

ORIGINAL

VOLUME VI OF X

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

THE STATE,

RESPONDENT,

V.

LUZENSKI ALLEN COTTRELL,

APPELLANT

APPELLATE CASE NO 2015-000731

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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

1 Q Now, how you feel and view things is a personal
2 right you have, of course. And we talked about that.
3 And no one is going to be critical of you for having
4 any opinion or try to change your mind.

5 But I want you to look at David Thebeau. And I
6 want you to tell me how you feel. I have kind of told
7 you what this case is about, the alleged shooting of a
8 police officer in the line of duty. That's not proven.
9 It's not evidence.

10 But considering cases like that, is there anything
11 about David Thebeau that we should know about? Would
12 you have any interest, prejudice, bias for the State or
13 Mr. Cottrell, against Mr. Cottrell or for him, or for
14 or against the State that would cause or substantially
15 impair your ability to be a fair and impartial juror in
16 this case?

17 A No.

18 Q Have you -- do you have any information or do you
19 know anything about the case?

20 A No. I had to look him up on the Internet just to
21 find the guy's name.

22 Q When did you do that?

23 A When I first got the questionnaire.

24 Q How long -- you said you have been here
25 20-something years?

1 A Yeah.

2 Q But you didn't follow the case?

3 A Huh-uh.

4 Q Do you have any preconceived notions about the
5 death penalty or punishment in general that might
6 affect your ability to be a fair and impartial juror?

7 A No.

8 Q None at all. Okay. Do you believe that you could
9 fairly view the evidence in this case and impartially
10 review that evidence and examine it and make a decision
11 concerning the facts of this case that's fair and
12 impartial, fair to both the State and to Mr. Cottrell?

13 A I do.

14 Q You do. And could you and would you apply the law
15 exactly as I gave it to you in this case?

16 A Yeah.

17 Q What if there was something about my instruction
18 that you didn't agree with that you thought might be
19 wrong or that the law ought to be something else?
20 Could you set that aside if I told you you must do it
21 and apply it just as I give it to you?

22 A Are you asking me to go against the law?

23 Q No. No. No. The judge in a case --

24 A Uh-huh.

25 Q -- is the sole and exclusive giver of the law in a

1 case. And if at the end of the case I instruct you on
2 the law, I said, "This is the law," but when you looked
3 at it, in your mind you thought, "This may be the law
4 but it shouldn't be the law," or, "Somebody else told
5 me something else different about the law," could you
6 put those thoughts out of your mind and follow the law
7 just as I give it to you?

8 A Oh, yeah.

9 Q You could do that and apply it?

10 A Uh-huh.

11 Q And could you be fair and impartial in your
12 application of the law?

13 A Yes.

14 Q And, finally, the last thing I want to ask you:
15 If -- if -- you're a juror in this case and if the
16 State proved the primary murder beyond a reasonable
17 doubt and moved on to the second phase, and if the
18 State proved an aggravating circumstance and we got to
19 the point that the death penalty was on the table, it
20 was a possible sentence or possible recommended
21 sentence for the jury, same time life was there, could
22 you consider both of them? Would you keep an open mind
23 or would you have your mind fixed as to one or the
24 other from the get-go?

25 A I wouldn't have my mind fixed from the get-go.

1 Q Could you consider all things that weigh in favor
2 of life and all things that weigh in favor of death and
3 make your own independent judgment as to what the
4 penalty should be?

5 A Yes.

6 THE COURT: All right. Ms. Norris.

7 EXAMINATION BY MS. NORRIS:

8 Q Good morning, Mr. Thebeau. I'm Teresa Norris. I
9 know I got a chance to stand up the other day, but this
10 is our one chance to talk together.

11 You indicated on your questionnaire and I believe
12 you came up to the bench. Diverticulitis. Tell me
13 again what that is.

14 A It's a digestive problem. It has to do with the
15 intestines. Little pockets get infected. I spent some
16 time in the hospital a week this year for it. It's not
17 a bad problem as far as being in pain or something like
18 that. The reason I wanted to make you aware of it --

19 THE COURT: Is when you got to go, you got to go.

20 MR. THEBEAU: When I got to go -- because when we
21 were in here earlier, on Monday, some people raised
22 their hands to go to the restroom. And the bailiff and
23 everybody was like, "No, we got to wait."

24 When I raise my hand, I got about 45 seconds or a
25 minute to get to where I need to be. I thought you

1 needed to be aware of that.

2 BY MS. NORRIS:

3 Q As long as Judge Hyman can take care of that,
4 otherwise you don't have any concerns about serving on
5 the jury or being in a hotel for a couple weeks?

6 A No. That's my biggest concern. Nobody wants to
7 have an accident.

8 THE COURT: I promise you, if you're on the jury,
9 I will do anything in the world to accommodate you in
10 that regard. All you've got to do is raise your hand.

11 MR. THEBEAU: I believe you.

12 BY MS. NORRIS:

13 Q You indicated you looked it up on the Internet.
14 There's nothing wrong with that. Nobody told you
15 before not to look. Tell me what you learned on the
16 Internet.

17 A It was an officer that had been shot. And that's
18 basically all I know. I didn't read a big, full story
19 on it. I just kind of looked up a little Google
20 splurge (sic) on it. It said there were two officers
21 on patrol and saw something going on, and one of them
22 got shot and later died.

23 Q And there was nothing about court proceedings or
24 anything else about the case?

25 A No.

1 Q So really it sounds like when the judge read the
2 indictment, the information you got off the Internet
3 wasn't any more than that, right?

4 A Correct.

5 Q Okay. Just tell me in general before, you got
6 this jury summons and got put in sort of in the hot
7 seat there, if I had asked you the day before you got
8 your jury summons to tell me your general thoughts
9 about the death penalty, give me that answer.

10 A I believe in the death penalty if it's
11 appropriate.

12 Q Do you believe it's appropriate for every murder?

13 A No.

14 Q You indicated on your questionnaire that you have
15 a theology degree?

16 A Uh-huh.

17 Q Are your beliefs about the death penalty based on
18 religious beliefs such as an-eye-for-an-eye type thing?

19 A Not particularly, no.

20 Q And what are your beliefs about the death penalty
21 based on?

22 A Well, you, know I grew up in the Midwest. I grew
23 up on a farm and basically seen ways to discipline
24 people. Some work out, some don't. And sometimes you
25 see what's appropriate. And I've always been a

1 believer that the death penalty is appropriate in
2 certain times.

3 Q And if you were seated as a juror and the judge
4 has described the whole process -- I'm not going to go
5 back through that. I'm satisfied that you understand
6 that.

7 At the end of the day when the instructions are
8 given, you're never going to get an instruction that
9 says, "If you find A, B and C, you have to impose the
10 death penalty." And, likewise, you won't get one that
11 says, "If you find A, B and C, you have to find for
12 life without parole." There's always going to be that
13 middle ground. So the law can't help you.

14 There's going to be -- think of it sort of as a
15 fence. Do you fall one way or the other at this point
16 without having heard anything?

17 A No, huh-uh.

18 Q You don't lean, I have a bias towards the death
19 penalty or against it?

20 A Well, I believe in the death penalty if it's
21 appropriate. That's what I can tell you.

22 Q But without hearing the facts, you can't say?

23 A As it relates to this case, I have no idea.

24 Q Okay. And would you consider all of those things
25 in mitigation, and that can be a person's upbringing,

1 other factors outside of just the crime they're alleged
2 to commit? Would you want to know more about the
3 person you're judging in terms of that sentence?

4 A I don't know. I'm pretty much a stickler for what
5 happens, what the instance of what happened, why we're
6 here, not particularly what happened 20 years ago.
7 Does that make sense?

8 Q So if murder was proven, you would look at those
9 facts, and anything else is sort of irrelevant; is that
10 a fair way to say it?

11 A Well, I would look at whatever the facts of it,
12 what happened, you know, the reason we're here. That
13 to me would be the crux of the whole situation.

14 Q Okay. And if you were seated on the jury, each
15 person would have to make that individual decision.
16 You follow me?

17 A Yeah.

18 Q If you were in the jury room and you and 11 people
19 viewed the evidence and the law one way but there was
20 one other person that viewed it another way but they
21 said, "Look, this is my decision. There is no right or
22 wrong answer under the law. The judge told me I could
23 give life for any reason or no reason at all, including
24 mercy, and I just believe that life without parole is
25 the appropriate punishment." Would you encourage that

1 one person to join a group just to join or would you
2 respect their individual decision?

3 A Well, I'd have to respect the way they feel about
4 it.

5 Q And the same thing on the other side, if --

6 MR. HIXSON: Your Honor, I object. I think the
7 "just to join the majority question" is appropriate,
8 but staking out jury nullification questions, these
9 hypotheticals are an ongoing problem. I have objected
10 many times. The just to go along is appropriate, but
11 not the staking out.

12 THE COURT: Let's just ask him if he could -- I
13 think it would be appropriate if he could respect the
14 opinion, if he was in the majority, of another juror.
15 I think that gets us as far as we need to go.

16 MS. NORRIS: I think he's answered that.

17 Thank you, sir.

18 EXAMINATION BY MR. RICHARDSON:

19 Q Mr. Thebeau, my name is Jimmy Richardson. I'm the
20 Solicitor for Georgetown and Horry Counties, and this
21 is Mr. Hixson. He is the Chief Deputy, and together we
22 are going to present the case for the State.

23 Of course, it is a death penalty case, and it will
24 be a little bit longer than a regular murder case. But
25 some of the stuff that Ms. Norris -- first of all, I

1 saw where you are a Mason. Which lodge are you in?

2 A 319.

3 Q 319?

4 A Grand Strand lodge.

5 Q Okay. Do you ever go?

6 A I was pretty regular up until I got into school
7 about 1999.

8 Q It's easy to get out of, isn't it?

9 A Yeah. Hard to get back into.

10 Q But everything else, you know, I think she asked
11 you about your diverticulitis, and we've got that
12 worked out. Do you know of anything else that would
13 keep you from being a fair juror to both the State and
14 to the defense?

15 A No.

16 Q All right. And she had talked with you a little
17 bit about mitigation. And you're the type of person
18 that had already said it's more important to you, that
19 act, what took place at that time, you know. Not so
20 much how it came to that point. And that's fine. All
21 of these answers are good.

22 But you agree the snapshot of what took place on
23 that date and time is the most important thing to you,
24 and that's what you would be looking for in the
25 evidence?

1 A Yes.

2 Q All right. Now, as part of your duty, you've got
3 to -- and in any other case that would be fine. But in
4 a death penalty case or a capital case, you are
5 promising this Court, the defense, the prosecution,
6 everybody, that because the State has to prove
7 something extra, murder plus an aggravating
8 circumstance, that you're going to have to consider
9 that aggravation. See what I'm saying?

10 A No.

11 Q Let me explain. In any other murder case, and
12 throughout the state there may be one hundred this
13 year. Quite a few in this county. And that is simply
14 a killing of another with malice.

15 A Uh-huh.

16 Q And a little bit of premeditation just for a
17 second. Pow, dead. Murder plus or capital, like this
18 case is, is the killing of another with malice --

19 MS. NORRIS: Your Honor, I'm going to have to
20 object to that phrasing, and I don't want to put it on
21 the record in front of this juror, but I'm going to
22 object to that phrasing.

23 THE COURT: Could -- Mr. Richardson, could you ask
24 your initial question to Mr. Thebeau again about does
25 he understand what an aggravating circumstance is. We

1 went through that this morning, and I'd just like you
2 to ask him one more time.

3 MR. RICHARDSON: Yes, sir.

4 Q Do you know what aggravation is?

5 A I kind of got the gist of it down.

6 Q Let me --

7 EXAMINATION BY THE COURT (Resumed):

8 Q Do you remember when we talked this morning?

9 A Yeah.

10 Q And I said a death penalty case is where you have
11 just murder, but then the State has an additional duty
12 to prove an aggravating circumstance?

13 A Right. I understand that.

14 Q When he says "aggravators," he means one of those
15 aggravating circumstances.

16 A I understand that part of it.

17 Q So you know what he's talking about?

18 A Correct.

19 THE COURT: Okay. That helps.

20 EXAMINATION BY MR. RICHARDSON (Resumed):

21 Q And, David, the murder part, like the killing of
22 another, any typical murder, we would have to prove
23 that beyond a reasonable doubt, right?

24 A Uh-huh.

25 Q And then we would have to prove that aggravating

1 circumstance or circumstances beyond a reasonable doubt
2 also?

3 A Uh-huh.

4 Q That's the burden that we have and we freely take
5 on. Okay? So that's what I'm saying when I say murder
6 plus that aggravating circumstance. Murder, and then
7 another step is the aggravating circumstance. All
8 right?

9 A Okay.

10 Q And that gets you to the penalty phase. If you
11 find that a murder was committed and that when y'all go
12 back and start talking about that aggravating
13 circumstance you find that that's there, now you can
14 talk about what's the appropriate penalty. Okay?

15 A Yes.

16 Q And that's what makes a capital case special or
17 different from all of these other murder cases. All
18 right?

19 A Okay.

20 Q The judge told you on those other murder cases you
21 can't even get the death penalty. This one you can.
22 All right? So wouldn't it be fair to say you've got to
23 consider the aggravating circumstances, because that's
24 a part of your requirement, right?

25 A Uh-huh.

1 Q You've also got to consider any mitigation. So
2 things that would make the defendant, put him in a
3 better light. You have got to be able to listen to the
4 defense with an open mind and take from it what you
5 will when they present that evidence, if they present
6 that evidence of mitigation or something better for
7 him. Do you understand what I'm saying?

8 A I think so.

9 Q Mitigation would be -- and I don't want to go
10 through -- there is a list of them, but you can make up
11 your own mitigation. If the guy's 14 -- but you can't
12 really get the death penalty at 14 -- but just say if
13 he's 14, that would be --

14 MS. NORRIS: Objection; hypothetical.

15 THE COURT: Again --

16 MR. RICHARDSON: All right.

17 THE COURT: -- mitigators would be things in
18 extenuation that would weigh against the recommendation
19 of a death penalty. You follow me now?

20 MR. THEBEAU: Okay.

21 THE COURT: It would be lessening the culpability
22 of the defendant, making the death penalty less likely.
23 That's what mitigators are.

24 BY MR. RICHARDSON:

25 Q So, David, you can consider not only the guilt or

1 innocence in part one, but also in part two the
2 aggravation and mitigation. You, along with the 11
3 other jurors, could you do that?

4 A Yeah.

5 Q Could you be fair and impartial not only to the
6 State but also to the defense?

7 A Oh, yeah.

8 Q And listen to everything from that witness stand?

9 A Yeah, uh-huh.

10 Q And then take that all together after considering
11 it and then you say, "I could consider not only the
12 death penalty but I could consider life in prison,"
13 depending on the circumstances?

14 A Yeah.

15 Q All right. And at that point the State is going
16 to ask for the death penalty. All right? I'm telling
17 you now this is a death penalty case. We will be
18 asking --

19 MS. NORRIS: Your Honor, I'm going -- I'm going to
20 have to object to this, and I've got a matter of law
21 that I need to take up.

22 THE COURT: All right.

23 Do you need to pursue this, Mr. Richardson? I
24 think --

25 MR. RICHARDSON: Can I --

1 THE COURT: Mr. Thebeau, I think I know where
2 we're going, and it's simply this. If you were to
3 vote, if your jury were to vote -- if -- for the death
4 penalty, there is an additional requirement if the
5 recommendation is for death to sign it. Everybody has
6 to sign it.

7 MR. THEBEAU: Uh-huh.

8 THE COURT: Could you, if you had voted, the
9 circumstances were such that you had voted for that --
10 and I'm not suggesting that you will, but if you got to
11 that point, could you also sign it?

12 MR. THEBEAU: Yeah.

13 THE COURT: There we go.

14 Is that what you want?

15 MR. RICHARDSON: That's it. Yes, sir.

16 I have no further questions.

17 THE COURT: Does that take care of your problem?

18 MS. NORRIS: No, sir, it doesn't.

19 THE COURT: All right. Let's let him step down.

20 (WHEREUPON, Mr. Thebeau exited the courtroom
21 at 10:56 a.m.)

22 THE COURT: All right.

23 Close the door, Bobby.

24 MS. NORRIS: Your Honor, I've got multiple
25 problems here. And the questioning, we let it go with

1 one of the other jurors, and it's going overboard now.

2 When the Solicitor talks about and even when your
3 Honor talks about, "It's a rare case where we seek the
4 death penalty," we're sending a message to jurors that
5 there's something special about Mr. Cottrell that
6 brings us here. And that phrasing saying, "We've
7 already decided this is a special case."

8 THE COURT: And that's not proper. And I have
9 tried to avoid that. I've tried to just impress the
10 jury that we -- and I may have used the terminology,
11 "It's rare that we do that." But I certainly don't
12 mean to convey anything other than this is not typical
13 and we have specific rules, and that's all I want to
14 tell the jury.

15 MS. NORRIS: If we could just say, "It's not like
16 any other murder case," because when we start talking
17 about numbers, we single this out here. We've got
18 potential jurors thinking -- knowing there's something
19 more. And the Solicitor is saying, "We never seek the
20 death penalty." So we're putting the State --

21 THE COURT: Let's just stay away from that. Try
22 not to put any emphasis on the fact or special emphasis
23 on it other than we've got to tell the jury that
24 there's special rules about it.

25 MS. NORRIS: Yes, sir. I don't have any

1 disagreement with that at all.

2 The other issue that I have with the questioning
3 of this potential juror is -- and I didn't object on
4 that one. I knew we were going to talk about it. But
5 the phrasing of, "Can you hear the mitigation," and the
6 Solicitor used the phrase, "Take from it what you
7 will." That's not in compliance with the law. And I
8 go now to my objections that Mr. --

9 THE COURT: I'm sorry. "Take from it what you
10 will," you lost me. I don't recall that or the
11 comment.

12 MS. NORRIS: In questioning Mr. Thebeau about
13 whether he could consider mitigation, the Solicitor
14 essentially said, "You will hear that." And the
15 Solicitor's quote was, "You can take from that what you
16 will." That's not the law.

17 This juror -- and here's my objection to this
18 juror. This juror already said that he did not believe
19 that anything other than the circumstances of the
20 murder was relevant. He can't consider mitigation.
21 Under *Morgan vs. Illinois* itself, he's already said
22 whatever else is presented to me, he'll sit there and
23 he'll listen to it, but that's not meaningful
24 consideration.

25 THE COURT: That's not how you couch the question.

1 The way it was asked to him is, "Do you think that that
2 is relevant?" Well, this juror may not think it's
3 relevant. This juror may not think or a juror may not
4 think the death penalty is appropriate. But that's not
5 controlling.

6 What's controlling is whether or not this juror,
7 if instructed to consider those things, can do so. And
8 nobody is asking, "If the judge instructed you to
9 consider those things, would you consider them?"

10 MS. NORRIS: Well, here is the problem, your
11 Honor. I don't think there is a statutory aggravating
12 circumstance that covers and he used the phrase, "I
13 don't think what happened 20 years ago is relevant."
14 So there's no specific instruction where we can say,
15 "You have to consider his childhood, his background,
16 his upbringing, his walk of life." They're not going
17 to get that instruction. So this juror is just simply
18 not going to consider the fact that --

19 THE COURT: Well, I don't view it in that context.
20 You did not ask him if he would not do it. You asked
21 him what his opinion was. And how is that any
22 different from a juror that says I favor or I object to
23 generally the death penalty --

24 MS. NORRIS: Well --

25 THE COURT: -- if they can still follow the law?

1 MS. NORRIS: Your Honor, if I ask, Would you not
2 do this, they're going to stand up and object to
3 staking out. I can't ask that question. I mean,
4 that's clearly getting into --

5 THE COURT: I am not going to disqualify that
6 juror on that ground.

7 MS. NORRIS: Just note our objection, please.
8 Thank you.

9 THE COURT: I'll hear you otherwise.

10 MR. RICHARDSON: And, your Honor, my whole purpose
11 for the line of questioning was to make him aware that
12 he did have to consider not only aggravation but
13 mitigation. And I don't know at the beginning that he
14 even actually understood all that. So I agree with
15 your Honor --

16 THE COURT: This is how I see that. You could ask
17 him questions about everything. But there's nothing
18 that says he has to consider that. Show me where, if
19 it's not a statutory mitigator, where there's anything
20 that says he must consider it.

21 My understanding of the law is there are statutory
22 mitigators. And I will tell them, "These are things
23 you must." But I also tell them, "You can consider
24 anything else." And I have made that very clear to
25 them. Including background. That gives the juror the

1 freedom to look at the case wholly.

2 I can't -- if it's not statutory, I can't make
3 this juror consider background information or things
4 that may have occurred in Mr. Cottrell's background.
5 If you say it's not statutory, well, then the
6 legislature didn't think that it should be made
7 mandatory that they should do it.

8 But this juror should be given the option to do
9 that. And I will tell this juror that he may consider
10 absolutely anything or nothing in determining whether
11 or not the death penalty is proper. This juror just
12 said in his opinion, and I think that that would
13 certainly be, if you felt that he would not and that
14 you have substantial evidence of that and you want to
15 introduce it, that might be grounds for you to exercise
16 a strike, but I don't think it's disqualifying as to
17 this juror. Because unless you can point me to
18 something that he's bound and must consider those
19 things, then it would disqualify him.

20 He may consider things that I may consider
21 absolutely irrelevant as a mitigating circumstance.

22 MR. RICHARDSON: I'll point out quickly for the
23 record that line of questioning, it was under just what
24 your Honor was talking about. I told him about
25 statutory mitigators, but I said, You can go out and

1 make up your own mitigators and you can certainly
2 decide on those.

3 THE COURT: And that's one of the reasons that I
4 wanted to explain to the jury what they could expect in
5 a death penalty case. So they would understand the
6 protections that apply to Mr. Cottrell. I wanted them
7 to understand the requirements upon the State. I
8 wanted them to understand how this is different than a
9 murder case. And that's why I brought in these panels
10 and I do that.

11 I think I expressed to the jury and to you all
12 that this jury is going to be free to look at the
13 things in this case and use anything they want as a
14 mitigator.

15 MR. HIXSON: Your Honor, just briefly, can we get
16 some guidance from the Court? We want to stay away
17 from Ms. Norris' concern over the rare, this is a rare
18 situation. So we don't want to run afoul of the Court.
19 Don't talk about the fact that murder is definitely
20 rare. I want to get some consensus on appropriate
21 language going forward on those questions.

22 THE COURT: I would allow you to say, you know,
23 "We have a number of murders." That's what I said, "We
24 have a number of murders. Any number of murders," I
25 think, is what I say, "that are tried in this state."

1 I have no problem with you saying, "Only a small
2 percentage of those do we seek the death penalty."

3 MS. NORRIS: Not "we" because, there again, we're
4 behind it.

5 THE COURT: Or you can say, "In which the State
6 seeks the death penalty." And I would like you to keep
7 that in context of expressing to the jury -- the only
8 time I think you would need to do it is when you're
9 saying, "And for that reason there are special rules
10 that apply."

11 I don't think there's anything wrong with letting
12 the jury know that this is a special case. And it is
13 because there is a lot at stake here.

14 MS. NORRIS: On the Court's question about
15 background, I think it's clear from *Gregg vs. Georgia*,
16 *Woodson vs. North Carolina*, *Lockett vs. Ohio*, *Eddings*
17 *vs. Oklahoma*, Fifth, Sixth, Eighth, Fourteenth
18 Amendment, a juror who says that what matters to me is
19 the facts surrounding the murder and nothing else
20 cannot consider mitigation.

21 THE COURT: Did this juror say nothing else?

22 MR. RICHARDSON: No, sir.

23 MS. NORRIS: He said he wouldn't consider
24 background. Unless it happened within those facts,
25 nothing else that happened in this man's life is going

1 to matter.

2 THE COURT: And there again you didn't ask him,
3 "Would you refuse to do it?" You just asked him --

4 MS. NORRIS: I can't ask him that without staking
5 out.

6 THE COURT: Your question was -- you shouldn't
7 even go there, then. Your question, "Do you think
8 that's important?" To him it was not important.
9 Doesn't mean he can't consider it as a mitigator.
10 There's nothing to indicate he won't. And there's
11 nothing that says that he must or has to consider that.
12 Again, that would be staking him out. He's going to
13 consider all the -- is free to consider all the
14 relevant testimony and he decides what is a relevant
15 mitigator.

16 MR. RICHARDSON: And, your Honor, the State would
17 believe that Mr. Thebeau is qualified.

18 THE COURT: All right. Bring him in. I believe
19 he is as well.

20 (WHEREUPON, Mr. Thebeau entered the courtroom
21 at 11:07 a.m.)

22 THE COURT: Mr. Thebeau, I have determined that
23 you are a qualified juror. That doesn't mean you are
24 on the panel. It means simply you are among the group
25 from which the panel will be drawn.

1 In that regard I won't need you for several days.
2 We're still going through this process. I'm going to
3 ask you to look at that sheet you're being handed.
4 There is a phone number on there. Call that number
5 after 6:00 p.m. Sunday afternoon -- after 6:00 -- and
6 there will be an instruction there that tells you when
7 to report.

8 When you report, you may be placed on the jury, so
9 bring with you any medications that you take, your
10 toiletries, some clothing for several days so you will
11 have them with you in case you are placed on the jury
12 because we would sequester you right then. Just leave
13 them in your car.

14 If you are selected there will be some of these
15 officers around here to help you get that and get over
16 to the motel, and they will take you over there. Okay?

17 MR. THEBEAU: Okay.

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

19 (WHEREUPON, Mr. Thebeau exited the courtroom
20 at 11:09 a.m.)

21 (WHEREUPON, Ms. Penn entered the courtroom
22 at 11:09 a.m.)

23 WANDA PENN,

24 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

25 EXAMINATION BY THE COURT:

1 Q Good morning.

2 A Good morning.

3 Q How are you? You are Ms. Penn?

4 A Yes.

5 Q Do you recall on Monday I gave you some
6 instructions about not talking to anyone about the case
7 or looking up anything or reading any news reports or
8 watching any news reports?

9 A Yes.

10 Q And have you complied with my instructions?

11 A Yes, sir.

12 Q I thank you for that. And I want to remind you
13 that until you're released from this jury panel, either
14 at the end of case or at the end of the selection
15 process, whichever applies to you, you remain under
16 that order. Okay?

17 A Yes.

18 Q Okay. Ms. Penn, I have before me some of the
19 paperwork that you filled out for us this morning. And
20 you will recall that I asked you to tell us or indicate
21 what type of juror you were or which most closely
22 describes you.

23 A Yes.

24 Q And we had three categories there, and you
25 indicate that you are a type C or category C juror?

1 A Yes.

2 Q And just so that you and I understand, make sure
3 we're on the same page, so to speak, that would be a
4 juror which needs to hear facts and circumstances in
5 aggravation and in mitigation before he or she could
6 make a decision regarding punishment?

7 A Yes.

8 Q Okay. And do you think that describes you most
9 closely?

10 A Yes, I do.

11 Q Okay. Good. You remember when we -- I talked
12 with you this morning about the process and what you as
13 jurors would need to do and what would be required of
14 you?

15 A Yes.

16 Q I used some of the same words that are in a type C
17 or category C juror. And, actually, I didn't make this
18 form up. It's just coincidentally somebody used the
19 same wording.

20 Do you recall when I discussed it with you that we
21 used words like "aggravation" and "mitigation"?

22 A Yes.

23 Q Okay. In your opinion, then, would your feeling
24 towards how a person should arrive at a penalty or a
25 punishment in a case if there is a conviction and if

1 all the other steps are complied with, in your opinion
2 is that consistent with the process that I discussed
3 with you this morning?

4 A Yes.

5 Q Okay. And did you notice or hear anything about
6 that general process that I described to you this
7 morning that might be offensive to you or that you
8 might feel is unfair to Mr. Cottrell or to the State or
9 unfair generally in the process of arriving at a
10 verdict or a penalty?

11 A No.

12 Q Okay. If I, at the end of the case, gave you an
13 instruction that included generally that same process,
14 would you have any difficulty following that
15 instruction?

16 A No.

17 Q Do you realize that in a trial the jury is the
18 sole, exclusive, absolute judge of the facts in the
19 case? You decide what the facts are as a jury if you
20 are on this jury?

21 A Yes.

22 Q And the way you go about that is you look at the
23 evidence. And evidence is not always what the facts
24 are. There's contradictory evidence in every case that
25 comes before the Court, otherwise we wouldn't even --

1 if there was agreement, we wouldn't even need to have
2 the evidence. The parties could just say what they
3 agree to.

4 But you have to take that evidence as a juror and
5 you have to distill it and look at it, weigh it and
6 decide what you believe and what you don't believe, and
7 from there you come up with the facts. And it would be
8 just so improper for me to try to tell you what the
9 facts are or to try to insinuate somehow what you
10 should arrive at because that's your prerogative.

11 A Yes, sir.

12 Q But the other side of the coin is that the judge
13 is the absolute, sole judge of the law. I decide what
14 the law is you then take and apply to those facts as
15 you find in your deliberation process. And as just
16 like you are the sole judge of the facts, I'm the sole
17 judge of the law.

18 If I were to charge you on the law and if after
19 charging you on the law you looked at what I had told
20 you and you would say, "Well, that might be the law,
21 this thing here might be the law, but I don't agree
22 with it," or you look at it and say, "Well, my Uncle
23 John one time told me something else about the law. I
24 think it might be something else," could you set that
25 aside and follow the law exactly as I give it to you?

1 A Yes.

2 Q And that would be your duty to do that. Do you
3 understand that?

4 A Yes, sir.

5 Q Okay. All right. Now, in that regard, Ms. Penn,
6 if we started this case and you were on the jury --
7 and, please, I'm not suggesting this is what you should
8 do or will happen. It's not for me to decide. We
9 started out and we went through the process and there
10 was a finding of guilt on that typical murder part, you
11 know, the plain ordinary murder?

12 A Yes.

13 Q And it moved us over to the part where the jury is
14 asked to find out if there is an aggravating
15 circumstance. And, sure enough, the jury found, in
16 fact, that the State did meet its burden and prove that
17 and we moved to the part where the jury had as its
18 options two possible recommended sentences. Remember
19 what those would be?

20 A Yes.

21 Q What would they be?

22 A Life in prison without parole and death.

23 Q You listened very well obviously. Okay. And you
24 understand that that recommendation of death would not
25 even be on the table unless the State met all these

1 other requirements?

2 A Yes.

3 Q But when you got to that point, do you think -- do
4 you think that you could look at from the beginning
5 these two options fairly and equally and impartially?
6 They would be real options, real options for you.

7 Could you do that?

8 A Yes, I could.

9 Q You know, if we look into the heart of Wanda Penn,
10 would Wanda Penn have any predisposition towards one or
11 the other based on your opinions, attitudes and
12 feelings?

13 A No.

14 Q Okay. Could you recommend the death penalty?

15 A Yes.

16 Q Would you be able, if your jury felt that it
17 unanimously was appropriate, would you be able to also
18 sign the verdict form that says you recommend the death
19 penalty? You know, it's one thing to vote for
20 something but another thing to actually go forward and
21 put your name on it. Would you have a problem with
22 that?

23 A No.

24 Q Could you -- under the right circumstances -- and,
25 there again, I don't want to make you think that we're

1 ever going to get there. That's not for me to decide.

2 A Correct.

3 Q I just need to ask these questions. But at the
4 same time and with equal impartiality, could you look
5 over here and say there are things in mitigation or, "I
6 believe that mercy should be granted," and vote for the
7 life or life imprisonment without possibility of
8 parole?

9 A Yes, I could.

10 Q Both of those options, are they clearly open to
11 you right now?

12 A Yes, sir.

13 Q Okay. You know, I've asked almost every juror
14 this, and no one has disagreed with me yet. Let's see
15 if you agree with me. We're sort of a product -- it's
16 just my personal thought -- we're sort of a product of
17 our life experiences -- good things and bad things that
18 have happened to us, things that we have done, our
19 education, how we react to our family and friends and
20 what their experience is all come together and make us
21 a person. And that person is going to have opinions,
22 feelings, prejudices and biases on all sorts of
23 subjects. And my job is to determine whether or not
24 there is anything about you, Ms. Penn, that might
25 interfere, substantially interfere, with your ability

1 to perform your duties as a juror. And your primary
2 duty as a juror is to be fair and impartial. That's
3 exactly what I want you to be.

4 Tell me, is there anything you might know about
5 this case, about experiences you have had with things
6 that may have happened to you, good or bad, do you have
7 any prejudices or biases that might be against or for
8 Mr. Cottrell or for or against the State?

9 A No.

10 Q Can you tell me any reason why you believe that
11 you could not be and remain that fair and impartial
12 juror?

13 A No reason.

14 THE COURT: Okay. Now, I want you to answer any
15 questions that Ms. Norris has. She wants to ask you
16 some things.

17 EXAMINATION BY MS. NORRIS:

18 Q Good morning, Ms. Penn.

19 A Good morning.

20 Q Again, I'm Teresa Norris. I know I had a chance
21 to stand up and we could look at each other across a
22 crowded room the other day, but this is my one
23 opportunity to talk to you.

24 Prior to getting your juror summons, if I had just
25 said, "Ms. Penn, tell me your thoughts on the death

1 penalty," share with me your thoughts.

2 A The death penalty is a hard, hard penalty. But if
3 I have the proof, if I have the facts and I believe
4 this is what the person deserves, then that's what I'm
5 going to say. Whether I like it or not, this is fair.

6 Q So did I understand you correctly that you
7 personally don't like the death penalty?

8 A No, I really don't like it or dislike it. I just
9 need the facts before I could sentence someone to the
10 death penalty.

11 Q Absolutely. And certainly under the law we hope
12 that any juror would say the same thing. So if you
13 were seated as a member of the jury, of course, there
14 would have to be a trial first --

15 A Yes.

16 Q -- before there would even be any discussion. But
17 if you ultimately ended up moving from that chair over
18 here to one of these and hearing all the evidence in a
19 case, at the end of all the evidence when you get down
20 to making an actual decision, I just want to make sure
21 that you understand that the judge will never give an
22 instruction that says, "If you find A, B and C, you
23 have to impose the death penalty."

24 A Yes.

25 Q And the same is true on the other side. The judge

1 will never say, "If you find A, B and C, you have to
2 impose a life sentence."

3 A Yes.

4 Q So there's always going to be a middle ground
5 there. And in your mind -- just correct me if I'm
6 wrong -- you're saying, understanding that I'm starting
7 in that middle ground, are you leaning one way or the
8 other?

9 A No.

10 Q Okay. So you just have to hear everything?

11 A Yes.

12 Q But you could vote for the death penalty?

13 A Yes.

14 Q And you could vote for life without parole?

15 A Yes.

16 Q And do you believe that that, depending on the
17 circumstances, is a harsh punishment in itself?

18 A Which one?

19 Q Life without parole.

20 A Depending on the circumstances.

21 Q So just in general, if I asked you if life without
22 parole is a harsh sentence?

23 A Yes, it would be.

24 Q Do you think that that would be an appropriate
25 sentence for some murders depending on circumstances?

1 A Depending on circumstances, yes.

2 Q Would it be too light or on the light end of the
3 spectrum or too heavy?

4 A That I don't know. I don't know.

5 Q Okay. If you were in a position where you made
6 your choice individually -- and the law always requires
7 it to be an individual decision -- and the judge has
8 already told you you can impose a life sentence for any
9 reason or no reason or as a matter of mercy. If you
10 made that choice and you chose one or the other and the
11 11 other people hearing all the same evidence and
12 instructions chose a different sentence, do you
13 understand that there would be nothing improper in
14 that --

15 A Yes.

16 Q -- under the instruction. All right. Here's
17 simply my question: If you reached that point where
18 your opinion was different than everybody else's, would
19 you give up your opinion just to go along with
20 everybody else, or would you say, "This is my opinion.
21 I'm sorry, it will violate my conscience to give it
22 up"?

23 A I would have to go with my opinion.

24 Q Okay. Give me just a second.

25 (WHEREUPON, an off-the-record discussion was

1 held between Ms. Norris and Mr. McGuire.)

2 BY MS. NORRIS:

3 Q And in considering whether the appropriate
4 sentence is life or death, the judge has told you what
5 mitigating circumstances are. That's anything --
6 anything that lessens the severity or weighs in favor
7 of life is another way to put it.

8 Do you believe that a person's background or
9 upbringing is relevant information that should be
10 considered prior to imposing a death sentence or a life
11 without parole?

12 A I don't think so.

13 Q Okay.

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

16 MR. HIXSON: Briefly, your Honor.

17 EXAMINATION BY MR. HIXSON:

18 Q Hi, ma'am. My name is Scott Hixson. I'm the
19 Chief Deputy Solicitor, and with Solicitor Richardson,
20 we'll be presenting the case from the State's
21 perspective.

22 Asked a bunch of questions and answered a bunch of
23 questions. And thank you for your participation in
24 that. I just want to kind of clarify one simple point,
25 and that is you heard Judge Hyman kind of describe to

1 you the process of the way the evidence will flow to
2 you and information that you will take in.

3 A Right.

4 Q And I think Judge Hyman earlier asked you
5 specifically could you follow the law and the
6 instructions that he gives you regardless of your
7 personal opinion on how you think the world or the law
8 should be.

9 A Yes.

10 Q And you can follow that and do that?

11 A Yes.

12 Q And so when Judge Hyman asks you, Will you please
13 follow the law as I instruct you on aggravating
14 circumstances, to find them, you must find them beyond
15 a reasonable doubt, and you will follow that?

16 A Yes.

17 Q And if Judge Hyman -- and when Judge Hyman tells
18 you that you must consider statutory aggravators and
19 you can consider or not consider any other
20 aggravating -- excuse me, mitigating factors, you will
21 follow the law as Judge Hyman asks you to do that?

22 A Yes.

23 Q I'm sure you will. Thank you so much for your
24 answers.

25 MR. HIXSON: Your Honor, we find her qualified.

1 EXAMINATION BY THE COURT (Resumed):

2 Q Ms. Penn, let me clarify one thing for you. Do
3 you understand that if you chose to, you certainly
4 could consider things like a person's background in
5 mitigation? When we talked earlier, I told you you
6 could consider anything in the record, not only the
7 statutory mitigators but anything. I want to make sure
8 you understand that?

9 A Yes.

10 Q And would you look at all the information and make
11 a -- your choice or exercise your judgment in deciding
12 whether something should be a mitigating circumstance?

13 A Yes. I would look at everything before me.

14 THE COURT: You would look at everything? Okay.
15 All right.

16 Thank you. You may step down.

17 (WHEREUPON, Ms. Penn exited the courtroom
18 at 11:28 a.m.)

19 THE COURT: All right.

20 MS. NORRIS: Your Honor, I believe she's not
21 qualified for the same reason as Mr. Thebeau.
22 Background is anything that happened prior to the
23 Dunkin' Donuts. She said she won't consider it. She
24 cannot consider mitigation.

25 THE COURT: Well, first of all, I think clearly

1 you said, "Would you consider a person's background?"
2 She just simply said, "Well, I don't think it's
3 important." But I wanted to make certain she
4 understood that if there was evidence concerning
5 background put in that she is free to consider that.

6 You know, if we took your position, we would need
7 to ask a juror about everything, every possible
8 mitigator in the world to make sure they thought that
9 was important. This witness simply, in her mind, at
10 least at this juncture without knowing specifically
11 what you're even talking about, doesn't feel like
12 background is particularly important. She understands
13 she has the right to consider it. And that's what's
14 crucial here. She understands the law and she will
15 apply the law.

16 I find her qualified.

17 Bring her in.

18 (WHEREUPON, Ms. Penn entered the courtroom
19 at 11:29 a.m.)

20 THE COURT: Ms. Penn, I find you qualified. That
21 doesn't mean you're on the jury. It simply means
22 you're in the panel of people who may be selected as
23 jurors.

24 So what I'm going to -- and we won't need you for
25 several days. So what I'm going to ask you to do is

1 take that number that the deputy there is handing you.
2 That's a number to a recording. That recording will
3 be -- will have instructions for you to appear after
4 6 p.m. on Sunday afternoon. After 6 p.m. there would
5 be something there.

6 If you would call that number, it will tell you
7 when you to report. Since we will be selecting the
8 jury then, the final selection, please bring with you
9 your medications, your toiletries, your clothing for
10 several days because if you are selected, we're going
11 to sequester you right then and take you over to the
12 hotel.

13 So just leave it in your car when you get here.
14 If you are selected, we will make sure that we have a
15 sheriff's deputy to help you get that.

16 MS. PENN: Okay.

17 THE COURT: All right. Thank you.

18 MS. PENN: Thank you.

19 (WHEREUPON, Ms. Penn exited the courtroom
20 at 11:31 a.m.)

21 THE COURT: Quick break.

22 (WHEREUPON, recess taken from 11:31 a.m.
23 to 11:34 a.m.)

24 (WHEREUPON, Ms. Smekal entered the courtroom
25 at 11:34 a.m.)

1 DONNA SMEKAL,
2 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

3 EXAMINATION BY THE COURT:

4 Q Good morning. Is it Ms. "Smekal"?

5 A "Smekal."

6 Q Okay. S-m-e-k-a-l; is that right?

7 A Yes, sir.

8 Q All right. Ms. Smekal, you're under oath. Do you
9 recall my conversations with the jury on Monday where I
10 asked you not to seek out any information or expose
11 yourself to any information about this case or discuss
12 it with anyone?

13 A Yes, sir.

14 Q Have you followed my instructions?

15 A Yes, I have.

16 Q Good. I appreciate that. I also would like to
17 remind you that until you're released as a potential
18 juror or a juror in this case, you are to continue
19 under that order. Okay?

20 A Okay.

21 Q Thank you, ma'am. Ms. Smekal, you were kind
22 enough this morning to fill out a couple of forms here,
23 one of which asked you to identify the type of juror
24 that you are.

25 A Yes.

1 Q And you indicated that you are a C type juror; is
2 that right?

3 A Yes, sir.

4 Q You think that best describes you?

5 A Yes, sir.

6 Q Okay. And just so that we are talking about the
7 same thing and there's no confusion, my understanding
8 is that's a juror who would need to hear the facts and
9 circumstances in aggravation and mitigation before he
10 or she could make a decision regarding punishment.

11 A Correct.

12 Q That sort of sums up your feelings?

13 A Yes.

14 Q You know, when I talked with you this morning
15 about the process, the protections that Mr. Cottrell
16 has and the requirement on the State and how a capital
17 case works, did you notice that it seemed to follow
18 along with the category that you're in?

19 A (Nodding.)

20 Q Both the description of this category and my
21 description of the process used words like "mitigation"
22 and "aggravation." So would your position be
23 consistent with the process that I described to you
24 this morning?

25 A Yes, sir.

1 Q Okay. And when I was doing that, was there
2 anything about that process that you thought might have
3 been -- might be unfair or oppressive either as to
4 Mr. Cottrell or to the State? Was there anything about
5 it that would -- you felt would give you some
6 difficulty in following that process?

7 A No, sir.

8 Q Okay. And at the end of the trial -- and if we
9 got that far -- again, I want to be very cautious in
10 telling you I'm not suggesting we'll ever get there.
11 But if we got to that point, do you believe that you
12 could, if I instructed you, could you follow the
13 instructions of the Court concerning that process?

14 A Yes, sir.

15 Q Okay. Typically or in every trial the jury is the
16 sole and exclusive judge of the facts in a case. And
17 the facts, the ultimate facts, are sometimes different
18 from the evidence. That's obvious, isn't it? There's
19 conflicting evidence in about every case.

20 And as a juror, you would have to sit through that
21 and apply your good common sense, and you and your
22 fellow jurors would have to come to a conclusion about
23 what the actual facts were. And it would be just
24 improper for me to suggest how you should determine the
25 facts to be because that's solely your prerogative. Do

1 you understand that?

2 A (Nodding.)

3 Q You need to speak up because this lady is having
4 to write your answer down.

5 A Yes.

6 Q And by the same token, though, the judge is the
7 sole and exclusive judge of the facts or -- giver of
8 the law, excuse me, giver of the law. It's for me to
9 determine what the law is, and I tell you as a jury
10 collectively what the law is.

11 And that deliberation process, the culmination of
12 the deliberation process, where you take those facts as
13 I give them to you, you take that law or facts as you
14 find them and the law as I give it to you and you reach
15 a verdict. You see how they fit, how they come
16 together. And that's sort of a simplistic approach but
17 a pretty accurate description of the process. Do you
18 understand that?

19 A Yes, sir.

20 Q Now, just like I can't go in there and even
21 suggest or infer how you should find the facts, do you
22 understand that the same would apply to my
23 determination of what the law is?

24 A Right.

25 Q If I were to instruct you on the law and you

1 looked at the law as I gave it to you, and from a
2 personal standpoint you thought, you know, "That
3 particular part of the law I don't really agree with,"
4 or maybe you thought that it was something else, could
5 you set that aside and apply the law just as I give it
6 to you?

7 A Would I be allowed to answer -- to ask a question
8 about it?

9 Q Oh, certainly you would be for clarification.

10 A It would seem to me that I wouldn't understand it
11 if I had a problem. But I would be able to ask a
12 question?

13 Q Yes, you would be able to do that. But the
14 question I asked you was ultimately could you follow
15 the law as I gave it to you?

16 A Yes, sir.

17 Q Okay. Now, Ms. Smekal, would you agree with me if
18 I said that we were all the product of our life
19 experiences, you know, how we think about things,
20 opinions that we have, prejudices or biases that we
21 might have are all sort of the culmination of things
22 that have happened to us, good or bad, to our family
23 and friends, our education, all those things sort of
24 come together to make us the person we are?

25 A Correct.

1 Q I think we can all agree with that. It's not a
2 difficult principle at all, is it?

3 Your thoughts, your feelings, your biases, your
4 prejudices are important in this case because the
5 ultimate issue here is whether or not or the final
6 issue is whether or not there's anything about Donna
7 Smekal what would substantially impair her ability to
8 perform her duties as a juror, and that is essentially
9 to be fair and impartial. Okay?

10 Do you know anything about this case? Have you
11 formed any opinions about perhaps the death penalty
12 generally? Have you formed any prejudices or biases
13 against the State or for the State or against
14 Mr. Cottrell or for Mr. Cottrell that would impair your
15 ability to be fair and impartial in this case?

16 A No, sir.

17 Q Do you know of anything?

18 A I know nothing.

19 Q Okay. Finally, what I want to ask you is this.
20 Whenever I described the process to you this morning?
21 Remember we talked about the State had to begin with
22 proving beyond a reasonable doubt that a murder had
23 occurred, then they had to go to that second stage, the
24 murder plus something. And those were aggravating
25 circumstances. And they had to prove those or at least

1 one of those beyond a reasonable doubt. And only if
2 they reach that point would murder as -- I mean would
3 the death penalty as an option be available in this
4 case. Only if they did all that would it even be on
5 the table.

6 But at that time there would be two possible
7 sentences on the table. Do you remember what those
8 were? Two possible things that the State could
9 recommend. We just talked about the death penalty.

10 A Death penalty or life in prison.

11 Q Life in prison.

12 A I'm sorry, I'm nervous.

13 Q Don't be nervous. Okay? Life imprisonment or the
14 death penalty. And what is really important in this
15 case is your ability to be able to consider both.

16 Okay?

17 A (Nodding.)

18 Q Could you do that? Could you do that? Could you
19 look at the evidence, look at the mitigating
20 circumstances, look at mitigating evidence, look at the
21 aggravating factors, could you look at all that and
22 then turn and have or consider both the life
23 imprisonment without parole and the death penalty as
24 options for the jury's recommendation?

25 A I do believe I could.

1 Q You would not be foreclosed as to either one. You
2 have no preconceived notions as to what should be
3 applicable. Okay. You're willing to listen to the
4 evidence and the circumstances?

5 A Yes, sir.

6 Q Okay. I want you to answer any questions that
7 Ms. Norris might have.

8 EXAMINATION BY MS. NORRIS:

9 Q Good morning, ma'am. Let me see if I can get this
10 right. Ms. "Smekal"?

11 A "Smekal."

12 Q "Smekal." All right.

13 Well, I'm Teresa Norris. I know a got a chance to
14 stand up the other day, but this is my chance just to
15 talk to you for a little bit and I don't want you to be
16 nervous.

17 As the judge said, whatever you say, there is no
18 right or wrong answer except for the one you have got.
19 So it should be the easiest process in the world.

20 If I had just asked you a week before you got your
21 juror summons and you realized that you were involved
22 in this type case, if I had just said, "Ms. Smekal,
23 what are your thoughts and opinions about the death
24 penalty," what would your answer be?

25 A Well, I can be for the death penalty in certain

1 cases. But it's a case by case. I mean, I could see
2 life imprisonment and I could see the death penalty.
3 It just would depend on the case.

4 Q And do you believe that life imprisonment without
5 parole can, in some cases, be harsh enough punishment
6 for a murder?

7 A I do believe. I do believe because you're
8 restricted. All your freedoms are taken away.

9 Q Okay. And do you have any preference -- and I'm
10 not asking about this case. I'm just saying for a
11 murder case in general. If we say you're sitting on a
12 fence, are you leaning towards life or death as the
13 appropriate punishment for murder in any case?

14 A On the fence?

15 Q Yeah. I mean do you have a general preference for
16 the death penalty or a general preference for life
17 without parole?

18 A No. But if I was on the fence, I would probably
19 be for life in prison, if I was on the fence.

20 Q Okay. Well, that's -- that answers my question
21 because really, if you're qualified, and you would be
22 in one of these chairs over here during the trial, and,
23 of course, there has to be a trial first. Right now
24 Mr. Cottrell hasn't even had a trial. He's presumed
25 innocent. You understood his instructions, his Honor's

1 instructions?

2 A Right.

3 Q All right. If you went through the whole process
4 as a juror in this case, you would reach the point
5 potentially, should there be a conviction -- and there
6 may not be. But potentially you would be in a position
7 of having heard all the evidence both from the State,
8 from the defense, the instructions, et cetera.

9 At the end of that, the judge would never give an
10 instruction that says, "If you find A, B and C, you
11 have to impose a death sentence." But you're saying
12 you could consider that. You could potentially impose
13 it?

14 A Yeah, I guess so. It could weigh either way. If
15 I'm on the fence, it just, you know, depends on the
16 situation, and I'm not in a situation to judge that at
17 this time.

18 Q Yes, ma'am. Let me ask it this way. I'm not
19 asking you to tell me. I'm just asking you in your own
20 mind, can you think of a set of facts where it would be
21 bad enough that you could impose the death sentence?

22 A Yes.

23 Q Okay. That's all I was getting at. And if you
24 reached that point -- and it's an individual reasoned
25 moral judgment, deciding whether a person deserves the

1 death penalty or life without parole. And, of course,
2 you would receive an instruction from the Court along
3 with everything else that you need to know about the
4 law.

5 But part of those instructions would be that, as a
6 juror, you could impose a life without parole sentence
7 for any reason or no reason. You could do that based
8 on mitigation. You can do that based simply on
9 murder -- I'm sorry -- mercy. You don't have any
10 problem with that aspect of the law, I take it?

11 A No, ma'am.

12 Q And if you, having gone through all of your
13 deliberative process, reached the point where you said,
14 "This is my sentence," either way, if you made your
15 judgment about what the appropriate sentence was but
16 all the 11 other people reached a different conclusion,
17 do you understand that under the law that's not
18 improper; each juror has to make their own judgment?

19 A Their own decision.

20 Q If you were in that position as one and the other
21 11 people said something else, would you give up your
22 opinion just to go along with the majority, or would
23 you say, "This is my opinion. It would violate my
24 conscience to go against what I believe is the proper
25 punishment"?

1 A I do believe I would stand my ground for what I
2 believe.

3 Q Okay. And if what you believed, based on all the
4 facts and circumstances, was the death penalty and
5 everybody else agreed with you -- and you understand
6 that in order for it to be a death penalty all 12
7 jurors have to agree unanimously. If you were at that
8 point, could you actually sign your name to the death
9 sentence itself? You and the other 12 people would
10 have to sign. I'm not saying just you.

11 A I'm unsure. I've never been in that position, so
12 I'm not sure. Really not.

13 Q Okay. Well, let me put it this way. I'm not
14 asking you in the abstract if you could just sign a
15 death sentence on someone. I'm saying that by the time
16 you reach that point, you would have decided yourself
17 that they were guilty of murder -- malicious,
18 intentional killing. Not self-defense, not accident.
19 Wicked, evil heart. Meant to do it and did it. You
20 would have found that, you would have found what your
21 Honor described as the legislature sets forth other
22 things that make it eligible for the death penalty. It
23 could be another crime -- murder rape -- it could be
24 status of victim -- a small child -- and you would be
25 instructed about that. But you would have found

1 something yourself along with all the other jurors
2 beyond a reasonable doubt that makes it murder plus.
3 Are you with me?

4 A Yes.

5 Q And so once you go back to the jury, I'm talking
6 about the situation where you individually have already
7 heard all that evidence and you decided in your
8 individual reasoned moral judgment that death was the
9 appropriate punishment. All right?

10 A Uh-huh, uh-huh.

11 Q The next step is just that final question of you
12 have already decided it. You've said it. Could you
13 sign your name to it?

14 A I understood you the first time. That's very
15 difficult, but I think I could.

16 EXAMINATION BY THE COURT (Resumed):

17 Q Ms. Smekal, let me help you here. As an added
18 protection in a capital case -- it doesn't lessen the
19 process at all. Doesn't add anything. As an added
20 protection, the Court and the law requires confirmation
21 that every juror did vote for that.

22 A Okay.

23 Q And that's the purpose.

24 A That's the purpose.

25 Q Of the signing.

1 A Okay.

2 Q If you have gone through the process, could you go
3 ahead and sign it, too?

4 A Yes, sir.

5 THE COURT: All right.

6 MS. NORRIS: Thank you, Ms. Smekal.

7 Thank you, your Honor.

8 EXAMINATION BY MR. HIXSON:

9 Q Good morning, ma'am. Almost afternoon. I'm Scott
10 Hixson. I'm the Chief Deputy Solicitor here in the
11 15th Circuit. Solicitor Richardson is the Solicitor
12 for this circuit. I just wanted to introduce
13 ourselves.

14 Thank you for your time. You have answered a lot
15 of questions. And it appears to me, I think you've
16 answered several times that you would be more than
17 willing to take all this information into your personal
18 belief system, and if you thought it was bad enough, I
19 think you said you could come back with a death
20 verdict, and if you didn't think it was bad enough,
21 that you could come back with a life verdict if you got
22 to that point?

23 A Correct.

24 Q And then you could manifest that belief by signing
25 the dotted line if you got there. Did you say that?

1 A Yes.

2 Q Thank you for your time.

3 MR. HIXSON: Your Honor, we believe that she's
4 qualified.

5 MS. NORRIS: We agree. She's qualified.

6 THE COURT: Mr. Hixson.

7 MR. HIXSON: We believe she's qualified.

8 THE COURT: Ms. Smekal, I find that you are --
9 that you are a qualified juror in a capital case. So
10 what I want you to do is this. We're not going to need
11 you for a couple days. You're not yet on the jury.
12 You're in the group from which the jury will be drawn.
13 And the last part, the selection of the jury, will be
14 fairly quick after we have gotten through all this.

15 But what I want you to do is go home, remain under
16 my order. After 6 o'clock -- this is Sunday evening.
17 After 6:00, if you will call that number that you were
18 just given, there will be a message there as to when we
19 need you to appear. Okay?

20 MS. SMEKAL: Okay.

21 THE COURT: And follow the instructions there.
22 Since you may be selected at that time to be on the
23 jury and since we have made or I have made the decision
24 to sequester the jury, you may be immediately taken to
25 a hotel if you're selected. Okay? So I would ask you

1 to please bring clothing for several days. If you have
2 any medications that you take, please bring your
3 medicine and your toiletries and things that you might
4 need. Just leave them in your car. If you are
5 selected, I'll make sure that some of these bailiffs or
6 officers around will accompany you out to get your
7 things and take you on for sequestration. All right?
8 Thank you, ma'am.

9 MS. SMEKAL: Thank you.

10 (WHEREUPON, Ms. Smekal exited the courtroom
11 at 11:55 a.m.)

12 (WHEREUPON, Prospective Jury Panel Number 12 came
13 into open court at approximately 11:57 a.m.)

14 THE COURT: Good morning, ladies and gentlemen of
15 the jury panel. It's good to see you this morning.
16 Thank you for returning here at the proper time. We
17 certainly appreciate you being here.

18 You know, last Monday I asked you a lot of
19 questions about things that were relevant to your
20 qualification to serve as a juror. And those questions
21 were geared towards finding out if you met the
22 statutory requirements of a juror. And I have made a
23 finding that you were all qualified or statutorily
24 qualified to be jurors here in South Carolina.

25 What I want to talk with you briefly about this

1 morning was what we call exemptions. Whenever a person
2 has been qualified as a juror, there may be certain
3 exemptions that apply to that juror. I don't have the
4 right to excuse anybody's jury service unless an
5 exemption applies. And that's a personal thing. A
6 personal right that a person has. It's not one that
7 you have to claim. You do not have to claim any
8 exemption that applies to you.

9 If a disqualification applies to you, no choice,
10 we have to disqualify you. But if an exemption
11 applies, it's your right to claim it. A good example
12 and the way I can explain that to you is if a person is
13 65 years of age or over, that person does not have to
14 serve on jury duty. Of course, we love to have our
15 senior citizens come in and participate as jurors.
16 They bring a lifetime of wisdom and experience to the
17 process. They make great jurors. Love to have them.
18 But if a person has reached his 65th birthday, he can
19 simply stand and say, "I choose to be excused," and
20 they have the right to be excused.

21 I can look at this jury and tell there's nobody
22 even close to 65 on this jury. We're going to go
23 through that process anyway.

24 Is there any member of the jury panel who's
25 attained his or her 65th birthday?

1 And there is no response.

2 I didn't think so.

3 Is there any member of the jury panel who has
4 served as a juror here in the court of common pleas or
5 general sessions -- that means you would have been
6 summonsed to this courthouse -- in the past three
7 years? Jury service on the federal courts,
8 magistrate's court, municipal courts doesn't count.
9 But if you were summonsed here within the last three
10 years, that is an exemption you may claim.

11 Same thing applies if you were on the Grand Jury
12 in the last five years. You may not be familiar with
13 the Grand Jury, but I promise you if you had been on
14 it, you would know it. The Grand Jury meets once a
15 month, and you have to serve for no less than a year,
16 up to two years.

17 And I see the clerk over there standing dutifully
18 to my side saying, "You didn't swear them, Judge."

19 Let me put you under oath.

20 (WHEREUPON, the panel was sworn.)

21 THE COURT: Okay. Now, I want to remind you that
22 you will remain under oath throughout the qualification
23 process, the voir dire process today. We won't swear
24 you again. The oath you just took is going to kick
25 over.

1 Another exemption is if you have a child of your
2 own or you have custody of a child and that child is
3 under the age of seven years old and you are the
4 caretaker for that child, you are the person who
5 provides the daily care for that child, and you have
6 not made arrangements nor have a way of making
7 arrangements for someone to fill your place or care for
8 the child, you can claim that as an exemption.

9 This is a unique type of trial. It's unique in
10 the sense that we sequester the jury. And we've talked
11 about that. So I appreciate the fact that you would be
12 away if you were selected as a juror, away from your
13 home at night as well, so I'm going to be very lenient
14 in deciding whether or not this exemption substantially
15 applies. Usually it's just during the daytime, but I'm
16 going to include at night.

17 Does anyone here have a child or children under
18 the age of seven?

19 And there is no response.

20 There is a similar exemption for people who have
21 the care of elderly people or people who have a severe
22 disability. If you are the caretaker for a person who
23 is over 65 or severely disabled and that person should
24 not, cannot be left alone and that person is in your
25 charge, you may claim that as an exemption.

1 Does that apply to anyone?

2 And there is no response.

3 I think we have weeded out the students through
4 the earlier questions, but we found one yesterday, so
5 I'm going to ask you if anyone is a full-time student,
6 or do you work for a school or a college or technical
7 center, anything like that, and you have a job that
8 they cannot fill and it is necessary for the operation
9 of that school? If that's the case, you can claim that
10 as an exemption.

11 Anybody in that category?

12 There are none.

13 Finally, if you perform services for yourself or
14 you own a business, commercial or agricultural
15 enterprise and your services, what you do for that
16 business, is so critical that if you are not there, it
17 just closes down, it's got to close up the doors, it
18 cannot operate without you, you have to send the
19 employees home. If that's your situation, you may
20 claim that as an exemption.

21 Is there anyone that falls into that category?

22 And there's none.

23 Okay. That takes care of our exemptions.

24 Now, what I want to do or talk to you about as a
25 group also is what happens or how a capital murder case

1 proceeds and what you can expect as a juror. I want to
2 talk to you about that and explain it to you because it
3 will help you understand the questions that the
4 attorneys are asking you during your individual voir
5 dire.

6 Let me preface everything with this statement.
7 Has anyone heard the term "presumption of innocence"
8 used? It is a term that describes a legal theory. It
9 is a legal theory that is pervasive throughout the
10 United States. It applies all over this country. I
11 don't care if you're in Alaska or you're in Florida, it
12 applies.

