

ORIGINAL
VOLUME V OF X

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

JAN 11 2017

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

LUZENSKI ALLEN COTTRELL,

APPELLANT

APPELLATE CASE NO 2015-000731

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COURT’S EXHIBIT NO. 12 (CD)
STATE’S EXHIBIT NO. 10 (CD)

1 Q In order to be death eligible, I certainly agree
2 with what your Honor instructed. There has to be that
3 finding of that statutory aggravating circumstance.
4 That's what legally opens up the option of death
5 penalty or life without parole.

6 A Uh-huh.

7 Q Once you're in that situation and you've heard all
8 the evidence, and the judge would, of course, give all
9 the instructions, you will never hear among those
10 instructions the judge say, "If you find A, B and C,
11 you must impose the death penalty." Do you understand
12 that?

13 A I do, yes.

14 Q And the opposite is true. The judge will never
15 say, "If you find A, B and C, you have to impose a life
16 sentence without parole."

17 A Yes.

18 Q All right. At that point the choice would be up
19 to you as an individual juror under the law. We call
20 that a reasoned moral judgment.

21 A Uh-huh.

22 Q And life can be -- can be the option for reasons
23 of mitigation, for any reason, or no reason at all.

24 A Uh-huh.

25 Q Do you have a problem with that?

1 A Not at all.

2 Q You could follow that and make your choice?

3 A Uh-huh.

4 Q You could also impose a life sentence for mercy.
5 To you, is mercy something that is earned or is that
6 something that is bestowed?

7 A That's an interesting question. I -- I would
8 think mercy is something that is bestowed.

9 Q All right, sir. And could you consider that in
10 making a decision about whether death or life without
11 parole would be the appropriate sentence?

12 A Yeah, I think you should.

13 Q Yes, sir. All right. And if -- if you were in
14 the jury and you reached your own individual decision,
15 having heard all the evidence, all the law and spoken
16 with the other jurors and you decided, "This is my
17 decision," and the other 11 jurors decided something
18 different having heard all the evidence and the law --
19 and that would be perfectly appropriate because it is
20 an individual moral judgment.

21 A Uh-huh.

22 Q If you were sitting over here as one and the other
23 11 disagreed with you, would you give up your vote just
24 to go to long with the others?

25 A I don't think so. I think personal integrity is

1 critical for each person, so I would say no.

2 Q And under your juror's oath, it would violate the
3 oath to make your individual judgment to violate your
4 conscience.

5 A Uh-huh.

6 Q And let me ask you the reverse. If you were one
7 of the 11 and there was one person on the other side,
8 would you respect that individual's integrity and their
9 decision or would you work real hard to bring them
10 along?

11 A Well, I would expect them to respect mine, so I
12 would do the same to them.

13 Q All right, sir.

14 MS. NORRIS: I don't have any further questions,
15 your Honor.

16 EXAMINATION BY MR. RICHARDSON:

17 Q Mr. Heindlmeyer, is that right?

18 A Uh-huh.

19 Q My name is Jimmy Richardson and this is Scott
20 Hixson.

21 A Met you on Monday.

22 Q Yes, sir. Yes, sir. I just want to pick up where
23 Ms. Teresa left off. Just to make sure it's clear, I
24 think its abundantly clear. You got it all. I can't
25 believe you kept up with as much of that as you did

1 from the judge, but you have got a really good grasp of
2 it.

3 I just want to make sure when we're talking about
4 what you might say to other jurors or they might say to
5 you, you do realize that a juror, we put 12 people over
6 here to discuss. Just because somebody says, "I want
7 this," or, "I don't want that," everybody doesn't have
8 to be quiet at that point. You can talk with them
9 about those feelings and they can talk with you about
10 those feelings, and you're fine to be able to discuss
11 both life and death.

12 A Uh-huh.

13 Q And I think you've got the whole process down that
14 this is more than just any other murder. And the State
15 has a big burden of proof. We fully expect to have
16 that burden of proof and to present you with the
17 sufficient evidence.

18 Now, when we do that, I don't want to trick you.
19 When we do what we say we're going to do, when we bring
20 you enough evidence for murder for guilty phase, show
21 you the aggravating circumstance, talk to you about how
22 this murder is different, we're going to ask you to put
23 your name on that line. There's 12 of them. One of
24 them is going to be yours. Can you sign your name
25 knowing that that is basically the death warrant for

1 this individual if the facts and circumstances justify
2 it?

3 A Yeah, I think so. I think I actually said that
4 already, but yes.

5 Q Yes, sir. You sure did. And you can also discuss
6 any other options -- life, not guilty, all those other
7 things that come along with it?

8 A Uh-huh.

9 MR. RICHARDSON: Your Honor, I have no further
10 questions.

11 MS. NORRIS: Could I ask just one more, your
12 Honor?

13 THE COURT: Yes.

14 EXAMINATION BY MS. NORRIS:

15 Q Sir, and the mitigating circumstances, that would
16 be things such as background, mental illness, et
17 cetera. Do you believe those are appropriate things to
18 consider?

19 A Sure I do.

20 MS. NORRIS: Thank you, sir.

21 He's qualified, your Honor.

22 MR. RICHARDSON: Qualified, your Honor.

23 THE COURT: All right.

24 Yes, sir. You have been found or I find you to be
25 qualified. It doesn't mean you're on the jury. What

1 it means is that you will be in that final pool of
2 jurors from which the jury will be drawn. We have --
3 we worked, actually, last night until midnight.

4 MR. HEINDLMEYER: I heard that.

5 THE COURT: And we were here early this morning,
6 and we will be going for several days to make sure we
7 have a qualified panel. We don't anticipate needing
8 you until probably Monday.

9 But what we've decided to do, the appropriate
10 thing would be to have a tape-recording. And this
11 officer has a number for you.

12 MR. HEINDLMEYER: Okay.

13 THE COURT: If you will call that number after
14 6:00 p.m. on Sunday, it will tell you when to report.
15 If you are selected on the jury, you will be
16 immediately sequestered so please have with you any
17 medications, clothing, things you might need to be
18 sequestered for several days.

19 Of course you will be put up at the county's
20 expense and we will take care of all your meals, things
21 of that nature. But be here in anticipation of being
22 selected. You may or may not be, but just be ready in
23 case you are.

24 Remember my order concerning pretrial publicity,
25 doing research concerning the case, talking with

1 anybody about the case. That order is in effect and
2 will continue in effect until you are released. So
3 please comply with it. Thank you.

4 MR. HEINDLMEYER: You're welcome.

5 (WHEREUPON, Mr. Heindlmeyer exited the courtroom
6 at 10:52 a.m.)

7 (WHEREUPON, Ms. Harry entered the courtroom
8 at 10:53 a.m.)

9 DONNA HARRY,

10 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT:

12 Q Good morning, Ms. Harry. How are you?

13 A Good morning. Fine. Thank you.

14 Q All right. Ms. Harry, before we get started with
15 your individual voir dire, I'd like to explore one
16 thing.

17 On Monday I asked if there were any jurors who
18 might know a reason why he or she could not be fair and
19 impartial in this case. Our inquiry is to determine
20 whether or not there is anything that would
21 significantly impair a person's ability to perform his
22 or her duties as a juror. And if I had to pick out
23 just two or three words to describe what the duties of
24 a juror are, it would be to be fair and impartial.

25 A Yes.

1 Q And you, according to my notes, stated in response
2 to my question that you did not feel you could be
3 either fair or impartial in this case, do my notes
4 correctly bear that out?

5 A Yes, sir.

6 Q You did say that?

7 A Yes.

8 Q Before we go any further, can you tell me why you
9 feel that you could not be fair and impartial in this
10 case?

11 A Well, we lived down the street. We live around
12 the corner where it happened at the time it happened.

13 Q Okay. So you lived down near 29 --

14 A

15 Q 29th, isn't it, where the donut shop was?

16 A Well, we lived on I didn't mean
17 around the corner, but in the area where it happened.
18 And I just, you know, living in there, we knew about
19 the case. We knew what happened and the outcomes of
20 things.

21 Q How long have you lived there?

22 A We lived there for four years. We lived in --

23 Q Okay. You say you know about the case. Tell me
24 what information you received about the case. What's
25 your understanding concerning the case?

1 A I mean, just through the news, the newspaper, all
2 of the articles that were out, you know, during the
3 trial, the facts.

4 Q Okay. So you've read all of that?

5 A Yeah, I did. And I have a police officer in my
6 family.

7 Q And you have a police officer. Does he work for
8 the Myrtle Beach Police Department?

9 A No. I have family members who are police officers
10 in different parts of the country.

11 Q You said that you had some information about
12 what's occurred since the incident. What's your
13 understanding of that?

14 A I was understanding he had been tried and found
15 guilty, and it went to the supreme court.

16 Q Okay. Would that information be such that you
17 could not set it aside in your deliberations in this
18 case? You could not -- whenever a juror begins
19 deliberations, and I would instruct the jury that they
20 can only consider -- only consider -- information that
21 has come -- you know, that's what a trial is.

22 A Right. I understand that.

23 Q You think about it. A trial is nothing more than
24 an orderly process by which the parties or attorneys
25 involved bring information to a juror for that juror's

1 consideration.

2 During the deliberation, I would tell you you
3 could only consider the evidence whether it be
4 testimony or exhibits that was introduced during that
5 trial. From what I gather from what you're telling me
6 is that you could not forget about what you have heard
7 and the information that you have obtained in this
8 case. You could not set that aside and not consider at
9 all and consider only the evidence introduced in the
10 case?

11 A Sir, I could probably set it aside, but I would
12 be -- I could not honestly tell you that that would
13 not...

14 Q Come into play?

15 A Come into play, yes. That's what I mean. I don't
16 know myself if I could honestly separate that when the
17 time came.

18 Q All right. Well, let me ask you this, the
19 ultimate question. The only way you could be fair and
20 impartial is to follow my instructions to consider only
21 what you hear or see in the trial of this case, the
22 things that were properly introduced as evidence.
23 That's the only way you could be fair and impartial --

24 A Right.

25 Q -- if you follow my instructions. Are you telling

1 me that because you have this information, your ability
2 to follow your oath as a juror to be fair and impartial
3 would be substantially impaired by this other
4 information that you have?

5 A I would hope not, sir. I mean, I'm honestly
6 trying to tell you I believe I could sit and listen to
7 the case and come up with my own judgment of what you
8 tell us, but I'm just being honest. I don't know if,
9 honestly, if that would ever come to mind.

10 Q That's what I need you to help me with.

11 A Right.

12 Q Because if this other information comes to mind,
13 if that other information influences your view of the
14 evidence in this case or your view of the case in
15 general, that would be improper. If you tell me that
16 you can set that aside, that you are certain that it
17 would not come into play in your deliberations in this
18 case, I would feel comfortable with that. But you
19 don't seem to be telling me that. Do you think you
20 could do it?

21 A I honestly feel -- I hope deep in my heart I
22 could. I'm being honest. I would be able to listen to
23 what you tell me and just to judge. I think hopefully
24 I could do that and be -- on just what I hear, assuming
25 that -- I have to say I guess yes, I could.

1 Q You say -- you're telling me now that you could?

2 A I believe I could, yes.

3 Q All right. Then do you believe that you could be
4 a fair and impartial juror in this case? That's the
5 ultimate question. You told me on Monday you did not
6 think you could, but now do you believe after our
7 discussions that you can be a fair and impartial juror?

8 A To be honest --

9 Q This is something that we cannot leave to chance.

10 A Right. I guess, to be honest, I'd have to say
11 hopefully I could, but I --

12 Q You cannot tell me you can?

13 A I can't honestly tell you one hundred percent yes
14 that I could do that.

15 THE COURT: I will let you examine on this issue.

16 MS. NORRIS: Your Honor, I don't have any question
17 on that issue. I just note on her information before
18 that she had a prepaid vacation within just a couple of
19 days that we had her come in, so your Honor could
20 address that. We would not object to excusing her on
21 that. Ms. Melanie has the paperwork. It's prepaid,
22 all arranged for the 20th through the 27th.

23 THE COURT: Is that right?

24 THE CLERK: Yes, but it was beginning the 20th.
25 We addressed this when we met the first time on the

1 jurors, that they wanted her to come -- everyone wanted
2 her to come in because the report day was the 15th and
3 her trip did not start until the 20th. And, yes, I
4 have all documentation of that.

5 THE COURT: Any objection to excusing this juror,
6 Mr. Richardson?

7 MR. RICHARDSON: No, sir.

8 MS. NORRIS: No, sir.

9 THE COURT: All right. You're excused, ma'am.
10 You need not make any further appearance in this
11 matter.

12 (WHEREUPON, Ms. Harry exited the courtroom
13 at 11:02 a.m.)

14 THE COURT: John Phelan.

15 (WHEREUPON, Mr. Phelan entered the courtroom
16 at 11:02 a.m.)

17 JOHN PHELAN,

18 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

19 EXAMINATION BY THE COURT:

20 Q Good afternoon -- or morning, Mr. Phelan. How are
21 you?

22 A I'm all right, sir.

23 Q All right. It's good to see you.

24 Mr. Phelan, have you complied with my order
25 concerning pretrial publicity and contact with anyone

1 about this case?

2 A Yes, sir, I did comply.

3 Q And, as I said earlier, it will continue until
4 such time as you are released.

5 Mr. Phelan, do you recall my remarks to you
6 earlier today?

7 A Yes.

8 Q And I want to be sure that you have a clear
9 understanding that Mr. Cottrell, as he sits in this
10 court today and will throughout this trial, with a
11 presumption of innocence. That is, he is innocent. Do
12 you understand that?

13 A Yes.

14 Q Are you clear on that?

15 A Yes.

16 Q Do you understand that he has pled not guilty and
17 then his attorneys intend to vigorously defend him in
18 this case? Do you understand that?

19 A Yes.

20 Q And do you clearly understand that, although we're
21 going to talk about this second phase of a capital
22 punishment case which would become only necessary if
23 there had been a conviction in the first phase, we do
24 that out of necessity? It is no indication of anyone's
25 inference that that will happen. Only the jury can say

1 whether the State has proved its case. And we don't
2 want you to think there's any inference on our part or
3 anyone's part that that will happen. It's just simply
4 we need to address it at this time. Do you understand
5 that?

6 A Yes, I understand.

7 Q Okay. You're crystal clear on those things, and
8 would you need to be reminded of any of those things
9 during the questioning that will take place in just a
10 moment?

11 A No.

12 Q You understand?

13 A Yes, sir.

14 Q All right. Now, Mr. Phelan, I see here that you
15 have looked at these documents that I gave you. One of
16 those documents asks you to categorize yourself. You
17 signed it, dated it. And guess what? You didn't mark
18 what kind of juror you are.

19 Can I hand it back to you and have you -- did you
20 have a pen?

21 A There's two here.

22 Q Just look at it and refresh your recollection of
23 the response and choose the one that you think best
24 describes you.

25 A (Document handed to the Court.)

1 Q Thank you, sir. All right.

2 Mr. Phelan, you had indicated that you are a C
3 type juror; is that correct?

4 A Yes.

5 Q And just so that you and I are on the same page,
6 let me make sure that I understand. You are telling me
7 that you're the type of juror that would need to hear
8 the facts and circumstances in aggravation and in
9 mitigation before you could make a decision regarding
10 punishment. Is that a correct description or the best
11 description of you as a juror?

12 A That's correct, yes.

13 Q All right. And then if we look back at our early
14 conversation about the process that would be followed,
15 it would seem to me that you have an understanding that
16 a juror in a capital case would necessarily, if there
17 were an initial conviction of murder, to look at
18 aggravating and mitigating circumstances. You
19 understand the distinction between those?

20 A Yes, sir.

21 Q Okay. And I want to make myself certain that you
22 understand that in a capital case, a simple -- a
23 conviction for murder is not enough to even put the
24 issue of a death penalty -- of a death penalty on the
25 table.

1 And even if the State then goes on and proves one
2 of the statutory aggravating circumstances, that does
3 not require the imposition of the death penalty. Do
4 you understand that?

5 A Yes.

6 Q There's no circumstance -- none -- no circumstance
7 whatsoever where you as a juror would be required to
8 recommend the death sentence. Do you understand that?

9 A Yes, sir.

10 Q Okay. Do you understand that even if we have
11 reached a point where the State has convinced the jury
12 beyond a reasonable doubt of aggravating circumstances,
13 that before the jury can even consider a recommendation
14 of the death penalty, it must first by law consider all
15 the statutory mitigators and look at the other evidence
16 of other mitigators, and it must also consider the
17 granting of mercy whether that mercy be earned mercy or
18 not? Mercy can be given to those who have earned it,
19 and mercy can be given by grace to a person who may
20 have done nothing to earn it. But mercy could be
21 extended in this case? Do you understand?

22 A Yes, sir.

23 Q So at no time are you required to give a
24 recommendation of the death penalty.

25 A Yes, sir.

1 (Telephone interruption.)

2 Q But you understand that you are -- please -- that
3 you are also allowed to consider -- consider -- the
4 death penalty. And under circumstances satisfactory to
5 you, you can recommend the death penalty. If the State
6 has met its burden, it is available to you. Do you
7 understand?

8 A Yes, sir.

9 Q And that would be a moral judgment that you as an
10 individual would be called upon to make.

11 Now, if the jury were to unanimously decide that
12 the death penalty was appropriate, do you realize that,
13 unlike the normal case where when a jury reaches a
14 verdict, the foreman signs it and hands it up to the
15 Court and that's it. But in a death penalty case, each
16 juror is required to sign his name to that verdict form
17 if there is a recommendation of death.

18 Do you think that you would be able to do that if,
19 in fact, we reached the point of -- and I'm not
20 suggesting that we will -- but if, in fact, we reach
21 the point where the jury unanimously decided to
22 recommend the death penalty based on the aggravating,
23 mitigating and other circumstances of this case, could
24 you sign your name --

25 A Yes, sir.

1 Q -- in addition to the others?

2 A Yes, sir.

3 Q All right. Now, Mr. Phelan, we're all shaped to
4 some extent, would you agree, by our life experiences,
5 things that have happened to us, happened to family
6 members or loved ones or friends, they all shape us in
7 some form or fashion? We all, in spite of how hard we
8 may try, have some bias or prejudices on some issues at
9 least, and we certainly have opinions about issues that
10 may differ from the opinions of others. Would you
11 agree with me --

12 A Yes.

13 Q -- that that is just generally true? The issue
14 before us is whether or not there is anything that
15 would substantially interfere with your ability to
16 perform your duties as a juror. And those duties, if I
17 could just pick one or two words and describe them, is
18 to be fair and impartial.

19 Can you think of anything in your life
20 experiences, any prejudice or bias that might be
21 against or for Mr. Cottrell or against or for the
22 State, do you have any opinions like perhaps your
23 opinion concerning the death penalty, anything of that
24 nature that you are aware of that might substantially
25 interfere with your ability to be a fair and impartial

1 juror in this case?

2 A No, sir.

3 Q Do you think you can be fair and impartial?

4 A Yes.

5 Q You did not respond when I asked if you had heard
6 or seen any information about this case. Do you have
7 any information about the case?

8 A I have none.

9 Q How long have you lived here?

10 A I've lived here four and a half years.

11 Q All right, sir. Now, Mr. Phelan, you went over
12 the potential witness list, and I understand or as I
13 look at it, I don't see where you indicated you know
14 anybody. And this is difficult, I know, to look at a
15 list of one hundred people and say, "Well, is this
16 somebody I know?" The names seem to run together and
17 doesn't look familiar or just unfamiliar.

18 Are you fairly comfortable in looking at that
19 list, if there was anyone on that list who had a
20 significant relationship with you like perhaps a
21 neighbor, a family member or a business associate, are
22 you fairly comfortable that you would recognize that
23 person, anyone that you had a significant relationship
24 with?

25 A I'm comfortable with that, yes.

1 Q So you're comfortable in telling us that there is
2 no one on this list, to the best of your knowledge,
3 that you have any type of significant relationship
4 with?

5 A Okay.

6 Q To that list I would add a couple people: Nicole
7 Pyle, John Taylor, Christine Del Fonzo, William Nettles
8 and Michelle Light. Do those names ring a bell?

9 A No.

10 Q Once again, finally, do you know of any reason
11 whatsoever why you should not serve on this case with
12 particular emphasis being placed on your ability to be
13 fair and impartial?

14 A I don't know of any reason.

15 THE COURT: Answer any questions Ms. Norris might
16 have.

17 MS. NORRIS: Thank you, your Honor.

18 EXAMINATION BY MS. NORRIS:

19 Q Mr. Phelan, I am Teresa Norris. I know we had a
20 chance just to stand up the other day across a big
21 room. I'm glad I get the opportunity to talk to you.

22 I noted on your questionnaire that you have a
23 brother and cousin who are law enforcement in New
24 Jersey?

25 A Ex-brother-in-law and cousin, yes.

1 Q Is there anything about that that would impact you
2 in a case where the deceased was a police officer?

3 A No.

4 Q Okay. Let me just ask you about your opinions
5 about the death penalty in general. Have you ever
6 given much thought one way or the other prior to being
7 called as a potential juror on this case?

8 A No. No.

9 Q And if I had met you two weeks ago or prior to you
10 getting a juror summons and you and I were just having
11 a discussion, and my question is just tell me generally
12 your thoughts about the death penalty, what would your
13 answer be?

14 A Boy. I mean, like I really have never thought
15 about it. But everybody deserves a fair trial. And I
16 feel that if somebody -- myself, if I was open minded
17 enough to listen to both sides of the story. I mean,
18 if the person is guilty and it's the crime that they
19 committed, and if, you know, they do the crime -- I
20 don't want to say you have to do the time, but if that
21 is what is after you, you know, and it's guilty, you
22 know, beyond a reasonable doubt, then that's, you know.

23 Q Let me ask it this way. First, of course, there
24 would have to be that trial that you're talking about
25 where you and the other --

1 A Right.

2 Q -- jurors would make a decision, guilty of murder
3 or not. And murder is the killing of another -- the
4 unlawful killing of another with malice aforethought.
5 And malice is a wicked, evil intent, a heart bent on
6 fatal mischief. Did it, meant to do it. Wasn't
7 self-defense, wasn't accident.

8 Are you saying that at that point if murder was
9 proved, you believe the death penalty is the
10 appropriate punishment?

11 A Yes.

12 Q Okay. And under the law, before a person is
13 eligible for the death penalty, there would have to be
14 what I call murder plus. And that's the list of
15 statutory aggravating circumstances that the
16 legislature set forth.

17 That can be murder plus an additional crime such
18 as rape, kidnapping. It can be status such as a
19 helpless victim, a small child. But if one of those
20 statutory aggravating circumstances is present -- so
21 we've got murder plus -- given your answer just based
22 on murder, I assume the answer is still true that you
23 believe that's the type case that should automatically
24 get the death penalty?

25 A I mean, I don't know.

1 Q Just in your own view, if a person -- you've done
2 the deliberations and decided they're guilty of murder,
3 and you've decided that they're guilty of something,
4 that plus, legally, in your mind at that point, as I
5 understood what you were saying, the death penalty is
6 the only option. Is that what you were saying? Is
7 that your opinion? Let me phrase it that way.

8 And there's no right or wrong answer here.

9 A I would say no. I mean -- I mean, I don't want to
10 say I'm getting confused by it, but I just, you know,
11 if it could be proven that it was an act of malice or,
12 you know, I decide in my mind and the jury decides that
13 it is, then I feel that the death penalty should be.

14 Q Well, at the point where it's proven that it's
15 malice and it's murder --

16 A Uh-huh.

17 Q -- in your own mind is there any circumstance
18 where you could envision not giving a death sentence?

19 A No.

20 Q Okay. That's all I was trying to ask.

21 And if you heard additional information about --
22 not talking about Mr. Cottrell but just the death
23 penalty in general -- if you heard information about
24 the defendant's background, perhaps mental illness,
25 things that under the law are mitigating factors, in

1 other words lessen, reduce it, do you personally feel
2 that that information is relevant at all or to you is
3 it just the facts of the murder itself?

4 A No. I feel that's relevant.

5 Q I'm sorry?

6 A I feel that that is relevant.

7 Q Okay. So you believe that you should hear all
8 that evidence --

9 A Yes.

10 Q -- and consider it? And after -- after you heard
11 all that evidence and you've got murder plus, I
12 understand that it's relevant and you would hear it,
13 but my question is: Could you actually change your
14 view that the death penalty is automatic given that
15 you've already found him guilty of that murder?

16 In other words, would you just hear that and
17 listen to it, or do you think there's a chance it could
18 actually change your mind?

19 A It could actually change my mind.

20 Q Okay. All right. And under -- if you were on a
21 capital sentencing jury, there would never be a
22 situation where the judge instructs, "If you find A, B
23 and C, you have to give a life sentence." Do you
24 understand that?

25 A Yes.

1 Q And the same is true. Once all the evidence is in
2 and all the instructions and arguments are in, you
3 would be in a position of making an individual choice
4 with two options: Death or life without parole. Is
5 there any circumstance there that you could envision
6 not automatically giving a death sentence?

7 A I'm -- you kind of lost me a little bit there, I'm
8 sorry.

9 Q Okay. Let me see if I can phrase it this way. If
10 you were on the jury, you had agreed this person is
11 guilty of murder -- malicious, intentional, did it,
12 meant to do it -- plus an additional bad thing that our
13 legislature has said this makes it a death penalty
14 case, plus you've heard all other information and
15 instructions, but at the end you will never get an
16 instruction that says, "You have to vote death," or,
17 "You have to vote life," I'm asking if in your own
18 brain, just based on murder plus, you're automatically
19 going to go for the death penalty in that question or
20 that situation?

21 A Um, no. I wouldn't automatically go with a death
22 sentence.

23 Q If -- if you were in that situation and made your
24 individual decision and you were one of 11 people on
25 one side -- well, let me phrase it differently.

1 If you made your choice and you chose, given
2 everything, "This is my sentence," and 11 people were
3 on the other side, would you -- and everybody heard all
4 the same evidence, et cetera, and there's nothing
5 improper at all, it's an individual reasoned moral
6 choice. There would be nothing improper for you having
7 one opinion and everybody else having another. But my
8 question is simply: If you were in that situation,
9 would you give up your individual decision just to go
10 along with the majority?

11 A No. No.

12 Q And if I put you in that 11 and it was one other
13 person so that you and everybody except one person
14 agreed, would you respect that person's decision or
15 would you work real hard to get them to join everybody
16 else just to go along?

17 A No. I would respect his decision or theirs. His
18 or hers, whatever.

19 Q All right, sir. Give me just a second.

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

22 MS. NORRIS: I don't have any further questions.
23 Thank you, sir.

24 MR. HIXSON: Thank you, your Honor.

25 EXAMINATION BY MR. HIXSON:

1 Q Good morning, sir. How are you?

2 A Good morning.

3 Q I'm Scott Hixson, Chief Deputy Solicitor here. I
4 met you -- well, didn't meet you, said hey earlier.
5 And Jimmy Richardson, the Solicitor, over there. We're
6 prosecuting the case for the State.

7 You answered a bunch of questions. Thank you so
8 much for your time. I think, trying to get straight to
9 the point and wrap it up for you, I think you indicated
10 early on that you were a C juror, that you would like
11 to take all this information in and form a decision on
12 what you think the appropriate penalty would be if you
13 were called upon to vote on a penalty. Is that fair to
14 say?

15 A Yes.

16 Q And that's still your position, I believe,
17 throughout that discussion?

18 A Yes.

19 Q It seemed like there may have been some confusion.
20 We have talked and talked and talked about this process
21 over and over again. But, in essence, I think you
22 answered directly to the Court that if, whatever the
23 law and the process the judge asks you to follow, you
24 said earlier that you could follow that and that you
25 would follow that, and that's still your position?

1 A Yes.

2 Q Okay. And then, last little bit, I don't know how
3 much you know about jury deliberation, the deliberation
4 process. But, in general, you go back to a room all by
5 yourself with your jurors. No one else can know what
6 you're talking about. And you get back up there. You
7 share your opinions. You go back and forth and try to
8 come up with a verdict that speaks the truth relating
9 to guilt and also relating to the sentence. Fair to
10 say?

11 A Yes.

12 Q And so there's a healthy give-and-take back there,
13 but the Court, we don't know what that's all about, but
14 you're privy to that. So do you feel like you could
15 engage in that process and listen to others and
16 formulate an opinion and bring that back that speaks
17 the truth?

18 A Yes.

19 MR. HIXSON: I have no further questions, your
20 Honor.

21 Thank you very much for your time.

22 THE COURT: All right. Step down, if you would,
23 Mr. Phelan. Go see Mr. Ropp there. Just step outside
24 the room for a moment.

25 (WHEREUPON, Mr. Phelan exited the courtroom)

1 at 11:27 a.m.)

2 THE COURT: What says the defense?

3 MS. NORRIS: Your Honor, I would challenge this
4 juror just based on several times he said that once it
5 was murder in his mind, that's an automatic death
6 penalty. So I don't think he's going to give
7 meaningful consideration to anything else.

8 THE COURT: Mr. Richardson or Mr. Hixson.

9 MR. HIXSON: Judge, he repeatedly said that he was
10 a C juror. He repeatedly said he would follow your
11 instructions. And he repeatedly asked, I'm confused
12 about being posited these questions over and over
13 again. Under the totality, there was no question. He
14 consistently said he would consider relevant mitigating
15 circumstances and he would consider it all in making
16 that decision. That's what we ask in a C juror and we
17 believe he's properly qualified.

18 THE COURT: Ms. Norris, I think he became totally
19 confused with your questioning or the way you were
20 positing the questioning. I became confused.

21 This juror was very clear in his responses to my
22 questions. I think there was no question he
23 understands the process. He indicated, and I think
24 it's significant he indicated while on the stand -- I
25 had to give him his sheet back. He hadn't marked

1 it yet -- he was a C juror. And I asked him
2 specifically if he would consider the circumstances in
3 aggravation and mitigation, and that was after I
4 explained to him how the process worked.

5 I don't have any doubt in my mind that this juror
6 can be fair and impartial in his deliberations. I have
7 no doubt that he will follow the instructions of the
8 Court and give due deference to the evidence in the
9 case, so I think he's qualified.

10 (WHEREUPON, Mr. Phelan entered the courtroom
11 at 1:29 a.m.)

12 THE COURT: Mr. Phelan, I find that you are
13 qualified in the case. That doesn't mean you are on
14 the jury. It means you go into the pool from which the
15 final jury will be pulled.

16 We will not need you for several days. However,
17 we're going to give you a sheet of paper there that has
18 a number on it. Please call that number after
19 6:00 p.m. this coming Sunday and there will be a
20 recording there, and that recording will advise you as
21 to when you are to come to court.

22 When you come, we will select the jury and you may
23 be on that jury. So it's important that you be
24 prepared to be sequestered. So have with you in your
25 car, whatever, if you have any medications, toiletries,

1 some clothing, things of that nature that you will need
2 in case you are selected and sequestered.

3 Do you understand?

4 MR. PHELAN: Yes, sir.

5 THE COURT: Of course, my order concerning
6 pretrial publicity, inquiry into the facts of this case
7 and discussion with any person remains in effect.

8 Okay?

9 MR. PHELAN: Yes, sir.

10 THE COURT: Thank you, sir.

11 (WHEREUPON, Mr. Phelan exited the courtroom
12 at 11:31 a.m.)

13 THE COURT: Let's take a real quick break, about
14 five minutes, if you can.

15 (WHEREUPON, recess taken from 11:31 a.m.
16 to 11:42 a.m.)

17 THE COURT: Everyone is here. There's one
18 housekeeping matter that's I wanted to address before
19 we bring in the next panel. The clerk has brought to
20 my attention and I think we have a little bit of
21 confusion, but I'm certainly willing to proceed in
22 whatever fashion you folks agree and I think you did
23 have an agreement.

24 It's my understanding that once we have qualified
25 the jury panel that we bring the whole panel in, okay,

1 and that we engage in a traditional general sessions
2 strike process where the juror is called, the juror
3 comes forward, the State exercises a strike or presents
4 the juror, then followed by the defense doing
5 essentially the same thing.

6 The question is, and I remember this was
7 addressed. I just want to clarify it for the clerk.
8 She is preparing the -- or is prepared to prepare the
9 list, the order in which the names are called.

10 Traditionally what happens is once we have -- she
11 has a list of qualified jurors. They're sort of
12 randomly jumbled, and they're -- a new list is prepared
13 regardless of -- well, in that situation there wouldn't
14 be any order in which they were qualified. There is
15 just a random list prepared, and they're called off of
16 that list.

17 There was some discussion earlier about calling
18 them in the order in which they were qualified. For
19 instance, the first person qualified would be the first
20 person that's called up and the parties are given an
21 opportunity to strike or seat. I want to make sure
22 that we have that right.

23 What was your understanding, Mr. McGuire?

24 MR. MCGUIRE: That's my understanding. So they
25 would be one through whatever in the order they were

1 qualified in.

2 THE COURT: So the first person who was qualified
3 will be the first person called up. Second person
4 qualified will be the second person called up?

5 MR. McGUIRE: Yes, sir.

6 MR. RICHARDSON: And that was my understanding.

7 THE COURT: So everyone agrees that is the
8 appropriate way to approach this?

9 MR. RICHARDSON: Yes.

10 MR. McGUIRE: Yes, sir.

11 THE COURT: All right. We're all in agreement.
12 That's how we will proceed then, Madam Clerk.

13 THE CLERK: Thank you.

14 THE COURT: Okay. Yes, sir.

15 Mr. Ropp, bring in the second jury panel.

16 (WHEREUPON, Prospective Jury Panel Number 7 came,
17 into open court at approximately 11:45 a.m.)

18 THE COURT: Good morning. Good to see y'all.

19 Thank you for being here. I see we have all six of the
20 jurors on our second panel.

21 Before I begin, let me have you placed under oath.

22 (WHEREUPON, the panel was sworn.)

23 THE COURT: Let the record reflect or let me make
24 sure, is there any person who refused to take that oath
25 on this jury panel?

1 And there is no response.

2 Please remember that you will remain under oath
3 for the balance of the individual voir dire. I bring
4 you in as a panel because there is an issue that I need
5 to address. I have previously found that all of you
6 meet the statutory qualifications of jurors and you're
7 not disqualified for any reason. You can serve as
8 jurors generally in the court of general sessions.

9 But there are certain statutory exemptions that a
10 qualified juror may claim. An exemption is a personal
11 right that you have. It allows you to say, if an
12 exemption applies to you, if you have an exemption, you
13 have the right to just say, "Your Honor, I would like
14 to claim my exemption." And if you claim your
15 exemption, you would be excused and we would release
16 you from any further participation in this trial.

17 Understand, though, that it's a personal right and
18 you do not have to claim your exemption. You can say,
19 "In spite of my exemption, I choose to serve or to make
20 myself available for service as a juror." But that,
21 again, is a right you have to do.

22 So let me go through the list of exemptions, and
23 let's determine whether or not any of you are entitled
24 to claim an exemption and whether you would like to
25 claim that exemption.

1 First of all, no person who has attained the age
2 of 65 is required to serve as a juror. Are there any
3 of you who are 65 years of age or older?

4 And there is no response to that inquiry.

5 Have either of you served as a juror in general
6 sessions court or common pleas court? That would be
7 court like we have here. You would have been summonsed
8 to come to this courthouse. The fact that you may have
9 been on magistrate's court or municipal court or even
10 federal court is not -- does not qualify you for the
11 exemption. But if you have been summonsed as a juror
12 within the last three years -- and we try to avoid that
13 happening, but sometimes it does -- but if you have
14 been summonsed -- you don't have to have served, but if
15 you were called to serve in the last three years, you
16 may claim that as an exemption.

17 Is there anyone who would fit in that category?

18 And there are no responses.

19 Also, if you were on the Grand Jury -- some of you
20 may not understand what the Grand Jury is, but I can
21 assure you if you were on the Grand Jury, you know very
22 well you were on the Grand Jury.

23 The Grand Jury is a special jury that does not
24 actually try cases, but it's the jury that meets and
25 determines whether or not indictments should be issued

1 where a person has been accused of a crime.

2 A Grand Jury member would be required to meet
3 about once every month, and you would serve for at
4 least a year and in many cases two years. So for that
5 reason I'm sure you would know if you were on the Grand
6 Jury. But if you have been on the Grand Jury within
7 the last five years you don't have to serve.

8 Is there anyone who fits in that category?

9 And there is no response.

10 The next exemption involves those of you who have
11 small children under your care and custody. If you
12 have a small child, that is, a child under the age of
13 seven, and that is your child or a child that you have
14 custody of and it is your job on a daily basis to care
15 for that child -- think in terms of a stay-at-home mom
16 or dad. You take care of that child, that child is
17 your responsibility and you're unable to make other
18 arrangements for the care of that child -- this is a
19 unique case where jurors are going to be sequestered,
20 so they will not be there at home in the evening
21 either. So I will certainly take that into
22 consideration.

23 If you have custody and control of a child and you
24 take care of that child on a regular basis, that's your
25 job and you can't make other arrangements, please let

1 us know.

2 Is there anyone who falls in that category?

3 And there are none.

4 We have a similar exemption for people who take
5 care of an elderly person, a person over 65 or a person
6 who has a severe disability such that that person
7 should not and cannot be left at home alone or left
8 alone. And you are the person who on a daily basis
9 takes care of that elderly or disabled person who is
10 unable to care for his or herself. If that's your
11 situation, you may claim that as an exemption.

12 Does that apply to anyone?

13 And there is no response.

14 Also full-time students are excused. And those
15 persons who have a necessary job at any school -- K
16 through 12, the technical institute out here, Horry
17 Georgetown Tech, any technical school, the college,
18 anything of that nature. If you have a necessary job
19 there and there's no one that can fill in for you, you
20 may claim that as an exemption.

21 Is there anyone who fits into that category?

22 And there is no response.

23 And, finally, if you perform services for a
24 business or commercial or agricultural enterprise and
25 your job is so important to the operation of that

1 business, no one can take your place, and if you are
2 not there the business shuts down, it closes, you have
3 to send the employees home, you may claim that as an
4 exemption.

5 Anyone who fits into that category?

6 Yes, sir.

7 POTENTIAL JUROR: I've got an audit from the South
8 Carolina Department of Revenue coming up Monday on two
9 corporations that I'm the office manager for, and I
10 need to be there with the auditor.

11 THE COURT: Let me inquire into that. Who do you
12 work for?

13 POTENTIAL JUROR: It's Beach House Entertainment
14 and Broadway Sports Entertainment.

15 THE COURT: What's your position with that
16 company?

17 POTENTIAL JUROR: I'm the office manager.

18 THE COURT: You're the office manager. Is there
19 anyone else that has access to those records or that
20 information that would be required by the -- who's
21 auditing it?

22 POTENTIAL JUROR: It's South Carolina Department
23 of Revenue.

24 THE COURT: The Department of Revenue?

25 POTENTIAL JUROR: It's a three-year audit that

1 they're performing on both corporations.

2 THE COURT: And they have given you notice that
3 they will be there on Monday?

4 POTENTIAL JUROR: Yes, sir. We've already had to
5 postpone it once before because of our accountant.

6 THE COURT: Okay. Could it be postponed in this
7 case?

8 POTENTIAL JUROR: They don't -- they only wanted
9 to postpone it the one time. I explained to them about
10 this, but they want to get it done because it is a
11 three-year audit on both corporations.

12 MR. RICHARDSON: Your Honor, I think that fits
13 within the exemption.

14 THE COURT: Okay. Both the defense and the State
15 tell me that they agree that that would fit into the
16 exemption. Normally I would just exempt you for one
17 day, but this case is such that we're going to require
18 sequestration, and we certainly, I hope, to be involved
19 with this on Monday.

20 So what I'm going to do is I'm not going to excuse
21 you, I'm going to transfer you to another week that you
22 can serve. All right, sir?

23 POTENTIAL JUROR: Okay.

24 THE COURT: And your name?

25 POTENTIAL JUROR: Michael Arnold.

1 THE COURT: Arnold?

2 POTENTIAL JUROR: Yes, sir.

3 THE COURT: Mr. Arnold, your number?

4 POTENTIAL JUROR: 19.

5 THE COURT: All right. Mr. Arnold, you will be
6 excused. You will receive notice from the clerk of
7 court telling you when you must appear. You may leave.

8 (WHEREUPON, Mr. Arnold exited the courtroom
9 at 11:54 a.m.)

10 THE COURT: As to the balance of the jury panel,
11 before we break out and examine you individually, let
12 me provide you with some general information and that
13 will help speed us along if I give it to you as a
14 group. So please pay close attention because these
15 things I'm telling you are very important to our
16 inquiry.

17 The purpose of this individual voir dire, and we
18 never have it in any other type of case except what we
19 call a capital murder case. You're all aware that this
20 is a capital murder case, what we call a death penalty
21 case. And there are very special rules that apply to
22 death penalty cases.

23 Murder cases are tried with some frequency
24 throughout the state of South Carolina. We call them
25 typical or regular murder cases. In special

1 circumstances the State can choose to seek the death
2 penalty in a murder case. And if it does, special
3 rules and procedures automatically come into play.

4 One of those special things is what you're
5 experiencing right here. As I said, in a normal case,
6 no other kind of case are the parties allowed to
7 examine you individually about your ability to be a
8 fair and impartial juror. That's just one of the
9 things that changed.

10 As I said, this is a death penalty case where the
11 State is seeking the death penalty. As such, as I
12 said, there will be inquiries made of you. There are
13 going to be questions asked of you. Most of those
14 questions are directed towards opinions or feelings or
15 bias or prejudices you might have that could possibly
16 prevent you from being a fair and impartial juror. The
17 magic language is whether or not there's anything that
18 would substantially interfere with your ability to
19 perform your duties as a juror. That's where we're
20 going.

21 So, quite naturally, they're going to ask you
22 questions about your feelings and opinions and
23 experiences. That's not an attempt to invade on your
24 privacy. No one wants to do that. We all understand
25 that in this country one of the great things about this

1 country is everybody is entitled to have his or her own
2 opinion on everything. And everybody here will respect
3 your opinion. And I promise you nobody is going to try
4 to change your opinion on any issue.

5 So when we ask you your opinion about something,
6 don't worry about there being a right or wrong answer.
7 Every answer is right. The only thing that we ask you
8 to do is just share with us candidly and truthfully
9 what your opinions or feelings are about particular
10 issues. That's all that we're going to ask of you.

11 Now, in regard to this particular case, have any
12 of you ever heard the term used "presumption of
13 innocence"? Have some of you heard that? I see some
14 nods. Well, let me tell you what that means.

15 That's a phrase we use in the law, and it's used
16 to describe a legal theory that is pervasive. It
17 applies all over the country whether you're in
18 California or South Carolina. And what that says, it
19 is an important legal right that y'all have. It means
20 this: A person accused of a crime is presumed to be
21 innocent. There is a legal presumption that person is
22 innocent. And that presumption stays with that person
23 not until the time a trial begins, it continues
24 throughout the trial until the State meets its burden
25 of overcoming that presumption.

1 We call that the burden of proof in a case. And
2 the burden of proof is placed upon the State to
3 overcome that presumption of innocence, is to convince
4 a jury -- that means every person on the jury
5 unanimously -- that the defendant has committed or is
6 guilty of the offense beyond a reasonable doubt.
7 That's the standard of proof. And I'll talk to you
8 more about reasonable doubt at the end of the case.

9 But that's what the State must do. It is
10 imperative -- imperative -- that each of you understand
11 during this questioning and if you're selected on the
12 jury during the trial of the case that Mr. Cottrell has
13 the protection of that presumption of innocence. He
14 has pled not guilty to this charge. And his attorneys
15 are going to go forward with the defense in this case
16 that says he did not do this. He is not guilty.

17 And I want you to always keep that in your mind
18 when you listen to testimony or when you're being
19 questioned here today. Keep that in your mind.

20 The reason that is so important today is that I
21 think I explained to you yesterday, and we'll talk a
22 little bit more about it in a moment, that in a capital
23 case, one of the rules is that it's split into two
24 parts. We call that a bifurcated case. We have what
25 we call the guilt phase. Just a term of art we use.

1 Doesn't mean anything. And we have what we call the
2 sentencing phase. Okay? You don't have the sentence
3 phase unless a jury has found that the defendant
4 committed the offense of murder in the guilt phase.

5 Now, since we're going to be asking you questions
6 about the sentencing phase, you might have in your mind
7 "Well, the judge, since he's asking me about the
8 sentence phase, is telling me I should convict
9 Mr. Cottrell on the guilt phase." That's not at all
10 what I am suggesting to you. It's just that we only
11 get to question you one time, so we need to talk to you
12 about both phases of the trial. No one here is
13 suggesting that the jury will or should return a
14 verdict of guilty in the first phase of the trial. And
15 please don't have that in your mind. Keep in the back
16 of your mind that these questions are only asked just
17 in case we get to that stage of the trial.

18 Now, as I said, a capital case or death penalty
19 case is very unique because, first of all, the State
20 has to begin with what appears to be a very traditional
21 or regular murder trial. In that trial, just like in a
22 regular case or a normal murder case, the State has to
23 convince the jury that the defendant killed another
24 person, took the life of another person unlawfully, and
25 that that act was committed with what we call malice

1 aforethought.

2 Malice is described in many ways by the court, and
3 I'll give you the full charge at the end of the trial.
4 But suffice it to say, malice means with an evil,
5 wickedness towards the victim, maliciously, with hatred
6 and ill will. That's what malice aforethought is.

7 Now, let me make sure that you understand that in
8 a murder case, even though that is what the State has
9 to prove, that it was a wicked, evil, intentional act,
10 did you realize that in a normal murder case and upon
11 that showing the death penalty is not even available as
12 a punishment in this state? Most people think that if
13 a murder is proved that the death penalty's a possible
14 penalty. That is not the case.

15 In fact, I will tell you that there's no criminal
16 offense in South Carolina where the judge will tell you
17 that on that criminal offense alone, the death penalty
18 is a possible sentence. Murder, in this state, murder
19 without the additional requirements of the death
20 penalty statute does not carry the death penalty. No
21 question about that.

22 However, in a capital case, we have that first
23 part. And if -- if -- the jury is convinced beyond a
24 reasonable doubt that the defendant did take the life,
25 unlawfully take the life of another person with malice

1 aforethought, and a jury finds that beyond a reasonable
2 doubt, we move to the second part called the sentencing
3 phase of the trial.

4 And the State at that trial has to first, as a
5 primary thing, has to convince the jury by the same
6 standard -- beyond a reasonable doubt, and
7 unanimously -- that the defendant, in addition to
8 committing a murder, which has already been --
9 convicted him of, must prove beyond a reasonable doubt
10 that that murder was in conjunction with some other
11 aggravating circumstance. That is, he did murder plus.
12 He did something else. And an aggravating circumstance
13 is something that makes the murder more heinous, that
14 it aggravates the fact that there was a murder.

15 A capital murder is more than a regular or
16 noncapital murder. So we start in the sentencing phase
17 with the State having to convince the jury that there
18 are aggravating circumstances to begin with. And the
19 State is limited to those aggravating circumstances
20 that our legislature put in the death penalty statute,
21 enumerates. There's several different types. Some
22 types can mean it was in the commission of another
23 crime like maybe a rape or a kidnapping.

24 There's some aggravators that have to do with the
25 status of the victim like the victim is a child, that

1 type of thing. The State must convince the jury beyond
2 a reasonable doubt and unanimously of at least one of
3 those statutory aggravators.

4 You know, when you're trying a case and you're
5 asked to deliberate, you may get to the point where you
6 say, "Well, you know, in this particular case, there's
7 this other circumstance that I believe is just as bad
8 as any of those that are aggravators that the State
9 listed. Well, why don't we use that as an aggravator
10 in this case?" You cannot do that, and I will instruct
11 you that you cannot do that. That's not appropriate.
12 You must be limited to those that the legislature has
13 put in the box, so to speak. You can't go to something
14 else.

15 Only if -- only if the jury is convinced beyond a
16 reasonable doubt and unanimously that there was a
17 murder committed and that there is an aggravating
18 circumstance, at least one, does the matter of
19 possibility of a death penalty even arise.

20 If you found the defendant guilty of murder, you
21 don't even think about the death penalty. If you find
22 him guilty or if you fail to find him guilty of an
23 aggravator, it's not even considered. If you find him
24 guilty of an aggravator, it still is not even
25 considered until -- until the law requires you to look

1 at the circumstances and determine whether or not there
2 are any mitigating circumstances, circumstances that
3 lessen the aggravated nature of the offense.

4 And the legislature has helped us in that regard,
5 too. The legislature describes some things that are to
6 be considered by you as mitigating circumstances.

7 But that's a little different from the aggravating
8 circumstances because as a juror, if we get to the
9 point where you are looking for mitigating
10 circumstances, the legislature says you can go outside
11 the box. You're not limited on mitigating matters to
12 just those described by the legislature. You can look
13 at anything, and it's a personal judgment that you have
14 to make. Any one of you individually can say, "I think
15 that this thing over here is a mitigating
16 circumstance." And you can consider it as a mitigating
17 circumstance.

18 Now, you must consider mitigating circumstances as
19 balancing against the aggravating circumstances in
20 determining whether or not the death penalty is
21 appropriate. But maybe balancing is not a good word
22 for me to use because the death penalty statute
23 provides that even if you find absolutely no mitigating
24 circumstances, although you can consider the death
25 penalty at that point, once there is proof beyond a

1 reasonable doubt on aggravating circumstances, you can
2 reject that and say, "No, I'm going to give a life
3 sentence with no mitigating circumstances." It can be
4 given simply as an extension of mercy. Or for no
5 reason. And that extension of mercy can be for a
6 reason that you perceive or for no reason.

7 I like to refer to that as whether mercy is earned
8 or not, deserved or not. Again, mercy can be given
9 when it's not deserved. It can be given by way of
10 grace.

11 So the point I'm trying to impress upon you is
12 this. At no time will I tell you that during your
13 deliberation process you have reached a point where you
14 have to give the death penalty. At no time will I tell
15 you, "If this or that occurs, you have to give a life
16 sentence." You, as a juror, are free to make your own
17 choice, your own individual choices as to whether or
18 not, based on the facts and circumstances, considering
19 aggravating and mitigating circumstances as to whether
20 or not you should recommend a sentence of death or a
21 sentence of life imprisonment without parole. That is
22 entirely up to you.

23 And that's another unique feature about the death
24 penalty. In no other case does the jury recommend to
25 the judge that he impose any particular sentence.

1 Whenever I am handed up a jury verdict in any other
2 case I try, it's just simply signed by the foreman and
3 says "guilty" or "not guilty." That's all it is.

4 In this case your verdict will be a recommendation
5 of a sentence, and I tell you that recommendation will
6 be followed by the Court. There's no question about
7 it.

8 Also, there's one other thing that you should
9 understand. Not only would you be required to express
10 your opinion or vote as to what you believe the
11 appropriate sentence is, when and if the jury was to
12 reach a unanimous decision that the death penalty was
13 appropriate, you would be required to sign your name to
14 that verdict. Everyone would have to sign. And we
15 need to know if you could do that because sometimes
16 that's a difficult thing to do to actually sign your
17 name to it. But that's something you have to do.

18 Now, I have generally explained to you how the
19 process works, what would be required and what the
20 options are. At the end of the trial I'll give you a
21 much more detailed explanation of how this process
22 works.

23 But I want to ask each of you as jurors today: Do
24 you understand or do you have a general understanding
25 of how the process now will follow? Let me ask you

1 this way. Is there anyone who does not understand?

2 And there is no response.

3 Generally speaking -- and we're going to get more
4 into this later -- but generally speaking, right now,
5 having heard about the process, are there any of you
6 who find anything about this process to be so
7 fundamentally unfair or fundamentally oppressive either
8 to Mr. Cottrell or to the State that you feel your
9 feelings are so strong in that regard that you could
10 not follow my instructions on the law concerning how
11 this statute is structured and what you are to do as
12 jurors? Is there anyone who feels that way?

13 There was no response.

14 Now, I would ask that you all retire to your room
15 with the exception of Ms. Rubin.

16 Ms. Rubin, you will be the first up to bat.

17 (WHEREUPON, Prospective Jury Panel Number 7, with
18 the exception of Ms. Rubin, exited the courtroom
19 at approximately 12:15 p.m.)

20 **DONNA RUBIN,**

21 **BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:**

22 **EXAMINATION BY THE COURT:**

23 Q Come around, Ms. Rubin. How are you this morning?

24 A Okay.

25 Q Good. Have a seat, if you would. And, Ms. Rubin,

1 so that we can correctly identify you, would you state
2 your name and spell your last name.

3 A My name is Donna Rubin. Rubin, R-u-b-i-n.

4 Q Thank you, Ms. Rubin.

5 Do you remember on yesterday when I gave you some
6 instructions about avoiding any publicity or any
7 information about this case?

8 A Yes.

9 Q Do you remember that?

10 A Yes, sir.

11 Q And I asked you not to have any contact with
12 anyone or discuss it with anyone?

13 A Yes.

14 Q And have you followed my instructions?

15 A Yes.

16 Q And would you be willing to continue if you were
17 qualified for this matter, continue to follow that
18 instruction?

19 A Yes, sir.

20 Q Thank you very much.

21 Ms. Rubin, is there -- do you have any question
22 about my comments concerning Mr. Cottrell's position in
23 this case? And I'm talking about his presumption of
24 innocence and his plea of guilty -- or plea of not
25 guilty, excuse me, and his right to be tried in this

1 matter. Do you have any questions about that? Do you
2 understand that?

3 A Any questions? No, sir.

4 Q Okay. So would we need to review that for you at
5 any time during this questioning?

6 A No, sir.

7 Q You understand? That's firmly fixed in your mind?

8 A Uh-huh.

9 Q All right. Thank you very much.

10 Now, Ms. Rubin, you were kind enough to comply
11 with my instructions and fill out or answer some
12 questions -- a question concerning the category of
13 juror which best describes you. Okay?

14 A Yes, sir.

15 Q And I have that before me. And if I have the
16 correct form, you are juror 531, I believe; isn't that
17 correct?

18 A Correct.

19 Q You indicate that you are what we call a class A
20 juror; is that right?

21 A Yes, sir.

22 Q Okay. And a class A juror, it's my
23 understanding -- and let's make sure that you and I are
24 on the same page -- is a juror that simply feels the
25 only appropriate penalty in a murder case is the death

1 penalty.

2 A Yes, sir.

3 Q Do you understand that?

4 A Yes.

5 Q Okay. Now, a moment ago, Ms. Rubin, I sort of
6 went through generally the law in this case as it
7 relates to murder and capital murder, and I also
8 touched on the penalties that are appropriate or
9 available. Let me put it that way, available. Let's
10 refer to it as a normal murder case and in a capital
11 murder case. Do you think you understood my comments
12 there?

13 A Yes.

14 Q And did you understand that I advised you that in
15 a noncapital or regular murder case, the death penalty
16 is not an available penalty?

17 A Yes, sir.

18 Q Did you understand that?

19 A Yes, sir.

20 Q And did you understand my comments concerning
21 capital murder when I explained that the State would
22 first have to prove murder, but then would have to
23 prove something else before we ever got to the -- an
24 aggravator before we would ever get to the point where
25 the death penalty was even on the table? Do you

1 understand that?

2 A Yes.

3 Q And you -- did you understand what I was saying
4 there? Do you feel like you have a grasp of what I was
5 telling you the law is?

6 A Yes.

7 Q Now, our inquiry here, as I said a moment ago, is
8 to determine whether or not you harbor any opinions
9 that would substantially impair your ability to perform
10 your duties as a juror. And one of those duties would
11 be to follow the law as I instruct you. Okay?

12 At the end of the case I would instruct you that
13 the death penalty for murder would only be appropriate
14 if the State had met its burden of proving an
15 aggravator in addition to murder. And then you would
16 still have to consider these other circumstances that
17 may be involved in the case.

18 Now, what I need to ask you is that when we had or
19 completed the first phase, and that would be only to
20 determine whether or not Mr. Cottrell committed the act
21 of murder just like if it was an ordinary murder case.
22 Okay? If we got to that point -- I'm not suggesting we
23 will, but if we got to that point, would your mind
24 already be made up based upon the fact that he was
25 convicted of murder, murder alone, would your mind be

1 made up that the death penalty would be the appropriate
2 penalty?

3 A Yes, sir.

4 Q Okay. Now, you know that if you were on the jury
5 and we got to that point, I would instruct you that
6 that is really not the law. That is not the law.
7 There must be the finding of an aggravator in addition
8 to that and then consideration of mitigation. Most
9 jurors want to follow the law. But what I need
10 to know --

11 MR. McGUIRE: Your Honor, I have an objection to
12 those comments.

13 THE COURT: All right.

14 Q Let me ask you this. Let me rephrase the
15 question. Would your feelings that we just discussed
16 that the death penalty is the only appropriate penalty
17 in a murder case, would that feeling, is it so strong
18 that it would affect your ability adversely to follow
19 the law and look beyond that to whether or not the
20 State had done murder plus and consider mitigation?
21 Would it substantially impair your ability to do that?

22 A In this case, yes, sir.

23 Q All right. And that's an honest answer. And I
24 can appreciate your feeling on that. And, certainly, I
25 appreciate you being truthful with me. You do not

1 think you could set that aside, your feeling is so set
2 that would it just be impossible for you to set it
3 aside; is that correct?

4 A In this case, yes, sir.

5 THE COURT: All right. Very well. Mr. McGuire.

6 MR. MCGUIRE: No questions. We have no questions.

7 MR. RICHARDSON: No questions.

8 THE COURT: All right. Ms. Rubin, I appreciate
9 your candor with us, but I am going to excuse you from
10 further participation in this process. Thank you
11 again. I appreciate your willingness to be here.

12 MS. RUBIN: Thank you.

13 (WHEREUPON, Ms. Rubin exited the courtroom
14 at 12:25 p.m.)

15 THE COURT: Let's put on the record. Do you
16 believe she was disqualified?

17 MR. MCGUIRE: Oh, yes, sir.

18 THE COURT: And the State?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: We both agree.

21 MR. MCGUIRE: Yes, sir. I hated to interrupt you,
22 Judge. It's just that -- I'm sure you didn't intend to
23 do it. But you started to say, "Most jurors want to
24 follow the law," and I thought that was just a little
25 too encouraging.

1 THE COURT: Well, the question I was going to ask,
2 we say that most want to do it, but would you find it
3 difficult to do that. Or something like that. I
4 promise you I wasn't trying to change her mind. I just
5 wanted to make sure she understood the question.

6 MR. McGUIRE: Yes, sir. My concern is she might
7 try to interpret that as sort of encouragement to
8 change.

9 THE COURT: All right.
10 Ms. Simons (sic).

11 (WHEREUPON, Ms. Simmons entered the courtroom
12 at 12:26 p.m.)

13 BERTHA SIMMONS,
14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 EXAMINATION BY THE COURT:

16 Q Come around, Ms. Simons. How are you?

17 A I'm fine.

18 Q You are juror 569, I believe; is that right?

19 A Yes, sir.

20 Q Ms. Simons --

21 A "Simmons."

22 Q Simmons. I'm sorry.

23 A That's okay.

24 Q Simmons. Ms. Simmons, you remember my
25 instructions yesterday to avoid any pretrial publicity

1 and not to do any research on this case and things of
2 that nature?

3 A Yes, sir.

4 Q Not to talk to anyone?

5 A Yes, sir.

6 Q Have you continued to comply with that?

7 A Yes, sir.

8 Q You haven't talked to anyone about the case or
9 made any inquiries about the case or made yourself --
10 or exposed yourself to any type of publicity?

11 A No, sir.

12 Q Okay. Very well. Now, Ms. Simmons, please
13 understand that that order will continue until such
14 time as you are released by the Court. All right?

15 A Yes.

16 Q That would be at the end of the trial or it could
17 be at the end of this question, either one.

18 A Yes, sir.

19 Q Now, Ms. Simmons, did you understand my comments
20 concerning the fact that Mr. Cottrell is presumed to be
21 innocent? Do you understand that?

22 A Yes, sir.

23 Q And you understand that he has pled not guilty to
24 these charges?

25 A Yes, sir.

1 Q And his attorneys are here to defend him on those
2 charges?

3 A Yes, sir.

4 Q Do you understand that? And do you understand
5 that although we're asking you questions about the
6 second part of this trial, which would mean that we
7 never get to that unless he's been convicted of murder
8 in the first part. Do you understand that?

9 A Yes, sir.

10 Q Okay. We are not suggesting or inferring in any
11 way that that will happen or should happen. I want you
12 to understand that.

13 A Yes, sir.

14 Q Okay. It's simply that we only get one chance to
15 talk to you, and so we need to talk to you about both
16 parts of the trial just as a precaution. Can you
17 understand that?

18 A Yes, sir.

19 Q Now, do you need to be reminded of the fact that
20 he is to be considered as an innocent person until he
21 is convicted?

