

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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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
DEFENDANT’S EXHIBIT # 24 (PHOTOGRAPH); ATKINS HEARING EXHIBITS:
DEFEDANT’S EXHIBIT # 9-A (NOTEBOOK); DEFENDANT’S EXHIBIT # 9-B
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1 okay, and you found somebody guilty of murder, and you have
2 these two options, the death penalty and life without the
3 possibility of parole.

4 A Yes, sir.

5 Q Okay. You with me?

6 A (Witness nods affirmatively.)

7 Q And in that situation, the State would have the burden
8 of proof first, okay, and they have to prove what's called
9 an aggravating circumstance, and the judge talked to you a
10 little bit about that.

11 A Yes, sir.

12 Q And one of those circumstances might be the, the nature
13 of the victim, okay, like was -- the victim was a child.

14 Okay. Some people would say in a case of a child
15 victim where the State proved that the victim was a child,
16 for me, the only appropriate punishment is the death
17 penalty.

18 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
19 the form of the question in this situation. I think if he
20 poses for his opinion or whatever, but trying to put a --
21 he's basically staking the juror out at this point cause
22 he's already talked about what his feeling would be one way
23 or the other, and now he's putting him in a scenario telling
24 him what it would be, and I think that's definitely what
25 he's doing, staking out the juror at this point.

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1 THE COURT: Well, I'm gonna ask you not to ask the
2 juror to put himself in someone else's position. I think
3 that would be an improper thing for a juror to do. I don't
4 know if that's where the question's going. So, if that's
5 where you're going, I would say that that's improper and
6 rephrase the question. If not, proceed. I never -- you
7 never got to where I knew exactly where the question was
8 going.

9 Q Well, like there were the first categories of jurors on
10 deciding murder is an automatic death penalty or murder --
11 or I don't believe in the death penalty, right, and---

12 A Right.

13 Q ---or it may be one or the other depending on what the
14 evidence is, right, the first categories that the judge went
15 through, the three topics---

16 A (Witness nods affirmatively.)

17 Q ---and I'm trying to do that same type, you know, those
18 same types.

19 Some people say that, for me, where you have a murder
20 of a child, I think that the only appropriate punishment
21 would be the death penalty, and some people would say I
22 think the punishment should never be the death penalty, and
23 some people would say it may or may not be the appropriate
24 punishment for that child murder.

25 You with me?

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1 A Yes, sir.

2 Q So, in those three types, which one of those types
3 would you be?

4 A And what was that last type you said there?

5 Q Sure. It was the same as the type three. That it
6 might be death---

7 A Yeah.

8 Q ---or life without the possibility of parole.

9 A Yes, yes.

10 Q That's where you come down.

11 For you, that one aggravating factor does not carry the
12 weight with you where you made up your mind and can't hear
13 anything else?

14 A No, sir.

15 Q And so the next step would be consideration of what the
16 judge called mitigation, and I think the judge defined
17 mitigation as anything that the defense may ask you to
18 consider.

19 Okay?

20 A (Witness nods affirmatively.)

21 A And it's different than aggravation in that aggravation
22 has to be unanimously found by all the jurors beyond a
23 reasonable doubt.

24 You with me on that?

25 A Yes, sir.

Individual Juror Qualification

1 Q Mitigation doesn't. All the jurors don't have to agree
2 on what's mitigating.

3 okay?

4 A Okay.

5 Q And it can be anything. I mean one juror might think,
6 you know, I liked his mom. One juror might think, you know,
7 he had a hard life. One juror might think he had a good
8 life, okay, stuff like that.

9 Are you with me on that?

10 A Yes, sir.

11 Q And each juror is entitled to decide for themselves,
12 himself or herself, whether or not it's mitigating and if
13 they want to, they can give it the weight of life, the
14 effect of life. They can decide I want to vote for the life
15 penalty based on this, okay, and all the other jurors don't
16 have to agree.

17 You with me on that?

18 A Yes, sir.

19 Q It's a little bit odd and that's why I have to talk to
20 you about it now.

21 Okay. You understand where we're at?

22 A Yes, sir.

23 Q Do you think you can do that?

24 A Yes, sir.

25 Q And that you can weigh out all those things and decide

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1 for yourself what's important for you?

2 A Yes, sir.

3 Q And allow other people to decide what's important for
4 them?

5 A Yes, sir.

6 Q The law calls it an individual moral judgment, okay,
7 and, and what we mean when we say individual moral judgment,
8 it's sort of like deciding what religion's right for you.
9 You made your choices about your faith.

10 A Yes, sir.

11 Q And you recognize other people may of made different
12 choices about their faith, right?

13 A Yes, sir.

14 Q And you expect them to respect your personal choices?

15 A Yes, sir.

16 Q And you respect their choices?

17 A Yes, sir.

18 Q And in the same line, if you saw somebody who was
19 getting bullied or yelled at or told that their, their
20 choice was wrong---

21 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
22 this point. I mean we're getting all kind of things,
23 talking about bullying, things like that that has nothing to
24 do with aggravating or mitigating circumstances.

25 THE COURT: Oh, I understand that, but I'm gonna -- I

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1 think he's asking more about whether -- when people make a,
2 a valued judgment or something of that nature, judgment --
3 personal judgment. I'm gonna let him go ahead.

4 overruled.

5 Q And would you ensure that everybody's choice, when they
6 had arrived at what, in their heart, was right for them,
7 would you ensure that that choice was respected?

8 A Yes, sir.

9 Q By everybody even if you disagreed with it?

10 A What you mean, trying to stop somebody from doing
11 something or---

12 Q No. Right. I mean if -- I mean stop somebody from
13 yelling at somebody, stop somebody from badgering somebody,
14 stop somebody from bullying somebody after they've arrived
15 at what choice was right for them.

16 A If I could I would try, yes, sir.

17 Q And you were, you were asked a question on your
18 questionnaire, I don't know if you remember the question
19 about race, that if somebody brought up race, could -- would
20 you stop it and would you report it?

21 A Yes.

22 Q Cause that shouldn't of been a sentencing factor and
23 you said yes, you would stop it---

24 A Uh-huh. (Affirmative).

25 Q ---and, and report it. The same thing.

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1 A Yes, sir.

2 Q If somebody was being bullied, you would stop it and
3 report it?

4 A I would try my best.

5 Q A couple more questions.

6 You understand, and I think we know, we talked about
7 how serious this is, that if people decided that the
8 appropriate punishment was the death penalty, Mr. Blackwell
9 would be put to death?

10 A Yes, sir.

11 Q All right. If, if somebody decided that the life
12 penalty was appropriate, then it would be life?

13 A Yes, sir.

14 Q Okay. Any questions about that?

15 A No, sir.

16 Q Can you tell me, how do you feel about knowing that
17 your vote would make a difference between whether or not a
18 person lived or died?

19 A I don't know exactly what my feeling would be. I mean
20 I, I really wouldn't want to, but if that way the law was
21 written and the evidence was there, I would be able to do
22 it.

23 MR. YOUNG: Beg the Court's indulgence for one second.

24 THE COURT: Yes, sir.

25 (Pause.)

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1 MR. YOUNG: Thank you, Mr. McCraw. That's all the
2 questions I have.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Barnette, are you gonna take this
5 juror?

6 SOLICITOR BARNETTE: Just for a second, Your Honor.

7 THE COURT: Yes, sir, you can ask questions.

8 SOLICITOR BARNETTE: Yes, sir.

9 THE COURT: I wanted to know if it was gonna be you or
10 Mr. Bulsa.

11 SOLICITOR BARNETTE: Okay.

12 THE COURT: I didn't know which one.

13 SOLICITOR BARNETTE: I apologize.

14 THE COURT: That's all right. No problem.

15 EXAMINATION

16 BY SOLICITOR BARNETTE:

17 Q Mr. McCraw, my name's Barry Barnette. I'll be
18 prosecuting the case along with Derrick Bulsa in this -- for
19 the State. Just a few questions where -- I notice you work
20 for UPS?

21 A Yes, sir.

22 Q How long have you worked for them?

23 A Since '88. So, it's 25 years.

24 Q You been there for quite a while, a lot of time then?

25 A Yes, sir.

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1 Q Is that facility up on near the---

2 A Howard Street.

3 Q Howard Street up there?

4 A Yes, sir.

5 Q And is Bobby Petit still there or did he retire?

6 A No, he's retired. I think it might of been last year
7 he retired.

8 Q Okay. I was about to say I know he was up there for a
9 long time---

10 A Yes, he was.

11 Q ---and everything.

12 Just a couple questions. I hate to ask you these
13 questions. Like I say, I know these are things you probably
14 never even thought about until this point or whatever.

15 A Yes, sir.

16 Q And like the judge has told you, basically he'll be
17 giving you the law in this case.

18 A Yes, sir.

19 Q And obviously there will be aggravating circumstances
20 that we'll present, and we have to prove at least one of
21 those to your satisfaction to get the death penalty---

22 A Yes, sir.

23 Q ---in this case. There will be mitigating
24 circumstances to try to lessen the crime or whatever from
25 that standpoint, but even if you find that mitigating

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1 factors existed, you could still give the death penalty.

2 Do you under, understand that?

3 A Yes, sir.

4 Q So, it would be based off the facts you determined in
5 the case?

6 A (Witness nods affirmatively.)

7 Q And the way -- if I understood right, you would listen
8 to both sides. You'd listen to our presentation as well as
9 their presentation.

10 A Absolutely.

11 Q And you would weigh your decision based off those
12 facts---

13 A Yes, sir.

14 Q ---in that case, and, at the end, if -- there would be
15 a sentencing sheet that will be signed. All 12 jurors have
16 to sign that sheet.

17 If you find that the facts required or, in this
18 situation, the death penalty, could you sign that sheet as
19 one of the 12 jurors?

20 A Yes, sir.

21 Q Okay. Thank you.

22 That's all the questions I have, Your Honor.

23 THE COURT: All right. Sir, I'm gonna ask you to step
24 back to the jury room for just a minute---

25 THE WITNESS: Yes, sir.

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1 THE COURT: ---and then we'll have you back to talk to
2 you.

3 THE WITNESS: Thank you.

4 THE COURT: Thank you, sir.

5 (WHEREUPON, the following takes place outside the
6 presence of the juror.)

7 THE COURT: All right. Defense have any position?

8 MR. YOUNG: No, Your Honor. He's qualified.

9 THE COURT: State.

10 SOLICITOR BARNETTE: I agree, Your Honor.

11 THE COURT: All right. Bring him in.

12 (WHEREUPON, the following takes place within the
13 presence of the juror.)

14 THE COURT: Have a seat, sir.

15 Mr. McCraw, I'm gonna tell you that I have determined
16 and we've found you to be qualified as a juror in this case.
17 Now, what that means, it doesn't mean you're on the jury
18 yet.

19 THE WITNESS: Yes, sir.

20 THE COURT: What we're doing is going through all the
21 jurors and we will have a list of people who have been
22 qualified as jurors and, from that list, a jury will be
23 selected.

24 THE WITNESS: Yes, sir.

25 THE COURT: So, you may or may not be on the jury at

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1 that point in time. We'll let you know once that process
2 has been completed.

3 THE WITNESS: Okay.

4 THE COURT: And it's probably gonna take us a couple of
5 days to get to the point where we can do that, several days.
6 So, you will be hearing from the Clerk's Office once we have
7 made a decision as to who is on the jury.

8 Now, the clerk's gonna give you a sheet of paper in
9 just a minute to remind you of a few things that you might
10 want to consider because, if you're called to come back to
11 the courthouse, you'll need to bring with you some personal
12 items, some additional clothing, because, if you're
13 sequestered, you're gonna be in the, the hotel for a period
14 of time, maybe more than a week. Of course, they'll be
15 laundry available there if you need to get clothes cleaned
16 or something like that, but bring whatever you need in
17 personal items and medicines and things like that that you
18 might need to, to take while you're there. So, be prepared
19 to do that.

20 THE WITNESS: Okay.

21 THE COURT: Now, it's okay for you to discuss with your
22 employer or your family the fact that you might be in that
23 situation for a period of time so that you can make
24 preparations with your work or your family about those
25 things, but do not discuss this case in anyway.

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1 THE WITNESS: Okay.

2 THE COURT: Don't describe what it's about, what's
3 involved in it. The same instructions I gave you yesterday
4 about your behavior while you're away from the courthouse
5 will, will apply until you're either seated on the jury, you
6 get additional instructions, or you're released all
7 together.

8 So, do you understand that you're still not to watch or
9 listen to reports, don't try to gather any information on
10 your own, don't discuss the case with anyone, including any
11 fellow juror, until such time as I might instruct you to do
12 otherwise. You're under those same restrictions. And if
13 anybody tries to contact you about your service, report that
14 to the Clerk's Office.

15 So, do you understand where we are at this point in
16 time?

17 THE WITNESS: Yes, sir.

18 THE COURT: And you will be hearing from us. I can't
19 tell you exactly when.

20 THE WITNESS: Okay.

21 THE COURT: But in the near future about your future
22 service.

23 THE WITNESS: All right.

24 THE COURT: All right. Do you have the sheet of paper
25 for me you can give him?

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1 THE CLERK: Yes, sir.

2 THE COURT: All right. So, at this time, you're gonna
3 check out with the, with the bailiffs. You'll be waiting to
4 hear from us in the future.

5 THE WITNESS: Okay.

6 THE COURT: You understand that?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay. Thank you, sir. You're free to go.

9 THE WITNESS: Thank you.

10 THE COURT: All right. The next individual is
11 Mackenzie Rollins.

12 (WHEREUPON, the following takes place within the
13 presence of the juror.)

14 MACKENZIE ROLLINS, having been previously
15 sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Have a seat in the, in the stand here, sir.

19 A (Witness complies.)

20 Q Thank you very much.

21 My, my information is that you are Mackenzie R.
22 Rollins, is that correct?

23 A Yes, sir.

24 Q All right. Now, Mr. Rollins, you might want to slide
25 back just a little bit cause I'm gonna be talking to you for

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1 a while---

2 A Okay.

3 Q ---and then, in a little bit, I'm gonna let you -- the
4 lawyers ask you some questions. So, at that point in time
5 you may want to face that way. It probably will make it
6 easier if you'll, you'll face me and we can talk.

7 I understand and I want to thank you for your
8 cooperation thus far. I know there's been a lot of waiting
9 and things and I appreciate your willingness to cooperate
10 with the, with the process. It's, it's inconvenient and
11 sitting in that chair is probably not the most comfortable
12 place anybody in Spartanburg is in right now, and I
13 appreciate that and understand it.

14 But I just want to let you know that what we're going
15 to do at this point in time is I'm gonna ask some questions
16 about some matters that pertain to this case, and then the
17 attorneys will ask you some questions about matters that
18 pertain to this case. And this is not a quiz where there's
19 right or wrong answers. There are no right or wrong
20 answers. There's only truthful and honest answers that
21 we're seeking.

22 I'll remind you that you, you're under oath with the
23 Court from yesterday. That oath continues that you will
24 answer the questions truthfully and honestly.

25 Do you understand that you're still under that oath?

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1 A Yes, sir.

2 Q Do you accept that fact?

3 A Yes, sir.

4 Q Okay. Now, as I said, I'm going to go over some, some
5 matters with you, and there's not gonna be any right or
6 wrong answers. I just want your answers.

7 Okay?

8 A (Witness nods affirmatively.)

9 Q Now, since we've talked yesterday, I had given you some
10 instructions on your behavior, what you were suppose to do,
11 how you were suppose to act as far as this case is
12 concerned.

13 Have you been able to follow those instructions so far?

14 A Yes, sir.

15 Q Has anybody tried to contact you about your service on
16 the -- possible service on the jury?

17 A No, sir.

18 Q Okay. Now, has, has any information been given to you
19 about this case since that---

20 A No, sir.

21 Q ---then?

22 Okay. Now, the first question I'm gonna ask you about,
23 you generally, is have you ever participated in any type of
24 Internet chat room or what's called a blog or any place
25 where issues involving the death penalty may have been

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1 discussed?

2 A No, sir.

3 Q Okay. Has, has -- have you ever participated in any
4 political actions such as demonstrations, letter writing
5 campaigns to representatives, things like that where
6 someone -- you might have been urging a position concerning
7 the death penalty one way or the other?

8 A No, sir.

9 Q Never been involved in any political activities like
10 that?

11 A No, sir.

12 Q Okay. Now, I'm gonna ask you, are you the kind of
13 person who could put aside anything that you might have
14 heard about this case or read about this case or know about
15 this case that you may of learned previously, and then, once
16 the trial was started, if you were on the jury, would you be
17 able to decide the case based upon solely what you hear in
18 the courtroom concerning the evidence and the law that's
19 presented during the trial?

20 A Kind of in-between there.

21 Q Well, I need to know a definite answer.

22 A Uh-huh. (Affirmative).

23 Q In other words, if you were seated on the jury, would
24 you be able to just put aside anything that you might have
25 heard or seen about the case and concentrate solely upon the

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1 evidence and the law as given to you during the trial of the
2 case in making a decision?

3 A No, sir, probably not.

4 Q Okay, sir. I'm gonna excuse you then from any further
5 consideration. The bailiffs will check you out and you're
6 free to go.

7 A All right.

8 Q Thank you, sir.

9 A Yes, sir.

10 (WHEREUPON, the following takes place outside the
11 presence of the juror.)

12 THE COURT: All right. The next juror would be Tommy
13 L. Williams, Senior, and just check to be sure he's read my
14 information and bring him in.

15 (WHEREUPON, the following takes place within the
16 presence of the juror.)

17 TOMMY L. WILLIAMS, SENIOR, having been
18 previously sworn, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q Sir, have a seat in the witness stand there.

22 A (Witness complies.)

23 Q Your name is Tommy L. Williams, Senior.

24 Did I get that right?

25 A Right, sir.

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1 Q Okay. Mr. Williams, first of all, I want to thank you
2 for your cooperation so far in this process.

3 A Uh-huh. (Affirmative).

4 Q I know there's been a lot of hurry up and wait.

5 A Right.

6 Q I'm sorry for that, but that's the nature of the beast.
7 It works that way sometimes around here, and I appreciate
8 your willingness to put up with the inconvenience thus far.

9 A Okay.

10 Q We're going to go over some matter with you this
11 morning and ask you -- this afternoon and ask you some
12 questions about some matters that would pertain to this
13 case.

14 A Uh-huh. (Affirmative).

15 Q We're still in the process of qualifying people
16 concerning the jury.

17 So, do you understand what we're doing?

18 A Right.

19 Q I'm gonna tell you that there aren't any right or wrong
20 answers to any question that you're asked whether I ask
21 them, later on the attorneys will have a chance to ask you
22 some questions or -- as well. There's only truthful answers
23 that we're seeking. So, we're -- there's no right or wrong
24 to what we're doing here, and I'll remind you that you were
25 put under oath yesterday to tell the truth during this

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1 process, and that oath still applies to your discussions
2 with us today.

3 A Okay.

4 Q Do you realize that?

5 A Right.

6 Q And do you agree that that's true?

7 A Right, yes, sir.

8 Q Okay. Now, yesterday when you left the courthouse I
9 gave you some instructions about I, I didn't want you to try
10 to gather any information about the case or discuss it with
11 anyone or watch or listen to any media reports or anything
12 of -- like that.

13 Have you been able to follow those instructions since
14 yesterday?

15 A Oh, yes, sir.

16 Q All right. Now, have you ever participated in any type
17 of blog or Internet talk room or discussions involving
18 issues surrounding the death penalty?

19 Have you ever---

20 A No, sir.

21 Q ---participated in anything like that?

22 A No, sir.

23 Q Have you ever participated in any political activities
24 such as demonstrations or letter writing campaigns to
25 representatives about issues involving the death penalty?

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1 A No, sir.

2 Q So, you've never been involved in any political
3 activities?

4 A No, sir.

5 Q All right. Now, are you the, are you the kind of
6 person who could put aside anything you may have heard that
7 might pertain in anyway to a case such as this, put those
8 matters beside, aside, anything that might pertain to this
9 matter, and be a person who would be able to decide this
10 case based upon the law and the evidence that you hear in
11 the courtroom during the trial?

12 A Yes, sir.

13 Q Now, back in the jury room I gave you a long list of
14 people---

15 A Uh-huh. (Affirmative).

16 Q ---names, and I asked you to look over it---

17 A Right.

18 Q ---before you came out here.

19 Did you do that?

20 A Yes, sir.

21 Q Now, as to those people on that list, I'll tell you
22 that those -- that list of names is people that I've been
23 told that may be a witness in this case. That doesn't mean
24 that they're all gonna testify, but they all could possibly
25 testify.