13 And it applies to Mr. Cottrell in this case. He
14 has the presumption of innocence. He is presumed to be
15 innocent under the law. And that presumption doesn't
16 stop when he walks into the courtroom. It doesn't stop
17 when we get a jury sworn. It doesn't stop when he's
18 charged with an offense or indicted for an offense.

19 It follows him throughout the trial until the
20 State overcomes that presumption. And there's only one
21 way that the State can overcome that presumption and
22 that is convincing a jury, convincing them unanimously
23 and beyond a reasonable doubt that he is guilty of the
24 offense for which he's charged.

25 I want you to keep that in mind. And it's

1 important that you keep it in your mind, keep that
2 stuck in your mind through all these proceedings. It's
3 important today because these attorneys are going to
4 ask you about questions or ask you questions about the
5 process.

6 And as we indicated earlier in the week, I think
7 you all got the idea that this is a two-part process.
8 We don't get to the second part unless he has been
9 convicted of the murder part. We don't even get to the
10 second part.

11 So if we ask you questions about him today, we are
12 fearful that you might infer or assume from that that
13 we believe that he will be convicted of the first part
14 and that we will get to the second part. And that is
15 the last thought that we want to convey to you. That
16 is entirely up to a jury to make that decision.

17 The only reason we talk about that second part
18 today is because this is the only opportunity that the
19 attorneys are going to have to talk to you about it.
20 So we have to discuss it. So please don't draw any
21 conclusions from the fact that we talk about that
22 second part of the case with you here today. It
23 doesn't mean that anybody is inferring that
24 Mr. Cottrell will be convicted. That's entirely up to
25 the jury.

1 Now, got that out of the way. Let me talk to you
2 about the case, about what murder is. Murder is
3 murder. The definition of murder is the unlawful
4 taking of a human life with malice aforethought.

5 The first part of it is pretty simple to
6 understand. The unlawful taking of a human life. I
7 don't think we need to discuss that part. What may
8 give you some difficulty is the malice aforethought
9 part of it.

10 Malice aforethought means that the taking of the
11 life was accompanied by ill will, maliciousness,
12 intentionally, with a blackened heart, with evil.
13 Those words are all the things that have been used by
14 the courts in this state to describe malice, malice
15 aforethought. And that's one of the things that the
16 State would have to prove.

17 And as I said, murder is murder, whether it is an
18 ordinary murder case or a capital case. So whether
19 it's capital murder or ordinary murder, it starts out
20 the same, with a requirement on the State to prove the
21 same thing.

22 Let me say that now. If this were a typical
23 murder case, and there may be any number of murder
24 cases tried in South Carolina throughout the State.
25 Only a small portion of those cases would be what we

1 call capital cases. And what makes the case a capital
2 case is that the State seeks the death penalty.

3 What makes that so special is that in a typical
4 murder case -- and most jurors don't know this -- the
5 death penalty is not an option. If this were a
6 noncapital murder case being tried before me in this
7 court, I could -- and there was a finding of guilt
8 beyond a reasonable doubt, I could not sentence the
9 defendant to murder (sic). It would not be possible.
10 It would not be legal for me to do that.

11 That's why there is this difference between a
12 capital trial and a noncapital trial. Once the State
13 says, "The circumstances of this trial or this case is
14 such that we're going to seek the death penalty," new
15 rules come into play. New procedures.

16 One of those procedures is the individual voir
17 dire or examination of jurors. That's not available in
18 any other criminal offense in this state. If this were
19 just a straight murder, would not be available. You
20 would not be questioned by the attorneys. That's just
21 an example of how the rules change once the State says,
22 "We're going to seek the death penalty."

23 If we have a death penalty case, as we have here,
24 the case begins as a traditional murder case. The
25 State has to prove or convince the jury that is seated

1 that the defendant committed the offense of murder --
2 plain, ordinary murder, unlawful killing of another
3 person with malice aforethought. Must convince them of
4 that beyond a reasonable doubt. The jury must be
5 unanimous.

6 It's just like your typical noncapital murder
7 case. If and only if the jury says, "Okay, we're going
8 to convict on that issue," if and only then you move to
9 what we call the second phase or the sentencing phase.
10 If and only if there is a conviction on the first of
11 murder do you move to the second phase because in order
12 to seek the death penalty, the State has to have murder
13 plus something else.

14 And that's what that second part or second trial
15 is to determine, what's that something else, what's the
16 plus. The plus is this. The State must then prove
17 beyond a reasonable doubt and unanimously to the jury
18 that there was an aggravating circumstance present.

19 An aggravating circumstance is a circumstance that
20 is concurrent with or goes along with or occurred with
21 the murder itself. It's that extra thing that went
22 along with it. And the legislature, when it passed the
23 capital case or the capital murder statute said, We're
24 going to be very specific about what those aggravating
25 circumstances are. These aggravating circumstances are

1 not malice. We talked about malice in a common murder
2 case. And sometimes jurors get confused. It's not
3 malice.

4 Malice is what the State has to prove just to
5 prove murder. We're talking about aggravating. And
6 those aggravating circumstances have to be one of the
7 ones -- it can be one or more, but it has to be at
8 least one of those that the legislature specifically
9 spelled out, put in the box. And it can be something
10 like another crime of a particular type that was
11 committed in conjunction with the murder.

12 And I'll give you one example. And I choose this
13 example because I'm assured that it has nothing to do
14 with this case. So I will just pick out that one
15 example that has nothing to do with this case, and that
16 would be like in the commission of a rape, if there is
17 a rape taking place and the victim is also murdered.
18 That is one of the statutory aggravating circumstances
19 that the State has selected.

20 And there also could be status of the victim
21 aggravating circumstances. Again, this is one without
22 question has nothing to do with this case, so I feel
23 comfortable giving it to you just as an example. And
24 that would be like the murder of a small child. That
25 doesn't particularly mean that there is another offense

1 but the status of the victim was such that it would
2 aggravate the case.

3 If the State can then prove beyond a reasonable
4 doubt to the unanimous decision of the jury that one of
5 these aggravating circumstances exists, at least one,
6 then we move to a special, a very special part of the
7 jury's deliberation.

8 If the jury made that determination, the jury then
9 must make a recommendation. And this is another
10 different thing about a capital case. If I were trying
11 a murder case, a straight murder, the verdict form
12 would just be a verdict form that says, "We find the
13 defendant guilty/not guilty." And the foreperson would
14 sign it, and they would hand it up to. Me and if I
15 were the judge, then I would impose the sentence.
16 Remember I couldn't impose death just on that but I
17 would impose a sentence.

18 In a capital case the jury is required to
19 recommend a sentence. And I will tell you that right
20 now that recommendation must be followed by the judge.
21 So when the sentence -- in a sense the jury, by
22 recommending, is sentencing the defendant.

23 But the jury, when we get to that second part, has
24 to decide what is the appropriate sentence. And at
25 that point is the only time and the first time that the

1 death penalty is placed on the table, so to speak. And
2 it lies on the table with another possible sentence,
3 and that is life in prison without the possibility of
4 parole, and the jury has to make a decision as to which
5 is appropriate.

6 And the legislature says that the jury at that
7 point must consider evidence of statutory mitigating
8 circumstances. And it made a box for those and says
9 these are ones that you must consider.

10 But unlike aggravating circumstances, the
11 legislature says for mitigators, you can go out of that
12 box. You can consider anything involved in this case
13 that you want in determining whether there are
14 mitigating circumstances. And each juror can pick out
15 his own mitigators.

16 One juror's mitigator doesn't have to agree with
17 the other judge -- juror's mitigators. They must all
18 look and consider the evidence to determine if there
19 are mitigating circumstances. Then the jury can take
20 those mitigating circumstances and consider them in
21 whether or not the death penalty or the life without
22 parole is appropriate.

23 At no time, at no time do you ever get to the
24 point where if this, this and this is found by you as a
25 jury, you must impose the death penalty. At no time is

1 there a situation where if you found this, this or
2 this, you have to impose a life sentence. Both remain
3 up to you.

4 And I will add this. I will tell you that you do
5 not have to find any mitigators, any at all, in order
6 to give a life sentence. You can give a life sentence
7 for no reason. You don't have to give a reason to give
8 a life sentence. In fact, I will instruct you that you
9 can give life as opposed to death simply as an
10 extension of mercy, whether that mercy is deserved or
11 that mercy is given only by grace.

12 Our inquiry here is to determine whether or not
13 you, as a juror, can consider both of these things,
14 whether you are open and receptive to both possible
15 verdicts and whether -- or recommendations and whether
16 you can be a fair and impartial juror.

17 Now, I'm going to send you back to your jury room,
18 all but Mr. Richardson.

19 Mr. Richardson, you are first up to bat. I want
20 you to stay with us and come around the corner and take
21 the witness stand.

22 (WHEREUPON, Prospective Jury Panel Number 12, with
23 the exception of Mr. Richardson, exited the
24 courtroom at approximately 12:20 p.m.)

25 JOHN RICHARDSON,

1 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

2 EXAMINATION BY THE COURT:

3 Q How you doing, Mr. Richardson?

4 A I'm doing well.

5 Q That's good. We certainly appreciate you being
6 here, Mr. Richardson. Remember, you're under oath.

7 A Yes, sir.

8 Q And I believe, I hope, you will recall my
9 instructions on Monday about not talking about the
10 case, not reading anything about the case or watching
11 TV reports or doing any research, that sort of stuff?

12 A Yes, sir.

13 Q Okay. Did you comply with all that?

14 A I did comply with not going out and doing any
15 research, but I was -- you know how people are. They
16 run their mouth. And I tried to avoid it, but I did
17 hear something about the case.

18 Q What did you hear?

19 A I heard that this was a retrial. He was
20 convicted.

21 Q Who told you that?

22 A A lady was talking about it in my office. She did
23 not know --

24 Q Did you tell that person you were a potential
25 juror?

1 A Yes, ma'am -- yes, sir.

2 Q Did you tell that person that she should not speak
3 about this case in your presence?

4 A Yes, sir. She did not know I was in the office at
5 the time because I come in early making up some work.

6 Q Did she stop when you told her that?

7 A Yes, ma'am -- yes, sir.

8 Q This was inadvertent?

9 A Yes, sir.

10 Q Okay. All right.

11 Mr. Richardson, you were kind enough to fill out a
12 form this morning. Well, let me say this. You remain
13 under that order. You did the right thing by telling
14 her not to and she did the right thing by ceasing.

15 A Yes, sir.

16 Q But you're still under my order until I have
17 released you from your subpoena not to allow anyone to
18 speak to you or discuss the case in your presence or
19 look up anything or do anything of that type. Okay?

20 A Yes, sir.

21 Q Okay. Thank you.

22 You were kind enough to fill out the form where we
23 asked you to indicate what category of juror best
24 describes you. Okay? And you appear to have done
25 that; is that right?

1 A Yes, sir.

2 Q Let me tell you, Mr. Richardson, that we're going
3 to be asking you questions about how you feel about
4 things and what your opinions are. Please understand
5 that this is America. And you have the absolute right
6 to have your own opinion about anything. And that's
7 personal to you. And there's nothing wrong with you
8 having an opinion about anything. And I promise you
9 that everyone here respects the fact that you have your
10 own opinion and that no one is going to be critical of
11 you.

12 The only thing we need to know is or we need is
13 for you to give us fair and candid answers concerning
14 your opinions. Tell us exactly how you feel.
15 Remember, there's no wrong answers when it comes to
16 expressing your opinions. You have the right to those
17 opinions. We just need truthful answers concerning
18 those opinions. Okay?

19 A Yes, sir.

20 Q All right. You indicated that you are a category
21 A juror; is that right?

22 A Yes, sir.

23 Q Okay. And just so that you and I can be certain
24 that you and I understand each other, you indicate that
25 that would be a juror who just simply feels that once a

1 murder has been committed, the death penalty is the
2 only appropriate punishment no matter what the
3 circumstances of the case. Does that describe you as a
4 juror?

5 A Yes, sir.

6 Q Okay. And there's nothing -- again, nothing wrong
7 with you having that opinion. And we're not being
8 critical. We just need to ask you some questions.
9 Okay? How strongly do you feel in that regard,
10 Mr. Richardson?

11 A I feel that life is precious and that the
12 punishment should fit the crime.

13 Q All right, sir. Mr. Richardson, would there be --
14 let me put it this way. Are you telling me that if the
15 State convinced you beyond a reasonable doubt that a
16 murder had been committed and that in the course of the
17 commission of that murder the person took another human
18 life unlawfully without excuse or otherwise, okay, and
19 that that act was done maliciously with evil intent,
20 with malicious intent, with hatred toward that person,
21 with malice, would you believe that had you been
22 convinced of that beyond a reasonable doubt, that the
23 death penalty would be the only appropriate way to
24 punish them? Is that what you're telling me?

25 A To an extent, yes, sir. I mean, we all have, I

1 don't know. I'm -- now that I get in here, I'm
2 conflicted a little bit.

3 Q Okay. And that's okay. And I don't want to make
4 you nervous. And as I said, I am not trying to change
5 your opinion. I'm just trying to make sure I
6 understand it. Okay? All right?

7 I'm the person who has to make the determination
8 of whether I think you would be an appropriate juror
9 for a capital murder case. And the way that I do that,
10 one of the ways, is I find out whether or not your
11 feelings, your beliefs, your opinions are such that
12 they would substantially interfere with your ability to
13 perform your duties as a juror. And that means to be
14 fair and impartial. Not only to the defendant but to
15 the State as well. Your ability to fairly and
16 impartially, among other things, follow the law.

17 And in order to do that, you must be able to look
18 at the potential penalties that are available in this
19 case -- life and the death penalty -- and view them
20 each fairly and impartially and be willing to approach
21 each fairly and impartially if you got to that, that
22 point.

23 Do you believe, sir, that you could set aside your
24 feelings about the penalty in a murder case to the
25 extent that you could fairly and impartially consider

1 both the death penalty and life imprisonment as
2 punishment in a case like this, or would it give you
3 difficulty?

4 A It would give me a lot of difficulty.

5 Q Would it substantially impair your ability to make
6 those decisions?

7 A Yes, sir.

8 THE COURT: All right.

9 MR. McGUIRE: No questions.

10 MR. HIXSON: No questions.

11 THE COURT: Mr. Richardson, do either of you want
12 to be heard?

13 MR. RICHARDSON: No.

14 MR. McGUIRE: No, sir.

15 THE COURT: I find that your beliefs and your
16 feelings, which are perfectly all right -- and lots of
17 people have those feelings. You're not alone -- are
18 such that you would not be an appropriate juror on this
19 particular type of case and I'm going to disqualify
20 you. You are released from your subpoena. You can go
21 back and talk to that lady all you want now.

22 MR. RICHARDSON: Thank you, sir.

23 THE COURT: But you no longer have any obligation
24 concerning this case. Thank you.

25 MR. RICHARDSON: Thank you.

1 (WHEREUPON, Mr. Richardson (the juror) exited the
2 courtroom at 12:30 p.m.)

3 (WHEREUPON, Ms. Thornburg entered the courtroom
4 at 12:30 p.m.)

5 SHANNON THORNBURG,
6 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

7 EXAMINATION BY THE COURT:

8 Q Good afternoon, Ms. Thornburg. How are you?

9 A Good. How are you?

10 Q I'm doing well. And I hope you are as well.

11 Ms. Thornburg, do you remember when we talked
12 Monday, I essentially issued an order and said I don't
13 want you talking about this case, I don't want you
14 looking up any information about it, I don't want you
15 doing any investigation, I don't want you reading any
16 news reports and things of that nature? Have you
17 complied with my order?

18 A Yes.

19 Q Okay. And I want you to understand that until
20 such time as you're released from your subpoena, you
21 would remain under that order. Fair enough?

22 A Fair.

23 Q Okay. Ms. Thornburg, you were kind enough this
24 morning to fill out some paperwork this morning for us.
25 And one of the things was a questionnaire where we

1 asked you if you would look at three different
2 categories of jurors and sort of select one that might
3 best describe you. And looks like you did that for me?

4 A Correct.

5 Q And you indicated that you are a C type juror?

6 A Right.

7 Q Okay. And just so that I'm sure that we are both
8 talking about the same type of juror, that juror to me
9 is the type of juror that would need to hear the facts
10 and circumstances in aggravation and in mitigation
11 before she or he could make a decision regarding
12 punishment in a capital case.

13 Does that best describe you if we look at the
14 three types of jurors?

15 A Yes.

16 Q Okay. Now, Ms. Thornburg, we talked this morning
17 about the process just a few minutes ago that would be
18 followed in a case of this type. Did you think you
19 understood what I was saying? Were you able to follow
20 me?

21 A Yes.

22 Q Okay. Now, Ms. Thornburg, do you believe that
23 that process is somewhat consistent with the type of
24 juror that you are?

25 A Yes.

1 Q That is -- actually both of them speak in terms of
2 aggravation and mitigation and taking things under
3 consideration before you make a decision. You believe
4 that is consistent and non-offensive to the type of
5 juror that you are?

6 A Yes.

7 Q Okay. Was there anything about that process that
8 I described -- and, you know, at the end of the trial I
9 will give you a more detailed charge concerning that,
10 but I think it pretty generally describes what you can
11 expect and what would be expected of you and what --
12 how you should be guided during your deliberations in
13 that type of case.

14 But was there anything about that, that process,
15 that you found offensive or overbearing or oppressive
16 that would give you any pause if I instructed you that
17 way as far as you being able to follow my instructions?

18 A No.

19 Q Did the system seem fair to you?

20 A Yes.

21 Q Okay. Now, Ms. Thornburg, in a jury case, the
22 jury is the group that determines what the facts are.
23 As you might imagine, sometimes when we have trials,
24 you have evidence. And all the evidence doesn't point
25 one way. There's conflicting evidence. And it's the

1 jury's job to take that evidence, and they can use only
2 the evidence they hear in court. Nothing extraneous or
3 from the outside can be considered. The jury has to
4 make up its mind, determine what the facts are. Do you
5 understand?

6 A (Nodding.)

7 Q And it would be improper for me to even suggest
8 that I wanted the jury to decide this way or that way.
9 It's entirely up to the jury. Can you appreciate that?

10 A Yes.

11 Q And as part of the deliberation process, the jury
12 would take the facts and it would take the law and put
13 them together and see how they fit, and that's what a
14 verdict would be. That's how a verdict is arrived at.

15 Just like it's the jury's job to decide the facts,
16 it's my job to decide the law. At the end of the
17 trial, I give you the law. Can you appreciate that?

18 A Yes.

19 Q And I would tell you that you had to be guided by
20 the law that I give you. Do you understand that?

21 A Uh-huh.

22 Q What if there was something about the law that I
23 gave that you maybe personally you didn't think should
24 be the law or maybe you thought something else was the
25 law?

1 A It's not law.

2 Q Could you set that aside and just say, "Hey, we
3 got to go by the law the judge gives us"? Could you
4 follow the law as I gave it to you?

5 A Yes.

6 Q Okay. When I talked to you a moment ago, I talked
7 to you about a scenario where the jury would be giving
8 a recommendation of a sentence, and there were two
9 possible sentences if we got there. Do you remember
10 what they were?

11 A It was the death penalty and murder -- or life
12 without probation.

13 Q There you go. Those were the ones that were
14 available. You know, if we got to that point, you as a
15 juror are going to have to make some moral judgments
16 concerning that. And when we are called upon to make
17 moral judgments, the way we feel, the opinions that we
18 have, interests, prejudices and biases that we may
19 personally harbor all come into play. Would you agree
20 with that?

21 A Yes.

22 Q And would you also agree with me if I said that we
23 are kind of or our opinions and our feelings are sort
24 of the product of our life experiences, what we have
25 been through -- the good things, the bad things, family

1 influences, the influence of friends, education, all
2 those things kind of come together and help us
3 formulate our personal feelings. Do you understand
4 that?

5 A Yes.

6 Q And that's why your personal feelings are so
7 important here. Do you have a personal opinion about
8 the death penalty generally?

9 A No.

10 Q You're sort of indifferent to that?

11 A Right.

12 Q If I said are you a supporter of the death penalty
13 or an opponent of the death penalty, you would just
14 have no position on it whatsoever?

15 A Correct.

16 Q Now, if we got to the point in the trial where you
17 were asked to consider two penalties, would you be able
18 to fairly and impartially consider both potential
19 sentences?

20 A Yes.

21 Q Could you begin your process of looking at
22 mitigators and looking at aggravating circumstances,
23 would you begin that process with no partiality or bias
24 towards either one of those sentences, no engrained
25 party -- bias towards either of them?

1 A Yes.

2 Q And you could move forward and base your decision
3 upon your own moral judgment as to which one would be
4 appropriate?

5 A Yes.

6 THE COURT: Okay. Answer any questions.

7 EXAMINATION BY MR. McGUIRE:

8 Q Is it Ms. Thornburg?

9 A It is.

10 Q My name is Bill, Bill McGuire. And I'm one of the
11 lawyers in the case, and I hope you bear with me a
12 little bit. I know you've been waiting back there a
13 little bit. Sorry about that.

14 A That's fine.

15 Q With regard to a case like this, we have to talk
16 about punishment before we even have a trial.

17 A Okay.

18 Q You can see how that's a little awkward for me. I
19 don't want you to think I'm throwing in the towel or
20 conceding guilt in any way.

21 A Okay.

22 Q If you were on the jury, I'd come to you and the
23 rest of the jurors and ask for a not guilty verdict,
24 not because I asked for it but because the evidence
25 supports it.

1 A Okay.

2 Q Let's pretend for a second that I ran into you two
3 months ago before you got your juror summons just
4 walking down the sidewalk. And we ran into each other,
5 and we struck up a conversation about the death
6 penalty. And I said, "Just in general, what are your
7 feelings about the death penalty," what would you say?

8 A I wouldn't acknowledge your question at all. I
9 mean, I don't really talk about it at all.

10 Q You're just saying, "It's not something I think
11 about"?

12 A It's not something I think about every day.

13 Q So it would be, "I don't really have a thought on
14 that"?

15 A Right.

16 Q And you've never thought about it until you got
17 your juror summons or until you came to court?

18 A Right.

19 Q You've got an associate's degree in criminal
20 justice?

21 A Yes.

22 Q My dad is a law enforcement officer, retired
23 federal law enforcement officer. Ms. Norris' brother
24 is a police officer. Sometimes we have opinions based
25 on being involved in the criminal justice system.

1 A Right.

2 Q Do you have any based on that, any kind of bias in
3 favor of law enforcement or anything like that?

4 A No.

5 Q Okay. That wouldn't affect you in a case at all?

6 A No.

7 Q Okay. What I want to do is ask you a little bit
8 about the decision-making process in the sentencing
9 phase.

10 As the judge stated, in South Carolina -- actually
11 in the states that have the death penalty -- there are
12 34 of them -- the State, the government, would have to
13 bring a case to the jury, not just murder but murder
14 plus aggravation. Okay?

15 And you've heard the indictment read in this case.
16 The allegation is it's the unlawful killing of a police
17 officer?

18 A Correct.

19 Q Just knowing this little bit, do you start off
20 leaning one way or the other at all?

21 A No.

22 Q When it comes to fixing punishment for that type
23 of murder plus, are background characteristics of the
24 person who committed the murder, how they grew up,
25 their walk in life, that sort of thing, would those

1 things be relevant in fixing punishment for the murder?

2 A Would they be relevant for his punishment -- if he
3 committed murder?

4 Q Yes. To you would --

5 A No.

6 Q I'm sorry, no?

7 A No.

8 Q And is that because the facts of murder itself
9 would --

10 A Right.

11 Q -- drive the punishment?

12 A Right.

13 Q And that's what you would focus on?

14 A Right.

15 Q You wouldn't consider background characteristics
16 of the defendant?

17 A Not unless they needed to be in with the case.

18 Other than that, that's the only way that they should
19 be brought up.

20 Q Yeah, I think I know what you're saying. It would
21 have to have some sort of nexus or connection to the
22 act itself?

23 A Correct.

24 Q But if it was just about somebody's history, their
25 walk in life, that wouldn't be relevant?

1 A No.

2 Q And even though you haven't given the death
3 penalty much thought, it looks like you are giving
4 thought to your answers today.

5 A Right.

6 Q And you're careful about your answers?

7 A Right.

8 Q They're truthful?

9 A Yes.

10 Q Honest?

11 A Right.

12 Q A reflection of your value system?

13 A Right.

14 Q Your moral code?

15 A Yes.

16 Q They kind of come from a deep place?

17 A They're mine.

18 Q They are yours.

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

20 That's all I have.

21 THE COURT: All right. Mr. Richardson.

22 EXAMINATION BY MR. HIXSON:

23 Q Good afternoon, ma'am. How are you? I'm Scott
24 Hixson. I'm the Chief Deputy Solicitor here, 15th
25 Circuit, and that's Solicitor Richardson over there.

1 And we'll be presenting the case for the prosecution.

2 Thanks for all your patience and answering all
3 those questions. I'm going to focus in on a couple
4 things towards the end of that. I want to make sure
5 you understand the process that Judge Hyman described
6 to you. He described in pretty significant detail, and
7 let's just go to a couple spots and make sure you got
8 it. Okay?

9 You understand the first part when you're talking
10 about the facts of what happened, that's what Judge
11 Hyman, I think, was referring to about the guilt phase,
12 about the indictment or the discussion the judge had
13 about did this person commit this act.

14 And I think you said you want to know the facts
15 surrounding that to come to a decision on guilt; is
16 that right?

17 A Correct.

18 Q Right. And I think -- is that safe to say that's
19 what you were asking about, I don't know much about the
20 background, what that has to do with that?

21 A Right.

22 Q Is that a fair paraphrase of what you're saying?

23 A Yes.

24 Q Okay. And now I want to make sure you understand,
25 let's just assume that you came back with a guilty

1 verdict, the jury itself, if you were on the jury
2 panel. And in the guilt phase you said, "Yes, we
3 believe Luzenski Cottrell is guilty of the offense of
4 murder." Then we move into the next phase. Okay? And
5 that's when Judge Hyman was talking about how the death
6 penalty is separate from other ones.

7 In that, there is other information gets to be
8 considered and has to be considered. The judge will
9 instruct you that you have to consider statutory
10 aggravating circumstances -- things that make it
11 worse -- and you have to consider statutory mitigating
12 circumstances -- things that make it not so bad.

13 A Uh-huh.

14 Q You understood that instruction from the judge?

15 A Yes.

16 Q And I think you said that you could do that,
17 didn't you?

18 A Right.

19 Q Okay. And so I think that was counsel's question
20 relating to can you follow the judge's law and take a
21 look at aggravators and mitigators and forming with
22 that information and to decide what you believe the
23 appropriate punishment should be. Can you do that?

24 A Yes.

25 Q And would you follow the judge's law in that

1 regard and considering those moving forward with your
2 decision?

3 A Yes.

4 Q Thank you so much for your time.

5 Let me ask you one other question. I think it was
6 asked earlier.

7 At the end of this process -- and we're assuming a
8 bunch in a vacuum. It's tough -- you decide that
9 Mr. Cottrell is guilty of murder. And then you decide
10 the State has carried its burden of proof on the
11 aggravators. And you have taken a look at any
12 mitigating information -- and consider it or not
13 consider it -- and your group decided, "We believe the
14 death penalty is the appropriate penalty." South
15 Carolina, there is a piece of paper signed by order,
16 and on that is 12 slots. And that's just every juror
17 that made that decision just backs it up with a
18 signature. Do you believe you could sign your name on
19 the dotted line if that was the decision of your group?

20 A Yes.

21 Q Thank you, ma'am.

22 MR. HIXSON: I believe she's qualified.

23 EXAMINATION BY THE COURT:

24 Q All right, Ms. Thornburg, I need a little
25 clarification.

1 Did you understand me when I told you that when it
2 came to mitigation, it was a little different from the
3 aggravating circumstances. Aggravators could only be
4 the ones designated by the state legislature.

5 When it came to mitigating things, they set forth
6 some specific mitigating circumstances, but you're
7 allowed to go outside that box and you can consider
8 anything, anything that you think is important as a
9 mitigating circumstance. Did you understand that?

10 A I understood that, yes.

11 Q And that would include -- include background
12 information or anything like that?

13 A Right.

14 Q If you felt it was pertinent, you could include
15 it?

16 A Uh-huh.

17 Q Thank you.

18 THE COURT: All right. Step down.

19 (WHEREUPON, Ms. Thornburg exited the courtroom
20 at 12:47 p.m.)

21 THE COURT: All right. Let me hear from you.

22 MR. McGUIRE: Move to strike for cause based on
23 mitigation impairment.

24 MR. HIXSON: We believe she's qualified, views the
25 guilt evidence versus mitigation. She was clear she

1 would follow the law relating to mitigation, to
2 consider it.

3 THE COURT: I don't think there's any question
4 this juror is qualified. She seemed to be a very
5 bright young lady who understood the process. She's
6 clearly a C type juror. She repeatedly indicated she
7 would follow the law and she could consider both the
8 life sentence and the death sentence, and she would
9 consider aggravating and mitigating circumstances, and
10 she understands that she may consider anything as a
11 mitigating circumstance that she thought was important
12 to the case.

13 I believe she can follow the law. I believe she
14 understands what would be expected of her, and she is
15 qualified. I saw nothing to indicate that she was
16 substantially impaired in her ability to perform her
17 duties as a juror, and she is indifferent as to the
18 case. All right.

19 (WHEREUPON, Ms. Thornburg entered the courtroom
20 at 12:48 p.m.)

21 THE COURT: Yes, ma'am, Ms. Thornburg. I find
22 that you are qualified to be on the jury panel in this
23 case. That doesn't mean you're on the jury panel.
24 What it means is you're in the larger group from which
25 the jury will be selected.

1 We won't need you for a couple of days. They're
2 going to give you a piece of paper there that has a
3 number on it. After 6:00 p.m. this coming Sunday, call
4 and there will be a message on that phone number, and
5 it will give you instructions as to when and where to
6 appear.

7 Since we will be selecting a jury at that time and
8 since we are going to sequester the jury at that time,
9 if you're selected, you would be taken directly to a
10 hotel where you would be sequestered. So what I want
11 you to do is bring with you any medications you might
12 have, any toiletries and some clothing for several
13 days. Have it in your car. Don't have to bring it in.

14 If you are selected on the jury, we'll make sure
15 that there is someone who can assist you in getting
16 that together before you are taken to your hotel.

17 Do you understand?

18 MS. THORNBURG: Uh-huh.

19 THE COURT: Thank you very much.

20 MS. THORNBURG: Thank you.

21 (WHEREUPON, Ms. Tobey entered the courtroom
22 at 12:50 p.m.)

23 **LAURA TOBEY,**

24 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

25 EXAMINATION BY THE COURT:

1 Q Good afternoon, Ms. Tobey. How are you doing?

2 A Good.

3 Q Is it "Tobey"?

4 A "Tobey."

5 Q Tobey, T-o-b-e-y. Please be seated. Make
6 yourself comfortable.

7 Ms. Tobey, do you remember on Monday that I
8 instructed you not to have any contact with any person
9 about this case or read anything or look up anything,
10 that sort of thing?

11 A Yes, sir.

12 Q Have you complied with my order?

13 A Absolutely.

14 Q Okay. Good. And I want to remind you that you
15 remain under that order until such time as you are
16 released.

17 A Okay.

18 Q Ms. Tobey, this morning you came in and you were
19 kind enough to consider a little form that we had, and
20 in that we asked you to describe what kind of juror you
21 were. Okay? And there were three types there, and you
22 indicated that you were a C type; is that right?

23 A Yes, sir.

24 Q Just so that you and I are understanding each
25 other, I believe that is the type of juror that would

1 need to hear the facts and circumstances in aggravation
2 and in mitigation in a case before you could make a
3 decision regarding punishment; is that right?

4 A Yes, sir.

5 Q And that's a true indication of your feeling?

6 A Yes.

7 Q I want to remind you that there are no wrong
8 answers that you can give. These attorneys are going
9 to be asking you about your opinions. And as I said
10 earlier, you have an absolute right to your opinion.
11 Nobody is going to try to change it. Okay? We just
12 need to know how your opinions might affect your
13 ability to be a juror in this very special type case.

14 A Yes.

15 Q All right. Now, were you listening when I, this
16 morning, sort of told you what you could expect and
17 what would be required of jurors?

18 A Yes.

19 Q You did that?

20 A Yes, sir.

21 Q You need to answer verbally each time because this
22 lady right around the corner is recording everything we
23 say.

24 A Okay.

25 Q All right. Would you or do you believe that that

1 system or procedure that I described to you is
2 consistent with your feelings concerning punishment in
3 a murder case?

4 A Yes, I do.

5 Q That would be a category C juror?

6 A Yes, sir.

7 Q Okay. Did you find it offensive to your feelings
8 in any form or fashion?

9 A No, sir.

10 Q Okay. Was there anything about the process that I
11 described that you would find difficult to comply with
12 if you were seated as a juror?

13 A The sequestering part.

14 Q Well, we know that, but that's not --

15 A That would be about it.

16 Q That would be it. Okay.

17 Ms. Tobey, whenever we have a trial, a jury has to
18 determine what the facts are from the evidence. Okay?
19 But the judge provides the law. The jury then applies
20 it to the facts to reach a verdict. Are you aware of
21 that?

22 A Yes, sir.

23 Q And do you believe that you could follow the law
24 as I give it to you?

25 A Yes, absolutely.

1 Q Well, what if there was something about that law
2 that maybe you didn't agree with? Could you set your
3 personal feelings aside and still follow the law as I
4 give it to you?

5 A I believe I could, yes.

6 Q All right. Now, Ms. Tobey, we are all the product
7 of our life experiences. Would you agree with that?

8 A Yes.

9 Q The way we feel about things and the way we react
10 to things and our opinions and our biases and our
11 prejudices all have to do with the good things and the
12 bad things that have happened to us and our interaction
13 with our family and friends and other people and how we
14 have been in business or kind of employment, kind of
15 all those things come together. Would you agree?

16 A Yes.

17 Q Is there anything in Ms. Tobey's background, is
18 there any experience that you have had that you feel
19 would substantially impair your ability in a case like
20 this or in any case to be fair and impartial? Do you
21 have any bias for or against the State or any bias for
22 or against Mr. Cottrell?

23 A No, no bias.

24 Q You think you could be fair to Mr. Cottrell in
25 this case?

1 A I do.

2 Q Do you think you could be fair to the State in
3 this case?

4 A Yes, I do.

5 Q One of the things that would be important in this
6 case would be your attitude or feeling about the death
7 penalty. Do you have any particular feeling concerning
8 the death penalty? Are you for it, against it or
9 indifferent to it? Could you share that with us if I
10 just asked you what do you think about the death
11 penalty.

12 A I'm for it if it's warranted, yes.

13 Q You would be what?

14 A I am for it if it's warranted.

15 Q You would be for it. Do you have any special
16 reason that you would be for it?

17 A Not a special reason, no, but...

18 Q Would the fact that you would say that you were
19 for the death penalty affect your ability, if we were
20 to get to the sentencing phase, if we were to get to
21 that where you, as a juror, were required to make a
22 decision as to what the appropriate sentence was in
23 this case, could you give fair and impartial
24 consideration to both of the available or potential
25 sentences?

1 A I believe I could, yes.

2 Q Do you remember the potential available sentences
3 if we got to that point?

4 A Yes, I do. Death penalty or life imprisonment
5 without the possibility of parole.

6 Q That's absolutely correct. That's correct. I
7 guess what I want to know is the mere fact that you
8 support the death penalty, would that make you or take
9 you to a place where you would not give fair
10 consideration to life imprisonment?

11 A No, because I don't believe that the death penalty
12 would be necessarily correct.

13 Q Okay. In every case? Let me ask you --

14 A Not in every case.

15 Q -- this. Are there circumstances, are there
16 situations where a murder may have been committed, even
17 a murder with an aggravating circumstance, do you
18 believe that there are situations in which life without
19 parole would be an appropriate sentence?

20 A Yes, I do.

21 Q And on the other hand, can you envision situations
22 where the death penalty would be an appropriate --

23 A Yes, I do envision both.

24 Q I guess again, then, and I want to make sure I
25 have your answer on this. Could you give due

1 consideration to both potential sentences? Could you
2 consider them both in determining what the appropriate
3 sentence in this case should be?

4 A Yes, I believe I could.

5 Q Okay. All right.

6 Answer any questions that Mr. McGuire has.

7 EXAMINATION BY MR. McGUIRE:

8 Q Good afternoon, ma'am. My name is Bill, Bill
9 McGuire. I'm one of the lawyers in the case,
10 obviously. I just want to go over a couple things to
11 start off with from your questionnaire.

12 A Sure.

13 Q You indicated that you knew somebody who was
14 incarcerated or in prison; is that not right?

15 A Currently or in the past?

16 Q In the past, I believe. Sometimes I misread these
17 things.

18 A Yes. Could you remind me, if you don't mind.

19 Q Sure. I'll show it to you.

20 A Okay.

21 Q Is this your signature?

22 A Yes. I'm sorry. Let me get my glasses.

23 Q My eyes are not what they used to be either.

24 A Yes. Yes, it was a family member years ago.

25 Q Okay. Because it was so many years ago, it didn't

1 ring a bell when I asked you about it?

2 A In fact, they're deceased now. It was probably
3 30 years ago.

4 Q Would that have any bearing on how you --

5 A No.

6 Q That's just something that's out there?

7 A Yes.

8 Q You testified in a criminal case?

9 A Yes.

10 Q And was that -- were you a witness or --

11 A I was a witness for the prosecution.

12 Q And you were just a bystander-type witness?

13 A Yeah, it was a theft of things that I witnessed.

14 Q Would that have any impact on you at all?

15 A No.

16 Q You were a victim of a crime, I believe you
17 indicated. I don't want to know the facts or anything,
18 but that process, the fact you were a victim of some
19 sort of crime, would that have any impact on you in
20 judging a case like this?

21 A No.

22 Q Now, you know a little bit about the facts of this
23 case?

24 A Uh-huh.

25 Q And I think you indicated from the media?

1 A Yes.

2 Q Can you tell us what you know?

3 A I remember when it was on the news initially.
4 It's about 12 years ago, give or take. And I didn't
5 remember it too much until maybe a couple more years
6 ago -- recently it came back to light in the media
7 where it was going to trial. But I thought it had
8 already been resolved. That was my understanding, that
9 it had already been.

10 Q When you say resolved, what do you mean by that
11 word?

12 A That there was already a conviction and that it
13 was going back to trial because something had not been
14 presented in the initial trial.

15 THE COURT: Could you slide that mic around a
16 little bit? I think the court reporter is having a
17 little bit of difficulty picking you up.

18 BY MR. McGUIRE:

19 Q Obviously a conviction would mean that 12 other
20 people at some other time in the past decided the case,
21 heard all the evidence and found Mr. Cottrell to be
22 guilty.

23 Would that fact that's in your -- the fact that
24 you have knowledge of that, would that influence how
25 you started off viewing the evidence in this case or

1 started off with a preconception that maybe he's guilty
2 because other people found him guilty?

3 A Probably not or we all wouldn't be here doing this
4 again if that were the case.

5 Q And assuming there was a conviction, do you have
6 any further knowledge of judicial proceedings in the
7 case?

8 A I don't.

9 Q You said that maybe there was something that
10 wasn't done right or presented right the first time
11 around. Do you know what that might be?

12 A No. And this was well over a year ago that I read
13 it, but I thought there was maybe something in the
14 sentencing -- or not the sentencing, but I believe the
15 term was manslaughter was not offered in the terms of
16 the first trial, and that's why it was coming back.

17 Q That the jury wasn't able to vote for
18 manslaughter?

19 A I believe that's what I read, yeah. Like I say,
20 it's been a while.

21 Q Sure.

22 A I don't remember it specifically.

23 Q And, obviously, you know a little bit about the
24 case not just from the media, but the judge read the
25 indictment in this case. The decedent, the victim of

1 the case, is a police officer in the line of duty.

2 Some people have come here and said that they're
3 either automatically going to vote life or
4 automatically going to vote death based on something,
5 and we have released them, let them go with our thanks.

6 Just based on what you know, based on the law and
7 what the judge has told you so far, would you start out
8 with any preconceptions as to what the sentence should
9 be?

10 A Probably not, no.

11 Q You indicated earlier what you knew about the case
12 in the media, that it was something in the sentencing
13 part, and it was about the jury wasn't able to vote for
14 or have the option of choosing manslaughter. Do you
15 know what the sentence was in the case?

16 A I don't recall. No, I really don't.

17 Q Okay. When it comes to fixing punishment in this
18 type of case, are background factors of the person who
19 committed the act, the killing, would those things be
20 relevant in determining punishment between life and
21 death?

22 A Maybe.

23 Q And when you say maybe, what do you mean? What do
24 you mean by that?

25 A Perhaps if there was a history of violence or

1 disregard for the law or something to that effect.

2 Q Are you looking at those factors as sort of
3 aggravating, maybe the person had a history of violence
4 or disregarding the law?

5 A Could be.

6 Q Can you think of any background factor that could
7 weigh in favor of a life penalty?

8 MR. HIXSON: Objection --

9 THE COURT: We're not going to get into specifics,
10 Mr. McGuire.

11 BY MR. McGUIRE:

12 Q When you look into somebody's background, the
13 person who committed the act, would factors just
14 leaning towards a harsher punishment -- death -- are
15 those the only factors that would be relevant to you?

16 A Not necessarily.

17 Q What do you mean by that?

18 A I think it would be hard to make a black-and-white
19 decision on that not knowing all the facts, I guess. I
20 couldn't really give a yes or no answer on that. So
21 not necessarily.

22 Q Okay. And the judge said that we're basically
23 here to see if you can be fair and impartial and follow
24 the law. There are some principles in the sentencing
25 proceeding that are so different. And the judge even

1 told you in this type of case where the government
2 seeks the death penalty, it's so peculiar and
3 different, there are different rules that apply. And
4 I'm going to ask if you can respect and follow a couple
5 of those principles.

6 A Sure.

7 Q The judge told you that any individual juror can
8 vote for the life penalty for any reason or no reason
9 or mercy alone. Is that a principle of the law you can
10 respect and follow?

11 A Yes.

12 Q And one thing that's different about a sentencing
13 proceeding is that there's no requirement for unanimity
14 when it comes to a reason to vote for the life penalty.
15 Did you know that?

16 A I did not.

17 Q A lot of people come thinking, "Well, if we're
18 going to vote for life for some reason, we all have to
19 agree on the reason." That's not the law --

20 MR. HIXSON: I'm going to object to the line of
21 questioning concerning this is past jury qualification
22 questioning. This goes back to jury nullification
23 arguments and this is not relevant to the charge on the
24 law.

25 THE COURT: I have been through this with this

1 witness -- I mean this juror. She tells me she could
2 follow the law.

3 You know, I'll let her answer that question, but
4 let's move on. Okay?

5 BY MR. McGUIRE:

6 Q So you didn't know that before, but now you know
7 there's no requirement for unanimity. Each individual
8 juror can have a different reason for voting for life.
9 You know that now. And you just learned it from me.

10 A Okay.

11 Q That's the first time you heard that. And that's
12 a principle that you can respect and follow?

13 A Yes.

14 Q And in your view, is mercy freely given and
15 bestowed or is it earned?

16 A Not really a concept I've thought about, no.
17 Don't know if I could answer that.

18 Q Okay. Might need some time.

19 Another principle of the law is that if an
20 individual juror reaches their individual moral
21 judgment -- that's what we call the sentencing
22 decision -- and they've gotten to that place where the
23 appropriate decision is there for them and their
24 individual moral judgment, the law is --

25 MR. HIXSON: I'm going to object again. Once

1 again, that's a jury nullification outside
2 qualifications, outside of 14-7-1020. This is pure
3 staking.

4 THE COURT: I will ask the question.

5 If you reached your own opinion, if you reached
6 your own opinion and the other jurors had a different
7 opinion, would you abandon your opinion solely for the
8 purposes of just being a part of the group?

9 MS. TOBEY: No.

10 THE COURT: Or would you listen to their argument
11 and ask them to listen to yours and change only if you
12 have a change in your heart or your opinion?

13 MS. TOBEY: Yes.

14 THE COURT: Okay. All right.

15 MR. McGUIRE: That's exactly my last question.

16 Thank you, ma'am.

17 MR. HIXSON: Very briefly, your Honor.

18 EXAMINATION BY MR. HIXSON:

19 Q Good afternoon, ma'am. My name is Scott Hixson.
20 I'm the Chief Deputy Solicitor. Kind of met you at a
21 distance the other day. This is Jimmy Richardson, the
22 Solicitor.

23 I just want to thank you for your time. You
24 answered a bunch of questions. We're almost done. The
25 last step in this little bit of the process -- and it

1 is a process, as you can tell -- is if you're picked on
2 the jury and you go through the guilt process and you,
3 as a collective jury, decide the defendant is guilty of
4 the offense of murder, the judge has told you then you
5 will go through the second process where the State has
6 to put up evidence in aggravation that makes it worse.

7 The defense can, if they want to, put up evidence
8 in mitigation and make it not as bad, whatever. You
9 combine that information. You guys collectively come
10 up with your decision on what you think the appropriate
11 punishment should be. Could be life; could be death.

12 If it is death, then you will bring that verdict
13 forth. And part of the process is there is a verdict
14 form that actually has 12 lines on it, and everybody on
15 the jury that said, "Yes, we believe that death is
16 appropriate," has to sign that sheet. Part of the
17 process. And do you believe you can do that?

18 A Uh-huh. It would be tough, but, yes, if that was
19 the case, yes.

20 MR. HIXSON: I just want to thank you for your
21 time. Have a great day.

22 EXAMINATION BY THE COURT (Resumed):

23 Q Let me ask you one other thing. Do you understand
24 that if we got to that sentencing part, I would give
25 you some statutory mitigators that I would tell you to

1 consider, but then you could consider anything else you
2 want including any background information? You're not
3 precluded from looking at that. Do you understand
4 that?

5 A Uh-huh.

6 Q If you thought it was relevant, you could consider
7 it. And would you do that? If you received
8 information that you thought was relevant to
9 mitigation, would you be willing to consider all of
10 that?

11 A I believe I would, yes.

12 Q All right. Thank you.

13 THE COURT: You may step down.

14 (WHEREUPON, Ms. Tobey exited the courtroom
15 at 1:12 p.m.)

16 THE COURT: What says the defense?

17 MR. McGUIRE: Judge, we move to strike on several
18 grounds. My first concern is the publicity and the
19 knowledge of a prior conviction which under *Caldwell*
20 *vs. Mississippi*, if there's anything in the case that
21 would lessen the juror's responsibility -- she's going
22 to come in starting with, "12 other people saw it, they
23 had a front row seat, they saw the evidence and they
24 convicted and sentenced." And that's how she's going
25 to start out.

1 I think she wants to be fair and put that aside,
2 but that is a substantial factor, and I think it would
3 be a violation of *Caldwell* to put her on.

4 THE COURT: Well, that would require my assumption
5 that she could not do it. She says that she could.

6 And, Mr. Richardson, let me hear you on that.

7 MR. RICHARDSON: Your Honor, again, *State vs.*
8 *Stanko*, there were so many of them that had heard about
9 the previous sentence. And the standard was could they
10 set that aside and be fair and impartial, to which some
11 said they could and some said they couldn't. But in
12 this case she says that she could, in fact, set it
13 aside and be fair and impartial.

14 Also, your Honor, she said she didn't even know of
15 the penalty. I think Mr. McGuire had asked her about
16 that. There was very limited knowledge what she was
17 able to ascertain.

18 THE COURT: She didn't seem to have any knowledge
19 concerning the facts. I think I understood her
20 knowledge was that there had been a conviction, that it
21 had been reversed because of something to do with
22 sentencing. That was pretty much it.

23 I believe that -- I see no reason not to believe
24 this witness' testimony concerning her ability to set
25 that aside. I saw nothing else in her testimony other

1 than -- that would not support the fact that she could
2 be a fair and impartial juror, and I believe that she's
3 being honest with us.

4 MR. McGUIRE: Yes, sir --

5 THE COURT: I find she's qualified and bring her
6 back out.

7 MR. McGUIRE: Judge, if I could put something else
8 on the record.

9 THE COURT: Okay.

10 MR. McGUIRE: The second danger is that she could
11 share that information with untainted jurors. We've
12 got people who have no knowledge. That's going to go
13 into the jury room with her. That could come up.
14 There's no need to taint the ones that we're going to
15 have with this outside knowledge. And you can prevent
16 it, Judge. Just send her on her way.

17 THE COURT: I can prevent it by instructing her
18 not to discuss it, and I have told her not to discuss
19 it with anyone. I have asked her very clearly if she's
20 followed my order, and I've asked her if -- she said
21 she had. And I told her not to discuss it with anyone
22 because my order stays in place. And I will be happy
23 upon the selection of a jury to tell them that they
24 should not reveal to any other juror any outside
25 information that they may have.

1 MR. McGUIRE: And if you do find her qualified,
2 I'd also request that instruction now when she comes
3 back.

4 And then, Judge, my last ground would be that I --
5 we're just kind of shooting in the dark with regard to
6 mitigation evidence. And I think your Honor used a
7 couple of examples in talking to the group before. I
8 think you said harsh background and I think child abuse
9 as another example --

10 THE COURT: No. I said rape and I said child --
11 the murder of a child. And I made it very clear to
12 this jury that I was certain and assured that neither
13 of these had anything to do with this case. And that's
14 why I would use them as an example.

15 MR. McGUIRE: Those are actually used in
16 aggravation. I was talking about yesterday when you
17 used examples of mitigation evidence. I think it was
18 harsh background --

19 THE COURT: I don't think I used anything.

20 MR. McGUIRE: I think it was child abuse. And I
21 wasn't going to try to stake out.

22 THE COURT: I don't recall anything like that.

23 I think that these jurors understand that they
24 have the right to use anything. And I'm trying to make
25 it very clear to them any information that comes to

1 them, if they think it's relevant to mitigation, they
2 can use it. They're not limited in any way.

3 It's simply this. We can't go in here and say,
4 Well, the fact that this particular witness doesn't
5 think this, that or the other is relevant is not
6 grounds to exclude that juror unless that juror says,
7 "I will not consider mitigation evidence," period.
8 This witness just says, "I don't think it's relevant."
9 And the other jurors as well. And that's clearly
10 something that a juror can do.

11 I don't know, quite frankly, whether background
12 information myself is really relevant in these cases.
13 I don't know. I know we get it a lot. I know it's
14 often done or put forth to the jury. It's often argued
15 that it is a relevant mitigating factor, and I'm sure
16 you're going to have someone to testify to that. And
17 these jurors understand that if they hear it and
18 they're convinced that it is a relevant mitigator, they
19 can use it. And that's what I want to assure them,
20 they can use that.

21 MR. RICHARDSON: Thank you, your Honor.

22 THE COURT: Mr. Ropp.

23 (WHEREUPON, Ms. Tobey entered the courtroom
24 at 1:18 p.m.)

25 THE COURT: Ms. Tobey, I have found you to be

1 qualified to serve as a juror in this case. That
2 doesn't mean you're on the jury yet. What it means is
3 you will be part of the larger panel from which the
4 jury will be drawn.

5 Right now we don't need you here today, so I'm
6 going to let you go home. But we're giving you a
7 number there, a phone number. After 6:00 p.m. on
8 Sunday, Sunday afternoon, if you will call that number,
9 there will be a message that tells you when you need to
10 report.

11 You will report then for final jury selection.
12 That process will not take long because we have all the
13 information and everything or we'll have it all done by
14 then. But there is a possibility you may be on the
15 jury, so please come prepared to be sequestered. You
16 know, bring some clothing for several days. If you
17 have medications, be sure you bring your medications
18 and your toiletries and things you might need. Just
19 leave them out in your car. If you are selected, we'll
20 have one of the officers help collect those things and
21 take them on.

22 Ms. Tobey, let me ask you to do something for me.
23 In fact, let me require you to do something. You're
24 going to have a lot of contact with jurors. And in my
25 opening instructions to jurors, I always tell them they

1 should not predeliberate in a case, which means they
2 should not even discuss any of the witnesses or
3 anything about the case until I tell them to begin
4 their deliberation process.

5 They're all sorts of things you can discuss --
6 your children, family. I do that in every case. But
7 in this case there obviously has been media attention.
8 I don't know what any particular juror knows, but I
9 want to tell you I do not want you to share what you
10 know or what you may have heard with any juror at all,
11 please. Okay?

12 MS. TOBEY: I understand.

13 THE COURT: Can you keep that promise for me?

14 MS. TOBEY: Yes, sir.

15 THE COURT: All right. Thank you very much.

16 You're free to go.

17 (WHEREUPON, Ms. Tobey exited the courtroom
18 at 1:20 p.m.)

19 THE COURT: All right. Let's break for lunch.

20 (WHEREUPON, recess taken from 1:20 p.m.
21 to 1:56 p.m.)

22 THE COURT: We have Mr. Cottrell in the courtroom,
23 his attorneys, and Mr. Richardson, Mr. Hixson for the
24 State.

25 Are we ready with Mr. Harth?

1 MR. RICHARDSON: State's ready, your Honor.

2 THE COURT: Okay.

3 (WHEREUPON, Mr. Harth entered the courtroom
4 at 1:56 p.m.)

5 KENNETH HARTH,
6 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

7 EXAMINATION BY THE COURT:

8 Q Good afternoon, Mr. Harth.

9 A Good afternoon.

10 Q Good to see you. Thank you for coming.

11 Well, Mr. Harth, do you recall Monday when I asked
12 you or directed to the jurors or potential jurors not
13 to have any contact with anybody about the case,
14 discuss or seek out any information, expose yourself to
15 any publicity, things of that nature?

16 A Yeah.

17 Q And have you complied with my order?

18 A Yes, sir.

19 Q Thank you. I just want to remind you that that
20 order is in effect and continues in effect until you
21 may be released from either the panel or the actual
22 jury. Fair enough?

23 A Fair enough.

24 Q All right. Now, Mr. Harth, you responded to some
25 questions on Monday, and one of the questions I asked

1 was have you formed an opinion based upon what you have
2 seen, heard or read about this case. Essentially that
3 question. Might not have been exactly, but it was
4 close to it.

5 And I made some notes as the jurors were
6 responding, and my notes indicate that you indicated
7 that you had formed an opinion about the case based on
8 what you had seen, heard or read. Did you respond in
9 that way?

10 A Yes, sir.

11 Q Okay. First of all, tell me what you have seen or
12 heard and how you heard about it or what you've seen or
13 heard?

14 A I remember reading in the newspaper when the
15 verdict was overturned in the court. Subsequent to
16 getting the summons, before you issued any
17 restrictions --

18 Q Obviously.

19 A -- I got the jury questionnaire. It was fairly
20 clear what was going on. I like to have an informed
21 opinion.

22 Q That's certainly understandable.

23 A I read the public record of the overturn of the
24 appeal.

25 Q Okay. Did you get some information concerning

1 what may have occurred there?

2 A Based on my read of that document, I would say
3 that the question isn't whether he's guilty or not but
4 what the sentence should be.

5 Q I see. Now -- and please understand this is
6 America. As I said earlier, we all have a right to
7 have an opinion, and our opinions are often based not
8 only on our life experiences and the good and the bad
9 that's happened to us, what our education is and what
10 our relationships with other people has been. We all
11 have the right to form our own opinion. And we all
12 appreciate the fact that you get to have your own
13 opinion, and we promise to respect your opinion. And
14 no one here is going to try to change that opinion.

15 The question that I want to address is this. Have
16 you, based on what you have seen, read or heard formed
17 an opinion in your mind as to whether or not the
18 defendant in this case is guilty or what the
19 appropriate punishment should be in this case? Have
20 you formed such an opinion?

21 A I have an opinion that he's guilty. I haven't
22 formed an opinion on what the sentence should be.

23 Q All right. And is that opinion based on what you
24 have seen and what you have read?

25 A What I read.

1 Q What you know?

2 A What I have read in that document, there was no
3 discussion of guilt or innocence. It was a discussion
4 over whether the jury was informed that they had
5 another option, which was a manslaughter conviction
6 versus the death penalty.

7 Q Okay. The inquiry or what I have to determine, I
8 have to make this decision. I have to determine
9 whether you would be qualified to sit on this
10 particular case.

11 As I said earlier, I have determined that you
12 are -- you meet all the qualifications of being a
13 juror, but we have to go further. We have to make an
14 inquiry about this specific case. Ultimately what I
15 must determine is whether or not there is anything that
16 would or might substantially impair your ability to
17 carry out your duties as a juror, and your duties are
18 to, of course, obviously follow the law and fairly and
19 impartially look at the evidence in this case.

20 Now, do you, sir, believe that, based on the
21 information that has come to you -- and I do not
22 criticize you. You're entitled to that information.
23 Only after I give you instruction not to read or
24 acquire any information should that be or can that be
25 cut off. And you tell me you've complied with that?

1 A (Nodding.)

2 Q But based on the information that you received
3 earlier, would your ability to set that entirely aside,
4 never cross your mind, have no impact on your decisions
5 in this case, do you believe that that -- that you are
6 unable to set that aside, to divorce yourself so
7 completely from it that it would not substantially
8 impact your decisions in this case?

9 A I don't think I could ignore it.

10 Q Okay. All right.

11 MR. McGUIRE: No questions.

12 MR. RICHARDSON: No questions.

13 THE COURT: What I'm going to do, Mr. Harth, I want
14 to thank you for being candid with us. And please
15 don't consider this as any reflection on you. I think
16 you are an honorable person and would do the best you
17 can, but I am going to find that you're not qualified
18 to sit on this particular case because of that. I'm
19 afraid that it might impact you, so I'm going to stand
20 you aside. I want to thank you for coming. I want to
21 thank you for being a part of this process.

22 As I said earlier, it's not only a duty, it's a
23 right that you have. And I don't remove you from this
24 jury lightly, but thank you again for coming. You're
25 released.

1 If you need any assistance, I'm certain that one
2 of these officers can help you, but you are dismissed.

3 (WHEREUPON, Mr. Harth exited the courtroom
4 at 2:04 p.m.)

5 (WHEREUPON, Ms. Welter entered the courtroom
6 at 2:05 p.m.)

7 TAMMY WELTER,

8 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

9 EXAMINATION BY THE COURT:

10 Q Good afternoon, Ms. Welter. How are you?

11 A Good. How are you?

12 Q I'm doing fine. It's Ms. Tammy Welter, and you
13 would spell that last name W-e-l-t-e-r; is that right?

14 A Yes, sir.

15 Q All right. Ms. Welter, do you recall my
16 instructions on Monday about not exposing yourself to
17 any pretrial publicity or information about this
18 case --

19 A Yes.

20 Q -- not to look up anything or discuss it with
21 anyone, things like that? Have you complied with my
22 order?

23 A Yes.

24 Q Do you understand that my order is a standing
25 order, and until you are dismissed as a potential juror

1 or juror if you are selected, that that order remains
2 in effect and you should not discuss this case in any
3 way with anyone including your fellow jurors?

4 A Yes, sir.

5 Q Okay. Thank you.

6 Ms. Welter, this morning you came in and you were
7 kind enough to help us a little bit. You had already
8 sent in a questionnaire, I believe, but you this
9 morning filled out some other forms, one where we asked
10 you to identify yourself or to select the category of
11 juror you felt best described your feelings --

12 A Yes, sir.

13 Q -- about a capital case. Okay. And you indicated
14 that you are a C type juror; is that right?

15 A Yes.

16 Q Just so I'm clear that we are communicating, you
17 believe you're the type of juror that would need to
18 hear the facts and circumstances in aggravation and
19 mitigation before you could make any decision
20 concerning the punishment in a capital case?

21 A Yes, sir.

22 Q Does that fairly identify you or establish how --
23 what type of juror you are?

24 A Yes, sir.

25 Q Okay. Now, Ms. Welter, in that regard do you

1 recall an hour or so ago when I discussed with you or
2 gave you some information concerning how this process
3 would work and what the process is and why we do things
4 and what would be expected of you as a juror --

5 A Yes, sir.

6 Q -- those things? Were you able to follow along
7 with what I was saying? Do you think you understood
8 what I was saying?

9 A I do.

10 Q Okay. And do you realize that at the end of the
11 trial I would give you instruction on the law, and it
12 would be in keeping with what I told you this morning?

13 A Yes, sir.

14 Q Okay. Do you believe that the type of category of
15 juror that you fall into, your opinions concerning how
16 this process should be followed would be consistent
17 with the way I described it this morning?

18 A Yes.

19 Q Okay. Your feelings about punishment would fit in
20 with that process?

21 A Yes, sir.

22 Q Now, you need to speak up because this lady here
23 has to record your answers, and she really can't see
24 you.

25 A Yes, sir. I apologize.

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Tammy Welter

1 Q That's okay. That's okay.

2 Do you, Ms. Welter -- or did you, Ms. Welter, in
3 listening to me this morning hear me describe any part
4 of the process that you felt was offensive to you, that
5 you felt was unfair to Mr. Cottrell or unfair to the
6 State, something that you believe that you would have
7 difficulty following if you were a juror on this case?

