

RECEIVED

JUN 12 2014

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Honorable Michael Nettles, Circuit Court Judge

Case No. 08-CP-43-00905
Appellate Case No. 2013-001968

BOBBY WAYNE STONE..... Petitioner,

v.

STATE OF SOUTH CAROLINA..... Respondent.

APPENDIX
VOLUME IV OF XV

EMILY C. PAAVOLA
Death Penalty Resource & Defense Center
900 Elmwood Ave., Suite 101
Columbia, SC 29201
(803)765-1044

JOHN H. BLUME
Cornell Law School
158 Myron Taylor Hall
Ithaca, New York 14853
(607) 255-1030
Counsel for Petitioner

ALPHONSO SIMON
Office of the Attorney General
P.O. Box 11549
Columba, SC 29211
(803) 734-4037
Counsel for Respondent

INDEX

INDEX	i
RECORD ON APPEAL (First Trial 1997)	1
January 28, 1997 (Prepared by Kathleen M. Simmons)	5
Gary Metts (Cross by Littlejohn)	6
Peggy Kubala (Direct by Kolb)	7
Kevin Kubala (Direct by Kolb)	12
Fred Kubala (Direct by Kolb)	14
State's Exhibit #75 (Photo) entered into evidence	22
State's Exhibit #76 (Photo) entered into evidence	22
Leanna Crookshanks (Direct by Kolb)	26
Teresa Kubala (Direct by Kolb)	38
State's Exhibit #77 (Photo) entered into evidence	44
State's Exhibit #78 (Photo) entered into evidence	44
State's Exhibit #79 (Photo) entered into evidence	44
State's Exhibit #80 (Photo) entered into evidence	44
State's Exhibit #81 (Photo) entered into evidence	44
State's Exhibit #82 (Photo) entered into evidence	44
State's Exhibit #83 (Photo) entered into evidence	44
Dr. Harold Morgan (Direct by Littlejohn)	58
Dr. Harold Morgan (Cross by Kolb)	67
Dr. Harold Morgan (Redirect by Littlejohn)	71
Bernice Perry (Direct by Babb)	83
Bernice Perry (Cross by Kolb)	95
Bernice Perry (Redirect by Babb)	96
Tammy Windham (Direct by Babb)	97
Tammy Windham (Cross by Kolb)	101
Melinda Parrott (Direct by Babb)	102
Melinda Parrott (Cross by Kolb)	110
Michelle Lynch (Direct by Babb)	114
Mary Wilson (Direct by Babb)	116
Mary Wilson (Cross by Kolb)	119
Diane Renea Conner (Direct by Babb)	119
Diane Renea Conner (Cross by Kolb)	121
Teanne Oehler (Direct by Littlejohn)	122
Teanne Oehler (Cross by Kolb)	155
Jerry Hyatt (Direct by Littlejohn)	165
Defendant's Exhibit #8 (Checklist) entered into evidence	167
Defendant's Exhibit #9 (Checklist) entered into evidence	167
Defendant's Exhibit #10 (Checklist) entered into evidence	167
Defendant's Exhibit #11 (Checklist) entered into evidence	167
Defendant's Exhibit #12 (Copy of Two Photos) entered into evidence	170
Jerry Hyatt (Cross by Kolb)	171

Denise Lewis (Direct by Kolb)	184
Dr. John Dunlap (Direct by Kolb)	191
Charge of the Court	245
Verdict of the Jury	265
Sentence of the Court	269
January 20, 21 and 22, 1997 (Prepared by Virginia Roland)	272
General Jury Qualification	284
Preliminary Remarks	326
Case Qualification	334
Court's Exhibit #1 (Jury Information) marked for identification	369
Court's Exhibit #2 (Letter from Player) marked for identification	369
Court's Exhibit #3 (Juror Sheet) marked for identification	375
Ora Bowers (Questioning by the Court)	376
Ora Bowers (Questioning by Kolb)	383
Ora Bowers (Questioning by Littlejohn)	388
Vona H. Graham (Questioning by the Court)	395
Vona H. Graham (Questioning by Littlejohn)	397
Teresa I. McDaniel (Questioning by the Court)	400
Connie L. Keegan (Questioning by the Court)	404
Connie L. Keegan (Questioning by Kolb)	411
Connie L. Keegan (Questioning by Littlejohn)	413
Jean S. Pieterse (Questioning by the Court)	418
Jean S. Pieterse (Questioning by Kolb)	425
Jean S. Pieterse (Questioning by Babb)	426
Jean S. Pieterse (Questioning by the Court)	428
Cynthia H. Barnhill (Questioning by the Court)	430
Cynthia H. Barnhill (Questioning by Kolb)	431
Cynthia H. Barnhill (Questioning by Littlejohn)	434
Cynthia H. Barnhill (Questioning by the Court)	438
Cynthia H. Barnhill (Questioning by Kolb)	442
Emily W.B. Sweatman (Questioning by the Court)	446
Emily W.B. Sweatman (Questioning by Kolb)	454
Emily W.B. Sweatman (Questioning by Babb)	455
Barbara J. Stewart (Questioning by the Court)	459
Barbara J. Stewart (Questioning by Kolb)	467
Barbara J. Stewart (Questioning by Littlejohn)	473
Barbara J. Stewart (Questioning by the Court)	477
Krystal M. Radcliffe (Questioning by the Court)	480
Krystal M. Radcliffe (Questioning by Hilliard)	485
Krystal M. Radcliffe (Questioning by Babb)	486
Krystal M. Radcliffe (Questioning by the Court)	490
Brandon E. Cromer (Questioning by the Court)	492
Brandon E. Cromer (Questioning by Littlejohn)	494
Ladonna L. Jordan (Questioning by the Court)	497

Ladonna L. Jordan (Questioning by Hilliard)	502
Ladonna L. Jordan (Questioning by Babb)	505
Tamika A. Gardner (Questioning by the Court)	513
Tamika A. Gardner (Questioning by Williams)	520
Tamika A. Gardner (Questioning by Littlejohn)	521
Joyce H. Gann (Questioning by the Court)	525
Joann Walker (Questioning by the Court)	527
Joann Walker (Questioning by Williams)	535
Joann Walker (Questioning by Littlejohn)	537
Joann Walker (Questioning by the Court)	539
Roger Coles (Questioning by the Court)	543
Roger Coles (Questioning by Littlejohn)	547
Roger Coles (Questioning by Williams)	549
Shirley A. Legette (Questioning by the Court)	553
Shirley A. Legette (Questioning by Williams)	561
Shirley A. Legette (Questioning by Littlejohn)	562
Christopher L. Carroll (Questioning by the Court)	565
Christopher L. Carroll (Questioning by Williams)	570
Christopher L. Carroll (Questioning by Littlejohn)	571
Christopher L. Carroll (Questioning by the Court)	572
Walter L. Frank (Questioning by the Court)	575
Walter L. Frank (Questioning by Littlejohn)	578
Roy A. Goss (Questioning by the Court)	581
Roy A. Goss (Questioning by Kolb)	588
Roy A. Goss (Questioning by Babb)	591
Debra R. Semple (Questioning by the Court)	594
Debra R. Semple (Questioning by Kolb)	600
Debra R. Semple (Questioning by Littlejohn)	601
Janette M. Miller (Questioning by the Court)	603
Janette M. Miller (Questioning by Littlejohn)	606
Jeanetta E. Tindall (Questioning by the Court)	608
Jeanetta E. Tindall (Questioning by Littlejohn)	617
Jeanetta E. Tindall (Questioning by Williams)	620
John V. Singletary (Questioning by the Court)	623
John V. Singletary (Questioning by Kolb)	629
John V. Singletary (Questioning by Littlejohn)	630
David C. McConnell (Questioning by the Court)	634
David C. McConnell (Questioning by Littlejohn)	638
Herbert D. McClary (Questioning by the Court)	641
Herbert D. McClary (Questioning by Kolb)	648
Herbert D. McClary (Questioning by Littlejohn)	649
Donna M. Moss (Questioning by the Court)	655
Donna M. Moss (Questioning by Williams)	662
Donna M. Moss (Questioning by Littlejohn)	663
Sean P. O'Rear (Questioning by the Court)	672

Sean P. O’Rear (Questioning by Williams)	684
Sean P. O’Rear (Questioning by Babb)	685
Matthew Brunson (Questioning by the Court)	690
Matthew Brunson (Questioning by Williams)	696
Matthew Brunson (Questioning by Littlejohn)	699
Matthew Brunson (Questioning by the Court)	702
Matthew Brunson (Questioning by Littlejohn)	703
Betty J. Keesee (Questioning by the Court)	707
Betty J. Keesee (Questioning by Williams)	715
Betty J. Keesee (Questioning by Babb)	716
Joseph K. Gallegos (Questioning by the Court)	722
Joseph K. Gallegos (Questioning by Williams)	731
Joseph K. Gallegos (Questioning by Littlejohn)	733
Joseph K. Gallegos (Questioning by the Court)	735
Joseph K. Gallegos (Questioning by Littlejohn)	736
Ingrid V. Brown (Questioning by the Court)	741
Ingrid V. Brown (Questioning by Williams)	743
Ingrid V. Brown (Questioning by the Court)	745
Sadie M. Jenkins (Questioning by the Court)	748
Sadie M. Jenkins (Questioning by Williams)	754
Sadie M. Jenkins (Questioning by Littlejohn)	756
Dan E. Riegle (Questioning by the Court)	758
Dan E. Riegle (Questioning by Williams)	767
Dan E. Riegle (Questioning by Littlejohn)	770
Priscilla Ann Gore (Questioning by the Court)	774
Priscilla Ann Gore (Questioning by Kolb)	781
Priscilla Ann Gore (Questioning by Babb)	783
Cindy W. Jones (Questioning by the Court)	786
Cindy W. Jones (Questioning by Kolb)	793
Cindy W. Jones (Questioning by Babb)	794
Larry L. Roberts (Questioning by the Court)	798
Larry L. Roberts (Questioning by Kolb)	804
Larry L. Roberts (Questioning by Littlejohn)	804
Gene C. Bratcher (Questioning by the Court)	809
Gene C. Bratcher (Questioning by Kolb)	814
Gene C. Bratcher (Questioning by Babb)	816
Alton Cribb, Jr. (Questioning by the Court)	820
Alton Cribb, Jr. (Questioning by Kolb)	829
Alton Cribb, Jr. (Questioning by Littlejohn)	830
Alton Cribb, Jr. (Questioning by the Court)	834
Patrick M. Collins (Questioning by the Court)	838
Patrick M. Collins (Questioning by Williams)	847
Patrick M. Collins (Questioning by Babb)	850
George O. Phillips (Questioning by the Court)	855
George O. Phillips (Questioning by Kolb)	864

George O. Phillips (Questioning by Littlejohn)	867
George O. Phillips (Questioning by the Court)	868
Dan Lee Hurell (Questioning by the Court)	872
Dan Lee Hurell (Questioning by Kolb)	874
Dan Lee Hurell (Questioning by Babb)	879
Karen L. Graham (Questioning by the Court)	881
Karen L. Graham (Questioning by Kolb)	889
Karen L. Graham (Questioning by Littlejohn)	890
Neomie M. Jordan (Questioning by the Court)	893
Neomie M. Jordan (Questioning by Littlejohn)	896
Marlene C. Deacon (Questioning by the Court)	897
Marlene C. Deacon (Questioning by Kolb)	904
Marlene C. Deacon (Questioning by Littlejohn)	906
Amy White Condon (Questioning by the Court)	912
Amy White Condon (Questioning by Kolb)	919
Amy White Condon (Questioning by Babb)	919
Phillip K. Allen (Questioning by the Court)	926
Phillip K. Allen (Questioning by Kolb)	933
Phillip K. Allen (Questioning by Littlejohn)	934
Clydie B. Thompson (Questioning by the Court)	936
Clydie B. Thompson (Questioning by Williams)	944
Clydie B. Thompson (Questioning by Littlejohn)	945
Carolyn L. Montagne (Questioning by the Court)	947
Carolyn L. Montagne (Questioning by Kolb)	958
Carolyn L. Montagne (Questioning by Littlejohn)	961
Carolyn L. Montagne (Questioning by Kolb)	963
Carolyn L. Montagne (Questioning by the Court)	966
Cecil M. McGee (Questioning by the Court)	970
Cecil M. McGee (Questioning by Williams)	978
Cecil M. McGee (Questioning by Babb)	980
Cecil M. McGee (Questioning by the Court)	983
John K. Crotts (Questioning by the Court)	988
Edward R. Goude (Questioning by the Court)	994
Edward R. Goude (Questioning by Williams)	1002
Edward R. Goude (Questioning by Littlejohn)	1003
Eugenia Maybank (Questioning by the Court)	1006
Eugenia Maybank (Questioning by Kolb)	1017
Eugenia Maybank (Questioning by Babb)	1022
James D. Woodard (Questioning by the Court)	1026
James D. Woodard (Questioning by Kolb)	1032
James D. Woodard (Questioning by Babb)	1035
Glenn D. Yarborough (Questioning by the Court)	1038
Glenn D. Yarborough (Questioning by Kolb)	1050
Glenn D. Yarborough (Questioning by Babb)	1053
Glenn D. Yarborough (Questioning by the Court)	1055

Patricia A. Haynes (Questioning by the Court)	1058
Patricia A. Haynes (Questioning by Williams)	1061
Ruby E. Brockington (Questioning by the Court)	1064
Mary Armstrong (Questioning by the Court)	1070
Mary Armstrong (Questioning by Williams)	1078
Mary Armstrong (Questioning by Babb)	1081
Mary Armstrong (Questioning by the Court)	1083
Mary Armstrong (Questioning by Babb)	1084
Mary Armstrong (Questioning by Williams)	1085
Strike Jury	1099
Court's Exhibit #4 (Strike List) marked for identification	1110
Call Roll of Jury Pool	1115
Impanel Jury	1117
January 20-22, 1997 (Prepared by Debra R. Jernigan)	1123
Swearing of the Jury Pool	1125
Roll Call	1128
General Qualification	1142
Opening Remarks	1165
Ora Bowers (Questioning by the Court)	1205
Ora Bowers (Questioning by Kolb)	1213
Ora Bowers (Questioning by Littlejohn)	1218
Vona Graham (Questioning by the Court)	1224
Vona Graham (Questioning by Littlejohn)	1226
Teresa McDaniel (Questioning by the Court)	1229
Connie Keegan (Questioning by the Court)	1232
Connie Keegan (Questioning by Kolb)	1239
Connie Keegan (Questioning by Littlejohn)	1240
Jean Pieterse (Questioning by the Court)	1245
Jean Pieterse (Questioning by Kolb)	1251
Jean Pieterse (Questioning by Babb)	1252
Jean Pieterse (Questioning by the Court)	1254
Cynthia Barnhill (Questioning by the Court)	1256
Cynthia Barnhill (Questioning by Kolb)	1258
Cynthia Barnhill (Questioning by Littlejohn)	1260
Cynthia Barnhill (Questioning by the Court)	1264
Cynthia Barnhill (Questioning by Kolb)	1268
Emily Sweatman (Questioning by the Court)	1272
Emily Sweatman (Questioning by Kolb)	1280
Emily Sweatman (Questioning by Babb)	1281
Barbara Stewart (Questioning by the Court)	1285
Barbara Stewart (Questioning by Kolb)	1292
Barbara Stewart (Questioning by Littlejohn)	1298
Barbara Stewart (Questioning by the Court)	1302
Krystal Radcliffe (Questioning by the Court)	1304

Krystal Radcliffe (Questioning by Hilliard)	1309
Krystal Radcliffe (Questioning by Babb)	1311
Krystal Radcliffe (Questioning by the Court)	1314
Brandon Cromer (Questioning by the Court)	1315
Brandon Cromer (Questioning by Littlejohn)	1317
Ladonna Jordan (Questioning by the Court)	1319
Ladonna Jordan (Questioning by Hilliard)	1325
Ladonna Jordan (Questioning by Babb)	1327
Tamika Gardner (Questioning by the Court)	1330
Tamika Gardner (Questioning by Kolb)	1338
Tamika Gardner (Questioning by Littlejohn)	1339
Joyce Gann (Questioning by the Court)	1342
Joyce Gann (Questioning by Hilliard)	1350
Joyce Gann (Questioning by Babb)	1352
Joyce Gann (Questioning by Hilliard)	1354
Joyce Gann (Questioning by the Court)	1355
Richard Bourne (Questioning by the Court)	1355
Richard Bourne (Questioning by Kolb)	1361
Richard Bourne (Questioning by Littlejohn)	1363
Danny Lucas (Questioning by the Court)	1366
Norman Williamson (Questioning by the Court)	1372
Norman Williamson (Questioning by Hilliard)	1377
Norman Williamson (Questioning by Littlejohn)	1380
Norman Williamson (Questioning by the Court)	1383
Joann Walker (Questioning by the Court)	1386
Joann Walker (Questioning by Hilliard)	1394
Joann Walker (Questioning by Littlejohn)	1396
Joann Walker (Questioning by the Court)	1399
Roger Coles (Questioning by the Court)	1401
Roger Coles (Questioning by Littlejohn)	1406
Roger Coles (Questioning by Hilliard)	1408
Shirley Legette (Questioning by the Court)	1411
Shirley Legette (Questioning by Hilliard)	1419
Shirley Legette (Questioning by Littlejohn)	1420
Christopher Carroll (Questioning by the Court)	1422
Christopher Carroll (Questioning by Hilliard)	1428
Christopher Carroll (Questioning by Littlejohn)	1429
Christopher Carroll (Questioning by the Court)	1430
Walter Frank (Questioning by the Court)	1432
Walter Frank (Questioning by Littlejohn)	1435
Roy Goss (Questioning by the Court)	1438
Roy Goss (Questioning by Hilliard)	1445
Roy Goss (Questioning by Babb)	1449
Debra Semple (Questioning by the Court)	1452
Debra Semple (Questioning by Kolb)	1458

Debra Semple (Questioning by Littlejohn)	1458
Janette Miller (Questioning by the Court)	1461
Janette Miller (Questioning by Littlejohn)	1463
Jeanetta Tindall (Questioning by the Court)	1465
Jeanetta Tindall (Questioning by Littlejohn)	1475
Jeanetta Tindall (Questioning by Kolb)	1477
John W. Singletary (Questioning by the Court)	1479
John W. Singletary (Questioning by Kolb)	1485
John W. Singletary (Questioning by Littlejohn)	1487
David McConnell (Questioning by the Court)	1490
David McConnell (Questioning by Littlejohn)	1494
Herbert McClary (Questioning by the Court)	1497
Herbert McClary (Questioning by Hilliard)	1504
Herbert McClary (Questioning by Littlejohn)	1505
Donna Moss (Questioning by the Court)	1510
Donna Moss (Questioning by Hilliard)	1522
Donna Moss (Questioning by Littlejohn)	1523
Sean O'Rear (Questioning by the Court)	1531
Sean O'Rear (Questioning by Hilliard)	1542
Sean O'Rear (Questioning by Babb)	1544
Matthew Brunson (Questioning by the Court)	1548
Matthew Brunson (Questioning by Hilliard)	1555
Matthew Brunson (Questioning by Littlejohn)	1557
Matthew Brunson (Questioning by the Court)	1560
Matthew Brunson (Questioning by Littlejohn)	1561
Betty Keesee (Questioning by the Court)	1564
Betty Keesee (Questioning by Hilliard)	1573
Betty Keesee (Questioning by Babb)	1574
Joseph Gallegos (Questioning by the Court)	1579
Joseph Gallegos (Questioning by Kolb)	1588
Joseph Gallegos (Questioning by Littlejohn)	1590
Joseph Gallegos (Questioning by the Court)	1592
Joseph Gallegos (Questioning by Littlejohn)	1593
Ingrid Brown (Questioning by the Court)	1598
Ingrid Brown (Questioning by Kolb)	1600
Sadie Jenkins (Questioning by the Court)	1605
Sadie Jenkins (Questioning by Kolb)	1612
Sadie Jenkins (Questioning by Littlejohn)	1613
Dan Riegle (Questioning by the Court)	1616
Dan Riegle (Questioning by Hilliard)	1626
Dan Riegle (Questioning by Littlejohn)	1628
Priscilla Ann Gore (Questioning by the Court)	1631
Priscilla Ann Gore (Questioning by Kolb)	1639
Priscilla Ann Gore (Questioning by Babb)	1640
Cindy Jones (Questioning by the Court)	1643

Cindy Jones (Questioning by Kolb)	1651
Cindy Jones (Questioning by Babb)	1653
Larry Roberts (Questioning by the Court)	1656
Larry Roberts (Questioning by Kolb)	1662
Larry Roberts (Questioning by Littlejohn)	1662
Gene Bratcher (Questioning by the Court)	1666
Gene Bratcher (Questioning by Kolb)	1673
Gene Bratcher (Questioning by Babb)	1674
Alton Cribb, Jr. (Questioning by the Court)	1678
Alton Cribb, Jr. (Questioning by Kolb)	1688
Alton Cribb, Jr. (Questioning by Littlejohn)	1689
Patrick Collins (Questioning by the Court)	1697
Patrick Collins (Questioning by Hilliard)	1706
Patrick Collins (Questioning by Babb)	1709
George Phillips (Questioning by the Court)	1713
George Phillips (Questioning by Kolb)	1721
George Phillips (Questioning by Littlejohn)	1724
Dan Lee Hurell (Questioning by the Court)	1729
Dan Lee Hurell (Questioning by Kolb)	1731
Dan Lee Hurell (Questioning by Littlejohn)	1735
Karen Graham (Questioning by the Court)	1737
Karen Graham (Questioning by Kolb)	1745
Karen Graham (Questioning by Littlejohn)	1746
Neomie Jordan (Questioning by the Court)	1748
Neomie Jordan (Questioning by Littlejohn)	1751
Marlene Deacon (Questioning by the Court)	1752
Marlene Deacon (Questioning by Kolb)	1759
Marlene Deacon (Questioning by Littlejohn)	1761
Amy White Condon (Questioning by the Court)	1765
Amy White Condon (Questioning by Kolb)	1771
Amy White Condon (Questioning by Babb)	1772
Phillip Allen (Questioning by the Court)	1776
Phillip Allen (Questioning by Kolb)	1783
Phillip Allen (Questioning by Littlejohn)	1785
Clydie Thompson (Questioning by the Court)	1786
Clydie Thompson (Questioning by Kolb)	1795
Clydie Thompson (Questioning by Littlejohn)	1796
Carolyn Montagne (Questioning by the Court)	1797
Carolyn Montagne (Questioning by Kolb)	1808
Carolyn Montagne (Questioning by Littlejohn)	1809
Carolyn Montagne (Questioning by Kolb)	1812
Carolyn Montagne (Questioning by the Court)	1814
Cecil McGee (Questioning by the Court)	1819
Cecil McGee (Questioning by Hilliard)	1825
Cecil McGee (Questioning by Babb)	1828

Cecil McGee (Questioning by the Court)	1830
Edward Crotts (Questioning by the Court)	1834
Edward Goude (Questioning by the Court)	1838
Edward Goude (Questioning by Hilliard)	1846
Edward Goude (Questioning by Littlejohn)	1847
Eugenia Maybank (Questioning by the Court)	1850
Eugenia Maybank (Questioning by Kolb)	1857
Eugenia Maybank (Questioning by Babb)	1862
James D. Woodard (Questioning by the Court)	1865
James D. Woodard (Questioning by Kolb)	1871
James D. Woodard (Questioning by Babb)	1876
Glenn D. Yarborough (Questioning by the Court)	1879
Glenn D. Yarborough (Questioning by Kolb)	1891
Glenn D. Yarborough (Questioning by Babb)	1893
Glenn D. Yarborough (Questioning by the Court)	1895
Patricia Haynes (Questioning by the Court)	1898
Patricia Haynes (Questioning by Kolb)	1901
Ruby Brockington (Questioning by the Court)	1903
Mary Armstrong (Questioning by the Court)	1908
Mary Armstrong (Questioning by Williams)	1916
Mary Armstrong (Questioning by Babb)	1919
Mary Armstrong (Questioning by the Court)	1921
Mary Armstrong (Questioning by Babb)	1922
Mary Armstrong (Questioning by Williams)	1923
Jury Strikes	1936
Roll Call of Jury Pool	1950
Jury Impanelled	1952
June 21, 1996 – Transcript of Arraignment	1957
August 20, 1996 – Motions Hearing	1965
Court's Exhibit #1 (Copies of articles) marked for identification	1970
Court's Exhibit #2 (Affidavits) marked for identification	1972
September 26, 1996 – Motions Hearing	2027
Court's Exhibit #1 (Copy of Newspaper Article) marked for identification	2047
Court's Exhibit #2 (Advertisement, Fund Raiser) marked for identification	2047
January 10, 1997 – Hearing Regarding Jury Excuses	2053
Notice of Intent to Seek the Death Penalty	2097
Indictments	2098
Jury Forms	2100
Report of the Trial Judge	2117
Final Brief of Appellant	2129
Brief of Respondent	2171
South Carolina Supreme Court Opinion	2244
RECORD ON APPEAL (Re-sentencing 2005)	2252
General Jury Qualification	2258
Pinky Walker, Juror 228 (Questioning by the Court)	2340

Juror 228 (Questioning by Saleeby)	2346
Juror 228 (Questioning by Littlejohn)	2349
Juror 228 (Questioning by Saleeby)	2350
Juror 228 (Questioning by Littlejohn)	2351
Ms. Hudson, Juror 95 (Questioning by the Court)	2354
Juror 95 (Questioning by Saleeby)	2358
Juror 95 (Questioning by Littlejohn)	2359
Linda Blue, Juror 20 (Questioning by the Court)	2361
Juror 20 (Questioning by Saleeby)	2365
Ronald A. Beard, Juror 13 (Questioning by the Court)	2367
Juror 13 (Questioning by Saleeby)	2374
Juror 13 (Questioning by Littlejohn)	2381
William Montibono, Juror 150 (Questioning by the Court)	2385
Juror 150 (Questioning by Saleeby)	2390
Juror 150 (Questioning by Littlejohn)	2393
Juror 150 (Questioning by Saleeby)	2396
Bonnie Trainer, Juror 219 (Questioning by the Court)	2398
Juror 219 (Questioning by Saleeby)	2403
Juror 219 (Questioning by Littlejohn)	2403
Betty Bolden, Juror 21 (Questioning by the Court)	2414
Juror 21 (Questioning by Saleeby)	2418
Juror 21 (Questioning by Littlejohn)	2418
Vincent Sims, Juror 195 (Questioning by the Court)	2422
Juror 195 (Questioning by Saleeby)	2427
Juror 195 (Questioning by Littlejohn)	2427
Ricky Labruno, Juror 115 (Questioning by the Court)	2432
Juror 115 (Questioning by Saleeby)	2439
Juror 115 (Questioning Littlejohn)	2442
Heather Roland, Juror 188 (Questioning by the Court)	2444
Juror 188 (Questioning by Saleeby)	2449
Cheryl Benjamin, Juror 15 (Questioning by the Court)	2455
Juror 15 (Questioning by Saleeby)	2459
Juror 15 (Questioning by Littlejohn)	2462
Juror 15 (Questioning by Saleeby)	2465
Juror 15 (Questioning by the Court)	2467
Mr. Sumter, Juror 210 (Questioning by the Court)	2470
Juror 210 (Questioning by Saleeby)	2475
Juror 210 (Questioning by Littlejohn)	2476
Mr. Burgess, Juror 31 (Questioning by the Court)	2482
Juror 31 (Questioning by Saleeby)	2486
Juror 31 (Questioning by Littlejohn)	2487
Unidentified, Juror 33 (Questioning by the Court)	2492
Juror 33 (Questioning by Saleeby)	2499
Juror 33 (Questioning by Babb)	2506
Ms. Sooner, Juror 197 (Questioning by the Court)	2511

Ms. Williamson, Juror 242 (Questioning by the Court)	2514
Juror 242 (Questioning by Jackson)	2520
Juror 242 (Questioning by Babb)	2524
Mr. Holstein, Juror 168 (Questioning by the Court)	2528
Juror 168 (Questioning by Saleeby)	2534
Juror 168 (Questioning by Littlejohn)	2537
Mr. Brody, Juror 24 (Questioning by the Court)	2543
Juror 24 (Questioning by Jackson)	2549
Juror 24 (Questioning by Littlejohn)	2552
Ms. Dowe, Juror 56 (Questioning by the Court)	2557
Juror 56 (Questioning by Jackson)	2563
Juror 56 (Questioning by Littlejohn)	2565
Ms. Drake, Juror 57 (Questioning by the Court)	2570
John McCloud, Juror 140 (Questioning by the Court)	2575
Juror 140 (Questioning by Jackson)	2583
Juror 140 (Questioning by Littlejohn)	2586
Mr. Slater, Juror 198 (Questioning by the Court)	2594
Juror 198 (Questioning by Saleeby)	2599
Juror 198 (Questioning by Babb)	2600
Mr. Tomlin, Juror 218 (Questioning by the Court)	2603
Mr. Cochran, Juror 39 (Questioning by the Court)	2606
Ms. Fulwood, Juror 64 (Questioning by the Court)	2609
Ms. Blanchette, Juror 19 (Questioning by the Court)	2613
Juror 19 (Questioning by Saleeby)	2618
Juror 19 (Questioning by Babb)	2620
Mr. Price, Juror 175 (Questioning by the Court)	2624
Juror 175 (Questioning by Jackson)	2630
Juror 175 (Questioning by Littlejohn)	2632
Emerericiana Ulery, Juror 222 (Questioning by the Court)	2642
Juror 222 (Questioning by Jackson)	2648
Juror 222 (Questioning by Littlejohn)	2650
Ms. Weston, Juror 235 (Questioning by the Court)	2656
Ms. Weeks, Juror 233 (Questioning by the Court)	2658
Juror 233 (Questioning by Saleeby)	2664
Juror 233 (Questioning by Babb)	2665
Mr. Brooks, Juror 26 (Questioning by the Court)	2673
Juror 26 (Questioning by Littlejohn)	2677
Nickie Jones, Juror 110 (Questioning by the Court)	2679
Juror 110 (Questioning by Jackson)	2685
Juror 110 (Questioning by Babb)	2689
Rosada Heriot, Juror 88 (Questioning by the Court)	2694
Juror 88 (Questioning by Jackson)	2698
Juror 88 (Questioning by Babb)	2700
Juror 88 (Questioning by the Court)	2704
Ms. Sanders, Juror 189 (Questioning by the Court)	2706

Juror 189 (Questioning by Jackson)	2711
Juror 189 (Questioning by Babb)	2714
Mr. Harsch, Juror 86 (Questioning by the Court)	2718
Juror 86 (Questioning by Jackson)	2723
Juror 86 (Questioning by Babb)	2725
Ms. Smith, Juror 199 (Questioning by the Court)	2734
Juror 199 (Questioning by Jackson)	2742
Juror 199 (Questioning by Littlejohn)	2744
Ms. Myers, Juror 157 (Questioning by the Court)	2749
Juror 157 (Questioning by Jackson)	2754
Juror 157 (Questioning by Babb)	2760
Mr. Rewis, Juror 180 (Questioning by the Court)	2774
Juror 180 (Questioning by Saleeby)	2779
Juror 180 (Questioning by Babb)	2780
Mr. Copeland, Juror 41 (Questioning by the Court)	2785
Juror 41 (Questioning by Jackson)	2794
Juror 41 (Questioning by Babb)	2799
Jury Selection	2830
Case Called	2863
State's Exhibit #84 (Diagram) entered into evidence	2871
State's Exhibit #85 (Diagram) entered into evidence	2871
State's Exhibit #86 (Diagram) entered into evidence	2871
Opening Statements	2884
Tommy Mims (Direct by Saleeby)	2898
Lillie Britt (Direct by Saleeby)	2907
State's Exhibit #63 (copy of indictment) entered into evidence	2910
State's Exhibit #64 (copy of indictment) entered into evidence	2910
State's Exhibit #65 (copy of indictment) entered into evidence	2910
State's Exhibit #66 (copy of indictment) entered into evidence	2910
State's Exhibit #67 (copy of indictment) entered into evidence	2910
State's Exhibit #68 (copy of indictment) entered into evidence	2910
State's Exhibit #69 (copy of indictment) entered into evidence	2910
Sharon Holland (Direct by Saleeby)	2915
Kathy Miles (Direct by Saleeby)	2923
State's Exhibit #4 (911 tape) played for the jury	2930
Kathy Miles (Cross by Littlejohn)	2930
Mary Ruth Williamson (Direct by Saleeby)	2937
State's Exhibit #56 (coat) entered into evidence	2944
State's Exhibit #13 (gun) entered into evidence	2946
State's Exhibit #6 (photo) entered into evidence	2951
State's Exhibit #9 (photo) entered into evidence	2953
State's Exhibit #8 (photo) entered into evidence	2954
State's Exhibit #15 (photo) entered into evidence	2955
State's Exhibit #10 (photo) entered into evidence	2955
State's Exhibit #12 (photo) entered into evidence	2956

Mary Ruth Williamson (Cross by Babb)	2957
Daniel Bethea (Direct by Saleeby)	2974
Daniel Bethea (Cross by Littlejohn)	2980
Ruth Griffith (previous testimony read into the record)	2984
Landrow Taylor (previous testimony read into the record)	3036
John Prince (Direct by Saleeby)	3058
State's Exhibit #13 (shotgun) entered into evidence	3071
State's Exhibit #31 (photo) entered into evidence	3072
State's Exhibit #19 (photo) entered into evidence	3072
John Prince (Cross by Littlejohn)	3074
John Prince (Redirect by Saleeby)	3079
Gene Edward Hobbs, Jr. (Direct by Saleeby)	3081
State's Exhibit #27 (Smith and Weston nine millimeter) entered into evidence	3091
State's Exhibit #26 (rounds) entered into evidence	3091
Gene Edward Hobbs, Jr. (Cross by Littlejohn)	3100
Fred Powell, Jr. (Direct by Saleeby)	3107
State's Exhibit #40 (photo) entered into evidence	3122
Fred Powell, Jr. (Cross by Littlejohn)	3123
Dana Wingate (Direct by Saleeby)	3129
State's Exhibit #60 (knife) entered into evidence	3134
Dana Wingate (Cross by Littlejohn)	3135
Perry Herod (Direct by Saleeby)	3143
State's Exhibit #1 (advisement of rights form) entered into evidence	3150
State's Exhibit #2 (sketch) entered into evidence	3156
State's Exhibit #3 (written statement) entered into evidence	3157
Perry Herod (Cross by Littlejohn)	3170
Dr. Joel Sexton (Direct by Saleeby)	3177
State's Exhibit #18 (portions of lead bullet) entered into evidence	3190
State's Exhibit #17 (22 long rifle bullet) entered into evidence	3190
Dr. Joel Sexton (Cross by Littlejohn)	3195
Raymond Mackessy (Direct by Saleeby)	3197
State's Exhibits #41-46 (photos of beer cans) entered into evidence	3207
State's Exhibits #40-70 (fired 22-caliber cartridge casing) entered into evidence	3207
State's Exhibit #40 (photo) entered into evidence	3207
State's Exhibits #29 and 30 (photos) entered into evidence	3208
State's Exhibit #35 (photo) entered into evidence	3210
State's Exhibits #53 and 54 (22-caliber cartridge casings) entered into evidence	3211
State's Exhibit #31 (photo) entered into evidence	3212
State's Exhibit #20 (photo) entered into evidence	3212
State's Exhibits #21 and 25 (photos) entered into evidence	3213
State's Exhibit #23 (photo) entered into evidence	3214
State's Exhibit #57 (cut portion of screen) entered into evidence	3218
Thomas Darnell (Direct by Saleeby)	3221

Thomas Darnell (Cross by Babb)	3234
Jeffery Hollifield (Direct by Saleeby)	3244
Jeffery Hollifield (Cross by Babb)	3252
John Barron (Direct by Saleeby)	3259
John Barron (Cross by Babb)	3273
Ira Parnell (Direct by Saleeby)	3275
Ira Parnell (Cross by Littlejohn)	3297
Peggy Kubala (Direct by Jackson)	3309
Ferdinand Kubala (Direct by Jackson)	3317
Kevin Kubala (Direct by Jackson)	3329
Teresa Kubala-Hanvey (Direct by Jackson)	3333
Gary Metts (Direct by Saleeby)	3357
State Rests	3368
Court's Exhibit #1 (death certificate of Mary Etta Wilson)	3376
Defense's Case	3391
Teanne Oehler (Direct by Babb)	3391
Teanne Oehler (Cross by Saleeby)	3414
Teanne Oehler (Redirect by Babb)	3430
Melinda Parrott (Direct by Babb)	3431
Melinda Parrott (Cross by Saleeby)	3451
Elizabeth Perry (Direct by Babb)	3457
Defendant's 5-7 (family photos)	3463
Linda Parrott (Direct by Babb)	3466
Mary Jean Wilson (Direct testimony is read into record by Littlejohn)	3469
Mary Jean Wilson (Cross read into the record by Jackson)	3477
Mary Jean Wilson (Continued testimony read by Littlejohn)	3482
Dr. William Alexander Morton, Jr. (Direct by Babb)	3485
Dr. William Alexander Morton, Jr. (Cross by Jackson)	3509
Dr. William Alexander Morton, Jr. (Redirect by Babb)	3520
James Aiken (Direct by Littlejohn)	3522
James Aiken (Cross Examination)	3537
James Aiken (Redirect by Littlejohn)	3542
State's Closing	3561
Defense's Closing	3581
Jury Charges	3599
Verdict	3630
Defense Motion for Directed Verdict	3635
Sentence	3636
Pre-trial Hearing Transcript (November 2, 2004)	3639
Pre-Trial Hearing Transcript (February 11, 2005)	3670
Pre-Trial Hearing Transcript (February 14, 2005)	3889
Dr. William Stavrou (Direct by Jackson)	3890
Dr. William Stavrou (Cross by Littlejohn)	3902
State's Exhibit #1 (letter)	3898
State's Exhibit #2 (letter)	3901

Letter From Court Reporter Regarding Transcription of Jury Selection (December 15, 2006)	3913
Statutory Instructions	3914
Sentence Form (Jury)	3915
Affirmation of Death	3917
Sentence Form (Judge)	3918
Certificate of Appellant	3919
Final Brief of Appellant	3920
Final Brief of Respondent	3937
Certificate of Counsel	3966
South Carolina Supreme Court Opinion	3969
Petition for Rehearing	3972
Order Denying Petition for Rehearing	3976
Initial Application for Post-Conviction Relief	3978
First Amended Application for Post-Conviction Relief	3985
Second Amended Application for Post-Conviction Relief	3995
Third Amended Application for Post-Conviction Relief	4004
Respondent's Return and Motion to Dismiss	4011
Post-Conviction Relief Hearing Transcript (April 23 rd & 24 th , 2012)	4075
Opening Remarks	4081
Dr. James Merikangas (Direct by Blume)	4092
Dr. James Merikangas (Cross by Zelenka)	4121
Dr. James Merikangas (Redirect by Blume)	4149
Dr. Howard Becker (Direct by Blume)	4155
Dr. Howard Becker (Cross by Zelenka)	4187
Dr. Arlene Andrews (Direct by Blume)	4196
Dr. Arlene Andrews (Cross by Zelenka)	4243
Joseph Savitz, III (Direct by Lominack)	4254
Joseph Savitz, III (Cross by Simon)	4257
Wayne Hill (Direct by Blume)	4263
Wayne Hill (Cross by Simon)	4301
Wayne Hill (Redirect by Blume)	4317
Wade Kolp (Direct by Zelenka)	4320
Wade Kolp (Cross by Blume)	4338
Wade Kolp (Redirect by Zelenka)	4346
Peter Skidmore (Direct by Blume)	4347
Peter Skidmore (Cross by Simon)	4350
James Babb (Direct by Lominack)	4353
James Babb (Cross by Simon)	4365
James Babb (Redirect by Lominack)	4402
State's Case	4415
Simon Majors, Jr. (Direct by Simon)	4415
Simon Majors, Jr. (Cross by Lominack)	4421
Cecil Jackson (Direct by Simon)	4425
Cecil Jackson (Cross by Blume)	4429

Ira Parnell (Direct by Simon)	4432
Ira Parnell (Cross by Blume)	4441
Ira Parnell (Redirect by Simon)	4446
Post-Conviction Relief Hearing (August 10, 2012)	4450
James Babb (Direct by Lominack)	4455
James Babb (Cross by Simon)	4458
Cameron Littlejohn (Direct by Simon)	4462
Cameron Littlejohn (Cross by Blume)	4486
Jill Rider (Direct by Blume)	4491
Post-Conviction Relief Exhibits	4506
Applicant's Exhibit #1 (Dr. Shine's Affidavit and Report)	4506
Applicant's Exhibit #2 (Dr. Gur's Affidavit and Report)	4511
Applicant's Exhibit #3 (Dr. Bookstein's Affidavit and Report)	4517
Applicant's Exhibit #10 (Dr. Andrews' Curriculum Vita)	4530
Applicant's Exhibit #11 (Dr. Andrew's Charts, Sociogram)	4536
Applicant's Exhibit #12 (Sanatorium Records- Bobby O. Stone)	4079
Applicant's Exhibit #13 (Sanatorium Records- Maybell Stone)	4611
Applicant's Exhibit #14 (Screen Door Diagram)	4651
Applicant's Exhibit #16 (Dr. Harold Morgan's Records)	4652
Applicant's Exhibit #18 (DEHEC- Turkey Creek Records)	4657
Applicant's Exhibit #25 (Death Certificates)	5099
Applicant's Exhibit #26 (Coroner's Report)	5101
Applicant's Exhibit #27 (TB Records)	5108
Applicant's Exhibit #28 (Jerry Stone's Medical Records)	5119
Applicant's Exhibit #29 (Melinda Stone's Medical Records)	5131
Applicant's Exhibit #30 (Tammy Stone's Medical Records)	5199
Applicant's Exhibit #31 (Bobby Stone's School Records)	6438
Applicant's Exhibit #32 (Melinda Stone's School Records)	6457
Applicant's Exhibit #33 (Tammy Stone's School Records)	6475
Applicant's Exhibit #34 (Bobby O. Stone's School Records)	6493
Applicant's Exhibit #35 (Douglas Edwards' Criminal Records)	6496
Applicant's Exhibit #36 (Jerry Edwards' Criminal Records)	6541
Applicant's Exhibit #37 (Terry Edwards' Criminal Records)	6606
Applicant's Exhibit #38 (Baker Floyd's Criminal Records)	6734
Applicant's Exhibit #39 (Walter Floyd's Criminal Records)	6737
Applicant's Exhibit #40 (Michelle Lynch's Criminal Records)	6818
Applicant's Exhibit #41 (Lovia Miles' Criminal Records)	6854
Applicant's Exhibit #42 (Wesley Miles Criminal Records)	6869
Applicant's Exhibit #43 (Melinda Stone Parrott's Criminal Records)	6911
Applicant's Exhibit #44 (Bobby O. Stone's Criminal Records)	6921
Applicant's Exhibit #45 (Anthony Turner's Criminal Records)	6931
Applicant's Exhibit #46 (Thomas Windham's Criminal Records)	7069
Applicant's Exhibit #47 (Social Security Records)	7090
Applicant's Exhibit #48 (Department of Juvenile Justice Records)	7095
Respondent's Exhibit #1 (James Babb's Time Sheets)	7102

Respondent's Exhibit #2 (James Babb's Notes)	7106
Respondent's Exhibits #3 (James Babb's Notes)	7107
Respondent's Exhibit #4 (Interview with Elizabeth Bernice Perry 9/9/96)	7108
Order Substituting Counsel	7110
Applicant's Post-Hearing Brief	7112
Respondent's Post-Trial Brief	7165
Order Denying Post-Conviction Relief	7259
Applicant's Motion to Alter or Amend Judgment	7291
Respondent's Motion to Alter or Amend Judgment	7302
Transcript of Hearing on Motion to Alter or Amend Judgment	7306
Amended Order Denying Post-Conviction Relief	7339
Notice of Appeal	7371

1 Q. Were you stationed at Myrtle Beach?

2 A. Yes, sir from '63 to '67, those four years.

3 Q. And you indicated you had two years of
4 college and I wasn't quite sure it says CCAF?

5 A. What did you say?

6 Q. You indicated you had two years of college?

7 A. I got associate degree from Community College
8 of the Air Force.

9 MR. LITTLEJOHN: Thank you, sir.

10 THE COURT: Any additional questions from
11 the State?

12 MR. KOLB: No, sir.

13 THE COURT: If you will step down we will
14 be with you in just a moment, sir. Thank you.

15 Mr. Kolb.

16 MR. KOLB: Yes, sir.

17 MR. LITTLEJOHN: We concur.

18 THE COURT: He is qualified, ask him to
19 come back in, please.

20 Mr. Singletary, you have been qualified as
21 potential juror in the jury pool. We will select
22 the jury from that pool tomorrow at five o'clock.
23 You will need to be back in the courtroom just
24 like you were yesterday, just come back out in
25 the audience tomorrow at five and information from

1 the clerk of Sumter provided in giving all the
2 jurors in case you are selected it has some
3 information on what is going to happen. You need
4 to bring with you tomorrow sufficient clothing and
5 personal effects to take care of your needs for
6 about a week. If you are selected we will leave
7 here and go onto Sumter.

8 One other thing, until tomorrow at five
9 please do not discuss this case with anyone, do
10 not allow anyone to talk to you or talk about it
11 in your presence and also do not watch any news
12 programs or read any news accounts. Thank you,
13 sir.

14 The next one is David McConnell.

15 DAVID MCCONNELL, having been first
16 duly sworn, testified as follows:

17 EXAM BY THE COURT:

18 Q. How are you this morning?

19 A. Pretty good.

20 Q. Good. Mr. McConnell, do you have any prior
21 knowledge of this alleged incident?

22 A. No, sir, I don't.

23 Q. You don't know anything other than what I
24 shared with you yesterday?

25 A. Yes, sir.

1 Q. Have you read anything or talked with anybody
2 about it since yesterday?

3 A. No, sir.

4 Q. Heard anything about it?

5 A. No, sir.

6 Q. You had a chance to read that list or that
7 sheet that has three types of jurors?

8 A. Yes, sir, I did.

9 Q. Which one best describes you?

10 A. I really don't understand them.

11 Q. Okay. Let me see if I can clarify for you.
12 Type one is a person that would feel that someone
13 is convicted of murder that they believe that the
14 only possible sentence would always be the death
15 penalty regardless of the circumstances.

16 Type two is a person that believes that
17 someone is convicted of murder that they would
18 believe that the appropriate punishment is always
19 life imprisonment regardless of the circumstances.

20 Type three is the type of person that
21 says, well, I think sometimes the death penalty
22 is appropriate, I think sometimes life
23 imprisonment is appropriate, it just depends on
24 the circumstances. And I can't tell you which
25 one it is until I have heard all the others.

2475

1 Which one do you think?

2 A. Type three.

3 Q. So you are a person that would believe it
4 just depends on the circumstances and would you
5 have to hear it all before you could make the
6 decision?

7 A. Yes, sir.

8 Q. And you believe there are some circumstances
9 where the death penalty would be appropriate?

10 A. Yes, sir.

11 Q. And you believe there are some circumstances
12 where you believe life imprisonment would be an
13 appropriate sentence?

14 A. Yes, sir.

15 Q. You heard me yesterday tell you certain
16 principles of law that apply to this case and
17 really any case that is of criminal nature one of
18 those is the presumption of innocence which means
19 a number of things, but it means that the State
20 had burden of proof in these matters, do you have
21 any problem with that?

22 A. No, sir.

23 Q. It also means that someone who is charged
24 with criminal offense like Mr. Stone they don't
25 have to prove anything. They certainly don't

1 have to prove their innocence, do you understand
2 that?

3 A. Yes, sir.

4 Q. Do you have any problem with that?

5 A. I can't convict somebody like that.

6 Q. What?

7 A. I don't know if they could do that, put
8 somebody's life in my hands or not.

9 Q. I understand that, but let me ask you this.
10 Could you sit as a juror and decide the facts in
11 the case?

12 A. No, sir.

13 Q. You could not? You could not decide what you
14 believe to be the truth?

15 A. I could.

16 Q. Could you take the law and apply it to those
17 facts?

18 A. Yes, sir.

19 Q. Okay. And part of the instruction was make
20 a decision first part would be make a decision
21 whether or not Mr. Stone did those things that he
22 is accused of doing and the standard would be that
23 they have to prove that beyond a reasonable doubt,
24 could you do that?

25 A. Probably can.

1 Q. Probably can?

2 A. Yes, sir.

3 Q. And if the State didn't prove its case could
4 you find Mr. Stone and would you find Mr. Stone
5 not guilty?

6 A. (Can't understand tape).

7 Q. And if you were satisfied and convinced the
8 State had proved its case could you find him
9 guilty?

10 A. No, sir.

11 Q. You think you couldn't?

12 A. No, sir.

13 Q. You believe that feeling would prevent you
14 from considering the evidence?

15 A. Yes, sir.

16 Q. That you would be more inclined to find him
17 not guilty than guilty?

18 A. (Can't understand tape).

19 THE COURT: Any questions from the State?

20 MR. HILLIARD: No, sir, Your Honor.

21 THE COURT: Any questions from the
22 defendant?

23 MR. LITTLEJOHN: Yes, sir.

24 EXAM BY MR. LITTLEJOHN:

25 Q. Let me see if I can understand your responses

1 to Judge Dennis' questions, if you were chosen as
2 a juror sitting in the jury box, and listened to
3 the State present its evidence against Mr. Stone
4 or any other defendant and that evidence was such
5 that you believed it and you believed that the
6 particular defendant was guilty of that which he
7 is charged with and His Honor would instruct you
8 that you would have to have that belief beyond a
9 reasonable doubt, if you got to that point where
10 you truly believe that that had occurred could you
11 not render a verdict of guilty as to that
12 particular defendant?

13 A. (Can't understand tape).

14 Q. I realize this is an unusual circumstance for
15 you to be sitting in a courtroom in a witness
16 stand with people asking you questions and
17 everything, I realize your hesitancy, but if you
18 were called upon to do your duty as a juror, do
19 you think you could follow what the Court tells
20 you to do, listen to the evidence and determine
21 whether the defendant in this case Mr. Stone is
22 either guilty or not guilty?

23 A. No, sir.

24 Q. You don't think you could do that under any
25 circumstances?

1 A. No, sir, I couldn't.

2 Q. Is there a reason why you don't believe you
3 could do that?

4 A. I don't know.

5 Q. You don't know.

6 MR. LITTLEJOHN: Thank you.

7 THE COURT: Any additional questions?

8 MR. KOLB: No, sir.

9 THE COURT: Step down please, Mr.
10 McConnell, we will be with you in just a second.

11 I find we can't really get to the question
12 of punishment in this case. This individual I
13 think would have a bias, he has expressed he
14 couldn't even fairly consider the evidence in this
15 case. He expressed on several times one direct
16 question, one voluntarily that he just simply
17 couldn't find him guilty. I find that would
18 impair his ability to serve as a juror and
19 furthermore find he didn't understand the three
20 types of jurors, no fault of his, but his
21 questionnaire doesn't read newspapers, doesn't
22 watch any television, for those reasons I find
23 that juror would not be appropriate in this case,
24 find him unqualified.

25 Any objection from the State?

1 MR. KOLB: No, sir.

2 THE COURT: Any objection from the
3 defendant?

4 MR. LITTLEJOHN: No, Your Honor.

5 THE COURT: Thank you very much. I will
6 excuse you from further participation in this
7 matter. We will probably select a jury tomorrow
8 or tomorrow afternoon. I would ask you until we
9 select the jury do not talk about this case with
10 anyone. After we have selected a jury you are
11 free to discuss it. Thank you, sir.

12 The next one is Herbert McClary.

13 HERBERT MCCLARY, having been first
14 duly sworn, testified as follows:

15 EXAM BY THE COURT:

16 Q. How are you today, sir?

17 A. Fine.

18 Q. Appreciate your patience for waiting on us.
19 I have some questions for you and like I indicated
20 yesterday there really aren't any right or wrong
21 answers, all we ask is you be truthful in your
22 answers to the questions the lawyers have for you,
23 also.

24 A. Yes, sir.

25 Q. You see the lady sitting there taking it down

1 we need to make sure we have verbal response. Do

2 you have any prior knowledge of this alleged
3 incident?

4 A. No.

5 Q. Other than what I shared with you on
6 yesterday?

7 A. You shared with us yesterday I presume the
8 lady sitting there (Can't understand tape).

9 Q. Also there is one other problem ---

10 A. I hadn't heard anything as far as I know
11 until yesterday.

12 Q. We got the mike system went out on us
13 yesterday afternoon so we had to try to create
14 microphone system, although I am sitting right
15 here next to you if you will keep your voice up.
16 Thank you, sir. Do you have any opinion about
17 this case at this point?

18 A. No.

19 Q. You will have to hear all of the evidence
20 before you reach any conclusions?

21 A. Yes.

22 Q. Are you that type of person?

23 A. I think so.

24 Q. You had an opportunity to review the sheet
25 that had three types of jurors?

2480

1 A. Yes.

2 Q. Which one best describes you?

3 A. The bottom.

4 Q. That is the one that says sometimes you
5 believe the death penalty would be appropriate,
6 sometimes you believe life imprisonment would be
7 appropriate, but it just depends upon the facts
8 and circumstances of the case?

9 A. Yes.

10 Q. You have to hear all of those before you
11 could decide which one, which case or which was
12 appropriate in any case?

13 A. Yes, sir.

14 Q. You understand that this case being of a
15 criminal nature that there are certain principles
16 of law and we talked about a couple of them
17 yesterday but one of them is anyone that is
18 charged in this country that is charged with
19 criminal violation is presumed to be innocent?

20 A. Yes.

21 Q. You have any problem with that?

22 A. No.

23 Q. Part of that would mean that the State
24 therefore has the burden of proof, it is up to
25 the State, they bring the charge, they must

1 prove it beyond a reasonable doubt, have you any
2 problem with that?

3 A. No.

4 Q. Also in part of that I would instruct you if
5 you were on this jury that the defendant doesn't
6 have to prove anything and they certainly, any
7 defendant does not ever have to prove his or her
8 innocence, do you understand that?

9 A. Yes.

10 Q. Would you have any problem following that
11 instruction?

12 A. No.

13 Q. Included with that would be the defendant
14 doesn't even have to testify if they don't want
15 to, it is up to them for whatever reason. And
16 if they chose not to testify you could not use
17 that against them at all, would you be able to
18 follow that instruction?

19 A. Yes.

20 Q. So if you were selected on the jury in the
21 first phase of this proceeding where we will deal
22 with whether or not the defendant is guilty or not
23 guilty of these alleged offenses, do you
24 understand?

25 A. Sure.

1 Q. You will hear evidence, would you be able to
2 listen to that evidence and then receive the law
3 from the Court, apply the law to those facts and
4 make a decision whether or not you felt the State
5 had met its burden?

6 A. Yes.

7 Q. Would you expect Mr. Stone to prove anything
8 to you?

9 A. Mr. Stone?

10 Q. He is the person accused of these offenses.

11 A. I have to hear his story. I don't have an
12 answer.

13 Q. Well, I will instruct you, let me make it
14 clear, that he doesn't have to prove anything.

15 A. I didn't know.

16 Q. You wouldn't expect him to prove anything?

17 A. Hear the evidence.

18 Q. You would hear the evidence, decide it on
19 the evidence, you wouldn't hold it against him or
20 expect him to put any evidence?

21 A. (Can't understand tape).

22 Q. Well, I would instruct you that any
23 defendant and Mr. Stone included is never required
24 to prove any ---

25 A. (Can't understand tape).

1 Q. So you would not expect him to prove
2 anything; is that correct?

3 A. Yes.

4 Q. If you in viewing the evidence were convinced
5 that the State, in other words, that you were
6 convinced the State beyond a reasonable doubt had
7 proved its case, would you have any hesitancy
8 finding him guilty?

9 A. No, sir.

10 Q. In your view of the evidence if you felt the
11 State did not convince you beyond a reasonable
12 doubt that he was guilty, would you have any
13 hesitancy in deciding a verdict of not guilty?

14 A. No.

15 Q. In the second phase of this proceeding that
16 is where you will hear additional evidence,
17 evidence you won't hear in the first portion that
18 will deal specifically with the issue of
19 appropriate punishment, do you understand that?

20 A. Yes.

21 Q. Would you be able to keep an open mind in
22 both proceedings?

23 A. Yes.

24 Q. Would you have -- would your decision in
25 the first case affect in anyway, in other words,

1 would you start the second phase with any set
2 punishment or would you have to hear all the
3 evidence before you could determine?

4 A. Hear the evidence.

5 Q. Because you would understand then you
6 wouldn't get to the second phase unless you found
7 him guilty of murder but that fact would make you
8 feel he ought to receive death penalty or life in
9 prison until you have heard all the evidence; is
10 that right?

11 A. Yes.

12 Q. So am I to understand then that you would be
13 able to keep an open mind until you had heard all
14 the evidence, received the law and then when you
15 were instructed to retire and deliberate you could
16 as a juror and would consider all the facts,
17 apply the law to those facts and determine what
18 you believe to be the appropriate punishment?

19 A. Yes.

20 Q. You could consider both death penalty and
21 life in prison?

22 A. Yes, sir.

23 Q. You understand that as a part of this
24 proceeding is this jury is going to be
25 sequestered, that means that for the duration of

1 trial you will be staying with the other jury at
2 the State's expense, they provide lodging, food,
3 transportation for you for the duration of the
4 trial. I realize that may not be the most, you
5 may not be excited about that fact but the
6 inconvenience of that or the fact that you are
7 sequestered would not affect you performing your
8 duties as jurors, would it?

9 A. No.

10 Q. Ask you one last question, do you know of
11 anything in your experiences in life, personal
12 philosophies or anything that would affect your
13 ability to be fair and impartial to the State in
14 viewing this case?

15 A. No.

16 Q. How about with the defendant Mr. Stone?

17 A. No.

18 THE COURT: Answer any questions the
19 State may have, sir.

20 EXAM BY MR. HILLIARD:

21 Q. Mr. McClary, you answered that in a death
22 penalty trial that it would depend upon the law
23 that you heard from the Court and all the facts
24 and circumstances of the case before you could
25 make a decision between life in prison and a death

1 penalty, but you could decide between both of
2 them is the answer I understood you to give?

3 A. I'm not following you. I have evidence and
4 I could choose the death penalty.

5 Q. Now, if you were on the jury and you and
6 other members of the jury decide on a death
7 penalty could you sign your name to the verdict
8 along with all 12 members of the jury?

9 A. Yes.

10 Q. Could you come in the courtroom, stand up in
11 the presence of the defendant and other persons in
12 the Court and announce the verdict to the Court?

13 A. Yes.

14 Q. All right thank you, sir.

15 THE COURT: Mr. Littlejohn.

16 EXAM BY MR. LITTLEJOHN:

17 Q. Mr. McClary, when Judge Dennis was asking
18 you about your consideration of the evidence in
19 this case during the trial if you were chosen as a
20 juror, I thought I saw some hesitancy there when
21 he asked you if you expected the defendant to
22 prove anything or put up any evidence. Do you
23 expect the defendant Mr. Stone, to put up a case?

24 MR. HILLIARD: Your Honor, objection.

25 THE COURT: I'm overruling I will allow

you may do so. I am not going to allow you to ask him what he would do because you are asking him to reveal something he can't reveal at this point, specifically about this case, sir. You have asked him if he was charged with that would not influence you, I will not allow to you pursue that. You can move onto something else, sir.

MR. LITTLEJOHN: Your Honor, that is all I have.

THE COURT: Any additional questions from the State?

MR. HILLIARD: No.

THE COURT: Ask you to please step down, Mr. McClary, I will be with you in just a couple of seconds.

What says the State?

MR. HILLIARD: Qualified, Your Honor.

THE COURT: What says the defendant?

MR. LITTLEJOHN: We agree.

THE COURT: Thank you, sir.

Mr. McClary, you have been qualified as prospective juror, potential juror in this case. What that means you are in a pool, from that pool we will select 12 jurors and alternate to hear the case. That will occur tomorrow afternoon at five

2
3
14
15
6
7

1 is that right?

2 A. Yes.

3 Q. Now, Mr. McClary as you are probably aware
4 the State has accused Mr. Stone of the murder of a
5 deputy sheriff. Would the fact that those are
6 the circumstances with which he is charged, would
7 that have any bearing on your ability to weigh the
8 evidence in this case?

9 A. No.

10 Q. Not a bit?

11 A. Over what?

12 Q. Say the victim was not a police officer?

13 A. (Can't understand tape).

14 Q. That wouldn't have any effect on you. Tell
15 me this, if you were seated as a juror and you
16 found Mr. Stone guilty of the murder of a deputy
17 sheriff would you in going into the sentencing
18 aspect of this case be more inclined to the death
19 penalty?

20 MR. HILLIARD: I object.

21 THE COURT: I sustain the objection that
22 is an inappropriate question.

23 EXAM BY MR. LITTLEJOHN:

24 Q. Let me ask it this way, Mr. McClary, if you
25 found the defendant was guilty of those

1 circumstances, could you go into the second phase
2 of this case and consider both the death penalty
3 and life in prison?

4 A. You have two cases?

5 Q. I'm in the second phase.

6 A. I don't know what the first phase is going to
7 bring.

8 Q. Let me back up. Assuming you are on this
9 jury, you and the rest of the jurors found Mr.
10 Stone guilty of the murder of a deputy sheriff,
11 you would then be called upon to go into the
12 second phase of the case at which point a jury
13 would make a binding recommendation to the Court
14 of either the death penalty or life in prison.
15 Could you if you were at that point in the trial,
16 could you weigh the evidence on both sides and
17 consider both of those alternative sentences?

18 A. You (Can't understand tape) me a little bit.

19 Q. It was a long question, I give you that.

20 MR. HILLIARD: I object. He is still
21 asking him what he would do under hypothetical
22 situation.

23 THE COURT: Mr. Littlejohn, I covered
24 that fully. If you want to examine him on all
25 the answers that he gave to that specific question

1 you may do so. I am not going to allow you to
2 ask him what he would do because you are asking
3 him to reveal something he can't reveal at this
4 point, specifically about this case, sir. You
5 have asked him if he was charged with that would
6 not influence you, I will not allow to you pursue
7 that. You can move onto something else, sir.

