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THE STATE OF SOUTH CAROLINA
In The Supreme Court

JUN 12 2014

S.C. 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 V OF XV

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1 and motion for particulars for discovery filed August 16th?

2 MR. LITTLEJOHN: That's correct.

3 THE COURT: Very well.

4 MR. LITTLEJOHN: Your Honor, by way of background --
5 because I know the court is not aware of the circumstances of
6 this case, if I may just briefly -- the discovery provided
7 to us indicates on the afternoon of February 26th of this year
8 that the Sumter County Sheriff's Department was called by Ms.
9 Griffin (phonetic) whose home was the subject of the alleged
10 burglary here. This was sometime during the afternoon, and
11 apparently the deceased, Sergeant Kubala, responded to that
12 initial call. Apparently there was nothing further done at
13 that time. Ms. Griffin had apparently identified Mr. Stone
14 as being in her yard, but Mr. Stone was not there when Deputy
15 Kubala arrived the first time.

16 Thereafter, there was another call placed to the Sumter
17 County Sheriff's Department. And as a result of that call
18 Deputy Kubala went to Ms. Griffin's house, and that is when
19 the incident which my client is charged with occurred.

20 Your Honor, giving that very brief background,
21 I think, would kind of demonstrate why we need some of
22 the particular things that we have delineated here.

23 Your Honor, the first one we have asked for is any
24 and all records of the sheriff's department involving radio
25 or telephonic communications. By that, I think what we are

1. looking for are commonly called the dispatcher notes and the
2 tapes which were made of the radio transmissions between the
3 dispatcher and the various officers.

4 THE COURT: Pertaining to both calls?

5 MR. LITTLEJOHN: Yes, Your Honor. What we have
6 asked for is from 2:30 in the afternoon, which Deputy Prince
7 (phonetic) indicated he and Sergeant Kubala went on duty about
8 that time until 12 midnight, and it is my understanding that
9 Mr. Stone was arrested sometime shortly before midnight.

10 THE COURT: But you are asking for all communications
11 from 2:30 to 12:00?

12 MR. LITTLEJOHN: Yes, Your Honor.

13 THE COURT: Regardless of whether it applies to this
14 or not; you just want to look at all of them?

15 MR. LITTLEJOHN: Your Honor, I would like to have
16 access to all of them. If not, perhaps we can narrow the
17 time frame down if that is some problem.

18 THE COURT: What is the State's position, Mr. Solicitor?

19 MR. KOLB: Your Honor, on this particular one, this is
20 not something that I have.

21 THE COURT: I understand.

22 MR. KOLB: Now, whether there was a recent case
23 that dealt with Rule 5 and things beyond the control of the
24 solicitor, I think maybe the court is taking a more realistic
25 approach. Some people look at it like the solicitor controls

1 everything in the state or everything in the county, and I
2 don't. Perhaps -- the sheriff happens to be here and the
3 sheriff perhaps could get a hold of this information, but
4 it takes a lot of work to get all that together, and then
5 of course there would be some difficulty, and I am sure there
6 would be some expense in copying it or some difficulty in
7 turning it over to them.

8 I guess my point is that this is not something the state
9 intends to use in its case in chief.

10 THE COURT: I understand.

11 MR. KOLB: As I was looking at the discovery
12 rules, I think the only thing it could come under is under
13 Rule 5 (A) (C): Documents, tangible objects and so forth
14 which are in the possession, custody, or control of the
15 prosecution. I question whether things over at the
16 dispatcher's office for the law enforcement center in
17 Sumter are in my control. If the court gets past that
18 hurdle then it's, "and which are material for the
19 preparation of his defense."

20 I think if they can show to the court's satisfaction
21 that it is in my control and it is material to his defense,
22 then of course we will have to do it. But it is not something
23 I was going to do in preparing the case. To expect me to go
24 out and do their legwork, I don't think that's ---

25 THE COURT: The first question I have, Mr. Solicitor --

1 let me deal with it. First of all, I think the Sheriff's
2 Office and any law enforcement office you work with on
3 a regular basis, while not in your control, is certainly
4 available to you. My position quite honestly is to try to
5 strike some balance between -- I am not able -- I couldn't
6 do it as a lawyer and I haven't been able to rationalize as
7 a judge either why we have a trial by surprise both ways in
8 one court but we don't in the other. It doesn't make a lot
9 of sense to me. By the same token I don't think we need to
10 require you to work or put documents together or collect
11 things. Absolutely not. I agree with you 100 percent on
12 that.

13 Is there a log that is regularly maintained? If
14 there is a log regularly maintained, then what I would
15 simply like to do is have someone there allow you to go
16 inspect that log. If there are entries in that that are
17 pertinent that you want to copy, then you copy them at
18 your expense. They don't have to pay you for whatever
19 the cost of copying it if it can be readily copied. If
20 not, I will deal with that. If it is something that somebody
21 can't put on a copy machine and copy, we will deal with that.
22 I certainly would ask that you make that document available
23 and allow them to inspect it. It does not have to leave the
24 premises. I can understand the concern of having any document
25 removed for that purpose because there is no way to secure

1 that document and make certain -- because he is responsible
2 for the entries there, and I am not going to require that.
3 But I would ask that they be allowed to inspect it under
4 your supervision or your designated representative.

5 MR. KOLB: Judge, that would be the log of dispatch
6 calls?

7 THE COURT: If there is one. I would assume. I am not
8 trying -- I think there used to be one in Berkeley County that
9 I was able to inspect from time to time. I don't know whether
10 they are still maintaining that as practical matter. I would
11 assume that there is some reference and the maintaining of
12 some log. I assume there is a tape. Most people have the
13 tape now. Obviously the log would first get you to the point
14 where you could specify the tape. Then let me go ahead and
15 deal with that if there is some entry in there.

16 Do you have the capability of making copies of portions
17 of tapes? I assume the tape is ---

18 MR. KOLB: Your Honor, Sheriff Tommy Mims is here.

19 SHERIFF MIMS: There are two types of records there.
20 One would be a computer-generated transaction of what activity
21 occurred during a particular time frame as well as an audio
22 recording ---

23 THE COURT: Okay, sir.

24 SHERIFF MIMS: --- Of those transactions between the
25 dispatcher and the officers, and there may be some telephone

1 communication or recording. I wouldn't say all are; some are.

2 THE COURT: If there are any, I would assume you can
3 play it or you can tape it if you have to by simply playing
4 it and make your tape at that point. I just would like for
5 them to be afforded the opportunity to inspect it.

6 SHERIFF MIMS: Sure.

7 THE COURT: Then if they need to copy anything or tape
8 anything, copying it would be at your expense.

9 MR. LITTLEJOHN: That is fine, Your Honor.

10 And if Solicitor Kolb has no problem, I will just
11 contact Sheriff Mims and make the arrangements.

12 THE COURT: That would be fine.

13 Solicitor Kolb, do you have any objection to that?

14 MR. KOLB: Just a moment?

15 THE COURT: Yes, sir.

16 (Brief pause in proceedings)

17 THE COURT: I heard -- I want to make it clear that
18 there is no reason -- and I will find this. I will be happy
19 if there is something you need to bring back to me. This is
20 not a blanket right to copy anything that is on there. If it
21 pertains specifically to what you addressed -- the call, the
22 two calls -- that is fine. And if it deals with the Stone
23 case obviously. If there is something else that you believe
24 has some relevance, I am not requiring that to be produced.
25 We will have another hearing on that if need be.

1 MR. LITTLEJOHN: I understand, Your Honor. That is very
2 good.

3 We understand the tapes are still in existence and are
4 in the possession of the police chief.

5 THE COURT: I understand they are maintained.

6 SHERIFF MIMS: Yes.

7 MR. KOLB: Judge, I was conferring with the sheriff
8 when you said, "Solicitor, is that okay?" Can I make sure
9 I understand?

10 THE COURT: What he said is he would contact the sheriff
11 and set up a time when it was convenient for him to do that.
12 Do you have any objection?

13 MR. KOLB: No. That is fine.

14 THE COURT: And excuse me for interrupting you, too,
15 Solicitor.

16 MR. LITTLEJOHN: Your Honor, the second item for
17 the first motion for particular discovery relates to any
18 records compiled by the detention center on Mr. Stone.
19 The reason we asked for those is, Your Honor: If we get
20 to a second phase of this trial, of course any institutional
21 records would be very important to us, and we certainly think
22 we have the right to review those.

23 THE COURT: If there are any such records, I would like
24 copies made available. If there aren't any, that is fine.

25 MR. LITTLEJOHN: That is fine. Number three relates

1 to ---

2 MR. KOLB: Judge, the thing is that I am not sure the
3 jail will just give me his medical records. Of course, if
4 the defendant is asking for them, I would like to get them
5 too.

6 THE COURT: Well, you can.

7 MR. KOLB: This is not something I think we can even
8 get to be frank.

9 THE COURT: Whatever you obtain insofar as a copy of
10 the medicals, I will make it -- unless there is some issue
11 that you want to preserve and something in there that I need
12 to hear, certainly we will preserve that aspect of it. If
13 otherwise it's just the general records, then the solicitor
14 needs to have that available to him.

15 MR. LITTLEJOHN: Very good.

16 Your Honor, as to number three, basically what
17 we are asking for here is the result of the crime scene
18 investigation. This was an incident that occurred on a
19 porch of Ms. Griffin's house and, as I understand the
20 discovery material, there was no actual eyewitnesses.
21 The crime scene, we think, is critical. And if there
22 were photographs taken, diagrams taken, any ballistical
23 tests or otherwise forensic examination of the crime scene,
24 the porch area, we certainly think we ought to be entitled
25 to see that material.

1 THE COURT: All right. Solicitor?

2 MR. KOLB: Judge, I think they are entitled to that
3 under Rule ---

4 THE COURT: I agree.

5 MR. KOLB: --- Rule 5. I just have not received it
6 yet. As a matter of fact, what has happened -- this is a
7 right complicated case, and it went off on some tangents as
8 the court is aware, and probably the information is still
9 being gathered.

10 THE COURT: Sure.

11 MR. KOLB: And actually after -- I finally said,
12 "Well, I am going to go ahead and get an arraignment and
13 gets things moving even though I don't have a case file yet,"
14 and Mr. Babb made a motion at the time of arraignment for
15 discovery. I said, "As soon as I get it, I will give it
16 to them." I have got a packet of information the day I
17 was -- I had a vacation in early July. It came in that
18 Friday afternoon just as I was getting ready to leave.
19 I gave it to my law clerk and said, "Copy it all and give
20 it to them."

21 To be frank with you, I hadn't seen it at the time
22 they got it. To my knowledge, they have got everything I
23 got except for a few things I got last week that I will be
24 cataloging and getting to them. I have not gotten diagrams,
25 sketches, or charts. I, like them, assume there are some

1 out there; I just haven't got them yet. What we were doing a
2 little bit before the court came in, I was asking them, "What
3 are you all looking for," because if they are just guessing
4 there should be something, maybe there is not. If they know
5 there is, I can be a little more direct in asking my questions
6 of people.

7 THE COURT: Why don't we do this? Obviously if there
8 is something -- I am not asking you and will not ask you to
9 produce something you directed somebody to prepare. That
10 is not your request. These would be things prepared in the
11 course of investigation in this incident. That is what you
12 are asking.

13 MR. LITTLEJOHN: I would think these would be things
14 prepared in the course of investigating any incident, much
15 less this one.

16 THE COURT: I understand that may be a customary
17 practice. Whether it is or isn't, that is another issue.
18 But clearly the request deals with matters that were prepared
19 or any materials or documents prepared in the investigation
20 of this incident that are -- whether they are customary in
21 the course, but they were part of the investigation before
22 and not at the direction of the solicitor.

23 MR. LITTLEJOHN: That's correct, Your Honor.

24 THE COURT: All right. That is fine. If you have
25 any such documents, Mr. Solicitor, make them available.

1 If there aren't any documents, then we simply would have
2 a statement from you to them that there are no such documents;
3 and for the purposes then later, if we have some documents
4 suddenly appear, we will deal with that as to whether or not
5 it can be used at trial. Okay?

6 MR. LITTLEJOHN: Fine. Thank you, Your Honor.

7 Your Honor, as to the fourth item: At the time Mr.
8 Stone was arrested by officers primarily of the SWAT team
9 of SLED, he apparently was injured during the course of the
10 arrest. And there has been things reported about how he
11 was beaten during the course of the arrest; and as a result
12 of those allegations, it is my understanding from a newspaper
13 article and from other sources that SLED did an internal
14 investigation into the circumstances surrounding Mr. Stone's
15 arrest, vis-a-vis his injuries. We are asking in the fourth
16 item that we be given a copy of the things enumerated there:
17 any reports, interviews, notes, conclusions ---

18 THE COURT: From SLED?

19 MR. LITTLEJOHN: --- Concerning an internal
20 investigation.

21 THE COURT: Why wouldn't you be entitled to
22 request of SLED that information?

23 MR. LITTLEJOHN: Your Honor, I would be glad to
24 request it of SLED. I don't know whether SLED will
25 furnish it to me without a court order.

1 THE COURT: Number one, why wouldn't that be
2 something he would be entitled to if it is about him?
3 Number two, wouldn't he be entitled to that under the
4 Freedom of Information Act, anything he did there?

5 MR. LITTLEJOHN: Your Honor, I would take that
6 position. However, SLED -- they may take it as a
7 personnel matter.

8 THE COURT: Clearly this was not initiated by the
9 Sheriff's Office; this was not initiated by the Solicitor's
10 Office -- this investigation; is that right?

11 MR. LITTLEJOHN: Your Honor, not to my knowledge.

12 THE COURT: Okay. Solicitor, do you have any knowledge
13 of such investigation or any documents?

14 MR. KOLB: No, sir. I think I've read all those
15 articles, and I was not aware of that.

16 THE COURT: Let's do this.

17 MR. KOLB: What I am aware of, Judge -- as I understand
18 it, when the defendant was arrested, he was up under a tree
19 that was sort of like a bramble bush. As the police spotted
20 him, they also saw a gun which turned out to be or what
21 thought to be the murder weapon in close proximity of him.
22 That obviously required quick action to get to him and secure
23 the gun and secure him. I saw one of the police officers
24 shortly after this had scratches all over his arms from
25 being out there and being involved in that. So I am --

1 I mean I don't want the court to think this is some sort
2 of police brutality case. I understand they may be wanting
3 to try to claim that, but I am not aware of any internal
4 investigation. If there was something internal like that,
5 isn't that exempt from discovery except to the extent they
6 would need it under Brady if they are going to be claiming
7 brutality?

8 THE COURT: That is correct. First of all, this is an
9 agency that's not related to you. Whether or not SLED should
10 produce it, I don't know. But at this point I am not going
11 to require the solicitor to go obtain that information for
12 you.

13 MR. LITTLEJOHN: Your Honor, I will be happy to try
14 to get it through SLED. If I am unsuccessful ---

15 THE COURT: Then we will have to deal with it.

16 MR. LITTLEJOHN: I will have to come back to the
17 court. I would point out to the court that in Exhibit One
18 is an article that was published in the "Sumter Item" on
19 3-5-96. The headline is, "Stone arrested by the books,
20 SLED says."

21 THE COURT: I remember watching -- I was in Columbia
22 the last six months; so I remember watching the news, and
23 I remember the morning after they had pictures, and there was
24 some implication of some bruises or something of that nature,
25 but that was the extent that I recall of any kind of

1 indication. I was not aware of any investigation. There
2 was nothing published about it except an investigation was
3 being done.

4 From the standpoint of that investigation, as I
5 understand that was not precipitated by the sheriff; that
6 was not precipitated by the solicitor; that was something
7 that SLED did maybe -- I don't know why, but that is material
8 that you need to request from them if that should be produced.
9 I will deal with that if necessary. I don't know I have the
10 authority to order SLED to do anything, but I will deal with
11 it at that time.

12 MR. LITTLEJOHN: Your Honor, I will be glad to request
13 it of Chief Stewart. If refused, I will have to come back.

14 I want to be frank with the court. Mr. Stone was
15 arrested at approximately 11:00 at night. He was interrogated
16 at the Sumter County Sheriff's Department and turned over to
17 the jail next morning, approximately 12 hours later; that is
18 when he was given medical attention. I just am trying to get
19 to the circumstances and find out what happened.

20 THE COURT: I understand. I assume -- were there
21 statements given and obtained during that period of time?

22 MR. LITTLEJOHN: Yes, Your Honor.

23 THE COURT: That may have some relevancy. I understand
24 that.

25 MR. LITTLEJOHN: Your Honor, number five. We are

1 requesting any notes or incident reports which Deputy Kubala
2 prepared on the particular day in question. We are not sure
3 whether there was anything prepared in regard to the first
4 call when he went to Ms. Griffin's house, and that is
5 basically what we are requesting if anything exists.

6 THE COURT: All right. If there is any incident --
7 sometimes I see them referred to as incident reports. If
8 there are any such documents that are normally prepared in
9 the course, Mr. Solicitor, you provide those if haven't
10 already done so.

11 MR. KOLB: Judge, this would be limited just to Ms.
12 Griffin, responding to the Griffin crime scene and not
13 everything he did that day?

14 THE COURT: Absolutely. No. At this point I won't
15 require you to produce everything he did that day unless
16 it has some bearing to Mr. Stone.

17 MR. LITTLEJOHN: Your Honor, I don't know that any
18 other calls he went on would have any bearing, but I would
19 like to include notes that Deputy Kubala prepared.

20 THE COURT: Pertaining to the Griffin call?

21 MR. LITTLEJOHN: Yes, Your Honor. Because I am thinking
22 it is quite likely he didn't prepare a formal incident report
23 being out in his car.

24 THE COURT: I would assume. But I don't know whether
25 -- if there are any notes, make them available, Mr. Solicitor.

1 MR. LITTLEJOHN: Your Honor, the sixth item in
2 this discovery request we are asking for any photographs
3 taken of the defendant during the course of his arrest and
4 interrogation. We have been furnished photographs that
5 were taken at the Sumter County Detention Center late in
6 the morning of February 27th. If there were any other
7 photographs taken, we would like to have access to those.

8 THE COURT: By who?

9 MR. LITTLEJOHN: By the Sheriff's Department or any
10 law enforcement involved in the investigation of the case.

11 THE COURT: Mr. Solicitor?

12 MR. KOLB: Did I give you all those photographs?

13 THE COURT: Do me a favor, Mr. Solicitor: If you have
14 any photographs of him, make them available whatever they are.
15 I don't know. I assume that would show or depict whatever the
16 condition was at the time. I think that has some relevancy.

17 MR. KOLB: The defense already has photographs of the
18 morning when he arrived at the jail.

19 MR. LITTLEJOHN: That's correct.

20 MR. BABB: We have pictures.

21 MR. KOLB: The booking report at the jail?

22 MR. BABB: Pictures of the ---

23 MR. KOLB: Of the booking at the jail?

24 MR. BABB: Yes.

25 MR. KOLB: Do you need anything other than that?

1 MR. BABB: Yes.

2 THE COURT: If there are any such pictures.

3 MR. LITTLEJOHN: Your Honor, number seven is kind
4 of a general request and the reason I generally worded it
5 is the discovery material furnished didn't really speak to
6 the probable cause that had been generated by the officers
7 to arrest Mr. Stone some three hours after the shooting took
8 place. If there are any particularized incident reports or
9 statements that pertain to the probable cause for the agents
10 to arrest Mr. Stone, any surveillance or any reports
11 concerning the tracking or the so-called manhunt, we
12 certainly think we ought to have access to that if it is
13 in the possession of the solicitor or the Sumter County
14 Sheriff's Department or any investigators.

15 THE COURT: Mr. Solicitor, do you have a response?
16 As I understand, you have given them the file that was
17 prepared as a part of what is normal in the course of the
18 investigation?

19 MR. KOLB: Yes, sir. Actually what I told my law clerk
20 -- Judge, I haven't reached the point where I feel like I have
21 everything yet so I can't tell the court they have everything.
22 What I do know is that, everything I had received, I gave them.
23 So I am still in the process of digging. Frankly I am using
24 what we are doing today to look where I need to do.

25 THE COURT: All right.

1 MR. KOLB: But, Judge, I am trying to figure out how that
2 comes under Rule 5 because I guess they are trying to get all
3 the officers involved to give them a summary. I mean I don't
4 know if there were dogs out there. Is there a bloodhound
5 report somewhere? That is what they are looking for, I guess.
6 It just seems like if there is a report and I can receive it
7 by asking SLED for it, then I need to give it to them but ---

8 MR. LITTLEJOHN: That is all I am asking.

9 MR. KOLB: I don't see where I have to tell SLED,
10 "Hey, you all need to go write up a report even though you
11 never did it before."

12 THE COURT: Mr. Solicitor, all I am saying is: If there
13 is any document prepared in the normal course of a job that is
14 a part of that officer's responsibility to prepare a written
15 report and that report has been prepared, then I want a copy
16 of it provided. If it has not been prepared, it has not been
17 prepared; there is no report. So, no, you are not required to
18 require people to prepare reports. I am not requiring any
19 people that had anything to do with this to write down what
20 they did unless they do it as a normal course of their job.
21 If they do it and that document has been prepared to date --
22 we are talking about all documents that have been prepared to
23 date in the normal course of it, any written documents. I ask
24 you to make those available if there are any. There may not
25 be.

1 MR. LITTLEJOHN: Your Honor, I would like my request
2 to include any documents prepared after this date that are
3 not work product for the solicitor.

4 THE COURT: Let me say this to you, Mr. Littlejohn. I
5 will be -- and, Mr. Solicitor. I read Rule 5, and Rule 5 is
6 kind of specific, but I have a little twist that I put on it,
7 too, that if it is a document that's generally there, I would
8 rather deal with the case by case objection you may have
9 rather than say, "This document does not meet it, and I would
10 prefer not to that," and that way we can deal with it. That
11 way when we come to trial, there is no question; they can't
12 raise any issue that this document was not provided, and we
13 don't get into any possible Brady situations even though
14 they probably from everybody's perspective -- they may not
15 be. Your vantage point may be that it is absolutely not
16 applicable. It eliminates that when you have it all, and we
17 don't have that issue come up, and that is what I am trying
18 to avoid.

19 But, again, I am not requiring you, sir, to request
20 anyone to prepare a document.

21 All right. With respect to your request, Mr.
22 Littlejohn, just as -- what continues is a Rule 5 request
23 and a Brady motion, and it continues throughout. With respect
24 to specifics: If there were reports that for some reason or
25 another have not been prepared now seven, eight months after

1 the incident, then I -- you know -- if those reports are
2 prepared and they come in your possession, then I would ask
3 you to produce them. If they are not prepared, obviously not.
4 All right.

5 MR. LITTLEJOHN: Very good. Thank you, Your Honor.

6 Your Honor, in regard to item number eight, we may
7 have received everything Solicitor Kolb received in regard to
8 the investigation into the origin of the two weapons that were
9 seized on the night of February 28, '96. If that is the case,
10 that is fine. If there are any other materials that were
11 prepared concerning the origin of these guns -- and quite
12 frankly we have materials indicating that these were two of
13 four guns that were stolen in an incident in Lee County. We
14 would just like to have access to that and make sure that is
15 a continuing request.

16 THE COURT: Okay.

17 MR. LITTLEJOHN: Your Honor, as to number nine,
18 the discovery we received contains an inventory which
19 apparently was prepared by the Sumter County Sheriff's
20 Department. The items inventoried are, as we indicated
21 in the motion, enumerated number one and then 22 through 32.
22 If these are evidentiary items, we would like to see what is
23 number two through 21 and anything 33 and thereafter.

24 THE COURT: I am not sure ---

25 MR. KOLB: Judge, this would be the items in the

1 sheriff's evidence room or at SLED, and I think they are
2 entitled to go over there and look at those. I don't have
3 any problem with that.

4 THE COURT: Okay. You go look at them.

5 MR. LITTLEJOHN: That is fine. That is all I want.

6 THE COURT: That takes care of that. No problem.

7 MR. LITTLEJOHN: Your Honor, that completes the first
8 particular request for discovery.

9 THE COURT: Okay. Moving right along.

10 MR. LITTLEJOHN: The second request begins with
11 paragraph number 10. We just numbered them in sequence.

12 Your Honor, in the discovery provided, it was indicated
13 that there were atomic absorption or what we used to call
14 paraffin tests done on Mr. Stone and Deputy Kubala. We think
15 we would be entitled to the results of those scientific
16 examinations.

17 THE COURT: Sure. If you have those results.

18 MR. KOLB: Don't have it yet, Judge. Of course when
19 we get it, we will give it to them.

20 THE COURT: Thank you, sir.

21 You will get those.

22 MR. LITTLEJOHN: Your Honor, number 11 relates to
23 reports that we received that reference taped interviews with
24 various witnesses. We would like to have or be able to listen
25 to those interviews, especially the one regarding Ms. Griffin.

1 I have got in the motion Griffith, but I believe it is
2 Griffin.

3 THE COURT: These are just lay witnesses?

4 MR. LITTLEJOHN: Yes, Your Honor.

5 THE COURT: Mr. Solicitor?

6 MR. KOLB: Judge, what happened is probably not covered
7 under the rule, but the summary of the SLED report -- the
8 first number of pages where they do a narrative summary, I
9 went ahead and gave that to them even though it's probably
10 not required. It refers to these statements.

11 Again, witness statements where there is no Brady
12 material involved are not discoverable until the person
13 has testified absent the prior order of the court. And,
14 Judge, frankly I have not yet had the opportunity to review
15 those. I did -- that is the thing I received last week.
16 I was trying a case in Lee County. We had court in three
17 counties last week: Lee, Clarendon, and Williamsburg. And
18 the SLED agent was over there for another matter, a police
19 officer case of breach of trust, embezzlement, where he pled
20 guilty. While he was there, he said, "I have got some stuff
21 on the Stone case." He gave me tapes. I was thinking he said
22 they had been transcribed, and I hadn't been able to find it.
23 I thought you transcribed them, and I would really like to
24 have the transcript before I listen to the tape. But I would
25 like to listen to those first ---

1 THE COURT: Sure.

2 MR. KOLB: --- And make a determination about
3 whether they are discoverable under Brady. And, Judge,
4 sometimes I go ahead and resolve it and just go ahead and
5 give statements ---

6 THE COURT: Thank you.

7 MR. KOLB: --- To the defense without requiring the
8 court to rule on that, but sometimes the witnesses really
9 don't appreciate that, because then the defense is on them:
10 "Hey, in your statement you said this. What about that?"
11 I really hadn't made a determination yet as to whether I
12 want to voluntarily turn them over.

13 THE COURT: Okay.

14 MR. KOLB: But I would like to have a little time
15 on that.

16 THE COURT: I am not going to require you to turn
17 them over at this point. We will revisit that. Certainly
18 the witnesses, I assume, will be given a copy of their
19 statement?

20 MR. KOLB: Yes, sir.

21 THE COURT: Or at some point in time if they plan to
22 use them. But from the standpoint of you having access to
23 the tape itself, at this point we will hold that one. Maybe
24 it will be resolved by the solicitor providing it to you. If
25 it is not, then I will be happy to deal with it. Certainly

1 those witnesses are not under the control of or part of the --
2 they don't have any connection with the Sheriff's Department.
3 You can talk to them as well as anybody.

4 MR. LITTLEJOHN: I understand that, Your Honor.

5 Your Honor, the only thing I would ask the court is
6 I realize the rule doesn't require discovery until after the
7 witness takes the stand. However, the court is well aware of
8 the problems that poses.

9 THE COURT: I understand that. As I said, I am not
10 telling you that you won't get it until after the witness
11 takes the stand. I am just saying at this point I am not
12 going to require the solicitor to produce the tapes until
13 he has had the opportunity to review them. Then I would be
14 happy to deal with it on a witness by witness basis. We are
15 dealing now with lay individuals, and I don't feel comfortable
16 at this point ordering a blanket release of that. Okay.

17 MR. LITTLEJOHN: I understand, sir.

18 THE COURT: Thank you, sir.

19 MR. LITTLEJOHN: Your Honor, the court's ruling --
20 I am assuming -- would apply to items 12, 13, 14 and 15
21 which are likewise requests for access to witness statements.
22 So rather than reargue that ---

23 THE COURT: Let's just take all those individual
24 statements. Hopefully, Mr. Solicitor, you will make them
25 available to them if there's any written statements, but I

1 will be happy to deal with those if need be.

2 I assume the statements -- I don't know these
3 individuals, but I assume these individuals are talking
4 specifically about this particular incident and nothing else?

5 MR. LITTLEJOHN: That is what is indicated in the
6 discovery we have thus far.

7 THE COURT: Okay.

8 MR. LITTLEJOHN: Your Honor, the last thing in
9 the second particular discovery request is number 16.

10 THE COURT: Yes, sir.

11 MR. LITTLEJOHN: We were provided with apparently
12 the county incident report which was done in regard to these
13 particular charges. The bottom was cut off. I would just
14 like to know who prepared and the date of preparation, which
15 I think would easily be ascertainable.

16 THE COURT: Solicitor, do you have that information
17 available? If you don't ---

18 MR. LITTLEJOHN: Your Honor, I am sure he will
19 provide it to me. I put it in there out of an abundance
20 of caution.

21 MR. KOLB: Your Honor, I will probably end up looking
22 for that also.

23 THE COURT: No problem.

24 MR. KOLB: What does it look like? Have you all got
25 it somewhere?

1 (Brief pause in proceedings)

2 MR. KOLB: Judge, what we will do is get a better copy
3 and give it to them.

4 THE COURT: Thank you.

5 MR. LITTLEJOHN: Your Honor, that deals with our
6 particular requests for discovery as of now.

7 THE COURT: Okay. That is good. Now, are there
8 any other motions we need to deal with at this point?

9 MR. KOLB: Yes, Your Honor. Two things that I am
10 concerned about in speaking with Mr. Babb about this a little
11 earlier is a mental evaluation of the defendant. It seems
12 to me -- of course, I don't know what they may do as far as --
13 you know -- the normal defense in a death penalty case is
14 getting experts and all, but usually the prerequisite to any
15 of that on the mental side is that there be a court-ordered
16 mental evaluation which I would call to the court's attention
17 has not been done yet. I think we -- it may not have been on
18 the record. I was thinking we discussed it informally and the
19 case was sort of new and they wanted to look further into it
20 before they made the decision whether to object or agree.
21 They may be in a position to just agree this morning. But
22 it seems to me that the court should deal with that issue,
23 whether it is going to be a mental evaluation by William S.
24 Hall Institute.

25 THE COURT: All right. What is your position in dealing

1 with the competency issue and the preliminary finding?

2 MR. LITTLEJOHN: Your Honor, my understanding is, unless
3 the state has some question as to the competency of Mr. Stone
4 or his mental capability, that they would not be entitled to
5 have him examined at William S. Hall Institute unless we
6 affirmatively assert we are going to interpose a defense
7 based on some mental defect.

8 I have discussed with Mr. Babb -- I know I have not
9 discussed with Mr. Kolb any such defense.

10 THE COURT: Okay. That is fine.

11 Solicitor, at this point I am not going to order it.
12 However, I will be happy to revisit that particular issue
13 if you want to present something that suggests we need to
14 cover it from the standpoint of competency alone.

15 MR. KOLB: Your Honor, I am not aware of him having
16 any mental problem whatsoever. In previous death penalty
17 cases, I know that quite often ---

18 THE COURT: It does. Yeah.

19 MR. KOLB: --- Defense has gotten a psychologist
20 or social worker or these sort of people, and I have been
21 from six months in advance -- like right here -- they are
22 telling me, "We want discovery; we want this; and we want
23 that." And I am required to give it. I am in the middle
24 of a trial right before the psychiatrist testifies and I get
25 their report, and what I don't -- I didn't want to say nothing

1 and then at the very last minute -- because I am not involved
2 in these ex parte conferences where they come to the court
3 asking for funding for this expert or that expert or somebody
4 to do a social history or somebody to do a psychiatric
5 evaluation, all of which would be dealt with by William S.
6 Hall at state expense and not taxpayers of Sumter County
7 expense. And it just seems to me that it should be done by
8 the state and available to both sides; and then, if they want
9 to go beyond, that the court could have the State's -- the
10 State's expert; I am not saying the state as me representing
11 the state and prosecution; the South Carolina Department of
12 Mental Health, the people on payroll -- to do the work and
13 look into these things and do the social histories and the
14 psychological evaluations and MMPI's and all that sort of
15 stuff, and then take that and go to a second independent
16 expert in your discretion for the funding if you feel it
17 is necessary.

18 It just seems to me for them to come to you with me
19 having no opportunity to know what is going on and for them
20 to gather all that kind of information and then spring it on
21 me at trial with me having no opportunity to get it from any
22 source at that point is unfair.

23 THE COURT: Well ---

24 MR. KOLB: That is why I raise it at this point.

25 THE COURT: At this point I am not going to order the

1 evaluation. But at such time as you -- these are things that
2 we can address as we move toward a January date. Certainly
3 I would be happy to reconsider that.

4 Let me just tell you from the standpoint of -- my
5 statement applies both ways in this business of trial by
6 surprise to the extent that it is permitted under our law
7 with respect to certain issues that certainly are not
8 discloseable by the defendant, but some of these issues
9 we need to have so that we just don't simply delay
10 things and that would be a problem or could be a problem.

11 As I understand, if you intend to assert it, you have
12 to give notice of it. At this point no notice has been given;
13 so we are proceeding that that is a nonissue. Thank you.

14 MR. KOLB: Judge, the second thing and the reason
15 I raise this is recent events. There was a letter that Mr.
16 Babb sent me with his motions that indicated that he wanted to
17 talk with the court some brief time "to discuss with you an
18 appropriate resolution of the issues arising as a consequence
19 of my recent decision to terminate my status as a so-called
20 part-time contract public defender," and I have also heard
21 Mr. Babb had resigned; then I heard he worked things out and
22 he was going to remain on.

23 My raising this issue with the court is in response
24 to that but also in behalf of the taxpayers; I have got some
25 obligation in this regard. I am prosecuting the case, but

1 I am concerned about costs to the taxpayers also. Sumter
2 County has five, very fine, highly paid, well paid public
3 defenders. The law only allows one of them to be one of
4 the two attorneys that Mr. Stone is entitled to, and of
5 course the significance of that is one person who is on
6 a salary already being paid.

7 THE COURT: I understand.

8 MR. KOLB: And then one other person that the state
9 through its resources, Indigent Defense or whatever it is,
10 will pay that second person.

11 THE COURT: You are trying to find out if Mr. Littlejohn
12 or Mr. Babb are going to be that other person?

13 MR. KOLB: I just want to be sure they are both not
14 that other person and the Sumter County Public Defender is
15 not totally relieved under salary payment of the obligation
16 to be one of the two attorneys.

17 THE COURT: Thank you.

18 Mr. Babb?

19 MR. BABB: Your Honor, I think most of that is
20 appropriate in an ex parte hearing. If Wade wants to
21 know what I am doing, he can always ask me.

22 THE COURT: I will be happy to talk with you about
23 it. Obviously the statutory scheme is fairly clear in that
24 regard, and I certainly will apply the statute, Mr. Solicitor,
25 with respect to how it proceeds.

1 All right. Is there anything else then that we need
2 to take up on the record?

3 MR. LITTLEJOHN: Your Honor, two housekeeping matters.
4 Mr. Babb's letter forwarding the motions to the court.

5 THE COURT: Yes.

6 MR. LITTLEJOHN: There are two we haven't addressed.
7 The one that is enumerated number five is a motion for order
8 compelling discovery filed June 24th, 1996.

9 THE COURT: Yes.

10 MR. LITTLEJOHN: Shortly after that Solicitor Kolb did
11 provide us with a discovery package which we reviewed and
12 discussed today.

13 THE COURT: So the motion filed June 24th is moot?

14 MR. LITTLEJOHN: Yes, Your Honor.

15 THE COURT: Very well.

16 MR. LITTLEJOHN: Your Honor, the motion number four,
17 motion for discovery, original request filed March 4, 1996 --
18 of course that is a general discovery Brady motion, and we
19 would just like to have that continue in effect.

20 THE COURT: That is ongoing by the nature of the motion.
21 All right.

22 MR. LITTLEJOHN: Your Honor, the final matter we have
23 for the court today: As indicated in our earlier discussion,
24 on July 19th of this year the Attorney General's office filed
25 a motion to reinstate sentence concerning two 1987 indictments

1 that were brought against Mr. Stone.

2 Your Honor, Mr. Stone does not have representation in
3 regard to that particular motion. I don't know if the court's
4 appointment of myself and Mr. Babb in this proceeding covers
5 that. We are just trying to ascertain what the situation is
6 and make sure that Mr. Stone has legal counsel in that regard.

7 THE COURT: Thank you, sir. And my order is from Court
8 Administration. The Chief Justice gives me authority to issue
9 orders in 96-GS-43-698. This motion that you are talking
10 about is not a motion filed in this matter -- is it? -- to
11 reinstate?

12 MR. LITTLEJOHN: No, your Honor. It could have some
13 impact on this matter.

14 THE COURT: It may have an impact, but my position
15 would be that, as far as your appointment, it pertains to
16 this case. Whether or not there are subsequent cases that
17 have some involvement would seem to me to -- not to pass the
18 buck; although, I will try to do it if I can -- conveniently
19 and properly, it would seem to me that would be me taking the
20 authority from the administrative judge for general sessions
21 for Sumter County. I think that would be an issue that he
22 would have to deal with as to whether or not Mr. Stone is
23 entitled to additional representation or whether or not he
24 is going to change it. If you are willing to offer yourself
25 for that purposes, then fine. But I don't think that is

1 something that I can do as a practical matter; however, if
2 you are talking with the administrative judge and he says,
3 "No, it is so intertwined with this that it really needs to
4 be handled with this case," and if the solicitor agrees, I
5 will be happy to deal with that issue. But at this point,
6 I don't think that I really have -- seriously I don't think
7 I have jurisdiction to order the appointment for you or Mr.
8 Babb in connection with any subsequent case filed not as a
9 part of this particular action.

10 MR. LITTLEJOHN: Thank you, Your Honor.

11 THE COURT: Mr. Solicitor, that is not a motion pending
12 in this matter; is it?

13 MR. KOLB: No, sir. When the Attorney General told me
14 that -- see, for a period of time they looked into -- I think
15 I am free to say now. It is the state grand jury matter.
16 When it was resolved, it was not going to be dealt with in
17 any sort of criminal fashion. Then how was it going to be
18 dealt with? They decided to file a motion to alter or amend
19 the sentence. I think that is the name of it.

20 Actually the question -- John McIntosh told me he
21 thought it would come up actually on the civil docket; is
22 that correct?

23 THE COURT: It would seem to me that would be a civil
24 motion.

25 MR. LITTLEJOHN: It is styled in the court of general

VOLUME SEVEN OF SEVEN

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

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TRIAL TRANSCRIPT DATED JANUARY 28, 1997

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

1 sessions by the Attorney General's office.

2 MR. KOLB: Anyway he felt it would come up normally
3 -- it would not necessarily go to the judge assigned to try
4 the death penalty case. I don't think we would have a problem
5 with it if the court wants to be the one to deal with it.

6 THE COURT: I would be happy to do that, but at this
7 point it is not filed in this case as I understand it. It has
8 a separate case number, and I would -- just off the top, the
9 first person to deal with that would be whoever is the
10 administrative judge for general sessions for this six months;
11 either he can hear it, or he can assign it to someone to be
12 heard. If you all decide after talking with him that he wants
13 me to hear it, I will hear it.

14 MR. LITTLEJOHN: I understand, Your Honor.

15 Your Honor, I just thought it was something we should
16 put on the record. The state served Mr. Babb and myself with
17 the motion; so we just wanted to clarify our respective roles.

18 THE COURT: Since Mr. Kolb is not the individual
19 initiating that ---

20 MR. KOLB: I will put my name on it also.

21 THE COURT: Maybe you ought to talk to the Attorney
22 General and tell them, "You served the attorneys, but they
23 may not be the attorneys; it may be a good idea to check with
24 the process server on that motion." But I am not advising.

25 MR. KOLB: Okay.

1 THE COURT: Unless you want -- unless everybody agrees
2 you all should be the attorneys, but maybe the administrative
3 judge will appoint you for that purpose. Excuse me for
4 interrupting.

5 MR. LITTLEJOHN: Your Honor, we understand. We will
6 take that up with him, I guess.

7 THE COURT: Okay.

8 (Brief pause in proceedings)

9 MR. LITTLEJOHN: Your Honor, those are all the matters
10 we have for the court to hear today.

11 THE COURT: Very well. There is a matter we need
12 to talk about under the rules, some ex parte discussion.

13 MR. LITTLEJOHN: That's correct, Your Honor.

14 THE COURT: Very well. I will be happy to see you
15 in chambers for that purpose.

16 Mr. Solicitor, thank you very much for coming here.
17 I thank everyone here for coming to Berkeley County. I am
18 sorry for the inconvenience for you to come here, but I
19 appreciate you doing that and facilitating this matter.

20 I will have my clerk -- Mr. Cox will be touching
21 base with you periodically. Please feel free to call either
22 my office or Mr. Cox if there are motions that need to be
23 scheduled. I will try to work them in as best I can.

24 For your information: If there are some, I know
25 I will be close to Sumter. I don't know how far it is from

1 here to Sumter, but Columbia -- I will be in Columbia the
2 first week of October, I know. If that would be more
3 convenient for everybody, we can look to that as a time
4 possibility in working in some motions if we have to.

5 MR. LITTLEJOHN: Thank you, Your Honor.

6 THE COURT: Thank you. We will be at ease then.
7 Thank you.

8 (11:13 p.m.)

9 *END OF REQUESTED TRANSCRIPTION*

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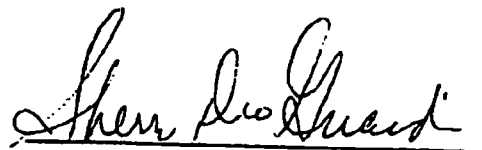
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1 CERTIFICATE OF REPORTER
2

3 I, the undersigned, Sherri DioGuardi, CSR, RPR,
4 Official Court Reporter for the Ninth Judicial Circuit
5 of the State of South Carolina, do hereby certify that
6 the foregoing is a true, accurate and complete Transcript
7 of Record of all the proceedings had and evidence introduced
8 in the HEARING of the captioned case, relative to appeal, in
9 the Criminal Court for Sumter County, South Carolina, on the
10 20th day of August, 1996.

11 I do further certify that I am neither of kin, counsel
12 nor interest to any party hereto.
13
14
15
16

17 October 12, 1996
18
19
20
21

22 
23

24 SHERRI DioGUARDI, CSR, RPR
25 Official Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS
 96-GS-43-0698

THE STATE)
)
 VS.)
)
BOBBY WAYNE STONE)

TRANSCRIPT OF RECORD

SEPTEMBER 26, 1996
 WINNSBORO, SOUTH CAROLINA

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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

WADE KOLB, SOLICITOR
 ATTORNEY FOR THE STATE

CAMERON B. LITTLEJOHN, JR., ESQUIRE
 JAMES H. BABB, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

KAREN TRACY
 OFFICIAL COURT REPORTER

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I N D E X

E X H I B I T S

COURT'S 1	COPY OF NEWSPAPER ARTICLE	22
COURT'S 2	ADVERTISEMENT, FUND RAISER	22

1 THE COURT: LET THE RECORD REFLECT THAT MR. STONE IS
2 PRESENT.

3 GOOD MORNING, MR. STONE.

4 THE DEFENDANT: GOOD MORNING.

5 THE COURT: I APPRECIATE YOU ALL COMING TO
6 WINNSBORO. WE SEEM TO KEEP MEETING IN STRANGE PLACES. I
7 THANK YOU VERY MUCH FOR DOING THAT, FOR YOUR WILLINGNESS
8 TO DO THAT. MAYBE WE CAN BRING IT TO COLUMBIA NEXT TIME
9 OR CLOSER.

10 THE PURPOSE OF THIS HEARING IS TO DEAL WITH -- I
11 BELIEVE, MR. SOLICITOR, YOU NEEDED SOME -- I'LL BE HAPPY
12 TO HEAR FROM YOU, IT'S SOME SAMPLES, I THINK.

13 MR. KOLB: YES, SIR. YOUR HONOR, WE'RE REQUESTING
14 THAT THE DEFENDANT BE ORDERED TO FURNISH BLOOD AND HAIR
15 SAMPLES FOR TESTING BY THE SLED FORENSIC LABORATORY, AND
16 AS I UNDERSTAND THE LAW, I THINK OUR STATE SUPREME COURT
17 HAS ADDRESSED THE ISSUE, THAT THERE NEEDS TO BE A SHOWING
18 OF NECESSITY.

19 AND THE NECESSITY IN THIS CASE IS, OF COURSE, THAT
20 THE EVIDENCE WAS GATHERED AND IS AT THE SLED LABORATORY IN
21 COLUMBIA, AND THE CHEMIST AND FORENSIC PEOPLE THERE HAVE
22 REQUESTED THAT I OBTAIN AN ORDER FOR BLOOD OF THE
23 DEFENDANT AND ALSO HAIR SAMPLES.

24 I THINK IT'S COMMONLY CALLED A SUSPECT KIT. IF IT
25 WAS A RAPE CASE, WE CALL IT A SUSPECT RAPE KIT. IN THIS

1 CASE IT'S GOING TO BE A SUSPECT KIT; THAT HE FURNISH
2 THOSE, AND I BELIEVE THE STANDARD IS THE SAME AS WOULD BE
3 FOR A SEARCH WARRANT, THAT THE STATE SHOW PROBABLE CAUSE.

4 YOUR HONOR, WE'RE -- AT LEAST I'M IN A MUCH BETTER
5 POSITION THAN I WAS AT THE LAST HEARING THAT THEY HAD
6 ASKED FOR, AND I HAD NOT YET GOTTEN CASE FILES AND BEEN
7 ABLE TO FULLY COMPLY WITH DISCOVERY.

8 I HADN'T GIVEN THEM EVERYTHING I HAD AT THAT POINT,
9 BUT I DIDN'T HAVE EVERYTHING. AND SINCE THEN WE'VE HAD
10 MEETINGS WITH SLED, AND THE SHERIFF'S DEPARTMENT HAVE
11 GATHERED A GOOD BIT OF ADDITIONAL EVIDENCE. AND I'VE
12 TURNED THAT ALL OVER TO THE DEFENSE.

13 THE COURT: ALL RIGHT.

14 MR. KOLB: JUDGE, THE EVIDENCE IN THE CASE REFLECTS
15 THAT THE DEFENDANT WAS IDENTIFIED BY WITNESSES AS HAVING
16 BEEN PRESENT AT THE SCENE OF THE CRIME. HE WAS ARRESTED
17 WHILE HIDING IN THE WOODS NEAR THE SCENE OF THE CRIME AT
18 THAT LOCATION.

19 HE WAS IN POSSESSION OF A PISTOL WHICH HAS BEEN
20 PROVEN BY BALLISTICS TESTS TO HAVE FIRED BOTH BULLETS
21 WHICH WERE RECOVERED FROM THE BODY OF THE VICTIM AND WHICH
22 CAUSED HIS DEATH.

23 HE'S GIVEN STATEMENTS ADMITTING TO FIRING THE
24 PISTOL. YOUR HONOR, I BELIEVE THAT THAT EVIDENCE WOULD
25 SHOW PROBABLE CAUSE FOR THE DEFENDANT TO BE REQUIRED TO

1 GIVE THESE BLOOD AND HAIR SAMPLES FOR COMPARISON TO THE
2 EVIDENCE THAT'S BEEN GATHERED IN THE CASE.

3 THE COURT: ALL RIGHT. YOU WERE ABLE TO RECOVER FROM
4 THE SCENE BLOOD THAT HAS NOT BEEN IDENTIFIED --

5 MR. KOLB: YES, SIR.

6 THE COURT: -- AS THAT OF THE VICTIM'S?

7 MR. KOLB: JUDGE, THE WAY SLED DOES IT, IS THEY WANT
8 TO GET THE DEFENDANT AND THE VICTIM SAMPLES WHEN THEY DO
9 THEIR TESTS. IT'S SOMETHING ABOUT THE TESTING THAT THEY
10 LIKE TO HAVE BOTH THERE AT THE SAME TIME WHEN THEY DO IT.

11 AND SO, THEY HAVE BLOOD THAT'S BEEN IDENTIFIED ON, OF
12 COURSE, THE CLOTHING OF THE VICTIM, ON THE GROUND NEAR THE
13 VICTIM, A SMEAR OF BLOOD THAT'S ON -- THESE ARE THE THINGS
14 I'M AWARE OF: THERE'S A SMEAR OF BLOOD ON THE PISTOL THAT
15 HAS BEEN IDENTIFIED AS THE MURDER WEAPON. AND ALSO, THERE
16 ARE SEVERAL SPOTS OF BLOOD ON THE COAT THAT THE DEFENDANT
17 WAS WEARING WHEN HE WAS ARRESTED, VERY LIKELY TO BE HIS
18 OWN BLOOD BUT, OF COURSE, THEY DON'T KNOW THAT YET.

19 THE COURT: CORRECT.

20 MR. KOLB: AND THAT'S THE BLOOD THAT I'M AWARE OF.
21 THE HAIR THAT I'M AWARE OF -- THERE MAY BE OTHER BLOOD
22 SAMPLES, BUT THAT'S WHAT I'M AWARE OF AT THIS POINT. THE
23 HAIR THAT I'M AWARE OF IS A CAP THAT WAS RECOVERED AS THEY
24 TRAILED BETWEEN WHERE THE POLICE OFFICER WAS KILLED AND
25 WHERE THE DEFENDANT WAS EVENTUALLY APPREHENDED. AS THEY

1 TRAILED ALONG THERE WITH THE AID OF DOGS, THEY CAME UPON A
2 HAT.

3 IT MAY WELL JUST BE JOE BLOW'S HAT WHICH WAS JUST
4 LEFT THERE, AND FRANKLY, AT ONE TIME WE WERE THINKING
5 WHAT DIFFERENCE DOES IT MAKE, YOU KNOW, BUT I REALIZE --
6 WE HAVEN'T ASKED FOR BLOOD, LET'S ASK FOR HAIR; THE CAP
7 HAD SOME HAIR IN IT.

8 THE COURT: OKAY.

9 MR. KOLB: AND SO THEY ASKED US TO GET SOME OF HIS
10 HAIR TO COMPARE TO THAT.

11 THE COURT: ALL RIGHT, SIR. THANK YOU. MR. BABB,
12 MR. LITTLEJOHN, WHICH -- I'D BE HAPPY TO HEAR EITHER OR
13 BOTH OF YOU.

14 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. YOUR HONOR,
15 OF COURSE, THE COURT IS GUIDED BY THE SCHMERBER CASE WHICH
16 INDICATES THAT, YOU KNOW, THIS WOULD BE GOVERNED BY THE
17 FOURTH AMENDMENT.

18 THE TWO CASES WE WERE ABLE TO LOOK AT ARE STATE
19 VERSUS REGISTER 419, S.E.2D. 771, 1992, AND IN RE: SNYDER
20 WHICH IS FOUND AT 417, S.E.2D., 572.

21 YOUR HONOR, THEY INDICATE THAT THE STATE MUST SHOW OR
22 DEMONSTRATE PROBABLE CAUSE TO BELIEVE THAT A CRIME HAS
23 BEEN COMMITTED; THAT THE DEFENDANT COMMITTED THAT CRIME,
24 WHICH PERHAPS HAS BEEN DONE BY VIRTUE OF THE ARREST
25 WARRANT AND THE INDICTMENT IN THIS CASE, BUT I THINK IT

1 GOES ON TO FURTHER REQUIRE THAT THE STATE MAKE A CLEAR
2 INDICATION THAT MATERIAL EVIDENCE RELEVANT TO THE QUESTION
3 OF THE SUSPECT'S GUILT WILL BE FOUND BY THE PROCUREMENT OF
4 THE HAIR AND BLOOD SAMPLES WHICH THEY SEEK.

5 ADDITIONALLY, THERE HAS TO BE A SHOWING THAT THE
6 METHOD USED TO SECURE THE EVIDENCE IS SAFE AND RELIABLE TO
7 THE HEALTH OF THE DEFENDANT.

8 THE COURT: RIGHT.

9 MR. LITTLEJOHN: YOUR HONOR, I HAVEN'T HAD A CHANCE
10 TO GO THROUGH THE DISCOVERY MATERIAL, SO I DON'T KNOW
11 EXACTLY HOW THE BLOOD, HAIR, WHATEVER THAT THEY'RE ASKING
12 FOR RELATES TO THE CRIME SCENE AND RELATES TO THE STATE'S
13 CASE AND HOW THEY WOULD USE THAT IN THEIR CASE.

14 BASED ON MR. KOLB'S REPRESENTATIONS, IT SEEMS LIKE
15 THERE MIGHT BE SOME INDICATION THAT THE BLOOD AND THE HAIR
16 COULD BE MATCHED UP OR NONMATCHED UP IN THAT CASE.

17 THE COURT: RIGHT. IT GOES EITHER WAY. IT MAY EVEN
18 EXCLUDE THE DEFENDANT FROM ANY POSSIBILITY OF IT BEING
19 HIS, AND TO THE EFFECT THAT THAT HAS AN IMPACT, I GUESS MY
20 QUESTION -- EXCUSE ME FOR INTERRUPTING YOU,
21 MR. LITTLEJOHN.

22 MR. LITTLEJOHN: NO, SIR.

23 THE COURT: MY QUESTION TO YOU IS -- BECAUSE THIS IS
24 TYPICAL AND I'VE DONE THESE BEFORE WITH SLED'S REQUEST;
25 FIRST OF ALL, DO YOU AGREE -- BECAUSE IF WE DON'T AGREE

1 THAT SLED HAS -- IS IN THE PROCESS OF ANALYZING CERTAIN
2 EVIDENCE THAT IS REPRESENTED TO HAVE BEEN DISCOVERED, AND
3 I UNDERSTAND ALL OF THAT DEPENDS ON CONNECTIONS AND
4 WEATHER CHANGE AND ALL OF THAT, BUT AT LEAST WITH THIS
5 STATE, THAT SLED HAS BLOOD THAT IS ANALYZED BECAUSE
6 EVERYBODY -- DO YOU BELIEVE THAT -- I MEAN, HE'S GIVING
7 YOU THE INFORMATION.

8 DO YOU WANT HIM TO BRING A SLED AGENT HERE TO SAY,
9 YEAH, I HAVE BLOOD, AND IT'S TAKEN FROM A, B, C ITEMS, OR
10 CAN WE STIPULATE THAT SLED HAS CERTAIN ITEMS THEY'RE
11 ANALYZING NOW?

12 MR. LITTLEJOHN: YOUR HONOR, LIKE I SAY, I HAVE NOT
13 SEEN THE DISCOVERY MATERIAL. I WOULD RELY ON SOLICITOR
14 KOLB'S REPRESENTATIONS --

15 THE COURT: ALL RIGHT. OKAY.

16 MR. LITTLEJOHN: -- IN THAT REGARD.

17 THE COURT: THAT'S FINE.

18 MR. LITTLEJOHN: HE SAYS THERE ARE BLOOD SMEARS ON
19 THE GUN --

20 THE COURT: ALL RIGHT.

21 MR. LITTLEJOHN: -- AND AT THE CRIME SCENE.

22 THE COURT: ALL RIGHT.

23 MR. LITTLEJOHN: AND I WOULD TAKE HIM AT HIS WORD FOR
24 THAT.

25 THE COURT: ALL RIGHT. THE SECOND ITEM CONCERNS THE

1 HAT; THERE'S HAIR, IT MAY HAVE -- IT MAY BE HIS, IT MAY
2 NOT BE HIS. CERTAINLY, IF THERE'S A HAIR SAMPLE
3 DISCOVERED IN THERE, THEN THERE WOULD BE PROBABLE CAUSE,
4 THERE WOULD BE SOME REASON -- PROBABLE CAUSE, AS I HAVE
5 BASED ON THE REPRESENTATION IS, HE'S DISCOVERED NEAR THE
6 SCENE WITH THE FIREARM THAT HAS BEEN CONNECTED.

7 NOW, IF WE HAVE NEED OF THE SLED AGENT, THE
8 BALLISTICS TO COME IN AND SAY, YES, THOSE FACTS ARE TRUE,
9 WE CAN POSTPONE THAT AND HAVE THEM COME. BUT I ASSUME
10 MR. KOLB IS NOT GOING TO REPRESENT SOMETHING IN THIS
11 MOTION THAT A SLED AGENT'S NOT WILLING TO COME IN HERE AND
12 TESTIFY.

13 SO GIVEN THAT AS BEING A TRUE REPRESENTATION, IT
14 WOULD -- THAT WOULD SERVE FOR MY PURPOSES, I THINK, SAY
15 PROBABLE CAUSE THAT A CRIME HAS BEEN COMMITTED AND
16 PROBABLE CAUSE THAT POSSIBLY THIS DEFENDANT WAS INVOLVED
17 WITH THE COMMISSION OF THAT CRIME IN SOME FASHION.

18 YOU KNOW, I'M NOT SUGGESTING THAT JUST HAVING THE GUN
19 NECESSARILY IMPLICATES HIM IN THE MURDER, IF THERE WAS A
20 MURDER, BUT IT CLEARLY INDICATES THAT HE'S INVOLVED IN THE
21 -- POTENTIALLY IN THE CRIME.

22 SO I THINK THE PROBABLE CAUSE ISSUE IS MET. THE
23 QUESTION NOW WOULD COME IS IT REASONABLE? CERTAINLY,
24 HAVING BLOOD SAMPLES HAS BEEN DONE TIME AND TIME.
25 SCHMERBER WAS A BLOOD SAMPLE.

1 SO, YOU KNOW, THAT'S OBVIOUSLY RECOGNIZED. I ASSUME
2 IT'S GOING TO BE TAKEN WITH THE TYPICAL PROTOCOL OF HAVING
3 IT REMOVED, PUT IN A TUBE; THE TYPICAL WAY THAT THAT'S
4 DONE, THE FASHION THAT -- IS SLED GOING TO ACTUALLY DO
5 THIS?

6 MR. KOLB: NO, SIR. SLED DOESN'T DO IT, AND THAT'S
7 WHY I REFERRED TO -- WE COMMONLY CALL IT A SUSPECT RAPE
8 KIT. THERE'S A PROTOCOL THAT I BELIEVE IS AVAILABLE AT
9 ALL HOSPITALS, AND I CERTAINLY INTEND TO HAVE THIS DONE AT
10 THE HOSPITAL --

11 THE COURT: ALL RIGHT.

12 MR. KOLB: -- MEDICAL CLINIC OR DOCTOR'S OFFICE BY A
13 LICENSED MEDICAL PERSONNEL.

14 THE COURT: I ASSUME THEY'LL USE THE VACUUM TUBE
15 WHERE HE TAKES IT AND PULLS IT OUT, GOES IN, IT SEALS AND
16 ALL OF THOSE THINGS. OF COURSE, THAT WILL BE SUBJECT TO
17 YOU. BUT CERTAINLY, IT'S SAFE; IT'S RELIABLE FROM MY
18 VANTAGE POINT, THAT PART. AND I FEEL THAT THE EXISTENCE
19 OF BLOOD WHERE IT'S PRESCRIBED; THE FACT THERE'S BLOOD ON
20 HIS CLOTHES. IF IT'S HIS BLOOD, THEN THAT WOULD BE PRETTY
21 NORMAL, BUT AS I UNDERSTAND SLED'S APPROACH AT HOW THEY
22 DEAL WITH THAT, THEY WANT EVERYBODY THAT'S POTENTIALLY
23 THERE SO THAT THEY CAN START WEEDING IT OUT.

24 FURTHER MORE, ONCE THEY HAVE THE TYPE, IF THE TYPES
25 DON'T MATCH, FOR INSTANCE. I MEAN, IF THEY CAN

1 CONCLUSIVELY DETERMINE THIS IS "A" AND THIS IS "O",
2 OBVIOUSLY, YOU DON'T HAVE TO BREAK IT DOWN AND GO ANY
3 FURTHER IN FURTHER EXPENDITURES TO ANYONE BECAUSE THAT --
4 JUST THE FIRST LEVEL WOULD BE HELPFUL.

5 SO I FEEL LIKE IT'S A PRUDENT APPROACH TO IT. IT'S
6 CERTAINLY BEEN RECOGNIZED, AND I FEEL LIKE IN THIS
7 PARTICULAR SITUATION, I WOULD HAVE TO GRANT THE MOTION FOR
8 THE SAMPLES.

9 MR. LITTLEJOHN: YOUR HONOR, COULD I RESERVE THE
10 RIGHT -- BECAUSE WE HAVE JUST BEEN FURNISHED THE DISCOVERY
11 MATERIAL, I'VE NOT HAD A CHANCE TO GO THROUGH IT, THIS
12 HEARING CAME RIGHT ON THE HEELS OF THE BULK OF THE
13 DISCOVERY MATERIAL BEING FURNISHED.

14 I'D JUST LIKE THE RIGHT TO CONTEST, SHOULD IT TURN
15 OUT THAT, FOR INSTANCE -- AND I USE THIS JUST AS AN
16 EXAMPLE, SAY THE HAT WAS FOUND A HALF-MILE AWAY AND REALLY
17 HAD NOTHING TO DO WITH THE INCIDENT THAT OCCURRED HERE.

18 THE COURT: WELL --

19 MR. LITTLEJOHN: THEN PROBABLE CAUSE MIGHT BE
20 QUESTIONED IN THAT CASE, BUT I'D LIKE THE RIGHT JUST TO
21 RESERVE AND BE ABLE TO OBJECT TO THE USE OF ANY SORT OF
22 BLOOD COMPARISON OR HAIR COMPARISON SHOULD THERE NOT BE
23 ADEQUATE PROBABLE CAUSE. I RECOGNIZE THAT ON THE RECORD,
24 THE COURT COULD EASILY FIND THAT PROBABLE CAUSE EXISTS AS
25 OF THIS TIME.

1 THE COURT: ALL RIGHT. WELL, WHY DON'T WE DO IT THIS
2 WAY: YOU KNOW, FROM THE STANDPOINT, I THINK, AT THIS
3 STAGE, I'M JUST CONSIDERING WHETHER OR NOT SAMPLES SHOULD
4 BE GIVEN. I MEAN, YOU KNOW --

5 MR. LITTLEJOHN: RIGHT.

6 THE COURT: -- PROBABLE CAUSE, YOU MAY RAISE AN
7 OBJECTION. I DON'T KNOW THAT THAT AUTOMATICALLY CLEARS IT
8 FOR EVERYTHING ELSE DOWN THE ROAD EITHER. SO, YOU KNOW,
9 CLEARLY, AS TO WHETHER OR NOT THE HAT IS RELEVANT, IT MAY
10 BE ANOTHER -- IT MAY BE AN OBJECTION.

11 I WILL DO THIS: I WOULD ASK THAT YOU CHECK THIS.
12 WHEN DO YOU ANTICIPATE THIS TEST BEING DONE?

13 MR. KOLB: JUDGE, WE WERE HOPING TO --

14 THE COURT: DO IT TODAY?

15 MR. KOLB: -- TAKE HIM TODAY. JUDGE, COULD I ADD ONE
16 OTHER THING --

17 THE COURT: SURE, MR. KOLB.

18 MR. KOLB: -- I FORGOT TO ADD? WHEN WE HAD THE LAST
19 HEARING IN AUGUST, THEY ASKED FOR SOME TAPED STATEMENTS
20 AND I HAD NOT HAD AN OPPORTUNITY TO REVIEW THEM MYSELF
21 YET, AND YOU, I THINK, TURNED DOWN THEIR REQUEST TO ORDER
22 ME TO TAPE THEM.

23 I WENT AHEAD AND COPIED THEM. WHILE I LISTENED TO
24 THEM, I COPIED THEM ON MY HOME STEREO, AS A MATTER OF
25 FACT.

1 THE COURT: ALL RIGHT.

2 MR. KOLB: AND HAVE GIVEN THEM COPIES. ONE OF THE
3 STATEMENTS, AS I INDICATED, THE HAT WITH THE HAIR IN IT
4 WAS FOUND ALONG THE TRAIL, AS I UNDERSTAND, BETWEEN THE
5 CRIME SCENE AND WHERE THE DEFENDANT WAS APPREHENDED.

6 BUT ONE OF THE STATEMENTS THAT I HAVE GIVEN THEM, A
7 TAPED STATEMENT, IS FROM A FELLOW BY THE NAME OF DONNIE
8 MORRIS WHO HAD SOME DEALINGS WITH MR. STONE PRIOR TO THE
9 DATE OF THE MURDER, AND HE INDICATED MR. STONE WAS WEARING
10 A TYPE OF BASEBALL CAP AND SAID IT HAD SOMETHING WRITTEN
11 ON THE FRONT OF IT. HE SAID IT WAS TOP-FLITE.

12 THE ONLY THING I KNOW THAT'S TOP-FLITE IS A TYPE OF
13 GOLF BALL, BUT ANYWAY, A TOP-FLITE HAT. THIS HAT THAT THE
14 POLICE HAD RECOVERED -- AND ACTUALLY, THEY JUST GATHERED
15 THINGS UP ALONG THE TRAIL AND THREW IN A SACK OR
16 SOMETHING, REALLY, YOU KNOW, BEER CANS AND OTHER THINGS
17 THEY DIDN'T KNOW IF IT HAD ANY RELEVANCE.

18 ONCE HE SAID -- TALKED ABOUT THE DEFENDANT HAVING A
19 TOP-FLITE HAT, THEY REALIZED THAT THEY HAD FOUND A
20 TOP-FLITE HAT ALONG THE TRAIL. AND THEN -- SO WE SAID,
21 WELL, WHAT ABOUT THAT HAT, AND THE HAT'S GOT SOME -- THEY
22 NOTED WHEN THEY FOUND IT, IT HAD SOME HAIR STRANDS IN IT.

23 AND SO ACTUALLY, INITIALLY, IT WASN'T THOUGHT TO BE
24 THAT IMPORTANT, BUT THEN ONCE WE HAD A WITNESS TO IDENTIFY
25 THE SAME TYPE OF HAT, THE SAME COLOR OF HAT WITH THE SAME

1 WORDING ON IT, WE FELT WE'D BETTER GET THE HAIR CHECKED.

2 THE COURT: OKAY. CERTAINLY, YOU DON'T BELIEVE THAT
3 REMOVING THE HAIR IS INTRUSIVE, DO YOU? I MEAN, THAT'S
4 NOT SOME UNUSUAL -- I MEAN, CLEARLY, THAT'S A
5 RECOGNIZED -- I MEAN, YOU'RE NOT ARGUING THAT BLOOD IS
6 VIOLATING THE PART WHERE YOU'RE GOING -- WHAT I CALL TOO
7 FAR, TO HAVE SURGERY TO REMOVE PART OF THINGS AND THAT
8 SORT OF THING.

9 THIS IS CERTAINLY NOT SOMETHING THAT INVADES HIS
10 BODY. IT'S JUST YOUR TYPICAL FOURTH AMENDMENT SITUATION.

11 MR. LITTLEJOHN: YOUR HONOR, THE WAY I READ
12 SCHMERBER, NO, THAT IS NOT -- THAT'S NOT THE SAME AS DOING
13 SURGERY TO REMOVE A BULLET --

14 THE COURT: YEAH. RIGHT.

15 MR. LITTLEJOHN: -- OR SOMETHING TO THAT EFFECT.
16 IT'S NOT INTRUSIVE.

17 THE COURT: OKAY.

18 MR. LITTLEJOHN: OUR ONLY CONCERN WAS THAT THE RECORD
19 MADE BY THE STATE WOULD SERVE AS A SWORN STATEMENT FOR AN
20 AFFIDAVIT, FOR A SEARCH WARRANT, WHICH IS THE WAY WE READ
21 THE CASE LAW, AND THAT'S HOW IT'S --

22 THE COURT: WELL, YOU KNOW, IT'S PRESENTED A NUMBER
23 OF WAYS. SOMETIMES PEOPLE COME IN AND THEY BRING THE SLED
24 AGENTS, AND THAT'S AN EXPENSE. WE CAN BRING EVERYBODY UP
25 HERE AND DO ALL OF THAT, IF YOU WANT TO DO THAT. AND OR

1 WE CAN SIMPLY MINIMIZE THAT EXPENSE IF YOU'VE BEEN
2 PROVIDED ALL THE INFORMATION.

3 I'LL DO THIS: I KNOW IT WILL BE PROBABLY MORE
4 CONVENIENT ONCE YOU HAVE HIM OUT, TO TAKE HIM RIGHT ON EN
5 ROUTE SO YOU DON'T -- JUST OUT OF AN ABUNDANCE OF CAUTION,
6 I'M GOING TO DELAY THAT SAMPLE.

7 I'LL GIVE YOU ONE WEEK FROM TODAY, AND IF YOU FIND
8 ANYTHING IN THE RECORD THAT IS INCONSISTENT WITH WHAT HAS
9 BEEN REPRESENTED HERE TODAY; IN OTHER WORDS, THAT THEY'RE
10 WORDED -- THERE ARE NO BLOOD SAMPLES; THERE ARE NO BLOOD
11 STAINS, BECAUSE IF THERE'S ANY -- IF THERE'S ONE, I
12 MEAN -- CLEARLY THAT'S --

13 MR. LITTLEJOHN: I UNDERSTAND.

14 THE COURT: AND CLEARLY, WE ALREADY KNOW ABOUT THE
15 GUN. I ASSUME THAT PART OF IT YOU HAVE KNOWLEDGE INsofar
16 AS WHETHER OR NOT HE HAD A GUN IN HIS POSSESSION.

17 IF THERE'S ANY INDICATION THAT THAT'S NOT IN THERE,
18 THEN FINE, IF THERE'S BLOOD ON THE GUN. BUT CLEARLY,
19 THOSE BLOOD STAINS ARE -- ESPECIALLY ON HIS CLOTHING, ARE
20 CERTAINLY SIGNIFICANT.

21 I THINK AND SLED IS -- THAT'S THEIR WAY TO DO IT. IF
22 IT'S YOUR CLOTHING, THEY WANT THE VICTIM'S AND THEY WANT
23 YOURS BECAUSE THAT'S THE ONLY WAY THEY CAN -- OBVIOUSLY,
24 THEY CAN START RUNNING SOME TESTS, BUT THE EASIEST THING
25 TO DO IS TO HAVE IT THERE AVAILABLE TO THEM.

1 MR. LITTLEJOHN: I UNDERSTAND.

2 THE COURT: SO THAT PART OF IT -- IF YOU FIND AT THAT
3 LEVEL, THEN I'LL BE HAPPY TO SIMPLY YOU ALL CALL ME AND
4 WE'LL COME BACK TOGETHER AND DO IT. OTHERWISE, WITHIN A
5 WEEK, YOU CAN HAVE THE TEST.

6 ALL RIGHT. LET'S DO IT THAT WAY.

7 MR. LITTLEJOHN: YOUR HONOR, LET ME NOTE ONE THING
8 FOR THE RECORD. I MET WITH MR. STONE YESTERDAY. THAT WAS
9 HIS FIRST KNOWLEDGE THAT THIS HEARING WAS COMING UP.

10 IF THE COURT WILL TAKE JUDICIAL NOTICE, HE HAS A VERY
11 SHORT HAIRCUT. THAT WAS DONE OVER HIS OBJECTION. IT WAS
12 NOT TO THWART ANY EFFORT TO SECURE A VALID HAIR SAMPLE.
13 AND, IN FACT, THE DEPARTMENT OF CORRECTIONS INSISTED THAT
14 HE CUT HIS HAIR VERY CLOSELY.

15 SO I JUST SAY THAT FOR THE RECORD. I DON'T --

16 THE COURT: I DON'T KNOW THAT THEY NEED ANY CERTAIN
17 LENGTH TO ANALYZE IT, I DON'T THINK, BUT THEY MAY WAIT
18 UNTIL HE GETS HIS HAIRCUT AGAIN. I DON'T KNOW WHAT THEY
19 HAVE TO DO INSOFAR AS MAKING SURE THAT IT'S PURE. I WOULD
20 ASSUME THAT THEY HAVE TO REMOVE IT WITH SOME -- WITH A
21 TWEEZER OR SOMETHING --

22 MR. LITTLEJOHN: YES, SIR.

23 THE COURT: -- LIKE THAT TO MAKE SURE THAT NOTHING --
24 NO IMPURITIES ARE --

25 MR. LITTLEJOHN: YOUR HONOR, THE REASON I RAISE THAT,

1 WHEN I WAS IN THE SOLICITOR'S OFFICE IN THE 11TH CIRCUIT,
2 I HAD A DEFENDANT COME TO A HEARING SUCH AS THIS --

3 THE COURT: SHAVED?

4 MR. LITTLEJOHN: -- COMPLETELY SHAVED.

5 THE COURT: YEAH.

6 MR. LITTLEJOHN: AND, OF COURSE, WE WERE ABLE TO USE
7 THAT INFERENCE.

8 THE COURT: I NOTE THAT MR. STONE'S HAIR IS CLOSE
9 CROPPED. I UNDERSTAND THAT YOU SAY THAT THAT WAS NOT DONE
10 TO AVOID THIS, I ASSUME THAT. UNLESS HE HAS SOME DISEASE
11 THAT YOU HAVEN'T REPRESENTED, HIS HAIR WILL PROBABLY
12 GROW. AND IF THE SOLICITOR WANTS TO WAIT UNTIL THAT CAN
13 BE DONE, THEN SO BE IT.

14 MR. KOLB: JUDGE, I'M GIVING UP A PROPOSED ORDER. I
15 REALIZE THE COURT WOULD NOT SIGN THIS UNTIL A WEEK FROM
16 NOW SO IT MIGHT --

17 THE COURT: I'LL JUST HOLD IT.

18 MR. KOLB: I HAD ALREADY PUT TODAY'S DATE AND
19 WINNSBORO ON THERE IN THE EVENT THE MOTION WAS GRANTED,
20 BUT MAYBE THAT WILL GIVE THE COURT SOMETHING TO WORK
21 WITH.

22 THE COURT: WHY DON'T I JUST DO THIS: I'LL JUST
23 WRITE IT IN THAT IT MAY BE TAKEN --

24 MR. KOLB: ALL RIGHT, SIR.

25 THE COURT: -- BUT NOT BEFORE -- HOW LONG DO YOU

1 NEED? THE WEEK MAY BE TOO LONG. HOW LONG DO YOU NEED
2 MR. LITTLEJOHN, REALISTICALLY?

3 MR. LITTLEJOHN: YOUR HONOR, I'D -- DUE TO MY
4 SCHEDULE, I'D ASK FOR A WEEK IF I MAY.

5 THE COURT: ALL RIGHT.

6 MR. LITTLEJOHN: OR PERHAPS -- HOW ABOUT TUESDAY OF
7 NEXT WEEK?

8 THE COURT: WHATEVER.

9 MR. LITTLEJOHN: TODAY'S THURSDAY.

10 THE COURT: ALL RIGHT. LET'S SEE, THE 28TH IS
11 SATURDAY. HOW ABOUT OCTOBER -- NOT BEFORE OCTOBER 1ST,
12 OCTOBER 2ND.

13 MR. LITTLEJOHN: OCTOBER 2ND.

14 THE COURT: ALL RIGHT.

15 MR. LITTLEJOHN: THANK YOU.

16 MR. BABB: YOUR HONOR, ONE POINT IN THIS --

17 THE COURT: SURE.

18 MR. BABB: -- AS MR. STONE, HE ADVISES THAT THEY HAVE
19 FACILITIES THERE WHERE SOMEONE CAN COME INTO THE PRISON
20 AND NOT HAVE TO...

21 THE COURT: THERE MAY BE.

22 MR. KOLB: I THINK SLED MADE ARRANGEMENTS TO DO IT AT
23 THE PRISON HOSPITAL.

24 THE COURT: OKAY.

25 MR. KOLB: THERE'S A NURSE THERE THAT DOES IT.

1 THE COURT: SO IT'S REALLY NOT GOING TO BE
2 TRANSPORTING THEN; IS THAT CORRECT?

3 MR. KOLB: NO, SIR.

4 THE COURT: ALL RIGHT, THAT'S FINE.

5 MR. KOLB: I UNDERSTAND THAT AGENT JOHNSON WAS READY
6 TO DO IT TODAY BUT -- TO TAKE HIM.

7 THE COURT: I APOLOGIZE FOR INCONVENIENCING HIM.

8 MR. KOLB: JUDGE, YOU KNOW THE PROCEDURES THAT AN
9 OFFICER ACTUALLY WATCHES --

10 THE COURT: ABSOLUTELY.

11 MR. KOLB: -- THE BLOOD BEING DRAWN, SO WE DON'T HAVE
12 TO GET THE NURSE TO TRIAL ON CHAIN OF CUSTODY.

13 MR. LITTLEJOHN: YOUR HONOR, I'M ASSUMING SLED OR THE
14 SOLICITOR'S OFFICE WOULD LET US KNOW WHERE AND WHEN THAT'S
15 TO BE DONE, SO WE CAN BE PRESENT IF...

16 THE COURT: I DON'T HAVE ANY PROBLEM. GIVEN THE
17 NATURE OF THE CASE, IF YOU'LL JUST CALL HIM -- JUST CALL
18 MR. LITTLEJOHN AND LET HIM KNOW WHEN YOU INTEND TO DO IT;
19 THAT WOULD BE THE SIMPLE WAY TO DO THAT. THEN IF HE WANTS
20 TO COME, HE CAN. IF HE DOESN'T, THAT DOESN'T STOP YOU.

21 I'M NOT GOING TO DELAY IT UNTIL YOU GET THERE, OKAY.

22 MR. LITTLEJOHN: ALL RIGHT. YOUR HONOR, THE ONLY
23 OTHER THING WE'D ASK IS THAT WE BE PROVIDED WITH A SPLIT
24 SAMPLE OF THE HAIR; THE BLOOD, OF COURSE, WOULD ALWAYS BE
25 THE SAME, BUT THE HAIR COULD CHANGE. AND I DON'T SEE

1 WHERE THAT'S ANY BIG PROBLEM.

2 THE COURT: WELL, FROM THE STANDPOINT OF THE HAIR --
3 ALL RIGHT. IF YOU PULL ONE, YOU PULL A -- PULL TWO
4 SAMPLES.

5 MR. LITTLEJOHN: THAT'S ALL WE'RE ASKING.

6 THE COURT: JUST TAKE TWO AT THE SAME TIME. ONE --

7 MR. KOLB: WHO WOULD THEY TURN THAT OVER TO, JUDGE?

8 THE COURT: WE'LL HAVE IT -- THEY CAN PUT IT IN A BAG
9 IF THEY WANT TO, JUST SEAL IT AS THE SECOND SAMPLE. SO
10 YOU'RE GOING TO AGREE THAT THEY MAY TAKE TWO SAMPLES OF
11 HAIR.

12 MR. LITTLEJOHN: YES, YOUR HONOR.

13 THE COURT: I MEAN SO FAR AS -- BECAUSE THAT WOULD BE
14 DUPLICITOUS, AND YOU MAY RAISE SOMETHING BUT THAT'S BY
15 YOUR REQUEST.

16 MR. LITTLEJOHN: YES, SIR, YOUR HONOR.

17 THE COURT: ALL RIGHT, VERY WELL.

18 MR. KOLB: WOULD THAT LIKE BE TAKEN TO SLED
19 HEADQUARTERS AND JUST KEPT IN A LAB THERE, OR DO YOU ALL
20 WANT TO RECEIVE IT?

21 THE COURT: YOU WANT TO --

22 MR. LITTLEJOHN: WE WANT TO RECEIVE IT.

23 THE COURT: THAT'S FINE. JUST PUT IT IN A BAG AND
24 TELL HIM WHERE HE CAN PICK IT UP. YOU DON'T HAVE TO SHIP
25 IT TO HIM OR SEND IT TO HIM. IF YOU'D JUST SIMPLY PUT IT

1 IN THE SAME CONTAINER THAT YOU WOULD YOUR SAMPLE.

2 YOU'RE JUST GOING TO AGREE TO DO THAT, WADE? I MEAN,
3 I DON'T NEED TO PUT IT IN THE ORDER, DO I?

4 MR. KOLB: YES.

5 THE COURT: ALL RIGHT. I'VE SIGNED THE ORDER AND
6 JUST ADDED THAT SAMPLES MAY NOT BE OBTAINED BEFORE OCTOBER
7 2RD, 1996. ANYTHING ELSE?

8 MR. BABB: YOUR HONOR, JUST IN CONNECTION WITH THE
9 COURT'S CONSIDERATION OF OUR MOTION TO HAVE THIS CASE
10 HEARD OUTSIDE OF SUMTER, THE THIRD JUDICIAL CIRCUIT, I
11 WOULD HAND UP AND ASK TO BE INCLUDED IN THE RECORD SOME
12 ADDITIONAL THINGS THAT HAVE COME OUT SINCE OUR LAST
13 MEETING.

14 THE COURT: SURE.

15 MR. BABB: THE FIRST OF WHICH IS AN AUGUST 22ND, 1996
16 ARTICLE FROM THE ITEM, WHICH IS THE SUMTER NEWSPAPER.

17 THE COURT: OKAY.

18 MR. BABB: AND THE SECOND OF WHICH IS A FLIER FOR A
19 GOLF TOURNAMENT.

20 THE COURT: ALL RIGHT.

21 MR. BABB: MEMORIAL GOLF TOURNAMENT, AND I'D JUST ASK
22 THAT THOSE --

23 THE COURT: ALL RIGHT. THE NEWS ARTICLE WILL BE
24 COURT'S EXHIBIT -- WELL, WE NEED TO RUN THEM SINCE...

25 AND I NOTE ON THE FLIER, THE GOLF TOURNAMENT IS TO BE

1 HELD ON OCTOBER 18TH.

2 (WHEREUPON, COURT'S EXHIBITS NO. 1 AND 2
3 WERE MARKED FOR IDENTIFICATION ONLY.)

4 MR. BABB: I BELIEVE THAT'S CORRECT, YOUR HONOR.

5 THE COURT: SO THAT'S A DATE YET TO OCCUR. OKAY.
6 ANYTHING ELSE?

7 MR. KOLB: JUDGE, AS A MATTER OF THE ARRAIGNMENT, I
8 WROTE TO THE COURT WITH A COPY TO THE DEFENSE THAT --
9 ABOUT THE MATTER THAT THE MOTION THAT WAS LEFT PENDING
10 AUGUST 20TH, AND THE GRAND JUROR --

11 THE COURT: IS NOW --

12 MR. KOLB: -- AFTER THAT RESIGNED WITH APPROVAL OF
13 THE COURT. A NEW GRAND JUROR WAS APPOINTED AND THE
14 INDICTMENT WAS RESUBMITTED AND TRUE BILLED AND HAS BEEN
15 PUBLISHED. OF COURSE, THE ACTUAL FORMAL ARRAIGNMENT OF
16 THE DEFENDANT WAS DONE PRIOR TO THAT DATE WITH THE OLD
17 INDICTMENT.

18 THE COURT: ALL RIGHT.

19 MR. KOLB: SO AT SOME POINT PRIOR TO THE ACTUAL TRIAL
20 OF THIS CASE, WE NEED TO HAVE A FORMAL ARRAIGNMENT.

21 THE COURT: OKAY.

22 MR. KOLB: I DON'T KNOW IF THE COURT -- AND I REALLY
23 JUST THOUGHT I'D BRING IT UP AND SEE WHAT THE COURT AND
24 DEFENSE THINKS. WE'RE HERE IN FAIRFIELD COUNTY AND, YOU
25 KNOW, I HAD A LITTLE CONCERN.

1 I'D BE GLAD TO GO AHEAD AND DO IT NOW. I'VE GIVEN A
2 CERTIFIED COPY TO THE DEFENSE, BUT THE WHOLE THING ABOUT
3 ARRAIGNMENT IS ALMOST 100 PERCENT FORM AS OPPOSED TO
4 SUBSTANCE --

5 THE COURT: CORRECT.

6 MR. KOLB: -- AS I UNDERSTAND THE LAW. AND SO IF
7 WE'RE GOING TO ELEVATE FORM, I THOUGHT IT WOULD BE BEST TO
8 WAIT UNTIL WE GET A CHANCE TO DO IT IN SUMTER COUNTY, IF
9 POSSIBLE.

10 THE COURT: I WOULD -- IN FACT, I WAS THINKING -- AND
11 I KNOW WE WANT TO MINIMIZE THE NUMBER OF ARTICLES THAT CAN
12 COME, BUT I WAS THINKING THE POSSIBILITY -- I DON'T KNOW
13 WHAT YOU ALL'S -- I KNOW YOU ALL HAVE THE SOLICITOR'S
14 CONVENTION THAT STARTS AND YOU ALL WOULD BE THERE UNTIL
15 WEDNESDAY, THURSDAY?

16 MR. KOLB: YES, SIR.

17 THE COURT: THE POSSIBILITY OF TRYING TO GET A TIME
18 AT THE END OF NEXT WEEK IF THAT -- THAT I COULD COME OVER
19 THERE THAT DEAL WITH -- WE'LL DEAL WITH THAT AS WELL AS
20 THIS APPOINTMENT MATTER THAT I NEED TO RESOLVE, TOO.

21 IT WOULD BE SIMPLER TO COME SINCE THERE ARE SOME
22 PEOPLE THAT WANT TO -- THAT NEED TO BE PRESENT, I GUESS,
23 FOR THE PURPOSES OF THAT HEARING. WHAT'S YOUR SCHEDULE?

24 MR. KOLB: THAT WILL BE FINE.

25 THE COURT: I'LL DEFER TO YOU BECAUSE I KNOW THIS IS

1 YOUR ANNUAL EVENT.

2 MR. KOLB: WELL, THURSDAY OR FRIDAY IS FINE. IS
3 THAT --

4 THE COURT: YEAH. EITHER ONE OF THOSE DAYS?

5 MR. KOLB: YES, SIR.

6 THE COURT: HOW ABOUT YOU, MR. LITTLEJOHN?

7 MR. LITTLEJOHN: YOUR HONOR, OCTOBER 3RD, I HAVE A
8 SENTENCING IN FEDERAL COURT, AND I IMAGINE IT'S GOING TO
9 LAST MOST OF THE DAY.

10 THE COURT: THAT'S...

11 MR. LITTLEJOHN: THAT'S THURSDAY.

12 THE COURT: THURSDAY. ALL RIGHT. MR. HABB, WHAT'S
13 YOUR SCHEDULE? DO YOU HAVE SOMETHING FRIDAY? IF IT IS,
14 THEN --

15 MR. HABB: NO, SIR, I BELIEVE MY SCHEDULE'S CLEAR
16 OPEN.

17 THE COURT: WELL, MAYBE WE COULD DO IT FRIDAY
18 MORNING. I'LL SEE ABOUT GETTING A COURT REPORTER SET UP
19 AND GETTING ME A TERM OVER THERE, AND I CAN COME OVER
20 THERE FOR THAT PURPOSE AND TAKE CARE OF THOSE ITEMS THAT
21 WE HAVE TO AND MAYBE ANYTHING ELSE THAT YOU ALL CAN THINK
22 OF THAT NEED TO BE ADDRESSED AT THAT TIME.

23 I WOULD APPRECIATE MAYBE IF YOU ALL COULD LOOK AT
24 DISCOVERY IF YOU HAVEN'T, BECAUSE I'D LIKE -- THERE WERE
25 SOME MOTIONS FILED. AND I WOULD LIKE TO SIMPLY HAVE AN

1 ORDER THAT SIMPLY SAYS THAT THEY'VE PROVIDED YOU WITH ALL
2 THE DISCOVERY YOU REQUESTED TO THIS POINT. SO THAT'S
3 CLEAR, AND WE CAN START NOW FROM GROUND ZERO AGAIN IF
4 THERE'S ANY ADDITIONAL THINGS THAT HAVE BEEN DONE. SO I'D
5 LIKE TO DEAL WITH THAT, IF I COULD, AS WELL.

6 I ASSUME AT THIS POINT, AND IF YOU ALL WILL REMIND ME
7 PLEASE, TRY TO MAKE A NOTE TO REMEMBER TO DO THIS: I'M
8 NOT GOING TO ASK YOU TO RESPOND TODAY BUT JUST -- I ASSUME
9 THAT WILL NOW -- BASICALLY TAKES CARE OF YOUR MOTION
10 CONSIDERING THE GRAND JUROR.

11 MR. BABB: YOUR HONOR, I HAVEN'T DISCUSSED THIS IN
12 LENGTH WITH MR. LITTLEJOHN. I HAVEN'T DISCUSSED IT ALL
13 WITH HIM, BUT I SUSPECT THERE WILL BE A SECOND MOTION
14 FORTHCOMING.

15 THE COURT: OKAY. AS TO THE COMPOSITION OF THE GRAND
16 JURY?

17 MR. BABB: YES, ON THE ISSUE OF THE INDICTMENT.

18 THE COURT: ALL RIGHT. WELL, WE'LL -- LET'S DEAL
19 WITH -- LET'S TRY TO GET THAT, IF WE COULD. I'D LIKE TO
20 DEAL WITH THAT IF WE CAN BY FRIDAY, BECAUSE I'D LIKE TO
21 TAKE CARE OF THAT ISSUE AS WELL.

22 MR. BABB: YES.

23 THE COURT: OKAY. SO THAT WILL BE TWO ISSUES THEN
24 THAT DEFINITELY WE'LL WANT TO RESPOND. WE WANT TO DEAL
25 WITH THE GRAND JUROR ISSUE, APPOINTMENT ISSUE AND

1 DISCOVERY ISSUE, OKAY. THANK YOU.

2 ANYTHING ELSE?

3 MR. LITTLEJOHN: THAT'S ALL WE HAVE, YOUR HONOR.

4 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM THE
5 STATE, MR. SOLICITOR?

6 MR. KOLB: NO, SIR.

7 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOU
8 ALL COMING TO WINNSBORO.

9 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF GEORGETOWN) (96-GS-43-0698)
3)
4 STATE)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 BOBBY WAYNE STONE) January 10, 1997
8) Georgetown, S. C.
9)

10 B E F O R E:

11 HONORABLE R. MARKLEY DENNIS, JR., Judge; AND A JURY.

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

13 WADE S. KOLB, JR., ESQ.
14 ASSISTANT SOLICITOR FOR SUMTER COUNTY
15 ATTORNEY FOR STATE

16 CAMERON B. LITTLEJOHN, JR., ESQ.
17 JAMES H. BABB, ESQ.
18 ATTORNEYS FOR DEFENDANT
19
20
21
22
23
24
25

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 (THE FOLLOWING TAKES PLACE ON JANUARY 10, 1997.)

2 THE COURT: Is Mr. Stone not going to be present?

3 MR. LITTLEJOHN: He will not be, Your Honor. He is
4 waiving his presence?

5 MR. LITTLEJOHN: That is correct, sir.

6 THE COURT: All right. Remind us the next time that
7 we are together, let's put it on the record and confirm that,
8 and have him acknowledge it, but you have spoken with him?

9 MR. LITTLEJOHN: I have, sir.

10 THE COURT: Very well.

11 Gentlemen, what I would propose that we do -- and I was
12 just talking to the Clerk. She has the excuses, or requests.
13 I think you all have a copy of what she has, and what I would
14 suggest that we do is -- there will be the record, but just go
15 one at a time, so the record is clear, and what I will do is
16 hear it, then I will ask the State -- of course obviously if
17 it's one that's statutory then I could deal with it, but if
18 not I'll ask -- I'll ask counsel your position on that. Okay.

19 You have them? You are ready any time -- I'm ready.

20 Do you have them in numerical order?

21 CLERK OF COURT: Yes sir.

22 THE COURT: All right.

23 CLERK OF COURT: Starting with number -- number ten is
24 deceased.

25 THE COURT: All right. Obviously that's legitimate.

1 CLERK OF COURT: Do you want me to call out names that
2 are over sixty-five?

3 THE COURT: Yes. Just call them out, but -- and you
4 have the birthday verification, do you not?

5 CLERK OF COURT: Yes sir.

6 THE COURT: Okay. Let's just go down each one. So ten
7 is deceased.

8 CLERK OF COURT: Number twelve is a student and she
9 wishes to be excused.

10 THE COURT: All right. Do you wish the student to
11 appear, so I can verify that on Monday the 20th, or will you
12 accept that statement?

13 Has she signed an Affidavit to that effect?

14 CLERK OF COURT: She did on the pink slip.

15 THE COURT: All right. She's signed that. Is that
16 satisfactory with the State?

17 MR. LITTLEJOHN: Yes sir, Your Honor.

18 THE COURT: Is that satisfactory with the defense?

19 MR. LITTLEJOHN: Yes, Your Honor.

20 THE COURT: Very well. She's -- you can just -- you
21 can either do one of -- either way you want to do it. I would
22 typically transfer her, probably, to a summer term ---

23 CLERK OF COURT: All right.

24 THE COURT: ---That doesn't conflict with her
25 activities as a student. That's number -- which one, twelve?

1 CLERK OF COURT: Number twelve. Number nine I
2 overlooked. Number nine wants to be excused because she has a
3 mentally handicapped son, and she has to take care of that
4 person. She is sixty years old.

5 THE COURT: Probably needs to come in. What is the
6 State's position?

7 MR. KOLB: Does she work outside of the home?

8 CLERK OF COURT: No. No sir.

9 THE COURT: I think she needs to come in. I think we
10 need to verify that.

11 MR. KOLB: From my standpoint, if she does not work, I
12 don't have any objection to her being excused.

13 THE COURT: What's the defense's position? If she's
14 not working outside the home you would agree for her to be
15 excused, Mr. Solicitor?

16 MR. KOLB: Yes sir.

17 MR. BABB: We concur with that.

18 THE COURT: All right. Very well, if you will have
19 her sign an Affidavit that she does not work outside of the
20 home, attach that to her slip and that will be fine. She can
21 be excused.

22 CLERK OF COURT: All right. Thank you.

23 THE COURT: Uh huh (indicating positive)

24 CLERK OF COURT: Number fifteen, the Sheriff was unable
25 to locate. The address is vacant, per the mail carrier.

1 THE COURT: Okay. Excused.
2 CLERK OF COURT: Number twenty is a student also.
3 THE COURT: Where? Did she say?
4 CLERK OF COURT: High School student.
5 THE COURT: All right. She signed the Affidavit to
6 that effect?
7 CLERK OF COURT: Yes sir.
8 THE COURT: Any objection from the State? Mr. Kolb?
9 MR. KOLB: No sir.
10 THE COURT: Any objection from the Defendant?
11 MR. BABB: No objection.
12 THE COURT: Very well. She excu -- transferred,
13 please, to a summer term. Okay.
14 CLERK OF COURT: Number twenty-two, has a four-month
15 old daughter who was premature and she has a breathing
16 problem.
17 THE COURT: And she does not work out ---
18 CLERK OF COURT: She does not work outside the home.
19 THE COURT: She would be excused. Any objection from
20 the State?
21 MR. KOLB: No sir.
22 THE COURT: Any objection from the Defendant?
23 MR. BABB: No, Your Honor.
24 THE COURT: Very well. She is excused.
25 CLERK OF COURT: Number twenty-seven is over sixty-

1 five.

2 Number twenty-eight ---

3 THE COURT: All right. Excused by statute.

4 Now, let me ask this question. We need to have in
5 addition -- because it's their right; it's their waiver.
6 These people are requesting to be excused?

7 CLERK OF COURT: Yes sir. They have sent me the
8 Affidavit back and signed it.

9 THE COURT: Then if they have signed that, specifically
10 requesting it, then by the statute I must honor that. Okay.

11 MR. KOLB: What number was that?

12 CLERK OF COURT: Twenty-seven.

13 THE COURT: Excuse me, Mr. -- you -- I interrupted you,
14 sir. Did you have something else that you wanted to add on --
15 -

16 MR. KOLB: That was my concern. I always like for the
17 over sixty-five to be asked.

18 THE COURT: Absolutely.

19 MR. KOLB: And explain to them that we want them, but
20 if they affirmatively ask for it, I agree with you, the
21 statute requires it.