8 A No, sir.

9 Q You are -- do you have a belief as to whether that
10 is a fair procedure that we follow?

11 A Yes.

12 Q Okay. Now, Ms. Welter, if you are seated as a
13 juror, when we reach -- if -- if, now. I gave you some
14 instructions concerning that this morning.

15 A Right.

16 Q But I want you to understand that I'm just
17 speaking assuming that Mr. Cottrell might be convicted.
18 I'm not insinuating that he would be, but if, in fact,
19 he was, that you would be called upon during the
20 process to make a recommendation as to the sentence
21 that would be appropriate in this case. Do you
22 remember what those possible sentences were?

23 A Yes, sir.

24 Q Can you tell me what they were?

25 A One was life sentence.

1 Q Yes.

2 A And one was death penalty.

3 Q Okay. And that's absolutely right. You did the
4 right thing. You remembered properly. I think it
5 would be fair to describe that process as you having to
6 come to a moral judgment about what would be the
7 appropriate sentence. You think that's fair?

8 A Yes.

9 Q And would you agree with me if I said that would
10 have a lot to do with the opinions, biases, prejudices
11 that you may have, would you agree with that?

12 A Repeat that.

13 Q How would you feel about certain mitigators or how
14 would you feel about certain aggravating circumstances
15 would all come into play in you making that decision --

16 A Yes.

17 Q -- as to which one would be appropriate in this
18 case.

19 A Yes, sir.

20 Q And so it's important that we explore a little bit
21 your feelings or opinions about those sort of things.

22 A Okay.

23 Q It's just simply my opinion -- and I would ask you
24 if you agree or disagree -- that as individuals we all
25 have opinions and feelings, and in many cases biases or

1 prejudices on certain issues, and those things are the
2 product of the experiences we have had in life, our
3 life experiences -- good things that have happened to
4 us, bad things have happened to us, our family, our
5 friends, what kind of work we do, our education,
6 information that we may have concerning a matter. Do
7 you think that's a pretty fair statement, that's what
8 we do?

9 A Yes.

10 Q So I want to talk to you a little bit about yours.
11 I guess the first thing I'd like to know is do you have
12 an opinion about the death penalty, generally speaking?

13 A Not really.

14 Q Okay. Would you say that you were pro death
15 penalty or anti-death penalty or just sort of in the
16 middle and indifferent to it?

17 A I'm not pro or anti. I guess in the middle, like
18 it would depend on the situation, the circumstances.

19 Q All right. Okay. In that regard, if, now, if we
20 got to the point in that trial where the State has up
21 its evidence to prove the murder, and if they were
22 successful in doing that, and then if we moved over to
23 the sentencing part of it -- and remember we talked
24 about again they would have to prove beyond a
25 reasonable doubt that there was an aggravating

1 circumstance. Okay? And if they got past that to the
2 point that the jury needed to determine what the
3 appropriate sentence was -- and we talked a minute ago
4 about there would be two potential sentences laid out
5 there on the table, two sentences that the jury could
6 recommend. Okay?

7 A Uh-huh.

8 Q And do you remember I told you that at that point
9 in time each individual juror would have to make a
10 moral decision or a judgment --

11 A Uh-huh.

12 Q -- as to which of those sentences would be
13 appropriate? Okay. You have told me that you're
14 somewhat indifferent as to the death penalty, generally
15 speaking. You're not for it, you're not really against
16 it, you are sort of neutral.

17 Is there anything in your life experiences, is
18 there anything, any reason because of any opinions that
19 you might harbor or any biases or prejudices you might
20 have either for or against the State or for or against
21 Mr. Cottrell, is there anything there that would cause
22 you to start out that process, start out that
23 process -- start it out. I'm not talking about after
24 you have gotten a bunch of information about it, but
25 could you sort of approach it with a clean slate, the

1 question of appropriate sentence, and would you be able
2 to give fair consideration to both the probability of a
3 life sentence and the possibility of a death penalty?

4 A Yes, I believe I can.

5 Q Would you start out pro death or pro life or could
6 you stay in the middle as you began?

7 A Yes.

8 Q Okay. Do you understand that in mitigation -- of
9 course, you don't have to find any mitigation at all to
10 recommend life. You don't have to find any. And you
11 don't -- even in the absence you could still give life
12 just as a matter of mercy. You could still recommend
13 life. But you're required to consider what mitigators
14 there are there.

15 A Can you define "mitigate"? I'm sorry.

16 Q A mitigation, a mitigator or a mitigating
17 circumstance is a circumstance, something about the
18 case, the individual, the circumstances, something that
19 would weigh in favor of you giving a life sentence
20 instead of a death sentence.

21 A Okay.

22 Q Something that might lessen the severity of the --
23 of the --

24 A Sentence.

25 Q -- of the murder. It would be sort of like offset

1 or the opposite of an aggravating circumstance. Okay?
2 Do you understand that you would have the right as a
3 juror to make your own personal reason, you don't have
4 to have something the other jurors agree with?

5 A Yes.

6 Q And you're not limited to just those that the
7 legislature set out in the statute. You could consider
8 absolutely anything about this case that you wanted if
9 you thought it was relevant. You could make that call
10 and say, "I believe this should be considered in
11 mitigation." Make your own call.

12 A Yes, sir.

13 Q And would you do that?

14 A Yes, sir.

15 Q Okay. Very well. The ultimate question is
16 whether or not there's anything that you're aware of
17 that would substantially impair your ability to perform
18 your duties. And the most important thing about your
19 duties would be to be fair and impartial.

20 Is there anything about -- that would rise out of
21 your life experiences, your education, your interaction
22 with other people, your family, is there anything you
23 can think of that would cause you to have -- that would
24 substantially impair your ability to be fair and
25 impartial?

1 A No, sir.

2 Q Could you be fair to the State; could you be fair
3 to Mr. Cottrell?

4 A Yes, sir.

5 Q Okay.

6 EXAMINATION BY MR. McGUIRE:

7 Q Good afternoon, Ms. Welter. My name is Bill, Bill
8 McGuire. I just want to ask you just a couple of
9 questions. You haven't heard anything about the case
10 from the media? You don't know anything about it?

11 A No, sir.

12 Q Okay. You testified -- no, you served as a juror
13 in a civil case. Is that true?

14 A I did. Not here.

15 Q Someplace else. And you understand that in the
16 civil case, the burden of proof, for one side to win,
17 is beyond the preponderance of the evidence. And that
18 means that something is more likely than not.
19 Sometimes we describe it as tipping the scales just one
20 percent over, 51 percent.

21 Do you understand the burden of proof is very
22 different in a criminal case? Did you know that?

23 A I would assume so.

24 Q And it's beyond a reasonable doubt. The judge
25 would charge you if you were on the jury that that's

1 the kind of doubt that would cause a reasonable person
2 to hesitate to act in some matter of importance. Does
3 that make sense to you?

4 A Yes.

5 Q Okay. If I ran into you at Caesars, Little
6 Caesars Pizza --

7 A No, you won't. I got fired yesterday.

8 Q Was that a happy day?

9 A Not really.

10 Q Well, if I ran into you just somewhere.

11 A Okay.

12 Q And before you got your juror summons, a couple
13 months ago, say I just asked you, "What are your
14 general feelings, your thoughts about the death
15 penalty," what would you say?

16 A Honestly, I would say I have never really thought
17 about it. I've never been approached with the
18 question. I've never really given it thought other
19 than maybe seeing it on TV or something and never gave
20 it a second thought.

21 Q Okay. Do you think we should have the death
22 penalty?

23 A Yes.

24 Q Why is that?

25 A There's just certain things that deserve the death

1 penalty.

2 Q Okay. And the judge has already explained to you
3 for the death penalty to be eligible or in play, the
4 government would have to come forward with a murder
5 case -- the intentional killing of an innocent person
6 with an evil intent. Not self-defense, not accident,
7 that sort of thing, and it would have to have that
8 aggravation-type evidence that the judge talked about.

9 Now, you heard the judge read the indictment in
10 the case for this case, and it's the killing of a
11 police officer in the line of duty. Now, just with
12 regard to that, what are your feelings about the death
13 penalty being appropriate?

14 A I honestly can't say until I hear more.

15 Q Okay. Do you think when it comes to fixing
16 punishment in a case and you're deciding between death
17 penalty, life penalty for the person that committed the
18 act, the murder, do you think their background, maybe
19 how they grew up, their walk in life, do you think that
20 would be important or relevant?

21 A I don't -- I don't think it would be relevant. It
22 might come into play, but.

23 Q When you say "come into play," what do you mean by
24 that?

25 A If he was brought up as an orphan or she,

1 whichever the case may be, was brought up as like an
2 orphan and didn't have the right mother, father, family
3 upbringing.

4 Q Okay. Now, I'm going to talk to you just a little
5 bit about a sentencing phase in a case where the
6 government is asking for the death penalty. It's
7 awkward for me because I have to talk about punishment
8 and we haven't even had the trial yet. And I don't
9 want you to think that I'm conceding guilt in any way
10 by talking about punishment issues. Is that --

11 A Okay.

12 Q Can you promise me that?

13 A I'll be open-minded.

14 Q Okay. If you were on the jury, I would come to
15 the jury, including you, and I would ask for a not
16 guilty verdict and not just because I asked for it, but
17 because the evidence supports it. You wouldn't punish
18 Mr. Cottrell if we got to a sentencing phase because I
19 tried very hard and fought very hard for him in the
20 first phase, would you?

21 A I'm sorry. Repeat that again.

22 Q Was that wordy? The judge says that there are two
23 phases of the trial. Two potential trials, basically.
24 The first part is is the person guilty of murder, yes
25 or no.

1 A Right.

2 Q The second part is if he's guilty --

3 A The sentencing.

4 Q -- sentencing.

5 A Right.

6 Q And because these cases are different than just
7 regular murder cases, different rules apply. And I'm
8 just going to talk to you about one or two of them.

9 Okay?

10 When it comes to the sentencing phase, the judge
11 would instruct the jury any individual juror can vote
12 for the life penalty for any reason, no reason or mercy
13 alone. And you can follow that principle of the law?
14 True?

15 A Yes.

16 Q You have to say "yes."

17 A Sorry.

18 Q She has to write it down.

19 Another important principle is there's no
20 requirement for unanimity when it comes to a reason to
21 vote for the life penalty. Meaning all 12 jurors don't
22 have to agree on the same reason to vote for the life
23 penalty. Did you know that?

24 A I do now.

25 Q Okay. Most people don't know that, and that's why

1 we talk about it. One juror can vote for life for
2 reason A, somebody reason B, reason C. They can all be
3 different. And you're okay with that?

4 A Yes.

5 Q Okay. And another principle is somebody can vote
6 for life for no reason, not have the words to put their
7 reason, you know, communicate their reason. And could
8 you let somebody do that?

9 A Yes.

10 Q Okay.

11 A I sit in here without words right now.

12 Q You're doing fine, ma'am.

13 A Thank you.

14 Q Now, the judge also said mercy, somebody can
15 bestow mercy or grant mercy just because they want to.
16 And when it comes to mercy, do you think somebody has
17 to earn it or is mercy just given by grace or freely
18 bestowed?

19 A You kind of have to earn it.

20 Q Okay. Another principle is that it's wrong if you
21 reached your individual moral judgment --

22 MR. HIXSON: I am going to object again to this
23 line of staking out jurors on nullification on --

24 THE COURT: I'm going to let him ask the limited
25 question concerning this witness' changing her vote

1 just to be a part of the a majority but no other
2 reason.

3 MR. McGUIRE: Thanks, Judge.

4 Q It's wrong and it's against juror oath -- it would
5 actually be unlawful -- for a person to change their
6 position. Once their conscience came to that decision,
7 their individual moral judgment, if they changed their
8 position just to go along with the majority, that would
9 actually be wrong. And you wouldn't do that, would
10 you?

11 A No.

12 Q You wouldn't let anybody else do that?

13 A No, I don't think so.

14 Q You wouldn't ask anybody to do that?

15 A No.

16 MR. McGUIRE: That's all I have.

17 Thank you, Judge.

18 EXAMINATION BY MR. RICHARDSON:

19 Q Ms. Welter, my name is Jimmy Richardson. I'm the
20 Solicitor for Horry and Georgetown Counties, and this
21 is Mr. Scott Hixson. Together we're going to be
22 presenting the case from the State's point of view. I
23 just want to clear up a few things and won't keep you
24 much longer.

25 Sort of what Mr. McGuire was talking about is

1 this. We've already gone through the penalty -- excuse
2 me, I mean the guilt phase. And certainly you and 11
3 others would have to agree that, in fact, Mr. Cottrell
4 was guilty of murder. Okay?

5 A Yes.

6 Q And that's killing of another person with malice.
7 We're assuming now that that's already been done. Now
8 we're going to the guilt phase -- I mean the penalty
9 phase, which is the guilt plus an aggravating
10 circumstance.

11 And Mr. McGuire mentioned that Officer McGarry was
12 a police officer. But there may be other ones. And
13 you guys could pick all of them, but you have at least
14 got to pick one of them or the death penalty is not on
15 the table. Okay? So you've got guilt plus one of
16 these aggravating circumstances.

17 A Yes.

18 Q And then you get to determine whether or not the
19 appropriate sentence is the death penalty or life
20 imprisonment. That's our only two options at this
21 point.

22 A Okay.

23 Q So given that now we're at that last phase of it
24 where you're determining whether or not the person
25 should get life imprisonment or death, and he asks you

1 about mitigation. The main thing that I'm interested
2 in, the judge is interested in, is whether or not you
3 can hear all the evidence about aggravation, and if
4 there is any evidence about mitigation presented, if
5 you can at least consider that in the determination of
6 whether or not to give the death penalty or life
7 imprisonment.

8 A Okay.

9 Q Do you think that you can do that?

10 A Yes.

11 Q Okay. So even the things that are bad against
12 Cottrell and the things that are good for Cottrell --

13 A Yes.

14 Q -- you can put them all together and listen to all
15 of it before making your decision?

16 A I believe so.

17 Q And keep an open mind until that point?

18 A I believe so.

19 Q All right. And then at the end of all of that,
20 the State would be asking you, of course, for the death
21 penalty. Okay?

22 A Okay.

23 Q Judge Hyman -- if you and 11 others agree that the
24 death penalty is the appropriate sentence for this
25 crime, then you would be asked, if you voted that way,

1 to put your name basically on the death warrant. Do
2 you know what I'm saying?

3 A Yes.

4 Q There will be 12 lines, and your name would be one
5 of those 12. Could you sign that paperwork saying that
6 you did, in fact, vote for the death penalty? Could
7 you put pen to paper?

8 A Yes.

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

11 THE COURT: Do you want to be heard?

12 MR. McGUIRE: She's qualified.

13 MR. RICHARDSON: Qualified, your Honor.

14 THE COURT: Ms. Welter, I find that you are
15 qualified to serve on a capital case, this case. That
16 doesn't mean you're on the jury.

17 MS. WELTER: Right.

18 THE COURT: What it means is you will be in the
19 final pool from which we will select the jury. This is
20 a lengthy process. That will move along relatively
21 quickly. I'm still going to be at this for probably a
22 couple more days before we get our panel together, so I
23 won't be needing you, and I'm going to let you go home.

24 Remember I don't want you speaking to anyone,
25 talking to anyone about this case or let anyone

1 approach you about it. But on Sunday afternoon after
2 6 o'clock I'll have a message put on an answering
3 machine, and that number you were given is the number
4 to call, and that message will tell you where to report
5 and when. Okay?

6 MS. WELTER: Okay.

7 THE COURT: Since you might go on the jury and
8 this is going be a sequestered jury, I would ask you to
9 bring to the courthouse your clothing for several days,
10 your medications, toiletries, things that you would
11 need, bring those with you and just leave them in your
12 car. If, in fact, you are selected, we would be taking
13 you to the hotel then, and I will make sure that one of
14 these officers or bailiffs or someone is to be
15 available to go out with you and get your things so you
16 can leave them in the car.

17 I look forward to seeing you. Remember
18 6 o'clock -- after 6 o'clock on Sunday.

19 MS. WELTER: And I should put off my job hunting?

20 THE COURT: For a few days. Thank you.

21 MS. WELTER: Thank you.

22 THE COURT: Maybe we'll have a job for you next
23 week.

24 (WHEREUPON, Ms. Welter exited the courtroom
25 at 2:32 p.m.)

1 (WHEREUPON, Ms. Griffin entered the courtroom
2 at 2:33 p.m.)

3 HANNAH GRIFFIN,
4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 EXAMINATION BY THE COURT:

6 Q Good afternoon, Ms. Griffin. Good to see you.

7 Ms. Griffin, you remember you're under oath?

8 A Yes.

9 Q You remember on Monday when we met and I told all
10 the jurors that I didn't want them talking with anybody
11 about the case, looking up anything about the case,
12 reading anything, watch any news reports about the
13 case?

14 A Yes.

15 Q Have you done what I asked you?

16 A No, sir -- yes, I have.

17 Q You have done what I asked you?

18 A Yes.

19 Q Do you understand that that is a standing order,
20 and it would control your actions until you are
21 released either from this panel or from the jury
22 itself. Do you understand?

23 A Yes, sir.

24 Q Okay. There is a couple things I would like to
25 talk to you about. You were kind enough this morning

1 to come in and take our little form here, and you
2 indicated what type of juror you were.

3 A Okay.

4 Q And you indicated that you were a B type --

5 A Yes.

6 Q -- or B category juror. And my understanding is
7 that a B category juror is a juror who felt that the
8 death penalty is never appropriate under any
9 circumstances of a case?

10 A Yes, sir.

11 Q Is that how you feel?

12 A Yes.

13 Q Okay. Let's talk about that.

14 A Okay.

15 Q Understanding, Ms. Griffin, that you absolutely
16 have a right to have any opinion you want --

17 A Okay.

18 Q -- and no one here is critical of any opinion you
19 have, and no one is trying to change your opinion. I
20 mean, we simply want to know what your feelings are.

21 A Okay.

22 Q Do you believe so strongly against the death
23 penalty that you could not impose it regardless of the
24 circumstances of the case?

25 A I don't like the way that the death penalty is

1 carried out, so that's the reason why I answered that.

2 Q What other reasons -- are you telling me you
3 couldn't impose the death penalty?

4 A Yes.

5 Q Under no circumstances could you do so because of
6 your beliefs? There again, I'm not trying to change
7 your mind, I just want to make sure I understand what
8 you're telling me.

9 A I'm sure that there is probably a scenario in
10 which I would favor the death penalty, but in this
11 circumstance I do not.

12 Q Okay. I notice or I have a note here when we were
13 asking those questions on Monday, I tried to make a
14 note of who answered what. And I have here on my notes
15 that when I asked the question does anyone know or have
16 any reason why he or she can't be fair and impartial,
17 that you stood up on that one; is that right? Are my
18 notes correct?

19 A Yes, sir.

20 Q Could you tell me why?

21 A Well, I automatically would favor the police
22 officer just because back in 2004, 2005 I had a few
23 romantic relationships with some Myrtle Beach police
24 officers, and I remember them talking about it. And it
25 was before I had moved to the area, and I just --

1 Q So you have had quite a few contacts with the
2 Myrtle Beach police officers?

3 A Yes.

4 Q And from that you have a lot of information about
5 this case?

6 A I wouldn't say I have a lot of information, but I
7 have pre-existing ideas.

8 Q Have you discussed -- okay. And in spite or
9 because of those ideas you have, you have already
10 formed an opinion that you could not give or recommend
11 the death penalty in this case; is that correct?

12 A Yes.

13 MR. McGUIRE: If I could ask a couple questions,
14 your Honor.

15 THE COURT: Certainly.

16 EXAMINATION BY MR. McGUIRE:

17 Q Good afternoon.

18 A Good afternoon.

19 Q You've kind of got me stumped a little bit.

20 A Okay.

21 Q I'm just going to talk to you in plain terms.

22 A That's fine. Please do.

23 Q Your general opinion about the death penalty is
24 what?

25 A I don't like the way that it's carried out. I

1 don't like the way that we, quote, euthanize.

2 Q So it's the method of actually killing a human
3 being?

4 A Yes. I think it's inhumane.

5 Q You're familiar with the process, the three-drug
6 cocktail, how it works?

7 A Yes.

8 Q And you know there are problems with that?

9 A Yes.

10 Q And you're aware that in South Carolina -- or you
11 might not be. Let me just tell you if a person in
12 South Carolina is sentenced to death, they can choose
13 the electric chair, but if they don't --

14 A I didn't know that.

15 Q A lot of people don't know that. But if they
16 don't, if they don't affirmatively say, "I want to die
17 in the electric chair" --

18 MR. HIXSON: Your Honor, I'm going to object
19 related to -- the method of execution, the method, this
20 discussion has nothing to do with juror qualification.
21 There's specific cases on point.

22 THE COURT: I agree with that, Mr. McGuire. I'll
23 just tell this witness there's more than one method of
24 execution in South Carolina.

25 MR. McGUIRE: Okay.

1 THE COURT: It doesn't change her thoughts, I
2 don't think. Let's see.

3 THE WITNESS: It doesn't.

4 BY MR. McGUIRE:

5 Q But I think you said that the method of -- what
6 you understand to be the method of execution you
7 believe is inhumane?

8 A Yes.

9 Q So in your position you could never sentence
10 somebody to death knowing that they would ultimately be
11 put to death in that manner?

12 A If those are the options. I mean, I would rather
13 have a firing squad than those two.

14 Q Okay. You seem pretty firm. I have no further
15 questions, Judge.

16 THE COURT: Do you want to be heard on this?

17 MR. HIXSON: She's -- I think she's substantially
18 impaired and that disqualifies her.

19 THE COURT: Mr. McGuire?

20 MR. McGUIRE: I agree.

21 THE COURT: Ms. Griffin, I'm going to excuse you.
22 You are released from your subpoena. Okay?

23 MS. GRIFFIN: Okay.

24 (WHEREUPON, Ms. Griffin exited the courtroom
25 at 2:39 p.m.)

1 THE COURT: All right. Let's get together our
2 next panel.

3 Let's take a break while they get our next panel
4 in here.

5 (WHEREUPON, recess taken from 2:40 p.m.
6 to 2:44 p.m.)

7 THE COURT: We have Mr. Hixson, Mr. Richardson,
8 Ms. Norris, Mr. Cottrell, Mr. McGuire.

9 (WHEREUPON, Prospective Jury Panel Number 13 came
10 into open court at approximately 2:44 p.m.)

11 THE COURT: Good morning. Good to see you all.
12 Let's have some order.

13 Good to see y'all. Thank you for coming back.
14 Madam Clerk, would you put them under oath,
15 please.

16 (WHEREUPON, the panel was sworn.)

17 THE COURT: Let the record reflect that everyone
18 took the oath. And let me remind you that you all will
19 be under oath for the balance of the day. We're going
20 to individually talk to each one of you in a few
21 minutes, and that oath would carry over. Do you
22 understand that? Okay.

23 On Monday we talked at length about your
24 qualifications to be jurors, whether you met the
25 standard to be a juror. And I determined that all of

1 you did. But one thing that we did not talk about was
2 the right of particular jurors to claim exemptions from
3 service. An exemption is a personal right that a juror
4 might have.

5 There are very few, and they're set out by statute
6 or law in South Carolina. It's a right that you have
7 that you don't have to claim. A good example would be
8 a person who is 65 years of age or older does not have
9 to serve as a juror. But if you came here on any
10 particular week that we were having jury trials, you
11 would see our senior citizens all over the juries. And
12 that's because they chose not to invoke their
13 exemption. And we're happy to have them because they
14 bring all sorts of experience and wisdom to the
15 process. They make great jurors. And we like to have
16 them. But that's an example of a person who doesn't
17 have to or chooses not to claim his exemption. But I
18 need to go through these exemptions for you before we
19 get started.

20 Is there any one of you -- I almost feel
21 ridiculous asking this question. Is any one of you
22 65 years of age or older?

23 And there is no response to that.

24 Is there any one of you that has served as a
25 juror, that is, you would have been summonsed to this

1 courthouse, within the last three years? Doesn't count
2 if it was federal jury or municipal jury like in city
3 court or magistrate's jury. That doesn't count. You
4 would have had to have come here.

5 In the last three years if you have served, you
6 can claim that as an exemption. Anyone?

7 No response.

8 Is there anyone who served on the Grand Jury here
9 in the county within the last year? Let me tell you
10 what a Grand Jury is. Grand Jury is not the kind of
11 jury that sits and hears cases like the traditional
12 concept of a jury would be. A Grand Jury member or the
13 Grand Jury is a jury that meets once a month. You
14 serve for at least a year, and in many cases, two
15 years, and you just decide whether there's any
16 justification to even go forward with a case.

17 Anyone that's been on the Grand Jury in the last
18 five years? Okay.

19 Is there any person who has a child or who has
20 custody of a child under the age of seven and you take
21 care of that child on a regular basis? The rule is,
22 actually, if you don't work and you stay at home, you
23 can claim the exemption. But if you have a job and
24 somebody else takes care of the child during the day,
25 you can claim the -- you can't claim the exemption.

1 But I appreciate the fact that in this case we're
2 going to have a sequestered juror, and even though you
3 have a job, you still have to take care of the child at
4 night, so I'm going to stretch that if it applies to
5 anyone.

6 Do any you have a child under seven?

7 Yes, sir. Are you married?

8 POTENTIAL JUROR: Yes, sir.

9 THE COURT: Okay. Is your wife at home?

10 POTENTIAL JUROR: My wife is at home during the
11 day. She is a full-time student and takes classes at
12 night at Horry Georgetown Tech. I work during the
13 day --

14 THE COURT: So she is a student that would be
15 taking courses at night. How old is the child?

16 POTENTIAL JUROR: I have three.

17 THE COURT: Well, congratulations.

18 POTENTIAL JUROR: Six-year-old, four-year-old and
19 a two-year-old.

20 THE COURT: Good for you. You have a busy
21 household, don't you?

22 POTENTIAL JUROR: Yes.

23 THE COURT: All right.

24 MS. NORRIS: No objection.

25 MR. RICHARDSON: No objection.

1 THE COURT: Tell you what I'm going to do. See,
2 it looks like you would have a problem. Mr. Hayes?

3 POTENTIAL JUROR: That's correct.

4 THE COURT: Mr. Hayes, I'm going to excuse you.
5 You may leave. Okay?

6 POTENTIAL JUROR: Thank you.

7 (WHEREUPON, Mr. Hayes exited the courtroom
8 at 2:50 p.m.)

9 THE COURT: Anyone else? Anyone else with small
10 children? Okay.

11 The next exemption is sort of like children but
12 the basic rules apply if you are a caretaker for an
13 elderly person or a disabled person who should not be
14 left alone and you don't have anyone else who can take
15 care of that elderly or disabled person.

16 Anyone in that category?

17 And there's no response.

18 Finally, or -- no, it's not finally, but we also
19 have an exemption for full-time students. Are there
20 any full-time students here?

21 Is there anyone who has a necessary job at any
22 school, college, technical school, anything of that
23 nature? And by necessary, I mean you have a job that
24 needs to be ongoing next week at the school and there's
25 not any person who could take your place that can fill

1 in.

2 Is there anyone that would fall into that
3 category?

4 And there's no response.

5 Finally, if you provide services, that is, you
6 work for a business -- and it can be agricultural,
7 commercial, industrial, anything of that nature -- and
8 your job is so important that the operation of that
9 building -- that business, that if you do not -- if you
10 were not there working, that the business itself has to
11 close down, that is, shut the doors, send the employees
12 home, it has to stop.

13 Is there anyone who falls into that category?

14 And there's no response.

15 Well, we have that out of the way. Now, let me
16 talk about what we're going to do here today. And this
17 may take a few minutes, but I believe in the long run
18 it saves a lot of time as we go through you
19 individually.

20 The defendant, as you have heard, is Mr. Cottrell,
21 is charged with the offense of murder. And it's a
22 somewhat unique murder case because the State is
23 seeking the imposition of the death penalty.

24 As I travel about the State, different counties
25 and all, I know that over the course of the year there

1 might be any number of murder cases tried. But
2 whenever the State is seeking the death penalty, that
3 makes it a unique murder case. It invokes a whole new
4 set of rules and procedures.

5 A murder case really is no different than any
6 other case if we have the typical or regular murder
7 case. A jury is selected, the evidence is put up, a
8 verdict is reached. If it's guilty, the foreperson
9 signs it, hands it to the judge, the judge imposes a
10 sentence. Same procedure followed in any other
11 offense.

12 As I said, though, if the State is seeking the
13 death penalty, new rules apply. And I think you need
14 to understand how we proceed in a death penalty and it
15 will help you understand what you would be required to
16 do as jurors. And that's important to the questions
17 that might be asked of you today.

18 As I said, Mr. Cottrell is accused of -- he is
19 charged with the offense of murder. Let me tell you
20 that he is protected by what we call the presumption of
21 innocence. Has anybody ever heard that phrase
22 "presumption of innocence"? Let me tell you what it
23 is.

24 It is used to describe a legal theory that is
25 pervasive. You find it in every state in these United

1 States. It is a basic premise of criminal law in the
2 United States. It simply means this: That a person
3 who is charged with a criminal offense is absolutely
4 presumed to be innocent. And that presumption of
5 innocence doesn't end when the trial starts or any time
6 during the trial. It only ends when the State has
7 overcome that presumption. That presumption puts the
8 burden on the State to prove his guilt.

9 The burden the State has in any criminal case is
10 proof beyond a reasonable doubt. And at the end of the
11 trial, I would, if you were on the jury, I would tell
12 you what that means. That's a relatively high, one of
13 the highest burdens of proof that we find in the law.
14 In this particular case, as I said, he is charged with
15 not only murder but capital murder.

16 In a capital murder case, we start out just like
17 we would in a regular murder case. The only issue in
18 that first part -- and you've heard us talk about two
19 parts, guilt phase, sentencing phase, on Monday. You
20 heard those terms. That first part is called the guilt
21 phase. And the only issue for the jury there is
22 whether or not the State has met its burden of proving
23 that Mr. Cottrell committed the offense of murder.
24 That is, the State has proven that beyond a reasonable
25 doubt to the satisfaction of every single juror.

1 Murder is defined simply as the unlawful killing
2 of a person with malice aforethought. Those are the
3 things that the State would have to prove. And murder,
4 which forms the basis of a capital murder case, is no
5 different from what we would call ordinary murder. The
6 proof is absolutely the same.

7 But capital murder requires something else. We
8 refer to it or have been referring it to here as murder
9 plus, plus something else. It's more than just murder.
10 Okay? If a person is tried just for murder, and even
11 if he is convicted, did you know that no judge can
12 impose the death penalty? That is not a penalty for
13 just murder. None at all. That's not the law in South
14 Carolina.

15 The death penalty is only possible in a case where
16 there is murder plus something else. This is a death
17 penalty murder case. This case has been designated as
18 a death penalty murder case. The State is seeking the
19 death penalty in this case.

20 So what would happen in the first part is the
21 State would put up evidence that it has in an attempt
22 to convince the jury beyond a reasonable doubt that
23 Mr. Cottrell committed the offense of murder -- common,
24 ordinary, traditional -- I don't want to minimize it --
25 but that type murder. Taking a life with malice

1 aforethought.

2 The malice element simply means that the State has
3 to also prove, in addition to an unlawful taking of a
4 life, that it was done with evil intent, a blackness of
5 heart, a malicious act, an act done with hatred towards
6 the victim. So there's this sort of aggravating
7 element that has to be proved in a murder. Without
8 that, it could be some other type of homicide, but it
9 has -- the reason I'm emphasizing that is I want you to
10 understand that malice that the State talks about is
11 not that extra thing. It is not that extra thing that
12 they have to prove in a death penalty case. Malice
13 does not suffice for that.

14 But if that is proven -- and, again, I do not want
15 to suggest that the jury will ever get to that point.
16 I don't know. That's up to the jury. We just need to
17 talk about it. But if we were to get to that point, we
18 take a day off, and then we start again. And the State
19 would again have that same high level of proof, proof
20 beyond a reasonable doubt, and it would have to
21 convince the jury that that other thing was present.

22 Now, what is that other thing? That other thing
23 is what we call an aggravating circumstance. And when
24 our legislature set out, drew up our death penalty
25 statute, it specifically says, these things are

1 aggravating circumstances and are the only aggravating
2 circumstances. And the State must prove at least one
3 of them. They could prove more than one, but if the
4 State doesn't prove at least one, the inquiry ends
5 right there. The State must prove that aggravating
6 circumstance beyond a reasonable doubt.

7 Now, I'm not going to go through the aggravating
8 circumstances. I don't want to emphasize anything, but
9 I will give you an example. I just sort of went
10 through them and looked at them and I picked out two
11 different types of aggravating circumstances that I
12 knew had absolutely -- absolutely nothing to do with
13 this case and I thought that I would use them as
14 examples to make sure that I'm not conveying any
15 improper information to you or suggesting anything.

16 Some of these aggravators are the commission of
17 another type of crime when the murder is being
18 committed. Like rape. Or sometimes we call it
19 criminal sexual conduct in the first degree, but a
20 layperson would refer to it as rape. If the murder was
21 committed in the commission of a rape, the legislature
22 says that's an aggravating circumstance. That's one of
23 those other offenses that can be -- that can be
24 committed while the murder is being committed, and that
25 makes it aggravating. That makes it eligible for

1 consideration as a death penalty case. Okay?

2 There are also sort of victim status-type cases.
3 For instance, the murder of a small child. The
4 legislature says that's an aggravating circumstance if
5 proven that would make this a death penalty eligible
6 situation. I hope you're following me. Okay?

7 Please understand if you heard a case and the case
8 was being tried, you might look out here to the facts
9 and say, "Well, you know, this other thing was going on
10 over here, and I think it's just as bad as some that
11 the legislature used. I think I'll use that as an
12 aggravating circumstance." Absolutely not. You can
13 only use those that the legislature has said are
14 aggravators.

15 And at the end of the case when I charge you fully
16 on the law, I would tell you what those are. And if
17 and only if -- only if -- you, as a jury, were
18 unanimously convinced beyond a reasonable doubt that
19 the State had proved that to you, had established at
20 least one of those aggravators, if that happens, then
21 you have to consider what the appropriate sentence is.
22 And this is where, again, it is different from an
23 ordinary murder case.

24 As I said, in an ordinary case, the verdict would
25 be nothing more than a piece of paper upon which the

1 foreperson signed his name and he says, "We find the
2 defendant guilty," okay, or not guilty. But if he
3 found him guilty, then I, as the judge, would just
4 impose a sentence.

5 But in a death penalty case that is, although I
6 will impose the sentence, it's sort of taken out of my
7 hands. We call it a jury recommendation of sentence,
8 but I want you to understand that I will follow that
9 recommendation that you make. I'm bound to follow the
10 recommendation that you make.

11 So the jury is asked to essentially impose the
12 sentence. And if we get to that point, if we get to
13 that point, there are only two possible sentences --
14 life in prison without the possibility of parole or the
15 death penalty.

16 The jury is required to consider which of those
17 would be appropriate. And the legislature, again, when
18 it did the death penalty statute, tried to establish
19 some parameters. The legislature said, "Here is a list
20 of mitigating circumstances." Mitigating circumstances
21 are circumstances that would weigh against giving a
22 person the death penalty, that would extenuate the
23 situation in some fashion.

24 Well, the legislature sets out some mitigating
25 circumstances and says you must consider these. But

1 then it says, unlike aggravating circumstances, where
2 you can only consider the ones that they spell out, the
3 mitigating circumstances, you can look at the entire
4 record and you can consider absolutely anything that
5 you think is relevant to be a mitigating circumstance.

6 And the jury doesn't have to find the mitigating
7 circumstances unanimously. Each individual, to his own
8 satisfaction, can find something or is permitted to
9 find something that he or she believes is in mitigation
10 or weighs against the imposition of the death penalty.

11 After determining mitigations, the jury would
12 determine what sentence is appropriate after
13 considering all mitigation. And I want you to
14 understand that the jury, as I said, has two options --
15 death or life imprisonment.

16 The jury can choose to give life imprisonment even
17 if it finds a ton of aggravating circumstances and
18 absolutely no mitigators. It can still give a life
19 sentence. It can give a life sentence for absolutely
20 no reason. Each juror has the right to hold an opinion
21 as to what a mitigator is.

22 Finally, the jury can give a life sentence purely
23 as an extension of mercy whether that mercy is deserved
24 mercy, that is, the defendant has done something in his
25 life that would justify it, or -- I don't think that's

1 a good word. It would at least make him entitled for
2 consideration of mercy. Or mercy can be extended by
3 the jury as just a matter of grace when none of those
4 things are available.

5 The point I want you to carry home with you is
6 this thought: That at no time in a trial, there's
7 nothing that can happen in a trial where I would say to
8 you, "If this A, B and C happens, you have to give the
9 death penalty." That is not the law in South Carolina.
10 You, the jury, is free to make that determination.

11 Likewise, I would never tell you that there's any
12 A, B or C. "If that happens, if you find A, B or C,
13 you have to give life." It's entirely up to you as a
14 jury. The only thing we want to do is make sure that
15 you, as a jury, fairly and impartially consider both
16 options if we get to that point.

17 Now, if you will kind of keep my thoughts here in
18 mind and we're going to be bringing you back in one at
19 a time in just a minute and these attorneys are going
20 to be asking you some questions, and I'm going to ask
21 you individually some more questions. So if you would
22 all just retire to your room. Except who's Ms. Harris?

23 POTENTIAL JUROR: There's two of us.

24 THE COURT: Well, both of you are Ms. Harris?

25 POTENTIAL JUROR: I'm probably first, Barbara

1 Harris.

2 THE COURT: Yes, ma'am. You are first up to bat.
3 If you will, when you're going out of the jury box,
4 just come around here to the witness stand and let us
5 talk with you a little bit.

6 (WHEREUPON, Prospective Jury Panel Number 13, with
7 the exception of Ms. Barbara Harris, exited the
8 courtroom at approximately 3:09 p.m.)

9 BARBARA HARRIS,

10 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT:

12 Q Good afternoon, Ms. Harris.

13 A Good afternoon.

14 Q It's good to have you back with us.

15 A Thank you.

16 Q You remember when I told you on Monday that I did
17 not want you to talk to anyone about the case, let
18 anyone make any comments in your presence, or I didn't
19 want you looking up things about the case or listening
20 to news reports or reading papers about it? Do you
21 remember that?

22 A Yes, sir.

23 Q Have you complied with that?

24 A I have.

25 Q Okay. Good. You have done exactly what I wanted.

1 Let me remind you that that is a standing order,
2 and it carries on through until you are released from
3 your subpoena. If at some time you are released, you
4 can talk about it and check on it all you want. But
5 until then, please do not. All right?

6 A Yes, sir.

7 Q Now, Ms. Harris, you were very kind when you came
8 in. We asked -- we gave you a sheet of paper and it
9 listed three categories of jurors, just general
10 categories. And we asked you to look at that and see
11 if there's one or decide which one of those categories
12 best describes you as a juror, a potential juror.

13 Looks like you did that for me?

14 A Yes.

15 Q Okay. Ms. Harris, in looking at your report, it
16 appears that you indicate that you are what we call a C
17 juror; is that right?

18 A Yes.

19 Q Okay. And just so that I make sure that we're
20 talking about the same thing, let me say my
21 understanding is that a C juror is a juror that would
22 need to hear the facts and circumstances in aggravation
23 and in mitigation before he or she could make the
24 decision regarding punishment. Do you think that best
25 describes you?

1 A Yes.

2 Q Okay. We just finished talking or I was talking
3 to you about sort of how the procedure goes and what
4 would be expected of you if you were on this jury or
5 what I would tell you you needed to do. And did you
6 understand what I was saying?

7 A Yes, sir.

8 Q Were you able to follow along?

9 A Yes, sir.

10 Q You kind of understand the process?

11 A Yes.

12 Q Do you have an opinion as to whether or not that
13 process, when we're talking about the determination of
14 sentence, is that consistent with your view of your
15 type of juror, that is, consider aggravation, consider
16 mitigation and all those things?

17 A Yes.

18 Q Would it in any way be offensive to the thought
19 process you would have if you were asked to sit as a
20 juror on a death penalty case?

21 A No.

22 Q Okay. All right. And, Ms. Harris, did you find
23 anything about that process that was -- that you felt
24 was oppressive or unfair to the extent that you would
25 have difficulty following my charge concerning that

1 process to follow that process?

2 A Not with the process, no.

3 Q Okay. Very well. Okay. Now, before I go any
4 further, I was looking at our notes, and it would
5 appear that on Monday I asked the question if there was
6 any juror that felt that he or she could not be fair
7 and impartial in this case. And my notes indicate that
8 you indicated or stood up and said that you could not.

9 A Correct.

10 Q So my notes are correct?

11 A Yes, sir.

12 Q Okay. Could you tell me why or what your thought
13 process is there?

14 A Sure. Well, I'm married to a police officer, and
15 he's served Fairfax County, Virginia for 26 years. And
16 all of my friends, you know, our family, we have a lot
17 of family that are also police officers, so for me this
18 would be personal.

19 Q Your friends and your family are police officers?

20 A Yes.

21 Q Do you believe that that would affect your ability
22 to be fair and impartial?

23 A I do.

24 Q Could you not set that aside?

25 A I wish I could but I don't feel that I can.

1 Q Are you firm in that conviction?

2 A I am. Because I visit the police officers'
3 memorial wall every year and I see the names inscribed
4 of officers who have lost their lives.

5 Q The call is mine and I have to determine whether
6 or not a juror has an opinion or if there's anything,
7 knowledge or anything like that, that would
8 substantially impair or interfere with that juror's
9 ability to carry out his or her duties as a juror.
10 And, of course, one of the most important things about
11 being a juror is to be fair and impartial. And I get
12 the sense that you're trying to tell me that because of
13 these experiences and these relationships you have that
14 you just don't think you could set that aside?

15 A No, I don't.

16 MR. McGUIRE: No questions.

17 MR. RICHARDSON: No questions.

18 THE COURT: What I'm going to do, Ms. Harris, is
19 excuse you from serving on this case further. I'm sure
20 you'd make an excellent juror in any other kind of
21 case, but we can all appreciate your feelings and
22 certainly respect that.

23 MS. HARRIS: Thank you for your consideration.

24 THE COURT: Thank you for being candid with us.

25 MS. HARRIS: Thank you.

1 (WHEREUPON, Ms. Barbara Harris exited the
2 courtroom at 3:16 p.m.)

3 (WHEREUPON, Ms. Harbaugh entered the courtroom
4 at 3:16 p.m.)

5 JULIE HARBAUGH,
6 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

7 EXAMINATION BY THE COURT:

8 Q Good afternoon, is it Ms. "Harbaugh"?

9 A Yes.

10 Q H-a-r-b-a-u-g-h?

11 A Yes.

12 Q All right. Ms. Harbaugh, I am going to ask you to
13 speak into that microphone and please speak up because
14 we have to record every response that you give us, and
15 we have a live feed to the attorneys and it's coming up
16 in realtime and they need to hear and see what you're
17 saying as well. Okay?

18 A Okay.

19 Q Do you remember when you came in Monday we had a
20 chance to talk about some things, and one of the things
21 that I asked the jury to do is to refrain from checking
22 up on this case, doing independent research, talking
23 with anybody, reading news reports, that sort of thing?
24 Do you remember that?

25 A Uh-huh.

1 Q And have you complied with my order?

2 A Yes.

3 Q Okay. And do you understand that that's a
4 standing order, one that would affect you until such
5 time as you're released from your subpoena?

6 A Yes, I do.

7 Q That's fair enough. All right.

8 Ms. Harbaugh, you were kind enough this morning to
9 come in, and we gave you a little form and it described
10 three categories of jurors. And we asked you if you
11 would mark the kind of juror that best describes you
12 and your feelings and your opinions. Okay? I see here
13 that you have marked B, that you are a B category
14 juror; is that correct?

15 A Yes.

16 Q Okay. Let me begin by saying that we in this
17 country all have the right to have an opinion. And we
18 appreciate the fact that you may have your opinion on
19 certain matters. We respect those opinions, and I
20 promise you no one here is going to try change your
21 feelings or your opinions. That's the last thing we
22 want to do, but we need to assess how those feelings
23 might affect or impact your ability to serve as a
24 juror. Okay?

25 So when we ask you questions, we're not trying to

1 pry. We're not trying to change your mind. There are
2 no wrong answers. You can tell us anything you want
3 about how you feel. All we ask is that you be candid
4 with us. Okay?

5 Now, if I understand what you're telling me,
6 you're saying that you believe that the death penalty
7 is never appropriate no matter what the circumstances;
8 is that correct?

9 A For the most part, yes. I think if it happened to
10 someone I cared about, my natural feeling would be that
11 they should die, but my Christian upbringing says only
12 God should make that decision.

13 Q You're saying that if it was a loved one of yours,
14 your emotions might be such --

15 A Very possibly.

16 Q -- that you could do it, but otherwise you could
17 not?

18 A Yeah.

19 Q Do you feel strongly about that?

20 A Yes.

21 Q Okay. Are you telling me that in this case -- and
22 I assume you did not know the victim, you do not know
23 Mr. Cottrell, you don't know anyone. These are all
24 strangers to you?

25 A Yes.

1 Q That if you were seated as a juror, you just would
2 not, you could not give the death penalty?

3 A I can't say a hundred percent sure, but sitting
4 here now, I feel like it's not my choice to make, that,
5 you know, I wouldn't be comfortable making that choice.

6 Q So you already are predisposed to give
7 the death -- I mean to give life?

8 A Right.

9 Q Do you think that your feelings would interfere
10 with your consideration of mitigating and aggravating
11 circumstances and your determination of whether a life
12 sentence or a death penalty would be appropriate?

13 A Yes.

14 Q Would it substantially affect your feelings?

15 A Yes.

16 MS. NORRIS: Your Honor, I'd like to follow up.

17 THE COURT: I'm going to let you talk with her.
18 And let's limit it to this issue. And we may go on
19 further, but let's talk about this one.

20 MS. NORRIS: Thank you.

21 EXAMINATION BY MS. NORRIS:

22 Q Good afternoon, ma'am. I'm Teresa Norris. I know
23 I got a chance to stand up as we all did in that sea of
24 people, but this is my one chance to talk to you.

25 On your questionnaire that you filled out, and the

1 reason I'm following up is I don't think I've heard a
2 clear answer yet.

3 On your questionnaire, on number 24, "Do you have
4 any moral, religious or professional beliefs that would
5 prevent you from sitting as a juror on a criminal
6 case?" Not even talking about capital. And you said,
7 "Yes, mixed feelings on death penalty, not sure," and
8 then you crossed out some stuff.

9 Tell us in your own words about the mixed feelings
10 and what you're not sure about.

11 A Basically, what I was saying, you know, if it
12 happened to me, I'm sure my emotions would come out and
13 I would be like, "I want this person gone." But my
14 Christian upbringing in the back of my mind keeps
15 saying God is the only one who should decide who lives
16 or dies.

17 My other feeling that makes it mixed is we're all
18 human. What if three years from now we find out
19 somebody made a mistake. If that person is gone, you
20 can't fix that. I feel like it's an overwhelming
21 responsibility to decide if someone lives or dies, and
22 I don't feel I'm qualified to do that.

23 Q I appreciate that, but let me address those sort
24 of in turn. First of all, if it was your family member
25 that was killed, you would not be allowed to qualify

1 for the jury because, obviously, our system requires
2 fair and impartial jurors.

3 So setting that aside, let's talk about where we
4 are now, whether it's for you to decide in your
5 Christian views. Unfortunately, ma'am, you got a
6 summons in a capital case. What I'm asking what about,
7 what we need to know is if you're seated on the jury,
8 is there any circumstance, of course following the law,
9 listening to all the evidence and weighing that out,
10 and the law never says you have to give a death
11 penalty. But in order to qualify to sit on this type
12 case, you have to be able to give meaningful
13 consideration to giving either the death penalty or
14 life without parole should we reach that far. Can you
15 honestly consider giving the death penalty?

16 A I don't think I could.

17 Q Let me ask it this way. And I don't want you to
18 tell me, but can you think of a set of facts in your
19 mind that would be sufficient that you personally could
20 vote for a death sentence?

21 A Not at this point, I'm not thinking of any.

22 MS. NORRIS: Thank you, ma'am.

23 MR. RICHARDSON: No questions, your Honor.

24 THE COURT: Do we need to be heard on this?

25 MS. NORRIS: No, sir.

1 THE COURT: You may step down. And, Ms. Harbaugh,
2 I'm sure you would make an excellent juror for any
3 other kind of case, but as to this particular case, I
4 would have to find that you are not qualified to sit
5 because of your beliefs. And, again, no one is
6 critical of those beliefs. They're yours, you have a
7 right to have them, and we respect them. Okay? Thank
8 you.

9 (WHEREUPON, Ms. Harbaugh exited the courtroom
10 at 3:25 p.m.)

11 (WHEREUPON, Ms. Martinez entered the courtroom
12 at 3:25 p.m.)

13 GLORIA MARTINEZ,

14 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

15 EXAMINATION BY THE COURT:

16 Q How are you, Ms. Martinez?

17 A Nervous.

18 Q You're nervous. Well, don't be nervous at all,
19 please. There's no one here that's going to put any
20 pressure on you or fuss at you or anything like that, I
21 promise you.

22 Do you remember on Monday when I asked you not to
23 talk about the case with anybody or do any research on
24 it, things like that?

25 A Uh-huh.

1 Q Okay. Have you followed my instructions?

2 A Yes.

3 Q Okay. Good. And I want you to understand that
4 those instructions are sort of a standing order. They
5 continue until you are released as a juror. You may
6 get on the jury. It will continue all through the
7 trial. If you're not on the jury, it will continue
8 until you are released from your subpoena. All right?
9 Do you understand that?

10 A Yes.

11 Q There is a lady right around here that's having to
12 type up everything that you say. And to do so she has
13 to hear.

14 A Oh, okay.

15 Q So I would ask you to get up close to the mic and
16 speak up so that she can pick up the things that you
17 are saying. All right?

18 A Yes.

19 Q Ms. Martinez, you were nice enough to come in this
20 morning and consider our little questionnaire where we
21 asked you to circle the letter of the category of juror
22 which best describes you. And we set out three
23 different categories or types of jurors or what we felt
24 were reasonable types, and one of those was type C or
25 category C. And you indicated that you are a category

1 C juror; is that right?

2 A Yes.

3 Q And just so that I want to make sure I understand
4 you, that would be a juror who needs to hear the facts
5 and circumstances in aggravation and mitigation before
6 she could make a decision about punishment in a case
7 like this?

8 A Yes.

9 Q And is that a fair statement of how you feel about
10 death penalty cases?

11 A Yes.

12 Q Okay. Now, you were here earlier when I talked
13 with you about how the process would work and what
14 would be expected of jurors and what jurors should do
15 during the process. Do you remember that?

16 A Yes.

17 Q Were you able to follow what I was saying?

18 A Yes.

19 Q You understand?

20 A Uh-huh.

21 Q Okay. Do you understand that process, where we
22 look at mitigating and aggravating circumstances, is
23 consistent with your view of what should be done as far
24 as punishment in a death penalty case?

25 A Yes.

1 Q Did you hear anything about that process that
2 would -- that you thought was unfair to either the
3 State or to Mr. Cottrell or was oppressive? Was there
4 anything about that process that you had any trouble
5 with?

6 A No.

7 Q If you were a juror and I were to instruct you
8 along the lines of that process that I described to you
9 a moment ago, do you think that you could follow my
10 instructions and follow the law in that regard?

11 A Yes.

12 Q Would you have any problems with that at all?

13 A No.

14 Q Okay. Now, Ms. Martinez, I've been talking with
15 some jurors today, and, you know, there's something
16 that we all seem to agree on. That is that our life
17 experiences -- the good things that have happened to
18 us, the bad things that have happened to us, who our
19 friends are, who our family is, our relationships with
20 these people, all those things come together and they
21 make us an individual. Do you agree with that?

22 A Yes.

23 Q And every individual, according to his makeup and
24 his experiences and the information that's been made
25 available to him or her, usually forms opinions and has

1 feelings about different things and may have biases or
2 prejudices or special interests in particular topics.

3 Would you agree with that?

4 A Yes.

5 Q Okay. All right. Now, the question that I have
6 to answer today is whether or not there's anything
7 about Gloria Martinez's opinions, feelings, interests,
8 prejudices, biases that might substantially interfere
9 with her ability to perform her duties as a juror.
10 Those duties -- the most important of those duties is
11 to be fair and impartial. That's the key to being a
12 good juror is being fair and impartial. Can you think
13 of anything that would substantially impair your
14 ability to be a fair and impartial juror?

15 A I don't think so.

16 Q All right. Nothing comes to mind?

17 A Not right now.

18 Q Let me ask you, you know, this is kind of an
19 important thing. Do you have any opinion about the
20 death penalty in general?

21 A No. I believe, you know, if it's a terrorist
22 or -- I don't know the law. If it constitutes the
23 death penalty, I believe in it.

24 Q Okay. You believe in the death penalty?

25 A Yes.

1 Q All right. Have you ever -- you say you believe
2 in it. Have you ever gone out of your way to do
3 anything in support of the death penalty or --

4 A No.

5 Q Has it just been sort of a benign thing with you?

6 A I mean, if I have to do my duty, I would do it.

7 Q You would do it?

8 A Uh-huh.

9 Q Now, we talked a little bit earlier about the fact
10 that if the State were to move through the steps of the
11 case, if they were able to do that, that is, prove
12 murder with malice, and then they went up and proved an
13 aggravating circumstance, and we finally moved around
14 to where the jury has to consider a recommendation of a
15 sentence. Okay? Do you remember the two possible
16 sentences?

17 A To be honest with you, no.

18 Q Death and life.

19 A Okay.

20 Q You recall me telling you that before the jury
21 could make that decision, they had to or the jury has
22 to consider mitigating circumstances, circumstances
23 that extenuate, excuse, make less death prone, the
24 possible sentence. Do you understand that?

25 A Yes.

1 Q Do you understand you can consider not only the
2 ones that are set out in the law, but you could
3 consider anything and you would have the right to pick
4 your own as an individual juror if you wanted to find
5 one. Do you understand that?

6 A Yes.

7 Q Now, as you went through that process, that
8 required process, can you tell me if at the beginning
9 you would be more prone to give the death penalty or
10 more prone to give life imprisonment, or could you
11 consider them fairly and impartially?

12 A Whatever -- consider fairly, I mean.

13 Q All right. Let me ask you another way. Would you
14 go into that process leaning towards death or leaning
15 towards life? I guess that's the best way to say it.

16 A I don't know. It would just depend on the
17 evidence.

18 Q No, I'm talking about at the beginning.

19 A At the beginning?

20 Q At the beginning. As you started out, could you
21 start out without leaning towards one or leaning
22 towards the other?

23 A I would lean towards life.

24 Q You would lean towards life. But could you
25 consider death and would you give fair consideration to

1 the death penalty as well?

2 A Yes.

3 Q So you could consider both?

4 A I guess.

5 Q That's what I want to know, whether or not you
6 would just be locked in on one.

7 A No.

8 Q Or you would be willing to think about both of
9 them and apply, as you said when you marked C, the
10 aggravation and mitigation in the case, the facts?

11 A The facts.

12 Q All right. I just wanted to make sure that I
13 understood where you were coming from. Can you be
14 fair?

15 A Yes.

16 Q Can you be fair to the State?

17 A Yes.

18 Q Can you be fair to Mr. Cottrell?

19 A Yes.

20 Q And would you follow my instructions on the law?

21 A Yes.

22 THE COURT: All right. Let's let you answer some
23 questions from Ms. Norris.

24 EXAMINATION BY MS. NORRIS:

25 Q Afternoon, Ms. Martinez.

1 A Hi.

2 Q I'm Teresa Norris. I know I got a chance to stand
3 up the other day in the sea of people, but this is my
4 one chance to really talk to you. And I just have a
5 couple questions.

6 You had indicated on your questionnaire
7 information that you felt like we ought to know, and
8 that was that you know Dr. Proctor and you've watched
9 an autopsy.

10 A Yeah, a few of them.

11 Q If I tell you that Dr. Proctor has nothing to do
12 with this case, do you feel like the fact that you've
13 seen a few autopsies is something we ought to know and
14 tell me why you think that's significant.

15 A Well, I think it was like three years ago I was
16 excused because Dr. Proctor happened to be an expert
17 witness, so they excused me.

18 Q Sure.

19 A And I know Robert Edge.

20 Q That was probably because you knew a witness as
21 opposed to the autopsies.

22 A Uh-huh.

23 THE COURT: And, Ms. Norris, you might have had
24 this available to you, but Dr. Proctor is a local
25 forensic pathologist who does many, many autopsies and

1 we see him in court on a regular basis.

2 MS. MARTINEZ: Yes.

3 MS. NORRIS: Thank you, sir.

4 Q Let me see if there was anything else about your
5 questionnaire.

6 Yes, ma'am. One other thing that I noted, and I
7 don't want to get personal about this, but one of the
8 questions was whether you or a family member was a
9 victim of a crime, and you indicated that your
10 daughter's car was burnt --

11 A Was burnt up last year, uh-huh.

12 Q And what --

13 A Was burned up last year and she had -- her car was
14 vandalized and she had instruments stolen from her car.

15 Q Is there anything about that that would give you a
16 bias one way or the other?

17 A No, not really. I just made you aware.

18 Q You just answered the question?

19 A Yeah.

20 Q And on the death penalty, as I understand it, you
21 don't think you would have any problem in deciding
22 whether a person is guilty of murder or not guilty,
23 right?

24 A No, I wouldn't have a problem.

25 Q And no problem with finding an aggravating

1 circumstance if proven?

2 A Uh-huh.

3 Q And you could listen to all the aggravation and
4 mitigation, and if you were seated, when that final
5 decision is made, you could vote either for the death
6 penalty or life without parole?

7 A Yes.

8 Q And it is without parole.

9 A If I had to. But I'm still nervous about it.

10 Q I understand.

11 A I mean, I'll do my duty, you know.

12 Q Well, I certainly appreciate that.

13 A I just want to be honest.

14 Q Let me make this clear now. And the judge has
15 explained it, but when you say your duty, you'll never
16 ever hear an instruction from the judge that says, "If
17 you find A, B and C, you have to impose death." And
18 the same is true on the other side. So the only duty
19 you would have, if it comes to that decision, is to
20 listen to all the evidence and follow the judge's
21 instruction and at the end of it to make an individual
22 reasoned moral judgment within your heart, within your
23 soul, following all that, your individual decision of
24 life or death.

25 A Yes.

1 Q That's the duty?

2 A Yes.

3 Q And as I understand what you're saying, you could
4 do it. You wouldn't want to, but you would be nervous?

5 A Yes.

6 Q And one final thing. If you were in that
7 position -- well, not final thing. I'm almost there.
8 But if you made that decision and 11 other people
9 listened to all the same evidence, et cetera, and their
10 decision was different than yours, would you give up
11 your vote just to join everybody else or would you say,
12 "This is my decision. I've listened to all this. My
13 juror's oath is this is my vote. It would violate it
14 to give up -- violate my conscience to give up my
15 oath"?

16 A I usually feel the first thing, I won't -- it
17 would be hard for me to change my mind, just to go
18 along with other people, what they feel.

19 THE COURT: Let me rephrase that question. If you
20 have 11 people over here and you were standing by
21 yourself, as a juror, you would obviously have the duty
22 to listen to their reasoning.

23 MS. MARTINEZ: Yeah.

24 THE COURT: And they would have a duty to listen
25 to your reasoning. But it would just be wrong for you

1 to say, "Oh, there's 11 over there. I'm going to give
2 up my position," just to move over there and be in the
3 pack.

4 MS. MARTINEZ: No, I can't do that.

5 THE COURT: Okay. That's what Ms. Norris was
6 asking.

7 BY MS. NORRIS:

8 Q And this is my final question. If you and the
9 other 11 jurors all did agree, and in order for it to
10 be a death sentence it has to be unanimous. Everybody.
11 And in order for that to take effect legally, you would
12 have to sign your name as well. So if you were
13 convinced by the evidence that death was the
14 appropriate punishment, could you sign your name to the
15 verdict?

16 A Yes.

17 Q Okay. Thank you, ma'am.

18 THE COURT: Do you need to --

19 EXAMINATION BY MR. HIXSON:

20 Q Just want to introduce myself. Ma'am, I'm Scott
21 Hixson, Chief Deputy Solicitor here, and Jimmy
22 Richardson I think you met earlier. We'll present the
23 case for the State. And thank you very much for your
24 time and your honest questions.

25 MR. HIXSON: And we believe this witness is

1 qualified, your Honor.

2 THE COURT: Ms. Norris.

3 MS. NORRIS: She's qualified, your Honor.

4 THE COURT: All right. Ms. Martinez, thank you
5 for coming. I find that you are a qualified juror in
6 this case. You're not on the jury yet. What you are
7 is you are in the pool of people from which the jury
8 would be drawn. And we're going to go on with this
9 process for at least a couple more days. So I won't be
10 needing you.

11 But I have given you a phone number there the
12 deputy has. If you will call that number after 6:00
13 p.m. on Sunday there will be instructions for you where
14 and when you are to appear.