22 A Yes, sir.

23 Q I mean do we need to remind you of that --

24 A Oh, no, sir.

25 Q You have that in your mind?

1 A Yes, sir.

2 Q Ma'am, thank you very much.

3 Ms. Simmons, I asked you to tell us by way of this
4 little form you have completed what kind of juror you
5 are. And you have circled that you're a C type juror;
6 is that right?

7 A Yes, sir.

8 Q And a C type juror is a juror who would need to
9 hear the facts and circumstances in aggravation and
10 mitigation before he or she could make a decision
11 regarding punishment. You think that accurately
12 describes how you are?

13 A Yes, sir.

14 Q Okay. Now, Ms. Simmons, I asked or explained to
15 you a moment ago with your jury panel basically how a
16 death penalty proceeds and what the State would have to
17 overcome before the death penalty would even be on the
18 table, so to speak. Did you -- do you feel you
19 understood what I was explaining to you?

20 A Yes, I did.

21 Q And do you believe, Ms. Simmons, that you could
22 follow my instructions concerning the death penalty
23 law?

24 A Yes, sir.

25 Q Do you, again, have any reason why you feel that

1 that is not fair or it is inappropriate in any way?

2 A No, sir.

3 Q Okay. All right. Ms. Simmons, whenever we're
4 asked questions about our opinions, you know, it sort
5 of harkens me back to how we form opinions. And, you
6 know, everything that happens to us in life, all of our
7 life experiences and the experiences of our family
8 members and friends all come together, and that helps
9 us formulate who we are and how we think about things
10 and how we view things. And it's important that we
11 understand how you think about certain issues.

12 One of those issues would be the death penalty in
13 general. Do you have an opinion about the death
14 penalty, whether it's right or whether it's wrong,
15 whether we need it or whether we don't need it, do you
16 have any opinion about it?

17 A Um, I really don't have an opinion about it either
18 way.

19 Q So if I asked you if it's wrong, you would not
20 have an opinion as to whether it's wrong; you would not
21 have an opinion as to whether it's the right thing?

22 A Yes, sir.

23 Q You just simply don't or haven't considered it --

24 A Yes, sir.

25 Q -- is that correct?

1 All right. Based upon your experiences in life
2 and in how you feel about things in general, are you
3 aware of any bias or prejudice you might have that
4 would affect your ability to be fair and impartial in
5 this trial against either the State of South Carolina
6 or its attorneys or Mr. Cottrell or his attorneys?

7 A No, I don't.

8 Q And can you think of, with special emphasis upon
9 your ability to be fair, any reason why you could not
10 be a fair and impartial juror in this case?

11 A No, sir.

12 Q Have you read or heard anything about this case?

13 A No, sir.

14 Q Do you know anything about this case?

15 A No, sir.

16 Q Where do you live?

17 A I live in Brooksville.

18 Q Have you always been from here in Horry County?

19 A Yes, sir.

20 Q You're a lifetime resident?

21 A Yes, sir.

22 Q That's good. Ms. Simmons, do you believe that you
23 could listen to the charge on the law that I give you
24 and follow that charge on the law if you were selected
25 as a juror?

1 A Yes, I can.

2 Q What if I were to charge the law in a certain way
3 and you were to think, "Well, that might be the law,
4 but I don't think it's right," or would you think, "You
5 know, somebody else told me something about the law and
6 that's not what they told me," could you set that aside
7 and follow the law just as I give it to you?

8 A Yes, I could.

9 Q That would be part of your oath. You would have
10 no problem with that?

11 A No problems.

12 Q Could you set aside any extraneous matter,
13 anything you might have heard or seen about this case,
14 set it aside and decide this case based solely on the
15 evidence that's presented in this trial?

16 A Yes, I could.

17 Q Do you understand that would be part of your oath?

18 A Yes.

19 Q That would be part of your commitment to the
20 defendant and the State in this case?

21 A Yes, sir.

22 Q Do you understand that?

23 A Yes, sir.

24 Q Do you understand that if you are selected as a
25 juror in this case, you would be sequestered. The

1 county would put you up in a hotel, provide you with
2 your meals and anything you need and provide you with
3 transportation back and forth to the courthouse, and
4 that might be for several days?

5 A Yes, sir.

6 Q And you're willing to do that?

7 A Yes, sir.

8 Q All right. Ms. Simmons, you were also kind enough
9 to look at the list of potential witnesses in this
10 case. And there were a bunch of them, weren't there?

11 A Yes, sir.

12 Q I see that you didn't mark anybody that you knew.

13 A Correct.

14 Q Okay. It's hard to look at a list with that many
15 people on it, and some of the names run together and
16 some names look familiar, others don't. When you don't
17 have a face to put with it, it's kind of difficult,
18 isn't it?

19 A Yes, it is.

20 Q Do you feel fairly comfortable, though, while you
21 were going over that list, if there was anybody that
22 you had a significant relationship with like a family
23 member, someone that you have been in business with or
24 businesses that you visit or a close friend, you would
25 recognize their name, wouldn't you?

1 A Yes, sir.

2 Q So are you fairly comfortable with telling me that
3 there's nobody on this list that you know of that you
4 would have any significant relationship with?

5 A No, sir.

6 Q Okay. I want to add to that list a couple names:
7 Nicole Pyle, John Taylor, Christine Del Fonzo, William
8 Nettles, Michelle Light. Do those names ring a bell?

9 A Not at the moment.

10 Q Okay. They don't ring a bell either. All right.
11 Once again, the question here is whether there's
12 anything that would substantially impair your ability
13 to perform your duties as a juror. That simply means
14 be fair and impartial.

15 A No, sir.

16 Q All right. Answer any questions that -- who's
17 going to examine her?

18 MR. McGUIRE: I'll do it.

19 Thank you, Judge.

20 EXAMINATION BY MR. McGUIRE:

21 Q Good afternoon, Ms. Simmons.

22 A Hello. How are you?

23 Q I'm going to walk over here. I don't want to
24 shout to you from over there.

25 A That's fine.

1 Q I'm going to just ask you some more general
2 open-ended questions and just kind of gauge your
3 thoughts about the death penalty.

4 We obviously have the death penalty in South
5 Carolina. It's available. It's a statute. It's on
6 the books. But if we made you governor of South
7 Carolina for a day, and on your desk was a bill and you
8 could say we're going to keep having the death penalty
9 or we're not going to have it, which way would you go?

10 A Basically I would follow -- get follow-up
11 information, which would be the best, whether to keep
12 it or do away with it. I would have to go through a
13 list of criteria, you know, to make sure I understand
14 whether we keep it or whether we do away with it if I
15 was the governor.

16 Q So instead of -- it's not really an emotional
17 issue. It's sort of like does it make sense and it
18 would be based on data and information?

19 A Correct.

20 Q To see if it was a good thing or a bad thing?

21 A Correct.

22 Q So it would be sort of a scientific analysis?

23 A Correct.

24 Q You don't have any sort of -- do you have any
25 opinions about this in your gut or your heart that

1 would be more emotional?

2 A No. I guess dealing with a child I deal with, I
3 don't really because I deal with, you know, a lot of
4 people. I do commercial driver's license testing here
5 and stuff, so I always weigh out the points of whether,
6 you know, it's good or bad or, you know, because you
7 just can't get an opinion just off the top without
8 doing -- you know, looking at the situation and stuff
9 that you're facing.

10 Q Okay. Now, if the State -- if the government --
11 the kind of case that brings us here is, obviously, a
12 murder case. And you've heard a lot of information,
13 but I'm just going to make sure we're together on the
14 same page here.

15 Murder in South Carolina is defined as the
16 unlawful killing of another person with malice
17 aforethought. Malice is an evil heart bent on
18 wickedness or meanness or hatred. Okay?

19 Now, if the State was able to -- if the government
20 was able to prove beyond a reasonable doubt that a
21 person committed that kind of killing, an intentional
22 taking of an innocent life with an evil intent, your
23 personal opinion, do you think the death penalty should
24 apply?

25 A Yes.

1 Q Okay. And would you take -- this is personal
2 opinion time. In that chair everything you say is the
3 right answer. Okay? And in that situation, if they
4 had the right person beyond a reasonable doubt and it
5 was that kind of case, some people might say that the
6 life penalty, putting somebody in prison for life,
7 that's not appropriate for that kind of intentional
8 killing. Do you agree with that?

9 A Yes.

10 Q Okay. And that's because the life penalty is not
11 harsh enough or severe enough to punish the intentional
12 taking of an innocent life?

13 A Correct.

14 Q You have to say yes -- okay -- for the court
15 reporter.

16 And these answers that you have given me are your
17 personal opinions, your personal beliefs?

18 A My personal belief?

19 Q Yes, ma'am. Again, the chair that you're sitting
20 in right there, that's the chair where everything you
21 say, everything that comes from your opinion, your
22 heart, it's one hundred percent correct every time.
23 We're just asking for honest opinions.

24 A Correct.

25 Q And in your honest opinion, if the State gets it

1 right, the death penalty is appropriate in every one of
2 those intentional murder cases?

3 A Yes.

4 Q Okay. And that's a reflection of who you are as a
5 person, your value system?

6 A Yes.

7 Q Your moral code?

8 A Yes.

9 Q And you feel very strong about these opinions?

10 A Yes, I do.

11 Q I can't change them?

12 A No.

13 Q Judge can't change them?

14 A No.

15 Q Prosecutors can't change them?

16 A No.

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

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

21 BY MR. McGUIRE:

22 Q And if somebody said, "I want to change that view.
23 I want you to change that opinion. I want you to take
24 it and kind of pretend you can put it some place and
25 it's not part of you anymore," you can't do that?

1 A Nope. I wouldn't do that.

2 Q Okay. Those beliefs, those opinions, that moral
3 code, that would always be with you?

4 A Always be with me.

5 Q And it would influence how you saw a case or
6 analyzed a case?

7 A Yes.

8 Q You couldn't set that aside?

9 A No.

10 Q Okay.

11 MR. McGUIRE: If I could just have a second.

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

14 BY MR. McGUIRE:

15 Q Now, just briefly, do you know either one of these
16 two fellows over here?

17 A No, I don't.

18 Q Because you indicated on your questionnaire that
19 you had some involvement with the prosecutor's office?

20 A My son.

21 Q Was he a witness in a case or what's the nature of
22 that?

23 A He got charged with checks.

24 Q Okay. And was he -- in your view, was he treated
25 fairly or unfairly?

1 A He was treated fairly because I made sure he came
2 here. I turned him in.

3 Q Okay. You didn't think there was anything wrong
4 about the case or him being arrested?

5 A No, I don't because he was wrong in what he did.

6 Q Right. I think you indicated you had some
7 interaction with the public defender's office?

8 A Yes.

9 Q And is that from the same case or a different one?

10 A That's the first -- well, he got picked up for
11 checks, and he went through the system. And he pulled
12 himself up, which he was wrong for doing what he did.

13 Q And did somebody from the public defender's office
14 represent him? Did he get a lawyer?

15 A I don't really know.

16 Q And part of the things that we are talking to you
17 about involve --

18 MR. HIXSON: Your Honor.

19 (WHEREUPON, an off-the-record discussion was
20 held between Mr. Hixson and Mr. McGuire.)

21 MR. MCGUIRE: Ma'am, I don't have any further
22 questions for you. Thank you so much.

23 MS. SIMMONS: You're welcome.

24 MR. HIXSON: I have no further questions, your
25 Honor.

1 THE COURT: All right. You may step down.

2 MS. SIMMONS: Thank you.

3 (WHEREUPON, Ms. Simmons exited the courtroom
4 at 12:43 p.m.)

5 THE COURT: Yes, sir.

6 MR. McGUIRE: Judge, we agree she's not qualified.

7 MR. HIXSON: That's correct, your Honor. I just
8 wanted to know --

9 THE COURT: Okay. All right. Bring her back out.
10 (WHEREUPON, Ms. Simmons entered the courtroom
11 at 12:44 p.m.)

12 THE COURT: Ms. Simmons, you are released from
13 your subpoena. You have no other obligation concerning
14 this trial. Thank you very much.

15 MS. SIMMONS: Thank you.

16 THE COURT: Crystal Hummer.

17 (WHEREUPON, Ms. Hummer entered the courtroom
18 at 12:45 p.m.)

19 CRYSTAL HUMMER,

20 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

21 EXAMINATION BY THE COURT:

22 Q Good afternoon, Ms. Hummer. How are you?

23 A Good. Thank you.

24 Q It's good to see you again.

25 A Thank you.

1 Q Ms. Hummer, we spoke earlier, but I wanted to ask
2 you one thing. You remember my instruction about not
3 exposing yourself to any pretrial publicity or doing
4 any research or discussing the case? Have you followed
5 those instructions?

6 A Yes, sir.

7 Q And I appreciate that. And let me remind you that
8 that order or admonishment would remain in effect until
9 such time that you're released.

10 A Okay.

11 Q Thank you very much.

12 A You're welcome.

13 Q Now, Ms. Hummer, let me place on the record the
14 spelling of your last name. I see you're juror
15 number 319?

16 A Yes, sir.

17 Q And that last name is H-u-m-m-e-r; is that
18 correct?

19 A Yes.

20 Q Thank you. I should have asked you that.

21 Ms. Hummer, you heard my remarks earlier, and I'm
22 particularly interested in making sure that you recall
23 my remarks concerning Mr. Cottrell as they relate to
24 the fact that he is presumed to be innocent. Do you
25 understand that?

1 A Yes.

2 Q And he has pled not guilty. No question about
3 that?

4 A Uh-huh.

5 Q And that his attorneys are here to defend him on
6 this matter. Do you understand that?

7 A Yes, sir.

8 Q And he -- that presumption of innocence will
9 remain with him until he is tried. Do you understand
10 that?

11 A Yes.

12 Q Okay. Do you need to be reminded of that at all?

13 A No.

14 Q And do you understand why we are going to be
15 asking you questions about the second or sentencing
16 phase of a death penalty trial?

17 A Yes, sir.

18 Q Again, I want to reiterate. You understand that
19 we are not inferring that we believe, anyone here is
20 not inferring that there will be a conviction as to the
21 murder which would be a prerequisite to reaching the
22 second phase. We are simply addressing the second
23 phase because it's the only opportunity we have to do
24 it.

25 A Okay.

1 Q Is that clear?

2 A Yes, sir.

3 Q You don't need to be reminded of that several
4 times during your questioning, do you?

5 A No, sir.

6 Q Okay. Thank you.

7 Now, Ms. Hummer, you were kind enough to respond
8 to a question that we put to you concerning the type of
9 or category of juror which best describes you, and you
10 indicated that you are a class C juror.

11 A Uh-huh.

12 Q Do you think that's a fair assessment?

13 A Yes.

14 Q Just so that you and I will be on the same page,
15 it's my understanding that you are telling me that
16 you're the type of juror that would need to hear the
17 facts and circumstances of a case in aggravation and in
18 mitigation before you could make a decision regarding
19 punishment. Does that fairly describe you as a juror?
20 Is that the best description?

21 A Yes. Yes, that's correct.

22 Q Good. Now, Ms. Hummer, as I spoke with you a
23 moment ago, did you understand my statement that
24 conviction for a murder does not authorize the
25 imposition of the death penalty in this state?

1 A Yes.

2 Q You understand that?

3 A Yes, sir.

4 Q You realize that just because a person is
5 convicted of murder, you would not even be authorized
6 to or the Court would not even be authorized to impose
7 the penalty of death?

8 A Uh-huh. Yes, sir.

9 Q And what's your impression as to what must occur
10 in addition to murder before the death penalty could
11 even be considered as a penalty?

12 A Malice.

13 Q Okay. Now, let's talk about that. Malice is an
14 element of murder.

15 A Okay.

16 Q So we're talking about murder plus.

17 A Uh-huh.

18 Q Do you remember our discussion about aggravating
19 circumstances?

20 A Yes.

21 Q Would that have to be proven before there could be
22 any consideration of the death penalty?

23 A Yes.

24 Q And that's what I was talking about.

25 A Uh-huh.

1 Q Do you understand that a capital case is more than
2 murder?

3 A Uh-huh.

4 Q We'd still call it murder. We call it capital
5 murder. We call it death penalty murder. But it's
6 murder plus something else. And I want to make sure
7 that you are comfortable with my instruction in this
8 case that you could only consider the death penalty if
9 and only if the State has convinced the jury that the
10 murder was committed under circumstances of
11 aggravation.

12 A Yes.

13 Q Do you understand that?

14 A I do.

15 Q Okay. And, of course, there are other
16 requirements like consideration of mitigation and
17 things of that nature.

18 A Uh-huh.

19 Q And do you have any problem if I were to so
20 instruct you and you were on this jury following those
21 instructions?

22 A No.

23 Q Could you, in the proper case, return a
24 recommendation of the death penalty?

25 A Yes.

1 Q Could you, in the proper case, return a
2 recommendation of life imprisonment?

3 A Yes.

4 Q Okay. Would the fact that a person has been
5 convicted of murder as the initial process in a death
6 penalty case taint you or affect your ability to fairly
7 consider the mitigating circumstances?

8 A I'm not sure I understand.

9 Q Okay. There are some people here who hear the
10 word "murder," they want to associate with the death
11 penalty. And I explained to you earlier that the death
12 penalty is not and you told me you understood it is not
13 appropriate in murder cases. But it is part of the
14 capital case. Conviction for murder must be the first
15 step before you ever get to the issue of considering
16 aggravating circumstances.

17 A Uh-huh.

18 Q Okay. Would the fact that the State had
19 accomplished that first part, had convicted the
20 defendant of commission of a murder, would that fact
21 affect your ability to fairly consider all the evidence
22 of aggravation? Would you be prejudiced against the
23 defendant?

24 A No.

25 Q You would not. You could fairly and impartially

1 look at that evidence and make that determination?

2 A I believe I could, yes.

3 Q And if you reach the point -- if you're on the
4 jury and if the jury unanimously finds that there was
5 some aggravating circumstance, would that prevent you
6 from fairly and impartially looking at mitigating
7 circumstances and considering the other circumstances
8 of the case and determine whether or not life or death
9 would be the appropriate sentence?

10 A No.

11 Q Could you do that?

12 A Uh-huh. Yes, sir.

13 Q All right. Now, Ms. Simmons, as I told you
14 earlier, the inquiry here is try to determine whether
15 or not there's anything concerning your feelings or
16 opinions or prejudices or bias that might substantially
17 interfere with your ability to perform your duties as a
18 juror.

19 You know, we are all shaped by things that happen
20 to us, things we hear and see all during our lives.
21 And that's, I believe, we could all agree, they're
22 responsible for how we view things and how we feel
23 about things. And try as we may, we all have certain
24 bias or prejudices on various issues.

25 Now, what concerns me or what I want to know is

1 considering your life experiences and considering your
2 views on things like the death penalty, things like
3 crime in general, would you have any bias or prejudice
4 against either the State or its attorneys or
5 Mr. Cottrell or his attorneys?

6 A No, sir.

7 Q Can you think of anything that would substantially
8 impair your ability to be fair and impartial in this
9 case?

10 A No, sir.

11 Q Okay. Now, what if I gave you an instruction on
12 the law, and after I instructed you, you thought about
13 it and you said, "Well, you know, that's not a very
14 good law." Or you said, "Somebody told me about the
15 law one time and they didn't tell me that. They told
16 me something else." Could you set that aside, could
17 you ignore that and follow the law as I give it to you?

18 A I believe I can.

19 Q Do you understand that that is part of your oath,
20 that you will follow the law as I give it to you?

21 A Yes, sir.

22 Q And you understand that's what you should do and
23 will do?

24 A Yes, sir.

25 Q Do you understand -- or let me back up a minute.

1 I looked here at this witness list. You've
2 circled two or three people on this list that you say
3 that you know. I want to supplement that list a little
4 bit, add a couple names to it or three or four names
5 like: Nicole Pyle, John Taylor, Christine Del Fonzo,
6 William Nettles and Michelle Light. Do you recognize
7 any of those names?

8 A No, sir.

9 Q As far as Mr. Graham, who is a potential witness,
10 and Mr. Mullinax, potential witness 117, would your
11 relationship -- tell me what your relationship is, say,
12 with Mr. Graham.

13 A Actually, I know a Chris Graham, but I'm not sure.

14 Q You're not sure it's him?

15 A I'm not sure it's the same one.

16 Q Is he just an acquaintance?

17 A Yes, he is.

18 Q How about Mr. Mullinax?

19 A I just know him through work, some events we do.
20 I work with him not directly, he just handles the
21 licensing for Myrtle Beach.

22 Q Okay. Is your relationship with either of these
23 witnesses such that you would put unfair emphasis on
24 anything that they said in this trial? Would the fact
25 that they testified prevent you from fairly and

1 impartially considering the evidence of every other
2 witness?

3 A No, sir.

4 Q Okay.

5 THE COURT: Questions?

6 EXAMINATION BY MR. McGUIRE:

7 Q It's Ms. Hummer?

8 A Yes, sir.

9 Q Good afternoon.

10 A Good afternoon.

11 Q My name is Bill, Bill McGuire. I'm a lawyer in
12 South Carolina, obviously.

13 I think you indicated that you had formed an
14 opinion about the case based on what you had heard. Am
15 I wrong about that?

16 A Yes. If I -- I'm not familiar with the case at
17 all, as a matter of fact. So if I answered that it
18 way.

19 Q Well, do you remember when we had about 300 people
20 here and all kind of people standing up?

21 A Yes. I did not stand up. I didn't.

22 Q Then I wrote down the wrong number.

23 A Okay. Definitely did not. I'm not familiar with
24 the case at all.

25 Q I'll take that one. That's my error.

1 A All right.

2 Q So what I want to do now is, first off, I want to
3 reassure you about something. And that is the position
4 that you're in right now is where we want you to
5 express your personal opinion.

6 A Uh-huh.

7 Q Okay?

8 A Okay.

9 Q We don't want you to say anything that you think I
10 want to hear or anything that anybody wants to hear.
11 It's really just what are your thoughts, your beliefs,
12 your personal opinions.

13 Today in that chair everything you say is the
14 right answer. If it's honest, it's candid and it comes
15 from who you are, it's the right answer.

16 A Okay.

17 Q So I'm going to ask you just sort of a general
18 question. If we made you governor, you took Nikki
19 Haley's place and you're there for a day and you had a
20 bill come across your desk. And the bill said it's up
21 to the governor to choose to have the death penalty, to
22 keep the death penalty, or to get rid of it and not
23 have it anymore. Which way would you go?

24 A I would sign it to keep it.

25 Q Okay. And why is that?

1 A I just believe that offenses have penalties or
2 have consequences. When we do things, we have
3 consequences. And if those things can be proven, I
4 believe, you know, I believe in this process. I mean,
5 I believe it should be proven, but if something is
6 proven, I believe that there are consequences and
7 that's just a consequence that I believe in.

8 Q Okay. And let's make sure we're on the same page.
9 The offense, the starting point in a capital case, is
10 murder, obviously.

11 A Uh-huh.

12 Q That's the kind of case that brings us here.
13 Murder in South Carolina, the technical definition is
14 the unlawful killing of another person with malice
15 aforethought.

16 A Right.

17 Q Malice aforethought is an intent, a mental state,
18 a heart that is fatally bent on an evil purpose.

19 A Okay.

20 Q So it's taking an innocent life intentionally with
21 an evil intent, basically.

22 A Uh-huh.

23 Q Are you with me?

24 A Yes.

25 Q Now, if the State -- and it's not self-defense,

1 not accident. We're on the same page?

2 A Right.

3 Q If the State, the government, was to come to you,
4 to the jury, with enough information where it convinced
5 all 12 jurors beyond a reasonable doubt that those
6 are -- that's the case, that it is an intentional
7 killing, the taking of an innocent life with evil
8 intent, all 12 jurors agreed on that, got the right
9 guy, beyond a reasonable doubt, is it your view that
10 the death penalty is appropriate?

11 MR. RICHARDSON: Objection, your Honor. It's not
12 a fair statement of the law.

13 THE COURT: I do not believe it's a fair statement
14 of the law, Mr. McGuire, and she has answered that
15 question to me. I asked her specifically if that would
16 cause her any problem in being fair and impartial on
17 the assessment of whether or not the State was able to
18 prove an aggravating circumstance. I think the
19 question is misleading. I'll allow you to rephrase it.

20 MR. MCGUIRE: Judge, I would actually have a
21 matter of law if I could take it up.

22 THE COURT: Let's hear it. Please step down.

23 (WHEREUPON, Ms. Hummer exited the courtroom
24 at 1:02 p.m.)

25 THE COURT: All right, Mr. McGuire.

1 MR. McGUIRE: Thank you, your Honor.

2 Your Honor, that is the *Morgan* question. That is
3 the *Illinois Morgan* question.

4 THE COURT: Mr. McGuire, you keep asking that
5 question, and the way you're asking it is obviously
6 confusing these jurors. Now, if you want to say that
7 the death penalty is not appropriate in a regular or
8 normal murder case but do you feel that it should be,
9 I'll allow you to ask it that way. But you're asking
10 it in such a roundabout and confusing fashion that it's
11 confusing me what you're asking.

12 If you just want to ask them if contrary to the
13 law you feel that it's appropriate -- the way you're
14 asking it, the jury is assuming that you're telling
15 them that this is the law. Could you follow the law?
16 Ask it in a way that doesn't suggest that to them and
17 I'll be happy to let you do it.

18 MR. RICHARDSON: Your Honor, the State would have
19 no objection to a question like that, certainly.

20 THE COURT: I mean, the jurors, I believe, are --
21 I mean, you got a juror here. We have had two or three
22 that are firmly C jurors, say that they would look at
23 the facts and circumstances, I have examined them
24 concerning that, and then you come back and you say --
25 you simply ask them, "Well, is murder" -- I mean, "Is

1 the death penalty appropriate in a murder case after
2 the State has proven the commission of the murder with
3 malice aforethought?" It's confusing to the jury. And
4 I have a problem with that, Mr. McGuire.

5 MR. MCGUIRE: Judge, I just want to take up the
6 issue of the Court indicated that it was misleading.
7 And what I did was I was very clear about I wanted to
8 be on the same page. I gave the technical definition
9 of murder in South Carolina which was a hundred percent
10 accurate.

11 THE COURT: But you didn't tell them what the
12 penalty in South Carolina was and if their opinion was
13 contrary to the available penalties in South Carolina.

14 MR. MCGUIRE: And what I want to do is get her
15 personal opinion, not tell her, "This is the law. Can
16 you follow it?"

17 THE COURT: Well, that's why I added the series of
18 questions that I did, Would the fact that a person, the
19 jury, had reached that point where they had been
20 convicted of murder, would that create in their mind
21 any bias against the defendant, any bias, it would have
22 a tendency to make them more inclined to issue or
23 recommend the death penalty.

24 MR. MCGUIRE: Judge, I think --

25 THE COURT: You know, if your intent is to make

1 sure that we don't get a jury, that's where you're
2 going with this. But because of that question, we have
3 jurors that have repeatedly, repeatedly answered
4 similar questions saying, "I could be fair. I
5 understand that we are to consider mitigating and
6 aggravating circumstances. I understand that. That's
7 what I'm going to do. I'm going to follow the law."
8 And then you come back and ask that question, and the
9 response is contrary to everything else they have said.
10 And it's obviously -- obvious to me that that question
11 is confusing to the jury.

12 I just ask you to ask it in such a fashion that
13 the juror is not conveyed the impression that that is
14 the answer that they should give, that the death
15 penalty is what is the penalty in South Carolina. I
16 just have a problem with the question, Mr. McGuire.

17 MR. MCGUIRE: Judge, I would move to excuse her at
18 this point because your Honor's comments that I was
19 misleading her I think would be prejudicial to
20 Mr. Cottrell.

21 THE COURT: Mr. Richardson.

22 MR. RICHARDSON: Your Honor, I certainly don't
23 think that it comes to that extent. I'm the one that
24 said that the question was misleading or it wasn't a
25 proper question on the law. And I believe that it is,

1 given in the context that your Honor has already
2 explained the process to her, Mr. McGuire's question is
3 certainly contrary to that process. Because your Honor
4 has gone through a long litany of this is what murder
5 is, this is what capital murder is, and this is the
6 punishment for capital murder and only capital murder.
7 And I think, your Honor, part of your questions or part
8 of your speaking to the jury is to say that capital --
9 I mean, excuse me, the death penalty is not even
10 available on regular murder cases. And they are told
11 that.

12 THE COURT: I'm doing everything I can to make
13 sure that these jurors will be fair and impartial to
14 Mr. Cottrell. I'm doing everything I can to do that.
15 I promise you the next juror will have that question
16 posed by the Court.

17 Bring her back out.

18 MR. RICHARDSON: Thank you, your Honor.

19 (WHEREUPON, Ms. Hummer entered the courtroom
20 at 1:08 p.m.)

21 THE COURT: You may continue, Mr. McGuire.

22 MR. MCGUIRE: Thank you, Judge.

23 BY MR. MCGUIRE:

24 Q Thank you, ma'am.

25 A You're welcome.

1 Q So what we were doing was we were talking about
2 the starting point in a capital case. And the starting
3 point is murder. We have talked about that, the
4 definition. But as the judge told you, that the death
5 penalty wouldn't be available in that situation.

6 A Right.

7 Q It would have to be plus something more. The
8 examples that the judge has thrown out before -- and
9 I'm not sure if he gave these to you or not, but to
10 other people -- could be like an additional crime,
11 murder rape, rape murder, the status of the victim like
12 a child, a young child. And you have heard the
13 indictment in this case, and the allegations are
14 shooting a police officer in the line of duty.

15 Now, if the State was to come to you and prove
16 beyond a reasonable doubt that intentional killing,
17 murder, with the aggravation evidence, would the death
18 penalty be appropriate in that case?

19 A Yes. Again, I would have to hear the entire case
20 and, you know, just the facts that you just gave me,
21 you know, based on what you're asking, yes. I'm sure
22 there are a lot of facts to hear, so.

23 Q Sure. We can't try to whole case right here --

24 A Absolutely.

25 Q -- one juror at a time. If the State does, the

1 government, comes forward with that, the quantity, the
2 quality of proof and proves murder plus the aggravation
3 evidence, some folks might say the life penalty isn't
4 severe enough to punish that kind of act. What's your
5 position on that?

6 A Again, I would just have to hear the case. I can
7 honestly tell you that I am -- I do believe in the
8 death penalty, also life in prison without parole. I
9 would have to hear the case before I could make -- you
10 know, I'm not the person that would say, "He murdered
11 someone and it was a police officer so he deserves the
12 death penalty."

13 I do think in certain situations, and I would have
14 to hear it, that the death penalty could be
15 appropriate.

16 Q Okay. With regard to when it comes to fixing that
17 punishment for that type of potential murder plus
18 aggravation evidence, would background characteristics
19 of the person who committed the act, the killer, their
20 walk in life, how they grew up, those sort of things,
21 would those factors be relevant in fixing punishment?

22 A Absolutely.

23 Q And why is that?

24 A I'm not saying that there's justification for
25 anything in that situation. But I do believe that the

1 way we were raised or situations in life sometimes make
2 us make or sometimes take us down a path that we make
3 the wrong decision. And, again, with that being said,
4 there are consequences to our decisions. However, I do
5 think that that plays into effect sometimes with the
6 decisions that people make.

7 Q In fact, you hit pretty much exactly on the legal
8 definition of what mitigation evidence can be. It
9 doesn't have to have a connection to the act. If you
10 found somebody guilty of the crime, you could still
11 look 20 years in their background 20 years ago and find
12 something that kind of said with you that's a reason to
13 vote for life. And that's evidence that you could take
14 into consideration.

15 A Yes.

16 Q When I pause and wait for you to say "yes," it's
17 only because she has to --

18 A Okay.

19 Q And I'll remind you politely if you forget to say
20 "yes."

21 A Okay.

22 Q Now, the judge talked to you about the law and can
23 you follow the law. I'm going to talk to you about
24 some legal principles now and ask you if these are
25 principles of the law that you can follow and respect.

1 A Okay.

2 Q First off, I want to talk about the penalty phase,
3 the sentencing phase. But that's a little awkward for
4 me because I'm talking about punishment and we haven't
5 even had a trial yet. And I want you to know we don't
6 concede guilt in this case. The State has to prove a
7 criminal act and criminal intent in someone's mind.
8 And I'm going to come to this jury, whether you're on
9 it or not, and ask for a not guilty verdict. I'm going
10 to ask not because I'm simply asking for it but because
11 the evidence supports it.

12 Now, you wouldn't hold it against Mr. Cottrell
13 that I, one of his lawyers, would zealously defend him
14 in the guilt phase and ask for a not guilty? You
15 wouldn't hold that against him if you reached the
16 penalty phase, would you?

17 A I'm not sure I understand the question.

18 Q It's a wordy question.

19 A Yes.

20 Q And that was not a very good one on my part.

21 If you got to the penalty phase and you heard
22 somebody make a comment, "His lawyers tried to get him
23 off. I want to vote for death," is that a comment that
24 sounds fair to you?

25 A No.

1 Q You would expect his lawyers to zealously defend
2 him, and the judge has told a couple of jurors that
3 that's what he expects and that's what you would
4 expect, too?

5 A Absolutely.

6 Q Wouldn't be doing my job otherwise?

7 A Right.

8 Q Wouldn't be fair otherwise?

9 A Right.

10 Q I think we've covered all of the issues in that
11 guilt phase. You know, that's the part that we're all
12 more familiar with from TV, newspapers, the news. All
13 12 people have to agree guilty/not guilty. And it's
14 basically did the person do it with the requisite
15 criminal intent. Is he guilty or not. And those are
16 generally fact questions. Science can answer those
17 questions yes or no, and it either is or it isn't.

18 MR. HIXSON: Your Honor, just kind of, Mr. -- if
19 he could voir dire the witness rather than give ongoing
20 testimony relating to that. Just ask for a question
21 there. We've been kind of indulgent about it, but it's
22 testimony, not really questions.

23 THE COURT: Just ask her questions; Mr. McGuire.

24 MR. MCGUIRE: Thanks, Judge.

25 BY MR. MCGUIRE:

1 Q I say those things just to point out the
2 difference between that and the penalty phase. And the
3 judge would charge the jury that the decision-making
4 process in the sentencing phase is described as an
5 individual moral judgment. You have probably never
6 heard that phrase before, right?

7 A Individual moral judgment? I'm not sure that I
8 have.

9 Q Okay. What I'm pointing out is the sentencing
10 decision, it's not going to be based on science or
11 fact. It's going to be more of an emotional, moral
12 decision.

13 A Okay.

14 Q And the judge would charge the jury and the law is
15 that any individual juror can vote for the life penalty
16 for any reason, no reason or mercy alone. Is that a
17 principle of the law that you can respect and follow?

18 A Yes.

19 Q Okay. And the any reason part, it's very peculiar
20 in the sentencing phase because it can be
21 non-unanimous, and there can be disagreement. People
22 can vote for the life penalty for different reasons.
23 The whole jury doesn't have to vote, "We should vote
24 for life for this reason or that reason." Is that a
25 principle of the law that you could respect and follow?

1 A Yes.

2 Q An example, just to play it out by example or
3 analogy, somebody in this seat could say, "I saw
4 something in this person's childhood, their upbringing
5 that resonated with me. I'm going to vote for life for
6 them." No one has to agree with that. Somebody else
7 can say, "I vote for life for a different reason." And
8 then somebody could say, "Well, I heard the judge, and
9 he said we could vote for life for no reason." And you
10 can see how people are all voting for the life penalty
11 but they have different reasons. Is that something
12 you're okay with?

13 A Yes.

14 Q You would allow everybody to have their own
15 opinion?

16 A Absolutely.

17 Q Even if it was different from yours?

18 A Absolutely.

19 Q In fact, there is another rule that we have to
20 follow. And actually it's not we, you. If you were
21 selected as a juror, you would take a juror oath. And
22 the juror oath requires everybody to try the case and
23 decide the case based on the evidence they see in court
24 and the law that requires them to take into account
25 everything presented by both sides, aggravation,

1 mitigation evidence, and fairly consider both
2 penalties.

3 A Uh-huh.

4 Q Now, on occasion, somebody might say, "If I found
5 myself in a room and it was 11 to one and I was the
6 one, maybe I'm just going to go with the 11 for harmony
7 and consensus and a unanimous decision." Would you do
8 that?

9 A No, absolutely not.

10 Q Okay.

11 A I stand firm to my decisions.

12 Q In fact, the law is once a juror reached their
13 individual moral judgment, it would harm their
14 conscience to change it, they have a duty and
15 obligation to have that vote heard. Is that a
16 principle that you could follow?

17 A Yes.

18 Q Ma'am, that's all I have for you. Thank you so
19 much.

20 A Thank you.

21 Q Oh, I'm sorry. I've got one other thing.

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

24 BY MR. MCGUIRE:

25 Q I just want to make sure about one thing.

1 A Okay.

2 Q Officer Chad Mullinax, your relationship with him,
3 would that have any impact on how you evaluate the
4 testimony or the case or anything?

5 A No. My relationship with him is minimal. I talk
6 to him a couple times a year, and it's specifically
7 about an event that I do at work.

8 Q Is that the March of Dimes?

9 A Yes.

10 Q You guys get like a parade permit or --

11 A Yes, exactly.

12 Q That's all I have. Thank you so much.

13 A Okay.

14 EXAMINATION BY MR. HIXSON:

15 Q Good afternoon, ma'am.

16 A Hello.

17 Q Hi. My name is Scott Hixson. I'm the Chief
18 Deputy Solicitor here for the 15th Circuit. And this
19 here is Jimmy Richardson, the Solicitor. We'll be
20 handling the case for the State. Thanks for your
21 patience and time.

22 A You're welcome.

23 Q Bunch of questions, and thanks for being so
24 honest. Just try to wrap it up a little bit, just a
25 couple little points. Just about your thoughts on the

1 deliberation process, you indicated that you were a C
2 type juror, that you would take all those facts into
3 consideration. That's the way you'd start it. And, of
4 course, that's the way that we hope you end it.

5 So let's pretend, go all the way to the end. Made
6 it through this process. You're on the jury. You're
7 now trying to decide, well, the guilt and then the
8 punishment after that phase.

9 A Uh-huh.

10 Q Is your concept of the deliberation process, it's
11 like a give-and-take of information, sharing your ideas
12 back and forth everybody so you guys can come up with a
13 consensus opinion on how -- what you believe the proper
14 sentence would be?

15 A I've never been in that situation.

16 Q Sure.

17 A But my idea would be that we would take back what
18 we've heard and it's all fact. It's based, as far as
19 the guilt or not guilt, you know, is based on fact. I
20 don't know how much you can give and take on that if
21 you're following what you need to follow.

22 Q I'm specifically fast-forwarding going to the
23 penalty phase which ultimately whether you decide life
24 imprisonment or the death penalty. And just I was kind
25 of playing off Mr. McGuire's concepts about respecting

1 other people's ultimate opinion. But it takes a lot of
2 deliberation to get to that ultimate opinion, and
3 that's kind of the process I'm talking about.

4 In other words, like a major purchase in your
5 life. For instance, buying a piece of real estate or
6 something. And this is far more serious than that.

7 A Absolutely.

8 Q Isn't it safe to say that you would look at
9 options and come up and have a discussion with that
10 about deciding what you're going to do through that
11 give-and-take process?

12 A It sounds like to me that process is more what you
13 truly feel, like you don't -- you know, the way the
14 judge explained it, you don't have to have a reason for
15 not giving someone the death penalty. I think you have
16 to -- again, I don't know how much I could give and
17 take if I came to a conclusion about what I felt either
18 for or against. I don't know how much I could give or
19 take on that.

20 Q I agree with that. I think I'm probably not
21 saying it very artfully. But once you are at that
22 sound decision, you're pretty comfortable with that
23 decision.

24 A Yes.

25 Q I understand. I understand what you're saying.

1 Let's just go along with that then towards the very
2 end. Once you come to that conclusion, and let's say
3 for the sake of this purpose that the collective
4 decision of the jury, they have come to the conclusion
5 that the appropriate sentence is death. Okay?

6 A Uh-huh.

7 Q At that point our process will require a verdict
8 form. And that verdict form, there's literally slots,
9 lines, on a piece of paper that require you to take out
10 a pen and actually sign your name to that that you
11 recommend a sentence of death. Just a step in the
12 process that we have to do.

13 Are you comfortable affixing your name to that,
14 that that is the opinion of the jury and your opinion
15 that the defendant should be sentenced to death?

16 A If that's what I agreed with, absolutely, yes.

17 Q That's all we ask of you. Thank you very much.

18 A You're welcome.

19 EXAMINATION BY THE COURT (Resumed):

20 Q Ms. Hummer, I want to be crystal clear about
21 something. You told me that you're a C type juror and
22 that you would, before you could make any decision
23 concerning the death penalty, you would have to look at
24 all the mitigating and aggravating circumstances. Is
25 that still your opinion?

1 A Absolutely, yes.

2 Q I talked to you earlier, and I was very clear, I
3 thought, in telling you that mere conviction of the
4 offense of murder did not support or authorize the
5 imposition of the death penalty.

6 A That's correct.

7 Q I understood you to have been asked a question
8 later where you were asked what do you believe would be
9 the appropriate sentence if a person had been convicted
10 of -- and again it was phrased as mere murder. The
11 unlawful killing of a human being with malice
12 aforethought, and I understand your response to have
13 been the death penalty. Was that your response or did
14 I misunderstand you?

15 A I think you misunderstood me. I am a -- I support
16 the death penalty if the situation, if there's -- if
17 it's proven, if it's under law, if it's an option, it
18 is definitely something that I would look at. I would
19 not say that in every single case I would say yes every
20 time someone commits murder with malice and aggravating
21 circumstances that they should be given the death
22 penalty.

23 As he mentioned earlier, there are a lot of
24 circumstances that you could look at. I'm just saying
25 that it's not something that I would discount.

1 Q All right. Let me make sure I understand. Do you
2 understand the difference between murder which includes
3 malice --

4 A Right, yes, and then aggravating circumstances.

5 Q -- and murder with aggravating circumstances?

6 A That's when something else goes into play. There
7 is another, I guess, another conviction there.

8 Q All right. Do you believe that a person who is
9 convicted solely or -- we're in the first phase of a
10 death penalty case and a person is convicted just of
11 murder, which is the wrongful taking of a person's life
12 with malice aforethought, that the death penalty is the
13 appropriate penalty in that case?

14 A No.

15 Q Okay. All right. That's what I want to know.
16 Would the fact -- and I asked you this earlier -- would
17 the fact that there had been a conviction for the
18 murder, and we're moving on to determine whether or not
19 there are aggravating circumstances. I want to know if
20 the fact that that person had been convicted of murder
21 would even influence you improperly or unfairly in your
22 consideration of the aggravation factors?

23 A Absolutely not. I want to make sure that -- I
24 don't feel like I explained myself either that when I
25 say I support the death penalty, it's not that in every

1 murder I feel like that someone should be given death.
2 But if you're saying this is an option, this person,
3 it's a capital case so the death penalty is an option
4 and these are mitigating circumstances are proven and I
5 have that option to look at that, and again I would
6 take into account everything that it is an option and I
7 would look at that option.

8 THE COURT: Thank you. Very much.

9 MR. McGUIRE: Judge, both sides agree she's
10 qualified.

11 THE COURT: Yes, ma'am. You are found to be
12 qualified in this case, Ms. Hummer. And we're not
13 going to need you for a few days. I would ask you, if
14 you would, to call this number that the officer is
15 giving you on Sunday evening after 6 o'clock and we
16 will give you instructions as to where you should
17 report.

18 Remember this is a case where the jurors will be
19 sequestered, so if you have any medications,
20 toiletries, clothing, you need to bring those things
21 just in case you're put on the jury, but we will take
22 you immediately to the hotel when you are selected.

23 MS. HUMMER: Thank you.

24 THE COURT: Thank you very much.

25 (WHEREUPON, Ms. Hummer exited the courtroom

1 at 1:26 p.m.)

2 THE COURT: The clerk tells me she has lunch for
3 us. Let's go ahead and have lunch. All right?

4 (WHEREUPON, lunch recess was taken from
5 1:26 p.m. to 2:00 p.m.)

6 (WHEREUPON, Ms. Harvey entered the courtroom
7 at 2:00 p.m.)

8 TONYA HARVEY,

9 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

10 EXAMINATION BY THE COURT:

11 Q Come around, Ms. Harvey. How you doing,
12 Ms. Harvey?

13 A Good.

14 Q Good to see you again.

15 Ms. Harvey, I don't know if I asked you or not.

16 Have you complied with my order to avoid any publicity
17 about this matter and not to talk with anyone about it?
18 You remember that, don't you?

19 A Yes.

20 Q I will remind you that you remain under that order
21 until you are released from this case. Fair enough?

22 A Yes.

23 Q All right. Ms. Harvey, do you remember our
24 discussion this morning where I informed you that
25 Mr. Cottrell has pled not guilty in this case and that

1 he at this time and throughout the trial, until the
2 State overcomes the proposition, he is presumed
3 innocent. Do you understand that?

4 A (Nodding.)

5 Q And the mere fact that we may be discussing the
6 second phase of the trial which would suggest, perhaps,
7 that he was found guilty in the first phase of the
8 trial. We do that only because we won't have another
9 opportunity to do it. And I don't want you to think or
10 infer that any of us want to suggest to you that he
11 would be convicted in the first phase. And that would
12 certainly be improper. That would be something for the
13 jury, and you if you were placed on this jury to
14 determine and not us. So please keep that in your mind
15 and thank you for thinking about it as we go along.
16 Okay?

17 A All right.

18 Q All right. Ms. Harvey, you were kind enough to
19 fill out your jury category form for us, and I have it
20 before me. And it looks like you indicated that you
21 would be a category C type juror; is that right?

22 A Uh-huh.

23 Q Okay. And just so that I'm sure that both of us
24 are thinking about the same thing, a C type juror is
25 one that would need to hear all the facts and

1 circumstances in aggravation and in mitigation before
2 she could make a decision regarding punishment. Is
3 that you? Does that best describe you?

4 A (Nodding.)

5 Q You need to say "yes" or "no" --

6 A Yes.

7 Q -- because this lady here, she can't really see
8 you. She's taking down everything. You need to
9 respond verbally so that she can pick it up. Would you
10 mind doing that for us?

11 A Yes.

12 Q Okay. Thank you, Ms. Harvey.

13 Now, Ms. Harvey, do you remember early this
14 morning when we talked about the process that would be
15 involved if we were to get to the second phase of this
16 case?

17 A Yes.

18 Q What we call the sentencing phase. And do you
19 remember we talked about aggravation and mitigation in
20 that? Do you remember what we said?

21 A Yes.

22 Q Do you think you have an understanding of how the
23 process works and how I will charge you at the end of
24 the case?

25 A Yes.

1 Q Okay. And is that in keeping with your selection
2 as number or letter C as the type of juror that you
3 would be?

4 A Yes.

5 Q Okay. Do you understand that if we were to or
6 when we get through the first part and if -- if -- the
7 State would have overcome its burden and the jury would
8 find unanimously that Mr. Cottrell was guilty of
9 murder, that would just be the first phase of this?

10 A Yes.

11 Q Do you understand? Okay. And it would be a
12 prerequisite to then moving into the sentencing phase?

13 A Yes.

14 Q Okay. And do you realize that if this were an
15 ordinary case and we stopped at that point where we
16 didn't have a sentencing phase like we do in a death
17 penalty case, that the death penalty would not be
18 appropriate? A mere murder that is proved by the State
19 of guilt beyond a reasonable doubt murder, which is a
20 wrongful or unlawful killing of another person with
21 malice aforethought -- that's what the State would have
22 to prove -- that merely proving that does not even put
23 the death penalty on the table. Do you understand
24 that?

25 A Yes.

1 Q All right. Would that conflict with your personal
2 feelings about the death penalty? Would that be
3 contrary to what you believe? I guess what I'm asking
4 you is this: Are you a person who would think that
5 once the State has made that proof, that first step,
6 that the death penalty should be imposed?

7 A No.

8 Q Okay. You don't believe that. Okay. Well, let
9 me move to the next question. If the State has done
10 that and we move to the second phase, would the fact
11 that he had been convicted, if that happens, would that
12 fact cause you to have any bias or prejudice against
13 Mr. Cottrell when it came around to you having to
14 consider whether the State had proven an aggravating
15 circumstance beyond a reasonable doubt?

16 You remember there are two different things, and
17 the same standard applies to both. They have to prove
18 beyond a reasonable doubt that he committed the offense
19 of murder. Then you have to prove beyond a doubt in a
20 separate proceeding that an aggravating circumstance
21 arose.

22 Would the fact that the State had proven beyond a
23 reasonable doubt that he committed murder, would that
24 taint your thinking or cause you to have some bias
25 against Mr. Cottrell, or could you still look at it

1 fairly and objectively and make a fair and impartial
2 determination of whether or not one of those
3 aggravating circumstances existed?

4 A I hope so.

5 Q Do you think you could?

6 A I think I could.

7 Q You think you could, okay. And that's -- I'll
8 tell you right now, that's what you must do. And that
9 would be part of your oath. The reason I ask that is I
10 want to know if you could follow your oath and follow
11 the law. Do you think you could do that?

12 A Yes.

13 Q All right. Thank you very much.

14 Now, do you understand that I will never tell you
15 and there is not a circumstance, no matter what you may
16 find. You can find murder, you can find an aggravating
17 circumstance. But even that doesn't direct you,
18 doesn't say to you you have to find or have to
19 recommend the death penalty. Do you understand that?

20 A Yes.

21 Q Okay. You still have to look at all the
22 mitigating circumstances. You don't even have to find
23 a mitigating circumstance. You could still recommend
24 life imprisonment as an appropriate sentence in this
25 matter. You never have to recommend the death penalty.

1 Just like you never have to recommend the life
2 imprisonment. Do you understand?

3 A Yes.

4 Q Okay. I just wanted to make sure that we
5 understood each other in that regard. And I appreciate
6 your comments.

7 Now, as, Ms. Harvey, our life experiences or at
8 least -- our life experiences, the things that happen
9 to us, the things that happen to our family members,
10 loved ones, friends, everything that happens in life
11 helps form us as a person. Do you agree with that?

12 A Yes.

13 Q And that also is responsible for the opinions that
14 we may have about certain issues. Would you agree with
15 that?

16 A Yes.

17 Q Okay. And if we really look at different issues,
18 we all have some prejudice or interest or bias
19 involving almost every issue, and that kind of arises
20 from our life experiences and information that we may
21 have obtained about a particular subject.

22 Now, my job here today is to determine whether or
23 not there's anything that has occurred or any
24 information that you may have or any prejudice or bias
25 that you might have that would substantially hinder

1 your ability to carry out your duties as a juror. And
2 the primary duty you have as a juror is to be fair and
3 impartial.

4 I want to know, keeping in mind that you must be a
5 fair and impartial juror, is there anything that you
6 can think of you about that might impair your ability
7 to be fair in a case like this? Things like your
8 attitude toward the death penalty. Do you oppose the
9 death penalty?

10 A No.

11 Q Do you support the death penalty? Or are you
12 indifferent to the death penalty?

13 A I'm indifferent.

14 Q You're just indifferent. Do you have any
15 prejudice or bias against the State or any of the
16 attorneys here? Have they done anything that you feel
17 is inappropriate?

18 A No.

19 Q How about Mr. Cottrell or Mr. Cottrell's
20 attorneys?

21 A No.

22 Q Okay. Can you think of any reason why you could
23 not be a fair and impartial juror in this case?

24 A No.

25 Q Now, I look back here, and you have gone over the

1 witness list for me. And I don't see where you
2 indicate that you know any witnesses.

3 A I don't know anybody.

4 Q I would add to that a couple -- a few other names
5 like: Nicole Pyle, John Taylor, Christine Del Fonzo,
6 William Nettles and Michelle Light. Do those names
7 ring a bell?

8 A Huh-uh.

9 Q Do you think -- and it's hard to look at a list of
10 names and really know who these people are. But
11 looking at that list, if there had been someone on that
12 list that you have a significant or had a significant
13 relationship with, like they were related to you or
14 maybe a neighbor, someone that you dealt with in
15 business, do you think that you would have recognized
16 those names, people that you know significantly?

17 A I would think so.

18 Q Okay. So are you pretty comfortable that you
19 don't know anyone on this list?

20 A Yes.

21 Q We recognize there might be someone when you put a
22 face with the name you might. But have you done the
23 best you can in that?

24 A Yes.

25 Q If it were to develop during this trial that all

1 of a sudden someone popped up that you were an
2 acquaintance with and knew, could you set aside the
3 fact that you, perhaps, knew this person or were
4 acquainted with this person and fairly and impartially
5 look at that person's testimony as well as the
6 testimony of other persons, particularly persons who
7 may testify to something different than that person?

8 A Yes.

9 Q You could do that?

10 A Yes.

11 Q And you would understand that that would, in fact,
12 be your duty to do so.

13 Now, if you are selected as a juror in this case,
14 do you understand -- and I think we've talked about
15 this -- that you would possibly or that you would be
16 sequestered. Do you understand this?

17 A Yes.

18 Q Okay. And we're looking at being next week.
19 Would that pose any particular problems for you? Could
20 you arrange that?

21 A Yes.

22 Q Okay. Thank you, ma'am.

23 Now, I want you to answer any questions that
24 Ms. Norris or the other attorney might have for you and
25 listen carefully to the questions, please.

1 Mr. McGuire.

2 MR. McGUIRE: Thank you very much, Judge.

3 EXAMINATION BY MR. McGUIRE:

4 Q Good afternoon, ma'am.

5 A Good afternoon.

6 Q When did you graduate from Coastal? I graduated
7 in 1990.

8 A Oh, like '04 or something like that.

9 Q Pretty far --

10 A You would think I would know that date but I
11 don't, really don't.

12 Q Congratulations on your graduation.

13 A Thanks.

14 Q What I want to do is, first off, just sort of
15 establish some framework for our conversation here if
16 you don't mind.

17 A All right.

18 Q The chair that you're sitting in right now for the
19 next couple minutes, the only thing that I'm going to
20 ask you for are your honest personal opinions.

21 A Okay.

22 Q I'll shift gears later and I'll talk about some
23 principles of law. But right now pretty much all my
24 questions start with, even if I don't say it, what is
25 your personal opinion about. Okay?

1 So what's your personal opinion about the death
2 penalty in general?

3 A That they should have it. I think it should be
4 for more things than just murder.

5 Q For more things. Like what?

6 A I mean like child molesters and things like that.
7 Like if convicted...

8 Q Okay. If you took Nikki Haley's place as governor
9 for a day and you had a bill on your desk and it said
10 that -- again, this is your personal opinion, okay --
11 and you could change the law and actually make the
12 death penalty the default penalty, the only penalty for
13 murder. And murder being the intentional taking of an
14 innocent life with an evil intent -- not self-defense,
15 no accident. Meant to do it, chose to do it, killed.
16 Would you, if you could, take the life penalty away and
17 had the death penalty as the only appropriate
18 punishment for that type of killing, would you?

19 A No.

20 Q Why not?

21 A Not everything is evil intent.

22 Q Well, the judge would tell you that in order for a
23 jury -- this is where I want to talk about the law a
24 little bit. In order for a jury to convict for the
25 offense of murder, there has to be an evil intent.

1 There's different definitions, but generally in South
2 Carolina it's described as the person acting with a
3 black, malignant heart, fatally bent on evil or
4 wickedness. So guaranteed evil intent.

5 If you were the governor and you could change the
6 law -- now we're shifting to just your personal
7 opinion -- if that evil intent was there beyond a
8 reasonable doubt, would you change the law so the death
9 penalty would be the appropriate punishment in every
10 one of those evil-type cases?

11 A Yes.

12 Q Okay. And why is that? Why do you have that view
13 or what's the foundation for that?

14 A Kind of hard to explain. Like where was their
15 forethought. They didn't care when they took that
16 life, so why should, you know, the same consideration
17 be...

18 Q Okay. Sometimes in the South we hear the phrase
19 "eye for an eye."

20 A Right. I'm not an overly religious person, so
21 it's not like, you know, that, but yeah.

22 Q When you say yeah, that resonates with you, the
23 eye-for-an-eye position?

24 A Uh-huh.

25 Q And sometimes we hear the phrase, If one takes an

1 innocent life, they forfeit theirs. Have you heard
2 that phrase?

3 A Uh-huh.

4 Q Do you agree with that?

5 A Yeah.

6 Q Okay. And it sounds what I'm hearing -- and this
7 is again your personal opinion -- that if the
8 government was to prove beyond any -- beyond a
9 reasonable doubt, got the right guy, meant to do it,
10 chose to kill, killed with an evil intent, took an
11 innocent life, that the death penalty would always be
12 appropriate in those cases?

13 A Yes.

14 Q Okay. And I appreciate your answers. It looks
15 like you're giving some serious thought to these
16 answers, correct?

17 A Yeah.

18 Q And you're under oath. And they're truthful?

19 A Uh-huh.

20 Q And they're honest?

21 A Yes.

22 Q They're candid. They are a reflection of your
23 value system, your moral code, emanate from a deep
24 place?

25 A Yes.

1 Q I can't change those opinions, can I?

2 A I don't know. I don't think so, but. I've been
3 told no. Once I have an opinion it doesn't change
4 much.

5 Q You look like a person who speaks their mind and
6 you say what you mean.

7 A Pretty much.

8 Q And you have done that today?

9 A Yes.

10 Q Okay.

11 MR. McGUIRE: If I could just have one second,
12 Judge.

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

15 MR. McGUIRE: Ma'am, I've got nothing further for
16 you. Thank you so much.

17 EXAMINATION BY MR. RICHARDSON:

18 Q Rebecca, my name is Jimmy Richardson. This is
19 Scott Hixson. I'm the Solicitor for Horry County, and
20 Scott is my chief deputy.

21 Now, you have heard a lot of questions. Believe
22 it or not, your questions have been a lot less than
23 most. So Judge Hyman has done a good job of explaining
24 the law.

25 And what I want to talk to you about is more

1 recently Mr. McGuire put forth this hypothetical making
2 you governor for the day. And you know that's not
3 going to happen. If you're governor, you're going to
4 be there for four years and it's going to be down the
5 road.

6 A I could do a lot in a day.

7 Q Yes, but if I'm hearing you right, one of the
8 first things on the agenda wouldn't be the death
9 penalty. Up until today you said you hadn't really
10 thought about it that much. So maybe that wouldn't be
11 the very first thing that popped up on your desk if you
12 got to order those things.

13 And while hypotheticals are fun to go through and
14 think about and we all do some daydreaming, my question
15 is this: You know that not to be the law, right?

16 A Uh-huh.

17 Q Judge Hyman has told you the law. And whatever
18 your personal opinions may be, if could you wave a
19 magic wand and all of that, are you telling this Court,
20 the defense, the State, Judge Hyman that you can put
21 aside any personal opinions you may have and follow the
22 law as it's given to you by Judge Hyman?

23 A Yes.

24 Q Okay. So if he tells you that you've got to have
25 murder plus to even consider the death penalty, which

1 is a true statement of the law, you could follow that,
2 right?

3 A Yes.

4 Q All right. And what you're telling us today, if
5 given the right set of facts and circumstances, you
6 could consider the death penalty?

7 A Yes.

8 Q And the right set of facts and circumstances, you
9 could consider imprisonment?

10 A Yes.

11 Q Both is a possible punishment for murder plus?

12 A Yes.

13 Q And you wouldn't be preconceived one way or the
14 other?

15 A Correct.

16 Q Okay.

17 MR. RICHARDSON: I have no further questions, your
18 Honor.

19 THE COURT: All right. You may step down. If you
20 would, just step out with Mr. Ropp.

21 (WHEREUPON, Ms. Harvey exited the courtroom
22 at 2:21 p.m.)

23 THE COURT: All right. Let me hear you.

24 MR. McGUIRE: Thank you, your Honor.

25 She's clearly not qualified. When I asked her her

1 personal opinions, even after being carefully
2 instructed on the law by your Honor, knowing what the
3 law was, being crystal clear on it, her personal
4 opinions are that in a case where the State proves
5 beyond a reasonable doubt that it is murder, and we
6 went over that to make sure there was no confusion, she
7 believes the death penalty was appropriate, appropriate
8 in every one of those cases. She was consistent about
9 that when she's talking about her own opinion, and she
10 was very clear that that was a reflection of her value
11 system, her moral code, it came from a deep place. To
12 put her on the jury, if she was to sit, this case would
13 be reversed, I believe.

14 THE COURT: Well, Mr. McGuire, did you hear me
15 question her very specifically about whether or not she
16 could follow the law and specifically as to whether or
17 not any belief she may have, although she told me they
18 were contrary to what she told you, that she would not
19 even be biased towards the defendant in the
20 consideration of aggravating circumstances if the jury
21 had found him guilty of murder with malice?