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1 A Okay.

2 Q So, those are all the people who could possibly testify
3 in the case, and we're gonna assume that maybe they all are
4 gonna testify for purposes of my question.

5 Now, as to those people, was there anybody on that list
6 that you've ever been related to by marriage or are you
7 related to by blood or any of those people?

8 A No, sir.

9 Q All right. Are there any of those people that were on
10 those lists that you have some kind of business or close
11 personal or social relationship with?

12 A No, sir.

13 Q So, you weren't familiar with any of those people---

14 A No, sir.

15 Q ---on a, on a friendly basis or anything of that
16 nature?

17 A No, sir.

18 Q Okay. Now, I'm going to ask you some, some more
19 personal questions at this point in time, and these
20 questions will be about certain topics that would be
21 involved in this case once it's tried.

22 Now, there's one thing I want to make you aware of so
23 that you've got an appreciation for this fact, and in, in
24 asking your opinions about some of these things, we're not
25 trying to invade your privacy, and I would think that you're

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1 old enough and secure enough that the fact that people ask
2 you about your beliefs or opinions wouldn't threaten you in
3 anyway. So, I think you feel secure enough to be able to
4 answer those questions.

5 A Uh-huh. (Affirmative).

6 Q Is that true?

7 A That's true.

8 Q All right. Now, I want -- also want to point out to
9 you one other thing. Some of the things we're going to talk
10 about are going to be matters that deal with the possible
11 penalties that are involved in a trial like this, and
12 normally we wouldn't talk about penalties in a case like
13 this at this stage of the proceedings. We'd probably not do
14 that normally because this type of trial involves where the
15 State is seeking a death penalty against someone. It
16 involves a first trial where the issue of guilt or innocence
17 of the charges is decided. So, the jury decides whether or
18 not the defendant is guilty or innocent of the charges.

19 well, now if the jury finds the defendant not guilty of
20 the charge of murder, there would be no penalty phase to the
21 trial. But if the jury found the defendant guilty of a
22 murder, then, since the State is seeking the death penalty,
23 that same jury would have to consider the penalties to be
24 imposed, and the choices are either life imprisonment
25 without parole or the death penalty.

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1 A Uh-huh. (Affirmative).

2 Q Now, as I said, the fact that we're talking about the
3 penalty now though should not reflect in anyway against the
4 defendant or against his case in this matter. It's simply
5 this is the only time that we can talk to jurors about the
6 whole case, including the penalty, even though we haven't
7 gotten to that stage of the trial yet.

8 So, you understand this is the only time we can talk
9 about this because once you're on the jury we can't go back
10 and start talking about these things?

11 A Okay.

12 Q You appreciate that?

13 A Right.

14 Q And -- okay. Now, I'm gonna ask you some case, some
15 questions about your, your opinion or your way of doing
16 things if you were a juror in a criminal case.

17 Now, I'm not referring to the case we're in right now.
18 I'm just talking about any criminal case.

19 A Okay.

20 Q If you happened to be up here serving as a juror in any
21 criminal case before the Court, would you be a person who
22 would be willing to listen to the law as instructed to you
23 by the Court and follow that law?

24 A Yes, sir.

25 Q would you also be a person who would be willing to

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1 accept the law as given by the Court, apply that law to the
2 facts as the jury decides those facts to be in reaching a
3 verdict in a case?

4 A Uh-huh. (Affirmative).

5 Yes, sir.

6 Q Now, let me ask you this, if, if -- when the judge
7 charged you the law, if, as you listened to the law, somehow
8 you didn't agree with what it said or somehow you didn't
9 feel like it was just right, would you still be willing to
10 accept the law exactly as the judge gives it and apply it to
11 the facts in reaching a verdict in the case even though you
12 might disagree or have some misgivings about the law?

13 A Yeah, I can do it. But, like you said, it will be---

14 Q well, it will be -- it's a little unusual situation.

15 A Yeah.

16 Q But jurors are generally required to take the law as
17 the judge gives it to them.

18 A Right.

19 Q And I just want to know could you set aside a
20 disagreement you have with something the law says and decide
21 it based on what the law is as given to you by the Court?

22 A Yeah.

23 Q Okay. Now, if you were a juror in this case, which is
24 the State versus Blackwell, would be willing to set aside
25 any information or knowledge that you may have about this

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1 case from any source at all or anything you might have seen
2 or heard outside of the courtroom, and if there is any such
3 information, and could you decide the case based upon just
4 the law and the evidence that you hear inside the courtroom
5 during the trial?

6 A Oh, yes, sir.

7 Q Now, as I mentioned to you before, a criminal defendant
8 is always presumed to be innocent under the law, and,
9 therefore, a criminal defendant is never required to prove
10 himself innocent of any charge.

11 A Uh-huh. (Affirmative).

12 Q In a criminal case, the State has the only burden of
13 proof in a criminal trial, and the State's burden of proof
14 is to prove the allegations in the indictment by proof
15 beyond a reasonable doubt.

16 Now, do you understand that -- you understand the
17 concept that, in a criminal trial, the defendant is presumed
18 to be innocent and the State has the sole burden of proof in
19 the case?

20 Do you understand that concept?

21 A Right.

22 Q Now, now, if you were sitting as a juror in a criminal
23 trial, and, again, I'm talking about any criminal trial,
24 including this one, but not specifically about this one,
25 are -- you've told me you would be willing to listen to the

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1 law and evidence as presented to you, but having done that,
2 based on what those things were, and based upon the
3 circumstances as you determine them to be, would you be a
4 person who could possibly find a defendant not guilty of the
5 crime that was charged?

6 A It's all -- you know --.

7 Q Again---

8 A It's so---

9 Q If you found, according to the evidence---

10 A Yeah.

11 Q ---that the defendant, there's a reasonable doubt as to
12 his guilt, could you find the defendant not guilty?

13 A You say that's a yes or no?

14 Q Well, let me phrase the question another way.

15 Is it your belief that if a person has been arrested,
16 charged, and indicted of a crime that they're automatically
17 guilty of the crime?

18 A Hu huh. (Negative).

19 Q Do you believe that?

20 A Not really.

21 Q So, you believe the person could be innocent?

22 A Yeah.

23 Q So, my question, again, is if, based on the facts and
24 circumstances of the case, if you made a determination that
25 there was a reasonable doubt as to the defendant's guilt,

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1 could you find the defendant not guilty?

2 A Yes, I could, but, like I said, like you're saying---

3 Q It depends on the facts.

4 A It depends on the facts.

5 Q Okay. All right. Now, on the other hand, if you found
6 or were convinced, beyond a reasonable doubt, that the
7 defendant was guilty of the crime that was charged, could
8 you render a verdict of guilty against someone?

9 A I can.

10 Q Okay. Now, are you telling me that you would be able
11 to make up your mind concerning the verdict to be reached
12 depending upon the strength of the evidence that you hear,
13 the testimony or other evidence that's been given to you
14 during the trial, and you could find a person either guilty
15 or not guilty depending on what the evidence showed?

16 A Right. I can.

17 Q Now, I want to talk to you a little bit about this
18 penalty situation that's involved in this case. In most
19 criminal cases the jury will decide whether or not the
20 defendant is guilty or innocent or not guilty of the crime.

21 A Uh-huh. (Affirmative).

22 Q Now, in most criminal cases it would be up to the judge
23 then to decide the appropriate sentence.

24 A Uh-huh. (Affirmative).

25 Q There's an exception to that rule and that's this kind

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1 of case. That's where the State is seeking the death
2 penalty in a case.

3 In this kind of case we have a trial deciding guilt or
4 innocence by a jury. Then, if the defendant is found guilty
5 of murder in that first trial, we hold a second trial using
6 the same jury that sat on the first one, and that jury then
7 decides what the appropriate penalty would be, and that
8 penalty would either be death or life imprisonment without
9 parole.

10 So, do you understand that the same jury would go
11 forward and---

12 A Right.

13 Q ---then there would be a penalty phase to the trial?

14 A Right.

15 Q A separate phase for that issue?

16 A Uh-huh. (Affirmative).

17 Q Okay. Now, under those circumstances, again, if the
18 defendant (sic) convicts the, the defendant of the crime of
19 murder, the guilt has been determined, the jury comes back,
20 and, during a separate sentencing procedure, listens to
21 additional evidence, new evidence, that will be presented on
22 the question or issue of the appropriate penalties. So,
23 there's a separate trial with new evidence that can be
24 presented during that time.

25 Now, the State statute that sets up the -- what's

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1 called the sentencing phase or the penalty phase of the
2 trial provides that, during that particular part of the
3 trial, evidence can be presented of what are called
4 statutory aggravating circumstances or mitigating
5 circumstances. Evidence of, of aggravating factors, those
6 would be factors that the State could prove to try to show
7 that this murder was more severe, it was aggravated, and,
8 therefore, deserving of a higher penalty.

9 A Uh-huh. (Affirmative).

10 Q Mitigating factors, on the other hand, tend to lessen
11 or mitigate the crime and tend to mitigate the level of
12 penalty that ought to go -- make it lesser. So, you hear
13 evidence on both sides, both aggravating circumstances and
14 mitigating circumstances, during that trial.

15 Do you understand that both types of evidence would be
16 presented---

17 A Right.

18 Q ---during that part of the trial?

19 Once that evidence had been presented to the jury, then
20 the, then the jury would be instructed by the Court to
21 consider the, the factors, the evidence that you'd heard
22 during that trial, and reach both aggravating and mitigating
23 evidence and -- in reaching its verdict concerning the
24 appropriate punishment to be given.

25 Now, do you understand how that process would work now

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1 that I've explained it to you?

2 A Uh-huh. (Affirmative).

3 Q Okay.

4 A Yes, sir.

5 Q Okay. Now, you may remember -- and let me start on
6 something a little different. I want, right now in your
7 mind, to put yourself in this position.

8 A Uh-huh. (Affirmative).

9 Q Let's assume that you had been selected as a juror in
10 the case where they're seeking the death penalty, and the
11 trial had gone forward and progressed to the point that the
12 jury had found the defendant guilty of the murder. In other
13 words, a guilty verdict had been rendered in the murder and
14 that, that means that was no longer an issue in the case.

15 A Uh-huh. (Affirmative).

16 Q So then that same jury is gonna be going back into the
17 courtroom to start the hearing for the sentencing phase.
18 So, the jury hasn't heard any evidence on the sentencing
19 phase of the trial. You're just now getting ready to go
20 back into the jury room -- the courtroom to begin that part
21 of the trial.

22 So, do you understand where you are?

23 A Right.

24 Q And I want you to put your, put yourself in that
25 position.

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1 A Okay.

2 Q Now, you may recall that, back in the jury room, I gave
3 you a sheet of paper and on that sheet of paper I described
4 three types of jurors.

5 A Right.

6 Q Did you read that paper?

7 A Yes, sir.

8 Q And I'm gonna go back over that with you, kind of
9 refresh your memory as to what that paper said about those
10 three types of jurors.

11 A Okay.

12 Q Okay. The first type of juror that was described in
13 that -- on that paper, that juror has already made up his or
14 her mind before they walk into the jury room for that
15 sentencing phase of the trial, before they've heard any
16 evidence, because that juror believes that, when a murder
17 has occurred, that the only appropriate penalty is death,
18 and, therefore, that juror will vote for the death penalty
19 every time.

20 A Uh-huh. (Affirmative).

21 Q Now, the second type of juror, that juror is also made
22 up his or her mind. That juror believes that the State
23 should never take a life in response to a crime, and,
24 therefore, regardless of what the crime is and regardless of
25 what the aggravating circumstances or mitigating

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1 circumstances are, that juror would always vote for life
2 without parole and would not consider any other verdict, but
3 already made up their mind on that point.

4 Now, the third type of juror that I described to you
5 doesn't know what that juror's going to do yet as they go
6 back into the courtroom. In other words, he doesn't have
7 his mind made up as to whether he's going to vote for life
8 imprisonment or for death. That juror then would have to
9 listen to the evidence, listen to the aggravating
10 circumstances, listen to the mitigating circumstances, and
11 then would have to make a decision based on those factors
12 that they heard in the courtroom. In other words, make the
13 decision based on the evidence presented during that part of
14 the trial.

15 Now, of those three types of jurors, the one that's
16 always gonna vote for the death penalty, the one that's
17 always gonna vote for life imprisonment, or the one that's
18 gonna listen to the evidence and make a decision based on
19 the evidence, which one of those more likely or more closely
20 describes how you would be?

21 A The third one.

22 Q The third one?

23 A Uh-huh. (Affirmative).

24 Q So, you would be willing to listen to the facts and the
25 evidence presented in the case, is that correct---

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1 A Yes, sir.

2 Q ---during that part of the case, and, based upon that
3 evidence, if you found that the, the evidence justified the
4 death penalty, would you be a person who could render that
5 kind of verdict?

6 A Yes, sir.

7 Q And on -- by the same token, if, after a thorough
8 consideration of the evidence, if you felt that the evidence
9 did not justify that penalty, would you be a person who
10 could sentence someone to life in prison without parole?

11 A Yes, sir.

12 Q That is considering both aggravating and mitigating
13 circumstances?

14 A Right, yes, sir.

15 Q All right. Now -- so that tells me that you could
16 possibly, depending on a case, sentence someone to either
17 life or death?

18 A Yes, sir.

19 Q Now, I'm gonna tell you, finally, if you're selected to
20 serve as a juror in this case, I have issued an order that
21 the jurors will be sequestered. That means you'll be held
22 separate during the trial.

23 A Uh-huh. (Affirmative).

24 Q You would be staying in a local hotel. Probably the
25 Marriott Hotel here in town. During that period of time the

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1 county would pay for all of your meals, would provide you
2 lodging, provide you with transportation anywhere we needed
3 to have you go during that time. You would receive some pay
4 for your services as a juror. It's set by law. But
5 probably not as much as you make, but it's all the law
6 allows us to pay jurors, but there would be some pay allowed
7 for jury duty, and there would be some money for you to
8 travel back and forth to the courthouse, back and forth
9 here.

10 A Uh-huh. (Affirmative).

11 Q So, that, that would be what you were looking at during
12 that period of time.

13 Now, my question to you is if -- that if you were
14 selected as -- to serve on the jury, would the fact that you
15 might be sequestered, and that might be for a week or maybe
16 a little more, I can't tell exactly how long it will be, and
17 I will tell you that once we start the trial, we, we go
18 seven days a week until we're finished. So, we don't waste
19 any, any time or any days. We go -- there's one day break
20 if we end up in the second phase, but we go straight
21 through. We don't stop---

22 A Okay.

23 Q ---till the trial's ended.

24 So, if that were to occur, would the fact that you
25 would be in that situation, would that pose a serious risk

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1 of danger to either your health or your personal well being?

2 A No, sir.

3 Q Would it pose any serious risk of, of danger or risk to
4 the health or well being of anybody who might be dependent
5 upon you?

6 A No, sir.

7 Q All right, sir. Now, at this point in time I'm going
8 to allow the attorneys to ask questions of you. I'm gonna
9 ask that you respond to them and then -- so we'll start.

10 Okay. You may proceed, Mr., Mr. McGuire.

11 MR. MCGUIRE: Thank you very much, judge.

12 THE COURT: Yes, sir.

13 EXAMINATION

14 BY MR. MCGUIRE:

15 Q Good afternoon, Mr. Williams.

16 A Good afternoon.

17 Q My name is Bill, Bill McGuire. I'm one of the
18 attorneys and I'll be able to ask you some questions now,
19 and I want to start with some of your just general thoughts
20 about the death penalty in general.

21 Do you believe that the death penalty is used about
22 right, not often enough, too much?

23 Where do you fall in there?

24 A It's, it's -- like it's in-between. Like I say, I just
25 go by how it really, the person really killed the person or

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1 something like that. They just, just killing, you know,
2 just doing it, it's not there. But like I say, if somebody
3 really killed somebody, mutilized (phonetic) them, cut their
4 head off, something like that, that's when, you know, death
5 penalty.

6 Q Okay. So, it sounds like there are some cases, for
7 you, that are so bad that they would just dictate the death
8 penalty?

9 A Yes, sir.

10 Q Okay. And, you know, by the same token, some people,
11 some people say there's some cases where they could just
12 never vote for the death penalty, categories of cases. For
13 instance, if the defendant was 18, 19 years old, some people
14 would say, you know, that's a child in my eyes, I just can't
15 do it. But, on the other hand, there might be categories
16 like you mentioned like that just kind of cry out for it and
17 demand the death penalty, and I'm gonna ask you about a, a
18 couple of them.

19 okay?

20 A Okay.

21 Q what if somebody intended to take the life of a police
22 officer in the line of duty?

23 A That's death penalty cause, you know, they are here to
24 serve, serve and protect.

25 SOLICITOR BULSA: Your Honor?

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1 THE COURT: Just a second.

2 SOLICITOR BULSA: Objection. We believe he's staking
3 out the juror with these kind of questions.

4 THE COURT: I'm sorry?

5 SOLICITOR BULSA: Staking out the juror based on these
6 kind of questions.

7 THE COURT: It's in the form of a hypothetical, isn't
8 it, if this were the case or if that were the case?

9 I'm not sure you can set up hypotheticals and ask him
10 to make decisions on hypotheticals.

11 MR. MCGUIRE: Sure. I was just trying to lead into
12 a---

13 THE COURT: I understand. I'm gonna sustain the
14 objection. It's a hypothetical.

15 Q Okay. I notice that your, your brother is a sheriff?

16 A Yes, sir.

17 Q Is he, is he the elected sheriff?

18 A He was just like a bailiff in---

19 Q Okay.

20 A ---inside the sheriff office.

21 Q Okay. I want to go back to those categories of
22 offenses or, or actually murders, and I'm gonna put you
23 right back where the judge had you a little while ago.
24 Remember when the judge said I want to get you in your mind
25 to put, to put you on a jury where you and 11 other people

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1 convicted a person, a defendant, of murder, and murder, in
2 South Carolina, is the intentional, deliberate killing of
3 another person with malice, and malice is defined as hatred,
4 ill will, hostility towards somebody. It's the intentional
5 doing of a, of a wrongful act without justification or
6 excuse with the intent to inflict an injury or under
7 circumstances where the law would infer evil intent. So,
8 it's the intentional killing of an innocent person with an
9 evil intent.

10 Are you with me?

11 A Right. Okay.

12 Q Okay. In that situation, what are your thoughts about
13 the death penalty?

14 A It's -- I can accept the death penalty, but, like I
15 say, I can see maybe life in prison too.

16 Q Okay. Okay. And the judge talked about different
17 kinds of evidence. Obviously aggravating evidence,
18 mitigating evidence. They'd be evidence from both sides.
19 But sometimes there's a case where there's a factor that
20 resonates so deeply with somebody that it could move them
21 all the way to basically a decision, and I want to ask you
22 about a factor in this case, which is if it's a murder, the
23 intentional taking of a life, and the victim's a child,
24 without regard to all that other evidence you might hear,
25 does that have the home run weight, does that move you all

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1 the way to a death verdict?

2 A Yes, sir.

3 SOLICITOR BULSA: Objection, Your Honor, as to---

4 THE COURT: I'll sustain the objection.

5 Q Why is that?

6 A Cause that's a child.

7 THE COURT: I've sustained the objection.

8 Q The judge talked to you about mitigating evidence,
9 things that the defense might put up, things that might make
10 a crime less worse. Aggravation evidence is evidence that
11 the State might put up to show that something is, is worse,
12 the crime is worse.

13 If it's a child victim, does that -- is the death
14 penalty appropriate in that case without regard to that
15 other evidence?

16 SOLICITOR BULSA: We object again. Same kind of
17 question.

18 THE COURT: I'm gonna ask the juror to step back to
19 jury room.

20 (Whereupon, the following takes place outside the
21 presence of the juror.)

22 THE COURT: State your objections, Mr. Bulsa.

23 SOLICITOR BULSA: Mr. Barnette's gonna argue it, Your
24 Honor.

25 THE COURT: Beg your pardon?

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1 SOLICITOR BULSA: Mr. Barnette's gonna argue this
2 matter.

3 THE COURT: Oh, yes, sir.

4 Okay. Mr. Barnette.

5 SOLICITOR BARNETTE: Your Honor, we been going through
6 it over and over. He keeps talking about a child witness
7 (sic), talking specifically about the, the -- and I don't
8 understand. I mean we just keep doing it over and over
9 again. You keep---

10 THE COURT: Well, I have a problem with understanding
11 it too. Apparently there's a lack of respect for my
12 rulings.