15 There is a possibility you may be put on the jury,
16 and if you are, you would be sequestered. So bring
17 with you your medications, toiletries and clothing for
18 several days. Just leave them in your car.

19 If you are selected on the jury, of course you
20 will be sequestered. I will make sure some of these
21 gentlemen here will be willing to go with you to help
22 you collect your things before you are taken to the
23 hotel. Just have them in your car. Thank you, ma'am.

24 (WHEREUPON, Ms. Martinez exited the courtroom
25 at 3:43 p.m.)

1 THE COURT: Harris.

2 (WHEREUPON, Ms. Joann Harris entered the courtroom
3 at 3:43 p.m.)

4 JOANN HARRIS,

5 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT:

7 Q Good afternoon, Ms. Harris. Good to see you
8 again.

9 Ms. Harris, do you recall on Monday my instructing
10 the jurors not to do any independent research, not to
11 speak with anybody about this case, not to read
12 anything about it? Do you remember that?

13 A Yes, your Honor.

14 Q Have you complied with that?

15 A Yes, I have.

16 Q Thank you, ma'am. I just wanted to remind you
17 that that is a standing order and until such time as
18 you are released from your duties in this matter, it
19 controls you. Okay?

20 A Yes, sir.

21 Q All right. Now, Ms. Harris, you were nice enough
22 to come in this morning or this afternoon, and we
23 provided you with a little questionnaire there and we
24 described three different types of jurors, and we asked
25 you to indicate which category of juror best describes

1 you. Okay? And you indicated a C juror. Was that
2 your intention?

3 A Yes.

4 Q You need to speak up because this lady has got to
5 pick up what you're saying and transcribe it.

6 A Yes.

7 Q Now, just so that you and I don't want to be
8 mistaken in my understanding of what you meant, a C
9 juror is a juror who would need to hear the facts and
10 circumstances in aggravation and mitigation before he
11 or she could make a decision concerning punishment in a
12 death penalty case?

13 A Yes, your Honor.

14 Q Do you think that pretty accurately describes you?

15 A Absolutely, your Honor.

16 Q Okay. Now, you know, we spoke or I spoke to you a
17 few moments ago about how the process worked, and I
18 tried to explain to you how a capital case is different
19 from a regular murder case. And I wanted to impress
20 upon you what you would be required -- what would be
21 required of you as a juror so you would have a good
22 understanding of that. Were you able to follow along?

23 A Yes, your Honor.

24 Q I didn't talk too fast or didn't confuse you?

25 A No, your Honor.

1 Q Do you believe that your category of juror or your
2 feelings about this matter are consistent with the
3 process that I described to you --

4 A Yes.

5 Q -- where you consider aggravation and you consider
6 mitigation and you have all those things?

7 A Consider all of the facts, yes.

8 Q Looking at that process as a whole, was there
9 anything about it that you found to be oppressive or
10 unfair either to Mr. Cottrell or to the State or
11 anyone?

12 A No, your Honor.

13 Q Okay. Then if you were a juror in this case and
14 at the end of the trial I gave you instructions, and
15 those instructions were along the lines of what we
16 talked about today, would you have any problems at all
17 following my instructions concerning your duties --

18 A No, your Honor.

19 Q -- as a juror? Okay. I was looking at my notes
20 from Monday. And I have down here that I asked the
21 question if there was any juror, potential juror, that
22 felt like he or she could not be fair and impartial,
23 and I just have your number down. And it may have been
24 mistaken, but did you stand up?

25 A No, I didn't stand up at all during the entire

1 time.

2 Q I got the wrong number. Well, it does look like
3 213. Actually, it's 273 and you're 276, aren't you?

4 A Yes, sir.

5 Q Okay. So that clears that up for me. Thank you.

6 I've been talking with jurors today and yesterday
7 and the day before about opinions and feelings that
8 people might have. And I'm sort of of the opinion the
9 way a person feels about something, the opinions a
10 person might have, the prejudices or biases that a
11 person might have are in great part the sum total of
12 the experiences in life that person has had whether
13 they're good experiences, bad experiences, their
14 relationship to family and friends, their education,
15 knowledge that they have about a particular subject,
16 all those things sort of come together and help form
17 how we feel about things. And how you feel about
18 matters relevant to this death penalty case are really
19 relevant here. Because I have to make a determination
20 if there is anything that Joanne has that would
21 substantially impair her ability to perform her duties
22 as a juror in this case.

23 One of the things -- before I go there, let me say
24 this, and I think I said it earlier. We respect your
25 opinions regardless of what they may be. You have a

1 right to have those opinions. We appreciate the fact
2 that you have individual opinions. I certainly
3 appreciate the fact that in America we can have them.
4 And I promise you nobody is trying to change them, not
5 one bit. I just like to know what they are and whether
6 they might affect you. I want to ask you to be very
7 candid with us.

8 Tell me, if you would, if you have any opinion
9 about the death penalty generally. You know, when I
10 say death penalty, I mean the concept of death as a
11 punishment for a crime or crimes in general, not
12 necessarily the South Carolina death statute but the
13 death penalty in general. Do you have any feelings
14 about that?

15 A I really -- I really don't because it bases on
16 each individual circumstance. I can't say that I feel
17 strongly towards it or I feel strongly against it
18 because it, to me, it depends on the situation.

19 Q On the case?

20 A Yes, your Honor, on the case.

21 Q And one of the reasons I wanted to know that is
22 because if the State, if the State is able to prove the
23 murder, and then if the State -- I'm going to make it
24 clear I'm not assuming it will happen -- if the State
25 proves aggravating circumstances, we have come to a

1 very unique part of a criminal case. It's not like
2 this with any other offense. And that is the
3 consideration of sentence.

4 The only case in which the jury actually
5 represents -- I mean recommends a sentence -- and that
6 recommendation, I tell you, is going to be followed by
7 the Court -- but if we get to that point, do you
8 remember the possible sentences that were on the table?

9 A Yes, sir.

10 Q And what were those?

11 A The life in prison or the death penalty.

12 Q Life in prison or the death penalty, precisely.
13 And those are sort of like the two ends of the spectrum
14 there. And you, as a juror, are going to have to
15 consider those if you follow my instructions. And you
16 understand that?

17 A Yes, your Honor.

18 Q That process, I tell you, is going to be a
19 difficult process. There's no question about it.
20 Because you, as a juror, are going to be put sort of in
21 a moral dilemma. You're going to have to make a moral
22 decision as to whether you're going to recommend life
23 or you're going to have to recommend death.

24 And the way you view the death penalty, the way
25 you view mitigation evidence is probably going to be a

1 great factor in you making your decision. You
2 understand that you're not limited to the statutory
3 factors. You can consider anything that you personally
4 believe should be in mitigation?

5 A Yes, your Honor.

6 Q We talked about the fact that even if you don't
7 find mitigation, you could extend mercy either by grace
8 or because you think he deserves it, warrants it. What
9 I have to be assured of is that when you go into that
10 process, you are willing to begin sort of with a clean
11 slate and be willing to consider both the life sentence
12 and the death sentence. Are you willing to do that?
13 Do you think there's anything about your personality,
14 your feelings, your opinions that would substantially
15 impair your ability to do that?

16 A No, your Honor.

17 Q Would you be willing to give just as much
18 consideration to a life sentence as you would to a
19 death sentence?

20 A Yes, your Honor.

21 Q Could you do either one?

22 A Yes, your Honor.

23 Q There's one little other thing I haven't talked to
24 you about and that is this. And please don't think I'm
25 suggesting this, but if this jury -- if you're on the

1 jury and if it reaches the point that the death penalty
2 was recommended, if it reached that point, as an extra
3 protection the legislature has said to make sure that
4 everybody that has voted for the death penalty really
5 means to do so, they require you to sign it. A lot of
6 times it's easy to vote for something, but when you
7 have to sign your name, it could create a problem.

8 Could you do that?

9 A Yes, your Honor.

10 Q Could you do that?

11 A Yes. If I make a decision on something, I'll
12 stand up to that.

13 THE COURT: All right.

14 EXAMINATION BY MS. NORRIS:

15 Q Thank you, Ms. Harris. I'm Teresa Norris. I know
16 we got to stand up and see each other in the sea of
17 people the other day. But you don't happen to be
18 related to other Ms. Harris?

19 A No, it's just an ironic coincidence.

20 Q You indicated on your questionnaire that you have
21 a brother-in-law in the highway patrol in Missouri?

22 A It was an ex-, my ex-brother-in-law. Yeah. I
23 haven't seen him in years. He was -- yeah, I just
24 thought I needed to put everything out there.

25 Q Sure. We ask the question for a reason. But my

1 question to you is does that make any difference at all
2 to you?

3 A No.

4 Q It wouldn't influence you one way or the other?

5 A No, ma'am. No, ma'am.

6 Q All right. I believe you indicated that you had
7 testified in a criminal case and, in fact, had worked
8 undercover to help apprehend some sex offender?

9 A Yes, ma'am, I did.

10 Q Was that a one-time thing?

11 A Yes, it was a one-time thing. I went in and I was
12 wired, and I went in and took care of it. I did
13 everything I needed to do, and then I came back and
14 testified in court with them, in the courtroom.

15 Q And your dealings with the Solicitor and the
16 public defender I understand were for your children.
17 You told us about that.

18 A Right.

19 Q Did anything about that cause you to have a bias
20 for or against the State?

21 A No, ma'am.

22 Q For or against the defense?

23 A Neither, no. No.

24 Q And anything in your work in taking out the sex
25 offender that would cause you to have a bias one way or

1 the other?

2 A No. No, ma'am. And that was in Missouri where
3 that happened as well.

4 Q Okay. Prior to getting your juror summons in this
5 case, if I had asked you a week before that, "Tell me
6 your general thoughts about the death penalty," what
7 would your answer be?

8 A My answer would be the same as it is right now.
9 It's based on the case. Unless I know all of the
10 information and I know everything about the case, I
11 mean, I'm not going to make a decision one way or the
12 other. So I can't tell you my answer would be that
13 unless I know the facts and then I could answer it.

14 Q Do you lean one way or the other just politically?

15 A No.

16 Q Okay. And I think your Honor has explained the
17 decision-making process, that you don't have any
18 reservation that if you chose a death sentence that you
19 could sign that?

20 A Yes, ma'am. I have no problem with that.

21 MS. NORRIS: Nothing further, your Honor.

22 Thank you, ma'am.

23 THE COURT: Mr. Richardson.

24 EXAMINATION BY MR. RICHARDSON:

25 Q Ms. Harris?

1 A Yes.

2 Q I don't have any questions. I just want to
3 introduce myself. My name is Jimmy Richardson. I'm
4 the Solicitor. This is Scott Hixson.

5 A Nice to meet you.

6 Q The two of us will be presenting the case from the
7 State's point of view. Look forward to having you on
8 the jury.

9 MR. RICHARDSON: We believe she's qualified.

10 MS. NORRIS: We agree.

11 THE COURT: Ms. Harris, you are found to be
12 qualified to serve as a juror in this case. We're
13 going to be at this for another couple days, so we
14 won't be needing you.

15 So I would like you to keep that piece of paper
16 that they just gave you. That has a number on it. If
17 you would call that number after 6:00 p.m. on Sunday,
18 it will tell you when and where we need you next. At
19 that point we will select the jury from the general
20 jury -- pool of qualified jurors.

21 That usually would be -- I anticipate that being a
22 rather quick process because everyone would know all
23 the jurors. And if you are selected, you would be
24 sequestered immediately. So I would ask that when you
25 come, whenever we tell you, bring with you some

1 clothing for a few days and any medications you take or
2 toiletries you need. Just bring them with you. Just
3 leave them in your car. If you are selected I'll make
4 sure that one of these gentlemen accompanies you out
5 and gets your things and gets you over to where you
6 need to go. Okay?

7 MS. HARRIS: Okay.

8 THE COURT: Thank you, Ms. Harris.

9 (WHEREUPON, Ms. Joann Harris exited the courtroom
10 at 3:58 p.m.)

11 (WHEREUPON, recess taken from 3:58 p.m.
12 to 4:07 p.m.)

13 (WHEREUPON, Prospective Jury Panel Number 14 came
14 into open court at approximately 4:09 p.m.)

15 THE COURT: Good afternoon, ladies and gentlemen.
16 It's good to see you all. It's good to see you had
17 made it in. We're not too far behind today, but we do
18 apologize for the delay.

19 I'm going to be asking you some questions about
20 your individual qualifications to serve on this jury.
21 But before I do that, there is a couple of things I
22 wanted to do or talk to you about as a group.

23 Before we get into that, I'm going to ask the
24 clerk to place you under oath. And this oath will
25 carry over and you will still be under oath when we

1 individually talk to you. Okay? Remember that,
2 please.

3 (WHEREUPON, the panel was sworn.)

4 THE COURT: Let's start out by me talking to you
5 about your service. I, on Monday, asked you a lot of
6 questions. And the purpose of those questions was to
7 basically find out if you met the general legal
8 requirements of a juror, whether you were legally
9 qualified to serve as jurors. And we all determined
10 that you were qualified as jurors.

11 However, the purpose of bringing you in is to
12 determine whether or not you would be qualified to
13 serve on this particular case. It's sort of a unique
14 thing that we do whenever the State is seeking the
15 death penalty. And you all know by now this is what we
16 call a capital case or a death penalty case. I'm sure
17 y'all are aware of that.

18 There are in this state certain exemptions that a
19 juror may claim even if that juror is a qualified juror
20 that would excuse that juror from service if the juror
21 chooses to claim his or her exemptions. And the first
22 thing I want to do is talk to you about those
23 exemptions.

24 The first exemption is that any person who is
25 65 years of age or older may claim an exemption. And

1 that's a good example for me to talk to you about
2 claiming it or not claiming it. You know, if you came
3 up here -- I try cases all the time, all different
4 kinds of cases. And if you came up to my courtroom and
5 you looked at the jury, you would see a lot of people
6 and say, "Well, that person is certainly over 65 years
7 of age." And those persons were told that they don't
8 have to serve, but in many instances they say, "That's
9 a personal right. I choose not to claim my exemption.
10 I'm willing to serve." And we are just happy to have
11 our older citizens serve as jurors because they just
12 bring a wealth of life experiences and wisdom that's
13 acquired with the passage of the years to jury service,
14 and they make good jurors.

15 But that's an example of a person who has an
16 exemption but chooses not to claim it. They're
17 statutory, set out by the law. You certainly have the
18 right to claim that. And if you claim it, we will
19 excuse you.

20 Again, is there anybody -- I don't think there can
21 possibly be -- but is there anybody on this jury panel
22 who is now 65 years of age or older?

23 Do you wish to claim your exemption?

24 POTENTIAL JUROR: No.

25 THE COURT: Thank you. Very well. And your name

1 was?

2 POTENTIAL JUROR: Linda Albrecht.

3 THE COURT: I see you down here. Thank you for
4 your service.

5 Is there any member of the jury panel who has
6 served as a juror within the last three years? Now,
7 service in the magistrate's court or the municipal
8 court -- that's the city court -- or even service in
9 the federal courts -- you might have been called to go
10 up to Columbia or Florence or someplace like that --
11 that doesn't count. You have to have been brought
12 here.

13 I'm informed Ms. Luft actually has served within
14 the last three years.

15 Where is Ms. Luft?

16 You served in 2013. You have the right to claim
17 that as an exemption. Do you wish to claim it?

18 POTENTIAL JUROR: I actually, yes, I need to.

19 THE COURT: Very well. You don't have to explain
20 it. You just have to tell me that's what you need to
21 do. You are excused. And your number, Ms. Luft, would
22 have been 393; is that correct?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Counsel, we have confirmed she served
25 5/17/13.

1 MR. McGUIRE: Yes, sir.

2 THE COURT: You may leave. Thank you very much.

3 POTENTIAL JUROR: Thank you.

4 (WHEREUPON, Ms. Luft exited the courtroom
5 at 4:14 p.m.)

6 THE COURT: The next exemption applies to those of
7 you who may have small children. If you have a
8 child -- it's your child or it's a child you have
9 custody of -- and that child is under seven years of
10 age and you daily take care of that child, that's your
11 job, you're the caretaker for that child and you're
12 unable to provide some other person to care for that
13 child, you may claim that as an exemption. And
14 normally we would say that only applies if you don't
15 work outside the home. That's what it was designed to
16 do.

17 But we all understand in this case we're talking
18 about sequestration of a jury. You would be away from
19 home at night, and we're going to kind of stretch that
20 because we understand that you can't have that child at
21 home at night by itself, even though you may have
22 daycare during the day.

23 So does anyone have a child under the age of seven
24 that you don't have anyone to care for if you were
25 sequestered?

1 And there is no response.

2 I skipped over one.

3 Also if you were a member of the Grand Jury within
4 the next -- last five years. The Grand Jury is a
5 special jury. It doesn't come into the courtroom and
6 try cases like the petit jury does. And you're
7 summonsed as petit jury members.

8 The Grand Jury instead is a group of people that
9 meet once a month. They have to serve at least a year,
10 in many cases two years, and their job is simply to
11 look at cases where people have been charged with a
12 crime and determine if there's any reason to even go
13 forward with it, to bring it to court. They don't make
14 any judgment as to guilt or innocence. They just look
15 at it and see if there's any evidence, any reasonable
16 evidence. If you were on the Grand Jury, I'm sure you
17 knew it because it's very demanding.

18 Has anyone been on the Grand Jury in last five
19 years?

20 And there is no response.

21 Another exemption applies. It's sort of like the
22 one with the small children, but it applies to people
23 who are the caretakers of elderly people or severely
24 disabled people who require care. They cannot be left
25 alone and you're unable to provide an alternative for

1 someone to care for that child -- I mean that person.

2 Anyone who falls into that category?

3 And there is no response.

4 Full-time students may claim an exemption, and I
5 think we have already weeded those out. We did find
6 one yesterday, so I want to ask that question.

7 Is anyone a full-time student?

8 And there is no response.

9 Does anyone work at a school? It can be a public
10 school, a private school. It can be a post secondary
11 school like a tech or Coastal Carolina, anything like
12 that. If your job is necessary to the operation of the
13 school and no substitute is readily available to fill
14 in for you, you may claim that as an exemption.

15 Any person that falls in that category?

16 No response.

17 And, finally, if you perform services for a
18 business, agricultural concern, commercial concern or
19 retail concern and your services are so essential to
20 the operation of that business that if you are not
21 there the business just has to close the doors, sends
22 the employees home, cannot operate, and there's no one
23 to replace you, can't reschedule your appointments or
24 anything like that, if that's your case, your
25 situation, you're entitled to be excused.

1 Anyone in that category?

2 And there is no response.

3 Okay. Now, finally, let's talk about the process
4 that we are involved in. I want to talk to you about
5 the process and give you a little more detail about how
6 it works, why it works or why we have the rules that we
7 have, what would be expected of you as a juror and what
8 you would necessarily, under the law, need to do in
9 performance of your duties as a juror on a capital case
10 or a death penalty case.

11 You know, the defendant in this case,
12 Mr. Cottrell, is charged with the offense of capital
13 murder. Are any of you familiar with the term
14 "presumption of innocence"? Have any of you heard it
15 or anything like that? I see some heads nodding.
16 Okay.

17 Let me tell you what it is. It is a term to
18 describe or refer to a legal theory or principle that
19 is just pervasive. It's throughout our country. It's
20 the rule in every state in the United States. It
21 simply says this, that when a person is accused of a
22 crime -- and that's what Mr. Cottrell is. He's just
23 simply accused of a crime -- when a person is accused
24 of a crime, there arises a presumption, an inference.
25 It is said that he is innocent until the State

1 overcomes that presumption.

2 That presumption doesn't end when he comes to
3 court. It doesn't end when he starts his trial. It
4 continues throughout the trial. And the only way that
5 that presumption is overcome by the State is when the
6 State has convinced a jury unanimously of his guilt
7 beyond a reasonable doubt. And at the end of the trial
8 I would talk to you about reasonable doubt. That's a
9 very high level of proof. I will say that at this
10 point in time.

11 But the State has to prove it to each and every
12 juror beyond a reasonable doubt. The State does that,
13 it has overcome that presumption and would be entitled
14 to a guilty verdict. But you should keep in the back
15 of your mind throughout this whole process that
16 Mr. Cottrell is entitled to that presumption of
17 innocence and it does cloak him.

18 Now, as I said earlier, he is charged with capital
19 murder. And that's a very unique term. It has very
20 special meaning in the law. As I travel about the
21 state and try cases in other counties and all and talk
22 to other judges, I am aware of the fact that during the
23 course of the year, there may be any number of murder
24 trials that occur over the course of a year in the
25 state of South Carolina. Okay? The vast majority of

1 those are simply what we call ordinary or typical
2 murder trials. All of those trials involve the
3 unlawful taking of a human life.

4 There are many offenses that involve the taking of
5 a human life. But a murder, a typical murder, an
6 ordinary murder involves more than just the proof of
7 the unlawful taking of a human life. To prove the
8 murder, the State must prove the taking of a human
9 life, the unlawful taking of a human life was done with
10 malice aforethought.

11 And the courts have used all sorts of words and
12 phrases to describe what malice is. Malice is
13 essentially a blackened heart, a malicious, intentional
14 act, an act committed with ill will or hatred towards
15 the victim. Not an accident, not unintentional.
16 That's what the State has to prove that makes the
17 taking of a life a murder. Okay?

18 And in a capital case where the State has decided
19 the circumstances of the murder are such that we're
20 going to seek the death penalty, a whole set of new
21 rules and procedures kick in and apply to the
22 prosecution.

23 One example of that would be the fact that you are
24 here. In no other case, in no other type case would
25 the attorneys have an opportunity to question the

1 jurors before they're selected individually. You know,
2 you see that on TV all the time, but in reality that's
3 not what happens. Only in a capital case would that
4 occur. And that's one of those rules that come into
5 play if the State should make a determination that it
6 wants to seek the death penalty. And that has occurred
7 here.

8 Well, we talked earlier in the week about this
9 being a two-part process or two stages to the trial,
10 one being the guilt phase and the other being the
11 sentence phase or the sentencing phase. And those
12 words really don't mean anything. They just signify
13 that we have two parts and we have to identify them
14 some way.

15 But the case starts out just like any other murder
16 case, the typical murder case, the non-death penalty
17 murder case. It begins with that guilt phase in which
18 the State has to overcome that presumption of innocence
19 and prove that the defendant, Mr. Cottrell, committed
20 the offense of murder.

21 The State must prove to the jury's satisfaction
22 beyond a reasonable doubt, each and every juror, that
23 he did take the life of another person unlawfully and
24 that that taking was accompanied by malice
25 aforethought. Okay?

1 If and only if -- and I'm not suggesting that this
2 is what your finding if you're on the jury would be.
3 Please don't misunderstand me. But if and only if that
4 occurs, then we move to the second part. And that's
5 another unique part of the death penalty statute. We
6 don't have it in anything else. If it were just a
7 straight murder case, the jury would be asked just to
8 determine has the State proven beyond a reasonable
9 doubt that he committed murder. And the verdict form
10 would just be one piece of paper, and it would say, We
11 find the defendant guilty or not guilty. And they
12 would circle one, and the foreperson would sign it, and
13 he would hand it to me, and I would impose the
14 sentence.

15 But something that most jurors don't understand is
16 if that occurred, I could not impose the death penalty.
17 The death penalty is reserved only -- only -- for
18 capital murder cases. Typical murder cases, that is
19 not a possibility in this state that a person would get
20 the death penalty. Just cannot happen.

21 But if the State has reached that point and has
22 been able to prove beyond a reasonable doubt that he
23 committed murder, including malice, we move to the
24 second part. We have to take a day's break, but we
25 move to the second part.

1 And in that second part the State has to prove
2 that extra thing. See, capital murder is murder plus
3 something else. There's something else the State has
4 to prove, something unique about the case that
5 justifies the seeking of the death penalty.

6 And that's what we call an aggravating
7 circumstance. And the jury starts again and evidence
8 is put up, and the State must convince every juror
9 beyond a reasonable doubt that the commission of that
10 murder was accompanied by or in conjunction with some
11 aggravating circumstance.

12 And the only aggravating circumstances -- the only
13 aggravating circumstances which the jury may consider
14 are those the legislature has specifically set out.
15 The legislature has created this little box and says,
16 These are the aggravating circumstances. And even if
17 you were on the jury and you saw something else and
18 thought, "Well, that's just as bad," not good enough.
19 Can't consider it. You can only consider the ones.

20 Now, I wanted to be able to explain to you what
21 might be an aggravating circumstance, so I wanted to be
22 very careful and make sure that I didn't put anything
23 in your mind. So I looked at the aggravating
24 circumstances, and I tried to pick out a couple
25 examples of what aggravating circumstances are so I

1 could just sort of show you what we're talking about.
2 And I wanted to make sure I had something that had
3 absolutely nothing to do with this case at all that was
4 far removed, not a consideration in this case.

5 One of those I looked at was like commission of
6 another crime such as rape. The commission of a murder
7 while committing a rape would be an aggravating
8 circumstance. Okay? There's some others we call like
9 victim classification aggravating circumstances. Like
10 the murder of a small child. Okay? That would also be
11 one of the statutory aggravating circumstances.

12 And let me make sure you understand those don't
13 apply at all to this case. I'm just giving them to you
14 by way of illustration. Okay? The State would have to
15 prove to you beyond a reasonable doubt that one of
16 those existed.

17 If the State failed to do so, there's only one
18 possible sentence and that would be life. Okay? But
19 if the State was able to meet that burden, then a very
20 unique part of the death penalty statute would come
21 into play. And that would be where the jury considers
22 what would be the appropriate sentence.

23 If they have reached that point, all of a sudden,
24 in addition to life, the death penalty becomes a
25 possible, a possible sentence in this matter. And you,

1 the jury, would be called upon to make a recommendation
2 of either life imprisonment or the death penalty. And
3 let me tell you that your recommendation would be
4 followed by the Court. The Court is bound to follow
5 your recommendation. You should know that. Okay?

6 The legislature, when it set out the death penalty
7 statute, tried to give some guidance to jurors as to
8 what they must do, and I would instruct you this is
9 what you have to do. You must give consideration to
10 mitigating circumstances. Aggravating circumstances
11 are things that make it worse, that make it a worse
12 murder than your typical murder.

13 Mitigating circumstances are things that extenuate
14 or make it less bad. Mitigating circumstances are
15 things that weigh in favor of you giving a life
16 sentence instead of a death sentence, if you understand
17 what I'm saying. And the legislature said, "Here is a
18 list of mitigating circumstances that we are requiring
19 you to consider."

20 But unlike aggravating circumstances -- I told you
21 if you were looking at aggravating circumstances, you
22 couldn't go outside the box. Even though you thought
23 something else was just as bad, you can't go outside
24 that box. You must find one of those.

25 But in mitigating circumstances, you're not

1 confined to the box. The finding of a mitigating
2 circumstance is a personal matter for each juror, which
3 means that each juror may find under the proper
4 circumstances his or her own special mitigator. And,
5 as I said, you go outside the box. You can look at
6 everything that is presented for to you consider.
7 Everything and anything that you find that you think
8 should be used in mitigation of, that is, that weighs
9 against giving the death penalty, you can certainly
10 consider.

11 And you would think -- I think a lot of people
12 have in their mind, "Well, if I find mitigating
13 circumstances, I don't give the death penalty. If I
14 do -- if I don't find any, I do give the death penalty.
15 If I do find some, I don't." It's not that simple.
16 That's not what you do.

17 There is no point in which I will instruct you
18 that if you find this, this or this or you don't find
19 that, you should give the death penalty. Or if you
20 find this, that or this and you don't find this, you're
21 supposed to give the life sentence. There is nothing
22 in this statute that requires you to find any sentence.

23 In fact, if you -- and I will instruct you that if
24 you don't find anything mitigating about this case, you
25 can still give a life sentence over a death sentence

1 for no reason. You're not going to be asked to give,
2 you don't have to have any reason other than in your
3 heart, that's what you want to do. Or you can get down
4 to the bottom line and just say, "Circumstances are
5 terrible, but we're going to grant mercy." And that
6 can be mercy because you think the defendant deserves
7 it for some reason, or it can be simply because you're
8 extending that mercy by grace.

9 The point is that there are two sentences,
10 possible sentences. And you, as a jury, as a matter of
11 moral judgment in your mind have to vote one way or the
12 other. You have to determine which would be
13 appropriate based on the facts and circumstances of any
14 particular case.

15 Also, to make sure if you decide to give the death
16 penalty, if -- if -- all of you are convinced that the
17 death penalty is appropriate, you would also be
18 required to sign the sentence order. I wouldn't be
19 where the just the foreman signs it anymore. As an
20 additional safeguard, the State requires each of you to
21 put your name on it. All right. That's the case.

22 All right. I hope that will help you in your
23 understanding of why the attorneys may be asking you
24 questions and where we're going. I think that's
25 information you need, and that's why I gave it to you.

1 I'm going to ask you now, all except -- who is
2 Ms. Breedmore (sic)?

3 MS. BREADMORE: "Bread."

4 THE COURT: Is it "Bread?" Okay.

5 MS. BREADMORE: Bread, like a loaf of bread.

6 THE COURT: Ms. Breadmore, you are first up. Come
7 around and take the witness stand.

8 (WHEREUPON, Prospective Jury Panel Number 14, with
9 the exception of Ms. Breadmore, exited the
10 courtroom at approximately 4:36 p.m.)

11 JAN BREADMORE,

12 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

13 EXAMINATION BY THE COURT:

14 Q Good afternoon, Ms. Breadmore. Remember you are
15 still under oath. I want to make sure the court
16 reporter has your name right. It's Breadmore, just
17 like it sounds?

18 A Uh-huh.

19 Q You're going to have to speak up and answer
20 affirmatively because she is, as we speak, typing up
21 everything we say.

22 A Okay.

23 Q And a nod, she can't get it.

24 A Okay. I got it.

25 Q All right. Ms. Breadmore, you were kind enough to

1 come in this afternoon, and we gave you a sheet of
2 paper, and we asked you to look at a little paragraph
3 we have for three different types or categories of
4 jurors. Do you remember that?

5 A Yes.

6 Q And we asked you to tell us if one of those
7 categories best describes your thoughts concerning a
8 capital case.

9 A Yes.

10 Q And you indicated -- I have your sheet here, and
11 you indicated that you were a C category juror; is that
12 correct?

13 A Yes, sir, yes.

14 Q And let's make sure that you and I understand what
15 we're talking about. You indicate that you're the type
16 juror that would need to hear the facts and
17 circumstances in aggravation and mitigation before you
18 could make a decision regarding punishment; is that
19 correct?

20 A Yes, sir.

21 Q Okay. Now, Ms. Breadmore, we just talked or I
22 just explained to you, as best I could, sort of the
23 procedures, the duties of jurors and some of the things
24 that would be relevant to how a capital case works.
25 Were you able to understand what I was talking about?

1 A Yes, sir.

2 Q I didn't talk too fast?

3 A No, sir.

4 Q Or jumble it up too much?

5 A No, sir.

6 Q You were able to follow it?

7 A Yes.

8 Q Do you think you have an understanding of what
9 your duties would be, generally speaking?

10 A Yes.

11 Q At the end of the case, I will give you a more
12 detailed explanation, but generally speaking, you have
13 now a grasp of how this procedure works?

14 A Yes, sir.

15 Q Okay. Now, do you believe that that procedure is
16 consistent with your thought process as far as how you
17 would determine punishment in a capital case?

18 A Definitely.

19 Q Okay. As I explained it to you, was there any
20 element of that process as it went along, anything that
21 you found offensive or oppressive or unfair to either
22 Mr. Cottrell or to the State of South Carolina?

23 A No, sir.

24 Q Was there anything that you think that you would
25 have a hard time or difficulty accepting in following

1 if that was my instruction?

2 A No, sir.

3 Q Do you think you would be okay with all that?

4 A Yes.

5 Q Now, Ms. Breadmore, we have been talking to jurors
6 now for several days, and I have shared sort of an
7 opinion that I have or a thought process that I have
8 with them. And let me do it with you and see if you
9 sort of agree with what I said or what I think.

10 It's my belief that we are all individuals and
11 that we have opinions and feelings, we have biases and
12 prejudices on certain subjects. And all of that, what
13 we are as an individual, sort of comes from our life
14 experiences -- good things that have happened to us,
15 the bad things that have happened to us, how we relate
16 to our family and our friends or our education level,
17 information that we may have about a particular
18 subject, all these things come together and are
19 responsible for how we feel. Would you agree with
20 that?

21 A I agree.

22 Q Now, what I have to determine is this, whether
23 there is anything in Jan Breadmore's past or if she has
24 any feelings or opinions about anything that might
25 substantially interfere with or impair her ability to

1 perform her duties as a juror. That's a determination
2 I have to make today. Okay?

3 And I will tell you that in my view, at least, the
4 best way, the number one consideration in performing
5 your duties as a juror is to be fair and impartial,
6 fair and impartial to Mr. --

7 A Cottrell.

8 Q -- Cottrell and to the State. Okay?

9 Now, in that regard, one of the primary concerns
10 that I have is your opinion or thoughts about the death
11 penalty in general. And I'm not talking about the
12 South Carolina death statute. I'm talking about the
13 concept of the death penalty being a penalty for a
14 crime. Do you have an opinion about that?

15 A I guess everybody has an opinion.

16 Q And that's right. We should.

17 A But we have guidelines that we have to follow
18 through the court to be able to determine that. So I
19 do believe in the death penalty in certain
20 circumstances.

21 Q All right. Can you think of anything else, any of
22 your experiences, anything about any knowledge that you
23 may have? I see here that you indicated that you had
24 some matter handled by the 15th Circuit Solicitor. How
25 long ago was that?

1 A I did not have a matter. My son -- my son was
2 paroled from Massachusetts to here.

3 Q Okay. All right. Would your interaction with the
4 Solicitor's office -- let me ask you. Do you know at
5 all Mr. Richardson other than, of course, he's our
6 Solicitor. He's on the ballot. I think he was in a
7 primary recently, I'm not sure. He's the Solicitor and
8 Mr. Hixson is his Chief Deputy Solicitor, I think.
9 Have you had any direct interaction with either of
10 those gentlemen?

11 A No, sir.

12 Q Okay. Would your interaction generally speaking
13 or your son's interaction generally speaking with the
14 Solicitor's office create any bias or prejudice for or
15 against the 15th Circuit Solicitor's office?

16 A No.

17 Q None at all?

18 A None at all.

19 Q Would it create any bias or prejudice in favor of
20 or against Mr. Cottrell?

21 A No.

22 Q Would not affect your decisions in this case or
23 performance of your duties in any way?

24 A No, sir.

25 Q Note at all. Okay. Let's talk about is there

1 anything else that you can think of that might even
2 come into play?

3 A No, sir.

4 Q Let's look at what we talked about or what I
5 explained to you a few moments ago. I explained to you
6 that if -- if -- again the State were to convince the
7 juror -- or a jury that he, Mr. Cottrell, had committed
8 murder and then moved to the second step and was able
9 to prove beyond a reasonable doubt again that at least
10 one aggravating circumstance existed, and they were
11 able to do that and we reach that point then where the
12 jury had to consider a sentence, can you remember the
13 two possible sentences that I told you?

14 A Death or life.

15 Q Death or life. And I talked with you about your
16 duty to then consider any mitigating circumstances.
17 All right?

18 A Uh-huh.

19 Q And do you understand that that would be necessary
20 before you decided on what the sentence should be?

21 A Yes.

22 Q Now, let's look at those possible sentences.
23 Could you fairly -- could you fairly consider giving
24 Mr. Cottrell a life sentence, recommending it? Could
25 you consider life?

1 A Yes.

2 Q Could you fairly consider and impartially consider
3 death as a sentence?

4 A Yes.

5 Q Would you be able to look at both of them
6 impartially or would you favor one over the other
7 before you began considering the aggravating and
8 mitigating circumstances? Do you favor one over the
9 other?

10 A Yes.

11 Q All right. Which one?

12 A Life.

13 Q So you favor life over death. Would that prevent
14 you unfairly from considering death? And I'm not
15 suggesting that you give death. I'm merely asking if
16 you would, during this process, fairly also look at
17 that as a possible sentence.

18 A Yes.

19 Q All right. You could do that?

20 A Yes, I could.

21 Q And you would do that?

22 A Yes, I would.

23 Q If -- if -- after the deliberation process the
24 jury were to make a determination that death was the
25 appropriate sentence -- again, I'm not suggesting that.

1 I just want to know your feelings about the next
2 step -- would you, in addition to voting for it, be
3 able to sign your name to a recommendation?

4 A If I voted for it, I would sign my name. I have
5 to go to bed at night and be able to sleep.

6 Q All right. Thank you very much.

7 EXAMINATION BY MR. McGUIRE:

8 Q Good afternoon, Ms. Breadmore.

9 A Hi.

10 Q My name is Bill, Bill McGuire. And this is my
11 opportunity to ask you a couple questions.

12 A Sure.

13 Q I want to start with a couple things on your
14 questionnaire. Before you knew you weren't supposed to
15 hear anything about the case or do anything, you were
16 able to do a Google search?

17 A Yes, sir.

18 Q So you actually know some facts about the case?

19 A Okay. If you want to call that facts, okay. The
20 media is the media's facts, yeah.

21 Q That's a good way to look at that. Tell us what
22 you saw.

23 A That Mr. Cottrell was being retried on a murder
24 case.

25 Q What happened in the first one?

1 A He was found guilty, sentenced to death, but the
2 State didn't offer manslaughter or involuntary
3 manslaughter, one of the two, so it was now put on the
4 table for the jury to consider.

5 Q Okay. So your understanding is the case was
6 reversed because the jury didn't have the opportunity
7 to vote --

8 A Yes.

9 Q -- for a lesser charge?

10 A Exactly.

11 Q Manslaughter. Now, the fact that you have this
12 information about a jury convicting before, would you
13 start off thinking, "Well, they already did it. He
14 must be guilty"?

15 A No, sir.

16 Q You would come in completely fresh?

17 A Yes, sir.

18 Q And objective?

19 A Yes, sir.

20 Q And you would have a front row seat --

21 A This is like a new case. This is a new case.

22 Q That's exactly where we're heading with that.

23 Now, you worked with the Suffolk Sheriff's Office?

24 A Yes, I was a nurse for the Suffolk County

25 Sheriff's Office in Boston.

1 Q Now, the judge read the indictment to the whole
2 panel. And you, obviously, know from Google that this
3 is an officer who's the decedent in the case, an
4 officer who was killed in the line of duty.

5 A Uh-huh.

6 Q The fact that you have this background working
7 with the sheriff's office and the decedent is an
8 officer in this case, would that impact you in any way?

9 A Not at all. Not at all.

10 Q Okay. Now, you indicated you're not a real
11 supporter of the death penalty, but there are certain
12 circumstances where it's warranted?

13 A Exactly.

14 Q Okay. And are you saying that if the case is bad
15 enough, then you could contemplate the death penalty?

16 A Yes..

17 Q In fixing punishment, if you were a juror and you
18 heard everything, you heard everything the State had,
19 everything that Mr. Cottrell's lawyers put up and you
20 were in that position where you had to make an
21 individual moral judgment -- that's what it's called,
22 the decision-making.

23 A Yes, sir.

24 Q If you had to make an individual moral judgment as
25 to voting for the life penalty or the death penalty,

1 would the background of the person who committed the
2 act, committed the murder, be relevant in that
3 decision?

4 A Yes.

5 Q Why is that?

6 A Because there may be mitigating circumstances
7 there. I don't know what his mental status is or was
8 or -- definitely. You don't know. I don't have the
9 case in front of me. I really don't know about this
10 case other than what I've read.

11 THE COURT: Your answer is perfect.

12 MS. BREADMORE: If -- if -- I don't believe the
13 court should have sent a questionnaire about that. A
14 nice little card would have been fine. I wouldn't have
15 known anything. I never would have Googled anything.

16 BY MR. MCGUIRE:

17 Q You're fine. You're fine, ma'am. We have faith
18 and confidence based on your answers, you strike me as
19 a very sort of outspoken, forthright person.

20 A I am.

21 Q What I see is what I get.

22 A Yeah.

23 Q I trust you can put that aside. But I will ask
24 you, and the judge would charge you -- he might even do
25 it today -- the fact that you have a little knowledge

1 of the case, he would ask that you not share that with
2 anybody.

3 A Exactly.

4 Q So if you were back with the panel or on the jury,
5 some people might not know anything about the case, and
6 you're supposed to leave them in the dark about --

7 A Right. I agree.

8 THE COURT: You understand that?

9 MS. BREADMORE: I do understand that.

10 THE COURT: Very well.

11 MR. MCGUIRE: And I think that's all I have.

12 Thank you, Judge.

13 MR. HIXSON: Thank you, your Honor.

14 EXAMINATION BY MR. HIXSON:

15 Q Hi, ma'am. My name is Scott Hixson. I'm the
16 Chief Deputy, as the judge mentioned earlier. This is
17 Jimmy Richardson. Just a couple questions.

18 Back when you indicated on your questionnaire, I
19 think you said your son or two sons --

20 A Yes.

21 Q -- came down to South Carolina, paroled out from
22 Massachusetts?

23 A One son paroled to South Carolina from
24 Massachusetts, and the other one did his time in
25 Massachusetts.

1 Q Fair enough. Is he out, too, then?

2 A Yes.

3 Q I'm not going to pry. It's not really my
4 business. Do you feel like he got a fair shake, you
5 don't have any particular bias?

6 A No. They did their time and they are productive
7 human beings now.

8 Q That's exactly right. That's great.

9 Also, as far as I just really wasn't sure about a
10 nurse for the sheriff's department. I mean, what's
11 your kind of daily job there? I don't know we have
12 nurses for the sheriff's department around here. Did
13 you work in the detention center or did you work --

14 A They were pretrial. It was detention, pretrial.

15 Q Got you. We have medical here, too. I just
16 really wasn't sure of the context. Thank you for your
17 service there. That's quite a job, I am sure.

18 A Thank you.

19 Q Would your relation involved with the pretrial
20 detention process, do you think would prejudice or bias
21 you in any way with that role?

22 A No, not at all.

23 Q I don't get that feeling from you, but I thought I
24 would ask anyway. I appreciate your questions (sic).
25 Got one last question. It's a procedural step just to

1 get an idea where you're from. I certainly think
2 you're qualified. And that is South Carolina, in the
3 process we have here, is if you do end up on the jury
4 and that jury initially comes back with a verdict of
5 murder, then we go to the second phase, have a little
6 cooling off period. And then we hear evidence. The
7 State will put up evidence in aggravation, and the
8 defense may or may not put up evidence to lessen the
9 crime. The judge charges you. You go back, and then
10 you guys go back there and talk about it and come up
11 with a verdict you think is appropriate.

12 A Right.

13 Q Let's just say, "You know what, after hearing all
14 that, I think we should come back with a verdict of
15 death."

16 A Uh-huh.

17 Q South Carolina has a verdict form actually that
18 has 12 slots on it. And if you're on the jury, there's
19 going to be 12 lines, and you have to put pen to paper
20 and say, "this is my verdict."

21 A Uh-huh.

22 Q Do you have any problem doing that?

23 A No, I do not.

24 Q I didn't think you would, ma'am. Have a great
25 day.

1 MR. HIXSON: And, your Honor, we believe she's
2 qualified.

3 THE COURT: Do you want to be heard?

4 MR. McGUIRE: Agreed.

5 THE COURT: Both the State and the defense agrees
6 and I find that you are qualified to sit on this case.
7 You are not on the jury now, but what you are is you
8 are on the broader panel from which the jury will be
9 sworn.

10 We're not going to need you for another day or so.
11 I'm going to be continuing with this voir dire
12 procedure. I would ask you, though, after 6 o'clock on
13 Sunday afternoon to call that number you were just
14 given, and there will be instructions for when you are
15 to appear.

16 You do know that if you are selected that you will
17 be sequestered and stay at a hotel. So I would ask you
18 when you appear, because we will sequester you as soon
19 as you are selected if you are selected.

20 When you appear if it's Monday or whatever, please
21 bring your medications if you have any, your toiletries
22 and some clothing for several days. Just leave them in
23 your car. If you are selected, I'll make sure that one
24 of these gentlemen go out with you and collect your
25 things before you're taken over to the hotel. Okay?

1 MS. BREADMORE: Okay.

2 THE COURT: Thank you, ma'am. And, please, let me
3 caution you again. If you know anything about the
4 case -- and you say you do -- please do not share that
5 with any other juror.

6 MS. BREADMORE: No, sir.

7 THE COURT: Don't discuss the case with anyone.

8 MS. BREADMORE: I won't talk about the case.

9 THE COURT: Thank you, ma'am.

10 (WHEREUPON, Ms. Breadmore exited the courtroom
11 at 4:57 p.m.)

12 (WHEREUPON, Mr. Velazquez entered the courtroom
13 at 4:57 p.m.)

14 EDGAR GARCIA VELAZQUEZ,

15 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q Come around, sir. How are you today?

18 A Good. You?

19 Q I'm well. Do you remember Monday when I asked the
20 jurors not to do any research about the case or read
21 any news reports or talk about it with anyone? Have
22 you complied with that?

23 A Yes, I haven't talked to anyone.

24 Q You haven't. Good for you. Let me just tell you
25 that that's what we call standing orders. And until

1 you're released from the jury panel, it applies. Okay?

2 A Okay.

3 Q All right. Now, first of all, let me ask you by
4 what name do you go?

5 A Edgar.

6 Q Last name?

7 A Velazquez.

8 Q You don't go by Velazquez Garcia?

9 A Just Velazquez.

10 Q And you're comfortable with me calling you that?

11 A Yeah. Sure.

12 Q Thank you. That is V-e-l-a-z-q-u-e-z?

13 A Yes, sir.

14 Q Thank you. All right. Mr. Velazquez, you came in
15 earlier today and we gave you a form.

16 A Yeah.

17 Q And on that form we asked you if one of the three
18 categories described you as a juror, and you indicated
19 that you are a category C type juror; is that right?

20 A Yeah.

21 Q Just so we're talking about the same thing and
22 understand each other, it's my understanding you were
23 saying that you're the type of juror that would need to
24 hear the facts and circumstances in aggravation and
25 mitigation before you could make a decision about

1 punishment in a death penalty case?

2 A Yes.

3 Q Does that best describe you?

4 A Yes.

5 Q Now, a moment ago I talked with you and your
6 fellow jurors about the procedure and the duty and
7 responsibilities of jurors in a death case.

8 A Yes.

9 Q Okay. Were you able to follow that?

10 A Yeah.

11 Q Okay. And did I talk too fast or was I confusing?
12 Do you feel like you have a grasp now?

13 A I got a grasp, yeah.

14 Q You understand how the procedure works?

15 A Yes, sir.

16 Q Now, do you believe that that procedure, the way a
17 juror or a jury reaches a recommendation of a penalty,
18 is that consistent with the type juror you are?

19 A No.

20 Q It's not?

21 A No.

22 Q It doesn't fit with what you feel should be done?

23 A Well, just a little bit.

24 Q It does?

25 A Yeah.

1 Q And would you agree, though, that both of the
2 procedures -- or that procedure does involve looking at
3 the aggravating and mitigating circumstances of the
4 case?

5 A Uh-huh.

6 Q Before you make a decision?

7 A Yeah.

8 Q I mean, it allows you to do that?

9 A Yes, sir.

10 Q Okay. So in that regard it is consistent with
11 your thoughts or your feelings about it?

12 A Yes, sir.

13 Q Okay. And that was really the thing I was
14 concerned about. Was there anything about that
15 procedure that in your mind or you felt like was unfair
16 or oppressive, unfair either to the State or to
17 Mr. Cottrell?

18 A No.

19 Q If you were on this jury and at the end of the
20 trial I gave you an instruction as to what you were
21 supposed to do and it was along the lines and will be
22 along the lines of what I talked about today, could you
23 follow those instructions, could you --

24 A Yeah.

25 Q -- could you do what I told you to do?

1 A Yes, sir.

2 Q You wouldn't have any problems with that?

3 A No problems.

4 Q Okay. Mr. Velazquez, today I have to determine
5 whether or not you would be an appropriate juror for
6 this kind of case. Okay? It's a death penalty case.
7 And to do that, what I have to find is whether or not
8 there is anything about you that would significantly
9 impair your ability to carry out your duties as a
10 juror. All right?

11 A Okay.

12 Q Okay. And the best way to describe a juror's
13 duties in just a few words is to say a juror has to be
14 fair and impartial. Do you understand that?

15 A Yes, sir.

16 Q All right. Is there anything about your life
17 experiences or your opinions or your feelings that you
18 believe would impair your ability to be a fair juror,
19 an impartial juror in this case?

20 A No.

21 Q Nothing you can think of?

22 A Nothing.

23 Q Tell me your views on the death penalty generally
24 speaking. Do you have any views on the death penalty?

25 A Not really. I mean, it's like my first time

1 experiencing this thing.

2 Q And it's a very rare -- I don't really know
3 anybody that's been on two.

4 A Yeah.

5 Q So don't feel bad about that. We just don't have
6 that many of them. But if I were to say to you,
7 "Edgar, tell me what you think about imposing the death
8 penalty for a murder."

9 A I would -- like deny it?

10 Q What do you think about that?

11 A I mean, if the case is like if the defendant is
12 like guilty, I see like he's really guilty, and then
13 the sentence is like really, really like if it's not
14 too good, it's okay with me.

15 Q Well, you never have to give the death penalty.

16 A Okay.

17 Q If the circumstances were bad enough surrounding a
18 case, could you consider giving or recommending the
19 death penalty?

20 A (Shaking head.)

21 Q You could not?

22 A Uh-huh.

23 Q You would not ever recommend the death penalty?

24 A Not really.

25 Q You could not do that?

1 A No.

2 Q Okay. Are you telling me that in every case
3 you're going to give life in prison, not the death
4 penalty?

5 A I mean, I'm like between those two, like life and
6 death.

7 Q Yes.

8 A I'm not going to choose between somebody has to
9 live or die.

10 Q You're not going to do that?

11 A No.

12 Q You're going to give them life; is that what
13 you're saying?

14 A (Nodding.)

15 Q You could not make the choice. You would have to
16 give them life? And I'm trying to understand you.

17 A Yeah.

18 Q Okay. You would give them life?

19 THE COURT: Argument?

20 MR. McGUIRE: No questions.

21 MR. HIXSON: That's a substantial impairment.

22 MR. McGUIRE: No questions.

23 THE COURT: You may step down. You are excused.

24 You do not have to come back. Thank you, sir.

25 (WHEREUPON, Mr. Velazquez exited the courtroom)

1 at 5:04 p.m.)

2 THE COURT: Let the record reflect that
3 Mr. Velazquez was excused with both the consent of the
4 defense and the State, and I find that there was
5 substantial impairment. And in addition thereto, I
6 believe Mr. Velazquez would have had difficulty, great
7 difficulty, with the language barrier. Okay.

8 MS. NORRIS: We agree, your Honor.

9 THE COURT: Okay.

10 (WHEREUPON, Ms. Hutley entered the courtroom
11 at 5:05 p.m.)

12 HEIDI HUTLEY,

13 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION BY THE COURT:

15 Q Ms. Hutley, how are you?

16 A I'm good. Thank you.

17 Q I'm glad to hear that. We are running a little
18 bit behind, but we're so happy that you are here.

19 Okay. Ms. Hutley, did you remember my instruction
20 on Monday not to talk to anybody about the case, not to
21 look up anything about the case, not to read or
22 anything about the case or watch any newscasts about
23 the case?

24 A I remembered.

25 Q Did you follow that instruction?

1 A Yes.

2 Q Good. I want to remind you that that's what we
3 call a standing order, which means as long as you're
4 part of this process and until I release you from your
5 participation here or your subpoena, you are under that
6 order. Okay?

7 A Okay.

8 Q Thank you. Ms. -- it's H-u-t-l-e-y?

9 A Yes.

10 Q "Hutley." Ms. Hutley, you were kind enough to
11 come in today, this afternoon, and you were given a
12 form here where you were asked to read about three
13 different categories of jurors and select the one that
14 best describes you. And looking at it, looks like you
15 chose C; is that right?

16 A Correct.

17 Q I want to make sure that you and I are on the same
18 page, we don't have any misunderstanding. You are
19 telling me that a C juror is one who would need to hear
20 the facts and circumstances in aggravation and in
21 mitigation before she could make a decision regarding
22 punishment in a death penalty case. Does that best
23 describe you?

24 A Yes, it does.

25 Q Okay. Now, you were here earlier, and I talked to

1 you about the duties and responsibilities and the
2 procedures generally in a capital case. Were you able
3 to follow me? Did I talk too fast or did I wander too
4 much?

5 A No, I followed.

6 Q You were able to follow me. And do you think you
7 would have a fairly good grasp now of how the process
8 works and what the duties of jurors would be in that
9 process?

10 A Yes.

11 Q Okay. And let me ask you this. Is that process
12 somewhat consistent with your thought process as a
13 class C juror, to review mitigation and aggravation and
14 that sort of stuff and hear all those factors before
15 any decision is made?

16 A Yes.

17 Q So that process sort of takes you along like what
18 you say or you feel you should do; is that right?

19 A Yes.

20 Q All right. Now, looking back at that process as I
21 described it to you, did you see anything in there or
22 was there any element or part of it that you felt was
23 unfair to the State or to Mr. Cottrell or that you felt
24 was oppressive?

25 The reason I ask you that is if I were to charge

1 you at the end of the trial and you were on this jury
2 along those lines and the State had met its burden of
3 proof and we were getting to the point where the jury
4 had to consider a sentence, is there anything along
5 there that would -- that you feel was unfair or
6 oppressive that you would have trouble with following
7 my instructions?

8 A No.

9 Q Okay. You could live with that process, I guess,
10 is what I'm saying?

11 A I mean, I come from a country where they don't
12 have that sentence, so.

13 Q We are you from?

14 A I'm from England.

15 Q Good. Ms. Hutley, it's my job to make a
16 determination of whether or not there's anything about
17 you that would materially impair your ability to carry
18 out your duties as a juror. Okay? You're going to
19 have -- you have to answer verbally because my court
20 reporter can't see you when you nod.

21 A Okay.

22 Q And I guess the best way, if I had to describe the
23 jury's duties in a couple words, I would have to say be
24 fair and impartial. That's the key --

25 A Yes.

1 Q -- to being a juror. You agree with that?

2 A Yes.

3 Q Would you also agree with me if I told you that it
4 was my opinion that we are all the product of our life
5 experiences -- the good things and bad things that
6 happen to us, how we relate to our friends and family
7 and people we meet in business, our education, the
8 knowledge we may gain about a particular subject, all
9 those things sort of come together and in great part
10 establish how we feel about certain things, the
11 opinions that we may have, prejudices or biases on
12 particular subjects that we may have. Would you kind
13 of agree with that, that opinion of mine?

14 A I would, yeah.

15 Q Okay. Now, so I want to explore how you feel
16 about some things, and these attorneys will as well.
17 And let me again promise you that no one is being
18 critical of any opinion you may have. You have the
19 right to have your own opinion as an individual. No
20 one is going to try to change it. No one is going to
21 criticize you. We respect it. All I'm asking is you
22 be candid with us.

23 A Okay.

24 Q Our opinions and the way we feel often impact the
25 way we may perceive certain things. Evidence is one.

1 The way we may approach a decision-making process like
2 whether we should give life or death in a capital case,
3 those are all things I think could be affected or
4 impacted by our opinions and feelings.

5 Let me ask you what are your feelings about the
6 death penalty generally? I know in Great Britain they
7 don't have the death penalty, but in the United States,
8 I think 30-some states, there is a death penalty. And
9 that's controversial here. But do you have any
10 opinion, any personal opinion about it?

11 A I actually don't have any opinion about it.

12 Q You could not tell me that you oppose it or that
13 you favor it, you're just indifferent to it?

14 A I would say maybe just for the most heinous of
15 crimes.

16 Q That's a fair opinion. The reason I ask you that
17 is I think that a person's opinion of the death penalty
18 can affect dramatically in some cases that thought
19 process if we were to get to the part where we had to
20 agree upon or the jury had to agree upon and select a
21 punishment in this case.

22 For argument's sake, let's say the jury has, and
23 just for argument's sake, the jury has convicted the
24 defendant of the murder, and the jury has unanimously
25 and beyond a reasonable doubt determined that there is

1 at least one aggravating circumstance, and we're to the
2 point where the jury must then make a decision
3 concerning the appropriate sentence. Do you remember
4 the two sentences that would be available?

5 A Uh-huh.

6 Q And they were?

7 A The aggravated and the --

8 Q If we got to that point and the jury had to
9 recommend a sentence?

10 A Either life in jail or the death penalty.

11 Q That's absolutely correct. You heard me tell you
12 that by law you had to look at all the evidence and
13 consider mitigating or extenuating circumstances in
14 that process. And I told you that you didn't even have
15 to find any, that you could still for no reason give
16 life over death or grant mercy either by grace or
17 because you felt that the defendant deserved mercy and
18 give life over death. Is that your understanding?

19 A Uh-huh.

20 Q What I would like to know is are you able, are you
21 able to fairly and impartially consider both sentences?
22 In that process would you have made a predetermination
23 of which sentence you were going to impose, or would
24 you approach that process with an open mind and
25 being -- the State is going to be asking for the death

1 penalty if we got to that point. And the defense, if
2 we got to that point, is going to be asking for life.
3 Could you give fair consideration to the position of
4 both sides?

5 A Yes, I could give fair. But I, to be honest, I
6 would not want to put my name -- that's the hardest
7 thing to do -- is put my signature to something like
8 that.

9 Q Let me just sort of give you an idea of why that's
10 required. That's an additional safeguard. The
11 legislature said if death is recommended, it absolutely
12 has to be a unanimous decision. All 12 jurors have to
13 agree to give death or to recommend the death sentence.
14 And as an additional precaution, they require that each
15 person affix his name. They have 12 lines. Everybody
16 signs it so there's no question everybody voted for it.
17 That's what that's for.

18 Are you telling me that even if you found or voted
19 for the death penalty, you could not sign your name to
20 it?

21 A I would find it difficult being one of the 12 that
22 had to make the decision.

23 Q Well, if you're on the jury --

24 A I know.

25 Q Only those 12 people can do it. The buck cannot

1 be passed. It stops there. Are you telling me that
2 you do not believe that you could impose the death
3 sentence.

4 A Yes.

5 Q That's what you're telling me?

6 A Yes.

7 Q Regardless of -- and I'm not suggesting anything
8 -- regardless of how heinous a crime may be, you could
9 not impose the death penalty or recommend the death
10 penalty? You know, we use those words interchangeably.

11 A Yes.

12 Q But in reality, if you recommend it, that's what's
13 going to happen.

14 A It's hard, yes, because I believe in the heinous
15 crimes and the fact they should be punished in that
16 way. But I'm just thinking of myself sitting there and
17 actually making that decision would be really hard.

18 Q And don't feel uncomfortable about your opinion.
19 If that is your opinion and that's how you feel, we
20 need to know. We need to know at this point, not down
21 the road.

22 But if that is your opinion -- and you have been
23 candid and honest with us about that. So let me ask
24 you again. Would you be able, given the choice between
25 life and death, were you put in a position where you

1 had to choose, could you give equal consideration to
2 both sentences, and could you under the appropriate
3 circumstances give life or death and sign your name in
4 the event you gave the death sentence?

5 A I don't think I could. I just --

6 Q I appreciate that. No one is being critical. I
7 just want to make sure that I understand you.

8 A Yes.

9 THE COURT: Do you want to talk to her?

10 MR. McGUIRE: I have no questions, Judge.

11 MR. RICHARDSON: No questions.

12 THE COURT: Thank you, Ms. Hutley.

13 MS. HUTLEY: I'm sorry.

14 THE COURT: Don't apologize. You will make a
15 great juror and maybe we'll have you back on another
16 case.

17 (WHEREUPON, Ms. Hutley exited the courtroom
18 at 5:20 p.m.)

19 MR. McGUIRE: Judge, may we approach quickly?

20 (WHEREUPON, counsel approached the bench.)

21 (WHEREUPON, Mr. Livingston entered the courtroom
22 at 5:21 p.m.)

23 MORRIS LIVINGSTON,

24 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

25 EXAMINATION BY THE COURT:

1 Q Good afternoon, Mr. Livingston.

2 A Hi. How are you?

3 Q Good. Thanks for asking.

4 Mr. Livingston, you were kind enough to indicate
5 that you were a type A or category A juror; is that
6 correct?

7 A Yes, sir.

8 Q And that is one that believes that if there is a
9 murder, regardless of the circumstances, the only
10 appropriate sentence is death. Is that your feeling?

11 A Yes, it is.

12 Q And are you firm in that?

13 A I am.

14 THE COURT: Any questions?

15 MR. McGUIRE: No questions.

16 MR. HIXSON: No, your Honor.

17 THE COURT: I find that Mr. Livingston's opinion
18 would substantially impair his ability to perform as a
19 juror in this case, and I am going to release him.

20 You're free to go.

21 MR. LIVINGSTON: All right.

22 (WHEREUPON, Mr. Livingston exited the courtroom
23 at 5:23 p.m.)