8 MR. LITTLEJOHN: Your Honor, that is all
9 I have.

10 THE COURT: Any additional questions from
11 the State?

12 MR. HILLIARD: No.

13 THE COURT: Ask you to please step down,
14 Mr. McClary, I will be with you in just a couple
15 of seconds.

16 What says the State?

17 MR. HILLIARD: Qualified, Your Honor.

18 THE COURT: What says the defendant?

19 MR. LITTLEJOHN: We agree.

20 THE COURT: Thank you, sir.

21 Mr. McClary, you have been qualified as
22 prospective juror, potential juror in this case.
23 What that means you are in a pool, from that pool
24 we will select 12 jurors and alternate to hear the
25 case. That will occur tomorrow afternoon at five

1 o'clock. I will need you to be back at the
2 courtroom tomorrow, you may come back just like
3 you did yesterday.

4 If you are selected you will leave from
5 here and go directly to Sumter where we will start
6 the trial Thursday so you will need to bring with
7 you in case you are selected sufficient clothing
8 and personal effects to take care of you for about
9 a week.

10 This sheet of paper the clerk has prepared
11 for you to help you understand what is going on.
12 I would ask you, sir, that until then that you
13 not discuss this case with anyone or allow anyone
14 to talk with you about it, do not watch any news
15 accounts about it or read any newspapers. Thank
16 you, sir, see you tomorrow at five o'clock.

17 Do we have the others? We will be at ease.
18 (Whereupon, a short recess was held.)

19 THE COURT: Bring in Donna Moss, please.

20 DONNA MOSS, having been first duly
21 sworn, testified as follows:

22 EXAM BY THE COURT:

23 Q. The mike went out on us yesterday, we are
24 having to do old time mike, all talk loud if you
25 would do that for us I would appreciate it. Good

1 afternoon, Ms. Moss, you are Ms. Moss?

2 A. Yes, sir.

3 Q. Donna?

4 A. Yes, sir.

5 Q. Have you heard anything or read anything
6 about this alleged incident?

7 A. No.

8 Q. So your knowledge of this really confined to
9 what I shared with you yesterday about what has
10 been alleged?

11 A. Yes.

12 Q. You haven't heard anything about it or read
13 anything about it since yesterday, have you?

14 A. No.

15 Q. No one has talked to you about it or talked
16 about it in your presence?

17 A. No.

18 Q. Do you have any opinions then?

19 A. Oh, no.

20 Q. Would you have to hear all of the evidence
21 before you reached or made a conclusion or reached
22 any conclusions about this?

23 A. Yes.

24 Q. Have you had a chance to review that sheet
25 naming the three types of jurors?

1 A. Yes, sir, I just read it.

2 Q. Which of those three best describe you?

3 A. The third type of juror.

4 Q. Does that mean that you are the type of
5 person that believes like that person that
6 sometimes the death penalty in a murder case would
7 be appropriate, sometimes the appropriate
8 punishment would be life in prison?

9 A. Yes, sir, I do under the circumstances.

10 Q. But it depends on the case?

11 A. Uh-huh (affirmative response).

12 Q. Would you have to hear all the circumstances
13 before you made a determination?

14 A. Yes.

15 Q. This case is a criminal nature and like I
16 indicated yesterday like every case that is
17 brought into this country of that type there are
18 certain principles of law that will apply, one of
19 those principles was mentioned and it is a
20 presumption of innocence, do you have any problem
21 with that principle of law?

22 A. No, sir.

23 Q. And basically it means that anyone charged
24 with criminal violation like Mr. Stone is charged
25 is presumed to be innocent until and if the State

1 presents enough evidence to convince the jury
2 beyond a reasonable doubt of his guilt, do you
3 understand that?

4 A. Yes, sir.

5 Q. That means the State has the only burden in
6 this proceeding, do you understand?

7 A. Uh-huh (affirmative response).

8 Q. They are the only ones that is required to
9 put up any evidence because it is their
10 responsibility to prove their case?

11 A. Yes, sir.

12 Q. That also means that Mr. Stone doesn't have
13 to prove a thing and he doesn't have to prove his
14 innocence. Important part of presumption of
15 innocence, do you understand?

16 A. Yes.

17 Q. If you were a juror could you follow those
18 principles of law?

19 A. Yes, sir.

20 Q. Would you then expect Mr. Stone to prove
21 anything to you?

22 A. No.

23 Q. Would you look to the State to prove its
24 case?

25 A. Yes, sir.

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Deputy Chief Attorney

SOUTH CAROLINA OFFICE
OF APPELLATE DEFENSE
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant

CHARLES M. CONDON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

C. KELLY JACKSON
Solicitor, Third Judicial Circuit
Sumter County Courthouse
141 N. Main Street
Sumter, SC 29150
(803) 436-2185

Attorneys for Respondent

INDEX

TRIAL TRANSCRIPT DATED JANUARY 28, 1997

TESTIMONY IN GUILT PHASE

WITNESSES:

PERRY HEROD	17
JOSEPH GALIMORE.....	57
DANA WINGATE.....	78
DR. HAROLD MORGAN.....	81
KATHY MILES.....	140
DANIEL BETHEA.....	172
MARY RUTH MCLEOD.....	186
RUTH GRIFFITH.....	220
LANDROW TAYLOR.....	279
DR. JOEL SEXTON.....	301
JOHN PRINCE.....	316
MICHAEL WINSTON.....	336
EDDIE HOBBS.....	350
ROBERT RICHARDSON.....	366
LEROY DENNIS.....	368
RAYMOND MACKESSY.....	374
TOM DARNELL.....	430
PAUL C. LAROSA.....	461
TOM DARNELL.....	468
JEFF HOLLIFIELD.....	472
JOHN BARRON.....	488
JEREMIAH DAVIS.....	503
FRED POWELL.....	512
STACY DRAKEFORD.....	537
RICHARD HUNTON.....	546
DAVID MCCLURE.....	554
DOUG BRANNON.....	556
BUSTER EDWARDS.....	569
DANA WINGATE.....	571
GRAYSON AMICK.....	578
GARY MARTIN.....	586
ROBERT JONES.....	591
JOHN JOHNSON.....	606
EMILY REINHART.....	608
PERRY HEROD.....	626
IRA PARNELL.....	643

PERRY HEROD	677
JOE GALLIMORE.....	715
MARY G. WILSON.....	743
MICHELLE LYNCH.....	757
TEANNE OEHLER.....	771
CHARGE.....	868
VERDICT.....	916
TESTIMONY IN PENALTY PHASE	
WITNESSES:	
PERRY HEROD	947
DEBORAH MATHIS	951
STEVE LANEY	963
TOMMY MIMS	977
GARY METTS.....	995
PEGGY KUBALA	1002
KEVIN KUBALA	1007
FRED KUBALA	1009
LEANNA CROOKSHANKS	1021
TERESA B. KUBALA	1033
DR. HAROLD MORGAN.....	1053
BERNICE PERRY	1078
TAMMY WINDHAM	1092
MELINDA PARROTT	1097
MICHELLE LYNCH.....	1109
MARY WILSON.....	1111
DIANE RENEA CONNOR.....	1114
TEANNE OEHLER	1117
JERRY HYATT	1160
DENISE LEWIS.....	1179
DR. JOHN DUNLAP	1186
CHARGE.....	1240
VERDICT.....	1260
SENTENCE.....	1264
JURY VOIR DIRE (JANUARY 20, 21 AND 22, 1997).....	1267
JURY VENIRE (JANUARY 20-22, 1997).....	2110

PRETRIAL HEARING DATED JUNE 21, 1996.....	2940
PRETRIAL HEARING DATED AUGUST 20, 1996.....	2946
PRETRIAL HEARING DATED SEPTEMBER 26, 1996.....	3005
PRETRIAL HEARING DATED JANUARY 10, 1997.....	3032
NOTICE OF INTENTION TO SEEK THE DEATH PENALTY	3076
INDICTMENT FOR MURDER AND BURGLARY	3077
VERDICT FORM	3079
STATUTORY INSTRUCTIONS.....	3080
JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES.....	3082
RECOMMENDATION OF DEATH SENTENCE	3084
AFFIRMATION OF DEATH SENTENCE.....	3085
JUROR INFORMATION CARD FOR CLYDIE THOMPSON.....	3086
JUROR INFORMATION CARD FOR DAN RIEGLE	3090
JUDGE'S FINAL REPORT	3094
CERTIFICATE OF COUNSEL	p-1X...1X...3107

STATE'S EXHIBITS 6 THROUGH 12 HAVE BEEN DOCKETED WITH THE COURT.

1 Q. If after you concluded and you understand I
2 indicated yesterday there are two parts to this
3 proceeding. The first part of this trial will
4 deal with the sole question of whether or not Mr.
5 Stone is guilty or not guilty as alleged. Then
6 based on what the jury determines at that phase
7 depend on whether or not we go to the second phase
8 because if you find a not guilty then there is --
9 of murder there is no second phase for penalty,
10 you understand?

11 A. Yes.

12 Q. If in the first phase you were not satisfied
13 after you had heard all of the evidence and you
14 had received and heard the law you were not
15 convinced beyond a reasonable doubt that the State
16 proved that Mr. Stone is guilty of one or more of
17 these offenses, would you have any hesitancy of
18 writing a verdict of not guilty?

19 A. (Can't understand tape).

20 Q. Looking at the evidence you as a juror, you
21 weren't convinced beyond a reasonable doubt that
22 the State had proved to you that he had done this,
23 would you have any hesitancy in finding him not
24 guilty and your verdict being not guilty if you
25 felt the State had not proved its case?

1 A. I guess if the State had not proved its case
2 it would have to, they had not proven him guilty
3 I would have no choice but finding him not guilty.

4 Q. That would be part of my instruction. I
5 would tell you as a juror you would look to the
6 State and if you conclude at the end that the
7 State had not proved to you beyond a reasonable
8 doubt it would be your duty to return a verdict of
9 not guilty, could you do that?

10 A. I think so, yes.

11 Q. And as a part of that I would also add for
12 you to remember that the defendant has nothing to
13 prove, in fact the defendant doesn't even have to
14 testify if the defendant chooses not to testify
15 would instruct you that you can't use that against
16 him in any way, shape or form, do you understand?

17 A. Uh-huh (affirmative response).

18 Q. Could you follow that instruction if he chose
19 not to testify?

20 A. Yes, sir.

21 Q. If on the other hand you were convinced
22 beyond a reasonable doubt that the State had
23 proved that he was guilty, would you find him
24 guilty?

25 A. Yes, sir.

1 Q. If you found him guilty and if the jury found
2 him guilty of murder then we would have the second
3 phase where we would determine the punishment, do
4 you understand, it is at that time and only then
5 will you hear certain evidence that pertains to
6 the punishment issue, do you understand that? So
7 it is a separate trial, if you will, in that
8 setting within the trial. Would you have an open
9 mind when you started the first phase?

10 A. Yes.

11 Q. Would you likewise have an open mind when you
12 started the second phase to determine the
13 punishment because until that point you will not
14 have heard any evidence about that goes to the
15 punishment issue?

16 A. I think I would have an open mind regarding
17 whether we give life in prison sentence or death
18 penalty sentence.

19 Q. That is what I am asking you because the
20 issue of guilt or innocence has already been
21 decided, I mean, we have gotten through that,
22 that is why we are in the second one you have
23 already concluded it, but you would have an open
24 mind as to punishment issue?

25 A. Yes.

1 Q. You would have to hear all the evidence in
2 that proceeding before you made a determination as
3 to the appropriate punishment; is that right?

4 A. Yes.

5 Q. Am I to understand that at the appropriate
6 stage once you have heard all the evidence and
7 received the law, that you could go back and
8 consider both life imprisonment and the death
9 penalty and make a decision which one you felt was
10 the most appropriate?

11 A. Yes, sir.

12 Q. Do you know of anything in your background,
13 any personal feelings you had, strong feelings,
14 personal convictions you had that would affect
15 your ability to be fair and impartial in trying
16 this case as it pertains to the State?

17 A. No, sir.

18 Q. How about as it pertains to Mr. Stone?

19 A. No.

20 Q. If you are selected as a juror you are going
21 to be sequestered with the other jurors for the
22 duration of the trial, that means the State will
23 provide you with lodging, food, transportation
24 until the trial is completed. I realize that is
25 not something everybody will be excited about?

1 A. No.

2 Q. I don't think I know of a soul that would be.
3 But my question to you is, could you set aside
4 that inconvenience and stay focused and perform
5 your duties as a juror?

6 A. I think so.

7 Q. So you wouldn't let it interfere with that?

8 A. No. I think going through nurses training
9 and other things I have gone through my life I
10 have had to sacrifice.

11 THE COURT: Thank you so much, if you
12 will answer any questions the State may have for
13 you.

14 EXAM BY MR. HILLIARD:

15 Q. Good afternoon, Ms. Moss, just a few
16 additional questions for you. Have you or any
17 close friends or family members ever been charged
18 with a crime as far as you know?

19 A. No, sir.

20 Q. In response to the Judge's question you
21 indicated that you consider yourself a type three
22 juror; is that correct?

23 A. Yes.

24 Q. You understand that to mean if you found the
25 defendant guilty you could vote for either the

1 death penalty or life imprisonment depending upon
2 the circumstances and facts of the case?

3 A. Yes.

4 Q. Do you believe that you could sign a verdict
5 form sentencing the defendant to death, you would
6 be able to write your name on that form?

7 A. If I had to I would.

8 Q. So you believe you could do that?

9 A. Yes.

10 Q. Do you believe you could come into the
11 courtroom in front of the defendant and whoever
12 else is present and say that your verdict was that
13 he be sentenced to death?

14 A. I think if that was the decision of the 12
15 jurors I could.

16 MR. HILLIARD: Please answer any
17 questions the defense may have.

18 THE COURT: Yes, sir, Mr. Littlejohn.

19 EXAM BY MR. LITTLEJOHN:

20 Q. Good afternoon, Ms. Moss. Ms. Moss, let
21 me just ask you about something that Judge Dennis
22 discussed with you. He has told you that as
23 Bobby Stone sits at this table that he is presumed
24 innocent. Do you have any problem following and
25 adopting that presumption?

1 A. No.

2 Q. And if he tells you, he being Judge Dennis,
3 if he tells you that Bobby Stone is presumed to be
4 innocent until such time as all the evidence is
5 in, all the arguments have been made and the
6 Court has given you the instruction if you are a
7 juror you go to deliberate, can you follow that
8 instruction and presume him innocent until that
9 point in the trial?

10 A. Uh-huh (affirmative response).

11 Q. Ms. Moss, do you have any friends or
12 acquaintances that are police officers?

13 A. I have a friend, yes.

14 Q. Who does he or she work for?

15 A. Well I guess I am in a precarious situation,
16 to be honest with you. I work in the emergency
17 room at the hospital so I know the majority of the
18 County deputies and I also know a lot of city
19 police because they come in and out all the time
20 with motor vehicle accidents and this sort of
21 thing. I am not socially active with them but I
22 know them on a professional basis.

23 Q. They are like pleasant acquaintances that you
24 see in the ER?

25 A. Right.

1 Q. AS you probably know in this case the State
2 has accused Bobby Stone with the murder of a
3 deputy sheriff?

4 A. I didn't know that until you just told me
5 right now.

6 Q. Okay. That is what he is accused of.
7 Given that accusation and your friendship with
8 these other deputies, would that have any effect
9 on you being a fair and impartial juror in this
10 case?

11 A. No.

12 Q. It would not?

13 A. No.

14 Q. You would be able to hear all of the evidence
15 and His Honor's instructions to you and render a
16 fair verdict?

17 A. Yes, sir, I believe I could.

18 Q. And if you were to find him guilty of murder,
19 could you likewise go into the jury room in the
20 penalty phase and consider whether a death penalty
21 or life imprisonment is appropriate?

22 MR. HILLIARD: I will object to the
23 hypothetical nature of that question.

24 THE COURT: I will overrule, he said
25 could you consider both of them, I overrule, no

1 problem.

2 THE WITNESS: Would you repeat the
3 question?

4 EXAM BY MR. LITTLEJOHN:

5 Q. Sure. If you were given those
6 circumstances, if you were on the jury and the
7 jury were to convict Bobby Stone with the murder
8 of a deputy sheriff ---

9 THE COURT: I sustain that. If you want
10 to ask in a generic fashion not specifically about
11 this case, sir.. Thank you, sir.

12 EXAM BY MR. LITTLEJOHN:

13 Q. If you were on the jury that was dealing in a
14 murder situation, there was a deputy sheriff
15 involved, could you fairly go into the jury room
16 and determine or --

17 THE COURT: Mr. Littlejohn, why don't
18 you just ask her, you have asked it typically
19 before, ask her the impact it would have with her
20 relationships. I will not allow you to ask the
21 question you are seeking to ask in this sense in
22 asking her what her verdict will be if she found
23 the person guilty of killing a police officer.
24 Not going to ask that question to be asked up
25 here.

1 MR. LITTLEJOHN: Your Honor, I was just
2 going to ask her if she could consider both.

3 THE COURT: I understand that. I am just
4 going to ask you -- you were going to ask her if
5 only she could consider both.

6 MR. LITTLEJOHN: Yes, sir.

7 THE COURT: Why don't you seek to impeach
8 because she has already answered that question
9 that she could consider both because she said so
10 earlier. You may ask her would that change her
11 answer. But let's stay away from the question
12 about asking what the juror's verdict would be,
13 it is very close to that, okay.

14 MR. LITTLEJOHN: Your Honor, I
15 understand.

16 THE COURT: You may continue. We
17 understand one another.

18 EXAM BY MR. LITTLEJOHN:

19 Q. Ms. Moss, if you were to sit on the jury
20 that was to render a verdict or render a finding
21 for recommendation, would you fairly consider
22 both alternatives, the death penalty and life
23 imprisonment given the facts and circumstances and
24 His Honor's instructions to you?

25 A. Yes.

1 MR. LITTLEJOHN: That is all I have,
2 Your Honor.

3 THE COURT: Thank you, sir. Any
4 additional questions from the State?

5 MR. HILLIARD: No, sir.

6 THE COURT: Thank you, you may step down
7 be with you in just a second.

8 MR. HILLIARD: Qualified, Your Honor.

9 MR. LITTLEJOHN: Your Honor, she is
10 qualified.

11 THE COURT: Thank you, sir. I find
12 that she is qualified. Ask her to step back in,
13 please.

14 Ms. Moss, you have been qualified as
15 potential juror in this case. That means that
16 you are now part of the pool and from that pool we
17 will select the 12 jurors and the alternates that
18 will hear this case. That will occur tomorrow at
19 five o'clock in this courtroom. I will need for
20 you therefore to be back at five o'clock.

21 This is a little note from the clerk of
22 Sumter that gives you some information about what
23 clothing and what not because when you come you
24 are going to need to bring clothing and personal
25 effects to take care of your needs for about a

1 week in case you are selected because you will
2 leave directly. Once you have been selected you
3 will be sequestered and go onto Sumter tomorrow.
4 So bring your clothing.

5 Please until then do not discuss this case
6 with anyone, do not allow anybody to talk with
7 you about it or talk about it in your presence or
8 watch any news accounts. Thank you.

9 Just one second before we bring in the
10 next one, please. Let's go ahead so we won't
11 have a problem I want to give you an opportunity,
12 Mr. Littlejohn, so we can get this resolved
13 insofar as the questions that you are asking. I
14 will be happy to hear you further if you need to
15 argue it further but it is going to be my
16 position, it is going to be my ruling insofar as
17 any questions that seek to get close to a
18 statement by any juror, potential juror of what
19 they would do that almost gives you sort of a
20 window, if you will, because they can't possibly
21 know that until they have heard it all so that is
22 why. Your wording in that one was probably
23 close, it could have gone either way, the way
24 you phrase it I think you are entitled to ask and
25 seek the information that you are asking, I would

2513

1 just ask you to kind of maybe do it in a couple of
2 questions and not specifically that one. If you
3 want to persist I will be happy to hear you.

4 MR. LITTLEJOHN: Your Honor, what I was
5 trying to do, this juror didn't know the
6 operative fact of who the alleged victim in this
7 case is. What I wanted to ask her is if given
8 that fact could she still fairly consider both.
9 She might say yes or she may say the death penalty
10 is the only verdict I can come up with or she
11 could say life in prison is the only one I could
12 come up with. I wanted to make sure just on
13 balance she could consider both.

14 THE COURT: And she had answered the
15 question because you asked her would that
16 influence you at all in this proceeding and she
17 said no. And now if you want to ask her if that
18 means in either phase because she has already,
19 see that is what I am saying, she has given you
20 the answer to that question but now you are
21 getting to a point that almost subconsciously gets
22 into penning these jurors down to a verdict one
23 way or the other and I don't think that is
24 appropriate.

25 MR. LITTLEJOHN: I understand. I was

1 trying to differentiate the guilt phase from
2 penalty phase.

3 THE COURT: I understand. Thank you,
4 sir. All right let's bring in the next one, Mr.
5 O'Rear.

6 SEAN O'REAR, having been first
7 duly sworn, testified as follows:

8 EXAM BY THE COURT:

9 Q. Good afternoon, sir.

10 A. How are you?

11 Q. I'm fine, how about you?

12 A. Good.

13 Q. I have some questions that I am going to ask
14 you in just a moment then when I am finished the
15 lawyers may have a couple of questions. All we
16 ask you to do is answer truthfully, all right.

17 Also I will ask you, you notice I am
18 talking a little loud sitting right next to you,
19 the mike is out, talk a little loud so everyone
20 can hear you, as well, if you would.

21 Do you have any prior knowledge of this?

22 A. No, I don't.

23 Q. So the only thing that you know about this
24 case is what I told you was alleged on yesterday?

25 A. Yes, sir.

1 Q. Do you have any opinions about this trial at
2 this point?

3 A. No.

4 Q. Would you be a person that would have to hear
5 all of the evidence or all of the facts before you
6 made a determination?

7 A. Yes.

8 Q. That would be typical of you?

9 A. Yes.

10 Q. Have you had a chance to read that sheet that
11 had the three types of jurors?

12 A. Yes, sir.

13 Q. Which one best describes you?

14 A. The third.

15 Q. The third?

16 A. Yes.

17 Q. You believe then am I to understand then you
18 believe that sometimes the death penalty may be
19 appropriate punishment, sometimes life
20 imprisonment would be appropriate punishment, but
21 it would just depend upon the facts and
22 circumstances in a given case?

23 A. Yes.

24 Q. And you would also in this type three be the
25 type like you just stated having to hear all the

1 facts, would that be true in that situation?

2 A. Yes.

3 Q. You wouldn't make a decision until you heard
4 all of the facts? And would you also wait until
5 you heard the law from the Court if you were on
6 the jury to apply those facts?

7 A. Yes.

8 Q. Okay. You understand this is a case
9 involving a criminal dispute and as a part of that
10 there are certain principles of law that apply to
11 this case and apply to all cases like that in this
12 country one of those is that every person who is
13 charged with a criminal violation is presumed
14 innocent until the State and if the State proves
15 the guilt beyond a reasonable doubt, do you
16 understand that?

17 A. Yes.

18 Q. Do you have any problem with that?

19 A. I would want the same.

20 Q. Okay. That would mean, of course, that
21 anyone who is charged with a criminal offense
22 doesn't have to prove anything and they certainly
23 don't have to prove their innocence, do you
24 understand that?

25 A. Yes.

1 Q. Do you have any problem with that?

2 A. No.

3 Q. The fact that Mr. Stone is charged with some
4 alleged violations and the fact he is sitting
5 there at that table would that mean anything to
6 you?

7 A. It is his right, is it not?

8 Q. Right. The fact he is here. You don't
9 consider him to be anything but innocent at this
10 point; is that correct?

11 A. No.

12 Q. In the trial of this case as I mentioned
13 yesterday there are two phases, the first phase
14 will deal where you will hear evidence solely on
15 the issue of whether or not Mr. Stone is guilty or
16 not guilty of -- is guilty of these alleged
17 instances, do you understand?

18 A. Yes.

19 Q. You will have to decide whether the State has
20 met its burden of proof as to whether or not he is
21 guilty, do you understand?

22 A. I understand.

23 Q. At this point if you were selected on the
24 jury would you have an open mind at the start of
25 that trial; is that right?

1 A. Yes.

2 Q. You would look to the State to prove its case
3 because that is the law as I have just discussed
4 it with you?

5 A. Correct.

6 Q. Would you expect Mr. Stone to prove anything
7 to you or disprove anything?

8 A. No.

9 Q. Any defendant charged with criminal offense,
10 any person charged with criminal offense has a
11 right not to testify if they choose to for
12 whatever reason, do you understand?

13 A. Yes.

14 Q. That is his right. And if the jury, if
15 that happens the jury is instructed they can't use
16 that against him, would you have any problem
17 following that instruction?

18 A. No.

19 Q. So if you were on the jury and you looked,
20 you heard all the evidence you were not convinced
21 beyond a reasonable doubt that Mr. Stone had done
22 any one or all of these offenses, you weren't
23 satisfied beyond a reasonable doubt would you have
24 any problem voting or writing the verdict of not
25 guilty?

1 A. I guess not.

2 Q. Would that be your verdict if I instructed
3 you if you found that the State had not met its
4 burden of proof, had not convinced you beyond a
5 reasonable doubt you must return a verdict of not
6 guilty?

7 A. Sure.

8 Q. Would you have any problem doing that?

9 A. Not if they didn't prove it.

10 Q. Likewise if the State proved its case would
11 you have any problem finding him guilty?

12 A. No.

13 Q. You understand that if the jury determines
14 that he is guilty, at the conclusion of that
15 first phase he is guilty and guilty of the offense
16 of murder it is then and only then we would go
17 into the second phase where the jury will hear
18 evidence and make a determination of appropriate
19 punishment, do you understand that?

20 A. I understand that. It is a whole other
21 trial again.

22 Q. Well, it is another trial in this sense, we
23 don't start over, you don't retry that first part
24 you have already heard that part. But now you
25 are going to hear evidence that you didn't hear in

1 the first trial. You will hear evidence that
2 will deal solely with the issue of punishment,
3 mitigating circumstances, aggravating
4 circumstances and the like and I will explain all
5 of those terms to you when it comes time to give
6 you a charge or instruction on the law, do you
7 understand that?

8 A. Yes.

9 Q. Would you be able to keep an open mind from
10 the beginning of that trial and throughout that
11 trial, the second phase on the punishment and
12 would you wait until you heard all the evidence
13 before you made a decision?

14 A. Yes.

15 Q. You wouldn't have any predeterminations or
16 pre-feelings of whether life imprisonment or the
17 death penalty would be appropriate at the start of
18 the trial, the second phase?

19 A. I guess it depends on what came out at the
20 first trial.

21 Q. You see the first trial, that is why it is
22 important that you understand, the first trial
23 you are not going to hear any of that evidence
24 that is going to deal with that issue, it is
25 saved until the second trial because the first

2521

1 part is only going to determine whether or not he
2 is guilty, okay. There is a method to the
3 madness, there is a reason for that.

4 A. I guess I wouldn't, I would have to hear
5 everything.

6 Q. The question I have and the most important
7 thing because it is somewhat convoluted this is
8 why we ask these questions and they are entitled
9 to know this, just like you have and seems you
10 want to keep floating back to the first one, that
11 is okay. Obviously you would have to consider
12 that because you wouldn't be in the second one but
13 for the fact you found him guilty, I am not
14 asking that you have to throw that aside I'm just
15 telling you that you are going to hear evidence in
16 the second phase that deals solely with the issue
17 of punishment, okay. So it is an additional
18 evidence, but my question is you don't have to
19 deal, you are no longer dealing with guilt that
20 has been decided. So now the jury's only issue,
21 the only issue is which one, life in prison or
22 the death penalty, okay. That is your choice.
23 My question is at the start of that second phase
24 would you have an open mind as to the appropriate
25 punishment?

2522

1 A. I guess I could.

2 Q. You could, but my question is will you?

3 A. In the situation, yes.

4 Q. So you would?

5 A. Right.

6 Q. You had indicated at the start of this
7 conversation that you were type three?

8 A. Yes.

9 Q. That meant in that statement that you have to
10 hear all the evidence before you decided
11 punishment?

12 A. Yes.

13 Q. I would tell you at the conclusion of the
14 first phase you have not heard any evidence that
15 deals with punishment issue, okay. That is why
16 I said it is two parts, you must keep that in
17 mind. So knowing that would you have an open
18 mind?

19 A. I could.

20 Q. At the end of that phase you would then get
21 additional instruction and then the jury would be
22 asked to retire to make the decision, the
23 decision would be to decide between life
24 imprisonment or the death penalty. Could you go
25 back at that time, consider both and make a

1 decision which one you felt was most appropriate?

2 A. Yes.

3 Q. Do you know of anything in your background,
4 any personal feelings you have, any experiences
5 that you have had in your life that would affect
6 your ability to be fair and impartial in trying
7 this case as it pertains to the State?

8 A. No.

9 Q. Same question, anything in your background,
10 any personal feelings or strong philosophies you
11 may have that would affect your ability to be fair
12 and impartial in trying this case as it pertains
13 to Mr. Stone?

14 A. No.

15 Q. If you are selected as a juror, you are
16 going to be sequestered with the other jurors and
17 that means the State is going to provide you with
18 housing, lodging, housing of course provide you
19 with lodging, not housing, and food and
20 transportation for the duration of this
21 proceeding, do you understand that?

22 A. I know that.

23 Q. I know that is not something that you would
24 necessarily be excited about but my question to
25 you is could you set aside any feelings and

1 inconvenience of that, stay focused on your job
2 and responsibilities as a juror?

3 A. It would be hard because my wife is 9 months
4 pregnant and due any day.

5 Q. I understand, sir and I remember that
6 yesterday and that is why?

7 A. I have a note right here from the doctor,
8 too.

9 Q. Okay is this your first child?

10 A. First child.

11 Q. Well, that's good. In the sense that most
12 of them sometimes they don't have a tendency to
13 come as early as some of the other ones. I know
14 that is comforting to you I remember my wife tried
15 to jog and make our first child come early.

16 Expected date of delivery he said is February 9th.
17 As I told you yesterday, if you are selected on
18 this jury that is why we have alternates, if
19 something were to happen then we will certainly
20 remove you from the jury at that point.

21 A. My question, the trial is here?

22 Q. We will get you back.

23 A. It is in Sumter?

24 Q. We will get you back to wherever you got to
25 go and I bet the ride would be quicker than you

1 could drive. In fact, I will assure you the
2 driver will be quicker than you can drive. So
3 that is not a concern.

4 A. I guess not.

5 Q. I am saying transportation is not a concern,
6 however the other part I can't answer that one, I
7 will shift that one back to you the ball is in
8 your court again.

9 A. I would have a hard time, you know,
10 thinking that she is in labor at the house and I
11 have to call somebody to get her to the hospital,
12 something like that.

13 Q. Would it affect your ability to be a juror?

14 A. I guess I would have to say it wouldn't in
15 some respects, but she will kill me if I'm not
16 there, I will say that.

17 Q. Well, this case will be over more than
18 likely next week. So we are talking about two
19 weeks before your expected date?

20 A. I guess I can stay focused.

21 THE COURT: Thank you, sir. Please
22 answer any questions that the State may have.

23 EXAM BY MR. HILLIARD:

24 Q. Good afternoon, Mr. O'Rear, just a couple
25 additional questions for you. Have you or any of

1 your close friends or family members ever been
2 charged with a crime?

3 A. No.

4 Q. You indicated in response to a Judge's
5 question that you consider yourself a type three
6 juror; is that correct?

7 A. Yes.

8 Q. You understand that to mean if a defendant is
9 found guilty you could either reach a verdict for
10 the death penalty or for life imprisonment
11 depending upon the facts and circumstances of the
12 case?

13 A. Absolutely.

14 Q. Do you believe you will be able to sign a
15 verdict form indicating that you would sentence
16 the defendant to death? You think you would be
17 able to write your name on that form?

18 A. Yes.

19 Q. You think you could then come into open Court
20 in front of the defendant and whoever else is in
21 the courtroom and announce that your verdict is
22 that he receive the death penalty?

23 A. Yes.

24 Q. One final question, do you know if it is
25 going to be a boy or girl?

1 A. No.

2 THE COURT: Mr. Babb.

3 EXAM BY MR. BABB:

4 Q. Good morning. Mr. O'Rear, do you have any
5 close personal friends that are law enforcement
6 officers?

7 A. No.

8 Q. Did you know that this was a death penalty
9 case before you were brought up here the first
10 day?

11 A. No, I did not.

12 Q. Does the fact that the State is seeking the
13 death penalty, would that influence or predispose
14 you in your judgment?

15 A. No.

16 Q. A couple of questions to clarify some of the
17 things His Honor asked, these are not trick
18 questions at all we are very interested in your
19 answers, going through this, we want to know
20 just exactly what you think, that is important to
21 everyone in these proceedings. When His Honor
22 was talking to you, I think you used the phrase
23 that you would have no problem returning a guilty
24 verdict if the State meets its burden in proving
25 the defendant guilty as accused beyond a

1 reasonable doubt; is that correct?

2 A. That's true.

3 Q. But when he asked you if the State failed to
4 do that would you then return a non guilty verdict
5 of not guilty, if my recollection is right you
6 said I guess not?

7 A. If the State didn't prove its case in my
8 opinion I could return not guilty verdict, yes.

9 Q. Is there any predisposition one way or the
10 other, are you more inclined to believe the
11 state's case because a defendant is charged?

12 A. No, if I was sitting in that chair I would
13 want to be considered innocent until proven
14 guilty.

15 Q. Now, this case the defendant is accused of
16 murder. He is accused of murder of a deputy
17 sheriff. Does the fact of that accusation affect
18 your impartiality in either phase of this trial,
19 as to guilt, as to the fact he is charged of
20 committing murder of a deputy sheriff influence
21 your ability to do what His Honor has asked you to
22 do and presume him innocent?

23 A. (Can't understand tape).

24 Q. Now, to get to the second phase of the trial
25 as His Honor has told you that phase comes about

1 if the defendant is found guilty of murder, the
2 State has borne its burden of proof and only if
3 that is the case. Does the fact that he is
4 accused and at that point would have been
5 convicted, does that impair your ability to
6 fairly consider both the death penalty as well as
7 a life sentence?

8 A. No.

9 Q. And you feel you could be competent to both
10 sides?

11 A. Yes.

12 Q. I believe you indicated in the questionnaire
13 that you had served as a witness in a criminal
14 trial before?

15 A. Yes.

16 Q. Could you tell us what that case was about?

17 A. Arson.

18 Q. And what was the purpose of your testimony in
19 that case? What did you, you testified to what
20 you saw?

21 A. I was the one at the time finding the fire,
22 give them date or time period (Can't understand
23 tape) establish when the house was found burned.

24 Q. Now, you indicated as well that no member of
25 your family nor a close personal friend had been a

1 victim of a crime or had been convicted of a
2 crime. The reason I'm asking that I take it no
3 friends one way or the other were involved in this
4 particular case?

5 A. No, sir.

6 MR. BABB: Thank you, Your Honor.

7 THE COURT: Any additional questions from
8 the State?

9 MR. HILLIARD: No, sir.

10 THE COURT: Thank you, would you please
11 step down, we will be with you momentarily.

12 What says the State?

13 MR. HILLIARD: Qualified.

14 THE COURT: What says the defense?

15 MR. BABB: Qualified, Your Honor.

16 THE COURT: He is. All right bring him
17 back, please.

18 Mr. O'Rear, you have been qualified now
19 as potential juror, which means you are in a pool
20 and from that pool we will select 12 and
21 alternates to decide this case. That will occur
22 tomorrow at five o'clock. That is a note from
23 the Clerk of Court with some information that may
24 be helpful for you to know what to expect.

25 Since you don't know whether you will be

1 selected or not, you need to come tomorrow and
2 come directly to the Court where did you yesterday
3 with sufficient clothing and personal effects to
4 take care of your needs for about a week. If you
5 are selected we will leave from here and go to
6 Sumter and start the trial right away.

7 Now, until then do not talk to anyone
8 about this case, do not allow anyone to talk to
9 you about it, don't read any newspaper accounts
10 or watch any news. See you tomorrow at five.
11 Thank you.

12 Send in Mr. Brunson, please.

13 MATTHEW BRUNSON, having been
14 first duly sworn, testified as follows:

15 EXAM BY THE COURT:

16 Q. Good afternoon, sir.

17 A. Hello, sir, how are you?

18 Q. Are you Mr. Brunson?

19 A. Yes.

20 Q. Mr. Brunson, yesterday I indicated we would
21 be asking you some questions, there are no right
22 or wrong answers to any of these questions, okay?

23 A. Yes, sir.

24 Q. I would ask you also to do me a favor, our
25 microphone system went out yesterday afternoon

1 that is why I am talking a little louder to you
2 right now, I would ask that you answer in the
3 same tone so that everyone can hear you, please?

4 A. All right, sir.

5 Q. Thank you. Do you have any prior knowledge
6 of this alleged incident?

7 A. No, sir.

8 Q. The only thing you know about it then is what
9 I shared with you yesterday?

10 A. Yes, sir.

11 Q. Do you have any opinions about this case?

12 A. No, sir.

13 Q. Are you the type person that would have to
14 hear all of the facts, circumstances before you
15 reached any conclusion?

16 A. That's correct, sir.

17 Q. You understand in a criminal case such as
18 this one like in any criminal case in this country
19 the person who is charged with criminal violation
20 has the presumption of innocence?

21 A. Yes, sir.

22 Q. I shared that with you yesterday as well?

23 A. Yes, sir.

24 Q. You have any problem with that principle of
25 law?

1 A. No, sir.

2 Q. You understand that under that principle the
3 State has the burden of proving its case beyond a
4 reasonable doubt, the burden therefore is upon
5 the State to prove their case, do you understand?

6 A. Yes, sir.

7 Q. The person who is charged with criminal
8 violation is never required to prove anything and
9 that would include, not required to prove their
10 innocence, do you understand that?

11 A. Yes, sir.

12 Q. Do you have any problem with that principle?

13 A. No, sir.

14 Q. That would mean in this particular matter let
15 me ask you this before I ask that question Mr.
16 Stone is seated over there at that table, does
17 that mean anything to you other than he is the
18 person that happens to be charged?

19 A. No, sir, Your Honor.

20 Q. Nothing at all. If you were selected as a
21 juror, would you expect Mr. Stone to prove
22 anything to you?

23 A. No, sir.

24 Q. You would expect the State?

25 A. The State.

1 Q. All right. Let me ask you, have you had a
2 chance to look at that list, which of the three
3 type jurors are you, most likely best describe
4 you?

5 A. The third one. I would need to hear all the
6 facts.

7 Q. You are the type of person then just because
8 someone is convicted of murder doesn't necessarily
9 mean that they should automatically have the death
10 penalty or automatically have life in prison it
11 would depend upon the facts?

12 A. The facts and circumstance.

13 Q. Depend on the facts?

14 A. Yes, sir.

15 Q. You would have to hear all of those before
16 you could decide which one was appropriate?

17 A. Yes, sir.

18 Q. But you could consider both of them?

19 A. Yes, sir.

20 Q. And there are some circumstances that you
21 would feel would warrant the death penalty and
22 some that would warrant life in prison?

23 A. Of course.

24 Q. If you were a juror in this case there are
25 two parts, the first phase and it is really two

1 trials within a trial, the first phase deals
2 solely with the issue of whether or not Mr. Stone
3 is guilty of these offenses, do you understand
4 that?

5 A. Yes, sir.

6 Q. You will hear the evidence and at the end of
7 that after you have heard the evidence I will give
8 you an instruction on the law and you will retire.
9 Part of that instruction would be that if you find
10 as a juror that the State has failed to meet its
11 burden of proof and has not satisfied you beyond a
12 reasonable doubt you must return a verdict of not
13 guilty?

14 A. That's right.

15 Q. If you are satisfied beyond a reasonable
16 doubt then your verdict would be guilty?

17 A. That's true.

18 Q. Would you have any problem if you were
19 convinced as a juror that the State had not met
20 its burden of proof, would you have any problem
21 or any hesitancy in voting or finding the
22 defendant not guilty?

23 A. Not at all.

24 Q. Likewise, if you were convinced the State
25 had met its burden and convinced you beyond a

1 reasonable doubt that he was guilty, that he did
2 these offenses, would you have any hesitancy in
3 finding him guilty?

4 A. No.

5 Q. Based on the jury's verdict, if the jury
6 returns that he is guilty of the offense of
7 murder, it is then and only then that we would go
8 into the second phase, do you understand that?

9 A. Yes, sir.

10 Q. And it is at that second phase where you
11 would hear some additional evidence and
12 specifically that evidence that will deal with the
13 issue of the appropriate punishment, mitigating
14 circumstances, aggravating circumstances and the
15 like, do you understand?

16 A. Yes.

17 Q. Would you have an open mind when you started
18 that phase as to the punishment?

19 A. Oh, yes, sir.

20 Q. You would have to hear all of the evidence?

21 A. All of it.

22 Q. At the conclusion of that, that second part
23 when you have heard all of the evidence on the
24 issue of punishment and you received an additional
25 instruction from the Court, you will then be

1 asked to retire with the other jurors in your jury
2 room and make a determination as to what
3 punishment is appropriate, as to which to choose.

4 You would have to decide between life in prison
5 and the death penalty. Could you as a juror
6 consider both?

7 A. Yes, sir.

8 Q. And would you make the decision based upon
9 what you felt was most appropriate as the facts
10 and circumstances indicated?

11 A. Yes, sir.

12 Q. Do you know of anything in your background or
13 anything in your personal life experiences, any
14 strong feelings, philosophies that you would have
15 that would in anyway affect your ability to be
16 fair and impartial in considering the State's
17 case?

18 A. Not at all, sir.

19 Q. Do you know of anything that would affect
20 your ability to be fair and impartial in every
21 respect in this trial as it pertains to Mr. Stone?

22 A. No, sir.

23 Q. If you are selected as a juror in this matter
24 you will be sequestered with the other jurors and
25 I know that is not something that is necessarily

1 is the most exciting I understand of this trial
2 but you will be sequestered, you will be kept
3 with them and the State will provide you with
4 lodging, food and transportation. Could you set
5 aside your inconvenience that may cause you and
6 stay focused as a juror?

7 A. Yes, sir, I feel it is my duty.

8 THE COURT: Thank you, sir, please
9 answer any questions the State may have for you.

10 EXAM BY MR. HILLIARD:

11 Q. A few additional questions for you, Mr.
12 Brunson. I believe you indicated on your
13 questionnaire that you or somebody in your family
14 had been charged with a crime before?

15 A. That's right, sir.

16 Q. Will you tell us the circumstances around
17 that?

18 A. It was my son. He was habitual check
19 writer. (Can't understand tape) I tried to get
20 him out of it, I tried to stop it. (Can't
21 understand tape) let him come home with me, but I
22 wasn't about (Can't understand tape) he had not
23 convinced me that he had stopped writing the
24 checks.

25 Q. So you were the victim in this case as well?

1 A. Yes, sir I was to the fact (Can't understand
2 tape). He did not write any on me. (Can't
3 understand tape) he never stopped. I told the
4 judge I felt it was time.

5 Q. How do you feel the way law enforcement
6 handled the case?

7 A. Oh, they handled it well.

8 Q. So you don't have any bad feelings toward law
9 enforcement?

10 A. No, it made him a better person. He is
11 studying law. He is going into pre law in June.
12 I think it made him a better person.

13 Q. Have you ever had any discussions with anyone
14 regarding your view of the death penalty?

15 A. Oh, yes, I have. I feel that it is if the
16 case is warranted, I'm a minister, I see it this
17 way if it warrants it you got to have it, you can
18 have it. But everything should be laid out on
19 the table and see what you make the determination
20 about. God said we must (Can't understand tape)
21 so you can't get this law. But I think (Can't
22 understand tape) you know I don't have any (Can't
23 understand tape) one side of it I just believe
24 everybody will serve justice, they have to be
25 able to explain themselves no matter how one sided

1 it might look you need to listen to all of it
2 before you can make a determination.

3 Q. Do you believe you could sign your name to a
4 verdict sentencing a defendant to death?

5 A. Yes, sir.

6 Q. Could you come into the open courtroom in
7 front of the defendant and whoever else is present
8 and announce your verdict of death?

9 A. Yes, sir.

10 MR. HILLIARD: Please answer any
11 questions the defendant may have for you.

12 THE COURT: Mr. Littlejohn.

13 EXAM BY MR. LITTLEJOHN:

14 Q. Mr. Brunson, on the other hand if you didn't
15 believe that the circumstances warranted, would
16 you have any problem coming back with a verdict of
17 life in prison?

18 A. Not at all.

19 Q. Let me ask you a couple of things about your
20 questionnaire, if I may. You were asked if you
21 had ever worked for any law enforcement agency,
22 prison, jail, et cetera, you indicated you had
23 in Andrews. Would you tell us a little bit about
24 that employment?

25 A. Yes, sir, I was reserve officer for ten

1 years in Andrews. It was a great experience, you
2 see a lot of things, you learn a lot of things,
3 it was a great experience.

4 Q. Was that a paid position?

5 A. No, sir.

6 Q. By reserve you would fill in on weekends?

7 A. I felt that everybody needed to be protected,
8 that is my feeling, everybody needs to be
9 protected and it was an honor for me to serve as a
10 reserve officer because and at the time I could
11 voice my opinion about if the officer is
12 mistreating, giving this person a fair shake that
13 is me, that is the way I feel about it period.
14 If the officer wasn't fair with this person, I
15 could voice my opinion, if the other person
16 wasn't fair I could voice my opinion, also.

17 Q. You said you did this for approximately ten
18 years?

19 A. Yes, sir.

20 Q. When did you last do that, when were you
21 last a reserve officer?

22 A. I had back injury, in '87 -- until '92.

23 Q. Ninety-two. You also indicated that a member
24 of your family was in law enforcement in Columbia?

25 A. Yes, that is my son-in-law, he is with the

1 Department of Correction of youth.

2 Q. Now, Mr. Brunson, in this case the State has
3 accused Mr. Stone of the murder of a deputy
4 sheriff. Would that fact in anyway impair your
5 ability to be a fair juror in the guilt phase of
6 this case?

7 A. No, sir I think Mr. Stone deserves the proof.
8 (Can't understand tape) they have to prove to me
9 that Mr. Stone did it.

10 Q. But you understand His Honor's instruction
11 Mr. Stone doesn't have to prove anything?

12 A. No.

13 Q. Would the fact he is charged with that sort
14 of offense would that impair your ability to be a
15 fair and impartial juror in the guilt phase if we
16 got to that?

17 A. No, sir.

18 Q. Thank you, sir.

19 THE COURT: All right, sir, step down,
20 please, we will be with you in just a second,
21 sir.

22 What says the State?

23 MR. KOLB: Your Honor, I feel like I
24 should inform the Court and allow the defense to
25 question the witness, he and I are friends and I

1 have helped him on a matter in the past. If he
2 ends up on the jury I don't want him to think that
3 I did not inform the Court and the defense of
4 that.

5 THE COURT: Thank you very much, Mr.
6 Solicitor. Ask him to step back in. I will
7 allow you to have any further inquiry.

8 EXAM BY THE COURT:

9 Q. Mr. Brunson, step back up here let me ask
10 you a question. I am advised by the solicitor
11 that in the past you have had occasion to work
12 with him; is that correct?

13 A. Yes, sir.

14 Q. On a professional basis?

15 A. Yes, sir.

16 Q. Would that experience affect you at all if
17 you were sitting in this case?

18 A. No, sir.

19 Q. Would it cause you or impair your ability to
20 be fair and impartial to the State?

21 A. No.

22 Q. How about Mr. Stone?

23 A. Not at all.

24 Q. It wouldn't have anything to do with it at
25 all?

1 A. No.

2 Q. Please answer any questions ---

3 MR. KOLB: I actually wrote a letter for
4 parole for his son.

5 THE COURT: All right, Mr. Littlejohn,
6 any questions?

7 EXAM BY MR. LITTLEJOHN:

8 Q. Mr. Brunson, just briefly, Solicitor Kolb
9 said he wrote a letter for your son?

10 A. Yes, sir.

11 Q. What kind of letter was it?

12 A. Let me explain this to you.

13 Q. Yes.

14 A. My son was nominated for Air Force Academy
15 and he went through the Air Force Academy and I
16 mean went to the Air Force Academy. When he was
17 a child he was (Can't understand tape), he had a
18 detached retina he had to give up his commission
19 he came back he was out of work. And he just
20 started writing checks. After dealing with
21 Chaplains and they worked with him I asked the
22 solicitor and the Chaplain indicated he was a
23 model prisoner and felt he would be good for
24 society if he could get out I asked the solicitor
25 to help me get this. He went onto law school and

1 is doing great.

2 Q. I take it some of these checks were written
3 in another County other than Georgetown?

4 A. In Richland County. Some in Richland and
5 others in Lexington.

6 Q. How did you get with solicitor Kolb on that,
7 what is the relationship?

8 A. Well, solicitor was I think some of the
9 checks might have been (Can't understand tape)
10 that is how.

11 Q. That is what I was trying to get at. Did
12 you meet with solicitor Kolb about the situation?

13 A. Yes, sir.

14 Q. You did, okay.

15 A. I have no problem with this.

16 Q. You think if you were chosen as a juror that
17 you could be fair and impartial to Mr. Stone over
18 here regardless of who the lawyers are?

19 A. Yes.

20 THE COURT: Thank you, sir, step out
21 just a moment we will be back with you.

22 Thank you, Mr. Solicitor for doing that
23 for us. Now what says the State?

24 MR. KOLB: Qualified, Your Honor.

25 THE COURT: What says the defendant?

1 MR. LITTLEJOHN: Yes, sir.

2 THE COURT: I do find he is qualified.

3 Mr. Brunson, you have been qualified as
4 prospective juror in this matter. That means
5 that you are now part of the pool and from that
6 pool we will select 12 individuals and the
7 alternate to hear this case. That will occur
8 tomorrow afternoon at five o'clock in this
9 courtroom. I will need you to be back then
10 tomorrow at five o'clock and come back in just
11 like you did yesterday and have a seat.

12 I will give you something from the clerk
13 in Sumter has prepared for all the affected
14 jurors, it deals with sequestration because you
15 will need to bring with you sufficient clothing
16 and personal effects to take care of your needs
17 for about a week because if you are selected we
18 will leave here and go onto Sumter. You will be
19 there tomorrow at five and please until then do
20 not talk to anyone about it, do not allow anyone
21 to talk to you, read any newspaper articles or
22 watch any TV news. Thank you very much.

23 Bring in Ms. Keesee.

24 BETTY KEESEE, having been first duly
25 sworn, testified as follows:

1 EXAM BY THE COURT:

2 Q. Could you state your full name, please?

3 A. Betty Keesee.

4 Q. Ms. Keesee, we have, I have one request, I
5 think you will do fine, the mike went out
6 yesterday we are trying to fend without it, you
7 may say judge I can hear you fine I am talking
8 loud so everyone can hear my questions so I will
9 ask you to do the same thing to respond to my
10 questions.

11 A. Okay.

12 Q. Do you have any prior knowledge of this
13 alleged incident?

14 A. No, I do not.

15 Q. Nothing other than what I shared with you
16 yesterday?

17 A. No.

18 Q. Have you heard anything or read anything
19 about it or talked with anybody about it since
20 yesterday?

21 A. No.

22 Q. Do you you have any opinion about it at this
23 point?

24 A. No, I do not.

25 Q. Have you had a chance to read that sheet that

1 had three types of jurors?

2 A. Yes, I have.

3 Q. On that sheet which one best describes you?

4 A. Number 3.

5 Q. Number 3. That would mean that you believe
6 that sometimes in murder situations sometimes the
7 circumstances were such that the death penalty
8 would be the appropriate punishment and there are
9 times when the circumstances would dictate that
10 life in prison was appropriate; is that right?

11 A. That's right.

12 Q. And you wouldn't have any strong feelings or
13 predisposition one way or the other until you have
14 heard all the facts and circumstances of the case;
15 is that right?

16 A. I would try not to.

17 Q. Do you think you could do that? You have a
18 leaning one way or the other?

19 A. I would probably lean toward the death
20 penalty in the circumstances.

21 Q. You would probably lean toward the death
22 penalty. But could you consider and would you
23 consider both of them in any given case?

24 A. Yes, I could.

25 Q. Now, in this particular case if you were

1 selected as a juror just like in this part applies
2 not only to this case it applies to all cases,
3 this is a case involving criminal dispute, it is
4 a criminal nature and certain principles of law
5 that would apply to this case would apply to every
6 case in the country which was criminal in nature.
7 One of those we talked about yesterday and that is
8 the presumption of innocence. Do you have any
9 problem with that principle of law?

10 A. No, I don't.

11 Q. As a part of that you understand that it
12 places the burden on the State to prove its case
13 beyond a reasonable doubt, do you understand
14 that? You need to answer yes or no.

15 A. Yes.

16 Q. Also as a part of it it says that persons who
17 are charged with criminal offenses like Mr. Stone
18 don't have to prove anything.

19 A. Not one thing?

20 Q. They have no burden whatsoever and they
21 certainly do not have to prove their innocence,
22 do you understand that?

23 A. Yes, I do.

24 Q. Therefore if you were selected in the trial
25 of this case would you expect Mr. Stone to prove

1 anything to you? He is the defendant?

2 A. I would have to say yes.

3 Q. You would. Now, if I instructed you just
4 as I have stated that a defendant does not have to
5 prove anything and you cannot for instance the
6 defendant charged with criminal offense doesn't
7 even have to testify if they don't want to for
8 whatever reason and I would instruct the jury in
9 that case that the jury could not consider that,
10 could not use that against him, would you have a
11 problem if you were on the jury following that
12 instruction?

13 A. I would do my best not to.

14 Q. Not to follow or to follow?

15 A. To follow, excuse me.

16 Q. Well, I appreciate that, I guess my
17 question is how good is your best? Can you follow
18 my instruction and would you follow my
19 instruction?

20 A. Yes.

21 Q. I assume from that that you have some
22 feelings that maybe someone charged with criminal
23 offense should prove something to you, just your
24 personal feelings?

25 A. Well, I think if I stated yes, which I did

1 before I contradicted myself.

2 Q. No, there are no right or wrong answers
3 here. I just need to find out because that is
4 okay, I mean, it is nothing wrong with that I
5 just want to find out whether or not that is your
6 feeling and then whether or not you can set that
7 aside if that is your feeling and follow my
8 instruction because one of the instructions, part
9 of my instruction would be that the great thing
10 about this country is we don't all have to agree
11 with the law. We can think a law is bad and
12 ought to be changed, nothing will happen to us
13 for feeling that way or expressing ourselves on
14 matters as long as we do things in a legal fashion
15 and a lawful fashion.

16 But for the purposes of the jury trial,
17 whether you like it, whether you agree with it,
18 you have to make a commitment to the State and to
19 the defendant that you are going to set those
20 personal feelings aside and follow the law as the
21 Court gives it to you. Now, can you do that?

22 A. Yes, I can.

23 Q. You can do that. And you would do that if
24 you were selected in this case?

25 A. I would do that.

1 Q. All right. So again I would ask you if you
2 were selected in this case would you expect Mr.
3 Stone to prove anything at all?

4 A. If the Court said I cannot consider that then
5 I would have to say no.

6 Q. So you would not hold it against him,
7 wouldn't factor into your decision; is that
8 correct at all?

9 A. No.

10 Q. It would not. Okay. In the first part of
11 this trial this trial is basically two trials
12 within one. In the first trial is going to deal
13 solely with the issue of whether Mr. Stone is
14 guilty of these alleged violations, that is all
15 the evidence you will hear as pertains
16 specifically to that issue. Would you have an
17 open mind going into that trial?

18 A. Yes.

19 Q. Would you look to the State to prove its
20 case?

21 A. Yes.

22 Q. I would instruct you at the conclusion of
23 that trial that it is the burden of the State to
24 prove its case beyond a reasonable doubt, I would
25 define that for you at that time. I would also

1 instruct you that as a juror if you felt that the
2 State had not met its burden of proof, had not
3 convinced you beyond a reasonable doubt that this
4 defendant is guilty of these offenses it would be
5 your duty to find him not guilty. Would you have
6 any problem following that instruction?

7 A. No.

8 Q. Would you have any hesitancy if you were
9 convinced the State had not met its burden of
10 proof in signing a verdict of not guilty?

11 A. Don't know how I would feel at that
12 particular time but I would have to say no.

13 Q. You could do it. And would do it if that
14 were your conviction?

15 A. Yes, sir, to the best of my ability.

16 Q. Well, you keep answering and I appreciate
17 that to the best of my ability, but you see where
18 that leaves me is if we -- because we are relying
19 on you to be fair and impartial and what that
20 means is that you can follow the law and we all
21 have feelings and it is a definite part on your
22 part, only you know whether you can set those
23 aside or whether they will affect you and affect
24 your ability to be truly fair, completely
25 impartial in this matter, can you do that?

1 A. Yes.

2 Q. Okay. So you believe to the best of your
3 ability is yes, you can do this?

4 A. Yes.

5 Q. If you find if you were on the jury and the
6 jury concluded that the State had met its burden
7 of proof and convinced you beyond a reasonable
8 doubt and your verdict would then be what, if you
9 were convinced the State met the burden, what
10 would be your verdict I would instruct you that
11 you could then find the defendant guilty if you
12 were convinced beyond a reasonable doubt, would
13 that be your verdict, that would be your verdict.
14 Will you be able to write that verdict in the same
15 way you would write the other verdict?

16 A. Yes, sir.

17 Q. If you found the defendant guilty of murder,
18 it is then and only then that we would go into the
19 second trial, you understand that? You need to
20 answer yes or no.

21 A. Yes.

22 Q. At that time you will hear additional
23 evidence, evidence that you won't hear at any
24 stage other than at the second that deals with the
25 issue of the proper punishment, do you understand

1 that?

2 A. Yes.

3 Q. Based on what you told me, am I to
4 understand that your reason would be to the death
5 penalty that you found him guilty of murder but
6 you would consider both of them?

7 A. Consider both of them, yes.

8 Q. Would you wait to conclude which one was most
9 appropriate until you had heard all the evidence?

10 A. Yes.

11 Q. If you were satisfied and you could make a
12 decision between the two which one you believe is
13 most appropriate; is that correct?

14 A. Yes.

15 Q. If you are selected on this jury you are
16 going to be sequestered and I know that is not
17 something that is exciting to you, but could you
18 set aside that, the State will provide you
19 lodging, food, transportation for the duration of
20 the trial. Could you set aside any inconvenience
21 that could cause you to stay focused in your
22 responsibility as jurors?

23 A. Yes.

24 THE COURT: Please answer any questions
25 the State may have.

1 EXAM BY MR. HILLIARD:

2 Q. Good afternoon, Ms. Keesee, just a couple
3 of additional questions for you. You indicated
4 in response to the Judge's questions that you
5 consider yourself a type three juror; is that
6 correct?

7 A. Yes.

8 Q. Do you understand that to mean if the
9 defendant is found guilty depending upon the
10 circumstances you could sentence him even to death
11 penalty or to life in prison?

12 A. Yes, I could.

13 Q. Do you believe you could sign the verdict
14 form sentencing him to the death penalty, you
15 believe you could write your name on that form?

16 A. Yes, I do.

17 Q. You believe you could come in open Court and
18 announce in front of the defendant and anyone else
19 who is present in the courtroom and announce that
20 your verdict is that he receive the death penalty?

21 A. Yes, I do.

22 Q. One other final question. Have you or
23 anybody else in your family or close friends ever
24 been charged with a crime?

25 A. No.

1 MR. HILLIARD: Please answer any questions
2 the defense may have for you.

3 THE COURT: Mr. Babb.

4 EXAM BY MR. BABB:

5 Q. Good afternoon. Ms. Keesee, in looking at
6 your form that you filled out and sent back to the
7 Court you mentioned that neither you nor family
8 member had ever worked or been involved in law
9 enforcement?

10 A. Right.

11 Q. Any close personal friends that have been
12 involved in law enforcement?

13 A. No.

14 Q. Did you know this was a death penalty case
15 before you showed up in the courtroom and His
16 Honor started discussing?

17 A. No, I did not.

18 Q. I believe you told the judge you had heard
19 nothing about this at all?

20 A. No, sir.

21 Q. You do understand that the defendant in this
22 case has been charged, accused of the murder of a
23 police officer?

24 A. No, I did not.

25 Q. Okay that is the indictment, that is what he

1 has been indicted for?

2 A. (Can't understand tape) particular person.

3 Q. And the judge has asked you a number of
4 questions, he asked you about the guilt phase and
5 any dispositions you have of that. Then he
6 talked about the sentencing phase and any
7 predispositions you may have towards that. Let's
8 talk just a moment about the guilt phase. Does
9 the fact that the defendant stands accused, it
10 has been alleged that he murdered a police
11 officer, does that change any of your
12 predispositions?

13 A. No.

14 Q. Does it impact your ability to be fair to him
15 or the State?

16 A. No.

17 Q. You mentioned that you would do your best and
18 you felt you could follow the Judge's instructions
19 to put in the back of your mind and not consider
20 it at all the fact that a defendant does not have
21 to prove anything, the State bears the entire
22 burden. Does the fact of the charge alter your
23 answers in anyway? Does it make it more difficult
24 for you?

25 A. No.

1 Q. You can set that aside. If the State
2 presents evidence in this case that makes it more
3 likely than not, but fails to meet their burden
4 of proof, would you follow the Judge's
5 instructions and return a not guilty verdict?

6 A. Yes, I would.

7 Q. In the second phase at that juncture the jury
8 would have determined to get there as His Honor
9 has told you there would have to be a verdict of
10 guilty. To get into the second phase the jury
11 would have determined Mr. Stone is guilty of
12 murder of a police officer. Would that inhibit
13 your ability to fairly consider both the death
14 penalty as well as life in prison?

15 A. No.

16 Q. And you could still keep an open mind even at
17 that time?

18 A. Yes.

19 MR. BABB: Court's indulgence.

20 THE COURT: Any additional questions from
21 the State?

22 MR. HILLIARD: No, sir.

23 THE COURT: If you would step down,
24 please.

25 What says the State?

2500

1 MR. HILLIARD: Qualified.

2 THE COURT: What says the defendant?

3 MR. BABB: Your Honor, we are very
4 troubled by her hesitancy. I understand that she
5 may have said on the stand I will do these things,
6 I find it difficult to believe and I do not
7 believe she is qualified.