13 SOLICITOR BARNETTE: Yes, sir.

14 MR. MCGUIRE: Your Honor, the Court is, is always
15 consistently indicated that the Court had some concern with
16 a question asked in a vacuum. Just a, a---

17 THE COURT: Yes, sir, but you, you asked him -- you
18 said how about the fact -- you let him know this is fact
19 specific to this case. That's the first thing you said to
20 him, him about the facts in this case.

21 MR. MCGUIRE: I, I---

22 THE COURT: And then when you asked him about it---

23 MR. MCGUIRE: I'm sorry.

24 THE COURT: ---you asked him -- this is exactly the way
25 you asked it, you said if someone were a child, is murdered,

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1 would you -- would that be something that would carry the
2 day or hit the home run or whatever you have, however you
3 referred it, without regard to all that other evidence.
4 Now, I'm sure this gentleman -- that's a confusing question
5 to a layman. We've been talking in terms of mitigation
6 evidence. Not in terms of all that other evidence. And
7 it's, again, facts specific to this case and doesn't include
8 all the facts and circumstances of this case. We've been
9 saying this now for two days.

10 MR. MCGUIRE: And, judge, my question was very
11 carefully crafted to try to meet the concerns of the Court,
12 which was---

13 THE COURT: Well, then I find the question was
14 confusing in that regard cause it referred to all that other
15 evidence. Sustain the objection.

16 MR. MCGUIRE: Okay.

17 THE COURT: You can rephrase it.

18 MR. MCGUIRE: And if I can just be heard and make a
19 record?

20 It is a capital case.

21 THE COURT: Well, please do.

22 MR. MCGUIRE: Thank you, Your Honor.

23 THE COURT: I think the -- your objection to this is --
24 your exception to this has been stated several times.

25 MR. MCGUIRE: Yes, sir, and---

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1 THE COURT: Do we need to state it again?

2 MR. MCGUIRE: And I'm not gonna restate anything. I
3 want to, I want to stay focused on exactly this question to
4 this particular juror.

5 First off, I tried very hard to carefully craft the
6 question to meet the, the Court's concerns. I did restate
7 the fact that mitigation evidence and aggravation evidence
8 were exactly how the Court defined them, make the crime
9 worse, or less worse.

10 THE COURT: Well, not in that, not in that last
11 question you asked.

12 MR. MCGUIRE: And when I said all the, all the---

13 THE COURT: Let's read the question.

14 MR. MCGUIRE: Sure.

15 THE COURT: Read the question please and this is the
16 one I'm ruling on.

17 Go ahead.

18 (WHEREUPON, the question was read back to the Court.)

19 THE COURT: I'll allow you to ask that question.

20 MR. MCGUIRE: Thank you, Your Honor.

21 THE COURT: Now we can get the juror back.

22 MR. MCGUIRE: I tried real hard, judge.

23 THE COURT: I hope so.

24 (WHEREUPON, the following takes place within the
25 presence of the juror.)

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1 THE COURT: Sir, I'm gonna allow Mr. McGuire to
2 continue the questioning. I've made a ruling.

3 You may proceed.

4 THE WITNESS: Okay.

5 CONTINUED EXAMINATION

6 BY MR. MCGUIRE:

7 Q Okay. Thank you, Mr. Williams, for coming back.

8 A Okay.

9 Q And we were talking, and we were talking about the
10 evidence that the judge had instructed you about earlier,
11 which was the aggravation evidence, mitigation evidence.
12 Aggravation evidence being something, some evidence that
13 might make the crime a little worse or more worse, and, in
14 mitigation evidence, would be stuff or evidence that could
15 make it a little bit or make it less worse.

16 A Right.

17 Q And we were talking about some factors are just so
18 impactful to people that they can have the weight of
19 deciding the case all by themselves and we talked, before,
20 before you left, about child victim. I think what you said
21 was the death penalty would be appropriate in the child
22 victim case without regard to that other evidence.

23 A Yes, sir.

24 Q Okay. And that, that -- is that because of the
25 innocence and vulnerability of the child?

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1 A Yes, sir.

2 Q In that type of category, that kind of case would
3 always demand the death penalty?

4 A I think so.

5 Q Okay. And your answers -- I see that you've given
6 careful thought to your answers.

7 Are your answers a reflection of your value system of
8 what's right and wrong?

9 A Yes, sir.

10 Q Kind of your moral code?

11 A Yes, sir.

12 Q Kind of comes from or emanates from a deep place?

13 A Yes, sir.

14 Q And I can't change your view on that?

15 A No, sir.

16 Q I don't have the talent or the words, do I?

17 A No, sir.

18 Q And if somebody said, you know, I just -- I want you to
19 promise to just pretend that you can put that aside or, or
20 promise that you can put that aside, the child victim is one
21 of those factors that you just can't?

22 It's just too important?

23 A Yeah, that's too important for a child.

24 Q Yeah.

25 Okay. If I could have just a minute, judge?

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1 THE COURT: Yes, sir.

2 (Pause.)

3 Q And, you know, we have a lot of fancy words for, for
4 things you might hear in Court, evidence, aggravation,
5 mitigation, facts, circumstances, that sort of thing, but,
6 again, with -- when it comes to that type of case, that
7 category of case, the death penalty is always appropriate
8 for the child killing?

9 A Okay. I say it can and it can't be. Like I say, it
10 all depends on the evidence, but really, for a child, a
11 child is innocent.

12 Q Okay.

13 A It can't defend itself or nothing. So, for myself, my
14 opinion, I would say the death penalty, death penalty for.

15 Q Okay. That's all I have.

16 Thank you, judge.

17 THE COURT: Mr. Bulsa.

18 EXAMINATION

19 BY SOLICITOR BULSA:

20 Q I'm Derrick Bulsa.

21 How are you, sir?

22 A Pretty good.

23 Q Who is your brother?

24 A Willie Williams.

25 Q He works for Spartanburg County?

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1 A Charlotte.

2 Q Charlotte. Okay.

3 A Mecklenburg.

4 Q Okay. I didn't think I recognized him, his name.

5 Okay. How long has he been there?

6 A Probably about five, six years, or more.

7 Q What kind of work does he do with them?

8 A He's a deputy sheriff like a bailiff or something like
9 that.

10 Q A bailiff.

11 He works for the Court system?

12 A Yes, sir.

13 Q Okay. All right. Sort of like these gentlemen we see
14 around here.

15 A Yes, sir.

16 Q Okay. All right. Now, Mr. Williams, you commented
17 that a child is an innocent victim?

18 A Yes, sir.

19 Q All right. And you said, at the end there, that there
20 might be circumstances that may warrant a life or may
21 warrant death---

22 A Yes, sir.

23 Q ---involving a child victim?

24 A Uh-huh. (Affirmative).

25 Q Is that right?

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1 A Yes, sir.

2 Q Okay. Cause, if you sit in this case, you'll have that
3 first phase where you decide the guilt or innocence of the
4 person.

5 You understand that?

6 A Yes, sir.

7 Q Okay. And then the next step is you're gonna go
8 determine what the punishment should be?

9 A Yes, sir.

10 Q And I think, when you talked with Judge Couch, you told
11 him you were the type -- the third type juror?

12 A Yes, sir.

13 Q The type that could decide the guilt and then walk into
14 the next jury room with an open mind --

15 A Yes, sir.

16 Q -- to listen to the aggravating circumstances and the
17 mitigation circumstances?

18 A Yes, sir.

19 Q Is that right?

20 A Yes, sir.

21 Q Okay. In this case, one of the aggravation would be
22 the age of the child.

23 A Yes, sir.

24 Q And the defense would put up mitigation meaning
25 evidence that might tend to, I guess, present a reason maybe

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1 why he did it or why he should not receive a death sentence.

2 You understand that?

3 A Yes, sir.

4 Q Could you consider both types of evidence before you---

5 MR. MCGUIRE: Your Honor, I would object to the
6 question.

7 Q ---make your decision?

8 THE COURT: State your objection.

9 MR. MCGUIRE: Based on the fact that the government
10 lawyer's defining mitigation with, with an inaccurate
11 definition like, for instance, why somebody did something.

12 THE COURT: My understanding, you had urged on the
13 Court a definition of mitigating factors as any factor a
14 juror wanted to, to consider.

15 MR. MCGUIRE: Well then it would be a hypothetical
16 cause the---

17 THE COURT: So anytime you bring that up it will be
18 considered a hypothetical?

19 MR. MCGUIRE: I'm sorry?

20 THE COURT: Anytime you bring up the fact that juror
21 considered, considered any factors the juror wants to
22 consider, that would be a hypothetical?

23 MR. MCGUIRE: No, I think when you're going---

24 THE COURT: Maybe I misunderstood.

25 MR. MCGUIRE: No, no, when, when -- my, my point is if

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1 you, if the prosecutors goes specific, and it's not gonna be
2 something that applies in the case, then it's a
3 hypothetical, and I'm not being allowed to use
4 hypotheticals. For instance, I used a police officer type
5 category of cases where an officer---

6 THE COURT: I'm gonna ask the jury to step back to the
7 jury room.

8 (WHEREUPON, the following takes place outside the
9 presence of the juror.)

10 THE COURT: This is, this is exactly the problem we get
11 into when you get fact specific inquiries. You're asking
12 now that he, that he try the case and name specific
13 mitigators.

14 Is that what you're asking?

15 MR. MCGUIRE: I think the, the prosecutor does have a
16 right to ask about significant mitigating circumstances.

17 THE COURT: Of course, that's -- see, this is the
18 slippery slope you go down when you get into fact specific
19 inquiries.

20 MR. MCGUIRE: Well, and I---

21 THE COURT: And if -- you end up trying the case with
22 every juror in the, in the voir dire. We haven't even
23 picked the jury yet.

24 MR. MCGUIRE: Sure. Well, with regard to this, this
25 issue, when the prosecutors went into some specific

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1 mitigators, I believe they said psychological issues. We
2 didn't object to that cause that was fairly accurate, and I
3 think they, they have a right to ask him with regard to
4 mental retardation as a matter of fact or a learning
5 disability or low IQ. They're not doing it. I don't know
6 why. I think I would if I was them. But when, when you
7 go---

8 THE COURT: I might not let them.

9 MR. MCGUIRE: Well, well, then we'd be in agreement
10 over here, which is odd. But the, the -- with the issue of
11 if the prosecutor's gonna define mitigation, and he, he goes
12 and says why somebody did something---

13 THE COURT: Yeah, but my question to you was, my
14 understanding, my understanding of the law, I don't disagree
15 with you. A juror has the right to consider any factor they
16 wish to consider under the sun as a mitigator. When I
17 instruct them, I don't think I'm gonna limit them to
18 anything that I put on a piece of paper that they can
19 consider.

20 MR. MCGUIRE: Sure, and, and my position---

21 THE COURT: So, I'm not sure how there's any limit
22 on -- I'm trying to -- I'm -- on the one hand you say
23 there's no limit. On another hand you say there is a limit.
24 So, I'm having, I'm having trouble reconciling those
25 positions --

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1 MR. MCGUIRE: Okay. And, and---

2 THE COURT: -- as to what constitutes a mitigating
3 circumstance.

4 MR. MCGUIRE: I can -- I will agree that, in some
5 cases, why somebody did something can be mitigating.

6 THE COURT: Yes, sir.

7 MR. MCGUIRE: In this case, the State---

8 THE COURT: But we're not trying fact specific right
9 now.

10 MR. MCGUIRE: My point -- I guess my position is --
11 what I'm asking the Court is---

12 THE COURT: I'm trying to avoid that. I'm doing
13 everything I can to avoid that.

14 MR. MCGUIRE: Oh, I understand and---

15 THE COURT: I don't want to try the case on every
16 juror.

17 MR. MCGUIRE: Sure. It's just that if we're gonna
18 embark on a -- if we're gonna throw out mitigation, and then
19 say like and give examples, if they're, if they're accurate
20 to the case, I'm not gonna object. But if it's gonna be a
21 mitigating circumstance that does not apply, in fact, it's
22 actually opposite, the motive in this case was to inflict
23 emotional pain upon the father of the victim, which is a
24 very offensive motive. In fact, in fact---

25 THE COURT: All right. What I'm gonna do is I'll ask

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1 the solicitor, if he asked the question, to say that -- I
2 think you can use examples of what might be a mitigating
3 circumstances, but don't ask it as specific. Such things
4 as.

5 MR. MCGUIRE: And, judge, I just, in fairness to the
6 State, if they go into a specific mitigator that's so
7 substantial on this side that could have the home run weight
8 of a life verdict, I think they have a right to do it. I
9 mean I---

10 THE COURT: I don't know that they're gonna do that.

11 MR. MCGUIRE: We'll see and I'm just, I'm just trying
12 to be consistent.

13 THE COURT: Maybe they understand the Court's ruling.

14 MR. MCGUIRE: Well, it wasn't -- we'll see.

15 THE COURT: Maybe so.

16 Bring the juror in.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 THE COURT: Thank you, sir, for your patience.

20 Mr. Bulsa's gonna be allowed to continue.

21 THE WITNESS: Okay.

22 SOLICITOR BULSA: Thank you, Your Honor.

23 CONTINUED EXAMINATION

24 BY SOLICITOR BULSA:

25 Q Mr. Williams, we were -- we talked about how the jury

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1 has just convicted, found a verdict of guilty, and now we're
2 in the sentencing phase, and, in the sentencing phase,
3 you're gonna hear evidence of aggravation and evidence of
4 mitigation.

5 Can you weigh both of those pieces of evidence before
6 you reach your decision as to the penalty?

7 A Before?

8 Q Yes, sir.

9 A I really got to go by the evidence really.

10 Q Right.

11 A Yeah.

12 Q You would take the aggravation evidence---

13 A Yes.

14 Q ---as well as the mitigation evidence and then use that
15 to decide---

16 A Decide on what I want.

17 Q ---on what the punishment should be?

18 A Yes, sir.

19 Q You're telling us that just because you convict
20 somebody of killing a young child, you wouldn't
21 automatically sentence them to death without listening to
22 the rest of the story?

23 A The rest of it, right.

24 Q Okay. Thank you, Mr. Williams.

25 THE COURT: Mr. McGuire.

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1 MR. MCGUIRE: Nothing further, judge.

2 THE COURT: All right, sir. I'm gonna ask you to step
3 back to the jury room for just a minute. I'll be calling
4 you back in just a second.

5 THE WITNESS: Okay, sir.

6 (WHEREUPON, the following takes place outside the
7 presence of the juror.)

8 THE COURT: Defense position.

9 MR. MCGUIRE: Yes, sir, Your Honor.

10 Move to strike Mr. Williams for cause. With regard to
11 the fact that he's an automatic death penalty vote with
12 regard to the category of this case, which is a child
13 victim, and he's mitigation impaired in, in the event of a,
14 of the child being the victim in the murder case. He stated
15 several times, when I was using very plain language with
16 him, and that---

17 THE COURT: He stated the other way a couple of times
18 too.

19 MR. MCGUIRE: Yeah, I don't disagree with that, but
20 that's, that's when you're using terms aggravation,
21 mitigation, and you can, can you listen to it before you
22 make a decision. That's a pretty weak word, can you sit and
23 listen to something before making your decision. You know,
24 I can sit and listen to a lot of stuff before making a
25 decision without running out of the room or plugging my ears

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1 and I don't think that's the test.

2 when it comes, when it came to a child victim, he
3 indicated that it would have the weight of a death verdict
4 without regard to that type of evidence. I think he was
5 consistent on that.

6 Based on that, we would move to strike him for cause
7 and to seat Mr. Williams would violate Mr. Blackwell's
8 rights to a unbiased and impartial jury on the Sixth and
9 Fourteenth Amendment.

10 THE COURT: State.

11 SOLICITOR BULSA: No, Your Honor, I believe Mr.
12 Williams last response was that he would not automatically
13 give a death sentence, that he would listen and use that
14 evidence to weigh his decision as to what punishment would
15 be appropriate, and that is -- to me, that's the standard
16 that he's suppose to show, that he would listen to all the
17 evidence. Not just take it out of context.

18 THE COURT: All right. My inquiry is whether a jury is
19 unbiased and impartial so as to be able to carry out the law
20 as the law is explained to him. The juror, of course,
21 questions whether or not his opinions would prevent or
22 substantially impair his performance as to his duties as a
23 juror. The witness is consistent -- I mean the juror
24 consistently testified that he would be able to take the law
25 exactly as it was given to him and apply it to the facts.

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1 He did equivocate concerning whether or not he would be
2 willing to listen to mitigation evidence. But when
3 explained to him in that fashion, he did on -- with the
4 Court and with the State, indicate that he would not
5 automatically vote for the death penalty in the fact
6 specific questions asked by the defense, and he said that he
7 would be willing to listen to both sides before he made up
8 his mind and consider all of the evidence, and that's what
9 the law requires in this situation.

10 I'll find the juror qualified.

11 All right. Is Mr. Donald Lowe or Lowe back there?

12 All right. Check to see if he's read the papers. If
13 he has, bring him in.

14 SOLICITOR BARNETTE: Your Honor, are you gonna---

15 THE COURT: Oh, that's right. I keep forgetting to do
16 that.

17 Bring, bring Mr., Mr. Williams back.

18 (WHEREUPON, the following takes place within the
19 presence of the juror.)

20 THE COURT: Mr. Williams, I want to let you know that
21 the Court has found you qualified to serve on the jury.
22 Now, that doesn't mean you're on the jury. That means
23 you're on the list from which the jury would be selected.

24 THE WITNESS: Okay.

25 THE COURT: Now, what that means that, at some point in

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1 time in the future, we'll be back in touch with you
2 concerning your future service on the jury panel.

3 THE WITNESS: Okay.

4 THE COURT: In the mean time, I'm going to direct you
5 to continue to follow the instructions of the Court
6 concerning not discussing the case, not listening to or
7 reading any media reports about the case, watching any
8 television shows or anything like that that might discuss
9 this matter. I don't want you to discuss this case with
10 anyone, and don't allow anyone to discuss it with you.

11 Now, since you may end up back here, you may end up in
12 a situation where you're sequestered, it's okay for you to
13 talk to your employer or your family about the fact you may
14 be away for a little while on jury duty, but that's just --
15 you know, that's all they need to know about the case.
16 Don't discuss the case with them. But you can make
17 arrangements if -- in the event that you might be selected.

18 THE WITNESS: Yes, sir.

19 THE COURT: So, you can go ahead and discuss that with
20 people.

21 THE WITNESS: Yes, sir.

22 THE COURT: We're gonna give you a sheet of paper. It
23 will suggest to you some things you might need to bring back
24 if you're called back. You'll need a few changes of clothes
25 to last maybe a little more than a week.

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1 THE WITNESS: Yes, sir.

2 THE COURT: And you're going to need any medications
3 you take, things of that nature. But that's just to give
4 you some idea of the things that you might need to bring if
5 you're called back.

6 THE WITNESS: Yes, sir.

7 THE COURT: I don't know how long this process is going
8 to take before we select a jury in the case. So, we'll be
9 back in touch with you. It could be several days. But
10 we'll be back in touch with you and let you know whether to
11 come back to the courthouse or whether you are, are going to
12 be excused.

13 THE WITNESS: Yes, sir.

14 THE COURT: We'll let you know what, what to do and
15 give you further instructions later on.

16 THE WITNESS: Yes, sir.

17 THE COURT: Do you understand that?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. If you'll give him the document,
20 and in the mean time, sir, my instructions continue to apply
21 to you until we tell you they don't.

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay, sir. You understand that?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. You're free to go. Thank you.

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1 THE WITNESS: Thank you.

2 (WHEREUPON, the following takes place outside the
3 hearing of the juror.)

4 THE COURT: All right. Mr. Lowe or Lowe. If he's
5 ready, bring him in.

6 (WHEREUPON, the following takes place within the
7 presence of the juror.)

8 DONALD LOWE, having been previously
9 sworn, testified as follows:

10 EXAMINATION

11 BY THE COURT:

12 Q Have a seat please, sir.

13 A All right, sir.

14 Q I can't recall whether you are Donald Lowe or Lowe?

15 A Lowe.

16 Q Okay. Well, I got it right now then.

17 Okay.

18 A Okay.

19 Q So, you are Donald Lowe?

20 A Yes, sir.

21 Q All right. Mr. Lowe, I want to thank you for your
22 patience today. I understand we're trying your patience
23 these days for people and I, I appreciate your presence and
24 your willingness to help us in this process and be, be
25 willing to cooperate with us. So, thank you very much for

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1 your continued cooperation.

2 This afternoon we're going to be going over some
3 questions that pertain to this case. I will tell you now
4 that there are no right or wrong answers to any question we
5 ask. We just want honest and truthful answers. That's all
6 that we're looking for.