24 (WHEREUPON, Ms. Albrecht entered the courtroom
25 at 5:23 p.m.)

1 LINDA ALBRECHT,
2 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

3 EXAMINATION BY THE COURT:

4 Q Good afternoon, Ms. Albrecht.

5 A Good afternoon.

6 Q It's good to see you again. And you tell me you
7 are 65. You must have turned 65 yesterday.

8 A No. Actually I'm 67. Thank you.

9 Q Bless your heart.

10 Ms. Albrecht, do you recall on Monday me
11 instructing jurors not to have any contact with anybody
12 about the case, not to do any research, not to look at
13 any news reports of any kind, that sort of thing?

14 A Yes.

15 Q Have you complied with that?

16 A I have. I'm not normally a news watcher, so.

17 Q I want to remind you that's what we call a
18 standing order. And until such time as you would be
19 released from service in this case, that would apply.
20 Okay, and ask you to please comply with it. All right?

21 A Uh-huh.

22 Q Ms. Albrecht, you were kind enough to come in and
23 you filled out a form for us where we ask you if you
24 would look at three different categories of jurors and
25 select which one best describes you. And you have

1 indicated you're a C type; is that right?

2 A Yes.

3 Q And just so that you and I are on the same page,
4 let me tell you what that means to me. You are saying
5 you're the type juror that would need to hear all the
6 facts and circumstances in aggravation and mitigation
7 before you could make a decision regarding punishment
8 in a death penalty case?

9 A Right.

10 Q Okay. And is that your feeling? Does that best
11 describe you?

12 A Uh-huh.

13 Q Now, you're going to have to kind of give us a
14 little help and speak into that microphone because this
15 nice lady right down here has to write down everything.
16 And if you nod and shake your head, she can't pick it
17 up.

18 A Okay.

19 Q So, please, if you could do that for me, I would
20 appreciate it.

21 Now, Ms. Albrecht, you were in here a moment ago,
22 and I talked to you about what a death penalty case or
23 a capital case was. And I talked to you about how the
24 procedure worked and about what the duties of a juror
25 would be in that process and what would be expected of

1 you and what your duty would be. Were you able to
2 follow what I was saying?

3 A Yes.

4 Q I didn't talk too fast, I didn't --

5 A No.

6 Q -- get all bumbled up and stray too far and mess
7 it up?

8 A No. It was fine.

9 Q Do you feel like you have a grasp now, an
10 understanding of how that process works?

11 A Yes.

12 Q Did you find that helpful?

13 A Oh, very.

14 Q Okay. Now, we just talked about the type juror
15 you feel you are. Do you believe that your feelings
16 are consistent with the process that we have here?

17 A Yes, I would think so.

18 Q You would consider mitigating, aggravating
19 circumstances? There are parallels in here, aren't
20 there?

21 A Right.

22 Q Okay. Overall, looking at that process, did you
23 think there was anything about it that was, in your
24 mind, was oppressive or unfair either to the State or
25 to Mr. Cottrell? I want to know if you felt that it

1 was overall fair and it was nothing that would be
2 offensive to you if you were required to follow that
3 process.

4 A No, nothing would be offensive to me. If the
5 proof is there, then.

6 Q I'm speaking generally about the process.

7 A Okay. Okay. No, I don't have a problem with the
8 process.

9 Q So at the end of the trial if I were to instruct
10 you, and they would be in more detail, but if they sort
11 of followed that procedure, could you accept that and
12 follow those instructions?

13 A Yes.

14 Q The reason I ask you, I just want to make sure
15 there was nothing that you said, "This is just not
16 fair, and I can't do it." Overall you thought it was
17 fair and you could follow it?

18 A Yes.

19 Q Okay. That's an important thing. All right.

20 Now, Ms. Albrecht, we have been talking to lots of
21 people over the week, and I've shared with them my
22 opinion about something and that is what makes us who
23 we are, what formulates our opinions and feelings about
24 things, the interests and prejudices and the biases we
25 may have on certain subjects. And it's my feeling that

1 we have to look at our life experiences. We look at
2 the good things that have happened to us, the bad
3 things that have happened to us, how we relate to our
4 family and friends and people we work with, things like
5 our education, things about information that we may
6 have on a subject all goes together and sort of
7 formulates that opinion we have. Would you agree with
8 that?

9 A Absolutely. Your environment and how you were
10 raised.

11 Q And that's sort of something that we can all agree
12 on?

13 A Yes.

14 Q Now, I have to make a determination if there's
15 anything about you that would significantly hinder your
16 ability to carry out your duties as a juror. And
17 probably the most important duty of a juror is to be
18 fair and impartial. And would you agree that in a case
19 like this your opinions, the way you felt about things
20 could impact that, generally speaking? Let me say a
21 person's feelings and opinions could impact the way he
22 perceives his duties or reacts to evidence and things
23 of that nature?

24 A Well, I think I would have to put them aside, my
25 personal feelings aside.

1 Q Okay. That's a great answer. In that regard, let
2 me ask you about something that I think is very
3 important in this case and that is the death penalty
4 generally. Not specifically the South Carolina death
5 penalty or death statute, but the concept of using
6 death as a punishment for crimes. Do you have a
7 feeling on that? Do you have an opinion on that one
8 way or the other?

9 A I would say no, I think it would depend on the
10 crime, what it was, you know, and the evidence that
11 warranted it.

12 Q Do I understand you to say then in certain
13 situations you would believe that it's appropriate?

14 A Yes.

15 Q Would you ever think that under certain
16 circumstances that life imprisonment would be a
17 sufficient punishment for the crime of murder?

18 A Sure, yes.

19 Q So it would be a range, death on one end, life
20 imprisonment on the other?

21 A Right.

22 Q Depending on the circumstances?

23 A Uh-huh.

24 Q Okay. The reason I wanted to talk to you about
25 that specifically was that, you know, assuming -- and

1 just assuming -- the State was able to carry its burden
2 in the first part of this trial, they convinced the
3 jury beyond a reasonable doubt that Mr. Cottrell
4 committed murder, okay.

5 A Uh-huh.

6 Q And assuming then we move to the second part --
7 just assuming -- and the State again was able to carry
8 its burden and convince the jury beyond a reasonable
9 doubt that there was an aggravating circumstance. Do
10 you remember then when we get to the point where the
11 jury had to consider what penalty to recommend? And I
12 want to stress upon you again that we call it a
13 recommendation.

14 A Yes.

15 Q But it would be followed by the Court. It
16 essentially determines the sentence. Okay?

17 A Uh-huh.

18 Q Do you remember the two possible sentences if we
19 got to that point? They were?

20 A The death penalty or life.

21 Q Death penalty or life. Okay. And you have
22 already told me that you have no problem following the
23 law concerning your duty as a juror to look at the
24 evidence to determine if there were mitigating
25 circumstances?

1 A Correct.

2 Q You understand that to be extenuating or weighing
3 in favor of life as opposed to death circumstances.
4 You understand that?

5 A Yes.

6 Q And do you understand that even if you couldn't
7 find any, you could still recommend life over death for
8 no reason or just as an extension of mercy, either one?

9 A Yes.

10 Q A juror could do that?

11 A Yes.

12 Q And that is an individual judgment, moral judgment
13 a juror has to reach. Do you understand?

14 A Yes.

15 Q Okay. Now, what I want to do is in doing that,
16 could you give fair consideration, fair consideration
17 to either sentence, life or death, or would you have
18 some preconceived idea or bias towards one or the other
19 before you consider any mitigators or anything like
20 that?

21 A I think it would depend on what the circumstances
22 were. I wouldn't have a problem with either.

23 Q Okay. Well, that's what I want to know. Could
24 you go into that process with an open mind, and could
25 you be receptive to the comments of your fellow jurors

1 and your interpretation of the aggravators and
2 mitigators, and could you consider giving a life
3 sentence?

4 A Yes.

5 Q Could you consider -- and we don't know -- we
6 don't know what the mitigators are going to be. We
7 don't know what aggravators are going to be proven, if
8 any.

9 A Right.

10 Q Could you also consider fairly and impartially the
11 possibility of a death penalty as well?

12 A Yes.

13 Q You could do both?

14 A Yes.

15 Q Now, I told you a moment ago that if you got to
16 that point and you and your fellow jurors
17 unanimously -- and please don't think I'm suggesting
18 this. I am not. But if you were to determine that the
19 death penalty was appropriate, there is another step.
20 And that is designed really as a safeguard for a
21 defendant in a case like this. And that is to ensure
22 that each juror actually did vote for the death
23 penalty. And that is to require each juror, a list of
24 12 lines, if you voted for it, you have to sign for it
25 to verify that that was your vote.

1 A Yes.

2 Q Could you do that, too?

3 A Yes.

4 Q If you reached that point?

5 A Yes.

6 Q Okay. Now, back to how you feel about things and
7 your opinions. Do you know any reason at all, has
8 anything happened to you, do you know anything, do you
9 harbor any biases or prejudices, anything that we need
10 to consider or that I need to know in my determination
11 of whether or not you can be that fair and impartial
12 juror, whether or not there's anything that would
13 substantially impact your ability to carry out your
14 duties as a juror?

15 A No.

16 Q Thank you, ma'am.

17 Questions.

18 EXAMINATION BY MR. McGUIRE:

19 Q Good evening, ma'am.

20 A Good evening.

21 Q My name is Bill, Bill McGuire. This is my
22 opportunity to talk to you. I think I'll be pretty
23 brief.

24 What I want to do is just ask you if you were
25 governor of South Carolina for a day and you took Nikki

1 Haley's job --

2 A The things I would change.

3 Q There are a lot?

4 THE COURT: We're not going to get into these
5 hypotheticals.

6 A No, I'm joking.

7 BY MR. McGUIRE:

8 Q Your view about the death penalty, should we have
9 the death penalty or should we not have it?

10 A Oh, I think there are cases where it is warranted.

11 Q Okay. And does having the death penalty sort of
12 as a societal goal, does it have an effect on crime or
13 deterrents or anything like that?

14 A I think it may.

15 Q Okay. When it comes to if you were on the jury
16 and you were in that position of determining whether
17 the proper punishment would be life or the death
18 penalty, would background -- would background
19 characteristics, life history of the person who
20 committed the act, would that be relevant?

21 A I think it all depends. Everyone has different
22 backgrounds, and that doesn't mean that you turn out
23 wrong. You know, you could have a really bad
24 background and be, you know, president of the United
25 States. So I don't think that background really

1 determines.

2 Q So sort of their upbringing, their life history
3 wouldn't be relevant in that life-and-death decision?

4 A No, I don't think so.

5 Q And you don't know anything about this case, do
6 you, facts, or do you?

7 A No. I remember something, hearing something about
8 it when it happened many years ago. But like I said,
9 I'm not a news watcher. I don't get the newspaper. I
10 have other things. Busy.

11 Q Okay. Now, I want to talk to you just very
12 briefly about the sentencing phase. The judge told you
13 that a capital case is different, there are different
14 rules. And his questions were geared towards whether
15 you would follow the law. And I'm going to talk to you
16 a little bit about that. Okay?

17 One of the principles of that is in the sentencing
18 phase, if you were to reach that point -- and I want to
19 tell you right now that just because I'm talking about
20 sentencing doesn't mean I'm conceding that Mr. Cottrell
21 is guilty. Do you understand that?

22 A No, I understand.

23 Q You would expect and want me to defend him
24 zealously?

25 A Yes.

1 Q It would be unfair if I didn't?

2 A Absolutely.

3 Q If we were to get to the sentencing phase, the
4 judge would instruct the jury that any individual juror
5 could vote for life penalty for any reason, no reason
6 or mercy alone.

7 The first part of that is for any reason. And
8 there doesn't have to be unanimity on the jury. What I
9 mean by that is a person right here could say, "I want
10 to vote for life for reason A." Somebody in the back
11 could say reason C, and somebody could say reason G.
12 And they don't have to agree. Is that okay with you?

13 A Yes.

14 Q Okay. And the second part is no reason, which is
15 a little peculiar that you could actually vote for
16 something with no reason. But that could just be
17 because somebody doesn't want to contemplate the rest
18 of their life with that mark on their record. And if
19 somebody didn't have a reason or couldn't articulate
20 it, could you let them still vote for life for no
21 reason?

22 A Yes.

23 Q And you would respect that?

24 A Yes.

25 Q And then the judge talked about mercy. Do you

1 think mercy is earned or bestowed or given by grace?

2 A I think mercy is given by grace.

3 Q Okay. And one last principle of law is that --
4 and the judge told you if a juror reaches an individual
5 moral judgment, that they have a duty and obligation to
6 have that position heard in court and it would be wrong
7 for them to switch over their position to just join the
8 majority just for the sake of majority. Do you
9 understand that?

10 That may have been a little wordy. Would you, if
11 you were just one person all by yourself and you
12 reached your decision, whatever it is, and then 11
13 other people said, "Well, we all got together. We have
14 our decision," would you say, "I'm just going to go
15 over there to have consensus and harmony"?

16 A Well, not automatically. It would have to be, you
17 know, I can pretty much stick to my guns if I need to.

18 Q That's what I expected. Okay. Thank you, ma'am.
19 That's all I have for you.

20 MR. HIXSON: Thank you, your Honor.

21 THE COURT: I have one before you get going.

22 Do you understand that if there was evidence
23 presented concerning a person's background that you
24 would be certainly free to consider that if you
25 thought --

1 MS. ALBRECHT: Oh, I would be open to it, yes.

2 But that wouldn't necessarily be the sole reason for a
3 decision.

4 THE COURT: You would certainly be open to it and
5 you understand that you could consider it?

6 MS. ALBRECHT: Oh, yes. Yes, absolutely.

7 THE COURT: Thank you.

8 EXAMINATION BY MR. HIXSON:

9 Q Thank you for addressing that question, ma'am.
10 The judge addressed the question I was going to ask.
11 Thank you. And I believe you're qualified.

12 MR. McGUIRE: Judge, if I could just ask one more
13 question.

14 THE COURT: Certainly.

15 EXAMINATION BY MR. McGUIRE (Resumed):

16 Q We're very honored to have you with us. Can you
17 tell us why you didn't exercise your exemption.

18 A Well, I'm still healthy.

19 THE COURT: She's a good citizen.

20 MS. ALBRECHT: That's right.

21 MR. McGUIRE: Fair enough. Thank you.

22 MR. HIXSON: Thank you.

23 THE COURT: Do you want to be heard?

24 MR. McGUIRE: Yes.

25 THE COURT: Okay. Step out there in the hallway

1 for just a second.

2 (WHEREUPON, Ms. Albrecht exited the courtroom
3 at 5:42 p.m.)

4 MR. McGUIRE: Thanks, Judge. Move to strike for
5 cause based on mitigation impairment.

6 THE COURT: All right. I believe she is certainly
7 qualified for this case. I wish we had 12 just like
8 her on the jury, actually. Delightful lady. I know
9 that she indicated to you that that wasn't going to be
10 a particularly relevant factor, background information.
11 But in my question she said she would certainly be open
12 to it and would consider it and understood she could.

13 I think that she will make a good juror for us,
14 and I find that she's qualified.

15 Do you want to be heard on that?

16 Do you want to put anything on the record?

17 MR. HIXSON: Yeah. Maybe just to tighten this up
18 because this is a continuing kind of deal.

19 The way the questions are phrased, he's asking
20 what they would do when they are deliberating in the
21 jury room on what factors they will consider. And
22 that's kind of invading the province of the jury. They
23 clearly say they will listen to you and consider it.
24 But personally, then it goes beyond voir dire into
25 their personal deliberation process. They say for me,

1 I will probably not consider it, but I will follow
2 instructions.

3 THE COURT: And she is not required to adopt the
4 position of the defense. The defense is taking the
5 position that these background factors should be
6 mitigators. Nothing says they have to. They can
7 certainly consider them. And if they think they're
8 appropriate mitigators, they can certainly use them as
9 mitigators.

10 Yes, ma'am.

11 MS. NORRIS: Your Honor, if I can just state our
12 full position. I cited these cases earlier, and your
13 Honor asked me for a case, so I'll give you what we
14 have on that, and I promise we don't have to talk about
15 this again.

16 But, essentially, under -- just following the
17 United States Supreme Court, under *Lockett vs. Ohio*
18 decided based on -- or I guess it's *Lockett vs.* -- yep,
19 it is *Ohio* -- that under the Eighth and Fourteenth
20 Amendments it defined mitigation as any aspect of a
21 defendant's character or record that is there as a
22 basis for a sentence less than death.

23 Following that and a whole line of U.S. Supreme
24 Court case law, *Williams vs. Taylor*, *Williams vs.*
25 *Smith*, *Beard*, *Porter*, *Sears*, essentially all cases

1 under the effective assistance of counsel addressed in
2 both the Sixth, Eighth and Fourteenth Amendment
3 essentially makes it clear that a defendant's
4 background certainly falls well within mitigation
5 defined by *Lockett* under the Eighth Amendment.

6 And counsel -- and our position, in fact, is
7 ineffective if we don't present that type of
8 information.

9 THE COURT: And I understand that. And I think
10 it's abundantly clear that that type of evidence is
11 admissible and should be presented to the jury and
12 should be there for the jury's consideration, but I
13 think what Mr. McGuire is trying to do is have me
14 disqualify a witness because a witness may not think
15 that evidence is particularly useful in mitigation.
16 And the witness has said very clearly that she's open
17 to it and that she would consider it. Said that to me.

18 MS. NORRIS: This potential juror aside, I'm just
19 stating our full objection as to why we believe a juror
20 has to be able to consider this.

21 And from that, under *Eddings vs. Oklahoma*, the
22 U.S. Supreme Court makes it very clear that a sentencer
23 may not refuse to consider, i.e., merely hearing it or
24 listening isn't enough, any proper mitigation before
25 it.

1 And then under *Morgan*, which, of course, is Fifth,
2 Sixth, Eighth, and Fourteenth, fair and impartial
3 juror, a juror whose beliefs would prevent or
4 substantially impair performance, i.e., they can't
5 consider -- or, for example, they can't consider proper
6 mitigating evidence, is not qualified.

7 And the one cite I would give the Court that sort
8 of puts all of that together -- and I can hand this up.
9 It's the United States Supreme Court decision in
10 Abdul-Kabir. And I'll spell that for the court
11 reporter. It's A-b-d-u-l, hyphen, K-a-b-i-r. And the
12 cite is 550 U.S. 233 2007. And, essentially, that's a
13 case where the court said that under the Texas statute
14 and instructions that jurors could not properly
15 consider background mitigation evidence.

16 But the quote I will give the Court -- and I can
17 hand this up -- on page 246 of that opinion, it says,
18 "A careful review of our jurisprudence in this area
19 makes clear that well before our decision in *Penry* 1,
20 our cases had firmly established that sentencing juries
21 must be able to give meaningful consideration and
22 effect to all mitigating evidence that might provide a
23 basis for refusing to impose the death penalty on a
24 particular individual."

25 We simply submit, your Honor, that whether the

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Linda Albrecht

1 statute prohibits it or a juror refuses to consider it,
2 it is the same difference. We're not meaningfully
3 considering mitigation.

4 THE COURT: And I don't think we have had a single
5 juror that said they would refuse to consider it. Not
6 one.

7 MS. NORRIS: Thank you, sir.

8 THE COURT: The jurors were asked if they thought
9 it was important, that sort of thing. And the
10 jurors -- I shouldn't even be allowing you to ask the
11 question, but I'm going to -- the jurors are simply
12 saying, "Look, I don't personally think it's
13 particularly important." And I'm making doggone sure
14 that each one of those jurors understands that they may
15 consider it, they're going to hear it, and it's
16 entirely up to them as to whether or not they think it
17 establishes a proper mitigating circumstance.

18 MR. HIXSON: One more comment, your Honor. We are
19 satisfied. I think that's specifically why the courts
20 limit inquiry into specific mitigators. We could go
21 through the laundry list and say, "How do you feel
22 about this?" I don't know. "How do you feel about
23 this?" "That one inflames me." That's why there is a
24 prohibition about that to stake these folks out and
25 disqualify them.

1 THE COURT: And that's why I'm only going to let
2 them say general background information.

3 Okay. Mr. Ropp.

4 (WHEREUPON, Ms. Albrecht entered the courtroom
5 at 5:49 p.m.)

6 THE COURT: Ms. Albrecht, I find that you are
7 qualified to serve on this jury. You are not on the
8 jury yet, but I'm going to ask you to call that number
9 that you were just given about 6 o'clock or after
10 6 o'clock this coming Sunday. And it will give you a
11 report date. You will report with all the other jurors
12 who have been qualified and a jury panel will be
13 selected. You may or may not be on that.

14 However, in anticipation of the possibility that
15 you will be, please bring with you clothing for several
16 days, of course your medications, toiletries and
17 things. Just leave them in your car.

18 If you get selected, you will be sequestered from
19 that point on. And I will make sure that some of these
20 gentlemen here will make sure that your things are
21 collected or go with you to get your things so they can
22 be delivered to the hotel.

23 MS. ALBRECHT: So I call Sunday night?

24 THE COURT: Sunday night you call, and you will
25 have the instructions. Okay? And just appear and have

1 those things with you in your car so that they will be
2 available. And I'll have someone help you with them if
3 you are put on the jury.

4 MS. ALBRECHT: They will tell me Sunday night when
5 to appear?

6 THE COURT: Yes, that number right there.

7 MS. ALBRECHT: Okay.

8 (WHEREUPON, Ms. Albrecht exited the courtroom
9 at 5:50 p.m.)

10 THE COURT: Okay. We're down to our last panel.
11 We're going to take a quick break.

12 (WHEREUPON, recess taken from 5:50 p.m.
13 to 6:02 p.m.)

14 (WHEREUPON, Prospective Jury Panel Number 15 came
15 into open court at approximately 6:03 p.m.)

16 THE COURT: Good afternoon. Here we are with our
17 last panel, and we're only a half hour late. I am
18 thrilled.

19 Ladies and gentlemen, on Monday I talked with you
20 folks and asked you many questions. And the purpose of
21 that was to determine primarily whether or not you met
22 the statutory requirements to be a juror in this state.
23 And I determined that you all did, that you are
24 properly before the Court as potential jurors.

25 Something that I did not discuss with you are

1 exemptions from jury service. There are certain
2 exemptions that if they apply to you, you can claim as
3 an excuse for not serving under your exemption.

4 Please understand that an exemption is a personal
5 thing to you. You can claim it or say, "No, I know I
6 have an exemption, but I would prefer to serve as a
7 juror." I try cases all the time, and if you came into
8 my courtroom and sat with me for a while, you would see
9 jurors and there would be people who are obviously
10 65 years of age and older.

11 And I use that just as an example for you because
12 a person at 65 can claim that as an exemption and say,
13 "I just choose not to serve," and that person would
14 absolutely be excused from jury service. But many
15 times our senior citizens tell me that, "No, I don't
16 want to claim my exemption. I want to serve." And we
17 are certainly pleased when they do that because our
18 senior citizens bring just a wealth of life experiences
19 and wisdom to the process, and they just make great
20 jurors, and we are happy to have them. And I tell you
21 that just to explain to you that it's a right that you
22 have that you can claim or not claim.

23 Before I get into that, I want to have the clerk
24 place you under oath. This oath will continue through
25 this process of voir dire or individual examination

1 that we're involved in today. So please remember that.

2 Madam Clerk.

3 (WHEREUPON, the panel was sworn.)

4 THE COURT: All right. Thank you very much.

5 Is there anyone on this jury -- I cannot believe
6 there would be -- but is there anyone on this jury
7 panel who is 65 years of age or older who would like to
8 claim their exemption? Anyone?

9 Let the record reflect that no one stands.

10 Is there anyone on the jury panel who has served
11 as a juror in the court of common pleas or general
12 sessions in the last three years? You would be here in
13 this courtroom. You were subpoenaed here.

14 If you were subpoenaed for federal jury duty or
15 you went down to the magistrate's court and served or
16 if you went down to municipal court -- that's city
17 court -- to serve, that doesn't count. Has to be here.

18 Anybody within the last three years who would like
19 to claim an exemption?

20 And there is no response.

21 Is there any member of the jury panel who was a
22 member of the county Grand Jury within the last five
23 years?

24 Let me give you a little explanation of what that
25 means. The Grand Jury doesn't hear cases. The Grand

1 Jury is a special jury that meets once a month, and you
2 have to serve at least a year if you're on the Grand
3 Jury, up to two years. And it is simply a jury that
4 looks at pending criminal cases and decides if there's
5 any reason at all for it to go forward. That's what a
6 Grand Jury is.

7 But if you have been on the Grand Jury within the
8 last five years you can claim that as an exemption.

9 Does that apply to anyone?

10 No response.

11 If you have a child or you have custody of a child
12 under the age of seven and that child is your
13 responsibility and you are unable to make arrangements
14 for the care of that child during the time you may be
15 serving as a juror, and keep in mind you will be
16 sequestered. Normally we only worry about care of the
17 child during the day, which is usual court operating
18 times. But you're going to be subpoenaed (sic), so
19 I've sort of stretched that exemption.

20 If you are sequestered and you would not have
21 anyone who can take care of that child for you and that
22 child is your responsibility, you can claim that as an
23 exemption. Does that apply to anybody?

24 And there is no response.

25 The next exemption is sort of like that but it

1 involves caretakers for elderly people or disabled
2 people who require care who can't be left at home
3 alone. If that's what you do, you care for an elderly
4 or disabled person, you may claim that as an exemption.

5 Does that apply to anyone?

6 And there is no response.

7 If you are a full-time student -- and we think we
8 have weeded out all students, but we did have one
9 earlier, so I'm going to ask the question. If you are
10 a full-time student, you may claim that as an exemption
11 if it would interfere with your classroom obligations.

12 Anyone in that category?

13 And there is no one standing or no one indicating
14 that they are.

15 If you work at a school, K through 12, private or
16 public, or if you're at tech or a local college, any
17 institution of learning, and your job is what we call a
18 necessary job, that is, it's necessary that someone
19 occupied that position to keep the school going and
20 there's not a substitute that is readily available for
21 you, you can claim that as an exemption.

22 Anyone in that?

23 POTENTIAL JUROR: I'm a custodian at St. James
24 Elementary, No. 36.

25 THE COURT: This time of the year I would assume

1 that it is operating now.

2 POTENTIAL JUROR: Yeah, but I can't find no sub.
3 Like tomorrow it would be a bad day for me tomorrow
4 when I go in.

5 THE COURT: Okay. So it would appear that you are
6 the guy that they need there; is that right?

7 POTENTIAL JUROR: Yes, sir. Keep the environment
8 clean for the little kids.

9 THE COURT: Okay. And you're Mr. Bellamy?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: Okay. Mr. Bellamy, that is a
12 necessary occupation at the school. Would you like to
13 claim that as an exemption?

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: Mr. Bellamy, you are excused. Thank
16 you, sir.

17 POTENTIAL JUROR: My man.

18 THE COURT: Any objection?

19 MR. HIXSON: No objection, your Honor.

20 MS. NORRIS: No, sir.

21 THE COURT: All right. Thank you, Mr. Bellamy.

22 POTENTIAL JUROR: Thank you, sir. My pleasure.

23 (WHEREUPON, Mr. Bellamy exited the courtroom
24 at 6:10 p.m.)

25 THE COURT: And, finally, if you provide services

1 for a business, commercial enterprise, agricultural
2 enterprise, and your services are so essential to the
3 operation of that ongoing enterprise that if you are
4 not there, you're not there, it has to close up, send
5 the employees home, business has to cease.

6 Is there anyone in that category?

7 And there is no response.

8 Thank you very much. Those are the exemptions,
9 and I appreciate your attention in that regard.

10 Now, let me talk to you about what we're going to
11 be doing today. I want to -- I know we briefly touched
12 on the fact that this is a capital case or a capital
13 murder case. It is a death penalty murder case, as it
14 is sometimes referred to on Monday. I think you're
15 aware of that.

16 But I think it would be helpful before we start
17 talking to you individually if I explain to you how the
18 process works, what it means, and what your duties
19 would be, what you would be asked to do or charged to
20 do, what your responsibilities are.

21 Let's begin with something called the presumption
22 of innocence. Has anybody ever heard of that,
23 presumption of innocence? Any of you familiar with
24 that term? Let me tell you what it is.

25 It's a phrase that we use in the law that

1 describes a legal theory. And that is an extremely
2 important legal theory. It's -- we have it in every
3 single state in this country. What it means is this.
4 When a person is charged with a criminal offense, that
5 person is presumed to be innocent. And that
6 presumption of innocence doesn't end when the trial
7 starts. It doesn't end when the evidence starts coming
8 in. It goes all the way through the trial until the
9 State overcomes that presumption.

10 And that presumption is what gives rise to the
11 State's burden of proof. The presumption is only
12 overcome when the State has convinced each and every
13 juror that the defendant is guilty of the offense for
14 which he is charged beyond a reasonable doubt. That's
15 what we call the burden of proof. It's a very high
16 burden.

17 And at the end of the trial, before you begin your
18 deliberations, I'll explain that in more detail to you.
19 With that basic premise in mind -- and I want you to
20 keep that in your mind through this process -- with
21 that in mind, let's talk about the offense that
22 Mr. Cottrell is charged with.

23 And please understand this is only a charge. He
24 has pled not guilty to this charge. His attorneys are
25 prepared when we start the trial to zealously defend

1 him. They are not conceding guilt in any form or
2 fashion, and he cannot be considered guilty unless that
3 burden or that presumption of innocence is overcome, as
4 I explained a minute ago.

5 But he is charged with murder, capital murder. As
6 I travel about the state, I see from time to time
7 murder cases around the state. It would be any number
8 of murder cases, common, traditional, regular, whatever
9 you want to call them, murder cases that are tried.

10 And those cases are tried using the same rules and
11 procedures that you would see in any other typical case
12 where someone had been charged with a crime. But when
13 the State determines that it wishes to seek the death
14 penalty, a whole tier of special and unique policies,
15 procedures, rules come into play.

16 And let me tell you the difference between capital
17 murder, death penalty murder, and regular murder. I
18 guess it's best to start with a homicide.

19 A homicide is the killing of a human being. And
20 it can result in the institution of a number of
21 offenses. There are homicides that are unintentional
22 but maybe reckless and things of that nature. It only
23 becomes a murder if that homicide occurs where there is
24 malice aforethought.

25 The definition of murder is the unlawful killing

1 of a person with malice aforethought. And malice is an
2 element of murder -- traditional, common, regular
3 murder. Malice has been described by the court using
4 all sorts of language. It basically means with an evil
5 heart, with malicious intent, with hatred or ill will
6 towards the person who is the victim of the killing or
7 who was killed.

8 For there to be a conviction of any offense that's
9 called a murder, malice is an element of it. And
10 that's what the State would have to prove beyond a
11 reasonable doubt, that the killing involved or was
12 committed with malice aforethought.

13 In cases where the State is seeking the death
14 penalty -- and I will say this. If there were a
15 regular murder, being a traditional murder or a murder
16 that we view in the traditional sense, before me and I
17 was the judge, and if the jury convicted the
18 defendant -- and most jurors don't know this -- I could
19 never impose the death penalty. The death penalty is
20 not a possible penalty with a murder case, murder
21 alone. Not possible. Not legal. Cannot be done,
22 period.

23 But in cases where the State decides or seeks to
24 have the jury or have the Court impose the death
25 penalty, as I said, new rules take over. And the State

1 has to start out by proving there was a murder, that
2 is, a killing with malice.

3 But then the State has to do something else. We
4 kind of refer to it as murder plus something else.
5 Goes beyond just murder. And in this situation or this
6 case -- and please don't think that I am insinuating in
7 any way that the jury would convict Mr. Cottrell of
8 murder. That's for the jury to determine, not me. But
9 I want to explain things to you.

10 If we start out and the State were to convince the
11 jury beyond a reasonable doubt that Mr. Cottrell or any
12 defendant committed the offense of murder, then we move
13 to what we call the second phase or the sentencing
14 phase. And that's what you've heard us talk about so
15 far.

16 And in that second phase the State would have to
17 prove that extra thing, that plus, in order to even
18 consider the death penalty. That plus is what we call
19 aggravating circumstances. And when the legislature
20 established the death penalty, drew the death penalty
21 statute, it was very specific. It said, Here is a list
22 of aggravating circumstances, and only if the State can
23 prove beyond a reasonable doubt that, in addition to
24 murder, the defendant also committed one of these other
25 acts concurrently or in connection with that murder --

1 and the State's burden of proving that is just like in
2 the murder. It must prove it beyond a reasonable doubt
3 to every single juror. All right?

4 An aggravating circumstance is something that
5 makes it more egregious, makes the murder more heinous.
6 That's what we think of when we think or talk about an
7 aggravating circumstance. I want to give you an
8 example, but I wanted to make sure that I don't suggest
9 to you that Mr. Cottrell is guilty of an aggravating
10 circumstance. That would be up to the jury to
11 determine.

12 So I looked at it, and there's really sort of two
13 categories of aggravating circumstances. And I wanted
14 to pick out something that I was sure had nothing to do
15 with this case as my examples. I want to give them to
16 you just as examples. You won't hear about either of
17 these in the trial because they are not involved at
18 all. It's not even alleged remotely that they are
19 involved.

20 One of those would be the commission of another
21 specifically enumerated crime. For instance, rape is
22 one of those aggravating circumstances. If a person
23 murdered someone while committing a rape, that would be
24 one of the aggravators that is set out by the
25 legislature. There are many of them, but that's just

1 one.

2 And there are also what we call victim classified
3 or victim-related aggravating circumstances like the
4 victim was a small child. Someone murdered a child.
5 That would be an example of a statutory aggravating
6 circumstance. Again, it has nothing to do with this
7 case. I just point it out to you to give you an
8 example of what I'm talking about.

9 But the State would have to, from that list or box
10 of aggravating circumstances, prove at least one to you
11 beyond a reasonable doubt. If they fail to do so, that
12 ends the inquiry, it's not death penalty murder, comes
13 back to the judge and a sentence is imposed.

14 But if the State is able to convince the jury
15 beyond a reasonable doubt that at least one of those
16 aggravating circumstances exist, then we move to
17 another part, and the jury has other obligations.

18 If the State has reached that point, all of a
19 sudden the death penalty is placed on the table. And
20 at that point there are two possible sentences that the
21 jury may recommend -- either life without parole or the
22 death penalty. Either of those sentences may be
23 recommended or would be recommended by the jury.

24 Now, I want to make sure that you understand that
25 the jury is not required under any circumstances -- I

1 don't care what their findings are -- to recommend the
2 death sentence. They are not, under any circumstances,
3 required to recommend life imprisonment. It is
4 entirely, entirely up to the jury to decide which
5 sentence that jury will recommend.

6 And I say recommend, but essentially let me tell
7 you this. If the jury recommends a sentence, the Court
8 will carry it out. So the jury is in all practicality
9 and in reality sentencing. And that's another
10 different thing about a capital case. The jury decides
11 whether the person would get life imprisonment or the
12 death penalty. The death penalty is only to be
13 considered if those aggravating circumstances have been
14 proved.

15 Now, you might look at a case and say, "Well,
16 here's something over here that looks mighty bad. I
17 think that's as bad as this list of aggravators that
18 the Court told us about. I think we'll use that for an
19 aggravator." Cannot do it. It must be proof beyond a
20 reasonable doubt of one of those that the legislature
21 listed and those alone. Only if that is proved beyond
22 a reasonable doubt does the death penalty even come on
23 the table.

24 Then the jury is required to look at the
25 circumstances of the case. The jury is required to

1 consider mitigating circumstances in determining
2 whether or not the death penalty is appropriate or the
3 life sentence is appropriate.

4 And the legislature again has given the jury some
5 help. It says, you know, these things are statutory
6 mitigators. Mitigators is something that lessens the
7 severity of the offense. Something that gives an
8 extenuation of the fact that the murder has occurred.
9 Something that weighs in favor of the life sentence as
10 opposed to the death penalty.

11 You must look at all circumstances and evidence
12 that's presented and determine whether or not there are
13 mitigating circumstances. And that's sort of an
14 unusual process because the jury doesn't have to agree
15 on what is a mitigating circumstance. Each juror may
16 find their own mitigating circumstance. Or you might
17 have some jurors that find mitigating circumstances and
18 some who don't. It's a moral judgment decision that
19 each and every juror makes.

20 The statute goes on to say even if you are unable
21 to find any mitigating circumstances, any juror can
22 still vote for life for no reason at all, just because
23 in their heart they think that's the right thing. Or,
24 even in the absence of a mitigating circumstance, the
25 jury can decide or a juror can decide to extend mercy.

1 That is say, "I'm going to give a life sentence as an
2 extension of mercy." And then mercy can be given
3 whether they think the defendant, there's something
4 about the defendant's life where he has earned or is
5 given as justification for the mercy, or the mercy can
6 be given as a matter of grace, for no reason.

7 So that's how you approach or you must approach
8 the decision whether to give life or death. You must,
9 must go through that process. If and only if the jury
10 were to unanimously -- all of you have to agree if the
11 decision is to impose the death penalty. I'm not
12 suggesting that you should, but only if you do, all of
13 you must agree.

14 And as an additional safeguard, the legislature
15 says to make absolutely certain that each juror has
16 reached that conclusion if they're going to impose the
17 death penalty, each juror must also sign the
18 recommendation, must put his or her name on it.

19 And sometimes that's difficult for people to do,
20 but that is also a requirement of the law. And it is,
21 as I said, an additional safeguard to make sure that
22 there's no question about it.

23 That, ladies and gentlemen, is how the process
24 works. And I hope it helps you understand what your
25 duties are and what you -- what would be expected of

1 you in this case. You're expected to consider both
2 potential sentences if you get to that point, life.
3 You're expected to consider the death penalty in your
4 deliberations.

5 Now, I'm going to let you return to your jury
6 room, that is everyone -- who is Mr. Skipper?
7 Mr. Skipper, you're first up. Why don't you just stay
8 with us. All right? Okay.

9 (WHEREUPON, Prospective Jury Panel Number 15, with
10 the exception of Mr. Skipper, exited the courtroom
11 at approximately 6:28 p.m.)

12 ANTHONY SKIPPER,
13 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION BY THE COURT:

15 Q I'm going to talk to you first and then I'm going
16 let the attorneys talk to you.

17 A (Nodding.)

18 Q Mr. Skipper, our court reporter right here has to
19 take down all your responses, so you need to rather
20 than shake your head or nod --

21 A Okay.

22 Q -- you need to answer verbally so she can pick it
23 up. Okay?

24 A Okay.

25 Q Now, Mr. Skipper, do you recall on Monday I asked

1 all the jurors not to do any investigation into this
2 case on their own, not talk with anybody about it, not
3 to listen to news reports or watch news reports about
4 it? Have you complied with that?

5 A Yes, I have.

6 Q Okay. And do you understand that that is a
7 standing order, that until you are released from jury
8 service, it would apply?

9 A Yes.

10 Q Okay. I just wanted to make sure.

11 Now, Mr. Skipper, you were kind enough this
12 morning or this afternoon to help us with this process
13 and what we did is we gave you a sheet of paper that
14 had A, B and C on it and it described generally three
15 types or categories of jurors. And you have indicated
16 that you are a category B juror; is that correct?

17 A Yes.

18 Q Okay. And before I go any further, let me impress
19 this upon you. Great thing about America, Mr. Skipper,
20 is that we are all free to have our own opinions about
21 any issue in the world. We have a right to formulate
22 our own opinions. And everybody in this room
23 appreciates that fact and every single person in this
24 room respects any opinion that you may have. And I
25 promise you I will not permit any person to try to

1 change your mind and I will not try to change your
2 mind. That's not what we're here for.

3 But a person's opinions on certain subjects often
4 are quite relevant to whether that person would be able
5 to carry out his duties as a juror. And that's
6 particularly important in a death penalty case. And I
7 hope you can appreciate that fact. So we will be
8 asking you some questions about your opinions.

9 A Okay.

10 Q Understand when we ask you about your opinion,
11 there can be no wrong answer. Every answer is right.
12 All we ask is that you be as honest and as candid as
13 you can possibly be when you tell us about your
14 opinions. Fair enough?

15 A Yes.

16 Q Now, you indicate you were a B type juror. And
17 just so that you and I understand what we're talking
18 about, a B type juror believes that the death penalty
19 is never appropriate, no matter what the circumstances
20 of the case. Is that what you intended to convey to
21 me?

22 A That's correct.

23 Q All right. Now, Mr. Skipper -- and I respect your
24 opinion. Let me ask you this. Is there any special
25 reason why you have that opinion? What's the basis of

1 it? Is it your faith, experiences you have had in
2 life?

3 A I just don't believe in sentencing someone to
4 death. I mean there are other ways to have someone...

5 Q To punish someone?

6 A Yes, sir, exactly. And I don't want that on my
7 conscience, and it never will be.

8 Q And I respect that, Mr. Skipper. I promise you I
9 respect that.

10 A I do appreciate the justice system, how it works.

11 Q And we certainly appreciate your saying that.
12 But, Mr. Skipper, let me ask you this. Are you firm in
13 that position?

14 A Absolutely.

15 Q Are you sure that regardless of the circumstances
16 of the case, you just could not impose the death
17 penalty?

18 A It's not only myself, my family. That's the way I
19 believe. My family all holds on to that.

20 THE COURT: Do you need to examine?

21 MS. NORRIS: No questions, your Honor.

22 THE COURT: Do you need to examine?

23 MR. HIXSON: No, sir.

24 THE COURT: Would you like to be heard?

25 MS. NORRIS: No, sir.

1 THE COURT: Would you like to be heard?

2 MR. HIXSON: No, I believe he is disqualified.

3 THE COURT: Mr. Skipper, I'm sure that you would
4 just be -- you're just so honest with us. I'm sure you
5 would make a great juror in just about any other kind
6 of case, and I'd love to have you sit in my court. But
7 on this particular case, because of your views, it
8 would appear that you would be unable to consider the
9 death penalty, so I'm going to excuse you from further
10 service in this matter. Thank you, sir.

11 MR. SKIPPER: You're welcome.

12 (WHEREUPON, Mr. Skipper exited the courtroom
13 at 6:34 p.m.)

14 MR. HIXSON: May we approach, your Honor, maybe to
15 speed things along?

16 THE COURT: Yes.

17 (Whereupon, counsel approached the bench.)

18 (WHEREUPON, Ms. Peet entered the courtroom
19 at 6:35 p.m.)

20 SHARON PEET,

21 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

22 EXAMINATION BY THE COURT:

23 Q Hello, Ms. Peet. How are you?

24 Ms. Peet, it's good to see you this afternoon.

25 Appreciate you coming.

1 Ms. Peet, do you remember my admonition against
2 the jurors or to the jurors on Monday where I said
3 don't talk about the case with anybody, don't look up
4 anything about the case, don't do any investigation,
5 don't look at any news reports?

6 A Yes.

7 Q And have you complied with that?

8 A Yeah, but I know about it from before.

9 Q I know. You indicate that you had heard about it.

10 Ms. Peet, I asked you or we asked you if you would
11 this morning or this afternoon read a brief paragraph
12 describing three categories of jurors and indicate to
13 us which category most correctly describes your
14 feelings in a death penalty case. All right? And
15 looks like you did that?

16 A (Nodding.)

17 Q Is that correct?

18 A (Nodding.)

19 Q You need to respond verbally because, see --

20 A Yes.

21 Q -- this lady here is taking down everything you
22 say, and she can't see you and type to get a nod or a
23 shake of your head.

24 You indicated that you are a category A --

25 A Yes.

1 Q -- juror; is that correct?

2 A Yes.

3 Q And let's make sure that I'm understanding you. A
4 category A would be a juror that simply feels once a
5 murder has been committed, the death penalty is the
6 only appropriate punishment no matter what the
7 circumstances of the case. Does that describe your
8 position in this matter?

9 A Pretty much.

10 Q Okay. Let me say, Ms. Peet, that the great thing
11 about this country is we're all free to have opinions,
12 and everybody here appreciates the fact as individuals
13 we all have the right to have our opinion. And
14 everybody here respects any opinions that you might
15 have. And I promise you nobody is going to try to
16 change it. But I need to ask you some questions about
17 your opinions because that could be very relevant to
18 the ultimate decision here, and that's a decision I
19 have to make as to whether or not your opinions or your
20 feelings would substantially impair your ability to
21 perform your duties as a juror, and that is to be fair
22 and impartial.

23 Are you firm in your feelings that once a murder
24 is committed, that death is the only appropriate
25 penalty?

1 A Yes.

2 Q And that's what you believe?

3 A Uh-huh.

4 Q Are you telling me that if you are on this jury,
5 at the bare minimum, the bare minimum, your ability to
6 give life would be substantially impaired by that
7 thought process?

8 A Uh-huh.

9 THE COURT: Any questions?

10 MS. NORRIS: No, sir.

11 MR. HIXSON: No, sir.

12 THE COURT: All right. Any argument?

13 MS. NORRIS: No, sir.

14 MR. HIXSON: That's substantial impairment.

15 THE COURT: Ms. Peet, you are certainly entitled
16 to your opinion. As I said, we respect the fact that
17 you have an opinion. We do appreciate your candor in
18 sharing that with us.

19 However, you have told me that it would
20 substantially impair your ability to consider the life
21 sentence -- a life sentence as opposed to a death
22 sentence and, therefore, I will have to find you
23 disqualified. I'm sure I would like to have you on any
24 other type jury. I'd love to have you in my courtroom.
25 But in this case I'm going to have to excuse you. You

1 are excused. Your presence will no longer be required.
2 Okay?

3 (WHEREUPON, Ms. Peet exited the courtroom
4 at 6:40 p.m.)

5 (WHEREUPON, Ms. Plowden entered the courtroom
6 at 6:40 p.m.)

7 **SHEILA PLOWDEN,**
8 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

9 EXAMINATION BY THE COURT:

10 Q Good afternoon, Ms. Plowden.

11 A How you doing?

12 Q I'm doing well. How about you?

13 A Stressed.

14 Q Please don't be stressed. Everyone here only
15 wishes you well. Okay?

16 A Okay.

17 Q Ms. Plowden, do you remember on Monday when I
18 talked to you, I told you that I didn't want any
19 potential juror to talk to anyone about this case or
20 read anything about it or do any research or watch any
21 TV reports about it?

22 A Yes, sir.

23 Q And were you able to obey my order and comply with
24 it?

25 A Yes.

1 Q Thank you. Ms. Plowden, let me remind you that's
2 what we call a standing order. And if you are
3 qualified or if you're on the jury, it continues until
4 such time as you may be released from jury duty. Okay?

5 A Yes.

6 Q I appreciate that.

7 Ms. Plowden, you were kind enough to come in this
8 afternoon, and we asked you to look at a list of jury
9 categories and to tell us which one best fits you. And
10 I look at your report here, and it says that you feel
11 that you're a category C juror; is that right?

12 A Yes.

13 Q And I want to make sure that you and I are on the
14 same page about this. My understanding is that is a
15 juror who would need to hear the facts and
16 circumstances in aggravation and in mitigation before
17 he or she could make a decision regarding punishment in
18 a death penalty case?

19 A Right.

20 Q Do you still believe that that pretty accurately
21 describes you?

22 A I do. I wouldn't ever want to, you know, select
23 death penalty, but if that was most efficient.

24 Q Most efficient?

25 A I don't really know how to say that.

1 Q Well, we'll talk about that.

2 A Yeah.

3 Q You were in court a few moments ago when I
4 described how the process would work and what it means
5 and your part as a juror in it and what you would be
6 expected to do and what your duties are. Did you
7 follow me as I went along?

8 A Yes. The extenuating circumstances.

9 Q I wasn't talking too fast or didn't ramble too
10 much? You were able to understand what I was saying?

11 A Uh-huh.

12 Q Okay. And you need to always give us a "yes" or
13 "no" or some other answer verbally so the court
14 reporter can record it. Although we're not in the
15 trial yet, what we do here is very important, okay, and
16 she has to pick it up.

17 A Okay.

18 Q Now, do you believe that your idea or opinion as
19 to how punishment should be determined is consistent
20 with the process that I described?

21 A Yes.

22 Q You consider aggravating and mitigating
23 circumstances, just kind of look at the whole case?

24 A Yes.

25 Q Is that kind of the way you feel it should be

1 done?

2 A Yes.

3 Q Now, overall, as I talk to you, did you -- was
4 there any part of that process that I explained to you
5 that you felt was just fundamentally unfair or
6 oppressive either to the State or to the defendant,
7 something that you felt you would have a hard time
8 following if I told you that in a trial, to do it in a
9 trial?

10 A No.

11 Q You were okay with that process as far as your
12 opinions and how you feel about punishment and trials?

13 A Yes.

14 Q Okay. All right. Good. Now, Ms. Plowden,
15 whenever I talk with jurors, I try to share with them
16 this idea that I have. And let me share it, or this
17 opinion, and tell me if you agree with me. I sort of
18 have the opinion that, you know, all of us as
19 individuals have opinions about things, we have
20 feelings about things, we might have special interests,
21 we may have special biases or prejudices on particular
22 subjects, and all of that is sort of the result or
23 formulated by the experiences we have had in life --
24 good things, bad things, our relationship with our
25 family and our friends and people we associate with,

1 our education level, information we may have about a
2 particular subject, all of that sort of goes together
3 to formulate our opinions. Do you think that's a fair
4 statement?

5 A Yes.

6 Q Do you agree with that?

7 A Yes.

8 Q Okay. Now, your opinions and the way you feel
9 about things are very important to us because it's my
10 job -- what I have to decide is whether or not you are
11 a qualified juror on a death penalty case. And to do
12 that, I have to determine whether or not there's
13 anything about Sheila Plowden that would prevent you or
14 substantially impair your ability to carry out your
15 duties as a juror. And essentially that means would it
16 prevent you, substantially impair your ability to be
17 fair and impartial. Do you understand that?

18 A Uh-huh, yes.

19 Q That's kind of the decision I have to make. Now,
20 in that regard, let me assure you that we understand
21 every single person is entitled to have an opinion.
22 That's the great thing about America, isn't it?

23 A Uh-huh.

24 Q And everybody in here understands that and
25 appreciates the fact that we have the right to have

1 individual opinions. We're going to be asking you some
2 questions about your opinions.

3 A Okay.

4 Q Not one single person here is going to criticize
5 your opinions. Not one single person here is going to
6 try to change your opinions. That's not what we're
7 here to do. We just need to ask you some things about
8 it. There's no wrong answers you can give when you
9 reply concerning what your opinions are about these
10 things that we're going to talk about.

11 We just ask that you be honest with us, that you
12 be candid with us, you be truthful with us so that we
13 get a true picture of how you're thinking. Okay?

14 A Okay.

15 Q Is that fair enough?

16 A Yes, it is.

17 Q Okay. Now, Ms. Plowden, one of the things that I
18 want to ask you about was that your opinion of the
19 death penalty generally -- and I'm not talking about
20 South Carolina's particular statute. I'm not talking
21 about that at all. What I'm talking about is the
22 general concept of using death as a penalty for a
23 crime. All right? Have you ever given that much
24 thought?

25 A Not really. You know, I thought about it. You

1 know, if it was someone in my family, I probably would
2 be all the way for it. But just thinking about it, it
3 is something I would not wish on anybody. But if I had
4 to make the decision, again, I would have to hear all
5 the facts.

6 Q Let me ask you this. Do you believe that in some
7 circumstances concerning a murder that the death
8 penalty would be appropriate?

9 A Yes.

10 Q Are there circumstances where you could give the
11 death penalty?

12 A Yes.

13 Q Now, a moment ago you said you could do that if it
14 were a family member, the victim was a family member.
15 What if the victim wasn't known by you? What if it was
16 a total stranger?

17 A Again, I would have to hear all the information.

18 Q You could listen to everything?

19 A Yes.

20 Q So you wouldn't be foreclosed from doing that.
21 You could do it under the right circumstances?

22 A I could.

23 Q Okay. And if there was a murder case, and under
24 proper circumstances could you instead give the life
25 penalty?

1 A Yes.

2 Q Life in prison?

3 A Yes.

4 Q And would you think that would be adequate under
5 certain circumstances?

6 A Yes.

7 Q And if you were called upon as a juror to make
8 that decision, do you remember I talked a minute ago
9 about there may be a time if the State has met all of
10 its burdens where you would be asked to consider a
11 sentence in this case. And remember I said there were
12 two possible sentences?

13 A Yes.

14 Q Life and death?

15 A Uh-huh.

16 Q Could you consider or give consideration to both
17 of those sentences?

18 A Yes. With all the evidence, yes, sir.

19 Q Would you look at all the evidence as you're
20 required to do, could you follow my instructions, and
21 in doing so, could you consider both the death penalty
22 and could you consider also life imprisonment?

23 A Yes.

24 Q And what would you base your decision on?

25 A Like you were saying before, the basis of the

1 crime, any extenuating circumstances.

2 Q So you would consider extenuating circumstances
3 and the circumstances of the crime?

4 A Yes.

5 Q Okay. All right. Do you know, thinking about
6 your life experiences, if there's any reason why you
7 could not be a fair and impartial juror? Let me tell
8 you why I ask you that. When people were standing up
9 Monday and I was asking questions, my notes indicate --
10 I tried to or my assistant, Mr. Postal over there, was
11 trying to write down all the numbers, and we may have
12 gotten some wrong.

13 But -- no, I misspoke. I thought that you had
14 said that you couldn't be fair and impartial, but it
15 wasn't you. I had the wrong number.

16 A Okay.

17 Q I apologize. I made a mistake.

18 A Okay.

19 Q Let me go back to my question. Do you know of any
20 reason why you could not be fair and impartial?

21 A No, I don't know any reason. Now, when I was
22 going over the list, that one name on there.

23 Q Let me get the list.

24 A Because as a case manager, I thought the name is
25 very common, and I might have --

1 Q Looks like there was a guy named Dale Long who you
2 circled. Do you know a Dale Long?

3 A I know a Dale and a Long. I have come in contact
4 with a lot of Longs, and I didn't know, so I just want
5 to tell you that ahead of time. But I can't say
6 specifically that's the person.

7 Q Would your relationship with Dale Long, even if it
8 is the one that you know --

9 A Huh-uh.

10 Q -- be significant enough that it would impair your
11 ability to be fair and impartial?

12 A No.

13 Q Do you know anybody else on the list?

14 A No.

15 Q Wanted to add a couple names to that list: Nicole
16 Pyle, John Taylor, Christine Del Fonzo, William Nettles
17 and Michelle Light. Do those names ring a bell?

18 A No.

19 Q Okay. Finally, I'm just going to ask you one
20 other question and then let the attorneys do it. Can
21 you be fair and impartial in your judgment of
22 Mr. Cottrell?

23 A I believe so.

24 Q Can you be fair and impartial concerning your
25 approach to the State's position?

1 A Yes.

2 Q You can be fair to everybody?

3 A Uh-huh.

4 Q And would you strive to do that?

5 A Definitely.

6 Q Do you think you could follow the law as I give it
7 to you?

8 A I think so, yes.

9 Q All right. Answer any questions that Ms. Norris
10 might have.

11 EXAMINATION BY MS. NORRIS:

12 Q Good evening, Ms. Plowden.

13 A Hi.

14 Q Let me just ask you a couple things that I noted
15 from your questionnaire and from what you've talked
16 about.

17 Tell me what you do as a case manager at Little
18 River.

19 A Well, now I'm a Shoreline Behavioral Health Care
20 Services. I am the Medicaid target case manager and
21 also the HIV coordinator.

22 Q And on the question about knowing people in
23 prison, you put clients. Is that -- tell me what you
24 meant by that.

25 A I have a couple clients that when I was at Little

1 River they would come in, you know, to get their care
2 for their HIV treatment or their primary care.

3 Q Okay. And it looks like your sister is in law
4 enforcement with Newberry County or booking officer.

5 A She was years ago.

6 Q Oh, long time ago?

7 A Yes.

8 Q Anything about that that matters --

9 A No.

10 Q -- related to impact?

11 A No.

12 Q And you indicated that at some point you had dealt
13 with the Solicitor's office. Tell me what that was.

14 A I did?

15 Q I thought so. I might be wrong. The judge makes
16 errors, so I certainly can. Let me check. Yeah. On
17 question 35 the question was, "Have you or any member
18 of your immediate family ever had any matters
19 whatsoever handled by any Solicitor or prosecutor's
20 office," and you wrote "no" but then marked it out and
21 wrote "yes."

22 A The Solicitor's office. Oh, my family -- I think
23 it was the Solicitor's office -- with property. I
24 think that was Plowdens, the family. They're trying to
25 get some family property settled and they were going

1 back and forth on that. That's all I can remember.

2 Q So you have never dealt with this particular
3 prosecutor's office on a criminal case or anything like
4 that?

5 A No, huh-uh.

6 Q Okay. Let me just ask you in general if you had
7 been asked the day before you got your juror summons on
8 this case to just talk to me about your thoughts about
9 the death penalty whatever they may be, what would your
10 answer be?

11 A The same basically as I have given the judge a few
12 seconds ago. You know, it's not something that I would
13 want to be a part of, but I understand after I hear all
14 the evidence and things, I could support it.

15 Q Okay. So just to jump to the end, if you were
16 seated as a juror in a capital case, just to make sure
17 you understand, the judge will never say, "If you find
18 A, B and C, you have to impose death." And the same is
19 true on life without parole.

20 A Uh-huh.

21 Q You'll always, if you're seated on a capital jury,
22 there's always that middle ground where you
23 individually have to look at all the facts all the law
24 as the judge instructs and make an individualized moral
25 choice of whatever sentence you think is appropriate.

1 Do you think you can do that?

2 A I do.

3 Q And understanding that the law never requires a
4 life sentence and you would be instructed it never
5 requires either one, but that you would be instructed
6 by the judge that you could give life for any reason or
7 no reason, as a matter of mitigation or simply as a
8 matter of mercy. No problem with that?

9 A No.

10 Q But under that circumstance, you could fairly
11 consider death or life without parole?

12 A Yes.

13 Q And if you made the decision and your vote was one
14 way and all the other 11 people chose another way,
15 would you give up your vote just to go along or would
16 you stand your ground on, "This is my opinion"?

17 A I stand my ground.

18 Q And if you did, after all the evidence and facts,
19 if you did vote for death and everybody else did, too,
20 understanding that if -- before a death sentence can be
21 imposed, all 12 jurors must agree.

22 A Uh-huh.

23 Q But if you did decide after everything that death
24 was appropriate, you can sign your name to it?

25 A I think so.

1 Q All right. Thank you, ma'am.

2 MR. HIXSON: Thank you, your Honor.

3 EXAMINATION BY MR. HIXSON:

4 Q Good evening, ma'am. How are you? I just want to
5 get a chance to say hi to you because I think on Monday
6 you kind of sat right here --

7 A I did.

8 Q -- almost all day and I wasn't allowed to say a
9 word to you. It was kind of awkward to be that close
10 and not get to say, "Hey, how are you?"

11 We're getting late in the day. I just kind of
12 want to get rid of the legalese and everything and just
13 get straight to the point. And that's really because I
14 noticed when you first got here, everybody is kind of
15 chatty and happy it's -- not happy, but it's much more
16 relaxed. And then when the judge mentioned that this
17 is a death penalty case, you kind of look around, and
18 you could tell your face totally changed. And I heard
19 when you came in you said, "Hey, Judge. I'm a little
20 stressed."

21 And so now is the time to talk about that kind of
22 stuff because you're kind of on the last step of
23 getting closer. You know, you go through this group
24 and you're getting pretty close. So now is the time
25 for you to talk about it and for you to feel

1 comfortable, whatever it is. That's why I wanted to
2 cut through the legalese, this and this and this, and
3 get straight to the point.

4 I know you said you would be happy to consider it,
5 you could consider it, you thought that you could, C
6 type juror and all those legal hoops. But what it
7 comes down to is, you know, if you get picked and
8 you're here, you -- it's no longer, you know, academic
9 exercise, you know. It's not -- you're educated and
10 you're successful. You can tell by the little
11 questionnaire we have. It's not just a case manager.
12 It's this is it.

13 And I entirely respect your opinion. This is the
14 time to talk about that. But I could just tell you're
15 under the stress of it. So I want you to be
16 comfortable for yourself at this point going to the
17 next step, that you're comfortable when you look at the
18 judge and say yes. This is what it comes down to.

19 MS. NORRIS: Your Honor, I'm going to have to
20 object --

21 THE COURT: Get to the point, Mr. Solicitor.

22 MR. HIXSON: I apologize, Judge.

23 "Yes, I can bring back a death sentence for the
24 State of South Carolina. I can do that." And that's
25 what it comes down to. Can you say, "Yes, I can, if

1 the facts warrants it, return a death sentence in this
2 case"?

3 A If enough supporting evidence is there, I could.

4 Q That's great. I just wanted to ask you that
5 question. Thank you, your Honor.

6 MR. HIXSON: I believe she's qualified.

7 THE COURT: Do you want to be heard on this?

8 MS. NORRIS: No, sir, I think she's clearly
9 qualified.

10 THE COURT: All right. Yes, ma'am, I believe she
11 is qualified as well.

12 And I am going to so find. I want to remind you,
13 Ms. Plowden, or tell you, Ms. Plowden, that you are not
14 yet on the jury. But you're on the larger panel from
15 which the jury will be selected. Okay?