8 THE COURT: Thank you, Mr. Babb, I
9 appreciate that position and I think this juror as
10 with some others we have had I think you qualified
11 at least one of them as I recall that felt more
12 inclined for life imprisonment but could consider
13 both of them. I think this juror wrestled with
14 it and gave you an honest response and I think
15 opening statements the charges and the oath that I
16 give I think that she will honor her commitment
17 here today that she made to all of us in this
18 courtroom. I think that her reluctance was being
19 just human and honest and I do find despite of her
20 equivocation, despite of her hesitancy that she
21 is qualified and would consider both punishments.

22 You have been qualified now as potential
23 juror in this case. You are now a part of a pool
24 and from that pool we will select 12 jurors and
25 alternate to hear this case, that will occur

2561

1 tomorrow at five o'clock. I will need you to be
2 back at that time. You come back in the
3 courtroom like you did yesterday and take your
4 seat. It shouldn't take a long time.

5 This is a note from the Clerk of Court
6 just some information of what to expect. I only
7 ask when you come you bring sufficient clothing
8 and personal effects to take care of you for about
9 a week because once we select the jury we will
10 leave from here and go to Sumter.

11 Please do not discuss this case with
12 anyone, read anything or watch anything about
13 this account. See you tomorrow at five.

14 All right anything further from the State
15 before we take our recess?

16 MR. KOLB: No, sir.

17 THE COURT: Anything further from Mr.
18 Stone?

19 MR. LITTLEJOHN: No, sir.

20 THE COURT: Thank you very much we will
21 be back at 2:30.

22 (Whereupon, a lunch recess was held.)

23 THE COURT: Is the State ready?

24 MR. KOLB: Yes, sir.

25 THE COURT: Defense ready?

1 MR. LITTLEJOHN: Yes, sir.

2 THE COURT: Let the record reflect Mr.
3 Stone is present. All right group number nine.
4 The first one is Mr. Gallegos.

5 JOSEPH GALLEGOS, having been first
6 duly sworn, testified as follows:

7 EXAM BY THE COURT:

8 Q. Good afternoon, sir, how are you?

9 A. Fine.

10 Q. Good. Yesterday we lost our microphone
11 system here so we are having to talk and you and I
12 are going to have to keep our voices up so they
13 can hear us out there, okay. So I need for you
14 to make sure that you answer my questions loudly
15 so that everyone can hear you. Do you have any
16 prior knowledge or know anything about this
17 alleged incident?

18 A. No, sir.

19 Q. The only thing you know is what I shared with
20 you yesterday?

21 A. Right.

22 Q. Have you formed any opinions about it?

23 A. Not really, I don't guess.

24 Q. I appreciate your response, I don't guess --
25 does that mean you may have?

1 A. I have thought about that (Can't understand
2 tape).

3 Q. Sure, certainly, absolutely. You are
4 certainly entitled to yours, what opinions may be
5 have you formed?

6 A. I don't know nothing about it.

7 Q. So you haven't?

8 A. Not really.

9 Q. Not really. You heard me yesterday talk
10 about the certain principles of law that apply in
11 criminal cases and certainly would apply in this
12 case, one of those is presumption of innocence,
13 that someone just because they are charged with
14 criminal offense they are presumed innocent until
15 and if the State proves them guilty beyond a
16 reasonable doubt, do you understand that?

17 A. Yes, sir.

18 Q. Do you have any problem with that principle
19 of law?

20 A. No, sir.

21 Q. There also would be a part of that people who
22 are charged with criminal offenses aren't required
23 under our law to prove anything and they are not
24 required nor expected to prove their innocence or
25 disprove anything, do you understand that? In

1 other words, they don't have to prove to anybody
2 that they did do something or that they are
3 innocent of the charge. It has to be proved by
4 the State, that is their responsibility, the
5 person charged with criminal act doesn't have to
6 prove anything. In fact an individual is charged
7 with a criminal act has an absolute right to
8 remain silent, not testify, to not offer any
9 evidence, nothing. And the law states that you
10 can't hold that against him. Do you have any
11 problem with that?

12 A. No.

13 Q. Because the law is on the State to prove its
14 case; is that correct?

15 A. Right.

16 Q. Okay. Have you had a chance to review the
17 sheet that contains the three types of jurors?

18 A. Yes.

19 Q. Which one best describes you?

20 A. It is hard to tell without hearing (Can't
21 understand tape).

22 Q. Okay?

23 A. I don't know anything about them already.

24 Q. I understand. So you believe in it, do you
25 believe the death penalty is the punishment that

2505

1 should be whenever someone is convicted of murder
2 or does it depend on the case?

3 A. I guess it would depend on whether it was
4 (Can't understand tape).

5 Q. Suppose a person was convinced or suppose the
6 evidence shows that he intentionally committed the
7 murder, would you believe that he should get the
8 death penalty?

9 A. (Can't understand tape).

10 Q. In every case?

11 A. If it was intentional.

12 Q. Is there any circumstance that you can think
13 of where it were proved that someone intentionally
14 killed another person that you would find or could
15 consider imposing or voting for life in prison?

16 A. The way I look at it if they (Can't
17 understand tape) they did it intentionally then
18 the next person has to take the life.

19 Q. So it would be -- it would always be your
20 decision that the person should get the death
21 penalty?

22 A. They go on intentionally, yes.

23 Q. And the circumstances wouldn't have anything
24 to do with your determination other than the fact
25 they intentionally committed this act; is that

1 right? In other words, the main thing your
2 determination would be the difference between an
3 accident and someone intentionally doing
4 something; is that right?

5 A. I guess.

6 Q. If you listened to the facts could you
7 consider both life in prison and the death
8 penalty?

9 A. I suppose.

10 Q. I need a little more than I suppose. Could
11 you do that? That would be my instructions if you
12 were on this jury, that you would be instructed
13 to go back and make a determination to that point
14 on the evidence and decide which one whether it be
15 life in prison or death penalty?

16 A. Yes, I could.

17 Q. You could do that. You wouldn't
18 automatically say the death penalty in every
19 situation?

20 A. That is hard for me to answer, I don't know.
21 It depends upon the circumstances I guess.

22 Q. Well, I understand that, I am not asking you
23 what you would do in any specific case, I'm just
24 saying would you have to hear the circumstances of
25 any given case before you make the decision

1 whether to vote for death penalty or vote for life
2 in prison?

3 A. Yes.

4 Q. Now, you have already indicated that you
5 understand that the defendant in this case Mr.
6 Stone was charged with these is presumed to be
7 innocent; is that right?

8 A. According to the law.

9 Q. According to the law you wouldn't expect him
10 to prove anything, would you?

11 A. No.

12 Q. If we went to a trial and in the first phase,
13 there are two parts to this trial, first phase
14 you will hear only evidence about whether or not
15 Mr. Stone is guilty of this and you will make --
16 the jury will make the decision whether he is
17 guilty. The jury concludes that he is not guilty
18 then that would end the trial, do you understand
19 that?

20 A. (Can't understand tape).

21 Q. You would be instructed at the end of that
22 portion of the trial as a juror to consider the
23 evidence and determine whether or not the State
24 had met its burden of proof, in other words
25 convinced you beyond a reasonable doubt, could

1 you do that?

2 A. Yes.

3 Q. Would you keep an open mind?

4 A. Yes.

5 Q. Until you were instructed to begin your
6 deliberations and decide that issue?

7 A. Yes.

8 Q. Okay. Would you base your decision solely
9 on the facts as you determine those facts to be?

10 A. Yes that would be the same thing that I know
11 about.

12 Q. If the jury concludes that the State had met
13 its burden or concluded that the State had met its
14 burden of proof then as to the offense of murder
15 and returned a verdict of guilty, it is at that
16 time that we would go forward with the second
17 phase, which is the penalty phase, you
18 understand that? So you would be starting the
19 second phase, you would have already been part of
20 a group that had decided that the defendant was
21 guilty of murder, you understand that?

22 A. Yes, sir.

23 Q. In that regard would you still have an open
24 mind at that point because you haven't heard any
25 evidence about what the punishment would be

1 appropriate, that is what happens in the second
2 phase, you hear additional evidence about the
3 punishment whether or not which one would be most
4 appropriate, you will hear evidence about
5 mitigating circumstances, aggravating
6 circumstances and the like. And it is from that
7 evidence that you and the jury will determine the
8 appropriate punishment, do you understand?

9 A. Yes.

10 Q. Would you have an open mind when you started
11 the second phase?

12 A. I didn't think it was intentional, yes.

13 Q. Suppose it is intentional?

14 A. Then I think the death penalty.

15 Q. Would you consider life in prison?

16 A. I don't know.

17 Q. You need to tell us because today is the day
18 we need to know. If you are telling me again
19 remember there are no right or wrong answers here.

20 A. I don't know what to say.

21 Q. I understand. My question is this, you
22 have concluded it is intentional, would it be
23 your position at that point that the appropriate
24 punishment would be the death penalty?

25 A. I thought it was intentional.

1 Q. Then am I to understand that the facts you
2 heard in the second phase wouldn't have anything
3 to do with what your decision is, you have already
4 decided that?

5 A. New evidence?

6 Q. You would have new evidence that you haven't
7 heard of what type of punishment should be
8 appropriate. Would you have already made up your
9 mind at that point or would you still have an open
10 mind then you will consider the evidence and make
11 your decision, which one is it?

12 A. I guess I would sit and listen to the
13 evidence and decide I guess.

14 Q. You guess. Well, there is no right or wrong
15 answer I'm only asking you what you would do, not
16 what anybody else would do, there is no right or
17 wrong answer. What do you based upon your
18 philosophy, what would you do?

19 A. If I thought it was intentional I would
20 suggest the death penalty.

21 Q. That alone would be the basis that you would
22 use?

23 A. It would be the basis.

24 Q. It wouldn't depend on anything else just
25 that?

1 A. Right.

2 Q. Okay.

3 THE COURT: All right please answer any
4 questions the State may have.

5 EXAM BY MR. KOLB:

6 Q. Mr. Gallegos, if the judge instructed you
7 that you had to keep an open mind going into the
8 second phase of the trial, the phase dealing with
9 the penalty whether it would be death penalty or
10 life imprisonment, do you think you could do
11 that?

12 A. I think I could do that.

13 Q. Do you think it would be possible for you to
14 find him guilty in the first phase and decide life
15 imprisonment instead of death penalty in the
16 second phase?

17 A. If it was an accident.

18 Q. Do you feel like there is any other evidence
19 you think that could be offered that would change
20 your mind from death penalty to life imprisonment?

21 A. I have told you that depending upon the
22 evidence.

23 Q. So you would wait until you heard all the
24 evidence in the second phase before you made up
25 your mind?

1 A. I guess so.

2 Q. Have you ever been charged with a crime you
3 or any of your family members or close friends?

4 A. Yeah, I have had friends.

5 Q. Could you tell us a little bit about that?

6 A. Just minor stuff.

7 Q. What kind of charges were they, do you
8 remember?

9 A. I'm not sure what he was charged I know he
10 served about a year.

11 Q. Do you have any problem with law enforcement
12 as a result of your friends being charged with
13 those crimes?

14 A. No, sir. I didn't have nothing to do with
15 it.

16 Q. You have never been charged yourself?

17 A. No.

18 Q. Have you or your friends ever been victim of
19 a crime?

20 A. No.

21 Q. If you were selected as a juror, you were to
22 find the defendant guilty, do you believe you
23 would be able to sign your name to a document
24 saying you would sentence him to the death
25 penalty?

1 A. What I told you.

2 Q. You think you could come into open Court and
3 say in front of the defendant and whoever else is
4 present that you had sentenced him to the death
5 penalty?

6 A. If I did it I did it I would have to say
7 something.

8 Q. So before you decided whether or not the
9 appropriate punishment would be the death penalty
10 or life imprisonment would you have to hear all
11 the facts and circumstances before making up your
12 mind?

13 A. You talking about the second?

14 Q. On the second.

15 A. If there was evidence I would sit and listen.

16 MR. KOLB: Please answer any questions
17 the defense might have for you.

18 THE COURT: Mr. Littlejohn.

19 EXAM BY MR. LITTLEJOHN:

20 Q. Just briefly, sir, you indicated to the
21 Court that if the jury found that the defendant
22 had intentionally killed somebody that you thought
23 the death penalty would be the appropriate
24 punishment?

25 A. Yes, sir.

1 Q. And would that be despite any instruction or
2 anything the Court told you, would you still
3 think the death penalty would be the only
4 appropriate sentence?

5 A. I would do (Can't understand tape) as I sit
6 here.

7 Q. Now you say you would listen to new evidence,
8 would you be able to listen to new evidence and
9 fairly consider whether life would be an
10 appropriate sentence or do you think you can get
11 that opinion you hold about intentional murder if
12 you set that aside or would that be with you?

13 A. I don't know. Man, I don't know. Repeat
14 the question.

15 Q. I say could you set aside your opinion that
16 intentional murder should be punished by the death
17 penalty and consider a life imprisonment sentence
18 in the second phase of the trial?

19 A. I don't know.

20 Q. You don't know whether you could put that
21 aside or not?

22 A. I don't know what answer to give you on that.

23 Q. Let me ask you this. You mentioned earlier
24 that if a defendant was sentenced to life then the
25 taxpayers would have to support that person?

1 A. Right.

2 Q. Is that something that you would consider in
3 deciding whether to arrive at a death penalty
4 verdict or life imprisonment verdict?

5 A. I suppose not, it is not a good excuse.

6 Q. Well, you mentioned it earlier and kind of
7 volunteered it, I was just wondering if it is a
8 consideration you would be thinking about in
9 arriving at such a verdict?

10 A. No, sir. I would have to hear the evidence,
11 I guess.

12 MR. LITTLEJOHN: That is all we have.

13 EXAM BY THE COURT:

14 Q. Let me be sure I understand your response.
15 You had indicated that if you found that the
16 killing was intentional it would be your feeling
17 that that alone would make you conclude that he
18 ought to have the death penalty. You would
19 listen to the evidence in the penalty phase, hear
20 new evidence that dealt with the issue of
21 punishment; is that right?

22 A. Yes, sir.

23 Q. And you would make your final decision after
24 you heard all that evidence?

25 A. Yes, sir.

2576

1 Q. So if you heard some evidence then am I to
2 understand that you could then and would consider
3 both life imprisonment and the death penalty?

4 A. Yes, sir (Can't understand tape).

5 Q. You would consider both of it and then make
6 your decision based on all of the evidence; is
7 that right?

8 A. (Can't understand tape).

9 THE COURT: Any additional questions from
10 the State?

11 MR. HILLIARD: No, sir, Your Honor.

12 THE COURT: Any questions from the
13 defendant?

14 MR. LITTLEJOHN: Just one, Your Honor.

15 EXAM BY MR. LITTLEJOHN:

16 Q. Sir, if during the guilt phase of the trial
17 you determined that the defendant committed an
18 intentional murder, is there other evidence in
19 support of the defendant that could make you
20 change your mind about the death penalty being
21 appropriate for an intentional murder?

22 A. Could you repeat that?

23 Q. If you were on the jury that found the
24 defendant guilty of an intentional murder in the
25 first phase of the trial, is there any evidence

2577

1 that could be presented at the second phase of the
2 trial, sentencing phase, that would change your
3 mind about the death penalty being the appropriate
4 sentence for the intentional murder?

5 A. It would have to be something pretty good.

6 Q. It would have to be something pretty good?

7 A. Yeah.

8 Q. How good would it have to be, really good?

9 A. It depends, I have never been through
10 something like this before.

11 Q. All right. I understand.

12 THE COURT: All right step down, step
13 outside we will be with you in just a moment.

14 What says the State?

15 MR. KOLB: Qualified.

16 THE COURT: What says the defendant?

17 MR. LITTLEJOHN: We don't believe the
18 juror is qualified based upon his earlier
19 responses about intentional, about killing. For
20 the jury to -- under just about every circumstance
21 the jury would have to conclude that the
22 defendant's actions were intentional to find him
23 guilty of murder, unless there was some form of
24 criminal homicide. Or wanton criminal
25 negligence. That coupled with his statement that

2578

1 he would consider the economic impact of the
2 defendant being given a life sentence as opposed
3 to death sentence, we think this disqualifies the
4 juror.

5 THE COURT: How do you distinguish his
6 responses from that of Singleton, which says that
7 the person said I will favor the death penalty,
8 but I would consider mitigating circumstances,
9 isn't that what he just said? Maybe not in that
10 word but that is precisely what he said? Let me
11 also add this as you are talking. At first blush
12 his first response my initial reaction was he had
13 a difficult time doing it. But then he almost
14 caught himself in the middle of the discussion,
15 he almost realized what he had said and he said
16 wait a minute, that is not right because I would
17 really have to hear the circumstances. And that
18 is precisely what we are talking about, that
19 yeah, I could give the death penalty but I would
20 consider. I think he is clearly in line on that.
21 I don't think that he is precluded, certainly
22 wouldn't say that anybody even favors it to be
23 excluded. Both standing, be happy to hear from
24 either or both of you.

25 MR. LITTLEJOHN: Your Honor, I guess our

1 point in that regard is of course Singleton was
2 decided looking backwards and I know that is the
3 way the case law always is. A couple of things
4 that could distinguish that and Singleton you
5 probably noted the defense did not use all of
6 their strikes and therefore couldn't be attacking
7 that, that may not be the case.

8 THE COURT: I understand.

9 MR. LITTLEJOHN: In addition, you know
10 what is permissible and what is just truly fair
11 are often two different standards that is a matter
12 of discretion with the Court, I understand that
13 completely.

14 THE COURT: I understand.

15 MR. LITTLEJOHN: The last point I would
16 make is I really don't believe, I am sincere
17 about this that this juror completely understands
18 that in the second phase we are not talking about
19 new evidence in terms of guilt, I think in his
20 mind he has got it well, you know, all right you
21 made that but then you can somehow show maybe it
22 wasn't intentional, that it was accidental.
23 Just seems to me that undermines the competence in
24 his ability and could undermine competence coupled
25 with everything else he has said. Thank you,

1 sir.

2 THE COURT: Thank you and I appreciate
3 it. However, in this particular case I believe
4 that this juror certainly stated or articulated a
5 position, I don't think he understands
6 technically how we understand the distinction in
7 the proceeding but I think this juror stated well,
8 yeah, I am going to hear additional evidence
9 about the punishment, no, I will wait to make my
10 decision at that time.

11 I am going to find him qualified and do so
12 find. Bring him back in.

13 All right, sir, you have been qualified
14 as potential juror in this matter. That means
15 that tomorrow at five o'clock you will need to be
16 back in this courtroom, just come back in like
17 you did yesterday. Take a seat, we will select
18 the jury from the pool and you are a member of
19 that pool. Of course we don't know whether or
20 not you will be selected but you need to come
21 prepared for about a week's stay, you will be
22 sequestered if you are selected. We will leave
23 from here and go to Sumter and start this trial on
24 Thursday morning, the State will provide you a
25 place to stay, provide you food and

1 transportation. You need to bring with you
2 clothing, personal effects to take care of your
3 needs for about a week to come. If you aren't
4 selected you can unpack them when you get home.

5 Until then do not discuss this case with
6 anyone, do not allow anyone to talk about this
7 case to you. Don't read any newspaper articles
8 about it or watch any news programs about it.
9 That is the sheet that tells you a little bit more
10 about sequestration and some information from the
11 clerk in Sumter. Thank you, sir. See you
12 tomorrow at five o'clock.

13 Bring in Ms. Brown, please.

14 INGRID BROWN, having been first duly
15 sworn, testified as follows:

16 EXAM BY THE COURT:

17 Q. Good afternoon, Ms. Brown, how are you?
18 Good. Now, I indicated yesterday there are some
19 questions that I would have to ask you and that
20 the attorneys may likewise have some questions
21 that they want to ask you. There are no right or
22 wrong answers to any of these questions. All we
23 ask is that you be truthful in your responses,
24 okay.

25 Also I am going to ask you to do me a

1 favor, we don't have any mike system, it went out
2 on us yesterday afternoon that is why I am talking
3 as loud as I can, I know you are sitting right
4 there so I will ask you to talk as loud back to me
5 so that everybody can hear your answers, okay.

6 Do you have any prior knowledge OF this
7 matter?

8 A. No.

9 Q. So you haven't read anything about it or
10 heard anything about it?

11 A. No.

12 Q. You haven't talked about it or read anything
13 or heard anything since yesterday?

14 A. No.

15 Q. Do you have any opinions about it?

16 A. No.

17 Q. Did you have a chance to read that sheet of
18 the types of jurors?

19 A. Yes.

20 Q. Which one best describes you?

21 A. The first.

22 Q. The first? Does that mean that you believe
23 that any time a person is convicted of murder that
24 the person charged and convicted of that should
25 receive the death penalty?

1 A. Yes.

2 Q. In every situation?

3 A. Yes.

4 Q. Doesn't matter about the facts?

5 A. No.

6 Q. So the circumstances wouldn't change your
7 mind at all if they were convicted of murder it
8 would be death penalty and nothing else. You
9 could not under any circumstances consider any
10 other punishment?

11 A. No.

12 Q. That is your personal feelings?

13 A. It is my personal feelings.

14 THE COURT: Any questions from the State?

15 EXAM BY MR. KOLB:

16 Q. Couple of questions for you, Ms. Brown. If
17 the judge instructed you that if you were a juror
18 in this case that you had to consider either the
19 death penalty or a life sentence, could you do
20 that?

21 A. No, I couldn't.

22 Q. If you found -- if you were selected and
23 found him guilty in the first phase, would it be
24 possible for you to keep an open mind as to what
25 the punishment should be as we go into the second

1 phase, the penalty phase?

2 A. Yes.

3 Q. You could do that?

4 A. Yes.

5 Q. If you found him in the first phase you could
6 go into the second phase with an open mind as to
7 whether the punishment would be either death
8 penalty or life in prison?

9 A. Yes.

10 Q. You could do that?

11 A. Yes.

12 Q. Have you or any member of your family or any
13 near close friends ever been charged with a crime?

14 A. No.

15 Q. Have you or any of your close friends or
16 family ever been the victim of a crime?

17 A. Yes.

18 Q. Who was it?

19 A. My sister.

20 Q. What happened?

21 A. She was raped.

22 Q. How long ago was that?

23 A. About eight years.

24 Q. Was that here in Georgetown?

25 A. In Andrews.

1 Q. What wound up happening in that case?

2 A. He got 21 to life.

3 Q. That was 8 years ago?

4 A. Yes.

5 Q. Were you satisfied with the way law
6 enforcement handled that case?

7 A. Yes.

8 Q. Just once again for clarification, is it
9 your testimony that if you were selected as a
10 juror in this case and if you found the defendant
11 guilty of phase one of this trial, could you go
12 into phase two, the penalty phase with an open
13 mind as to whether his punishment should be death
14 penalty or life in prison?

15 A. Yes.

16 Q. It is possible you could find him guilty and
17 still sentence him to a sentence of life in
18 prison?

19 A. Yes.

20 MR. KOLB: Please answer any questions
21 the defense might have.

22 THE COURT: Before you get into that let
23 me ask a question.

24 EXAM BY THE COURT:

25 Q. I thought you just told many there was no

1 circumstance that you could find anything other
2 than death?

3 A. That's true, too.

4 Q. How do you now say that you could keep an
5 open mind and you could impose life imprisonment,
6 I asked you if you could do that you said no?

7 A. I would do it.

8 Q. Well, what changed? What changed your mind?

9 A. My sister.

10 Q. Your sister?

11 A. (Can't understand tape).

12 Q. What do you mean, you mean because of your
13 sister that is what made you feel that people who
14 commit murder ought to get the death penalty?

15 A. Yes.

16 Q. Would that always be in your mind as a juror
17 in this case or in any case?

18 A. Yes.

19 Q. It would affect then how you looked at the
20 evidence?

21 A. I guess.

22 Q. You couldn't set that aside and be totally
23 impartial? It would be impossible to you, that is
24 too much, it preys on your mind?

25 A. Yeah.

1 THE COURT: All right. Any additional
2 questions from the State?

3 MR. KOLB: No, sir, Your Honor.

4 THE COURT: Any additional questions for
5 the defendant?

6 MR. LITTLEJOHN: No, sir.

7 THE COURT: If you will step out there I
8 will be with you in just a moment.

9 What says the State?

10 MR. KOLB: Not qualified.

11 THE COURT: Any disagreement out of the
12 defense?

13 MR. LITTLEJOHN: No.

14 THE COURT: I find she is unqualified and
15 somewhat because of her answer concerning the
16 death penalty, but more because of her inability
17 to be impartial and I understand the situation and
18 appreciate her honesty in that regard.

19 Thank you very much for your patience,
20 thank you for your honesty, I'm sorry for that
21 experience. I wish there was something I could
22 do to make that hurt go away. You are excused
23 from further participation in this matter. I
24 would ask you only one thing, we will select the
25 jury tomorrow at five o'clock, until we select

1 the jury I would appreciate if you would not
2 discuss this case with anyone. All right thank
3 you. Good luck to you, ma'am.

4 All right let's get in Ms. Jenkins.

5 SADIE JENKINS, having been first
6 duly sworn, testified as follows:

7 EXAM BY THE COURT:

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

9 A. Fine.

10 Q. Good. Yesterday I indicated to you we would
11 be asking you some questions and at this time we
12 will do that, we will remind you there are no
13 right or wrong answers to any of these questions.

14 A. Okay.

15 Q. I would also ask you if you would help us we
16 don't have our sound system it went out yesterday
17 so we are all kind of having to talk a little
18 louder so if you would do that as well, even
19 though you and I are sitting next to each other I
20 would appreciate it so they can hear your answers,
21 okay?

22 A. Yes.

23 Q. Do you know anything about this case?

24 A. No, sir.

25 Q. The only thing you know is what I shared with

1 you what has been alleged?

2 A. On yesterday.

3 Q. Yesterday. Do you have any opinions about
4 this case?

5 A. No, sir.

6 Q. You have a chance to read the sheet that had
7 the three types of jurors?

8 A. Yes, sir.

9 Q. On that sheet, which one best describes you?

10 A. The third one.

11 Q. The third one. And that would mean to me
12 that you are the kind of a person that believed
13 that in some circumstances someone commits a
14 murder the death penalty would be appropriate,
15 some circumstances life imprisonment would be
16 appropriate but you couldn't make a decision until
17 you heard all of the circumstances?

18 A. No, sir.

19 Q. All the facts and circumstances?

20 A. Yes, sir.

21 Q. But you could consider both of them depending
22 upon the circumstances?

23 A. Yes, sir.

24 Q. And would impose either of them depending
25 upon the circumstances?

1 A. Yes, sir.

2 Q. Now, you understand that I shared with you
3 yesterday that criminal cases like this one
4 everybody is charged with criminal offense in this
5 country enjoys the presumption of innocence, you
6 understand that?

7 A. Yes, sir.

8 Q. Do you have any problem with that principle
9 of law?

10 A. No, sir.

11 Q. That says people are presumed innocent until
12 and if the State proves them guilty beyond a
13 reasonable doubt?

14 A. Yes, sir.

15 Q. You understand also as a part of that
16 presumption a person charged with the criminal
17 offense does not have to prove anything, in fact,
18 they don't have to say anything, they don't have
19 to offer any evidence, they don't have to do
20 anything, do you understand that?

21 A. Yes, sir.

22 Q. Because the State is the only party that has
23 to prove anything. You have any problem with
24 that principle of law?

25 A. No, sir.

1 Q. If you were selected as a juror in this case
2 the fact that Mr. Stone is charged with these
3 offenses that wouldn't cause you to feel one way
4 or the other, would it?

5 A. No, sir.

6 Q. Would you expect Mr. Stone to prove any of
7 it, he is the defendant in this case?

8 A. I would like the evidence to prove that he
9 did it.

10 Q. I understand that you would base your
11 decision on the evidence and I would tell you and
12 instruct you that the only party in this
13 proceeding that has any burden or has to produce
14 any evidence is the State because they have the
15 burden of proof. In other words, they have to
16 prove that he did it. He doesn't have to
17 disprove it, he doesn't have to prove that he did
18 it, do you understand?

19 A. Yes, sir.

20 Q. Would you have any problem following that
21 instruction?

22 A. No, sir.

23 Q. So if you are on the jury you would look to
24 the State to prove its case?

25 A. Yes.

1 Q. If the jury didn't meet its burden, in other
2 words it didn't convince you beyond a reasonable
3 doubt, would you find Mr. Stone not guilty?

4 A. Yes, sir.

5 Q. On the other hand if they convinced you
6 beyond a reasonable doubt, would you find him
7 guilty?

8 A. Yes, sir.

9 Q. You understand that this trial we talked
10 yesterday is a two part trial. In other words,
11 there are really two trials within one. The
12 first part will deal solely with the issue of
13 whether or not Mr. Stone is guilty of these
14 offenses, that is all the evidence is going to
15 deal with, do you understand that?

16 A. Yes, sir.

17 Q. Once the jury makes its determination and the
18 jury finds him not guilty of course that would be
19 the end of it, of the trial. If on the other
20 hand the judge should find that the State had met
21 its burden of proof and found him guilty of
22 murder, then we go into the second trial, which
23 is the trial that deals with punishment and then
24 that trial no longer dealing with the guilt
25 because that has already been determined. Now,

1 the jury will deal with what is the proper
2 punishment or appropriate punishment in this case,
3 do you understand that?

4 A. Yes, sir.

5 Q. Would you have an open mind going into both
6 of those phases?

7 A. Yes, sir.

8 Q. So you would be by that you would want to
9 hear all the evidence before you made your
10 decision; is that right?

11 A. Yes, sir.

12 Q. Your decision would be based solely on that
13 evidence which you heard in both phases; is that
14 correct?

15 A. Yes, sir.

16 Q. At the end of the second phase when you --
17 where you will hear evidence and this evidence you
18 wouldn't have heard in the first one because this
19 evidence is going to deal solely with the issue of
20 punishment. You will hear evidence of mitigating
21 circumstances, aggravating circumstances and the
22 like and then I will give you an instruction on
23 the law and the jury then will be asked at the
24 conclusion of the case to go out and make a
25 decision as to what the appropriate sentence

1 should be, do you understand that?

2 A. Yes, sir.

3 Q. Would you be able to consider both of them,
4 both death penalty and life in prison?

5 A. Yes, sir.

6 Q. And make a decision which one you felt was
7 the most appropriate?

8 A. Yes, sir.

9 Q. Do you know of anything in your background,
10 anything that has occurred in your life, any
11 strong feelings or convictions that you may have
12 that would affect you in anyway from giving the
13 State a fair and impartial trial?

14 A. No, sir.

15 Q. Do you know of anything that would affect
16 your ability to likewise give Mr. Stone a fair and
17 impartial trial?

18 A. No, sir.

19 Q. If you are selected on this jury you will be
20 sequestered with the other jurors, the State will
21 provide you with lodging and meals and
22 transportation for the duration of the trial and I
23 know that may not be something that is exciting to
24 you but the question I have is if you are selected
25 as a juror would you be able to set aside that

1 inconvenience and stay focused on your
2 responsibility and duty as a juror?

3 A. Yes, sir.

4 Q. You would do that?

5 A. Yes, sir.

6 THE COURT: Please answer any questions
7 that the State may have for you, solicitor.

8 EXAM BY MR. KOLB:

9 Q. Just a couple of questions for you, Ms.
10 Jenkins. Have you or any close family members or
11 friends ever been the victim of a crime?

12 A. (Can't understand tape).

13 Q. Have you or any close family members or
14 friends ever been charged with a crime?

15 A. No, sir.

16 Q. You indicated that you believe you are a type
17 three juror; is that correct?

18 A. Yes, sir.

19 Q. Do you understand that is to mean if you
20 found the defendant guilty you could sentence him
21 to either the death penalty or life in prison
22 depending upon the facts and circumstances of the
23 case?

24 A. Yes, sir.

25 Q. Do you believe you could sign your name to a

1 document stating that you were sentencing the
2 defendant to the death penalty?

3 A. Yes, sir.

4 Q. Do you think you could write your name on
5 that document?

6 A. Yes, sir.

7 Q. Do you think you could come into the
8 courtroom and stand in front of the defendant and
9 whoever else is in the courtroom and say that you
10 would sentence him to the death penalty?

11 A. Yes, sir.

12 MR. KOLB: Please answer any questions
13 the defense may have for you.

14 THE COURT: Mr. Littlejohn.

15 EXAM BY MR. LITTLEJOHN:

16 Q. Ms. Jenkins, on the other hand if you
17 thought the appropriate sentence in the case was
18 life in prison could you render that verdict,
19 also?

20 A. Yes, sir.

21 Q. Ms. Jenkins, do you have any friends,
22 acquaintances or relatives with police officers?

23 A. No, sir.

24 Q. You don't have any. Let me ask you this,
25 ma'am, in this case the defendant, Mr. Stone

2597

1 over here, was charged with the murder of a
2 Sumter County deputy sheriff. The fact that he
3 is charged in that manner, would that have any
4 effect on your ability to be a fair and impartial
5 juror as to his guilt or innocence?

6 A. No, sir.

7 Q. Would that have any effect on your ability to
8 be a fair and impartial juror as to the sentence
9 that should be imposed in this case?

10 A. No, sir.

11 Q. Ms. Jenkins, as the judge instructed you the
12 defendant doesn't have to prove anything in this
13 case nor does any defendant in any criminal case,
14 that is their Constitutional right. Do you think
15 you could follow that instruction?

16 A. Yes, sir.

17 Q. And not require him to prove anything to you?

18 A. Yes, sir.

19 MR. LITTLEJOHN: Thank you very much.

20 THE COURT: Thank you, Ms. Jenkins, step
21 down, step out there we will be with you in just a
22 moment.

23 What says the State?

24 MR. KOLB: Qualified.

25 THE COURT: Defendant.

1 MR. LITTLEJOHN: We agree.

2 THE COURT: I find she is qualified ask
3 her to step back in, please.

4 Ma'am, you have qualified as potential
5 juror in this case. Tomorrow at five o'clock in
6 this courtroom we will need you to be present, we
7 will select the jury at that time. You are part
8 of the pool we will select from that pool the 12
9 jurors and the alternates. So in case you are
10 selected you will need to bring with you clothing
11 and personal effects to take care of your needs
12 for about a week. Of course you will need to go
13 straight to Sumter to start the trial Thursday
14 morning.

15 This is a letter from the clerk in Sumter
16 that gives you some information about what to
17 expect. Be present tomorrow at five, it
18 shouldn't take that long, then if you are not
19 selected go home and unpack your clothes if you
20 are we will leave from here. Until then I would
21 ask that you do me a favor, do not talk with
22 anyone about this case, do not allow anyone to
23 talk with you about this case or watch any news
24 programs about it. I will see you tomorrow at
25 five, thank you.

1 Lets go to Mr. Riegler now.

2 DAN RIEGLE, having been first duly
3 sworn, testified as follows:

4 EXAM BY THE COURT:

5 Q. Good afternoon, Mr. Riegler, how are you?

6 A. Fine.

7 Q. Yesterday I told you we would be asking you
8 some questions and I want to remind you there are
9 no right or wrong answers to any of these
10 questions, okay. You will need to respond to
11 all of my questions and any other questions
12 verbally because the lady seated in front of me is
13 keeping a record of all of this we want to make
14 sure your responses are accurately recorded. You
15 need to say yes.

16 A. Yes.

17 Q. Also the next little dilemma we have occurred
18 yesterday the mikes went out so that is why I am
19 talking as loud as I am so that everybody can
20 hear, I would ask you to do the same even though
21 we are seated next to each other. Do you have
22 any prior knowledge of this alleged incident?

23 A. No, sir.

24 Q. The only thing you know then is basically
25 what I shared with you that has been alleged?

1 A. Yes.

2 Q. So you have any opinions about this?

3 A. No, sir.

4 Q. None whatsoever?

5 A. I don't know how I could have formed any.

6 Q. I agree with you. So you are the kind of a
7 person that has to have the facts before you have
8 any feelings?

9 A. Yes.

10 Q. Okay that's good. In that regard, did you
11 have an opportunity to review that sheet that had
12 three types of jurors?

13 A. Yes.

14 Q. Which one best describes you?

15 A. I would say the third.

16 Q. The third one. And that is someone that
17 basically says that there are situations where you
18 believe the death penalty would be appropriate,
19 likewise there are situations where somebody
20 commits a murder that life in prison would be the
21 appropriate punishment, but in order to determine
22 which one would be suitable you have to hear the
23 facts and circumstances of that particular case?

24 A. Yes.

25 Q. In order to make a decision?

1 A. Yes.

2 Q. Okay. You understand this is a criminal
3 dispute, as a result it has certain principles of
4 law that would apply to every criminal case in
5 this country, one of those share or several of
6 them I shared with you yesterday, one in
7 particular is the presumption of innocence. Do
8 you have any problem with that principle of law?

9 A. Oh, absolutely not.

10 Q. And you understand that that not only makes
11 the burden or places the burden on the State to
12 prove its case, but it also says that as well
13 that a person charged with a criminal offense
14 doesn't have to prove or disprove anything. In
15 fact they don't have to offer any evidence at all
16 if they choose not to, do you understand that?

17 A. Yes, sir.

18 Q. Likewise if the defendant chose not to
19 testify for whatever reason a jury could not use
20 that against that person, would you have any
21 problem with that?

22 A. No.

23 Q. So if you were selected as a juror on this
24 case, the fact that Mr. Stone is sitting at that
25 table wouldn't have any impact on your decision,

1 just the fact he is sitting there?

2 A. No. (Can't understand tape).

3 Q. Oh, sure... He is there because he is charged
4 with something, no question about that, but just
5 the fact that he is there doesn't make you feel
6 that he is most likely guilty or anything else; is
7 that right?

8 A. No.

9 Q. The fact if you were in there and he offered
10 no evidence whatsoever in the trial, would you
11 hold that against him in anyway?

12 A. No.

13 Q. Because you would look to the State to prove
14 its case?

15 A. Yeah. I would think the principle he has
16 his representatives here.

17 Q. Let me just say this to you, part of the
18 instruction would be and I don't know what it
19 would be I'm just using this to kind of
20 illustrate, suppose they didn't say anything,
21 they just sat through the trial. Would you still
22 base your decisions solely on what the State
23 proved?

24 A. If that was the only side of an issue brought
25 forward and you had to make a decision, certainly

1 have to go with that.

2 Q. Based on your view of the evidence in that
3 situation, if you were convinced that the State
4 or in your opinion the State had not convinced you
5 that Mr. Stone had committed these offenses would
6 you have any hesitancy in finding him not guilty
7 even if he didn't offer any evidence?

8 A. I don't think that that (Can't understand
9 tape) in my mind.

10 Q. Of course, good. Likewise, if you were
11 convinced the State had met its burden you would
12 find him guilty as instructed; is that correct?

13 A. Yes.

14 Q. In other words, the instruction will be
15 something to this effect, if you are satisfied
16 after viewing all the evidence that the State has
17 failed to meet its burden, failed to convince you
18 beyond a reasonable doubt it would be your duty to
19 find him not guilty, you wouldn't have any
20 problem with that?

21 A. Absolutely.

22 Q. Likewise if you were convinced it would then
23 of course be your duty to find him guilty, do you
24 understand that?

25 A. Yes, sir.

1 Q. You wouldn't have any problem following that
2 instruction either way?

3 A. No.

4 Q. In this trial, it is a two part trial, the
5 first part will deal solely with the issue of
6 guilt, the alleged offenses. If the jury
7 concludes at the end that the State has failed to
8 meet the burden of proof then of course that would
9 be the end of it, the end of the trial. But if
10 the jury should conclude that the State had met
11 its burden of proof and found him guilty of the
12 offense of murder, then we would go forward with
13 the second part which is the penalty part.

14 Now, as I understand from your earlier
15 answers would you have an open mind going into
16 that first part?

17 A. Yes.

18 Q. And you would not make a decision until you
19 have heard all of the evidence and received the
20 law; is that right?

21 A. Certainly strive to do that.

22 Q. Would you also going into the second part
23 where you will hear now additional evidence that
24 will deal solely with the issue of the punishment,
25 the appropriate punishment, hear aggravating

1 circumstances, mitigating circumstances or you
2 may hear those and the like, would you keep an
3 open mind during that phase, as well?

4 A. Yes.

5 Q. So you would not have a decision on the
6 appropriate penalty until the conclusion of that
7 case where you have heard all the evidence and
8 received the law; is that correct?

9 A. Yes.

10 Q. I understand from your statement of being
11 juror number 3, at the conclusion of that second
12 phase the jury will be asked to retire and make a
13 determination based upon the evidence and the law
14 as to what they believe, which of the two is the
15 most appropriate punishment there is in this case.
16 You could do that?

17 A. Yes.

18 Q. And could you consider both life imprisonment
19 and the death penalty in making that
20 determination?

21 A. Yes.

22 Q. Do you know of anything that has occurred in
23 your life, experiences in life, philosophies you
24 may have, strong feelings you may have that would
25 in anyway influence or affect your ability to give

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF
) GENERAL SESSIONS
COUNTY OF SUMTER)

THE STATE,) Transcript of
) Proceedings
)
) Georgetown,
vs.) South Carolina
) 96-GS-43-968
BOBBY WAYNE STONE,)
)
Defendant.) January 20-22, 1997

Volume III

BEFORE THE HONORABLE R. MARKLEY DENNIS,
JR., Judge; and a jury.

DEBRA R. JERNIGAN, RPR, CPE
13TH JUDICIAL CIRCUIT
GREENVILLE, SOUTH CAROLINA

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

A P P E A R A N C E S:

WADE S. KOLB, JR., Solicitor

VERNIE L. WILLIAMS, Assistant Solicitor

On Behalf of the State

JAMES H. BABB, Esq.

CAMERON B. LITTLEJOHN, JR., Esq.

On Behalf of the Defendant

1 the State a fair and impartial trial?

2 A. No.

3 Q. What about the defendant, Mr. Stone?
4 Anything that would affect your ability or
5 influence your ability to give him a fair and
6 impartial trial?

7 If you are selected, this jury is going
8 to be sequestered during the trial and I know that
9 is not exciting news but could you set aside that
10 inconvenience that would cause you and stay
11 focused on your responsibilities and duties as a
12 juror?

13 A. I could stay focused. I'm a small building
14 contractor firm and I have a couple of real tough
15 deadlines. (Can't understand tape).

16 Q. Knowing that and understanding we find you so
17 where you are in that regard, would you be able to
18 if you are selected to not let that influence you
19 or affect your ability to consider all of the
20 evidence and the law?

21 A. Yes. I have given it some thought, I could
22 do it. It would be really, really inconvenient.
23 I would really like to scratch that.

24 Q. I understand. I don't quarrel with that and
25 I understand. But it would not impair your

1 ability to be fair and impartial to the State or
2 to Mr. Stone?

3 A. I feel if I am selected I could lay my other
4 obligations aside.

5 THE COURT: Thank you, sir, appreciate
6 that. Answer any questions the State may have,
7 please.

8 EXAM BY MR. HILLIARD:

9 Q. Good afternoon, Mr. Riegler, just have a few
10 questions for you. Have you or any of your
11 family members or friends ever been the victim of
12 a crime that you know of?

13 A. No, not that I can think of.

14 Q. Have you or any of your family members or
15 friends ever been charged with a crime?

16 A. I had a DUI about eight and a half years ago
17 it was first offense I pled guilty.

18 Q. Was that here in Georgetown?

19 A. No.

20 Q. Do you have any bad feelings towards law
21 enforcement as a result of that charge?

22 A. No, I was guilty.

23 Q. Your wife is an attorney; is that correct?

24 A. Yes.

25 Q. What kind of law does she practice?

1 A. Real estate.

2 Q. Does she practice here in Georgetown?

3 A. No, she is with a law firm in Horry County.

4 Q. You indicated earlier I believe yesterday
5 that you know Tee Anne Oehler, is that right?

6 A. Yes.

7 Q. What is your relationship with her?

8 A. Tee Anne was a neighbor that lived up the
9 street oh, about 7 or 8 houses away. We were
10 invited to her house on a couple of occasions,
11 one was a Christmas party, one was an open house
12 when she first moved in, that was a house warming
13 party. We are friends socially.

14 Q. And if she appears as a witness in this trial
15 would that affect your ability to be impartial to
16 her, do you think?

17 A. I don't think it would affect it at all.

18 Q. In response to the Judge's questions you
19 indicated you consider yourself a type three
20 juror; is that correct?

21 A. Yes.

22 Q. Do you understand that to mean that at the
23 time you found the defendant guilty of murder you
24 could either sentence him to death penalty or life
25 in prison depending upon the facts and

1 circumstances in the case?

2 A. Yes.

3 Q. Do you believe it would be possible for you
4 to sign a document indicating that you are
5 sentencing the defendant to death penalty, do you
6 think you could write your name on that document?

7 A. Yes, I think so.

8 Q. Do you think you would be able to come into
9 open Court before the defendant and whoever else
10 was in the courtroom and announce that your
11 verdict was that he receive the death penalty?

12 A. Yes.

13 MR. HILLIARD: Please answer any
14 questions the defense might have for you.

15 THE COURT: Mr. Littlejohn.

16 EXAM BY MR. LITTLEJOHN:

17 Q. Mr. Riegler, on the other hand, if you
18 didn't think that the appropriate sentence was
19 death penalty but more life imprisonment, could
20 you not agree to a verdict of life imprisonment?

21 A. Oh, absolutely.

22 Q. Absolutely?

23 A. Yeah, you know, I don't know if you want to
24 hear this at this time or not, but it would have
25 to be a very premeditated, cold-blooded, cruel

1 set of circumstances for me to go along with the
2 idea of death penalty.

3 Q. Okay. Mr. Riegler, do you have any friends,
4 acquaintances or relatives in law enforcement?

5 A. No.

6 Q. No?

7 A. Well I like to feel I have some friends.

8 Q. Not close friends. Okay thank you. Let me
9 ask you this, sir, in this case the State has
10 charged the defendant Mr. Stone with the murder of
11 a deputy sheriff. Given that those are the
12 circumstances which are charged by the State,
13 would that have any effect on your ability to
14 render a fair and impartial verdict in this case?

15 A. Yes, it might.

16 Q. How so?

17 A. I think I would be more inclined to go for
18 death penalty.

19 Q. Because the State has charged that the
20 defendant has murdered a law enforcement officer;
21 is that it? Well, let me ask you this if the case
22 got to the point where you would have to decide on
23 the penalty, would you be able to consider both
24 the death penalty and life imprisonment?

25 A. Yes.

1 MR. LITTLEJOHN: That is all I have.

2 THE COURT: Any additional questions? If
3 you will step down and step through I will be
4 right with you.

5 Says the State?

6 MR. HILLIARD: Qualified.

7 THE COURT: Says the defendant?

8 MR. LITTLEJOHN: We agree.

9 THE COURT: He is qualified. Ask him to
10 come back in, please.

11 Mr. Riegle, you have been qualified as
12 potential juror in the pool. That means tomorrow
13 afternoon at five o'clock you will need to be
14 present. You will come back, from that pool we
15 will select 12 jurors and alternates to try this
16 case. Since you don't know whether or not you
17 will be selected, you will need to bring with you
18 at that time sufficient clothing to take care of a
19 week's needs because you will go from here to
20 Sumter and be in the trial. Of course if you
21 aren't selected you will have to go home and
22 unpack.

23 That is a letter from the clerk's office,
24 gives you a little bit of information about the
25 sequestration and what to expect.

1 I ask you, sir, do not until we get
2 together tomorrow talk with anyone about this
3 case, allow anyone to talk with you about it.
4 Don't read any newspaper articles about it or
5 watch any news accounts. See you tomorrow at
6 five, sir.

7 We will take a brief break about five
8 minutes.

9 (Whereupon, a short recess was held.)

10 THE COURT: For the record, I never --
11 Ms. Keegan, who is in group number 1, juror
12 number 93, Ms. Keegan diagnosed with hepatitis,
13 don't know if it is A or B at this point, it is
14 definitely hepatitis, I have excused her for
15 medical reasons. Any objection by the State?

16 MR. KOLB: No, sir.

17 THE COURT: Any objection from Mr. Stone?

18 MR. LITTLEJOHN: No.

19 THE COURT: Very well, thank you.
20 Let's bring in Ms. Gore, please.

21 PRISCILLA ANN GORE, having been first
22 duly sworn, testified as follows:

23 Q. Hello, Ms. Gore, how are you?

24 A. Fine.

25 Q. Good. Yesterday I told you that I was going

1 to ask you some questions and that the attorneys
2 may also be asking you some questions. I want to
3 remind you that there are no right or wrong
4 answers to any of these questions. All I want
5 you to do is if you could be truthful.

6 A. Okay.

7 Q. I will also ask you to help, yesterday our
8 microphone system went out so we don't have any
9 microphones so that is why I am talking as loud as
10 I am and I need for you to do the same thing even
11 though we are sitting right next to each other so
12 that everybody can hear you. You will have to
13 raise your voice from what it is right now, okay?

14 A. Yes.

15 Q. All right. Do you have any knowledge of
16 this case other than what I shared yesterday?

17 A. No, sir.

18 Q. You haven't read anything about it or heard
19 anything about it?

20 A. No.

21 Q. You haven't heard anything about it since we
22 met?

23 A. No, sir.

24 Q. Do you have any opinions about this case at
25 this point?

1 A. No, sir.

2 Q. Would you have to hear all the evidence
3 before you could reach a determination?

4 A. Yes, sir.

5 Q. Have you had a chance to read that sheet that
6 had the three types of jurors?

7 A. Yes.

8 Q. Which one are you?

9 A. The third.

10 Q. The third. That would be someone who would
11 first of all have to hear the evidence before they
12 could determine their punishment; is that right?

13 A. Yes.

14 Q. But in some cases after you have heard the
15 evidence you would think death penalty would be
16 the appropriate punishment, but in some cases you
17 believe life imprisonment would be the appropriate
18 punishment?

19 A. Yes.

20 Q. It depends on a particular case?

21 A. Yes, sir.

22 Q. You understand that people who are charged
23 with criminal offenses in this country are
24 presumed to be innocent?

25 A. Yes, sir.

1 Q. You understand, you have any problem with
2 that law?

3 A. (Can't understand tape).

4 Q. That means that if a person who is charged
5 doesn't have to prove anything, you understand?

6 A. Yes, sir.

7 Q. The State or the Government that is bringing
8 the charge has the duty or burden to prove their
9 case beyond a reasonable doubt, do you understand
10 that?

11 A. Yes, sir.

12 Q. And the law is such that the State failed to
13 satisfy the jury beyond a reasonable doubt just on
14 that presumption of innocence alone the jury
15 would, it would be the duty of the jury to return
16 a verdict of not guilty, do you understand?

17 A. Yes, sir.

18 Q. You understand by that that that means that a
19 person charged with the offense is not required to
20 testify, not required to offer any evidence, do
21 you understand?

22 A. Yes, I understand.

23 Q. They don't have anything to prove, they
24 don't have to prove their innocence, they don't
25 have to disprove anything?

1 A. Yes, sir.

2 Q. You have any problem following that law?

3 A. No, sir, I don't.

4 Q. So if you were selected as juror in this
5 trial, would you expect Mr. Stone who is the
6 defendant to prove anything to you?

7 A. To me?

8 Q. Yes, sir.

9 A. Yes, sir.

10 Q. What would you expect him to prove?

11 A. The innocence or guilt.

12 Q. All right. This is the State over here,
13 they are the ones that are bringing it. They are
14 responsible to prove it, you look to them to
15 produce the evidence.

16 A. Yes, sir.

17 Q. That is that one right there?

18 A. Yes, sir.

19 Q. Mr. Stone is the one who happens to be
20 charged with the offense, you wouldn't expect him
21 to prove anything, would you?

22 A. This guy is being charged?

23 Q. Yes, ma'am. You wouldn't expect him to
24 prove anything, would you?

25 A. The State would have to prove it.

1 Q. So you would look to the State to prove its
2 case?

3 A. Yes.

4 Q. If the State failed to convince you, if the
5 State didn't convince you that Mr. Stone was
6 guilty of these offenses, didn't convince you
7 beyond a reasonable doubt, would you find him not
8 guilty?

9 A. Yes, I would.

10 Q. On the other hand if the State satisfied you,
11 convinced you beyond a reasonable doubt that he
12 did do it, would you find him guilty?

13 A. I would.

14 Q. Would you keep an open mind until you have
15 heard all of the evidence in that portion of the
16 trial?

17 A. Yes, sir.

18 Q. You understand this proceeding will be sort
19 of two trials within one, the first one will be
20 solely of whether or not Mr. Stone is guilty of
21 these offenses, you understand that?

22 A. Yes, sir.

23 Q. Once the jury decides that case then
24 depending upon the jury's verdict as to whether or
25 not we have a second because if the jury finds him

1 not guilty then of course we won't have anymore
2 trial, that would be the end of it?

3 A. Yes.

4 Q. On the other hand if the jury should find
5 that he is guilty, guilty of murder, then we go
6 into the second phase which is the penalty phase,
7 do you understand?

8 A. Yes, I do.

9 Q. Now, it is at that phase that you would hear
10 some additional evidence more than what you heard
11 in the first, it deals specifically in the second
12 phase with the one issue that the jury has to
13 decide and that is what is the appropriate
14 punishment, do you understand?

15 A. Yes, sir.

16 Q. You will hear evidence of aggravating
17 circumstances, mitigating circumstances and the
18 like, do you understand?

19 A. Yes, sir.

20 Q. You will hear all of the evidence and then I
21 will give you further instruction on the law and
22 then after that the jury will be asked to make a
23 decision, which of the two punishments is
24 appropriate, do you understand?

25 A. Yes, sir.

1 Q. Would you keep an open mind in the second
2 phase also?

3 A. Yes, sir, I would.

4 Q. You would not make your decision as to the
5 appropriate punishment until you have heard all
6 the evidence and received the law?

7 A. Yes, sir.

8 Q. And when you went back to consider it is my
9 understanding as the type three juror that you
10 could consider both life imprisonment and the
11 death penalty, but it would depend upon the facts
12 and circumstances as to which one you thought was
13 most appropriate?

14 A. Yes, sir.

15 Q. Do you know of anything in your experiences
16 in life or a personal feeling or strong
17 convictions you may have that would in anyway
18 affect your ability to be fair and impartial to
19 the State?

20 A. No, sir.

21 Q. You know of anything about your personal
22 background, history or philosophies that would
23 affect your ability to be fair and impartial to
24 Mr. Stone?

25 A. No, sir.

1 Q. If you are selected on this jury, you are
2 going to be sequestered with the other jurors that
3 means we will provide you -- the State will
4 provide you with lodging, food, and
5 transportation until the trial is completed. I
6 know that would be an inconvenience to you, could
7 you set aside that inconvenience and stay focused
8 and do the job you are asked to do as a juror?

9 A. Yes, sir.

10 Q. It wouldn't affect you?

11 A. No, sir.

12 THE COURT: Please answer any questions
13 the State may have, Mr. Kolb.

14 EXAM BY MR. KOLB:

15 Q. Ms. Gore, the form you sent back to the
16 Clerk of Court I notice that you didn't answer
17 where they asked you if any member of your family
18 or yourself or a close personal friend had been
19 the victim of a crime?

20 A. I didn't know what that meant.

21 Q. Do you know what victim?

22 A. I know my family (Can't understand tape).

23 Q. All right. And the answer you put if you or
24 member of your immediate family or close personal
25 friend had ever been charged with a crime was no;

1 is that correct?

2 A. Yes.

3 Q. You indicated that you were the type of juror
4 that could give either a death sentence or a life
5 sentence and it would depend upon the law that you
6 heard and the facts and circumstances of the case
7 that you heard?

8 A. Yes.

9 Q. All right. Now, once you heard those facts
10 and circumstances and the law and decided that the
11 death sentence was appropriate, could you sign
12 your name to the verdict form?

13 A. I could.

14 Q. And could you come into this courtroom and
15 stand up and announce that verdict in front of the
16 defendant and everybody else in here?

17 A. Yes.

18 Q. When I say this courtroom I mean a different
19 courtroom, but you could come into the courtroom?

20 A. Yes, sir.

21 MR. KOLB: Thank you, ma'am.

22 THE COURT: Mr. Babb.

23 EXAM BY MR. BABB:

24 Q. Good afternoon, Ms. Gore. In responding to
25 the Court's questions you have indicated that you

1 could be fair to the defendant in this case?

2 A. Yes.

3 Q. Now, you realize this is a case, it is a
4 case in which it has been alleged that he has
5 committed a murder? He is charged with the murder
6 of a police officer, a deputy sheriff, does that
7 in anyway alter any of the questions that you have
8 answered to the judge before?

9 A. No.

10 Q. Would you still require the State to prove
11 beyond a reasonable doubt his guilt?

12 A. Yes, sir.

13 Q. If he were found guilty and you could fairly
14 consider whatever evidence is presented with
15 regard to punishment, keep an open mind?

16 A. Yes, sir.

17 Q. Even after finding if you found, if a
18 finding was made of guilt you could still do that?

19 A. Yes, sir.

20 Q. Do you have any close personal friends who
21 are police officers?

22 A. No I don't.

23 MR. BABB: Thank you.

24 THE COURT: Ms. Gore, I will ask that
25 you step down and step out that door we will be

1 with you in just a moment. Thank you.

2 The State?

3 MR. KOLB: Qualified, Your Honor.

4 THE COURT: Defense?

5 MR. BABB: Concur.

6 THE COURT: She is qualified, step back
7 in, please.

8 Ms. Gore, you have been qualified as a
9 potential juror in this case. You need to be
10 back here tomorrow at five o'clock. You are now
11 a part of a number of jurors who are in a pool.
12 From that pool of jurors we are going to select 12
13 jury members and alternates that will hear the
14 case. Because you may be selected, we need for
15 you to come tomorrow when you come at five o'clock
16 to bring enough clothing and personal effects to
17 take care of your needs for a week because if you
18 are selected we are going to leave from here and
19 go onto Sumter, start the trial of the case on
20 Thursday.

21 I will give you a letter from the Clerk of
22 Court from Sumter that talks about some of the
23 parts of being sequestered, he will give you some
24 good information.

25 Please until tomorrow at five o'clock do

2626

1 not allow anybody to talk to you about this case
2 or discuss the matter with anyone, do not read
3 anything about it or watch any TV about it.
4 Thank you, I will see you tomorrow at five
5 o'clock you need to come back out into the
6 courtroom just like you did yesterday, tomorrow
7 at five.

8 Okay Ms. Jones.

9 CINDY JONES, having been first duly
10 sworn, testified as follows:

11 EXAM BY THE COURT:

12 Q. Good afternoon, Ms. Jones, how are you?

13 A. Fine.

14 Q. Good. I told you yesterday that we were
15 going to ask you some questions and also indicated
16 that there are no right or wrong answers to any of
17 these questions, okay. All we want you to do is
18 be truthful in your responses and I am sure you
19 will do that, will you do that?

20 A. Yes.

21 Q. Also I am going to ask you as a favor to all
22 of us we lost our mike system yesterday it went on
23 the blink so that is why I will be talking as loud
24 as I am even though we are sitting as close to
25 each other that you talk loudly like I am so that

1 everybody can hear us, okay.

2 Do you have any prior knowledge of this
3 case?

4 A. No, sir.

5 Q. So basically your knowledge is that what I
6 shared with you, those alleged facts I shared with
7 you yesterday and that is the extent?

8 A. That is all.

9 Q. Have you formed any opinions about ---

10 A. No, sir.

11 Q. Would you have to hear all of the facts
12 before you decide it or reached any conclusions?

13 A. Yes, sir.

14 Q. Are you that type of a person?

15 A. Yes, sir.

16 Q. You had a chance to read that sheet that has
17 the three types of jurors?

18 A. Yes, sir.

19 Q. Which one are you?

20 A. The third one.

21 Q. The third one. And that is a person that
22 sometimes you believe circumstances would warrant
23 a death penalty if a person is convicted of a
24 murder and sometimes you would believe it would
25 warrant life imprisonment, but before you could

1 decide which one was appropriate you would have to
2 hear and know all the facts and circumstances?

3 A. Yes, sir.

4 Q. But you could impose the death penalty in
5 some situation and you could impose life
6 imprisonment in some situations?

7 A. Yes, sir.

8 Q. Now, you understand that people who are
9 charged with criminal offenses in this country
10 have the presumption of innocence?

11 A. Yes, sir.

12 Q. I shared that with you yesterday, do you
13 understand that?

14 A. Yes, sir.

15 Q. Do you have any problem with that law?

16 A. No, sir.

17 Q. You understood that that means that the State
18 or agencies, governmental agency that is bringing
19 the charge has the burden of proving the case
20 beyond a reasonable doubt?

21 A. Yes, sir.

22 Q. And that the person who is charged with the
23 criminal offense doesn't have to prove anything,
24 they don't have to prove their innocence, they
25 don't have to disprove anything, they don't have

1 to put in any evidence if they choose not to, do
2 you understand that?

3 A. Yes, sir.

4 Q. Do you have any problem with that?

5 A. No, sir.

6 Q. In fact if the defendant chose not to testify
7 in a case, I would instruct you if you were on a
8 jury in that case that you couldn't use that
9 against him, would you have any problem following
10 that instruction?

11 A. No, sir.

12 Q. Likewise if you were a juror, you were
13 selected on this case, would you expect Mr. Stone
14 to prove anything to you? He is the defendant, he
15 is the person who is charged with these offenses?

16 A. No.

17 Q. You would look to the State to prove its
18 case?

19 A. Yes, sir.

20 Q. Let me make it clearer for you. As I
21 understand from your earlier answer, if you were
22 selected as a juror, you would start this trial
23 with an open mind; is that right?

24 A. Yes, sir.

25 Q. You don't know anything about it?

2656

1 A. No, sir.

2 Q. You would base your decision solely on the
3 evidence?

4 A. Yes, sir.

5 Q. And you would apply the law to the facts as
6 you determined those facts to be and make your
7 decision; is that right?

8 A. Yes, sir.

9 Q. I would instruct you that if your view of the
10 evidence and let's talk about two parts of this
11 trial, remember I told you there were two parts,
12 one part deals with whether or not Mr. Stone is
13 guilty of these offenses, the next part would deal
14 with the penalty, okay. So the first part you
15 would hear evidence of whether or not he did these
16 crimes. If after hearing all of the evidence you
17 were convinced and satisfied that the State had
18 not proved its case, in other words they had not
19 convinced you beyond a reasonable doubt, my
20 instruction would say that if the jury, if the
21 State fails to meet its burden of proof, that you
22 must return a verdict of not guilty. Would you
23 have any problem with doing that?

