

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY LEE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2014-000610

REDACTED RECORD ON APPEAL
PURSUANT TO SUPREME COURT ORDER DATED MAY 20, 2015

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 DEFEDANT’S EXHIBIT # 9-A (NOTEBOOK); DEFENDANT’S EXHIBIT # 9-B
 (NOTEBOOK); DEFENDANT’S EXHIBIT # 10 (BOOK)**

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,) TRANSCRIPT
PLAINTIFF,) OF
vs.) RECORD
RICKY LEE BLACKWELL,) 2009-GS-42-3609
DEFENDANT.) 2009-GS-42-3610

March 3rd - 8th, 2014
March 10th - 16th, 2014
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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11	S-28	Photograph	2279	2520
12	S-29	Photograph	2279	2520
13	S-30	Photograph	2279	2520
14	S-31	Photograph	2279	2521
15	S-32	Photograph	2279	2521
16	S-33	wallet	2279	2521
17	S-33-A	Cards from wallet		2389
18	S-33-B	Cards from wallet		2389
19	S-33-C	Driver's License		2391
20	S-34	Money	2279	2549
21	S-35	Photograph	2279	2526
22	S-36	Photograph	2279	2526
23	S-37	Gun Case	2279	2527
24	S-38	Diagram	2279	2545
25	S-39	Photograph	2279	2539

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	S-40	Photograph	2279	2539
4	S-41	9-1-1 Call	2279	2468
5	S-42	9-1-1 Call	2279	2468
6	S-43	Photograph	2279	2473
7	S-44	Statement		2445
8	S-45	Signature		2447
9	S-46	SLED Report	2558	2559
10	S-47	Indictment	2608	2646
11	S-48	Birth Certificate	2608	2625
12	S-49	Death Certificate	2608	2625
13	S-50	Photograph	2608	2629
14	S-51	Photograph	2608	2630
15	S-52	Photograph	2608	2630
16	S-53	Photograph	2608	
17	S-54	Photograph	2608	2743
18	S-55	Diagram	2608	2638
19	S-56	Jail Log		2649
20	S-57	Jail Log		2649
21	S-58	Blank Statement Form		2961
22	S-59	Photograph	2693	2704
23	S-60	Photograph	2693	2705
24	S-61	Photograph	2693	
25	S-62	Photograph	2693	

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	S-63	Photograph	2693	
4	S-64	Photograph	2693	
5	S-65	Photograph	2693	
6	S-66	Photograph	2693	
7	S-67	Photograph	2693	2711
8	S-68	Photograph	2693	2711
9	S-69	Photograph	2693	2711
10	S-70	Photograph	2693	2711
11	S-71	Photograph	2693	2711
12	S-72	Photograph	2693	
13	S-73	Application	2920	2920
14	S-74	ABIS Records	2928	2933
15	S-75	ABIS Records	2928	2933
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Defendant's Exhibits</u>		
D-1	Statement	2439	
D-2	Psychologist Report	2787	
D-3	Supplemental Psychologist Report	2787	
D-4	School Records	2845	2848
D-5	Social Security Earnings	2872	2873
D-6	ABIS Records		2889
D-7	ABIS Rating Information		2903
D-8	Medical Record	2961	
D-9	Bible Study Information	2997	3010
D-10	Photograph	2997	3012
D-11	Photograph	2997	3012
D-12	Photograph	2997	3012
D-13	Photograph	2997	3012
D-14	Photograph	2997	3012
D-15	Photograph	2997	3012
D-16	Photograph	2997	3012
D-17	Photograph	2997	3012
D-18	Photograph	2997	3012
D-19	Photograph	2997	3012
D-20	Photograph	2997	
D-21	Thumb Drive		3023

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	D-22	Photograph	3040	3042
4	D-23	Photograph	3040	3042
5	D-24	Photograph	3040	3042
6	D-25	Photograph	3040	3042
7	D-26	Photograph	3040	3042
8	D-27	Photograph	3040	3042
9	D-28	Photograph	3040	3042
10	D-29	Photograph	3040	3042
11	D-30	Photograph	3040	3042
12	D-31	Photograph	3040	3042
13	D-32	Photograph	3040	3042
14	D-33	Photograph	3040	3042
15	D-34	Photograph	3040	3042
16	D-35	Photograph	3040	3042
17	D-36	Photograph	3040	3042
18	D-37	Bible Study Papers	3075	3081
19	D-38	Photograph	3084	3085
20	D-39	Photograph	3091	3102
21	D-40	Photograph	3091	3102
22	D-41	Photograph	3091	3102
23	D-42	Photograph	3091	3102
24	D-43	Photograph	3091	3102
25	D-44	Photograph	3091	3102

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	D-45	Photograph	3091	3102
4	D-46	Photograph	3091	3102
5	d-47	Notebook	3091	
6	D-48	Jail calls		3106
7				
8				
9				
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Court's Exhibits</u>		
C-1	Juror Questioning Information		133
C-2	Juror Questioning Information		133
C-3-A	Juror Questioning Information		165
C-3-B	Juror Questioning Information		165
C-4-A	Witness List		165
C-4-B	Witness List		165
C-5-A	Witness List		289
C-5-B	Witness List		289
C-6	Code of Laws		2415
C-7	HIPAA Information		2415
C-8	Witness List		2489
C-9	Juror Questionnaires		
C-10	Autopsy Report	2643	
C-11	Proposed Jury Instructions	3143	
C-12	Proposed Mitigating Circumstances	3143	
C-13	Verdict Form	3143	

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2				
3	C-14	Note from Jury		3251
4	C-15	Note from Jury		3263
5	C-16	Records for Jurors		3263
6	C-17	Jury Instruction		3263
7				
8				
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P R O C E E D I N G S

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

THE COURT: All right. Good morning, ladies and gentlemen.

First of all, I want to thank you for your patience this morning. Anytime we deal with this large a number of people they're some problems, and I think we've gotten those ironed out now.

I want to introduce myself to you. My name is Roger Couch. I am a resident circuit judge here in Spartanburg County. It's my pleasure to be serving with you for a term of Court, and probably some of you have served on juries before. But probably, most of you, this would be your first experience in serving on a jury.

For those who have never been in this situation before, I would expect for you to have some feelings like maybe you're a little apprehensive, worried, maybe don't understand what's going on, maybe even scared, and I imagine some of you may even be mad at having gotten a jury summons. I realize that you did get one and you were required to be present. However, I want to thank you very much for your willingness to come forward and serve and be present.

we didn't have to send a sheriff deputy after you.

1 You've come here voluntarily and if it weren't for good
2 citizens such as yourselves who are willing to come forward
3 and serve on jury panels our system couldn't function as it
4 was designed by our forefathers. So, I hope you understand
5 that we understand your situation. We deal with juries
6 quite often here, and we'll do everything we can to keep
7 this process moving, and, of course, make your visit with us
8 as comfortable as possible.

9 Now, this term of Court that we're about to begin, more
10 than likely, will last more than one week, and your service
11 as jurors in this particular situation may be needed for a
12 longer period than one week.

13 Now, again, I want to thank you for your being present
14 here today, and assure you again we'll do everything to
15 minimize your inconvenience. It's my personal belief that
16 service on a jury panel is the second highest service that a
17 citizen can render to one's country during peace time, and I
18 know that any of you, if you were involved in a Court
19 proceeding, would want a fair and impartial jury to serve in
20 your case, and I am confident that you will appreciate the
21 seriousness and the solemn nature of the proceeding that --
22 proceeding here in the court and that you'll discharge your
23 duties fairly and in good faith and with integrity.

24 Now, each of you is here because you are a --
25 potentially an, an eligible juror in South Carolina. We

1 have three sources from which we pull people on a jury
2 panel, and you were pulled because your name appears in one
3 of those three sources. The sources of jurors is a list of
4 registered voters, list of licensed drivers, and people who
5 have South Carolina identification cards as issued by the --
6 through the DMV.

7 Now, what we're going to do is -- today is, to begin
8 with, is go through your qualifications to serve as jurors.
9 Under the laws and the Constitution of this state, there are
10 certain requirements that juries -- jurors must have in
11 order to be qualified to serve.

12 So, we're going to be going over some information with
13 you and asking you some questions in that regard. It's
14 important that the information that you give us in this
15 process is truthful, accurate, and complete information, and
16 so, for that reason, it is necessary that you be sworn
17 concerning the responses that you're about to give to the
18 Court.

19 So, at this time I'm going to ask that the clerk swear
20 the potential jury, jurors for me.

21 (WHEREUPON, the entire jury panel was placed under oath
22 at this time.)

23 THE COURT: All right. You may be seated.

24 (Jurors comply.)

25 THE COURT: Now, if there was any potential juror who

1 either failed or refused to take the oath that was just
2 administered by the clerk, I'd ask that you now please
3 stand.

4 (No response.)

5 THE COURT: It appears that all potential jurors have
6 been sworn for purposes of the qualification process.

7 Now, you -- each of you was sent a questionnaire
8 earlier, and we have received some information about you on
9 the questionnaire as a member of the jury pool. However, if
10 there's any member of the jury pool present who is not yet
11 completed a questionnaire, I'd ask that you now please
12 stand.

13 (No response.)

14 THE COURT: It looks like everyone has completed the
15 questionnaire.

16 Now, I'm also going to give you an opportunity, a
17 little later on, to come forward and change your
18 questionnaire if any of the information that you provided us
19 was -- has changed since you submitted it. So, think about
20 that. A little later on I'll give you an opportunity to
21 amend your questionnaire if that becomes -- if that's
22 necessary.

23 Now, I want to introduce some of the people in the
24 courtroom to you, the people that are involved in the
25 qualification process. You've met members of the clerk's

1 staff. Ms. Hope Blackley is seated in front of me here.
2 She's our Clerk of Court.

3 You've met the bailiffs here at the courthouse, the
4 ladies and gentleman in the red jackets, and I won't try to
5 introduce them all to you. But they were here to get you in
6 and get your badges on you, things of that nature.

7 Ms. Pam Green is my court reporter. She's the lady
8 over here to my left. She's taking down everything that's
9 being said in this process because everything that goes on
10 in the courtroom is a matter of record. So, she's providing
11 that information and preparing that information at this
12 time.

13 My law clerk, Ms. AnneMarie Haynsworth, is the young
14 lady seated to my right. She'll be coming and going from
15 the courtroom and assisting me in my duties as we go
16 forward.

17 I'm not going to try to introduce all the sheriff's
18 deputies here that are providing security at the courthouse,
19 but you've met them as they came in. We want to thank Chuck
20 wright and his staff for providing those people here to
21 provide us with a safe place in which to do business. So,
22 they'll be assisting us as well.

23 Now, I told you my purpose this morning is to determine
24 your qualifications and eligibility to serve as jurors.
25 We're going to do that in a couple of stages or steps.

1 The first step is there will be a roll call and the
2 clerk will be calling the names of those who should be
3 present. When your name is called, I would like for you to
4 stand and give us the mileage, your estimation of the
5 mileage one way from your home to here at the courthouse.
6 The clerk will need that information later on in determining
7 reimbursements and things of that nature.

8 So, please stand, and in a clear voice, give us that
9 information.

10 So, at this point in time I'll authorize the clerk to
11 begin the roll call.

12 Madam Clerk.

13 (WHEREUPON, the roll of the entire jury panel was
14 called at this time.)

15 THE COURT: All right. Ladies and gentlemen, that
16 completes the roll call, and, as I told you, now it's my
17 responsibility to ask some questions of you. The law
18 requires that the questions that I'm about to ask should be
19 asked of you. It's not our purpose here to embarrass anyone
20 or to cause you any concern. But -- so, if there's anything
21 that I ask you about that you would rather speak with me in
22 a more private situation, when I complete my questioning, I
23 will allow you to come forward and speak with me in a more
24 private situation.

25 Now, I've told you, everything that goes on in a

1 courtroom has to be taken down on the record. So, if you do
2 wish to speak with me in a more private situation about any
3 of the matters I raised, it will be necessary that we meet
4 up by the court reporter over here, and we'll have to take
5 down what you tell me on the record, but it won't be like
6 you're standing up in open Court in front of everyone
7 assembled here.

8 So, if there's any matter like that, something that you
9 would rather speak with me in a more private situation,
10 please remember that and I'll give you an opportunity to
11 come forward and speak with me in that fashion.

12 Now, as I ask the questions that I'm about to ask, I'll
13 be asking that you stand if you have a response to my
14 questions, and if you do, I'll need to get your name and
15 number on the record before we discuss anything about the
16 question that I've asked you. So, again, I'll be asking
17 that you stand if you have a response. I'll need your name
18 and number on the record. That's so if anyone later reads
19 the transcript of this proceeding, they'd be able to tell
20 who I was talking to in any given moment. So, I will need
21 that information before we proceed.

22 Now, my first question is, is there any member of the
23 jury panel who is not a citizen of the United States of
24 America, if that's true, please stand.

25 (No response.)

1 THE COURT: Is there any member of this jury panel who
2 is not currently a resident of and a citizen of Spartanburg
3 County, South Carolina, if that's true, please stand.

4 (No response.)

5 THE COURT: Is there any member of the jury panel who
6 does not possess one of the following:

7 A voter registration, a driver's license, or a Highway
8 Department identification card.

9 So, if you do not possess one of those following items,
10 please stand.

11 (Juror responds.)

12 THE COURT: Yes, sir, your name and number?

13 THE JUROR: 299.

14 THE COURT: Yes, sir, you don't--

15 THE JUROR: No voter's registration.

16 THE COURT: Sir?

17 THE JUROR: No voter's registration.

18 THE COURT: Do you have a driver's license?

19 THE JUROR: Yes.

20 THE COURT: I said if you possess one of those.

21 THE JUROR: Oh.

22 THE COURT: So, you do. So, you're, you're fine.

23 THE JUROR: Okay.

24 THE COURT: Thank you, sir.

25 THE JUROR: All right.

1 THE COURT: Anyone else?

2 (No response.)

3 THE COURT: Is there any member of the jury panel who
4 is unable to either read, write, speak, or understand the
5 English language, if that's true, please stand.

6 (Jurors respond.)

7 THE COURT: Is there any member of the jury -- oh, I'm
8 sorry.

9 Yes, ma'am, name and number?

10 THE JUROR: 55.

11 THE COURT: Yes, ma'am, your name?

12 THE JUROR: Isabel Cortez.

13 THE COURT: Yes, ma'am, your situation?

14 THE JUROR: I can not -- I can not write English.

15 THE COURT: You can not write English, is that right?

16 THE JUROR: Yeah.

17 THE COURT: Okay. How far did you go in school, ma'am?

18 THE JUROR: Huh?

19 THE COURT: How far did you go in school?

20 THE JUROR: I did high school, about nine years, but in
21 Mexico.

22 THE COURT: You did that in Mexico?

23 THE JUROR: Yeah.

24 THE COURT: All right. Ma'am, so can you read the
25 English language?

1 THE JUROR: Yes.

2 THE COURT: But you can't write it?

3 THE JUROR: I can -- I have a lot of mistakes writing.

4 THE COURT: All right. Well, ma'am, I'll excuse you
5 from service. See the, the bailiff on the way out. They'll
6 take care of you. If you can't write, we need you to be
7 able to read or write.

8 Yes, ma'am, name and number?

9 THE JUROR: Yes, my name is Pham. My number is 200. I
10 can not read it or write it.

11 THE COURT: You can not read or write English?

12 THE JUROR: No.

13 THE COURT: All right, ma'am. That would excuse you
14 from service. If you'll step out. See the bailiff.

15 Anyone else?

16 (No response.)

17 THE COURT: Is there any member of this jury panel who
18 has less than a sixth grade education or its equivalency?

19 Now, by equivalency, we mean some people have reached
20 the level of a sixth grade education through self-education,
21 work experiences, things of that nature.

22 So, if there's anyone who has less than a sixth grade
23 education or its equivalency, please stand.

24 (No response.)

25 THE COURT: Now, is there any member of the jury panel

1 who is incapable, incapable, by reason of a mental or a
2 physical condition, to be able to render good and efficient
3 jury service, if that's true, please stand.

4 (Juror responds.)

5 THE COURT: Name and number, ma'am?

6 THE JUROR: Benita James, 122.

7 THE COURT: Yes, ma'am, your situation?

8 THE JUROR: I have a titanium rods. I've had three
9 back surgeries, and it's hard for me to sit --

10 THE COURT: Does it --

11 THE JUROR: -- for a long time.

12 THE COURT: Do you take medication for that problem?

13 THE JUROR: Yes.

14 THE COURT: What types of medication?

15 THE JUROR: Narcotics.

16 THE COURT: So, you do take narcotics for that?

17 THE JUROR: Yes, sir.

18 THE COURT: Ma'am, I'll excuse you from service. Step
19 out and see the bailiff if you're taking narcotics.

20 Name and number please, ma'am?

21 THE JUROR: Four---

22 THE JUROR: Gloria---

23 THE COURT: I'm talking to the lady in the back. I'm
24 sorry.

25 Yes, ma'am, name and number please?

1 THE JUROR: Gloria Whitener, 287.

2 THE COURT: Yes, ma'am.

3 THE JUROR: I recently fell and banged my head on the
4 wall, and landed on my rear.

5 THE COURT: Yes, ma'am.

6 THE JUROR: But I haven't had the money to go to the
7 doctor, but I'm in a lot of pain.

8 THE COURT: Well, are you taking medication for the
9 pain?

10 THE JUROR: I can't go to the doctor.

11 THE COURT: Okay. Well, ma'am, normally this, this
12 type of thing would require some type of a doctor's excuse
13 if it was questionable. I'm gonna ask that you stay with
14 us. Thank you, ma'am.

15 Name and number please, ma'am?

16 THE JUROR: 41, Nicole Carlton.

17 THE COURT: Yes, ma'am.

18 THE JUROR: I'd rather talk to you in---

19 THE COURT: Okay. That will be fine. Just remember it
20 and -- not, not right now. I wait till the end and I ask
21 everybody to come up at the same time.

22 THE JUROR: Okay.

23 THE COURT: Thank you.

24 Name and number please, ma'am?

25 THE JUROR: Wanda Westmoreland, two -- 281.

1 THE COURT: Yes, ma'am.

2 THE JUROR: I'd rather talk to you in private.

3 THE COURT: That will be fine. Thank you.

4 Over here, ma'am, name and number?

5 THE JUROR: Marcy Lyda, 156. I'm in chronic pain due
6 to a car wreck in 2000, and I'm on narcotics.

7 THE COURT: Okay, ma'am. I'll excuse you. See the
8 bailiff.

9 Name and number, ma'am?

10 THE JUROR: My name is Sharon Robinson. My number is
11 217. I recently developed a hole in my eardrum and I've had
12 hearing aids. I can hear some, but not very well, and I'm
13 still getting adjusted to the new hearing aids. It's not---

14 THE COURT: Have you been able -- have you been able to
15 understand what I'm saying and doing?

16 THE JUROR: I can hear you fairly well, but I can't
17 hear other people like---

18 THE COURT: Okay. Well, ma'am, I'm gonna ask you to
19 stay with us cause it will be a lot closer than this---

20 THE JUROR: Okay. I can hear---

21 THE COURT: ---in a courtroom. It won't be this far
22 apart. So, I'll ask you to stay with us. Thank you.

23 THE JUROR: All right. Thank you.

24 THE COURT: All right. And, sir, that took care of
25 your problem too?

1 THE JUROR: (Nods affirmatively.)

2 THE COURT: Thank you, sir.

3 All right. Now, I didn't hear that this matter
4 involves anyone, but I'm required to ask the question.

5 Is there any person here who is a clerk of court, a
6 deputy clerk of court, a constable, a sheriff, a probate
7 judge, a county commissioner, a magistrate, or any county
8 officer, or are you employed within the walls of a
9 courthouse, if that's true, these stand.

10 (No response.)

11 THE COURT: Now, is there any person on the jury panel
12 who has ever been convicted, and that will be either by a
13 guilty plea or in a trial, in a state or a Federal Court of
14 record of a crime which was punishable by imprisonment for
15 more than one year, and your civil rights have not been
16 restored either by pardon or amnesty?

17 Let me explain this question a little bit because it's
18 confusing to people quite often. But the, the offenses
19 we're talking about are offenses where you could of been
20 sentenced to more than one year in prison. That doesn't
21 mean that you were sentenced to more than one year in
22 prison. That means you were in jeopardy of or could of been
23 sentenced to that length of time.

24 Now, if you were found guilty of some matter that
25 carries less than one year in prison as a possible sentence,

1 I'm not referring to those type of convictions. So, let me
2 go over it again just to be sure that you'll understand the
3 question.

4 Has any member of the jury panel ever been convicted,
5 either by a guilty plea or in a trial, in a State or a
6 Federal Court of record of a crime which was punishable by
7 imprisonment for more than one year and your civil rights
8 have not been restored either by pardon or by amnesty, if
9 that's true, please stand.

10 (Jurors respond.)

11 THE COURT: Name and number, sir?

12 THE JUROR: 299, Shakur Zaheer.

13 THE COURT: Yes, sir.

14 THE JUROR: Convicted of a crime back in '92.

15 THE COURT: Can you tell me the nature of the crime?

16 THE JUROR: Crack cocaine.

17 THE COURT: Okay. Possession?

18 THE JUROR: Selling crack, yep.

19 THE COURT: Okay, sir. I'll excuse you from service.

20 THE JUROR: Thank you.

21 THE COURT: That will disqualify you from service
22 actually.

23 THE JUROR: Your Honor, can -- y'all gonna send my
24 money to me?

25 THE COURT: See the bailiff and they'll check you out.

1 THE JUROR: Oh, excuse me.

2 THE COURT: Name and number, sir?

3 THE JUROR: I'm Curtis Pearson.

4 THE COURT: Order please.

5 THE JUROR: 195.

6 THE COURT: Yes, sir.

7 THE JUROR: I was convicted of armed robbery, arson,
8 and resisting arrest.

9 THE COURT: well, that's gonna excuse you -- disqualify
10 you from service. See the bailiff on the way out.

11 Anyone else?

12 (Jurors respond.)

13 THE COURT: Sir, name and number?

14 THE JUROR: Stacy Fullenwinder, 79. Possession of a
15 firearm.

16 THE COURT: Okay, sir.

17 Mr. Solicitor, could you help me with that one?

18 SOLICITOR BARNETTE: What was his name and number, Your
19 Honor?

20 I'm sorry.

21 THE COURT: Your number, sir?

22 THE JUROR: 79.

23 THE COURT: 79.

24 SOLICITOR BARNETTE: 79.

25 THE COURT: Some of those offenses carry less than a

1 year. So, let me see what we're looking at.

2 SOLICITOR BARNETTE: It only carries a year, Your
3 Honor.

4 THE COURT: Beg your pardon?

5 SOLICITOR BARNETTE: It only would carry a year. He
6 had possession of a weapon.

7 THE COURT: So, it carried --?

8 SOLICITOR BARNETTE: One year.

9 THE COURT: One year?

10 SOLICITOR BARNETTE: Yes, sir.

11 THE COURT: So, it was not more than a year?

12 SOLICITOR BARNETTE: No, sir.

13 THE COURT: Okay, sir. You can stay with us. Thank
14 you, sir.

15 Name and number please, ma'am?

16 THE JUROR: 89, Melissa Giles. Carrying---

17 THE COURT: Yes, ma'am.

18 THE JUROR: Convicted of carrying a weapon on school
19 property.

20 THE COURT: I don't think that's gonna -- you're gonna
21 be able to stay with us. Thank you, ma'am. Less than one
22 year.

23 Anyone else?

24 (No response.)

25 THE COURT: Now, my next question, is there any member

1 of the jury panel who is served on Circuit Court jury duty
2 during this calendar year, 2014?

3 We only had two months. So, it's very unlikely and if
4 you served on Circuit Court jury it would of been in this
5 courthouse on this level. So, we're not talking about
6 Magistrate Courts or City Courts or Federal Courts.

7 So, if you served on State Circuit Court jury during
8 this calendar year, please stand.

9 (No response.)

10 THE COURT: Now, that concludes the statutory list of
11 matters that can disqualify from -- someone from jury
12 service.

13 I'm now going to move on to a second set of questions.
14 These questions involve matters that we refer to as
15 exemptions under the law.

16 Now, when we talk about exemptions, what's that -- what
17 this means is, if this applies to you, then I may have some
18 options concerning your service or you may have some options
19 concerning your service on a jury panel. I'll go over those
20 options with you as we go through the questions.

21 Now, there is an exemption that allows people who have
22 served on Circuit Court jury duty during any of the last
23 three full calendar years to claim an exemption or they're
24 allowed to serve. Now, if you served this year on a Circuit
25 Court jury, you're disqualified. We're already talked about

1 that.

2 So, if you served during any of the last three full
3 calendar years on a Circuit Court jury, and you wish to
4 claim an exemption, please stand.

5 (No response.)

6 THE COURT: My next exemption deals with those of you
7 who may be 65 years of age or older. As I get closer to
8 that age I fully appreciate that they are some of our better
9 jurors, people who are over 65, cause they have a good many
10 life experiences. They've been around a good bit. But we
11 allow people who are over the age of 65, 65 years of age or
12 older, to claim an exemption if you wish to claim one.

13 If that applies to you, and you do wish to claim the
14 exemption, please stand.

15 (Juror responds.)

16 THE COURT: Your name and number, ma'am?

17 THE JUROR: Jennie Sherbert, 228.

18 THE COURT: I'm not gonna ask your age, but you are
19 over the age of 65?

20 THE JUROR: Yes, sir.

21 THE COURT: Do you wish to claim the exemption?

22 THE JUROR: Yes, sir.

23 THE COURT: All right. Step out and see the bailiff.
24 Thank you very much.

25 Anyone else?

1 (No response.)

2 THE COURT: Now, persons who have served as a member of
3 a Grand Jury during any of the last five calendar years can
4 be exempt. Now, if you served on a Grand Jury I'm sure
5 you'd remember that experience. Service on a Grand Jury
6 requires you serve on that -- in that position for a full
7 year, and you have to meet at least monthly. So, you'd
8 remember if you'd been on a Grand Jury.

9 So, if you've served on a Grand Jury during any of the
10 last five calendar years, and you wish to claim an exemption
11 for that reason, please stand.

12 (No response.)

13 THE COURT: My next exemption applies to those of you
14 who may have small children. Listen carefully to this,
15 because it has several parts, to see if it might apply to
16 you.

17 You can be exempted from jury service if you have a
18 child or children under the age of seven years and you are
19 the person who has the care -- duty of care, custody, and
20 control of that child. In other words, you're the custodial
21 parent of the child or the person in that position, and
22 you've been unable to make adequate arrangements for the
23 care of that child while performing jury duty and you wish
24 to claim an exemption for that reason, please stand.

25 (Jurors respond.)

1 THE COURT: Name and number, ma'am?

2 THE JUROR: Porcha Gibson, Number 87.

3 THE COURT: And, ma'am, your situation is?

4 THE JUROR: I have to get my kids, they're three and
5 four, off the bus at 2:45.

6 THE COURT: And what, and what ages are they?

7 THE JUROR: Three and four.

8 THE COURT: Three and four?

9 THE JUROR: Uh-huh. (Affirmative).

10 THE COURT: You wish to claim the exemption, ma'am?

11 THE JUROR: (Nods affirmatively.)

12 THE COURT: And you are the custodial parent?

13 THE JUROR: (Nods affirmatively.)

14 THE COURT: See the bailiff. Thank you.

15 Name and number, ma'am?

16 THE JUROR: Lindsey Wood, 294.

17 THE COURT: Yes, ma'am.

18 THE JUROR: I have two one year olds and a five year
19 old.

20 THE COURT: Okay. Well, you've got your hands full.

21 THE JUROR: Yes.

22 THE COURT: Have you been able to arrange for the care
23 of those children otherwise?

24 THE JUROR: I haven't. I got today, but---

25 THE COURT: Okay. So, you wish to claim the exemption?

1 THE JUROR: (Nods affirmatively.)

2 THE COURT: See the bailiff. See Mr. Ruth there.

3 Name and number, ma'am?

4 THE JUROR: Jeris Pugh, 209.

5 THE COURT: Yes.

6 THE JUROR: I have a six month old, and I have to get
7 him from my mom around 12:30.

8 THE COURT: Okay. So, are you the person who has
9 custody and control of the child?

10 THE JUROR: Yes, sir.

11 THE COURT: Have you been able to arrange for adequate
12 care of the child at this time?

13 THE JUROR: Only for---

14 THE COURT: Other than yourself?

15 THE JUROR: No, sir.

16 THE COURT: All right. Then you, you wish to claim the
17 exemption, ma'am?

18 THE JUROR: Yes, sir.

19 THE COURT: See the bailiff.

20 My next exemption has to do with those of you who may
21 be the primary caretaker of a disabled person who is 65
22 years of age or older. That is a person who's unable to
23 care for themselves or can not be left unattended.

24 If you are the primary caretaker of such a person, and
25 you wish to claim an exemption for that reason, please

1 stand.

2 (No response.)

3 THE COURT: The law does provide an exemption for those
4 people who work at a school or, or either are a full-time or
5 a part-time student. Now, this exemption doesn't allow you
6 to be excused altogether. This exemption provides that you
7 will be moved to another time of service. So, you'll get a
8 new summons and be required to come at another time when
9 school is not in session or the Court would not conflict
10 with your duties at the school.

11 So, if you work at a school or you are a student and
12 you wish to claim the exemption such that you would be moved
13 to another week of service, please stand.

14 (Jurors respond.)

15 THE COURT: Name and number, sir?

16 THE JUROR: Joel Gardner, 83.

17 THE COURT: Yes, sir.

18 THE JUROR: I work for Spartanburg County School
19 District II in the district office.

20 THE COURT: Do you wish to be moved to another week of
21 service?

22 THE JUROR: Yes.

23 THE COURT: All right. We'll do that for you, sir.
24 See the bailiff.

25 Ma'am, name and number?

1 THE JUROR: Peggy Long, 152.

2 THE COURT: Yes, ma'am.

3 THE JUROR: Spartanburg School District III in the
4 transportation department.

5 THE COURT: And do you wish to move your service to
6 another week?

7 THE JUROR: Yes, please.

8 THE COURT: All right. See the bailiff.
9 Ma'am, name and number?

10 THE JUROR: Annette Wilson, 292. I'm a full-time
11 student at Spartanburg Community College and I also work at
12 Spartanburg Community College.

13 THE COURT: All right. Do you wish to move your
14 service to another week?

15 THE JUROR: Yes, sir.

16 THE COURT: All right. See the bailiff.
17 One more, yes, ma'am, name and number?

18 THE JUROR: Kayla Beatty, 11.

19 THE COURT: Yes, ma'am.

20 THE JUROR: I'm a full, I'm a full-time student at
21 Spartanburg Community College and I work at a home
22 healthcare center.

23 THE COURT: All right. Do you want to move to another
24 week of service?

25 THE JUROR: Yes.

1 THE COURT: All right. You may do so. Step out.

2 Now, if you are a person who performs services for a
3 business, commercial or agricultural enterprise, and your
4 services are so essential to the operation of that business
5 or enterprise that, if you were selected to serve on a jury
6 and required to serve, that during the period of your
7 service the enterprise would cease doing business. In other
8 words, it would have to close its doors during that period
9 of time, and you wish to claim an exemption for that reason,
10 please stand.

11 (Juror responds.)

12 THE COURT: Name and number, sir?

13 THE JUROR: My name is Jonathan Bridwell, Number 32.

14 THE COURT: Yes, sir.

15 THE JUROR: I own a restoration shop, and I'm, I'm the,
16 the only employee.

17 THE COURT: You're the sole proprietor and the
18 employee?

19 THE JUROR: Yes, sir.

20 THE COURT: So, if you're here it's not open?

21 THE JUROR: Yes, sir.

22 THE COURT: All right. Do you wish to claim an
23 exemption for that reason?

24 THE JUROR: Yes, sir.

25 THE COURT: All right. See the bailiff on your way

1 out. Thank you.

2 Name and number, sir?

3 THE JUROR: Ankit Patel, 190.

4 THE COURT: Yes, sir.

5 THE JUROR: I got a convenience store. I'm the owner
6 and I got a family member covering today, but that's it.

7 THE COURT: So, you're the only employee of the
8 business?

9 THE JUROR: I got another employee, but he's in school.

10 THE COURT: Okay, sir.

11 THE JUROR: He's there right now.

12 THE COURT: So, if you're not there it's closed during
13 the period that you're not there?

14 THE JUROR: Yes, sir.

15 THE COURT: All right. See the bailiff on the way out.
16 Thank you, sir.

17 Sir, name and number?

18 THE JUROR: Kenneth Bosley, Number 26.

19 THE COURT: Yes, sir.

20 THE JUROR: I have my own electrical plumbing business.
21 I'm the sole employee.

22 THE COURT: So, you're a sole proprietor as well?

23 THE JUROR: Yes, sir.

24 THE COURT: All right, sir. Do you wish to claim the
25 exemption?

1 THE JUROR: Yes, sir.

2 THE COURT: All right. See the bailiff on the way out.

3 Thank you, sir.

4 Name and number, ma'am?

5 THE JUROR: Melanie Groce, 97.

6 THE COURT: Yes, ma'am.

7 THE JUROR: I'm the sole proprietor of a beauty salon.

8 THE COURT: All right. Do you wish to claim an
9 exemption?

10 THE JUROR: I do.

11 THE COURT: And if you're not there, it's closed, is
12 that right?

13 THE JUROR: Yes, sir.

14 THE COURT: All right. Thank you, ma'am. See the
15 bailiff.

16 Sir?

17 THE JUROR: I'm a sole -- 137. I'm a sole proprietor
18 of a cabinet installation. I'm the owner.

19 THE COURT: And so you're the sole employee?

20 THE JUROR: Yes, I am.

21 THE COURT: If you're not there it will be closed, is
22 that right?

23 THE JUROR: Yes, sir.

24 THE COURT: All right. See the bailiff on the way out.
25 Thank you.

1 Sir, name and number?

2 THE JUROR: David Long, Number 151.

3 THE COURT: Yes, sir.

4 THE JUROR: The business will not be closed. I am in a
5 partnership. But there are certain aspects of my business,
6 if I'm not there -- I, I have not taken a vacation in a
7 week -- for a week in 15 years since we owned the business.

8 THE COURT: Well, sir, I have to -- it has to be a
9 situation where the business would have to close. So, I'll
10 have to deny that request. Thank you.

11 The law provides that a person who is a guard or works
12 in a prison with a detention facility can be exempted. I
13 didn't hear that that applied to anyone here.

14 If it does however, please stand, if you wish to claim
15 an exemption for that reason.

16 (No response.)

17 THE COURT: Now, that completes the statutory list of
18 qualifications and exemptions for jury service.

19 Now, the law does allow me some discretion concerning
20 the service of jurors, and so I do have some discretion, but
21 I'm only suppose to use that under extreme or compelling
22 circumstances.

23 So, if you believe that there's something going on in
24 your life that would be an extreme or a compelling
25 circumstance that I should consider concerning your service,

1 please stand.

2 (Jurors respond.)

3 THE COURT: Sir, your name and number?

4 THE JUROR: Robert Blasingame, Juror 23. I'd like to
5 speak with you in private.

6 THE COURT: All right. That will be fine.

7 Sir, name and number?

8 THE JUROR: Calvin Windless, 293.

9 THE COURT: Yes, sir.

10 THE JUROR: I have to go to Court for Family Court in
11 Aiken on the 5th, which is Wednesday.

12 THE COURT: Well, sir, if you're here with us, we
13 probably can arrange for you to miss that Court meeting.
14 So, you can stay with us. Thank you.

15 SOLICITOR BARNETTE: May we approach for a second, Your
16 Honor?

17 THE COURT: Beg your pardon?

18 SOLICITOR BARNETTE: Can we approach on that juror for
19 a second?

20 THE COURT: Sure.

21 Ask the attorneys to come forward.

22 THE BAILIFF: Your Honor?

23 THE COURT: I'm gonna need to talk to the attorneys for
24 just a minute. Thank you, sir.

25 (WHEREUPON, the following takes place out of the

1 hearing of the entire jury panel.)

2 SOLICITOR BARNETTE: I think he's disqualified, his
3 criminal record. He didn't stand up.

4 THE COURT: Well, we'll call him up in just a minute.
5 When I step down, I'll ask you to give me those folks.

6 SOLICITOR BARNETTE: Yes, sir.

7 THE COURT: Thank you.

8 (WHEREUPON, the following takes place within the
9 hearing of the entire jury panel.)

10 THE COURT: Now, there was somebody standing back here.
11 Yes, ma'am.

12 THE JUROR: I am---

13 THE COURT: Your name and number first?

14 THE JUROR: Melissa Shuler, 230, and I'd like to talk
15 to you in private.

16 THE COURT: That will be. Thank you.

17 Anyone else?

18 (No response.)

19 THE COURT: All right. Now this is the opportunity
20 that I'll give you to come forward and speak with me in a
21 more private setting. Mr. Ruth is gonna be here. We'll
22 have a bailiff at this aisle. If you want to step out and
23 speak with me, come to the bailiff, wait right there, and
24 we'll call you up one at a time.

25 Now, as you come forward, let me caution you about one

1 thing, these gentlemen in the uniforms, they get really
2 nervous if you have your hands in your pockets. So, don't
3 come up here with your hands in your pockets cause they'll
4 take exception to that. They don't like -- they like to see
5 your hands at all times when you're coming forward. So,
6 just be sure you don't put your hands in your pockets as you
7 come forward. I'm gonna step down right over here.

8 Okay.

9 (WHEREUPON, the following takes place at the bench with
10 all attorneys present, but where the other members of the
11 jury panel are unable to hear.)

12 THE COURT: All right.

13 THE BAILIFF: Number 41.

14 THE COURT: Thank you. Send her forward.

15 Right up here, ma'am.

16 Yes, ma'am.

17 THE JUROR: I have depression.

18 THE COURT: Step up over here by this microphone.

19 (Juror complies.)

20 THE COURT: Thank you, ma'am.

21 THE JUROR: I'm not on my antidepressants.

22 THE COURT: Uh-huh. (Affirmative).

23 THE JUROR: I'm really not on medication.

24 THE COURT: Okay.

25 THE JUROR: I am just emotional.

1 THE COURT: But you have taken medication in the past?

2 THE JUROR: I've, I've taken medication for like 17
3 years.

4 THE COURT: Okay. Well, I'm gonna excuse you from
5 service, ma'am. Thank you.

6 THE JUROR: Thank you very much.

7 THE COURT: Number 41 is excused for medical reasons.

8 THE BAILIFF: Number 230.

9 THE COURT: Hi.

10 THE JUROR: Hi, sir.

11 THE COURT: Yes, ma'am.

12 THE JUROR: First I have a question.

13 THE COURT: Uh-huh. (Affirmative).

14 THE JUROR: Do we get compensated for---

15 THE COURT: Yes, ma'am.

16 THE JUROR: ---missed time at work?

17 Okay. That was all I needed to know. I can't miss my
18 bills.

19 THE COURT: Okay. Thank you, ma'am.

20 THE JUROR: Thank you.

21 THE BAILIFF: Number 191.

22 THE COURT: Hi.

23 THE JUROR: This is my first time---

24 THE COURT: Walk on up here because we've got a
25 microphone right here.

1 THE JUROR: This is my first time. I've never been
2 like this.

3 THE COURT: That's okay.

4 THE JUROR: And I have a baby. So, at that time I was
5 confused like I don't know what -- about the claim. So, I
6 was confused about the---

7 THE COURT: Well, how old is your baby?

8 THE JUROR: Five.

9 THE COURT: Five years old?

10 THE JUROR: He just goes to school, yeah.

11 THE COURT: And so you're the person who's responsible
12 for the care of that child?

13 THE JUROR: Yeah, I have to take care of the baby.

14 THE COURT: So, you are asking for an exemption for
15 that reason?

16 THE JUROR: Actually it does -- does it make hurt
17 anything if I do something like that?

18 THE COURT: No. No, ma'am. You have a right to claim
19 an exemption---

20 THE JUROR: Okay.

21 THE COURT: ---if it qualifies -- if it applies to you.

22 THE JUROR: Then I would like to do that please.

23 THE COURT: You are number?

24 THE JUROR: 191.

25 THE COURT: 191?

1 THE JUROR: Yeah.

2 THE COURT: I'll excuse you for that reason.

3 THE JUROR: Thank you.

4 THE COURT: Thank you, ma'am.

5 THE BAILIFF: Number 89.

6 THE JUROR: May I?

7 THE COURT: Yes.

8 THE JUROR: I was in a car accident just---

9 THE COURT: Walk up just a little bit.

10 THE JUROR: I'm sorry.

11 THE COURT: We've got a microphone you have to speak
12 in.

13 THE JUROR: Oh. I was in a car accident last Friday
14 due to a job.

15 THE COURT: Yes.

16 THE JUROR: And I've been under the influence of
17 narcotics ever since last week. I had to get a ride here
18 this morning because of the medicine I'm on.

19 THE COURT: Okay. So, you're taking pain medication at
20 the present time?

21 THE JUROR: Yes.

22 THE COURT: All right. Number 89, I'll excuse you for
23 that reason.

24 THE JUROR: Thank you.

25 THE BAILIFF: Number 53.

1 THE COURT: Hi.

2 THE JUROR: Hi, judge.

3 THE COURT: Yes, sir.

4 THE JUROR: I'm Patrick Cont.

5 THE COURT: Get close enough to the microphone.

6 THE JUROR: Sure.

7 THE COURT: There we go.

8 THE JUROR: I'm Patrick Cont. I'm an attorney here in
9 Spartanburg.

10 THE COURT: Uh-huh. (Affirmative).

11 Yes, sir.

12 THE JUROR: I don't have any pending cases that would
13 conflict, but I---

14 THE COURT: Okay.

15 THE JUROR: But I did tell my client I would come in.
16 We've tried to settle an ICE case with a client---

17 THE COURT: Well, we'll go through a selection process.

18 THE JUROR: Okay.

19 THE COURT: And you won't be here all the time for the
20 next couple of days.

21 THE JUROR: Okay.

22 THE COURT: So, you probably can get that taken care
23 of.

24 THE JUROR: Thank you.

25 THE COURT: All right. You can stay with us.

1 THE BAILIFF: Number 25.

2 THE COURT: Yes.

3 THE JUROR: I have---

4 THE COURT: Step up close enough to the microphone.
5 (Juror complies.)

6 THE COURT: There we go.

7 THE JUROR: I have the utmost respect for the Court.

8 THE COURT: Well, thank you.

9 THE JUROR: I worked as a paralegal for 12 years at a
10 prosecutor's office.

11 THE COURT: Uh-huh. (Affirmative).

12 THE JUROR: I do not feel I can be partial, impartial,
13 or fair.

14 THE COURT: Well, you don't know anything about this so
15 far. So, I'm gonna ask you to stay and---

16 THE JUROR: And I also do Grand Jury for all that time
17 period too.

18 THE COURT: Okay. Well, all what time period?

19 THE JUROR: Of the 12 years. I mean I was the court
20 reporter for that.

21 THE COURT: Oh, okay. All right.

22 THE JUROR: So---

23 THE COURT: We're gonna be going through a questioning
24 process, and we'll determine your situation later on.

25 THE JUROR: Okay. And my 12 year old is sick at home

1 today too.

2 THE COURT: I said thank you.

3 THE JUROR: Okay.

4 THE BAILIFF: Number 261.

5 THE COURT: Yes, ma'am.

6 THE JUROR: Yes, I am disabled. I have severe
7 diabetes, neuropathy, and I take all kinds of medications
8 for pain in my back.

9 THE COURT: See, I take, I take medications too and
10 that doesn't keep you from functioning necessarily. So, I
11 need to know a little bit about your medications.

12 what do you take?

13 THE JUROR: I take Avalox 65 units a morning, and 65---

14 THE COURT: And what's that for?

15 THE JUROR: Diabetes.

16 THE COURT: Okay.

17 THE JUROR: Okay. I take the---

18 THE COURT: That helps you control that?

19 THE JUROR: Yes.

20 THE COURT: So, I assume that's working?

21 THE JUROR: So so.

22 THE COURT: All right.

23 THE JUROR: I take Levamire, all 45 units each time.

24 THE COURT: And what's that for?

25 THE JUROR: That's for diabetes as well.

1 THE COURT: Okay. Each meal I take---

2 THE JUROR: Each meal I take the, the pain killers for
3 my back. I've had two surgeries---

4 THE COURT: And tell me what that is.

5 THE JUROR: I've had Avalen (phonetic) 800 milligrams,
6 and I take Diazepine, 15 milligrams three times a day.

7 THE COURT: Do you hold a job?

8 THE JUROR: No, I'm -- I'm disabled.

9 THE COURT: You're totally disabled because of the
10 back?

11 THE JUROR: Yes.

12 THE COURT: Now, does that affect your ability to
13 understand what you're doing or be able to handle your own
14 business affairs?

15 THE JUROR: No, but it depends. Sometimes sitting a
16 lot is -- just bothers me.

17 THE COURT: Okay. Have you been able to do okay today?

18 THE JUROR: Yeah, so far.

19 THE COURT: Okay. Well, I'm gonna let you stay with
20 us.

21 THE JUROR: All right.

22 THE COURT: Thank you, ma'am.

23 THE JUROR: Okay. Thanks.

24 THE BAILIFF: Number 211.

25 THE COURT: All right. Come on up. We got a

1 microphone. So, you need to get close to it. Thank you,
2 ma'am.

3 THE JUROR: Okay. I have problems focusing on things.

4 THE COURT: Uh-huh. (Affirmative).

5 THE JUROR: And I'm just afraid that I will not be able
6 to focus fully.

7 THE COURT: Well, now, ma'am, do you hold a job?

8 THE JUROR: Yeah, I do, but I get up and walk around
9 when I need to all the time.

10 THE COURT: Okay. Well, you're gonna be able to stay
11 with us I think. You can hold a job and you're able to --
12 you been able to listen to what I've been saying and
13 understand me?

14 THE JUROR: Not really.

15 THE COURT: Oh, really?

16 THE JUROR: Yeah, really.

17 THE COURT: What kind of job do you have?

18 THE JUROR: I do billing.

19 THE COURT: Okay. So, you work in an office?

20 THE JUROR: I work in an office, and I have an
21 opportunity to get up and down and walk around.

22 THE COURT: Okay. Well, we take breaks quite often in
23 Court. We don't---

24 THE JUROR: Do you?

25 THE COURT: Yes, ma'am. We don't---

1 THE JUROR: Okay.

2 THE COURT: About an hour, hour or so we take a break.

3 THE JUROR: All right.

4 THE COURT: So, you'll be able to stay with us. Thank
5 you, ma'am.

6 THE JUROR: Okay.

7 THE COURT: You're gonna do just fine. Thank you.

8 THE BAILIFF: 111.

9 THE JUROR: Hi, Your Honor.

10 THE COURT: Hi.

11 THE JUROR: I'm self-employed. I work by myself. I
12 have a job that I'm in the process right now of doing that I
13 was promised before I ever got my jury summons. I have this
14 lady's bathroom---

15 THE COURT: What kind of work do you do?

16 THE JUROR: I do ceramic tile.

17 THE COURT: Yes, sir.

18 THE JUROR: But I have her house just tore apart.

19 THE COURT: Uh-huh. (Affirmative).

20 THE JUROR: It's really torn up.

21 THE COURT: Right.

22 THE JUROR: You know, I just need to get her back
23 together.

24 THE COURT: Well, now, you are a sole proprietor?

25 THE JUROR: Uh-huh. (Affirmative).

1 THE COURT: The only person who works for you?

2 THE JUROR: I'm the only one.

3 THE COURT: Okay. You want to claim an exemption for
4 that reason?

5 THE JUROR: If I can, yes, sir.

6 THE COURT: All right. I'll excuse you for that
7 reason.

8 THE JUROR: All right. Thank you.

9 THE COURT: Thank you.

10 THE BAILIFF: Number 23.

11 THE COURT: Yes, sir.

12 THE JUROR: Yes, sir, Your Honor. My dad was done
13 this -- malignant brain tumor back in September of last
14 year.

15 THE COURT: I'm sorry.

16 THE JUROR: They got it removed and everything, but now
17 it's moved to his lungs and his lymph nodes, and he's at
18 Stage IV. My step-mom stays and provides for him. I work
19 and pay all the bills. I live with him, take care of them
20 when I'm home.

21 THE COURT: Yes, sir.

22 THE JUROR: I'm the one.

23 THE COURT: Oh, I understand that, but everybody here
24 has job problems and you're gonna have to stay with us.
25 Thank you, sir.

1 THE JUROR: All right.

2 THE COURT: Thank you.

3 THE BAILIFF: Number 13.

4 THE COURT: Hi.

5 THE JUROR: Hi. I'm not trying to get out of anything.

6 I had a DUI in 2000.

7 THE COURT: Uh-huh. (Affirmative).

8 THE JUROR: I just wanted to make sure. Everything was
9 taken care of.

10 THE COURT: July 1st, you only got one?

11 THE JUROR: Yes.

12 THE COURT: That's, that's---

13 THE JUROR: But I'm just saying---

14 THE COURT: That doesn't affect---

15 THE JUROR: It doesn't affect -- okay.

16 THE COURT: Well, I'm sure that -- okay. Thank you,
17 ma'am.

18 THE BAILIFF: 167.

19 THE COURT: Hi.

20 THE JUROR: How are you?

21 THE COURT: I'm fine.

22 THE JUROR: I'm -- on Wednesday I have cervical neck
23 surgery in Charlotte, North Carolina with Doctor Stacockis.

24 THE COURT: So, you got surgery coming up this
25 Wednesday?

1 THE JUROR: Oh, Wednesday, yes, sir.

2 THE COURT: Can you get us a doctor's letter about
3 that?

4 THE JUROR: Sure. But I'd love to serve another time.

5 THE COURT: Okay. Well, I'm gonna move you to another
6 week of service later in the year.

7 THE JUROR: Of course.

8 THE COURT: All right. Thank you, ma'am.

9 THE JUROR: Great. Thank you.

10 THE COURT: Over this way, ma'am.

11 THE BAILIFF: 293.

12 THE COURT: Come on up, sir.

13 Yes, sir, how you doing?

14 Your number is?

15 THE JUROR: 293.

16 THE COURT: Okay. Well, you got a conviction on your
17 record too, don't you?

18 THE JUROR: I do.

19 THE COURT: Okay. And what was it for?

20 THE JUROR: It was for breach of trust.

21 THE COURT: Okay. You're gonna be excused for that
22 reason.

23 THE JUROR: Okay.

24 THE COURT: Thank you, sir.

25 THE JUROR: Thanks.

1 THE COURT: Thank you, sir.

2 THE BAILIFF: 281.

3 THE COURT: Hi.

4 THE JUROR: Hi.

5 THE COURT: Yes, ma'am.

6 THE JUROR: Wanda Westmoreland.

7 THE COURT: Beg your pardon?

8 THE JUROR: Wanda Westmoreland.

9 THE COURT: Yes, ma'am.

10 (WHEREUPON, the juror hands a note to the judge.)

11 THE COURT: All right, ma'am. I'm gonna excuse you for
12 medical reasons. We're gonna take this and give that to Ms.
13 Blackley over there.

14 THE JUROR: Thank you.

15 THE COURT: You're free to go.

16 THE JUROR: Thank you.

17 THE BAILIFF: 129.

18 THE COURT: Hi.

19 THE JUROR: I just went back to work, and but I was
20 sick. I just started back to work. I just brought home my
21 first paycheck. So, I really got to work and walk -- I
22 walked up here, but I ain't got paid---

23 THE COURT: Now, where did you, where did you go to
24 work?

25 THE JUROR: Brims. I'm nervous too.

1 THE COURT: I'm sorry.

2 what?

3 THE JUROR: Brims.

4 THE COURT: Brims.

5 THE JUROR: Yeah, I just went back to work.

6 THE JUROR: Uh-huh. (Affirmative).

7 THE COURT: So that was your first week to work?

8 THE JUROR: Uh-huh. (Affirmative).

9 THE COURT: And you can't miss?

10 THE JUROR: No.

11 THE COURT: I'm gonna move you to another week of
12 service, ma'am.

13 THE JUROR: All right. Thank you.

14 THE COURT: 129?

15 THE JUROR: Uh-huh. (Affirmative).

16 THE COURT: Go this way.

17 THE BAILIFF: All right. 264.

18 THE COURT: Hi.

19 THE JUROR: Hi.

20 THE COURT: Yes, sir.

21 THE JUROR: I'm corporate safety and health director
22 and I travel 75 percent at the time.

23 THE COURT: Uh-huh. (Affirmative).

24 THE JUROR: I supply support for 18 manufacturing
25 sites. I'm scheduled to travel for the next three weeks,

1 and you had mentioned this could carry---

2 THE COURT: You're gonna have to stay with us. Thank
3 you, sir.

4 THE JUROR: Well, that could be a problem.

5 THE BAILIFF: 275.

6 THE COURT: Hi, yes, sir.

7 THE JUROR: I'm disabled. I'm on medication.

8 THE COURT: What kind of medication?

9 THE JUROR: Xanax, Zoloft.

10 THE COURT: You take Xanax?

11 THE JUROR: I got a---

12 THE COURT: Is that, is that per needed or do you take
13 it everyday?

14 THE JUROR: I take it prescribed. I got---

15 THE COURT: I know it's prescribed, but is it per need
16 or---

17 THE JUROR: Yes, sir.

18 THE COURT: ---do you take it when you need it or you
19 have to take it---

20 THE JUROR: I take it, I take it everyday.

21 THE COURT: So, you take it everyday?

22 THE JUROR: Yes, sir.

23 THE COURT: I'm gonna excuse you, sir. Thank you.

24 THE JUROR: Okay. Thank you.

25 THE BAILIFF: 286.

1 THE JUROR: How you doing?

2 THE COURT: I'm fine.

3 Yes, sir.

4 THE JUROR: I have -- I had got arrested back in
5 January.

6 THE COURT: Do you have any record on him, Number 286.

7 THE JUROR: I got two -- I got arrested.

8 THE COURT: You got arrested?

9 THE JUROR: Yes, sir.

10 THE COURT: But you haven't been convicted of it?

11 THE JUROR: No, I was convicted of criminal domestic
12 violence, and I had to take---

13 THE COURT: That's, that's a first offense?

14 THE JUROR: Yes, sir, and I got to take---

15 THE COURT: That doesn't carry anymore than a year.
16 So, you're okay.

17 THE JUROR: And I got to take anger management classes
18 every Tuesday.

19 THE COURT: Well, I'll probably be able to get you out
20 of that if you get on a jury panel.

21 THE JUROR: Okay.

22 THE COURT: Well, take care of that. That won't be a
23 problem.

24 THE JUROR: All right. Thank you.

25 THE COURT: Thank you, sir.

1 JUROR: 284.

2 THE COURT: Hi.

3 THE JUROR: I'm not seeking an exemption, but just
4 wanted you to be aware. I do have an older sibling that was
5 arrested over 14 years now.

6 THE COURT: Well, we'll be asking a lot of questions
7 about that, but that wouldn't disqualify you from jury
8 service.

9 THE JUROR: Good.

10 THE COURT: So, you're fine. Thank you.

11 THE BAILIFF: 258.

12 THE COURT: Hi.

13 THE JUROR: Hi.

14 THE COURT: Yes.

15 THE JUROR: I just started a brand new job two weeks
16 ago. I'm a nurse and I didn't know if there was anyway I
17 could be excused.

18 THE COURT: I can---

19 THE JUROR: And I'm not getting paid today either.

20 THE COURT: So, you -- everybody here is probably not
21 getting paid today. That doesn't make any difference. I
22 could move you to another week of service if this is gonna
23 interfere with your employment.

24 Are they going to fire you if you stay here?

25 THE JUROR: No, they're not gonna fire me, no.

1 THE COURT: Then I'll let you stay with me. Thank you,
2 ma'am.

3 THE JUROR: Thanks.

4 THE BAILIFF: 199.

5 THE COURT: Hi.

6 THE JUROR: My husband just passed away.

7 THE COURT: I heard you say that.

8 THE JUROR: Yes.

9 THE COURT: Well, do you think that would prevent you
10 from being able to serve on a jury?

11 THE JUROR: I'm not sure.

12 THE COURT: Uh-huh, I understand that.

13 Well, my question, let me ask you this, is it gonna be
14 something that would prevent you from being able to
15 participate in this trial?

16 THE JUROR: I'll do my best.

17 THE COURT: Okay. Why don't you stay with us?

18 THE JUROR: Okay.

19 THE BAILIFF: Number 287.

20 THE COURT: I would appreciate it if you would
21 reconsider cause this is been more than I can stand.

22 THE COURT: Well, ma'am, do you get -- you said you
23 hadn't been to the doctor.

24 THE JUROR: I don't have any -- I got zero income.

25 THE COURT: Now, what happened to you?

1 You said it was an accident?

2 THE JUROR: No, I fell.

3 THE COURT: An accident, uh-huh. (Affirmative).

4 THE JUROR: And I hit my head on the wall.

5 THE COURT: Uh-huh. (Affirmative).

6 THE JUROR: And then I bruised up my elbow. This is
7 been---

8 THE COURT: Well, it's cleared up.

9 THE JUROR: ---a month now. Yeah, it is. It has and I
10 landed on my tailbone.

11 THE COURT: Well, we'll get you a pad to sit on if you
12 need one.

13 THE JUROR: Please. That would help.

14 THE COURT: Well, we'll work on that for you.

15 THE JUROR: That would help.

16 THE COURT: Just remind us and we'll take care of that.

17 THE JUROR: When do I need to remind you cause I need
18 one now.

19 THE COURT: Well, I can't get you one right now.

20 THE JUROR: Okay.

21 THE COURT: We'll get you one. If you need to stand up
22 back there you can stand up for a while.

23 THE JUROR: Well, I've been keeping my -- trying to
24 keep moving.

25 THE COURT: All right.

1 THE JUROR: But I've, I've gotten---

2 THE COURT: Thank you, ma'am.

3 THE CLERK: We can get you a pad.

4 THE COURT: We can get you a pad. We'll bring it to
5 you, ma'am.

6 (WHEREUPON, the following takes place within the
7 hearing of the entire jury panel.)

8 THE COURT: All right. Anyone else?

9 (No response.)

10 THE COURT: All right. Ladies and gentlemen, we've
11 been going a little while. So, what we're going to do, at
12 this point in time, is take a short break.

13 Now, if there's any of you who did wish to change any
14 of the information on your juror questionnaire, during the
15 break, if you'll come up to the clerk's officers here.
16 They'll assist you in, in changing any information that may
17 of changed on your questionnaire so that we have current and
18 complete information on that particular document.

19 Now, during the break, I'm going to ask you, if you
20 would, please don't discuss any case that may be pending
21 before this Court among -- even among yourselves during this
22 break. You have -- of course, you can talk about the
23 weather, you can talk about sports, or whatever else you'd
24 like to talk about, but don't talk about anything that may
25 have to do with any type of Court business or anything that

1 may be coming before the Court during this period of time
2 because I am declaring, at this point in time, you are
3 qualified to serve as jurors within the Court this week.

4 Now, one other thing I want to caution you about. You
5 may know people here at the courthouse. You may know
6 individuals you'll see out in the hallways, things of that
7 nature. Because of your status as a potential juror member,
8 you're a fairly important person to people around the
9 courthouse.

10 I'm going to ask you not to stop to talk to
11 acquaintances or people that you might know. Even the most
12 innocent conversation you may have with someone could be
13 taken in the wrong way, and so I want you to please avoid
14 talking about anything that has to do with Court business.
15 Don't stop and talk to folks that you might know here that
16 work at the courthouse or around the courthouse, and that
17 will keep us from having problems in that regard.

18 All right. So, I'm going to ask that you be back in
19 the courtroom. I'm gonna look over or the wall. Be
20 seated -- reseated by 12:45. That's about 15 minutes. That
21 should give you a chance to go to the restroom, if you'd
22 like to smoke a cigarette. You'll have to do that outdoors.
23 You can step out there. But be back in this courtroom at a
24 quarter till 1:00 or 12:45.

25 So, we'll take a short break at this time.

1 Thank you very much.

2 During the break, I'd like to see the attorneys in my
3 office.

4 (WHEREUPON, a short recess was taken at this time.)

5 THE COURT: All right. Ms. Camp, is that everybody's
6 questionnaire straightened out?

7 THE CLERK: Yes, sir, Your Honor.

8 THE COURT: Okay. We got it now?

9 THE CLERK: Yes.

10 THE COURT: All right.

11 All right. State may call the case.

12 SOLICITOR BARNETTE: May it please the Court, Your
13 Honor.

14 We're calling the case of State versus Ricky Lee
15 Blackwell, Senior, Your Honor. Two indictments.

16 The first one is 2009-GS-42-3910 and for murder.

17 2009-GS-42-3609 for kidnapping.