16 MS. PLOWDEN: Okay.

17 THE COURT: And I'm going to continue with this
18 process for probably another couple days at least,
19 maybe three days or four days. So what I have done is
20 I have arranged to have all the people who are
21 qualified contact the court next Sunday.

22 After 6 o'clock p.m. on Sunday, if you will call
23 the number that's on the sheet that you were just
24 given, there will be a recorded message that tells you
25 when and where to appear. Give you instructions. You

1 are to appear at that time, and at that time we will
2 select the final jury.

3 In that we are going to sequester the jury in this
4 case and we would sequester jurors as they are
5 selected, please bring with you some clothing for
6 several days. If you have any medications, bring
7 those. Your toiletries and things that you will need,
8 bring those and leave them in your car. And if you get
9 selected on the jury, I'll make sure one of these
10 gentlemen will help you get those to the hotel and that
11 you will be properly situated. Okay? All right.
12 Thank you very much. You're excused.

13 (WHEREUPON, Ms. Plowden exited the courtroom
14 at 7:02 p.m.)

15 THE COURT: Richardson.

16 (WHEREUPON, Ms. Richardson entered the courtroom
17 at 7:03 p.m.)

18 **MONA RICHARDSON,**

19 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

20 EXAMINATION BY THE COURT:

21 Q Hello, Ms. Richardson.

22 A Hello.

23 Q How are you?

24 A Fine. Thank you.

25 Q All right. Ms. Richardson, do you remember my

1 comments to the jury panel on Monday where I said that
2 I wanted you to refrain from doing any research about
3 this case or talking with anyone about it or watching
4 the news or reading the news about it? Have you been
5 able to comply with that?

6 A Yes, sir.

7 Q Okay. I want to tell you that that is a standing
8 order. And until such time as you are released from
9 jury duty, I want you to comply with that. Okay?

10 A Yes, sir.

11 Q Now, Ms. Richardson, you were kind enough today to
12 review several categories of jurors. And we asked you
13 to tell us which category best describes you. And you
14 indicated that you are a C type or C category juror.
15 Was that right?

16 A Yes, sir.

17 Q And just so that I'm certain that we're talking
18 about the same thing, a C juror is one who would need
19 to hear all the facts and circumstances in aggravation
20 and mitigation before he or she can make a decision in
21 a death penalty case. Does that best describe you?

22 A Yes, sir.

23 Q All right. Now, Ms. Richardson, we're probably
24 going to be asking you some questions, and those
25 questions are going to involve opinions and feelings

1 that you may have that would be relevant to your
2 service as a juror in a death penalty case. Please
3 understand that we are all free to have our own
4 opinions. That's the great thing about this country.
5 We are free to have our own personal opinions and
6 everybody here appreciates that fact. Everybody here
7 appreciates that fact that you have opinions and no one
8 here is going to try to change your mind or your
9 opinion about anything. We simply need to know what
10 your opinions are. And all we ask you to do is to be
11 candid and honest with us about your true feelings and
12 opinions. Okay?

13 A Yes, sir.

14 Q All right. Before we go any further, I look at my
15 notes, and it would appear that when I asked the
16 question if any juror knew any reason why he or she
17 could not be fair and impartial, you responded that you
18 did. You are 519, are you not?

19 A Yes, sir.

20 Q Did you stand up and say that whenever I went
21 through the list?

22 A (Nodding.)

23 Q Can you tell me about that?

24 A When all this -- I worked at Myrtle Beach
25 Elementary for many years until I retired, 29 and a

1 half years. And when this took place, that was just a
2 block away from where I worked, and we all talked about
3 it extensively and I kind of followed the case. And I
4 have -- my niece is married to a Myrtle Beach police
5 officer. And I have a good friend that was a Myrtle
6 Beach police officer. And through school and just -- I
7 just feel like in this case that you're talking about
8 from now, I don't know that I can separate my feelings
9 and what I -- does that make sense?

10 Q What I have to do here today is I have to make a
11 determination of whether any opinions that you might
12 have would substantially impair or interfere with your
13 ability to be or to perform your duties as a juror.
14 And one of those duties probably, most important duty,
15 is to be fair and impartial. Okay?

16 Now, I looked at your additional questionnaire,
17 and it seemed to me that you had some very strong
18 feelings about the defendant's guilt in this case, and
19 particularly the trial in this case. Do you feel that
20 the knowledge that you have, the interaction you have
21 had with the police officers would substantially impair
22 your ability to be fair and impartial in this case?

23 A Yes, sir. In this particular case, I do.

24 Q And I appreciate that. I only ask that you be
25 honest with us. I certainly appreciate you being

1 honest. Are you firm and do you really believe that?

2 A In this particular case. If you put me back in
3 the jury pool for any other jury, I'll be glad to
4 serve.

5 MS. NORRIS: No questions, your Honor.

6 MR. HIXSON: No questions.

7 THE COURT: Do you want to be heard?

8 MS. NORRIS: No, sir.

9 THE COURT: Do you want to be heard?

10 MR. HIXSON: No, sir.

11 THE COURT: Ms. Richardson, I am going to excuse
12 you on this case. You may leave. Thank you, ma'am.

13 (WHEREUPON, Ms. Richardson exited the courtroom
14 at 7:08 p.m.)

15 THE COURT: Herman Rice.

16 (WHEREUPON, Mr. Rice entered the courtroom
17 at 7:08 p.m.)

18 HERMAN RICE,

19 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

20 EXAMINATION BY THE COURT:

21 Q Good afternoon, Mr. Rice. Come around, if you
22 would.

23 A How you doing?

24 Q How are you this evening?

25 A Fine. Thank you, sir. Hope you are.

1 Q I certainly am, Mr. Rice. Good to see you.

2 Mr. Rice, do you remember on Monday that I ordered
3 that the jurors not have any contact with anyone about
4 this case, discuss it with them, do any independent
5 research, listen to any news reports and things of that
6 nature?

7 A Yes, sir.

8 Q And were you able to comply with that?

9 A Yes, sir.

10 Q Okay. Good. I want to just tell you, Mr. Rice,
11 that's what we call a standing order. And until you're
12 released from your subpoena, whether that be at the end
13 of the trial or at the end of the day, it applies. Are
14 you okay? You can comply?

15 A Yes.

16 Q Thank you, Mr. Rice.

17 Mr. Rice, you were very kind coming back today,
18 and we asked you to look at a list of categories of
19 jurors and to tell us which one of those categories
20 best describe you. And I have your form, and you said
21 that you were a C type juror. Do you believe that is
22 correct?

23 A Yes, sir.

24 Q And just so that you and I understand what that
25 means or are on the same page, that is a juror who

1 needs to hear the facts and circumstances in
2 aggravation and in mitigation before he or she could
3 make decisions regarding punishment in a death penalty
4 case. Do you think that's a pretty accurate assessment
5 of your feelings?

6 A Yes, sir.

7 Q Okay. Mr. Rice, you recall just a few minutes ago
8 I talked with you about your duties, responsibilities,
9 how a death penalty case would work and the steps that
10 would have to be followed. Were you able to follow me
11 as I explained that?

12 A Yes, I was.

13 Q I didn't talk too fast or ramble too much? Were
14 you able to understand what I was saying?

15 A Yes, sir.

16 Q Okay. Very well. Do you believe that that
17 process generally, the way it works and the way the
18 jury reaches a recommended verdict, is consistent with
19 your philosophy on how punishment should be determined
20 in a case like this?

21 A Yes, I do.

22 Q As I went through it and as you reflect on it, do
23 you think there was any part of that process that you
24 found offensive, unfair to either Mr. Cottrell or the
25 State or oppressive in any way?

1 A No, sir.

2 Q I ask you that because it's important that I know
3 whether or not if, at the end of the trial if you were
4 a juror and if we got that far, that if I gave you
5 instructions that followed that model that I described
6 to you that you would be able to follow those
7 instructions. Do you think you can?

8 A Yes, sir.

9 Q All right, sir. Now, Mr. Rice, I believe what
10 happens to us, our experiences -- good experiences, bad
11 experiences, our relationship with other people,
12 family, friends, business associates, education,
13 knowledge that we might obtain about a particular
14 subject, all go together to sort of form and formulate
15 the opinions and feelings that we have about particular
16 things. Would you agree with that?

17 A Yes, sir, pretty much so.

18 Q Or in great extent that plays a great part?

19 A Right. Right.

20 Q And would you agree with me how we react to
21 certain things or how we see things has to do with our
22 opinions and feelings?

23 A Yes.

24 Q So I tell you that because my job here today is to
25 look at Herman Rice and talk with him about his

1 feelings and make a decision about whether or not
2 there's anything about him that would substantially
3 interfere with his ability to carry out his duties as a
4 juror, and probably the most important of those duties
5 is the duty to be fair and impartial. That's what
6 we're looking at. Can you understand that?

7 A Yes, sir, I can.

8 Q Okay. Necessarily we're going to have to ask you
9 about some of your opinions, feelings and things of
10 that nature. So please understand that we all believe
11 that every person in this country, every individual has
12 an absolute right to form his own opinions. Any
13 opinion you want. That's the great thing about this
14 country, isn't it?

15 A Yes, sir.

16 Q And as we go along, we develop opinions and
17 feelings about things and we even develop biases and
18 prejudices about certain subjects that might be
19 addressed. And we understand that. And everybody has
20 their right to that. So I want you to realize that
21 nobody here is going to be critical of any opinion you
22 have. You have the right to have your opinion. Nobody
23 is going to try to change your mind about anything, any
24 opinion you have.

25 So when we ask you about your opinions, there are

1 no right or wrong answers. There are just answers. We
2 just need to know candidly and honestly what your
3 feelings are about things. Okay?

4 A Yes, sir.

5 Q All right. One of the things I wanted to ask you
6 about is your feeling about the death penalty. Not
7 particularly the South Carolina statute, but the
8 concept of punishing crime with the death penalty. Do
9 you have any feelings, specific feelings about that,
10 whether it's good, bad, wrong, right, or are you just
11 indifferent to it?

12 A No, sir. I just feel that when called for and as
13 you come down to it, there's no reasonable doubt left,
14 it's been proven that this person maliciously or any
15 person maliciously kills somebody, then I have no
16 problem with the death penalty being imposed at that
17 point.

18 Q Do you understand that in South Carolina malice or
19 a malicious killing would not be enough? There would
20 have to be an aggravating circumstance, something more
21 than that. Do you understand that?

22 A Well, yes, sir. You explained there has been to
23 be the plus side.

24 Q The plus. That's it, the statutory plus. The
25 reason I ask you that is because if only -- if -- I'm

1 not suggesting they will, but if the State were to go
2 through all the hoops and were to convince the jury
3 that Mr. Cottrell is guilty of murder, then it would
4 have gone on, or if it goes on and proves to the jury
5 beyond that there's that plus, that aggravating
6 circumstance, that thing that makes it worse, and we
7 got to the point where the jury would have to consider
8 what the appropriate sentence is, do you remember what
9 the two possible sentences would be if you got to that
10 point?

11 A Yes, sir. It would be penalty of death or life
12 without parole.

13 Q You are absolutely right in that. But we get to
14 that point, and that's where the jury would have to
15 make a tough call. You have to make a tough decision.
16 The jury would have to consider mitigating
17 circumstances. That's the law. I would instruct you
18 that. They would have to look at the evidence and all
19 and determine if there were mitigators or mitigating
20 circumstances, things that would lessen the severity of
21 the offense.

22 And even if there weren't any, they could still
23 vote for life instead of death. We went through all
24 that. They could extend mercy and give life. We
25 talked about all that. Did you understand what I was

1 saying?

2 A Yes.

3 Q I guess the crux of what I'm most interested in
4 right now is if we reach that point, could you approach
5 that process with a willingness to give the death
6 penalty or the life penalty, or would you be willing to
7 consider -- to give serious consideration to both
8 possible sentences?

9 A Yes, sir, I think I could.

10 Q You would not get hung up on death and you would
11 not get hung up on life, you would fairly consider the
12 possibility of both sentences?

13 A Yes, sir. And I would do my utmost best to, you
14 know, be impartial, to keep an open mind as to, you
15 know, the arguments, whatever, of the jurors.

16 Q That's the most I can ask you, to keep an open
17 mind and be fair and impartial in your view of those
18 things. Do you believe that you could do that?

19 A Yes, sir.

20 Q If this jury that you are on, if -- if -- if --
21 now I'm not suggesting anything, but if you unanimously
22 decided that death was the appropriate penalty, there's
23 one more thing that the jury would have to do and
24 that's kind of a safeguard to make sure that the Court
25 is absolutely certain to make sure that every juror

1 voted for the death penalty, and that is to make each
2 juror sign the verdict form.

3 If you had voted for the death penalty, if you had
4 gotten to the point that you thought that was
5 appropriate, could you also sign it?

6 A Yes, sir.

7 Q You could do that. Could you in all cases follow
8 the law that I give to you and instruct you upon?

9 A Yes, sir.

10 Q What if I gave you a charge of the law and you
11 looked at it and you said, "You know, I never believed
12 that. I didn't know that was part of the law. I'm not
13 sure that's right." Could you set that aside and
14 follow the law as I give it to you?

15 A Yes, sir. My personal opinions or feelings is not
16 relevant.

17 Q What if you thought that the law is just a bad law
18 but I told you that was the law, can you still follow
19 it?

20 A Yes, sir. I think I do it now. I don't agree
21 with a lot of things now, but I still have to go along
22 with it.

23 Q That might apply to all of us. We have to follow
24 the law, and that's what I want you to do.

25 Mr. Rice, you indicated that you had heard some

1 things about this case. Or did you? I just made notes
2 when I asked those questions on Monday, and one of the
3 questions was have you heard anything or read anything
4 about this case. And I might have made a mistake, but
5 I thought Juror 514, Mr. Rice, said that he had.

6 A Well, to the extent of -- well, the alleged, you
7 know, incident happened about a year and a half after I
8 transferred here from Rock Hill. And so, you know, I
9 was well aware of it, you know, at the time. And when
10 the questionnaire come out, and the names, the officer
11 and whatnot, you know, that brought back -- that's what
12 I was referring to as far as knowing something about
13 it. Like I say, I mean --

14 Q Okay. All right. What do you know about it?
15 Anything specific?

16 A To the extent of, you know, I believe that, you
17 know, it happened at a donut shop, if I'm not mistaken.
18 And, you know, it was pretty -- you know, it was a
19 headliner news event, so just then. But as time goes
20 on, sort of fades from your mind.

21 Q That's been quite a while back.

22 A Yes, sir. Even though as soon as the name came
23 up, I knew immediately, you know, the situation. I
24 didn't follow the case through the news. I mean, other
25 than, you know, the Nightly News of what they said

1 happened. But, you know, I knew that Mr. Cottrell had
2 been found guilty at that time. But other than that,
3 you know, I mean, that's it. I didn't harbor on it or
4 anything else. I mean, this is an unfortunate
5 situation that happened.

6 Q Could you set all that aside and be fair in your
7 assessment of the evidence and approach this new trial
8 with an open mind, fairly and impartially?

9 A I want to say I could, sir, and I hope I could. I
10 would pray to keep the other things out of my mind, not
11 to let them influence me one way or the other and keep
12 an open mind as to the evidence that's presented as it
13 would be in the case.

14 Q But, you know, I would instruct you as a juror
15 that you could only consider the evidence that you
16 heard during the case, evidence that was admitted by
17 the Court, and that would be testimony or exhibits that
18 are admitted. And that's the only thing you could
19 consider in determining this case. You know that?

20 A Well, with that instruction, and then I would.
21 Yes, sir, I would do that.

22 Q Do you think you can put it out of your mind?

23 A I don't know if I could completely put it out of
24 your mind, but I don't think I would let it sway.

25 Q You would not let it sway you?

1 A No, sir.

2 Q You could approach this case with an open mind and
3 no preconceived notions?

4 A I would try, yes, sir. I feel I could be
5 impartial.

6 Q You could do that?

7 A Yes, sir.

8 Q Answer any questions that Ms. Norris might have.

9 EXAMINATION BY MS. NORRIS:

10 Q Good evening, Mr. Rice.

11 A Good evening.

12 Q In addition to knowing about the prior trial, do
13 you know about the prior sentence?

14 A No, ma'am, I don't remember what -- like I said,
15 it's been quite a few years ago and I don't remember
16 what the sentence was, no, ma'am.

17 Q And did you read anything about why there is a new
18 trial?

19 A No, ma'am. I didn't even know it until, you
20 know --

21 Q Yes or no.

22 A Well, I sort of suspected when I got the
23 questionnaire, but I had no idea why until I came into
24 court Monday.

25 Q In addition to standing up on the question of had

1 you seen some news, I thought you also stood up on that
2 you had formed an opinion about the case; is that
3 right?

4 A The previous case, yes, ma'am. Not this case.

5 Q How do you separate that out in your mind? It's
6 all one.

7 A The previous case, I mean, the previous case, the
8 trial back when the initial incident happened. With
9 how I followed it, you know, I figured, I said at that
10 time, you know, I said I truly thought the man was
11 guilty. So that's why -- if that's what you're calling
12 forming my opinion --

13 Q Right.

14 A -- then I did form my opinion of the man being
15 guilty when the initial incident happened. That's what
16 I was standing up in reference to.

17 Q Yes, sir. And that's fair enough and I appreciate
18 it. But having formed that opinion that Mr. Cottrell
19 was guilty before, isn't it true that you're still
20 assuming and have that opinion that Mr. Cottrell is
21 guilty?

22 A Like I told the judge that, you know, if I was on
23 the jury, then I would obey his instruction that the
24 only evidence I was to entertain or elicit or whatever
25 opinion on would be the evidence that's presented in a

1 new trial.

2 Q I know --

3 A I would, you know, I would do -- can you
4 completely wipe out what happened before out of your
5 mind? Probably no. I mean, it's there. I mean,
6 that's -- it's a lot easier to turn off that light
7 switch than what's in your brain. But I would do my
8 utmost. Like I told him, I would listen to his
9 instruction and not let that sway what opinion or how I
10 would perceive or, you know, my opinion on the new
11 trial. It would be based upon the evidence that's
12 presented at trial, at this trial.

13 Q Yes, sir. And I understand. And I appreciate
14 very much your honesty with us, but my concern is one
15 of those -- before we even get to this death penalty
16 thing, Mr. Cottrell is going to have a trial, and
17 you've heard all about the presumption of innocence?

18 A Yes, ma'am.

19 Q And if you have already got that opinion that he's
20 guilty, let me ask you this first. Do you think that
21 you would be influenced by knowing that a prior jury
22 already decided that question?

23 A I think that thought has crossed my mind because I
24 don't think all 12 jurors would have made a wrong
25 decision in their conviction of him.

1 Q So here's really where I'm stuck, whether you can
2 truly accept the presumption of innocence when you've
3 already formed your own opinion of guilt and you don't
4 think 12 other jurors could have gotten it wrong. And
5 I guess the only way -- the only way to ask this is can
6 you guarantee that that will not impact you in any way,
7 form or fashion?

8 MR. RICHARDSON: Your Honor, I would object.
9 That's not the standard. It's substantially impact.

10 BY MS. NORRIS:

11 Q Can you guarantee that it will not substantially
12 impair your ability to give Mr. Cottrell a fair trial
13 by an impartial juror?

14 A No, ma'am. I want to say my character would allow
15 me to be impartial, and, you know, the evidence that's
16 presented at the trial would be the evidence that I
17 would consider in forming my opinion as a juror.

18 Q So when you say, "No, ma'am," you're saying you
19 will be substantially -- you can't guarantee me that or
20 you can?

21 A I'm saying that I feel I could follow the judge's
22 order to only consider the evidence that's presented at
23 the trial. Is that satisfactory to you or I do need
24 to --

25 Q No, I understand your answer. Let me ask you

1 about something that you put on your questionnaire,
2 that you have dealt with the prosecutor's office and
3 the public defender's office. Did you answer that
4 somewhere? And it doesn't have to be recently or
5 anything about this case. There was just a question
6 whether you or your family member had ever dealt with
7 the prosecutor's office.

8 A Well, I've had -- I mean, myself, I've been
9 through the PTI program.

10 Q Was that recently?

11 A No. No. It's been seven, be eight years ago.

12 Q Would that have been when you dealt with the
13 prosecutor's or the public defender's office?

14 A Well, I never actually met them. I just went to
15 the...

16 Q If -- if you were seated as a juror and you heard
17 all the evidence in the trial -- and this is it -- you
18 understand that Mr. Cottrell does not concede guilt and
19 will be contesting that -- if he were convicted and you
20 were on the sentencing jury, if you had already found
21 him guilty of malicious murder, as you put it, would
22 you automatically think, "This is a death penalty case
23 in my brain and no other"?

24 A No, ma'am. Did you mention about the plus factor?

25 Q All right. Well, if you found malicious murder

1 and one of those plus factors, would you automatically
2 say, "This is a death penalty vote for me"?

3 A No, ma'am, I wouldn't automatically say that
4 because I'm sure it would be brought up, his character,
5 what's transpired with him the last ten or 12 years
6 with his life, he's bettered his life or what he's done
7 with his time being incarcerated. Then that would
8 weigh on the fact of mercy to the degree, you know, to
9 the extent of that's the way I would see it.

10 Q So you would want to hear what he's done with his
11 life since then?

12 A Yes, I would like to know. I mean, hopefully, you
13 know, since this tragic incident that everybody is, you
14 know -- you know, I know there's been a lot of sorrow
15 in the case. I hope the families' hearts have been
16 mended, whoever has been involved with this, to
17 whatever degree. And if Mr. Cottrell has been falsely,
18 you know, imprisoned, then I hope he gets his justice
19 during this trial.

20 Q And would you also -- considering sentencing,
21 would you also want to hear background information
22 about his upbringing and things of that nature before
23 all of this at the Dunkin' Donuts?

24 A I think upbringing has some sort of, you know,
25 input in people's personalities as they get older.

1 Their environment they're brought up in for sure. I
2 know it did mine, and I'm sure it did everybody's in
3 here.

4 Q So you would want to hear that and consider that
5 as part of all the information?

6 A Well, I would if it had a bearing on actions that
7 were taken that evening, whether it be him or whatever,
8 yeah, it would be -- to me it would have some input on,
9 you know, how I look at things if that had any bearing
10 on it, if any.

11 Q Thank you, sir.

12 A Yes.

13 MR. RICHARDSON: Your Honor, I just like to
14 introduce myself. I really don't have any questions.

15 My name is Jimmy Richardson. I'm the Solicitor,
16 and this is Scott Hixson, and we're going to be
17 prosecuting this case for the State.

18 Your Honor, I believe that he is a qualified
19 juror, and I have no questions.

20 THE COURT: All right. You may step down,
21 Mr. Rice.

22 MR. RICE: Could I say one thing, your Honor?

23 THE COURT: Yes, sir.

24 MR. RICE: I mean, I didn't -- during the process
25 Monday when you were talking to people, I mean, I do

1 have liver cancer right now and I'm going through
2 treatments at MUSC. And I do have an ongoing thing
3 being considered for transplant, even though I'm not
4 sure I want to go that route because my liver is
5 working fine, thank the Lord. But I am supposed to be
6 there Monday for an echocardiogram.

7 THE COURT: So you have a procedure.

8 Do you have any objection?

9 MS. NORRIS: I don't have any objection to
10 excusing him.

11 THE COURT: He has a procedure scheduled.

12 MR. RICHARDSON: No objection.

13 THE COURT: You're excused. Thank you, Mr. Rice.

14 (WHEREUPON, Mr. Rice exited the courtroom
15 at 7:35 p.m.)

16 THE COURT: I'll see you all in the morning
17 tomorrow.

18 (WHEREUPON, the hearing adjourned at 7:36 p.m.)
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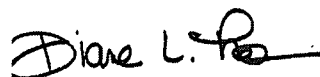
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in the trial of the captioned case, relative to appeal,
in the Circuit Court for Horry County, South Carolina,
on the 18th day of September 2014.

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I do further certify that I am neither of kin, counsel,
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January 15, 2015



Diane L. Thommes, RPR, CRR
Circuit Court Reporter

1 State of South Carolina
2 County of Horry In the Court of General Sessions

3
4 STATE OF SOUTH CAROLINA,)
5) 2003-GS-26-20
6 -vs-) September 19, 2014
7 LUZENSKI ALLEN COTTRELL,)
8 Defendant.) Volume V of X
9 -----) Pages 1692 - 2070
10) Transcript of Record

11 B E F O R E:

12 The Honorable Larry B. Hyman, Jr., Judge

13
14 A P P E A R A N C E S:

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17 Scott R. Hixson, Assistant Solicitor
Fifteenth Circuit Solicitor's Office

18 Attorneys for the Defendant:
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20 Teresa L. Norris, Attorney at Law
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21 Diana Holt, Attorney at Law

22

23

24

25

Diane L. Thommes, RPR, CRR
Circuit Court Reporter

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18 For the State:

19	<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
20	None offered.			

21 For the Defendant:

22	<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
23	None offered.			

24

25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:05 a.m.)

4 THE COURT: Good morning. I see that Mr. Cottrell
5 is here.

6 Mr. McGuire, Ms. Norris, good to see you both.

7 We have got Mr. Hixson and Mr. Richardson from the
8 State. I assume we're ready to go then, right?

9 MR. RICHARDSON: Yes, the State is ready.

10 THE COURT: All right. Let's bring in our next
11 panel.

12 (WHEREUPON, Prospective Jury Panel Number 16 came
13 into open court at approximately 9:06 a.m.)

14 THE COURT: Good morning. It's good to see you.
15 Thank you for returning at your appointed time. We
16 appreciate that very much.

17 Ladies and gentlemen of the jury, we're today
18 going to continue with our selection process. When
19 there is a capital case, and I think you all are aware
20 of it by now, there is a special rule that applies. In
21 no other case would the attorneys and the Court be able
22 to swear individual jurors and question them about
23 their ability to be fair and impartial. But that is
24 the rule here, and we're going to continue with that
25 process today.

1 On Monday I talked to y'all and I found that each
2 and every one of you was qualified, that is, met the
3 statutory requirement of being jurors in this state.
4 So we have taken care of that process.

5 But the first thing I want to do this morning is
6 talk to you about what we call exemptions. A person
7 that's qualified to be a juror may still claim an
8 exemption if that exemption applies to that person.
9 And those exemptions are set out in the law. And
10 that's the first thing I want to talk to you about.

11 You do not have to claim an exemption if an
12 exemption applies to you. You're not disqualified by
13 the fact that there is an exemption that applies to
14 you. The good example would be a person who's 65 years
15 of age or older does not have to serve as a juror
16 anymore. And if you're 65, you can just simply say, "I
17 choose to be exempted. I want to claim my exemption,"
18 and we would excuse you without question.

19 But, you know, if you came up here when I'm
20 holding court -- I try lots of cases, all types of
21 cases throughout the year, and if you look at my
22 juries, it would be very common for you to see a person
23 and you would think that person is certainly over 65.
24 That person was exempt.

25 We have many, many 65 and older jurors who come

1 here who want to serve and just say, "I choose not to
2 claim my exemption." And, of course, we're very happy
3 to have them because those senior citizens, they just
4 bring so much in the way of life experiences and wisdom
5 to the process and just make wonderful jurors, and
6 we're happy to have them. But that's just an example I
7 give you of a person who would choose not to claim his
8 exemption.

9 But I want to talk to you about those exemptions
10 and make you aware that those exemptions are there.
11 Before we begin that process, again, it's very
12 important that you answer truthfully all through the
13 day as we discuss things with you. I'm going to have
14 the clerk put you under oath. And remember, this oath
15 will carry over. When we get you individually up here,
16 you will still be under oath. Okay?

17 Madam Clerk.

18 (WHEREUPON, the panel was sworn.)

19 THE COURT: All right. Thank you.

20 Listen very carefully. Again, is there anyone who
21 is 65 years of age or older that would choose to claim
22 their exemption?

23 I don't believe there is a soul on this jury that
24 could possibly be 65. But if you are, you may claim
25 that. Anyone in that category?

1 And there is no response.

2 If you've served as a juror in this court in the
3 last three years, be it a civil case or a criminal
4 case, or you were summonsed and you could potentially
5 have been a juror in the last three years -- that
6 doesn't apply if you went to federal court, doesn't
7 apply if you went to magistrate's court, doesn't apply
8 if you went to the city courts. You would have been
9 summonsed here just like you were this week.

10 Is there anyone that fits in that category,
11 service within the last three years?

12 And there's no response.

13 Also, if you were on the Grand Jury in the last
14 five years, you can claim that as an exemption.

15 The Grand Jury is not the jury that would hear
16 cases. The Grand Jury is a jury that meets once a
17 month, and you have to serve at least a year, and you
18 could serve two years, and it does nothing more than
19 just look at cases where people have been accused of a
20 crime and determine if there's any reason to proceed at
21 all in that case. We call that determining if there's
22 any probable cause.

23 If you have been on the Grand Jury in the last
24 five years, that would entitle you to be excused if you
25 wish to be excused.

1 Anyone like that?

2 And there's no response.

3 Also, if you have the care and custody of a child
4 under the age of seven. That is, it's your child or
5 you have custody of that child, and if you're
6 sequestered as a juror in this case, would not have
7 anyone who could take care of the child for you. The
8 child is in your care, and you just could not make any
9 arrangements for that.

10 Anyone who falls in that category?

11 Okay. We have two ladies.

12 The first lady here on the end. Yes, ma'am.

13 POTENTIAL JUROR: My daughter, she's three years
14 old.

15 THE COURT: Your name?

16 POTENTIAL JUROR: Cotisha Pagan.

17 THE COURT: All right. You have a three-year-old?

18 POTENTIAL JUROR: And I've got an eight-year-old.

19 THE COURT: Well, congratulations.

20 Ms. Pagan, the child -- do you work?

21 POTENTIAL JUROR: Uh-huh.

22 THE COURT: You work during the day, but this
23 would cause a problem for you at night?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Do you have anybody at home who can

1 take care of the child for you?

2 POTENTIAL JUROR: I'm a single parent.

3 THE COURT: You're a single parent. Okay. Well,
4 what I'm going to do, Ms. Pagan, is -- any objection?

5 MS. NORRIS: No, sir.

6 MR. RICHARDSON: No, your Honor.

7 THE COURT: I'm going to excuse you, and you take
8 care of that child. Okay? You may leave.

9 (WHEREUPON, Ms. Pagan exited the courtroom
10 at 9:12 a.m.)

11 THE COURT: The lady right by her?

12 POTENTIAL JUROR: My daughter is seven.

13 THE COURT: She is seven?

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: You know, that doesn't fit the
16 exemption, but let me hear about that.

17 POTENTIAL JUROR: Well, I own my own business, and
18 I have no employees. She goes to school during the day
19 and then I pick her up.

20 THE COURT: In the evening is there anyone there
21 that can take care of her?

22 POTENTIAL JUROR: Well, me and my boyfriend, we
23 both run our business, so she's there with us. And I
24 have an older daughter, too.

25 THE COURT: So you have two children?

1 POTENTIAL JUROR: Uh-huh.

2 THE COURT: And your boyfriend lives with you?

3 POTENTIAL JUROR: Yes.

4 THE COURT: He could not take care of the
5 children, you don't think?

6 POTENTIAL JUROR: He probably could, but we both
7 run a business, so I'm not sure.

8 THE COURT: The children are really not his
9 responsibility, are they?

10 POTENTIAL JUROR: Well, yeah.

11 THE COURT: You know, I didn't say that right, did
12 I? These are your children; is that right?

13 POTENTIAL JUROR: Sir?

14 THE COURT: These are your children?

15 POTENTIAL JUROR: Yes.

16 THE COURT: And do you believe it's necessary --
17 would it affect the well-being of those children if you
18 were not at home with them?

19 POTENTIAL JUROR: Well, I would just really have
20 to find someone to keep them, but I'm not sure who.

21 THE COURT: And that would be in the evenings?

22 POTENTIAL JUROR: Uh-huh.

23 THE COURT: Would that be difficult for you to do?

24 POTENTIAL JUROR: It probably would, honestly. If
25 we didn't own our own business, it would be different

1 because we don't have employees.

2 MS. NORRIS: No objection, your Honor..

3 MR. RICHARDSON: None, your Honor.

4 THE COURT: All right. I'm going to excuse you.

5 And your name?

6 POTENTIAL JUROR: Summer Hucks.

7 THE COURT: Ms. Hucks, you are excused.

8 POTENTIAL JUROR: Thank you.

9 (WHEREUPON, Ms. Hucks exited the courtroom
10 at 9:14 a.m.)

11 THE COURT: All right. The next exemption is sort
12 of like that, but it applies to people who are the
13 caretakers of elderly persons or disabled persons who
14 can't be left alone, who have to have care and that's
15 what you do. You provide daily care for that person.
16 It's your responsibility. You have undertaken that
17 responsibility, let me say that.

18 Anyone fall in that category?

19 And there's no response to that one.

20 Also, if you're a full-time student. And we
21 thought we kind of had those weeded out, but we
22 encountered one earlier, so I'm going to ask that
23 question again.

24 Is anyone a full-time student?

25 And there's no response.

1 Does anyone work at a school -- and that can be K
2 through 12 and the public schools or private schools,
3 or it can be someone at the college or the technical
4 school. If you work at a school and your job is a
5 necessary job, and there's no person who can take over
6 your responsibilities and you need to be there, then
7 you can claim that as an exemption.

8 Anyone who falls in that category?

9 Yes, ma'am.

10 POTENTIAL JUROR: Nancy Neece. Child development
11 Center. Does that qualify?

12 THE COURT: What age level?

13 POTENTIAL JUROR: Infants to school age children.
14 But my capacity is finances. Payroll, bookkeeping.

15 THE COURT: I really don't think that meets the
16 criteria. Thank you.

17 Is there anyone who works for a commercial or
18 agricultural enterprise, business, and your service,
19 the services that you perform are so essential that
20 this business is just going to close down if you're not
21 there, it cannot operate, close the doors, send the
22 employees home?

23 Anyone fall into that category?

24 And there is no response.

25 Okay. Those are the exemptions. So now let's

1 talk about what we're going to do. I want to explain
2 to you how this process is going to work, give you a
3 better idea of what your duties and responsibilities as
4 a juror would be. I think that would be very helpful
5 to you in understanding the questions that are being
6 asked by the Court and by the attorneys for each side.
7 And I've done that with every juror, and we think it's
8 been helpful.

9 Let me begin by saying or asking you, have any of
10 you ever heard the term "presumption of innocence"?
11 Anybody ever heard that or are familiar with that? I
12 see a couple heads nodding. Let me tell you what it
13 is.

14 That's a phrase that we use to describe a legal
15 theory or principle that's just pervasive. I mean it
16 applies in every state in the United States. What it
17 means is that a person who is accused of a crime has a
18 presumption of innocence that protects that person.

19 And that presumption of innocence remains with
20 that person until it is overcome by the State. That
21 presumption of innocence is what places upon the -- the
22 burden upon the State to prove that person's guilt
23 beyond a reasonable doubt.

24 And when that presumption attaches, it doesn't end
25 when the case begins. It doesn't end when the State

1 has finished with its evidence. It continues until a
2 jury is convinced beyond a reasonable doubt -- that is,
3 every juror on that jury must agree -- that the State
4 has proven that he is guilty of the offense for which
5 he is charged beyond a reasonable doubt.

6 And that is just probably one of the most
7 important principles that we have in our jurisprudence
8 in this country, and it's something I want you as
9 jurors to keep in the back of your mind.

10 Remember, Mr. Cottrell has pled not guilty to the
11 indictment in this case. I read the indictment to you
12 earlier, so you can kind of know what he's charged
13 with. He's pled not guilty to that. He has the
14 presumption of innocence.

15 He has two fine attorneys with him. The State has
16 two fine attorneys representing the State. But
17 Mr. Cottrell's attorneys will tell you that they are
18 going to defend him and that they believe or they
19 believe that the evidence will show that he is not
20 guilty. That will be for you, the jury, to determine,
21 whether or not the State has proven him guilty beyond a
22 reasonable doubt.

23 So, again, keep that in your mind and let that be
24 the basis of everything that I tell you and everything
25 that you respond to in this court.

1 The defendant is charged with the offense of
2 murder. Now, there are many different types of
3 homicides, that is, the killing of a human being.
4 There could be many charges that flow from that
5 incident, the unlawful killing of a human being.

6 Murder is where that killing is alleged to have
7 occurred with malice aforethought. That's what makes
8 the taking of a life a murder -- that element, malice
9 aforethought. Malice aforethought has been described
10 in many ways by our court system. And at the end of
11 the court -- of the trial, if we get that far, I'm
12 going to explain to you in detail what malice is, but
13 suffice it to say that, generally speaking, malice
14 means that the act was committed with malicious intent,
15 with an evil heart, with hatred or wickedness towards
16 the victim. It rises or raises the unlawful taking of
17 a life to a new level. And that's what murder is.

18 As I travel about the state, I see in all the
19 counties any number of murder cases might be tried
20 around this state in the course of a year. And if I or
21 any other judge were sitting as a juror in one of those
22 typical, ordinary cases that we see or murder cases, I
23 want you to understand that if the person was convicted
24 of that and the obligation was placed upon me to
25 sentence that person, that I could not -- I could not

1 not -- sentence that person to death. Did you know
2 that? In murder, that ordinary, typical murder case,
3 the death penalty is not an available penalty. I could
4 not do that. That's what the law says.

5 There are circumstances where the State may choose
6 to try the case as a capital case or a death penalty
7 case. And that's exactly what has happened here and
8 what makes the difference. Because when once the State
9 invokes that, says, "We're going to seek the death
10 penalty," a whole set of new rules and requirements
11 come into play. You're in the midst of one of those.

12 As I said earlier, in no other case would the
13 attorneys and the Court need to discuss your
14 qualifications on the specific case individually. That
15 doesn't happen in any other trial. That's just one of
16 the things that's a change in the rules, a significant
17 change, because this case has been elevated to a death
18 penalty case.

19 What's the real difference? A capital murder is
20 different -- you know, it's hard for me to say an
21 "ordinary murder" because it seems to me it undermines
22 it. That's not what I intend to do. But I have to
23 figure some way to designate that.

24 But if we have an ordinary murder, the State has
25 to prove taking of a human life unlawfully with malice

1 aforethought. In a death penalty, the State has to
2 prove that, typical murder, plus something else.
3 Something else has to have happened or be in
4 conjunction with that murder.

5 We talked earlier about this being a two-part
6 case. And that second part is what is addressed or
7 that plus part of the murder is what's addressed in
8 that second part. What the State has to do is the
9 State has to show that there was a murder plus what we
10 call an aggravating circumstance.

11 And our legislature, when it created the death
12 penalty statute, very specifically listed all the
13 aggravating circumstances and the only aggravating
14 circumstances that a jury may consider. They put them
15 in a box here for you to look at.

16 I wanted to be able to give you an example so --
17 and at the same time I did not want to influence you in
18 any way in your determination in this case, so I looked
19 at those examples, and I picked out a couple of
20 examples that I know have absolutely nothing to do with
21 this case but that I felt would be able to help you
22 understand what we're talking about when we say
23 aggravating circumstances.

24 Aggravating circumstances are something that make
25 the offense of murder more heinous. It aggravates the

1 case. For instance -- and as I said, you're not going
2 to hear anything about this. This has nothing to do
3 with this case. Sometimes the commission of another
4 offense in the commission of a murder will be an
5 aggravating circumstance like rape. The murder has
6 occurred during the commission of a rape. That is an
7 aggravating circumstance.

8 And sometimes when look at those aggravators, and
9 it may just have to do with the status of the victim
10 such as a child. That has nothing to do with this
11 case. I just give it to you by way of illustration.
12 But if a child was murdered, the legislature says that
13 would be an aggravating circumstance.

14 Well, the State said murder plus something else
15 has the same standard of proof or requirement of proof
16 in proving an aggravating circumstance that it does in
17 proving the base murder. The State must convince every
18 single juror beyond a reasonable doubt that an
19 aggravating circumstance, at least one -- the State may
20 offer evidence of several. I don't know if it will or
21 not. They may or may not. But you have to at least
22 find one.

23 If you do not find -- and you can't go outside
24 this box. You can't look at something else and say, "I
25 think that's aggravating also." You have got to stay

1 in that box. If you fail to find one, that means that
2 the possible penalty is life imprisonment. That's the
3 maximum.

4 If the jury -- if -- and I'm not suggesting that
5 any jury will. I'm not suggesting that any jury would
6 even convict Mr. Cottrell of the murder. That's up to
7 the jury, and I don't want you to think just because
8 we're talking about moving on to the sentencing part of
9 the case that I have an opinion that we're going to get
10 there. And I don't want you to think that I'm
11 inferring that. We just need to talk about all of the
12 possibilities. Okay?

13 But, if the jury is convinced unanimously beyond a
14 reasonable doubt that at least one aggravator is
15 present, we go to other things. If that occurs, this
16 case again takes on a unique posture. If I were trying
17 just an ordinary murder case, when the jury reached the
18 verdict, I would ask the foreperson to hand me the
19 verdict, and the foreperson would have just answered a
20 question: Is the defendant guilty of murder? Yes or
21 no. Or is your verdict guilty or not guilty, something
22 like that. And you would just mark that and just the
23 foreperson would sign it, hand it up, and it would be
24 my responsibility then to sentence the person based on
25 if there was a conviction.

1 In a capital case, if we get to the point that the
2 jury has found beyond a reasonable doubt that there was
3 a murder and the jury has found that there was that
4 plus factor, that aggravator, then the jury has to
5 recommend a sentence. And I will tell you right now
6 the jury's recommendation will be followed by the
7 Court. The Court's bound to follow that
8 recommendation.

9 And the jury has available to it two possible
10 verdicts -- life imprisonment without the possibility
11 of parole and the death penalty. In reaching a
12 decision as to which one should be applied, the jury
13 may not, cannot just stop at the fact that there was an
14 aggravator. The jury must listen to any evidence,
15 testimony, anything put up by either side to determine
16 whether or not in this case there was a mitigated or
17 mitigating circumstances.

18 Mitigating means tending to lessen the severity of
19 the total circumstances of the case, extenuating the
20 murder, weighing in favor of a life sentence as opposed
21 to a death penalty. Those are what we call mitigators.
22 And I want you to understand that although the
23 legislature has specifically said, "We've got another
24 little box here and these are mitigators that you have
25 to look for," you have to consider -- there are other

1 things, many other things that may be involved in the
2 case that you would be required to at least consider.

3 You don't have to determine that it should be a
4 mitigator, but they're just there and you have to --
5 and you are duty bound by your oath to at least look at
6 them. Okay? No juror has to find a mitigator. No
7 juror has to reject all the mitigation. Jurors are
8 free to look at the evidence and make an individual
9 judgment as to whether or not something is in
10 mitigation of the death penalty. It's your call.

11 And you don't have to have all the jurors agree.
12 It's an individual thing. One juror may find one
13 thing. Another juror may find nothing. Another juror
14 may find an entirely different thing. It's an
15 individual thought process. We call it a moral
16 judgment or a moral decision by a juror.

17 The jury must ultimately make a decision as to
18 what sentence should be recommended. A juror may
19 recommend life over death because he or she determines
20 that there is some mitigation. A juror may recommend
21 life over death without finding that there is a
22 mitigator, may do it for absolutely no reason at all
23 other than their moral judgment.

24 A juror may just look at it and say, "You know,
25 the facts kind of call for it or do call for the death

1 penalty, but I'm going to extend mercy," and you can
2 extend mercy, whether you think the person deserves it
3 or you're giving it to them just as a matter of grace.

4 The point I'm trying to make to you is there is
5 never a point at which the Court will tell you, "If you
6 found A, B or C, you have to give the death penalty."
7 You will never hear me say, "If you find A, B or C, you
8 have to give a life sentence." It's entirely up to you
9 as a jury. You can give life to death for any reason
10 or no reason. It's entirely up to you.

11 And we have one other little step that has to be
12 carried out if you are a juror, and we need to know you
13 can do that. After you reach a verdict or a
14 recommendation, if you were -- if your jury was
15 convinced beyond a reasonable doubt, all 12, that the
16 death penalty was appropriate, as an additional
17 safeguard, the law requires each and every one of you
18 to attest to that fact by signing that verdict.

19 You know, sometimes it's difficult. Easier for a
20 person to vote than it is to sign their name. But you
21 would have to do that. The attorneys will probably ask
22 you if you could, in fact, do that. But those are the
23 responsibilities that you would have as a juror in this
24 case, and that's how the process would work.

25 Now, as I said, at this point we're going to ask

1 you individually some questions about that. So what
2 we're going to do is let you all go into your -- into
3 the jury room. I think I just excused Ms. Hucks,
4 didn't I?

5 MR. McGUIRE: You did.

6 THE COURT: All right. Who's Mr. Patrick?

7 Well, you must be Mr. Patrick Dozier (sic). Are
8 you, sir?

9 MR. DOZLER: Yes.

10 THE COURT: Okay. Would you remain with us for
11 just a moment, let the other ladies and gentleman
12 return to the jury room and we'll be with you
13 presently. Okay?

14 (WHEREUPON, Prospective Jury Panel Number 16, with
15 the exception of Mr. Dozler, exited the courtroom
16 at approximately 9:35 a.m.)

17 PATRICK DOZLER,

18 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

19 EXAMINATION BY THE COURT:

20 Q You know, I believe I referred to you as
21 Mr. Dozier. That's kind of a common Horry County name,
22 but it looks like you are "Dozler."

23 A That's correct.

24 Q "Dozler." All right.

25 Mr. Dozler, thank you for being here. Mr. Dozler,

1 do you recall last Monday or on Monday that I gave the
2 jury some instructions, and I said I don't want you to
3 look at anything about the case, I don't want you
4 talking to anybody about the case, I don't want you
5 exposing yourself to any publicity about the case? Do
6 you remember that?

7 A I do.

8 Q Have you complied with that?

9 A I have.

10 Q Thank you very much. Please understand that's
11 what we would call a standing order, and it would
12 control your conduct throughout your service. Until I
13 have released you from jury service, you would be under
14 that directive. Can you follow that?

15 A Yes, sir.

16 Q Thank you very much. Mr. Dozler, when you came in
17 this morning, we asked you if you could look at a list
18 of categories of jurors and to select which category
19 best describes you. And you were kind enough to do
20 that, and I have it right in front of me. And in doing
21 so, you indicated that you were what we refer to as a
22 category A juror; is that right?

23 A Yes, sir.

24 Q All right. And just so that I'm sure that I
25 understand you, that is a juror that simply feels that

1 once a murder has been committed, the death penalty is
2 only -- the only appropriate punishment no matter the
3 circumstances of the case. Is that how you feel about
4 it?

5 A Yes, based upon the definitions of what you
6 described and what I feel murder is.

7 Q Okay. And let me just say this. One of the
8 wonderful things about this country is we are all free
9 to have our own opinions and our own feelings, and I
10 promise you that no one here today is going to
11 criticize you for any opinion you have.

12 Those are your opinions. No one is going to try
13 to change your mind. I would not allow it. We simply
14 need you to be candid and honest with us concerning
15 your feelings about certain issues we'll be talking
16 about. Okay?

17 A Yes, sir.

18 Q Now, in regard to what you just told me, you said
19 that according to the definition. Are you referring to
20 my explanation of what capital murder is?

21 A Yes.

22 Q Murder plus one, murder plus an aggravator?

23 A Well, from a personal --

24 Q Or murder generally?

25 A I mean, though I think capital punishment is a

1 fair --

2 Q Well --

3 A I think it's fair.

4 Q I'm going to ask you about that.

5 A Well, I think it's something that is a fair, you
6 know, punishment of that particular crime.

7 Q All right. And please don't hesitate to just
8 speak freely. As I said, no one will criticize you at
9 all about your feelings. I just need to know what they
10 are. It's my job, Mr. Dozler, to determine if there is
11 anything about a particular juror, if that juror has
12 any particular opinion that would substantially impair
13 or interfere with that juror's ability to perform his
14 duties as a juror. And probably the primary concern is
15 whether a juror can be fair and impartial.

16 Impartial means that you could follow the law
17 without being unfairly influenced by your opinions.
18 And in this case, as I told you earlier, to even --
19 even -- and if -- again, I'm not suggesting we'll get
20 there -- but if there is a conviction for murder,
21 killing with malice aforethought, and then the State
22 goes beyond that and proves that it was done under
23 aggravating circumstances, could you at that point in
24 time set aside any feelings you might have, divorce
25 yourself from those feelings and fairly consider both

1 life imprisonment and the death penalty, or would your
2 feelings, do you believe your feelings would make you
3 be more inclined or inclined to vote for the death
4 penalty?

5 A No.

6 Q No?

7 A No, my --

8 Q No, they would? No, they wouldn't?

9 A If there wasn't -- if there wasn't presented that
10 mitigating factor, then even though I believe that the
11 death penalty is a fair and appropriate judgment, if it
12 wasn't proven in accordance to the law, then I could
13 agree with life.

14 Q And what I was asking you is if the State did
15 reach that point, proved that there was murder, proved
16 beyond a reasonable doubt that there was an aggravating
17 circumstance -- see, unless that is done, we don't even
18 get to the issue of the death penalty.

19 A Right.

20 Q If they had done that, if all that was already
21 done, could you still then approach this with an open
22 mind with fairness, giving equal consideration to life
23 and equal consideration to death?

24 A Yes.

25 Q You could do that?

1 A Uh-huh.

2 Q Okay. You made a comment a moment ago, and I want
3 to make certain I understood. You said if there was
4 present a mitigating circumstance. You understand that
5 even if you do not find mitigating circumstances, you
6 would still be entitled to vote for life. Do you
7 understand that?

8 A Yes.

9 Q Even without a mitigating circumstance. And if
10 you could not find a mitigating circumstance, do you
11 think you could still fairly consider both life and
12 death?

13 A Yes, I could.

14 Q You could do that. All right. Now, whenever a --
15 well, let me ask you this. I believe that -- I want to
16 know if you agree -- that the sum total of our
17 opinions, prejudices, biases that we all have, our
18 feelings, come from our life experiences in great part.
19 Would you agree with that?

20 A I would.

21 Q The good things, the bad things, relations with
22 family members, friends, business associates, all that
23 kind of comes together. Is there anything, Mr. Dozler,
24 that you feel is in your background, do you have any
25 opinions or biases that are a result of those things

1 that you believe would substantially impair your
2 ability to be fair and impartial in this case?

3 A No.

4 Q Could you be fair to Mr. Cottrell specifically?

5 A I could.

6 Q Could you be fair to the State of South Carolina
7 specifically?

8 A Yes.

9 Q Okay. You understand that you could only decide
10 this case on the evidence that you hear during the
11 trial?

12 A Yes, sir.

13 Q Have you heard anything else about it? Do you
14 know anything about the case?

15 A Very --

16 Q How long have you been in our area?

17 A I've only lived here for 15 months.

18 Q You're new to our area?

19 A Uh-huh.

20 Q Mr. Dozler, could you follow the law and would you
21 follow the law as I instruct you at the end of the
22 case?

23 A Of course.

24 Q Okay. What if you were listening to it and you
25 said, "Well, you know, the judge said that's the law,

1 but I just don't agree with that." Could you set that
2 aside and still follow the law as I give it to you?

3 A Yes.

4 Q You understand that's what you have to do?

5 A Right.

6 Q All right, sir. Answer any questions that
7 Ms. Norris has.

8 MS. NORRIS: Thank you.

9 EXAMINATION BY MS. NORRIS:

10 Q Good morning, Mr. Dozler.

11 A Good morning.

12 Q I'm Teresa Norris. I know I stood up the other
13 day and we got to see each other across a sea of
14 people.

15 Just let me ask you this. If I had met you a week
16 before you got your juror summons and I said,
17 "Mr. Dozler, tell me your general thoughts and opinions
18 about the death penalty," what would your answer be?

19 A Well, I think I would -- it's not just so black
20 and white in the sense that, you know, I value life and
21 I wouldn't -- not that I have a desire that anybody be
22 put to death, but based upon my views as a Christian
23 man, I believe that the death penalty is a fair option
24 if the action warrants that.

25 Q A fair option or -- I think you started with the

1 death penalty is always appropriate for murder. So I'm
2 just asking your --

3 A Based upon that what I -- that definition of what
4 murder is, then.

5 Q Murder being with malice aforethought?

6 A Exactly.

7 Q So in your opinion, just generally the death
8 penalty is always the appropriate punishment there?

9 A For that definition, yes.

10 Q Yes, sir. And there's nothing wrong with that.

11 A Yeah.

12 Q And if you were to be seated on a capital jury,
13 before you even got to the question of sentencing,
14 there would have been a conviction of that malicious
15 murder. So at that point where your own opinion is it
16 should always be the death penalty, are you ever even
17 going to consider anything beyond that other than just
18 listening to it, the law says life is an option?

19 A Are you asking me that question in the sense of if
20 it got to that point?

21 Q Yes, sir.

22 A If the State wasn't able to prove that it was
23 malicious under that definition, would I even think
24 of --

25 Q No. I'm sorry. If the State had proven it was

1 malicious murder, that's got to happen before you even
2 would get to that second part. So I'm saying you've
3 already found that. You've been convinced beyond a
4 reasonable doubt the State's proven its case of that
5 malicious murder. After that, even though life may be
6 an option under the law, in your opinion, your vote is
7 always going to be the death penalty?

8 A As difficult as it would be, yes.

9 Q Yes, sir. I understand. And as part of that, if
10 you were in a sentencing phase, the State has to prove
11 an aggravating factor, but you understand the defendant
12 doesn't have to present any evidence. So if you hear
13 nothing more than that malicious murder where you think
14 death is appropriate and it only gets worse from there,
15 it's an automatic death sentence from you, right?

16 A Though I feel that personally that the death
17 penalty is appropriate for murder, as a juror, if I'm
18 required to stay within the confines of the law and
19 that wasn't proven, then I would -- I could vote for
20 life imprisonment.

21 Q All right. Well, but before you would even reach
22 the point of making a decision, the State would have
23 had to have proven malicious murder plus the
24 aggravating factor, that plus, the examples --

25 A Right.

1 Q -- the judge gave. So the State's case would have
2 been proven before you're in a position. And there's
3 never a requirement of one sentence or the other at
4 that point. So the law won't guide you on that. So
5 when it's left to Mr. Dozler, I'm asking -- and there's
6 no right or wrong answer other than yours: -- are you
7 always going to come down on the side of death?

8 A Yes.

9 Q All right. Thank you, sir.

10 MR. RICHARDSON: Just a couple of questions, your
11 Honor.

12 EXAMINATION BY MR. RICHARDSON:

13 Q I want to make sure that you understand the
14 process, Mr. Dozler. My name is Jimmy Richardson.
15 This is Scott Hixson. We're going to be presenting the
16 case for the State. I know you started off as an A
17 juror, correct?

18 A Yes.

19 Q And here's -- an A juror says, "I'm going to
20 always vote for the death penalty." All right? A B
21 juror would say, "I'm never going to vote for the death
22 penalty." And a C juror is going to say, "I'm going to
23 weigh both sides."

24 So what I'm asking you about is where you stand
25 now. I'm going to tell you just as simply as I can

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1 about this process. Okay? Two-stage trial. Stage one
2 is like any other murder trial. Did Luzenski Cottrell
3 kill Joe McGarry with malice, evil heart, premeditated.
4 And if you guys, the 12 of y'all, decide that he did
5 beyond a reasonable doubt, then stage one is passed.
6 Okay?

7 Now, Judge Hyman told you earlier regular murder
8 trials, that's where it would end. But in those
9 capital cases, stage two is the State has to show what
10 makes this murder so much worse than other murders. In
11 other words, this is why we're asking for the death
12 penalty. So we would present that plus factor, that
13 aggravating circumstance.

14 So you've already said you've got it in your
15 pocket, he is guilty of murder. Now you look with the
16 same beyond a reasonable doubt standard, did he commit
17 this aggravator. Like the judge said, did he kill a
18 child, a police officer, a rape --

19 MS. NORRIS: Objection.

20 MR. RICHARDSON: -- any number -- I'll skip that.

21 But he knows, your Honor. You read the
22 indictment.

23 THE COURT: Mr. Dozler, do not consider any remark
24 other than mine giving you an illustration of what an
25 aggravating circumstance is. Okay?

1 MR. DOZLER: Okay.

2 MR. RICHARDSON: All right. Murder plus. And
3 when y'all guys have decided on both of those beyond a
4 reasonable doubt, now the third doorway is open. And
5 there you stand saying, All right. The only
6 appropriate penalty -- sentence is at that point is
7 life or death.

8 What I want very simply is can you consider life
9 and death at that stage?

10 A I could.

11 Q You could?

12 A Uh-huh.

13 THE COURT: What was the response?

14 MR. RICHARDSON: "I could."

15 THE COURT: Okay...

16 BY MR. RICHARDSON:

17 Q So you're saying that could you take in all of the
18 mitigating circumstances, all of the aggravating
19 circumstances, you could look at all of them together
20 and determine what is the most appropriate sentence?

21 A Yes.

22 Q All right. Because it would not be fair to the
23 defense nor the State if you were saying, "Once I get
24 to stage two and then finding that he's guilty," if
25 you're saying, "The only thing I'm going to look at is

1 death," that wouldn't be fair to the defense or the
2 State.

3 A Correct.

4 Q Got me?

5 A Uh-huh.

6 Q So you're saying I could look at death or life and
7 I could take all of the facts, the mitigation, the
8 aggravation, and determine between those two choices?

9 A Yes.

10 Q All right.

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

13 THE COURT: Would you just step out for a minute,
14 Mr. Dozler, with Mr. Ropp.

15 MR. DOZLER: Yes.

16 (WHEREUPON, Mr. Dozler exited the courtroom
17 at 9:54 a.m.)

18 THE COURT: Yes, ma'am.

19 MS. NORRIS: Your Honor, he said that he could
20 consider life, but he said multiple times that he's
21 always going to impose the death penalty.

22 MR. RICHARDSON: Your Honor, I know he started off
23 as an A. I think -- I honestly believe he got confused
24 with the process. I don't know how much simpler I
25 could have asked it, "At stage three can you consider

1 both?" He said he could. We believe that he is a C
2 juror and qualified.

3 THE COURT: Mr. Richardson, he indicated on his
4 form that he was an A. He confirmed that he was an A.
5 He vacillated back and forth during questioning. The
6 thing, the line that gives me greatest concern is
7 Ms. Norris' where he, I think, clearly said that once
8 the -- although he said otherwise, but there I believe
9 he clearly said once the aggravator was proven, that he
10 would be inclined towards or would give -- I think he
11 said he would give the death penalty. At the very
12 least there was great uncertainty in this juror's
13 responses. I'm uncertain where he stands, to be quite
14 honest with you.

15 But if we look at the *Lindsey* case, there the
16 juror, the supreme court upheld the judge's
17 determination that uncertainty as to whether a person
18 could give the death penalty was a reason or proper
19 reason to excuse a juror.

20 And I think the flip side, uncertainty as to
21 whether you can give the life sentence under the
22 directions of the Court, gives me great, great
23 reservations about this juror.

24 I'm going to find this juror is not qualified.
25 Thank you very much.

1 MR. RICHARDSON: Thank you, your Honor.

2 (WHEREUPON, Mr. Dozler entered the courtroom
3 at 9:56 a.m.)

4 THE COURT: Mr. Dozler, thank you for coming, but
5 you are released from further service. You may leave
6 now. Thank you, sir.

7 MR. DOZLER: Thank you.

8 (WHEREUPON, Mr. Dozler exited the courtroom
9 at 9:56 a.m.)

10 (WHEREUPON, Mr. Schroll entered the courtroom
11 at 9:57 a.m.)

12 MICHAEL SCHROLL,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION BY THE COURT:

15 Q Yes, sir. Come around. Is it "Mr. Schroll?"

16 A "Schroll."

17 Q "Schroll." How are you, Mr. Schroll?

18 A Good. How are you?

19 Q I'm doing well. Thank you for being here.

20 Mr. Schroll, you remember you're under oath?

21 A Yes, sir.

22 Q Okay. And do you remember or do you recall the
23 conversations we had on Monday about where I instructed
24 the jurors not to seek out any information or expose
25 yourself to any information or publicity, anything like

1 that, or discuss this case with anyone?

2 A Yes.

3 Q And have you been able to follow my instructions?

4 A Yes.

5 Q Okay. Thank you very much. That's exactly what I
6 wanted you to do. Let me just say that that's a
7 standing order of the Court. Which a standing order
8 means it continues. So until you're released from your
9 jury service -- you might be on the jury and that could
10 be sometime from now, or it might end today, but until
11 you're released, that order stands.

12 A I understand, yep.

13 Q Thank you very much. I hope you comply with that.

14 Mr. Schroll, this morning you came in and we asked
15 you to tell us what kind of juror you are. We gave you
16 three categories of jurors there. And all those
17 categories are sort of relevant to a person who might
18 be called as a juror on a capital case, and you have
19 indicated that you are a C juror; is that right?