22 MR. MCGUIRE: And that's exactly the situation
23 that the *Morgan* case talks about, that a juror could
24 have a personal opinion that is held deeply and answer
25 questions from the Court about putting that aside.

1 THE COURT: Show me where she is excluded because
2 of a bias in favor of death.

3 MR. McGUIRE: Her bias is that her personal
4 opinion --

5 THE COURT: Show me where that bias, if she tells
6 us unequivocally that she can follow the law, show me
7 where that bias, even if it exists -- and I'm not sure
8 it does -- but even if it does, show me where, some
9 authority, that says that that disqualifies her for
10 service as a juror..

11 MR. McGUIRE: If you can just give me a second --

12 THE COURT: I mean it's just like jurors who are
13 biased against. The question is whether or not they
14 can follow the law.

15 Let me hear from Mr. Richardson.

16 MR. RICHARDSON: While he's looking at that, you
17 know, I think Mr. McGuire basically made a statement, a
18 leading question. We've been -- you know, there's no
19 problem with that. We let him get away with a good bit
20 of that. But it had gotten to the point where he was
21 putting words in her mouth. And these hypotheticals
22 that he was coming up with was, "If you were queen for
23 a day, if you were governor a day," and it was a little
24 bit different than the system that he had been using
25 before.

1 But by the time it was all over, it was basically
2 snap your fingers and do whatever you want to do, which
3 isn't the standard at all. The standard is can you --
4 are you able to concede the law once it's given to you,
5 can you rationally think it through, and can you follow
6 the law.

7 And, Judge, on very simple questions that you
8 asked and that I asked, she was unequivocal. The only
9 time she said anything about doing something with pro
10 death penalty was when he asked her, You get carte
11 blanche. You get to change all the laws right now for
12 the purpose of this. Now he's wanting to use that
13 against her. But that was a hypothetical in fairytale
14 land and certainly it was confusing to her.

15 She was asked point blank, "Can you follow the
16 law? Can you give this defendant a fair trial? Can
17 you consider not only the death penalty but also life
18 imprisonment?" And she said yes to all of those
19 things.

20 Oh, and she also said she understood that the
21 hypothetical that he was posing was not the law. So,
22 you know, it's to walk her down that street and say --

23 THE COURT: You know, one of the things I asked,
24 since the juror was -- did she understand that
25 conviction just for murder, that being the wrongful

1 killing of another person with malice aforethought,
2 does not carry the death penalty. And she said she
3 understood that. Then I asked her if that conflicts in
4 any way with your personal views, and she told me it
5 did not. Then I went further to make sure that that
6 would not interfere with her ability, if she harbored
7 that thought, that that would not -- over the fact that
8 he was convicted. Even if he was convicted, that would
9 not interfere with her ability to fairly and
10 impartially look or consider the aggravating
11 circumstances.

12 I asked this potential juror every question I
13 could think of to assure that. I believe she's
14 qualified. I'm going to find her qualified.

15 Bring her back out, Mr. Ropp.

16 MR. RICHARDSON: Thank you, your Honor.

17 MR. McGUIRE: Judge, if I could --

18 THE COURT: Wait a minute, Mr. Ropp.

19 MR. McGUIRE: -- put some argument on the record.

20 In the *Morgan* case, the United States Supreme
21 Court essentially found that follow the law questions
22 were insufficient to make sure that a juror did not
23 have a bias or opinion so strong where they would be
24 substantially impaired.

25 The example of the questions are, "Would you

1 follow my instructions on the law even though you may
2 not agree?" "Do you know of any reason why you cannot
3 be fair and impartial?" Do you feel you can give both
4 sides a fair trial?"

5 THE COURT: Hasn't she answered affirmatively to
6 all those questions?

7 MR. McGUIRE: Yes. Those are the questions that
8 the United States Supreme Court pointed out that are
9 insufficient to ferret out bias of a juror.

10 THE COURT: Well, the standard as set forth, I
11 believe, in *Morgan* is whether the juror's views would
12 prevent or substantially impair their performance of
13 his duty as a juror in accordance with the instruction
14 and his oath.

15 It does not require that a bias be proved with
16 unmistakable clarity, nor that the juror would
17 automatically vote one way or the other. The question
18 is whether or not the trial judge is convinced that the
19 juror's views would prevent that juror from following
20 his duties or performing his duties as a juror.

21 This juror has unequivocally, unerringly,
22 repeatedly said that she understood the law and that
23 she would follow the law.

24 MR. McGUIRE: Yes, sir. If I could just add, on
25 page 15 of the *Morgan* case, the United States Supreme

1 Court states, "As to general questions of fairness and
2 impartiality, such jurors could in all truth and candor
3 respond affirmatively, personally confident that such
4 dogmatic views are fair and impartial while leaving the
5 specific concern unprobed. And, more importantly,
6 however, the belief that that should be imposed upon
7 conviction of a capital offense reflects directly on
8 that individual's inability to follow the law. Any
9 juror who would impose death regardless of the facts
10 and circumstances of conviction cannot follow the
11 dictates of the law, and that juror could in good
12 conscience swear to uphold the law and yet be unaware
13 that maintaining such beliefs about the death penalty
14 would prevent him or her from doing so."

15 THE COURT: Hasn't she repeatedly said, even
16 before being examined on her jury questionnaire, said
17 that she would look at the facts and circumstances of
18 the case? From the very get-go. Is there anything in
19 this record, one single response that she had that says
20 she would not do that?

21 MR. McGUIRE: When I asked her what her personal
22 opinion was, what's the appropriate penalty for
23 intentional killing of another person with evil intent,
24 it's one hundred percent always the death penalty.

25 MR. RICHARDSON: And, your Honor --

1 THE COURT: And I told you I am not really pleased
2 with that question. I think it's confusing. In fact,
3 a lot of your questions are confusing, Mr. McGuire. We
4 have had jurors on several occasions say, "I don't
5 understand the question." You're rambling when you ask
6 them.

7 I think this juror has been very clear at least in
8 my mind. She may have some bias in favor of the death
9 penalty. She may have some personal feeling that it
10 was appropriate if there was a killing accompanied by
11 malice as we defined murder, which she has repeatedly
12 over and over said, "I understand the law and I would
13 follow the law." You asked her for her personal
14 opinion if she understood that. That's what you asked
15 her.

16 MR. RICHARDSON: And not only that, your Honor --

17 THE COURT: You asked the last, Ms. Hummer, the
18 same thing. And Ms. Hummer finally cleared that up
19 very well and you conceded that she was qualified.

20 MR. RICHARDSON: Your Honor, not only that, I
21 think you have cleared part one up. She didn't -- she
22 answered part of those can you follow the law type
23 questions. She always answered to the Court in the
24 affirmative.

25 But also, like you pointed out, in her

1 questionnaire and throughout other questions that were
2 not follow the law, she always said that she could, in
3 fact, consider not only the death penalty but also life
4 imprisonment, could weigh it all out.

5 The only other thing that I would say, the only
6 time she seemed to get confused, and I think that's a
7 good word for it, was through these fantasy questions
8 about snapping your fingers. And if you ask that of
9 basically anybody, "Would you like to be a
10 billionaire?" Sure. You know, I can take that. But
11 that's where she got confused. And he led her down
12 that lane, and now he's trying to say, well, that was
13 her personal view. She said she hadn't even thought
14 about the death penalty before much before this trial.

15 THE COURT: Well, what he's referring to is
16 totally consistent with everything else she said. I
17 believe this witness is qualified.

18 MR. RICHARDSON: I do too, your Honor.

19 MR. McGUIRE: Your Honor, I understand the Court's
20 ruling. If I could just put on the record that to
21 qualify this particular juror would be a violation of
22 Mr. Cottrell's due process rights under both the Fifth
23 and Fourteenth Amendment, South Carolina Constitution,
24 Article 1, Section 3 and Section 14. It prevents
25 assembling a jury that is as indifferent as they are

1 unsworn, which is the requirement, and that would be a
2 violation of Mr. Cottrell's right to an unbiased jury
3 pursuant to both the Sixth and the Fourteenth Amendment
4 in the South Carolina Constitution, Article 1, Section
5 14.

6 And it would also violate the heightened
7 reliability requirement of the prohibition against
8 cruel and unusual punishment guaranteed by the United
9 States Constitution amendment, the Eighth Amendment,
10 actually, and South Carolina Constitution Article 1 and
11 Section 15.

12 And, Judge, just briefly before the juror comes
13 back in, the questions from the Court are becoming
14 almost like leading, staking out questions.

15 THE COURT: What do you think you're doing,
16 Mr. McGuire?

17 MR. MCGUIRE: I think I'm not doing that at all.
18 I'm asking them their personal opinions without leading
19 them or telling them that they must follow the law or
20 must follow my instructions.

21 And I would ask the Court to alter the language
22 and stay away from, "Could you follow my instructions?"
23 "To be fair, you have to follow my instructions." Now
24 they have to say that not only are they unfair, but
25 they also have to openly defy the Court. And they're

1 going to want to please your Honor.

2 THE COURT: Well, Mr. McGuire, that's the ultimate
3 question here. And I'm going to ask jurors if they
4 would be willing to follow my instructions.

5 MR. MCGUIRE: I understand the Court's ruling.

6 THE COURT: All right.

7 (WHEREUPON, Ms. Harvey entered the courtroom
8 at 2:35 p.m.)

9 THE COURT: Ms. Harvey, we have found you -- or I
10 have found you qualified to serve as a juror on this
11 case. It doesn't mean that you are on the jury. It
12 simply means that you are qualified to be on the panel
13 of potential jurors.

14 I'm not sure when we're going to need you. But
15 what I'm going to do is ask you to call that number
16 there by 6 o'clock on -- or after 6 o'clock on Sunday
17 afternoon, and there will be a recorded message telling
18 you when to appear.

19 You need to appear. Bring some clothing with you,
20 any pharmaceutical medicines that you may take, your
21 toiletries and things of that nature because if you are
22 selected, we're going to immediately sequester you.
23 Thank you.

24 MS. HARVEY: Thank you.

25 (WHEREUPON, Ms. Harvey exited the courtroom)

1 at 2:36 p.m.)

2 (WHEREUPON, Ms. Murphy entered the courtroom

3 at 2:36 p.m.)

4 REBECCA MURPHY,

5 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT:

7 Q Good afternoon, Ms. Murphy. How are you?

8 A Good. How are you?

9 Q Ms. Murphy, we had an opportunity to speak
10 earlier, but what I want to ask you is, do you recall
11 my order last -- or Monday requiring you not to seek
12 out any information about this case or expose yourself
13 to it or to discuss it with any person?

14 A Yes.

15 Q And have you complied with that?

16 A Yes.

17 Q Do you understand that order will stand until you
18 are dismissed in this case?

19 A Yes.

20 Q You agree to comply with that?

21 A Yes.

22 Q Thank you, ma'am.

23 Now, Ms. Murphy, do you recall our conversations
24 concerning Mr. Cottrell?

25 A Uh-huh.

1 Q Do you realize that and understand that
2 Mr. Cottrell is here under a presumption of innocence?

3 A Yes.

4 Q And we talked about that. And that means he is
5 innocent and will be considered innocent until such
6 time as the State can tear down that presumption or
7 resolve that presumption. Do you understand that?

8 A Yes, sir.

9 Q And that would be at the end of the trial.

10 A Yes.

11 Q Now, we are going to be talking about procedures
12 that we follow in a capital case. And as I think we
13 have discussed earlier, there are two parts. There is
14 a guilt phase and there is a sentencing phase. And you
15 would not get to the sentencing phase, no one would,
16 unless the State had been able to prove to a jury
17 unanimously and beyond a reasonable doubt that
18 Mr. Cottrell was guilty of the offense of murder. Do
19 you understand that?

20 A Yes.

21 Q Now, when we talk about the second phase, you
22 could reasonably infer that we are suggesting that we
23 are going -- we know we're going to get there or that
24 it would be appropriate to convict him. And that is
25 certainly not the case. That is a decision that can

1 only be made by a jury. And certainly no one here has
2 the right to even suggest that. And we don't want you
3 taking any inference from that.

4 We just have to talk about it sometime, and this
5 is the only time we have to talk about it. So as it's
6 been said in here today, we might be getting the cart
7 before the horse, but that's what we're trying to do.
8 And can you appreciate that?

9 A Yes.

10 Q And can you remember that and keep it in your mind
11 through all this questioning?

12 A Yes.

13 Q You don't have to be reminded?

14 A No.

15 Q Thank you, ma'am.

16 Ms. Murphy, you were kind enough to provide a
17 juror category questionnaire.

18 A Uh-huh.

19 Q And in that you indicated that you are what we
20 call a C class juror; is that right?

21 A Correct.

22 Q And you think that paragraph there most correctly
23 describes your thought processes and how you feel about
24 this type of case?

25 A Yes, I do.

1 Q So that we can be sure that you and I are talking
2 about the same thing, it's my understanding that you
3 are telling me that you are a juror that would need to
4 hear the facts and circumstances in aggravation and in
5 mitigation before you could make a decision regarding
6 punishment. Is that your understanding?

7 A Correct.

8 Q Is that how you feel?

9 A Yes.

10 Q Okay. You're very soft-spoken, and this lady has
11 to record your answers.

12 A Okay.

13 Q So maybe just bring that microphone around a
14 little bit. I think it's still working. Could you do
15 that for me?

16 A Okay.

17 Q Thank you, ma'am.

18 Now, Ms. Murphy, looking at your indication that
19 you are C type juror, you speak in terms of aggravation
20 and mitigation circumstances. Is that your
21 understanding of those terms when you indicate that you
22 were C, consistent with your understanding you have of
23 those terms after having listened to my comments this
24 morning? Do you understand what aggravation --
25 aggravation and mitigation factors are --

1 A Yes.

2 Q -- and how they come into play in this matter?

3 A I believe, yes, uh-huh.

4 Q You do? Okay. Well, good. And do you believe
5 after hearing my comments that you have a general
6 understanding of how the process would work?

7 A General, yes.

8 Q Okay. And I will tell you that at the end of the
9 trial I will give you a much more detailed charge on
10 the law and tell you much more about it, but I wanted
11 you to be able to have a feel or a sense of how it's
12 set up and what would be expected of you as a juror
13 because how you would react in this case as a juror is
14 very important to everyone involved in this case.

15 In fact, determining how your feelings and
16 opinions might affect you is what we are exploring.

17 A Okay.

18 Q Because we're charged with making a determination
19 or I am as to whether or not your opinions, your
20 feelings, your beliefs, your bias, your -- the
21 knowledge you may have, your past experience, any of
22 those things would cause you or would impair, let me
23 put it that way, would impair your ability to carry out
24 your duty as a juror. And those duties can, in the
25 most basic sense, be described as just being fair and

1 impartial. That's what we all want, fair and impartial
2 jurors in this case. In fact, in every case that we
3 have.

4 Now, I want to make sure that you have a clear
5 understanding of what we discussed this morning. Do
6 you remember us talking about the events that
7 Mr. Cottrell is charged with?

8 A Yes.

9 Q Murder.

10 A Yes.

11 Q Okay. And is it just simple murder or is this a
12 special kind of murder?

13 A Special.

14 Q And what do we call it?

15 A Capital.

16 Q Capital murder. And what's the difference in
17 capital murder and a regular murder case?

18 A That is when the aggravated situation comes into
19 play.

20 Q Aggravating circumstances -- did you say
21 authorized death or --

22 A No. No. Comes into play.

23 Q Okay. An aggravating circumstance, okay.

24 Now, you know, we try a lot of murder cases in
25 this state. Throughout the state over the course of

1 the year there will be several that are tried. As we
2 discussed earlier, in fact, I told you earlier, if the
3 State should look at a case and choose to proceed as a
4 capital case, they seek the death penalty, all new
5 types of rules come into play and procedures come into
6 play. And those things actually create sometimes
7 special problems for us.

8 As I indicated, first of all, we would approach
9 this case just like it was any other murder case. As
10 far as that first phase is concerned, capital murder
11 doesn't mean adding anything to it. It's murder is
12 murder. And I believe I told you that murder is the
13 unauthorized -- or the unlawful killing of another
14 person with malice aforethought. That's what makes it
15 murder.

16 There are many types of killings that can take
17 place. Homicides we call them. But only if you have
18 malice aforethought is it a murder. And that's
19 something the State would have to prove. Okay?

20 Now, do you have a personal feeling as to how a
21 person who has been convicted of murder should be
22 punished? There again, that's a person who
23 intentionally killed someone with malice aforethought,
24 evil hatred, ill will towards that person. Do you have
25 a personal feeling as to how that person should be

1 punished? Something -- do you have a feeling that
2 every time this person should be punished in a certain
3 way or what that the punishment should be?

4 A I guess in not every specific case. I think it
5 would depend a little bit on the situation around it,
6 but I definitely would feel that if murder was proven,
7 at least imprisonment.

8 Q I'm sorry?

9 A At least imprisonment for a murder.

10 Q At least imprisonment.

11 A At least. And I think the circumstances around
12 the case could make me feel different.

13 Q All right. Would you ever feel -- ever feel --
14 that a person who committed murder, that is taking of
15 the life with malice aforethought, unlawful taking of a
16 life with malice aforethought, would you ever think
17 that alone with nothing more that the penalty should be
18 death?

19 A It could be in some circumstances.

20 Q It could be in some circumstances. Then if I
21 understand you correctly, you're of the opinion that if
22 a murder is committed, death might be appropriate
23 and/or imprisonment might be appropriate?

24 A Right. I think I would need more information on
25 the case to be able to -- yeah.

1 Q That's a good answer. As a said, I'm just asking
2 you what your opinion is. All I ask you is just be
3 candid with me. There's nothing wrong with any opinion
4 you have. All right?

5 A Uh-huh.

6 Q Now, one of the problems that we have when we have
7 a capital case is, first of all, you have a trial
8 involving proof of a murder, and essentially the jury
9 has to find that the defendant is guilty of the classic
10 elements of murder. Guilty of murder before we move to
11 the second phase.

12 And one of the things that sometimes concerns me
13 is this. When we get to the second part, the guilt
14 phase, okay, as we discussed this morning, the State
15 again has a high burden. The State has to prove beyond
16 a reasonable doubt that the defendant committed some
17 other act contemporaneously with the murder or in
18 connection with the murder. And that that is one of
19 the statutory aggravating circumstances. Remember we
20 talked about that?

21 A Uh-huh.

22 Q Okay. And the State must prove that beyond a
23 reasonable doubt and must convince every juror of that.
24 It's the same standard of proof that the State had when
25 it was down here trying the murder. Do you understand

1 that?

2 A Okay.

3 Q Okay? No difference. Got to have the same
4 standard of proof, just has to prove that there are one
5 of these aggravating circumstances. Are we clear?

6 A Uh-huh.

7 Q Now, if you got to that point -- and I'm not
8 suggesting you will, but if you got to that point,
9 would the fact that you are on the jury and you had
10 just convicted the defendant in the case of murder,
11 would that unfairly bias you against the defendant, or
12 could you in the context of this case set that aside
13 and look at the aggravators with that fresh eye and
14 apply -- and look at it fairly and impartially in your
15 determination of whether or not the State had proven it
16 beyond a reasonable doubt?

17 A So just looking at just the additional?

18 Q Right.

19 A Yes.

20 Q You could do that?

21 A Yes.

22 Q You wouldn't be poisoned by the fact that there
23 has already been a conviction of murder?

24 A No, I think I could just --

25 Q Okay. And that would be what a juror should do.

1 That would be part of your oath, to be fair and
2 impartial in all your determinations. I want to stress
3 that. Okay.

4 Now, did you understand or do you clearly
5 understand that reaching that point, reaching that
6 point, if you were to reach that point, there was
7 consensus among the jury that the State had proven
8 beyond a reasonable doubt that he was guilty of or had
9 committed one of these statutory aggravating factors,
10 if you were to reach that point, do you understand that
11 the State would not be entitled to a recommendation of
12 a death penalty sentence at that time?

13 A Okay. Yes.

14 Q You would have that other standard, and that is to
15 review the case, essentially it's looking at the
16 mitigating circumstances that are statutory, looking at
17 all the other facts, see if there are other mitigating
18 circumstances. We talked about all that.

19 A Uh-huh.

20 Q You could even consider just extending mercy to
21 the defendant. All those things would be factors you
22 consider in whether to recommend death or life. Okay?

23 Do you have any problem with any of the steps in
24 that process? Do you find any of them oppressive or
25 unfair to the extent that you personally, based on your

1 beliefs, you have a hard time complying with those
2 things?

3 A No, I don't think so.

4 Q All right. Okay. Could you just as easily
5 recommend life as death depending on the circumstances
6 of the case?

7 Do you want me to rephrase that?

8 A Yes.

9 Q When you got to the end where you had to vote to
10 recommend a sentence -- and we know in this case it
11 would be life imprisonment or the death -- would you
12 be, depending on the circumstances -- let's say we
13 hadn't heard any of the circumstances. Would you go
14 into it just as willing to recommend life as you would
15 death?

16 A Just as willing to recommend life as death?

17 Q Yes. Would you give both sentences a fair shake,
18 I guess, is what I'm trying to say.

19 A Yes. Yes. Yes.

20 Q And would you base it on the circumstances?

21 A Yes.

22 Q All right. Thank you.

23 Now, we're all a product of our life experiences,
24 aren't we?

25 A Uh-huh.

1 Q Good things happen to us, bad things happen to us,
2 happen to your family and friends, and that sort of
3 shapes us. Would you agree with that?

4 A Yes.

5 Q And as a result of that, we form opinions, biases,
6 and we may form prejudices in some form or fashion. We
7 just develop how we feel about things. Is that a fair
8 statement?

9 A It is.

10 Q Is that how it works with you?

11 A Yes.

12 Q Okay. If you look back at your life and you look
13 back and how you feel about things, things like the
14 death penalty. And by the way, I haven't asked you,
15 are you pro death penalty, do you oppose the death
16 penalty, are you indifferent to the death penalty?
17 Have you given it any thought? Do you have an opinion
18 about it?

19 A I'm not against it. I'll put it that way. That's
20 as much as I can really dwell on it. I think there is
21 a place for it.

22 Q Okay. You understand what kind of case this is?

23 A Uh-huh.

24 Q And we're all very concerned that we get fair and
25 impartial jurors. Is there anything about you,

1 anything about your background or your opinions that
2 you're aware of that you need to share with us that
3 might substantially impair your ability to be a fair
4 and impartial juror? That's the ultimate question.

5 You know, I don't know what else to ask you other
6 than to ask you, do you know of anything that would
7 cause you to hesitate to fairly view the law, to
8 consider the law, follow the law as you were
9 instructed, anything?

10 A Knowing a little bit about the case from years
11 past from what has just been in the media, my father is
12 a retired police officer. And that is a large part of
13 my life.

14 Q Okay. And where was your dad a police officer?

15 A In New York State.

16 Q In New York State. How long have you been down
17 there?

18 A Twenty years.

19 Q You're almost a native, aren't you?

20 A Yes.

21 Q Okay. Ms. Murphy, I'm sure the fact that your
22 father was a police officer affected in some way your
23 view of this case and that would be natural. Can you
24 tell us about that? How does it affect your view of
25 this case?

1 A I just remember my father retired when I was
2 younger, so I just remember a lot of it from when he
3 was younger. And just different things when he went
4 into and looking up to law enforcement. And he had
5 been shot at one point. So going, you know, to the
6 hospital to visit during surgeries and different things
7 like that and just how that played in my view of law
8 enforcement.

9 Q Okay. Would it be fair to say that you have some
10 degree of respect for law enforcement?

11 A Very much.

12 Q Okay. And that's quite natural. We appreciate
13 you being candid with us in that respect. But could
14 you set that aside? Is your relationship with your
15 father, law enforcement in general, is it such that it
16 would substantially impair your ability to look at the
17 evidence and testimony in this case fairly and
18 impartially, would it affect your ability to fairly and
19 impartially consider the mitigating and aggravating
20 circumstances of a case and your decision as to what
21 sentence would be appropriate, would those things be
22 substantially or your ability to deal with those things
23 be substantially impaired or affected by this
24 relationship?

25 A I feel like that's hard to know. I feel like I

1 could say that I would choose to be fair. But I'm not
2 sure if something wouldn't be way in the back. I can't
3 answer that.

4 Q You're not sure?

5 A I would --

6 Q Okay.

7 A I don't know how to answer that.

8 Q Would it cause you to have a bias in favor of the
9 State or in favor of the defendant, or do you think
10 there is an identifiable bias on your part?

11 A I mean, choosing today how I would feel?

12 Q Yes, ma'am.

13 A I would be biased toward one end. If I had to say
14 today, I would be biased towards one end versus the
15 other end.

16 Q Do you know which one?

17 A The State.

18 Q Towards the State. Okay. And that's fair, and we
19 appreciate that. We certainly can't criticize you for
20 your opinions, and I promised you we wouldn't. And we
21 don't. We just want you to be honest with us. Okay.
22 Anything else?

23 A Not that I'm aware of.

24 Q Okay.

25 THE COURT: Mr. McGuire.

1 MS. NORRIS: I'm going to do this one, your Honor.

2 THE COURT: All right. Ms. Norris.

3 EXAMINATION BY MS. NORRIS:

4 Q Ms. Murphy, I'm Teresa Norris. I know I stood up
5 the other day and I know you had the opportunity, too,
6 but I'm glad you and I get to talk now. And I'm very
7 glad that your father is doing fine or made it through
8 that event.

9 Let me talk to you a little bit before I get into
10 all those death penalty questions. And I know it
11 probably feels like you're sitting in the hot seat, and
12 we apologize for that. But I'm sure you can understand
13 the gravity of the situation.

14 But, really, you're in what we call the safety
15 seat. The judge has said this to you before and I'm
16 going to say it to you now. There are no right or
17 wrong answers. Whatever your opinion is, whatever your
18 answer is, that's the right answer.

19 A Okay.

20 Q So you're in the safe seat. Let me ask you a
21 little bit, and there were so many people standing up
22 the other day that, honestly, I couldn't keep track. I
23 know everybody in the courtroom was. But I thought
24 that you stood up on these questions -- and you tell me
25 if I'm wrong -- that you had seen some news on the

1 case?

2 A Correct.

3 Q That you had formed an opinion?

4 A Correct.

5 Q And that you had something else that you thought
6 might impair you?

7 A Yes.

8 Q Okay. Let me talk to you first about what you
9 know about this case. Just tell me what's the source,
10 what do you know.

11 A Just basic media as far as newspaper and
12 television. That's it.

13 Q Tell me the facts that you know. And this is not
14 a pop quiz. We just need to know just how much
15 information you have here.

16 A The location, I believe, was at the Dunkin' Donuts
17 down on 30-something avenue in Myrtle Beach is what I'm
18 aware of. And there had been a shooting with a police
19 officer. And I believe it was two of them and one did
20 not make it and one did. And that's the basis.

21 Q Do you know anything about the subsequent judicial
22 process?

23 A No. I know that there has been, obviously, a
24 case. I believe from what I have gathered from either
25 news or from what people have told me in the past is

1 that there is a life in prison sentence. I'm not sure
2 if that's correct. That's just what I have been told.

3 Q And so you're not sure, given that there is a life
4 in prison sentence here, you're not sure what we're
5 doing at all?

6 A I can't stake my life on that I know, but that's
7 it.

8 Q That's fair enough. And based on that
9 information, have you formed an opinion in your own
10 mind of what should happen here? Not talking about
11 death penalty in general. I'm asking, have you formed
12 an opinion in your mind about what should happen in
13 this case between the State of South Carolina and
14 Mr. Cottrell?

15 A I guess as I stated before, with the little bit of
16 information I know, I'm a little bit biased towards the
17 State's side. So I do feel that.

18 Q And did anything that you heard in the judge's
19 instructions the other day, once you learned what the
20 charges, what the indictment is, and you've got the
21 location, you've got the facts that confirmed this is
22 the case you heard about before, did that add to the
23 bias or just -- tell me what, if any, impact that had
24 on you.

25 A I guess it just confirmed that it was the case

1 that I had thought it was when I had filled out the
2 paperwork.

3 Q And I believe you said you've actually lived in
4 Myrtle Beach for a fair amount of time?

5 A About 20 years, yes.

6 Q And does your father also live here now?

7 A Yes.

8 Q Is this a case you've talked about with your
9 father?

10 A We have talked about it, yes. Not since then.
11 Not since Monday. But, yes, past experience, yes. I
12 don't want to get in trouble.

13 Q I understand. Not trying to get you in trouble.
14 I was sure that you had followed that instruction. But
15 there was a whole lot of time between the Dunkin'
16 Donuts and you being told you can't talk about it.

17 A Correct, yes.

18 Q So share with us that discussion. Did your father
19 express opinions? Did you express opinions? I mean,
20 what do you recall?

21 A Right. I guess I feel like we've always, you
22 know, it doesn't matter who you are, things can go
23 wrong either way, law enforcement, fireman, anything.
24 You can do things that are wrong and things. But we
25 had kind of felt that based on the facts of what we had

1 been told or read or heard that we were biased towards
2 the police officer, his side in this case. Based on
3 what we knew on our facts, we just felt like there
4 wasn't evidence that there was wrongdoing on that end.

5 Q There's absolutely nothing wrong with that. Let
6 me ask you about this now. Some other things just on
7 your questionnaire, that information you had filled out
8 before. You listed it as one of your organizations
9 and, I guess, hobbies, your church activities.

10 A Correct.

11 Q I respect that a great deal. My question is just
12 this: Have you had discussions about the death penalty
13 in general within your religious discussions, your
14 thoughts, your prayers, reading the Bible, have you
15 thought about the death penalty in that context?

16 A In a personal prayer life, yes. Not within the
17 church.

18 Q And prior to getting the summons in this case, if
19 you and I were just at the church having a discussion,
20 and this wasn't necessarily an all Biblical discussion
21 but our personal opinions, political, whatever. You
22 and I are just talking about, "This is my opinion of
23 the death penalty."

24 If I had asked you that question prior to you
25 getting this summons -- nothing to do with this case --

1 just in general, share with me your thoughts about the
2 death penalty.

3 A I am not against the death penalty. I think that
4 there is a place for it. I don't think it should be
5 attached to every murder case. I think it depends on
6 the circumstances around the severity of it.

7 Q And I appreciate that. And I'll share with you
8 that I don't have any real concern about you being fair
9 in a death penalty case or a trial in general. But my
10 concern I think is the same thing that you have
11 expressed. So I'm going to ask you -- well, before I
12 get to that, you had also indicated on your
13 questionnaire that you know someone in prison or
14 someone that's been to prison.

15 A Yes.

16 Q Who is that? Tell me about that.

17 A I don't even know the person well enough to be
18 able to tell you a last name, but the first name is
19 Oscar.

20 Q Just somebody you ever met went to prison?

21 A Yes.

22 Q Then we don't even have to talk about that.

23 A Okay.

24 Q And you had indicated that you, on one question it
25 asked if you had worked with prevention of crime,

1 apprehension of offenders or rehabilitation. What were
2 you referring to there?

3 A I answered yes on that?

4 Q I thought you did, but I make a lot of mistakes.

5 A It may have been the fact that I live in a
6 community that has a neighborhood watch program. I'm
7 not super active, but perhaps.

8 Q I think community watch was listed in that
9 question.

10 A We kind of look out for each other. That's the
11 extent of it.

12 Q Are you an active participant?

13 A No.

14 Q Just you support it?

15 A Correct.

16 Q It's in your neighborhood, you feel safer --

17 A We take care of the people on our street.

18 Q I appreciate that. I like to be taken care of on
19 my street, too.

20 All right. So just given all that, and I'm not
21 talking about a general death penalty case now. I'm
22 talking about Mr. Cottrell. And, obviously, the
23 judge -- you know, there's not even a discussion.
24 We're human beings. We're shaped by our background,
25 our lives, our family, everything around us.

1 And what I'm gathering from you -- and you're an
2 educated woman. Don't let me put words into your
3 mouth. I'm just trying to make sure that I've got
4 this -- is that you have had discussion -- you've heard
5 about this case enough to know essentially the judge
6 didn't tell you anything new in the indictment. You
7 got the location, you got the officer, you even know
8 the street that it's on. And you're not sure where or
9 how, but you know that Mr. Cottrell right now is
10 serving a life sentence. And in addition to that, your
11 father is a police officer?

12 A Retired, yes.

13 Q And I respect that. My brother is a police
14 officer still active. But it's -- and your father was
15 injured on the job?

16 A Uh-huh.

17 Q Very clearly. Shot. In your mind is there any
18 way that you can separate that if you were actually
19 seated on this jury, and you will hear evidence about
20 Officer Joe McGarry in a parking lot at a Dunkin'
21 Donuts, and I won't talk about the interaction before,
22 but he was a police officer on duty and ended up -- the
23 trial will address what happened in the middle -- but
24 it ended up very clearly with Officer McGarry being
25 shot in the face and died there or very shortly after.

1 Is there any way in your mind that you can just
2 divorce yourself from the fact that your father was a
3 police officer, your father was shot, can you just set
4 that aside and it doesn't affect you at all?

5 A Difficult question to know.

6 Q Again, you're in a safety seat. There's no right
7 or wrong answer here. We just need to know. And
8 you've been very honest with us.

9 A I think the part or respect I have for law
10 enforcement may always be in the back of my head. But
11 at the same time I know, I've seen or heard, read cases
12 where law enforcement have done the wrong thing, and
13 that needs to be taken care of as well because it's a
14 very difficult question.

15 Q And let me just -- I appreciate all that. But let
16 me add to that, if I understood you correctly, you and
17 your father have talked about Officer McGarry wasn't
18 doing the wrong thing?

19 A Correct. Yes.

20 Q So all of that that's making you hesitate to say,
21 "I want to be fair," and --

22 A Right.

23 Q -- I'll tell you, I respect you a great deal for
24 that. And that's the honest truth. We all want to be
25 fair. But nobody can answer this question for you

1 other than you.

2 A Right.

3 Q Do you feel like you can just completely set that
4 aside, it's not going to bother you, you're not going
5 to be biased. Or do you feel like no matter how much
6 you try, you're going to have a bias and it's going to
7 be towards the State?

8 A I guess there would always be a little bit of bias
9 there.

10 Q Okay. A little bit or would it be something that
11 no matter how much you try, it's going to be stuck with
12 you? You can't put it out of your mind, your bias
13 toward law enforcement? You have talked about this
14 case with your dad. You know the facts of this case.
15 You know other information about Mr. Cottrell.

16 A I think that there would always be something
17 there.

18 Q And it's a fairly substantial something, right?
19 You're coming into this with a bias towards the State?

20 A Correct.

21 Q All right. That's all I wanted to talk with you
22 about. Thank you, ma'am.

23 THE COURT: All right.

24 Mr. Richardson.

25 MR. RICHARDSON: Your Honor, we don't have any

1 questions.

2 THE COURT: You may step down. If you would step
3 over to Mr. Ropp.

4 (WHEREUPON, Ms. Murphy exited the courtroom
5 at 3:13 p.m.)

6 MR. RICHARDSON: Your Honor, from our perspective
7 she's close. She's saying a lot of the right things,
8 but the fact that her father had been shot --

9 THE COURT: I really agree. It's just too much
10 here.

11 MR. RICHARDSON: Yes, sir.

12 MS. NORRIS: I agree, your Honor.

13 THE COURT: I think she's really trying to do the
14 right thing and she wants to be fair, but there's just
15 too much there, and I'm going to excuse her on this
16 case.

17 Is that what you wanted me to do, Ms. Norris?

18 MS. NORRIS: Absolutely, your Honor.

19 THE COURT: All right.

20 MS. NORRIS: If I ever do another case down here,
21 though, I would love to have her on the jury though.
22 It's just that one bias.

23 (WHEREUPON, Ms. Murphy entered the courtroom
24 at 3:14 p.m.)

25 THE COURT: Ms. Murphy.

1 MS. MURPHY: Yes.

2 THE COURT: We will not require your further
3 service in this case. Thank you. You are excused and
4 released from your subpoena. Thank you.

5 MS. MURPHY: Thank you.

6 THE COURT: Let's take a quick break, five
7 minutes.

8 (WHEREUPON, recess taken from 3:14 p.m.
9 to 3:18 p.m.)

10 THE COURT: We have Mr. Cottrell, his attorneys,
11 and Mr. Richardson and Mr. Hixson.

12 (WHEREUPON, Prospective Jury Panel Number 8 came
13 into open court at approximately 3:18 p.m.)

14 THE COURT: Good afternoon, ladies and gentlemen
15 of this Wednesday afternoon panel. It's good to see
16 you all again.

17 As you may know and as I have told you earlier, we
18 were bringing you in today so we can individually voir
19 dire or question you concerning your service as jurors
20 on this case. I have already found that you all meet
21 the qualifications of jurors. That means on the face
22 of it you meet those statutory requirements of a person
23 to sit as a juror.

24 But what I didn't talk to you about and I wanted
25 to wait until today to do it is the matter of the

1 exemptions. Although you are qualified jurors, there
2 are certain circumstances when a juror has a right to
3 say, "I wish to be excused from jury service because I
4 have an exemption that applies to me."

5 And please understand, the fact that an exemption
6 may apply to you does not mean that you have to take
7 advantage of that exemption. You certainly have the
8 right to stay and serve like, for instance, you're 65
9 or older, you can claim an exemption. You have the
10 right to be relieved from your obligations for jury
11 duty. But you don't have to. And we love to have our
12 senior citizens as jurors. They bring a lot of wisdom
13 and experience to the process and make great jurors.
14 It's just that they have the right.

15 So if one of these exemptions applies to you,
16 please understand you do not have to take it. You have
17 the right to stay on the jury if you wish.

18 Now, I'm going to ask you some questions, so
19 before we get started I need to place you under oath
20 again. This oath will carry over. You will be under
21 oath when you are individually examined. It is for the
22 afternoon, let's put it that way.

23 All right. Yes, ma'am. Would you swear the jury
24 in, please.

25 (WHEREUPON, the panel was sworn.)

1 THE COURT: All right. Did each of you take that
2 oath? If did you not, please stand.

3 And no one is standing. There's no response to
4 that.

5 All right. Let's go through the exemptions.

6 Is there any one of you, as I said earlier, who is
7 65 years of age or older? Is there anyone who fits
8 into that category?

9 And there was no response.

10 Have any of you served as a juror in this
11 courthouse -- that's common pleas or general sessions,
12 civil or criminal court -- here in the last three
13 years? If you served in the last three years -- not on
14 magistrate's court, not on municipal court, not in
15 federal court even, but if you served here in the last
16 three years, you can claim that as an exemption.

17 Anyone?

18 And there is no response.

19 Also if you were on the Grand Jury within the last
20 five years, you may claim that as an exemption. Some
21 of you might not know what the Grand Jury is. That's
22 not the jury that actually tries cases. It's a special
23 jury that meets once a month, and it determines whether
24 or not people who are charged with crimes should be
25 indicted. And you serve for one to two years. So you

1 would know if you were on it.

2 But if you have been on it within five years, that
3 excuses you from further service.

4 Is there anyone?

5 And there's no response.

6 Is there any one of you who has the care, custody
7 and control of a child under the age of seven -- this
8 must be your child or it must be a child that you have
9 custody of -- and your job, your occupation is taking
10 care of that small child? Not a situation where you
11 work outside the home, you got somebody else to take
12 care of the child. This is a child that you take care
13 of. Sort of like the mom -- the stay-at-home mom and
14 stay-at-home dad type of situation.

15 Is there any person who that would fit?

16 And there is no response.

17 Also, if you are the primary caretaker on a
18 permanent basis, that is regularly what you do on a
19 daily basis, if you are the primary caretaker of an
20 elderly person or a person who has a severe disability
21 who cannot be left at home alone, your job is to take
22 care of that person, you may claim that.

23 Is there any person who would fit into that
24 category?

25 And there are none.

1 Also, if you are a full-time student, I think
2 we've been through all of those. But if you also work
3 at a school, and that can be any school, K through 12,
4 or it can be a college or a technical school as well.
5 If you work there and you have what we call a necessary
6 job, a job that they could not get a ready replacement
7 for, then you may claim that as an exemption.

8 And, finally -- was there anyone?

9 POTENTIAL JUROR: I am a school teacher, yes, sir.

10 THE COURT: Well, you are a school teacher. Where
11 do you teach?

12 POTENTIAL JUROR: Myrtle Beach Primary.

13 THE COURT: Good for you. My wife taught primary
14 school for 28 years. What grade do you teach?

15 POTENTIAL JUROR: Kindergarten.

16 THE COURT: You've got some young ones. Are you
17 able to have someone replace you, or would you like to
18 claim an exemption?

19 POTENTIAL JUROR: They have a substitute. They
20 are prepared for this.

21 THE COURT: They are prepared for that. So you
22 don't mind staying with us?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Good for you. Good for you. Also --
25 give us your name just for the record and your number.

1 POTENTIAL JUROR: Michelle Stearns, number 600.

2 THE COURT: Thank you.

3 If you perform services for a business, whether it
4 be commercial or agricultural or a combination, and
5 your services are so essential to that business that it
6 cannot operate without you, it has to close the doors
7 essentially, there is no one who can take your place,
8 no business can be rearranged, it's just going to close
9 up a business and you send the employees home, if
10 that's your situation, you may claim that.

11 Is there anyone who falls in that situation?

12 Yes, sir. Your name, sir?

13 POTENTIAL JUROR: Chris Lepera, 371.

14 THE COURT: And, Mr. Lepera, where do you work?

15 POTENTIAL JUROR: AAR Stone Boutique.

16 THE COURT: Okay. And where is that?

17 POTENTIAL JUROR: Myrtle Beach. Pottery.

18 THE COURT: What's your position?

19 POTENTIAL JUROR: Sole proprietor.

20 THE COURT: Is that a retail establishment?

21 POTENTIAL JUROR: It's a remodeling company. I
22 have seven employees.

23 THE COURT: Okay. Are you the one who supervises
24 those employees?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: And is there any way that business can
2 operate without you?

3 POTENTIAL JUROR: No, sir.

4 THE COURT: Mr. McGuire, I think he meets the
5 requirements.

6 MS. NORRIS: We don't object.

7 MR. RICHARDSON: No objection, your Honor.

8 THE COURT: All right. I'm going to excuse you,
9 sir. You may leave.

10 POTENTIAL JUROR: Thank you.

11 THE COURT: Now, that takes care of that.

12 Now, while I have you in a group and to help us
13 manage your time, let me talk with you about some other
14 things that we will be addressing today.

15 First of all, let me say that we're going to be
16 asking you questions about your opinions, your feelings
17 about certain things. And the wonderful thing about
18 this country is that everybody has the right to have an
19 opinion about everything.

20 And please understand no one here is going to try
21 to change your mind, no one here is going to be
22 critical of you because you have a certain opinion, and
23 we all respect your opinion. The only thing we ask is
24 that you be honest and candid about your opinions when
25 you respond to the questions that are asked.

1 We'll be asking all sorts of questions or the
2 attorneys and I will be asking all sorts of questions
3 about matters that may be relevant to your service as a
4 juror. The question that we have or that I have to
5 resolve, answer today after we have examined you is
6 whether or not there is anything that would -- this is
7 the magic language -- would substantially impair your
8 ability to perform your duties as a juror. And those
9 duties can be simply described in just a few words, and
10 that is to be fair and impartial. That's the most
11 important thing about jurors. And that's what we want
12 to have not only in this case but in every case tried
13 in this courthouse. So please bear with us and
14 remember that is why we are asking you these questions.

15 Also, at the beginning of this session that we
16 have, I want to explain to you something that's very
17 important. Something that I want you to keep in your
18 mind the whole time that we are questioning you, I want
19 to you keep it, if you're selected as a juror, I want
20 you to keep it in your mind the whole time the case is
21 going on. I want you to keep it in your mind during
22 the deliberation process. And that is this: The
23 defendant in this case, Mr. Cottrell, has what we call
24 a presumption of innocence. That is a special term
25 that we have in the law. It describes for us a special

1 status that a person charged with a crime might have.

2 That is that if you are charged with a crime in
3 this country, there is a presumption that you are
4 innocent. And that presumption doesn't end when you
5 walk in the courtroom. That presumption remains with
6 you throughout the trial, remains with you until the
7 State has overcome that presumption of innocence.

8 Mr. Cottrell has pled not guilty to these charges.
9 He has two fine attorneys here with him. Those
10 attorneys have made it very clear they will zealously
11 defend him, made it clear that they feel that he is not
12 guilty. That's a determination for a jury. The jury
13 will make that determination.

14 The reason I think that that is so important for
15 us to know at this point is this. I think I explained
16 to you on yesterday that -- yes, yesterday -- Monday,
17 excuse me, that this is a two-part process.

18 First the State would have to engage in what we
19 call the guilt phase. And they would have to convince
20 the jury beyond a reasonable doubt that he,
21 Mr. Cottrell, committed the offense of murder. And
22 then if that occurred, if and then, we would move to
23 the second phase where the State would have to prove
24 certain aggravating circumstances and things of that
25 nature.

1 We're going to be asking questions about both.
2 And what I fear if I don't explain this to you is this,
3 that you might get the impression when we start asking
4 you about questions about that second phase, that we
5 are inferring that we believe that he's going to be
6 convicted on the first part. And that is certainly not
7 the case. That's up to the jury. We don't want to
8 lead you to believe that, that we harbor any such
9 thoughts because that's not right.

10 We do that just because this is the only time
11 we're going to be able to talk to you. So we have to
12 talk to you about both parts of the case in case we get
13 to that second part. I'm sure that you can understand
14 that.

15 Now, let me back up a minute and talk to you a
16 little more about this case and so that I can help you
17 understand a little bit about the law surrounding this
18 case so that you might better understand some of the
19 questions that are being put to you. Okay?

20 In South Carolina, it's not uncommon to have a
21 murder case. If you went all around the state, all the
22 courthouses in every county, you would probably find
23 many murder cases that are tried during the course of
24 the year. But it's very rare for the State to seek the
25 death penalty in a murder case.

1 A murder case, a typical murder case, that is a
2 case where a person has been accused of the unlawful
3 killing of another person -- intended to do it, meant
4 to do it, no question about he did it, intended to --
5 not only intended to do it but did it with malice
6 aforethought. That means a meanness in his heart with
7 ill will, a wicked heart. Those are words that have
8 been used to describe malice.

9 Not only did he intend to do it but he did it with
10 malice. We will see those tried with some frequency.
11 But those cases, in those cases, even if the defendant
12 is found guilty of those things, the death penalty does
13 not apply. Most people don't know that, that a murder
14 case, in a murder case in South Carolina, the death
15 penalty is not a possible penalty. Only when the State
16 announces that it is seeking the death penalty is the
17 death penalty ever, ever to be considered.

18 And once the State does that, as it did in this
19 case, it becomes a new type of case. All new rules
20 apply to it. And there are new procedures that come
21 into play. It is quite a different case. One of the
22 things that would be different is in a murder case or
23 any other case tried in the court of general sessions,
24 nobody would have an opportunity to put a potential
25 juror up here and question that juror. That doesn't

1 happen in this state. In a death penalty case it is
2 permitted again because of the unique nature of the
3 case.

4 What I want to impress upon you is this, that the
5 death penalty case is more than a murder case. It is
6 substantially more than a murder case. And that's why
7 there are two parts to it. Just for murder, that is
8 death penalty is not even on the table. The State has
9 to begin by proving just that. It starts out very much
10 like a regular murder case. The State has to prove
11 that the person accused willfully and intentionally
12 took a life, did it unlawfully, and he did it with
13 malice aforethought.

14 That case is tried, part of the case is tried very
15 much like a typical murder case. If the jury is
16 convinced beyond a reasonable doubt, everybody on the
17 jury is convinced beyond a reasonable doubt and he is
18 convicted of that murder part, if he is, the State has
19 proved that, it can move to the second part of the
20 trial.

21 And in that part of the trial, the State has to
22 prove beyond a reasonable doubt -- same standard --
23 that while that murder was being committed, there was
24 always some -- also, excuse me, some other
25 circumstance, something else that was done. We call

1 those aggravators. They make it more heinous. They
2 make the crime worse. They make it more aggravated.
3 The State has to prove one of those.

4 And the legislature has set out those aggravating
5 circumstances. They made a whole list of them. The
6 State must prove one of those. If the State can prove
7 that beyond a reasonable doubt -- and it can't be some
8 other aggravating circumstances. It has got to be one
9 on the list.

10 If the State convinces that jury beyond a
11 reasonable doubt of that using the same standard of
12 proof, then and only then -- only then -- does the
13 possibility of a death penalty come into play. The
14 State must prove two things -- murder plus.

15 Murder plus is the only circumstance in which a
16 death penalty is even possible in this country -- in
17 this state. And even if you get to that point, I would
18 tell you in my instructions you are not required to
19 give the death penalty. Never required to give the
20 death penalty.

21 I would tell you that you can think about it. You
22 can consider recommending the death penalty. You may
23 consider it. But you can't consider it unless you also
24 consider whether or not there are mitigating
25 circumstances or extenuating circumstances to lessen

1 the severity of the aggravator. Unless you do that,
2 you may not recommend the death penalty.

3 The legislature also listed the mitigating
4 circumstances. But unlike the aggravating
5 circumstances, you're not just limited to the ones that
6 are in the statute. You can look at the whole case.
7 You can look at anything else and you personally, as a
8 personal -- you don't have to get the whole jury to
9 agree on it, you can personally select one and say, "I
10 think this, this thing over here, is a mitigating
11 circumstance."

12 And if you find mitigating circumstances and you
13 consider those in light of the aggravating
14 circumstances that you have found, you can recommend
15 life. Of course, you're not required, even if you find
16 no mitigating circumstances, to recommend the death
17 penalty.

18 You can refuse to recommend the death penalty for
19 no reason at all. You don't even have to give a reason
20 for it. You can refuse to recommend the death penalty
21 just as an extension of mercy, and that can be mercy
22 based upon the fact that you feel the defendant has
23 earned it or you just want to give it to him by grace
24 and no one can challenge it.

25 You may, you are free, based upon the facts and

1 circumstances of the case, to give either or recommend
2 either the death sentence or life imprisonment based
3 upon your view as a jury of the facts and circumstances
4 in the case. But I want you to keep in mind the death
5 penalty is never to even be considered or authorized
6 until you have reached the point that the State has not
7 only proved the murder but has proved the aggravating
8 circumstances. Okay?

9 Now, that is generally, generally speaking how a
10 death penalty is handled. And it generally tells you
11 how I would charge you on the law at the end of the
12 case. Of course, I'll give you a much more detailed
13 charge on the law. That generally explains to you.

14 Now, we're going to be talking to you about some
15 other things in a few minutes, but I want you to have
16 that information so that you could be considering it as
17 we prepare to bring you in and talk with you so you
18 will know how the case will proceed and what might be
19 expected of you.

20 Now, if everyone will return to their jury room
21 except Ms. Ritter. Where is Ms. Ritter? Come around,
22 Ms. Ritter.

23 (WHEREUPON, Prospective Jury Panel Number 8, with
24 the exception of Ms. Ritter, exited the courtroom
25 at approximately 3:41 p.m.)

1 MARJORIE RITTER,

2 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

3 EXAMINATION BY THE COURT:

4 Q Ms. Ritter, would you give us your name and spell
5 your last name.

6 A Marjorie Ritter, R-i-t-t-e-r.

7 Q All right. Ms. Ritter, do you remember my
8 cautionary instructions to you on Monday about not
9 talking about the case with anyone, not seeking out any
10 information, not exposing yourself to any media
11 reports?

12 A Yes, sir.

13 Q And have you complied with that?

14 A Yes, sir.

15 Q And you understand that that order will continue
16 until you are released in this case?

17 A Yes, sir.

18 Q Thank you, ma'am.

19 Now, Ms. Ritter, you were listening when I spoke a
20 moment ago?

21 A Yes, sir.

22 Q And do you remember what I told you about
23 Mr. Cottrell being cloaked in a presumption of
24 innocence?

25 A Yes, sir.

1 Q You understand that? And do you understand if
2 were you seated as a juror, all during this trial he is
3 to be considered as an innocent person. You understand
4 that?

5 A Yes, sir.

6 Q And would you need for me to keep reminding you of
7 that as we question you today?

8 A No, I think I've got it.

9 Q You can keep that in your mind. All right.

10 Do you have any personal problem with that, that
11 is, would you have any difficulty accepting that based
12 upon the fact that Mr. Cottrell has been charged with a
13 crime?

14 A No.

15 Q That would not cause you any difficulty?

16 A No, sir.

17 Q All right. Now, Ms. Ritter, I see here that when
18 you filled out your category of juror form, you
19 indicated that you are a C type juror; is that right?

20 A Yes, sir.

21 Q And that, if I understand you correctly, means
22 that you would be the kind of juror that would need to
23 hear the facts and circumstances in mitigation and in
24 aggravation before you could make a decision regarding
25 punishment?

1 A Yes.

2 Q And, you know, is your feeling there consistent
3 with or different in any way with the statutory scheme
4 that I described a moment ago, do they -- are they
5 consistent with each other?

6 A I think it meshes pretty well.

7 Q Okay. Is there anything about what I described
8 that, based upon your feelings of how this thing should
9 be done, that would -- you would find offensive or
10 difficult to follow or that you feel would be unfair?

11 A No, I don't think so.

12 Q Okay. Now, Ms. Ritter, tell me if you understand
13 that in a case of this sort, you could only decide --
14 if you're a juror -- decide the case based on the facts
15 and evidence that you heard in the courtroom --

16 A Yes.

17 Q -- or that was entered into the record. Do you
18 understand that?

19 A Yes, I do.

20 Q Have you heard or discussed this in any manner,
21 talked with anyone about this case, do you have any
22 information about this case at all?

23 A No.

24 Q You have none. How long have you been living down
25 here?

1 A Since 2008.

2 Q Okay. And now, Ms. Ritter, along those same
3 lines, do you understand that the deliberation process
4 in which a juror must engage is a process where the
5 juror looks at the evidence that's presented in the
6 case, and you promised me that you would look only at
7 the evidence as presented in the case and nothing
8 extraneous. And you look at the evidence or the jurors
9 look at the evidence, and they glean from that evidence
10 what the facts are.

11 Evidence is not necessarily what a fact is. It is
12 always contradictory in evidence in every case or we
13 wouldn't need to have a case, would we?

14 A No, I guess not.

15 Q But you have to glean the facts. And that's what
16 a jury does. That's part of your job. Then the jury
17 takes those facts and they apply them to the law. And
18 that's sort of the easy part for you because I -- it's
19 my job to instruct you or tell you what the law is. Do
20 you understand that?

21 A Yes, sir.

22 Q Okay. And part of your job or part of your oath
23 would be to follow the law as I give it to you. Do you
24 understand that concept?

25 A I do.

1 Q And do you have any problems at all with that
2 concept?

3 A No, sir.

4 Q If I were to instruct you on the law or tell you
5 what the law is, and suppose there was something that
6 you didn't agree with or perhaps you thought the law
7 was maybe something else, could you set that aside and
8 follow your oath and accept the law as I give it to
9 you?

10 A I think I could, yes, sir.

11 Q And do you understand that that would be necessary
12 and that would be what you should do?

13 A Yes, sir.

14 Q Okay. Now, Ms. Ritter, we're very interested in
15 your thoughts, feelings and opinions about this case.
16 Have you formed any opinion about this case?

17 A Until I got here Monday I had no knowledge of this
18 case at all.

19 Q Now, you understand that it is a capital murder
20 case. I'm sure you understand that now.

21 A Yes, sir.

22 Q Would the fact that this is a capital murder case
23 cause you any problems? Would it create any bias
24 against the defendant or against the State?

25 A No, I don't think so.

- 1 Q You could treat it as any other case?
- 2 A I think so.
- 3 Q Okay. Very well. Now, I want to talk a little
- 4 bit about other biases you have. Have you ever thought
- 5 about the death penalty?
- 6 A Not really until Monday.
- 7 Q Have you given it some thought since then?
- 8 A Yes, sir.
- 9 Q What do you think about it?
- 10 A I think that the death penalty is not something
- 11 that I could give lightly. I'd like to think -- I
- 12 think in general I'm opposed to the death penalty, but
- 13 I like to know that it's an option in a very specific,
- 14 horrific crime.
- 15 Q Let me ask you this.
- 16 A Yes, sir.
- 17 Q You tell me that you are generally opposed to the
- 18 death penalty or at least that's what you think your
- 19 feelings are.
- 20 A Yes.
- 21 Q Okay. Would those feelings that you have be such
- 22 that you -- that they would substantially impair your
- 23 ability to recommend the death penalty, in an
- 24 appropriate case?
- 25 A I think in an appropriate case, after thinking

1 long and hard, I could probably do it, but it would
2 have to be with a lot of thought.

3 Q Okay. And thoughtfulness is a good trait for
4 jurors. I tell you no one is going to fault you for
5 it. By the same token, could you give a life sentence
6 in an appropriate case or recommend a life sentence?

7 A Again, with proper circumstances, yes, sir, I
8 think I could.

9 Q I guess the point I'm trying to make is would your
10 feeling about the death penalty prevent you from or
11 substantially hinder you from being able to make a
12 decision either way --

13 A No, I don't think --

14 Q -- for life or death?

15 A I don't think so. You know, I --

16 Q You think you could do that?

17 A I think I could.

18 Q Okay. Let me ask you something else that I have
19 some concerns about. If we began this case and the
20 State started out like we would in a normal murder
21 case, and the State put up its proof in the first
22 phase -- and we're only talking about the murder -- and
23 the State was able to prove beyond a reasonable doubt
24 if -- if now -- if -- the defendant committed the crime
25 of murder. That's intentional, meant to do it, did it,

1 crime of taking another person's life unlawfully with
2 malice. Not just taking it, but taking it with malice.

3 If you were on the jury and you can reach that
4 conclusion essentially convicting him of that offense
5 and we moved over to the second offense or the second
6 part where we were going to consider what? What would
7 we consider?

8 A The death penalty. And then we would need to
9 consider aggravation.

10 Q There you go. We would start out with aggravating
11 circumstances.

12 A Yes.

13 Q You were listening very well. And, there again,
14 we have to look at the aggravating circumstances. And
15 the State has to prove aggravation to the same level.

16 A Uh-huh.

17 Q Okay? Could you approach that part of the trial,
18 the aggravation, with the same fairness that you
19 approach the first part, the murder part? And by that
20 what I mean is after he or you had been convinced
21 beyond a reasonable doubt that the defendant had
22 committed the offense of murder, could you still be
23 fair and impartial, objectively look at the State's
24 evidence concerning aggravation and fairly and
25 impartially look at those and determine whether the

- 1 State had proven that beyond a reasonable doubt?
- 2 A I think I could.
- 3 Q You could do that?
- 4 A Yes, sir.
- 5 Q Okay. Very well. You also provided me with a
- 6 potential witness list, and it looks like you didn't
- 7 know anyone on the list.
- 8 A No, sir, I don't.
- 9 Q You know, it's hard to look at a list of names
- 10 like that and remember everybody, isn't it?
- 11 A It is.
- 12 Q Let me just ask you about it this way.
- 13 A Sure.
- 14 Q If someone was on there that you had some
- 15 significant relationship with like a neighbor, a
- 16 relation, a cousin or something of that nature or
- 17 someone you worked with or someone whose business you
- 18 visit, do you think that you would recognize that
- 19 person's name if you had a significant relationship?
- 20 A I believe so.
- 21 Q Okay. So can we be fairly comfortable that
- 22 there's no one on this list that you really had any
- 23 significant relationship with?
- 24 A I think so, yes, sir.
- 25 Q And to that list I would add a couple more names:

1 Nicole Pyle, John Taylor, Christine Del Fonzo, William
2 Nettles and Michael (sic) Light.

3 A No, none of those names are familiar.

4 Q One final thing I want to ask you. Would you
5 agree with me that we're all sort of the product of our
6 life experiences?

7 A Absolutely.

8 Q You know, things that happen to us, things that
9 happen to our families, things we experience, our
10 education, knowledge that we may gain, all those things
11 sort of come together and determine how we feel about
12 certain things, any opinions that we may have like your
13 opinion concerning the death penalty. We all have to
14 some degree bias or prejudice as they apply to some
15 subject, I'm sure. And all those are the products of
16 our life experiences, and it's the sum total of what we
17 are and have been. Could you agree with that?

18 A Yes, sir.

19 Q And those things, would you agree, really affect
20 how we see things and how we look at things?

21 A Uh-huh, yes.

22 Q And you agree with that?

23 A I do.

24 Q Okay. Now, I want you to think hard and tell me,
25 considering the nature of this case, the type of case

1 that we have, what's at stake here, can you think of
2 anything, anything at all that might cause you to have
3 some bias or prejudice for or against the State and its
4 attorneys or Mr. Cottrell and his attorneys or the case
5 in general? Is there anything that you can think of
6 that might prevent from you being fair and impartial in
7 this case that might significantly impair your ability
8 to perform your duties as a juror?