24 A. No, sir.

25 Q. Likewise if the State met its burden of

1 proof, then it would be your duty to return a
2 verdict of guilty if you were convinced beyond a
3 reasonable doubt, do you understand that?

4 A. Yes, sir.

5 Q. And you wouldn't have any problem doing that
6 if that was your decision; is that right?

7 A. Yes, sir.

8 Q. If the jury found Mr. Stone guilty, then we
9 go onto the second phase which is the penalty
10 phase, do you understand?

11 A. Yes, sir.

12 Q. If you find him not guilty of course that
13 would be the end of it, do you understand that?

14 A. Yes, sir.

15 Q. If the jury should find the State met its
16 burden of proof and therefore found him guilty of
17 murder, then you would hear in the second phase
18 the additional testimony that would deal solely
19 with the issue of what punishment would be
20 appropriate. Now, you indicated you have an
21 open mind when you entered the first phase, is
22 that right?

23 A. Yes, sir.

24 Q. Would you have an open mind when you started
25 this next one where you would consider the

2637

1 punishment?

2 A. Yes, sir.

3 Q. Would you wait until you have heard all of
4 the evidence before you made a decision as to the
5 appropriate punishment?

6 A. Yes, sir.

7 Q. At the conclusion of that phase, at the
8 conclusion of the evidence and I will give you
9 another instruction on the law, the jury will
10 then be asked to go to their jury room and make a
11 decision of the appropriate punishment. You will
12 then have heard all of the evidence. Will you as
13 a juror be able to consider both punishments,
14 life imprisonment and the death penalty, would
15 you be able to do that?

16 A. Yes, sir.

17 Q. Would you make a decision at that time and
18 could you make a decision as to which one you felt
19 would be the most appropriate?

20 A. Yes, sir.

21 Q. Now, you understand that this case, you
22 might not, the jury is going to be sequestered,
23 means you will be with the other jurors, the
24 State will provide you lodging and take care of
25 your meals and provide you with transportation for

1 the duration of the trial. I realize that would
2 be an inconvenience to you, but could you set
3 that aside and stay focused on your
4 responsibilities as a juror?

5 A. Yes, sir.

6 Q. And perform your duties as a juror, could
7 you do that?

8 A. Yes, sir.

9 Q. Do you know of anything in your life, this
10 of course is a criminal trial involves alleged --
11 allegations of someone killing another individual.
12 Do you know of anything about the nature of this
13 trial or anything that you have heard based
14 because of your background and your experiences in
15 life, your personal philosophies that would in
16 anyway affect your ability to be fair and
17 impartial in the trial as it pertains to the
18 State, could you be fair?

19 A. Yes, sir.

20 Q. Could you be fair to Mr. Stone and impartial
21 to him, as well?

22 A. Yes, sir.

23 Q. Okay.

24 THE COURT: Answer any questions that the
25 State may have, please.

2634

1 EXAM BY MR. KOLB:

2 Q. Ms. Jones, on your juror form, they ask a
3 question have you, a member of your immediate
4 family or close personal friend ever been the
5 victim of a crime, you didn't have an answer
6 there?

7 A. Me and my daughter got jumped on one time by
8 this man.

9 Q. Was that robbed?

10 A. No, he just jumped on us and knocked us
11 around.

12 Q. Was that case ever solved?

13 A. I think he had to serve some time for it.

14 Q. So they did catch him?

15 A. Yes, sir.

16 Q. Were you -- did law enforcement treat you
17 right in that case?

18 A. Uh-huh (affirmative response).

19 Q. In the matter of the type of juror that you
20 just told the Court you were, the type you
21 described would get in the penalty phase of a
22 death penalty trial would be able to consider the
23 law from the Court and all the facts and
24 circumstances and then decide between the death
25 penalty and life in prison?

1 A. Yes, sir.

2 Q. If the decision is the death penalty, could
3 you sign your name on the verdict form?

4 A. Yes, sir.

5 Q. And realizing that would be the death
6 sentence in the case?

7 A. Yes, sir.

8 Q. And could you come to the Court and stand up
9 and report the verdict here in Court in front of
10 the defendant and anyone else present?

11 A. Yes, sir.

12 Q. Let me ask you about your employment. You
13 indicated you are a construction cleaner for Dean
14 Player?

15 A. Yes, sir.

16 Q. He is the owner of the company?

17 A. Yes, sir.

18 Q. And you all go around to different industries
19 and do maintenance work for them?

20 A. No, I just do the cleaning of houses.

21 Q. So he builds houses and you clean them up?

22 A. Yes.

23 Q. You get ready for people to move in?

24 A. Yes.

25 MR. KOLB: Thank you.

1 THE COURT: Mr. Babb.

2 EXAM BY MR. BABB:

3 Q. Ms. Jones, you have indicated to Solicitor
4 Kolb that if you felt the circumstances warranted
5 you could return a sentence of death. Could you
6 also if the circumstances didn't warrant death
7 return a sentence of life in prison?

8 A. Yes.

9 Q. If the State failed to meet its burden of
10 proof in the guilt phase, could you return a
11 verdict of not guilty?

12 A. Yes, sir.

13 Q. You mentioned that you and your daughter had
14 been jumped on by a fellow once?

15 A. Yes, sir.

16 Q. Did you go to his trial?

17 A. No.

18 Q. You just heard that the matter had been taken
19 care of?

20 A. Yes.

21 Q. The fact of that incident, does that impact
22 on your objectivity, the judge talked with you a
23 lot about having an upper line, do you think you
24 could put anything, left over feelings from that
25 incident so totally aside, come in with a clean

1 slate?

2 A. Yes, sir.

3 Q. Do you have any friends, neighbors,
4 relatives that are involved in law enforcement?

5 A. No, sir.

6 Q. Or members of law enforcement?

7 A. No, sir.

8 Q. Do you understand this is a murder trial?

9 A. Yes, sir.

10 Q. The defendant, Mr. Stone, is accused and
11 the trial will involve a murder, it is alleged he
12 killed a police officer. Does that change any of
13 the answers that you have given the judge before?

14 A. No, sir.

15 Q. Does it alter your views of him, presumption
16 of innocence?

17 A. No, sir.

18 Q. Would you hold the State to the same burden
19 as before?

20 A. Yes, sir.

21 Q. And you could consider if he were found
22 guilty, could you still consider what penalty to
23 impose fairly?

24 A. Yes, sir.

25 Q. You could consider both life imprisonment and

1 death?

2 A. Yes, sir.

3 Q. Thank you.

4 THE COURT: All right. If you would
5 step down just for a moment we will be with you,
6 step out that door for just a second.

7 What says the State?

8 MR. KOLB: Qualified, Your Honor.

9 THE COURT: Defendant?

10 MR. BABB: We agree, sir.

11 THE COURT: She is qualified. Bring her
12 back in, please.

13 Ms. Jones, you have been qualified as
14 potential juror in this matter. Tomorrow at five
15 o'clock we will select the jury in this matter.
16 Come back tomorrow at five in this courtroom.
17 That is some information from the Clerk of Court
18 providing you for prospective jurors describes
19 what will happen during sequestration.

20 When you come you need to bring with you
21 personal clothing and personal effects to take
22 care of your needs for about a week. When we
23 leave from here we will go straight to Sumter.
24 Of course, if you aren't selected you will be able
25 to return home. It will take just a short while,

1 be here.

2 Until then, please do not discuss this
3 case, allow anyone to talk with you about it,
4 read anything about it or watch any news accounts.
5 See you tomorrow at five.

6 Let's move onto Mr. Roberts.

7 LARRY ROBERTS, having been first duly
8 sworn, testified as follows:

9 EXAM BY THE COURT:

10 Q. You are Larry Roberts?

11 A. Yes, sir.

12 Q. Good afternoon, sir. Mr. Roberts, I am
13 going to ask you some questions, remind you there
14 are no right or wrong answers. Do you know
15 anything about this case?

16 A. No, sir.

17 Q. You haven't heard anything about it or heard
18 anything about it; is that right?

19 A. No.

20 Q. You have heard no one talk about it?

21 A. No, sir.

22 Q. Do you have an opinion about this case?

23 A. No, sir.

24 Q. You had a chance to read that sheet that had
25 the three types of jurors?

1 A. Yes, sir.

2 Q. Which one best describes you?

3 A. The third.

4 Q. The third one. That means that you are a
5 person like that juror that first of all has to
6 hear all of the facts and circumstances before you
7 can make a determination of the appropriate
8 punishment when someone commits a murder; is that
9 right?

10 A. Yes.

11 Q. Secondly, in some circumstances you believe
12 that the death penalty would be the most
13 appropriate one and in some circumstances you
14 believe life imprisonment would be the most
15 appropriate punishment?

16 A. Yes, sir.

17 Q. And you would consider and be able to
18 consider both?

19 A. Yes, sir.

20 Q. Now, you understand in this case just like
21 any other criminal case in this country, Mr.
22 Stone who is charged with these offenses has and
23 enjoys the presumption of innocence, do you
24 understand that?

25 A. Yes, sir.

1 Q. And that means that he is presumed innocent
2 until the State proves his guilt beyond a
3 reasonable doubt. Do you have any problem with
4 that principle of law?

5 A. No, sir.

6 Q. You understand as a part of that it says the
7 person charged with criminal offense, Mr. Stone
8 included, is never required to prove anything,
9 and certainly not required to prove their
10 innocence, do you understand that?

11 A. Yes, sir.

12 Q. Would you expect if you were a juror Mr.
13 Stone to prove anything to you?

14 A. No, sir.

15 Q. You would look to the State to prove their
16 case, right?

17 A. Right.

18 Q. If Mr. Stone -- in fact Mr. Stone should
19 choose not to testify for whatever reason, he
20 would be entitled to an instruction and I would
21 instruct the jury that you could not use that
22 against him at all, would you have any problem
23 following that instruction?

24 A. No, sir.

25 Q. Again, the burden is on the State to prove

1 its case, do you understand?

2 A. Yes, sir.

3 Q. Yesterday I explained to you that it is a two
4 part proceeding, the first part, the first phase
5 of this trial will deal with whether -- and you
6 will hear evidence as to whether or not Mr. Stone
7 is guilty of these offenses. The jury makes a
8 determination based on that evidence, at the
9 conclusion of that evidence I will give you
10 instruction on the law, the jury will retire and
11 decide whether or not the State has met its burden
12 of proof.

13 If you were on that jury and you were
14 convinced that the State had not met its burden of
15 proof, in other words, they had not convinced
16 you beyond a reasonable doubt that Mr. Stone did
17 these acts, would you have any problem or any
18 hesitancy finding him not guilty?

19 A. No, sir.

20 Q. Also if the State proved to you beyond a
21 reasonable doubt that he was guilty or he did
22 these acts, would you find him guilty?

23 A. Yes, sir.

24 Q. If the jury were to find Mr. Stone not guilty
25 of course that would end this matter. If on the

1 other hand the jury should find that the State had
2 met its burden of proof and found him guilty of
3 murder, you understand the second phase would be
4 over the issue of punishment?

5 A. Yes, sir.

6 Q. And it is during that portion that you would
7 hear additional evidence that would deal solely
8 with the issue of the punishment, you would hear,
9 it would be issues concerning aggravating
10 circumstances, mitigating circumstances and the
11 like. Would you have an open mind in both
12 phases?

13 A. Yes, sir.

14 Q. Would you wait until you have heard all of
15 the evidence in both phases before you made your
16 decision?

17 A. Yes, sir.

18 Q. And am I to understand that at the conclusion
19 of the second phase, if you got to the second
20 phase, that you would not have any decision or
21 not make any decision about the appropriate
22 punishment until you heard all the evidence and
23 received the law and been instructed by the Court
24 and then you will make your decision; is that
25 right?

1 A. Yes, sir.

2 Q. And if you were on the jury you would be able
3 to then leave the courtroom, go to your jury room
4 and consider between death penalty and life
5 imprisonment and decide which one you felt is the
6 most appropriate punishment based upon the facts
7 and circumstances; is that right?

8 A. Yes, sir.

9 Q. Do you know of anything in your background,
10 anything in experiences in your life, any strong
11 feelings or philosophies that you may have that in
12 a case like this where the charges of someone
13 killing someone would affect you in anyway or
14 affect your ability to be fair and impartial to
15 the State and fair and impartial with Mr. Stone?

16 A. No, sir.

17 Q. You could do it for both of them?

18 A. Yes, sir.

19 Q. If you are selected as a juror you are going
20 to be sequestered with the other jurors for the
21 trial, which means the State will provide you
22 lodging and housing and transportation until the
23 trial is completed. I know that would be an
24 inconvenience to you, but could you set aside
25 that inconvenience or set aside your feelings

1 about that and stay focused as a juror?

2 A. Yes, sir.

3 Q. It would not impair your ability to be a
4 juror and perform your duties?

5 A. No, sir.

6 THE COURT: Answer any questions the
7 State may have, please.

8 EXAM BY MR. KOLB:

9 Q. Mr. Roberts, if you were on a jury that
10 decided to impose the death sentence could you
11 sign your name to that verdict form?

12 A. Yes, sir.

13 Q. Could you come into the Court, not this
14 courtroom, but into a courtroom in the presence
15 of the defendant and others that were there and
16 announce that that was your verdict sentencing the
17 defendant to death?

18 A. Yes, sir.

19 MR. KOLB: Nothing further.

20 THE COURT: Questions from the defendant.

21 EXAM BY MR. LITTLEJOHN:

22 Q. On your questionnaire you indicated you had
23 previously served as a juror in criminal cases?

24 A. Not criminal.

25 Q. It is not criminal? Okay the question was

1 have you ever served as a juror in a criminal case
2 and you put down yes?

3 A. Well, it was drunk driving cases and I might
4 have misinterpreted it.

5 Q. Was it a Magistrate Court?

6 A. No it was right here.

7 Q. Over here in general sessions Court?

8 A. Yes.

9 Q. So one was charged with driving under the
10 influence by the State that would be a criminal
11 matter so your answer is accurate?

12 A. Right.

13 Q. It also says that you served on civil cases
14 or was that the same case?

15 A. It was the same thing.

16 Q. Okay I understand. Let me ask you this.
17 Yesterday when the judge was qualifying the entire
18 panel I believe you made the statement that you
19 wanted to serve on the jury?

20 A. Well, the reason I stood up was I thought it
21 was my obligation to serve. If you have served
22 and your three years ain't came up I felt like I
23 needed to serve.

24 Q. You wanted to serve because you felt like it
25 was your duty?

1 A. Yeah.

2 Q. Let me ask you one other thing, Mr. Roberts,
3 about your questionnaire. You indicated in there
4 in response to the question whether any member of
5 your family had ever worked for any law
6 enforcement agency you put yes in Johnsonville.
7 Would you tell us who that is?

8 A. Johnsonville.

9 Q. Johnsonville, right, that is in Florence
10 County, right?

11 A. Right.

12 Q. Who served in law enforcement there?

13 A. My brother-in-law.

14 Q. In what capacity?

15 A. Chief of Police.

16 Q. Is he still Chief of Police there?

17 A. No.

18 Q. How long ago was he chief?

19 A. It has been six years.

20 Q. Six years ago. Mr. Roberts, in this case
21 the State has accused Mr. Stone, the defendant,
22 of the murder of a law enforcement officer,
23 mainly a deputy sheriff. Would the fact that
24 your brother-in-law was in law enforcement, the
25 fact that that is the nature of the charge here,

2643

1 would that in anyway prevent you from being a fair
2 juror in this case as to the defendant's guilt or
3 innocence?

4 A. No, sir.

5 Q. Would that affect you in anyway if you got to
6 the second stage of this case in considering
7 either the death penalty or life imprisonment,
8 would you listen to all the facts and
9 circumstances and weigh both of those potential
10 penalties before deciding that?

11 A. Yes, sir.

12 MR. LITTLEJOHN: Thank you, sir.

13 THE COURT: All right thank you, Mr.
14 Roberts. If you will step out that door for just
15 a second we will be with you in just a moment.

16 What says the State?

17 MR. KOLB: Qualified.

18 THE COURT: What says the defendant?

19 MR. LITTLEJOHN: We agree.

20 THE COURT: He is qualified, bring him
21 back in, please.

22 Mr. Roberts, you have been qualified as
23 potential juror in this matter. Tomorrow at five
24 o'clock I am asking those who have been so
25 qualified to return to the courtroom, you just

1 come back like you did yesterday and have a seat
2 and we will select from that group the 12 jurors
3 and the alternates that will hear this case. You
4 since you may be selected you are going to need to
5 bring with you clothing and personal effects that
6 will take care of about, take care of you for
7 about a week because once we select the jury we
8 are going to go into Sumter and we will start the
9 trial on Thursday. So I look forward to seeing
10 you tomorrow at five o'clock.

11 This is a letter that talks about the
12 sequestration, give you some information that may
13 be helpful to you. Please until tomorrow until
14 we get back together don't talk with anyone about
15 it, don't allow anyone to talk with you about it,
16 talk about it in your presence, don't read
17 anything about it or watch the news about it.
18 See you tomorrow at five. Thank you.

19 THE COURT: All right now it is Mr.
20 Bratcher.

21 GENE BRATCHER, having been first duly
22 sworn, testified as follows:

23 EXAM BY THE COURT:

24 Q. Mr. Bratcher?

25 A. Yes, sir.

1 Q. Good afternoon, sir. I have some questions
2 that I need to ask you, when I am completed the
3 attorneys may need to ask you some questions, as
4 well, there are no right or wrong answers to any
5 of these questions, sir. Do you have any prior
6 knowledge of this incident?

7 A. No, sir.

8 Q. So basically all you know about is what I
9 shared with you and has been alleged yesterday?

10 A. What you said yesterday.

11 Q. You haven't talked to anybody since then
12 about it, have you?

13 A. No, sir.

14 Q. All right. Do you have an opinion about
15 this case?

16 A. No, sir.

17 Q. Would have you to hear all of the evidence
18 first?

19 A. Yes, of course.

20 Q. You had a chance to review that sheet?

21 A. Yes, sir.

22 Q. Which of those three types of jurors, which
23 one best describes you?

24 A. I would have to say the third.

25 Q. The third. And that means that you are the

1 type of a juror or that type of person that in
2 some circumstances could vote to impose the death
3 penalty, some circumstances you could vote to
4 impose life imprisonment if someone was convicted
5 of murder, but you would have to hear all the
6 facts and circumstances before you could decide
7 which one would apply in certain situations?

8 A. Yes, sir.

9 Q. You understand that people who are charged
10 with criminal violations in this country have the
11 very fortunate -- legal right that is involved
12 and applies that is the presumption of innocence?

13 A. Yes, sir.

14 Q. It applies to everyone, you understand that?
15 It applies to Mr. Stone in this case as well
16 because he has been accused of certain criminal
17 offenses, do you understand?

18 A. Yes, sir.

19 Q. Do you have any problems with that principle
20 of law?

21 A. No, sir.

22 Q. You understand part of that principle of law
23 that requires the State to prove its case beyond a
24 reasonable doubt?

25 A. Yes, sir.

1 Q. And further states that the person charged
2 with criminal offense doesn't have to prove
3 anything. They don't have to offer any evidence,
4 they certainly don't have to prove their
5 innocence?

6 A. Yes, sir.

7 Q. Do you understand that?

8 A. Yes, sir.

9 Q. Do you have any problem with that?

10 A. No, sir.

11 Q. So if you were selected as a juror in this
12 case and you understand this case is a two part
13 case, first part deals with whether or not Mr.
14 Stone is guilty of these offenses and the second
15 phase would occur only if the jury returned a
16 verdict of guilty and that would be at the penalty
17 phase, do you understand that?

18 A. Yes, sir.

19 Q. So basically if you were selected as a juror
20 in the first phase would you look to the State to
21 prove its case?

22 A. Yes, sir.

23 Q. Would you expect Mr. Stone to prove anything
24 to you?

25 A. No, sir.

1 Q. And if the State in your view of the evidence
2 did not convince you beyond a reasonable doubt
3 that Mr. Stone did these offenses, would you have
4 any hesitation in finding him not guilty?

5 A. No, sir.

6 Q. Also if the State convinced you beyond a
7 reasonable doubt that he was the person who
8 committed these offenses would you also be able to
9 find him guilty?

10 A. Yes, sir.

11 Q. Now, if I understand you correctly, you
12 would not make any decision concerning the first
13 phase until you have heard all of the evidence?

14 A. That's correct.

15 Q. And received the law from the Court; is that
16 correct?

17 A. That's correct.

18 Q. Would you also have an open mind in the
19 second phase?

20 A. Yes, sir.

21 Q. That would occur only in the course if the
22 jury found him guilty of murder, do you
23 understand that?

24 A. Yes, sir.

25 Q. So it is in the second phase when you would

2654

1 hear evidence that would deal with the issue of
2 punishment, you would hear evidence, aggravating
3 circumstances, mitigating circumstances and the
4 like and I would explain all of that to you, do
5 you understand?

6 A. Yes, sir.

7 Q. You would have an open mind to that second
8 phase?

9 A. Yes, sir.

10 Q. Would you make any decisions as to the
11 appropriate punishment before you heard all of the
12 evidence and received the law?

13 A. No, sir, I wouldn't.

14 Q. You would not. After hearing all of the
15 evidence and after receiving the law, the jury
16 will be requested and instructed to go and
17 deliberate and make a decision as to the
18 appropriate punishment choosing between the death
19 penalty and life in prison, do you understand?

20 A. Yes, sir.

21 Q. It is my understanding that you could
22 consider both punishments; is that right?

23 A. Yes, sir.

24 Q. And that you would then be able to decide
25 which one that you felt was most appropriate based

1 upon the facts and circumstances?

2 A. Yes, sir, I could.

3 Q. Do you know of anything in your background,
4 anything about your life experiences, any strong
5 feelings or personal philosophies that you would
6 have that would in anyway in a case like this,
7 involving these issues, that would in anyway
8 impair or affect your ability to be fair and
9 impartial to the State and fair and impartial with
10 Mr. Stone?

11 A. No, sir, I don't.

12 Q. This jury is going to be sequestered during
13 the trial, it means of course the State will be
14 providing you with lodging, food, transportation
15 until the trial is over. I know that would be an
16 inconvenience and somewhat of an imposition, but
17 could you set aside that inconvenience or those
18 feelings and stay focused as a juror in this
19 matter?

20 A. Yes, sir.

21 Q. And perform your duty, would not interfere
22 with your performance of your duties as a juror?

23 A. No, sir, it would not.

24 THE COURT: Please answer any questions
25 the State may have.

1 EXAM BY MR. KOLB:

2 Q. Mr. Bratcher, you indicated that your
3 brother was killed by his wife, could you tell us
4 where that occurred?

5 A. That was in his home city of North Carolina,
6 I have forgotten the actual city, I guess, this
7 was back in '85.

8 Q. What was the ultimate result in that case?

9 A. She pled guilty to second degree murder.

10 Q. Did law enforcement treat your family right
11 in that case?

12 A. Yes, sir.

13 Q. And you indicated that you were the type of
14 juror that would have an open mind and would
15 listen to all of the facts and circumstances in a
16 case and would listen to the law and then decide
17 the appropriate punishment, whether it be life in
18 prison or the death penalty?

19 A. Yes, sir.

20 Q. If you decided on the death penalty, but it
21 was required that all members of the jury actually
22 individually sign their name on the verdict,
23 would that create any problem with you?

24 A. Not a bit.

25 Q. If it required all of you to come into the

1 jury room and acknowledge and stand up that that
2 was your verdict, would that cause you a problem?

3 A. No, sir.

4 MR. KOLB: Nothing further.

5 THE COURT: Mr. Babb.

6 EXAM BY MR. BABB:

7 Q. Good afternoon, Mr. Bratcher, I need to ask
8 you a few more questions about your brother, not
9 trying to be nosey, I know it is probably hard.
10 As an attorney I have a responsibility to do that.
11 You say this happened in 1985?

12 A. Eighty-five.

13 Q. Were you a witness?

14 A. No, sir. I didn't even go to the trial.
15 She pled guilty from the start and subject to
16 sentencing and my work really would not allow me
17 to take off so I didn't attend the trial.

18 Q. The fact that this happened to you, she was
19 charged and then she pled guilty, do you
20 understand and appreciate the people to be charged
21 and not be guilty?

22 A. Yes, sir.

23 Q. Would this tragedy in your life impair your
24 ability to be fair to Mr. Stone?

25 A. No, sir, it wouldn't.

2650

1 Q. You are sure of that?

2 A. Absolutely.

3 Q. Thank you for that. Do you have any
4 friends, personal acquaintances that are law
5 enforcement officers?

6 A. None that I know of.

7 Q. You mentioned that you felt the law
8 enforcement had treated your family very fairly in
9 the tragedy that occurred to y'all?

10 A. Like I said I did not go to North Carolina.
11 Everything I heard was my father and my family,
12 they were treated rather well.

13 Q. Let me explain why I am asking. In this
14 particular case the charge that has been lodged
15 against Mr. Stone is a murder charge. It charges
16 he murdered a law enforcement officer. Does that
17 affect any of the answers that you have given the
18 judge before?

19 A. No, sir.

20 Q. The fact that the victim, the alleged victim
21 in this case is uniform deputy?

22 A. No, sir, it does not. I didn't know until
23 you just mentioned that he was an officer. I
24 don't know anything about this case. I did not
25 know it was an officer.

1 Q. You told the judge that you would require
2 following his instructions you would require the
3 State to prove to you beyond a reasonable doubt
4 that someone has (Can't understand tape)?

5 A. Yes, sir.

6 Q. Regardless of the charge?

7 A. Yes, sir.

8 Q. And that if they were convicted of murder
9 then you could fairly consider both of the
10 penalties that are available, depending upon the
11 circumstances?

12 A. Yes, sir.

13 Q. To be fair in favor of the death penalty or
14 fair in favor of life sentence?

15 A. Yes, sir, I could.

16 MR. BABB: I thank you, sir.

17 THE COURT: Thank you very much if you
18 would step down go for just a second we will be
19 right back with you.

20 What says the State?

21 MR. KOLB: Qualified.

22 THE COURT: Defense?

23 MR. BABB: He is, sir.

24 THE COURT: He is qualified, ask him to
25 step back in, please.

1. Mr. Bratcher, you have been qualified as
2 potential juror, that means tomorrow at five
3 o'clock you need to be here, you are part of the
4 pool, and from that pool we will select the 12
5 jurors and alternates who will decide this case.
6 Since we don't know who is going to be selected
7 asking all of the potential jurors to bring with
8 them enough clothing and personal effects to take
9 care of a week's need because once we select we
10 will leave from here and go to Sumter, start the
11 trial on Thursday in Sumter.

12 That is some information that has been
13 provided by the clerk in Sumter that may be
14 helpful in preparing for what you may need and
15 gives you some information about being
16 sequestered.

17 Please until tomorrow do not discuss this
18 case with anyone, do not allow anyone to talk
19 with you about this case, do not watch any news
20 programs or read anything, I will see you
21 tomorrow at five.

22 We will take a break, talk with the
23 lawyers just briefly. I have to go put together
24 my packets for the last two so we will have a
25 break, have about fifteen minutes anyway before

2661

1 we start. We will be at ease at this point.

2 Let me chat with y'all just a second.

3 (Whereupon, a short recess was held.)

4 THE COURT: State ready?

5 MR. KOLB: Yes, sir, Your Honor.

6 THE COURT: Defense ready?

7 MR. LITTLEJOHN: Yes, Your Honor.

8 THE COURT: Let the record reflect Mr.
9 Stone is present. Okay. Bring in Mr. Cribb,
10 please.

11 ALTON CRIBB, JR., having been first
12 duly sworn, testified as follows:

13 EXAM BY THE COURT:

14 Q. Good afternoon, Mr. Cribb, how are you?

15 A. Fine.

16 Q. I'm sorry we held a little bit, forgive me
17 for that, I had to take care of some items I
18 appreciate your patience. I have some questions
19 that I need to ask you, sir, when I am finished
20 the lawyers may have some questions for you. I
21 want to remind you as I stated to you yesterday,
22 there aren't any right or wrong answers to any of
23 these questions. The only thing we ask you to do
24 is to be truthful in responding to the questions.
25 Will do you that?

1 A. Yes, sir.

2 Q. Also you may think, judge, why in the world
3 why are you talking so loud, I can hear you and I
4 understand that and you will forgive me but the
5 microphone went out yesterday, so we are having
6 to keep our voices up so everyone out here can
7 hear us. So I will ask you to do the same thing
8 even though I am sitting right next to you.

9 A. All right, sir.

10 Q. Okay. Thank you very much. Mr. Cribb, do
11 you have any prior knowledge of this alleged
12 incident?

13 A. No, sir.

14 Q. The only thing you know about it is what I
15 shared with you yesterday has been alleged?

16 A. Yes, sir.

17 Q. Do you have any opinions about it?

18 A. No, sir.

19 Q. Would you have to hear the facts before you
20 reached, had any opinions or reached any
21 conclusions?

22 A. Yes, sir.

23 Q. Is that typically, I mean, is that typical
24 of you?

25 A. Yes, sir.

1 Q. You would have to hear all of the facts
2 before you made a decision?

3 A. Yes, sir.

4 Q. Have you had a chance to review that list
5 that has the three types of jurors?

6 A. Yes, sir.

7 Q. Which one best describes you?

8 A. Number 3.

9 Q. Number 3?

10 A. Yes, sir.

11 Q. That means if I understand correctly that
12 there are circumstances where you would feel like
13 the death penalty would be appropriate punishment,
14 there are circumstances where you would feel that
15 life imprisonment would be the appropriate
16 punishment in a murder situation, but as to what
17 would apply in any given case you would have to
18 hear the facts of that specific case?

19 A. Yes, sir.

20 Q. And you would not make any decision on the
21 appropriate punishment until you heard all of the
22 facts?

23 A. That's right.

24 Q. You understand I told you yesterday that
25 criminal cases like this anyone charged with

2664

1 criminal offense in this country has the
2 presumption of innocence?

3 A. Yes, sir..

4 Q. You got any problem with that?

5 A. No, sir.

6 Q. You understand that that means that the State
7 has to prove its case?

8 A. Yes, sir.

9 Q. Beyond a reasonable doubt?

10 A. Yes, sir.

11 Q. Also means that a person charged with
12 criminal offense is not required to prove anything
13 and they certainly not required to prove their
14 innocence, do you understand that?

15 A. Yes, sir.

16 Q. Also I would tell you in that regard that the
17 person charged with criminal offense they aren't
18 even required to testify and if they chose not to
19 testify for whatever reason the jury could not use
20 that against and I would instruct the jury to that
21 effect, would you have any problems following that
22 instruction?

23 A. No, sir.

24 Q. So if you were selected as a juror in this
25 case, would you expect Mr. Stone, who is the

1 individual charged with the criminal violations of
2 this matter, would you expect him to prove
3 anything to you?

4 A. Yes, sir.

5 Q. What would you expect him to prove?

6 A. What he was charged with that he didn't do
7 it.

8 Q. Now, I understand that and let me explain
9 something to you. I will charge you that the
10 only person that has or the only entity that has
11 to prove anything in this proceeding, the only
12 side that has to prove anything at all is the
13 State. Mr. Stone, the defendant in this matter,
14 I would charge you that he has the presumption of
15 innocence and that alone is sufficient to require
16 the State to prove its case. And it is removed
17 only when and if the State introduces enough
18 evidence to satisfy a jury beyond a reasonable
19 doubt, do you understand that?

20 A. Yes, sir.

21 Q. Would you have any problem following that
22 instruction?

23 A. No, sir.

24 Q. I would also charge you that Mr. Stone is not
25 required to prove his innocence, do you

2666

1 understand that?

2 A. Yes, sir.

3 Q. That is what I will charge you the law says.

4 A. Yes, sir.

5 Q. Could you follow that law?

6 A. Yes, sir.

7 Q. Now then given that instruction, would you
8 still expect Mr. Stone to prove his innocence?

9 A. I would have to say so.

10 Q. You still would, even though the Court
11 instructed you that you could not expect him to do
12 that?

13 A. Yes, sir.

14 Q. You would still expect him to?

15 A. Yes, sir.

16 Q. You understand that you are going to hear
17 evidence and the Court will instruct you that you
18 are to decide this case solely on the evidence,
19 do you understand that?

20 A. Yes, sir.

21 Q. What I am saying to you is Mr. Stone is not
22 required to do anything, he is not required to
23 put in any evidence, he is not required to
24 respond, he is not required to say anything.

25 You would have to decide the case solely on the

1 evidence and therefore would not, you would have
2 to state that you would not be influenced if Mr.
3 Stone offered no evidence and didn't say a word,
4 do you understand that?

5 A. Yes, sir.

6 Q. But I understand you to say that you would be
7 influenced if he didn't tell you why he is not,
8 why he is innocent or he would have to tell you
9 that he is innocent or show you that he is
10 innocent?

11 A. He would have to show it.

12 Q. Okay. And there is nothing that I could
13 instruct you to change that, that feeling that
14 you have? Remember there are no right or wrong
15 answers.

16 A. I know. I have never done this before.

17 Q. I understand. Could you follow my
18 instruction and not be influenced by your
19 feelings?

20 A. I could follow your instructions if that is
21 the way I have to do it.

22 Q. Well, you would have to, you would take an
23 oath and your oath is twofold. It says number
24 one you will decide this case solely on the
25 evidence, you have indicated to me you would do

1 that and would do that.

2 A. Yes, sir.

3 Q. Number two, the oath says that you will take
4 the law as I give it to you and apply that law to
5 the facts, even if you disagree with the law, do
6 you understand that?

7 A. Yes.

8 Q. Could you then follow my instruction?

9 A. Yes, sir.

10 Q. Would you in anyway, if this case including
11 in the first phase say where we deal with the
12 issue of whether or not Mr. Stone committed these
13 offenses, the State has offered its evidence that
14 he did, Mr. Stone didn't offer any evidence, Mr.
15 Stone didn't testify, I instructed the jury to
16 retire and if your view of the evidence you
17 weren't convinced that he did this, but Mr. Stone
18 hadn't offered any evidence, would you hold that
19 against him? Would you consider that in reaching
20 your decision or could you set that aside and
21 follow the Court's instruction and that is that
22 you must decide this case on the evidence or the
23 lack. If you weren't convinced it would be your
24 duty to return a verdict of not guilty, could you
25 follow that instruction?

1 A. Yes, sir.

2 Q. Likewise I would instruct you if you were
3 convinced beyond a reasonable doubt then of course
4 it would be your duty to return a verdict of
5 guilty, do you understand that?

6 A. Yes, sir.

7 Q. So you could follow the Court's instruction
8 in that regard?

9 A. Yes, sir.

10 Q. And even though you had some personal
11 feelings that someone charged with a crime should
12 prove their innocence you could set that aside and
13 not be influenced by that?

14 A. Yes, sir.

15 Q. You could do that?

16 A. Yes, sir.

17 Q. Okay. If the jury finds and determines
18 after considering all of the evidence that Mr.
19 Stone is not guilty, in other words the State has
20 not met its burden of proof of course that would
21 end this matter. If on the other hand they
22 concluded that he was guilty then you would move
23 into the second stage and that is where you would
24 hear testimony and evidence about the possible
25 punishment, do you understand?

1 A. Yes, sir.

2 Q. Would you keep an open mind from the
3 beginning of that until you have heard all of the
4 evidence and the law?

5 A. Yes, sir.

6 Q. You would not make a decision on what
7 punishment may be appropriate until you had been
8 instructed to make that decision by the court?

9 A. No, sir.

10 Q. And that would not happen until all of the
11 evidence had been heard and I instructed you to go
12 make that decision?

13 A. Yes, sir.

14 Q. At that time and only then would you make
15 that decision?

16 A. Yes, sir.

17 Q. And would you be able to consider both the
18 death penalty and life in prison?

19 A. Yes, sir.

20 Q. But it would depend upon the circumstances as
21 to which one you would choose?

22 A. Yes, sir.

23 Q. If you are sequestered -- you will be
24 sequestered if you are picked on this jury, would
25 that affect your ability to be a conscientious

1 juror?

2 A. No, sir.

3 Q. Would anything impair you in considering this
4 case, would affect you as to, I understand it
5 would be inconvenient, could you set that aside?

6 A. Yes, sir.

7 THE COURT: Answer any questions the
8 State may have.

9 EXAM BY MR. KOLB:

10 Q. Mr. Cribb, if you were serving in a death
11 penalty case and you and the other members of the
12 jury concluded that based upon the law His Honor
13 charged you and the facts and circumstances of the
14 case that the death penalty was the appropriate
15 sentence, would you have any problem signing your
16 name to that verdict?

17 A. No, sir.

18 Q. Would you have any problem coming into the
19 Court and announcing your verdict in public in
20 front of the defendant and other members of the
21 Court?

22 A. No, sir.

23 Q. Now, I think maybe you misunderstood to
24 start with, you accept now that the judge is the
25 judge of the law and whatever he tells you the law

1 is you would accept that?

2 A. Yes, sir.

3 Q. So when the judge tells you something is the
4 law you will accept that and not be influenced by
5 opinions or things that you might have thought on
6 your own before you came here, is that what the
7 law was?

8 A. Yes, sir.

9 MR. KOLB: Thank you, sir.

10 THE COURT: Mr. Littlejohn.

11 EXAM BY MR. LITTLEJOHN:

12 Q. Good afternoon, Mr. Cribb. Mr. Cribb, let
13 me make sure I am clear on something in your
14 discussion with Judge Dennis, he indicated to you
15 that one of the instructions he would give the
16 jury in this case is that the defense doesn't have
17 to prove anything, you understood him to say
18 that, did you not?

19 A. Yes.

20 Q. And likewise he said the defendant would not
21 have to testify, put up any evidence or do
22 anything, the entire burden is on the State, do
23 you understand that to be the law?

24 A. Yes, sir.

25 Q. Now, if His Honor instructed you that and

1 Mr. Stone in fact did not testify, put up any
2 evidence, would you be able to follow his
3 instruction or would you have some sort of nagging
4 doubt about the failure of the defendant to tell
5 you something or tell you he didn't do it?

6 A. I don't think so.

7 Q. You don't think?

8 A. If I am instructed that that is what I would
9 have to do, that is what I would have to do.

10 Q. You think you can follow that instruction?

11 A. Yes, sir.

12 Q. And you think you could set aside whether or
13 not the defendant put up anything and judge the
14 State's case solely on the State's case and
15 whether they prove it, could you do that?

16 A. Yes, sir.

17 Q. Mr. Cribb, do you have any friends,
18 acquaintances or relatives that are police
19 officers?

20 A. I know a few of the city policemen and a few
21 of the County deputies.

22 Q. Just a few of the city police officers here
23 in Georgetown?

24 A. Yes, sir.

25 Q. Do you know them well?

1 A. Just when I see them. I deliver bread at
2 Georgetown Detention Center, I see some of the
3 deputies at various places. I see some of the
4 city police officers.

5 Q. I understand. In this case the State has
6 accused Mr. Stone of the murder of a deputy
7 sheriff, that is what he is charged with. Would
8 the fact that you know police officers and deal
9 with them on a regular basis coupled with that
10 kind of charge affect your ability to be a fair
11 juror in this case?

12 A. I did not know that that is what that was.

13 Q. Yes, sir.

14 A. I would have to say it would because I
15 respect the law officer and when I do see one on
16 TV that has lost his life, you know, I feel for
17 him.

18 Q. Right.

19 A. It probably would.

20 Q. You think that would affect your ability to
21 be fair in this case the fact that he is charged
22 with the killing of a deputy sheriff?

23 A. In my honest opinion I would say so.

24 Q. Okay. Well, I appreciate your honesty.
25 Mr. Cribb, do you think that would carry over if

1 you were on the jury and the jury were to find him
2 guilty, do you think that would influence your
3 ability to consider the two possible punishments,
4 the death penalty or life in prison?

5 A. With assault if it was proved I could go
6 either way.

7 Q. Okay. But do I understand you -- please
8 explain that to me.

9 A. I see these law officers around and I know
10 how hectic it is out there and it would be, it
11 would be hard for me not to go one way on that.

12 Q. And which way would it be hard for you to go?

13 A. It would be hard for me to say life.

14 Q. Would it be hard for you to say not guilty?

15 A. Unless it was proven that he did not do it.

16 Q. Unless it was proven by the defense that he
17 did not do it?

18 A. Unless the State did not prove, give any
19 reasonable doubt that he did not do it. If they
20 could not show me enough evidence.

21 Q. Okay. But then we get back to the
22 proposition would you expect Mr. Stone because he
23 is accused of the murder of a police officer to
24 prove that he did not do it?

25 A. No.

1 MR. LITTLEJOHN: That is all I have at
2 this time.

3 EXAM BY THE COURT:

4 Q. Sir, let me ask you a couple of questions,
5 Mr. Cribb. You answered Mr. Littlejohn's
6 question that the fact that Mr. Stone is accused
7 of killing a police officer may have some
8 influence in how you look at and view this
9 evidence?

10 A. Honestly it would, sir.

11 Q. So my understanding you to say that you
12 believe that that fact alone would impair your
13 ability to be impartial in this matter?

14 A. I would say so. My reason is I get up early
15 every morning I'm on the road early and I see some
16 of the stuff that a police officer has to do and I
17 wouldn't want to do it.

18 Q. So basically what you are telling me is you
19 would not, in fairness to all, you would not be
20 able to set aside your personal experiences in
21 life and not have that influence or affect your
22 ability to be fair and impartial in this case?

23 A. I honestly can say so.

24 THE COURT: All right, sir. Any
25 additional questions from the State?

1 MR. KOLB: No, sir.

2 THE COURT: Any additional questions from
3 the defendant?

4 MR. LITTLEJOHN: No, sir.

5 THE COURT: If you will step out for just
6 a moment we will be right with you.

7 The State's position?

8 MR. KOLB: Your Honor, I believe he is
9 qualified. I can understand the latter responses
10 were damaging to that, but I think the fact that
11 he said if it was proved he murdered a law
12 enforcement officer, it would be hard to say life
13 but I could go either way. You know I really
14 think he got the impression that he thought he was
15 saying something wrong but there is nothing wrong
16 with that. The Legislature has said that the
17 murder of a police officer is an aggravating
18 circumstance that justifies the death. My only
19 concern is that somehow I know it wasn't
20 intentional by the Court or otherwise, but I
21 think he got the impression that he had said
22 something wrong, had to be apologetic for it, that
23 is why he gave the final responses he gave. I
24 really think he is qualified juror.

25 THE COURT: Well, I thank you that you

1 feel that he was being apologetic I didn't sense
2 that at all. I think he was trying to be candid
3 and honest in his responses. I think with
4 respect to that before I respond let me hear from
5 defense what your position.

6 MR. LITTLEJOHN: Your Honor, aside from
7 qualifications I think the juror honestly said the
8 fact that a deputy sheriff was a victim in this
9 case would cloud his judgment, would affect his
10 ability to impartially consider the evidence in
11 this case and be fair. And I think that is the
12 way the gentleman feels and I appreciate his
13 convictions in that regard, but I think he should
14 be excused for cause.

15 THE COURT: I am not concerned about his
16 position with respect to the police officer, that
17 really didn't give me any concern at all because I
18 agree with you, that is precisely he said if I
19 found him guilty of that, yeah, that would be
20 very serious. He said I would consider it and
21 that is exactly, I think he is fine within the
22 law at that point. But what truly concerns me
23 about it and it really comes from the witness'
24 demeanor, his response, his wrestling with
25 number one following the instruction that the

1 defendant doesn't have to prove anything. I
2 think he did finally agree that he could. But
3 when you factor his reluctance to come to that
4 point with the fact that he says if a police
5 officer is involved based on what my experiences
6 are in life I could not set that aside it would
7 impair my ability and affect my ability to be
8 totally impartial in this case. So it really
9 comes down to a situation just like I would with
10 any juror that stood up and said I don't think I
11 could be totally impartial and that is the basis
12 for which I will exclude him, not on different
13 views of capital punishment I mean the death
14 penalty or life imprisonment. Ask him to come
15 back in, please.

16 Thank you, Mr. Cribb, I appreciate your
17 candor here today. I thank you for the manner in
18 which you have approached your responsibilities as
19 a juror in this case and potential juror in this
20 matter, I will excuse you from further
21 participation in this case. I would ask you,
22 sir, we will select the jury tomorrow at five
23 o'clock. Until then I would ask that you simply
24 not discuss this case with anyone, once we have
25 selected the jury you are free to talk about it,

1 if you wish. Good luck to you, sir, thank you,
2 sir.

3 Let's bring in Mr. Collins.

4 PATRICK COLLINS, having been first
5 duly sworn, testified as follows:

6 EXAM BY THE COURT:

7 Q. Good afternoon, Mr. Collins, how are you?

8 A. Nervous.

9 Q. I can understand. I appreciate that.

10 Don't be. Relax. I know that is easier said
11 than done. The good thing about this one is
12 there are really no right or wrong answers.

13 Nobody is going to quarrel with any of your
14 answers because all we want you to do is be
15 truthful. Even if everybody in this room
16 disagreed with you it doesn't matter, you are
17 still right, it is just how you feel so just
18 relax and don't worry about anything.

19 I want you to do one thing for me,
20 please. In fact they were here, somebody is
21 here I didn't want people to wait for us to fix
22 it, the PA system went out yesterday so we don't
23 have any microphones, so I may be talking loud to
24 you, don't think I am angry or anything.

25 A. No, sir.

2681

1 Q. So please, please can you hear me out there?

2 A. Not what you are saying but that you are
3 talking loud.

4 Q. Please keep them back in the jury room, bring
5 them in one at a time out of abundance of caution.
6 My son said dad I know you are mad when you are
7 talking loud, sometimes that is not the case, it
8 is just my voice is just that way so don't think
9 that, okay.

10 A. Yes, sir.

11 Q. All right. But I would ask that you respond
12 just as loudly as I am talking to you so that
13 everyone out here can hear you, okay?

14 A. Yes, sir.

15 Q. Thank you. There we go. Do you have any
16 prior knowledge of this?

17 A. Absolutely not.

18 Q. The only thing you know about it is basically
19 what I shared with you yesterday?

20 A. Yes, sir.

21 Q. Have you formed any opinions?

22 A. Not one.

23 Q. Would you have to hear all of the evidence
24 before you reached a conclusion?

25 A. Definitely.

1 Q. You are that type of person then?

2 A. Yes, sir.

3 Q. You would not make any judgments until you
4 have heard all of the evidence?

5 A. No judgment could be made until all the
6 evidence is out there sifted through.

7 Q. Thank you. Have you had a chance to look at
8 the three types of jurors?

9 A. Yes, sir.

10 Q. Which one best describes you?

11 A. Number 3.

12 Q. Number 3 which would be the person who says I
13 can't tell you, sometimes it would be the death
14 penalty, sometimes it would be life imprisonment,
15 but it would depend upon the circumstances, all
16 the facts and circumstances and that would be
17 before I could make a decision; is that true?

18 A. Yes, sir.

19 Q. But you could consider both punishments?

20 A. Yes, sir.

21 Q. And in certain situations you could consider
22 imposing the death penalty and some situations it
23 would be life in prison?

24 A. Yes, sir.

25 Q. You understand that there are certain

1 principles of law that apply in this case, apply
2 in any case in criminal case in this country one
3 of those is the presumption of innocence?

4 A. Yes, sir.

5 Q. That people charged with criminal offenses is
6 presumed to be innocent until the State proves
7 otherwise and proves guilt beyond a reasonable
8 doubt.

9 A. Yes, sir.

10 Q. Do you understand?

11 A. Yes, sir.

12 Q. Do you have any problem with that?

13 A. No, sir.

14 Q. You understand as a part of that that means
15 that not only is the State required to prove guilt
16 through and beyond a reasonable doubt, but a
17 person charged with a criminal offense, a
18 defendant, doesn't have to prove anything, that
19 is held in the same way, they don't have to offer
20 any evidence because the burden is on the State to
21 prove his case, do you understand?

22 A. Yes, sir.

23 Q. You further understand that you could not
24 hold that against a defendant, do you understand?

25 A. Yes, sir.

2684

1 Q. Likewise a defendant has an absolute right to
2 not testify if he chose to.

3 A. Yes, sir.

4 Q. Could not consider that?

5 A. No, sir.

6 Q. If you were selected as a juror in this case,
7 will you expect Mr. Stone who is the person who is
8 accused of committing these criminal acts, would
9 you expect him to prove anything to you?

10 A. Not him, sir, the State would have to prove
11 the case.

12 Q. All right. So you would look to the State
13 to prove its case?

14 A. Yes, sir.

15 Q. You understand that as I told you yesterday
16 this is a trial that has basically two trials
17 within a trial. The first part of the first
18 trial you are going to hear evidence that talks
19 about and deals with the issue of whether or not
20 the defendant committed these offenses, do you
21 understand that?

22 A. Yes, sir.

23 Q. After you hear -- after the State presents
24 its case you hear all the evidence you will make a
25 decision and I will instruct you on the law and

1 you will go back and you will decide whether or
2 not you believe the State has met its burden of
3 proof. If you were on this jury and you view the
4 evidence and you were not convinced that the
5 defendant committed these offenses, would you
6 have any hesitancy finding the defendant not
7 guilty?

8 A. No, sir.

9 Q. Okay. If on the other hand you viewed the
10 evidence, applied the law and you were convinced
11 beyond a reasonable doubt that he did commit these
12 offenses, would you have any hesitancy in finding
13 him guilty?

14 A. No, sir.

15 Q. If the jury were to conclude that the State
16 had failed to meet its burden and found him not
17 guilty of course that would end this trial, you
18 understand?

19 A. Yes, sir.

20 Q. But, on the other hand if the jury concluded
21 that the State had met its burden and proved to
22 the jury beyond a reasonable doubt that he was
23 guilty and the jury returned a verdict of guilty
24 of murder then we would go into the second portion
25 or the second trial, it would deal with the issue

1 of appropriate punishment, do you understand
2 that?

3 A. Yes, sir.

4 Q. In that second trial you will hear additional
5 evidence, evidence that you did not hear in the
6 first one because the second trial is devoted
7 solely to the issue of punishment, do you
8 understand that?

9 A. Yes, sir.

10 Q. Of course there is no reason for that until
11 the jury determines whether or not a defendant is
12 guilty, do you understand that?

13 A. Yes, sir.

14 Q. Am I to understand from your statement
15 earlier that you are the type of person that has
16 to hear all of the evidence in a situation before
17 you make a decision? You would have an open mind
18 at the start of all phases?

19 A. All throughout.

20 Q. And would you not make your decisions until
21 you have heard all of the evidence and received
22 the law?

23 A. Couldn't do that.

24 Q. When you have heard all of the evidence in
25 the penalty phase, the second phase and I had

1 instructed you on the law the jury will be asked
2 to retire to their jury room and then decide
3 between life in prison or the death penalty, do
4 you understand?

5 A. Yes, sir.

6 Q. At that time would you be able to consider
7 both punishments?

8 A. Yes, sir.

9 Q. And could you make a decision based on the
10 facts and circumstances of the law as to which one
11 you felt was most appropriate?

12 A. I would have to.

13 Q. But can you do that?

14 A. Yes, sir.

15 Q. Do you know of anything that has occurred in
16 your life, strong feelings that you may have,
17 philosophies that you have, convictions that
18 would in anyway affect your ability in a case like
19 this when someone is accused of committing the
20 crime of murder that would affect your ability to
21 be fair and impartial to the State?

22 A. No, sir. This is too bold for anything in
23 my background to get in the way of way things
24 ought to be done or should be done by prescribed
25 by law.

1 Q. Likewise, would that be your same answer as
2 it pertains to Mr. Stone?

3 A. Yes, sir.

4 Q. Nothing in your background that would affect
5 you to be fair and impartial as it pertains to
6 him?

7 A. No, sir.

8 Q. You understand also that this jury is going
9 to be sequestered?

10 A. No, sir, I didn't understand that until
11 right this moment.

12 Q. All right. Now you do. That means you
13 will be the guest of the State for the duration of
14 this trial, they will provide you with lodging,
15 food and transportation. And I notice your sigh
16 and I understand that.

17 A. We saw something like this on TV recently.

18 Q. Well, let me assure you and allay any
19 concerns that you may have, I have been doing
20 this for just short of three years, the longest
21 trial I have ever had is nine days, that is the
22 longest.

23 A. We can do that.

24 Q. Well, I assure you you will not be trying
25 this case six months or a year from now. I

1 promise you that. In fact I have to be in
2 Beaufort to try a case, try some cases February
3 first. They will make an adjustment if need be,
4 we don't anticipate this case running that long.

5 Now, the inconvenience to you, could you
6 set that aside and not have that influence you or
7 affect your ability to be a fair and impartial
8 juror?

9 A. Yes, sir.

10 Q. Could you set it aside?

11 A. Yes, sir. The fact I am being sequestered
12 wouldn't affect.

13 Q. It wouldn't influence you in anyway?

14 A. No, sir. Make me miss my family a little
15 bit.

16 Q. I understand that, that's okay but nothing
17 wrong with that. But you could do that when you
18 are not in trial, when you are in trial you would
19 be focused on the evidence?

20 A. Yes, sir.

21 THE COURT: Please answer any questions
22 the State may have for you.

23 EXAM BY MR. HILLIARD:

24 Q. Mr. Collins, have you or any of your family
25 members or close friends ever been a victim of a

1 crime?

2 A. Yes, sir.

3 Q. What happened?

4 A. We were burglarized.

5 Q. When you say we, who is we?

6 A. My wife, my family.

7 Q. How long ago was that?

8 A. Couple of years.

9 Q. Was that here in Georgetown?

10 A. Yes, sir.

11 Q. What wound up happening in that case, was it
12 solved?

13 A. Yes, sir, it was.

14 Q. Was there a trial, did the person plead
15 guilty, what happened there?

16 A. Most of the people involved were juveniles,
17 one was not. I still receive checks from this
18 individual from time-to-time.

19 Q. Were you satisfied with the way law
20 enforcement handled this case?

21 A. Very well satisfied.

22 Q. You don't have any bad feelings toward law
23 enforcement?

24 A. No, sir.

25 Q. Have you or any close friends or family

1 members ever been charged with a crime?

2 A. I have had a DUI in my past.

3 Q. How long ago was that?

4 A. It has been five years.

5 Q. Was that here in Georgetown, also?

6 A. Yes, sir.

7 Q. And how do you feel that was handled by law
8 enforcement?

9 A. I feel like I got what I deserved.

10 Q. You indicated that you consider yourself a
11 type three juror?

12 A. Yes, sir.

13 Q. Do you understand that to mean that you would
14 listen to all the facts and circumstances and if
15 the defendant is found guilty you could consider
16 death penalty or life imprisonment as possible
17 punishment?

18 A. Yes, sir.

19 Q. Do you believe you could sign your name to a
20 document sentencing the defendant to a death
21 penalty?

22 A. I would have to if that was my decision after
23 hearing all the evidence.

24 Q. And you wouldn't have a problem writing your
25 name on that document?

1 A. No, sir.

2 Q. Do you think you could come into the Court
3 and stand in front of the defendant and whoever
4 else was present and announce that your verdict is
5 that he receive the death penalty?

6 A. Yes, sir.

7 MR. HILLIARD: Please answer any
8 questions the defense might have for you.

9 THE COURT: Mr. Babb.

10 EXAM BY MR. BABB:

11 Q. Good afternoon, Mr. Collins.

12 A. Good afternoon, sir.

13 Q. Could you in this case just as equally and
14 just as fairly consider the evidence and impose a
15 sentence of life imprisonment?

16 A. Absolutely.

17 Q. If that were based on the evidence?

18 A. Yes, sir.

19 Q. You have been very emphatic in your answers
20 and your sincerity shows through. When you were
21 answering the Judge's questions I presume you had
22 within your mind and your thoughts this burglary
23 occurred?

24 A. No, sir, I didn't think about that one time.

25 Q. What I am saying it had already occurred,

1 you knew, you were aware of that when you gave
2 those answers?

3 A. That's correct.

4 Q. That does not impair your ability to be fair
5 to both sides in this case?

6 A. No, sir.

7 Q. I believe you also mentioned that you were
8 very satisfied with the way law enforcement
9 handled that?

10 A. Very much so. They found my stuff.

11 Q. I would be satisfied if they found my stuff,
12 too. You and your wife are involved in the
13 medical field in one degree or the other?

14 A. Yes, sir.

15 Q. In that do you feel a sort of sense of
16 camaraderie with law enforcement in serving the
17 public and serving the people?

18 A. See, I have not worked since 92. I guess I
19 did. I worked with the neurology department at
20 the hospital, there were times when I would see
21 certain sheriffs in the emergency room as they
22 were maybe perhaps bringing a victim or something
23 like that, but I was basically too busy, you
24 know, to form any close bonds with anybody.

25 Q. Do you have friends that are members of law

2694

1 enforcement, family, relatives?

2 A. Martha Hunt comes to mind because she is one
3 that got my stuff.

4 Q. I think she would be my friend, too. Mr.
5 Collins, I am not asking those questions to be
6 nosey.

7 A. I understand.

8 Q. This case is a murder case. The defendant
9 has been charged, it is claimed that he murdered
10 a deputy sheriff. Given that knowledge, does
11 that impact the answers that you gave His Honor
12 earlier?

13 A. No, sir, to my mind, a crime is a crime,
14 it doesn't matter who it was perpetrated on
15 necessarily, you know.

16 Q. When you say a crime is a crime, we will be
17 here to determine whether a crime occurred.

18 A. Right.

19 Q. I understand. And I am just trying to make
20 sure, make sure the record is clear.

21 A. An alleged crime, as it were.

22 Q. You are saying that the charge to the alleged
23 victim in this case is a deputy sheriff, you
24 could put that aside and be just as fair as if it
25 were anyone else?

1 A. No, sir.

2 MR. BABB: Thank you, sir.

3 THE COURT: Any additional questions from
4 the State?

5 MR. HILLIARD: No, sir.

6 THE COURT: If you will step down just a
7 moment, I will be with you.

8 What says the State?

9 MR. HILLIARD: Qualified.

10 THE COURT: What says the defendant?

11 MR. BABB: We agree, sir.

12 THE COURT: I find him qualified. Ask
13 him to come back in, please.

14 Mr. Collins; you have been qualified as
15 potential juror in this case. Tomorrow at five
16 o'clock we will select the jury, the 12 and the
17 alternates. You are a member of that pool so at
18 this point we don't know whether or not you will
19 be selected. Once we have selected a jury we are
20 going to leave and go back to Sumter and start the
21 trial on Thursday morning. So I would need for
22 you to be here tomorrow at five o'clock. When
23 you come -- you will be coming right back just
24 come back like you did yesterday, you need to
25 bring with you clothing and personal effects that

1 will take care of about a week's worth.

2 I would ask you, sir, that you not talk
3 about this case with anyone, watch any news
4 accounts or read anything about it and certainly
5 don't allow anyone to talk about it or talk about
6 it in your presence. This is some information
7 from the Clerk of Court that is prepared to help
8 you understand about being sequestered. That is
9 Sumter clerk. See you tomorrow at five.

10 Now let's proceed with Mr. Phillips.

11 GEORGE PHILLIPS, having been first
12 duly sworn, testified as follows:

13 Q. You are Mr. George Phillips?

14 A. Yes, sir.

15 Q. I see you are from Monks Corner. You were
16 born in Monks Corner?

17 A. Yes.

18 Q. How long since you were born there?

19 A. (Can't understand tape).

20 Q. I didn't run you away, did I?

21 A. No.

22 Q. That is my home. You know yesterday I told
23 you that I was going to have some questions for
24 you and that maybe the lawyers may have some
25 questions for you, there are no right or wrong

2697

1 answers to any of these questions, okay. You
2 have a right to feel anyway shape of form because
3 it is just how you feel. In other words you are
4 entitled to it even if this whole room disagreed
5 with you, okay?

6 A. Okay.

7 Q. The only thing I will ask you to do, our
8 microphone went out yesterday so we are having to
9 talk a little louder than we normally would so
10 when I am talking to you I will be talking with
11 this tone, don't think I am angry or anything,
12 ask you to talk in the same tone so that everybody
13 can hear you you can respond to these questions,
14 okay?

15 A. Yes, sir.

16 Q. Do you know anything about this other than
17 what I shared with you yesterday, what has been
18 alleged?

19 A. I found out last night I just overheard about
20 this case (Can't understand tape).

21 Q. All right. Want to repeat that you
22 overheard last night that this fellow was what
23 relationship?

24 A. No, my first cousin's husband.

25 Q. First cousin's husband cousin. Did they

1 talk about it in your presence?

2 A. Yeah, (Can't understand tape).

3 Q. They started talking about it?

4 A. Yes, sir.

5 Q. Did you tell them not to talk about it?

6 A. Yes, sir.

7 Q. Did they follow your instruction?

8 A. Yes, sir.

9 Q. You think based on what you just found out
10 last night that that would influence you at all?

11 A. No, sir.

12 Q. It would not?

13 A. No, sir.

14 Q. Would you be able to keep an open mind?

15 A. Yes, sir.

16 Q. Would you decide this case solely on the
17 evidence?

18 A. Yes, sir.

19 Q. Did you have a chance to look at that sheet
20 of paper that talks about the three types of
21 jurors?

22 A. Yes, sir.

23 Q. Which one best describes you?

24 A. Number two.

25 Q. Number two. That means that basically when

1 anyone would be convicted of murder you believe
2 the punishment or the appropriate punishment would
3 always be life in prison?

4 A. Yes, sir.

5 Q. You hesitated, you mean that there are some
6 circumstances that may warrant death penalty?

7 A. Yes, sir.

8 Q. But your feeling would be that most of the
9 time you would feel life in prison?

10 A. Yeah.

11 Q. But you could consider the death penalty?

12 A. I could consider it.

13 Q. You could consider it?

14 A. Yes, sir.

15 Q. Okay. Now, what would determine whether
16 you would impose the death penalty, the facts and
17 circumstances of that case?

18 A. Yes, sir.

19 Q. So you would be able to listen to all of the
20 facts and circumstances and make a decision?

21 A. Yes, sir.

22 Q. Would you not make any decisions -- would
23 you be a person who would not decide until you
24 have heard all the facts and circumstances?

25 A. No, sir.

1 Q. You would decide before then?

2 A. I would wait until I heard.

3 Q. Until you heard it all. You understand when
4 someone is charged with a criminal offense has the
5 presumption of innocence, do you understand that
6 principle of law?

7 A. Yes, sir.

8 Q. That follows and starts there from the charge
9 and continues until and if the State proves him
10 guilty beyond a reasonable doubt.