7 Now, you were sworn to tell the truth yesterday to the
8 Court.

9 A Sure.

10 Q That same oath applies to our discussions now.

11 Do you understand that?

12 A Yes, sir.

13 Q Do you acknowledge that's true?

14 A Yes, sir, I do.

15 Q All right. Now, again, we're simply trying to gather
16 some information about you and about your -- perhaps your
17 opinions and that sort of thing. So, again, I don't expect
18 any particular answer. I just want you to answer the
19 question truthfully.

20 Do you understand that?

21 A Yes, sir, I do.

22 Q Okay. Now, I'm gonna ask some questions of you, and
23 then I'll allow the attorneys to ask some questions of you.
24 So, we'll all be asking questions this after, this
25 afternoon.

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1 Now, the first question I've got for you, since we
2 talked yesterday, I had given you some instructions not to
3 gather any information on your own, not to read, watch, or
4 listen to any reports about the case, not to discuss the
5 case with anyone, don't allow anyone to discuss it with you.

6 Have you been able to comply with my instructions?

7 A Yes, sir, I have.

8 Q All right. Has anyone tried to contact you about this
9 case?

10 A No, sir, they haven't.

11 Q Now, have you ever participated in or been involved in
12 any type of like an Internet chat room or a blog or anything
13 that had to do with your views or your opinions about the
14 death penalty?

15 A No, sir, I haven't.

16 Q Have you ever participated in any political activities
17 such as a demonstration or sending letters to
18 representatives on issues involving the death penalty?

19 A No, sir, I haven't.

20 Q So, you've never been involved in any political
21 activities or discussions?

22 A Only activities, I was a Gunner, Ryan Gunner or
23 something, and I helped put up some signs for one time and
24 that was it.

25 Q For somebody running for office?

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1 A Yes, sir, that was---

2 Q That didn't involve anything to do with the death
3 penalty?

4 A No, sir.

5 Q Okay.

6 A That's the only---

7 Q Well, we encourage people to get involved in political
8 process. That's a good thing.

9 All right. Now, I want to ask you if you're the kind
10 of person who is a person who could put aside anything that
11 you may have heard in the past or seen or know about that
12 might, in anyway, pertain to this case?

13 Could you put that information aside and could you
14 come, if you were serving on the jury, and decide the case
15 that's presented to you based upon the law and evidence
16 given to you during that trial?

17 A Yes, sir, I could.

18 Q Now, I gave you a list of people back there, a long
19 list.

20 A Yes, sir.

21 Q Did you read the list?

22 A Yes, sir, I did.

23 Q And it's a couple of lists I believe.

24 A Yes, sir.

25 Q A short one and a long one.

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1 A Three or four pages, yes, sir.

2 Q Okay. Now, as to those people, those are people who
3 have been identified as possible witnesses in the case. I
4 don't know if they're all gonna testify. I don't think they
5 all will, but they all possibly could. So, we've given you
6 all of those names.

7 Now, as to those names, was there anybody on that list
8 that you may of been related to either by blood or marriage
9 at anytime?

10 A No, sir, they're not.

11 Q All right. Was there anybody on that list that you may
12 have had a social, a personal, or a business relationship
13 with?

14 A No, sir, there's not.

15 Q So, you apparently don't have an acquaintance---

16 A No, sir

17 Q ---with anybody on that list?

18 A No, sir, I don't.

19 Q Okay. Now, I'm going to ask you some more personal
20 questions now. In fact, I'm gonna ask you about some, some
21 questions that you might -- some people might consider we're
22 trying to invade your privacy. I can assure you we're not
23 doing that.

24 A Yes, sir.

25 Q what we are doing is trying to find out some things

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1 about you and some things about your opinions that may be
2 important in jury selection in the case. I feel like you're
3 probably old enough and secure enough that it's not gonna
4 bother you too much if we ask you about those things.

5 Is that correct?

6 A Yes, sir.

7 Q Okay. All right. Now, one of the things I'm gonna ask
8 you about is the, is the penalty involved in this case, and
9 as you're aware from yesterday, the State, in this case, is
10 seeking the penalty of the death penalty.

11 A Yes, sir.

12 Q Now, I want to tell you it's a little bit premature
13 that we're talking about the penalty in this case because,
14 as I made you aware yesterday, in this type of case, there
15 will be a trial concerning guilt or innocence as to the
16 charges. Then, if the defendant is found guilty of murder,
17 there would be a separate trial by the same jury to decide
18 the question of the appropriate penalty to be given. So,
19 it's a two phase trial if it goes that far. It may not go
20 that far, but I hope you appreciate the fact that if we're
21 going to talk to you about -- anything about the penalty
22 itself, we can't wait until the middle of the trial to talk
23 to the jury that's already seated. We have to talk to the
24 potential jurors before the trial is concerned.

25 A Yes, sir.

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1 Q So, we're gonna be talking some about the penalties
2 that might be involved in a case like this, but I want to
3 stress to you that, that Mr. Blackwell, as a defendant, is
4 always presumed to be innocent of the charges for which the,
5 the indictments were issued and the fact that we're talking
6 about the penalty questions at this time should not serve
7 to, to indicate anything one way or the other about him.
8 It's simply the only -- or his case. It's simply the only
9 time we have to talk about these things. We're gonna talk
10 about them now.

11 A Okay.

12 Q You understand that?

13 A Yes, sir, I do.

14 Q Okay. Now, I want you to assume that you're a
15 defendant in a criminal case. I mean not a defendant. But
16 a juror. I'm sorry. I misspoke. You're a juror in a
17 criminal case, and I'm not talking about this case, any
18 criminal case.

19 If you were a juror on the case, are you the kind of
20 person who would be willing to listen to the law as given to
21 you by the judge?

22 A Yes, sir, I will.

23 Q Would you be willing to accept the law and apply it to
24 the facts that the jury finds the facts to be?

25 A Yes, sir, I'd listen to the facts.

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1 Q Now, is that true even though, when you hear the law,
2 the judge gives you or tells you law, charges you the law is
3 what the technical term is, if you didn't -- if when the
4 judge charged you with the law, you might say well, I'm not
5 sure I disagree with that law -- I mean agree with that law.
6 I'm not sure I'm quite, I'm quite there.

7 Even though you might not be in agreement with
8 everything the law says, are you the kind of person that
9 could take the law as the judge gives it to you, and apply
10 that law to the facts and reach a decision?

11 A Yes, sir.

12 Q Now, if you were a juror in this case, State versus
13 Blackwell, would you be able and willing to set aside any
14 information or knowledge that you may of gained from any
15 source, that includes during this hearing, during anything
16 that happened before today, anything that, that may of gone
17 on prior to this time, would you be willing to set all that
18 stuff aside that you may hear during or in preparation for
19 the trial or otherwise, and decide this case purely upon
20 what you hear in the courtroom either by way of law or
21 evidence?

22 A Yes, sir.

23 Q Now, I mentioned to you before that a criminal
24 defendant is always presumed to be innocent. That's the law
25 in the State, this State and this country, and, therefore,

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1 because a defendant is presumed to be innocent, he has no
2 obligation. He doesn't have to prove himself innocent.

3 Do you understand that concept?

4 A Yes, sir, I do.

5 Q And I will also tell you that it's a rule of law in
6 this country and State that the State always has the only
7 burden of proof in a criminal case, and that is to prove the
8 defendant guilty of the charges in the indictment by proof
9 beyond a reasonable doubt.

10 So, do you understand the concept that the State has
11 the only burden of proof in criminal trials?

12 A Yes, sir, I do.

13 Q Now, if you were a juror sitting on any criminal case,
14 would you be willing to listen to the law and the evidence
15 presented to you, and after hearing that evidence, if, based
16 on what those things were, the law and the evidence, and
17 based on the circumstances as you determine them to be, if
18 you found that there was a reasonable doubt as to the
19 defendant's guilt, could you find a defendant not guilty of
20 the charges?

21 A Yes, sir, I could.

22 Q Now -- and in other words, do you think -- is it your
23 opinion that just because someone's been accused or indicted
24 of a crime that they're automatically guilty of that crime?

25 A No, sir, I don't.

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1 Q Now, if the evidence, however, convinced you, beyond a
2 reasonable doubt, that a person was guilty of a crime, would
3 you be a person who could render a guilty verdict?

4 A Yes, sir, I could.

5 Q Now, what you're telling me, I believe, that says that
6 you would be able to make up your mind, depending upon the
7 strength of the evidence, depending upon what testimony was
8 given, what the evidence showed, and what the law was given
9 to you by the Court, you could find a person either guilty
10 or not guilty depending on those factors?

11 A Yes, sir, I could.

12 Q Now, we're gonna talk for a minute, and, and a little
13 bit about the penalties that are involved in this case, and
14 I'm gonna tell you -- explain to you that, in most criminal
15 cases, the jury decides whether someone's guilty or not
16 guilty. Once that's done, it's up to the judge to decide
17 the appropriate penalty for that particular crime, whatever
18 it is, if the person's found guilty.

19 There's an exception to that rule, and that exception
20 is in a case like the one that we're in now. That's where
21 the State is seeking a death penalty.

22 In this case there will be a trial conducted by a -- in
23 front of a jury to determine the guilt or the innocence of
24 the defendant. Now, should the jury find the defendant
25 guilty on murder, the State has asked that the death penalty

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1 be imposed for that particular crime. That same jury that
2 heard the first part of the case then would sit again in
3 what we call the, the sentencing or the penalty phase of the
4 trial. That's the second trial where the question of the
5 appropriate penalty is decided.

6 Do you understand that that's how this particular
7 proceeding would go?

8 A Yes, sir, I do.

9 Q All right. Now, in the separate sentencing procedure,
10 the only determination to be made by the jury is the type of
11 sentence that would be given. There's only two choices
12 during that sentencing period, either life imprisonment
13 without parole or the death penalty. Those are the two
14 choices.

15 A Okay.

16 Q During that particular hearing, the statute that sets
17 up that hearing or governs that hearing provides that
18 evidence can be presented, perhaps even new evidence that
19 wasn't even discussed in the guilt phase, new -- evidence
20 can be presented either of aggravating circumstances, and by
21 aggravating circumstances we mean circumstances that tend to
22 make the offense of murder more -- I guess make it, make it
23 more likely that a more serious penalty be given, or what we
24 call mitigating circumstances. Those are circumstances that
25 would tend to either excuse the conduct or lessen the

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1 severity of what happened, and, therefore, tend to go toward
2 a lesser sentence.

3 So, do you understand the difference between
4 aggravating circumstances and mitigating circumstances?

5 A Yes, sir.

6 Q Okay. And that's the kind of evidence that a jury
7 would be called upon to hear during that penalty phase of
8 the trial.

9 Do you understand that?

10 A Yes, sir, I do.

11 Q Now, once that evidence has been placed before the
12 jury, the jury would be instructed by the Court to consider
13 both the aggravating evidence and the mitigating evidence
14 and reach a verdict as to the appropriate punishment to be
15 given.

16 So, do you understand that that's the question that
17 would be put to the jury by the judge?

18 A Yes, sir.

19 Q All right. Now, I'm gonna ask you to put yourself in a
20 position theoretically, and that is -- let's say you were on
21 that jury that was deciding the guilt phase of a murder
22 trial, and that particular jury found the defendant guilty
23 of murder. You're on the jury. So that same jury now,
24 since the State is seeking the death penalty, is coming back
25 into the courtroom to begin what we call the penalty or

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1 sentencing phase of the trial.

2 Now, do you remember a piece of paper that I asked you
3 to read back there in the jury room that described three
4 different kinds of jurors?

5 A Yes, sir.

6 Q All right. Now, think about that piece of paper and
7 I'm gonna go kind of over it. I'm not gonna use those exact
8 words, but I'll describe the three jurors that were on that
9 paper so that I'm sure you and I have an understanding of
10 which ones we're talking about.

11 A Yes, sir.

12 Q Okay. Now, the first juror that was on that piece of
13 paper, that was a person, who before they ever set foot in
14 the jury -- in the courtroom to come in for that sentencing
15 phase, that juror had already made up his mind. That juror
16 is, is of the opinion, he's decided that he's gonna vote for
17 the death penalty in every single case because he believes
18 that's the most appropriate penalty any time someone has
19 committed a murder and been found guilty of a crime, been
20 convicted of that.

21 Now, the second type of juror is another juror who also
22 has already made up his or her mind. That juror doesn't
23 think that the State should ever take a life in response to
24 someone being found guilty of a crime regardless of how
25 severe that crime might be. In other words, that juror is

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1 always going to vote for life imprisonment without parole in
2 every single case.

3 The third type of juror doesn't know what that juror's
4 going to do yet. That juror doesn't have his mind made up
5 as to whether he's going to vote for life imprisonment or
6 for the death penalty. He will have to wait and listen to
7 the evidence, both of aggravation and of mitigation, and
8 after -- before that juror would make up his or her mind as
9 to what the appropriate penalty ought to be.

10 Do you understand the three types of jurors I've
11 described?

12 A Yes, sir, I do.

13 Q Now, of those three types of jurors, which one would
14 best describe you before you came into the courtroom for
15 that hearing?

16 A It would be juror three.

17 Q Number three?

18 A Yes, sir.

19 Q All right. Now, so what you're telling me is, under
20 those circumstances, keeping in mind the defendant is
21 already been found guilty of murder and the issue of guilt
22 is no longer of concern, you would be willing to listen to
23 the facts and the evidence, is that right?

24 A Yes, sir, I would.

25 Q Now, if the evidence justified the sentence to you,

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1 would you be willing to vote for a sentence of death?

2 A I would be able to, yes, sir.

3 Q You would be able to?

4 A Yes, sir.

5 Q Now, on the other hand, if you thought the facts and
6 the evidence did not justify a death penalty or, for any
7 reason, you felt that it would be justified, would you be
8 willing to sentence someone to life imprisonment without
9 parole?

10 A Yes, sir.

11 Q So, you're telling me that, depending on the proof
12 that's presented --

13 A Yes, sir.

14 Q -- you could decide either for the death penalty or for
15 life imprisonment without parole?

16 A Yes, sir, I could.

17 Q You could go either way?

18 A Yes, sir.

19 Q Now, if you're seated on this jury, and I'm not telling
20 you you're going to be---

21 A Yes, sir.

22 Q ---I'm just saying if you were, I have signed an order
23 sequestering the jury. So that means that, during the
24 trial, the jury will be housed in a hotel here. I think
25 probably the Marriott is the one that's gonna be used.

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1 During that period of time, the county would provide
2 all your meals. They'll provide you the place to stay.
3 They'll provide you with all your transportation. You'll
4 receive an amount of money and it's not a large amount of
5 money for your jury pay. You'll get paid during the time
6 you're here. Probably not as much as you'd make on your
7 regular job, but it's all the law allows us to pay, and
8 you'd receive some mileage for travel back and forth to the,
9 to the courthouse.

10 My question to you is, if you were put in the situation
11 where you were sequestered on a jury, and it would last
12 probably about a week, maybe a little longer, I don't know
13 for sure, and I'll just make you aware that once we start
14 one of these trials we go seven days a week until we're
15 finished. So we take up weekends too. We just go till
16 we're done.

17 A Okay.

18 Q So, if you were put in that situation and sequestered,
19 would that fact pose a serious risk or danger to your health
20 or your well being?

21 A No, sir.

22 Q Would that particular situation pose a serious risk of
23 danger to the health or well being of anyone who's dependent
24 upon you?

25 A No, sir, it would not.

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1 Q All right. Now, I'm gonna ask you to ask some, answer,
2 answer some questions from the attorneys. So, they're gonna
3 be asking questions at this time.

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. Lowe.

11 A Good afternoon.

12 Q My name is Barry Barnette and Derrick Bulsa and me is
13 gonna be presenting the State's side of the case.

14 A few questions I wanted to ask you and we're gonna --
15 and I apologize ahead of time. We're gonna probably ask you
16 some questions you never even thought of or never thought
17 anybody would ask you about.

18 A Okay.

19 Q Just trying to figure out -- well, one question I do
20 want to ask before I get into the serious stuff. I notice
21 you had softball stickers on the back of your car. Is it --
22 I'm just curious about that.

23 Do you have any---

24 A I have a daughter that's a senior over at Woodruff High
25 School and plays and their season's starting up.

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1 Q Okay. I know that's an exciting time. Well, my
2 daughter played softball. That's the reason I asked that
3 question. So, I know how that goes from there.

4 But getting back to this here, I know the judge talked
5 to you about the type of jurors and everything.

6 You're the type of juror that would listen to
7 everything before you made a decision?

8 A Yes, sir, I would.

9 Q And obviously it's a very serious decision you would
10 take seriously?

11 A Yes, sir, it's very serious.

12 Q The way it would go was obviously the guilt phase would
13 go first, and if they're found -- and if the defendant's
14 found guilty of murder, then we go to the second phase. In
15 the second phase the State will present aggravating
16 circumstances.

17 Not every murder in South Carolina can be death penalty
18 eligible. We have to prove certain aggravators that has to
19 be involved with that. If we do have those aggravators we
20 can present as a death penalty case, and we will be
21 presenting aggravators at that stage.

22 At the same time the defense has a right to do
23 mitigating circumstances, and they'll present those
24 mitigating circumstances to you from there.

25 What -- would you listen to like our aggravators as

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1 well as their mitigators before you made a decision?

2 A Yes, sir, I would.

3 Q And aggravator -- and like an aggravator could be, like
4 in this case or whatever, we have a couple, but one of them
5 may be involving a death of a child. At the same time
6 they'll present mitigation. That will be different areas
7 they may present, even a disability in this situation.

8 would you listen to all those factors before you made a
9 decision?

10 A Yes, I would, sir.

11 Q Okay. Just because we've presented our aggravators,
12 would you automatically vote before you heard theirs?

13 A I would listen to both.

14 Q You'd listen to both---

15 A Yes, sir.

16 Q ---before you made a decision?

17 So, in that situation, you could come back with a death
18 sentence?

19 A Yes, sir, I could.

20 Q But at the same time you could come back with life
21 without parole?

22 A Yes, sir, I could.

23 Q You'd weigh all those factors and make a decision based
24 on what you've heard?

25 A Based on what I heard, yes, sir.

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1 Q It wouldn't be automatic one way or the other?

2 A No, sir.

3 SOLICITOR BARNETTE: One moment, Your Honor.

4 THE COURT: Yes, sir.

5 (Pause.)

6 SOLICITOR BARNETTE: Please answer any questions the
7 defense may have for you.

8 THE COURT: Mr. Young, you may proceed.

9 MR. YOUNG: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. YOUNG:

12 Q Afternoon, Mr. Lowe.

13 A Good afternoon.

14 Q My name is Boyd Young. We met briefly yesterday. It
15 feels like a long time ago to me we've been in here.

16 Let me follow up with one other area in your
17 questionnaire. You were asked a question about the criminal
18 justice system, police officer, prosecutors --

19 A Yes, sir.

20 Q -- and defense attorneys.

21 A Yes, sir.

22 Q Do you recall what you wrote about defense attorneys?

23 A Yes, sir, I -- like I said, I believe, if I'm not
24 mistaken, what I wrote, wrote down was, you know, everyone
25 has a right to a defense, you know, they --.

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1 Q And---

2 A Couldn't -- something in that nature to see. In other
3 words, I can't remember how I exactly worded it word for
4 word.

5 Q Sure.

6 would you like to see it?

7 A Sure.

8 Q And I'm happy to show it to you, and I just want to ask
9 you about -- you said that they are respected as long as
10 they help someone who is wrongfully charged?

11 A Yes, sir, is wrongfully charged, yes, sir, as it was
12 proven. Like I say, if someone has brought charges against
13 them, they have a right to a good defense as to help prove
14 their innocence cause they are innocent until proven guilty
15 is what I'm trying to say in that.

16 Q And I respect that opinion and I want to make sure that
17 I'm clear with you.

18 A Yes, sir.

19 Q You're not saying that you think poorly of defense
20 attorneys---

21 A No, sir.

22 Q ---unless they're representing an innocent person?

23 A No, sir.

24 Q Okay.

25 A I'm just saying they need to be, you know, representing

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1 someone to get the facts and to be --.

2 Q We're on the same page, Mr. Lowe. I'm with you.

3 A All right.

4 Q Thank you very much. I, I appreciate the opinion.

5 Can I ask you -- I want to just start talking about
6 what the judge is talking about about your opinions about
7 the death penalty.

8 okay?

9 A Yes, sir.

10 Q Can you tell me a little bit about what do you think
11 about the death penalty?

12 A Well, there -- like I say, if -- my personal opinion
13 on, on the death penalty is, is, if the evidence is there,
14 and, you know, the person is charged with a crime and the
15 evidence is there, then, you know, they should be charged
16 with what the evidence provides.