9 A No, sir.

10 Q Okay. I thank you for that.

11 THE COURT: Okay, Mr. McGuire.

12 EXAMINATION BY MR. McGUIRE:

13 Q Good afternoon. I'm just going to follow up with
14 a couple of things from your questionnaire to start
15 with.

16 A Sure.

17 Q You were a juror in a civil case?

18 A Yes, sir.

19 Q Do you remember where that was, what --

20 A It was at the Myrtle Beach courthouse.

21 Q Okay. The city courthouse?

22 A Yes.

23 Q So it was a city case?

24 A Yep.

25 Q And what kind of case was it?

1 A There were actually three of them. One was --
2 actually, I may have been -- I'm confused as far as
3 civil and -- it was, I believe, civil. There was a
4 woman who had -- her house was flooded and she was
5 suing her homeowners association, a gentleman who had a
6 car accident, and I think -- no, two car accidents.

7 Q And these were actions for money?

8 A Yes.

9 Q To repair something?

10 A Exactly.

11 Q We sometimes call that damages, to make up for
12 some damages. I just want to point out, like the judge
13 said, the burden of proof in a criminal case is far
14 higher than of a civil case and you seem to have a
15 grasp on that.

16 Do you remember the burden in the civil case?
17 It's usually referred to as the preponderance of the
18 evidence.

19 A Yes.

20 Q Does that sound familiar?

21 A That does sound familiar.

22 Q That means -- sometimes we call it 51 percent --

23 A Exactly, 60/40 --

24 Q -- tip the scales. Is that how the judge
25 explained it to you?

1 A I believe so.

2 Q But here the burden is much, much higher. It's
3 what's called beyond a reasonable doubt. You've
4 probably heard that phrase?

5 A Yes.

6 Q The judge would tell all the jurors that a good
7 way to think about that is if you have a reasonable
8 doubt -- a reasonable doubt is the hesitation to act in
9 an affair of great importance. So if it's a matter of
10 importance and you hesitate to act, that's a reasonable
11 doubt. Does that make sense?

12 A Okay. It does.

13 Q You can apply that standard to this case?

14 A Yes.

15 Q You also indicate that you testified as a witness
16 in a criminal case?

17 A Yes.

18 Q Is this something that had to do with you or were
19 you just sort of a bystander?

20 A I'm a pharmacist and I had --

21 Q Prescription?

22 A Prescription fraud.

23 Q There is a lot of that going around. We see more
24 and more of that every day.

25 And you also indicated that you knew somebody who

1 was incarcerated, in prison. Or you may not have.

2 That might be --

3 A I was going to say I don't think so.

4 Q I might just have to take responsibility for that
5 mistake. Hold on.

6 A Let me think about it.

7 MR. McGUIRE: If I could approach, Judge.

8 Q Is this you?

9 A That is me. I don't know. I apologize.

10 Q No, no. I'm glad that I'm not losing my mind and
11 I read your questionnaire accurately. You may have
12 just been thinking about one question and filled it
13 out.

14 A I'm sorry.

15 Q No, you're fine. There's no harm.

16 And I want to talk to you a little bit about a
17 term that you used when you were talking to the judge
18 about, you said that the death penalty could be
19 appropriate in certain circumstances.

20 A Yes.

21 Q And you used the word "horrific."

22 A Yes.

23 Q Define that for me, if you would.

24 A Serial child rapist. Someone who has hurt someone
25 who has no control. Those would be circumstances that

1 I -- someone who is beyond repair.

2 Q Okay. And the Court might refer to these sorts of
3 things as aggravation-type evidence.

4 A Okay.

5 Q And I think you were clear with the judge that the
6 death penalty is not available for just murder?

7 A Right.

8 Q I don't want to say just murder, but you know what
9 I mean.

10 A Yes, sir.

11 Q It's obviously very serious, but no one is
12 eligible for murder (sic) unless the State proves
13 aggravation. And you're saying that in some cases if
14 the aggravation evidence is substantial enough, then
15 the death penalty is appropriate?

16 A It would have to be a very specific case, but yes.

17 Q Okay. And you could apply the law and follow the
18 judges's instructions, and you could consider all the
19 evidence, everything that the State would have to offer
20 in way of aggravation evidence?

21 A I think so.

22 Q You would listen to it and consider it?

23 A Yes, sir.

24 Q And you would listen to everything that the
25 defense had to offer, listen to that and consider that?

1 A Yes, sir.

2 Q I want to talk to you a little bit about the law
3 and some legal principles because the whole reason
4 we're here is to see if you can follow the law and be
5 fair.

6 A Okay.

7 Q One of those principles is the difference between
8 the sentencing phase, a sentencing phase, and a first
9 phase or a guilt phase type case.

10 A Okay.

11 Q The guilt phase is just like any regular case.
12 Did the person commit an act, a criminal act, and did
13 they have the intent to commit the criminal act.

14 A Okay.

15 Q Just like a regular case we see on TV or the news.
16 And the judge would instruct the jury that the
17 sentencing phase, the decision-making process is
18 different. First phase issues are determined by
19 something is or it isn't. It's either a fact or it's
20 not a fact. Sometimes science can answer those
21 questions.

22 A Okay.

23 Q Is the car red or green or is the bullet a caliber
24 .32 or .35. But the sentencing decision, the judge
25 would call it an individual moral judgment. And it's

1 an emotional moral decision, not based on fact or
2 science won't help us there. Did you know that?

3 A Are we talking about the aggravation part?

4 Q At this point -- yeah, this would be the
5 sentencing phase where you would be able to consider
6 aggravation evidence.

7 A Okay.

8 Q Mitigation evidence.

9 A Okay.

10 Q And then you put all that together, and then with
11 your belief system and the law, and then you come up
12 with an answer as to what punishment is proper.

13 A Okay.

14 Q Life in prison or the death penalty.

15 A Okay.

16 Q That analysis, that decision-making process, is
17 referred to as an individual moral judgment. Is that a
18 principle that makes sense to you?

19 A Yes, it does.

20 Q You can follow that?

21 A Yes.

22 Q And another thing about the sentencing part of the
23 case is that the judge would instruct the jury somebody
24 could vote for the life penalty for any reason; no
25 reason or mercy alone.

1 A Okay.

2 Q Did you know that?

3 A I just learned that.

4 Q And that's a principle of the law you can respect
5 and follow?

6 A Absolutely.

7 Q And there's no unanimity required with regard to
8 mitigation evidence. What I mean by that is if you
9 were a juror, you were over here with the jury, one
10 juror can say, "I saw something in a defendant's
11 background, his walk of life, how he was raised. I
12 want to vote for life for that because I saw something
13 there."

14 A Okay.

15 Q And everybody else could say, "You know what, we
16 don't agree with you," but they still have the right
17 to, A, vote for life --

18 MR. HIXSON: Your Honor, just I have objected a
19 couple times on this. It's like a closing argument
20 rather than questions on voir dire about what's going
21 on. It's an ongoing statement without any questions
22 about the bias.

23 THE COURT: Get to your point and ask the
24 question. Okay? As soon as you can.

25 MR. McGUIRE: Sure.

1 Q Did you know that there's no unanimous requirement
2 for mitigation evidence in the sentencing phase?, Did
3 you know that?

4 A I did not know that.

5 Q A lot of people think that. They think that
6 everybody has to agree, but now you know that's not
7 true.

8 A Okay.

9 Q And that's a principle of the law that you could
10 respect and follow?

11 A Yes, sir.

12 Q And what I was going to say was somebody could
13 vote for a reason over here and be different from
14 everybody else --

15 A Okay.

16 Q -- because they don't all have to agree that
17 they're going to vote for something for a particular
18 reason.

19 A Okay.

20 Q And you could do that?

21 A Yes, sir.

22 Q And the judge would again instruct on the no
23 reason part. If somebody said, "I just don't want to
24 vote for the life penalty. I don't want that mark on
25 my conscience as I live through the rest of my life. I

1 don't even have the words to explain my position,"

2 could you let them have that position?

3 A That's -- their entitled to their thoughts.

4 Q Right. That's in accordance with the law and the
5 judge's instructions. And you could follow that law?

6 A Yes, sir.

7 Q Okay. We have another rule. I think this is
8 about the last thing I want to talk to you about. We
9 have another rule where it's wrong for a juror, once
10 they reach their individual moral judgment, to abandon
11 that and throw in with the majority just for the sake
12 of joining the majority. That once somebody reached
13 that individual moral judgment, they have a duty and
14 obligation to have that position heard in court. Did
15 you know that?

16 A I did not.

17 Q You know it now.

18 A I do.

19 Q And you can respect and follow that?

20 A Yes, sir.

21 Q That's all I have for you, ma'am. Thank you.

22 A Thank you.

23 Q I forgot one more thing. I'm sorry.

24 In this state, in South Carolina, to be a
25 qualified juror, to be a fair and qualified juror who's

1 able to follow the law and the judge's instructions, if
2 the jury was to vote for the death penalty, there is a
3 special verdict form. It's actually the indictment
4 which is the accusation, the charge. There would be
5 lines on it, 12 of them. Everybody would have to sign
6 that paperwork. You could do that?

7 A I could.

8 Q That's all I have for you.

9 A Thank you.

10 THE COURT: Mr. Hixson.

11 MR. HIXSON: Thank you, your Honor.

12 EXAMINATION BY MR. HIXSON:

13 Q Just want to say hey to you, ma'am. You answered
14 a bunch of questions. I'm Scott Hixson, Chief Deputy
15 Solicitor. This is Solicitor Jimmy Richardson. I just
16 want to have a chance to thank you for being here and
17 going through this process.

18 We had talked a lot about general principles of
19 law. And just fast forward right to the very end, I
20 guess. You said, I think, throughout the process that
21 you could fairly consider both sides when you come up
22 to a decision on what the appropriate sentence is, a
23 death sentence or a life in prison sentence?

24 A I think I could, yes, sir.

25 Q And you think you could participate with your

1 fellow jurors back and kind of argue and discuss back
2 and forth with each other, sharing your views up to the
3 point of coming up to your judgment on what you think
4 is appropriate. You could give and take and mix it up
5 and come out with an answer. Fair enough?

6 A I think I could.

7 Q Okay. Thank you for your service.

8 A You're welcome.

9 MR. HIXSON: No further questions.

10 THE COURT: Step down right over here by Mr. Ropp.

11 MR. McGUIRE: Judge, we agree she's qualified.

12 THE COURT: All right. Ms. Ritter, you don't even
13 have to go in there.

14 Ms. Ritter, we have determined that you are
15 qualified. I find that you are qualified. That
16 doesn't mean that you are on the jury. What it means
17 is you are on the panel of people from whom the jury
18 will be selected.

19 We don't know exactly when we will need you, but I
20 have instructed the clerk on Sunday afternoon at
21 6 o'clock, 6:00 p.m., to put a recording on that phone,
22 the document you've just been given, on that phone so
23 that you may call and it will tell you when to appear.
24 Please don't forget. Sunday afternoon, 6 o'clock.

25 When you appear, make sure that you bring any

1 medications that you have, your toiletries, your --
2 some clothing because you may be seated on the jury and
3 if you are, you would be sequestered, immediately be
4 taken to the hotel. So bring something with you. You
5 can leave it in your car. We can go out and get it if
6 you need to, but just have it with you.

7 MS. RITTER: Yes, sir.

8 THE COURT: Thank you. And remember my order.
9 Okay?

10 MS. RITTER: Yes, sir.

11 THE COURT: Thank you, ma'am.

12 How about Ms. Stearns.

13 (WHEREUPON, Ms. Stearns entered the courtroom
14 at 4:10 p.m.)

15 MICHELLE STEARNS,

16 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

17 EXAMINATION BY THE COURT:

18 Q Come around, if you would, Ms. Stearns. Good to
19 see you.

20 Ms. Stearns --

21 A Yes, sir.

22 Q -- do you remember my instructions concerning
23 contact with any person about this case?

24 A Yes, sir.

25 Q Or exposing yourself to media coverage or doing

1 any online investigation?

2 A Yes, sir.

3 Q Have you complied with that?

4 A Yes, sir.

5 Q And let me stress upon you that this or that
6 requirement carries over. It is in force until you are
7 released from this case and I ask you to abide by it,
8 please, if you would.

9 A Yes, sir.

10 Q Do you recall my comments about Mr. Cottrell, the
11 fact that he is protected by a presumption of innocence
12 at this point, he is not guilty of anything, and that
13 would protect him and shield him until the Solicitor's
14 office has overcome that presumption in a trial. Do
15 you understand that?

16 A Yes, sir.

17 Q And it's necessary that you keep that in your head
18 not only if you are selected as a juror throughout the
19 trial but today as well. Can you remember that without
20 being reminded of it?

21 A Yes, sir.

22 Q His fine attorneys have informed the Court that
23 they intend to defend this matter, they believe that he
24 is not guilty. He has pled not guilty. Can you
25 appreciate that fact?

1 A Yes, sir.

2 Q You understand?

3 A Yes, sir.

4 Q All right. Very well. I'll also talk to you a
5 little bit about the fact that we're going to be
6 talking about both phases of a death penalty trial, the
7 guilt phase and the sentencing phase.

8 Normally we would not reach a sentencing phase
9 unless a person was found guilty in the guilt phase.
10 Makes sense, doesn't it?

11 A Yes, sir.

12 Q I don't want you to suppose or think we are
13 inferring that, because we're going to talk about the
14 sentencing phase, that we are suggesting that
15 Mr. Cottrell will be found guilty in the guilt phase.
16 That is absolutely the last thing we want to do.
17 That's up to the jury. But this is the only time that
18 the attorneys are going to get to talk with you about
19 your qualifications. So it's necessary that out of an
20 abundance of caution that we talk to you about it.

21 Fair enough?

22 A Yes, sir.

23 Q And please don't draw any conclusion from that.
24 All right?

25 A Yes, sir.

1 Q Thank you. Now, Ms. Stearns, you have indicated
2 on your little report that you have prepared for us
3 that you are a C type juror; is that correct?

4 A Yes, sir.

5 Q And just so that I make sure we are on the same
6 page, that is a juror who would need to hear the facts
7 and circumstances in aggravation and mitigation before
8 he or she could make the decision regarding punishment?

9 A Yes, sir.

10 Q Okay. Does that describe your feelings?

11 A Yes, sir.

12 Q Do you find that consistent or inconsistent with
13 the statutory scheme that I described to you a moment
14 ago about how a death penalty case worked?

15 A I find it consistent, yes, sir.

16 Q You think it's consistent with it, okay. And that
17 is good.

18 Now, Ms. Stearns, you say that you would need to
19 hear the facts and circumstances in aggravation and in
20 mitigation before you could make a decision regarding
21 punishment. Let me ask you this. If the State were to
22 prove that a person, not necessarily Mr. Cottrell but a
23 person, a person had committed the offense of murder --
24 and I've told you what that is: The intentional,
25 unlawful killing of a person with malice aforethought.

1 Malice aforethought is the evil heart, the wickedness.
2 If the State proved that to you beyond a reasonable
3 doubt, is there any punishment you think should be
4 imposed every time?

5 A No, sir.

6 Q Okay. Are there -- what would you say the range
7 of punishments should be or do you have a range of
8 punishments?

9 A For murder is what you're asking?

10 Q Yes?

11 A I would imagine that will be life in prison or
12 death in South Carolina.

13 Q Would you be bound to either one?

14 A No, sir.

15 Q You say that you would look at the facts and
16 circumstances in aggravation and mitigation. That is
17 what you would do?

18 A Yes, sir.

19 Q Okay. Well, good. Thank you. And I appreciate
20 your comments. Again, there's no right or wrong
21 answers here.

22 A Yes, sir.

23 Q We just need to know what your honest opinions
24 are. Now, in this case, suppose the State started out
25 with proof that Mr. Cottrell committed the offense of

1 murder, and they were successful in doing that and the
2 jury returned a verdict and said okay, the State has
3 convinced us beyond a reasonable doubt that he
4 committed the offense of murder. And you're on that
5 jury. And you're part of that process. And you
6 reached that conclusion.

7 You know, a moment ago we talked about the fact
8 that then we move to the second part. And in the
9 second part, remember the State had to prove something
10 again. What was your recollection of that?

11 A They have to prove that it was malice or evilness
12 in the heart and there was a mitigating circumstance.

13 Q How about an aggravating?

14 A Okay. Aggravating.

15 Q Malice, that evilness part, has to be proven in
16 the first part.

17 A Okay.

18 Q And it's hard for jurors to sort of not confuse
19 malice with aggravating circumstances. But malice is
20 not an aggravating circumstance. Aggravating
21 circumstance is something else the legislature has
22 defined. But you do understand that they have to prove
23 something else?

24 A Yes, sir.

25 Q You remember I told you they have to prove that

1 beyond a reasonable doubt, just like they had to prove
2 the original, the original murder to get to that point.
3 Okay?

4 I was wondering if you were on the jury that heard
5 that -- was hearing the case and you reached the
6 conclusion that he is guilty of murder, would you be
7 able to go to the second part and look at the State's
8 evidence and fairly and impartially decide whether or
9 not the State had proven the existence of one of those
10 mitigating (sic) circumstances?

11 A Yes, sir.

12 Q Would you be tainted by the fact that you had just
13 convicted Mr. Cottrell essentially of murder?

14 A No, sir.

15 Q Could you look at it fairly and impartially?

16 A Yes, sir.

17 Q All right. All right. Now, it's important that I
18 know for certain that you could give life or death.
19 Those are the two potential sentences. Is there
20 anything, any thought process that you have, any
21 opinion that you have that would make you hesitant to
22 grant a life sentence? If there had been a mitigating
23 circumstance applied and life was on the table, is
24 there, with all things even, is there any -- any
25 reason, anything in your background, do you harbor any

1 opinion, any prejudice or any bias that would make you
2 hesitate under the proper circumstances to recommend a
3 life sentence?

4 A No, sir.

5 Q Likewise, could you recommend the death sentence?

6 A Yes, sir.

7 Q Nothing in your bag of biases and prejudices and
8 opinions that would substantially impair you doing
9 that?

10 A No, sir.

11 Q You could do that?

12 A (Nodding.)

13 Q Okay. All right. Now, would you agree with me,
14 Ms. Stearns, that we are all kind of the product of our
15 life experiences, things that have occurred, things
16 that have happened to us, things that we've done,
17 things that our close friends and family have had
18 happen to them, all those things sort of wrap up into
19 one and sort of make us individuals. Would you agree
20 with that?

21 A Yes, sir.

22 Q That's just my opinion, but I think it's pretty
23 widely held.

24 A Yes, sir.

25 Q People agree with that. And we look at

1 information that we may have received or things we may
2 know, and all that contributes to the formulation of
3 opinions we have on various subjects and things of that
4 nature, and it creates our bias and prejudice. You
5 know, those are popular words, bias and prejudice, but
6 really we have a bias or prejudice just about any
7 subject. If I ask you what's your favorite color,
8 you're going to have a bias or prejudice against purple
9 or green or whatever. And that's how I'm referring to
10 bias and prejudice.

11 You indicated in your responses to my questions
12 that you had read or heard about this case?

13 A Yes, sir.

14 Q Can you share that with me? Can you tell us what
15 you have read or heard about the case?

16 A I just remember when it happened a long time ago.

17 Q That was a long time ago.

18 A Long time ago. And I was pregnant, so, I mean, I
19 was busy with child raising and teaching still at that
20 point as well. So I don't remember specifics so much,
21 I just remember that it did happen.

22 Q Have you read anything more recently about it?

23 A Not since you told us not to, no, sir.

24 Q Good for you. That's what I want you to do is
25 stay away from that stuff.

1 What concerns me, Ms. Stearns, and this is what I
2 want to ask you.

3 A Yes, sir.

4 Q Have you read or heard, have you gained any
5 information from any source about this case that would
6 impair your ability to be fair and impartial in your
7 consideration not only of the law or the evidence in
8 this case but also your attitude toward the
9 participants in this trial?

10 A No, sir.

11 Q Could you set aside anything that you may have
12 learned during the trial of this case -- you know and
13 I'm sure all these attorneys are going to tell you the
14 only evidence that you can consider is what you hear
15 from that witness stand or exhibits that may be
16 introduced. You may have been exposed to some other
17 information. You must set that aside, put it out of
18 your mind. Would you have any difficulty doing that?

19 A I don't think so, no, sir.

20 Q All right. Can you think of any other reason with
21 special emphasis upon you being a fair and impartial
22 juror, can you think of any reason why you should not
23 serve in this case? Do you know of any reason why you
24 would be substantially impaired in carrying out your
25 duties as a juror?

1 A No, sir.

2 Q Answer any questions that counsel might have.

3 Ms. Norris, I believe, is going to ask you some
4 questions.

5 MS. NORRIS: Thank you, your Honor.

6 EXAMINATION BY MS. NORRIS:

7 Q Is it Ms. Stearns?

8 A "Ms. Stearns," yes, sir -- yes, ma'am.

9 Q I appreciate that. Since you're a school teacher,
10 I certainly don't want to mispronounce your name.

11 A Thank you.

12 Q Ms. Stearns, let me just start with this. And I
13 appreciate very much you staying with us, but I'm
14 curious as to the reason that you chose not to exercise
15 your exemption.

16 A I know that he would put me right back in the
17 summer service, and that's when I travel with my
18 children. That would be the only reason.

19 THE COURT: That's probably the best reason I've
20 heard.

21 MS. STEARNS: Sorry.

22 BY MS. NORRIS:

23 Q I tell you what, my sister is a kindergarten
24 teacher, and I anticipated it was going to be not to
25 interrupt summer vacation or she needed a break from

1 the kids.

2 A No, not at the beginning of the year, no, ma'am.

3 Q On your questionnaire you indicated -- and I
4 apologize for this if it's personal. I really do, but
5 I'm sure you can understand that in this type case, we
6 just have to ask.

7 A Yes.

8 Q You indicated that either you or someone close to
9 you has been a victim of a crime.

10 A Yes, sir.

11 Q Can you tell me about that?

12 A My eldest child was raped.

13 Q How long ago was that?

14 A Six years, five years.

15 Q And was that -- and was the rapist arrested?

16 A No. She did not want to prosecute.

17 Q Is there anything -- and let me just say this.
18 I'm very sorry that that happened.

19 A Thank you.

20 Q Knowing that that has happened to your child and a
21 horrible crime has happened within your family, is
22 there anything about that that might influence you
23 being involved in a court case where the person is
24 being prosecuted for, even on the allegations, murder I
25 think we can agree is a horrible, violent crime?

1 A Yes, ma'am.

2 Q Is there anything about going through your child's
3 experience, the impact on her and the impact on you,
4 that you feel like you might carry over into a case
5 like this?

6 A Separate circumstances, so I don't think that I
7 would, no, ma'am.

8 Q Okay. And let me ask you this. And I'm
9 satisfied, fully satisfied, that you understand the law
10 that your Honor has instructed. But here is my
11 question and an aspect of capital sentencing that I
12 don't think was addressed.

13 And that is as part of the additional information
14 you would get if you were seated in a case where you as
15 a juror were asked to decide life or death, part of the
16 information that the State is allowed to present is
17 testimony from family members. And I'll tell you, it's
18 not guaranteed, but I anticipate that the deceased
19 police officer's parents are going to testify in this
20 case about the impact on them of losing their child.

21 When that happens, do you feel like you can still
22 divorce what happened to your daughter and how that
23 impacted her, how that impacted you, how it affects
24 your whole lives -- and I expect that six years later
25 it's still there. It's always going to be with you --

1 is there anything about that that you feel might bring
2 you closer to it's not separate facts but similar?

3 A No, ma'am.

4 Q Okay. That's fair enough. I just needed to make
5 sure about that. All right.

6 Another thing about the sentencing process, if
7 you're seated as a juror, once you've heard the murder
8 plus that aggravating circumstance, additional
9 aggravation and mitigation, you've gotten the judge's
10 instructions, at that point -- and this is what makes
11 it different in a death penalty case where you're
12 deciding sentencing -- at that point the judge will
13 never give an instruction that says, "If you find A, B
14 and C, you have to impose the death penalty." Do you
15 understand that?

16 A Yes, ma'am.

17 Q And the same is true on the other side. The judge
18 is never going to say, "If you find A, B, C, you have
19 to give a life sentence." What you will hear from the
20 Court, and maybe not these words, but I anticipate they
21 will be similar, is that you can give a life sentence
22 as a -- essentially based on the mitigation you hear.
23 And that's, of course, anything weighing in favor of
24 life. Or you can impose a life sentence for any reason
25 or no reason at all. You can do it as a matter of

1 mercy. In other words, each individual juror has to
2 make what we call in the death penalty law an
3 individual reasoned moral judgment or choice. You're
4 okay with that in the law?

5 A Yes, ma'am.

6 Q You think that's fair, no complaints with it?

7 A Yes, ma'am.

8 Q And also what makes this different is that --
9 well, it's not different in a way. Each person has to
10 make their judgment, but here again under the law
11 there's no right answer, there's no wrong answer other
12 than what you as an individual choose, right?

13 A Right.

14 Q Okay. And if you were in the situation and you've
15 heard everything, followed every instruction,
16 considered it all, and you reach one choice based on
17 all that. And especially teaching little kids, I'm
18 sure you know you're going to have disagreements even
19 when everybody is acting reasonably. So there are
20 circumstances where, for example, you might make one
21 choice based on your individual reasoned moral
22 judgment. Everybody else, all other 11, might make a
23 different choice.

24 Would you, just to go along with the majority,
25 give up your opinion to join everybody else?

1 A No.

2 Q And if I put you in that 11, everybody agrees with
3 you except for one person, would you respect the
4 decision of that one person or would you try to pull
5 them along just to go along?

6 A Respect their opinion.

7 Q All right. Give me just a second.

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

10 BY MS. NORRIS:

11 Q Just one last thing. If you were seated, as part
12 of mitigation, and the facts in each death penalty case
13 are different, but generally or in general it can be
14 things such as background, upbringing, mental illness,
15 things that you might hear. Is that the type of
16 information that you could consider as part of deciding
17 whether the death penalty or life without parole is the
18 appropriate punishment?

19 A Would I consider those things?

20 Q Right.

21 A If that's what I was told to do in the directions,
22 yes, ma'am.

23 Q Okay. And if you weren't told to do that, do you
24 think that stuff matters or is it just what happened
25 when the crime was committed?

1 A So you're asking if those kind of things are going
2 to sway me from exactly what happened when the crime
3 was committed?

4 Q Right. Or could they. I'm not trying to pin you
5 down. Let me start with that.

6 MR. RICHARDSON: Your Honor, I object. I
7 believe --

8 THE COURT: Ms. Norris, I think that is way too
9 specific. And you're asking this potential juror to
10 commit to you. I just don't think that's appropriate.

11 MS. NORRIS: I agree, your Honor. And that's why
12 I backed up the way I phrased it. I said I'm not
13 trying to sway her. Please let me rephrase it and see
14 if I can do this better.

15 THE COURT: I'll let you rephrase.

16 BY MS. NORRIS:

17 Q All I'm asking is this. In general, the law says
18 you can consider anything mitigating that you find,
19 that there are statutory mitigating circumstances that
20 the judge would instruct. But under the law, you
21 are -- each individual juror is allowed to consider
22 anything that weighs in favor of a life sentence.

23 As part of that, when you're making your own
24 choice, would you view things such as mental illness --

25 THE COURT: That's too specific. You know, you

1 can ask her if she would weigh things other than the
2 statutory mitigators, but I don't want you to make her
3 commit to any position on that at this point.

4 MS. NORRIS: Your Honor, could we take up -- well,
5 I'd like to take up a matter of law.

6 THE COURT: Okay. Let's take the juror out.

7 MS. NORRIS: I apologize, ma'am.

8 (WHEREUPON, Ms. Stearns exited the courtroom
9 at 4:33 p.m.)

10 THE COURT: All right.

11 MS. NORRIS: Sir, I promise you, I'm not trying to
12 pin her down.

13 THE COURT: But that's the effect of it because
14 you were saying, "Would you consider things like."
15 Okay. That's sort of open-ended, "Would you consider
16 things like." But she may say, "No, I would not
17 consider that."

18 What you're doing is developing a personality
19 profile for her, I believe, and you are essentially
20 asking her to commit on certain mitigating and
21 aggravating circumstances. That is way, way, way too
22 specific. I would not let the State do it. I would
23 not let the defense do it. It's just asking her to to
24 make a -- maybe that's not what your intent is, but
25 that's what it's doing. This witness is going to be

1 staked out to what she tells you.

2 MS. NORRIS: Let me just say this, your Honor. If
3 I said "would you," I misspoke. I meant to say "could
4 you." The same question that I have asked every single
5 potential juror without objection.

6 THE COURT: Well, I haven't heard you had ask that
7 about anything specifically.

8 MS. NORRIS: I've asked it every single time I've
9 stood up, your Honor.

10 MR. HIXSON: I feel like we're objecting a lot and
11 may have objected continuously. I feel like we're
12 objecting too much. So we have objected to specific
13 statutory mitigators and staking out and hypotheticals
14 and stuff and it falls on deaf ears.

15 And my problem was is that even if the judge
16 doesn't instruct you on this can you and stuff like
17 that, it seems like that was an effort to have her not
18 follow your instructions.

19 THE COURT: I don't have any problem with you
20 saying "would you" or "could you look outside the
21 statute." I, in fact, have told them that. But even I
22 have been careful not to point out anything specific.
23 And when you say things like "mental illness," you are
24 pointing to mental illness and you are asking her for a
25 commitment as to that specific mitigator. And that's

1 just how I see it. Even if you say "could," I think
2 you're pointing to it.

3 I think the same response, if that's what you
4 want, you can get by simply saying, "Can you go
5 outside," or, "Do you understand that you can go
6 outside the statutory list of mitigators and consider
7 any other thing that you want to consider?" Without
8 saying, "How about this one," or, "How about that one?"
9 That's what the question sounds like to me. We're
10 saying, "How about this one," or, "How about that one,"
11 rather than, "Would you go outside the statute and look
12 at them, look for other things?" She could consider
13 anything she wants, anything. I just don't want her to
14 be pinned down as to anything specific.

15 MS. NORRIS: Your Honor, I've got two objections
16 to that. And I'm not going to argue, I just want to
17 make my record clear.

18 THE COURT: Okay.

19 MS. NORRIS: First, under *Penry vs. Lynaugh*,
20 however you pronounce it, U.S. Supreme Court, *Lockett*,
21 *Eddings*, all of those cases from the U.S. supreme
22 court, they are allowed to consider background
23 information. I haven't said anything more specific
24 than other than "mental illness."

25 THE COURT: I agree with that. They can consider

1 background information.

2 MS. NORRIS: And mental illness, while I'm using
3 that general term, if you look at our statute, and I'm
4 perfectly satisfied that you know it better than I do,
5 but at least three of those refer to what can generally
6 be labeled as mental illness. One is extreme emotional
7 disturbance, one is mental impairment --

8 THE COURT: I agree with you one hundred percent
9 and those are statutory and she has said, "I will
10 follow the instructions of the Court." So you know
11 that if there's evidence of those things, I'm going to
12 instruct on and she's going to consider them.

13 But I have a real problem asking her outside that
14 statute to consider very specific things. Now, I don't
15 know whether you're talking about -- now you're talking
16 about background generally. Before you were talking
17 about mental health problems specifically. What are
18 you talking about asking her?

19 MS. NORRIS: I want to ask her the same thing I've
20 asked every juror that I've --

21 THE COURT: Well, he's objecting now.

22 MS. NORRIS: All right. Well, I've asked about
23 background. I haven't said anything more than
24 background upbringing, nor has Mr. McGuire in terms of
25 that. I think in a whole line of U.S. supreme court

1 cases starting with *Gregg vs. Georgia* on down through
2 *Woodson vs. North Carolina*, all the way through,
3 background is one of the words you're going to hear
4 that they can consider. I'm not asking anything more
5 specific --

6 THE COURT: Well, Ms. Norris, I guess the truth
7 will be told by what your follow-up question is. If
8 you want to say background generally, I'll let you do
9 that, but you follow up with any other question
10 concerning that and I'm going to be very disappointed.

11 MS. NORRIS: All right. But before we go there,
12 you asked me specifically. Background is one of the
13 phrases I wanted to use, background, upbringing.
14 Mental illness is the other.

15 THE COURT: No, I'm not going to do that. That is
16 specific. Background is pretty general -- I mean is
17 general enough that I would let you do it. And I feel
18 like I'm bending over backwards by doing that,
19 Ms. Norris. But I am not going to point out anything
20 specific even if it is statutory. I'm just not going
21 to do that. You're not going to pin this witness down.

22 MS. NORRIS: All right, sir. Thank you.

23 THE COURT: All right.

24 There are many, many things that may be included
25 in background. That could be a person's life,

1 essentially. I don't find that to be specific. But
2 when you start pointing out things like, "Well, part of
3 his background is he's mentally ill or he has mental
4 illness," that's being very specific. I've got a
5 problem that.

6 MS. NORRIS: Your Honor, given where we are, I
7 think you know what I'm trying to ask. At this point I
8 would just like to sit down and for you to ask that
9 question and --

10 THE COURT: No, I'm going to let you ask it.

11 MS. NORRIS: All right. All right, sir. I'm
12 ready then.

13 (WHEREUPON, Ms. Stearns entered the courtroom
14 at 4:40 p.m.)

15 THE COURT: Yes, ma'am.

16 BY MS. NORRIS:

17 Q All right, ma'am. I apologize for that delay, but
18 we just had one of those moments where reasonable
19 people disagree.

20 Here's the only thing I was trying to ask. The
21 judge will instruct you that essentially as a juror you
22 can consider anything that you believe is mitigating.
23 All I want to know is if in your own opinion -- I'm not
24 trying to ask you how you would vote -- but do you
25 believe background information is the type stuff that

1 should be considered before a decision is made on the
2 death penalty or life without parole?

3 A Yes, ma'am.

4 Q All right.

5 MS. NORRIS: Your Honor, I'm thoroughly satisfied
6 that she's qualified.

7 THE COURT: How about the State?

8 MR. RICHARDSON: Yes, sir, your Honor.

9 EXAMINATION BY MR. RICHARDSON:

10 Q My name is Jimmy Richardson. I'm the Solicitor.
11 And this is Scott Hixson, and he's the Deputy
12 Solicitor. You remember you're still under oath,
13 right?

14 A Yes, sir.

15 Q I need to ask this question first because my wife
16 is a kindergarten teacher?

17 A Yes, sir.

18 Q Is it really as bad as she puts on?

19 A I'm under oath.

20 Q I'll let you off of that one.

21 I do want to -- she teaches at Conway Elementary.

22 A Yes, sir.

23 Q Kindergarten. I want to talk with you about a few
24 things that the defense brought up just to make sure
25 everybody is perfectly clear.

1 What they were getting at with that last series of
2 questions is we want to make sure that you're a juror
3 that if Luzenski Cottrell is found guilty of murder and
4 if the State shows an aggravating circumstance or more
5 than one -- one or two or whatever -- anyway, it
6 becomes death penalty qualified. At that stage can you
7 weigh both that aggravating circumstance and any other
8 aggravating circumstances that we ask you to as long as
9 they're within the statute and listen to the defense --

10 MS. NORRIS: Your Honor, I apologize, but I am
11 going to have to ask that it not be phrased as weighing
12 because that's not what the statute says.

13 MR. RICHARDSON: If I said "weighing," I'm sorry.

14 THE COURT: It's consider.

15 BY MR. RICHARDSON:

16 Q Consider not only the aggravation but also the
17 mitigation, the things would make -- put him in a more
18 favorable light.

19 A Yes, sir.

20 Q Can you weigh all of that --

21 THE COURT: Consider.

22 BY MR. RICHARDSON:

23 Q I'm sorry. Consider all of that in your
24 determination as to whether or not to give life in
25 prison or the death penalty?

1 A Yes, sir.

2 Q Okay. And another thing that I don't want you to
3 be confused about because you have seen TV and have
4 some sort of an idea what jury service is about. Have
5 you ever sat on a jury?

6 A No, sir.

7 Q All right. Well, I haven't either. And we aren't
8 allowed to go back and watch what goes on in jury duty.
9 But the whole reason for putting 12 people together is
10 that you guys can compare what you believe the evidence
11 has shown. You guys can believe -- talk to each other
12 about the aggravating circumstances and the mitigating
13 circumstances, all of those things. It's a
14 give-and-take.

15 So I don't want you to believe that you've got to
16 go back there and because somebody has a -- says, Hey,
17 I got a heartfelt feeling either guilt or innocence,
18 that you can't say anything to them, that isn't the
19 give-and-take. All right? That would be a
20 misrepresentation.

21 At some point it becomes -- people have discussed
22 and they have talked about it as much as they can, and
23 then they get to a place where they may say, "Hey, it
24 would be going against my morals to do what you're
25 asking me to do." And that's way on down the line.

1 And that's when we say, Well, you can't change your
2 morals to vote one way or the other or change someone
3 else's.

4 And, finally, in all fairness, at the end of this
5 thing, the State believes that we can prove that he's
6 guilty of murder, and we can show you the aggravating
7 circumstances. And, certainly, we believe that they're
8 bad enough to seek the death penalty or we wouldn't
9 have brought this case.

10 I tell you all that to say at the end of the day,
11 we're going to ask the judge if you agree with us and
12 find him guilty, find the aggravating circumstances,
13 what we're going to ask is that the judge give you a
14 sheet of paper. It's an indictment. But it will have
15 12 slots on there, and hopefully one of them will be
16 yours. And you will have to sign that death warrant
17 saying, "I believe that the State has proved it, I
18 believe that the aggravation is there, we have
19 discussed it, this is the proper sentence given the
20 facts and circumstances." Can you sign your name to
21 that paper?

22 A Yes, sir.

23 MR. RICHARDSON: All right. I have no further
24 questions, your Honor.

25 THE COURT: Would you step out again with

1 Mr. Ropp.

2 (WHEREUPON, Ms. Stearns exited the courtroom
3 at 4:46 p.m.)

4 MS. NORRIS: Your Honor, we agree thoroughly she's
5 qualified. And I didn't want to interrupt again, but I
6 do have a problem with the Solicitor saying, talking
7 about, "We've sought the death penalty in this case,
8 and certainly we believe the aggravating circumstances
9 are bad enough to seek the death penalty."

10 THE COURT: And that is improper. It shifts -- it
11 would be an improper closing argument, let me put it
12 that way. It shifts the burden.

13 MS. NORRIS: Well, I think at this point it's also
14 putting in the jurors that haven't had a trial yet,
15 there's other bad stuff out there. I would just ask
16 that we carefully phrase that.

17 THE COURT: And let's be careful in using that
18 sort of phraseology.

19 Do you agree she's qualified?

20 MR. RICHARDSON: Yes.

21 THE COURT: Bring her out.

22 (WHEREUPON, Ms. Stearns entered the courtroom
23 at 4:47 p.m.)

24 THE COURT: Ms. Stearns, we find you or I find you
25 to be a qualified juror in this case. It doesn't mean

1 you're on the jury. It means you're in the group of
2 jurors from which the panel will be drawn.

3 We will not need you for a few days while we
4 continue this process. I am having the deputy give you
5 a document there that has a phone number on it. If
6 would you call that after 6:00 on Sunday, this coming
7 Sunday --

8 MS. STEARNS: Yes, sir.

9 THE COURT: -- there will be a message that tells
10 you when to report. Please bring with you your
11 medications, toiletries, clothing, things like that
12 because if you are seated, we will immediately
13 sequester you.

14 MS. STEARNS: Okay.

15 THE COURT: And you just need to have it with you.
16 You can leave it out in the car, and if you are
17 selected, one of the deputies will help you collect it
18 and they will take you on to the hotel.

19 Please remember my order concerning no publicity
20 or conversations concerning this and other things is
21 still in effect. We look forward to seeing you.

22 MS. STEARNS: Yes, sir.

23 THE COURT: Thank you.

24 MS. STEARNS: Thank you.

25 (WHEREUPON, Ms. Stearns exited the courtroom)

1 at 4:48 p.m.)

2 THE COURT: Five minutes.

3 (WHEREUPON, recess taken from 4:48 p.m.
4 to 4:57 p.m.)

5 THE COURT: I see we've got Mr. Cottrell and his
6 attorneys and both the State solicitors, and we have
7 someone from the clerk.

8 And I believe Mr. Powell is next.

9 (WHEREUPON, Mr. Powell entered the courtroom
10 at 4:58 p.m.)

11 JIMMY C. POWELL, JR.,

12 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

13 EXAMINATION BY THE COURT:

14 Q Mr. Powell, good to see you.

15 A You too, Judge.

16 Q You're still under oath, and let me remind you of
17 my comments earlier concerning Mr. Cottrell and the
18 presumption of innocence. I'm sure you're familiar
19 with all of that?

20 A Yes, I am.

21 Q And can you keep in your mind both during these
22 questions and, if you're selected, all during the trial
23 that there is a presumption of innocence that protects
24 him.

25 And although we're going to ask you questions

1 concerning the second phase of a trial, while that
2 might suggest he has already been convicted, we do not
3 mean to infer that at all. That would be entirely up
4 to a jury. But the process requires us to ask those
5 questions at this time. You can appreciate that, I'm
6 sure, Mr. Powell --

7 A Yes, sir.

8 Q -- having practiced law as long as you have.

9 Mr. Powell, have you complied with my instructions
10 concerning avoiding any pretrial publicity about this
11 case and discussing it with anyone, things of that
12 nature?

13 A Yes, your Honor.

14 Q I appreciate that. Please remember that that
15 order will be in effect until such time as you are
16 discharged with the panel or the jury if that is the
17 case. Fair enough?

18 A Yes, your Honor.

19 Q Okay. Mr. Powell, I see here that you indicate
20 that you are a class C juror. Is that a fair
21 assessment of your position in this matter?

22 A It's hard to put yourself in that hole, but I
23 can -- I will uphold my oath I have taken in my job to
24 apply the law to the facts and that's what I'm prepared
25 to do if I have to serve.

1 Q And you could consider the facts and circumstances
2 in aggravation and in mitigation. I think that's what
3 you indicate on your category as describing you; is
4 that correct?

5 A Yes, your Honor.

6 Q Would you find or would you believe that that
7 classification would be consistent or do you think it
8 would be inconsistent with the procedure that I have
9 described to you in my earlier remarks?

10 A Meaning could I follow the procedure you have
11 given?

12 Q No. Do you think the procedure I have prescribed
13 is in keeping with or consistent with your
14 categorization as a juror?

15 A Yes, sir.

16 Q You think it is?

17 A Yes.

18 Q All right, sir. Very good.

19 Now, Mr. Powell, do you have any feelings about a
20 murder case in general? And I guess what I'm trying to
21 ask you is this: Do you have any feelings as to what
22 would be the appropriate penalty if a person is
23 convicted of murder, that being the unlawful killing of
24 another person with malice aforethought?

25 A Have I formed an opinion as to what that

1 punishment should be?

2 Q Yeah, what that punishment should be.

3 A I have no preconceived view on what that
4 punishment should be. To be honest, I haven't
5 philosophically sat around and thought about it, but I
6 have no preconceived notion. I would be willing to
7 take your charge and apply the facts to whatever I
8 could.

9 Q Do you understand with nothing more than a
10 conviction simply for murder would not under the law of
11 this state authorize the death penalty?

12 A I understand that.

13 Q Would you, if a person has been convicted of
14 murder and we move over to the second part of the trial
15 where we consider aggravating circumstances, would you
16 be more predisposed to find aggravating circumstances
17 and impose a death penalty after consideration of
18 mitigating circumstances by virtue of the fact that the
19 person had been convicted for murder?

20 A No.

21 Q All right. Would the fact that a person has been
22 convicted of murder and if we move then to the second
23 phase or the guilt phase or sentencing phase of the
24 case and you are required to consider whether or not
25 the State has proven beyond a reasonable doubt that

1 aggravating circumstances exist, would the fact that
2 you had just convicted a person of murder affect your
3 ability to be fair and impartial in your assessment of
4 the evidence concerning the existence of an aggravating
5 circumstance? Would it prejudice you or bias you
6 against the defendant?

7 A I'd like to think not, so I'll say no.

8 Q All right, sir. Do you understand that the death
9 penalty would not even be on the table, it would not
10 even be a consideration until and if and only if the
11 State were to be able to convince the jury beyond a
12 reasonable doubt that the crime of murder had been
13 committed and that it was in conjunction with a
14 statutory aggravating circumstance?

15 A I understand that.

16 Q You understand that?

17 A Yes, sir.

18 Q And do you understand then that the law, even if
19 we reach that point, does not favor the death penalty,
20 it does not favor life imprisonment, either one. Those
21 are options that are available to you?

22 A I understand that.

23 Q And you understand that. And, again, would the
24 fact that a person has been convicted of murder and
25 that the person also is in a situation where you, the

1 jury, have determined there are aggravating
2 circumstances make you any less likely to fairly review
3 the other circumstances in a search for or
4 consideration of mitigating circumstances?

5 A I don't think it would affect me.

6 Q You could be fair to the defendant, just as fair
7 to the defendant before his conviction or those
8 convictions or findings as you would afterwards?

9 A I would certainly try.

10 Q All right, sir. Do you think you could?

11 A I think I can.

12 Q All right. Very well. Very well.

13 Could you, after reviewing the case and
14 consideration of all factors that might possibly be
15 considered mitigation factors, could you in the
16 appropriate case vote for or recommend a sentence of
17 death?

18 A I've thought about this a lot over the last couple
19 days, to be honest with you. And that's a tough
20 question, but I would follow the law of the state if
21 that was an option that was put there and the case
22 was -- the burden carried by the State, I think I could
23 recommend it.

24 Q All right. And could you equally look at the
25 mitigating circumstances and consider all of them, and

1 even if there weren't any mitigating circumstances,
2 consider the granting of mercy and the recommendation
3 of a life sentence?

4 A Yes.

5 Q Would you favor one over the other? I know that
6 the circumstances are going or would make you
7 predisposed to one over the other, but could you
8 consider, could you balance the field and give them
9 both fair consideration?

10 A Yes, your Honor.

11 Q You could do that. All right, sir. Now,
12 Mr. Powell, I have asked all the jurors about this.
13 And I have sort of a preconceived notion myself in that
14 I am of the opinion that we are all the product of our
15 life experiences and our education. Not only our life
16 experiences but the experiences of our loved ones,
17 close friends, family and what may have happened to
18 them and the experiences they may have had, and of
19 course many, many other factors.

20 But all those things come together and it forms us
21 as a human being which determines how we see things and
22 the opinions we have of various things. Do you agree
23 with that, that premise?

24 A Yes, sir, your Honor.

25 Q That's pretty universal, isn't it?

1 A I think so.

2 Q Okay. Now, and in that regard I would ask you to
3 look to yourself and the experiences you've had.
4 You've indicated that you have had or that you know the
5 lawyers in this case, that you have heard about the
6 case. And do you believe that based upon all of that
7 you would be able to be a fair and impartial juror?

8 A I'd like to think I would be. But I have kept in
9 touch with the case practicing in the area a long time,
10 so I do know a lot. I do know about the original
11 trial. I do know about the advance sheet, the rulings
12 that came down. So I know a lot about the case.

13 Could I be fair and impartial? I would like to
14 think I could. I know a lot about the case.

15 Q I understand that. And being an attorney here --
16 we're all attorneys. And we know that you would
17 probably have followed it more closely than a layperson
18 would. But the question is this: Would the fact that
19 you have had this exposure to a lot of information
20 about the case -- you probably have been exposed to
21 everything that's been printed. Would that be a fair
22 statement?

23 A I think so, your Honor.

24 Q Okay. Could you, in spite of that, set that
25 aside, could you look at this case with a fresh eye,

1 could you base your decision in this case solely on the
2 evidence that you -- that's presented during the trial
3 of this case, and could you apply the law as I give it
4 to you?

5 A I could certainly apply the law as you give to me
6 to what's put in front of me. Could I unring the bells
7 of what I already know from the press and reading about
8 it? I'd like to think I could, but that's hard to
9 answer that question. Surely I would have no problem
10 applying the law to the facts as you would charge me.

11 Q I guess we should go right to the ultimate
12 question here. Do you believe the knowledge that you
13 have would substantially impair your performance of
14 your duties as a juror?

15 A I would think that probably both sides would want
16 somebody other than me on their jury panel.

17 Q So what you're doing is you're telling me that
18 you're not sure you can unring that bell?

19 A I feel like I'm cheating the system a little bit
20 by being a lawyer up here and telling you that I have a
21 preconceived notion because I don't, but I do have a
22 concern about what I know. So, you know, could I
23 overleap that hurdle? Probably so. Would I want to
24 jeopardize this man's defense or the State's case based
25 on what I know? I would not want to do that. So it's

1 hard to answer your question. I know a lot about the
2 case and it could affect me.

3 THE COURT: I understand. I certainly appreciate
4 your candor.

5 MR. McGUIRE: I think we agree to let him go,
6 Judge.

7 MR. HIXSON: Yeah, it's appropriate.

8 THE COURT: Mr. Powell, having been an attorney
9 myself, I can appreciate how you would follow this and
10 if the advance sheets came out, there was quite a bit
11 in there and I'm sure you know everything there is to
12 know about the case. And as hard as you try, I believe
13 it would be very difficult for you to, as you say,
14 unring that bell. And both of the -- both the
15 attorneys for the defendant and for the State agree
16 that you should be excused, so I am going to release
17 you from your subpoena and find you not qualified.
18 Okay? Thank you, sir.

19 (WHEREUPON, Mr. Powell exited the courtroom
20 at 5:13 p.m.)

21 (WHEREUPON, Mr. Youmans entered the courtroom
22 at 5:13 p.m.)

23 JASON YOUMANS,

24 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

25 EXAMINATION BY THE COURT:

1 Q Come around, sir. Is this Mr. Youmans?

2 A Yes, sir.

3 Q Good to see you, Mr. Youmans. Please have a seat
4 here in the witness box.

5 A Okay.

6 Q Mr. Youmans, you're under oath. You understand
7 that?

8 A Yes, sir.

9 Q All right, sir. Do you recall Monday when I gave
10 you some instructions about avoiding any pretrial
11 publicity and refrain from discussing this case with
12 anyone and things of that nature?

13 A Yes, sir.

14 Q Have you complied with my instructions in that
15 regard?

16 A Yes, sir.

17 Q And do you understand that if you were qualified
18 and held over in this case, my instruction and order to
19 you would remain in effect until such time as you were
20 released in this case? And do you agree to do that?

21 A Yes, sir.

22 Q Okay. Mr. Youmans, I have here your questionnaire
23 concerning your category of juror which best describes
24 you. And you tell me that you're a class C juror. Is
25 that your opinion?

1 A Yes, sir.

2 Q And a class C juror, as I understand it, is one
3 who would need to hear the facts and circumstances in
4 aggravation and in mitigation before you could make a
5 decision regarding punishment in a case like this. Is
6 that your opinion?

7 A That's correct, yes, sir.

8 Q Do you think that best describes you?

9 A I think so. I like to hear both ends of the
10 story, make sure --

11 Q All right, sir. All right, sir.

12 Now, Mr. Youmans, a moment ago or a few moments
13 ago we met and I described generally how the death
14 penalty process would work and the things that the
15 State would have to establish beyond a reasonable doubt
16 before the death penalty could even be considered or a
17 recommendation of the death penalty could even be
18 considered by a jury. Do you think you understood what
19 I was saying there?

20 A Absolutely.

21 Q Were you able to follow what I said?

22 Do you believe that your categorization of
23 yourself as a C juror is consistent with what I've told
24 you a juror would need to do and should do in a case
25 like this?

1 A I believe so, yes, sir.

2 Q You think it is? Do you find what I told you to
3 be in any way offensive to your ideas concerning what
4 you as an individual juror feel you should do?

5 A I didn't find it offensive.

6 Q All right. Do you believe if you were selected
7 and I gave you an instruction along the lines that we
8 talked about that you could follow those instructions?

9 A Definitely, yes, sir.

10 Q Let me tell you something that always concerns me
11 somewhat in these cases. That is the fact -- and
12 there's nothing wrong with it. The legislature said
13 this is how we do it. And I can't think of a better
14 way to do it, but it does give me a little concern.

15 In a death penalty trial like this, as I said
16 earlier, the first phase or the guilt phase is where
17 essentially the defendant is tried for the offense of
18 murder. That is the malicious -- I mean the unlawful
19 killing of another person with malice aforethought.

20 Okay?

21 A Okay.

22 Q And do you understand while malice has a legal
23 description of being -- having ill will or wickedness,
24 maliciousness towards the victim, that is different
25 from an aggravating circumstance? They're different

1 things, do you understand? One, malice, you find if
2 you're required to convict him of murder, and that is
3 different from aggravating circumstances.

4 A Yes, sir.

5 Q Do you understand that if he were to be just tried
6 for murder or there was just a finding of murder, the
7 death penalty legally would not be appropriate?

8 A Yes, sir. I remember you explained that.

9 Q Would that be offensive to your own thought
10 process? Do you have any ideas of what the penalty
11 should be upon the conviction of someone for murder or
12 what you would be prone or inclined to do with someone
13 who was convicted of murder?

14 A Honestly, no, I wouldn't really know. Sorry.

15 Q All right. All right. I guess what I want to
16 know is would you be inclined if a person or do you
17 feel if a person was convicted of murder, in every case
18 he should get the death penalty?

19 A No.

20 Q Okay. All right, sir. Now, if we move -- let's
21 just suppose for the sake of argument -- and I don't
22 want to suggest this is what should happen. That's
23 entirely up to the jury. But let's just suppose there
24 was a conviction in the first phase for the offense of
25 murder, that you were on the jury and you made a

1 finding -- your jury made a unanimous finding beyond a
2 reasonable doubt that the defendant did commit the
3 offense of murder. Okay?

4 And then we move to the second phase. And
5 remember we talked about the fact that the State in
6 that phase would be required again to prove beyond a
7 reasonable doubt that the defendant, in connection with
8 the murder, also committed one of those statutory
9 aggravating circumstances that made the crime
10 essentially more heinous. Are you following me?

11 A So far, yes.

12 Q Okay. Well, would the fact that you would have
13 been part of a jury that had just convicted the
14 defendant essentially of murder and were now being
15 asked to consider whether or not the State has proven
16 beyond a reasonable doubt that he is guilty also of an
17 aggravating circumstance, would the fact that you had
18 just convicted him of murder cause you to have a bias
19 or prejudice against him that would affect your ability
20 to be a fair and impartial juror in the determination
21 of whether or not the State had proven beyond a
22 reasonable doubt that he had committed this aggravating
23 circumstance?

24 A It would -- it's tough to answer because I feel
25 that --

1 Q And that's why I ask you. It is a tough question.
2 I would like you to think about it and could you still
3 remain impartial?

4 A I could still remain impartial. But like you
5 mentioned, beyond a reasonable doubt.

6 Q You could remain impartial and you would consider
7 all the evidence?

8 A Absolutely.

9 Q And you would give Mr. Cottrell the benefit of the
10 doubt?

11 A Yes, sir, I would.

12 Q Okay. And if -- if -- if your jury were to get
13 through that and were to find at least one statutory
14 aggravating circumstance, if you were to get down to
15 that point where, as we discussed earlier, the death
16 penalty was now a possibility, it was, shall we say, on
17 the table --

18 A Okay.

19 Q -- could you consider the possible recommendation
20 of a death penalty and the possible recommendation --
21 or the possible recommendation of a life sentence
22 equally? Would you be prone to want to do one over the
23 other without looking at the mitigating circumstances
24 or could you be fair in your assessment?

25 A I honestly believe I could be fair in it.

1 Q Okay. All right?

2 A As long as I had my cards in front of me and I
3 have the information.

4 Q And do you understand that that would be an
5 individual decision that you as a juror would make, and
6 that is whether or not there are mitigating
7 circumstances that would offset or mitigate against the
8 death penalty?

9 A Yes, sir.

10 Q Or whether or not you should just by grace grant
11 mercy and recommend a life sentence? Do you understand
12 that would be an option available to you?

13 A Yes, sir, I do.

14 Q What we want to do is make sure that you are not a
15 juror that would be predisposed to want to go one way
16 or the other without hearing and considering all the
17 evidence in mitigation and considering granting mercy
18 in this case.

19 A Okay.

20 Q And could you do that?

21 A Absolutely, yes, sir.

22 Q Okay. And that little scenario we went through
23 honestly, honestly describes you or how you feel as a
24 juror?

25 A Yes, sir.

1 Q Okay. And you're comfortable with that. All
2 right.

3 Now, Mr. Youmans, I have been talking with jurors
4 and sharing with them a thought that I have and I'll
5 ask you if you agree with it, and that is, you know, I
6 believe that we all have opinions and we all have
7 prejudices and biases that would apply to various
8 subjects. We also have predilections to react in a
9 certain way to certain stimuli and things of that
10 nature. And that, I believe, is a product of our life
11 experiences. Not only what may have happened to us but
12 what has happened to our loved ones, family members,
13 friends. It's a factor of things like our education.
14 It's a factor of information that we may have received
15 about a particular subject.

16 A Uh-huh.

17 Q Would you agree with that?

18 A Absolutely, yes.

19 Q You think that is?

20 A Yes.

21 Q Okay. The question that I need to ask you is
22 this: Whether or not there is anything -- anything --
23 that would substantially hinder your ability to perform
24 your duties as a juror. And the primary duty is to be
25 fair and impartial.

1 Now, there are things that obviously would affect
2 your ability to do that. Things like your opinion
3 about the death penalty, period. Do you have an
4 opinion about the death penalty?

5 A Do I have an opinion about the death penalty? I
6 would say my opinion is that it kind of depends on the
7 situation to the person whether they deserve it or not.
8 Is it necessary? I would say yes, it is.

9 Q Okay. So you would say basically you feel that it
10 is necessary and you would favor it?

11 A If I had enough information.

12 Q Okay. Well, I mean generally speaking. I'm
13 talking about generally speaking. Not specifically as
14 in any case. But you would essentially support the
15 concept of the death penalty?

16 A If I felt that -- if it was -- yeah, any -- if I
17 had any doubt, I would have to have all my information.

18 Q But as you indicated on your --

19 A Yeah.

20 Q -- category here, you would want to, before voting
21 or imposing it, you would want to know all about the
22 case?

23 A Exactly. Yes, sir.

24 Q All right. Fair enough. Fair enough that you
25 tell me that. And we all respect your opinion. You

1 certainly have the right to it.

2 But I also see here -- no, I don't. I thought I
3 had you down as a person who may know something about
4 the case or have information about the case. Do you
5 know anything about the case?

6 A I know nothing about it.

7 Q How long have you been down in this area?

8 A I moved down here nine years ago from Florence,
9 but I must have been living under a rock because I
10 didn't know anything about it.

11 Q You didn't know anything about the case?

12 A No.

13 Q That's important because I would tell you, as a
14 juror, if you were seated on this panel, that it's
15 important that you consider only -- only the evidence,
16 testimony or exhibits that are presented during this
17 trial. And you must not consider any extraneous
18 information that you have. And you're telling me that
19 you just don't have any?

20 A I honestly have never heard anything.

21 Q Let me go back a few steps to the questions that I
22 have. Do you know anything about Jason Youmans --

23 A Yes, sir. I see him every day.

24 Q -- that would suggest to us that you harbor some
25 belief or opinion or knowledge or anything of that

1 nature that would substantially interfere with your
2 ability to carry out your duties as a juror, that is,
3 to be fair and impartial in your judgment in this case?

4 A No, there's nothing I have to hide. What you see
5 is what you get, pretty much open book.

6 Q Okay. Thank you, sir. I also noticed that you
7 did look over the witness list, but I don't see where
8 you had indicated that you know anybody on this list.

9 A I don't know anybody.

10 Q I know it's hard to look at a list of 180 people
11 with just names, without faces, and say whether you
12 know someone. But looking at it, if you believe there
13 was anyone who was a potential witness that you had any
14 significant contact with like a neighbor, someone that
15 you deal with in business, a relative or anything like
16 that, anybody with any significant contact, do you feel
17 comfortable you would have recognized their name?

18 A Yes, sir, I would have.

19 Q So you, as best you know, don't know a soul on
20 that list?

21 A I don't know.

22 Q There are some people that they asked me to add to
23 the list. That would be: Nicole Pyle, John Taylor,
24 Christine Del Fonzo -- I think that's right. It's hard
25 to read that name -- William Nettles and Michelle

1 Light. Do those ring a bell? Do you know any of those
2 people?

3 A No, sir, I don't, no.

4 Q In addition to considering only the evidence
5 presented during the trial, I think I've told you you
6 must consider only the law as I give it to you because
7 I provide the law, you as a jury or the jury reviews
8 the evidence and you determine the facts. And that
9 deliberation process, I used to describe it when I was
10 practicing law to jurors is like think of a great big
11 mill with two big gears that come together. Can you
12 visualize that?