18 THE COURT: Thank you.

19 SOLICITOR BARNETTE: May I approach the bench, Your
20 Honor?

21 THE COURT: You may.

22 Thank you, sir.

23 SOLICITOR BARNETTE: Thank you.

24 THE COURT: All right. It's my understanding that the
25 defense is waiving arraignment, is that correct?

1 MR. MCGUIRE: Yes, sir.

2 THE COURT: And pleading not guilty and requesting
3 trial by jury.

4 Is that also correct?

5 MR. MCGUIRE: That's correct.

6 THE COURT: Thank you, sir.

7 All right. Ladies and gentlemen of the jury, the State
8 has called the case of The State versus Ricky Lee Blackwell.
9 I want to go over a little bit of information about the case
10 to be tried and the process that we're going to follow in
11 selecting a jury.

12 The case is -- this case is one -- that charges an
13 individual certain crimes, and the State, the State is
14 seeking the death penalty against the defendant in this
15 matter. Because the State is seeking the death penalty, the
16 law requires that I address certain issues and matters with
17 you.

18 Please understand, I have no opinion concerning facts
19 in this case, and you should not take from anything that I
20 say in the discharge of my duties to indicate that I have an
21 opinion concerning the facts in this case. The Constitution
22 of South Carolina prohibits a trial judge from making any
23 comment to a jury about the facts of a matter. So, don't
24 infer, from anything that I may say or do, that I have an
25 opinion concerning the facts in this matter.

1 Now, a criminal case comes into the Court by way of a
2 legal document. That legal document is referred to as an
3 indictment. The indictment is -- the indictments in this
4 case are the two documents that I've been handed by the
5 solicitor.

6 The indictments is not evidence of any kind in this
7 case. An indictment merely contains the charges against an
8 individual. An indictment merely is the vehicle or the
9 document that brings the case into the Court. It informs
10 this Court of the charges to be tried. It informs the
11 defendant of the charges that have been lodged against him.

12 Now, I'm going to go over these indictments with you at
13 this time. The purpose of my going over the indictments is
14 so that you'll know a little bit about what's been alleged
15 in this case because I'm going to ask some -- you some
16 questions that apply specifically to this matter in just a
17 few minutes. So, I'll go over the indictments with you at
18 this time for that purpose.

19 The first indictment I'll discuss with you is Case
20 Number 09-GS-42-3609. That indictment is for the offense of
21 kidnapping.

22 The indictment states that the defendant, Ricky Lee
23 Blackwell, Senior, did, in Spartanburg County, on or about
24 July 8th of 2009, unlawfully seize, confine, inveigle,
25 decoy, kidnap, abduct, or carry away the victim,

1 Brooke , without authority of law all in violation of
2 Section 16-3-910 of the Code of Laws of South Carolina, 1976
3 as amended, against the peace and dignity of the State and
4 contrary to the statute in such case made and provided.

5 That's the first indictment that I've been handed.

6 The second indictment is in Case Number 09-GS-42-3610.
7 That indictment is for the offense of murder.

8 The indictment states, in its body, that the defendant,
9 Ricky Lee Blackwell, did, in Spartanburg County, on or about
10 July 8th of 2009, feloniously, willfully, with malice
11 aforethought, kill one Brooke by shooting
12 her, and the victim died as a proximate result thereof. All
13 in violation of Code Section 16-3-10 and 20 of the Code of
14 Laws of South Carolina, 1976 as amended, against the peace
15 and dignity of the State and contrary to the statute in such
16 case made and provided.

17 Now, again, the documents that I read to you are not
18 proof of any kind in this case. It is simply a piece of
19 paper that brings the charges to this Court. It has the
20 charges written down on them, and, to these charges, the
21 defendant has pled not guilty to both indictments, and is
22 requested a trial by jury at your hands.

23 That plea of not guilty places the burden upon the
24 State to prove the allegations and each element of the
25 offenses of both indictments beyond a reasonable doubt. A

1 defendant will always be presumed to be innocent of the
2 crime or crimes for which he is charged unless guilt has
3 been proven to a jury by evidence that satisfies that jury
4 of the guilt beyond a reasonable doubt.

5 Now, at this point in time I'm going to ask the
6 attorneys involved in this case to introduce themselves to
7 you, and in the case of the defense, I'll ask that the
8 defense counsel introduce the defendant to you.

9 So, at this point in time I'll ask the attorneys for
10 the State to introduce themselves to you.

11 SOLICITOR BARNETTE: May it please the Court, Your
12 Honor?

13 THE COURT: Yes, sir.

14 SOLICITOR BARNETTE: Barry Barnette, solicitor.

15 SOLICITOR BULSA: Derrick Bulsa.

16 SOLICITOR GHENT: Russell Ghent.

17 THE COURT: All right. Thank you, gentlemen.

18 SOLICITOR BARNETTE: Thank you, Your Honor.

19 THE COURT: And for the defense.

20 MR. ALLEN: Clay Allen.

21 MR. MCGUIRE: McGuire, and my client, to my right, is
22 Mr. Ricky Lee Blackwell.

23 Stand up.

24 (Defendant complies.)

25 MR. YOUNG: And my name is Boyd Young.

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

2 Now, ladies and gentlemen, I'm going to ask you some
3 questions at this point in time, and we'll go through a
4 similar process that we did as far as the questions that I
5 asked you earlier.

6 I'll be asking the questions. I'll ask if you have, if
7 you have a response, to stand. I'll need your name and
8 number again before I can discuss any response that you
9 might have to the questions that I'm about to ask.

10 Now, my first question is -- and I'll remind you that
11 you remain under oath concerning the questions that I'm
12 asking at this point in time.

13 The first question is, is there any member of this jury
14 panel who is ever been related by marriage or have you ever
15 been related by blood to the alleged victim, Brooke
16 , or the defendant, Ricky Lee Blackwell, Senior, if
17 that's true, please stand.

18 (No response.)

19 THE COURT: Has any member of the jury panel ever had a
20 close social or a personal relationship with either the
21 alleged victim, Brooke , or the defendant,
22 Ricky Lee Blackwell, Senior, if that's true, please stand.

23 (No response.)

24 THE COURT: Now, is there any member of the jury panel
25 who has ever been represented by any of the attorneys that

1 are involved in this case or have they ever appeared on the
2 other side of some legal matter from you, if that's true,
3 please stand.

4 (No response.)

5 THE COURT: Is there any member of the jury panel who
6 has ever been related by marriage or are you related by
7 blood or have you ever had a close social or a personal
8 relationship with any of the attorneys that are involved in
9 the trial of this case, if that's true, please stand.

10 (Juror responds.)

11 THE COURT: I'm sorry.

12 Ma'am, name and number?

13 THE JUROR: 258, Tammy Timms.

14 THE COURT: Yes.

15 THE JUROR: I have a social relationship with Derrick
16 Bulsa.

17 THE COURT: All right. Can you give me a little more
18 detailed -- is it through church or work or---

19 THE JUROR: It's church and personal.

20 THE COURT: I see.

21 Now, ma'am, if you were to be selected as a juror in
22 this case, and were sitting on -- as a juror in this case,
23 would the fact that Mr. Bulsa might be participating as an
24 attorney, would that affect your ability to be both fair and
25 impartial to both the State and the defense?

1 THE JUROR: It would.

2 THE COURT: All right. Ma'am, then I'm gonna have to
3 excuse you from the trial of the case. If you'll see the
4 bailiff. Thank you very much.

5 Anyone else?

6 (No response.)

7 THE COURT: I don't believe that this applies to
8 anyone, but I am required to ask the question.

9 Is there any member of the jury panel who may have
10 served as a member of the Grand Jury that would of issued
11 the indictments in this case?

12 Those indictments were issued on July 17th of 2009.

13 If that's true, please stand.

14 (No response.)

15 THE COURT: My next question I'm going to ask, if it
16 applies to you, I'm going to ask that you stand and give --
17 and I'll be getting only your name and juror number in
18 response to this question.

19 Has any member of the jury panel received or gathered
20 any information about this case such that it would of caused
21 you to either express or form an opinion concerning the
22 matter, if that's true, please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 is aware of any bias or prejudice that you might have either

1 for or against either the State or the defense in this
2 matter, if that's true, please stand.

3 (No response.)

4 THE COURT: Has any member of this jury panel either
5 seen or heard or read any news accounts or articles or
6 any -- heard any news accounts or articles concerning this
7 case, if that's true, please stand.

8 (Jurors respond.)

9 THE COURT: All right. I'm gonna start with this
10 section over here. I only need your name and number please.
11 Sir?

12 THE JUROR: Howard Perry, Number 197.

13 THE COURT: You can be seated. Thank you, sir.
14 Ma'am, name and number please.

15 THE JUROR: Sharon Robinson, two -- 217.

16 THE COURT: Thank you.

17 Ma'am.

18 THE JUROR: Lori Butehorn, 36.

19 THE COURT: Thank you.

20 Ma'am.

21 THE JUROR: Elizabeth Petty, 199.

22 THE COURT: Thank you.

23 THE JUROR: Jennifer Salley, 223.

24 THE COURT: Thank you.

25 Sir.

1 THE JUROR: James Nittel, 183.

2 THE COURT: Thank you.

3 Sir.

4 THE JUROR: Michael Berry, 15.

5 THE COURT: Thank you.

6 Ma'am.

7 THE JUROR: Amanda Tinker, 259.

8 THE COURT: Thank you.

9 Sir.

10 THE JUROR: David Gimbel, 90.

11 THE COURT: Thank you.

12 Ma'am.

13 THE JUROR: Donna Champion, 43.

14 THE COURT: Thank you.

15 Ma'am.

16 THE JUROR: Donna Ramsey, 211.

17 THE COURT: Sir.

18 THE JUROR: Mackenzie Rollins, 218.

19 THE COURT: Thank you.

20 Ma'am.

21 THE JUROR: Gloria Whitener, 287.

22 THE COURT: All right. Thank you very much. You can
23 be seated.

24 Based on the news accounts that you may have seen or
25 heard or read, have you formed or expressed an opinion about

1 this case, if that's true, please stand.

2 So, those that answered my last question, if you have
3 already formed or expressed an opinion about the case,
4 please stand.

5 (Jurors respond.)

6 THE COURT: Just need name and number, sir.

7 THE JUROR: Howard Perry, 197.

8 THE COURT: Thank you.

9 Ma'am.

10 THE JUROR: Jennifer Salley, 223.

11 THE COURT: Thank you, ma'am.

12 Ma'am.

13 THE JUROR: Amanda Tinker, 259.

14 THE COURT: Thank you.

15 Sir.

16 THE JUROR: David Gimbel, 90.

17 THE COURT: Thank you.

18 Does any juror know of any reason whatsoever why he or
19 she should -- could not give a fair and impartial trial to
20 both the State and the defense, if that's true, please
21 stand.

22 (Jurors respond.)

23 THE COURT: Name and number, sir.

24 THE JUROR: Chris Rutledge, 222.

25 THE COURT: Thank you, sir. You can be seated.

1 Ma'am.

2 THE JUROR: Melissa Shuler, 230.

3 THE COURT: Thank you.

4 Ma'am.

5 THE JUROR: Kimberly Borgel, 25.

6 THE COURT: Thank you.

7 THE JUROR: Linda Jolley, 125.

8 THE COURT: Thank you.

9 Ma'am.

10 THE JUROR: Kim Allen, Number 2.

11 THE COURT: Thank you very much.

12 Has any member of the jury panel or a member of your
13 immediate family ever been the victim of a crime of violence
14 or a serious assault, if that's true, please stand.

15 (Jurors respond.)

16 THE COURT: Ma'am, name and number?

17 THE JUROR: Linda Jolley, 125.

18 THE COURT: Yes, ma'am, name and number please.

19 THE JUROR: Melissa Shuler, 230.

20 THE COURT: Thank you.

21 Anyone else?

22 Oh, name and number.

23 SOLICITOR BARNETTE: Your Honor, we can't hear them
24 over on that side.

25 THE COURT: I'm sorry.

1 Stand again and let's get your name and number, the
2 last two ladies.

3 Ms. Jolley I believe?

4 Your name and number?

5 THE JUROR: Linda Jolley, 125.

6 THE COURT: 125.

7 Ma'am.

8 THE JUROR: Melissa Shuler, 230.

9 THE COURT: 230.

10 And now -- let's see.

11 Ma'am, your name and number.

12 THE JUROR: Elizabeth Petty, 199.

13 THE COURT: All right. Thank you, ma'am.

14 As to those people who just answered my last question,
15 if the crime of violence or serious violent crime, if it
16 would affect your decision in this case in any manner
17 whatsoever, please stand.

18 (Jurors respond.)

19 THE COURT: Name and number, ma'am.

20 THE JUROR: Linda Jolley, 125.

21 THE COURT: Thank you.

22 THE JUROR: Melissa Shuler, 230.

23 THE COURT: Thank you.

24 Anyone else?

25 (No response.)

1 THE COURT: Thank you.

2 Is there any member of this jury panel who is a member
3 of or a contributor to any group which has its primary
4 concern the promotion of law enforcement and/or victims
5 rights?

6 These groups would include, but not be limited to,
7 Mothers Against Drunk Driving, Citizens Against Violent
8 Crime, Students Against Drunk Driving, the South Carolina
9 Troopers Association, the South Carolina Sheriff's
10 Association, or other similarly oriented organization, if
11 that's true, please stand.

12 (Jurors respond.)

13 THE COURT: Ma'am, name and number?

14 THE JUROR: 238, Vickie Smith.

15 THE COURT: And, ma'am, you're a member of what group?

16 THE JUROR: South Carolina Troopers Association.

17 THE COURT: All right, ma'am. Would that affect your
18 ability to be fair and impartial in the trial?

19 THE JUROR: No, sir.

20 THE COURT: Thank you, ma'am.

21 Name and number, ma'am.

22 THE JUROR: Camille Kallas-Oczkowski, 131, and I'm
23 simply a member of our homeowners association.

24 THE COURT: I see.

25 Would that affect your ability, however, to be

1 impartial in a trial?

2 THE JUROR: It would not.

3 THE COURT: Thank you, ma'am.

4 Name and number, sir.

5 THE JUROR: James Nittel, 183.

6 THE COURT: Yes, sir.

7 THE JUROR: Financial support of the troopers
8 association.

9 THE COURT: Okay. Would that affect your ability to be
10 fair and impartial if you were a juror in the trial?

11 THE JUROR: No, sir.

12 THE COURT: Thank you, sir.

13 Anyone else?

14 (No response.)

15 THE COURT: Is there any member of this jury panel who
16 is presently being prosecuted by the Seventh Circuit
17 solicitor's Office for some criminal act -- alleged criminal
18 activity, if that's true, please stand.

19 (No response.)

20 THE COURT: Is there any member of the jury panel who
21 has ever been arrested for, charged with, or convicted of a
22 crime involving violence such as murder, manslaughter,
23 assault and battery with intent to kill, armed robbery,
24 criminal sexual conduct, burglary, CDVHAN, or assault of
25 another -- against another person or similar crimes, if

1 that's true, please stand.

2 (No response.)

3 If you've ever been arrested for or charged with or
4 been convicted of any of those offenses.

5 (No response.)

6 THE COURT: Does any member of the jury panel have a
7 family member or a close friend who has ever been arrested
8 for or charged with a violent crime?

9 Again, such as the ones I previously enumerated.

10 If that's true, please stand.

11 (Jurors respond.)

12 THE COURT: Yes, ma'am, in the back, name and number.

13 THE JUROR: Melissa Shuler, 230.

14 THE COURT: Yes, ma'am, your situation?

15 Someone in your family was charged?

16 THE JUROR: Yes, a, a friend, yes.

17 THE COURT: A friend was.

18 Okay. All right. Thank you, ma'am.

19 Name and number.

20 THE JUROR: Latressa Wright, 296.

21 THE COURT: Yes, ma'am.

22 THE JUROR: My uncle was.

23 THE COURT: An uncle was charged?

24 THE JUROR: Yes.

25 THE COURT: Okay. Thank you, ma'am.

1 I just -- name and number in the back, ma'am.

2 THE JUROR: Gloria Whitener, 287.

3 THE COURT: All right.

4 THE JUROR: My son.

5 THE COURT: Okay. Thank you, ma'am.

6 Ma'am, name and number.

7 THE JUROR: 236, Lena Smith, my son.

8 THE COURT: Oh, your son. Thank you, ma'am.

9 Name and number, sir.

10 THE JUROR: Robert Martin, 162.

11 THE COURT: And the relationship?

12 THE JUROR: My nephew.

13 THE COURT: Thank you, sir.

14 Name and number, sir.

15 THE JUROR: David Gimbel, Number 90. My brother.

16 THE COURT: Thank you.

17 Sir, name and number.

18 THE JUROR: Michael Estes, Number 70. My son.

19 THE COURT: Thank you.

20 Name and number, sir.

21 THE JUROR: Ronald Unger, 264. My brother.

22 THE COURT: Thank you, sir.

23 Name and number, ma'am.

24 THE JUROR: Veronica Flowers, 72. My brother.

25 THE COURT: Thank you.

1 Name and number please, ma'am.

2 THE JUROR: Stephanie Mitchell, 257. My brother.

3 THE COURT: Thank you, ma'am.

4 Is there any member of the jury panel who is related by
5 blood or marriage or ever been related by blood or marriage
6 or are you the close personal friend of anyone who might be
7 employed either with the Seventh Judicial Circuit
8 Solicitor's Office, the Spartanburg Public -- Department of
9 Public Safety, the Spartanburg County Sheriff's Office, the
10 police department of any city, town in Spartanburg or
11 Cherokee Counties or the State Law Enforcement Division or
12 the Seventh Circuit Public Defender's Office, if that's
13 true, please stand.

14 (Jurors respond.)

15 THE COURT: Name and number, ma'am?

16 THE JUROR: Angela Bradley, 29.

17 THE COURT: Yes, ma'am.

18 THE JUROR: My ex-husband is employed with the
19 Spartanburg County Sheriff's Office.

20 THE COURT: All right. Thank you, ma'am.

21 would that affect your ability to be fair and impartial
22 in this case, ma'am?

23 THE JUROR: No, sir.

24 THE COURT: Thank you.

25 Name and number, sir.

1 THE JUROR: Martin Kimmons, 134.

2 THE COURT: Yes, sir.

3 THE JUROR: My father was a policeman with the county
4 detention center.

5 THE COURT: All right. Would that affect your ability
6 to be fair and impartial in the trial of the case?

7 THE JUROR: No, it would not.

8 THE COURT: Thank you, sir.

9 Yes, sir, name and number.

10 THE JUROR: Eric McCraw, 165.

11 THE COURT: Yes, sir.

12 THE JUROR: I have a second cousin that's employed by
13 the Sheriff's Department.

14 THE COURT: All right. Would that affect your ability
15 to be fair and impartial though?

16 THE JUROR: No, sir.

17 THE COURT: Thank you, sir.

18 Ma'am, name and number.

19 THE JUROR: Elizabeth Petty, 199. I have three cousins
20 that are in law enforcement and an uncle and no.

21 THE COURT: It would not affect your impartiality?

22 THE JUROR: No, ma'am.

23 THE COURT: Thank you, ma'am.

24 Has any member of the jury panel or a member of your
25 immediate family ever been an alleged victim in a case that

1 was prosecuted by the solicitor's office?

2 If that's true, please stand.

3 (Juror responds.)

4 THE COURT: Name and number.

5 THE JUROR: Linda Jolley, 125.

6 THE COURT: And was that you or someone else in your
7 family?

8 THE JUROR: Someone else in my family.

9 THE COURT: All right. Would that affect, affect your
10 ability to be fair and impartial in the case?

11 THE JUROR: Yes, sir.

12 THE COURT: Okay. Ma'am, then I'm gonna ask you to
13 step out and I'm gonna excuse you. See the bailiff please.

14 Did you get the number?

15 I think I heard you ask it.

16 Okay.

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: Okay. Has any member of this jury panel
19 ever been arrested by either the Spartanburg County
20 Sheriff's Department or the South Carolina Law Enforcement
21 Division, if that's true, please stand.

22 (Jurors respond.)

23 THE COURT: Name and number, ma'am.

24 THE JUROR: Gloria Whitener, 287.

25 THE COURT: And you were arrested at some point in

1 time?

2 THE JUROR: It's been a long time ago.

3 THE COURT: Okay.

4 THE JUROR: Is that case now ended, ma'am?

5 THE JUROR: Yes.

6 THE COURT: All right. Would that affect your
7 impartiality in this case, ma'am, the fact you've been
8 arrested before?

9 THE JUROR: I'm not sure.

10 THE COURT: Well, you have to tell me.

11 Would it affect your impartiality or not?

12 THE JUROR: Yes, I think.

13 THE COURT: All right, ma'am. I'm gonna excuse you.
14 See the bailiff.

15 Name and number, sir.

16 THE JUROR: Stacy Fullenwinder, 79.

17 THE COURT: Yes, sir.

18 THE JUROR: I was arrested. It's probably been about
19 eight years ago.

20 THE COURT: Okay, sir. Is that case gone or over with?

21 THE JUROR: Yes, sir.

22 THE COURT: All right. Would that affect your
23 impartiality?

24 THE JUROR: No.

25 THE COURT: Thank you.

1 Sir, name and number.

2 THE JUROR: Michael Estes, 70.

3 THE COURT: Yes, sir.

4 THE JUROR: I got behind on my child support --

5 THE COURT: Okay, sir.

6 THE JUROR: -- in 1997.

7 THE COURT: Long time ago.

8 THE JUROR: Yes, sir.

9 THE COURT: would that affect your impartiality, sir?

10 THE JUROR: No, sir.

11 THE COURT: Thank you.

12 Ma'am, name and number.

13 THE JUROR: Stephanie Partridge, 188.

14 THE COURT: Yes, ma'am.

15 THE JUROR: It's currently pending. It's open right
16 now.

17 THE COURT: Okay. But there's been no adjudication on
18 anything?

19 THE JUROR: No.

20 THE COURT: All right. would that affect your
21 impartiality in this case?

22 THE JUROR: No, sir.

23 THE COURT: Thank you, ma'am.

24 Sir, name and number.

25 THE JUROR: Martin Kimmons, 134. I have been arrested.

1 THE COURT: All right. Is that case still going on or
2 ended?

3 THE JUROR: No, sir.

4 THE COURT: So, would that affect your impartiality in
5 this matter?

6 THE JUROR: No, sir.

7 THE COURT: Thank you, sir.

8 Name and number, sir.

9 THE JUROR: Reginald Fowler, 77.

10 THE COURT: All right, sir. Apparently you've been
11 arrested before?

12 THE JUROR: Yes, sir.

13 THE COURT: Would that affect your impartiality in this
14 matter?

15 THE JUROR: No, sir.

16 THE COURT: Thank you, sir.

17 Anyone else?

18 (No response.)

19 THE COURT: All right. Is there any member of the jury
20 panel who is a member of any group who does not recognize
21 the authority of the government of the United States of
22 America or the State of South Carolina, if that's true,
23 please stand.

24 (No response.)

25 THE COURT: Has any member of the jury panel ever been

1 employed or are you currently employed by any civilian or
2 military law enforcement agency, if that's true, please
3 stand.

4 (Jurors respond.)

5 THE COURT: Yes, ma'am.

6 THE JUROR: Kim Borge1. The Sheriff's Department
7 and---

8 THE COURT: Did I get your name and number?

9 THE JUROR: Oh, I'm sorry. 25, Kim Borge1.

10 THE COURT: Yes, ma'am.

11 THE JUROR: I was a dispatcher matron for a jail
12 facility for a Sheriff's Department in North Carolina.

13 THE COURT: All right. Would that affect your
14 impartiality in this trial?

15 THE JUROR: Yes.

16 THE COURT: All right, ma'am. You may see the bailiff.
17 Thank you.

18 Name and number.

19 THE JUROR: Frances Vensel, 270. I was a deputy clerk
20 of the court in Orange County.

21 THE COURT: I see.

22 You weren't in law enforcement then though, were you?

23 THE JUROR: No, I didn't know exactly where or not that
24 would still---

25 THE COURT: Okay.

1 THE JUROR: ---qualify.

2 THE COURT: Well, I was speaking more in terms of
3 people like police officers or---

4 THE JUROR: Okay.

5 THE COURT: ---military policemen, things of that
6 nature.

7 THE JUROR: No.

8 THE COURT: Okay. Thank you, ma'am.

9 Name and number please, ma'am.

10 THE JUROR: 238, Vickie Smith.

11 THE COURT: Yes, ma'am.

12 THE JUROR: I'm a retired state trooper.

13 THE COURT: All right. Would that affect your
14 impartiality in the trial, ma'am?

15 THE JUROR: No, sir.

16 THE COURT: Thank you.

17 Now, is there any member of the jury panel who knows of
18 any reason whatsoever why he or she could not give either
19 the State or the defendant a fair trial in this case, if
20 that's true, please stand.

21 (Jurors respond.)

22 THE COURT: Yes, sir, name and number.

23 THE JUROR: Chris Rutledge, 222.

24 THE COURT: So, you do not feel that you could give a
25 fair trial in his matter?

1 THE JUROR: Yes, Your Honor.

2 THE COURT: All right. See the bailiff. Thank you.

3 THE COURT: Name and number, ma'am.

4 THE JUROR: Kimberly Allen, Number 2.

5 THE COURT: You are of the opinion you could not give a
6 free trial -- a fair trial in this case?

7 THE JUROR: Yes, sir.

8 THE COURT: See the bailiff. Thank you, ma'am.
9 Name and number, ma'am.

10 THE JUROR: Melissa Shuler, 230.

11 THE COURT: Yes, ma'am.

12 THE JUROR: I don't think I could either.

13 THE COURT: All right. See the bailiff.

14 THE JUROR: Donna Ramsey, 211.

15 THE COURT: You feel that you could not give a fair
16 trial in this case?

17 THE JUROR: No, sir.

18 THE COURT: All right. See the bailiff. Thank you.
19 Anyone else?

20 (Juror responds.)

21 THE COURT: Name and number, ma'am.

22 THE JUROR: 236, Lena Smith.

23 THE COURT: Yes, ma'am.

24 THE JUROR: I don't think I could.

25 THE COURT: All right. See the bailiff. Thank you.

1 All right. Now, ladies and gentlemen, there's a couple
2 of things I need to go over with you at this point in time.
3 There are a couple legal principles, as I stated, I wanted
4 to go over with you at this time, and I indicated earlier
5 that the State has the burden of proof in this case to prove
6 guilt beyond a reasonable doubt. There is no burden
7 whatsoever on any accused to ever prove or disprove
8 anything. The fact -- in fact, the defendant has a
9 Constitutional right to remain silent, and the assertion of
10 that right to remain silent can not, under any
11 circumstances, be held against a defendant.

12 Ladies and gentlemen, the defendant is presumed to be
13 innocent, and that is a cardinal rule of our legal system.
14 It's a fundamental principle of law that a defendant, in any
15 case, will always be presumed to be innocent for the crimes
16 for which he is been indicted, and this important
17 presumption of innocence is a substantial right to which any
18 defendant is entitled.

19 For those of you who are selected to serve on the jury,
20 your oath would require that you accept the law as I
21 instruct it to you including the burden of proof and the
22 presumption of innocence as part of that law.

23 In the State of South Carolina, when the State seeks a
24 death penalty for the charge of murder, the law provides for
25 what is described as a bifurcated trial. The word

1 bifurcated is a legal phrase and that means a two part
2 trial, a two step trial, a two phase trial, if you will.

3 In the first trial or the first phase the jury is only
4 concerned with guilt or innocence of the defendant. So, the
5 only issue to be decided in the first phase is whether the
6 defendant is guilty or not guilty of the offense for which
7 he is charged in the indictments, and, in this case, the
8 indictments charge both kidnapping and murder. If the jury
9 finds the defendant not guilty of murder, then we don't
10 proceed to the second phase. That would be the end of the
11 case, and only if the jury finds the defendant guilty of
12 murder then would we go on to the second phase of the trial.

13 Now, the second phase of the trial in this case is what
14 is normally referred to as the sentencing or penalty phase.
15 The only issue to be determined is what punishment is
16 appropriate. The choice would be life imprisonment or the
17 death penalty. We simply discuss the penalty now as a
18 convenient means of explaining the process to you.

19 So, please don't draw any inference from any reference
20 that I might make to you about the penalties. It's up --
21 this is the only time that I can discuss this with you. So,
22 I'm going over with you the procedure that we will be
23 following in this case.

24 The law in South Carolina provides that the State can
25 not seek that penalty, that being the death penalty, in

1 every murder case. That's not permitted. The State can
2 only seek the death penalty in a case where there has been a
3 murder and the murder is accompanied by at least one
4 aggravating circumstance.

5 The phrase aggravating circumstance is a term of art
6 under the law, and aggravating circumstances are
7 specifically identified in the Code of Laws of South
8 Carolina. The State can only seek the death penalty in a
9 case where there is a murder and the murder is accompanied
10 by at least one aggravating circumstance that's identified
11 in the law.

12 By the term aggravate, we mean to make worse or to
13 exacerbate the circumstance. Under the law, if we go to the
14 second phase of the trial or the sentencing phase, the jury
15 is required to consider any mitigating circumstance of any
16 nature whatsoever, and mitigating means to lessen or reduce
17 the fault or the culpability, to reduce the punishment. If
18 we reach the second phase, the sentencing phase of the
19 trial, after considering all of the evidence, after
20 considering -- the jury could, after considering all the
21 evidence, impose the death penalty only if the jury
22 unanimously finds the existence of an aggravating
23 circumstance.

24 In that -- in the event that the jury, under, under the
25 law, unanimously determines that the death penalty is

1 appropriate, it is required that each jury -- juror must
2 sign his or her name to the verdict form. The jury further
3 has the authority to sentence the defendant to life
4 imprisonment.

5 I reiterate to you that we reach the second or the
6 sentencing phase of the trial only if the jury, the
7 defendant is found guilty of the murder in the first part of
8 the trial. If the defendant is not convicted of murder,
9 that would conclude the trial.

10 I speak to you about these matters only because it
11 would be an issue if you first find the defendant guilty of
12 murder -- it would only be an issue if you first find the
13 defendant guilty of murder. That is the penalty phase would
14 be an issue.

15 Now, because of that possibility, we will take time to
16 question each of you individually and privately under oath.
17 we're going to spend a couple of days going through that
18 process of talking with you on an individual basis. Thus
19 far I've only asked you questions regarding your general
20 eligibility to serve as jurors, and then -- but later on
21 we're going to question you individually, and, at that time,
22 we'll be discussing specific questions concerning the case.
23 we will -- and will go over any exposure you may of had to
24 publicity about the case. we'll also go over and consider
25 other matters when you're questioned individually.

1 We want to know what you recall about anything that you
2 may have learned about the case from -- on the outside from
3 any source whatsoever. We'll also be discussing with you
4 whether or not you have formed opinions about the case and
5 whether or not you can serve as a fair and impartial juror
6 in the case.

7 For those of you who will serve in the case, you must
8 accept and apply the law as I give it to you. It would be a
9 further part of your oath to find the truth in this case
10 from the evidence presented in the courtroom. Therefore,
11 you are not permitted to be swayed by anything that may have
12 occurred outside of the courtroom or any pretrial publicity.

13 Now, ladies and gentlemen, I will question you
14 regarding your views concerning the death penalty. Please
15 understand, when I do so, there are no right or wrong
16 answers. I trust that you understand that we must have full
17 and honest disclosure, disclosure from you to be able to
18 select a fair and impartial jury in this case.

19 In questioning each of you individually, here's what
20 we're going to do. Your names are gonna be selected,
21 selected randomly by the Clerk's Office. We're going to
22 divide you up in groups of four. We will be assigning you a
23 time to come back to the courthouse and meet with us. We'll
24 set up those groups of four to come each hour so you won't
25 have to be wasting your time while other people are being

1 interviewed, and we will provide you with a telephone number
2 that you can call in and determine whether we're on time or
3 if there needs to be an adjustment in the schedule, but
4 we'll give you a schedule for each hour. They'll be four of
5 you given a time to be here and to return. Now, we're gonna
6 proceed in that fashion until such time as we have selected
7 a jury.

8 Now, it is customary that, in a case such as this, the
9 jury would be sequestered. Therefore, the Court has decided
10 that the jury which is ultimately selected in this case will
11 be sequestered now -- until the trial is over. That
12 sequestration means that you would report to the courthouse
13 for jury selection, and if you were put on the jury, you
14 would need to be able to stay until the trial is being
15 concluded.

16 We have arranged for hotel rooms for the people that
17 will be serving on the jury. We have arranged that you will
18 be taken care of by a group of agents from the State Law
19 Enforcement Division. You will be provided with food and
20 shelter at local restaurants, restaurants at the county's
21 expense during your sequestration.

22 So, we'll give you some advice as to how much -- what
23 you need to bring with you if we get to that point, but
24 we're not there yet. So, we, we will be giving you advice
25 as we go along. I just want to make you aware that all of

1 those things are possible.

2 Now, I'm going to ask that you, during the breaks that
3 we give you and you're away from the courthouse, I'm going
4 to ask that you not seek to gather any information about the
5 this Court -- case from any source whatsoever. You know, I
6 realize we live in an information age. With a few strokes
7 of a button you can get information about anything that
8 you'd like to get it about, but if you are selected to serve
9 on the jury, your oath will be to decide this case based
10 upon the law and the evidence.

11 The only place you're going to hear evidence in this
12 case will be in the courtroom during the trial, and, of
13 course, the law will be given to you by me, the judge, and
14 you're to take that law and apply it to the facts as you
15 determine them.

16 So, it would be improper and a violation of your oath
17 for you to try to gather any information, at this point in
18 time, from any source outside of this courthouse. I will be
19 asking you, under oath, as to whether or not you've been
20 able to follow that direction. So, I'm instructing you now
21 do not listen to, watch, or read any media reports about
22 this case. Don't try to gather any information about this
23 case from any source outside of the courthouse. Do not even
24 discuss this case with anyone. That includes family members
25 or friends or even fellow jurors. You should not discuss

1 this case at all. You may tell your family that you're
2 involved in the jury selection process in a case, and that's
3 as far as that discussion should go.

4 So, I want to make it clear, you should not discuss the
5 case with anyone. Don't attempt to gather any information
6 from any source outside of the courthouse, and don't listen
7 to, watch, or read any media reports concerning this case.
8 Again, that would be a violation of your oath if you were to
9 do so.

10 Now, this is a process that we have been following in
11 South Carolina for many years. We have some people who are
12 experienced in these matters from the State Law Enforcement
13 Division. These are former agents who will be handling the
14 process. So, it will not be a burden on you. In other
15 words, they're people here who have gone through these
16 before and will be able to assist you in this matter.

17 Now, until the jury is actually seated, you will not be
18 sequestered. In other words, you'll be allowed to go home.
19 You'll be allowed to go about your business until we need
20 you back here in this process.

21 The purpose of my instructions were directed toward
22 that period of time between now and the time that we
23 actually seek the jury in this matter. So, again, I'm
24 instructing you not to gather any information about the case
25 and not to listen to, watch, or read anything about this

1 matter, and don't discuss it with anyone, even your family
2 and friends.

3 Now, also, if anyone tries to contact you concerning
4 your service or potential service on this jury, anywhere
5 other than in the courtroom during the process, please
6 report that to us. We take jury tampering extremely
7 seriously. It is a crime in this state, and I would see
8 that the appropriate investigations were begun should anyone
9 contact you in an effort to try to influence you in anyway
10 in your service as a jury.

11 I can't over emphasize to you the importance of the
12 instruction that you not discuss this matter, from this
13 point forward, with anyone, and don't attempt to gather any
14 information or receive any information about this case from
15 this point forward.

16 All right. I will direct the clerk, at this time, to
17 begin to select jurors. We will be assigning to each panel
18 of those four jurors a time to be here.

19 Let's see. We're going to begin that process, I would
20 say, at three o'clock this afternoon. So, we will need
21 about two panels this afternoon, and then we'll start at
22 nine o'clock in the morning and work every hour. We'll take
23 one hour for lunch from around -- well, let's say an hour
24 and a half for lunch because we may run a little over, have
25 to go a little longer than that.

1 Do they have the number, the call in number, Madam
2 Clerk?

3 THE CLERK: They do. They've been given the pamphlets.

4 THE COURT: They've been given that information
5 already.

6 THE CLERK: We haven't gone over it with them.

7 THE COURT: Okay. You will be given a call in number.
8 I will advise that maybe, let's say, when you get assigned
9 a, a time to be here, if you would call in to the Clerk's
10 office maybe an hour and a half or two hours ahead of time.
11 If we're running behind we can tell you that and adjust the
12 time that you need to be here.

13 I want to waste as little of your time as possible.
14 So, you'll have that call in number. They'll tell you how
15 to get back in touch with us so that you can get back and,
16 and determine when you should be here.

17 THE JUROR: Can I get -- have my understanding of what
18 number it's going to be?

19 THE COURT: The clerk will see that you get that. If
20 you need it, when we finish, just, just ask her.

21 THE JUROR: Okay.

22 THE COURT: Now, at this point in time I'm going to
23 administer an oath to each of you. I will ask that you all
24 stand and raise your right-hand.

25 (Jurors all stand.)

1 THE COURT: will you faithfully comply with the
2 instructions the Court has given you including your duty not
3 to expose yourself to any further information about the case
4 from the press or any person?

5 If you agree to be bound by this oath, please say I
6 will at this time.

7 (All jurors respond in the affirmative.)

8 THE COURT: All right. Please be seated.

9 (Jurors comply.)

10 THE COURT: If there was anyone in the group who either
11 failed or refused to take that oath I just administered,
12 please stand.

13 (No response.)

14 THE COURT: It appears that all potential jurors have
15 been sworn concerning my instructions concerning your
16 behavior while you're away from the courthouse.

17 Ladies and gentlemen, let me say I want to thank you
18 very much for your patience today. We'll do our very best
19 to work with you in a good faith and a professional manner.
20 We'll do our best to, to put you at ease. I assure you that
21 you will be treated with courtesy and respect throughout
22 this process.

23 I have tried to arrange the scheduling of the jury
24 panels again to minimize your inconvenience. You will
25 return to the courthouse, however, at the set times, and

1 we'll try to get that process completed as quickly as
2 possible. I trust and am confident that you are going to
3 honor the oath that you've taken concerning your behavior
4 away from the courthouse.

5 Now, if you have any questions during this process, the
6 clerk will be glad to discuss it with you and, and be able
7 to give you the information such as the phone number that
8 the lady needed.

9 Madam Clerk.

10 (WHEREUPON, a bench conference was held at this time.)

11 THE COURT: I'll ask the attorneys to approach briefly.

12 (WHEREUPON, a bench conference was held at this time
13 out of the hearing of the jury.)

14 THE COURT: Are you ready, Madam Clerk?

15 THE CLERK: About two minutes.

16 THE COURT: Okay.

17 (Pause.)

18 THE COURT: Yes, sir. I'm sorry.

19 THE JUROR: Your Honor, I have a second part-time job.
20 I teach night classes---

21 THE COURT: Yes, sir.

22 THE JUROR: ---after 6:00PM at a local college.

23 THE COURT: Yes, sir.

24 THE JUROR: I don't know if that would conflict with
25 the sequestration, sequestration.

1 THE COURT: Well, sequestration means that you will be
2 with us 24/7 until the trial is ended.

3 THE JUROR: Okay. I have a class that starts next
4 Tuesday.

5 THE COURT: Yes, sir.

6 THE JUROR: I don't know if that would conflict.

7 THE COURT: Well, sir, are you -- do you work at that
8 school?

9 That's a---

10 THE JUROR: Well, I'm an engineer by day, but I also
11 teach night classes---

12 THE COURT: Uh-huh. (Affirmative).

13 THE JUROR: -- at a local college.

14 THE COURT: Well, you would be entitled to be moved
15 because you work at a school.

16 Do you wish to be moved?

17 THE JUROR: Yes, I would need to be if---

18 THE COURT: All right. We're gonna move -- what's that
19 number?

20 THE JUROR: Juror 174.

21 THE COURT: 174.

22 Has he been pulled already?

23 Do we need to start over?

24 THE CLERK: No, sir.

25 THE COURT: Okay. I'll excuse you, sir. Thank you.

1 (Pause.)

2 THE COURT: All right. I'm gonna call the names of the
3 first panel. These will need -- people will need to be here
4 at three o'clock this afternoon.

5 We're going to ask that when you come, come to the, to
6 the courthouse that you report to the Clerk's Office.
7 That's right inside the front door of the lobby to your --
8 as you come in the door to your right. They will put you in
9 the proper location once you report to the Clerk's Office.

10 The first individual on panel number one is Martin
11 Kimmons.

12 Please stand when I call your name.

13 (Juror complies.)

14 THE COURT: Lonnie Smith.

15 Amanda Tinker.

16 Michael Estes.

17 All right. You four will be panel number one. You'll
18 need to be back here at three o'clock this afternoon. At
19 this point in time you're free to go subject to my
20 instructions.

21 (Jurors leave the courtroom.)

22 THE COURT: Second panel.

23 Johnson Kong.

24 David Gimbel.

25 Lori Butehorn.

1 Robert -- Ronald Unger.

2 Have we got all four standing?

3 There we go.

4 All right. You will need to be here at four o'clock
5 this afternoon. Report to the Clerk's Office subject to my
6 instructions. You're free to go at this time.

7 (Jurors leave the courtroom.)

8 THE COURT: Panel number three. This will be at nine
9 o'clock in the morning.

10 Robert Martin.

11 Eric McCraw.

12 Mackenzie Rollins.

13 Tommy Williams.

14 All right. Nine o'clock in the morning, the Clerk's
15 Office. You're free to go subject to my instructions.

16 (Jurors leave the courtroom.)

17 THE COURT: Panel number four at ten o'clock in the
18 morning.

19 Donald Lowe or Lowe.

20 Donald Patterson.

21 Donna Leiter.

22 Ursula Reese.

23 Ten o'clock in the morning at the Clerk's Office.

24 You're free to go. Thank you.

25 (Jurors leave the courtroom.)

1 THE COURT: Panel number five will be eleven o'clock in
2 the morning.

3 Donna Champion.

4 Diane Marcotte.

5 Robert Blasingame.

6 Stephanie Partridge.

7 All right. Eleven o'clock Tuesday. Thank you very
8 much. Free to go pursuant to my instructions.

9 THE BAILIFF: Is the number you're talking about the
10 same as the ones on the pamphlet?

11 THE COURT: If you don't have that phone number, get it
12 before you leave. Thank you.

13 (Jurors leave the courtroom.)

14 THE COURT: Panel number six, be twelve o'clock on
15 Tuesday.

16 George Lamb.

17 Savannah Murriel. That's M-U-R-R-I-E-L. There we go.

18 Angela Bradley.

19 Vickie Smith.

20 All right. Noon tomorrow at the Clerk's Office. You
21 may leave pursuant to my instructions. Thank you very much.
22 Twelve o'clock.

23 (Jurors leave the courtroom.)

24 THE COURT: Panel number seven, two o'clock in the
25 afternoon tomorrow.

1 Andrea Dendy.

2 Diegocelina Arangure, Arangure. I'm not sure I
3 pronounced that right.

4 THE JUROR: Diegocelina Arangure.

5 THE COURT: Thank you, ma'am. Appreciate your help.
6 Bonnie Watson.

7 Remain standing please, ma'am. Thank you.

8 Alice Moore.

9 All right. Two o'clock tomorrow. Be sure you have the
10 phone number and call before you come. Two o'clock
11 tomorrow.

12 (Jurors leave the courtroom.)

13 THE COURT: Three o'clock on Tuesday. Panel number
14 eight.

15 Carolina Fritch.

16 John Douglas.

17 Richard Anderson.

18 Ferrall Erickson.

19 Three o'clock tomorrow. Be sure you have the number so
20 you can call in and check on the timing. Free to go
21 pursuant to my instructions.

22 (Jurors leave the courtroom.)

23 THE COURT: Panel number nine, four o'clock on Tuesday.

24 Linda Jefferies.

25 Willem Van Der Plaat.

1 Alfred Jones.

2 Please stand.

3 (Juror complies.)

4 THE COURT: Thank you, sir.

5 Stephanie Mitchell.

6 Four o'clock on Tuesday. You're free to go pursuant to
7 my instructions. Thank you. Be sure you have the number to
8 call in and check on the timing.

9 (Jurors leave the courtroom.)

10 THE COURT: Panel number ten, nine o'clock on
11 Wednesday.

12 Robert Stephens.

13 Michael McIntyre.

14 Patrick Cont.

15 Frances Vensel.

16 Nine o'clock AM Wednesday. You're free to go pursuant
17 to my instructions. You may want to call the night before
18 just to be sure.

19 (Jurors leave the courtroom.)

20 THE COURT: Panel number eleven, ten o'clock on
21 Wednesday.

22 Barbara Collins.

23 Cicely White.

24 Is there Ms. White or Mr. White?

25 Oh, over here. There we go. I didn't see you. My, my

1 fault.

2 Elizabeth Petty.

3 Terrance Richardson.

4 There we go.

5 All right. Ten o'clock on Wednesday. Call in the --
6 probably the night before would be a good idea. You're free
7 to go at this time pursuant to my instructions. Thank you.

8 (Jurors leave the courtroom.)

9 THE COURT: Panel number twelve, eleven o'clock on
10 Wednesday.

11 Laura Matherly.

12 Corey Cheeks.

13 Michael Berry.

14 Matthew Perry.

15 Eleven o'clock on Wednesday. Be sure you have the
16 phone number when you leave, and you're free to go pursuant
17 to my instructions. Thank you very much.

18 THE COURT: Panel number thirteen. I'm gonna set this
19 one for two o'clock on Wednesday.

20 Todd Danielson.

21 Sonia Wright.

22 Stacy Fullenwinder.

23 Ray Rothenburg.

24 All right. Setting this one for two o'clock on
25 Wednesday. Be sure you have the number so you call in ahead

1 of time. Thank you very much.

2 (Jurors leave the courtroom.)

3 THE COURT: Panel number fourteen, three o'clock on
4 wednesday.

5 Karen Trejo.

6 Keith Sanders.

7 Reginald Fowler.

8 Edward Grabarkiewicz.

9 All right. Three o'clock on wednesday. Be sure you
10 have the phone number to call in early. You're free to go
11 pursuant to my instructions. Thank you very much.

12 (Jurors leave the courtroom.)

13 THE COURT: Panel number fifteen, four o'clock on
14 wednesday.

15 Kim Henson.

16 Daphne Billings.

17 John Lindsey.

18 Wendell White.

19 All right. Four o'clock on wednesday. Be sure to call
20 in with the phone number beforehand. You're free to go
21 pursuant to my instructions. Thank you.

22 (Jurors leave the courtroom.)

23 THE COURT: Panel number sixteen, nine o'clock on
24 Thursday.

25 Jennifer Salley.

1 David Long.

2 Christopher -- is it Guenther?

3 THE JUROR: Yes, sir.

4 THE COURT: Pamela Pruitt.

5 Nine o'clock on Thursday. Call in the night before to
6 check on your time, and, at this time, you're free to go
7 pursuant to my instructions. Nine o'clock Thursday. Thank
8 you.

9 (Jurors leave the courtroom.)

10 THE COURT: Panel number seventeen, ten o'clock on
11 Thursday.

12 Veronica Flowers.

13 David Blackstone.

14 David Padgett.

15 David Connell.

16 Got three David's in this group. That's a little
17 usual.

18 All right. Ten o'clock on Thursday. Be sure you check
19 in ahead of time. You're free to go pursuant to my
20 instructions and thank you very much.

21 (Jurors leave the courtroom.)

22 THE COURT: Panel number eighteen, eleven o'clock on
23 Thursday.

24 Stephanie Porter.

25 Yaniss Hester.

1 Timothy Poole. Timothy Poole.

2 James Nittel.

3 All right. Eleven o'clock Thursday. Be sure to call
4 in ahead of time. You're free to go.

5 (Jurors leave the courtroom.)

6 THE COURT: Panel number nineteen.

7 Eddie Speed.

8 Sharon Robinson.

9 Camille Kallas-Oczkowski.

10 THE JUROR: Oczkowski.

11 THE COURT: Thank you.

12 Tre'una Phelps.

13 All right. Two o'clock on Thursday. You're free to
14 go.

15 Ma'am, do you need that phone number?

16 THE JUROR: Yes, please.

17 THE COURT: The bailiff will give it to you on the way
18 out.

19 THE JUROR: May I ask another question just to be sure
20 I didn't misunderstand something?

21 I am reporting to work Tuesday and Wednesday?

22 There's no reason for me not to go?

23 THE COURT: That's right. You're not needed until this
24 time right here. So, you're free to go about your business.

25 THE JUROR: Thank you.

1 THE COURT: Thank you. Yes, ma'am.

2 That one was two o'clock on Thursday.

3 (Jurors leave the courtroom.)

4 THE COURT: Well, the final panel, number twenty,
5 three o'clock on Thursday.

6 Felicia Sturgill.

7 Linda Ben-Shabat.

8 Donald Makins.

9 Latressa Wright.

10 Three o'clock Thursday afternoon. Be sure to call in
11 ahead of time for your time. Thank you very much. You're
12 free to go pursuant to my instructions.

13 (Jurors leave the courtroom.)

14 THE COURT: All right. Anything from the State
15 before -- well, let me close the door.

16 Anything from the State before we begin individual voir
17 dire?

18 SOLICITOR BARNETTE: Nothing from the State, Your
19 Honor.

20 THE COURT: Anything from the defense?

21 MR. MCGUIRE: No, sir.

22 THE COURT: All right. We'll be in recess then until
23 three o'clock. We'll resume in the east courtroom.

24 Thank you very much.

25 (WHEREUPON, Court was in recess for the lunch hour.)

1 THE COURT: I'll ask the attorneys to approach briefly.

2 (WHEREUPON, a bench conference was held at this time.)

3 THE COURT: All right. Mr. McGuire, I've gone over --
4 I've given you a copy of the document that I intend to show
5 to the jury describing three types of jurors, and you
6 indicated -- you have handed to the Court a proposal from
7 the defense.

8 I'll be happy to hear from you.

9 MR. MCGUIRE: Thank you, Your Honor, and I think it
10 would be appropriate to mark both of them as Court Exhibits.

11 (WHEREUPON, the juror questioning sheets were marked as
12 Court's Exhibit Nos. 1 and 2 and received into evidence at
13 this time.)

14 MR. MCGUIRE: And, judge, just for the record, the, the
15 Court's Exhibit No. 1 is the three types of jurors that's
16 authored by the Court, and Court Exhibit No. 2 is the one
17 that we authored, and I'll pass them up for your --

18 THE COURT: All right.

19 MR. MCGUIRE: -- perusal.

20 THE COURT: I've got them.

21 MR. MCGUIRE: And, judge, the -- my objections would be
22 that, first off, I think that anybody that's done a couple
23 of these cases, we all have recollections of jurors, during
24 voir dire, who make statements like well, I wouldn't vote
25 for the death penalty if it was an accident or if it was

1 self-defense or -- and then they'll mention some other time
2 of -- type of homicide, and the, the proposed one -- type
3 one, two, three that we passed up does have a bit of a
4 definition of murder. That it's the intentional killing of
5 another person with malice aforethought, and we exclude
6 basically the most common homicides mentioned by jurors on
7 voir dire in that the defendant knew what he was doing, he
8 could distinguish right from wrong, was not acting in
9 self-defense, was not an accident.

10 Those are the main ones that we have come up with, and
11 it just takes them right -- it defines, it defines murder.
12 It, it takes the most common misconceptions that we've seen
13 from jurors. It takes it out of the mix so they know
14 exactly what we're talking about and we're getting more
15 accurate information.

16 The, the type two definition we passed up, again, just
17 gives a better definition of murder, and the more accurate
18 we be -- that we are going to be with our information that
19 we give to the jurors, the more accurate information we're
20 going to get back. And the type three, you know, it's --
21 again, it's just a pretty fair description of somebody that
22 can go either way and it has the definition of murder just
23 like number one and number two.

24 My, my objections with, with regard to the one, two,
25 three types given out by the Court, first off, there's no

1 definition of murder at all, and if we just use the word
2 murder, we're getting into some -- we're gonna get some
3 misconceptions.

4 THE COURT: Yeah, but it talks in terms of someone who
5 had been convicted of the crime of murder.

6 MR. MCGUIRE: Sure.

7 THE COURT: I guess it would -- you could assume that
8 they would have been convicted of whatever was legally
9 defined as murder.

10 MR. MCGUIRE: Yeah, the problem is they don't know what
11 that is. They don't know the legal definition of it.

12 THE COURT: Well, I'm not trying the case right now.

13 MR. MCGUIRE: Oh, I understand.

14 I'm just saying if you want -- if we want to try to get
15 some information at all with this sheet, we can be much more
16 accurate with the addition of just a couple of words and the
17 information that we'll get back will be more accurate.

18 THE COURT: State.

19 SOLICITOR BARNETTE: Your Honor, we would object to the
20 form. I've been through the form the Court used before.
21 It's in State versus Torres. Obviously the Court upheld
22 that and didn't see any problem with it whatsoever.

23 The second thing, Your Honor, with theirs, basically --
24 I think he just hinted at it. They want to start staking
25 out jurors right now, give them their definition of murder

1 as well as bring up self-defense, accidents, other things.
2 To me, that's outside the realm of this, State versus
3 Powers, and different cases like this held. That
4 generally -- basically we're here to find a jury that can be
5 fair concerning the death penalty one way or the other, and
6 it's not about trying the case ahead of time. It's not
7 about trying individual parts of that case, and I think the
8 charge that the Court has submitted and the Court Exhibit
9 No. 1 is exactly what should be done and the way it should
10 be done in this case.

11 If you look at theirs, they keep talking about almost
12 never. That basically -- that's not what we're here for.
13 We're not here trying to pick out individual, individual
14 facts of this case. We're here to seat a jury if it's death
15 penalty eligible in this situation.

16 So, I definitely object to those things and plus they
17 talk about moral, religious, philosophical beliefs and
18 everything. Well, obviously that's what voir dire is for,
19 to answer those questions about that.

20 MR. MCGUIRE: And then -- and I'm not gonna respond to
21 that. The, the judge -- I mean, judge, the---

22 THE COURT: Well, I'm a little concerned about your
23 questioning from just in reading it. I'm gonna instruct --
24 whatever jury is picked, they're gonna be instructed they
25 should follow the law in spite of what their personal

1 beliefs or philosophies might be. In fact, they'll be told
2 if they have a notion as to what the law is or what the law
3 ought to be, it should be left outside of the jury room.

4 To ask jurors, at this stage, to, to somehow indicate
5 to them that they can base decisions on philosophical
6 beliefs, that kind of goes against the, the ultimate
7 instruction I'm gonna give to every jury, every jury I've
8 ever had. I'm instructing them to leave their philosophical
9 ideas of what the law is or what the law ought to be outside
10 of the jury room.

11 MR. MCGUIRE: Sure. And on that, judge---

12 THE COURT: I have, I have a real problem with that,
13 Mr. McGuire.

14 MR. MCGUIRE: Well -- and let me, let me -- for the
15 record?

16 THE COURT: Yes, sir. Sure.

17 MR. MCGUIRE: What I'm asking for is actually exactly
18 in line with what the law is. Morgan v. Illinois recognizes
19 that jurors could have deeply held beliefs that would
20 impair -- that would make them substantially impaired as
21 jurors even when they say they can follow the law, that
22 there's that category of jurors who could give an
23 affirmative response to can you follow the law as I instruct
24 it, and they really do intend to do that, and they want to.
25 I don't mean anybody is being deceptive.

1 THE COURT: Yes, sir, but your questions seems to
2 indicate that that, that -- I think Courts still instruct
3 people not to use philosophical beliefs in deciding cases.
4 There -- they're decided on the law and the evidence --

5 MR. MCGUIRE: Well, if they, if they bring---

6 THE COURT: -- and leave their philosophy out of it I
7 think it's the way I'm gonna instruct them as far as the law
8 is concerned.

9 MR. MCGUIRE: Sure.

10 But if they bring a value system into Court, based on
11 philosophy or religion or moral teachings that they've grown
12 up with, if they bring that into Court, and they are
13 substantially impaired, even if they answer the Courts --
14 and---

15 THE COURT: Substantially impaired in what respect?

16 MR. MCGUIRE: From being able to follow the, the juror
17 oath, which would be consider all aggravation evidence, all
18 mitigation evidence.

19 THE COURT: You think these questions are gonna root
20 those folks out --

21 MR. MCGUIRE: Well --

22 THE COURT: -- by asking them to use their
23 philosophical beliefs?

24 MR. MCGUIRE: Sure. Absolutely.

25 THE COURT: I'll deny the request. I'm gonna issue the

1 questions as I've prepared them.

2 MR. MCGUIRE: Okay. And, judge, if I could just be
3 heard for the record?

4 THE COURT: Well, I'm sorry. Go ahead. I thought you
5 already had.

6 MR. MCGUIRE: Oh, I'm sorry, no.

7 With regard to the follow the law aspect, I'll --
8 it's -- it is not sufficient just to ask them if they can
9 pledge to follow the law.

10 THE COURT: Well, I'm not asking them in this document
11 to follow the law.

12 MR. MCGUIRE: I understand. I just want to---

13 THE COURT: It would seem though that if I give them
14 the document that you had requested, all, all three of your
15 questions start off, for any reason, whether as a matter of
16 moral or religious or philosophical belief, or as a matter
17 of conscious or personal belief, or for any other reason you
18 can say you believe the death penalty is almost always an
19 appropriate penalty. Again, I think that flies in the face
20 of the instruction that I'm going to give to the jury at the
21 close of the trial, which is to take the law exactly as I
22 give it to them, apply it to the facts as they determine
23 them to be, and if they have an opinion as to what the law
24 is or what it ought to be, they should leave that outside of
25 the jury room.

1 MR. MCGUIRE: And at the end of the trial I would
2 actually embrace that instruction and ask for it.

3 THE COURT: Now, that -- I give it every time I try a
4 criminal case.

5 MR. MCGUIRE: Okay. And I think it's very appropriate
6 at the end, but in the beginning, what would be---

7 THE COURT: Well, I'm not instructing anybody on
8 anything right now. In fact, I want my questions to be such
9 that it's neutral and doesn't suggest any proper answer, and
10 I'm gonna -- again, I've made my ruling.

11 MR. MCGUIRE: I understand, and, judge, if I could just
12 briefly state for the record, and this is illustrated --
13 this is on the issue of the follow the law lines. You
14 brought it up. I just want to make a record that it -- in
15 State versus Thomas, it's a Louisiana case, and it's cited
16 as 680 Southern 2d 37, the Court goes on -- says this Court
17 has rejected the contention that unjustified restrictions on
18 voir dire or voir dire could be cured by a response on the
19 part of a prospective juror that he follow the law as given
20 to him by the judge when the juror's unaware of the
21 complexity of the law, and where the, where the law involves
22 a basic right of the defendant.

23 I mean I think the follow the law questions, on the, on
24 the beginning of the trial, have been condemned. I embrace
25 the follow the law question at the end. I want it. I agree

1 that it's an appropriate instruction. But right now we're
2 just concerned with---

3 THE COURT: Has it been condemned in this State?

4 MR. MCGUIRE: I -- well, I mean obviously it's always
5 the same test and when you---

6 THE COURT: It's always the same what?

7 MR. MCGUIRE: It's always the same test, the test, to
8 determine---

9 THE COURT: Test.

10 MR. MCGUIRE: ---to determine if a juror is
11 substantially impaired, and the test is can they comply with
12 the juror oath, which requires them to consider all the
13 aggravation evidence, all the mitigation evidence, and
14 fairly consider both penalties, and they're two cases in
15 South Carolina, State versus Davis cited as 309,
16 309 S.C. 326, and that case, that case involved actually---

17 THE COURT: Pass up a copy please.

18 MR. MCGUIRE: Oh sure.

19 THE COURT: Thank you.

20 SOLICITOR BARNETTE: Your Honor, can we have a copy of
21 that also or at least the cite?

22 MR. MCGUIRE: Yeah, I'm gonna -- I'll do you better
23 than the cite. I'll get you a copy.

24 THE COURT: Well, you passed up State versus Longworth
25 as well. I don't know if you want that up here or not.

1 MR. MCGUIRE: Yeah, I do.

2 THE COURT: Oh, okay.

3 MR. MCGUIRE: Thank you, judge.

4 THE COURT: Thank you.

5 MR. MCGUIRE: It must of been stuck together.

6 The Davis case involves the issue of mild mental
7 retardation before Atkins and the Longworth case involves
8 the youth of a defendant, being 22 years old, and also the
9 category of offense, which was a -- in short, sort of a
10 Felony Murder Doctrine case where the defendant was a
11 non-triggerman, and, in South Carolina, what we do is we
12 follow with the, the principle that there's something that's
13 so mitigating in the case or so aggravating that we're
14 allowed to voir dire on those issues to make sure that those
15 issues -- that factor doesn't have the home run weight of a
16 verdict with the defendant, and the language in the case is,
17 and they set out the test to determine whether a juror's
18 substantially impaired, and that is whether they can follow
19 their oath, and truly consider all the evidence in
20 mitigation and truly consider all the evidence in
21 aggravation in coming up with the just verdict and that they
22 can fairly consider both life and death as a potential
23 punishment.