11 A. Yes, sir.

12 Q. Do you understand that?

13 A. Yes, sir.

14 Q. Do you have any problems with that?

15 A. No, sir.

16 Q. That means that the only party in this
17 proceeding that has any responsibility to prove
18 anything is the State, do you understand?

19 A. Yes, sir.

20 Q. Someone charged with a criminal offense
21 doesn't have anything to prove, nothing at all.
22 Do you agree with that?

23 A. Yes, sir.

24 Q. That would include if they aren't required to
25 prove their innocence or disprove anything the

1 State says, do you understand that?

2 A. Yes, sir.

3 Q. Do you agree with that?

4 A. Yes, sir.

5 Q. So if you were a juror in this case, would
6 you expect Mr. Stone to prove anything to you, he
7 is the defendant, he is the person charged?

8 A. Yes, sir.

9 Q. You would?

10 A. Yeah.

11 Q. What?

12 A. Just prove that he killed or whatever.

13 Q. Well now the State would be the one to try to
14 prove that he killed him. You would look to the
15 State. If Mr. Stone didn't take the stand I
16 would instruct the jury that they couldn't use
17 that against him, could you follow that
18 instruction?

19 A. Yes, sir.

20 Q. You could?

21 A. Yes, sir.

22 Q. If Mr. Stone offered no evidence it would be
23 my instruction that you must look to the State for
24 this case, the burden is on the State to prove
25 its case, can't use that against him, would you

1 be able to follow that instruction?

2 A. Yes, sir.

3 Q. After you have heard all of the evidence if
4 you had a feeling it was your conviction that the
5 State didn't prove to you that Mr. Stone committed
6 these offenses, in other words they haven't
7 convinced you beyond a reasonable doubt, would
8 you have any problem or any hesitancy finding him
9 not guilty?

10 A. Yes, sir.

11 Q. You would or could you?

12 A. I could.

13 Q. You could I'm sorry what?

14 A. If they proved it.

15 Q. If they didn't prove it?

16 A. If they didn't prove it. Not really.

17 Q. You wouldn't find him guilty, would you find
18 him not guilty?

19 A. Yes.

20 Q. Is that right?

21 A. Yes, sir.

22 Q. On the other hand if they proved it?

23 A. Then I would find him guilty.

24 Q. You would find him guilty, okay. Do you
25 understand that after you have had that trial, it

1 will be two parts in this the first part you will
2 make a decision whether he did or he didn't, do
3 you understand that?

4 A. Uh-huh (affirmative response).

5 Q. Based upon the State's case, the State's
6 evidence. If the jury found that he did,
7 committed the offense of murder, then you would
8 go into the second part when you would consider
9 the appropriate punishment, do you understand
10 that? Based on what you just told me is it my
11 understanding that you have not had any decision
12 on what the punishment should be given until you
13 have heard all of the evidence; is that right?

14 A. Yes, sir.

15 Q. When you got to the end of that and I gave
16 you some instruction on the law, I would ask you
17 and the other jurors to go if you are on the jury
18 to make a decision and choose whether the death
19 penalty or life imprisonment, do you understand
20 that?

21 A. Yes.

22 Q. Am I to understand that you would go back and
23 consider both of them, sir?

24 A. Yes, sir.

25 Q. And would you make a decision as to which one

1 you felt?

2 A. Yes, sir.

3 Q. Should be given?

4 A. Yes, sir.

5 Q. And if the situation was bad enough you could
6 decide the death penalty?

7 A. Yes, sir.

8 Q. But if it wasn't you could decide for life in
9 prison?

10 A. Yes, sir.

11 Q. But it would depend upon the facts?

12 A. Yes.

13 Q. You understand that the jury will be
14 sequestered, that means the State will provide
15 you with lodging, food, transportation for the
16 trial, do you understand that?

17 A. Yes.

18 Q. Would that in anyway affect your ability to
19 be a good juror?

20 A. No, sir.

21 THE COURT: Answer any questions the
22 State may have for you.

23 EXAM BY MR. KOLB:

24 Q. Mr. Phillips, how are you related to
25 somebody in this case?

1 A. My cousin's husband I believe it is supposed
2 to be first cousin to him.

3 Q. To who?

4 A. Mr. Stone.

5 Q. How did you find that out?

6 A. I just overheard my cousin come to the house,
7 her husband's cousin (Can't understand tape).

8 Q. When did you hear that?

9 A. Last night.

10 Q. Okay. We were starting the trial yesterday?

11 A. Yes, sir. Picking the jury or whatever in
12 Georgetown.

13 Q. And did you tell her at that time that you
14 were on the jury?

15 A. I told her I had been ordered not to hear, I
16 had to get out of the room.

17 Q. I didn't quite hear what you said.

18 A. I had to leave out of the room.

19 Q. You told her not to discuss it in front of
20 you?

21 A. Yes, sir.

22 Q. What else did she say about it besides her
23 husband's cousin was on trial in Georgetown?

24 A. That is the only thing I heard.

25 Q. This is your cousin?

2706

1 A. Yes, sir.

2 Q. So and this is a lady, what is her name?

3 A. Darlene Stone.

4 Q. Is your cousin?

5 A. Yes, sir.

6 Q. Is she married to your cousin or she is your
7 cousin by blood?

8 A. She is my cousin by blood.

9 Q. Okay. And so she married a person named
10 Stone?

11 A. Yes, sir.

12 Q. And what is his name?

13 A. David Stone.

14 Q. David Stone. Where do they live?

15 A. In Andrews.

16 Q. All right. So Bobby Stone is David Stone's
17 first cousin?

18 A. Yes, sir.

19 Q. Now, in deciding the issues in the case, do
20 you think that the relationship that you have that
21 you just described would in anyway affect your
22 decision?

23 A. No, sir.

24 Q. It wouldn't affect you at all in deciding
25 whether the State presented enough evidence to

1 prove guilt beyond a reasonable doubt?

2 A. No, sir.

3 Q. And you mentioned it would be very difficult
4 for you to impose a death sentence on anybody?

5 A. Yes, sir.

6 Q. Are you telling the Court under oath today
7 that the fact that he is kin to you or has this
8 relationship to you would not enter in your mind
9 in making that decision?

10 A. The only thing that bother me is that (Can't
11 understand tape) trouble with her husband and me
12 and whatever.

13 Q. Would the fact of possible problems within
14 your family, would that be in the back of your
15 mind when you were trying the case?

16 A. No, sir.

17 Q. You are saying that wouldn't be in your mind?

18 A. It would be back there.

19 Q. You think it would be better if you didn't
20 serve because of this relationship?

21 A. Yes, sir.

22 MR. KOLB: Nothing further, Your Honor.

23 THE COURT: Cross-examine.

24 EXAM BY MR. LITTLEJOHN:

25 Q. Mr. Phillips, let me just clarify something

1 that Solicitor Kolb was getting into. You
2 indicated that the relationship there might be in
3 the back of your mind?

4 A. Yes, sir.

5 Q. If you were chosen as a juror in this case?

6 A. Yes, sir.

7 Q. Given that it might be in the back of your
8 mind, could you still fairly consider the
9 evidence in this case and render?

10 A. Yes, sir.

11 Q. Render a true verdict what you think to be a
12 true verdict?

13 A. Yes, sir.

14 Q. And were the jury in this case to go to the
15 second phase of the trial and determine the
16 penalty to be imposed, do you think you could put
17 aside that relationship and render a fair verdict,
18 whether it be death penalty or life in prison?

19 A. Yes, sir.

20 Q. Could you consider both of those?

21 A. Yes, sir.

22 Q. And make a decision that you think is fair
23 and right?

24 A. Yes, sir.

25 MR. LITTLEJOHN: That is all I have.

1 EXAM BY THE COURT:

2 Q. Mr. Phillips, this relationship you have, I
3 believe it is your cousin's husband. You
4 indicated in answer to question of Mr. Kolb that
5 when he asked you would it be any problem you said
6 it would cause problems between me and my cousin's
7 husband; is that right?

8 A. (Can't understand tape).

9 Q. You don't know him?

10 A. I know him I don't know the other party, Mr.
11 Stone over there.

12 Q. I understand.

13 A. Or what his first name was.

14 Q. Is it something that you can set aside or
15 would it be something that would always be in the
16 back of your mind as you are considering this
17 evidence?

18 A. (Can't understand tape).

19 Q. You are saying it may have some influence on
20 how you looked at the evidence?

21 A. As far as evidence. I don't know.

22 THE COURT: Okay. Anything further from
23 the State?

24 MR. KOLB: No, sir.

25 THE COURT: Anything further from the

1 defendant?

2 MR. LITTLEJOHN: No, sir. I'm sorry I
3 couldn't hear the juror's last answer.

4 THE COURT: He said I guess I would have
5 to try to put it out of the back of my mind. I
6 will ask you to step down, Mr. Phillips, step
7 right out that door we will be with you in just a
8 second.

9 What says the State?

10 MR. KOLB: I believe he is not qualified
11 given the relationship that would affect his
12 impartiality.

13 THE COURT: What is defendant's position?

14 MR. LITTLEJOHN: Your Honor, I think he
15 is qualified, I think perhaps the State should
16 pose their objection as a challenge for cause.

17 THE COURT: He said because of
18 impartiality. I don't think this one just like
19 before whether or not he can consider both
20 punishments, that is not the concern anymore so
21 let's address that his ability to be impartial.

22 MR. LITTLEJOHN: Your Honor in answering
23 the questions, the Court's questions to begin
24 with, I think he indicated that he could set that
25 aside in answering my questions I think he said.

1 THE COURT: The problem I have with Mr.
2 Phillips is in answering everybody's questions it
3 was yes until he had to make a choice between
4 which one. As long as you were stating a
5 question he was comfortable with yes, yes, yes.
6 The problem was yes, yes create conflicts. I am
7 concerned about the relationship, I am concerned
8 that it concerned him enough that I want the
9 record to reflect that the last questions I asked
10 him they weren't difficult, I asked him would it
11 influence him and there was a long pause before he
12 answered the question, a very long pause. And
13 almost a reluctance to answer the question.

14 Looking at his body language, I realize
15 and I recognize and certainly understand that Mr.
16 Phillips at no fault of his own is not familiar
17 with all of these proceedings and is very
18 unfamiliar with it and doesn't truly understand
19 all of it. And that is not his fault. And that
20 doesn't disqualify him as a potential juror but
21 what does concern me is that influence that may be
22 there and the appearance of it and the problems
23 that it presents.

24 Secondly, it really concerns me even more
25 so that there was a statement made and that he did

2712

1 not stop it immediately, but heard something about
2 it. I am concerned about it, I think that his
3 impartiality is questioned and as I have excused
4 jurors today who have vacillated on that I will be
5 consistent in that I will excuse this juror from
6 participation, ask him to come in.

7 Mr. Phillips, I will excuse you from
8 further participation in this matter. I
9 appreciate you being here, I appreciate your
10 honesty and the manner in which you have answered
11 the questions. Ask you to do me a favor until we
12 select a jury, that will occur tomorrow that you
13 not talk about this case with anyone.

14 Let's bring in Mr. Hurell.

15 DAN LEE HURELL, having been first
16 duly sworn, testified as follows:

17 EXAM BY THE COURT:

18 Q. Good afternoon, Mr. Hurell, how are you?

19 A. Great.

20 Q. Good, sir, I appreciate your patience. I
21 have some questions that I need to ask you and
22 when I have completed my questions the State may
23 have some questions and then the defense may have
24 some questions. There are no right or wrong
25 answers to any of these questions, okay. I need

1 for you to make sure that you do something. I
2 need you to answer loudly because we don't have a
3 microphone. Do you know anything about this case
4 other than what I shared with you yesterday what
5 has been alleged?

6 A. No.

7 Q. That's all? Have you had a chance to look at
8 that list that talks about the three types of
9 jurors?

10 A. Yes.

11 Q. Which one are you? Which one of them best
12 describes you? Which one do you think is most like
13 you?

14 A. (Can't understand tape). The first one.

15 Q. And when you say the first one you mean by
16 that when somebody is convicted of murder you
17 believe the death penalty is the appropriate
18 punishment?

19 A. Yes.

20 Q. It doesn't make any difference what the
21 circumstances are?

22 A. No, sir.

23 Q. None whatsoever?

24 A. No.

25 Q. It would always be death penalty?

1 A. Yes.

2 Q. And there is nothing that you could hear in
3 the trial that would change that?

4 A. No, sir.

5 Q. That would be your personal philosophy?

6 A. Yes, sir.

7 Q. So the circumstances in a case wouldn't make
8 any difference to you as long as they were
9 convicted of murder that would be it?

10 A. It would.

11 THE COURT: Questions from the State?

12 EXAM BY MR. KOLB:

13 Q. You pronounce your name Hurrell?

14 A. Hurell.

15 Q. Mr. Hurell, you mentioned on your form shows
16 Walter Hurell as being your employer, is that your
17 brother or father or what?

18 A. My brother.

19 Q. Your brother. So you work together on
20 scenic finishing business?

21 A. Yes.

22 Q. How long have you been doing that?

23 A. For twenty years.

24 Q. And you got some children?

25 A. My wife (Can't understand tape).

1 Q. Now, are you able to read very well, Mr.
2 Hurell?

3 A. I don't have my glasses I can read.

4 Q. I believe you told the judge yesterday that
5 you only finished the 4th grade before you went to
6 work?

7 A. I went to work, yeah.

8 Q. So you have been working all your life?

9 A. Yes, sir.

10 Q. Can you read real well?

11 A. I can read but not real well.

12 Q. Did you read over that form to the type, the
13 third type of juror that could give death penalty
14 in some circumstances depending upon how bad it
15 was, but if there was excuse for what was done
16 they could give a life sentence?

17 A. Give an excuse?

18 Q. Right.

19 A. If he had an excuse I would give him.

20 MR. LITTLEJOHN: Your Honor, I have to
21 object.

22 THE COURT: I sustain the objection.
23 You don't have to answer that question.
24 Solicitor, you need to rephrase that question,
25 sir.

1 EXAM BY MR. KOLB:

2 Q. If a case where someone was convicted of
3 murder, do you understand there is two phases to
4 the trial? There is a trial that decides whether
5 they did it or not, do you understand that? That
6 is where you find somebody guilty or not guilty.
7 Now, once they have been found guilty or if they
8 were found guilty of murder the jury has to decide
9 should they get life in prison or should they get
10 death penalty.

11 A. (Can't understand tape).

12 Q. What you are saying in every case always be
13 the death penalty regardless of what the facts and
14 circumstances, regardless of the law?

15 A. (Can't understand tape). I think if
16 somebody is going to kill somebody they should get
17 the death penalty. In self-defense I suggest you
18 get life.

19 Q. All right. Now, would you respect the
20 Judge's role to tell you what the law was?

21 A. Yes.

22 Q. So if the judge told you that a person is
23 presumed to be innocent the State has to prove
24 them guilty, would you accept that and require us
25 to prove it to you before you found them guilty?

1 A. You would have to prove it to me.

2 Q. Well, if the law is that the jury has to
3 consider both death and life imprisonment based
4 upon the evidence that is presented about the
5 background of the defendant and the circumstances
6 of the crime, would you disregard the judge
7 telling you that was the law and be locked into
8 what you think the law is at this point. Seems
9 to me you think the law is --

10 THE COURT: Now, Mr. Kolb, you will ask
11 the question properly, sir. He shared his
12 personal philosophy. We are not talking about a
13 law, you are talking about philosophy and you can
14 ask him about his personal philosophy.

15 EXAM BY MR. KOLB:

16 Q. Your personal philosophy is that the death
17 penalty should be imposed for every murder?

18 A. Cold-blooded murder.

19 Q. Are you thinking that every murder is a
20 cold-blooded murder deserves the death penalty?

21 A. What do you mean?

22 Q. Let me see if I can ask it different. You
23 told us if it is a cold-blooded murder it deserves
24 the death penalty, is that what I understood you
25 to say? So there are some murders that would not

1 deserve the death penalty that are not
2 cold-blooded, are not heinous, bad murders on
3 the facts that would warrant life in prison?

4 MR. LITTLEJOHN: Your Honor, I object.

5 THE COURT: Mr. Kolb, let's move on,
6 sir. You are not going to make any headway here,
7 sir. I will be happy to hear you fully, but you
8 don't need to try to restate your questions in an
9 artfully fashion so you can get some answer in the
10 record, sir.

11 EXAM BY MR. KOLB:

12 Q. Mr. Hurell, would there be some murders that
13 would be proper to get life in prison?

14 A. Yes.

15 Q. Would you consider the facts and
16 circumstances of each case in deciding whether the
17 proper punishment was the death penalty or life in
18 prison? Would you have to listen to all the facts
19 and circumstances to make that decision?

20 A. Yes.

21 MR. KOLB: Yes, sir.

22 EXAM BY MR. LITTLEJOHN:

23 Q. Sir, do you understand that the term malice,
24 do you understand what malice means? If there is
25 an intentional murder, if it were death by

1 self-defense it would be different. Thank you,
2 sir. You nodded your head but she needs to hear
3 your answer.

4 THE COURT: Need to answer.

5 THE WITNESS: Yes.

6 MR. LITTLEJOHN: Thank you, sir.

7 THE COURT: Mr. Hurell, if you will step
8 out the door we will be with you just shortly,
9 sir.

10 All right State's position is that he is
11 qualified?

12 MR. KOLB: Your Honor, I understand he
13 said he had fourth grade education, the Court
14 qualified him, I understand he is minimally
15 qualified, but I think his problem is not that he
16 will always vote to impose death I think we
17 clarified that. I think his problem is that he
18 needs a little bit more explanation on what the
19 law is including that with respect to the Court
20 and would follow the Court's directions.

21 THE COURT: I don't have any problem he
22 made a statement to the Court without any problem
23 that somebody commits a murder they get the death
24 penalty automatically every time. Then he said
25 yeah, there is one case if it is excuse, if it

2726

1 is self-defense it gets life in prison. I assume
2 you feel he is unqualified?

3 MR. LITTLEJOHN: That's correct.

4 THE COURT: I find that he is
5 unqualified.

6 Mr. Hurell, I appreciate your being here.
7 There are no right or wrong answers, we just
8 wanted you to be truthful. I thank you for being
9 truthful with the Court. I will excuse you from
10 further participation in this matter. I would
11 ask you we will select a jury tomorrow and I ask
12 that you not talk about this case until we select
13 a jury. After that you are free to talk about
14 it. Thank you so much.

15 Okay. Are we ready for the next one?
16 Let's bring in Ms. Graham.

17 KAREN GRAHAM, having been first duly
18 sworn, testified as follows:

19 EXAM BY THE COURT:

20 Q. Good afternoon. I'm sorry we held you
21 longer, appreciate your patience.

22 A. That's fine.

23 Q. Yesterday we told you there would be some
24 questions we need to ask you and this is that time
25 and I have some questions that I need to ask you

2721

1 and then when I am finished the attorneys may have
2 some questions they want to ask you as well. I
3 want to assure you there are no right or wrong
4 answers, okay?

5 A. Okay.

6 Q. I would ask you to do me one favor, you may
7 notice my voice is a little loud it is because we
8 don't have any mike system in here so we need to
9 make sure that you and I speak even though we are
10 seated as close as we are we use a loud voice so
11 that everyone can hear us, okay. Do you know
12 anything about this case?

13 A. No.

14 Q. Other than what I shared with you yesterday
15 that has been alleged?

16 A. No.

17 Q. Do you have any opinions about this case?

18 A. No.

19 Q. Would you have to hear all of the evidence
20 before you made a decision?

21 A. Yes, I would.

22 Q. Did you have a chance to review that sheet
23 that contains the three types of jurors?

24 A. Yes.

25 Q. Which one best describes you?

2700

1 A. Three.

2 Q. Number three. That means that in some cases
3 where you believe the death penalty would be
4 appropriate, some cases you believe that life
5 imprisonment would be appropriate, but you would
6 have to hear all the facts and circumstances
7 before you could decide which one in a given case?

8 A. Yes, definitely.

9 Q. Now, you understand I told you yesterday
10 that anyone charged with criminal violation in
11 this country there are certain principles of law
12 that apply and one of those is called presumption
13 of innocence, the person charged is presumed to
14 be innocent and until -- and that presumption
15 stays until the State offers and presents enough
16 evidence that satisfies the jury beyond a
17 reasonable doubt of their guilt, do you
18 understand?

19 A. Yes.

20 Q. Do you have any problems?

21 A. (Can't understand tape).

22 Q. You understand part of that because the
23 burden is on the State to prove its case, that a
24 person charged with criminal violation doesn't
25 have to prove anything, do you understand that?

1 That means they are not required to prove their
2 innocence, do you understand?

3 A. Yes.

4 Q. Do you have any problem with that?

5 A. No.

6 Q. That would also mean that they chose not to
7 offer any evidence at all, you couldn't use that
8 against him because the burden is solely on the
9 State and it is from that evidence that you would
10 be called upon to decide this case. Is that your
11 understanding?

12 A. Yes, sir.

13 Q. If you were selected as a juror you indicated
14 you don't know anything about this case, so if
15 you were selected as a juror in this case would
16 you have an open mind?

17 A. Yes.

18 Q. And would you wait and decide only decide the
19 issues that you were asked to decide after you
20 have heard all of the evidence and received the
21 law, would you wait until that before making any
22 decision?

23 A. Yes, sir.

24 Q. Now, if in that trial Mr. Stone who is the
25 individual who is charged with some criminal

1 violation and is the defendant in this case, if
2 Mr. Stone we started the trial would you expect
3 him to prove anything to you?

4 A. No, sir.

5 Q. Not at all?

6 A. (Can't understand tape).

7 Q. The burden is on the State, you are right.
8 So you wouldn't expect him to prove anything, you
9 need to keep your voice up. Mr. Stone as any
10 defendant has a right if he chose not to testify I
11 would instruct the jury that they couldn't use
12 that against him in anyway, do you understand?
13 Because that is the defendant's right they choose
14 to exercise. Could you follow that instruction?

15 A. Yes, sir.

16 Q. At the conclusion, you understand there is
17 two parts to this trial, the first part is going
18 to be over with and you will hear evidence only
19 about the issue of whether or not Mr. Stone is
20 guilty of these offenses, do you understand that?

21 A. Yes.

22 Q. At the conclusion of the evidence I will give
23 you an instruction on the law and the jury will
24 retire and decide whether or not the State has met
25 its burden of proof, do you understand?

1 A. Yes.

2 Q. If you in hearing the evidence was convinced
3 that the State had not satisfied you beyond a
4 reasonable doubt that Mr. Stone committed these
5 offenses, would your verdict be not guilty?

6 A. Yes.

7 Q. It would? They didn't prove it, it would
8 be not guilty?

9 A. Not guilty.

10 Q. If on the other hand you were convinced that
11 the State had met its burden and had convinced you
12 beyond a reasonable doubt that he is the person
13 that has committed these offenses, would your
14 verdict be guilty?

15 A. Yes.

16 Q. If the jury's verdict is not guilty of course
17 that would end this proceeding, but if the jury
18 should find the defendant guilty of murder, then
19 we would move into the second phase, which would
20 deal solely with the issue of punishment, do you
21 understand that?

22 A. Yes.

23 Q. At that time you would hear additional
24 evidence on the issue of punishment, mitigating
25 circumstances, aggravating circumstances and the

1 like, do you understand that? Would you keep an
2 open mind throughout that proceeding?

3 A. (Can't understand tape).

4 Q. You understand you wouldn't be dealing with
5 the issue of guilt anymore, all you are dealing
6 with is punishment. You would not make a
7 decision until you had heard all of the evidence?

8 A. Yes, sir.

9 Q. After you have heard all of the evidence and
10 I will give you further instruction on the law,
11 the jury would then be asked to retire and make a
12 decision and choose which between the two whether
13 it be death penalty or life in prison, do you
14 understand that?

15 A. Yes, sir.

16 Q. Would you be able to consider both possible
17 punishments?

18 A. Yes, sir.

19 Q. Would you be able to make a decision based
20 upon the facts and the law of what you believe to
21 be the most appropriate in this case?

22 A. Yes, I would.

23 Q. And as I understand you do not have any
24 predisposition one way or the other?

25 A. No.

1 Q. It would depend upon the facts?

2 A. Yes, sir.

3 Q. All right. Do you know of anything in your
4 background, anything that has occurred in your
5 life, any strong feelings you would have or
6 personal convictions you would have in a case like
7 this where you are dealing with someone being
8 accused of murder that would affect your ability
9 to be fair and impartial to the State?

10 A. Not that I know of. I would like to think I
11 would be a fair person.

12 Q. Likewise, do you know of anything in your
13 background, personal feelings in a case like this
14 that would cause you not be able or in anyway
15 affect your ability to be fair and impartial as it
16 pertains to Mr. Stone?

17 A. No.

18 Q. Okay. Thank you. If you are selected on
19 this jury you will be sequestered. And I know
20 that is not the most exciting news you have heard
21 today, but the question that I have for you is I
22 know it may be inconvenient to you and certainly
23 may be an imposition in some way, but could you
24 set aside that if you were selected on the jury
25 and focus on being a juror and not let it affect

1 your abilities as a juror?

2 A. Yes, sir.

3 Q. You could do that?

4 A. Yes, sir.

5 Q. Thank you. Please answer any questions that
6 the State may have for you.

7 EXAM BY MR. KOLB:

8 Q. Ms. Graham, you indicated that you could be
9 a juror who depending upon the law and the facts
10 and circumstances of the case, could return a
11 death verdict?

12 A. Yes, sir.

13 Q. In that case would you have any trouble
14 signing your name along with the other 12 members
15 of the jury to that verdict?

16 A. No, sir.

17 Q. Or coming into Court and reporting that
18 verdict in the presence of the defendant and the
19 other members of the Court?

20 A. No, sir.

21 Q. It is required. And because it is required
22 would that affect your willingness to return a
23 death verdict?

24 A. No, sir.

25 MR. KOLB: Thank you.

1 EXAM BY MR. LITTLEJOHN:

2 Q. Good evening, Ms. Graham. Started off
3 saying good morning to jurors. To follow-up what
4 solicitor Kolb said, could you likewise return a
5 verdict of life imprisonment if you thought that
6 was appropriate given the circumstances?

7 A. Yes, I could. Like I said I would view
8 everything before I make any decision.

9 Q. I understand I appreciate that. Let me ask
10 you about one aspect of the case. The State has
11 accused Mr. Stone of the murder of a deputy
12 sheriff. Now by virtue of that charge, would
13 that have any effect on your ability to be a fair
14 and impartial juror insofar as determining whether
15 the State has proven the guilt of the defendant in
16 this case?

17 A. No, sir.

18 Q. If you were on the jury and the jury decided
19 that the appropriate verdict was guilty, would
20 the fact that he is charged with the killing of a
21 deputy sheriff affect your ability to consider
22 both the death penalty and life imprisonment as
23 appropriate punishment?

24 MR. KOLB: Your Honor, I object, I think
25 that is improper question.

1 THE COURT: Rephrase it, please.

2 EXAM BY MR. LITTLEJOHN:

3 Q. Ms. Graham, given the circumstances with
4 which he is charged, would those circumstances
5 affect your ability to fairly consider both
6 possible sentences in this case?

7 A. No, it wouldn't.

8 MR. LITTLEJOHN: Thank you.

9 THE COURT: Thank you, if you would
10 please I will ask you for just a few moments step
11 outside we will be right back with you. Thank
12 you.

13 What says the State?

14 MR. KOLB: She is qualified.

15 MR. LITTLEJOHN: We concur.

16 THE COURT: I do find she is qualified.
17 Ask her to step back in.

18 Ms. Graham, you have been qualified as
19 potential juror in this case, which means that
20 tomorrow afternoon I need for you to return to the
21 Court at five o'clock, you can come back and sit
22 out in the audience as you did yesterday. We are
23 going to select the jury at that time and we will
24 select 12 jurors and the alternates that will try
25 this case.

2731

1 I would ask that when you return bring
2 with you sufficient clothing and personal effects
3 to take care of you for about a week because if
4 you are selected we will leave from here and go
5 onto Sumter and get ready to start the trial
6 Thursday morning. Of course if you aren't
7 selected you can return home and unpack all your
8 bags.

9 But this is a letter that has some
10 information that may be helpful for you in
11 planning, some numbers and what not, it is from
12 the clerk in Sumter. I would ask that you until
13 tomorrow we can get back together at five o'clock
14 do not talk about this case with anyone, don't
15 allow anybody to talk with you about it or talk
16 about it in your presence. Don't watch any news
17 programs with it or read any newspaper articles.
18 Thank you, see you tomorrow at five.

19 The next one is Jordan.

20 NEOMIE JORDAN, having been first duly
21 sworn, testified as follows:

22 EXAM BY THE COURT:

23 Q. Good evening, Ms. Jordan, how are you?

24 A. Fine.

25 Q. I will ask you to do me a favor, please, I

1 have some questions I need to ask you, when I
2 finish the attorneys may have some questions,
3 too. I remind you there are no right or wrong
4 answers to any of these questions, okay. All we
5 want you to do is be truthful.

6 A. I will be.

7 Q. I would ask you also that when answering the
8 questions that you please speak loudly, the
9 microphone went out on us so we are having to talk
10 a little louder than normal, if you would work
11 with me on that I would appreciate it so they can
12 all hear you, okay?

13 A. Okay.

14 Q. Do you know anything about this case?

15 A. No, sir.

16 Q. You know nothing more than what I shared with
17 you yesterday what has been alleged, that is the
18 extent of it?

19 A. Yes, sir.

20 Q. Do you have any opinions about it?

21 A. Not that I know of at this time.

22 Q. So you haven't made any decisions about any
23 issues in this case?

24 A. No, sir.

25 Q. Would you have to hear all of the evidence

1 before you made a decision?

2 A. Yes, sir.

3 Q. You have a chance to read the sheet that had
4 the three types of jurors?

5 A. Yes, sir.

6 Q. Which one are you?

7 A. I'm the second one.

8 Q. The second one?

9 A. Yes, sir.

10 Q. And am I to understand by that that you mean
11 that in any case where a person is convicted of
12 murder that regardless of the circumstances you
13 believe life imprisonment is the appropriate
14 punishment?

15 A. Yes, sir.

16 Q. And that there is absolutely no circumstance
17 that you can think of that would warrant you
18 considering the death penalty?

19 A. No, sir.

20 Q. None at all?

21 A. No, sir.

22 Q. And that is your personal philosophy?

23 A. Yes, sir.

24 THE COURT: Any questions from the State?

25 MR. KOLB: No, sir.

1 THE COURT: Any questions from the
2 defendant?

3 MR. LITTLEJOHN: Court's indulgence.

4 THE COURT: Take your time.

5 EXAM BY MR. LITTLEJOHN:

6 Q. Ms. Jordan, just one question, is your
7 belief as to the or your strong opinion against
8 the death penalty, is that based upon your
9 religious beliefs?

10 A. Yes, sir.

11 Q. It is?

12 A. Yes, sir.

13 Q. Thank you, ma'am.

14 THE COURT: Ms. Jordan I ask that you
15 please step outside just a moment we will be right
16 back with you.

17 I find Ms. Jordan is unqualified because
18 of her beliefs and her inability to consider both
19 punishments, any objection from the State?

20 MR. KOLB: No, sir.

21 THE COURT: Any objection from the
22 defendant?

23 MR. LITTLEJOHN: No, sir.

24 THE COURT: Thank you very much. Ask
25 her to step back in here. I will excuse you from

1 further participation in the matter. You are
2 excused. We will select this jury tomorrow
3 afternoon, until we select the jury do not talk
4 about this case with anyone. Once that jury is
5 selected if you want to talk about it that is your
6 privilege, okay. Thank you so much. Nice
7 being with you. Take care.

8 Let's call Ms. Deacon.

9 MARLENE DEACON, having been first
10 duly sworn, testified as follows:

11 EXAM BY THE COURT:

12 Q. Good evening. Thank you for your patience.
13 Ms. Deacon I have some questions that I need to
14 ask you now and I would remind you that there are
15 no right or wrong answers to my questions or any
16 of the other questions that may be asked by
17 anyone. I would just ask that you be truthful
18 with your responses. You are entitled to them,
19 there will be questions that deal with your
20 personal philosophies and understandings, okay?

21 A. Okay.

22 Q. I would only ask that you answer my questions
23 with words, that you also speak loudly so that we
24 can all hear you, the microphone is not working so
25 that is one of the reasons you may hear me speak a

1 little louder and I know we are sitting close to
2 one another but you need to answer loudly, if you
3 would.

4 Do you know anything about this matter?

5 A. I don't know anything except yesterday I was
6 watching Jeopardy and the end came on the news
7 where it showed jury selection had started in
8 Georgetown County for so-and-so, a lady I forget
9 the name, but I wasn't listening to anything it
10 said. He is charged with the murder of Sumter
11 deputy sheriff, I saw it, I wasn't watching the
12 news I was watching Jeopardy.

13 Q. I understand that.

14 A. I assume it is the same.

15 Q. The fact and what you heard that he is
16 charged with?

17 A. Yes, sir.

18 Q. You also heard me say yesterday that a person
19 charged with an offense is presumed to be innocent
20 until the State presents enough evidence to prove
21 guilt beyond a reasonable doubt. Is that your
22 understanding of the law?

23 A. Yes, it is and I worked in Court for six
24 years over thirty years ago.

25 Q. I notice that your former is that your former

2737

1 U. S. Attorney's office, so you are familiar with
2 that principle of law; is that correct?

3 A. Yes.

4 Q. Do you have any problem with that principle
5 of law?

6 A. No.

7 Q. What you heard inadvertently last night,
8 would that influence you at all?

9 A. No.

10 Q. Could you set that aside?

11 A. I will have to say that -- maybe it is a
12 question.

13 Q. Sure.

14 A. I have to say that does not influence me, I
15 am not against capital punishment in certain cases
16 but it would have to be a good case. I don't
17 think everybody that commits murder should get the
18 death penalty, but certain mitigating
19 circumstances. I'm in favor of capital
20 punishment, I have to say that.

21 Q. Let me ask you in that regard you have a
22 chance to review the sheet that has three types of
23 jurors?

24 A. Yes.

25 Q. So you are more like type three that is

1 someone that says based upon the circumstances I
2 could impose the death penalty but it would depend
3 upon the case? .

4 A. Yes. And I have served a number of trial
5 months of Court in my life, I don't think you
6 should have to do that twice in your life. They
7 were not asking for death penalty.

8 Q. Will you be able to set your previous
9 experience as a juror, could you set that aside?

10 A. Yes.

11 Q. Do you understand that each case is based
12 upon its own set of facts and you would not be
13 influenced by anything that occurred in that case;
14 is that correct? .

15 A. No, I would not (Can't understand tape).

16 Q. Let me ask you a question having some
17 familiarity with some of these principles, you
18 understand then that a person charged with
19 criminal offense doesn't have to prove anything?

20 A. Yes.

21 Q. And if you were selected as a juror in this
22 case and Mr. Stone who is the defendant in this
23 matter you wouldn't expect him to prove anything?

24 A. No.

25 Q. You would expect the State to meet its

2738

1 burden?

2 A. Yes.

3 Q. And you understand that there are two
4 proceedings, the first one we will deal with is
5 whether or not he is guilty of the offense. The
6 second one would only occur if the jury concludes
7 it is, do you agree with that?

8 A. Yes.

9 Q. If you are on the jury and your view of the
10 evidence and taking the law and applying it to
11 those facts you were not convinced that he was the
12 person that committed these offenses beyond a
13 reasonable doubt, would you have any hesitancy in
14 finding him not guilty?

15 A. (Can't understand tape) I would have to find
16 him not guilty.

17 Q. Likewise, if you were convinced beyond a
18 reasonable doubt that he was a person who
19 committed these offenses, would you also have any
20 hesitancy in finding him guilty?

21 A. No I would not.

22 Q. Obviously, the jury concluded the State had
23 not met its burden, failed to prove his guilt,
24 the verdict would be not guilty we would go no
25 further in this matter. But if the jury

2740

1 concluded that the State had met its burden and
2 the jury concluded that he was guilty of the
3 offense of murder we would go into the second
4 phase, am I to understand that you would have an
5 open mind in both phases?

6 A. Yes, sir.

7 Q. You would not make any decisions until you
8 had heard all of the evidence and received the law
9 from the Court; is that correct?

10 A. Yes.

11 Q. In the second phase you would hear additional
12 evidence as to the issue of punishment and you
13 would hear mitigating -- evidence such as
14 mitigating circumstances and aggravating
15 circumstances. Would you wait until you had
16 heard all of the evidence (Can't understand tape)?

17 A. I would try.

18 Q. You would make every effort?

19 A. I would say I would make all efforts, it
20 would depend upon the evidence.

21 Q. I understand. Certainly you would decide
22 this case on all of the evidence, but the issue
23 of the punishment you will not hear that until the
24 second phase, you understand that?

25 A. Yes, sir.

1 Q. So am I to understand then that if you were
2 on this jury after you had heard all of the
3 evidence and (Can't understand tape) would be the
4 evidence in the second phase and received the
5 charge, I would then instruct the jury that they
6 must retire to make a decision. That would be
7 between the two, which punishment should be
8 applied in this case. You as a juror could
9 consider both punishments; is that correct?

10 A. That is going to be a question of mine, life
11 in prison or capital.

12 Q. That is correct. In other words, you must
13 decide between life imprisonment and death, do
14 you understand that? Could you consider both of
15 them?

16 A. Yes.

17 Q. And would you be able to make a decision as
18 to which one you would do under which the facts
19 warranted?

20 A. I would do my best.

21 Q. You would decide one and that would be based
22 solely on the evidence?

23 A. Yes.

24 Q. If you were selected on this jury you will be
25 sequestered for the trial. I realize that may be

1 an imposition and inconvenience, but could you
2 set aside any inconvenience and stay focused as a
3 juror?

4 A. Yes, if I am chosen I will.

5 Q. You don't know anything in your background,
6 any personal philosophies which you may have,
7 strong feelings that will affect your ability to
8 be fair and impartial to the State or Mr. Stone,
9 do you?

10 A. No.

11 Q. You don't know of any?

12 A. No.

13 THE COURT: Answer any questions the
14 State may have, please, ma'am.

15 EXAM BY MR. KOLB:

16 Q. Ms. Deacon, as I understood you you have
17 known about the death penalty for a long time in
18 your life?

19 A. Yes. We did not do them in federal Court,
20 we had bank robbers (Can't understand tape).

21 Q. But in the past you have sort of followed
22 certain type cases that would be more likely than
23 death sentences and certain type cases that would
24 be not as likely or more likely for life sentence?

25 A. Yes.

1 Q. I will not ask you specifically which types
2 you think those are, but would you in a death
3 penalty trial, would you wait until you had heard
4 all of the evidence, all the circumstances of the
5 case, all the facts and the law before you made
6 the decision what was appropriate in that
7 particular case? In other words, would you not
8 put it in category in advance?

9 A. I can't promise for sure. I think it would
10 depend upon the evidence.

11 Q. Okay. So you would wait to hear all the
12 evidence?

13 A. I think there are some cases that warrant the
14 death penalty and others that do not.

15 Q. So it would depend upon once you heard all
16 the evidence, if somebody were to say this was a
17 certain type of case would you say all right I am
18 automatically for the death penalty in that type
19 case?

20 A. No, I would not do that.

21 Q. So you would have to wait and hear the law
22 and hear all the facts and circumstances, you
23 wouldn't put it in a category in advance that you
24 were automatically against the death penalty or on
25 the other hand automatically for the death penalty

1 in every circumstance regardless of what occurred?

2 A. It would depend upon the evidence.

3 MR. KOLB: Thank you.

4 THE COURT: Mr. Littlejohn.

5 EXAM BY MR. LITTLEJOHN:

6 Q. Good evening, Ms. Deacon. As I understood
7 from your questionnaire you were employed by the
8 U. S. Attorney's office in Roanoke?

9 A. Roanoke, Virginia. I was U. S. Attorney's
10 office for the western district of Virginia.

11 Before that for three years I was deputy clerk in
12 domestic relations Court.

13 Q. That was in County Court?

14 A. That was in the city of Roanoke.

15 Q. How long were you in the U. S. Attorney's
16 office?

17 A. Three years.

18 Q. Were you in criminal division or civil
19 division or overlap?

20 A. We did both. We did land cases and
21 criminal.

22 Q. So you handled criminal matters?

23 A. Most were criminal and civil, yes.

24 Q. Much more criminal, okay. In answer to
25 your question have you ever worked for any law

1 enforcement agency that was by virtue you said yes
2 that was by virtue of being in the U. S.

3 Attorney's office?

4 A. I only worked for the U. S. Attorney's office
5 in the juvenile, I did not work for any other.

6 Q. I understand that has been some time ago?

7 A. Been several years.

8 Q. Ms. Deacon, you answered in response to the
9 question have you ever served as a jury in a
10 criminal case I believe you told us just now that
11 you had served in a murder case before is that
12 your only experience as a juror in a criminal
13 case?

14 A. Yes, it is.

15 Q. Then you also indicated that you have served
16 on a grand jury?

17 A. I served on a grand jury a lot when I was in
18 Charlottesville, Virginia.

19 Q. Okay.

20 A. A lot. It seemed like a couple of times a
21 year.

22 Q. You understand the duties of grand jury are
23 different than those of trial jury?

24 A. Right.

25 Q. Let me ask you one other thing, you

2746

1 indicated in response to one of the questions that
2 your son had been the victim of a crime?

3 A. Yes, there was attempted robbery, he was
4 managing a store during his college years he
5 worked summer managing Kentucky Fried Chicken, he
6 was closing one night and he was approached by a
7 guy with a knife.

8 Q. Okay. Where was this, was that in
9 Virginia?

10 A. In Maryland.

11 Q. The fact you had that experience and that
12 happened to your son, would that in anyway affect
13 your ability to be a fair juror in this case?

14 A. I don't think so. My son hit him in the
15 mouth, he had to get a tetnus shot.

16 Q. Just one final thing, Ms. Deacon, in this
17 case the State has accused Mr. Stone, the
18 defendant, with the murder of a deputy sheriff.
19 Would the fact that a police officer is involved,
20 would that affect your ability to be a fair juror
21 in this case?

22 A. I would be a fair juror I think, but as I
23 said certain cases warrant the death penalty and
24 others don't. I would have to hear the evidence.

25 Q. Could you fairly consider both of those

2747

1 possible penalties?

2 MR. KOLB: Your Honor, I object to him
3 asking what she would do in a particular case.

4 THE COURT: He is not. I overrule your
5 objection, he asked if she could fairly consider
6 both possible penalties. You may answer the
7 question.

8 EXAM BY MR. LITTLEJOHN:

9 Q. Could you consider both possible penalties?

10 A. Yes.

11 MR. LITTLEJOHN: Thank you.

12 THE COURT: Anything further from the
13 State?

14 MR. KOLB: No, sir.

15 THE COURT: I would ask you please, Ms.
16 Deacon, to step outside we will be with you in
17 just one moment.

18 Says the State?

19 MR. KOLB: Qualified.

20 THE COURT: Says the defendant?

21 MR. LITTLEJOHN: We agree.

22 THE COURT: Ask her to step back in.

23 Ms. Deacon, you are qualified, been
24 qualified to be a member of the pool. We will
25 select this jury from that pool tomorrow at five

1 o'clock so I will ask you, please, ma'am, to
2 return to this courtroom at that time. That
3 process will not be very long. We will select 12
4 and then the alternates. I need for you to come
5 prepared with clothing and personal effects to
6 take care of you for about a week because once you
7 are selected you will leave from here and we will
8 start the trial Thursday morning.

9 Until tomorrow I ask you not to talk about
10 this case or allow anyone to talk to you about it
11 or watch any news programs about it or read any
12 news articles. Thank you. This is some
13 information that the clerk prepared from Sumter
14 that will help you in preparing for this case.
15 Thank you.

16 All right let me tell you what let's do.
17 Let's take five minutes to stretch and take the
18 last one.

19 (Whereupon, a short recess was held.)

20 THE COURT: Are you ready?

21 MR. KOLB: Yes, sir.

22 MR. LITTLEJOHN: Yes, sir.

23 THE COURT: All right. Let's bring in
24 Ms. Condon

25 AMY WHITE CONDON, having been first

1 Q. But it would depend on the facts and
2 circumstances of each case; is that right?

3 A. Yes.

4 Q. And that is you?

5 A. Uh-huh (affirmative response).

6 Q. Would you like you just indicated have to
7 hear all of the facts and circumstances before you
8 would make a determination as to which punishment
9 was most appropriate?

10 A. Yes, I would like to think that I would.

11 Q. Okay. So you don't have any preset formula
12 for one if someone is convicted of murder it still
13 depends on the facts and circumstances?

14 A. It depends on the facts.

15 Q. You understand a person charged with criminal
16 offense is presumed to be innocent until the State
17 proves them guilty?

18 A. Yes.

19 Q. It is called the presumption of innocence.
20 Do you have any problem with that principle of
21 law?

22 A. No, not at all.

23 Q. You understand also as a part of that just
24 because someone is charged with criminal violation
25 they don't have to prove a thing and they

1 certainly don't have to prove their innocence?

2 A. Right.

3 Q. You have any problem with that?

4 A. No.

5 Q. If you were selected as a juror in this case,
6 would you expect Mr. Stone who is the person
7 seated at that table and the person who has been
8 charged with these alleged violations, would you
9 expect him to prove anything to you?

10 A. I wouldn't expect him to prove it but I would
11 expect to hear all the defense (Can't understand
12 tape).

13 Q. I would tell you that Mr. Stone was not, I
14 would charge you that Mr. Stone certainly is not
15 required to prove anything. In fact, just as
16 any person charged with a criminal offense it is
17 their right if they choose not to testify for
18 whatever reason a jury would be instructed that
19 they cannot consider that or use that against them
20 in any fashion, could you do that?

21 A. Yes.

22 Q. So basically am I understanding you that you
23 would decide the case solely on the evidence, the
24 fact that he testified or didn't testify or the
25 fact he didn't offer any evidence wouldn't

1 influence you at all, you would just look at the
2 evidence and make your decision based upon that
3 evidence?

4 A. Yes.

5 Q. If you were on that jury you understand there
6 are two phases, the first phase deals with the
7 guilt, whether or not Mr. Stone is guilty of
8 these events. You will hear evidence solely on
9 that issue, I will give you an instruction on the
10 law, the jury will decide, they will go back and
11 they will say, they will look at the evidence and
12 decide whether or not the State has met its burden
13 of proof, whether or not it has proved its case
14 beyond a reasonable doubt. And that would depend
15 upon you whether or not you were convinced beyond
16 a reasonable doubt that the State had met its
17 burden and establish to your satisfaction that Mr.
18 Stone was in fact the person who committed these
19 offenses, do you understand?

20 A. Yes.

21 Q. If you were not convinced the State had met
22 its burden, would you have any hesitancy finding
23 Mr. Stone not guilty?

24 A. No (Can't understand tape).

25 Q. Okay. Likewise, if you were convinced that

1 Mr. Stone was the person beyond a reasonable doubt
2 would you have any hesitancy in finding him
3 guilty?

4 A. No.

5 Q. Do you understand that once that jury, once
6 the jury makes a decision on that and depending
7 upon that decision whether or not we have the
8 second phase, the jury found him not guilty of
9 murder then there would be no second phase. If
10 on the other hand the jury found that the State
11 had met its burden of proof, then we would go to
12 the second phase which is called the penalty
13 phase, do you understand that?

14 A. Yes, sir.

15 Q. It is at that time that you will hear
16 evidence that you hadn't heard before that would
17 be evidence solely on the issue of what type of
18 punishment would be appropriate. You would hear
19 evidence, categorize it as mitigating
20 circumstances, aggravating circumstances and the
21 like, do you understand?

22 A. Yes.

23 Q. All right. Would you have an open mind
24 during that phase?

25 A. Yes.

1 Q. You would not make a decision on the
2 punishment until you have heard all the evidence
3 in the second phase and been instructed on the
4 law?

5 A. Yes.

6 Q. At the conclusion of that phase, once you
7 have heard all the evidence and I have instructed
8 you on the law, the jury will be directed to
9 retire to the jury room and make a decision as to
10 the appropriate punishment and decide between life
11 imprisonment and the death penalty, do you
12 understand?

13 A. Yes.

14 Q. Could you and would you consider both
15 punishments?

16 A. Yes.

17 Q. Would you be able as a juror to make a
18 decision based solely on the facts of the case,
19 solely on the law of what you believe is the most
20 appropriate punishment?

21 A. Yes.

22 Q. Do you know anything in your background, any
23 experiences you have had in life, any experiences
24 that you have had in life, strong feelings you
25 may have that because of the nature of this case,

2754

1 taking someone's life that would in anyway affect
2 your ability to be fair and impartial with the
3 State, fair and impartial with Mr. Stone?

4 A. No, I don't think so.

5 Q. If you are selected on this jury you would be
6 sequestered and I know that is not very exciting,
7 but could you set aside any feelings you may have
8 as a result of that, the inconvenience and
9 imposition and perform your jury -- your duties
10 as a juror?

11 A. Yes.

12 THE COURT: Please answer any questions
13 that the State may have.

14 EXAM BY MR. KOLB:

15 Q. Ms. Condon, as I understand your responses
16 that you would listen to the law and listen to all
17 the facts and circumstances of the case?

18 A. Yes.

19 Q. And depending upon what the law was and what
20 the facts and circumstances were that you could
21 return a death verdict in a particular case?

22 A. Yes.

23 Q. And in that if the law required each of the
24 12 jurors to sign the verdict and come in the
25 courtroom and report their verdict, you could do

1 that?

2 A. Yes.

3 MR. KOLB: Thank you.

4 THE COURT: Mr. Babb.

5 EXAM BY MR. BABB:

6 Q. Ms. Condon your maiden name was White?

7 A. Yes, sir.

8 Q. Is your husband related to Charlie Condon
9 by any chance?

10 A. No.

11 Q. No relation to the Attorney General?

12 A. No.

13 Q. Okay just curious. I just have a few
14 questions that I need to ask of you.

15 A. Okay.

16 Q. You understand this is a murder case?

17 A. Yes.

18 Q. In this case the defendant is accused of the
19 murder of a police officer, a deputy sheriff. I
20 notice when I said that you closed your eyes.
21 That obviously bothers you; is that correct?

22 A. I think the murder of anybody bothers me. I
23 think the murder of a police officer is just
24 another -- it is another person, but police
25 officers are held to a different (Can't understand

1 tape).

2 Q. Does that fact in your views holding a police
3 officer at a different level, could you still be
4 fair to this defendant?

5 A. Yes, I would be.

6 Q. You would still hold the State to the task in
7 the guilt phase to prove beyond a reasonable
8 doubt?

9 A. Yes.

10 Q. If they didn't complete that you would follow
11 the Judge's instruction regarding that?

12 A. Yes.

13 Q. If the State convinced you beyond a
14 reasonable doubt and a verdict had been returned
15 that the defendant was killed, could you then
16 still know what you now know, weigh both
17 alternatives fairly?

18 A. Yes.

19 Q. You consider the evidence and the law as the
20 judge gives you?

21 A. Yes.

22 MR. BABB: Nothing further.

23 THE COURT: Anything further from the
24 State?

25 MR. KOLB: No, sir.

1 THE COURT: Step down, Ms. Condon, we
2 will be with you in just a moment.

3 What says the State?

4 MR. KOLB: Qualified.

5 THE COURT: The defendant?

6 MR. BABB: Yes, sir.

7 THE COURT: I agree. She is qualified.
8 Ask her to step in, please.

9 Ms. Condon you are qualified as
10 potential juror in this matter. That means
11 tomorrow you will need to be here at five o'clock.
12 Here is some information from the Clerk of Court
13 at Sumter that may be some helpful use to you, has
14 some telephone numbers and what not. Tomorrow at
15 five we will select the 12 jurors and alternate
16 that will try this case from that pool. If you
17 are selected you will leave from here and go
18 directly to Sumter so you need to bring with you
19 clothing and personal effects that will take care
20 of your needs for about a week. Of course if you
21 aren't selected you can return home that will
22 conclude your services in this matter. I ask
23 that you not talk about this case with anyone or
24 allow anybody to talk with you about it or read
25 any news accounts or watch any news accounts. I

1 look forward to seeing you at five.

2 All right. Anything further from the
3 State?

4 MR. KOLB: Nothing.

5 THE COURT: Anything from the defendant?

6 MR. LITTLEJOHN: No, sir.

7 THE COURT: I will see you in the morning
8 at nine o'clock.

9 (Whereupon, court was in recess for the evening.)

10 THE COURT: Good morning, everyone.
11 Let the record reflect that Mr. Stone is present,
12 good morning, Mr. Stone. Yesterday when we
13 broke everybody had slipped out I think Mr.
14 Littlejohn was in the process of leaving, Amy
15 white con ton returned to the courtroom to ask me
16 a question, I want to share it with you. She
17 was concerned about her students, asked me what
18 she thought that she should say -- she asked me
19 what I thought she should say I guess is what it
20 really was to her students about her absence and
21 how long it would be. I just barely tried to
22 tell her not to worry, informed her we would be
23 working on the weekend, as well, that that would
24 minimize the number of days that she would not be
25 present with her students. That seemed to

1 comfort her somewhat but I wanted to sure that
2 with all of you so you could have that
3 information, as well.

4 THE COURT: All right anything from the
5 State before we bring the jury back?

6 MR. KOLB: No, sir.

7 THE COURT: Anything from the defendant?

8 MR. LITTLEJOHN: No, sir.

9 THE COURT: All right bring the first one
10 in, Mr. Allen.

11 PHILLIP ALLEN, having been first duly
12 sworn, testified as follows:

13 EXAM BY THE COURT:

14 Q. Good morning, sir, how are you?

15 A. I'm fine. I am going to have some questions
16 for you when I am completed the attorneys may have
17 some questions for you and we discussed on Monday
18 there really are no right or wrong answers to any
19 of these questions. And you needn't feel that
20 you need to defend any of your responses because
21 they are your responses, it is generally matters
22 that pertain to you and your feelings about things
23 and you are entitled to those. So I want to
24 assure you now really nobody is going to attack
25 those positions, okay. Do you have any prior

1 knowledge of this alleged incident.

2 A. No, sir.

3 Q. So basically what you know about this case is
4 really confined to what I shared with you that has
5 been alleged?

6 A. Yes.

7 Q. Have you read anything about it or talked
8 with anybody about it since Monday?

9 A. I haven't.

10 Q. Do you have any opinions at this point about
11 this case?

12 A. I have none.

13 Q. Would have you to hear the evidence before
14 you were able to two any opinions or reach any
15 conclusions about them?

16 A. Yes, sir.

17 Q. And would that be typical of you?

18 A. Yes.

19 Q. If you were a person that really wants to
20 hear all of them before you made a decision?

21 A. Yes, sir.

22 Q. Have you had an opportunity to review that
23 sheet that had the three types of jurors?

24 A. Yes, sir there which one best describes you.

25 A. Number three.

1 Q. The third one. And I understand that to
2 mean, let me share with you see if you are in
3 agreement, that is an individual who believes
4 there are circumstances in a murder case that
5 sometimes would warrant the death penalty,
6 sometimes would warrant life imprisonment, but it
7 depends on the particular circumstances in a given
8 case and before you can make a decision as to can
9 one is appropriate have you to hear all of the
10 facts?

11 A. Yes.

12 Q. That is you?

13 A. Yes.

14 Q. You understand that there are certain
15 principles of law that apply to this action,
16 being a criminal action or criminal dispute shared
17 a couple on Monday, one of those is the
18 presumption of innocence. When anyone is charged
19 with criminal offense it is presumed to be
20 innocent until the State proves that guilt, you
21 don't have any problems with that?

22 A. No.

23 Q. You understand that that does play the
24 burden on the State to prove its case beyond a
25 reasonable doubt and that they are the only party

1 in the proceeding that has responsibility and
2 obligation to prove anything?

3 A. Yes.

4 Q. Also coupled with that means that the
5 defendant in this matter, Mr. Stone, an
6 individual who is charged with some criminal
7 violation has no responsibility to prove a thing,
8 certainly doesn't have to prove his innocence, do
9 you agree with that?

10 A. Yes.

11 Q. If you were selected as a juror in this
12 matter, would you expect Mr. Stone to prove
13 anything to you?

14 A. (Can't understand tape).

15 Q. So you would look to the State to prove its
16 case and if Mr. Stone say for instance has a right
17 as anyone charged with a criminal offense if he
18 elected not to testify I would instruct the jury
19 they couldn't use that against him as well would
20 you have any trouble following that instruction as
21 well?

22 A. No.

23 Q. This trial will involve two parts, the first
24 part really there are two mini trials within the
25 trial, if you you will, because the first part

1 is going to deal solely with the issue of whether
2 or not Mr. Stone committed the offenses of which
3 he stands accused. We will deal with those
4 issues, those issues only. The jury will hear
5 that evidence, I will give instructions to the
6 charges and the law pertaining to them and the
7 jury will retire and then make a decision as to
8 whether or not he is guilty. Would you have an
9 open mind at the start of that trial?

10 A. Yes, I could.

11 Q. Would you maintain that open mind until you
12 have been instructed by the Court to make a
13 decision or begin your deliberations?

14 A. Yes.

15 Q. Now, part of my instructions would be would
16 you as part of the jury believe that the State
17 failed to meet its burden of proof, in other
18 words, they failed to convince you beyond a
19 reasonable doubt that Mr. Stone did commit
20 these offenses, it would be your duty to return a
21 verdict of not guilty. Could you follow that?

22 A. Sure, yes.

23 Q. Would you have any hesitancy in that
24 situation of returning a verdict?

25 A. No.

1 Q. Likewise if you were convinced beyond a
2 reasonable doubt that the State had met its burden
3 and proved that he had committed these offenses
4 then your verdict should be guilty, would you
5 have any problem following that or not?

6 A. To.

7 Q. You could find him guilty?

8 A. Yes, sir.

9 Q. Obviously the second part is somewhat
10 controlled about the jury's decision in the first
11 part because if the jury finds that the State has
12 failed to meet its burden and finds the defendant
13 not guilty then that would end this matter, do
14 you understand that?

15 A. Yes.

16 Q. If the jury, however, finds that Mr. Stone
17 did commit the offense of murder and find him
18 guilty of murder then we will go into the second
19 phase which deals solely with penalty, do you
20 understand that?

21 A. Yes, sir.

22 Q. It is in that phase that you will hear
23 additional evidence and that evidence will pertain
24 solely to that issue or the appropriate
25 punishment. You will hear evidence, you will

2765

1 hear evidence of aggravating circumstances,
2 mitigating circumstances around the like and I
3 will give you further instructions on those terms
4 and certain elements of law, do you understand?

5 A. Yes.

6 Q. Would you have an open mind at the start of
7 the second phase?

8 A. Yes, sir.

9 Q. The same as you did start of the first phase.
10 Would you not make any decisions until you have
11 heard all of the evidence in that second phase?

12 A. Yes.

13 Q. At the end of that second phase after I give
14 you an instruction on the law, I will ask the
15 jury to retire and decide the appropriate
16 punishment you will be asked to decide between
17 death penalty and life in prison. Would you as a
18 juror be able to consider both of those
19 punishments?

20 A. Yes.

21 Q. Would you be able to make your decision based
22 upon your view of the facts and circumstances
23 which you felt was most appropriate?

24 A. Yes.

25 Q. If you are selected on this jury, the jury

1 will be sequestered for trial and I understand
2 that many times that causes some people some
3 concern and may cause you some concern because it
4 is certainly an inconvenience, rupture of normal
5 life, but could you set that aside and not let
6 that interfere with your responsibilities as
7 jurors?

8 A. Of course, yes, sir.

9 Q. You would do that?

10 A. Yes.

11 Q. Do you know of anything that has occurred in
12 your life, any strong feelings you may have, any
13 convictions you may have that would in anyway
14 affect your ability to be fair and impartial in
15 this trial dealing with the issues that we talked
16 about as it pertains to the State?

17 A. No you know of any reason you couldn't be
18 fair and impartial to the State.

19 A. I guess not.

20 Q. You know of any reason why you couldn't be
21 fair and impartial to Mr. Stone?

22 A. No.

23 THE COURT: Please answer any questions
24 that the State may have for you, sir.

25 EXAM BY MR. KOLB:

1 Q. Mr. Allen, have you ever talked with anyone
2 about the death penalty?

3 A. A few times.

4 Q. In those discussions, did you give an
5 opinion one way or the other about what you felt
6 about the death penalty?

7 A. Yes, I did.

8 Q. Could you tell us what that opinion has been?

9 A. Basically really if a person deserves it or
10 not based upon the crime and the description of
11 it.

12 Q. As an individual citizen you accept the fact
13 that we have death penalty, capital punishment is
14 appropriate in some circumstances and not others?

15 A. Yes, sir.

16 Q. If you were on the jury made determination
17 that death penalty was appropriate under the law
18 and the facts and circumstances of that case,
19 would you have any problem signing your name to
20 the verdict form along with all other jurors?

21 A. Yes, sir.

22 Q. Or standing up in Court and announcing that
23 that was your decision?

24 A. Yes.

25 MR. KOLB: Thank you, sir.

1 THE COURT: Mr. Littlejohn.

2 EXAM BY MR. LITTLEJOHN:

3 Q. Mr. Allen, on the other hand if we got to
4 that point in the trial, could you also consider
5 life imprisonment as an appropriate sentence?

6 A. Yes.

7 Q. Mr. Allen, let me ask you this, sir, do
8 you have any friends, relatives or acquaintances
9 that are in law enforcement?

10 A. No.

11 Q. You don't. Okay. Let me tell you, sir?

12 A. Correction.

13 Q. Yes, sir?

14 A. I have a first cousin that was a US Marshal,
15 works up in Michigan (Can't understand tape).

16 Q. Okay thank you. Mr. Allen, let me tell
17 you, sir, in this case the State has charged the
18 defendant Mr. Stone with the murder of a deputy
19 sheriff. Would the fact that the nature of the
20 charge have any effect on your ability to fairly
21 judge the guilt or innocence of the defendant?

22 A. Known whatsoever, sir.

23 Q. If we got to that stage at the trial, would
24 that have any effect on your ability to consider
25 both possible penalties?