17 Q It sounds to me like you're saying that--

18 A If, if---

19 Q If they're guilty guilty---

20 A If they're guilty guilty and the evidence is beyond a
21 reasonable doubt or whatnot, then they should, you know, and
22 if that's what the law allows, the death penalty, then they
23 should -- if they seek it, then that's what the maximum
24 penalty is, then that's what the maximum penalty should be.

25 Q And that's what---

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1 A That's my opinion, yes, sir.

2 Q what they should get?

3 A Yes, sir.

4 Q And I'm not trying to -- I don't want to confuse you.

5 I just need to know how you feel. There's no right or wrong
6 answer.

7 A Okay.

8 Q These are just your personal opinions.

9 okay?

10 A Yes, sir.

11 Q So, when we were talking about guilty guilty murder,
12 you know, intentional, deliberate killing of an innocent
13 person --

14 A Yes, sir.

15 Q Okay. Meant to do it. Not an accident.

16 okay?

17 All right?

18 A Yes, sir.

19 Q You with me?

20 And it's with malice aforethought meaning -- malice is
21 hatred or ill will or hostility towards another person.

22 It's the intentional doing of a wrongful act without just
23 cause or excuse and with an intent to inflict an injury or
24 under circumstances that the law will infer an evil intent.

25 Do you understand that?

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1 A It's -- pretty much, yes, sir.

2 Q Well, it -- they meant to do it.

3 A Yes, sir, I understand.

4 Q They meant to kill an innocent person.

5 A Yes, sir.

6 Q Okay. You with me?

7 A Yes, sir.

8 Q And that's what guilty of murder means, right?

9 When you found somebody guilty of murder, that's what
10 you found them guilty of doing.

11 A Yes, sir.

12 Q They're guilty guilty.

13 Okay?

14 A Yes, sir.

15 Q Now, it sounds to me like you, for your personal
16 feelings about a guilty murder, is that the only appropriate
17 punishment would be the death penalty?

18 A Well not the only appropriate, but if that's what the
19 law is saying that, in my, in my opinion, you know, if
20 something -- not -- they don't actually deserve the death
21 penalty, it's according to what the circumstances, the
22 circumstances are in the situation cause every situation is
23 different in my opinion.

24 Q Sure.

25 A But as the law also states that, you know, if that's

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1 the worse case scenario, and it was a malice or hatred or
2 whatever, then not necessarily I would say death penalty,
3 but it is a possibility too.

4 Q Okay. And you're saying not necessarily.

5 Does it -- are you leaning that way or---

6 A It's -- well, I'm, I'm kind of open to either, to life
7 in prison or the death penalty because, to me, you know,
8 taking a life is, is not good. It's not good in my opinion
9 either. But, you know, some -- I'm not saying it's a --
10 there's a nice way to do it, nice way not to do it. I
11 guess, I guess I'm -- I don't know unless I hear what the
12 situation is.

13 Q Okay.

14 A I really don't. I can't give you a definitive answer
15 unless I know what the circumstances we're talking about is.

16 Q Okay. I'm gonna add a little bit more to the
17 circumstances.

18 A Okay.

19 Q Okay. And like the solicitor talked about, if, if you
20 were on trial where somebody was convicted of that malice
21 murder of a child --

22 A Yes, sir.

23 Q Okay. Does that fact, that one additional fact, the
24 fact that the victim---

25 SOLICITOR BARNETTE: Objection, Your Honor. Now we're

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1 staking. We're getting that one fact and he's just given
2 one fact without any other explanation, any other mitigation
3 or anything at all.

4 MR. YOUNG: Well, I'm trying to add mitigation. I just
5 got to get it out after -- one of them has to come first.

6 SOLICITOR BARNETTE: No, he -- now, wait a minute. He
7 paused. That was his question.

8 MR. YOUNG: No.

9 SOLICITOR BARNETTE: They keep -- they're adding more
10 questions to it and he paused and then he wanted to get---

11 THE COURT: I'm gonna ask---

12 MR. YOUNG: I'm trying to---

13 THE COURT: I think he knows what my ruling has been,
14 and, thus far, the question would run afoul of my ruling.

15 SOLICITOR BARNETTE: Yes, sir.

16 THE COURT: I don't know where it's going from here.
17 We'll see.

18 Q Mr. Lowe, would that fact preclude or prevent your
19 consideration of the other evidence, the mitigation?

20 A Are you saying I would make -- are you asking me if I
21 would make a decision before I would of heard all the
22 evidence?

23 Q Would you make a decision---

24 A No.

25 Q ---based on the fact that the victim was a child as

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1 opposed to the other evidence?

2 A I would -- like I say again, I would like to hear the
3 whole story, the whole information before I would completely
4 give my other opinion on it.

5 Q Okay. Now, I understand that and respect it. Thank
6 you.

7 The other parts of the story that we're talking about,
8 this sort of -- this mitigation evidence, and I want to be
9 clear that we're talking about the same thing. We're not
10 talking about who, what, when, where---

11 A Yes, sir.

12 Q ---how, right?

13 That's already been decided.

14 A Yes, sir.

15 Q You're with me on that?

16 A Yes, sir.

17 Q We're talking about circumstances about a person's
18 life. It can be anything that the jury wants to believe is
19 mitigation.

20 okay?

21 A Okay.

22 Q Any reason that a juror wants to vote for a life
23 sentence they can use it and call it mitigation.

24 Does that make sense to you?

25 A Yes, sir.

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1 Q But it doesn't necessarily relate to what happened.

2 Okay. Is that all right with you?

3 A Yes, sir.

4 Q It could be something in their childhood.

5 Okay. Is that all right with you?

6 A Yes, sir.

7 Q And it could be something about what their future might
8 be like.

9 A Okay.

10 Q All right. So, we're on the same page about what
11 mitigation is?

12 A Yes, sir.

13 Q Okay. Is that the type of stuff that you would find
14 important in determining who lived or died?

15 A Yes, sir.

16 Q That stuff that you could give a meaningful
17 consideration to?

18 A Yes, sir, I could.

19 Q Mitigation is also different than aggravation in that
20 it doesn't have a burden of proof.

21 Okay. With me on that?

22 A Okay.

23 Q Aggravation has to be found by all 12 jurors beyond a
24 reasonable doubt---

25 A Yes, sir.

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1 Q ---to exist?

2 Okay. Mitigation, each individual juror can decide for
3 himself or herself what's mitigating to them.

4 Okay.

5 A Okay.

6 Q And give it whatever weight they want. They don't have
7 to agree.

8 okay?

9 A Okay.

10 Q And if all 12 jurors do agree and decide for the death
11 penalty, then Mr. Blackwell will be put to death.

12 You understand that?

13 A Yes, sir I do.

14 Q You don't have any questions about that?

15 A No, sir, I don't.

16 Q But your sentence would be carried out?

17 A Yes, sir.

18 Q And if one juror found that the life penalty was
19 appropriate for them, then a life sentence would be given?

20 A Yes, sir.

21 Q Okay. You all right with that?

22 A Yes, sir, I am.

23 Q And each individual juror makes their own choice --

24 A Yes, sir.

25 Q -- about what's right for them?

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1 A Yes, sir.

2 Q To determine it -- we call that choice. We call it an
3 individual moral judgment.

4 A Okay.

5 Q You with me?

6 A Yes, sir.

7 Q Like -- and then -- what I mean by that or that choice
8 is kind of like, for you, you've made a choice about what
9 faith is right for you.

10 A Yes, sir.

11 Q And you expect other people to respect your choice?

12 A Yes, sir, I do.

13 Q And you recognize that other people may of made
14 different choices for them?

15 A Yes, sir.

16 Q And you respect their right to make their own---

17 A Yes, sir, they have the right to make their own
18 decision.

19 Q Their own moral judgment?

20 A Yes, sir.

21 Q And if you saw somebody being bullied, and I don't mean
22 like let's talk about this and you state your position and I
23 state my position, I mean name calling and threatened and
24 being bullied to change what they had arrived at for
25 themselves is what their---

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1 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
2 this. I think this is covered by your instructions. I
3 don't know whether this has any relevance in this procedure
4 from that standpoint. I know they've asked that question
5 before and I almost objected to it, and I started thinking
6 about it.

7 what relevance does it have in this procedure?

8 THE COURT: I'll overrule the objection. I think the
9 question is whether or not someone might have their own
10 beliefs and respects other beliefs, that's -- he has a right
11 to ask that question.

12 You may proceed.

13 Q I'm just asking would you stop somebody else from
14 trying to bully somebody?

15 A If someone was bullying someone else, then I probably
16 myself would intervene, yes, to ask them not to do so.

17 Q And tell them that they're entitled to their opinion?

18 A Yes, sir.

19 Q I'm entitled to my opinion?

20 A Yes, sir, you're entitled to your opinion.

21 Q Even if you didn't---

22 A As long as it's your opinion, yes, sir.

23 Q Right.

24 Even if you didn't agree with it --

25 A Yes, sir.

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1 Q -- you would stop it?

2 A Yes, sir.

3 Q We arrive at this concept in death penalty cases where
4 even if there's no mitigation, even if none of the jurors
5 find anything that was presented by the defense is
6 mitigation, they're still entitled to consider a life
7 sentence based on a concept of mercy alone. Okay. They can
8 say I don't have a reason, but based on mercy I want to vote
9 for life.

10 A Yes, sir, mercy.

11 Q And they can -- and a juror can do that. That's up to
12 them.

13 A Yes, sir.

14 Q Okay.

15 A It's his or her choice, yes, sir.

16 Q Under that concept of mercy, can you tell me, to you,
17 do you think that mercy is something that's freely given to
18 another or is it something that's earned?

19 A I guess mercy would be kind of earned. It's not really
20 earned because, like I say, I would intervene if I seen
21 things not right. So, my two questions by that or my two
22 choices is either intervene or I wouldn't.

23 Q well, no, I'm just -- you personally, for you---

24 A Yes, sir.

25 Q --- mercy, the concept of mercy, you're being

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1 merciful---

2 A It's given, but not as greatly everyday, yes, sir.

3 Q Maybe we could all use a little more of it?

4 A Yes, sir.

5 Q Okay. Can you tell me, just finally, how do you feel,
6 as a juror, if you were a juror, how would you feel about
7 your decision, your vote being the difference between
8 whether or not Mr. Blackwell lived or died?

9 A I think it's very serious, my vote would be.

10 Q I just want to know what your thoughts are if you --
11 that would be very serious?

12 A Yes, sir, I think it's very serious.

13 Q Absolutely. Thank you, Mr. Lowe.

14 One second?

15 THE COURT: Anything further?

16 SOLICITOR BARNETTE: Just one follow-up thing, Your
17 Honor, I just want to---

18 THE COURT: It needs to be new matter.

19 SOLICITOR BARNETTE: Yes, sir.

20 EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q One thing to really -- just to clarify from there.

23 A Yes, sir.

24 Q We do have to prove aggravating circumstances, and even
25 if they prove mitigating circumstances you could still find

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1 the death penalty.

2 You understand that?

3 A Yes, sir.

4 Q Okay.

5 A I still understand.

6 Q Thank you, sir.

7 Thank you, Your Honor.

8 THE COURT: Anything to follow up on that question?

9 MR. YOUNG: No, Your Honor.

10 THE COURT: All right, sir, I'm gonna ask you to step
11 back into the jury room. I'll be calling you back shortly.

12 THE WITNESS: Okay.

13 THE COURT: Thank you, sir.

14 (WHEREUPON, the following takes place outside the
15 presence of the juror.)

16 THE COURT: Defense position?

17 MR. YOUNG: He's qualified, Your Honor.

18 THE COURT: State.

19 SOLICITOR BARNETTE: State agrees.

20 THE COURT: All right. Bring him back in.

21 (WHEREUPON, the following takes place within the
22 presence of the juror.)

23 THE COURT: Have a seat there again, sir. That didn't
24 take long, did it?

25 All right. Now, let me explain to you where we are.

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1 At this point in time you've been determined to be qualified
2 as a possible juror in the case. That doesn't mean you're
3 on the jury panel. That means your name will go on the list
4 from which the jury is selected.

5 You understand that?

6 THE WITNESS: Yes, sir.

7 THE COURT: Now, the process that we're going through,
8 as you can tell, it's taking a while.

9 THE WITNESS: Yes, sir.

10 THE COURT: So, it's gonna be a few days before we
11 complete the process, and, at that point in time, we're
12 going to get back in touch with everyone and let them know
13 their status, where you are, whether you, you're gonna be
14 coming back from jury duty or not coming back from jury
15 duty.

16 Until that occurs, my instructions to you concerning
17 your behavior, when you leave the courthouse, is gonna be
18 the same that you got earlier. Don't try to gather any
19 information on your own. Don't listen to, watch, or read
20 media reports. Don't discuss this case with anyone. Don't
21 allow anyone to discuss it with you.

22 Do you understand those instructions?

23 THE WITNESS: Yes, sir.

24 THE COURT: Now, I'm going to give you -- the clerk's
25 gonna give you a sheet of paper to remind you of some

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1 things, if you're called back for jury duty, you'll need to
2 bring with you some clothing maybe to last a little longer
3 than a week. If they're any medications, if you take any
4 types of medication, that sort of thing. Whatever personal
5 items you think you need, and it reminds you of some things
6 you might need to bring. So, you need to bring that with
7 you when you come back because, if you were selected on the
8 jury, you'll be going into sequestration at that point in
9 time.

10 Do you understand that?

11 THE WITNESS: Yes, sir.

12 THE COURT: Now, in that regard, it's okay for you to
13 talk about -- talk to family or your employers and make
14 arrangements for the fact that you might be away for about a
15 week or better.

16 Okay?

17 THE WITNESS: Yes, sir.

18 THE COURT: Now, I'll tell you, once we start the trial
19 of the case, we go seven days a week or whatever it takes to
20 complete the trial of the case. So, we, we try to get it,
21 get it to go in a continuous fashion as we can so there's
22 not any break-ups and things like that. So, we'll be trying
23 to get down to business as we go along there.

24 THE WITNESS: Okay.

25 THE COURT: I expect it will be a little more than a

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1 week for the case to be tried.

2 Now, you understand my instructions?

3 THE WITNESS: Yes, sir, I do.

4 THE COURT: Okay. And you understand you're still
5 under the restrictions that I placed you under?

6 THE WITNESS: Yes, sir.

7 THE COURT: So, at this time the clerk is going to give
8 you the sheet. The bailiffs will check you out. We'll be
9 back in touch with you as to what you do next.

10 All right. Thank you, sir.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Appreciate it.

13 (WHEREUPON, the following takes place outside the
14 presence of the juror.)

15 THE COURT: All right. Court's gonna take a short
16 recess. Court's in recess for about five to ten minutes.

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

18 THE COURT: All right. State ready to proceed?

19 Mr. Barnette, State ready to proceed?

20 SOLICITOR BARNETTE: State's ready, Your Honor. Sorry.

21 THE COURT: Defense ready?

22 MR. YOUNG: Yes, Your Honor.

23 THE COURT: All right. I believe the next gentleman is
24 Donald Patterson.

25 THE BAILIFF: Yes, Your Honor.

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1 (WHEREUPON, the following takes place within the
2 presence of the juror.)

3 DONALD PATTERSON, having been previously
4 sworn, testified as follows:

5 EXAMINATION

6 BY THE COURT:

7 Q Mr. Patterson, have a seat there in the witness stand.
8 Thank you, sir.

9 A Thank you.

10 Q Your name is Donald G. Patterson, is that right?

11 A Yes, sir.

12 Q All right. Mr. Patterson, this afternoon we're going
13 to be going over some things with you, asking you some
14 questions, and I want to thank you very much for your
15 cooperation so far. I know it's been a lot of hurry up and
16 wait and I apologize to you about that, but that's just part
17 of the way things work sometimes, and I thank you for your
18 cooperation thus far.

19 Now, yesterday, when you left the courthouse, I'd given
20 you some instructions concerning how you were to behave
21 while you were away from the courthouse.

22 Have you been able to follow my directions?

23 A Yes, sir, I have.

24 Q Okay. Now -- excuse me.

25 So, I take it no one has tried to contact you about

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1 this case?

2 A No, sir.

3 Q And you've not the -- discussed the case with anyone or
4 had anyone discuss it with you?

5 A No, sir.

6 Q All right. Now, we're simply here to gather some
7 information that will assist us in selecting a jury. We're
8 not selecting a jury today. We're selecting those who might
9 be qualified to be on the list for jury selection. So,
10 that's where we are in the proceedings.

11 We're gonna ask some questions, and I will tell you
12 there are no right answers and there are no wrong answers to
13 my questions. There are only truthful answers, and what
14 we're asking you to do is to tell us the truth about the
15 things we're asking about. Yesterday you took an oath to
16 tell the truth.

17 Do you remember doing that?

18 A Yes, sir.

19 Q I'll remind you that you're still under oath at this
20 time and you agree to that?

21 A Yes, sir, I do.

22 Q Okay. Now, since we -- excuse me. The first question
23 I have for you, have you ever participated in any blog or
24 Internet site or, or place where issues were discussed,
25 where the issue discussed might of been the death penalty?

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1 A No, sir, I haven't.

2 Q Have you ever engaged in any political activities, and
3 by that I mean such things as political demonstration or
4 letter writing campaign to representatives that are in the
5 Legislature, anything of that nature, where you tried to
6 politically discuss the issue of the death penalty?

7 A No, sir, I haven't.

8 Q Are you the kind of person, Mr. Patterson, who could
9 put aside anything that you may have in your knowledge or
10 know about or learn from any source outside of the courtroom
11 that might have a bearing on the case that's being tried?

12 Could you put those things aside and decide a case
13 strictly based upon the law and the evidence that was
14 presented during the trial?

15 A Yes, sir, I could.

16 Q Now, back in the jury room I had a list of people,
17 about three or four pages. I don't know how long it got,
18 but it got pretty long.

19 A 149.

20 Q 149.

21 You counted them?

22 A Yes, sir.

23 Q You had plenty of time back there.

24 A Yes, sir.

25 Q Okay. Now, as to those people that were on that list,

Individual Juror Qualification

1 is -- did you see anybody on there that you may have ever
2 been related to by marriage or that you're related to by
3 blood?

4 A No, sir, I didn't.

5 Q All right. Was there anybody on that list that you may
6 of had some business or close social or personal
7 relationship with?

8 A There was one name I recognized on the list.

9 Q Yes, sir.

10 A Deanna Burgess.

11 Q All right.

12 A She attends the church I attend.

13 Q I see.

14 Okay. Well, now, I don't know if all those people are
15 gonna testify. I suspect they're not all gonna testify, but
16 they're listed as possible witnesses, and so we're gonna
17 assume that they all may testify including Ms. Burgess.

18 So, let's assume this. Let's assume you're sitting on
19 the jury panel, and let's say Ms. Burgess happened to be a
20 witness about some fact or issue or something involved in
21 the case, and I don't know what her testimony might be, but
22 let's say she testified.

23 would the simple fact that you knew her, would that
24 affect your ability to be fair and impartial to both sides
25 in the case?

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1 A It would not.

2 Q So, you could be impartial?

3 A Yes, sir, I could.

4 Q Okay. Now, sir, I'm going to get into some questions
5 now that will be a little bit more personal in nature. I'm
6 gonna be asking you about some things you might believe or
7 things or beliefs you may have or values you have, things of
8 that nature. I want to tell you that we're not trying to
9 invade your privacy, but I do need to get answers to these
10 questions cause they're important questions in jury
11 selection in this case, and so I hope that you're secure
12 enough in your opinions and what you're gonna tell me that
13 you won't feel threatened by this questioning.

14 Am I correct in saying that?

15 A Yes, sir.

16 Q All right. Now, I'm gonna tell you that, when we get
17 into the questions, one of the things we're gonna ask about
18 is the death penalty.

19 Are you aware that's a possible issue in this case?

20 A I understand that.

21 Q Okay, sir. And because of that, the -- it could be an
22 issue in the trial and we're gonna talk about it, but let me
23 explain something to you about this process first. In this
24 case, the defendant has been charged with, with two
25 particular crimes. One of which is charged with murder.

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1 Now, the way this particular case will be handled,
2 there will be a charge, a trial concerning the guilt phase
3 of the trial, and, at that time, the jury that's picked will
4 be deciding whether the defendant is either guilty or not
5 guilty of the crimes charged.

6 Now, once that decision has been made, if the verdict
7 on the charge of murder turned out to be guilty, since the
8 State is requesting the death penalty, there would be a
9 separate trial conducted concerning the possible penalty,
10 and the choices at that second trial would be either life
11 imprisonment without parole or the death penalty.