24 These are all cases where the prosecutors were able to
25 ask questions and, and ferret out jurors that were not death

1 eligible -- death qualified meaning that would the, would
2 the fact that somebody's mentally retarded prevent you from
3 considering a death sentence, and likewise, with the youth
4 of the defendant being 22, and, and the defendant's status
5 as an non-triggerman. And the opposite side of the coin
6 we're gonna be entitled to, obviously, voir dire on
7 something that would be so aggravating as to have the home
8 run weight of a verdict with a particular juror.

9 And that -- I don't want to, I don't want to beat a
10 horse to death on this issue, judge. I've just got one or
11 two things on the type one, two, three for the record.

12 THE COURT: Go ahead. I haven't stopped you.

13 MR. MCGUIRE: Thank you, judge.

14 On, on the Courts -- can -- you know, already accepting
15 my defeat here, I would ask---

16 THE COURT: Beg your pardon?

17 MR. MCGUIRE: I'm accepting my defeat that I'm not
18 gonna have my questionnaire used. But what I wanted to do
19 is talk a little bit about the language that the Court has
20 on, on that questionnaire to see if we can change it just a
21 little bit, and that is, in the first type, the language
22 used is that there's a type juror who, this is the first
23 one, once the crime of murder has been proven by the State,
24 and the juror's considering punishment, feels that he or she
25 is required to give the death penalty, I would object to the

1 word required. It suggests an external, external cause of
2 why they would have to vote for the death penalty.

3 I think we can just take that sentence out and just go
4 straight to the last sentence, which is this juror simply
5 feels that, once a murder's been committed, the death
6 penalty is the most appropriate punishment. It doesn't
7 matter what the circumstances of the case are. I would ask
8 that if we can just take out the required language.

9 THE COURT: State's position.

10 SOLICITOR BARNETTE: Your Honor, I would object to it
11 because obviously I think this is a charge that's been
12 approved by our Supreme Court. If you start messing with
13 things that's required to be, you're trying to find out if
14 that juror is putting the death penalty no matter what, and
15 I think that's a perfectly good example out of that.

16 Your Honor, going back to the cases he's citing, I
17 don't know -- I don't support the proposition that he's
18 saying that they support. Like the Morgan versus Illinois
19 case, it doesn't stand for that proposition that the
20 defendant is entitled to every opened required -- required
21 prospective juror's sentiments on each one -- each possible
22 circumstance or aggravating circumstance.

23 He's bringing out the -- his position on this. I don't
24 know if that's what the cases say. I think the cases say
25 that obviously you can ask about general questions about,

1 you know, aggravation and mitigation. But you can't get
2 into specifics.

3 I think what he's trying to do is set up a case where
4 he can get specific questions on here, and I don't think we
5 can. I don't think Longworth stands for that proposition
6 from there, and that was Justice Burnett's case when he was
7 a circuit judge here.

8 So, I disagree with his presenting the cases the way he
9 is presenting them to this Court. Like I say, I have an
10 objection---

11 THE COURT: Well, I haven't found the language you
12 referred to in Longworth. I was trying to, but I didn't get
13 there. You switched arguments on me.

14 So, what language are you specifically referring to in
15 Longworth?

16 MR. MCGUIRE: I'm gonna have to go to it specifically,
17 judge.

18 (Pause.)

19 MR. MCGUIRE: It's actually Davis, judge, 309 S.C. 326
20 and---

21 THE COURT: Going to the Davis case now?

22 MR. MCGUIRE: Yes, sir.

23 THE COURT: Okay. Excuse me.

24 MR. MCGUIRE: Yeah, the language that I actually wanted
25 to---

1 THE COURT: I asked about Longworth.

2 MR. MCGUIRE: Yes, sir, and the language I wanted to
3 bring to -- the Court's attention to is actually found in
4 Davis.

5 THE COURT: Excuse me.

6 Go ahead.

7 MR. MCGUIRE: And it's on the, it's on Page 5 of 14,
8 and they go on to say, the second to the last paragraph, a
9 juror must be unbiased, impartial, and able to carry out the
10 law as it, as it is explained to him. A potential juror
11 must be excused if his opinions would prevent or
12 substantially impair the performance of his duties as a
13 juror in accordance with his oath and instructions, and then
14 they go on to say here the record overwhelmingly supports
15 the conclusion that the potential juror was so committed to
16 her position regarding a mentally retarded person that she
17 would of refused to consider any statutory aggravating,
18 aggravating circumstances supported by the evidence.

19 And I mean that's the, that's the test. You know, if
20 I -- if there's something that is so impactful or, or
21 profound in terms of either mitigation or aggravation, we
22 have to ask about it. Otherwise we could have a juror end
23 up on the seat -- we could have a juror end up seated whose
24 beliefs, from coming out of the gate, were I was
25 automatic -- like let's take the case for the State.

1 Let's say that youth of the defendant, and nobody ever
2 asked the juror any questions about youth as a substantial
3 mitigating factor, and the juror voted for life, would not
4 consider aggravation evidence, would not consider a death
5 penalty, and then somebody from the prosecutor's office
6 interviews the juror, and the juror says well, if they would
7 of just asked me about could I vote for the death penalty
8 for somebody who was young, I would of told them no,
9 absolutely not. And so, they---

10 THE COURT: So, you're thinking you get into fact
11 specific questions?

12 MR. MCGUIRE: Yes, sir. Oh, absolutely. If it is so,
13 if it is so -- and I have a number of cases where Courts
14 have addressed that very issue. Generally it's in terms of
15 a double murder conviction of -- prior conviction for
16 murder, multiple victims. There's a case of a category of
17 rape/murder cases, and, again, the cases that we have in
18 South Carolina deal with substantial mitigating factors, but
19 the, the opposite side of the same coin is that you have to
20 be able to ask about fact -- not fact specific. It's
21 actually category.

22 For instance, police officer killing, child victim,
23 rape/murder, double homicide. They're certain categories of
24 cases that can have such significant impact on a juror to
25 move them so towards a death verdict that they really can't

1 live up to their oath and consider all the evidence in
2 mitigation, all the evidence in aggravation, and fairly
3 consider both penalties, and we absolutely have to ask those
4 questions.

5 THE COURT: Mr. Barnette.

6 SOLICITOR BARNETTE: This is a shock to me, judge,
7 because, like I said, I've never---

8 THE COURT: It's kind of a shock to me. It's a new
9 concept from the cases I've read.

10 SOLICITOR BARNETTE: I was about to say, based on what
11 I've seen before, you know, basically he's saying we're
12 gonna ask fact specific questions from both sides about this
13 case, and I don't think that's what the law says by any
14 means.

15 MR. MCGUIRE: I think the law requires it, judge.

16 THE COURT: Tell me -- give me a case -- don't tell me
17 what you think.

18 MR. MCGUIRE: Okay.

19 THE COURT: Give me some cases that say that.

20 MR. MCGUIRE: People versus Cash.

21 THE COURT: You got a copy?

22 MR. MCGUIRE: Yes, sir. Cited as 28 or I'm sorry.
23 Cited as 50 Pacific 3d 332.

24 THE COURT: What language are you referring to?

25 MR. MCGUIRE: The---

1 SOLICITOR BARNETTE: Your Honor, may I get a copy?

2 MR. MCGUIRE: I'm sorry.

3 Yeah, here's your copy.

4 Judge, I'll give you mine. Let me pass you up this
5 copy. It's clean. Sorry about that.

6 In that, in that case, judge, it involved a defendant
7 who was on trial obviously for murder, and had a murder in
8 his past. The defendant, the defendant's counsel sought to
9 voir dire on those issues or sought to have -- use open
10 ended questions to determine---

11 THE COURT: Point me to the language you're referring
12 to.

13 MR. MCGUIRE: Page 17.

14 THE COURT: Thank you.

15 MR. MCGUIRE: The second to the last paragraph.

16 "Defendant contends that by preventing all voir dire on
17 the issue of his prior murders, the Court denied him his
18 rights under our Federal and State Constitutions to an
19 impartial jury. We agree."

20 The case was reversed based on the fact that there was
21 something that was so significant in terms of aggravation
22 that it could have, and I'm not quoting from the language
23 here, but the case stands for the idea that there can be
24 something so significant in the case that it can move a
25 juror, either for life or death, to such a degree that that

1 particular bias has to be rooted out.

2 Judge, if I could pass up another case?

3 THE COURT: No, sir, I want to stay on this one for a
4 minute.

5 MR. MCGUIRE: Okay.

6 THE COURT: In reading the case you handed up, it's a
7 California case.

8 MR. MCGUIRE: Yes, sir, that's generally what's noticed
9 first by South Carolina judges.

10 THE COURT: Beg your pardon?

11 MR. MCGUIRE: That's usually the first thing that's
12 pointed out to me by South Carolina judges is that it's a
13 California case.

14 THE COURT: Well, it is.

15 MR. MCGUIRE: It is. Sure.

16 THE COURT: You know, I -- South Carolina generally
17 takes a position, in cases like State versus Patterson and
18 State versus South, that you're not allowed to -- I guess --
19 are you, are you planning on asking hypothetical questions
20 on these points?

21 Are you planning on asking about the facts of this
22 case?

23 MR. MCGUIRE: The facts of this case. Now, I'm aware
24 hypothetical questions are disfavored in South Carolina. I
25 don't intend to ask any hypothetical questions. In fact,

1 the case that speaks on hypothetical questions is one that I
2 think you just mentioned and it actually says hypothetical
3 questions aren't relevant to the case. It's the evidence in
4 the case before the juror that really matters. So, it
5 brings it back to my point, that's what we have to ask
6 about.

7 THE COURT: Mr. Barnette.

8 SOLICITOR BARNETTE: Your Honor, all the cases in South
9 Carolina I know of say -- State versus Powers, for example,
10 331 S.C. 307, 1998 case, North Carolina versus Skippers, I
11 know it's not our case, but it basically rules you can't be
12 fact specific on weeding this out. We've stayed away from
13 that in South Carolina, and I know he's pointed out
14 California cases and things like that, but they don't have
15 any bearing on South Carolina.

16 THE COURT: Have you got a South Carolina case that
17 talks about being fact specific in your question?

18 MR. MCGUIRE: Well, I'm relying on Longworth and Davis
19 that I passed up.

20 THE COURT: Well, I still haven't gotten any language
21 that you quoted on that point out of those. I'll ask one
22 more time.

23 MR. MCGUIRE: Well, you have to read it as a whole to
24 determine that.

25 THE COURT: Well, I know a little bit of Longworth. It

1 was a Spartanburg case. One of my partners participated in
2 it. So, I know, I know a little about it. So, you can talk
3 to me about it.

4 MR. MCGUIRE: Okay. Well, I believe the Court, when
5 you read the case as a whole---

6 THE COURT: As a whole?

7 MR. MCGUIRE: Well, sure.

8 THE COURT: Give me some language that even goes toward
9 what you're talking about.

10 MR. MCGUIRE: I'm sorry?

11 THE COURT: Point out some language in those cases that
12 goes toward the point that you're trying to establish.

13 I'm -- I started on Longworth a while ago and you switched
14 to Davis.

15 MR. MCGUIRE: Okay.

16 THE COURT: Okay. Now let's go back to Davis.

17 MR. MCGUIRE: Sure.

18 THE COURT: The voir dire issues, I think, starts on
19 Page 4.

20 MR. MCGUIRE: Uh-huh. (Affirmative).

21 THE COURT: Let me take a second and read what it says.
22 (Pause.)

23 THE COURT: All right. I've read the section that had
24 to do with voir dire issues.

25 MR. MCGUIRE: Yes, sir. Well, on Page 5 --

1 THE COURT: Yes, sir.

2 MR. MCGUIRE: -- the third paragraph down goes to the
3 language that I pointed to earlier where the Court states
4 the trial judge disqualified the potential juror on the
5 grounds that she would be unable to fulfill---

6 THE COURT: Just one second. I don't see that.

7 MR. MCGUIRE: Oh, I'm sorry.

8 THE COURT: I found it.

9 MR. MCGUIRE: It's D---

10 THE COURT: Okay. I found it now.

11 Go ahead.

12 MR. MCGUIRE: I'm sorry. I should of told you it was
13 the second sentence.

14 THE COURT: Uh-huh. (Affirmative).

15 MR. MCGUIRE: The trial judge disqualified a potential
16 juror on the grounds that she would be unable to fulfill her
17 duty to consider the statutory aggravating and mitigating
18 circumstances, which may be supported by the evidence as
19 mandated by South Carolina Code 16-3-20, and that's because
20 she points to a specific fact in mitigation that would have
21 such impact with her that it would move her to the point of
22 not being able to consider a death sentence, and it was---

23 THE COURT: They don't say that. You say that.

24 MR. MCGUIRE: Okay. But I think, when you read it as a
25 whole, it does say that.

1 THE COURT: Well, I don't know.

2 MR. MCGUIRE: Well, again, the judge disqualified her
3 because she would not be able to fulfill her duty to
4 consider both statutory aggravating and mitigating
5 circumstances as well---

6 THE COURT: Well, they just said that a juror must be
7 unbiased, impartial, and able to carry out the laws
8 explained to him.

9 MR. MCGUIRE: Sure.

10 THE COURT: A potential juror must be excused if his
11 opinions would prevent or substantially impair the
12 performance of his duties as a juror in accordance with his
13 oath and instructions.

14 MR. MCGUIRE: Exactly.

15 THE COURT: And see I don't know how -- in what context
16 that question came up. They don't put in here what the
17 questioning was.

18 MR. MCGUIRE: Well, I've actually read the transcript.
19 I can tell you. It would be out of this record though.

20 THE COURT: Yeah.

21 MR. MCGUIRE: Obviously it was the prosecutors asking
22 the questions along the lines of would, would this
23 particular fact, and in, in Davis it was the mental
24 retardation case, Longworth being the 22 year old and the
25 non-triggerman case, but she was -- the, the prosecutors

1 asked the question would the fact, if you found somebody to
2 be mildly mentally retarded, would that prevent you from
3 delivering a death sentence in this case.

4 Now, they don't talk about that in the, in the case. I
5 admit that. That would be outside the record, but I've read
6 it and I know that's exactly how it came up.

7 Now, in Longworth, the Court asked the question.

8 THE COURT: But there wasn't an objection to that
9 question. The objection was the ruling the judge made on
10 the question.

11 MR. MCGUIRE: You're right. There was not an objection
12 saying that the question was inappropriate --

13 THE COURT: Okay.

14 MR. MCGUIRE: -- as best I can tell.

15 THE COURT: Yes, sir. Well, you said you read the
16 transcript.

17 MR. MCGUIRE: Right. Right.

18 THE COURT: Okay.

19 MR. MCGUIRE: And actually the -- I think the reason --
20 it would of been better preserved had they had it come up
21 like that and they had to fight it out over the question
22 because unfortunately they had, they had to fight it out
23 over whether or not the juror was properly excused for
24 cause.

25 Now, in the---

1 THE COURT: In the Longworth case --?

2 MR. MCGUIRE: In the Longworth case the Court actually
3 does the questioning. On Page 4 you can see where the
4 Court, at the very bottom of the page, is posing the
5 question. If the facts were bad enough -- if the facts were
6 bad enough, could you give a non-triggerman the penalty of
7 death.

8 Now, the Court is going fact specific right there, and
9 I believe, I believe that---

10 THE COURT: Yes, sir, I don't intend to ask questions
11 like that.

12 MR. MCGUIRE: I, I understand. What's, what's telling
13 though, in Longworth, is that the Appellate Court -- the
14 South Carolina Supreme Court didn't call the judge out of
15 line and say it was an improper question or did an improper
16 inquiry into the facts of the case. I mean I think when
17 the, I think when the trial judge---

18 THE COURT: Again, is that issue -- did anybody object
19 to him, his question based on that basis?

20 MR. MCGUIRE: No.

21 THE COURT: Again, the question was whether or not the
22 juror was properly included or excluded.

23 MR. MCGUIRE: And---

24 THE COURT: Now, the specific case, the California
25 case, they talk specifically about objecting to the question

1 cause the attorney, during a break, made it, made an
2 objection and asked the Court to allow questioning along
3 that line, and the judge ruled against that line of
4 question.

5 MR. MCGUIRE: I agree and it was much better preserved
6 and I think the argument and the analysis of the Appellate
7 Court is much clearer and better in that, in that case
8 because we have---

9 THE COURT: Well, it's clear to, to see what they did.
10 I'm not sure that our State follows that reasoning and I'm
11 trying to find a case that says we do.

12 MR. MCGUIRE: Well, first off, in all candor to, to the
13 Court --

14 THE COURT: Yes, sir.

15 MR. MCGUIRE: -- if, if we had similar elements in this
16 case, and the prosecutor asked them, I wouldn't have
17 objected either cause I think they're entitled to ask those
18 questions. I would concede that those, those mitigating
19 factors could be so significant---

20 THE COURT: See, our Courts kind of lean toward not
21 staking out a witness (sic) on the facts. I mean that's --
22 I've read that in some of the cases.

23 MR. MCGUIRE: Sure, we're not gonna do that.

24 THE COURT: Okay.

25 MR. MCGUIRE: Staking out is, is an attempt by a lawyer

1 to commit a juror to a certain course of conduct if they can
2 prove something in their case. We're absolutely not gonna
3 do that.

4 THE COURT: It sounds like we're getting awfully close.

5 MR. MCGUIRE: No, what I intend to do is ask the, the,
6 the potential jurors that, in a case, what are their
7 thoughts about the death penalty in a case where it's the
8 category of a, of an intentional killing of a child just
9 like we'd be entitled to ask what are your, what are your
10 thoughts about if we had a police officer killing, what are
11 your thoughts about the death penalty for the category of
12 cases where a police officer is, is killed in the line of
13 duty.

14 It's not actually fact specific. It's category
15 specific. It's the category of a child killing. It's the
16 category of rape/murders. It's the category of an officer
17 killing. It's the, it's the category. It's actually not a
18 fact.

19 The objection, prejudgment, I think I heard that a
20 little while -- prejudgment is, is giving a detailed summary
21 of the case, evidence and aggravation, evidence in
22 mitigation, and giving a detailed summary and asking for
23 their position or their vote and that's absolutely
24 inappropriate and we don't intend to do that. But I think
25 there's the middle area where we, we have an obligation to

1 ask about a factor, whether mitigating or aggravating, that
2 is impactful, so significant that they can be an unbiased
3 juror.

4 THE COURT: So, just tell me what question you think
5 you might ask on that point.

6 MR. MCGUIRE: Madam Juror, in the case of an
7 intentional deliberate killing of a child with malice
8 aforethought, malice being an evil intent with the person's
9 operating with a black and malignant heart, it's not an
10 accident, it's a deliberate killing of a, of a child, what
11 are your thoughts about the death penalty in that type of
12 category of case.

13 THE COURT: Well, don't give them any information on
14 the possible mitigating circumstances?

15 MR. MCGUIRE: Well, I come to that later.

16 SOLICITOR BARNETTE: Your Honor, the other problem I've
17 got is they've not given us a copy of the mitigators. So, I
18 don't even have them.

19 MR. MCGUIRE: Well, we passed them up in writing to the
20 Court. We had copies available.

21 SOLICITOR BARNETTE: They haven't given them to us.
22 I'd like to see them if they're going to start talking about
23 them.

24 MR. MCGUIRE: They're statutory mitigation --.

25 MR. ALLEN: I was under the impression that we were to

1 give them to the Court.

2 THE COURT: Well, he's saying he didn't get a copy.

3 SOLICITOR BARNETTE: I didn't get a copy. They got our
4 aggravating circumstances.

5 THE COURT: I'm not asking for it. He's asking for it.

6 SOLICITOR BARNETTE: I mean we gave them our
7 aggravating copy back in 2012. They've had our
8 circumstances since then. If we're gonna start talking
9 about, if we're gonna start talking about mitigating
10 evidence---

11 THE COURT: We've got them. I've got one. But I don't
12 know whether you gave one to him or not. I can't answer
13 that question.

14 MR. ALLEN: Well, let me --

15 MR. MCGUIRE: And, judge, just so you, you understand
16 what we intend to do --.

17 THE COURT: Well, we kind of have gotten far afield
18 from the three categories of jurors that I intend to put in
19 front of them, haven't we?

20 MR. MCGUIRE: Sure.

21 THE COURT: Maybe that's intentional or not. I don't
22 know.

23 MR. MCGUIRE: No, no, no.
24 why don't we go back to that?

25 THE COURT: Maybe we should.

1 MR. MCGUIRE: Judge, the -- so, my first request with,
2 made with all due respect, is that the language that the
3 juror feels that he or she is required to give the death
4 penalty should be removed. I mean you've already instructed
5 the jurors that the death penalty is never required. You
6 could get somebody who's just simply paying attention who
7 would say well, I'm not that person cause I heard that it's
8 never required.

9 Let's just take that out and just leave it with the
10 last, the last sentence, which is this juror feels, simply
11 feels that once a murder is been committed, the death
12 penalty is the most appropriate punishment no matter what
13 the circumstances of the case are. I think that's a pretty
14 small request.

15 THE COURT: Anything else?

16 MR. MCGUIRE: And then---

17 THE COURT: Let's, let's take one at a time.

18 MR. MCGUIRE: Okay. That's, that's it on that.

19 THE COURT: I'm gonna ask Mr. Barnette if he needs to
20 say anything about it.

21 MR. MCGUIRE: Yes, sir, sorry.

22 THE COURT: Thank you.

23 MR. MCGUIRE: Yes, sir.

24 SOLICITOR BARNETTE: Your Honor, I object again. I
25 mean there's nothing wrong with the original charge to the

1 jury that the judge is gonna give. To me, I think the
2 problem is that Mr. McGuire, he's getting into all kinds of
3 staking issues. He's getting into all kinds of -- he's
4 basically saying I can ask about mental retardation, open
5 the door, what do you think about mental retardation, and we
6 go down that slippery slope, we'll be all over the place.

7 I mean they're gonna be asking about the child, about
8 mental retardation. It may get to the point where we're
9 talking about CDL licenses, and I don't want to get into all
10 that because I don't think that's the law in this state.

11 THE COURT: All right. What I'm gonna do on the first
12 question, I'll take out the wording is required to and I'll
13 put -- substitute the word will.

14 MR. MCGUIRE: Yes, sir, I appreciate it. Thank you.

15 THE COURT: Next question.

16 MR. MCGUIRE: With regard to the second paragraph, I
17 would, I would object to the last part of it where it
18 indicates the juror would have his or her, his or her mind
19 made up concerning punishment no matter what he or she
20 heard.

21 It -- my objections are it, it starts to use language
22 that I think you could -- a normal person would consider
23 negative, and I think it's always negative to tell people or
24 accuse people of having their mind made up.

25 THE COURT: We're not accusing. We're describing

1 someone. Not accusing anyone of anything.

2 MR. MCGUIRE: I understand.

3 And -- but if you read the sheet as a whole, and you
4 read the language from the third one, you're talking
5 about---

6 THE COURT: Well, let's stay on the second one.

7 MR. MCGUIRE: I understand.

8 But if you read the whole thing and then you come back
9 to the second one after reading what I think is negative
10 language in the third response, which is---

11 THE COURT: Let's get to the second one.

12 MR. MCGUIRE: I am.

13 THE COURT: I would like to get to the second one --
14 line down.

15 MR. MCGUIRE: Sure.

16 When you read it as a whole, the language indicating
17 that somebody -- this type of juror is somebody who already
18 has their mind, his or her mind made up. It's, it's couched
19 in, in language that I think is negative as opposed to the,
20 to the first one, but---

21 THE COURT: I'll deny that one.

22 MR. MCGUIRE: All right.

23 THE COURT: Next.

24 MR. MCGUIRE: And the objection to the third one, the
25 language would not have his or her mind made up in advance.

1 I do consider that to be a negative statement, and would --
2 what it's saying is you're not negative. If you check this
3 box, if you're number three, you're not that negative --
4 you're not that person who is so close minded to have his or
5 her mind made up in advance. So, it's sort of welcoming
6 more people into the third one by criticizing the first two
7 because it uses the negative language.

8 THE COURT: All right. I deny that request.

9 MR. MCGUIRE: And I think I've already put on the
10 record that obviously our -- we would request that murder be
11 defined for the jurors with regard to the sheet.

12 THE COURT: You want me to charge the law of murder --

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: -- on the sheets?

15 MR. MCGUIRE: Well, if -- I'm sorry. If, if the
16 sheets's gonna go back and you use the word murder, I would
17 ask for a definition of murder.

18 THE COURT: Okay. I think I'm not gonna make that
19 change. I'll leave it just like it is. I think it's
20 sufficient.

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: I will make the one change I agreed to.

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All right. I have copies of how I intend
25 to submit it to the prospective jurors if you'd like them.

1 I'm gonna have these two marked as Court's Exhibits. Be A
2 and B, whatever the number is.

3 (WHEREUPON, the juror questioning information was
4 marked as Court's Exhibit Nos. 3-A and 3-B and received into
5 evidence at this time.)

6 SOLICITOR BARNETTE: May I, Your Honor?

7 THE COURT: Yes, you may.

8 (Pause.)

9 THE COURT: Was there any objection to the witness list
10 from the State?

11 SOLICITOR BARNETTE: No, sir.

12 THE COURT: Any from the defense?

13 MR. ALLEN: No, Your Honor.

14 THE COURT: All right. I'm gonna have these marked as
15 the next Court's Exhibit, A and B.

16 (WHEREUPON, the witness lists were marked as Court's
17 Exhibit Nos. 4-A and 4-B and received into evidence at this
18 time.)

19 THE COURT: Deliver those to the bailiffs, ask them to
20 take them back to the jury room.

21 The first person is -- out is going to be -- who's
22 number one?

23 THE CLERK: Martin Kimmons.

24 THE COURT: Okay. Go ahead and take those back. Give,
25 give a copy. Give a copy -- be sure to Mr. Kimmons.

1 THE CLERK: Kimmons?

2 THE COURT: Kimmons. Gets -- get those and look over
3 those please, sir.

4 THE BAILIFF: Mr. Simmons?

5 THE CLERK: Kimmons.

6 THE COURT: Kimmons.

7 And then tell the others that they need to be reading
8 those or looking over those in preparation for coming out.

9 THE BAILIFF: All right.

10 THE COURT: Thank you.

11 Now, I, I really don't know how to deal with where we
12 ended up on that argument other than to deal with it as it
13 comes up.

14 State have any motions in particular that we need to
15 take up before we start individual voir dire?

16 SOLICITOR BARNETTE: The only thing, Your Honor, is
17 obviously -- it might be better to see what -- Mr. McGuire
18 goes first because my response and my questions is gonna be
19 responsive to what happens with him. I know -- usually I
20 know we rotate or go back and forth, but I've got some real
21 concerns about the direction he wants to go in.

22 THE COURT: Any objection to that, Mr. McGuire?

23 MR. MCGUIRE: I'm happy to go first all the time.

24 THE COURT: Okay. All right.

25 SOLICITOR BARNETTE: Well, I'd like to rotate it, Your

1 Honor, if we could. Like I said, maybe one panel they go
2 first, the next panel we go first, and it doesn't matter
3 from that standpoint. I know that's what we've done in the
4 past.

5 MR. MCGUIRE: My understanding is that the statute
6 gives the right to -- a lawyer can make a voir dire to the
7 defendant. The State's rights are derivative. So, we'd ask
8 that we go first all the time.

9 THE COURT: Okay. Y'all want to see if you can reach
10 an agreement on that?

11 I don't really have a preference one way or the other.

12 SOLICITOR BARNETTE: I don't think we're gonna reach an
13 agreement on that either, Your Honor, cause I don't know
14 what he's talking about anyway. I've never heard -- that
15 law's never been cited.

16 THE COURT: Tell me where that says that, Mr., Mr.
17 McGuire.

18 MR. MCGUIRE: Well---

19 THE COURT: Let me get in the code.

20 MR. MCGUIRE: Judge, how about we do this to move
21 things along. We do the first juror. There's no question
22 about me going first. The State wants me to go first on the
23 first one, and perhaps, by the end of the first juror, we'll
24 have that language printed up for you. We're pulling it off
25 the---

1 THE COURT: well, have you found it?

2 I can look it up.

3 MR. MCGUIRE: It's 16-3-20.

4 THE COURT: I'm there.

5 MR. MCGUIRE: Okay.

6 THE COURT: where does it say that?

7 MR. MCGUIRE: Unfortunately I don't have it in front of
8 me.

9 THE COURT: well, I'm looking.

10 MR. YOUNG: where it says the defense has the right to
11 question jurors.

12 SOLICITOR BARNETTE: That's all it says.

13 THE COURT: That's all it says. It doesn't say who
14 goes in what order.

15 MR. MCGUIRE: Oh, no, I agree with that. It just says
16 that---

17 THE COURT: well, I was hoping you guys could reach an
18 agreement on what order, but if we can't I'll just make a
19 ruling.

20 MR. MCGUIRE: I'm not holding out a lot of hope for an
21 agreement, judge. I think you're gonna have to rule.

22 THE COURT: It's getting rather contentious out there
23 and obviously this is, this is an adversarial proceeding,
24 but I'd rather hope that we could do it in a civil manner.

25 MR. MCGUIRE: Yes, sir.

Individual Juror Qualification

1 THE COURT: So, I'm gonna, I'm gonna direct that the
2 defense question the jurors first in the first panel, and
3 then the next panel, the State will go first, and we'll
4 alternate thereafter.

5 MR. MCGUIRE: Yes, sir.

6 SOLICITOR BARNETTE: Thank you, Your Honor.

7 THE COURT: All right. Let's bring the first juror in.

8 (WHEREUPON, the following takes place within the
9 presence of the juror.)

10 MARTIN KIMMONS, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Right here, sir. Have a seat.

15 (Juror complies.)

16 Q All right. Mr. Kimmons, I'm gonna start off by just
17 reminding you that you are under oath still as you were
18 sworn earlier concerning your conversations with the Court.

19 Do you understand and acknowledge that?

20 A Yes, sir.

21 Q All right. Mr. Kimmons, I want to thank you so much
22 for you being with us today. We recognize that it's an
23 inconvenience for you and this might be an uncomfortable
24 setting for you to sit in that chair and have to deal with
25 all this and we appreciate that. I understand that.

Individual Juror Qualification

1 But what we're gonna have -- what's gonna happen right
2 now is I'm gonna go over some questions with you. I'm gonna
3 cover some things, and then the attorneys will be allowed to
4 ask some questions as well, to follow-up on questions, and
5 I'm going to tell you, at this point in time, there are no
6 right or wrong answers to the questions that we're going to
7 ask. We're simply here to gather information. We're not
8 trying to change your ideas or your opinions. We are simply
9 trying to determine what your opinions are.

10 Do you understand that, sir?

11 A (Nods affirmatively.)

12 Q You need to answer me yes or no.

13 A Yes, sir.

14 Q Okay. Thank you.

15 See, this lady's taking down everything that goes on
16 and we have to do it verbally. So, just, just respond
17 verbally with your questions.

18 Since we talked earlier today, has anybody contacted
19 you about this case or have you read or seen anything about
20 this case or have you been exposed to any information
21 outside of the courtroom about, about this case?

22 A No, sir.

23 Q Has anything happened that would of caused you to form
24 or express an opinion about this case since the last time we
25 talked?

Individual Juror Qualification

1 A No, sir.

2 Q All right. Now, have, have you ever participated in or
3 responded to any type of blog or Internet chat room or site
4 concerning issues involving the death penalty?

5 A No.

6 Q Have you ever participated in any political activity or
7 demonstration or anything of that nature concerning the
8 imposition of the death penalty?

9 A No, sir.

10 Q Can you put aside everything that you might have heard
11 or seen or read previously about the case and decide this
12 case based upon what you might hear in the courtroom?

13 Would you be able to do that?

14 A Yes.

15 Q Now, while you were in the courtroom we provided you
16 with a list of witnesses in the case. It was a, a rather
17 long list of names.

18 Do you remember seeing that---

19 A In---

20 Q ---back in the jury room.

21 A Yes, sir.

22 Q Did you take a look at that witness list?

23 A I did.

24 Q Did you go over it?

25 A I scanned through it, yes, sir.

Individual Juror Qualification

1 Q Well, did you, did you read the names?

2 A Yes, sir.

3 Q If you don't, I can get it for you and let you read it
4 again if you haven't read it.

5 Have you gone over that list of names?

6 A I didn't read every one. I just kind of scanned
7 through it.

8 THE COURT: All right. I'm gonna ask if, madam, if
9 you'll go get that and let's let him take a look at it right
10 now.

11 (The bailiff complies.)

12 THE COURT: All right. Just hand it to him.

13 Sir, take your, take your time, go down the list, read
14 the names, and let me know when you're finished.

15 A (Witness complies.)

16 I'm done, sir.

17 Q All right. Now that you've finished that list, did you
18 see any name on there or any person on there that you might
19 be related to either by blood or marriage?

20 A No, sir.

21 Q All right. Did -- is there anyone on that list that
22 you might have a social, a business, or a personal
23 connection to?

24 A I didn't see none on there.

25 Q Okay, sir. So, you don't see anyone on there that you

Individual Juror Qualification

1 have any connection with either through family or by
2 business or social connections, is that right?

3 A That's right, sir.

4 Q Okay, sir. Now, I'm going to -- you can pass that back
5 to the, to the bailiff and she'll take that back there for
6 us. Thank you, sir.

7 Now, I'm gonna ask you some questions that are now a
8 little more personal in nature, the questions about your
9 opinions on certain topics. Obviously we're not trying to
10 invade your privacy by doing this. We are trying to find
11 out how you may feel about some things and get your opinions
12 that are important to us.

13 I would hope and think that you are secure enough in
14 your opinions that you're not going to feel threatened by
15 these questions. I want you to understand we're not trying
16 to get you to change your mind and your feelings about
17 anything. We are trying to identify your opinions as best
18 we can.

19 Do you understand what we're doing at this point in
20 time?

21 A Yes, sir.

22 Q All right. One of the things I want to ask you or I'm
23 going to ask your opinion about is the penalty in this case
24 and specifically the death penalty because that may be an
25 issue in this trial, but understand that the trial has not

Individual Juror Qualification

1 yet begun. So, it's a little premature for us to talk about
2 this because guilt is not yet been determined.

3 Mr. Blackwell, of course, as I explained earlier, is
4 presumed to be innocent of the charges brought against him.
5 So, the fact that I'm talking to you at this point in time
6 about the penalty at this early stage doesn't indicate
7 anything about him. It's simply the only time that we will
8 have to talk about this issue because, once the trial
9 starts, there would not be an opportunity to do that.

10 You understand that, sir?

11 A Yes, sir.

12 Q All right. Now, if you were a juror in any criminal
13 case, and I'm not talking specifically about this case at
14 this point in time because it's not proper for me to talk to
15 you specifically about this case, but if you were a juror in
16 any criminal case, would you be willing to listen to the law
17 as instructed by the judge?

18 A Yes, sir.

19 Q Would you be willing to accept the law, as instructed
20 to you by the judge, and then apply that law to the facts as
21 you find the facts to be?

22 A Yes, sir.

23 Q Now, even though you might not like the law as the
24 judge explained it to you, so in other words if you
25 disagreed with the law, would you still be willing to follow

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1 the law if you were instructed to do that by the Court?

2 A Yes, sir.

3 Q Now, talking about this case, if you were a juror in
4 the case of State versus Blackwell, would you be willing and
5 able to set aside any information or knowledge that you
6 might have about this case, whether you heard it from any
7 source at all, whether you read it or saw it or heard it
8 outside of the courtroom, would you be willing to set that
9 aside -- information aside and decide the case based purely
10 upon what you heard in the courtroom?

11 Could you do that?

12 A Yes, sir.

13 Q Now, I mentioned to you before that a criminal
14 defendant is presumed to be innocent. Therefore, he doesn't
15 have to prove his innocence in a case.

16 Do you understand that concept?

17 A I do.

18 Q The State has the burden of proving the defendant
19 guilty beyond a reasonable doubt.

20 Do you understand that that's also a requirement?

21 A Yes, sir.

22 Q Now, if you were sitting as a juror in a -- in any
23 criminal case, once again not this one, but any criminal
24 case, would you be willing to listen to the law and the
25 evidence presented to you, and based upon what those things

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1 were and based upon the circumstances, could you find a
2 person not guilty of a charge that had been levied against
3 the person?

4 A Yes, sir.

5 Q In other words, do you think that just because -- I
6 guess I'm asking you, just because someone's been charged
7 with a crime, do you believe that they must automatically be
8 guilty?

9 A No.

10 Q Now, if the evidence convinces you, beyond a reasonable
11 doubt, that a person was guilty of the crime as charged to
12 you by the judge, the law charged to you by the judge, could
13 you and would you be able to find someone guilty of the
14 crime?

15 A Yes, sir.

16 Q Now, if the evidence did convince you, beyond a
17 reasonable doubt, that someone was guilty, again, could you
18 find that same person not guilty?

19 A Yeah, if I wasn't convinced.

20 Q Okay, sir. Now -- so, would you be able to make up
21 your mind about any criminal case, depending upon the
22 strength of the evidence and what the testimony showed or
23 the evidence showed?

24 So, would you be able to find a person either guilty or
25 not guilty, is that correct?

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1 A That's correct.

2 Q Now, let's talk about the penalty for just a minute.
3 Most of the time, in a criminal case, the judge has to
4 decide the penalty. The jury doesn't have a concern about
5 what the penalty is in most criminal cases, but in one
6 particular type of case the jury has to decide the penalty
7 that's going to be imposed.

8 Now, that type of case is a case where a defendant has
9 been accused of murder and the State is seeking to impose
10 the death penalty.

11 Now, under those circumstances, if a jury convicts the
12 defendant of the crime of murder so that guilt has been
13 determined, that same jury comes back in a separate
14 proceeding and listens to additional evidence and testimony.

15 Do you understand that?

16 A Yes, sir.

17 Q So, in a separate sentencing proceeding, the only
18 determination to be made by the jury is the type of the
19 sentence that is gonna be -- is, is to be handed out.
20 They're only two choices. One is life imprisonment. The
21 other is the death penalty.

22 Do you understand that?

23 A Yes, sir.

24 Q Now, I want you to put yourself in that situation
25 theoretically as a jury -- juror in a case where the State,

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1 the state is seeking to impose the death penalty, and
2 imagine that you and the other jurors has convicted a
3 defendant of murder, and you're now going to come back into
4 the courtroom for the purpose of holding the second phase of
5 the trial, that is the punishment or sentencing phase, to
6 decide either life or death.

7 Do you understand the situation that I've put you in,
8 asked you to put yourself in?

9 A Right.

10 Q Now, while you were in the jury room, and I know it got
11 handed out just before you came in, we had a sheet of paper
12 that described three different jurors.

13 Did you get a chance to look over that, that paper?

14 A I did.

15 Q And did you read it?

16 A I did.

17 Q Okay, sir. Now -- so, I'm going to ask you about that.
18 So, I'm asking you to remember those three types of jurors.

19 The first type of juror on that piece of paper was a
20 juror that was in the same situation I asked you to put
21 yourself in. You're coming back into the jury room to
22 decide the question of the sentence to be imposed. So,
23 you're on the jury that is just convicted a defendant of
24 murder and you come back into the room.

25 The first type of juror is the type of juror, before he

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1 ever comes back out in the courtroom for that second penalty
2 phase, has -- already knows how he's going to vote. He's
3 going to vote for the death penalty every time because he
4 believes that that's the most appropriate penalty that
5 any -- some -- that anybody has for someone who's been
6 convicted of murder.

7 The second type of juror on that sheet of paper has
8 already made his mind up. He knows how he's going to vote
9 too because, before he hears a word, he's going to vote for
10 life in prison because he doesn't think the state should
11 ever take the life of a person in response to a crime
12 regardless of what the, the crime is. So, he knows that
13 he's going to vote for life imprisonment every time he's in
14 that situation.

15 The third type of juror doesn't know how he's going to
16 vote. He doesn't have his mind made up as to whether he's
17 going to vote for life imprisonment or for the death
18 penalty. That juror would have to wait and listen to the
19 evidence and the testimony, and then decide the appropriate
20 penalty.

21 So, do you understand the three different types of
22 jurors I've described?

23 A Yes, sir.

24 Q Now, of the three types of jurors, which one do you
25 feel best describes you yourself?

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1 A As the third one.

2 Q The third one.

3 A The way it---

4 Q Okay, sir. So, under those circumstances, keeping in
5 mind that the defendant is already been found guilty of
6 murder and the issue of guilt is no longer a concern, you --
7 would you be willing to listen to the facts and evidence,
8 and if the evidence justified it, would you be willing to
9 sentence someone to death?

10 A If it was justified -- if I thought it was justified.

11 Q All right. On the other hand though, if you thought
12 the facts and evidence did not justify the death penalty, or
13 for any other reason, would you be willing to sentence
14 someone to life imprisonment?

15 A Yes, sir.

16 Q So, are you telling me it would depend upon the facts
17 and circumstances that would be determined to have existed
18 in the case for you to decide the appropriate penalty?

19 A Yes, sir.

20 Q Now, finally, if you were asked to serve as a juror in
21 this case, I've already explained that there would be a
22 sequestration. You would be placed in a local hotel for the
23 duration of the trial. I don't know how long the trial is
24 going to last. I expect it will be several days, perhaps
25 more than a week, but I don't know that for sure.

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1 All the costs would be paid by the county while you
2 were there. Your food and lodging and everything of that
3 nature would be taken care of by the county. But, however,
4 you would be required to be away from home and your
5 employment for the duration of the trial, and I know that's
6 gonna be an inconvenience for anybody who serves on the
7 jury.

8 However, my question to you is would that pose a
9 serious risk or danger to your health or well being if that
10 were to, to occur, that you were sequestered?

11 A No, not mine, no.

12 Q And would it serve as a serious risk to the health or
13 well being of anyone who depends upon you?

14 A It would be a serious inconvenience.

15 Q Okay, sir. Okay. I understand that. It would be an
16 inconvenience. I can appreciate that answer.

17 Now, that completes the questions that I'm going to ask
18 you. I'm going to give the lawyers an opportunity to ask
19 you some questions at this time. I'll introduce -- Mr.
20 McGuire, are you gonna question for the defense?

21 MR. MCGUIRE: Yes, sir, Your Honor.

22 THE COURT: I'll introduce you to Mr. McGuire. He's
23 one of the attorneys for the defense.

24 You may proceed, Mr. McGuire.

25 MR. MCGUIRE: Thank you, Your Honor.

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1 Your Honor, if I could approach and get a little
2 closer?

3 THE COURT: Sure.

4 EXAMINATION

5 BY MR. MCGUIRE:

6 Q Sometimes I mumble a little bit or get a little horse
7 cause I do a lot of talking. So, I want to stand a little
8 closer to you if you don't mind.

9 A That's fine.

10 Q You and I have something in common. It looks like both
11 our dads were in law enforcement and we both got arrested
12 for something, and I don't mean to pry into your personal
13 business, but were you arrested in Spartanburg County?

14 A Yes, sir.

15 Q Okay. And were you prosecuted by the prosecutor's
16 office here?

17 A No, sir.

18 Q Who were you prosecuted by?

19 A It was a -- I don't know what it was. It was a DUI
20 offense is what it was.

21 Q Okay.

22 A So, I guess it was just traffic court.

23 Q Okay. Okay. Fair enough. I'm sorry I had to ask you
24 --

25 A That's fine.

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1 Q -- cause we just -- I never know what you might say and
2 it could be relevant to this case. You just never know, but
3 I also told you I've got my own little black marks on my
4 record.

5 Did your dad work at the Spartanburg County Jail?

6 A He did.

7 Q Does he still or --?

8 A No, sir, he's retired.

9 Q Okay. Does he still stay in touch with people there at
10 all?

11 A That I don't know.

12 Q The reason I ask you is Mr. Blackwell had a -- spent
13 some time there obviously waiting for trial.

14 Did your dad know about him or has he talked to anybody
15 about that?

16 A I wouldn't think so. He's been retired I guess ten
17 years. So, I mean it's been a while.

18 Q Okay. And it sounds like he hasn't talked to you about
19 it in any---

20 A No.

21 Q ---detail?

22 A No, not anyway.

23 Q Okay. Fair enough. I just wanted to make sure you
24 didn't have any inside knowledge.

25 Now I want to ask you a little bit about just general

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1 knowledge.

2 Have you heard or read or seen anything about the case
3 on the news or anything?

4 A I haven't.

5 Q Okay. What I want to do now is talk to you a little
6 bit about, a little bit more specific information about the
7 kind of case that brings us here. This is the only
8 opportunity where the lawyers can talk to you about your
9 views about the death penalty, okay, and I'm gonna give you
10 a little bit more information to, to just make sure we're,
11 we're on the same page and there's no right or wrong answer.
12 This is the one day in your life where everything you say is
13 correct. As long as it's what you believe, it's right.

14 Okay?

15 A Okay.

16 Q Now, with regard, there's some categories of murder
17 that resonate with people, and they, they seem to call out
18 for the death penalty with some folks, and I want to ask you
19 about the category of an intentional deliberate killing of a
20 child victim and it's with malice---

21 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
22 this point. My objection is that he's trying to strike out,
23 strike out the -- I mean stake out the juror at this point.

24 THE COURT: All right, sir. I'm gonna ask you to step
25 back to the jury room please, sir, just for a moment. I'll

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1 call you back in a minute.

2 (WHEREUPON, the following takes place outside the
3 presence of the juror.)

4 THE COURT: Mr. Barnette, state your objection please,
5 sir.

6 SOLICITOR BARNETTE: Your Honor, my objection is he's
7 giving specific facts of the case. I mean I know we talk
8 about aggravating circumstances, mitigating circumstances in
9 general, but I can see where this line of questioning is
10 going. He's going straight into the facts of the case, and
11 our law -- our case law doesn't allow that to happen in
12 South Carolina. I know he cited California case law, but
13 that's not Fourth Circuit or U.S. Supreme Court case. So,
14 I'd object to that line of questioning at this point.

15 MR. MCGUIRE: Well, Your Honor, first off, I think the
16 original objection was staking out. That's -- we need to
17 get the definition of staking out nailed down.

18 My understanding of staking out is me or the defense --
19 the lawyer doing the questioning making an effort to commit
20 a juror to a certain course of action if they can prove
21 something up in their case, and sometimes you can use a
22 hypothetical like hypothetically if the person was really,
23 really sorry, or maybe had a learning disability, in that
24 case, could you, could you, could you tell me that you would
25 lean more towards the, the life penalty, that's staking out.

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1 I'm not doing the staking out. That's, that's far away
2 from what I'm doing as possible.

3 what I'm doing is I'm asking about the case that's
4 going to be before these jurors, the category of case,
5 because I think we would all agree, without much
6 deliberation or pause, that the status of the victim in this
7 case being a child of eight years old is so impactful, so
8 moving that it could have the home run weight of a death
9 verdict with a potential juror, and I think we all know
10 that. We all agree on that. If anybody doesn't agree with
11 that, they should stand up and say I -- those jurors don't
12 exist because that would be ridiculous. That would be
13 ridiculous.

14 we know they exist. We can't have them on the jury.
15 The only way to make sure they're not on the jury is to ask
16 them about their opinions regarding that kind of category of
17 case. If we don't do it, they're gonna get over there, and
18 the State wants to shut down the questioning so they can
19 slide in the dark, because I'd be shooting in the dark
20 without being able to ask those questions, they would like
21 to sneak in the dark a couple of automatic death votes on
22 the juror, and the law is clear, pursuant to the Sixth and
23 Fourteenth Amendments, that the jury has to be as unbiased
24 as they are unsworn, and in capital cases, it's a heightened
25 requirement. It's a heightened liability requirement.

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1 If we don't ask that question, this whole process will
2 be repeated.

3 SOLICITOR BARNETTE: We're not trying to slide anything
4 in here, Your Honor. We're just trying to make sure the
5 jury -- he basically asked the basic questions. We're
6 trying to find out information concerning that.

7 what he's trying to do to ask that question is to
8 eliminate jurors. I mean he's gonna try to put it in such a
9 way they're gonna answer they're giving death in that
10 situation and substantially impair their ability to do that.
11 That's all this question is about.

12 The questioning is to see if you can get a fair and
13 impartial juror. There's gonna be factors that's brought up
14 in the trial one way or the other, and he's talking about
15 automatic. They're some people that couldn't give death to
16 somebody killing an eight year old child. We know that too.

17 THE COURT: I have a little bit of a problem with the
18 way you're asking the question, Mr. McGuire, and that is
19 that, when a jury is called upon to make that determination
20 during the sentencing phase of a trial, they're not only
21 presented with the act of the, we assume they've been found
22 guilty at that point in time, the act of the defendant, but
23 they should also, at that point in time, be given the
24 mitigating circumstances that would go against that
25 particular crime, and for you to simply ask the question

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1 concerning the aggravating circumstances without giving a
2 juror the benefit of knowing what mitigating circumstances
3 might exist, it seems to me also to be an effort to get a
4 juror to answer only in one direction.

5 MR. MCGUIRE: Well, Your Honor---

6 THE COURT: Because you, your own argument was that all
7 of us agree that that type of crime is heinous.

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: Okay. So, we all agree to that.

10 So, to ask the question without providing a juror with
11 any type of mitigating circumstances or information will
12 place a juror automatically in making the decision to say I
13 would find that person guilty and give them the death
14 penalty without knowing what factors might weigh against
15 that.

16 MR. MCGUIRE: Well, and---

17 THE COURT: I have a problem with that.

18 MR. MCGUIRE: Well, and I have further questions
19 regarding mitigation evidence. So, I do want to know if
20 they'll consider it---

21 THE COURT: You didn't state it in that question.

22 MR. MCGUIRE: Well, and---

23 THE COURT: And I don't know where we're going from
24 there.

25 MR. MCGUIRE: Sure. I mean---

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1 THE COURT: So, maybe we ought to talk about that.

2 MR. MCGUIRE: Well, I don't think there's a requirement
3 that every question I ask includes phrases---

4 THE COURT: I didn't say every question. If you were
5 to get up here and ask a juror would -- you know, given the
6 intentional, I forget the exact wording. I can get her to
7 play it back, intentional murder of a child --

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: -- sounds like to me -- I didn't hear much
10 in mitigation in that question.

11 MR. MCGUIRE: There was none.

12 THE COURT: Okay. That's exactly the point I'm trying
13 to make.

14 MR. MCGUIRE: Yes, sir. Well, I don't think I'm
15 required---

16 THE COURT: It is, it is a question designed but for
17 one answer.

18 MR. MCGUIRE: It's -- judge, I mean I have questions
19 about mitigation evidence, but I have to have a starting
20 point.

21 THE COURT: Well, maybe -- I don't know how you're
22 gonna word it. I don't tell you how to ask your questions.

23 MR. MCGUIRE: Sure.

24 THE COURT: I can tell you that I have a problem with
25 that question without -- if I go to a jury, if I'm

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1 presenting the sentencing phase of the trial to a jury, I'm
2 gonna be sure that they have the benefit of both the
3 aggravating circumstances as well as the mitigating
4 circumstances before they're called upon to state an opinion
5 as to what the penalty ought to be.

6 MR. MCGUIRE: I agree. I expect, I expect---

7 THE COURT: Okay. Then, then I've got a problem with
8 simply asking a juror if, if I lay out all the bad facts and
9 say would you give that person the death penalty
10 automatically. I think that basically requires -- it
11 suggests an answer.

12 MR. MCGUIRE: Well, I'm not asking them---

13 THE COURT: And our question -- the question here is to
14 determine -- the inquiry in South Carolina has always been
15 can the juror do his job. That is to weigh the facts and
16 circumstances on both sides, listen to the instructions by
17 the judge, and make a decision according to the law and the
18 evidence. All of the evidence. Not just one factor of the
19 evidence.

20 MR. MCGUIRE: Yes, sir, and I---

21 THE COURT: And I see this -- I see this as suggesting
22 an answer to a juror---

23 MR. MCGUIRE: Well---

24 THE COURT: ---that would place the juror in a, in a
25 bad light before the Court.

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1 MR. MCGUIRE: Well, it's, it's -- judge, it's kind of
2 like --.

3 MR. YOUNG: It's the---

4 THE COURT: Now, I'm not gonna allow two people to
5 argue your motion.

6 MR. MCGUIRE: No, and he's not.

7 And, judge, it's, it's kind of like looking at a jury
8 charge in a whole. I mean obviously the whole charge can't
9 be one sentence. You have to look at a jury charge as the
10 whole, and they'll be some things in a jury charge that are
11 favorable for the State. They're some favorable from the
12 defense which you look at as a whole.

13 You have to have some starting point, and there's --
14 and that's the point of conviction based on the -- the point
15 of conviction like you said. When you -- in your
16 preliminary comments when you said I want to put you in a,
17 in a situation, you went back there, and you came back out
18 to start the second part of the trial, already convicted the
19 person, and I'm placing them in that position, and the
20 starting point is in the category of this type of offense,
21 what are your personal views regarding the death penalty,
22 and I have to have a starting point.

23 THE COURT: But, again, the, the personal views, if I
24 simply give someone the most heinous facts I can give them
25 about the event, and don't give them the benefit of any

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1 mitigating -- I assume you plan to present mitigating
2 circumstances in the case.

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: Then I don't find that to be a fair
5 question to reach the point that we're trying to reach,
6 which is to decide whether or not the juror is willing to do
7 his job under the instructions given by the Court and follow
8 the law and consider the evidence both ways. That's, that's
9 the test. I just, I just read it. I think that's what it
10 says in the cases here.

11 MR. MCGUIRE: Sure.

12 And my job is to determine, based on a more informal
13 questioning approach, to determine if the juror has
14 personally held beliefs or views that would substantially
15 impair his ability to do that job, and I need---

16 THE COURT: And, again, if you ask that question in
17 that fashion, I don't have a problem with that. But that's
18 not what you asked him. You asked him if, if the gentleman
19 was convicted of the intentional murder of a child, I think
20 the next question is -- read me the question.

21 (WHEREUPON, the last question of Mr. McGuire was read
22 back to the Court at this time.)

23 THE COURT: Okay. How do you intend to complete that
24 question?

25 MR. MCGUIRE: Well, I'm gonna see what his answer is

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1 and---

2 THE COURT: All right. I'll sustain the objection.

3 MR. MCGUIRE: And -- so, I'm not allowed to ask that
4 question?

5 THE COURT: Not in that form.

6 MR. MCGUIRE: Okay. My question that -- well, just so
7 we can -- we need a -- with all due respect, I'd ask that we
8 have an opportunity to hammer out the question that I'm
9 allowed to ask.

10 THE COURT: I'm not suggesting questions to you today.
11 That's not my job.

12 MR. MCGUIRE: I have---

13 THE COURT: I will tell you, again, that the rule that
14 I understand in this state is the inquiry at this point in
15 time is to determine whether or not a juror has an open mind
16 and is willing to consider all of the law and the evidence
17 in this case, and that juror, given the -- all of the
18 evidence, both aggravating and mitigating evidence, could
19 reach a verdict based upon the law and the evidence. That's
20 the inquiry I think I'm suppose to be conducting.

21 Now, I find that a question that simply presents to a
22 jury the most heinous facts of the, of the case, the, the,
23 the aggravating factors, and does not give him anything to
24 weigh that against, is not a question designed to get to the
25 inquiry that the Court has asked us to get to. So, I'm

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1 sustaining that objection.

2 MR. MCGUIRE: Is it based on a staking out?

3 THE COURT: Just like you handed me the, the Longworth
4 case. The question asked by the judge, I would sustain an
5 objection to that question.

6 MR. MCGUIRE: In Longworth?

7 THE COURT: Yes, sir, the one that says could you give
8 the triggerman, you know. Again, what are the factors
9 that -- what are the factors in both sides of it?

10 I don't think you can get into asking questions and
11 simply ask somebody the most heinous facts without weighing
12 it, without indicating there's any evidence on the other
13 side of the case. There's no mitigating factors that have
14 been presented to that, that juror for them to consider.

15 It's like we give them the worst and think they'll dig
16 out the best without knowing what it is?

17 Is that your position?

18 MR. MCGUIRE: No, sir.

19 My position is that I have to establish whether the
20 juror has deeply held beliefs with regard to this category
21 of killing, this category of murder that does, in fact,
22 involve the very moving factor---

23 THE COURT: Well, see, your question didn't go on to
24 say that well, that he's proven guilty of doing that, but
25 there's five or six mitigating factors on the other side

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1 that you'd have to consider, would you be willing to
2 consider those other factors before you made a decision even
3 though it was this category of crime. You didn't give him
4 that option. You didn't ask him -- I asked you to finish
5 the question, and the way you finished it I heard nothing
6 about the fact that there might be some factors on the other
7 side of that case.

8 MR. MCGUIRE: Right. I would---

9 THE COURT: And -- so, I've sustained the objection.

10 MR. MCGUIRE: Okay. So, I'm not allowed to ask that
11 question?

12 THE COURT: That's right.

13 MR. MCGUIRE: Okay.

14 THE COURT: And we'll get into the more -- I'm sure
15 we're gonna get into some more as we go down through here.

16 MR. MCGUIRE: Sure.

17 For the record, I have to state my objection to
18 preserve it. I don't want to fail Mr. Blackwell.

19 THE COURT: Please do.

20 MR. MCGUIRE: That Mr. Blackwell's right to an
21 impartial and unbiased jury is found within the guarantees
22 of the Sixth and Fourteenth Amendment, and that failure to
23 ask a category specific question, which is a child victim,
24 would be a denial of his---

25 THE COURT: If that's all you're gonna ask them, I'll

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1 make the same ruling.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: You can put that on the record that you
4 object to that.

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: Okay. Bring the juror back.

7 (WHEREUPON, the following takes place within the
8 presence of the juror.)

9 THE COURT: Thank you, Mr. Kimmons. I appreciate your,
10 your patience. I will let you know that I have sustained
11 the State's objection to the last question that the defense
12 asked, and I'm gonna ask the defense to ask another
13 question.

14 Yes, sir.

15 MR. MCGUIRE: Thank you, judge.

16 CONTINUED EXAMINATION

17 BY MR. MCGUIRE:

18 Q I'll come back up here and talk to you if I could.

19 What I'm gonna do is, is, is try to string that out a
20 little bit longer, and that is you got some information from
21 the judge and the Court and you probably have your own
22 definition of, of murder as you sit there. But my guess is
23 no one's actually told you the exact legal definition of
24 murder in South Carolina.

25 A (Nods negatively.)

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1 Q Got to say no.

2 THE COURT: Answer verbally, sir.

3 A No.

4 THE COURT: Thank you. You begin to shake your head,
5 but we got to -- you got to talk to us here. Thank you,
6 sir.

7 MR. MCGUIRE: Thanks, judge.

8 And I'm not picking on you. You have no reason to know
9 that definition, but what I'm gonna do is I'm gonna give it
10 to you.

11 Okay?

12 A All right.

13 Q Murder, in South Carolina, is a deliberate act to take
14 an innocent person's life with malice aforethought. Now,
15 malice aforethought is where the person, the killer, acts
16 with a black, malignant heart fatally bent on evil or
17 mischief. Pretty heavy language. It's not an accident.
18 It's not self-defense. It's not somebody so crazy they
19 don't know what they're doing. It's a person who knows
20 right from wrong, and acting to kill with an evil intent.

21 Are you with me?

22 SOLICITOR BARNETTE: Your Honor, I'm gonna object.

23 He's compounding several things into one question now. I
24 mean he's bringing out self-defense, accident, whatever with
25 this.

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1 THE COURT: I'm gonna let him ask his questions. So
2 far he -- I'll -- so far he hasn't run afoul of anything I
3 need to make a ruling.

4 You may proceed.

5 MR. MCGUIRE: Thanks, judge.

6 And, again, that's just the, the basic legal definition
7 of murder in South Carolina.

8 Are you with me?

9 A Yes, sir.

10 Q Okay. Now, what I'm gonna do is add the -- what's
11 called an aggravating factor to that, but before I do it,
12 what I'm gonna do is I'm gonna ask you to envision sort of
13 three types of people kind of like the three types that the
14 judge asked you about. And it's like some people would
15 almost always vote for death in this situation. Some people
16 would pretty much never vote for death and some people would
17 be maybe on the fence.

18 Okay. And in the situation where it's that malice
19 murder, the intentional killing of somebody with, with an
20 evil intent, and the victim is an eight year old child,
21 where do you fit in those three categories?

22 A I think it would come down to if there was any beating
23 of the child or, I don't know what the word, you know.
24 Something sexual that went on or something like that.

25 Q Okay. We actually---

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1 A I mean those would be things that would sway, you know,
2 more toward the death penalty.