13 A Okay.

14 Q One is the facts; one is the law. I fill the law.
15 The jury fills the facts and you bring them together.
16 And the process of deliberation, the process of
17 determining whether there is reasonable doubt depends
18 on how they fit together. That's sort of a simplistic
19 approach to it. Can you appreciate that?

20 A Yeah. I can picture that.

21 Q You can picture that. But, you know, you have to
22 accept the law as I give it to you.

23 A Okay.

24 Q You know, you might be a juror and I instruct you
25 of this law and you think, "Well, I don't agree with

1 that," or, "Someone has told me something else about
2 this other point." But would you, as a juror, adopt
3 the law exactly as I give it to you?

4 A As you give it to me, yes, sir.

5 Q You have a committed as a juror to both
6 Mr. Cottrell and to the State to do exactly that. And
7 could you do that and set aside any other preconceived
8 notion you may have about what the law is?

9 A I believe so. I know so, yes, your Honor. I
10 could.

11 Q You believe that you could be fair and impartial?

12 A Yes, sir.

13 Q Okay. I want you to answer any questions that
14 Mr. McGuire has for you. Okay?

15 MR. McGUIRE: Thank you very much, Judge.

16 EXAMINATION BY MR. McGUIRE:

17 Q Good afternoon, Mr. Youmans. How you doing? You
18 can spin around and talk to me.

19 A I'm stiff right now.

20 Q I'm going to come over here so we can have more of
21 a normal conversation, I'm not shouting at you from
22 across the room there.

23 What I want to do is start by just telling you
24 that where you're sitting right there is sort of like a
25 free speech zone.

1 A Okay.

2 Q And what that means is any opinion you might have,
3 any belief, any position that you might have is one
4 hundred percent right and accurate as long as it's
5 honest and you're honest with us.

6 So whenever we start a question with, "What's your
7 opinion about," or, "What's your position on," whatever
8 you say is going to be the right answer. Do you
9 understand that?

10 A Okay. All right.

11 Q That should make you feel pretty comfortable. You
12 can't mess this up.

13 A Yeah.

14 Q And while you're there in that free speech zone,
15 all the law and the rules in court and all, they don't
16 apply to you right now. You're a citizen off the
17 street, and you're allowed to have whatever feelings,
18 positions you want. Okay?

19 A Okay.

20 Q You'd have to make the trip from there to over
21 there to start following the rules and regulations
22 under the law. Okay?

23 A Okay.

24 Q For instance, some people have religious views
25 that just simply prevent them from considering the

1 death penalty. And they come here and they tell us
2 that, and we discharge them with our thanks. Okay?
3 They can't follow some of these rules and regulations,
4 so we don't let them get to the jury box. Okay?

5 A Okay.

6 Q As you've seen, this is a big production, for lack
7 of a better phrase. I don't mean to be light about it.
8 There are hundreds of people here. It's critical that
9 we start out with jurors that are as indifferent as
10 they are unsworn is the phrase used in the law. Are
11 you with me?

12 A So far, yes, sir.

13 Q Okay. Let's go back a little bit and just talk in
14 general about the death penalty. Okay?

15 A Okay.

16 Q You work at Blue Cross Blue Shield?

17 A Yes, sir.

18 Q And you're a project manager?

19 A Project assistant.

20 Q Assistant?

21 A Yes, sir.

22 Q But you work at home, right?

23 A No, I work in an office.

24 Q Okay. Good. What I want you to do is just

25 picture -- is there a snack room or a water cooler?

1 A Yeah, like a break room.

2 Q All right. You and I are in the break room. And
3 we're sitting at the table just having our snack. And
4 one of your friends comes up and says, "I understand
5 that the death penalty in South Carolina requires this
6 aggravation and some other stuff, but there's going to
7 be a referendum and we can change the law, and we're
8 going able to vote for the death penalty if we want to
9 just based on the State and the government proving that
10 it's intentional killing, malice aforethought." And
11 malice aforethought is operating with a black,
12 malignant, evil heart. Are you with me?

13 A Okay. I'm with you.

14 Q That's exactly what the judge said.

15 MR. RICHARDSON: Your Honor, I am going to object.
16 Again, we're getting into changing and reducing the
17 sentence. I think it could be much easier asked just
18 about what the law is today or his views.

19 THE COURT: I'm going to let him go.

20 BY MR. McGUIRE:

21 Q Again, this is the free speech zone, the personal
22 opinion zone. Okay? So whatever your thoughts are,
23 they're correct. Okay? And somebody at our snack
24 table says, "There's going to be a referendum. We can
25 change the law. And we can change the law so we don't

1 have to have that aggravating circumstance. That if
2 the government proves beyond a reasonable doubt they
3 got the right guy, he intentionally took an innocent
4 life with an evil intent, that we could vote for the
5 death penalty for that type of killing." And they look
6 at you and say, "What are your thoughts about that?"
7 What are you going to tell them?

8 A That's a tough call.

9 Q Yeah, it is.

10 A I would have to say it's hard to answer. It would
11 have to depend on the evidence. If there's proof
12 beyond a reasonable doubt, yes, I would have to say we
13 should have the death penalty. But I'm saying it very
14 loosely without knowing the information behind it,
15 though.

16 Q It's very difficult to talk in these abstracts.

17 A I was going to say there's so many what ifs in
18 this, and it's hard to actually see it without -- I
19 mean visualize it without seeing it or hearing it in
20 person. It's just so broad, you could say, it's kind
21 of hard to --

22 Q It is. But, again, if your buddy just looked at
23 you and said there is the ability if we vote for it to
24 change the law, and the only thing that the government
25 would have to show to have the death penalty on the

1 table would be the intentional killing of another
2 person, taking an innocent life with an evil intent,
3 and the death penalty could be available for that,
4 would you want that or no?

5 A I would say yes.

6 Q Yes.

7 A Like you say, evil intent, yes.

8 Q Okay. Again, this is the free speech zone. You
9 can say whatever you want.

10 Now, you've heard the indictment in this case.
11 This is an accusation of murder -- intentional killing
12 with an evil intent of a police officer in the line of
13 duty. And the State is required to bring aggravation
14 evidence the way the current law is. Sometimes we
15 refer to it as murder plus the aggravation.

16 Again, you heard the indictment regarding the
17 police officer shot in the line of duty. In the
18 situation where the State, the government, can prove
19 the intentional killing, evil intent, malice
20 aforethought, not an accident, not self-defense, and
21 that aggravation-type evidence, what are your thoughts
22 about the death penalty as the appropriate punishment?

23 A As long as there's evil intent, yes, I would say
24 yes, there should be death penalty.

25 Q There should be death penalty?

1 A Yeah. But my hang-up, I guess, is it's not
2 consistent as far as my experience with this.

3 Q Tell me about that.

4 A Well, just like why should this person get the
5 death sentence and why should this person just get life
6 in prison. I don't know why this person is allowed to
7 live and this one is to die on death row.

8 Q That is a good question.

9 A I mean, to me, it just doesn't seem consistent. I
10 think things should just be more consistent. Because
11 what's good for this -- what's good for the goose is
12 good for the gander, as the saying goes.

13 Q Sure. And the judge has told a number of jurors
14 that there aren't many capital cases in South Carolina.
15 They're fairly rare. And why do you have that concern?
16 Is it just for the sake of consistency or is there
17 something behind that?

18 A Consistency, yeah. To me, when people -- I think
19 the reason the death sentence was put in would be to be
20 just like a deterrent, to keep people from committing
21 heinous crimes. So right now it doesn't look to me
22 like it's working too well.

23 Q Do you think the death penalty is a deterrent?

24 A I think if it was consistent, yes, I think it
25 would be. If I knew I was going to --

1 Q Get it?

2 A Get it, yes.

3 Q And my guess is you probably don't know the last
4 death penalty case tried in South Carolina?

5 A No.

6 Q Or the last person executed?

7 A No. I think it was Larry Wayne Bell.

8 Q No.

9 A No? That's the last one I remember.

10 Q And my point is for something to be a deterrent,
11 you have to know about it and it has to happen.

12 A Yes. That's what I'm saying, it's just not -- it
13 doesn't happen every day, that's why --

14 Q Sure. And your feelings that the death penalty
15 doesn't seem to be operating as a deterrent, would that
16 affect your decision-making in this case?

17 A No, as long as I have the facts.

18 Q When you said you wanted more consistency, what
19 would get -- if you could choose what would bring that
20 consistency and you had to choose between more death
21 penalty to make it consistent or less life -- or more
22 life in prison, what would you do?

23 A That's a good question. Probably more death
24 penalty.

25 Q Okay. To make it more consistent?

1 A Just make the people think about it before they
2 actually commit the crime or commit the action, kind of
3 fresh in your head.

4 Q I want to bring you back to it. I'm not going to
5 ask you about changing the law now. I'm going to talk
6 to you about the way the law is right now.

7 If you were making that decision in a capital case
8 where the death penalty is on the table and you heard
9 about the intentional killing, evil intent plus
10 aggravation evidence, and you're fixing punishment,
11 would the background characteristics of the person who
12 killed, the defendant, would that be relevant in fixing
13 that punishment?

14 A The background?

15 Q Yes, sir.

16 A I don't understand what you mean, background.

17 Like --

18 Q Somebody's walk in life, who they are, things
19 that --

20 A No, that wouldn't matter.

21 Q Those things would not be relevant?

22 A No.

23 Q And that's because the facts of the incident, the
24 crime, the murder, that would control?

25 A Yes, sir.

1 Q Okay. Now, the answers that you have given us, it
2 looks like you're putting careful thought in all your
3 answers. Is that true?

4 A Yeah. Yeah.

5 Q And they're candid, honest?

6 A Yes, sir, they are.

7 Q And true?

8 A Yes, sir.

9 Q And they're a reflection of your value system?

10 A Yes, sir.

11 Q Your moral code?

12 A (Nodding.)

13 Q Emanate from a deep place?

14 A Yes, sir.

15 Q I can't change that moral code, can I?

16 A No, not at this point in time.

17 Q I didn't think so.

18 Now, what I want to talk to you a little bit about
19 is the way the procedure works in a capital case and
20 how it's different. It's so, like you said, rare that
21 there's some legal principles that are a little
22 peculiar. Just like the judge asked you could you
23 follow some of the legal principles that he put out,
24 I'm going to ask about a couple more.

25 A Okay.

1 Q So we're leaving the free speech zone. I'm just
2 going to ask you if you can follow and respect these
3 principles of law.

4 A Okay.

5 Q The guilt phase, we all have a pretty good idea
6 generally of that from newspapers, news, television
7 shows. And that is basically did the person commit the
8 crime with a criminal intent, right?

9 A Right.

10 Q And all 12 people have to agree pretty much on the
11 same thing to find somebody guilty.

12 A Yes, sir.

13 Q And your experience probably tells you those
14 questions, did the person do it or not, those are fact
15 based or science based questions.

16 A Yes, sir.

17 Q They either are or they are not. Are you with you
18 me?

19 A Yes, sir.

20 Q Now I want to leave that and compare it to the
21 sentencing phase and compare it to some of the
22 instructions the judge will give you to see if you can
23 follow these principles.

24 The sentencing phase decision for an individual
25 juror is described as an individual moral judgment.

1 Did you know that?

2 A No.

3 Q Okay. It's more of an emotional moral decision,
4 and facts and science aren't really going to help us.

5 A I agree with that. Yeah, that make sense.

6 Q And the judge would charge each individual juror
7 in reaching that analysis, their decision, their
8 individual moral judgment, that any individual juror
9 can vote for the life penalty for any reason, no reason
10 or mercy alone. Did you know that?

11 A I didn't know that.

12 Q But you know it today.

13 A I learned a lot.

14 Q It's a lot to bite off. You will know more than a
15 law school student here in a second. Now that you know
16 that and you know that's a principle of law, can you
17 respect and follow that?

18 A Yeah, I can follow it, yes, sir.

19 Q I'm going to take each one of those just briefly.
20 And that is any reason. First off, it's not required
21 that there be agreement as to what -- there doesn't
22 have to be any agreement as to a reason to vote for the
23 life penalty. Do you understand what I'm saying?

24 A Agreement with the jurors?

25 Q Among the jurors.

1 A Okay.

2 Q To make it simple, I'll do it by example. A juror
3 sitting here could say, "I saw something in the
4 person's background, their walk in life, who they are.
5 It resonated with me. I want to vote for life for
6 them." Somebody in the back might say, "I saw
7 something in the facts of the incident of how these two
8 people came together and the incident and something
9 about the facts, that's a reason for me to vote for
10 life." And they don't agree with each other. In fact,
11 one of them said to the other one, "I don't see what
12 you see." But they all have that reason to vote for
13 life. Nobody has to agree with them. Did you know
14 that?

15 A No, I didn't know that.

16 Q A lot of people come here thinking, "If we are
17 going to vote for life for this reason, we all have to
18 agree on it," but that isn't true. Do you understand
19 that?

20 A Yes.

21 Q You can follow the judge's instruction on that?

22 A Yeah, as long as it's been proven, I'm good to go.

23 Q Now, another part of that is that any individual
24 juror can vote for life for no reason. That's a
25 peculiar principle. Normally you think we have to have

1 a reason to vote on something, especially something so
2 important that we're here for today.

3 And that's really for some jurors. You know, if a
4 juror was to say to you, "I heard the judge's
5 instructions. I'm following them. The death penalty
6 doesn't sit comfortable with me. I'm going to vote for
7 life for no reason. I don't have the words to express
8 my position or articulate it, but he said I could do it
9 and for no reason I'm voting for life," could you let
10 him do that?

11 A Repeat the question.

12 Q If somebody said, "I want to vote for life. And I
13 heard the judge say no reason. I don't have a reason,
14 but I'm voting for life," could you let them do that?

15 A Could I let the other juror do that?

16 Q Yes.

17 A I suppose so, yes. He has his own opinion, so
18 yeah.

19 Q Sure. Well, that's the law. If somebody says
20 that's what I want to do --

21 A Yeah.

22 Q You can respect that principle of law?

23 A Yeah. Yeah.

24 Q And then there's mercy. The judge talked to you
25 about mercy. Is, in your view, mercy earned or freely

1 bestowed?

2 A Can you explain a little bit better?

3 Q Does somebody have to earn someone's mercy by
4 doing something in their life, or can they just be in a
5 position where they might get mercy by grace, I think
6 is what the judge said?

7 A I would say they have to earn it, the individual.

8 Q Like their walk in life would have to show some --

9 A Yeah, they have to show they earned it or deserve
10 it.

11 Q And there is another principle of the law that if
12 you would -- if you were to be a juror, you would take
13 an oath. And the oath would require you and 11 other
14 jurors to try the case based on the evidence presented
15 in the courtroom.

16 A Uh-huh.

17 Q And based on the law that the judge gives. And
18 that would include considering all the evidence in both
19 aggravation and mitigation, fairly considering both
20 penalties. Can you do that?

21 A Yes, sir.

22 Q Okay. Now, if you found yourself in a position
23 where, after the case and the jury is deliberating, 11
24 other jurors, every other juror, took a position
25 different from you, would you go over to the majority

1 side?

2 A No. I'd stick to my belief or opinion.

3 Q Okay. And what I was going to tell you is that
4 once a juror reaches their individual moral judgment,
5 and it would harm their conscience to change it, if
6 they just threw in with the majority for consensus or
7 unanimity, that would actually be a violation of the
8 juror oath. Did you know that?

9 A No, I didn't know.

10 Q You know it now. And you can respect and follow
11 that?

12 A Yes, sir.

13 Q And I'm not saying that we wouldn't expect civil
14 discourse, an exchange of ideas and thoughts. But as
15 soon as that person says, "It would harm my conscience
16 to change my position," you can let them stay there?

17 A Okay.

18 Q Could you?

19 A Okay. Yes.

20 Q And respect their position?

21 A Yes.

22 Q And have your position respected?

23 A Yes, sir.

24 Q Now, in South Carolina, in a case like this, a
25 capital case, if the jury was to -- and I want to make

1 it clear. I think the judge mentioned it. Because I'm
2 talking about penalty issues, I am in no way conceding
3 that Mr. Cottrell is innocent (sic) of the charge. Do
4 you understand that?

5 A Okay.

6 Q I don't want you to think that because we're
7 talking about penalty we'll get there. Do you
8 understand that?

9 A Okay.

10 Q If you were on the jury, I'd come to you and the
11 other jurors and I would ask for a not guilty verdict.
12 Not just because I'm asking for it, but because the
13 evidence supports it. You wouldn't hold that against
14 Mr. Cottrell in any way, would you?

15 A No.

16 Q You would expect that?

17 A Yes.

18 Q It wouldn't be fair otherwise, would it?

19 A That's right.

20 Q Now, in South Carolina, if the jury was to -- I'm
21 not talking about this jury. Any jury in South
22 Carolina in a capital case, if they were to vote the
23 death penalty, they would actually have to sign the
24 death warrant.

25 A Oh.

1 Q It's pretty heavy, right?

2 A Yeah, I didn't know that.

3 Q Your signature would be on a document, a public
4 document, that would, in essence, be the warrant for a
5 human being to die. Could you sign that?

6 A I could sign it, yes.

7 Q Okay.

8 MR. McGUIRE: If I could have just a second,
9 Judge.

10 That's all I have. Thank you.

11 THE COURT: All right.

12 EXAMINATION BY MR. RICHARDSON:

13 Q Mr. Youmans, my name is Jimmy Richardson. I'm the
14 Solicitor for Horry and Georgetown Counties, and this
15 is Mr. Scott Hixson. He's the Chief Deputy Assistant
16 Solicitor, and he will be helping, we together, will
17 bring the State's case.

18 I just -- I don't want to trick you with anything.
19 Did you find any of that confusing, the last series --

20 A I thought it went pretty well.

21 Q Okay. Here's what we're up against. Part one is
22 just was he guilty or was he not guilty. Okay? And
23 all 12 of you would have to determine unanimously that
24 he was, in fact, guilty of murder.

25 A Okay.

1 Q All right? Then that what Judge Hyman was talking
2 about, the State plus, the State, since this is a
3 capital case instead of just a regular murder, the
4 State would have to show an aggravating circumstance.

5 A Okay.

6 Q Something that makes it worse. All right? And
7 you guys together as a group would have to determine
8 again unanimously beyond a reasonable doubt that not
9 only was he guilty, but now is that extra there, that
10 aggravating circumstance that makes it even worse. All
11 right?

12 If you find guilt plus aggravation, you understand
13 that you don't have to give the death penalty at that
14 point?

15 A Yes, sir, I understand. Yes.

16 Q You could go from life in prison all the way to
17 the death penalty. All right?

18 A Okay.

19 Q And what do you think you and the 12 of y'all, the
20 11 others, are going to talk about once you get to the
21 point where you say, "Okay, he's guilty. The
22 aggravation is there." What helps you to determine
23 whether it should be life or the death penalty?

24 A To me it would be the malice, intent part of it,
25 show that it was premeditated without a doubt before he

1 actually committed the act.

2 Q All right. Would it surprise you to know that you
3 would have already decided on murder, the malice part.
4 All right? That would -- part one of this trial would
5 be the killing of another -- in other words, I didn't
6 kill myself -- with malice aforethought. In other
7 words, some evil intent sprang up in my heart.

8 And, hey, when we keep talking about evil, it
9 ain't like the devil or anything like that. It is
10 that, "I meant to kill that person. I did what I set
11 out to do."

12 A Okay.

13 Q And for today don't even worry about all of that
14 because the judge is going to charge you, if you make
15 this jury, on all that stuff. But it's not like devil
16 appeared pitchfork, that sort of evil. It's just that,
17 "I meant to do what I set out to do. I didn't make an
18 accident or a mistake."

19 A Okay.

20 Q But you're on to something. Would you agree with
21 me that what is in the person's mind could be much
22 worse or you could have really, really bad malice or
23 you could have not as bad malice but still malice. In
24 other words, "I meant to do what I set out to do," or,
25 "I meant to do it because I want to kill 40 people and

1 this was Number 17." I'm not saying that he did that.

2 A Yeah.

3 Q But some is worse than others, right?

4 A I'd say so, yes.

5 Q So you would have to, in part, look at not just
6 that malice was there, but how bad is the malice.

7 MR. McGUIRE: Your Honor, I'm going to object.
8 That's a misstatement of law.

9 THE COURT: Well, I'm going to let him continue.
10 Go ahead and ask your questions.

11 MR. RICHARDSON: Well, I don't want to --

12 THE COURT: I'm not sure there was a statement of
13 law.

14 BY MR. RICHARDSON:

15 Q I don't want to -- some murders -- all murders are
16 bad, right?

17 A Right, yes.

18 Q Some are worse than others, and that's why you've
19 got the capital case. All right? Would you work with
20 the other 11 to discuss how bad is this? There is --
21 this is something that really deserves -- he's earned
22 the death penalty. Could we agree that sometimes
23 there's murder and there's aggravation, and reasonable
24 minds could say -- and I believe you're one of them --
25 "This isn't as bad as it could have been. This is bad

1 but not death penalty bad." Do you see what I'm
2 saying?

3 A Yeah.

4 Q That you could have a murder and an aggravator,
5 but you could say, "Given all the things that the
6 defense told me about him, what was in his mind, the
7 reason he did some of this stuff, I don't want to give
8 the death penalty in this case."

9 What I'm trying get to is I need make sure that
10 you're a reasonable juror. Because that's all the
11 State or the defense can ask for, somebody that's going
12 to follow the law but who's also going to look at good
13 things for the defendant and bad things against the
14 defendant.

15 A Uh-huh.

16 Q And not so much weigh them, but to at least
17 consider all of it, everything that -- somebody else
18 will be sitting in that stand pretty soon. And you
19 need to be able to hear them whether they're coming
20 from the State or the defense. Do you think you could
21 do that?

22 A Yes, sir, I'm very open-minded.

23 Q That's what we're looking for. You get -- I'm not
24 saying that they would because they don't have to put
25 up any mitigation. But if they were to put up a school

1 teacher or somebody who says he was a good child in the
2 past, that should come into your -- what the steps that
3 he took as a kid and where it finally went wrong, if
4 there was some sort of reason for why it went wrong,
5 would you consider that reason?

6 A Yeah, I'd put that in the equation, yeah. I
7 would.

8 Q And that's what we're talking about when we're
9 saying mitigation. So are you saying that you could
10 consider all the mitigating circumstances that the
11 defense would put up?

12 A Yes, I could put that into play, yes.

13 Q Like the judge has said several times, you fit the
14 facts with the law and put them all together, and then
15 as long as you're considering the mitigation and the
16 aggravation and everything that comes from that stand,
17 that's that being fair means.

18 A Yeah. I can be fair and impartial.

19 Q And do you think you can give both the State and
20 the defense a fair case?

21 A Yes, sir, I can.

22 Q And reason through everything that comes from the
23 stand?

24 A Yes, sir.

25 Q And apply the law as the judge instructs you?

1 A So long as he instructs me, yeah. Don't ask me to
2 memorize it. Yeah.

3 MR. RICHARDSON: I have no further questions.

4 THE COURT: Would you step down, Mr. Youmans, and
5 step outside with Mr. Ropp.

6 (WHEREUPON, Mr. Youmans exited the courtroom
7 at 5:58 p.m.)

8 THE COURT: Mr. McGuire.

9 MR. MCGUIRE: Thank you, Judge. Move to excuse
10 him for cause regarding his thoughts and opinions on
11 punishment and mitigation. And I would, just for the
12 record, just follow that on the same constitutional
13 grounds I stated before. Thank you.

14 MR. RICHARDSON: Your Honor, we believe that he is
15 qualified, and we believe that he spoke to your Honor
16 and answered all of your questions. The only time that
17 he got mixed up was when he was in fantasy land and
18 free speech zone. So I think he was very confused at
19 what was being said to him and we believe that he is
20 qualified.

21 THE COURT: You know, the issue is whether or not
22 there's anything that would substantially hinder his
23 ability to perform his duties as a juror. I questioned
24 him, Mr. McGuire questioned him, you questioned him,
25 and the answers he gave seemed to depend on who was

1 questioning him.

2 I have serious, serious doubts as to whether or
3 not this particular juror could perform his duties as a
4 juror and in this case. I am just afraid that this
5 juror would be so subject to suggestion by any other
6 juror in this matter, not only on the facts but on the
7 law. And I would agree with the defense that he should
8 be found not qualified.

9 Okay. Mr. Ropp.

10 (WHEREUPON, Mr. Youmans entered the courtroom
11 at 6:00 p.m.)

12 THE COURT: Mr. Youmans, you may go. We don't
13 need your services. Thank you very much for spending
14 time with us.

15 MR. YOUMANS: Okay.

16 (WHEREUPON, Mr. Youmans exited the courtroom
17 at 6:01 p.m.)

18 THE COURT: Shields.

19 MR. RICHARDSON: Your Honor, I really need to
20 point something out. You know, I've watched as your
21 Honor has, and throughout the course of this, potential
22 jurors come in and seem to be doing well until they hit
23 these hypothetical questions about fantasy land and
24 changing the law.

25 It is confusing for law students and jurists, but

1 especially if you're saying, All right. Not what the
2 law is, not what Judge Hyman has just instructed you
3 on, but now here's a new version of the law. And then
4 from working off of that new version of the law where
5 you could give death penalty for any murder, then they
6 start asking them a series of questions on that and
7 then flip back to what is reality.

8 And anybody is going to be confused to that. Now
9 I don't disagree with the Court at all. He
10 flip-flopped several times, Mr. Youmans. But there's
11 been some other people that have come through and
12 certainly had a hard time jumping back and forth.

13 THE COURT: I understand that. And I have been
14 very concerned about Mr. McGuire's method of
15 questioning these jurors, and I have seen jurors who
16 seem to be very firm and clear as to what they wanted
17 to tell me or what they responded to me become what I
18 thought was confused.

19 But this particular prospective juror I don't
20 think could have been resurrected. I really think that
21 this person would have had serious problems following
22 the law, sticking to the law, and would have been
23 subject undoubtedly to suggestions by other jurors, and
24 I just did not feel comfortable.

25 I did not think he was qualified. I think there

1 was clear evidence that there was something there that
2 would substantially impair his ability to serve as a
3 juror in this case. That's why I found him
4 unqualified.

5 I would entertain -- we have lots of work to do
6 today, but if you have anything that you want to
7 provide me by way of authority concerning the use of
8 these type of hypotheticals, I will be happy to
9 entertain that.

10 MR. RICHARDSON: Yes, sir. Your Honor, that's
11 *State v. Patterson*, 384 S.E.2d 699.

12 THE COURT: All right. I'll have Drew get that.
13 Give me the last three numbers.

14 MR. RICHARDSON: Yes, sir. 699.

15 THE COURT: I will, of course, allow Mr. McGuire
16 to provide anything for me that he has.

17 Let's go ahead and bring in the next. We have
18 only done 16. We have 14 more to go. Looks like we'll
19 be here until midnight again tonight.

20 Shields.

21 (WHEREUPON, Mr. Shields entered the courtroom
22 at 6:04 p.m.)

23 FRANK SHIELDS,

24 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

25 EXAMINATION BY THE COURT:

1 Q Hello, Mr. Shields.

2 A Hello, your Honor. How you doing?

3 Q Good to see you.

4 A Thank you.

5 Q Mr. Shields, as a preliminary matter, let me talk
6 with you about something. I see here on the jury
7 category that you have indicated that you're an A type
8 juror; is that correct?

9 A You mean on there?

10 Q Yes, A.

11 A Basically all three of those questions really
12 could not describe the type of juror I would be, but
13 that was the closest.

14 Q Okay. You indicate the best description of you is
15 a juror that simply feels once a murder has been
16 committed, the death penalty is the only appropriate
17 punishment no matter what the circumstances of the
18 case.

19 Okay. Tell me, then, how that relates to the way
20 you feel.

21 A Well, that would be with an explanation, your
22 Honor.

23 Q Okay. Explain.

24 A I believe that, in my opinion, it is if you take
25 the life of a police officer in the line of duty, it

1 should be murder. It should be a death sentence. But
2 either one of those three questions would cover that.
3 That would probably be the closest.

4 Q Well, obviously I read the indictment to you --

5 A Correct.

6 Q -- on Monday. And that indictment alleges, of
7 course, that Mr. Cottrell -- it alleges only. There's
8 no proof of that.

9 A Correct.

10 Q But it alleges he took the life of a police
11 officer in the line of duty.

12 A Correct.

13 Q And certainly that would be -- the State would,
14 taking this case, the State would seek to prove.

15 A Correct.

16 Q If we were to end this case and you were a juror.
17 And just for argument sake -- I'm not suggesting this
18 is what would happen -- but for argument sake if
19 Mr. Cottrell was convicted of murder in the death of
20 the officer, okay, you know then we would go to the --

21 A Sentencing stage.

22 Q -- to the sentencing phase. Yes, you have a grasp
23 of it. Is your opinion such that that fact alone, the
24 fact that there was a police officer who was killed in
25 the line of duty and that you had found that, would

1 that irrevocably indicate to you that the appropriate
2 sentence is the death sentence?

3 A Correct, it would.

4 Q Do you feel strongly about that?

5 A Yes, sir, your Honor, I do.

6 Q Would anything I could say or do change that
7 feeling that you have?

8 A I don't think so. It's an opinion I've always
9 had.

10 Q And you're entitled to your opinion. And please
11 don't --

12 A No. I know you're not trying to change my
13 opinion. I've had law enforcement in my family. My
14 wife is retired law enforcement for 30-plus years. And
15 I sat home many nights worried about her out in the
16 field doing what she's doing. That's always been my
17 opinion. It's in my heart.

18 Q All right. Let me ask you this. Are you
19 irrevocably committed to that?

20 A Yes, sir.

21 Q If you got to the point, as I mentioned a moment
22 ago, if you got to the point where he had been
23 convicted of the murder of the officer and the officer
24 happened to be in the line of duty, that -- let me put
25 it this way -- your mind would be poisoned. You would

1 be unreceptive to any other mitigating circumstances or
2 anything, in your opinion the only appropriate penalty
3 would be death?

4 A Yes, sir, I think it would. I think it would be
5 hard for me to change --

6 THE COURT: Do you need to examine him?

7 MS. NORRIS: No.

8 THE COURT: Mr. Hixson?

9 MR. HIXSON: No, sir.

10 THE COURT: All right. Mr. --

11 MR. SHIELDS: Shields.

12 THE COURT: Mr. Shields. I've lost my list.

13 Mr. Shields, I want to thank you for coming and
14 participating. How old are you, sir?

15 MR. SHIELDS: 63.

16 THE COURT: Not quite old enough.

17 MR. SHIELDS: Two more years.

18 THE COURT: Mr. Shields, we appreciate the fact
19 that you have an opinion and we respect your opinion.
20 And that is your opinion and you're entitled to have
21 it, but I am going to excuse you on this case. I
22 believe you have very candidly told us that you could
23 not be fair and impartial in this matter, so we're
24 going to excuse you. Thank you. You are released and
25 you do not need to come back. Thank you, sir.

1 MR. SHIELDS: Thank you, your Honor.

2 THE COURT: All right.

3 Mr. Lepera.

4 He has been excused?

5 MS. NORRIS: Yes, your Honor. We let him go for
6 work reasons.

7 THE COURT: Oh, that's right. I'm sorry. I
8 forgot.

9 MR. HIXSON: Your Honor, briefly, there are two
10 *Pattersons*. I want to make sure that cite is correct.
11 The correct cite is 29 S.C. 523.

12 MS. NORRIS: I think the *Patterson* you're looking
13 for is the trial was '95 the decision is about '97.

14 MR. HIXSON: That's right.

15 THE COURT: We have been at it for two or
16 three hours now, couple of hours. Another brief break.

17 (WHEREUPON, recess taken from 6:10 p.m.
18 to 6:19 p.m.)

19 THE COURT: Mr. Richardson, I found little
20 guidance in that cite that did involve a question that
21 could have been considered as hypothetical but the
22 Court really didn't address hypotheticals.

23 All right. Do we have our next panel?

24 (WHEREUPON, Prospective Jury Panel Number 9 came
25 into open court at approximately 6:20 p.m.)

1 THE COURT: All right. Ladies and gentlemen of
2 the jury, thank you for coming. Before we begin the
3 individual voir dire, I want to speak to you a few
4 minutes about some general matters that might shorten
5 up our process here. But before I begin, I'm going to
6 ask the clerk of court to place you under oath.

7 (WHEREUPON, the panel was sworn.)

8 THE COURT: Let me begin by saying that I had
9 found that all of you are qualified jurors, that is,
10 you meet the statutory or legal requirements for a
11 juror.

12 One of the other issues that we need to address is
13 whether or not there is an exemption that you may avail
14 yourself of. An exemption is an excuse that a juror
15 may use if it applies to that particular juror to be
16 excused from jury service. A juror is never required
17 to excuse himself or herself from jury service if an
18 exemption applies. It's a private right that you have.

19 For instance, 65 years of age or older is one of
20 the exemptions. And a juror who has reached that age
21 is perfectly entitled to stay on the jury if he or she
22 does not want to claim the exemption. So understand as
23 we go through these exemptions that you do not have to
24 claim them if you do not wish to, but we need to
25 address them.

1 Is there any member of the jury panel who is
2 65 years of age or older who wishes to claim that
3 exemption?

4 And let the record reflect that there is no
5 response to that question. Just want you to raise your
6 hands when I ask you a question.

7 Is there any juror who has served on a jury in
8 this courthouse within the next -- the last three
9 years? Jury service in the magistrate's court or the
10 municipal court or the federal court doesn't count.
11 Has to be here. But if it's been in the last three
12 years, you could claim that as an exemption.

13 Also if you have been on the Grand Jury within the
14 last five years, the Grand Jury is a special jury. It
15 doesn't hear cases like we have here in the courthouse.
16 It meets like once a month to determine whether or not
17 indictments should be issued in cases where people have
18 been charged with a crime.

19 If you were on the Grand Jury, you would know
20 because, as I said, it meets once a month and you have
21 to serve for a minimum of a year up to two years. So
22 you would know if you were on the Grand Jury.

23 Is anyone on this jury -- and there's no response
24 to that.

25 Does anyone on this jury panel have custody and

1 care of a child under the age of seven? It must be
2 your child or a child that you have custody of, and you
3 must be a person whose job it is to take care of that
4 child. That is what you do. It's sort of like a
5 stay-at-home mom or stay-at-home dad. If that's your
6 situation and you have no one else that can take care
7 of the child, you may claim that as an exemption. And
8 we would make a special circumstance since the jury in
9 this case has to be sequestered overnight. We would
10 certainly consider that as well.

11 Is there anyone in that situation?

12 And I see no response.

13 There's also an exemption for someone who takes
14 care of an elderly person or a person who is severely
15 disabled, either of which is unable to stay at home and
16 take care of themselves. And it's something like the
17 exemption for children. That is you on a regular basis
18 take care of that person. You're the person's
19 caretaker, and there's no one else to take care of that
20 person. And you may claim that as an exemption.

21 Is anyone in that category?

22 And there is no response.

23 Also, full-time students are entitled to an
24 exemption. I think we have taken care of all those,
25 but are any of you full-time students? No.

1 Do any of you work at a school? That can be
2 public school, K through 12, private school, technical
3 school, college, anything like that. If you work there
4 and you have what we consider as a necessary job and no
5 one is available to take your place, you may claim that
6 as an exemption.

7 Does anyone fall into that category?

8 And there is no response.

9 Also and finally a person who performs services
10 for a business or commercial or agricultural enterprise
11 and whose services are so essential to that business
12 that absence from that business closes it down. That
13 is, it cannot operate without that individual there.
14 That is, customers cannot be received and employees
15 have to go home.

16 If that's your situation, let me know.

17 And there is no response that.

18 Those are the exemptions that apply. As I said, I
19 found y'all qualified statutorily to reach this point,
20 and no one is claiming an exemption.

21 Now, before we begin the individual voir dire or
22 questioning, I think I explained how that would work to
23 you on Monday. I want to talk to you a little bit or
24 give you some information generally about how a capital
25 death penalty case is or a capital murder case is

1 conducted. And there's two purposes in that.

2 I want you to understand how the process works
3 because I'm going to be asking you personally if you
4 have any problems with that generally, and I want you
5 to understand what the attorneys are talking about when
6 they are asking you questions as well.

7 Let me begin by saying that a capital case or a
8 death penalty case, as we often refer to it, is a very
9 unique type of murder case. A capital case or a death
10 penalty case only arises in the case of a murder.
11 Across this state every year there are a number of
12 murder cases that are tried. And they are what we
13 would call ordinary murder cases, that is, the
14 defendant has unlawfully taken the life of another
15 human being with malice aforethought.

16 Malice aforethought is an element of all murder
17 cases. Many people get malice aforethought confused
18 with aggravating circumstance. They're two different
19 things. All murders require malice aforethought.
20 There are other kinds of homicides like perhaps a
21 voluntary homicide that doesn't involve malice
22 aforethought. They are not murder. All murder cases
23 involve malice aforethought.

24 So in a typical murder case -- typical -- the
25 State would have to prove that the defendant took the

1 life of another person unlawfully with malice
2 aforethought. And malice aforethought is described by
3 the law as being a wickedness, having hatred towards
4 the victim, an act committed intentionally and
5 purposely with a blackened heart, as they say. Also
6 it's a word similar that has been used to describe
7 malice aforethought. But when you get to that point,
8 what you have is simply a murder case.

9 Let me back up a minute and tell you that in every
10 case any person who is charged with an offense has what
11 we call the presumption of innocence. Have any of you
12 heard that term? I see some nodding heads. Let me
13 tell you what I know about it.

14 It's a legal term, a legal phrase, something that
15 describes a legal theory. In this country, across this
16 country there is this legal theory known as the
17 presumption of innocence. What it means is any person
18 charged with a crime is absolutely presumed to be
19 innocent until the State overcomes that presumption by
20 proving the guilt of the person beyond a reasonable
21 doubt unanimously to a jury.

22 So the presumption of innocence doesn't end when
23 someone walks in the courtroom. It continues until the
24 jury reaches that verdict. And only then is that
25 presumption of innocence overcome.

1 The defendant here, Mr. Cottrell, has pled not
2 guilty to the charge of capital murder. Therefore, he
3 is presumed and must be presumed to be innocent. His
4 attorneys have told you or will tell you that it's
5 their position that he is innocent of this charge.

6 The reason I am stressing this to you is that
7 during the questioning, we're going to talk about two
8 parts of a capital case. One is called the guilt
9 phase, and that's where the murder part of the offense
10 would be tried. If and only if there's a conviction on
11 that would we move to the sentencing part. And I'm
12 going to talk to you more about that in a minute.

13 So if we talk about the sentencing part here
14 today, you might get the impression that we are
15 assuming that he is going to be convicted of the
16 initial murder, and that is certainly not the
17 impression that we want to convey to you. That would
18 be entirely wrong. That would be improper.

19 We talk about both phases simply because this is
20 the only time we will get a chance to speak to you and
21 we need to talk to you about both. So don't draw any
22 conclusion from the fact that we're talking about both
23 or we're talking about a sentencing involving
24 Mr. Cottrell. It does not have any evidentiary weight,
25 and we don't want to transmit any feeling that we may

1 have about it. We don't have a feeling.

2 Let's go back now. I told you a moment ago what
3 murder was, the murder as we will see tried across this
4 state. In certain circumstances, the State might
5 decide that they're going to seek the death penalty in
6 a case. And we call that a capital murder or a capital
7 trial.

8 If that occurs, a whole new set of rules come into
9 play. There is a whole new procedure that must be
10 followed because capital murder or death penalty murder
11 is a different animal from the normal murder case.
12 They're very similar in many respects. They overlap in
13 some respects. But they are a different, different
14 animal.

15 As I said earlier, if this were a simple murder
16 case, we would come in here and the State would put up
17 evidence and attempt to convince the jury that the
18 defendant had unlawfully taken the life of another
19 person with that malice aforethought. And that would
20 be the only issues before the Court -- before the jury.
21 The jury would return a verdict, and the judge then
22 would decide what the sentence would be.

23 Let me discuss with you a moment a misconception
24 that most people have about a murder charge. Did you
25 realize that murder in the common sense or the common

1 way we look at that, that is that case that is usually
2 tried and the sentence is handed down by a judge, did
3 you know that murder is not a possible -- I mean the
4 death penalty is not a possible penalty? In a typical
5 murder case, the judge cannot sentence a person to
6 death. That is only something that can be done if
7 there is a capital case in which those extra steps and
8 the new rules apply. Okay?

9 If it is a capital case, it starts out just like a
10 typical murder case. And the State has to prove that
11 the defendant committed the murder, that is, unlawfully
12 took the life of a person with malice aforethought.
13 Okay?

14 Then if and only if the State does prove that
15 unanimously and beyond a reasonable doubt to the jury
16 and the jury makes that finding, only then does the
17 case then move to the second phase or what we call the
18 penalty phase.

19 And the reason it does that is this is where the
20 main difference between an ordinary murder and a
21 capital murder occurs. A capital murder is an ordinary
22 murder plus something else. An aggravating
23 circumstance. There must not only be an ordinary
24 murder, the taking of a human life unlawfully with
25 malice aforethought, but there must also be proof that

1 the murder took place in conjunction with some other
2 aggravating circumstance -- something that made it
3 worse, something that made it more heinous. It can be
4 things like in the commission of a rape which would be
5 the commission of another crime or specific crime or it
6 can be something like the murder of a child. That's
7 what we call a status offense.

8 I don't think either one of those have anything to
9 do with this case, and that's the reason I picked them.
10 They don't have anything to do with this case, but I
11 just wanted to give you some example to help you
12 understand what we're talking about.

13 Well, the sentencing phase begins with the State
14 producing evidence to establish at least one of the
15 several aggravating circumstances that the legislature
16 has defined in the death penalty statute. The
17 legislature has said, If you want to seek the death
18 penalty after proving murder, you have to come over
19 here and prove one of these aggravating circumstances,
20 and you have to prove it just like you had to prove it
21 in the murder case. The State has to prove it beyond a
22 reasonable doubt unanimously to the jury. The jury has
23 to make a unanimous decision that the State has proven
24 it beyond a reasonable doubt.

25 Now, these aggravating circumstances -- and some

1 jurors get confused with this -- are not malice.
2 Malice was proven over here in the first step. Malice
3 is part of the ordinary murder. That had already been
4 proven. This is something different.

5 Now, if the State is successful in doing that and
6 only if the State is successful in proving at least one
7 of those statutory aggravating circumstances, unless
8 that happens, the death penalty is not even a
9 consideration. It's not even on the table. The State
10 has to do those two things, murder plus something else.

11 Once that is done, that does not mean -- and if
12 that is done, that does not mean that the death penalty
13 automatically is given. Absolutely not. I will tell
14 you that there is absolutely no circumstance in which a
15 jury is told that they must represent -- I mean
16 recommend the death penalty. That is not a part of the
17 law in South Carolina.

18 In South Carolina -- this is another little
19 difference -- the capital case jury recommends the
20 sentence, not the judge. But the capital case jury
21 cannot -- does not even have available to it, may not
22 even consider the recommendation of the death penalty
23 unless the State has met those first two steps beyond a
24 reasonable doubt.

25 Then the jury by statute must consider any

1 mitigating circumstances. And the legislature again
2 set out a little box of mitigating circumstances. And
3 they said, "These are always mitigating circumstances.
4 These things we indicated right here." But they treat
5 mitigating circumstances a little different than they
6 treat aggravating circumstances. When and if you're
7 called upon to determine if there is an aggravating
8 circumstance, you may look at the circumstances of the
9 case and say, "Well, there's not one on this list, but
10 something else over here happened. It seems to be just
11 as bad to us, so let's call that an aggravating
12 circumstance." Cannot do that. Absolutely not. Must
13 only prove -- the State must only use one of the
14 aggravators that are in the box, the list.

15 But when you, the jury, are sent out and said --
16 and told to look at, to talk about, to consider the
17 mitigating circumstances, and those are any
18 circumstances that would lessen the culpability or
19 lessen the badness of the murder, you look not only at
20 the ones that the legislature has put in the box, but
21 you have to look at everything else and you, as an
22 individual juror, can pick one of those if you find
23 support for it. You can find a mitigating
24 circumstance.

25 And then you look at the mitigating circumstances

1 and you compare them to the aggravating circumstances
2 and the other circumstances in the case and from that
3 you can determine whether or not the case justifies the
4 imposition of the death penalty or life imprisonment.

5 Let me back up and add a little to that. Those
6 are the two possible sentences if the State has reached
7 the point, they have proved murder and the aggravator
8 beyond a reasonable doubt. Those are the two possible
9 sentences. Before you can even consider murder, as I
10 said, you have got to look for mitigators. You have to
11 look but you don't have to find a single one to reject
12 the death penalty. A juror can find mitigating
13 circumstances and compare those to the aggravating
14 circumstances and the other circumstances in the case,
15 and they can decide that the circumstances justify only
16 the imposition of a life sentence. Or if they find
17 absolutely no mitigating circumstances, they can still
18 say, "Well, for no reason we choose in this case to
19 recommend a life sentence," or they can simply look at
20 it and say, "We're going to extend mercy and recommend
21 a life sentence." And that mercy can be given because
22 it's deserved by the defendant. Maybe he did something
23 to deserve some mercy, or it can be given by just pure
24 grace to someone who didn't deserve it. The law
25 doesn't prevent you from doing that. Not at all.

1 But if you, as a jury, again feel that the
2 circumstances of the case justify it, you may recommend
3 the death penalty as a sentence. And I tell you that
4 the Court will follow your recommendation. Now, that's
5 how we go about trying, disposing of a capital murder
6 case. That's it in a nutshell. And at the end of this
7 case, if we get that far, I'm going to give you a more
8 detailed instruction. But that gives you a general
9 idea of what the law is and how the law works in a
10 capital case.

11 I hope you can see now how that is different from
12 a plain murder case where the State's biggest hurdle is
13 to prove malice. In a capital case you have to prove
14 malice and something else, that aggravator over there.

15 Now, I want you to keep that in mind. You can
16 think about it. Don't talk about it among yourselves,
17 but keep it in mind and mull it over, and in a moment
18 we'll be bringing you back in and we'll talk to you one
19 at a time. It looks like Mr. Johnson in the first one
20 on the list. Where is Mr. Johnson?

21 There's Mr. Johnson.

22 Mr. Johnson, you want to come around.

23 And, Bobby, would you take the rest of the jurors
24 into the jury room.

25 (WHEREUPON, Prospective Jury Panel Number 9, with

1 the exception of Mr. Johnson, exited the courtroom
2 at approximately 6:45 p.m.)

3 **ESTON JOHNSON,**
4 **BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:**

5 **EXAMINATION BY THE COURT:**

6 Q How you doing, Mr. Johnson?

7 A Fine, sir. How about you?

8 Q I'm doing quite well. Good to see you.

9 Mr. Johnson, do you remember on Monday I asked
10 y'all not to seek out any publicity about this case or
11 read anything about it or talk to anybody about it?

12 A Yes, sir.

13 Q Did you follow my instructions in that regard?

14 A Yes.

15 Q Good for you. I want to remind you that that
16 order will stay in effect until such time as you may be
17 released from this jury panel. Okay? So we're not
18 going to issue another one. That one stays in effect.
19 Okay?

20 Mr. Johnson, when you answer questions, this lady
21 over here is going to have to write them down. So we
22 ask you to answer verbally rather than just nod or
23 something like that. Okay?

24 A Yeah.

25 Q All right. Now, that microphone there will help

1 these other folks to hear you also. I know you're kind
2 of soft-spoken.

3 Now, Mr. Johnson, as a preliminary matter, let's
4 look at your letter or sheet that indicates what kind
5 of juror you are. Okay?

6 A Yes.

7 Q Mr. Johnson, you have checked that you are a type
8 A juror; is that right?

9 A Yes, sir.

10 Q Okay. And my understanding of that is that a type
11 A juror is one that simply feels that once a murder is
12 committed, the death penalty is the only appropriate
13 punishment no matter what the circumstances of the
14 case.

15 A That's correct.

16 Q Is that -- does that accurately describe your
17 opinion?

18 A Yes, sir.

19 Q All right. Now, Mr. Johnson, our purpose here is
20 to determine whether or not there's anything that would
21 substantially interfere with your performance of your
22 duties as a juror. And one of your duties, of course,
23 would be to follow the law.

24 We're all entitled to have opinions. Every one of
25 us is entitled to have an opinion. That's the great

1 thing about America.

2 A Yes, sir.

3 Q Okay? And so it's necessary that we ask you some
4 things about your opinions here today to find out if
5 those opinions would affect your ability to follow the
6 law in this case. So understand that we all appreciate
7 the fact that you have opinions, we respect your
8 opinions, and we are not here to try to change your
9 opinions. All we want you to do is just be candid and
10 honest with us about your opinions.

11 Now, Mr. Johnson, you heard me a moment ago
12 describe the way that capital murder cases are brought
13 to court and the way a jury goes about reaching a
14 verdict. Based upon your classification, let me ask
15 you this. If we went into phase number one, that's
16 where he's tried for the murder, we go in there and the
17 State starts putting up evidence to prove that the
18 defendant unlawfully took the life of another person
19 with malice aforethought, and at the end of two or
20 three days the jury went out and the jury came back and
21 said, "We find that the State has proved his guilt
22 beyond a reasonable doubt, we unanimously find," is it
23 your position that the only appropriate sentence in
24 that case would be murder (sic) at that point?

25 A Yes, sir.

1 Q Okay. And could you consider any other sentence
2 by going through this other process? Could you
3 consider life?

4 A Yes, sir.

5 Q All right.

6 A I would.

7 Q Now, let me ask you this. Would your feelings
8 about the death sentence, that being the appropriate
9 punishment, be so strong as to affect the way that you
10 look at the punishment in this case? Would it impair
11 your ability to consider life or death equally in this
12 case? Would you favor the death penalty?

13 A Yes, sir.

14 Q Okay. Do you think that by listening to a charge
15 on the law that you would overcome that, or is that
16 just part of your being, part of your opinions?

17 A I can overcome it probably.

18 Q You could. Let me tell you what. I'm going to
19 let the defense and the State question you on this
20 first.

21 MR. HIXSON: Let me just address one thing, Judge.
22 I know there was a mistake, you didn't mean to say
23 that, but when you said, "Would the only appropriate
24 sentence be murder," you just misstated it. You said
25 "murder," and he said, "Yes, it would be." That

1 question was just a little confusing.

2 THE COURT: Let me back up.

3 Mr. Johnson, do you feel that if a person commits
4 murder with no aggravating circumstances, the
5 appropriate punishment, no matter what the
6 circumstances of the case, is the death penalty?

7 A No, sir.

8 Q That is not your feeling?

9 A No, that's not my feeling.

10 Q Okay. All right. Well, tell me then how do you
11 feel about that? That's what a category A juror would
12 be. A category B juror would be one that thinks you
13 should never give the death penalty. A category C
14 juror is one that would need to hear the facts and
15 circumstances in aggravation and mitigation before he
16 or she could make the decision regarding punishment.
17 That's a C.

18 Now, which one more accurately describes you, one
19 that believes that it's always the appropriate penalty,
20 one that believes that death is never the appropriate
21 penalty, or one that believes you would have to look at
22 the facts and circumstances to decide?

23 A I have to look at the circumstances, but I think
24 that the death penalty is what I'd still stick with.

25 Q You would stick with the death penalty?

1 A Yes, sir.

2 Q Okay. All right.

3 A I could explain, but.

4 THE COURT: I'm going to let you examine on this,
5 Mr. Hixson or Ms. Norris.

6 EXAMINATION BY MS. NORRIS:

7 Q Mr. Johnson, I'm Teresa Norris. I know we got to
8 see each other across the room the other day. And you,
9 in particular, I'm very glad to get to talk to you
10 because, if I recall correctly, you were pretty much
11 sitting right in front of where you were the other day.

12 A Yes, ma'am. That's right.

13 Q And you passed me in the hall and you spoke and I
14 just smiled and nodded. And I want to apologize to you
15 for that. My mama taught me better, but under our
16 court rules, I'm not supposed to talk to potential
17 jurors except for right here. So I do apologize. I
18 wasn't trying to be rude.

19 On the question that the judge asked you, if I
20 just asked you your personal opinion about the death
21 penalty and what type case automatically gets the death
22 penalty, answer that for me. Just tell me how you
23 feel.

24 A Well, my opinion is the guy that was shot didn't
25 have the chance to have a jury. Okay?

1 Q Gotcha.

2 A In other words, he didn't have an opportunity. It
3 would have been nice if he had an opportunity to
4 explain his side of the story because, ma'am, I had a
5 brother that retired from the police force in Buds
6 (phonetic). And they found him dead behind a
7 convenience store over there five years ago. And they
8 ain't never found out who done it, you know.

9 Q I'm very sorry about that. Let me ask you some
10 follow-up to that.

11 (WHEREUPON, an off-the-record discussion was
12 held between the attorneys.)

13 MS. NORRIS: Your Honor, I think we can agree on
14 this one.

15 Thank you, sir, very much. And I'm very sorry
16 about your brother.

17 THE COURT: Is there agreement?

18 EXAMINATION BY MR. HIXSON:

19 Q Is that life experience, do you think that really
20 would impair your ability -- it's hard to get rid of a
21 life experience like that. Do you think that would
22 really affect your decision-making process here?

23 A Yeah, it's going to impair my ability because I
24 feel we all should have the same opportunity. We can
25 get hot headed and do things we shouldn't do, so if you

1 do the crime, you got to do the time one way or
2 another. Do you know what I mean?

3 Q I do, sir.

4 THE COURT: Mr. Johnson, you can step down and you
5 are excused. Thank you, sir.

6 (WHEREUPON, Mr. Johnson exited the courtroom
7 at 6:56 p.m.)

8 THE COURT: That was by agreement, Ms. Norris?

9 MS. NORRIS: Yes.

10 THE COURT: And that was by agreement, Mr. Hixson?

11 MR. HIXSON: Yes, sir.

12 (WHEREUPON, Mr. Soles entered the courtroom
13 at 6:57 p.m.)

14 JAMES SOLES,

15 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q Good afternoon, Mr. Soles. How are you?

18 A I'm fine. How are you?

19 Q I'm good. Mr. Soles, do you remember my
20 instructions on Monday not to talk about the case or
21 read anything about it or do any research about it,
22 that sort of thing?

23 A Yes, sir.

24 Q And have you conformed to that? Have you complied
25 with my order?

1 A Yes.

2 Q And do you understand that you would remain under
3 that until I have excused you?

4 A Yes, sir.

5 Q Now, Mr. Soles, we have received your letter in
6 which your category of juror has been indicated, and I
7 see here that you believe that a type C best describes
8 you; is that right?

9 A Yes, sir.

10 Q And just so that I make sure we're on the same
11 page, that is a juror who would need to hear the facts
12 and circumstances in aggravation and in mitigation
13 before he or she could make the decision regarding
14 punishment?

15 A Yes, sir.

16 Q Is that right?

17 A Uh-huh.

18 Q And you sat here a moment ago and heard me kind of
19 talk about the process that has to be followed in a
20 capital case or death penalty case?

21 A Yes, sir.

22 Q Especially concerning punishment and all. Do you
23 believe that the category that you have chosen is
24 consistent with the scheme that I described to you?

25 A Yes, sir, I believe so.

1 Q Do you see anything about that scheme or method
2 that I described that you would think would be so
3 unfair or oppressive to either party that you would
4 have any difficulty following a charge of the law along
5 those lines?

6 A No, sir.

7 Q Okay. You could do that.

8 Well, Mr. Soles, there's something that I want to
9 talk to you about concerning your ability to be fair
10 and impartial. You understand that is the primary
11 concern of everyone here, to make sure we have jurors
12 who are fair and impartial?

13 A Yes, sir.

14 Q Okay. And as I look at the death penalty process,
15 one of the things that's always given me some
16 concern -- I'm not critical of it at all. That's what
17 the legislature passed. I think it's the best thing
18 that we could have had, but I always have a little
19 concern about it and that is this.

20 You know, we talk about the fact that the jury
21 would first have to make a determination of whether or
22 not the defendant is guilty of murder first. And
23 that's the unlawful taking of a life with malice
24 aforethought.

25 Malice is a part of that. And then if that's

1 found beyond a reasonable doubt, the same jury goes up
2 and the State has to prove an aggravating circumstance.
3 You remember that?

4 A Yes.

5 Q And they have to prove it by beyond a reasonable
6 doubt?

7 A Yes.

8 Q That's where I've always had a little bit of
9 concern. Now, if you were on that jury and you had
10 just made a finding or a determination that the
11 defendant was guilty beyond a reasonable doubt of the
12 offense of murder and you were asked to come back the
13 next day, 24 hours later, and consider whether or not
14 the State has proved beyond a reasonable doubt the
15 existence of an aggravating circumstance, and that's
16 all new evidence --

17 A Yes, sir.

18 Q -- would your judgment be tainted by the fact that
19 he had been convicted of murder at that time or could
20 you remain objective, could you keep an open mind,
21 could you be fair in your determination of whether or
22 not the State had carried its burden of proving beyond
23 a reasonable doubt that the aggravators were present?

24 A I believe so, yes, sir.

25 Q You could do that. All right, sir. Now, do you

1 understand that just because he would be found guilty
2 of murder -- no death penalty -- no death penalty is on
3 the table. Do you understand that?

4 A Yes, sir.

5 Q Not at all. It would be only -- only if -- if and
6 only if the State proved the aggravators beyond a
7 reasonable doubt unanimously to the jury would the
8 possibility of a death penalty even be placed on the
9 table.

10 A Yes, sir.

11 Q Do you understand that?

12 A Uh-huh.

13 Q Do you personally have any problems with that? Do
14 you have an opinion as to whether or not the finding of
15 an aggravating circumstance should be necessary for the
16 imposition of the death penalty?

17 A I think I would agree with needing it.

18 Q Would you agree that it is necessary?

19 A I think yeah, the circumstances.

20 Q So you would not have any preconceived notion that
21 anyone who commits a murder should automatically be
22 sentenced to death?

23 A No, sir.

24 Q Did you hear me when I said there's no
25 circumstance in this state when anybody is

1 automatically, no matter what they did, no matter what
2 the jury finds, automatically has to be given the death
3 penalty? Do you understand that?

4 A Yes, sir.

5 Q And would you be willing, if we got to the point
6 that the State had proved murder had proved this extra
7 element here -- it's been referred to as murder plus
8 all week long, murder plus -- did that, could you then
9 fairly, fairly consider both the death penalty and life
10 imprisonment in your assessment of the case?

11 A I believe so, yes, sir.

12 Q Okay. You would not be so poisoned by the fact
13 that you had found an aggravating circumstance and that
14 you had found that the murder had been committed, that
15 would not so poison your mind, so to speak, that you
16 could not fairly consider either of the possible
17 penalties?

18 A No, sir.

19 Q You could do that?

20 A Uh-huh.

21 Q All right. And that's what you would do?

22 A Yes, sir.

23 Q All right. Mr. Soles, it's been said here several
24 times this week, usually by me, that we are all sort of
25 a product of our life experiences.

1 A Yes, sir.

2 Q We all have opinions. We have the right to have
3 opinions about anything. And we all have prejudices
4 and biases in some regard on some issue. No question
5 about that. And we all look at things in a certain way
6 or other. And that sort of makes up who we are.

7 And that, would you agree, is sort of the sum
8 total of all of our life experiences, everything from
9 education to upbringing, everything has to do with
10 that; do you agree --

11 A Yes, sir.

12 Q -- agree with that?

13 Well, what we want to know is about you, how you
14 feel about certain things and any interests or
15 prejudices or biases that you may have on a number of
16 issues because our ultimate goal is to determine
17 whether or not anything would substantially interfere
18 with your ability to be a fair and impartial juror.

19 A Yes, sir.

20 Q Said another way, perform the duties of a juror.
21 Okay?

22 A Yes, sir.

23 Q Now, I looked at my notes, and it would appear
24 that you did not respond when I asked if anybody knew
25 anything about the case or read anything about the case

1 or had an opinion about the case. Have you done any of
2 those things?

3 A No, sir.

4 Q Have you read anything about the case?

5 A No, sir, that I recall.

6 Q Now, Mr. Soles, tell me generally what you think
7 about the death penalty.

8 A I never put much thought into it. I guess I would
9 feel, I mean, if it's warranted, something that heinous
10 or bad has happened and really warrants that kind of
11 punishment, I'm okay with it.

12 Q So you would consider --

13 A But I don't think it should be handed out just...

14 Q You don't think it should just be handed out, but
15 you should look at how heinous the crime may have been,
16 that sort of thing?

17 A Uh-huh.

18 Q And is that sort of in keeping with the category
19 that you selected?

20 A I feel so, yes, sir.

21 Q Is that what you meant when you said you want to
22 look at the circumstances in aggravation and
23 mitigation? Is that consistent with that comment?