12 So, do you understand that this would be a two phase
13 trial?

14 A Yes, sir.

15 Q Now, I told you just a minute ago, some of the
16 questions I'm gonna ask you may involve issues concerning
17 the death penalty, and, to a certain degree, we're putting
18 the cart before the horse because we don't know the result
19 of that first trial.

20 A Right.

21 Q I don't even know if we'll get to that second trial, we
22 possibly could, but I don't know that that will happen.
23 That'd be up to the jury to decide. But I will tell you
24 that this is the only opportunity that we have to interview
25 witnesses -- I mean not witnesses, but jurors. We can't

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1 stop the case in the middle of that trial and start
2 reinterviewing the jurors that are already sitting. So, we
3 will talk to you some about the penalty phase even though
4 we're not to that point in the case.

5 Do you understand that we're kind of putting the cart
6 before the horse?

7 A Right.

8 Q And I will tell you that Mr. Blackwell, the defendant,
9 is presumed, under the law, to be innocent of the charges
10 that are brought against him. So, the fact that we're
11 talking about the penalty phase at this early stage of the
12 proceeding doesn't indicate anything about him or his case
13 in this matter. It's simple the only time that we're gonna
14 have to take care of these discussions. We're gonna do that
15 now.

16 Do you understand that?

17 A Yes, sir, I understand.

18 Q Okay. Now, I'm gonna ask you to, to imagine that you
19 are a juror in a criminal case. Not this particular case.
20 This will be any criminal case. You've been selected for
21 jury duty and you're here on a criminal case.

22 I'm gonna ask you, if you were a jury in a -- juror in
23 a criminal case, would you be willing to listen to the law
24 as given to you by the judge?

25 A Yes, sir.

Individual Juror Qualification

1 Q All right. Now, would you be willing to accept that
2 law and apply that law to the facts as the facts are
3 determined by the jury?

4 would you be willing to apply the judge's law to those
5 facts?

6 A Yes, sir.

7 Q Now, would that be true even if, once you heard the
8 law, the judge's given the law, what we call charging the
9 law to the jury, if the judge was charging the law to the
10 jury, and you realized, at some point in time, that you
11 might not disagree -- might not agree with everything the
12 judge said, in other words, there might be some part of the
13 law you disagreed with, even if you had a disagreement
14 though about what the law ought to be, could you take the
15 law, as the judge gave it to you, and apply it to facts and
16 thereby reach a verdict based on that law?

17 A Yes, sir, I could.

18 Q All right. Now -- excuse me.

19 Now, if you were a juror in this case, the Blackwell
20 case, would you be able and willing to set aside any
21 information or knowledge that you might have from any source
22 whatsoever that might pertain to any issue in this case,
23 anything you may have heard or seen or read, and, and decide
24 the case purely upon the law and the evidence presented
25 during the trial?

Individual Juror Qualification

1 A Definitely.

2 Q Now, as mentioned before, the -- a defendant, in every
3 criminal trial, is presumed to be innocent, and, therefore,
4 the defendant, in a criminal trial, never has to prove
5 himself innocent cause the presumption is that he's
6 innocent.

7 You understand that concept?

8 A Yes, sir.

9 Q Now, next I want you to -- the next concept I want to
10 talk to you about is the fact that, in a criminal trial, the
11 State has the only burden of proof. In other words, the
12 State has the burden of proving the allegations that are in
13 the indictment, the charge, by proof beyond a reasonable
14 doubt. Because the defendant is presumed to be innocent,
15 he's not required to prove anything.

16 So, do you understand that the State has the only
17 burden of proof in a criminal trial?

18 A Yes, sir, I do.

19 Q Now, I'm gonna ask you, let's say you were on a jury
20 sitting on a criminal case, and you've heard all the
21 evidence that's been presented, the law's been given to you,
22 and, once you've considered the evidence and the law that
23 was presented to you, if you found that there was a
24 reasonable doubt as to the defendant's guilt, would you be a
25 person who could find a defendant not guilty of a crime?

Individual Juror Qualification

1 A If there was reasonable doubt, yes, sir.

2 Q Okay. And by the same token, if you were sitting on
3 that particular trial, and you found that the defendant --
4 the evidence indicated or you found the evidence proved that
5 the defendant was guilty beyond a reasonable doubt, could
6 you find the defendant guilty of the crime?

7 A Yes, sir, I could.

8 Q So, are you telling me that you could find, find a
9 defendant either guilty or not guilty, but that would be
10 based upon the evidence and the law as given to you during
11 the trial?

12 A Based on the facts.

13 Q Okay. All right. And the law the judge gives you?

14 A Right.

15 Q Is that true?

16 You'd apply that?

17 A Yes, sir.

18 Q And do you believe, just because someone has been
19 accused of a crime, arrested, or indicted, that they must
20 automatically be guilty?

21 A I don't believe that.

22 Q Okay. Now, let's talk a little bit -- I told you we
23 would get to the point where we were gonna be talking about
24 the death penalty, and I will tell you that, in most
25 criminal cases that come before this, this Court, once a

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1 person is found guilty of a crime, the judge normally
2 decides the sentence. The jury doesn't get into sentencing
3 of a defendant.

4 An exception to that rule is a case just like the one
5 that we're in. That's where the State is seeking the death
6 penalty, and that exception to the rule is that when the
7 death penalty is being sought, the jury decides guilt or
8 innocence like it would in a normal case, but then that same
9 jury would go forward, based on any new evidence that the
10 parties wish to bring in in that second phase, they would
11 decide then the possible or potential penalties that should
12 be, and the penalty choices are life imprisonment without
13 parole or the death penalty.

14 So, do you understand that this is an exception to the
15 general rule --

16 A Right.

17 Q -- what we're doing?

18 A All right now. Now, under those circumstances that I
19 talked to you about, that separate proceeding, and I'll call
20 it either a penalty phase or a sentencing phase of the
21 trial, that, that second phase of the trial is governed by a
22 statute in our state that sets out the kinds of things that
23 a, a jury -- the State could prove or the defense can prove
24 in that kind of a, of a proceeding. And in that particular
25 proceeding, the types of evidence that, that can be

Individual Juror Qualification

1 presented is evidence on what are called aggravating
2 circumstances.

3 Now, aggravating circumstances, that, that word, it's a
4 word that not everybody uses everyday, but aggravating means
5 the State would be allowed to present evidence as to the
6 factors which might make the crime of murder seem to be
7 worse or more severe justifying a higher level of
8 punishment.

9 So, you understand what an aggravating---

10 A Yes.

11 Q ---circumstance is?

12 A I do.

13 Q Also, the defense would have the right to bring in
14 evidence of mitigating circumstances. That's factors that
15 might either lessen the, the offense itself or might be
16 factors that, that a jury should consider in whether or not
17 the defendant should be subject to the death penalty or not.
18 So, there's a lot of different factors. In fact, it's been
19 defined as any factor a jury thinks is properly considered.
20 In mitigation, the jury can consider those factors. So, we
21 have aggravating evidence to make, to make it look worse or
22 be worse, and mitigating circumstances to somehow lessen or
23 excuse the level of the crime or the penalty for the crime.

24 So, you understand what evidence would come in?

25 A I do.

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1 Q Now, once the evidence had been presented, it would be
2 up to the Court to instruct the jury to consider the
3 evidence, aggravation and mitigation, and then make a
4 decision as to the appropriate punishment.

5 So, do you understand the purpose of the hearing and
6 what would be done?

7 A Yes, sir, I do.

8 Q Now, I want to put yourself -- I want you to put
9 yourself in a situation. Let's say that you were selected
10 as a juror on a death penalty case, and that jury had heard
11 the evidence in the guilt phase of the trial. Based upon
12 the evidence that it heard, it then goes back into
13 deliberations and it decides that the defendant is, in fact,
14 guilty of murder. So, the fact or the events of murder has
15 been proven at this point in time. As I told you, if you
16 were in that kind of trial, then that same jury would be
17 coming back into the courtroom for another hearing to
18 determine the penalty to be assessed.

19 So, do you understand that you're on the jury --

20 A Yes, sir.

21 Q -- a guilty verdict has been issued on murder. You're
22 about to walk back into the courtroom with your fellow
23 jurors to start the hearing concerning sentencing.

24 Now, I had a piece of paper back in the jury room that
25 described three different types of jurors.

Individual Juror Qualification

1 Do you remember that piece of paper?

2 A I do.

3 Q All right. Now, I'm gonna remind you of those, those
4 people that were on there so that I'm sure you and I have an
5 understanding of what jurors we're talking about, and I
6 won't use the exact words that were on that paper, but I
7 think you'll see that I'm talking about the same types of
8 jurors.

9 The first type of juror that was on the paper is
10 somebody who, before they walked into the door to the
11 courtroom for that second, that second hearing has already
12 made up their mind. That person believes or has the belief
13 that the death penalty is the most appropriate penalty for
14 anytime someone is convicted of a murder. So, in every
15 case, that juror is going to vote or decide the case in
16 favor of the death penalty regardless of any facts or
17 circumstances.

18 Now, the second type of juror has also made up his or
19 her mind. That means that that juror has decided that the
20 State is never justified in taking a person's life in
21 response to the commission of a crime. So, that juror is
22 decided that they will always vote for the death penalty.
23 No matter how severe the crime might be, that person will
24 always vote for life imprisonment without the possibility of
25 parole.

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1 Now, the third type of juror on that sheet of paper is
2 a juror who hasn't made up their mind yet. They don't know
3 what they're going to do. That particular juror is going to
4 come into the courtroom and listen to the evidence and the
5 testimony on both sides, both the things that make it worse
6 and then also listen to the mitigating circumstances. And
7 after hearing both sides of the evidence, and after weighing
8 it, would make a decision as to the appropriate penalty,
9 whether it be life without parole or death.

10 Do you understand the three different kinds of jurors
11 we have?

12 A I do.

13 Q All right. Now, as -- using those three jurors as an
14 example, which one of those most likely or best describes
15 how you would be in that situation?

16 A I think it would definitely be the third one.

17 Q So, you would definitely be the third person?

18 A Yes.

19 Q What that tells me is that you, you would study the
20 facts and the circumstances and the evidence, and if, after
21 you have heard the evidence on, on the sentencing phase, if
22 you thought that the death penalty was warranted given all
23 the facts, the aggravation and mitigation, then you could
24 find for death?

25 A I could.

Individual Juror Qualification

1 Q Now, by the same token, if you weighed all the
2 evidence, the aggravating and mitigation, and you found that
3 the death penalty was not justified, not warranted, then you
4 could sentence someone to life in prison without the
5 possibility of parole?

6 A Yes, sir, I could.

7 Q So, that means you could make a decision either way,
8 but it would depend on both the aggravating circumstances
9 and the mitigating circumstances and how you determined that
10 to be, is that correct?

11 A Right.

12 Q All right. All right. Now, if you were to be selected
13 on the jury, I have entered a sequestration order in this
14 case. What that means is that, once the jury is impaneled,
15 they'll be kept separate throughout the trial and be staying
16 at a local hotel. I think the Marriott's gonna be in use
17 for this case.

18 During that particular time, the State would pay for
19 all meals, travel. They would get you back and forth. In
20 other words, you'd be taken care of there during the trial
21 at the county's expense. Also you will receive jury
22 compensation as set by law. It's not as much money as you
23 ought to be paid, but it's all the law allows.

24 So, there would be some compensation, and then there
25 will also be a -- some money for travel back and forth from

Individual Juror Qualification

1 the courthouse.

2 So, you understand how that would work?

3 A Yes, sir, I do.

4 Q Now, my question to you is if you were placed in that
5 situation, if you were sequestered, would the -- that fact
6 pose a serious risk of danger to either -- to your health or
7 your personal well being?

8 A No, sir.

9 Q Now, also I'd like to know is, if you were in that
10 situation, would that fact pose a serious risk of danger to
11 your health or well being or to anyone who might be
12 dependent upon you for their health or well being?

13 A I don't think so.

14 Q Okay. Now, I'm gonna ask you to ask -- answer some
15 questions from the attorneys. They're gonna ask some
16 questions, and so, at this point in time, we'll proceed with
17 that.

18 Mr. Bulsa, do you have this one?

19 SOLICITOR BULSA: Yes, sir.

20 THE COURT: All right. Mr. Bulsa's gonna proceed first
21 for the State.

22 EXAMINATION

23 BY SOLICITOR BULSA:

24 Q How you doing, Mr. Patterson?

25 A Okay.

Individual Juror Qualification

1 Q I'm Derrick Bulsa and I, I attend church at First
2 Baptist too.

3 A Okay.

4 Q Do you recognize me?

5 A I think I've seen it a time or two.

6 Q Okay. It's a big church.

7 A Yes, it is. Seven thousand members.

8 Q Okay. And you take care of the grounds there?

9 A I do. I take care of the facilities.

10 Q All the buildings and all?

11 A Buildings, transportation, maintenance.

12 Q Okay. That's a big job, isn't it?

13 A Yes, it is.

14 Q I appreciate you doing that.

15 A Thank you.

16 Q Now, you put on your juror information form that you
17 have a son-in-law who's a deputy.

18 A Yes, I do.

19 Q Who is that?

20 A It's Sean Roberts. He's the SRO at Dorman High School.

21 Q Okay. Now, have you talked with him about any of these
22 cases?

23 A No.

24 Q Okay. Now---

25 A I didn't know anything about this case till yesterday

Individual Juror Qualification

1 morning.

2 Q Okay.

3 A I looked back on those dates and we were on vacation
4 when this happened --

5 Q Okay.

6 A -- and I didn't really know anything about it.

7 Q Okay. So, you've got an open mind?

8 A Yes, sir.

9 Q And the judge did a great job of going over the types
10 of scenarios.

11 A He did.

12 Q And -- well, we're trying to get jurors that can keep
13 an open mind. Once guilt is decided, can they go into a
14 sentencing phase with an open mind and listen to both sides.

15 A Right.

16 Q And can you do that?

17 A I definitely could.

18 Q And would you weigh both sides in making your
19 decision---

20 A Yes.

21 Q ---as to what the penalty should be?

22 A Yes, sir.

23 Q Okay. Have you ever given much thought to the death
24 penalty?

25 A Not a lot.

Individual Juror Qualification

1 Q Okay.

2 A I, I -- I'm sure there are crimes or have been crimes
3 that deserve the death penalty, proven, and whatever, but
4 it's a very serious penalty, and I think you really need to
5 think hard and long about it, and, you know, when you do
6 make sure everything is properly (sic) and the law was
7 applied.

8 Q Okay. So, you wouldn't just look at say one side and
9 say the aggravating circumstance without considering the
10 mitigating circumstances?

11 A No, I would not.

12 Q Okay. So -- in this case, the alleged victim is a
13 young child.

14 A Okay.

15 Q Okay. Now, with that information, coupled with the
16 mitigating circumstances, could you give the defendant a
17 fair trial?

18 A I could.

19 Q Okay. All right. Mr. Patterson, thank you. That's
20 all I have.

21 THE COURT: Mr. Young, your, your juror.

22 MR. YOUNG: Thank you, Your Honor.

23 EXAMINATION

24 BY MR. YOUNG:

25 Q Afternoon, Mr. Patterson.

Individual Juror Qualification

1 A How you doing?

2 Q I'm gonna follow up real quick about your son-in-law --

3 A Yes, sir.

4 Q -- the sheriff.

5 Do you know that they'll be a number of police officers

6 who---

7 A Right.

8 Q ---testify in any criminal case?

9 A Right.

10 Q would that relationship with your son-in-law cause you

11 to judge the credibility of an officer different than you

12 would another witness just because of they're in law

13 enforcement?

14 A No, it would not.

15 Q Or, or the other way, I guess like hold it against him

16 if it's your son-in-law?

17 A He's a son-in-law.

18 Q Okay. He's a good son-in-law?

19 A He's a good one.

20 Q Okay. As a son-in-law, I like to check in.

21 You also indicated that you were under the care of a

22 physician?

23 A well, I -- a normal, my normal physician. I've -- I

24 have Type II Diabetes.

25 Q Okay.

Individual Juror Qualification

1 A But I just go every three months I attend -- I mean I
2 go see the doctor or whatever, but it's under control.

3 Q No, no concerns there?

4 A No.

5 Q Okay. All right. Well, let's talk a little bit about
6 your views about the death penalty.

7 A Okay.

8 Q Can you tell me a little bit about how you feel about
9 the death penalty?

10 I think you started to say that if it was properly
11 applied, you need to make sure that the law is properly
12 applied, and that you were kind of in agreement with the
13 death penalty.

14 A Never been on a death penalty case. You know, I would
15 have to, how you said, the judge is, you know, very
16 thoroughly explained what was going on---

17 Q Yes, sir.

18 A ---in applying the law is the main thing that my job is
19 to make sure that the law is applied, and after it's
20 weighing the mitigating circumstances and the -- both
21 circumstances, you know, I think that would be my job to do,
22 and, you know, but, like I say, death penalty is a very
23 serious thing and it's something you really need to
24 consider.

25 Q And if you were deciding the law, you got to decide

Individual Juror Qualification

1 whether we were gonna have a death penalty or not have a
2 death penalty, do you think that you would have a death
3 penalty?

4 A I think death penalty is probably a deterrent, I'm sure
5 it is, to a lot of cases. But if I was in charge, and if I
6 was in law, I mean I think I would have things the way they
7 are.

8 Q Okay. So, the way that y'all -- we're talking about
9 the death penalty for a murder case, right?

10 A Well, you don't apply the death penalty to all murder
11 cases.

12 Q Right.

13 A Right.

14 Q Right.

15 First things first is you have to have a conviction for
16 murder.

17 A Right.

18 Q Right.

19 And murder, in South Carolina, is the intentional
20 killing of another with malice aforethought.

21 A Okay.

22 Q Okay. And that means that -- and malice is defined as
23 hatred, ill will, or hostility towards another person. The
24 intentional doing of a wrongful act without just cause or
25 excuse and with the intent to inflict an injury under

Individual Juror Qualification

1 circumstances that the law might infer an evil intent.

2 okay?

3 A Okay.

4 Q It's kind of a long definition, but it's they meant to
5 do it. They meant to kill an innocent person. It wasn't
6 self-defense. It wasn't an accident.

7 A Right.

8 Q Okay. They knew what they were doing.

9 A Right.

10 Q Okay. Now, understanding that that's what guilty of
11 murder means --

12 A Yes, sir.

13 Q Okay. Do you have any feelings about the
14 appropriateness of the death penalty or life without parole
15 for somebody who has been convicted of murder?

16 A Again, I say the circumstances, as we talked about, in
17 mitigating circumstances would, would have a, in my mind,
18 would have a, you know, whether it would -- the death
19 penalty be appropriate or not. Again, I think you need to
20 weigh out the mitigating, aggravating circumstances, and
21 just make sure the law is applied.

22 Q Okay. And that's, and that's where I'm just kind of
23 checking in with you as we go through the process.

24 A Yes, sir.

25 Q And -- so, the second process, the second step would be

Individual Juror Qualification

1 the State's presentation of aggravating circumstances, which
2 we've talked about, right, and that would be like the murder
3 of a child would be a possible aggravating circumstance.

4 A I guess it would be, yes, sir. Definitely would be,
5 yeah.

6 Q And all -- if all the jurors found unanimously, beyond
7 a reasonable doubt, the existence of an aggravating
8 circumstance, okay?

9 A Right.

10 Q Then the death penalty becomes an option.
11 Okay.

12 A That's, that's how Judge Couch explained it, yes.

13 Q And then we could talk about stuff called mitigation,
14 mitigating circumstances.

15 A Right, and that's the -- what he explained is that
16 could counteract the aggravating circumstances.

17 Q And I just want to make sure that we're talking about
18 the same thing. That mitigation -- I know the judge
19 explained it to you. He said it could be anything, anything
20 about a defendant that the jury wants to consider as a
21 reason for a life penalty.

22 A I understand that, yes.

23 Q It's -- and I want to make sure we're not, you're not
24 talking about who -- what happened. Guilt's already been
25 decided. This is about---

Individual Juror Qualification

1 A The guilt is done.

2 Q Right.

3 And you're with me on that?

4 A Right.

5 Q That's, that stuff about a person's life and background

6 and how --

7 A Right.

8 Q -- they were as a child and how they are as an adult --

9 A Right.

10 Q -- what their future looks like --

11 A Exactly.

12 Q -- are those factors that you---

13 A Those would be mitigating circumstances, correct?

14 Q Yes, sir.

15 A Okay.

16 Q They could be and I'm not trying to say they are. They
17 could be.

18 Is that stuff that would be important to you in
19 determining whether a person lived or died?

20 A Definitely.

21 Q That would be stuff that you could give meaningful
22 consideration to?

23 A I could.

24 Q Now, mitigating circumstances are a little bit
25 different than aggravating circumstances because each juror

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1 gets to decide for himself or herself what's mitigating to
2 them.