3 Q Okay. We're actually not able to go into the whole
4 case right now or all the facts. Basically I can only just
5 give you that category, and in that category, a deliberate
6 killing of an eight year old child, where, where are you?

7 Does that move you straight to the death penalty?

8 A No, not necessarily.

9 Q Okay. And there's, there's this thing called
10 mitigation evidence. The judge talked to you a little bit
11 about it.

12 Sometimes that's referred to as the background and
13 character of somebody. Like their walk in life, things that
14 have been done to them, and things that they've done to
15 other people. Kind of their experience in life.

16 When it comes to, to fixing punishment for that
17 intentional killing, and in the case we're talking about,
18 the category of a child victim, is the background of the
19 killer important in fixing the punishment?

20 A That's a hard question.

21 Q Yeah, and I actually should of used the word relevant
22 cause that's sort of the legal word that we use.

23 Is, is the background of the killer relevant in
24 determining and fixing punishment for that intentional
25 killing of a child?

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1 A I don't think so.

2 Q Okay. You don't think so?

3 I need a---

4 A No it's not.

5 Q It's not?

6 Not relevant?

7 A No.

8 Q Okay. And I just want to make sure that we're clear on
9 this.

10 If you, if you did find a person guilty of the
11 intentional deliberate taking of a child's life with malice,
12 with evil in their heart, could the life penalty, letting
13 them live out their years in prison, could that be severe
14 enough to punish that kind of killing?

15 A Yes.

16 Q Okay. Do you think life without parole is a severe
17 punishment?

18 A Do I think it's a severe punishment?

19 Q Sure.

20 A Yes.

21 Q Okay. Sometimes you hear Club Fed and people make
22 jokes about how cushy prison can be. Three hots and a cot
23 is a phrase that people throw around, and they're shocked
24 that somebody might have television or, or be able to lift
25 weights.

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1 Do you -- but it sounds like you consider the life
2 penalty to be a severe one?

3 A Yes.

4 Q Did you know that life in South Carolina is, in fact,
5 without parole, that the person would never get out?

6 A Right.

7 Q You agree -- you already knew that?

8 A No, I didn't know it.

9 Q Okay.

10 A But I mean, without parole, that -- yeah, they're not
11 getting out.

12 Q Yeah, the judge would actually instruct you that the
13 only penalty, if you get to a second phase of a trial, would
14 be the death penalty and life without parole, and when he
15 says without parole, we're talking the person never gets out
16 until he dies.

17 Can you accept that for what it is, where the judge
18 would tell you that it would, in fact, be life without
19 parole?

20 A Yes, sir.

21 Q It's -- before 1996 we actually had parole in South
22 Carolina and there were---

23 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
24 this line of questioning. It's not pertinent in this case.

25 THE COURT: Sustain the objection.

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1 Q Okay.

2 THE COURT: I think you -- he's asked -- answered the
3 questions as to what---

4 MR. MCGUIRE: Sure.

5 THE COURT: -- his understanding of life without parole
6 means. I think it's been asked and answered. I don't know
7 where we're going about the history on it.

8 MR. MCGUIRE: Okay.

9 THE COURT: I'll sustain the objection.

10 Q What -- I just wanted to make sure you never heard
11 anything on TV about somebody being up for parole and you
12 thought we might still have it cause we don't.

13 Okay. With regard to the first phase of a trial, it's
14 very traditional, and what I mean by that is all 12 jurors
15 would have to agree on a verdict or you'd have a mistrial
16 and the case would have to be tried again, and I want to
17 talk to you a little bit about the penalty phase cause it's
18 so foreign to everybody else and it's so different. This is
19 the opportunity that lawyers have to talk to you about the
20 penalty phase, some principles of law, and I'm gonna ask you
21 if you can follow these principles.

22 Okay?

23 A Okay.

24 Q The, the penalty phase in a, in a trial like this
25 involves, involves that concept that the judge talked about

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1 called mitigation evidence, that background stuff, and the
2 fact is that jurors are required to, to listen to that type
3 of evidence. And the ultimate decision that a juror makes
4 is what's called a moral -- an individual moral judgment, an
5 individual decision. Not a group decision.

6 If -- did you know that?

7 A Um.

8 Q Okay.

9 A No.

10 Q Okay. A lot of people that I talk to in cases like
11 this actually think that if the State proves certain things
12 the death penalty is automatic. But it sounds like you --
13 that's not your belief, right?

14 A (Witness nods negatively.)

15 Q It sounds like you knew, before you came here, that the
16 death penalty is never required.

17 Is that true?

18 A No, I didn't know it was never required.

19 Q Right.

20 Some people actually believe, based on TV and other
21 stuff, that if the State proves certain things, like certain
22 aggravating circumstances, that the death penalty would
23 simply be required. Like say if an officer was shot in the
24 line of duty.

25 But did you, did you know that the death penalty is

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1 absolutely never required?

2 A No, I didn't know that.

3 Q Okay. Now you do?

4 A Now I do.

5 Q Okay. And the penalty phase is also different in a way
6 because people don't have to agree on things like they do in
7 the -- a traditional trial. The traditional trial is do you
8 have the right guy, did he do it, did every -- everybody
9 agrees. All 12 agree on the same thing, that the, that the
10 same elements of the crime were proven.

11 And in a penalty phase, different jurors can, can vote
12 for the penalty based on different reasons, and the way that
13 works is something called mitigation, which is what the
14 judge talked about earlier, and I want to see if you can
15 agree with these principles of individuality in the penalty
16 phase, and the way that works is---

17 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
18 this point. That's not -- that's not the law of this state.
19 That's nothing that the Court will be instructing them.

20 THE COURT: I'm gonna ask the juror to step back into
21 the jury room while we discuss this.

22 (WHEREUPON, the following takes place outside the
23 presence of the juror.)

24 THE COURT: Mr. Barnette.

25 SOLICITOR BARNETTE: Your Honor, he's at the point now,

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1 the jury's never been instructed on that. They're gonna be
2 instructed to vote the way they feel about it. He's trying
3 to now get into the point about individually looking at and
4 saying they can vote one way or vote a different way or
5 whatever from that standpoint.

6 That's something that's in their province from that
7 standpoint. That's not part of this sentencing from that
8 standpoint.

9 Our position is that they have to look -- we're looking
10 for jurors who can be fair and impartial. We're not looking
11 at jurors about individualism or anything like that. I
12 think it's getting to the point now where you're invading
13 the province of that juror by asking those type of
14 questions.

15 THE COURT: Exactly where was that question going, Mr.
16 McGuire?

17 MR. MCGUIRE: Yes, sir.

18 Well, basically there's no unanimity requirement for
19 mitigation evidence. The case on point is a United States
20 case of Maryland versus Midlands where Maryland tried to
21 pass a statute where, for a jury to consider mitigation
22 evidence, all 12 had to agree and find -- and agree that the
23 mitigation evidence existed, and the United States Supreme
24 Court struck that down saying that the penalty phase is an
25 individual moral judgment, and different jurors can find

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1 mitigation evidence individually, and it can be different
2 from everybody else. In fact, it can be only one to find
3 mitigation evidence and all others could take the position
4 that what they find to exist doesn't exist.

5 This, this whole process is to see if he can do his
6 job, follow the law and respect principles in the law, and
7 I'm just gonna ask him is that a principle that he can, he
8 can follow, he can agree with, that it can be an individual
9 process with regard to finding different reasons to vote for
10 the life penalty, and that is the law. The United States
11 Supreme Court said so.

12 SOLICITOR BARNETTE: Well, Your Honor, first I'd like
13 to see the case, number one, cause we've already had several
14 cases cited. We haven't been able to show anything out of
15 them.

16 The second thing, I think the State of Florida allows
17 people -- it doesn't have to be a unanimous vote for death.
18 It's ten and two in their state. So, I mean if we're gonna
19 talk about different states, we're gonna be talking about
20 different things from that standpoint.

21 But here he is -- I mean a juror can find mitigating
22 and aggravating circumstances and give life or death. They
23 can find both. It does matter. But I think when he starts
24 talking about individualism or whatever, it's based on what
25 the jury comes down to. They, they reach the verdict. If

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1 they can't reach a verdict, obviously it's gonna be in a
2 situation of life instead of death.

3 I think when he starts talking about mitigation
4 circumstances, he can talk in general about them, but now
5 we're getting specifics with that juror about specifics on
6 mitigating evidence and what he would think or what he --
7 and basically Mr. McGuire is, I don't think, stating the law
8 correctly to the jury at this point.

9 MR. MCGUIRE: Actually I'm stating the law exactly as
10 the United States Supreme Court has set it out to be, and
11 to -- and actually what Mr. Barnette said was a fundamental
12 misunderstanding of the law. Jurors can't just individually
13 find aggravation and find mitigation. It only applies to
14 mitigation.

15 The Court is well aware that all 12 jurors would have
16 to agree on the existence of an aggravating circumstance
17 beyond a reasonable doubt. That is consistent with jurors
18 normally views. They believe that. What they don't -- when
19 they show up, they are completely in the dark about a
20 process that would allow 12 individual people to come up
21 with a different reason, in a penalty phase, to vote for the
22 ultimate penalty, whichever way they go.

23 In terms of the life -- I'm sorry. In terms of voting
24 for the life penalty, different jurors, individual jurors,
25 can have different reasons. What I was getting to---

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1 THE COURT: I'm not arguing with that point. I'm
2 trying to find out where that question was going to go. I
3 never have heard where it was gonna go.

4 MR. MCGUIRE: Well, I'm gonna admit to be---

5 THE COURT: That's the question and I'm still kind of
6 on that. I kind of want to know an answer to that one.

7 MR. MCGUIRE: Yes, sir, and, and I admit it was a
8 little wordy. It was a pretty inartful question. It was a
9 little long, but what I was going to do is just tell him---

10 THE COURT: Well, inartfulness doesn't bother me so
11 much. I just need to know where it was going.

12 MR. MCGUIRE: Oh, where it was going was, and the way
13 this works, in practical terms, by analogy, is one person
14 could find something that resonates with them in the
15 defendant's background, how he grew up. Somebody else over
16 here could find something, some good deed that he did that
17 might resonate with him. Somebody else could say I saw he
18 had a relationship with his family that might be important
19 to me, and just, by example, can you see how everybody could
20 have a different reason.

21 THE COURT: Well, are you filibustering me or are you
22 gonna answer my question?

23 MR. MCGUIRE: And then -- I'm sorry.

24 THE COURT: What was the question -- where was the
25 question going?

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1 MR. MCGUIRE: So, after---

2 THE COURT: Tell me what the question is.

3 MR. MCGUIRE: Yes, sir.

4 So, after saying -- after giving him his examples, I
5 was just gonna say can -- is that a principle of law that
6 you can abide by and follow and allow people to have
7 different reasons for voting for the life penalty.

8 THE COURT: Mr. Barnette.

9 SOLICITOR BARNETTE: Yes, sir.

10 THE COURT: I think I finally heard where the question
11 was going.

12 SOLICITOR BARNETTE: Your Honor, first thing I want to
13 clarify something I said, and I think I said it this way. I
14 said you can find aggravating circumstances and mitigating
15 circumstance and still find life or death. That's what I
16 said. I didn't say that they can take and pick different
17 aggravators. Obviously all 12 have to agree on the
18 aggravators in order to give the death penalty from that
19 standpoint.

20 The problem he's doing is he wants to try to basically
21 pick and choose what he wants to do individually. He wants
22 to go in there and say you can find these different
23 mitigating circumstances. They can find all five mitigating
24 circumstances and give him death that they've submitted.
25 That's a misprision of a thought that basically they would

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1 have to weigh just like the Court's talking about and take a
2 look at those, and obviously jurors can make different
3 decisions, but that's up to the jury to make that decision,
4 how they -- you decide that, and now we're getting away from
5 the general principles of voir dire and specific instances
6 of voir dire with his questioning.

7 THE COURT: All right. Restate the question again.

8 MR. MCGUIRE: It would be along the lines of and
9 Mr. Juror, the way mitigation evidence can work in a capital
10 case in terms of it not having to be unanimous, one juror
11 could find one reason, they could see something in his
12 background, somebody could see something in his relationship
13 with his family, somebody could see something -- some good
14 deed that he did in his past, and they could all be
15 different, and -- but they could all vote for life if they
16 wanted to---

17 THE COURT: What are you asking this fellow?

18 MR. MCGUIRE: Is that, is that a principle of law that
19 you can respect, that people could have different reasons,
20 they don't all have to agree on the existence of mitigation
21 evidence before it's considered. Is that a principle of law
22 you can respect and follow.

23 THE COURT: And you object to that question?

24 I didn't hear anything specific in that question.

25 SOLICITOR BARNETTE: Yes, sir, if he's in general I

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1 don't have a problem with it. It's when he gets into
2 specifics.

3 THE COURT: All right. I don't have a problem with
4 that question the way you asked it that time.

5 MR. MCGUIRE: I would never go into specifics. I mean
6 I would just say -- well, I want, I want to make sure I
7 don't run afoul with the judge.

8 THE COURT: Except on the other side I understand.

9 MR. MCGUIRE: Right.

10 THE COURT: Go ahead.

11 MR. MCGUIRE: Yeah, I just don't want to run afoul of
12 the Court's---

13 THE COURT: You probably shouldn't.

14 MR. MCGUIRE: ---ruling in that.

15 THE COURT: Go ahead.

16 MR. MCGUIRE: In terms of -- I'm not, I'm not shopping
17 mitigation. I'm not asking them if mitigation that I have
18 is gonna---

19 THE COURT: Well, the way you asked the question that
20 last time, you said do you realize people, you know,
21 different jurors could see mitigation factors in a variety
22 of circumstances, do you agree that that could happen, I
23 have no problem with you asking that question.

24 MR. MCGUIRE: Right, and I'll just throw out a couple
25 of examples just to show the difference.

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1 THE COURT: Now, see, now you've gone and changed it on
2 me. Don't do that.

3 MR. MCGUIRE: Okay. That's what I wanted, that's what
4 I wanted to clarify. I'm---

5 THE COURT: See, you have that tendency, Mr. McGuire.
6 You tend to push the bubble a few times down the road, and I
7 understand that, that's your job.

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: I got no problem with that, but, you know,
10 again, I don't have any problem with you talking in general
11 about jurors having the right to consider any factor they
12 consider to be mitigating circumstances in reaching their
13 verdict. I don't have a problem with you asking that
14 question.

15 MR. MCGUIRE: And it---

16 THE COURT: I think that's a correct statement of the
17 law. They do have a right to consider it.

18 MR. MCGUIRE: Oh, absolutely.

19 THE COURT: Whatever factors are relevant in
20 mitigation. I don't have any problem with that.

21 MR. MCGUIRE: Yes, sir, and the, and the only reason I
22 would go specific at all -- and I'm saying any of these
23 factors apply to Mr. Blackwell.

24 THE COURT: Well, if you're gonna ask specific
25 questions you better tell me about it so we can deal with

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1 it.

2 MR. MCGUIRE: That's why I'm standing right here.

3 That's why I'm standing right here, judge.

4 The only thing I would do is be just specific enough to
5 draw the line that they are, in fact, different things. For
6 instance, it can be something in his, his background growing
7 up. It can be a relationship with somebody. It can be
8 something good that he's done in the past. Now, that's
9 pretty general. That's not very specific and that's how I
10 would do it just to delineate the differences.

11 THE COURT: All right. Mr. Barnette, anything further?

12 SOLICITOR BARNETTE: Your Honor, I've stated my
13 objection. I think if he's asked the question the way -- a
14 couple times back I think it would be okay. But he keeps,
15 like you say, keeps changing it.

16 THE COURT: I think he understands how I feel about it.
17 I'm having a problem with those generalities. I'm hoping to
18 get through the first one in two hours. I'm hoping. I
19 don't think we're gonna make it.

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: It will be a long month.

22 Call him in.

23 (WHEREUPON, the following takes place within the
24 presence of the juror.)

25 THE COURT: All right, sir. Thank you for your, for

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1 your patience. I'll allow the defense to continue to ask
2 questions. Thank you, sir.

3 CONTINUED EXAMINATION

4 BY MR. MCGUIRE:

5 Q Thanks, Mr. Kimmons. We're gonna get you a lot of
6 exercise going back and forth here.

7 So, the point I wanted to make was that the penalty
8 phase is just very very different from a regular trial, and
9 when it comes to the mitigation evidence that the judge was
10 talking about, different individual jurors can see different
11 mitigation evidence. For instance, somebody sitting here
12 might say I saw something in the, the fellow's background
13 that resonated with me. Somebody might say I saw something
14 with a relationship he had with a family member that was
15 redeeming or somebody over here could say I saw a good deed
16 that he did, and that, that showed a spark of humanity to
17 me, and you could see how all those reasons are different?

18 A Uh huh. (Affirmative).

19 Q Okay. And any one of those jurors could vote for, for
20 the life penalty just based on that one reason or a
21 combination of reasons, and all the reasons don't have to be
22 the same.

23 Is that a principle of law that you could respect and
24 follow?

25 A Yes.

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1 Q Okay. What I want to do now is just go backwards a
2 little bit just to ask you some, some very general
3 questions.

4 Do you think we use the death penalty frequently,
5 enough in South Carolina, or too much, or where do you fall
6 on that?

7 A I haven't really kept up with it a whole lot to be
8 honest.

9 Q Okay. Do you think it's an effective tool in the
10 criminal justice system?

11 Do you think it works and, and deters murder?

12 A Yes, I do.

13 Q Okay. So, you think it serves a useful function?

14 A Yes.

15 Q And why is that?

16 Why does it serve that useful function to you?

17 I don't want to put words in your mouth.

18 A Well, it, to me, it would seem if, if people do certain
19 things and they know it could cause them to die, that would
20 be a deterrent not to do certain things.

21 Q Okay. Okay. What I want to talk to, to you now a
22 little bit is, you know, we have a lot of rules in court.
23 Some of them are for me, some of them are for the judge, but
24 some of them are for you, and there's a case, a famous case
25 that came out of Georgia, and it says these proceedings

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1 shall be conducted with dignity, and while we expect, in
2 deliberations, civil discourse, we expect them to be,
3 deliberations to be conducted---

4 SOLICITOR BARNETTE: Your Honor, I'm gonna object.
5 He's not asking a question. He's just basically stating a
6 statement.

7 THE COURT: Let's try to get to a question.

8 MR. MCGUIRE: There's a question in there.

9 If you saw dignity leave the proceedings, could you
10 step in and maybe pass a note out to the judge saying
11 dignity has left this, we got to get back to civil
12 discourse?

13 A Yes.

14 Q If you saw somebody say -- you know, cause the way this
15 works, and if, if the -- in cases where the jury doesn't
16 agree, they usually send out a note to the judge saying we
17 can't agree and the judge---

18 SOLICITOR BARNETTE: Objection, Your Honor.

19 why are we getting into all this for?

20 I mean this is not---

21 THE COURT: Sustained.

22 Q Okay. The juror's individual decision in a, in a case
23 like this is what's called an individual moral judgment, and
24 what it means is if it harms---

25 SOLICITOR BARNETTE: Objection, Your Honor.

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1 I mean what are we gonna do?

2 Are we just gonna go through moral judgments and
3 everything else?

4 Were getting beyond---

5 THE COURT: I'll ask the witness -- the juror to step
6 back to the jury room.

7 (WHEREUPON, the following takes place outside the
8 presence of the juror.)

9 THE COURT: I'm not sure where that question was going.

10 MR. MCGUIRE: Well, I didn't -- I wasn't allowed to get
11 to the end of it.

12 THE COURT: Well, it was asking about moral judgments
13 on something and I'm---

14 MR. MCGUIRE: Yes, sir. Well, that's---

15 THE COURT: We're kind of in the area of voting what
16 would constitute a mistrial, things like that.

17 MR. MCGUIRE: Well, actually what---

18 THE COURT: Jury dynamics I guess is what it was.

19 MR. MCGUIRE: Sure.

20 What I was---

21 THE COURT: It seems that's where we were.

22 MR. MCGUIRE: Well, right. This is my opportunity to
23 see if he can comply with the law and respect the law as it
24 applies to the penalty phase, and the law in the penalty
25 phase is, and it's been this way forever, which is that the

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1 decision -- it's not a decision of science like the first
2 phase where something can be determined yes or no, like the
3 caliber of a bullet, this is described as an individual
4 moral judgment, and I assume that's the language that the
5 Court's going to charge to the jury, and the individual
6 moral judgment, once a juror reaches that place, if it would
7 harm their conscience to change their position, that would
8 be a violation of the juror oath. What I was gonna ask him
9 is that a principle of law that he can respect and follow.

10 THE COURT: Mr. Barnette.

11 SOLICITOR BARNETTE: Your Honor, the moral judgment, I
12 think he's trying to back-door into the situation. I know
13 you sustained the objection concerning changes he wanted to
14 make to the three types of jurors from that standpoint.

15 The thing I get tired about is he keeps preaching about
16 dignity and things like that. I didn't see any law on that.
17 He talks about a case out of Georgia. This is South
18 Carolina, and I'm just getting tired of him preaching what
19 he thinks the law is from that standpoint.

20 I know what the Court will give. It's the correct law
21 in this situation. He's here to question the jurors on
22 what -- like, for example, ask the question on the death
23 penalty. There's no problem with that because obviously
24 everybody has a right to figure out what the death penalty
25 is. But now he's going into moral judgments. He's going

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1 into talking about mistrials. I don't know what else he's
2 getting ready to talk about, but that's just crazy from that
3 standpoint.

4 THE COURT: I don't have a specific objection to rule
5 on. So, I'm gonna let you finish your question and if
6 Mr. Barnette wishes to object --

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: -- I'll entertain it.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: Bring the juror back.

11 (WHEREUPON, the following takes place within the
12 presence of the juror.)

13 THE COURT: You may resume your questioning.

14 CONTINUED EXAMINATION

15 BY MR. MCGUIRE:

16 Q Have we warn you out yet --

17 A No.

18 Q -- walking back and forth?

19 A No, I'm fine.

20 THE COURT: Ask questions please.

21 MR. MCGUIRE: Yes, sir, Your Honor.

22 THE COURT: Thank you.

23 Q What I want to ask you is if another principle of the,
24 of the law as it exist in this state and in this country,
25 and that is once a juror reaches a decision in a capital

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1 case, it's called their individual moral judgment. And if
2 it would violate or harm their conscience to change their
3 position, and you saw somebody trying to change their
4 position, could you step in---

5 SOLICITOR BARNETTE: Objection, Your Honor. I mean
6 that's not his job as a juror. His job is to be -- to weigh
7 the evidence and so forth.

8 THE COURT: I'm gonna sustain the objection.

9 You're asking whether he would step in with another
10 juror?

11 MR. MCGUIRE: Sure. I can rephrase it.

12 THE COURT: I think you should.

13 MR. MCGUIRE: Thank you, Your Honor.

14 Q Once, once a juror reaches their individual moral
15 judgment, they have a duty and obligation to have that
16 position heard in Court.

17 Is that a principle you can respect and follow?

18 A Yes.

19 Q That it's not just a throw in with the majority to have
20 12 people agree?

21 Do you understand the difference -- what I'm saying?

22 A Yes, I do.

23 Q Okay. That, that sake of unanimity is less than the
24 individual moral judgment and the person's commitment to it
25 and respect for it.

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1 Do you understand that?

2 A Yes, sir.

3 MR. MCGUIRE: Okay. Judge, based on that, I'm gonna
4 stand down.

5 THE COURT: Thank you, sir.

6 MR. MCGUIRE: Thank you, Your Honor.

7 THE COURT: Mr. Barnette.

8 SOLICITOR BARNETTE: May it please the Court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 EXAMINATION

12 BY SOLICITOR BARNETTE:

13 Q Mr. Kimmons, my name is Barry Barnette. Along with me
14 is Derrick Bulsa and Russell Ghent. We're gonna be
15 representing the State in this case.

16 How's your dad doing by the way if I can ask?

17 A He's good.

18 Q Okay. I hadn't seen him for about ten years like you
19 said. It's when I was a judge down in Magistrate's Court
20 from there.

21 Going back, I know he was in -- a jailor for a period
22 of time.

23 Was he in the Sheriff's Department before that also?

24 A Before that, yes, sir.

25 Q Okay. On that -- and did that have -- did that have an

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1 affect on your life, him being a police officer or being in
2 law enforcement or anything from that?

3 A No, sir.

4 Q Okay. I know Mr. McGuire asked you about your opinion
5 on the death penalty.

6 You feel like it depends on the circumstances you would
7 hear as how you discern, discern what the penalty would be
8 in this case based off your opinion?

9 A Yes.

10 Q You feel like if you had the right circumstances in the
11 case you could give death if it was appropriate?

12 A If it's right, yes. If it was appropriate.

13 Q And if you heard the right circumstances like -- we get
14 to do what we call aggravating circumstances. Not every
15 murder could be a death penalty case. We had to prove an
16 aggravating circumstance in order to prove the murder to be
17 considered for the death penalty.

18 Do you understand that?

19 A Yes, sir.

20 Q And they have a right to do mitigating circumstances,
21 and they'll bring those up to you if we get to the
22 sentencing phase.

23 And you'd weigh those too?

24 A Yes, sir.

25 Q And if you felt like it was appropriate, if, if we

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1 didn't prove the aggravating circumstances, that you could
2 find a life sentence in that case if we didn't prove it?

3 A If you what?

4 Q Let me rephrase that question. It's kind of confusing
5 from that standpoint.

6 We go through the trial and everything, and we have to
7 prove the aggravating circumstances to your satisfaction.

8 If we do that, do you feel like death could be
9 appropriate in that situation?

10 A Yes.

11 Q And, of course, if we didn't prove them, you realize
12 that the life sentence would have to be the sentence in that
13 case?

14 A Yes.

15 Q Okay. From there.

16 And you realize, at the end of the trial, if you found
17 death as a group, all 12 jurors found death as the
18 appropriate sentence, could you sign your name to a piece of
19 paper saying that death was the appropriate sentence in this
20 case?

21 A Yes.

22 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
23 please.

24 THE COURT: Yes, sir.

25 (Pause.)

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1 SOLICITOR BARNETTE: Nothing else, Your Honor.

2 Thank you.

3 MR. MCGUIRE: Just very briefly, Your Honor.

4 EXAMINATION

5 BY MR. MCGUIRE:

6 Q I just want to make sure I didn't mishear something.

7 The prosecutor was talking about if they could prove
8 that aggravating circumstance, and then he asked would you
9 feel the death penalty was appropriate in that situation.

10 Tell me what you meant by that answer.

11 A Well, it would go -- the proof would be at the end,
12 after everything was weighed, and the way I was seeing it.

13 Q Okay. You weren't saying if they auto -- if they
14 proved an aggravating circumstance, that wouldn't secure a
15 vote of death from you automatically?

16 A If I'm understanding it correctly, no, not
17 automatically.

18 Q Okay. And the aggravating circumstances we're talking
19 about in this case is that category that we talked about
20 earlier of a child victim.

21 If they proved that aggravating circumstance, does that
22 commit you to the death penalty as being appropriate?

23 A No.

24 Q Okay. It sounds like -- I just want to make sure that,
25 that everything we said earlier was still true.

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1 A Right.

2 Q Thank you, sir.

3 THE COURT: All right, sir. Anything further, Mr.
4 Barnette?

5 SOLICITOR BARNETTE: I have nothing further, Your
6 Honor.

7 THE COURT: All right, sir. I'll ask you to step back
8 to the jury room for me.

9 THE JUROR: All right.

10 (WHEREUPON, the following takes place outside the
11 presence of the juror.)

12 THE COURT: Defense have objections to the
13 qualification of the juror?

14 MR. MCGUIRE: No, sir.

15 THE COURT: State have any objection to qualification
16 of the juror?

17 SOLICITOR BARNETTE: No, sir.

18 THE COURT: All right.

19 MR. MCGUIRE: I'm sorry. If I can I restate. I
20 misspoke, judge.

21 Just with regard to whether he could consider
22 mitigation evidence and the way I explained it to him is the
23 background of the person, things done to him and things he's
24 done, he indicated the background wouldn't be relevant. So,
25 I'd move to strike him for cause on that ground, but not on

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1 his, his death views aside from that.

2 THE COURT: Mr. Barnette.

3 SOLICITOR BARNETTE: Your Honor, I disagree totally
4 with him. I don't know how you could say -- I mean he's so
5 confusing in the way he asked the questions and everything.
6 I don't see how he gets the benefit from that. We have a
7 fair juror that could listen to both sides. Explained that.
8 I mean basically he answered the question and Mr. McGuire
9 went back and asked him about considering the circumstances.

10 THE COURT: I think I agree that that -- he did make
11 that statement. However, if you take his testimony in
12 total, in all the circumstances, my finding is that the
13 juror is qualified. I'll qualify him as such.

14 Bring him in please.

15 (WHEREUPON, the following takes place within the
16 presence of the juror.)

17 THE COURT: Mr. Kimmons, I know we're about to give
18 you -- it's a lot of exercise coming and going, but I will
19 tell you that I have determined, and you've been qualified
20 as a potential juror in the case. Now, that doesn't mean
21 you're on the jury yet. What that means is that you've been
22 qualified as a possible juror.

23 we'll go through the process and we'll go through this
24 with a lot of jurors, and once we reach a list of possible
25 jurors, then your name will be placed upon that list, and

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1 from that list a jury would be selected. So, depending on
2 if your name comes up and depending on how that works, you
3 may have an opportunity to serve in this case. If it does,
4 then you won't be serving in this case.

5 Do you understand that?

6 THE JUROR: Yes, sir.

7 THE COURT: Now, do you recall the instructions that I
8 gave you earlier about your conduct when you're away from
9 the courthouse?

10 THE JUROR: Yes, sir.

11 THE COURT: Those instructions will continue.

12 Do you understand that, sir?

13 THE JUROR: Yes, sir.

14 THE COURT: I will tell you that we won't need you to
15 report again until after we have decided whether or not you
16 would be on the jury. They're going to give you some
17 practical pointers.

18 where are those available?

19 Do you have those?

20 THE CLERK: Your Honor, they're available in the
21 Clerk's Office. The jury coordinator has them.

22 THE COURT: So, I'm gonna ask you to step by the
23 Clerk's Office. They're gonna give you a little sheet
24 telling you about getting your clothing together, things
25 like that. So, if you're called to come back to the

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1 courthouse, take a look at that sheet and, and you'll need
2 to make whatever provisions you'd like to make in order to
3 stay with us.

4 Do you understand that, sir?

5 THE JUROR: Yes, sir.

6 THE COURT: But you'll receive additional instructions
7 from the Court later on. But, again, I will caution you,
8 the instructions I gave to you earlier do continue.

9 will you be able to follow those instructions?

10 THE JUROR: Yes, sir.

11 THE COURT: All right. Thank you, sir. You're free to
12 go at this time.

13 THE JUROR: All right.

14 (WHEREUPON, the juror leaves the courtroom.)

15 THE COURT: All right. We'll need to see Mr. Lonny
16 Smith.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 LONNY SMITH, having been previously
20 sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q Mr. Smith, how are you doing today?

24 A Great.

25 Q Good.

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1 Mr. Smith, I want to remind you that you were placed
2 under oath to tell the truth to the Court earlier. You're
3 still under oath now.

4 Do you understand that, sir?

5 A Yes, sir.

6 Q All right. I want to thank you so much for being with
7 us today. I understand it's an inconvenience, and you've
8 done a lot of hurry up and waiting so far, and I, and I
9 apologize to you for that, but it's part of the nature of
10 the beast I suppose that we operate in this fashion.

11 And I understand that where you're sitting right not
12 now -- right now might be an uncomfortable spot for anybody.
13 And I can appreciate that as well.

14 What we're gonna do is I'm gonna go over some questions
15 with you, and then I'm gonna allow the attorneys to ask some
16 questions of you in this process. And I'm going to remind
17 you, earlier in the day, I told you there aren't any right
18 answers. There's no wrong answer. What we're doing is
19 simply trying to gather information about you and your --
20 and things about you that would be relevant to this case.

21 A Okay.

22 Q Do you understand that, sir?

23 A Yes, sir.

24 Q So, there's -- you don't have to think about what
25 answer I'm seeking cause I'm not seeking any answer in

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1 particular. Whatever answer you give to me will be a right
2 answer if it's honest.

3 Now, since we talked earlier today, I want to ask you,
4 has anybody contacted you about this case?

5 A No, sir.

6 Q All right. Have you heard, read, or seen anything
7 about this case since that time?

8 A No, sir.

9 Q Have you been exposed to any other information about
10 this case other than you heard in the courtroom this
11 morning?

12 A No, sir.

13 Q Now, have you ever participated or been involved in any
14 blog or other Internet or social site concerning matters
15 involving the death penalty?

16 A No, sir.

17 Q Have you ever participated in any political activities
18 such as a demonstration or, or a -- some type of political
19 activity which would involve the issue of the death penalty?

20 A No, sir.

21 Q I'm not sure exactly what you may or may not have heard
22 about this case, but I would ask you that whether or not you
23 would be able to put aside anything that you might have
24 heard or seen or read previously about this matter and
25 decide this case based upon what you hear only in the

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1 courtroom?

2 A Yes, sir, I could do that.

3 Q Now, while you were sitting in the jury room we had a
4 rather long list of people who were named as possible
5 witnesses in this case.

6 Did you read over that list?

7 A Yes, sir.

8 Q All right. Now, as to this particular list, are you
9 related by blood or have you ever been related by marriage
10 to anybody whose name appeared upon that list?

11 A No, sir.

12 Q Have you ever been involved with any of those people on
13 a social, business, or personal level?

14 A No, sir, I don't know anyone on that list.

15 Q Okay, sir. So, you don't -- so far as you know you've
16 had no contact with those people?

17 A Yes, sir.

18 Q All right, sir. Now I'm gonna get into some matters
19 that might be a little more personal to you. We're gonna
20 ask you some questions about your opinions on some things
21 and some topics that are -- may be involved in this case,
22 and I will tell you we're not trying to invade your privacy.
23 We're just trying to find out how you may feel about some
24 things that would be important in this matter.

25 I would hope that you are secure enough in your beliefs

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1 and opinions that you're not going to feel threatened by
2 these questions that I'm asking and I'm not intending to try
3 to threaten you in anyway. I want you to understand we're
4 not trying to get you to change your opinions or your
5 feelings. We just want to know about them. So, we're
6 trying to identify some things that would be important in
7 this matter.

8 Do you understand what I'm doing now?

9 A Yes, sir.

10 Q Now, one of the things I'm going to ask you about
11 specifically is what I've already informed you of is the
12 penalty phase of this trial, and specifically the death
13 penalty because that may be an issue in this case depending
14 on how the case proceeds.

15 But understand the trial is not yet begun. So, it's
16 really a little premature for me to talk to you about the
17 penalty phase because guilty has not yet been determined.
18 Mr. Blackwell, as I've told you earlier, is presumed, under
19 the law, to be innocent of the charges that have been
20 brought against him. So, the fact that I'm talking to you
21 about the penalty at this early stage, I want you to know,
22 doesn't indicate anything about him or the case. This is
23 simply the only time that I'm gonna have to discuss these
24 matters with you before the trial starts and the jury's
25 selected.

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1 Do you understand that?

2 A Yes, sir.

3 Q Now, if you were a juror in any criminal case, and I'm
4 not talking about this case now, I'm talking about any
5 criminal case cause it wouldn't be proper for me to comment
6 about this particular case, but if you were a juror in any
7 criminal case, would you be willing to listen to the law as
8 instructed to you by the judge?

9 A Yes, sir.

10 Q Would you be willing to accept that law and apply that
11 law to the facts as you, a member of the jury, found those
12 facts to be?

13 A Yes, sir.

14 Q Now, even though you may not like the law, let's say
15 you might even disagree with what the law is as, as I will
16 charge it to you, would you still be willing to accept the
17 law as charged by the judge and follow the law if you were
18 instructed to do that by the Court?

19 A Yes, sir.

20 Q Now, if you were a juror in, in this case, State versus
21 Blackwell, and would you be willing to, to set aside any
22 information or knowledge that you might have gathered from
23 any source whatsoever, anything you may have seen or heard
24 or read about the case on the outside of the courtroom?

25 So if you -- would you be willing to set aside all of

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1 that information and decide the case based purely upon what
2 you hear in the courtroom?

3 Could you do that?

4 A Yes, sir, I could.

5 Q Now, as I mentioned to you before, a criminal
6 defendant, in this state, is always presumed to be innocent.
7 Therefore, a criminal defendant doesn't have to prove his
8 innocence.

9 Do you understand that?

10 A Yes, sir.

11 Q The State has the burden of proving, in a criminal
12 case, and that burden is to prove the defendant's guilt
13 beyond a reasonable doubt.

14 Do you understand that concept as well?

15 A Yes, sir.

16 Q Now, if you were sitting as a juror in any criminal
17 case, and, once again, I'm not talking about any case, any
18 particular case, this would be any case in general, would
19 you be willing to listen to the law and the evidence as it's
20 presented to you, and based upon what those things were, and
21 based upon the circumstances that were shown to have
22 existed, could you find a person not guilty of the crime
23 charged?

24 A Yes.

25 Q Now, on the other hand -- well, I guess I'm asking you

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1 is it your belief that, just because someone's been arrested
2 or accused of a crime, that they must automatically be
3 guilty of that crime?

4 A No, sir.

5 Q Now, if the evidence convinced you, beyond a reasonable
6 doubt, that a person was guilty, would you be able to find
7 the person guilty?

8 A Yes, sir.

9 Q If the evidence did not convince you, beyond a
10 reasonable doubt, that a person was guilty, could you find
11 the person not guilty?

12 A Yes, sir.

13 Q So, I assume -- I take it that you're telling me that
14 you would be able to make up your mind, depending upon the
15 strength of the evidence, and what the testimony and the
16 evidence showed, and find a person either guilty or not
17 guilty depending on your finding on those matters?

18 A Yes, sir.

19 Q Now, let's talk about the penalty in this case a little
20 bit. Most of the time, in a criminal case, I'll tell you
21 the judge decides the penalty, and the jury doesn't concern
22 itself with what the penalty ought to be for a particular
23 type crime.

24 Now, there's an exception to that and in one particular
25 type of case a jury has the, the responsibility of deciding

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1 a penalty that's going to be imposed, and that type of case
2 is where a defendant has been accused of the crime of murder
3 and the State is seeking to impose the death penalty.

4 Now, under those circumstances, if a jury convicts the
5 defendant of the crime of murder, so that guilt is been
6 determined, that same jury comes back, in a separate
7 proceeding, and listens to additional evidence and
8 testimony.

9 Do you understand that that's how these cases are
10 handled?

11 A Yes, sir.

12 Q Now, in that separate sentencing proceeding, the only
13 determination made by the jury is the type of sentence
14 that's going to be given. They're only two choices. That's
15 either life imprisonment without the possibility of parole
16 and the other choice is death.

17 Do you understand that situation?

18 A Yes, sir.

19 Q Now, I want you to put yourself in that situation
20 theoretically as a juror in a case where the State is
21 seeking to impose the death penalty, and imagine that you
22 and your fellow jurors have convicted the defendant of the
23 crime of murder. So, that puts you in a position where
24 you're now going to go back into the courtroom to take up
25 the second phase of the trial. That is the penalty or

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1 punishment phase, and that will be either life imprisonment
2 without parole or the death penalty.

3 Do you understand the position I've asked you to put
4 yourself in?

5 A Yes, sir, I do.

6 Q Now, while you were in the jury room I gave you another
7 sheet of paper to read, and that sheet of paper described
8 three different types of jurors.

9 Do you remember that piece of paper I gave you?

10 A Yes, sir.

11 Q All right. And on that piece of paper, the first type
12 of juror, in that same situation that I asked you to put
13 yourself in, was a juror that is just convicted a defendant
14 of murder, now comes back into the courtroom for the
15 separate sentencing phase to decide the penalty that, that
16 they're going to give.

17 The first type of juror I described who is a person
18 who, before he ever comes back into the jury room for that
19 second penalty phase, already knows how that juror's going
20 to vote. He's going to vote for the death penalty every
21 time because that juror believes that that is the most
22 appropriate penalty and anytime someone has been convicted
23 of murder.

24 The second type of juror also has his mind made up. He
25 knows how he's gonna vote before he comes into the jury

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1 room -- to the courtroom because he doesn't think that the
2 State ever should take a life of a person in response to a
3 crime regardless of what the crime is. So, he knows that
4 every time he's gonna vote for life imprisonment.

5 Now, the third type of juror doesn't know what he or
6 she is going to do. He doesn't have his mind made up as to
7 whether he's going to vote for life imprisonment or for the
8 death penalty. That juror's gonna have to wait and listen
9 to the evidence and testimony, then make a decision as to
10 what should be done.

11 Now, do you understand the three different types of
12 jurors I described?

13 A Yes, sir, I do.

14 Q Now, of those three jurors, which one of those best
15 describes you?

16 A I'd have to say number three.

17 Q Now, under those circumstances, keeping in mind that
18 the defendant is already been found guilty of murder, and
19 the issue of guilt is no longer a concern, would you be
20 willing to listen to the facts and evidence, and if the
21 evidence justified it, would you be willing to sentence a
22 defendant to death?

23 A Yes, sir.

24 Q And I will tell you, on the other hand, if you thought
25 the facts and evidence did not justify a death penalty, or

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1 for any other reason, would you be willing to sentence
2 someone to life imprisonment without parole?

3 A No, sir.

4 Q You said no sir or yes sir?

5 A No.

6 Q Did you hear my question?

7 Let me be sure I---

8 A Repeat it again, sir.

9 Q If you thought the facts and evidence did not justify
10 the death penalty or, for any other reason, would you be
11 willing to sentence the person to life imprisonment?

12 A No, sir.

13 Q All right, sir. So, could you sentence someone to life
14 or death?

15 A I could.

16 Q Okay. So, you could go either way?

17 A Yes, sir.

18 Q Well, maybe I didn't understand your answer. I thought
19 that's what you told me earlier, but let me go back to that
20 one question I asked you.

21 A Sure.

22 Q I asked it two different ways. I'm not trying to
23 change your answer. I just want to be sure you understood
24 what I asked.

25 Okay, sir. So, listen to what I asked.

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1 Now, under the circumstances -- I'm gonna start over
2 the whole, the whole scenario, keeping in mind that a
3 defendant is already been found guilty of murder and the
4 issue of guilt is no longer a concern, would you be willing
5 to listen to the facts and evidence, and if the evidence
6 justified it, would you be willing to sentence someone to
7 death?

8 A Yes, sir.

9 Q Now, the second situation is, and if you thought the
10 facts and evidence did not justify a death penalty, or for
11 any other reason, would you be willing to sentence someone
12 to life imprisonment without the possibility of parole?

13 A Yes, sir.

14 Q Okay. So, again, I'm gonna ask the question.

15 So, you would -- could you be someone who could
16 sentence someone, depending on the facts and the evidence,
17 to either the death penalty or to life imprisonment without
18 parole?

19 A Yes, sir.

20 Q Now, finally, if you were asked to serve as a juror in
21 this case, you'll be housed in a local hotel, and that will
22 continue while the trial goes on, and I believe the trial
23 will last about a week, maybe a little longer, but I'm not
24 sure, and I will tell you that, when we start, we go until
25 the case has been ended.

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1 The cost and expenses of that stay will all be paid by
2 the county. Transportation will be provided by the county.
3 So, so those -- none of those factors would be, should be a
4 concern of yours because you'd be taken care of during that
5 period of time.

6 It would, however, keep you away from your home or your
7 family or your employment during the trial. I know it's
8 gonna be an inconvenience to you. There's no question about
9 that.

10 But I guess my question is if you were called upon to,
11 to serve on the jury, and were in that situation, would that
12 fact or that situation pose a serious risk of danger to your
13 health or well being?

14 A No, sir.

15 Q Would it pose a serious risk of danger to the health or
16 well being of anyone who depends upon you?

17 A No, sir.

18 Q Now, I've completed the questions that I'm going to ask
19 at this point in time. I'm going to allow the attorneys to
20 ask some questions of you.

21 So, at this time, Mr. McGuire.

22 MR. MCGUIRE: Thank you very much, judge.

23 EXAMINATION

24 BY MR. MCGUIRE:

25 Q Good afternoon, Mr. Smith.

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1 A Good afternoon, sir.

2 Q I remember you were one of the jurors that stood up and
3 had some questions about being able to hear.

4 A Yes, sir.

5 Q Am I talking loud enough for you?

6 A Yes, sir.

7 Q Okay. One of my good friends has a hearing aid, and,
8 and I never take offense when he says I just didn't hear
9 that, you speak up. You tell me to do that.

10 okay?

11 A You don't take advantage of him for that?

12 Q I don't.

13 A Okay.

14 Q I don't.

15 what I want to do is ask you -- this is, this is when
16 the lawyers have the opportunity to talk to you about your
17 feelings about what's relevant in the case with regard to
18 capital punishment or the death penalty, okay, and what I'm
19 gonna start with is finding out what's relevant to you,
20 okay, and I want to put you in that position that the judge
21 put you in just a second ago.

22 You and 11 other people convicted a person of murder,
23 and, in South Carolina -- and my guess is you've never heard
24 the technical definition of murder in South Carolina.

25 A No, sir.

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1 Q Okay. You don't have any reason to know it.

2 A No.

3 Q And what I'm gonna do is I want to help you with it.

4 I'm not, I'm not picking on you, and there's no reason for

5 you to know it, and -- but I want to help you with it now,

6 and the judge would tell you eventually in the case that

7 murder, in South Carolina, is defined as the, the killing of

8 another person, innocent person, with malice aforethought.

9 It's a deliberate, intentional act with an, with an evil
10 intent.

11 Okay. It's not accident. Not self-defense. A person
12 knew what he was doing and, and chose to, to kill.

13 Are you with me?

14 A Yes, sir.

15 Q Okay. In that situation, and you're at that point,
16 with regard to the convicted killer's background, his, his
17 walk in life, things he's done, how he was raised, things
18 that have been done to him, are those things relevant in
19 fixing punishment for that intentional killing?

20 A No, sir.

21 Q Okay. And you answer me pretty quickly and pretty
22 firmly.

23 I take it that's a pretty firm belief that you have?

24 A Yes, sir.

25 Q Okay. And the way you're answering my questions on

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1 these -- this important matter is a reflection of your value
2 system?

3 A Yes, sir, I believe we've got to be responsible for our
4 acts.

5 Q Yes, sir.

6 And, and I'm gonna ask you some more about that
7 responsibility. I'm gonna add a little bit more to the
8 question that the judge put to you.

9 When you and 11 other people came back into Court, not
10 only did you convict the killer of murder, which is the
11 deliberate taking of an innocent life with evil intent, but
12 the State also proved what's called an aggravating
13 circumstance, and the category of case we're talking about
14 would be the killing of a child victim.

15 In that case, what are your thoughts about the death
16 penalty?

17 A I believe that he should be---

18 Q Okay.

19 A ---put to death.

20 Q And, in that situation, would the life penalty be
21 severe enough to punish an intentional killing of a child?

22 A Without parole?

23 Q Yes, sir.

24 A That still doesn't replace that child's life, but---

25 Q It doesn't.

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1 A I don't know if I -- I'd tried to stick with it.

2 Q With the death penalty?

3 A With the death penalty.

4 Q And because that, in your personal belief, that's the
5 more appropriate punishment?

6 A Yes, sir.

7 Q Okay. And it's based on the facts of the killing and
8 the victim being a child?

9 A Yes, sir.

10 Q And, again, these -- and I appreciate your, your taking
11 the time to answer these questions carefully, and, again,
12 are these answers a reflection of your core value system?

13 A Yes, sir.

14 Q Who you are as a person?

15 A Yes, sir.

16 Q Your belief on what's right and wrong?

17 A Yes, sir.

18 Q I can't change your mind?

19 A No, sir.

20 Q I don't have the words to do it, do I?

21 A No, sir.

22 Q And if somebody asked you well, I want you to promise
23 that you can set these personal views aside and come in here
24 and really consider that life sentence for a person that
25 killed an innocent child, you couldn't do that, could you?

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1 A No, sir.

2 MR. MCGUIRE: Okay. If could have just one second,
3 judge?

4 (Pause.)

5 MR. MCGUIRE: Judge, I'm gonna stand down.

6 I thank you, sir. Thank you, Mr. Smith.

7 THE COURT: Mr. Barnette.

8 SOLICITOR BARNETTE: May it please the Court, Your
9 Honor?

10 EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q Mr. Smith, I know you're hard of hearing. So, my dad's
13 hard of hearing. So, a lot of times I have to yell at him.
14 I apologize if I yell at you.

15 Okay?

16 A I'm probably as old as your dad.

17 Q Yeah. Yes, sir. Probably there. But I apologize if
18 I'm yelling, but I want to---

19 A That's all right.

20 Q ---make sure you can hear me from there.

21 Just following up on Mr. McGuire with some of the
22 questions he asked, he didn't really talk to you about
23 aggravating, aggravating circumstances and mitigating
24 circumstances.

25 A Yes.

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1 Q So, I want to talk to you about that a little bit if
2 that's okay.

3 There is aggravating circumstances. In order to prove
4 a murder for the death penalty, we have to prove aggravating
5 circumstances to you.

6 A Yes, sir.

7 Q And then there's mitigating circumstances as presented
8 by the defense to mitigate, to lessen the crime from that
9 standpoint, and the judge would charge you on those two
10 issues.

11 Do you understand that?

12 A Yes, sir.

13 Q And would you listen to the judge and weigh those in
14 consideration when you were looking at a case like this?

15 A Yes, sir.

16 Q For example, mitigation might be something out of his
17 background, some disability, or something like that.

18 Would you weigh that into this factor -- into that
19 sentence also?

20 A Yes, a disability I would.

21 Q Yes, sir.

22 For example -- so, I know you mentioned life is life
23 without parole. It's true life. It can not be reduced from
24 that. So, the choice would be, if we got to the second
25 phase, would be the death, the death penalty or life without

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1 parole --

2 A Yes, sir.

3 Q -- from there.

4 And knowing these different factors could be explained
5 to you, would you consider those factors in weighing that?

6 Could you give a life sentence even if a child was
7 killed knowing there may be mitigation explaining why he did
8 that?

9 A Rephrase that. I didn't understand it.

10 Q I apologize, and please do if -- I know it's confusing.

11 A Yes, sir.

12 Q You're getting a lot of questions thrown at you by
13 different people.

14 A Yes, sir.

15 Q So, please, if I have to -- for example, if we do
16 have -- let's say the death of a child is proven --

17 A Uh-huh. (Affirmative).

18 Q -- and it was murder from there, but they also present
19 mitigating factors such as his background, a disability,
20 things of that nature, would you weigh that?

21 would that be something that you consider that could
22 possibly give him life without parole in that situation?

23 A Yes, I would weigh that out.

24 Q Yes, sir.

25 So, you would weigh all the factors out?

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1 A I would try to.

2 Q Just not what Mr. McGuire just mapped out for you?

3 You would listen to the judge and weigh all those
4 factors?

5 A Yes, sir.

6 Q And with those mitigating factors, there may be five or
7 more factors that they may give to you.

8 would you weigh that against the aggravating
9 circumstances?

10 A Yes, sir.

11 Q And in those situations, could you give a sentence of
12 life without parole if that happens?

13 A Yes, sir, if I was convinced that there was something,
14 you know, that needed to go that route.

15 Q Yes, sir.

16 And they could present that to you and you would
17 consider that?

18 A Yes, sir.

19 Q Just like you would consider the aggravating
20 circumstances in the case?

21 A Yes, sir.

22 Q So, in that situation, you wouldn't know, until you
23 heard that evidence, how you would vote?

24 A Not until I heard the evidence.

25 Q And talking about your core sense, your core sense is

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1 about fairness, is that right?

2 A Yes, sir.

3 Q And you're trying to be fair in this situation?

4 A Yes, sir.

5 Q So, you'd have to be given all the circumstances before
6 you made that fair decision?

7 A Yes, sir.

8 Q Just not the circumstances given by Mr. McGuire, not
9 the circumstances just given by me, it's what's presented in
10 court?

11 A Yes, sir.

12 Q And you'd follow the judge's instructions concerning
13 that?

14 A Yes, sir.

15 SOLICITOR BARNETTE: One moment, Your Honor, please.

16 THE COURT: Yes, sir.

17 (Pause.)

18 SOLICITOR BARNETTE: Thank you, sir.

19 THE WITNESS: Yes, sir.

20 THE COURT: Mr. McGuire, your witness -- your juror I
21 should say.

22 MR. MCGUIRE: Thanks, judge.

23 THE COURT: Yes, sir.

24 MR. MCGUIRE: Just very briefly.

25 EXAMINATION

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1 BY MR. MCGUIRE:

2 Q The prosecutor mentioned something about a disability
3 in someone's background. You, you---

4 A Yes, sir.

5 Q You were the one that brought that word to us.
6 what did you mean when you said disability?

7 A well, I have a special needs daughter, and there's a
8 lot of things that -- well, she's got cerebral palsy. She
9 can't always express herself that -- the way she wants to,
10 but, you know, she knows what's going on and everything
11 else.

12 Q Yes, sir.

13 A I still got to hold her responsible cause she knows
14 better, but she reacts in another way of doing things, you
15 know. A lot of times she doesn't act her age I should say.

16 Q Yes, sir.

17 A She'll get, you know, throw a fit or whatever.

18 Q Okay.

19 A She's responsible for throwing that fit cause she knows
20 better, but now if something -- if someone is say got a
21 mental problem or something like that that they do not know
22 what they're doing at the time --

23 Q Yes.

24 A -- I would consider that as, you know, something that
25 they can't control, but---

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1 Q But if it---

2 A You have to prove to me that he had something wrong
3 with him.

4 Q Okay. In a case where the person knows right from
5 wrong --

6 A Yes, sir.

7 Q -- knows what they're doing --

8 A Yes, sir.

9 Q -- and engages in a deliberate act to take an innocent
10 child's life, in that situation when they know right from---

11 SOLICITOR BARNETTE: Your Honor, I'm object at this
12 point. He's starting to stake the juror out.

13 THE COURT: I'm gonna ask the juror to step back to the
14 jury room.

15 Sir, if you'll step back to the jury room for me. We
16 have to take up something with the lawyers.

17 (WHEREUPON, the following takes place outside the
18 presence of the juror.)

19 THE COURT: Yes, sir, Mr. Barnette.

20 SOLICITOR BARNETTE: Your Honor, on the mitigating
21 circumstances, one of the things they're gonna argue is
22 number three, the capacity of the defendant to appreciate
23 the criminality of his conduct and to conform his conduct to
24 the requirements of the law was substantially impaired.
25 That's one of the things they're gonna show, and I've --

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1 basically that's something that he's trying to ask to get
2 around there.

3 He's saying right or wrong. That's something they're
4 gonna prove in mitigation or show in their mitigation I'm
5 supposing by the paper I've been given. So, therefore, I
6 don't think that's a fair question saying that he knew
7 from -- right from wrong when they're gonna introduce that.

8 THE COURT: Mr. McGuire.

9 MR. MCGUIRE: Your Honor, that is a frivolous
10 objection. The juror himself brought up the term
11 disability. Not knowing what that meant, I had to pursue
12 it. When I pursued it, he gave the language of if a person
13 had a mental problem, and---

14 THE COURT: Cerebral palsy. He talked about his
15 daughter.

16 MR. MCGUIRE: But he also said if the person didn't
17 know what they were doing. He used that phrase, didn't know
18 what they were doing, and I need to bring him back to if, if
19 the defendant knows right from wrong, and, and engages on a
20 deliberate act to, to take an innocent life, and---

21 THE COURT: Well, you actually -- you actually
22 described the exact facts in this case, but go ahead.

23 MR. MCGUIRE: I'm sorry?

24 THE COURT: You actually described the exact facts in
25 this case. You didn't just say did something wrong. You

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1 said deliberately killed a child. That's what you said.

2 MR. MCGUIRE: Exactly. I meant to say that --

3 THE COURT: Okay.

4 MR. MCGUIRE: -- and that's what we're here for.

5 THE COURT: Okay. That's what you said.

6 Go ahead.

7 MR. MCGUIRE: Yes, sir.

8 I mean that's -- I meant to say that because that's
9 what we're here for. We have to know -- we have to know
10 that disability, when he says disability, if -- when you
11 take that out of the equation, you have a person that can
12 distinguish between right and wrong, and they deliberately
13 choose to act and commit this crime, is the death penalty
14 always appropriate in his view, is he always going to be so
15 predisposed to the death penalty that he's substantially
16 impaired. I have to ask that question.

17 THE COURT: Well, I didn't say you couldn't ask that
18 question. I was just---

19 MR. MCGUIRE: Oh, I'm sorry. You're right. You didn't
20 say that.

21 THE COURT: I never said that.

22 MR. MCGUIRE: You're right. In response to
23 Mr. Barnette, that's my position.

24 THE COURT: I just continue to have a little bit of a
25 problem with you stating the exact facts in this case in

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1 your questions.

2 MR. MCGUIRE: Yes, sir, and, judge, I mean I can, I can
3 quote from more of these cases, but, you know, for instance,
4 in the, in the Cash case, which I've already passed around,
5 the Court says we affirm the principle that either party is
6 entitled to ask prospective jurors questions that are
7 specific enough to determine if those jurors harbor bias as
8 to some fact.

9 THE COURT: Is that, is that the California case?

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: Okay.

12 MR. MCGUIRE: But, to go on, they're entitled to ask
13 prospective jurors questions that are specific enough to
14 determine if those jurors harbor bias as to some fact or
15 circumstances.

16 THE COURT: Well, the question -- the word of art there
17 is specific enough. Now, specific enough, you're being,
18 you're being dead on --

19 MR. MCGUIRE: I---

20 THE COURT: -- and specific enough would indicate to me
21 that we try to not ask about this specific case or the facts
22 in this specific case, but that your question be specific
23 enough to get to whether or not they have a bias or
24 prejudice.

25 MR. MCGUIRE: Yes, sir, and, and the question---

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1 THE COURT: And I'm---

2 MR. MCGUIRE: Sorry.

3 THE COURT: Again, I'm expressing the Court's
4 reservation, and I've done it on several occasions this
5 afternoon, with how specific you're being about the facts of
6 this case in your questions. It's still my position.

7 MR. MCGUIRE: I understand.

8 THE COURT: It hasn't changed.

9 MR. MCGUIRE: I understand.

10 THE COURT: Okay.

11 MR. MCGUIRE: And -- so, you're right. I think you
12 stated previously you didn't tell me I couldn't ask that
13 question. So, I'm ready to go.

14 THE COURT: Well, no, I'm, I'm -- there are ways to ask
15 questions --

16 MR. MCGUIRE: Yes, sir.

17 THE COURT: -- that don't involve specifically asking
18 about the facts of this case. I'm urging you to find those.

19 MR. MCGUIRE: I think I'm compelled to ask about the
20 fact of a child victim. I think I would fail my client
21 and---

22 THE COURT: I didn't say -- I didn't ask you to give up
23 your duty---

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: ---as a zealot advocate.

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1 MR. MCGUIRE: Yes, sir.

2 THE COURT: Don't get me wrong. But I do have a right
3 to have an opinion too cause I am the judge.

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: Okay.

6 MR. MCGUIRE: And I respect that.

7 THE COURT: Thank you.

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: Bring the juror in.

10 (WHEREUPON, the following takes place within the
11 presence of the juror.)

12 THE COURT: Mr. Smith, thank you for your indulgence.
13 Have a seat and I'm gonna ask Mr. McGuire to continue his
14 questioning.

15 CONTINUED EXAMINATION

16 BY MR. MCGUIRE:

17 Q Thank you, Mr. Smith.

18 You brought up the term disability, and I, and I think
19 you threw out two things when we were talking about that.
20 One was you talked about -- is it your granddaughter?

21 A My daughter.

22 Q Your daughter. I'm sorry.

23 Okay. I was gonna compliment you on your age, your age
24 there.

25 Your daughter with cerebral palsy and maybe not

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1 appreciating throwing a fit, and then you also sort of
2 applied that to a criminal case and somebody who didn't know
3 what they were doing, is that---

4 A Yes, sir.

5 Q Okay. And, and what I want to do is ask you about, in
6 the criminal case context, and, and the person who didn't
7 know what they were doing.

8 when you removed that from the scenario, and you're
9 talking about a criminal defendant who deliberately,
10 intentionally, with malice aforethought killed a child---

11 SOLICITOR BARNETTE: Your Honor, I'm gonna object.

12 THE COURT: Sustain the objection.

13 MR. MCGUIRE: Thank you, Your Honor.

14 THE COURT: I'll ask you to rephrase the question.

15 MR. MCGUIRE: Sure.

16 THE COURT: Your objection is noted.

17 MR. MCGUIRE: Thank you very much, judge.

18 THE COURT: You're welcome.

19 Q When we're talking about a criminal defendant who knows
20 right from wrong, intentionally, deliberately, with malice
21 aforethought kills a child---

22 SOLICITOR BARNETTE: Objection, Your Honor. That's the
23 same question.

24 THE COURT: I'm gonna ask you to step outside,
25 Mr. Smith.

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1 (WHEREUPON, the following takes place outside the
2 presence of the juror.)