20 A Correct.

21 Q Okay. Good. And just so I'm sure that we
22 understand each other, a C juror is a juror that would
23 need to hear the facts and circumstances in aggravation
24 and in mitigation before he or she could make a
25 decision regarding punishment.

1 A That's correct.

2 Q That describes you?

3 A Yes.

4 Q Okay. Mr. Schroll, you heard me this morning talk
5 to you about how the process works and what the
6 responsibilities of the jury would be in that process.
7 I know it was sort of general and brief, and at the end
8 of the trial I would instruct the jury who's seated in
9 much more detail about that. But were you able to
10 follow me?

11 A Yes.

12 Q Was I clear, do you think?

13 A Yes.

14 Q Didn't talk too fast, didn't ramble too much?

15 A No.

16 Q You seem to get a grasp on it?

17 A Yes.

18 Q All right, sir. Do you believe that that process,
19 the process that a juror would follow if now -- if the
20 State were to convict Mr. Cottrell of murder and if the
21 State were to then prove that plus, the aggravator,
22 that's when the jury is required to recommend a
23 sentence. That's when that kicks in.

24 A Yep.

25 Q Do you remember what the two possible sentences

1 were?

2 A The death penalty or life in prison without the
3 possibility of parole.

4 Q Very good. You were paying attention. Do you
5 believe that the process I described, if you got to
6 that point where the jury would have to consider
7 sentencing --

8 A Uh-huh.

9 Q -- do you think that's consistent with your
10 thought processes or what you feel you would have to
11 know before selecting a sentence?

12 A Yeah. The only question I had about that process
13 was inasmuch as each individual juror putting forth
14 their recommendation, and then you said only if
15 everyone unanimously puts forth the death penalty
16 option, then would that proceed. I was just curious
17 whether, you know, that is put forth to you without any
18 further consideration?

19 Q That's correct.

20 A Okay.

21 Q The Court, as I said, would follow the
22 recommendation. The Court would follow that. Okay?
23 Bound to follow the recommendation whether it's life or
24 death.

25 A Okay.

1 Q But is that consistent with your thought process,
2 that is, the considering of mitigating circumstances,
3 the considering of aggravating circumstances and
4 reaching a moral judgment concerning what you should
5 do?

6 A Yes.

7 Q And did you understand that there's great, great
8 latitude, unfettered latitude given to the jury in
9 making that decision? You should consider everything
10 that's put forth in mitigation. Certainly I'm going to
11 tell you to do that. Consider it. You don't have to
12 accept or apply any of it. You can pick this, that or
13 whatever as a mitigator or you don't even have to have
14 a mitigator.

15 A Yep.

16 Q You understand that. You're never in a position
17 where I have instructed you that you have to give the
18 death penalty or you have to give life. Do you
19 understand that?

20 A Yes.

21 Q Life imprisonment. Okay. Mr. Schroll, the
22 determination that I have to make is whether or not
23 there's anything about Michael Schroll that would
24 substantially hinder his ability to carry out his
25 duties as a juror. And I guess that the most important

1 thing about being a juror is to be fair and impartial.

2 A Agreed.

3 Q You agree with that?

4 A Yes.

5 Q Okay. Good. I'm glad you do. Would you also
6 agree that we all have biases and prejudices on certain
7 subjects and we have our opinions about things and we
8 have our feelings about things. That's what makes us
9 individuals, doesn't it?

10 A Sure.

11 Q You agree with that?

12 A Yes.

13 Q And that is often, in great part, formed about our
14 whole life experiences -- good things that have
15 happened, bad things that have happened, family
16 relations, friends, associates, work, education, all
17 those things come together. Do you believe that?

18 A Yep.

19 Q Well, I wanted to -- and these attorneys will
20 probably ask you about some of your feelings. And let
21 me tell you that we have in this country the absolute
22 right to have any opinion we want. And we can even
23 express that opinion. We call that freedom of speech.
24 Great thing about this country. And we're going to be
25 asking you about yours.

1 Please understand that when you respond concerning
2 your opinions, there's no wrong answers. You have the
3 right to your opinions, and we all respect that and no
4 one is going to try to change it. But it is crucially
5 important that you're candid with us and honest with us
6 about those feelings. In that regard, just let me ask
7 you about one thing --

8 A Okay.

9 Q -- the death penalty. Not so much South
10 Carolina's statute. Every state has a death statute.
11 Well, quite a few. But the death penalty as a concept,
12 that is, death as punishment for crime, do you have an
13 opinion about that? Do you have feelings about that?

14 A I mean, my stance is each individual instance may
15 or may not warrant such punishment.

16 Q So then would it be fair to say that under certain
17 circumstances you would think it's appropriate?

18 A Correct.

19 Q And under certain circumstances you would think it
20 not be appropriate?

21 A Also correct.

22 Q If we were to get to the part of the case -- if --
23 where the jury's going to have to reach a decision
24 concerning the appropriate recommendation of
25 sentence --

1 A Uh-huh.

2 Q -- if we got to that, and you know what that
3 means, the State would have had to convince you beyond
4 a reasonable doubt that there was a malicious murder, a
5 murder, a killing accompanied by malice.

6 A Yep.

7 Q Okay. And in addition to that -- now, malice is
8 not an aggravating circumstance. That's different.
9 That's what you have to show just to get ordinary
10 murder. You have got to go beyond malice.

11 If they were to show there was this aggravating
12 circumstance and you had found that beyond a reasonable
13 doubt not only was it murder, it was aggravated murder,
14 if you got to that point, would you lean -- be leaning,
15 without hearing mitigation evidence, without
16 considering anything in mitigation, without having
17 considered the extending mercy, without going through
18 the process at the get-go when you had found aggravated
19 murder, would you be leaning unfairly towards the death
20 penalty or leaning towards the life penalty or would
21 your mind be open?

22 A I would not lean in any particular direction. I
23 would be open to follow the guidelines you provide and
24 the evidence.

25 Q That's important. Could you begin that process

1 with no preconceived notions? You know, it would be
2 hard if you had just found an aggravating circumstance.
3 But that's what you must do. Can you do that?

4 A Yes.

5 Q And could you in this case be fair to Mr. Cottrell
6 in deciding on a sentence, and could you be fair to the
7 State?

8 A Yes.

9 Q You know, I told you a moment ago as an additional
10 safeguard the Court requires if -- if and only if --
11 you had a unanimous verdict for the death penalty, and
12 that's the only way the death penalty could be
13 recommended is if it was unanimous. But in addition to
14 that, just to be sure that every juror was committed to
15 that, that recommendation, you would have to sign it.
16 You know, it's one thing to vote. It's another thing
17 to affix your name. Could you do that?

18 A Yes.

19 Q Okay. Do you know anything about Michael Schroll
20 that you believe would impair your ability to be fair?

21 A No.

22 Q Do you know anything about this case?

23 A I do not.

24 Q How long have you been in this area?

25 A I moved here, it would be 22 months ago.

1 Q So you're new to the area?

2 A Yep.

3 Q Where do you come from?

4 A Originally from Pennsylvania but was most recently
5 in Boston for six years.

6 Q Where?

7 A Boston.

8 Q Okay. Good. Good to have you.

9 EXAMINATION BY MS. NORRIS:

10 Q Good morning, Mr. Schroll.

11 A Hi there.

12 Q I'm Teresa Norris. I know we got to stand up the
13 other day and see you across the sea of people, but I'm
14 glad to talk to you.

15 I was looking at your questionnaire, and I've got
16 a couple questions about that. First, I guess you
17 missed your trip to Denver?

18 A Yeah.

19 Q We're sorry about that, but glad to have you with
20 us.

21 You indicated that you were part of the
22 organization the Myrtle Beach Citizens Police Academy
23 Alumni?

24 A Correct.

25 Q Tell me what the Citizens Police Academy is. I'm

1 not familiar with that.

2 A Sure. So the Myrtle Beach Citizens Police Academy
3 is an approximately ten-week informational session that
4 one can participate in where you go to the police
5 substation in the Market Common area, and each week
6 they have a different presenter who helps educate you
7 about, you know, for instance, the drug enforcement
8 group or the canine unit, each week, going through
9 different groups in the police department educating you
10 about what it is they do.

11 Q And through that, did you look through the witness
12 list that the judge provided?

13 A I did. And so the thought crossed my mind that
14 there may be people that I, if I saw their face I might
15 know them, but I don't know them by their name as
16 written on the list.

17 Q Okay. That's fair enough. But if you were seated
18 as a juror, you would certainly let Judge Hyman know if
19 you did recognize somebody?

20 A Yes..

21 Q Sure.

22 THE COURT: In that regard, Mr. Schroll, I see
23 here that you did mark Chris Graham. Do you know a
24 Chris Graham?

25 MR. SCHROLL: So I know a Chris Graham who

1 works -- I mean, I work remotely for a company out of
2 Boston and he works for that company. He does not live
3 in that area, so it's unlikely it's the same.

4 THE COURT: Your Chris Graham doesn't even live
5 here?

6 MR. SCHROLL: Correct.

7 THE COURT: He lives in Massachusetts?

8 MR. SCHROLL: I'm actually not sure. My entire
9 team lives all over the country. But he definitely
10 doesn't live in South Carolina.

11 THE COURT: That's good enough. Thank you.

12 BY MS. NORRIS:

13 Q Was there anything about your experience in the
14 Citizens Police Academy that would make you biased for
15 or against law enforcement?

16 A I don't believe so.

17 Q Okay. And you also indicated that you said yes to
18 working with prevention of crime, et cetera. Is that
19 what you were talking about there or --

20 A That and I've also attended Neighborhood Watch
21 Crime Watch meetings in my community.

22 Q Okay. And I know some of this is personal, and I
23 don't mean to be personal, but I just need to know.
24 You indicated that you or your family had been a victim
25 of a crime. What was that?

- 1 A A little over a year ago my scooter was stolen.
- 2 Q Did you get it back?
- 3 A I did not, unfortunately.
- 4 Q Well, I hope you had some insurance.
- 5 A I didn't, unfortunately.
- 6 Q Let me ask you just a little bit about the death
7 penalty. If I had met you a week before you got your
8 juror summons and said, "Mr. Schroll, tell me your
9 general thoughts about the death penalty," what would
10 your answer have been?
- 11 A I would have just said I'm open to it and I think
12 that each case is, you know, has its situations to
13 warrant or not warrant the death penalty.
- 14 Q Okay. And if -- if you were seated on a capital
15 jury, of course, before you got to that question, there
16 would have been a conviction of murder, that
17 aggravating circumstance, the State could present
18 additional evidence, the defense doesn't have to
19 present additional evidence but can. Would you
20 consider a person's background, their upbringing, as
21 important information to you?
- 22 A Well, I think first I would look for instructions
23 from the Court as to whether or not that is relevant to
24 deciding the case.
- 25 Q If you were told that anything that weighs in

1 favor of life -- and you would be told that you could
2 consider any mitigation evidence, whether it was
3 presented by the defense or whether you independently
4 saw it within all the evidence presented. So assume
5 for me that the Court would tell you you can consider
6 that.

7 A Okay, then.

8 Q My question is: Would you personally consider
9 that relevant?

10 A I mean, I would -- yeah, if it's in the scope of
11 what should be considered, then, yes, I would take it
12 into consideration.

13 Q Okay. And if you were on a capital jury, I just
14 want to make sure you would understand that the Court
15 would never give you an instruction that says, "If you
16 find A, B and C, it has to be the death penalty"?

17 A Correct.

18 Q Same on the other side. So the question down the
19 middle that you would be asked to decide is that
20 individual reasoned moral judgment, looking at all the
21 evidence, taking all the instructions, you would be
22 asked to choose between the death penalty and life
23 without parole. And is it fair to say that you're just
24 on the fence, not leaning either way at this point?

25 A Correct.

1 Q All right. And if you made your individual
2 reasoned moral judgment based on all the evidence and
3 the facts and your opinion differed from the 11 others,
4 would you give up your opinion to join them, or would
5 you say, "This is what my conscience dictates. This is
6 my opinion. This is my vote"?

7 A Well, so I guess that goes back to what I was
8 actually trying ask which was when the -- if things got
9 to that point that you had to make the recommendation,
10 is there discussion amongst jurors prior to providing
11 that recommendation to the Court?

12 THE COURT: Oh, certainly. Certainly. And that
13 is part of the exchange of ideas between jurors.

14 MR. SCHROLL: Okay.

15 BY MS. NORRIS:

16 Q Yes, sir.

17 A So then yes, I mean, I would -- I would share with
18 my fellow jurors what brought me to that decision.

19 Q Absolutely. And just to make clear, if you're
20 selected as a juror, all 12 of you will be over here,
21 front row seat to all the evidence and action. And at
22 the end of that, the Court would give full instructions
23 of this is how you do this and then send you out to a
24 room where you would have all the time that you and the
25 other jurors needed to talk about it. But then you've

1 got to make your individual choice.

2 A Yep.

3 Q And you understand that you could find something
4 mitigating that a juror seated down here doesn't agree
5 with you, but you still can --

6 A Right.

7 Q -- have to consider what you believe?

8 A Yes.

9 Q And my question is simply at the end of that, when
10 you made your choice, would you give up your vote just
11 to join everybody else or would you say, "This is my
12 opinion. This is what my conscience dictates"?

13 A I mean, I don't know that I would necessarily do
14 one or the other. I would listen to what they had to
15 say, I would share what my thought process was, and if
16 in the discussion they, you know, shared, you know,
17 some -- something that I missed or didn't consider, you
18 know, I would be open to considering that also and --

19 Q Absolutely, as you should. But at some point at
20 the end of that you've got to make a choice. And my
21 question is simply after you have had all the
22 discussion --

23 A Yep.

24 Q -- and they have considered your opinions, you've
25 considered theirs, if your opinion is different, would

1 you give it up just to join everyone else?

2 A No. I would have no problem sticking with my
3 opinion if I felt that that's what my opinion should
4 be.

5 Q Okay. And if you were one of the 11 all agreeing
6 and somebody else had a different opinion, would you
7 respect that --

8 MR. HIXSON: Your Honor, I would object to that
9 hypothetical as not --

10 THE COURT: Yes, ma'am. Let's just leave it to
11 wherever he would go.

12 And it would be improper for you to have that
13 exchange and listen to each other and for you to just
14 simply say, "Well, you haven't changed my mind, but we
15 want to get out of here, so I'm just going to vote with
16 you."

17 MR. SCHROLL: No, I wouldn't --

18 THE COURT: That's what we cannot have.

19 MR. SCHROLL: Agreed.

20 THE COURT: Whatever the vote may have been.

21 MR. SCHROLL: Yes.

22 MS. NORRIS: Thank you, Mr. Schroll.

23 EXAMINATION BY MR. HIXSON:

24 Q Hi, sir. How are you?

25 A Good.

1 Q My name is Scott Hixson. I'm the Chief Deputy
2 Solicitor, and this is Jimmy Richardson. We don't have
3 a lot of questions for you. I think the Court
4 addressed it and Ms. Norris addressed a lot of them.

5 And just to clarify that for you, that point. You
6 know, that's why we don't have a voting booth just to
7 vote. It's to encourage that conversation until you
8 come to that sound moral judgment.

9 And there's one little last step in the process.
10 I didn't hear the judge ask the question. It's pretty
11 brief. Once you get through that and you're firm in
12 your convictions. And let's just say everybody is firm
13 and they return a verdict or a recommendation to the
14 Court that you want to recommend the death penalty in
15 this case. Procedurally you have to kind of affix your
16 signature that, "This is what we believe," and you have
17 to sign on the dotted line, so to speak. That is the
18 next little step.

19 Could you do that? Could you sign the dotted line
20 if that's your firm convictions coming out of the jury
21 room?

22 A Yes.

23 Q Thanks, sir, for your service.

24 MR. HIXSON: And we believe he's qualified, your
25 Honor.

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

2 THE COURT: All right.

3 Mr. Schroll, I find -- you know, they say that
4 they agree, but it's my call. I find that you are
5 certainly qualified as a juror on a capital case. That
6 doesn't mean you're going to be on this jury. Okay?

7 What it means is you're going to be in the larger
8 pool from which the jury is ultimately drawn. Once we
9 get that pool, it will move along very quickly, the
10 selection process. But we're still going to be at this
11 for maybe another day or so, so we won't need you. So
12 I'm going to let you go home.

13 MR. SCHROLL: Okay.

14 THE COURT: You were just given a sheet of paper
15 with a number.

16 MR. SCHROLL: Yes.

17 THE COURT: After 6:00 p.m. on Sunday -- after
18 6:00 p.m. -- there will be a message at that number
19 directed to you or the jurors.

20 MR. SCHROLL: Okay.

21 THE COURT: It will tell you when to appear and
22 where. Please appear at that time. Bring with you --
23 we're going to sequester the jury in this case. Bring
24 with you some clothing for several days. If you have
25 medications, you would need to bring those. Okay? If

1 you have -- you know, your toiletries, anything that
2 you might need, bring it with you when you come.

3 And if you're selected, just leave it in the car.
4 If you're selected -- you don't have to drag your
5 suitcase in here. If you are selected, we'll make sure
6 one of these gentlemen are available to go with you and
7 get that if you're sequestered. Just bring it.

8 MR. SCHROLL: Okay.

9 THE COURT: Thank you, sir. You may leave.

10 (WHEREUPON, Mr. Schroll exited the courtroom
11 at 10:20 a.m.)

12 (WHEREUPON, Ms. Cope entered the courtroom
13 at 10:20 a.m.)

14 KAREN COPE,

15 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q Come around, Ms. Cope. How are you?

18 A I'm a nervous wreck.

19 Q Don't be nervous. You should not be nervous.

20 We're just going to talk to you. There's nothing at

21 all adversarial about this process. We'll be asking

22 you about some of your opinions. And I promise you

23 that everyone here appreciates the fact that here in

24 this country everybody is entitled to have their own

25 opinion, and they can express those opinions. We call

1 that freedom of speech.

2 No one is going to criticize you for any opinion
3 you have. No one is going to try to change your mind.
4 That's not what we're about. We would just like you to
5 candidly and honestly tell us what your opinions are.

6 Okay?

7 A Okay.

8 Q So don't be nervous. All right?

9 A Okay.

10 Q No one is going to think any worse of you because
11 of any answer you give.

12 Do you remember on Monday I asked you not to read
13 anything about the case or talk with anybody about it
14 or expose yourself to any publicity or do any research
15 on the case?

16 A Yes, sir.

17 Q Have you done that?

18 A Yes, sir.

19 Q Have you done what I asked you to do --

20 A Yes, sir.

21 Q -- and refrained from those things? Good. This
22 is what we call a standing order. It means it goes
23 until you are released. You might be on the jury and
24 that could be some while, but it might end today. But
25 it's until you're released.

1 A Okay.

2 Q This morning when you came in, we asked you to
3 look at a sheet of paper here where we describe three
4 different types of categories of jurors that might be
5 involved in a capital case. Okay? And we asked you to
6 read those and indicate which one best describes you,
7 okay; is that right?

8 A Yes, sir.

9 Q And it looks like you said that you're a B type,
10 right?

11 A Right.

12 Q And just so that you and I are on the same page
13 and I'm understanding, a B type is a type juror who
14 believes the death penalty is never appropriate no
15 matter what the circumstances of the case?

16 A Yes, sir.

17 Q Personally you just do not believe in the death
18 penalty?

19 A Yes, sir.

20 Q That's you. You might need to speak up a little
21 bit because the lady right down here is taking
22 everything down, and I don't know if she's picking your
23 mic up or not.

24 THE COURT: Can you hear, Madam Court Reporter?

25 THE COURT REPORTER: A little louder would be

1 good.

2 BY THE COURT:

3 Q Let me ask you about that. Did you hear me, did
4 you follow me when I was talking to you about the
5 process that would be followed in a capital case in
6 this state?

7 A Yes, sir.

8 Q And did you understand that before it ever got put
9 on the table or it was even considered as a condition
10 of that happening, the State would first have to prove
11 that a murder had occurred, and that involves malice.
12 Do you understand malice is not one of the aggravators?

13 A Right.

14 Q Malice is just part of a basic murder. Then it
15 would have to be proved beyond a reasonable doubt that
16 some aggravating circumstance had been committed in
17 conjunction with that murder in some way. Okay? Had
18 to reach that, that point.

19 And then you would begin, the jury -- then and
20 only then would the jury begin that process of
21 recommending a sentence which would involve
22 consideration of both life and death. And my question
23 to you is: If you reach that point, do you still
24 believe that you would be unable to impose the death
25 penalty?

1 A Yes, sir.

2 Q Okay.

3 MS. NORRIS: No objection, your Honor.

4 MR. RICHARDSON: No objection.

5 THE COURT: I find that this juror is not
6 qualified on a death penalty case.

7 Ms. Cope, thank you for your honest answers. I
8 think you would make an excellent juror on any other
9 type case. I certainly would love to have you on any
10 of my juries, but if your beliefs would not allow you
11 to consider death, then that would not be appropriate
12 in a death penalty case. It would be unfair to the
13 State. Sometimes people might think that every time
14 you should give death, and that would be unfair to
15 Mr. Cottrell, and you would appreciate that.

16 MS. COPE: Right.

17 THE COURT: And that's your personal opinion.

18 MS. COPE: Uh-huh.

19 THE COURT: So I'm going to excuse you. You are
20 released.

21 MS. COPE: Thank you. Have a good day.

22 THE COURT: Thank you, ma'am, for coming.

23 MS. COPE: Thank you.

24 (WHEREUPON, Ms. Cope exited the courtroom
25 at 10:26 a.m.)

1 (WHEREUPON, Ms. Neece entered the courtroom
2 at 10:26 a.m.)

3 NANCY NEECE,
4 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

5 EXAMINATION BY THE COURT:

6 Q Come around, Ms. Neece. Good to see you this
7 morning.

8 A Thank you.

9 Q I hope you're well.

10 A I am.

11 Q Good. Are you ready to answer some questions for
12 us?

13 A As ready as I'm going to be.

14 Q Good. It's not a test.

15 A Yes, okay.

16 Q This is not a test.

17 Ms. Neece, do you remember on Monday I talked to
18 you and the other jurors about not talking with anyone
19 about the case or doing any independent research or
20 reading anything or watching any news reports about the
21 case? Do you remember that?

22 A Yes.

23 Q Were you able to conform to that instruction?

24 A Yes.

25 Q And I want to remind you that that's what we call

1 a standing order. It's my order to you, and it would
2 apply to you and control your actions until you are
3 released from your subpoena. Okay? That could be
4 today, could be down the road, whenever the case has
5 been completed. All right?

6 A Okay.

7 Q Now, you came in this morning, and we gave you a
8 sheet of paper. And that sheet of paper described
9 three categories of jurors that might be called upon to
10 sit as a juror on a death penalty case, capital case.
11 And you indicated that you were best described as a
12 category C juror; is that right?

13 A Yes.

14 Q My understanding, I want to repeat it just to make
15 sure you and I are on the same page. That would be a
16 juror who would need to hear the facts and
17 circumstances in aggravation and mitigation before he
18 or she could make a decision regarding punishment.
19 Does that best describe you?

20 A Yes, it does.

21 Q Is that how you actually feel?

22 A Yes.

23 Q Okay. Now, this morning I took an opportunity to
24 talk with you and the other jurors about how the
25 process would work, how a capital case was structured

1 and how it was different from other cases. And I want
2 to stress upon you the duties, the things that would be
3 required of a juror if we got to the point where the
4 jury was -- specifically the jury was to make a
5 recommendation of the sentence. Did you follow all
6 that?

7 A Yes.

8 Q Okay. I didn't talk too fast, I didn't ramble too
9 much?

10 A No.

11 Q You were able to kind of follow what I was saying?

12 A Yes.

13 Q Do you feel you have a grasp of what -- how the
14 process would work and what would be required of the
15 jurors?

16 A Yes.

17 Q Okay. Is that process that you follow as I
18 described it consistent with your ideas and opinions as
19 to how it should be done?

20 A Yes.

21 Q Okay. Did you find anything offensive about the
22 process as I described it or anything patently unfair
23 to Mr. Cottrell or patently unfair to the State?

24 A No.

25 Q The reason I ask you that question is I want to

1 know, if you are on this jury and if we got to that
2 point -- again, I'm not suggesting we will. I don't
3 want to put that in your mind. But if we got to that
4 point and I instruct you on the law, would you have any
5 difficulty following my instruction if I gave you an
6 instruction along the line of what I told you this
7 morning?

8 A No.

9 Q You believe that's a fair process?

10 A Yes.

11 Q All right. Now, Ms. Neece, we all have opinions.
12 We all have feelings. We all have biases and
13 prejudices about things in life. And it's my opinion
14 that those are formed by things that have happened to
15 us, good or bad, or relationships with family, friends,
16 business associates, our education, knowledge we may
17 have about a subject. All those go together and kind
18 of formulate our opinions and feelings. Would you
19 agree with that?

20 A Yes.

21 Q So we want to know about Nancy Neece. Let me
22 assure you there are no wrong answers. You have the
23 right to have absolutely any opinion on any subject.
24 That's the great thing about America, isn't it?

25 A Uh-huh.

1 Q And not only that, you can say it in America. We
2 call that freedom of speech. Everybody in this
3 courtroom appreciates that, that concept. Everybody
4 here respects your opinion, your right to have an
5 opinion. And no one here is going to try to change it.
6 We just need candid, honest answers about your
7 feelings. Do you understand?

8 A Yes.

9 Q And we will certainly respect anything that you
10 tell us. Okay?

11 A Okay.

12 Q One of the things that I'm interested in, and the
13 attorneys are going to ask you about other things, I'm
14 sure, is your feeling generally about the death
15 penalty. And I'm not asking you specifically about
16 South Carolina's structure or how it does it or any
17 other state but, generally speaking, the concept of
18 death as a punishment for crime. Okay?

19 A Uh-huh.

20 Q If I ask you what your opinion is about the death
21 penalty, what your feelings are about the death
22 penalty, what would you say?

23 A Well, I don't look at it lightly. But I do feel
24 that there are some circumstances that it should be
25 considered.

1 Q Okay. All right. Do you believe that in a
2 murder, even an aggravated murder, even an aggravated
3 murder, we were in trial and you had found murder and
4 an aggravator, do you believe that there are certain
5 circumstances where life would also be an appropriate
6 penalty?

7 A Absolutely.

8 Q Absolutely. Okay. If we got to that point in the
9 trial, you were on the jury and you had been sitting
10 there and listening to evidence and you found beyond a
11 reasonable doubt that there was a murder, a killing
12 accompanied by malice. Again, I want to stress malice
13 is not an aggravator. Malice is part of murder.
14 That's what makes the taking of a life a murder. It is
15 not one of your aggravators.

16 But you had found malicious murder and you had
17 found beyond a reasonable doubt an aggravating
18 circumstance, you had already found those beyond a
19 reasonable doubt and you were beginning that process
20 where you were to consider mitigating circumstances,
21 mercy, life, death, you were considering those things,
22 could you still look at it afresh? Could you follow
23 the law? Would you have already made up your mind that
24 it should be death? Could you consider both of those
25 possibilities?

1 A Could I consider both?

2 Q Yes, ma'am.

3 A Yes.

4 Q Okay. Would you be inclined to give one without
5 hearing the evidence before you gave the other?

6 A No.

7 Q You would not. Okay. If at the end of the
8 process all the jurors, all 12, had voted and
9 recommended the death penalty -- I'm not suggesting
10 that's going to happen -- but if it came to that, as an
11 extra protection -- and I think I indicated this
12 earlier -- as an extra protection to the Court to make
13 sure, I would want to make sure that everyone did vote
14 for the imposition of the death penalty, you would have
15 to sign your name.

16 You know, sometimes it's easier to vote than it is
17 to write your name down. Could you, in fact, do that?

18 A Yes.

19 Q Can you tell us anything now about Nancy Neece
20 that you are aware of that would in any way affect your
21 ability to be fair to Mr. Cottrell and to be fair to
22 the State of South Carolina?

23 A No.

24 Q Could you follow my instruction on the law?

25 A Yes.

1 Q What if you thought the law that I was giving you
2 wasn't a fair law, could you still follow it if I told
3 you you had to do that?

4 A The law is the law.

5 Q All right. Thank you.

6 EXAMINATION BY MS. NORRIS:

7 Q Good morning, Ms. Neece.

8 A Good morning.

9 Q I'm Teresa Norris. Stood up in the sea of people
10 the other day, but I'm glad to get to talk to you.

11 I noticed from your questionnaire that you had
12 testified in a criminal case before. Was that just as
13 a bystander where you weren't the victim or anything of
14 that nature?

15 A Yes.

16 Q Okay. So that wouldn't have any impact on your
17 ability to be a juror?

18 A No.

19 Q Okay. If you were seated in the jury and we had
20 gone through that whole process, I just want to make
21 sure that you understand that at the end of that, you
22 would never get an instruction that says, "If you find
23 A, B and C, you have to give life." And the same is
24 true the other way, never an instruction, "If you find
25 A, B and C, you have to give death."

1 So you, as a juror, would be in that middle
2 ground. Just going in, would you have a preference for
3 death or a preference for life or are you just there in
4 the middle?

5 A I'm in the middle.

6 Q Okay. And at that point you would be asked or
7 required, if you are on the jury, to make an individual
8 reasoned moral judgment of what you believe the
9 appropriate punishment was, taking into consideration
10 all of the evidence. But you would also get an
11 instruction that says you could give life without
12 parole for any reason or no reason. Do you understand
13 that?

14 A Yes.

15 Q Okay. And you could do it as a matter of
16 mitigating circumstances. And if you were seated down
17 here, you could consider one thing mitigating, other
18 jurors might find something else, and you don't
19 necessarily have to agree on that.

20 A Right.

21 Q Doesn't have to be unanimous. All right. Or you
22 could give a life sentence as a matter of mercy. No
23 problem with that in the law?

24 A Right.

25 Q Okay.

1 A I agree.

2 Q And as part of mitigation, would you want to
3 consider evidence about the defendant such as his
4 background, his upbringing? Do you think that would be
5 relevant?

6 A I think what would be relevant is the case, what
7 we're talking about.

8 Q Okay.

9 A That focus of the facts.

10 Q Just on what happened in the murder itself, you
11 think that would be more important or would you want to
12 hear all the evidence?

13 A It's a good question.

14 Q Yes, ma'am.

15 A I guess it's probably not fair to hear all the
16 evidence.

17 Q Not fair --

18 A I don't think it would -- the human side, you want
19 to know everything about a person. But I realize your
20 focus needs to be on what's happening with this case,
21 to me, and try it as this case only, I guess is what
22 I'm saying.

23 Q Let me make sure we're clear. In the initial part
24 the trial itself, all you're going to hear about is the
25 facts relevant to whether there was a murder or not.

1 A Okay.

2 Q If there is a conviction, once you get to
3 sentencing, in addition to that aggravating
4 circumstance, that plus factor that makes it death
5 eligible, after that the State would have the
6 opportunity to present additional aggravation. That
7 can be anything that the State says makes this person,
8 this offense worse.

9 The defense, on the other side, doesn't have to
10 present mitigation but can. And mitigation is simply
11 anything that weighs in favor of a life sentence, and
12 that can include background information.

13 So once you get to the sentencing, it is proper
14 for you to consider all that stuff? My question is
15 simply: Do you believe it's relevant, would you want
16 to know that stuff?

17 A Yes.

18 Q Okay. Thank you, ma'am.

19 EXAMINATION BY MR. HIXSON:

20 Q Hi, ma'am. My name is Scott Hixson. I'm the
21 Chief Deputy Solicitor, and Jimmy Richardson. I want
22 to thank you for your service and thank you for being
23 here.

24 MR. HIXSON: Your Honor, I don't really have any
25 additional questions.

1 MS. NORRIS: She's qualified.

2 MR. HIXSON: She's qualified, your Honor.

3 THE COURT: I'm glad these attorneys agree with
4 me. I think that you are qualified to sit on this
5 jury. Doesn't mean that you're on the jury yet.
6 You're just a part of that larger panel from which the
7 jury will be drawn. And I know this has been a long,
8 drawn out process, but actually this is the hardest
9 part of the process. Once we have qualified jurors, it
10 moves along very quickly. The selection process
11 doesn't take long at all.

12 But right now we're not going to need you for a
13 couple days. So I'm giving you a phone number there or
14 Mr. Ropp is, and I want you to call that number anytime
15 after 6:00 p.m., that's in the afternoon, on Sunday.

16 MS. NEECE: Okay.

17 THE COURT: Call that number. There will be some
18 instructions for you to appear, maybe some other
19 instructions, but it will at least tell you when and
20 where to come.

21 When you come, bring your things with you because
22 we are going to sequester the jury. Be sure to bring,
23 if you have any medication that you take, make sure you
24 got your medicine. Of course your toiletries, anything
25 that you need, and some clothing for several days.

1 Just leave that in your car when you get here.

2 If you are selected on the jury, I'll make sure
3 one of these gentlemen will accompany you and get those
4 things for you so that you can be sequestered. Okay?
5 Do you understand?

6 MS. NEECE: Yes.

7 THE COURT: Call back after 6:00 on Sunday. Thank
8 you, Ma'am. Ms. Neece, it's been a pleasure to meet
9 you.

10 THE WITNESS: Thank you.

11 (WHEREUPON, Ms. Neece exited the courtroom
12 at 10:43 a.m.)

13 THE COURT: Okay. The next panel is here, but I
14 need to take a break. Let's take a break. Ten,
15 15 minutes. Okay?

16 (WHEREUPON, recess taken from 10:43 a.m.
17 to 10:55 a.m.)

18 THE COURT: We have Mr. Cottrell and his counsel
19 and Mr. Hixson and Mr. Richardson in here and let the
20 record reflect that.

21 (WHEREUPON, Prospective Jury Panel Number 17 came
22 into open court at approximately 10:56 a.m.)

23 THE COURT: I see we have all six of our jurors on
24 this panel. Good morning. Thank you for coming back
25 at your appointed time.

1 I'm going to ask you some questions. Before we
2 get started, let me place you under oath. And please
3 remember, you're being placed under oath here this
4 morning. It will carry over. When we question you
5 individually, you will still remain under oath. Fair
6 enough?

7 If you would, Madam Clerk.

8 (WHEREUPON, the panel was sworn.)

9 THE COURT: You know, ladies and gentlemen, on
10 Monday I spent the whole day asking this whole jury
11 panel, all 250 whatever jurors, questions about your
12 general qualification to be jurors, the statutory
13 qualifications to be a juror. And I found that all of
14 you are qualified to be jurors.

15 The first thing I need to talk with you this
16 morning about is exemptions. There are certain
17 exemptions, and they're very specific, and they're set
18 out in the law that could apply to a potential juror,
19 that is, someone who is being qualified.

20 An exemption does not disqualify you. An
21 exemption is the right you have to ask to be excused
22 from jury service. You don't have to claim it. A good
23 example of that would be a person that's 65 years of
24 age or older. Once you hit that age, if you don't want
25 to be or serve as a juror, you don't have to.

1 You know, I try cases all the time, all different
2 kinds of cases. Some are civil cases, some are
3 criminal cases. But if you were to come up and visit
4 with me and watch some of the trials that I have, you
5 might look at the jury and say, "Obviously it looks
6 like this person here is over 65. I wonder why that
7 person is serving on the jury." And that's a good
8 example of what I was telling you. A person can be
9 65 years old, happens all the time, and they decide
10 that they don't want to claim their exemption. They
11 want to serve. And we are just pleased to have them do
12 that because our senior citizens, as you might expect,
13 bring just a wealth of experience and wisdom that they
14 have gained through attaining that age to jury service,
15 make wonderful jurors. And we're just happy to have
16 them. But that's a good example of a person who would
17 have an exemption but doesn't want to claim it.

18 So let me talk to you about your exemptions and
19 see if there is an exemption that applies to you and
20 find out if you want to claim your exemption.

21 Of course I said 65. Is there anyone on this jury
22 panel who has attained age of 65 who would like to be
23 excused? I don't think any of you are 65.

24 My goodness. This is Ms.?

25 POTENTIAL JUROR: Mary Walker.

1 THE COURT: Ms. Walker, are you 65?

2 POTENTIAL JUROR: I'm 67.

3 THE COURT: Oh, my goodness. Do you wish to claim
4 your exemption?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Okay. Then you are excused. Thank
7 you, ma'am.

8 POTENTIAL JUROR: Thank you very much.

9 THE COURT: You may leave.

10 POTENTIAL JUROR: Do I leave?

11 THE COURT: You may leave.

12 POTENTIAL JUROR: Thank you. Good luck.

13 (WHEREUPON, Ms. Walker exited the courtroom
14 at 11:00 a.m.)

15 THE COURT: Is there anyone else that would like
16 to claim that exemption?

17 Okay. There's no response.

18 Is there anyone who has served as a juror in this
19 court, and that would be the court of common pleas or
20 general sessions. That's the civil or criminal side.
21 It doesn't mean that you had to serve but just that you
22 were summonsed and you came and you made yourself
23 available.

24 Service on a magistrate's jury, if you went to
25 magistrate's court and you were a juror, that doesn't

1 count. Neither does municipal court, like the city
2 court. That doesn't count either. Neither does
3 federal court. You may have been summonsed to go up to
4 Charleston or Florence. That doesn't give rise to an
5 excuse, but if you served as a juror in this court in
6 the last three years, you can claim it.

7 Does that apply to anyone?

8 There is no response.

9 If you were on the county Grand Jury within the
10 last five years. Sometimes jurors don't really
11 understand what the Grand Jury is. I can say that if
12 you were on the Grand Jury, I guarantee you would know.

13 The Grand Jury meets once a month, and you have to
14 serve for at least a year, and many Grand Jurors have
15 to stay for two years. And the Grand Jury doesn't hear
16 cases like a trial. The Grand Jury just meets, and
17 they determine -- they look at people, cases where
18 people have been charged with a crime, and they make an
19 initial determination of whether there's any reason at
20 all to proceed with the case. That's what the Grand
21 Jury does.

22 Has anyone served on the Grand Jury within the
23 last five years?

24 And there's no response.

25 The next exemption has to do with small children.

1 If you have a child that's under the age of seven or if
2 you have custody of a child that's under the age of
3 seven and you're responsible for the care and custody
4 of that child -- you know, you're going to be
5 sequestered if you're placed on the jury. We have
6 talked about that. If you don't have any way of
7 getting someone else to help you with the care of that
8 child, you can claim that as an exemption.

9 Does that apply to anyone?

10 And there is no response.

11 There is a similar exemption that applies to
12 people who are the caretakers for people who are
13 elderly or disabled who require care. They should not
14 be left alone. And if you provide that care for a
15 person that's disabled or so elderly that they can't be
16 left alone, you can claim that.

17 Does anyone fit into that category?

18 There's no response.

19 Also full-time students. We thought we had all
20 those weeded out, but we did not. We have run into
21 that a couple of times in qualification of jurors.

22 Is there anyone who's a full-time student?

23 And there's no response.

24 Also, if you work at a school, and that can be K
25 through 12 private or public school, or if you work at

1 the technical school or college or university and your
2 job is a necessary job, that is, a job that is
3 important to the operation of the school and there's no
4 one who can fill in for you, you may claim that as an
5 exemption.

6 Is there anyone in that category?

7 All right. There's no response.

8 And, finally, if you have a job and you work for a
9 business, agricultural enterprise or a commercial-type
10 business and your services, the services that you
11 provide to that business, are so important that it
12 cannot operate without you, no one can replace you,
13 have to close the doors, send the employees home, got
14 to shut down the business if you're not there. Anyone
15 in that category?

16 And there's no response.

17 Okay. Now, let me talk to you generally about the
18 process that we're going to undertake with the trial of
19 this case and the duties and responsibilities of
20 jurors. I think if I explain that to you, it will help
21 you understand where the people who are going to ask
22 you questions are going and the purpose of those
23 questions.

24 Have any of you ever heard the phrase "presumption
25 of innocence"? I see a couple heads nodding. That

1 phrase describes a legal principle or a legal theory
2 that just doesn't apply in South Carolina. It applies
3 in every state in the United States. It's pervasive.
4 It's constitutional.

5 What it means is any person who is charged with a
6 crime is presumed to be innocent. And that presumption
7 protects that person. It stays with that person. It
8 does not end when the person walks in the courtroom and
9 the trial starts. It stays with that person throughout
10 the trial. And it gives rise, essentially, to the
11 responsibility, burden, it's on the State in a criminal
12 case.

13 In a criminal case the State can only overcome
14 that presumption if the State can convince each and
15 every juror on that jury beyond a reasonable doubt that
16 the person accused committed the crime that he or she
17 is charged with. That is the only way that a
18 conviction can take place.

19 Now, as I travel about the state and I'm required
20 to go to other counties, and I'll say they move me
21 around just like any other circuit judge. We have to
22 move around. As I move around the state, there may be
23 any number of murder cases that are tried during the
24 year all around the state. And those cases are
25 tried -- it's hard to say a normal murder case. Murder

1 is certainly not a normal thing, but I'll refer to it
2 as normal meaning a non-death penalty murder case.

3 If a person is tried with murder or tried for
4 murder, that case proceeds just like any other case,
5 like if the person was charged with stealing or
6 anything like that. The procedure would be exactly the
7 same. The evidence would be presented to the jury.
8 The jury would have to make a determination if the
9 State had proven guilt beyond a reasonable doubt. And
10 at the end of the case, the jury would be given what we
11 call a verdict form, and the verdict form would simply
12 ask if you find him either guilty or not guilty. And
13 when the deliberations were finished, the foreperson,
14 just the foreperson, would sign it, mark what the
15 verdict was, and it would be handed up to me. And if
16 it was not guilty, that ends it. If it were guilty,
17 then I, as the judge, would decide the appropriate
18 sentence.

19 And that's the way it is in every case that's
20 tried in this state except -- except those cases where
21 the State has determined that it would seek the death
22 penalty. That is what we have here in this case. I
23 want you to understand that if I were involved in a
24 normal or traditional murder case and the jury had
25 found the defendant guilty of murder, did you know that

1 I could not impose a sentence of death? An ordinary,
2 plain, run-of-the-mill murder case, that's not even on
3 the table. It could not be considered by me. I
4 couldn't do that. It would be unlawful for me to do
5 that on an ordinary case.

6 That's what makes a capital case different. In an
7 ordinary murder case -- and let me say this. There are
8 many kinds of charges that may be levied against a
9 person for taking a life. Okay? Many different
10 circumstances that give rise to different charges other
11 than murder.

12 Murder is the unlawful taking of a life. We start
13 out with that. If we have that, it could be any number
14 of charges. But only if it is accompanied by malice
15 aforethought does it become murder. All right?

16 Now, malice aforethought has been described in
17 many, many ways or using different language by the
18 courts. It essentially means with ill will or hatred
19 or evil intent or maliciousness towards the victim.
20 The taking of the life is accompanied by that ill will
21 that the perpetrator had against the person. That's
22 what we call malice. Maliciousness.

23 In a case where the State has determined that it
24 would seek the death penalty, there has to be more than
25 just murder. Capital murder is more than that. We've

1 been referring to it during this process as murder
2 plus. Murder plus something else. And that is why
3 capital cases are divided into two parts.

4 It starts out just like a typical, ordinary murder
5 case. And the State has to put up evidence to first
6 determine whether or not the person is guilty of
7 murder, taking the life with malice aforethought. And
8 it's tried just like any other murder case. All right?

9 If and only if, only if the State proves that this
10 was murder beyond a reasonable doubt and every juror
11 agrees with that, that is, there is a conviction for
12 the murder do we ever move to the second phase. And
13 you've heard it referred to as the sentencing phase of
14 a capital case. We move up to that.

15 And that's where the State, we'd take a break,
16 come back fresh. And the State then has to start anew
17 in an effort to prove that extra thing, that plus that
18 we have been talking about. And the State has to
19 convince each juror that that extra thing occurred
20 beyond a reasonable doubt just like it had to do in the
21 initial part of the trial.

22 That plus is what we call an aggravating
23 circumstances -- or aggravating circumstance. It is
24 not malice. Malice had to be proved in the first part.
25 Aggravating circumstances are something else. And when

1 our legislature set up the capital case system or the
2 death penalty system, it very specifically said, "These
3 things," and it listed them, "These things are the
4 aggravating circumstances that a jury can consider."
5 And you can consider only those.

6 You know, you might get in a case where the judge
7 tells you, "These things are the aggravating
8 circumstances." And you may look at a particular case
9 and say, "Well, you know, this happened over here, and
10 in my mind, it's just as bad as any of those other
11 things. Let's use that as an aggravating
12 circumstance." Could not do that. You have to stay in
13 the box, so to speak, and just do that.

14 What is an aggravating circumstance? I wanted to
15 give you an example of what an aggravating circumstance
16 is. And I looked at it. And so that I not influence
17 you in any way -- I do not want to do that. And please
18 understand that my remarks here where we talk about
19 reaching that second part does not mean that I have an
20 opinion or anyone has an opinion or wants to infer from
21 you that you will ever get to that point.

22 It's up to the jury to determine whether murder
23 even took place and we would do it, and Mr. Cottrell
24 has pled not guilty to that. And he has a presumption
25 of innocence, and his attorneys are going to tell you

1 that they're here to defend him, and they don't believe
2 this is murder, and that's their position. So please
3 understand that that should be in your mind all through
4 this trial.

5 But I looked at the aggravating circumstances, and
6 I wanted to pick out a couple examples that I know
7 don't have anything at all to do with this case.
8 You're not going to hear anything about these examples
9 that I pick out. They have nothing to do with this
10 case. But I just point them out to you so maybe it
11 will help you understand what an aggravator is.

12 There are two types of aggravators. One is the
13 murder was committed in conjunction with another crime,
14 a very specific crime. One of those that the
15 legislature has set out would be like a rape. If a
16 murder is committed during the commission of a rape,
17 that would be an aggravating circumstance if proven
18 beyond a reasonable doubt.

19 And we have others that say or have to do with the
20 type of victim, such as it would be an aggravating
21 circumstance if a small child was murdered. That would
22 be one of the statutory aggravating circumstances.
23 And, again, that has nothing at all to do with this
24 case. I just point it out so you can get a feel for
25 what I'm talking about here.

1 Well, what really makes a capital case interesting
2 and what really makes it different from other types of
3 cases is if and only if the State has convinced each
4 and every juror beyond a reasonable doubt that at least
5 one -- at least one -- of those aggravating
6 circumstances was present, at that point in time, only
7 if you reach that point, does the matter of the death
8 penalty even become a consideration or a possibility.
9 That's the plus one thing.

10 The State must prove beyond a reasonable doubt not
11 only murder which involves malice, but it must prove
12 something else that's an aggravating circumstance
13 before we ever get to the point where the death penalty
14 is even brought out and put on the table.

15 What's really unique about a capital case is that,
16 unlike the case where if it was a common murder and I
17 told you the foreperson would hand up a verdict form
18 just saying whether he was guilty or not guilty and
19 then I would determine what the penalty was, in a
20 capital case the jury recommends the sentence.

21 And there are two options available to a jury if
22 it gets to that point. And that is the death penalty
23 or life. And only if the jury were to determine
24 unanimously that the death penalty was their
25 recommendation could it be recommended. And I will

1 tell you right up front, the recommendation of the jury
2 is essentially the sentence. The Court will follow the
3 recommendation of the jury. And I hope you can see now
4 that this is a unique situation. We don't have it
5 anywhere else.

6 But that's the process that has to be followed for
7 the jury to even consider recommending the death
8 penalty. But when you get to that point, you just
9 can't say, "It's aggravated and it was murder," and
10 that would be the end of the inquiry.

11 The jury has to then consider and listen to all
12 the evidence concerning mitigation. Mitigation is
13 something that makes the -- that extenuates
14 the sentence. Mitigation are things that make the acts
15 of the defendant less severe. Mitigation are things
16 that would weigh in favor of giving life instead of the
17 death sentence.

18 And I don't know what or if anything is going to
19 be presented to you because I haven't heard the case.
20 But whatever is offered to you, you are required to
21 consider it, to at least consider it. You may find it
22 to be mitigating or you may find it not to be
23 mitigating. That's a moral decision that you as jurors
24 have to reach.

25 I will tell you that the legislature has

1 identified another box and said, These things are
2 mitigating circumstances. We feel that these are
3 mitigating circumstances. But unlike aggravating
4 circumstances, those are circumstances that, let's say,
5 make the crime more heinous. You can't go out of the
6 box and find something else with that.

7 But with mitigating circumstances, you're not
8 bound by what the legislature has said are statutory.
9 You can consider and should at least consider
10 everything that's offered out there. And at the end of
11 the day you don't have to agree on what or if there are
12 mitigators in the case.

13 Each juror can look out here and determine if
14 anything is a mitigator. And another juror may have
15 something else that he or she thinks is a mitigator, or
16 the jury may have found absolutely nothing as
17 mitigation.

18 If you find there's nothing that is offered that
19 convinces you that it should be used in mitigation, you
20 find no mitigating circumstances, you would think that
21 perhaps that ends the inquiry. It does not. And I'll
22 instruct you that, in spite of that, you could
23 recommend a life sentence even if you find no
24 mitigators at all. You can recommend life for no
25 reason at all. You can recommend life over death

1 simply because you want to extend mercy whether that
2 mercy is something that you feel that the defendant
3 deserves or that you want to grant just by grace.
4 Either way.

5 There is never a point -- never a point -- at
6 which I will tell you, "If you find this, this and
7 this, or this, this or that, that that means you have
8 got to impose the death penalty." Likewise, I will
9 never tell you that, "If you find this, this or this,
10 you have to impose life." It is a moral choice that
11 each juror has to make in voting as to whether or not
12 you will recommend a life sentence or the death
13 sentence.

14 What is crucial is that you look at it fairly and
15 objectively and that you are willing to consider both
16 possible sentences in making your decision. You, of
17 course, will in your deliberations discuss it and share
18 ideas back and forth. But ultimately you will be
19 required to vote. And if -- I'm not suggesting you
20 have to do this or should do it or it's appropriate. I
21 have no opinion on it. But if you should reach the
22 point that you as jurors unanimously -- you can only
23 recommend the death penalty if you are unanimous. But
24 if you are unanimous in your decision that the death
25 penalty is appropriate, there's one extra step that the

1 courts require, and that's to -- it's an extra
2 protection that the defendant is entitled to so that
3 the Court will be absolutely certain that each person
4 did vote to recommend the death penalty, and that is
5 unlike that verdict in a common, ordinary murder
6 case -- I told you that just the foreperson signs --
7 each juror has to sign indicating that that was, in
8 fact, their vote in this case. It's something you
9 should think about. That's how a capital case is
10 different. I hope that that will help you understand
11 your responsibilities as jurors.

12 Now, what we're going to do is let you all go back
13 to your jury room with the exception of
14 Ms. Villalpando. Who is Ms. Villalpando?

15 Am I saying that right?

16 MS. VILLALPANDO: It's "Villalpando." Just Carla.

17 THE COURT: "Villalpando." Okay. I'm sorry.
18 That's just a good 'ol Horry County name, isn't it?

19 MS. VILLALPANDO: Right.

20 THE COURT: Ms. Villalpando, if you would stay
21 with us.

22 Mr. Ropp will take you back to your jury room.
23 Get comfortable. We'll be with you presently. All
24 right.

25 (WHEREUPON, Prospective Jury Panel Number 17, with

1 the exception of Ms. Villalpando, exited the.
2 courtroom at approximately 11:25 a.m.)

3 **CARLA COLLINS VILLALPANDO,**
4 **BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:**

5 **EXAMINATION BY THE COURT:**

6 Q Ms. Villalpando, please come forward. Good.
7 morning, Ms. Villalpando.

8 A Good morning.

9 Q I hope you're well.

10 A Yes. Thank you.

11 Q Ms. Villalpando, do you remember on Monday when I
12 met with all the jurors I asked you, directed that you
13 not do any independent research, do not talk to anyone
14 about the case, that you not expose yourself to any
15 news reports or media reports about it? Were you able
16 to comply with that?

17 A Yes.

18 Q Well, thank you very much. That is a standing
19 order which means that it binds you throughout this
20 process until you might be released as a juror, whether
21 it's at the end of the trial or at any other time I
22 tell you you are released as a juror. Fair enough?

23 A Yes.

24 Q Now, you were kind enough to come in this morning
25 and we gave you a sheet of paper, and on that we put

1 three categories of jurors that might be called upon to
2 serve in a capital case. And you indicated that you
3 are a type C or category C juror; is that right?

4 A Yes.

5 Q And just so that you and I understand each other,
6 let me make sure that we have this right. You say that
7 you are a juror who would need to hear the facts and
8 circumstances in aggravation and in mitigation before
9 you could make a decision regarding punishment. Does
10 that fairly describe you?

11 A Correct.

12 Q Okay. Now, a moment ago I tried to explain to you
13 how the process works and what your duties as a juror
14 would be. Were you able to follow what I was saying?

15 A Yes.

16 Q I didn't talk too fast or ramble too much?

17 A No.

18 Q Do you feel you have a better grasp now of what
19 your responsibilities would be as a juror and what the
20 process would involve?

21 A Yes, I do.

22 Q Okay. Thank you. Did you find that helpful?

23 A Yes.

24 Q Okay. Was there anything about that process that
25 you personally found to be objectionable, unfair to

1 either the defendant or the State or oppressive in any
2 way, something that in your mind at least you felt
3 would be difficult to follow or deal with if you were
4 selected as a juror?

5 A No.

6 Q Okay. Do you believe that that process is
7 somewhat consistent with your feelings about how the
8 decision of penalty or the choice of penalty should be
9 determined in a capital case?

10 A Yes.

11 Q Okay? All right. Now, Ms. Villalpando, we're
12 going to be asking you some questions, or I anticipate
13 there will be questions asked about your opinions, your
14 feelings on certain relevant subjects. And it's at
15 least my opinion that all that, how we feel about
16 things, are kind of the sum total of our life
17 experiences -- good things that happen to us, bad
18 things that happen to us, our relationships with
19 family, friends, associates, education, and
20 particularly knowledge that we may have about a
21 particular subject. You agree with that?

22 A Yes, absolutely.

23 Q Okay. You're really soft-spoken.

24 A I'm sorry.

25 Q Maybe move that microphone up. I want to make

1 sure that the court reporter can record your response.

2 So you absolutely agree with that?

3 A Yes.

4 Q Do you understand that in this country, not only
5 does everybody have the right to have an opinion about
6 anything, you also have the right to express that
7 opinion?

8 A Yes.

9 Q Okay. We call that freedom of speech.

10 A Thank God.

11 Q Very important. I want to impress upon you,
12 Ms. Villalpando, that no one here will criticize any
13 opinion you have. We all respect the fact that you
14 have individual opinions regardless of what those
15 opinions are, and no one is going to try change your
16 mind. I won't permit that.

17 A Okay.

18 Q But it is important that we -- that you candidly
19 and honestly share those opinions with us. Okay?

20 A Okay.

21 Q No wrong answers here.

22 A Got you.

23 Q Everything is a right answer. Okay?

24 A Okay.

25 Q And could you do that?

1 A I will.

2 Q All right. Let me begin by asking you, generally
3 speaking, about your feelings or opinions on the death
4 penalty in general. I'm not talking about the
5 statutory scheme that the State of South Carolina has.
6 I'm talking in more general terms about the use of the
7 death penalty as punishment for crime. If I ask you,
8 said, you know, "What's your opinion about that," what
9 would you tell me?

10 A I just think it's another avenue that we can go,
11 you know, because we do here in the United States have
12 options as jurors and as a government to make those
13 decisions. And I just think it's another avenue that
14 we allow ourselves to take, and sometimes it's
15 necessary and sometimes it's not.

16 Q Do you believe that in some circumstances it would
17 not be too severe? That's not -- I'm not sure I asked
18 that right. Do you believe that under some
19 circumstances it would be appropriate?

20 A Yes.

21 Q Okay. And would you believe that there are
22 circumstances, even for murder with malice
23 aforethought, even with an aggravating circumstance
24 that, on the other hand, life imprisonment would be the
25 appropriate sentence?

1 A Yes.

2 Q Okay. And in that regard, if you were seated as a
3 juror, okay, and we had gone through the process -- and
4 there again, I'm just speculating. I don't have an
5 opinion. I don't want to infer anything to you. But
6 if the State met its burden of proof and proved that
7 Mr. Cottrell committed murder, that is, murder with
8 malice aforethought, proved it to you beyond a
9 reasonable doubt, okay, and then we move to the second
10 phase and the State successfully convinced you and the
11 other jurors beyond a reasonable doubt that that murder
12 was committed under circumstances or aggravating
13 circumstances, one or more aggravating circumstances,
14 and then we reach that very unique position where the
15 jury was asked to and instructed to return a
16 recommendation of a sentence, do you remember what I
17 told you the options would be if we reach that point?
18 What were they?

19 A That we would decide -- it would have to be
20 unanimous. The jury would have to be unanimous on
21 whatever decision we make if they went with the death
22 penalty.

23 Q There you go. A death penalty would have to be
24 unanimous. And what would be the other option?

25 A I can't remember. I'm sorry. Life.

1 Q Life imprisonment.

2 A Life.

3 Q So there are two things that have to be
4 considered. If you reach that point where you had
5 determined there was murder with malice, malice as part
6 of murder, and there was an additional aggravating
7 circumstance, at least one, and you were asked to
8 proceed with a recommendation, could you still at that
9 point -- at that point -- approach the process of
10 determining whether life was appropriate or death was
11 appropriate with an open mind? Could you consider both
12 of those options?

13 A Yes, I could.

14 Q Okay. Would you look at any evidence that was
15 offered in mitigation? Whether or not you thought it
16 was an appropriate mitigator, would you look at it and
17 consider it, think about it, be open to it, is I guess
18 what I'm saying?

19 A Yes.

20 Q You understand that would be your duty to do it?

21 A Yes.

22 Q Okay. Do you understand that you don't have to
23 find a mitigator to give life?

24 A Right.

25 Q You can do it purely for purposes of extending

1 mercy. Do you understand that?

2 A Yes.

3 Q Would you lean one way or the other before you
4 completed that process or when you began that process?

5 A No, I wouldn't.

6 Q You feel you could be absolutely fairly open to
7 both possibilities?

8 A Yes, because I think it's, you know, it's a human
9 life you're talking about, and I don't take that
10 lightly.

11 Q Okay. All right. Let's back up a little bit. Do
12 you understand that you could only judge this case if
13 you were sitting as a juror based on the evidence that
14 you heard in the trial?

15 A Yes.

16 Q Only that evidence. You could follow my
17 instructions concerning that?

18 When I asked jurors to stand up, my notes indicate
19 that you stood up whenever I asked if anyone had heard
20 anything about the case.

21 A Yes.

22 Q And was I correct in recording that you said that?

23 A Yes.

24 Q How long have you been here in this county? Were
25 you born here?

1 A No. I've been here 25 years.

2 Q You've been here quite a while.

3 A Yes.

4 Q Okay. What have you heard about the case?

5 A I mostly just remembered the names.

6 Q Okay.

7 A And that's about it. I do remember there was like
8 a scuffle or something or -- I don't know. All I know
9 is there was a policeman was killed.

10 Q You know, I read the indictment to you Monday. Is
11 that basically what you heard, the things that were in
12 the indictment?

13 A Yeah.

14 Q Had you even heard that?

15 A Not even all that. It's been so long ago, I just
16 mostly remembered the names.

17 Q And, you know, a moment ago when we were talking,
18 I said sometimes knowledge we may have about a
19 particular issue or subject will affect the way we feel
20 or any opinion we may have about that. Would anything
21 that you have heard affect your ability to be fair and
22 impartial in this case?

23 A Oh, no.

24 Q You know, what I have to do is make a decision as
25 to whether or not there's anything about Carla that

1 would substantially interfere with her ability to
2 perform her duties as a juror, which essentially means
3 to be fair and impartial.

4 A Right.

5 Q Can you, thinking back about your life and your
6 feelings, do you think there's anything out there that
7 might cause you to have a prejudice or bias against
8 Mr. Cottrell or against the State?

9 A No.

10 Q Could you be fair to both the State and to
11 Mr. Cottrell?

12 A Yes.

13 Q And would you do that?

14 A Yes, I would, absolutely.

15 Q Would you follow the law as I give it to you?

16 A Yes.

17 Q You know, the jury has to use the law that the
18 judge gives them. You know, I'll give you that
19 instruction. You have got to follow the law?

20 A Right.

21 Q What if I said something and you looked at it and
22 you said, "Goodness, you know, I don't think that
23 should be the law." Could you set that aside and still
24 follow the law as I gave it to you and apply it as I
25 gave it to you?

1 A It doesn't matter if I think it's a good law or
2 not. If it's the law, it's the law.

3 Q It's the law. All right.

4 THE COURT: Do you want to ask her any questions,
5 Mr. McGuire?

6 MR. McGUIRE: Thank you, Judge.

7 EXAMINATION BY MR. McGUIRE:

8 Q Good morning, Ms. Villalpando. My name is Bill,
9 Bill McGuire, one of the lawyers in the case.

10 You put on your questionnaire that you thought I
11 lived in your neighborhood; is that right?

12 A No.

13 Q Just want to make sure we're not confused.

14 A You know what, I think I may have been thinking
15 about Mark McGuire.

16 Q Here we go.

17 MR. McGUIRE: If I could approach, Judge.

18 MS. VILLALPANDO: Yes. I was thinking about Mark
19 McGuire. I apologize.

20 BY MR. McGUIRE:

21 Q I mean, I went to Coastal.

22 A When I saw you, I was like no, that's not --

23 Q Not the right guy. Fair enough.

24 A Sorry about that.

25 Q And I just want to go back. If I met you a month

1 ago before you got this summons, before you knew about
2 the case, and I just asked you what are your general
3 thoughts, feelings, what you thought about the death
4 penalty over time, what's your opinion generally?