3 Does that make sense to you?

4 A It does.

5 Q It doesn't have a burden of proof.

6 A Right.

7 Q If one juror feels it, it's right for them to vote for
8 a life penalty based on a particular circumstance, they're
9 entitled to do that.

10 Is that okay?

11 A Yes, sir.

12 Q That's kind of a protection that the law provides for a
13 defendant who's facing the death penalty.

14 A Right.

15 Q Okay.

16 A Okay.

17 Q Even if they're no mitigating circumstances, even if
18 the defense doesn't present anything that a juror finds
19 mitigating, the jury's still entitled to consider this
20 concept of mercy.

21 A Okay.

22 Q And, in mercy, I don't have a better question to ask
23 about your concept of mercy. So I just kind of ask people
24 do you feel that mercy is something that is sort of freely
25 given or is it -- somebody earned mercy?

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1 A I think, for it to be true, mercy would have to be
2 earned.

3 Q And can you tell me a little bit -- how would somebody
4 earn mercy?

5 A Well, if someone was truly remorseful for something
6 they done, I think that would be a circumstance from -- to
7 allow, for mercy, you know, and you're truly remorseful for
8 something you've done, and, like I said, there were
9 different circumstances in your life or whatever. It could
10 of been -- would definitely be a reason for mercy.

11 Q Okay. At the end of the day, Mr. Patterson, when the
12 jury makes a decision about life and death, you understand
13 that, if all jurors agree that the death penalty is
14 appropriate, that Mr. Blackwell would be put to death?

15 A Yes, sir.

16 Q You don't have any question about that, that your
17 sentence would be carried out?

18 A Yes, sir, if we, if 12 people voted for the death
19 penalty, yes, I understand that.

20 Q And if one person voted for the life penalty, then the
21 life penalty would be given and that's life without the
22 possibility of parole.

23 A Okay.

24 Q You understand that?

25 You don't have any questions about the fact that, in

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1 South Carolina, the life penalty means you die in prison?

2 A Right.

3 Q Do you have any thoughts or concerns about that?

4 A Like I say -- what you're saying is, either way, it
5 doesn't have to be unanimous?

6 Q Right.

7 A The decision?

8 Q Right.

9 A But the---

10 Q The life penalty does not.

11 A Yes.

12 Q If one juror says life, it's the life penalty.

13 A I understand that now.

14 Q And the way that we ask jurors to sort of make this
15 decision about who lives and dies, we kind of call it an
16 individual moral judgment.

17 A Right.

18 Q Okay. And when I say that, what I mean is you've made
19 a decision about what faith is right for you.

20 A Right.

21 Q And that's your personal feelings.

22 A Right.

23 Q Your choice.

24 A Right.

25 Q And you expect other people to respect your personal

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1 decision?

2 A Now phrase that again just to make sure I'm --.

3 Q Sure.

4 You expect other people to respect that choice that
5 you've made?

6 A I would.

7 Q And you recognize that some people may of made a
8 different choice about what faith's right for them?

9 A Right.

10 Q And you respect their right to their own opinion?

11 A I must, yes.

12 Q And if you saw somebody being bullied to give up what
13 they had arrived at as their individual moral judgment,
14 would you stop it?

15 A If -- that would be wrong.

16 Q It would be wrong, right?

17 A Right.

18 Q And you would stop it?

19 A Yes, sir, I would.

20 Q Even if you didn't agree with it?

21 A Yeah, I don't know that I could stop it, but I want to
22 make sure the proper authorities knew about that, you know.

23 Q Well, you could tell the judge.

24 A Right.

25 Q And the judge could stop it.

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1 A Right.

2 Q Just like on the questionnaire, you were asked a
3 question about like if somebody was improperly using race.

4 A Correct. Yes, I did.

5 Q And you said that you would stop it and report it?

6 A I definitely would.

7 Q Thank you, Mr. Patterson. That's all the questions I
8 have right now.

9 A Thank you.

10 THE COURT: Mr. Bulsa, anything further?

11 SOLICITOR BULSA: Just briefly.

12 THE COURT: Yes, sir.

13 EXAMINATION

14 BY SOLICITOR BULSA:

15 Q Mr. Patterson, you seem to have a good grasp on the
16 situation. I just want to ask you a couple things.

17 Do you understand that even if mitigating circumstances
18 are found by the jury, the option of death still exists?

19 A Right. Right.

20 Q Okay. So, you could still fairly consider a death
21 sentence if you found mitigating circumstances?

22 A You're weighing the, you're weighing the two
23 circumstances out, correct.

24 Q So, you could fairly consider life and fairly consider
25 death?

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1 A Right. No problem.

2 Q Thank you, sir.

3 THE COURT: Anything to follow-up, Mr. Young?

4 MR. YOUNG: No, Your Honor.

5 THE COURT: All right, sir. I'm gonna ask you to step
6 back into the jury room just a moment. We'll be calling you
7 back in just a few minutes.

8 THE WITNESS: Thank you.

9 (WHEREUPON, the following takes place outside the
10 presence of the juror.)

11 THE COURT: All right. Defense's position in the
12 matter?

13 MR. YOUNG: He's qualified, Your Honor.

14 THE COURT: State.

15 SOLICITOR BULSA: Agree.

16 THE COURT: All right. Bring him back in.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 THE COURT: All right. Mr. Patterson, that didn't take
20 long. I will inform you that you are -- have been qualified
21 to serve on the jury. Now, that doesn't mean you're on the
22 jury. What that means is you're on the list for which the
23 jury will be picked.

24 THE WITNESS: Correct.

25 THE COURT: All right. Now, where we go from here is

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1 this process is taking longer than I expected. So, it's
2 gonna be a little while before we get enough jury's
3 qualified to be able to pick a jury. We got to get a
4 certain number before we can start choosing a jury. So,
5 it's gonna be a few days probably before we actually get
6 this process completed.

7 Now, during that time period, I'm going to instruct you
8 that the instructions I gave you yesterday continue. You
9 should not discuss the case with anyone. You should not
10 read, watch, or listen to any media reports. You should not
11 attempt to gather any information about the case on your
12 own, and if someone tries to contact you or talk to you
13 about the case, please report that to the Court -- the
14 Clerk's Office will need to know about that.

15 You remember those instructions?

16 THE WITNESS: I do.

17 THE COURT: Can you follow those instructions?

18 THE WITNESS: I can.

19 THE COURT: All right. Now, we're gonna give you a
20 sheet?

21 You got that sheet of paper?

22 THE CLERK: Yes, sir.

23 THE COURT: Go ahead and give it to him.

24 That's gotten information from the Clerk's Office, all
25 kinds of things that you might need to bring if you're

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1 called back to serve on a jury panel.

2 I'll point out to you the case, once we start, we will
3 continue with the trial until we finish it. We go right
4 over the weekend, whatever we have to do to get the case
5 done. We do it continuously so we can take as little time
6 out of your life as we can. But it may take more than a
7 week is what I'm saying.

8 So, when you come back, you may need to bring clothing
9 for that length of time. Now, where you're staying, you'll
10 have laundry service available. So, if we go longer than
11 that, we could take care of that situation.

12 You indicated you might be diabetic. So, if there's
13 any medications you might need, we'll be glad to take care
14 of those things for you. Just bring it with you so that we
15 can be sure that it's properly administered.

16 Now, one exception to my rule about not talking about
17 the case. You can talk to your employer or talk to your
18 wife and let them know that if you happen to get selected,
19 that you're going to be sequestered, and make arrangements
20 with them for whatever needs to be done at work or at home
21 or be sure things continue during your absence. So, you can
22 talk to them about that, but don't talk about the case.
23 Don't talk about the issues. Just say that I may be on a
24 jury and I may be gone for a little while.

25 THE WITNESS: This could happen in the next couple,

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1 three days?

2 THE COURT: I expect we will be in a position to give
3 you some information within the next few days.

4 THE WITNESS: Okay.

5 THE COURT: I can't tell you exactly when because it
6 will depend on how long this questioning process takes. So,
7 I've kind of given up on predicting it. I'm gonna just, I'm
8 just gonna try to get it done and done properly. So,
9 that's, that's where we are.

10 okay. So, I'll just let you know. But you'll get a
11 call from us. Until then, my instructions still apply, and
12 so that should take -- if you have an issue or something
13 that comes up, you got the number for the Clerk's Office,
14 you call and let us know something -- this problem.

15 THE WITNESS: Okay.

16 THE COURT: Okay. At this time they're gonna check you
17 out and you're free to go pursuant to my instructions.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you, sir.

20 (WHEREUPON, the following takes place outside the
21 presence of the juror.)

22 SOLICITOR BARNETTE: Your Honor, can we take up one
23 matter before the next juror's called in?

24 THE COURT: I don't know that I'm gonna call another
25 one out.

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1 SOLICITOR BARNETTE: Oh, okay. I'm sorry. I just saw
2 you look up.

3 THE COURT: No, we're gonna break for the evening.
4 we'll start back in the morning at nine o'clock.

5 Court is in recess until that time.

6 SOLICITOR BARNETTE: May we approach, Your Honor?

7 THE COURT: Please do.

8 (WHEREUPON, a bench conference was held at this time.)
9

10 (WHEREUPON, Court was in recess for the evening.)
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1 wednesday, March 5th, 2014

2

3 THE COURT: All right. The documents are in there?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Okay. State ready to go forward this
6 morning?

7 SOLICITOR BARNETTE: State's ready, Your Honor.

8 THE COURT: Defense ready?

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: All right. Let's bring in Donna Leiter I
11 believe is her name.

12 (WHEREUPON, the following takes place within the
13 presence of the juror.)

14 DONNA LEITER, having been previously
15 sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Ma'am, have a seat right here for me.

19 A (Witness complies.)

20 Q Thank you very much.

21 Your name I believe is Donna -- is it Leiter?

22 A Leiter.

23 Q Leiter.

24 Okay.

25 A Leiter.

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1 Q I'll get it right. You may want to slide back a little
2 bit because I'm gonna do most of the talking to you to begin
3 with, and then we'll -- that kind of blocks off the view
4 right there.

5 A Okay.

6 Q So, if you don't mind.

7 First of all, I want to thank you for your patience
8 with us. We've been -- I've missed on my timing a good bit,
9 and that's -- I apologize to you, but we're trying to get a
10 little better about that.

11 I want to let you know that this morning what we're
12 gonna do is ask some questions and go over some matters with
13 you that pertain to the selection of the jury. I realize
14 that where you sit is an uncomfortable spot. I want you to
15 get as comfortable as you can --

16 A Okay.

17 Q -- because I'm gonna tell you the questions we're going
18 to ask today, there are no right or wrong answers to them.
19 We're not looking for any particular answer. We're just
20 looking for your answers.

21 A Okay.

22 Q We're looking for an honest answer from you, and, in
23 that regard, I want to remind you that you took an oath.
24 That oath was to tell the truth to the Court, and that oath
25 still applies to your communications with the Court.

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1 Do you understand that?

2 A Yes.

3 Q Do you agree that's true?

4 A Yes.

5 Q Okay. Now, ma'am, we're -- I want to check on one
6 thing.

7 Since I talked with you earlier, and it seems like a
8 long time ago now, I believe -- yes, it was. On Monday. We
9 went over some things and I gave some instructions to the
10 entire jury panel and to everybody as to how you would
11 behave during the time that you're not in the courthouse and
12 specifically I was talking about not communicating about the
13 case, not reading, watching, or listening to media reports
14 about the case. Don't allow anybody to discuss the case
15 with you and report anybody who might contact you.

16 Have you been able to follow my instructions so far?

17 A I have. I've not watched the news or anything like
18 that. I did not discuss the case. But I, I was on Facebook
19 and I -- there was something from Fox 21 on there.

20 Q Okay. Well, did you read it or did you get rid of it?

21 A I did read it.

22 Q Okay. And can you tell me if the -- did that have
23 information in there that might affect your opinion in this
24 case?

25 A No.

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1 Q Okay. Can you give me the nature of that document?

2 What, what was it talking about?

3 A It was, I guess, the jurors were being selected for the
4 trial.

5 Q Okay. So, it discussed this process here?

6 A Yes.

7 Q The jury selection process?

8 A Yes.

9 Q All right. Well, ma'am, if, if that, if that
10 particular article, would it in any -- well, let me ask you
11 this question. I'll put it this way.

12 Are you the kind of person that could put aside the
13 things that you might have seen or heard thus far about this
14 case and decide this case based solely upon the information
15 that you receive in the courtroom?

16 That would be the evidence and the law that the judge
17 gives to you.

18 A Yes.

19 Q So, you don't believe that particular information would
20 affect your opinion---

21 A No.

22 Q ---in anyway?

23 A No.

24 Q All right. Now, ma'am, I'm gonna ask you some
25 questions. As I said, there aren't any right or wrong

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1 answers to these questions, but I do want your answers.

2 Do you understand?

3 A Okay.

4 Q Now, first of all, have you ever participated in any
5 kind of discussions, Internet chat room, a blog, or anything
6 like that where the subject may have been the death penalty?

7 A No.

8 Q Have you ever been involved in any political activities
9 such as a demonstration or writing letters to a congressman,
10 to a representative about issues involving the death
11 penalty?

12 A No.

13 Q So, you've not been involved in any political activity
14 that would have---

15 A No.

16 Q ---as its subject the death penalty?

17 A No.

18 Q Okay. Now, I had a list back there in the jury room, a
19 long list of names. Maybe three pages long.

20 A Yeah.

21 Q Have you looked over that list?

22 A I did.

23 Q All right. Now, as to the people whose names appear on
24 that list, are you related -- have you ever been related by
25 blood or marriage or -- with anybody on that list?

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1 A No.

2 Q Have you ever had a close social, personal, business
3 relationship with anybody on the list?

4 A No.

5 Q Okay. So, you read it and you didn't see anybody that
6 you---

7 A I didn't---

8 Q ---recognized?

9 A ---see nobody.

10 Q Okay. Those are people who are listed as potential
11 witnesses in this case. I don't, I don't know that all
12 those people will testify, but they could testify. So,
13 that's the reason we wanted to ask you about those people
14 and have you take a look at that.

15 All right. Now, I'm going to ask some questions now
16 about your, your opinions or things of that nature, and you
17 might consider some of these to be personal in nature. And
18 I want to point out to you, and let you know, we're not
19 trying to invade your privacy in anyway, but we do want to
20 get your ideas or your opinions about certain things, and I
21 would hope that you are a secure enough person that that
22 won't threaten you in anyway.

23 Is that correct?

24 A Okay.

25 Q So, you -- can you, can you participate in this

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1 discussion---

2 A Yes.

3 Q ---freely?

4 A Yes.

5 Q Okay. Now, one of the things I'm going to ask you
6 about will be your opinions concerning the death penalty
7 cause the State is asking that that penalty be given in this
8 case, and it's an issue in this case.

9 But I want to point out one thing to you. The way this
10 process is going to work, there's, as the trial goes
11 forward, once a jury is seated, the first phase of the trial
12 or part of the trial will be what we refer to as the guilt
13 phase, and in that particular phase there's two charges in
14 this case. Those two charges would be tried, and a jury
15 would determine whether or not the defendant is either
16 guilty of those charges or not guilty of those charges. If
17 the defendant were to be found guilty on the charge of
18 murder, then we would move to a second phase of the trial.

19 That second phase of the trial is what we refer to as
20 the penalty phase or the sentencing phase. I don't know how
21 you -- some people call it different things, but it would be
22 where the jury then would determine the appropriate penalty
23 and the choices there are life imprisonment without parole
24 or the death penalty. So, those are the -- that's the way
25 this will work. It's a two phase proposition.

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1 I'm going to be talking to you about the death penalty
2 itself a little bit, and I want to point out to you that
3 we've kind of got the cart before the horse here because, if
4 the jury, in that first trial, determines a verdict of not
5 guilty on the charges, we'll never even get to that, that
6 stage of the trial, and that -- you know, that's a
7 possibility.

8 So, I'll just tell you that we're going to be talking
9 about the penalty phase of the trial before we ever really
10 get there, but the reason I'm going over that with you is to
11 point out to you that this is the only chance we'll get to
12 do that. If we waited until a jury was seated in the, in
13 the sentencing, in the penalty, in the, excuse me, in the
14 guilt phase, then we wouldn't be able to get into these
15 things before the next phase starts. The same jury does
16 both cases. So, now's the only time we can discuss this
17 with you.

18 I'll point out to you that Mr. Blackwell, as all
19 defendants are, is presumed, is presumed to be innocent of
20 the charges, and the fact that we're talking about the
21 penalty phase at this point in time should not be taken as a
22 reflection in anyway against him or against his case. It's
23 simply the only time that we have an opportunity to talk
24 about these things with all the prospective jurors.

25 Do you understand what we're doing?

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1 A Yes.

2 Q Okay. Now, I'm going to ask you to put yourself in the
3 position of being a juror in a criminal case, and that's not
4 just -- not this case. Any criminal case. I'm gonna ask
5 you some general questions about how you think you would,
6 you would be able to handle being on a jury in any criminal
7 case.

8 First of all, I'll ask you, if you were a juror in a
9 criminal case, would you be willing to listen to the law as
10 given to you by the judge?

11 A Yes.

12 Q Would you be willing to accept the law as given to you
13 by the judge and then apply that law to the facts as the
14 jury finds the facts?

15 A Yes.

16 Q Now, even though -- now, let me, let me explain to you.
17 Put yourself in the position where the judge is charging the
18 law or giving the law, and as you're listening to it, you
19 might hear something that you don't necessarily agree with.

20 If, if that were to happen, would you still be willing
21 to take the law as the judge gave it to you, disregard your
22 notions about it, but take the law as the judge gives it to
23 you and apply it to the facts as the, as the jury decides
24 it?

25 So, could you set aside your personal beliefs and take

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1 the judge, what the judge gave you as being the law?

2 A As far as the death penalty, like the death penalty
3 part?

4 Q No, I'm talking about in any criminal case. I told you
5 not -- we're not, not, not to put yourself in this case. I
6 want you to put yourself in any criminal case.

7 Let's say if you were sitting on a jury and somebody's
8 charged with shoplifting, somebody's charged with burglary,
9 the judge is reading the law or giving you the law, the
10 question I have for you is if, as you listen to that law
11 being given, you hear something that you don't necessarily
12 agree with, my question is but would you be willing to set
13 your personal beliefs aside but -- and take the law, as the
14 judge gives it to you, and apply it to the facts as the jury
15 determines them?

16 A Yes.

17 Q So, you would be willing to do that?

18 A Yes.

19 Q Okay. Now, in this particular case, and I'm kind of
20 asking you this question already, but I'll, I'll ask it
21 again.

22 In this particular case, would you be able and willing
23 to set aside any information or knowledge that you might
24 have about this case from any source whatsoever, anything
25 you may have heard, seen, or read about the case outside the

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1 courtroom, or even information that you gained so far during
2 this trial?

3 would you be willing to set that information aside and
4 decide the case that was presented to you in this case
5 purely upon the law and the evidence that you hear in the
6 courtroom?

7 A Yes.

8 Q Now, as I mentioned to you before, a criminal defendant
9 is always presumed to be innocent. That's a rule of law in
10 our country. In other words, a, a defendant is never
11 required to prove himself innocent. The law presumes that
12 everyone is innocent.

13 Do you understand that concept---

14 A Yes.

15 Q ---of the law?

16 And, in a criminal case, the State has the -- then has
17 the only burden of proof. The defendant doesn't have to
18 prove anything. The State is the only burden of proof and
19 that is to prove the allegations contained in the
20 indictments by proof beyond a reasonable doubt.

21 Do you understand that concept?

22 A Yes.

23 Q The State is the only one who has the burden of proof.

24 A Yes.

25 Q Okay. Now, now, if you were sitting as a juror, and,

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1 again, I'm not talking about this particular case, I'll be
2 talking about any, any criminal case, would you be willing
3 to listen to the law as given to you by the judge, listen to
4 the evidence that comes from the witnesses who testify
5 during the trial, and based upon what those things are, and
6 based upon the circumstances as you or the jury determines,
7 could you possibly then find somebody not guilty of a crime?

8 A Yes.

9 Q So, is it your -- in other words, you're telling me
10 that it's your belief or your understanding that simply
11 because someone has been arrested, charged with a crime, and
12 even an indictment was issued, even if those three things
13 have occurred, that that doesn't make someone automatically
14 guilty of that crime?