22 THE COURT: All right.

23 CLERK OF COURT: Number twenty-eight requests that she
24 be excused. She's over sixty-five also.

25 THE COURT: She has requested that?

1 CLERK OF COURT: Yes sir.

2 THE COURT: Very well. She is excused by statute.

3 CLERK OF COURT: Number twenty-nine is stationed in
4 Puerto Rica in Service.

5 THE COURT: Okay. Excused. Any objection from the
6 State?

7 MR. KOLB: No sir.

8 THE COURT: Any objection from the Defendant?

9 MR. HABB: No, Your Honor.

10 CLERK OF COURT: Number thirty-two, the Sheriff was
11 unable to locate. The post office box was wrong.

12 THE COURT: All right.

13 CLERK OF COURT: Number forty-one, I have a doctor's
14 excuse here.

15 THE COURT: Let me see it, please. Thank you.

16 Any objection from the State?

17 MR. KOLB: Judge, we have the same ---

18 THE COURT: You may look at it. It's from Dr. Frank
19 Harper, M.D., in Mount Pleasant. Says that she is unfit for
20 medical reasons. I honestly -- from severe ---

21 CLERK OF COURT: She did not put it on there to start
22 with, and I sent it back, and ---

23 THE COURT: Something muscle -- I can't ---

24 CLERK OF COURT: She can't sit long at the time.

25 THE COURT: Yes.

1 Is that what it is -- looks like -- yes, fibromyalgia.
2 I'm familiar with that condition. I have someone in my church
3 that has it.

4 Any objection from the State?

5 MR. KOLB: None.

6 THE COURT: Any objection from the Defendant?

7 MR. LITTLEJOHN: No, Your Honor.

8 THE COURT: Very well. She is excused for medical
9 reasons.

10 CLERK OF COURT: Number forty-two, was unable to
11 locate. Forty-four, I have an excuse, or a reason. He wants
12 you to read that.

13 THE COURT: That's an interesting one. And this is
14 forty- ---

15 CLERK OF COURT: Forty-four. Forty-four.

16 THE COURT: Mr. Crommer is a baseball player with the
17 Pittsburgh Pirates. He does not live here. He has an address
18 and gets his mail here. This appears to be his father, and
19 he's just telling that he lives in Columbia but he travels all
20 over the United States, most of the time. So, do you want him
21 to come in?

22 MR. KOLB: Judge, I guarantee if they called him for
23 jury duty in Pittsburgh during the season he wouldn't want --
24 he would say he was residing in Georgetown.

25 THE COURT: Yes.

1 MR. KOLB: It seems like to me this is off season and
2 he ought to be here.

3 THE COURT: All right.

4 MR. KOLB: I don't see why somebody works here and has
5 to come -- leave work to come, or leave their home and all and
6 have to come, he should.

7 THE COURT: I agree. He should. I agree. Have him
8 come, and we will talk about it then.

9 CLERK OF COURT: Number forty-eight is over sixty-five.

10 THE COURT: All right. Request to be excused?

11 CLERK OF COURT: Right.

12 THE COURT: Excused by statute, and the exemption.

13 CLERK OF COURT: Number fifty works in the Auditor's
14 Office in this building.

15 THE COURT: That is the courthouse.

16 CLERK OF COURT: Yes sir.

17 THE COURT: By statute they are -- any objection from
18 the State?

19 MR. KOLB: No sir.

20 THE COURT: Any objection from the Defendant?

21 MR. LITTLEJOHN: No, Your Honor.

22 THE COURT: Okay.

23 CLERK OF COURT: Number fifty-four, Mr. Floyd, requests
24 -- do you need to see this?

25 THE COURT: Yes, I've seen it. Mr. Floyd has a long-

1 standing and apparently -- I received documentation of payment
2 of monies toward a golf workshop. He's a lawyer.

3 What says the State?

4 MR. KOLB: Judge, I think the Courts can be tougher
5 than that on non-legal members, and I -- I just am not sure
6 that's sufficient. He has already paid a non-refundable
7 deposit?

8 THE COURT: That's my understanding. That's been sort
9 of my standard. If these people have put -- and what I've
10 done in the previous ones -- if they have already paid --
11 they've paid money; they cannot get it back, then I have
12 transferred them?

13 MR. KOLB: Transferred them.

14 THE COURT: Yes sir. I will not excuse him. I would
15 only -- I would merely transfer him.

16 Do you have any objection to transferring him?

17 MR. KOLB: No sir.

18 THE COURT: Do you have any objection to transferring
19 him?

20 MR. LITTLEJOHN: No, Your Honor.

21 THE COURT: Very well. He will be transferred. As I
22 understand, it is non-refundable; is that correct?

23 Is that your understanding, Ms. Moore?

24 CLERK OF COURT: Yes sir.

25 Number fifty-seven is scheduled for surgery that week.

1 He is a physician, from what I understand. He didn't -- he
2 didn't give me great details. He just said that he was
3 scheduled for surgery.

4 Number fifty-seven.

5 THE COURT: I'm sorry. There's a lot of people -- he
6 needs to come. I would suggest that he make arrangements for
7 someone else to handle it, but that won't prevent him. No
8 Ma'am.

9 CLERK OF COURT: Number sixty-one has moved out of the
10 State.

11 THE COURT: Okay.

12 CLERK OF COURT: Number sixty-eight is over sixty-five,
13 and did not wish to serve.

14 THE COURT: Excused by statute.

15 CLERK OF COURT: Number seventy is over sixty-five and
16 did not wish to serve.

17 THE COURT: All right.

18 CLERK OF COURT: Number seventy-one has moved out of
19 the County.

20 THE COURT: Okay.

21 CLERK OF COURT: Number seventy-nine, says that she can
22 serve on the 20th, but she is due to leave on the 26th for the
23 Bahamas, which has already been prepaid and non-refundable.
24 She is standing back here.

25 THE COURT: Yes Ma'am. She can serve on the 20th,

1 but ---

2 POTENTIAL JUROR: I can serve the week -- the 20th ---

3 THE COURT: And you have already ---

4 POTENTIAL JUROR: Have my tickets. It was done in
5 October.

6 THE COURT: All right. And this is number -- what
7 number?

8 CLERK OF COURT: Seventy-nine.

9 THE COURT: Ms. Hughes. I can't assure you that this
10 case will be resolved within a week. I will transfer Ms.
11 Hughes. Any objection from the State?

12 MR. KOLB: No sir.

13 THE COURT: Any objection from the Defendant?

14 MR. LITTLEJOHN: No, Your Honor.

15 THE COURT: Thank you, Ms. Hughes, and thank you for
16 being here today as well. I appreciate your willingness to
17 serve for the week. I wish I could tell you we could finish
18 it, but I'm -- I can't do that. Thank you.

19 She will be transferred.

20 CLERK OF COURT: Number eighty-one is over sixty-five,
21 and did not wish to serve.

22 THE COURT: Excused by statute.

23 CLERK OF COURT: Number eighty-two called to say he
24 would not be here on the 10th; he would be in Florida.

25 THE COURT: He has -- he has been subpoenaed?

1 CLERK OF COURT: Yes sir.

2 THE COURT: Tell him it would be a better idea for him
3 to be here.

4 CLERK OF COURT: He left a number to call.

5 THE COURT: I would suggest that he make -- better want
6 to change his mind, if he wants to continue to reside
7 outside -- some other place.

8 CLERK OF COURT: Number eighty-three is over sixty-five
9 and does not wish to serve.

10 THE COURT: Okay.

11 CLERK OF COURT: Number eighty-four is deaf and blind,
12 unable to serve.

13 THE COURT: All right. She is requesting to be
14 excused.

15 CLERK OF COURT: Right.

16 THE COURT: What says the State?

17 MR. KOLB: It's not a medical certificate. It's just a
18 sheet, sent that in?

19 CLERK OF COURT: Yes sir.

20 MR. KOLB: But deaf and blind?

21 THE COURT: I was going to ask -- I mean, I'll bring
22 her in to verify it, if you wish me to.

23 CLERK OF COURT: I don't know her.

24 THE COURT: Let's do this -- if she ---

25 MR. KOLB: I don't have any objection.

1 THE COURT: You don't?

2 MR. KOLB: No sir.

3 THE COURT: I mean, I can get a doctor to verify it
4 if -- or have someone verify it, if you would like me to do,
5 and have some medical confirmation, if you prefer it, so I'm
6 going to do that. I think it would be a better deal. Any
7 objection from the Defendant?

8 MR. LITTLEJOHN: Your Honor, as far as I'm concerned
9 you can excuse her. I mean ---

10 THE COURT: You don't have any objection?

11 MR. LITTLEJOHN: I don't have any objection. She is
12 either deaf or blind, or she really doesn't want to serve, so
13 either way I've got no objection.

14 THE COURT: All right. I'll let you use -- if you are
15 satisfied that she is deaf and blind?

16 CLERK OF COURT: I'll call and verify it.

17 THE COURT: You will verify that. That will be fine.

18 CLERK OF COURT: I'll have her come in ---

19 THE COURT: All right. Thank you very much, and then
20 I'll take it up at that time.

21 CLERK OF COURT: Number eighty-five. Her husband is in
22 the Medical College Hospital on a respirator, and she is
23 asking to be excused. I don't ---

24 THE COURT: I'll just have to take that up in ---

25 CLERK OF COURT: She called me on the phone. I know

1 her, but that's the only -- I told her she would have to send
2 me something from the doctor.

3 THE COURT: What I will do is ---

4 CLERK OF COURT: She hasn't sent it yet.

5 THE COURT: I hope things don't worsen. We will --
6 right now, at this point, she needs to report on that Monday,
7 unless situation worsens, and if that's the case we need
8 some -- some doctor confirming that.

9 CLERK OF COURT: Right.

10 THE COURT: Okay.

11 CLERK OF COURT: Number eighty-nine is over sixty-five
12 and does not wish to serve.

13 THE COURT: Very well. Excused by statute.

14 CLERK OF COURT: Number ninety-two is over sixty-five
15 and does not wish to serve.

16 THE COURT: Excused by statute.

17 CLERK OF COURT: Number ninety-five lives in Texas and
18 is ---

19 THE COURT: When you say lives in Texas, you mean they
20 have moved?

21 CLERK OF COURT: Yes sir.

22 THE COURT: All right. Excused.

23 CLERK OF COURT: Ninety-three is a teacher, and wants
24 to be excused.

25 Betty J. Pearson. Is that you?

1 LADY IN THE AUDIENCE: No.

2 THE COURT: Wait a minute. The one you just handed me
3 is Keegan.

4 CLERK OF COURT: Keegan.

5 THE COURT: Connie Keegan. Is that -- Okay.
6 Tell Ms. Keegan, I -- you know, I understand her situation,
7 but she needs to come and we will take -- we will discuss it
8 on that day.

9 CLERK OF COURT: Okay.

10 THE COURT: Okay. Will not be excused at this point.

11 CLERK OF COURT: Number ninety-seven is over sixty-
12 five, and does not wish to serve.

13 THE COURT: Excused by statute.

14 CLERK OF COURT: Number ninety-eight is on probation
15 for failing to stop.

16 THE COURT: For blue light?

17 CLERK OF COURT: Right.

18 THE COURT: That's three. That would prevent him. By
19 statute they are excused.

20 Any objection from the State?

21 MR. KOLB: None.

22 THE COURT: All right. That's Mr. -- I assume he
23 hasn't done anything to change that, to get his rights back.

24 CLERK OF COURT: Right.

25 THE COURT: All right. He's excused. That was James,

1 Number ninety-eight.

2 CLERK OF COURT: Ninety-eight. Number one hundred
3 works in the Assessor's Office here in the building.

4 THE COURT: That would excuse him, prevent him from
5 serving. Any objection from the State?

6 MR. KOLB: No sir.

7 THE COURT: From the Defendant?

8 MR. LITTLEJOHN: No, Your Honor.

9 THE COURT: Thank you. Thank you, gentlemen. Let me
10 save you -- I know it's a habit, and I did -- feel free to
11 stay seated. Thank you very much. I appreciate your ---

12 CLERK OF COURT: Number one zero two is over sixty-five
13 and does not wish to serve.

14 THE COURT: All right. Excused by statute.

15 CLERK OF COURT: Number one zero six is over sixty-five
16 and does not wish to serve.

17 THE COURT: All right. Did you draw over sixty-five
18 box; is that what we ---

19 CLERK OF COURT: We had quite a few. One Fourteen is
20 over sixty-five and does not wish to serve.

21 THE COURT: All right. Excused by statute.

22 CLERK OF COURT: One sixteen is deceased.

23 One seventeen is over ---

24 MR. KOLB: How about one fifteen?

25 THE COURT: One fifteen is present.

1 POTENTIAL JUROR IN AUDIENCE: I fully intended to serve.
2 I work with emotionally disturbed children and I'm over
3 seventy, but I had a call yesterday asking me to start a new
4 job with another child on Wednesday the 22nd. Maybe I could
5 serve another time.

6 THE COURT: Thank you so much, and I appreciate your
7 willingness to serve, so you would wish to claim your
8 exemption at this time?

9 POTENTIAL JUROR: Just that one time, yes.

10 THE COURT: So you would rather me transfer you then,
11 to another time.

12 POTENTIAL JUROR: To another time, yes sir.

13 THE COURT: Very well. If you will transfer juror
14 number one fifteen. That's Mr. Melhall?

15 POTENTIAL JUROR: Melabal.

16 THE COURT: Melabal. Thank you so much for coming,
17 sir, and I appreciate your willingness to participate as well,
18 sir.

19 We will be delighted to have you serve at another time.
20 Thank you.

21 CLERK OF COURT: One seventeen is over sixty-five and
22 does not wish to serve.

23 THE COURT: Okay.

24 CLERK OF COURT: One eighteen, she did not send a
25 doctor's excuse, but this is what she is requesting.

1 THE COURT: No. She needs to come, if she doesn't get
2 a doctor's excuse, otherwise -- at this point -- there are
3 plenty of people that have high blood pressure that have to
4 serve.

5 CLERK OF COURT: One twenty-one is over sixty-five and
6 does not wish to serve.

7 Number one twenty-four ---

8 MR. BABB: Excuse me. What was the first name -- after
9 one eighteen, what was the next one?

10 THE COURT: One twenty-one.

11 CLERK OF COURT: One twenty-one.

12 One twenty-four, the Sheriff was unable to locate.

13 THE COURT: Okay.

14 CLERK OF COURT: One twenty-nine is over sixty-five and
15 does not wish to serve.

16 One thirty-two is over -- no, one thirty-one has a one
17 year old son, and don't have any transportation, and she is --
18 -

19 THE COURT: She does not work outside the home?

20 "I am pregnant and I have a one-year old son, and don't
21 have any transportation."

22 I need an affidavit as to whether or not she works
23 outside of the family home. If she does then -- if she works
24 then she needs to come in. If she signs the affidavit to the
25 effect that she does not work outside the home, then I will

1 excuse her as required by statute. Any objection from the
2 State?

3 MR. KOLB: None.

4 THE COURT: Any objection from the Defendant?

5 MR. LITTLEJOHN: No, Your Honor.

6 THE COURT: Very well. That was one thirty-one?

7 CLERK OF COURT: One thirty-one, yes sir.

8 One thirty-two is over sixty-five and does not wish to
9 serve.

10 One thirty-six, over sixty-five and does not wish to
11 serve.

12 One thirty-seven, over sixty-five, and does not wish to
13 serve.

14 One thirty-nine lives in Charleston County.

15 THE COURT: Excuse one thirty-nine. Not a resident of
16 Georgetown.

17 CLERK OF COURT: One forty-three is over sixty-five and
18 does not wish to serve.

19 THE COURT: All right.

20 CLERK OF COURT: One forty-five is also a school
21 teacher, like the one before, and does not wish to serve.

22 THE COURT: Must appear.

23 CLERK OF COURT: One forty-six, Sheriff's office was
24 unable to locate.

25 THE COURT: Very well.

1 CLERK OF COURT: One forty-eight is the primary
2 caretaker of her mother, who has a form of Alzheimer and is
3 incompetent.

4 THE COURT: We should have more than that. What says
5 the State?

6 MR. KOLB: She doesn't list employment?

7 THE COURT: Do you know whether she works outside of
8 the home, or does she have other people coming in that can
9 provide care?

10 CLERK OF COURT: I don't -- I think on the bottom of
11 that further is where I read that -- on that pink slip ---

12 THE COURT: If she's a homemaker.

13 CLERK OF COURT: ---On that pink slip, that it says
14 that she would have to get someone else to come in.

15 THE COURT: "I will need time to find someone who can
16 help me in caring for her."

17 What's your position?

18 MR. KOLB: No objection.

19 THE COURT: And the defense?

20 MR. LITTLEJOHN: No objection.

21 THE COURT: Very well. You may excuse her. Close to
22 one forty-eight. Thank you.

23 CLERK OF COURT: Number one fifty-one, over sixty-five
24 and does not wish to serve.

25 One fifty-six is a student at Williamsburg Technical

1 College.

2 THE COURT: Okay. Transfer.

3 CLERK OF COURT: Number one fifty-nine has a twenty-one
4 month old daughter, does not have a babysitter. She does not
5 work outside the home.

6 THE COURT: Excused by statute. Any objection from the
7 State?

8 MR. KOLB: No sir.

9 THE COURT: Any objection from the Defendant?

10 MR. LITTLEJOHN: No, Your Honor.

11 CLERK OF COURT: One sixty is over sixty-five and does
12 not wish to serve.

13 One sixty-three is over sixty-five and does not wish to
14 serve.

15 One sixty-four is over sixty-five and does not wish to
16 serve.

17 One sixty-five, according to his mother, he is retarded
18 and deaf, and doesn't understand what is going on.

19 THE COURT: What says the State, bring him in?

20 MR. KOLB: No objection.

21 THE COURT: What says the Defendant?

22 MR. LITTLEJOHN: No objection.

23 THE COURT: He's excused. That's one sixty-five,
24 excused. Thank you.

25 CLERK OF COURT: One sixty-six is taking care of her

1 sick mother, but on her pink slip she has that she works in
2 the Food Lion, so I don't know ---

3 THE COURT: She needs to come in. I need to hear more
4 about that. That was one sixty-six?

5 CLERK OF COURT: Sixty-six, right.

6 THE COURT: All right.

7 CLERK OF COURT: One sixty-nine is not a U.S. Citizen.

8 THE COURT: Excused by statute. Any objection from the
9 State?

10 MR. KOLB: No sir.

11 THE COURT: Any objection from the Defendant?

12 MR. LITTLEJOHN: No, Your Honor.

13 CLERK OF COURT: One seventy-five is over sixty-five
14 and does not wish to serve.

15 THE COURT: Excused by statute.

16 CLERK OF COURT: One seventy-eight and one seventy-nine
17 are both over sixty-five and do not wish to serve.

18 One eighty-two lives in Horry County.

19 THE COURT: Excused.

20 CLERK OF COURT: One eighty-three is deceased.

21 THE COURT: One eighty-three is deceased?

22 CLERK OF COURT: Right.

23 One eighty-five, the Sheriff was unable to locate.

24 One ninety has moved out of the County.

25 THE COURT: Okay.

1 CLERK OF COURT: One ninety-one is over sixty-five and
2 also has moved out of the county.

3 THE COURT: Excused by statute.

4 CLERK OF COURT: One ninety-one -- one ninety-two, the
5 Sheriff was unable to locate.

6 One Ninety-three, the Sheriff was unable to locate, but
7 she got word that they were looking for her. I've remailed
8 her slip, so -- I have not gotten that back yet.

9 THE COURT: All right.

10 CLERK OF COURT: One ninety-four has a criminal record.
11 I have ---

12 THE COURT: Verified?

13 CLERK OF COURT: I have it here.

14 THE COURT: You've got it.

15 (COURT VIEWS THE DOCUMENT.)

16 THE COURT: This one looks like she's served on a
17 jury ---

18 CLERK OF COURT: Is that ---

19 THE COURT: This is Deborah Tyson. Looks like prior
20 jury service.

21 CLERK OF COURT: No, I didn't -- I gave you the wrong
22 one.

23 I Must have put it in the wrong stack. Anyway, he -- we
24 have him in our office on record, as a criminal record, in '91
25 and '92.

1 THE COURT: That is on what number?
2 CLERK OF COURT: One ninety-four, Bonnie White.
3 THE COURT: Put that in the -- that's verified. We
4 will excuse him. He will be prevented from serving.
5 CLERK OF COURT: One ninety-five, Sheriff was unable to
6 locate.
7 THE COURT: One ninety-five is unable to locate?
8 CLERK OF COURT: Right.
9 THE COURT: All right.
10 CLERK OF COURT: And One ninety-eight sent this.
11 THE COURT: You are Ms. Withers? I certainly
12 understand that. Where do you teach?
13 POTENTIAL JUROR IN AUDIENCE: St. James Middle School.
14 I have a letter from the principal there.
15 THE COURT: I'll be happy to review it, but that would
16 not entitle you to be excused.
17 POTENTIAL JUROR: Can I request a transfer to summer, I
18 mean, because really, I mean, it's a strain if I'm out to be --
19 -- several of them -- with a prolong absence I would have an
20 expel class.
21 THE COURT: I'll be happy to review it. I doubt very
22 seriously I'm going to be able to transfer you though. Okay.
23 I mean, I'll be happy to do it, but I just -- there are people
24 -- I understand your situation, but that's -- that is fairly
25 typical of a lot of people, and I just simply cannot transfer

1 you. If I did I would be transferring everyone, so it's --
2 what you are telling me is, it really is a situation that any
3 time school is in session you've got a problem, so that would
4 be true of anybody that was in -- for instance, in business
5 for themselves, and there are a lot of people like that where
6 they have to close the doors for the period of time, so -- and
7 they have to serve so ---

8 Please let the State review it, and let the Defendant
9 review that letter please, Ms. Moore, and I'll be happy to ---

10 Gentlemen, you want ---

11 What say the State?

12 May we attach that letter to yours as well?

13 POTENTIAL JUROR: Sure.

14 THE COURT: Thank you very much.

15 What's your position?

16 MR. KOLB: Judge, I guess it sort of affects a lot of
17 these -- I was concerned. So many over sixty-five asking to
18 be excused. I'm concerned of the numbers.

19 THE COURT: Well, that's what I was asking my Clerk.
20 Apparently we only have -- there has been seventy-five out of
21 two hundred that have been excused for one reason, so we have
22 over a hundred right now, apparently.

23 MR. KOLB: And the others have actually -- You can
24 account for -- they are actually going to be here?

25 CLERK OF COURT: Uh huh (indicating positive) Well, all

1 that I've heard from are these that you've got copies of.

2 THE COURT: How many have you heard -- have you
3 received responses?

4 CLERK OF COURT: I did not count these to see exactly
5 how many.

6 MR. KOLB: Did you have a response from everybody
7 except who you said, unable to serve, or whatever?

8 CLERK OF COURT: No, I've still got these. I can tell
9 you ---

10 THE COURT: Well, you and I are on the same page. I'm
11 concerned about the numbers.

12 MR. KOLB: I would hate to go through this whole
13 process and not have enough people here.

14 THE COURT: That's mine as well.

15 MR. KOLB: Except for that, I understand that a
16 transfer might be in order.

17 THE COURT: Let me do this for you. Yours does seem to
18 be unique in that it deals the class that you have, and it's
19 not typical of every classroom, and I understand that. There
20 may -- I may be able to draw a distinction, but at this point
21 the num -- my number situation is my concern. I cannot, at
22 this point, tell you. I will consider it again on the 20th.
23 How about that?

24 POTENTIAL JUROR: That's fine.

25 THE COURT: Thank you. Thank you so much for coming

1 too. I appreciate it. And I certainly understand your
2 dilemma, I really do.

3 All right. Let's -- we have two more.

4 CLERK OF COURT: There's fifty or fifty-five that have
5 not responded yet.

6 THE COURT: Fifty-five. So we are talking about ---

7 CLERK OF COURT: Between fifty-three and fifty-five.
8 I've got one more here that just came in. The girl brought it
9 up to me a few minutes ago.

10 Number forty-five. Says he has a trip.

11 (COURT VIEWS DOCUMENT.)

12 THE COURT: He has not indicated that he's spent any
13 monies. He's got to come in. One forty-five.

14 CLERK OF COURT: That's all that I have so far as ---

15 THE COURT: All right. Do you have the number -- the
16 ones that you have responses from?

17 CLERK OF COURT: Yes sir.

18 THE COURT: Why don't we run through them and let's --
19 if you will just call those numbers so that they can star
20 them, and that way they will -- there should be -- you would --
21 -- that would be a way that you would have a cross-reference to
22 the stack of materials that you have.

23 CLERK OF COURT: Number one ---

24 MR. KOLB: Are these the ones that have ---

25 THE COURT: These are ones -- just call the ones that

1 have responded.

2 CLERK OF COURT: Have.

3 MR. KOLB: Judge, there are some that are here that
4 still want to be heard on excuses.

5 THE COURT: Are there others that have not been
6 addressed?

7 MEMBER OF AUDIENCE: We are just here to verify the -- I
8 didn't have the papers to remember ---

9 CLERK OF COURT: Number ten is deceased.

10 THE COURT: Is deceased.

11 MR. KOLB: Juror number twelve ---

12 THE COURT: That's a student.

13 POTENTIAL JUROR: Yes sir.

14 THE COURT: She is transferred.

15 POTENTIAL JUROR: Thank you.

16 THE COURT: Anyone else? Yes Ma'am.

17 POTENTIAL JUROR: I'm juror number one fifty-four.

18 THE COURT: Yes.

19 POTENTIAL JUROR: I do have travel plans to the Bahamas.
20 I have my reservation form.

21 THE COURT: And the money cannot be refunded?

22 POTENTIAL JUROR: My whole family is going, sir.

23 CLERK OF COURT: Did you send your response back in?

24 POTENTIAL JUROR: I have it here. I did call someone
25 and she told me to come here, but I didn't understand to mail

1 it in previously.

2 THE COURT: When is this trip scheduled?

3 POTENTIAL JUROR: We are leaving on the 24th. That was
4 Friday. I don't mind serving. It's just that particular
5 Friday we are having to leave.

6 THE COURT: What says the State?

7 MR. KOLB: No objection.

8 THE COURT: Any objection?

9 MR. LITTLEJOHN: No, Your Honor.

10 THE COURT: I will transfer you. Thank you. Have a
11 nice trip.

12 POTENTIAL JUROR: Thank you.

13 THE COURT: Number one fifty-four is transferred.

14 Let me be sure of one thing, Ms. Wray, so that -- that
15 trip had been planned prior to your receiving the jury ---

16 POTENTIAL JUROR: Yes sir. We go every year.

17 THE COURT: I'm sure, but I just need to ask that.
18 Thank you, Ma'am.

19 POTENTIAL JUROR: Do I need to turn this in?

20 THE COURT: Well, yes, you do need so we will have a
21 record of it, if you will, but you can just do that at your
22 con -- if you will just hand it to the bailiff we can take it
23 and you are free to leave if you like. Thank you.

24 All right. Let's go back and we will ---

25 Anyone else here to respond?

1 Okay. Let's go back, if you would. Now call the ones
2 that you have response -- from which you have received
3 response.

4 CLERK OF COURT: Number one, three, five, six, seven,
5 eight, nine, ten, eleven ---

6 Do you want me to call out the ones that we've already
7 discussed?

8 THE COURT: No. Well, you can call them. It doesn't
9 matter. You can call ---

10 MR. KOLB: Nine and ten are excused.

11 CLERK OF COURT: Right.

12 THE COURT: They have been excused. That's correct.

13 CLERK OF COURT: Eleven, fourteen, sixteen, eighteen,
14 twenty-three, twenty-four, twenty-five, thirty-one, thirty-
15 five, thirty-six, thirty-seven, thirty-eight, forty-three,
16 forty-five -- I left the one that we just received -- forty-
17 seven, fifty-one, fifty-six, fifty-eight, sixty, sixty-two,
18 sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven,
19 sixty-nine, seventy-four, seventy-seven, eighty-five, eighty-
20 six, eighty-eight, ninety, ninety-one, ninety-four, one oh
21 three, one oh seven, one oh nine, one ten, one eleven, one
22 twelve, one thirteen, one twenty, one twenty-two, one twenty-
23 five, one twenty-seven, one thirty-three, one forty-four, one
24 fifty, one fifty-three, one fifty-seven, one fifty-eight, one
25 sixty-seven, one sixty-eight, one seventy, one seventy-one,

1 one seventy-four, one seventy-seven, one eighty, one eighty
2 one, one eighty-four, one eighty-nine, one ninety-six, one
3 ninety-nine and two hundred.

4 THE COURT: Of the ones that you have not called, do
5 you have -- or have you had a prior experience with your
6 County to -- enough responses being required that you can give
7 us some indication of the ones that do not respond, is that an
8 indication that they are likely not to appear?

9 CLERK OF COURT: What we normally do is, the first of
10 the week I will go through this, and those that I have not
11 gotten responses from, I will send it to the Sheriff's
12 office -- send this list to the Sheriff's office, and let them
13 get in touch with them, so I should know something by the
14 middle of the week.

15 MR. KOLB: I counted seventy.

16 THE COURT: Seventy.

17 Well, do you want to start the process over or you
18 want ---

19 MR. KOLB: You mean at a different time? No sir, no,
20 not a bit. I was just wondering if maybe we need to get some
21 additional people at this time.

22 THE COURT: Well, that's an alternative as well. We
23 have -- but the problem I have is getting the responses, the
24 information that would be there.

25 You count seventy-eight. Okay. Seventy to seventy-

1 eight.

2 Why don't we do this. We are off. Let's go off.

3 (AFTER SOME DISCUSSION OFF THE RECORD.)

4 MR. LITTLEJOHN: Your Honor, the only thing else we
5 have, Mr. Babb filed a motion, I believe, concerning three
6 discovery items ---

7 THE COURT: Okay. Let's go back on the record.
8 Just one second. We have been off the record chatting. We
9 want to go back on the record.

10 All right. You have some motions pending?

11 MR. LITTLEJOHN: Yes sir, Your Honor. There is one
12 supplemental discovery motion. Mr. Babb tells me it has not
13 been filed as of yet. I have a copy of it I have handed up to
14 the Court, and we can file it with the Clerk in Sumter or file
15 it here.

16 THE COURT: Okay. Well, we can't hear ---

17 It's going to be filed in Sumter, but -- so that has not
18 been provided to the Solicitor at this point, prior to it's
19 filing?

20 MR. KOLB: That's -- I have no problem.

21 THE COURT: All right. Thank you.

22 MR. BABB: Your Honor, basically at this time, three
23 times that we have interest in. Nothing definitive has been
24 provided on those. Item one references a -- there was a truck
25 of Sammy Terrell's that was allegedly stolen on February the

1 2nd, 1996, containing quite a number of items, including some
2 firearms that are very relevant to this particular case.
3 There were many more items that were taken, and we are asking
4 the State to disclose what of those have been recovered, what
5 the circumstances surrounding them, from whom they were
6 recovered, because we feel that would be potentially
7 exculpatory information for the defense.

8 We have asked on several occasions for the -- any
9 notebook ---

10 THE COURT: Well, let's deal with one at a time, if you
11 could, Mr. Babb.

12 MR. BABB: All right, sir.

13 THE COURT: What's the State's position as to number
14 one?

15 MR. KOLB: Judge, the defense has everything I have in
16 my file, and they -- I think they all did draw the same
17 conclusions from what they have that I -- I don't think I
18 would have to answer those questions for them. There are
19 statements from witnesses that I wasn't required to them, but
20 I gave them. "Bobby Stone gave me a gun; I sold it to so and
21 so; I don't know where it is now." That kind of thing. Seems
22 like they ought to draw the same conclusions as me, and I
23 shouldn't have -- I don't have any additional information.

24 THE COURT: Do you know of any law enforcement agency
25 that has any documents or tangible objects that have not made

1 it to your file?

2 MR. KOLB: No sir. No sir.

3 THE COURT: Very well. You have everything, Mr. Babb.

4 MR. BABB: All right, sir.

5 THE COURT: Let's go to number two.

6 MR. BABB: Item two is a matter that we have raised

7 before, and request -- which is essentially the officer's

8 notes, in case he made any notations following his first visit

9 to the scene of the crime.

10 MR. KOLB: They tell me none, have nothing on that.

11 THE COURT: There is nothing.

12 MR. KOLB: Yes sir.

13 THE COURT: You have everything.

14 MR. BABB: All right, sir.

15 THE COURT: Very well.

16 MR. BABB: Then item three, we are not certain -- some

17 of the cars ---

18 THE COURT: You have a video -- did Officer Kafalis

19 have a video camera at that ---

20 MR. KOLB: No sir.

21 THE COURT: He did not. Very well. That takes care of

22 all three.

23 MR. BABB: Thank you, Your Honor.

24 THE COURT: Thank you very much, Mr. Babb. I

25 appreciate it.

1 And Solicitor, thank you for agreeing to take care of
2 that matter too, at this time.

3 Are there other motions?

4 MR. LITTLEJOHN: Your Honor, the only thing we have is
5 an ex-parte matter we need to take up with the Court
6 concerning some expenses.

7 THE COURT: Very well.

8 MR. KOLB: Judge, one thing. I had mailed to the Court
9 -- this deals with the mental issues, and I'm still -- of
10 course, when they do all this stuff ex parte with you you may
11 be quite comfortable about certain things, but I am very
12 uncomfortable with going into a death penalty case and every
13 one I've ever done there was no emotional psychological
14 testimony in behalf of the Defendant, and I just feel like the
15 State is going to be handicapped if that comes out in the
16 middle of the trial and I've had no notice of it, and I moved
17 for an evaluation at the State Hospital back in August, which
18 was denied, and they have assured the Court those are not
19 going to be issues, and I really thought something would have
20 come up by now and it hasn't, and I just want to -- you know,
21 I mailed the letter to the Court with a proposed order, and I
22 haven't heard anything from the defense or the Court in that
23 regard.

24 THE COURT: When you are talking about an issue you are
25 talking about, I assume, as a defense to the act itself? You

1 are not talking about mitigation matters, are you?

2 MR. KOLB: Well, yes sir.

3 THE COURT: What's your position, Mr. Littlejohn?

4 MR. LITTLEJOHN: Your Honor, that's the one matter we
5 need to take up with the Court ex parte, and -- but at this
6 point in time we don't have any reports or any psychological
7 evaluations or anything that we can give to the State. As to
8 a defense to the actual charges, that is not entered into our
9 case.

10 THE COURT: All right. Mr. Solicitor, let me tell you
11 this. At this point, I don't know what -- to be honest with
12 you, because I really, and honestly, I can't draw any
13 conclusions, and wouldn't begin to share at this point,
14 because I can't, but I'll do this. At the point that I will
15 discuss it, my position is going to be, once you have such a
16 report, once you have such an individual, that that must be
17 given to the Solicitor, insofar as the expert has to be
18 identified to him.

19 MR. KOLB: Judge, of course, when I made the motion
20 back in August it was to have the Defendant evaluated at the
21 State Hospital, and my concern now is, if they get this now,
22 how am I going to have him evaluated between now and ---

23 THE COURT: Number one, the State Hospital's evaluation
24 wouldn't have a thing in the world to do with anything other
25 than his competency to stand trial, and the issue of whether

1 or not he was criminally responsible. That's the only thing
2 they deal with.

3 MR. KOLB: Well, I've called them in the penalty phase
4 before, on the issues of mitigation, in response to the
5 defense's psychiatric testimony.

6 THE COURT: I tell you what you do. I canceled a week
7 of court. You tell -- you go ahead and call the State and
8 tell them how long they need -- how long they need to have him
9 before they can do that. Give me some indication. Give it to
10 them as well. We will stop everything the minute they have
11 such a situation that you have to review.

12 MR. KOLB: You mean if the defense has ---

13 THE COURT: I'm going to give you an opportunity to
14 have the State evaluate this person, if that need be done.
15 Okay.

16 MR. KOLB: If it needs ---

17 THE COURT: If it needs to be done.

18 MR. KOLB: At this point ---

19 THE COURT: All I want you to tell me is, how long is
20 it going to take the State to accomplish that.

21 MR. KOLB: Well, I just -- in dealing with the State
22 Hospital, they always -- at this point we may -- if this comes
23 up we may have to retain somebody. I just ---

24 THE COURT: Well, that's fine. Whatever -- however you
25 want to deal with it. The State Hospital will hear it on

1 order. I did it in Columbia several times.

2 MR. KOLB: All right, sir. Did you do it on an
3 expedited basis?

4 THE COURT: Yes.

5 MR. KOLB: All right.

6 THE COURT: But you need to go ahead and broach that
7 subject with the appropriate persons. I just would like an
8 idea of how long it needs to be.

9 MR. KOLB: But this would be triggered when and if the
10 defense has some ---

11 THE COURT: He has indicated he has no one at this
12 point, and no report.

13 MR. KOLB: And anticipates no ---

14 THE COURT: Not going to ask him -- I'm not going to
15 ask him to divulge anything other than the fact that he has
16 nothing at this point, and I have indicated to you that, as
17 soon as he has it then you will need to tell me how long you
18 need it. Okay. And if we need to ---

19 MR. KOLB: Judge, this would be something we would do
20 during the trial?

21 THE COURT: This would be something that we can do
22 before the trial if -- once we know this, but from the
23 standpoint -- I will have an indication of that. Obviously
24 I'm not going to allow them -- and I wouldn't think they would
25 do this in the middle of a trial. I assume that would be

1 resolved beforehand. You are not planning to do that after
2 the State's case, are you make a determination of your
3 witnesses?

4 MR. LITTLEJOHN: No, Your Honor. I'm trying to do
5 it as quickly as I possibly can.

6 THE COURT: And in fairness to them, Mr. Solicitor,
7 that is true. I have not approved certain requests. We are
8 do it in a very piecemeal fashion, and trying to hold down
9 expenses, so from that standpoint, that's as far as we are
10 going, and from the standpoint of -- I'll talk with y'all, and
11 we will see where we are, but in the meantime, I need somebody
12 there -- how long they need -- for planning purposes. I mean,
13 I may tell the jury to come back the Monday following, you
14 know, whatever, it needs to be done.

15 MR. KOLB: All right. Judge, one other thing that I
16 need to mention, and I wrote a letter but probably the defense
17 and the Court have not received that yet, but in regard to
18 this blood evidence, the Court is aware that -- with the
19 problems that we encountered, and I believe maybe S.L.E.D.
20 contacted the Court. They were dealing with Mr. Babb and I
21 think, Mr. Littlejohn, and about the problems of doing any
22 work on the blood, with the Court -- the ruling about that,
23 and I defer and let the defense expert come in.

24 THE COURT: I haven't heard one complaint, one problem.
25 That's news to me.

1 MR. KOLB: They have talked to -- my understanding was
2 that they had gotten approval from Mr. Babb, and Mr. Babb had
3 talked to the Court to do analysis to get a blood type on two
4 known subjects, and that the Court had approved that, and that
5 S.L.E.D. went ahead and did it.

6 MR. LITTLEJOHN: Your Honor, I went with the S.L.E.D.
7 agents and retrieved blood and hair samples from our client,
8 Mr. Stone ---

9 THE COURT: Well, yes.

10 MR. LITTLEJOHN: ---That was given to S.L.E.D.

11 THE COURT: Yes.

12 MR. LITTLEJOHN: Later on S.L.E.D. wanted to do typing
13 of the Defendant's blood and Sergeant Kafalis' blood. We said
14 go ahead and do it; we didn't need anybody there; we didn't
15 contact the Court, obviously.

16 THE COURT: Okay.

17 MR. LITTLEJOHN: They called back and said they wanted
18 to do subtyping of both known samples. We said, well, if we
19 are going to do just subtyping, just go ahead, so they did.

20 THE COURT: Okay.

21 MR. KOLB: Judge, what had happened was, you had said -
22 - when they said get S.L.E.D. to preserve evidence for our
23 experts to look at, you had said, well, I'll do you better
24 than that; before S.L.E.D. does any tests, notify the defense,
25 give them a chance to have an expert present.

1 THE COURT: That was only in testing, matters that they
2 would have to destroy in the tests. That was all that was.

3 MR. KOLB: Well, what happened, S.L.E.D. says their
4 accreditation would not allow them to have someone from
5 outside their lab in the lab during the tests, so they really
6 didn't do any tests, and so no tests were done except for what
7 I thought the Court had approved, and it turns out now, Mr.
8 Littlejohn has just said do it; we don't object, and I thought
9 the Court had approved it. Be that as it may, no harm done.

10 The bottom line is, after that, as far as further
11 testing, which I have known S.L.E.D. to do, they didn't do,
12 because they didn't want to do it the way the Court had
13 instructed, and they couldn't do it without violating the
14 Court's Order otherwise, so it wasn't done, so we offered to
15 turn that evidence over to the defense, and I sent the Court a
16 letter about that, where the blood was offered to be turned
17 over to them for testing it wherever they wanted it tested.

18 On January 3rd I found out -- which was over a month
19 thereafter, that they had done nothing in that regard, and at
20 that point the Sheriff contacted S.L.E.D. and agreed to pay
21 for this additional testing, and that has begun, and that's
22 why I wrote to inform the defense and the Court that that had
23 been done, I mean, it's being done in an outside lab, and we -
24 - of course I notified them in an Order about that. So I
25 believe that complies with everything the Court had required.

1 THE COURT: That's fine.

2 MR. KOLB: I just wanted to give everybody heads up on
3 it.

4 THE COURT: That's fine. Thank you, sir.

5 All right. Anything else?

6 MR. LITTLEJOHN: Nothing from the Defendant.

7 THE COURT: Okay. We will adjourn this and see you all
8 in two weeks, if not sooner.

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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the MOTIONS of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS FOR GEORGETOWN COUNTY, SOUTH CAROLINA, on the 10th day of JANUARY, 1997.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

July 1, 1997


DIXIE COX EUBANK

CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

3076

STATE OF SOUTH CAROLINA

RECORDED

COUNTY OF SUMTER

'96 JUN 21 AM 8 33

IN THE COURT OF GENERAL SESSIONS

96-GS-43-698

The State,

O.V. PLASTER JR.

-vs-

CLERK OF COURT

SUMTER COUNTY, S.C.

NOTICE OF INTENTION TO SEEK THE
DEATH PENALTY

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Bobby Wayne Stone,

Defendant.

O.V. Plaster Jr.
CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

TO: The defendant Bobby Wayne Stone, and his attorney, James H. Babb:

YOU ARE HEREBY NOTIFIED that the Solicitor of the Third Judicial Circuit, representing the citizens of the State of South Carolina and the County of Sumter, will seek the death penalty at the trial of this case to commence at least 30 days after service of this Notice. The statutory aggravating circumstances are as follows:

1. The Murder was of a local law enforcement officer, Deputy Sheriff for Sumter County, during or because of the performance of his official duties. S. C. Code Section 16-3-20 (C) (a) (7).
2. The Murder was committed while in the commission of the crime or act of Burglary. S. C. Code Section 16-3-20 (C) (a) (1) (c).

Additional evidence in aggravation of punishment will include all of the circumstances of the crimes, evidence as to the character of the defendant including the defendant's prior criminal record, all evidence admitted during the guilt phase, and all such other evidence as may be authorized by law.

No process - no notice of evidence.
June 21, 1996

Wade S. Kolb Jr.
Wade S. Kolb, Jr.
Solicitor

*Arraignment 6/21/96
Ct. Rept. Margaret Sullivan
Motion for discovery put on record.*

96-GS-43-698

DOCKET NO.

WITNESSES

SLEP

John H. Johnson

Terry Herod

Gary L. Martin

1100

ARREST WARRANT NO. E 740206-208

2-27-96

Investment Officer #1776

James R. Rains, Clerk of Superior Court

ACTION OF GRAND JURY

True Bill

Robert J. Powell

Foreman of Grand Jury

VERDICT

The State of South Carolina,

County of SUMTER

COURT OF GENERAL SESSIONS

AUGUST TERM 1996

THE STATE

vs.

BOBBY WAYNE STONE

Indictment for

BURGLARY - FIRST DEGREE, MURDER &
POSSESSION OF WEAPON DURING VIOLENT
CRIME

CERTIFIED TRUE COPY
OF ORIGINAL FILED

July 2, 1996
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

3076

STATE OF SOUTH CAROLINA) INDICTMENT FOR BURGLARY - FIRST DEGREE,
COUNTY OF SUMTER) MURDER & POSSESSION OF WEAPON DURING
) VIOLENT CRIME

At a Court of General Sessions, convened on August 26, 1996,
the Grand Jurors of Sumter County present upon their oath:

COUNT ONE - BURGLARY - FIRST DEGREE

That one BOBBY WAYNE STONE did in Sumter County on or about February 26, 1996, wilfully and unlawfully enter the dwelling of Ruth Griffith without consent and with intent to commit a crime therein, and in effecting entry, while therein, or in immediate flight therefrom, he was armed with deadly weapons, to wit: shotgun and pistol, and he had two or more convictions for burglary or housebreaking, to wit: three (3) burglary convictions in December, 1987 and two (2) housebreaking convictions in July, 1985, and the defendant entered or remained therein in the nighttime, in violation of S.C. Code Section 16-11-311, as amended.

COUNT TWO - MURDER

That one BOBBY WAYNE STONE did in Sumter County on or about February 26, 1996, feloniously, wilfully and with malice aforethought, kill one law enforcement officer, Deputy Sheriff Charles Kubala, by means of shooting the victim with a deadly weapon, to wit: pistol, and the said Charles Kubala died as a proximate result thereof, in violation of S.C. Code Section 16-3-10, as amended.

COUNT THREE - POSSESSION OF WEAPON DURING VIOLENT CRIME

That one BOBBY WAYNE STONE did in Sumter County on or about February 26, 1996, possess or visibly display a firearm, to wit: shotgun and pistol, during the commission or attempted commission of violent crimes, in violation of S.C. Code Section 16-23-490, as amended.

Against the peace and dignity of the State and contrary to the statute in such case as made and provided.

Wade S Kolb Jr
SOLICITOR WADE S. KOLB, JR.

3073

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF GENERAL SESSIONS
FOR THE THIRD JUDICIAL CIRCUIT

INDICTMENT NO. 96-GS-43-698

THE STATE OF SOUTH CAROLINA)

VS.)

BOBBY WAYNE STONE,)

Defendant.)

VERDICT FORM

WE, THE JURY in the above-entitled action, find the Defendant,
Bobby Wayne Stone:

1. As to the Count of BURGLARY IN THE FIRST DEGREE:

X Guilty
___ Not Guilty

2. As to the Count of MURDER:

X Guilty
___ Not Guilty

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OF ORIGINAL FILED
Allen E. Riegle
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

As to the Lesser-Included Offense of INVOLUNTARY MANSLAUGHTER:

___ Guilty
___ Not Guilty

3. As to the Count of UNLAWFUL CARRYING OF A PISTOL:

X Guilty
___ Not Guilty

Allen E. Riegle
FOREPERSON

SUMTER, SOUTH CAROLINA

JANUARY 26, 1997

3000

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
96-GS-43-698

COUNTY OF SUMTER

The State

-vs-

Bobby Wayne Stone,

Defendant.

STATUTORY INSTRUCTIONS

(1) In determining whether the Defendant, Bobby Wayne Stone, be sentenced to life imprisonment or death, you shall first determine whether the State has proven the existence of the following statutory aggravating circumstance(s) beyond a reasonable doubt:

Murder was committed while in the commission of burglary in any degree.

Murder of a local law enforcement officer during or because of the performance of his official duties.

(2) If you do not unanimously find the existence of the alleged statutory aggravating circumstance(s) listed above, you shall so indicate on Part (a) of the sentencing verdict form entitled "JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES." At this point, you will cease deliberations and complete the verdict form entitled "RECOMMENDATION OF SENTENCE -- LIFE IMPRISONMENT." The Foreman will sign both forms. You will then indicate to the bailiffs that you have reached a decision and will return to the courtroom with your verdict.

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OF ORIGINAL FILED
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

5081

(3) If, however, you unanimously find the existence of the alleged statutory aggravating circumstance(s) listed above, you will so indicate on Part (b) of the sentencing verdict form entitled "JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES." This finding, if made by you, must be signed by every member of the jury. If you unanimously find the existence of the alleged statutory aggravating circumstance and designate this finding on Part (b) of the "JURY'S VERDICT ON PROOF OF AGGRAVATING CIRCUMSTANCES," you must then continue your deliberations to determine whether you shall recommend that the Defendant, Bobby Wayne Stone, be sentenced to life imprisonment or to death.

(4) In determining whether to recommend that the Defendant be sentenced to life imprisonment or to death, you may consider any of the statutory aggravating circumstances found by you to exist beyond a reasonable doubt. You may also consider any of the following statutory mitigating circumstance:

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JUL 10 1971
DEPUTY CLERK OF COURT
SUMMER COUNTY
SOUTH CAROLINA

- (a) The Defendant has no significant history of prior criminal conviction involving the use of violence against another person.
- (b) The murder was committed while the Defendant was under the influence of mental or emotional disturbance.

Furthermore, you may consider any other mitigating circumstances which are supported by the evidence in this case.

(5) When you have determined the sentence to be imposed upon the Defendant, indicate your verdict by completing the appropriate sentencing form: "RECOMMENDATION OF SENTENCE -- LIFE IMPRISONMENT," or "RECOMMENDATION OF SENTENCE -- DEATH PENALTY." If the unanimous verdict of the jury is a recommendation that the

508.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS
96-GS-43-698

The State

-vs-

Bobby Wayne Stone,

Defendant.

JURY'S VERDICT ON PROOF OF
AGGRAVATING CIRCUMSTANCES

(a) WE, THE JURY in the above-entitled case, find no
statutory aggravating circumstances.

Foreman

(b) WE, THE JURY in the above-entitled case, find beyond a
reasonable doubt the following statutory aggravating

circumstance(s): Murder was committed while in
the commission of burglary in any degree

Murder of a local law enforcement officer
during or because of the performance of
his official duties.

Foreman

Donna M. Ruse

Ernie W. B. Swatman

Barbara A. Harder

Shirley Leggett

Norman L. Williamson

Richard Bourne

Priscilla Ann Lero

James R. Woodard

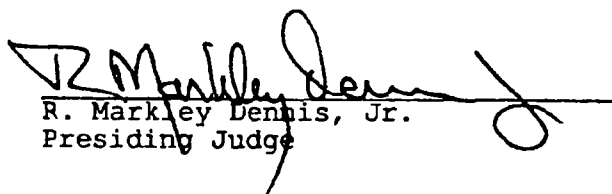
John W. J. J. J. J.

James L. L. L.

Christopher L. Canell

3086

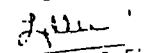
Defendant should be sentenced to death, each member of the jury shall indicate his or her agreement with the verdict by signing as indicated.


R. Markley Dennis, Jr.
Presiding Judge

January 28, 1997

Sumter, South Carolina

CERTIFIED
OF OFFICE


DEPUTY CLERK
SUMTER
SOUTH CAROLINA

5084

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS
96-GS-43-698

07 JAN 29 1998

The State

-vs-

Bobby Wayne Stone,
Defendant.

RECOMMENDATION OF SENTENCE

DEATH PENALTY

WE, THE JURY in the above-entitled case,, having found
beyond a reasonable doubt the existence of the following
statutory aggravating circumstance(s): Murder was committed
while in the commission of burglary in any degree.

Murder of a local law enforcement officer during
or because of the performance of his official
duties.

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

do now recommend to the Court that the Defendant, Bobby Wayne
Stone, be sentenced to death.

Foreman

John E. Riegle
John L. Abraham
John W. Ingletary
James D. Woodard
Priscilla Ann Gore
Richard Baume

Norman H. Williamson
Christopher L. Powell
Shirley Leggett
Janet A. Barden
Emily B. B. Linstrom
Donna M. McSp

5083

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

The State

-vs-

Bobby Wayne Stone,

Defendant.

IN THE COURT OF GENERAL SESSIONS
96-GS-43-698

AFFIRMATION

Prior to the imposition of the death penalty, I find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not recommended as a result of prejudice, passion, or any other arbitrary factor.

R. Markley Dennis, Jr.
R. Markley Dennis, Jr.
Presiding Judge

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OF ORIGINAL FILED
[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Sumter, South Carolina

January 28, 1997

3086

JUROR INFORMATION CARD

(PLEASE TYPE OR PRINT CLEARLY)

CITY, COUNTY, STATE OF BIRTH		AGE	MARRIED	SINGLE	WIDOWED	DIVORCED	NO. OF CHILD
Inglisway-Williamsburg, S.C.		49	☒	☐	☐	☐	3
OCCUPATION		PRESENT OR FORMER EMPLOYER		YEARS	NAME OF SPOUSE		
Manager Food Service		Georgetown Board of Ed.		10	HARRY		
SPOUSE'S OCCUPATION		PRESENT OR FORMER EMPLOYER		YEARS	IF THE ADDRESS BELOW IS INCORRECT PLEASE PRINT THE ADDRESS AND CORRECT THE ADDRESS ON THE BACK OF THIS CARD		
Owner Motor Oper.		T.P.C. - Containers Div.		25	THOMPSON CLYDIE B		
HAVE PREVIOUSLY SERVED ON A		IF SO, WHEN?		210 GIBSON ST			
JURY ☐ CRIMINAL ☐				GEORGETOWN S.C. 294			
HAVE YOU EVER BEEN A PARTY TO A CIVIL		HAVE YOU EVER BEEN CONVICTED OF A CRIME (OTHER THAN A MINOR TRAFFIC OFFENSE)?					
SUITS? YES ☐ NO ☐		YES ☐ NO ☒					
HIGHEST SCHOOL EDUCATION COMPLETED		GED					

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

HOME TELEPHONE NO.	BUSINESS TELEPHONE NO.	SPOUSE'S BUSINESS TELEPHONE NO.	EMERGENCY TELEPHONE NO.
546-9533	546-8516-8429	546-0528	

COMPLETE THIS FORM AND RETURN IT WITHIN TWO DAYS.
FAILURE TO RETURN IS PUNISHABLE BY CONTEMPT.

Clydie B. Thompson
SIGNATURE

3087

THE PRESIDING JUDGE REQUESTS THAT YOU ANSWER
TO THE BEST OF YOUR KNOWLEDGE THE FOLLOWING QUESTIONS
AND RETURN ALONG WITH THE JUROR QUESTIONNAIRE CARD

1. NAME: Clydie Thompson / Juror # 181
2. DATE OF BIRTH: 10-12-47
3. ADDRESS: 172 Gibson St, Georgetown SC 29410
4. TELEPHONE NUMBERS:
 - (a) Home Telephone Number: 546-9533
 - (b) Business Telephone Number: 546-8516-Ext 239
 - (c) Spouse's Business Telephone Number: 546-0528
 - (d) Emergency Telephone Number: 546-1306-1006 546-4491-work (Daughter)
Home
5. PLACE OF BIRTH: Hemingway SC
6. PLEASE NAME THE SCHOOLS YOU HAVE ATTENDED AND THE GRADE OR LEVEL COMPLETED:
 - (a) Grade School: Hemingway and Johnsonville
 - (b) Junior High: Wynah
 - (c) High School: Wynah
 - (d) College: _____
 - (e) Vocational/Trade School: _____
 - (f) Professional School: _____
 - (g) Graduate School: _____
 - (h) Degrees or Diplomas you hold: C.E.D.
7. HOW LONG HAVE YOU LIVED IN GEORGETOWN COUNTY? 28 yrs
8. HAVED YOU EVER LIVED IN SUMTER COUNTY? NO IF YES, WHEN? _____
9. DO ANY OF YOUR FAMILY MEMBERS OR CLOSE FRIENDS LIVE IN SUMTER COUNTY? NO
10. DO YOU HAVE BUSINESS, PROFESSIONAL, EDUCATIONAL OR OTHER TIES TO SUMTER COUNTY? NO IF SO, DESCRIBE THEM: _____
11. HAVE YOU EVER LIVED OUTSIDE THE SOUTHEASTERN US? yes (Germany)
12. HAVE YOU EVER BEEN IN THE MILITARY? NO
13. PRESENT OCCUPATION: Asst mgr - Food Service - Georgetown High Scho

14. PLACE OF EMPLOYMENT: Georgetown Board of Ed
15. LENGTH OF TIME WITH PRESENT EMPLOYER: 10 yrs
16. JOB TITLE AND DUTIES (Please be specific): Postman
doing paper work - also ordering gas. Some hand-delivered
mail. Running computer at lunch times. Bank - deposit
17. OCCUPATION BEFORE PRESENT EMPLOYMENT: Belts-Shipping & receiving
18. HAVE YOU EVER WORKED FOR ANY LAW ENFORCEMENT AGENCY, PRISON, JAIL OR CORRECTIONAL FACILITY? no
- IF SO, WHERE? _____
19. HAS ANY MEMBER OF YOUR FAMILY EVER WORKED FOR ANY LAW ENFORCEMENT AGENCY, PRISON, JAIL, OR CORRECTIONAL FACILITY? no
- IF SO, WHERE? _____
20. MARITAL STATUS: (☒) MARRIED - NUMBER OF YEARS: 33 yrs
 () NEVER MARRIED
 () SEPARATED
 () DIVORCED
 () WIDOWED
21. IF MARRIED, SPOUSE'S NAME: Harry
22. SPOUSE'S OCCUPATION: Law motor Driver
23. SPOUSE'S EDUCATIONAL LEVEL: 8th
24. NUMBER OF CHILDREN AND THEIR AGES:
 GIRLS: (3) 29 - 21 - 19
 BOYS: _____
25. HAVE YOU EVER BEEN A WITNESS IN A CRIMINAL CASE? no
26. HAVE YOU EVER SERVED AS A JUROR IN A CRIMINAL CASE? no
27. HAVE YOU EVER SERVED AS A JUROR IN A CIVIL CASE? no
28. HAVE YOU EVER SERVED ON A GRAND JURY? no
29. HAVE YOU, A MEMBER OF YOUR IMMEDIATE FAMILY, OR A CLOSE PERSONAL FRIEND EVER BEEN CHARGED WITH A CRIME? no
- IF SO, DESCRIBE THE CHARGE: _____

3089

#181

30. HAVE YOU, A MEMBER OF YOUR IMMEDIATE FAMILY, OR A CLOSE PERSONAL FRIEND EVER BEEN THE VICTIM OF A CRIME? no
IF SO, DESCRIBE THE CRIME: _____
31. WHAT CHURCH (NAME AND DENOMINATION) DO YOU ATTEND? House
Shorthorn Baptist - Baptist - am not attending now.
32. WHAT SOCIAL, CIVIC, FRATERNAL, OR CHARITABLE CLUBS AND ORGANIZATIONS DO YOU BELONG TO? None
33. TO WHAT GROUPS DO YOU DONATE YOUR MONEY OR YOUR TIME? None
34. WHAT ^{NO} TV OR RADIO SHOWS DO YOU WATCH OR LISTEN TO REGULARLY, AND WHAT NEWSPAPER DO YOU REGULARLY READ? Soaps - Dr. Quinn (Satu
(Sun) Touches By Angel - Promise Land (Tuesday)
35. TO WHAT MAGAZINES DO YOU SUBSCRIBE? None
36. PLEASE DESCRIBE THE BUMPER STICKERS YOU HAVE ON YOUR CAR:
None
- 1-1-97 Date
Clydie Thompson Juror's Signature

5090

JUROR INFORMATION CARD

(PLEASE TYPE OR PRINT CLEARLY)

CITY, COUNTY, STATE OF BIRTH GETTYSBURG, ADAMS, PA		AGE 28	MARRIED ☒	SINGLE ☐	WIDOWED ☐	DIVORCED ☐	NO. OF CHILD 2
OCCUPATION BUILDING CONTRACTOR	PRESENT OR FORMER EMPLOYER SELF		YEARS 14		NAME OF SPOUSE		
HOUSEHOLD OCCUPATION ATTORNEY	PRESENT OR FORMER EMPLOYER BELLAMY LAW FIRM		YEARS 14		IF THE ADDRESS BELOW IS INCORRECT PLEASE "X" THE ADDRESS AND CORRECT THE ADDRESS ON THE BACK OF THIS CARD		
HAVE PREVIOUSLY SERVED ON A VIL ☐ CRIMINAL ☐ JURY ☐		IF SO, WHEN?		NAME OF SPOUSE RIEGLER DAN E			
HAVE YOU EVER BEEN A PARTY TO A CIVIL SUIT? YES ☐ NO ☐		HAVE YOU EVER BEEN CONVICTED OF A CRIME (OTHER THAN A MINOR TRAFFIC OFFENSE)? YES ☒ NO ☐		ADDRESS 443 OLD AGUSTA DR PAWLEYS ISLAND S.C. 2958			
FORMAL EDUCATION COMPLETED 1 YR COLLEGE							

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

HOME TELEPHONE NO. 237-4140	BUSINESS TELEPHONE NO. 237-4140	SPOUSE'S BUSINESS TELEPHONE NO. 448-2400	EMERGENCY TELEPHONE NO. 448-2400

COMPLETE THIS FORM AND RETURN IT WITHIN TWO DAYS.
FAILURE TO RETURN IS PUNISHABLE BY CONTEMPT.

Dan E Riegl
SIGNATURE

THE PRESIDING JUDGE REQUESTS THAT YOU ANSWER
TO THE BEST OF YOUR KNOWLEDGE THE FOLLOWING QUESTIONS
AND RETURN ALONG WITH THE JUROR QUESTIONNAIRE CARD

1. NAME: DAN E. RIEGLE JUROR # 157
2. DATE OF BIRTH: 7/15/40
3. ADDRESS: 443 OLD AUGUSTA DR, PAULEYS ISLAND SC
4. TELEPHONE NUMBERS: 29585
 - (a) Home Telephone Number: 237-4140
 - (b) Business Telephone Number: 237-4140
 - (c) Spouse's Business Telephone Number: 442-2403
 - (d) Emergency Telephone Number: 442-2403
5. PLACE OF BIRTH: ADAMS CO, PENNA.
6. PLEASE NAME THE SCHOOLS YOU HAVE ATTENDED AND THE GRADE OR LEVEL COMPLETED:
 - (a) Grade School: SPRING GROVE PA
 - (b) Junior High: GETTYSBURG, PA
 - (c) High School: GETTYSBURG PA
 - (d) College: PENN STATE, PA 1YR
 - (e) Vocational/Trade School: _____
 - (f) Professional School: _____
 - (g) Graduate School: _____
 - (h) Degrees or Diplomas you hold: _____
7. HOW LONG HAVE YOU LIVED IN GEORGETOWN COUNTY? 1 YR
8. HAVED YOU EVER LIVED IN SUMTER COUNTY? No IF YES, WHEN? _____
9. DO ANY OF YOUR FAMILY MEMBERS OR CLOSE FRIENDS LIVE IN SUMTER COUNTY? No
10. DO YOU HAVE BUSINESS, PROFESSIONAL, EDUCATIONAL OR OTHER TIES TO SUMTER COUNTY? No IF SO, DESCRIBE THEM: _____
11. HAVE YOU EVER LIVED OUTSIDE THE SOUTHEASTERN US? YES
12. HAVE YOU EVER BEEN IN THE MILITARY? No
13. PRESENT OCCUPATION: BUILDING CONTRACTOR

14. PLACE OF EMPLOYMENT: WORK FROM HOME
15. LENGTH OF TIME WITH PRESENT EMPLOYER: 15 YRS
16. JOB TITLE AND DUTIES (Please be specific): BUILDING
CONTRACTOR-RESIDENTIAL CONSTRUCTION
OWNER OF COMPANY
17. OCCUPATION BEFORE PRESENT EMPLOYMENT: BARBER
18. HAVE YOU EVER WORKED FOR ANY LAW ENFORCEMENT AGENCY, PRISON, JAIL OR CORRECTIONAL FACILITY? NO
IF SO, WHERE? —
19. HAS ANY MEMBER OF YOUR FAMILY EVER WORKED FOR ANY LAW ENFORCEMENT AGENCY, PRISON, JAIL, OR CORRECTIONAL FACILITY? NO
IF SO, WHERE? —
20. MARITAL STATUS: (☒) MARRIED - NUMBER OF YEARS: 5
(☐) NEVER MARRIED
(☐) SEPARATED
(☐) DIVORCED
(☐) WIDOWED
21. IF MARRIED, SPOUSE'S NAME: JILL
22. SPOUSE'S OCCUPATION: ATTORNEY
23. SPOUSE'S EDUCATIONAL LEVEL: LAW SCHOOL GRADUATE
24. NUMBER OF CHILDREN AND THEIR AGES:
GIRLS: 2 34 + 36
BOYS: —
25. HAVE YOU EVER BEEN A WITNESS IN A CRIMINAL CASE? NO
26. HAVE YOU EVER SERVED AS A JUROR IN A CRIMINAL CASE? NO
27. HAVE YOU EVER SERVED AS A JUROR IN A CIVIL CASE? NO
28. HAVE YOU EVER SERVED ON A GRAND JURY? NO
29. HAVE YOU, A MEMBER OF YOUR IMMEDIATE FAMILY, OR A CLOSE PERSONAL FRIEND EVER BEEN CHARGED WITH A CRIME? NO YES
IF SO, DESCRIBE THE CHARGE: DUI - 1987

3095

157

30. HAVE YOU, A MEMBER OF YOUR IMMEDIATE FAMILY, OR A CLOSE PERSONAL FRIEND EVER BEEN THE VICTIM OF A CRIME? No
IF SO, DESCRIBE THE CRIME: _____
31. WHAT CHURCH (NAME AND DENOMINATION) DO YOU ATTEND? 1ST. PRESBYTERIAN M.B.S.C.
32. WHAT SOCIAL, CIVIC, FRATERNAL, OR CHARITABLE CLUBS AND ORGANIZATIONS DO YOU BELONG TO? _____
33. TO WHAT GROUPS DO YOU DONATE YOUR MONEY OR YOUR TIME? CHURCH, SALVATION ARMY, UNITED WAY
34. WHAT TV OR RADIO SHOWS DO YOU WATCH OR LISTEN TO REGULARLY, AND WHAT NEWSPAPER DO YOU REGULARLY READ? NEWS, SIT-COM'S
SUN NEWS
35. TO WHAT MAGAZINES DO YOU SUBSCRIBE? BUILDER, READERS DIGEST
ARCHITECTURAL DIGEST, PROFESSIONAL BUILDER
36. PLEASE DESCRIBE THE BUMPER STICKERS YOU HAVE ON YOUR CAR:
PERMIT STICKER TO PAULETS PLANTATION

1/8/97
Date

Don E. Riegle
Juror's Signature

THE STATE OF SOUTH CAROLINA
In The Supreme Court

3094

ORDER

RE: DEATH PENALTY SENTENCING REPORT

IT IS ORDERED that the attached questionnaire is adopted for use by the trial judge in all cases in which the death penalty is imposed. This report must be submitted to the Supreme Court within ten (10) days after the receipt of the transcript by the Clerk of the trial court.

/s/ J. Woodrow Lewis C. J.

/s/ Bruce Littlejohn A. J.

/s/ J. B. Ness A. J.

/s/ Wm. L. Rhodes, Jr. A. J.

/s/ George T. Gregory, Jr. A. J.

Columbia, South Carolina

November 18, 1977.

RECEIVED
FEB 24 1978
S. C. SUPREME COURT

REPORT OF THE TRIAL JUDGE
OF THE
COURT OF GENERAL SESSIONS FOR Sumter COUNTY,
SOUTH CAROLINA*

3095

The State v. Bobby Wayne Stone

Docket No. 96-GS-43-0698

A. Data Concerning the Defendant**

1. Name Stone Bobby Wayne 2. Date of Birth 9 19 65
Last First Middle Mo. Day Yr.

3. Social Security Number ☒ 247 31 1905 ☐ Unknown

4. Sex: M ☒
F ☐

5. Race: W ☒
B ☐

Other
(Specify): _____

6. Education - Highest Grade Completed:

1 2 3 4 5 6 7 8 9 10 ☒ 12 13 14 15 16
(Circle One) (College)

7. Do you have an opinion as to the defendant's intelligence level?

Yes ☒ No ☐

If so, is it

a. Below Average ☒
b. Average ☐
c. Above Average ☐

8. Was a psychiatric evaluation performed? Yes ☒ No ☐

a. If performed,*** by whom? Drs. Harold Margen + John Dunlap
b. If performed, is defendant
(1) able to distinguish right from wrong? Yes ☒ No ☐
(2) able to cooperate intelligently in
his own defense? ☒ ☐
c. If performed, were character or behavior
disorders found? ☐ ☒
(If answer is yes please elaborate)

*Attach separate sheets where insufficient space provided for response.
**Separate report must be submitted for each defendant sentenced to death.
***If more than one evaluation was performed, attach a separate response for each evaluation.

9. Does the defendant have a record of prior convictions?

3098

Yes ☒ No ☐

- a. If so, either attach hereto a record manifesting such prior conviction(s) or list the offense(s), the date(s) of the offense(s) and the sentence(s) imposed:

Offense	Date of Offense	Sentence Imposed
1. <u>Record attached as Exhibit A</u>		
2. _____		
3. _____		
4. _____		
5. _____		
6. _____		

10. Was the defendant a resident or nonresident of the county in which trial was held?

Resident ☒ Nonresident ☐

B. Data Concerning Pre-Trial Matters

1. The defendant was arrested on February, 26, 1996.
2. Was a preliminary hearing requested? Yes ☒ No ☐
3. Was a preliminary hearing conducted? Yes ☒ No ☐
4. The defendant was indicted at the August 26, 1996
Term of the Court of General Sessions for
Sumter County, South Carolina.
5. List each charge alleged in the indictment.
 - a. Murder
 - b. Burglary - First Degree
 - c. ~~Unlawful Possession of a Weapon~~ Possession of Weapon
 - d. _____ During Commission of
 - e. _____ Violent Crime
 - f. _____

6. The defendant was arraigned on June 7, 1996.
 a. If not arraigned, did the defendant waive arraignment? 3097
 Yes ☐ No ☐
7. Was the defendant provided with a true copy of the whole indictment at least three days prior to his trial thereupon?
 Yes ☒ No ☐
- a. If not, did the defendant waive this right to a three-day sight of the indictment?
 Yes ☐ No ☐
8. Did the Solicitor notify the defendant at least thirty days before trial that the State would seek the imposition of the death penalty upon the defendant?
 Yes ☒ No ☐
9. Did the Solicitor make known to the defendant in writing prior to trial the evidence in aggravation of punishment thereafter introduced by the State during the trial or during the sentencing proceeding?
 Yes ☒ No ☐
10. Did the defendant move for a change of venue?
 Yes ☒ No ☐
- a. If so, was the venue changed?
 Yes ☒ No ☐
- (1) If so, designate the county Georgetown (jury selection only)

C. Data Concerning the Trial

1. The defendant was brought to trial in the Court of General Sessions for Sumter County, South Carolina, on January 23, 1997, during the January 20, 1997 Term of that Court.
2. How did the defendant plead? Guilty ☐
 Not Guilty ☒
3. List each offense of which the defendant was convicted and each offense of which the defendant was acquitted:
 a. The offense(s) of which the defendant was convicted:
 (1) Murder
 (2) Burglary - First Degree

(3) ~~XXXXXX XXXXXXXXXXXXXXXXXXXXXXX~~
(4) _____
(5) _____

509c

b. The offense(s) of which the defendant was acquitted:

(1) _____
(2) _____
(3) _____
(4) _____
(5) _____

4. On what date and at what time did the conviction(s) occur?

January 26, 1997, at
3:35 o'clock, P.m.

D. Data Relating to Sentencing Proceeding*

1. Before whom was the defendant's sentencing proceeding conducted?

the trial jury ☒ the trial judge ☐
a new jury ☐ a new trial judge ☐

a. If conducted before the trial jury,

(1) On what date and at what time was the sentencing proceeding held?

January 27, 1997, at
4:30 o'clock, P.m.

(a) If such proceeding was conducted less than twenty-four hours after the defendant's conviction, did the defendant waive the twenty-four hour waiting period?

Yes ☐ No ☐

b. If conducted before the trial judge or a new trial judge,

(1) And if the defendant was convicted by a jury,

(a) Did the defendant and the State waive having the trial jury recommend sentence?

Yes ☐ No ☐

*The term "sentencing proceeding" includes the term "resentencing proceeding".

"1" If not, was the sentencing proceeding conducted by the trial judge because the case, due to nonprejudicial error, had been remanded to the trial court for resentencing based upon the record and argument of counsel?

3095

Yes ☐ No ☐

(b) On what date and at what time was the sentencing proceeding held?

_____, 19____, at

_____ o'clock, _____.m.

"1" If such proceeding was conducted less than twenty-four hours after the defendant's conviction, did the defendant waive the twenty-four hour waiting period?

Yes ☐ No ☐

(2) And if the defendant was convicted upon a plea of guilty, on what date was the sentencing proceeding held?

_____, 19____.

c. If conducted before a new jury,

(1) On what date was the sentencing proceeding held?

_____, 19____.

(2) Was such proceeding conducted by the same judge who presided over the defendant's trial?

Yes ☐ No ☐

2. Which of the following statutory aggravating circumstances were instructed, if the sentencing proceeding was conducted before a jury, and which of those circumstances were found, irrespective of whether or not that proceeding was conducted before a jury or a trial judge?

	<u>Instructed</u>	<u>Found</u>
a. Murder was committed while in the commission of		
(1) Rape	☐	☐
(2) Assault with intent to ravish	☐	☐
(3) Kidnapping	☐	☐
(4) Burglary	☒	☒
(5) Robbery while armed with a deadly weapon	☐	☐
(6) Larceny with use of a deadly weapon	☐	☐
(7) Housebreaking	☐	☐
(8) Killing by poison	☐	☐
b. Murder was committed by a person with a prior record of conviction for murder.	☐	☐

	<u>Instructed</u>	<u>Found</u>
c. The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.	3100 []	[]
d. The offender committed the offense of murder for himself or another for the purpose of receiving money or any other thing of monetary value.	[]	[]
e. The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.	[]	[]
f. The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.	[]	[]
g. The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.	[✓]	[✓]
3. Was (were) the aggravating circumstance(s) found supported by the evidence?		
Yes [✓] No []		
4. Was there evidence of mitigating circumstances?		
Yes [✓] No []		
5. If so, which of the following mitigating circumstances was in evidence?		
a. The defendant has no significant history of prior criminal activity involving the use of violence against another person.		[✓]
b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.		[✓]
c. The victim was a participant in the defendant's conduct or consented to the act.		[]
d. The defendant was an accomplice in a murder committed by another person and his participation was relatively minor.		[]
e. The defendant acted under duress or under the domination of another person.		[]
f. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.		[]

g. The age or mentality of the defendant at the time of the crime(s).

3101

[]

h. The defendant was provoked by the victim into committing murder.

[]

i. The defendant was below the age of eighteen at the time of the crime(s).

[]

j. Other.

[]

Please explain if (j) is checked.

6. If tried with a jury, was the jury instructed to consider the circumstances in 5 as mitigating circumstances?

Yes [☒] No []

7. Was the jury provided in writing for its deliberation the statutory instructions as to aggravating and mitigating circumstances?

Yes [☒] No []

8. As trial judge, did you, prior to imposing the sentence of death upon the defendant, find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion or any other arbitrary factor?

Yes [☒] No []

E. Data Relating to Offense(s)

1. Was there evidence that the defendant, at the time the offense(s) was (were) committed, was

a. Under the influence of alcohol? Yes [☒] No []

b. Under the influence of narcotics or other dangerous drugs? Yes [☒] No []

2. Was (were) any weapon(s) used in the commission of the crime of murder?

Yes ☒ No ☐

3102

a. If so, check each weapon used

- (1) Poison ☐
(2) Pistol ☒
(3) Rifle ☐
(4) Shotgun ☐
(5) Blunt instrument
(Describe)

(6) ☐
Sharp instrument
(Describe)

(7) ☐
Motor vehicle ☐
(8) Other ☐
(Describe)

 ☐

3. Cause of death. gunshot wounds

4. County in which the body was found. Sumter

5. County in which the murder occurred if different from county in which the body was found.

1. Data Relating to Victim

1. What was the victim's age? 32

2. Was the victim related by blood or marriage to the defendant?

Yes ☐ No ☒

a. If so, what was the relationship?

3. Was the victim the same race as the defendant? Yes ☒ No ☐

4. Was the victim the same sex as the defendant? Yes ☒ No ☐

5. Was the victim physically harmed or tortured? Yes ☐ No ☒

If yes, state nature of harm or extent of torture:

None (other than gunshot wounds)

G. Data Concerning Defense Counsel

3103

1. Who was (were) the defendant's attorney(s) and what was (were) his (their) mailing address(es)?

	<u>Name</u>	<u>Mailing Address</u>
a.	<u>James H. Babb</u>	<u>640 Bultman Dr., Sumter, SC 29150</u>
b.	<u>Cameron B. Littlejohn, Jr.</u>	<u>1720 Main St., Suite 101</u>
c.		<u>Columbia, SC 29201</u>
d.		

2. Did the defendant retain his own counsel or did the court appoint defense counsel?

Retained by defendant ☐
 Appointed by court ☒

- a. Specify for each such counsel, the date retained or appointed, the number of years as a licensed attorney and the number of years of actual felony trial experience.

	<u>Name</u>	<u>Date retained or appointed</u>	<u>Years experience as attorney</u>	<u>Years felony trial experience</u>
(1)	<u>Littlejohn</u>	<u>7/19/96</u>	<u>22 yrs.</u>	<u>22 yrs.</u>
(2)	<u>Babb</u>	<u>2/27/96</u>	<u>12 yrs.</u>	<u>2 1/2 yrs.</u>
(3)				
(4)				

3. Identify by name each attorney who, at the time of his appointment, was employed by the Public Defender's Office.

James H. Babb

4. Did each counsel serve throughout the trial?

Yes ☒ No ☐

- a. If not, explain in detail.

H. General Considerations

3104

1. Was race raised by the defense as an issue in the trial?
Yes ☐ No ☒
2. Did race otherwise appear as an issue in the trial?
Yes ☐ No ☒
3. Were members of the defendant's race represented on the petit jury?
Yes ☒ No ☐
4. Were members of the defendant's race represented on the jury venire?
Yes ☒ No ☐
5. Was there any evidence that members of the defendant's race were systematically excluded from the jury?
Yes ☐ No ☒
6. Was the jury instructed to exclude race as an issue?
Yes ☐ No ☒
7. Was there extensive publicity in the community concerning this case?
Yes ☒ No ☐
8. Was the jury instructed to disregard such publicity?
Yes ☒ No ☐
9. Was the jury sequestered?
Yes ☒ No ☐
10. Was the jury instructed to avoid any influence of passion, prejudice or any other arbitrary factor when recommending sentence?
Yes ☒ No ☐
11. Your general comments concerning the appropriateness of the sentence imposed in this case.
The sentence was appropriate.

12. If the defendant is a female, is she currently pregnant?
Yes ☐ No ☐
a. If so, the anticipated delivery date is _____, 19____.
13. This report was submitted to the defendant's counsel for such comments as he (they) desired to make concerning the factual accuracy of the report and
 - a. His (their) comments are attached ☐
 - b. He (they) stated he (they) had no comments ☐
 - c. He has (they have) not responded ☐

1. Chronology of Case

3105

		<u>Elapsed Days</u>
1. Date of offense	<u>2/26/96</u>	_____
2. Date of arrest	<u>2/26/96</u>	_____
3. Date trial began	<u>1/20/97</u>	_____
4. Date sentence imposed	<u>1/28/97</u>	_____
5. Date post trial motions ruled or	<u>4/1/28/97</u>	_____
6. Date trial judge's report completed	<u>2/12/97</u>	_____
7. *Date received by Supreme Court	_____	_____
8. *Date sentence review completed	_____	_____
9. *Total elapsed days	_____	_____

*To be completed by Supreme Court

Q. Markley Dennis
 Judge, Court of General Sessions
Spartanburg County,
 South Carolina

2/12/97
 Date

3106

EXHIBIT A

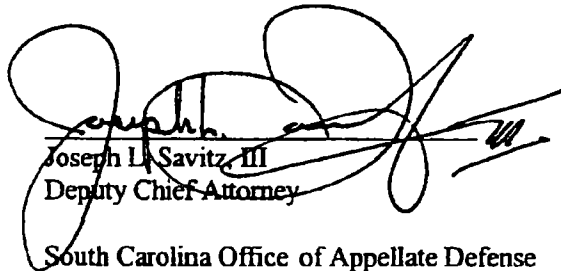
PRIOR CONVICTIONS OF BOBBY WAYNE STONE

<u>DATE OF OFFENSE</u>	<u>OFFENSE</u>	<u>SENTENCE IMPOSED</u>
7/24/85	Breaking/Entering Auto (2 cts.)	Sentence under Youthful Offend. Act Not to exceed 6 yrs.
7/24/85	Grand Larceny (5 cts.)	concurrent w/above
7/24/85	Housebreaking (2 cts.)	concurrent w/above
12/3/87	Burglary in the Second Degree	30 years suspended upon service of 20 yrs. followed by 5 yrs. probation.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 8th, 2002

A large, stylized handwritten signature in black ink, appearing to read 'Joseph L. Savitz, III', is written over the printed name and title.

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F0286

ORIGINAL

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

FINAL BRIEF OF APPELLANT

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S.C. SUPREME COURT

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STATEMENT OF ISSUES ON APPEAL

1. The judge erred by denying a directed verdict acquitting Stone of burglary, since there was no evidence he entered Griffith's dwelling as required by S.C. Code Section 16-11-311(A).

2. Since the burglary charge should not have been submitted to the jury, the judge further erred by instructing them that they could not find Stone guilty of involuntary manslaughter if they found him guilty of burglary.

3. The judge erred by refusing to allow a defense psychotherapist to testify at the guilt phase that Stone had a behavioral characteristic she described as an "exaggerated startle response" – that is, a heightened sensitivity to sudden and unexpected environmental stimuli – because this expert testimony corroborated Stone's statement to the police that the shooting was not murder but involuntary manslaughter.

4. The judge erred by excusing a juror during the sentencing phase at the solicitor's request, simply because she had been casually acquainted with Stone's aunt, who was testifying for the defense, some five or six years earlier.

5. The judge erred by refusing to charge the statutory mitigators provided by S.C. Code Section 16-3-20(C)(b)(6) and (7) where there was overwhelming evidence that Stone was intoxicated when he shot Sergeant Kubala.

6. The judge erred by instructing the jury at sentencing that "voluntary intoxication is not a defense to [a] criminal act," because this charge precluded the jury from considering and giving effect to the mitigating evidence that Stone was intoxicated at the time of the incident.

7. The judge erred by allowing the state to argue parole and future dangerousness but then refusing to instruct the jury that a life sentence for Stone in fact meant life without parole.

STATEMENT OF FACTS

On June 10, 1996, a Sumter County grand jury indicted Bobby Wayne Stone for murder (victim: Sergeant Charles Kubala), first degree burglary (victim: Ruth Griffith), and possession of a firearm during the commission of a violent crime. On June 21, the state announced its intention to seek the death penalty on the basis of two aggravating circumstances:

S.C. Code Section 16-3-20(C)(a)(7): The murder of a law enforcement officer, and

Section 16-3-20(C)(a)(1)(c): The murder was committed while in the commission of burglary.

The incident occurred the evening of February 26, 1996. The state's theory of the case was that Stone intentionally shot Kubala twice as the officer responded to a possible burglary in progress at Griffith's house. But after his arrest, Stone told the police that he had been drinking that day and had shot Kubala accidentally when he was startled by the officer while knocking on Griffith's door. It turned out that Stone had been a guest in Griffith's home on previous occasions.

By every account, Sumter County Sergeant Charles Kubala was an outstanding police officer. Pretrial publicity was enormous and emotions ran high in the Sumter area. A jury was selected in Georgetown County and transported to Sumter County for Stone's trial. Judge R. Markley Dennis presided at that trial, which was held the last week of January 1997. In addition to murder, he charged the jury on involuntary manslaughter, but they found Stone guilty as charged.

At sentencing, the judge submitted two statutory mitigating circumstances:

S.C. Code Section 16-3-20(C)(b)(1): The defendant has no

significant history of prior criminal conviction involving the use of violence against another person, and

Section 16-3-20(C)(b)(2): The murder was committed while the defendant was under the influence of mental or emotional disturbance.

The jury found both aggravating circumstances advanced by the state and the judge sentenced Stone to death, plus consecutive maximum sentences (that is, thirty-five years) for the remaining two offenses.

ARGUMENT

I.

The judge erred by denying a directed verdict acquitting Stone of burglary, since there was no evidence he entered Griffith's dwelling as required by S.C. Code Section 16-11-311(A).

Mary Ruth McLeod was visiting her mother, Ruth Griffith, the evening of February 26, 1996, when they heard a knock at the backdoor. ROA p. 197, lines 1-3. McLeod was on the phone, so Griffith got up to see who it was. ROA p. 194, lines 11-18. Moments later, she ran back into the living room, apparently "scared out of her wits," and exclaimed, "It's him, it's him!" – referring to Bobby Wayne Stone – "I don't want him here! I don't want him in here!" ROA p. 195, lines 3-11; ROA p. 197, line 11 – p. 198, line 7.

The nature of the prior relationship between Stone and Griffith was the subject of some dispute at trial. Everyone agreed that Stone had dated Griffith's deceased husband's niece, Michelle Lynch, at one time and that the couple had visited Griffith at her home on occasion while Lynch was living there. ROA p. 213, line 8 – p. 214, line 23; ROA p. 222, lines 17-24; ROA p. 228, lines 16-22. Griffith admitted that Stone had fixed her driveway and that he and Lynch had once smoked marijuana in her house while she drank beer. ROA p. 252, lines 2-9; ROA p. 259, line 20 – p. 261, line 19. But Griffith denied any more extensive social relationship. ROA p. 228, lines 9-15; ROA p. 250, lines 6-17. At trial, she claimed that she was afraid of Stone. ROA p. 230, lines 5-7. (Apparently, Griffith had turned him in 1995 for violating probation. ROA p. 226, line 25 – p. 227, line 3.) However, Mary Griffith Wilson, Ruth Griffith's sister-in-law and Lynch's mother, testified that Griffith had partied with Lynch and Stone on a regular basis. ROA p. 750, line 4 – p. 751,

line 3. Lynch corroborated her mother's testimony and added that Stone and Griffith would occasionally sit in Griffith's living room drinking beer and talking. ROA p. 759, line 21 – p. 763, line 11. In his statement to the police, Stone said he and Griffith were "old drinking buddies. We have gone out and got drunk together a few times." ROA p. 692, lines 9–11.

McLeod hung up the telephone and went outside to confront Stone as he walked across the yard toward the woods behind the house. ROA p. 198, lines 7–12. She asked Stone what he was doing and he said he was "going home." ROA p. 198, lines 12–25. She told him "that we had had trouble with him before at my mother's house and that my mother didn't live alone anymore; that I would be there and he wasn't coming back up there no more because I'd have him locked up." ROA p. 200, lines 17–22. Stone walked into the woods and, after a minute, McLeod followed. ROA p. 199, lines 1–8; ROA p. 201, line 13 – p. 202, line 2. "[H]e was standing there holding the gun across his arms like a hunter carried a gun when they walked through the woods... I told him he better get on to where he was going because I was going in to call the police," she testified. ROA p. 199, lines 9–13; ROA p. 203, lines 2–6. McLeod returned to her mother's house and called the police. ROA p. 196, lines 16–19; ROA p. 203, lines 7–14.

The 911 call came in at 5:39 p.m. and Sergeant Charles Kubala was dispatched to the Griffith residence. ROA p. 149, line 19 – p. 150, line 12. He arrived at 6:06, spoke with McLeod and Griffith and looked around, but apparently Stone had already left, so Kubala departed at 6:26. ROA p. 153, line 19 – p. 155, line 17; ROA p. 203, line 15 – p. 204, line 8. McLeod left shortly to pick up her daughter but could not persuade Griffith to accompany her. ROA. p. 204, line 16 – p. 205, line 1.

Griffith testified that, not long after Sergeant Kubala and her daughter left, Stone returned and fired a gun in her backyard. ROA p. 233, lines 7–16. She called her neighbor, Landrow Taylor. ROA p. 233, lines 17–21. He had also heard gunshots. ROA p. 280, lines 5 and 6. Taylor noticed that it was 6:47 when Griffith called. ROA p. 279, lines 19 and 20. He crossed the street to her house and used her phone to call 911 at 6:55. ROA p. 155, line 22 – p. 156, line 23; ROA p. 233, line 24 – p. 234, line 2; ROA p. 280, lines 21–23. According to Griffith and Taylor, Stone attempted to break into Griffith's car. ROA p. 234, lines 16–18; ROA p. 280, line 24 – p. 281, line 2. (This allegation appears to be more of an assumption than an observed fact. See ROA p. 234, lines 10–15; ROA p. 290, line 19 – p. 291, line 21; ROA p. 456, lines 4–9.) Stone opened the screen door, came up on the back porch and, according to Taylor, tried to "beat... the door down." ROA p. 235, line 9 – p. 236, line 6; ROA p. 281, lines 8–18. He was armed with a shotgun and a semi-automatic pistol. ROA p. 658, line 22 – p. 659, line 2; ROA p. 663, lines 1–14. (According to Stone's statement, he had bought the guns and ammunition for them that day for \$100 and spent the afternoon in the woods "shooting birds and things" and drinking beer. ROA p. 691, line 7 – p. 692, line 4. In fact, five beer cans with bullet holes in them were found in the woods behind Griffith's house, along with a shell casing from Stone's pistol. ROA p. 587, line 19 – p. 588, line 2; RO p. 662, lines 17–25.) Taylor placed another call to the police at 7:02. ROA p. 156, line 19 – p. 158, line 11; ROA p. 280, line 24 – p. 281, line 4. Sergeant Kubala returned to the Griffith residence at 7:07. ROA p. 159, lines 3–19.

The following facts are crucial to the determination of this directed verdict motion – that is, whether the state introduced any evidence of entry as required by S.C. Code Section 16–11–311(A). As Stone pounded on the door, Taylor asked "what he was trying to do

back there." ROA p. 281, lines 23 and 24. The main door separating Stone from the interior of the house was a typical wooden door with six glass windowpanes. ROA p. 236, lines 10–15; ROA p. 254, lines 13–18. Sometime previously, Griffith had broken out the lower right-hand corner pane after she locked her keys in the house. ROA p. 236, lines 18–23; ROA p. 254, lines 19–25. She later nailed a thin board loosely over the opening. ROA p. 236, line 24 – p. 237, line 7; ROA p. 255, lines 1–18. After the incident, Griffith noticed that this board had been knocked loose and was hanging by a nail. ROA p. 237, lines 19–24. Defense counsel's cross-examination of Ruth Griffith went directly to the heart of the matter:

Q. [T]he knocking continued. But, as I understand your testimony, nobody ever came in that door. That door was never open.

A. No, it wasn't. But he would have if Sergeant Kubala hadn't come...

Q. [N]obody ever reached inside and turned the knob and opened that door?

A. No, sir.

ROA p. 270, line 14 – p. 271, line 13. Griffith never testified that Stone entered the interior of her house. See ROA p. 237, line 25 – p. 238, line 4. In his statement, Stone said, "I started beating on the door that leads to the house. The door broke." ROA p. 693, lines 1–4. There were no other signs of attempted entry. ROA p. 436, lines 2–10.

Sergeant Kubala confronted Stone at this moment. Griffith and Taylor heard Kubala shout "Hold it!" or "Halt!" and then there were several gunshots. ROA p. 241, lines 12–19; ROA p. 284, lines 7–15. The shots were so rapid Taylor thought both men were firing

simultaneously. ROA p. 284, lines 15-19. (But fellow officers testified that Kubala's gun had not been fired. ROA p. 338, lines 10-22; ROA p. 354, line 22 – p. 355, line 24.)

Stone had fired three rounds from his semi-automatic pistol through the screen door. ROA p. 386, line 10 – p. 387, line 13; ROA p. 393, line 21 – p. 394, line 1; ROA p. 494, line 4 – p. 495, line 16. Two of the three struck Kubala and either would have been fatal. ROA p. 307, lines 7-10. One entered the right ear and struck the skull, where it disintegrated. ROA p. 307, line 11 – p. 308, line 3. The other entered the base of the neck and entered the chest, where it passed through the left lung and blood vessels leading away from the heart. ROA p. 308, line 6 – p. 309, line 8.

Stone fled into the woods, leaving his shotgun on the porch. ROA p. 334, lines 18-22. Senior Deputy John Prince arrived moments after the shooting. ROA p. 285, lines 4-7; ROA p. 320, lines 4-9. He found Kubala lying on his back. ROA p. 323, lines 11 and 12. Prince observed that Kubala's walkie-talkie was "right off the fingertips of his left hand. His gun was right off the fingertips of his right hand, and his flashlight was parallel with his arm, in between his arm and his chest." ROA p. 322, line 18 – p. 323, line 10. Prince called for an ambulance at 7:09. ROA p. 164, lines 8-16; ROA p. 324, line 23 – p. 325, line 2. He was trying to administer first aid when he thought he heard a noise in the woods. ROA p. 323, line 18 – p. 324, line 6. Prince shined his flashlight in that direction and shortly after that heard a gunshot, so he took cover, not sure if he was being shot at. ROA p. 324, lines 7-22.

Soon, the area was swarming with police officers and emergency medical personnel. ROA p. 351, line 4 – p. 352, line 15; ROA p. 353, line 16 – p. 354, line 17. Sergeant Kubala's body was removed by ambulance at 7:35. ROA p. 369, line 15 – p. 370, line 23.

Griffith told the police that the man they were looking for was Bobby Wayne Stone. ROA p. 352, line 16 – p. 353, line 2.

The search for Stone focused on the woods behind Ruth Griffith's house and involved bloodhounds and a helicopter equipped with a heat sensor. ROA p. 504, lines 9–24; ROA p. 515, lines 7–18. At approximately 11:00, after searching for a couple of hours, the police found Stone lying in the woods between two fallen trees and placed him under arrest. ROA p. 505, line 14 – p. 506, line 5; ROA p. 517, line 19 – p. 521, line 24.

Stone was transported to police headquarters, where he was interrogated by a SLED agent and a county investigator, beginning around 2:00 the morning of February 27. ROA p. 679, line 4 – p. 680, line 9. Over the next two hours, Stone consistently maintained that he had been drinking that day (a 12-pack consumed between 1:00 and 7:00) and that he had shot Sergeant Kubala accidentally when he was startled by the officer while knocking on Ruth Griffith's door. ROA p. 683, lines 1–21; ROA p. 689, line 10 – p. 695, line 17; ROA p. 724, line 2 – p. 725, line 22. He had not known that the man who shouted at him was a police officer. ROA p. 695, lines 18–23. "I know nobody will believe this story," Stone predicted, "but it's true." ROA p. 702, lines 13–18.

That, in a nutshell, was the state's case. Defense counsel moved for a directed verdict on all three charges both then and at the conclusion of the case for the defense. ROA p. 736, lines 3–22; ROA p. 781, lines 19–21. The judge denied both motions. ROA p. 736, line 23 – p. 738, line 13; ROA p. 781, lines 22–24.

First degree burglary requires (among other things) the entry of a dwelling. S.C. Code Section 16–11–311(A). While the statute does not define the term "entry," it is clear that something more than mere contact with the exterior of a dwelling is required. See State

v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). The common law required at least slight physical penetration of the structure:

Entry is an indispensable element in the crime of burglary... Literally, entry is the act of going into the place after a breach has been affected, but the word has a broader significance in the law of burglary, for it is not confined to the intrusion of the whole body, but may consist of the insertion of any part for the purpose of committing a felony. An entry is accomplished by putting through the place broken the hand, the foot, or any instrument with which it is intended to commit a felony... The least entry of any part of the body is sufficient, as the entry of the hand or a finger only.

State v. Chappell, 185 S.C. 111, 193 S.E. 924 (1937) (citations omitted). In Chappell, the defendant stuck his hand through a hole in a window screen.

When reviewing the denial of a directed verdict motion, the Supreme Court views the evidence in the light most favorable to the state. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). Where there is no direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which his guilt might be fairly and logically deduced, the Court must direct a verdict of acquittal. State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000).

In this case, the state introduced no direct or circumstantial evidence that Stone entered the Griffith dwelling. The issue is one of objective fact, not intent. While the state showed that Stone had beaten on the door and knocked loose a board Griffith had placed over a broken windowpane, there was no evidence that any part of his body ever entered the dwelling. In fact, Ruth Griffith was quite certain that Sergeant Kubala's arrival had prevented Stone from entering her residence.

Since the state did not prove entry, the judge should have directed a verdict acquitting Stone of burglary. The Supreme Court should reverse that conviction and direct a verdict for the same reason. But, as shown next, the judge's error also means that the murder conviction must be reversed.

II.

Since the burglary charge should not have been submitted to the jury, the judge further erred by instructing them that they could not find Stone guilty of involuntary manslaughter if they found him guilty of burglary.