5 A About the death penalty?

6 Q Yes, ma'am.

7 A Well, it's just, like I said, it's another option
8 that we have, you know, in our government. And I
9 don't -- I'm not one of those people that says
10 everybody should get the death penalty or anything like
11 that, but I'm not saying it should never be used
12 either. I think that depends on the circumstances.

13 Q And, of course, the judge told you that the
14 definition of murder in South Carolina is a malicious
15 taking of an innocent life with an evil intent. Not
16 accident, not self-defense. And then there would be an
17 aggravator, something more. And you heard the
18 indictment. The decedent in this case was a police
19 officer in the line of duty.

20 Just knowing that, do you have any thoughts about
21 the death penalty as it being appropriate?

22 A I just -- I mean, I don't know anything about
23 the -- you know, I don't know details, so I don't know.

24 Q You need to hear more?

25 A Yeah.

1 Q Fair enough. When it comes to fixing that
2 decision, the life penalty or death penalty, do you
3 think that general background of the person who
4 committed the act would be relevant?

5 A I don't know. Maybe in some cases, maybe not. I
6 think we are all who we are, and I think our background
7 tells a lot about who we are.

8 Q Fair enough. Fair enough. I think the judge told
9 you briefly that to vote for the life penalty -- and
10 the sentencing phase is very different. A capital case
11 is very different. The judge made that clear. I want
12 to just tell you very clearly with no hesitation that
13 because I'm talking about penalty that I'm conceding
14 guilt in any way. Do you understand that?

15 A Yes.

16 Q This is my only time to talk to you, so I have to
17 do it.

18 A Right.

19 Q In that sentencing phase, any individual juror can
20 vote for the life penalty or any reason, no reason or
21 mercy. Did you know that?

22 A Yes, I knew that, but I would hope that no one
23 would just say, "Well, let's give him the death penalty
24 just because." You know, I would hope we're more
25 intelligent than that.

1 Q I think we have faith that you are and your fellow
2 jurors will be. But -- so that no reason part is a
3 little peculiar because normally you think about a
4 normal case, a normal trial, you know, is the person
5 guilty, do they have a criminal intent in their mind
6 when they did an act. And the thing is it either is or
7 isn't. Kind of black and white. But the sentencing
8 decision is an individual moral judgment. Had you ever
9 heard that phrase before you came here?

10 A I never heard that phrase, but I know that. I
11 feel that.

12 Q It sounds right?

13 A Yes.

14 Q Okay. Now, the judge -- one rule of law that we
15 have is that it would be wrong to, when somebody came
16 to an individual moral judgment, if it would harm their
17 conscience to change their position, it would be wrong
18 for them and against our law to throw in with the
19 majority just for majority sake.

20 A Right.

21 Q You wouldn't do that?

22 A No.

23 Q Okay. And what we do have in South Carolina is a
24 requirement in a capital case, sort of like a
25 precautionary-type measure, that instead of just the

1 jury coming in and saying, "Here is our decision," the
2 foreman announces it, everybody would have to sign
3 their name on the indictment. Is that something you
4 would do or could do if you voted for the death
5 penalty?

6 A I could do it. It's not something I would take
7 lightly, but if it's my duty and belief, yes.

8 Q If the judge said that we have a requirement to
9 take -- this is different from a regular case and
10 everybody has to sign, just so we make sure there's no
11 doubt as to everybody's vote, you could write your name
12 on the indictment?

13 A Yes.

14 Q That's all I have for you, ma'am. Thank you.

15 EXAMINATION BY MR. RICHARDSON:

16 Q Hey, my name is Jimmy Richardson. This is Scott
17 Hixson, and together we'll be presenting the case for
18 the State. I believe you have a good grasp of the
19 process, so I'm not going to ask you any questions. I
20 just wanted to introduce myself.

21 MR. RICHARDSON: And, your Honor, I believe she's
22 qualified.

23 MR. McGUIRE: I agree.

24 THE COURT: All right. Ms. Villalpando, I find,
25 and I appreciate the fact that the attorneys believe

1 that you're qualified, but I find you qualified and
2 that's the key here.

3 That doesn't mean you're on the jury. What it
4 means is that you're in the greater pool that we'll
5 draw the jury from. This is the difficult part of the
6 process. That will move along fairly quickly once we
7 have everybody qualified.

8 We're not going to need you for a day or two, so
9 I'm going to excuse you right now. Mr. Ropp is giving
10 you a sheet there, and it has a phone number on it.
11 After 6:00 on Sunday, 6:00 p.m., if you will call that
12 number, there will be a message telling you when and
13 where to report next.

14 When you report, of course, you know, there's a
15 possibility -- or we will sequester the jury. There is
16 a possibility that you may be sequestered. So please
17 bring with you any medications that you might have,
18 your toiletries, your clothing for several days, things
19 that you might need. Just leave them in your car. If
20 you need any assistance if you are selected, then we'll
21 have one of these gentlemen assist you in getting that
22 whenever we go back to the hotel.

23 One other thing that occurred to me actually over
24 the break, if you have any medications that require
25 special care like refrigeration or something, bring

1 those up, those medications with you, and we'll make
2 sure -- I don't know if you would or not, but I was
3 talking with the staff in trying to arrange for the
4 jury, and that occurred to me. If that's the case,
5 bring it and we'll make sure it gets refrigerated or
6 kept as it should be. Okay? I look forward to seeing
7 you. Thank, you ma'am.

8 (WHEREUPON, Ms. Villalpando exited the courtroom
9 at 11:47 a.m.)

10 (WHEREUPON, Mr. Smith entered the courtroom
11 at 11:47 a.m.)

12 EDWARD SMITH,
13 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

14 EXAMINATION BY THE COURT:

15 Q Good morning, Mr. Smith.

16 A Good morning, sir.

17 Q Good to see you. Mr. Smith, do you remember
18 Monday when I talked to all the jury, I asked them not
19 to discuss the case with anyone, seek out any
20 information, expose yourself to any reports of any
21 kind, that sort of thing? Do you remember that?

22 A Yes, sir.

23 Q And have you been able to follow that instruction?

24 A Yes, sir.

25 Q Okay. Let me remind you that this is what we call

1 a standing order, and it would apply to you throughout
2 the trial of this case or until such time as I release
3 you. Do you understand?

4 A I sure do.

5 Q Thank you very much. Mr. Smith, if you would
6 speak up now because --

7 A Okay.

8 Q -- this young lady around the corner here is
9 taking down everything we say, and I want to make sure
10 that she doesn't miss anything. All right?

11 A Yes, your Honor.

12 Q Now, Mr. Smith, you came in today, and you were
13 kind enough to cooperate with us in filling out a form
14 where we described three types of or categories of
15 jurors that might be called upon to serve in a capital
16 case, and you apparently looked through that.

17 I have your report here, and you indicated that
18 you were one of those jurors that would need to hear
19 the facts and circumstances in aggravation and in
20 mitigation before you could make a decision regarding
21 punishment. Does that fairly describe you as a juror?

22 A Yes, your Honor.

23 Q Okay. Now, we talked about how the process would
24 flow earlier when you were in the courtroom, and I
25 talked with you about the responsibilities of a juror

1 on a capital case. Were you able to follow what I was
2 saying?

3 A Yes, your Honor.

4 Q I didn't talk too fast or ramble on too much?

5 A No, your Honor.

6 Q Did you seem -- do you think you have a pretty
7 good grasp of how the procedure will work and what will
8 be expected of you?

9 A Yes, sir.

10 Q Okay. Do you, looking at that process, find
11 anything about it that would be just so unfair to
12 either Mr. Cottrell or to the State that you would have
13 difficulty following my instructions if I, at the end
14 of the case after we reach that point, instructed you
15 to follow that procedure?

16 A No, your Honor.

17 Q You think you could?

18 A Yes, your Honor.

19 Q Mr. Smith, does that process, is it consistent
20 with what your thought processes are as far as how you
21 think a punishment should be determined in a capital
22 case? Does it sort of fit together?

23 A Yes, it does.

24 Q And do you think you could work in that framework?

25 A Yes, your Honor.

1 Q Okay. Now, Mr. Smith, it's my job to make a
2 determination of whether or not there's anything about
3 you that would substantially interfere with your
4 abilities to carry out your duties as a juror, and that
5 essentially means to be fair and impartial. And I want
6 to know that.

7 Please understand that we would be asking you some
8 questions about how you feel about certain issues, what
9 your opinions might be. Please understand that we in
10 this courtroom, everybody understands and realizes that
11 as individuals in this country, not only do we have the
12 right to have our own opinions about any subject, we
13 have the right to express those opinions. We call it
14 freedom of speech. You understand that, don't you?

15 A Yes, sir.

16 Q So as we ask you questions about how you may feel
17 about a subject, please understand that no one here
18 will be critical of any opinion you have. No one is
19 going to try to change your mind. That would not be --
20 that's not what we want to do. All we want you to do
21 is promise that you would candidly and honestly
22 describe your feelings to us if asked. Okay? Can you
23 do that?

24 A Yes, your Honor.

25 Q Okay. Let me just ask you generally what you

1 think about the death penalty. And I'm not talking
2 about South Carolina's statute or scheme as to how we
3 go about it. I'm speaking more generally about what do
4 you think about the concept of the death penalty as
5 punishment for a crime.

6 A I did a, I guess, years ago, probably 20-something
7 years ago, I did a little paper in English on the death
8 penalty, the pros and cons.

9 Q In school?

10 A Well, it was 101 in Horry-Georgetown.

11 Q Okay. Good.

12 A And some of the pros, like I say the pros, was
13 that, you know, an eye for an eye. But the con was
14 what if they were not guilty. Somehow something got
15 messed up on it.

16 And the other thing I looked at was the cost. The
17 cost was about the same, someone going to prison for
18 life versus the death penalty with all the appeals. So
19 those are the kind of things I weighed out.

20 I really didn't have a conclusion, so it was
21 dependent on the crime that was taken, in fact. You
22 know, because the deterrent on death penalty was you
23 killed someone, they die. So if you had a crime
24 somewhere where someone killed one person, why wouldn't
25 you just kill five. It's the same thing. So that was

1 the kind of stuff that I remember from the paper.

2 Q Okay. So you have actually done some sort of
3 in-depth or conducted an in-depth look at the death
4 penalty?

5 A Yeah. Like I say, it was 20-something years ago.

6 Q Do you have a feeling one way or the other about
7 whether it was a good thing or a bad thing?

8 A Well, that was the thing with the paper was there
9 was way one way or the other. It just depended on what
10 crime occurred and what happened.

11 Q Well, let me ask you this. If the State met its
12 burden of proof and did everything that it was supposed
13 to and you were given all the facts and circumstances,
14 in your mind, if the facts and circumstances were
15 sufficient and you didn't feel that there was any other
16 reason in mitigation or whatever not to do so, could
17 you, in a proper case, recommend the death penalty?

18 A Well, like I say, I guess I would have to know the
19 facts.

20 Q I'm saying that --

21 A If there was any doubt or any thing to where you
22 were talking about in mitigation --

23 Q Yes.

24 A -- or aggravation of it, then I couldn't.

25 Q You would consider all those things?

- 1 A Yes.
- 2 Q But my question to you was: Once you got all the
3 information, you got all past that, would you have a
4 moral objection, would you be unable to recommend the
5 death penalty?
- 6 A No, your Honor.
- 7 Q You could do that --
- 8 A Yes, your Honor.
- 9 Q -- in the right case?
- 10 A Yes, your Honor.
- 11 Q Okay. And do you believe that in the right case
12 based on the circumstances, if you had all the
13 circumstances -- and, there again, I'm just speaking
14 theoretically -- could you recommend the life sentence?
- 15 A Yes, your Honor.
- 16 Q Okay. Then do you believe that, based on the
17 facts and circumstances, life or death could be an
18 appropriate sentence?
- 19 A Yes, your Honor.
- 20 Q Okay. Now, in this case -- and I'm not suggesting
21 we'll ever get there, but let's just suppose that the
22 State had convinced you beyond a reasonable doubt that
23 a murder had been committed. Okay? Murder -- or a
24 life had been taken with malice aforethought. Okay?
- 25 And the State moved on to that second part. And it

1 proved one or more of those statutory mitigators (sic)
2 beyond a reasonable doubt again. You were on the jury,
3 and you were convinced beyond a reasonable doubt that
4 there was murder plus. There was an aggravator,
5 something that made it worse, more heinous, and you had
6 made that finding. And all of a sudden you were faced
7 with the prospect, as I said earlier, death penalty all
8 of a sudden comes on the table. It's on the table.
9 And you were faced with the prospect of having to make
10 a decision, a moral decision, as to whether to impose
11 or recommend life or to recommend death, could you
12 begin that process? That's the process, remember,
13 where you look at mitigating evidence and determine in
14 your mind whether or not there are mitigating
15 circumstances. You have to consider all that. You are
16 beginning at that process.

17 Could you begin that process fairly, looking at
18 the case and giving fair consideration to the
19 possibility of a life sentence and giving fair
20 consideration to the possibility of a recommendation of
21 a death sentence?

22 A Yes, your Honor, I can.

23 Q The fact that you had just determined that there
24 was an aggravating circumstance in a murder would not
25 cloud your ability to be fair and impartial?

1 A Yes, your Honor.

2 Q Okay. Do you understand that you don't even have
3 to have a mitigating circumstance? There will be all
4 sorts of stuff probably put out there. I don't know.
5 I would assume there will be. There may not. That's
6 all right, too. But all that put out there. And if
7 you listen to it, in your mind you might find every bit
8 of it to be properly mitigating the acts of the
9 accused. Or you might decide that, "Well, none of this
10 in my mind really mitigates." You would be free to
11 make that choice.

12 A I think I would be fair, your Honor.

13 Q Okay. And -- but do you understand that even if
14 you reach the conclusion there's no mitigating
15 circumstances, you still could vote for life?

16 A Yes, your Honor.

17 Q Okay. You could still give life as an act of
18 mercy. Do you understand that?

19 A Yes, your Honor.

20 Q You could still fairly consider also giving the
21 death penalty?

22 A Yes, your Honor.

23 Q Okay. Do you understand that I will never tell
24 you, and it is not the law of this state, once that
25 process begins, that if you find this, this or this,

1 you have to give the death penalty or that you have to
2 give the life penalty. Do you understand that?

3 A Yes, I understand.

4 Q It all boils down to a moral judgment on your
5 part. Can you appreciate that?

6 A Yes, sir.

7 Q Do you think that you can do that?

8 A Yes, your Honor.

9 Q I told you earlier that as that process moves
10 along, it's obviously different than a regular case.
11 The jury has to recommend a sentence. If the jury got
12 to the point where the jurors unanimously felt that the
13 death penalty was appropriate, as an extra safeguard,
14 the Court will require, to make sure that everyone
15 voted for the death penalty, would require you to sign
16 it. Could you do that?

17 A Yes, your Honor.

18 Q Okay. Can you think of anything, sir, anything
19 that would affect your ability to be fair and impartial
20 in this case?

21 A No, your Honor.

22 Q You said in response to my questions on Monday,
23 and if I made the notes right, that you had heard some
24 of that?

25 A Yes, your Honor.

1 Q Tell me what you heard.

2 A Basically I just, you know, I think -- I don't
3 remember the name, but I know I've heard a little bit
4 off and on through the news. I'm not sure if it's the
5 same case, but a police officer, I guess every year
6 they have a get-together or something for him on the
7 news, you know, just a quick blip. But I couldn't tell
8 you right offhand. I don't -- I don't remember the
9 case word for word, whatever happened.

10 Q Okay. And is that all you know about this case?

11 A Yes, your Honor.

12 Q Okay. You understand that if we had a trial, you
13 could only judge this case based on the evidence you
14 hear in this courtroom. You could not consider
15 anything from the outside, anything that you may have
16 heard. If you were listening to evidence and all of a
17 sudden it occurred to you that, "Gosh, I do remember
18 hearing about that," you would have to put that out of
19 your mind.

20 A Yes, your Honor.

21 Q You think you could do that?

22 A Yes, your Honor.

23 Q You think you could judge the case solely on what
24 you hear in this courtroom?

25 A Yes, your Honor.

1 Q And could you apply the law using only the law
2 that I give you? You could do that?

3 A Yes, your Honor.

4 Q What if you thought that part of the law that I
5 gave you is just not right? Could you ignore that
6 feeling and still follow law?

7 A No, sir.

8 Q Pardon?

9 A No, sir. I would follow the guidelines of what
10 was supposed to be given out.

11 Q You would follow the law?

12 A Yes, sir.

13 Q Well, what I asked you is could you set
14 aside -- --

15 A No, sir.

16 Q -- the feeling that you may have had that that's
17 really not a good law?

18 A No, sir.

19 Q You could set that aside?

20 A Yes, sir.

21 Q Okay. All right. I want to be sure. Answer any
22 questions that Mr. McGuire might have.

23 EXAMINATION BY MR. McGUIRE:

24 Q Good afternoon, Mr. Smith.

25 A Hello.

1 Q I want to talk to you a little bit about your
2 questionnaire and some answers that you put on there.
3 I don't mean to be too personal..

4 A That's all right.

5 Q If you forgive me that.

6 You know a couple of law enforcement officers and
7 have some relatives in law enforcement?

8 A Yes, I do.

9 Q And who are they?

10 A One of them is Mike Laughtner. And the other one
11 is Chip Squires, William Squires.

12 Q And they are related to you?

13 A Well, one is a brother-in-law and the other one is
14 a nephew.

15 Q Okay. And have you talked to them at all about
16 this?

17 A I have not. No, I have not.

18 Q Have they ever expressed an opinion to you as to
19 what should happen?

20 A They have not, no.

21 Q Do you know if they worked with the officer in
22 this case?

23 A I -- I didn't see his name on the list, so I
24 didn't see him on there, but I believe he left the City
25 of Myrtle Beach before that time. I don't remember

1 when he left, joined another police force.

2 Q Okay. And you indicated that, I think, your
3 stepson was in prison?

4 A Yes.

5 Q And was he treated fairly?

6 A Yes.

7 Q Is there anything about that that would influence
8 you in a case like this, sitting as a juror?

9 A No. No, sir.

10 Q Okay. You also indicated that you were a victim
11 of crime?

12 A Yes.

13 Q What was that?

14 A Someone stole my car out of my garage. That was
15 my fault.

16 Q Why was that your fault?

17 A Because I left the garage door open, left the keys
18 in it, left the car unlocked.

19 Q I still don't think it's your fault.

20 A I know, but one of the three would have stopped
21 it.

22 Q Fair enough. Now, you -- you've dealt with the
23 prosecutor's office and the public defender's office
24 here, and that was regarding your stepson, I believe?

25 A Yeah, but I really didn't have a lot of

1 involvement with that. My wife handled most of that.

2 Q You don't know anybody personally?

3 A No, I do not.

4 Q Now, the judge indicated to you that in order for
5 the death penalty to be an option, the State has got to
6 prove murder, killing of another human being with
7 malice aforethought. And malice is described as having
8 a black, malignant heart, bent on evil. Then the
9 State, the government, would have to prove something a
10 little bit more than that.

11 The judge read the indictment to the jury panel,
12 and the decedent in the case is obviously a police
13 officer in the line of duty. Knowing those things,
14 what are your general thoughts about the death penalty
15 from there?

16 A Well, like I say, until all the facts are shown,
17 it's the only time I could weigh anything on it. One
18 way or the other.

19 Q What I'm saying is you're at a point where you've
20 heard all that. You had a front row seat to the
21 evidence.

22 A Yeah.

23 Q And you're at the point where you just convicted
24 the person.

25 A Right.

1 Q That's all behind you. And you found beyond a
2 reasonable doubt all the facts were there to make it a
3 malice -- malicious murder with an aggravating factor.
4 At that point what are your thoughts about the death
5 penalty?

6 A I guess I'd -- you know, right now it's tough to
7 even -- you can talk about where it is down the road,
8 but right now it's hard to pick. But, you know, if it
9 was default and guidelines and that's what happened and
10 malice was there, yes, I could do the death penalty.

11 Q When you say you could do it, would that be your
12 personal choice?

13 A No.

14 Q Why not?

15 A It would be whatever the law stated it was.

16 Q Okay. When you say you could do the death
17 penalty, does that mean your vote would be for it?

18 A Well, yes. Yes.

19 Q When it comes to fixing punishment for a malicious
20 murder, the taking of an innocent life, would the
21 general background of the person who committed the act
22 be relevant in that decision-making process?

23 A I'm thinking it could. It could, yes.

24 Q And why is that?

25 A Because maybe he's got a history, got a history

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1 with violence or something --

2 THE COURT: Mr. McGuire, I've been gracious in
3 letting you ask the general questions. We're not going
4 to probe. You can pass that.

5 MR. McGUIRE: Sure.

6 BY MR. McGUIRE:

7 Q I've got to talk a little bit about the sentencing
8 phase, but as the judge told you, I don't want you to
9 think that because I'm talking about punishment issues
10 that I'm conceding guilt in any way. Do you understand
11 that?

12 A Yes, I do.

13 Q This is just my only time to do it. We can't put
14 you on the jury and then talk to you about it. So I
15 have to talk about punishment issues even though I will
16 tell you that if you were on the jury, I would come to
17 you and the other jurors and I'd ask for a verdict of
18 not guilty. Not just because I'm asking for it but
19 because the evidence would support it.

20 If we did reach the sentencing phase, you wouldn't
21 hold it against Mr. Cottrell that I zealously defended
22 him and sought a not guilty verdict?

23 A No, sir.

24 Q You wouldn't view that as somebody trying to get
25 him off and that he should be punished for it?

1 A No, sir.

2 Q For exercising his right to trial?

3 A Yes, sir.

4 Q In fact, it would be unfair if I didn't try hard?

5 A I believe so, yes, sir.

6 Q Some of the -- and we're here for -- the whole
7 reason we're here is to see if you can follow the law,
8 if you have any personal opinion or position that's so
9 strong it might not square with the law. And if that
10 was the case, we would just release you with our thanks
11 and that would be fine.

12 A Yes.

13 Q But some of the rules of what I want to talk to
14 you about are about this sentencing phase. The judge
15 would charge the jury that this is an individual moral
16 judgment. That's how the decision-making process is
17 described.

18 And the sentencing phase is different from the
19 first phase. The first phase is -- you have seen it on
20 TV, newspapers, news -- that is did the person do the
21 act with the requisite criminal intent, intend to
22 commit the crime. And that is a question of it either
23 is or it isn't. It's a fact question. But the
24 sentencing phase is an individual moral judgment. Do
25 you see the difference?

1 A Yes, I do.

2 Q Okay. Now, the judge would charge the jury that
3 in the sentencing phase, any individual juror could
4 vote for the life penalty for any reason, no reason or
5 mercy alone. Are those principles that you could
6 respect and follow?

7 A Yes, I would.

8 Q And the any reason part doesn't require unanimity.
9 You know, we normally --

10 MR. HIXSON: Your Honor, we're going to object
11 again to this whole staking out jurors to get promise
12 to follow these things. This is staking them out in
13 the jury room for mitigation again. We object.

14 THE COURT: I'm going to let him -- I think I'm
15 going to let him ask this question.

16 BY MR. McGUIRE:

17 Q I think the judge already told you this, and I
18 just want to make sure we're on the same page. I heard
19 the judge say, I'm pretty sure, that any individual
20 juror could vote for life for any reason, no reason or
21 mercy alone. Mercy can just be bestowed upon somebody.

22 Now, the any reason part -- this may have been the
23 last panel, but I think I heard the judge say it to
24 your panel -- that one juror can vote for reason A, one
25 juror can vote for reason B, another juror can vote for

1 reason C. They don't all have to have the same reason.
2 They could be individual choices to vote for life for
3 different reasons. Did you know that?

4 A That's what I gathered, yes.

5 Q Okay. Good. And that's a principle of the law
6 that you can respect and follow?

7 A (Nodding.)

8 Q Yes?

9 A Yes, sir.

10 Q She's got to --

11 A Okay. I understand.

12 Q Thank you. And another rule is that a juror can
13 vote for life for no reason. And that's a little
14 peculiar to take the position on something for no
15 reason. Somebody might just say, "I don't want to
16 contemplate the rest of my life having taken another
17 life. I just don't want to do it, no reason, and I'm
18 firm on that." Could you respect that?

19 A Yes, I could.

20 Q Okay. And then mercy is the other aspect. Do you
21 think mercy is earned by somebody, or is it something
22 that's just freely given or bestowed upon something?

23 A I think it's something that they just kind of
24 bestow upon themselves, bring it out upon themselves.

25 Q Another rule of law is once a juror reaches their

1 individual moral judgment, and it would harm their
2 conscience to change their position, it would be wrong
3 for them to change their vote or their position just to
4 join a majority. For instance, if it was nine to
5 three, if you were on the three, you'd say, "Jeez, look
6 at that majority over there." You can't just throw in
7 with the majority.

8 A I wouldn't do that, no.

9 Q You wouldn't want anybody else to do that?

10 A No, sir.

11 Q Okay. That's all I have. Thank you very much.

12 A Thank you.

13 THE COURT: Mr. Hixson.

14 EXAMINATION BY MR. HIXSON:

15 Q Good afternoon, sir. My name is Scott Hixson.
16 Jimmy Richardson, the Solicitor. Thank you for your
17 time and your patience and answering the questions
18 directly. We don't have any more questions.

19 MR. HIXSON: Our opinion is he is qualified.

20 MR. McGUIRE: Agreed.

21 THE COURT: Yes, Mr. Smith. I believe that you
22 are qualified to serve as a juror on this case.

23 That doesn't mean that you are on the jury. What
24 it means is that you're in that final panel from which
25 we will select the jury. That process will move along

1 fairly quickly, although we have lots to do among
2 ourselves. We just won't need you for a while.

3 So what I want you to do is go home. Remember my
4 order. On Sunday afternoon after 6 o'clock I want you
5 to call that number that you have been given, and there
6 will be a message there, and it will tell you when and
7 where to report. Okay?

8 MR. SMITH: Yes, sir.

9 THE COURT: Please come at that time. Have a bag
10 packed with some clothing in it for several days. If
11 you have medicine, bring your medicine, your toiletries
12 and things you would need because if you are selected,
13 we'll begin the trial and in the evening we will
14 sequester you. I will point out -- I don't know if you
15 do or not. But if you take any medicines that would
16 require refrigeration or whatever, bring them in the
17 courtroom with you. Leave your bag in the car, but
18 bring your medicine in. We'll take care of it for you.

19 If you are selected, I'll have someone, one of
20 these gentlemen, help you get your bags and stuff and
21 we'll bring them in at that point.

22 MR. SMITH: Yes, your Honor.

23 THE COURT: Thank you very much. You are excused
24 for the day.

25 (WHEREUPON, Mr. Smith exited the courtroom

1 at 12:13 p.m.)

2 (WHEREUPON, Ms. Greco entered the courtroom

3 at 12:13 p.m.)

4 EVELYN GRECO,

5 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT:

7 Q Good afternoon, Ms. Walker (sic). How are you
8 today?

9 A Very well.

10 Q Good to see you. We appreciate you coming.

11 Ms. Walker, do you remember on Monday when I
12 talked to you I asked all the jurors or told all the
13 jurors not to talk about the case with anyone, not to
14 expose yourselves to any information about the case or
15 publicity about the case or do any investigation about
16 the case? Do you remember that?

17 A Yes, I do.

18 Q And have you been able to follow that for me?

19 A Yes.

20 Q Okay. Let me just tell you that that's a standing
21 order. And it would bind you until such time as you
22 are released from your duty. Okay?

23 A Yes.

24 Q And would you follow that? Okay?

25 A I would.

1 Q Thank you, ma'am. You were kind enough to come
2 in, Ms. Walker --

3 MS. NORRIS: Your Honor, I apologize. Ms. Walker
4 was excused. She asked for the --

5 THE COURT: Oh, this is Ms. Greco.

6 MS. NORRIS: This is Ms. Greco.

7 THE COURT: Why didn't you straighten me out?

8 MS. GRECO: Well, sorry about that.

9 BY THE COURT:

10 Q But you were kind enough to come in and look at a
11 list of different categories of jurors that might be
12 called upon to serve on a capital case, and you
13 indicated that -- I have your little form in front of
14 me -- you indicated that you would be what we call a
15 type C or category C juror; is that correct?

16 A That's correct.

17 Q My understanding of that is that would be a juror
18 who would need to hear the facts and circumstances in
19 aggravation and in mitigation before he or she could
20 make a decision regarding punishment. Does that
21 accurately describe how you feel about a case like
22 this?

23 A Yes, sir.

24 Q All right. When we were -- when I was talking to
25 the jury a little while ago, did -- were you able to

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1 hear what I was saying?

2 A Yes.

3 Q Were you able to follow what I was saying?

4 A Yes.

5 Q Do you think you have a good grasp of how the
6 process works and what your duties would be if you were
7 seated as a juror in this case?

8 A I do.

9 Q Okay. I didn't talk too fast, didn't ramble too
10 much?

11 A No.

12 Q Okay. Was that process, at least in your opinion,
13 consistent with what you think should be the process
14 followed by a category C juror?

15 A Yes, I do.

16 Q You think it's consistent with it. Okay.

17 A Yes.

18 Q Looking at it or listening to me as I talked about
19 the process, was there anything about that process that
20 you thought was unfair to either Mr. Cottrell or to the
21 State?

22 A No.

23 Q Okay. And what I wanted to know was, looking at
24 the process in general, was there anything about it
25 that you felt that you just couldn't follow? Do you

1 think you could, if I were to instruct you at the end
2 of the case, "These are what your duties are" -- I
3 would be more detailed, but it would generally follow
4 that process that I explained to you earlier -- do you
5 think you could you follow that, follow law as I
6 instruct you?

7 A Yes, I do.

8 Q Okay. Very well. Now, Ms. Greco, do you
9 understand that if you were on this jury, the State
10 would have the burden of proof as we discussed earlier
11 and evidence would be put up in the trial and you would
12 have to judge the trial, both the first and the second
13 phase, only on the evidence that you hear in the
14 court -- courtroom? Do you understand that?

15 A Yes.

16 Q And do you further understand that you would have
17 to take that evidence, and from that evidence with your
18 fellow jurors, decide what the actual facts are?
19 Evidence doesn't always square exactly with what the
20 jury determines the facts to be. That's part of the
21 process.

22 Could you limit your consideration just to the
23 evidence that's presented in court?

24 A Yes, I feel I could.

25 Q Have you heard anything or have you been provided

1 with any information or obtained any information about
2 this case that might interfere with your ability to
3 just consider the evidence that's presented in the
4 court?

5 A I don't really know anything about the case. I
6 was living in Monmouth County, New Jersey in 2002, and
7 I'm not familiar with anything leading up before or
8 after.

9 Q All right. So you don't have any prior knowledge
10 about this case?

11 A No.

12 Q Okay. Could you apply the law exactly as I gave
13 it to you in your deliberations in this case?

14 A Yes, I feel I could.

15 Q What if I were to give you the law and you looked
16 at it and you said, "You know, that might be the law,
17 but I just don't agree with it," could you still follow
18 it as I told you?

19 A Yes, the letter of the law.

20 Q You know you have to follow the letter of the law?

21 A Exactly.

22 Q And you could do that?

23 A I could.

24 Q All right. Ms. Greco, before you got involved in
25 this process in any fashion, you got that summons and

1 that questionnaire to fill out. If you and I were just
2 sitting and having coffee and I were to have said,
3 "Evelyn, what do you think about the death penalty?"
4 And, there again, I'm not talking about the statutory
5 scheme, South Carolina's law or any state's law. I'm
6 talking about that general concept of the death penalty
7 being punishment for a crime. What would you have had
8 to say to me? What would you have shared?

9 A It would depend on the circumstances, your Honor.
10 You would have to know exactly what we're discussing,
11 not just generally, as you're putting it.

12 Q Well, let me ask it this way. Are you open to the
13 concept of if a case is bad enough?

14 A Is what, your Honor?

15 Q Is bad enough.

16 A Bad enough?

17 Q Is serious enough, if it is aggravated enough --

18 A Yes.

19 Q -- there are situations in which the death penalty
20 would be appropriate. Do you believe that?

21 A Yes, I do.

22 Q Okay. And on the other hand, do you believe that
23 there are situations involving murder, even if it's an
24 aggravated murder, where life would be the appropriate
25 punishment?

1 A Well, wouldn't that fall under the mitigating
2 circumstances?

3 Q Yes. That's exactly what I'm talking about. Even
4 in the case of an aggravated murder, murder plus cases,
5 if there are mitigating circumstances, extenuating
6 circumstances, do you believe that or even if there are
7 not any mitigating or extenuating circumstances, do you
8 believe that there are situations where perhaps mercy
9 is required, that there are situations where you can
10 contemplate where life would be appropriate?

11 A Yes.

12 Q Okay.

13 A I think all things have to be considered.

14 Q All right. Okay. Now, let's think about that
15 process that I described to you a moment ago. If you
16 were on this jury and we had gone through -- and, there
17 again, I'm speaking directly. If we had gone through
18 the first process and you, as a juror, and your fellow
19 jurors had determined that the defendant had committed
20 murder, that is, he took a life with malice. Okay.
21 And you found that beyond a reasonable doubt. And then
22 we moved to the second part. And the State began
23 putting up evidence of an aggravating circumstance,
24 something that makes it heinous, something that makes
25 it worse. And at the end of the day you and your

1 fellow jurors were convinced beyond a reasonable doubt,
2 each and every one of you, that there was an
3 aggravating circumstance present. Do you follow me?

4 A Yes, I do.

5 Q So we have murder and the aggravating
6 circumstance. Okay?

7 A Uh-huh.

8 Q You know, as I talked to you yesterday, at that
9 point we have that unique situation if the State has
10 reached that point where the jury has to determine or
11 recommend a sentence. Do you recall that?

12 A Yes.

13 Q Okay. Now, what are the possible sentences that
14 the jury could recommend? What are the options?

15 A Well, it would be either mercy or death sentence
16 or life sentence.

17 Q Death or life. And that's absolutely correct.
18 Now, what I need to know is this. Having just
19 determined that someone is guilty of murder, killing
20 with malice, and having just determined that that
21 person also committed some other act or there's some
22 other aggravating circumstance that went along with
23 that, could you then approach that process of
24 recommending a sentence in a fair and impartial way?
25 Could you approach that process fairly and impartially?

1 A I think I could, yes.

2 Q Okay. And as you approach that process, do you
3 remember me telling you you also have to consider all
4 mitigating information, whether you may think it's
5 properly mitigating or you may not. But you look at
6 what's been presented to you. You look at the
7 aggravators. And do you understand that you could,
8 even if you found no mitigating circumstances, you
9 could still give life imprisonment? Do you understand
10 that?

11 A Uh-huh.

12 Q You could give life for no reason at all. Or you
13 could give life just as an extension of mercy. Do you
14 understand that?

15 A Yes.

16 Q Okay. Knowing those things, could you approach
17 this, this issue, give fair consideration to the
18 possibility of recommending a death sentence? Could
19 you do that?

20 A After I heard all the facts, your Honor -- I don't
21 want to generalize.

22 Q As these things are being presented to you --

23 A Yes.

24 Q -- could you keep your mind open --

25 A I could.

1 Q -- as to the possibilities of a death penalty and
2 give that fair consideration?

3 A I could, yes, your Honor.

4 Q And could you keep your mind open all during the
5 presentation of these matters, keep your mind open and
6 give fair consideration to the possibility of a life
7 sentence?

8 A Yes, I could.

9 Q So you would be open to both?

10 A Yes.

11 Q Okay. In the end, after a recommendation was
12 reached by the jury, if -- if, now -- that
13 recommendation was the unanimous recommendation of the
14 death penalty, do you understand -- and I think I've
15 told you earlier that as an additional safeguard the
16 Court would require you and every other juror to sign
17 your name, confirming that that was your --

18 A Yes, I remember that.

19 Q And could you do that?

20 A Yes, I could.

21 Q Okay. Let me ask you one other thing. Do you
22 understand that your decision in this matter would be a
23 moral judgment that you would have to make? It would
24 have to be something coming from your heart based on
25 your view of the circumstances of the case? Can you

1 appreciate that?

2 A Yes, I can, your Honor.

3 Q Is that what you would do?

4 A Yes.

5 Q Okay. If we reached a point in the trial where
6 you were in a minority position, the other jurors had
7 voted and you were in a minority position, would you be
8 able to listen to their reasoning and you would you
9 share your reasoning, if you had any, with them?

10 A Yes, I can share my point of view.

11 Q All right. It would be wrong for you to switch
12 your position solely because you just wanted to be a
13 part of the majority or the bigger group. Do you
14 understand that?

15 A Yes, I do.

16 Q Okay. Would you do that, not because your mind
17 did change, not because you had taken a different view
18 of it because of sharing ideas with your fellow jurors,
19 but just because, "Well, I want to be part of the
20 majority," or, "I want to get this thing over," you
21 understand that would be wrong?

22 A Yes.

23 Q And would you do that?

24 A No, I'm not easily swayed.

25 Q Good for you. I didn't think you would be easily

1 swayed.

2 Answer any questions that Mr. McGuire has.

3 MR. MCGUIRE: Thank you, Judge.

4 EXAMINATION BY MR. MCGUIRE:

5 Q Good afternoon, Ms. Greco.

6 A Good afternoon, sir.

7 Q You were born in Scotland?

8 A Yes.

9 Q And are you familiar with their criminal justice
10 system regarding the death penalty?

11 A Well, it's a little bit different in Scotland.

12 Q How so?

13 A As far as like solicitors and counselors and some
14 represent the legal matters of criminals.

15 Q Yes.

16 A And others, domestic matters, the real estate and
17 that kind of thing.

18 Q Okay. But you're being from Scotland doesn't
19 cause you to have any opinions or positions that are
20 significant just based on a different set of laws or a
21 different criminal justice system?

22 A I'm more familiar with the U.S. because I've lived
23 here since I was 17. So that was a long time ago. So
24 I'm much more familiar with the American.

25 Q I understand. What I want to do I want to talk to

1 you a little bit about this punishment issue,
2 sentencing issue.

3 A Okay.

4 Q I want to make it very clear to you that I'm not
5 conceding guilty in any way by talking about
6 punishment. Can you promise me you'll -- you
7 understand that?

8 A Yes.

9 Q Okay. It would be -- if you were on the jury, I
10 would come to you and the other 11 jurors, and I would
11 ask for a not guilty verdict and not just because I
12 asked for it, but because the evidence supports it.
13 And you would agree with me -- well, let me ask you
14 this. If I did that and I zealously defended
15 Mr. Cottrell, and then you did end up somehow in a
16 sentencing phase, would you hold that against
17 Mr. Cottrell that I tried to secure a not guilty
18 verdict for him?

19 A No, I wouldn't hold that against him.

20 Q In fact, it wouldn't be fair if I didn't try very
21 hard in the first phase, right?

22 A (Nodding.)

23 Q You would agree with that?

24 A Yes.

25 Q Let's go back to that sentencing phase, punishment

1 phase. In deciding a life and death issue, would the
2 general background of the person who committed the act
3 of murder be relevant in that decision-making process?

4 A The general background meaning?

5 Q Just walk in life, just their general background
6 history.

7 A No.

8 Q Okay. And another rule that we have, the judge
9 would tell everybody on the jury that they could vote
10 for the life penalty for any reason, no reason or mercy
11 alone. You have heard that, correct?

12 A Yes.

13 Q Is that a principle of law that you could respect
14 and follow?

15 A Yes, sir.

16 Q If you and the other jurors were making that
17 sentencing decision and people wanted to vote for the
18 life penalty, they could actually have -- different
19 jurors can have different reasons for that. They don't
20 have to agree on a reason to vote for life. Did you
21 know that?

22 A No, I didn't know that.

23 Q A lot of people think -- we think of juries
24 speaking with one voice being unanimous.

25 A Yes.

1 Q But in the sentencing process, it's very
2 different. One juror could say, "I'm going to vote for
3 the life penalty for reason A." One juror could vote
4 for reason B. Another one could vote for reason C.
5 All different, nobody has to agree. Is that a
6 principle of law you could respect and follow?

7 A Yes.

8 Q And one thing that's very peculiar about the
9 sentencing phase is that the judge would tell the
10 jurors that a juror could vote for life for no reason.
11 You know, to take the position --

12 A Yes.

13 Q They could say, "I'm very strong about it. I want
14 to vote for the life penalty. But I heard the judge
15 say I didn't have to have a reason. I just can't put
16 it into words. It just doesn't feel right for me,"
17 could you respect that principle of law?

18 A Yes.

19 Q And then the third option would be just a life
20 penalty vote for mercy alone. Do you believe that
21 mercy is earned or freely given or bestowed?

22 A I think it's earned.

23 Q Okay. And all of your answers, it looks like
24 you're giving careful thought to your answers today; is
25 that correct?

1 A Yes, sir.

2 Q And they're all truthful?

3 A Yes, sir.

4 Q Candid?

5 A (Nodding.)

6 Q And honest?

7 A Yes, sir.

8 Q And they are a reflection of your value system and
9 how you see the world?

10 A Yes.

11 Q Kind of a reflection of your moral code?

12 A Yes.

13 Q That's all I have for you.

14 EXAMINATION BY MR. HIXSON:

15 Q Good afternoon, ma'am.

16 A Good afternoon.

17 Q My name is Scott Hixson. I'm the Chief Deputy
18 Solicitor here. I briefly got to say a couple words to
19 you. And this is Jimmy Richardson, the Solicitor. And
20 we'll be over here through the course of the trial
21 representing the case for the State of South Carolina.
22 And I don't have any additional questions for you.

23 I --

24 EXAMINATION BY THE COURT (Resumed):

25 Q Let me just ask. Ms. Greco, in the sentencing

1 phase, if there was information presented concerning
2 background, would you be willing to consider it, look
3 at it, consider it in your determination of the
4 appropriate sentence?

5 A Again, would you be more clear about that?

6 Q I really can't. I'm just saying would you
7 consider everything that is presented?

8 A Yes, I would. Yes.

9 Q You would look at everything?

10 A Every detail.

11 Q Okay. Every detail. Thank you, ma'am.

12 THE COURT: Would you go with Mr. Ropp for just a
13 moment.

14 (WHEREUPON, Ms. Greco exited the courtroom
15 at 12:34 p.m.)

16 THE COURT: Defense.

17 MR. MCGUIRE: Move to strike for cause, Judge.

18 THE COURT: State, you think she's qualified?

19 MR. HIXSON: Yes.

20 THE COURT: I believe this witness is qualified.

21 She has certainly, I think, answered very candidly. I
22 don't think there's any question that she is a type C
23 or a category C juror. She made it very clear to me
24 she could remain open-minded, that she could equally
25 consider life or death, and that she could consider

1 everything that was presented in mitigation in making
2 her decision.

3 I see no prejudice or bias on the part of this
4 witness that would prevent her from being fair and
5 impartial or that would in any way interfere with her
6 ability to perform her duties, and I find her
7 qualified.

8 (WHEREUPON, Ms. Greco entered the courtroom
9 at 12:35 p.m.)

10 THE COURT: Ms. Greco, thank you for your remarks.
11 I find that you are qualified to sit as a juror in a
12 capital case. And I will not need you for a couple of
13 days because we're going to continue with this process
14 with the other jurors.

15 So what I've done is I've had the bailiff hand you
16 a sheet of paper with a number on it. Please call that
17 number after 6:00 p.m. on Sunday, this coming Sunday,
18 and there will be a message there telling you when to
19 report. It doesn't mean you're on the jury yet.

20 MS. GRECO: Okay.

21 THE COURT: It just means that you're in the
22 greater pool that we will select the jury from. That
23 process will move fairly quickly once we get through
24 all voir dire.

25 So when you appear, remember when we talked about

1 the sequestration, you're going to be sequestered if
2 you're on the jury. So bring with you your
3 medications, if you have any, your toiletries and
4 your -- and some clothing for several days. Just leave
5 it in the car. If you're selected, I'll have one of
6 these gentlemen help you with it.

7 I will say that if you have any medications that
8 require special care like refrigeration or anything
9 like that, if you have any of those, if you did, I
10 would ask you to bring that into the courthouse and we
11 will take care of it for you. Okay?

12 MS. GRECO: Okay.

13 THE COURT: Thank you, ma'am.

14 MS. GRECO: Thank you, your Honor.

15 THE COURT: Call after 6:00.

16 (WHEREUPON, Ms. Greco exited the courtroom
17 at 12:38 p.m.)

18 (WHEREUPON, Ms. Standish entered the courtroom
19 at 12:38 p.m.)

20 LESLEY STANDISH,

21 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

22 EXAMINATION BY THE COURT:

23 Q Ms. Standish, do you remember Monday when I talked
24 to the jury, I instructed you not to talk with anybody
25 about the case, expose yourself to any information

1 about the case, look up anything, read any news
2 reports, that sort of thing? Were you able to comply
3 with that?

4 A Yes, sir.

5 Q Do you understand that's a standing order I've
6 issued, and it would bind you or control your actions
7 throughout your service as a juror or until you're
8 released?

9 A Yes, sir.

10 Q Okay. I'll ask you to do that for me.

11 Ms. Standish, you came in and were kind enough to
12 look at a list of categories of jurors who might serve
13 on a capital case, and I see that you at our request
14 have indicated that the category that best describes
15 you is a C; is that right?

16 A Yes, sir.

17 Q And a C, as I understand, is a juror who would
18 need to hear the facts and circumstances in aggravation
19 and in mitigation before she could make a decision
20 regarding punishment. Does that describe you fairly?

21 A Yes, sir.

22 Q Okay. When we met a few moments ago and I
23 explained to you or tried to explain to you how the
24 process would work and what a juror's duties are in a
25 capital case, were you able to follow what I was

1 saying?

2 A Yes, sir.

3 Q I didn't talk too fast or ramble too much?

4 A No, sir.

5 Q Do you feel like you have an understanding of the
6 process?

7 A Yes, sir.

8 Q Do you believe that was helpful?

9 A Yes.

10 Q Okay. Ms. Standish, in your category of juror,
11 are your thoughts concerning punishment or how it
12 should be determined, do you feel that's consistent
13 with the process that I described to you?

14 A Yes.

15 Q Okay. Would it fit that process?

16 A Yes.

17 Q Okay. During my description of the process, did
18 you see anything in there or have any feelings about
19 any part of it, did you think that any part of it was
20 unfair to Mr. Cottrell or unfair to the State?

21 A No.

22 Q Was there any part of it that you felt that you
23 would have difficulty following?

24 A No.

25 Q At the end of the case I'll give you more detailed

1 instructions concerning the process, but, generally
2 speaking, that's the process. Do you believe you could
3 follow that process?

4 A Yes.

5 Q Okay. Ms. Standish, you know, everybody has the
6 right in this country to have an opinion.

7 A Yes.

8 Q And not only to have it, to talk about it and
9 express it. Great thing about this country, isn't it?

10 A Yes, sir.

11 Q We're going to be asking you about some of your
12 opinions.

13 A Okay.

14 Q There is no wrong answer. I promise you nobody in
15 this courtroom will criticize you for any opinion you
16 have. No one is going to try to change your mind.
17 That's not what we're here about. All we want you to
18 do is be candid and honest about how you feel about
19 things you are asked about. Can you do that for us?

20 A Yes, sir.

21 Q In that regard, let me ask you right out of the
22 chute. What if we met before you got involved in this
23 process and we were just sitting around having coffee,
24 and I were to have said, "Ms. Standish," or, "Lesley,
25 what do you think about the death penalty?" And I'm

1 not talking about the specific procedure that South
2 Carolina has. I'm talking generally about the concept
3 of the death penalty as punishment for crime. If I had
4 asked you that, what do you think about it, what would
5 you have told me?

6 A I would say I believe there is a time and a place
7 for the death penalty.

8 Q There is a time and a place for it. Do you
9 believe that there are circumstances in a murder case
10 where the death penalty is appropriate?

11 A Is what?

12 Q Is appropriate.

13 A Yes, sir.

14 Q Do you believe that there are circumstances where,
15 even if it is an aggravated murder, I mean murder plus
16 like we talked about, even in that circumstance, there
17 are situations where life would be appropriate?

18 A Probably.

19 Q Okay. All right. Now, let's talk about that
20 process that I described to you earlier. If you were
21 on that jury and we started out and Mr. Richardson
22 undertook to prove the murder, that is, killing with
23 malice. I want to stress again malice is not an
24 aggravator. And you're on the jury and, sure enough,
25 just for the sake of our discussion here today, he was

1 successful in overcoming that presumption of innocence.
2 And you, as a juror, determined beyond a reasonable
3 doubt that the defendant was guilty of murder, and we
4 went into that second part. And he started putting up
5 his evidence and he, at the end of the day, was able to
6 convince you and every other juror beyond a reasonable
7 doubt that this case was an aggravated case. Murder
8 plus. Okay?

9 When you reach that point, you know that opened up
10 the very unique situation that we have in death penalty
11 cases where the jury has to consider the appropriate
12 penalty. And do you recall the two possible penalties
13 that I told you would be available if we reach that
14 point?

15 A Yes.

16 Q And what were they?

17 A Life or death.

18 Q Life or death. And as a juror, you would be faced
19 with that.

20 A Yes.

21 Q Okay. And you do remember I told you whatever the
22 recommendation is, that's what the judge or the Court
23 is going to follow?

24 A Yes.

25 Q Do you understand that? So, essentially, you

1 would be reaching a sentence. Do you understand that?

2 A Yes.

3 Q Now, what I want to know is this. If you had just
4 been through that process and you had found him guilty
5 of murder which requires malice, and you had gone
6 beyond that and you had found there was an aggravating
7 circumstance, something that makes it more heinous,
8 okay, would you still or could you still approach the
9 consideration of mitigating circumstances with fairness
10 to both the State and the defendant?

11 A Yes.

12 Q Could you still keep an open mind and fairly
13 consider the option of a death penalty and the option
14 of life imprisonment?

15 A Yes.

16 Q You know that I would not be able to give you any
17 help, I would not be able to say, "If the jury finds
18 this, this or this, all you got to do is give him the
19 death penalty," or, "You have to give him the death
20 penalty." Or, "If you find this, this or this, you're
21 off the hook as far as making any moral judgment. You
22 have to give him life imprisonment." That's not going
23 to happen. It's going to have to be a moral judgment
24 on your part.

25 A Yes.

1 Q And do you understand that as any mitigating
2 evidence is put up, you should look at all of it, not
3 only the ones that I will tell you are statutory
4 mitigators, but any other thing that's offered, you
5 should look at it. Don't have to consider it as
6 mitigating or not, but you should look at it. And
7 would you do that?

8 A Yes.

9 Q Do you understand, even if you don't find a
10 mitigating circumstance, you can still vote as an
11 individual juror for life?

12 A Yes.

13 Q Do you understand if you found something in
14 mitigation over here, it doesn't necessarily have to
15 agree with what a juror over here finds. You can each
16 find your own mitigating circumstance?

17 A Yes.

18 Q Personal decision by you. You could do that?

19 A Yes.

20 Q And, finally, even if there was nothing, no reason
21 that you could find why the death penalty shouldn't be
22 imposed, you could still, as a matter of mercy, say,
23 "I'm going to go with life."

24 A Yes.

25 Q No reason or just for mercy.

1 A Yes.

2 Q Do you understand that you could grant mercy
3 because you think he deserved it or just as a matter of
4 grace? That's the thing about mercy. You don't have
5 to determine whether somebody earned it. You could
6 just give it.

7 A Yes.

8 Q Give it to that person. Can you appreciate that?

9 A Yes.

10 Q Again, can you give fair consideration to both
11 possible sentences. Have you read or heard or do you
12 know anything about this case?

13 A Yes.

14 Q Tell me what you know about this case.

15 A I lived here when the case happened, when the
16 murder happened. So through TV, Internet and radio
17 back in 2002. And then -- so I knew some of it from
18 then. And then when I actually got my jury packet in
19 the very beginning, I recalled the names that were on
20 that questionnaire. So I actually went to the Internet
21 to see if I was correct in what case I thought it was
22 and, that was -- I was correct.

23 Q Would the information that you have received -- I
24 made a note when I asked this question, anyone had
25 formed an opinion based on anything you read or heard.

1 And my notes indicate that you said you had formed an
2 opinion.

3 A Yes, sir.

4 Q What is that opinion?

5 A I believe -- from what I read and heard that he
6 was guilty of murder. And at that point I would say I
7 would believe the death penalty should be his
8 punishment.

9 Q So at this juncture you believe Mr. Cottrell is
10 guilty?

11 A Yes, sir.

12 Q And the death penalty is appropriate?

13 A Yes.

14 Q Could you divorce yourself from that, put it aside
15 and guarantee me it would have no effect on your
16 service as a juror in this case?

17 A Yes.

18 Q You could do that?

19 A Uh-huh, yes.

20 THE COURT: All right. Mr. McGuire.

21 EXAMINATION BY MR. MCGUIRE:

22 Q Ms. Standish, as you sit there right now, you
23 believe that Mr. Cottrell is guilty?

24 A Yes, sir.

25 Q And he killed Officer McGarry with malice

1 aforethought?

2 A Yes, sir.

3 Q And that -- if that's proven, then he should get
4 the death penalty?

5 A Possibly, yes.

6 Q Okay. When you say you read about it, you said
7 that you went to the media and you looked at the facts
8 to make sure it's the right case.

9 A Yes, sir.

10 Q Tell me about the facts you saw.

11 A I would say that I was correct in that he was the
12 one who had been found to have shot Officer McGarry and
13 it was outside the Dunkin' Donuts. That's what I
14 called in my mind was that case. That's pretty much
15 the extent. I was just briefly reviewing to see if
16 that was the incident.

17 Q Okay. So not only do you believe he's guilty from
18 what you read, you also know that another jury found
19 him guilty?

20 A Yes.

21 Q And you're firm in those positions?

22 A Yes.

23 Q And they're sort of deeply held?

24 A I would say strong.

25 Q Strong. These are strong convictions --

1 THE COURT: Could we stand the witness down just a
2 minute.

3 MR. HIXSON: Your Honor, I have no questions.

4 MR. McGUIRE: Thank you, Judge.

5 THE COURT: I'm going to excuse this potential
6 juror. I assume that would be your position,
7 Mr. McGuire?

8 MR. McGUIRE: Yes, sir.

9 THE COURT: And the State has no position.

10 MR. HIXSON: I'm confident she's firm in her
11 convictions, and that would be a substantial
12 impairment.

13 THE COURT: I'm going to excuse you from jury
14 service, Ms. Standish. I'm sure you'd make a great
15 juror in any other case, but I'm just concerned about
16 this one. Thank you.

17 MS. STANDISH: Thank you.

18 (WHEREUPON, Ms. Standish exited the courtroom
19 at 12:51 p.m.)

20 MR. McGUIRE: Judge, if we could approach just
21 quickly.

22 THE COURT: Yes.

23 (Whereupon, counsel approached the bench.)

24 THE COURT: Mr. Sevor, please.

25 (WHEREUPON, Mr. Sevor entered the courtroom

1 at 12:52 p.m.)

2 KEITH SEVOR,

3 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

4 EXAMINATION BY THE COURT:

5 Q Come around, Mr. Sevor. How are you today?

6 A Good, sir.

7 Q You remember my instructions not to talk about the
8 case or expose yourself to publicity, things like that?

9 A Yes, sir.

10 Q And have you been able to comply with that?

11 A I have watched the news.

12 Q Have you talked about the case with anyone?

13 A No, sir.

14 Q That's a standing order. It controls your actions
15 until such time as you are released. Okay?

16 A Yes, sir.

17 Q All right. Mr. Sevor, I had an opportunity to
18 look at your questionnaire.

19 A Yes, sir.

20 Q And it would appear that you were at one time in
21 law enforcement?

22 A Yes, sir.

23 Q And that was up in Mecklenburg County?

24 A Yes.

25 Q And, unfortunately, it indicated that your

1 supervisor was shot and killed; is that correct?

2 A Yes, sir, Captain Anthony Stancil.

3 Q I want to just come right to the point. Do you
4 believe that that would affect your decision-making and
5 thought processes in this case?

6 A Different case, sir.

7 Q You don't think it would in any way?

8 A This is a different case. That was a different
9 case, different perpetrator.

10 Q Would the fact that it's a police officer, would
11 that affect your ability to be fair and impartial?

12 A No, sir.

13 Q Okay. Let me back up a little bit. I notice that
14 you indicate that you're a type C juror; is that right?

15 A Yes, sir.

16 Q And that's a juror who could hear the facts and
17 circumstances in aggravation and in mitigation before
18 making a decision?

19 A Yes.

20 Q Would want to hear that before you make a
21 decision. Okay. Did you follow me when I was
22 explaining the process here in the courtroom?

23 A Uh-huh.

24 Q Okay. You've got to speak up now, "yes" or "no"
25 because our court reporter is down here trying to

1 record your answer.

2 A Oh, yes, sir. My apologies.

3 Q I didn't talk too fast or I didn't ramble too
4 much?

5 A No, sir.

6 Q Did you find that helpful, that explanation of
7 how --

8 A Yes, sir.

9 Q -- we would proceed and what your duties were?

10 A Yes, sir.

11 Q Okay. Do you believe that process is consistent
12 with your thought processes concerning how punishment
13 should be determined in a capital case?

14 A Yes, sir. I believe it's something that can't be
15 taken lightly.

16 Q Does your process or the process that you think
17 should be employed fit with that statute?

18 A Yes, sir.

19 Q Okay. That's what I want to know. Is there
20 anything about the process that I explained to you that
21 you felt was just so unfair to either the State or the
22 defendant that you could not --

23 A No, sir.

24 Q -- follow an instruction on the law that would
25 kind of flow with that or follow that process that I

1 explained to you?

2 A No, sir.

3 Q If we were just having coffee together before you
4 even got your questionnaire, just sitting around, and I
5 said, "Keith, what do you think about the death penalty
6 generally" -- not the South Carolina statutory scheme
7 or North Carolina's or any other state's, but the
8 general concept of the death penalty being appropriate
9 for punishment for crime -- what would you have told
10 me?

11 A My basic stance is if everything is followed
12 through and every base is covered and the State as
13 proven its case and there was enough evidence and
14 that's what the law allows. I'm a big proponent of
15 what is allowed in trying to follow the law.

16 Q If -- let me ask you this. Do you believe that
17 there are certain circumstances under which the death
18 penalty would be appropriate in a murder case?

19 A Yes, sir.

20 Q Do you believe also that even in the case of an
21 aggravated murder -- even in the case of an aggravated
22 murder, that there are circumstances, situations, where
23 life would be an appropriate sentence?

24 A Yes, sir.

25 Q Okay. With that in mind, let's sort of switch

1 over to the South Carolina scheme. If you were on a
2 jury and you had just been asked to determine beyond a
3 reasonable doubt whether there was a murder -- and
4 murder involves malice in this state -- and you had
5 just determined the defendant and your fellow jurors
6 unanimously determined the State had proven beyond a
7 reasonable doubt and you had found that he was guilty
8 of that murder, and then we moved on to the second
9 phase, sentencing phase, and the State again put up
10 evidence and you and your fellow jurors unanimously
11 found beyond a reasonable doubt there is an aggravating
12 circumstance in conjunction with this murder -- you had
13 made those two determinations -- you do know that
14 that's where and at what point this very unique process
15 of the jury recommending a sentence comes into play.

16 And do you understand what would be the options?

17 A Yes, sir.

18 Q What are they?

19 A It would be life imprisonment or death penalty,
20 sir.

21 Q Or the death penalty. All right, sir. Even
22 though you had just found beyond a reasonable doubt
23 that there were aggravating circumstances, and even
24 though you just found beyond a reasonable doubt that he
25 was guilty of murder which involves a malicious

1 killing, could you still look at those possible
2 sentences and fairly and impartially be willing to
3 consider either one of them --

4 A Yes, sir.

5 Q -- in this case? You know that you would be
6 required, and I told you that earlier, the jury, before
7 they could reach that conclusion as to what sentence
8 would be appropriate, has to look at evidence in
9 mitigation in the case. Do you understand that?

10 A Yes, sir.

11 Q And there's statutory matters in mitigation and
12 there are just nonstatutory which means anything. Do
13 you understand that?

14 A Yes, sir.

15 Q Would you be willing to fairly and impartially
16 look at everything produced by the defense, everything?

17 A Yes, sir.

18 Q You don't have to find any mitigating, but you
19 would be willing, in spite of the fact that you had
20 just found aggravating circumstances, you would still
21 be willing to look at everything in all fairness to the
22 defendant and to the State?

23 A Yes, sir.

24 Q Okay. Do you understand that each juror has a
25 right to make a finding of a mitigating circumstance