3 THE COURT: State your objection, Mr. Barnette.

4 SOLICITOR BARNETTE: Your Honor, he's asked the same
5 question three times. The Court's already cautioned him on
6 it. He's going right to the facts of the case.

7 THE COURT: well, zealotry has its limits.

8 MR. MCGUIRE: well, judge, obviously I'm gonna abide by
9 any ruling the Court makes.

10 THE COURT: well, you haven't yet.

11 MR. MCGUIRE: And I think -- well, maybe I was unclear
12 when we brought the juror back in. I mean I did state I
13 feel compelled, like I have an obligation---

14 THE COURT: I understand you feel compelled, but I said
15 zealotry has its limits.

16 MR. MCGUIRE: In the end, the Court's ruled.

17 THE COURT: You preserved your objection to my ruling.

18 MR. MCGUIRE: Yes, sir, I mean if the Courts, if the
19 Court's ruling is that we're not allowed to go into the
20 specific fact that the victim was a child, I'm gonna follow
21 the Court's ruling obviously.

22 THE COURT: well, again, my, my ruling is that you
23 can't ask specific questions about this case of a juror
24 before they know all the facts and all the circumstances
25 without having given them at least the benefit of those

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1 other facts and circumstances that might exist. I think the
2 point that you're trying to get to, at this point in time,
3 is whether or not, if there's a defendant who doesn't -- who
4 does know the difference between right and wrong, but has
5 some other type of intellectual or mental, mental
6 disability, would he consider that as a mitigating factor in
7 that circumstance. So, you can ask that question without
8 asking about fact specific issues in this case.

9 Do you follow me?

10 Is that the point you're trying to get to, is decide
11 whether or not he could consider a mitigating factor of
12 someone's mental or, or -- disability even though they knew
13 the difference between right and wrong?

14 I think that's where you're trying to go. It's a
15 perfectly appropriate question. I have a problem with you
16 adding the facts in this case specifically in that question
17 --

18 MR. MCGUIRE: Well---

19 THE COURT: -- and that's been my ruling since we
20 started this process.

21 MR. MCGUIRE: Sure. And I---

22 THE COURT: And I know you don't agree with that
23 ruling. You have every right not to do so.

24 MR. MCGUIRE: Okay. And, and I -- in response, I would
25 say I'm not actually going into facts.

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1 THE COURT: well, what are they?

2 MR. MCGUIRE: well, you know, the facts would be the,
3 the husband in a relationship that was breaking up with,
4 with a lot of emotions and jealousy---

5 THE COURT: See, that's exactly the point I'm trying to
6 make. If you're gonna get fact specific, you got to be fact
7 specific about everything. If you're gonna ask a juror how
8 he'd vote, then you're gonna have to put in all the facts,
9 good and bad, mitigating as well. If you're gonna ask this
10 juror to give an -- so then you're asking them to decide the
11 case. We're trying the case with every juror, and that's
12 exactly what our Supreme Court said we shouldn't do.

13 MR. MCGUIRE: I agree with that.

14 THE COURT: We're trying to determine whether or not a
15 juror has the ability to follow the law and will be willing
16 to listen to the evidence and will follow the instructions
17 of the Court and will decide the case fairly. I still think
18 that's the test in this state.

19 MR. MCGUIRE: And, judge, I think I would just go back
20 to, to, to saying that I think we can all agree there are
21 people -- good people in this county.

22 THE COURT: Let me, let me say one other thing --

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: -- while I'm thinking about it.

25 MR. MCGUIRE: Yes, sir.

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1 THE COURT: It's crossed my mind. Excuse me. I'll let
2 you get back to your argument.

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: This particular juror may be a prime
5 example of what I'm talking about in this case because when
6 asked specifically by you if he were faced with a decision
7 concerning someone who had murdered a child, he said he'd
8 give the death penalty every time. When the solicitor got
9 up, he started throwing in well, what about if there was a
10 few mitigating circumstances and other factors to consider,
11 would you be willing to back off and be willing to consider
12 those factors. Of course the juror said he would.

13 But, see, your question never, never -- it presupposed
14 that there were no mitigating circumstances. Your question
15 was, if that's all you knew, would you always vote for the
16 death penalty and he said yes. But then when you asked him
17 the question and throw in the other things he might
18 consider, he said he could consider those things and no, he
19 wouldn't always vote for the death penalty.

20 See, he's, he's, he's living proof of what I'm talking
21 about.

22 MR. MCGUIRE: Yeah, actually I, I -- with all due
23 respect, I disagree and I think he's living proof of what
24 I'm talking about because actually---

25 THE COURT: Well, maybe so.

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1 MR. MCGUIRE: ---I actually started off with
2 mitigation, and I put him at the point where you put him at,
3 you and 11 other people convicted a person of murder, and I
4 asked him, when it came to affixing punishment for that
5 person, did the background of the defendant matter, was it
6 relevant to him, and I gave him examples. His background,
7 how he was raised, family, that sort of thing, and he said
8 no, and he was pretty firm, and I remarked that was a pretty
9 firm answer.

10 So, I think---

11 THE COURT: It is---

12 MR. MCGUIRE: ---when, when you see that the questions
13 are posed in layman's terms with real world language, and he
14 understands it, you get one answer, but if you talk in---

15 THE COURT: But he's, he's given different answers to
16 Mr. Barnette on the same issue.

17 MR. MCGUIRE: Right.

18 THE COURT: So, I'm just saying, again, fact specific
19 questions on this case are frowned upon in this state --

20 MR. MCGUIRE: Am I---

21 THE COURT: -- and, and you keep going there, and I
22 keep making the same rulings.

23 MR. MCGUIRE: Yes, sir, and I, and I mean I don't know
24 what to say other than---

25 THE COURT: I don't know if we're gonna -- you know, I

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1 think, at some point in time, I'll bring it to a close.

2 MR. MCGUIRE: And I just want to make sure that I'm not
3 gonna run afoul of the Court's rule. I mean I'm willing to
4 accept, obviously, any ruling, and I, and I don't obviously
5 take the position that a child victim is fact specific. You
6 know, the language that I'm using is category specific.
7 It's a type of case like rape/murder, officer killing, child
8 killing. I'm not talking about---

9 THE COURT: It just happens to be the facts, I suppose,
10 in this case.

11 MR. MCGUIRE: Right. And maybe we're splitting hairs,
12 but that's -- it's a category of case. It's the statutory
13 aggravator that the State's gonna prove, and my position is
14 I'm not going into the facts. I'm not using pistol and four
15 shots and anything horrific.

16 THE COURT: You haven't gone that far.

17 MR. MCGUIRE: And I never---

18 THE COURT: Well, you're describing it as a deliberate
19 killing.

20 MR. MCGUIRE: Which it is. I mean the law in South
21 Carolina is murder has to be deliberate.

22 THE COURT: Hasn't been proven yet. I don't know.

23 MR. MCGUIRE: I'm sorry?

24 THE COURT: It hadn't been proven yet. I don't know.

25 MR. MCGUIRE: True.

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1 But, in South Carolina, murder does require a
2 deliberate act, and I have described it as such. And I
3 think I'm going, I'm going back to we -- are there people,
4 good people, who, who would vote automatic for the death
5 penalty once they learned the category of cases, child
6 victim, and the answer is yeah, and do, do we want to put
7 them on the jury?

8 I hope the answer is no.

9 And how do we make sure that we identify them?
10 We ask the question.

11 THE COURT: Mr. Barnette.

12 SOLICITOR BARNETTE: Your Honor, I still disagree.
13 There's people that would not put anybody to death. We know
14 that also. But from there, the problem is he wants to ask
15 fact specific -- and you've already stated the law's that
16 way from that point. I think the Court's been appropriate
17 in sustaining my position from there.

18 He just don't -- the problem is he wants to give them
19 just part of the story and not the whole story. Hopefully
20 I've been a little more open, but the bottom line is this is
21 the way it's instructed by the judge and he's followed
22 the -- you know, he said he can follow the instruction of
23 the, of the Court, and I brought out the circumstances
24 exactly -- I mean there's aggravating and there's
25 mitigating.

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1 He just wants to talk about the one aggravator. That's
2 all he wants to talk about.

3 well, yeah, you put people in that box and they're
4 gonna most likely say yes, most of the time. But when you
5 explain everything else involved with it, they may consider
6 all those things.

7 Like I say, the witness talked about disability and
8 that's gonna be one issue that they're gonna bring up
9 obviously, and he feels like he can weigh that as well as
10 anything else, and it's not gonna impair his judgment in
11 this situation. I hate to argue for the juror at this
12 point, but that's the position we're getting in thanks to
13 Mr. McGuire in this situation.

14 MR. MCGUIRE: And, judge, Mr. Barnette is actually
15 correct and I agree with him in a lot of what he says in
16 that I'm limiting my questions to the aggravator of child
17 victim and, because if I didn't, if I went into too many
18 facts, too many details, I would be engaging in what's
19 called prejudgment. We can't, we can't give them a full
20 summary of evidence on both sides and say well, go ahead and
21 tell us how you'd vote.

22 THE COURT: I don't think you should. I didn't -- but
23 I think that's the only way you can ask a fair question in
24 that when you're starting to getting into fact specific
25 questions. If you're gonna start throwing fact specific

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1 matters into questions, the only way for it to be fair to
2 the juror is if they get the whole picture.

3 MR. MCGUIRE: Sure.

4 THE COURT: So, that's the reason we don't go there.

5 MR. MCGUIRE: And, and, judge, the reason I started
6 with mitigation evidence with this particular juror was to
7 get his views with, with the background of the defendant
8 relevant in fixing punishment for an intentional -- that
9 intentional killing.

10 THE COURT: I heard his answer, but then I heard a
11 different answer later on when it was asked a different way.

12 MR. MCGUIRE: Sure.

13 with all due respect, those are ineffective questions.
14 when we talk about can you consider all of the mitigation,
15 and you want to hear all the evidence---

16 THE COURT: Are we arguing -- are we talking about your
17 question or and are we gonna get into -- let's, let's stay
18 on what we're on.

19 MR. MCGUIRE: Sure.

20 And what we're on is that, that for -- the only way
21 this court is going to exercise its obligation to impanel a
22 jury that's unbiased and impartial is to make sure that we
23 do not have jurors impaneled who will vote for death
24 automatically and be so predisposed to death upon learning
25 that the victim is a child. That's the only way you're

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1 gonna -- that's the only way you're gonna fulfill your role
2 as gatekeeper in this case, to guarantee that impartial
3 jury, and to protect Mr. Blackwell's Constitutional rights
4 under the Sixth and Fourteenth Amendment is we know we don't
5 want them on the jury, we know they exist.

6 So, how do we identify them?

7 We ask the question and that's the only method we have,
8 and I'm sure the State doesn't want it cause they want to
9 engage in shock and awe in the penalty phase.

10 Well, now that you learned it's a child, they're gonna
11 argue heavily for death based on the incident.

12 THE COURT: I'm gonna ask the attorneys to step back in
13 my chambers.

14 MR. MCGUIRE: Yes, sir.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: All right. Please bring Mr. Smith back.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 THE COURT: Thank you, Mr. Smith. We're gonna continue
20 with the questioning.

21 CONTINUED EXAMINATION

22 BY MR. MCGUIRE:

23 Q Hello again, Mr. Smith. Again, just remind me if I
24 need to speak up.

25 Okay?

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1 A (Witness nods affirmatively.)

2 Q We talked a little bit about that background stuff in a
3 person's life, kind of their walk in life, maybe how they
4 were raised, life experiences, things they've done, things
5 that have been done to them, kind of like a person's whole
6 character and background.

7 In that case of the deliberate intentional killing of a
8 child, does the killer's background -- is that relevant to
9 you in affixing punishment?

10 A No, sir.

11 Q Okay. And, again, that's, that's a reflection of your
12 value system and what's right and wrong?

13 A Yes, sir.

14 Q And it's -- that's -- that emanates from a deep place
15 in you?

16 A Yes, sir.

17 Q And I can't change your mind on that?

18 A Don't believe so.

19 Q I don't have that talent, do I, or the words?

20 But suffice it to say, you feel firmly in that belief.

21 A Yes, sir, I do.

22 MR. MCGUIRE: Okay. And I think I might stand down
23 there, judge.

24 If I could have just one second?

25 (Pause.)

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1 Q You strike me as a man who is not wishy washy about
2 things.

3 Is that fair to say?

4 A Well, I'm married.

5 Q Me too and that makes me wishy washy to be quite honest
6 with you.

7 But in -- I'm just -- I don't want to put words in your
8 mouth, but the way you're answering the questions, you're
9 pretty firm in your responses?

10 A Yes, sir.

11 Q Okay. And, again, that's because they emanate from
12 your value system?

13 A I believe so, sir.

14 Q Okay. And the life penalty, the life in prison
15 penalty, that would not be appropriate for the person who
16 knew right from wrong and killed a child?

17 SOLICITOR BARNETTE: Objection, Your Honor. Here we go
18 back -- right back to it again.

19 THE COURT: Overruled.

20 Q So---

21 THE COURT: I'll allow him to ask the question
22 consistent with my ruling.

23 MR. MCGUIRE: Yes, sir.

24 Q Knowing that, you know, you can consider a person's
25 background, their walk in life, but for a person who, who

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1 intentionally deliberately killed a child, in terms of
2 punishment, the life penalty, letting them live in prison
3 for that child killing, that would be inappropriate?

4 It wouldn't be strong enough?

5 A Yes, sir.

6 SOLICITOR BARNETTE: Objection, Your Honor.

7 THE COURT: Are you suggesting an answer, Mr. McGuire?
8 Is that a question?

9 MR. MCGUIRE: I think, I think the way I---

10 SOLICITOR BARNETTE: Your Honor, I---

11 MR. MCGUIRE: ---addressed it the first time was---

12 SOLICITOR BARNETTE: Your Honor, can I put my objection
13 on the record---

14 THE COURT: Yes, sir, please do.

15 SOLICITOR BARNETTE: ---if I can?

16 Your Honor, he asked him the question and---

17 MR. MCGUIRE: Judge, I want to---

18 SOLICITOR BARNETTE: ---and then he said that's not
19 strong enough.

20 MR. MCGUIRE: Judge, I want to object to his
21 speaking---

22 THE COURT: He has to put his objection on the record,
23 Mr. McGuire.

24 MR. MCGUIRE: I understand that and I'm gonna object to
25 his speaking---

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1 THE COURT: I'm gonna ask you to be quiet.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: Thank you.

4 You may proceed.

5 SOLICITOR BARNETTE: Thank you, Your Honor.

6 Obviously the witness was thinking, and then he
7 wanted -- he didn't like him thinking about the question.
8 So then he started adding some more to it. I'd appreciate
9 him just asking the question and let the witness answer it.

10 THE COURT: Now, Mr. McGuire, I'll hear from you.

11 MR. MCGUIRE: Thank you, Your Honor.

12 I just didn't want an education in speaking---

13 THE COURT: My court reporter can't down two people---

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: ---talking at the same time.

16 MR. MCGUIRE: And I apologize. Thank you, Your Honor.

17 THE COURT: I'll sustain the objection.

18 MR. MCGUIRE: Yes, sir.

19 Q In terms of that category of case we were talking
20 about, the, the killing of the child, even if you can, can
21 consider the background of the, the defendant, I'm just
22 gonna make a statement and you just tell me if you agree
23 with it or not.

24 The life penalty, life imprisonment penalty, is not
25 severe or strong enough to punish that kind of killing?

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1 Do you agree with that or not?

2 A I don't agree with that.

3 Q And tell me what you mean by that. If you can be a
4 little bit more detail.

5 A If there's something that is triggering his reactions
6 when he went and murdered somebody, if, if that was
7 affecting him at the time, say maybe his brain's not
8 functioning right or something at the time or something like
9 that.

10 Q Okay. When you say brain's not functioning right at
11 the time, tell me what you mean by that.

12 A Say he's got flashbacks or something like that that he
13 has. Something, something physical or mental that's going
14 on in his life that he can't control, and if that's taking
15 place at this time, I would lean probably towards life
16 imprisonment.

17 Q If something was happening to the person where they
18 really couldn't control their actions?

19 A Yes, sir.

20 Q Okay. And like a flashback, would that be sort of like
21 if the person thought they were killing an enemy fighter in
22 the Middle East and they thought they were being---

23 THE COURT: Mr. McGuire, we're getting into
24 hypotheticals now.

25 SOLICITOR BARNETTE: Yes, sir.

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1 MR. MCGUIRE: I just need a -- I'm sorry.

2 THE COURT: I'm not gonna allow that question.

3 Q Okay. When you say a flashback, are you talking about
4 a situation where the person who's killing somebody thinks
5 they're doing the right thing?

6 SOLICITOR BARNETTE: Objection, Your Honor. That's for
7 a legal opinion there.

8 A I wouldn't know that they would -- the right thing.

9 THE COURT: I'll allow him.

10 Go ahead, sir. You can answer the question.

11 MR. MCGUIRE: I think he just did.

12 Did you get that, ma'am?

13 THE COURT: Okay.

14 A I'm not sure I understand.

15 Q Sure.

16 Is it -- so, it might not rise to a level of not
17 knowing right from wrong, but are you talking about a case
18 where somebody can't conform their actions to the law, they
19 can't control their impulses?

20 SOLICITOR BARNETTE: I would object, Your Honor, to
21 this.

22 THE COURT: Is that a hypothetical?

23 MR. MCGUIRE: No, sir.

24 THE COURT: It sounds like it.

25 MR. MCGUIRE: No, I'm just asking what his terms mean.

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1 THE COURT: well, I'll, I'll allow him to explain his
2 answer to the extent he wishes to do so.

3 MR. MCGUIRE: Okay.

4 Tell me what you mean by this whole flashback, not
5 controlling---

6 A I'm just thinking of flashback or something. You're
7 talking about someone that had a bad background or something
8 like that was -- they was growing up, Lord only know what
9 went on in their mind. I mean if it's something that just
10 triggers their brain not to work like yours and mine or it
11 would cause them to do things that they think they're doing
12 right or whatever in their mind, but not according to you or
13 me.

14 Q Okay.

15 A That could be anything. I mean --.

16 Q Okay. What I'm, what I'm gonna do is put you back in
17 the exact position that the judge put you in in his
18 preliminary comments.

19 A Yes, sir.

20 Q Do it very quickly. You and 11 other people have found
21 a person guilty beyond a reasonable doubt, got the right
22 guy, he intentionally deliberately took, took an innocent
23 life with malice aforethought, acted with evil intent, not
24 self---

25 SOLICITOR BARNETTE: Your Honor, I want to object. If

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1 he's gonna go back to your three questions, I have no
2 problem with that. But now he's going a whole different
3 route. That's not what you asked him to start with.

4 THE COURT: I don't recall a lot of those factors in my
5 questioning, but you're asking questions. I'll agree with
6 the solicitor that's not the way the Court asked the
7 question.

8 MR. MCGUIRE: I agree with that.

9 THE COURT: But you have the right to ask whatever
10 questions you want to---

11 MR. MCGUIRE: Sure.

12 THE COURT: ---and I'll rule of them appropriately.

13 MR. MCGUIRE: All right.

14 THE COURT: Thank you, sir.

15 MR. MCGUIRE: Thank you, judge.

16 The judge used the word murder, and what I'm doing is
17 I'm just adding to it, and giving you the, the technical
18 legal definition of murder in South Carolina, which is an
19 intentional deliberate act to take a life with malice
20 aforethought, which means that the person's acting with an
21 even, black, malignant heart, heart.

22 okay?

23 A Yes, sir.

24 Q It's an evil act. It's not an accident. Not
25 self-defense.

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1 Are you with me?

2 A Yes, sir.

3 Q In that situation, and the background of this person
4 didn't include this mental defect.

5 A Yes, sir.

6 Q They knew, they knew what they were doing, chose to
7 kill.

8 SOLICITOR BARNETTE: Objection, Your Honor. That's,
9 that's a hypothetical all the way when he said it didn't
10 include this mental defect or any kind of disability.

11 THE COURT: Overruled.

12 Q In that situation, the intentional deliberate act to
13 take a life, and the disability, the mental disability is
14 not in play.

15 A Yes, sir.

16 Q And it's a child victim.

17 The -- and just correct me if I'm wrong, but it sounds
18 like, for you, based on your value system, the death penalty
19 would be appropriate?

20 A Yes, sir.

21 Q And the life penalty would not be appropriate?

22 A That's right.

23 Q And that the general background of the defendant, his
24 character, growing up, as long as it didn't include the
25 mental defect disability thing --

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1 A Yes, sir.

2 Q -- those things would not be relevant in fixing your
3 decision?

4 A Yes, sir.

5 Q Okay. Thank you.

6 THE COURT: Mr. Barnette.

7 SOLICITOR BARNETTE: May it please the Court, Your
8 Honor?

9 THE COURT: Yes, sir.

10 EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q I apologize. I know we've gone through a lot of
13 questions with you and I apologize for that.

14 A That's all right.

15 Q But he keeps talking about background information.
16 Well, part of the background is a disability that's involved
17 with it.

18 But that would be something that you would factor into
19 your decision, sir?

20 A Yes, sir, I would, I would think I can open, openly
21 minded --

22 Q Right.

23 A -- weigh it out.

24 Q And, of course, his whole background would be involved
25 with it. Just not pieces or parts of it. You would look at

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1 the whole background, his disability, his background, how he
2 was raised and everything from there.

3 A Yes, sir.

4 Q And based off that, if you felt like the mitigating
5 circumstances could reduce his culpability in the crime,
6 could you come back with life without parole?

7 A Could I vote --

8 Q Well, you could vote either way.

9 A -- imprisonment---

10 Q Yes, sir.

11 A ---without parole instead of life?

12 Q Yes, sir.

13 A Yes, sir, I could.

14 Q So, what you would do is listen to the judge -- listen
15 to the facts of the case?

16 A Yes, sir.

17 Q And you would weigh both the aggravating circumstances
18 as well as the mitigating circumstances?

19 A Yes, sir.

20 Q And anything that they presented you'd listen to, and
21 anything we presented you'd listen to?

22 A Yes, sir.

23 Q And based off that, you would decide what the proper
24 verdict would be?

25 A Yes, sir, you'd have to prove to me, without a doubt,

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1 and I could, I could make my decision.

2 Q So, we'd have to prove, beyond, beyond a doubt, without
3 a doubt, that this occurred?

4 A Yes, sir.

5 Q But at the same time, if they proved their mitigators
6 or whatever that could lessen the crime, and you could come
7 back with life without parole as well as death?

8 A Yes, sir.

9 Q Did you -- I know it's hard. We're throwing a lot of
10 questions at you. I apologize from there.

11 But the main line is you want to be fair to the State
12 and the defense --

13 A Yes, sir.

14 Q -- is that right?

15 And you'd listen to both sides?

16 A Yes, sir.

17 Q And you wouldn't automatically give one verdict one way
18 or the other based off your beliefs just based off of what
19 you hear in Court here today?

20 A No, sir.

21 SOLICITOR BARNETTE: One moment, Your Honor, please.

22 THE COURT: Yes, sir.

23 (Pause.)

24 SOLICITOR BARNETTE: Thank you, sir.

25 Thank you, Mr. Smith.

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1 THE COURT: All right. Mr. Smith, you may step down
2 and return to the jury room just a minute. Thank you.

3 THE WITNESS: Thank you, sir.

4 (WHEREUPON, the following takes place outside the
5 presence of the juror.)

6 THE COURT: Mr. McGuire.

7 MR. MCGUIRE: Thank you, Your Honor.

8 Just very briefly, I put on the record that I would
9 move to excuse the juror for cause in that, when using
10 straight layman's terms, he's automatic death penalty on
11 this category of case, that when you take out the
12 disability, mental defective issue that we threw in it, he
13 was not gonna consider the background of, of the defendant.
14 He indicated that that was not relevant absent the, the
15 defective, mental defective thing when using straight
16 layman's terms.

17 I agree, when you use the terms like you want to hear
18 everything, you want to be fair, and you listen to them, you
19 listen to us, would you listen to all the mitigation,
20 anything that would lessen the crime, I think a lot of
21 people are gonna say just yes to those questions. They're
22 just not effective. But when you talk to him in plain
23 language, you get the real answer. I think I'm the one that
24 got the real answers, and the real answers render him
25 substantially impaired, and to seat him or -- yeah, to, to

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1 present this juror in the panel would violate Mr.
2 Blackwell's Sixth and Fourteenth Amendments rights to a fair
3 trial and an unbiased and impartial jury.

4 THE COURT: Mr. Barnette.

5 SOLICITOR BARNETTE: Your Honor, I think they want to
6 have their cake and eat it too. He wants to ask about
7 certain aggravators, but when a certain mitigator comes
8 up -- he keeps talking about background. He don't --
9 it's -- he don't explain that background. Even when he gets
10 to one part he does not like, he separates it. He says
11 background separating the disability to get that answer.

12 The disability is part of it. They're gonna argue
13 that. They're gonna argue all these different mitigation in
14 there, and he said he'd be fair and impartial once you give
15 him the whole story, and he got the whole story, and I think
16 he's a juror that can sit based off that cause he's gonna
17 listen to your law and evidence.

18 Yeah, if you give him Mr. McGuire's facts, which is not
19 as straightforward as Mr. McGuire would like to say, he
20 likes to make sure to muddy the water, I think once he hears
21 the whole story, he'll make the decision based on what he's
22 presented in this case as well as the law as given to him by
23 the Court.

24 THE COURT: All right. As to Mr. Smith, Mr. Smith
25 seems, to me, to be a person who would be willing to hear

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1 both sides of the case. He testified that he would be
2 willing to consider both mitigation evidence and
3 non-mitigating evidence.

4 when asked specific questions just about the
5 aggravating circumstance, he did indicate that he would vote
6 for the death penalty. But then, when asked about specific
7 mitigators, he said he would consider those as well. He did
8 say that he could find life imprisonment without parole as an
9 appropriate verdict in this case.

10 I'm gonna find Mr. Smith to be qualified in the case.

11 Bring Mr. Smith in please.

12 (WHEREUPON, the following takes place within the
13 presence of the juror.)

14 THE COURT: All right. Mr. Smith, you've been
15 qualified as a potential juror in this case. Now, that
16 doesn't mean that you're actually gonna serve on the jury
17 yet.

18 THE WITNESS: Yes, sir.

19 THE COURT: That means that you have been qualified as
20 a possible juror. You, and the other qualified jurors, will
21 have your names placed on a list, and if your name comes up
22 after that time as being on the jury, you may get the
23 opportunity to serve, and if it doesn't, then you won't.

24 We're hopeful that we might get this process done in
25 the near future. I'm not sure exactly when now because it's

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1 taking a lot longer than I thought it was gonna take. So,
2 I'll have to kind of keep up with you and let you know how
3 that goes.

4 We don't need for you to report again at this time. We
5 will call you and let you know what you need to do next.

6 I will caution you that you have the right to -- we're
7 gonna give you a sheet of paper about some of the things you
8 might need to bring if you---

9 THE WITNESS: Yes, sir.

10 THE COURT: ---get picked on the jury cause you will be
11 staying at the hotel.

12 THE WITNESS: Yes, sir.

13 THE COURT: And you're free to discuss that information
14 with anybody who needs to know about that information.
15 However, I will caution you about the instructions I gave
16 you earlier.

17 THE WITNESS: Yes, sir.

18 THE COURT: They continue. You should not listen to,
19 watch, or read reports. Don't try to gather information on
20 the case. Don't discuss this case with anyone, even family
21 members or fellow jurors. Please don't expose yourself to
22 any outside information cause your job, if chosen, will be
23 to decide the case based on the evidence that, that is given
24 out in this Court.

25 Do you understand, sir?

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1 THE WITNESS: Yes, sir.

2 THE COURT: And are you willing to follow those
3 instructions?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right, sir. At this time you're free
6 to go. They'll give you one of the sheets and we'll be in
7 touch with you later.

8 THE WITNESS: Thank you, ma'am.

9 THE COURT: Thank you, sir.

10 THE WITNESS: Thank you.

11 THE COURT: All right. I have sent the other jurors
12 home for the evening.

13 We'll start again at nine o'clock in the morning.

14 MR. MCGUIRE: Yes, sir.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 THE COURT: Thank you.

17

18 (WHEREUPON, Court was in recess for the evening.)

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2

3 THE COURT: All right. State ready to go forward?

4 SOLICITOR BARNETTE: State's ready, Your Honor.

5 THE COURT: Defense ready to go forward?

6 MR. ALLEN: Yes, Your Honor.

7 well, may we approach a minute?

8 THE COURT: Just, just one second.

9 I'm gonna instruct the bailiffs to take the exhibits
10 back to the prospective jurors and ask them to begin reading
11 those documents. Thank you.

12 Yes, sir, you may approach.

13 MR. ALLEN: Solicitor and I may approach.

14 (WHEREUPON, a bench conference was held at this time.)

15 SOLICITOR BARNETTE: And, Your Honor, there is a matter
16 I'd like to put on the record at the appropriate time. I
17 don't know if this will be --

18 THE COURT: Okay.

19 SOLICITOR BARNETTE: -- since we may have a delay. I
20 didn't know.

21 THE COURT: Okay.

22 (Pause.)

23 THE COURT: You said there was some other matter you
24 want to take up?

25 So, why don't we do that right now?

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1 SOLICITOR BARNETTE: Yes, sir. Thank you, Your Honor.

2 Your Honor, we had talked about this in pretrial
3 motions and so forth. They have other experts that's gonna
4 be called in their sentencing phase if we get to that part,
5 Your Honor. I know Donna Schwartz-Watts is one of the
6 witnesses, and traditionally she, she has a report. I've
7 dealt with her so many times over the years.

8 THE COURT: Uh-huh. (Affirmative).

9 SOLICITOR BARNETTE: And, obviously, we'd like to make
10 a motion for any reports that she's generated as well as any
11 other expert---

12 THE COURT: All right.

13 SOLICITOR BARNETTE: ---or any other things---

14 THE COURT: Mr. McGuire.

15 Excuse me. Mr. Allen.

16 MR. ALLEN: Your Honor, first of all, you know, we have
17 not implicated Rule 5. You know, we had not requested
18 discovery under Rule 5 and---

19 THE COURT: I understand that, but the State is
20 requesting a copy of that report.

21 MR. ALLEN: I don't have a report at this time. I do
22 know---

23 THE COURT: Has she issued a report?

24 MR. ALLEN: Not to my knowledge. I understand she is
25 going to prepare a report. I do not have it.

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1 THE COURT: Do you know when that's going to be done?

2 MR. ALLEN: No, sir, I do not.

3 THE COURT: Well, I'm gonna instruct you to find out
4 and report to the Court as to when that's gonna be done if
5 she intends to do it.

6 MR. ALLEN: Yes, sir.

7 THE COURT: So, let me know by the end of today.

8 MR. ALLEN: Yes, sir.

9 THE COURT: Thank you.

10 At the bench I was informed that the defense is adding
11 additional names to the witness list. There were some
12 six---

13 MR. ALLEN: Six.

14 THE COURT: ---six detention officers that were listed.
15 I'm getting those names at this point in time. We will add
16 those to the list of witnesses.

17 I have offered to the State the opportunity for me to
18 voir dire the two witnesses that have already -- two jurors
19 that have already been qualified concerning those
20 individuals if the State so desires.

21 I assume, Mr. Barnette, you will let me know if I -- if
22 you want me to go back and question those two jurors.

23 SOLICITOR BARNETTE: Yes, sir, at this point I don't
24 see any point in it.

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

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1 (Pause.)

2 THE COURT: All right. Allow the attorneys to take a
3 look at the list. I'm gonna have that marked as an
4 additional Court's Exhibit and submitted to the potential
5 witnesses -- potential jurors.

6 Any objections to the additional list --

7 SOLICITOR BARNETTE: No objections.

8 THE COURT: -- from the State?

9 Any from the defense?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: All right. If you would please mark that
12 as an additional witness to the -- I mean exhibit to the
13 exhibits and then we'll submit it to the jurors.

14 (WHEREUPON, the witness list was marked as Court's
15 Exhibit No. 5-A and 5-B and received into evidence at this
16 time.)

17 THE COURT: All right. If you'll take those back and
18 ask the jurors to read those documents as well.

19 THE BAILIFF: Yes, Your Honor.

20 THE COURT: Thank you.

21 (Pause.)

22 THE COURT: All right, ma'am. If you'll step back and
23 ask Ms. Tinker if she's read the documents that I've asked
24 her to read. If she has, bring her out please.

25 THE BAILIFF: Yes, sir.

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1 (WHEREUPON, the following takes place within the
2 presence of the juror.)

3 AMANDA TINKER, having been previously
4 sworn, testified as follows:

5 THE COURT: Have a seat please, ma'am.

6 THE BAILIFF: Your Honor, the other juror is here.

7 THE COURT: Okay. Thank you, ma'am.

8 EXAMINATION

9 BY THE COURT:

10 Q All right. Your name is Amanda Tinker, is that right?

11 A Yes, sir.

12 Q Ms. Tinker, yesterday you were placed under oath to
13 tell, tell the truth to the Court and I want to remind you
14 of that fact, and explain to you that what you, what -- your
15 testimony today before me is also under oath.

16 Do you acknowledge and agree to that?

17 A Yes, sir.

18 Q All right. Now, I want to thank you so much for your
19 being here today. I recognize and I've told you many times
20 already that I understand this is an inconvenience for you
21 and you might be very uncomfortable sitting where you're
22 sitting and I, and I appreciate and understand that cause
23 people don't sit there everyday and I understand that.

24 what we're going to do now is ask some questions of
25 you, and then once I finished asking questions, I'm going to

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1 allow the attorneys to ask some questions of you as well,
2 and we're here simply to gather information that will assist
3 us in selecting a jury in this matter.

4 So, do you understand what we're doing at this time?

5 A Yes, sir.

6 Q And I want to tell you that, that the answers you give,
7 there are no right or wrong answers. They're only your
8 answers. We want you to be honest and tell us the truth
9 about the things that we're asking you about.

10 You understand that?

11 A Uh-huh. (Affirmative).

12 Q And I want you to be as easy -- as at ease as you can
13 be in this situation.

14 All right. Now, since we talked yesterday, has anybody
15 contacted you about this case?

16 A No, sir.

17 Q Have you heard or read or seen any information about
18 this case outside of the courtroom?

19 A Yes, sir.

20 Q Okay. And what did you see?

21 A Yesterday before I came to Court my mom called me and
22 she---

23 Q I'm talking about since yesterday.

24 A Hu huh. (Negative).

25 Q Since I talked to you last?

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1 A No.

2 Q Okay. That's -- have you seen anything---

3 A No.

4 Q ---or read anything since that time?

5 A No, sir.

6 Q Okay. Thank you.

7 Now, yesterday, during questioning, I believe you
8 answered to, to the fact that you may have formed some
9 opinions about this case based on news reports you might
10 have seen in the past and -- is that correct?

11 A From what I've heard about it.

12 Q Okay. All right. Now, ma'am, the sources of that
13 information, can you tell me what they were?

14 A Right, my mom heard on the radio and I had heard before
15 that it was a man who had killed a little girl.

16 Q Uh-huh. (Affirmative).

17 A And she said that it would probably be that case since
18 it was in Spartanburg County, and so I mean, when you hear
19 something like that, you can only assume the worst.

20 Q Okay. So, you heard what the case was about --

21 A Uh-huh. (Affirmative).

22 Q -- in other words?

23 A Uh-huh. (Affirmative).

24 Q Now, yesterday I asked you whether or not that would of
25 caused you to form or express any opinions about the case

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1 already, and has it caused you to form any opinions about
2 the case already?

3 A Somewhat.

4 Q All right. Tell me what those opinions are.

5 A I just feel like, with a little girl being killed, that
6 it's not just an accident. I mean stuff like that just
7 isn't taken lightly.

8 Q Okay. So, it shouldn't be taken lightly?

9 A Hu huh. (Negative).

10 Q Okay. All right. Well, I'm gonna ask you some more
11 questions, and we'll get into this a little further and see
12 where, where we might go.

13 Now, have you ever participated in any type of a blog
14 or an Internet site or have you ever had discussions with
15 anyone about any issues concerning the death penalty?

16 A No, sir.

17 Q Have you ever participated in any political activities,
18 demonstrations, or any type of, of activity to try to either
19 lobby a legislation, Legislature or anything of that nature
20 concerning matters involving the death penalty?

21 A No, sir.

22 Q Now, do you believe that you could put aside anything
23 that you might have seen or read or heard previously and
24 decide this case based upon the evidence and the law that
25 you would hear inside the courtroom?

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1 A Yes, sir.

2 Q Now, while you were waiting, I gave you a couple of
3 things to read.

4 A Uh-huh. (Affirmative).

5 Q Did you get a chance to read those things?

6 A Yes, sir.

7 Q One of those was a long list of people's names.

8 A Uh-huh. (Affirmative).

9 Q Those are people that have been identified to the Court
10 as possible witnesses in this case. I don't know if they'll
11 all testify, but they all could possibly testify.

12 A Uh-huh. (Affirmative).

13 Q Did you read that list?

14 A Yes, sir.

15 Q All right. Now, in reading that list, is there anybody
16 that was on that list that you might be related to, either
17 now or formerly, by marriage or by blood?

18 A No, sir.

19 Q Was there anybody on that list that you might have some
20 social or business or personal connection with?

21 A Yes, sir.

22 Q All right. Can you tell me who that might be?

23 A The ID officer, Robert Talanges.

24 Q Okay. And tell me how you know Officer Talanges.

25 A His son and I were best friends in high school.

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1 Q I see.

2 So, you knew him when you were growing up?

3 A Uh-huh. (Affirmative).

4 Q Well, I guess I'm gonna have to ask you, about how long
5 ago was that?

6 I hate to ask people's ages, but---

7 A I'm only 24. So, we met when we were in middle school.
8 So --.

9 Q Okay. So, it's been about ten or so years ago that you
10 met --

11 A Uh-huh. (Affirmative).

12 Q -- or 12 years ago?

13 A Yup.

14 Q All right. Now, would the fact that Officer Talanges,
15 the ID officer, might testify in this case, one way or the
16 other, and I don't know what his testimony might be, would
17 the simple fact that he testified in this case, would that
18 affect your ability to be fair and impartial to both sides
19 in the case?

20 A Maybe.

21 Q Okay. Can you tell me -- when, when you say maybe,
22 what do you mean by that?

23 I need to know exactly---

24 A Just cause I trust what he says.

25 Q I need to know whether or not it would, in fact, affect

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1 your decision or not affect your decision based on his --
2 the fact that you knew him before?

3 A I mean it probably would affect it.

4 Q Okay. So, it would affect your decision one way or the
5 other if he were to testify?

6 A Yes, sir.

7 Q All right. Well, ma'am, I'm gonna ask you to step back
8 into the, the room --

9 A Okay.

10 Q -- and then I'll get back in to talk with you again.

11 A Okay.

12 (WHEREUPON, the following takes place outside the
13 presence of the juror.)

14 THE COURT: Defense's position regarding the juror?

15 MR. MCGUIRE: Move to strike.

16 THE COURT: State.

17 SOLICITOR BARNETTE: No objection, Your Honor.

18 THE COURT: All right. I want to bring her out and
19 excuse her.

20 Bring her back out.

21 (WHEREUPON, the following takes place within the
22 presence of the juror.)

23 THE COURT: Ma'am, you don't need to sit down. I want
24 to let you know that I have ruled, because that might affect
25 your ultimate decision, that you're disqualified as a juror

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1 in this case. You're excused at this time. The bailiffs
2 will see that you're, that you're checked out.

3 Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: All right. If you'll bring in Mr. Estes.
6 Check to see that he's read the documents and then bring him
7 in.

8 THE BAILIFF: All right.

9 (WHEREUPON, the following takes place within the
10 presence of the juror.)

11 MICHAEL ESTES, having been previously
12 sworn, testified as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q Sir, have a seat.

16 A Yes, sir.

17 Q Thank you very much.

18 A Thank you.

19 Q Your name is Michael Estes, is that right?

20 A Yes, sir.

21 Q Now, Mr. Estes, yesterday you came in front of me and
22 you took an oath to tell the truth, and I'm going to make
23 you aware that oath still applies to our discussion this
24 morning.

25 Do you understand that?

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1 A Yes, sir.

2 Q And you agree that you are still under oath?

3 A Yes, sir.

4 Q Okay. Thank you, sir.

5 I want to thank you very much for your being with us
6 today. I recognize, as I told you earlier, that this whole
7 process is an inconvenience and a big inconvenience to some
8 people and I appreciate that, and I understand that sitting
9 in the seat that you're sitting in, it's kind of an
10 uncomfortable place to be, and I, I understand that as well.
11 But we're gonna do everything that we can to make this
12 process a, a reasonable process, and one that you can get
13 through without much concern or, or worry.

14 We're going to ask a set of questions. I'm gonna be
15 questioning you first, and then the attorneys will have an
16 opportunity to question you following that.

17 The questions that we're asking you, I'll tell you
18 there are no right or wrong answers. There's only your
19 honest responses. All's we want is you to be honest about
20 you and about the, the case that we're talking about so that
21 you can assist us in, in forming a jury in this matter.

22 Do you understand what we're doing here?

23 A Yes, sir.

24 Q Okay.

25 A I understand.

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1 Q And, again, we're not seeking any particular answer.
2 We're just seeking the answers to these questions that we're
3 gonna ask.

4 Now, I want to ask you a couple of things.

5 First of all, I gave you some instructions when you
6 left the courthouse yesterday.

7 Have you been able to follow my instructions?

8 A Yes, sir.

9 Q Now, since we've talked, has anybody tried to contact
10 you about this case?

11 A No, sir.

12 Q And since we have talked, have you seen, heard, or read
13 anything about the case?

14 A No, sir.

15 Q And have you been exposed to any information about this
16 case that might have caused you to either form or express an
17 opinion about the issues involved in this case?

18 A No, sir.

19 Q Okay. Now, have you ever participated in any type of
20 group or I'll call it a blog or discussion about issues that
21 might surround or involve the questions of the death
22 penalty?

23 A Yes, sir.

24 Q And tell me what that is.

25 A I was in college. We discussed it -- our view on

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1 death, the death penalty.

2 Q was that as part of a class assignment---

3 A Yes, sir.

4 Q ---or a group of people that you were in?

5 A Yes, sir.

6 Q Okay.

7 A And I go to church and there's been discussions on it.

8 Q On the---

9 A Typically how we should view it.

10 Q Oh, I see.

11 Okay. So, you've participated in those kinds of
12 discussions?

13 A Yes, sir.

14 Q Okay. Now, have you ever participated in any political
15 activity or, or activity that would of sought to impose the
16 death penalty or seeking the imposition of the death
17 penalty?

18 A No, sir.

19 Q All right. Now, I'm gonna ask you if you feel that you
20 could put aside anything or you may have seen or read or
21 heard that it would, in anyway, impact this case?

22 Could you put those issues aside and decide this case
23 based upon the evidence and the law as given to you inside
24 the courtroom?

25 A Yes, sir.

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1 Q Now, while you, while you were back in the jury room I
2 had provided a long list of names of people, and then there
3 was another document I asked that you read.

4 A Yes, sir.

5 Q And I'm gonna talk, first of all, about that long list
6 of people that were listed in there.

7 Those are lists of individuals who have been named as
8 possible or potential witnesses in this case, and concerning
9 the people's names that were on that list, I'll ask are
10 you -- have you ever been related by marriage or are you
11 related by blood to anyone whose name appeared on that list?

12 A No, sir.

13 Q Have you ever had any close social or personal
14 relationship with anyone whose name appeared on that list?

15 A Yes, sir.

16 Q And can you tell me who that was?

17 A David Taylor.

18 Q Okay.

19 A He's an investigator and Robert Jackson was my son's
20 doctor.

21 Q Okay, sir. Now, let's assume that those people now --
22 see, that's a list of potential witnesses. I don't know who
23 off that list will actually testify.

24 A Uh-huh. (Affirmative).

25 Q But let's assume those two individuals did testify in

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1 some fashion about some matter that's involved in this case.

2 would the mere fact or would the fact that those
3 witnesses -- those people testified in this case, would that
4 affect your ability to be fair and impartial to both sides
5 in this case?

6 A No, sir.

7 Q Now, I'm going to ask you some -- now some questions
8 that I guess are considered more personal. They're gonna be
9 about your opinions on, on certain topics and issues, and,
10 again, I'm not trying to invade your privacy. We are trying
11 to find out how you may feel about some things, and your
12 opinions on some things will be important in this process.

13 I hope that you are secure enough in your opinions that
14 you're going -- not going to feel threatened by the fact
15 that I ask you about these things. I want you to understand
16 we're not trying to get you to change your mind about
17 anything. We're just trying to identify your opinions as
18 best we can.

19 Do you understand that?

20 A Yes, sir.

21 Q And -- now -- and you feel comfortable with that
22 process?

23 A Yes, sir.

24 Q Okay. Now, one of the things I'm -- I'll end up asking
25 you about in this is your issues -- the issues concerning

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1 the death penalty cause that is an issue involved in this
2 case, and it may be an issue that would be involved in this
3 case depending on the outcome of the first part of the
4 trial, but understand that the trial has not begun, and so
5 it's really, at this point in time, premature for us to talk
6 about the penalty phase of the trial because the guilt phase
7 has not yet been determined.

8 However -- and I will inform you that Mr. Blackwell is
9 presumed to be innocent and -- of the charges that have been
10 brought against him. So, the fact that we're talking about
11 the penalty phase today, at this early stage, doesn't
12 indicate anything about him or whether or not he is innocent
13 or guilty of the charge. This is simply the only time or
14 chance that I will get to talk to you about these things
15 before the trial begins.

16 Do you understand that?

17 A Yes, sir.

18 Q Okay. Now, I'm gonna ask you, if, if you were a juror
19 in any criminal case -- and I'm not talking about this
20 particular case, I'm just talking about any criminal case,
21 you were selected as a juror, cause it's not proper for me
22 to comment specifically about this case. I wouldn't do
23 that.

24 But if you were a juror in any criminal case, would you
25 be willing to listen to the law as instructed to you by the

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1 judge?

2 A Yes, sir.

3 Q would you be willing to accept the law as given to you
4 by the judge and then apply that law to the facts of the
5 case as you, the jury, might have determined the facts?

6 A Yes, sir.

7 Q Now, even though you might not like the law, let's say
8 you might even, once I give you the law, you may disagree
9 with what the law says.

10 would you still be willing to follow the law as
11 instructed to you by the Court?

12 A Yes, sir.

13 Q Now, if you were a juror in this case, State versus
14 Blackwell, would you be willing to set aside any information
15 or knowledge you might have about this case from any source
16 at all, at all, any information you may have heard, seen, or
17 read about this case, either outside of the courtroom, if,
18 if that information should recur -- occur, and would you
19 decide the case then based purely upon the law and the
20 evidence that you hear in the courtroom during the trial?

21 A Yes, sir.

22 Q Now, as I mentioned to you before, a criminal defendant
23 is presumed to be innocent, and that's a substantial right
24 that exists under our law, and, therefore, a criminal
25 defendant is never required to prove himself innocent of a

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1 charge.

2 Do you understand it's the State's obligation to prove
3 the charges?

4 Do you understand that concept?

5 A Yes, sir, I do.

6 Q And, and the State has the burden of proving the
7 defendant guilty beyond a reasonable doubt.

8 Do you understand that as well?

9 A Yes, sir, I do.

10 Q Now, if you were sitting as a juror in any criminal
11 case, and, again, I'm not talking about the Blackwell case
12 right now, would you be willing to listen to the law as
13 presented to you, and based upon what -- and based upon what
14 those things were, and based upon the circumstances, would
15 it be possible for you to find any defendant not guilty of a
16 charge?

17 A Listening to the information?

18 Q Yes, sir.

19 A Yes, sir.

20 Q But considering all the law and the evidence, would you
21 be willing to find a defendant not guilty?

22 A If he's not guilty, yes, sir.

23 Q All right, sir. And on the other hand, let's say that,
24 that if, if you, if you were presented with sufficient law
25 and evidence in a case, could you find someone guilty of a

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1 charge?

2 A Yes, sir.

3 Q Well, I want to be sure now that, that -- do you think
4 that, just because someone has been accused of a crime, that
5 they must automatically be guilty of that crime?

6 A No, sir.

7 Q So, I take it from your answers, and you can correct me
8 if I'm wrong in saying this, you would be able to make up
9 your mind, depending on the strength of the evidence and
10 what the testimony or the evidence showed, to find a person
11 either guilty or not guilty, is that correct?

12 A Yes, sir.

13 Q Now, I'm gonna talk to you a little bit about the
14 penalty phase of the trial. Again, I've told you already
15 that this shouldn't be taken as anything concerning the
16 guilt or innocence of, of the defendant in this case.
17 Again, it's just the only chance I'm gonna get to talk to
18 you before the trial starts. So, I want to talk to you
19 about this now. So, we'll talk about the penalty for just a
20 few minutes.

21 Now, most of the time, in most criminal cases, the
22 judge decides the level of penalty to be assessed in any
23 particular crime. The jury decides guilt or innocence. The
24 judge then decides the appropriate penalty.

25 You understand that that's normally the way it works?

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1 A Yes, sir.

2 Q Well, that -- there's a difference here and that
3 difference is when the State is seeking the death penalty of
4 a defendant. The jury then has the responsibility to decide
5 the penalty that's going to be imposed.

6 In that type of case, where a defendant has been
7 accused of murder and the State is seeking to impose the
8 death penalty, it's up to the jury to decide the, the level
9 of penalty in a separate sentencing phase, and, under those
10 circumstances, if the jury convicts the defendant of the
11 crime of murder, so that guilt has already been determined,
12 that same jury then goes back and starts a separate
13 proceeding and listens to additional evidence and testimony.

14 Do you understand that that's how these trials are
15 conducted?

16 A Yes, sir.

17 Q All right. Now, in that separate proceeding, the only
18 determination to be made by the jury is the type of sentence
19 that's going to be handed out or given. Then there's only
20 two choices during that, that penalty phase. One is life
21 imprisonment without the possibility of parole, and the
22 other is the death penalty.

23 Do you understand that that will be the two choices?

24 A Yes, sir.

25 Q Now, under the State statute that governs how the

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1 penalty or sentencing phase of the trial is to be handled,
2 it provides that there would be evidence presented during
3 that particular phase of the trial of either statutory
4 aggravating circumstances or statutorily mitigating
5 circumstances.

6 In other words, the aggravating circumstances are the
7 circumstances that would tend to make the particular crime
8 more severe or, or worse, and the mitigating circumstances
9 would be those circumstances that would tend to modify the
10 crime or make the circumstances less severe.

11 Do you understand that that, that those types -- that
12 type of evidence would be presented during that phase of the
13 trial?

14 A Yes, sir.

15 Q Now, the -- once the aggravating and mitigating
16 evidence had been presented to the jury, the jury would be
17 instructed by the Court to consider those circumstances in
18 reaching a verdict as to the appropriate penalty to be
19 given.

20 Do you understand that as well?

21 A Yes, sir.

22 Q So, do you understand basically how that particular
23 trial, that particular phase would be handled?

24 A Yes, sir.

25 Q Now, I want to -- you to put yourself in a situation

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1 theoretically, kind of in your mind, as a juror in a case in
2 which the State is seeking to impose the death penalty, and
3 imagine that you and your other fellow jurors have reached
4 the point where you have reached a verdict on the guilt
5 phase of the trial, and the defendant had been convicted of
6 murder, and now you're going to go back to decide the
7 punishment. That is either life in prison without parole or
8 the death penalty. So, you're in that point in the trial
9 where the, the guilt has been determined and now we're ready
10 to start that second phase that I just described to you.

11 Do you understand that?

12 A Yes, sir.

13 Q Now, while you're back in the jury room, I gave you a
14 chance to read a paper and it described three different
15 jurors, and I'm kind of gonna go over that with you again to
16 remind you the three different jurors that it described.

17 Did you read that paper?

18 A Yes, sir, I did.

19 Q Okay. Now, the first type of juror that was described
20 on that paper was in the same situation that I've told you
21 to put yourself in.

22 A Uh-huh. (Affirmative).

23 Q That means you're on a jury, a conviction has occurred,
24 and you're coming back in to decide the, the penalty.

25 The first type of juror, before he ever walks back into

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1 the room, into the courtroom for that second penalty phase,
2 already knows how he's going to vote. He's gonna vote for
3 the death penalty every single time because he believes
4 that's the most appropriate penalty anytime someone is
5 convicted of a murder.

6 Now, the second type of juror I described to you was a
7 juror who's also, also already made his mind up. He knows
8 how he's going to vote before he walks back into the, the
9 hearing for the, the penalty phase. He doesn't think that
10 the State should ever take a life of a person in response to
11 a crime regardless of what the crime is. So, he knows
12 he's -- how he's gonna vote. He's gonna vote for life
13 imprisonment every single time.

14 Now, the third type of juror doesn't know how he's
15 going to vote. He hasn't made up his mind as to whether
16 he's going to vote for either life imprisonment or the death
17 penalty. That juror is gonna have to wait. He's gonna have
18 to listen to the evidence that I've described to you
19 earlier, and the testimony, and then decide how he wishes to
20 decide the penalty. Either for life imprisonment without
21 parole or death.

22 Do you understand the three jurors I've described?

23 A Yes, sir.

24 Q Now, which of those three jurors would best describe
25 you if you were in that situation?

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1 A Number three.

2 Q Number three.

3 So, you think you would be someone who would be willing
4 to listen to both the aggravating, the bad parts, and the
5 good parts, and make a decision based on the evidence that
6 you've heard?

7 A Solely on the evidence, yes, sir.

8 Q Okay, sir. Now, now I'm gonna ask you this.

9 Now, if, after you considered all of the evidence, if
10 you did not think that the evidence justified a death
11 penalty or, for any reason, would you be willing, in that
12 circumstance, to give someone life in prison without parole?

13 A Yes, sir.

14 Q Now, on the other hand, if you felt that the evidence
15 justified a sentence of the death penalty, would you be
16 willing to sentence someone to death if you think -- thought
17 that was the case?

18 A Yes, sir.

19 Q So, you believe, based on the evidence, you could give
20 someone either life or death depending on all of the
21 evidence, both aggravating and mitigating circumstances?

22 A Yes, sir, I do.

23 Q Now, if you were asked to serve as a juror in this
24 case, I've already explained it may go on for several days.
25 I don't -- I can't tell you how long it will go on for. But

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1 during the, that time, a jury would be housed in a local
2 hotel. All of your meals would be paid for. All of your
3 expenses would be taken care of. You'd be transported
4 everywhere you needed to go.

5 But if you were in that situation for the duration of
6 the trial, would, would that, in anyway, be a danger to
7 you -- either to your personal health or well being?

8 A I'm diabetic. As long as I can take my medicine I'll
9 be fine.

10 Q Well, we'd see to it that you got your medicine.

11 A Yeah.

12 Q That wouldn't be a problem.

13 A Other than that I don't.

14 Q Other than that, no.

15 Well, would it be -- would it be a danger to the health
16 and well, well being of anyone who depends upon you if you
17 were there for, for a week let's say?

18 A No, sir.

19 Q All right. Now, I want to thank you for answering my
20 questions. I'm gonna give the attorneys an opportunity to
21 ask you some questions, and then I may follow-up with some
22 questions once we've finished that.

23 Do you understand what we're going to do?

24 A Yes, sir.

25 THE COURT: Okay. Defense may proceed.

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1 MR. MCGUIRE: Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 EXAMINATION

4 BY MR. YOUNG:

5 Q Good morning, Mr. Estes.

6 A Hey.

7 How you doing?

8 Q I'm doing well.

9 My name is Boyd Young. We met briefly yesterday or I
10 got to introduce myself, but -- so, there you go.

11 A How you doing?

12 Q I want to ask you a couple questions to follow-up with
13 off of your questionnaire.

14 okay?

15 A Okay.

16 Q I notice that you were in the Navy?

17 A Yes, sir.

18 Q Can you tell me a little bit about that, where you
19 served, what your MS was?

20 A I was a machinist mate, pits -- I worked on the
21 boilers.

22 Q And what ships you were on?

23 A I was on the USS Suribachi.

24 Q What is the Suribachi?

25 I don't---

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1 A It's an---

2 Q I don't know what class it is.

3 A It's an ammunition supply ship.

4 Q Okay. And it -- were -- you're honorably discharged or
5 what kind of discharge did you get?

6 A I got other than honorable.

7 Q Okay. Can you tell me what happened?

8 A Youth and stupidity. I just walked off the ship and
9 went home.

10 Q Okay.

11 A And I only had two months left. So, it's stupid.

12 Q Yeah.

13 All right. Well, having been on some ships I can't
14 really blame you.

15 I noticed that you had some experience with the South
16 Carolina Department of Corrections?

17 A Yes, sir, I worked at Perry Correctional Facility.

18 Q And what, what were you doing at Perry?

19 A I was a correctional officer.

20 Q And how long were you there?

21 A About six months.

22 Q What -- why did you leave that?

23 A They raised my child support up to more than I could
24 afford it and stay at Perry.

25 Q Okay.

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1 A I ended up leaving South Carolina and moving back in
2 with my parents.

3 Q Okay. And where are you parents at?

4 A Wendell, North Carolina.

5 Q Okay. Not too far and, and now you're back?

6 A Yes, sir.

7 Q And you're back working and everything okay with all
8 that stuff now?

9 A Yes, sir.

10 Q All right. Your time at the Department of Corrections,
11 can you tell me -- I mean, you know, we have these ideas.
12 Some people say prison is really easy. Some people say it's
13 hard.

14 what were your thoughts?

15 A It's -- they don't eat a lot. It's not fun.

16 Q Yeah.

17 A It's not fun at all.

18 Q It's not, it's not a country club?

19 A It's not a resort. That's for sure.

20 Q Okay. The judge was talking to you a little bit about
21 your views about the death penalty and I'm gonna sort of
22 follow-up with where he was on that.

23 okay?

24 A Okay.

25 Q We were talking about somebody who's sat on a jury and

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1 you and 11 other people found somebody guilty of murder.

2 okay?

3 A Yes, sir.

4 Q And murder means the intentional killing of another
5 with malice aforethought.

6 A Right.

7 Q Okay. So -- and you probably had some of this in your
8 correctional officer training, but that's meant to do it
9 murder.

10 A Yeah.

11 Q Not an accident.

12 A Yeah.

13 Q Not self-defense.

14 A Malicious intent.

15 Q Right.

16 Not heat of passion.

17 A Right.

18 Q And we talked a little bit yesterday that murder is not
19 enough for the death penalty in South Carolina, right?

20 A Right.

21 Q You have to have something called an aggravating
22 circumstance?

23 A Yes, sir.

24 Q All right. And all the jurors have to find that -- the
25 existence of an aggravating circumstance unanimously beyond

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1 a reasonable doubt.

2 A Right.

3 Q Okay. And one of those aggravating circumstances might
4 be that the victim was a child.

5 okay?

6 A Uh-huh. (Affirmative).

7 Q So, in that category of cases, understanding that
8 you've found -- convicted him of murder and an aggravating
9 circumstance, what are your views about the appropriateness
10 of the death penalty?

11 A Well, if it's an aggravating situation or
12 circumstances, I think they should receive the death
13 penalty. If it's an accidental death, then no.

14 Q Sure.

15 And then -- but if---

16 A If the intent was not to kill the child, then no.

17 Q Right.

18 But if the intent was to kill the child?

19 A I think they should receive the death penalty.

20 Q And understanding, you know, that the defense might
21 bring more information about a particular defendant.

22 A Uh-huh. (Affirmative).

23 Q Okay. And we talked some a little bit about
24 mitigation.

25 A Right.

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1 Q Right.

2 And then about what is happened to him in his life, how
3 he grew up, how he was raised, what his future might be
4 like, stuff like that.

5 You understand that?

6 A Yup.

7 Q That stuff, that mitigation stuff, sounds to me like,
8 for you, intentional murder of a child, that mitigation
9 stuff is not gonna matter to me. I'm not gonna change my
10 opinion about the death penalty.

11 A It's, like I said, if his intention was to kill the
12 child, then those mitigating circumstances wouldn't affect
13 it for me.

14 Q Okay.

15 A If it was accidental, then, then no.

16 Q Okay. And I understand where you're at and they're a
17 lot of people like that. There's, there's no problem --
18 there's no right or wrong answers, and I appreciate you
19 sharing your thoughts with me.

20 A Right.

21 MR. YOUNG: If I could have one second, Your Honor?

22 THE COURT: Yes, sir.

23 (Pause.)

24 Q A few more questions, Mr. Estes.

25 A Okay.

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1 Q I just got -- I want to talk about -- a little bit more
2 about the process, about how this works.

3 okay?

4 A Okay.

5 Q And we talked about the aggravating circumstance that
6 all the jurors find unanimously beyond a reasonable doubt.

7 okay?