24 A Yes, sir.

25 Q Okay. Is there anything that we should know, is

1 there anything that you could tell us that will help us
2 understand whether or not James Soles has any opinion,
3 interest, bias, prejudices that might interfere in any
4 way with his ability to be a fair and impartial juror?

5 A I mean not off the top of my head, I don't believe
6 so.

7 Q Do you know that by taking the oath as a juror,
8 what you do is you make a commitment to Mr. Cottrell
9 and to the State of South Carolina to faithfully
10 perform your duties as a juror?

11 A Yes, sir.

12 Q And that is to consider only the evidence that's
13 offered in this case, nothing extraneous?

14 A Yes, sir.

15 Q Judge it solely upon the evidence in this case?

16 A Yes, sir.

17 Q And to apply that evidence to the law as I give it
18 to you, exactly as I give it to you. Do you
19 understand?

20 A Yes, sir.

21 Q The job of the jury is they decide what the facts
22 are. They gather the evidence and the jury alone
23 decides the facts, but the judge alone decides what the
24 law is. And, you know, when I charge you on the law,
25 you might hear somebody say, "You know, that just

1 doesn't sound like the law." Or, you know, "The boys
2 and I were down at the hunting club the other day, and
3 we were talking about that thing, and they told me it
4 was something else." Have you ever had anything like
5 that happen?

6 A I have, yes, sir.

7 Q "And they told me it was some other kind of law."
8 And part of your job as a juror would be to set that
9 aside, put that out of your mind and apply the law as I
10 give it to you. Do you think you could do that?

11 A Yes, sir.

12 Q Would you strive to do that?

13 A Yes, sir.

14 Q Do you have any problem at all with the concept
15 that Mr. Cottrell has pled not guilty and he has a
16 presumption of innocence?

17 A No, sir.

18 Q And that presumption will follow him throughout
19 the trial until and if the State overcomes it by
20 proving his guilt beyond a reasonable doubt?

21 A Yes, sir.

22 Q And you can remain objective throughout all phases
23 of this trial? You believe you can do that?

24 A I believe so.

25 THE COURT: Answer any questions.

1 EXAMINATION BY MS. NORRIS:

2 Q Good evening, sir. Is it "Soles"?

3 A "Soles," yes, ma'am.

4 Q I'm Teresa Norris. I know the other day somewhere
5 in this crowd you got to stand up and I got to stand
6 up, so I'm glad -- this is the one time we get to talk
7 together, and I'm glad for that.

8 On your questionnaire, I noted that you said that
9 you knew somebody in prison or someone who had been in
10 prison; is that right?

11 A Yes, ma'am.

12 Q Okay. Can you tell me who that is?

13 A It was my wife's brother. He served a short
14 sentence. I'm not even sure how long it was, honestly.
15 It was back before we got together.

16 Q Would that influence you in any way in terms of
17 being a juror?

18 A I don't believe so, no, ma'am.

19 Q The other thing I'm just curious about, did you
20 live in this county in 2002 and all the way up to today
21 or were you gone for work?

22 A In '02, as far as I can recall, I believe I was
23 still here. Let's see.

24 Q Let me make this simple. Have there been times
25 that you've been gone?

1 A Yes, ma'am. I lived in Columbia for a short time
2 in school and Charleston for a short time.

3 Q I thought it was either that or you're like me and
4 you sort of live under a rock, and you're one of the
5 few people that did not stand up on, "Have you heard
6 about this case."

7 A Yes, ma'am.

8 Q Okay. Prior to getting your jury summons, had you
9 ever given any real thought to the death penalty at
10 all?

11 A I guess a little. I mean, light discussion with
12 friends or something, but not a whole lot.

13 Q And when you had discussion with a friend, what
14 was your position, your discussion about the death
15 penalty?

16 A I mean, my opinion of it is, like I was saying
17 earlier, I think if it's warranted based on whatever
18 evidence and proving that something was high enough in
19 nature, you know, being that bad of a crime and it
20 warrants it, then I'm okay with it, I guess is what I'm
21 trying to say there. But they shouldn't just be given
22 out, "Well, you did this, you get the death penalty."

23 Q And understand there's no right or wrong answer.
24 You're in that chair. I'm asking you your opinion.

25 A Yes, ma'am.

1 Q At that point prior to your jury summons, if
2 you're just talking to your buddy at the hunting club,
3 at work or wherever, would you have been using the
4 language "if it warranted it" or were you saying --
5 would you say, "In my opinion this is the type case
6 where it's applicable"?

7 A No, not referencing a specific thing. Just if
8 something was bad enough.

9 Q Okay. Let me ask you this way. I think when you
10 were talking to the judge, you said "if it's heinous
11 enough."

12 A Yeah.

13 Q And you rephrased it there a little bit. What to
14 you makes it heinous enough or bad enough that it's a
15 death penalty case in your own opinion?

16 A I never honestly put quite that much thought into
17 what it would have to be. I mean, maybe something with
18 a child murder rape-type thing or something. Like I
19 say, it would have to be kind of off the charts in my
20 mind.

21 Q And if it was a rape murder, that in itself would
22 put it sort of off that chart where --

23 A Well, putting the child in there, yes, I would go
24 that far probably.

25 Q Okay. If it was a rape murder of a child or a

1 child victim murder?

2 A No, the rape murder of a child all together I feel
3 like.

4 Q Is there any other category of case that you can
5 think of?

6 MR. HIXSON: Your Honor, I would object to staking
7 out on specific instances that he would do that.

8 MS. NORRIS: I was just trying to understand what
9 was heinous enough, bad enough.

10 BY MS. NORRIS:

11 Q Understanding that none of us are going to ask you
12 questions about this case because, obviously, you
13 haven't heard all of the facts and circumstances. But
14 if you were to hear and you were convinced as a juror
15 that the State had proven murder -- there's no question
16 about that -- and if the State were to prove a
17 statutory aggravating circumstance that the legislature
18 has determined makes it bad enough to be eligible for
19 the death penalty, at that point would you be -- would
20 you feel that that's bad enough, heinous enough where
21 it reaches, your opinion, it ought to be automatically
22 the death penalty?

23 A I don't think so. I mean, I don't know what the
24 aggravators are or the details, but I'm not going to
25 say it would automatically be there.

1 Q Let me ask it this way. If you were in a case
2 where it reached that point where it was a child rape
3 murder, would you still want to know additional
4 information?

5 MR. HIXSON: Your Honor, I'm going to object to
6 that. Again, it's staking out using hypotheticals.

7 THE COURT: It is a hypothetical, and I've read
8 the most recent *Patterson* case.

9 And, Ms. Norris, I think that that's improper and
10 it is getting specific in trying to essentially stake
11 out or commit the potential juror, and I'd ask you to
12 approach it another way.

13 MS. NORRIS: All right.

14 BY MS. NORRIS:

15 Q Not talking hypothetically on that fact situation
16 or any fact situation, just legally, you have been a
17 juror and decided it's malice murder, and we found one
18 of those statutory aggravating circumstances that I'll
19 just say -- and the judge may have used this
20 language -- murder plus. So legally it's bad enough,
21 death eligible is the legal phrase I'll put on "bad
22 enough, heinous enough."

23 After that, would -- do you believe that it is
24 relevant, important information to hear additional
25 stuff about the defendant in that case? For example,

1 would you want to know about background, upbringing?

2 A Yes, ma'am.

3 Q And do you think -- and I'm not asking you about
4 this case. I'm just saying in general. You've said
5 that you would want to hear that. Do you think that
6 could make you go one way or the other as to whether
7 the death penalty or life without parole is
8 appropriate?

9 A Yes, ma'am.

10 Q Okay. And the judge has explained to you that --
11 I just want to make sure that you understand that in a
12 death penalty case, if you were seated as a juror,
13 you're never going to get an instruction that says, "If
14 you find A, B and C, you have to give the death
15 penalty."

16 A Yeah.

17 Q And the same is true on life. You're never going
18 to get an instruction that says, "A, B and C, you have
19 to impose a life sentence."

20 A Yes, ma'am.

21 Q And if you were seated in a death penalty jury, at
22 the end of it, you would be in the position where the
23 judge -- you've heard all the evidence, the judge has
24 given you the law, but when it comes down to the
25 decision about the death penalty versus life without

1 parole -- and those are the only two options -- legally
2 we call that an individual, reasoned moral judgment or
3 choice.

4 A Uh-huh.

5 Q You have to decide. And you would get an
6 instruction that you could consider giving life without
7 parole -- or not just consider, you could actually do.
8 You could give a life without parole sentence for any
9 reason or no reason.

10 A Uh-huh.

11 Q Or as a matter of mercy. Would you have any
12 problem, given those instructions, considering either
13 one?

14 A No, I don't believe so.

15 Q And if you were seated, moving from that box to
16 this one, one of the 12 jurors, if you were in that
17 position and you made your individual reasoned judgment
18 and you were part of 11 people who agreed but there was
19 one person who looked at the same evidence, following
20 the same law but reached a different individual
21 reasoned moral judgment -- and there's nothing improper
22 under that -- would you respect that person's decision
23 if they said after discussing it with you and the other
24 jurors, "Look, this is what I believe morally, after
25 determining all of this, this is my position and it

1 will violate my conscience to just change my vote to
2 join you," would you accept that and respect that or
3 would you try to persuade that person to join you and
4 the other ten?

5 A I'll accept their decision.

6 Q And if you were the one person that said, "Look,
7 this is my judgment," and the other 11 people had a
8 difference of opinion, would you give up your vote just
9 to go along or would you say, you know, essentially we
10 can agree to disagree?

11 A Agree to disagree.

12 Q And there's nothing unlawful about it.

13 A (Nodding.)

14 Q All right.

15 MS. NORRIS: Just a second, your Honor.

16 Thank you, sir. I don't have anything further.

17 EXAMINATION BY MR. HIXSON:

18 Q Thank you for your time, Mr. Soles.

19 MR. HIXSON: I have no further questions, your
20 Honor. I believe he's qualified.

21 THE COURT: You may step down, Mr. Soles. If you
22 would just step through the door there with Mr. Ropp.

23 MS. NORRIS: Your Honor, we agree he's qualified.

24 MR. RICHARDSON: He's qualified, your Honor.

25 THE COURT: All right.

1 Mr. Soles, you have been found or I have
2 determined that you are qualified and with the consent
3 of the attorneys. That means that you would be not
4 necessarily on the jury. This doesn't put you on the
5 jury, but it puts you on the panel, the final panel
6 from which the jury will be selected.

7 We're not going to need you for several days
8 because we were here until midnight last night. Looks
9 like we're going to be that late tonight. So what I
10 want you to do is Mr. Ropp is giving you a paper there
11 with a number on it. Call that number on Sunday and it
12 will tell you what day we want you to report for trial.

13 If you are selected, you're going to go on the
14 jury panel. And that means you will be immediately
15 sequestered. So bring with you your medications if you
16 have any, your toiletries, your clothing, things you
17 might need for several days. Have them in your car,
18 and we'll have a deputy help you get them if you get on
19 the jury and take you over to the hotel. All right?

20 MR. SOLES: All right.

21 THE COURT: Thank you, sir.

22 MR. SOLES: Thank you.

23 THE COURT: Call anytime after 6:00.

24 MR. SOLES: Okay.

25 (WHEREUPON, Mr. Soles exited the courtroom

1 at 7:21 p.m.)

2 (WHEREUPON, Ms. Shelley entered the courtroom

3 at 7:22 p.m.)

4 DONNA SHELLEY,

5 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT:

7 Q Good afternoon, Ms. Shelley. How are you?

8 A I'm doing fine.

9 Q Good to see you.

10 Ms. Shelley, do you remember on Monday I told you
11 jurors that I did not want you to expose yourself to
12 any publicity about this case or to talk about it with
13 anyone or to do any research on your own? Do you
14 remember all those things?

15 A (Nodding.)

16 Q Were you able to do that, comply with?

17 A Oh, yes, sir.

18 Q You did what I asked you to?

19 A Yes, sir.

20 Q All right. I appreciate that. And I'm going to
21 tell you -- I'm going to ask you or tell you that that
22 order stays in effect until you are released from this
23 jury panel. Okay?

24 A Okay.

25 Q Okay. Ms. Shelley, you were nice enough to fill

1 out the jury category sheet in which you described
2 yourself as a C type juror; is that right?

3 A Yes, sir.

4 Q Just so that we -- I make sure we're on the same
5 page, my understanding is that you're telling me that
6 you're the type of juror that would need to hear the
7 facts and circumstances in aggravation and in
8 mitigation before you could make a decision regarding
9 punishment; is that right?

10 A Yes, sir.

11 Q Okay. Do you remember when we talked a moment ago
12 and I kind of explained to you how the process worked?

13 A Yes, sir.

14 Q Okay. That process, do you think it's consistent
15 with your type of juror?

16 A Yes, sir.

17 Q Where you consider aggravating and mitigating
18 circumstances and things of that nature?

19 A Yes, sir.

20 Q Okay. Did you notice anything about the procedure
21 that I was describing to you that you thought was
22 unfair or oppressive to anyone to the extent that you
23 would have any trouble following the law pertaining to
24 that procedure if I charged you on that?

25 A I have no problem.

1 Q Okay. And would it fit with the type of juror you
2 are?

3 A Yes, sir.

4 Q Okay. Now, Ms. Shelley, we all have opinions and
5 thought processes that are obviously the product of our
6 upbringing and our life experiences and things of that
7 nature. Could you agree with me on that?

8 A Yes, sir.

9 Q And your opinions, your thought processes are very
10 important to us. Absolutely you have the right to have
11 your own opinion. That's America. And no one here is
12 going to try to change your mind or be critical of you
13 because of any opinion you have. We just need to know
14 what your opinion is.

15 A Okay.

16 Q Do you have an opinion about things -- let's say
17 the death penalty. Do you have an opinion about that?

18 A If it's warranted as you described --

19 Q Okay.

20 A -- with the mitigating circumstances or
21 aggravated. It's just like I circled C was I need to
22 know everything. And weigh everything, all the
23 information that we would get.

24 Q Okay.

25 A So if it was -- if I came to that decision that I

1 felt like I got all the information, then no, sir, I
2 would not have a problem with stating.

3 Q With the death penalty?

4 A No, sir.

5 Q If you reached the point and you're on this jury
6 where you were to contemplate or recommend a sentence,
7 I think I told you that there would be two possible
8 sentences. One would be life without parole. The
9 other would be the death penalty.

10 A Yes, sir.

11 Q Could you go into that process open-minded as to
12 each of those possible penalties?

13 A Yes, sir.

14 Q And could you give each one a chance? Could you
15 look at them both or would you be prone to do one or
16 the other more so?

17 A Again, before I could make that decision, I'd have
18 to weigh both -- I'd have to weigh all the information.

19 Q I understand.

20 A And upon that, I would be doing a whole lot of
21 praying to make sure that I reached the right decision.

22 Q Okay. All right. Let me ask you one other
23 question that always gives me a little bit of concern
24 about this system. And it's a good system. It's the
25 system that was designed by our legislature.

1 But, you know, when we talk about it, first of
2 all, the jury would be called upon to sit as a normal
3 jury and determine whether or not the defendant had
4 committed the act or offense of murder.

5 A Yes, sir.

6 Q And that would involve a finding of malice --

7 A Yes, sir.

8 Q -- on top of everything else. And then that same
9 jury 24 hours later moves up and has to make a
10 determination of whether or not the State has proven an
11 aggravating circumstance beyond a reasonable doubt.

12 A Yes, sir.

13 Q If you were on the jury and if that occurred, you
14 made a unanimous finding beyond a reasonable doubt that
15 he had committed the murder, then you're brought back
16 and you're asked to consider the State's evidence of an
17 aggravating circumstance. Having known or having just
18 convicted the defendant of murder -- and I'm not
19 suggesting that's what you should do. I'm just saying
20 if you did that, okay -- could you still remain fair in
21 your treatment of him as you consider whether or not
22 the State had proven beyond a reasonable doubt that
23 there was aggravating circumstance?

24 A Yes, sir.

25 Q You would not be tainted or poisoned by the fact

1 that he had just been convicted at your hands of
2 murder?

3 A No, sir.

4 Q And carrying that a little further, if you
5 actually found as a jury unanimously and beyond a
6 reasonable doubt that there was at least one
7 aggravating circumstance, as you remember, which would
8 sort of put the death penalty on the table, it would be
9 something you could consider?

10 A Yes, sir.

11 Q Along with life. But would the fact that you're
12 on the jury who just found him guilty of murder and the
13 jury that just found aggravating circumstances, would
14 that taint you or could you remain objective as you
15 went through that process and looked for the mitigating
16 circumstances and considered those mitigating
17 circumstances in determining what an appropriate
18 penalty would be?

19 A Yes, sir. I'd like to believe I could do that,
20 yes.

21 Q You think you could do that. All right. Tell you
22 what I want you to do -- well, one other thing. I
23 notice you went over the witness list, and, boy, there
24 were a lot of names on there, wasn't there?

25 A A lot of names.

1 Q Did you know any of those people?

2 A No, sir.

3 Q It's kind of hard to put faces with names when
4 it's just a list of names, isn't it?

5 A Yes, sir. I'm more of a face person.

6 Q I am, too. I sure am, Ms. Shelley, and it would
7 be real hard for me to even look at that list and tell.
8 But let me ask you this. Do you feel fairly
9 comfortable that if there was someone on there that you
10 had any kind of significant relationship or a
11 relationship that really would make a difference in
12 whether you believed the witness or not like a family
13 member or a neighbor or something like that, do you
14 think you would have been able to pick that name out?

15 A Yes, sir.

16 Q So do you feel fairly comfortable that if there's
17 someone on there that when they come up and you
18 recognize their face, you are comfortable it would be
19 someone you're not that familiar with?

20 A Okay.

21 Q Do you agree?

22 A I agree.

23 Q Let me give you about five more names: Nicole
24 Pyle, John Taylor, Christine Del Fonzo, William
25 Nettles, and Michelle Light. Do those names ring a

1 bell?

2 A No, sir.

3 Q Do you know any reason whatsoever, Ms. Shelley,
4 thinking about all your life experiences and all the
5 opinions you have about various things and the way you
6 feel about things, do you believe that there's anything
7 that would prevent you from adequately carrying your
8 duties as a juror?

9 A No, sir.

10 Q Could you be fair and impartial?

11 A Yes, sir, I believe I would.

12 Q All right. Answer any questions Mr. McGuire might
13 have.

14 EXAMINATION BY MR. MCGUIRE:

15 Q Good evening, Ms. Shelley. How are you doing?

16 A Fine. Thank you.

17 Q My name is Bill, Bill McGuire. I'm one of the
18 lawyers in the case. And we all stood up and you guys
19 got to see us not too long ago, but this is my
20 opportunity to talk to you.

21 And I'm going to talk to you first a little bit
22 about your questionnaire. And I think you expressed a
23 concern that you had some health issues that might
24 interfere with jury service. Could you tell the judge
25 and me about that.

1 A Well, I felt that once y'all would see that I had
2 a trach --

3 Q Yes, ma'am.

4 A -- that you might not think that I could not serve
5 on a jury.

6 Q But what you're saying is you can?

7 A Oh, yes, sir.

8 Q Okay. You thought we might prejudge you as not
9 being able to do it, and you just wanted to let us know
10 that you could do it?

11 A Yes, sir.

12 Q I appreciate that. You also indicated that you
13 knew somebody that was in prison or went to prison; is
14 that true?

15 A Oh, it's been so long ago. It was for -- he had
16 more than one DUI. He was a repeat offender and he was
17 sent away to Aiken.

18 Q Was this a friend of yours?

19 A It was -- no, sir. I couldn't call him a friend,
20 but he was my friend's boyfriend.

21 Q I see. So an acquaintance maybe?

22 A Yes, sir.

23 Q So that wouldn't have anything to do with your
24 ability to be a juror in this case?

25 A No, sir.

1 Q What I want to ask you about now and the judge
2 told you that it's perfectly normal and we would expect
3 people to have opinions about the death penalty.

4 A Yes, sir.

5 Q Have you thought about that much before coming
6 here?

7 A Honestly, no. I know that would be hard for
8 someone to -- if a murder or anything, you know, you
9 would have to think long and hard about it. And it
10 would make me sad, but it's something that I feel like
11 if it came down to it, yes, sir, I could make that
12 decision.

13 Q Okay.

14 A But, I mean, I have never given it a whole lot of
15 thought until now.

16 Q Fair enough. Some people come and they sit in
17 that chair and they say, "I have an opinion or a
18 belief," maybe a religious belief or some other reason
19 to say, "I can't vote for the death penalty. I can't
20 do that." And if their opinion is strong enough where
21 they can't fairly consider both punishments, the death
22 penalty and the life penalty, then we discharge them
23 with our thanks and we send them on their way because
24 they have that right to have an opinion.

25 And there are just some people, their opinion is

1 just not going to square with the law. Some people
2 show up and say, "I can't consider the life penalty.
3 If it's the intentional killing of an innocent person,
4 it's not an accident, not self-defense, then it should
5 always be the death penalty." And we discharge those
6 people with our thanks, too.

7 I just want to make sure, are you so -- do you
8 believe that the death penalty should be automatic
9 ever?

10 A No.

11 Q Okay. And that's in line with the law in South
12 Carolina. The State of South Carolina is always
13 satisfied with a life verdict in this case and any
14 cases and the worse cases. Did you know that?

15 A Not until you just told me. But, you know, either
16 one of those decisions is still going to be harsh.

17 Q You -- what I gather from that is you consider a
18 life sentence in prison to be a very harsh sentence?

19 A I think both of them are. One is just a little
20 more harsher than the other.

21 Q Which one?

22 A Losing your life over.

23 Q Some people actually say sometimes having to live
24 in prison for the rest of your life is actually harder,
25 and they kind of consider the death penalty an easy

1 out. But that's not you?

2 A I don't -- death isn't something I'm looking
3 forward to.

4 Q I understand. I want to talk to you a little bit
5 about the judge talked to you about some legal
6 principles, some laws and some rules that you would
7 have to follow if you were a juror. Okay?

8 You probably have a pretty good grasp on what we
9 refer to as the first phase of a case. It's like a
10 regular case, just like any other case you see on TV,
11 the news or newspaper. Did the person do it. Did they
12 mean to do it with criminal intent. Guilty/not guilty,
13 that's the first phase.

14 A Yes, sir.

15 Q You're probably pretty familiar with that?

16 A Yes, sir.

17 Q There's nothing confusing about that?

18 A No, sir.

19 Q Now, what can be a little confusing are some of
20 the principles of law that apply to a sentencing phase
21 because it's very different from the first phase. The
22 judge would tell the jury that the decision is actually
23 an individual moral judgment that each individual juror
24 should make for themselves. Did you know that before
25 you came here?

1 A Yes, sir.

2 Q Oh, you did. Okay. Then you're ahead of the
3 curve.

4 A Well, I guess so.

5 Q Now, the judge would also say that any individual
6 juror can vote for the life penalty, life without
7 parole -- and it is without parole in South Carolina --
8 for any reason, no reason or mercy alone. And I want
9 to talk to you a little bit about that to make sure you
10 understand this principle.

11 I'm going to start with the any reason. Okay?

12 A (Nodding.)

13 Q And do me a favor. When you nod, go ahead and say
14 "yes."

15 A Oh, yeah. I'm sorry.

16 Q She's got to take all that down. I see you
17 nodding, but she's got to take it down.

18 With the any reason part, the part about the
19 sentencing phase that's unique and different is that
20 there's no need nor unanimity with regard for a reason
21 to vote for the life penalty. Did you know that?

22 A Not until just then.

23 MR. HIXSON: Your Honor, I would object relating
24 to this. Specifically this is an act to stake out a
25 hung jury. We have objected several times, and it's

1 outside the scope of voir dire on jury qualification
2 questions.

3 THE COURT: It is. What does it have to do with
4 14-7-1020 which controls the limits of voir dire? And
5 voir dire is to determine whether or not she -- there's
6 anything that would substantially impair her ability to
7 be indifferent.

8 MR. McGUIRE: Yes, sir. I'm just seeing if she
9 can follow the law just like the Court has required us.
10 And I've had in the past jurors say that if they would
11 not go out on a limb by themselves, they would want
12 other jurors to --

13 THE COURT: Move along.

14 MR. McGUIRE: Sure.

15 Q The way that works is that one juror can say --
16 well, let me ask this first. When it comes to fixing
17 punishment in a murder case, the intentional killing of
18 an innocent person with malice aforethought with an
19 evil intent, is the background of the person who did
20 the act, is the background of the person who killed,
21 his walk in life, how he grew up, that sort of thing,
22 are those things relevant in determining punishment?

23 A I'm going to think before I answer that.

24 Q Take your time, ma'am.

25 A I would like to say that regardless of what, how

1 you walked to get to where you are now --

2 Q Yes, ma'am.

3 A -- you have to make that conscious decision
4 yourself. And you have to know right from wrong. So
5 maybe some instances it might -- I'm at a loss for
6 words now, and that's unusual for me.

7 Q Yes, ma'am.

8 A I know I see a lot of things on TV, and they talk
9 about how child abuse could result in someone doing
10 something that he was -- he or she was brought up with.
11 But I have to believe that, regardless of that, if you
12 made a conscious decision to do something wrong, then
13 you know you were doing something wrong.

14 Q Okay. And that's because if you know what you're
15 doing, you know right from wrong, you're responsible
16 for your actions?

17 A Yes, sir.

18 Q In that case, somebody who knows right from wrong,
19 knows what they're doing, their background
20 characteristics would not be relevant for fixing
21 punishment for murder?

22 A No, sir.

23 Q I'm going to go back to the principles of law that
24 we need to ask you. Just like the judge said, the
25 whole purpose we're here is to see if you can follow

1 the law.

2 A Yes, sir.

3 Q We were on the any reason part of the judge's
4 charge, that a juror could vote for the life penalty
5 for any reason, no reason or mercy alone.

6 A Yes, sir.

7 Q I think we covered the any reason. People can
8 have different reasons to vote for life, and nobody has
9 to agree on that. Is that a principle of the law you
10 could respect and follow?

11 A Yes, sir.

12 Q The no reason is a little peculiar. Because it's
13 a little peculiar for somebody to say, "I want to vote
14 for something for no reason." But they actually have
15 that right. Is that a principle of the law you can
16 respect and follow, let somebody do that?

17 A Yes, sir.

18 Q And the other part is mercy alone. Somebody might
19 just say, "I'm just going to let God take them when God
20 wants them, and I'm going to extend mercy just by
21 grace." Could you allow somebody to do that, just
22 bestow mercy?

23 A Yes, sir.

24 Q In terms of mercy, is mercy earned or is it freely
25 given or bestowed?

1 A I think it's freely given or bestowed.

2 Q One other principle of law that I'm going to talk
3 to you about is if you were to be selected as a juror,
4 you would take the juror oath.

5 A Yes, sir.

6 Q The juror oath requires you to reach your own
7 individual judgment.

8 MR. HIXSON: Your Honor, this is back into the
9 objection area. We're going to continue. Outside the
10 scope, staking out a juror on actions.

11 THE COURT: Mr. McGuire, you have been at this
12 witness for about 40 minutes. It's not a difficult
13 witness. Please move ahead.

14 MR. MCGUIRE: My last question, Judge.

15 Q The last principle of law that applies to this
16 type of case, sentencing --

17 A Yes, sir.

18 Q -- is that you would take the juror oath and it
19 would require you to reach your own individual moral
20 judgment.

21 A Most definitely.

22 Q And it would be wrong and against the juror oath
23 for a juror just to say, "You know, there's a majority
24 of people over here. There are ten or 11 people, and
25 even though I reached a different decision, I'm just

1 going to throw in with the majority just for consensus
2 or unanimity." That would be wrong or unlawful. You
3 wouldn't do that?

4 A No, sir. I make up my own mind.

5 Q You wouldn't want anybody else to do that?

6 A No, sir, not at all.

7 Q Thank you, ma'am.

8 MR. McGUIRE: Judge, she's qualified.

9 MR. RICHARDSON: State would agree. She's
10 qualified.

11 THE COURT: All right.

12 Yes, ma'am. Ms. Shelley, I find you to be
13 qualified. If you could step right down here where
14 Mr. Ropp is.

15 While you're doing that, let me tell you that this
16 doesn't place you on the jury, but it puts you in the
17 final pool from which the jury will be selected.

18 I don't know when we will need you, but it will be
19 a couple days at least. The clerk has a sheet for you
20 and there is a telephone number on that.

21 MS. SHELLEY: Yes, sir.

22 THE COURT: After 6:00 p.m. on Sunday, any time
23 after 6:00, call that number and there will be a
24 message there that tells us when we need you. When you
25 come, bring with you any medicines that you take, your

1 toiletries, some clothing for several days because you
2 know we're going to sequester you. Of course that will
3 be at the county's expense.

4 When you arrive, just leave that in your car. If
5 you're selected, the deputy will help you collect that
6 and we'll take you directly to the hotel. Okay?

7 MS. SHELLEY: Okay. Will do.

8 THE COURT: Thank you.

9 MS. SHELLEY: Thank you.

10 (WHEREUPON, Ms. Shelley exited the courtroom
11 at 7:46 p.m.)

12 THE COURT: We're at ease for a few minutes.

13 (WHEREUPON, recess taken from 7:46 p.m.
14 to 8:10 p.m.)

15 (WHEREUPON, an off-the-record discussion was
16 held between the Court and counsel.)

17 THE COURT: All right. Let the record reflect
18 counsel are here as well as Mr. Cottrell.

19 (WHEREUPON, Ms. Brockway entered the courtroom
20 at 8:11 p.m.)

21 JENNIFER BROCKWAY,

22 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

23 EXAMINATION BY THE COURT:

24 Q Ms. Brockway, how are you?

25 A I'm good.

1 Q Come around, please. Remember you're still under
2 oath.

3 Ms. Brockway, I'm informed from some staff that
4 you have a problem with a two-year-old child?

5 A Well, the problem is her dad goes to work at 4:30
6 in the morning and her daycare doesn't open until 7:00.

7 Q And you would have no one who could take care of
8 her then?

9 A Right. Unless he could change his schedule.

10 Q Would you like to be excused?

11 A If I could, but if not, I could work around it.

12 Q That's what I'm getting at. I don't want you to
13 work around it. You're talking about 4:00 to 7 o'clock
14 in the morning. And if you're not there, you're
15 sequestered, that's going to be extremely burdensome on
16 you. How would you get someone to come into the house
17 at 4 o'clock to keep a child who's two?

18 I have discussed it with counsel on both sides and
19 they have agreed that that substantially does meet the
20 exemption statute, and that if you wish to be excused,
21 I will allow you to be excused.

22 Is that what you want to do?

23 A Yes, sir.

24 Q Thank you, Ms. Brockway. You're excused and
25 released from your subpoena.

1 THE COURT: That is correct, is it not,
2 Ms. Norris?

3 MS. NORRIS: Yes, your Honor, absolutely. We want
4 her to be with her child.

5 MR. RICHARDSON: Yes, sir.

6 (WHEREUPON, Ms. Brockway exited the courtroom
7 at 8:13 p.m.)

8 (WHEREUPON, Ms. Smith entered the courtroom
9 at 8:13 p.m.)

10 MARILYN SMITH,
11 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

12 EXAMINATION BY THE COURT:

13 Q Ms. Smith, please come around. Thank you.

14 I want to apologize for the lateness of the hour.
15 We were just, I believe, too ambitious as far as what
16 we thought we could do, so I apologize.

17 Ms. Smith, do you remember my admonitions --
18 admonishments against contact with anyone about this
19 case?

20 A Uh-huh, yes.

21 Q And to expose yourself to any media reports or
22 anything about it? Have you complied with that order?

23 A Yes.

24 Q You understand that would be in effect until you
25 are released?

1 A Yes.

2 Q Now, Ms. Smith, I asked you to indicate what kind
3 of juror you are. And I see here that you have
4 indicated you are a type B juror; is that correct?

5 A Yes.

6 Q And just so that you and I are on the same page,
7 it's my understanding that that is a juror that
8 believes the death penalty is never appropriate no
9 matter what the circumstances in a case.

10 A Yes.

11 Q Is that correct? Do you feel so strongly about
12 that issue that you would be unable, under any
13 circumstances, to recommend the death penalty? Is that
14 what you are telling me?

15 A Yes.

16 Q And is that based on some religious upbringing you
17 have had or moral decision that you've made, something
18 of that nature?

19 A I think it's just a moral thing as far as my heart
20 goes with that.

21 Q Have you given that much thought?

22 A I have.

23 Q And, again, I want you to understand that we
24 respect your opinion in that regard, and we don't want
25 to challenge it or try to change your mind, but I need

1 to make sure that I completely understand what you're
2 telling me. And I'm going to ask you again, you just
3 simply do not believe that the death penalty can ever
4 be appropriate; is that right?

5 A I don't think I could agree with it.

6 THE COURT: Okay. Do you have any questions?

7 MS. NORRIS: No questions, your Honor.

8 MR. RICHARDSON: Your Honor, we agree she's not
9 qualified.

10 THE COURT: Mr. McGuire?

11 MR. McGUIRE: Yes, sir.

12 THE COURT: Ms. Smith, again, we appreciate the
13 fact that you have your opinion. But if that is your
14 opinion, it would not be appropriate to place you on a
15 death penalty case, so I am going to excuse you from
16 your subpoena. Thank you.

17 (WHEREUPON, Ms. Smith exited the courtroom
18 at 8:17 p.m.)

19 THE COURT: Tanya Bralley.

20 (WHEREUPON, Ms. Bralley entered the courtroom
21 at 8:17 p.m.)

22 TANYA BRALLEY,

23 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

24 EXAMINATION BY THE COURT:

25 Q Hello, Ms. Bralley. How are you?

1 A Hello.

2 Q I do apologize for the lateness of the evening.
3 Apparently we were too ambitious with what we thought
4 we could do. We wanted to move this case along, but we
5 are behind tonight and we apologize to be this late.

6 Ms. Bralley, do you remember my admonitions on
7 Monday about not exposing yourself to any media
8 attention or media reports about this case, not
9 discussing it with others and other things? Do you
10 remember that?

11 A Yes.

12 Q And have you complied with my directives?

13 A Uh-huh.

14 Q And do you understand that that continues until
15 such time as you would be released on this case?

16 A Yes.

17 Q Ms. Bralley, you were kind enough to indicate on
18 the form where we asked you to tell us what kind of
19 juror you are, you completed that form and you tell us
20 that the type of juror, category of juror which best
21 describes you is one who would need to hear the facts
22 and circumstances in aggravation and mitigation before
23 you could make a decision regarding punishment. Do you
24 believe that most closely describes the category of
25 juror you would fall into?

- 1 A Yes, sir.
- 2 Q Is that your honest opinion?
- 3 A Yes, sir.
- 4 Q Now, you heard me discuss with you and the other
5 jurors a generalization or a general description of how
6 we would proceed if you were placed on this jury?
- 7 A Uh-huh.
- 8 Q Did you understand what I was telling you?
- 9 A Yes, sir.
- 10 Q Did you follow me in that?
- 11 A Uh-huh.
- 12 Q If we look at the part concerning when and how and
13 if a death penalty would ever be appropriate and when
14 and how and if the life sentence would be appropriate,
15 do you believe that that is consistent with your
16 feelings concerning the punishment in a murder case?
- 17 A Yes, sir.
- 18 Q Okay. And do you find anything about that
19 procedure that I described to you to be oppressive or
20 unfair to the extent that you could not follow that
21 type of procedure if I so instruct you?
- 22 A No, sir.
- 23 Q Do you understand that the primary concern of the
24 Court this evening is to determine whether or not
25 you -- or there's anything that would substantially

1 interfere with your ability to perform your duties as a
2 juror. Do you understand that?

3 A Yes.

4 Q And essentially your duties can be summed up as
5 essentially just being fair and impartial?

6 A Yes, sir.

7 Q And as part of your duties, you would be asked to
8 look at the evidence in this case and make a
9 determination of the facts along with your fellow
10 jurors. Do you understand that?

11 A Yes, sir.

12 Q And do you realize that you would only be able to
13 consider the evidence that's presented here in this
14 courtroom?

15 A Yes, sir.

16 Q And I would instruct you as to that. Do you think
17 you could do that? Do you know of any reason why you
18 could not follow my instructions and actually do that?

19 A No, sir.

20 Q Do you understand that by taking the oath you're
21 making a commitment to Mr. Cottrell and to the State to
22 do that, and would you do that?

23 A Yes, sir.

24 Q Okay. As to the law, you know, the jurors have to
25 determine what the facts are. The judge has to

1 determine what the law is. And the deliberation
2 process is a process whereby the jury brings the two
3 together to determine how they fit, whether or not
4 there is any probable -- I mean any reasonable doubt as
5 to whether or not the State has proven its case. Do
6 you understand that?

7 A Yes, sir.

8 Q Now, if I were to instruct you on the law and you
9 were to look at my instructions and say, "You know,
10 there's this one part here that I just don't agree
11 with," do you understand that you would have to set
12 that aside and you would have to follow the law exactly
13 as I gave it to you?

14 A Yes, sir.

15 Q And do you understand that if you thought the law
16 is something else or was something else and I had
17 incorrectly done it, nevertheless, you would have to
18 set that aside and follow the law just as I gave it to
19 you?

20 A Yes, sir.

21 Q And would you be willing to do that?

22 A Yes, sir.

23 Q Do you know of any reason whatsoever why you might
24 be, because of an opinion that you hold concerning
25 things about the death penalty or any prejudice or bias

1 you might have against any party or that might be
2 created by the facts of this case, do you know of any
3 reason why you could not be fair and impartial in this
4 case?

5 A No, sir.

6 Q Could you carry out the duties as instructed by
7 this Court, your duties as instructed by this Court?

8 A Yes, sir.

9 Q All right. Answer any questions Ms. Norris has.

10 EXAMINATION BY MS. NORRIS:

11 Q Good evening, ma'am. Could you pronounce your
12 last name for us?

13 A It's "Bralley."

14 Q I'm Teresa Norris. I know we got a chance to
15 stand up the other day, but this will be the one chance
16 I get to talk to you.

17 How long have you lived in this county?

18 A Two years.

19 Q Okay. I noted on your questionnaire that -- well,
20 let me say this first. I realize that some of these
21 questions are personal. Maybe they are, maybe they
22 aren't. And I apologize, but I am sure you can
23 understand the gravity of the situation. We just need
24 to find out if there's anything that would impact you
25 in this case.

1 I noted that you indicated that your grandfather
2 was in prison.

3 A Uh-huh.

4 Q Was that for a crime committed against you or
5 another family member or something totally unrelated?

6 A Unrelated.

7 Q Is there anything about him having been in prison
8 that would impair you, a bias for or against either
9 party in this case, or is that just something out
10 there?

11 A It's something out there.

12 Q And I believe you indicated that you had testified
13 in a criminal case. Was that where a crime was
14 committed against you or you were just a bystander
15 witness?

16 A Bystander.

17 Q Okay. Didn't happen to be a murder case?

18 A No, it did not.

19 Q Okay. Is there anything about that experience
20 that you believe would impact you?

21 A No.

22 Q Okay. Prior to getting your jury summons in this
23 case, had you ever given much thought one way or the
24 other to the death penalty?

25 A Of course. I think everyone -- I would assume

1 everyone has. And my feeling on it is for me is, you
2 know, I would have to listen to the facts. If it was
3 proven beyond a reasonable doubt and the crime
4 justified that, obviously that's the reason they are
5 going for that. But for me I would have to pray about
6 it and have peace about it before I would ever be able
7 to go forth with it. That's my faith.

8 Q Let me ask it this way.

9 A Okay.

10 Q Is your pray about it part, if somebody else had
11 to make the decision about the death penalty, am I
12 correct that you don't have a hesitation about it
13 anywhere in that process as long as you're not the
14 person making the decision?

15 A Yes.

16 Q And when you pray about it, let me just ask this.

17 A Sure.

18 Q Prior to getting a juror summons, if you and I
19 were just having a conversation and I said,
20 "Ms. Bralley, tell me your general thoughts about the
21 death penalty. Is it a good thing? Is it a bad thing?
22 Tell me your thoughts." Answer that for me.

23 A I would say it would depend on the case. Each
24 case is very individual, and that's what I would say.

25 Q And I'm sure you followed the judge's instructions

1 and understand that. You have got a college degree and
2 are certainly an educated person. So I just want to
3 make sure that in a death penalty case, if you were
4 seated as a juror, in addition to the murder and the
5 statutory aggravating circumstance, the defendant would
6 have the opportunity to present mitigation, that stuff
7 that weighs against the death penalty.

8 In listening to all of the evidence in your own
9 mind and as you're making a judgment, would things such
10 as the defendant's background, upbringing, walk of
11 life, is that something that you believe is relevant to
12 the determination of which sentence to impose?

13 A Yes.

14 Q And do you understand that at the end of the
15 process, if you were seated in a capital case, that the
16 judge would never say, "If you find A, B and C, you
17 have to impose the death penalty"? Do you understand
18 that?

19 A Yes, ma'am.

20 Q And it's the same the other way. The judge is
21 never going to say, "A, B and C equals life." What we
22 call that ground in the middle there in a capital
23 sentencing is an individual reasoned moral judgment.
24 You have to make the determination.

25 And the law, your Honor will instruct that after

1 you have heard the evidence and the instructions that
2 you can give life without parole for any reason or no
3 reason. Do you have any problem with that?

4 A No.

5 Q Or that you could give life as a matter of mercy.
6 Any problem with that?

7 A (Shaking head.)

8 Q And if you made that individual moral reasoned
9 judgment and the other 11 jurors also made that
10 judgment, and under the law, since the law never says
11 you have to go one way or the other, there could be a
12 difference of opinion there.

13 If you were the one person that reached this side
14 and the other 11 people were over there, would you give
15 up your opinion just to go along with everybody else,
16 or would you say, "This is my individual reasoned moral
17 judgment. Here's why this is my vote," and stick to
18 it?

19 A Well, if you felt -- if you felt that strong about
20 your opinion and that's how you felt and that's the
21 piece that you had with it, then I would stick with my
22 opinion.

23 Q Okay. And if you happened to be one of the 11
24 people agreeing but there was one other person on the
25 other side and that was their individual decision,

1 would you respect that, or would you try to convince
2 them, "Hey, you're clearly wrong because we all agree
3 over here. Give up your opinion. Join us?" Would you
4 respect that decision or would you try to change it?

5 A I think we all have individual opinions in this
6 life. We have to respect each other's opinion.

7 MS. NORRIS: Just one second.

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

10 BY MS. NORRIS:

11 Q One last question. If you agreed that the death
12 penalty was appropriate and everybody else did too,
13 would you be able to sign your name to a death verdict?

14 A If I believed that that was deserved.

15 Q If --

16 THE COURT: Let me interrupt here and let me help
17 you out, and maybe you will understand Ms. Norris'
18 question a little bit better.

19 If it came to that -- and I'm not suggesting that
20 it should be, but if it came to that, a recommendation
21 of a death penalty, every juror must sign. It's not
22 like the usual case where just the foreman signs. And
23 that's why she's asking you that. You would have to do
24 it if that was your vote. Do you understand that?

25 MS. BRALLEY: Uh-huh.

1 THE COURT: The question is could you.

2 MS. BRALLEY: Could I do it?

3 THE COURT: Could you take that other step?

4 BY MS. NORRIS:

5 Q That's exactly what I'm asking.

6 A Right. Well, I think if you're saying that you
7 can sit on this and do this and be a juror and fairly
8 in this, then you have to have the ability to do that.

9 Q And you believe you can?

10 A If -- it's a hard question. I'm not sure.

11 Q Okay. And there's no right or wrong answer.

12 A I know, but it's just right now, you know, I'm not
13 sure.

14 Q Thank you. I don't have any other questions for
15 you, ma'am.

16 EXAMINATION BY MR. RICHARDSON:

17 Q Ms. Bralley, my name is Jimmy Richardson, and I'm
18 the Solicitor for Georgetown and Horry Counties. This
19 is Scott Hixson, and he's the Deputy Solicitor. And if
20 you make it to this jury, we'll be seeing a good bit of
21 you. I hope you do.

22 What she was talking about is -- I mean, it's a
23 big-time decision. And -- but when you get to that
24 decision, you will have already made several. You
25 would have had to have made the decision that, of

1 course, he's guilty of murder, that the State had
2 proven the aggravating circumstance, and you and your
3 colleagues, the 12 of you total, would have sat down
4 and discussed it and said, "Maybe I'm not, you know,
5 always wanting to give a death penalty," because it's
6 pretty rare. Death penalty is rare. "But I've
7 examined everything and I've looked at the mitigation,
8 I've looked at the aggravation, and this is the
9 appropriate sentence."

10 So it's not going to sneak up on you. But if you
11 vote that way -- and, of course, we're asking you -- we
12 will be asking you at that time to vote that way --
13 that's one of the requirements. They don't let you
14 just stand in the back or don't let you just raise your
15 hand. You have got to sign one of 12 lines.

16 And I'm going to do something different. On all
17 these other people I've asked can you do it. But I
18 think you're well reasoned, and I think by that time,
19 having seen everything, if that's your decision, you'll
20 be able to do that. So thank you for your service.

21 A Thank you.

22 MS. NORRIS: We agree, your Honor.

23 MR. RICHARDSON: Yes, sir, your Honor.

24 THE COURT: All right.

25 Ms. Bralley, the Court finds that you are

1 qualified in this case. That doesn't mean you are on
2 the jury. It means you're in the group, the final
3 group. After it's all been weeded out, you're in that
4 final group from which the jury will be drawn.

5 We're going to be at this for a couple more days
6 at least. So we won't need you for a while. Now, my
7 order, as I said, still stays in place. I don't want
8 you talking to anybody, reading anything, doing any
9 research, exposing yourself to any media coverage.

10 We're going to give you a couple days off.
11 Mr. Ropp is going to give you a sheet of paper with a
12 number on it. On Sunday evening, this coming Sunday
13 after 6 o'clock, I will ask you to call that number.
14 There will be a recording there. And that recording
15 will tell you when to report.

16 We have already told you this will require
17 sequestration if you are selected. Do you understand
18 that?

19 MS. BRALLEY: Uh-huh.

20 THE COURT: So I want to ask you to bring any
21 medications that you may take, your toiletries and your
22 clothes for several days with you. You can just leave
23 them in the car when you get here. If you are
24 selected, you will be immediately sequestered. We will
25 make sure that someone can go out with you and get your

1 things and get you comfortably situated at the hotel.

2 After 6 o'clock on Sunday. Okay? And follow the
3 instructions there. Thank you, ma'am.

4 (WHEREUPON, Prospective Jury Panel Number 10 came
5 into open court at approximately 8:37 p.m.)

6 THE COURT: All right. Ladies and gentlemen of
7 the jury, I am told and I certainly hope you are our
8 last group today. You probably heard around the
9 courthouse I was here until after midnight last night,
10 and I was here at 8 o'clock this morning, and all we
11 have had is like 15-minute lunches. So we're ready to
12 go home. So we're trying to try to move through and
13 get this last group this evening done.

14 Before we do that, I wanted to meet with you as a
15 group because there are some things I needed to talk
16 with you about.

17 First thing I need to do is this, explain to you
18 that, you know, during the first questions I asked, I
19 made a determination that each and every one of you met
20 the legal requirements to be a juror. You are legally
21 not disqualified, you are legally qualified to serve on
22 a jury in South Carolina.

23 However, today, first thing I wanted to talk with
24 you about your right to an exemption. An exemption is
25 a personal right. I think it's easier to understand if

1 I give you an example. Like one of the exemptions is
2 if you are 65 years of age or older.

3 If you have reached that age, like I have, you can
4 just simply say, "I choose not to serve. I just don't
5 want to serve." And if you say that, we will
6 absolutely release you with no questions asked.

7 However, you are not required to do that. I can
8 tell you right now from my -- I practiced 30-some years
9 and been sitting on the bench here now for about seven
10 or eight years, and our senior citizens make wonderful,
11 wonderful jurors. There's nothing like experience and
12 wisdom on a jury and that's what they bring. And many
13 times -- it's just common for our senior citizens to
14 show up and say, "I want to serve." And we're happy to
15 have them. So you don't have to claim your exemption.
16 That's the point I'm trying to make. You don't have to
17 claim it if you have the right to it or even if you
18 have the right to it. It does not disqualify you. So
19 keep that in mind as I run through these with you.

20 As I said, if you are 65 years of age or older,
21 you do not have to serve. And I don't believe there's
22 anybody out there --

23 THE CLERK: Judge, do you want them sworn?

24 THE COURT: Yeah. I'm going to do it before I ask
25 them to respond. I don't believe there's anyone out

1 there 65 years of age or older. I'm way older than any
2 of you folks.

3 Would you administer the oath.

4 (WHEREUPON, the panel was sworn.)

5 THE COURT: All right. Is anybody 65 that would
6 like to be excused?

7 And I see no response.

8 Has any juror or any prospective juror served or
9 been called as a juror in this court? That means you
10 would have been summonsed to this courthouse. Not the
11 magistrate's court or the municipal court or the
12 federal court but this court within the last three
13 years. You are only required to serve once every three
14 years.

15 Or have you been called or served as a juror on
16 the county Grand Jury? Some of you may not know what
17 the Grand Jury is. The Grand Jury is not the jury that
18 sits in the box in a trial and makes decisions. The
19 Grand Jury is a jury made up of about 18 people, and
20 its sole purpose is to look at cases where people have
21 been charged with crimes and decide whether an
22 indictment should be issued. It sort of like puts a
23 stamp of approval on a charge. Is there probable cause
24 to even make it. And it allows it to move on to the
25 court.

1 If you were on the Grand Jury, I bet you you would
2 know because it meets once a month, and you're on it
3 for at least a year, and in many cases two years. But
4 if that's the case, you can claim that as an exemption.

5 Anybody fall into that category?

6 No response.

7 If you have the care and custody and control of a
8 child under the age of seven. Now, it's got to be your
9 child or a child that you have custody of and you take
10 care of that child. Normally we say you take care of
11 that child during the day. You don't work outside the
12 home. It was initially designed for a stay-at-home mom
13 and now we have stay-at-home dads.

14 If that's the case, you could claim that as an
15 exemption. But this is a special case, and I
16 understand that there's going to be sequestration,
17 which means you would have to spend the night away from
18 home. So if you have a child that's home with you at
19 night that you take care of or in the day, I'm going to
20 say that that meets the requirements.

21 Does that -- does anybody fall into that category
22 at all?

23 Yes, ma'am.

24 POTENTIAL JUROR: 12 year old.

25 THE COURT: I would consider that. Do you have a

1 12-year-old?

2 POTENTIAL JUROR: 12-year-old.

3 THE COURT: Are you married?

4 POTENTIAL JUROR: (Nodding.)

5 THE COURT: Does your husband -- is your husband
6 at home?

7 POTENTIAL JUROR: She's special needs, so I'm
8 usually -- she goes to school, but after school she's
9 very dependent on me.

10 THE COURT: She's a special needs child?

11 POTENTIAL JUROR: Yeah.

12 THE COURT: Then that brings up another issue. Is
13 she able to be left alone? I mean, does she need care
14 and attention on a regular basis?

15 POTENTIAL JUROR: She's able to be left alone for
16 short periods, but she needs -- for her to attend
17 school, she needs a lot of -- I tutor her and prepare
18 her.

19 THE COURT: Well, one of the exemptions is a
20 person who takes care of an elderly person or a
21 severely disabled person --

22 POTENTIAL JUROR: She's not severely.

23 THE COURT: -- who needs care and has to be taken
24 care of. You seem to have like an overlap.

25 Any objection?

1 MS. NORRIS: No, sir.

2 MR. HIXSON: No, sir.

3 THE COURT: I tell you what I'm going to do. And
4 you are Ms.?

5 POTENTIAL JUROR: Leah Aizenman, Number 7.

6 THE COURT: Number 7? Where's my list?

7 Yes, ma'am. I think that your situation
8 substantially complies with perhaps two overlapping
9 conditions. And as I said, we're going to be very
10 liberal in my view or interpretation of these because
11 it's requiring overnight.

12 And what I'm going to do is I'm going to excuse
13 you and have the clerk send you a notice later at some
14 other time.

15 Does your child go to school year round?

16 POTENTIAL JUROR: No.

17 THE COURT: Maybe next summer when she will be out
18 of school and you can make arrangements for someone to
19 help you with her, and I'll bring you back then.

20 POTENTIAL JUROR: Thank you.

21 THE COURT: But you are excused. You may leave.

22 POTENTIAL JUROR: Thank you very much.

23 (WHEREUPON, Ms. Aizenman exited the courtroom
24 at 8:44 p.m.)

25 THE COURT: Now, where was I? We were talking

1 about a child.

2 Does any one of you -- or do any one of you, as I
3 mentioned earlier, care for an elderly person or a
4 disabled person? That's what you do. That's your
5 responsibility, and that person can't be left at home
6 and you just can't reasonably arrange for someone else
7 to do it.

8 Is there anyone that would fall in that category?

9 And there's no response.

10 Is anyone a full-time student or an employee, a
11 necessary employee at a school? That means there has
12 to be someone occupying your slot, and there's no one
13 who can do that and no arrangement can be made to
14 prevent disruption in school.

15 Is there anyone that falls in that?

16 And there's no response.

17 And, finally, do any of you perform such services
18 for a business, and that can be a commercial or
19 agricultural enterprise, that your job is so important
20 that no one else can do it, no other arrangement can be
21 made, and if you are not there, the doors just have to
22 close? Anyone in that category?

23 Yes, sir.

24 POTENTIAL JUROR: I'm sole proprietor of a paint
25 company. Me and my son is the only people there. And

1 we have work right now.

2 THE COURT: What kind of company do you have?

3 POTENTIAL JUROR: It's a painting and
4 construction.

5 THE COURT: What's the name of your company?

6 POTENTIAL JUROR: Quality Plus Painting and
7 Construction.

8 THE COURT: Do you have contracts lined up that
9 would need your attention next week?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: And if you're not there, can that be
12 accomplished? Is there any way to do it if you're not
13 there?

14 POTENTIAL JUROR: Only my son, and we need both on
15 the job.

16 THE COURT: It takes two of you to do the work?

17 POTENTIAL JUROR: Yes, sir.

18 MR. McGUIRE: No objection, Judge.

19 MR. HIXSON: That's fine, your Honor.

20 THE COURT: All right. I'm going to excuse you
21 then, and we'll bring you back at some other time. All
22 right?

23 Your name and number, please, sir?

24 POTENTIAL JUROR: 688, Ronald Williamson.

25 THE COURT: All right, Mr. Williamson. Okay.

1 (WHEREUPON, Mr. Williamson exited the courtroom
2 at 8:46 p.m.)

3 THE COURT: To those of you who remain, let me
4 make a few comments to you, some preliminary comments.

5 First of all, let me tell you that we're going to
6 be asking you questions about how you feel about
7 certain things, about your opinions. And the wonderful
8 thing about this country is everybody has the right to
9 have his or her own opinion.

10 And I promise you when we ask you about these
11 opinions, we're not prying. It's just necessary that
12 we know what your opinions or feelings are about
13 certain things because that will determine how you view
14 or see certain issues that are involved in this
15 particular case.

16 When we ask you your opinion, please understand
17 that we appreciate the fact that you have a right to
18 have your opinion. And there is no good opinion or bad
19 opinion. There is no right opinion, there is no wrong
20 opinion. It is just your opinion. And I promise you
21 no one here will try to change your opinion. No one
22 will try to criticize you for your opinion, and
23 everyone will respect you for having an opinion.

24 So if we ask you about your opinion, the only
25 thing we want you to do -- the only wrong answer you

1 can give is an answer that is not candid and truthful.
2 So, please, it's very important that you give us
3 truthful and candid answers concerning any of those
4 things that we ask you.

5 As we begin to ask questions, we're going to be
6 talking in terms of the way this trial will proceed.
7 And I have touched on that briefly earlier, and I think
8 you understand that it's going to be a two-part trial.

9 The first part will be a determination or involve
10 the determination of whether or not the defendant
11 committed the offense of murder. If and only if that
12 is determined in the first part we might move or we
13 would move to the second part which would be a
14 determination of the appropriate penalty. Okay?

15 We're going to be asking you about both. So you
16 might be sitting there thinking, "They're asking me
17 about that second part so they must all think that the
18 conviction on the first part is a sure thing and
19 everybody is expecting that to happen." There could be
20 nothing further from the truth. That is not the
21 message that we want to convey to you. It's just that
22 this is the only time that we will have an opportunity
23 to talk to you. So we need to talk to you about both
24 phases.

25 Mr. Cottrell has pled not guilty to these charges.

1 In addition to that, he has the benefit of what we call
2 the presumption of innocence. That's a theory of law.
3 It pervades the law throughout this country in every
4 state. It simply means that the law assumes, presumes
5 that he is innocent.

6 And that stays with him, that presumption, until
7 such time as the State overcomes it, takes it away.
8 And that can only happen if the State convinces a jury
9 of his guilt beyond a reasonable doubt. And that is --
10 has to be a unanimous decision by a jury.

11 He has also, as I said, pled not guilty. He has
12 two fine attorneys here who are going to tell you he is
13 not guilty, and they are going to zealously represent
14 him. So please do not think that by asking you
15 questions about both phases that we are saying, "Well,
16 he's guilty of the first part, so we're going to talk
17 to you about the second part." That is certainly not
18 the case, and I hope you understand what I'm saying.

19 Finally, let me just tell you briefly, just sort
20 of set the stage for the questions that these other
21 attorneys are going to ask in giving you a more
22 detailed analysis of what's going to transpire if you
23 are set -- or selected as a juror.

24 Murder in this state is murder, whether it be
25 capital murder or death penalty murder, or what we

1 would call regular or traditional murder. The
2 definition of murder is the same in both. Murder is
3 the unlawful killing of another person with malice
4 aforethought.

5 Malice aforethought. That is a basic element of
6 murder whether it be common traditional murder or death
7 penalty murder. It is an element of it. And what that
8 means is it's above an accidental killing. It's above
9 a killing in the heat of passion. It is a killing
10 accompanied by malice, an ill feeling towards the
11 victim, an evil heart and mind, a malicious act.
12 That's what makes it a murder.

13 The way capital murder is different from
14 traditional or regular murder is this. There is a
15 separate, an extra element. We have been referring to
16 it this week as murder plus. It is an extra thing. It
17 is murder, just like traditional murder. But it's
18 murder to which there is attached something else that
19 we call an aggravating circumstance.

20 The legislature has created the death penalty
21 statute, and it has listed those things. And there are
22 many or several of those aggravating circumstances. It
23 might be while in the commission of some other
24 specified crime.

25 And I'll give you one example because it has

1 nothing to do with this case. And that's the only
2 reason I can give you this. I wouldn't even speak of
3 anything that might even conceivably be related to this
4 case. But when I say it could be another crime, like a
5 murder in the commission of a rape. See, that is that
6 aggravator that would make it death penalty qualified.

7 And there are other things are like status of
8 aggravating circumstances, like the murder of a child.
9 As you can see, all these things make it much worse
10 than or aggravates the base murder, that is, the murder
11 with is malice. There are things that add to it.

12 Now, the way that it would work is this. The case
13 would begin just like a normal murder case. And I
14 would tell you the traditional or normal murder case,
15 there are quite a few tried throughout the State every
16 year. Very rare is it that we see a death penalty
17 case. And when we do, a whole new set of rules kick in
18 that have to be observed.

19 You're in the midst of one of those rule changes.
20 If this was just a murder case, in spite of what you
21 may see on TV, in South Carolina the attorneys never
22 get to ask the jurors questions before they are seated.
23 That only occurs in a murder case, a capital murder
24 case.

25 So we would begin the trial, and the State would

1 have to convince the jury beyond a reasonable doubt
2 that the defendant committed that particular offense,
3 that is murder, the unlawful taking of a life with
4 malice aforethought.

5 If the State were successful in doing that,
6 convincing the jury beyond a reasonable doubt -- and
7 I'm not suggesting that they would, but if they did,
8 since this is a capital murder case, they have to take
9 a day off and they move up to another level. We call
10 it the second phase or the penalty phase of the case.

11 And they have to start all over again, and they
12 have to convince that same jury that at least one of
13 those aggravating circumstances that are set out in the
14 death penalty statute exist, at least one of them. And
15 they have to prove it beyond a reasonable doubt, and
16 they have to prove it to each and every juror. All
17 right?

18 Up to this point in time the question of the death
19 penalty is not even on the table. You probably didn't
20 know this. But murder in South Carolina does not carry
21 the death penalty. Absolutely does not. Somebody gets
22 convicted of murder in my courtroom, I cannot give that
23 person the death penalty. It's not in the statute.

24 Unless the State has a capital case, they have
25 served notice, we are seeking the death penalty and the

1 new rules apply. So first there has to be a conviction
2 for the offense of murder. Then there has to be
3 another trial in which the State convinces the jury
4 beyond a reasonable doubt that one of those aggravating
5 circumstances -- and it has to be one in the statute.
6 Can't be something else -- has accompanied the
7 commission of the murder.