Although Bobby Wayne Stone did not testify at his trial, the state introduced the statement he had given the police the night of the incident. In it, Stone consistently maintained that he had shot Sergeant Kubala accidentally when the officer startled him while he was knocking on Ruth Griffith's door. ROA p. 683, lines 15–21; ROA p. 689, line 10 – p. 697, line 25; ROA p. 724, line 2 – p. 725, line 22. Defense counsel requested and received a charge on involuntary manslaughter. ROA p. 788, lines 19–24; ROA p. 891, line 12 – p. 893, line 20. Counsel objected to the judge's decision to instruct the jury, "[I]f it's your decision that he is guilty of burglary, then you may not consider the lesser-included offense of involuntary manslaughter." ROA p. 799, line 9 – p. 800, line 14.

The defense argued to the jury that Stone was guilty of involuntary manslaughter. ROA p. 867, lines 14–16. The judge instructed them that they could not find Stone guilty of involuntary manslaughter if they found him guilty of burglary. ROA p. 899, lines 13–22. Defense counsel objected that this charge effectively precluded the jury from considering involuntary manslaughter, thereby denying Stone due process. ROA p. 904, line 24 – p. 907, line 2. The judge overruled this exception. ROA p. 907, line 11 – p. 908, line 20.

In Beck v. Alabama, 447 U.S. 625 (1980), the Supreme Court held that a death sentence could not be predicated on a murder conviction if the jury was not permitted to consider a lesser-included offense which the evidence would have supported. As a matter of state law, an instruction which effectively prevents the jury from considering a lesser-

included offense entitles the defendant to a new trial. State v. Pilgrim, 320 S.C. 409, 465 S.E.2d 108 (Ct. App. 1996); State v. Hilton, 284 S.C. 245, 325 S.E.2d 575 (Ct. App. 1985).

Involuntary manslaughter is: (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm, or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Chatman, 336 S.C. 149, 519 S.E.2d 100 (1999). The unlawful possession of a firearm does not preclude involuntary manslaughter. State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994). In addition, the negligent handling of a loaded gun will support a finding of involuntary manslaughter. State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999).

The following passage from Stone's statement is representative:

Q. When you fired the gun on the porch, what were you shooting at?

A. I just turned from the house door and the gun went off on the porch and I ran.

ROA p. 695, lines 15–17. Such evidence has consistently supported an instruction on involuntary manslaughter. See, for example, State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000), State v. Burriss, State v. Goodson, and State v. White, 253 S.C. 475, 171 S.E.2d 712 (1969).

Stone's statement to the police supported the judge's instruction on involuntary manslaughter. Stone did not say that the shooting was intentional, which distinguishes cases such as State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996), State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994), and State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976). In addition, he stated that he was knocking on Griffith's door not to burglarize the place but to

pay her a visit, which distinguishes such cases as State v. Avery, 333 S.C. 284, 509 S.E.2d 476 (1998), and State v. Young, 319 S.C. 33, 459 S.E.2d 84 (1995), where there was no evidence the defendants were acting lawfully at the time they claimed their guns discharged unintentionally.

Although there was evidence of involuntary manslaughter but none of burglary, the judge's instruction on the functional relationship between the two precluded the jury from even considering involuntary manslaughter. As a result, the Supreme Court should reverse the murder conviction and remand for a new trial.

III.

The judge erred by refusing to allow a defense psychotherapist to testify at the guilt phase that Stone had a behavioral characteristic she described as an "exaggerated startle response" — that is, a heightened sensitivity to sudden and unexpected environmental stimuli — because this expert testimony corroborated Stone's statement to the police that the shooting was not murder but involuntary manslaughter.

At the guilt phase, the defense proffered the testimony of TeAnne Oehler, a psychotherapist who had interviewed Stone and his family and investigated his background. ROA p. 1150, line 22 – p. 1151, line 2. She determined that Stone was of "low intelligence." ROA p. 1137, line 10. His upbringing had been violent and abusive. ROA p. 1126, line 3 – p. 1127, line 25; ROA p. 1136, lines 6 and 7. In response, Stone drank alcohol and took drugs. ROA p. 772, lines 17–21; ROA p. 1128, line 10 – p. 1129, line 19. Oehler concluded that these factors had combined to produce a behavioral characteristic she described as an "exaggerated startle response." ROA p. 772, lines 10–21. This condition is characterized by "an increased arousal to stimuli in the environment that he's in, so that he would have [a] reactive physiological response, so that he might jump suddenly or move suddenly when he hears a noise or when he sees a sudden movement or when he might touch something that is not something that's normally in his environment." ROA p. 772, line 22 – p. 773, line 7; ROA p. 1149, line 20 – p. 1150, line 17. It is essentially a conditioned defense mechanism. ROA p. 773, lines 13–22.

The solicitor objected to the relevance of this testimony at the guilt phase. ROA p. 774, lines 16–22. Defense counsel responded, "[I]t's important for the jury to understand why Bobby Stone may have reacted in the manner in which he did on the night of February

26th." ROA p. 775, lines 9–13. The judge felt that the expert's testimony was simply the defense of voluntary intoxication by another name and therefore inadmissible. ROA p. 775, line 14 – p. 776, line 22. (Ms. Oehler did ultimately testify to her conclusions at sentencing.)

Again, the state introduced Stone's statement to the police that he had been drinking and shot Sergeant Kubala accidentally when the officer suddenly startled him. The judge instructed the jury on involuntary manslaughter based on this evidence of the negligent handling of a firearm.

Evidence Rule 702 governs the admissibility of expert testimony:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

In his excellent treatise, South Carolina Evidence (2nd Ed.), Danny R. Collins explains:

The rule allowing opinions by expert witnesses is based on need and reliability. Some matters are beyond the common knowledge of lay witnesses and the jury, and an opinion by an expert in the field is necessary for the jury to make an intelligent decision in interpreting the evidence. State v. Myers, 301 S.C. 251, 391 S.E.2d 551 (1990). Even when the matter appears to be one of common knowledge, it may involve aspects that make expert testimony desirable. See Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992) (battered woman syndrome); State v. Whaley, 305 S.C. 138, 406 S.E.2d 369 (1991) (reliability of eyewitness testimony).

Scientific evidence is admissible under Rule 702 where: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect. State v. Jones, Opinion No. 25242,

decided January 24, 2001; State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). In the past, the Supreme Court has readily recognized the relevance and admissibility of expert testimony illuminating some aspect of the behavioral sciences. See, for example, State v. Whaley, 305 S.C. 138, 406 S.E.2d 369 (1991); State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991); and State v. Hill, 287 S.C. 398, 339 S.E.2d 121 (1986). Such evidence is admissible on the specific issue of volition. See State v. Lopez, 306 S.C. 362, 412 S.E.2d 390 (1991).

Ms. Oehler's testimony was clearly satisfied the criteria of Evidence Rule 702 and State v. Jones. It would have corroborated Stone's account of the shooting (that it was involuntary manslaughter) by providing the jury with a plausible physiological basis for his behavior at that time.

The Supreme Court should reverse the murder conviction and remand for a new trial.

IV.

The judge erred by excusing a juror during the sentencing phase at the solicitor's request, simply because she had been casually acquainted with Stone's aunt, who was testifying for the defense, some five or six years earlier.

The first juror seated in this case was Clydie Thompson, a 49 year-old mother of three. ROA p. 2087, lines 3-10; ROA p. 3086 (juror information card). She was employed as an assistant food-service manager by the Georgetown Board of Education and her husband, Harry, worked for International Paper. ROA p. 3087 (juror information card). The foreman of the jury was Dan Riegle, a 56 year-old father of two. ROA p. 3090 (juror information card). He was self-employed as a building contractor and his wife, Jill, was a real estate lawyer in a prominent Myrtle Beach firm. ROA p. 3091 (juror information card).

At the start of voir dire, Stone's aunt, Bernice Perry, and psychotherapist TeAnne Oehler were announced as potential defense witnesses. ROA1335 p. 69, line 8 – p. 1336, line 5. Riegle informed the judge that Oehler was "a neighbor of mine when I lived in Horry County" but stated that their relationship would not influence his duties as a juror. Voir Dire ROA p. 1337, lines 6-20. During his individual voir dire, Riegle explained:

TeAnne was a neighbor that lived up the street maybe 7 or 8 houses away from where Jill and I lived, and we were invited to her house on a couple of occasions. One was a Christmas party. One was an open house when she first moved there – big get-together, housewarming party – so we're friends socially in that.

ROA p. 1759, lines 14-23. He reiterated that their friendship would not affect his ability to be impartial. ROA p. 1759, line 24 – p. 1760, line 2. The solicitor exhausted all five

peremptory challenges allotted the state by S.C. Code Section 14-7-1110 while picking the jury. ROA p. 2097, lines 18 and 19. He did not strike Riegle.

When the defense called Bernice Perry to testify at sentencing, Thompson recognized her and alerted the judge. ROA p. 1069, line 17 – p. 1070, line 3; ROA p. 1073, lines 6–8. He questioned Thompson in chambers, asking the same questions he had previously asked Riegle and receiving the same answers. ROA p. 1072, lines 10–15. He then reported the results for the record:

In essence, Mrs. Thompson lived about 5 or 6 years ago on the same street as this individual. They knew each other casually, only to speak to her. She said, "I knew that she lived there." She said she was never in her home; never had occasion to talk with her; doesn't know anything about her family or family background.

ROA p. 1072, lines 4–10. When asked if she could be fair and impartial despite her slight prior acquaintance with Perry, Thompson responded "unequivocally and without hesitation that she could." ROA p. 1072, lines 16–22.

The judge found no cause to remove Thompson from the jury. ROA p. 1073, lines 1–6. Nevertheless – and despite the fact that the state had exhausted its peremptories – the solicitor asked the judge to excuse Thompson from the jury "even though it's a casual connection," because "the fact that they were neighbors, that really puts somebody on the spot to sentence that neighbor's child (sic) to the electric chair." ROA p. 1073, line 9 – p. 1074, line 2. Defense counsel reminded the judge that Thompson did not even know Perry's name and pointed out that there was no reason to question her impartiality. ROA p. 1074, lines 3–12. Although the judge agreed with defense counsel, he nevertheless removed Thompson from the jury and seated a male alternate, giving this reason:

The state said had they known the information, they would have – may have – exercised one of the peremptory challenges and excused the juror from participating in this matter. That being the basis of previous court decisions for knowledge learned after the jury has been impaneled... [which] resulted in a case being reversed and remanded for retrial, the court will excuse this juror from further participation in this matter and place the next alternate on the jury panel.

ROA p. 1074, lines 13–23. The judge was apparently relying on State v. Gullledge, 277 S.C. 368, 287 S.E.2d 488 (1982). Defense counsel objected unsuccessfully. ROA p. 1074, lines 24 and 25.

In short, the judge granted the state an additional peremptory challenge halfway through sentencing. Also, as will be shown, the reason advanced by the solicitor for removing Thompson from the jury was actually gender-based and demonstrably pretextual.

As noted, S.C. Code Section 14–7–1110 gives the state five peremptory challenges in a murder case. Section 14–7–1030 states, "All objections to jurors called to try prosecutions... if not made before the juror is impaneled for or charged with the trial of the prosecution... is waived, and if made thereafter is of no effect."

While there is some conflict of authority as to the grounds justifying the rejection of a juror after he is sworn, the weight of authority is that the court cannot reject a juror after he is accepted and sworn against the objection of one of the parties in the absence of any good cause for his exclusion, or for a mere ground of challenge which the parties might waive, and which, if waived, would in no way affect the juror's competency in the particular case. However, the court may exclude a juror who could not render a lawful verdict or who the law expressly says shall not be permitted to serve; and the court may discharge a juror for any ground rendering him manifestly disqualified or incompetent which is discovered after he is sworn, although previously existing, or generally whenever from any cause such a necessity exists as to make it appear that the ends of justice would otherwise be defeated..

50 CJS Juries Section 249(b).

In State v. Gulledge, a juror intentionally failed to disclose that she was related by marriage to a deputy sheriff involved in the defendant's case. Under those circumstances, the Supreme Court granted a new trial, stating, "Absent any justification for the juror's failure to disclose her relationship to the deputy sheriff when asked on voir dire, the trial judge abused his discretion in denying appellant's motion for mistrial when the relationship was discovered." 287 S.E.2d at 490. However, Gulledge did not establish a per se rule:

[The removal of a seated juror] is required only when the Court finds the [intentionally] concealed information would have supported a challenge for cause or would have been a material factor in the use of party's peremptory challenges. The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred.

Thompson v. O'Rourke, 288 S.C. 13, 339 S.E.2d 505, 506 (1986). The threshold question is whether the juror has intentionally concealed information during voir dire. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998).

Here, the judge concluded that Thompson had not intentionally concealed her casual acquaintance with Stone's aunt five or six years previously. The record supports that finding, as Thompson did not even know Perry's name and recognized her only when she was called as a witness. In any case, this information would not have supported a challenge for cause nor would it have been a material factor in the state's use of its peremptory challenges. This is plainly demonstrated by the state's decision to seat Riegle, even though he was a personal friend of the defense psychotherapist, TeAnne Oehler. The Fourteenth Amendment forbids peremptory challenges on the basis of gender. J.E.B. v. Alabama ex

rel. T.B., 511 U.S. 127 (1994). Pretext is generally established by showing disparate treatment of similarly-situated jurors. See State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996).

In conclusion, the judge granted the state an extra strike midway through the sentencing phase simply because the solicitor wished to remove an unquestionably impartial and diligent female juror. The solicitor's stated reason for removing Clydie Thompson from Stone's jury was transparently pretextual. In fact, no cause whatsoever was shown justifying her removal from the jury. Compare State v. Kelly and State v. Ivey, 331 S.C. 118, 502 S.E.2d 92 (1998).

The Supreme Court should reverse the death sentence and remand for resentencing.

The judge erred by refusing to charge the statutory mitigators provided by S.C. Code Section 16-3-20(C)(b)(6) and (7) where there was overwhelming evidence that Stone was intoxicated when he shot Sergeant Kubala.

The evening Mary Ruth McLeod confronted Stone outside her mother's house, she noticed that "he had a can in his hands, looked like a beer can. I thought maybe he had been drinking..." ROA p. 198, lines 22-25. "His eyes looked kind of glazed out," she testified, and he wobbled when he walked. ROA p. 205, lines 6-14; ROA p. 216, lines 1-8. Ruth Griffith testified that Stone was "staggering" and looked like he was "hyped-up on something." ROA p. 262, line 24 - p. 263, line 8.

When the police arrested Stone approximately four hours after the shooting, they detected a strong odor of alcohol. ROA p. 553, lines 3-10. The officers who interrogated Stone some three hours later also smelled alcohol "like beer," though he appeared to have sobered up somewhat by that time. ROA p. 731, lines 3-10. In his statement, Stone told the police that he had consumed a twelve-pack of Budweiser on an empty stomach in the six hours leading up to the shooting. ROA p. 691, lines 12-16; ROA p. 693, line 18 - p. 694, line 6. Five empty Budweiser cans with bullet holes in them were found in the woods behind Griffith's house, along with the shell casing from Stone's pistol. ROA p. 587, line 19 - p. 588, line 2; ROA p. 662, lines 17-25. (In his final report, the judge also found that Stone was intoxicated at the time of the incident. ROA p. 3094 (judge's final report).)

Based on this evidence that Stone was intoxicated when he shot Sergeant Kubala, defense counsel requested the three statutory mitigators provided by S.C. Code Section 16-3-20(C)(b)(2), (6) and (7):

- (2) The murder was committed while the defendant was under the influence of mental or emotional disturbance;
- (6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired; and
- (7) The age or mentality of the defendant at the time of the crime.

ROA p. 1194, line 15 – p. 1196, line 16. The judge agreed to charge (2) but refused (6) and (7) because he believed that a capital defendant could not raise voluntary intoxication in mitigation of punishment. ROA p. 1196, line 17 – p. 1197, line 11; ROA p. 1249, lines 2–10. Defense counsel objected to the omission of those two statutory mitigators. ROA p. 1254, lines 10–12. The judge also told the jury that they should determine "whether the defendant has introduced any evidence as to the existence of any statutory mitigating circumstances." ROA p. 1247, line 21 – p. 1248, line 3 (emphasis added). Finally, the judge reminded the jury "of the instruction that I gave you during the first phase that says voluntary intoxication is not a defense to [a] criminal act..." ROA p. 1256, line 24 – p. 1257, line 4. (This particular charge is a separate error dealt with next.)

The basis of the judge's ruling is incorrect. "Evidence of voluntary intoxication is a proper matter for consideration by the jury in mitigation of punishment." State v. Pierce, 289 S.C. 430, 346 S.E.2d 707, 710–11 (1986). (It is also mitigating under the Eighth and Fourteenth Amendments, a point which is discussed next in connection with the voluntary intoxication charge itself.)

Since State v. Pierce, the Supreme Court has consistently held that statutory mitigators (2), (6) and (7) must be submitted to the jury when there is evidence of voluntary

intoxication. See, also, State v. Plemmons, 296 S.C. 76, 370 S.E.2d 871 (1988), and State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987).

Here, there was overwhelming – and undisputed – evidence that Stone was intoxicated at the time of the incident. Compare State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987). Accordingly, the judge erred by refusing to charge mitigators (6) and (7) along with (2). He compounded the error by instructing the jury that they should determine "whether the defendant has introduced any evidence" of the statutory mitigators and that "voluntary intoxication is not a defense." In fact, a capital defendant has no burden of proof as to statutory mitigation (see State v. Bellamy), and here the state introduced the evidence that Stone was intoxicated.

The Supreme Court should reverse the death sentence and remand for resentencing.

VI.

The judge erred by instructing the jury at sentencing that "voluntary intoxication is not a defense to [a] criminal act," because this charge precluded the jury from considering and giving effect to the mitigating evidence that Stone was intoxicated at the time of the incident.

By this point, it should be clear that Stone was intoxicated when he shot Sergeant Kubala. He had consumed a twelve-pack of beer in the hours leading up to the incident. Eyewitnesses described him as glassy-eyed and unsteady. The officers who arrested Stone, as well as those who later interrogated him, smelled alcohol. Finally, the judge himself concluded that Stone had been intoxicated.

At the guilt phase, the judge instructed the jury that "voluntary intoxication, where it has not produced a permanent insanity, is never an excuse for or a defense to a crime or criminal act, regardless of whether the intent involved be general or specific." ROA p. 896, lines 19-23. He believed that this principle also applied to sentencing as well. For that reason, as previously shown, he refused to charge the statutory mitigators provided by S.C. Code Section 16-3-20(C)(b)(6) and (7), thereby violating state law. But the judge then informed defense counsel that he also intended to reinstruct the jury that "voluntary intoxication is never a defense." ROA p. 1255, lines 12-16. Counsel objected unsuccessfully. ROA p. 1256, lines 1 and 2. The judge concluded his sentencing phase instructions by telling the jury that "voluntary intoxication is not a defense to [a] criminal act..." ROA p. 1256, line 24 - p. 1257, line 4. Defense counsel renewed his objection without result. ROA p. 1257, lines 16-20.

This particular error violates fundamental Eighth Amendment law. In Lockett v. Ohio, 438 U.S. 586, 604 (1978), a plurality of the Supreme Court held that the Eighth and Fourteenth Amendments require that the sentencer "not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." See, also, Eddings v. Oklahoma, 455 U.S. 104 (1982).

Moreover, ... it is not enough simply to allow the defendant to present mitigating evidence to sentencer. The sentencer must also be able to consider and give effect to that evidence in imposing sentence.

Penry v. Lynaugh, 492 U.S. 302, 319 (1989); see, also, Hitchcock v. Dugger, 481 U.S. 393 (1987). Mitigating evidence encompasses a broader range of circumstances than simply those "which would tend to support a legal excuse from criminal liability" and includes voluntary intoxication. Eddings, at 113; State v. Pierce, 289 S.C. 430, 346 S.E.2d 707 (1986).

The judge's instruction on voluntary intoxication at sentencing expressly precluded the jury from giving effect to the undisputed and overwhelming evidence that Stone was intoxicated at the moment he shot Sergeant Kubala. This interdiction of relevant mitigating evidence violated the Eighth and Fourteenth Amendments.

The Supreme Court should reverse the death sentence and remand for resentencing.

VII.

The judge erred by allowing the state to argue parole and future dangerousness but then refusing to instruct the jury that a life sentence for Stone in fact meant life without parole.

The state's case at sentencing consisted of two main components: (1) victim impact and (2) parole and future dangerousness. The solicitor introduced Stone's prior record, which consisted of property crimes committed in 1985 and 1987, including two counts of burglary. ROA p. 952, line 11 – p. 959, line 6. He pointed out that Stone had served "a little over five years" on the thirty-year sentence he received for those burglaries before being paroled in June 1993. ROA p. 966, line 5 – p. 969, line 12. Defense counsel objected to "the state trying to bring in prejudicial matters that really shouldn't be before the jury." ROA p. 971, lines 10–15. The judge overruled the objection. ROA p. 971, lines 22–24.

The state then emphasized that Stone was on parole when he killed Sergeant Kubala. ROA p. 975, lines 12–25. The solicitor also asked a forensic psychiatrist testifying for the defense if he had considered "whether or not [Stone] had committed any offenses against persons since his parole... if he's committed offenses against persons on the outside." ROA p. 1065, line 21 – p. 1066, line 9.

In his closing argument, the solicitor stated that Stone would continue to be "a problem in the future" if not sentenced to death, a danger both within the prison system and, when paroled, to society in general. ROA p. 1203, line 22 – p. 1204, line 1. His argument was saturated with references to the possibility of Stone's early release and the certainty of his future dangerousness. The following passages are representative:

[T]hroughout his life, he has been a problem. He has not

been willing to obey the laws of society.

ROA p. 1205, lines 23–25.

[T]hroughout his life, he's basically manipulated the system... People have tried to correct him and he wouldn't be corrected. [H]e was out on parole... Did he take advantage of that and doing any straightening out? This guy who is now asking you to give him a life sentence? Did he take advantage of mercy? No.

ROA p. 1206, line 10 – p. 1207, line 10.

He is not going to follow the rules. He hasn't done it in the past. He's not going to do it in the future.

ROA p. 1209, lines 2–4.

[Y]ou see how he went through the system, and how the system tried to give him a break every step along the way. And he manipulated the system... [a]nd look where we are now... He was on parole.

ROA p. 1212, line 22 – p. 1213, line 10.

[B]y doing a courageous act... you can save innocent human lives... I ask you to be courageous in deciding the punishment to impose in this case. The reason we have a death penalty statute is for its deterrent effect. It deters this defendant. You impose the death penalty upon him, folks... You heard about the parole... You make sure that no correctional officer – or somebody else if he were to escape or something – nobody else is up here like this Kubala family and all these deputies and their friends and relatives. It is important that you consider that deterrent effect.

ROA p. 1219, line 18 – p. 1222, line 18.

[T]he duty that I'm asking you to carry out... [is] to be a part of a criminal justice system that works and deters criminals, deters Bobby Wayne Stone from ever doing anything like this again to any correctional officer or anyone else...

ROA p. 1225, line 19 – p. 1226, line 6.

Defense counsel argued to the jury that the alternatives were death or that "the state keeps him in a maximum security jail for the rest of his life." ROA p. 1236, lines 5-10. "[I]f you select life imprisonment for Bobby Stone," counsel continued, "I can tell you this... he will be in jail until he dies." ROA p. 1238, lines 4-19.

The judge instructed the jury that their options were "the death penalty" or "life imprisonment." ROA p. 1243, lines 8 and 9. Defense counsel requested a charge on "life in prison without parole." ROA p. 1254, lines 14 and 15. The judge stated, "You have argued that to them," then brought the jury back and told them instead that "life imprisonment means that a person will... serve the balance of his life in prison." ROA p. 1257, lines 5-7.

In Simmons v. South Carolina, 512 U.S. 154, 156 (1994), the Supreme Court held that "where the defendant's future dangerousness is at issue, and state law prohibits the defendant's release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible." See, also, Shafer v. South Carolina, 121 S.Ct. 1263 (2001). In response to Simmons, this Court approved the following charge: "If a recommendation of death is not made, the defendant shall be sentenced to life imprisonment without the possibility of parole." State v. Southerland, 316 S.C. 377, 447 S.E.2d 862, 868 (1994); State v. Rogers, 320 S.C. 520, 466 S.E.2d 360 (1996).

Here, Stone was doubly ineligible for parole, as he had two prior burglary convictions. See S.C. Code Section 24-21-640 and Shafer (interpreting the 1995 amendment to Section 16-3-20).

As an initial matter, the solicitor's references to parole were themselves improper. See, for example State v. Ard, 332 S.C. 370, 505 S.E.2d 328 (1998). Defense counsel properly objected that the solicitor was "trying to bring in prejudicial matters that really

shouldn't be before the jury." ROA p. 971, lines 10-15. The judge erred by overruling this objection (ROA p. 971, lines 22-24), so the Court should reverse Stone's death sentence for that reason alone.

When the solicitor added future dangerousness to his equation, the judge was obliged to charge the jury that a sentence of life excluded the possibility of parole, as requested by defense counsel. Neither defense counsel's closing argument nor the instruction the judge did give satisfied Simmons and Shafer, as neither specifically addressed the question of parole.

The Supreme Court should reverse the death sentence and remand for resentencing.

CONCLUSION

Bobby Wayne Stone did not receive a fair trial. The Supreme Court should reverse his convictions and death sentence, direct a verdict acquitting him of burglary, and, finally, remand for a new trial.

Respectfully submitted,



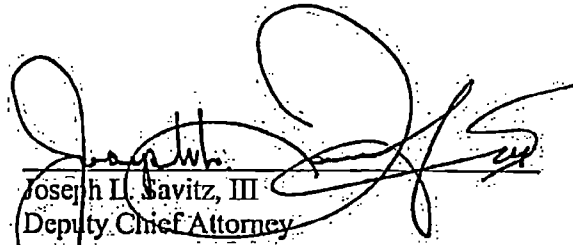
Joseph L. Savitz, III
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This 28th day of February, 2002.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

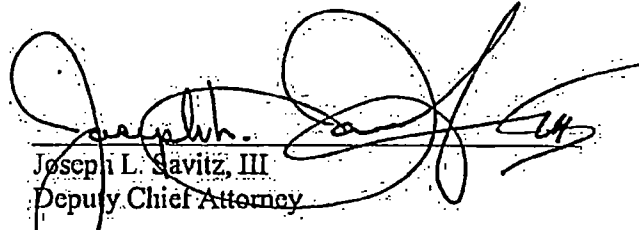
V.

BOBBY WAYNE STONE,

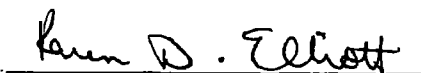
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon S. Creighton Waters, Esquire, this 28th day of February, 2002.


Joseph L. Savitz, III
Deputy Chief Attorney
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of February, 2002.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 13, 2007

THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C. 20530

MEMORANDUM

TO :

FROM :

SUBJECT :

RE :

DATE :

BY :

FOR :

APPROVED :

DATE :

RE :

**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.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. SHOULD APPELLANT'S CONVICTION OF BURGLARY BE REVERSED FOR THE ALLEGED FAILURE OF THE STATE TO PRODUCE EVIDENCE OF ENTRY INTO THE HEATED PORTION OF THE HOUSE, WHERE (1) THE ISSUE WAS NOT RAISED TO THE TRIAL COURT, (2) APPELLANT'S ENTRY ONTO THE SCREENED PORCH IN AND OF ITSELF QUALIFIED AS ENTRY INTO A DWELLING, AND (3) IN ANY EVENT, APPELLANT'S DISLODGING OF A BOARD COVERING A BROKEN WINDOW PANE ON THE INSIDE DOOR WAS SUFFICIENT FOR THE JURY TO CONCLUDE AT LEAST SOME PART OF HIS BODY ENTERED THE MAIN PART OF THE HOUSE?

II. ASSUMING THE TRIAL COURT SHOULD HAVE GRANTED THE DEFENSE'S DIRECTED VERDICT MOTION ON BURGLARY, WERE APPELLANT'S MURDER CONVICTION AND DEATH SENTENCE COMPROMISED BY THE TRIAL COURT'S CHARGE THAT A FINDING OF BURGLARY PRECLUDED CONSIDERATION OF INVOLUNTARY MANSLAUGHTER, WHERE APPELLANT'S UNLAWFUL USE AND POSSESSION OF FIREARMS ALONE PRECLUDED SUCH A CHARGE?

III. WAS THERE REVERSIBLE ERROR FROM EXCLUSION OF DEFENSE TESTIMONY DURING THE GUILT PHASE THAT APPELLANT HAD THE BEHAVIORAL CHARACTERISTIC OF "EXAGGERATED STARTLE RESPONSE" RESULTING FROM HIS VOLUNTARY INTOXICATION, EVEN THOUGH (1) AN INVOLUNTARY MANSLAUGHTER CHARGE WAS NOT REQUIRED AS A MATTER OF LAW, AND (2) EFFECTS OF VOLUNTARY INTOXICATION CANNOT REDUCE CRIMINAL LIABILITY?

IV. DID THE TRIAL COURT ERR IN EXCUSING A JUROR WHO REALIZED DURING THE SENTENCING PROCEEDING THAT SHE WAS AN ACQUAINTANCE OF APPELLANT'S AUNT, WHERE THE TRIAL COURT'S DECISION TO SEAT AN ALTERNATE WAS NOT AN ABUSE OF DISCRETION AND RESULTED IN NO PREJUDICE TO APPELLANT?

V. DOES THIS COURT'S RECENT DECISION IN *JONES V. STATE* PRECLUDE REVERSIBLE ERROR FROM THE TRIAL COURT'S REFUSAL TO CHARGE TWO STATUTORY MITIGATORS, EVEN THOUGH THERE WAS EVIDENCE APPELLANT WAS INTOXICATED AT THE TIME OF THE CRIMES?

VI. IS THERE A REASONABLE LIKELIHOOD THE JUDGE'S INSTRUCTION THAT VOLUNTARY INTOXICATION IS NOT A DEFENSE PRECLUDED THE JURY FROM CONSIDERING IT AS A MITIGATING CIRCUMSTANCE, WHERE THE JURY WOULD HAVE UNDERSTOOD THE DIFFERENCE BETWEEN A "DEFENSE" AND A "MITIGATING CIRCUMSTANCE"?

VII. DID THE TRIAL COURT VIOLATE *SIMMONS V. SOUTH CAROLINA* BY NOT SPECIFICALLY MENTIONING PAROLE WHEN CHARGING THE JURY THAT

APPELLANT WOULD SERVE THE BALANCE OF HIS LIFE IN PRISON, WHERE APPELLANT ACCEPTED THE CHARGE AS GIVEN, THE CHARGE WAS SUFFICIENT, AND THE STATE'S ARGUMENT AND EVIDENCE WHEN VIEWED AS A WHOLE DID NOT RAISE FUTURE DANGEROUSNESS?

STATEMENT OF THE CASE

During the August 1996 term, the Sumter County Grand Jury indicted Appellant, Bobby Wayne Stone, for murder, first degree burglary, and possession of a weapon during a violent crime (96-GS-43-0698). {R. 3077-78}. The state gave notice of intent to seek the death penalty, and served its Notice of Evidence in Aggravation.

The trial judge in this case was the Honorable R. Markely Dennis, Jr. Appellant was represented at the trial level by Cameron B. Littlejohn, Jr., and James H. Babb; Solicitor Wade S. Kolb prosecuted the case for the state.

On August 20th, 1996, Judge Dennis granted the defense motion to draw a jury from another county due to pretrial publicity. Jury selection took place in Georgetown County on January 20th through January 22nd, 1997. Trial began before Judge Dennis and a jury on January 23rd, 1997, and on January 26th, 1997, Appellant's jury convicted him of all charges.

Appellant exercised his right to the 24-hour cooling-off period in subsection 16-3-20(B) of the Code of Laws for South Carolina. The sentencing phase of his trial began on January 27th, 1997. Judge Dennis submitted the following aggravating factors to the jury:

- (1) Murder was committed while in the commission of burglary in any degree.
- (2) Murder of a local law enforcement officer during or because of the performance of his official duties.

The following mitigating factors were submitted to the jury:

- (1) The Defendant has no significant history of prior criminal convictions involving the use of violence against another person.
- (2) The murder was committed while the Defendant was under the influence of mental or emotional disturbance.

On January 28th, 1997, Appellant's jury found the existence of both aggravating factors and recommended a sentence of death. Judge Dennis then sentenced Appellant to death for murder, to a consecutive thirty (30) years for first degree burglary, and to five (5) years consecutive to both of the other counts for possession of a weapon.

A timely Notice of Appeal was filed and served on January 31st, 1997. This appeal follows.

STATEMENT OF FACTS

Although the defense requested and received an involuntary manslaughter charge at trial, it is undisputed that Appellant killed Sumter County Sheriff's Deputy Charlie Kubala. The issues in this appeal challenge both the guilt and sentencing phases.

A. 2/26/96: Sgt. Kubala is killed after responding to a 911 call from Ruth Griffith's house.

On the evening of the incident, February 26th, 1996, Ruth Griffith was being visited at her Sumter home by her daughter Mary Ruth McLeod. McLeod was on the phone with her daughter's father when Ruth heard knocking at her back door. Ruth pulled the curtain back on the door and saw Appellant; she then went running back through the house screaming "its him, its him". {R. 194-97; 206; 229-32; 257-58}.

Ruth told her daughter that Bobby Stone was outside and she did not want him in her home. Worried that Appellant was going to steal something, McLeod went outside and accosted Appellant, telling him to leave. McLeod reminded Appellant that he had caused trouble before, that Ruth did not want him around, and that if he came back he would get locked up. She told Appellant she was going to call the police. As Appellant walked away, McLeod saw that he had something under the back of his jacket. Appellant's eyes were glazed, he was "wobbling", and was holding what appeared to be a beer can. {R. 198-99; 205; 215-17; 232; 262-63; 277}.

Appellant then walked in the woods behind the house. McLeod followed him and heard a crackle. She looked up to see Appellant standing in a clearing, looking towards Ruth's house, and holding a gun across his arms like a hunter. She asked Appellant what he was doing, and Appellant said he was going home. {R. 198-203; 216-17}.

McLeod went back inside and called 911. The call came in at 5:39 p.m., and dispatch sent Sergeant Charlie Kubala to Ruth's house on a suspicious persons call. Kubala reported arriving at the scene at 6:06 p.m. McLeod told Kubala what happened, and they walked to the edge of the woods where Appellant had gone. Appellant was nowhere to be seen. Before he left at 6:26 p.m., Kubala told Ruth and McLeod to stay inside, keep a watch out, and call 911 if Appellant showed up again. {R. 149-55; 203-04; 207-08; 232-33}.

Before McLeod left to go see her daughter, she unsuccessfully begged Ruth to leave the house. Evidently Ruth should have listened, because shortly after McLeod left Ruth heard gunshots in her backyard. At 6:47 p.m., she called her neighbor Landrow Taylor, who also had heard the shooting and promptly came over. Taylor called 911 at 6:55 p.m. {R. 156; 204; 232-34; 279-80}.

Ruth and Taylor then heard someone jiggle the door handle to Ruth's car, which was parked right outside her bedroom window. They called 911 again at 7:02 p.m. As the two people cowered in the living room, afraid to go near the windows, they heard someone banging on the rarely-used side door, which led from the washroom onto a small screened-in porch used to store wood. The light on the porch was off, and it was dark. Taylor hollered, "What are you trying to do back there?"; there was a moment of silence but the beating started back. {R. 234-38; 253-54; 265-71; 281-82}.

Sergeant Kubala reported arriving at the scene at 7:07 p.m. Taylor went out onto the front porch and motioned to the deputy, who walked around the corner of the house. Taylor went back inside the house. The dispatcher radioed Kubala about another call, but

at fifty-five seconds after 7:07 p.m. Kubala radioed that he was busy. **{R. 159-64; 282-84}**.

Suddenly, Taylor and Ruth heard someone shout, "Halt!", or "Hold it!", followed immediately by three or four gunshots. As Taylor ran back out onto the front porch, Deputy John Prince came pulling up in his cruiser. Taylor saw a flashlight and walkie-talkie lying on the ground, and yelled at Prince that Kubala had been shot. Meanwhile, thirty seconds after 7:08 p.m., Ruth called 911 to report the officer down. **{R. 240-42; 283-85; 296}**.

Deputy Prince shined a flashlight, saw Kubala, and ran to his side. Kubala was laying face up and bleeding profusely from his mouth and neck. His gun lay near the fingertips of his right hand, and off the fingertips of his right hand was his walkie talkie, from which the radio transmissions were clearly audible. His flashlight lay between his body and his right arm. Deputy Prince rolled Kubala over to clear an airway, but another gunshot rang out and Prince sought cover by the corner of the house. **{R. 285-88; 297-99; 321-335; 337-39}**.

Other officers and EMS arrived shortly thereafter. Because Prince had heard another shot, the police cleared a nearby shed and the surrounding area before EMS could get to Sgt. Kubala. EMS found the victim not breathing and without a pulse. Although he was wearing his protective vest, Sergeant Charles Kubala of the Sumter County Sheriff's Department died at the scene from one gunshot that entered his right ear, and another that entered his neck. **{R. 305-10; 341; 350-53; 369-71}**.

Officers then began to set up a perimeter to snare the assailant. SLED bloodhound and SWAT teams were called, and off-duty officers from various jurisdictions volunteered to assist. A SLED helicopter equipped with forward-looking infrared radar and an

extremely powerful spotlight called "midnight sun" began searching the woods nearby Ruth's house. At about 11:00 p.m., after two hours of searching, the SLED helicopter located a "hot spot" which appeared to be a subject lying prone underneath two fallen trees. The helicopter used the midnight sun to light up the spot, which was about a half to three-quarters of a mile away from Ruth's house. {R. 353-54; 403; 504-07}.

Meanwhile, police ground teams directed by the helicopter moved in on the suspect. It was extremely slow going through heavy brush and briars, and many officers fell or got scratched. Finally, they neared the suspect, who lay perfectly still on his back. The officers repeatedly ordered the suspect to raise his hands, but he would not comply. Finally, one of the agents put his foot on the suspect's chest while the other officers attempted to take control of the suspect's hands. As the officers began to pull the struggling suspect from his hiding place, one of them noticed a .22 pistol underneath the suspect and yelled "gun". Hearing that, the officers wasted no time in quickly securing the suspect and his weapon. The suspect, who proved to be Appellant, resisted being handcuffed, and officers practically had to carry him out of the dense woods. As he was being arrested, Appellant said: "Go ahead. Beat the f*ck out of me. You know you want to". {R. 512-35; 537-52; 567}.

Appellant was taken to the law enforcement center to be interviewed. While waiting, Appellant said, "ya'll are getting off on this". Appellant ultimately gave a statement in which he claimed the shooting was accidental. {R. 682-86; 706}.

In his statement, Appellant said that he woke up the morning of February 26th and smoked some marijuana. He went to the store and bought some beer, and met a man

named David. David offered to sell Appellant three guns, and they agreed to meet on a nearby dirt road. {R. 691}.

According to Appellant, David arrived at the meeting place with a .22 pistol and a .410 shotgun. The two men walked around in the woods, drinking beer and target shooting. They agreed on a price of \$100 for both guns. As they walked around, Appellant decided to stop by and say hi to Ruth, whom he described as an old drinking buddy. David stayed in the woods with the guns. {R. 691-92}.

Appellant claimed that as soon as he entered Ruth's backyard, a woman he did not know came out of the house "raising cane" at him and telling him to get off the property. Appellant returned to the woods, and found and paid David, who left. Appellant then walked around the woods shooting the guns and finishing off the beer. Around dark he decided to return to Ruth's. {R. 692; 694}.

Appellant walked up the steps to the little screen porch, set down the shotgun, but kept the .22 in his right hand. He admitted he started beating on the inside door, which broke because he hit it too hard. Appellant then heard a man's voice yelling outside the house, and as he turned, the gun went off. Appellant ran into the woods. In his statement, Appellant claimed the gun only went off once, and he never saw the deputy or his patrol car. {R. 693; 695-96}.

Appellant denied ever firing the gun again after he ran off the porch. He also claimed he did not know what was going on even though he hid in the woods for hours surrounded by police officers with a helicopter overhead. {R. 695-96}.

Police processed the scene and collected various items of evidence confirming that

Appellant murdered Sgt. Kubala. The pistol recovered from under Appellant at the time of his arrest was an extremely accurate target pistol which fired powerful .22 "long rifle" ammunition. The weapon was found with five rounds in its clip and a shell casing lodged in the ejection port. SLED conclusively matched this gun to two bullet fragments and one bullet taken from Sgt. Kubala's body. The .22 pistol also matched to three spent .22 cartridge cases found on the side porch as well as other casings found in the nearby woods. Kubala's 9mm service pistol, on the other hand, was found fully loaded and had not been fired. {R. 339; 393; 401; 437-40; 653-62; 656; 666-67; 669-74}.

Leaning up against the wall of the side porch was a single-shot .410 shotgun, with a live shell inside and its hammer cocked back in the firing position. This shotgun was conclusively matched to a spent .410 shell casing found in the woods near Ruth's house. {R. 388-93; 650; 663}.

The screen door to that side porch had three holes which appeared to be from bullets. The screen around these holes not only tested positive for lead but also was microscopically consistent with holes made from bullets SLED test fired through the screen door with Appellant's .22 pistol. Ruth had nailed a board to cover a broken window pane on the door inside the screen porch that leads into the main house itself. After the incident, this board was knocked out and was hanging loosely from only one nail. {R. 236-38; 255; 268-71; 490-96; 664-65}.

A knife was found in Appellant's coat pocket. Tests taken shortly after arrest indicated gunshot residue on the palm and back of Appellant's right hand, as well as the presence of lead on Appellant's left palm and sleeve. The victim had lead on his right

palm; however, this only likely indicated handling of a weapon. The victim's shirt did not have any gunshot residue, which indicates Kubala was not hit by a close range shot. DNA tests matched Appellant to small bloodstains found on the .22 pistol and his jacket. Kubala was matched to a blood sample taken from the corner of Ruth's house. {R. 479-85; 574; 610-22; 622}.

B. The defense guilt phase case

Much of the defense cross-examination and guilt phase case attempted to validate Appellant's claim that he just dropped by Ruth's house because she was an "old drinking buddy". To this end, Appellant called Mary Wilson, Ruth's sister-in-law, and Wilson's daughter Michelle Lynch, who is Appellant's old girlfriend. The two testified that Wilson lived with Ruth off and on until about August 1995, and Michelle lived with Ruth off and on for about four years until mid-1993. During this time, Appellant would come and visit or pick up Michelle. Michelle stated Appellant would often sit and drink beer with Ruth, and both witnesses stated Ruth tried marijuana one time with Appellant and Michelle. Wilson and Ruth used to go out drinking together in the 70's and 80's, and Appellant was sometimes at the same nightspots. On one occasion before 1987, Appellant gave the two women a ride home from a bar. Appellant also did some occasional odd jobs for Ruth. Despite all this, neither witness could state that they had seen Appellant at Ruth's house since 1994. {R. 744-67}.

For her part, Ruth stated the when Michelle was living with her Appellant would occasionally come over to pick Michelle up, but that it was never to socialize. Ruth admitted that on one occasion when she was drinking a beer Appellant and Michelle came

inside and lit a marijuana cigarette, but Ruth denied smoking any of it. {R. 247-53; 259-61}.

While it seems clear that Appellant previously had some infrequent and peripheral social contact with Ruth years before Kubala's murder, the relevance of this testimony was destroyed by Ruth's affirmation that on September 4th, 1995, she and "law enforcement" made it clear to Appellant he was no longer welcome at her home. Ruth stated the Appellant had not been on her property from the date of the September 1995 incident until the Kubala's murder in February 1996. Indeed, defense witness Michelle confirmed that there was "no doubt" Appellant was not welcome at Ruth's house after the incident in September 1995.¹ {R. 275-76; 767}.

C. The state's sentencing phase case

The state's sentencing phase case began with introduction of Appellant's unredacted statement, in which he admitted he knew the .22 pistol and .410 shotgun were stolen.² {R. 947-50}. This was followed by Appellant's extensive prior record. In 1985, Appellant was convicted on seven indictments for breaking into a motor vehicle, larceny, housebreaking, grand larceny, housebreaking, grand larceny, breaking into a motor vehicle, petty larceny, breaking into a motor vehicle, grand larceny, breaking into a motor vehicle, grand larceny, and grand larceny. For all of these crimes he received a youthful offender sentence not to exceed six years, and Appellant was paroled in 1985. {R. 952-

¹ Ruth had evidently caught Appellant trying to steal an air conditioner out of a window in her home, and the police were called. {R. 769-70}.

² The trial court excluded as unduly prejudicial evidence that there was no David, that Appellant had stolen a truck with the guns inside, and that he had given guns from the truck to other convicted felons.

56; 966}.

In 1987, Appellant pled guilty to two counts of 2nd degree burglary and two counts of grand larceny on one indictment, and 2nd degree burglary and grand larceny on another indictment. For these crimes, Appellant received a total active sentence of twenty years plus five years probation. **{R. 957-59; 966-67}.**

Appellant was paroled in June of 1993 after serving approximately five years. The state elicited that he faced substantial time if his parole was revoked. A witness noted that Appellant's conditions of parole and probation precluded him from possessing firearms, using controlled substances, drinking alcohol to excess, or otherwise violating the law. Of course, Appellant violated all of those conditions on February 26th, 1996. **{R. 966-69; 974-75}.**

The state then presented Sgt. Kubala's family members, fellow officers, and friends who universally testified that he was a "young, bright, and energetic" officer who devoted much time to his community, including the Explorers, the YMCA, and the Special Olympics. Family members described the trauma of losing Charlie Kubala, particularly on his widow and young children. A woman who hardly knew Kubala described the positive effect his community activities had on her children and the difficulty they faced in dealing with his death. **{R. 977-1050}.**

D. The defense's sentencing phase case

The defense began with psychiatrist Dr. Harold Morgan, who testified that Appellant was adaptable to prison. Dr. Morgan noted that Appellant behaved relatively well during his prior incarcerations and had no history of violence or escape attempts. Appellant was

disciplined for some rules violations. On cross-examination, Dr. Morgan stated Appellant is competent and has no active mental illness or disorder. However, Dr. Morgan admitted that his testing revealed Appellant has anti-social personality traits, problems with authority figures, and a rebelliousness and desire for instant gratification which could be problematic during incarceration. Dr. Morgan concluded on re-direct that Appellant would not be a model prisoner but would "fit in". {R. 1057-68}.

Appellant's paternal aunt Bernice and sisters Tammy and Melinda testified about Appellant's parents, his upbringing, and his family. Appellant's family was very poor. Appellant's father started drinking heavily once the family moved to Sumter, separated from Appellant's mother because of her affairs, and never provided much financial support to the family after that. {R. 1079-83; 1090; 1098-99; 1104}.

Appellant's mother Mabel carried on a running, open, and notorious affair with her next door neighbor Wesley Eugene Miles, who also was a horrible drunk. Miles came into the Stone household at will and often stayed with Appellant's mother in the home. Evidently, Miles's wife was fine with this arrangement. Both Appellant's sisters testified that Miles would get drunk and try to molest them, and that he on a few occasions beat Appellant. Mary Wilson, Michelle Lynch, and Diane Connor confirmed the running affair between oft-drunken Miles and Appellant's mother. {R. 1081; 1092-1116}.

Santee Regional Jail System director Jerry Hyatt testified that during Appellant's previous incarceration Appellant moved up in custody status and was a model inmate who organized a charity pool tournament. On cross-examination, Hyatt admitted that he testified at Appellant's parole hearing and arranged for Appellant to be transferred from

prison to Sumter County Jail, because Appellant's mother, who had cared for Hyatt's mother during an illness, had requested the favors. {R. 1160-74}.

Appellant also called social worker and "psychotherapist" TeAnne Oehler. Oehler discussed Miles's effect on Appellant's childhood, and stated that Miles was violent, beat defendant up once, and would shoot guns at the children when drunk. Oehler described a very impoverished and deprived childhood, and opined that Appellant's value system was corrupted by his mother's implicit approval of his stealing of chickens to supplement the family diet. This led to him having a long juvenile record for stealing. {R. 1124-27; 1136; 1144-45}.

Appellant had been drinking since he was 11 or 12, and tried marijuana and cocaine in his teens. His alcohol abuse disrupted his relationships with women. Appellant told Oehler that when he drinks he is easy to anger and quickly acts to defend himself. {R. 1128-32; 1143}.

Oehler stated Appellant had a history of emotional problems and did not learn coping skills. Appellant did not have a high IQ but was not borderline retarded. Oehler stated Appellant's IQ slowly dropped during his teens, which may have been caused by substance abuse. Because of this, Appellant was found to have a learning disability for language comprehension and placed in a special class. Ultimately, Appellant dropped out of school in the 10th grade. Oehler gave the oft-heard opinion that Appellant was a "concrete thinker" and could not think abstractly. {R. 1128-40; 1142-43; 1157-58}.

According to Oehler, Appellant's behavior was characteristic of exaggerated startle response, which Oehler described as quickly reacting when startled by a sharp movement

or loud noise. She stated it is a symptom of post-traumatic stress disorder (PTSD) or alcoholism and could be aggravated by substance abuse. On cross-examination, Oehler stated that Petitioner did not meet the criteria of PTSD but did have a diagnosis of alcoholism. She opined that Appellant did not have any psychiatric diagnosis but did exhibit signs of some unnamed emotional disorder. {R. 1149-50; 1154-58}.

Ultimately, Oehler concluded that Appellant's present situation was attributable to his alcoholism, drug use, family background, skewed instruction in values, disregard for authority, and exposure to violence. {R. 1145}.

E. State's sentencing phase reply case

In reply, the state called Denise Lewis, who grew up in the same neighborhood as Appellant's family and is friends with daughters of Eugene Miles. Denise denied that there was any abuse and stated she has no knowledge of any of the girls being molested by Miles. {R. 1179-85}.

The state also presented psychiatrist Dr. John C. Dunlap, who stated that his examination of Appellant revealed that Appellant was competent to stand trial and had no mental illness. {R. 1186-89}.

ARGUMENT

I. THE STATE PRODUCED SUFFICIENT EVIDENCE OF ENTRY TO SURVIVE A DIRECTED VERDICT AS TO THE BURGLARY CHARGE, WHERE (1) THE ISSUE WAS NOT RAISED TO THE TRIAL COURT, (2) APPELLANT'S ENTRY ONTO THE SCREENED PORCH IN AND OF ITSELF QUALIFIED AS ENTRY INTO A DWELLING, AND (3) APPELLANT'S DISLODGING OF THE BOARD COVERING A BROKEN WINDOW PANE ON THE INSIDE DOOR WAS SUFFICIENT FOR THE JURY TO CONCLUDE AT LEAST SOME PART OF HIS BODY ENTERED THE MAIN PART OF THE HOUSE.

Appellant first contends that the trial court should have granted his directed verdict on the burglary charge because there was no evidence of entry. While Appellant concedes there was evidence he knocked out a board covering a broken window pane while he was beating on the side door, he asserts there is no evidence any part of his body actually entered Ruth's house. This issue is not preserved as it was not argued as a basis for directed verdict at trial. In any event, since Ruth's screened porch qualifies as a "dwelling", Appellant's entry onto the porch was enough for burglary. Moreover, there was sufficient evidence for a jury to conclude that at least some part of Appellant's hand entered the interior of the heated portion of Ruth's house when he was beating on the inside door.

A. Events at trial

Ruth's side screen porch was raised off of the ground, attached to the house, entirely enclosed, accessible only through steps leading up to a screen door, and used for household purposes like storage and access. {R. 190-93; 206-07; 235-36; 245; 253-55; 424-27}. As described earlier in the Statement of Facts, the evidence at trial showed that Appellant entered Ruth's screened porch with two loaded guns and proceeded to beat on the interior door until he dislodged a wooden board nailed up to cover a broken window pane. {R. 235-39; 254-56; 268-72; 280-81}. Indeed, Appellant admitted beating on Ruth's

door until it broke. {R. 693-95}.

On cross-examination, Ruth stated that at no time did Appellant reach through the broken window pane, unlock the inside door, and enter the heated portion of the house. Ruth theorized that Appellant would have entered the inside door had Sgt. Kubala not arrived. {R. 270-71}. The defense also brought out on cross-examination that the initial police incident report reflected an attempted burglary with no forced entry. {R. 363-66}.

At the close of the state's evidence, the defense made a motion for directed verdict arguing *only* that the state had not proved the element of "intent to commit a crime". The court denied the motion. {R. 736-37}. During the charge conference, long after the directed verdict motions had been heard and denied, both the state and defense requested a charge on attempted burglary, with the defense evidently citing State v. Puckett, 78 S.E. 737 (S.C. 1913). The court rejected the charge, ruling that entry onto the screen porch was sufficient to constitute burglary. {R. 785-87}.

During closing argument, the solicitor contended that it would have been impossible for Appellant to have dislocated the board covering the broken window pane on the inside door without having some part of his hand enter the house at least slightly. The solicitor then went on to state that in any event Appellant's entry onto the screened porch was sufficient for burglary, and that attempted burglary was not an option for the jury. {R. 819-21}. The defense responded by arguing that if Appellant had the intent to commit a crime, the flimsy inside door would not have stopped him. The defense also pointed out that there were no pictures of the dislodged board on the inside door. {R. 855-59}.

Ultimately, the trial court instructed the jury, in part, that:

All houses, outhouses, buildings, shed and erections that are within two hundred yards of a dwelling *are attached to the dwelling* shall be included as a part of that dwelling.

{R. 887 II. 19-22} (emphasis added).

B. The issue is not preserved for appeal.

At the close of the state's evidence, defense counsel did move for a directed verdict. However, the defense *only* argued that there was insufficient evidence to show the burglary element that Appellant had intent to commit a crime, because, according to the defense, Appellant just wanted to visit his "old drinking buddy" Ruth. The trial court denied the motion, reasoning that there was sufficient evidence to conclude Appellant intended to commit a crime because he had been told to leave but yet came back, he went to the little-used side door, and he was banging on it with a loaded pistol in his hand and a cocked shotgun nearby. {R. 736-38}. At the close of the defense's case, Appellant simply renewed its directed verdict motion based on the previous grounds. {R. 781}.

At no time during the defense's directed verdict motion did Appellant argue that there was insufficient proof of entry. While there was some closing argument from the state on the issue of entry {R. 819}, at no time did the defense raise lack of proof of entry to the trial court as a basis for a directed verdict on burglary. As such, the issue is not preserved for appeal. See, e.g. *State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal).

C. Appellant's entry onto the screen porch was in and of itself sufficient to satisfy the entry requirement for burglary.

In his brief Appellant only asserts the evidence was insufficient to show entry from testimony that he dislodged the board covering a broken window pane on Ruth's side door.

However, there is no dispute that Appellant opened the screen door and entered the screen porch off of Ruth's side door. Although in the context of a charge conference and not a directed verdict motion, the trial court correctly ruled that this in and of itself was sufficient to satisfy the entry requirement. {R. 786-87}.

When reviewing the denial of a directed verdict, the evidence must be viewed in the light most favorable to the state. If there is any direct evidence or any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt can be fairly and logically deduced, then the case was properly submitted to the jury. State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999). The trial judge is concerned with the existence of evidence, not its weight. State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991).

Of course, first degree burglary requires that the place burgled be a "dwelling", which has been broadly defined by both the burglary statutes and the South Carolina common law. A "building" is defined, in part, as "any structure . . . [w]here any person lodges or lives", or ". . . where goods are stored". S.C. Code Ann. § 16-11-310(1) (Supp. 2000). A "dwelling" is defined as "the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person", but also the following "shall be deemed parcels", or part of, a dwelling:

all houses, outhouses, buildings, sheds and erections which are within two hundred yards of [the dwelling house] and are appurtenant to it or to the same establishment of which it is an appurtenance.

S.C. Code Ann. §§ 16-11-10 & 16-11-310(2) (1985 & Supp. 2001).³

The screen porch in this case was raised off of the ground, physically attached to the house under the same roof, walled halfway on two sides, entirely enclosed, and accessible only by steps up to a screen door. The porch was used primarily as a storage area, particularly for paint cans and wood for the stove within the house. The door within the porch led inside to the house's laundry room, and the family would exit through that door and the screen porch when taking clothes out to be hung up to dry. {R. 190-93; 206-07; 235-36; 245; 253-55; 424-27}.

Ruth's side porch clearly meets the definition for a dwelling. Unquestionably, it is within 200 yards of the main house, and it is clearly appurtenant, or "belonging, adjunct, appended, or annexed to" the main house. Black's Law Dictionary 102 (6th ed. 1990). It was "connected [with the main house] by being under the same roof or within the same inclosure". State v. Anderson, 24 S.C. 109 (1886) (citing Blackstone).

³ Professor McAninch has indicated "puzzlement" at the meaning of being "deemed parcels" in this 1866 statute. McAninch & Fairey, The Criminal Law of South Carolina 310 (3rd ed. 1996). However, a reading of cases from this time period show he is correct in his guess that "parcels" meant "part of the dwelling house". See State v. Johnson, 23 S.E. 619, 621 (S.C. 1896) ("no evidence that the mill house was parcel of, or appurtenant to, the dwelling"; no evidence dwelling was an appurtenance of the farm of which the "mill was part and parcel"); State v. Sampson, 12 S.C. 567 (1880) (noting that "dwelling" includes all outhouses "contiguous to the dwelling and parcel thereof", and quoting Blackstone for the proposition that a burglary can be committed "if a barn, stable or warehouse be parcel of the mansion house and within the same common fence"). Cf. Black's Law Dictionary 1112 (6th ed. 1990) (defining "parcel" as a part or portion of land or an estate).

The porch was used to store household goods including wood for heating the house, and also provided exit during laundry chores; thus, it was "used for [a] purpose connected with and contributory to the dwelling". State v. Anderson, 24 S.C. 109 (1886) (finding, on the other hand, that an outhouse was not appurtenant because it was used to store commercial goods not belonging to the owner of the main house). See also State v. Johnson, 12 S.C. 567 (1880) (insufficient evidence that a mill house was a dwelling, where there was no evidence the main dwelling was part and parcel of the farm or plantation of which the mill was a part, and no evidence whether the mill was a "merchant-mill" or ordinary mill); Black's Law Dictionary 102 (6th ed. 1990) (appurtenant as "necessarily connected with the use and enjoyment of the [principal]"); Johnson v. Commonwealth, 875 S.W.2d 105 (Ky. Ct. App. 1994) (where screened-in porch was attached to house and contained by same roof, and family occasionally ate, played games, and stored goods belongings on the porch, porch materially contributed to the comfort and convenience of habitation in the dwelling).

The porch is also a "structure", "where goods are stored", "normally used for . . . living . . . by a person". S.C. Code Ann. § 16-11-310 (1)(b) & (2) (Supp. 2000).

Ruth's porch is also distinguishable from the "piazza" held not to be part of the dwelling in State v. Puckett, 78 S.E. 737 (1913). Puckett addressed an open porch on two sides of a house. The porch was bordered by a 2 ½ foot balustrade, or railing, and above that was six or seven feet of open space before the ceiling. The defendant argued the porch could not be the subject of a burglary because it was "unprotected and uninclosed". The court agreed, noting that "there must be a breaking of 'the inclosing parts of a dwelling house'", and that entering such a piazza was "quite different from opening the closed doors

of a house". Puckett, 78 S.E.2d at 737-38.⁴

Unlike Puckett, Ruth's porch was entirely enclosed and Appellant had to open a door to enter. Indeed, much more than a barn, stable, chicken house, or warehouse merely within the same fence as the main house, Ruth's screened porch was an part of her residence. See State v. Johnson, 23 S.E.2d 619 (S.C. 1896) (affirming decision that hen house separated from house by public highway was appurtenant to the main house); State v. Sampson, 12 S.C. 567 (1880) (if within the same common fence, a barn, stable, warehouse, or other outhouse can be parcel of the dwelling, even if not under the same roof).

Moreover, a number of other jurisdictions have held under their various statutes that entry into a similar screened-in porch is sufficient for burglary. Davis v. State, 938 P.2d 1076 (Alaska Ct. App. 1997) (in search and seizure case, holding that an arctic entry is part of the "premises" of a residence, and citing various cases from Kentucky, Louisiana, Illinois, New York, North Carolina, and Pennsylvania for the proposition that an attached and enclosed or screened-in porch is part of a dwelling for burglary); Bowers v. State, 297 S.E.2d 359 (Ga. 1982) (entry for burglary had been sufficiently proven, where defendant tore down screen door and took lawnmower); Johnson v. Commonwealth, 875 S.W.2d 105 (Ky. Ct. App. 1994) (where screened-in porch was attached to house and contained by same roof, and family occasionally ate, played games, and stored goods belongings on the porch, porch materially contributed to the comfort and convenience of habitation in the

⁴ Inasmuch as the Puckett court was guided to its decision that the piazza was not a dwelling because entry onto such an open porch did not require a "breaking", such a rationale would not apply now because the "breaking" requirement has been removed from our burglary statute. S.C. Code Ann. § 16-11-311 (Supp. 2000)

dwelling); People v. McIntyre, 578 N.E.2d 314 (Ill. Ct. App. 1991) (porch that was partly walled and partly screened, which had a lockable door and another door that led to the utility room inside the house, and on which the family cooked out, was part of the residence for burglary statute).

There is no dispute that Appellant entered the side porch with two loaded guns. The evidence established that Ruth's side porch is a dwelling, whether this Court views the issue as a matter of law or in the context of the necessary production of evidence for directed verdict. Either way, Appellant's issue fails as a basis for relief.

D. The state produced sufficient evidence to create a jury question on whether Appellant entered Ruth's residence when he dislodged the board covering the broken window pane.

Even if this issue is somehow preserved, the state also produced sufficient evidence to survive a directed verdict on the issue of entry beyond just the screen porch. There was evidence showing that Appellant entered Ruth's residence through the broken window pane.

As Appellant concedes, "entry" is broadly defined for purposes of burglary. This Court has quoted with approval that "the least entry of any part of the body is sufficient, as the entry of the hand or finger only". Also, insertion of a tool would constitute entry. State v. Chappell, 185 S.C. 111, ___, 193 S.E. 924, 925 (1937). Indeed, in Chappell, the defendant tore a small hole in a window screen, reached in, and raised the window sash before being frightened away by the owner. This Court held that such evidence was sufficient to survive a directed verdict. 185 S.C. at ___, 193 S.E. at 925.

This case is indistinguishable from Chappell. Ruth testified that she heard Appellant

scraping and then beating on the board she had nailed to cover the broken window pane in the door. {R. 237}. After the incident, the board had been "knocked loose" and was swinging freely from only one nail. {R. 237}. Indeed, Appellant admitted in his statement that he was beating on the inside door and it broke, and that he must have hit it too hard. {R. 693-95}. As the solicitor argued in closing, if Appellant was beating on the door so hard that it broke loose the board, it would certainly be impossible that his fist did not at least to some degree cross the plane of the door into the house during the blow that ultimately dislodged all but one of the nails holding the board in place. If merely reaching through a screen and raising a window was sufficient to constitute entry in Chappell, then certainly the violent dislodging of a part of the door in this case is enough to result in entry. It would be no different than if Appellant had taken an ax and smashed a hole in a solid wood door; the ax would have necessarily crossed the plane and would therefore have entered the residence.

Appellant erroneously focuses on Ruth's cross-examination testimony that nobody reached inside the broken pane, and then unlocked and opened the door. {R. 270}. Of course, neither Ruth nor Landrow Taylor actually saw Appellant attack the side door to the house; they only heard Appellant at the side door as they were cowering in fear in a room on the opposite side of the house. {R. 281; 294-96; 299-300}. Ruth's testimony that Appellant did not put his hand through the broken pane and unlock the door is only inferential, because the door was still closed and locked after the incident. The fact that Appellant did not put his hand through and open the door for whatever reason, whether because Sgt. Kubala arrived or because he just did not think to do it, is irrelevant to the fact

that Appellant satisfied the entry requirement for burglary when his hand or any other instrument violently dislodged the board covering the broken pane.⁵

The state's case contained at least some direct or substantial circumstantial evidence of entry into Ruth's dwelling. Appellant's conviction of burglary should be affirmed.

II. EVEN IF THE TRIAL COURT SHOULD HAVE GRANTED THE DEFENSE'S DIRECTED VERDICT MOTION ON BURGLARY, APPELLANT'S MURDER CONVICTION AND DEATH SENTENCE WERE NOT COMPROMISED BY THE TRIAL COURT'S CHARGE THAT A FINDING OF BURGLARY PRECLUDED CONSIDERATION OF INVOLUNTARY MANSLAUGHTER, BECAUSE APPELLANT'S UNLAWFUL USE AND POSSESSION OF FIREARMS ALONE PRECLUDED SUCH A CHARGE.

The success of Appellant's second issue depends on resolution of his first. Appellant contends that if there was insufficient evidence to justify submission of the burglary charge to the jury, then his murder conviction should be reversed because the trial court charged the jury that it could not consider the lesser-included offense of involuntary manslaughter if it found appellant guilty of burglary.

Of course, if this Court rejects Appellant's burglary issue discussed in Issue I, *supra*, then the Court needs to go no further with this claim, as Appellant implicitly concedes that he would not be entitled to an involuntary manslaughter charge if he killed during the course of a burglary. See, e.g. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). In any event, Appellant undisputably committed a number of other crimes by his possession and use of firearms, and these crimes were the proximate cause of Sgt. Kubala's shooting.

⁵ This case is unlike State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), where this Court found that the defendant's fingerprint on a screen outside of the house did not establish entry; in Mitchell, the Court was more concerned with proof of identity that the defendant was the one who entered the house, and in this case it is undisputed that Appellant was the one who broke the covering on Ruth's door.

Thus, an involuntary manslaughter charge would have not been available as a matter of law, and there is no reversible error from the judge's charge even if burglary should not have been submitted to the jury.

Involuntary manslaughter is defined as the killing of another without malice and unintentionally, while either:

(1) one is committing some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or

(2) while one is acting lawfully with reckless disregard of the safety of others.

State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999) (citing State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996)). A charge on involuntary manslaughter is properly refused if there is no evidence which would support such a finding. Burriss.⁶

Moreover, statutory law holds that a person cannot be convicted of involuntary manslaughter without a finding of criminal negligence, which it defines as "reckless disregard for the safety of others." S.C. Code Ann. § 16-3-60 (Supp. 2000).

At trial, the defense requested involuntary manslaughter, but specifically did not

⁶ In some opinions, this Court has omitted the "not amounting to a felony" language in the first type of involuntary manslaughter, thereby implying that a felony alone does not necessarily preclude involuntary manslaughter. See Douglas v. State, 332 S.C. 67, 504 S.E.2d 307 (1998). On the other hand, this Court has specifically held that a trial court did not err in charging a jury that it could not convict a defendant of both armed robbery, which is of course a felony, and involuntary manslaughter, by referring to the "not amounting to a felony" language. State v. Avery, 333 S.C. 284, 509 S.E.2d 476 (1999). Professor McAninch has noted that the felony aspect of the rule may be the distinction between "felony murder" and "misdemeanor manslaughter", but also asserts that precluding involuntary manslaughter charges simply because the other crime is a felony adopts a substantive rule that a killing in the course of a felony is murder *per se*, see Gore v. Leeke, 261 S.C. 308, 199 S.E.2d 755 (1973), rather than merely sufficient to permissively infer malice for murder, see State v. Norris, 285 S.C. 86, 91-92, 328 S.E.2d 339, 342 (1985). McAninch & Fahey, The Criminal Law of South Carolina 97, 168, 173 (6th ed. 1996 & Supp. 2000).

request accident. The trial court ruled that Appellant's possession of a firearm was only a misdemeanor, and it could not say as a matter of law that such possession was an act naturally tending to cause death or great bodily harm. Thus, it agreed to give a charge to the jury on the lesser-included offense of involuntary manslaughter. However, the defense objected to the judge's intent to charge that a finding of burglary precluded consideration of involuntary manslaughter, by arguing that such a judicially-created requirement goes beyond the definition of involuntary manslaughter set forth in S.C. Code Ann. 16-3-60 (Supp. 2000). {R. 792-800}. Ultimately, the trial court charged the jurors that a finding of burglary precluded consideration of involuntary manslaughter because burglary was a felony. {R. 899}. After the charge, the defense renewed its objection. {R. 905-07}.⁷

Regardless of whether burglary was properly submitted to the jury, Appellant's unlawful possession and use of firearms precluded the necessity of an involuntary manslaughter charge as a matter of law. In order for an unlawful act to remove the need for a charge on involuntary manslaughter, the act must have been the proximate cause of the homicide. State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994). In Goodson, the defendant pulled out his gun after being threatened in a bar by a man with a pool stick. The defendant then shot and killed the bar owner after being escorted outside, but claimed the gun went off accidentally. In concurrence, then-Justice Toal recognized that the unlawful possession of a weapon may not be in all cases the proximate

⁷ Thus, the defense never made the exact argument it makes now, that since its directed verdict motion for burglary should have been granted, the judge's charge precluded consideration of a lesser-included offense. See, e.g. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal). Of course, the trial court earlier denied the directed verdict motion.

cause of a killing, but reasoned that:

[W]here, as here, the defendant unlawfully possesses a firearm, has been drinking heavily all day, and kills the bar owner with the unlawful firearm, the unlawful possession of the firearm is a proximate cause of the injury.

Goodson, 312 S.C. at 281-82, 440 S.E.2d at 372. See also Burriss, 334 S.C. at 262 n.5, 513 S.E.2d 107 n.5 (adopting then-Justice Toal's proximate cause analysis and interpretation from her concurrence in Goodson).

In the present case, Appellant had been drinking Budweiser all day and shooting guns in the woods behind Ruth's house (which was not Appellant's real property). He came onto Ruth's property with loaded guns and knocked on the door, and was then ran off by Ruth's daughter, who told him that her mother did not want him around anymore, Appellant went back out into the woods and shot the guns and drank some more beer. Despite the prior warning, Appellant returned at dusk to Ruth's house with two loaded and cocked weapons. He proceeded to enter her little-used side screen porch and beat on the interior door until it broke, despite the protestations of those inside.

If the defendant's unlawful possession of a gun in a bar parking lot was the proximate cause of the shooting in Goodson, certainly Appellant's extended and repeated unlawful possession of two guns, coupled with his drinking and his trespass after notice, amounted to a proximate cause of Sgt. Kubala's shooting. Indeed, proximate cause could be found from *any* of the following list of illegal acts Appellant undisputedly committed:

(1) 18 U.S.C. § 922(g)(1) (unlawful possession of a firearm by a person convicted of a crime punishable by imprisonment exceeding one year).⁸

⁸ Only if the gun and ammunition Appellant used was manufactured in South Carolina and never left the state would there not be sufficient minimal nexus to interstate commerce. See United States v. Wasela, 223 F.3d 656 (7th Cir. 2000); United States v.

Appellant of course had an extensive felony record, primarily of burglaries and grand larcenies. This crime would be a felony.

(2) S.C. Code Ann. § 16-23-20 (Supp. 2000) (unlawful to carry a pistol except under certain exceptions not applicable here).

(3) S.C. Code Ann. § 16-23-30(a) & (e) (Supp. 2000) (unlawful to possess a pistol by anyone convicted of a crime of a crime of violence, or who is a habitual drunkard). Appellant had prior convictions for 2nd degree burglary in the nighttime {R. 956-59}, which is a violent crime under S.C. Code Ann. § 16-1-60, and also admitted he drank at least a 12-pack to a case of beer a day {R. 693-94}. This crime would be a felony. S.C. Code Ann. § 16-23-50(A)(1) (Supp. 2000).

(4) S.C. Code Ann. § 23-31-400(B) (Supp. 2000) (unlawful to discharge a firearm while under the influence of alcohol or drugs). Of course, McLeod described Appellant as wobbling with glazed eyes, and holding a silver can. {R. 205; 215-16}. Appellant admitted drinking most of the day, and beer cans were found out in the woods where he had been shooting the guns. {R. 691-94}.

(5) S.C. Code Ann. § 24-21-450 & -680 (Supp. 2000) (arrest for violating conditions of probation and parole). Appellant was prohibited from having weapons as a condition of his probation and parole. {R. 968-71}.

This case is of course distinguishable from State v. Chatham, 336 S.C. 149, 519 S.E.2d 100 (1999), where the court reversed because involuntary manslaughter instructions were not given. Chatham held that the defendant's particular actions in unarmed fistfight and wrestling match with the victim were not the type of actions naturally tending to cause death or serious bodily harm. Id. Of course, Appellant's violation of the laws regarding deadly weapons, under this circumstances of this case, certainly does tend to cause death or bodily harm.

Bell, 70 F.3d 495, 498 (7th Cir. 1995). The .22 pistol was manufactured by Hi Standard Manufacturing Company {R. 662}; an internet search reveals that company is presently located in Houston, Texas. The shotgun was a Sporting Arms Snake Charmer II {R. 388}; an internet search reflects that gun is presently sold by Verney-Carron USA of Clay Center, Kansas.

Moreover, it can not be seriously contended that Appellant in these circumstances had a lawful right to arm himself or act in self-defense, thereby justifying an involuntary manslaughter charge. Unlike the defendant in Burriss, who had been physically attacked by two crack-smoking fellows who continued to behave menacingly, absolutely no one at any time threatened Appellant with bodily harm. 334 S.C. at 263, 513 S.E.2d at 108. See also State v. McCaskill, 300 S.C. 256, 387 S.E.2d 268 (1990) (defendant entitled to charge on accident where she had armed himself after being frightened by a domestic quarrel with another in her own property, but claimed the gun fired accidentally). Indeed, in Goodson, the defendant initially had been threatened by a man with a pool stick before he shot the bar owner, but the court "specifically held Goodson was not lawfully armed when he shot the victim because *he had no self-defense claim at the time*". Burriss, 334 S.C. at 262 n.5, 513 S.E.2d at 107 n.5 (emphasis added) (discussing Goodson, 312 S.C. at 281-82, 440 S.E.2d at 372-73). Appellant here did not even face any kind of earlier threat, and by returning to Ruth's and beating on her door with two loaded firearms, he certainly was at fault in bringing on the difficulty.

Therefore, even if this Court finds in Appellant's first issue that the trial court should have directed a verdict on burglary, the murder conviction would still stand as an involuntary manslaughter charge was not required as a matter of law. Any one of the above crimes would prevent a charge on involuntary manslaughter; accordingly, there could be no reversible error from the trial court's charge that the jury could not find involuntary manslaughter if it found Appellant guilty of burglary.

Appellant is misplaced in his argument of Beck v. Alabama, 447 U.S. 625 (1980). In Beck, the United States Supreme Court held that a death sentence could not stand if

the jury arbitrarily was not allowed to consider a lesser-included offense supported by the evidence. The determining factor of whether the evidence supports a lesser-included offense is, of course, state law. Beck, 447 U.S. at 630 & 630 n.5. As argued above, Appellant's actions preclude an involuntary manslaughter instruction under state law.

Further, since South Carolina is a "consider" state, in that juries are not instructed to "weigh" aggravators and mitigators, then the subsequent overturning on appeal of one aggravator would not affect the validity of a death sentence as long as one valid aggravator remained. See State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984) (citing Zant v. Stephens, 462 U.S. 862 (1983)). The jury in this case found two aggravators: murder while in the commission of a burglary, and murder of a law enforcement officer during or because of the performance of his official duties. Accordingly, Appellant's death sentence would not be compromised even if this Court was to reverse the burglary conviction.

III. THERE WAS NO REVERSIBLE ERROR FROM EXCLUSION OF DEFENSE TESTIMONY DURING THE GUILT PHASE THAT APPELLANT HAD THE BEHAVIORAL CHARACTERISTIC OF "EXAGGERATED STARTLE RESPONSE" RESULTING FROM HIS VOLUNTARY INTOXICATION, BECAUSE (1) AN INVOLUNTARY MANSLAUGHTER CHARGE WAS NOT REQUIRED AS A MATTER OF LAW, AND, (2) IN ANY EVENT, EFFECTS OF VOLUNTARY INTOXICATION CANNOT REDUCE CRIMINAL LIABILITY.

Appellant next contends that the trial court erred by refusing to allow social worker and "psychotherapist" TeAnne Oehler testify during the guilt phase that Appellant had a "behavioral characteristic" of "exaggerated startle response". Appellant contends this would have corroborated his statement to police that the shooting was unintentional, and thus involuntary manslaughter and not murder. However, there was no reversible error from exclusion of this testimony because an involuntary manslaughter charge was not required as a matter of law. Even if involuntary manslaughter was appropriately in issue,

the trial court properly excluded the testimony, because Oehler testified that Appellant's "exaggerated startle response" was the result of voluntary intoxication, which cannot reduce or absolve criminal liability under state law.

A. Events at trial

At the close of the state's case, Appellant proffered the testimony of Ms. Oehler. Oehler testified that Appellant does have a diagnosis of alcohol and cannabis dependence, and that "exaggerated startle response" was a behavioral characteristic of someone with substance dependence. She described the concept:

The interaction of the alcohol and the marijuana combined together would cause him to have an increased arousal to stimuli in the environment that he's in so that he would have a reactive physiological response so that he might jump suddenly or move suddenly when he hears a noise or when he sees sudden movement or when he might touch something that is not something that's normally in his environment.

Oehler asserted this could "cause him to suddenly respond with the feeling of having to defend himself or trying to protect himself". The behavior was characteristic of one who has been abusing substances for a long time. {R. 772-773}.⁹

The defense conceded that the proffer did not rise to the level of the M'Naughten test, but asserted it was "important for the jury to understand why Bobby Stone may have reacted in the manner in which he did on the night of February 26th". While noting that Oehler's testimony would be admissible in sentencing, the trial court ruled that it was not relevant to the guilt phase. He reasoned voluntary intoxication does not relieve an

⁹ Interestingly, this is the same TeAnne Oehler who testified in the Robert Conyers PCR, which is presently pending on appeal before this Court, that she was unqualified to define psychopathy from the DSM-IV as anything other than a layperson. Oehler had no problem giving diagnoses in this case.

individual from criminal responsibility, and exaggerated startle response was a "by-product" of Appellant's voluntary intoxication. {R. 774-76}.

B. Since, as argued in the previous issue, Appellant was not entitled to an involuntary manslaughter charge as a matter of law, then there could be no reversible error from the exclusion of Oehler's testimony.

Whether or not Appellant was overly sensitive to stimuli of course could have nothing to do with his guilt for the charges of burglary and possession of a weapon during commission of a violent crime. However, the testimony bears no relevance to the murder charge either.

As argued in the preceding section, Appellant's undisputed and unlawful possession and use of firearms on the day of the incident precluded the necessity for an involuntary manslaughter charge as a matter of law. The defense expressly declined to request a charge on accident. {R. 792}. Thus, exclusion of the testimony could not have resulted in reversible error, as there was nothing appropriately in issue for which it could enlighten the jury.

C. Even if involuntary manslaughter was properly submitted to the jury, Oehler's testimony would have done nothing to aid the jury, as a claim that one startled easily because of voluntary intoxication does not absolve or reduce a defendant's criminal liability.

However, even if involuntary manslaughter was appropriately in issue, the trial court correctly excluded Oehler's "opinion". As an initial matter, Oehler's testimony that a person with exaggerated startle response would have a heightened defense mechanism can not bear any relevance in the case, because Appellant only said in his statement that the gun accidentally went off as he turned around, not that he felt threatened. {R. 683; 693; 695}. Indeed, Appellant specifically denied that he fired the gun at anything. {R. 695 II. 15-17}.

This court has repeatedly held that voluntary intoxication does not relieve an individual from criminal responsibility. State v. South, 310 S.C. 504, 427 S.E.2d 666 (1993). Murder is of course a general intent crime,¹⁰ and South Carolina follows the minority rule that voluntary intoxication provides no defense even for specific intent crimes. State v. Vaughn, 268 S.C. 119, 232 S.E.2d 328 (1977).

The reason is one of rational policy: people have a duty to avoid being so intoxicated that they pose a danger to others. Otherwise, many offenders would escape liability, and there would be no personal accountability "which is the bedrock of all law". Id. at ___, 232 S.E.2d at 330-31. Thus, in South Carolina one cannot be acutely "too drunk to know right from wrong". South, 310 S.C. at 507, 427 S.E.2d at 669. In the present case, Oehler did not testify that Appellant was so acutely intoxicated he did not know right from wrong; even if she did, it would be irrelevant under South.

The trial court was correct in ruling that this "characteristic" was nothing more than a by-product of voluntary intoxication, and thus inadmissible as a matter of state law. Since there is a duty to avoid voluntary intoxication that makes one a danger to others, a person can no more seek to show that their drunkenness caused them to startle more easily than a normal person, than they can claim that it caused them to anger more easily. This Court has repeatedly held that as a matter of law voluntary intoxication, no matter how severe, cannot impair a defendant's ability to act with malice aforethought so as to reduce murder to voluntary manslaughter. See generally State v. Davis, 278 S.C. 544, 298 S.E.2d 778 (1983); State v. Crockett, 272 S.C. 344, 251 S.E.2d 764 (1979). It follows that

¹⁰ State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996);

voluntary intoxication similarly cannot impair one's ability to act with intention. Since Appellant's voluntary intoxication is irrelevant to a determination of his mental state at the time of the shooting, expert testimony as to the effect of the intoxication on his mental state would not have assisted the trier of fact in understanding the evidence or determining a fact in issue. Rule 702, SCRE (admissibility of expert testimony).

Further, Oehler's testimony is so weak as to not meet the standard for pragmatic relevance in Rule 403, SCRE, which prohibits evidence which is prejudicial, confusing, or misleading. Although Oehler stated Appellant had a diagnosis of chemical dependence, she described "exaggerated startle response" in purely a hypothetical and academic vein. {R. 772-74}. Oehler never opined to a reasonable degree of "psychotherapeutic" certainty, or to any degree at all, that Appellant's actions in shooting Sgt. Kubala on the night of February 26th were due to exaggerated startle response caused by his acute intoxication and chronic substance dependence. As such, the testimony is incompetent and irrelevant. Rule 220(c), SCACR (appellate court can affirm for any ground appearing in the record).

Finally, Oehler did testify that exaggerated startle response was "most especially [a] characteristic" of a long term substance abuser who was actively intoxicated. {R. 774 II. 3-9}. And, a defendant can assert an *insanity defense* based on voluntary intoxication, if the intake of drugs and alcohol *permanently* destroys his ability to know legal or moral right from legal or moral wrong, thus meeting the M'Naughten standard. See State v. Hartfield, 300 S.C. 469, 388 S.E.2d 802 (1990) (discussing S.C. Code Ann. § 17-24-10(A) (Supp. 2000), which adopts the M'Naughten "know right from wrong" standard for an insanity defense). A defendant can also seek a verdict of guilty but mentally ill (GBMI) if there is

evidence the substance abuse "caused permanent and irreversible brain damage which manifests itself in a mental illness". Hartfield, 300 S.C. at 473, 388 S.E.2d at 804; S.C. Code Ann. § 17-24-20 (Supp. 2000) (GBMI defined as knowledge of right and wrong but because of mental defect being unable to conform to the law).

Of course, Appellant raised neither an insanity defense nor a GBMI verdict at trial. Thus, Oehler's testimony could not have been relevant under a Hartfield analysis. State v. Gill, 327 S.C. 253, 489 S.E.2d 478 (1997) (issue must be raised and ruled on by trial judge to be preserved for appeal). In any event, Appellant conceded that Oehler's testimony did not meet the M'Naughten standard. {R. 775 II. 6-8}. Thus, even if his chronic alcoholism and acute intoxication had permanently caused him to have "exaggerated startle response", state law would preclude this from being relevant to an insanity defense, as it did not affect his ability to perceive right from wrong.

Further, Oehler's testimony was also insufficient to establish GBMI. Oehler never diagnosed Appellant with having either a mental illness or "permanent and irreversible changes in the functioning of his brain". Hartfield, 300 S.C. at 473, 388 S.E.2d at 804. She merely referred to a "behavior characteristic" of one who has been imbibing much too long. As noted in Vaughn, "the effect of drunkenness on the mind and on a man's actions . . . is a fact known to all". 268 at ___, 232 S.E.2d at 330-31. It is just as commonly known that chronic drunkenness can lead to alcoholism and its resulting adverse health effects; thus, the policy against voluntary intoxication is no less applicable to a chronic abuser, at least where the testimony is far short of the substance-induced permanent psychosis described in Hartfield. 300 S.C. 469, 388 S.E.2d 802. Moreover, a claim of accident or absence of intention is inconsistent with a claim of "lack[ing] sufficient capacity to conform

his conduct with the requirements of the law". Cf. generally Davis v. State, 739 S.W.2d 150, 154 (Ark. 1987) (evidence of nervousness or irritability from cocaine use does not go to lack of capacity to conform conduct to the law).

Thus, Oehler's "expert" testimony would not have been relevant to any issue and there can be no reversible error.

IV. THE TRIAL COURT DID NOT ERR IN EXCUSING A JUROR WHO REALIZED DURING THE SENTENCING PROCEEDING THAT SHE WAS AN ACQUAINTANCE OF APPELLANT'S AUNT, WHO WAS A DEFENSE WITNESS; THE TRIAL COURT'S DECISION TO SEAT AN ALTERNATE WAS NOT AN ABUSE OF DISCRETION AND RESULTED IN NO PREJUDICE TO APPELLANT.

Appellant next contends that this Court should reverse his death sentence because the trial court excused a female juror and replaced her with an alternate mid-way through the sentencing proceeding. The trial court excluded the juror because she realized she was a neighbor of Appellant's aunt, who testified as a defense witness in the sentencing phase. This issue is not preserved. In any event, there is no reversible error. Contrary to Appellant's claim, the requirement that juror's concealment of information be intentional only identifies situations in which the trial court is *required* to grant extreme relief such as a mistrial or a new trial. Here, the trial court made a discretionary decision to excuse the juror and seat the alternate, and this decision did not result in any prejudice to Appellant.

A. Events at trial

During general voir dire at the very beginning of trial, Juror Dan Riegle responded to the court's reading of potential witnesses that he had been neighbors with defense expert witness TeAnne Oehler. Riegle assured the court that this acquaintance would not influence him. {R. 1336-37}. The trial court also called out the name of defense witness

Bernice Perry, but no one responded. {R. 1335 II. 10-11}.

Juror Riegle was ultimately death-qualified. During that voir dire, he stated that TeAnne Oehler lived eight houses up the street from his house, and that he had been in her house for social reasons on a few occasions. Riegle again stressed that this acquaintance would not affect his ability to be fair and impartial. {R. 1749-63}. Later, both sides agreed that Juror Clydie Thompson was death-qualified after her voir dire. {R. 1928-39}.

Appellant called Bernice Perry, Appellant's aunt, during the defense case in the sentencing phase. Before her testimony began, the court received a note from the jury foreman, and the court talked with Juror Thompson in chambers without objection from either side. When the trial court returned, it reported that Thompson stated she used to live on the same street as Perry five or six years ago, but knew Perry casually: "only to speak to her". Thompson claimed not to know anything about Perry's family or family background, and asserted that she "didn't really know [Perry] until she walked in and I remembered that this person lives on the street". Thompson stated that her acquaintance with Perry would not affect her impartiality. {R. 1069-73}.

The state asked for Thompson's excusal, by raising the concern that Thompson knows a blood relative of Appellant, and that it "really puts somebody on the spot to sentence that neighbor's child" to death. {R. 1072-74}. The defense responded that Thompson did not even know Perry's name, and stated she could be impartial. {R. 1074 II. 5-12}. The trial court responded:

THE COURT: However, the state said had they known the information they would have may have [sic] exercised one of their peremptory challenges and

excused the juror from participating in this matter. That being the basis of previous court decisions for knowledge learned after the jury has been impaneled and the fact one of the – resulted in an case being reversed and remanded for retrial, the court will excuse this juror from further participation in this matter and place the next alternate on the jury panel. That is Mr. John Singletary.

DEFENSE COUNSEL: Your Honor, the court will note our objection.

{R. 1074 II. 13-25}.

After a pause, the defense objected to the excusal of Thompson on the grounds that Alternate John Singletary did not participate in the guilt phase deliberations. The court responded that the jurors had been advised of the bifurcated nature of a capital trial and told to keep their minds open throughout the process. The trial court noted that the alternate had been present for all of the prior evidence and jury charges. **{R. 1075-77}.** There was no further discussion of the issue.

B. Appellant's issues are not preserved.

On appeal, Appellant basically makes three arguments: (1) that Thompson's concealment of her knowledge of Perry was not intentional, would not have supported a challenge for cause, and would not have been a material factor in the state's use of peremptory challenges, (2) that the state's argument to exclude Thompson was pretext for gender discrimination, and (3) that the judge's decision effectively granted the state an extra peremptory strike halfway through trial.

At trial, Appellant only argued that Thompson should not be excused because (1) she said she could be a fair juror and her the relationship with Perry was minimal, and (2) excusal would result in seating of an alternate who did not participate in the guilt phase deliberations. None of the arguments Appellant has raised on appeal were raised at trial.

As such, they are not preserved. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal); See State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996) (Batson issue regarding dismissal of juror during trial not preserved where it was not raised at trial).

C. Appellant applies the wrong standard when he asserts that juror removal is only proper when the juror intentionally concealed information; that standard only dictates when a trial court is required to grant extreme relief such as a mistrial.

Appellant applies the wrong standard when he asserts that removal of a juror is only required when the juror *intentionally* concealed information which would have supported a challenge for cause or a would have been a material factor in the party's use of peremptory challenges. See Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986) (block quoted in Appellant's brief) (affirming denial of motion for new trial based on after-discovered evidence where jurors' relationship with doctor's attorney was not a basis for disqualification). See also State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) (post-verdict motion for new trial should have been granted where juror intentionally concealed prior association with solicitor's office, which denied defendant effective use of peremptory challenges); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (affirming denial of new trial motion based on after discovered evidence based on information that juror attended pro-death penalty rally, where information was not intentionally concealed); State v. Gullledge, 277 S.C. 368, 287 S.E.2d 488 (1982) (pre-verdict mistrial should have been granted for juror's failure to disclose relationship with police officer, where information

would have supported a challenge for cause or would have been a material factor in the exercise of a peremptory strike); State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991) (post-verdict mistrial motion properly denied because no evidence party would have struck juror, and juror's failure to disclose distant relationship with witness was not intentional).

The state agrees Juror Thompson's concealment does not appear to be intentional. However, despite Appellant's contentions, Thompson and the other cases cited above instead provide the standard for the *granting of the extreme measures of a mistrial or a new trial*, when juror concealment of relevant information is discovered. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106 (1998) (quoting Thompson as the standard for a new trial, and not, as Appellant creatively does in his brief through the use of brackets, as the standard for removal of a juror). Thompson and the other cases mandate when a trial court *has to* address the problem of newly discovered juror information with new trial or mistrial. Moreover, Thompson and the other cases discussed above are irrelevant to Appellant's particular claims here, because in the present case *the state* is the party aggrieved by the newly discovered jury information, not Appellant.

However, trial courts may still as a matter of discretion remove jurors for alternates in lesser circumstances than those which require mistrial as defined by Thompson and its progeny. This standard is discussed below.

D. The judge's decision to excuse Juror Thompson because of her acquaintance with a defense witness is not so unreasonable as to be an abuse of discretion, and Appellant can show no actual prejudice.

"The general rule in this State is that the conduct of a criminal trial is left largely to the sound discretion of the presiding judge and [an appellate court] will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way". State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Along these lines, the typical appellate standard of review for the discretionary pre-verdict removal of a juror and replacement with an alternate, is whether or not the trial court's decision was so unreasonable as to be an abuse of discretion resulting in actual prejudice. State v. Rogers, 263 S.C. 373, 210 S.E.2d 604 (1974); State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). In this case, Appellant can show no prejudice from the seating of Alternate Singletary, nor can he show that the trial court's decision to excuse Thompson was so unreasonable as to amount to an abuse of discretion.

This case is similar to State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). During trial in Williams, a juror spoke to a minister seated at counsel table. The juror testified he had worked with the minister and had heard him preach. The minister was seated at counsel table because he had assisted the defense in contacting witnesses. The trial court excused the juror and replaced him with an alternate to prevent any problems. This Court rejected the defendant's claim that the excusal violated Batson v. Kentucky, 476 U.S. 79 (1986), and Georgia v. McCollum, 505 U.S. 42 (1992), by first noting that the issues were not preserved. However, this Court went on to hold that there was no reversible error, because (1) there is no right to be tried by a jury composed of particular

individuals, (2) the alternate juror had been approved by both sides at the inception of trial, and (3) there was no showing of any prejudice from the seating of the alternate juror. Williams, 321 S.C. at 459-60, 469 S.E.2d at 52.

The same result is warranted here as is warranted in Williams. Appellant has no right to be tried by a particular juror, and the alternate juror in this case was approved by both sides. {R. 1614-24}. Appellant has identified no sustainable reason why he was prejudiced by the seating of Alternate Singletary. Here, the party aggrieved by the Juror Thompson's revelations was the state, not the defense.

Appellant attempts to show prejudice by contending that the effect of the judge's decision was to give the state an extra peremptory strike. However, the trial court's decision, that a juror's acquaintance with a blood relative of and defense witness for Appellant warrants excusal, is not so unreasonable as to be an abuse of discretion. Parties are entitled to truthful and accurate information during voir dire so that they may intelligently make peremptory challenges; there is no question that the state did not have this information at selection. See, e.g. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). Although it certainly appears that the relationship was minimal, the state pointed out its concern about a juror having to sentence a neighbor's relative to death. {R. 1073}. Moreover, Thompson was the first juror selected; had the information been known at jury selection the state would not have ultimately had an "extra" strike. Like the judge in Williams, where the relationship between the juror and the minister was admittedly more defined than the present case, yet still very casual, the trial court in this case was not unreasonable in deciding to avoid any possible appearance or existence of unfairness by

seating the alternate.

E. The state's argument for excusal of Thompson was not pretext for gender-based discrimination.

Appellant finally attempts to show prejudice by arguing that the state's request for excusal of Juror Thompson, who is female, was mere pretext for impermissible gender-based discrimination in violation of Batson and J.E.B. v. Alabama, 511 U.S. 127 (1994). He notes that pretext is established by showing disparate treatment of similarly-situated jurors, see State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996), and notes that the prosecutor did not move to excuse or strike Juror Riegle, who knew defense expert witness TeAnne Oehler.

Despite the fact that this was never raised to the trial court, pretext is not apparent from this record. The state was aware of Riegle's involvement from the first day of voir dire; the solicitor may have been saving strikes. See, e.g. State v. Kelly, 319 S.C. 173, 460 S.E.2d 368 (1995). When another *male* juror stated during death-qualification that his first cousin's husband is the cousin of the defendant, the state argued that he should be excused because this relationship affected his partiality. {R. 625-42}. That should be enough to dispel any gender-based discrimination, as it shows the solicitor was treating alike jurors who had connections to the defendant. Moreover, Jurors Thompson and Riegle were not similarly situated in that Thompson was an acquaintance of Appellant's family, which is far more personal a connection to Appellant than Riegle's acquaintance to a professional expert defense witness. Finally, Riegle and Thompson's answers in voir dire were different, in that Riegle said that the murder of a police officer would make him lean toward a more severe penalty. {R. 1762}. See State v. Haigler, 334 S.C. 623, 515

S.E.2d 88 (1999) (jurors' answers about prior jury service were distinct so they were not similarly situated). Finally, the original jury had six females. See State v. Dyar, 317 S.C. 77, 79, 452 S.E.2d 603, 604 (1994) (solicitor's acceptance of members of the minority onto the jury is a valid consideration in determining discrimination). Thompson and Riegle were not similarly situated and there is no indication of gender-based discrimination.

The trial court's decision to avoid any possible unfairness by excusing Thompson was a reasonable decision that resulted in no prejudice to Appellant. The claim for relief should be denied.

V. THIS COURT'S RECENT DECISION IN JONES V. STATE PRECLUDES REVERSIBLE ERROR FROM THE TRIAL COURT'S REFUSAL TO CHARGE TWO STATUTORY MITIGATORS, EVEN THOUGH THERE WAS EVIDENCE APPELLANT WAS INTOXICATED AT THE TIME OF THE CRIMES.

Appellant next contends he should receive a new sentencing proceeding because the trial court failed to instruct on the mitigating factors in S.C. Code Ann. § 16-3-20(C)(b)(6) & (7) (Supp. 2000). There was in fact evidence that Appellant was intoxicated at the time of crimes, and this Court has reversed in the past for failure to charge all three relevant statutory mitigators where there was evidence of intoxication. S.C. Code Ann. § 16-3-20(C)(b) (2), (6) & (7) (Supp. 2000). However, in Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998), which is admittedly a capital PCR appeal applying a prejudice standard for ineffective assistance of counsel, this Court held that there was no prejudice from failure to submit one of the mitigators because submission of other mitigators allowed the jury to fairly consider mental health evidence. The state would contend that such a result is warranted here, because the trial court did charge the mitigator in S.C. Code Ann. § 16-3-20(C)(b)(2) (Supp. 2000), and also gave a general charge on nonstatutory mitigators.