1 A. No, sir.

2 THE COURT: All right Mr. Allen, if you
3 will please sir step outside I will be right back
4 with you.

5 What says the State?

6 MR. KOLB: Qualified.

7 MR. LITTLEJOHN: We concur.

8 THE COURT: Agreed. Very.

9 Thank you, Mr. Allen. Have you been
10 qualified as potential juror in this matter. We
11 are going to select the jury this afternoon at
12 five o'clock. I will need you to be back here in
13 the courtroom at that time. You are part of the
14 pool to select 12 and then alternate from that
15 pool, we will be leaving tonight once that
16 process is completed to go to Sumter so you will
17 need just in case you are selected you will need
18 to bring with you clothing and personal affects to
19 take care of your needs for about a week. Until
20 I see you this afternoon, I would ask that you
21 continue do not discuss this case, allow anyone
22 to talk with you, watch anything or read
23 anything.

24 Okay, Ms. Thompson.

25 CLYDIE THOMPSON, having been first

1 duly sworn, testified as follows:

2 EXAM BY THE COURT:

3 Q. Good morning, Ms. Thompson, how are you?

4 A. Fine.

5 Q. Good. Thank you for coming this morning and
6 being on time. I have some questions that I am
7 going to ask you when I have completed the
8 attorneys may have some questions for you. I
9 want to remind you what I shared with you Monday
10 there are no right or wrong answers to these
11 questions. You should not in anyway think you
12 have to defend any answers because these are
13 questions that deal with what you feel about
14 certain things, they are your opinions,
15 certainly you are entitled to them even if
16 everyone in this room didn't agree. I just
17 wanted to assure you of that so you could relax
18 and make sure that you feel that you don't have to
19 worry about anything.

20 I would also ask because we do not have a
21 microphone it went out on us Monday afternoon that
22 you please answer loudly enough so that those
23 individuals can hear you.

24 Do you have any prior knowledge of this
25 situation or incident?

1 A. No, sir.

2 Q. So the only thing you know is what I shared
3 with you that has been alleged?

4 A. Yes, sir.

5 Q. Have you read anything about it or watched
6 anything or heard anything about it since Monday?

7 A. No, sir.

8 Q. Do you have any opinions about this matter?

9 A. Not really.

10 Q. You say not really, that seems?

11 A. No.

12 Q. Okay. No. Definitely no. Would you have
13 to hear the evidence before you developed any
14 opinion?

15 A. Yes.

16 Q. Are you typically the person that requires,
17 you would want to hear all before you developed an
18 opinion or you wanted to develop opinions along
19 the way? You want to hear it all?

20 A. Yes.

21 Q. What you are doing is very normal in
22 conversation, this lady seated here, she has to
23 interpret those remarks and let's help her by just
24 responding verbally yes or no, okay?

25 A. All right.

1 Q. Have you had a chance to read that sheet of
2 paper that had the three types of jurors?

3 A. Yes.

4 Q. Which one describes you the best?

5 A. The last one.

6 Q. The last one. And am I to understand then
7 that you are the type of person that believes that
8 someone has been convicted of murder that there
9 are times when that individual should receive the
10 death penalty and at times when that individual
11 should receive life imprisonment but it all
12 depends upon the facts and circumstances of a
13 given case?

14 A. Yes.

15 Q. And before you could decide or would decide
16 which one was appropriate would you want to hear
17 all the facts of that case?

18 A. Yes, sir.

19 Q. So that is the individual we are talking to?

20 A. Yes, sir.

21 Q. You understand that this is a criminal
22 dispute or matter trial involving a criminal
23 dispute and as a result there are certain
24 principles of law that will apply in this case and
25 as do in any case of this nature tried in this

1 country. One is the presumption of innocence,
2 you understand that?

3 A. Yes.

4 Q. I talked to you a little bit about that on
5 Monday, do you have any problem with that law?

6 A. No.

7 Q. You understand that that law places the
8 burden on the State to prove its case beyond a
9 reasonable doubt. Also as a part of that because
10 the burden is on the State to prove your case that
11 is the only part of this dispute that has any
12 responsibility to prove any, a person charged
13 with a criminal offense doesn't have to prove
14 anything, they don't have to prove anything,
15 they don't have to disprove anything, they don't
16 have to respond at all if they don't want to, do
17 you understand?

18 A. Yes, sir.

19 Q. Would you have any problem or do you have any
20 problem with that principle of law?

21 A. No, sir.

22 Q. That would mean that the individual charged
23 with criminal offense is never required to prove
24 his or her innocence. Again, you don't have any
25 problem with that?

1 A. No.

2 Q. If you were selected as a juror in this case,
3 would you expect Mr. Stone who is the individual
4 charged with these criminal violations to prove
5 anything?

6 A. No.

7 Q. Would you look to the State to prove its
8 case; is that right?

9 A. Yes.

10 Q. In this trial there are really going to be
11 two trials, two jury verdicts so to speak or
12 could be two jury verdicts depending upon certain
13 things. The first part is going to deal with
14 whether or not Mr. Stone committed the offenses
15 which he is accused. Do you understand that?

16 A. Yes, sir.

17 Q. During that phase that is the only evidence
18 that you are going to hear. At the end of that
19 phase the jury will be asked to make a decision.
20 If you are convinced or not convinced, in other
21 words, the State does not prove to you beyond a
22 reasonable doubt, would you be able to sign a
23 verdict of not guilty?

24 A. Yes.

25 Q. In other words, if they didn't convince you

1 Mr. Stone did this beyond a reasonable doubt,
2 could you find him not guilty?

3 A. Yes.

4 Q. That would be your instruction by the Court,
5 could you follow that instruction?

6 A. Yes, sir.

7 Q. Also as a part of that instruction would be
8 if you are convinced Mr. Stone is guilty, decide
9 Mr. Stone did commit the offense or offenses then
10 would your verdict be guilty?

11 A. Yes.

12 Q. Would you have an open mind throughout that
13 proceeding until you were instructed to make a
14 decision?

15 A. Yes, sir.

16 Q. You would keep that open mind?

17 A. Yes, sir.

18 Q. Now, if the jury finds at the end of the
19 first proceeding that Mr. Stone did not or that
20 the State failed to meet the burden of proof
21 (Can't understand tape) then really that is what
22 you find, you understand that, because it is not
23 a matter of what you are dealing with, did the
24 State prove it case in the first proceeding. If
25 they failed to convince you your verdict has to be

1 not guilty. If that be your verdict that will
2 end the trial obviously. If the jury was
3 convinced however that the State had met its
4 burden, did find Mr. Stone was guilty, then you
5 go into the second, do you understand?

6 A. Yes.

7 Q. During the second phase you would hear
8 evidence that deals solely with the issue of
9 punishment because that is what is called the
10 penalty phase. You will hear evidence, I will
11 define these terms for you at that time, but
12 mitigating circumstances, aggravating
13 circumstances and the like that is the type of
14 testimony you may hear in that second phase.

15 Would you be able to keep an open mind, start and
16 finish?

17 A. Yes.

18 Q. You wouldn't start with any predetermination
19 as to what should be the appropriate punishment?

20 A. No, sir.

21 Q. After you have heard all of the evidence in
22 the second phase I will give you further
23 instruction on the law and then I will ask the
24 jury to retire and make a decision and choose
25 between the two, between life imprisonment and

1 the death penalty. Would you as a juror if you
2 were selected be able to consider both of those
3 punishments?

4 A. Yes, sir.

5 Q. And would you be able to make decision based
6 upon the circumstances as you determine to decide
7 between the two?

8 A. Yes.

9 Q. Before I turn it over one little part, this
10 case will involve the jury being sequestered and I
11 notice your face your reaction and that is pretty
12 much the way I have seen with everyone we have
13 talked to and that is pretty normal. I
14 understand the fear and frustration and anguish
15 because primarily of what we have seen and watched
16 I assure you we are not talking about six months.
17 But I understand that it is interesting and it is
18 a large extent can be but my question to you is
19 this would you be able to set all of that aside if
20 you were selected and perform your duties as a
21 juror?

22 A. Yes.

23 Q. Would you too that.

24 THE COURT: Answer any questions the
25 State may have.

1 EXAM BY MR. KOLB:

2 Q. Good morning, Ms. Thompson, I just have a
3 few questions for you. Have you or any of your
4 family members or close friends ever been a victim
5 of a crime?

6 A. No, sir.

7 Q. Have you or any of your family members or
8 close friends ever been charged with a crime?

9 A. No, sir.

10 Q. You indicated to the judge that you consider
11 yourself the type three juror; is that correct? Do
12 you understand that to mean that if you found the
13 defendant guilty you could sentence him to either
14 the death penalty or life in prison depending upon
15 the facts and circumstances of the case?

16 A. Yes.

17 Q. Could you sign your name to a verdict form
18 sentencing the defendant to death, you believe
19 you could write your name on that document? Do you
20 think could you come into open Court in front of
21 the defendant and whoever else was present and
22 announce that your verdict was that he receive the
23 death penalty?

24 A. Yes, sir.

25 MR. KOLB: Thank you.

1 THE COURT: Mr. Littlejohn.

2 EXAM BY MR. LITTLEJOHN:

3 Q. Ms. Thompson on the other hand if we got to
4 that point in the proceeding, could you also
5 consider life imprisonment as a proper sentence?

6 A. Yes.

7 Q. Could you agree to a verdict of life in
8 prison?

9 A. Yes, sir.

10 Q. Ms. Thompson, the State in this case has
11 charged the defendant Mr. Stone with the murder of
12 a deputy sheriff. Given that those are the
13 circumstances which he is charged with, would
14 that have any effect on your ability to have an
15 open mind and be a fair juror?

16 A. (Can't understand tape).

17 Q. If we got to the point of the trial where you
18 were called upon to decide punishment, could you
19 consider not only the death penalty but life in
20 prison as a proper disposition of this case?

21 A. (Can't understand tape).

22 MR. LITTLEJOHN: Thank you very much.

23 THE COURT: Ms. Thompson, if you would
24 step out the door we will be right with you.

25 What says the State?

1 MR. KOLB: Qualified.

2 MR. LITTLEJOHN: We concur.

3 THE COURT: She is qualified, ask her to
4 step in, please.

5 Thank you, Ms. Thompson. Have you been
6 qualified now as a potential juror in this matter.
7 We will select the jury at five o'clock this
8 afternoon. I will need for to you be back, come
9 back like you did on Monday at five. At that
10 time we will select the 12 jurors and alternates
11 that will try the case. You will need since that
12 is the information from the clerk it talks about
13 it gives you some numbers that will be helpful.
14 You will need to bring with you sufficient
15 clothing and personal effects to take care of you
16 for about a week because if you are selected we
17 will go straight from here to Sumter start the
18 trial tomorrow. If you are not selected you of
19 course will go back and unpack. I will see you
20 at five. Until then do not discuss the matter
21 with anyone or allow anyone to talk with you,
22 certainly don't watch anything or read anything.
23 See you at five. Thank you so much.

24 Next is Ms. Montagne.

25 CAROLYN MONTAGNE, having been first

1 duly sworn, testified as follows:

2 EXAM BY THE COURT:

3 Q. Good morning Ms. Montagne, how are you?

4 A. Good.

5 Q. Good. Are you nervous?

6 A. Yes.

7 Q. I understand. Don't be. I want to assure
8 you of something because what we will ask you this
9 morning I told you Monday there are no wrong
10 answers let me reiterate that. What the
11 questions we ask you or your personal feelings and
12 opinions. I want to assure you of something, it
13 doesn't make any difference whether anybody in
14 this room agrees with you you are entitled to
15 those so don't worry about them. We ask you to
16 answer, whatever they are they are yours, you
17 are entitled to them relax, respond to the
18 questions, okay.

19 Do you have any prior knowledge of this
20 particular incident?

21 A. No.

22 Q. And so basically what you know is what I
23 shared with you on Monday that has been alleged?

24 A. Yes. I read an article.

25 Q. And what was in it?

1 A. That they were choosing a jury, in the
2 process of this case.

3 Q. Do you feel that anything that you read in
4 that article would affect your ability to sit as a
5 juror?

6 A. (Can't understand tape).

7 Q. Do you have any opinions about this case?

8 A. No, sir.

9 Q. Would you have to hear all of the evidence
10 before you reached any conclusions?

11 A. Oh, yeah.

12 Q. Are you that type of person, generally?

13 A. Yes, sir.

14 Q. So in order to make any decisions about this
15 matter or have an opinion, you would first want
16 to hear the evidence and then have an opportunity
17 to consider the law and apply that to the evidence
18 before you decided it?

19 A. Yes.

20 Q. Have you had an opportunity to read that
21 sheet that has the three types of jurors?

22 A. Yes.

23 Q. Which one best describes you?

24 A. Well not number two so probably number 3, I
25 guess. My opinion about life imprisonment versus

1 the death penalty is they are -- a person whose
2 life who is in prison for life can't contribute to
3 our society so that kind of (Can't understand
4 tape). But the reason it keeps on for years and
5 years and years you know kind of waivers.

6 Q. Absolutely, I told that you is entitled to
7 that. But basically you are a person that it
8 depends upon the circumstances of murder as to the
9 punishment or just the facts of murder?

10 A. I think it depends upon the circumstances.

11 Q. So it would depend your conclusion about
12 which one was most appropriate would depend upon
13 the circumstances of a given case?

14 A. Yes, I think so.

15 Q. But you have a tendency, if I'm stating and
16 I understand you correctly, your inclination
17 would probably be more for the death penalty than
18 life in prison?

19 A. Yes.

20 Q. But could I clearly and would if someone
21 asked you which is the most appropriate would you
22 want to know all the facts and circumstances of
23 the case before you answered that?

24 A. Oh, yes.

25 Q. Now, you understand in this particular case

1 like any case, the nature being a criminal case
2 there are certain principles of law that apply,
3 one of those I shared with you on Monday is the
4 presumption of innocence. Do you have any
5 problem with that principle of law?

6 A. No.

7 Q. A part of that says that because the
8 individual is being charged with criminal offense,
9 is presumed innocent the burden then is upon the
10 State to prove its case beyond a reasonable doubt,
11 do you agree with that?

12 A. Yes.

13 Q. That means in this type proceeding the only
14 party that has any burden is the State. They are
15 the only party that has to prove anything. The
16 defendant never had to prove anything, the person
17 charged with the criminal offense, do you have
18 any problem with that?

19 A. No, I don't have a problem with that. I
20 think from what I have read and learned and seen
21 in the news I think our system is kind of leaning
22 the other way.

23 Q. Okay. Well, I again you are entitled to
24 that. My question would be because one of the
25 things and this is one of the beauties of our

1 system, I think, neither you or I will be in
2 prison because we think something is wrong or a
3 law needs to be changed and we state that, we
4 feel comfortable in doing that and that is pretty
5 neat?

6 A. Right.

7 Q. But in this proceeding, this is a one time
8 where and it is really unique to this jury system
9 as well, you will be asked for this limited
10 purpose, for this trial that even if you differ
11 from the law would you be asked to apply that law
12 and set aside your personal feelings would you be
13 able to do that?

14 A. I think so.

15 Q. Because I will instruct you if you are
16 selected on the jury that basically what I just
17 stated and I will instruct you that the defendant
18 never has to prove anything and that is the
19 accused is never required to prove his or her
20 innocence in a case. Also, I don't know, if
21 for some reason Mr. Stone should not testify in
22 this matter just as anyone charged of a criminal
23 offense has the right to testify or not testify
24 for whatever reason I would instruct the jury that
25 they could not use that against him in anyway.

2786

1 Would you be able to follow that instruction?

2 A. Yes.

3 Q. So if you were selected as a juror in this
4 case, would you expect Mr. Stone to prove
5 anything to you?

6 A. I don't know how to answer that.

7 Q. All right let me ask you this. I think you
8 are being very honest you are saying personal
9 feelings from you saying I may expect him to do
10 something, prove his innocence?

11 A. Maybe.

12 Q. My question is, given that being your
13 personal feelings would you as a juror be able to
14 set that aside and follow my instruction when I
15 tell you that you can't expect him? In other
16 words, you must look to the State and judge this
17 case solely on the evidence presented by the State
18 and not be influenced at all by anything that Mr.
19 Stone didn't prove or didn't establish for you
20 because he has no responsibility?

21 A. Given the evidence from the State, is that
22 what you are saying.

23 Q. Would you not be influenced by that feeling?

24 A. I don't know.

25 Q. I understand that feeling and I would, too,

1 but we need to know this morning, we need to have
2 a commitment from you because you are going to
3 take an oath to follow that law?

4 A. I think can I do it, listen to the State's
5 case.

6 Q. And make a decision solely on the evidence?

7 A. Yes.

8 Q. Or lack of evidence?

9 A. Yes.

10 Q. Because I will tell you, you will decide this
11 case on the evidence or the lack of evidence.

12 A. Yes.

13 Q. All right. So you would follow the
14 instruction that would you not hold that against
15 Mr. Stone in anyway; is that correct?

16 A. Yes.

17 Q. In the first phase of this proceeding you
18 will hear evidence that will deal solely with the
19 issue of whether or not Mr. Stone committed the
20 offense. At the end of that I will instruct you,
21 give you instruction on the law and the jury will
22 decide whether or not the State has met its burden
23 of proof. Part of my instruction will be that if
24 you are not convinced that the State has met its
25 burden, in other words, they have not convinced

1 you beyond a reasonable doubt that Mr. Stone
2 committed these offenses, then it would be your
3 duty to return a verdict of not guilty, would you
4 be able to do that?

5 A. Yes.

6 Q. Also be a part of my instruction that if the
7 defendant, if the State proved its case beyond a
8 reasonable doubt, convinced you that the
9 defendant the commit these acts then it would be
10 your duty and responsibility to return a verdict
11 of guilty, could you follow that?

12 A. Yes.

13 Q. If the jury returns a verdict of not guilty
14 to the offense of murder, would be no second
15 phase. But if the jury finds that the State has
16 met its burden, you find the defendant is guilty
17 of the offense of murder it is then and only then
18 that we will go into the second phase which is
19 known as the penalty phase, do you understand
20 that?

21 A. Yes.

22 Q. In the second phase you will hear additional
23 evidence action evidence that you didn't hear in
24 the first that will deal solely with the issue for
25 the appropriate punishment. Will you be able to

1 keep an open mind in the second phase?

2 A. Yes.

3 Q. Will you before you make a decision on
4 punishment that you feel to be the most
5 appropriate, will you wait until have you heard
6 all of the evidence and received the law?

7 A. Yes.

8 Q. You think you could do that?

9 A. Yes.

10 Q. At the conclusion of that phase where you
11 will hear evidence, you will hear evidence that
12 deals with issues like aggravating circumstances,
13 mitigating circumstances and the like, you will
14 get, you will receive further instruction and
15 then I will ask the jury to retire and make a
16 decision. You will be asked to decide between
17 life in prison and death penalty. Will you at
18 that time be able to consider both?

19 A. Yes.

20 Q. Will you at that time then based upon the
21 facts and circumstances that you determine decide
22 which sentence is more appropriate, would you
23 wait until that time to do that?

24 A. Yes.

25 Q. Do you know of anything in your background

1 any feelings you would have other than what you
2 have already shared with us this morning
3 concerning the death penalty, do you know of
4 anything, any other convictions or strong
5 feelings that you would have or anything that has
6 occurred, life's experiences in a case like this
7 where someone is accused of committing the offense
8 of murder that would in anyway influence or affect
9 your ability to be fair and impartial to the
10 State?

11 A. No.

12 Q. How about fair and impartial to the
13 defendant, the accused?

14 A. No.

15 Q. If you were selected the jury will be
16 sequestered. Now, what you have watched I want
17 to allay your concern immediately. We are not
18 talking about six to nine months. I assure you
19 none of that. I realize it would be an
20 inconvenience, I realize it would be certainly
21 disruptive to your normal life, but if you were
22 selected could you set all of that aside and stay
23 focused on your responsibilities as a juror?

24 A. Yes, I could.

25 Q. You could. Okay answer any questions the

1 State may have, please.

2 EXAM BY MR. KOLB:

3 Q. Ms. Montagne, I understand you to say that
4 you would need to hear all the facts and
5 circumstances before deciding what the appropriate
6 punishment would be?

7 A. Yes.

8 Q. What you have considered the capital
9 punishment in the past and you feel it is
10 appropriate in certain circumstances?

11 A. Yes. (Can't understand tape).

12 Q. So is the person personally involved in the
13 case you would have to hear all of the
14 circumstances, all the facts and the Judge's
15 charge on the law before you made up your mind of
16 what punishment would be appropriate?

17 A. Yes.

18 Q. No one category or describing the case would
19 cause you to makeup your mind in advance of what
20 the ultimate penalty should be?

21 A. No.

22 Q. So you would have to wait and hear all the
23 facts and circumstances?

24 A. Yes.

25 Q. And in a case where after hearing the law and

1 after hearing all the facts and circumstances in a
2 case where the decision of the jury is the death
3 penalty was the appropriate punishment, would you
4 have any problem signing your name to the verdict
5 form with all of the other jurors and that verdict
6 form then in effect become the death warrant in
7 the case?

8 A. No.

9 Q. Or coming into Court and standing and
10 publicly announcing that is your verdict in the
11 presence of the defendant, would you have any
12 problem with that?

13 A. No.

14 Q. Thank you.

15 THE COURT: Mr. Littlejohn.

16 EXAM BY MR. LITTLEJOHN:

17 Q. Ms. Montagne, you expressed to Judge Dennis
18 some thoughts or opinions that you have concerning
19 the death penalty and its application in our
20 criminal system. Let me ask you this, would you
21 be able to put aside those opinions and if we got
22 to this stage in the trial consider life in prison
23 as an appropriate sentence?

24 A. Yes, I could do that.

25 Q. You think you could?

1 A. Yes.

2 Q. I notice that your husband was retired from
3 United States Custom Service. Was he in
4 enforcement or regulatory?

5 A. Enforcement for years and years and then
6 headquarters.

7 Q. He went to headquarters trained other customs
8 agents how to do their jobs?

9 A. Yes.

10 Q. Let me tell you this, in this case the State
11 of South Carolina has charged the defendant, Mr.
12 Stone, with the murder of a law enforcement
13 officer. Given the fact that that is the nature
14 of the crime that is charged, would that have any
15 effect on your ability to be a fair juror in this
16 case?

17 A. Perhaps. My husband as an inspector as a
18 younger man was in a position of danger (Can't
19 understand tape).

20 Q. I work with them before I know?

21 A. Ask me your question again.

22 Q. The fact that the nature of the charge
23 against Mr. Stone is that he is accused of the
24 murder of a police officer, would that impair
25 your ability to be a fair juror in this case, to

1 determine his guilt or innocence?

2 A. Perhaps. Yes, it would.

3 Q. You think it would? Do you think that is
4 something that would interfere with your ability
5 to weigh the evidence?

6 A. It is hard, I would hope not.

7 MR. KOLB: I object.

8 THE COURT: No, sir. You may object,
9 but I will allow the question.

10 THE WITNESS: If that would interfere
11 with my judgment since my husband is an officer.
12 I guess I would think not.

13 EXAM BY MR. LITTLEJOHN:

14 Q. I understand, I appreciate your candor.

15 A. I would hope not but I think it might.

16 Q. In order for this case to get to the second
17 phase if the State proves the guilt of the
18 defendant beyond a reasonable doubt, would the
19 circumstances affect your ability to fairly
20 consider both possible punishments?

21 A. No.

22 Q. You don't think it would affect that part?

23 A. No.

24 Q. But what you are telling us is you have
25 reservations about the effect it might have on you

2795

1 in the first phase of this trial?

2 A. Right, yes.

3 MR. LITTLEJOHN: Thank you, ma'am.

4 THE COURT: You care to ask any follow-up
5 questions before I do?

6 EXAM BY MR. KOLB:

7 Q. Just one thing I understood you to say that
8 no one category would cause you to makeup your
9 mind in advance. That would you have to hear all
10 the facts and circumstances before you made a
11 decision?

12 A. Yes.

13 Q. So just the mere allegation that something is
14 involved would cause you to make up your mind in
15 advance?

16 A. Mere allegation.

17 THE COURT: Solicitor, let's rephrase
18 your question, please started in did I quiteing
19 she expressed this is her philosophy and fear, if
20 you want to explore what she stated, let's state
21 it specifically, sir.

22 EXAM BY MR. KOLB:

23 Q. Just the allegation that involving the murder
24 of a law enforcement officer, would that mere
25 allegation before you received all the proof and

1 received the Judge's charge on the law and
2 received all of the evidence, would the mere
3 allegation cause you not to be fair in evaluating
4 the evidence that you hear?

5 A. I guess I was thrown. Policeman is officer
6 of the law type situation I would hope that I
7 could (Can't understand tape) I kind of feel I
8 wouldn't. It is apples oranges type of thing I'm
9 not understanding, it is either one or the two.

10 Q. Well, you understand I don't think anyone is
11 trying to ask you what your verdict would be given
12 the particular circumstances, that is not what we
13 are asking you?

14 A. Okay.

15 Q. Nobody is asking you would you be more likely
16 to give death penalty if it is the murder of
17 police officer that is not what you are being
18 asked. The question is if it is alleged that the
19 murder of a police officer, does that mere
20 allegation going to cause you not be able to be
21 fair in listening to the law and listening to the
22 facts and evidence?

23 THE COURT: I will allow the question.
24 That is appropriate question. Overrule the
25 objection you may ask the question.

1 THE WITNESS: The mere allegation I don't
2 think would determine my choices, does that
3 answer your question.

4 EXAM BY MR. KOLB:

5 Q. Yes, ma'am. So you believe you could be a
6 fair and impartial juror even in a case where it
7 is alleged that a police officer was murdered?

8 A. I believe I could be.

9 Q. We all want to make sure you know what you
10 are saying. We are not asking you what would
11 your verdict likely be if that is what you have
12 after you have heard all the law and evidence,
13 nobody is asking you, we are not entitled to ask
14 you that. The question is could you be a fair
15 juror?

16 A. Yes, I think I could be a fair juror.

17 EXAM BY THE COURT:

18 Q. Now, let me ask you a question, it is not a
19 matter of you understanding what you are saying or
20 anything else, it is our understanding of what
21 you are saying, you know very well what you are
22 saying. The question that has been asked you is
23 multi-faceted?

24 A. Yes.

25 Q. It is. Because being a fair juror in the

1 questions that are asked different aspects about
2 my concern is this, you remember I asked you the
3 questions anything would cause you anyway affect
4 your ability to be fair and impartial. One of
5 the questions with every juror is is there
6 anything about the trial that if you hear the
7 evidence that would affect your ability to be
8 totally impartial. The question I have is not
9 alleged you have answered that question I
10 understand just the allegation of it doesn't
11 affect it. If you are in the trial and there is
12 testimony about a police officer being murdered,
13 if that comes out at the trial, will that
14 influence you at all so that you can't be totally
15 fair. You already expressed I understand your
16 reasoning, it relates itself to your husband's
17 involvement, that is fine, that doesn't
18 disqualify you. My question is can you set aside
19 those feelings and not be influenced by them in
20 viewing the evidence?

21 A. Yes, sir.

22 Q. You could do that. Because you see that
23 comes back to you. Can you set aside
24 acknowledging those tendencies or those feelings
25 may be there, can you suppress that, put those

1 aside as all jurors have to do, I mean we all
2 come here with certain things we are all asked to
3 do that, will you be able to do that?

4 A. Yes, I think so.

5 Q. And not let it impair or affect your ability
6 of how you view the evidence and how you weigh the
7 evidence?

8 A. Yes, I know I can.

9 Q. All right. Appreciate?

10 A. Yes.

11 Q. You can?

12 A. Yes.

13 Q. All right thank you. Any additional
14 questions from the State?

15 MR. KOLB: No, sir.

16 THE COURT: Any additional questions from
17 the defense?

18 MR. LITTLEJOHN: No, sir.

19 THE COURT: Very well, thank you. If
20 you will step out I would appreciate it, be with
21 you in just a second.

22 Says the State?

23 MR. KOLB: Qualified.

24 THE COURT: Says the defendant?

25 MR. LITTLEJOHN: Your Honor, I think she

1 is qualified we move to disqualified her for cause
2 based on her responses concerning her ability to
3 be a fair juror in the guilt aspects of this case.

4 I think it is clear from her hesitation from her
5 answers that that is something that she just
6 couldn't put aside.

7 THE COURT: I appreciate that. I feel
8 like that this juror and I have observed her
9 demeanor, I feel like that she is a very
10 conscientious individual and someone who is very
11 candid in answering the questions, was not at all
12 embarrassed I'm glad she wasn't by her feelings.
13 I feel like she certainly was asked several
14 questions that had differing aspects to them and
15 they dealt with different phases, allegation
16 versus evidence, that sort of thing. Clearly
17 she indicated that she was more inclined to impose
18 the death penalty, no question about that. But
19 clearly she indicated that she could and would
20 consider both punishments and specifically in
21 answer to your question she said not so much in
22 the penalty phase as she did in the guilt phase,
23 the penalty phase she was unequivocal no would not
24 influence the imposition of the penalty.

25 Then with respect I think it was clarified

1 that she acknowledged she had this predisposition,
2 but she recognizes that and she stated
3 unequivocally she could set that aside and be fair
4 and impartial. The juror has stated now that she
5 can be unbiased, would be impartial and I think
6 this juror especially with her background and
7 everything else would follow the oath and would
8 take that oath very seriously. For those reasons
9 I do find that she is qualified.

10 You have been qualified as potential juror
11 in this matter. What that means is you are a
12 member of the pool that will leave today at five
13 o'clock. Need you back at five o'clock, take a
14 seat in the audience at that time. From that
15 pool we will select the 12 jurors and the
16 alternates to decide this case. When you come
17 you need to bring with you clothing, personal
18 effects to take care of your needs for about a
19 week because once the jury is selected we are
20 leaving and going to Sumter and start the trial
21 tomorrow.

22 This is a letter from the Clerk of Court
23 in Sumter, it will give you some assistance in
24 preparing for the sequestration. Be here at five
25 o'clock. It shouldn't take much longer to select

1 the jury. Until five I would ask that you not
2 talk about this case with anyone, certainly don't
3 allow anyone to talk with you about it, don't
4 read anything or watch anything on TV.

5 THE WITNESS: If one is selected do you
6 have a chance to tell someone you are selected.

7 THE COURT: You need to go ahead and tell
8 them that if you don't return home that you will
9 be leaving. You will be able to say you are in
10 route if you were selected. We will allow you to
11 make a phone call.

12 Let's bring in Mr. McGee.

13 CECIL MCGEE, having been first duly
14 sworn, testified as follows:

15 EXMA BY THE COURT:

16 Q. Good morning, Mr. McGee, how are you?

17 A. Fine hope are you.

18 Q. Good. I have some questions I need to ask
19 you, when I have completed my questions the
20 attorneys may have some questions for you, I want
21 to remind you that there are no right or wrong
22 answers to any of these questions. These are
23 questions that basically how you feel about
24 certain things so they are your opinions and you
25 are certainly entitled to them, sir. Don't feel

1 have you to defend any of them. Do you have any
2 prior knowledge of this alleged incident?

3 A. No.

4 Q. Nothing. Do you have any opinions about it?

5 A. No, sir.

6 Q. So all that you know about this is basically
7 what I shared with you Monday that has been
8 alleged; is that right?

9 A. Yes, sir.

10 Q. Are you the type of person that would have to
11 hear all of the evidence, receive all the facts
12 before you could develop any opinion?

13 A. Yes, sir.

14 Q. I am going to ask you one thing, if you
15 could, the mike system went out on Monday so if
16 you could raise your voice just a little bit,
17 thank you, sir. You had an opportunity to read
18 that sheet that has the three types of jurors?

19 A. Yes, sir.

20 Q. Which one is you?

21 A. I would be the third.

22 Q. The third. That is a person that sometimes
23 when one had been convicted of murder sometimes
24 you would believe the death penalty was
25 appropriate and sometimes life in prison would be

1 the appropriate punishment, but you would need to
2 hear all the facts before you could make a
3 decision?

4 A. Yes, sir.

5 Q. In this case there are certain principles of
6 law that apply in this criminal case, one of
7 those is the presumption of innocence, do you
8 understand that? That is what I shared with you on
9 Monday. That someone who is charged with
10 criminal offense is presumed to be innocent until
11 and if the State proves the guilt beyond a
12 reasonable doubt, do you have any problem with
13 that principle?

14 A. No.

15 Q. You understand that also as a part of that
16 just because someone is accused of doing something
17 that is what we mean when we say charged, they
18 don't have to prove anything, do you understand?

19 A. Yes, sir.

20 Q. In fact in this proceeding this trial we are
21 about to start tomorrow, the only person, the
22 only party that has to prove anything is the
23 State, do you understand?

24 A. Yes, sir.

25 Q. If you were selected on this jury, would you

2807.

1 expect Mr. Stone to prove anything to you, he is
2 the individual who has been charged with these
3 things?

4 A. No, sir.

5 Q. You would not?

6 A. Would not.

7 Q. You would look to the State?

8 A. Yes.

9 Q. If you were selected and you understand there
10 are two parts of the proceeding, the first part
11 would deal with the issue of whether or not Mr.
12 Stone did these offenses then depending upon the
13 jury's verdict we may have the penalty phase, do
14 you understand?

15 A. Yes, sir.

16 Q. The first phase if after hearing all the
17 evidence and receiving the law you were not
18 convinced beyond a reasonable doubt line Mr. Stone
19 committed these offenses, would you have any
20 hesitation in finding him not guilty?

21 A. Yes, sir.

22 Q. You would?

23 A. I would not have.

24 Q. You would not have. Would you find him not
25 guilty?

1 A. Yes, sir.

2 Q. On the other hand, if you were convinced?

3 A. Yes, sir.

4 Q. That the State satisfied you beyond a
5 reasonable doubt that he did commit these
6 offenses, would you find him guilty?

7 A. Yes.

8 Q. If the jury finds him not guilty, that of
9 course would end this matter, do you understand?

10 A. Yes.

11 Q. But if on the other hand the jury were to
12 find that the State met its burden of proof,
13 found him guilty of murder, then we go into the
14 penalty phase, do you understand?

15 A. Yes, sir.

16 Q. Would you have an open mind when you started
17 both of those phases?

18 A. I would have to say yes.

19 Q. You would be just like you are right now,
20 you haven't heard anything about the case as I
21 understand?

22 A. Yes, sir.

23 Q. Basically what you told me you would wait
24 until you made a decision as to the guilt or not
25 guilty, you wouldn't make any decision until you

1 heard all of the evidence and the law; is that
2 right?

3 A. I would hope not, yes, sir.

4 Q. Do you understand that would be one of your
5 responsibilities as a juror, would you do that,
6 would you wait and keep an open mind?

7 A. Yes.

8 Q. Also in the second phase because you are
9 going to hear additional evidence in the second
10 phase that deals solely with the issue of
11 punishment such as aggravating circumstances,
12 mitigating circumstances and the like, would you
13 be able to keep an open mind in the second phase?

14 A. Sure, yes.

15 Q. And not make any decisions as to the
16 appropriate punishment until you have heard all of
17 the evidence?

18 A. Yes.

19 Q. And received the law?

20 A. Yes.

21 Q. At the conclusion of the trial once you have
22 received the law the jury will be asked to retire
23 and make a decision as to the appropriate
24 punishment. Would you be able to as a juror to
25 consider at that time both the death penalty and

1 life in prison, consider them both?

2 A. Yes, I would.

3 Q. And decide which one you believe will be the
4 most appropriate based on the facts and
5 circumstances?

6 A. Yes.

7 Q. If you are selected on this jury and this
8 jury will be sequestered and that means the State
9 will provide you with lodging, food and
10 transportation for the trial I know that may be an
11 imposition for you and certainly disrupt your
12 lifestyle, but could you if you were selected set
13 all of that aside and not let it interfere with
14 your duties as a juror?

15 A. Yes.

16 Q. You could do that.

17 THE COURT: Answer any questions that the
18 State may have for you, solicitor.

19 EXAM BY MR. HILLIARD:

20 Q. Good morning, Mr. McGee just a few questions
21 for you. Have you or any of your friends or
22 close family members ever been the victim of a
23 crime?

24 A. Yes.

25 Q. You indicated on one of your juror

2800

1 information sheet that you gave the name Claudia
2 Howard?

3 A. Yes.

4 Q. Who is that?

5 A. I can't hardly hear you.

6 Q. Who is Claudia Howard?

7 A. Who is Claudia Howard?

8 Q. Yes, sir.

9 A. A none in Georgetown.

10 Q. What is your relationship to her?

11 A. Very good friends.

12 Q. Was her case ever solved?

13 A. Yes.

14 Q. What wound up happening, was there a trial?

15 A. The guy was guilty.

16 Q. Were you satisfied with the way that case was
17 handled by law enforcement?

18 A. On how to answer that, the guy was put on
19 parole, then he raped another girl before they
20 had (Can't understand tape).

21 Q. So do you have any bad feelings toward law
22 enforcement as a result of the way that case was
23 handled?

24 A. No.

25 Q. You don't. Have you or any of your friends

1 or family ever been charged with a crime? Were you
2 about to say something else about your feelings
3 toward law enforcement?

4 A. I'm sorry repeat, that sir.

5 Q. Seems like you were about to say something
6 else about the Claudia Howard situation?

7 A. No.

8 Q. You indicated to the judge that you
9 considered yourself a type three juror; is that
10 correct?

11 A. Yes, sir.

12 Q. You understand that to mean that depending
13 upon the facts and circumstances of the case could
14 you return a verdict for the death penalty or life
15 in prison just depending upon the facts and
16 circumstances?

17 A. Yes, sir.

18 Q. Do you believe you could sign your name on a
19 verdict sentencing the defendant to death?

20 A. I think so.

21 Q. Do you think could you come into Court and
22 announce in front of the defendant and whoever
23 else was present that it was your verdict that he
24 receive the death penalty?

25 A. Yes.

1 THE COURT: Mr. Babb.

2 EXAM BY MR. BABB:

3 Q. Good morning, sir. Mr. McGee, I need to
4 ask you a few questions about Sister Howard, I
5 understand it is upsetting to you I'm not trying
6 to pry.

7 A. You have to talk louder because I can't hear
8 you.

9 Q. I need to ask you a few questions about is it
10 sister Howard?

11 A. Yes.

12 Q. You say she was a very good friend of yours?

13 A. Yes.

14 Q. And this tragedy that occurred to her, did
15 that change your views on law enforcement, on
16 prison systems?

17 A. I don't know what you mean, you lost me.

18 Q. You mentioned, sir, that the individual
19 that committed that crime was then released and
20 committed another crime?

21 A. Right.

22 Q. Did that change your views on what should
23 happen to someone who is convicted of a crime?

24 A. Yes.

25 Q. How so?

1 A. I guess if he did it one time he will do it
2 again. It is the only thing I can say. I can't
3 give you an answer of what he should have done.

4 Q. I understand none of us is asking (Can't
5 understand tape). Did it change your views on
6 the death penalty?

7 A. No. It didn't change my views.

8 Q. Did it change any of your views on the
9 burden, on the proof of the criminal trial?

10 A. I mean I didn't hear.

11 Q. You were not a witness at that time?

12 A. No, sir, it could not have changed me. I
13 just (Can't understand tape) I never tried.

14 Q. All right, sir. Do you agree that the mere
15 accusation that someone has committed a crime does
16 not make them guilty?

17 A. True.

18 Q. Would the fact they have been arrested for a
19 crime?

20 A. True.

21 Q. Now, in this particular case, this
22 defendant has been accused of a murder of a deputy
23 sheriff. Does the fact that that accusation
24 change any question in any of your views, any
25 answers to questions that His Honor may have asked

1 were your views?

2 A. You know, kind of like, in my mind, you
3 almost have to feel they are guilty or they
4 wouldn't be here. I am just stating what I
5 think. If he is here he must be guilty.

6 Q. I understand that, sir.

7 A. The fact he is here it has to be something.

8 Q. And that is a fact that would you consider
9 during the trial?

10 A. Yes.

11 MR. BABB: Thank you, sir.

12 EXAM BY THE COURT:

13 Q. Mr. McGee, let me ask you this, one of the
14 things that you will be called upon to do as a
15 juror is to take an oath at the start of this
16 trial that you will decide this case solely on the
17 evidence. And the evidence will only be the
18 testimony of the witnesses and exhibits that are
19 offered during that testimony?

20 A. Yes.

21 Q. You and I have already talked and you
22 understand that the defendant doesn't have to
23 prove anything?

24 A. True.

25 Q. Have you indicated and I appreciate that that

1 you feel that just because he is sitting here he
2 did something?

3 A. It seems so, yes.

4 Q. That is your opinion. My question to you
5 is, obviously that is not evidence?

6 A. True.

7 Q. Would you be able to follow the Court's
8 instruction and decide this case solely on the
9 evidence?

10 A. I would.

11 Q. So you would not be influenced by that
12 thought at all?

13 A. If you say so it would not be, correct. If
14 you ask me, yes, if you ask me to I will.

15 Q. You would set it aside?

16 A. I will set it aside.

17 Q. I will instruct you that the only thing that
18 the jury may decide this case on is that the
19 evidence which is in the case or the lack or
20 absence of evidence?

21 A. Yes, sir.

22 Q. The evidence is only that which has been, is
23 the testimony of the witnesses and the exhibits.
24 Everything else has to be set aside. Can you
25 follow that instruction?

1 A. I will and I can.

2 THE COURT: All right, sir. Any
3 additional questions Mr. Hilliard?

4 MR. HILLIARD: No, sir.

5 THE COURT: Any additional questions Mr.
6 Babb?

7 MR. BABB: Court's indulgence. Nothing
8 further, Your Honor.

9 THE COURT: Very well, Mr. McGee, step
10 down we will be with you in just a moment.

11 What says the State?

12 MR. HILLIARD: Qualified.

13 THE COURT: Defendant?

14 MR. BABB: Your Honor, I understand his
15 answers to the Court, but he seems to say yes to
16 every question the Court asked even when it was
17 appropriate you would correct him by rephrasing
18 your question as you did. What bothers me
19 particularly is something that doesn't show in the
20 record because the record doesn't capture his face
21 and his expressions is he is half guilty just
22 because he is here and that makes such a strong
23 feeling that I just honestly don't believe that he
24 can truly set that aside. Despite his answers to
25 the Court.

1 THE COURT: Thank you, Mr. Babb, I
2 appreciate that. I checked with him, if the
3 juror indicates he can then that is what I am
4 relying on. Now, is this person one that you
5 may want to consider using your peremptory
6 challenge for, would all those things justify it
7 absolutely, 110 percent. Certainly, there are
8 a number of factors, I think there were
9 indications that his feelings and frustrations
10 that happened with his friend, those are all
11 factors that certainly you may consider at a later
12 stage. But insofar as this individual's
13 qualifications at this stage, I will find that he
14 is qualified. He did indicate that he would set
15 that aside when confronted, when explained he may
16 not use that or consider that and based upon all
17 of his answers I have nothing that would indicate
18 to the contrary that this juror would not do
19 exactly that. I would note your objection and
20 note your position and find him qualified.

21 MR. BABB: Thank you, Your Honor.

22 THE COURT: Thank you. Mr. McGee, you
23 are qualified to certain as potential juror in
24 this matter which means you need to be back here
25 with us at five o'clock. Come back in the

1 courtroom. If you are selected we will select
2 the 12 jurors and alternates at that time, you
3 will need to bring with you enough clothing and
4 personal effects for a week, because we will be
5 leaving for Sumter at that time.

6 Do not allow anyone to talk to you or you
7 discuss it with anyone or watch anything or read
8 anything about this case. Thank you, sir.

9 We will take about a five minute break,
10 stretch.

11 (Whereupon, a short recess was held.)

12 THE COURT: State ready?

13 MR. KOLB: Yes, sir.

14 THE COURT: Defense ready?

15 MR. LITTLEJOHN: Yes, sir.

16 THE COURT: Let the record reflect Mr.
17 Stone is present. Let's bring in Mr. Crotts.

18 EDWARD CROTTS, having been first duly
19 sworn, testified as follows:

20 EXAM BY THE COURT:

21 Q. Good morning, Mr. Crotts, how are you?

22 A. Fine.

23 Q. I apologize for keeping you waiting, we
24 needed to take a little stretch break?

25 A. It is quite all right. Your Honor, may I?

1 Q. You want me to read this first? I need to
2 share this with counsel. Mr. Crotts, I have
3 shared with counsel, attorneys, the letter. As
4 I understand you are presently involved in some
5 litigation; is that correct?

6 A. That's correct.

7 Q. Has the court date been scheduled?

8 A. Well, it is sort of in a fluid position
9 right now. We have about three different trials
10 in Texas, here, we are in a situation where
11 (Can't understand tape). Matter of fact when I
12 first received the summons I responded back to the
13 Court if I could be excused because of a number of
14 circumstances, not just this. (Can't understand
15 tape) to see if we could handle it. When I got,
16 I have been in Court (Can't understand tape) I'm
17 thinking if I could work, see if I was on. He
18 impressed upon me it is something that takes time,
19 take my undivided attention, I am president of a
20 company, small business, we are undergoing some
21 very (Can't understand tape). I didn't get an
22 alternative I just feel like, this is not even
23 knowing (Can't understand tape). So anyway the
24 problem with me I couldn't call you to try to tell
25 you my concern (Can't understand tape).

1 Q. Are you obviously and I agree with you all
2 trials are important, this trial has a feature
3 that you don't find customarily found in this
4 State will involve sequestration of the jury for
5 approximately a week. This litigation that you
6 are discussing has been on going for some time?

7 A. It has just picked up speed. Actually it
8 was filed in October as of the last four weeks it
9 has picked up tremendous amount of activity.
10 Matter of fact when I leave here I am going to my
11 lawyers office to discuss (Can't understand tape).
12 It is not a Court state like tomorrow or today
13 (Can't understand tape). That is one of the
14 problems I have, I am not familiar with
15 sequestered jurors.

16 Q. So let me ask you a question because this is
17 your call. You are going to be sequestered
18 probably a week, maybe slightly over that, will
19 you be able to set those issues aside, put them
20 on hold until this matter is completed?

21 A. Judge, I am intelligent enough I am smart
22 enough to be on here I have so many issues I am
23 fighting right now, another litigation, another
24 issue, that is why I requested to be excused.
25 (Can't understand tape) I have to write myself a

1 note to turn my phone off right before I came in
2 here because I am in such contact with my office.
3 Honestly, I don't think I could do it.

4 Q. It would affect your ability as a juror?

5 A. Yes, I would spend my time worrying about
6 what is going on, people could not get in touch
7 with me, my ability to effect would impede my
8 ability of my judgment, absorb all the facts.
9 Obviously in a case like this or any case you need
10 undivided attention. I could not do that.

11 THE COURT: All right. Please answer
12 any questions the State may have.

13 MR. KOLB: None.

14 MR. LITTLEJOHN: None.

15 THE COURT: All right if you will step
16 out I will be with you in just a minute.

17 I do find that this juror because of the
18 circumstances in his life at this point he has
19 indicated under oath his inability to stay
20 focused. I think it would impair his ability to
21 be a fair and impartial juror both for the State
22 and Mr. Stone. For that reason I find him
23 unqualified to serve in this case. Any objection
24 from the State?

25 MR. KOLB: It doesn't matter to me.

1 THE COURT: Any objection to me finding
2 him you unqualified in this case?

3 MR. KOLB: No.

4 MR. LITTLEJOHN: No.

5 THE COURT: What I am going to do is
6 this. You are not going to have to participate
7 in this case, but I am going to ask the clerk to,
8 how long do you think it will take to do this
9 litigation? So you will be able to serve then
10 after March 31st? All right. If you would look
11 at your docket transfer him to any term after
12 March 31st. April 7th. Good luck to you, sir.

13 Let's bring in Mr. Goude.

14 EDWARD GOUDE, having been first duly
15 sworn, testified as follows:

16 EXAM BY THE COURT:

17 Q. Good morning, Mr. Goude, how are you?

18 A. Pretty good.

19 Q. Mr. Goude, I have some questions that I need
20 to ask you now and the answers to these questions
21 I told you Monday there are no right or wrong
22 answers, these are questions that your personal
23 feelings about them. You are entitled to that
24 whether we all agree or disagree it doesn't
25 matter, to are years. Be comfortable. All we

1 ask is you be truthful in your responses, will
2 you do that for me?

3 A. Yes, sir.

4 Q. Also would add in what we are doing right now
5 is very easy in this format where you and I are
6 talking to be conversational and both of us from
7 time-to-time do the same thing I nod my head or I
8 say uh-huh (affirmative response) or un-huh
9 (negative response). The lady seated in front of
10 you is taking down this, is keeping a record so
11 it will assist her if you will give a verbal
12 response to it not just, by that I mean using
13 words, sir?

14 A. Yes, sir.

15 Q. Also the mike system is off, once I get all
16 the ground rules, we are having to talk a little
17 bit louder than we normally would, would ask you
18 to answer my questions even though I am sitting as
19 close as I am to you so that everybody out there
20 can hear you as well.

21 Do you have any prior knowledge of this
22 case?

23 A. No, sir.

24 Q. The only thing you know is what I shared with
25 you that has been alleged on Monday?

1 A. Yes, sir.

2 Q. Have you read anything about it or heard
3 anything about it since Monday?

4 A. No, sir.

5 Q. Do you have any opinions about this case?

6 A. No, sir.

7 Q. Would you have to hear all of the evidence
8 before you were able to develop an opinion?

9 A. Yes, sir.

10 Q. Have you had a chance to review that sheet
11 that had the three types of jurors?

12 A. Yes, sir.

13 Q. Which type are you?

14 A. The third type.

15 Q. The third type. And that is someone that
16 basically along the lines of what you just said
17 that in order to make a decision between death
18 penalty and life imprisonment have you to hear all
19 the facts and circumstances about certain
20 situations; is that right?

21 A. Yes, sir.

22 Q. But you would believe and do believe that
23 there are some situations that would warrant the
24 imposition of the death penalty and then there are
25 others that would warrant life imprisonment if it

1 was appropriate?

2 A. Yes, sir.

3 Q. And just the murder doesn't make that
4 determination, it has to depend upon facts and
5 circumstances surrounding that murder?

6 A. Yes, sir.

7 Q. You understand in a situation like this that
8 when I say like this you are talking about
9 criminal action there are certain principles of
10 law that apply in this case or any case, criminal
11 case tried in this country one of those is
12 presumption of innocence, do you understand that?

13 A. Yes, sir.

14 Q. Do you have any problem with that law?

15 A. No, sir.

16 Q. Do you understand that that law places the
17 burden to prove the case, places it squarely on
18 the State. That the person charged with the
19 criminal offense the State has to prove that case
20 beyond a reasonable doubt, do you understand
21 that?

22 A. Yes, sir, I understand.

23 Q. You have any problem with that?

24 A. No, sir.

25 Q. That would mean in this particular dispute

1 that the only party that has anything to prove
2 will be required to show anything or anybody
3 should expect to show anything would be the State?

4 A. Yes, sir.

5 Q. Also a part of that it means a person charged
6 with a criminal offense is never required to prove
7 anything or disprove anything, certainly tonight
8 have to prove his or her innocence, do you agree
9 with that?

10 A. Yes, sir.

11 Q. If you were selected as a juror in this case,
12 would you expect Mr. Stone who is the individual
13 would is charged with these offenses to prove
14 anything?

15 A. No, sir, I would expect the State to prove he
16 is guilty.

17 Q. Would you have an open mind until you heard
18 all of the evidence, received the law and the
19 Court instructed you then to make a decision?

20 A. Yes, sir.

21 Q. You would be able to do that?

22 A. Yes, sir.

23 Q. And you would make your decision based solely
24 on the facts in the case; is that correct?

25 A. Yes, sir.

1 Q. You understand it is a two part proceeding
2 here in this trial, it would really think of a
3 trial within a trial. The first part would deal
4 with the issue of whether or not Mr. Stone did
5 commit these offenses?

6 A. Yes, sir.

7 Q. At the conclusion of that portion of this
8 proceeding once have you heard all of the evidence
9 you will be instructed to make a decision. If
10 you were on the jury and you were not satisfied or
11 convinced beyond a reasonable doubt that Mr. Stone
12 did these offenses, did commit these offenses,
13 would you have any hesitancy in finding him not
14 guilty?

15 A. No, sir. If the State had not proved he is
16 not guilty.

17 Q. Likewise, if the State did meet the burden,
18 received to you, convinced to you, would you
19 have any hesitancy in finding him guilty?

20 A. No, sir.

21 Q. If the jury concludes that the State failed
22 to meet the burden, therefore finds the defendant
23 not guilty then of course that would end this
24 matter. But on the other hand if the jury finds
25 the State did meet its burden, found him guilty

1 of murder, then and only then would we go into
2 the second phase which is also called penalty
3 phase, do you understand that?

4 A. Yes, sir.

5 Q. It is during that phase that you would hear
6 additional evidence that you didn't hear in the
7 first phase, it deals solely with the issue of
8 which of the punishments would be the most
9 appropriate in this case, do you understand?

10 A. Yes, sir.

11 Q. Would you be able to keep an open mind during
12 the second phase and wait until you have heard all
13 the evidence and received them all before you made
14 a decision?

15 A. Yes, sir.

16 Q. So you would not be influenced by what
17 happened in the first phase in determination of
18 what the penalty is?

19 A. No, sir.

20 Q. Other than you have to have the guilt phase
21 of murder?

22 A. Yes, sir.

23 Q. After you have heard all the evidence and I
24 instructed you again on the law pertaining to that
25 phase, you will be asked along with the other

1 jurors to retire and make a decision and choose
2 the appropriate punishment. At that time, would
3 you be able to consider both the death penalty and
4 life in prison?

5 A. Yes, sir.

6 Q. And could you make a decision based solely on
7 the evidence and your view of the facts and
8 circumstances?

9 A. Yes, sir.

10 Q. Decide which one you felt was most
11 appropriate?

12 A. Yes, sir.

13 Q. You understand, you may not, this jury is
14 going to be sequestered during the trial and it
15 means of course the State will provide with you
16 lodging, food transportation for the duration of
17 the trial. I realize that that may be an
18 imposition, I realize it is certainly disruptive,
19 but could you set aside the inconvenience to you
20 and not let it influence your ability to serve as
21 a juror?

22 A. Yes, sir.

23 Q. You could do that. Do you know of anything
24 that has occurred in your life or any strong
25 feelings or philosophies that you may have or you

1 have developed over the years that in a case of
2 this nature, involving some of the views,
3 killing another individual, that would influence
4 or affect your ability to be fair and impartial to
5 the State in this case?

6 A. No, sir.

7 Q. How about with Mr. Stone?

8 A. No, sir.

9 Q. Be fair and impartial?

10 A. Yes, sir.

11 THE COURT: Please answer any questions
12 the solicitor may have.

13 EXAM BY MR. HILLIARD:

14 Q. Is your last name pronounced Goude?

15 A. Yes, sir.

16 Q. Just a few questions for you. Have you or
17 any of your family members or close friends ever
18 been a victim of a crime?

19 A. No, sir.

20 Q. Have you or any of your family members or
21 close friends ever been charged with a crime?

22 A. No, sir.

23 Q. You indicated to the judge that you consider
24 yourself a type three juror; is that correct?

25 A. Yes, sir.

1 Q. And you understand that to mean that you
2 could sentence the defendant to either the death
3 penalty or life in prison depending upon the facts
4 and circumstances of the case if you found him
5 guilty?

6 A. Yes, sir.

7 Q. Do you believe you could write your name to a
8 document sentencing the defendant to death?

9 A. Yes, sir.

10 Q. You could write your name on that?

11 A. Yes, sir.

12 Q. Do you believe you could come into Court in
13 front of the defendant or whoever else is present
14 and announce your verdict is that he receive the
15 death penalty?

16 A. Yes, sir.

17 Q. Thank you, sir.

18 EXAM BY MR. LITTLEJOHN:

19 Q. Good morning, Mr. Goude. Mr. Goude, the
20 alternative of that, if you thought, if we got
21 to that point in this trial, if you thought the
22 appropriate sentence that should be meted out
23 would be life imprisonment would you have any
24 problem rendering a verdict to that effect?

25 A. No, sir.

1 Q. Let me ask you a couple of questions about
2 your answers to the questionnaire, if I may.
3 You indicated that you were previously in the
4 military?

5 A. I served six years in National Guard.

6 Q. All right, sir, that answers that question.
7 Mr. Goude let me inform you, sir, that in this
8 particular case the State has charged Mr. Stone,
9 the defendant with the murder of a deputy sheriff.
10 Given the fact that that is the nature of the
11 charge against Mr. Stone, would that have any
12 effect on your ability?

13 A. No, sir.

14 Q. To be a fair juror?

15 A. No, sir.

16 Q. And following that if we got to the second
17 phase of this trial, would the nature of that
18 charge have any effect on your ability to consider
19 both the death penalty and life imprisonment as
20 alternatives?

21 A. No, sir.

22 Q. Thank you, sir.

23 THE COURT: Mr. Goude, I would ask you,
24 sir, if you would step out for just a secondly be
25 right back with you. Not take much longer.

1 Thank you, sir.

2 What says the State?

3 MR. KOLB: Qualified.

4 THE COURT: Defendant?

5 MR. LITTLEJOHN: We agree.

6 THE COURT: I find he is qualified, ask
7 him to step in, please.

8 Thank you, Mr. Goude. Have you been
9 qualified as potential juror in this case. We
10 will select the jury at 5:00 o'clock this
11 afternoon I will meet you back here in the
12 courtroom. We will select from the pool of the
13 jurors 12 individuals and the alternates. You
14 may be one of the once selected, you need to
15 bring with you when you come sufficient clothing,
16 personal effects to take care of your needs for
17 about a week because once we select the jury we
18 will leave from here and go to Sumter.

19 This is some information from the Clerk of
20 Court, it is a sheet of paper that has some
21 information on sequestration.

22 Until five o'clock don't talk to anyone
23 about this case don't allow anyone to talk to you
24 about or read any news accounts on it or read any
25 news articles. Thank you, sir.

1 Let's bring in Ms. Maybank.

2 EUGENIA MAYBANK, having been first
3 duly sworn, testified as follows:

4 EXAM BY THE COURT:

5 Q. Good morning, Ms. Maybank, how are you?

6 A. Good.

7 Q. Good. Ms. Maybank, I have some questions I
8 need to ask you, there are no right or wrong
9 answers to any of these questions you don't need
10 to be apprehensive about it, these are questions
11 that are just your personal feelings about some
12 things, you are entitled to feel the way you want
13 to feel about it, nobody is going to try to
14 change your mind. You are entitled to those
15 feelings, feel relaxed and just respond to the
16 Court. Do you know anything about this case
17 other than what I shared with you that was alleged
18 to have occurred?

19 A. Nothing at all.

20 Q. Have you read anything about it or heard
21 anything about it since we met on Monday?

22 A. No.

23 Q. No one has talked to you about it either?

24 A. No.

25 Q. Do you have any opinion about this case?

1 A. No, because I don't know nothing about it.

2 Q. Would you have to hear all of the facts
3 before you could make a decision about it?

4 A. Yes.

5 Q. You would be that type of person?

6 A. Yes, sir.

7 Q. And would you wait until you heard all of the
8 facts and the law that the Court would tell you
9 that would be applied to those facts before you
10 would make your decision?

11 A. Yes, I would.

12 Q. Have you had a chance to read that sheet of
13 paper that had the three types of jurors?

14 A. Yes.

15 Q. Which one best describes you?

16 A. The third one.

17 Q. And as I understand that that means that are
18 you the type of person that believes when someone
19 is found guilty of murder that sometimes the death
20 penalty would be the appropriate punishment,
21 sometimes life imprisonment would be the
22 appropriate punishment but it would just depend
23 upon the circumstances and the case but before you
24 could decide would you have to hear all of the
25 circumstances?

1 A. Yes.

2 Q. Is that right?

3 A. Yes, sir.

4 Q. You understand that this is a case involving
5 a criminal matter, certain principles of law,
6 certain legal issues involved in this case, , of
7 course any case of that nature is tried in this
8 country for that matter, one of them is
9 presumption of innocence, which I explained to
10 you on Monday. Do you have a problem with that
11 principle of law?

12 A. No, I do not.

13 Q. Basically, of course, stated somebody
14 charged with a criminal offense is presumed to be
15 innocent until and if the State brings in enough
16 evidence to satisfy the jurors beyond a reasonable
17 doubt, do you understand that?

18 A. Yes.

19 Q. Obviously that means that the State in this
20 dispute is the only party that has anything to
21 prove. A person charged with criminal offense is
22 never required to prove anything. Not required
23 to prove or disprove anything, they certainly are
24 never required to prove their innocence, do you
25 understand that?

1 A. Yes, sir.

2 Q. Would you have any problem, you have any
3 problem with that law?

4 A. No, sir.

5 Q. If you were selected as a juror in this case,
6 would you expect Mr. Stone I will tell you is the
7 individual seated over there he is the individual
8 who is charged with these offenses, would you
9 expect him to prove anything?

10 A. No.

11 Q. You look to the State to prove its case?

12 A. Yes.

13 Q. You would? If you were on the jury and you
14 know that two parts of this proceeding, second
15 part is somewhat controlled by what the jury
16 decision is the first one because the first one
17 you will deal with whether or not Mr. Stone
18 committed these offenses, committed these acts,
19 whether or not the State can prove that he did
20 beyond a reasonable doubt, do you understand?

21 A. Yes, sir.

22 Q. If you were on this jury and I would instruct
23 you that if you felt if you were not convinced
24 beyond a reasonable doubt that the State had
25 proved its case, that Mr. Stone did commit these

1 offenses it would be your duty to find him not
2 guilty. Will you have any hesitancy or any
3 problem following that instruction?

4 A. No.

5 Q. So if the State didn't convince you that he
6 was guilty you would find him not guilty?

7 A. Well, I would have to hear the whole case.

8 Q. Precisely. You would base it on all the
9 evidence, but after viewing all the evidence and
10 the law you weren't satisfied that the State had
11 convinced you beyond a reasonable doubt that he
12 was guilty you would find him not guilty? If you
13 weren't satisfied at the end I'm not asking?

14 A. If I wasn't satisfied?

15 Q. Yes.

16 A. Yes.

17 Q. You could do that?

18 A. Yes, sir.

19 Q. Also if in viewing all of the evidence after
20 have you heard it all and after have you heard me
21 charge you on the law, part of my charge would
22 also say that if you are convinced that if the
23 jury is satisfied that the State has met its
24 burden convinced you beyond a reasonable doubt of
25 his guilt that he did do these offenses, then you

1 would, it would be your duty to return a verdict
2 of guilty, could you do that?