8 A Okay.

9 Q And mitigation circumstances are, are a little bit
10 different, and we talked about what some of those might be,
11 but how a jury arrives at them is a little bit different too

12 okay?

13 A Okay.

14 Q Each juror is entitled to find what they want to be
15 mitigated mitigated.

16 okay?

17 A Right.

18 Q There's no set definition. It doesn't have to be found
19 by every juror. They don't have to agree.

20 You understand that?

21 A Right.

22 Q And it doesn't have to be proven beyond any set burden
23 of proof. If a juror feels it's right for them, then they
24 are allowed to give it effect.

25 A Right.

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1 Q Okay. And even in a case where there's no mitigation,
2 where there's said -- there's nothing mitigating, the
3 juror's entitled to consider this concept called mercy.

4 A Uh-huh. (Affirmative).

5 Q Okay. You understand that?

6 A Right. Yes, I do understand mercy.

7 Q And you've heard this term mercy?

8 A Yes, I have.

9 Q And mercy -- for you, is mercy something that is --
10 does somebody earn mercy or is it something that's sort of
11 freely given?

12 A It's freely given.

13 Q And, and where does that come from as far as who you
14 are?

15 A Well, being a Christian, you know, Christ forgave us.

16 Q Uh-huh. (Affirmative).

17 A I think, while we're yet sinners, Christ loved us so
18 much that he died for us on the cross. I mean that's mercy.

19 Q Okay. And it -- and I understand where you're coming
20 from on that.

21 This ultimate decision that we -- that jurors are asked
22 to arrive at, this sort of a life or death decision based on
23 aggravation and mitigation and mercy.

24 okay?

25 A Uh-huh. (Affirmative).

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1 Q And if all 12 jurors agree that death is the
2 appropriate sentence, you understand that Mr. Blackwell will
3 be killed by the state?

4 A Right.

5 Q Be executed, right?

6 You understand that?

7 A I understand that, yes, sir.

8 Q And you understand if all 12 jurors agree that life is
9 the appropriate punishment, he'll be given life without the
10 possibility of parole?

11 A Yes, sir.

12 Q And you know, from your days at the Department of
13 Corrections, that that means you die in prison?

14 A Right.

15 Q This decision that jurors are asked to find is what we
16 call an individual moral judgment.

17 A Uh-huh. (Affirmative).

18 Q Okay. And an individual moral judgment is a concept
19 like what religion is right for you. You've made your
20 personal choices about your faith.

21 A Yes, sir.

22 Q And you recognize that other people may of made
23 different choices---

24 SOLICITOR BULSA: Your Honor, I object to his moral --
25 question about this.

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1 THE COURT: I don't know if your question is going into
2 his religious beliefs.

3 MR. YOUNG: No, sir.

4 THE COURT: Okay. Then it shouldn't go there.

5 MR. YOUNG: And I'm not trying to question anybody's
6 faith.

7 THE COURT: All right. Well, I'm gonna let you finish
8 your question.

9 You still have the right to object once he completes
10 it.

11 Q You recognize that other people have made different
12 choices?

13 A Yes, sir.

14 Q And you respect their right to make their choice?

15 A Yes, sir.

16 Q And you expect them to respect your right to make your
17 choice?

18 A Absolutely.

19 Q And if somebody were being pressured or bullied or
20 yelled at or told that their choice was dumb, you would stop
21 that?

22 A Well, yes, sir.

23 Q And you would ensure that everybody's opinion was
24 respected?

25 A Absolutely.

Individual Juror Qualification

1 Q At the end of the day, when making individual moral
2 judgments, people can agree to disagree?

3 A Yes, sir.

4 Q You agree with that?

5 A Yes, I do.

6 Q And is that a concept that you're okay with?

7 A Absolutely.

8 Q Thank you for answering my questions, Mr. Estes.

9 A You welcome.

10 THE COURT: Mr. Bulsa.

11 SOLICITOR BULSA: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 EXAMINATION

14 BY SOLICITOR BULSA:

15 Q How you doing, Mr. Estes?

16 A All right.

17 How you doing?

18 Q I'm Derrick Bulsa. I introduced myself yesterday.

19 A Yes, sir.

20 Q I was in the military myself a little bit.

21 A Uh-huh. (Affirmative).

22 Q I went through the National Guard.

23 How long were you in the military?

24 A Five years.

25 Q Five years.

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1 Okay. And you decided you had enough and---

2 A Yup.

3 Q ---wanted to get out a little early?

4 A Yup, that's a decision I regret until this day.

5 Q Okay. You still support the military, of course?

6 A Yes, I do.

7 Q All right. Now, I was noticing in your juror
8 questionnaire that you've been divorced?

9 A Yes, sir.

10 Q And you're remarried now?

11 A Yes, sir.

12 Q Okay. And apparently it looks like you've got some
13 step kids as well as some kids of your own?

14 A Yes, sir.

15 Q Okay. All right.

16 A I have five altogether.

17 Q All right. Right.

18 A She had two.

19 Q And they all live with you?

20 A well, three of them.

21 Q okay.

22 A The -- my oldest was living with me.

23 Q okay.

24 A But he's engaged now. So --.

25 Q All right. You still have a -- how's your relationship

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1 with your ex-wife?

2 A Non, nonexistent.

3 Q Not good.

4 Okay. Okay. All right. And you said you were a
5 Christian?

6 A Yes, sir, I am.

7 Q Okay. And you, you commented about having discussions
8 in college and also---

9 A Yes, sir.

10 Q ---through church about your views of the death
11 penalty?

12 A Yes, sir.

13 Q And when the judge read those three types of jurors to
14 you, you said you were the third type?

15 A Yes, sir.

16 Q And that third type included your ability to listen to
17 the aggravating circumstances as well as the mitigating
18 circumstances before you even made up your mind?

19 A Right.

20 Q Okay.

21 A Yes, sir.

22 Q And you, you were asked a question about the death of a
23 child being the aggravating circumstance.

24 You remember that question?

25 A Right.

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1 Q while it might be your natural inclination that death
2 might be appropriate, would you not make that decision until
3 you heard the full evidence?

4 A The whole story.

5 Q Okay. So, if you heard some mitigation, could your
6 view be swayed?

7 A It could be swayed.

8 Q Okay. So, you would not automatically vote for death
9 until you heard--

10 A The whole---

11 Q ---the full story?

12 A The full story, yes, sir.

13 Q And once you heard the full story of both aggravating
14 and the, and the mitigating, could you then consider a life
15 sentence?

16 A Yes, I can consider a life sentence.

17 Q Okay. As well consider a death sentence?

18 A Yes, sir.

19 Q Okay. So, at this point you don't know what the facts
20 are?

21 A Right.

22 Q Okay. You just know that the victim was a child?

23 A Now I do, yes.

24 Q Okay. Because that's what was brought up in the
25 questioning?

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1 A Yup.

2 Q Now -- and we're, we're kind of jumping the gun here.
3 we're assuming the jury is gonna find the man guilty of
4 murder.

5 A Okay.

6 Q Okay. And then the State's gonna present their
7 aggravating circumstances?

8 A Uh-huh. (Affirmative).

9 Q And it doesn't stop there.
10 You understand that?

11 A Right.

12 Q The defense has a, has a right to step up here and
13 present their side of the story --

14 A Uh-huh. (Affirmative).

15 Q -- to mitigate or lessen the reason why he did that.

16 A Right.

17 Q And taking both sides into consideration, is your mind
18 made up right now how you would decide to vote?

19 A No.

20 Q Okay.

21 A I mean it really does bother me that a child was
22 killed.

23 Q Well, that's understandable.

24 A Right.

25 Q That's human nature.

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1 But as a Christian and---

2 A You have to be fair.

3 Q ---and as a man, could you listen to both sides?

4 A You have to be fair.

5 Q Okay.

6 A I mean that's our responsibility.

7 Q So, the question the Court has to decide is would you
8 automatically vote death?

9 A No.

10 Q Okay. And would you automatically vote life?

11 A No.

12 Q Okay. So, when would you make the decision on how to
13 vote?

14 A After I weighed both sides of the, the story, and then
15 I would determine what would be the right thing to do.

16 Q Okay. And would you listen to the viewpoints of the,
17 of the other jurors?

18 A Yes, sir, I would.

19 Q And would you share your viewpoints?

20 A Yes, I would.

21 Q Okay. And then after a collective decision, would you
22 follow the law and evidence as the judge gave it to you?

23 A Yes, sir, I would.

24 Q Well, you've heard a little bit about the aggravating
25 circumstance.

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1 How -- what's your viewpoint of psychological
2 illnesses?

3 A Some people have mental illnesses that need to be taken
4 care of with medication.

5 Q Okay. And if the defense presented information about
6 the defendant's mental status, would you consider that
7 evidence?

8 A I would consider it.

9 Q Okay. Now, I hate to get a little personal, but you
10 commented on your information sheet about a domestic
11 violence situation.

12 A Yes, sir.

13 Q You went through anger management?

14 A Yes, sir, I did. That was---

15 Q And that was well in your past?

16 A That was expunged though from my record.

17 Q And that was well in your past?

18 A Yes, sir.

19 Q Okay. So, if there's some mitigation evidence
20 presented about a certain relationship that was going on,
21 would you consider that?

22 A I would consider it, but -- yeah, I would consider it.

23 Q Okay. And could you factor that into the decision you
24 make?

25 A If it was the person he was involved with, that would

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1 be one thing. But with a child, I would have to -- it would
2 have to be all the evidence surrounding the child.

3 Q All right. You'd have to look at the full
4 circumstances?

5 A Right.

6 Q Okay. So, not just the child party, but other parties
7 involved?

8 A Right.

9 Q Okay. Do you have any persons in your family with any
10 sort of intellectual disability?

11 A No, sir, I don't.

12 Q Okay. How about with any medical -- mental illnesses?

13 A No, sir, I don't.

14 Q Do you have any familiarity with either one of those
15 two areas?

16 A Well, not really.

17 Q Okay.

18 A I mean I've had some friends that have suffered from
19 depression, but --.

20 Q Okay.

21 A And I've, you know, suffered from depression, but
22 nothing severe.

23 Q Okay. And could you listen to certain witnesses who
24 would talk about those kind of matters?

25 A Yes, sir.

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1 Q And would you weigh that evidence against both sides?

2 A Yes, sir, I would.

3 Q So, the bottom line is could you be fair and impartial
4 and decide the -- your decision based on the facts and
5 circumstances of the case?

6 A Absolutely.

7 Q Thank you, Mr. Estes.

8 THE COURT: All right. In an effort to streamline
9 this, I'll only allow redirect on new matters that were
10 brought up by the State.

11 MR. YOUNG: Sure, Your Honor, I don't---

12 THE COURT: I've given you an opportunity to examine
13 him once. I'll let you go into new matters that were
14 brought up by the State's questioning.

15 MR. YOUNG: Okay. I understand.

16 THE COURT: That's the way you normally do recross or
17 redirect.

18 MR. YOUNG: No disagreement here, Your Honor.

19 THE COURT: So, there's nothing different, different
20 about that ruling I do in any other trial. I just don't
21 think we need to go back over information that is already
22 been covered.

23 MR. YOUNG: I understand.

24 THE COURT: All right. You may proceed.

25 EXAMINATION

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1 BY MR. YOUNG:

2 Q Mr. Ester, I just want to follow-up on one thing
3 okay?

4 A Okay.

5 Q When I was talking to you about murder and the death
6 penalty and for the intentional murder of a child --

7 A Uh-huh. (Affirmative).

8 Q -- you said that the most appropriate punishment for
9 you was the death penalty and that stuff about the
10 background and stuff like that wouldn't matter to you, and
11 wouldn't affect your decision to vote for the death penalty
12 on an intentional murder of a child.

13 A No, I -- what I meant by that was --

14 Q Sure.

15 A -- if all the evidence -- if his intention was to
16 murder a child, then the death penalty. If it's accidental
17 you know, that's -- then no.

18 Q And I understand that and I think I understand where
19 you're -- what you're saying.

20 okay?

21 A Right.

22 Q The first trial, guilty/not guilty, okay?

23 A Yes, sir.

24 Q That's where any evidence -- like if it was an
25 accident, you would of heard that evidence. If it was

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1 self-defense, you would of heard that evidence.

2 A Right.

3 Q If it was heat of passion you would of heard that
4 evidence.

5 okay?

6 A Right.

7 Q And in order to find somebody guilty of murder, you
8 would of found -- you would of rejected that. You would of
9 said it's not an accident.

10 okay?

11 A (Witness nods affirmatively.)

12 Q You would of found that it was malicious. It was
13 intentional. It was meant to do it.

14 okay?

15 A Okay.

16 Q So, that decision's been made. That's not what we're
17 talking about when we talk about mitigation.

18 okay?

19 A (Witness nods affirmatively.)

20 Q That's not part of the facts and circumstances to be
21 considered in the penalty phase.

22 You with me?

23 A Right.

24 Q Okay. So, with that additional information, does
25 that -- you know some people say if you murder a child, for

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1 me, the death penalty is the only appropriate punishment,
2 and I'm just asking is that you?

3 A No, I'd have to, like I say, I'd have to know all the
4 circumstances surrounding it.

5 Q Okay. And can you just tell me a little bit about what
6 you mean by that?

7 A I mean if it was -- I don't know. If his intention was
8 to murder, I mean just plain out kill the child --

9 Q Uh-huh. (Affirmative).

10 I mean that's murder.

11 A That's murder.

12 Q Right. That's what murder is.

13 A And I mean if it was malicious, then I'd, I'd say the
14 death penalty, but if there were circumstances surrounding
15 it, and that wasn't his intent and purpose from the onset,
16 it -- just something happened and the child was killed,
17 then, you know, I wouldn't decide for the, for the death
18 penalty.

19 Q And I think that that's where we sort of get confused
20 with jurors and sort of -- I may of confused you.

21 Okay. So, we're talking about meant to do it---

22 A I know if he murdered the child --

23 Q Right.

24 A -- then it would -- if it would -- if it was severe
25 circumstances, yeah, I would -- it would have, to, to me,

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1 you'd have to go with the death penalty.

2 Q Okay. And I think I understand what you're saying and
3 I thank you.

4 A You welcome.

5 THE COURT: State wish to ask any follow-up?

6 SOLICITOR BULSA: Just briefly.

7 EXAMINATION

8 BY SOLICITOR BULSA:

9 Q I think that---

10 THE COURT: Again, it needs to be limited to---

11 SOLICITOR BULSA: Yes, sir.

12 THE COURT: ---information brought out by them that was
13 new.

14 SOLICITOR BULSA: Yes, sir. Yes, sir.

15 Q I think that what we're---

16 THE COURT: I'm gonna start enforcing that rule.

17 SOLICITOR BULSA: Yes, sir.

18 THE COURT: So, let's move on.

19 SOLICITOR BULSA: Yes, sir.

20 Q I think the confusion is we have the guilt phase and
21 then we have the sentencing phase.

22 A Right.

23 Q The guilt phase is did he do it.

24 A Right.

25 Q The sentencing phase is what's the rest of the story.

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1 will you -- is your mind gonna make it -- be made up at
2 the end of the guilt phase about what your sentence should
3 be or are you gonna listen to the rest of the story before
4 you decide your sentence?

5 A well, it's like the judge says, he's gonna lay down
6 the -- what -- the rules that we should follow, and by the
7 information that he gives me that's what -- how I would
8 determine it --

9 Q okay.

10 A -- if he gets a death penalty or not.

11 Q okay. So, you would be willing to listen to the second
12 phase of the---

13 A Yes, sir.

14 Q okay. Before you made up your mind?

15 A Yes, I can't really determine the -- right now what I
16 would say until I heard everything.

17 Q okay. Thank you, Mr. Estes.

18 A The judge has to say, what y'all have to say,
19 everything.

20 Q Great. Thank you, sir.

21 THE COURT: All right, sir. I'm gonna ask you to step
22 back into the jury room for just a moment and I'll bring you
23 back once I've had a discussion with the lawyers.

24 Thank you, sir.

25 THE WITNESS: Thank you.

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1 (WHEREUPON, the following takes place outside the
2 presence of the juror.)

3 THE COURT: All right. The defense's position as to
4 Juror Estes.

5 MR. YOUNG: Mr. Estes is clearly not qualified. He's
6 substantially impaired in his ability to follow the law. He
7 said numerous times every time, if it was intentional murder
8 of a child, it's automatic death.

9 He keeps talking about well, I'm gonna listen to the
10 facts and circumstances. But when you ask him what he means
11 by that, he talks about well, if it was really intentional,
12 if he meant to kill the child, if that was the malicious
13 murder of a child, then yeah, I'm gonna always vote for the
14 death penalty. I'm gonna sit and listen and I'm not gonna
15 put my hands over my ears. I'm not gonna run out of the
16 room when the defense starts talking. But his mind is made
17 up upon the conviction of murder for a child that the only
18 appropriate punishment is death.

19 THE COURT: I'll hear from the State.

20 SOLICITOR BULSA: Your Honor, the State, of course,
21 disagrees. The defense -- the witness or the juror
22 specifically stated he could wait and hear the rest of the
23 story. Your Honor posed this question in chambers. Anybody
24 of a right mind, just hearing one side of the story, hearing
25 a young child, is killed is gonna naturally be inclined to

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1 vote death. But he has stated that he could listen to the
2 rest of the story, both aggravation and mitigation, before
3 he makes up his mind.

4 That's a little deceiving just to say, once you
5 convicted him, if it's an intentional killing of a child,
6 would you vote death penalty. Most everybody's gonna say
7 yes. But can you listen to the rest of the story, and he
8 said he certainly could. That makes him a valid juror.

9 THE COURT: Yes, sir.

10 MR. YOUNG: It's not a listening test that makes
11 somebody a valid juror. Being able to hear doesn't, doesn't
12 overcome anybody's substantial impairment, and this is why
13 it's not, it's not an absolute impairment.

14 The judge -- he doesn't have to say unequivocally that
15 I can't listen to anything else, my mind's already made up.
16 He says if it's an intentional murder of a child, the only
17 appropriate punishment for him is the death penalty. He
18 said it over and over, and, judge, you know, some people say
19 that, and we talk about well, everybody's gonna say that.

20 Well, that's not true. Not everybody is gonna say
21 that. Some people, children, police officers, it doesn't
22 really matter to me who was killed. That's not what I
23 decide who deserves to live and die based on. Again, based
24 on the record, he's substantially impaired.

25 THE COURT: All right. My understanding is that I am

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1 to, in examining the entire voir dire, not just answers to
2 specific questions. The standard is whether or not the
3 views of the juror would prevent or substantially impair the
4 performance of his or her duties.

5 The juror repeatedly stated that he would be willing
6 and would follow the Trial Court's instructions concerning
7 the law even if he disagreed with that law. He also
8 repeatedly stated that he would be willing to listen to both
9 aggravating and mitigating circumstances.

10 I'll find that the specific question pointed to by the
11 defense was a question that did not offer the juror an
12 alternative or the other evidence that would of been
13 presented during the sentencing phase that being that the
14 Court is required, by statute, to instruct the jury to
15 consider -- sir, I'm talking now.

16 MR. YOUNG: Yes, sir.

17 THE COURT: You can be seated.

18 The statute that governs the death penalty specifically
19 states that the Court is to instruct the jury to consider
20 both aggravating and mitigating circumstances. This juror
21 indicated repeatedly that he would be willing to consider
22 those factors, and even when asked whether he could consider
23 those factors in the case of a child's death, when presented
24 with that alternative, he stated that he could.

25 It's my finding that the juror is qualified and should

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1 be seated.

2 All right. All right. We're moving on to panel number
3 two. The first juror in that list is Juror 136, Johnson
4 Kong.

5 Check with Mr. Kong and see if he has read the
6 information that I've requested. If he has, bring him out.

7 THE BAILIFF: Yes, Your Honor.

8 MR. YOUNG: Your Honor, are you gonna bring Mr. Estes
9 and give him your---

10 THE COURT: Oh, I'm sorry. I didn't, I didn't do that.

11 MR. YOUNG: And---

12 THE COURT: I'll, I'll catch her. Just a second.

13 Yes, sir. Excuse me.

14 MR. YOUNG: And, Your Honor, I certainly was not trying
15 to interrupt, Your Honor, and I understand your ruling, and
16 I'm not trying to argue against your ruling.

17 THE COURT: Just one second, ma'am. I've got some
18 issues I've got to take up.

19 Yes, sir.

20 MR. YOUNG: You were talking about -- the question we
21 talked about yesterday and I just wanted to say that I
22 thought I did follow-up with---

23 THE COURT: I didn't.

24 MR. YOUNG: ---your views about the death penalty and
25 would you give consideration to others.

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1 THE COURT: I didn't stop you from asking any
2 questions.

3 MR. YOUNG: No, sir. No, sir, you did not. I just
4 didn't want you to think that I was violating what we had
5 discussed in chambers.

6 THE COURT: Well, I didn't indicate that you had.

7 MR. YOUNG: Yes, sir, thank you.

8 THE COURT: You're welcome.

9 I'm sorry. I should of brought Mr. Estes out and let's
10 bring him out first and then we'll talk to Mr. Kong.

11 THE BAILIFF: All right.

12 (WHEREUPON, the following takes place within the
13 presence of the juror.)

14 THE COURT: Have a seat please, Mr. Estes.

15 Mr. Estes, we're gonna give you a little sheet of
16 paper. That paper's gonna have a little bit of information
17 on it about the kinds of things you might want to bring if
18 you're summoned back to the courthouse.

19 THE WITNESS: Okay.

20 THE COURT: I have determined that you are someone who
21 will consider for the jury. That doesn't mean that you will
22 be selected on the jury. We're gonna qualify a good number
23 of people, and from that group a jury will be selected.

24 THE WITNESS: Yes, sir.

25 THE COURT: So, I've determined that you are qualified

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1 and you can go forward.

2 Now, if we call you back, then you're going to be
3 staying with us for the period of the trial. We're gonna
4 give you a sheet of paper that indicates some of the things
5 you might consider bringing with you when you're called back
6 to the courthouse.

7 Do you understand that?

8 THE WITNESS: Yes, sir.

9 THE COURT: Now, in the mean time, my instructions
10 concerning your behavior will continue.

11 THE WITNESS: Yes, sir.

12 THE COURT: You're not to listen to, watch, or read any
13 media reports about the case. Don't discuss the case with
14 anyone. Don't discuss the -- don't, don't allow anyone to
15 discuss the case with you.

16 Now, it's okay to talk to family or friends about the
17 fact that you may be with the Court for a period of time and
18 make arrangements for being away for a period of time. I
19 know you may need to do that. But don't talk about anything
20 that has to do with the case or the issues that might be
21 involved in the case.

22 Do you understand that?

23 THE WITNESS: Yes, sir.

24 THE COURT: And, again, it would be highly improper for
25 you to try to gather any information about this matter on

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1 your own.

2 Do you understand that as well?

3 THE WITNESS: Yes, sir, I do.

4 THE COURT: So, you understand the instructions I've
5 given you?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. So, we're gonna release you at
8 this time, but you stay under the Court's instructions
9 concerning your behavior in regard to the case. It may be a
10 few days before we get back in touch with you. But we will
11 be back in touch with you.

12 Do you understand that?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Do you have the paper for him?

15 THE CLERK: Yes, sir.

16 THE COURT: Thank you.

17 All right, sir. You're free to go at this time.

18 You're free to go pursuant to my instructions. Thank you,
19 sir.

20 THE WITNESS: Thank you.

21 (WHEREUPON, the following takes place outside the
22 presence of the juror.)

23 THE BAILIFF: They're reading the information, Your
24 Honor.

25 THE COURT: All right. Be sure they're all reading it

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1 while we're waiting.

2 THE BAILIFF: Yes, sir.

3 THE COURT: Thank you.

4 As soon as Mr. Kong is ready, bring him out.

5 THE BAILIFF: He's gonna---

6 THE COURT: Beg your pardon?

7 THE BAILIFF: Okay. He's gonna let me know when he's
8 finished reading it.

9 THE COURT: Okay. All right. Just bring him out when
10 he's ready.

11 THE BAILIFF: Okay.

12 THE COURT: Thank you, ma'am.

13 (WHEREUPON, the following takes place within the
14 presence of the juror.)

15 JOHNSON KONG, having been previously
16 sworn, testified as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q Sir, come in and have a seat please.

20 A (Witness complies.)

21 Q Thank you, sir.

22 Your name is Johnson Kong --

23 A Yes, sir.

24 Q -- is that right?

25 I'm gonna be talking to you for a little while.

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1 A Okay.

2 Q So you can turn and face me. That will be fine.

3 Mr. Kong, I'm going to go over some matters with you in
4 this, this case, and I want to thank you very much for your
5 corporation thus far in this process. I realize it's an
6 inconvenience for anyone in your position. Believe it or
7 not, I was selected on a -- for jury service one time. I
8 had to sit, sit back in the back. I not -- never sat where
9 you're sitting today, but, at any rate, I've been involved
10 in the process and I realize it's an inconvenience.
11 Sometimes it's a little unsettling for people and I
12 appreciate that fact, and it's uncomfortable for you to be
13 in the position you're in, and I realize all those things.
14 But I'm trying to make you understand -- trying to make you
15 as comfortable as I can in this process.

16 What we're going to do, at this point in time, is I'm
17 going to ask you some questions about this case and about
18 some issues that could potentially come up in this case, and
19 then I'm gonna allow the attorneys to also ask questions of
20 you as well before we go forward, and we're still in the
21 process of qualifying people for jury selection.

22 Do you understand what we're doing so far?

23 A Yes, sir.

24 Q Now, the questions I'm going to ask, I'll tell you
25 there are no right or wrong answers. We're not asking for a

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1 question to see if you know the answer to the question.

2 what we're asking are -- today is some questions about your
3 general views, your opinions on some subjects that will
4 assist us in determining the, the selection of a jury.

5 So, do you understand what we're doing?

6 A Yes, sir.

7 Q And, again, there are no right or wrong answers.

8 There's only truthful and honest answers. In that regard,
9 I'm gonna remind you you've been placed under oath to be
10 honest with the Court. That oath continues today.

11 Do you acknowledge that fact?

12 A Yes, sir.

13 Q Okay, sir. Now, I want to ask you just a couple of
14 quick questions.

15 I gave you some instructions yesterday when you left
16 the courthouse as to your behavior, your actions.

17 Do you remember those?

18 A Yes, sir.

19 Q And have you been able to follow those since that time
20 yesterday?

21 A Yes, sir.

22 Q Okay. Has anyone tried to talk to you about this case
23 or to contact you about this case?

24 A No, sir.

25 Q Now -- and I asked you not to listen to, read, or watch

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1 any media reports or gather any information.

2 You've been able to follow that, is that correct?

3 A Yes, sir.

4 Q Okay. Now, a couple of questions I have for you
5 generally about some, some, I guess, possibly political
6 issues or things of that nature.

7 Have you ever participated in or responded to a blog or
8 any other Internet site that might gather or disseminate
9 information concerning the death penalty?

10 A No, sir.

11 Q Have you ever participated in any demonstration or any
12 political activity concerning the imposition of the death
13 penalty?

14 A No, sir.

15 Q Would you be able to put aside anything that you might
16 have heard or seen or read previously and decide this case
17 based upon the law and the evidence that you would hear
18 inside of the courtroom during the trial?

19 A No, sir.

20 Q You would not be able to do that?

21 A Can you repeat the question?

22 Q Yes, sir, I'm sorry.

23 Q Listen carefully to me. I know these are a little
24 confusing, but be sure you answer, you're answering this --
25 the, the -- correctly, your opinion. I'm not looking for a

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1 right answer. I'm looking for your opinion.

2 Can, can you put aside anything that you might have
3 heard, read, or seen previously, and decide this case based
4 upon what you would hear, that would be the law and the
5 evidence, what you would hear in the courtroom during the
6 trial?

7 Could you do that?

8 A Yes, sir.

9 Q All right, sir. Now, while you were waiting I had you
10 read a long list of names, a couple of lists actually. It's
11 one small and a couple -- a long one.

12 Did you look over those names?

13 A Yes, I did.

14 Q All right. Now, as to those people that are on that
15 list, those are people that have been, have been identified
16 to me as people who could possibly testify in this case.
17 Now, I don't know if all of them are gonna testify or not,
18 but those are people who are potential witnesses. So, we're
19 gonna assume that each and every one of them will testify in
20 the case.

21 Do you understand that?

22 A Yes, sir.

23 Q Now, as to those people that are on that list, are you
24 related, either by marriage, now or previously, or by blood,
25 to anybody that you read on that list?

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1 A No, sir.

2 Q All right. Do you have any type of business, social,
3 or personal connection with anyone who might be on that
4 list?

5 A I'm not sure if I have any kind of business with a
6 person per se, but I think Founders, yes.

7 Q With whom?

8 A Founders.

9 Q Founders, is that, is that---

10 A A bank.

11 Q Oh, a bank.

12 A Yeah.

13 Q So, you have, you have some dealings with Founders.
14 That's a Federal Credit Union I think in town?

15 A Yes.

16 Q Is that right?

17 A Yes.

18 Q All right. Do you have some business dealings with
19 them?

20 A Bank accounts.

21 Q You bank there.

22 Okay. Well, I don't know if the bank itself will be a
23 witness in the case.

24 A Okay.

25 Q But somebody from that organization apparently might be

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1 a witness in the case.

2 You understand that?

3 A Yes.

4 Q Now, let's assume there's somebody who did testify who
5 was from that banking institution.

6 would the, would the simple fact that that person was
7 from Founders and testified, would that affect your ability
8 to be fair and impartial to both sides in the case
9 concerning the issues in the case?

10 A No.

11 Q Okay. Now, I'm going to ask you some more personal
12 questions now. These are questions that will be getting
13 into your opinions or your belief on certain topics, and I
14 want to tell you now, before we get into this, we're not
15 here to attempt to invade your privacy, but we are trying to
16 find out how you may feel about some things and, and matters
17 that are important to us, that being the people
18 participating in the trial and the selection of a jury.

19 Do you understand that?

20 A Yes, sir.

21 Q All right. Now -- and I would hope that you're secure
22 enough in your opinions and your own beliefs that you're not
23 going to feel threatened by the fact that I'm asking you
24 about those facts.

25 Is that true?

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1 A Yes.

2 Q Okay. Now, one of the things I'm going to talk to you
3 about is the penalty that could possibly be imposed in this
4 case. That, that penalty is the death penalty specifically,
5 and because that might be an issue in the trial, I'm going
6 to discuss that with you, but I want you to understand one
7 thing before I start talking about that, and that is that
8 it's really premature for us to even be talking about the
9 penalty at this point in time in this trial because, thus
10 far, guilt of a crime has not yet been, been established or
11 determined.

12 Mr. Blackwell, the defendant in this case, is presumed
13 to be innocent of the charges brought against him. So, the
14 fact that we're talking about the penalty at this point in
15 time should not be taken by you to indicate anything about
16 him or his case. This is simply the only time that I and
17 the lawyers will have a chance to talk with you about the
18 penalty phase of the trial, and be aware that, depending on
19 the outcome of the case, we may not, may not even get to
20 that stage of the trial.

21 So, again, I realize it's premature for us to talk
22 about this, but this is the only opportunity we have to talk
23 to you about any part of the case.

24 You understand that?

25 A Yes.

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1 Q Okay, sir. Now, I'm gonna talk to you generally about
2 criminal cases, and if you were a juror selected in any
3 criminal case -- and I'm not talking just about this one,
4 any criminal case, whatever it might be because it's not
5 proper for me to talk specifically about this case and I
6 wouldn't do that.

7 But if you were a juror in a criminal case, would you
8 be willing to listen to the law as instructed to you by the
9 judge in that trial?

10 A Yes.

11 Q Would you be willing to accept the law as the judge
12 instructed it to you, and apply that law to the facts as
13 determined by the jury -- and I'll tell you the jury is
14 always the finder of facts.

15 So, would you be willing to accept the law given to you
16 by the judge and apply that law to the facts?

17 A Yes.

18 Q Now, even -- let's, let's assume that, once you heard
19 the law the judge gave you law, let's assume that you might
20 disagree with the law and you may not like, like or may not
21 agree with what the law says.

22 Would you be willing still though to take the law
23 exactly as given to you by the judge and apply it to the
24 facts in the case as instructed by the Court?

25 A Yes.

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1 Q Now, if you were a juror in, in this case, would you be
2 willing to set aside any information or knowledge that you
3 might have about this case from any source at all, anything
4 that you might have seen, heard, or read outside of the
5 courtroom, if this information should occur to you in that
6 regard, would you be willing to set aside that information
7 and decide this case based solely upon what you hear in the
8 courtroom?

9 That would be the testimony and the law given by the
10 judge.

11 A Yes.

12 Q Now, as I mentioned to you before, and I'll, I'll
13 reiterate to you, in South Carolina and the United States, a
14 criminal defendant is always presumed to be innocent and,
15 therefore, a criminal defendant is never required to prove
16 his innocence in a case.

17 Do you understand that that's a basic concept of our
18 law?

19 A Yes.

20 Q And the State has the burden of proving that a
21 defendant is guilty beyond a reasonable doubt.

22 So, do you understand that the State has the only
23 burden of proof in a criminal case?

24 A Yes.

25 Q Now, if you were serving -- sitting as a juror again in

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1 any criminal case, would you be willing to listen to the law
2 and the evidence as presented to you, and based upon what
3 those things were, could you find a person not guilty of a
4 crime that they've been charged with?

5 A Yes.

6 Q And by the same token, if you were convinced, beyond a
7 reasonable doubt, that a person was guilty of a crime based
8 on the law and the evidence, could you render a verdict of
9 guilty against the defendant?

10 A Yes.

11 Q So, in other words, are you telling me that, that,
12 based upon the law and the evidence presented in any trial,
13 you would be in a position or you would be able to either
14 find a defendant guilty or not guilty based upon your
15 determination of the law and the evidence in this case?

16 A Yes.

17 Q Okay, sir. Now, I'm going to talk to you specifically
18 about the penalty that's possible in this case.

19 I will tell you that, in most criminal trials, a jury
20 decides guilt or innocence and generally the judge decides
21 the penalty or the level of penalty that's to be assessed in
22 most criminal cases. So, the jury doesn't have to concern
23 itself with the penalty.

24 Now, one particular kind of case that we have in our
25 Court system, the jury has the duty of deciding the penalty

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1 that's going to be imposed. That type of case is the type
2 of case where a defendant has been accused of the crime of
3 murder, and the State is seeking the imposition of the death
4 penalty against that defendant.

5 Do you understand that that's different, in that case,
6 the jury decides the level of penalty?

7 A Yes.

8 Q You understand that?

9 All right. Now, under those circumstances, if a jury
10 convicts a defendant of a crime of murder, so that guilt is
11 been determined, that same jury comes back, in a separate
12 sentencing proceeding, and listens to additional evidence
13 and testimony.

14 Do you understand that the, that that type of trial is
15 divided into two steps or phases?

16 A Yes.

17 Q Okay. Now, in the separate sentencing proceeding, the
18 only determination to be made by a jury is the type of
19 sentence that's going to be handed out or given. There's
20 only two choices during that, that particular phase of the
21 trial. One is life imprisonment without the possibility of
22 parole and the other is the death penalty.

23 So, do you understand that that would be the choice
24 that a jury would have in the second phase of that type of
25 trial?

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1 A Yes.

2 Q Now, the State statute that governs how the penalty or
3 sentencing phase of the, of the trial is to be handled
4 provides for the presentation of evidence. That evidence
5 can include statutory aggravating circumstances and
6 statutorily mitigating circumstances.

7 Do you understand that there would be two types of
8 evidence that could be presented during the penalty phase?

9 A Yes, sir.

10 Q All right. And the purpose for which, which that
11 hearing is conducted is for the jury to be presented with
12 both types of evidence.

13 Now, aggravating circumstances are factors which tend
14 to make the crime more severe or, or a worse situation.
15 Mitigating circumstances are, are circumstances or evidence
16 which tend to make the crime or the, the event less severe.

17 So, do you understand the difference between
18 aggravating and mitigating?

19 A Yes, sir.

20 Q Okay. Now, once the aggravating and mitigating
21 evidence has been presented to the jury in that phase of the
22 trial, the jury would be instructed by the Court to consider
23 the aggravating circumstances and the mitigating
24 circumstances in reaching its verdict as to the question on
25 the punishment to be given.

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1 Do you understand the purpose for which that hearing
2 then would be held?

3 A Yes, sir.

4 Q Okay. Now, I want, I want you to put yourself in a
5 position theoretically in your mind in other words. As a
6 juror in a case in which the State is seeking the death
7 penalty, imagine you and your fellow jurors have just
8 completed the guilt phase of the trial and have convicted
9 the defendant of the crime of murder.

10 So, do you understand where you would be in the, in the
11 process?

12 A Uh-huh. (Affirmative).

13 Q All right. Now you are about to go back into the
14 courtroom for the penalty phase of the trial to decide the
15 punishment and that punishment can be, again, either life
16 imprisonment without parole or the death penalty.

17 Do you understand that?

18 A Yes, sir.

19 Q Now, when you're in the jury room, I put a sheet of
20 paper in there and there were three different jurors
21 described on that sheet of paper.

22 Did you read the paper?

23 A Yes, sir.

24 Q Okay. And I want to remind you of a little bit my --
25 of what that paper said about the three different types of

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1 jurors.

2 Now, the, the first type of juror that we're talking
3 about is coming back into the room for the, for the separate
4 phase of the trial to decide the penalty, and that juror,
5 who, before he ever walks back into that room for that
6 second part of the trial, that second phase, already knows
7 how he's going to vote in that case. He's decided or he has
8 in his mind that he is always going to vote for the death
9 penalty every time because he believes that that is the most
10 appropriate penalty anytime someone has been convicted of
11 murder.

12 Now, the second type of juror that I've put on that
13 paper is a juror who's also, before he walks back into the
14 room for the penalty, for the sentencing phase, has already
15 made up his or her mind. That juror believes that the State
16 should never take the life of a person in response to a
17 crime regardless of what the crime is or how severe it is.
18 So, he knows that, no matter what, he's always going to vote
19 for life imprisonment every time.

20 The third type of juror doesn't know what he's going to
21 do yet. He doesn't have his mind made up as to whether he's
22 going for life imprisonment without parole or he's gonna
23 vote for the death penalty. That juror is going to have to
24 wait and listen to the evidence and the testimony, in other
25 words, the evidence as to aggravating factors and the

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1 evidence as to mitigating factors, and then make a decision
2 as to what the appropriate penalty is made.

3 So, do you understand the three types of jurors I've
4 described?

5 A Yes, sir.

6 Q Do you understand the differences between them?

7 A Yes.

8 Q Now, which of those three types of jurors would best
9 describe you if you were in that situation?

10 A Number three.

11 Q Number three?

12 A Yes.

13 Q All right. Now, under those circumstances, keeping in
14 mind that a defendant has already been found guilty and the
15 issue of guilt is no longer a concern, would you be willing
16 to listen to the facts and the evidence, and if the evidence
17 justified it, would you be willing to enter a sentence of
18 death?

19 A Can you please repeat that please?

20 Q Sure. I'll repeat that to you.

21 Under the circumstances I've described to you, and
22 keeping in mind the defendant is already been convicted of
23 the crime of murder, so---

24 A Yes.

25 Q ---in that position we were talking about, so the issue

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1 of guilt's no longer a concern, would you be willing to
2 listen to the facts and the evidence in the case concerning
3 the penalty, and if the evidence presented during that phase
4 justified it, would you be willing to sentence someone to
5 death?

6 A Yes.

7 Q Now -- and if your thoughts and the facts of the
8 evidence did not justify the death penalty or, for any other
9 reason you, you chose, would you be willing to sentence
10 someone to life imprisonment without parole?

11 A Yes.

12 Q Now, you're telling me then, I'm gonna ask you -- so,
13 you, you could sentence someone to either life imprisonment
14 without parole or you could sentence someone to death
15 depending on the evidence in the case?

16 A Yes.

17 Q Now, I'm finally gonna ask you a couple of questions
18 about the, the trial itself. The length of trial is
19 difficult for me to gauge. I can tell you that, generally,
20 these trials sometimes last a week or maybe a little longer
21 than a week. If you were selected to serve on the jury, an
22 order of sequestration has been entered in this case, and
23 that means people that were on the jury would be housed in a
24 local motel during the trial. All of your meals would be
25 paid for. Your travel back and forth from the courthouse

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1 would be taken care of. So, there would be no expense to
2 you at all for serving on the jury panel, and, and your
3 meals and that sort of thing would be taken care of.

4 Now, I know that's gonna be an inconvenience. It would
5 be to anybody in that situation, that circumstance and I
6 understand it.

7 But my real question is if you were put in that
8 situation of being sequestered, would that fact pose a
9 serious risk of danger to your health or well being, your
10 personal health or well being?

11 A No.

12 Q And would it be -- pose a serious risk of danger to the
13 health or well being of anyone who might be dependent upon
14 you?

15 A Yes.

16 Q And can you tell me what that might be?

17 A I'm -- right now I'm the only one that's working. My
18 wife, she, she works for her parents, but she's depending on
19 me for, for---

20 Q Okay. Well, I don't know the situation with your
21 employer as to whether or not he pays you during periods of
22 this, like this. I will tell you the State does pay for
23 jury service. It's not -- I'm not gonna tell you it's as
24 much as you're making because it's probably not, but there
25 is some pay that would be involved, involved from the State.

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1 would that lessen that situation?

2 A Yeah.

3 Q Okay, sir. All right. Now, I'm gonna allow the
4 lawyers to ask some questions of you at this time. So, if
5 you would, if you would, pay attention to what they asked in
6 their questions, and I believe we're on the second panel.
7 So, the State will be going first at this time.

8 SOLICITOR BARNETTE: May it please the Court, Your
9 Honor?

10 THE COURT: Yes, sir.

11 EXAMINATION

12 BY SOLICITOR BARNETTE:

13 Q Morning, Mr. Kong.

14 A Morning.

15 Q My name is Barry Barnette and I'm with Derrick Bulsa.
16 We're representing the State in this matter.

17 I apologize ahead of time. I'm gonna ask you some
18 questions that normally I wouldn't ask people these
19 questions, but, like I said, we're trying to figure out what
20 you're thinking and what -- and you're probably thinking
21 about things that you never thought about before from that
22 standpoint.

23 I've noticed you've lived in Florida---

24 A Yes.

25 Q ---Massachusetts and California?

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1 A Yes.

2 Q So, you've basically got all corners of the country,
3 hadn't you?

4 A Yes.

5 Q What brought you to South Carolina if I can ask?

6 A My family.

7 Q Okay.

8 A They're all living here.

9 Q Oh, is your family living here?

10 A Yes.

11 Q Okay. That's good to come back home, I guess, to your
12 family and everything from there.

13 Let me just ask you, and this is probably something you
14 never thought about until today, what is your position on
15 what -- what do you think about the death penalty?

16 A I think that the death penalty -- I mean anyone who
17 really deserves it, you know. It's kind of hard to explain
18 how I feel about it.

19 Q Have you ever thought about it before today?

20 Let me ask you that question.

21 A No. No.

22 Q Okay. I understand.

23 What would you, what would you use to determine the
24 death penalty -- well, like I said, the judge explained to
25 you, you have the options. If you get to the second phase

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1 of the trial, you have life without parole, that means he
2 doesn't get out of jail, and you have the death penalty.

3 A Yes.

4 Q Is those two, two decisions that you could consider in
5 that situation?

6 A Yes, if it comes to the evidence I could.

7 Q Okay. And if you felt like -- if you heard all the
8 evidence and everything and you determined the death penalty
9 was appropriate, could you give the death penalty?

10 A Yes, I can.

11 Q Okay. If, however, if you heard all the factors and
12 you decided that life without parole was the choice, could
13 you make life without parole the choice?

14 A Yes, I can.

15 Q Okay. And the judge explained this a little bit to
16 you. There's gonna be aggravating circumstances as well as
17 mitigating circumstances. We'll present the aggravating
18 circumstances when we get to that part.

19 A Okay.

20 Q The defense will present the mitigating factors for
21 you, and aggravating factors can be -- in order for a murder
22 to be considered for the death penalty you have to have an
23 aggravating circumstance.

24 A Yes.

25 Q In this case, the State will have two in this case, and

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1 the defense is presented five different mitigators, and that
2 doesn't mean by numbers. We just have to prove one of those
3 to your satisfaction in order to be considered for the death
4 penalty, and you realize, if we prove the aggravator, you
5 don't have to give the death penalty. You can give life
6 without parole if you want to.

7 A Yes.

8 Q But we do have to prove one of them to you.

9 A Yes.

10 Q Okay. And the mitigators, they can provide those to
11 you. They don't have to prove them or they do prove them.
12 Even if they prove them you can still give the death penalty
13 in that situation.

14 A Yes.

15 Q You understand what I'm saying?

16 I know it's a lot I'm throwing at you. If I'm
17 confusing you, please let me know---

18 A Yeah.

19 Q ---from there.

20 For example, one of the factors in this case may be a
21 death of a child --

22 A Yes.

23 Q -- from there. One of the mitigators may be a
24 disability the defendant may present from there. Those are
25 different factors that you'll be facing in this case.

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1 Does either one of those factors give you rise one way
2 or the other?

3 A What do you mean by that?

4 Q Does it, does it affect you in anyway concerning your
5 decision?

6 Obviously it would be a factor you can consider.

7 But is it something that it's just so heinous to you or
8 so -- I don't know if you have a disability in your family
9 or anything like that, for example.

10 Do you have anything in your family, in the---

11 A No.

12 Q ---family from that standpoint?

13 A No.

14 Q Obviously -- I think you're married, but you don't have
15 any children yet?

16 A No.

17 Q Obviously you, you know probably children in your
18 family I'm assuming from other members of your family and so
19 forth --

20 A Yes.

21 Q -- from there.

22 But, in this situation, if you listened to everything,
23 and you decide death was appropriate in this situation, at
24 the end we'd have what we have -- the sheet of paper. Some
25 people call it a death warrant, for example.

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1 A Okay.

2 Q Could you sign that sheet of paper saying death would
3 be the appropriate sentence in this case?

4 A Yes, I could.

5 Q If -- I notice you kind of looked.

6 Is that a tough decision for you or from there?

7 I know you --

8 A I mean it would be a tough decision, but I mean if it
9 warrants a death sentence I can.

10 Q Okay. And, of course, life without parole would always
11 be an option in that situation --

12 A Yes.

13 Q -- from there.

14 But is it -- like I said, this type case, it is a tough
15 decision all the way across cause obviously it's something
16 to consider, and, like I say, I've explained those factors
17 to you on both sides from there.

18 Let me ask you something, I was just curious from -- do
19 you build computers?

20 A Yes.

21 Q Is that a passion of yours?

22 I notice you put it on there.

23 A It's, it's a hobby.

24 Q It's a hobby from that standpoint.

25 What's vaping if I can ask?

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1 A E-cigarettes basically. I mean, you know, it's a -- I
2 try to quit smoking and that's what I've been doing.

3 Q Oh, okay. I got you. That's a good thing from that
4 standpoint.

5 Let me ask you, in building computers, do you play
6 video games?

7 A No.

8 Q You don't?

9 A Not, not on computers, but, you know, on just console
10 systems, yeah.

11 Q Play Stations?

12 A Yes.

13 Q XBox, things like that.

14 what kind of games do you play if I can ask?

15 A A lot of sports game.

16 Q Okay. Do you play any I guess, how can I say it,
17 Battlefield, things like that, or anything like that?

18 A No.

19 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
20 please.

21 THE COURT: Yes, sir.

22 (Pause.)

23 SOLICITOR BARNETTE: Thank you, sir. Please answer any
24 questions the defense or the judge may have for you.

25 THE COURT: Mr. McGuire, are you gonna do the

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1 examination?

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: You may proceed.

4 MR. MCGUIRE: Yes, sir. Thank you very much, Your
5 Honor.

6 THE COURT: Yes, sir.

7 EXAMINATION

8 BY MR. MCGUIRE:

9 Q Good morning, Mr. Kong. My name's Bill, Bill McGuire.
10 This is my opportunity to ask you some questions about your
11 thoughts about the criminal justice system and specifically
12 today the death penalty.

13 A All right.

14 Q And, again, it's a little cart before the horse cause
15 we haven't had a trial, but this is my only opportunity to
16 talk to you.

17 So, let me ask you this, do you think we use the death
18 penalty too much, not enough, about right?

19 A I think we use it too much. I mean across, across the
20 United States in general, yeah, I think we do.

21 Q Okay. And why is that or why do you believe that?

22 A I don't know. I guess it's kind of hard for me to
23 explain. I just think everyone deserves a second chance.
24 You know, that's all.

25 Q Okay. Okay. And -- but in talking with the, the

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1 government attorney, you indicated that, if a case warranted
2 it, I think that's the word you used, if it warranted it,
3 you could vote for the death penalty?

4 A Yes.

5 Q And sign the appropriate paperwork?

6 A Yes.

7 Q I want to talk to you a little bit about -- well, I
8 just want to -- I'm gonna clarify one thing. The State
9 talked about an aggravating factor and he talked to you
10 about children.

11 In the aggravating -- there are two aggravators alleged
12 in this case. One's kidnapping and one is that the victim
13 is a, is a child.

14 In, in that case, I'm gonna ask you a follow-up
15 question after, after I ask you this one particular
16 question, but I'm gonna have a starting point.

17 With regard to, if the State proves that the, the
18 victim was a child and it was an intentional killing of a
19 child with malice aforethought, and the person knew right
20 from wrong, knew what they were doing, engaged in a
21 deliberate act and took the child's life, would that -- what
22 are your thoughts about the death penalty in that situation?

23 A Can you repeat that please?

24 Q I want to---

25 A I'm trying to process this information.

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1 Q Sure and I'm gonna shorten it a little bit.

2 In a case where the allegation -- and it's not just an
3 allegation at this point. Like the judge put you at a
4 specific point. He said you and 11 other people found the
5 person guilty beyond a reasonable doubt, and, in the case
6 we're talking about, it would be the intentional killing of
7 a child.

8 If you found that beyond a reasonable doubt, what are
9 your thoughts about the death penalty in that type of
10 situation?

11 A I think the person deserves it.

12 Q Okay. And the judge would charge the jury that they
13 could vote for life for any reason, no reason, or mercy
14 alone, or you could consider background and characteristics
15 of a defendant, and I'm just gonna ask you for your personal
16 view here, not what you think the right answer is or
17 anything else, but in that, in that child killing case,
18 would the background of the defendant, sort of his life
19 experiences, how he was raised, would that be relevant in
20 fixing punishment in that kind of child killing case?

21 A Yes.

22 Q Okay. And why is that?

23 A I mean it's -- you know, everyone's raised, what's the
24 word, everyone's just raised differently. So, I mean it all
25 depends on how someone else has been raised, how they been,

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1 you know, brought up I guess.

2 Q Okay. But when you have that, that background
3 information, would it -- could it sway you from your
4 position that a child killer deserves the death penalty?

5 A No.

6 THE COURT: What was -- the answer was yes?

7 MR. MCGUIRE: No.

8 THE COURT: Oh, the answer was no?

9 MR. MCGUIRE: Yes, sir.

10 And that's, that's -- is that because of the, the
11 status of the child being an innocent child?

12 A Not necessarily being an innocent child. It's just,
13 you know, you said that there was kidnapping and a murder.

14 Q Yeah.

15 A Okay.

16 Q And in that situation, the background of the defendant,
17 his character, that wouldn't factor into the decision to
18 affix punishment in that child killing?

19 A No.

20 Q Okay. And I notice that your answer, you're taking
21 your time and you're giving some thought here.

22 These answers about the background of the defendant not
23 being relevant in the child killing case, that's a
24 reflection of your value system?

25 A Yes.

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1 Q How you were raised?

2 A Yes.

3 Q It's, it's a reflection of your moral code?

4 A Yes.

5 Q Of what's right and wrong, emanates from a deep place?

6 A Yes.

7 Q I can't change your view on that, can I?

8 A No, not necessarily.

9 Q I mean I'm not, I'm not a bad lawyer, but I don't have
10 the talent or the words to change your personal views, do I?

11 A Not necessarily change my views. Just -- no, like you
12 said, it's the facts. I mean whatever, whatever I see
13 through my eyes.

14 Q Okay. And when you say the facts, if it's a child
15 killing case, then the background of the defendant, how
16 you -- his walk in life, wouldn't be relevant in fixing
17 punishment?

18 A It may. You know, it's kind of hard.

19 THE COURT: I'm gonna ask you to speak up. I'm having
20 a hard time hearing.

21 THE WITNESS: Oh, I'm sorry. It may. I don't know.
22 It's hard, it's kind of hard for me to explain it.

23 THE COURT: Are you asking what verdict he would issue
24 in that case?

25 MR. MCGUIRE: No, sir.

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1 THE COURT: Okay. So, you're not being asked that
2 question, sir.

3 A Well then can you please repeat the question?

4 Q Sure.

5 It's my understanding, in talking with you, that if the
6 State was to prove the kidnapping and killing of a child --

7 A Yes.

8 Q -- the intentional killing of a child, that the
9 background, the defendant's walk-in life, his background,
10 that would not be relevant for you in fixing the punishment
11 for the kidnapping child killing?

12 A No.

13 Q Okay. And, again, we went over this, this comes from
14 your system of what's right and wrong?

15 A Yes.

16 Q Okay. I want to talk to you a little bit about how a
17 penalty phase in a capital trial works.

18 A Okay.

19 Q It's a little bit different than any other trial and
20 the judge said that. He said this is different.

21 Instead of -- in the, in the first part of a trial, the
22 did the person do it, guilty, not guilty, everybody has to
23 agree on pretty much all the same stuff to deliver a
24 verdict, but there's room for disagreement in a capital
25 case, and the way a juror reaches their verdict is what's

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1 called an individual moral judgment.

2 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
3 this point about the moral judgment.

4 MR. MCGUIRE: That's the law.

5 THE COURT: Overruled.

6 SOLICITOR BARNETTE: If it says it's the law, I'd like
7 to see the law.

8 THE COURT: Okay. Send the juror back to the jury
9 room.

10 Sir, just step back to the jury room.

11 (WHEREUPON, the following takes place outside the
12 presence of the juror.)

13 THE COURT: I need some law on whether or not you can
14 question a juror as to their moral judgments.

15 MR. MCGUIRE: I'm not -- well, I'm not gonna be able to
16 produce a case that says specifically I'm allowed to ask
17 them about do they understand if it's an individual moral
18 judgment. But this is the opportunity where the lawyers are
19 asked if they can respect and follow some principles of the
20 law and apply the law in the case, and what I want to make
21 sure is that he understands that the difference of
22 individuality in the penalty phase, which is so different
23 from any other in a tradition trial, that most jurors have
24 no idea that's how it works.

25 I'm just gonna ask him if he can respect the principle

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1 of law that different jurors can have different reasons for
2 voting their position, and it's -- it is called an
3 individual moral judgment. That is the law. I think we all
4 agree on that. That's, that's so basic I don't even have a
5 case for it, but that's the only thing, only question I want
6 to ask him.

7 SOLICITOR BARNETTE: Your Honor, like I said, he says
8 it's the law. I'd like to see where it's the law, that's
9 the thing, and I object to the question on moral -- I mean
10 that's not about moral judgments. It's about their personal
11 opinions from there. I think it's a totally different
12 way -- the way he asked the question I think is wrong. He
13 can ask it a different way.

14 MR. MCGUIRE: I'll try to rephrase it.

15 THE COURT: Beg your pardon?

16 MR. MCGUIRE: I can, I can attempt to rephrase it.

17 THE COURT: Okay, sir. I'd ask you to do that.

18 Bring the juror back.

19 (WHEREUPON, the following takes place within the
20 presence of the juror.)

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

22 MR. MCGUIRE: Thank you, Your Honor.

23 CONTINUED EXAMINATION

24 BY MR. MCGUIRE:

25 Q Hello again, Mr. Kong.

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1 I was talking about the sentencing phase of a capital
2 trial. It's a little bit different than a traditional
3 trial, and what I mean by that is, instead of, instead of
4 the question being one that we can determine by science or,
5 or, you know, is a fact a fact, is a car red or green, the,
6 the Courts in this country define the juror's decision
7 making process or their decision in a capital case as an
8 individual moral judgment, and I'm asking you if someone had
9 a different individual moral judgment than you, could you
10 respect it?

11 A Yes, I would.

12 Q Okay. And you'd expect your position to be respected?

13 A Yes.

14 Q And while we expect some civil discourse, the law is
15 that it would be, if it would harm somebody's conscience to
16 change their individual moral judgment just to have a
17 majority---

18 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
19 this line of questioning. I mean I'm trying to give him
20 some latitude. He keeps going to the moral judgment avenue.

21 THE COURT: Well, the decision has been described by
22 the Courts as a moral judgment, and I'll instruct the juror
23 that it has been called that. I'm not allowing the lawyer
24 to inquire into your moral judgments or what your moral
25 judgments might be.

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1 So, to that extent, I will instruct you that that's not
2 the purpose of the question. It's simply that the Courts,
3 at some point in time, has defined that decision as an
4 individual moral judgment.

5 So, I'll let him use the phrase, but I will caution you
6 that you're not expected to divulge your particular morals
7 on any subject by that question.

8 You may proceed.

9 MR. MCGUIRE: Thank you, Your Honor.

10 And I would never do that. I'm not gonna ask you your
11 moral position regarding this, but the judge would
12 eventually charge you that in the, in the sentencing phase,
13 the decision making process, the decision is called an
14 individual moral judgment, and we would expect some
15 disagreement in a case so significant and important as this,
16 and I'm just asking, could you respect and let people have
17 and keep their own individual moral judgments?

18 A Yes.

19 Q That's all I have. Thank you, sir.

20 THE COURT: Mr. Barnette.

21 SOLICITOR BARNETTE: Yes, sir.

22 THE COURT: New matters.

23 EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q I notice in your questioning about the death penalty

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1 from Mr. McGuire, he asked you about the use of the death
2 penalty and you said use it too much.

3 A Yes.

4 Q What do you mean by that if I could -- just ask you to
5 explain that a little bit more to me.

6 A I think that I mean, you know, with the death penalty,
7 I think that it's --.

8 Q And I apologize again for asking you these questions.

9 A Yeah. You know, only, only people that really deserve
10 it can -- should be, you know, sentenced to death. But I've
11 seen, you know, a lot of people.

12 Q Uh-huh. (Affirmative).

13 You feel a lot of peoples got the death penalty that
14 shouldn't got the death penalty?

15 A Yeah.

16 Q Okay. I understand.

17 And, and you said everybody deserves a second chance?

18 A Yes.

19 Q Which I, I don't disagree with that from that
20 standpoint, but -- so you feel like everybody deserves a
21 second chance if they can?

22 A Yes.

23 SOLICITOR BARNETTE: Okay. No further questions, Your
24 Honor. Thank you.

25 THE COURT: All right. Anything further?

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1 MR. MCGUIRE: Not from the defense, Your Honor.

2 THE COURT: All right, sir. You may step outside to
3 the jury room. We'll be calling you back shortly.

4 (WHEREUPON, the following takes place outside the
5 presence of the juror.)

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

7 MR. MCGUIRE: Thank you, Your Honor.

8 Move to strike Mr. Kong for cause. In the category of
9 a child killing, he indicated that the background of the
10 defendant, his life experiences, would not be relevant in
11 fixing punishment in that type of case. Therefore, he's
12 substantially impaired, will not be able to consider all the
13 mitigation evidence, aggravation evidence, and fairly
14 consider both the life penalty and the death penalty in this
15 particular category of case, and to, to seat him or present
16 him as a juror would violate Mr. Blackwell's Sixth and
17 Fourteenth Amendment rights to an unbiased and impartial
18 jury.

19 THE COURT: Mr. Barnette.

20 SOLICITOR BARNETTE: No objection, Your Honor.

21 THE COURT: Beg your pardon?

22 SOLICITOR BARNETTE: No objection.

23 THE COURT: All right. I'll declare him not qualified.
24 Bring Mr. Kong in please.

25 (WHEREUPON, the following takes place within the

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1 presence of the jury.)

2 THE COURT: Have a seat, sir.

3 (Witness complies.)

4 THE COURT: Mr. Kong, I've gone over the, the matters
5 with the attorneys, and, at this point in time, I'm not
6 going to qualify you as a potential juror in the case. So,
7 we're gonna release you at this time. The bailiffs will
8 check you out and you're free to go. You no longer have any
9 responsibility to the Court.

10 Thank you very much.

11 THE WITNESS: Thank you.

12 THE COURT: All right. Check with Mr. Gimbel and see
13 if he's ready to come in please.

14 (WHEREUPON, the following takes place within the
15 presence of the juror.)

16 David Gimbel, having been previously
17 sworn, testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q All right, sir. Your name is David Gimbel, is that
21 right?