A. General Rules

When fashioning a capital sentencing charge, the trial court has a duty to review all statutory instructions and instruct the jury on any circumstances which may be supported by the evidence, and not merely on those requested by the defendant. State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000). In making this determination, the trial court is concerned with only the existence of evidence at not its weight. Id.

Evidence of voluntary intoxication is a proper matter for consideration by the jury in mitigation of punishment. State v. Pierce, 289 S.C. 430, 346 S.E.2d 707 (1986). When there is evidence that the defendant was intoxicated at the time of the crime, the trial court should instruct the jurors on three statutory mitigating factors: S.C. Code Ann. § 16-3-20(C)(b)(2), (6) & (7) (Supp. 2000). Pierce, 289 S.C. 430, 346 S.E.2d 707. These mitigators are:

(2) The murder was committed while the defendant was under the influence of mental or emotional disturbance;

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired;

(7) The age or mentality of the defendant at the time of the crime.

If the trial court gives a specific charge on a nonstatutory mitigator of voluntary intoxication, it is not reversible error to fail to charge the three statutory mitigators. State v. Plemmons, 296 S.C. 76, 370 S.E.2d 871 (1988). The trial court did not give a specific instruction on voluntary intoxication as a mitigator in this case.

B. Despite the fact that there was evidence of Appellant's intoxication at the time of the crime, the trial court refused to charge on mitigators (6) & (7).

Unlike State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987), where the Court found that evidence that the defendant had drank some beer at some period before the crime did not establish that he was intoxicated at the time of the crime, the state cannot fairly contend that there was no evidence Appellant was intoxicated at the time of the offense in this case. As pointed out by Appellant, he claimed in his statement that he drank twelve Budweisers over a six hour period while shooting guns in the woods; however, that was his normal intake for the day. {R. 693}. Five beer cans were found in the woods. {R. 409-11}. After he was arrested four hours after the shooting, Appellant smelled of alcohol, but appeared to be sober. {R. 682; 719}. But the evidence most obvious came from Ruth and her daughter McLeod, who testified about their confrontation with Appellant approximately an hour before the shooting: McLeod stated Appellant appeared to have a beer can, was wobbling or stumbling while walking, and had glazed eyes that were "staring out" {R. 198; 205; 214-17}. Ruth described Appellant as "hyped-up on something" and staggering. {R. 262-63}.

The trial court agreed to charge mitigator (2), or influence of mental or emotional disturbance, because of evidence from the social worker concerning Appellant's upbringing and background. However, the court declined the defense request to submit mitigator (7), or age and mentality, based on the social worker's testimony, because "that would be basically doubling the two". The defense then argued that the evidence of voluntary intoxication required a charge on mitigator (6), or substantial impairment of the capacity to appreciate criminality or conform one's conduct. The court denied it, however, ruling that mitigator (6) "deals specifically with a finding by a doctor", that the case law "is clear that

you are not entitled to that, with respect to voluntary intoxication", and that voluntary intoxication would be covered by the general charge that the jury could consider any nonstatutory mitigators. {R. 1194-97}.

During the charge, the trial court only instructed the jury on mitigators (1), lack of a significant prior violent record, and (2) mental or emotional disturbance. The trial court also told the jury that it could "consider any other mitigating circumstances which are supported by the evidence in this case". The trial court defined these as factors not defined by statute "but which the defendant claims reduces the degree of punishment he should receive". {R. 1249}.

After the charge, the defense renewed its request for mitigators (6) and (7). The trial court then indicated his intent to remind the jury, for purposes of the burglary aggravator, that voluntary intoxication was not a defense to a criminal act. The defense objected only as far as the trial court's refusal to expressly limit the supplemental charge on voluntary intoxication to burglary only. {R. 1254-57}.

C. - There was no reversible error because the trial court's submission of statutory mitigator (2) allowed the jury to fairly consider voluntary intoxication.

Although the trial court did not instruct on statutory mitigators (6) and (7), and did not give a specific nonstatutory mitigator as to voluntary intoxication, the trial court did charge the jury on mitigator (2), or "the murder was committed while the defendant was under the influence of mental or emotional disturbance". The trial court also instructed the jurors they could consider any nonstatutory mitigator supported by the evidence. {R. 1249}. The defense argued voluntary intoxication as a mitigator, asserting that while it was

not a defense, Appellant was "mixing alcohol with a dangerous [weapon]". The defense argued that its important that one is careful with drugs and alcohol because "in a blink of an eye something could happen", and that a life sentence was fitting punishment for Appellant's "drunken stupidity". {R. 1232-33; 1238}.

The state would contend that the trial court's charging on statutory mitigator (2) as well as on general nonstatutory mitigators fairly allowed the jury to consider Appellant's voluntary intoxication, so that reversible error did not result. This Court has rejected such claims in the past. See State v. Young, 305 S.C. 380, 409 S.E.2d 352 (1991) (where there was evidence that defendant was intoxicated at the time of the crime, the trial court erred by refusing to charge mitigator (2) even though mitigators (6) and (7) were charged); Plemmons, 296 S.C. 76, 370 S.E.2d 871 (finding trial court's specific charge on voluntary manslaughter prevented reversible error from failure to charge (2) and (6)).¹¹

However, this Court has since decided the capital PCR appeal of Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998). During Jones's sentencing proceeding, his defense presented a wealth of information about his mental retardation, possibility of organic brain damage, lack of impulse control, bizarre behavior, and family life. However, Jones's sentencing phase expert did not specifically diagnose a mental illness, and the trial court only instructed on statutory mitigators (6) and (7), as well as a general nonstatutory mitigator, while omitting mitigator (2) (mental and emotional disturbance). During the PCR hearing, experts were presented who did specifically diagnose Jones with mental illnesses. When rejecting the claim that counsel's failure to present a more complete mental health

¹¹ The state plans to file a motion to argue against precedent on this issue.

mitigation case deprived Jones of a charge on statutory mitigator (2), this Court reasoned:

From the testimony presented [at the sentencing phase], the jurors were aware that Jones was mentally retarded, that he had brain damage, and that he often behaved in a bizarre manner. They were given several mitigating factors through which to consider the mental condition of Jones.

Jones, 332 at ___, 504 S.E.2d at 827.

Admittedly, Jones was decided within a prejudice analysis for ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984). However, the state would contend that the same reasoning holds true here: that the trial court's submission of mitigator (2) and the general nonstatutory mitigator provided the jury a conduit through which they could fairly consider the voluntary intoxication of Appellant. The lack of prejudice is confirmed by the fact that South Carolina is a "consider" state rather than a "weighing" state: since the jury does not need to "stack" mitigators to weigh them against aggravators, the omission of two mitigators directed toward the same issue as the submitted mitigator would not affect the jury's analysis. Indeed, the same is true with aggravators. See, e.g. State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (1984) (the subsequent overturning on appeal of one aggravator would not affect the validity of a death sentence as long as one valid aggravator remained).

Moreover, the United States Supreme Court has held that the Eighth Amendment does not require instructions on the concept of mitigation or on particular statutory mitigators, as long as there is no reasonable likelihood the jury applied the instructions in a way that prevented the consideration of constitutionally relevant evidence. Buchanan v. Angelone, 522 U.S. 269 (1998). The trial court's submission of mitigator (2) as well as the nonstatutory mitigator certainly allowed the jury to consider voluntary intoxication as

mitigation evidence.

Further, the trial court had somewhat of a point in ruling that only expert mental health testimony should trigger mitigator (6), which refers to a substantial impairment of the defendant's ability to appreciate the criminality of his conduct or to conform his conduct to requirements of law. Indeed, this is, or is at least similar to, the standard for *insanity* in other jurisdictions and in the Model Penal Code. See McAninch & Fairey, The Criminal Law of South Carolina 506 (3rd ed. 1996); Davis v. State, 739 S.W.2d 150 (Ark. 1987); Godley v. Commonwealth, 343 S.E.2d 368 (Va. Ct. App. 1986).

This Court has been appropriately strict in deciding whether expert mental health evidence was sufficient to require that this mitigator to be charged. In State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000), the defendant presented a neuropsychologist who testified that the defendant had an organic brain dysfunction and a tough early childhood that would affect his ability to cope and deal with stress. This Court held that mitigator (6) did not need to be charged from such evidence, because the evidence only established that the defendant could not deal with stress, not that he was unable to appreciate the criminality of his conduct or conform it to the law. Id. It seems somewhat incongruous that, on one hand, the court is appropriately strict with expert evidence and mitigator (6), but yet the slightest evidence that a person may have been intoxicated at the time of the crime automatically triggers the mitigator, even though it is pattered on a distinct mental health standard of insanity and irresistible impulse. Thus, mere evidence of intoxication should not trigger mitigator (6) without some expert evidence that the level of intoxication substantially impaired the defendant's ability to appreciate the criminality of his conduct or

conform it to the law. No such testimony was present in this case.¹²

Appellant contends that the trial court aggravated any error by charging that the jury should consider "whether *the defendant* has introduced any evidence as to the existence" of mitigating circumstances. {R. 1247 II. 21-25}. When the judge's charge is considered as a whole, however, such a brief passage would not preclude the jury from considering evidence of voluntary intoxication simply because it came during the state's case. In the trial court's instruction on general nonstatutory mitigators, it referred to mitigators being supported by "any evidence". {R. 1249 II. 8-10}. It instructed the jury that the ultimate burden was upon the state, that a mitigating circumstance did not have to be supported by proof beyond a reasonable doubt, and that the jury could find for life for any reason or no reason at all. {R. 1241 II. 9-13; 1250 II. 1-5; 1250 II. 11-25}. Moreover, much of the evidence of intoxication did in fact come during the defense's cross-examination of the state's witnesses. {R. 214-16; 263; 553; 731}. The effect of the trial court's charge was simply to instruct the jury that it could consider any mitigating circumstance as to which there was some evidence. See, e.g. Boyde v. California, 494 U.S. 370 (1990) (no reasonable likelihood the charge as a whole prevented the jury from considering any mitigating circumstance); State v. Bell, 305 S.C. 11, 406 S.E.2d 165 (1991) (charge in

¹² Moreover, the defense only asked for mitigator (6) on the basis of voluntary intoxication, and did not ask for mitigator (7) on that basis. Although this Court has stated, even as recently as Hughey, that *the trial judge* has a duty to charge relevant mitigators even absent a request from the defendant, this does not change the fact that *in favorem vitae* review has been abolished. A contemporaneous and specific objection would be required to preserve any issue of mitigator (7) and voluntary intoxication. State v. Humphries, 325 S.C. 28, 479 S.E.2d 52 (1996) (issue not preserved because defendant never requested certain mitigator); State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal).

context did not preclude consideration of character and background).

Appellant finally contends that any error was aggravated by the trial court's sentencing phase instruction that voluntary intoxication was not a defense to a criminal act. Like Appellant, Respondent will address this claim in the following issue.

VI. THERE IS NO REASONABLE LIKELIHOOD THE JUDGE'S INSTRUCTION THAT VOLUNTARY INTOXICATION IS NOT A DEFENSE PRECLUDED THE JURY FROM CONSIDERING IT AS A MITIGATING CIRCUMSTANCE, WHERE THE JURY WOULD HAVE UNDERSTOOD THE DIFFERENCE BETWEEN A "DEFENSE" AND A "MITIGATING CIRCUMSTANCE".

Appellant next contends that when the trial court charged in the sentencing phase that "voluntary intoxication is not a defense to a criminal act", it violated the Eighth Amendment's mandate that a jury not be precluded from considering any circumstances of the offense as a basis for a sentence less than death. The issue is not preserved; in any event, the jury would have understood the distinction between a defense and a mitigating circumstance.

A. Events at trial

After the sentencing charge, the defense requested for the first time a charge that life imprisonment meant life without parole. The defense also renewed its objection to the judge's guilt phase charge, incorporated into the sentencing phase, that a finding of burglary would preclude involuntary manslaughter. At this point, the trial court stated that if it was going to bring back the jury for a life without parole charge, it would also remind the jury, because it also had to decide the burglary aggravator, that voluntary intoxication was not a defense to a criminal act. The defense at first agreed that "it was clear to us that [the trial court] intended" to give that instruction; however, after a pause, the defense

decided to object. The defense objected only as far as the trial court did not expressly limit the supplemental charge on voluntary intoxication to burglary only. {R. 1254-56}.

The judge then called the jurors back, and opened by expressly telling them that the supplemental charge should only be considered in light of the entire charge. The court then "remind[ed]" the jury of its guilt phase instruction that "voluntary intoxication is not a *defense* to criminal act or actions" (emphasis added). The trial court also charged the life imprisonment meant a defendant would serve the balance of his life in prison. {R. 1256-57}.

B. Appellant's issue is not preserved.

On appeal, Appellant contends that the trial court's reference to voluntary intoxication in and of itself violated the Eighth Amendment, not, as was argued at trial, that the trial court should have expressly limited the instruction to the jury's consideration of the burglary aggravator only. At no time did the defense expressly raise any Eighth Amendment claim or object to the giving of *any* type of voluntary intoxication instruction. Thus, the issue is not preserved. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal); See State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial).

C. There was no reasonable likelihood the jury applied the judge's instruction in such a way as to preclude consideration of voluntary intoxication, where the jury would have understood the difference between a "defense" and a "mitigating circumstance".

Even if the issue is preserved, the judge's charge on voluntary intoxication did not result in reversible error. Ultimately, the test is whether there is a reasonable likelihood the

jury applied the challenged instruction in such a way as to preclude the consideration of constitutionally relevant evidence. Boyde v. California, 494 U.S. 370 (1990). The jury in this case would not have confused a "defense" with a "mitigating circumstance". The two concepts are obviously distinct. See State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996) (where defendant first made a request for a charge on duress in the sentencing phase, it would be inappropriate for the jury to consider duress as a defense to the murder, but would be appropriate for them to consider it as a mitigating circumstance).

One of the submitted aggravators in this case was that the murder occurred while Appellant was committing a burglary. Of course, during the penalty phase the additional crime in aggravation must be proven beyond a reasonable doubt. Cf., generally State v. Riddle, 301 S.C. 68, 389 S.E.2d 665 (1990) (addressing a re-sentencing jury that did not hear the original guilt phase evidence). Although the judge charged the jurors that since he had "already defined for them the crime of burglary" and they had already "discussed that", he would not re-define it "at this particular point", he did repeatedly note to the jury that the state must prove aggravators beyond a reasonable doubt. {R. 1244 II. 14-19; 1246 II. 15-25}. When he gave his supplemental charge, the trial judge did not expressly link burglary to his instruction on voluntary intoxication, but it is clear the judge was simply attempting to remind the jury that voluntary intoxication would not be a "defense" to any criminal act, such as the aggravating crime of burglary. The jury would have understood it that way and not any other.

This conclusion is strengthened by the court's definition of mitigating circumstances:

What do I mean by statutory mitigating circumstances? It is a fact, and incident, a detail or occurrence which the General Assembly has

declared by statute *would reduce the severity of the offense of murder*. First, it is a circumstance recognized by statute as one which in fairness and mercy may be considered as *extenuating or as reducing the degree of moral culpability* for the commission of a murder. *A mitigating circumstance is neither justification nor excuse for murder*. It simply *lessens the degree of the defendant's action*, that is it tends to *lessen the severity of the punishment*.

{R. 1248 II. 4-20} (emphasis added). When defining non-statutory mitigators, the judge referred to them as factors "which the defendant claims reduces the degree of punishment that he should receive". {R. 1249}.

There is no reasonable likelihood that the jury would have confused the two concepts of "defense" and "mitigating circumstance", where the trial court clearly explained that a mitigating circumstance is "neither justification nor excuse for murder", but simply a fact which reduces the severity of the defendant's culpability for the offense. Defenses, as common knowledge holds, *are* justifications or excuses for a crime. Indeed, during the trial court's guilt phase charge on criminal intent it stated that voluntary intoxication is "never an excuse for or a defense to" a crime {R. 896 II. 19-32}, thereby implying the common sense proposition that a "defense" is something raised as a complete bar to criminal liability. Even though the concept of a defense was explained in the negative, when the judge's guilt and sentencing phase charges are considered as a whole, it was clear to the jury that a mitigating circumstance is not the same thing as a defense.

The judge expressly asked the jury to consider his charge in its entirety, and not to unduly focus on the supplemental charge. {R. 1256}. In the judge's entire charge, the jury was told that voluntary intoxication was not an "excuse for or defense to" a criminal act, and, similarly, that a mitigating circumstance also was not a "justification [or] excuse for

murder". The jury was told that a mitigating circumstance merely reduces the degree of culpability for the crime. There is no reason to think the jury would therefore not also consider voluntary intoxication as one of the mitigating factors that reduced Appellant's culpability for the crime.

VII. THE TRIAL COURT DID NOT VIOLATE *SIMMONS V. SOUTH CAROLINA* BY NOT SPECIFICALLY MENTIONING PAROLE WHEN CHARGING THE JURY THAT APPELLANT WOULD SERVE THE BALANCE OF HIS LIFE IN PRISON, BECAUSE APPELLANT ACCEPTED THE CHARGE AS GIVEN, THE CHARGE WAS SUFFICIENT, AND THE STATE'S ARGUMENT AND EVIDENCE WHEN VIEWED AS A WHOLE DID NOT RAISE FUTURE DANGEROUSNESS.

Appellant finally contends that the trial court violated *Simmons v. South Carolina*, 512 U.S. 154 (1994), by not referring to parole when it charged the jury that "life imprisonment means that a person will . . . serve the balance of his life in prison". He also contends that the solicitor improperly referred to Appellant's prior parole during the sentencing phase case.

The solicitor focused much of his penalty phase on Appellant's prior record {R. 951-59}, the fact that his activities on the day of the incident violated his parole and probation conditions {R. 964-975}, and victim impact testimony. The solicitor cross-examined the defense psychiatrist on Appellant's adaptability, and elicited that Appellant has an anti-social personality structure, problems with authority figures, and problems with rebelliousness that would lead him to have difficulty in prison. {R. 1064-65}. From the social worker the solicitor elicited Appellant's extensive violent record. {R. 1151-53}.

In closing, the solicitor repeatedly and extensively argued that Appellant would pose a danger in the future in prison. The solicitor also argued that Appellant had not "straightened out" from his prior stays in prison, that he manipulated the system to get

special treatment and parole, and that he has never followed the rules. The solicitor concluded by arguing specific deterrence, stating that a death sentence would stop Appellant from "ever doing anything like this again to any correctional officer or anyone else". {R. 1225}.

The defense repeatedly and unequivocally argued that if sentenced to life Appellant would never leave prison again. {R. 1236-38}.

Following the judge's charge, the defense for the first time requested a charge that life imprisonment meant life without parole. {R. 1254 II. 14-15}. The trial court agreed, and called the jury back for a supplemental charge:

I would instruct you that under our law life imprisonment means that a person will be – will serve the balance of his life in prison.

{R. 1257 II. 5-7}. Although the trial judge asked, the defense indicated it had no further "exceptions" to the judge's supplemental charge on the meaning of life in prison. {R. 1257 II. 14-22}.

In Simmons v. South Carolina, the United States Supreme Court held that due process required the jury be informed that the defendant was parole ineligible if (1) the defendant's future dangerousness was at issue, and (2) state law prohibited the defendant's release on parole. 512 U.S. 154 (1994). Although Appellant got the "balance of his life" charge, he contends there was Simmons error because the trial court did not say "without parole".

The issue clearly is not preserved. After the trial court gave its charge that Appellant "would serve the balance of his life in prison", Appellant expressly declined to make any further objection, and therefore has waived the issue on appeal. State v. Whipple, 324

S.C. 43, 476 S.E.2d 683 (1996) (failure to object to charge when opportunity is given waives issue on appeal). Moreover, at no time did the defense refer to Simmons, the solicitor's argument of future dangerousness, or due process. As such, his issues are not preserved. See State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial).

In any event, Simmons was satisfied by the trial court's instruction that Appellant would serve the balance of his life in prison, coupled with defense argument that Appellant would never leave prison. Admittedly, in Shafer v. South Carolina, 121 S.Ct. 1263 (2001), the United States Supreme Court rejected a similar claim that such argument and jury instructions satisfied Simmons. And, this Court also has approved an instruction specifically referring to parole ineligibility whenever Simmons is triggered. State v. Southerland, 316 S.C. 377, 447 S.E.2d 862 (1994), overruled on the grounds in State v. Chapman, 317 S.C. 302, 454 S.E.2d 317 (1995)

However, two important factors distinguish Appellant's case from that in Simmons even Shafer. First, unlike those cases, the jury in Appellant's case did not inquire about parole eligibility. Thus, there is nothing whatsoever to indicate that the jurors were concerned at all with the possibility of Petitioner's future release when they decided death was appropriate. Cf. Shafer v. South Carolina, 121 S.Ct. 1263, 1273-74 (2001). Second, unlike Simmons and Shafer, the jurors in this case were not charged that parole eligibility or ineligibility was not for their consideration. Cf. Simmons, 512 U.S. at 170-71; Shafer, 121 S.Ct. at 1274. Thus, there is no reason to think that the jurors were told parole was available, but "for some unstated reason, [they] should be blind to that fact". Simmons,

512 U.S. at 170. Since there is no reason to think that the jurors did not accept that life imprisonment meant Appellant would serve the balance of his life in prison, the judge's charge and defense argument satisfied due process, regardless of whether the prosecution raised future dangerousness.

In any event, when the solicitor's argument, evidentiary submissions, and cross-examination is considered as a whole, it is clear that he was arguing Appellant would be a future danger in prison, and showing that Appellant would not adapt to prison life. Such arguments and evidence do not trigger Simmons. See State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001).¹³

Finally, Appellant contends that it was improper to refer to Appellant's prior parole. Again, the issue is not preserved; in the passage to which Appellant points as raising the issue, he was only objecting specifically to discussion of his violation of a parole condition prohibiting use of drugs or alcohol. {R. 971 II. 1-25}. In any event, it is certainly proper for a solicitor to elicit a defendant's prior bad acts and failure to comply with parole conditions, to show the Appellant's character and characteristics as well as his unadaptability to prison. See, e.g. State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001); State v. Young, 319 S.C. 33, 459 S.E.2d 84 (1994); Allen v. State, 662 So.2d 323, 331 (Fla. 1995) (prosecutor did not argue future dangerousness with reference to prior escape; argument went to "committed by person under sentence of confinement" aggravator); Parker v. State, 456 So.2d 436 (Fla. 1984) (prosecutor's reference to defendant's prior life with parole

¹³ The United States Supreme Court has granted certiorari on the issue of whether future dangerousness was raised in Kelly. Oral argument is scheduled before that Court on November 26, 2001.

sentences did not raise future dangerousness but merely argued aggravator of prior violent record).

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Sumter County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

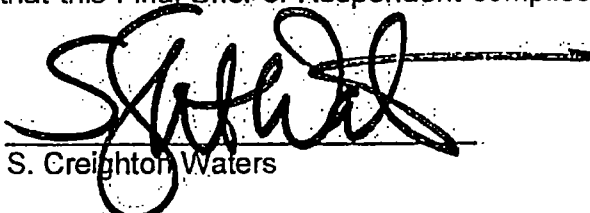
v.

BOBBY WAYNE STONE,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.



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ATTORNEYS FOR RESPONDENT.

February 28, 2002

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.

PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date **served the *Final Brief of Respondent***, dated February 28, 2002, on Appellant by depositing three (3) copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Joseph L. Savitz, III, Esquire
South Carolina Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, South Carolina 29201

I further certify that I have served all parties required by Rule to be served.

This 28th day of February, 2002.



S. CREIGHTON WATERS
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

Supreme Court of South Carolina.

The STATE, Respondent,

v.

Bobby Wayne STONE, Appellant.

No. 25494.

Heard May 16, 2002.

Decided July 15, 2002.

Defendant was convicted, after a jury trial in the Circuit Court, Sumter County, R. Markley Dennis, Jr., J., of murder, first-degree burglary, and possession of weapon during violent crime, and he was sentenced to death. Defendant appealed. The Supreme Court, Waller, J., held that: (1) a fully-enclosed screened porch was a "dwelling," within the meaning of the burglary statute; (2) removal of juror at penalty phase was not warranted; (3) defendant was entitled to mitigation instructions regarding impaired capacity, at penalty phase; and (4) penalty-phase instructions did not adequately convey that if sentenced to life imprisonment, defendant would be ineligible for parole.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Burglary 67 ↪4

67 Burglary

67I Offenses and Responsibility Therefor

67k1 Nature and Elements of Offenses

67k4 k. Character of Building. Most Cited Cases

A fully-enclosed screened porch was a "dwelling," within meaning of burglary statute; the porch was appurtenant to a home, and it was used by the homeowner for the protection of paint and wood stored there. Code 1976, §§ 16-11-10, 16-11-310, 16-11-311(A).

[2] Jury 230 ↪90

230 Jury

230V Competency of Jurors, Challenges, and Objections

230k90 k. Relationship to Party or Person Interested. Most Cited Cases

Jury 230 ↪131(18)

230 Jury

230V Competency of Jurors, Challenges, and Objections

230k124 Challenges for Cause

230k131 Examination of Juror

230k131(18) k. Form and Sufficiency of Answers. Most Cited Cases

Removal of juror was not warranted at penalty phase of capital murder trial, though juror was casually acquainted with defendant's aunt, who was called as State's witness at penalty phase and who had lived down the street from juror five or six years earlier; juror's failure to disclose the acquaintance when the aunt's name was announced at start of voir dire was innocent, because juror had not known the aunt's name, and juror clearly indicated that her former acquaintance with the aunt would not affect her in any way.

[3] Sentencing and Punishment 350H ⚡1780(3)

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)3 Hearing
350Hk1780 Conduct of Hearing
350Hk1780(3) k. Instructions. Most Cited Cases

Evidence that defendant was voluntarily intoxicated when the murder occurred warranted instructions, at penalty phase of capital murder trial, on mitigating circumstances regarding substantial impairment of defendant's capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and the age or mentality of defendant at the time of the crime. Code 1976, § 16-3-20(C)(b)(6, 7).

[4] Sentencing and Punishment 350H ⚡1780(3)

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(G) Proceedings
350HVIII(G)3 Hearing
350Hk1780 Conduct of Hearing
350Hk1780(3) k. Instructions. Most Cited Cases

To the extent the jury charges at penalty phase of capital murder trial prohibited the jury from considering the mitigating circumstance of defendant's voluntary intoxication, the charges violated the Eighth Amendment. U.S.C.A. Const.Amend. 8.

[5] Constitutional Law 92 ⚡4745

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)6 Judgment and Sentence
92k4741 Capital Punishment; Death Penalty
92k4745 k. Proceedings. Most Cited Cases
(Formerly 92k268(11))

Sentencing and Punishment 350H ⚡1780(3)

350H Sentencing and Punishment
350HVIII The Death Penalty

350HVIII(G) Proceedings
350HVIII(G)3 Hearing
350Hk1780 Conduct of Hearing
350Hk1780(3) k. Instructions. Most Cited Cases

Trial court's instruction, at penalty phase of capital murder trial, that "[u]nder our law life imprisonment means that a person will be--will serve the balance of his life in prison" did not satisfy defendant's due process right, in a capital sentencing proceeding in which defendant's future dangerousness was at issue, to have an instruction that if sentenced to life imprisonment, defendant would be ineligible for parole. U.S.C.A. Const.Amend. 14.

****245 *443** Deputy Chief Attorney Joseph L. Savitz, III, of South Carolina Office of Appellate Defense, of Columbia, for appellant.

***444** Attorney General Charles M. Condon, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General S. Creighton Waters, all of Columbia, and Solicitor C. Kelly Jackson, of Sumter, for respondent.

Justice WALLER.

Appellant, Bobby Wayne Stone, was convicted of murder, first-degree burglary, and possession of a weapon during a violent crime. He was sentenced to death for murder, and consecutively sentenced to thirty years for burglary, and five years for possession of a weapon. We affirm the convictions, but reverse Stone's death sentence and remand for a new sentencing proceeding.

FACTS

Shortly before 7:00 p.m. on February 26, 1996, Ruth Griffith heard gunshots in her backyard. She called her next door neighbor, Landrow Taylor, who came over; the two called 911. As they waited in the living room, Griffith and Taylor heard someone come onto the screened porch on the side of the house and start banging on the door to the house. A wooden board which had been nailed over a broken window pane on the lower right-hand corner of the door broke out. Sumter police officer, Sergeant Charles Kubala arrived at 7:07 p.m.; he was motioned to the side of the house by Taylor. As Taylor and Griffith waited inside the house, they heard someone shout "Halt" or "Hold It" followed immediately by three or four gunshots. A second police officer arrived to find Kubala had been shot in the right ear and neck. Kubala died at the scene.

After four hours of searching the wooded area behind Griffith's home, Stone was found lying beneath two fallen trees, with a .22 caliber pistol under him. A shotgun had been left on the screened porch. Stone confessed to the shooting, but claimed he had drank about twelve beers in the six hours prior to the shooting. He told police that when he heard a man's voice yelling at him from outside the screened porch, he ***445** turned and the gun went off, so he ran.^{FN1} The jury convicted Stone of murder, first degree burglary, and possession of a firearm during commission of a violent crime.

FN1. Stone claimed he had gone to visit Griffith as he had dated Griffith's niece a few years earlier and had previously been to her home.

****246 ISSUES**

1. Did the court err in failing to direct a verdict on the charge of first-degree burglary?

2. Did the court err in excusing a juror during sentencing?
3. Did the court err in refusing to charge the statutory mitigating circumstances of S.C.Code Ann. § 16-3-20(C)(b)(6) & (7)(Supp.2001)?
4. Did the court err in failing to instruct the jury that Stone would be ineligible for parole if sentenced to life imprisonment?

1. DIRECTED VERDICT-FIRST DEGREE BURGLARY

[1] Stone asserts he was entitled to a directed verdict on the charge of burglary as there was no evidence he entered Ruth Griffith's "dwelling." We disagree.

Under S.C.Code Ann. § 16-11-311(A)(Supp.2001), a person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and the entering is accompanied by an aggravating circumstance. For purposes of burglary, a "dwelling house" is defined by S.C.Code Ann. § 16-11-10 (1985) as follows:

With respect to the crimes of burglary and arson and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it or to the *446 same establishment of which it is an appurtenance shall be deemed parcels.

A "dwelling" also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person. S.C.Code Ann. § 16-11-310 (Supp.2001).

We find Griffith's screened porch meets the statutory definition of a dwelling. The porch is attached to the left side of Griffith's house. It has three concrete block stairs going up to it, and appears from photographs to be very small, approximately four feet on each side, with wood panels which extend two-thirds of the way up on two sides, and a screened door on the third side. The porch leads into and out of the laundry room and is used primarily to store wood and paint cans. Griffith uses the porch for ingress and egress to her clothesline outside. We find the screened porch is appurtenant, and is used for the protection of Griffith's property (paint and wood) so as to come within the definition of a dwelling.

We have not previously addressed, under the current burglary statute, whether a fully enclosed screened porch is a dwelling within the meaning of section 16-11-10. In the 1913 case of *State v. Puckett*, 95 S.C. 114, 78 S.E. 737 (1913), we addressed whether the defendant could be convicted of burglary for entering an unenclosed piazza, which had a two and one-half foot balustrade, and was open on the top 6-7 feet, with a picket gate on each end to keep out chickens and dogs. Under the facts of the case, the Court held the evidence did not show the piazza was such a part of the dwelling house as was contemplated by law to make it an offense to enter in the nighttime against the security of the dwelling house.^{FN2} However, at the time *Puckett* was decided, common law required a breaking in order to establish the offense of burglary. The offense of burglary no longer requires such a breaking. Further, unlike *Puckett*, the porch here was completely enclosed and was utilized for the protection of Griffith's property. We *447 find these factors sufficient to demonstrate the porch was part of Griffith's dwelling.

FN2. The *Puckett* Court noted that on the night in question it was damp and raining and the defendant was found on the piazza "under suspicious circumstances." The Court found that "there is no evidence that he stole anything or made any overt act to commit a felony." 78 S.E. at 737. Accordingly, *Puckett* could have been decided on the basis of a lack of intent to commit a crime. Whether the piazza was part of the "dwelling" was unnecessary to resolution of the case.

****247** Furthermore, numerous courts in other jurisdictions have held screened porches qualify as part of a dwelling for purposes of burglary statutes. See *State v. Bordley*, 2000 WL 706788 (Del.Super.2000); *State v. Jenkins* 741 S.W.2d 767, 768-770 (Mo.Ct.App.1987) (upholding burglary conviction for entry into enclosed screen porch despite unsuccessful attempt to open inner door to home); *Davis v. State*, 938 P.2d 1076 (Alaska App.1997); *People v. Wise*, 25 Cal.App.4th 339, 30 Cal.Rptr.2d 413, 416-18 (1994); *Johnson v. Commonwealth*, 875 S.W.2d 105, 106-07 (Ky.App.1994); *People v. McIntyre*, 218 Ill.App.3d 479, 161 Ill.Dec. 187, 578 N.E.2d 314 (1991) (screened porch attached to house was part of "living quarters" and thus was a "dwelling"); *State v. Lawrence*, 572 So.2d 276, 278-79 (La.App.1990) (particular back porch was part of the residence; porch was fully enclosed screened porch underneath the main roof); *State v. Watts*, 76 N.C.App. 656, 334 S.E.2d 68, 70 (1985); *People v. Lewoc*, 101 A.D.2d 927, 475 N.Y.S.2d 933, 934 (1984) (fully enclosed porch, with windows and walls of wooden construction running length of the house); *State v. Gatewood*, 169 Kan. 679, 221 P.2d 392 (1950) (porch which was screened in and connected to kitchen by door and window). Similarly, other courts have held appurtenant structures to a home, even if not directly accessible from the home, are nonetheless part of the "dwelling" as contemplated by burglary statutes. See *State v. Maykoski*, 583 N.W.2d 587 (Minn.1998) (basement); *People v. Ingram*, 40 Cal.App.4th 1397, 48 Cal.Rptr.2d 256 (5th Dist.1995) (garage attached to house, even though not connected by an inside doorway to the inhabited part of house); *People v. Moreno*, 158 Cal.App.3d 109, 204 Cal.Rptr. 17 (1984) ("given that garage was under the same roof, functionally interconnected with, and immediately contiguous to other portions of the house, simple logic would suffer were we to leap over this interrelationship to a conclusion that a garage is not part of a dwelling because no inside entrance connects the two").

We find the screened porch is part of the "dwelling." Accordingly, Stone was not entitled to a directed verdict.

***448 2. REMOVAL OF JUROR DURING SENTENCING**

[2] Stone next asserts the trial court abused its discretion in removing Juror Clydie Thompson during sentencing. We agree.

At sentencing, the state called Stone's aunt, Bernice Perry, as a witness. When Perry was placed on the witness stand, Juror Thompson indicated to the court that she knew Ms. Perry. Although Perry had been announced as a witness at the start of voir dire, Thompson did not know her name. Thompson had lived down the street from Perry five or six years earlier, and they were casual acquaintances only. Thompson indicated her acquaintance would not affect her ability to be fair and impartial.

The solicitor objected to Thompson's continued participation contending it would be difficult for her to impose a death sentence on a former acquaintance's nephew. The court removed Juror Thompson and replaced her with the second alternate juror. We find this was error.

In *State v. Woods*, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001), we recently stated:

When a juror conceals information inquired into during voir dire, a new trial is required only when the court

finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. *Thompson v. O'Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. *State v. Savage*, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991).

Although the present case does not involve a new trial, *Woods* is instructive. It is patent here that Juror Thompson's failure to disclose her acquaintance with Perry was innocent. Moreover, we find her scant acquaintance would neither have supported a **248 challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges. Thompson clearly indicated her former acquaintance with a witness whose name she did not even know, would not *449 have affected her in any way. Accordingly, we hold the trial court abused its discretion in removing her.

3. CHARGE ON STATUTORY MITIGATORS

[3] Stone next asserts reversible error in the trial court's refusal to charge, at sentencing, the statutory mitigating factors set forth in S.C.Code Ann. § 16-3-20(C)(b)(6) and (7) (Supp.2001), to wit, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired, and the age or mentality of the defendant at the time of the crime. He claims the charges were mandated due to evidence that he was intoxicated at the time of the crime. We agree.

In *State v. Pierce*, 289 S.C. 430, 435, 346 S.E.2d 707, 711 (1986), *overruled on other grounds*, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), we held that "the trial judge was required by law to instruct the jury on statutory mitigating circumstances 2, 6, and 7, given the evidence showing Pierce was using drugs and extremely intoxicated during the commission of the crime. **The failure to instruct is not harmless error.**" (Emphasis supplied). Thereafter, in *State v. Plemmons*, 296 S.C. 76, 78, 370 S.E.2d 871, 872 (1988), we held the specific statutory mitigating circumstances of subsections (2), (6), and (7) need not be submitted to the jury if the trial court gives a specific charge on the defendant's voluntary intoxication as mitigating circumstance.^{FN3}

FN3. Here, there was no such charge. To the contrary, the jury was specifically charged that voluntary intoxication was not a defense.

We have specifically rejected the contention that a charge on one mitigator is sufficient to cover the others. *State v. Young*, 305 S.C. 380, 409 S.E.2d 352 (1991) (where there is evidence the defendant was intoxicated at the time of the crime, the trial judge is **required** to submit the statutory mitigating circumstances in § 16-3-20(C)(b)(2), (6) and (7));^{FN4} *State v. Plemmons*, *supra*. We adhere to these precedents and hold the trial court erred in refusing to charge these statutory mitigating circumstances.

FN4. In *Young*, the trial judge had charged the jury on the mitigators in subsections 6 & 7, but had not charged subsection 2. We held this was error.

*450 [4] Further, we find the error was exacerbated by the trial court's supplemental instructions to the jury. After the jury had been charged at sentencing, the court specifically called them back for the purpose of reminding them of its earlier instruction, during guilt phase, that "voluntary intoxication is not a defense to criminal act or actions." We find reasonable jurors would clearly have understood this instruction as preventing them from considering evidence of Stone's intoxication in mitigation. To the extent the charge prohibited the jury from considering the mitigating circumstance of Stone's intoxication, it violated the Eighth Amendment. *See Payne v.*

Tennessee, 501 U.S. 808, 822, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991), citing *Eddings v. Oklahoma*, 455 U.S. 104, 114, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982)(Eighth Amendment prohibits state from limiting sentencer's consideration of "any relevant mitigating evidence" which could cause the jury to decline to impose the death penalty). Accordingly, the trial court's refusal to instruct on the statutory mitigating circumstances of S.C.Code Ann. § 16-3-20(C)(b)(6) & (7) and its instruction concerning voluntary intoxication require reversal.

4. PAROLE INELIGIBILITY CHARGE

[5] At sentencing, during its closing argument, the state argued that Stone is "going to be a problem in the future-a problem in the future in the prison system." The solicitor went on to argue that "throughout his life, he has been a problem. He has not been willing to obey the laws of society." In talking about Stone's 1987 burglary convictions, the solicitor stated, "This guy who wants you to give him mercy this time. He got thirty years. Then you see what happened after that and how he manipulated the **249 system and [eventually got paroled] ... and when he is paroled he signs and acknowledges ... [he] may not possess any weapon whatsoever ... a condition of parole ... Was he able to abide by that rule? This guy that wants you to show him mercy now?.... He is not going to follow the rules. He hasn't done it in the past. He's not going to do it in the future." The solicitor went on to argue "You make sure that no correctional officer-or somebody else if he were to escape or something-nobody else is up here like this Kubala family ..." Finally, the solicitor argued, "I'm asking you to carry out ... a criminal justice *451 system that works and deters criminals, deters Bobby Wayne Stone from ever doing anything like this again to any correctional officer or anyone else."

After the court charged the jury, defense counsel requested an instruction concerning "life imprisonment, life in prison without parole." The court then called the jury back in and instructed that "[u]nder our law life imprisonment means that a person will be-will serve the balance of his life in prison, okay?" Stone asserts the trial court erred in failing to instruct the jury that if sentenced to life imprisonment, he would be **ineligible for parole**. We agree.

Under the recent precedents of *Kelly v. South Carolina*, 534 U.S. 246, 122 S.Ct. 726, 151 L.Ed.2d 670 (2002) and *Shafer v. South Carolina*, 532 U.S. 36, 121 S.Ct. 1263, 149 L.Ed.2d 178 (2001), Stone was entitled to an instruction that if sentenced to life imprisonment, he would be ineligible for parole. In *Kelly*, the United States Supreme Court held that where a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without parole, due process entitles the defendant to inform the jury of his parole ineligibility, either by jury instruction or in arguments by counsel. The *Kelly* court specifically noted that arguments by counsel in *Shafer* to the effect that the defendant "would die in prison" or would "spend his natural life there" as well as the trial judge's instructions that "life imprisonment means until the death of the defendant" were insufficient to convey a clear understanding to Shafer's parole ineligibility. 122 S.Ct. at 733-34. The Court also noted that the fact that the jury did not request further instructions concerning parole ineligibility was irrelevant. 122 S.Ct. at 733. Finally, the *Kelly* court noted that "evidence of future dangerousness in prison can raise a strong implication of 'generalized ... future dangerousness'.... A jury hearing evidence of a defendant's demonstrated propensity for violence reasonably will conclude that he presents a risk of violent behavior, whether locked up or free, and whether free as a fugitive or as a parolee." 122 S.Ct. at 731.

Here, it is patent the state argued Stone's future dangerousness to the jury, both in the context of his danger in prison and the possibility he could escape in the future. Moreover, *452 notwithstanding counsel and the court told the jury Stone would spend the rest of his life in prison, these statements do not clearly convey to the jury the fact that Stone would be ineligible for parole as required by *Kelly*. Accordingly, the trial court's failure

to instruct that Stone would be ineligible for parole if sentenced to life imprisonment requires reversal.

Stone's remaining issue is affirmed pursuant to SCACR, Rule 220(b) and the following authorities: Stone's issue 3-*State v. Von Dohlen*, 322 S.C. 234, 471 S.E.2d 689 (1996) (admission of expert testimony is within discretion of trial court).^{FN5}

FN5. In conjunction with his first issue, Stone asserted that, if he was entitled to a directed verdict on the burglary charge, then the trial court's charge to the jury that it could not convict him of involuntary manslaughter if it found him guilty of burglary was error. In light of our holding that Stone was not entitled to a directed verdict on the burglary charge, this claim is moot.

Stone's convictions are affirmed, as are his sentences for burglary and possession of a weapon. The matter is remanded for a new sentencing proceeding on his murder conviction.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

TOAL, C.J., MOORE, BURNETT, and PLEICONES, JJ., concur.

S.C., 2002.

State v. Stone

350 S.C. 442, 567 S.E.2d 244

END OF DOCUMENT

VOLUME ONE OF FOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SUMTER COUNTY

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BOBBY WAYNE STONE,

APPELLANT

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
COUNTY OF SUMTER	)	COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
v.	)	C/A #: 1996-GS-43-0698
BOBBY WAYNE STONE,	)	
DEFENDANT.	)	

SUMTER COUNTY COURTHOUSE
February 22, 2005 A.M.

TRANSCRIPT OF JURY SELECTION BEGINNING FEBRUARY 22, 2005 IN THE A.M.

BEFORE:

HONORABLE HOWARD P. KING, PRESIDING JUDGE.

APPEARANCES:

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Solicitor Dudley Saleeby, Esquire
Attorneys for The State

James H. Babb, Esquire
Cam Littlejohn, Esquire
Attorneys for Defendant Bobby Wayne Stone

TAKEN BY MELISSA R. WINFIELD
CERTIFIED VERBATIM REPORTER

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Certificate of Service. 35

HEARING

3

3

1 THE COURT: MR. SOLICITOR, WOULD YOU CALL THE CASE
2 AND SO THAT WE CAN TELL THE JURY WHAT WE'LL BE DOING AT THIS
3 POINT?

4 MR. JACKSON: I CAN, YOUR HONOR. MAY IT PLEASE THE
5 COURT. THE STATE WOULD CALL THE CASE OF THE SOUTH CAROLINA
6 VS. BOBBY WAYNE STONE. IT'S INDICTMENT 96-GS-43-698. HE'S
7 INDICTED FOR BURGLARY IN THE FIRST DEGREE, MURDER AND
8 POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
9 CRIME.

10 THE COURT: ALL RIGHT, SIR. ALL RIGHT. LADIES AND
11 GENTLEMEN, YOU HAVE HEARD THAT THE STATE HAS CALLED THE
12 CASE OF THE STATE AND BOBBY WAYNE ... STATE VS. BOBBY WAYNE
13 STONE. AS I TOLD YOU EARLIER, THE STATE WILL BE REPRESENTED
14 BY MR. JACKSON, WHO IS THE SOLICITOR, AND MR. DUDLEY SALEEBY.
15 THE DEFENSE IN THIS CASE IS REPRESENTED BY MR. CAMERON
16 LITTLEJOHN AND MR. JAMES BABB. MR. LITTLEJOHN AND MR. BABB,
17 WOULD YOU BOTH STAND AND INTRODUCE YOURSELVES TO THE
18 JURY, PLEASE?

19 MR. BABB: I AM JIM BABB.

20 MR. LITTLEJOHN: I'M CAM LITTLEJOHN AND I PRACTICE IN
21 COLUMBIA.

22 THE COURT: ALL RIGHT. MR. BABB, GIVE THE NAMES OF
23 ANY LAWYERS WITHIN YOUR PRACTICE, PLEASE, SIR.

24 MR. BABB: JACK HOWLE IS MY PARTNER.

25 THE COURT: OKAY. THANK YOU VERY MUCH. ALL RIGHT.

1 NOW, LADIES AND GENTLEMEN, I NOW NEED TO ASK YOU A NUMBER
2 OF QUESTIONS TO DETERMINE YOUR QUALIFICATIONS TO SERVE IN
3 THIS CASE AND SO I AM GOING TO GO OVER THAT AT THIS TIME. I
4 WOULD TELL YOU THAT WE WILL EMPANEL A JURY THAT IS CAPABLE
5 OF DECIDING WHAT IS BELIEVABLE TESTIMONY AND EVIDENCE,
6 CAPABLE OF APPLYING TO THAT TESTIMONY AND EVIDENCE THE LAW
7 THAT I WILL TELL YOU AND CAPABLE OF RETURNING A FAIR VERDICT
8 AND RECOMMEND ... AND RECOMMENDING A SENTENCE. I WOULD
9 ALSO TELL YOU THAT A QUALIFIED JUROR IS ONE WHO WILL
10 CONSCIENTIOUSLY APPLY THE LAW AND FIND THE FACTS. A
11 QUALIFIED JUROR IS ONE WHO IS CAPABLE OF RETURNING A VERDICT
12 AND A RECOMMENDATION OF SENTENCE BASED ON THE EVIDENCE
13 AND THE LAW. A QUALIFIED JURY IS ONE CAPABLE OF SETTING ASIDE
14 HIS OR HER OPINIONS AND DECIDING THE MATTER BASED UPON THE
15 LAW AND THE EVIDENCE. A JUROR IS NOT QUALIFIED IF THE JUROR
16 WOULD PREVENT OR SUBSTANTIALLY IMPAIR THE PERFORMANCE OF
17 HIS OR HER DUTIES IN ACCORDANCE WITH THE OATH OF A JUROR AND
18 THE INSTRUCTIONS FROM THE COURT. NOW, LET ME ASK SOME
19 GENERAL QUALIFICATION QUESTIONS THAT I NEED TO ASK YOU AND
20 THEN WE'LL COME BACK TO THE PARTICULAR POINTS IN THIS
21 PARTICULAR CASE. IS THERE ANY MEMBER OF THE JURY PANEL WHO
22 IS NOT A CITIZEN OF THE UNITED STATES OF AMERICA? IF SO, PLEASE
23 STAND. IS THERE ANY MEMBER OF THE JURY PANEL WHO DOES NOT
24 NOW RESIDE IN SUMTER COUNTY? IF SO, PLEASE STAND. ALL RIGHT,
25 YES, SIR, GIVE ME YOUR NAME AGAIN, PLEASE.

JUROR: MR. OLIVER.

THE COURT: MR. OLIVER.

MR. HERRING: JUDGE, NUMBER 167.

THE COURT: 167. ALL RIGHT, MR. OLIVER, WHERE DO YOU
LIVE NOW?

MR. OLIVER: RICHLAND COUNTY.

THE COURT: RICHLAND COUNTY? HOW LONG HAVE YOU
LIVED OVER THERE?

MR. OLIVER: A YEAR.

THE COURT: A YEAR? WE HAVE YOUR ADDRESS AS 300
PEARSON ROAD, IS THAT NOT CORRECT?

MR. OLIVER: THAT'S NOT CORRECT.

THE COURT: IS THAT STILL SHOWING ON YOUR DRIVER'S
LICENSE?

MR. OLIVER: NO, SIR.

THE COURT: IS IT SHOWING ON YOUR VOTER
REGISTRATION CERTIFICATE?

MR. OLIVER: NO, SIR.

THE COURT: ALL RIGHT. WHERE ARE YOU EMPLOYED?

MR. OLIVER: LANIER.

THE COURT: IS THAT IN COLUMBIA?

MR. OLIVER: YES, SIR.

THE COURT: AND YOU ... THAT'S NOW YOUR PERMANENT
... WHAT IS YOUR PERMANENT ADDRESS OVER THERE?

MR. OLIVER: I STAY ON FAIRFIELD ROAD. 5 ... 5313

1 FAIRFIELD ROAD.

2 THE COURT: WHERE DO YOU GET YOUR MAIL?

3 MR. OLIVER: FAIRFIELD ROAD.

4 THE COURT: OKAY. ALL RIGHT. COUNSEL, IT APPEARS
5 THAT MR. OLIVER IS NOT A RESIDENT OF SUMTER COUNTY. ANY
6 OBJECTION TO EXCUSING HIM, MR. JACKSON?

7 MR. JACKSON: NO, YOUR HONOR.

8 THE COURT: MR. LITTLEJOHN?

9 MR. LITTLEJOHN: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. THE JUROR WILL BE EXCUSED.
11 THANK YOU FOR COMING, SIR.

12 MR. HERRING: YOU HAVE ONE MORE STANDING, JUDGE.

13 THE COURT: YES, SIR, YOUR NAME?

14 MR. DAY: JAMES DAY.

15 THE COURT: JUROR NUMBER 49. ALL RIGHT, MR. DAY,
16 WHERE DO YOU RESIDE?

17 MR. DAY: I CURRENTLY RESIDE IN TWO COUNTIES,
18 LEXINGTON COUNTY AS WELL AS SUMTER COUNTY.

19 THE COURT: THAT'S KIND OF HARD TO DO. WHERE'S
20 YOUR HOME?

21 MR. DAY: MY PERMANENT ADDRESS IS HERE BUT I DO
22 LIVE AND WORK IN COLUMBIA.

23 THE COURT: ALL RIGHT. BUT YOUR PERMANENT
24 ADDRESS IS ... IS 1210 COTTINGHAM DRIVE?

25 MR. DAY: THAT IS CORRECT.

1 THE COURT: ALL RIGHT. I BELIEVE THAT SHOULD
2 QUALIFY YOU, SIR. THANK YOU VERY MUCH. IS THERE ANY MEMBER
3 OF THE JURY PANEL WHO DOES NOT POSSESS A VALID SOUTH
4 CAROLINA DRIVER'S LICENSE OR IDENTIFICATION CARD OR A VOTER
5 REGISTRATION CERTIFICATE? IT IS NOT NECESSARY THAT YOU
6 POSSESS ALL THREE OF THESE OR TWO OF THESE BUT ONLY ONE OF
7 THESE THREE ITEMS. IF YOU DO NOT POSSESS AT LEAST ONE OF
8 THESE ITEMS, PLEASE STAND. ALL RIGHT, TELL ME YOUR NAME,
9 PLEASE, SIR.

10 MR. ROSEN: EDWARD W. REWIS. JUROR 180.

11 THE COURT: ALL RIGHT, MR. REWIS, YOU DONT HAVE A
12 DRIVER ... SOUTH CAROLINA DRIVER'S LICENSE?

13 MR. REWIS: I DONT HAVE A VOTER'S REGISTRATION
14 CARD.

15 THE COURT: JUST NEED ONE OF THEM.

16 MR. REWIS: YEAH, I HAVE ...

17 THE COURT: OKAY. THANK YOU, SIR.

18 MR. REWIS: THANK YOU.

19 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL
20 WHO HAS NOT REACHED HIS OR HER 18TH BIRTHDAY? IF SO, PLEASE
21 STAND. IS THERE ANY MEMBER OF THE JURY PANEL WHO WISHES
22 THEY HAD NOT REACHED THEIR ... IS THERE ANY MEMBER OF THE
23 JURY PANEL WHO EMPLOYED WITHIN THE WALLS OF THIS
24 COURTHOUSE? IF SO, PLEASE STAND. IS THERE ANY MEMBER OF THE
25 JURY PANEL WHO IS A COUNTY OFFICIAL SUCH AS A COUNTY

1 COUNCILMAN, COUNTY AUDITOR, OR OTHER TYPE OF COUNTY
2 OFFICIAL? IF SO, PLEASE STAND.

3 MS. MCGEE: YOU SAID A COUNTY OFFICIAL?

4 THE COURT: YES, MA'AM. GIVE ME ... I REMEMBER I
5 WROTE THIS DOWN BUT I DON'T RECALL YOUR NAME AND NUMBER.
6 PLEASE GIVE ME THAT. JUST GIVE ME YOUR NAME I CAN FIND IT
7 PROBABLY.

8 MS. MCGEE: IT'S MCGEE, NUMBER 134.

9 THE COURT: ALL RIGHT, MS. MCGEE. I DID MAKE A NOTE
10 THAT I BELIEVE YOU ARE EMPLOYED IN THE ACCOUNTING TAX
11 OFFICE, IS THAT CORRECT?

12 MS. MCGEE: A COUNTY CLERK.

13 THE COURT: MA'AM?

14 MS. MCGEE: COUNTY CLERK.

15 THE COURT: RIGHT. THANK YOU VERY MUCH, MS.
16 MCGEE, I'LL TAKE THIS MATTER UP WITH THE ATTORNEYS. THANK
17 YOU FOR THAT INFORMATION. IS THERE ANY MEMBER OF THE JURY
18 PANEL WHO HOLDS A LAW ENFORCEMENT COMMISSION WITH OR
19 WITHOUT PAY? THAT IS A COMMISSION THAT IS ISSUED BY THE STATE
20 LAW ENFORCEMENT DIVISION COMMONLY REFERRED TO AS SLED
21 THAT GIVES THEM THE POWER OF ARREST? IF SO, PLEASE STAND.
22 ALL RIGHT, MR. BERRY, I BELIEVE YOU IDENTIFIED YOURSELF AS NOW
23 THE ANIMAL CONTROL OFFICER, IS THAT CORRECT?

24 MR. BERRY: THAT'S CORRECT.

25 THE COURT: AND YOU HAVE A COMMISSION FROM SLED

1 THAT GIVES YOU THE POWER OF ARREST.

2 MR. BERRY: YES, SIR.

3 THE COURT: YOU WORK FOR THE CITY?

4 MR. BERRY: YES, SIR.

5 THE COURT: OKAY. ANY OBJECTION TO EXCUSING THE
6 JUROR UNDER THE STATUTORY DISQUALIFICATION, MR. JACKSON?

7 MR. JACKSON: NO, YOUR HONOR.

8 THE COURT: MR. LITTLEJOHN?

9 MR. LITTLEJOHN: NO, YOUR HONOR.

10 THE COURT: YOU ARE EXCUSED, MR. BERRY. THANK YOU
11 FOR COMING.

12 MR. BERRY: THANK YOU.

13 THE COURT: JUROR NUMBER 18. ALL RIGHT, NOW, LADIES
14 AND GENTLEMEN, THE NEXT THREE QUESTIONS ARE QUITE PERSONAL
15 AND YOU MAY NOT WANT TO STAND AND DISCLOSE THIS
16 INFORMATION OPENLY IN THE PRESENCE OF YOUR FELLOW JURORS.
17 IT'S NOT MY INTENTION TO EMBARRASS ANYONE BUT THE LAW DOES
18 REQUIRE THAT I OBTAIN THIS INFORMATION. THEREFORE, I'M GOING
19 TO ASK THE NEXT THREE QUESTIONS AS A GROUP AND AFTER I ASK
20 ALL THREE QUESTIONS, I WOULD REQUEST THAT IF ANY OF THE
21 THREE QUESTIONS APPLIES TO YOU THAT YOU COME FORWARD AND
22 DISCUSS IT WITH ME WHEN I ASK YOU TO DO SO. FIRST QUESTION, IS
23 THERE ANY MEMBER OF THE JURY PANEL WHO HAS BEEN CONVICTED
24 OR WHO HAS PLED GUILTY IN A STATE OR FEDERAL COURT OF A
25 CRIME PUNISHABLE BY IMPRISONMENT OF MORE THAN ONE YEAR

1 AND WHOSE CIVIL RIGHTS HAVE NOT BEEN RESTORED BY PARDON OR
2 AMNESTY? NOW, IT IS NOT NECESSARY THAT YOU WOULD HAVE
3 RECEIVED MORE THAN ONE YEAR OF IMPRISONMENT BUT IF YOU PLED
4 GUILTY OR WERE FOUND GUILTY OF A CRIME FOR WHICH YOU COULD
5 HAVE GOTTEN MORE THAN ONE YEAR I WILL NEED TO KNOW ABOUT
6 THAT IN JUST A FEW MINUTES. SECOND QUESTION, IS THERE ANY
7 MEMBER OF THE JURY PANEL WHO IS UNABLE TO READ, WRITE, SPEAK
8 OR UNDERSTAND THE ENGLISH LANGUAGE? I'VE ALWAYS THOUGHT
9 THAT THIS IS A STRANGE QUESTION THAT WE'RE REQUIRED TO ASK
10 BECAUSE IF YOU CAN'T UNDERSTAND THE ENGLISH LANGUAGE I
11 DON'T KNOW HOW YOU WOULD UNDERSTAND WHAT I'M ASKING YOU
12 BUT THE QUESTION IS IF THERE'S ANYONE WHO IS UNABLE TO READ,
13 WRITE, SPEAK OR UNDERSTAND THE ENGLISH LANGUAGE I WOULD
14 NEED TO KNOW ABOUT THAT IN JUST A FEW MINUTES. THE THIRD
15 QUESTION, IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS LESS
16 THAN A SIXTH GRADE EDUCATION OR ITS EQUIVALENT? AND I
17 WOULD TELL YOU THAT IF YOU'VE REACHED ADULTHOOD, HOLD
18 DOWN A JOB, SUPPORT A FAMILY AND SHOP IN THE COMMUNITY YOU
19 PROBABLY HAVE THE EQUIVALENT OF A SIXTH GRADE EDUCATION
20 BUT IF ANYONE HAS ANY QUESTIONS ABOUT IT AND WANTS TO
21 DISCUSS IT WITH ME, PLEASE COME FORWARD WHEN I ASK YOU TO DO
22 SO. SO THE THREE QUESTIONS ARE IF ANYONE HAS BEEN CONVICTED
23 OF A CRIME FOR WHICH YOU COULD HAVE RECEIVED A SENTENCE OF
24 MORE THAN ONE YEAR IN JAIL, OR IF YOU'RE UNABLE TO READ,
25 WRITE, SPEAK OR UNDERSTAND THE ENGLISH LANGUAGE, OR IF YOU

1 HAVE LESS THAN A SIXTH GRADE EDUCATION OR ITS EQUIVALENT. IF
2 ANYONE OF THOSE THREE QUESTIONS APPLIES TO YOU, PLEASE
3 STAND AT THIS TIME. ALL RIGHT, LET THE RECORD REFLECT THAT
4 THREE INDIVIDUALS HAVE STOOD. I'D ASK THOSE THREE
5 INDIVIDUALS TO COME UP TO THE SIDEBAR, PLEASE, AND COUNSEL IF
6 YOU WOULD COME OVER ALSO.

7 THE COURT: TELL ME YOUR NAME?

8 JUROR: THOMAS WASHINGTON.

9 THE COURT: #232. WHAT'S YOUR SITUATION?

10 JUROR: DRUG CHARGE.

11 THE COURT: DID YOU DO SOME TIME?

12 JUROR: YES, SIR. I DID SOME TIME.

13 THE COURT: YOU DID SOME TIME?

14 JUROR: YES, SIR.

15 THE COURT: DO YOU RECALL HOW MUCH YOU DID?

16 JUROR: I DID 5 ½ YEARS.

17 THE COURT: ALL RIGHT. THAT WOULD BE A DISQUALIFICATION.

18 THE COURT: YOUR NAME?

19 JUROR: BRYANT.

20 THE COURT: ALL RIGHT. MR. BRYANT, WHAT'S YOUR
21 SITUATION?

22 JUROR: STOLE A WEAPON, NON VIOLENT.

23 THE COURT: DID PLEAD NOT GUILTY

24 JUROR: YES.

25 THE COURT: HOW LONG AGO WAS THAT?

HEARING

12

12

1 JUROR: DECEMBER THIS PAST YEAR.
2 THE COURT: WHAT WAS YOUR SENTENCE?
3 JUROR: PROBATION.
4 THE COURT: WHAT COULD YOU HAVE GOTTEN FOR THAT?
5 JUROR: FIVE YEARS.
6 THE COURT: YOU'RE EXCUSED. THANK YOU FOR COMING.
7 THE COURT: YOUR NAME?
8 JUROR: MICHAEL CABBAGESTALK.
9 THE COURT: #33. WHAT'S YOUR SITUATION?
10 JUROR: BAD CHECKS.
11 THE COURT: BAD CHECKS WHERE?
12 JUROR: IN SUMTER.
13 THE COURT: WAS THAT IN GENERAL SESSIONS OR
14 MAGISTRATE'S COURT?
15 JUROR: MAGISTRATE'S COURT.
16 THE COURT: HOW MUCH TIME DID YOU SERVE?
17 JUROR: A YEAR AND A HALF.
18 THE COURT: THIRTY DAYS FOR EACH ONE?
19 JUROR: YES.
20 THE COURT: THAT WOULD NOT DISQUALIFY YOU. STAY WITH
21 US. ALL RIGHT. THANK YOU VERY MUCH, LADIES AND GENTLEMEN.
22 NOW, IS THERE ANY MEMBER OF THE JURY PANEL WHO IS NOT
23 CAPABLE BY REASON OF PHYSICAL OR MENTAL INFIRMITY OF
24 RENDERING SUFFICIENT JURY SERVICE. EXAMPLES WOULD BE
25 HEARING, SEEING, HEART TROUBLE, ANYTHING OF THAT NATURE? IF

1 SO, PLEASE STAND. OR COME FORWARD. ALL RIGHT, COUNSELOR,
2 LET'S TAKE THEM UP AT SIDE BAR.

3 (COUNSELS APPROACH BENCH)

4 THE COURT: ALL RIGHT, LADIES AND GENTLEMAN, THOSE
5 ALL QUESTIONS ALL DEAL WITH THE QUALIFICATIONS TO SERVE THIS
6 WEEK. NOW, THERE ARE CERTAIN PEOPLE WHO ARE EXEMPT FROM
7 JURY SERVICE, THAT IS THEY HAVE AN EXEMPTION THAT THE JUROR
8 CAN EXERCISE OR NOT EXERCISE DEPENDING ON THE JUROR'S
9 PREFERENCE. SO IN THAT CONNECTION I'M GONNA SK YOU A NUMBER
10 OF QUESTIONS AND IF ANY OF THESE APPLY TO YOU AND YOU THINK
11 YOU HAVE AN EXEMPTION THAT YOU WOULD LIKE TO DISCUSS WITH
12 ME, PLEASE STAND WHEN I ASK YOU TO DO SO. HAS ANY MEMBER
13 SERVED AS A JUROR IN THE CIRCUIT COURT, THAT IS UP HERE IN THIS
14 COURTROOM OR A SMALLER COURTROOM DOWN THE HALL, THE
15 COURT OF COMMON PLEAS OR THE COURT OF GENERAL SESSIONS FOR
16 THE CIRCUIT COURT WITHIN THE LAST THREE YEARS. IF SO, PLEASE
17 STAND. IS THERE ANY MEMBER OF THE JURY PANEL WHO IS OVER
18 THE AGE OF 65 YEARS AND WISHES TO BE EXCUSED. IT HAS BEEN MY
19 EXPERIENCE THAT SOME OF OUR CITIZENS OVER THE AGE OF 65 MAKE
20 EXCELLENT JURORS BUT THE LAW DOES PROVIDE THAT IF YOU ARE
21 OVER THE AGE OF 65 AND YOU WISH TO BE EXCUSED THAT I CAN
22 EXCUSE YOU. IS THERE ANYBODY WHO FALLS IN THAT CATEGORY?
23 IF SO, PLEASE STAND. IS THERE ANY MEMBER OF THE JURY PANEL
24 WHO HAS LEGAL CUSTODY AND THE DUTY OF CARE OF A CHILD LESS
25 THAN SEVEN YEARS OF AGE AND WISHES TO BE EXCUSED? IN OTHER

1 WORDS, IF THERE IS A MEMBER OF THE JURY PANEL WHO HAS LEGAL
2 CUSTODY OF A CHILD UNDER THE AGE OF SEVEN AND HAS NO ONE
3 OTHER THAN HIMSELF OR HERSELF TO CARE FOR THAT CHILD AND
4 WISHES TO BE EXCUSED THEN I CAN CONSIDER THAT BUT I WILL TELL
5 YOU THAT IF YOU ... IF THE CHILD STAYS IN DAYCARE OR A FAMILY
6 MEMBER STAYS WITH THE CHILD DURING THE DAY THAT WOULD NOT
7 BE A LEGITIMATE EXCUSE BUT IF THERE IS A MEMBER OF THE JURY
8 PANEL WHO HAS LEGAL CUSTODY OF A CHILD UNDER THE AGE OF
9 SEVEN AND NO ONE OTHER THAN YOURSELF TO CARE FOR THAT
10 CHILD AND WISHES TO BE EXCUSED, PLEASE STAND. IS THERE ...
11 YOUR NAME, PLEASE MA'AM?

12 JUROR: MS. HOWARD.

13 THE COURT: OKAY. ALL RIGHT, MS. HOWARD. YOU HAVE
14 CHILDREN UNDER SEVEN?

15 MS. HOWARD: YES. I HAVE A FOUR YEAR OLD. MY
16 MOTHER-IN-LAW NORMALLY TAKES CARE OF HER BUT HER JOB IS
17 SENDING HER AWAY TONIGHT AND SHE WON'T BE BACK UNTIL
18 SATURDAY.

19 THE COURT: ALL RIGHT. SO WHAT ... DO YOU WORK?

20 MS. HOWARD: YES, I DO.

21 THE COURT: ALL RIGHT. WHAT ARE YOU GONNA DO WITH
22 THAT CHILD IF I LET YOU OFF THIS JURY DUTY TODAY WITH YOUR
23 MOTHER-IN-LAW GONE?

24 MS. HOWARD: I HAVE THE REST OF THE WEEK OFF.

25 THE COURT: I'M SORRY?

1 MS. HOWARD: I HAVE THE REST OF THE WEEK OFF.

2 THE COURT: OH, YOU HAVE THE REST OF THE WEEK OFF.

3 SO THE PLAN WAS TO STAY HOME WITH THE CHILD THIS WEEK?

4 MS. HOWARD: YES.

5 THE COURT: OKAY. MR. JACKSON, ANY OBJECTION TO
6 TRANSFERRING THE JUROR?

7 MR. JACKSON: NO OBJECTION FROM THE STATE.

8 THE COURT: MR. LITTLEJOHN?

9 MR. LITTLEJOHN: NO, YOUR HONOR.

10 THE COURT: ALL RIGHT. YOU'LL BE TRANSFERRED TO A
11 TERM OF COURT ABOUT A MONTH OUT AND YOU'LL GET ANOTHER
12 NOTICE FROM THE CLERK OF COURT. THANK YOU FOR COMING.

13 MS. HOWARD: THANK YOU.

14 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL
15 WHO IS THE PRIMARY CARE GIVER OF THE A PERSON AGED 65 OR OLDER
16 AND WISHES TO BE EXCUSED? IF SO, PLEASE STAND. ALL RIGHT, YES,
17 MA'AM, TELL ME YOUR NAME, PLEASE.

18 MS. JOHNSON: MARY A. JOHNSON.

19 THE COURT: MS. JOHNSON.

20 MS. JOHNSON: NUMBER 103.

21 THE COURT: ALL RIGHT, MS. JOHNSON. TELL ME ABOUT THE
22 SITUATION. YOU'RE THE PRIMARY CARETAKER FOR SOMEBODY?

23 MS. JOHNSON: FOR MY MOTHER.

24 THE COURT: OKAY.

25 MS. JOHNSON: WHO IS 86 YEARS OF AGE. SHE IS AN INVALID

1 AND SHE LIVES WITH ME.

2 THE COURT: ALL RIGHT. AND CAN'T BE LEFT ALONE.

3 MS. JOHNSON: SHE CANNOT.

4 THE COURT: ALL RIGHT. AND YOU DON'T HAVE ANYONE
5 ELSE THAT COULD TAKE CARE ...

6 MS. JOHNSON: FOR TWO HOURS THERE IS A PERSON WHO
7 COMES IN BUT YOU WERE SAYING BEING SEQUESTERED ...

8 THE COURT: YES.

9 MS. JOHNSON: ... THAT WOULD BE A PROBLEM.

10 THE COURT: ALL RIGHT, THANK YOU, MS. JOHNSON. ANY
11 OBJECTION TO EXCUSING THE JUROR, MR. JACKSON?

12 MR. JACKSON: NO OBJECTION, YOUR HONOR.

13 THE COURT: MR. LITTLEJOHN?

14 MR. LITTLEJOHN: NO, YOUR HONOR.

15 THE COURT: ALL RIGHT. YOU'LL BE EXCUSED. THANK YOU.
16 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS THE PRIMARY CARE
17 TAKER OF A SEVERELY DISABLED PERSON WHO IS UNABLE TO CARE FOR
18 HIMSELF OR HERSELF AND CANNOT BE LEFT UNATTENDED AND WISHES
19 TO BE EXCUSED? IF SO, PLEASE STAND. ALL RIGHT. THANK YOU. OH,
20 OKAY.

21 BAILIFF: YOU HAVE ONE STANDING, YOUR HONOR.

22 THE COURT: YES, MA'AM. YOU WANT TO COME UP, PLEASE,
23 MA'AM? COUNSEL.

24 THE COURT: YOUR NUMBER?

25 JUROR: #29.

1 THE COURT: WHAT'S YOUR SITUATION?

2 JUROR: MY HUSBAND IS HANDICAP AND I TAKE CARE OF
3 HIM.

4 THE COURT: WE'LL EXCUSE YOU. ALL RIGHT. NOW, LADIES
5 AND GENTLEMEN, AS PART OF THE NEXT QUESTION I CANNOT EXCUSE
6 YOU FOR THIS REASON BUT IF THERE IS A MEMBER OF THE JURY PANEL
7 WHO IS A TEACHER, A STUDENT OR A KEY EMPLOYEE OF THE SCHOOL
8 SYSTEM AND WISHES TO BE TRANSFERRED TO A TERM OF COURT WHICH
9 WOULD NOT INTERFERE WITH THOSE DUTIES THEN I MAY TRANSFER YOU
10 IF I FEEL REASONS ARE VALID. NOW, AS I SAID, I CAN'T EXCUSE YOU FOR
11 THESE REASONS BUT IF THERE IS ANY MEMBER OF THE JURY PANEL WHO
12 IS A STUDENT, A TEACHER OR A KEY EMPLOYEE OF THE SCHOOL SYSTEM
13 AND WISHES TO BE TRANSFERRED TO A TERM OF COURT THAT WOULD
14 NOT INTERFERE WITH THOSE DUTIES, PLEASE STAND AT THIS TIME. ALL
15 RIGHT. GIVE ME YOUR NAME AGAIN, PLEASE.

16 JUROR: MARIA.

17 THE COURT: OKAY. DO YOU REMEMBER YOUR NUMBER?

18 JUROR: #224.

19 THE COURT: 224. ALL RIGHT. WHAT'S YOUR EMPLOYMENT,
20 MS. ... WHAT'S YOUR EMPLOYMENT?

21 JUROR: I'M A TEACHER.

22 THE COURT: I'M SORRY. I'M GONNA ASK YOU TO COME UP,
23 PLEASE. I'M GONNA ASK ALL THREE OF YOU ALL TO COME UP PLEASE SO
24 I CAN GET THIS ON THE RECORD.

25 JUROR: I'M A TEACHER.

1 THE COURT: DO YOU WANT TO BE TRANSFERRED?
2 JUROR: YES, SIR.
3 THE COURT: YOU'LL BE TRANSFERRED TO THE SUMMER.
4 THE COURT: YOUR NUMBER?
5 JUROR: #38.
6 THE COURT: WHAT'S YOUR SITUATION?
7 JUROR: I'M A TEACHER.
8 THE COURT: YOU WANT TO BE TRANSFERRED?
9 JUROR: YES SIR.,
10 THE COURT: YOU'LL BE TRANSFERRED TO THE SUMMER
11 MONTHS. YOUR NUMBER?
12 JUROR: 108. I'M A STUDENT AT ADULT ED MONDAY
13 THROUGH THURSDAY.
14 THE COURT: WE'LL TRANSFER YOU TO THE SUMMER
15 MONTHS.
16 JUROR: THANK YOU..
17 THE COURT: ALL RIGHT. IS THERE ANY MEMBER OF THE
18 JURY PANEL WHO IS A GUARD, A KEEPER, AN EMPLOYEE OR OTHER
19 OFFICIAL OR EMPLOYEE AT A PENITENTIARY OR DETENTION FACILITY
20 AND WISHES TO BE EXCUSED? IF SO, PLEASE STAND. ALL RIGHT. NOW,
21 LADIES AND GENTLEMEN, THE COURT UNDERSTANDS THAT THERE'S
22 SOMETIMES VERY SERIOUS REASONS WHY A PERSON FEELS THEY
23 CANNOT BE SERVED ... CANNOT SERVE FOR A PARTICULAR TERM OF
24 COURT. IT IS NORMALLY MY POLICY TO TRANSFER THAT JUROR TO
25 ANOTHER TERM OF COURT IF I FEEL THAT THE REASONS ARE VALID.

1 ORDINARILY BUSINESS REASONS ARE NOT A SUFFICIENT REASON TO BE
2 EXCUSED OR TRANSFERRED BECAUSE IF THAT WERE THE CASE MOST
3 EVERYONE WOULD WANT TO BE EXCUSED OR TRANSFERRED. I WILL
4 ALSO TELL YOU THAT LATER ON WE WILL DEAL WITH THE
5 SEQUESTRATION ISSUE SO IF IT IS A SITUATION WHERE SOMEBODY
6 NEEDS TO BE EXCUSED BECAUSE OF A HARDSHIP FROM THE
7 SEQUESTRATION MATTER THAT I DISCUSSED EARLIER WE'LL TAKE THAT
8 UP A LITTLE BIT LATER. BUT IF THERE ARE MEMBERS OF THE JURY
9 PANEL WHO HAVE A REASON THAT THEY FEEL OTHER THAN THE FACT
10 THAT SEQUESTRATION IF THEY FEEL THEY CANNOT SERVE THIS WEEK
11 FOR A GOOD AND VALID REASON AND WANT TO DISCUSS IT WITH ME,
12 PLEASE STAND AT THIS TIME. ALL RIGHT. LET THE RECORD REFLECT
13 THAT TWO INDIVIDUALS HAVE STOOD. LET ME ASK THOSE TWO
14 INDIVIDUALS TO COME FORWARD, PLEASE.

15 THE COURT: YOUR NUMBER?

16 JUROR: #40.

17 THE COURT: WHAT'S YOUR SITUATION.

18 JUROR: I KNOW A FAMILY MEMBER.

19 THE COURT: YOU'RE QUALIFIED. STAY WITH US. WHAT'S
20 YOUR NUMBER?

21 JUROR: #5.

22 THE COURT: WHAT'S YOUR SITUATION?

23 JUROR: I'M A FRIEND OF STONE'S BROTHER.

24 THE COURT: DOES THE FACT THAT YOU'RE FRIENDS WITH
25 HIS BROTHER PREVENT YOU FROM GIVING A FAIR VERDICT TO BOTH THE

1 STATE AND THE DEFENDANT IN THIS MATTER?

2 JUROR: NO, SIR.

3 THE COURT: YOU'RE QUALIFIED. STAY WITH US. ALL RIGHT.
4 IS THERE ANY MEMBERS OF THE JURY PANEL OTHER THAN THE
5 SEQUESTRATION ISSUE, IS THERE ANY MEMBERS OF THE JURY PANEL
6 THAT HAVE ANY OTHER MATTER THAT THEY WISH TO BRING UP TO ME
7 AND FOR MY ATTENTION AT THIS TIME, PLEASE STAND AT THIS TIME.
8 ALL RIGHT, THERE ARE FOUR INDIVIDUALS, FIVE INDIVIDUALS, SIX.
9 ANYBODY ELSE? STAND NOW OR FOREVER HOLD YOUR PEACE. FOUR,
10 FIVE, SIX, SEVEN. SEVEN. THOSE SEVEN INDIVIDUALS PLEASE COME UP.

11 JUROR # 14.

12 THE COURT: YOU'RE QUALIFIED.

13 JUROR #177.

14 THE COURT: YOU'RE QUALIFIED.

15 JUROR #127: WORKING OUT OF THE COUNTY. I'M AN
16 ENGINEER.

17 THE COURT: WE'LL TRANSFER YOU.

18 JUROR #233.

19 THE COURT: YOU'RE QUALIFIED.

20 JUROR #147. I HAD A HEART ATTACH AND BAD NERVES.

21 THE COURT: DUE TO YOUR HEART ATTACK AND HEALTH
22 PROBLEMS, YOU'RE EXCUSED.

23 JUROR #210. MY WIFE IS LEGALLY BLIND.

24 THE COURT: YOU'RE QUALIFIED.

25 THE COURT: OKAY. THANK YOU VERY MUCH. NOW, LADIES

HEARING

21

21

1 AND GENTLEMEN, GIVE ME JUST ONE MINUTE BEFORE WE GO ANY
2 FURTHER. ALL RIGHT, COUNSEL, COME AROUND SO WE CAN HEAR.

3 JUROR #167.

4 THE COURT: YOU'RE EXCUSED.

5 JUROR #49.

6 THE COURT: YOU STAY WITH US.

7 JUROR #134.

8 THE COURT: YOU'RE EXCUSED.

9 JUROR # 18.

10 THE COURT: YOU'RE EXCUSED.

11 JUROR # 232.

12 THE COURT: YOU'RE EXCUSED.

13 JUROR #10.

14 THE COURT: YOU'RE EXCUSED.

15 JUROR # 33.

16 THE COURT: STAY WITH US.

17 JUROR #43. POSSESSING STOLEN PROPERTY.

18 THE COURT: YOU'RE EXCUSED.

19 JUROR # 41.

20 THE COURT: YOU'RE QUALIFIED.

21 JUROR #108.

22 THE COURT: YOU'RE EXCUSED.

23 JUROR #204.

24 THE COURT: YOU'RE EXCUSED.

25 JUROR #79.

THIRD JUDICIAL CIRCUIT
(803) 436-2150

1 THE COURT: YOU'RE EXCUSED.
2 JUROR #191.
3 THE COURT: YOU'RE EXCUSED.
4 JUROR #220.
5 THE COURT: YOU'LL BE TRANSFERRED.
6 JUROR #193.
7 THE COURT: YOU'RE EXCUSED.
8 JUROR #190.
9 THE COURT: YOU'RE EXCUSED.
10 JUROR #129.
11 THE COURT: YOU'RE EXCUSED.
12 JUROR #173.
13 THE COURT: YOU'RE QUALIFIED.
14 JUROR #48.
15 THE COURT: YOU'RE EXCUSED.
16 JUROR #11.
17 THE COURT: YOU'RE QUALIFIED.
18 JUROR #235.
19 THE COURT: YOU'RE QUALIFIED.
20 JUROR #94.
21 THE COURT: WE'LL TRANSFER YOU.
22 JUROR #103. CARETAKER.
23 THE COURT: YOU'RE EXCUSED.
24 JUROR #29.
25 THE COURT: YOU'RE EXCUSED.

HEARING

23

23

1 JUROR #224.

2 THE COURT: WE'LL TRANSFER YOU.

3 JUROR #38.

4 THE COURT: YOU'LL BE TRANSFERRED.

5 JUROR #108.

6 THE COURT: YOU'RE EXCUSED.

7 JUROR #40.

8 THE COURT: YOU'RE QUALIFIED.

9 JUROR #5.

10 THE COURT: YOU'RE QUALIFIED.

11 JUROR #114.

12 THE COURT: YOU'RE QUALIFIED.

13 JUROR #177.

14 THE COURT: YOU'RE QUALIFIED.

15 JUROR #127.

16 THE COURT: YOU'LL BE TRANSFERRED.

17 JUROR #233.

18 THE COURT: YOU'RE QUALIFIED.

19 JUROR #147.

20 THE COURT: YOU'RE EXCUSED.

21 JUROR #210.

22 THE COURT: YOU'RE QUALIFIED.

23 JUROR #197.

24 THE COURT: YOU'RE QUALIFIED. ALL RIGHT. I'D LIKE TO SEE

25 JUROR NUMBER 40, MR. COKER, PLEASE.

THIRD JUDICIAL CIRCUIT
(803) 436-2150

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THE COURT: OUR RECORDS INDICATE YOU HAVE A FAILURE TO STOP FOR A BLUE LIGHT. IS THAT YOU?

JUROR #40: YES, SIR.

THE COURT: THAT WOULD DISQUALIFY YOU. THANK YOU, SIR.

JUROR #217.

THE COURT: OUR RECORDS INDICATE YOU HAVE ON YOUR RECORD A CHARGE FOR RECEIVING STOLEN GOODS. IS THAT YOU?

JUROR #217: YES, SIR.

THE COURT: THAT WOULD DISQUALIFY YOU. THANK YOU FOR COMING. COULD I SEE JUROR, MS. TISDALE, PLEASE? MS. TISDALE, WAIT JUST ONE MINUTE, PLEASE. YES, MA'AM, THANK YOU. YOU ARE EXCUSED. ALL RIGHT, WITH THE EXCEPTION OF JUROR NUMBER 43 WHICH WE ARE GOING TO CHECK A LITTLE FURTHER INTO ONE MATTER HE TOLD US ABOUT, I WOULD FIND ALL OF YOU WHO HAVE NOT BEEN EXCUSED ARE QUALIFIED TO SERVE AS JURORS IN THIS CASE. ALL RIGHT. NOW, LADIES AND GENTLEMEN, THIS PROCESS HAS TAKEN A LITTLE BIT LONGER THAN I HAD EXPECTED AND I KNOW YOU HAVE BEEN IN THE COURTROOM FOR A GOOD WHILE. I DO THINK WE NEED TO TAKE A ... A QUICK BREAK BUT I'M GOING TO ASK IF YOU CAN ... I KNOW THIS IS REALLY PROBABLY NOT POSSIBLE BUT HOPEFULLY EVERYBODY CAN BE BACK IN THE COURTROOM IN ABOUT TEN MINUTES. WE'LL TAKE A SHORT BREAK AT THIS TIME AND ASK THAT YOU BE BACK IN IN ABOUT TEN MINUTES AND WE'LL BE READY TO GO FORWARD WITH THE NEXT MATTER THAT WE HAVE TO DO. IN THE MEANTIME, LET ME SEE

1 COUNSEL IN CHAMBERS FOR JUST A FEW MINUTES. THANK YOU.
2 (YOUR HONOR ALONG WITH COUNSEL MEET IN CHAMBERS)

3 THE COURT: THE REASON I WANTED TO JUST LET
4 EVERYBODY BACK IN THE COURTROOM IS TO TELL YOU THAT WE'VE
5 GOT A LOT OF THINGS THAT WE HAVE TO DO AND IT'S GONNA TAKE
6 SOME TIME SO I'M THINKING THAT IT'S APPROPRIATE THAT WE BREAK
7 FOR LUNCH AT THIS TIME SO I AM GOING TO EXCUSE YOU NOW AND
8 ASK YOU TO PLEASE COME BACK AT 2:00 O'CLOCK THIS AFTERNOON.
9 WE'LL BE READY TO START THE SELECTION OR THE QUALIFICATION
10 OF THE JURY OF THIS PARTICULAR CASE THIS AFTERNOON. I'VE GOT A
11 COUPLE OF MATTERS THAT I HAVE TO TAKE UP WITH THE ATTORNEYS
12 AND WITH SOME OTHER JURORS AND I'M GOING TO DO THAT WHEN
13 WE BREAK FOR LUNCH SO WITH THE EXCEPTION OF THE FOLLOWING
14 JURORS, JUROR NUMBER 13, JUROR NUMBER 44, I FORGET THOSE TWO
15 NAMES BUT THE INDIVIDUALS THAT CAME IN LATE, MR. BEARD,
16 JUROR NUMBER 13. WHERE'S MR. BEARD? ALL RIGHT. MR. BEARD,
17 COME ON UP HERE FOR JUST A MOMENT, PLEASE, AND HAVE A SEAT
18 RIGHT UP HERE IN THE GRAND JURY BOX AND JUROR NUMBER 44, MR.
19 COX, IS HE HERE? ALL RIGHT, YOU ALL COME UP AND HAVE A SEAT IN
20 THE JURY BOX AND THEN JUROR NUMBER 119, MS. LOWDER, I WANT
21 YOU TO COME UP, PLEASE AND WE WANT TO GIVE YOU ONE OF THESE
22 QUESTIONNAIRE SHEETS THAT WE NEED FOR YOU TO COMPLETE. AND
23 JUROR NUMBER 95, MS. HUDSON, ALSO WANT YOU TO COME UP,
24 PLEASE AND GET ONE OF THESE QUESTIONNAIRE SHEETS. JUROR
25 NUMBER 95, MS. HUDSON, COME ON UP, PLEASE. YOU CAN LET THEM

1 GO BACK INTO THE JURY ROOM, MR. HERRING, YOU ALL CAN TAKE
2 THEM BACK TO THE JURY ROOM AND LET THEM COMPLETE THOSE
3 QUESTIONNAIRES. THE REST OF YOU LADIES AND GENTLEMEN, I'M
4 GOING TO EXCUSE YOU AT THIS TIME AND ASK THAT YOU PLEASE BE
5 BACK HERE AT 2:00 O'CLOCK WHEN WE'LL BE READY TO GO FORWARD
6 WITH THIS CASE. SO PLEASE BE BACK ... PLAN TO BE BACK UP HERE ...
7 GO AND GET YOUR LUNCH AND BE BACK UP HERE AT 2:00 O'CLOCK.
8 SEE YOU AT THAT TIME. THANK YOU.

9 MR. LITTLEJOHN: JUDGE, DO YOU WANT TO CALL JUROR
10 43?

11 THE COURT: WHICH ONE? OH, LET ME ASK ... 43, JUROR
12 MR. COWELL? JUROR NUMBER 43, MR. COWELL, IF HE'S STILL HERE.
13 COME UP, PLEASE, SIR. MR. LITTLEJOHN, ...
14 (OFF THE RECORD)

15 THE COURT: ALL RIGHT, LET'S GO BACK ON THE RECORD
16 AND COME TO ORDER, PLEASE. ALL RIGHT, I WANT TO TALK TO
17 JURORS NUMBER 13 AND MR. DONALD BEARD AND JUROR NUMBER 44,
18 MR. COX. FIRST OF ALL, MR. BEARD, LET ME ASK YOU IF YOU WOULD
19 STAND AND JUST GIVE US YOUR NAME, WHERE YOU LIVE AND WHAT
20 YOUR OCCUPATION IS, IF YOU'RE MARRIED AND WHAT YOUR WIFE'S
21 OCCUPATION IS.

22 MR. BEARD: MY NAME IS DONALD BEARD, SUMTER,
23 SOUTH CAROLINA, I'M NOT MARRIED, I HAVE ONE CHILD.

24 THE COURT: WHERE OD YOU WORK?

25 MR. BEARD: I HAVE NO JOB NOW.

1 THE COURT: ALL RIGHT, SIR. ALL RIGHT, MR. BEARD, YOU
2 WERE SUPPOSED TO BE HERE THIS MORNING AT 10:00. WHAT WAS
3 YOUR PROBLEM WITH THAT? TRANSPORTATION?

4 MR. BEARD: NO, SIR. THIS IS MY FIRST TIME. I WASN'T
5 PICKED I DIDN'T HAVE TO WORRY.

6 THE COURT: THE SUMMONS TOLD YOU TO BE HERE AT
7 10:00 O'CLOCK, THOUGH, DIDN'T IT?

8 MR. BEARD: I DIDN'T GET THAT SHEET ... I MEAN, I GOT
9 THAT SHEET OF PAPER BUT I DIDN'T REMEMBER IT HAD BEEN SO LONG
10 SINCE I GOT IT.

11 THE COURT: DID YOU COMPLETE THE QUESTIONNAIRE
12 FORM AND SEND IT BACK IN?

13 MR. BEARD: YES, SIR.

14 THE COURT: YOU DID? SO DO WE HAVE A
15 QUESTIONNAIRE FORM COMPLETED ON HIM? ALL RIGHT. ALL RIGHT,
16 THANK YOU, MR. BEARD. IF YOU'LL HAVE A SEAT I'LL COME BACK TO
17 YOU IN JUST A MINUTE. ALL RIGHT. LET ME ASK YOU, MR. COX, TELL
18 ME WHAT YOUR SITUATION IS.

19 MR. COX: (CAN'T HEAR).

20 THE COURT: YES.

21 COURT REPORTER: I CAN'T HEAR HIM. I'M SORRY.

22 THE COURT: SPEAK UP A LITTLE BIT, PLEASE. YOU SENT A
23 DOCTOR'S EXCUSE?

24 MR. COX: YES, SIR.

25 THE COURT: YOU ALL HAVE AN EXCUSE FROM HIM?

1 DEPUTY CLERK: I THINK I HAVE IT IN THE OFFICE NOW.
2 THAT HE'S MENTIONED IT. WHAT I HAD ASKED HIM TO DO IS COME BY
3 THE OFFICE A LITTLE BIT BEFORE 10:00 AND BRING THE MEDICAL
4 EXCUSE IN THERE WITH HIM AND PRESENT IT TO YOU THAT TIME.
5 THIS WAS LATE FRIDAY.

6 THE COURT: ALL RIGHT. SO WHERE IS THE EXCUSE? JUST
7 HAVE A SEAT WHILE SHE'S GETTING THAT AND LET'S SEE IF WE CAN
8 GET THAT EXCUSE. THE COMPUTER PRINT OUT ON THE GENERAL
9 SESSIONS DOCKET FROM CLARENDON COUNTY AS IT DEALS WITH
10 JUROR NUMBER 43, MR. COLWELL. IT SHOWS THAT HE DID HAVE THE
11 CONVICTION THAT DISQUALIFIES HIM. HE'S EXCUSED, MR.
12 LITTLEJOHN. I'VE ASKED TO GIVE A LIST OF THOSE THAT DIDN'T SHOW
13 UP TO THE SHERIFF'S OFFICE. THE INSTRUCTIONS WILL BE THAT I
14 WANT THEM TO APPEAR TOMORROW MORNING AT 9:00 O'CLOCK. ANY
15 THAT THEY CAN FIND TO BE BROUGHT IN TOMORROW MORNING AT
16 9:00 O'CLOCK AND I'LL QUALIFY THEM AND ADD THEM TO THE PANEL
17 IF NECESSARY. GO AHEAD AND QUALIFY THEM AND WE'LL ADD THEM
18 TO THE PANEL TOMORROW MORNING AT 9:00 O'CLOCK. SO HAVE THEM
19 REPORT TOMORROW MORNING AT 9:00 ANY THAT YOU CAN FIND THAT
20 WE THOUGHT WERE COMING AND THEY DIDN'T SHOW UP. I THINK
21 THERE WERE ABOUT SIX OF THEM. I NOW HAVE AND WILL GIVE TO
22 THE CLERK THE COMPLETED QUESTIONNAIRES OF THESE JURORS,
23 TAMMY LOWDER AND ALSO BEVERLY HUDSON TO MAKE THE
24 REQUISITE NUMBER OF COPIES AND GET COPIES TO YOU ALL.

25 MR. JACKSON: THANK YOU, YOUR HONOR.

1 MR. LITTLEJOHN: THANK YOU.

2 MR. BEARD: THE DOCTOR'S EXCUSE IS NOT WHERE I HAD
3 IT ON FRIDAY AND I DON'T KNOW ...

4 THE COURT: COME AROUND AND LET'S TALK WITH
5 COUNSEL. YOU CAN COME AROUND, TOO.

6 (OFF THE RECORD)

7 THE COURT: ALL RIGHT. THAT BEING THE CASE THEN I'M
8 GONNA ASK MR. BEARD, IF YOU'LL COME AROUND FOR ME, PLEASE,
9 SIR. JUST COME RIGHT UP HERE AND LET ME ASK YOU A COUPLE
10 QUESTIONS. WILL YOU SWEAR HIM, PLEASE, MR. ...

11 BAILIFF: PLACE YOUR LEFT HAND ON THE BIBLE. RAISE
12 YOUR RIGHT HAND AND STATE YOUR NAME, PLEASE.

13 MR. BEARD: RONALD BEARD.

14 BAILIFF: DO YOU SOLEMNLY SWEAR OR AFFIRM THE
15 TESTIMONY YOU GIVE THIS COURT WILL BE THE TRUTH, THE WHOLE
16 TRUTH AND NOTHING BUT THE TRUTH SO HELP YOU GOD?

17 MR. BEARD: YES, SIR.

18 THE COURT: OKAY. THIS SOUND REAL FORMAL BUT IT'S
19 NOT, MR. BEARD. JUST RELAX FOR A MINUTE, I JUST NEED TO ASK
20 YOU SOME QUESTIONS TO DETERMINE YOUR QUALIFICATIONS TO
21 SERVE AND SO I JUST NEED TO MAKE SURE THAT WE GET THIS ON THE
22 RECORD. THAT'S WHY I ASKED YOU TO COME AROUND AND BE
23 SWORN. ARE YOU A UNITED STATES CITIZEN?

24 MR. BEARD: YES, SIR.

25 THE COURT: YOU LIVE IN SUMTER COUNTY?

1 MR. BEARD: YES, SIR.

2 THE COURT: DO YOU HAVE A DRIVER'S LICENSE OR A
3 VOTER'S REGISTRATION CERTIFICATION OR AN ID CARD ISSUED BY
4 THE HIGHWAY DEPARTMENT?

5 MR. BEARD: YES, SIR.

6 THE COURT: I BELIEVE YOU ARE AT LEAST 18?

7 MR. BEARD: YES, SIR.

8 THE COURT: OKAY. YOU'RE NOT ... WHERE ARE YOU
9 EMPLOYED?

10 MR. BEARD: I'M NOT EMPLOYED RIGHT NOW.

11 THE COURT: YOU'RE NOT EMPLOYED WITHIN THE WALLS
12 OF THE COURTHOUSE?

13 MR. BEARD: OH, NO, SIR.

14 THE COURT: OKAY. AND YOU'RE NOT ANY KIND OF
15 COUNTY OFFICIAL, ARE YOU?

16 MR. BEARD: NO, SIR.

17 THE COURT: DO YOU HAVE A LAW ENFORCEMENT
18 COMMISSION ...

19 MR. BEARD: NO, SIR.

20 THE COURT: ... ISSUED BY SLED THAT GIVES THE POWER
21 OF ARREST?

22 MR. BEARD: NO, SIR.

23 THE COURT: HAVE YOU EVER BEEN CONVICTED IN A
24 STATED OR FEDERAL COURT FOR A CRIME FOR WHICH YOU COULD
25 HAVE GOTTEN MORE THAN ONE YEAR IN JAIL?

1 MR. BEARD: NO, SIR.

2 THE COURT: AND I CAN SEE THAT YOU ARE ABLE TO READ
3 AND WRITE OR AT LEAST SPEAK AND UNDERSTAND THE ENGLISH
4 LANGUAGE. HOW FAR DID YOU GO IN SCHOOL?