3 A. Yes.

4 Q. If the jury finds Mr. Stone not guilty, in
5 other words, they concluded that the State has
6 not met its burden, not convinced you beyond a
7 reasonable doubt that of course that would /EPB
8 the case. But if the jury after hearing all of
9 the evidence is convinced that the State has met
10 its burden, in other words, Mr. Stone did these
11 offenses and is satisfied beyond a reasonable
12 doubt and found him guilty of the offense of
13 murder then you go into the second phase in this
14 trial which is known as the penalty phase, do you
15 understand?

16 A. Yes, sir.

17 Q. It is at that time that you are going to hear
18 additional information, you are going to get to
19 hear some additional facts that you didn't hear
20 the first or additional testimony that you didn't
21 hear at first, do you understand?

22 A. Yes, sir.

23 Q. Would you be able to keep an open mind during
24 that phase?

25 A. Yes, I would.

1 Q. That would mean that would you not decide the
2 appropriate punishment until you heard all of
3 those facts and circumstances?

4 A. Yes.

5 Q. At the conclusion of that phase after you
6 have heard the testimony I will give you further
7 instruction on the law and then the jury will be
8 asked to go to the jury room and decide the
9 appropriate punishment, do you understand that?

10 A. Yes, I do.

11 Q. Would you be able to consider and would you
12 consider both possible punishments, life
13 imprisonment and the death penalty?

14 A. Say that again.

15 Q. Would you consider, have you to pick between
16 the two, have you to decide which one, would you
17 be able to consider both of them?

18 A. Yes.

19 Q. And then decide which one you felt was most
20 appropriate?

21 A. Yes.

22 Q. You would be able to do that?

23 A. Yes, I could.

24 Q. If you are selected on this jury, this jury
25 is going to be sequestered for the trial, means

1 the State will provide you with lodging and
2 transportation and food for the duration of the
3 trial, you will all be kept together in Sumter.
4 I realize that may be an inconvenience to you, I
5 understand it may disrupt your life for awhile,
6 but would you be able to set that aside and
7 perform your duties as a juror?

8 A. Yes.

9 Q. You could do that?

10 A. Yes.

11 Q. Do you know of anything that has occurred in
12 your life, any strong feelings that you would
13 have, any personal philosophies that you may have
14 that in a case like this involving where someone
15 is accused of taking another person's life that
16 would in anyway affect your ability to be fair and
17 impartial with the State or fair and impartial
18 with Mr. Stone?

19 A. No.

20 Q. Do you not?

21 A. No.

22 THE COURT: Answer any questions the
23 solicitor may have for you.

24 EXAM BY MR. KOLB:

25 Q. Ms. Maybank, you indicated you have eight

1 children but you didn't give their ages, would
2 you tell me how old your daughters are first?

3 A. Forty, thirty-five, thirty-three,
4 twenty-nine, twenty-six.

5 Q. And how about the boys?

6 A. Forty-two, twenty-seven, twenty-six.

7 Q. They all live around here in Georgetown?

8 A. No. The son lives in North Carolina, I
9 have a daughter live in Delaware, I have a
10 daughter live in (Can't understand tape). I have
11 a son that live in California and a daughter live,
12 two of them live here -- two daughters and a
13 son.

14 Q. You have done real well. Ms. Maybank, you
15 indicated that you were the type of person that if
16 called upon as a juror that you could decide in a
17 death penalty case that in some circumstances the
18 death penalty was appropriate?

19 A. Yes.

20 Q. Let me start it a different way. Have you
21 ever discussed the death penalty with anybody,
22 talked about the death penalty?

23 A. No I haven't.

24 Q. But you never talked with your friends or
25 family members just talked about the death penalty

1 in general or death penalty cases?

2 A. No.

3 Q. You haven't ever talked with anybody about
4 that guy ought to get the death penalty or some
5 case you see on TV, that guy shouldn't get the
6 death penalty?

7 A. No I haven't.

8 Q. You have never discussed that?

9 A. No.

10 Q. Have you ever thought about the death penalty
11 before you came up here for this trial?

12 A. No.

13 Q. You haven't really thought about it in all of
14 the years?

15 A. No.

16 Q. But being faced with it, this is the first
17 time you have ever been on a jury for a death
18 penalty case; is that right?

19 A. Yes, sir.

20 Q. So you thought about it at least today
21 reading that paper, the paper the judge gave you
22 you thought about what type of person you were?

23 A. No, I haven't thought much about it.

24 Q. Okay really. So you didn't think about that
25 in the room out there before you came in here as

1 to what type person you were with regards to the
2 death penalty case?

3 A. Just the right thing (Can't understand tape).

4 Q. So you don't have any strong, personal
5 feelings against the death penalty or for the
6 death penalty?

7 A. No.

8 Q. So then in certain circumstances, depending
9 upon what the law is and depending upon what the
10 facts in the case are you do feel that the death
11 penalty would be an appropriate punishment?

12 A. I would have to hear the evidence before I
13 could say that.

14 Q. But if you always have a choice between the
15 death penalty and life in prison you could always
16 have that choice, would you always choose to
17 impose life imprisonment?

18 A. No.

19 Q. You don't think you would always choose life
20 imprisonment if you had that choice once you heard
21 all the facts?

22 A. I wouldn't know -- I guess (Can't
23 understand tape).

24 Q. But are there some cases where you could give
25 the death penalty?

1 A. Yes.

2 Q. So there are some cases then where the death
3 penalty could be better than giving a person life
4 in prison?

5 A. I haven't thought about that either.

6 Q. Sew in reading that form before you came in
7 here you didn't think about the possibility that
8 you might be on a jury and have to decide and give
9 somebody the death penalty?

10 A. Yes.

11 Q. You did think about that. Did you think you
12 could do it, that you could be on a jury and
13 actually give the death penalty?

14 A. Well, I couldn't see I could do it (Can't
15 understand tape).

16 Q. But going we realize that you couldn't make
17 the decision until have you heard all the facts,
18 all the circumstances and the law from the judge,
19 But do you feel like that if the facts are bad
20 enough and if the law applied to that case that
21 you could, you yourself could return a death
22 verdict?

23 A. Yes, I could.

24 Q. If you were on the jury and made that
25 decision, would you have any problem signing your

1 name to that verdict?

2 A. No.

3 Q. That that was your sentence?

4 A. No.

5 Q. Coming in the courtroom standing up and
6 saying that that was your sentence?

7 A. No.

8 Q. You wouldn't have any problem with that?

9 A. No.

10 MR. KOLB: Thank you.

11 THE COURT: Mr. Babb.

12 EXAM BY MR. BABB:

13 Q. Good morning, ma'am. Ms. Maybank, let me
14 just be sure I understand your answer to these
15 questions. What you are basically saying in a
16 nutshell you can sit there, listen to all of the
17 evidence, hear it, follow the Judge's
18 instructions, do what is right and render a fair
19 verdict?

20 A. Yes, I could.

21 Q. Once you do you are going to stick to your
22 guns?

23 A. Yes.

24 Q. If you felt that it was appropriate after the
25 issue of guilt has been determined, talking about

1 two different things, first the question of guilt
2 and then penalty. If guilt is determined and are
3 you in the penalty phase, can you weigh both life
4 and death, life in prison and do what you think
5 is right?

6 A. Yes.

7 Q. Under those circumstances?

8 A. Yes.

9 Q. Thank you. Just a couple more questions,
10 Ms. Maybank. I think in filling out your
11 questionnaire you recall you received a
12 questionnaire to fill out, there is one question
13 you may have overlooked. The question is have
14 you ever been a witness to a criminal case?

15 A. No.

16 Q. I know Ms. Maybank I am not trying to pry,
17 it is just something we need to know to consider
18 matters, you are a widow, what were the
19 circumstances of your husband's death?

20 A. Do what.

21 Q. What were the circumstances of your husband's
22 death?

23 A. He was (Can't understand tape).

24 Q. One last area that I do need to cover with
25 you, in this case the defendant is accused of

1 murder. He is accused of murder of a police
2 officer. Does the fact that he has been charged
3 with the murder of a police officer, would that
4 impact your ability to be fair?

5 A. No, it wouldn't.

6 Q. You could set aside and determine his guilt
7 with the fact that a police officer may have been
8 involved?

9 Q. Would you continue to fairly consider all of
10 the evidence with regard to your decision if he
11 were determined to be guilty?

12 A. Yes, I could.

13 Q. To impose a sentence of death or a sentence
14 of life in prison?

15 A. Yes.

16 Q. Thank you very much.

17 THE COURT: Thank you very much Ms.
18 Maybank I ask to you step out for just a second be
19 right back with you.

20 Says the State?

21 MR. KOLB: Qualified.

22 THE COURT: Says the defendant?

23 MR. BABB: We agree.

24 THE COURT: I do find she is qualified,
25 ask her to step in, please.

284c

1 Ms. Maybank, you have been qualified as a
2 juror in this matter. That means that you are
3 part of the pool that we are going to select this
4 afternoon, the 12 jurors with the alternate. Be
5 back here this afternoon at five o'clock. We
6 will pick the jurors who will serve, 12 and
7 alternate. In case you are selected you need to
8 bring with you when you come clothing and personal
9 effects to take care of your needs for about a
10 week. If you are selected we are going from
11 here, all of us are going to Sumter to start the
12 trial in the morning.

13 This is some information that the Clerk of
14 Court in Sumter has prepared some information for
15 you about sequestration. He thought it would be
16 helpful for you.

17 Until five o'clock please do not discuss
18 this case with anyone nor allow anyone to talk
19 with you about it, read anything about it or
20 watch any news. Thank you. See you at five.

21 Let's go onto Mr. Woodard.

22 JAMES D. WOODARD, having been first
23 duly sworn, testified as follows:

24 EXAM BY THE COURT:

25 Q. Mr. Woodard, how are you, sir?

1 A. Fine.

2 Q. I have some questions that I need to ask you.
3 These questions do not have any right or wrong
4 answer. Many of them will be just your personal
5 feelings about things and you don't need to worry
6 about it you are entitled to your opinion, nobody
7 will attack you for it. So I want you to feel
8 comfortable for that, okay.

9 I need to ask you first of all, do you
10 have any knowledge about this incident?

11 A. No, sir.

12 Q. None other than what I shared with you on
13 Monday?

14 A. That's right.

15 Q. Do you have any any opinions about it at this
16 point?

17 A. No, not really.

18 Q. Would you have to hear all of the evidence
19 before you were able to develop an opinion?

20 A. Yes, sir.

21 Q. Would you keep an open mind until you heard
22 all of the evidence?

23 A. Yes, sir.

24 Q. And you are a person that would have to hear
25 it all before you make a decision?

1 A. Right.

2 Q. Did you have a chance to review that sheet
3 that had the three types?

4 A. Yes there which one best describes you.

5 A. Three.

6 Q. Number three. And by that it means, are
7 you telling me that there are circumstances where
8 a person is found guilty of murder, circumstances
9 in some cases would warrant the death penalty but
10 in other cases it would warrant life in prison?

11 A. Yes, sir.

12 Q. And for you to make a decision upon which one
13 you would have to know all the facts and
14 circumstances?

15 A. Yes, sir.

16 Q. Then you would make your decision?

17 A. Yes, sir.

18 Q. This case is a case criminal nature and
19 involves a number of principles of law I shared
20 with you on Monday a couple of them, one of them
21 was presumption of innocence?

22 A. Right.

23 Q. Do you have any problem with that?

24 A. No, sir.

25 Q. You understand then that that places the

285

1 burden on the State to prove this case beyond a
2 reasonable doubt?

3 A. Yes.

4 Q. And if someone is charged with a crime just
5 because they are charged doesn't mean anything and
6 they are never required to prove anything; is that
7 your understanding?

8 A. Yes, sir.

9 Q. If you were selected on a jury, would you
10 expect Mr. Stone, who is the person who is
11 accused of committing these offenses seated over
12 there, would you expect him to prove anything to
13 you?

14 A. No, sir I believe the evidence would speak
15 for itself.

16 Q. So you would look at the evidence introduced
17 by the State would you expect the State to prove
18 its case?

19 A. Yes, sir.

20 Q. This is a two part trial, really two trials
21 within a trial. The first part will deal with
22 evidence of whether or not Mr. Stone is guilty of
23 these offenses. After you heard the testimony
24 and all of the evidence then I will give you
25 instruction on the law, the jury is going to

1 decide. If in hearing that evidence and in
2 considering the law you were not convinced beyond
3 a reasonable doubt that Mr. Stone committed these
4 offenses, would you have any hesitancy in finding
5 him not guilty?

6 A. No, I wouldn't.

7 Q. Okay. On the other hand, if you were
8 convinced beyond a reasonable doubt based on the
9 evidence and the law that he did commit them would
10 you have any hesitancy in finding him guilty?

11 A. No, I wouldn't.

12 Q. Depending upon the jury's verdict, obviously
13 the jury finds him not guilty, the State didn't
14 meet its burden that would conclude the trial.
15 On the other hand if the jury concludes the State
16 did meet its burden then we would go and then
17 would we only go into the second phase which is
18 the penalty phase where you would have found him
19 guilty of murder, do you understand that?

20 A. Yes, sir.

21 Q. As I understand from your answers earlier
22 would you have an open mind in the first phase and
23 would not make a decision until you heard all of
24 the evidence in the law?

25 A. Yes, sir.

1 Q. Would you have an open mind in the second
2 phase as to the punishment?

3 A. Yes, sir, I would.

4 Q. Because it is in the second phase, the
5 penalty phase where you will hear additional
6 evidence?

7 A. Yes, sir.

8 Q. That will deal solely with that issue of
9 punishment?

10 A. Yes, sir.

11 Q. You will hear some evidence, maybe some
12 evidence of aggravating circumstances, mitigating
13 circumstances and the like?

14 A. Yes.

15 Q. So am I to understand that your decision as
16 the appropriate punishment would not be made until
17 that had concluded?

18 A. Right.

19 Q. You understand at the end after I have
20 charged you on the law, conclusion of the second
21 phase, the jury will be asked to retire and make
22 a decision of the appropriate punishment?

23 A. Yes, sir.

24 Q. Would you be able to consider both the death
25 penalty and life in prison?

1 A. Yes.

2 Q. Those would be your options?

3 A. Uh-huh (affirmative response).

4 Q. Then would you be able to decide which one
5 you felt was most appropriate based upon the facts
6 and circumstances of this case?

7 A. Yes, sir.

8 Q. This jury will be sequestered and I know that
9 may create a problem for you in the sense of being
10 an inconvenience and disrupt your lifestyle, but
11 could you set all of the inconvenience aside and
12 not let it affect your performance as a juror?

13 A. Yes, I could.

14 Q. One last question, do you know of anything
15 in your life's experiences, personal philosophies
16 that you may have, any strong convictions you may
17 have or any strong feelings that you may have that
18 would in anyway influence or affect your ability
19 to be fair and impartial in this trial as it
20 pertains to either the State or to Mr. Stone, the
21 individual charged with this offense?

22 A. No, sir, I wouldn't.

23 Q. Please answer any questions that the
24 solicitor may have for you. Mr. Solicitor.

25 EXAM BY MR. KOLB:

1 Q. Mr. Woodard, you indicated you had lived in
2 Clarendon County for some 8 years?

3 A. Yes, sir.

4 Q. You went to school there?

5 A. Yes, sir.

6 Q. Did you actually finish high school in
7 Clarendon?

8 A. Yes, sir.

9 Q. Then you went to Sumter Tech for two years
10 and got the job you now have?

11 A. Well, yeah, after I finished college in
12 Sumter then I took a job in Santee and then later
13 I'm in the job I am in now.

14 Q. You indicated have you family and close
15 friends in Sumter, can you tell us name of family
16 members?

17 A. No family members in Sumter I have close
18 friends in Sumter. (Can't understand tape) I
19 went to high school with, you want me to tell you
20 one of my professors in college.

21 Q. You had indicated, that Timmy Newman might be
22 somebody, a potential witness in this case that
23 you might know him?

24 A. Yeah, I think that is him he has a nephew
25 named Vern (Can't understand tape).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF
) GENERAL SESSIONS
COUNTY OF SUMTER)

THE STATE,) Transcript of
) Proceedings
)
) Georgetown,
vs.) South Carolina
) 96-GS-43-968
BOBBY WAYNE STONE,)
Defendant.) January 20-22, 1997

Volume 10

BEFORE THE HONORABLE R. MARKLEY DENNIS,
JR., Judge; and a jury.

DEBRA R. JERNIGAN, RPR, CPE
13TH JUDICIAL CIRCUIT
GREENVILLE, SOUTH CAROLINA

A P P E A R A N C E S:

WADE S. KOLB, JR., Solicitor

VERNIE L. WILLIAMS, Assistant Solicitor

On Behalf of the State

JAMES H. BABB, Esq.

CAMERON B. LITTLEJOHN, JR., Esq.

On Behalf of the Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Q. Vern Newman was a friend of yours in school?

2 A. In high school in Manning.

3 Q. And you think he has got a nephew named
4 Timmy?

5 A. Yes, sir.

6 Q. Would that affect your ability to be fair in
7 this case?

8 A. No, sir.

9 Q. Before being summoned up here for jury duty
10 in this case, did you ever have discussions about
11 the death penalty with anyone? Ever talk about
12 how you felt about the death penalty?

13 A. Yes, it has come up in general conversation.

14 Q. Have you expressed opinions that you were for
15 the death penalty or against the death penalty,
16 felt strongly either way?

17 A. I am for death penalty in certain situations
18 like it is testified in this third type juror.

19 Q. Even before you came up here and read that
20 form you thought you were the type person that
21 agreed with the law and agreed with the fact that
22 juries would have to hear the whole case and the
23 law and make the decision in each case?

24 A. Yes, sir.

25 Q. So if the facts in the case are bad enough

1 you could see yourself returning the death verdict
2 and be when I say bad enough under the law?

3 MR. LITTLEJOHN: Under the facts and
4 circumstances.

5 EXAM BY MR. KOLB:

6 Q. You could see yourself returning a death
7 verdict which would mean signing a form along with
8 the other jurors, coming into the Court and
9 reporting that verdict to the defendant?

10 A. Yes.

11 Q. You would have no problem in doing that?

12 A. No problem.

13 Q. But you would have to hear all the facts and
14 circumstances before making that decision?

15 A. Yes, sir.

16 Q. And no one allegation would cause you to
17 makeup your mind in advance?

18 A. No, sir.

19 Q. For instance this case involves allegation of
20 murder of law enforcement officer that would not
21 cause to you make up your mind in advance and make
22 you unfair in hearing the evidence?

23 A. No, sir.

24 THE COURT: Mr. Babb.

25 EXAM BY MR. BABB:

1 Q. You just have a handful of friends in Sumter?

2 A. Yes, sir, I went to college just a few that
3 I remember.-

4 Q. If the circumstances were such that you felt
5 a sentence of life imprisonment were appropriate,
6 would have you any problem?

7 A. No I wouldn't have any problem.

8 Q. Now, the solicitor mentioned to you that
9 allegations of a police officer being murdered?

10 A. Yes.

11 Q. Mr. Stone is accused of the murder of a
12 police officer, would that impair your ability to
13 be fair?

14 A. No. Murder is a murder.

15 Q. I believe you told His Honor that you agree
16 with the principle, that you share the philosophy
17 of the principle that the burden is on the State
18 to prove its case?

19 A. Right.

20 Q. But the defendant doesn't have to say
21 anything or do anything?

22 A. Right.

23 Q. His lawyers don't have to do anything. The
24 fact he is charged with the murder of a police
25 officer does not alter that view of yours?

1 A. No, sir.

2 Q. Does it alter it in anyway your ability to
3 impair your ability to fairly consider both the
4 death sentence as well as life in prison?

5 A. Depending upon the circumstances.

6 MR. BABB: Court's indulgence.

7 THE COURT: Yes, sir. I will ask you to
8 step out for just a second, we will be right back
9 with you.

10 What says the State?

11 MR. KOLB: Qualified.

12 MR. BABB: We concur.

13 THE COURT: I find he is qualified. Ask
14 him to step in, please.

15 Mr. Woodard, have you been qualified as
16 potential juror in this case. We are going to
17 select the jury at 5:00 o'clock this afternoon so
18 you will need to be back very shortly at that
19 time. Just come back and take a seat out in the
20 audience. Since you may be selected as a juror
21 you are going to need to bring with you in case
22 you are sufficient clothing and personal affects
23 to take care of your needs for about a week.
24 Because when we select the jury and all we are
25 leaving here and go to Sumter.

1 Here is a letter from the clerk of Sumter
2 to help you know what to expect.

3 Until five o'clock, do not discuss this
4 case with anyone certainly don't allow anyone to
5 talk with you about it. Also don't read anything
6 about it or watch any news. See you at five.

7 Let's move on with Mr. Yarborough.

8 GLENN D. YARBOROUGH, having been
9 first duly sworn, testified as follows:

10 EXAM BY THE COURT:

11 Q. Good morning, Mr. Yarborough, how are you?

12 A. Fine.

13 Q. Good. We are sitting right next to each
14 other, but the mikes went out Monday afternoon so
15 I will need for to you speak loudly so that those
16 individuals seated out there can hear you, okay?

17 A. Okay.

18 Q. Do you ever get mad?

19 A. No.

20 Q. When you get mad do you talk loud?

21 A. Yes, sir.

22 Q. Well get mad, talk loud. Get mad at me not
23 anybody else. But don't let the facts that I am
24 going to talk loud, don't think I am angry or
25 anything because I am not. The question I have

1 for you are questions that don't really have any
2 right or wrong answers. They are questions that
3 deal with your personal feelings about things.
4 You needn't worry about the fact whether everybody
5 agrees with you or disagrees with you because they
6 are yours and you are entitled to them. So I want
7 to you feel comfortable about that, all we ask to
8 you do is be truthful with your responses, okay.
9 Will you do that for me?

10 A. Yes.

11 Q. Do you have any prior knowledge of this
12 alleged offense?

13 A. No.

14 Q. The only thing you know is what I shared with
15 you that has been alleged in this matter?

16 A. Yes, sir.

17 Q. Based upon that do you have any opinions
18 about this matter?

19 A. None.

20 Q. None?

21 A. No.

22 Q. One other thing we need to do is make sure,
23 I'm sure you will, the lady that is receiptd in
24 front of you is taking, keeping a record of this
25 and it would help her we need to make sure that

1 you use words in response to my questions and any
2 of the questions. Okay. Thank you.

3 Have you had a chance to review that sheet
4 of paper that had the three types of jurors?

5 A. Yes, sir.

6 Q. Which one best describes you?

7 A. The third.

8 Q. The third, the last one. That is one that
9 says there are situations where you believe the
10 death penalty would be the appropriate punishment
11 for murder and then there are some that you
12 believe that life imprisonment is an appropriate
13 punishment?

14 A. Yes, sir.

15 Q. But what applies in a given case you have to
16 hear all of the facts and circumstances first and
17 it would depend upon the facts and circumstances
18 as to which one would be most appropriate; is that
19 right?

20 A. Yes, sir.

21 Q. Do you feel at this point, you say you don't
22 have any opinions about this matter, that you
23 have an open mind about this particular matter at
24 this point?

25 A. Yes, sir.

1 Q. Are you the type person that would have to
2 hear all of the facts and circumstances before you
3 make a decision?

4 A. Yes.

5 Q. You are not one to make quick judgments you
6 want to hear it all?

7 A. (Can't understand tape).

8 Q. Let me tell you some people, you know, have
9 a tendency I am probably mine is to jump quickly
10 sometime. I have to keep reminding myself keep
11 an open mind. Are you one that has a tendency
12 that tends to want to hear it all before you make
13 a decision?

14 A. Yes, sir.

15 Q. In this case if you were selected as a juror
16 that is precisely what you will be asked to do,
17 in fact you will take an oath to do that, do you
18 understand?

19 A. Yes, sir.

20 Q. You understand if you go to trial in this
21 matter, if you are on the jury this will be a
22 matter of a criminal nature, you understand?

23 A. Yes, sir.

24 Q. It will involve certain principles of law
25 which apply to this case and some of which will

1 apply to every case of criminal nature in this
2 country, do you understand?

3 A. Yes.

4 Q. One of those is presumption of innocence, do
5 you have any problem with that presumption?

6 A. No, sir.

7 Q. You have any problem with that principle of
8 law?

9 A. No, sir.

10 Q. You understand it means that the State has
11 the burden of proving this case?

12 A. (Can't understand tape). Everybody should
13 have a chance to prove himself innocent.

14 Q. All right. I appreciate that statement
15 because what you said and I understand that, but
16 the unusual nature of this presumption of law is
17 this, the presumption of innocence, the
18 presumption of innocence which is the law, not
19 the presumption of law, this presumption of
20 innocence states this: That when someone is
21 charged with a criminal offense in this country,
22 that individual is never ever required to prove
23 his or her innocence. It says that the State,
24 the State or the Government, the person that
25 brings this action has the sole responsibility of

1 proving, in fact the State has the only
2 responsibility. In this matter there are two
3 parties, the State and Mr. Stone who is the
4 defendant. The only party in this dispute who
5 has any burden to prove anything is the State, do
6 you understand?

7 A. Yes.

8 Q. Mr. Stone who is seated at that table over
9 there is the person who is acuted of these
10 offenses. Under our law he doesn't have to prove
11 anything. He doesn't have to disprove anything
12 and he doesn't have to prove his innocence, do
13 you understand?

14 A. Yes, sir.

15 Q. In fact, just like anybody charged with any
16 criminal violation in this country, should Mr.
17 Stone choose for whatever reason not to testify in
18 this matter, I would instruct the jury as I have
19 done before in the other cases where individual
20 chose not to testify that you can't use that
21 against him at all. Would you have any problem
22 following that instruction?

23 A. No, sir.

24 Q. Not at all?

25 A. No, sir. (Can't understand tape).

1 Q. Well, I appreciate that. Remember I said
2 when we started you don't need to feel defensive
3 about any of this I am just asking whether you
4 would or you wouldn't and like I said whatever,
5 it is your philosophy, it is your opinions that
6 we listen for. Do you understand? Would you be
7 able to follow that instruction?

8 A. If I have to, I have to.

9 Q. Let me put it to you in this fashion. One
10 of the first acts that will take place tomorrow as
11 we all gather together is you if you are on this
12 jury you are going to stand up in that courtroom
13 before the State, before Mr. Stone, before the
14 plays and any witnesses therein and you will raise
15 your right hand and you are going to take an oath
16 that you are going to decide this case solely on
17 the evidence and the law. And that means that
18 you are going to accept the law as I give it to
19 you even if you differ with it. Even if you
20 think it ought to be changed, that is your right
21 to feel that way. But what you will be promising
22 both to the State and Mr. Stone is that you will
23 follow that oath. Now, having said that will
24 you be able to follow that oath?

25 A. Yes.

1 Q. You will. So the instruction that you
2 cannot use that against him, you would set aside
3 any personal feelings you would have and follow
4 that instruction?

5 A. Yes.

6 Q. You would be able to do that?

7 A. Yes.

8 Q. You understand that this case is going to
9 involve two parts, the first part is you will
10 hear evidence that deals only with one issue and
11 that is whether or not Mr. Stone is the person who
12 committed these offenses. At the conclusion of
13 the evidence, receiving the evidence I will give
14 you instruction on the law and the jury will
15 retire and deliberate and make a decision. Your
16 decision will be whether or not the State has
17 proved to you beyond a reasonable doubt that Mr.
18 Stone did in fact commit these offenses.

19 Now, the question that I have to ask you
20 now is given the instruction that I will have to
21 tell that you Mr. Stone doesn't have to prove his
22 innocence, can you and will you look at the
23 evidence, and the evidence will consist of
24 testimony of the witnesses and any exhibits that
25 have been offered through the testimony and from

1 that evidence that that alone you must make this
2 decision, okay. Will you be able to when you
3 look at the evidence and say after you have viewed
4 it that I am not convinced beyond a reasonable
5 doubt that Mr. Stone did these acts, would you be
6 able to return a verdict of not guilty?

7 A. If they didn't show it I could.

8 Q. If you were not convinced that he did it,
9 convinced beyond a reasonable doubt that he did
10 it, would you be able to return a verdict of not
11 guilty?

12 A. Yes.

13 Q. On the other hand if you were convinced
14 beyond a reasonable doubt that he did commit these
15 offenses, you were convinced the State had met
16 its burden, would you be able to return a verdict
17 of guilty?

18 A. Yes.

19 Q. You understand that depending upon the jury's
20 verdict, if the jury concludes that the State has
21 failed in its burden and finds Mr. Stone not
22 guilty, then, of course, that would conclude
23 the matter, it wouldn't go any further. But if
24 on the other hand the State -- the jury
25 concludes that the State has met its burden and is

1 convinced beyond a reasonable doubt that Mr. Stone
2 did commit the offense of murder, then we would
3 go into the second phase which is the penalty
4 phase, you understand?

5 A. Yes.

6 Q. You understand that during that phase you are
7 going to hear additional evidence that is going to
8 deal solely with this issue of punishment. You
9 wouldn't have heard any other in the first stage,
10 it is reserved for the second stage, you don't get
11 there unless the jury concludes that the State has
12 met its burden, you understand?

13 A. Yes, sir.

14 Q. Now, it is at that time that you are going
15 to hear or may hear evidence of aggravating
16 circumstances, mitigating circumstances and the
17 like, do you understand?

18 A. Yes, sir.

19 Q. Would you keep an open mind during that
20 stage?

21 A. I would try.

22 Q. I appreciate that, but I need to know what
23 your best is going to be. Would you have an open
24 mind or would you have already decided the
25 punishment because remember you told me at the

1 start that you were a person that needed to hear
2 all the facts and circumstances. I would tell
3 you you have heard some, some of the evidence
4 obviously you would want to consider that, but as
5 far as the additional evidence you haven't heard
6 that, okay. So that is when you will hear this
7 additional evidence. So could you keep an open
8 mind?

9 A. Sure.

10 Q. Would you wait until have you heard all of
11 the evidence before you make a decision?

12 A. Yes.

13 Q. That is what that oath is going to mean, do
14 you understand, you will take it tomorrow that
15 you are do that?

16 A. Yes.

17 Q. All right. Now, at the conclusion of the
18 evidence in the second phase I will give you
19 instruction on the law. And at that time and
20 then when will the jury be asked to make this
21 decision about what the most appropriate
22 punishment is in this case, do you understand?

23 A. Yes.

24 Q. At that time when you go back to your jury
25 room will you be able and will you consider both

1 life imprisonment and the death penalty, will you
2 consider them both and make a decision as to which
3 one you believe the facts and circumstances
4 dictate is the most appropriate punishment?

5 A. I will.

6 Q. This matter you will be sequestered in this
7 case with the other jurors, you will be kept at
8 the motel and provided with lodging and
9 transportation and food for the duration of the
10 trial. That may be an imposition to you, I
11 imagine it will be, maybe certainly disruptive of
12 your lifestyle. But could you set all of that
13 aside and stay focused as a juror and not let it
14 interfere with your responsibilities?

15 A. I will try.

16 Q. I appreciate that, but my question is will
17 you do that?

18 A. If I have to.

19 Q. If you are selected you would be able to do
20 that?

21 A. When.

22 Q. Starting today, we will start today if you
23 are selected?

24 A. Today.

25 Q. Yes, sir. Super Bowl weekend, I understand

1 that. If it is Super Bowl we will probably break
2 the testimony so you can watch the Super Bowl.
3 All right we are on the same team, we won't get
4 into that. May have to pull in New England since
5 are you on the jury just to keep it up. Will
6 that interfere with your ability, sir?

7 A. No.

8 THE COURT: Please answer any questions
9 the solicitor may have for you.

10 EXAM BY MR. KOLB:

11 Q. Mr. Yarborough, before you were summoned for
12 this jury service, had you ever talked about the
13 death penalty with anybody?

14 A. (Can't understand tape).

15 Q. I understand in those conversations, did you
16 ever express an opinion you were for the death
17 penalty or against the death penalty or you
18 thought you were for it in some circumstances?
19 What sort of opinion did you have?

20 A. (Can't understand tape),

21 Q. So you had previously indicated that you
22 agreed with the law that we have that the death
23 penalty applies in some circumstances but not all?

24 A. Right.

25 Q. And so there are -- depending upon what the

1 law is and what the facts and circumstances are in
2 a particular case, you can see yourself being on
3 a jury to be able to determine death verdict
4 depending upon if the facts are bad enough?

5 A. Never been on one (Can't understand tape).

6 Q. If you reached that point that you were on a
7 jury that decided to impose the death sentence,
8 would you have any problems signing your name
9 along with all the other members of the jury to
10 the verdict form?

11 A. No.

12 Q. Would you have any problem coming into the
13 courtroom standing up in public in front of the
14 defendant and others and reporting that you were
15 sentencing him to death?

16 A. I would be nervous, I have never done it.

17 Q. I understand it is not what somebody wants to
18 do. If you made that decision the legal
19 requirement to sign the verdict and come into
20 Court to report it, be anything to hinder you
21 from carrying out your duty in the verdict that
22 you would render?

23 A. I think after I heard all the facts, I
24 could.

25 Q. You just mentioned again I think you told the

1 judge you had to hear all the facts, all the
2 circumstances and the law before you could decide
3 what punishment should be. Is there any --
4 mere allegation that a certain fact is present in
5 a case, would that mere allegation cause you to
6 make up your mind as to what the punishment should
7 be? Like somebody says this involves the murder of
8 a young child or this involves the murder of a
9 police officer, those are just allegations, you
10 could still be fair and you would have to hear all
11 the facts, all the circumstances and the law and
12 then decide the punishment only after hearing all
13 of the facts and all the circumstances?

14 A. Yes, sir.

15 Q. So would you have to hear all the facts and
16 circumstances and the law before you made a
17 decision on what the punishment would be?

18 A. Yes, sir.

19 MR. KOLB: Yes, sir.

20 THE COURT: Mr. Babb.

21 EXAM BY MR. BABB:

22 Q. Good morning, sir. I noted in going over
23 the sheet that you filled out, questionnaire that
24 you had served in the military, would you tell us
25 about that?

1 A. National Guard.

2 Q. You are currently in the National Guard. I
3 believe you said no one in your family is involved
4 in law enforcement. Do you have any friends that
5 are law enforcement?

6 A. No.

7 Q. Do you have any friends that are law
8 enforcement officers?

9 A. (Can't understand tape).

10 Q. The fact that you had a friend was in there
11 as Mr. Kolb has mentioned this case, this is a
12 case in which the defendant is accused of the
13 murder of a deputy sheriff, it doesn't affect
14 your answers at all?

15 A. (Can't understand tape).

16 Q. All right, sir. Does it impact at all upon
17 your ability to set aside your beliefs that the
18 defendant must prove his innocence?

19 A. I think he should.

20 Q. You think a defendant should prove his
21 innocence? Is that something that is going to stay
22 in your mind during this trial?

23 A. (Can't understand tape).

24 Q. Well, it is something you feel very strongly
25 about, isn't it?

1 A. (Can't understand tape).

2 Q. Is that something you feel very strongly
3 about?

4 A. (Can't understand tape).

5 Q. And you feel very strongly that if someone is
6 arrested, brought into Court that they need to
7 prove their innocence?

8 A. (Can't understand tape).

9 Q. And you always feel that way; is that a
10 correct statement. Thank you, sir.

11 EXAM BY THE COURT:

12 Q. Mr. Yarborough, again, no right or wrong
13 answer to this question, you have already stated
14 I believe in answering the Solicitor's questions,
15 that you could take an oath, you could do that.
16 We discussed the feelings you have about someone
17 being charged having to prove their innocence. I
18 appreciate your candor with your feeling about
19 that but my question to you is this, I want to be
20 certain, do you feel that that feeling is strong
21 enough or so strong that it would affect your
22 ability to fairly and impartially try this case?

23 A. I would have to look at the evidence.

24 Q. Well most important thing can you follow the
25 law that says a defendant in any criminal action

1 does not have to prove anything? That means that
2 you must set that feeling you have totally aside
3 because that is not evidence. Do you understand?

4 A. Yes.

5 Q. Can you put all that aside? Sir?

6 A. Yes.

7 THE COURT: Any additional questions from
8 the State?

9 MR. KOLB: No, sir.

10 THE COURT: Any additional questions from
11 the defendant?

12 MR. BABB: No.

13 THE COURT: If you will step down Mr.
14 Yarborough will be with you in just a moment.

15 What says the State?

16 MR. KOLB: Qualified.

17 THE COURT: What says the defendant?

18 MR. BABB: Your Honor, I put him in the
19 same category, I understand how the Court is
20 inclined to rule.

21 THE COURT: Thank you, Mr. Babb. At
22 this point I will find that he is qualified. He
23 indicates he could set it aside. However, I have
24 considered them both the same. The other
25 individual much more mature individual, this

1 individual is not the same degree of maturity,
2 but at this point I must find he is qualified and
3 so find.

4 Mr. Yarborough, you have been qualified
5 as a potential juror in this matter. That means
6 that you need to be back here at five o'clock this
7 afternoon, at five we will select 12 individuals
8 and alternates to decide this case. Since you
9 don't know until that occurs if you will be
10 selected as a juror, you will need to bring
11 sufficient clothing and personal effects to
12 satisfy your needs for a week. If you are
13 selected we will leave go directly to Sumter and
14 start the trial of this case tomorrow. To assist
15 you here is some information about that about
16 being sequestered, Mr. Player who is Clerk of
17 Court in Sumter prepared this for us, it is just
18 information.

19 I ask that while you are out until we get
20 back together at five o'clock you continue not to
21 discuss this case with anyone or allow anybody to
22 talk with you about it. Don't read anything
23 about it, don't watch any news program about it.
24 Okay. See you at five o'clock. Thank you.

25 All right let's move onto Ms. Haynes.

1 PATRICIA HAYNES, having been first
2 duly sworn, testified as follows:

3 EXAM BY THE COURT:

4 Q. Ms. Haynes, good morning, how are you?

5 A. Fine.

6 Q. Good, I will ask you to do me a favor,
7 please, ma'am. The mike system in this
8 courtroom went out on Monday so we are having to
9 talk a little louder than we normally would, if
10 you could help me so that everybody can hear you I
11 need you to raise your voice a little bit for us,
12 all right. Do you know anything about this case?

13 A. No.

14 Q. Nothing other than what I have said has been
15 alleged. Do you have any feelings about it?
16 Ma'am? Let me before you answer that let me say
17 something to you I appreciate that. The
18 questions that I am asking you, the questions
19 that these lawyers may ask you, there is in right
20 or wrong answer to these questions. These are
21 questions that really are asking you your personal
22 feelings about the case, what you think about
23 things and let me say something to you, you are
24 entitled to believe whatever you want to believe.
25 Nobody here is going to challenge that, nobody is

1 going to attack your personal philosophy or
2 belief.

3 So having said that do you have any
4 feelings about this matter at this time? You do
5 not, keep your voice up please because I know
6 they can't hear you?

7 A. (Can't understand tape).

8 Q. All right. Would you have to hear all of
9 the evidence before you could develop an opinion?

10 A. Yes, sir.

11 Q. Have you had a chance to review that sheet
12 that has the three type your ors, which one best
13 describes you?

14 A. The first one.

15 Q. All right. With you say the first one does
16 that mean in every case the first one is one let
17 me run over them with you. The first one was the
18 juror when someone has been convicted of murder
19 always believes that the death penalty is the
20 appropriate punishment, it doesn't have a thing
21 to do with the circumstances of the case, it is
22 only a person is ever convicted of murder that
23 automatically the person ought to be sentenced to
24 death. That is what the first one says.

25 The second one said that if a person is

1 convicted of murder always it doesn't make any
2 difference about the circumstances always the
3 punishment should be life in prison.

4 The third one says well, I believe in
5 some cases the death penalty is the proper
6 punishment, but I believe in other cases life
7 imprisonment may be the proper punishment, by it
8 just kind of depends upon the circumstances of the
9 case as to which one would apply. Now, are you
10 the one when you said you were the first one, are
11 you the one that believes when someone is
12 convicted of murder then the death penalty is the
13 only punishment that should be given?

14 A. Yes.

15 Q. You believe that?

16 A. Yes.

17 Q. It doesn't matter about the circumstances
18 about the case?

19 A. No, sir.

20 Q. So you would not even, would you not
21 consider the facts and circumstances surrounding
22 the case just if the person was convicted of
23 murder then your vote would be that he ought to be
24 sentenced to death, absolutely. Nothing that
25 will change that once you are convicted of murder.

1 That is your belief, okay.

2 THE COURT: Solicitor, questions?

3 EXAM BY MR. KOLB:

4 Q. If the judge instructed you that you had to
5 keep an open mind going -- if you were selected
6 for this jury and you found the defendant guilty
7 in the first phase of the trial, of guilt or
8 innocence, if the judge instructed you you had to
9 keep an open mind going into the second phase
10 regarding the penalty, that is whether you will
11 give him the death penalty or life in prison, do
12 you think could you do that?

13 A. Yes.

14 Q. You think could you keep an open mind in
15 regard to penalty? Do you think it would be
16 possible for you to find him guilty in phase one
17 of murder and still at the completion of phase two
18 depending upon the facts and circumstances that
19 you heard still go in favor of the sentence being
20 life in prison?

21 MR. LITTLEJOHN: Your Honor I will have
22 to object.

23 THE COURT: I sustain that objection.

24 EXAM BY MR. KOLB:

25 Q. Do you think it would be possible for to you

1 consider both the death penalty and life
2 imprisonment as a possible verdict if you found
3 the defendant guilty of murder?

4 A. (Can't understand tape).

5 Q. You don't think would you be able to consider
6 life in prison as possible verdict even if the
7 judge told you that was the law in this case that
8 you had to consider that and you had to look at
9 the facts and circumstances you don't think you
10 could follow that instruction from the judge?

11 A. (Can't understand tape).

12 Q. There is no facts or circumstances that you
13 could hear that would (Can't understand tape)?

14 A. (Can't understand tape).

15 MR. KOLB: No further questions.

16 MR. LITTLEJOHN: No questions.

17 THE COURT: If you would step out the
18 door, we will be with you in just a moment.

19 She is clearly unqualified, clearly
20 cannot consider both punishments, any objection
21 from the State?

22 MR. KOLB: No, sir, Your Honor.

23 THE COURT: Any objection from the
24 defendant?

25 MR. LITTLEJOHN: No, sir.

2880

1 THE COURT: Bring her back in, please.
2 Ms. Haynes, I will excuse you from any further
3 participation in this matter. We will select the
4 jury at five this afternoon, until the jury is
5 selected I ask that you not talk about this case.
6 Once the jury is selected if you want to talk
7 about this case you are free to do so.

8 Let me see y'all just a second, please.
9 (Whereupon, a bench conference was held off the
10 record.)

11 THE COURT: You want to go ahead and
12 finish this one Before we bring in the next one.
13 It is Ms. Brockington, I believe.

14 RUBY BROCKINGTON, having been first
15 duly sworn, testified as follows:

16 EXAM BY THE COURT:

17 Q. It is almost afternoon, Ms. Brockington,
18 how are you?

19 A. Fine. How are you.

20 Q. I'm fine, thank you, ma'am. I appreciate
21 your patience, I have some questions I need to
22 ask you, ma'am. I want to start out by telling
23 you and reminding you that on Monday I told you
24 these questions they don't have any right or wrong
25 answers, okay. I also need for you to do me

1 another favor, the microphones went out on
2 Monday, these folks that are seated out there
3 they need to hear your answers and I know you sit
4 right here and I can hear you but you need to
5 raise your voice like my voice is raised right
6 now, okay. And keep that voice raised so that
7 everybody can hear your answers to my questions.
8 These questions are sort of questions about how
9 you feel about certain things, as I stated they
10 are your rights, you are entitled to feel anyway
11 you want to and you are not going to be attacked
12 for feeling one way or the other, that is your
13 right as an individual to have certain feelings,
14 okay. So having said that let me ask you a
15 question, do you know anything about this
16 situation other than what I shared with you has
17 been alleged on Monday?

18 A. No, sir.

19 Q. Have you read anything about it or heard
20 anybody talk about it since Monday?

21 A. No, sir.

22 Q. Now, do you have any opinions about it at
23 this point?

24 A. No, not really.

25 Q. Not really. Would you have to hear all of

1 the evidence before you could make a decision or
2 have an opinion of it?

3 A. No I don't think so.

4 Q. You don't think so. You could make an
5 opinion before you heard all of the evidence?

6 A. Yes.

7 Q. You could? Have you had a chance to read that
8 sheet that has two types of jurors?

9 A. Yes, sir.

10 Q. Which one of them best describes you?

11 A. The second one.

12 Q. The second one. That means that you are a
13 person, let me go over them for you let's make
14 sure we understand. The first one is the kind of
15 person that says when somebody is convicted of
16 murder that once they are convicted of murder they
17 think they ought to get the death penalty every
18 time. Is that how you understand the first one?

19 A. Yes, sir.

20 Q. The second one says that a person is
21 convicted of murder that they will only get life
22 in prison in every case, it doesn't make any
23 difference about how bad it is or any of the
24 circumstances, it is always the type of person?

25 A. Yes.

1 Q. And the third one is somebody that says,
2 well, sometimes I think it is a death penalty
3 sometimes I think it is life imprisonment it kind
4 of depends upon the facts and circumstances of the
5 case. Is that your understanding of those three?

6 A. Yes, sir.

7 Q. And are you the number two; is that right?

8 A. Yes, sir.

9 Q. And that means that it is your feeling if
10 someone is convicted of murder they automatically
11 in every case your vote would be life in prison?

12 A. Yes.

13 Q. It wouldn't matter to you anything about the
14 facts or circumstances. It wouldn't matter how
15 serious the crime or serious the situation?

16 A. No.

17 Q. It would not change your mind, not at all,
18 you will always vote for life in prison. And
19 there is no circumstance that you can think of
20 that could be brought into the courtroom where you
21 would even consider the death penalty?

22 A. No.

23 THE COURT: Any questions from the State?

24 MR. KOLB: No, sir.

25 THE COURT: Any questions from the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

defendant?

MR. LITTLEJOHN: No Your Honor.

THE COURT: If you would please ma'am step out the door for just a second we will be right back with you.

I find she is clearly unqualified because of her inability to consider both possible punishments. She indicated clearly and unequivocally she would under all circumstances give life imprisonment, we went over three, she understands all three of them indicated her understanding therefore I find she is unqualified. Any objection from the State?

MR. KOLB: No, sir.

THE COURT: Any objection from the defendants?

MR. LITTLEJOHN: No, Your Honor.

THE COURT: Also, please again despite of what we said also please feel free if you wish to challenge her.

MR. KOLB: I understand if any equivocation.

THE COURT: All right. Thank you, sir. All right ask her to come in here.

Ms. Brockington, I will excuse you ma'am

1 from having to participate any further in this
2 proceeding. You will not have to come back
3 anymore. We are going to select the jury
4 probably this afternoon about five o'clock.
5 Until we pick that jury I would just ask that you
6 not talk with anybody about the proceedings.
7 Once the jury has been selected if you want to
8 talk about it feel free to talk about it, okay.
9 Thank you so much.

10 Let's bring in Ms. Armstrong.

11 MARY ARMSTRONG, having been first
12 duly sworn, testified as follows:

13 EXAM BY THE COURT:

14 Q. Good afternoon, Ms. Armstrong, how are you?

15 A. Fine.

16 Q. Good. Ms. Armstrong, I have some questions
17 that I am going to ask you now. I think when you
18 hear the questions you will understand and agree
19 with me that there really are no right or wrong
20 answers to these questions because most of them
21 ask about your feelings and opinions about things.
22 Certainly have you a right to have any feeling you
23 want and any opinion you have about any of these
24 issues, do you understand that?

25 A. Yes, sir.

1 Q. So I just want you to respond truthfully to
2 my questions and any questions that these lawyers
3 have for you as well?

4 A. Okay.

5 Q. Do you have any knowledge let me ask that you
6 first, do you have any other knowledge about this
7 case other than what I shared with you that has
8 been alleged on Monday?

9 A. No I don't.

10 Q. Do you have any opinions about it?

11 A. No.

12 Q. Would have you to hear all of the evidence
13 before you could develop an opinion about this?

14 A. No.

15 Q. You would not? You would be able to develop
16 an opinion before then?

17 A. In my mind.

18 Q. It wouldn't depend on all of the evidence?

19 A. No.

20 Q. Have you had a chance to review that sheet of
21 paper that had the three types of jurors?

22 A. Yes.

23 Q. Which one of them are you?

24 A. Probably the third one.

25 Q. Probably the third. That means that

1 sometimes you would believe that depending upon
2 the circumstances the death penalty would be I
3 prop are you /KWRAEUT punishment if someone is
4 convicted of murder?

5 A. Yes.

6 Q. That sometimes life in prison would be the
7 appropriate punishment; is that true?

8 A. Yes.

9 Q. Depending upon the facts and circumstances?

10 A. Right.

11 Q. The third part of that says that in order for
12 to you determine that you are going to have to
13 hear all of the facts and circumstances. Isn't
14 that what it says?

15 A. Yes.

16 Q. Let me ask you a question. Are you going to
17 make a determination before you hear all of the
18 facts and circumstances?

19 A. No.

20 Q. You would not?

21 A. I would hear all of the facts.

22 Q. Would you follow the Court's instruction in
23 that regard?

24 A. Yes.

25 Q. Do you understand if you are selected as a

1 juror in this case you are going to take an oath
2 that you will decide this case based solely on the
3 facts and the evidence, the evidence and the law.
4 That means the evidence is simply this, that is
5 the testimony and the exhibits that will be
6 offered during the testimony, during the trial.
7 You won't let anything else affect your decision,
8 do you understand that?

9 A. Yes.

10 Q. Now, that doesn't mean you won't apply your
11 good common sense and that doesn't mean you won't
12 apply your logic or reason, that means you won't
13 decide this thing on anything other than the
14 evidence and the law. Ask you do that?

15 A. Yes.

16 Q. One of the things that you will be promising
17 and has started even on the questions I asked you
18 on Monday and these questions will be asked of you
19 now, you will be promising the State and Mr.
20 Stone, who is the individual who is charged with
21 this offense, you will be promising them this,
22 that I promise you both that I will be fair, I
23 will be impartial and I am going to keep an open
24 mind until I have heard all of the facts and until
25 I have received the law from the Court. And I

1 promise you both that I am not going to make any
2 decisions until the Court tells me to make that
3 decision. Now, will you be able to follow that?

4 A. Yes, I would.

5 Q. You will keep an open mind then in both
6 proceedings because there will be two parts. The
7 first part you are going to hear evidence about
8 Mr. Stone alleging to commit some of these
9 offenses, do you understand that? After hearing
10 all the evidence I give you the law the jury will
11 be asked to make a decision, you will decide
12 whether the State met its burden or not, do you
13 understand?

14 A. Yes.

15 Q. Do you understand that it is the State's
16 responsibility to prove this case?

17 A. Yes.

18 Q. Because it is their case, it is their
19 responsibility. As I told you Monday people who
20 are charged with criminal offenses in this
21 country, they don't have to prove anything. Not
22 one thing. That is what the law is. Will you
23 be able to follow that law?

24 A. Yes.

25 Q. It means that they are presumed innocent

1 until and if the State proves their guilt and only
2 then, otherwise they are presumed innocent unless
3 you are convinced beyond a reasonable doubt that
4 they did the offense for which they are accused
5 they are innocent solely on that presumption of
6 innocence, do you understand?

7 A. Yes.

8 Q. And it would be your duty if you weren't
9 convinced as a juror beyond a reasonable doubt to
10 return a verdict of not guilty, do you understand
11 that?

12 A. Yes.

13 Q. Could you do that?

14 A. Yes.

15 Q. Also it would be your duty as a juror that if
16 you are convinced that the State has met its
17 burden of proof and convinced you beyond a
18 reasonable doubt that the individual did these
19 offenses it would be your duty to return a verdict
20 of guilty, could you do that?

21 A. Yes.

22 Q. Now, in this proceeding Mr. Stone like
23 anybody else that is charged with a criminal
24 offense doesn't have to prove anything, doesn't
25 have to put up any evidence, doesn't have,

1 doesn't even have to testify and I would tell you
2 you can't use that against him, could you follow
3 that instruction?

4 A. Yes.

5 Q. Would have you any problem with that?

6 A. No.

7 Q. If the jury after that first phase decides
8 that Mr. Stone or the State had met its burden of
9 proof and Mr. Stone was the person who committed
10 these offenses, we go into the second phase,
11 which is the penalty phase where you will consider
12 what the punishment should be in this case, do
13 you understand?

14 A. Yes.

15 Q. All right. Of course if the jury concludes
16 that the State didn't meet its burden and
17 therefore found him not guilty of course that
18 would end this proceeding, do you understand
19 that?

20 A. Yes.

21 Q. If we got into the penalty phase you would
22 hear additional evidence at that time. Now, you
23 have heard some, certainly would you have already
24 decided obviously at that point that the State had
25 met its burden of proof and he was guilty of

1 murder. But in addition to that you would also
2 now hear some evidence that maybe some aggravating
3 circumstances, mitigating circumstances and that
4 type of evidence and I will explain all that to
5 you at the conclusion. But the most important
6 thing is you are going to hear additional evidence
7 by your statement that you are number 3, would
8 you be able to and would you keep an open mind and
9 not decide on the appropriate punishment until you
10 have heard all of the evidence?

11 A. Yes.

12 Q. To you at the conclusion of that and after I
13 have instructed you on the law, the jury will be
14 asked to go back in their jury room and decide
15 what the appropriate punishment should be in this
16 case. Would you at that time be able to consider
17 both the death penalty and life in prison?

18 A. Yes.

19 Q. And decide which one you think is most
20 appropriate?

21 A. Yes.

22 Q. This jury is going to be sequestered, you
23 will be kept together, the State will be
24 providing you food, lodging and transportation.
25 I know that may be an imposition, but could you

1 set aside that inconvenience and not let it affect
2 your responsibility as juror?

3 A. I guess.

4 Q. Ma'am, you could? You won't be alone there
5 will be at least, at least 11 others and possibly
6 a couple more so you will all be in it together
7 the question is can you set this aside and stay
8 focused on your duties as juror?

9 A. I guess I could.

10 Q. And not let it interfere with the matter?

11 A. Yes.

12 THE COURT: Answer any questions that the
13 solicitor may have for you.

14 EXAM BY MR. WILLIAMS:

15 Q. Good afternoon, Ms. Armstrong. You
16 indicated on your juror information sheet that you
17 have some friends or family that live in Sumter?

18 A. Yes, I do have (Can't understand tape).

19 Q. What is his name?

20 A. James Armstrong.

21 Q. Do you know where in Sumter he lives?

22 A. I think he live (Can't understand tape).

23 Q. You think he lives in (Can't understand
24 tape)?

25 A. Yes.

2906

- 1 Q. Have you ever had any discussion with anybody
2 about the death penalty?
- 3 A. No, I haven't.
- 4 Q. Never talked about the death penalty with
5 anybody before?
- 6 A. No.
- 7 Q. You have any general opinion on the death
8 penalty?
- 9 A. No.
- 10 Q. You don't? Have you or anyone in your family
11 or close friends ever been the victim of a crime?
- 12 A. No.
- 13 Q. Have you or anyone the your family or close
14 friends ever been charged with a crime?
- 15 A. No.
- 16 Q. You indicated in response to the judges a
17 questions that you consider yourself a type three
18 juror; is that correct?
- 19 A. Yes.
- 20 Q. And you understand that to mean that
21 depending upon the facts and circumstances you
22 could recommend either a verdict of life in prison
23 or the death penalty, could you do either one of
24 those?
- 25 A. Yeah.

1 Q. Do you believe you could sign your name on a
2 document sentencing the defendant to the death
3 penalty, do you think could you write your name
4 on that document?

5 A. Yes if he was proven guilty.

6 Q. Do you think could you come into the
7 courtroom in front of the defendant and whoever
8 else was in the courtroom and announce that your
9 verdict is that he receive the death penalty?

10 A. I could do that.

11 Q. You think could you do that?

12 A. Prove him guilty.

13 Q. On your jury information sheet you said you
14 or member of your immediate family or close
15 personal friend had been charged with a crime and
16 your response to that you said yes it was domestic
17 and drug, can you explain that?

18 A. No, I have a brother in jail for crack.

19 Q. That is your brother?

20 A. Yes, Frank Armstrong.

21 Q. Was that here in Georgetown?

22 A. At the detention here in Georgetown.

23 Q. Do you have any opinion about how he was
24 treated by law enforcement?

25 A. No.

1 Q. You don't have any bad feelings toward law
2 enforcement as a result of that charge?

3 A. No.

4 Q. You said something about domestic also?

5 A. Oh, that was when he was in jail for domestic
6 abuse (Can't understand tape).

7 Q. Who was in domestic is that Frank also?

8 A. Same person.

9 MR. WILLIAMS: Thank you.

10 THE COURT: Mr. Babb.

11 EXAM BY MR. BABB:

12 Q. Good afternoon, Ms. Armstrong. In answer
13 to Mr. Williams questions he asked if you would
14 have any hesitation about fairly considering the
15 death penalty, if you felt that was appropriate
16 your response was if he was guilty?

17 A. Right.

18 Q. Do you understand that there are two phases
19 in this trial which His Honor mentioned to you.
20 First there is a trial to determine guilt or
21 innocence if a not guilty verdict is rendered then
22 that is the end of it. If a guilty verdict is
23 entered then there is a second trial, not about
24 guilt it is like a mini trial. In that second
25 phase you would hear, you may hear various types

1 of evidence, evidence in aggravation or evidence
2 in mitigation. And after hearing all of that and
3 receiving the law from the judge do you come to
4 the question of whether it should be a sentence of
5 life in prison or death. Can you consider both
6 fairly to both sides if the verdict is guilty of
7 murder?

8 A. I would consider both.

9 Q. If someone is guilty of murder are you saying
10 they should be punished by death?

11 A. If what now.

12 Q. If someone is found guilty of murder, should
13 the punishment then be death?

14 A. No.

15 Q. You mentioned to the Solicitor's office in
16 responding to their questions under appropriate
17 circumstances you could impose the death penalty
18 and sign your name to it?

19 A. After he is found guilty by the evidence
20 (Can't understand tape).

21 Q. Okay. You are saying have you to have all
22 of that evidence to makeup your decision?

23 A. Right.

24 Q. Is that what you are saying?

25 A. Right.

1 Q. Am I confusing you with my questions? Let me
2 just move onto something else. In this case the
3 defendant is accused of murder, accused of murder
4 of a police officer and a deputy sheriff. Would
5 that impact your ability to be fair to him?

6 A. No.

7 Q. Would it impact your ability to be fair to
8 the State? Do you have any close friends who are
9 police officers?

10 A. (Can't understand tape).

11 MR. BABB: Nothing further, Your Honor.

12 EXAM BY THE COURT:

13 Q. Ms. Armstrong let me ask you a question we
14 talked about three types of jurors. I thought I
15 understood you to say in response to the type of
16 juror and also in response to the Solicitor's
17 question that there were circumstances where you
18 would and could impose the death penalty; is that
19 true? It would depend upon the facts?

20 A. Depending upon the facts and circumstances.

21 Q. Depending upon the facts and circumstances
22 you could impose a death penalty?

23 A. I would rather give them life.

24 Q. All right. Let me ask you this. I
25 understand that would be what you would rather do,

1 but could you consider both of them?

2 A. Yes.

3 Q. And could you if the situation based upon the
4 facts and circumstances, could you impose life in
5 prison -- impose the death penalty?

6 A. No.

7 Q. Under no circumstances?

8 A. No.

9 THE COURT: Solicitor, any additional
10 questions?

11 MR. WILLIAMS: No, sir.

12 THE COURT: Mr. Babb, any additional
13 questions?

14 EXAM BY MR. BABB:

15 Q. Ms. Armstrong, if someone is convicted of
16 murder, convicted of murder, no matter how
17 heinous, how bad the crime is, how much malice,
18 how brutal under no circumstances would you impose
19 the death penalty or even consider it fairly?

20 A. I would consider it fairly.

21 Q. Would you consider it fairly.

22 A. Yes.

23 Q. If the circumstances are so horrible, so
24 shocking so aggravating that you feel that is
25 warranted could you impose the death penalty could

1 you not when I say impose I mean returning a
2 verdict for the death penalty?

3 A. I would, yes.

4 Q. You could sign your name on that with all the
5 other jurors if that is what you had to do?

6 A. If I had to do it, yes.

7 MR. BABB: . Thank you.

8 THE COURT: Any additional questions?

9 EXAM BY MR. WILLIAMS:

10 Q. Ms. Armstrong you said earlier if you had to
11 you would recommend a verdict of the death
12 penalty; is that correct?

13 A. With the (Can't understand tape).

14 Q. If you had a choice would you yourself
15 recommend the verdict of death?

16 A. I would have to hear the evidence.

17 Q. But after hearing the evidence would it be
18 possible for to you recommend the verdict of
19 death?

20 A. Repeat that.

21 Q. After hearing all the evidence would it be
22 possible for you yourself to recommend a verdict
23 of death, to recommend that the defendant get the
24 death penalty, would it be possible for to you do
25 that?

1 A. No, it wouldn't.

2 Q. It would not?

3 MR. WILLIAMS: That is all I have.

4 THE COURT: Any additional questions?

5 MR. BABB: Nothing further.

6 THE COURT: Ms. Armstrong I will ask that
7 you please step outside we will be with you in
8 just a moment. Thank you, ma'am.

9 What says the State?

10 MR. WILLIAMS: Not qualified.

11 THE COURT: What says the defense?

12 MR. BABB: Your Honor, I will take the
13 position that she is and let me explain. I heard
14 her last answer, but the question here is can you
15 consider it fairly and she answered that, yes
16 over and over again.

17 THE COURT: No question she false clearly
18 within the recognized situation that has been
19 dealt with and there are a number of cases where
20 the person says I am more inclined to impose death
21 penalty but I could fairly consider life
22 imprisonment, this is the flip side of it if I
23 have ever seen it. There is an equivocation
24 here, no question about it depending upon what
25 the question was she answered mine that she could

1 consider it, would consider it she even said she
2 could sign the death penalty if had to. Her
3 words I think if I had to if the other jurors went
4 along then she said no I couldn't. In this case
5 I must find she is qualified because I have ruled
6 in the other situations. I do find her
7 qualified.

8 Ms. Armstrong, you have been qualified
9 now as a potential juror in this case. We are
10 going to select a jury at five o'clock. I need
11 for to you be back in this courtroom at that time.
12 Please do not talk with anyone about this case
13 until that is done, don't allow anyone to talk
14 with you or read anything or watch any news
15 programs.