22 A Yes, sir.

23 Q Mr. Gimbel, just a couple things I want to talk with
24 you about this morning.

25 First of all, I want to thank you very much for your

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1 cooperation in our process thus far. I realize it is not
2 been an easy thing so far and it's been an inconvenience and
3 I appreciate your participation in this matter.

4 What we're going to do this morning is we're going to
5 be asking you some questions. When I say we, I will be
6 asking you some questions, and then I'm gonna allow the
7 lawyers to ask some questions of you as well.

8 I realize that sitting in the seat that you're sitting
9 in might be a little uncomfortable for you. It's not a
10 position that you're in very often or probably ever have
11 been in, and I can appreciate that. But I hope you realize
12 that the questions that we're asking have no right or wrong
13 answers. We're not asking -- looking for any particular
14 answer. What we're looking for are answers, your honest
15 answers about these matters, and, in that regard, I'll
16 remind you that you took an oath yesterday to tell the truth
17 to the Court. That oath applies to our discussion at this
18 point in time.

19 Do you understand and accept that?

20 A I do. But I don't think I want to waste the Court's
21 time because, like I had said before, I did know about the
22 case before and I went home and I took my daughter into my
23 arms, and I don't think I can be fair to this man.

24 THE COURT: All right, sir. Well, I'm gonna excuse you
25 as a juror in this case.

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1 A Thank you, sir.

2 THE COURT: You're free to go. The bailiffs will check
3 you out.

4 (WHEREUPON, the following takes place outside the
5 presence of the juror.)

6 THE COURT: Check with Ms. Butehorn and see if she's
7 ready to come in.

8 (WHEREUPON, the following takes place within the
9 presence of the juror.)

10 LORI BUTEHORN, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Have a seat please, ma'am.

15 (Witness complies.)

16 Q Thank you very much.

17 A Thank you.

18 Q Your name is Lori Butehorn?

19 A Yes, sir.

20 Q Did I say that right?

21 A You did, yes.

22 Q Okay. Well, my name is Couch and I have problems with
23 that sometimes.

24 A That's okay.

25 Q So, I can appreciate that.

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1 A That's okay.

2 Q I just wanted to be sure I got it right, and, ma'am,
3 thank you, first of all, for your cooperation in this
4 matter.

5 A Sure.

6 Q I know it's been difficult already, and that's just the
7 nature of these things. They are that way and I apologize
8 to you about any inconvenience that you're experiencing.

9 A Okay.

10 Q I understand that where you're sitting -- seated quite
11 often is not a very comfortable spot for someone to sit --

12 A No.

13 Q -- and I appreciate that, but I want you -- to try to
14 put you at ease as much as I can because---

15 A Thank you.

16 Q ---what we're gonna do this morning is I'm going to go
17 through some questions that I want to ask you, and then I
18 allow the attorneys to ask questions of you as well.

19 A Yep.

20 Q I'll tell you, there aren't any right or wrong answers
21 to my questions. What we are seeking is your honest
22 responses to the questions that we have.

23 A Yes, sir.

24 Q So, there's no pass or fail as far as we're concerned
25 other than we would like honest responses to these matters.

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1 Now, in that regard, I'll remind you that you were put
2 under oath yesterday to---

3 A Yes, sir.

4 Q ---tell the truth to the Court and that oath would
5 apply to our discussions now.

6 You understand that?

7 A Yes, sir.

8 Q And you accept that?

9 A Yes, Your Honor.

10 Q All right. Now, ma'am, since we talked yesterday, I
11 want to ask you a couple of questions. I gave you some
12 instructions when you left the courthouse, and that was not
13 to discuss the case, not to gather any information about the
14 case. Don't listen to, watch, or read any news reports
15 about the case.

16 Do you recall those instructions?

17 A Yes, Your Honor.

18 Q And have you been able to comply with those
19 instructions?

20 A Yes, Your Honor.

21 Q So, I take it then, since our last discussion, you have
22 not read, seen, or heard anything about this case?

23 A Yes, Your Honor.

24 Q Is that correct?

25 A That's correct.

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1 Q Has anyone tried to contact you about this case?

2 A No, Your Honor.

3 Q Okay. Now, I've got some questions I'll be asking you,
4 and, again, no right or wrong answers. I just want accurate
5 information.

6 The first question I have, have you ever participated
7 in any type of blog, Internet discussion, something of that
8 nature, that might have, as its subject, the death penalty?

9 A No.

10 Q Have you ever been engaged in any political activities
11 such as demonstrations or letter writing or things of that
12 nature trying to influence decisions concerning the death
13 penalty?

14 A No.

15 Q Now, ma'am, could you put aside anything that you may
16 have heard, seen, or read previously about this case, and,
17 if you were seated on the jury, decide this case based
18 solely upon the information, that would be the evidence and
19 the law that you would hear in the courtroom during the
20 trial?

21 A I don't think so, no.

22 Q And tell me -- you've formed an opinion about this
23 case?

24 A I have, yes.

25 Q Okay. And would that opinion affect your ability to

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1 serve on the jury?

2 A Unfortunately I believe it would, yes, sir.

3 Q Okay. Well, ma'am, I'm gonna ask you -- I'm gonna
4 release you at this time. The bailiff will accept your,
5 your things and you're free to go.

6 A Thank you.

7 Q Thank you very much.

8 (WHEREUPON, the following takes place outside the
9 presence of the juror.)

10 THE COURT: Bring in Mr. Unger if he's had -- if he's
11 read the documents.

12 (WHEREUPON, the following takes place within the
13 presence of the juror.)

14 RONALD UNGER, having been previously
15 sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Sir, have a seat please.

19 (Witness complies.)

20 Q Your name is Ronald E. Unger, is that right?

21 A Correct.

22 Q All right. Mr. Unger, a couple of things I want to go
23 over with you.

24 First of all, I want to thank you for your
25 participation in the process. I understand that people who

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1 sit in the position you're sitting in right now can
2 sometimes feel uncomfortable. It's not a very comfortable
3 position to be in, but I want to assure you that what we're
4 going to do this morning is ask some questions of you.

5 I'll be talking with you and asking questions first.
6 The attorneys will be given an opportunity, once I finish,
7 to also ask questions of you.

8 During that process, I can tell you there aren't any
9 right or wrong answers to our questions. The questions are,
10 are intended to get some information about you and your
11 views or opinions on certain matters.

12 Do you understand what we're doing this morning?

13 A Yes, sir.

14 Q And, of course, what we want are honest responses from
15 you concerning these matters.

16 Now, in that regard, I will remind you that you took an
17 oath yesterday and that oath was to tell the truth to the
18 Court. That oath continues to apply to your discussions
19 this morning with the Court and with the attorneys.

20 Do you understand that you're still under oath at this
21 time?

22 A Yes, sir.

23 Q You accept that fact?

24 A I do.

25 Q All right. Now, yesterday, when you left the

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1 courthouse, I gave you some instructions concerning your
2 behavior. I told you about not trying to gather any
3 information about the case, not talking to anyone, even with
4 fellow jurors, about any matter or anything that had to do
5 with the case, and I -- and do you remember those
6 instructions?

7 A I do.

8 Q Have you been able to follow them thus far?

9 A Yes.

10 Q Okay, sir. Now, has anybody tried to contact you about
11 any participation in this case thus far?

12 A No, sir.

13 Q Okay. Now, the first question I'm going to have for
14 you, have you ever participated in any type of discussion,
15 either personally or on-line, either a blog or any Internet
16 site, something like that, on issues involving the death
17 penalty?

18 A I don't think so.

19 Q Okay. Have you ever been involved in any political
20 activities such as demonstrations or a letter writing
21 campaign to, to representatives or anything of that nature
22 on issues that might surround or involve the death penalty?

23 A Oh, no.

24 Q Now, I'm gonna ask you, if, if you think that you could
25 put aside anything that you might have heard, seen, or read

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1 about this case or, or any information you've even gathered
2 during the process that we've gone through thus far, and
3 decide the case based solely upon the evidence and the law
4 that would be presented to you in a courtroom during a
5 trial?

6 A I believe I could.

7 Q All right. Now, you had a chance, I hope, to read the
8 list of names that I put back in the jury room.

9 A I did.

10 Q A rather long list of names.

11 A (Nods affirmatively.)

12 Q Those are people who have been identified to me as
13 people who might be witnesses in the case. It doesn't mean
14 that each person's gonna testify, but they could testify.
15 There's possible witnesses, and the reason I put those back
16 there is so you could read them.

17 My first question is do you believe or do you know
18 whether or not you are related, either by blood or, or
19 marriage, or have you formerly been related by marriage to
20 anyone listed on that list?

21 A No, sir.

22 Q All right. Have you ever had any social or business or
23 personal relationships with anyone who might have been
24 listed on that list?

25 A I don't believe I have or---

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1 Q well, is there somebody you possibly had some contact
2 with?

3 A There are a couple of officers on the list --

4 Q Uh-huh. (Affirmative).

5 A -- and I have a friend who manages the Police Club in
6 Spartanburg --

7 Q I see.

8 A -- and I've met---

9 Q Met some---

10 A ---various---

11 Q ---people there --

12 A The, the---

13 Q ---but you couldn't tell me specifically who they might
14 be?

15 A A couple of the names, looking at them---

16 Q Okay.

17 A ---looked like maybe names that could be---

18 Q well, that sounds like rather a casual relationship?

19 A They were not---

20 Q Okay. well, let's, let's -- I'll just ask this
21 question.

22 As to those people, if -- let's say that they, in fact,
23 ended up being a witness during the trial and you ended up
24 being a juror in the trial, would the fact that you may have
25 met them in the past, would that affect your ability to be

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1 fair and impartial to both sides of the case?

2 A No.

3 Q Okay. Now, I'm going to ask you some more personal
4 questions at this point in time about certain topics, and,
5 again, obviously I'm not trying to invade your privacy, but
6 these matters are important as far as the trial of the case,
7 and, and we're trying to determine how you might feel about
8 certain things, and I would hope that you are secure enough
9 in your opinions or your beliefs that you wouldn't feel
10 threatened by this process.

11 Is that correct?

12 A I hope so.

13 Q Okay. Now, again, I'm just trying to get the
14 information that you might have about the issues I'm gonna
15 talk about.

16 One of the things I'll talk about during this process
17 will be the penalty that might be involved in this case, and
18 that penalty is the, the death penalty that's being sought
19 by the State. Now, because that might be an issue in the
20 case, I'm gonna have to talk to you about it at some point
21 in time. But I want you to understand that the trial is not
22 yet started. We're not, we're not to that point yet.

23 So, it's really premature for people to talk about what
24 penalty there might be when the trial hasn't even begun,
25 and, of course, in this type of case, you must establish

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1 guilt before you even discuss what the penalty might be.

2 So, it's premature, at this point in time, for us to discuss
3 it, but I want to point out to you that the only time we can
4 discuss these issues is before the trial because, once the
5 jury's seated, we can't get into those things with the jury.

6 So, you understand now's the only chance we have to
7 talk about it?

8 A Sure.

9 Q But I will tell you that Mr. Blackwell, in this case,
10 the defendant, is presumed, under the law, to be innocent of
11 the charges that have been brought against him. So, the
12 fact that we might talk about penalty during this process
13 doesn't indicate anything about him or his case. It's just
14 the time -- the only time that I can talk about those
15 things.

16 Do you understand that?

17 A Yes.

18 Q And he is always presumed to be innocent in the case,
19 and, of course, the State has the only burden of proof in
20 the case. The defendant, therefore, is not required to
21 prove anything in a trial because they're presumed innocent.

22 You understand that basic concept of law?

23 A Yes.

24 Q Okay. Now, first I'm gonna ask you about, if you were
25 a juror in any criminal case, I'm not talking about this

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1 one, I'm just talking about any criminal case, and -- cause
2 it wouldn't be proper for me to ask you about the specific
3 facts in this matter, but I will tell you that if you were a
4 juror in a criminal case, would you be willing to listen to
5 the law and the -- as instructed to you by the judge in
6 making your decision?

7 A Sure.

8 Q And would you be willing to accept the law and apply
9 the law to the facts as the jury decides those facts in
10 reaching a decision?

11 A Sure.

12 Q Now, let me ask you this.

13 Even though you might not like the law, let's say you
14 don't agree with what the judge tells you the law is, would
15 you still be willing to accept the law exactly as the judge
16 gave it to you and apply that law to the facts as decided by
17 the judge in that circumstance?

18 A I, I would think so, yes.

19 Q Well, I need to know for sure.

20 A Right.

21 Q Would you be willing to set aside your personal beliefs
22 or dislikes and accept the law as the judge gave it to you
23 and apply it to the facts?

24 A I would say yes.

25 Q Okay. Now, I'm going to go over some facts that are or

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1 some issues that might apply to, to this particular case,
2 and I'm going to ask you to set aside any information or
3 knowledge you might have about this case from any source at
4 all, anything that you might have heard, read, or seen about
5 this case in the courtroom. If that information should
6 occur to you in that regard, I'm gonna ask you to decide
7 this case purely upon what you hear in the courtroom and
8 you -- are you able to do that?

9 A Yes, sir.

10 Q Now, as I mentioned to you before, a defendant is
11 presumed to innocent. Therefore, does not have to prove
12 innocence.

13 Do you understand that concept?

14 A (Nods affirmatively.)

15 Q You have to answer me verbally.

16 A Yes.

17 Q She's taking it down.

18 A I'm sorry. Yes.

19 Q I normally would let you shake your head, but she's,
20 she's taking it down. So, I have to get answers.

21 All right. And do you understand that the State's
22 burden of proof is proof beyond a reasonable doubt?

23 A I do.

24 Q Okay. Now, if you were sitting in a jury -- as a juror
25 in any case, any criminal case, again, I'm not talking about

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1 this one now particularly, again, would you be willing to
2 listen to the law and the evidence as presented to you, and,
3 if you found that the decision was proper, the circumstances
4 indicated it to you, are you able to find a person not
5 guilty of a crime that they were charged with?

6 A Yes.

7 Q And, in other words, do you think that, just because
8 someone is accused of a crime, that they must automatically
9 be guilty of that crime?

10 A No.

11 Q Now, if the evidence convinced you though, beyond a
12 reasonable doubt, that the person was guilty, would you be
13 able to find someone guilty of a crime?

14 A Yes.

15 Q So, you are telling me, I think, that you would be able
16 to make your mind up based upon the strength of the evidence
17 and the testimony or what the evidence showed to be able to
18 find a person either guilty or not guilty based on your
19 judgment of the law and the evidence?

20 A Correct. Yes.

21 Q Okay. Now, I'm gonna talk about the penalty that's
22 involved in this case for just a minute.

23 As you're aware that the State has sought the death
24 penalty in this case, and, in most criminal cases, I will
25 tell you that the jury decides guilt or innocence, but then,

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1 in most criminal cases, the judge then decides the
2 appropriate punishment to be given or the sentence to be
3 given. That's generally the way the law works in, in
4 criminal cases. I'll tell you there's an exception to that
5 rule, and the one exception is in the case where the State
6 does seek the death penalty.

7 In that particular case, the jury determines guilt or
8 innocence in one phase of a trial, and then, in a separate
9 penalty or sentencing phase, the jury decides the
10 appropriate penalty to be given, and that appropriate
11 penalty could be either life in prison without parole or the
12 death penalty.

13 Do you understand that that's the way these types of
14 cases are handled, two phases?

15 A Well, I didn't until you just told me that, yes.

16 Q Okay. But do you, do you accept that --

17 A Right.

18 Q -- that that's the way that is?

19 Okay. Very good. Now -- and under those
20 circumstances, if a jury convicts a defendant of the crime
21 of murder and that's the, the only time that a, that a
22 capital sentence can be given, so that guilt has been
23 determined, that same jury is the jury that comes back and
24 determines the appropriate sentence, and they do that after
25 listening to additional evidence and testimony that's given

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1 during the sentencing phase of the trial.

2 Do you understand that that's how that works, now?

3 A Now, yes.

4 Q Okay. Now, in that separate proceeding, the only
5 determination made by the jury is the type of sentence that
6 will be given and handed out, and there's only the two
7 choices I've indicated, life in prison without parole or the
8 death penalty.

9 Now, the statute that governs the penalty phase of the
10 trial or the sentencing phase of the trial, it provides how
11 that's to be handled and it provides for the presentation of
12 evidence during that phase of the trial, that sentencing
13 phase, and that evidence is described as either statutorily
14 aggravating circumstances or statutorily mitigating
15 circumstances. So, that's the two types of evidence.

16 Of course, aggravating circumstances are those
17 circumstances which tend to make the crime appear to be or
18 be worse or more severe. Mitigating circumstances are
19 circumstances that are presented to a jury to consider
20 whether or not to lessen the severity of the offense or
21 lessen the penalty that would be given.

22 So, do you understand that there, there would be
23 different types of evidence given during that phase of the
24 trial on both sides of the question, aggravating and
25 mitigating?

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1 Do you understand that?

2 A Well, from your explanation.

3 Q Okay.

4 A Yes, sir.

5 Q I'll tell you that that statute provides for that.

6 That's what it provides for in that case.

7 Now, once the aggravating and mitigating evidence has
8 been presented to the jury, the jury would be instructed by
9 the Court to consider those factors and, and reach a verdict
10 on the question of the punishment to be given. So, that's
11 how that phase of the trial would be held.

12 Now, I want to put yourself in a situation
13 theoretically. That means in your head. I want you to
14 think about this situation.

15 As a juror in a case in which the State is seeking to
16 impose the death penalty for murder, imagine that you and
17 the other jurors have convicted a defendant of a murder, and
18 you are now going to come back into the courtroom to begin
19 the penalty phase of that trial. So, we've determined a
20 guilt verdict. Now we're going into the second phase of the
21 trial with the same jury. You're on the same jury and that
22 decision would be to determine that penalty, life or death.

23 So, do you understand the situation I'm describing?

24 A Yes.

25 Q Okay. Now, you were in the jury room and I had a sheet

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1 of paper in there, and on that sheet of paper there were
2 three different jurors described.

3 Did you read that sheet of paper?

4 A I did.

5 Q Okay. Now, I'm going to go back over those different
6 types of jurors with you to remind you of who they were and
7 describe them to you. I may not use the exact words that
8 were on that paper, but I'm gonna describe them to you
9 again, and be sure you understand what we're talking about.

10 Now, the first type of juror is a juror who, before he
11 ever steps into the courtroom on the second time for that
12 penalty phase of the trial, he already knows what his
13 verdict is gonna be. In other words, he knows he is gonna
14 vote for the death penalty every time because he has a
15 belief that it is the most appropriate penalty for someone
16 anytime a person has been convicted of a crime of murder.
17 That's the first kind of juror I described.

18 The second type of juror also, before he ever sets foot
19 back in the jury room for the penalty phase, that juror's
20 also made up his or her mind, and that juror has decided
21 that it's never appropriate for the State to take a life in
22 response to a crime regardless of what the crime is or the
23 severity of it, and so he knows that he's always, every
24 time, gonna vote for life imprisonment without parole.

25 Now, the third type of juror doesn't know what he's

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1 gonna do yet. That juror has not yet made up his mind as to
2 what the appropriate penalty is going to be. In other
3 words, that juror's gonna have to wait and listen to the
4 evidence, aggravating and mitigating evidence, and then
5 decide as to what the appropriate type of penalty might be,
6 either life imprisonment or the death penalty.

7 Do you understand the three types of jurors I've
8 described to you?

9 A I understand.

10 Q Now, of those three jurors, if you were in that same
11 situation, about to step foot back into the courtroom, which
12 one of those would best describe you?

13 A Does it have to be just one?

14 Q Number one?

15 A No.

16 Does it have to be one?

17 Q Well, yes, sir, it's gonna have to be. I'm asking you
18 to tell me which one best describes you or which one most
19 closely resembles how you would be in that situation, the
20 one who'd already made up his mind for the death penalty,
21 the one who'd already made up his mind for life imprisonment
22 without parole and would always make those decisions in
23 those cases, or the one who would have to wait and listen to
24 the evidence, aggravating and mitigating, before deciding
25 the appropriate penalty.

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1 which ones best describes you?

2 A I would say number three.

3 Q All right. Number three.

4 All right. Now, under those circumstances, and keeping
5 in mind that the defendant is already found guilty of
6 murder, so that's no longer a concern, therefore, you're
7 telling me that you would be willing to listen to the facts
8 and the evidence on both sides of the question, and, if the
9 evidence justified it, after you've listened to it and
10 weighed it, if it justified it to you, would you be willing
11 to sentence someone to death?

12 A I would listen to the facts --

13 Q Uh-huh. (Affirmative).

14 A -- and try to make the decision that I felt was best.

15 Q Well, again, I'm pursuing -- my question presumes
16 though that you have weighed the evidence and you feel that
17 it justifies a death penalty.

18 If you got to that point, would you be willing to join
19 in a verdict of death?

20 A I would try to, yes.

21 Q That's not my question.

22 A I'm fundamentally opposed to the death penalty.

23 Q Uh-huh. (Affirmative).

24 A But I would try to keep my personal opinion out and go
25 on facts.

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1 Q All right. Go on facts and evidence?

2 A Correct.

3 Q So, are you telling me you could possibly sentence
4 someone to death in that situation or not?

5 A I would try to, yes.

6 Q Okay. Now, now, if you thought that the evidence did
7 not justify a death penalty or, for any other reason, you
8 would be willing -- would you be willing to sentence someone
9 to life imprisonment without parole?

10 A Based on the evidence, yes.

11 Q Okay, sir. Now, are you telling me then that your
12 verdict in that situation would depend upon the facts and
13 circumstances that you heard in the courtroom, is that
14 correct?

15 A Correct.

16 Q Both aggravating and mitigating circumstances?

17 A Correct.

18 Q All right. My last question to you is if you were
19 selected to serve on a jury, as a juror in this case, it may
20 mean several days, maybe a week, maybe more, where you would
21 be sequestered with the jury in a hotel provided by the
22 county. Meals and expenses taken care of by the county.
23 Transportation taken care of with the -- by the county.
24 And, of course, during that time you would receive whatever
25 the standard jury pay is for the, for the services that you

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1 rendered, and, and also there's pay for travel coming and
2 going from the courthouse, at least one time, cause after
3 that the county transports you.

4 So, you understand what the situation would be if you
5 were in that case?

6 A (Nods affirmatively.)

7 Q My question to you is that if you were in that
8 situation, would that situation pose a serious risk or
9 danger to your health or well being, your personal health or
10 well being?

11 A No.

12 Q All right. would that situation, if you were in it,
13 pose a, a serious risk of danger or, or risk to the well
14 being of anyone who might be dependent upon you?

15 A My wife has a heart condition.

16 Q Uh-huh. (Affirmative).

17 A I would be able to keep in contact with her?

18 Q Yes. Yes, sir, you'll be allowed to contact her, but I
19 just have to tell you that the, that the people who keep the
20 jury would be monitoring your phone calls, but you can talk
21 to her.

22 A Right.

23 Q There's no problem in that.

24 A No.

25 Q Okay. So, it would not pose a serious risk?

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1 A No.

2 Q All right. I'm gonna ask the attorneys to, to ask some
3 questions of you at this time. I'll give them an
4 opportunity to do that. So, if you would answer their
5 questions.

6 A Yes.

7 THE COURT: Yes, sir, Mr. Bulsa.

8 SOLICITOR BULSA: May it please the Court?

9 EXAMINATION

10 BY SOLICITOR BULSA:

11 Q Good morning, Mr. Unger.

12 A Good morning.

13 Q My name's Derrick Bulsa, and, along with Solicitor
14 Barnette, we're prosecuting this case.

15 Mr. Unger, I noticed on your information sheet that you
16 studied some law at Penn State?

17 A Correct.

18 Q Did you ever consider going to law school?

19 A I did not.

20 Q Okay. Good for you.

21 You also studied psychology I believe as well?

22 A I did.

23 Q Okay. Two, two points that are gonna be of, of -- in
24 play in this case.

25 You made a comment to the judge that you're

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1 fundamentally opposed to the death penalty.

2 Can you expound upon that for us?

3 A I, I -- morally, I find that very difficult to accept.

4 Q Okay. Do you believe it should not be, that people --
5 that the government should not put people to death?

6 A I think that we should try to rehabilitate people
7 whenever possible, and I'm not sure that anyone has the
8 right to take someone else's life.

9 Q Well---

10 A That's just a moral belief.

11 Q Okay. Can you tell us of any reasons where you might
12 believe a death penalty would be appropriate?

13 A I would think that there are certainly cases where the
14 facts and the evidence may dictate that, yes.

15 Q Okay. Now, I noticed on your information sheet that
16 you referenced that your brother's son was -- is
17 incarcerated?

18 A Correct.

19 Q Is he still incarcerated?

20 A He is.

21 Q Was he prosecuted here in Spartanburg?

22 A No, Pennsylvania.

23 Q Pennsylvania.

24 Okay. And you also noted that -- well, did you -- was
25 it a trial?

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1 Did he go to trial?

2 A He did.

3 Q Did you attend that trial?

4 A I did not.

5 Q You did not.

6 Okay. Do you feel he got a fair shake in that case?

7 A I would have to say yes.

8 Q Okay. All right. Now, I notice that you referenced
9 that you served on a jury for a child abuse case?

10 A Yes.

11 Q Was that here in Spartanburg?

12 A It was.

13 Q So, you were actually seated on a jury?

14 A I was selected, but we never actually started the case

15 --

16 Q Okay.

17 A -- because it was plea bargained before.

18 Q Okay. Was it in this courtroom?

19 A It was.

20 Q Okay. So, you were actually seated in the box?

21 A Correct.

22 Q But before they started---

23 A Well, they actually put us back in a deliberation room
24 and---

25 Q Right. Okay.

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1 A ---we never got started. We were going to---

2 Q Okay.

3 A ---be seated.

4 Q And they pled out?

5 A Right.

6 Q Okay. All right. There's -- so, you have a limited
7 exposure to the criminal justice system?

8 A Correct.

9 Q And that -- and I was listening to your responses with
10 Judge Couch. You seemed a little unsure of, of what he was
11 saying and how he was describing it.

12 Is that fair to say?

13 A Unsure?

14 Q You had some -- you had, you had to pause in an effort,
15 in -- before you could answer his questions.

16 A No, I---

17 Q Okay.

18 A I mean it -- his, his description was --

19 Q Okay. But it---

20 A -- very clear.

21 Q But he was talking about things you never thought
22 about?

23 A Yeah.

24 Q Okay.

25 A Yeah.

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1 Q And your exposure had been in---

2 A Well, the aggravating, aggravating and mitigating---

3 Q Right.

4 A Okay.

5 Q Okay. That's what I want to get to now.

6 A Right.

7 Q Those words aren't used in everyday language, right?

8 A No, not really.

9 Q Okay. Okay. Now --

10 A I use them in a different terminology. So --.

11 Q Okay. Well, in the criminal case, an aggravation would
12 be a reason the State would be asking somebody to sentence
13 somebody to death.

14 Do you believe there are certain aggravating
15 circumstances where death would be appropriate?

16 A It would -- I would certainly think that that is the
17 case, yes.

18 Q Okay. Now, the evidence in this case is gonna show
19 that the victim was a child.

20 would that be one of those circumstances where you
21 could find that the death sentence might be appropriate?

22 A I would say yes.

23 Q Okay. Now, there's gonna be some mitigation evidence
24 concerning the defendant's -- some sort of disability he
25 might have.

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1 would you factor that in into your decision making?

2 A Can you say that again?

3 Q The mitigation evidence I believe the defense will
4 present will go into his mental status, his -- some sort of
5 disability that he might have.

6 A Okay.

7 Q Okay. Is that something you would consider?

8 A I, I would say, yes.

9 Q would that outweigh any reason that you would impose a
10 death sentence with a child victim?

11 A without knowing the actual facts, I, I would say no.

12 Q Okay. So, you, you say you're a type three juror that
13 could listen to both sides of the case, okay, with the
14 understanding you've already convicted the guy of murder --

15 A Okay.

16 Q -- and now we're asking for a sentence.

17 Okay. We just want to make sure that when it comes
18 time to sign the death warrant, if you, along with your
19 other jurors, find unanimously that he warrants the death
20 sentence, could you actually put your name to a document
21 saying that I agree that he should be sentenced to death?

22 A That's a difficult question. I might -- the answer is
23 if the jury decided that, I was part of the jury, based on
24 the evidence, then I would follow through with the
25 commitment that I've made.

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1 Q And you could overcome your fundamental opposition to
2 the death penalty?

3 A I think I could, yes.

4 Q Okay. Now, you, you say you think a lot---

5 A I've never had---

6 Q ---and I understand you have a position---

7 A I don't get in this situation.

8 Q Exactly.

9 A Right.

10 Q You're in a position---

11 A Right.

12 Q ---and we hate to put people in this position.

13 Okay. We understand that it's difficult for you, but
14 we need you to be sure because, if you get in there, and
15 you're going why am I here, that's not gonna be fair to both
16 sides of this situation -- of the case.

17 A Okay.

18 Q Can you be fair to both sides?

19 A I would certainly do everything I could to be fair,
20 yes.

21 SOLICITOR BULSA: Okay. Now one moment please.

22 THE COURT: Yes, sir.

23 (Pause.)

24 Q would your decision be your independent decision or
25 would you just go along with the majority?

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1 A No, I would make my own decision, yes.

2 Q Okay. But you commented that you would go along with
3 the majority. I may of misunderstood you.

4 But did you say that?

5 A No, what I, I think I said was that, if the decision of
6 the jury was to impose the death penalty, then I would
7 certainly be committed to that.

8 Q Okay. And who would be the jury?

9 A I'm sorry?

10 Q And you said the decision of the jury.

11 A Right.

12 Q what if 11 say yes, would you just go along with them?

13 A No.

14 Q Okay.

15 A No, I would make my own opinion. I mean I would form
16 my own belief.

17 Q Okay. All right.

18 A I, I guess what I'm trying to say is that if we, as a
19 jury, decided that the death penalty was appropriate, then I
20 would be willing -- you asked me would I be willing to
21 sign---

22 Q Yes, sir.

23 A ---and the answer would be yes.

24 Q Okay. But it would be a lot easier for you to sign a
25 life verdict?

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1 A Would it be a lot easier?

2 It would---

3 Q Yes.

4 A I don't know if it would be easier. Based on my
5 fundamental beliefs, it would be more difficult to sign, but
6 if I chose that as appropriate, I would do it.

7 SOLICITOR BULSA: Okay. Excuse me.

8 THE COURT: Yes, sir.

9 (Pause.)

10 Q Not to belabor the point, but would you mind giving us
11 a little background as to why you're fundamentally opposed
12 to the death penalty?

13 A Why?

14 Q Yes, sir.

15 A I've read about studies on the death penalty, and I've
16 read about studies on, you know, rehabilitation and so
17 forth, and I have concluded, over the years, that
18 rehabilitation is something that can be done, that people
19 can be rehabilitated. I just fundamentally, from a moral
20 standpoint, find it difficult to justify taking someone's
21 life. I'm not sure that anyone really has that right.
22 Clearly, you know, they're societal needs that, I guess,
23 dictate that -- sometimes that is the case. But that's just
24 what I believed. It's not, it's not based on anything else.

25 Q Would you -- do you consider the death penalty to be a

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1 deterrent to crime?

2 A Do I?

3 Q Yes, sir.

4 A I do not.

5 Q Do not?

6 A No.

7 Q So, how can you say that you would vote for a death
8 sentence if you feel that strongly against it?

9 A I think, again, the evidence would be what I would make
10 my decision on.

11 Q Okay.

12 All right. I have nothing further.

13 THE COURT: Any questions from the defense?

14 MR. MCGUIRE: No questions, Your Honor. Thank you.

15 THE COURT: All right, sir. You may step back to the
16 jury room.

17 THE WITNESS: Thank you.

18 THE COURT: We'll be talking with you in just a moment.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you, sir.

21 (WHEREUPON, the following takes place outside of the
22 presence of the juror.)

23 THE COURT: Defense's position?

24 MR. MCGUIRE: He's qualified.

25 THE COURT: State.

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1 SOLICITOR BULSA: We agree.

2 THE COURT: All right. I'll find him to be qualified
3 then.

4 Bring him -- bring Mr. Unger back in for me.

5 (WHEREUPON, the following takes place within the
6 presence of the juror.)

7 THE COURT: Just one second, sir. I'll be with you in
8 just a moment.

9 THE WITNESS: Okay.

10 (Pause.)

11 THE COURT: All right. Now, Mr. Unger, I have
12 determined that you are qualified to serve on the jury.
13 That doesn't mean you're on the jury. That means we're
14 developing a list of people who would be qualified to serve
15 on the jury.

16 At a later time we will get together and actually pick
17 the jury in question, and we'll be back in touch with you
18 concerning your status after that's occurred, and I'm not
19 sure exactly when that's gonna occur, but it should be in
20 the not to distant future.

21 Now, I'm going to ask the clerk to give you a sheet of
22 paper that would indicate the kinds of things you might want
23 to consider when you come back because we'll be asking you
24 to bring with you your personal belongings, some additional
25 clothing and things, for a stay of maybe a little better

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1 than a week. We don't know how long that will last, and the
2 place you're staying would allow for you to be able to wash
3 clothes and things like that. So, they'll be a laundry
4 available to you if you needed that. But at any rate, you
5 should be prepared to do that.

6 Now, it's okay for you to discuss, to discuss with
7 family members the fact that, if you were selected on a
8 jury, you'd be sequestered, make arrangements if you had to
9 be absent for a period of time. It's okay to discuss those
10 things.

11 It's not okay to discuss anything about the case, and
12 my instructions will continue until such time as you're
13 either seated on the jury or we release you from any further
14 service. So, again, don't attempt to gather any information
15 on your own. Don't listen to, watch, or read media reports.
16 Don't discuss the case with anyone, and don't allow anyone
17 to discuss it with you.

18 Do you understand my instructions?

19 THE WITNESS: I do.

20 THE COURT: Okay, sir. So, at this time we're gonna
21 give you that sheet. The bailiffs will check you out today
22 and we'll be back in touch with you in the near future.

23 THE WITNESS: Okay.

24 THE COURT: Thank you, sir.

25 THE WITNESS: Thank you.

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1 THE COURT: You're free to go at this time.

2 (WHEREUPON, the following takes place outside the
3 presence of the juror.)

4 THE COURT: Okay. We're gonna take a short break,
5 about five to ten minutes.

6 Court's in recess.

7 Thank you very much.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: All right. The next juror would be Robert
10 Martin.

11 Check and see if Mr. Martin is ready.

12 THE BAILIFF: Yes, Your Honor.

13 (WHEREUPON, the following takes place within the
14 presence of the juror.)

15 ROBERT MARTIN, having been previously
16 sworn, testified as follows:

17 EXAMINATION

18 BY THE COURT:

19 THE BAILIFF: Have a seat please.

20 THE WITNESS: All right.

21 Q Thank you, sir.

22 All right. Mr. Martin, I'm gonna be talking to you.
23 So, you can turn where you face me for a little while, and
24 then I'm gonna, I'm gonna ask you some questions and go over
25 some things with you, and then the attorneys will have a

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1 chance to do that as well.

2 I understand and appreciate your, your cooperation thus
3 far. I can understand how you might feel a little
4 uncomfortable sitting in that seat in the witness stand in
5 the courtroom. It's not where people sit every day, thank
6 goodness. But, again, I appreciate your cooperation.

7 what we're intending to do is ask some questions about
8 some of the matters that will be involved in this case, and
9 I'm gonna tell you, as we do that, that there aren't any
10 right or wrong answers to our questions. They're just your
11 answers and they need to be truthful and honest answers --

12 A All right.

13 Q -- and, and we -- I'm sure you'll respond in that
14 fashion, but I do need to remind you, on the record, that
15 the oath that you took yesterday to be honest with the Court
16 and responsive to the Court, that continues today.

17 Do you understand that?

18 A Yes, sir, I do.

19 Q Do you accept that fact?

20 A Yes, sir.

21 Q Okay. Now, I'm gonna ask you, first of all, since we
22 talked yesterday, has anybody contacted you about this case?

23 A My mother did.

24 Q Okay. She called you?

25 A She called me.

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1 Q Did you discuss it with her?

2 A No, sir.

3 Q Okay. You followed my instructions then.

4 I take it that you have not read, heard, or seen
5 anything about this case otherwise than that conversation,
6 is that correct?

7 A I didn't even know what she was talking about.

8 Q Okay. All right. So, then -- so, did you cut her---

9 A She was talking about---

10 Q You cut her off and didn't discuss it.

11 A Yes, sir.

12 Q Okay. I appreciate you following my instructions in
13 that regard.

14 Now, the next question I have, have you ever
15 participated or, or responded to or been involved in any
16 type of discussion, blog, or Internet chat room or stuff,
17 stuff like that to where the subject of the discussion might
18 of been the issues of the death penalty?

19 A No, sir.

20 Q Have you ever participated in any, any political
21 activities such as demonstrations or letter writing
22 campaigns to representatives or anything of that nature
23 where the subject might of been the death penalty?

24 A No, sir.

25 Q Now, I'm gonna ask you if you feel that you could put

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1 aside anything that you may have seen, heard, or read
2 previously that might involve this case, and would you be
3 able to put that aside and decide this case based solely
4 upon the evidence and the law that you would hear in the
5 courtroom during the trial?

6 A I have no problem. In fact, I don't even know what
7 the, the circumstances are.

8 Q Okay. Well, that's, that's, that's a good situation
9 for a juror.

10 So -- but -- so, there's nothing for you to put aside
11 is what you're telling me?

12 A No, sir.

13 Q Okay. Now, while you were waiting out in the jury room
14 I had a long list of people's names, and that, that's a list
15 of people who are listed to me as possible or potential
16 witnesses in the case. I don't know if all of them are
17 gonna testify or not. They're just potential witnesses.
18 But we're gonna assume, for purposes of my questioning now,
19 that they're all gonna testify.

20 As to those particular witnesses, have you ever been
21 related by marriage or are you related by blood to any of
22 the people that are listed on that list?

23 A No, sir.

24 Q Have you ever had any social, business, or personal
25 contact and relationship with any of those people?

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1 A If Jamie Tate, if it's the same deputy that I'm
2 thinking of, he was -- lived next door to the school that I
3 use to work at---

4 Q Oh, okay.

5 A ---at Inman Intermediate.

6 Q So, you may of had some contact with him?

7 A Yes, sir.

8 Q Now, it sounds like it was rather casual contact, but I
9 have to ask this question since you do have some knowledge
10 of him.

11 Let's assume he was a witness, and you were on the
12 jury.

13 would the fact that you had that previous contact with
14 him, would that affect or prevent you from being fair or
15 impartial to both sides of the case?

16 A No, sir.

17 Q Okay. Now, I'm going to ask some questions now that
18 are gonna be a little more personal in nature. I'm gonna
19 get your opinions on certain topics. I'm not trying to
20 invade your privacy by asking these questions, and we're
21 just trying to find out how you feel about some things that
22 are relevant to the case, and how the case will be handled,
23 and, of course, your opinions are important to all the
24 people here trying to seat a, a jury in the case. So, I
25 want to go over those things.

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1 I would assume that you're secure enough in your
2 opinions and beliefs that you'll be able to express your
3 opinions without any fear or any problem like that, is that
4 correct?

5 A Yes, sir.

6 Q Okay. Now, I'm going to ask you about some things in
7 this discussion, in this part of our discussion, about the
8 death penalty, and, first of all, let me point out to you
9 that, in any case where the State is seeking a death
10 penalty, the trial's divided into two phases. The first
11 phase of the trial is the question of whether or not the
12 defendant is guilty or not guilty of the crimes that are
13 charged. That's the first phase.

14 Now, if the jury found the defendant guilty of the
15 crime of murder during that first phase, then the issue of
16 what the appropriate penalty is comes up, and that's tried
17 by a jury -- the same jury that tried the, the guilt or
18 innocence phase.

19 So, do you understand that this case would be divided
20 into two phases, one involving guilt or innocence of the
21 crimes, the other, if there's a guilty verdict in the first,
22 there would be a second phase for penalties?

23 You understand that that's how that would work?

24 A Yes, sir.

25 Q Okay. Now, I want to tell you and explain to you

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1 though that this discussion about the penalty phase is
2 premature. It -- you know, I'm kind of, I guess, putting
3 the cart before the horse is one way of describing it
4 because we may not ever get to that phase, and if we do, it
5 would be only after a finding of guilt. I hope you
6 appreciate the fact, however, that if we're gonna discuss
7 that issue with any juror, we have to do it at the beginning
8 of the trial. We can't wait until a jury's seated and then
9 bring that issue up. So, we don't have anytime, other than
10 now, to discuss it with you.

11 But in doing that, I want to point out to you that the
12 defendant, in this case, Mr. Blackwell, under the law, is
13 presumed to be innocent of the charges brought against him.
14 So, the fact that we're talking about the penalty now should
15 not be taken as any reflection against him or his case here.
16 It's simply the only time or the only opportunity we'll have
17 to discuss this with you.

18 Do you understand that?

19 A Yes, sir.

20 Q Okay. Now, first of all, I want to talk in general
21 about criminal cases in general, and I want you to put
22 yourself in the position that you're a juror in some
23 criminal case, and I'm going to ask you, if you were serving
24 as a juror in a criminal case, would you be willing to
25 listen to the law and the evidence as instructed to you by

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1 the Court in making a decision?

2 A Yes, sir.

3 Q Would you be willing to accept the law, as given by the
4 judge, and apply it to the facts, as determined by the jury,
5 in reaching a verdict?

6 A Yes, sir.

7 Q Now, even if the situation existed that when the judge
8 charged you with the law to be used in the case, if, after
9 you heard that law, you realized that you might disagree
10 with it or you might feel that the law ought to be different
11 in some fashion, so, if you had some disagreement with the
12 law, would you still be willing to accept the law exactly as
13 given by the judge and apply that to the facts as determined
14 by the jury?

15 A Yes, sir.

16 Q Now, I'm going to move on to some case, some questions
17 that may apply to this particular case, and I'm gonna ask
18 you if you -- you've already told me you don't have any
19 knowledge about the facts of the case in this matter.

20 So, I wouldn't ask now if you could set aside anything
21 you might know about it and proceed, but I assume there's
22 nothing to set aside.

23 Is that still the case?

24 A Absolutely.

25 Q Okay. Now -- excuse me.

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1 Now, as I mentioned to you before, a criminal defendant
2 is presumed to be innocent, and, therefore, a criminal
3 defendant never has to prove his innocence.

4 Do you understand that the only burden of proof in any
5 criminal case is upon the State, and the State has the
6 burden of proving the defendant guilty beyond a reasonable
7 doubt?

8 Do you understand that concept in our legal system?

9 A Yes.

10 Q Okay. Now, if you were sitting as a juror in a
11 criminal case, and, again, I'm not referring to this one,
12 any criminal case, would you be willing to listen to the law
13 and the evidence presented to you, and based upon that
14 evidence and whatever the circumstances the jury finds,
15 could you find a person not guilty of a crime that was
16 charged?

17 A Can you repeat that?

18 Q Yes, sir.

19 If, if you were sitting as a juror and you had listened
20 to the law, listened to the evidence that was presented, and
21 based on your finding of those facts and the law as given to
22 you by the judge, depending on what your finding is, could
23 you possibly find somebody not guilty of the crime that was
24 charged?

25 A If it---

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1 Q I guess what I'm asking you is it your belief that
2 simply because someone has been arrested, charged, and even
3 indicted in a case, that that means they're automatically
4 guilty?

5 A No, sir, I don't believe that.

6 Q So, you could find somebody then not guilty if the
7 law---

8 A Yes, sir.

9 Q ---and the evidence dictated it?
10 Is that what you're telling me?

11 A Right.

12 Q Okay. I want to be sure.

13 Now, however, if the evidence convinced you, beyond a
14 reasonable doubt of the defendant's guilt, would you be then
15 in a position to find somebody guilty if you found that to
16 be necessary?

17 A If the evidence was there, yes, sir.

18 Q All right. Now, I guess then what you've told me, and
19 you correct me if I'm stating this wrong, that you would
20 make up your mind, depending upon the strength of the
21 evidence and the law as given to you by the Court, and you
22 could find somebody either guilty or not guilty depending on
23 the factors in the case?

24 A The facts, yes.

25 Q Yes, sir.

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1 Now, let's talk a little bit about the penalty, and
2 I'll tell you, in most criminal cases, the jury decides
3 guilt or innocence, either guilty or not guilty. Then the
4 judge determines the appropriate penalty to be assessed.
5 So, that's the case in all cases but one, and that's where
6 the State is seeking the death penalty.

7 In that particular kind of case, the case -- the trial
8 is what we call bifurcated. It's broken down into two
9 phases. As I told you earlier, you have a guilt phase and
10 then a penalty phase if the defendant is found guilty in the
11 guilt phase. So, there's a difference in this type of case,
12 and, and, under those circumstances, if a jury convicts a
13 defendant of the crime of murder so that guilt has been
14 determined, that same jury is the jury that determines the
15 question of the appropriate penalty.

16 In that separate sentencing procedure, the only
17 determination made by the jury is the type of sentence that
18 would be imposed and that sentence could either be life in
19 prison without parole or the death penalty. Those are the
20 only two choices in that sentencing phase, and I will tell
21 you that the statute that governs how that particular
22 hearing is held, that penalty or sentencing hearing,
23 provides for the presentation of two types of evidence.
24 That is evidence concerning what's called statutory
25 aggravating circumstances or statutory mitigating

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1 circumstances.

2 Aggravating circumstances are those kinds of facts that
3 would tend to make the crime of murder to be considered more
4 severe or, or something that would be a worse situation.

5 Mitigating circumstances, on the other hand, are
6 circumstances that would tend to lessen someone's
7 culpability for that particular offense. So, you -- the,
8 the law allows for presentation of evidence on both types of
9 evidence, aggravating situations and mitigating
10 circumstances.

11 So, do you understand how that would be---

12 A Yes, sir.

13 Q ---be handled?

14 Now, once the aggravating and mitigating evidence has
15 been presented, then the jury would be instructed by the
16 Court to consider those factors, that, that evidence, and
17 determine the appropriate punishment to be entered, and,
18 again, that punishment could either be life in prison
19 without parole or the death penalty.

20 Now, I want you to put yourself in a situation
21 theoretically in your mind. As a juror in a case, let's
22 assume you're on the jury, the case is proceeded to the
23 point where we've completed the, the guilty phase, the guilt
24 phase, and the jury has found that particular defendant
25 guilty of the crime of murder. So, that part of the trial

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1 has been completed.

2 At this point in time, you're with the -- your fellow
3 jurors and you're about to go back into the courtroom to
4 consider the question of the penalty, the appropriate
5 penalty that would be entered in the case.

6 Now, I put a sheet of paper back in the jury room and I
7 asked all the people to read it when they came in and it
8 described three different types of jurors.

9 You remember reading that?

10 A Yes, sir.

11 Q I'm gonna go back over that briefly with you so we'll
12 be clear on which jurors we're talking about that came off
13 of that paper.

14 Now, the first type of juror that I described on that
15 piece of paper, before he ever set foot back into the jury
16 room for the second phase of that trial, the sentencing
17 phase, that juror has already made up his mind and knows how
18 he's going to vote on that question. That juror is decided
19 he's gonna vote for the death penalty because it's that
20 juror's belief that every time someone is convicted of
21 murder that death is the appropriate penalty anytime
22 someone's convicted of any murder. That's the first juror.

23 The second juror is a juror who has also made up his or
24 her mind, and that juror is one whose decided that he's
25 always going to vote for life imprisonment without parole.

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1 That juror believes the state should never take the life of
2 a person in response to a crime regardless of what the crime
3 is or the severity of it or the, the lack of severity. He
4 knows he's always going to vote for life imprisonment
5 without parole.

6 The third type of juror doesn't know what he's gonna do
7 yet. In other words, he hasn't made up his mind as to
8 whether he's going to vote for or against life imprisonment
9 or the death penalty. That juror's going to have to wait
10 and listen to the evidence presented during that phase of
11 the trial, listen to the testimony, and once that evidence,
12 aggravating and mitigating, has been presented, that juror
13 would have to then make his mind up as to what the
14 appropriate penalty was.

15 Now, I'm going to ask you, of those three jurors I just
16 described, which one would best describe you if you were in
17 that situation?

18 A Juror number three.

19 Q Number three.

20 All right. Now, what that tells me is that, if you
21 were in that situation coming back to the courtroom, that
22 you would not have made up your mind concerning the fact --
23 the appropriate penalty.

24 I'm going to ask you though, once you had heard the
25 evidence on that particular issue, the aggravating and

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1 mitigating circumstances, would you be willing to listen to
2 that facts and evidence, and if you felt or you found that
3 the evidence justified it, would you be willing to sentence
4 someone to death?

5 A Yes, sir.

6 Q And if you thought the facts and evidence did not
7 justify the death penalty, for any reason whatsoever, would
8 you be willing to sentence someone to life in prison without
9 parole?

10 A Yes, sir.

11 Q Now -- so, you're telling me that it would depend on
12 the facts and circumstances as were shown to you during the
13 trial, is that correct?

14 A Yes, sir.

15 Q All right. Now, I'm going to ask you one other
16 question.

17 If you were selected to serve on the jury, I have
18 entered a sequestration order. So, once the jury's
19 selected, they'll be taken and housed in a motel. Actually
20 in the Marriott here, pretty nice place, and they would
21 be -- you would be required to stay there while the trial
22 proceeds. I can't tell you exactly how long that would
23 last. I expect a little more than a week is what I'm
24 thinking.

25 I will tell you that, once we start, we don't stop. We

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1 go till we finish, and, during that period of time, your
2 lodging's paid for by the county. The meals are taken care
3 of. Your travel's taken care of. You receive a, a sum for
4 jury pay. It's not enough to retire on, but it's all the
5 law allows. And you'd receive some money for travel back
6 and forth to the courthouse when you had made that travel --
7 that trip. So, there would be some compensation, but
8 probably not as much as you might make somewhere else. I'll
9 tell you that.

10 But now, my question to you is, if you were required to
11 be in that situation, sequestered on a jury, would that
12 situation pose any serious risk or danger to your personal
13 well being?

14 A No, sir.

15 Q Do you believe that it would pose any serious risk of
16 danger or to the health of anyone who might be dependent
17 upon you?

18 A No, sir.

19 Q All right. Now, at this point in time I'm going to ask
20 or allow the attorneys to ask questions of you, and I'll ask
21 that you be responsive to their questions.

22 A Okay.

23 THE COURT: All right. Mr. McGuire.

24 MR. MCGUIRE: Thank you very much, judge.

25 THE COURT: Yes, sir.

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1 EXAMINATION

2 BY MR. MCGUIRE:

3 Q Good afternoon, Mr. Martin.

4 A Good afternoon.

5 Q We're just a hair over noon there.

6 I see that you've got some police or deputy sheriff
7 involvement or training?

8 A I ran a pawn shop.

9 Q Okay. And -- okay. So, you had some contact with law
10 enforcement---

11 A Yes, sir.

12 Q ---with regard to that and I guess it's suspected
13 stolen goods, is that right?

14 A Sir?

15 Q Is that -- I would imagine that's dealing with
16 suspected stolen goods?

17 A No, sir, we had, we had them coming in just to see what
18 we were taking in.

19 Q Oh.

20 A So, they would come in quite often.

21 Q Okay.

22 A And they were also doing their job from the Consumer
23 Affairs Department too.

24 Q Okay. Okay. And, and what I want to ask you now is a
25 little bit more about your thoughts about the death penalty

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1 in general.

2 Do you think we use the death penalty about right, too
3 much, too seldom?

4 Do you have an opinion on that?

5 A I don't have an opinion.

6 Q Okay. Okay. What I'm gonna do now is add just a
7 little bit more to what the judge said. The judge, when he
8 was talking to you, kind of put you at that point of
9 conviction meaning that you and 11 other people found a
10 person guilty, guilty of murder. Murder in South Carolina
11 is the intentional killing of another person with malice
12 aforethought, with evil intent. It's not an accident. It's
13 not self-defense. A person knew what they were doing,
14 deliberately chose to kill, and then the State would have to
15 prove an aggravating circumstance to, to make the person
16 eligible for the death penalty.

17 The category of case we're talking about is a child
18 victim where a child was murdered.

19 In that case, what are your thoughts about the death
20 penalty as the appropriate punishment?

21 A It just depends.

22 Q On what?

23 A Whether I felt like it was an aggravated type assault
24 or if it was an accident, for example.

25 Q Okay. Well, if it was an accident, the person would be

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1 not guilty.

2 A Right.

3 Q For instance, if somebody was cleaning a gun and it
4 went off. We're talking about somebody who deliberately and
5 intentionally, with evil intent, took an innocent child's
6 life.

7 In that situation, what are your thoughts about the
8 death penalty?

9 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
10 this question. I think it's getting fact specific in this
11 situation.

12 THE COURT: I'll ask the juror to step back to the jury
13 room.

14 (WHEREUPON, the following takes place outside the
15 presence of the juror.)

16 THE COURT: Yes, sir, Mr. Barnette.

17 SOLICITOR BARNETTE: Your Honor, I think we went
18 through this yesterday. We got very fact specific and he
19 just did. He talked about categories, I understand that,
20 but when he gets to talking about certain facts of the case
21 itself, and he's going right on the facts, I'm gonna object
22 to that every time.

23 THE COURT: Yes, sir.

24 MR. MCGUIRE: Well, first off, it's not a fact. It's a
25 category, child victim. I didn't ask any fact. I didn't

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1 say that it was a shooting.

2 THE COURT: It happened to be fact specific to this
3 case though.

4 MR. MCGUIRE: well, it's a category like a---

5 THE COURT: well, you don't go all over all the
6 categories. You're only going over one of them.

7 MR. MCGUIRE: Oh, I can go over more if that will, if
8 that will---

9 THE COURT: well, I, again, I -- the question I have is
10 whether or not you're staking out a witness.

11 MR. MCGUIRE: well, staking out---

12 THE COURT: I think you might be.

13 MR. MCGUIRE: well, staking out would be if I was
14 trying to, to get the juror to pledge to a certain course of
15 action that would be favorable to my side and I'm actually
16 getting---

17 THE COURT: well, I got a definition that says it may
18 be asking a juror to speculate or pre-commit to how a jury
19 might vote based on particular facts or seek to discover and
20 advance what a prospective jury decision will be under a
21 certain state of the evidence or seek or cause a prospective
22 juror to pledge himself to a future course of action. I
23 don't think you're doing that.

24 MR. MCGUIRE: Sure.

25 THE COURT: But I think the first two are pretty close.

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1 MR. MCGUIRE: well, and, again, it's just, it's just
2 ferreting out bias and he was, I think he was just about
3 to---

4 THE COURT: Don't you think that's a pretty close
5 question?

6 MR. MCGUIRE: No, sir, I mean I think there's some---

7 THE COURT: Oh, you don't think that's close at all?

8 MR. MCGUIRE: No, I mean I think there's some confusion
9 in the law when you look at the definition of staking out
10 and prejudgment, and I agree that a very, a very detailed
11 summary of the evidence and asking somebody which way they
12 would vote would be improper.

13 THE COURT: well, we've been down this road before --

14 MR. MCGUIRE: We have.

15 THE COURT: -- and my concern is that you present only
16 aggravating circumstances to a, to a prospective juror
17 without any presentation that there might be mitigating
18 circumstances.

19 MR. MCGUIRE: And that's always the follow-up. It's,
20 it's---

21 THE COURT: well, maybe it ought to be part of the same
22 question.

23 MR. MCGUIRE: I just don't know how to do that, judge.

24 THE COURT: Now, you don't know how to do that?

25 MR. MCGUIRE: No, sir.

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1 THE COURT: I bet you do.

2 MR. MCGUIRE: I don't think I can do it---

3 THE COURT: I'd be willing to bet that you know how to
4 do it.

5 MR. MCGUIRE: Or let me rephrase that. I don't, I
6 don't know how to do that in a way where I can, I can get an
7 effective -- where it's an effective question, and I just
8 want to know -- I need to get a starting point on how strong
9 he feels about this very, very, very, significant---

10 THE COURT: Oh, I understand it's significant. I'm
11 not, not diminishing the significance of the question you're
12 asking.

13 MR. MCGUIRE: Yeah, it -- you know, to, to make my
14 point, when Mr. Bulsa was arguing earlier, he actually used
15 phrases well naturally when people hear it's a child victim
16 they would---

17 THE COURT: I didn't have an objection to rule on at
18 that time.

19 MR. MCGUIRE: Oh, I agree. I agree. No, I'm just
20 saying it illustrates the point that even Mr. Bulsa agreed
21 that when people hear child victim, that most people are
22 gonna say yeah to the death penalty, and that's -- if that's
23 their genuine view---

24 THE COURT: But it's a fact specific question to this
25 case.

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1 MR. MCGUIRE: Well, again, I would differ with the term
2 fact specific. I would say it's category specific.

3 THE COURT: Well, I understand you would, but that's
4 the way I view it.

5 MR. MCGUIRE: I understand.

6 THE COURT: It's a fact specific question to this case.

7 MR. MCGUIRE: But, but, but I mean I would want to make
8 the point---

9 THE COURT: Well, see, the test I'm suppose to be up
10 here determining is not for a particular -- what the juror's
11 particular attitude on the capital punishment, but if that
12 attitude would render them unable to follow the Court's
13 instructions and follow the law.

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: That's the issue that I have here, and the,
16 you know, I guess the standard is whether the juror's view
17 would prevent or substantially impair them in the
18 performance of their duty, and so the duty is not -- the
19 question's not what -- how they would rule in a particular
20 fact situation given no other evidence or no mitigating
21 circumstances. That's not what they're gonna be presented
22 with. They're -- and I'm -- I've tried to explain that they
23 are gonna be presented both with aggravating circumstances
24 and mitigating circumstances.

25 MR. MCGUIRE: Yes, sir.

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1 THE COURT: So, while you ask the question, I'm not
2 sure the question goes to the questions that I have to
3 answer.

4 MR. MCGUIRE: Yes, sir, and, and my position would be
5 that it's a starting point to feel how strongly they feel
6 about that, that very, very significant impactful factor.

7 THE COURT: Well, as the judge I can give it the weight
8 that I choose to give it.

9 MR. MCGUIRE: Sure. Of course. But I'm interested --
10 and I just -- my job is to see how much weight they're gonna
11 give it, and if it's a factor that's so so strong that it
12 moves them to death without being able to consider
13 mitigation, is that we've all been---

14 THE COURT: Well, see that's not what you're asking.

15 MR. MCGUIRE: But we always follow-up---

16 THE COURT: That's not what you're asking.

17 MR. MCGUIRE: Well---

18 THE COURT: Let me, let me talk for a second.

19 MR. MCGUIRE: Sorry.

20 THE COURT: That's not what you asked them. What you
21 asked them is given one aggravating circumstance, what would
22 be your result, and let me finish.

23 MR. MCGUIRE: Sure. I'm sorry.

24 THE COURT: You don't give them any of the possible
25 mitigating circumstances to consider. Again, it presupposes

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1 an answer. So, the weight of that answer is somewhat
2 diminished in the Court's view. I'll just tell you that.

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: I've tried to explain that to you before.

5 MR. MCGUIRE: Yes, sir, and---

6 THE COURT: And, of course, you can take that position
7 and do whatever you choose to do with it. I'm not telling
8 you how to try the case, but I will tell you that that
9 information, that bare information, on its own, without
10 presenting the juror with the factors, other factors that
11 could exist I don't think is a fair question, and I give it
12 what weight I choose to give it.

13 MR. MCGUIRE: I agree with that.

14 THE COURT: Okay.

15 MR. MCGUIRE: And if I, if I ask that question and sat
16 down I would agree. I wouldn't give it much weight at all
17 cause it is in a vacuum and it doesn't consider other
18 things. But my follow-up question was going to be, but we
19 also have information with regard to the defendant, his
20 background, how he was brought up. In that situation with a
21 child victim, as the -- with the child as the victim, would
22 that, when it comes to fixing punishment in that type of --
23 would this background information of the defendant be
24 relevant to you. That's -- and that, that, that gets it to
25 exactly where---

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1 THE COURT: There's a, there's a quote from several
2 cases that says when a defendant asks the juror to speculate
3 or pre-commit on how that juror might vote based on any
4 particular facts, the question strays beyond the purpose
5 protected in Morgan, Morgan versus Illinois.

6 MR. MCGUIRE: Yes, sir, I'm not asking for their vote.
7 I've never asked for their vote. I always asked for---

8 THE COURT: Maybe I'm missing something. Maybe I'm
9 missing something.

10 MR. MCGUIRE: I always end the question with language
11 along the lines of what are your thoughts about the death
12 penalty in that situation.

13 THE COURT: So, you're asking whether they would impose
14 the death penalty or not?

15 MR. MCGUIRE: Well, I'm asking them in the abstract.

16 THE COURT: I understand. I think that's where we're
17 getting. That's certainly the objection that you made later
18 on, on some of the other ones we've had. Would -- that
19 juror would vote that way. That's what I've heard. Maybe I
20 misunderstood.