5 MR. BEARD: THIRD YEAR OF COLLEGE.

6 THE COURT: OKAY. SO YOU HAVE SOME COLLEGE?

7 MR. BEARD: YES, SIR.

8 THE COURT: DO YOU KNOW OF ANY REASON PHYSICAL
9 OR MENTAL REASON WHY YOU WOULD NOT BE ABLE TO SERVE ON
10 THE JURY, HEARING, SEEING, HEART TROUBLE OR ANYTHING OF THAT
11 NATURE?

12 MR. BEARD: NO, SIR.

13 THE COURT: HAVE YOU EVER SERVED AS A JUROR IN THE
14 CIRCUIT COURT BEFORE, THAT IS, UP HERE IN THIS COURTROOM IN
15 THE COURT OF GENERAL SESSIONS OR THE COURT OF COMMON PLEAS
16 WITHIN THE PAST THREE YEARS?

17 MR. BEARD: YES, SIR.

18 THE COURT: DO YOU HAVE LEGAL CUSTODY OF A CHILD
19 UNDER THE AGE OF SEVEN?

20 MR. BEARD: YES, SIR.

21 THE COURT: YOU DO? YOU HAVE LEGAL CUSTODY OF
22 HOW MANY CHILDREN?

23 MR. BEARD: JUST ONE.

24 THE COURT: TWO BOYS?

25 MR. BEARD: NO, ONE GIRL.

1 THE COURT: SIR?

2 MR. BEARD: ONE GIRL.

3 THE COURT: ONE. OKAY. AND YOU HAVE LEGAL
4 CUSTODY OF HIM?

5 MR. BEARD: YES, SIR.

6 THE COURT: WHO TAKES CARE OF HIM?

7 MR. BEARD: I DO.

8 THE COURT: ALL DAY EVERY DAY?

9 MR. BEARD: I MEAN MY OLD LADY TAKE CARE OF HER.

10 THE COURT: SIR?

11 MR. BEARD: MY GIRLFRIEND.

12 THE COURT: YEAH.

13 MR. BEARD: YEAH.

14 THE COURT: SHE TAKES CARE OF HIM? SO YOU'RE NOT
15 CHARGED WITH THEIR CARE AND TAKING CARE OF THEM ALL THE
16 TIME, IS THAT RIGHT?

17 MR. BEARD: I MEAN I TAKE CARE OF THEM.

18 THE COURT: I UNDERSTAND THAT BUT I MEAN AS FAR AS
19 ... WHERE ARE THEY TODAY?

20 MR. BEARD: AT THE HOUSE.

21 THE COURT: AND SHE'S TAKING ... SHE ... SHE'S CARING
22 THEIR NEEDS DURING THE DAY.

23 MR. BEARD: YES, SIR.

24 THE COURT: AND SHE'S AVAILABLE TO TAKE CARE OF
25 THEM FROM THE PHYSICAL STANDPOINT IF YOU HAVE TO SERVE ON

1 THE JURY.

2 MR. BEARD: YES, SIR.

3 THE COURT: YOU'RE NOT A STUDENT. YOU'VE ALREADY
4 SAID THAT YOU'RE NOT EMPLOYED BUT YOU'RE NOT A STUDENT, ARE
5 YOU?

6 MR. BEARD: NO, SIR.

7 THE COURT: AND YOU'RE NOT ... YOU'RE NOT EMPLOYED
8 SO THE PENITENTIARY AND DETENTION FACILITY WOULD NOT APPLY
9 TO YOU. IS THERE ANY REASON THAT YOU CAN THINK OF WHY YOU
10 SHOULD NOT SERVE AS A JUROR IN THIS CASE?

11 MR. BEARD: NO, SIR.

12 THE COURT: IS THERE ANY REASON THAT YOU THINK
13 THAT YOU WANT TO EXPRESS TO ME WHY I SHOULD EXCUSE YOU
14 AND I WILL TELL YOU I CAN'T EXCUSE UNLESS IT'S A REAL GOOD
15 VALID REASON BUT IF YOU HAVE GOT ANY REASON THAT YOU THINK
16 YOU WOULD LIKE ME TO CONSIDER I'LL BE GLAD TO HEAR FROM YOU.

17 MR. BEARD: NO, SIR.

18 THE COURT: OKAY. ALL RIGHT. MR. JACKSON, IT
19 APPEARS TO ME THE JUROR IS QUALIFIED, DO YOU AGREE?

20 MR. JACKSON: JUDGE, CAN WE APPROACH ON THAT JUST
21 A MOMENT?

22 THE COURT: YES, SIR.
23 (COUNSEL APPROACHES BENCH)

24 THE COURT: NOW, I THINK I'VE ALREADY ASKED THIS BUT
25 DID YOU COMPLETE THAT FORM, THREE PAGE FORM AND SEND IT

1 BACK IN?

2 MR. BEARD: YES, SIR.

3 THE COURT: OKAY. ALL RIGHT. SO WE HAVE THAT. ALL
4 RIGHT. I WOULD FIND THIS JUROR IS QUALIFIED AND HE WOULD BE
5 ADDED TO THE POOL OF JURORS AND WHAT I'M GONNA DO IS ALLOW
6 YOU TO GO GET YOUR LUNCH AND ASK YOU TO PLEASE BE BACK UP
7 HERE AT 2:00 O'CLOCK.

8 MR. BEARD: YES, SIR.

9 THE COURT: THANK YOU. ALL RIGHT, COUNSEL, WITH ...
10 WITH THAT IS THERE ANYTHING BEFORE WE TAKE A SHORT RECESS
11 FOR LUNCH? I'M GOING ... WHAT I'D LIKE TO DO IS HAVE EVERYBODY
12 BACK HERE SAY AT 2:00 O'CLOCK, YOU KNOW, GET SOMETHING TO
13 EAT. I TOLD THE JURY TO BE BACK AT 2:00 BUT THEY'RE NOT GONNA
14 BE IN THE COURTROOM RIGHT AT 2:00 SO THEN THAT'LL GIVE US THE
15 CHANCE TO DETERMINE WHAT'S GONNA TELL THEM CAUSE THEY'RE
16 GONNA ALL COME BACK THROUGH THE METAL DETECTORS SO IF
17 EVERYBODY WILL BE BACK AT 2:00 O'CLOCK AND WE'LL MEET IN
18 CHAMBERS TO DECIDE EXACTLY WHAT WE WANT TO TELL THE JURY
19 IN REGARD TO QUALIFICATION ON THIS PARTICULAR CASE.

20 MR. JACKSON: THANK YOU, YOUR HONOR.

21 MR. LITTLEJOHN: THANK YOU.

22 THE COURT: THANK YOU.

23 (WHEREUPON THERE WAS A PAUSE).

24

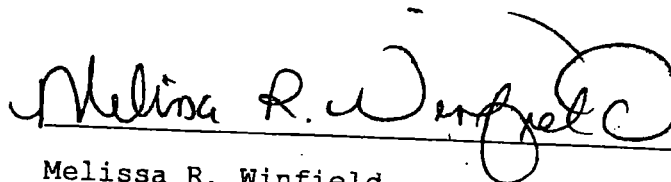
25

CERTIFICATE

This is to certify that the jury selection on February 22, 2005 a.m. in State vs. Bobby Wayne Stone, consisting of Thirty-Four (34) pages is a true and correct transcript; said jury selection was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 10th day of October, 2006.



Melissa R. Winfield
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

)
) COURT OF COMMON PLEAS
)

STATE OF SOUTH CAROLINA,
PLAINTIFF,

)
)
) TRANSCRIPT OF RECORD
) C/A #: 1996-GS-43-0698
)

v.

BOBBY WAYNE STONE,
DEFENDANT.

)
)
)
)
)
)

SUMTER COUNTY COURTHOUSE
February 22, 2005

TRANSCRIPT OF JURY SELECTION BEGINNING FEBRUARY 22, 2005 IN THE P.M.

BEFORE:

HONORABLE HOWARD P. KING, PRESIDING JUDGE.

APPEARANCES:

Solicitor C. Kelly Jackson, Esquire
Solicitor Dudley Saleeby, Esquire
Attorneys for The State

James H. Babb, Esquire
Cam Littlejohn, Esquire
Attorneys for Defendant Bobby Wayne Stone

TAKEN BY MELISSA R. WINFIELD
CERTIFIED VERBATIM REPORTER

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HEARING

3

1 THE COURT: THANK YOU. PLEASE BE SEATED. ALL RIGHT. LADIES
2 AND GENTLEMEN OF THE JURY, THANK YOU VERY MUCH FOR YOUR
3 PROMPTNESS IN BEING BACK HERE. LET THE RECORD REFLECT
4 THAT ALL THE PARTIES AND DEFENDANT ARE PRESENT IN THE
5 COURT. WE ARE NOW READY TO GO INTO THE QUALIFICATION
6 PROCESS OF THIS PARTICULAR CASE. AS I TOLD YOU
7 EARLIER, THIS IS THE CASE OF THE STATE V. DANNY STONE,
8 I'M SORRY, BOBBY WAYNE STONE. I HAVE THE INDICTMENT
9 HERE, AND IN THIS INDICTMENT, MR. STONE IS CHARGED WITH
10 MURDER. I WILL TELL YOU NOW THAT HE HAS ALREADY BEEN
11 CONVICTED OF THE CRIME OF MURDER.

12 THIS CASE IS BEFORE THE COURT FOR A NEW
13 SENTENCING HEARING. QUESTION OF GUILTY OR INNOCENT IS
14 NOT BEFORE THIS COURT AND IS NOT AN ISSUE THAT YOU WILL
15 HAVE TO DECIDE. THE ONLY ISSUE WHICH THE JURY IN THIS
16 CASE WILL BE ASKED TO DECIDE IS THE PUNISHMENT THAT IS
17 TO BE IMPOSED FOR THIS MURDER CONVICTION.

18 NOW, I DO NEED TO ASK YOU SOME FURTHER QUESTIONS
19 TO DETERMINE YOUR QUALIFICATIONS TO SERVE ON THIS JURY.
20 I WANT TO MAKE JUST TWO OR THREE PRELIMINARY
21 STATEMENTS, SOME OF WHICH I HAVE ALREADY SAID. IT WILL
22 BE THE DUTY OF THE JURY IN THIS CASE TO MAKE THE
23 FINDINGS OF FACTS. THAT'S WHAT A JURY DOES. THEY MAKE
24 A DETERMINATION OF FACTS IN A PARTICULAR CASE. THE
25 COURT MAKES THE DETERMINATIONS OF THE LAW. I AM THE

THIRD JUDICIAL CIRCUIT

(803) 436-2150

HEARING

4

1 JUDGE OF THE LAW IN THIS CASE, WHICH MEANS I MAKE ALL
2 THE DECISIONS THAT ARE LEGAL DECISIONS, AND THE JURY
3 THAT IS SELECTED IN THIS CASE WILL MAKE ALL DECISIONS
4 THAT ARE FACTUAL DECISIONS.

5 WE WILL PANEL A JURY THAT IS CAPABLE OF DECIDING
6 WHAT IS THE BELIEVABLE TESTIMONY IN EVIDENCE, CAPABLE
7 OF APPLYING THAT TO THE TESTIMONY IN EVIDENCE AND THE
8 LAW THAT I GIVE YOU AND RETURNING A RECOMMENDATION OF
9 SENTENCE. AS I FURTHER TOLD YOU A LITTLE EARLIER, A
10 QUALIFIED JUROR IS ONE WHO WILL CONSCIENTIOUSLY APPLY
11 THE LAW AND FIND THE FACTS. QUALIFIED JUROR IS ONE WHO
12 IS CAPABLE OF RETURNING A VERDICT IN A RECOMMENDATION
13 OF SENTENCE BASED ON THE EVIDENCE AND THE LAW. A
14 QUALIFIED JUROR IS ONE CAPABLE OF SETTING ASIDE HIS OR
15 HER OPINIONS AND DECIDING A MATTER BASED UPON THE LAW
16 AND THE EVIDENCE. A JUROR IS NOT QUALIFIED IF THE
17 JUROR'S VIEWS WILL PREVENT OR SUBSTANTIALLY IMPAIR THE
18 PERFORMANCE OF HIS OR HER DUTIES AS A JUROR IN A
19 ACCORDANCE, OR BOTH AS A JUROR AND THE INSTRUCTIONS OF
20 THE COURT.

21 NOW, IN THAT CONNECTION, I NEED TO ASK YOU AND
22 WOULD ASK THAT YOU GIVE YOUR ATTENTION, PLEASE TO THESE
23 QUESTIONS, AND IF ANY OF THEM APPLY TO YOU, THEN
24 RESPOND ACCORDINGLY.

25 FIRST OF ALL, AS I HAVE TOLD YOU, THE DEFENDANT

HEARING

5

1 IN THIS CASE IS MR. BOBBY WAYNE STONE. THIS IS MR.
2 STONE SEATED AT THE COUNSEL TABLE HERE. IS THERE ANY
3 MEMBER OF THE JURY PANEL WHO IS RELATED BY BLOOD OR
4 CONNECTED BY MARRIAGE OR WHO ENJOYS ANY PERSONAL OR
5 OTHER RELATIONSHIP WITH THE DEFENDANT, MR. BOBBY WAYNE
6 STONE, OR WITH ANY MEMBER OF HIS FAMILY? IF SO, PLEASE
7 STAND. ALL RIGHT. THANK YOU, YOU MAY BE SEATED, MR.
8 STONE.

9 ALL RIGHT. JUROR BACK IN THE BACK, WOULD YOU
10 IDENTIFY YOURSELF, PLEASE, MA'AM?

11 JUROR #5: VIRGINIA AYERS.

12 THE COURT: ALL RIGHT. MS. AYERS, WOULD YOU COME UP, PLEASE?

13 COUNSEL? ALL RIGHT. THIS IS JUROR #5.

14 JUROR #5: HIS BROTHER IS A FRIEND OF MINE.

15 THE COURT: ARE YOU ALL SOCIAL FRIENDS OR JUST ACQUAINTANCES?

16 HOW WOULD YOU DESCRIBE IT?

17 JUROR #5: HE'S DRIVING ME TO THE RACE TRACK A COUPLE TIMES,
18 HIM AND HIS WIFE AND HIS CHILD.

19 THE COURT: ARE YOU TALKING ABOUT MR. STONE OR HIS BROTHER?

20 DO YOU KNOW MR. STONE?

21 JUROR #5: NO, I'VE NEVER MET HIM.

22 THE COURT: DO YOU STILL SEE HIS BROTHER?

23 JUROR #5: YOU MEAN JERRY, YES, SIR.

24 THE COURT: ANY QUESTIONS YOU'D LIKE TO ASK? ANY QUESTIONS?

25 LET ME ASK COULD YOU PUT THAT ASIDE AND DECIDE THIS

THIRD JUDICIAL CIRCUIT

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HEARING

6

1 BASED ON THE EVIDENCE WE HAVE IN THIS COURT.

2 JUROR #5: YES, SIR, BUT I'D RATHER NOT BE.

3 THE COURT: THE QUESTION IS WHETHER OR NOT YOU COULD BE
4 OBJECTIVE AND LOOK AT THE EVIDENCE AND DECIDE THIS CASE
5 BASED ON WHAT YOU HEAR IN THE COURTROOM.

6 JUROR #5: YES, SIR.

7 THE COURT: ALL RIGHT, THANK YOU. ALL RIGHT. LADIES AND
8 GENTLEMEN OF THE JURY PANEL, THE VICTIM IN THIS CASE
9 WAS CHARLES KUBALA, A DEPUTY WITH THE SUMTER COUNTY
10 SHERIFF'S DEPARTMENT. IS THERE ANY MEMBER OF THE JURY
11 PANEL WHO IS RELATED BY BLOOD OR MARRIAGE OR ENJOYS ANY
12 PERSONAL OR OTHER RELATIONSHIP WITH THE VICTIM, SGT.
13 KUBALA OR ANY MEMBER OF HIS FAMILY? IF SO, PLEASE
14 STAND.

15 YOU ALREADY KNOW THAT THE ATTORNEY FOR THE STATE
16 IS MR. KELLY JACKSON, THE SOLICITOR. THIS IS MR.
17 JACKSON RIGHT HERE. HE WILL BE ASSISTED BY MR. DUDLEY
18 SALEEBY. THIS IS MR. SALEEBY. THANK YOU. YOU'VE
19 ALREADY MET, AND I'LL ASK THEM TO STAND AGAIN, MR. CAM
20 LITTLEJOHN AND MR. JIM BABB, WHO ARE THE ATTORNEYS FOR
21 THE DEFENDANT. IS THERE ANY MEMBER OF THE JURY PANEL
22 WHO IS RELATED BY BLOOD OR MARRIAGE OR ENJOYS ANY
23 PERSONAL OR OTHER RELATIONSHIP WITH THE ATTORNEYS
24 INVOLVED IN THIS CASE OR ANY MEMBERS OF THEIR FAMILY?
25 IF SO, PLEASE STAND. THANK YOU.

HEARING

7

1 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS NOW
2 REPRESENTED OR HAS BEEN REPRESENTED IN THE PAST OR HAS
3 BEEN SUBJECT TO A LAWSUIT BROUGHT BY ANY OF THE
4 ATTORNEYS OR MEMBERS OF THEIR FIRMS? IF SO, PLEASE
5 STAND.

6 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS
7 FORMED OR EXPRESSED AN OPINION ON THIS CASE? IF SO,
8 PLEASE STAND.

9 ARE THERE ANY MEMBERS OF THE JURY PANEL WHO ARE
10 AWARE OF ANY BIAS OR PREJUDICE IN THIS CASE, EITHER FOR
11 OR AGAINST THE STATE OR FOR OR AGAINST THE DEFENDANT?
12 IF SO, PLEASE STAND.

13 HAS ANY MEMBER OF THE JURY PANEL SEEN, HEARD OR
14 READ ANY ACCOUNTS OF THIS MATTER? INCIDENTLY, LET ME
15 TELL YOU SO THAT YOU CAN GET ORIENTED, THIS IS ALLEGED
16 TO HAVE OCCURRED, THIS MURDER OCCURRED ON FEBRUARY 26,
17 1996. AND I WOULD ASK AGAIN, IS THERE ANY MEMBER OF
18 THE JURY PANEL WHO HAS SEEN, HEARD OR READ ANY ACCOUNTS
19 OF THIS MATTER? IF SO, PLEASE STAND.

20 ALL RIGHT. WE'RE GOING TO START ON THIS SIDE,
21 AND I DON'T WANT YOU TO TELL ME ANYTHING RIGHT NOW.
22 WHAT I JUST WANT TO KNOW ARE YOUR NAME AND YOUR JUROR
23 NUMBER. IF YOU DON'T KNOW YOUR JUROR NUMBER, WE'LL
24 LOOK IT UP, BUT IT WILL BE HELPFUL IF YOU CAN TELL US
25 YOUR JUROR NUMBER AND WE'LL START RIGHT HERE ON THE

THIRD JUDICIAL CIRCUIT

(803) 436-2150

HEARING

8

1 FRONT ROW ON MY RIGHT, THE LADY IN THE BROWN, YOUR NAME
2 AND NUMBER.

3 JUROR #73: SHARON GOLDEN.

4 THE COURT: NUMBER?

5 JUROR #73: #73.

6 THE COURT: AND YOUR NAME IS?

7 JUROR #73: SHARON GOLDEN.

8 THE COURT: ALL RIGHT.

9 JUROR #46: #46, JUDY CULBERTSON.

10 THE COURT: YES, MA'AM.

11 JUROR #11: #11, MIRA BARKLEY.

12 THE COURT: ALL RIGHT.

13 JUROR #58: #58, (INAUDIBLE).

14 THE COURT: ALL RIGHT.

15 JUROR #228: #228, MS. WALKER.

16 THE COURT: I'M SORRY, DIDN'T GET YOUR NUMBER.

17 JUROR #228: #228.

18 THE COURT: #228. ALL RIGHT. YES, SIR, GENTLEMAN ON THE
19 RIGHT.

20 JUROR #33: #33, MIKE CABBAGESTALK.

21 THE COURT: ALL RIGHT. YES, MA'AM, ON MY RIGHT, FAR RIGHT.

22 JUROR #189: (INAUDIBLE), #189.

23 THE COURT: #189. YES, MA'AM.

24 JUROR #141: #141, (INAUDIBLE).

25 THE COURT: #141. YES, MA'AM, LADY IN THE YELLOW.

THIRD JUDICIAL CIRCUIT
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HEARING

9

1 JUROR #157: #157, LUCILLE MYERS.
2 THE COURT: ALL RIGHT. YES, SIR.
3 JUROR #140: #140, JOHN MCLEOD.
4 THE COURT: ALL RIGHT. YES, MA'AM, STARTING OVER HERE.
5 JUROR #219: #219, BONNIE TRAINER.
6 THE COURT: ALL RIGHT, THANK YOU. YES, SIR.
7 JUROR #36: #36, MARK CARR.
8 THE COURT: I'M SORRY, I DIDN'T GET YOUR NUMBER.
9 JUROR #36: #36.
10 THE COURT: #36? IT'S #34. YES, SIR.
11 JUROR #202: RON SMITH, #202.
12 THE COURT: ALL RIGHT.
13 JUROR #168: #168, MR. OSTEEN.
14 THE COURT: THANK YOU.
15 JUROR #123: I DON'T KNOW MY NUMBER, BUT MY NAME IS STEVEN
16 MAPLE.
17 THE COURT: #123. ALL RIGHT. STARTING ON THE OTHER SIDE
18 WITH THE GENTLEMAN RIGHT HERE IN THE FRONT.
19 JUROR #218: I DON'T KNOW MY NUMBER, BUT MY NAME IS GERALD
20 THOMAS.
21 THE COURT: GERALD THOMAS, #218, ALL RIGHT.
22 JUROR #122: #122, JAMES (INAUDIBLE).
23 THE COURT: ALL RIGHT.
24 JUROR #114: #114, MS. MCCrackEN.
25 THE COURT: ALL RIGHT.

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HEARING

10

1 JUROR #19: #19, SANDRA BLANCHOT.
2 THE COURT: #19, OKAY. ALL RIGHT.
3 JUROR #56: #56, RANDY GAL.
4 THE COURT: THANK YOU.
5 JUROR #184: #184, MR. RIDGEWAY.
6 JUROR #162: MR. BLOCK, DON'T KNOW MY NUMBER.
7 THE COURT: #162.
8 JUROR #236: #236, (INAUDIBLE) WEIRY.
9 THE COURT: I'M SORRY, GIVE ME YOUR NUMBER AGAIN, THE LAST
10 LADY.
11 JUROR #236: #236.
12 THE COURT: MS. WEIRY?
13 JUROR #236: YES.
14 THE COURT: OKAY, THANK YOU.
15 JUROR #175: JOHN PRICE, DON'T KNOW MY NUMBER.
16 THE COURT: #175, MR. PRICE.
17 JUROR #119: TAMMY LOWDER, AND I DON'T KNOW MY NUMBER.
18 THE COURT: MS. LOWDER, YOUR NUMBER IS #119.
19 JUROR #45: BENNETT CROFT, #45.
20 THE COURT: THANK YOU.
21 JUROR #52: ROSALYN DIAMOND, #52.
22 THE COURT: THANK YOU.
23 JUROR #161: LYNN NEWMAN, #161.
24 THE COURT: THANK YOU.
25 JUROR #152: TRENNON MONTGOMERY, #152.

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HEARING

11

1 THE COURT: THANK YOU.

2 JUROR #221: JIM PRUIT, #221.

3 THE COURT: WHAT WAS YOUR LAST NAME?

4 JUROR #221: PRUIT.

5 THE COURT: #221.

6 JUROR #235: JUANITA WESTON, #235.

7 THE COURT: YES, SIR.

8 JUROR #98: #98, DENNIS JOHNSON.

9 THE COURT: ALL RIGHT, THANK YOU. ALL RIGHT. NOW, I'M GOING

10 TO ASK ALL OF THOSE WHO WERE STANDING TO PLEASE STAND

11 AGAIN SO THAT I CAN ASK YOU ANOTHER QUESTION. EVERYONE

12 THAT GAVE ME THEIR NUMBERS, PLEASE STAND. ALL RIGHT.

13 BASED ON THE ACCOUNTS THAT YOU'VE READ, HAVE ANY OF

14 YOUR FORMED OR EXPRESSED AN OPINION IN THIS MATTER? IF

15 SO, REMAIN STANDING. EVERYONE ELSE, BE SEATED.

16 ALL RIGHT. NOW, THIS IS THE QUESTION WITH REGARD

17 TO THOSE WHO HAVE FORMED AN OPINION, AND I DON'T WANT

18 TO KNOW WHAT THAT OPINION IS, BUT I NEED TO KNOW THE

19 NUMBERS OF THOSE THAT HAVE INDICATED THAT THEY WOULD,

20 SO WE'LL GO THROUGH AGAIN STARTING RIGHT HERE AT THE

21 FRONT.

22 JUROR #46: #46, JUDY CULBERTSON.

23 THE COURT: MS. CULBERTSON, ALL RIGHT, #46.

24 JUROR #140: #140, JOHN MCLEOD.

25 THE COURT: ALL RIGHT.

HEARING

12

1 JUROR #202: #202.

2 THE COURT: #202, ALL RIGHT. YES, SIR, IN THE BLUE SHIRT.

3 JUROR #122: #122.

4 THE COURT: I'M SORRY?

5 JUROR #122: #122.

6 THE COURT: ALL RIGHT, SIR.

7 JUROR #184: #184.

8 THE COURT: ALL RIGHT, SIR.

9 JUROR #119: #119.

10 THE COURT: ALL RIGHT.

11 JUROR #45: #45.

12 THE COURT: OKAY.

13 JUROR #152: #152.

14 THE COURT: ALL RIGHT. WE'LL COME BACK TO THAT IN JUST A FEW
15 MINUTES, BUT RIGHT NOW, THE NEXT QUESTION IS OTHER THAN
16 THOSE MATTERS THAT HAVE BEEN DISCLOSED TO THE COURT
17 ALREADY, DO ANY OF YOU KNOW OF ANY REASON WHATSOEVER
18 WHY THEY COULD NOT GIVE A FAIR TRIAL TO BOTH THE STATE
19 AND THE DEFENDANT? IF SO, PLEASE STAND. OTHER THAN
20 THE THINGS YOU'VE JUST DESCRIBED.

21 HAS ANY MEMBER OF THE JURY PANEL OR MEMBER OF
22 YOUR IMMEDIATE FAMILY, AND I DEFINE IMMEDIATE FAMILY AS
23 PARENT, BROTHER, SISTER, SPOUSE OR CHILD, HAS ANY
24 MEMBER OF THE JURY PANEL OR MEMBER OF YOUR IMMEDIATE
25 FAMILY BEEN THE VICTIM OF A CRIME OF VIOLENCE? IF SO,

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HEARING

13

1 PLEASE STAND.

2 ALL RIGHT. JUROR #46, MS. CULBERTSON, LET ME ...

3 I THINK THIS IS A GOOD TIME BEFORE WE ADDRESS THAT.

4 RIGHT NOW, I'LL ASK THOSE FEW JURORS TO COME FORWARD,

5 PLEASE. THIS IS JUROR #46, MS. CULBERTSON. ALL RIGHT.

6 MS. CULBERTSON, TELL US.

7 JUROR #46: MY BROTHER WAS ROBBED AT GUNPOINT IN TEXAS.

8 THE COURT: WAS SOMEBODY CONVICTED OF THAT?

9 JUROR #46: NO, THEY WERE NEVER ABLE TO FIND THE PEOPLE.

10 THE COURT: DO YOU THINK YOU CAN GIVE BOTH THE STATE AND THE
11 DEFENDANT A FAIR TRIAL BASED ON THE EVIDENCE YOU HEAR
12 IN THIS COURT?

13 JUROR #46: YES.

14 THE COURT: OKAY. THANK YOU VERY MUCH. #210?

15 JUROR #210: MY NEPHEW SHOT UP A HOUSE. I THINK HE DID FOUR
16 OR FIVE YEARS. HE WAS CHARGED WITH SHOOTING UP A
17 HOUSE.

18 THE COURT: IT WASN'T YOUR HOUSE?

19 JUROR #210: NO, IT WASN'T MY HOUSE.

20 THE COURT: SOMEBODY THAT'S RELATED TO YOU WAS CONVICTED OF
21 A CRIME?

22 JUROR #210: RIGHT.

23 THE COURT: WOULD THAT PREVENT YOU FROM GIVING BOTH THE STATE
24 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

25 JUROR #210: NO.

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HEARING

14

1 THE COURT: THANK YOU VERY MUCH. THAT'S IT. #58?

2 JUROR #58: YEARS AGO, A FELLOW HIT ME WITH A BRICK.
3 (INAUDIBLE).

4 THE COURT: DO YOU THINK YOU CAN GIVE BOTH THE STATE AND THE
5 DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE
6 EVIDENCE YOU HEAR IN THIS COURTROOM?

7 JUROR #58: YES, SIR.

8 THE COURT: THANK YOU VERY MUCH. #96.

9 JUROR #96: MY BROTHER WAS CHARGED WITH ASSAULT AND BATTERY
10 WITH INTENT TO KILL.

11 THE COURT: DID HE GO TO COURT ON IT?

12 JUROR #96: YES.

13 THE COURT: DID HE PLEAD GUILTY OR WAS HE FOUND GUILTY?

14 JUROR #96: HE PLED.

15 THE COURT: DO YOU THINK THAT WOULD PREVENT YOU FROM GIVING
16 BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL
17 TRIAL BASED ON THE EVIDENCE?

18 JUROR #96: (NODS HEAD AFFIRMATIVELY).

19 THE COURT: LET ME ASK THE QUESTION AGAIN. WOULD THAT FACT
20 PREVENT YOU FROM GIVING BOTH THE STATE AND THE
21 DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE
22 EVIDENCE?

23 JUROR #96: YES; IT WOULD.

24 THE COURT: IT WOULD PREVENT YOU FROM GIVING BOTH THE STATE
25 AND DEFENDANT ...

HEARING

15

1 JUROR #96: OH, NO.

2 THE COURT: WOULD YOU BE ABLE TO PUT THAT FACT ASIDE AND
3 DECIDE THIS CASE BASED ON THE EVIDENCE YOU HEAR IN THIS
4 COURTROOM?

5 JUROR #96: (NODS HEAD AFFIRMATIVELY).

6 THE COURT: IS THAT A YES?

7 JUROR #96: YES.

8 THE COURT: OKAY, GOOD. THANK YOU. #15. ALL RIGHT. WHAT'S
9 YOUR SITUATION?

10 JUROR #15: MY STEP-BROTHER WAS KILLED RIGHT IN FRONT OF ME,
11 AND I GOT SHOT AT.

12 THE COURT: YOUR BROTHER WAS KILLED RIGHT IN FRONT OF YOU AND
13 YOU GOT SHOT AT? HOW LONG AGO WAS THAT?

14 JUROR #15: '94.

15 THE COURT: HOW OLD WERE YOU AT THE TIME?

16 JUROR #15: NINE.

17 THE COURT: THAT WAS '94, ABOUT 10 OR 11 YEARS AGO, SO YOU
18 WERE ABOUT EIGHT OR NINE YEARS OLD, IS THAT RIGHT?

19 JUROR #15: YES.

20 THE COURT: WAS THE PERSON CONVICTED?

21 JUROR #15: YES.

22 THE COURT: AND AS FAR AS YOU, (INAUDIBLE)?

23 JUROR #15: (INAUDIBLE).

24 THE COURT: YOU GOT SHOT AT, BUT YOU WERE NOT SHOT?

25 JUROR #15: AT ONE POINT, MY STEP-FATHER SHOT AT ME IN A

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HEARING

16

1 MOVING CAR, AND IT GRAZED MY HEAD.

2 THE COURT: SO, YOUR STEP-FATHER SHOT AT YOU ONE TIME? OKAY.

3 LET'S GO BACK. IT WAS YOUR FATHER THAT WAS KILLED, AND
4 THAT WAS ABOUT 10 OR 12 YEARS AGO, AND THAT WAS IN
5 FRONT OF YOU. YOU WERE THERE WHEN IT HAPPENED?

6 JUROR #15: YES.

7 THE COURT: I GUESS THE MAN WAS ARRESTED AND WENT TO JAIL?

8 JUROR #15: YES.

9 THE COURT: OKAY. AND MY QUESTION IS ONE OF THE ISSUES
10 YOU'VE GOT TO DECIDE IN THIS CASE IS THE PUNISHMENT
11 THAT SHOULD BE GIVEN TO THE DEFENDANT ON MURDER. WOULD
12 YOU BE ABLE TO GIVE THE STATE AND DEFENDANT A FAIR AND
13 IMPARTIAL TRIAL? PUTTING YOUR SITUATION ASIDE, WOULD
14 YOU BE ABLE TO GIVE THE STATE AND DEFENDANT A FAIR AND
15 IMPARTIAL TRIAL BASED ON WHAT YOU HEAR IN THIS
16 COURTROOM?

17 JUROR #15: YES, I WOULD.

18 THE COURT: NOW, YOU'VE GOT ANOTHER INCIDENT WHERE YOU WERE
19 SHOT AT. HOW LONG AGO WAS THAT?

20 JUROR #15: OVER TWO YEARS BEFORE THAT.

21 THE COURT: SO, YOU WERE YOUNGER?

22 JUROR #15: YEAH, I WAS EVEN YOUNGER.

23 THE COURT: YOU WERE IN A CAR?

24 JUROR #15: YES, I WAS IN A CAR WITH MY MOTHER.

25 THE COURT: DO YOU KNOW WHO IT WAS THAT SHOT?

HEARING

17

1 JUROR #15: MY STEP-FATHER.
2 THE COURT: WHAT HAPPENED TO HIM?
3 JUROR #15: HE GOT CONVICTED.
4 THE COURT: DID HE GO TO JAIL?
5 JUROR #15: YEAH, GOT OUT IN TWO YEARS.
6 THE COURT: NOW, THAT INCIDENT THAT HAPPENED TO YOU THEN,
7 WOULD THAT PREVENT YOU FROM GIVING BOTH THE STATE AND
8 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE
9 EVIDENCE?
10 JUROR #15: NO, IT WOULD NOT.
11 THE COURT: THANK YOU. #110.
12 JUROR #110: I WAS ROBBED AT GUNPOINT.
13 THE COURT: WERE YOU WORKING?
14 JUROR #110: AT A VIDEO POKER PARLOR. HE JUST PUSHED IT AT
15 ME. NOBODY WAS SHOT.
16 THE COURT: WOULD THAT PREVENT YOU FROM GIVING BOTH THE STATE
17 AND DEFENDANT A PARTIAL TRIAL BASED ON THE EVIDENCE YOU
18 HEAR IN THIS COURTROOM? WOULD YOU BE ABLE TO PUT THAT
19 FACT ASIDE?
20 JUROR #110: YES.
21 THE COURT: #168. WHAT HAPPENED?
22 JUROR #168: MY UNCLE WAS MURDERED.
23 THE COURT: WAS ANYBODY CAUGHT FOR THE CRIME?
24 JUROR #168: YEAH.
25 THE COURT: HOW LONG AGO WAS THAT?

HEARING

18

1 JUROR #168: THREE YEARS.

2 THE COURT: SO, YOU SAID IT WAS ... NOBODY HAS BEEN ARRESTED
3 FOR THAT AT THIS POINT?

4 JUROR #168: NO, SIR.

5 THE COURT: WOULD THAT PREVENT YOU FROM GIVING BOTH THE STATE
6 AND DEFENDANT A FAIR AN IMPARTIAL TRIAL IN THIS CASE?

7 JUROR #168: NO, SIR.

8 THE COURT: COULD YOU BE OBJECTIVE AND DECIDE THIS CASE BASED
9 ON THE EVIDENCE YOU HEAR IN THIS COURTROOM?

10 JUROR #168: YES, SIR. I BELIEVE I COULD.

11 THE COURT: THANK YOU.

12 MR. BABB: YOUR HONOR, EXCUSE ME. WE HAVE NO MOTIONS AT THIS
13 TIME. WE WOULD LIKE TO RESERVE THE RIGHT TO BRING THAT
14 BACK UP AFTER VOIR DIRE.

15 THE COURT: ALL RIGHT, SIR.

16 MR. BABB: THANK YOU.

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THERE ARE
18 NUMBER OF LEGAL INSTRUCTIONS THAT I WILL GIVE YOU
19 THROUGHOUT THE CASE. THEY HAVE TO DO WITH THE BURDEN
20 OF PROOF AND CERTAIN OTHER LEGAL DEFINITIONS AND THINGS
21 THAT I WILL ASK YOU AS JURORS TO DO, BECAUSE IT IS THE
22 LAW IN THE STATE. IS THERE ANY MEMBER OF THE JURY
23 PANEL WHO WOULD BE UNABLE OR UNWILLING TO FOLLOW THE
24 LAW AS I INSTRUCT IT TO YOU, REGARDLESS OF WHETHER YOU
25 AGREE WITH THE LAW OR DISAGREE WITH THE LAW? ANYBODY

HEARING

19

1 WHO WOULD BE UNABLE TO FOLLOW THE COURT'S INSTRUCTIONS
2 ON THE LAW? IF SO, PLEASE STAND.

3 ALL RIGHT. LADIES AND GENTLEMEN, I AM NOW GOING
4 TO READ TO YOU A LIST OF PEOPLE WHO MAY OR MAY NOT
5 TESTIFY IN THIS CASE. IF THESE WITNESSES ARE PRESENT
6 IN THE COURT, I WOULD ASK YOU TO STAND WHEN I CALL YOUR
7 NAME. LET ME ASK COUNSEL AGAIN TO APPROACH FOR JUST A
8 MOMENT BEFORE I GO THROUGH THE WITNESS LIST.

9 (BENCH CONFERENCE)

10 THE COURT: ALL RIGHT. AS I SAID, I'M GOING TO GO BY THE
11 WITNESSES, CALL OFF A NUMBER OF NAMES. IF THOSE
12 WITNESSES ARE PRESENT, I WOULD ASK THAT YOU STAND WHEN
13 YOUR NAME IS CALLED. JOHN BARRON, DANIEL BETHEA,
14 LILLIE BRICK, TOM DARNELL, TESTIMONY OF RUTH GRIFFIN
15 WILL BE PRESENTED BY TRANSCRIPT, PERRY HERRON, EDDIE
16 HAUS, SHARON HOLLER, JEFF HOLLIFIELD, CHARLIE KUBALA,
17 JR., FRED KUBALA, KEVIN KUBALA, PEGGY KUBALA, TERESA
18 KUBALA, GREY MACKASY, GARY METTS, KATHY MILES, TOMMY
19 MIMS, IRA PARNELL, FRED POWELL, JOHN PRINCE, JOEL
20 SEXTON, TESTIMONY OF LANDRO TAYLOR WILL BE PRESENTED BY
21 TRANSCRIPT, MR. TAYLOR IS DECEASED, DANA WINGATE, MARY
22 RUTH WILLIAMSON, MELINDA PARROT, JERRY STONE, LINDA
23 PARROT, TAMMY WINDHAM, T.N. OLLER, JAMES AIKEN, ALEX
24 MORTON, BERNICE PERRY, MICHELLE LYNCH, TOMMY DAVIS,
25 JOYCE MCLENDON AND DON GIRNDT, G-I-R-N-D-T. THANK YOU,

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HEARING

20

1 YOU MAY BE SEATED.

2 IS ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD
3 OR CONNECT BY MARRIAGE TO ANY OF THE PROPOSED WITNESSES
4 IN THIS CASE? IF SO, PLEASE STAND.

5 OKAY. EACH MEMBER OF THE JURY PANEL GIVES TO THE
6 STATE AND THE DEFENDANT, BOBBY WAYNE STONE, A FAIR AND
7 IMPARTIAL TRIAL. IF NOT, PLEASE STAND.

8 DOES ANY MEMBER OF THE JURY PANEL KNOW OF ANY
9 REASON WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A
10 JUROR IN THIS CASE? IF SO, PLEASE STAND.

11 ALL RIGHT. ONE JUROR HAS STOOD. HAVE THAT JUROR
12 COME FORWARD, PLEASE. TWO, THOSE TWO JURORS, IF YOU
13 COULD, COME FORWARD, PLEASE. #122, WHAT IS THE
14 SITUATION?

15 JUROR #122: I WAS A RESERVE POLICE OFFICER FOR 10 YEARS, AND
16 THE NIGHT KUBALA GOT SHOT, I WAS COMING IN FROM
17 MANNING. I STOPPED MY TRUCK WHERE HE COULD GO ANSWER
18 THE CALL. I JUST DON'T WANT TO BE HERE AND HEAR ALL
19 THIS.

20 THE COURT: YOU'RE TELLING ME THERE (INAUDIBLE).

21 JUROR #122: BUT I DON'T WANT TO PUSH IT. YOU KNOW WHAT I'M
22 SAYING?

23 THE COURT: WE'RE TRYING TO BE FAIR TO EVERYBODY. WE'LL DO
24 A VOIR DIRE AT A LATER TIME. THE BASIC QUESTION HERE
25 IS IF YOU COULD OR COULD NOT BE FAIR AND OBJECTIVE ON

1 AN INDIVIDUAL BASIS.

2 JUROR #122: I DON'T KNOW WHETHER I COULD OR COULDN'T. I'M
3 TRYING TO BE HONEST.

4 THE COURT: THAT'S THE INFORMATION I NEED. THANK YOU VERY
5 MUCH. WE'LL PROCEED FROM THERE. NEXT IS #114.

6 JUROR #114: WE DONATED TROPHIES TO KUBALA.

7 THE COURT: DO YOU THINK THAT WOULD PREVENT YOU FROM GIVING
8 BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL
9 TRIAL BASED ON THE EVIDENCE?

10 JUROR #114: NO.

11 THE COURT: DO YOU THINK (INAUDIBLE).

12 JUROR #114: YES.

13 MR. BABB: YOUR HONOR, WE MOVE TO DISQUALIFY BOTH JURORS FOR
14 CAUSE.

15 THE COURT: WHAT SAY THE STATE?

16 THE STATE: (INAUDIBLE).

17 MR. BABB: YOUR HONOR, #114 APPEARS TO HAVE A LOT MORE
18 RELATIONSHIP WITH THE SHERIFF'S DEPARTMENT, AND I CAN'T
19 HELP BUT FEEL THAT SHE WOULD HAVE SOME MISGIVINGS ABOUT
20 GOING AGAINST THE SHERIFF'S DEPARTMENT IN THIS CASE.

21 MR. JACKSON: JUDGE, I THINK THE BASIC THING IS SHE COULD BE
22 IMPARTIAL. (INAUDIBLE).

23 THE COURT: OKAY. WE'LL WAIT AND SEE WHAT ELSE COMES OUT ON
24 THE INDIVIDUAL VOIR DIRE, ALL RIGHT?

25 ALL RIGHT. AS FAR AS GENERAL QUALIFICATIONS ARE

HEARING

22

1 CONCERNED, ARE THERE ANY ADDITIONAL QUESTIONS ON BEHALF
2 OF THE STATE, MR. JACKSON?

3 MR. JACKSON: NOTHING FROM THE STATE, YOUR HONOR, THANK YOU.

4 THE COURT: ON BEHALF OF THE DEFENDANT, MR. LITTLEJOHN, MR.
5 BABB?

6 MR. LITTLEJOHN: NO ADDITIONAL QUESTIONS, YOUR HONOR.

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, LET ME EXPLAIN
8 TO YOU THE JURY SELECTION PROCESS IN THIS CASE. WE
9 WILL TALK WITH EACH OF YOU UNTIL A PANEL OF QUALIFIED
10 JURORS HAS BEEN SELECTED. FROM THAT PANEL, 14 JURORS
11 WILL BE SWORN TO HEAR THIS CASE, AND THIS WILL TAKE US
12 SOME TIME, AND I'M GOING TO ASK YOUR PATIENCE. I WILL
13 TELL YOU THAT THE PROCEDURE THAT WE ARE GOING TO GO
14 THROUGH NOW IS THAT ALL OF THE NAMES OF ALL OF THE
15 QUALIFIED JURORS, AND I FIND ALL OF YOU, EXPECT THE ONE
16 DISQUALIFIED, TO BE QUALIFIED FOR THIS CASE. ALL OF
17 YOUR NAMES WILL BE PUT INTO THIS ROTATING DRUM, AND THE
18 NAMES WILL BE DRAWN OUT ON AN INDIVIDUAL BASIS.

19 I'M JUST TRYING TO DECIDE. ONE MORE POINT
20 COUNSELOR BEFORE I TELL THE JURORS WHAT TO DO. HOW
21 ABOUT STEPPING UP HERE JUST A MINUTE.

22 (BENCH CONFERENCE)

23 THE COURT: ALL RIGHT. GO AHEAD, MR. JACKSON. YOU WANT TO
24 EXCUSE THOSE WITNESSES?

25 MR. JACKSON: YES, SIR, YOUR HONOR. THANK YOU FOR DOING

HEARING

23

1 THAT. THANK YOU VERY MUCH.

2 THE COURT: IN THE MEANTIME, COUNSEL, I DO NEED TO GO OVER
3 SOMETHING WITH SEVERAL WITNESSES ON THE INFORMATION, I
4 MEAN SEVERAL OF THE JURORS ON THE INFORMATION THAT WAS
5 GIVEN. MAYBE I SHOULD ASK THE FOLLOWING JURORS TO COME
6 UP AND FORM A LINE, PLEASE. AND WE'LL START WITH JUROR
7 #46, MS. CULBERTSON, JUROR #210, JUROR #58, JUROR #96,
8 JUROR #15, JUROR #110 AND JUROR #168.

9 JUROR #46, YOU HAD WRITTEN SOMETHING ABOUT IN
10 KEEPING UP WITH THE PAPER.

11 JUROR #46: (INAUDIBLE). FAMILY MEMBERS, NEWSPAPER AND OTHER
12 PEOPLE TELL ME A LOT OF INFORMATION ABOUT WHAT HAPPENED
13 AND WHY IT HAPPENED.

14 THE COURT: NO MATTER WHAT YOU HEARD ...

15 JUROR #46: A POLICE OFFICER KILLED IN THE LINE OF DUTY, I
16 WOULD BELIEVE IN THE DEATH PENALTY.

17 MR. BABB: YOUR HONOR, WE MOVE TO DISQUALIFY BASED ON HER
18 ANSWER.

19 THE COURT: ANY OBJECTION?

20 MR. JACKSON: NO.

21 THE COURT: THIS IS JUROR #210. YOU INDICATE YOU HAD HEARD
22 SOMETHING ABOUT THIS CASE. YOU INDICATE YOU MAY HAVE
23 HEARD SOMETHING OR KNEW SOMETHING ABOUT THIS CASE.

24 JUROR #210: IT WAS BACK IN 2000.

25 THE COURT: OKAY. LET ME ASK YOU. I THINK I WAS REFERRING

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HEARING

24

1 TO THE WRONG LIST. THE JURORS I NEED ... I'VE ALREADY
2 TALKED TO MS. CULBERTSON. I NEED #140, #202, #122,
3 #184, #119, #45 AND #152. THE REST OF YOU CAN BE
4 SEATED. JUROR #140. ALL RIGHT. YOU INDICATED YOU HAD
5 HEARD SOMETHING ABOUT THIS.

6 JUROR #140: AT THE RADIO STATION, WE DO THE NEWS AND THE
7 MEDIA COVERAGE. WE DO MEDIA COVERAGE FOR THE ...
8 WITHIN THE MEDIA AND THE NEWSPAPER ON STUFF LIKE THIS.

9 THE COURT: SO, YOU HAD SOME KNOWLEDGE, AND YOU KNOW
10 SOMETHING ABOUT IT. NOW, WOULD THAT KNOWLEDGE AND
11 INFORMATION THAT YOU HAVE PREVENT YOU FROM GIVING A
12 FAIR AND IMPARTIAL TRIAL? COULD YOU GIVE A FAIR TRIAL?

13 JUROR #140: YES, SIR.

14 THE COURT: WOULD YOU BE ABLE TO DECIDE THIS CASE BASED ON
15 THE EVIDENCE THAT YOU HEAR IN THE COURTROOM HERE?

16 JUROR #140: YES.

17 THE COURT: ALL RIGHT, THANK YOU.

18 MR. BABB: AGAIN, I WOULD LIKE TO RESERVE MY RIGHT TO MAKE
19 ANY MOTIONS AT THIS TIME.

20 THE COURT: #202, YOU INDICATED YOU HAD HEARD SOMETHING ABOUT
21 THIS CASE IN A RANDOM NEWS ACCOUNT. TELL ME WHAT
22 YOU'VE READ.

23 JUROR #202: WELL, I SAW THE ACCOUNT WHEN IT WAS GOING ON
24 RECENTLY, AND I WORK WITH THE DEPARTMENT OF SOCIAL
25 SERVICES, SO (INAUDIBLE).

HEARING

25

1 THE COURT: DID YOU HAVE ANY, DID YOU KNOW THIS OFFICER?

2 JUROR #202: I DID NOT HAVE ANY CONTACT WITH HIM. I DID NOT
3 KNOW HIM.

4 THE COURT: BASED UPON WHAT YOU'VE TOLD ME, YOU DEAL WITH LAW
5 ENFORCEMENT EVERY DAY. WOULD THAT FACT PREVENT YOU
6 FROM GIVING BOTH THE STATE AND DEFENDANT AN IMPARTIAL
7 TRIAL BASED ON THE EVIDENCE?

8 JUROR #202: YOU KNOW, I GET MY WORK DONE WITH LAW
9 ENFORCEMENT, SO IT PROBABLY WOULDN'T BE A GOOD
10 SITUATION. I DON'T MIND SERVING, BUT I'D HAVE A HARD
11 TIME COMING DOWN AGAINST LAW ENFORCEMENT.

12 MR. BABB: A MOTION TO DISQUALIFY FOR CAUSE BASED ON HIS
13 ANSWER. OBVIOUSLY, HE WOULDN'T BE ABLE TO ...

14 THE COURT: I KNOW HE'S SAYING HE'D HAVE A HARD TIME, BUT HE
15 DIDN'T SAY HE COULDN'T DO IT, AND HE HAS TO DO IT A LOT
16 OF TIMES. DSS AND LAW ENFORCEMENT DON'T SEE EYE-TO-EYE
17 A LOT OF TIMES.

18 MR. BABB: I'D LIKE THE OPPORTUNITY TO EXPLORE HIM A LITTLE
19 MORE.

20 MR. LITTLEJOHN: ANYTHING HE SAID, HE SAID HE WOULD COME DOWN
21 ON THE SIDE OF LAW ENFORCEMENT.

22 THE COURT: YES, I THINK HE DID SAY THAT. DISQUALIFIED.
23 #184, DID YOU READ SOMETHING IN THE NEWSPAPER OR HEARD
24 ACCOUNTS OF THIS CASE? TELL ME WITH ALL THOSE NEWS
25 ACCOUNTS, HAVE YOU FORMED AN OPINION?

HEARING

26

1 JUROR #184: I HAVE A LONG TIME AGO.

2 THE COURT: AND WOULD YOU BE ABLE TO PUT THAT OPINION ASIDE?

3 JUROR #184: I DON'T THINK SO.

4 THE COURT: AND YOU THINK THAT WOULD PREVENT YOU FROM GIVING
5 THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL
6 BASED ON THE EVIDENCE?

7 JUROR #184: I DON'T THINK I COULD, NO.

8 THE COURT: I NEED A LITTLE BIT MORE THAN THAT.

9 JUROR #184: I CAN'T.

10 THE COURT: THANK YOU, SIR.

11 MR. LITTLEJOHN: MOVE TO DISQUALIFY FOR A PRE-FORMED OPINION.

12 THE COURT: AGREED, DISQUALIFIED. ALL RIGHT, #119. YOU HAD
13 INDICATED THAT YOU HAD READ SOME NEWS ACCOUNTS.

14 JUROR #119: I SEEN SOMETHING ON TELEVISION.

15 THE COURT: YOU SAW STUFF ABOUT THIS MATTER?

16 JUROR #119: INFORMATION IN THE NEWSPAPER.

17 THE COURT: BASED ON THAT, HAVE YOU FORMED AN OPINION AS TO
18 THIS MATTER?

19 JUROR #119: YES, SIR.

20 THE COURT: WOULD YOU BE ABLE TO PUT THAT OPINION ASIDE AND
21 BASED ON THE EVIDENCE YOU HEAR IN THIS COURT, YOU DON'T
22 THINK YOU COULD BE FAIR AND OBJECTIVE?

23 JUROR #119: NO, SIR.

24 THE COURT: IS THAT ABSOLUTELY NO?

25 JUROR #119: NO. I DON'T THINK I'D CHANGE MY MIND.

HEARING

27

1 THE COURT: SO, YOU'RE SAYING THAT NOTHING WOULD PERSUADE YOU
2 TO CHANGE YOUR MIND AS FAR AS EVIDENCE IN A COURTROOM?

3 JUROR #119: NO, SIR.

4 THE COURT: ALL RIGHT. THANK YOU, MA'AM.

5 MR. LITTLEJOHN: JUDGE, I DON'T KNOW WHICH WAY HER OPINION
6 IS, BUT SHE IS OPINIONATED. I DON'T THINK WE WANT AN
7 OPINIONATED JUROR.

8 THE COURT: I WOULD CONCUR. SHE'LL BE EXCUSED. ALL RIGHT,
9 #45. YOU INDICATED EARLIER THAT YOU HAD FORMED AN
10 OPINION BASED UPON NEWSPAPER ACCOUNTS. WAS THIS YOUR
11 SOURCE OF INFORMATION?

12 JUROR #45: GOT IT FROM THE NEWSPAPER, YES, SIR.

13 THE COURT: AND HAVE YOU FORMED AN OPINION ON THIS MATTER
14 BASED UPON WHAT YOU'VE READ IN THE NEWSPAPER?

15 JUROR #45: (NODS HEAD AFFIRMATIVELY).

16 THE COURT: IS THAT A YES?

17 JUROR #45: YES, SIR.

18 THE COURT: WOULD YOU BE ABLE TO PUT THAT OPINION ASIDE AND
19 DECIDE THIS CASE BASED UPON THE FACTS YOU HEAR IN THIS
20 COURTROOM?

21 JUROR #45: I DON'T THINK SO. I REALLY DON'T.

22 THE COURT: DO YOU FEEL LIKE YOU COULD DIVORCE THAT FROM YOUR
23 MIND AND DECIDE IT BASED UPON WHAT YOU HEAR HERE?

24 JUROR #45: I DON'T THINK SO, NOT THE WAY I FEEL ABOUT IT.
25 I'M NOT GOING TO CHANGE MY MIND ABOUT IT.

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HEARING

28

1 THE COURT: JUST BASED UPON WHAT YOU READ IN THE NEWSPAPER,
2 AND YOU FOUND OUT THE NEWSPAPER WAS NOT ACCURATE, WOULD
3 YOU BE ABLE TO DECIDE THIS CASE BASED UPON WHAT YOU
4 HEAR IN THIS COURTROOM? WITH ALL DUE RESPECT, AND MY
5 FRIENDS IN THE NEWS MEDIA, THE NEWS IS NOT ALWAYS
6 ABSOLUTELY ACCURATE.

7 JUROR #45: I DON'T THINK SO, BECAUSE HE TOOK SOMEONE'S LIFE.
8 HE TOOK SOMEONE'S FATHER, SOMEONE'S SON, YOU KNOW.

9 THE COURT: SO, THE QUESTION IS (INAUDIBLE) WHAT PUNISHMENT
10 SHOULD BE GIVEN.

11 JUROR #45: AS TO THAT ISSUE, I THINK HE SHOULD GET THE DEATH
12 PENALTY. I REALLY DO.

13 THE COURT: AND YOU FEEL LIKE THAT NOTHING YOU HEAR IN THIS
14 COURTROOM WOULD CHANGE YOUR MIND?

15 JUROR #45: NO, SIR.

16 THE COURT: THANK YOU, MA'AM.

17 MR. LITTLEJOHN: MOVE TO DISQUALIFY.

18 THE COURT: I CONCUR. MOVE TO DISQUALIFY. #152, YOU
19 INDICATED A LITTLE WHILE AGO THAT YOU HAD READ SOME
20 NEWSPAPER ACCOUNTS AND SEEN SOME REPORTS IN THE NEWS
21 MEDIA ABOUT THIS CASE.

22 JUROR #152: YES, SIR.

23 THE COURT: AND HAVE YOU FORMED AN OPINION ABOUT THIS MATTE?

24 JUROR #152: YES, SIR. I BELIEVE I DO.

25 THE COURT: AND WITH THAT OPINION, IT'S BASED UPON WHAT

HEARING

29

1 YOU'VE HEARD IN THE NEWS MEDIA OR FROM SOME OTHER
2 SOURCE?

3 JUROR #152: WHAT I'VE HEARD IN THE NEWS MEDIA.

4 THE COURT: DO YOU BELIEVE THAT YOU WOULD BE ABLE TO PUT
5 THOSE MATTERS OUT OF YOUR MIND AND DECIDE THIS CASE
6 BASED ON WHAT YOU HEAR IN THIS COURTROOM AND NOT BASED
7 UPON WHAT WAS IN THE NEWS MEDIA AND THE FACTS IN THIS
8 CASE?

9 JUROR #152: HONESTLY, I DON'T BELIEVE I WOULD BE.

10 THE COURT: YOU DON'T THINK SO?

11 JUROR #152: NO, SIR.

12 THE COURT: ANYTHING YOU WANT TO ASK, MR. LITTLEJOHN?

13 MR. LITTLEJOHN: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. THANK YOU. MR. LITTLEJOHN?

15 MR. LITTLEJOHN: JUDGE, AGAIN, I DON'T KNOW WHAT HIS OPINION
16 IS, BUT HE APPARENTLY HAS ONE.

17 THE COURT: I CONCUR. COME ON UP, SIR. THE COURT, BASED ON
18 WHAT I'VE HEARD, WE WILL EXCUSE #46, #122, #184, #119,
19 #45 AND #152.

20 MR. BABB: AND WE RESERVE AN OBJECTION TO #140.

21 THE COURT: ALL RIGHT. NOW, LADIES AND GENTLEMEN, BEFORE I
22 GO ANY FURTHER, I AGAIN WANT TO TELL YOU THAT IN A
23 LITTLE WHILE, WE ARE GOING TO, AT THIS POINT, WILL
24 START DRAWING THE JURY, AND WHAT WE'RE GOING TO DO IS
25 PUT ALL YOUR NAMES IN THIS ROTATING DRUM, AND WE'RE

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HEARING

30

1 GOING TO DRAW OUT THE NAMES ONE-BY-ONE. WE WILL DRAW
2 OUT FIVE NAMES, AND YOU WILL BECOME PANEL ONE. THEN WE
3 WILL DRAW OUT ... WE'LL HAVE YOU COME BACK TO THE JURY
4 ROOM, AND WE'RE GOING TO GIVE YOU CERTAIN INFORMATION,
5 AND THEN BRING YOU BACK IN THE COURTROOM ONE-BY-ONE FOR
6 FURTHER QUESTIONS BY BOTH ME AND THE ATTORNEYS.

7 THEN WE WILL DRAW OUT ANOTHER FIVE AND THAT WILL
8 BECOME PANEL TWO AND PANEL THREE AND RIGHT ON THROUGH.
9 SOME OF YOU WILL BE RELEASED TODAY AND COME BACK
10 TOMORROW AT THE APPOINTED TIME, BUT WE'RE GOING TO GO
11 THROUGH THIS PROCESS OF VOIR DIRE IN PANELS. SO, WE
12 WILL DRAW OUT THE NUMBERS OF THE JURORS AND WE WILL
13 CALL YOU UP, AND I WILL ASK THE FIVE OF YOU ON PANEL
14 ONE, THE FIRST THING THAT YOU WILL DO IS TO GO WITH MR.
15 CAMPBELL TO THE JURY ROOM, AND WE'LL BRING YOU IN VERY
16 SHORTLY. BEFORE WE DO THAT, MR. CAMPBELL, LET ME GIVE
17 YOU SOME NUMBERS.

18 ALL RIGHT. MR. CLERK, IF YOU WOULD, LET'S DRAW,
19 START DRAWING PANELS OF FIVE EACH, PLEASE AND WHEN YOUR
20 NAME IS CALLED, IF YOU WILL BRING YOUR PERSONAL
21 BELONGINGS WITH YOU AND COME THROUGH EITHER THE DOOR TO
22 MY LEFT OR MY RIGHT OR THE CENTER DOORS, AND JUST STAND
23 RIGHT OVER HERE UNTIL WE HAVE ALL FIVE JURORS
24 ASSEMBLED, PLEASE.

25 MR. CAMPBELL: JUROR #228, PINKY LOUISE WALKER; JUROR #95,

HEARING

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1 BEVERLY D. HUDSON; JUROR #20, LINDA M. BLUE; JUROR #13,
2 DONALD A. BEARD; JUROR #150, WILLIAM J. MONTIBONO.

3 THE COURT: ALL RIGHT. YOU LADIES AND GENTLEMEN WILL MAKE UP
4 PANEL #1. I'M GOING TO ASK THAT YOU GO TO THE JURY
5 ROOM. AT THAT TIME, HE WILL GIVE YOU A DOCUMENT FOR
6 YOU TO LOOK OVER, AND IT DISCUSSES THE TYPES OF JURORS
7 IN A CASE OF THIS NATURE. BUT I DO WANT TO CAUTION YOU
8 AGAINST THIS, AND THIS GOES TO THE ENTIRE JURY PANEL,
9 IF YOU'RE DRAWN ON A PANEL, DO NOT DISCUSS AMONG
10 YOURSELF THE TYPES OF JURORS, AS TO WHAT YOU MIGHT BE
11 OR MAY NOT BE. THIS IS SOMETHING THAT I WANT YOU TO
12 READ TO DIGEST, AND THEN WE WILL ASK YOU SOME QUESTIONS
13 ABOUT IT WHEN YOU COME BACK IN THE COURTROOM. BUT DO
14 NOT DISCUSS IT AMONG YOURSELVES. JUST SIMPLY READ OVER
15 THAT, AND THEN WE WILL SEND FOR YOU VERY SHORTLY ON A
16 ONE-BY-ONE BASIS. SO, DON'T DISCUSS THAT IN THE JURY
17 ROOM. ALSO, DO NOT DISCUSS THIS CASE AMONG YOURSELVES.
18 IT WOULD BE IMPROPER FOR YOU TO BEGIN ANY DISCUSSION
19 WHATSOEVER ABOUT THIS CASE AMONG YOURSELVES. SO, WHILE
20 YOU ARE THERE IN THE JURY ROOM, AFTER YOU HAVE READ
21 THIS SHEET THAT INDICATES THE TYPES OF JURORS THAT
22 MIGHT FALL INTO PARTICULAR CATEGORIES IN THIS CASE, YOU
23 MAY NOT HAVE ANYTHING TO DO, SO GET TO KNOW EACH OTHER
24 A LITTLE BIT. TALK ABOUT CHILDREN, GRANDCHILDREN,
25 SPORTS, WEATHER, ANYTHING, BUT DON'T TALK ABOUT THIS

HEARING

32

1 CASE, AND THEN WE WILL SEND FOR YOU ON AN INDIVIDUAL
2 BASIS AND BRING YOU BACK IN THE COURTROOM ON A ONE-BY-
3 ONE BASIS. SO, IF YOU WOULD AT THIS TIME, MR. BRADLEY,
4 TAKE THEM TO THE JURY ROOM, AND MY CLERK WILL BRING
5 THEM THE FORM THAT I WANT THEM TO READ AND BE FAMILIAR
6 WITH. THANK YOU, GO WITH MR. BRADLEY. ALL RIGHT. MR.
7 CLERK, THE NEXT FIVE JURORS WILL MAKE UP PANEL #2.

8 MR. CAMPBELL: JUROR #219, BONNIE J. TRAYMOND; JUROR #21,
9 BETTY BOLDEN; JUROR #195, VINCENT SIMS; JUROR #115,
10 RICKY A. LABRUNO; JUROR #188, HEATHER R. ROLAND.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL MAKE
12 UP PANEL #2, AND WE'LL GET TO YOU A LITTLE BIT LATER
13 THIS AFTERNOON, BUT I'M NOT GOING TO REQUIRE THAT YOU
14 SIT IN THAT ROOM WHILE YOU'RE WAITING TO BE CALLED, SO
15 I'M GOING TO EXCUSE YOU NOW AND ASK THAT YOU PLEASE BE
16 BACK AT 4:15. THAT'S ABOUT AN HOUR FROM NOW, AND THAT
17 WILL GIVE US A CHANCE TO TAKE CARE OF THESE OTHER
18 MATTERS. THE BAILIFF WILL SHOW YOU WHERE THE JURY ROOM
19 IS, AND IF YOU WILL, COME BACK UP THESE STAIRS ON THIS
20 END AND COME TO THE JURY ROOM AT 4:15 THIS AFTERNOON,
21 AND WE'LL BE READY TO GET, TO MOVE FORWARD AS WE CAN.
22 AGAIN, SAME CAUTIONARY INSTRUCTIONS. DON'T DISCUSS THE
23 CASE WITH ANYONE. DON'T ALLOW ANYONE TO DISCUSS IT
24 WITH YOU. DON'T DISCUSS AMONG YOURSELVES, AND DO NOT
25 DISCUSS THE INFORMATION CONTAINED IN THE THREE TYPE OF

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1 JUROR FORMS THAT WE'RE GOING TO SHOW YOU. READ AND
2 DIGEST THAT, AND WE'RE GOING TO ASK YOU SOME QUESTIONS
3 ABOUT THAT WHEN YOU COME BACK INTO THE COURTROOM.
4 THANK YOU. GO WITH THE BAILIFF, AND HE'LL SHOW YOU
5 WHERE TO COME BACK TO. ALL RIGHT. PANEL #3?

6 MR. CAMPBELL: JUROR #134, MARGARET A. MCGEE; JUROR #11, MYRA
7 BARTON; JUROR #138, HAZEL MCLEAN; JUROR #177, ISIETTE
8 HARRIS; JUROR #137, NEAL J. MCKNIGHT.

9 THE COURT: ALL RIGHT. MS. MCGEE, WE'VE DEALT WITH A LOT OF
10 JURORS AND WE HAVE CONCLUDED THAT WHILE YOUR OFFICE IS
11 NOT IN THIS BUILDING, IT USE TO BE IN THIS BUILDING,
12 AND THAT YOU HAVE COME CLOSE TO BEING DISQUALIFIED
13 UNDER THAT STATUTE, SO WITH THE CONSENT OF THE
14 ATTORNEYS, IT WAS DECIDED THIS MORNING THAT YOU WOULD
15 BE EXCUSED, AND I NEGLECTED TO TELL YOU THAT. SO, I
16 WILL EXCUSE YOU, BECAUSE I THINK IT WOULD BE A CLOSE
17 QUESTION AS TO WHETHER YOU WOULD BE STATUTORILY
18 DISQUALIFIED BY VIRTUE OF YOUR POSITION WITH THE TAX
19 OFFICE, SO YOU MAY BE EXCUSED. THANK YOU, MA'AM. DRAW
20 US ONE MORE FOR THE PANEL, PLEASE.

21 MR. CAMPBELL: JUROR #206, LORETTA SPANN.

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL BECOME
23 PANEL #3, AND I AM GOING TO AGAIN HAVE THE BAILIFF SHOW
24 YOU WHERE THE JURY ROOM IS, AND I'M GOING TO ASK THAT
25 YOU REPORT BACK, PLEASE AT 5:15 THIS AFTERNOON. AGAIN,

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HEARING

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1 DON'T DISCUSS THE CASE AMONG YOURSELVES. DON'T DISCUSS
2 IT WITH ANYONE ELSE. DON'T ALLOW ANYONE TO DISCUSS IT
3 WITH YOU. AND WHEN YOU ARE READING THIS MATERIAL WE'RE
4 GOING TO GIVE YOU IN THE JURY ROOM, DON'T EVEN DISCUSS
5 THAT AMONG YOURSELVES, BECAUSE WE'VE GOT TO GET YOU
6 INDIVIDUALLY, AND IT MIGHT NOT BE WHAT YOUR FELLOW
7 JURORS FEEL ABOUT IT. SO, DO NOT DISCUSS THAT AMONG
8 YOURSELVES AS WELL, AND PLEASE BE BACK AT 5:15 THIS
9 AFTERNOON. THANK YOU VERY MUCH, AND GO WITH THE
10 BAILIFF. ALL RIGHT. NEXT PANEL, PANEL #4, PLEASE.

11 MR. CAMPBELL: JUROR #39, JAMES M. DAY; JUROR #161, LYNN B.
12 NEWMAN; JUROR #159, SHIRLEY E. NELSON; JUROR #141,
13 WILLIE M. MCQUILLA; JUROR #73, SHARON GOLDEN.

14 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL BECOME
15 PANEL #4, AND I AM GOING TO AGAIN HAVE THE BAILIFF SHOW
16 YOU WHERE THE JURY ROOM IS, AND I'M GOING TO ASK THAT
17 YOU REPORT BACK TOMORROW MORNING AT 9:00 O'CLOCK, AND
18 WE WILL THEN GO FORWARD WITH CERTAIN INDIVIDUAL
19 QUESTIONS OF EACH OF YOU. OVER THIS EVENING RECESS,
20 DON'T DISCUSS THE CASE WITH ANYONE. WHEN YOU SEE YOUR
21 FAMILY OR YOUR FRIENDS, AS I'M SURE YOU WILL, TELL THEM
22 THAT YOU CAN'T TALK ABOUT THE MATTER. THE JUDGE TOLD
23 YOU NOT TO DISCUSS THE MATTER, BECAUSE YOU'VE GOT TO
24 DECIDE THIS CASE BASED UPON WHAT YOU HEAR IN THIS
25 COURTROOM, NOT ON THE BASIS OF WHAT ANYONE MIGHT SAY.

HEARING

35

1 DO NOT DISCUSS IT AMONG YOURSELVES IN THE MORNING.
2 DON'T DISCUSS IT WITH ANYONE ELSE. DON'T ALLOW ANYONE
3 TO DISCUSS IT WITH YOU. AND WHEN YOU ARE READING THIS
4 MATERIAL WE'RE GOING TO GIVE YOU IN THE JURY ROOM,
5 DON'T EVEN DISCUSS THAT AMONG YOURSELVES. SIMPLY READ
6 THAT AND DIGEST IT, AND WE'LL ASK YOU SOME QUESTIONS
7 ABOUT IT WHEN WE BRING YOU BACK IN THE COURTROOM
8 TOMORROW MORNING. WITH THAT, I'M GOING TO EXCUSE YOU
9 NOW AND LET YOU SEE WHERE THE JURY ROOM IS. PLEASE
10 REPORT BACK AT 9:00 A.M. IN THE MORNING IN THE JURY
11 ROOM AND NOT IN THE COURTROOM. SEE YOU THEN. ALL
12 RIGHT. PANEL #5, MR. CAMPBELL.

13 MR. CAMPBELL: JUROR #61, SCOTT FITZGERALD.

14 THE COURT: HE WAS EXCUSED.

15 MR. CAMPBELL: JUROR #52, ROSALINDA DIAMOND; JUROR #162,
16 WILLIAM KNOT; JUROR #160, RAMONE NEWKIRK; JUROR #225,
17 WALTER VAUGHN; JUROR #123, STEVEN MAPLE.

18 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL BE
19 PANEL #5. AGAIN, YOU HAVE HEARD THE INSTRUCTIONS THAT
20 I HAVE GIVEN THE OTHER PANELS. THAT IS NOT TO TALK
21 ABOUT THE MATTER AMONG YOURSELVES. DO NOT TALK ABOUT
22 IT WITH ANYONE ELSE, AND DO NOT ALLOW ANYONE TO TALK
23 WITH YOU ABOUT IT. ALSO, READ THE MATERIALS REGARDING
24 THE TYPES OF JUROR AND JUST READ IT AND KEEP IT TO
25 YOURSELF. DO NOT DISCUSS IT AMONG THOSE OF YOU ON THE

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HEARING

36

1 PANEL. I'M GOING TO EXCUSE YOU NOW AND ASK THAT YOU
2 REPORT BACK IN THE JURY ROOM TOMORROW MORNING AT 10:00
3 O'CLOCK AND COME DIRECTLY TO THE JURY ROOM. WE WILL
4 BRING YOU IN THE COURTROOM AND ASK YOU SOME QUESTIONS
5 ON AN INDIVIDUAL BASIS, BUT YOU ARE EXCUSED FOR THE
6 EVENING WITH THOSE ADMONITIONS.

7 I ALSO FORGOT TO TELL SOME OF THE JURORS THIS,
8 BUT I WILL TELL Y'ALL. DO NOT READ ANY NEWSPAPER
9 ACCOUNTS OR STORIES CONCERNING THIS MATTER OVER THE
10 EVENING RECESS. IF THERE IS ANYTHING ON THE NEWS OR IF
11 THERE IS ANYTHING IN THE NEWSPAPER ABOUT IT, SIMPLY PUT
12 THAT ASIDE AND DO NOT LOOK AT IT AND DO NOT READ THAT
13 NEWSPAPER ACCOUNT, BECAUSE YOU'VE GOT TO DECIDE THE
14 CASE BASED ON WHAT YOU HEAR IN THIS COURTROOM AND NOT
15 ON THE BASIS OF WHAT YOU MIGHT READ IN THE NEWSPAPER.
16 SO, WITH THOSE ADMONITIONS, I'M GOING TO EXCUSE YOU AND
17 ASK YOU TO BE BACK TOMORROW MORNING AT 10:00 O'CLOCK.
18 THANK YOU AND BE IN THE JURY ROOM AT 10:00, NOT IN THE
19 COURTROOM.

20 ALL RIGHT. NEXT PANEL, MR. CAMPBELL.

21 MR. CAMPBELL: JUROR #58, JOSEPH R. EDWARDS; JUROR #30, ROBIN
22 S. BUDD; JUROR #5, VIRGINIA A. AYERS; JUROR #114,
23 CATHERINE CREIGHTON; JUROR #42, MARVIN L. COUNSEL.

24 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL BECOME
25 PANEL #6, AND AGAIN, ALL OF THE THINGS THAT I SAID TO

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HEARING

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1 THE PREVIOUS PANEL ABOUT NOT DISCUSSING THE CASE AMONG
2 YOURSELVES, NOT DISCUSSING IT WITH ANYONE ELSE, NOT
3 ALLOWING ANYONE TO TALK TO YOU ABOUT IT, NOT DISCUSSING
4 THE TYPES OF JURORS ON THE INFORMATION YOU GET IN THE
5 MORNING AMONG YOURSELVES AND NOT READING ANY NEWSPAPERS
6 OR MEDIA REPORTS ABOUT THIS CASE APPLY TO YOU AS WELL.
7 IF YOU DO SEE ANYTHING IN THE NEWSPAPER OR ANY MEDIA
8 REPORTS, PLEASE TURN IT OFF. YOU HAVE TO DECIDE THIS
9 MATTER BASED ON WHAT YOU HEAR IN THE COURTROOM AND NOT
10 ON THE BASIS OF WHAT MIGHT BE PRINTED IN THE MEDIA OR
11 ON TELEVISION.

12 I AM GOING TO EXCUSE YOU NOW AT PANEL #6 AND ASK
13 THAT YOU REPORT TO THE JURY ROOM TOMORROW MORNING AT
14 11:00 O'CLOCK. MR. HERRING WILL SHOW YOU WHERE THE
15 JURY ROOM IS. DO NOT COME TO THE COURTROOM. REPORT
16 BACK TO THE JURY ROOM TOMORROW MORNING AT 11:00
17 O'CLOCK. WE'LL SEE YOU THEN. ALL RIGHT, PANEL #7.

18 MR. CAMPBELL: JUROR #26, DAVID BROOKS; JUROR #110, MICKEY
19 JONES; JUROR #88, ROSETTA (INAUDIBLE); JUROR #189,
20 GWENDOLYN SANDERS; JUROR #86, BRENT HARSH.

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU NOW BECOME
22 PANEL #7, AND I'M GOING TO EXCUSE YOU AND ALLOW YOU TO
23 GO TO YOUR HOMES AND FAMILIES TONIGHT AND ASK THAT YOU
24 BE BACK TOMORROW AT NOON. AGAIN, DO NOT DISCUSS THE
25 CASE WITH YOUR FAMILY OR ANY FRIENDS OR DO NOT ALLOW

HEARING

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1 ANYONE TO DISCUSS IT WITH YOU. DO NOT TALK ABOUT THE
2 CASE WHILE YOU ARE ASSEMBLING TOMORROW OR TALK WITH ANY
3 OF YOUR FELLOW JURORS ABOUT THIS MATTER, AND DO NOT
4 DISCUSS THE INFORMATION CONTAINED IN THE TYPE OF
5 JURORS. DO NOT READ ANY NEWS REPORTS OR LISTEN TO ANY
6 TELEVISION BROADCASTS REGARDING THIS MATTER. KEEP AND
7 OPEN MIND AND RETURN TOMORROW AT 12:00 O'CLOCK, AND WE
8 WILL TALK TO YOU ON AN INDIVIDUAL BASIS AT THAT TIME.
9 YOU'RE FREE TO GO FOR TODAY, AND I'LL SEE YOU TOMORROW
10 AT NOON. THANK YOU. ALL RIGHT, MR. CAMPBELL, PANEL
11 #8.

12 MR. CAMPBELL: JUROR #15, SHIRLEY BENJAMIN; JUROR #210, JOSH
13 SUMTER; JUROR #31, EUGENE BURGESS; JUROR #33, MICHAEL
14 CABBAGESTALK; JUROR #197, COURTNEY CENTER.

15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL BECOME
16 AND ARE PANEL #8, AND I'M GOING TO ASK THAT YOU REPORT
17 BACK TO THE COURTROOM TOMORROW AT 2:00 O'CLOCK. AGAIN,
18 DON'T DISCUSS THIS CASE WITH ANYONE OVER THE EVENING
19 RECESS. DON'T ALLOW ANYONE TO DISCUSS IT WITH YOU. DO
20 NOT DISCUSS IT AMONG YOURSELVES WHEN REASSEMBLING
21 TOMORROW. DO NOT LISTEN TO ANY NEWS OR RADIO REPORTS.
22 YOU MUST NOT DO THAT. YOU MUST BASE YOUR DECISION ON
23 WHAT YOU HEAR IN THE COURTROOM. REPORT BACK TOMORROW
24 AT 2:00 O'CLOCK, AND WE WILL BE TALKING WITH YOU ON AN
25 INDIVIDUAL BASIS AT THAT TIME. THANK YOU. YOU ARE

HEARING

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1 FREE TO GO. PANEL #9?

2 MR. CAMPBELL: JUROR #242, CYNTHIA M. WILLIAMS; JUROR #168,
3 ELVIN T. OSTEEN; JUROR #24, JACK BROAD; JUROR #56,
4 RANDY DOW; JUROR #57, SANDRA DRAYTON.

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE NOW
6 BEEN SELECTED AND ARE PLACED ON PANEL #9. I'M GOING TO
7 ASK THAT YOU REPORT BACK TO THE JURY ROOM TOMORROW AT
8 3:00 O'CLOCK. AGAIN, YOU HEARD THE ADMONITIONS THAT
9 I'VE GIVEN TO ALL THE OTHER PANELS, AND THE SAME
10 APPLIES TO YOU. DON'T DISCUSS THIS WITH ANYONE. DON'T
11 ALLOW ANYONE TO DISCUSS THIS MATTER WITH YOU. DO NOT
12 DISCUSS THIS MATTER AMONG YOURSELVES WHEN REASSEMBLING
13 AND DO NOT DISCUSS THE CONTENTS OF THE TYPES OF JURORS
14 FORMS THAT YOU WILL GET TOMORROW WHEN YOU COME IN.
15 ALSO, DO NOT READ ANY NEWSPAPER REPORTS OR BROADCAST
16 MEDIA REGARDING THIS MATTER. BE BACK TOMORROW AT 3:00
17 O'CLOCK. THANK YOU. WE'LL SEE YOU AT THAT TIME.
18 PANEL #10?

19 MR. CAMPBELL: JUROR #140, JOHN MCLEOD; JUROR #198, JAMES E.
20 SLATER; JUROR #218, GERALD TOMLIN; JUROR #39, ISAAC
21 COCKLIN; JUROR #64, JENNIFER FULLBLUE.

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU ARE NOW
23 PANEL #10. YOUR REPORTING TIME TOMORROW IS 4:00
24 O'CLOCK TOMORROW AFTERNOON. AGAIN, THE SAME
25 ADMONITIONS THAT HAVE BEEN GIVEN TO ALL THE OTHER JURY

HEARING

40

1 PANELS ABOUT NOT TALKING TO EACH OTHER, TALKING WITH
2 ANYONE ELSE, ALLOWING ANYONE TO TALK TO YOU AND ALSO
3 ABOUT NOT READING ANY NEWS REPORTS ABOUT THIS MATTER
4 APPLY TO YOU AS WELL. KEEP AN OPEN MIND. DO NOT DO
5 ANYTHING, HAVE ANY ASSOCIATION WITH THIS CASE UNTIL
6 TOMORROW AT 4:00 O'CLOCK, AND WE WILL SEE YOU AT THAT
7 TIME IN WHICH WE WILL TALK WITH YOU A LITTLE FURTHER.
8 THANK YOU, HAVE A PLEASANT DAY. I'LL SEE YOU TOMORROW
9 AFTERNOON. NEXT PANEL, WHICH WILL BE PANEL #11.

10 MR. CAMPBELL: JUROR #19, SANDRA A. BLANCHETT; JUROR #175,
11 JOHN PRICE; JUROR #222, MERTZIANA URLARY; JUROR #235,
12 JUANITA WESTON; JUROR #233, ANGELA WHEATS.

13 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU ARE NOW
14 PANEL #11. I'M GOING TO ASK THAT YOU REPORT BACK
15 TOMORROW AFTERNOON AT 5:00 O'CLOCK. WE WILL HAVE MOVED
16 ALONG AT THAT POINT, I THINK. AGAIN, YOU HAVE HEARD
17 THE ADMONITIONS I HAVE GIVEN TO THE OTHER PANELS ABOUT
18 NOT TALKING TO ANYONE OR ALLOWING ANYONE TO TALK WITH
19 YOU, NOT DISCUSSING IT AMONG YOURSELVES, AND NOT
20 LISTENING TO ANY RADIO OR NEWS REPORTS ABOUT THIS
21 MATTER. SIMPLY, PUT THIS MATTER OUT OF YOUR MIND AND
22 DO NOT LISTEN TO ANY RADIO OR NEWS REPORTS UNTIL
23 TOMORROW AFTERNOON AT 5:00 O'CLOCK AND REPORT BACK TO
24 THE JURY ROOM AT THAT TIME. WE'LL SEE YOU TOMORROW
25 AFTERNOON. THANK YOU VERY MUCH. PANEL #12.

HEARING

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1 MR. CAMPBELL: JUROR #199, CARLA N. SMITH; JUROR #157,
2 LUCILLE MYERS; JUROR #45, ANNETTE CROFT; JUROR #41,
3 HARRY COPELAND, III; JUROR #112, ALBERT KELLY.

4 THE COURT: MR. JACKSON?

5 MR. JACKSON: YES, SIR.

6 (BENCH CONFERENCE)

7 THE COURT: ALL RIGHT. JUROR #45, YOU HAVE A SEAT BACK OUT
8 THERE. DRAW THE NEXT NUMBER FOR THIS PANEL.

9 MR. CAMPBELL: JUROR #180, EDWARD RUEZ.

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL MAKE
11 UP PANEL #12, AND I'M GOING TO EXCUSE YOU AT THIS TIME
12 AND ASK THAT YOU COME BACK TOMORROW EVENING AT 6:00
13 O'CLOCK, AND WE WILL GET INTO CERTAIN MATTERS WITH YOU.
14 AGAIN, THE SAME ADMONITIONS THAT YOU HAVE HEARD ME GIVE
15 EVERY OTHER PANEL IN THIS CASE APPLY TO YOU. DO NOT
16 DISCUSS IT WITH ANYONE, DON'T ALLOW ANYONE TO DISCUSS
17 IT WITH YOU, DO NOT DISCUSS IT AMONG YOURSELVES, AND
18 ALSO DO NOT LOOK AT ANY TV REPORTS OR NEWSPAPER REPORTS
19 ON THIS MATTER, BUT COME BACK TOMORROW EVENING ABOUT
20 6:00 O'CLOCK, AND WE WILL TALK WITH YOU FURTHER ABOUT
21 THIS MATTER AT THAT TIME. YOU'RE FREE TO GO TONIGHT
22 AND ENJOY TOMORROW AND BE BACK HERE IN THE JURY ROOM AT
23 6:00. ALL RIGHT, NEXT PANEL.

24 MR. CAMPBELL: JUROR #173, KATHY A. PHILIPS; JUROR #75, HANNA
25 GRAHAM; JUROR #96, SHARON HUNTER; JUROR #98, DENNIS L.

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1 JACKSON; JUROR #36, MARY L. CHIME.
2 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL BECOME
3 PANEL #13. I'M NOT GOING TO GIVE YOU BACK A REPORTING
4 TIME, BECAUSE WE DON'T KNOW EXACTLY WHAT KIND OF
5 PROGRESS WE'RE GOING TO BE MAKING WITH THE WORK THAT
6 WE'VE GOT TO DO THIS AFTERNOON AND TOMORROW. BUT I'M
7 GOING TO ASK THAT YOU CALL A NUMBER, WHICH THE BAILIFF
8 WILL HAVE. IF YOU DON'T HAVE IT, IT SHOULD BE ON THE
9 INFORMATION THAT WAS GIVEN TO YOU THIS MORNING. THAT
10 IS AN ANSWERING MACHINE, AND I WANT TO ASK THAT YOU
11 CALL THAT NUMBER BETWEEN 1:00 AND 2:00 O'CLOCK
12 TOMORROW, AND IT WILL HAVE YOUR REPORTING INSTRUCTIONS
13 AS TO WHEN YOU NEED TO COME BACK. SO, IF YOU DON'T
14 HAVE THAT NUMBER, BE SURE AND GET IT FROM THE BAILIFF
15 BEFORE YOU LEAVE, BUT IT SHOULD BE ON THE LITTLE BLUE
16 CARD, AND THAT IS SIMPLY AN ANSWERING MACHINE. CALL
17 THAT NUMBER BETWEEN 1:00 AND 2:00 TOMORROW, AND WE WILL
18 HAVE A MESSAGE FOR YOU ON THAT MACHINE AT THAT TIME AS
19 TO WHAT YOUR REPORTING INSTRUCTIONS WILL BE. THE SAME
20 ADMONITIONS THAT WERE GIVEN TO THE LAST MATTERS APPLY
21 TO YOU. DON'T DISCUSS THE CASE WITH ANYONE. DON'T
22 ALLOW ANYONE TO DISCUSS IT WITH YOU. DON'T TALK ABOUT
23 IT AMONG YOURSELVES. WHEN YOU COME BACK, DON'T DISCUSS
24 THE TYPES OF JUROR AMONG YOURSELVES, BUT SIMPLY DIGEST
25 THAT INFORMATION, AND WE'RE GOING TO ASK YOU SOME

HEARING

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1 QUESTIONS ABOUT IT. DON'T READ ANY NEWSPAPER REPORTS
2 OR TELEVISION BROADCASTS ABOUT THIS MATTER UNTIL YOU
3 HAVE EITHER BEEN SELECTED FOR THE JURY OR EXCUSED. I'M
4 GOING TO EXCUSE YOU AT THIS TIME AND ASK THAT YOU DO
5 CALL THAT NUMBER BETWEEN 1:00 AND 2:00 O'CLOCK
6 TOMORROW, AND WE'LL LET YOU KNOW WHEN YOU'RE SUPPOSE TO
7 REPORT BACK. THANK YOU VERY MUCH. PANEL #14.

8 MR. CAMPBELL: JUROR #34, MARK CARR; JUROR #132, ADAM
9 MCFADDEN; JUROR #109, MELVIN JONES; JUROR #221, TIM
10 TRUITT; JUROR #172, MICHAEL HEDDIS.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU ARE PANEL
12 #14. PLEASE REMEMBER THAT NUMBER, BECAUSE I'M ALSO
13 GOING TO ASK THAT YOU CALL THE NUMBER OF THE ANSWERING
14 MACHINE THAT'S ON THAT BLUE CARD. AGAIN, CALL THAT
15 NUMBER BETWEEN 1:00 AND 2:00 O'CLOCK TOMORROW. THERE
16 WILL BE SOME INSTRUCTIONS ON THERE WITH REGARD TO PANEL
17 #14 AND ABOUT WHEN TO REPORT BACK. DO NOT DISCUSS THE
18 CASE WITH ANYONE OR ALLOW ANYONE TO DISCUSS THE CASE
19 WITH YOU. DO NOT READ ANY NEWSPAPER ACCOUNTS OR LISTEN
20 TO ANY TELEVISION OR BROADCAST REPORTS OF THIS MATTER,
21 AND DO NOT DISCUSS THE TYPES OF JURORS THAT YOU WILL BE
22 GIVEN INFORMATION ON WHEN YOU COME BACK TO THE JURY
23 ROOM. SO, WITH THOSE ADMONITIONS, I'M GOING TO EXCUSE
24 YOU NOW AND ASK THAT YOU CALL THAT NUMBER AND REMEMBER
25 THIS IS FOR PANEL #14, BECAUSE THAT'S GOING TO BE

HEARING

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1 BETWEEN 1:00 AND 2:00 TOMORROW. THANK YOU. YOU'RE
2 FREE TO GO. PLEASE CALL THAT NUMBER TOMORROW. ALL
3 RIGHT. CALL THE NEXT PANEL, PLEASE.

4 MR. CAMPBELL: JUROR #236, LINDA WEIRY; JUROR #229, LATOYA
5 WALTERS; JUROR #14, GARY BENENHAVEN.

6 THE COURT: ALL RIGHT. COUNSEL, ACCORDING TO MY
7 CALCULATIONS, THAT'S ALL THE QUALIFIED JURORS. ANY
8 QUESTIONS ABOUT THAT, MR. JACKSON?

9 MR. JACKSON: THAT'S ALL I HAVE, YOUR HONOR.

10 THE COURT: ALL RIGHT. MR. LITTLEJOHN?

11 MR. LITTLEJOHN: WE AGREE, YOUR HONOR.

12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WILL BE
13 PANEL #15, AND THAT MEANS THAT YOU ... AGAIN, I'M NOT
14 GOING TO TELL YOU TO REPORT BACK AT ANY SPECIAL TIME.
15 I'M GOING TO ASK THAT YOU CALL THAT NUMBER TOMORROW
16 BETWEEN 1:00 AND 2:00 AND LISTEN FOR A MESSAGE ABOUT
17 PANEL #15, AND WHATEVER THOSE INSTRUCTIONS ARE, THAT'S
18 WHAT YOU WILL FOLLOW. AGAIN, ON THE RECESS, DO NOT
19 DISCUSS IT WITH ANYONE. DON'T ALLOW ANYONE TO DISCUSS
20 THIS WITH YOU AND DO NOT TALK ABOUT THIS CASE AMONG
21 YOURSELVES. DO NOT READ ANY NEWSPAPER REPORTS OR
22 LISTEN TO ANY BROADCAST MEDIA. WITH THAT, I'M GOING TO
23 EXCUSE YOU AND ASK THAT YOU PLEASE CALL THAT NUMBER
24 BETWEEN 1:00 AND 2:00 O'CLOCK TOMORROW AND BE SURE YOU
25 HAVE THAT BLUE CARD BEFORE YOU LEAVE. THANK YOU AND

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HEARING

45

1 HAVE A PLEASANT DAY, AND WE MAY SEE YOU TOMORROW.

2 ALL RIGHT. LADIES AND GENTLEMEN OF THE JUROR
3 PANEL WHO WERE NOT SELECTED THAT ARE STILL OUT THERE,
4 FOR ONE REASON OR ANOTHER, YOU HAVE BEEN EXCUSED FOR
5 ANY SERVICES IN THIS CASE, AND IT IS NOT GOING TO BE
6 NECESSARY THAT YOU COME BACK ANYMORE. I WILL THANK YOU
7 FOR COMING HERE TODAY. I KNOW THIS IS SOMEWHAT OF A
8 TEDIOUS PROCESS, BUT IT IS SOMETHING THAT WE HAVE TO
9 DO. I CERTAINLY APPRECIATE YOUR PATIENCE AND YOUR
10 WILLINGNESS TO WORK WITH THE COURT. I ALSO APPRECIATE
11 YOUR CANDOR IN DISCUSSING CERTAIN MATTERS WITH THE
12 COURT WHEN YOU WERE ASKED TO DO SO. I KNOW IT IS NEVER
13 CONVENIENT TO SERVE ON A JURY, BUT IT IS AN IMPORTANT
14 CITIZENSHIP RESPONSIBILITY, AND I CERTAINLY DO
15 APPRECIATE YOUR BEING HERE AND BEING WILLING TO SERVE,
16 IF IT BECAME NECESSARY.

17 NEXT WEEK SOMETIME, YOU'LL GET A VERY SMALL CHECK
18 FROM THE CLERK'S OFFICE FOR BEING HERE TODAY. IT WILL
19 IN NO WAY COMPENSATE YOU FOR THE TIME THAT YOU'VE SPENT
20 UP HERE JUST TODAY, BUT IT IS A SMALL TOKEN OF
21 APPRECIATION ON BEHALF OF THE COUNTY FOR YOUR
22 APPEARANCE THIS WEEK. IF ANY OF YOU NEED A CERTIFICATE
23 TO TAKE TO YOUR EMPLOYER TO SHOW THAT YOU WERE HERE,
24 THE BAILIFFS WILL HAVE THOSE CERTIFICATES FOR YOU AND
25 WILL GIVE YOU A CERTIFICATE WHEN YOU LEAVE THE

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1 COURTROOM. AND FINALLY, I WILL TELL YOU THAT BY
2 SERVING ON THE PANEL, EVEN THOUGH YOU WERE NOT SELECTED
3 ON THE CASE BUT BY SERVING ON THE PANEL, YOU HAVE MET
4 YOUR CITIZENSHIP RESPONSIBILITIES FOR SERVICE IN THE
5 CIRCUIT COURT FOR THE NEXT THREE YEARS. YOU CANNOT BE
6 CALLED AS A JUROR IN THE CIRCUIT COURT MORE THAN ONCE
7 EVERY THREE YEARS. FIRST, YOU WERE DISQUALIFIED. I
8 COULDN'T TAKE YOU IF YOU WANTED TO SERVE, AND SECOND
9 AND THIRD YEARS, YOU HAVE AN EXEMPTION, SO YOU COULD
10 NOT BE REQUIRED TO SERVE.

11 BUT AGAIN, THANK YOU FOR YOUR PATIENCE. THANK
12 YOU FOR YOUR WILLINGNESS TO SERVE, AND YOU ARE FREE TO
13 GO, AND YOU NEED NOT REPORT BACK. THANK YOU VERY MUCH.

14 ALL RIGHT. COUNSEL, WE'RE RUNNING A LITTLE BIT
15 BEHIND ON THE PANELS, BUT LET'S TAKE A VERY SHORT
16 RECESS. BEFORE WE DO THAT, MR. LITTLEJOHN, WHILE WE'VE
17 GOT A FREE MOMENT AND WHILE I'M THINKING ABOUT IT, ARE
18 THERE MOTIONS THAT WE SHOULD MAKE? YOU HAD INDICATED
19 EARLIER A MOTION YOU WANTED TO MAKE WHEN WE WERE IN
20 CHAMBERS.

21 MR. LITTLEJOHN: YES, YOUR HONOR. YOUR HONOR, EARLIER TODAY
22 WHEN THE COURT CALLED UPON THE STATE TO CALL THE CASE,
23 MR. JACKSON INDICATED IN THE PRESENCE OF THE JURY THAT
24 BOBBY WAYNE STONE WAS UNDER INDICTMENT FOR MURDER, FOR
25 BURGLARY FIRST DEGREE AND FOR POSSESSION OF A FIREARM.

HEARING

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1 YOUR HONOR, BY VIRTUE OF THE NATURE OF THIS CASE,
2 BURGLARY AND POSSESSION OF A FIREARM ARE NOT BEFORE
3 THIS JURY. YOUR HONOR, BASED ON THE FACT THAT IT WAS
4 MENTIONED THAT HE WAS UNDER INDICTMENT FOR THOSE TWO
5 OFFENSES, WE THINK THAT IS PREJUDICIAL TO THE
6 DEFENDANT, ESPECIALLY IN REGARD TO THIS TYPE OF
7 PROCEEDING, AND WE WOULD RESPECTFULLY MOVE FOR A
8 MISTRIAL BASED ON THAT EXCLAMATION AND THOSE ITEMS THAT
9 WERE PUT BEFORE THE JURY.