16 When you come you need to bring with you
17 sufficient personal effects and clothing to take
18 care of about a week's needs. After the jury is
19 selected we will leave from here and go to Sumter.
20 If you are not selected you will be allowed to go
21 back home. Here is some information to help you
22 with the sequestration.

23 Let's take a break, please.

24 (Whereupon, a short recess was held.)

25 THE COURT: First of all let the record

1 reflect Mr. Stone is present. We just concluded
2 a break and during the break we had a bench
3 conference I suggested the possibility of stopping
4 the qualification process at this point and
5 accepting or using those jurors that have been
6 qualified. I count 41 in the count and that is
7 my count, those are my notes we will run through
8 that, let's go through that at this point make
9 sure that we are all together if have you your
10 list.

11 This group one number 17 and 93 is
12 qualified. 93 has been excused for medical
13 reasons.

14 Group 2, number 145, 177 and 174 were
15 all qualified.

16 Group 3, 153, 90 and 60 were all
17 qualified.

18 Group 4, number 16, juror 196 was
19 qualified.

20 Group 5, number 189, juror 103 and
21 number 31 were qualified.

22 Group 6, juror number 63, 162 were
23 qualified.

24 Group 7, juror number 167 and 110 were
25 qualified.

1 Group 8, all four jurors, 128, 133,
2 25, and 94 were qualified.

3 Group 9, number 58, 86 and 157 were
4 qualified.

5 Group 10, number 62, 88, 158 and 18 were
6 qualified.

7 Group 11, Mr. Cribb was unqualified so 43
8 was not qualified. 37 was the only juror
9 qualified in that group.

10 Group 12, 65, 47 and 192 were qualified.

11 Group 13, number 3, 181, 122, 113 were
12 qualified.

13 Group 14, 64, 109, 199 were qualified.

14 Group 15, 200 and juror number 6 were
15 qualified.

16 Is that consistent with the State's
17 record?

18 MR. KOLB: Yes, sir.

19 THE COURT: Is that consistent with the
20 defendant's record.

21 MR. BABB: Yes, sir.

22 THE COURT: I believe it is 40 not 41 the
23 number of jurors in the pool. As I understand
24 stopping the qualifications at this point
25 therefore not examining those jurors remaining in

1 groups 16, 17 and 18 is done fully with the
2 consent of the State; is that correct?

3 MR. KOLB: Your Honor, all the persons
4 that have been qualified up to this point would
5 continue to be qualified, any change on that, no
6 reconsideration on any of those. One person said
7 at this time I believe that is all.

8 THE COURT: At this time then I think he
9 is qualified. There is another stage where if
10 necessary I may have to reconsider that is if
11 there is a challenge for cause.

12 MR. KOLB: I understand.

13 THE COURT: Okay. I think he is
14 qualified to be in the draw. I simply at that
15 point if I am confronted with that that was the
16 reason I said that there is another stage where I
17 must again reversus sit some of these and the same
18 would hold true with the State in some of the once
19 that there were some issues made I was not
20 suggesting that that was one where I had some
21 reservation I wanted to express on the record for
22 both sides how I had seen those two individuals.

23 MR. KOLB: That would be Batson
24 challenges?

25 THE COURT: If for instance, I don't

1 know what is going to happen we may get the first
2 12 persons that come out of the box, I don't
3 know. But if the defendant exhausted their
4 strikes and if the defendant, I am just saying
5 the defendant because they moved to have him
6 unqualified, I presume they will be using their
7 peremptory challenge and if they exhaust it then I
8 would assume that the next step would be that Your
9 Honor would move to challenge him for cause. And
10 at that time I think I have to face that issue.
11 That is all I am saying, Mr. Solicitor. Let's
12 too me a favor, I don't know what I am going to
13 do. We aren't there yet, we will deal with that
14 but in answer to your question we are not going to
15 requalify these persons. They are qualified,
16 that is done.

17 MR. KOLB: It is my concern in talking
18 with victim and officers, these are the people who
19 are qualified, they are the ones we need to
20 consider I just want to make sure that if that
21 situation is going to change that could affect our
22 decision.

23 THE COURT: That is fine I am telling you
24 now that I of course am not going to rule nor am I
25 going to indicate how I would ever rule on any

1 challenge for cause made by either party. If you
2 and the victims want to have more people in the
3 pool in case someone may be excused for cause
4 should you exhaust your strikes, then we need to
5 not stop we need to go forward. So if you need
6 to discuss that with them and not talk about that
7 potential with them then please feel to take a few
8 moments to discuss that.

9 MR. KOLB: Let me do that.

10 THE COURT: The same is true for the
11 defendant as well.

12 (Whereupon, the record was paused.)

13 MR. KOLB: That's fine for us.

14 THE COURT: Thank you, sir, I
15 appreciate that. Am I understand the State is in
16 agreement with stopping the qualification process
17 at this time.

18 MR. KOLB: Yes.

19 THE COURT: Is the defendant in agreement
20 with stopping the process at this point?

21 MR. LITTLEJOHN: Your Honor, he is. We
22 have discussed with him how we procedurally came
23 to be at this point. The fact that we were
24 attempting to go through the entire panel and
25 qualify them or disqualify them and then

1 rerandomly draw the jury and I think I have
2 sufficiently explained to him that by stopping at
3 this point there would be approximately 12 jurors
4 which have not gone through the qualification
5 procedure that would not even be considered to be
6 randomly drawn for his jury pool. I think Mr.
7 Stone understands that and he has indicated to us
8 that he understands the agreement with stopping
9 now and drawing from the 40 jurors who are
10 qualified.

11 THE COURT: Thank you very much. Mr.
12 Babb.

13 MR. BABB: I want to say I was with Mr.
14 Littlejohn when he went through that process with
15 Mr. Stone. I agree that Mr. Stone understands.

16 THE COURT: Thank you, sir. Then what
17 I would ask to you do is this. That first of all
18 well as soon as we finish this before you make a
19 list I want to deal with those panels that are not
20 here. When we finish that, go ahead and put
21 those 40 names that we just mentioned into the
22 drum, redraw one at a time putting them on a list
23 provide the State a copy of the list and the
24 defendant a copy of the list. That list that
25 comes out now will be the order that they will be

1 called. When we strike, it will be just like we
2 typically do in a criminal Court. For instance,
3 the first person drawn and placed on that list
4 will be juror number 1. When we get to the
5 strike on the record I will ask the solicitor or
6 the clerk will ask who says the State as juror
7 number one, the State will say either excuse the
8 juror or seat the juror or swear the juror,
9 whatever you typically say. Then it will pass to
10 you and you will decide and we will go through
11 that process taking them one at a time until we
12 have seated the 12 jurors. In other words, it
13 will be just like they were being called up as we
14 typically do in criminal Court so we won't be
15 striking, we won't do like in civil Court where
16 have you ten strikes you strike then then you
17 strike five, that is not the way we are going to
18 do it. Have you five strikes, have you ten.
19 But we will do it one at a time. So once we get
20 those 40 and once we get the 12 the very next
21 juror will be the next juror to be considered as
22 an alternate and the strikes will then go from one
23 to two until you have exhausted. If we select
24 that we go to the next alternate, they go one and
25 two and for instance, suppose you say the State

1 says seat the juror and the defendant says excuse
2 the juror, now the strike for that alternate are
3 one and one. Next juror, seat the juror, swear
4 the juror, fine, we go back to alternate two,
5 strikes are now again one and two: So everybody
6 understands that we are not, we are picking that
7 next one just like it would be a separate juror,
8 they are per alternate we would be taking them it
9 would be the next person but the strikes would go
10 back and we would start it over for alternate two,
11 is everybody clear on the process. The State
12 clear on that.

13 MR. KOLB: Will we get that list.

14 THE COURT: You will get that list when
15 it is accomplished. You can take it with you and
16 too whatever you want because you have until five
17 o'clock before that jury is coming. We can
18 strike it, I would anticipate that would you like
19 to go ahead and let's go through the strike
20 process because they don't have to be here to
21 accomplish that so that and we will have done the
22 motion F's there be any so that when those jurors
23 arrive we simply call out the numbers that have
24 them come forward that would be what I would like
25 to do if that is agreeable with every one.

1 Whenever you tell me you are ready I will be here,
2 I will be available that is not a problem.

3 Now, any objection from the State as to
4 the process the Court has just outlined.

5 MR. KOLB: No, sir.

6 THE COURT: Any objection from the
7 defendant as to the process of selection.

8 MR. LITTLEJOHN: I have explained it
9 again to Mr. Stone, he understands the procedure
10 we consent to it.

11 THE COURT: Thank you the very much.
12 Bring those four dear people who have been cooped
13 up, bring them out, please.

14 (Whereupon, a recess was held.)

15 THE COURT: Let's go on the record. Any
16 objection to the clerk drawing from the drum the
17 plastic containers which were sealed containing
18 the name of the jurors, any objection from the
19 State?

20 MR. KOLB: No.

21 THE COURT: From the defendant?

22 MR. LITTLEJOHN: Let me explain to the
23 defendant. Your Honor, we have no problem with
24 that procedure I have explained it to Mr. Stone.

25 THE COURT: All right. Secondly, the

1 clerk is prepared to draw them now. I will leave
2 it to you, do you want her to call them out bun
3 we one on the record or are you willing to just
4 accept the list once she has prepared it.

5 MR. KOLB: We will willing to accept it.

6 MR. LITTLEJOHN: That is fine with us,
7 also.

8 THE COURT: All right. Very well.
9 Then I will leave it to you if you wish to be
10 present you may once the list has been prepared,
11 Ms. Clerk, if you will hand them each a copy.
12 Thank you very much we will be at ease while she
13 draws the new list.

14 MR. KOLB: Your Honor, for final
15 purposes would that be back about 2:30.

16 THE COURT: I will tell you this. I am
17 going to go get a bite to eat probably I will be
18 coming back here I will be working in the office
19 you call me when you are ready, whenever you are
20 ready I will be ready to go throw the strikes.
21 So you just take as long as you need to do it. I
22 ask you to do it before five o'clock.

23 (Whereupon, court was in recess.)

24 THE COURT: All right. Let the record
25 reflect Mr. Stone is present. During the break

1 has the State been provided a copy of the new
2 jurors and we have them thumb board consecutively
3 1 through 40; is that correct, solicitor.

4 MR. KOLB: Yes, sir.

5 THE COURT: Has Mr. Stone been provide
6 add copy of the jurors.

7 MR. LITTLEJOHN: Yes, sir.

8 THE COURT: Has he had them numbered 1
9 through 40 consecutively.

10 MR. LITTLEJOHN: Yes, sir.

11 THE COURT: Is the State ready to strike?

12 MR. KOLB: Yes, sir.

13 THE COURT: Is the defendant ready to
14 strike?

15 MR. LITTLEJOHN: Yes, sir.

16 THE COURT: Very well. Ms. Clerk, the
17 State will strike first starting with the number
18 one juror.

19 THE CLERK: Number one 1, Clydie
20 Thompson.

21 THE COURT: Not the name just the number.

22 THE CLERK: Okay number one. What says
23 the State?

24 MR. KOLB: Present the juror.

25 THE CLERK: What says the defendant?

1 MR. LITTLEJOHN: Seat the juror.

2 THE CLERK: Number 2, what says the
3 State?

4 MR. KOLB: Excuse the juror.

5 THE CLERK: Number 3, what says the
6 State?

7 MR. KOLB: Present the juror.

8 THE CLERK: What says the defense?

9 MR. LITTLEJOHN: Excuse this juror,
10 please.

11 THE CLERK: Number 4, what says the
12 State?

13 MR. KOLB: Present the juror.

14 THE CLERK: What says the defense?

15 MR. LITTLEJOHN: Your Honor we would like
16 to renew our motion to disqualify this juror for
17 cause.

18 THE COURT: Denied.

19 MR. LITTLEJOHN: Excuse the juror.

20 THE CLERK: Number 5, what says the
21 State?

22 MR. KOLB: Present the juror.

23 THE CLERK: What says the defense?

24 MR. LITTLEJOHN: Seat the juror.

25 THE CLERK: Number 6, what says the

1 State?

2 MR. KOLB: Present the juror.

3 THE CLERK: What says the defense?

4 MR. LITTLEJOHN: Seat the juror.

5 THE CLERK: Number 7, what says the
6 State?

7 MR. KOLB: Present the juror.

8 THE CLERK: What says the defense?

9 MR. LITTLEJOHN: Please excuse this
10 juror.

11 THE CLERK: Number 8, what says the
12 State?

13 MR. KOLB: Present the juror.

14 THE CLERK: What says the defense?

15 MR. LITTLEJOHN: Excuse this juror.

16 THE CLERK: Number 9, what says the
17 State?

18 MR. KOLB: Present the juror.

19 THE CLERK: What says the defense?

20 MR. LITTLEJOHN: Seat the juror.

21 THE CLERK: Number 10, what says the
22 State?

23 MR. KOLB: Excuse the juror.

24 THE CLERK: Number 11, what says the
25 State?

1 MR. KOLB: Present the juror.
2 THE CLERK: What says the defense?
3 MR. LITTLEJOHN: Seat the juror, please.
4 THE CLERK: Number 12, what says the
5 State?
6 MR. KOLB: Present the juror.
7 THE CLERK: What says the defense?
8 MR. LITTLEJOHN: Seat the juror.
9 THE CLERK: Number 13, what says the
10 State?
11 MR. KOLB: Present the juror.
12 THE CLERK: What says the defense?
13 MR. LITTLEJOHN: Please excuse this
14 juror.
15 THE CLERK: Number 14, what says the
16 State?
17 MR. KOLB: Excuse the juror.
18 THE CLERK: Number 15, what says the
19 State?
20 MR. KOLB: Present the juror.
21 THE CLERK: What says the defense?
22 MR. LITTLEJOHN: Seat the juror.
23 THE CLERK: Number 16, what says the
24 State?
25 MR. KOLB: Present the juror.

1 THE CLERK: What says the defense?

2 MR. LITTLEJOHN: Please excuse this
3 juror.

4 THE CLERK: Number 17, what says the
5 State?

6 MR. KOLB: Excuse the juror.

7 THE CLERK: Number 18, what says the
8 State?

9 MR. KOLB: Present the juror.

10 THE CLERK: What says the defense?

11 MR. LITTLEJOHN: Excuse this juror.

12 THE CLERK: Number 19, what says the
13 State?

14 MR. KOLB: Present the juror.

15 THE CLERK: What says the defense?

16 MR. LITTLEJOHN: Seat the juror.

17 THE CLERK: Number 20, what says the
18 State?

19 MR. KOLB: Present the juror.

20 THE CLERK: What says the defense?

21 MR. LITTLEJOHN: Excuse this juror,
22 please.

23 THE CLERK: Number 21, what says the
24 State?

25 MR. KOLB: Present the juror.

1 THE CLERK: What says the defense?

2 MR. LITTLEJOHN: Your Honor in regard to
3 juror 21 we would like to renew our motion to
4 excuse this juror for cause.

5 THE COURT: Very well I would again deny
6 the motion as pertains to juror number 11 /# --
7 21.

8 MR.. LITTLEJOHN: Please excuse this
9 juror.

10 THE CLERK: Number 22, what says the
11 State?

12 MR. KOLB: Present the juror.

13 THE CLERK: What says the defense?

14 MR. LITTLEJOHN: Seat the juror.

15 THE CLERK: Number 23, what says the
16 State?

17 MR. KOLB: Present the juror.

18 THE CLERK: What says the defense?

19 MR. LITTLEJOHN: Nubmer 23?

20 THE CLERK: Yes, sir.

21 MR. OUTTEN: Seat the juror, please.

22 THE CLERK: Number 24, what says the
23 State?

24 MR. KOLB: Excuse the juror.

25 THE CLERK: Number 25, what says the

1 State?

2 MR. KOLB: Present the juror.

3 THE CLERK: What says the defense?

4 MR. LITTLEJOHN: Seat the juror.

5 THE CLERK: Number 26, what says the
6 State?

7 MR. KOLB: Present the juror.

8 THE CLERK: What says the defense?

9 MR. LITTLEJOHN: Court's indulgence.
10 Number 26, please seat the juror.

11 THE CLERK: Number 27, the State.

12 MR. KOLB: Is this alternate?

13 THE COURT: No, sir. Still has one
14 more. Unless I missed one. Hold it just a
15 second before we go any further let's go back and
16 check. I think that was the twelfth juror.

17 THE CLERK: Right.

18 THE COURT: Is that what you have?

19 THE CLERK: Yes, sir.

20 THE COURT: This is the alternate,
21 strikes will be one and two. It is the first
22 alternate.

23 THE CLERK: Number 27, what says the
24 State?

25 MR. KOLB: Present the juror.

1 THE CLERK: What says the defense?

2 MR. LITTLEJOHN: Please excuse this
3 juror.

4 THE CLERK: Number 28, what says the
5 State?

6 MR. KOLB: Present the juror.

7 THE CLERK: What says the defense?

8 MR. LITTLEJOHN: Present the juror.

9 THE COURT: Alternate number one.

10 THE CLERK: Okay for the second one
11 number 29, what says the State?

12 MR. KOLB: This is alternate two?

13 THE COURT: Yes, sir. Let's note
14 something just one second, you have down
15 Patricia, it is Patrick.

16 MR. KOLB: Yes, sir.

17 THE COURT: Just want to be sure.

18 THE CLERK: It is Patrick?

19 THE COURT: Yes. Excuse me for
20 interrupting, Mr. Solicitor.

21 MR. KOLB: Have just a moment?

22 THE COURT: Sure. Take your time, no
23 rush.

24 MR. KOLB: Number 29, excuse the juror,
25 please.

1 THE COURT: Very well.

2 THE CLERK: Number 30, who says the
3 State?

4 MR. KOLB: Present the juror.

5 THE CLERK: What says the defense?

6 MR. LITTLEJOHN: Excuse the juror.

7 THE CLERK: Number 31, what says the
8 State?

9 MR. KOLB: Present the juror.

10 THE CLERK: What says the defense?

11 MR. LITTLEJOHN: Excuse the juror.

12 THE CLERK: Number 32, what says the
13 State?

14 MR. KOLB: Present the juror.

15 THE CLERK: What says the defense?

16 MR. LITTLEJOHN: Present the juror.

17 THE COURT: That will be alternate number
18 2. All right gentlemen let's go back and check
19 and let me go through my list to be sure. I will
20 call the numbers as number 1, number 5, 6, 9,
21 11, 12, 15, 19, 22, 23, 25, 26, those are
22 your jurors, the first 12. Alternate numbers
23 128, alternate number two is 32; is that correct
24 by the State?

25 MR. KOLB: Going to go ahead and seat a

1 third alternate since we have enough.

2 THE COURT: My concern is this,
3 solicitor we have talked about putting a third
4 person through this to sit now.

5 MR. KOLB: Seems like mighty cheap
6 insurance over a problem if we run out of jurors.
7 I would go ahead and move.

8 THE COURT: All right pick the third
9 alternate.

10 THE CLERK: Number 33, what says the
11 State?

12 MR. KOLB: Excuse the juror.

13 THE CLERK: Number 34, what says the
14 State?

15 MR. KOLB: Present the juror.

16 THE CLERK: What says the defense?

17 MR. LITTLEJOHN: Give us just one minute,
18 Your Honor, we didn't realize we were going this
19 far. As to juror 34, seat the juror.

20 THE COURT: Seat the juror, be alternate
21 number 3.

22 All right. Any motions on behalf of the
23 State regarding the jury selection.

24 MR. KOLB: Just one minute, Your Honor.

25 THE COURT: Absolutely.

1 MR. KOLB: Your Honor, we would have a
2 Batson motion. I will tell the Court that the
3 defense does not have a Batson motion.

4 THE COURT: I love that. Well you may,
5 if you make it I will hear the Batson motion. I
6 granted one in Columbia and I know you have
7 thought about it and it wasn't a very good redraw
8 so whatever you want to do. If you want to make
9 it I will be happy to hear it. If you want to
10 say none and then rethink it then I will do that.

11 MR. KOLB: We can't do it the way I want
12 to do it, if I have one side explained I want
13 both sides explained.

14 THE COURT: I may revisit it.

15 MR. KOLB: We are satisfied with the jury
16 as they are now.

17 THE COURT: Very well. Any motions on
18 behalf of the defense?

19 MR. LITTLEJOHN: Indulge us just one
20 moment, Your Honor. Your Honor, we have no
21 motion.

22 THE COURT: Very good. There being no
23 motions those will be the jurors and we will call
24 them, I guess my plan is we will need to call,
25 before we call them call all of those names and

1 then, I mean call them all and then we will call
2 those persons forward, I will excuse the others
3 and we will depart, okay.

4 Now, let's take care of.

5 MR. LITTLEJOHN: Will the record reflect
6 the defense only took nine of the possible ten.

7 THE COURT: That is correct. You have
8 the strikes that are kept by the clerk will now
9 become a part of the record. I guess we ought to
10 make that as court's exhibit. That will be
11 court's exhibit number 4, strikes from clerk's
12 strike list. I have State cause Ted their five,
13 the defense used nine of their ten.

14 MR. LITTLEJOHN: Your Honor, one final
15 thing had a similar situation I hate to mention
16 another judge but just having been told something
17 frankly I have not seen the law that says it, but
18 in a previous selection of a jury very similar to
19 this that judge was of the opinion that the law
20 required the actual selection of the jury to be
21 done in the actual presence of the defendant and
22 the juror. Therefore we were required to reenact
23 in the presence of the entire jury panel what we
24 just did. I just want to mention that. I can't
25 cite the Court the requirement for that but having

1 been told by circuit judge that we had to do that
2 I hate to not do it without some kind of waiver
3 on the record. I understand the Court is just
4 planning on calling the 12 read off and not
5 actually going through what we just done in the
6 presence of the jury. I just don't want that to
7 be a defect that I at least some had idea that it
8 might be a problem.

9 THE COURT: Well, I will be happy to
10 check that. I assure you I have never read that
11 case nor have I seen it but that does not mean
12 that it does not exist. There is nothing in any
13 of the notebooks that I have had that have come as
14 far back as John and Smith suggested that but
15 being the law and knowing that things have a
16 tendency of hiding in little nooks and crannies,
17 if it is we will go through it if not.

18 MR. LITTLEJOHN: If there is such a
19 requirement it could be knowingly and
20 intentionally waived.

21 THE COURT: If it is we will discuss it.
22 You be thinking about whether you want to reenact
23 it. I will check to see if it has to be done.

24 THE COURT: Anything else from the State?

25 MR. KOLB: No, sir.

1 THE COURT: Anything from the defendant
2 before we recess in.

3 MR. LITTLEJOHN: No.

4 THE COURT: Before we take our recess if
5 we could get SLED agents that will be in charge of
6 the jury. These are the individuals that will be
7 assisting you.

8 SLED OFFICER: Yes.

9 THE COURT: If you will, Ms. Clerk,
10 swear the agents.

11 THE CLERK: Yes.

12 (Whereupon, the SLED Agents were sworn.)

13 THE COURT: Thank you. I believe we
14 have some bus drivers that will assisting or a
15 busdriver.

16 SLED OFFICER: Have a busdriver have to
17 drive them back to Sumter tonight we will not be
18 using him after that.

19 THE COURT: Very well. When he arrives
20 we will administer the oath. Is he also with
21 SLED?

22 SLED OFFICER: No, sir with Peedee
23 transportation.

24 THE COURT: Any objection to that
25 individual driving the bus?

1 MR. KOLB: No.

2 MR. LITTLEJOHN: No, sir.

3 THE COURT: Nothing further we will be at
4 ease.

5 (Whereupon, court was in recess.)

6 THE COURT: We took our recess did some
7 work during the selection process. Does the
8 defendant raise any objection to the manner in
9 which we have already gone through the selection.

10 MR. LITTLEJOHN: No.

11 THE COURT: Are you content now with the
12 procedure that we have outlined and that is to
13 simply call for those individuals to come forward.

14 MR. LITTLEJOHN: Yes, Your Honor, we
15 have no objection.

16 THE COURT: All right thank you very
17 much.

18 Ladies and gentlemen, in just a second I
19 am going to ask your Clerk of Court to call the
20 roll of those jurors who have been selected for
21 the pool. Before we do that I want to personally
22 thank you for your patience, for your to that
23 city in some respects and for your being very
24 cooperative throughout this process. Thank you
25 so much. As I told you each one of you we are

1 now going to go through we have gone through the
2 process and selected the 12 jurors and three
3 alternates and just after we call the roll we will
4 call those individuals to come forward. That
5 means fifteen of you will accompany us and we will
6 as I stated head to Sumter. The balance of you
7 will have some unpacking to do and I hope the fact
8 that you are unpacking will make you feel okay and
9 those of you that are going with us I truly look
10 forward to working with you and we will talk
11 tomorrow when we reach Sumter.

12 If you would please now if you will call
13 the roll of the jurors.

14 THE CLERK: As I call your name, please,
15 stand. Clydie Thompson; Matthew Brunson;
16 Matthew Brunson.

17 THE COURT: Need to recall him.

18 THE CLERK: Barbara Stewart; Glenn
19 Yarborough; Emily Sweatman; Priscilla Gore; Amy
20 White Condon; Betty Keese; Dan Riegle; Joann
21 Walker; Shirley Leggett; Phillip Allen; Jean
22 Pieterse; LaDonna Jordan; James Woodard; Larry
23 Roberts; Mary Armstrong; Carolyn Montagne; Donna
24 Moss; Debra Semple; Cecil McGee; Christopher
25 Carroll; Norman Williamson; Eugenia Maybank;

1 Tamika Gardner; Richard Borne; Marlene Deacon;
2 Karen Graham; Patrick Collins; Herbert McClary;
3 Krystal Radcliffe; John Singletary; Edward Goude;
4 Cindy Jones; Gene Bratcher; Joseph Gallagher;
5 Sadie Jenkins; Ora Bowers; Roy Goss; Sean O'Rear.

6 THE COURT: Who was missing?

7 THE CLERK: Matthew Brunson and Barbara
8 Stewart. She was one that the Sheriff's Office
9 (Can't understand tape).

10 THE COURT: If you would, go ahead and
11 call those jurors who have been selected to serve
12 on the jury in this case. When your name is
13 called please come forward and take a seat in the
14 jury box, please.

15 THE CLERK: Clydie Thompson; Emily
16 Sweatman; Priscilla Ann Gore; Dan Riegle; Shirley
17 Leggett; Phillip Allen; James Woodard; Donna Moss;
18 Christopher Carroll; Norman Williamson; Tamika
19 Gardner; Richard Borne; and the alternates are
20 Karen Graham; John Singletary; and Cindy Jones.

21 THE COURT: Those of you who have not
22 been selected, that will now conclude your
23 responsibilities for this week. You are now free
24 to leave, also the restrictions that I have been
25 placing on you concerning discussing this matter

1 have now been removed as they pertain to you.
2 You have earned your three year exemption. If
3 you choose to claim it in the future if I happen
4 to be coming through I will say hello and good-bye
5 and I wouldn't blame you. If you happen to want
6 to stay with me I look forward to working with
7 you. I wish you all well and thank you again for
8 your participation in this process, as well.

9 Ladies and gentlemen, if I could have
10 your attention. I want to thank you for your
11 participation at this point. Have you now been
12 selected to help us resolve this matter.
13 Tomorrow morning when we start I will have some
14 remarks for you at that time, but right now I
15 will stop with that and just tell you the agents
16 are here. I think the plan is to have supper
17 here before we leave and then you will be taken to
18 Sumter I look forward to seeing you all there on
19 the way to Sumter I think you will probably stay
20 in the same place. Have a nice supper.

21 SLED OFFICER: Your Honor, we have the
22 busdriver.

23 THE COURT: Okay come forward, please.
24 If you would administer the oath to the busdriver.
25 (Whereupon, the busdriver was sworn.)

1 THE COURT: Thank you, sir. Look
2 forward to working with you, as well. Ladies
3 and gentlemen, thank you.

4 Let me see you please.

5 (Whereupon, a bench conference was held in the
6 presence of the trial jury, but outside the
7 hearing of the trial jury.)

8 THE COURT: Ladies and gentlemen we have
9 made arrangements if anybody wants to make a quick
10 call home to let somebody know you will be going
11 to Sumter tonight that will be allowed and be
12 permitted. As I understand the State has no
13 objection to that.

14 MR. KOLB: No objection.

15 THE COURT: Mr. Stone has no objection.

16 MR. LITTLEJOHN: No objection.

17 THE COURT: Thank you very much.

18 Someone of course will have to be present during
19 that call. After that you will get your stuff
20 together, have a safe trip I look forward to
21 seeing you in the morning. The plan will be to
22 start at 9:30 in the morning. We will talk about
23 scheduling then.

24 (Whereupon, the following was heard outside the
25 presence of the trial jury.)

1 THE COURT: All right. Any objection to
2 the process To this point from the State?

3 MR. KOLB: No, sir.

4 THE COURT: Any objection to the process
5 to this point from the defense?

6 MR. LITTLEJOHN: No, sir.

7 THE COURT: Very well, thank you. You
8 all have safe drive as well. I will plan to be
9 there at 8:30 in the morning we can discuss some
10 of these other matters. Thank you. We will be
11 adjourned in this matter at this time.

12 Mr. Brunson and Ms. Stuart please come
13 forward. We have selected the jury, gone
14 through the process. I told the others before
15 you got here that we appreciate very much, I know
16 have you packed, I know each of you will probably
17 be sad that you have to go home and unpack, maybe
18 you will get over it. I thank you so much for
19 your participation in this process, you were very
20 helpful I appreciate you being so cooperative.
21 Good luck to you.

22 *** END OF REQUESTED TRANSCRIPT ***

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Debra Jernigan, RPR, CPE, Official Court Reporter for the 13th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of proceedings had and evidence, if any, introduced in the trial of the captioned case, relative to appeal, in the General Sessions Court for Sumter County, South Carolina, January 20-22, 1997.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 19, 1998

Debra Jernigan
Court Reporter

(SEAL)

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN GENERAL SESSIONS COURT

THE STATE OF SOUTH CAROLINA,)
PLAINTIFF)

TRANSCRIPT OF ARRAIGNMENT
96-GS-43-698

VS.

BOBBY WAYNE STONE,
DEFENDANT

JUNE 21, 1996
SUMTER, S.C.

BEFORE THE HONORABLE L. CASEY, MANNING, JUDGE.

A P P E A R A N C E S:

MR. WADE S. KOLB, JR.
SOLICITOR FOR THE STATE

MR. JAMES H. BABB,
ATTORNEY FOR MR. STONE

MARGARET T. SULLIVAN,
COURT REPORTER

1 MR. KOLB: YOUR HONOR, WE NEED TO DO A FORMAL
2 ARRAIGNMENT. THIS IS CASE IS INDICTMENT 96-GS-43-698.
3 THE STATE VERSUS BOBBY WAYNE STONE.

4 IF YOU ANSWER TO THE NAME OF BOBBY WAYNE STONE,
5 HOLD UP YOUR RIGHT HAND.

6 (THEREUPON, MR. STONE HOLDS UP HIS RIGHT HAND.)

7 MR. KOLB: PUT IT DOWN. BOBBY WAYNE STONE,
8 YOU STAND INDICTED FOR BURGLARY, -- I MEAN, FOR
9 THE FELONIES OF BURGLARY FIRST DEGREE, MURDER,
10 AND POSSESSION OF WEAPON DURING A VIOLENT CRIME.
11 IN THAT YOU, COUNT ONE, BURGLARY FIRST DEGREE, ONE
12 BOBBY WAYNE STONE DID IN SUMTER COUNTY ON OR ABOUT FEBRUARY
13 26, 1996, WILLFULLY AND UNLAWFULLY ENTER THE DWELLING OF
14 RUTH GRIFFIN WITHOUT CONSENT, INTENDING TO COMMIT A CRIME
15 THEREIN.

16 AND IN EFFECTING ENTRY WHILE THEREIN OR IMMEDIATE
17 FLIGHT THEREFROM, HE WAS ARMED WITH A DEADLY WEAPON.
18 TO WIT: A SHOTGUN AND A PISTOL. AND HE HAD TWO OR MORE
19 CONVICTIONS FOR BURGLARY AND HOUSEBREAKING. TO WIT:
20 THREE BURGLARY CONVICTIONS IN DECEMBER OF 1987. AND
21 TWO HOUSEBREAKING CONVICTIONS IN JULY OF 1985. AND
22 THE DEFENDANT ENTERED OR REMAINED THEREIN IN THE NIGHTTIME
23 IN VIOLATION OF SOUTH CAROLINA CODE SECTION 16-11-311
24 AS AMENDED.

25 AND COUNT TWO, MURDER. THAT ONE BOBBY WAYNE STONE,

1 DID IN SUMTER COUNTY ON OR ABOUT FEBRUARY 26, 1996,
2 FELONIOUSLY, WILLFULLY AND WITH MALICE AFORETHOUGHT, KILL
3 ONE LAW ENFORCEMENT OFFICER, DEPUTY SHERIFF, CHARLES
4 KUBALA BY MEANS OF SHOOTING THE VICTIM WITH A DEADLY
5 WEAPON. TO WIT: A PISTOL. AND THAT SAID CHARLES KUBALA
6 DIED AS THE PROXIMATE RESULT THEREOF IN VIOLATION
7 OF SOUTH CAROLINA CODE SECTION 16-3-20 AS AMENDED.

8 COUNT THREE, POSSESSION OF A WEAPON DURING A VIOLENT
9 CRIME. ONE BOBBY WAYNE STONE DID IN SUMTER COUNTY ON
10 OR ABOUT FEBRUARY 26, 1996, POSSESS OR VISIBLY DISPLAY
11 A FIREARM. TO WIT: A SHOTGUN AND PISTOL DURING THE
12 COMMISSION OR ATTEMPTED COMMISSION OF VIOLENT CRIMES. IN
13 VIOLATION OF SOUTH CAROLINA CODE SECTION 16-23-490 AGAINST
14 THE PEACE AND DIGNITY OF THE STATE. AND CONTRARY TO THE
15 STATUTES AS SUCH CASE MAY PROVIDE.

16 HOW SAY YOU, BOBBY WAYNE STONE, ARE YOU GUILTY OR NOT
17 GUILTY OF THE FELONIES WHERE YOU STAND INDICTED?

18 MR. STONE: INNOCENT.

19 THE COURT: AND HOW WILL YOU BE TRIED?

20 MR. STONE: BY MY COUNTRY AND MY GOD.

21 MR. KOLB: MAY GOD GRANT YOU TRUE DELIVERANCE.

22 YOUR HONOR, PRIOR TO THE ARRAIGNMENT, I SERVED ON THE
23 DEFENDANT A NOTICE OF THE STATE'S INTENTION TO SEEK THE DEATH
24 PENALTY IN THIS CASE. AND ALSO A CERTIFIED COPY OF THE
25 INDICTMENT. THE EARLIEST POSSIBLE TRIAL DATE THAT I WILL

1 HEREBY ANNOUNCE, WILL BE AUGUST 26, 1996. AND I UNDERSTAND
2 THAT TRIAL JUDGE WILL BE ASSIGNED BY THE CHIEF JUSTICE.

3 THE COURT: I UNDERSTAND. ANYTHING, MR. BABB?

4 MR. BABB: I'D MOVE FOR AN ORDER COMPELLING DISCOVERY.
5 WE'VE RECEIVED NONE IN THIS CASE WHATSOEVER. AND WE NEED TO
6 HAVE ANOTHER ATTORNEY APPOINTED. WE PROBABLY NEED TO MEET
7 IN CHAMBERS.

8 THE COURT: WE KNOW THAT THERE WILL BE A SECOND
9 APPOINTED ATTORNEY TO REPRESENT MR. STONE.

10 MR. BABB: YES, SIR.

11 THE COURT: AND I THINK AT THIS POINT AND TIME, MR.
12 BABB, YOU'RE FREE TO ISSUE AN ORDER IN THAT REGARD.
13 INASMUCH AS, I KNOW I'M NOT GOING TO BE HERE. AND IT'S
14 PROBABLY GOING TO BE A JUDGE FROM THE THIRD CIRCUIT WILL
15 PROBABLY HANDLE THIS. NOW I HATE TO GUESS AND SPECULATE,
16 SO I WON'T. SO I THINK IT WOULD BE PREMATURE FOR ME TO
17 GET INVOLVED IN THIS MATTER, EXCEPT FOR THE PURPOSES OF
18 THIS ARRAIGNMENT.

19 MR. BABB: I JUST WANTED TO PUT THAT IN---

20 THE COURT: LET THE RECORD REFLECT THAT YOU'VE
21 MADE THIS REQUEST IN OPEN COURT ON THIS DATE. AND
22 I'M SURE THE SOLICITOR KNOWS THE RULES. AND HAS
23 ALWAYS COMPLIED WITH THEM AS FAR AS I CAN DETERMINE.
24 AND I'M SURE THE TRIAL JUDGE SITTING IN THIS MATTER
25 WILL MAKE SURE THAT ALL OF THE RULES ARE COMPLIED WITH.

1 SO I UNDERSTAND AND APPRECIATE YOUR MOTION AND
2 CONCERN, BUT I THINK THE JUSTICES WILL WORK FAIRLY WELL
3 FOR BOTH SIDES. GOOD LUCK TO EVERYBODY, SOLICITOR.

4 MR. KOLB: JUDGE, I HAVEN'T YET RECEIVED A CASE FILE
5 FROM THE SHERIFF'S DEPARTMENT OR SLED. AND AS SOON AS I GET
6 ONE, I INTEND TO PROMPTLY COMPLY.

7 THE COURT: WELL I'VE BEEN AROUND A LITTLE WHILE. AND
8 THAT'S WHY I MADE REFERENCE TO THE FACT THAT IT'S PROBABLY
9 PREMATURE, MR. BABB. BUT I UNDERSTAND YOUR POSITION. AND
10 I WOULD MAKE IT ALSO MY POSITION THAT IT'S PROBABLY
11 PREMATURE. AND THE SOLICITOR HAS INDICATED THAT IT IS.
12 SO THAT'S WHERE THE MATTER RESTS.

13 MR. BABB: THANK YOU, SIR.

14 THE COURT: THANK YOU, MR. BABB. THANK YOU, SOLICITOR.

15 - - - - END OF REQUESTED TRANSCRIPT OF RECORD- - - - -

CERTIFICATE

I, THE UNDERSIGNED MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, IN GENERAL SESSIONS COURT, SUMTER COUNTY, JUNE 21, 1996, SUMTER, S.C.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST OF ANY PARTY HERETO.

July 15, 1996

Margaret T. Sullivan
MARGARET T. SULLIVAN,
COURT REPORTER

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SUMTER

COURT OF GENERAL SESSIONS

3

4 THE STATE OF SOUTH CAROLINA :

5 -vs- :

6 BOBBY WAYNE STONE :

TRANSCRIPT OF RECORD
96-GS-43-0698

7

8

9

August 20, 1996
Moncks Corner, South Carolina

10

11

12 B E F O R E :

13 THE HONORABLE R. MARKLEY DENNIS, JR., Judge

14

15

16 A P P E A R A N C E S :

17 WADE S. KOLB, JR., Solicitor
Appeared on behalf of the State;

18 JAMES H. BABB, Esquire
19 CAMERON B. LITTLEJOHN, JR., Esquire
Appeared on behalf of the Defendant;

20 ALSO PRESENT:

21 BARBARA WILEY, Victim Advocate.

22

23

24

25

SHERRI Dioguardi, CSR, RPR
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES DIRECT CROSS REDIRECT RE CROSS

(No witnesses were called to testify.)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>FOR I.D.</u>	<u>IN EVID.</u>
Court #1	Copies of articles	8	--
Court #2	Affidavits	10	--

P-R-O-C-E-E-D-I-N-G-S

1
2 (In open court at 9:54 a.m.)

3 THE COURT: All right. Let the record reflect
4 Mr. Stone is present.

5 Good morning, Mr. Stone.

6 THE DEFENDANT: Good morning.

7 THE COURT: I believe the purpose of this is several
8 motions have been filed.

9 Solicitor, have you received a copy of all these
10 motions, sir?

11 MR. KOLB: Yes, sir.

12 THE COURT: Very well. Do you have a particular order,
13 Mr. Littlejohn? Which one are we primarily dealing with?

14 MR. LITTLEJOHN: You Honor, I might suggest that
15 we take up procedural motions, the motion to quash, first.

16 THE COURT: Very well.

17 MR. LITTLEJOHN: As we discussed, that needs to be
18 heard before we make a motion for change of venue.

19 THE COURT: I understand. I will be happy to hear
20 you. That is the motion you filed to quash the indictment.
21 I believe the primary basis is the participation of Mr. Boyle;
22 is that the reason?

23 MR. BABB: That is correct.

24 THE COURT: Good morning.

25 MR. BABB: Good morning, sir. I spoke with Mr. Kolb

1 briefly before the hearing, and he mentioned he may have the
2 means to resolve that. I don't know what it is. That might
3 let us move quickly.

4 THE COURT: Mr. Kolb?

5 MR. KOLB: There are some things in process that have
6 not occurred as of yet that may resolve that issue so it would
7 be moot; so I would just be willing if the motion is filed and
8 if the court would take note of it and reserve their rights
9 under the motion for a later ruling and let me deal with it
10 in another matter.

11 THE COURT: Okay. As we talked and from the mechanics
12 of it, let's just assume that my participating -- the solicitor
13 says in January whenever a new grand jury is seated that you
14 will re-present this. You would be in a position that you
15 could claim, I guess, if you want to start the process over --
16 but if they re-present it, doesn't that correct the problem
17 as a practical matter?

18 MR. KOLB: There is a possibility it may be re-presented
19 this Thursday, Your Honor. As soon as this Thursday. I am
20 not sure.

21 THE COURT: The individual is no longer on the grand
22 jury or possibly ---

23 MR. KOLB: No, sir. Possibly.

24 THE COURT: You are not sure of this. Let's just
25 talk for the sake of -- assuming that scenario, does that

1 not basically destroy this particular issue?

2 MR. KOLB: Judge, rather than being secret about it,
3 the discussions I had after we had our telephone conversation
4 a couple of weeks ago -- I felt like I had to discuss the
5 matter with the chief administrative judge, Judge Cooper.
6 Judge Cooper did not want to be seen, any more than I think
7 you do, second-guessing Judge Manning's decision.

8 THE COURT: Absolutely.

9 MR. KOLB: So purely if the grand juror were to
10 request to resign from the grand jury then -- I have the
11 understanding with Judge Cooper that if a person requests
12 to be resigned from the grand jury that it would have to be
13 approved by the court. He would be inclined to approve it
14 and appoint a alternate. I just haven't been able to get in
15 touch with him to let him know it's a potential problem and
16 if he were willing to do that. Frankly, he was out of town
17 yesterday.

18 THE COURT: I don't mind going through it. But as a
19 practical matter -- we can hear all this; I would be happy to,
20 or we can simply note the motion is filed, and we will wait.
21 It would seem to me for me to wrestle with it and to make
22 some determination if there is an issue -- I am certainly
23 not suggesting that I in any way would overrule or overturn
24 what Judge Manning has already done. Just as an aside,
25 I don't know that I am in a posture to do that in the

1 first case.

2 I guess I could deal with it as a potential problem
3 here, but it seems to be a back-door approach. But as a
4 practical matter, if the matter is going to be resolved in
5 another fashion and everybody agrees if that occurs that
6 there won't be any problem any more, maybe we just needn't
7 ride this horse at this particular point but just simply have
8 it noted. And I will do this: In the event it is not done
9 and you want this matter heard, it is noted now for all
10 purposes of protecting any record with respect to order
11 of motion. You filed it. It is done. It is noted. You
12 are preserving, I think, all rights of any challenge insofar
13 as order matters. There was some concern about whether you
14 had to make one versus the other. That clearly is understood.

15 Is that correct, Mr. Solicitor?

16 MR. KOLB: Yes, sir.

17 THE COURT: Does that protect you all as far as you
18 are concerned at this point?

19 MR. BABB: Of course ---

20 THE COURT: Take your time.

21 MR. LITTLEJOHN: Could we confer with Mr. Stone?

22 THE COURT: Sure. Please talk with Mr. Stone about it.

23 (Brief pause in proceedings)

24 MR. BABB: That would be fine, Your Honor. As long
25 as we are protected.

1 THE COURT: No question. That is clear. The record
2 needs to be -- I will state again that all issues as to
3 the order of the motions and whether they are argued or
4 preserved, you are protected from any collateral challenge
5 to that issue.

6 MR. BABB: Thank you, sir.

7 MR. LITTLEJOHN: If I could make the record crystal
8 clear, we are reserving any challenge that we might have to
9 a subsequent indictment.

10 THE COURT: Oh, absolutely. No question about
11 that. Obviously anything that transpires with respect to a
12 reindictment or re-presentment -- all those issues, of course,
13 would be subject to review if there be any need to review
14 them.

15 MR. LITTLEJOHN: Thank you.

16 MR. BABB: The next motion would be for change of venue.
17 In that regard, Your Honor, I have a series of articles that
18 appeared in "The State" in Sumter.

19 THE COURT: Is this the package you provided?

20 Very well. You want to make those for purposes of
21 this Court's Exhibit Number One?

22 Do you have any objection, Solicitor?

23 MR. KOLB: No, sir.

24 THE COURT: Very well. There are a number of articles
25 that are attached, and they collectively will be Court's

1 Exhibit One.

2 (Court's Ex. #1, copies of articles,
3 was marked for identification.)

4 MR. BABB: Your Honor, I have struggled with this motion
5 quite a bit and tried to go through my mind as to how to best
6 present it. I did not know Officer Kubala. That is one of
7 the reasons I ended up with this case. Everybody else
8 essentially conflicted out. What I have learned and heard
9 of him is that he and his family are extremely well thought
10 of in the Sumter community. They had many friends. This is
11 an extremely tragic case from the point of view that he was
12 an exemplary officer; he did volunteer work in the community.
13 It has created quite a bit of trauma in Sumter. It has been
14 very much on everyone's minds.

15 As the court can tell from the newspaper articles,
16 it is not one of these events where there is a series of
17 articles for a few days. There were a number of articles
18 as soon as it occurred. There were articles concerning the
19 way the -- concerning the candlelight ceremonies; several
20 hundred people attended. The funeral itself was one of the
21 biggest I am aware of that transpired in the state. The
22 "Sumter Item" said roughly 3,000 people attended; "The State"
23 newspaper said 4,000. If my memory serves me correct,
24 some of the TV media estimated as many as 6,000. It was
25 attended by government and law enforcement all over the

1 state. It was very emotional.

2 I did not attend. I thought that would be in poor
3 taste, but I did speak with people who have, and it was
4 extremely emotional to me.

5 It has continued to be in the press since. There were
6 issues that have come up regarding Mr. Stone's being parole
7 eligible. That was put in the press. It was put into the
8 press that the grand jury was looking into those things.
9 That continually generated a number of articles. Excuse
10 me, Your Honor.

11 THE COURT: That's all right.

12 MR. BABB: In addition, the Attorney General and Mr.
13 Kolb leaked to the press the fact that motions had been filed
14 to reinstate the previous sentence. Much of the press that
15 has continued about this has been the result, Your Honor, of
16 state action or the state leaking information to the news.
17 In addition, newspapers -- in addition, the papers in dealing
18 with Mr. Kubala and his family provided a lot of details that
19 fairly make him out to be the hero that he was. At the same
20 time, it has put into the press quite a bit of information
21 about Mr. Stone and his past record, information that in many
22 respects would not be admissible in court except under certain
23 circumstances. And whether that would be or not, we aren't
24 sure.

25 In addition, he has been held in safekeeping virtually

1 since hours after his arrest. He was placed into safekeeping
2 not at my request but at the request of the state.

3 And in that regard, Your Honor, affidavits have been
4 filed, and I would submit those for the record as well.

5 THE COURT: Court's Exhibit Two. How many are there?

6 MR. BABB: Three, Cam?

7 MR. LITTLEJOHN: There were three affidavits submitted
8 in -- three in April and three in June. And also a copy of
9 Governor Beasley's order for safekeeping.

10 THE COURT: So there's affidavits there?

11 MR. LITTLEJOHN: Yes. There is an affidavit from
12 Sheriff Mims or his designee, from Ms. Hyatt who is the head
13 of corrections, the correctional center, and from Solicitor
14 Kolb.

15 THE COURT: All right. Court's Exhibit Two, a
16 collection of affidavits and petitions consisting of
17 11 pages.

18 (Court's Ex. #2, affidavits,
19 was marked for identification.)

20 MR. BABB: Thank you, Your Honor. In that regard,
21 I particularly note the affidavit of Sheriff Mims who in
22 there states that, "Stone was involved in the shooting death
23 of a Sumter County Sheriff's Deputy who was well thought of
24 by his fellow officers and the community of Sumter. Due
25 to the hostility of the community and all aspects of law

1 enforcement involved, Stone should be housed in another
2 institute to ensure his safety until such time he would
3 be brought to trial."

4 Your Honor, I don't know what could explain better
5 the sentiment that exists in the community than the sheriff's
6 statement. After this occurred, many people affixed white
7 ribbons to their antennas. You saw that everywhere you went.
8 When the court has a chance to review those articles, at the
9 YMCA -- which is at a central location in Sumter -- it had
10 Opie as the sheriff's nickname. I just honestly -- and as
11 I stated in my affidavit -- don't see how the defendant
12 could possibly have a fair trial in Sumter County with a
13 Sumter County jury. It is for that reason and to protect
14 his constitutional rights, as more specifically noted in
15 our written motion, that we make that motion.

16 THE COURT: Mr. Littlejohn, anything else?

17 MR. LITTLEJOHN: I have nothing to add at this time.
18 Thank you.

19 THE COURT: Solicitor?

20 MR. KOLB: Judge, probably a couple of things ought
21 to be clarified. Actually I realized I signed this thing
22 about safekeeping, but this is the first time I've seen the
23 affidavits of the sheriff and the director of the correctional
24 center. From time to time if they can get people out of jail
25 and put them somewhere else at somebody else's expense, they

1 do that. They come to me with one piece of paper to sign it,
2 and I signed it. Maybe I shouldn't do that, but I didn't
3 sign that having seen these petitions to say he can't be
4 safely housed and all that. And frankly I think he could
5 be safely housed in Sumter. And very shortly after this
6 occurred I found out that, as far as I am concerned, he
7 should have still been in state prison anyway instead of
8 paroled on the streets.

9 So when the thought came up with keeping him in state
10 prison pending this trial, I have no problem with it, but I
11 don't agree that he couldn't be kept safely in Sumter.

12 Judge, a couple of other things for clarification.
13 They stated that I had leaked to the media information
14 about a motion to reinstate the previous sentence. There
15 was a motion filed by the Attorney General in my behalf as
16 well as his to clarify the previous sentence where a change
17 was made five years after the fact, and the Attorney General
18 believes that that is fraud under the law and should be taken
19 off of the sentence, and I didn't have anything to do with
20 releasing that. I don't know how that was released. As
21 far as I know, it was filed with the Clerk of Court.

22 THE COURT: I was going to say: If it was filed ---

23 MR. KOLB: It's public record, and the paper got it.
24 How it got to the press, I don't know anything about that.

25 THE COURT: I understand.

1 MR. KOLB: Your Honor, all those are sort of minor
2 things. One -- of course, they have given you all those
3 articles. I don't know if you got them in advance or not
4 and have had an opportunity to read them. One thing that
5 has always concerned me about those articles -- and I talked
6 with the "Item" reporter about them -- when the problem about
7 the sentence came to light, there was stuff being printed in
8 the paper when it first happened that he had a record, had
9 a prior record and had violent crimes. This is before I knew
10 anything about his prior record. And so I said, I think --
11 as a matter of fact, after attending the funeral, I said,
12 "Too many people have asked me about this, and I don't know
13 anything. I am going to go check it myself."

14 I went to the courthouse and started checking his prior
15 record. That is when I discovered the 5-year-after-the-fact
16 change notation on the original sentence sheet and immediately
17 called SLED for an investigation of that.

18 But I said nothing about that to the media and released
19 none of it to the media. As it turns out later on in talking
20 with the reporter, I found out how he got on to it was that
21 one of Bobby Stone's co-defendants in the original sentence
22 back in '87, I believe it was, had complained because they
23 had just had a parole hearing recently. He had been turned
24 in and is still in prison and is classified as a violent
25 offender, and Bobby Stone is on the street allegedly killing

1 somebody. And they had called the press complaining, "My
2 son got the same sentence on the same day, and he is still
3 in prison; Stone is on the street. I want to know what is
4 going on."

5 The actual press people came over to the Clerk of
6 Court's office looking for the records at the same time
7 that the SLED agents were there at my request to begin
8 checking into that.

9 Anyway, when the reporter came to me with a copy of
10 it some two or three days later -- again, not even let on
11 to the issue by me or by SLED to my knowledge. It was,
12 by the reporter's own admission, independent sources.
13 He showed me the sentence and said, "I want to ask you
14 something." and of course I am there dealing with
15 issues and that same reporter on issues all the time.

16 He comes in and says, "I want to show you something."
17 And I looked at it. And he says, "Is there any authority,
18 legal authority, for this?"

19 I said, "None that I know of," or, "None that we know
20 of," at that time because I had already talked to SLED. I
21 said, "None that we know of." The next thing I knew it was
22 in the paper: "Sentence illegal, Kolb charges," kind of like
23 I accused Judge McInnis of a crime.

24 I realize that is sort of an aside of what is being
25 heard here, but I wanted you to be aware of that. I never

1 agreed that the sentence should have been charged or that it
2 was lawful for it to be changed, but that is a heck of a lot
3 different than saying, "Kolb charges somebody with a crime,"
4 versus to simply acknowledge a reporter when he says, "Is
5 there any legal authority for this sentence change," and for
6 me to say, "None that I know of." Or "None that we know of"
7 were my compact words.

8 Anyway, I wanted to clarify that as you get into
9 this case and review all that.

10 Your Honor, on this issue of change of venue, there
11 are a couple of things involved. One is, of course if venue
12 is changed, there are two ways of doing that. One is to take
13 the whole case and try it in a remote location which is an
14 extreme hardship to the witnesses and the litigants and the
15 officials involved in the trial, and I of course vehemently
16 oppose that.

17 THE COURT: Don't worry about that. I will tell you now
18 that, if we change it, we will use the method that's already
19 been done. We'll draw the jury somewhere else and bring them
20 back and try the case in Sumter.

21 MR. KOLB: With that clarification, I would have to be
22 vehemently opposed to the first method.

23 THE COURT: Sure.

24 MR. KOLB: The second method that is available
25 obviously removes a potential appellate issue as far as

1 pretrial publicity is concerned, and I frankly think that
2 the -- you know -- these type things -- any time you have
3 a big case, there is a lot of stuff in the papers, and
4 there is no question there has been a little extra in this
5 particular case because of the unique circumstances, but it
6 has always amazed me when you actually get ready to draw a
7 jury and ask, "Have you read or heard anything about it or
8 discussed it," how few people even read those papers or, if
9 they do, remember what they read.

10 I believe the people of Sumter could be fair and an
11 impartial jury could be drawn but -- you know -- the court
12 has just got to look at the information and make a decision.
13 It's whatever the court decides on that.

14 My main concern was to avoid having all of us having
15 to move to a remote location for the entire trial.

16 THE COURT: Okay. Thank you, sir.

17 Anything else?

18 MR. LITTLEJOHN: Your Honor, briefly in reply.

19 Solicitor Kolb, I want to point out -- in the Exhibit
20 Number One which we handed up, which is a collection of
21 articles, the court will see there is a series of articles
22 concerning Mr. Stone's previous conviction for burglary and
23 grand larceny. These articles came out in March. The
24 Attorneys General's motion was filed July 19th. I believe
25 that's the correct date. Motion to reinstate sentence July

1 19, 1996. And I point that out, and really at this stage
2 I don't think it much matters how the information got out
3 in the press and how it got out in the Sumter community. The
4 problem is this: The fact that Mr. Stone has previously been
5 convicted of felonies is out and public knowledge, and it of
6 course would be inadmissible in his trials. And whether
7 jurors can put that aside, I don't think that is the question.
8 The fact that they know about it in advance of the trial in
9 which they might be called upon to pass on his guilt or
10 innocence is the problem, and we think that is a strong
11 indication that this case should be moved venue-wise.

12 THE COURT: All right. Thank you, sir. All right.
13 I am going to review the articles. Let me be sure the last
14 article you provided me -- and it is now August of '96 --
15 is July 19th '96.

16 MR. LITTLEJOHN: The last article in the exhibit?

17 THE COURT: According to just looking through it
18 quickly last night and again this morning it is, "McInnis
19 cleared in Stone parole case." That is the last article,
20 and the date of that article is July 19, 1996; is that
21 correct?

22 It appears the majority of articles were published
23 in or about the time of the shooting, which was the first
24 of the year -- February or March primarily, and then several
25 in April. And then when the issue arose concerning this

1 subsequent issue, there are different articles, and July 19th
2 is the last one we have. But this is August now. It's now
3 August 20th, 1996.

4 MR. BABB: (Moves head up and down)

5 THE COURT: Okay. All right. Let me look at the
6 articles and the exhibit, the affidavits. I will advise
7 you very shortly as to my ruling on the motion. All right.

8 Since it won't affect anything whether we transfer it
9 the way we are going to do it as I stated, if I do grant your
10 motion, the process we will be implementing is to draw -- have
11 a jury pool selected; we will pull the jury, and then come
12 back to Sumter, and we will try it. We will start trying
13 it. That is the method I would prefer to use instead of
14 transferring everybody out there.

15 MR. BABB: Just for the record, I believe that was
16 one of the alternate forms we, in fact, requested in the
17 motion.

18 THE COURT: Thank you. All right.

19 Now, there are some motions that you have filed that,
20 according to your letter, Mr. Babb, I think are now moot; is
21 that correct?

22 MR. BABB: Yes, sir. Just moot or at least things
23 have changed.

24 THE COURT: All right.

25 MR. BABB: When we had the formal arraignment, Solicitor

1 Kolb indicated that he expected to try the case on or about
2 August 26th. Of course I am sitting there with no co-counsel
3 at that point. I moved for discovery; I moved for appointment
4 of counsel. And those motions were declined to be heard at
5 the time; so I was a little bit concerned about the things
6 I needed to do immediately.

7 THE COURT: Okay.

8 MR. BABB: So some of those motions were filed
9 -- including the motion to quash the indictment, I believe,
10 was at least drafted at that particular time. But things
11 have changed somewhat since then.

12 One of the motions that was filed -- and I don't
13 believe it's in your packet -- of course, was for a
14 continuance. And based upon the full discussions involving
15 myself, Mr. Littlejohn, Mr. Kolb, and the court in terms of
16 looking at court schedules, I don't think that is a problem
17 any more.

18 Some of the other factors that were listed in there
19 are still ripe for determination. It is just that the relief
20 we were requesting at that time may not be the appropriate
21 relief.

22 Cam, do you want me to do the one on quashing the intent
23 to seek?

24 MR. LITTLEJOHN: Uh-huh.

25 MR. BABB: Your Honor, one of those was notice of

1 motion and motion to quash the notice of intent to seek
2 the death penalty. What drove that motion was that the
3 notice that we received contained nonstatutory circumstances
4 that would be used in aggravation. Basically it just said
5 the evidence presented at trial and whatever else we --
6 (coughing) -- "additional evidence will include all the
7 circumstances of the crime, evidence as to the character
8 of the defendant including the defendant's prior criminal
9 record, all evidence admitted during the guilt phase, and
10 all such other evidence as may be authorized by law."

11 And that, Your Honor -- I am reading from the actual
12 notice of intent to seek the death penalty.

13 We are entitled to written notice. Our position is,
14 Your Honor, that we are entitled under the law of written
15 notice of what aggravating circumstances are going to be
16 presented. This is an open-ended notice that is no notice.

17 We move to quash. Of course, that would be one remedy.
18 The other would be to require the state to specify in writing
19 specifically what aggravating circumstances they intend to
20 show and provide that to us.

21 THE COURT: Okay. Mr. Solicitor?

22 MR. KOLB: Judge, the form I used I got -- I have
23 been solicitor 14 years now, and I got that somewhere way
24 back when I first started and have been using it ever
25 since. The form actually includes the two specific

1 aggravating circumstances that we intend to rely on,
2 that being that the murder was of a local law enforcement
3 officer, a deputy sheriff of Sumter County during or while
4 performing official duties. South Carolina Code Section
5 16-3-20 (C) (A) (7). And, two, the murder was committed
6 while in the commission of a crime or act of burglary.
7 South Carolina Code Section 16-3-20 (C) (A) (1) (C).

8 And those are the statutory aggravating circumstances
9 that we base the intent to seek the death penalty on.

10 The final sentence of the notice is based on a form
11 that we have always used and, as far as I know, all of the
12 solicitors use. I don't know if the court has seen this
13 or not.

14 THE COURT: I have, and it is sort of like the
15 relief request, requesting all other relief proper. It
16 is part of all that I drafted as a lawyer. You know, it
17 is clear now. I never knew what that meant to be perfectly
18 candid with you, Solicitor. At this point the two that you
19 have enumerated -- those are clearly delineated in the
20 statute; there is no question about that?

21 MR. BABB: Yes, sir.

22 THE COURT: I would ask you this: Of course, I
23 assume the investigation is ongoing. If there others that
24 are specific and you learn of them, notice them in writing;
25 it doesn't have to be a form. You simply put in writing,

1 "This is an added one that is specified." We will cover it
2 on that basis.

3 MR. BABB: Thank you, Your Honor.

4 THE COURT: Very well. Otherwise, the motion is denied.
5 Thank you.

6 Now, do you have discovery motions?

7 MR. LITTLEJOHN: Yes, Your Honor.

8 Your Honor, Mr. Babb initially filed a general motion
9 for discovery on February 29th of this year. On July 11th
10 Solicitor Kolb provided us with a discovery package which
11 contains a number of statements and incident reports and
12 different things. In going through that, I noticed several
13 things that I thought were probably done, and that would be
14 material to us preparing a defense for Mr. Stone. I tried
15 to delineate those in two motions which were filed within
16 the last few days. And first is a motion for particular
17 discovery, and then the next one was a second motion for
18 particular discovery.

19 THE COURT: Okay.

20 MR. LITTLEJOHN: And I have discussed briefly some of
21 those items with Solicitor Kolb this morning, and perhaps for
22 purposes of the record we can just go down them one by one.

23 THE COURT: That is fine.

24 MR. LITTLEJOHN: If that is suitable with the court?

25 THE COURT: Absolutely. Are we talking notice of motion