8 And when you get to that point, all of a sudden
9 the penalty becomes important. All of a sudden and for
10 the first time, for the first time, the death penalty
11 is out on the table. There are two possible sentences
12 in that scenario -- the death penalty and life without
13 parole, and they're out there.

14 The jury cannot be told and will not be told that
15 if this, that or the other happens, you have to give
16 the death penalty. Never a circumstance where the jury
17 is told, "You have to give the death penalty." Never a
18 circumstance where the jury is told, "You have to give
19 life without parole." It's entirely up to the jury.

20 And that's another thing that's different. In a
21 traditional trial, if were trying just a traditional
22 murder case and the jury was convinced beyond a
23 reasonable doubt, they would hand up a verdict form
24 signed only by the foreman. And it would just say
25 "guilty" or "not guilty" and it would be up to me to

1 sentence.

2 In a capital case, if we get to that point, the
3 jury actually recommends what the sentence will be.
4 And the judge is bound to follow that sentence. No
5 question about it, the judge will follow it.

6 But before the jury can even consider the
7 sentence, the statute says they have to look for
8 mitigating circumstances, things that lessen the
9 severity of the crime or things that would weigh
10 against giving the death penalty. And the statute
11 again says, "Here are some mitigating circumstances you
12 could consider."

13 But unlike the aggravating circumstances, you can
14 go outside the box. The jury can look at the whole
15 case and say, "Here is something over here that I think
16 should be considered as mitigation," and each juror can
17 find his own mitigating circumstances. They don't have
18 to match up. They don't have to have a full agreement
19 as to what the mitigators are.

20 If the jury can't find any mitigators, that still
21 doesn't answer the question because the jury can't
22 decide that it's not appropriate to give death penalty
23 for no reason. Don't have to give a single reason for
24 it. Or they can decide to grant leniency or mercy and
25 impose the life sentence. And that mercy can be given

1 by grace to a defendant who has shown no reason to
2 deserve it or a defendant who has some compelling
3 reason that he should get mercy. Doesn't make any
4 difference. So you see it's entirely up to the jury.

5 And one other final thing is when -- what is
6 different from any other case is if the jury, if the
7 jury should -- and I'm not suggesting you should -- but
8 if they should decide, "We should give the death
9 penalty," it's not a matter of being signed by the
10 foreperson. Every single juror has to sign that
11 recommendation of the death penalty.

12 Those are the special rules and that's how it
13 works. Now, please, I just tell you that so that you
14 will kind of have it in your mind because these
15 attorneys are going to talk to you about the case or
16 about the process, and they will be referring to the
17 process. And I just wanted you to have an idea of how
18 the process works, something more than that little bit
19 of information that we gave you Monday.

20 So, if you would, I want everybody but -- is it
21 Ms. Dottellis?

22 MS. DOTTELLIS: Yes, sir.

23 THE COURT: Ms. Dotellis. That's a good 'ol Horry
24 County name, isn't it?

25 MS. DOTTELLIS: No, sir, it's not, but my maiden

1 name is.

2 THE COURT: Ms. Dottellis, if you could you stay
3 with us, you're going to be the first up to bat.

4 (WHEREUPON, Prospective Jury Panel Number 10, with
5 the exception of Ms. Dottellis, exited the
6 courtroom at approximately 9:02 p.m.)

7 MARLENE DOTTELLIS,

8 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

9 EXAMINATION BY THE COURT:

10 Q Ms. Dotellis, please have a seat. Remember you're
11 still under oath.

12 You remember on Monday when I talked to you I said
13 I don't want you to be doing any research, I don't want
14 you to be talking with anybody about the case and
15 things like that? Have you done what I asked?

16 A Yes, sir.

17 Q Okay. I'm glad to hear that. I want to remind
18 you that that ruling will stay in effect as long as you
19 are still on this jury panel. Okay?

20 A Yes, sir.

21 Q When you are excused, it no longer applies to you.
22 And until then please keep it in mind.

23 All right. Ms. Dottellis, I asked you to tell me
24 what category of juror best describes you. Okay? And
25 you indicate that you are what we call an A juror,

1 class A?

2 A Yes, sir.

3 Q Just so you and I will be on the same page and
4 we'll know we are talking about the same thing -- we
5 had a fellow earlier who -- we were backwards. He had
6 marked the wrong one.

7 A Well, I teeter-tottered between A and B, sir.

8 Q Well, this one says that you simply feel that once
9 a murder has been committed, the death penalty is the
10 only appropriate punishment no matter what the
11 circumstances of the case.

12 A Yes, sir.

13 Q Does that fairly describe your feelings?

14 A Yes, sir, I do believe so.

15 Q Okay. Well, let's you and I talk about that for a
16 minute. You know, just a second ago I sort of went
17 through the process of explaining to you how a jury
18 would receive the case and the steps that had to be
19 followed all the way through to where there is a
20 possibility of recommending the death penalty or life.
21 It's sort of a mini show of the death penalty statute.

22 And, you know, I noticed when you were sitting
23 there and I made the comment or I asked, "Did you know
24 that for an ordinary or traditional murder case in this
25 state, no judge could give the death penalty? It's not

1 legal. It's not appropriate. It's not a possible
2 penalty." And I noticed you were the one that looked
3 puzzled about that. You didn't know that, did you?

4 A No, I didn't.

5 Q You didn't know that. And did you kind of follow
6 me along as I described how and what would have to be
7 shown and the factors that we would have to consider in
8 order to ever get to the point where it would be
9 appropriate for a capital case jury to ever even
10 consider the death penalty?

11 A Yes.

12 Q Okay. Now, that process seems to, in my view, run
13 contrary to your personal views about the death
14 penalty. Is that a fair statement?

15 A Yes, sir.

16 Q Is that a fair assessment that I have made?

17 A Yes.

18 Q Now, what I have to do as the judge in determining
19 whether you should be considered as one of the final
20 jurors in this case is determine whether you have any
21 interest, prejudice, bias or opinions that might
22 substantially hinder your ability to perform your
23 duties as a juror.

24 And, of course, one of your duties as a juror
25 would be to follow the law and the evidence in the

1 case. But the simplest way that we have found to
2 describe a jury's -- juror's duty is by saying a
3 juror's duty is to be fair and impartial. Okay?

4 A Right.

5 Q Now, considering what you have told us, it would
6 appear at first blush -- and I want to give you an
7 opportunity to talk to me about it and help me with
8 this. But it would appear at first blush that you are
9 saying to me, "Judge, I have this opinion. It is
10 contrary to what you told me the actual law is, and I
11 feel that it might stand in the way somehow, somehow
12 hinder my ability to be fair or impartial in my
13 determination in this case." Is that a fair
14 assessment?

15 A Yes.

16 Q That is. Okay. So you are telling me that
17 regardless of the presence of an aggravator or
18 mitigating circumstances, if it is shown that the
19 defendant willfully and intentionally took the life of
20 another person without legal excuse and with malice
21 aforethought, wicked, evil heart, that you believe that
22 the only appropriate sentence in that case is the death
23 penalty?

24 A Yes, sir.

25 MR. McGUIRE: Judge, we can agree.

1 MR. RICHARDSON: We agree, your Honor.

2 THE COURT: I tell you what I'm going to do. What
3 was your maiden name?

4 MS. DOTTELLIS: Parnell.

5 THE COURT: Parnell. I knew you were an Horry
6 County girl. Ms. Dotellis, thank you for coming. And
7 I want to stress upon you that we respect your opinion.
8 We cannot seat you on this case since it's a death
9 penalty case. That would not be appropriate. But
10 certainly no one here is criticizing you. No one here
11 is going to try to change your mind. We do respect the
12 fact that you have an opinion.

13 Thank you, ma'am. You may leave. You are free to
14 go.

15 (WHEREUPON, Ms. Dottellis exited the courtroom
16 at 9:10 p.m.)

17 (WHEREUPON, Mr. Keel entered the courtroom
18 at 9:10 p.m.)

19 DERICK KEEL,

20 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

21 EXAMINATION BY THE COURT:

22 Q Good evening, Mr. Keel.

23 A How you doing, Judge?

24 Q I'm doing well. I hope you are, too. We
25 apologize for this late night, but we are about to wrap

1 up tonight. Three hours earlier than last night, but
2 we're getting there. Please have a seat, make yourself
3 comfortable.

4 Mr. Keel, remember you are under oath?

5 A Yes, sir.

6 Q Let me ask you if you remember on Monday me
7 telling you that I didn't want you to talk about the
8 case with anybody, I didn't want you looking up
9 anything about the case, reading any newspaper articles
10 or things of that nature? Have you complied with my
11 order?

12 A Yes, sir.

13 Q And I want to thank you for that. And I want to
14 tell you that that order will continue as long as
15 you're on that jury panel. Okay?

16 A Okay.

17 Q So just want to make you aware of that. All
18 right?

19 Mr. Keel -- it's not "Keels," it's "Keel," right?

20 A Yes.

21 Q Keels is a pretty common name in Horry County, but
22 Keel is a little rarer.

23 Do you have family here in Horry County?

24 A Yes, sir.

25 Q Mr. Keel, you were kind enough to get our form

1 here where we asked you to tell us what kind of juror
2 best describes you. Okay? And you said or indicated
3 to me that you are a C type or C category juror; is
4 that your intention?

5 A Yes, sir.

6 Q And just so that we're on the same page, let me
7 make sure. You are telling me that you are the type of
8 juror that, in a murder case, you would need to hear
9 the facts and circumstances in aggravation and
10 mitigation before you could make a decision regarding
11 punishment?

12 A Yes, sir.

13 Q And does that, in fact, describe how you are?

14 A Yes, sir.

15 Q That's how you feel about it?

16 A Yes, sir.

17 Q I noticed you were listening a moment ago when I
18 was sort of giving you an overview of how a capital
19 case works, what the State would have to show and what
20 it would mean to Mr. Cottrell if they did and the steps
21 that we would follow. Did you follow me on that?

22 A Yes, sir.

23 Q You understood what I was saying?

24 A Uh-huh.

25 Q Okay. Do you agree or believe that this

1 categorization that you made, one that would need to
2 look at the circumstances and consider the aggravation
3 and mitigation before you could make a decision
4 concerning punishment, do you believe that that is
5 consistent with -- it actually fits the system that I
6 talked to you about?

7 A Yes, sir.

8 Q Okay. After hearing what I said, do you see
9 anything or pick up on anything in my description of
10 how that would work that in your mind you felt was
11 unfair or oppressive to the point that you couldn't
12 follow that process if you were put on the jury?

13 A No, sir.

14 Q And you think it kind of goes hand in hand with
15 how you actually think?

16 A Uh-huh.

17 Q Okay. If I instructed you, if you were on the
18 jury, at the end of the trial, if we got that far, if I
19 gave you an instruction along those lines, do you feel
20 that you would be comfortable following that?

21 A Yes, sir.

22 Q Okay. And you could do that?

23 A (Nodding.)

24 Q Do you know that whenever a trial is conducted,
25 the jury listens to all the evidence that's put forth.

1 In fact, that's what the jury -- the evidence is put
2 forth for. A trial is just for information, and we
3 call it evidence, is brought forward for the benefit of
4 the jury. Do you understand that you could only
5 consider what you saw and heard in the courtroom?

6 A Yes, sir.

7 Q And if I told you that's all you could consider,
8 would you have any trouble following that?

9 A No, sir.

10 Q Do you have any other information about this case?
11 Do you know anything about this case?

12 A No, sir.

13 Q All right. What if I was giving you the law and
14 you heard me say something that you just felt like,
15 "Well, that might be the law, but it is not a good
16 law," could you set that feeling aside and still follow
17 the law as I gave it to you?

18 A I'm not sure.

19 Q Well, let me tell you, the job that the jury has,
20 the jury has to listen to the evidence. And the
21 evidence might not be exactly what the facts are, but
22 the jury has to determine what the facts are. You
23 know, in every case you have conflicting evidence,
24 otherwise you wouldn't even need to have a jury.

25 A Yes, sir.

1 Q But the jury has to sit through all that evidence,
2 and the jury says what the facts are, what actually
3 happened. They have to make that determination. I
4 can't have anything to do with that. Nothing
5 whatsoever. I can't even let you know if I have an
6 opinion. I don't have the legal right.

7 But on the other hand, the jury, when it gets
8 those facts, has to compare those facts to the law and
9 kind of see how the law and the facts fit. The law
10 comes from the judge. Every time. And the jury,
11 whether they agree with it, like it, believe it's the
12 law, they have to take the law exactly as the judge
13 gives it. Did you know that was a principle of the
14 jury system?

15 A Yes, sir.

16 Q Now, a moment ago you said you didn't know if you
17 could follow the law as I gave it to you if you didn't
18 agree with it. Can you, having told you that you must
19 follow it, can you follow it?

20 A Yes, sir.

21 Q Can you apply the law as I give it to you?

22 A Uh-huh.

23 Q Okay. All right, sir. Now, you indicated on
24 your -- or I have a note here on my sheet from Monday.
25 And if I'm not mistaken, I asked a question if you knew

1 of any reason why you could not be fair and impartial.
2 And my notes say that you stood up, among other people,
3 but you were one of the people that stood up. Was that
4 right?

5 A Yes, sir.

6 Q Tell me why do you feel could you not be fair and
7 impartial?

8 A Because I feel that sometimes police officers make
9 biased decisions --

10 Q Make a what? I'm sorry.

11 A Biased decision against certain people just
12 because the way they feel the way things happen and
13 because I know witnesses weren't there, people made up
14 stories. But I'm not sure because I haven't heard the
15 story yet.

16 Q What I think you were telling me and what I've at
17 least gathered from what you're saying is, for whatever
18 reason, you have a bias or prejudice against police
19 officers; is that right?

20 A Not necessarily but some sort of.

21 Q But in some cases you have a bias or a prejudice
22 against a police officer?

23 A Yes, sir.

24 Q Would that bias or prejudice against a police
25 officer, could you promise me that it would not come

1 into play if you were a juror in this case?

2 A Yes, sir.

3 Q You could set that aside, you would not consider
4 it at all?

5 A Yes, sir.

6 Q It would not in any way have anything to do with
7 your determination of facts?

8 A (Nodding.)

9 Q Tell me why you told me on Monday that because of
10 that you could not be fair and impartial.

11 A Because I didn't -- I don't know the
12 circumstances.

13 Q Okay. And we don't know what the circumstances
14 are. Are you telling me that as the circumstances
15 develop you might become a person who could not be fair
16 and impartial?

17 A It's a possibility.

18 Q There is a possibility?

19 A Yes, sir.

20 THE COURT: Okay.

21 MR. McGUIRE: I'd like to voir dire, your Honor.

22 THE COURT: I'm going let you voir dire on that
23 issue.

24 MR. McGUIRE: Yes, sir.

25 THE COURT: Later, if necessary, we'll get into

1 other things, but I want you to limit it to that issue.

2 MR. McGUIRE: Yes, sir.

3 EXAMINATION BY MR. McGUIRE:

4 Q Evening, Mr. Keel. How you doing?

5 A I'm okay.

6 Q If I hear you correctly, you indicated that
7 sometimes police officers don't do the right things?

8 A Yes, sir.

9 Q And just like any other group of people, you're
10 going to have good ones and bad ones; is that right?

11 A Yes, sir.

12 Q Good lawyers, bad lawyers; good doctors, bad
13 lawyers (sic). Some people say good judges, bad
14 judges. We're lucky to have a good one here.

15 A Yes, sir.

16 Q I've been told that people are like fruit on a
17 tree. Always some good, some bad. Would you agree?

18 A Yes, sir.

19 Q You don't know anything about the officers in this
20 case, do you?

21 A No, sir.

22 Q You don't know the names Officer Guthinger?

23 A No, sir.

24 Q McGarry?

25 A No, sir.

- 1 Q Pyle?
- 2 A No, sir.
- 3 Q Sheldon?
- 4 A No, sir.
- 5 Q As far as you know, these could all be good
- 6 officers?
- 7 A Right.
- 8 Q Because there are some good ones in the world,
- 9 right? And you don't have any reason to prejudge the
- 10 case or assume they're bad in any way, do you?
- 11 A No, sir.
- 12 Q You would give them the benefit of the doubt of
- 13 being good until they were proven otherwise?
- 14 A Yes, sir.
- 15 Q And if there was evidence of that, the judge would
- 16 tell you that you would have to take that into
- 17 consideration and you would have to weigh it just like
- 18 any other juror (sic).
- 19 A Yes, sir.
- 20 Q You could do that?
- 21 A Yes, sir.
- 22 Q You wouldn't automatically believe that a police
- 23 officer is going to be bad?
- 24 A No, sir.
- 25 MR. McGUIRE: If I could have one second.

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

3 MR. MCGUIRE: That's all I have.

4 THE COURT: Mr. Richardson, Mr. Hixson.

5 MR. RICHARDSON: Thank you, your Honor.

6 EXAMINATION BY MR. RICHARDSON:

7 Q Mr. Keel, I ask you to go a little deeper just so
8 we can explore this issue and this issue only.

9 Where do you believe that that distrust of police
10 comes from?

11 A Because I myself was arrested for -- I believe the
12 charge was scaling a vehicle.

13 Q What kind of vehicle?

14 A It said scaling a vehicle.

15 Q Scaling?

16 A That's what it said it was.

17 Q Okay. Well, on your form you said that you had
18 never been arrested.

19 A I don't remember that.

20 Q On your jury qualification form.

21 A Yes, sir.

22 Q Let's see if this is your writing.

23 Is that your handwriting? Did you go to Loris
24 High School?

25 A Yes.

1 Q Let's see here. Have you ever been -- I'm sorry.
2 "Have you ever been indicted, convicted, probation,
3 deferred adjudication, conditional discharge of a crime
4 other than a traffic ticket?" Did you say "no"?

5 A Yes, sir. Probably I just didn't understand the
6 question. I'm sorry.

7 Q Okay. But you have been arrested for scaling a
8 vehicle?

9 A Yes, sir.

10 Q Were you -- you were also a member of the Army,
11 right?

12 A Yes, sir.

13 Q And another conviction that you've got from the
14 Army was cocaine use --

15 A Yes, sir.

16 Q -- is that right? And what happened as a result
17 of that?

18 A I was discharged.

19 Q Discharged. And that was a conviction?

20 A Uh-huh.

21 Q And another conviction that -- and let me ask you
22 if this conviction would play any part in your bias
23 towards police officers and ultimately whether or not
24 you can be a -- could substantially put this aside.
25 Did you plead guilty to assault on a police officer in

1 July of 2009?

2 A I don't recall.

3 Q It would have been in front of Judge Jennifer
4 Wilson?

5 A Yes, sir.

6 Q Okay. And do you remember, does that have
7 anything to do with your bias?

8 A That was for scaling the vehicle.

9 Q Scaling the vehicle?

10 A Yes, sir.

11 Q Then there was a separate charge of assault on a
12 police officer?

13 A Yes, sir.

14 Q Did you plead to the scaling of the vehicle?

15 A I don't recall.

16 Q I don't -- I have never heard of that before. I
17 just saw the assault on a police officer. The assault
18 on a police officer, was that a fight?

19 A No, sir. He was trying to put me under arrest and
20 I was trying to run, so I guess he said he got hurt
21 somehow.

22 Q Do you know if he went to the hospital --

23 A No, sir.

24 Q -- hurt? You don't know?

25 A I'm not sure. I don't think he did.

1 Q Is that the same officer that arrested you?

2 A I'm not sure.

3 Q Okay. With regard to that -- and, of course, you
4 heard the indictment on Monday -- would your past
5 dealings with the police, coupled with this bias
6 against the police, do you think that would
7 substantially impact your ability to be a juror in this
8 case?

9 A No, sir.

10 Q Do you think that you could set that aside?

11 A Yes, sir.

12 Q Okay. Now, it's more, Mr. Keel, than not just
13 discussing it with the others. When I say set it
14 aside, you have got to actually not forget about it,
15 but really not bring that into play at all. And do you
16 think that with this case involving the death of
17 a police officer --

18 MR. McGUIRE: Judge, I'd object to that. "Not
19 having it be in play at all" is a misstatement. It has
20 to -- if you can set it aside so you're not
21 substantially impaired is the law. Saying that, "Would
22 this have any play at all," is actually misleading.

23 THE COURT: Okay. All right.

24 MR. RICHARDSON: All right.

25 Q And I don't want to mislead you. Do you think

1 that that would impair your ability to render a fair
2 and impartial verdict in this case?

3 A I don't think so.

4 Q You don't think so. Well, to your knowledge,
5 is -- and we're talking about the scaling of the
6 vehicle and the assault on the police officer and the
7 arrest in the Army. Do you know of any other arrest
8 that you have had?

9 A Yes, sir.

10 Q Okay. What was that?

11 A I was arrested in high school for a stink bomb.

12 Q A stink bomb, okay. And did you -- you didn't
13 list that on this paperwork either, did you?

14 A I don't think so.

15 Q Mr. Keel, there's another question that I had some
16 concern with. Do you remember which office handled
17 that case?

18 A No, sir.

19 Q Would it have been the Solicitor's office?

20 A I'm not sure.

21 Q Have you ever heard the term "general session"
22 before?

23 A I don't recall.

24 Q Well, first of all, do you remember writing on
25 your paperwork that you have had no dealings or no

1 cases handled with the Solicitor's office right here?

2 "Have you or any member of your immediate family ever
3 had any matters whatsoever handled by any Solicitor or
4 prosecutor's office?"

5 A I don't recall.

6 Q Is that your writing?

7 A Yes.

8 Q Okay. And if I told you that this was a general
9 sessions charge, do you remember where the stink bomb
10 was? Was it in Horry or Georgetown County?

11 A Yes.

12 Q So it would have been our office.

13 A Okay.

14 Q All right. And right under that, question 36, it
15 says, "Have you or any member of your immediate family
16 ever had any members -- excuse me -- matters whatsoever
17 handled by the public defender's office?" I'm assuming
18 any public defender's office. But for the purposes of
19 this questioning we'll just call it Horry and
20 Georgetown Counties. And your answer was?

21 A No.

22 Q "No," right?

23 A Uh-huh.

24 Q Is that a fair answer?

25 A I guess not. I didn't understand the question.

1 Q Okay. Do you know Mary Ashley Martin?

2 A No, sir.

3 Q Do you remember whether or not you had an attorney
4 during that stink bomb charge?

5 A No, sir.

6 Q See. That's the court of general sessions and
7 Horry County Public Defender's Office, 203 Laurel
8 Street. And who was your attorney?

9 A Mary Ashley Martin.

10 Q Mary Ashley Martin. And that was 2008?

11 A Yes, sir.

12 Q Now, I know this next one I'm going to ask you
13 about wasn't an Horry County charge. And it looks to
14 be fairly benign, but do you remember being arrested
15 for disorderly conduct? Was that Morris?

16 A I don't recall.

17 Q And at that time were you still living at
18 , Loris?

19 A Yes, sir.

20 Q And did -- is that Loris Municipal Court?

21 A Yes, sir.

22 Q Judge Butler. Do you remember that now?

23 A No, sir.

24 Q You don't remember? Public disorderly conduct.
25 Is that you?

1 A Yes, sir, it's my name.

2 Q That's your name?

3 (WHEREUPON, an off-the-record discussion was
4 held between Mr. McGuire and Mr. Hixson.)

5 MR. HIXSON: Jim, he says disqualify him.

6 MR. RICHARDSON: He said disqualify?

7 THE COURT: Thank you. You may step down,
8 Mr. Keel.

9 Mr. Keel, you are excused and you will not have to
10 report back. Thank you.

11 MR. KEEL: Yes, sir.

12 (WHEREUPON, Mr. Keel exited the courtroom
13 at 9:30 p.m.)

14 THE COURT: Jenerette.

15 (WHEREUPON, Ms. Jenerette entered the courtroom
16 at 9:31 p.m.)

17 KAREN JENERETTE,

18 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

19 EXAMINATION BY THE COURT:

20 Q Ms. Jenerette, how are you? It's good to see you.
21 I'm sorry it's so late.

22 A It's okay.

23 Q We were here real late last night. Looks like
24 we're going to be here late tonight and we're about to
25 finish everything. Again, we apologize. Sometimes it

1 just takes longer than we anticipate.

2 Do you remember my talking with you Monday about
3 avoiding pretrial publicity and not talking with
4 anybody about the case and things of that nature?

5 A Yes, sir.

6 Q Do you remember all that? And have you kept my
7 directive, have you done as I've told you?

8 A Yes, sir.

9 Q And I appreciate that. And I want you to
10 understand that until you are released from this case,
11 that order will stay in effect. Do you understand?

12 A Yes, sir.

13 Q I do not want you talking to anyone or get any
14 information about this case.

15 I have your sheet here where you describe yourself
16 as a juror.

17 A Uh-huh.

18 Q And you had indicated on that sheet that you were
19 a B juror or B category best describes you; is that
20 correct?

21 A Yes.

22 Q And as I look at that, I want to make sure we are
23 together on this. A B juror believes that the death
24 penalty is never appropriate no matter what the
25 circumstances of the case?

1 A I feel as though I'm not the one to judge that
2 person.

3 Q Okay. Again, let me assure you we all appreciate
4 that fact that you have opinions. We all have
5 different opinions, and no one is going to criticize
6 you and no one is going to try to change your mind. We
7 just simply want you to understand that we need you to
8 be very candid with us, okay, and truthful when you
9 answer the questions.

10 Now, is that belief based in your faith or your
11 moral upbringing? What's the -- do you have a specific
12 basis for that thought process?

13 A I've just always believed that. I think it was
14 just the way I was raised in church, and I've just felt
15 that.

16 Q That's good. Do you -- did you listen to me as I
17 kind of described the process that we would follow in a
18 capital case, the steps that we would have to go up and
19 down in order to ever get to the point where the jury
20 would consider or could even consider that the death
21 penalty is appropriate?

22 A Yes.

23 Q Suppose you were on this jury and we actually did
24 that and went up and down all the hills and steps we
25 were supposed to do and we got to that point where it

1 was time to talk about the penalty. And you remember I
2 said at that point, if we got to that point, there
3 would be two possible penalties: Life without parole
4 and the death penalty. And they would both be on the
5 table at that time, so to speak.

6 Are you telling me that if you were a juror and
7 you reached that point that you could only vote for
8 life imprisonment?

9 A Yes, sir.

10 Q You could not vote for the death penalty?

11 A Correct.

12 Q And you notice that I mentioned when I was
13 describing the process to you that if a person did
14 vote, if everybody on the jury did vote and were to say
15 the death penalty is appropriate, then everybody would
16 have to sign their name to it as well. I would assume
17 if you couldn't vote, you couldn't do that either?

18 A Correct.

19 Q You just couldn't do it?

20 A Correct.

21 MR. McGUIRE: No questions, Judge.

22 MR. HIXSON: No questions, your Honor.

23 THE COURT: Is there -- do you have --

24 MR. McGUIRE: I think we can agree to excuse this
25 juror.

1 MR. HIXSON: That's right.

2 THE COURT: Ms. Jenerette, thank you for coming.
3 I know we kept you away tonight. And, again, we
4 respect your opinion, and you're entitled to those and
5 we wish you we will. You are released. Okay?

6 MS. JENERETTE: Thank you.

7 (WHEREUPON, Ms. Magness entered the courtroom
8 at 9:37 p.m.)

9 SHERRETTA MAGNESS,
10 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT:

12 Q Come around, Ms. Magness. How are you?

13 A Hi. I'm fine.

14 Q Good. I apologize, Ms. Magness, for the late
15 hour. You're the last person tonight, but it's much
16 earlier than we were here last night, and I know we
17 have inconvenienced you and we apologize for that.
18 It's just such an important matter, we have to just
19 soldier on once we get the schedule set.

20 Do you remember on Monday that we talked and I
21 said that -- I ordered everyone to refrain from talking
22 about the case or doing research on the case or reading
23 newspaper articles, watching TV reports and things like
24 that?

25 A Yes.

1 Q Okay. And have you been able to comply with my
2 order? Have you done what I asked you to do and
3 refrained from those things?

4 A (Nodding.)

5 Q Now, see this lady right here. She has to write
6 down your responses to every question I ask.

7 A Okay.

8 Q She really can't see you as she's watching what
9 you're doing when you nod or shake your head. I'm
10 going to ask you to speak up.

11 A Okay.

12 Q Thank you. Thank you. But do you understand that
13 that order will now stay in effect until you are
14 released from jury service? Do you understand that?

15 A Yes, sir.

16 Q You are not to talk with anybody about this case.

17 A Yes, sir.

18 Q Thank you. Ms. Magness, that's not an Horry
19 County name, is it?

20 A No, sir.

21 Q Where are you from?

22 A Charleston.

23 Q Charleston, okay. How long have you been here in
24 Horry County?

25 A Four years.

1 Q Four years. Okay. You were kind enough at our
2 request to fill out a form here where we ask you if you
3 could tell us what category best describes you as a
4 juror. Okay? Have you ever been a juror?

5 A No, sir.

6 Q And you indicated you're a C type juror; is that
7 right?

8 A Yes, sir.

9 Q And just so that you and I will be thinking about
10 the same thing or are on the same page, it's my
11 understanding you're telling me that you're a juror who
12 would need to hear the facts and circumstances in
13 aggravation and in mitigation before you could make a
14 decision regarding punishment. Does that best describe
15 you?

16 A Yes, sir.

17 Q And that's as honest an assessment of your thought
18 processes as you can give us?

19 A Yes, sir.

20 Q Okay. Now, I know that a few moments ago you were
21 in here in the courtroom, and I was talking to you
22 about how the process worked so that you would know
23 what these lawyers, when they ask you questions, are
24 talking about.

25 Did you pay attention? Did you follow me when I

1 was telling you how it went?

2 A Yes, sir.

3 Q Okay. And would you say that this description
4 that you have here that you say best fits you is pretty
5 consistent with that process? It sort of fits that
6 process, that is, looking at mitigating circumstances,
7 looking at aggravating circumstances?

8 A Yes, sir.

9 Q They kind of fit together?

10 A Yes.

11 Q As you went through that, did you pick up on
12 anything or notice anything about that process that you
13 felt was unfair or oppressive to either the State or to
14 Mr. Cottrell that you didn't think was right, that you
15 didn't think you could go for?

16 A Not that I recall, no, sir.

17 Q Okay. Well, in that it's consistent with the
18 thought processes that you have, and we've agreed on
19 that, if you were seated as a juror and I gave you a
20 set of instructions that said follow the law on that
21 process that I just talked with you about, could you
22 follow those instructions? Do you think that you could
23 do that?

24 A Yes, sir.

25 Q Okay. You know, in a trial, the jury has to

1 decide what the facts are. Only the jury can do that.
2 And in doing that, the jury has to consider all the
3 evidence. Can disregard some of the evidence, can find
4 it unbelievable or unreliable, but has to consider all
5 the evidence that comes in and make a decision as to
6 what the facts are. And nobody can do that but the
7 jury. Are you aware of that?

8 A Yes, sir.

9 Q Okay. And you're supposed to be fair and
10 impartial in your assessment of those facts. And you
11 can't consider anything except those facts or that
12 evidence that has come into the trial. Do you
13 understand that?

14 A Yes, sir.

15 Q When I asked if anybody knew anything about the
16 case or had read or heard anything about the case, my
17 notes indicate that you said that you had. Is that --
18 is that correct?

19 A Yes, sir.

20 Q Okay. Tell me what you've read or heard or know
21 about the case. You know, it might be helpful if you
22 could tell me how long you have been here in Horry
23 County.

24 A I've been here four years.

25 Q Four years. So you weren't even here back when

1 this incident occurred in 2002?

2 A No, sir.

3 Q But in the four years you have been here, you have
4 read or heard something about the case?

5 A Yes, sir.

6 Q Can you tell me what you heard and where you heard
7 it?

8 A I don't remember exactly where, but I just heard
9 that there was a killing, a shooting, I believe, of an
10 officer and then that was it.

11 Q That was it?

12 A Yeah. I don't know anything specific, just that
13 it was a shooting.

14 Q Would that come from casual conversations with
15 friends or acquaintances, or did you like see it on the
16 news or do you remember where the source was?

17 A It probably would have been like overhearing or a
18 casual conversation, you know.

19 Q You don't remember who said it?

20 A No.

21 Q And that's all you heard?

22 A Yes, sir.

23 Q Could you, if you were seated as a juror, forget
24 about that, not consider it? You know, it doesn't seem
25 like you heard a whole lot, but whatever it was, can

1 you just kind of put that out of your mind and base
2 your determination on what the facts are on the
3 evidence that you hear in this case? Could you do
4 that?

5 A Yes, sir.

6 Q Do you have any problems doing that? Would what
7 you heard in any way affect your decision or decisions
8 in this case?

9 A No, sir.

10 Q Okay. Very well. You know, Ms. Magness -- and
11 several jurors and I have talked about this. Let me
12 ask you if you feel the same way. We all have opinions
13 about different subjects, and we all have beliefs and
14 feelings about different subjects. And you could bring
15 up just about any subject and a person, based on these
16 feelings and beliefs, would probably have some bias or
17 prejudice about that particular subject, whatever it
18 is.

19 And would you agree that the way we feel about
20 things, our opinions about things, are pretty much the
21 product of our life experiences, things that we have
22 experienced, things like our education, things like
23 people we have been exposed to, even the experiences of
24 our family and close friends, they all kind of come
25 together and they sort of make us into a person and

1 that's why we might feel one way or the other about a
2 particular subject? Would you kind of agree with that,
3 that's kind of what molds us and makes us?

4 A Me, personally, not a hundred percent.

5 Q Okay.

6 A But I do agree somewhat. I believe that.

7 Q And there's all sorts of other things?

8 A But that is a main part of it, yes.

9 Q And there's all kinds of things that come
10 together. But, anyway, my point is that those things
11 do contribute.

12 One of the things that I have to do is make a
13 determination of whether there's anything about
14 Ms. Magness that would substantially impair her ability
15 to perform her duties as a juror. And the duties of a
16 juror are simply described as being fair and impartial.
17 That's the main thing. That's what a juror is supposed
18 to be, fair and impartial. And we have talked about
19 look at the evidence, apply the law, all this stuff.
20 But fair and impartial is a pretty good description of
21 what a juror has to be.

22 Let's look back at your life experiences and the
23 things that have molded you and the opinions that you
24 have. Are there any opinions or feelings that you have
25 that you think would hinder your ability to be fair and

1 impartial in this case? Could you be fair and

2 impartial to the State and to Mr. Cottrell?

3 A Yes, sir.

4 Q You think you can. Okay. Tell me about, say,
5 your feelings concerning the death penalty, if you have
6 any feelings about the death penalty.

7 A I do have feelings on it. I guess I could say I
8 don't have set feelings. I believe that everything
9 depends on the circumstances. I don't just go towards
10 one way or the other.

11 So I'm kind of, I would say, in the middle but
12 it's not because I'm not sure, it's because I believe
13 in the circumstances.

14 Q Well, that's a fair assessment. And that kind of
15 fits with what you told us what kind of juror you said
16 you are. You said you'd want to look at the
17 circumstances.

18 If you were called upon to judge this case, could
19 you consider a life sentence or the death penalty
20 depending on the circumstances? Could you consider
21 either one and make your decision based honestly on
22 your perception of the facts and circumstances in this
23 case?

24 A I believe I could.

25 Q Okay. Would you favor one over the other? Let me

1 put it another way. Suppose we know nothing about the
2 case, nothing at all.

3 A Uh-huh.

4 Q We haven't heard a single word about it, and we
5 went in the room and said, "Okay. We're going to try a
6 capital case, and we're going to have death and life as
7 possible penalties." Would you favor one over the
8 other? Not knowing anything about the case, would you
9 be more inclined to give life than death or death than
10 life?

11 A I would be more inclined to give life, but I still
12 would want to see the facts and I would still want to
13 know the circumstances. I may be a little more
14 inclined, but I still want to know, you know,
15 everything.

16 Q Are you telling me you could still give the death
17 penalty?

18 A Could I still do it, yes.

19 Q And you understand if you did it, and we talked
20 about this, if you were on a jury and everybody agreed
21 that the death penalty was appropriate, that unlike
22 other cases, you would have to sign it, put your name
23 on it. Could you do that?

24 A Yes, sir.

25 THE COURT: Answer any questions Mr. McGuire might

1 have.

2 EXAMINATION BY MR. McGUIRE:

3 Q Good evening, ma'am. My name is Bill, Bill
4 McGuire. I'm one of the lawyers in the case. I
5 represent Mr. Cottrell.

6 I wanted just to ask you briefly about you
7 indicated on your questionnaire that you had been a
8 victim of some kind of crime. I just want to make sure
9 that whatever took place, whatever it might have been,
10 wouldn't affect your ability to be a fair juror and
11 wouldn't affect your deliberations in this case.

12 A It wouldn't.

13 Q That's just something that's out there, doesn't
14 have anything to do with this?

15 A Right.

16 Q Wouldn't affect you in any way?

17 A No.

18 Q To be a fair and qualified juror, you have to
19 follow the judge's instructions. And that means you
20 can fairly consider all the evidence in aggravation.
21 That's generally evidence that the State would bring.
22 You would listen to that, consider it; listen to all
23 the evidence from the defense, mitigation evidence, and
24 you could fairly consider both penalties, the life
25 penalty and the death penalty. Sounds like you can do

1 that?

2 A Uh-huh.

3 Q Okay. Did you know that the State never requires
4 the death penalty? There's never a point where it's
5 automatic. Did you know that?

6 A Yes, from earlier.

7 Q You heard it from the judge?

8 A Yes.

9 Q And you could follow that? You could respect that
10 principle of the law?

11 A Yes, sir.

12 Q There's no case in your mind that would be
13 automatic for the death penalty?

14 A No, sir.

15 Q Okay. And with regard to the sentencing phase, if
16 we got there -- and I want to tell you that Ms. Norris
17 and I are going to represent Mr. Cottrell. We're going
18 to come to the jury, and if you're on it, I'll come to
19 you and ask you for a not guilty verdict in the case.
20 Not because I asked for it, but because the evidence
21 supports it.

22 So I don't want you to think that we're throwing
23 in the towel or conceding guilt by talking about the
24 penalty. Okay?

25 A Okay.

1 Q Does that sound fair?

2 A Yes.

3 Q Okay. And if we got to a sentencing phase, and I
4 have to talk to you about it now because I have no
5 other choice. But let's say we get there. Let's say
6 you're on the jury and you're in the sentencing phase.
7 One of the principles of law that we have is that it
8 would be wrong once -- if you reached a decision and
9 your decision was your individual moral judgment --
10 that's how we refer to it. If you reached your
11 individual moral judgment, it would be wrong to switch
12 sides just to go with the majority. Did you know that?

13 A Yes.

14 Q You knew that was wrong?

15 A Yes. And I wouldn't do that.

16 Q That was my next question. You wouldn't do that?

17 A I wouldn't.

18 MR. McGUIRE: That's all I have. Thank you.

19 THE COURT: Mr. Richardson.

20 MR. RICHARDSON: Thank you, your Honor.

21 EXAMINATION BY MR. RICHARDSON:

22 Q Ms. Magness, my name is Jimmy Richardson,
23 Solicitor for Horry and Georgetown Counties, and this
24 is Mr. Hixson. Together we will be presenting the case
25 for the State.

1 Did you indicate that you had heard a little bit
2 about this case?

3 A Yes, sir.

4 Q What had you heard?

5 A Like I said, just that there was a shooting and
6 someone lost their life and it was an officer or
7 someone in law enforcement.

8 Q Police officer. And do you remember when you
9 would have heard that? Would it have been closer to
10 the time that it happened or more recently?

11 A It would have been more recently because I wasn't
12 in the area close to the time that it happened.

13 Q Okay. You were down in Charleston at the time?

14 A Yes.

15 Q What year did you graduate from high school?

16 A 2010.

17 Q 2010. Which high school did you go to?

18 A Ft. Johnson High School.

19 Q All right. Ms. Magness, you also said something
20 about knowing a person in prison. Who is that?

21 A I don't -- I'm not sure if I stated I knew them
22 currently, that they were currently or had been in
23 prison.

24 Q Well, it says, "Do you personally know anyone who
25 has been to prison or is in prison?"

1 A Oh, yes. I know people who have been to prison.

2 Q Can you tell us the sort of crimes that they are
3 there for, if you know?

4 A One person, I don't know for sure. But the others
5 that I know, they were like drug related.

6 Q Okay. And was it like high school kids? I mean
7 people that you knew from high school or family or
8 what?

9 A Yes, some from high school and some family
10 members.

11 Q Okay. All right. Let me ask you, would it affect
12 your judgment at all if the officer and the defendant
13 were of different races?

14 A No.

15 Q Okay. Do you have any preconceived notions or
16 biases that you know of or that you can tell us about
17 regarding police and the police interaction with
18 people?

19 A No. No.

20 Q And have you ever personally experienced through a
21 traffic stop, an arrest, anything like that, a personal
22 interaction with a police officer?

23 A Yes.

24 Q All right. And how did that go? I don't need to
25 know what it was for or anything of that, but did you

1 feel comfortable? Were you okay?

2 A It wasn't unpleasant. It wasn't like an
3 unpleasant experience. It was just like normal. I
4 didn't feel upset or happy. It was just a normal
5 experience.

6 Q All right. Do you know of any biases, prejudice,
7 anything like that that we need to know about?

8 A No.

9 Q Okay. And I think that the judge had asked you
10 this before, but at the end -- if you're on this jury,
11 at the end of the deliberations, if you guys find that
12 he is, in fact, guilty, in other words, killing of
13 another person with malice --

14 A Uh-huh.

15 Q -- and then you find that aggravating
16 circumstance, we would be asking you to find for the
17 death penalty. And his Honor mentioned it to you, but
18 on the actual indictment, there will be 12 lines for
19 each of you to sign. Would you be able to sign the
20 document, basically the death warrant?

21 A I believe so, yes.

22 Q All right. Well, and Ms. Magness, I know it's a
23 lot to take in, but one of the requirements, you really
24 have to know so at that point. We have to know that
25 you would be able to do that.

1 A I'm not sure.

2 Q It is a tremendous thing, and we can all read the
3 paper. And I'm sure you do it as bad as I do. But if
4 they did that and then you exact this punishment on
5 somebody -- you know what I'm talking about. Or you're
6 watching TV and see something in the wrong and start
7 arguing that's why the world is in the mess that it's
8 in today and all this, but it's much tougher when it's
9 put to you like that, are you going to be one of the 12
10 responsible for the death of an individual. What do
11 you think?

12 A I believe if --

13 EXAMINATION BY THE COURT (Resumed):

14 Q Ms. Magness, let me tell you what the consequence
15 of that would be. And maybe I didn't make it clear.
16 But if you would not sign it, your vote would not
17 count. It would not be a vote for the death penalty.
18 It could not be counted. Do you understand that?

19 So if you were to -- if you were able to vote for
20 the death penalty and all your others jurors did it,
21 you would have a unanimous verdict only if you're
22 willing to sign it. Do you understand that? That
23 would have to be part of it.

24 Knowing that, can you tell me, can you say that if
25 I -- I'm not suggesting you would ever get to that

1 point. I'm just saying if you made that moral judgment
2 and you got to that point where you voted and said, "I
3 vote that the death penalty is appropriate now that I
4 know about this case," that you would have, for your
5 vote to count, you would have to sign it. Do you
6 understand that?

7 A Yes.

8 Q And what the Solicitor is asking you is that if
9 you got to that point, could you sign it, put your name
10 on that verdict by signing it that was your verdict?

11 A Then I don't believe I could.

12 Q You do not believe you could?

13 A I do not.

14 Q You could not sign it?

15 A I could not.

16 Q You're sure about that?

17 A This is a lot to --

18 Q I know. But that is such an important thing. And
19 you have to say -- you have to tell us honestly and
20 nobody is trying to change your mind. Nobody is trying
21 to force an opinion on you. It's entirely up to you.

22 But we need to have your honest thoughts as to
23 that issue because if I were sitting on the trial bench
24 and the verdict was delivered to me like that, and I
25 would call up Mr. McGuire and I would call up Mr.

1 Richardson and I would show them that. And the first
2 thing they would do is say, "We would object to the
3 form of that verdict." Because the law would require
4 you to send it -- I mean to sign it. That's just a
5 part of it. So it's an important part of it. And
6 that's a fair question. Mr. McGuire has asked it of
7 his witnesses. He may have asked it of you and
8 Mr. Richardson is asking. We just have to know.

9 Like I say, there's no wrong answer. No right
10 answer. All we need to know is how you feel sitting
11 here today, whether you could or couldn't.

12 A I feel like I couldn't. I could not.

13 Q You could not do that?

14 A I could not.

15 MR. RICHARDSON: Like I said, it's a lot to sit
16 and read the paper or watch TV and rant and rave. But
17 when you put some thought into it, it's -- I'm not
18 sitting here blaming you at all. We just want an
19 honest answer. I appreciate it.

20 MR. MCGUIRE: Judge, if I could just ask a couple
21 questions.

22 THE COURT: I'm going to let you, Mr. McGuire,
23 because I questioned her.

24 So come on.

25 EXAMINATION BY MR. MCGUIRE (Resumed):

1 Q You're doing great. This is a little confusing
2 sometimes. And to make sure that we're clear, when we
3 listened to you answer the questions from the Court
4 about your ability to be a fair and impartial juror,
5 follow the law, I understood you to say that there are
6 some cases where they're bad enough and they deserve
7 the death penalty. Okay? Is that true?

8 A Yes.

9 Q Okay. And, in fact, in this case, if this
10 government brought forward to you the kind of proof,
11 the quality and the amount of proof necessary for you
12 to say, "This case is bad enough. It deserves the
13 death penalty," you could vote for the death penalty.

14 MR. HIXSON: Your Honor, I'm going to object to
15 leading questions on this issue. She has been
16 questioned on that issue.

17 THE COURT: This is a very sensitive issue and I
18 don't want anybody putting words in Ms. Magness' mouth.
19 I want what she tells me to be her words and her
20 feelings on this.

21 BY MR. McGUIRE:

22 Q Let me rephrase it so I'm not putting words in
23 your mouth.

24 If the State brought forth evidence, the amount of
25 evidence you would need, the kind of evidence you would

1 need where you thought the death penalty would be
2 appropriate, could you vote for the death penalty?

3 A I don't want it to seem as if I'm going back on my
4 answer.

5 THE COURT: That's perfectly all right.

6 MS. MAGNESS: It's more like I would have to be
7 absolutely sure because when you asked me, you said,
8 "Would you favor in one or the other," and that's why I
9 said I would favor in life, but I would have to be
10 absolutely sure without a doubt in my mind before I
11 could, you know, say, you know, death.

12 EXAMINATION BY THE COURT (Resumed):

13 Q Well, and I appreciate that. And that's really
14 how you should approach it. It's a very serious
15 matter, and you should be absolutely certain in your
16 heart and mind that you're doing the right thing. But
17 that's not the question that Mr. McGuire asked you.

18 Mr. McGuire asked you in the proper case with the
19 proper proof, something satisfactory, is there a case
20 that could be -- where the evidence would be strong
21 enough that you could, first of all, vote, vote for the
22 death penalty?

23 A If there was a case where the evidence was strong
24 enough, I could vote for the death penalty.

25 Q Right. That's the question.

1 A I want to say yes, but I don't...

2 Q You're not sure?

3 A I feel like I'm sure, but I don't want it to
4 contradict the conversation that we just had because I
5 guess I would say I'm not sure then because I feel like
6 I want to say yes that I could, but like he just said,
7 when you're watching it and you have to be the one to
8 make the decision, you know, so I guess would I say I'm
9 not sure then. I'm not sure.

10 Q All right.

11 MR. McGUIRE: Judge, I have a follow-up question.

12 THE COURT: Okay. Go ahead. Go ahead,
13 Mr. McGuire.

14 EXAMINATION BY MR. McGUIRE (Resumed):

15 Q And I think what we all would say is you would
16 have a front row seat to all the evidence in the case.
17 You wouldn't have to do this by guesswork or
18 conjecture. All the evidence that both sides would
19 present to you, you would be right here, and you would
20 have a front row seat to all the witnesses right there,
21 all the documents, photographs, and you could -- you
22 would be in a position to judge the evidence to see if
23 it satisfied you to the level of certainty that you
24 would need with regard to the death penalty. Does that
25 make you feel more comfortable?

1 A A little.

2 EXAMINATION BY THE COURT (Resumed):

3 Q Do you still have doubts as to whether or not you
4 could vote for the death penalty?

5 A Yes, I do.

6 Q All right. Is that your final answer? Do you
7 think that is your position? That's what I seem to be
8 gathering. And, please, Ms. Magness, don't think
9 anybody is upset with you or anybody is disappointed in
10 you or anybody feels that you have a bad opinion about
11 this. Because they don't. I promise you that. It's
12 your opinion; you're entitled to it. I just -- see, I
13 have to make this decision. And I need something.

14 I need to know -- you know, we start out with
15 whether or not you could actually sign a sentencing
16 form and say, "This is my sentence," and now we've
17 backtracked to where, if I'm understanding you
18 correctly -- and please straighten me out if I'm not
19 right. Please do that.

20 A Okay.

21 Q But I believe that what you're saying to me is
22 you're saying, "I just don't know if I could do that."
23 You know, that's where I am in assessing you now. Can
24 you help me? Is that incorrect? Are you feeling
25 something else? Can you say something to help me to

1 correct me if that is wrong?

2 A I believe you're correct.

3 Q You think that that is how you feel?

4 A Yes, sir.

5 Q And it's just simply that you just don't know
6 sitting here today; is that what you're telling me?

7 A Yes, sir.

8 Q All right. So then I would assume then that you
9 would not know whether you could sign the sentence form
10 if you don't know if you could even vote for it. Would
11 that be a fair assessment?

12 A Yes, sir.

13 Q I mean, that's the only conclusion -- I don't want
14 to put words in your mouth. I promise you I don't. I
15 want to help you communicate with me because I'm the
16 one that's got to make the decision. And that's sort
17 of what I gathered from your reluctance.

18 And, there again, do not let me put words in your
19 mouth. Straighten me out if that's not how you're
20 feeling. That's just how I was reading you.

21 A Yes, sir.

22 Q Was I reading you correctly?

23 A Yes, sir. I just wanted to take my time because I
24 know that it's serious and make sure that I was sure.

25 Q That's perfectly all right. Perfectly. That's

1 good. That's good that you're thoughtful about it.

2 That's what I want you to do. And thank you for doing
3 that.

4 Are you satisfied with your answer now?

5 A Yes, sir.

6 Q You're satisfied that your answer is what? What
7 is your answer to that question, could you vote for the
8 death penalty?

9 A I'm not sure that I could vote.

10 Q You're not sure that you could.

11 A Vote for the death penalty.

12 Q Thank you.

13 MR. McGUIRE: Judge, if I could just add one
14 thing.

15 MR. HIXSON: Your Honor, no offense, but we have
16 had three bites at voir dire right now, back and forth
17 and back and forth, and she's unequivocally answered
18 three times that she couldn't --

19 THE COURT: Ms. Magness has given me her answer,
20 really.

21 MR. McGUIRE: Judge, I don't have a question for
22 the juror. What I was going to say is we would accept
23 an indictment without a signature if that's the issue.
24 And in this age of modern information where people
25 would be reluctant to have their name on a document, we

1 understand that. And there's no requirement under the
2 law that that exists. And if that's the issue --

3 THE COURT: You're saying to accommodate this
4 reluctant witness you would change the whole ball game.
5 We're not going to do that, Mr. McGuire. And that's
6 not the issue anymore. Ms. Magness has been, I think,
7 very candid with me. And I think she's done some soul
8 searching here, and I believe that she is satisfied
9 with the answer she has given me, and there's nothing
10 wrong with her answer, and I'm not going to allow any
11 further examination of Ms. Magness. I think that
12 Ms. Magness has reached her answer.

13 Is that right, Ms. Magness?

14 MS. MAGNESS: Yes, sir.

15 THE COURT: Okay. Ms. Magness, if you would go
16 and see Mr. Ropp right over there just a second. He's
17 going take you outside.

18 MS. MAGNESS: Do I get my things?

19 THE COURT: Yes, you can carry your things.

20 MS. MAGNESS: Thank you.

21 THE COURT: You're welcome.

22 (WHEREUPON, Ms. Magness exited the courtroom
23 at 10:13 p.m.)

24 THE COURT: The defense.

25 MR. MCGUIRE: Your Honor, I think she answered

1 your questions very accurately. I think the only time
2 where she stubbed her toe was this whole would you sign
3 this document, put your name on it, and that was the
4 issue.

5 THE COURT: And I think that was the issue, and I
6 think we could have worked around it. But then she
7 backed up when I think you began to examine her and
8 said, "I don't want to sign it at all. I don't know if
9 I could sign it -- I mean, I don't know if I could even
10 vote for it."

11 And she did a lot of soul searching there. And
12 both of you questioned her. And I feel like I rescued
13 her from you two. And I tried to be as gentle and
14 unpersuasive as I could possibly be. And I believe
15 that Ms. Magness was able to calm down and I think
16 she's given us her answer. And that answer takes us
17 out of the realm of the signing. Ms. Magness is back
18 and she assures me that that is her true position, that
19 she just does not know that she could -- whether she
20 could vote for the death penalty or not, and I think
21 that is a serious question for her.

22 I'll hear from you, though.

23 MR. McGUIRE: Just to put -- for the record, your
24 Honor, she was also treated a little bit differently
25 than other jurors by the prosecution in that she was

1 asked about race issues, is she comfortable with the
2 police. And that was when her answers started to
3 change.

4 THE COURT: I've heard those kind of questions
5 with everybody, with a number of witnesses. And, in
6 fact, I've heard you, I think, talk about the race
7 issue.

8 MR. RICHARDSON: And I think I did it --

9 THE COURT: Everybody talked about it. I don't
10 think anybody was roughing her up. I think Ms. Magness
11 was genuinely torn. She was -- I think both of you
12 treated her well. She was just genuinely torn about
13 this and began to have second thoughts about where she
14 was.

15 MR. RICHARDSON: And, your Honor, before she comes
16 back in, I would just cite *Plath* for juror couldn't
17 sign the verdict form and, of course, inconsistent
18 answers under *Tiner*. Both, I think -- I won't say
19 inconsistent. She did waver, and like your Honor said,
20 at some point she said, "I don't think I could find the
21 death penalty."

22 THE COURT: She has made it very clear to me that
23 she has great misgivings about signing the death
24 warrant -- the recommendation of death. But most
25 importantly, she is telling me that she does not know

1 if she could ever vote for a recommendation of the
2 death penalty. And that is, in my view, proof that her
3 opinions substantially hinder her ability to carry out
4 her duties as a juror. So I'm going to find her
5 disqualified.

6 Bring her out.

7 (WHEREUPON, Ms. Magness entered the courtroom
8 at 10:17 p.m.)

9 THE COURT: Ms. Magness, thank you so much for
10 coming. We have kept you a long time, and you are the
11 last one today. But we're not going to be needing you
12 anymore. You don't have to come back. You are
13 released from your subpoena. Thank you again for
14 coming here. Thank you for sharing your thoughts with
15 us. Thank you, ma'am. You are released.

16 (WHEREUPON, Ms. Magness exited the courtroom
17 at 10:17 p.m.)

18 THE COURT: All right. 9 o'clock in the morning.

19 THE CLERK: Sir, before we leave again, let's make
20 sure we are on the same page at 23.

21 THE COURT: That makes a total of 23 -- 11 today,
22 12 yesterday.

23 Is everybody on the same page at 23?

24 MR. HIXSON: Yes, ma'am.

25 THE CLERK: Mr. McGuire, Ms. Norris, 23 qualified,

1 correct?

2 MR. McGUIRE: I think so.

3 (WHEREUPON, the hearing adjourned at 10:18 p.m.)

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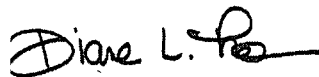
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15 January 15, 2015

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Circuit Court Reporter
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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 18, 2014
7 LUZENSKI ALLEN COTTRELL,)
8 Defendant.) Volume IV of X
9 -----) Pages 1286 - 1691
10) Transcript of Record

11 B E F O R E:

12 The Honorable Larry B. Hyman, Jr., Judge

13
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Fifteenth Circuit Solicitor's Office

18 Attorneys for the Defendant:
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22

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25

Diane L. Thommes, RPR, CRR
Circuit Court Reporter

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E x h i b i t s

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For the State:

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MarkedDescriptionI.D.Admitted

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None offered.

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For the Defendant:

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MarkedDescriptionI.D.Admitted

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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 8:58 a.m.)

4 THE COURT: All right. Ladies and gentlemen,
5 we're on the record now. I see Mr. Cottrell is here.
6 All counsel is here.

7 I want to make something very clear to you this
8 morning. It's absolutely unforgivable. We're having
9 jurors appear and having to stand back there or sit
10 back there in the room for five hours before we get to
11 their panel. And we're not going to do that.

12 I've been very lenient in my allowing you to
13 expand your questioning. I'm telling you right now
14 there will be no more hypotheticals directed to any
15 respective juror for purpose of uncovering any hidden
16 biases. We're not going to do that anymore, and I
17 encourage you to make direct inquiries, inquiries that
18 are permitted by the statutes, 14-7-1020, and the case
19 law.

20 The issue here is whether or not the potential
21 juror can be indifferent as to the case, whether the
22 potential juror has anything or any -- harbors any
23 feelings that would substantially interfere with that
24 juror performing his duties.

25 I want direct questions. Questions do not need to

1 be preceded by five-minute dissertations or statements
2 of facts or anything else. I want direct questions.
3 Get to the point, Gentlemen. We're going to move along
4 today. We're going to have move along with this jury
5 qualification. That's what I expect of you and that's
6 what I'm going to require.

7 Now, Mr. Ropp, are you ready? Bring in the first
8 panel.

9 (WHEREUPON, Prospective Jury Panel Number 11 came
10 into open court at approximately 9:00 a.m.)

11 THE COURT: I see we have all six of our jurors
12 for this panel here this morning. Good morning. We
13 appreciate you being here.

14 I'm going to ask the clerk to put you under oath
15 because I'm going to be asking you some questions and
16 telling you some things that you need to know, so I
17 want to make sure that you're under oath.

18 This oath will continue throughout the day. When
19 we bring you in individually, I want to remind you that
20 you are still under oath. Okay?

21 Madam Clerk.

22 (WHEREUPON, the panel was sworn.)

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, you know, on Monday we had lengthy
25 questioning, and that questioning was to determine

1 whether or not you, as a juror, were qualified,
2 generally speaking, to serve as a juror.

3 As I say, there are very specific requirements of
4 jurors and disqualifications, and I determined that all
5 of you at that point were qualified potential jurors.
6 You met the statutory requirements of jurors.

7 What I want to talk to you this morning about was
8 what we call exemptions. Even though you are qualified
9 as a juror, you may be in a position where an exemption
10 from jury service may apply to you. An exemption is a
11 personal right you have. It's not one that you are
12 required to exercise, if you follow me.

13 For example, if you were 65 years of age or
14 older -- and I'm going to ask you more about that in a
15 moment -- but if you're 65, you are exempt from jury
16 service. Of course, we would love to have you if you
17 are over 65. Our senior citizens bring a wealth of
18 knowledge and experience to the process. We make great
19 jurors. I can tell you that from experience. We love
20 to have them. But if a person was 65, that person
21 could say, "I really choose not to serve." And they
22 have the right to be excused.

23 Exemptions are statutory. They are limited.
24 There are just a few. But I want to go over those with
25 you today and determine whether or not they apply to

1 any of you, and if so, if you choose to exercise your
2 right to be exempted. So listen very carefully.

3 Again, is there any juror who is 65 years of age
4 or older?

5 And there is no response to that inquiry.

6 Is there any juror who has or potential juror who
7 has served on a jury for the court of general sessions
8 or common pleas? That means you would have been
9 brought to this courthouse within the last three years.

10 Now, it doesn't count if you were on a federal
11 jury or called for federal jury service, like if you
12 were to go to Florence or Charleston or Columbia,
13 something like that. Doesn't count if you were in
14 magistrate's court or the municipal courts. Has to
15 have been here.

16 Would that apply to anyone? If you have served or
17 were called to serve in the last three years, you can
18 claim that as an exemption.

19 And there is no response to that.

20 Has any juror served on the County Grand Jury in
21 the last five years?

22 Grand Jury service is rather unique. If you are
23 on the Grand Jury, I believe you would have known it.
24 The Grand Jury is not the jury that comes into the
25 courtroom, listens to the evidence and returns a

1 verdict in a case. A Grand Jury is a jury that meets
2 once a month. You have to serve for a minimum of a
3 year up to two years, and essentially what you do is
4 you look at situations where a person has been charged
5 with a crime and you decide whether or not an
6 indictment should even be issued. Not a determination
7 of guilt or innocence, just a determination of whether
8 just probable cause to issue it.