10 THE COURT: ALL RIGHT. I DO RECALL THAT WAS SAID, BUT I AM
11 GOING TO RESPECTFULLY DENY THE MOTION FOR MISTRIAL. I
12 THINK THAT I HAVE TAKEN CARE OF THAT ALREADY WITH THE
13 INSTRUCTIONS THAT I GAVE TO THIS PANEL BEFORE THE
14 ACTUAL DRAWING OF THE PANELS, AND THAT WAS THAT THE
15 DEFENDANT WAS CHARGED WITH AND CONVICTED WITH THE CRIME
16 OF MURDER, AND THAT THE CASE BEFORE THEM IS FOR A RE-
17 SENTENCING HEARING, AND THAT THE QUESTION OF GUILTY OR
18 INNOCENCE IS NOT BEFORE THEM, BUT HAS ALREADY BEEN
19 DECIDED, AND THE ONLY ISSUE FOR THEM TO DECIDE IS THE
20 PUNISHMENT THAT SHOULD BE IMPOSED FOR THE MURDER
21 CONVICTION. I BELIEVE THIS IS ALMOST VERBATIM THE
22 WORDS THAT I TOLD THE JURY. I WILL GIVE THEM
23 ADDITIONAL INSTRUCTIONS THAT YOU THINK ARE APPROPRIATE
24 OR I'LL CONSIDER ANY INSTRUCTIONS THAT YOU THINK ARE
25 APPROPRIATE, IF YOU HAVE ANYTHING ELSE THAT YOU WOULD

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1 LIKE FOR ME TO TELL THEM.

2 MR. LITTLEJOHN: ALL RIGHT, SIR. PERHAPS AT THE APPROPRIATE
3 TIME, WE WILL DO THAT.

4 THE COURT: ALL RIGHT.

5 MR. LITTLEJOHN: YOUR HONOR, IF I MIGHT, JUST TO CLARIFY THE
6 RECORD, PERHAPS I SHOULD FRAME MY MOTION AS A MOTION TO
7 DISMISS THIS JURY PANEL, AS OPPOSED TO A MOTION FOR A
8 MISTRIAL, BECAUSE WE HAVE NOT BEGUN THE TRIAL.

9 THE COURT: I THINK THAT PROBABLY IS CORRECT. AGAIN, SAME
10 RULING AND FOR THE SAME REASON, BUT I WILL GIVE
11 ADDITIONAL INSTRUCTIONS, IF THAT BECOMES NECESSARY, AND
12 I WOULD INVITE YOU, IF YOU THINK APPROPRIATE, MR.
13 LITTLEJOHN, FOR ME TO ASK ON THE INDIVIDUAL VOIR DIRE
14 WHEN WE BRING THE JURY OUT AS TO WHETHER THEY HEARD
15 THAT STATEMENT AND IF IT MAKES ANY DIFFERENCE. OF
16 COURSE, THAT WOULD ONLY BE EMPHASIZING THAT IT WAS
17 SAID. BUT I'M NOT OPPOSED TO DOING THAT, IF YOU WANT
18 IT.

19 MR. LITTLEJOHN: YOUR HONOR, I'M IN SUPPORT TO RE-EMPHASIZE
20 THE COURT'S EARLIER INSTRUCTION THAT THE ONLY ISSUE
21 BEFORE THIS JURY IS THE PUNISHMENT FOR MURDER.

22 THE COURT: ALL RIGHT. I LIKELY WILL DO THAT WITH EACH ONE
23 AS THEY'RE BROUGHT OUT. I THINK THAT TO CALL ATTENTION
24 TO THE FACT OF THE MATTER OF BURGLARY, AS FAR AS GUILT
25 OR INNOCENCE OF THE BURGLARY, IS NOT BEFORE THEM. THE

HEARING

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1 STATE IS STILL GOING TO HAVE TO PROVE THE BURGLARY
2 UNDER THE STATUTORY AGGRAVATED CIRCUMSTANCES.

3 ALL RIGHT. LET'S TAKE JUST A SHORT RECESS, AND
4 WE'LL BE READY TO GO WITH THE FIRST PANEL. THANK YOU.

5 (OFF THE RECORD)

6 THE COURT: ALL RIGHT. COUNSEL, AFTER ALL THE QUALIFICATIONS
7 AND THE EXCUSALS, GOING BACK TO THE HEARING THAT WE HAD
8 ON FEBRUARY THE 11TH AND ALSO TODAY, EXCEPT FOR THOSE
9 THAT DIDN'T SHOW UP, AND WE'RE STILL LOOKING FOR THOSE
10 AND HAVE GOTTEN THE SHERIFF'S DEPARTMENT LOOKING FOR
11 THOSE, BUT EXCEPT FOR THE ... WE ENDED UP WITH
12 APPARENTLY 73 QUALIFIED JURORS FOR THIS CASE, BECAUSE
13 WE HAD 14 FULL PANELS OF FIVE AND THE LAST PANEL WE HAD
14 THREE, WHICH I BELIEVE, I THINK I'VE CORRECTED THAT.
15 IS THERE ANY OBJECTION OR ANY MATTERS THAT THE STATE
16 WISHES TO PUT ON THE RECORD WITH REGARD TO ANY OF THE
17 JURORS WHO HAVE BEEN EXCUSED OR DISQUALIFIED?

18 MR. JACKSON: YOUR HONOR, THERE'S NOTHING FROM THE STATE IN
19 REFERENCE TO ANY OF THE JURORS THAT WE HAVE EXCUSED OR
20 DISQUALIFIED.

21 THE COURT: ALL RIGHT. MR. LITTLEJOHN?

22 MR. LITTLEJOHN: JUDGE, WE HAVE NOTHING FURTHER IN REGARD TO
23 ANY OF THE JURORS WHO HAVE BEEN EXCUSED. WE RESERVE
24 THE RIGHT TO FURTHER EXAM TWO JURORS, I THINK #114 AND
25 #140.

HEARING

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1 THE COURT: YES, SIR. I RECALL THAT. ALL RIGHT. THANK YOU.
2 THAT'S MAINLY WHAT I WANTED TO SEE IS THE ONES THAT
3 HAVE BEEN EXCUSED ALREADY, IF THERE'S ANY OBJECTION.
4 THAT'S FINE.

5 ALL RIGHT. WE'RE READY TO GO FORWARD WITH THE
6 INDIVIDUAL VOIR DIRE, MR. JACKSON?

7 MR. JACKSON: WE ARE, YOUR HONOR.

8 THE COURT: MR. LITTLEJOHN?

9 MR. LITTLEJOHN: YES, YOUR HONOR.

10 THE COURT: ALL RIGHT. JUROR #228, PLEASE. HAVE A SEAT
11 RIGHT UP HERE, PLEASE, MS. WALKER. ALL RIGHT. YOU ARE
12 MS. PINKY WALKER, IS THAT CORRECT?

13 JUROR #228: THAT'S CORRECT.

14 THE COURT: ALL RIGHT. MS. WALKER, JUST RELAX. YOU ARE
15 STILL UNDER OATH. YOU WERE PREVIOUSLY PUT UNDER OATH,
16 AND YOU ARE STILL SWORN FOR THESE PROCEEDINGS. YOU
17 UNDERSTAND THAT?

18 JUROR #228: I DO.

19 THE COURT: OKAY. AS I SAID, WE'RE GOING TO ASK YOU SOME
20 QUESTIONS. THESE ARE NOT TO INVADE ANY PRIVACY IN ANY
21 WAY, BUT IT IS NECESSARY DUE TO THE NATURE OF THE
22 PROCEEDINGS, AND THERE ARE NO RIGHT OR WRONG ANSWERS TO
23 THE QUESTIONS THAT WE ARE ABOUT TO ASK YOU. WE'RE
24 SIMPLY SEEKING YOUR POINT OF VIEW, SO PLEASE BE OPEN
25 AND HONEST. YOU WILL BE TREATED COURTEOUSLY BY

HEARING

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1 EVERYONE, AND NO ONE IS TRYING TO TAKE ADVANTAGE OF YOU
2 IN ANY WAY, BUT IT IS NECESSARY THAT WE HAVE THESE
3 QUESTIONS ANSWERED.

4 FIRST OF ALL, HAVE YOU HAD AN OPPORTUNITY TO LOOK
5 AT THE JUROR SHEET THAT YOU WERE GIVEN BACK IN THE JURY
6 ROOM?

7 JUROR #228: I DID.

8 THE COURT: AND THERE ARE THREE TYPES OF JURORS, TYPE #1,
9 TYPE #2 AND TYPE #3. WHICH TYPE OF THE JURORS WOULD
10 YOU SAY THAT YOU ARE?

11 JUROR #228: TYPE #3.

12 THE COURT: TYPE #3, ALL RIGHT. IN TYPE #3, SO WHAT YOU'RE
13 SAYING IS AFTER LISTENING TO THE FACTS AND
14 CIRCUMSTANCES SURROUNDING THIS CASE AND DEPENDING ON
15 THOSE FACTS AND CIRCUMSTANCES, YOU COULD EITHER FIND
16 FOR THE LIFE IMPRISONMENT OR FIND FOR THE DEATH PENALTY
17 AFTER HEARING THE EVIDENCE, IS THAT CORRECT?

18 JUROR #228: THAT'S CORRECT.

19 THE COURT: ALL RIGHT. SO, YOU COULD LISTEN TO THE LAW AND
20 APPLY THE LAW AS IT IS CHARGED TO YOU AND ACCEPT THE
21 LAW AS I GIVE IT TO YOU, EVEN THOUGH YOU MIGHT THINK
22 THE LAW IS SOMETHING ELSE, IS THAT RIGHT?

23 JUROR #228: THAT'S CORRECT.

24 THE COURT: OKAY. HAVE YOU FORMED ANY OPINION AT ALL AS TO
25 WHAT THE PUNISHMENT FOR THE DEFENDANT IN THIS CASE

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HEARING

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1 SHOULD BE?

2 JUROR #228: I HAVE NOT.

3 THE COURT: ALL RIGHT. NOW, I WILL TELL YOU AGAIN, AS I DID
4 AT THE FIRST OF THIS CASE, THAT THE QUESTION OF GUILT
5 OR INNOCENCE IS NOT BEFORE THE COURT AND NOT A MATTER
6 THAT YOU WILL HAVE TO DECIDE. THE DEFENDANT WAS
7 ALREADY FOUND GUILTY OF THE CRIME OF MURDER, AND THE
8 ONLY ISSUE THAT YOU WILL BE ASKED TO FIND IS THE
9 QUESTION OF THE PUNISHMENT, AND THAT IS EITHER LIFE IN
10 PRISON OR THE DEATH PENALTY. DO YOU UNDERSTAND THAT IF
11 THE JURY WERE TO MAKE A RECOMMENDATION TO THIS COURT,
12 THAT WHATEVER THAT RECOMMENDATION IS IS WHAT I WILL
13 FOLLOW. IT IS NOT REALLY A RECOMMENDATION, BUT IS WHAT
14 THIS COURT WILL FOLLOW AND BE THE PUNISHMENT THAT WOULD
15 BE IMPOSED. DO YOU UNDERSTAND THAT?

16 JUROR #228: I DO.

17 THE COURT: AND YOU UNDERSTAND THAT THE POSSIBLE PUNISHMENTS
18 OR THE POSSIBLE FINDINGS THAT THE JURY COULD MAKE,
19 DEPENDING ON ITS VIEW OF THE FACTS, WOULD BE WHETHER
20 THE DEFENDANT SHOULD BE PUT TO DEATH OR WHETHER IT
21 WOULD BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF
22 PAROLE? YOU UNDERSTAND THOSE ARE THE TWO
23 POSSIBILITIES?

24 JUROR #228: YES, I DO.

25 THE COURT: ALL RIGHT. YOU WILL BE ASKED TO TAKE INTO

HEARING

53

1 CONSIDERATION AGGRAVATING AND MITIGATING CIRCUMSTANCES.
2 THESE ARE CIRCUMSTANCES WHICH THE GENERAL ASSEMBLY BY
3 STATUTE HAS DECIDED EITHER LESSEN OR INCREASE THE
4 CHARGE OF MURDER. AGGRAVATED CIRCUMSTANCES ARE FACTS,
5 INCIDENTS, DETAILS OR OCCURRENCES THAT THE GENERAL
6 ASSEMBLY HAS DECLARED BY STATUTE WOULD MAKE THE CRIME
7 WORSE, THAT IS AGGRAVATE THE OFFENSE OF MURDER. IN
8 OTHER WORD, AGGRAVATING CIRCUMSTANCES, WHEN ACCOMPANIED
9 WITH THE MURDER, INCREASE THE ENORMITY AND ADDS TO THE
10 INJURY OF THE CRIME OF MURDER. MITIGATING
11 CIRCUMSTANCES ARE EXACTLY THE OPPOSITE. THEY ARE
12 FACTS, INCIDENTS, DETAILS OR OCCURRENCES THAT THE
13 GENERAL ASSEMBLY HAS DECLARED BY STATUTE REDUCE THE
14 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED
15 AS EXTENUATING OR REDUCING THE DEGREE OF MORAL
16 CULPABILITY OR RESPONSIBILITY. IF YOU WERE A JUROR IN
17 THAT SITUATION, COULD YOU, DEPENDING ON THE FACTS AND
18 CIRCUMSTANCES OF THE CASE, INCLUDING THE CONSIDERATION
19 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE
20 LAW, SIGN A VERDICT FORM FOR LIFE IN PRISON WITHOUT THE
21 POSSIBILITY OF PAROLE? COULD YOU DO THAT?

22 JUROR #228: I COULD.

23 THE COURT: IF YOU WERE A JUROR IN THAT SITUATION, AGAIN IN
24 THIS CASE, COULD YOU, DEPENDING ON THE FACTS AND
25 CIRCUMSTANCES OF THIS CASE, INCLUDING THE CONSIDERATION

HEARING

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1 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THE LAW
2 THAT I WILL INSTRUCT YOU, SIGN A VERDICT FORM FOR
3 DEATH, WHICH IN THIS STATE IS EITHER BY ELECTROCUTION
4 OR BY LETHAL INJECTION?

5 JUROR #228: COULD NOT.

6 THE COURT: YOU COULD NOT? YOU FEEL THAT YOU COULD NOT UNDER
7 ANY CIRCUMSTANCES OR DEPENDING ON THE FACTS AND
8 CIRCUMSTANCES OF THE CASE?

9 JUROR #228: I DON'T THINK I COULD.

10 THE COURT: ALL RIGHT. TELL ME A LITTLE BIT MORE WHY YOU
11 DON'T THINK ... YOU WOULD HAVE TO SIGN A ... IF IT WAS
12 YOUR VIEW OF THE FACTS AND CIRCUMSTANCES THAT THERE
13 WERE AGGRAVATING CIRCUMSTANCES, I GUESS THE QUESTION IS
14 COULD YOU, AND YOU WOULD BE REQUIRED TO SIGN A VERDICT
15 THAT WOULD REQUIRE A PUNISHMENT OF DEATH, AND THE
16 QUESTION IS COULD YOU DO THAT DEPENDING ON THE FACTS
17 AND CIRCUMSTANCES?

18 JUROR #228: THE DEATH PENALTY?

19 THE COURT: YES, MA'AM. I DON'T WANT YOUR PERSONAL VIEWS.

20 JUROR #228: OH, YOU DON'T.

21 THE COURT: NO, MA'AM. WHAT I WANT YOU TO TELL ME ...

22 JUROR #228: OKAY.

23 THE COURT: WHAT I WANT YOU TO TELL ME IS IF YOU, BASED UPON
24 THE LAW THAT I GIVE TO YOU AND THE FACTS AND
25 CIRCUMSTANCES OF THIS CASE, INCLUDING ANY AGGRAVATING

HEARING

55

1 CIRCUMSTANCES THE STATE PRODUCES OR ANY MITIGATING
2 CIRCUMSTANCES THAT THE DEFENSE PRODUCES, COULD YOU,
3 BASED UPON THE LAW THAT I CHARGE YOU AND BASED UPON
4 YOUR VIEW OF THOSE FACTS, MAKE A DECISION FOR DEATH?

5 JUROR #228: BASED ON YOUR LAW, I COULD.

6 THE COURT: BASED UPON THE LAW OF THE STATE, NOT MY LAW.

7 JUROR #228: THE STATE, THE STATE.

8 THE COURT: WHAT I TELL YOU THE LAW IS.

9 JUROR #228: OKAY. I GUESS I COULD.

10 THE COURT: YOU COULD? ALL RIGHT. NOW, IF YOU'RE CHOSEN AS
11 A JUROR IN THIS CASE, YOU WILL BE HOUSED IN A MOTEL
12 DURING THE TRIAL, WHERE YOU WILL BE FOR APPROXIMATELY
13 SIX DAYS. EXCEPT FOR THE PERSONAL INCONVENIENCE, WOULD
14 THIS POSE A SERIOUS DANGER TO THE HEALTH OR WELL BEING
15 OF YOURSELF OR ANY OF THOSE WHO ARE DEPENDENT UPON YOU?

16 JUROR #228: WELL, YOU KNOW, I DO TAKE CARE OF MY MOTHER.
17 SHE'S ABLE TO ... SHE LIVES ALONE, BUT SHE'S 91, AND I
18 DO CHECK ON HER DAILY, AND I DO TAKE CARE OF MY TWO
19 GRANDCHILDREN. I GUESS I COULD MAKE SOME ... IT WOULD
20 JUST BE SORT OF STRANGE TO DO.

21 THE COURT: IT WOULD BE AN INCONVENIENCE?

22 JUROR #228: IT WOULD BE.

23 THE COURT: I UNDERSTAND THAT. BUT OTHER THAN THE
24 INCONVENIENCE OF IT AND BECAUSE OF NECESSITY, YOU SAY
25 YOU COULD MAKE SOME SORT OF ARRANGEMENTS, IF NECESSARY?

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HEARING

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1 JUROR #228: I COULD, YES. I BELIEVE I COULD.

2 THE COURT: ALL RIGHT, THANK YOU. THAT'S ALL THE QUESTIONS
3 I HAVE FOR YOU. PLEASE ANSWER ANY QUESTIONS THAT THE
4 STATE MAY HAVE FOR YOU AS WELL. MR. SALEEBY?

5 MR. SALEEBY: MS. WALKER.

6 JUROR #228: YES.

7 MR. SALEEBY: MY NAME IS DUDLEY SALEEBY. I WORK HERE WITH
8 SOLICITOR JACKSON AND AM RESPONSIBLE FOR PROSECUTING
9 THIS CASE. WE DON'T MEAN TO PRY, BUT IT'S OUR JOB TO
10 ASK YOU QUESTIONS IN THESE TYPE OF PROCEEDINGS. DO YOU
11 UNDERSTAND THAT UNLIKE MOST TRIALS, IN THIS TRIAL, THIS
12 DEFENDANT IS ALREADY GUILTY? THIS IS JUST ABOUT
13 PUNISHMENT.

14 JUROR #228: YES.

15 MR. SALEEBY: AND I THINK I HEARD YOU CORRECTLY WHEN THE
16 JUDGE FIRST ASKED YOU ABOUT THE DEATH PENALTY, YOU SAID
17 YOU COULD NOT?

18 JUROR #228: I DID.

19 MR. SALEEBY: WOULD YOU LIKE TO EXPLAIN THAT TO ME?

20 JUROR #228: WELL, HE SAID IT WAS NOT MY PERSONAL OPINION.
21 THAT WOULD BE MY PERSONAL OPINION, BUT I COULD.

22 MR. SALEEBY: AND WHAT IS YOUR PERSONAL OPINION?

23 JUROR #228: I JUST DON'T ... MY PERSONAL OPINION, WHEN IT
24 COMES TO THE DEATH PENALTY, I JUST DON'T BELIEVE IN THE
25 DEATH PENALTY.

HEARING

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1 MR. SALEEBY: I UNDERSTAND. WE'RE NOT TRYING TO CHANGE YOUR
2 MIND. WE'RE JUST TRYING TO FIND OUT HOW YOU FEEL.

3 JUROR #228: RIGHT. THAT'S THE ONLY THING ABOUT THAT, BUT I
4 COULD FOLLOW THE STATE'S, YOU KNOW, IF THAT WAS ... I
5 COULD SIGN IT, BUT IF I HAD TO DO IT PERSONALLY, NO.

6 MR. SALEEBY: YOU REALIZE YOU'RE NOT REQUIRED TO DO ANYTHING
7 HERE? THAT YOU COULD MAKE UP YOUR OWN MIND BASED ON
8 WHAT YOU HEAR?

9 JUROR #228: YEAH.

10 MR. SALEEBY: AND DO YOU FEEL LIKE YOU COULD MAKE YOUR MIND
11 UP FOR LIFE IMPRISONMENT?

12 JUROR #228: I DO.

13 MR. SALEEBY: AND DO YOU THINK YOU COULD MAKE A DECISION TO
14 PUT SOMEBODY TO DEATH?

15 JUROR #228: PERSONALLY, NO BUT IF IT WAS, LIKE HE SAID, IF
16 THE STATE REQUIRED ME.

17 MR. SALEEBY: OKAY. THAT'S WHAT WE'RE TRYING TO FIND OUT,
18 BECAUSE THIS IS A DIFFERENT SORT OF PROCESS. YOU'RE
19 NOT REQUIRED TO DO ANYTHING. IN OTHER WORDS, YOU WOULD
20 NOT BE REQUIRED TO SAY ...

21 JUROR #228: TO DO IT.

22 MR. SALEEBY: ... DEATH.

23 JUROR #228: OH, OKAY. I UNDERSTAND, YEAH.

24 MR. SALEEBY: AND YOU WOULD NOT BE REQUIRED TO SIGN YOUR NAME
25 TO A FORM SAYING THIS PERSON SHOULD BE PUT TO DEATH.

HEARING

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1 JUROR #228: OH, OKAY, BECAUSE I REALLY WOULDN'T WANT TO DO
2 THAT.

3 MR. SALEEBY: I UNDERSTAND. WHAT WE'RE TRYING TO FIND OUT IS
4 IF THE STATE AND COURT TELL YOU THAT YOU'RE NOT
5 REQUIRED TO DO IT, YOU COULD MAKE UP YOUR OWN MIND,
6 WOULD YOU EVER MAKE UP YOUR MIND FOR THE DEATH PENALTY?

7 JUROR #228: I'M TAKING TOO MUCH TIME.

8 MR. SALEEBY: NO, MA'AM. YOU TAKE YOUR TIME.

9 THE COURT: THAT'S ALL RIGHT. WE'VE GOT PLENTY OF TIME.

10 NOBODY'S TRYING TO PRY, AND AS I TOLD YOU, THERE ARE NO
11 RIGHT OR WRONG ANSWERS HERE. THIS IS JUST A PROCESS
12 THAT WE HAVE TO GO THROUGH, AND WE WANT YOU TO ANSWER
13 THE QUESTIONS AS HONESTLY AND AS TRUTHFULLY AS YOU CAN
14 DO.

15 JUROR #228: WELL, HONESTLY, I DON'T BELIEVE IN THE DEATH
16 PENALTY.

17 MR. SALEEBY: I UNDERSTAND. WHAT THE JUDGE'S QUESTIONS AND
18 MY QUESTIONS ARE ARE NOT ASKING YOU WHAT YOU'RE GOING
19 TO DO. WE'RE NOT ASKING YOU THAT. WE'RE ASKING YOU IF
20 GIVEN A CHOICE, IF YOU EVER THINK YOU COULD DO THAT.
21 IT BEING YOUR CHOICE, NOBODY REQUIRING YOU TO DO
22 ANYTHING.

23 JUROR #228: COULD I EVER DO IT? IT DEPENDS. I GUESS I
24 COULD. YES, I THINK I COULD DO IT.

25 MR. SALEEBY: COULD YOU SIGN YOUR NAME TO A FORM SAYING THIS

HEARING

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1 PERSON SHOULD BE PUT TO DEATH? YOU WOULDN'T BE
2 REQUIRED TO DO ANYTHING. IT'S ALL WHAT YOU ...

3 JUROR #228: NO, I DON'T THINK I COULD DO THAT.

4 MR. SALEEBY: THANK YOU, MA'AM.

5 THE COURT: MR. LITTLEJOHN?

6 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. MS. WALKER, MY
7 NAME'S CAM LITTLEJOHN. I, ALONG WITH JIM BABB,
8 REPRESENT MR. STONE. I DON'T MEAN TO GO INTO THESE
9 THINGS THAT YOU'VE BEEN ASKED ABOUT, BUT I HAVE TO
10 BECAUSE IT'S MY JOB.

11 JUROR #228: OKAY.

12 MR. LITTLEJOHN: YOU TOLD JUDGE KING THAT YOU THOUGHT IF HE
13 TOLD YOU WHAT THE LAW WAS, AND DEPENDING ON WHAT HE
14 TOLD YOU ABOUT THE LAW, AND YOU AGREED WITH THE FACTS,
15 THAT YOU THOUGHT YOU COULD SIGN A DEATH VERDICT FORM
16 ALONG WITH THE OTHER JURORS?

17 JUROR #228: I WOULD HAVE A HARD TIME DOING THAT.

18 MR. LITTLEJOHN: I UNDERSTAND. I WOULD HOPE ANYBODY WOULD
19 HAVE A HARD TIME DOING THAT, BUT I GUESS WHAT I'M
20 ASKING YOU IS DEPENDING ON WHAT THE LAW IS AND WHAT THE
21 FACTS ARE, IF YOU AND THE OTHER JURORS AGREED THAT THE
22 LAW WAS BEING FOLLOWED AND IT WAS THE APPROPRIATE THING
23 TO DO, COULD YOU GO ALONG WITH THE OTHER JURORS?

24 JUROR #228: YEAH, YEAH, I COULD. I GUESS I WOULD. REALLY
25 I DON'T AGREE WITH IT DEEP DOWN, BUT IF IT WAS THE LAW

HEARING

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1 AND EVERYTHING, I GUESS I COULD DO THAT.

2 MR. LITTLEJOHN: YOU COULD SIGN THE DEATH VERDICT?

3 JUROR #228: YEAH.

4 MR. LITTLEJOHN: OKAY. THAT'S FAIR ENOUGH. THANK YOU.

5 MR. SALEEBY: MS. WALKER, LET ME ASK YOU JUST A FEW THINGS.

6 ONLY GOING TO TAKE A FEW MINUTES OF YOUR TIME. I SEE
7 HERE WHERE YOU ARE A RETIRED TEACHER?

8 JUROR #228: I AM.

9 MR. SALEEBY: WHERE DID YOU TEACH?

10 JUROR #228: LEE COUNTY AND ORANGEBURG COUNTY.

11 MR. SALEEBY: IN ORANGEBURG COUNTY?

12 JUROR #228: I TAUGHT IN ORANGEBURG COUNTY FOR TWO YEARS AND
13 THEN IN LEE COUNTY FOR 32.

14 MR. SALEEBY: WAS THAT ELEMENTARY SCHOOL, JUNIOR HIGH?

15 JUROR #228: ELEMENTARY, FIRST GRADE, KINDERGARTEN AND FIRST
16 GRADE.

17 MR. SALEEBY: JUST A COUPLE OF FINAL THINGS. HAVE YOU HEARD
18 OR READ ANYTHING ABOUT THIS CASE?

19 JUROR #228: I HAVE. I'VE READ IT.

20 MR. SALEEBY: HAVE YOU READ ANYTHING RECENTLY?

21 JUROR #228: I DID. I CAN'T REMEMBER. I WAS OUT OF TOWN,
22 AND I KNOW I READ SOME PAPERS WHEN I CAME BACK IN TOWN.
23 I CAN'T REMEMBER WHICH DAY IT WAS IN THERE, BUT IT WAS
24 THURSDAY, FRIDAY AND SATURDAY I WAS OUT OF TOWN.

25 MR. SALEEBY: ALL RIGHT. AND IN SPITE WHAT YOU HEARD ABOUT

HEARING

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1 THE CASE, I BELIEVE YOU INDICATED TO JUDGE KING THAT
2 YOU HAD NOT FORMED AN OPINION, THAT YOU COULD BE FAIR
3 IN THIS CASE?

4 JUROR #228: I HAVEN'T FORMED AN OPINION. I JUST READ IT.

5 MR. SALEEBY: ALL RIGHT. YOU THINK YOU COULD JUST BASE YOUR
6 VERDICT OR YOUR DECISION ON WHAT YOU HEAR IN THIS
7 COURTROOM, ALONG WITH THE LAW THAT THE JUDGE GIVES YOU?

8 JUROR #228: I COULD.

9 MR. SALEEBY: OKAY.

10 MR. LITTLEJOHN: MS. WALKER, HAVE YOU EVER HAD ANY DEALINGS
11 WITH THE SUMTER COUNTY SHERIFF'S DEPARTMENT? DO YOU
12 KNOW ANY OF THE DEPUTIES OR HAVE YOU EVER WORKED WITH
13 THE SHERIFF'S DEPARTMENT IN ANY WAY?

14 JUROR #228: NO, NO.

15 MR. LITTLEJOHN: OKAY. I BELIEVE THAT'S ALL I HAVE, YOUR
16 HONOR.

17 THE COURT: MR. SALEEBY, ANYTHING FURTHER?

18 MR. SALEEBY: NO, SIR.

19 THE COURT: ALL RIGHT. MS. WALKER, I'M GOING TO HAVE YOU
20 STEP RIGHT OUTSIDE THE DOOR FOR JUST A MINUTE WITH THE
21 BAILIFF AND AWAY FROM THE COURTROOM A LITTLE BIT, BUT
22 SHE DOES NOT HAVE TO GO BACK IN THE JURY ROOM. JUST
23 HAVE HER SIT OUT THERE IN THE HALL JUST A MINUTE.

24 WHAT SAYETH THE STATE?

25 MR. SALEEBY: YOUR HONOR, WE THINK IT'S PRETTY MUCH A CASE OF

HEARING

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1 (INAUDIBLE). SHE ANSWERED MY QUESTIONS MY WAY, MR.
2 LITTLEJOHN'S QUESTIONS HIS WAY AND YOUR QUESTIONS BOTH
3 WAYS. I DON'T KNOW HOW SITTING IN YOUR SEAT IF I COULD
4 MAKE A DETERMINATION AS TO WHETHER OR NOT SHE COULD DO
5 WHAT SHE HAD TO DO.

6 THE COURT: TELL ME WHAT THE STATE'S MOTION IS.

7 MR. SALEEBY: THAT SHE WOULD BE DISMISSED FOR CAUSE.

8 THE COURT: ALL RIGHT. MR. LITTLEJOHN?

9 MR. LITTLEJOHN: YOUR HONOR, WE THINK SHE ANSWERED THE
10 QUESTIONS APPROPRIATELY. SHE SAID BASED ON THE LAW AND
11 THE FACTS, THE LAW THE COURT GAVE HER, THAT SHE COULD
12 SIGN A DEATH VERDICT, AND I THINK THAT'S ALL THAT'S
13 NECESSARY TO QUALIFY HER AS A JUROR. YOUR HONOR, I
14 THINK SHE WAS HAVING DIFFICULTY WITH DOING THAT, WHICH
15 I WOULD HOPE ANY PERSON WOULD HAVE DIFFICULTY DOING,
16 JUST BASED ON THE MAGNITUDE OF IT. BUT I THINK AN
17 ANALYSIS IN THE LONG RUN, SHE INDICATED THAT SHE COULD
18 DO THAT, GIVEN THE CIRCUMSTANCES.

19 THE COURT: I'M AFRAID I DISAGREE WITH YOU, MR. LITTLEJOHN.
20 I THINK THAT UNDER THE CIRCUMSTANCES IN THIS CASE, SHE
21 HAS INDICATED PRETTY MUCH THAT SHE COULD NOT DO IT.
22 SHE WOULD AGREE WITH ME UNDER CERTAIN WAYS THAT THINGS
23 WERE WORDED OR AGREE WITH YOU. SHE KIND OF AGREED WITH
24 WHOEVER MIGHT BE QUESTIONING HER. I DON'T THINK THAT
25 ... I THINK THAT SHE, AS EVIDENCED, IS PRETTY STRONG IN

HEARING

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1 OPPOSITION OF THE DEATH PENALTY AND HAS BASICALLY
2 INDICATED THAT SHE COULD NOT SERVE OR COULD NOT SIGN.
3 SHE WOULD DO IT, BUT SHE INDICATED SHE ... ONE TIME,
4 SHE INDICATED SHE WOULD, AND ANOTHER TIME, SHE
5 INDICATED SHE WOULDN'T. I THINK BECAUSE OF THIS, I'M
6 GOING TO DISQUALIFY HER. YOUR EXCEPTION IS NOTED.

7 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. MIGHT I RAISE ONE
8 ITEM BEFORE YOU?

9 THE COURT: YES, SIR.

10 MR. LITTLEJOHN: FOR THIS JUROR, IT'S MOOT NOW. I THINK THE
11 COURT, IN ITS PRELIMINARY REMARKS TO THIS INDIVIDUAL
12 JUROR, SAID THAT THE ONLY DECISION THAT WAS UP TO THE
13 JUROR WAS WHETHER A SENTENCE OF LIFE OR A SENTENCE OF
14 DEATH WOULD BE HANDED DOWN IN THIS CASE.

15 THE COURT: YES, SIR.

16 MR. LITTLEJOHN: YOUR HONOR, IT SEEMS TO ME THERE'S A
17 THRESHOLD QUESTION, AND THAT IS WHETHER THE STATE HAS
18 PROVEN THE AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE
19 DOUBT, AND I THINK THEY WOULD HAVE TO CROSS THAT HURDLE
20 BEFORE THEY GET TO THE NOTION OF WHETHER LIFE OR DEATH
21 IS APPROPRIATE.

22 THE COURT: ALL RIGHT.

23 MR. LITTLEJOHN: THEY WOULD HAVE TO JUMP ... THE STATE WOULD
24 HAVE TO JUMP THAT HURDLE FIRST, AND IF THEY DON'T,
25 THEN, OF COURSE, ANOTHER SENTENCING RANGE IS AVAILABLE

HEARING

64

1 TO THE COURT.

2 THE COURT: I WOULD INDICATE THAT IN FUTURE QUESTIONS TO THE
3 JURY. I THINK YOU ARE RIGHT. THE ULTIMATE ISSUE IS
4 THAT IF THERE IS ANOTHER RANGE INVOLVED IN THERE, IT
5 HAS TO DO WITH AGGRAVATED CIRCUMSTANCES, AND I WOULD
6 DISCUSS THAT WITH THE NEXT JUROR. THANK YOU, MR.
7 LITTLEJOHN.

8 MR. LITTLEJOHN: THANK YOU.

9 THE COURT: #95.

10 MR. CAMPBELL: AND #228?

11 THE COURT: YES, SIR. BRING HER BACK IN. MS. WALKER, THANK
12 YOU VERY MUCH FOR YOUR COMING AND FOR YOUR HONESTY AND
13 FOR YOUR CANDOR. AFTER DISCUSSING THE MATTER WITH THE
14 ATTORNEYS, WE HAVE DECIDED THAT YOU, OR THE COURT HAS
15 DECIDED, THAT YOU SHOULD BE EXCUSED FROM ANY FURTHER
16 SERVICE ON THIS CASE, AND YOU WILL NOT NEED TO COME
17 BACK, SO YOU ARE EXCUSED AND FREE TO GO. THANK YOU
18 VERY MUCH.

19 JUROR #228: THANK YOU VERY MUCH.

20 THE COURT: MS. HUDSON, IF YOU WOULD, COME HERE AND HAVE A
21 SEAT, PLEASE, MA'AM. YOU ARE MS. HUDSON, IS THAT
22 CORRECT?

23 JUROR #95: YES.

24 THE COURT: ALL RIGHT. MS. HUDSON, JUST RELAX AND TAKE IT
25 EASY. YOU HAD PREVIOUSLY BEEN PUT UNDER OATH, AND YOU

HEARING

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1 ARE STILL SWORN FOR THESE PROCEEDINGS, AND I WANT YOU
2 TO UNDERSTAND THAT. I WANT YOU TO UNDERSTAND THAT ME
3 AND THE LAWYERS IN THE CASE ARE GOING TO ASK YOU SOME
4 QUESTIONS NOT TO INVADE YOUR PRIVACY IN ANY WAY, BUT
5 BECAUSE IT IS NECESSARY DUE TO THE NATURE OF THESE
6 PROCEEDINGS. THERE ARE NO RIGHT OR WRONG ANSWERS. I
7 WANT YOU JUST TO GIVE US YOUR HONEST ANSWERS TO THE
8 QUESTIONS THAT WE ASK AND YOUR POINT OF VIEW, SO BE
9 OPEN AND HONEST ABOUT THIS MATTER. AS I TOLD YOU
10 EARLIER, THIS IS A CASE INVOLVING THE STATE OF SOUTH
11 CAROLINA V. BOBBY WAYNE STONE, AND IT IS BEFORE THE
12 COURT ON A PROCEEDING TO DETERMINE WHAT PUNISHMENT
13 SHOULD BE IMPOSED ON MR. STONE FOR A MURDER CONVICTION
14 THAT HE ALREADY HAS. SO, THE QUESTION OF THE GUILT OR
15 INNOCENCE OF THE MURDER IS NOT BEFORE YOU, BUT ONLY THE
16 QUESTION OF WHAT PUNISHMENT SHOULD BE IMPOSED. IN
17 ORDER TO DETERMINE WHAT PUNISHMENT SHOULD BE IMPOSED,
18 IT IS INCUMBENT UPON THE STATE, FIRST OF ALL, TO SHOW
19 CERTAIN FACTS AND CIRCUMSTANCES WHICH WE CALL
20 AGGRAVATED CIRCUMSTANCES, AND THEY WILL HAVE TO PROVE
21 THOSE TO YOU BEYOND A REASONABLE DOUBT. AND THEN BASED
22 UPON WHETHER THEY DO OR DO NOT PROVE THOSE AGGRAVATING
23 CIRCUMSTANCES WILL DEPEND ON WHAT KIND OF
24 RECOMMENDATION THAT YOU WOULD MAKE TO THE COURT OR THE
25 JURY WOULD MAKE TO THE COURT AS FAR AS PUNISHMENT IS

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HEARING

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1 CONCERNED. DO YOU UNDERSTAND THAT?

2 JUROR #95: YES.

3 THE COURT: DO YOU UNDERSTAND THAT WHEN I USE THE TERM
4 RECOMMENDATION, I DON'T MEAN IT'S A RECOMMENDATION. I
5 MEAN THAT WHATEVER, AFTER THE STATE, IF THE STATE
6 PROVES WHAT THEY NEED TO PROVE AND AFTER YOU GET TO THE
7 POINT OR THE JURY GETS TO THE POINT WHERE THEY ARE
8 DECIDING, FIRST OF ALL, WHETHER OR NOT THE STATE HAS
9 PROVED THE STATUTORY AGGRAVATING CIRCUMSTANCES AND
10 SECONDLY, THE PUNISHMENT, WHEN WE GET TO THAT POINT,
11 THEN YOU WILL BE ASKED TO DO CERTAIN THINGS THAT I'M
12 GOING TO ASK YOU ABOUT, SO I WANT TO EXPLORE THOSE A
13 LITTLE BIT WITH YOU NOW.

14 HAVE YOU HAD THE OPPORTUNITY TO LOOK AT THE JUROR
15 SHEET THAT YOU WERE GIVEN BACK IN THE JUROR ROOM?

16 JUROR #95: YES.

17 THE COURT: AND DID YOU UNDERSTAND THAT THERE ARE THREE
18 CLASSIFICATIONS, BASICALLY THREE TYPES OF JURORS?

19 JUROR #95: (NODS HEAD AFFIRMATIVELY).

20 THE COURT: IS THAT A YES?

21 JUROR #95: YES, SIR.

22 THE COURT: YOU HAVE TO SPEAK OUT, BECAUSE THIS LADY HAS TO
23 TAKE IT DOWN. BASED ON THAT, WHICH ONE OF THOSE THREE
24 TYPES OF JURORS WOULD YOU CONSIDER THAT YOU ARE, #1, #2
25 OR #3?

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HEARING

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1 JUROR #95: #2.

2 THE COURT: #2, ALL RIGHT. SO, WHEN YOU SAY THAT YOU'RE A
3 JUROR #2, YOU'RE THE TYPE OF JUROR THAT WOULD NEVER
4 IMPOSE THE DEATH PENALTY, NO MATTER WHAT THE
5 CIRCUMSTANCES OF THE CASE MAY BE?

6 JUROR #95: YES, SIR.

7 THE COURT: ALL RIGHT. SO, THAT'S WHAT YOU FEEL? THAT YOU
8 WOULD NOT BE ABLE TO, IN ANY CIRCUMSTANCES, NO MATTER
9 WHAT THE FACTS AND CIRCUMSTANCES OF THE CASE WERE,
10 NEVER UNDER ANY CIRCUMSTANCES BE ABLE TO IMPOSE THE
11 DEATH PENALTY, IS THAT RIGHT?

12 JUROR #95: YES, SIR.

13 THE COURT: HAVE YOU HEARD ANYTHING OR READ ANYTHING ABOUT
14 THIS CASE?

15 JUROR #95: NO.

16 THE COURT: NONE AT ALL?

17 JUROR #95: NO.

18 THE COURT: YOU UNDERSTAND THAT AS A JUROR AND WHAT THE STATE
19 WILL BE REQUIRED TO PROVE IN THIS CASE ARE CERTAIN
20 AGGRAVATING CIRCUMSTANCES THAT THEY CONTEND ENTITLES
21 THE DEFENDANT OR A VERDICT OF DEATH? YOU UNDERSTAND
22 THE STATE HAS TO PROVE THOSE AGGRAVATING CIRCUMSTANCES?
23 AND LET ME TELL YOU WHAT THE AGGRAVATING CIRCUMSTANCES
24 ARE. THEY ARE BASICALLY DETAILS OR INCIDENTS OR FACTS
25 THAT OUR GENERAL ASSEMBLY HAS DECLARED MAKE THE MATTER

HEARING

68

1 WORSE. THAT IS AGGRAVATE THE OFFENSE OF MURDER. IN
2 OTHER WORDS, THE AGGRAVATED CIRCUMSTANCES, WHEN
3 ACCOMPANIED WITH MURDER, INCREASES THE ENORMITY OR ADDS
4 TO THE INJURY OF THE CRIME OF MURDER. MITIGATING
5 CIRCUMSTANCES, ON THE OTHER HAND, ARE EXACTLY THE
6 OPPOSITE. THEY ARE FACTS AND INCIDENTS WHICH THE
7 GENERAL ASSEMBLY HAS DECLARED BY STATUTE REDUCES THE
8 OFFENSE OF MURDER AND MAY BE CONSIDERED AS EXTENUATING
9 OR REDUCING THE DEGREE OF MORAL CULPABILITY. IF YOU
10 WERE A JUROR IN THIS CASE, WOULD YOU BE ABLE TO LISTEN
11 TO, KEEP AN OPEN MIND TO THE AGGRAVATING CIRCUMSTANCES
12 AND TO THE MITIGATING CIRCUMSTANCES AND, IN FACT, FIND
13 IF THERE WERE AGGRAVATING CIRCUMSTANCES IN THIS CASE,
14 WOULD YOU BE ABLE TO SIGN A ... YOU WOULD FIRST HAVE TO
15 FIND THE QUESTION OF AGGRAVATED CIRCUMSTANCES, AND IF
16 YOU FOUND THAT THERE WERE AGGRAVATING CIRCUMSTANCES,
17 WOULD YOU BE ABLE TO SIGN A VERDICT THAT INCLUDES THE
18 DEATH PENALTY?

19 JUROR #95: NO, SIR.

20 THE COURT: YOU WOULD NOT? OKAY. ALL RIGHT. MR. SALEEBY?

21 MR. SALEEBY: MS. HUDSON, MY NAME IS DUDLEY SALEEBY. I WORK
22 WITH SOLICITOR JACKSON HERE. WE APOLOGIZE TO HAVE TO
23 ASK THESE INTRUSIVE QUESTIONS. HOPE YOU UNDERSTAND
24 WE'RE HERE TRYING TO FIND OUT HOW YOU FEEL. WE'RE NOT
25 TRYING TO CHANGE YOUR MIND. I WANTED TO ASK YOU ONE

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HEARING

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1 OTHER THING, IF I COULD. I'M SORRY TO BRING THIS UP,
2 BUT IT'S JUST SORT OF PART OF OUR JOB. YOU INDICATED
3 THAT YOU HAD A BROTHER WHO HAD SOME PROBLEMS BEFORE
4 WITH LAW ENFORCEMENT.

5 JUROR #95: YES, SIR.

6 MR. SALEEBY: WAS THAT HERE IN THIS COUNTY?

7 JUROR #95: YES, SIR.

8 MR. SALEEBY: WHAT DEPARTMENT WAS THAT WITH?

9 JUROR #95: SUMTER COUNTY.

10 MR. SALEEBY: SHERIFF'S DEPARTMENT?

11 JUROR #95: YES, SIR.

12 MR. SALEEBY: IS THAT RECENTLY?

13 JUROR #95: I THINK '94 OR '95.

14 MR. SALEEBY: IS HE STILL IN SUMTER COUNTY?

15 JUROR #95: YES, SIR.

16 MR. SALEEBY: PARDON ME FOR ASKING THAT. I JUST HAD TO CHECK
17 IT OUT. THANK YOU, MA'AM.

18 THE COURT: MR. LITTLEJOHN?

19 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. MS. HUDSON, GOOD
20 AFTERNOON. I'M CAM LITTLEJOHN. I, ALONG WITH JIM
21 BABB, REPRESENT MR. STONE IN THIS CASE. LET ME ASK
22 YOU, MS. HUDSON, BEFORE I GO INTO ANYTHING ELSE, HIS
23 HONOR HAD EXPLAINED TO YOU WHAT YOUR DUTIES WOULD BE IF
24 YOU WERE SELECTED ON THIS JURY, AND YOU INDICATED TO
25 HIM YOU WOULD HAVE DIFFICULTY IMPOSING THE DEATH

HEARING

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1 PENALTY OR SIGNING A VERDICT FORM THAT INCLUDED THE
2 DEATH PENALTY, IS THAT RIGHT?

3 JUROR #95: YES, SIR.

4 MR. LITTLEJOHN: ARE YOU TELLING US THERE ARE NO
5 CIRCUMSTANCES UNDER WHICH YOU COULD DO THAT?

6 JUROR #95: YES, SIR.

7 MR. LITTLEJOHN: I MEAN, IF YOU HEAR THE EVIDENCE AND THE
8 JUDGE INSTRUCTS YOU THAT THAT IS AN OPTION AVAILABLE
9 AND OTHER JURORS AGREE THAT THAT'S THE APPROPRIATE
10 PUNISHMENT, DO YOU THINK YOU COULD GO ALONG WITH IT?

11 JUROR #95: NO, SIR.

12 MR. LITTLEJOHN: UNDER NO CIRCUMSTANCES?

13 JUROR #95: NO, SIR.

14 MR. LITTLEJOHN: ALL RIGHT. THANK YOU, MS. HUDSON.

15 THE COURT: MS. HUDSON, I'M GOING TO ASK YOU TO STEP OUTSIDE
16 FOR JUST A MOMENT WHILE I TAKE UP CERTAIN MATTERS WITH
17 THE ATTORNEYS. THANK YOU VERY MUCH.

18 MR. SALEEBY?

19 MR. SALEEBY: I THINK SHE'S QUITE HONESTLY DISQUALIFIED.

20 THE COURT: MR. LITTLEJOHN?

21 MR. LITTLEJOHN: YOUR HONOR, WE WOULD HAVE TO AGREE.

22 THE COURT: ALL RIGHT. BRING MS. HUDSON BACK IN. MS.
23 HUDSON, THANK YOU VERY MUCH FOR YOUR CANDOR AND HONESTY
24 AND BEING HERE AND WILLING TO SERVE AS A JUROR. WE
25 CERTAINLY DO APPRECIATE YOUR SERVICE AND BEING TRUTHFUL

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HEARING

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1 WITH THE COURT AND HONEST WITH THE COURT IN RESPONSE TO
2 THE QUESTIONS POSTED TO YOU BY ME AND THE LAWYERS FROM
3 BOTH SIDES. AFTER HAVING HEARD YOUR ANSWERS AND HAVING
4 MADE CERTAIN EVALUATIONS IN THIS CASE, IT WILL NOT BE
5 NECESSARY THAT YOU STAY ANY LONGER. WE ARE GOING TO
6 EXCUSE YOU FROM ANY FURTHER SERVICE ON THIS CASE. YOU
7 WILL BE ALLOWED TO GO AND NOT COME BACK, YOU ARE
8 EXCUSED. THANK YOU VERY MUCH.

9 ALL RIGHT. YOU ARE LINDA BLUE?

10 JUROR #20: YES.

11 THE COURT: ALL RIGHT. MS. BLUE, PLEASE BE AT EASE. WE DO
12 NEED TO ASK YOU SOME QUESTIONS, BUT I DON'T WANT YOU TO
13 FEEL INTIMIDATED. NOBODY'S GOING TO GIVE YOU A HARD
14 TIME. WE JUST NEED TO ASK YOU SOME QUESTIONS TO
15 DETERMINE YOUR QUALIFICATIONS TO SERVE ON THIS CASE.
16 I WILL TELL YOU THAT YOU WERE PREVIOUSLY PUT UNDER
17 OATH, SO THE ANSWERS THAT YOU WILL GIVE US NOW ARE
18 STILL UNDER OATH. WE WOULD ASK THAT YOU BE TRUTHFUL,
19 OPEN AND HONEST IN ANSWERING THESE QUESTIONS, AND I
20 WILL TELL YOU THAT THERE ARE NO RIGHT OR WRONG ANSWERS.
21 THE QUESTIONS WE'RE ABOUT TO ASK YOU ARE SIMPLY TO
22 DETERMINE WHAT YOUR VIEWS ARE AND WHAT YOUR THINKING IS
23 IN CONNECTION WITH YOUR POSSIBLE SERVICE AS A JUROR IN
24 THIS CASE.

25 LET ME TELL YOU THAT AS I TOLD YOU EARLIER, THE

HEARING

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1 DEFENDANT IN THIS CASE HAS ALREADY BEEN FOUND GUILTY OF
2 THE CRIME OF MURDER, AND THAT MATTER IS NOT GOING TO BE
3 UP TO THIS JURY TO DECIDE. THE THINGS THAT THIS JURY
4 WILL HAVE TO DECIDE ARE WHETHER OR NOT THE STATE HAS
5 PROVEN BEYOND A REASONABLE DOUBT THAT THERE WERE
6 AGGRAVATING CIRCUMSTANCES IN CONNECTION WITH THE
7 MURDER. AND THEN DEPENDING ON THE JURY'S DECISION OF
8 WHETHER THERE WERE OR WERE NOT AGGRAVATING
9 CIRCUMSTANCES, WHETHER OR NOT THE STATE HAS PROVEN
10 AGGRAVATING CIRCUMSTANCES, WOULD THEN DECIDE WHAT
11 PUNISHMENT OPTIONS WOULD BE AND WOULD MAKE A
12 RECOMMENDATION TO THIS COURT OF POSSIBLE PUNISHMENT.
13 THAT'S WHAT THE ROLE OF THE JURY IS GOING TO BE IN THIS
14 CASE. YOU UNDERSTAND THAT?

15 JUROR #20: YES.

16 THE COURT: OKAY. NOW, YOU UNDERSTAND THAT WHILE I PUT IT IN
17 THE FORM OF A RECOMMENDATION, IT'S NOT REALLY A
18 RECOMMENDATION. WHATEVER THE JURY RECOMMENDS TO THIS
19 COURT WILL BE THE PUNISHMENT THAT IS IMPOSED BY THE
20 COURT. DO YOU UNDERSTAND THAT?

21 JUROR #20: YES, SIR.

22 THE COURT: ALL RIGHT. HAVING SAID THAT, HAVE YOU HAD AN
23 OPPORTUNITY TO LOOK AT THE JUROR SHEET THAT YOU WERE
24 GIVEN BACK IN THE JURY ROOM WITH THE THREE TYPES OF
25 JURORS?

HEARING

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1 JUROR #20: YES, SIR.

2 THE COURT: WHICH TYPE OF JUROR BEST DESCRIBES YOU?

3 JUROR #20: #2.

4 THE COURT: #2?

5 JUROR #20: YES, SIR.

6 THE COURT: ALL RIGHT. #2 IS THE JUROR ... WHEN YOU SAY #2,
7 WHAT WAS IT ABOUT #2 THAT YOU THINK APPLIES TO YOU?

8 JUROR #20: WELL, WITH ALL DUE RESPECT, YOUR HONOR, I JUST
9 FEEL THAT (INAUDIBLE).

10 MR. LITTLEJOHN: WE CAN'T HEAR HER, JUDGE.

11 THE COURT: ALL RIGHT. HOW ABOUT GO AHEAD AND SPEAK IN THE
12 MICROPHONE AND GIVE THAT ANSWER AGAIN.

13 JUROR #20: WITH ALL DUE RESPECT, YOUR HONOR, I COULDN'T GIVE
14 A VERDICT OF GUILTY OF LIFE IMPRISONMENT TO SOMEONE.

15 THE COURT: BY GUILTY? A MINUTE AGO YOU SAID DEATH.

16 JUROR #20: RIGHT, THE DEATH PENALTY, I COULDN'T DO THAT.

17 THE COURT: COULDN'T DO EITHER ONE?

18 JUROR #20: NO, SIR.

19 THE COURT: ALL RIGHT. THAT BEING THE CASE, LET ME ASK YOU
20 THIS, MS. BLUE. THEY'RE NOT GOING TO BE THE ONLY
21 OPTIONS NECESSARILY IN THIS CASE, BUT THEY WOULD BE TWO
22 OF THE OPTIONS THAT WOULD BE AVAILABLE IN THIS CASE.
23 BASED UPON THE EVIDENCE PRESENTED, YOU MAY HAVE TO MAKE
24 A DECISION AS TO ONE OF THOSE TWO OPTIONS. IF THAT'S
25 THE CASE, COULD YOU MAKE A DECISION AS TO ONE OF THOSE

HEARING

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1 TWO OPTIONS?

2 JUROR #20: NO, SIR. I REALLY COULDN'T.

3 THE COURT: SO, WHAT YOU'RE SAYING, I GUESS, IS THAT YOU
4 WOULD NOT BE ABLE TO FOLLOW THE DIRECTIONS OF THE COURT
5 AS FAR AS MY TELLING YOU WHAT THE LAW IS AND FOLLOW
6 THOSE QUESTIONS OF LAW?

7 JUROR #20: I DON'T KNOW WHETHER I SHOULD STATE IT LIKE THIS,
8 BUT CAN I EXPLAIN SOMETHING, YOUR HONOR?

9 THE COURT: YES, MA'AM. WE WANT TO KNOW. THAT'S WHAT WE'RE
10 HERE FOR.

11 JUROR #20: I SAT ON A JURY IN LAWTON, OKLAHOMA ABOUT SEVEN
12 YEARS AGO, AND WE FOUND THE DEFENDANT GUILTY. ABOUT
13 TWO MONTHS AFTER THAT, THE REAL PERPETRATOR SURFACED,
14 AND IT WAS THE WRONG PERSON, AND I HAD PRAYED TO GOD I
15 WOULD NEVER DO THAT AGAIN.

16 THE COURT: ALL RIGHT. WELL, I HAVE TO GO BACK TO THIS
17 QUESTION AGAIN, MS. BLUE. THE QUESTION OF GUILT OR
18 INNOCENCE IS NOT THE QUESTION THAT IS BEFORE THE COURT.
19 AS FAR AS THIS JURY IS CONCERNED, MR. STONE HAS ALREADY
20 BEEN FOUND TO BE GUILTY OF MURDER, AND SO THE ONLY
21 QUESTION BECOMES THE APPROPRIATE PUNISHMENT. SO, IT'S
22 NOT A QUESTION OF GUILT OR INNOCENCE AND FINDING THE
23 WRONG PERSON GUILTY, YOU UNDERSTAND THAT, WHICH IS WHAT
24 YOU'RE SAYING Y'ALL DID IN THAT OTHER SITUATION.

25 JUROR #20: YES, SIR.

HEARING

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1 THE COURT: IT'S A QUESTION OF LISTENING TO THE LAW THAT I
2 GIVE YOU ABOUT AGGRAVATING CIRCUMSTANCES AND THEN
3 DETERMINING WHETHER THOSE AGGRAVATED CIRCUMSTANCES ARE
4 PRESENT, AND IF THEY'RE PRESENT, IF THEY'RE NOT
5 PRESENT, THEN YOUR VERDICT WOULD BE ACCORDINGLY. IF
6 THEY ARE PRESENT, THEN YOU WOULD HAVE TO SIGN A VERDICT
7 FOR EITHER LIFE IMPRISONMENT OR DEATH. I GUESS THAT
8 BEING THE ISSUE BEFORE YOU, MY QUESTION IS WOULD YOU BE
9 ABLE TO SIGN A SHEET OF PAPER OR A VERDICT FORM THAT
10 SAYS GUILTY AND A RECOMMENDATION OF LIFE IMPRISONMENT?
11 WOULD YOU BE ABLE TO DO THAT?

12 JUROR #20: NO, SIR.

13 THE COURT: AND WOULD YOU BE ABLE TO SIGN THE VERDICT FORM
14 THAT SAYS GUILTY AND RECOMMENDATION FOR THE DEATH
15 PENALTY?

16 JUROR #20: NO, SIR.

17 THE COURT: OKAY. MR. SALEEBY?

18 MR. SALEEBY: MS. BLUE, MY NAME IS DUDLEY SALEEBY. I WORK
19 WITH SOLICITOR JACKSON. WE KNOW THIS IS INTRUSIVE. I
20 HOPE YOU WILL PARDON US. THIS IS JUST PART OF WHAT WE
21 HAVE TO DO TO MAKE THE PROCESS WORK. WE'RE NOT TRYING
22 TO CHANGE ANY OF YOUR BELIEFS OR OPINIONS OR REQUIRE
23 YOU TO DO ANYTHING. THANK YOU FOR BEING SO CANDID WITH
24 US.

25 THE COURT: MR. LITTLEJOHN?

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HEARING

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1 MR. LITTLEJOHN: YOUR HONOR, WE HAVE NO QUESTIONS FOR MS.
2 BLUE.

3 THE COURT: ALL RIGHT. MS. BLUE, STEP OUT IN THE HALL FOR
4 JUST A MINUTE. DON'T GO BACK TO THE JURY ROOM. LET ME
5 DISCUSS A COUPLE OF MATTERS WITH THE ATTORNEYS, AND I
6 WILL BE READY TO GO FORWARD. MR. SALEEBY?

7 MR. SALEEBY: SHE WOULD BE DISQUALIFIED, SIR.

8 THE COURT: MR. LITTLEJOHN?

9 MR. LITTLEJOHN: YOUR HONOR, WE WOULD HAVE TO AGREE.

10 THE COURT: ALL RIGHT. SHE WILL BE DISQUALIFIED. ASK HER TO
11 COME BACK IN. MS. BLUE, THANK YOU VERY MUCH FOR YOUR
12 CANDOR AND YOUR HONESTY IN RESPONDING TO MY QUESTIONS.
13 BASED ON THE MATTERS WE HAVE TAKEN UP, IT HAS BEEN
14 DECIDED THAT YOU WILL NOT HAVE TO SERVE AS A JUROR IN
15 THIS CASE, SO WE ARE GOING TO EXCUSE YOU. YOU NEED NOT
16 COME BACK. YOU ARE FINISHED.

17 MR. LITTLEJOHN: YOUR HONOR, BEFORE WE BRING MR. BEARD IN,
18 CAN I BRING SOMETHING TO THE COURT'S ATTENTION?

19 THE COURT: YES, SIR. HOLD ON JUST A MINUTE, MR. HERRING.

20 MR. SALEEBY: MR. BEARD IS JUROR #13. HE'S CURRENTLY BEING
21 PROSECUTED BY OUR OFFICE FOR BREAKING AND ENTERING A
22 MOTOR VEHICLE. I KNOW THAT'S NOT A STATUTORILY
23 DISQUALIFYING FACTOR, BUT I DO THINK IT WOULD HAVE A
24 GREAT IMPACT ON HIS ABILITY TO BE ABLE TO RATIONALIZE
25 SOMETHING WE MIGHT ARGUE TO HIM. WANTED TO BRING THAT

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HEARING

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1 TO THE COURT'S ATTENTION. WE SHOULD AT LEAST GET SOME
2 BOUNDARIES ON WHERE WE MIGHT QUESTION HIM ABOUT ANY
3 BIAS TO US, BECAUSE WE'RE PROSECUTING HIM RIGHT NOW.
4 HE'S SUPPOSE TO BE HERE NEXT MONDAY.

5 THE COURT: WHAT SAYETH, MR. LITTLEJOHN?

6 MR. LITTLEJOHN: YOUR HONEST, AS INDICATED BY THE SOLICITOR,
7 I DON'T KNOW THAT THAT'S A LEGALLY DISQUALIFYING
8 REASON.

9 THE COURT: I AGREE IT'S NOT A LEGALLY DISQUALIFYING REASON
10 AT THIS TIME, BUT IT COMES CLOSE TO THE SITUATION ...
11 IT'S NOT REPRESENTING SOMEBODY, WHICH WOULD BE LEGALLY
12 DISQUALIFYING, IT'S THE EXACT OPPOSITE OF THAT.

13 MR. SALEEBY: YOUR HONOR, I GUESS TECHNICALLY HE'S A PARTY IN
14 A LAWSUIT THAT I'M INVOLVED IN. WE ARE PROSECUTING HIM
15 IN A CRIMINAL CASE. WE'RE NOT SUING EACH OTHER.

16 THE COURT: I'LL LET YOU GO INTO THAT A LITTLE BIT.

17 MR. SALEEBY: HE MIGHT BE FAVORABLE TO THE SOLICITOR'S
18 OFFICE.

19 THE COURT: DON'T COUNT ON IT. ALL RIGHT. BRING HIM IN,
20 PLEASE. HAVE A SEAT RIGHT THERE, MR. BEARD. YOU ARE
21 RONALD A. BEARD, IS THAT CORRECT?

22 JUROR #13: YES, SIR.

23 THE COURT: ALL RIGHT. MR. BEARD, EARLIER TODAY, WE HAD YOU
24 PUT UNDER OATH SO THAT YOU WOULD TELL THE TRUTH, AND WE
25 NOW NEED TO ASK YOU SOME QUESTIONS REGARDING YOUR

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HEARING

78

1 POSSIBLE SERVICE AS A JUROR IN THIS CASE. YOU
2 UNDERSTAND THAT YOU ARE UNDER OATH AND THAT YOU NEED TO
3 ANSWER THE QUESTIONS TRUTHFULLY? YOU UNDERSTAND THAT?

4 JUROR #13: YES, SIR.

5 THE COURT: ALL RIGHT. PUT THIS MICROPHONE DOWN, SO HE CAN
6 SPEAK INTO THE MICROPHONE AND WE CAN ALL HEAR HIM.
7 NOW, THE QUESTIONS THAT WE'RE GOING TO ASK ARE NOT TO
8 INVADE YOUR PRIVACY IN ANY WAY, BUT IT IS NECESSARY DUE
9 TO THE NATURE OF THESE PROCEEDINGS THAT WE GET THIS
10 INFORMATION. THERE ARE NO RIGHT OR WRONG ANSWERS TO
11 THE QUESTIONS. WE'RE SIMPLY SEEKING YOUR POINT OF
12 VIEW, SO PLEASE BE OPEN AND HONEST IN ANSWERING ALL OF
13 THE QUESTIONS.

14 HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THE JUROR
15 SHEET THAT YOU WERE GIVEN BACK IN THE JURY ROOM?

16 JUROR #13: YES, SIR.

17 THE COURT: IT DESCRIBES THE THREE TYPES OF JURORS?

18 JUROR #13: YES, SIR.

19 THE COURT: DID YOU UNDERSTAND THAT SHEET WITH THE THREE
20 TYPES OF JURORS?

21 JUROR #13: NOT REALLY.

22 THE COURT: YOU DIDN'T UNDERSTAND IT?

23 JUROR #13: NO, SIR.

24 THE COURT: ALL RIGHT. LET ME ASK YOU. TYPE #1 ON THAT
25 SHEET IS THE TYPE OF JUROR WHERE WHEN THERE HAS BEEN A

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HEARING

79

1 CRIME OF MURDER AND PROVEN BY THE STATE ... AND LET ME
2 SAY THIS AT THE OUTSET. IN THIS CASE, THE CRIME OF
3 MURDER IS ALREADY IN PLACE. IN OTHER WORDS, THE JURY
4 IS NOT GOING TO BE ASKED TO MAKE A DECISION AS TO
5 WHETHER THE DEFENDANT, MR. STONE, IS OR IS NOT GUILTY
6 OF THE CRIME OF MURDER. THAT HAS ALREADY BEEN DECIDED.
7 THE ISSUES THAT THIS JURY IS GOING TO HAVE TO CONSIDER
8 ARE WHETHER OR NOT THE MURDER WAS COMMITTED UNDER
9 CIRCUMSTANCES OF AGGRAVATION OR IN THE COURT OF
10 CIRCUMSTANCES OF AGGRAVATION, AND THERE ARE CERTAIN
11 STATUTORY AGGRAVATED CIRCUMSTANCES THAT THE STATE WILL
12 HAVE TO PROVE BEYOND A REASONABLE DOUBT. THEN
13 DEPENDING ON WHETHER OR NOT THEY DO OR DO NOT PROVE
14 THOSE AGGRAVATING CIRCUMSTANCES, THE JURY WILL BE ASKED
15 TO RECOMMEND A PUNISHMENT. AND DEPENDING ON WHAT THE
16 FINDING IS ON THE AGGRAVATING CIRCUMSTANCES, THE JURY
17 HAS SEVERAL OPTIONS WITH REGARD TO THE PUNISHMENT THAT
18 IT CAN RECOMMEND. BUT WHATEVER THE RECOMMENDATION OF
19 THE JURY IS, I'M GOING TO IMPOSE THAT PUNISHMENT. IT
20 DOESN'T MATTER WHAT ... WE USE THE WORD RECOMMENDATION,
21 BUT IT'S NOT A RECOMMENDATION AT ALL. WHATEVER THE
22 JURY RECOMMENDS, THAT'S WHAT I'M GOING TO DO. IF THE
23 JURY FINDS THAT THERE WERE, THE STATE HAS PROVEN
24 CIRCUMSTANCES OF AGGRAVATION UNDER THE STATUTE, THE
25 JURY WOULD BE ASKED TO DECIDE WHETHER OR NOT TO GIVE

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HEARING

80

1 THE DEATH PENALTY OR LIFE IN PRISON. SO, THAT'S WHAT
2 THE JURY'S FUNCTION IN THIS CASE IS GOING TO BE. YOU
3 UNDERSTAND THAT'S WHAT THE JURY IS GOING TO HAVE TO DO?

4 JUROR #13: YES, SIR.

5 THE COURT: NOW, HAVING SAID THAT, I WILL TELL YOU THAT THERE
6 ARE BASICALLY THREE TYPES OF JURORS. ONE TYPE OF JUROR
7 IS A JUROR WHO FEELS THAT ONCE A CRIME HAS BEEN PROVEN
8 BY THE STATE AND THE JURY IS CONSIDERING PUNISHMENT,
9 THAT JUROR FEELS THAT THE CRIME REQUIRES HIM OR HER TO
10 GIVE THE DEATH PENALTY IN EVERY CASE. THE JUROR SIMPLY
11 FEELS THAT ONCE MURDER HAS BEEN COMMITTED, IT SHOULD BE
12 THE MOST APPROPRIATE PUNISHMENT NO MATTER WHAT THE
13 CIRCUMSTANCES ARE. THAT'S ONE TYPE OF JUROR.

14 THE SECOND TYPE OF JUROR IS ONE WHO, ALTHOUGH THE
15 GUILT OF THE DEFENDANT HAS BEEN DETERMINED, AND IT HAS
16 BEEN DETERMINED THAT HE'S GUILTY, THAT UNDER NO
17 CIRCUMSTANCES COULD EVER GIVE THE DEATH PENALTY. THIS
18 JUROR WOULD NOT NEED TO HEAR WHAT THE FACTS AND
19 CIRCUMSTANCES AND AGGRAVATION AND MITIGATION ARE,
20 BECAUSE THAT JUROR WOULD HAVE HIS OR HER MIND MADE UP
21 CONCERNING THE PUNISHMENT NO MATTER WHAT HE OR SHE
22 HEARD, AND FEELS THAT HE OR SHE WOULD NOT, UNDER ANY
23 CIRCUMSTANCES, BE ABLE TO GIVE THE DEATH PENALTY.
24 THAT'S THE SECOND TYPE OF JUROR.

25 THE THIRD TYPE OF JUROR IS ONE WHO, ALTHOUGH THE

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HEARING

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1 GUILT OF THE DEFENDANT HAS BEEN DETERMINED, AND THAT'S
2 THE CASE HERE, WOULD NOT HAVE HIS OR HER MIND MADE UP
3 IN ADVANCE CONCERNING PUNISHMENT. THIS JUROR WOULD
4 NEED TO HEAR THE FACTS OF CIRCUMSTANCES IN AGGRAVATION
5 AND MITIGATION AND WOULD WANT TO LISTEN TO AND FOLLOW
6 ALONG AS THE JUDGE CHARGES THE JURY BEFORE HE OR SHE
7 MAKES UP HER MIND REGARDING PUNISHMENT. IF THE FACTS
8 PRESENTED WERE SO WARRANTED, THIS JUROR COULD BRING IN
9 A VERDICT OF LIFE IMPRISONMENT. ALSO, IF THE FACTS
10 PRESENTED, THE JUROR COULD BRING IN A VERDICT OF THE
11 DEATH PENALTY.

12 SO, THOSE ARE THE THREE TYPES OF JURORS.. THE ONE
13 WHO FEELS LIKE ONCE MURDER HAS BEEN ESTABLISHED, THE
14 DEATH PENALTY IS APPROPRIATE IN EVERY CASE. THAT'S
15 TYPE #1. TYPE #2 IS THE ONE THAT WOULD NEVER UNDER ANY
16 CIRCUMSTANCES GIVE THE DEATH PENALTY. AND TYPE #3 IS
17 THE TYPE THAT WOULD LISTEN TO THE EVIDENCE AND DECIDE
18 THE CASE BASED UPON THE EVIDENCE AND WHETHER THE STATE
19 HAS PROVEN THE AGGRAVATING CIRCUMSTANCES.

20 NOW, HAVING EXPLAINED THAT TO YOU, WHICH
21 CLASSIFICATION OF JUROR WOULD YOU SAY THAT YOU FALL
22 UNDER.

23 JUROR #13: #3.

24 THE COURT: SO, YOU THINK YOU FALL UNDER #3. YOU COULD
25 LISTEN TO THE EVIDENCE AND DECIDE THE CASE BASED UPON

HEARING

82

1 WHAT THE FACTS ARE, IS THAT RIGHT?

2 JUROR #13: YES, SIR.

3 THE COURT: OKAY. AND COULD YOU LISTEN TO THE LAW AND APPLY
4 THE LAW AS I CHARGE IT TO YOU?

5 JUROR #13: YES, SIR.

6 THE COURT: EVEN IF YOU DON'T AGREE WITH WHAT I SAY THE LAW
7 IS OR YOU THOUGHT THE LAW SHOULD BE SOME OTHER WAY, YOU
8 FEEL THAT YOU WOULD BE ABLE TO APPLY THE LAW IF I TELL
9 YOU THAT'S WHAT THE LAW IS?

10 JUROR #13: YES, SIR.

11 THE COURT: NOW, HAVE YOU HEARD OR READ ANYTHING ABOUT THIS
12 CASE?

13 JUROR #13: NO, SIR.

14 THE COURT: ALL RIGHT. AS I WAS EXPLAINING TO YOU A WHILE
15 AGO, YOU AND YOUR FELLOW JURORS WOULD BE RESPONSIBLE
16 FOR PUNISHMENT, AND I TOLD YOU THAT AGGRAVATED
17 CIRCUMSTANCES ARE FACTS, INCIDENTS, DETAILS OR
18 OCCURRENCES THAT OUR GENERAL ASSEMBLY HAS DECLARED MAKE
19 THE OFFENSE WORD. THAT IS THEY INCREASE THE ENORMITY
20 OF THE MURDER OR ADD TO THE INJURY OF THE CRIME.
21 MITIGATING CIRCUMSTANCES ARE EXACTLY THE OPPOSITE.
22 THEY ARE FACTS, INCIDENTS, DETAILS OR OCCURRENCES THAT
23 THE GENERAL ASSEMBLY HAS DECLARED REDUCES THE SEVERITY
24 OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
25 EXTENUATING OR REDUCING THE DEGREE OF MORAL CULPABILITY

HEARING

83

1 OR RESPONSIBILITY. IF YOU WERE A JUROR IN THAT
2 SITUATION, DEPENDING UPON THE FACTS AND CIRCUMSTANCES
3 OF THE CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING
4 AND MITIGATING CIRCUMSTANCES, WOULD YOU BE ABLE TO
5 CONSIDER THOSE FACTS AND THEN SIGN A VERDICT FORM FOR
6 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, IF
7 YOU FOUND THAT THERE WERE AGGRAVATING CIRCUMSTANCES?

8 JUROR #13: YES, SIR.

9 THE COURT: IF YOU WERE A JUROR IN THAT SITUATION, AGAIN
10 DEPENDING ON THE FACTS AND CIRCUMSTANCES OF THE CASE,
11 INCLUDING THE CONSIDERATION OF THE AGGRAVATING AND
12 MITIGATING CIRCUMSTANCES, WOULD YOU BE ABLE TO SIGN A
13 VERDICT FORM FOR DEATH, WHICH IN THIS STATE IS BY
14 ELECTROCUTION OR BY LETHAL INJECTION?

15 JUROR #13: YES, SIR.

16 THE COURT: ALL RIGHT. NOW, MR. BEARD, IF YOU'RE CHOSEN FOR
17 A JURY IN THIS CASE, YOU WOULD BE HOUSED IN A MOTEL
18 DURING THE TRIAL FOR APPROXIMATELY SIX DAYS. EXCEPT
19 FOR THE PERSONAL INCONVENIENCE THAT THIS WOULD POSE OR
20 THIS WOULD CAUSE YOU, WOULD THIS POSE ANY SERIOUS
21 DANGER TO THE HEALTH OR WELL BEING OF YOURSELF OR ANY
22 OF THE PERSONS THAT ARE DEPENDENT UPON YOU?

23 JUROR #13: NO, SIR.

24 THE COURT: ALL RIGHT. THESE ARE ALL THE QUESTIONS I HAVE
25 FOR YOU. ANSWER ANY QUESTIONS MR. SALEEBY MIGHT HAVE.

HEARING

84

1 MR. SALEEBY: MR. BEARD, I'M DUDLEY SALEEBY. I WORK WITH
2 SOLICITOR JACKSON HERE. I NEED TO ASK YOU A COUPLE OF
3 QUESTIONS, IF I COULD. I DON'T MEAN TO BELABOR THIS,
4 BUT THE HIGH SCHOOL THAT YOU GRADUATED FROM, IS THAT
5 CRESTWOOD?

6 JUROR #13: YES, SIR.

7 MR. SALEEBY: ALL RIGHT. AND THE FORT UNION THAT YOU WENT
8 TO, IS THAT FORT UNION UP IN VIRGINIA?

9 JUROR #13: YES, SIR.

10 MR. SALEEBY: AND HOW LONG DID YOU GO TO FORT UNION?

11 JUROR #13: FOR A YEAR.

12 MR. SALEEBY: OKAY. WAS THAT BEFORE HIGH SCHOOL OR AFTER
13 HIGH SCHOOL?

14 JUROR #13: AFTER HIGH SCHOOL, POST-GRADUATE.

15 MR. SALEEBY: OKAY. WAS THAT PRIOR TO GETTING INTO COLLEGE?

16 JUROR #13: YES, HELP ME WITH MY SAT SCORES. I WAS ALREADY
17 SIGNED, BUT I NEEDED TO GET MY SAT SCORE UP FIRST.

18 MR. SALEEBY: ALREADY SIGNED?

19 JUROR #13: UH-HUH (AFFIRMATIVE RESPONSE).

20 MR. SALEEBY: WERE YOU GOING TO PLAY BALL SOMEWHERE?

21 JUROR #13: YES, SIR.

22 MR. SALEEBY: WHERE?

23 JUROR #13: UVA.

24 MR. SALEEBY: OKAY. UVA RECRUITED YOU OUT OF CRESTWOOD?

25 JUROR #13: YES, SIR.

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HEARING

85

1 MR. SALEEBY: AND TO PLAY WHAT POSITION, IF I MIGHT ASK?
2 JUROR #13: D-LINE.
3 MR. SALEEBY: OKAY. DEFENSIVE LINE, BUT YOU WOUND UP NOT
4 GOING TO UVA BUT TO BENEDICT?
5 JUROR #13: YES, SIR.
6 MR. SALEEBY: PLAY ANY BALL FOR THEM?
7 JUROR #13: YES, SIR.
8 MR. SALEEBY: HOW MANY YEARS?
9 JUROR #13: THREE.
10 MR. SALEEBY: OKAY. DID YOU GET YOUR JUROR QUESTIONNAIRE,
11 THE THREE-PAGE THING?
12 JUROR #13: I DON'T THINK SO.
13 MR. SALEEBY: IT'S PROBABLY BEEN A WHILE, BUT DID THEY SEND
14 YOU ONE OF THOSE?
15 JUROR #13: YES, SIR.
16 MR. SALEEBY: DID YOU FILL IT OUT?
17 JUROR #13: YES, SIR.
18 MR. SALEEBY: OKAY. DID YOU HAVE ANY PROBLEM WITH IT?
19 JUROR #13: NO, SIR.
20 MR. SALEEBY: DID YOU HAVE ANY PROBLEM UNDERSTANDING THE FORM
21 THAT THE JUDGE HAD BACK IN THE JURY ROOM? YOU KNOW,
22 THE ONE HE ASKED YOU ABOUT FIRST?
23 JUROR #13: YES, SIR.
24 MR. SALEEBY: WHAT KIND OF PROBLEM DID YOU HAVE WITH IT?
25 JUROR #13: WELL, BASICALLY UNDERSTANDING EVERYTHING SINCE

HEARING

86

1 IT'S MY FIRST TIME BEING UP HERE, BUT AFTER HE
2 EXPLAINED IT TO ME, I UNDERSTAND IT.

3 MR. SALEEBY: I UNDERSTAND. I UNDERSTAND THAT HELPED YOU.

4 I WANTED TO ASK YOU ABOUT YOUR QUESTIONNAIRE, AND I
5 APOLOGIZE FOR HAVING TO DO THIS, BUT I HOPE YOU'LL
6 UNDERSTAND IT'S PART OF OUR JOB. DID YOU UNDERSTAND
7 THE QUESTION ABOUT HAVE YOU EVER BEEN CHARGED WITH A
8 CRIME?

9 JUROR #13: YES, SIR.

10 MR. SALEEBY: AND YOU INDICATED NO?

11 JUROR #13: YES, SIR.

12 MR. SALEEBY: IS THAT CORRECT?

13 JUROR #13: YES, SIR.

14 MR. SALEEBY: WERE YOU EVER CHARGED IN SUMTER COUNTY IN 2002?

15 LET ME SEE, WERE YOU BORN ON NOVEMBER 30TH OF 1980?

16 JUROR #13: YES, SIR.

17 MR. SALEEBY: AND IS YOUR SOCIAL SECURITY NUMBER 530-23-2335?

18 JUROR #13: YES, SIR.

19 MR. SALEEBY: OKAY. WERE YOU CHARGED HERE IN SUMTER COUNTY
20 WITH AN ASSAULT IN 2002?

21 JUROR #13: ASSAULT?

22 MR. SALEEBY: YES, SIR.

23 JUROR #13: NO, SIR.

24 MR. SALEEBY: THAT WASN'T YOU?

25 JUROR #13: HUH-UH (NEGATIVE RESPONSE).

HEARING

87

1 MR. SALEEBY: WERE YOU CHARGED IN 2003 WITH BREAKING INTO AN
2 AUTOMOBILE OR A TANK, FUEL TANK?

3 JUROR #13: A FUEL TANK?

4 MR. SALEEBY: THE CHARGE IS BREAKING INTO AN AUTOMOBILE OR
5 ANYTHING THAT HOLDS FUEL? IT'S A BREAKING AND ENTERING
6 A VEHICLE OR SOMETHING ASSOCIATED WITH A VEHICLE.

7 JUROR #13: OH, SOMEBODY ACCUSED ME OF THAT, BUT THEY THREW
8 IT OUT, BECAUSE THEY KNEW IT WASN'T TRUE. THE FELLOW
9 COME IN AT ... I FORGOT WHAT IT'S CALLED. RIGHT OVER
10 ACROSS THE STREET AT THE LIBRARY?

11 MR. SALEEBY: I DON'T KNOW. I'VE GOT A PIECE OF PAPER HERE
12 THAT I HAVEN'T SEEN BEFORE. THAT'S WHY I'M ASKING YOU.
13 SOMETIMES WE GET PEOPLE ...

14 JUROR #13: I MEAN, I WASN'T ACCUSED FOR ANYTHING OR NOTHING
15 LIKE THAT, YOU KNOW. I DON'T HAVE ANYTHING ON MY
16 RECORD.

17 MR. SALEEBY: WERE YOU ARRESTED?

18 JUROR #13: YES, SIR.

19 MR. SALEEBY: WERE YOU TAKEN TO THE JAIL?

20 JUROR #13: YES, SIR.

21 MR. SALEEBY: POST A BOND OR WERE YOU JUST LET OUT BY SIGNING
22 YOUR OWN NAME?

23 JUROR #13: NO. MY MOTHER CAME.

24 MR. SALEEBY: HAVE YOU GOT A LAWYER ON THAT?

25 JUROR #13: NO, SIR.

HEARING

88

1 MR. SALEEBY: IS THE CHARGE STILL PENDING?

2 JUROR #13: NO, SIR. I HAVE NO CHARGES PENDING.

3 MR. SALEEBY: YOU'RE SURE?

4 JUROR #13: POSITIVE.

5 MR. SALEEBY: OKAY. DID YOU HAVE TO COME UP HERE TO THE
6 COURT TO ANSWER A ROLL CALL OR ANYTHING?

7 JUROR #13: YES, SIR.

8 MR. SALEEBY: HOW MANY TIMES?

9 JUROR #13: IT WAS FOR LIKE, IT WAS A LONG TIME I CAME UP
10 HERE FOR ABOUT I WANT TO SAY THREE, THREE AND A HALF
11 YEARS.

12 MR. SALEEBY: AND DID YOU HAVE A LAWYER?

13 JUROR #13: MR. CHARLES T. BROOKS.

14 MR. SALEEBY: MR. BROOKS?

15 JUROR #13: YES, SIR.

16 MR. SALEEBY: AND THAT WAS ON THIS BREAKING AND ENTERING
17 CHARGE?

18 JUROR #13: YES, SIR.

19 MR. SALEEBY: DID YOU HAVE A CHARGE BEFORE THE BREAKING AND
20 ENTERING CHARGE? THAT'S WHAT I'M TRYING TO FIGURE OUT
21 ON THIS PIECE OF PAPER.

22 JUROR #13: WELL, I HAD MR. CHARLES T. BROOKS FOR AN INCIDENT
23 BEFOREHAND.

24 MR. SALEEBY: WHAT WAS THAT?

25 JUROR #13: I DONE FORGOT WHAT THAT CHARGE WAS, BUT I KNEW

HEARING

89

1 THEY THREW IT OUT.

2 MR. SALEEBY: WHAT AGENCY MADE THESE CHARGES, IF YOU
3 REMEMBER?

4 JUROR #13: WHAT DO YOU MEAN BY AGENCY?

5 MR. SALEEBY: LIKE WHAT POLICE AGENCY, LIKE SHERIFF, HIGHWAY
6 PATROL, CITY.

7 JUROR #13: SHERIFF.

8 MR. SALEEBY: ALL RIGHT. BUT BOTH CASES, ASSAULT AND THE
9 MOST RECENT?

10 JUROR #13: YES, SIR.

11 MR. SALEEBY: ALL RIGHT. AND DO YOU KNOW WHAT PERSON, WHAT
12 OFFICER?

13 JUROR #13: MR. DANNY HOLCOMB.

14 MR. SALEEBY: ALL RIGHT. THIS CASE INVOLVES A SHERIFF'S
15 DEPUTY, AND THERE WILL BE A LOT OF SHERIFF'S DEPUTIES
16 INVOLVED, SO WE NEED TO KNOW IF HAVING A SHERIFF'S
17 DEPUTY UP HERE WOULD CAUSE YOU ANY PARTICULAR PROBLEMS,
18 SINCE THEY MADE SOME CASES ON YOU.

19 JUROR #13: YES, SIR.

20 MR. SALEEBY: IT WOULD?

21 JUROR #13: YES, SIR.

22 MR. SALEEBY: EXPLAIN THAT TO ME.

23 JUROR #13: I AIN'T NEVER BEEN IN A COURTROOM BEFORE, YOU
24 KNOW. I'M A LITTLE JITTERY, THAT'S ALL.

25 THE COURT: RELAX. THERE ARE NO RIGHT OR WRONG ANSWERS. WE

HEARING

90

1 JUST NEED TO KNOW THIS INFORMATION, SO BE JUST AS
2 HONEST AS YOU POSSIBLY CAN.

3 JUROR #13: OKAY.

4 MR. SALEEBY: AND SEE, WHAT I'M ASKING IS YOU HAVING BEEN
5 CHARGED BY THE SHERIFF'S DEPARTMENT, IF YOU HEAR
6 WITNESSES FROM THE SHERIFF'S DEPARTMENT, ARE YOU GOING
7 TO HAVE A HARD TIME BELIEVING THEM SINCE THEY MADE
8 CHARGES ON YOU, THE CHARGES THAT GOT DISMISSED?

9 JUROR #13: NO, SIR.

10 MR. SALEEBY: HOW ABOUT THE PEOPLE WHO ARE PROSECUTING THE
11 CASES, MR. JACKSON AND MYSELF?

12 JUROR #13: I DON'T HAVE NO PROBLEMS WITH Y'ALL.

13 MR. LITTLEJOHN: I'M GOING TO HAVE TO OBJECT. HE SAYS TO HIS
14 UNDERSTANDING, BOTH HIS CHARGES ARE OVER WITH.

15 THE COURT: ALL RIGHT, SIR. I'LL OVERRULE THE OBJECTION AT
16 THIS TIME. I THINK THAT HE'S EXPLORING A POSSIBLE
17 BIAS, AND I WILL ALLOW HIM TO DO THAT.

18 MR. SALEEBY: YOU UNDERSTAND WE'VE GOT A JOB TO DO?

19 JUROR #13: YES, SIR.

20 MR. SALEEBY: AND THAT JOB MIGHT INCLUDE AT THIS TIME OR A
21 LATER TIME PROSECUTING YOU, IF THAT WOULD CAUSE YOU A
22 PROBLEM, WE NEED TO KNOW NOW.

23 JUROR #13: NO, SIR. THAT WOULDN'T CAUSE ME NO PROBLEM.

24 MR. SALEEBY: AND DID YOU UNDERSTAND WHEN YOU GOT THE
25 QUESTIONNAIRE, HAD YOU EVER BEEN CHARGED, DID YOU

HEARING

91

1 UNDERSTAND THAT YOU HAD ACTUALLY BEEN CHARGED WITH
2 SOMETHING IN THE PAST?

3 JUROR #13: I THOUGHT THAT MEANT ONLY LIKE FOR YOUR RECORD
4 AND A FELONY OR SOMETHING LIKE THAT.

5 MR. SALEEBY: I SEE. I THINK YOU, SIR.

6 THE COURT: MR. LITTLEJOHN?

7 MR. LITTLEJOHN: GOOD AFTERNOON, MR. BEARD.

8 JUROR #13: HELLO, SIR.

9 MR. LITTLEJOHN: MR. BEARD, MY NAME IS CAM LITTLEJOHN. I,
10 ALONG WITH JIM BABB, REPRESENT BOBBY WAYNE STONE, WHO
11 IS THE DEFENDANT IN THIS CASE. I JUST HAVE A FEW BRIEF
12 QUESTIONS FOR YOU. I BELIEVE YOU INDICATED YOU HAD NOT
13 READ OR HEARD ANYTHING ABOUT THIS CASE IN THE PRESS?

14 JUROR #13: NO, SIR.

15 MR. LITTLEJOHN: OKAY. DO I UNDERSTAND YOU'RE WORKING AS A
16 DOG GROOMER NOW?

17 JUROR #13: I WAS.

18 MR. LITTLEJOHN: YOU WERE?

19 JUROR #13: YES, SIR. I JUST RECENTLY QUIT.

20 MR. LITTLEJOHN: ARE YOU WORKING NOW?

21 JUROR #13: NO, SIR.

22 MR. LITTLEJOHN: LOOKING FOR A JOB?

23 JUROR #13: YES, SIR.

24 MR. LITTLEJOHN: OKAY. MR. BEARD, WHEN THE JUDGE WAS
25 EXPLAINING TO YOU THE THREE TYPES OF JURORS, YOU

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HEARING

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1 INDICATED YOU THOUGHT YOU WERE THE THIRD TYPE OF JUROR.

2 JUROR #13: YES, SIR.

3 MR. LITTLEJOHN: AND YOU INDICATED, AND CORRECT ME IF I'M
4 WRONG, THAT YOU COULD LISTEN TO ALL THE EVIDENCE IN
5 THIS CASE AND THEN BASED ON THE LAW AND THE
6 INSTRUCTIONS THAT THE JUDGE GIVES YOU, YOU COULD EITHER
7 GO ALONG WITH A LIFE SENTENCE OR A DEATH SENTENCE?

8 JUROR #13: YES, SIR.

9 MR. LITTLEJOHN: DEPENDING ON WHETHER CERTAIN THINGS WERE
10 FOUND?

11 JUROR #13: YES, SIR.

12 MR. LITTLEJOHN: YOU WOULDN'T HAVE ANY PROBLEM, DEPENDING ON
13 WHAT YOUR VIEW OF THE CASE IS, EITHER GOING WITH ONE OF
14 THOSE TWO VERDICTS?

15 JUROR #13: NO, SIR.

16 MR. LITTLEJOHN: OKAY. AND MR. BEARD, WOULD YOU HAVE ANY
17 DIFFICULTY LISTENING TO WHAT HIS HONOR EXPLAINED TO YOU
18 BRIEFLY MITIGATING CIRCUMSTANCES? BY THAT I MEAN
19 EVIDENCE CONCERNING THE DEFENDANT THAT MIGHT BEAR ON
20 WHETHER HE SHOULD GET A LIFE SENTENCE OR A LESSER
21 SENTENCE. WOULD YOU BE ABLE TO LISTEN TO THAT EVIDENCE
22 AND WEIGH IT?

23 JUROR #13: YES, SIR.

24 MR. LITTLEJOHN: AND CONSIDER THAT?

25 JUROR #13: YES, SIR.

HEARING

93

1 MR. LITTLEJOHN: OKAY. THANK YOU, MR. BEARD.

2 THE COURT: ALL RIGHT. MR. BEARD, LET ME ASK YOU TO STEP OUT
3 IN THE HALLWAY FOR JUST A MINUTE. DON'T GO BACK IN THE
4 JURY ROOM. I'M GOING TO TAKE A COUPLE MATTERS UP WITH
5 THE ATTORNEYS, AND WE'LL BE WITH YOU IN JUST A MINUTE.
6 MR. JACKSON AND MR. SALEEBY?

7 MR. SALEEBY: WE HAVE NO MOTION.

8 THE COURT: ALL RIGHT.

9 MR. LITTLEJOHN: NO MOTIONS, YOUR HONOR.

10 THE COURT: ALL RIGHT. JUROR WILL BE FOUND TO BE QUALIFIED.
11 ASK MR. BEARD TO COME BACK IN, PLEASE. ALL RIGHT. MR.
12 BEARD, YOU HAVE BEEN QUALIFIED AS A JUROR IN THIS CASE,
13 AND I'M GOING TO EXCUSE YOU NOW. I DON'T KNOW EXACTLY
14 HOW LONG IT'S GOING TO TAKE US TO FINISH OUR
15 QUALIFICATION PROCESS AND TO ASK YOU WHEN TO BE BACK,
16 SO WHAT I'M GOING TO ASK THAT YOU DO, PLEASE, IS TO
17 CALL THE NUMBER THAT YOU WERE GIVEN. IF YOU DON'T HAVE
18 IT, MR. HERRING WILL HAVE IT FOR YOU ON A BLUE CARD.
19 IT'S GOT A TELEPHONE NUMBER ON THERE, AND THAT IS AN
20 ANSWERING MACHINE. I'M GOING TO ASK YOU TO CALL THAT
21 NUMBER AFTER 3:00 O'CLOCK TOMORROW AFTERNOON BETWEEN
22 3:00 AND 4:00, NOT BEYOND 4:00 BUT NOT BEFORE 3:00, ALL
23 RIGHT?

24 JUROR #13: YES, SIR.

25 THE COURT: AND ON THAT, THERE WILL BE SOME REPORTING

HEARING

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1 INSTRUCTIONS FOR YOU. IT WILL TELL YOU TO EITHER
2 REPORT AT A CERTAIN TIME, IT WILL DEFINITELY TELL YOU
3 TO REPORT AT A CERTAIN TIME. I CAN'T TELL YOU WHETHER
4 IT'S GOING TO BE LATER TOMORROW AFTERNOON, THAT IS
5 WEDNESDAY AFTERNOON, OR WHETHER IT'S GOING TO BE
6 THURSDAY MORNING, BECAUSE I'VE GOT TO SEE HOW FAR WE
7 CAN GET WITH THIS PROCESS. BUT IT WILL GIVE YOU
8 REPORTING INSTRUCTIONS FOR LATER TOMORROW AFTERNOON OR
9 POSSIBLY ON THURSDAY.

10 NOW, IN THE MEANTIME, DO NOT DISCUSS THIS CASE
11 WITH ANYONE. DO NOT ALLOW ANYONE TO DISCUSS IT WITH
12 YOU. DO NOT READ ANYTHING IN THE NEWSPAPER. DO NOT
13 LISTEN TO ANY TV REPORTS. ANYTHING COMES ON THE
14 TELEVISION ABOUT IT, JUST TURN THE VOLUME OFF. WHEN
15 YOU ... AND YOU DEFINITELY ARE GOING TO HAVE TO REPORT
16 BACK UP HERE. AT THIS TIME, I JUST DON'T KNOW WHETHER
17 IT'S GOING TO BE TOMORROW AFTERNOON LATE OR THURSDAY
18 MORNING. WHEN YOU DO REPORT BACK, COME UP HERE
19 PREPARED TO STAY FOR UP TO SIX DAYS. BRING YOUR
20 CLOTHING AND PERSONAL BELONGINGS AND THINGS THAT YOU
21 MIGHT NEED TO STAY FOR SIX DAYS. DO NOT BRING THEM
22 INTO THE COURTHOUSE. YOU CAN LEAVE THEM IN YOUR CAR.
23 AND IF YOU ARE SELECTED FOR THE JURY, WE'LL GO FROM
24 THERE. BUT YOU WILL NOT HAVE AN OPPORTUNITY TO GO HOME
25 AND GET THOSE ITEMS, SO GET THOSE THINGS TOGETHER

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HEARING

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1 TONIGHT AND HAVE THEM ALL READY, SO IF YOUR
2 INSTRUCTIONS TOMORROW AFTERNOON ARE TO REPORT, THAT YOU
3 CAN BE READY. THANK YOU.

4 JUROR #13: THANK YOU, SIR.

5 THE COURT: ALL RIGHT. JUROR #150. RELAX, TAKE IT EASY FOR
6 A MINUTE. WE NEED TO ASK YOU SOME QUESTIONS. DON'T
7 FEEL INTIMIDATED. ALL WE WANT YOU TO DO IS TO GIVE US
8 HONEST ANSWERS TO THE QUESTIONS WE'RE GOING TO PUT TO
9 YOU. I WILL TELL YOU THAT EARLIER TODAY, YOU WERE
10 SWORN AND SO YOU ARE STILL UNDER THAT OATH TO GIVE US
11 HONEST AND TRUTHFUL ANSWERS. DO YOU UNDERSTAND THAT?