21 MR. MCGUIRE: Or they would be so predisposed to---

22 THE COURT: But it sounds to me like your question may
23 be violating these precepts that I've read about staking out
24 witnesses -- about jurors. Excuse me.

25 MR. MCGUIRE: And I would dis -- I would -- I mean

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1 obviously I would disagree, with all due respect, that those
2 cases involve, first off, the speculation part. The normal
3 course of where you see that is if a lawyer says well, if I
4 was to prove A, for instance, if I was to prove a learning
5 disability, then you'd have to admit that would impact your
6 decision, could cause you to vote for life. That's one of
7 those that's staking out and trying to pledge somebody to a
8 course of action.

9 THE COURT: well, that's kind of what you're doing on
10 the other side --

11 MR. MCGUIRE: No.

12 THE COURT: -- in my view.

13 MR. MCGUIRE: I'm trying to figure out---

14 THE COURT: In my view it is.

15 MR. MCGUIRE: Sure. And we might have to agree to
16 disagree, but it -- what I'm trying to do is to ferret out
17 if, if this factor, which is so emotional, so impactful, if
18 it could -- it resonates so strongly with a person---

19 THE COURT: In a vacuum given no other information but
20 that information.

21 MR. MCGUIRE: well, but with---

22 THE COURT: That's the way you're asking the question.

23 MR. MCGUIRE: well, I mean I would have to agree with
24 that, but---

25 THE COURT: Yes, sir, that's exactly what you're doing.

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1 MR. MCGUIRE: But I have to have a starting point to
2 see how strongly---

3 THE COURT: well, there's, there's other ways to ask
4 that question as I've pointed out.

5 MR. MCGUIRE: well, I can't think of an effective way
6 to do it.

7 THE COURT: well, think about it.

8 MR. MCGUIRE: I have given some, some substantial
9 thought. I can't think of an effective way to create an
10 environment and to examine somebody, in an informal way, to
11 get at -- you know, you have to bring these questions down
12 with its plain language, where they understand it, to have a
13 starting point, and the follow-up that we've always asked
14 is---

15 THE COURT: well, you could ask -- for example, you
16 could ask the question that would, would -- your usual
17 involves a child murder. Would that cause you to disregard
18 all mitigating evidence and vote only for death, you could
19 ask it in that fashion so at least the juror had in his mind
20 that there was mitigating evidence. You don't ask it that
21 way. You ask it, as I said, within a vacuum just giving,
22 giving the aggravating circumstance.

23 So, you know, at this point in time I think I can give
24 it the weight that I choose to give it. I think I've tried
25 to explain to you how I see it. I think it is an effort to

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1 stake out a juror on that particular question, and I'm
2 ruling in that fashion.

3 MR. MCGUIRE: And I'm gonna try to allay the Court's
4 concerns about---

5 THE COURT: And I've, I've been consistent on that.

6 MR. MCGUIRE: Yes, sir, and I'm, and I'm gonna try to
7 satisfy the Court's desire for the additional information
8 with regard to mitigation with the follow-up right behind
9 that question.

10 THE COURT: Well, you ask it the way you choose to ask
11 it. I'm gonna let you ask it as long as you follow it up --

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: -- and I'll give it the weight that I think
14 it deserves---

15 MR. MCGUIRE: I understand.

16 THE COURT: ---because, again, I'm thinking -- I'm
17 going to tell you that I've done a little research on this
18 staking out thing and what I'm hearing and reading is that
19 my suspicions were correct to begin with.

20 MR. MCGUIRE: I understand that Your Honor might---

21 THE COURT: I've reconsidered my position and I came
22 back to the same spot.

23 MR. MCGUIRE: I understand and I understand you might
24 place less weight on the responses given the way I'm asking
25 them, and I'm -- I'll accept that.

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1 THE COURT: Does the State wish to add anything?

2 SOLICITOR BARNETTE: Your Honor, I'm gonna continue to
3 object to that question because, like I say, I think the
4 court's exactly right. I think Morgan versus Illinois
5 speaks to that and just note for my -- obviously I have -- I
6 guess I got to speak my objection every time from that
7 standpoint.

8 THE COURT: Now, I'm gonna consistently rule in this
9 fashion.

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: I'll explain that to you.

12 You understand?

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: Okay. Bring the juror back.

15 (WHEREUPON, the following takes place within the
16 presence of the juror.)

17 THE COURT: Sir, thank you for your, for your patience
18 with us. I've made a ruling and now I'll allow the attorney
19 to continue to ask the questions.

20 THE WITNESS: Okay. Go ahead.

21 THE COURT: Thank you, sir.

22 MR. MCGUIRE: Thank you, sir.

23 CONTINUED EXAMINATION

24 BY MR. MCGUIRE:

25 Q Mr. Martin, what I want to -- I'm gonna ask you now a

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1 little bit more about that decision making process with
2 regard to you and your personal views.

3 Okay. When, when it comes to fixing punishment for
4 somebody who intentionally, deliberately, not accident, not
5 self-defense, chose to kill and did kill a child, is the
6 background of the defendant, his walk in life, would the
7 defendant's background figure in that decision making
8 process?

9 A I think everything figures into that process.

10 Q Okay. And when you say that, what, what are you
11 thinking about when you say everything?

12 A I couldn't really put my place -- myself in a situation
13 like that. If you could be a little bit more specific.

14 Q Okay. Well, so -- ask it just a different way. Maybe
15 a little bit plainer.

16 If you found somebody, a defendant, guilty, beyond a
17 reasonable doubt, of intentionally taking the innocent life
18 of a child, would the background -- could the background of
19 the defendant have an affect on your decision making
20 process?

21 A No.

22 Q Okay. And that's because the facts of the killing
23 would control?

24 A Right.

25 Q And how heinous it is?

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1 SOLICITOR BARNETTE: Your Honor, I'm gonna object. I
2 mean that's exactly what he just staked out like we just
3 talked about earlier.

4 THE COURT: Well, I'm gonna allow you to ask the
5 questions. I'll overrule the objection at this point in
6 time and I'll allow you to ask questions along these lines,
7 Mr. Barnette.

8 MR. MCGUIRE: Thank you, Your Honor.

9 And if you---

10 THE COURT: Although I'm not sure that, that background
11 is a word that's used in mitigating circumstances in this
12 state.

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: Is it?

15 MR. MCGUIRE: Well, no, it actually is. I'll expound
16 upon it.

17 THE COURT: Thank you.

18 Q The -- in terms of the person's background, it can be
19 just their walk in life, how they were raised, things that
20 were done to them, things that were done to other people,
21 kind of who they are as a human being, their character,
22 their, their record in life, and I think I heard you say
23 that, in the particular case of the intentional killing of a
24 child, that that stuff would not be relevant in the decision
25 making process?

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1 A A killing is a killing.

2 Q Okay. And---

3 A And if it's mitigated, beyond a shadow of a doubt,
4 whatever, it's still a killing is a killing---

5 Q And---

6 A ---and I don't really understand how you can say that
7 he did it because he was mistreated as a child.

8 Q Sure.

9 Cause people are responsible for their actions?

10 A Right.

11 Q And if somebody knows what they're doing, knows right
12 from wrong, and engages in this type of crime we're talking
13 about, the death penalty would be appropriate?

14 SOLICITOR BARNETTE: Objection, Your Honor. Talking
15 about right or wrong, he's talking about legal issues, legal
16 terms within the---

17 THE COURT: I'll sustain the objection.

18 Q If an person deliberately, intentionally kills an
19 innocent child, it sounds like what you're saying is the
20 death penalty's appropriate?

21 A Yes, sir.

22 Q And the life penalty would not be severe enough to
23 punish that kind of killing?

24 A It depends again.

25 Q On?

Individual Juror Qualification

1 A Well, you said life.

2 Q Yes, sir.

3 A And then you said death penalty.

4 Q Right.

5 A I said death penalty, then I wouldn't go back and say
6 life.

7 Q Okay. Right. I mean I -- and everything you say is
8 the right answer as long as it comes, you know, from, from
9 who you are as a person, and it sounds like you're saying if
10 it's an intentional, deliberate killing of an innocent
11 person, the death penalty is appropriate?

12 A Right.

13 Q Okay. I think you said right?

14 A Yes, sir.

15 Q Okay. I just want to make sure I heard you.

16 THE COURT: Are you asking him if it's appropriate or
17 the only verdict?

18 MR. MCGUIRE: Well, that's what I'm getting to, judge.

19 THE COURT: Well --.

20 Q And, and it would always be appropriate in the
21 intentional killing cases?

22 SOLICITOR BARNETTE: Objection, Your Honor. The form
23 of the question, now he's definitely staking out and---

24 THE COURT: I'll sustain the objection.

25 Q Just so we're on the same page, it sounds like, and

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1 don't let me put words in your mouth, but just tell me how
2 you feel, if the State was to prove murder and murder, in
3 South Carolina, is the intentional deliberate killing of
4 another person, excuse me, with malice aforethought, and
5 malice aforethought is defined as, as the person operating
6 with a black and malignant heart, bent on evil or
7 wickedness, and that means that it would not be an act of
8 self-defense or accident, and what are your thoughts about
9 the death penalty in those types of cases?

10 SOLICITOR BARNETTE: Objection, Your Honor. We keep
11 asking the same question.

12 THE COURT: I'm gonna ask the juror to step outside.

13 (WHEREUPON, the following takes place outside the
14 presence of the juror.)

15 THE COURT: Just one second before we discuss this.

16 (Pause.)

17 THE COURT: All right. I'll hear from you, Mr.
18 Barnette.

19 SOLICITOR BARNETTE: Your Honor, I hate doing this, but
20 I mean it's the same thing over and over and over again. I
21 mean we had Mr. Young ask questions a little while ago, and
22 I thought he asked a lot more appropriate than Mr. McGuire
23 is. He just wants to straight go to one question, and he
24 keeps wanting to do that over and over again. The job of
25 the juror, and I'm not, I know the Court knows this, but

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1 basically is to get a fair jury that can consider both sides
2 and he tries---

3 THE COURT: Someone who's capable of following the
4 Court's instructions and is willing to discharge their
5 responsibilities.

6 SOLICITOR BARNETTE: Yes, sir, but if he keeps staking
7 out every juror like this, we're gonna go through this -- I
8 mean we went through this I guess with four jurors I think
9 with him right now, at least three. I think maybe three.
10 And it just continues on and on, and I don't know what else
11 to do but object because he -- what he wants to do is
12 disqualify every juror off that question.

13 He even disqualified, disqualified one who I think he
14 was actually possibly qualified after I questioned him
15 today. So, I mean, you know, if he wants to disqualify the
16 whole jury panel, I guess that's what he's trying to do.

17 THE COURT: Yes, sir, Mr. McGuire.

18 MR. MCGUIRE: Your Honor, I can't, I can't imagine a
19 more frivolous objection. The question was what are your
20 thoughts about the death penalty in a murder case. That's
21 what voir dire is all about, a hundred percent all about.

22 I mean to entertain this objection as some sort of
23 staking out, just using the cliché phrase staking out,
24 would, would essentially just do away with voir dire. I
25 mean if we're really just gonna lecture about the law and

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1 say can you follow the law, we wouldn't have voir dire if we
2 were really all satisfied that that really actually covered
3 everything and that there's not---

4 THE COURT: I'll overrule the objection.

5 MR. MCGUIRE: I'm sorry?

6 THE COURT: I'll overrule the objection.

7 MR. MCGUIRE: Oh, I'm sorry. Thank you.

8 THE COURT: I have a little bit -- one, one issue I do
9 want to take up with you, Mr. McGuire, and this is the
10 Court's concern.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: When you talk about malice, you need to
13 give the full definition of malice as used by the Courts.

14 MR. MCGUIRE: Oh, geez, I've seen---

15 THE COURT: If you're gonna use a legal phrase and
16 define it as a legal definition, I'm going to ask that you
17 use the full legal definition of the phrase.

18 MR. MCGUIRE: I've seen it in so many different slight
19 variations.

20 THE COURT: Well, I -- not, not too many different
21 variations I don't think.

22 MR. MCGUIRE: I think -- and let me, let me see if I
23 can give it. It is---

24 THE COURT: I can tell you what the Court thinks it is.

25 MR. MCGUIRE: Oh, sure. Sure.

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1 THE COURT: Malice is hatred, ill will, or hostility.

2 MR. MCGUIRE: I'll add that to it, but I do think the
3 part about operating with a black malignant, malignant heart
4 fatally bent on mischief---

5 THE COURT: I don't know that that's necessary to
6 define malice.

7 MR. MCGUIRE: I, I mean I want to use whatever
8 definition the Court tells me to use.

9 THE COURT: I'm just telling you that's what -- looking
10 at the charge given by the State Supreme Court --

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: -- it says malice is hatred, ill will, or
13 hostility towards another person. It is the intentional
14 doing of a wrongful act without just cause or excuse with an
15 intent to inflict an injury or under circumstances that the
16 law would infer an evil intent. That's where the word evil
17 comes in, at the very end.

18 So, if you're gonna use a legal phrase and ask a
19 layman, I would ask that you use the, the definition of the
20 word that's generally accepted. It's been bothering me
21 somewhat that your questioning always talks in terms of a
22 black heart. I don't know where that comes from. As part
23 of the Court's previous ruling that your questioning, when
24 it's given in a vacuum like you're giving it, you're not
25 giving the possibility of any mitigating circumstances, that

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1 your question is seeking a predetermined answer.

2 I, I want a fair jury. I want them to have --
3 understand that, that malice has several different
4 connotations, and so if you're going to question them on a
5 legal concept and give them a legal definition of the phrase
6 malice, I'd like for it to be complete.

7 MR. MCGUIRE: Yes, sir, and I was writing as fast as I
8 could. It's displaying---

9 THE COURT: I'll be glad to print this out and give you
10 a copy of it if you'd like to read it.

11 MR. MCGUIRE: I'd very much appreciate that, judge.
12 Thank you.

13 THE COURT: All right.

14 MR. MCGUIRE: And, judge, I'm assuming that means that,
15 when you charge the jury, that this is the language that,
16 that will be in your charge?

17 THE COURT: That's what I intend to use. Of course,
18 you gentlemen sometimes object to things I charge, and, you
19 know, I certainly will look at anything that might change
20 it. But that's the way I've charged it for the last 11
21 years or so.

22 MR. MCGUIRE: Yes, sir, I just want to make sure I'm on
23 the same page with your charge.

24 MR. ALLEN: Your Honor, pursuant -- may we take up a
25 slightly different issue while we're here?

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1 THE COURT: Certainly.

2 MR. ALLEN: Pursuant to the Court's instructions,
3 I've -- well, between Mr. Young and I, we've been in
4 communications with Doctor Schwartz-Watts.

5 THE COURT: Yes.

6 MR. ALLEN: She advises us that she will try to have
7 the report by Friday this week, earlier if possible.
8 Apparently she's in depositions or Court hearings either
9 today or tomorrow as I recall, and -- but that's the status
10 of her report.

11 THE COURT: Okay. All right. When it's available, it
12 needs to be made available to the State.

13 MR. ALLEN: May I state my position?

14 THE COURT: Beg your pardon?

15 MR. ALLEN: May I state my, my position for the record
16 on, on making the report available to the State?

17 THE COURT: Yes, sir.

18 MR. ALLEN: Your Honor, we would object to the State's
19 request to make it available at this time because this is
20 not part of the agreement pursuant to, you know, for the
21 mental retardation aspect of the case or the Atkins case,
22 which she's consulted on a different issue as, as a
23 potential mitigating witness, and we have not served a Rule
24 5. I don't believe that reciprocal Rule 5 applies in this
25 situation, and, for that reason, we would object to turning

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1 over the report at this time.

2 THE COURT: well then I'm gonna ask you to produce it
3 to the Court and I'll make a decision once I see it in
4 camera.

5 MR. ALLEN: Yes, sir, very well.

6 THE COURT: Did you get copies?

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: Okay. All right. Let's bring the juror,
9 the potential juror back.

10 (WHEREUPON, the following takes place within the
11 presence of the juror.)

12 THE COURT: Thank you, sir.

13 I'm gonna ask that Mr. McGuire continue his
14 examination.

15 CONTINUED EXAMINATION

16 BY MR. MCGUIRE:

17 Q Thank you, Mr. Martin.

18 I know that you know Mr. Bulsa, Derrick Bulsa?

19 A Yes, sir.

20 Q Can you tell the Court the nature of that relationship?

21 A He goes to church where I go to church.

22 Q Okay. And his involvement in the case, would that have
23 an impact on your --

24 A No, sir.

25 Q -- decision making?

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1 A No, sir.

2 Q Okay. You just know him from church?

3 A Yes, sir.

4 Q Okay. What I'm gonna do now---

5 A Well, I did meet him -- I owned a video store back in
6 the eighties.

7 Q Met him at a video store?

8 A Yes.

9 Q Okay.

10 A And -- well, he was a customer of mine.

11 Q Okay. At the pawn shop?

12 A No, the video store.

13 Q At the video store.

14 Okay. Fair enough.

15 And, again, the fact that he patronized your
16 business---

17 A No, sir.

18 Q ---wouldn't impact your---

19 A No, sir.

20 Q What I'm gonna do is go back now a little bit with
21 regard to your, your views about the death penalty in the
22 case of murder, and the judge used the word murder when he
23 was talking to you and I'm going to go ahead and just add a
24 little bit to it, okay, so that we're on the same page, and
25 we're talking about a capital case.

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1 Again, the murder is the intentional killing of a, of a
2 person with malice in their heart or their mind, and malice
3 is defined as hatred, ill will, or hostility towards another
4 person. It's the intentional doing of a wrongful act
5 without just cause or excuse and with an intent to inflict
6 an injury or under circumstances where the law infers an
7 evil intent, and then, to be eligible for the death penalty,
8 the State would have to come and show an aggravating factor,
9 and, in this case, they've alleged the aggravating factor of
10 the victim being a child.

11 In that situation, would the background, the character
12 of the defendant be relevant to your decision making?

13 A No, sir.

14 Q Okay. And your belief, your -- that belief, that
15 answer is a reflection of your moral values?

16 A No, sir.

17 Q No.

18 What's the, what's the cause behind that decision?

19 A It just depends on the facts of how I feel at that
20 time, whether the malice was there, and whether the
21 opportunity of him carrying forth the wrong.

22 Q Okay. And, again, and like the judge told you, when we
23 talk about this decision making process in the sentencing
24 part of the trial, remember the judge put you in that
25 position where you came back with the 11 other people, you

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1 found beyond a reasonable doubt that the guy did it, you had
2 the right fellow, and that it was an intentional act, and
3 malice was there.

4 In that situation, your thought about the death
5 penalty?

6 SOLICITOR BARNETTE: Objection, Your Honor. He just
7 staked him out. He just went around that same question
8 after he got through all -- he didn't add anything to it.
9 He just went straight to the heart of it.

10 THE COURT: Are you asking him his thought as to
11 whether he would impose it under those circumstances or not?

12 MR. MCGUIRE: No, just abstract thoughts about the
13 death penalty in that situation.

14 THE COURT: Just any thought he has about the death
15 penalty is what you're wanting?

16 MR. MCGUIRE: Yes, sir. Yes, Your Honor.

17 A I have any thoughts about the death penalty?

18 Q Yes, sir.

19 The thought, the thought about the death penalty being
20 appropriate in that situation.

21 THE COURT: So, you are asking him specifically if he'd
22 give the death penalty in that situation?

23 I'll sustain the objection given that qualification.

24 Q Okay. What I want to ask you, sir, is would the, would
25 the aggravating factor of a child victim resonate so

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1 strongly with you where you would automatically commit
2 yourself to the death penalty?

3 A whether it was a child?

4 Q Yes, sir.

5 A Just because it was a child I would?

6 Q Yes, sir.

7 A No, sir.

8 Q Okay. And what I want to talk to you a little bit
9 about now is the, the, the -- your feelings about the death
10 penalty, and I think I asked you do we use it, do we use it
11 too seldom, about right, or not enough?

12 Did I ask you that?

13 SOLICITOR BARNETTE: Objection. Asked and answered,
14 Your Honor.

15 Q Do you believe that the death penalty is a last resort?

16 A Yes, sir.

17 Q Okay. And why do you say that?

18 A well, I think, with the malice end of it, and what the
19 purpose of it, how things fell together, I hate it for
20 anyone that was -- had lost their life for murder, but there
21 are some circumstances that I can quote if I can?

22 Q Sure.

23 THE COURT: I just want you to be responsive to the
24 question.

25 THE WITNESS: Okay.

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1 THE COURT: If you feel that's responsive to the
2 question, you can state it.

3 THE WITNESS: Well, it's just some people out there---

4 THE COURT: But I don't want you just to be offering
5 opinions.

6 THE WITNESS: No, it's not an opinion. It's just some
7 people I feel like that it hasn't justified it.

8 Q And that some people have gotten the death penalty when
9 it was not justified?

10 A Right.

11 Q Okay. And what are those examples?

12 A I can't recall any just -- I don't read the newspaper a
13 whole lot.

14 Q Okay. Just over the course of -- just over the course
15 of your life, you remember a couple of times where somebody
16 got the death penalty and you thought---

17 A No, sir.

18 Q Okay. I'm sorry. Explain to me what you're talking
19 about.

20 A Well, I've known that it was seemed it would of been
21 warranted to have the death penalty and it wasn't.

22 Q I'm sorry. Maybe I'm having trouble understanding.

23 Can you repeat that?

24 A A specific case?

25 Q Where the person got the death penalty?

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1 A Did not.

2 Q Did not.

3 And you thought it was warranted?

4 A Uh-huh. (Affirmative).

5 Q I see.

6 And you disagree with that?

7 A (Witness nods affirmatively.)

8 Q So, is it your view that we should have the death
9 penalty imposed more often?

10 A No, sir.

11 Q Okay. Do you believe that the death penalty is a
12 deterrent?

13 A Is a what?

14 Q A deterrent. Likes keep people from committing crimes.

15 A No, sir.

16 Q Okay. Do you believe that life without parole is a
17 substantial punishment?

18 A I think it's a substantial punishment if they don't get
19 parole.

20 Q And the judge would actually charge you that, in South
21 Carolina, life in prison without parole means exactly that,
22 life without parole.

23 A Right.

24 Q Could a life without parole sentence be appropriate for
25 somebody that killed a child?

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1 A Yes, sir.

2 Q Okay. And why is that?

3 A It would just depend on the circumstances there.

4 Q Okay. And would you want to look at a person's, a
5 defendant's walk in life, their upbringing, their experience
6 in life?

7 would that be important to you?

8 A I'd like to see the facts that are going on right now.

9 Q Like what brought everybody to that point?

10 A Yes, sir.

11 Q Okay. Sort of the relationship of all the parties or
12 how you---

13 A Parties that are -- parties that are at hand at that
14 particular time.

15 Q Yes, sir. Okay. I think that's fair enough.

16 I'm gonna ask you a little bit about a principle of law
17 and see if you can agree with it or follow it. I mean
18 that's why we're here, to see if you can follow the law.

19 The judge would charge the jury, if you were on the
20 jury, that a juror could vote for the life penalty for any
21 reason, no reason, or mercy alone.

22 Do you think that mercy is freely given or earned?

23 A Freely given?

24 Q Or freely bestowed or does somebody have to earn mercy?

25 A I think you have to earn it.

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1 Q Okay. And the decision making process in the, the
2 penalty phase of a case like this is a juror's -- reach what
3 is called an individual moral judgment.

4 SOLICITOR BARNETTE: Objection, Your Honor, the moral
5 judgment part of the question.

6 THE COURT: I'll overrule the objection.

7 MR. MCGUIRE: Thank you, Your Honor.

8 Q It's, it's different from the first part of a case or a
9 regular trial where, you know, you're deciding factual
10 questions. Is a car red or green or something like that.
11 It's just what resonates with somebody individually, and
12 with the Court in accord with their morals.

13 If somebody had a, a different individual moral
14 judgment than you, you could respect that?

15 A Yes, sir.

16 Q And you'd want your individual moral judgment to be
17 respected?

18 A Uh-huh. (Affirmative).

19 Q And, in South Carolina, if it would violate somebody's
20 conscience or harm their conscience to change their
21 position, their individual moral judgment, that would be
22 wrong and you wouldn't do that to another juror, would you?

23 A You mean if I was to think that morally I was wrong?

24 Q No, no.

25 If somebody said I've reached my position, it's my

Individual Juror Qualification

1 individual moral judgment to take this position, you
2 wouldn't try to---

3 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
4 this point. He's trying to pit jurors against jurors and
5 things like that. I think the person answered the question
6 concerning trying to influence or---

7 THE COURT: Well, he has answered that he felt he could
8 respect the opinions of others. So, that's been answered to
9 that extent, but I'm not sure exactly where this question is
10 going. So, I'll let him ask it. That -- it may of already
11 been asked and answered.

12 Go ahead.

13 Q In, in the -- if it would harm somebody's conscience to
14 change their position, to throw in with the majority, that
15 would be wrong and you wouldn't try to get a juror to do
16 that, right?

17 A If we were on the jury --

18 Q Yes, sir.

19 A -- and I knew that it bothered you to have the death
20 penalty, that's between you and your conscience. Not mine.

21 Q Okay. And you would -- if I was a juror, you'd agree
22 or you would let me have my---

23 A I would decide it myself --

24 Q Sure.

25 A -- and they could decide it themselves.

Individual Juror Qualification

1 Q And people can disagree?

2 A Yes, sir.

3 Q Okay. That's all I have for you. Thank you.

4 THE COURT: Mr. Barnette.

5 SOLICITOR BARNETTE: May it please the Court, Your
6 Honor?

7 THE COURT: Yes, sir.

8 EXAMINATION

9 BY SOLICITOR BARNETTE:

10 Q Good afternoon, Mr. Martin.

11 A Good afternoon.

12 Q My name is Barry Barnette. Of course, you know Mr.
13 Bulsa, I guess, from church from that standpoint.

14 A Yes, sir.

15 Q We represent the State in this case. Just a few
16 questions I wanted to ask you.

17 How long have you been a business owner here in town?

18 I know you've had a pawn shop and a video store.

19 How long have you been -- had businesses in the past in
20 Spartanburg?

21 A I've been in car sales. I've been in tanning beds.

22 I've been in satellite dish equipment. I've been teaching.

23 I've been -- now I'm an associate at Adidas.

24 Q Okay. So, you, you've worked all around town then,
25 give or take, doing different things?

Individual Juror Qualification

1 A (Witness nods affirmatively.)

2 Q Okay. So, you know town pretty well then --

3 A Yes, sir.

4 Q -- from that standpoint?

5 Just going back to a few questions and whatever, you
6 could fairly listen to both sides of this case, couldn't
7 you?

8 A Yes, sir.

9 Q And like the judge explained to you, there would be
10 aggravating circumstances maybe be presented or will be
11 presented, as well as mitigating factors they may present,
12 and you could listen to both those factors and you'd weigh
13 both of them if I understood your answers right?

14 A Yes, sir.

15 Q And, obviously, you feel like certain crimes the death
16 penalty would be appropriate in those situations?

17 A Uh-huh. (Affirmative).

18 Q There are some cases where you think life without
19 parole would be, be appropriate in those situations, is that
20 right?

21 A Yes, sir.

22 Q You'd have to listen to the facts of the case and look
23 at them from that standpoint?

24 A (Witness nods affirmatively.)

25 Q Is that what you would do?

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1 A Yes, sir.

2 Q So, you don't have any preconception of what you're
3 gonna do until you hear it?

4 A Correct.

5 Q And then you'd make the rulings based off that?

6 A Yes, sir.

7 SOLICITOR BARNETTE: Thank you, Your Honor. No further
8 questions.

9 THE COURT: All right.

10 MR. MCGUIRE: Nothing further, Your Honor.

11 THE COURT: All right. Sir, you may step down to the
12 jury room again. We'll be calling you back shortly.

13 THE WITNESS: Okay.

14 THE COURT: Thank you, sir.

15 (WHEREUPON, the following takes place outside the
16 presence of the juror.)

17 THE COURT: All right. Hear from the defense.

18 MR. MCGUIRE: Jury briefly, Your Honor. Move to strike
19 based on the fact that he seemed to indicate he was
20 mitigation impaired, wouldn't consider the background of the
21 defendant, and---

22 THE COURT: Yes, sir, but when you ask that question
23 you say about the background, and I went back and looked at
24 the statute, and I don't find that word used in the
25 mitigating circumstances anywhere. Let me pull it up cause

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1 you indicated it was there.

2 MR. MCGUIRE: No, I didn't. I'm sorry.

3 THE COURT: Well, I raised that when you said it and
4 you said it's in -- I said I don't think that's in the
5 statute and you said it was --

6 MR. MCGUIRE: Oh, I'm sorry then.

7 THE COURT: -- and then I went back and read it.

8 MR. MCGUIRE: If that's the case, I misspoke. That --
9 the fact that -- I don't see -- your, your questions, when
10 you asked about mitigating circumstances, use background and
11 history and -- not, not history, some other word, neither of
12 which is in the mitigating circumstances that are defined by
13 the statute. So, I'm not sure you're asking about
14 mitigating circumstances that would be presented with --
15 well, well, actually there's obviously both statutory
16 aggravating circumstances and nonstatutory.

17 THE COURT: Well, you definitely asked him about that.

18 MR. MCGUIRE: Sure. I was making a point, and there's
19 obviously statutory aggravating circumstances and
20 nonstatutory aggravating circumstances. There's statutory
21 mitigating circumstances, and they're nonstatutory
22 mitigating circumstances.

23 THE COURT: And they have the right to consider
24 anything they want to consider.

25 MR. MCGUIRE: Absolutely.

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1 THE COURT: And -- in mitigation, I understand that.

2 MR. MCGUIRE: And that's where the whole---

3 THE COURT: But the only choice you give the witness is
4 the things you asked him, the specific things, would he
5 consider -- I know background was one of them. I can't
6 remember the other word, but---

7 MR. MCGUIRE: I generally use the language background,
8 how somebody was raised, how they grew up, things that
9 they've done, things that have been done to them.

10 THE COURT: Well, again, I'm just, I'm just pointing
11 out that, that -- go ahead.

12 MR. MCGUIRE: Yeah, I mean obviously I take the
13 position that mitigation evidence can be almost anything. I
14 mean it can be --.

15 THE COURT: Oh, I understand that. But, again, it goes
16 to the, the weight or the importance of the response I get
17 as to whether or not you -- the juror actually is responding
18 to things they'd be faced with.

19 MR. MCGUIRE: Sure, and my position---

20 THE COURT: And I don't -- didn't hear anything that he
21 said that he would not follow the law as given by the Court.

22 MR. MCGUIRE: I understand.

23 THE COURT: Go ahead.

24 MR. MCGUIRE: And move to strike based on the fact
25 that, when he -- in the category specific question, and I

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1 think even when it was just murder, when it was just an
2 intentional killing of another person with malice
3 aforethought, he indicated that the background, and I did
4 use the word background, the Court's absolutely right.

5 THE COURT: Uh-huh. (Affirmative).

6 MR. MCGUIRE: I think it may of been a little bit more
7 than that, but I certainly always use that word, and he --
8 and I -- my position would be that background is actually --
9 it's, it's so inclusive---

10 THE COURT: I know that's yours. I'm not sure the
11 juror understands that.

12 Do you follow what I'm saying, in his response?

13 MR. MCGUIRE: Sure, and what I -- and I use the---

14 THE COURT: It's not---

15 MR. MCGUIRE: I use the word like background cause it
16 can cover just about anything. So, I'm actually -- what I
17 want to---

18 THE COURT: Well, I'm not -- you can continue to use it
19 if you want to. I'm just pointing out that it's not---

20 MR. MCGUIRE: Sure.

21 THE COURT: ---it's not -- I didn't find that anywhere
22 in the mitigating circumstances --

23 MR. MCGUIRE: Oh, it's not in the statute.

24 THE COURT: -- defined in the statute.

25 MR. MCGUIRE: Sure and it's---

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1 THE COURT: And, when I brought that up to you, you
2 told me I was wrong and I just pointed out that I went back
3 and read it and didn't find it.

4 MR. MCGUIRE: Then, then I was the one who was at
5 fault.

6 THE COURT: That's the end of that comment. It's just
7 a comment of mine.

8 You may proceed.

9 MR. MCGUIRE: No, no, I'll take the, I'll take the I'm
10 wrong. If I said -- I thought you just meant in general in
11 the jurisprudence of the Eighth Amendment.

12 THE COURT: I just -- no, I just don't see it in there
13 and---

14 MR. MCGUIRE: No, it's not.

15 THE COURT: ---it's not.

16 Go ahead.

17 MR. MCGUIRE: It's absolutely not, and -- but with
18 regard to, to this particular juror, I'd move to, to strike
19 him in that he's mitigation impaired.

20 I used the word background because basically it's
21 anything that the juror can imagine in a person's
22 background, and they're rejecting all of it if they say oh,
23 no, I think it's background. That why I use the big word
24 background. It's actually more inclusive and it includes
25 everything really, and if they reject it and say I don't

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1 want to consider background, they're really rejecting
2 everything in a person's life, and that's why I use the
3 word.

4 I mean this person did indicate that it would not be
5 relevant in his decision making process with regard to
6 fixing punishment for the intentional killing of another
7 person, and especially a child victim. So, I'd move to
8 strike based on the fact that to seat this juror would
9 violate Mr. Blackwell's right to an unbiased and impartial
10 juror pursuant to the Sixth and Fourteenth Amendment.

11 THE COURT: Mr. Barnette.

12 SOLICITOR BARNETTE: Thank you, Your Honor.

13 I would find him qualified, Your Honor. The reason why
14 I'd ask the Court to, Mr. McGuire's questions, he got to the
15 point where he specifically asked him and said, you know, a
16 child victim in this case with murder and went through that
17 whole malice thing. Said you would weigh. Said no, I would
18 look at the facts of the case, and that's all you can ask a
19 juror to do in this case.

20 In, in response to Mr. McGuire's even own questions
21 from there, he tried to stake him out. Then the juror, you
22 know, he realized that basically there's other facts that's
23 gonna be involved with this. He keeps using background to
24 confuse him. He don't want to go into the specific
25 mitigation. He don't want to talk about mitigation.

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1 He wants to talk about background, which he's right.
2 There's non-statutorial (sic) rights to that, but he ain't
3 talked about the whole picture. I think the Court sees
4 that.

5 The juror was very responsive. He's a fair juror.
6 He's gonna listen to both sides. He's gonna weigh the facts
7 of the case. He's not automatically gonna give death. He's
8 gonna consider life and consider life without parole a
9 considerable sentence in this case also.

10 THE COURT: All right.

11 SOLICITOR BARNETTE: I ask the Court to find him
12 qualified.

13 THE COURT: As always, I will review the juror's
14 responses in light of the entire voir dire, and I find that
15 this juror, his views would not prevent or substantially
16 impair him performing his duties as a juror, and I will find
17 him qualified.

18 Bring the juror in.

19 (WHEREUPON, the following takes place within the
20 presence of the juror.)

21 THE COURT: Come on in, Mr. Martin. Have a seat.

22 Mr. Martin, at this point in time I am going to find
23 that you are qualified to go into the jury pool. Now that
24 doesn't mean that you're on the jury. That means you're on
25 the -- in the list of people who are qualified to be on the

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1 jury.

2 At some point in time in the future we will be in touch
3 with you concerning the next step in this process. I will
4 caution you that the instructions I've given you so far will
5 continue to apply until you've heard back from the Court
6 whether you're, whether you're seated or whether we release
7 you.

8 Do you understand that you'd be under those same
9 instructions?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. And are you gonna be able to follow
12 those instructions?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. We're gonna give you a sheet of
15 paper. The clerk's going to do that. It has some
16 information about some things that you might want to
17 consider when you come back because, if you were to be
18 seated on the jury, you would be put in a position of living
19 at the hotel or the motel. So, you need to bring some items
20 along and enough clothes to last maybe a little over a week,
21 something of that nature. But, again, that's some
22 information that might be helpful to you. But you would
23 need to come back and be prepared for that.

24 Do you understand that?

25 THE WITNESS: Yes, sir.

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1 THE COURT: All right, sir. So, at this point in time
2 I'm going to release you from any further responsibility
3 until you hear back from the Court other than you are
4 required to follow my instructions during your absence from
5 the courthouse.

6 THE WITNESS: So I can leave the room?

7 THE COURT: You're gonna be free to go from the room
8 now. I'm finally gonna release you.

9 THE WITNESS: And this says when they'll call or --?

10 THE COURT: Well, they'll be just -- you'll, you'll get
11 a call from the Clerk's Office.

12 THE WITNESS: Okay.

13 THE COURT: I'm sure you've given us the correct
14 numbers where to reach you?

15 THE WITNESS: Yes, sir, they've gotten in touch with
16 me.

17 THE COURT: And we'll be in touch with you and let you
18 know what you do next.

19 THE WITNESS: Okay.

20 THE COURT: Okay?

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Thank you, sir.

23 THE WITNESS: Thank you.

24 (WHEREUPON, the following takes place within the
25 presence of the juror.)

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1 THE COURT: All right. I'm gonna ask the clerk to
2 instruct the remaining jurors in the room to be back at two
3 o'clock this afternoon. I think we might want to move our
4 two o'clock back to four o'clock.

5 THE CLERK: Okay.

6 THE COURT: And we may have to rearrange our entire
7 time of schedule. This is obviously taking much longer than
8 I anticipated.

9 All right. We'll be in recess until two o'clock.

10 Thank you very much.

11 (WHEREUPON, Court was in recess for the lunch break.)

12 THE COURT: State ready to proceed?

13 SOLICITOR BARNETTE: State's ready, Your Honor.

14 THE COURT: Defense ready?

15 MR. MCGUIRE: Yes, sir.

16 THE COURT: All right. Let's bring in Mr. McCraw, Eric
17 McCraw.

18 (WHEREUPON, the following takes place within the
19 presence of the juror.)

20 ERIC MCCRAW, having been previously
21 sworn, testified as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q All right, sir. Your name, I believe, is Eric J.
25 McCraw, is that right?

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1 A Yes, sir.

2 Q All right. Mr. McCraw, I'm going to be going over some
3 things with you this morning or this afternoon now I should
4 say. It's not morning anymore.

5 First of all, I want to tell you thank you for your
6 cooperation with us. I know this is dragging out longer
7 than we hoped it would, but we're, we're in a process where
8 we're seeking to find the truth, and any time you do that it
9 takes a little while sometimes. So, we're taking a while, a
10 little while to get it going.

11 I understand that where you're seated is probably an
12 uncomfortable place to be seated. Probably an experience
13 you haven't had before --

14 A That's right.

15 Q -- and I want you to be at ease as much as you can.

16 What we're gonna do is I'm gonna ask some questions,
17 the attorneys are gonna ask some questions, and we're trying
18 to gather a little information that will assist everyone in
19 selecting a jury in this case.

20 I'll tell you that questions I'm about to ask you don't
21 have a right or a wrong answer. They just have truthful
22 answers. You were sworn to tell the truth yesterday, and
23 I'm gonna remind you of that fact and tell you that you're
24 still under oath for purposes of your discussions with the
25 Court today.

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1 Do you understand that?

2 A Yes, sir.

3 Q And do you acknowledge that as well?

4 A Yes, sir.

5 Q Okay. Now, since we talked yesterday, I gave you some
6 instructions about how you were suppose to behave concerning
7 gathering any information or discussing the case with
8 anyone.

9 Have you been able to comply with my instructions thus
10 far?

11 A Yes, sir.

12 Q All right, sir. Now, so no one has tried to contact
13 you about your participation in the case, is that right?

14 A That's right.

15 Q Okay. Now, I'm gonna ask a series of questions, and if
16 you have any -- if you don't understand anything or
17 something confuses you, just let me know or let the lawyers
18 know and we'll try to explain those things to you.

19 My first question is have you ever participated in any
20 kind of a blog or an Internet chat room or any place where
21 issues concerning the death penalty may have been discussed?

22 A No, sir.

23 Q Have you ever participated in any political activity
24 such as a demonstration or a letter writing campaign to
25 representatives or something like that concerning the death

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1 penalty or its imposition?

2 A No, sir.

3 Q Now, I'm going to ask you, do you believe or is it, is
4 it true that you could put aside anything that you may have
5 heard, seen, or read that might pertain in anyway to this
6 case and decide this case based upon the law and the
7 evidence that would be presented to you if you were a juror
8 in the courtroom during the trial?

9 A Yes, sir.

10 Q Now, while you were in the jury room waiting there was
11 a list of names in there, a long list of names.

12 Did you look over that and read that for me?

13 A Yes, sir.

14 Q Okay. Those people have been identified to me as
15 possible witnesses in this case. Now, I can't tell you
16 whether they, in fact, are going to testify or not. So,
17 we're going to assume that all of them are gonna testify
18 during the trial, and so I've got a couple of questions
19 about those people.

20 Now, as to the people whose names are on that list, is
21 there anybody whose name was on that list that is ever been
22 related to you by marriage or related by blood?

23 A No, sir.

24 Q Did you see anybody on that list that you might have
25 some social or business contact or relationship with?

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1 A There was a Bill Hayes on there.

2 Q Uh-huh. (Affirmative).

3 A I went to church with a Robbie Hayes and I'm not
4 sure -- I know he taught at Chesnee High School at one time,
5 but I'm not sure if that would be the same one or not, but
6 --.

7 Q So, there was a Bill Hayes that, that may of taught at
8 Chesnee High School?

9 A Yeah. Well, I knew a Robbie Hayes, but, you know,
10 Robert, I didn't know if that would go with Bill or --.

11 Q I see.

12 Okay. Well, let me just assume -- let's assume it's
13 the person that you knew some years ago.

14 A Right.

15 Q If that person happened to be a witness about some fact
16 or something that was in the case, and you were sitting on
17 the jury, would the fact that that person happened to
18 testify during the trial, would that affect your ability to
19 be fair and impartial for both the State and the defense in
20 the case?

21 A No, sir.

22 Q So, you could still be impartial regardless---

23 A Yes, sir.

24 Q ---if that person is testifying?

25 A Yes, sir.

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1 Q Okay. Now, I'm going to get into some more personal
2 questions, questions about perhaps your beliefs on some
3 things. I'm not trying to invade your privacy, but I am
4 going to ask some things that what -- may involve your
5 opinions and things like that that could be important in
6 this case.

7 I would believe that you're of -- at the stage in life
8 where you are -- you won't feel threatened by us asking
9 questions about those things and I hope you don't cause you
10 shouldn't be, and, as I said, there are no right or wrong
11 answers, answers. There's just your answers. As long as
12 you're truthful and honest with us, that's all we can ask
13 for.

14 All right. Now, one of the things I'm going to ask you
15 about during this process where we're gonna ask about your
16 opinions, opinions will be matters concerning the death
17 penalty.

18 Now, let me explain to you, in a trial such as this
19 one, the trial takes two different phases. The first phase
20 is a trial concerning the allegations that are made in the
21 indictments in the case, and the question is whether or not
22 the defendant is guilty or not guilty of the charges in
23 those indictments. So, that's what we call the, the guilt
24 phase or the -- of the trial.

25 If the defendant were to be found guilty of the charge

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1 of murder, then we would enter a separate set of -- phase of
2 the trial using the same jury, and during that phase of the
3 trial, the question or the issue before the Court would be
4 the appropriate penalty to be assessed as a result of the
5 conviction for the murder.

6 So, you understand it's a two phase trial, same jury
7 hears both phases?

8 Do you understand that---

9 A Yes, sir.

10 Q ---concept?

11 Okay. Now, I want to point out to you, however, that
12 we're kind of putting the cart before the horse and we're
13 taking up something that's at the end of the trial when we
14 talk about the penalties involved before we've ever gotten
15 to that point in the case, and I want to point out to you
16 that the -- this is the only way we can do that.

17 We can't stop the trial and then ask jurors already on
18 the jury about these things. We have to ask about it now.
19 So -- but I want to point out to you that Mr. Blackwell is
20 presumed, under the law, to be innocent of the original
21 charge, and the fact that we're talking about the penalty
22 doesn't have any effect on that particular situation.

23 So, the fact that we're talking about penalty, the
24 penalty, at this early stage of the proceedings, doesn't
25 indicate anything about him or his case. It simply is the

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1 only time we have available to talk about these things.

2 Do you realize and understand that?

3 A Yes, sir.

4 Q Okay. Now, I want to -- I'm gonna ask you to, to
5 presume that you're a juror in a criminal case, and this
6 is -- I'm not talking about this case now. I'm talking
7 about any criminal case when I'm asking you these questions
8 because it wouldn't be proper for me to ask you specifically
9 about your opinions in this case.

10 But if you were a juror in any criminal case, would you
11 be willing to listen to the law as instructed to you by the
12 Court in making the decision?

13 A Yes, sir.

14 Q Would you be willing to accept the law as given to you
15 by the Court and then apply that law to the facts as decided
16 by the jury in reaching a verdict?

17 A Yes, sir.

18 Q Now, is that true even though you might, once you've
19 heard the law given to you by the Court, you might disagree
20 with it in some fashion or not, not, not like it in some
21 fashion?

22 So, if the Court were to instruct you on the law that
23 you somehow disagreed with, would you still be willing to
24 accept the law as given to you by the Court and apply it to
25 the facts as decided by the jury?

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1 A Yes, sir.

2 Q Now, I'm gonna ask you, if you were selected as a juror
3 in this particular case, would you be able and willing to
4 set aside any information you might have or any knowledge
5 that you might of gathered from any source at all or
6 anything that you may have heard or seen about this case
7 outside of the courtroom or even during the trial?

8 Would you be willing to set aside any extraneous
9 information and decide the case purely on the evidence and
10 law heard during the trial?

11 A Yes, sir.

12 Q Now, I mentioned to you before that a criminal
13 defendant is presumed to be innocent, and, therefore, he
14 never has to prove himself innocent in a case because the
15 law presumes that, and in every criminal case the State has
16 the burden of proof to prove the allegations in the
17 indictments by proof beyond a reasonable doubt.

18 Do you understand that concept under the law that the
19 state has the only burden of proof and what that burden is?

20 A Yes, sir.

21 Q Now, if you were sitting in a -- as a juror in a
22 criminal case, and, again, I'm not talking about this one,
23 would you be willing to listen to the law and evidence as
24 presented to you, and based upon those particular factors,
25 the law and the evidence, depending on how you decided that,

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1 is it -- would it be possible for you to find a person not
2 guilty of the crime charged?

3 A Yes, sir.

4 Q In other words, do you think that just because someone
5 is been accused of a crime, arrested, or indicted that they
6 are automatically guilty?

7 A No, sir.

8 Q Now, if the evidence convinced you, however, beyond a
9 reasonable doubt, that the person was guilty, would you be
10 able to find a person guilty of a crime?

11 A Could you read that again?

12 Q Yes, sir.

13 If the evidence convinced you, beyond a reasonable
14 doubt, that the defendant was guilty, would you then be able
15 to find or reach a verdict of guilty against someone?

16 A Yes, sir.

17 Q Now, by the same token, if the evidence did not
18 convince you, beyond a reasonable doubt of that person's
19 guilt, would be able to render a not guilty verdict?

20 A Yes, sir.

21 Q So, I -- from what I'm hearing, you would be able to
22 make up your mind in any -- in a criminal case you were in,
23 based upon the strength of the evidence and upon the
24 testimony that you'd heard during the trial, and upon the
25 law that was given to you by the judge?

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1 Is that true?

2 A Yes, sir.

3 Q Now, I'm gonna talk specifically to you about the
4 penalty in this case. I'll tell you that, in most criminal
5 trials, the jury decides whether a person is guilty or not
6 guilty, but then the judge normally is the person who sets
7 the penalty in the case -- in most criminal cases. The
8 exception to that general rule is in a case where the State
9 seeks the death penalty in a case, and in a case where the
10 State is seeking the death penalty, I explained to you
11 earlier we have a different procedure.

12 We have a guilt phase in the trial where the guilt or
13 innocence is determined, and then, if the defendant is found
14 guilty of murder, we have a separate penalty trial, and, in
15 that particular phase of the trial, the jury sets the
16 penalty.

17 Do you understand that the difference there -- this is
18 a difference in the way we normally do business?

19 A Yes, sir.

20 Q Okay. Now, now, under those circumstances, of course,
21 if the jury convicts the defendant of the crime of murder,
22 then we go to that separate proceeding, that separate
23 sentencing period -- proceeding. The only determination to
24 be made by the jury then is the type of sentence that's
25 going to be handed out and there's two choices, either the

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1 death penalty or life in prison without parole.

2 Do you understand that those would be the two choices
3 at this phase --

4 A Yes, sir.

5 Q -- if we got to that phase?

6 A Yes, sir.

7 Q All right. Now, I'll tell you at that -- at that phase
8 of the trial, the State statute that governs how that
9 penalty or sentencing phase of the trial is to be handled
10 provides for the presentation of two types of evidence. One
11 type of evidence is referred to as statutory aggravating
12 circumstances, and the other type of, of evidence is
13 mitigating circumstances, and those can be mitigating
14 circumstances that are contained in the statute, enumerated
15 in the statute, or any mitigating circumstances that a jury
16 might want to consider. So, there's, there's those two
17 types of evidence that the jury should consider in doing
18 that.

19 An aggravating circumstance is a circumstance that, if
20 you were confronted with that information or that fact, it
21 would tend to make the crime more severe than, than other
22 perhaps murders. I guess make a murder more severe because
23 of those aggravating circumstances, and, at the same time,
24 mitigating circumstances is a whole list of factors. In
25 fact, the law let's the jury decide what factors, even some

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1 outside of the statute, that you might consider in
2 mitigation, in, in lessening the culpability or the
3 responsibility for the murder. So, aggravating makes it
4 worse and mitigating evidence would make it less severe.

5 Do you understand that that's---

6 A Yes, sir.

7 Q ---the two types of evidence presented?

8 All right. Now, once the aggravating and mitigating
9 evidence has been presented to the jury, the jury would be
10 instructed by the Court to consider those factors in, in
11 reaching its verdict as to the question of the punishment to
12 be given.

13 So, do you understand the purpose of the hearing and
14 how that will be done?

15 A Yes, sir.

16 Q Okay. Now, I'm gonna ask you to put yourself in a
17 situation theoretically. That is as a juror in a case in
18 which the State is seeking the death penalty, and I'm not
19 talking about this particular case. I'm just talking about
20 a death penalty case. You had reached the point in, in the
21 trial where the jury has found the defendant in that case
22 guilty of the murder.

23 So, the jury then is preparing to reenter the courtroom
24 for the purpose of conducting that sentencing hearing.
25 Again, where you'd receive evidence of aggravating and

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1 mitigating circumstances.

2 Now, I asked you to read a paper back there in the jury
3 room that described three different jurors.

4 Do you remember reading that paper?

5 A Yes, sir.

6 Q All right. I'm gonna go over the three types of jurors
7 that I described in that paper with you so that I'm sure you
8 and I have an understanding of what I'm referring to here.

9 Now, the first type of juror I described on that paper
10 is a, is a juror who, before that juror ever set foot into
11 that courtroom for the second phase of the trial, had
12 already made up his or her mind, and that would be a juror
13 who believed that, that, no matter what the, the situation
14 might be, that the only penalty for someone found guilty of
15 a murder is the death penalty, and that juror would find for
16 the death penalty in every case. In other words, he feels
17 it's the most appropriate penalty -- a penalty for someone
18 whose been convicted of that crime.

19 The second type of juror is also a juror who's already
20 made up his or her mind. In other words, that jury has
21 decided that the State should never take a life in
22 retribution for a -- or a response to a crime regardless of
23 what the crime is, regardless of how severe it was or what
24 mitigating circumstances would be. That juror has already
25 made up his or her mind to vote for the life sentence

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1 without parole.

2 Now, the third type of juror that I described is one
3 who doesn't know what he's going to do in that particular
4 event. In other words, he'll have to -- that juror would
5 have to wait and listen to the evidence, aggravating and
6 mitigating evidence, and listen to the testimony and the,
7 and the evidence presented and then make a decision based
8 upon that evidence as whether to impose the death penalty or
9 impose the penalty of life without parole.

10 Now, do you understand the three types of jurors I'm
11 talking about?

12 A Yes, sir.

13 Q Now, if you were, were one of those jurors walking back
14 into the courtroom to begin that stage of the trial, which
15 one of those three would most describe you or your situation
16 or best describe you in your situation?

17 A I hope number three.

18 Q Number three.

19 Now, are you telling me it would describe you best --

20 A Yes, sir.

21 Q -- number three?

22 A I've never been in that situation, but I---

23 Q Oh, I know you haven't and very few people are.

24 A I'd say number three.

25 Q Okay. But you're saying number three.

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1 Now, under those circumstances, keeping in mind that
2 the defendant has been found guilty of murder, and the issue
3 of guilt's no longer a concern, you're telling me you would
4 be willing to listen to the law and the evidence that
5 pertains to that trial and, if you found that the evidence
6 justified it, you could possibly issue -- enter a verdict
7 that would require the death penalty?

8 A Yes, sir.

9 Q And on the same token, if you thought the evidence and
10 the facts, mitigating and aggravating, did not justify the
11 death penalty, then you would be able to enter a verdict of
12 life imprisonment without parole?

13 A Yes, sir.

14 Q So, you could make a decision either way depending on
15 the facts and circumstances, all of the facts and
16 circumstances?

17 A Yes, sir.

18 Q Okay. Now, finally, if you were asked to serve as a
19 juror in this case, it appears the case may take more than a
20 week to try. I don't know much more than a week, but a week
21 at least I would think, and during that time the jury panel
22 would be sequestered.

23 Now, by sequestration, what we mean, that jury panel
24 would be housed, in this case, it's gonna be at the Marriott
25 Hotel it appears, and, during that week, the county would

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1 pay for all the meals, all transportation. You would, you
2 would receive a juror's pay for that period of time. It's
3 not as much as people normally make in a salary, but it's
4 all the law allows us to pay jurors. But there would be
5 an -- an amount paid to you for juror's pay, and there would
6 be some travel money for getting back and forth to the
7 courthouse. But once you're here, the county would provide
8 everything for you.

9 Now, my question for you is, if you were in that
10 situation, if you were sequestered, would that fact pose a
11 serious risk or a danger to your health or well being, your
12 personal health or well being?

13 A No, sir.

14 Q Now, if that also happened and you were put in that
15 situation, would it pose a serious risk of danger to anyone
16 who might be dependent upon you as to their health or well
17 being?

18 A No, sir.

19 Q All right. Now I'm gonna -- I want to thank you for
20 answering my questions. I'm going to allow the attorneys
21 not to ask questions of you, and I'm gonna ask that you
22 respond to the questions that they're about to ask.

23 Yes, sir, Mr. Young.

24 MR. YOUNG: Thank you, Your Honor.

25 THE COURT: Yes, sir.

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1 EXAMINATION

2 BY MR. YOUNG:

3 Q Good afternoon, Mr. McCraw.

4 A Afternoon.

5 Q I introduced myself briefly yesterday. My name is Boyd
6 Young. I'm one of the attorneys for Mr. Blackwell.

7 Okay. I want to follow-up with you on your
8 questionnaire just really briefly.

9 I notice that you had a cousin who's in law
10 enforcement?

11 A Yes, sir.

12 Q Can you tell me a little bit more about that?

13 A He's a second cousin. It's Matt Hutchins.

14 Q Okay.

15 A I see him maybe once a year at Christmas, but other
16 than that we're not close cousins --

17 Q Okay.

18 A -- you know, but he is a second cousin.

19 Q Is he in law enforcement here in Spartanburg?

20 A Spartanburg County.

21 Q He's Spartanburg County---

22 A I'm not sure exactly, you know, what division he's in,
23 but he was with Spartanburg County.

24 Q Okay. And I guess what I need to ask you is your
25 relationship with him, and having a family member in law

Individual Juror Qualification

1 enforcement, do you think that that would cause you to be
2 unfair in your evaluation of law enforcement officer's
3 testimony?

4 A No, sir.

5 Q You don't, you don't think so?

6 A No, sir.

7 Q All right. Fair enough.

8 I'm gonna talk to you a little bit about what the judge
9 alluded to and we're gonna ask you some questions about the
10 death penalty, okay, and I notice that when we started
11 talking about the death penalty you kind of got like really
12 serious and it's something that you take very seriously?

13 A Absolutely.

14 Q Can you tell me what are your thoughts about the death
15 penalty?

16 A That it would probably be the last resort, you know,
17 the death penalty, but, you know, I mean if the evidence was
18 there, I could do it I think.

19 Q Okay.

20 A But, you know, that would have to be the last resort.

21 Q Okay. And, and I think I understand where you're
22 coming from.

23 If you got to decide the laws, you were gonna decide
24 what laws we were gonna have and what we weren't gonna have,
25 would you have the death penalty?

Individual Juror Qualification

1 A I hadn't really thought about it, you know, as far as
2 me deciding laws. No, I don't -- I couldn't tell you if I
3 would or not.

4 Q Okay. I guess another way for me to ask that would be
5 do you think that it serves a purpose?

6 A In certain cases it probably does.

7 Q Okay. Can you tell me a little bit more about what you
8 mean by in certain cases it does?

9 A Well, I mean there's more obvious murders than, you
10 know, serial killers or stuff like that. I would think yes,
11 that would probably fit pretty well.

12 Q Okay. And we're talking about this term murder, and
13 it's sort of -- we have a legal definition of what we mean
14 when we talk about murder, and, in South Carolina, murder is
15 the intentional killing of another with malice aforethought,
16 and what that means is that malice is hatred or ill will or
17 hostility towards another person. It's an intentional doing
18 of a wrongful act without just cause or excuse and with an
19 intent to inflict injury or understand circumstances that
20 the law would infer an evil intent.

21 Okay. I mean it's not an accident. It's not
22 self-defense. Not heat of passion. It's meant to do it,
23 intentional killing of an innocent person.

24 Okay. You with me?

25 A Yes, sir.

Individual Juror Qualification

1 Q And when we talk about somebody who's been convicted of
2 murder, that's what we mean.

3 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
4 this point. He said heat of passion in his question and I
5 don't know that's the proper definition of the murder term
6 because obviously heat of passion is a part of manslaughter
7 and so forth.

8 MR. YOUNG: It -- I meant to say heat of passion --
9 it's not heat of passion. There's no heat of passion. It
10 wasn't somebody who lost control and got so angry they did
11 it.

12 SOLICITOR BARNETTE: I know, but that can still be
13 murder. That's, that's what I'm saying in that situation.
14 I know it could be a mitigator down the road, but from that
15 standpoint, and I'd object to that form of the question,
16 adding that part to the question. It's the first time I've
17 heard that.

18 THE COURT: I note your objection. I think it's
19 been -- put that issue on the record. Everyone here is
20 aware of that.

21 So, I'll let you proceed. I won't make you rephrase
22 the question.

23 MR. YOUNG: Thank you, Your Honor.

24 Q You still with me, Mr. McCraw?

25 A You might want to --.

Individual Juror Qualification

1 Q Okay. And what I, what I -- all I want to talk about
2 is the facts and circumstances that you've heard about
3 whether, what was done, who did it, did they have the right
4 guy, what did he mean to do, you've heard, okay, you've
5 decided that, guilty, guilty.

6 okay?

7 A Yes, sir.

8 Q Intentional murder.

9 You with me on that?

10 A Yes, sir.

11 Q Now, for somebody who's been found guilty of an
12 intentional murder, they did it, okay, what are your
13 feelings about the death penalty as an appropriate
14 punishment for that guilty murder?

15 A Well, I guess it's according to how the murder was done
16 and if it was premeditated, you know, a thought --

17 Q Uh-huh. (Affirmative).

18 A -- that he meant to go do it would be one thing or if
19 it was just more of a spur of the moment thing that there
20 was un -- you know, it was premeditated. Not premeditated I
21 guess.

22 Q Okay.

23 A I mean it would be the difference between the two I
24 would think.

25 Q And, in South Carolina, and I think I understand you to

Individual Juror Qualification

1 be using the phrase premeditated sort of like substantial
2 planning.

3 A Yeah.

4 Q Okay. And when we say malice aforethought, we just
5 mean that's what they meant to do at the time that they did
6 it.

7 A (Witness nods affirmatively.)

8 Q Okay. You with me on that?

9 A Yes, sir.

10 Q I just didn't want to confuse you on that, and I
11 understand where you're at.

12 So, how about for the life penalty, for that guilty
13 murder, life without the possibility of parole for somebody
14 who is guilty of that murder that we talked about, how do
15 you feel about that punishment?

16 A I mean if it, if it fits the crime there, I would, I
17 would think that would be right.

18 Q Do you think that the life penalty is a substantial
19 punishment going to prison for the rest of your life?

20 A Yes, sir.

21 Q Could that be a severe enough punishment for a guilty
22 murder?

23 A If it's -- yes, I think it could be.

24 Q Okay. And so, so now we're kind of at the situation
25 where, where the judge is talking about you're on the jury,