9 Was there anyone on the Grand Jury in the last
10 five years?

11 And there is no response.

12 Now, this next exemption contains several parts.
13 First of all, you must be either the legal custodian or
14 parent of a child under the age of seven. It must be
15 your child or a child that you have custody of. And if
16 you are the daily caretaker of that child, that is, you
17 stay at home and you take of the child, and you are
18 unable to make satisfactory arrangements for the care
19 of that child while you would be on jury duty, you may
20 claim that as an exemption.

21 You know, that's what the exemption says.
22 However, we understand and I think you all understand
23 if you were selected as a juror, you would be
24 sequestered or kept overnight. So as a matter of
25 necessity, we understand that that exemption may have

1 to be expanded somewhat because certainly we couldn't
2 have small children at home alone at night by
3 themselves, so I would look at that.

4 Is there anyone that applies to?

5 Yes, ma'am. Your name?

6 POTENTIAL JUROR: Silont Gibson.

7 THE COURT: Ms. Gibson, all right.

8 Ms. Gibson, do you have children under seven?

9 POTENTIAL JUROR: Yes.

10 THE COURT: Okay. And do you have anyone else in
11 your household that could take care of your children?

12 POTENTIAL JUROR: No, sir.

13 THE COURT: Do the children live with you?

14 POTENTIAL JUROR: Uh-huh.

15 THE COURT: Okay. And do you take care of them on
16 a daily basis, they spend their evenings with you?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Are you able to find anyone who could
19 take care of the children for you?

20 POTENTIAL JUROR: No, sir.

21 THE COURT: All right. Ms. Gibson, do you wish to
22 claim your exemption?

23 POTENTIAL JUROR: Yes.

24 THE COURT: All right, Ms. Gibson.

25 MS. NORRIS: No objection, your Honor.

1 MR. RICHARDSON: No objection, your Honor.

2 THE COURT: I am going to excuse you from service
3 in this trial. You may leave. Thank you very much.

4 (WHEREUPON, Ms. Gibson exited the courtroom
5 at 9:08 a.m.)

6 THE COURT: The next exemption is sort of like
7 that, but it involves elderly people and people who are
8 severely disabled, people who need constant care who
9 are unable to be left alone.

10 And I think you understand what I'm talking about.
11 If you are the caretaker for such a person, that is,
12 that's what you do, you take care of either an elderly
13 person or a disabled person who cannot be left alone
14 and you cannot make any arrangements for the care of
15 that person, you may claim that as an exemption.

16 Is there anyone who would fall into that category?

17 And there is no response.

18 We thought we had all of the next group of people
19 sorted out, but we learned that there were a few that
20 we missed, and that is full-time students. If you're a
21 student and you are in school now and service as a
22 juror would interrupt your study and your attendance at
23 class, you may claim that as an exemption.

24 Likewise, if you work at a school -- and that can
25 be anything from K through 12, technical school,

1 college -- if you work at a school and you have a
2 necessary job and a job for which there is no
3 replacement person available, you are needed at that
4 school and your service would be disruptive to the
5 school, you may claim that as an exemption.

6 Does that apply to either of you?

7 And there is no response.

8 And, finally, if you provide services for a
9 business, and that can be retail business, any
10 commercial enterprise including an agricultural
11 enterprise, and the services that you provide to that
12 business are so significant that the business cannot
13 operate without you, that is, the business has to close
14 down, there's no one else that can do your job and the
15 business cannot operate without you and the business is
16 ongoing, that is, appointments can't be rescheduled and
17 things of that nature to allow for your absence, you
18 may claim that as an exemption.

19 Would that apply to anyone?

20 And there is no response.

21 Those are the exemptions, ladies and gentlemen,
22 and the things that I wanted to discuss with you.

23 Now, in a moment these fine lawyers who we have
24 here today -- you have met them. They were introduced
25 to you earlier -- are going to be asking you some

1 questions about your service as a juror to determine
2 whether or not you should serve on this particular
3 case.

4 As I said, generally speaking, you meet all the
5 qualifications of jurors, but we need to know if
6 there's anything about you that would make it
7 inappropriate for you to serve on this particular jury.
8 The magic words are whether or not there is anything
9 that would substantially interfere with your ability to
10 perform your duties as a juror.

11 And, you know, if I had to pick two words to
12 describe what a juror's duties are, that would be to be
13 fair and impartial. That's essentially what a juror is
14 required to be, just be fair and impartial. So they're
15 going to be asking you questions about that.

16 And I thought -- this is my decision -- that it
17 would be helpful in understanding perhaps where the
18 attorneys are coming from in understanding why they're
19 asking you questions if you knew a little bit more
20 about how this process that we're about to begin works
21 or how a trial works. Because a lot of people have
22 misconceptions about a capital or death penalty murder
23 trial. And you all know that that's what we're talking
24 about here. That's been mentioned to you and discussed
25 already.

1 So let me begin by giving you a little bit of
2 background information about how the process works and
3 what it means and how it's different from other cases.

4 Murder is the same whether it is a murder in a
5 noncapital case or a capital case. Murder is defined
6 in the law as being the unlawful killing or life-taking
7 of another person with malice aforethought. Regardless
8 of what kind of case, what kind of murder case you're
9 looking at, that's all the same, a person has taken
10 another person's life unlawfully and he did or she did
11 so with malice aforethought.

12 And malice aforethought is that malicious, evil,
13 wickedness or motivation towards the victim in the
14 case. It involves an evilness of the heart. There are
15 all sort of words like that that are used to describe
16 it. We have other types of homicides, but what makes
17 an act murder is that malice aforethought, that
18 wickedness of heart, if you would let me describe it as
19 that.

20 Around the State during the course of the year,
21 there may be several murder cases that are tried,
22 ordinary murder cases. And that's what jurors are told
23 murder is.

24 But once in a while -- and these are rare cases.
25 Once in a while the State looks at a case and decides

1 that that case should be tried as a capital case or a
2 case in which the State seeks a penalty of death.

3 Well, just any murder charge cannot be elevated to
4 that standard. In a capital case, the case begins just
5 like any other murder case, and we have talked about
6 this being a two-part trial. You've heard that
7 discussed back on Monday.

8 In the first part of the trial, it's tried just
9 like any other murder case, and the State has the
10 burden of proof, exactly what it would have to prove in
11 any other murder case. It would have to convince the
12 jury beyond a reasonable doubt that the defendant
13 committed the offense.

14 And let me make something really clear to you as
15 we go through this process. Mr. Cottrell over here has
16 what we call a presumption of innocence. That's a
17 theory under the law. It's a very important theory
18 under the law. And it's available or is used in every
19 state in this country. It says that he has a
20 presumption that we must all honor that he is innocent.

21 And that presumption of innocence follows him not
22 until the trial starts, not until halfway through the
23 case, it follows him all the way to the end of that
24 trial until a jury is convinced -- unanimously beyond a
25 reasonable doubt -- that he committed the offense.

1 That's why we say the State has the burden of
2 proof, the burden to prove his guilt beyond a
3 reasonable doubt. He doesn't have to prove a single
4 thing because of that presumption. He doesn't have to
5 testify, he doesn't have to put up a single witness.
6 Nothing is required. But the State has that burden,
7 and we should keep that in our minds when we talk about
8 this.

9 But when we begin that first part of the trial,
10 it's just like any other murder case, and the State
11 must prove it beyond a reasonable doubt. But in a
12 death penalty case or capital case, as it's sometimes
13 called, if the State can do that -- and I'm not
14 suggesting to you and no one here is suggesting to you
15 that that is what this jury should do. We don't know.
16 That's entirely up to the jury. We just need to talk
17 about these things. So don't think that I'm inferring
18 what my opinion is of the case or anyone else's. We
19 just need to talk about it. Okay?

20 If the State -- the jury were to come back and
21 say, "Yes, we have been convinced beyond a reasonable
22 doubt that the defendant committed this murder," then
23 we would move, after a brief waiting period, we would
24 move to the second part because the State must do more
25 than just prove murder. The State has to do -- and

1 we've been talking about this. We call it murder plus.
2 Murder plus. The State has to go up and prove another
3 very important thing. The State must prove that the
4 murder was accompanied by or was committed in
5 connection with what we call an aggravating
6 circumstance.

7 An aggravating circumstance is something that
8 makes it worse. It enhances the moral culpability of
9 the defendant in the commission of the crime. This
10 case has absolutely nothing to do with these two little
11 examples that I'm going to give you, so don't think I'm
12 suggesting that. I purposely picked out two that have
13 nothing to do with even any kind of allegation in this
14 case.

15 It would be like -- one of those aggravating
16 circumstances would be like if the murder took place
17 during the commission of a rape. And there are some
18 other offenses or crimes that, if connected with the
19 murder, could be considered as an aggravating
20 circumstance.

21 And then there are things like murders involving
22 certain people like a child, the murder of a child.
23 That would be or is listed as an aggravating
24 circumstance. Again, I picked those purposely because
25 they have nothing to do with this case. It's just that

1 I wanted to point to something that would give you an
2 idea of what I'm talking about.

3 In that second phase, the State would be put to
4 the same test that they are in the first phase. The
5 State would have to convince each and every juror --
6 every juror -- beyond a reasonable doubt that there was
7 one of these accompanying aggravating circumstances.

8 And we know exactly what those are because when
9 the legislature passed the death penalty statute, the
10 legislature spelled out those aggravating circumstances
11 and said this, this and this. And at the end of the
12 trial, if we got that far, I would take the time and
13 tell you what aggravating circumstances to consider in
14 this particular case.

15 Now, I want to stress upon you that as you looked
16 at those aggravators, you may look at the facts
17 surrounding the case and say, "Well, I think this thing
18 over here is just as bad. I think it ought to be an
19 aggravator." You can't even do that. You can't even
20 look outside of that box or that list of aggravators
21 that the State has or the legislature has passed.

22 Only if -- only if -- you as a juror -- jury found
23 beyond a reasonable doubt that one of these aggravators
24 was present would the matter of the death penalty even
25 arise, would it even be a possibility. You know, most

1 jurors don't even know that in a regular murder case,
2 there's no such thing as the death penalty. The death
3 penalty in a regular murder case where someone is tried
4 for the unlawful taking of a life with malice
5 aforethought, that's not a penalty that's even allowed
6 under the law.

7 The death penalty, as the type of this case would
8 indicate, is only available in a capital or death
9 penalty-type murder. And we would not even discuss,
10 you would not even consider the possibility of the
11 death penalty until you got and if you got to the point
12 that there was a conviction for the murder and a
13 conviction or a finding that there were these
14 aggravating circumstances.

15 If -- if the jury gets to that point -- if -- if,
16 you would be instructed that you could consider one of
17 two possible sentences, life imprisonment without the
18 possibility of parole or the death penalty.

19 This is another way that a capital case is a
20 little different or substantially different from an
21 ordinary murder case or any other criminal case.
22 Whenever people appear before me and we try any other
23 crime including an ordinary murder case, the verdict
24 just says simply "guilty" or "not guilty." And it's
25 signed by the foreperson. And they hand it up to me.

1 And if they're guilty, I decide what the sentence is.

2 In a capital case, the jury does what we call
3 recommending a sentence. But the judge is required to
4 follow that recommendation. I would follow that
5 recommendation. But there would be these two possible
6 sentences, life without parole or death. And even if
7 you determine that there were one of these aggravating
8 circumstances, as I said, you would just be to the
9 point where you could consider death as one of the
10 possibilities, a recommendation of death as one of the
11 possibilities.

12 And you would be instructed that before you could
13 make that decision, you would have to look at all the
14 facts and evidence offered by either party concerning
15 what would be an appropriate sentence. You would have
16 to. I would instruct you that you would have to
17 consider any mitigation evidence that there was in the
18 case. And I would give you a list of what the
19 legislature has also said are statutory mitigating
20 circumstances. You would have to look, see if they are
21 there.

22 And, you know, unlike the aggravators, you are not
23 limited just to the ones that the legislature thought
24 of. You could look at the entire record and determine
25 personally whether you thought there was something else

1 that was a mitigating circumstance. And you can pick
2 and choose your very own thing as mitigation. Don't
3 have to agree with the other jurors in that regard.

4 The next juror may have something else that he or
5 she thinks should be a mitigator. And you could take
6 these mitigators and you could compare them with the
7 other facts of the case or offset the severity of the
8 offense if you find it is severe, and you can use those
9 mitigators in deciding whether or not the death penalty
10 is appropriate.

11 But I would also tell you you could even go beyond
12 that. You don't have to have any reason. A juror
13 doesn't have to have a single reason to refuse to
14 recommend the death penalty and instead recommend life
15 imprisonment. And even if you made a conscious
16 decision that there's nothing mitigating here, the jury
17 even has the right to say, "We're going to extend
18 mercy," whether that mercy is the result of something
19 that the defendant has done to earn it in your eyes or
20 you're just giving it by way of grace. It makes no
21 difference.

22 You're not -- you're never going to be put in a
23 situation where I tell you, "This, this and this," or,
24 "A, B and C has occurred, you have to give the death
25 penalty." You do not. You do not have to give a life

1 recommendation. I'm not telling you that there's any
2 situation where you have to do either one. It's
3 entirely up to you as jurors when you look at all the
4 facts and circumstances to determine what would be the
5 appropriate sentence in this case.

6 That's how this process proceeds. I know I've
7 taken a good bit of your time to tell you about that,
8 but I think if you have that in your mind that it will
9 help you process and understand the questions that
10 these attorneys are going to ask you.

11 Again, let me tell you this. They're going to be
12 asking you questions about how you feel about things
13 and your opinions. The beautiful thing about this
14 country is we all have the right to have our own
15 opinion about any issue.

16 And I promise you, if you're asked what your
17 opinion is on any relevant subject, no one is going to
18 criticize you for having that opinion. No one is going
19 to try to change your mind. That is your opinion. We
20 will all respect your opinion. It's just that we need
21 to know what your opinion is.

22 The only right answer is a candid and honest
23 answer. Really, when you're asked about an opinion,
24 every answer is right. We just want to know what it
25 is. You cannot have the wrong opinion. As I said, no

1 one is going to try to criticize you. No one is going
2 to try to change you. We just need to know what your
3 opinion, your feeling, is on these relevant subjects.

4 Now, I want everyone to please go back into the
5 jury room except -- I think I excused Ms. Gibson,
6 didn't I? All right. That would leave Ms. McClure.

7 Ms. McClure, you're first up to bat this morning.
8 If you would, as the jury files out, just come around
9 and have a seat right here in the witness box.

10 (WHEREUPON, Prospective Jury Panel Number 11, with
11 the exception of Ms. McClure, exited the courtroom
12 at approximately 9:30 a.m.)

13 STACEY McCLURE,

14 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

15 EXAMINATION BY THE COURT:

16 Q Ms. McClure, good morning.

17 A Good morning.

18 Q Ms. McClure, you remember you're under oath?

19 A Yes.

20 Q Do you recall on Monday that I asked you not to
21 seek out any information or expose yourself to any
22 information about this case or do any independent
23 research or discuss it with anyone?

24 A Yes.

25 Q Have you followed my instructions?

- 1 A Yes.
- 2 Q You avoided any pretrial publicity in this case?
- 3 A Yes.
- 4 Q Thank you so much for doing that.
- 5 Ms. McClure, you were kind enough to -- and that
- 6 is "McClure," right?
- 7 A Right.
- 8 Q M-c-C-l-u-r-e?
- 9 A Yes.
- 10 Q Okay. Ms. McClure, you were kind enough to fill
- 11 out a questionnaire we have here where we ask you to
- 12 consider three types of jurors and to tell us which one
- 13 best suits your feelings.
- 14 A Yes.
- 15 Q Or best suits you as a potential juror. And you
- 16 have marked category B. Okay?
- 17 A Yes.
- 18 Q All right. And is that what you meant to do?
- 19 A Yes.
- 20 Q And just so I make sure you and I are on the same
- 21 page, that is a juror that believes that the death
- 22 penalty is never appropriate no matter what the
- 23 circumstances; is that correct?
- 24 A No.
- 25 Q Okay. That's why I ask that question.

1 A Sorry.

2 Q That's why I ask that question. That's what B
3 says. It says, "This juror believes that the death
4 penalty is never appropriate no matter the
5 circumstances of the case." Could you tell me then
6 what your position is?

7 A Yes. I do believe in the death penalty. I just
8 don't think that I could sentence somebody to death.

9 Q Oh, okay. All right.

10 A And I didn't see that as an option on that form.

11 Q So that's why you marked --

12 A Right.

13 Q -- it's never appropriate. From what you tell me
14 now, I assume what you're saying is it may be
15 appropriate, but I could never give it?

16 A Right.

17 Q Okay. Let me ask you a few questions about that.
18 Did you -- you were paying attention to me a moment
19 ago --

20 A Yes.

21 Q -- when I described the process that has to be
22 followed. And did you understand what I was telling
23 you?

24 A Yes.

25 Q And did you get the feel from my statements there

1 that the death penalty regimen or procedure was sort of
2 geared to a situation or a requirement that if the
3 State could make its proof, then the jury was required
4 to give substantial thought to mitigators and
5 aggravators?

6 A Yes.

7 Q Did you get that?

8 A Uh-huh.

9 Q Do you understand that that would be the sort of
10 dialogue that would be entered into by a jury? Jurors
11 discuss the pros and cons and the mitigation and
12 aggravation of the case before there would be any
13 decision concerning whether to recommend death or
14 whether to recommend life?

15 A Yes.

16 Q All right. Do you believe that in that situation
17 where you sat around with your other jurors and you
18 discussed it and you got to share your thoughts with
19 them that you would still not be able personally to
20 vote for the death penalty?

21 A I don't think so.

22 Q Okay. And could you tell me the basis for your
23 feeling? Again, I want to stress it's perfectly all
24 right for you to have those feelings. And you're being
25 candid and honest by sharing them. We really

1 appreciate that. That's what we hope jurors will do.

2 But could you tell me the basis for that? Is it
3 based on your faith or is it moral decision that you
4 made?

5 A It's more of a faith decision. I don't feel that
6 God put us on this earth to take the lives of other
7 people. I believe that he's the ultimate judge and
8 he'll decide on judgment day your sentence.

9 Q Well, do you believe, Ms. McClure, that your
10 feelings in this regard would substantially impair your
11 ability to consider the death penalty?

12 A I can't guarantee that it wouldn't.

13 THE COURT: I'm going to let you examine her at
14 this juncture, Mr. McClure -- I mean counsel and
15 Mr. Hixson.

16 EXAMINATION BY MS. NORRIS:

17 Q I'm Teresa Norris. I know we got to look at each
18 other across a sea of people the other day, but I'm
19 glad to get this opportunity to talk to you.

20 Let me ask you this first. I know there were a
21 lot of people jumping up, and I couldn't keep good
22 track, but were you one of the people that stood up on
23 you had seen something on the news about this case?

24 A Read something.

25 Q Okay.

1 A Yeah.

2 Q Do you recall what you read?

3 A It was basically just what happened or what they
4 say happened.

5 Q Was there anything more than that?

6 A No.

7 Q Anything about trial proceedings that have gone on
8 before?

9 A Huh-uh.

10 Q Okay. You had indicated on your questionnaire
11 that -- and I don't mean to get personal, I really
12 don't. We just need to understand. You had indicated
13 that you had some anxiety that you take medication for.
14 Have you been on that for a long time?

15 A It's medication when needed, when I feel anxiety.

16 Q And --

17 A It's not a daily thing that I have to take.

18 Q Is part -- is part of your concern -- and it may
19 not be. Just does part of your concern that you can't
20 personally give the death penalty include that, that
21 it's going to make you more anxious, et cetera?

22 A I don't think so.

23 Q So it's just faith based?

24 A Uh-huh.

25 Q All right. And if I understand -- well, tell me

1 just generally your thoughts about the death penalty.

2 A I don't believe one way or another that it's wrong
3 or it's right. I just don't know that, put in that
4 situation, I could sentence somebody to death.

5 Q Well, let me just --

6 A But, again, I don't know because I'm -- you know,
7 not put in that situation, you really don't know what
8 you would do, but that's just how I feel.

9 Q Do you feel like you would have any problem being
10 a juror on the first part of the trial --

11 A No.

12 Q -- as your Honor talked about?

13 A No.

14 Q You could make a judgment of guilty or not guilty?

15 A Yes, ma'am.

16 Q Would you have any problem finding whether there
17 was a statutory aggravating circumstance? Your Honor
18 gave some examples of a child victim or a rape. Would
19 you have any problem making a decision on that?

20 A No.

21 Q So your question is when it came -- what's hanging
22 you up here, and I don't mean to be facetious about
23 that --

24 A I understand.

25 Q -- is that decision when you're given all the

1 instructions and it's entirely up to you whether you
2 vote for death or life without parole, could you make
3 that decision?

4 A I could make the decision of life without parole.
5 I just don't know that I could sentence somebody to
6 die.

7 Q Well, nobody can answer -- I don't mean to harass
8 you.

9 A No, you're fine. I understand.

10 Q Nobody can answer this question for you. Is "I
11 don't know" the best, the best way you can phrase it or
12 you feel like you can, or is it just one of those human
13 things you never know until you're there what you will
14 do?

15 A Right. I feel that I couldn't, but until put in
16 that situation, I don't know what I would do.

17 Q Let me ask you this next question and then I
18 promise I'll quit.

19 A You're fine.

20 Q If you could make the decision to impose a death
21 sentence, before that could be carried out all the
22 other jurors would have to agree with you. So let's
23 just say all 12 people agreed. In order for that to
24 happen, you would also have to sign your name to it.

25 So if you could reach that point to make a

1 judgment of "my vote is death," could you also sign the
2 form?

3 A Yes.

4 Q Okay. So the question is can you reach that
5 judgment?

6 A Right.

7 Q Is this a concern that you would say you feel more
8 like you can't or you just don't know?

9 A I don't know.

10 Q Okay.

11 A Sorry.

12 Q So we're just stuck in the middle?

13 A Yeah.

14 Q Okay. Thank you, ma'am.

15 A You're welcome.

16 MR. HIXSON: Thank you, your Honor.

17 EXAMINATION BY MR. HIXSON:

18 Q Good morning, ma'am. How are you?

19 A Good morning. I'm good.

20 Q My name is Scott Hixson. This is Jimmy
21 Richardson, Solicitor here in the 15th Circuit. Just
22 relax. This is a relaxing time. It's okay. The
23 reason it's set up like this is because this isn't a
24 pressure situation.

25 As you can see, this is a pretty big process. And

1 why it's a give-and-take at this point in time is
2 you're at the stage right now that we have to know
3 where you are in this because after this, you may be on
4 that jury and you may be in that situation to make that
5 decision.

6 A Right.

7 Q So anything you say up there is absolutely
8 appropriate. But now is the time we kind of have to
9 ask kind of pressing questions because there's kind of
10 no going back, and so I kind of have to push you on
11 what that is. And there's no right or wrong answer and
12 that's entirely okay.

13 A Okay.

14 Q So, I guess, just to get to the point, if the
15 judge qualifies you to be on the jury, you're going to
16 be in here. And you are going to be in the spot -- I
17 mean, potentially you're days away from making this
18 decision. See what I mean?

19 A Yes.

20 Q Mr. Cottrell wants and deserves and is entitled to
21 a fair trial by someone that can fairly consider giving
22 him the death penalty if he is convicted of this and
23 giving him life. And you have to know if you're going
24 to be able to do that or not. And that's okay if you
25 don't know.

1 Same thing with the State. You have to say, "Yes,
2 I can," or, "No, I can't." And it's okay if you can't
3 because there's other jurors to talk about. That's
4 okay.

5 So just to get right to the pressing question, and
6 I don't mean to pressure you but I have to. You
7 understand?

8 A Yes, sir.

9 Q You indicated that your beliefs and concerns over
10 the death penalty are grounded in your morality, in
11 other words, your religion. Is that safe to say?

12 A Yes, sir.

13 Q Have you been -- are you a frequent church-goer or
14 have you been?

15 A Yes, sir.

16 Q It's none of my business what that is, just as it
17 applies to your prejudices and concerns over the death
18 penalty, and that's okay.

19 How long have you been in your current faith? I
20 mean, your whole life pretty much?

21 A No. No. Probably nine years, ten years.

22 Q Okay. And I think you've pretty much indicated
23 that you, based and grounded in that belief, is it's
24 not your role to judge. Other people can judge, but
25 God is the ultimate judge of right or wrong. And, of

1 course, that's a little contradictory to the law. But,
2 unfortunately, our criminal justice system says that
3 judges and juries have to, to maintain order. So
4 that's a little bit separate from the law that we have
5 in South Carolina. Is that safe to say?

6 A Right.

7 Q And it's a little contrary to the law the judge
8 will charge you. And that's okay. If you get sworn,
9 it's too late. That's why we're having the
10 conversation now. Okay?

11 So -- and it's okay if you can or can't. But can
12 you say, "Yes, I have absolutely no problem giving the
13 death penalty in this case. I have absolutely -- I
14 cannot give the death penalty in this case because of
15 my religious beliefs?" And that question is just that
16 simple and then we will move on.

17 So can you tell this Court that you can give the
18 death penalty if you considered everything and the
19 facts warranted it?

20 A No.

21 Q Thank you very much for your honesty on that. And
22 I appreciate your time.

23 MR. HIXSON: I have no further questions, your
24 Honor.

25 THE COURT: All right. Ma'am, would you please

1 step down and just go right outside the door there with
2 Mr. Ropp.

3 MS. NORRIS: Your Honor, I think we can agree on
4 this one.

5 THE COURT: She's not qualified?

6 MS. NORRIS: Yes.

7 MR. HIXSON: I concur.

8 THE COURT: All right. Rather than take you back,
9 Ms. McClure, I have determined that in this particular
10 case, this being a capital case, it would not be
11 appropriate or proper for you to serve as a juror. So
12 I'm going to excuse you, and you are released from your
13 subpoena. You don't have to come back. Thank you,
14 ma'am.

15 MS. McCLURE: Thank you.

16 (WHEREUPON, Ms. McClure exited the courtroom
17 at 9:45 a.m.)

18 (WHEREUPON, Ms. Herriott entered the courtroom
19 at 9:45 a.m.)

20 KAYLA HERRIOTT,

21 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

22 EXAMINATION BY THE COURT:

23 Q Come around, Ms. Herriott. How are you today?

24 A Sleepy.

25 Q Well, we won't keep you long today, I believe.

1 We'll have you out of here soon.

2 A Okay.

3 Q Ms. Herriott, do you remember on Monday when I
4 asked you not to talk about the case with anybody or
5 seek out any information or read about the case? We
6 had a rather lengthy -- I had a rather lengthy
7 instruction to you concerning that.

8 A Yes.

9 Q Have you been abiding by my instructions?

10 A Yes.

11 Q Okay. And you have refrained from talking about
12 the case?

13 A Yes.

14 Q Well, thank you. Let me just remind you until you
15 are released as a juror -- I don't know if you will be
16 on the jury or not, but all during the time that you
17 are a potential juror or juror, I'll ask you to honor
18 those instructions. I tell you they continue. All
19 right? Do you understand that?

20 A Yes.

21 Q All right. Ms. Herriott, we usually ask people to
22 come around and spell your last name. Let me do that
23 for you. H-e-r-r-i-o-t-t?

24 A Uh-huh.

25 Q That's a good 'ol Horry County/Georgetown name,

1 isn't it?

2 A I have got a lot of family here.

3 Q A lot of family. I bet so.

4 Ms. Herriott, one of the things you did for me
5 this morning, I gave you a sheet and it listed several
6 categories of jurors or types of jurors. And I asked
7 you to circle the one that best described you. And you
8 circled C type or C category juror; is that right?

9 A Yeah. I didn't know what sex or gender it was. I
10 scratched it out. Do you see under the name?

11 Q I think that you might be talking about when you
12 looked at the witness list.

13 A Yeah.

14 Q I'm talking about when you circled on the page
15 there --

16 A Oh, okay.

17 Q -- as to what kind of juror you felt like you
18 would be. We described three different types of
19 jurors, said which one is more like you. Okay? Do you
20 remember that?

21 A (Nodding.)

22 Q You have to say "yes" or "no" because see this
23 lady around the corner has to write down everything I
24 say and everything you say. All right?

25 A Yeah.

1 Q All right. Now, just so that you and I -- I want
2 to make sure that I'm understanding you. A C type
3 juror, which you indicated you are, is a juror who
4 would need to know the facts and circumstances in
5 aggravation and in mitigation before you could make a
6 decision regarding the punishment in a case. Does that
7 fairly describe your beliefs about this case?

8 A Yes.

9 Q All right. That's good. Ms. Herriott, you were
10 listening this morning when I told you how this process
11 works just a moment ago?

12 A Yeah.

13 Q And did you pay attention when I was describing
14 how or what must be done if the State chose to seek the
15 death penalty in a murder trial?

16 A Yes.

17 Q Do you remember me talking to you about
18 aggravating circumstances and mitigating
19 circumstances --

20 A Yes.

21 Q -- that you would have to consider both? We
22 talked about that or I told you about that this
23 morning, used those words "aggravating" and "mitigating
24 circumstances"?

25 A What is mitigating?

1 Q Mitigating means making less serious, extenuating
2 circumstances. Things about the case that would weigh
3 against giving the death penalty.

4 A Okay.

5 Q Do you understand that?

6 A Yes, I understand.

7 Q And do you understand that the process I was
8 describing would involve looking at aggravating
9 circumstances and looking at mitigating circumstances
10 before you would decide what penalty should be
11 recommended? Did you gather that from what I was
12 telling you this morning?

13 A Yes, a little bit. I just didn't understand the
14 two terms.

15 Q Well, I'm sorry if I wasn't clear.

16 A That's okay.

17 Q Do you understand them now?

18 A Yes.

19 Q "Aggravating" means making it worse and
20 "mitigating," in the simplest form, means making it
21 less worse or less bad.

22 A Okay.

23 Q Do you believe that your feelings where you said
24 that you wanted to hear the aggravating and the
25 mitigating circumstances, doesn't that sort of fit with

1 the procedure that I described to you this morning?

2 A Yes.

3 Q Okay. It's consistent with it, isn't it?

4 A (Nodding.)

5 Q Was there anything about that procedure that I
6 described -- see, at the end of the case I will give
7 you a much more detailed description of what you should
8 think about and what you should do in the case. That
9 was just sort of an overview of it, though. I think it
10 fairly described it.

11 But as you listened, was there anything about that
12 procedure that you thought was unfair or oppressive to
13 the State or the defendant, anything about that
14 procedure that I described you didn't think that you
15 could follow if you were a juror on this case?

16 A No. I thought it was fair.

17 Q Okay. All right. Well, that's good. Thank you.

18 Now, there's something here I wanted to ask you
19 about, Ms. Herriott. I made notes or my clerk,
20 Mr. Post here, helped me make notes as to how everybody
21 answered my questions on Monday. Remember?

22 A Uh-huh.

23 Q We went through those. And I didn't go into it,
24 but I asked if there was anyone who knew of a reason
25 why he or she couldn't be fair and impartial. And I

1 might be wrong, but my notes indicate that you stood up
2 when that question was asked. Am I correct in that?

3 A What was the question again?

4 Q The question was -- on Monday the question was,
5 "Does any juror or potential juror know any reason why
6 he or she cannot be fair and impartial in this case?"
7 And we were trying to get the names and numbers of
8 every juror as they answered all those questions. And
9 in my notes I thought you stood up and said that you
10 did have some concerns there.

11 A I probably stood up for the wrong situation, I
12 think.

13 Q Okay.

14 A Because I stood up and then I sat back down.

15 Q Well, we asked you the numbers. It could be we
16 got you on the wrong list. There was a lot of people
17 out there. You recognize that, I'm sure?

18 A I do remember when I stood up, but it was for the
19 wrong thing. That's why I sat back down.

20 Q That's why I'm asking. I want to make sure I got
21 it right. So let me just ask you. Do you know of any
22 reason why you could not be fair and impartial in this
23 trial if you were selected as a juror?

24 A No.

25 Q Okay. All right. Now, let me ask you and let's

1 try to find out what you stood up for. Do you remember
2 what you stood up for? Was it about information about
3 the case?

4 A Yeah, it was about information for me changing my
5 employment.

6 Q Pardon?

7 A It was about other information. And I asked my
8 neighbor, I said, Did he say something about that, and
9 I stood up for the wrong thing. That's why I sat back
10 down.

11 Q Okay. Ms. Herriott, have you read or heard
12 anything about this case? You know anything about this
13 case?

14 A Not recently. I heard stuff about it a long time
15 ago.

16 Q Okay. Have you always lived here in Horry County?

17 A Yeah.

18 Q Okay. Ms. Herriott, tell me what you read or what
19 you heard or what you know about it, the case.

20 A I just heard about the guy shooting a police
21 officer.

22 Q Basically the same stuff that I read to you from
23 the indictment yesterday?

24 A Yeah, basically. I didn't know no names or
25 exactly the situation. But I just heard it like a long

1 time ago.

2 Q Have you talked with anybody about it?

3 A No.

4 Q Or discussed it with any people or anything like
5 that?

6 A No.

7 Q Okay. If you were selected as a juror,
8 Ms. Herriott, you would, with your other jurors, be
9 required to determine what the facts are in this case.
10 You know, evidence and facts about the case, the
11 ultimate facts of the case are usually different in
12 some degree. You know, we have conflicting evidence in
13 almost every trial that there is. And the jury has to
14 look at all that evidence and weigh it against each
15 other and apply their common sense in deciding what's
16 true and then they come up with the facts in the case.
17 Do you understand that?

18 A (Nodding.)

19 Q Okay. And they need to be fair and impartial when
20 they look at that evidence to determine the facts.
21 Could you be fair and impartial in your review of the
22 evidence in the case?

23 A Yes.

24 Q Okay. Following the presentation of evidence, the
25 judge tells the jury what the law is. And just like I

1 can't tell you what the facts are. That would be
2 wrong. That's your job as a juror. The jury has to
3 take the law as I give it to them. Even though you
4 might not agree with it, you are bound by your oath as
5 a juror to accept the law as I give it and apply that
6 law to the facts. Okay? Do you understand?

7 A (Nodding.)

8 Q Could you fairly and impartially apply the law
9 just as I give it to you to the facts in this case and
10 reach a verdict?

11 A Yes.

12 Q All right. Now, Ms. Herriott, would you agree
13 that we are all sort of the product of our life
14 experiences? Our opinions about things, our biases on
15 particular issues, the way we feel, the way we perceive
16 things all have a lot to do with our life experiences
17 and the life experiences of our friends and families
18 and things of that nature. It all comes together to
19 make us who we are. Would you agree with that?

20 A Yes.

21 Q That's a pretty fair statement, isn't it?

22 A Yeah.

23 Q So I want to know about Kayla Herriott. Is there
24 anything about Kayla Herriott that you believe would in
25 any way hinder your ability to carry out your duties as

1 a juror, to be fair and impartial in this case?

2 A No.

3 Q Could you consider -- if the State met all its
4 proof and you had all the facts before you, could you
5 consider life imprisonment as a recommended sentence?
6 Could you consider it?

7 A It's kind of hard to answer without the facts.

8 Q Well, listen to my question. After you heard this
9 case -- remember I told you there were two possible
10 sentences: Life imprisonment and death, any one of
11 which the jury could recommend.

12 What I want to know is could you look at it and
13 give consideration, fair and impartial consideration,
14 to both the life sentence and the death penalty?

15 A No, I couldn't look at both. I could only look at
16 one.

17 Q All right. Tell me what you mean by that.

18 A Are you asking me to pick a choice?

19 Q No. No. No, I'm not asking you to choose now.

20 A Oh, okay.

21 Q No. No. What I'm asking you -- let me put it
22 another way. I'm probably confusing you. Could you
23 keep an open mind as you were hearing the testimony and
24 evidence in the case? If you're a juror, could you
25 keep an open mind and be receptive to evidence that

1 would weigh in favor of life imprisonment, and at the
2 same time, keep your mind open to evidence that might
3 weigh in favor of the death penalty?

4 A Yeah.

5 Q You could keep -- you could look at both possible
6 sentences and consider both and make a moral judgment
7 at the end based on the evidence and circumstances of
8 the case?

9 A Yes.

10 Q You could do that?

11 A (Nodding.)

12 Q And that's all I want to know. I wanted to know
13 that you weren't going into this thing with your mind
14 already made up, I'm only going to consider one or the
15 other at the very beginning. I'm not even going to
16 think that.

17 A Okay. That's what I thought you were asking me.

18 Q That's not what I was asking you. I want to know
19 if you would be open-minded as you approach the
20 sentencing phase, if we ever get there. Okay? I'm not
21 saying we will, but if we ever do get there, that you
22 would be open-minded?

23 A Yes.

24 Q And that's what you think you would be. Okay.

25 Now, I also asked if you would prepare a witness list

1 or look at the witness list, and you've signed -- well,
2 you haven't signed that yet, but let me just ask you
3 under oath: Did you look at the witness list?

4 A Yes, I did.

5 Q And the only person I see that you marked was
6 Chris Holloman.

7 A Yes.

8 Q Is that the only name you recognize?

9 A Yeah, that name I recognize. But I didn't know if
10 I went to school with him or not because I didn't know
11 the gender.

12 Q Do you know a Chris Holloman?

13 A Yeah, I do.

14 Q It's a lady?

15 A Oh, then no. I know a male. That's the Chris I
16 know.

17 Q I was asking you. Is the one you know a lady or a
18 male?

19 A Oh, a male.

20 Q A male, okay.

21 A A male.

22 Q And if this turns out to be the same Chris
23 Holloman, tell me how you know him.

24 A From my city, from Myrtle Beach. I just heard the
25 name.

1 Q You've just heard it. It's not a close friend?

2 A Not a close friend of mine.

3 Q Would you be able to set aside the fact that you
4 know who that witness is and be fair and impartial in
5 your assessment of the testimony of the other witnesses
6 who might testify in this case?

7 A Yes.

8 Q He wouldn't sway you one way or the other more
9 than another witness would just because you might know
10 him?

11 A No.

12 Q Okay. Do you think if you really had any
13 significant relationship -- family, friend, business,
14 whatever with any of these other witnesses that you
15 would probably remember them?

16 A Yeah, I would remember them.

17 Q Okay. There is a couple names I want to add:
18 Nicole Pyle. Do you know Nicole Pyle?

19 A No.

20 Q How about John Taylor?

21 A No.

22 Q Christine Del Fonzo?

23 A No.

24 Q William Nettles?

25 A No.

1 Q Michelle Light?

2 A No.

3 Q You don't even know them?

4 A I don't know none of those names.

5 Q Answer any questions Mr. McGuire or Ms. Norris
6 might have.

7 EXAMINATION BY MS. NORRIS:

8 Q Good morning.

9 A Good morning.

10 Q Could you pronounce your last name for me.

11 A "Herriott."

12 Q "Herriott." All right. Just didn't want to mess
13 that up.

14 Do you feel like you're in the hot seat right now?

15 A No.

16 Q Good. Good. Because all we want to know is how
17 you feel, your opinions right now. Do you remember
18 filling out that questionnaire where you were asked a
19 bunch of questions?

20 A Yeah.

21 Q I noted on there -- and I don't mean to get
22 personal, but we ask these questions for a reason, to
23 make sure that you could fairly consider everything in
24 the case. But I noticed that you have a family member
25 in prison and that you listed "victim of crime" and you

1 wrote "family" and that you had dealt with the
2 prosecutor and dealt with the public defender's office.

3 My first question is: Are all those things
4 related? In other words, did your uncle commit a crime
5 against the family?

6 A No, he didn't commit a crime against the family.

7 Q So that's not connected?

8 A No.

9 Q And can you tell me what crime was committed
10 against a family member just in general? I don't need
11 details.

12 A I think it was -- the crime was robbery.

13 Q Robbery?

14 A Yeah.

15 Q That wasn't you that was robbed?

16 A No. No.

17 Q Who was robbed?

18 A I don't know who was robbed.

19 Q But that happened to somebody in your family?

20 A No. What I'm telling you is that that's why they
21 went to jail.

22 Q Your uncle robbed somebody else?

23 A Yeah, somebody else, not nobody in the family.

24 Q Let's leave uncle and that question aside. There
25 was a separate question on there where you were asked

1 if you or a family member or somebody close to you had
2 been a victim of a crime. Tell me about that.

3 A I'm not sure.

4 Q You don't remember that question?

5 A I don't remember that question.

6 Q Have you ever been the victim of a crime?

7 A No.

8 Q Anybody close to you that you can think of?

9 A No.

10 Q Okay. You indicated that you had dealt with the
11 prosecutor's office on your form. What was that
12 situation?

13 A Could you explain that to me?

14 Q There was a question asking in general -- let me
15 just get your form so I can show this to you. Let me
16 go back to number 34. See there, the question was,
17 "Have you or any immediate family member ever been the
18 victim of a crime?" And you wrote, "Yes, family." Or
19 did you fill out this form yourself?

20 A Yes, but I don't know why I put yes for that.

21 Q You can't remember what you were thinking about
22 then?

23 A I don't remember what I was thinking about then.

24 Q Okay. Here is the question I was asking about,
25 number 35, "Have you or any member of your immediate

1 family ever had any matters whatsoever handled by any
2 solicitor or prosecutor's office"?

3 A. Oh, I know what you're talking about. We had an
4 issue with one of my dad's girlfriends that we had to
5 go to court for. That's what it was for. But it
6 wasn't like a big crime where I went to jail or
7 anything. It was like a family court thing.

8 Q I wasn't implying that at all.

9 A I just wanted you to know.

10 Q Where I'm going with that is was there anything in
11 your dealings with the prosecutor's office to cause you
12 to be biased for or against them, any bad feelings or
13 do you just love them?

14 A Oh, no. I don't have no bad feelings.

15 Q All right. That's all I was asking. And the next
16 question on there, number 36, was similar, "Have you or
17 any member of your immediate family ever had to deal
18 with the public defender's office?" Is that the same
19 situation or --

20 A Yeah, that's the same situation.

21 Q Okay. Did you have any hard feelings one way or
22 the other about the defense lawyers you had to deal
23 with?

24 A No.

25 Q Okay. Let me just ask you in general, just in

1 your own language, how do you feel about the death
2 penalty?

3 A I don't feel like the death penalty is right.

4 Q Okay. You don't feel like it's right. Well, you
5 understand that you're real close to being qualified to
6 sit on a jury that could potentially be asked to make
7 the choice.

8 A Yeah.

9 Q Okay. So are you saying that you don't personally
10 feel like it's right, but you could follow the law and
11 consider it?

12 A Yeah, I could consider it. I just, in my opinion,
13 I don't feel it's right.

14 Q Okay. So if you were in charge, we wouldn't have
15 a death penalty but you can apply the law?

16 A (Nodding.)

17 Q Okay. Well, would you have any problem whatsoever
18 after hearing all the evidence and the instructions
19 from the Court of deciding whether a person is guilty
20 or not guilty of murder?

21 A Yes.

22 Q You would have a problem or you could make that
23 decision?

24 A Oh, I could make that decision. I'm sorry.

25 Q All right. And if you were to get into the second

1 phase of that where the question was life without
2 parole or the death sentence, could you make the
3 decision of whether there's a statutory aggravating
4 circumstance? And "aggravating" again very simply is
5 anything that -- well, first there would have to be one
6 of those things that the legislature has described.

7 But aggravation in general is what the State would
8 present that weighs in favor of the death penalty that
9 makes things worse. You could consider all that,
10 right?

11 A Yeah.

12 Q And you would also hear mitigating, which
13 essentially, as the judge explained, just lessens
14 severity or weighs in favor of a life sentence. Or
15 weighs in favor of, "This is a situation where I just
16 don't think the death penalty is appropriate," or, "I'm
17 going to give life for mercy." You could consider and
18 do all that, right?

19 A Yes.

20 Q All right. Well at the end of that, after all the
21 evidence and the argument was in, the judge would give
22 a full instruction of this is what applies. If you
23 were seated in the jury with 11 other people, could you
24 go in the room and discuss with them thoughts and
25 issues but at the end of the day make your choice, you

1 individually, not after having listened and considered
2 everything else, could you individually make your
3 choice of looking at all of this, "I think life without
4 parole is appropriate," or, "I think the death penalty
5 is appropriate"; could you do that?

6 A Yes, I could do that.

7 Q And if you reach that point and you had a
8 different opinion than all the 11 other people, would
9 you give up your vote just to join them, or would you
10 say, "I have looked at all this. This is my individual
11 choice and under my oath as a juror, I can't give up
12 what I honestly truly believe is the appropriate
13 punishment?" Would you give it up or stay with your
14 opinion?

15 A I would stay with my opinion.

16 Q All right. And if at the end of all that you
17 personally believed and chose that the death penalty
18 was the appropriate thing, would you be able to sign
19 your name to that?

20 A Yes.

21 Q And for the death penalty, it has to be unanimous.
22 All 12 people have to agree. Could you sign that form?

23 A Yes.

24 Q All right.

25 MS. NORRIS: I don't have anything else, your

1 Honor.

2 THE COURT: Mr. Richardson.

3 MR. RICHARDSON: Thank you, your Honor.

4 EXAMINATION BY MR. RICHARDSON:

5 Q Ms. Herriott, you say you have lived in Myrtle
6 Beach your entire life?

7 A Yeah.

8 Q First of all, I apologize. My name is Jimmy
9 Richardson, and this is Scott Hixson, and together
10 we're going to be presenting the case to you from the
11 State's point of view. Okay?

12 We've got the burden of proof of showing that,
13 first of all, Luzenski Cottrell did this act beyond a
14 reasonable doubt, which is murder. Two-part case. It
15 will take a while.

16 But the first part is did Luzenski Cottrell take
17 the life of Joe McGarry with malice aforethought. In
18 other words, did he mean to do what we did. Just like
19 with any other regular murder case. Are you with me so
20 far?

21 A Uh-huh.

22 Q And this is different than a regular murder case.
23 This is a capital case. In other words, we're going to
24 come back to you at some point and say what makes this
25 different is an aggravating circumstance or several

1 aggravating circumstances which makes this case worse
2 than just any general murder. Got me?

3 A Yes, I'm listening.

4 Q And like Judge Hyman told you, on most murder
5 cases, you can't even get the death penalty. Did you
6 ever know that?

7 A No, I didn't. I just learned that today.

8 Q Yeah. So in most cases, even though it's murder,
9 you can't get the death penalty because the State isn't
10 even trying for the death penalty. That's the biggest
11 majority of murders. It's a rarity that you go for the
12 death penalty.

13 So what we're saying to you is there is an
14 aggravating circumstance, something that makes this
15 worse. And we have to prove that to you on the jury.
16 Okay?

17 A (Nodding.)

18 Q And that's called a capital case or death penalty
19 case or whatever. It deals more with the punishment.
20 But we have got to prove that he did it first, and then
21 part two is what's the proper punishment. So you
22 probably know a lot more about regular old cases --
23 murder, rape, those sort of things, burden of proof,
24 because they're more common.

25 With this being different, I just want to ask

- 1 where -- I know you lean against the death penalty from
2 your previous answers. You said, "I don't like the
3 death penalty." Can you tell me where that comes from?
- 4 A Where that comes from is I just -- I think that
5 everybody deserves a chance and nobody deserves to die.
6 I'm not saying that is right for whatever happened,
7 whatever. But I just feel like if you're going to die,
8 you're just going to die. I don't feel that somebody
9 should put you there.
- 10 Q And, I mean, it's a difficult -- it's the worst
11 punishment.
- 12 A Yes.
- 13 Q I mean, I don't know what more you could do to a
14 person. But would you say that in most cases it is --
15 well, would you say in all cases that the worst thing
16 should be life imprisonment?
- 17 A (Nodding.)
- 18 Q Do you know of a situation that you would feel
19 comfortable saying, "This is worth more than life
20 imprisonment. This is worth the death penalty"?
- 21 A Not really.
- 22 Q So at the end of the day from a scale of one to
23 ten -- one being the easiest, ten being the worst -- on
24 your scale, the worst thing would be -- that ten would
25 be life imprisonment?

1 A Yes. The reason why I say that because no matter
2 what scale you're on, from one to ten or whatever,
3 what's happened happened. Like even if I feel like,
4 okay, this person deserves to die. I can't change it.

5 Q I got you.

6 A You see what I'm saying?

7 Q Even, say, Hitler. You know who I'm talking
8 about?

9 MS. NORRIS: Your Honor, I'm going to object to
10 hypotheticals.

11 THE COURT: That's not appropriate.

12 MR. RICHARDSON: I apologize.

13 Q But as bad as the person is or as bad as the facts
14 are, we can't bring the decedent back, so there's no
15 reason to use a punishment like the death penalty to
16 punish the person that did it; is that what I hear you
17 saying?

18 A Yes.

19 Q Do you go to church?

20 A Yes.

21 Q I know you haven't mentioned it, but growing up as
22 a little girl, have you always believed that way about
23 the death penalty?

24 A No, not always. I used to, like when I would hear
25 like bad stories, I would be like, "That person

1 deserves that." But as I got older, it's like you
2 can't change certain situations.

3 Q I mean, isn't that amazing? When we are reading
4 the paper or watching TV, it's easy to say, "Boy, if I
5 was in charge, that person deserves to die."

6 A Yeah.

7 Q But then when you've got to do it, it's totally
8 different, isn't it?

9 A (Nodding.)

10 Q I mean, when you have got to be the one to do it,
11 it's a lot harder. And it's well reasoned, what you're
12 talking about.

13 I ask you this simply because I don't want to
14 trick you at all. And I hope that none of my questions
15 have been tricky.

16 A No.

17 Q But we are going to ask at the end of this thing
18 for the death penalty. And I know your views and
19 beliefs on it. But if you guys together as a group
20 decide that that's the appropriate sentence, you would
21 have to write your name basically on the death warrant.
22 You would have to put Kayla down on one of 12 lines.

23 And Judge Hyman has asked you about it a couple of
24 times, but this is like watching TV, and now being for
25 real, being responsible, at least in part of signing

1 your name to that death warrant, do you think you could
2 do that given your views on the death penalty?

3 A I think so.

4 Q All right. You think that if all of you decided
5 for the death penalty that you could sign the warrant?

6 A I think so.

7 Q But you're just saying, "I don't think that
8 there's ever an appropriate case to give the death
9 penalty"?

10 A I could sign it.

11 Q I know that if you -- what you're saying is if you
12 deliberated and y'all come up with that, the signing
13 wouldn't be that big -- wouldn't be a great overcoming
14 deal for you. But what I got earlier was your ten,
15 life imprisonment --

16 MS. NORRIS: Objection; asked and answered.

17 THE COURT: I think so.

18 MR. RICHARDSON: Can she answer it or no?

19 THE COURT: She's already answered that.

20 MR. RICHARDSON: Okay. I have no further
21 questions.

22 Thank you, ma'am.

23 MS. HERRIOTT: You're welcome.

24 EXAMINATION BY THE COURT (Resumed):

25 Q Ms. Herriott, I'm the one who has to make this

1 decision. And I've herd Ms. Norris ask you questions,
2 and I heard Mr. Richardson ask you questions and your
3 responses, and I'm not real clear. So I'm just going
4 to ask you one or two questions just to clear it up in
5 my mind. Okay?

6 A Okay.

7 Q I don't want to change your answers at all. I
8 just want you to help me understand your answers.
9 Okay?

10 Let me begin by saying, you know, when we gave you
11 this form, it had A juror, B juror, C juror. Remember
12 that?

13 A (Nodding.)

14 Q And A juror is a juror that feels like if there is
15 a murder committed, in every case, no matter what the
16 circumstances, we ought to give them the death penalty.
17 Okay? And a B juror is a juror that says, "I don't
18 care what the circumstance is. I just couldn't give
19 somebody the death penalty. Even if they committed the
20 worst crime I could imagine, I couldn't give them the
21 death penalty."

22 In this case what we have to do is have a juror
23 who would be fair to the State and fair to
24 Mr. Cottrell. Okay? It would be really unfair to
25 Mr. Cottrell to put a juror on this jury if it said,

1 "We found out he committed murder. I don't care what
2 else you do, Judge, with this other stuff about
3 mitigating circumstance and all, he committed a murder,
4 he gets the death penalty if I'm on the jury." That
5 wouldn't be fair to him. That wouldn't be appropriate.
6 You agree with that?

7 A Yes.

8 Q And that would be an A juror. Likewise, it
9 wouldn't be fair to put someone on the jury that would
10 be a B juror, wouldn't be fair to the State to put
11 someone on that says, "Y'all can put up all that
12 evidence you want about aggravating things, I don't
13 care. I will never give the death penalty, period. I
14 made up my mind about that. So y'all can put up all
15 that you want, but I am never going to change my mind."
16 That would be a B juror. That wouldn't be fair for the
17 State, would it?

18 A No.

19 Q You can understand that?

20 A That wouldn't be.

21 Q What we need is a juror that, even though you may
22 have a personal objection to the death penalty, you
23 could still sit on that jury and you could be fair to
24 the State and to Mr. Cottrell. You could equally go in
25 that court and say, "I'm going to follow the

1 instructions the judge gave me, and I'm going to look
2 at this thing and I'm going to consider both. And if
3 the circumstances are bad enough, if they warrant it,
4 I'm willing to give the death penalty. But if they're
5 not, I'm just as willing to give life imprisonment or
6 recommend it."

7 A Yes.

8 Q Now, that's what I want to know. Are you -- can
9 you do that?

10 A Yes, I can.

11 Q You could sign your name and say, "I recommend the
12 death penalty," or you could sign your name and say, "I
13 recommend the" -- you wouldn't have to sign your name.
14 Could you say, "I recommend life in prison"?

15 A Yes.

16 Q You could do both?

17 A Yes, I could do both.

18 THE COURT: All right. That's all I want to know.

19 MS. NORRIS: Nothing else, your Honor. I think
20 that answers the question.

21 MR. RICHARDSON: No further questions.

22 THE COURT: Would you step down and just step
23 outside the door there with Mr. Ropp.

24 MS. HERRIOTT: Yeah.

25 (WHEREUPON, Ms. Herriott exited the courtroom

1 at 10:24 a.m.)

2 THE COURT: Ms. Norris.

3 MS. NORRIS: She's clearly qualified, your Honor.

4 MR. RICHARDSON: Your Honor, I believe she's not
5 qualified. She gave inconsistent answers throughout
6 depending on who was asking the question. I was not
7 hard on her. I basically asked her what was her ten,
8 what was the worst she could do, and she said life in
9 prison.

10 She clearly is opposed to the death penalty and
11 told me that she could see anything -- nothing more
12 than life in prison. I know she was changed toward the
13 end, but it seemed like every time she was asked, she
14 gave a different statement.

15 So under -- excuse me, your Honor, under *Tiner* I
16 would argue inconsistent answers and vacillating.

17 THE COURT: I asked her, I thought, adequate
18 questions to begin with. And she indicated to me that
19 she could consider life or death. I think she was
20 clear to me on that. It's when you attorneys got in
21 there and messed it up that there was any question
22 about it.

23 I think it was more a matter of her being able to
24 express herself than anything else. That's why I
25 questioned her right at the end and I tried to do it in

1 a way where she would understand, and I think she did
2 understand that it would be improper to be an A juror,
3 it would be improper to be a B juror, that she
4 understood the difference, and she said very clearly to
5 me could, "I do it." So I think she's qualified.

6 Bring her in.

7 (WHEREUPON, Ms. Herriott entered the courtroom
8 at 10:26 a.m.)

9 THE COURT: All right, Ms. Herriott. I have found
10 that you are qualified for the jury panel. That
11 doesn't mean you're on the jury yet. You're on the
12 panel that the jury will be drawn from.

13 We're not going to need you for a couple of days.
14 I want to remind you you are not to speak to anyone,
15 talk to anyone about the case, look up any information,
16 read anything. My order stays in effect. I've told
17 you that.

18 But, Ms. Herriott, I want you to call the number
19 that's on that sheet of paper that you got right there.
20 I want you to call it after 6 o'clock on Sunday
21 afternoon, Sunday evening. It will tell you when you
22 are to report back.

23 When you report back, when you come here on that
24 day, we will select the jury panel. You may be on that
25 jury, so bring with you any medications that you need,

1 your toiletries, some clothing for several days because
2 if you are selected, we will immediately take you to
3 the hotel where you will be staying.

4 Do you understand?

5 MS. HERRIOTT: (Nodding.)

6 THE COURT: You understand?

7 MS. HERRIOTT: Yeah.

8 THE COURT: Okay. Be sure to call back Sunday
9 afternoon. All right?

10 MS. HERRIOTT: After 6:00, right?

11 THE COURT: After 6:00. Thank you, ma'am.

12 Let's take a little quick break.

13 (WHEREUPON, recess taken from 10:27 a.m.
14 to 10:30 a.m.)

15 THE COURT: We have everyone back in the
16 courtroom -- Mr. Cottrell and his attorneys and the
17 State.

18 Next juror, please.

19 (WHEREUPON, Mr. Thebeau entered the courtroom
20 at 10:31 a.m.)

21 **DAVID THEBEAU,**

22 **BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **EXAMINATION BY THE COURT:**

24 Q Good morning.

25 A Hi, Judge. How are you?

1 Q I'm doing well. Is it Mr. "Thebeau"?

2 A "Thebeau."

3 Q "Thebeau." Okay. Is it T-h-e-b-e-a-u?

4 A Correct.

5 Q "Thebeau," okay. That's an old Horry County name.

6 A I don't know where it came from.

7 Q Are you from the county?

8 A I've been here 25 years. Originally from
9 Missouri.

10 Q Good. Mr. Thebeau, do you remember that you're
11 under oath, and do you recall when we talked Monday I
12 asked you not to seek out any information or expose
13 yourself to any information about this case or talk
14 about it with anybody?

15 A Uh-huh.

16 Q Have you complied with that?

17 A Yes.

18 Q You followed my order?

19 A Uh-huh.

20 Q And would you please remember that that continues
21 until such time as we release you?

22 A I do.

23 Q All right. Mr. Thebeau, you were kind enough to
24 fill out a couple forms for us this morning. We asked
25 you to look at the witness list, and we asked you to

1 consider three categories of jurors or types of jurors
2 and to tell us which category best describes you. And
3 you indicated that you're a C type; is that right?

4 A Yes.

5 Q Okay. And just so that you and I are on the same
6 page and we're talking about the same type -- we had
7 one juror where we had a mixup -- my understanding is
8 you're telling me that you are the type of juror that
9 would hear the facts and circumstances in aggravation
10 and mitigation before you could make a decision
11 regarding punishment?

12 A Yes.

13 Q And you feel that accurately describes your
14 attitude towards punishment in a capital case?

15 A Yes.

16 Q Now, you were here this morning and we talked
17 about -- or I did the talking. I told you about the
18 process and sort of gave you an overview as to how it
19 works, and I used words like "aggravating
20 circumstances" and "mitigating circumstances." Did you
21 follow me on all that?

22 A Yes.

23 Q Do you think you understood what I was saying?

24 A Yes.

25 Q Was I clear?

1 A Yes.

2 Q Okay. All right. And I notice that here in this
3 seat, I really didn't have anything to do with that,
4 but you filled that out before you even talked to me,
5 but those same words, "aggravating" and "mitigating,"
6 are used in that description of a C category juror.

7 A Yes.

8 Q You noticed that?

9 A Uh-huh.

10 Q Do you believe that a juror that would be a
11 category C juror like yourself, your attitude or
12 feelings towards punishment in a capital case would be
13 consistent with the process that a jury is asked to
14 follow in a death penalty case as I described it to you
15 this morning?

16 A Yes.

17 Q Where you consider aggravating and mitigating
18 circumstances?

19 A Yes.

20 Q So they seem to fit, don't seem to be in conflict
21 with your views?

22 A Seems fine to me.

23 Q Did you hear anything in my description about that
24 process that you would be asked to follow if you were
25 on the jury that would be offensive to you or you would

1 find unfair to anyone or anything of that nature,
2 something that if I instructed you, "This is what you
3 need to do," would you find that process difficult to
4 follow or would you -- is there anything so bad about
5 it that you would just not follow it?

6 A I don't think I would find it difficult.

7 Q And do you believe you could follow the law or
8 instructions that generally followed what I told you
9 this morning in your deliberations? You wouldn't have
10 any problems with that?

11 A No.

12 Q Okay. Good. Mr. Thebeau, would you agree with me
13 if I were to say -- and this is just a personal belief
14 I have -- that we, that is, how we see things, how we
15 view things, what our opinions are about things,
16 interests, prejudices and biases that we have all are
17 the product of our life experience -- good things that
18 have happened to us, bad things that have happened to
19 us, things that have happened to family, friends, loved
20 ones, this all sort of comes together and it makes us a
21 person? Our education also comes together. Would you
22 agree with that?

23 A Yes.

24 Q That's pretty easy to understand, isn't it?

25 A Yes, it is.