12 JUROR #150: (NODS HEAD AFFIRMATIVELY).

13 THE COURT: NOW, YOU'RE GOING TO HAVE TO SPEAK UP LOUDLY
14 ENOUGH FOR ME TO HEAR YOU, FOR THE LAWYERS TO HEAR YOU
15 AND WE'VE GOT TO HAVE VERBAL ANSWERS SO YOU NEED TO
16 LEAN UP AND GET TO THAT MICROPHONE. THE QUESTIONS
17 WE'RE GOING TO ASK YOU ARE NOT DESIGNED TO INVADGE YOUR
18 PRIVACY IN ANY WAY, BUT IT IS NECESSARY FOR US TO GET
19 THIS INFORMATION. THERE ARE NO RIGHT OR WRONG ANSWERS
20 TO THE QUESTIONS WE'RE ABOUT TO ASK YOU. WE'RE SIMPLY
21 SEEKING YOUR POINT OF VIEW, SO JUST BE OPEN AND HONEST
22 SO WE CAN MAKE A DETERMINATION ON THAT.

23 HAVE YOU HAD AN OPPORTUNITY TO ... BEFORE I SAY
24 THAT, LET ME SAY THAT AS YOU KNOW, THIS IS THE CASE OF
25 THE STATE OF SOUTH CAROLINA V. BOBBY WAYNE STONE, AND

HEARING

96

1 THE QUESTION OF GUILT OR INNOCENSE OF THE CRIME OF
2 MURDER HAS ALREADY BEEN DECIDED, AND THAT ISSUE IS NOT
3 GOING TO HAVE TO BE DECIDED BY THE JURY. THE FIRST
4 THING THE JURY IS GOING TO HAVE TO DECIDE IS WHETHER OR
5 NOT THERE ARE CERTAIN STATUTORY AGGRAVATED
6 CIRCUMSTANCES, AND THEN DEPENDING ON THE JURY'S VIEW OF
7 THOSE FACTS, THEY WILL THEN DECIDE WHAT SENTENCE TO
8 RECOMMEND TO THE COURT. DO YOU UNDERSTAND THAT THAT IS
9 THE ISSUE THAT IS BEFORE THE JURY AND THAT THE JURY IS
10 GOING TO HAVE TO DECIDE?

11 JUROR #150: YES, SIR.

12 THE COURT: AND DO YOU UNDERSTAND THAT WHEN I SAY RECOMMEND
13 A SENTENCE, THAT IT'S NOT A RECOMMENDATION AT ALL, THAT
14 I WILL FOLLOW WHATEVER SENTENCE THE JURY MAKES A
15 DETERMINATION ON? YOU UNDERSTAND THAT?

16 JUROR #150: YEAH.

17 THE COURT: ALL RIGHT. NOW, HAVE YOU HAD AN OPPORTUNITY TO
18 LOOK AT THE JURY SHEET THAT YOU WERE GIVEN BACK IN THE
19 JURY ROOM?

20 JUROR #150: YES, SIR.

21 THE COURT: AND IN THAT, IT LISTS THREE TYPES OF JURORS, TYPE
22 #1, TYPE #2 AND TYPE #3. WHICH TYPE OF JUROR DO YOU
23 BELIEVE BEST DESCRIBES YOU?

24 JUROR #150: I RECKON I'D HAVE TO BE #1.

25 THE COURT: #1?

HEARING

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1 JUROR #150: YEAH.

2 THE COURT: ALL RIGHT. NOW, WHAT DO YOU UNDERSTAND A JUROR
3 #1, WHAT DOES THAT TITLE?

4 JUROR #150: I RECKON THAT'S WHERE YOU CAN'T TELL NOBODY WHAT
5 TO DO OR NOTHING LIKE THAT. I RECKON THAT'S WHAT IT
6 MEANS.

7 THE COURT: WELL, I'M NOT GOING TO TELL YOU WHICH ONE IS #1,
8 #2 OR #3, BUT I'M GOING TO BRIEFLY RECITE THESE TO YOU,
9 AND YOU TELL ME WHICH KIND YOU ARE. ONE OF THE TYPES
10 IS A JUROR WHO UNDER NO CIRCUMSTANCES COULD EVER GIVE
11 THE DEATH PENALTY. ANOTHER TYPE IS A TYPE THAT LISTENS
12 TO THE EVIDENCE AND DETERMINES WHAT THE FACTS AND
13 CIRCUMSTANCES WERE IN AGGRAVATION AND MITIGATION, AND
14 THEN MAKE A DETERMINATION BASED UPON WHAT THEY HEAR IN
15 COURT. AND THE OTHER TYPE IS THE TYPE WHICH WOULD
16 SIMPLY FEEL THAT ANY TIME THERE'S A MURDER CONVICTION,
17 THAT THE JUROR IS REQUIRED TO RETURN A DEATH PENALTY.
18 NOW, OF THOSE THREE TYPES, WHICH ARE YOU?

19 JUROR #150: WHICH TYPE I WOULD BE?

20 THE COURT: SIR?

21 JUROR #150: I RECKON I'D HAVE TO BE #2.

22 THE COURT: ALL RIGHT. BY #2, EXPLAIN WHAT YOU MEAN.

23 JUROR #150: THAT'S WHERE YOU GO TO THE DEATH PENALTY, NOT
24 THE DEATH PENALTY, BUT THE LIFE IMPRISONMENT, I THINK.

25 THE COURT: ALL RIGHT. ARE YOU SAYING THAT UNDER THE

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HEARING

98

1 APPROPRIATE FACTS AND CIRCUMSTANCES, THAT YOU COULD,
2 DEPENDING ON THE AGGRAVATING CIRCUMSTANCES, THAT YOU
3 COULD RECOMMEND TO THIS COURT LIFE IMPRISONMENT?.

4 JUROR #150: I RECKON SO.

5 THE COURT: RECKON SO?

6 JUROR #150: YEAH.

7 THE COURT: ALL RIGHT. WHAT ABOUT UNDER THE APPROPRIATE
8 FACTS AND CIRCUMSTANCES COULD YOU RECOMMEND THE DEATH
9 PENALTY?

10 JUROR #150: WELL, I REALLY COULDN'T BECAUSE I DON'T KNOW
11 NOTHING ABOUT THE FELLOW. I DON'T KNOW NOTHING ABOUT
12 HIM.

13 THE COURT: ALL RIGHT. WELL, IF I TOLD YOU THAT PART OF THE
14 EVIDENCE IN THIS CASE THAT THE STATE HAS GOT TO PRESENT
15 IS GOING TO BE WHAT WE CALL AGGRAVATING CIRCUMSTANCES
16 THAT MAKES THIS CASE, THAT GOT PROVED BEYOND A
17 REASONABLE DOUBT TO YOUR SATISFACTION, THAT THE MURDER
18 WAS COMMITTED UNDER AGGRAVATED CIRCUMSTANCES. THE
19 DEFENDANT, AT THE SAME TIME, HAS THE RIGHT TO SHOW
20 MITIGATING CIRCUMSTANCES, THAT IS CERTAIN REASONS THAT
21 HIS SENTENCE SHOULD BE LESSENER. AFTER HEARING BOTH
22 THE AGGRAVATING CIRCUMSTANCES AND THE MITIGATING
23 CIRCUMSTANCES, WOULD YOU BE ABLE TO SIGN A VERDICT FORM
24 THAT INCLUDES THE DEATH PENALTY?

25 JUROR #150: I WOULDN'T WANT TO.

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HEARING

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1 THE COURT: I UNDERSTAND THAT YOU WOULDN'T WANT TO, BUT THE
2 QUESTION IS WOULD YOU BE ABLE TO WEIGH THE EVIDENCE
3 BASED UPON THE FACTS AND IN THE APPROPRIATE CASE, IF IT
4 WAS PROVEN TO YOU BEYOND A REASONABLE DOUBT, TO BE ABLE
5 TO SIGN SUCH A VERDICT?

6 JUROR #150: I RECKON I COULD.

7 THE COURT: ALL RIGHT. NOW, LET ME ASK YOU A COUPLE OF OTHER
8 QUESTIONS. HAVE YOU READ OR HEARD ANYTHING ABOUT THIS
9 CASE IN ANY OF THE NEWS MEDIA, THE TELEVISION OR THE
10 NEWSPAPER?

11 JUROR #150: NO, SIR.

12 THE COURT: OKAY. AND THE FINAL THING THAT I'M GOING TO ASK
13 YOU BEFORE I LET THE LAWYERS ASK YOU SOME QUESTIONS IS
14 IF YOU ARE CHOSEN AS A JUROR IN THIS CASE, I KNOW IT
15 WOULD BE INCONVENIENT, BUT DO YOU UNDERSTAND IF YOU ARE
16 CHOSEN AS A JUROR, YOU WOULD BE HOUSED IN A MOTEL
17 DURING THE TRIAL FOR APPROXIMATELY SIX DAYS, AND EXCEPT
18 FOR THE PERSONAL INCONVENIENCE, WOULD THIS POSE A
19 SERIOUS DANGER TO THE HEALTH AND WELL BEING OF YOURSELF
20 OR ANY OF THOSE THAT ARE DEPENDENT UPON YOU?

21 JUROR #150: NO, BUT I MIGHT HAVE TO CHECK ON MY WIFE EVERY
22 NOW AND THEN, BECAUSE MY WIFE SOMETIMES HAS TO HAVE
23 MEDICINE AND STUFF, BECAUSE SHE CAN'T GET AROUND A LOT
24 REAL GOOD.

25 THE COURT: WELL, THAT'S WHAT I NEED TO KNOW. TELL ME ABOUT

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HEARING

100

1 ... AGAIN, I'M NOT TRYING TO PRY.

2 JUROR #150: SHE'S GOT HIGH BLOOD AND SUGAR AND STUFF LIKE
3 THAT.

4 THE COURT: WELL, WHAT I'M SAYING IS IN THIS CIRCUMSTANCE,
5 YOU WOULD BE ACTUALLY WHAT WE CALL SEQUESTERED AT A
6 MOTEL FOR UP TO SIX DAYS, AND WOULD THAT CAUSE A
7 SERIOUS PROBLEM AS FAR AS YOUR WIFE IS CONCERNED
8 BECAUSE OF HER ILLNESS? WOULD THAT CAUSE ANY SERIOUS
9 PROBLEMS WITH REGARD TO HER PHYSICAL CONDITION?

10 JUROR #150: NO. MY DAUGHTER STAYS AT THE HOUSE.

11 THE COURT: ALL RIGHT. SO, YOUR DAUGHTER WOULD BE ABLE TO
12 TAKE CARE OF THAT, IF NECESSARY?

13 JUROR #150: YES.

14 THE COURT: ALL RIGHT. THOSE ARE ALL THE QUESTIONS THAT I
15 HAVE. PLEASE ANSWER ANY QUESTIONS THAT THE STATE MAY
16 HAVE FOR YOU. MR. SALEEBY?

17 MR. SALEEBY: MY NAME IS DUDLEY SALEEBY. I'M PROSECUTING
18 THIS CASE WITH KELLY JACKSON. THE FIRST THING I'D ASK
19 YOU, SIR IS IF YOU WOULD TELL ME HOW TO PRONOUNCE YOUR
20 NAME.

21 JUROR #150: WILLIAM MONTIBONO.

22 MR. SALEEBY: WILLIAM MONTIBONO, DID I SAY THAT RIGHT?

23 JUROR #150: YEAH.

24 MR. SALEEBY: OKAY. I'LL SAY THAT TILL I GET IT RIGHT. THIS
25 IS PROBABLY YOUR FIRST TIME SITTING HERE LIKE THIS,

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HEARING

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1 RIGHT? WE'RE NOT ASKING YOU WHAT YOU ARE GOING TO DO
2 IN THIS CASE. YOU UNDERSTAND?

3 JUROR #150: YEAH.

4 MR. SALEEBY: YOU CAN'T MAKE THAT DECISION. NOBODY CAN MAKE
5 THAT DECISION UNTIL THEY HEAR EVERYTHING THAT THE LAW
6 ALLOWS THEM TO HEAR. YOU UNDERSTAND?

7 JUROR #150: YEAH.

8 MR. SALEEBY: THIS IS SORT OF A DIFFERENT PROCEEDING. THIS
9 MAN HAS ALREADY BEEN FOUND GUILTY OF MURDER, BUT THE
10 PEOPLE WHO HEAR THIS CASE NEED TO HEAR MORE ABOUT THE
11 CRIME, MORE ABOUT THE VICTIM, MORE ABOUT THE DEFENDANT,
12 AND THEN THOSE 12 PEOPLE DECIDE WHAT THEY THINK IS THE
13 RIGHT PUNISHMENT. YOU FOLLOW ME?

14 JUROR #150: YES, SIR.

15 MR. SALEEBY: COULD YOU SIT IN A CASE LIKE THAT AND MAKE YOUR
16 OWN DECISION?

17 JUROR #150: I COULD IF I HAD TO, BUT I'D HAVE TO LISTEN TO
18 EVERYBODY AND SEE WHAT THEY SAY.

19 MR. SALEEBY: ALL RIGHT. IF YOU LISTEN TO EVERYBODY AND YOU
20 HEARD WHAT THEY SAID, AND YOU THOUGHT THAT LIFE
21 IMPRISONMENT WAS THE RIGHT PUNISHMENT, COULD YOU VOTE
22 FOR THAT?

23 JUROR #150: YEAH, I RECKON I COULD.

24 MR. SALEEBY: IF YOU LISTEN TO EVERYBODY AND YOU HEARD, COULD
25 YOU MAKE UP YOUR OWN MIND IF YOU THOUGHT DEATH WAS THE

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HEARING

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1 PROPER PUNISHMENT, COULD YOU VOTE FOR THAT?

2 JUROR #150: I WOULD HATE TO HAVE TO KILL SOMEBODY.

3 MR. SALEEBY: I UNDERSTAND.

4 JUROR #150: BUT I RECKON I WOULD HAVE TO VOTE FOR IT IF
5 EVERYBODY ELSE VOTED FOR IT.

6 MR. SALEEBY: WELL, YOU ONLY VOTE YOUR OWN CONSCIOUS.

7 JUROR #150: I WOULDN'T WANT TO KILL NOBODY.

8 MR. SALEEBY: I UNDERSTAND.

9 JUROR #150: BECAUSE I DON'T KNOW NOTHING ABOUT THE FELLOW.

10 MR. SALEEBY: I UNDERSTAND. WE UNDERSTAND THAT PERFECTLY.
11 WE'RE NOT ASKING YOU WHAT YOU'RE GOING TO DO. WE'RE
12 JUST TRYING TO FIND OUT IF YOU FEEL THAT YOU COULD MAKE
13 EITHER OF THE TWO DECISIONS THAT THE LAW ALLOWS, NOT
14 THAT YOU WOULD WANT TO MAKE EITHER ONE OF THEM, BUT
15 COULD YOU MAKE EITHER ONE OF THEM. THAT'S WHAT I'M
16 ASKING YOU.

17 JUROR #150: YEAH, I'D HAVE TO. I RECKON SO.

18 MR. SALEEBY: IF YOU HEARD ALL THE EVIDENCE?

19 JUROR #150: YEAH.

20 MR. SALEEBY: AND YOU WOULD DECIDE IN YOUR OWN MIND,
21 REGARDLESS OF WHAT ANYBODY ELSE THOUGHT, THAT THE DEATH
22 PENALTY WAS THE PROPER PUNISHMENT, COULD YOU VOTE FOR
23 THE DEATH PENALTY?

24 JUROR #150: YEAH.

25 MR. SALEEBY: COULD YOU SIGN YOUR NAME TO A FORM THAT SAID

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HEARING

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1 THIS IS WHAT I BELIEVE?

2 JUROR #150: I RECKON, YEAH. I WOULD HAVE TO.

3 MR. SALEEBY: ON THE OTHER HAND, IF YOU WERE SATISFIED THAT
4 LIFE IMPRISONMENT WAS THE PROPER PUNISHMENT, COULD YOU
5 SIGN THAT?

6 JUROR #150: I COULD SIGN MY NAME PERFECT ON THAT.

7 MR. SALEEBY: ALL RIGHT, SIR. THANK YOU SO MUCH.

8 THE COURT: MR. LITTLEJOHN?

9 MR. LITTLEJOHN: MR. MONTIBONO, MY NAME IS CAM LITTLEJOHN,
10 AND I, ALONG WITH JIM BABB, REPRESENT BOBBY WAYNE STONE
11 OVER HERE. LET ME ASK YOU JUST A FEW QUESTIONS, IF I
12 MAY. YOU INDICATED ON YOUR JURY QUESTIONNAIRE THAT
13 YOUR SON-IN-LAW IS A STATE TROOPER?

14 JUROR #150: YEAH.

15 MR. LITTLEJOHN: HOW LONG HAS HE BEEN A STATE TROOPER?

16 JUROR #150: PROBABLY ABOUT 10 YEARS.

17 MR. LITTLEJOHN: YOU CLOSE TO HIM?

18 JUROR #150: HE'S IN MANNING. I MEAN, HE'S IN MANNING. I
19 LIVE IN SUMTER. I TALK TO HIM EVERY NOW AND THEN, BUT
20 HE'S A STATE TROOPER.

21 MR. LITTLEJOHN: ALL RIGHT. THIS CASE, THERE'S GOING TO BE
22 EVIDENCE THAT THE VICTIM IN THIS CASE, THE MAN THAT WAS
23 KILLED, WAS A SUMTER COUNTY SHERIFF'S DEPUTY. NOW, THE
24 FACT THAT HE WAS A LAW ENFORCEMENT OFFICER AND THE FACT
25 THAT YOUR SON-IN-LAW IS A STATE TROOPER, WOULD THAT

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HEARING

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1 CAUSE YOU ANY CONCERN OR WOULD THAT WEIGH IN YOUR MIND
2 AS YOU GO THROUGH THIS CASE?

3 JUROR #150: I COULD GO THROUGH IT, IF I HAD TO.

4 MR. LITTLEJOHN: ALL RIGHT.

5 JUROR #150: THAT WOULDN'T BOTHER ME.

6 MR. LITTLEJOHN: YOU DON'T THINK IT WOULD BOTHER YOU?

7 JUROR #150: I HOPE IT WOULDN'T. FAR AS I KNOW, IT WOULDN'T.

8 MR. LITTLEJOHN: YOU DON'T THINK THAT WOULD BE IN THE BACK OF
9 YOUR MIND AS YOU THOUGHT ABOUT THE FACTS AND THINGS
10 THAT ARE GOING TO COME OUT IN THIS TRIAL?

11 JUROR #150: IT MIGHT COME OUT IN THE BACK IN THE BACK OF MY
12 MIND, BECAUSE HE'S DONE SOME THINGS. I MEAN, STOPPED
13 PEOPLE ON THE ROAD AND STUFF, BECAUSE HE BROKE A BIG
14 DRUG DEAL IN MANNING.

15 MR. LITTLEJOHN: OKAY. SO, YOU'RE AWARE THAT HE'S BEEN IN
16 SITUATIONS WHERE HE MIGHT HAVE BEEN IN DANGER HIMSELF?

17 JUROR #150: YEAH.

18 MR. LITTLEJOHN: OKAY. WELL, THAT BEING THE CASE, DO YOU
19 THINK YOU COULD SET THAT ASIDE AND JUST LISTEN TO THIS
20 CASE WITHOUT WORRYING ABOUT YOUR SON-IN-LAW OR WHAT HE
21 MIGHT THINK ABOUT YOUR VERDICT IN THIS CASE?

22 JUROR #150: YEAH, I COULD.

23 MR. LITTLEJOHN: OKAY. YOU INDICATED THAT YOU HAVEN'T READ
24 OR SEEN ANY TELEVISION ACCOUNTS OR ANYTHING ABOUT THIS
25 CASE?

HEARING

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1 JUROR #150: NO, SIR.

2 MR. LITTLEJOHN: YOU DON'T KNOW ANYTHING ABOUT IT OTHER THAN
3 WHAT YOU'VE LEARNED THIS MORNING?

4 JUROR #150: RIGHT.

5 MR. LITTLEJOHN: HAVE YOU EVER HAD ANY DEALINGS WITH THE
6 SUMTER COUNTY SHERIFF'S DEPARTMENT?

7 JUROR #150: NO, SIR.

8 MR. LITTLEJOHN: DON'T KNOW ANY OF THE DEPUTIES?

9 JUROR #150: NO.

10 MR. LITTLEJOHN: JUST A COUPLE OF FINAL THINGS. IF YOU WERE
11 ON THIS JURY AND A MAJORITY OF THE JURORS WERE PRONE TO
12 GO ONE WAY AND YOU WERE PRONE TO GO ANOTHER WAY, DO YOU
13 THINK YOU COULD BE INDEPENDENT ENOUGH TO LISTEN TO WHAT
14 THEY HAD TO SAY BUT STILL MAKE YOUR OWN MIND UP ABOUT
15 WHAT THE VERDICT OUGHT TO BE?

16 JUROR #150: I THINK I COULD.

17 MR. LITTLEJOHN: OKAY. I KIND OF NEED TO KNOW.

18 JUROR #150: YEAH, I COULD.

19 MR. LITTLEJOHN: LET ME TELL YOU ONE THING. IT'S JUST BASED
20 ON EXPERIENCE DOING THESE KIND OF THINGS. THE JURY IS
21 GOING TO BE SEQUESTERED, AND SO, YOU'RE GOING TO BE
22 WITH THE OTHER 13 PEOPLE, YOU KNOW, FOR ABOUT FIVE OR
23 SIX DAYS LIKE THE JUDGE SAID, AND THERE ARE GOING TO BE
24 FRIENDSHIPS AND BONDS AND THAT SORT OF THING. BUT WHEN
25 IT COMES RIGHT DOWN TO IT AND YOU HAVE TO DECIDE WHAT

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HEARING

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1 THE CORRECT RESULT IN THIS CASE SHOULD BE, WOULD YOU BE
2 ABLE TO INDEPENDENTLY MAKE UP YOUR OWN MIND ...

3 JUROR #150: YES, SIR.

4 MR. LITTLEJOHN: ... WHAT THAT RESULT SHOULD BE?

5 JUROR #150: YES, SIR.

6 MR. LITTLEJOHN: OKAY. I BELIEVE THAT'S ALL I HAVE.

7 THE COURT: ALL RIGHT.

8 MR. SALEEBY: JUDGE, CAN I ASK ONE QUESTION I NEGLECTED TO?

9 WHO IS YOUR SON?

10 JUROR #150: ERIC MORRIS.

11 MR. SALEEBY: MORRIS?

12 JUROR #150: YEAH.

13 MR. SALEEBY: ALL RIGHT, THANKS.

14 THE COURT: ALL RIGHT. IF YOU WILL, STEP OUT IN THE HALL FOR
15 JUST A MINUTE. DON'T GO BACK TO THE JURY ROOM. WE'LL
16 BE WITH YOU IN JUST A SHORT PERIOD. WHAT SAYETH THE
17 STATE?

18 MR. SALEEBY: APPEARS QUALIFIED TO US.

19 THE COURT: DEFENSE?

20 MR. LITTLEJOHN: WE AGREE, YOUR HONOR.

21 THE COURT: ALL RIGHT. JUROR IS QUALIFIED. ASK HIM TO COME
22 BACK IN, PLEASE. AFTER HAVING CONFERRED WITH THE
23 LAWYERS, WE HAVE CONCLUDED THAT YOU ARE QUALIFIED TO
24 SERVE AS A JUROR IN THIS CASE, SO I'M GOING TO EXCUSE
25 YOU NOW WHILE WE GO THROUGH MORE QUALIFICATION

HEARING

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1 PROCEDURES. I WILL TELL YOU THAT UNTIL YOU REPORT BACK
2 UP HERE, YOU ARE NOT TO TALK TO ANYBODY ABOUT THIS
3 CASE. DO NOT ALLOW ANYONE TO TALK TO YOU ABOUT THE
4 CASE. DO NOT EVEN TALK TO YOUR FAMILY ABOUT IT. YOU
5 SHOULD JUST TELL THEM YOU ARE QUALIFIED. YOU HAVE NOT
6 BEEN ACTUALLY SELECTED FOR THE JURY, BECAUSE THE JURY
7 SELECTION WILL ACTUALLY TAKE PLACE LATER. BUT YOU ARE
8 QUALIFIED, AND I'M GOING TO ASK YOU TO REPORT BACK.
9 HOWEVER, I DON'T KNOW EXACTLY WHEN THAT'S GOING TO BE,
10 SO WHAT I'M GOING TO ASK THAT YOU DO IS YOU'VE GOT THE
11 BLUE CARD THAT YOU WERE GIVEN THAT'S GOT THE TELEPHONE
12 NUMBER ON IT. I'M GOING TO ASK THAT YOU CALL THAT
13 NUMBER BETWEEN 3:00 AND 4:00 O'CLOCK TOMORROW
14 AFTERNOON, AND WE WILL TELL YOU WHETHER IT'S GOING TO
15 BE NECESSARY FOR YOU TO REPORT BACK TOMORROW AFTERNOON
16 LATE OR WHETHER IT WILL BE THURSDAY MORNING. BUT IN
17 ANY EVENT, I WANT YOU TO CALL THAT NUMBER BETWEEN 3:00
18 AND 4:00. I WILL ALSO TELL YOU THAT WHEN YOU COME
19 BACK, YOU NEED TO BE PREPARED TO STAY UP TO SIX DAYS,
20 SO HAVE YOUR BAG PACKED, YOUR PERSONAL BELONGINGS AND
21 ANYTHING THAT YOU MIGHT NEED, BUT DO NOT BRING THOSE
22 THINGS INTO THE COURTHOUSE WITH YOU. LEAVE THEM IN
23 YOUR CAR. BUT YOU WILL NOT HAVE AN OPPORTUNITY TO GO
24 HOME AT WHATEVER TIME YOU DO REPORT BACK TO GET THOSE
25 THINGS. WITH THOSE ADMONITIONS AND THOSE INSTRUCTIONS,

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HEARING

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1 I'M GOING TO EXCUSE YOU NOW AND ASK YOU TO CALL
2 TOMORROW.

3 JUROR #150: LET ME ASK YOU THIS. DO I NEED TO GO BACK TO
4 WORK?

5 THE COURT: NO, SIR, DO NOT. COUNSEL BEFORE WE CALL THE
6 FIRST MEMBER OF THE NEXT PANEL, WE ARE ALREADY AT 5:30
7 AND JUST NOW GETTING TO THE 4:15 PANEL. I KNEW WE WERE
8 GOING TO HAVE TO BREAK A LITTLE THIS AFTERNOON. WHAT
9 DO YOU HAVE TO SAY, MR. JACKSON?

10 MR. JACKSON: JUDGE, I JUST TOLD MR. LITTLEJOHN, LET'S WALK
11 UP AND TALK TO THE JUDGE ABOUT THE SCHEDULE. I'VE
12 CANCELED WHAT I WAS GOING TO DO THIS EVENING.

13 THE COURT: ALL RIGHT. LET'S FINISH THE PANEL THEN. THAT
14 BEING THE CASE, WE'VE GOT TWO PANELS TO DO. LET'S GO
15 AHEAD AND GET THEM DONE THIS AFTERNOON. ANY OBJECTION
16 TO THAT?

17 MR. SALEEBY: NO, YOUR HONOR.

18 THE COURT: ANY OBJECTION, MR. LITTLEJOHN?

19 MR. LITTLEJOHN: NO, YOUR HONOR.

20 THE COURT: OKAY. THANK YOU.

21 (OFF THE RECORD CONVERSATION ABOUT TIMES)

22 THE COURT: MR. HERRING, BRING IN JUROR #219. GOOD
23 AFTERNOON, MS. TRAINER. YOU ARE BONNIE TRAINER, IS
24 THAT CORRECT?

25 JUROR #219: THAT'S CORRECT.

HEARING

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1 THE COURT: ALL RIGHT. MS. TRAINER, I WANT YOU JUST TO BE AT
2 EASE, AND I'LL TELL YOU THAT WE NEED TO ASK YOU SOME
3 QUESTIONS TO FIND IF YOU ARE QUALIFIED TO SERVE ON THIS
4 JURY. YOU WERE PREVIOUSLY PUT UNDER OATH, AND YOU'RE
5 STILL SWORN FOR THESE PROCEEDINGS. YOU UNDERSTAND
6 THIS?

7 JUROR #219: YES.

8 THE COURT: NOW, AS I SAID, BE AT EASE AND RELAX. WE'RE NOT
9 ASKING THESE QUESTIONS TO INVADE YOUR PRIVACY IN ANY
10 WAY, BUT IT IS NECESSARY DUE TO THE NATURE OF THESE
11 PROCEEDINGS. THERE ARE NO RIGHT OR WRONG ANSWERS TO
12 THE QUESTIONS WE'RE GOING TO ASK YOU. WE'RE SIMPLY
13 SEEKING YOUR POINT OF VIEW, SO ALL WE ASK IS THAT YOU
14 BE OPEN AND HONEST IN ANSWERING THE QUESTIONS, EITHER
15 FROM ME OR FROM THE LAWYERS. IS THAT FAIR ENOUGH?

16 JUROR #219: YES, SIR.

17 THE COURT: OKAY. NOW, HAVE YOU HAD AN OPPORTUNITY TO LOOK
18 AT THE JURY SHEET THAT YOU WERE GIVEN IN THE JURY ROOM?

19 JUROR #219: YES.

20 THE COURT: THERE ARE THREE TYPES OF JURORS, TYPE #1, TYPE #2
21 AND TYPE #3. WHICH OF THESE TYPES WOULD YOU SAY BEST
22 DESCRIBES YOU?

23 JUROR #219: TYPE #3.

24 THE COURT: TYPE #3, ALL RIGHT. NOW, TYPE #3, SO WHAT YOU'RE
25 SAYING IS THAT AFTER LISTENING TO THE FACTS AND

HEARING

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1 CIRCUMSTANCES SURROUNDING THIS CASE AND DEPENDING ON
2 THOSE FACTS AND CIRCUMSTANCES, YOU COULD EITHER FIND
3 LIFE IMPRISONMENT OR YOU COULD FIND THE FACTS WARRANT
4 PUNISHMENT OF DEATH, BUT IT DEPENDS ON THE FACTS AND
5 CIRCUMSTANCES, IS THAT CORRECT?

6 JUROR #219: THAT IS CORRECT.

7 THE COURT: OKAY. WOULD YOU BE ABLE TO LISTEN TO THE LAW AND
8 APPLY THE LAW AS THE COURT CHARGES OR INSTRUCTS IT TO
9 YOU, WHETHER YOU AGREE WITH THE LAW OR NOT? WOULD YOU
10 BE ABLE TO FOLLOW THE LAW, IF I TELL YOU THAT'S THE
11 LAW, WHETHER OR NOT YOU AGREE WITH IT?

12 JUROR #219: I BELIEVE SO.

13 THE COURT: NOW, DURING THE COURSE OF THIS TRIAL, AND I WILL
14 TELL YOU THAT MR. STONE HAS ALREADY BEEN FOUND TO BE
15 GUILTY OF THE CRIME OF MURDER. THE ONLY ISSUE WITH
16 THIS JURY IS WE ASK YOU TO DETERMINE WHETHER OR NOT
17 THERE ARE AGGRAVATING CIRCUMSTANCES WHICH WARRANT A
18 PUNISHMENT OF DEATH. YOU WILL BE, THE JURY WILL BE
19 REQUIRED TO FIND OUT IF THERE ARE AGGRAVATING
20 CIRCUMSTANCES, AND IF SO, WHAT THOSE AGGRAVATING
21 CIRCUMSTANCES ARE, AND THE STATE MUST PROOF THESE
22 AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT.
23 THE DEFENSE WILL ALSO HAVE THE RIGHT TO PRESENT
24 MITIGATING CIRCUMSTANCES TO YOU. I WILL TELL YOU THAT
25 AGGRAVATING CIRCUMSTANCES ARE FACTS OR DETAILS OR

HEARING

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1 OCCURRENCES THAT OUR LEGISLATURE HAS DECLARED BY
2 STATUTE MAKES THE CRIME WORSE. THAT IS IT AGGRAVATES
3 THE OFFENSE OF MURDER. IN OTHER WORDS, THE AGGRAVATING
4 CIRCUMSTANCES, WHEN ACCOMPANIED BY MURDER, INCREASE THE
5 ENORMITY AND ADD TO THE INJURY OF THE CRIME OF MURDER.
6 MITIGATING CIRCUMSTANCES ARE EXACTLY THE OPPOSITE.
7 THEY ARE FACTS, INCIDENTS AND DETAILS THAT THE GENERAL
8 ASSEMBLY HAS DECLARED REDUCES THE SEVERITY OF THE
9 OFFENSE OF MURDER AND MAY BE CONSIDERED AS EXTENUATING
10 OR REDUCING THE DEGREE OF CULPABILITY OR
11 RESPONSIBILITY. THERE ARE ALSO OTHER MITIGATING
12 CIRCUMSTANCES THAT ARE NOT STATUTORY MITIGATING
13 CIRCUMSTANCES. I TELL YOU THIS SO MY QUESTION IS IF
14 YOU COULD LISTEN TO THE TESTIMONY, DECIDE IF THERE WERE
15 AGGRAVATING OR MITIGATING CIRCUMSTANCES, AND THEN BASED
16 UPON THAT, WOULD YOU BE ABLE TO MAKE A DECISION AS TO
17 THE APPROPRIATE PUNISHMENT IN THIS CASE?

18 JUROR #219: YES.

19 THE COURT: YOU UNDERSTAND THAT WHEN I SAY THE JURY WOULD
20 RECOMMEND A PUNISHMENT, IT WOULD NOT BE A
21 RECOMMENDATION AT ALL? IT WOULD ACTUALLY BE ... THIS
22 COURT WILL FOLLOW WHATEVER RECOMMENDATION THE JURY
23 WOULD RETURN IN THIS CASE. IF THE JURY WERE TO
24 RECOMMEND LIFE IMPRISONMENT, THAT IS WHAT THE COURT
25 WOULD IMPOSE, OR IF THE JURY WERE THE RECOMMEND DEATH,

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1 THAT IS WHAT THE COURT WOULD IMPOSE. YOU UNDERSTAND
2 THAT IT'S NOT REALLY A RECOMMENDATION AS SUCH?

3 JUROR #219: OKAY.

4 THE COURT: NOW, IF YOU WERE A JUROR IN THIS SITUATION AND
5 DEPENDING ON THE FACTS OF THE CASE AND CONSIDERING THE
6 AGGRAVATING AND MITIGATING CIRCUMSTANCES, WOULD YOU BE
7 ABLE TO SIGN A VERDICT FOR LIFE IMPRISONMENT?

8 JUROR #219: YES.

9 THE COURT: SAME QUESTION IN REVERSE. IF YOU WERE A JUROR IN
10 THAT SITUATION, DEPENDING UPON YOUR VIEW OF THE FACTS
11 AND CIRCUMSTANCES, INCLUDING THE AGGRAVATING AND
12 MITIGATING CIRCUMSTANCES, WOULD YOU BE ABLE TO SIGN A
13 VERDICT FORM FOR DEATH, WHICH IN THIS STATE IS BY
14 EXECUTION OR BY LETHAL INJECTION?

15 JUROR #219: YES.

16 THE COURT: ALL RIGHT. NOW, MS. TRAINER, IF YOU'RE CHOSEN AS
17 A JUROR IN THIS CASE, YOU WILL BE HOUSED IN A MOTEL
18 DURING THIS TRIAL FOR APPROXIMATELY 10 DAYS, NOT 10
19 DAYS, SIX DAYS, AND EXCEPT FOR THE PERSONAL
20 INCONVENIENCE TO YOU, WOULD THIS POSE A SERIOUS DANGER
21 TO THE HEALTH AND WELL BEING OF YOURSELF OR ANY OF THE
22 PEOPLE WHO ARE DEPENDENT UPON YOU?

23 JUROR #219: NO.

24 THE COURT: ALL RIGHT. THAT'S ALL THE QUESTIONS THAT I HAVE
25 FOR YOU. PLEASE ANSWER ANY QUESTIONS THE STATE MAY

HEARING

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1 HAVE FOR YOU.

2 MR. SALEEBY: IS IT MS. TRAINER?

3 JUROR #219: YES.

4 MR. SALEEBY: MS. TRAINER, I'M DUDLEY SALEEBY. SOLICITOR
5 JACKSON AND I WILL BE PRESENTING THIS CASE. IF I
6 UNDERSTAND YOUR ANSWERS, YOU KNOW THAT YOU'RE NOT
7 REQUIRED TO MAKE ANY DECISION. YOU ONLY MAKE THE
8 DECISION AFTER YOU HEAR EVERYTHING THE COURT AND BOTH
9 SIDES WANT YOU TO HEAR. YOU UNDERSTAND THAT'S THE
10 PROCESS?

11 JUROR #219: YES.

12 MR. SALEEBY: AND YOU FEEL THAT YOU COULD FAIRLY DO THAT AND
13 DECIDE WHATEVER PUNISHMENT YOU THOUGHT WAS RIGHT UNDER
14 THE CIRCUMSTANCES?

15 JUROR #219: YES.

16 MR. SALEEBY: THANK YOU, MA'AM.

17 THE COURT: MR. LITTLEJOHN?

18 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. MS. TRAINER, MY NAME
19 IS CAM LITTLEJOHN, AND I, ALONG WITH JIM BABB,
20 REPRESENT BOBBY WAYNE STONE. MS. TRAINER, YOU MAY HAVE
21 BEEN ASKED THIS BEFORE. HAVE YOU HEARD ANYTHING ABOUT
22 THIS CASE OR READ ANYTHING ABOUT IT?

23 JUROR #219: YES.

24 MR. LITTLEJOHN: WHAT DID YOU READ ABOUT IT?

25 JUROR #219: I REMEMBER READING ABOUT THE CASE IN THE LOCAL

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1 NEWSPAPER AT THE TIME THAT IT HAPPENED.

2 MR. LITTLEJOHN: ALL RIGHT.

3 JUROR #219: I DO NOT REMEMBER SPECIFIC DETAILS.

4 MR. LITTLEJOHN: OKAY. HAVE YOU READ ANYTHING ABOUT IT
5 RECENTLY?

6 JUROR #219: NO.

7 MR. LITTLEJOHN: YOU DIDN'T SEE THE NEWSPAPER ARTICLE
8 YESTERDAY OR SEE ANYTHING ON THE TV?

9 JUROR #219: NO.

10 MR. LITTLEJOHN: OKAY. MS. TRAINER, DO YOU HAVE ANY DEALINGS
11 OR DO YOU KNOW ANY OF THE MEMBERS OF THE SUMTER COUNTY
12 SHERIFF'S DEPARTMENT?

13 JUROR #219: DO I KNOW? I KNOW A COUPLE OF PEOPLE THAT ARE
14 ASSOCIATED WITH THE SHERIFF'S DEPARTMENT.

15 MR. LITTLEJOHN: ALL RIGHT. WHO DO YOU KNOW THAT'S WITH THE
16 SHERIFF'S DEPARTMENT?

17 JUROR #219: I KNOW MS. HERRON.

18 MR. LITTLEJOHN: THAT'S WHO HAS BEEN IN THE COURTROOM TODAY?

19 JUROR #219: YES. SHE GOES TO THE SAME CHURCH.

20 MR. LITTLEJOHN: Y'ALL CLOSE FRIENDS?

21 JUROR #219: NO.

22 MR. LITTLEJOHN: WHO ELSE DO YOU KNOW WITH THE SHERIFF'S
23 DEPARTMENT?

24 JUROR #219: I CAN'T RECALL HER NAME.

25 MR. LITTLEJOHN: LET ME ASK YOU, THE FACT THAT YOU KNOW THESE

HEARING

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1 PEOPLE AND THE FACT THAT THE VICTIM IN THIS CASE WAS A
2 SUMTER COUNTY SHERIFF'S DEPUTY, WOULD THAT HAVE ANY
3 BEARING ON YOUR ABILITY TO LISTEN TO THE EVIDENCE
4 IMPARTIALLY?

5 JUROR #219: NO, IT WOULD NOT.

6 MR. LITTLEJOHN: OKAY. IS THAT SOMETHING THAT WOULD BE IN
7 THE BACK OF YOUR MIND, THE FACT THAT YOU KNOW THESE
8 FOLKS WITH THE SHERIFF'S DEPARTMENT?

9 JUROR #219: NO.

10 MR. LITTLEJOHN: OKAY. YOU THINK YOU COULD SET THAT ASIDE
11 AND DECIDE THIS CASE BASED ON THE EVIDENCE AND THE LAW
12 THAT JUDGE KING GIVES YOU?

13 JUROR #219: YES, SIR. I DO.

14 MR. LITTLEJOHN: OKAY. MS. TRAINER, YOU TOLD THE COURT THAT
15 YOU THOUGHT GIVE THE LAW AND THE CIRCUMSTANCES, YOU
16 COULD EITHER GO ALONG WITH A LIFE SENTENCE IN THIS
17 CASE, IF THAT WAS APPROPRIATE, OR YOU COULD GO ALONG
18 WITH A DEATH SENTENCE, IS THAT RIGHT?

19 JUROR #219: YES, I DID.

20 MR. LITTLEJOHN: GIVEN THE LAW AND THE CIRCUMSTANCES AND WHAT
21 YOU THOUGHT WAS RIGHT, IS THAT RIGHT?

22 JUROR #219: YES, SIR.

23 MR. LITTLEJOHN: SO, YOU WOULDN'T AUTOMATICALLY VOTE FOR A
24 DEATH PENALTY IF THE DEFENDANT WAS CONVICTED OF MURDER?

25 JUROR #219: NO, I WOULD NOT.

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1 MR. LITTLEJOHN: OKAY. LET ME ASK YOU THIS. HIS HONOR WILL
2 BE EXPLAINING TO YOU ABOUT A LIFE SENTENCE, OKAY? AND
3 HE'S GOING TO TELL YOU THAT A LIFE SENTENCE MEANS LIFE
4 IN PRISON WITHOUT A POSSIBILITY OF PAROLE. DO YOU
5 THINK THAT'S A SUBSTANTIAL SENTENCE?

6 JUROR #219: YES.

7 MR. LITTLEJOHN: OKAY. IS THAT SOMETHING YOU THINK YOU COULD
8 CONSIDER AS BEING AN APPROPRIATE SENTENCE IN THIS CASE?

9 JUROR #219: YES.

10 MR. LITTLEJOHN: AND DO YOU UNDERSTAND FURTHER, AND HIS HONOR
11 WILL TELL YOU THIS, YOU CAN VOTE FOR A LIFE SENTENCE IN
12 THIS CASE FOR ANY REASON AT ALL?

13 JUROR #219: I UNDERSTAND THAT.

14 MR. LITTLEJOHN: YOU UNDERSTAND, OKAY. WOULD YOU HAVE ANY
15 PROBLEM LISTENING TO EVIDENCE OF MITIGATING
16 CIRCUMSTANCES? I THINK HIS HONOR EXPLAIN TO YOU
17 MITIGATING CIRCUMSTANCES ARE THINGS THAT LESSEN THE
18 SEVERITY OF A CRIME. THEY MAY BE INDEPENDENT OF THE
19 ACTUAL CIRCUMSTANCES OF THE CRIME. THEY MAY JUST
20 RELATE TO THE LIFE OF THE DEFENDANT AND HIS
21 CIRCUMSTANCES. WOULD YOU LISTEN TO THAT KIND OF
22 EVIDENCE BEFORE YOU MAKE YOUR MIND UP?

23 JUROR #219: YES.

24 MR. LITTLEJOHN: OKAY. MS. TRAINER, JUST ONE FINAL THING.
25 IF YOU WERE ON THE JURY AND IT HAPPENED THAT A MAJORITY

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1 OF THE JURY WERE LEANING ONE WAY AND YOU WERE LEANING
2 ANOTHER WAY, WOULD YOU BE ABLE TO BE INDEPENDENT ABOUT
3 WHAT YOU THOUGHT WAS RIGHT IN THIS CASE?

4 JUROR #219: YES.

5 MR. LITTLEJOHN: YOU THINK YOU COULD, EVEN THOUGH YOU HAVE A
6 DUTY TO LISTEN TO YOUR FELLOW JURORS, DO YOU THINK YOU
7 COULD LISTEN TO THEM AND RESPECT THEIR VIEWS, BUT STILL
8 HOLD TIGHT TO WHAT YOU THINK WAS RIGHT?

9 JUROR #219: YES.

10 MR. LITTLEJOHN: THAT'S ALL I HAVE.

11 THE COURT: ALL RIGHT. MS. TRAINER, LET ME ASK YOU TO STEP
12 OUTSIDE FOR JUST A MOMENT, NOT TO THE JURY ROOM. I
13 NEED TO TALK WITH THE LAWYERS FOR JUST A MOMENT. WHAT
14 SAYETH THE STATE?

15 MR. SALEEBY: SHE WOULD BE QUALIFIED.

16 THE COURT: SAYETH THE DEFENDANT?

17 MR. LITTLEJOHN: WE AGREE, YOUR HONOR.

18 THE COURT: ALL RIGHT. JUROR IS QUALIFIED. ASK HER TO COME
19 BACK, PLEASE, MR. HERRING. MS. TRAINER, THANK YOU VERY
20 MUCH FOR YOUR CANDOR AND HONESTY, AND YOU HAVE BEEN
21 FOUND TO BE A QUALIFIED JUROR FOR THIS CASE. THAT
22 MEANS YOU MAY BE SELECTED AS A JUROR, BUT YOU'RE NOT
23 NECESSARILY GOING TO BE A JUROR. WE'RE GOING TO ASK
24 YOU TO COME BACK WITH THE OTHER QUALIFIED JURORS AT A
25 LATER TIME IN WHICH THE ACTUAL JURY IN THIS CASE WILL

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1 BE SELECTED. I DO NOT KNOW EXACTLY WHEN THAT IS GOING
2 TO BE AND WHEN WE'RE GOING TO FINISH THIS QUALIFICATION
3 PROCESS. SO, WHAT I'M GOING TO ASK YOU TO DO IS TO
4 CALL THE NUMBER THAT YOU HAVE ON THAT BLUE CARD AND
5 CALL THAT NUMBER BETWEEN 3:00 AND 4:00 O'CLOCK TOMORROW
6 AFTERNOON. IT MAY BE THAT WE BRING YOU BACK LATER
7 TOMORROW AFTERNOON OR WE MAY BRING YOU BACK THURSDAY
8 MORNING. BUT IN ANY EVENT, YOU WILL BE COMING BACK AT
9 SOME TIME IN THE FUTURE. WHATEVER TIME YOU ARE GIVEN
10 TO COME BACK, YOU SHOULD BRING ENOUGH CLOSE AND
11 PERSONAL BELONGINGS TO STAY FOR SIX DAYS IN A HOTEL.
12 BRING THOSE CLOTHES WITH YOU PACKED IN A SUITCASE, BUT
13 DO NOT BRING THEM IN THE COURTHOUSE. LEAVE THEM IN
14 YOUR CAR. BECAUSE IF YOU DO NEED THEM AND YOU'RE
15 SELECTED ON A JURY, YOU WILL BE ABLE TO TAKE THOSE
16 DIRECTLY TO THE HOTEL. IF YOU'RE NOT SELECTED ON THE
17 JURY, YOU CAN TAKE THEM HOME AND UNPACK. BUT BE
18 PREPARED TO STAY UP TO SIX DAYS.

19 IN ANY EVENT, WHILE YOU ARE AWAY FROM THE
20 COURTHOUSE, DO NOT TALK TO ANYONE ABOUT THIS CASE. DO
21 NOT ALLOW ANYONE TO TALK TO YOU ABOUT IT. DO NOT
22 DISCUSS IT WITH YOUR FAMILY AND FRIENDS. YOU'VE GOT TO
23 MAKE YOUR DECISION BASED ON THE EVIDENCE THAT YOU HEAR
24 IN THIS COURTROOM AND NOT ON THE BASIS OF WHAT ANYBODY
25 ELSE MIGHT TELL YOU. DO NOT LISTEN TO ANY BROADCAST

HEARING

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1 MEDIA REPORTS OF THE CASE OR READ ANYTHING IN THE
2 NEWSPAPER. WITH THOSE INSTRUCTIONS THEN, I'M GOING TO
3 EXCUSE YOU NOW AND ASK YOU TO CALL THAT NUMBER BETWEEN
4 3:00 AND 4:00 TOMORROW AFTERNOON, AND WE'LL LET YOU
5 KNOW WHEN TO COME BACK. THANK YOU VERY MUCH.

6 MR. SALEEBY: YOUR HONOR, COULD WE ADDRESS ONE THING?

7 THE COURT: YES, SIR.

8 MR. SALEEBY: I WONDER ABOUT THE PROPRIETY OF THIS STAGE OF
9 THE PROCEDURE OF TALKING TO THE JURORS ABOUT LIFE MEANS
10 LIFE WITHOUT PAROLE, GIVING THE POSSIBILITY THAT
11 MITIGATING CIRCUMSTANCES MIGHT NOT BE FAMILY AND GIVEN
12 THE FACT THE COURT HAS NOT DISCUSSED ALL THOSE OPTIONS.
13 I JUST WONDER ABOUT THE ADVISABILITY AT THIS POINT.

14 THE COURT: WELL, I WONDERED ABOUT THAT, TOO, MR. LITTLEJOHN,
15 BECAUSE YOU HAD MENTIONED A WHILE AGO THAT THE COURT
16 HAD SOME OPTIONS OTHER THAN LIFE WITHOUT PAROLE, IF
17 THERE ARE NO AGGRAVATING CIRCUMSTANCES. SO, I THINK
18 MAYBE WE OUGHT TO MENTION THAT IS A POSSIBILITY BUT IS
19 NOT NECESSARILY. WE DON'T NEED TO CONVEY THAT THOSE
20 ARE THE ONLY TWO OPTIONS THE JURORS ARE GOING TO HAVE.

21 MR. LITTLEJOHN: YOUR HONOR, I DON'T THINK I FRAMED IT AS
22 SUCH THAT THAT WAS THE ONLY OPTION. I JUST WANTED ...

23 THE COURT: I DON'T REALLY SEE ANYTHING WRONG WITH THE
24 QUESTION. I THINK HE WAS JUST ASKING, AND I ASKED THE
25 SAME THING, I WAS LEAVING OUT THE PAROLE ELIGIBILITY.

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1 MR. SALEEBY: YES, SIR. IT'S THE PAROLE ELIGIBILITY ISSUE.

2 IT JUST SEEMS TO BE PREMATURE AT THIS POINT IN TIME.

3 MR. LITTLEJOHN: YOUR HONOR, I THINK IT'S SOMETHING THAT'S
4 COMING. IT'S IN THE COURT'S INSTRUCTIONS, AND OF
5 COURSE, THE APPELLATE COURTS HAVE SAID THAT IS THE WAY
6 YOU HAVE TO INSTRUCT THE JURORS IN DEFINING LIFE
7 SENTENCE, SO THEY KNOW REALLY WHAT A LIFE SENTENCE IS.

8 MR. SALEEBY: IF THEY FIND AGGRAVATING CIRCUMSTANCES ...

9 THE COURT: IF THEY FIND AGGRAVATING CIRCUMSTANCES, I ...

10 MR. SALEEBY: THAT'S NOT BEING SAID.

11 THE COURT: I WOULD PREFER AT THIS TIME, SINCE WE HAVEN'T
12 GIVEN THEM FULL INSTRUCTIONS ABOUT THE AGGRAVATING
13 CIRCUMSTANCES, MR. LITTLEJOHN, THAT WE QUESTION THE
14 JURORS WHETHER THEY COULD RETURN A SENTENCE OF LIFE
15 WITHOUT USING THE PAROLE SITUATION, SO I WOULD ASK THAT
16 YOU NOT DO THAT.

17 MR. LITTLEJOHN: ALL RIGHT, SIR.

18 THE COURT: JUROR #21.

19 MR. LITTLEJOHN: YOUR HONOR, BEFORE YOU BRING THE JUROR IN,
20 COULD I JUST NOTE MY EXCEPTION TO THE COURT'S
21 LIMITATION OF OUR VOIR DIRE, JUST FOR THE RECORD?

22 THE COURT: WELL, LET'S DISCUSS IT SOME MORE THEN, MR.
23 LITTLEJOHN. YOU TELL ME WHY YOU THINK THAT'S NOT THE
24 CORRECT WAY TO APPROACH IT.

25 MR. LITTLEJOHN: YOUR HONOR, I GUESS I GO BACK TO MY EARLIER

HEARING

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1 ARGUMENT THAT ULTIMATELY THE COURT IS GOING TO INSTRUCT
2 THE JURY THAT THAT'S WHAT LIFE MEANS. IT'S A LIFE
3 SENTENCE WITHOUT PAROLE, AND I THINK THIS IS A QUESTION
4 THAT'S BEEN BANTERED ABOUT AMONG THE APPELLATE COURTS,
5 AND IT WAS FINALLY DETERMINED THAT THE JURY SHOULD BE
6 INSTRUCTED ABOUT THE MEANING OF A LIFE SENTENCE.

7 THE COURT: WELL, ALL THAT IS TRUE, BUT THIS IS THE FIRST
8 JUROR THAT YOU HAVE ASK THOSE PARTICULAR QUESTIONS TO,
9 AND I HAVE STAYED AWAY FROM PAROLE ELIGIBILITY. BUT IT
10 SEEMS LIKE TO ME THAT IF THEY ARE TO BE QUESTIONED ON
11 THAT, THEN I NEED TO TELL THEM THAT IF THEY FIND NO
12 AGGRAVATING CIRCUMSTANCES, THAT THEY CAN FIND THAT
13 THERE WOULD BE PAROLE ELIGIBILITY. I THINK WE OPEN A
14 PANDORA BOX IN WHAT WE'RE GOING TO HAVE TO TELL THEM AS
15 FAR AS THE JURY QUALIFICATION QUESTIONS ARE CONCERNED.
16 IT JUST SEEMS LIKE TO ME THAT WE'RE NOT TRYING TO
17 QUALIFY ... I'VE ASKED THEM IF THEY CAN FOLLOW THE LAW
18 AS I INSTRUCT IT TO THEM, AND THEY'VE INDICATED THAT
19 THEY CAN. I DON'T KNOW ... WHAT WOULD YOU SAY THAT I
20 SHOULD TELL THEM ABOUT WHEN THEY ARE GOING TO BE ASKED
21 TO DECIDE THE DEATH PENALTY OR LIFE? WHAT DO YOU THINK
22 THAT I SHOULD TELL THEM AS PART OF THE INSTRUCTIONS AT
23 THIS STAGE?

24 MR. LITTLEJOHN: YOUR HONOR, YOU'RE TALKING ABOUT AT THIS
25 STAGE OR WHEN WE FINALLY ...

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1 THE COURT: NO, I'M TALKING ABOUT RIGHT NOW.

2 MR. LITTLEJOHN: JUDGE, GIVE ME JUST A MINUTE. I WANT TO
3 TALK WITH MR. BABB.

4 THE COURT: OKAY. LET ME SAY ONE THING, MR. LITTLEJOHN.

5 MR. LITTLEJOHN: YES, SIR.

6 THE COURT: MAYBE WE CAN GET AROUND THIS. THIS IS WHAT
7 BOTHERS ME. IT SEEMS LIKE THE IMPRESSION THIS JUROR
8 WAS LEFT WITH WAS THIS JURY WAS GOING TO HAVE ONLY TWO
9 OPTIONS, DEATH OR LIFE WITHOUT PAROLE. IT SEEMS LIKE
10 THAT WAS THE IMPRESSION THIS JUROR WAS LEFT WITH, AND
11 THAT'S NOT NECESSARILY THE ONLY TWO OPTIONS THAT THE
12 JURY IS GOING TO HAVE.

13 MR. LITTLEJOHN: YOUR HONOR, I UNDERSTAND, BUT MAYBE I CAN,
14 MAYBE I ... I DIDN'T MEAN TO LEAVE THE JUROR WITH THE
15 IMPRESSION THAT THOSE WERE THE ONLY TWO OPTIONS.

16 THE COURT: OKAY.

17 MR. LITTLEJOHN: WHAT I MEANT TO ASK THE JUROR WAS IF THE
18 JUROR UNDERSTOOD THAT IF THAT WAS AN OPTION THAT WAS
19 DECIDED ON THE JURY, THAT LIFE MEANT THAT.

20 THE COURT: YEAH. AND THEN YOU SAID WOULD SHE AGREE THAT
21 LIFE WITHOUT PAROLE IS A SUBSTANTIAL SENTENCE, AND SHE
22 SAID YES, I WOULD AGREE WITH THAT. AND THEN THAT'S
23 KIND OF WHERE IT WAS LEFT, AND THAT'S NOT NECESSARILY
24 THE ONLY OPTION THE JURY WOULD HAVE, AND THAT WAS,
25 THAT'S MY CONCERN.

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1 MR. LITTLEJOHN: I UNDERSTAND. I DIDN'T MEAN TO INDICATE
2 THAT THERE WERE ONLY TWO OPTIONS AS OPPOSED TO A THIRD
3 OPTION.

4 THE COURT: ALL RIGHT. AS LONG AS WE DON'T LIMIT IT TO THOSE
5 ARE THE ONLY TWO OPTIONS, I DON'T HAVE ANY PROBLEM WITH
6 THE QUESTION.

7 MR. LITTLEJOHN: ALL RIGHT, SIR.

8 MR. SALEEBY: YOU HAVE TO LET ME BRING UP ONE OTHER THING.
9 IT'S HOW WE GET INTO IT AND CONFUSE THEM, BECAUSE
10 THERE'S GOT A POINT WHERE YOU SAID ... THE FIRST THING
11 YOU DO IS DECIDE WHETHER OR NOT YOU FIND AGGRAVATING
12 CIRCUMSTANCES BEYOND A REASONABLE DOUBT, AND IF THEY
13 DON'T, THEY'RE DONE. THEY'VE GOT NOTHING TO DO WITH
14 THE PUNISHMENT. I DON'T KNOW THAT YOU WANT TO TELL
15 THEM ALL OF THAT.

16 THE COURT: WELL, I'M NOT AT THIS STAGE. THIS IS JURY
17 QUALIFICATION STAGE. ALL I'M ...

18 MR. SALEEBY: THAT'S WHAT I'M THINKING. IT'S KIND OF HARD TO
19 GET INTO THIS OTHER QUESTION ABOUT THE OTHER OPTIONS
20 INVOLVED. I JUST THINK IT'S COMPLICATED.

21 THE COURT: ALL RIGHT. ALL THEY'VE GOT TO DECIDE FOR THE
22 PURPOSES OF JURY QUALIFICATIONS IS, ALL THEY'VE GOT TO
23 DECIDE IS WHETHER OR NOT THEY CAN FOLLOW THE
24 INSTRUCTIONS OF THE COURT THAT ARE GIVEN TO THEM AT THE
25 APPROPRIATE STAGE OF THE TRIAL. THAT'S REALLY, IF THAT

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1 MEANS LIFE, WHATEVER IT MEANS, THEY'VE GOT TO FOLLOW
2 THE INSTRUCTIONS THAT THE COURT GIVES. I'M THE ARBITER
3 OF THE LAW, AND THAT'S WHAT I'M GOING TO TELL THEM WHEN
4 I ASK THOSE QUESTIONS. ALL RIGHT. LET'S MOVE ON.

5 MS. BOLDEN, GOOD AFTERNOON.

6 JUROR #21: HELLO.

7 THE COURT: YOU ARE BETTY BOLDEN, IS THAT CORRECT?

8 JUROR #21: YES, BETTY H. BOLDEN.

9 THE COURT: ALL RIGHT. MS. BOLDEN, I WANT YOU TO JUST RELAX
10 AND BE AT EASE AND NOT FEEL INTIMIDATED AT ALL. WE DO
11 NEED TO ASK YOU SOME QUESTIONS, AND THE QUESTIONS ARE
12 NOT DESIGNED FOR THE PURPOSE TO INVAD E YOUR PRIVACY AT
13 ALL. THEY ARE QUESTIONS WE NEED TO ASK TO DETERMINE
14 YOUR QUALIFICATIONS TO SERVE ON THIS JURY, AND IT IS
15 NECESSARY DUE TO THE NATURE OF THE PROCEEDING. THERE
16 ARE NO RIGHT OR WRONG ANSWERS. WE ARE JUST SIMPLY
17 SEEKING YOUR POINT OF VIEW. WE SIMPLY ASK THAT YOU
18 ANSWER OPEN AND HONEST. YOU DO UNDERSTAND THAT YOU ARE
19 UNDER OATH, HAVING BEEN SWORN EARLIER TODAY, AND THAT
20 YOU ARE SWORN TO GIVE US HONEST ANSWERS?

21 JUROR #21: YES, SIR.

22 THE COURT: NOW, MS. BOLDEN, HAVE YOU HAD AN OPPORTUNITY TO
23 LOOK AT THE JUROR SHEET THAT YOU WERE GIVEN BACK IN THE
24 JURY ROOM?

25 JUROR #21: YES, SIR.

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1 THE COURT: THERE ARE THREE TYPES OF JURORS, TYPE #1, TYPE #2
2 AND TYPE #3. WHICH TYPE OF JUROR WOULD BEST DESCRIBE
3 YOU?

4 JUROR #21: TYPE #3.

5 THE COURT: TYPE #3, ALL RIGHT. NOW, WHAT YOU'RE SAYING IS
6 THAT IF YOU'RE TYPE #3, AFTER LISTENING TO THE FACTS
7 AND CIRCUMSTANCES SURROUNDING THIS CASE AND DEPENDING
8 ON THOSE FACTS AND CIRCUMSTANCES, YOU COULD EITHER FIND
9 FOR LIFE IMPRISONMENT OR YOU COULD FIND THE FACTS
10 WARRANTED A PUNISHMENT BY DEATH, EITHER BY LETHAL
11 INJECTION OR ELECTROCUTION, IS THAT CORRECT?

12 JUROR #21: YES, SIR.

13 THE COURT: NOW, I WILL TELL YOU THAT IN THIS CASE, MR. STONE
14 HAS ALREADY BEEN FOUND TO BE GUILTY, AND THE ONLY ISSUE
15 BEFORE THE COURT IS WHAT PUNISHMENT THE JURY SHOULD
16 RECOMMEND THAT HE RECEIVE. YOU WILL BE GIVEN SEVERAL
17 OPTIONS AS TO WHAT THAT PUNISHMENT IS WHEN YOU'RE IN
18 THE JURY ROOM, AND I WANT TO TELL YOU THAT WHATEVER
19 PUNISHMENT THE JURY RECOMMENDS IS NOT REALLY A
20 RECOMMENDATION AT ALL. THIS COURT WILL IMPOSE WHATEVER
21 THE JURY RECOMMENDS. YOU UNDERSTAND THAT?

22 JUROR #21: YES, SIR.

23 THE COURT: ALL RIGHT. NOW, YOU WOULD HAVE TO DECIDE, WE
24 WOULD ASK YOU AS JURORS TO TAKE INTO CONSIDERATION
25 CERTAIN AGGRAVATING AND MITIGATING CIRCUMSTANCES, AND

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1 I WILL TELL YOU THE STATE MUST PROVE AGGRAVATING
2 CIRCUMSTANCES BEYOND A REASONABLE DOUBT. THE STATUTORY
3 AGGRAVATING AND MITIGATING CIRCUMSTANCES ARE
4 CIRCUMSTANCES WHICH OUR GENERAL ASSEMBLY HAS DECIDED
5 EITHER LESSON OR INCREASE THE CHARGE OF MURDER. FOR
6 EXAMPLE, AGGRAVATING CIRCUMSTANCES ARE FACTS THAT THE
7 GENERAL ASSEMBLY HAS DECLARED BY STATUTE WOULD MAKE
8 WORSE OR AGGRAVATE THE OFFENSE OF MURDER, AND WOULD
9 INCREASE THE ENORMITY AND ADD TO THE INJURY OF THE
10 CRIME OF MURDER. ONE OF THE THINGS THAT THE JURY WILL
11 HAVE TO DETERMINE IN THIS CASE IS WHETHER OR NOT THE
12 STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT THERE
13 ARE AGGRAVATING CIRCUMSTANCES. DO YOU UNDERSTAND THAT?

14 JUROR #21: YES, SIR.

15 THE COURT: YOU WOULD ALSO BE ABLE TO CONSIDER MITIGATING
16 CIRCUMSTANCES, AND THAT'S EXACTLY THE OPPOSITE OF
17 AGGRAVATING CIRCUMSTANCES. THESE ARE FACTS WHICH OUR
18 GENERAL ASSEMBLY HAS DECLARED REDUCE THE SEVERITY OF
19 THE OFFENSE OF MURDER AND MAY BE CONSIDERED AS
20 EXTENUATING OR REDUCING THE DEGREE OF MORAL CULPABILITY
21 OR RESPONSIBILITY. IN ADDITION TO THE STATUTORY
22 MITIGATING CIRCUMSTANCES, THERE MAY ALSO BE OTHER
23 MITIGATING CIRCUMSTANCES WHICH THE JURY COULD CONSIDER
24 OR SHOULD CONSIDER. IF YOU WERE A JUROR IN THIS CASE,
25 COULD YOU, DEPENDING UPON THE FACTS AND CIRCUMSTANCES,

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1 INCLUDING THE CONSIDERATION OF AGGRAVATING AND
2 MITIGATING CIRCUMSTANCES AND THE LAW THAT I WILL
3 INSTRUCT TO YOU SIGN A VERDICT FORM FOR LIFE IN PRISON?
4 COULD YOU SIGN THAT VERDICT FORM?

5 JUROR #21: YES, SIR.

6 THE COURT: IF YOU WERE A JUROR IN THAT SITUATION, DEPENDING
7 UPON YOUR VIEW OF THE FACTS AS TO WHAT FACTS AND
8 CIRCUMSTANCES, INCLUDING THE AGGRAVATING AND MITIGATING
9 CIRCUMSTANCES, COULD YOU FOLLOW THE LAW AS I INSTRUCT
10 IT TO YOU AND SIGN A VERDICT WHICH WOULD REQUIRE A
11 PUNISHMENT OF DEATH?

12 JUROR #21: YES, SIR.

13 THE COURT: WOULD YOU BE ABLE TO FOLLOW THE INSTRUCTIONS OF
14 THE COURT AS TO THE LAW IN THIS CASE, WHETHER YOU AGREE
15 WITH THE LAW OR NOT? IF I TELL YOU THAT'S WHAT THE LAW
16 IS, WOULD YOU BE ABLE TO PUT YOUR VIEWS ASIDE AND APPLY
17 THE LAW AS I GIVE IT TO YOU?

18 JUROR #21: YES, SIR.

19 THE COURT: NOW, ONE OTHER THING, MS. BOLDEN, IF YOU ARE
20 SELECTED AS A JUROR IN THIS CASE, YOU WILL BE HOUSED IN
21 A MOTEL DURING THIS TRIAL THAT WILL LAST APPROXIMATELY
22 SIX DAYS. EXCEPT FOR THE PERSONAL INCONVENIENCE THAT
23 THIS WOULD POSE TO YOU, WOULD IT POSE A SERIOUS DANGER
24 TO THE HEALTH AND WELL BEING TO YOURSELF OR ANY MEMBER
25 OF YOUR FAMILY OR ANYONE WHO IS DEPENDENT UPON YOU?

HEARING

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1 JUROR #21: NO, SIR.

2 THE COURT: AND FINALLY, I WOULD ASK YOU, MS. BOLDEN, HAVE
3 YOU READ ANYTHING IN THE NEWSPAPER OR HEARD ANY
4 TELEVISION REPORTS ABOUT THIS CASE AT ALL?

5 JUROR #21: NO, SIR.

6 THE COURT: ALL RIGHT, THANK YOU. I BELIEVE THAT'S ALL THE
7 QUESTIONS THAT I HAVE. PLEASE ANSWER ANY QUESTIONS
8 THAT MR. SALEEBY MIGHT HAVE FOR YOU.

9 MR. SALEEBY: MS. BOLDEN, I'M DUDLEY SALEEBY. SOLICITOR
10 JACKSON AND I WILL BE TRYING THIS CASE. THANK YOU FOR
11 ANSWERING THE QUESTIONS AS YOU HAVE. IF I UNDERSTAND
12 WHAT YOU'RE TELLING US, YOU FEEL LIKE YOU COULD MAKE
13 WHATEVER DECISION THE FACTS AND CIRCUMSTANCES YOU HEARD
14 MADE YOU DECIDE OR YOU COULD BASE YOUR DECISION BASED
15 ON THE FACTS AND CIRCUMSTANCES THAT YOU HEARD IN THIS
16 COURT AND MAKE THE DECISION THAT YOU THOUGHT WAS BEST?

17 JUROR #21: YES, SIR.

18 THE COURT: MR. LITTLEJOHN?

19 MR. LITTLEJOHN: MS. BOLDEN, MY NAME IS CAM LITTLEJOHN. I,
20 ALONG WITH JIM BABB, REPRESENT BOBBY WAYNE STONE. LET
21 ME JUST ASK YOU A FEW QUESTIONS, IF I MAY. HOW LONG
22 HAVE YOU ... WERE YOU BORN IN SUMTER COUNTY?

23 JUROR #21: YES, SIR.

24 MR. LITTLEJOHN: YOU'VE LIVED HERE MOST OF YOUR LIFE?

25 JUROR #21: MOST OF MY LIFE, YES.

HEARING

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1 MR. LITTLEJOHN: I NOTICED ON YOUR QUESTIONNAIRE YOU LIVED IN
2 NEW JERSEY FOR A WHILE.

3 JUROR #21: YES, ABOUT TWO YEARS.

4 MR. LITTLEJOHN: THAT'S WHEN YOU WERE IN SCHOOL?

5 JUROR #21: YES, SIR.

6 MR. LITTLEJOHN: OKAY. I UNDERSTAND. MS. BOLDEN, HAVE YOU
7 HEARD OR READ ANYTHING ABOUT THIS PARTICULAR CASE?

8 JUROR #21: NO, SIR.

9 MR. LITTLEJOHN: YOU HAVEN'T SEEN ANYTHING IN THE NEWSPAPER
10 RECENTLY?

11 JUROR #21: I HAVEN'T SEEN ANYTHING RECENTLY, AND I DON'T
12 REMEMBER IN '96 AT ALL.

13 MR. LITTLEJOHN: YOU HAVEN'T SEEN ANYTHING ON TV ABOUT IT?

14 JUROR #21: NO, SIR.

15 MR. LITTLEJOHN: ALL RIGHT. MS. BOLDEN, AS I UNDERSTAND YOUR
16 RESPONSES TO JUDGE KING, IF YOU WERE ON THIS JURY AND
17 THE ISSUE OF, I MEAN, THE FACT THAT THE DEFENDANT HAS
18 BEEN FOUND GUILTY OF MURDER WAS BEFORE YOU, YOU
19 WOULDN'T AUTOMATICALLY VOTE FOR THE DEATH PENALTY JUST
20 DUE TO THAT CIRCUMSTANCE, WOULD YOU?

21 JUROR #21: NO, SIR.

22 MR. LITTLEJOHN: OKAY. AND HIS HONOR HAS TOLD YOU, I THINK,
23 IF THE JURY FOUND THAT THE STATE HAD PROVEN AGGRAVATING
24 CIRCUMSTANCES BEYOND A REASONABLE DOUBT, THEN THE
25 OPTIONS WOULD BE EITHER A DEATH SENTENCE OR A LIFE

THIRD JUDICIAL CIRCUIT

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HEARING

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1 SENTENCE. I'D ASK YOU, DO YOU THINK A LIFE SENTENCE IS
2 A SUBSTANTIAL SENTENCE?

3 JUROR #21: YES, SIR.

4 MR. LITTLEJOHN: OKAY. COULD YOU CONSIDER A LIFE SENTENCE AS
5 BEING AN APPROPRIATE SENTENCE GIVEN THE CIRCUMSTANCES?

6 JUROR #21: YES, SIR.

7 MR. LITTLEJOHN: ALL RIGHT. WOULD YOU HAVE ANY PROBLEM
8 LISTENING AND CONSIDERING MITIGATING CIRCUMSTANCES? BY
9 THAT I MEAN EVIDENCE THAT TENDS TO LESSON THE SEVERITY
10 OF A MURDER CHARGE?

11 JUROR #21: I WOULDN'T HAVE ANY PROBLEM WITH THAT, NO.

12 MR. LITTLEJOHN: OKAY. LET ME ASK YOU ONE FINAL THING. IF
13 YOU WERE ON THE JURY AND THE MAJORITY OF THE JURY
14 WANTED TO VOTE ONE WAY, WOULD YOU EVER CONSIDER
15 CHANGING YOUR VOTE TO GO ALONG WITH THAT MAJORITY?

16 JUROR #21: NO, SIR.

17 MR. LITTLEJOHN: OKAY. WOULD YOU RESPECT THE MAJORITY
18 OPINION?

19 JUROR #21: WOULD I RESPECT THEIR OPINION?

20 MR. LITTLEJOHN: YES. WOULD YOU RESPECT THEIR OPINION?

21 JUROR #21: YES, SIR.

22 MR. LITTLEJOHN: WOULD YOU EXPECT THE MAJORITY TO RESPECT
23 YOUR OPINION?

24 JUROR #21: YES, SIR.

25 MR. LITTLEJOHN: OKAY. THANK YOU, MS. BOLDEN. THOSE ARE ALL

HEARING

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1 THE QUESTIONS I HAVE, YOUR HONOR.

2 THE COURT: ALL RIGHT. MS. BOLDEN STEP OUT IN THE HALL.

3 DON'T GO TO THE JURY ROOM. I NEED TO TALK TO THE

4 LAWYERS JUST A MINUTE, AND WE'LL BE RIGHT WITH YOU.

5 WHAT SAYETH THE STATE?

6 MR. SALEEBY: SHE WOULD BE QUALIFIED.

7 MR. LITTLEJOHN: WE AGREE, YOUR HONOR.

8 THE COURT: ALL RIGHT. THE JUROR WILL BE QUALIFIED. MR.

9 HERRING, ASK HER TO COME BACK, PLEASE. MS. BOLDEN, YOU
10 HAVE BEEN QUALIFIED AS A JUROR IN THIS CASE. NOW, THAT
11 DOES NOT NECESSARILY MEAN YOU WILL BE SELECTED AS A
12 JUROR, BUT IT MEANS THAT YOU ARE QUALIFIED AS A JUROR,
13 AND WE WILL BRING YOU BACK AT A LATER TIME. IT'S
14 IMPOSSIBLE FOR ME TO TELL RIGHT NOW WHEN THAT'S GOING
15 TO BE, SO WHAT I'M GOING TO ASK YOU TO DO IS TO CALL
16 THE NUMBER THAT IS ON THAT BLUE CARD BETWEEN 3:00 AND
17 4:00 O'CLOCK TOMORROW AFTERNOON. WE MAY CALL YOU BACK
18 TOMORROW AFTERNOON OR THURSDAY MORNING. I JUST DON'T
19 KNOW, YET.

20 IN THE MEANTIME, IF YOU ARE SELECTED AS A JUROR,
21 I HAD TOLD YOU THAT YOU WOULD BE SEQUESTERED AT A
22 MOTEL, SO WHAT YOU NEED TO DO TONIGHT IS TO BRING
23 ENOUGH CLOTHING FOR SIX DAYS. DO NOT BRING THOSE
24 THINGS IN THE COURTROOM WITH YOU, BUT LEAVE THEM IN THE
25 CAR. IF YOU ARE SELECTED FOR THE JURY, YOU WILL BE

THIRD JUDICIAL CIRCUIT

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HEARING

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1 READY TO GO TO THE MOTEL. SO, PACK THOSE THINGS AND
2 HAVE THEM READY.

3 I WILL TELL YOU THAT OVER THE EVENING RECESS, DO
4 NOT DISCUSS THE CASE WITH ANYONE. DON'T TALK TO YOUR
5 FAMILY AND FRIENDS ABOUT IT. DON'T ALLOW ANYONE TO
6 TALK WITH YOU ABOUT IT. IF ANYONE SHOULD APPROACH YOU
7 ABOUT THE CASE, GET THEIR NAME AND DESCRIPTION AND I
8 WILL DEAL WITH THEM. ALSO WHILE YOU ARE AWAY FROM THE
9 COURTHOUSE, DO NOT LISTEN TO ANY TV REPORTS OR READ THE
10 NEWSPAPER ABOUT THIS CASE AT ALL. YOU'VE GOT TO DECIDE
11 THIS CASE BASED ON WHAT YOU HEAR IN THE COURTROOM.
12 WITH THOSE ADMONITIONS, I'M GOING TO EXCUSE YOU NOW AND
13 ASK YOU TO CALL THAT NUMBER TOMORROW BETWEEN 3:00 AND
14 4:00, AND YOU WILL GET YOUR REPORTING INSTRUCTIONS AT
15 THAT TIME. THANK YOU VERY MUCH. MR. HERRING, JUROR
16 #195. THAT IS VINCENT SIMS. GOOD EVENING, MR. SIMS.

17 JUROR #195: HOW YOU DOING?

18 THE COURT: ALL RIGHT. YOU'RE VINCENT SIMS, IS THAT CORRECT?

19 JUROR #195: YES, SIR.

20 THE COURT: ALL RIGHT. MR. SIMS, I WANT YOU TO RELAX AND
21 JUST BE AT EASE. YOU WERE SWORN IN THIS MORNING, AND
22 YOU ARE STILL SWORN FOR THESE PROCEEDINGS. WE ARE
23 GOING TO ASK YOU SOME QUESTIONS, AND WE NEED TO HAVE
24 TRUTHFUL ANSWERS. DO YOU UNDERSTAND THAT?

25 JUROR #195: YES, SIR.

HEARING

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1 THE COURT: OKAY. AS I SAID, JUST RELAX. WE'RE GOING TO ASK
2 YOU SOME QUESTIONS NOT TO INVADE YOUR PRIVACY IN ANY
3 WAY, BUT BECAUSE IT IS NECESSARY DUE TO THE NATURE OF
4 THE PROCEEDING. THERE ARE NO RIGHT OR WRONG ANSWERS TO
5 THE QUESTIONS, BUT WE'RE SIMPLY SEEKING YOUR POINT OF
6 VIEW. WE WANT YOU TO BE OPEN AND HONEST IN HOUR
7 ANSWERS.

8 FIRST OF ALL, LET ME ASK YOU IF YOU HAD AN
9 OPPORTUNITY TO LOOK AT THE JURY SHEET YOU WERE GIVEN
10 BACK IN THE JURY ROOM? THERE ARE THREE TYPES OF
11 JURORS, TYPE #1, TYPE #2 AND TYPE #3. WHICH TYPE JUROR
12 DO YOU BELIEVE BEST DESCRIBES YOU?

13 JUROR #195: I'LL SAY #3.

14 THE COURT: JUROR #3, ALL RIGHT, SIR. SO, WHAT YOU'RE SAYING
15 IS THAT AFTER LISTENING TO THE FACTS AND CIRCUMSTANCES
16 SURROUNDING THIS CASE AND DEPENDING ON THOSE FACTS AND
17 CIRCUMSTANCES, YOU COULD EITHER FIND FOR LIFE
18 IMPRISONMENT, OR IF THE FACTS WARRANTED IT, YOU COULD
19 FIND FOR A PUNISHMENT OF DEATH, IF APPROPRIATE, IS THAT
20 RIGHT?

21 JUROR #195: YES, SIR.

22 THE COURT: ALL RIGHT. LET ME ASK YOU OR TELL YOU THAT IN
23 THIS MATTER, THE STATE MUST PROVE BEYOND A REASONABLE
24 DOUBT CERTAIN AGGRAVATED CIRCUMSTANCES IN THIS CASE,
25 AND THESE AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES

HEARING

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1 WHICH OUR GENERAL ASSEMBLY HAS DECIDED EITHER LESSON OR
2 INCREASE THE SEVERITY OF THE MURDER. MR. STONE HAS
3 ALREADY BEEN FOUND GUILTY, AND THAT IS NOT GOING TO BE
4 BEFORE THE JURY. THE ONLY ISSUE THAT IS GOING TO BE
5 BEFORE THE JURY IS WHAT PUNISHMENT THE JURY IS GOING TO
6 RECOMMEND, EITHER LIFE IMPRISONMENT OR DEATH. WHEN I
7 SAY RECOMMEND, THE JURY IS GOING TO RECOMMEND, BUT IT'S
8 NOT REALLY A RECOMMENDATION, BECAUSE WHATEVER THE JURY
9 RECOMMENDS TO ME, I'M GOING TO IMPOSE, BE IT LIFE
10 IMPRISONMENT OR DEATH. YOU UNDERSTAND THAT THAT'S THE
11 JURY'S ROLE IN THIS PARTICULAR CASE?

12 JUROR #195: YES, SIR.

13 THE COURT: OKAY. AND IN THAT CONNECTION, YOU AS JURORS WILL
14 BE ASKED TO TAKE INTO CONSIDERATION AGGRAVATING AN
15 MITIGATING CIRCUMSTANCES. AGGRAVATING CIRCUMSTANCES
16 ARE FACTS THAT THE GENERAL ASSEMBLY HAS DECLARED BY
17 STATUTE WOULD MAKE WORSE OR AGGRAVATE THE OFFENSE OF
18 MURDER, AND WOULD INCREASE THE ENORMITY AND ADD TO THE
19 INJURY OF THE CRIME OF MURDER. ONE OF THE THINGS THAT
20 THE JURY WILL HAVE TO DETERMINE IN THIS CASE IS WHETHER
21 OR NOT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT
22 THAT THERE ARE AGGRAVATING CIRCUMSTANCES. MITIGATING
23 CIRCUMSTANCES ARE EXACTLY THE OPPOSITE. THEY ARE FACTS
24 AND CIRCUMSTANCES AND DETAILS THAT OUR GENERAL ASSEMBLY
25 HAS DECLARED BY STATUTE REDUCE THE SEVERITY OF THE

HEARING

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1 OFFENSE OF MURDER AND MAY BE CONSIDERED AS EXTENUATING
2 OR DECREASING THE DEGREE OF MORAL CULPABILITY OR
3 RESPONSIBILITY. THOSE ARE THE STATUTORY MITIGATING
4 CIRCUMSTANCES, AND IN ADDITION, THE DEFENDANT HAS THE
5 RIGHT TO SHOW OTHER MITIGATING CIRCUMSTANCES. MY
6 QUESTION TO YOU IS IF YOU ARE A JUROR IN THIS SITUATION
7 ON THIS CASE, DEPENDING ON THE FACTS AND CIRCUMSTANCES
8 OF THE CASE, INCLUDING THE CONSIDERATION OF AGGRAVATING
9 AND MITIGATING CIRCUMSTANCES, WOULD YOU BE ABLE TO SIGN
10 A VERDICT FORM FOR LIFE IN PRISON, IF THAT IS YOUR VIEW
11 OF THE FACTS AND CIRCUMSTANCES?

12 JUROR #195: YES.

13 THE COURT: IF YOU WERE A JUROR IN THIS CASE, AND AGAIN AFTER
14 CONSIDERING THE AGGRAVATING AND MITIGATING
15 CIRCUMSTANCES, WOULD YOU BE ABLE TO SIGN A VERDICT FORM
16 OF DEATH, IF THAT BE YOUR VIEW OF THE FACTS AND
17 CIRCUMSTANCES?

18 JUROR #195: YES.

19 THE COURT: ALL RIGHT. MR. SIMS, LET ME ASK THIS TO YOU.
20 HAVE YOU READ ANYTHING OR HEARD ANYTHING ABOUT THIS
21 CASE?

22 JUROR #195: I HAVEN'T ACTUALLY HEARD ANYTHING ABOUT IT. I
23 PROBABLY GLANCED AT IT IN THE PAPER, BUT NEVER READ
24 ANYTHING.

25 THE COURT: WHAT PAPER IS THAT? THE LAST FEW DAYS OR WAS IT

HEARING

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1 SOME TIME AGO?

2 JUROR #195: ACTUALLY, IT WAS A WHILE AGO.

3 THE COURT: A WHILE AGO? DO YOU KNOW HOW LONG AGO? I MEAN,
4 IN THE LAST SIX MONTHS OR LONGER THAN THAT?

5 JUROR #195: PROBABLY SOMEWHERE IN THAT AREA. I DON'T
6 REMEMBER EXACTLY.

7 THE COURT: ALL RIGHT. WOULD THE FACT THAT YOU HAD READ
8 SOMETHING IN THE NEWSPAPER, HAS THAT CAUSED YOU TO FORM
9 AN OPINION ABOUT ANYTHING IN CONNECTION WITH THIS CASE?

10 JUROR #195: NO, SIR.

11 THE COURT: ALL RIGHT. WOULD YOU BE ABLE TO PUT THAT ASIDE
12 AND DECIDE THE CASE BASED ON THE FACTS YOU HEAR IN THIS
13 COURTROOM AS OPPOSED TO WHAT YOU MAY HAVE READ IN THE
14 NEWSPAPER?

15 JUROR #195: YES, SIR.

16 THE COURT: NOW, IF YOU ARE CHOSEN AS A JUROR IN THIS CASE,
17 YOU WILL BE HOUSED IN A MOTEL FOR APPROXIMATELY SIX
18 DAYS. EXCEPT FOR THE PERSONAL INCONVENIENCE, WOULD
19 THIS POSE A SERIOUS DANGER TO THE HEALTH OR WELL BEING
20 OF YOURSELF OR ANY OF THOSE WHO ARE DEPENDENT UPON YOU?

21 JUROR #195: NO, SIR.

22 THE COURT: I KNOW IT'S A BIT INCONVENIENT.

23 JUROR #195: YEAH.

24 THE COURT: ALL RIGHT. I THINK THAT'S ALL THE QUESTIONS I
25 HAVE FOR YOU. ANSWER ANY QUESTIONS MR. SALEEBY MAY

HEARING

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1 HAVE FOR YOU.

2 MR. SALEEBY: MR. SIMS, MY NAME IS DUDLEY SALEEBY. I'LL
3 TRYING THIS CASE, ALONG WITH SOLICITOR JACKSON. I TAKE
4 IT YOU DON'T KNOW ANYTHING PRIOR TO THIS TRIAL THAT
5 WOULD INFLUENCE YOUR DECISION, IS THAT CORRECT?

6 JUROR #195: THAT'S RIGHT.

7 MR. SALEEBY: AND YOU COULD LISTEN TO WHAT BOTH SIDES HAVE TO
8 SAY AND MAKE UP YOUR OWN MIND AS TO WHAT YOU THOUGHT
9 THE PROPER PUNISHMENT WAS?

10 JUROR #195: YES, SIR.

11 MR. SALEEBY: EITHER LIFE OR DEATH, AND YOU COULD POSE EITHER
12 PUNISHMENT THAT YOU WERE SATISFIED WAS CORRECT?

13 JUROR #195: RIGHT.

14 MR. SALEEBY: THANK YOU, SIR.

15 THE COURT: MR. LITTLEJOHN?

16 MR. LITTLEJOHN: THANK YOU, YOUR HONOR. MR. SIMS, MY NAME IS
17 CAM LITTLEJOHN. I, ALONG WITH JIM BABB, REPRESENT
18 BOBBY WAYNE STONE, THE DEFENDANT HERE. MR. SIMS, YOU
19 INDICATED YOU HAD READ SOMETHING ABOUT THE CASE, BUT
20 REALLY WASN'T THAT MUCH? DID I UNDERSTAND YOU?

21 JUROR #195: WELL, JUST KIND OF GLANCED IT THROUGH THE PAPER
22 REALLY.

23 MR. LITTLEJOHN: WHAT DO YOU REMEMBER SEEING ABOUT IT, IF I
24 MAY ASK?

25 JUROR #195: JUST SAW THE DEPUTY'S PICTURE IN THERE.

HEARING

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1 MR. LITTLEJOHN: DEPUTY KUBALA?

2 JUROR #195: RIGHT.

3 MR. LITTLEJOHN: YOU REMEMBER ANYTHING ELSE ABOUT THE

4 ARTICLE?

5 JUROR #195: NO.

6 MR. LITTLEJOHN: DID YOU SEE ANYTHING ON TV?

7 JUROR #195: NO. I'M NOT A BIG TV WATCHER.

8 MR. LITTLEJOHN: GOOD FOR YOU. MR. SIMS, HAVE YOU IN THE

9 PAST HAD ANY DEALINGS WITH THE SUMTER COUNTY SHERIFF'S

10 DEPARTMENT? DO YOU KNOW ANY OF THE DEPUTIES OR ANYBODY

11 THAT WORKS THERE?

12 JUROR #195: WELL, I KNOW THEM. I MEAN, I PLAYED BASEBALL

13 AGAINST THEM A WHILE BACK. I MEAN, THAT ... BUT I QUIT

14 PLAYING 16 YEARS AGO NOW. YOU KNOW WHAT I'M SAYING?

15 I DO KNOW SOME OF THE DEPUTIES.

16 MR. LITTLEJOHN: ALL RIGHT. HAVE YOU KEPT UP ACQUAINTANCES

17 WITH THEM IN THOSE 16 YEARS?

18 JUROR #195: NO MORE THAN TO SPEAK TO THEM WHEN I SEE THEM.

19 MR. LITTLEJOHN: OKAY. YOU DON'T HAVE ANY CLOSE FRIENDS THAT

20 ARE DEPUTIES?

21 JUROR #195: NO.

22 MR. LITTLEJOHN: MR. SIMS, YOU HAD INDICATED THAT GIVEN THE

23 CIRCUMSTANCES AND THE EVIDENCE THAT YOU HEAR, YOU COULD

24 EITHER GO WITH A SENTENCE OF LIFE IN PRISON OR A

25 SENTENCE OF DEATH, IS THAT RIGHT?

HEARING

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1 JUROR #195: CORRECT.

2 MR. LITTLEJOHN: DO YOU HAVE AN OPINION ABOUT THE DEATH
3 PENALTY?

4 JUROR #195: WELL, I MEAN, DON'T REALLY HAVE AN OPINION ABOUT
5 IT. I MEAN, AS FAR AS SAYING MY OPINION ABOUT IT?

6 MR. LITTLEJOHN: YES, SIR.

7 JUROR #195: I MEAN, ONLY IF IT'S DUE TO SOMEONE. I MEAN, AS
8 FAR AS EVIDENCE AGAINST THEM.

9 MR. LITTLEJOHN: OKAY. SO IF I MAY, YOU THINK IT'S
10 APPROPRIATE UNDER SOME CIRCUMSTANCES?

11 JUROR #195: OF COURSE.

12 MR. LITTLEJOHN: OKAY. WELL, LET ME ASK YOU THIS. BASED ON
13 THE FACT THAT THE DEFENDANT IS GUILTY OF MURDER, WOULD
14 YOU AUTOMATICALLY THINK THE DEATH PENALTY IS
15 APPROPRIATE?

16 JUROR #195: UNLESS THERE'S A REASON FOR MURDER. I MEAN, IF
17 YOU COME IN MY HOUSE, THEN I FEEL I GOT A REASON, YOU
18 KNOW, TO FIGHT BACK, SO YOU KNOW, IT DEPENDS ON THE
19 REASON.

20 MR. LITTLEJOHN: OKAY. OF COURSE, WE'RE TALKING ABOUT A
21 DIFFERENT SETTING HERE. WE'RE NOT TALKING ABOUT A
22 SELF-DEFENSE THING. WE'RE TALKING ABOUT THIS
23 PARTICULAR CASE. WOULD YOU BE WILLING TO LISTEN TO ALL
24 THE EVIDENCE AND FIGURE OUT WHETHER A DEATH PENALTY IS
25 APPROPRIATE OR WHETHER A LIFE SENTENCE WOULD BE

HEARING

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1 APPROPRIATE?

2 JUROR #195: YES.

3 MR. LITTLEJOHN: OKAY. MR. SIMS, IN THIS CASE, THERE WILL
4 BE, WHAT HIS HONOR HAS ALLUDED TO, MITIGATING
5 CIRCUMSTANCES OR EVIDENCE OF MITIGATION, AND BY THAT,
6 IT IS MEANT THINGS THAT LESSEN THE SEVERITY OF A MURDER
7 CONVICTION. WOULD YOU HAVE ANY PROBLEM LISTENING TO
8 THAT MITIGATING CIRCUMSTANCES BEFORE YOU DETERMINE WHAT
9 THE APPROPRIATE SENTENCE IS?

10 JUROR #195: NO, SIR. I WOULDN'T HAVE NO PROBLEM.

11 MR. LITTLEJOHN: OKAY. AND BY THAT, I'M TALKING ABOUT THINGS
12 THAT BEAR ON THE DEFENDANT'S LIFE OR HIS CIRCUMSTANCES
13 OR THINGS INDEPENDENT OF THIS PARTICULAR CRIME. WOULD
14 YOU HAVE ANY PROBLEM LISTENING TO THAT EVIDENCE?

15 JUROR #195: NO, SIR.

16 MR. LITTLEJOHN: AND TAKING IT INTO CONSIDERATION?

17 JUROR #195: NO.

18 MR. LITTLEJOHN: OKAY. JUST A COUPLE OF FINAL THINGS. MR.
19 SIMS, IF YOU WERE ON THIS JURY AND YOU FOUND OUT THAT
20 A MAJORITY OF THE JURORS WERE LEANING ONE WAY OR WANTED
21 TO VOTE ONE WAY, WOULD YOU EVER CONSIDER CHANGING YOUR
22 VOTE JUST TO GO ALONG WITH THE MAJORITY OF THE JURORS?

23 JUROR #195: NO. I MEAN, MY DECISION WOULD BE MINE.

24 MR. LITTLEJOHN: OKAY. WOULD YOU EXPECT THE MAJORITY TO
25 EXPECT YOUR OPINION?

HEARING

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1 JUROR #195: YEAH, JUST LIKE I WOULD, YOU KNOW, RESPECT MINE
2 JUST LIKE I'M GOING TO RESPECT THEIRS. I WOULDN'T TRY
3 TO CHANGE THEIR MINDS.

4 MR. LITTLEJOHN: GOOD ENOUGH. THANK YOU, MR. SIMS. THAT'S
5 ALL I HAVE.

6 THE COURT: ALL RIGHT. MR. SIMS, THANK YOU VERY MUCH. IF
7 YOU WOULD, STEP OUTSIDE FOR JUST A MINUTE. YOU NEED
8 NOT GO BACK TO THE JURY ROOM. I NEED TO TALK TO THE
9 LAWYERS FOR JUST A MINUTE, AND THEN WE'LL BRING YOU
10 BACK IN. WHAT SAYETH THE STATE?

11 MR. SALEEBY: HE'S QUALIFIED, SIR.

12 THE COURT: MR. LITTLEJOHN?

13 MR. LITTLEJOHN: WE AGREE, YOUR HONOR.

14 THE COURT: ALL RIGHT. BRING THE JUROR BACK IN, PLEASE. MR.
15 SIMS, YOU HAVE BEEN QUALIFIED AS A JUROR IN THIS CASE.
16 IT MEANS THAT YOU MAY SERVE AS A JUROR. IT DOES NOT
17 MEAN THAT YOU WILL BE SELECTED. WE ARE IN THE PROCESS
18 OF GOING THROUGH THE JUROR PANEL TO DETERMINE THE
19 JURORS WHO WOULD BE QUALIFIED, AND YOU HAVE BEEN FOUND
20 TO BE QUALIFIED. I CANNOT TELL YOU EXACTLY WHEN I'M
21 GOING TO NEED YOU TO REPORT BACK, BECAUSE WE'VE GOT A
22 LOT OF PEOPLE THAT WE'VE GOT TO ASK THE SAME TYPE
23 QUESTIONS. WHAT I'M GOING TO ASK THAT YOU DO IS
24 BETWEEN 3:00 AND 4:00 O'CLOCK TOMORROW AFTERNOON, CALL
25 THAT NUMBER ON THE BLUE CARD, AND WE WILL GIVE YOU

HEARING

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1 INSTRUCTIONS ON WHEN TO COME BACK. IT MIGHT BE LATE
2 TOMORROW AFTERNOON OR EARLY THURSDAY. I CAN'T TELL AT
3 THIS TIME. SO, CALL THAT NUMBER.

4 IN THE MEANTIME, WHEN YOU COME BACK, YOU NEED TO
5 BRING CLOTHES AND PERSONAL BELONGINGS THAT WOULD LAST
6 YOU UP TO SIX DAYS IN A HOTEL, IF YOU ARE SELECTED. DO
7 NOT BRING THEM INTO THE COURTHOUSE. PACK THEM UP AND
8 PUT THEM IN YOUR CAR, AND IF YOU ARE SELECTED, YOU
9 WOULD HAVE THEM TO GO TO THE HOTEL. IN THE MEANTIME,
10 DO NOT DISCUSS THIS CASE WITH ANYONE. WHEN YOU SEE
11 YOUR FAMILY AND FRIENDS, DO NOT DISCUSS THE CASE WITH
12 THEM. YOU'VE GOT TO DECIDE THIS CASE BASED ON WHAT YOU
13 HEAR IN THE COURTROOM AND NOT BASED ON WHAT YOU HEAR OR
14 READ. DO NOT ALLOW ANYONE TO DISCUSS IT WITH YOU. IF
15 THEY TRY TO DISCUSS IT WITH YOU, GET THEIR NAMES. DO
16 NOT READ ANY NEWSPAPERS OR WATCH ANYTHING ON TV ABOUT
17 THIS MATTER. WITH THAT THEN, I'M GOING TO EXCUSE YOU
18 AND ASK YOU TO CALL BACK BETWEEN 3:00 AND 4:00
19 TOMORROW, THANK YOU. ALL RIGHT. #115, MR. HERRING.

20 ALL RIGHT. LET ME SEE IF I'VE PRONOUNCED YOUR
21 NAME CORRECTLY. IS IT LABRUNO?

22 JUROR #115: LABRUNO.

23 THE COURT: ALL RIGHT. YOU ARE RICKY LABRUNO, IS THAT
24 CORRECT?

25 JUROR #115: YES.

HEARING

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1 THE COURT: ALL RIGHT. I WANT YOU TO JUST RELAX AND BE AT
2 EASE AND NOT FEEL INTIMIDATED AT ALL. WE DO NEED TO
3 ASK YOU SOME QUESTIONS, AND THE QUESTIONS ARE NOT
4 DESIGNED FOR THE PURPOSE TO INVADÉ YOUR PRIVACY AT ALL.
5 THEY ARE QUESTIONS WE NEED TO ASK TO DETERMINE YOUR
6 QUALIFICATIONS TO SERVE ON THIS JURY, AND IT IS
7 NECESSARY DUE TO THE NATURE OF THE PROCEEDING. THERE
8 ARE NO RIGHT OR WRONG ANSWERS. WE ARE JUST SIMPLY
9 SEEKING YOUR POINT OF VIEW. WE SIMPLY ASK THAT YOU
10 ANSWER OPEN AND HONEST. HAVE YOU HAD AN OPPORTUNITY TO
11 LOOK AT THE JUROR SHEET THAT YOU WERE GIVEN BACK IN THE
12 JURY ROOM?

13 JUROR #115: YES, SIR.

14 THE COURT: ALL RIGHT. THERE ARE THREE TYPES OF JURORS
15 MENTIONED THERE, TYPE #1, TYPE #2 AND TYPE #3. WHICH
16 TYPE OF JUROR DO YOU BELIEVE BEST DESCRIBES YOU?

17 JUROR #115: I AM GOING OVER IT IN MY MIND MYSELF.

18 THE COURT: ALL RIGHT. YOU WANT ME TO GO OVER THEM WITH YOU
19 AGAIN OR HAVE YOU GOT A GOOD IDEA?

20 JUROR #115: I'VE GOT AN IDEA.

21 THE COURT: JUST TAKE YOUR TIME AND GIVE US YOUR SINCERE
22 FEELINGS ON IT.

23 JUROR #115: HONESTLY, THE FIRST ONE.

24 THE COURT: TYPE #1 IS WHAT YOU THINK YOU WOULD BE?

25 JUROR #115: YES.

HEARING

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1 THE COURT: ALL RIGHT. TYPE #1 IS THE TYPE JUROR THAT FEELS
2 THAT ONCE A CRIME OF MURDER HAS BEEN PROVEN BY THE
3 STATE AND THE JURY IS CONSIDERING THE PUNISHMENT, YOU
4 FEEL THAT YOU ARE REQUIRED TO GIVE THE DEATH PENALTY IN
5 EACH AND EVERY CASE, IS THAT CORRECT?

6 JUROR #115: IF IT'S BEEN PROVEN, I GUESS DEPENDING ON WHAT
7 TYPE, LIKE THIRD DEGREE OR WHATEVER.

8 THE COURT: ALL RIGHT. LET'S EXPLORE THAT A LITTLE BIT.
9 FIRST OF ALL, I WILL TELL YOU THAT IN THIS CASE, MR.
10 STONE IS ALREADY FOUND TO BE GUILTY OF MURDER, SO THE
11 JURY IN THIS CASE IS NOT GOING TO HAVE TO MAKE A
12 DETERMINATION AS TO GUILT OF THE PARTY. THE ONLY
13 QUESTION THAT WILL BE BEFORE THE JURY IN THIS CASE WILL
14 BE WHAT PUNISHMENT TO RECOMMEND TO THE COURT, AND I
15 WILL TELL YOU THAT WHATEVER PUNISHMENT IS RECOMMENDED
16 BY THE JURY TO THE COURT, IS NOT TRULY A
17 RECOMMENDATION. IT IS WHAT THIS COURT WILL FOLLOW. I
18 WILL SENTENCE HIM TO WHATEVER THE JURY RECOMMENDS IN
19 THIS CASE.

20 NOW, YOU WILL BE ASKED TO HEAR OR WILL HEAR AND
21 WILL BE ASKED TO DECIDE WHETHER OR NOT THE STATE HAS
22 PROVEN BEYOND A REASONABLE DOUBT STATUTORY AGGRAVATING
23 CIRCUMSTANCES, AND IF THE STATE DOES PROVE TO THE
24 SATISFACTION OF THE JURY THAT THERE WERE STATUTORY
25 AGGRAVATING CIRCUMSTANCES, AND I WILL TELL YOU WHAT

HEARING

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1 THOSE ARE ARE FACTS WHICH MAKE WORSE, THAT IS AGGRAVATE
2 THE OFFENSE OF MURDER. IN OTHER WORDS, THE AGGRAVATING
3 CIRCUMSTANCE, WHEN ACCOMPANYING THE MURDER, INCREASES
4 THE ENORMITY OR ADDS TO THE INJURY OF THE CRIME, SO IT
5 REALLY MAKES THE CRIME WORSE.

6 IN ADDITION TO THAT, YOU WILL HAVE THE
7 OPPORTUNITY TO HEAR MITIGATING CIRCUMSTANCES. THERE
8 ARE TWO TYPES OF MITIGATING CIRCUMSTANCES. STATUTORY
9 MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES OR FACTS
10 WHICH THE GENERAL ASSEMBLY HAS DECLARED REDUCE THE
11 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED
12 AS EXTENUATING OR REDUCING THE DEGREE OF THE
13 CULPABILITY OR RESPONSIBILITY OF THE DEFENDANT. THOSE
14 ARE THE STATUTORY MITIGATING CIRCUMSTANCES. IN
15 ADDITION, THE DEFENDANT HAS THE RIGHT TO CONSIDER OR
16 THE JURY HAS THE RIGHT TO CONSIDER OTHER MITIGATION
17 CIRCUMSTANCES.

18 NOW, I TELL YOU THAT TO ASK YOU THESE QUESTIONS.
19 KEEPING IN MIND THAT THE DEFENDANT IN THIS CASE IS
20 ALREADY FOUND TO BE GUILTY OF MURDER, YOU WILL BE ASKED
21 AS A JUROR TO DETERMINE WHETHER OR NOT THERE ARE ANY
22 STATUTORY AGGRAVATING CIRCUMSTANCES, AND I WILL DEFINE
23 WHAT THOSE AGGRAVATING CIRCUMSTANCES ARE FOR YOU, AND
24 YOU WILL ALSO BE ASKED TO CONSIDER ANY STATUTORY
25 MITIGATING CIRCUMSTANCES AND IF THERE ARE ANY OTHER

HEARING

146

1 MITIGATING CIRCUMSTANCES. HAVING HEARD ALL OF THAT,
2 YOU WILL THEN MAKE A DECISION AS TO WHETHER THE
3 DEFENDANT SHOULD BE SENTENCED TO DEATH OR LIFE
4 IMPRISONMENT. SO, MY QUESTION TO YOU IS AFTER HEARING
5 THOSE THINGS, WOULD YOU BE ABLE TO MAKE A DECISION OF
6 EITHER DEATH OR LIFE IMPRISONMENT BASED UPON THE FACTS
7 OF THE CASE AS YOU HEAR THEM TO BE?

8 JUROR #115: I THINK I COULD.

9 THE COURT: OKAY. I'M GOING TO TELL YOU AGAIN THAT WHAT YOU
10 WOULD BE REQUIRED TO DO IS NOT ONLY MAKE A
11 DETERMINATION THAT THERE WERE OR WERE NOT STATUTORY OR
12 MITIGATING CIRCUMSTANCES, BUT YOU WOULD BE REQUIRED TO
13 SIGN A VERDICT FORM THAT SENTENCES THE DEFENDANT TO
14 LIFE IN PRISON OR TO DEATH. YOU WOULD BE REQUIRED TO
15 SIGN THAT ACCORDING TO YOUR VIEW OF THE FACTS AND
16 CIRCUMSTANCES AS PROVEN TO YOU. COULD YOU DO THAT?

17 JUROR #115: EVERY JUROR WOULD HAVE TO SIGN?

18 THE COURT: YES, SIR. EVERY JUROR WOULD HAVE TO SIGN,
19 INCLUDING YOU.

20 JUROR #115: YES, SIR.

21 THE COURT: OKAY. IN THAT CONNECTION, LET ME ASK YOU, WOULD
22 YOU BE ABLE TO MAKE THAT DECISION ON YOUR OWN AND
23 DEPENDING ON WHAT THE OTHER JURORS DID, WHERE WOULD YOU
24 STAND AS FAR AS WHAT THE OTHER JURORS DID?

25 JUROR #115: NEVER BEEN IN THAT SITUATION BEFORE.

HEARING

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1 THE COURT: ALL RIGHT. I'M GOING TO LET THE LAWYERS EXPLORE
2 THAT WITH YOU A LITTLE BIT MORE IN JUST A FEW MINUTES.

3 JUROR #115: ALL RIGHT.

4 THE COURT: I BELIEVE THE ANSWER TO THE LAST QUESTION IS IF
5 YOU WERE A JUROR IN THIS CASE, THAT YOU COULD,
6 DEPENDING ON THE FACTS AND CIRCUMSTANCES OF THE CASE,
7 INCLUDING THE AGGRAVATING AND MITIGATING CIRCUMSTANCES
8 AND ALSO ANY OTHER MITIGATING CIRCUMSTANCES AND THE LAW
9 I INSTRUCT YOU, YOU WOULD BE ABLE TO FIND A VERDICT OF
10 EITHER LIFE IMPRISONMENT OR THE DEATH PENALTY AND SIGN
11 YOUR NAME TO THAT VERDICT FORM, IS THAT CORRECT?

12 JUROR #115: YES, SIR.

13 THE COURT: AND WOULD YOU BE ABLE TO FOLLOW THE LAW AS THIS
14 COURT INSTRUCTS IT TO YOU, REGARDLESS OF WHETHER YOU
15 THINK THE LAW IS CORRECT OR WHETHER IT AGREES OR
16 DISAGREES WITH YOUR VIEW OF THE LAW, THAT YOU WOULD BE
17 REQUIRED TO FOLLOW THE LAW AS I INSTRUCTED IT TO YOU?
18 WOULD YOU BE ABLE TO DO THAT?

19 JUROR #115: YES, SIR.

20 THE COURT: ALL RIGHT. NOW, LET ME ASK YOU THIS. HAVE YOU
21 AT ANY TIME IN THE PAST READ ANYTHING IN THE NEWSPAPER
22 ABOUT THIS CASE OR HEARD ANY TELEVISION OR BROADCAST
23 REPORTS ABOUT THIS CASE?

24 JUROR #115: YES, SIR.

25 THE COURT: ALL RIGHT. TELL ME ABOUT WHAT YOU'VE HEARD AND

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HEARING

148

1 WHAT YOU'VE SEEN.

2 JUROR #115: THIS WAS BACK IN '96.

3 THE COURT: BACK AT THE TIME THE INCIDENT OCCURRED. HAVE YOU
4 READ ANYTHING OR HEARD ANYTHING LATELY ABOUT THIS CASE?

5 JUROR #115: NO. I CAN'T SAY THAT I HAVE HEARD ANYTHING
6 LATELY.

7 THE COURT: BY LATELY, I MEAN IN THE LAST SIX MONTHS.

8 JUROR #115: NO, SIR.

9 THE COURT: NOW, WHAT YOU HEARD BACK IN 1996, HAVE YOU FORMED
10 ANY OPINION REGARDING THIS MATTER BASED UPON WHAT YOU
11 HEARD OR READ BACK IN 1996?

12 JUROR #115: I BELIEVE I HAVE.

13 THE COURT: YOU HAVE. WOULD THAT OPINION PREVENT YOU FROM
14 LISTENING TO THE TESTIMONY IN THIS CASE, KEEPING IN
15 MIND THAT YOU'RE NOT MAKING A DECISION ON THE GUILT
16 PHASE, HE'S ALREADY BEEN FOUND GUILTY OF THAT, WHAT YOU
17 HEARD ABOUT IT, WOULD THAT PREVENT YOU FROM LISTENING
18 TO THE TESTIMONY AND DECIDING THE AGGRAVATING AND
19 MITIGATING CIRCUMSTANCES AND DECIDING THE CASE BASED
20 UPON WHAT YOU HEAR IN THIS COURTROOM?

21 JUROR #115: I DON'T THINK IT WOULD.

22 THE COURT: ALL RIGHT, SIR. ONE OTHER QUESTION, AND THAT IS
23 IF YOU ARE SELECTED AS A JUROR IN THIS CASE, YOU WOULD
24 BE HOUSED IN A MOTEL FOR FIVE OR SIX DAYS UNTIL THE
25 MATTER IS CONCLUDED. BESIDES THE PERSONAL

THIRD JUDICIAL CIRCUIT

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HEARING

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1 INCONVENIENCE, WOULD THAT CAUSE ANY UNDUE HARDSHIP OR
2 SERIOUS DANGER TO THE HEALTH AND WELL BEING OF YOURSELF
3 OR ANY OF THOSE WHO ARE DEPENDENT UPON YOU?

4 JUROR #115: NO, SIR.

5 THE COURT: ALL RIGHT. I THINK THAT'S ALL THE QUESTIONS I
6 HAVE. ANSWER ANY QUESTIONS THAT MR. SALEEBY MIGHT HAVE
7 FOR YOU.

8 MR. SALEEBY: MR. LABRUNO, MY NAME IS DUDLEY SALEEBY.
9 SOLICITOR JACKSON AND I WILL BE TRYING THIS CASE. I
10 KNOW THIS IS PROBABLY YOUR FIRST EXPERIENCE IN COURT.

11 JUROR #115: YES, SIR.

12 MR. SALEEBY: AND PROBABLY NOT THE MOST COMFORTABLE POSITION
13 SITTING UP THERE. BE AT EASE AND PLEASE UNDERSTAND
14 THERE AREN'T ANY RIGHT OR WRONG ANSWER, NOR IS ANYBODY
15 ASKING YOU, I'M NOT ASKING YOU WHAT ARE YOU GOING TO DO
16 IF YOU SIT ON THIS JURY. WE'RE NOT ASKING YOU THAT.
17 WE'RE ASKING YOU TO TELL US WHAT YOU THINK YOU'RE
18 CAPABLE OF DOING. DO YOU THINK YOU'RE CAPABLE OF
19 SITTING AND LISTENING TO TESTIMONY PUT UP BY BOTH THE
20 STATE AND THE DEFENSE?

21 JUROR #115: YES, SIR.

22 MR. SALEEBY: DO YOU THINK YOU'RE CAPABLE OF MAKING YOUR OWN
23 MIND UP OF WHAT THE PROPER PUNISHMENT IS BASED ON WHAT
24 YOU HEAR IN COURT?

25 JUROR #115: YES, SIR.

HEARING

150

1 MR. SALEEBY: DO YOU THINK THAT YOU COULD RECOMMEND, THAT IS
2 SET PUNISHMENT FOR LIFE IMPRISONMENT, IF THAT'S WHAT
3 YOU THOUGHT WAS RIGHT?

4 JUROR #115: WILL YOU REPEAT THAT?

5 MR. SALEEBY: ALL RIGHT. I'LL SAY IT ANOTHER WAY. AFTER YOU
6 HEARD EVERYTHING BOTH SIDES WANTED YOU TO HEAR, HEARD
7 FROM THE JUDGE, IF YOU THOUGHT THAT LIFE IMPRISONMENT
8 WAS THE PROPER PUNISHMENT, COULD YOU VOTE FOR LIFE
9 IMPRISONMENT?

10 JUROR #115: YES, SIR.

11 MR. SALEEBY: ON THE OTHER HAND, IF AFTER YOU HEARD
12 EVERYTHING YOU THOUGHT THE PROPER PUNISHMENT WAS THE
13 DEATH PENALTY, COULD YOU VOTE FOR THAT?

14 JUROR #115: YES, SIR.

15 MR. SALEEBY: WOULD YOU LISTEN TO WHAT BOTH SIDES SAID AND
16 WHAT THE JUDGE SAID BEFORE YOU MADE UP YOUR MIND?

17 JUROR #115: YES, SIR.

18 MR. SALEEBY: WOULD YOU DISCUSS THE CASE WITH YOUR OTHER
19 JURORS? WOULD YOU LISTEN TO THEM AS THEY DISCUSS THE
20 CASE?

21 JUROR #115: THE DECISION IS SUPPOSE TO BE MINE.

22 MR. SALEEBY: EXACTLY. THAT'S WHAT I'M ASKING. WOULD YOU
23 MAKE YOUR OWN ... WOULD YOU LISTEN TO THEM, BUT
24 NEVERTHELESS MAKE YOUR OWN MIND UP AS TO WHAT YOU
25 THOUGHT WAS RIGHT?

HEARING

151

1 JUROR #115: THAT'S WHAT I WOULD, LIKE I SAID, THAT'S WHAT I
2 WOULD ATTEMPT TO DO. I CAN'T SAY IT'S NOT GOING TO
3 SWAY SOMEBODY ONE WAY OR ANOTHER, IF YOU HEAR
4 SOMETHING, BUT I WOULD ATTEMPT TO DO IT ON MY OWN
5 BELIEF.

6 MR. SALEEBY: AND IF YOU MADE YOUR MIND UP WHAT THE RIGHT
7 PUNISHMENT WAS, WOULD YOU HOLD TO THAT OPINION,
8 REGARDLESS OF WHAT OTHERS SAID OR THOUGHT?

9 JUROR #115: YES, SIR.

10 MR. SALEEBY: YOU MENTIONED THAT YOU READ SOMETHING BACK IN
11 1996. CAN YOU MAKE YOUR DECISION ON PUNISHMENT BASED
12 ON WHAT YOU HEAR TODAY OR WOULD ANY OF THAT AFFECT YOUR
13 DECISION?

14 JUROR #115: I THINK I CAN ONLY SPEAK FOR THE PRESENT, BUT IT
15 HAS AN AFFECT ON THE WAY I SEE IT RIGHT NOW.

16 MR. SALEEBY: WELL, YOU NEED TO TELL US ABOUT THAT. THAT'S
17 WHAT WE'RE TRYING TO FIND OUT.

18 JUROR #115: WHAT I KNOW ABOUT THE CASE RIGHT NOW HAS MY MIND
19 THINKING A CERTAIN WAY.

20 MR. SALEEBY: AND WHAT WOULD THAT BE?

21 JUROR #115: THAT IT'S THE DEATH PENALTY.

22 MR. SALEEBY: ALL RIGHT. AND WE NEED TO KNOW THAT WHAT
23 YOU'VE HEARD AND HOW YOU FEEL WOULD INFLUENCE YOU SUCH
24 THAT YOU DON'T THINK YOU COULD MAKE A DECISION HERE OR
25 DO YOU THINK THAT'S SOMETHING THAT'S IN THE PAST AND

HEARING

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1 YOU CAN PUT ASIDE? THERE'S NO RIGHT OR WRONG. WE JUST
2 NEED TO KNOW.

3 JUROR #115: I UNDERSTAND THAT. I WISHED I COULD ANSWER THAT
4 FOR SURE ONE WAY OR THE OTHER WITHOUT ACTUALLY
5 EXPERIENCING IT IS WHAT I'M GETTING AT. THERE IS SOME
6 PREJUDICE TO IT IN MY MIND. I MEAN, I WOULD TRY TO
7 LISTEN TO IT WITH AN OPEN MIND, BUT I'M NOT ABSOLUTELY
8 CERTAIN THAT I COULD DO IT.

9 MR. SALEEBY: I THINK YOU'VE ANSWERED JUST AS PLAIN AS YOU
10 CAN. THANK YOU, SIR.

11 THE COURT: MR. LITTLEJOHN?

12 MR. LITTLEJOHN: MR. LABRUNO, MY NAME IS CAM LITTLEJOHN. I,
13 ALONG WITH JIM BABB, REPRESENT BOBBY WAYNE STONE. WE
14 APPRECIATE YOUR CANDOR HERE TODAY. AS I UNDERSTAND,
15 YOU READ AND HEARD SOME THINGS ABOUT THIS CASE BACK IN
16 1996?

17 JUROR #115: YES, SIR.

18 MR. LITTLEJOHN: AND BASED UPON THAT AND ... I'M SORRY. I'M
19 GETTING PUNCHY, IT'S LATE. BASED ON WHAT YOU READ AND
20 HEARD ABOUT THE CASE, YOU INDICATE TO US THAT YOU HAD
21 ALREADY FORMED AN OPINION ABOUT WHAT WOULD BE
22 APPROPRIATE IN THIS CASE. WHAT IS THAT OPINION?

23 JUROR #115: THE SENTENCE?

24 MR. LITTLEJOHN: YES, SIR.

25 JUROR #115: LIKE I TOLD HIM.

HEARING

153

1 MR. LITTLEJOHN: OKAY. I NOTICE YOU'VE HAD DIFFICULTY WITH
2 I GUESS THE ISSUE OF WHETHER A LIFE SENTENCE OUGHT TO
3 BE APPROPRIATE IN THIS CASE.

4 JUROR #115: RIGHT.

5 MR. LITTLEJOHN: OKAY. AND I BELIEVE YOU INDICATED WHEN YOU
6 TOLD THE JUDGE YOU THOUGHT YOU WERE A TYPE #1 JUROR
7 THAT IT WOULD BE VERY DIFFICULT FOR YOU TO SET THAT
8 OPINION ASIDE. IS THAT A SAFE STATEMENT?

9 JUROR #115: IN THIS, IN SOME SITUATIONS, IT WOULD BE.

10 MR. LITTLEJOHN: OKAY. I GUESS WHAT I'M ASKING IS BASED ON
11 THE OPINION THAT YOU'VE ALREADY FORMED, IS IT SAFE TO
12 SAY IT WOULD BE VERY HARD FOR YOU TO SET THAT OPINION
13 ASIDE?

14 JUROR #115: YES, SIR.

15 MR. LITTLEJOHN: JUDGE, I BELIEVE THAT'S ALL I HAVE. LET ME
16 CHECK WITH MR. BABB.

17 THE COURT: MR. LABRUNO, HOW ABOUT STEP OUT IN THE HALL FOR
18 JUST A MINUTE. I NEED TO DISCUSS SOME MATTERS WITH THE
19 LAWYERS. WE'LL BRING YOU BACK IN JUST A MINUTE. MR.
20 SALEEBY?

21 MR. SALEEBY: YOUR HONOR, I THINK QUALIFYING HIM WOULD PUT US
22 IN A DIFFICULT SITUATION. I WOULD NOT RECOMMEND IT.

23 THE COURT: ALL RIGHT. I AGREE, AND I DON'T THINK THE JUROR
24 IS QUALIFIED, MR. LITTLEJOHN, AND I WOULD FIND THAT HE
25 IS DISQUALIFIED. AS ALL OF YOU KNOW, THE TEST IS CAN

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HEARING

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1 HE BE (INAUDIBLE). HIS OPINIONS WOULD PREVENT HIM FROM
2 PERFORMING HIS DUTIES. ASK HIM TO COME BACK IN.

3 MR. LABRUNO, THANK YOU VERY MUCH FOR YOUR VERY
4 CANDID ANSWERS. IT'S EXACTLY WHAT WE ARE ATTEMPTING TO
5 DO IN THIS CASE. WE APPRECIATE YOUR HONESTY. WE HAVE
6 DETERMINED THAT YOU WOULD NOT QUALIFY TO SERVE ON THIS
7 CASE, AND WE EXCUSE YOU FROM FURTHER SERVICE. YOU NEED
8 NOT COME BACK. I CERTAINLY DO APPRECIATE YOUR BEING
9 HERE. I KNOW IT IS NEVER CONVENIENT TO SERVE ON A
10 JURY, BUT I DO APPRECIATE YOUR HONESTY AND YOUR
11 WILLINGNESS TO ANSWER OUR QUESTIONS. YOU ARE FREE TO
12 GO, THANK YOU VERY MUCH. JUROR #188 WILL BE THE LAST
13 JUROR WE DO TODAY. MS. ROLAND, YOU ARE MS. HEATHER
14 ROLAND, IS THAT CORRECT?

15 JUROR #188: YES, SIR.

16 THE COURT: ALL RIGHT. MS. ROLAND, JUST RELAX A LITTLE BIT.

17 I KNOW THIS IS KIND OF AN INTIMIDATING SITUATION. NONE
18 OF US BITE. WE JUST HAVE SOME QUESTIONS TO ASK YOU TO
19 DETERMINE CERTAIN INFORMATION. I WILL TELL YOU FIRST
20 OF ALL THAT YOU WERE PUT UNDER OATH EARLIER, AND YOU
21 ARE STILL UNDER OATH FOR THIS PROCEEDING. DO YOU
22 UNDERSTAND THAT?

23 JUROR #188: YES, SIR.

24 THE COURT: NOW, WE'RE GOING TO ASK YOU SOME QUESTIONS, AND
25 THEY ARE NOT INTENDED TO INVADE YOUR PRIVACY IN ANY

HEARING

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1 WAY, BUT IT IS NECESSARY DUE TO THE NATURE OF THE
2 PROCEEDING. THERE ARE NO RIGHT OR WRONG ANSWERS. WE
3 SIMPLY NEED TO ASK YOU THESE QUESTIONS TO DETERMINE
4 YOUR VIEWS ON CERTAIN ISSUES. SO, JUST BE OPEN AND
5 HONEST AND ANSWER THE QUESTIONS AS BEST YOU CAN.

6 FIRST OF ALL, LET ME TELL YOU THAT, AS I TOLD YOU
7 EARLIER, THE DEFENDANT IN THIS CASE, MR. BOBBY WAYNE
8 STONE, HAS BEEN FOUND TO BE GUILTY OF THE CRIME OF
9 MURDER IN THIS CASE, SO THE JURY IS NOT GOING TO HAVE
10 TO MAKE A DETERMINATION ON THE GUILTY OR INNOCENCE OF
11 THE DEFENDANT. THAT WILL NOT BE A QUESTION THE JURY
12 WILL HAVE TO DETERMINE. WHAT THE JURY WILL HAVE TO
13 CONSIDER WILL BE WHETHER OR NOT THERE ARE AGGRAVATING
14 CIRCUMSTANCES, SOMETIMES CALL STATUTORY AGGRAVATING
15 CIRCUMSTANCES, AND ALSO MITIGATING CIRCUMSTANCES, AND
16 I WILL DEFINE THOSE TWO TERMS FOR YOU IN JUST A MINUTE,
17 THAT WOULD IMPACT UPON THE SENTENCE. WHAT THE JURY IS
18 GOING TO HAVE TO DETERMINE IS WHAT SENTENCE TO
19 RECOMMEND TO THE COURT, AND THAT'S TO ME. NOW, I WILL
20 TELL YOU THAT THE RECOMMENDATION IS NOT REALLY A
21 RECOMMENDATION. IT IS WHATEVER SENTENCE THE JURY SAYS
22 IS THE RECOMMENDATION, I WILL IMPOSE, SO RECOMMENDATION
23 IS KIND OF A MISNOMER FROM THAT STANDPOINT, BUT IT WILL
24 DETERMINE WHETHER OR NOT THE DEFENDANT IS PUT TO DEATH
25 AS PUNISHMENT FOR THE CRIME OR WHETHER HE WILL SERVE

HEARING

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1 LIFE IN PRISON.

2 SO, HAVING SAID THAT, I WOULD ASK YOU A COUPLE OF
3 QUESTIONS. HAVE YOU HAD AN OPPORTUNITY TO LOOK AT THE
4 JUROR SHEET YOU WERE GIVEN BACK IN THE JURY ROOM?

5 JUROR #188: YES, SIR.

6 THE COURT: AND DID YOU UNDERSTAND THE THREE TYPES OF JURORS?

7 JUROR #188: YES, SIR.

8 THE COURT: AND HAVING READ THAT, TYPE #1, TYPE #2, TYPE #3,
9 WHICH TYPE OF JUROR DO YOU THINK BEST DESCRIBES YOU?

10 JUROR #188: PROBABLY TYPE #1.

11 THE COURT: TYPE #1, ALL RIGHT. SO, AS I UNDERSTAND IT THEN,
12 YOU ARE SAYING THAT YOU THINK THAT THE TYPE DESCRIBED
13 HERE, ONCE A PERSON HAS BEEN CONVICTED OF MURDER, YOU
14 WOULD BE REQUIRED OR COMPELLED TO GIVE THE DEATH
15 PENALTY ON EACH AND EVERY CASE, AND THAT IS THE MOST
16 APPROPRIATE PUNISHMENT NO MATTER WHAT THE CIRCUMSTANCES
17 ARE?

18 JUROR #188: MOST LIKELY.

19 THE COURT: MOST LIKELY.

20 JUROR #188: RIGHT. I CAN'T SAY 100%, BUT CLOSE ENOUGH.

21 THE COURT: ALL RIGHT. WELL, LET'S TALK ABOUT THAT. THAT'S
22 A TYPE #1, OF COURSE. TYPE #2 IS AN INDIVIDUAL WHO
23 FEELS THAT UNDER NO CIRCUMSTANCES COULD THEY GIVE THE
24 DEATH PENALTY. THE THIRD TYPE OF JUROR WAS ONE WHO HAS
25 NOT MADE UP HIS OR HER MIND IN-ADVANCE CONCERNING THE

HEARING

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1 PUNISHMENT, AND THAT JUROR WOULD NEED TO HEAR THE FACTS
2 AND CIRCUMSTANCES AND AGGRAVATION AND MITIGATION AND
3 WANT TO HEAR ALL OF THE FACTS BEFORE DECIDING THE
4 PUNISHMENT. NOW, LET ME TELL YOU THAT IN THIS CASE, SO
5 YOU'LL KNOW, IS THE STATE IS REQUIRED TO PROVE BEYOND
6 A REASONABLE DOUBT WHAT WE CALL STATUTORY AGGRAVATING
7 CIRCUMSTANCES. THE JURY MAY ALSO CONSIDER STATUTORY
8 MITIGATION CIRCUMSTANCES AND OTHER MITIGATING
9 CIRCUMSTANCES. AGGRAVATING CIRCUMSTANCES MAKE THE
10 OFFENSE OF MURDER WORSE. THAT IS IT AGGRAVATES IT OR
11 INCREASES THE ENORMITY OR ADDS TO THE INJURY OF THE
12 CRIME OF MURDER. MITIGATING CIRCUMSTANCES ARE EXACTLY
13 THE OPPOSITE. THEY ARE FACTS, INCIDENTS AND DETAILS
14 THAT THE GENERAL ASSEMBLY HAS DECLARED REDUCES THE
15 SEVERITY OF THE OFFENSE OF MURDER AND MAY BE CONSIDERED
16 AS EXTENUATING OR REDUCING THE DEGREE OF MORAL
17 CULPABILITY OR RESPONSIBILITY. THOSE ARE THE STATUTORY
18 MITIGATING CIRCUMSTANCES, AND ALSO THERE MAY BE OTHER
19 MITIGATING CIRCUMSTANCES WHICH THE JURY MAY WANT TO
20 CONSIDER. MY QUESTION TO YOU IS THIS. IF YOU WERE A
21 JUROR IN THIS CASE, DEPENDING ON THE FACTS AND
22 CIRCUMSTANCES OF THE CASE, INCLUDING THE AGGRAVATING
23 AND MITIGATING CIRCUMSTANCES IN THIS CASE, WOULD YOU BE
24 ABLE TO FIND A SENTENCE OR RECOMMEND A SENTENCE IN THIS
25 CASE THAT WOULD ENTAIL THE DEATH PENALTY?

HEARING

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1 JUROR #188: WOULD I DECIDE THAT?

2 THE COURT: YES. WOULD YOU BE ABLE TO LISTEN TO THE FACTS
3 AND CIRCUMSTANCES OF AGGRAVATION AND MITIGATION AND
4 DECIDE AS ONE OF THE JURORS IN FAVOR OF THE DEATH
5 PENALTY? WOULD YOU BE ABLE TO DO THAT?

6 JUROR #188: YES, SIR.

7 THE COURT: ALL RIGHT. BY THE SAME TOKEN, IF YOU HEARD THE
8 FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION,
9 WOULD YOU BE ABLE TO DECIDE AND ASSIGN A SENTENCE FOR
10 LIFE IN PRISON?

11 JUROR #188: PROBABLY NOT.

12 THE COURT: PROBABLY NOT, OKAY. SO AGAIN, AFTER HAVING GONE
13 OVER THE THREE TYPES OF JURORS AND THE FACTS AND
14 CIRCUMSTANCES THAT MIGHT BE PRESENTED IN THIS CASE,
15 WOULD YOU STILL DESCRIBE YOURSELF AS A TYPE #1 JUROR?

16 JUROR #188: YES, SIR.

17 THE COURT: ALL RIGHT. NOW, LET ME ASK YOU JUST A COUPLE OF
18 OTHER THINGS. HAVE YOU READ ANYTHING IN THE NEWSPAPER
19 OR HEARD ANY TELEVISION OR RADIO ABOUT THE FACTS OF
20 THIS CASE?

21 JUROR #188: NO, SIR.

22 THE COURT: AND ONE FINAL QUESTION WILL BE THAT IF YOU ARE
23 QUALIFIED AND SELECTED AS A JUROR IN THIS CASE, AND
24 RIGHT NOW WE'RE JUST TALKING ABOUT QUALIFICATION, YOU
25 WILL BE HOUSED IN A MOTEL FOR FIVE OR SIX DAYS UNTIL

HEARING

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1 THIS CASE IS OVER. ASIDE FROM THE PERSONAL
2 INCONVENIENCE TO YOU, WOULD THAT CAUSE ANY MAJOR
3 PROBLEMS IN THE WAY OF HEALTH OR WELFARE FOR YOU OR
4 ANYBODY THAT YOU ARE RESPONSIBLE FOR OR ANYBODY THAT IS
5 DEPENDENT UPON YOU?

6 JUROR #188: NO, SIR.

7 THE COURT: ALL RIGHT. MR. SALEEBY?

8 MR. SALEEBY: MS. ROLAND, ARE THERE ANY SET OF FACTS OR
9 CIRCUMSTANCES THAT YOU THINK WOULD PERSUADE YOU IN A
10 PARTICULAR CASE TO VOTE FOR LIFE IMPRISONMENT AS
11 OPPOSED TO THE DEATH PENALTY?

12 JUROR #188: ANY FACTS?

13 MR. SALEEBY: YEAH, FACTS OR CIRCUMSTANCES THAT MIGHT COME
14 OUT IN A PROCEEDING THAT WOULD MAKE YOU DECIDE LIFE IS
15 THE RIGHT DECISION INSTEAD OF DEATH?

16 JUROR #188: IF IT WAS AN ACCIDENT, IF IT'S SOMETHING DONE
17 PURPOSELY, I WOULD GO FOR DEATH PENALTY.

18 MR. SALEEBY: THANK YOU, MA'AM. APPRECIATE YOUR ANSWER.

19 THE COURT: MR. LITTLEJOHN?

20 MR. LITTLEJOHN: YOUR HONOR, I DON'T THINK WE HAVE ANY
21 QUESTIONS.

22 THE COURT: ALL RIGHT. THANK YOU, MS. ROLAND. STEP DOWN AND
23 GO OUT IN THE HALL FOR JUST A MOMENT. I'LL TAKE A
24 COUPLE OF THINGS UP WITH THE LAWYERS, AND THEN WE'LL BE
25 BACK WITH YOU. ALL RIGHT. MR. SALEEBY?

HEARING

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1 MR. SALEEBY: I AGREE WITH MR. LITTLEJOHN.

2 THE COURT: I GUESS THAT ANSWERS THE QUESTION, MR.
3 LITTLEJOHN. I THINK SHE HAS INDICATED THAT SHE IS
4 PRETTY WELL A TYPE #1 JUROR AND COULD NOT, WOULD NOT
5 VOTE FOR LIFE IMPRISONMENT. I THINK THAT DOES
6 DISQUALIFY HER.

7 MR. LITTLEJOHN: OBVIOUSLY, WE AGREE.

8 THE COURT: YEAH. IT WOULD PREVENT OR SUBSTANTIALLY IMPAIR
9 THE PERFORMANCE OF HER DUTIES. I DON'T BELIEVE SHE
10 WOULD BE ABLE TO PERFORM THOSE DUTIES, AND I WILL
11 DISQUALIFY HER. BRING HER BACK IN, PLEASE. MS.
12 ROLAND, THANK YOU VERY MUCH AND THANK YOU FOR YOUR
13 CANDOR. WE APPRECIATE YOU BEING HERE. I DO APOLOGIZE
14 TO YOU FOR THE INCONVENIENCE. WE HAVE HEARD WHAT YOU
15 HAD TO TELL THE COURT AND APPRECIATE YOU BEING HONEST
16 WITH US. WE HAVE DECIDED THAT YOU ARE NOT QUALIFIED TO
17 SERVE AS A JUROR IN THIS CASE, SO I AM GOING TO EXCUSE
18 YOU FOR ANY FURTHER SERVICE. YOU WILL NOT HAVE TO COME
19 BACK ANY FURTHER. WE APPRECIATE YOU BEING HERE.

20 ALL RIGHT. COUNSEL, THAT BRINGS US TO THE END OF
21 THE DAY, AND WE'LL START BACK AT 8:15 TOMORROW MORNING.
22 WE WILL START WITH PANEL #3 AT 8:15. IS THERE ANYTHING
23 ELSE THIS AFTERNOON FROM THE STATE?

24 MR. SALEEBY: NOTHING FROM THE STATE, YOUR HONOR.

25 THE COURT: OF THE DEFENSE?

HEARING

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1 MR. LITTLEJOHN: NOTHING FROM THE DEFENSE.
2 THE COURT: ALL RIGHT. THANK YOU. I'LL SEE YOU TOMORROW.
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HEARING

1 (February 23, 2006 a.m. qualifications)

2 PANEL 3

3 JUROR #11 - TYPE 1.

4 (JUROR # 11 IS DISQUALIFIED)

5 JUROR #138 - TYPE 3.

6 (JUROR #138 IS QUALIFIED)

7 JUROR #177 - TYPE 2

8 (JUROR #177 IS DISQUALIFIED)

9 JUROR #137 - TYPE 3

10 (JUROR #137 IS QUALIFIED)

11 (There was a break taken 10:04 - 10:09)

12 PANEL 4

13 JUROR #39 - TYPE 3

14 (JUROR #39 IS QUALIFIED)

15 JUROR #161 - TYPE 3

16 (JUROR #161 IS QUALIFIED)

17 JUROR #159 - TYPE 2

18 (JUROR #159 IS DISQUALIFIED)

19 JUROR #141 - TYPE 3

20 (JUROR #141 IS QUALIFIED)

21 JUROR #73 - TYPE 3

22 (JUROR #73 IS QUALIFIED)

23 PANEL 5

24 JUROR #52 - TYPE 3

25 (JUROR #52 IS NOT QUALIFIED)

HEARING

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JUROR #162 - TYPE 1

(JUROR #162 IS DISQUALIFIED)

JUROR #160 - TYPE 2

(JUROR #160 IS NOT QUALIFIED)

JUROR #225 - TYPE 2

(JUROR #225 IS NOT QUALIFIED)

JUROR #123 - TYPE 3

(JUROR #123 IS QUALIFIED)

PANEL 6

JUROR #58 - TYPE 3

(JUROR #58 IS QUALIFIED)

JUROR #30 - TYPE 3

(JUROR #30 IS QUALIFIED)

JUROR #5 - TYPE 3

(JUROR #5 IS QUALIFIED)

JUROR #114 - TYPE 3

(JUROR #114 IS QUALIFIED)

JUROR #42 - TYPE 2

(JUROR #42 IS DISQUALIFIED)

(February 23, 1006 p.m. qualifications begin)

THE COURT: ALL RIGHT. BACK ON THE RECORD. THE STATE IS PRESENT AND REPRESENTED BY MR. SALEEBY AND MR. JACKSON. THE DEFENDANT IS PRESENT AND IN THE COURTROOM WITH MR. BABB. I BELIEVE MR. LITTLEJOHN HAS AN ERRAND OR TWO TO RUN, IF WE CAN GO AHEAD; IS THAT CORRECT?

HEARING

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5

1 **MR. BABE:** YES, SIR. - HE'LL BE BACK MOMENTARILY.

2 **THE COURT:** ALL RIGHT. LET ME GO AHEAD AND PUT ON THE
3 RECORD, COUNSEL, THAT THIS MORNING WE RECEIVED FROM
4 JUROR #219, MS. BOBBIE TRAINER, WHO WAS QUALIFIED
5 YESTERDAY AS A NUMBER OF PANEL #2. A LETTER FROM
6 HER ADVISING THAT HER 77 YEAR OLD MOTHER WITH
7 TERMINAL CANCER, THE ARRANGEMENTS THAT SHE HAD MADE
8 WITH A FAMILY MEMBER HAS FALLEN THROUGH AND THAT SHE
9 IS GOING TO HAVE TO NEED TO STAY WITH HER MOTHER AND
10 WOULD CAUSE HER EXTREME HARDSHIP TO BE SEQUESTERED.
11 THIS IS SUPPORTED BY A LETTER FROM DR. CLOWNEY, WHO
12 IS A HEMATOLOGIST HERE IN TOWN. I HAVE GIVEN THIS
13 TO BOTH COUNSEL AND I THINK EVERYONE IS IN AGREEMENT
14 THAT UNDER THOSE CIRCUMSTANCES, THAT MR. TRAINER
15 WOULD HAVE TO BE EXCUSED. ANY OBJECTIONS TO THAT
16 PROCEDURE, MR. JACKSON?

17 **MR. JACKSON:** NO, YOUR HONOR.

18 **THE COURT:** MR. LITTLEJOHN?

19 **MR. LITTLEJOHN:** NO, YOUR HONOR.

20 **THE COURT:** WELL, GIVE THIS TO THE CLERK AND MAKE IT A
21 PART OF THE RECORD WITH REGARD TO THE JURY
22 QUALIFICATION AND OF THE JURY EXCUSES IN THIS CASE
23 AND IT WILL BE KEPT ON RECORD WITH THE CLERK'S
24 OFFICE. ALL RIGHT. WE'RE ABOUT READY TO PROCEED.
25 WE'RE GOING TO SKIP PANEL #7 WHO IS COMING AT 6:30

HEARING

1 THIS EVENING AND GO TO PANEL #8 WHO WAS SCHEDULED TO
2 BE HERE AT 2:00, AND THAT ONLY GIVES US ABOUT 40
3 MINUTES TONIGHT. MAYBE WE CAN MAKE SOME OF THAT UP.
4 FIRST MATTER IS JUROR #15, CHERYL BENJAMIN.

5 **MR. JACKSON:** JUDGE, WE'RE BACK TO 16, CORRECT? TAKE ONE
6 OFF. WE HAD SEVENTEEN, NOW WE'RE BACK TO SIXTEEN.

7 **THE COURT:** THAT'S RIGHT. WE HAD SEVENTEEN.

8 **MR. LITTLEJOHN :** RIGHT. WE'RE BACK TO 16, YOUR HONOR.

9 **THE COURT:** HAVE A SEAT. THANK YOU FOR YOUR PATIENCE AND
10 THANK YOU FOR BEING BACK HERE PROMPTLY. WE
11 APOLOGIZE FOR KEEPING YOU WAITING A LITTLE WHILE.
12 WE DIDN'T BREAK HERE OURSELVES UNTIL 2:00, AND HAD
13 TO GET A SANDWICH FOR LUNCH BEFORE WE COULD START
14 BACK, BUT WE ARE NOW READY TO START BACK. I WANT TO
15 TELL YOU THAT, DON'T BE INTIMIDATED BY ALL THIS,
16 JUST RELAX, AND WE'RE GOING TO ASK YOU SOME
17 QUESTIONS AND YOU JUST RELAX AND ANSWER THOSE
18 QUESTIONS THE BEST YOU CAN. I WILL ALSO TELL YOU
19 THAT YOU ARE UNDER OATH BECAUSE YOU WERE SWORN
20 YESTERDAY TO TELL THE TRUTH AND YOU'RE GOING TO HAVE
21 TO DO THAT AGAIN. IF I COULD JUST ASK YOU TO PUT
22 THE MICROPHONE DOWN HERE. AND I WILL TELL YOU THAT
23 THERE ARE NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS
24 THAT WE'RE GOING TO ASK. THESE ARE BEING ASKED
25 SOLELY FOR THE PURPOSES OF DETERMINING YOUR VIEWS ON

HEARING

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7

1 VARIOUS SUBJECTS. I KNOW THIS IS KIND OF PERSONAL
2 AND WE DON'T MEAN TO BE INVADING YOUR PRIVACY, BUT
3 BECAUSE OF THE NATURE OF THIS CASE, WE DO NEED TO
4 KNOW THAT ANSWER TO THESE QUESTIONS, SO I JUST WANT
5 YOU TO BE OPEN AND HONEST AND ANSWER THE QUESTIONS
6 AS BEST YOU CAN. OKAY? ALL RIGHT. BEFORE WE GET
7 STARTED, LET ME TELL YOU THAT THE DEFENDANT IN THIS
8 CASE, MR. STONE, HAS ALREADY BEEN FOUND GUILTY OF
9 MURDER, SO THE ISSUE OF WHETHER HE IS GUILTY OR NOT
10 GUILTY IS NOT GOING TO BE BEFORE THIS JURY. THAT
11 QUESTION HAS ALREADY BEEN DECIDED. THE ONLY
12 QUESTION THAT THIS JURY WILL CONSIDER IS THE
13 PUNISHMENT THAT IS GOING TO BE IMPOSED. THE STATE
14 WILL PRESENT SOME TESTIMONY CONCERNING STATUTORY
15 AGGRAVATED CIRCUMSTANCES. THEY MUST PROVE THAT AT
16 LEAST ONE OF THE STATUTORY AGGRAVATED CIRCUMSTANCES
17 BEYOND A REASONABLE DOUBT BEFORE YOU, IF YOU'RE ON
18 THE JURY, OR BEFORE THE JURY WOULD BE ABLE TO
19 RECOMMEND TO THIS COURT A SENTENCE OF LIFE
20 IMPRISONMENT OR A SENTENCE OF DEATH BY LETHAL
21 INJECTION OR BY ELECTROCUTION. BUT THAT WOULD BE UP
22 TO THE STATE. THEY WOULD HAVE TO PROVE ONE OF THOSE
23 AGGRAVATED CIRCUMSTANCES BEYOND A REASONABLE DOUBT.
24 THE DEFENDANT WILL ALSO HAVE A RIGHT TO PRESENT
25 STATUTORY MITIGATING CIRCUMSTANCES, WHICH ARE

THIRD JUDICIAL CIRCUIT
(803) 436-2150

HEARING

1 THINGS THAT MIGHT LESSEN THE AMOUNT OR THE ENORMITY
2 OF THE CRIME. SOME OF THEM ARE STATUTORY MITIGATING
3 CIRCUMSTANCES AND SOME OF THEM ARE JUST MITIGATING
4 CIRCUMSTANCES. HAVING SAID THAT, AND I WANT TO ASK
5 YOU, IF YOU'VE HAD A CHANCE TO READ OVER THE TYPES
6 OF JURORS, TYPE #1, TYPE #2, AND TYPE #3?

7 JUROR #15: YES, SIR.

8 THE COURT: AND YOU UNDERSTOOD WHAT WE MEANT BY TYPE #1,
9 TYPE #2, AND TYPE #3?

10 JUROR #15: YES.

11 THE COURT: AND HOW WOULD YOU ... WHICH ONE OF THOSE THREE
12 TYPES OF JURORS WOULD YOU SAY BEST DESCRIBES YOU?

13 JUROR #15: TYPE #3.

14 THE COURT: TYPE #3? ALL RIGHT. SO, WHAT YOU'RE SAYING
15 IS THAT I CAN LISTEN TO THE FACTS AND CIRCUMSTANCES
16 SURROUNDING THIS CASE AND DEPENDING ON THE FACTS AND
17 CIRCUMSTANCES, YOU COULD EITHER FIND LIFE
18 IMPRISONMENT OR YOU COULD FIND THAT THE FACTS AND
19 CIRCUMSTANCES INCLUDING THE STATUTORY AGGRAVATED
20 CIRCUMSTANCES AND THE STATE IS REQUIRED TO PROVE
21 WITH REGARDS TO HIS PUNISHMENT, DEATH; IS THAT
22 CORRECT?

23 JUROR #15: THAT'S CORRECT.

24 THE COURT: NOW, YOU UNDERSTAND THAT I WILL GIVE YOU
25 INSTRUCTIONS IN THE LAW IN THIS CASE, BUT IF I

HEARING

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9

1 INSTRUCT YOU ON WHAT THE LAW IS, YOU HAVE TO FOLLOW
2 THAT LAW WHETHER YOU AGREE WITH IT OR NOT. WOULD
3 YOU BE ABLE TO FOLLOW MY INSTRUCTIONS ON THE LAW?

4 JUROR #15: YES.

5 THE COURT: ALL RIGHT. NOW HAVING SAID THAT, LET ME ASK
6 AGAIN, HAVE YOU HEARD ANYTHING ABOUT THIS CASE OR
7 ANY NEWS ACCOUNTS OR SEEN ANYTHING ON TELEVISION
8 ABOUT THIS CASE AT ALL?

9 JUROR #15: NO.

10 THE COURT: NOW IF YOU ARE SERVING ON THE JURY AND YOU ARE
11 SATISFIED IN YOUR MIND THAT THE STATE HAS PROVEN AT
12 LEAST ONE AGGRAVATED CIRCUMSTANCE BEYOND A
13 REASONABLE DOUBT, YOU WOULD BE REQUIRED TO SIGN
14 ALONG WITH YOUR FELLOW JURORS, THAT IS THE OTHER 11
15 PEOPLE ON THE JURY, A VERDICT THAT COULD BE LIFE
16 IMPRISONMENT, YOU WOULD HAVE TO SIGN YOUR NAME TO
17 THAT, WOULD YOU DO THAT?

18 JUROR #15: YES.

19 THE COURT: USE ALL THE FACTS AND CIRCUMSTANCES WARRANTED?

20 JUROR #15: BY THE SAME TOKEN, IF YOU THOUGHT THE FACTS
21 AND CIRCUMSTANCES INCLUDE PROOF OF THE AGGRAVATED
22 CIRCUMSTANCES BY THE STATE WARRANTED, YOU WOULD ALSO
23 BE REQUIRED TO, COULD BE REQUIRED, TO SIGN A VERDICT
24 FORM THAT IMPOSES A SENTENCE OF DEATH ON THE
25 DEFENDANT, WOULD YOU DO THAT IF THE FACTS AND

1 CIRCUMSTANCES WARRANTED?

2 **JUROR #15:** YES.

3 **THE COURT:** NOW, EXCEPT FOR THE PERSONAL INCONVENIENCE
4 THAT IT WOULD CAUSE YOU, WOULD THE FACT THAT YOU
5 WOULD BE SEQUESTERED, THAT MEANS HOUSED IN A HOTEL
6 FOR FIVE TO SIX DAYS, WHILE THIS TESTIMONY IN THIS
7 CASE IS GOING ON, WOULD THAT CAUSE YOU ANY ... I
8 KNOW IT WOULD CAUSE YOU PERSONAL INCONVENIENCE, BUT
9 IT CAUSE YOU ANY UNDUE HARDSHIP THAT WOULD IMPOSE A
10 SERIOUS DANGER TO THE HEALTH AND WELL BEING OF
11 YOURSELF OR ANY OF THOSE WHO ARE DEPENDANT UPON YOU
12 IF YOU WERE SEQUESTERED FOR FIVE TO SIX DAYS?

13 **JUROR #15:** NO.

14 **THE COURT:** ALL RIGHT. I THINK THAT'S ALL THE QUESTIONS
15 THAT I HAVE FOR YOU AT THIS TIME. I'M GOING TO ASK
16 THE LAWYERS TO ASK WHATEVER THEY'D LIKE TO ASK YOU
17 AND PLEASE GIVE THEM THE SAME COOPERATION THAT
18 YOU'VE GIVEN ME.

19 **MR. SALEEBY:** MS. BENJAMIN, MY NAME IS DUDLEY SALEEBY.
20 I'LL BE PROSECUTING THIS CASE ALONG WITH SOLICITOR
21 JACKSON. I REALIZE THAT THIS IS PROBABLY NOT THE
22 WORLD'S MOST COMFORTABLE PROCEDURE, BUT IF YOU WILL
23 BEAR WITH US, WE'LL TRY NOT TO PROBE TOO MUCH.

24 OKAY?

25 **JUROR #15:** OKAY.

1 **MR. SALEEBY:** I'M GOING TO ASK YOU TO SPEAK UP JUST A
2 LITTLE BIT SO THAT LADY CAN HEAR YOU AND SO THOSE
3 GENTLEMEN CAN HEAR YOU. OKAY?

4 **JUROR #15:** OKAY.

5 **MR. SALEEBY:** HAVE YOU READ OR HEARD ANYTHING ABOUT THIS
6 CASE THROUGH THE ITEM?? OR ANY OTHER MEDIA YOU MIGHT
7 LISTEN TO?

8 **JUROR #15:** NO, I HAVEN'T.

9 **MR. SALEEBY:** YOU HAVE NO INFORMATION OUTSIDE OF THIS
10 COURTROOM, SO YOU'D BE ABLE TO BASE YOUR DECISION ON
11 WHAT YOU'VE HEARD INSIDE OF THIS COURTROOM?

12 **JUROR #15:** YES, SIR.

13 **MR. SALEEBY:** IF I UNDERSTOOD YOUR ANSWERS TO THE JUDGE
14 CORRECTLY, YOU COULD RECOMMEND OR SET A PUNISHMENT
15 OF LIFE IMPRISONMENT IF YOU THOUGHT THAT THAT WAS
16 THE RIGHT PUNISHMENT FOR THE DEFENDANT AND THE
17 CRIME?

18 **JUROR #15:** YES.

19 **MR. SALEEBY:** YOU COULD SIGN YOUR NAME TO A DEATH PENALTY
20 VERDICT IF YOU THOUGHT THAT WAS THE RIGHT THING?

21 **JUROR #15:** YES.

22 **MR. SALEEBY:** YOU HAVE INDICATED QUITE FRANKLY ON YOUR
23 QUESTIONNAIRE AND WHEN THE JUDGE WAS ASKING GENERAL
24 QUESTIONS, THAT YOU'VE HAD SOME, I GUESS I'D CALL
25 IT, TRAUMATIC THINGS AMONG, IN YOUR FAMILY, SUCH AS

HEARING

12

1 YOUR FATHER BEING KILLED IN FRONT OF YOU?

2 JUROR #15: YES.

3 MR. SALEEBY: IS THERE ANYTHING ABOUT THAT EXPERIENCE THAT
4 YOU FEEL WOULD IMPACT YOUR ABILITY TO SIT?

5 JUROR #15: NO.

6 MR. SALEEBY: IS THERE ANYTHING INVOLVING YOUR STEPFATHER
7 AND HIS CIRCUMSTANCES AND A WEAPON BEING POINTED AT
8 YOU, THAT YOU THINK WOULD CARRY OVER TO HERE TODAY?

9 JUROR #15: NO.

10 MR. SALEEBY: ARE YOU STILL A STUDENT?

11 JUROR #15: YES.

12 MR. SALEEBY: AND ARE YOU GOING ... AND WOULD YOU BE IN
13 SCHOOL BUT FOR THIS TRIAL? IN OTHER WORDS, ARE YOU
14 IN THE MIDDLE OF A TERM, A SEMESTER?

15 JUROR #15: YES, I AM.

16 MR. SALEEBY: ARE YOU MISSING CLASSES?

17 JUROR #15: YES.

18 MR. SALEEBY: ALL RIGHT. DID YOU UNDERSTAND WHEN THE
19 JUDGE SPOKE TO THE PANEL ABOUT STUDENTS AND
20 UNDERSTAND THAT YOU COULD REQUEST A TRANSFER IF YOU
21 WANTED ONE AS A STUDENT?

22 JUROR #15: I UNDERSTOOD.

23 MR. SALEEBY: ALL RIGHT. AND IN KNOWING THAT, YOU ARE
24 READY TO DO YOUR DUTY ANYWAYS; IS THAT CORRECT?

25 JUROR #15: THAT'S CORRECT.

1 **MR. SALEEBY:** ALL RIGHT. THANK YOU VERY MUCH, MA'AM.

2 **THE COURT:** MR. LITTLEJOHN.

3 **MR. LITTLEJOHN:** THANK YOU, YOUR HONOR. GOOD AFTERNOON,
4 MS. BENJAMIN.

5 **JUROR #15:** GOOD AFTERNOON.

6 **MR. LITTLEJOHN:** MY NAME IS CAM LITTLEJOHN AND I, ALONG
7 WITH JIM BABB, REPRESENT THE DEFENDANT, BOBBY WAYNE
8 STONE. I DON'T MEAN TO PRY AND I DON'T MEAN BRING
9 UP BAD FEELINGS OR ANYTHING, BUT I HAVE A DUTY TO
10 ASK SOME QUESTIONS ABOUT WHAT HAPPENED TO YOU
11 EARLIER CONCERNING YOUR FATHER AND YOUR STEPFATHER.

12 **JUROR #15:** OKAY.

13 **MR. LITTLEJOHN:** AND LET ME JUST MAKE SURE I UNDERSTAND.
14 IN READING YOUR QUESTIONNAIRE, YOU INDICATED THAT
15 YOUR FATHER WAS A POLICE OFFICER?

16 **JUROR #15:** YES, HE WAS.

17 **MR. LITTLEJOHN:** AND WHO DID ... HE WORKED FOR THE SUMTER
18 CITY POLICE DEPARTMENT?

19 **JUROR #15:** YES, HE DID.

20 **MR. LITTLEJOHN:** WELL NOW, AS I UNDERSTOOD IT, HE WAS
21 KILLED 11 YEARS AGO?

22 **JUROR #15:** NO, THAT'S MY STEPFATHER WAS KILLED 11 YEARS
23 AGO.

24 **MR. LITTLEJOHN:** THAT WAS YOUR STEPFATHER?

25 **JUROR #15:** BUT I WAS ADOPTED BY MY STEPFATHER.

HEARING

1 THE COURT: SPEAK UP JUST A LITTLE BIT.

2 JUROR #15: I WAS ADOPTED BY MY STEPFATHER ALSO.

3 MR. LITTLEJOHN: OKAY. ALL RIGHT. I UNDERSTAND NOW. SO
4 THAT WAS YOUR STEPFATHER THAT WAS KILLED?

5 JUROR #15: YES, HE WAS.

6 MR. LITTLEJOHN: AND PATERNAL FATHER WAS A POLICE OFFICER?

7 JUROR #15: YES.

8 MR. LITTLEJOHN: AND HE'S STILL LIVING?

9 JUROR #15: YES.

10 MR. LITTLEJOHN: OKAY. THANK YOU VERY MUCH. MS.

11 BENJAMIN, AS I UNDERSTOOD YOUR RESPONSE TO JUDGE
12 KING, YOU FEEL THAT OF THOSE THREE CLASSES OF
13 JURORS, YOU WOULD BE IN THAT THIRD CLASS?

14 JUROR #15: YES.

15 MR. LITTLEJOHN: OKAY. AND I TAKE IT BY YOUR SELECTING
16 THAT CLASS, THAT YOU DON'T FEEL THAT IF SOMEONE IS
17 CONVICTED OF MURDER, THAT THEY SHOULD AUTOMATICALLY
18 GET THE DEATH PENALTY?

19 JUROR #15: THAT'S CORRECT.

20 MR. LITTLEJOHN: OKAY. DO YOU THINK A LIFE SENTENCE IS
21 APPROPRIATE IN SOME CIRCUMSTANCES?

22 JUROR #15: YES.

23 MR. LITTLEJOHN: DO YOU THINK A LIFE SENTENCE IS A
24 SUBSTANTIAL SENTENCE?

25 JUROR #15: IF IT'S CALLED FOR.

HEARING

1 MR. LITTLEJOHN: OKAY. BUT I MEAN, IF SOMEONE GETS A
2 SENTENCE OF LIFE IMPRISONMENT ...

3 JUROR #15: YES.

4 MR. LITTLEJOHN: ... DO YOU THINK THAT'S A SUBSTANTIAL
5 SENTENCE?

6 JUROR #15: YES.

7 MR. LITTLEJOHN: OKAY. MS. BENJAMIN, IF YOU WERE ON THE
8 JURY AND EVIDENCE WAS PRESENTED OF MITIGATING
9 CIRCUMSTANCES, AND BY THAT I MEAN, EVIDENCE OR
10 FACTORS THAT MADE THE CRIME OF MURDER LESS OR MADE
11 IT NOT QUITE AS SERIOUS, WOULD YOU BE ABLE TO LISTEN
12 TO THOSE THINGS AND WEIGH THAT AND FACTOR THAT INTO
13 YOUR DECISION

14 JUROR #15: YES.

15 MR. LITTLEJOHN: ... AS TO WHAT THE PUNISHMENT SHOULD BE?

16 JUROR #15: YES.

17 MR. LITTLEJOHN: THAT MIGHT INCLUDE EVIDENCE CONCERNING
18 MR. STONE'S BACKGROUND, HIS FAMILY, HIS HISTORY OF
19 GROWING UP, THOSE SORT OF THINGS. DO YOU THINK
20 THOSE ARE THINGS THAT YOU COULD LISTEN TO AND WEIGH
21 VERY CAREFULLY IN MAKING YOUR DECISION?

22 JUROR #15: YES.

23 MR. LITTLEJOHN: OKAY. LET ME ASK YOU ONE FINAL THING.
24 IF YOU WERE ON THE JURY AND AS THE JURY WAS
25 DELIBERATING IT BECAME OBVIOUS TO YOU THAT THE

HEARING

16

1 MAJORITY OF THE JURORS WERE WANTING TO VOTE ONE WAY
2 AND YOU WERE WANTING TO VOTE ANOTHER WAY, DO YOU
3 THINK THAT YOU WOULD CHANGE YOUR VOTE JUST TO GO
4 ALONG WITH THE REST OF THEM?

5 JUROR #15: NO.

6 MR. LITTLEJOHN: DO YOU THINK YOU WOULD BE ABLE TO ARRIVE
7 AT WHAT YOU THINK IS RIGHT INDEPENDENTLY AND BELIEVE
8 IN THAT?

9 JUROR #15: YES.

10 MR. LITTLEJOHN: OKAY. THANK YOU, MA'AM, I APPRECIATE
11 YOUR ANSWERING.

12 MR. SALEEBY: JUDGE, COULD I ASK A COUPLE MORE QUESTIONS?

13 THE COURT: YES, SIR.

14 MR. SALEEBY: WHAT WAS YOUR FATHER'S NAME?

15 JUROR #15: BRIAN REGINALD HUDSON.

16 MR. SALEEBY: BRIAN ...

17 JUROR #15: REGINALD ...

18 MR. SALEEBY: ... REGINALD ...

19 JUROR #15: ... HUDSON.

20 MR. SALEEBY: ... HUDSON, H-U-D-S-O-N?

21 JUROR #15: YES.

22 MR. SALEEBY: AND YOU STEPFATHER WHO ADOPTED YOU, WHAT WAS
23 HIS NAME?

24 JUROR #15: KEVIN LENNARD MOSES.

25 MR. SALEEBY: KEVIN LAMAR MOSES?

1 **JUROR #:** LENNARD.

2 **MR. SALEEBY:** LENNARD. THANK YOU, MA'AM.

3 **THE COURT:** ALL RIGHT. THANK YOU, MS. BENJAMIN AND THANK
4 YOU FOR YOUR CANTOR AND FOR ANSWERING OUR QUESTIONS,
5 AND I'M GOING TO ASK YOU TO STEP OUTSIDE FOR JUST A
6 MOMENT AND NOT GO BACK IN THE JURY ROOM. I NEED TO
7 TALK TO THE LAWYERS, AND I'LL SEND FOR YOU IN JUST A
8 MINUTE.

9 **MR. BABB:** I NEED TO PUT SOMETHING ON THE RECORD REGARDING
10 THIS DEPONENT, OR THIS JUROR.

11 **THE COURT:** YES, SIR. GO AHEAD.

12 **MR. BABB:** IF MY RECOLLECTION IS CORRECT, AND IF I
13 UNDERSTOOD THE NAMES SHE WAS SAYING, I THINK I MAY
14 HAVE REPRESENTED HER FATHER ON THE DRUG CHARGES.

15 **THE COURT:** ALL RIGHT.

16 **MR. BABB:** I DON'T THINK SHE KNOWS THAT. I MEAN, THAT'S
17 GOING A LONG WAY BACK.

18 **THE COURT:** HOW LONG AGO DO YOU THINK THAT WOULD BE, MR.
19 BABB?

20 **MR. LITTLEJOHN:** SHE WAS PROBABLY VERY YOUNG.

21 **MR. BABB:** IT WOULD HAVE BEEN, I THINK IN '94.

22 **THE COURT:** ALL RIGHT. MAYBE IT WOULD BE APPROPRIATE THAT
23 I ASK HER TO COME IN AND ASK HER IF SHE KNOWS ANY OF
24 THE LAWYERS IN THIS CASE.

25 **MR. BABB:** AND I'D NEVER MET ANY OF HIS CHILDREN. I HEARD

HEARING

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18

1 THE CHILDREN ON THE TAPES SINGING, JESUS LOVES ME.

2 **THE COURT:** I'M NOT GOING TO SUGGEST TO HER THAT YOU MIGHT
3 HAVE REPRESENTED HER FATHER. I'M JUST GOING TO ASK
4 IF SHE KNOWS ANY OF THE LAWYERS IN THIS CASE. I
5 JUST WANT TO FIND OUT ABOUT THAT SITUATION. IS
6 THERE ANY OBJECTION TO THAT, MR. SALEEBY?

7 **MR. SALEEBY:** NO, SIR.

8 **THE COURT:** ALL RIGHT. ASK HER TO COME BACK IN. THANK
9 YOU, MR. BABB.

10 **MR. BABB:** THANK YOU.

11 **THE COURT:** COME RIGHT BACK UP HERE AND LET ME ASK YOU
12 JUST A COUPLE MORE THINGS. PRETTY MUCH BASED UPON
13 THE LAST ANSWER THAT YOU GAVE US, AS FAR AS WHO YOUR
14 FATHER IS AND YOUR STEPFATHER IS AND WAS, DO YOU
15 KNOW ANY OF THE LAWYERS IN THIS CASE? HAVE YOU EVER
16 HAD DEALINGS WITH ANY OF THE LAWYERS IN THIS CASE;
17 MR. SALEEBY, MR. JACKSON, MR. LITTLEJOHN, AND MR.
18 BABB?

19 **JUROR #15:** NO.

20 **THE COURT:** AND DO YOU OF ANYTHING ABOUT WHETHER ANY
21 MEMBERS OF YOUR FAMILY EVER HAD ANY DEALINGS WITH
22 ANY OF THESE LAWYERS?

23 **JUROR #15:** NO.

24 **THE COURT:** ARE YOU SAYING YOU DON'T KNOW OR TO YOUR
25 KNOWLEDGE THEY DIDN'T HAVE?

1 **JUROR #15:** I DON'T KNOW.

2 **THE COURT:** YOU DON'T KNOW. BUT DO YOU HAVE ANY PREJUDICE
3 FOR OR AGAINST ANY OF THE LAWYERS IN THIS ROOM ABOUT
4 ANYTHING THAT YOU MIGHT HAVE BEEN INVOLVED WITH ANY
5 MEMBERS OF YOUR FAMILY?

6 **JUROR #15:** NO.

7 **THE COURT:** ALL RIGHT. THANK YOU, MA'AM. I'LL LET YOU
8 STEP BACK OUT, PLEASE.

9 **THE COURT:** ALL RIGHT. BASED UPON THOSE ANSWERS, MR.
10 SALEEBY, WHAT'S YOUR STATEMENT?

11 **MR. SALEEBY:** SHE APPEARS QUALIFIED TO ME.

12 **MR. BABB:** WE AGREE.

13 **THE COURT:** ALL RIGHT. BRING HER BACK IN, PLEASE. THANK
14 YOU, SIR.

15 **THE COURT:** ALL RIGHT, MS. BENJAMIN, YOU HAVE BEEN FOUND
16 TO BE QUALIFIED AS A JUROR IN THIS CASE. NOW THAT
17 DOES NOT MEAN THAT YOU'RE NECESSARILY GOING TO
18 SERVE, BUT THAT YOU'VE JUST BEEN QUALIFIED AS A
19 JUROR. SO I'M GOING TO ALLOW YOU TO LEAVE NOW AND
20 GO HOME AND I'M GOING TO ASK THAT YOU CALL THAT
21 NUMBER ON THAT BLUE CARD AFTER 6:00 TONIGHT. IT
22 WILL HAVE YOUR REPORTING INSTRUCTIONS FOR TOMORROW.
23 YOU WILL HAVE TO COME BACK ON SOMETIME TOMORROW. I
24 ANTICIPATE THAT'S IT'S GOING TO BE SOMETIME BETWEEN
25 11:00 AND 2:00, BUT I CAN'T GIVE YOU ANY CLOSER TIME

HEARING

20

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1 THAN THAT RIGHT NOW. SO THAT'S WHY I WANT YOU TO
2 CALL THAT NUMBER TONIGHT AND THERE WILL BE A TIME TO
3 TELL YOU WHEN THE QUALIFIED JURORS ARE TO REPORT
4 BACK. WHEN YOU GO HOME, PLEASE PACK YOUR PERSONAL
5 BELONGINGS AND CLOTHING AND ANYTHING THAT YOU NEED,
6 THAT YOU WOULD NEED IF YOU HAD TO STAY IN A MOTEL OR
7 HOTEL FOR ABOUT SIX DAYS IN THE TRIAL OF THIS CASE,
8 AND BRING THAT WITH YOU WHEN YOU COME TOMORROW. YOU
9 DO NOT NEED TO BRING IT INTO THE COURTHOUSE. YOU
10 CAN LEAVE IT IN YOUR CAR, AND THEN IF YOU ARE
11 SELECTED ON THE JURY, YOU WILL BE UNPACKING AT THE
12 HOTEL. IF YOU ARE NOT SELECTED ON THE JURY, YOU
13 WILL JUST TAKE IT HOME AND BE UNPACKING AT HOME
14 TOMORROW AFTER WE SELECT A JURY. BUT DO BRING ANY
15 CLOTHING AND BELONGINGS WITH YOU AT WHATEVER TIME
16 YOU ARE TO REPORT BACK TOMORROW, AND CALL AFTER 6:00
17 TONIGHT TO FIND OUT WHAT TIME THAT WILL BE. ALSO,
18 DO NOT TALK WITH ANYONE ABOUT THIS CASE. DO NOT
19 ALLOW ANYONE TO TALK WITH YOU ABOUT IT. DO NOT READ
20 ANY NEWSPAPER REPORTS OR LISTEN TO ANY TELEVISION
21 REPORTS THROUGHOUT THIS CASE, BUT REPORT BACK
22 TOMORROW AT THE TIME THAT WE TELL YOU AND BE
23 PREPARED TO STAY WITH US FOR AWHILE WHEN YOU COME
24 BACK. OKAY?

25 **JUROR #15:** OKAY.

HEARING

21

1 **THE COURT:** THANK YOU. JUROR #210, MR. SUMTER. GOOD
2 AFTERNOON, MR. SUMTER.

3 **JUROR #210:** GOOD AFTERNOON.

4 **THE COURT:** THANK YOU FOR YOUR ATTENTION AND THANK YOU FOR
5 BEING BACK HERE PROMPTLY, AND WITH THAT, I NEED TO
6 ASK YOU SOME QUESTIONS TO DETERMINE YOUR
7 QUALIFICATIONS TO BE ON THE JURY THIS WEEK. PLEASE
8 DON'T BE INTIMIDATED BY THE SETTING. I KNOW THAT
9 YOU PROBABLY HAVEN'T BEEN IN THIS SITUATION BEFORE.
10 AND WE DO NEED TO ASK YOU SOME QUESTIONS, NOT FOR
11 THE PURPOSES OF INVADING YOUR PRIVACY, BUT JUST
12 BECAUSE OF THE NATURE OF THE PROCEEDINGS. THERE ARE
13 NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE JUST
14 NEED FOR YOU TO ANSWER THEM OPENLY AND HONESTLY SO
15 THAT WE CAN DETERMINE YOUR VIEWS ON CERTAIN THINGS.
16 AND I WOULD ALSO TELL YOU THAT YOU ARE STILL UNDER
17 OATH BASED ON THE OATH THAT YOU TOOK YESTERDAY WHEN
18 WE SWORE THE JURORS. SO OF COURSE YOUR ANSWERS WILL
19 HAVE TO BE TRUTHFUL; DO YOU UNDERSTAND?

20 **JUROR #210:** (NODS HEAD AFFIRMATIVELY).

21 **THE COURT:** NOW, I'LL NEED FOR YOU TO ANSWER OUT, FIRST OF
22 ALL. YOU MAY NEED TO STEP UP TO THE MICROPHONE A
23 LITTLE BIT BECAUSE THIS LADY'S GOT TO HEAR WHAT
24 YOU'VE GOT TO SAY AND THE LAWYER'S HAVE GOT TO HEAR
25 WHAT YOU'VE GOT TO SAY AS WELL AS I DO. SO, YOU DO

HEARING

1 UNDERSTAND THAT YOU'RE UNDER OATH AND YOU'RE GOING
2 TO GIVE TRUTHFUL ANSWERS; IS THAT RIGHT?

3 **JUROR #210:** YES, SIR.

4 **THE COURT:** OKAY. MR. SUMTER, THE DEFENDANT IN THIS CASE
5 IS MR. BOBBY WAYNE STONE. MR. STONE HAS ALREADY
6 BEEN FOUND GUILTY OF MURDER, SO THE ISSUE OF WHETHER
7 HE'S GUILTY OR INNOCENT IS NOT GOING TO BE BEFORE
8 THE JURY. THE ONLY QUESTION IN WHICH THE JURY WILL
9 DECIDE IS THE PUNISHMENT THAT IS TO BE IMPOSED ON
10 MR. STONE. THE STATE WILL PRESENT EVIDENCE AND
11 CERTAIN STATUTORY AGGRAVATED CIRCUMSTANCES AND IF
12 THEY CAN PROVE THAT AT LEAST ONE STATUTORY
13 AGGRAVATED CIRCUMSTANCE TO YOUR SATISFACTION, BEYOND
14 A REASONABLE DOUBT, AND TO THE JURY'S SATISFACTION,
15 THEN THE JURY WOULD FIND WHETHER MR. STONE SHOULD BE
16 PUNISHED BY LIFE IMPRISON OR DEATH. THOSE ARE THE
17 ONLY THINGS THAT THE JURY WILL CONSIDER ALONG WITH
18 ANY (INAUDIBLE) THEY WILL CONSIDER THE STATUTORY
19 AGGRAVATED CIRCUMSTANCES PRESENTED BY THE STATE AND
20 ALSO ANY MITIGATING CIRCUMSTANCES THAT MIGHT BE
21 PRESENTED BY THE DEFENDANT, INCLUDING STATUTORY
22 MITIGATING CIRCUMSTANCES. NOW HAVING SAID THAT I
23 WILL ASK YOU, HAVE YOU READ THIS FORM THAT WAS GIVEN
24 TO YOU ABOUT THE THREE TYPES OF JURORS?

25 **JUROR #210:** YES, SIR, I DID.

HEARING

23

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1 **THE COURT:** AND OF THE THREE TYPES, TYPE #1, TYPE #2 OR
2 TYPE #3, WHICH ONE WOULD YOU SAY BEST DESCRIBES YOU?
3 DO YOU WANT ME TO REVIEW THOSE WITH YOU?

4 **JUROR #210:** I WOULD SAY MAYBE #3.

5 **THE COURT:** #3?

6 **JUROR #210:** YEAH.

7 **THE COURT:** ALL RIGHT. LET ME JUST REVIEW THOSE WITH YOU
8 TO SEE IF THAT'S WHAT YOU AGREE WITH. TYPE #1 JUROR
9 IS THE ONE THAT ONCE A CRIME OF MURDER HAS BEEN
10 PROVEN BY THE STATE AND THE STATE, AND THE JURORS
11 ARE CONSIDERING PUNISHMENT, THE JUROR FEELS THAT IN
12 EVERY CASE HE OR SHE IS REQUIRED TO GIVE THE DEATH
13 PENALTY. THAT'S THE TYPE JUROR THAT FEELS THAT ONCE
14 MURDER HAS BEEN COMMITTED, THE DEATH PENALTY IS
15 APPROPRIATE PUNISHMENT. THAT'S TYPE #1. TYPE #2 IS
16 ONE THAT EVEN THOUGH THE GUILT OF THE DEFENDANT HAS
17 BEEN DETERMINED, THAT IN THAT SITUATION UNDER NO
18 CIRCUMSTANCES COULD THE JUROR ACCEPT TO GIVE THE
19 DEATH PENALTY. THE JUROR WILL NOT BE ABLE TO HEAR
20 THE FACTS AND CIRCUMSTANCES THAT AGGRAVATED
21 MITIGATION, BUT HAS HIS OR HER MIND MADE UP
22 CONCERNING PUNISHMENT. THEN TYPE #3 IS THE TYPE OF
23 PERSON OR INDIVIDUAL WHO WOULD NOT HAVE HIS OR HER
24 MIND MADE UP IN ADVANCE CONCERNING PUNISHMENT AND
25 WOULD NEED TO HEAR WHAT THE FACTS AND CIRCUMSTANCES

HEARING

1 THAT AGGRAVATION AND MITIGATION WERE, AND WOULD WANT
2 TO LISTEN AND FOLLOW TO THE LAW AS IS GIVEN TO YOU
3 BY THE COURT BEFORE YOU COULD MAKE A DECISION
4 REGARDING THE PUNISHMENT, AND IF THE FACTS PRESENTED
5 SO WARRANTED, THE JUROR COULD RETURN A VERDICT FOR
6 LIFE IMPRISONMENT OR IF THE FACTS SO WARRANTED OR
7 HAD BEEN PROVEN, THE JURY COULD RETURN THE VERDICT
8 OF A DEATH PENALTY. NOW, HAVING REVIEWED THOSE
9 THREE, DO YOU STILL AGREE THAT TYPE #3 BEST
10 DESCRIBES YOU?

11 **JUROR #210:** I WOULD SAY SO.

12 **THE COURT:** ALL RIGHT, SIR. LET ME ASK YOU THIS MR.
13 SUMTER, HAVE YOU READ ANYTHING, HEARD ANYTHING, OR
14 KNOW ANYTHING AT ALL ABOUT THIS CASE?

15 **JUROR #210:** NO, SIR, I DON'T.

16 **THE COURT:** OKAY. HAVE YOU ... YOU HAVE NOT SEEN ANY NEWS
17 REPORTS OR TELEVISION REPORTS ABOUT THIS CASE AT
18 ALL; IS THAT CORRECT?

19 **JUROR #210:** THAT'S CORRECT.

20 **THE COURT:** HAVE YOU FORMED ANY OPINION WHATSOEVER AS TO
21 WHAT YOUR VERDICT SHOULD BE OR WHAT YOUR DECISION
22 SHOULD BE IN THIS CASE BASED UPON WHAT I HAVE
23 DESCRIBED TO YOU?

24 **JUROR #210:** WHAT MY VERDICT WOULD BE, YOU SAID?

25 **THE COURT:** YES. HAVE YOU FORMED ANY OPINION? HAVE YOU

HEARING

25

1 ALREADY MADE UP YOUR MIND OR DO YOU HAVE ANY OPINION
2 AS TO WHAT YOUR VERDICT WILL BE OR ARE YOU OPEN-
3 MINDED AND WOULD YOU WAIT UNTIL ALL THE TESTIMONY IS
4 IN BEFORE YOU MAKE A DECISION?

5 **JUROR #210:** WELL, YES, SIR. I WOULD LIKE TO WAIT FOR
6 TESTIMONY BEFORE I MAKE A DECISION.

7 **THE COURT:** ALL RIGHT. NOW, IF THE STATE PROVES AN
8 AGGRAVATED CIRCUMSTANCE, AT LEAST ONE OF THE
9 AGGRAVATED CIRCUMSTANCES AND (INAUDIBLE) PLEAD
10 GUILTY TO MURDER, YOU WOULD BE ASKED ALONG WITH YOUR
11 FELLOW JURORS TO SIGN A VERDICT FORM THAT RECOMMENDS
12 TO THIS COURT, IT'S NOT A RECOMMENDATION, IT IS AN
13 ACTUAL SENTENCE THAT THE COURT WOULD FOLLOW, THAT
14 THE DEFENDANT BE SENTENCED TO LIFE IMPRISONMENT.
15 COULD YOU, IF THE FACTS AND CIRCUMSTANCES WARRANTED
16 THAT AFTER HEARING ALL THE EVIDENCE, COULD YOU SIGN
17 A VERDICT FORM OF LIFE IMPRISONMENT ON THIS
18 DEFENDANT?

19 **JUROR #210:** YES. YES, SIR.

20 **THE COURT:** BY THE SAME TOKEN, IF THE CIRCUMSTANCES
21 WARRANTED IT AND IF THE STATE PROVED A CIRCUMSTANCE
22 OF AGGRAVATION, STATUTORY AGGRAVATION CIRCUMSTANCE,
23 AND EVEN CONSIDERING MITIGATING CIRCUMSTANCES ISSUED
24 BY THE DEFENDANT, AND HEARING ALL THE TESTIMONY YOU
25 THOUGHT IN YOUR MIND THAT IT WAS RIGHT AND THE STATE

1 HAD PROVEN ITS CASE AND IT WAS THE RIGHT THING TO
2 DO, COULD YOU SIGN ... YOU WOULD BE REQUIRED TO SIGN
3 A VERDICT ALONG WITH THE OTHER 11 MEMBERS OF THE
4 JURY THAT WOULD IMPOSE THE SENTENCE OF DEATH ON THIS
5 DEFENDANT. COULD YOU SIGN SUCH A VERDICT IN THAT
6 SITUATION?

7 **JUROR #210:** YES, SIR.

8 **THE COURT:** ALL RIGHT. NOW, ONE FINAL QUESTION, MR.
9 SUMTER, AND THAT IS THAT IF YOU ARE SELECTED AS A
10 JUROR IN THIS CASE YOU WOULD BE SEQUESTERED, THAT
11 IS, PUT UP IN A MOTEL FOR FIVE TO SIX DAYS WHILE
12 THIS CASE IS GOING ON. EXCEPT FOR THE PERSONAL
13 INCONVENIENCE THAT THAT WOULD CAUSE YOU, WOULD THAT
14 CAUSE YOU ANY UNDUE HARDSHIP TO YOURSELF OR ANY
15 MEMBER OF YOUR FAMILY WHO IS DEPENDANT UPON YOU, TO
16 BE SEQUESTERED FOR THAT PERIOD OF TIME? WOULD THAT
17 CAUSE YOU ANY PROBLEM?

18 **JUROR #210:** NO, SIR, IT WOULDN'T.

19 **THE COURT:** ALL RIGHT, SIR. THANK YOU VERY MUCH. IF YOU
20 WOULD, ANSWER ANY QUESTIONS THAT THESE LAWYERS MIGHT
21 HAVE FOR YOU.

22 **MR. SALEEBY:** MR. SUMMER, MY NAME IS DUDLEY SALEEBY.
23 SOLICITOR JACKSON AND I WILL BE RESPONSIBLE FOR
24 PRESENTING THIS CASE ON BEHALF OF THE STATE. IF I
25 UNDERSTAND YOUR QUESTIONS CORRECTLY, YOU DON'T HAVE

HEARING

27 **221**

1 ANY PRIOR INFORMATION ABOUT THE FACTS AND
2 CIRCUMSTANCES OF THIS PARTICULAR EPISODE?

3 **JUROR #210:** I DON'T.

4 **MR. SALEEBY:** YOU UNDERSTAND AS THE JUDGE TOLD YOU THAT
5 THIS JURY WILL NOT BE CONCERNED WITH GUILT. THIS
6 DEFENDANT HAS ALREADY BEEN FOUND GUILTY AT ANOTHER
7 TIME AND PLACE; DO YOU UNDERSTAND THAT?

8 **JUROR #210:** I UNDERSTAND.

9 **MR. SALEEBY:** AND WE'RE JUST HERE TALKING ABOUT
10 PUNISHMENT?

11 **JUROR #210:** RIGHT.

12 **MR. SALEEBY:** DO YOU FEEL LIKE YOU CAN WAIT WITH AN OPEN
13 MIND UNTIL YOU'VE HEARD EVERYTHING FROM BOTH SIDES
14 AND MAKE YOUR OWN MIND UP ABOUT PUNISHMENT?

15 **JUROR #210:** THAT'S WHAT I ... I WOULD SAY SO.

16 **MR. SALEEBY:** DO YOU FEEL THAT YOU COULD VOTE FOR EITHER
17 LIFE IMPRISONMENT OR THE DEATH PENALTY BASED UPON
18 WHAT YOU KNEW ABOUT THE CRIME AND THE DEFENDANT AND
19 THE VICTIM?

20 **JUROR #210:** EITHER WAY, YES.

21 **MR. SALEEBY:** THANK YOU, SIR.

22 **THE COURT:** MR. LITTLEJOHN.

23 **MR. LITTLEJOHN:** THANK YOU, YOUR HONOR.

24 **THE COURT:** YES, SIR.

25 **MR. LITTLEJOHN:** GOOD AFTERNOON, MR. SUMTER.

1 JUROR #210: GOOD AFTERNOON.

2 MR. LITTLEJOHN: MY NAME IS CAM LITTLEJOHN AND I, ALONG
3 WITH JIM BABB, REPRESENT BOBBY WAYNE STONE WHO'S THE
4 DEFENDANT HERE. I NEED TO ASK YOU A FEW QUESTIONS.
5 MR. SUMTER, ON YOUR JURY INFORMATION FORM, I THINK
6 YOU PUT IN THERE THAT YOU HAD PREVIOUSLY WORKED FOR,
7 IS IT RAILROAD CONSTRUCTION?

8 JUROR #210: YES, SIR.

9 MR. LITTLEJOHN: OKAY. AND YOU WERE A TRUCK DRIVER?

10 JUROR #210: A TRUCK DRIVER AND OPERATOR, YEAH.

11 MR. LITTLEJOHN: AND THAT WAS IN NEW JERSEY?

12 JUROR #210: IN NEW JERSEY.

13 MR. LITTLEJOHN: OKAY. AND YOU'RE NOT WORKING NOW?

14 JUROR #210: NO, SIR. I'M RETIRED.

15 MR. LITTLEJOHN: YOU'RE RETIRED? I UNDERSTAND. MR.
16 SUMTER, SINCE YOU'VE BEEN LIVING IN SUMTER COUNTY,
17 HAVE YOU EVER HAD ANY DEALINGS WITH THE SUMTER
18 COUNTY SHERIFF'S DEPARTMENT?

19 JUROR #210: NO, I DIDN'T.

20 MR. LITTLEJOHN: DO YOU KNOW ANY OF THE DEPUTIES OR
21 ANYBODY THAT WORKS THERE?

22 JUROR #210: I DON'T KNOW ANYBODY.

23 MR. LITTLEJOHN: YOU DON'T KNOW ANYBODY? OKAY. MR.
24 SUMTER, BY YOUR ANSWERS TO JUDGE KING'S QUESTIONS
25 AND YOUR SELECTION AS A TYPE #3 JUROR, AS I

1 UNDERSTAND IT, YOU DON'T FEEL THAT IF SOMEONE IS
2 CONVICTED OF MURDER THAT THEY SHOULD AUTOMATICALLY
3 GET THE DEATH PENALTY. IS THAT A FAIR STATEMENT?

4 **JUROR #210:** I WOULD SAY SO.

5 **MR. LITTLEJOHN:** OKAY. IF THE STATE PROVES TO YOUR
6 SATISFACTION THAT AGGRAVATING CIRCUMSTANCES EXISTED
7 SURROUNDING THIS MURDER, DO YOU THINK NEVERTHELESS
8 YOU COULD CONSIDER BOTH THE DEATH PENALTY AND LIFE
9 IMPRISONMENT AS APPROPRIATE?

10 **JUROR #210:** I WOULD SAY SO, SIR.

11 **MR. LITTLEJOHN:** OKAY.

12 **JUROR #210:** I GUESS SO.

13 **MR. LITTLEJOHN:** I MEAN, DO YOU WANT TO EXPLAIN IT?

14 **JUROR #210:** EITHER ONE. NO. I WOULD SAY, LIKE I GOT TO
15 HEAR THE WHOLE STORY. DON'T KNOW NOTHING ABOUT IT,
16 SO I HAVE TO MAKE UP MY MIND ON DEATH THEN.

17 **MR. LITTLEJOHN:** THAT'S FAIR ENOUGH. LET ME ASK YOU THIS,
18 IF THE JURY, OR THIS COURT WAS TO IMPOSE A LIFE
19 SENTENCE, DO YOU THINK A LIFE SENTENCE IS A
20 SUBSTANTIAL SENTENCE? DO YOU THINK THAT'S A HEAVY
21 SENTENCE?

22 **JUROR #210:** YES. IT ALL DEPENDS. YES.

23 **MR. LITTLEJOHN:** OKAY. MR. SUMTER, DURING THE COURSE OF
24 THIS PROCEEDING, THERE WILL BE EVIDENCE PRESENTED
25 THAT WE CALL EVIDENCE OF MITIGATING CIRCUMSTANCES.

1 AND BY THAT I MEAN, EVIDENCE THAT WOULD LESSEN THE
2 SEVERITY OF THE MURDER THAT OCCURRED. AND THIS
3 EVIDENCE MIGHT RELATE TO THE BACKGROUND OF THE
4 DEFENDANT, OR HIS LIFE HISTORY, OR HIS FAMILY, OR
5 HIS EMPLOYMENT, THOSE SORT OF THINGS. DO YOU THINK
6 YOU WOULD HAVE ANY PROBLEM LISTENING TO THAT
7 EVIDENCE AND FACTORING THAT IN OR LETTING THAT BE
8 PART OF YOUR DECISION IN THIS CASE?

9 **JUROR #210:** I DON'T THINK I'D HAVE A PROBLEM WITH THAT.

10 **MR. LITTLEJOHN:** OKAY. I GUESS WHAT I'M ASKING, WOULD YOU
11 GIVE THAT EVIDENCE A FAIR SHAKE? WOULD YOU LISTEN
12 TO IT?

13 **JUROR #210:** YES, I WOULD.

14 **MR. LITTLEJOHN:** OKAY. MR. SUMTER, IF YOU'RE ON THIS JURY
15 AND DURING THE DELIBERATIONS IT BECAME OBVIOUS TO
16 YOU THAT THE MAJORITY WANTED TO VOTE ONE WAY AND YOU
17 WANTED TO VOTE ANOTHER WAY, DO YOU THINK YOU WOULD
18 EVER JUST CHANGE YOUR VOTE JUST TO GO ALONG WITH THE
19 MAJORITY?

20 **JUROR #210:** THAT'S A HARD ONE TO ANSWER. I HAVE TO
21 REALLY SEE IT AND KNOW IT, YOU KNOW, MAKE UP MY MIND
22 WHAT'S HAPPENING ON IT BECAUSE LIKE I SAY, I DON'T
23 REALLY KNOW THE STORY. I DON'T KNOW WHAT HAPPENED.

24 **MR. LITTLEJOHN:** OKAY. WELL, I GUESS WHAT I'M DRIVING AT
25 IS, IF YOU HAD YOUR MIND MADE UP AS TO WHAT THE

1 RIGHT THING TO DO IN THIS CASE WAS, WOULD YOU BE
2 ABLE TO STICK BY YOUR GUNS, TO STAY WITH THAT
3 DECISION?

4 JUROR #210: I WOULD SAY SO, YES.

5 MR. LITTLEJOHN: OKAY. CAN I ASK YOU, WOULD YOU EXPECT
6 THE OTHER JURORS TO RESPECT WHAT YOUR OPINION IS?

7 JUROR #210: WELL, I HOPE THAT WE CAN COME TO AN
8 AGREEMENT AND RESPECT EACH OTHER.

9 MR. LITTLEJOHN: OKAY.

10 JUROR #210: YEAH.

11 MR. LITTLEJOHN: BUT IF YOU THINK YOU'RE RIGHT AND THEY'RE
12 WRONG, CAN YOU STICK BY YOUR GUNS?

13 JUROR #210: WELL, IF I FEEL THAT I'M RIGHT, I'M RIGHT.

14 MR. LITTLEJOHN: OKAY. ALL RIGHT. THANK YOU, MR. SUMTER.

15 JUROR #210: OKAY.

16 THE COURT: THANK YOU, MR. SUMTER FOR BEING SO CANDID
17 ANSWERING QUESTIONS THAT EVERYBODY POSED TO YOU. IF
18 YOU'LL STEP OUTSIDE FOR JUST A MINUTE. I'LL SEND
19 OUT FOR YOU IN JUST ONE SECOND.

20 JUROR #210: OKAY.

21 THE COURT: MR. SALEEBY?

22 MR. SALEEBY: HE APPEARS QUALIFIED TO ME, SIR.

23 MR. LITTLEJOHN: WE AGREE, YOUR HONOR.

24 THE COURT: ALL RIGHT. THE JUROR IS QUALIFIED. ALL
25 RIGHT. MR. SUMTER, YOU HAVE BEEN FOUND TO BE A

1 QUALIFIED JUROR IN THIS CASE, AND THAT MEANS NOT
2 NECESSARILY THAT YOU'RE GOING TO SERVE ON THE CASE,
3 BUT YOU ARE ONE OF THE QUALIFIED JURORS. SO IT'S
4 GOING TO BE NECESSARY THAT I HAVE YOU COME BACK
5 TOMORROW. AT THIS TIME WE DON'T KNOW EXACTLY WHAT
6 TIME I'M GOING TO NEED YOU TOMORROW, SO I'M GOING TO
7 ASK IF YOU WILL CALL THE NUMBER THAT YOU HAVE ON
8 THAT BLUE CARD AND IF YOU DON'T HAVE ONE, WE'LL GET
9 ONE FOR YOU. AFTER 6:00 TONIGHT WE WILL HAVE A
10 REPORTING TIME ON THERE FOR YOU TOMORROW. WHEN YOU
11 GO HOME THIS AFTERNOON, PLEASE PACK YOUR CLOTHES AND
12 YOUR PERSONAL BELONGINGS SO WHEN YOU COME BACK TO
13 THE COURTHOUSE TOMORROW, BE PREPARED TO STAY FOR
14 FIVE OR SIX DAYS. AND WE WILL TAKE YOU, OR YOU WILL
15 BE TRANSPORTED FROM HERE TO THE MOTEL OR ELSE YOU'LL
16 DRIVE YOUR VEHICLES TO THE MOTEL. DO NOT BRING YOUR
17 CLOTHES AND THINGS IN THE COURTROOM. JUST LEAVE
18 THEM IN YOUR VEHICLE SO THAT IF YOU ARE SELECTED,
19 YOU WILL BE UNPACKING AT THE HOTEL. IF YOU'RE NOT
20 SELECTED, YOU'LL BE UNPACKING TOMORROW NIGHT AT
21 HOME. SO WHEN YOU COME, YOU'LL HAVE TO BRING
22 WHATEVER YOU NEED TO STAY FOR FIVE OR SIX DAYS.
23 OVER THE EVENING RECESS, DO NOT DISCUSS THE CASE
24 WITH ANYONE. DO NOT ALLOW ANYONE TO DISCUSS IT WITH
25 YOU. DO NOT READ ANY NEWS STORIES OR LISTEN TO ANY

THIRD JUDICIAL CIRCUIT

(803) 436-2150