15 A Yes.

16 Q Is that your understanding?

17 A Yes.

18 Q Is that your belief?

19 Is that what you believe, that just because someone's
20 been arrested, charged with a crime or indicted, that
21 doesn't make them automatically guilty of the crime?

22 A Yes.

23 Q Okay. Now, now, on the other hand, if you were sitting
24 on a jury, and, again, I'm talking about any jury, if the
25 evidence convinced you of the defendant's guilt, beyond a

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1 reasonable doubt, would you be able to take the law and the
2 evidence and find someone guilty of a crime?

3 A Yes.

4 Q So, the way I understand what we're telling me is you
5 are telling me that you would be able to, depending upon the
6 strength of the evidence you've heard and upon the evidence,
7 the testimony and what that showed, you would be able to
8 find someone either guilty or not guilty depending on what
9 the evidence and the law was?

10 A Yes.

11 Q Is that your---

12 A Yes.

13 Q ---your position?

14 All right. Now, now I'm gonna get into discussion
15 about the, the penalty involved in this case, and one of the
16 penalties because there's more than one penalty that's
17 possible in this case on the charge of murder. So, we need
18 to -- we're gonna talk about that.

19 I'll tell you that, in most criminal cases, the jury
20 decides whether the person is guilty or not guilty, and then
21 the judge determines, if they're found guilty, what the
22 appropriate sentence is. So, the judge does the sentencing
23 in most cases.

24 There's an exception to that rule, and that's this type
25 of case that we're in right now. In this type of case, as I

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1 told you, we have a phase where we determine guilt or
2 innocence, and then, if the, the defendant is found guilty
3 on the crime of murder, the -- since the State is seeking
4 the death penalty, that same jury comes back and determines
5 the appropriate penalty and the appropriate penalties,
6 there's two choices. There's either, once the person's
7 found guilty, either the death penalty or the penalty of
8 life imprisonment without the possibility of a parole.

9 Do you understand that that would be the two choices---

10 A Yes.

11 Q ---that a jury would be put to in this case?

12 Now, in that separate sentencing procedure, the only
13 determination to be made by the jury is the type of sentence
14 that's going to be given in the case.

15 Now, the State statute that governs the conducting of
16 that second phase of the trial, second hearing, provides
17 that, that there will be evidence presented both concerning
18 what are called aggravating circumstances and also
19 circumstances that are referred to as mitigating
20 circumstances, and there's a list of statutory or
21 aggravating circumstances under the law, and then there's a
22 list of, of mitigating circumstances, but the law allows the
23 jury, a juror to find any mitigating circumstance a jury
24 might want to find. So, you're not limited to that list as
25 far as mitigating circumstances.

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1 Now, the purpose of that hearing is to, is for the jury
2 to be presented that evidence, both the things that are --
3 when I say aggravating, those will be factors that would
4 tend to make the crime of murder more severe, I guess worse,
5 so that a jury might tend to give a worse sentence for that
6 crime. That's what we mean by aggravating circumstances,
7 and there's a list of those aggravating circumstances. Many
8 of them.

9 Then there is what we call mitigating circumstances,
10 and I hope you understand that word means that those
11 circumstances would be factors that would tend to lessen the
12 severity of the crime, that would tend to, perhaps give a
13 jury a reason to give a lower sentence. So, a jury's
14 required to hear both types of evidence during that
15 sentencing phase, but aggravating evidence and mitigating
16 evidence.

17 Do you understand---

18 A Yes.

19 Q ---what we mean by those phrases---

20 A Yes.

21 Q ---cause they're not words that people use everyday and
22 I want to be sure you understand what we're talking about---

23 A I do.

24 Q ---when we refer to those kind of words.

25 All right. Now, once the aggravating and mitigating

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1 evidence has been presented, and that evidence will include
2 some evidence that was in the guilt phase, but it can
3 include new evidence about new matters that weren't even
4 discussed in the guilt phase.

5 Do you understand that---

6 A Yes.

7 Q ---that's how that hearing would be held?

8 Once that evidence has been presented to the jury, the
9 jury would be instructed by the Court to consider both the
10 aggravating circumstances and the mitigating circumstances
11 in reaching a verdict as to the question of the appropriate
12 punishment.

13 So, do you understand the purpose as, as to how that
14 hearing would go?

15 A Yes.

16 Q I want to be sure you got it clear in your mind cause
17 you're not in this situation everyday. I understand that.

18 Now, I want you to, in your mind, put yourself in a
19 position and I'm gonna describe the position to you. So,
20 imagine you being in this spot, okay, this place.

21 You were selected to serve on a penalty in the which
22 the State is seeking the death penalty for a murder. So,
23 you're on, on a jury. That jury has completed the guilt
24 phase of the trial. In other words, there's -- the trial
25 has been completed, the jury has determined that the

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1 defendant was guilty of murder.

2 Okay. So, we're at that stage now where that same jury
3 is going to come back into the courtroom and begin the
4 second phase of that trial, the question deciding
5 sentencing.

6 So, do you understand where I've put you?

7 A Yes.

8 Q So, you're about to walk in through -- let's say
9 through that door right there and come into the courtroom
10 and start that procedure.

11 Now, when you were back in the jury room, I left a
12 piece of paper on the table back there and it has on it --
13 it describes three different types of jurors.

14 Did you read that paper?

15 A I did.

16 Q Okay. I'm kind of gonna go over those three types of
17 jurors with you again so that we've got an understanding,
18 when I talk about juror one, two, or three, you'll know
19 which one I'm talking about.

20 Okay?

21 A Okay.

22 Q Now, the first juror that was listed on that sheet,
23 that juror, before that juror ever comes through the door
24 into the courtroom, is already made up his or her mind.
25 That juror believes that the only appropriate punishment for

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1 someone who is found guilty of a murder is the death
2 penalty. And so that juror, every time that juror might be
3 in that position, will always vote the same way, do the same
4 thing. That juror's decided that matter before they came
5 into the courtroom and that decision was for the death
6 penalty. They believe that's the appropriate thing to do
7 for anybody who commits a murder.

8 The second juror has already made up his or her mind
9 also. That juror believes that the State should never take
10 the life of a person in response to the commission of a
11 crime no matter how serious the crime is. That person
12 doesn't believe that the death penalty is a proper penalty
13 and, therefore, will always vote for the life sentence
14 without parole.

15 Now, the third type of juror doesn't know what he or
16 she is going to do. That juror hasn't made up his or her
17 mind as to what is the appropriate thing to do at that point
18 in time. That juror would have to listen and wait to the
19 evidence, and wait for the evidence to be presented, and,
20 after listening to the evidence that's presented during that
21 sentencing phase, would then make up his or her mind based
22 upon that evidence and the law as charged by the judge.

23 So, do you understand the three different jurors we're
24 talking about?

25 A Yes.

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1 Q Now, if, if I had told you about those three jurors,
2 which one of those three jurors would best describe you
3 before you walked into the courtroom?

4 A The third one.

5 Q The third one.

6 So, you, you're telling me that, depending on the
7 circumstances that are shown to you and the evidence that's
8 presented, that if you felt that the death sentence was the
9 appropriate sentence, after listening to all that evidence,
10 that you could sign a, a verdict sentencing -- providing for
11 a sentence of death?

12 A No.

13 Q You could not do that?

14 A No.

15 Q So, you could never put your name on a---

16 A No.

17 Q ---on a, on a sentence of death?

18 A No.

19 Q Okay. Ma'am, I'm gonna ask you to step outside for
20 just a moment.

21 (WHEREUPON, the following takes place outside the
22 presence of the juror.)

23 THE COURT: I intend to find the juror not qualified.
24 Any objection to that designation from the State?

25 SOLICITOR BARNETTE: None from the State, Your Honor.

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1 THE COURT: Any from the defense?

2 MR. MCGUIRE: We request to examine the juror, judge.

3 THE COURT: All right. Bring her back in. I'll
4 complete the examination.

5 (WHEREUPON, the following takes place within the
6 presence of the juror.)

7 CONTINUED EXAMINATION

8 BY THE COURT:

9 Q All right, ma'am. Have a seat.

10 A (Witness complies.)

11 Q All right. At this time I'm gonna allow the attorneys
12 to ask some questions of you. So, please listen to them and
13 answer the questions as we proceed.

14 SOLICITOR BARNETTE: May it please the Court, Your
15 Honor?

16 THE COURT: Mr. Barnette.

17 EXAMINATION

18 BY SOLICITOR BARNETTE:

19 Q Ms. Leiter, I'm Barry Barnette with Derrick Bulsa
20 representing the case for the State.

21 A Uh-huh. (Affirmative).

22 Q And let me apologize ahead of time. I hate asking you
23 questions. I know it's a very tough spot to be in. So, let
24 me apologize ahead of time if I can to you from there.

25 I notice the judge asked you or whatever.

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1 You, you feel like you could never do the death penalty
2 in that situation?

3 A No. No.

4 Q Okay. And that's from your own strong belief in -- I
5 mean that you believe a life sentence will be the
6 appropriate sentence in this case or any case I guess from
7 that standpoint?

8 A This case -- I mean cause it's not affecting me
9 personally.

10 Q Right.

11 A So --.

12 Q I understand.

13 It has to be something to affect you personally from
14 that standpoint?

15 A Yes. Yes.

16 Q And, obviously, it's a -- substantially affect any kind
17 of judgment you would have in this?

18 What I mean by that is, you would vote -- you would not
19 vote for the death penalty under any circumstance?

20 A No. No.

21 Q Okay. And, like I said, you answered the judge's
22 questions honestly, is that right?

23 A Yes.

24 Q And -- okay. Thank you, ma'am.

25 THE COURT: Mr. McGuire, examination.

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1 EXAMINATION

2 BY MR. MCGUIRE:

3 Q Morning, ma'am.

4 A Morning.

5 Q My name is Bill, Bill McGuire, and I'm one of the
6 lawyers in the case. This is our opportunity to talk to you
7 and ask you some questions.

8 A lot of people have reservations about the death
9 penalty and as they should and it's based on a lot of
10 reasons. Sometimes you read stuff in the paper about people
11 wrongfully being convicted of crimes, that sort of thing.
12 And I just want to explore your views on this. And I'm
13 gonna start with the law because our whole job here is to
14 see if you can just follow the law.

15 Okay. Now, the law in South Carolina never requires
16 the death penalty. It never requires a juror to vote for
17 the death penalty in any case, the worse case or this case.

18 Did you know that?

19 A No.

20 Q Okay. A lot of people think they come to Court and
21 that they might be required to do something they don't want
22 to do. It sounds like that's who you are.

23 A Yes.

24 Q And -- but now you know that a juror is never forced to
25 vote for the death penalty.

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1 Now you know that cause I tell you that, right?

2 A Yes.

3 Q Okay. Knowing that, does that make you feel a little
4 bit better?

5 A Yes.

6 Q Okay. And the way a case like this would work would be
7 you'd have -- the first part of the trial, the guilt phase,
8 and the judge already told you a little bit about that, and
9 that's the traditional do they have the right guy, did he do
10 it, beyond a reasonable doubt, that sort of thing. And then
11 the trial would go into a penalty phase. And it's
12 completely different from a traditional trial because a
13 juror -- a jury would be able -- would be asked to make a
14 decision regarding penalty, and it's the only time the jury
15 really gets to decide that issue, penalty. Normally judges
16 hand out penalty after a trial.

17 And, again, no juror would ever have to vote for the
18 death penalty. And, in fact, the judge would charge the
19 jury that any individual juror, maybe yourself, could vote
20 for the life penalty for any reason, no reason, or mercy
21 alone.

22 Did you know that?

23 A No.

24 Q Does that make you feel better knowing that?

25 A Yes.

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1 Q Okay. And maybe you could consider sitting on this
2 jury now?

3 A Yes.

4 Q Okay. And what we are is we are a country of laws, and
5 this is just to see if you can be a good juror and follow
6 the law.

7 Okay. So, the way the penalty law works is that every
8 juror has a right to vote for the life penalty, okay, and
9 the way -- and it doesn't have to be unanimous like a
10 regular jury. For instance, a juror sitting over here could
11 say, you know, I saw something in the person's growing up
12 that resonated with me and I want to vote for life for that.
13 Somebody over here could say I saw a relationship with his
14 children and that resonated with me. I'm gonna vote for
15 life for that. Somebody over here can say, you know what,
16 after hearing everything, I really just can't put it in
17 words, but, but the judge told me I could just do it for no
18 reason. It just doesn't sit right with me. So, I have no
19 reason, but I'm gonna vote for life.

20 Did you know how it worked?

21 You didn't---

22 A No.

23 Q You didn't know that before coming in here?

24 A No.

25 Q Does that make you feel a little bit better?

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1 A Yes.

2 Q Does it sound like a system you can participate in?

3 A Yes.

4 Q And you can follow the law?

5 A Yes.

6 Q And if you were on the jury, and the judge swore you in
7 as a juror, he would ask you to try the case based on the
8 evidence and the law and set aside personal views.

9 Could you do that?

10 A Yes.

11 Q And if, if the State came with the requisite amount and
12 quality and quantity of the evidence where you and 11 other
13 jurors found that, under the law and the evidence, that the
14 death penalty was appropriate, could you vote for it?

15 A For the death penalty?

16 Q Yes.

17 A No.

18 Q Okay. Okay. Even, even if, under the law, you found
19 that the aggravation circumstances were so strong that it
20 called out for the death penalty, you still couldn't do it?

21 A No.

22 Q Okay. Do you mind if I ask why?

23 A I, I mean I just -- me, me, personally, I could not
24 give that -- the death penalty to someone.

25 MR. MCGUIRE: Okay. If I could have just a second

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1 judge?

2 THE COURT: Yes, sir.

3 (Pause.)

4 MR. MCGUIRE: That's all I have, judge. Thank you so
5 much, ma'am.

6 THE COURT: All right. Anything further from the
7 State?

8 SOLICITOR BARNETTE: Nothing further from the State,
9 Your Honor.

10 THE COURT: All right, ma'am. I'm gonna ask you to
11 step back in the jury room. I'll have you back in just a
12 moment.

13 THE WITNESS: All right.

14 (WHEREUPON, the following takes place outside the
15 presence of the juror.)

16 THE COURT: Defense have a position?

17 MR. MCGUIRE: While she seems to be a lovely person,
18 she's not qualified.

19 THE COURT: All right. State.

20 SOLICITOR BARNETTE: I agree, Your Honor.

21 THE COURT: All right. Let's bring her back.

22 (WHEREUPON, the following takes place within the
23 presence of the juror.)

24 THE COURT: Ms. Leiter, I am going to find that you are
25 not qualified to serve on the jury in this case, and,

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1 therefore, the bailiff's are gonna check you out. You no
2 longer have any responsibility in this matter. You're free
3 to go.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you, ma'am.

6 (WHEREUPON, the following takes place outside the
7 presence of the juror.)

8 THE COURT: The next juror on the list is Ursula Reese.

9 (WHEREUPON, the following takes place within the
10 presence of the juror.)

11 URSULA REESE, having been previously
12 sworn, testified as follows:

13 EXAMINATION

14 BY THE COURT:

15 Q Ma'am, please have a seat.

16 A (Witness complies.)

17 Q Thank you.

18 All right. You are Ursula Reese, is that right?

19 A I am.

20 Q Ms. Reese, first of all, I want to thank you for your
21 cooperation thus far in this process. I know it's a little
22 different than anything you've ever been involved in, and
23 it's a lot of hurry up and wait and I, and I apologize to
24 you. But sometimes that's the nature of these proceedings.
25 Anytime you're involved in an effort to try to find the

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1 truth in matters or to search for the truth sometimes can be
2 slow and deliberate, and that's what we're involved in, and,
3 again, I'm sorry we're making you come and wait and all
4 those kind of things. But hopefully we're gonna get, get
5 down to the point we have now at this point in time, and
6 that is we're going to ask you some questions today. I'm
7 going to ask some questions to begin with. Then I'll give
8 the attorneys to opportunity to ask some questions of you.

9 I understand that the seat that you're seating in --
10 sitting in can be pretty uncomfortable sometimes. But I
11 don't think it will be that way this morning because I'm
12 gonna tell you, there aren't any right or wrong answers to
13 our questions. There's only your honest answers. That's
14 all we, we're looking for.

15 Now, earlier we -- when you were here before, you took
16 an oath. That oath was to tell the truth to the Court.
17 That oath is continuing at this point in time. So, you're
18 still under oath at this time.

19 Do you understand that, ma'am?

20 A Yes, sir.

21 Q And are you acknowledging that that's true?

22 A Yes.

23 Q Okay. Now, if you have any problems, anything you need
24 to take, need a drink of water, anything like that, we want
25 you to be comfortable---

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1 A Okay.

2 Q ---in this situation.

3 Okay. And hopefully be at ease as much as you can.

4 Now, when you left the Court on Monday, I gave some
5 instructions to the jury. I asked you not to try to gather
6 any information on your own about the case, not to read,
7 watch, or listen to any media reports, not to discuss any --
8 the case with anyone and don't allow anybody to discuss it
9 with you.

10 Do you remember those instructions?

11 A Yes, sir.

12 Q Have you been able to follow my instructions thus far?

13 A Yes, sir.

14 Q Okay. Now, I guess one question I have for you, have
15 you been exposed to any information or anything that would
16 of caused you, since our last meeting, to form an opinion
17 about this case?

18 A No, sir.

19 Q Okay. Now, have you ever participated in any
20 discussions on the Internet or any blogs or anything of that
21 nature about issues involving the death penalty?

22 A No. No, sir.

23 Q All right. Have you ever been involved in any
24 political activities such as a demonstration or sending
25 letters to a representative or something on issues that

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1 might have involved that penalty?

2 A No, sir.

3 Q Okay. Now, are you the kind of person who can put
4 aside anything that you may have heard outside of the
5 courtroom, anything that you might have heard that might, in
6 anyway, relate to, to this case?

7 Could you put those matters aside and decide this case
8 based solely upon the law as given to you in the courtroom
9 and the evidence that's presented to you in the courtroom?

10 A Yes.

11 Q Now, back in the jury room there's a long list of
12 people's names, and I think it's about three pages now.
13 It's grown a little bit.

14 Did you look over that list?

15 A I did.

16 Q Did you read those names?

17 A I did.

18 Q Now, as to the people that are on that list, they are
19 people who've been identified to me as possible witnesses in
20 the case. I don't know that all those people would, in
21 fact, testify, but they could possibly testify. So, we'll
22 assume that they do.

23 Now, as to the people that were listed on that list,
24 have you ever been related by marriage or are you related by
25 blood to anyone that you read on that list?

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1 A No, sir.

2 Q All right. Have you ever had a close social, personal,
3 or business relationship with anyone that you noticed on
4 that list?

5 A Yes, sir.

6 Q And can you tell me who that was?

7 A There were three deputies on there that work for the
8 company. They do side work for the company that I work
9 with.

10 Q Oh, I see.

11 Okay. So, they do some security work---

12 A For the---

13 Q ---for the company that -- a company you work at?

14 A Yes, sir.

15 Q All right. Now, let's just -- I don't know if they're
16 gonna actually testify or not, but let's assume, for
17 purposes of my question, that they do testify about some
18 fact or something in the case, and if you were sitting on
19 the jury, would the fact that you're acquainted with those
20 particular officers, would that affect your ability though
21 to be fair and impartial to both the State and the defense
22 in this case?

23 A No.

24 Q So, you could still be impartial even though they might
25 testify?

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1 A Yes.

2 Q Okay. Now, I'm going to ask you some questions that
3 are kind of personal in nature. It involves your opinions
4 and ideas about some things. It's, it's not our purpose
5 here to try to embarrass anybody or invade your privacy in
6 anyway. I hope you feel secure enough in what you think and
7 believe that you'll be able to talk to me about it without
8 feeling threatened.

9 Am I correct in saying that?

10 A Yes, sir.

11 Q Okay. Now, one thing I'm going to be asking you about
12 eventually when we get to it in my questioning, I'll be
13 talking to you about matters involving the death penalty
14 because it's, it's gonna be an issue or potential issue in
15 this case, and I hope you understand that, by doing that, in
16 a, in a, to a certain extent, I'm putting the cart in front
17 of the horse because let me just go over with your briefly
18 how this proceeding would be handled depending on what
19 happens.

20 Once a jury is seated, that jury would participate in
21 what's called the guilt phase of the trial. There's two
22 indictments that I explained to you on Monday. The jury
23 would determine the guilt or the innocence of the defendant
24 on those two charges.

25 Now, should the jury find the defendant guilty of the

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1 crime of murder, then, in that case, there would be a second
2 trial using the same jury, and, in that trial, the issue
3 would be the appropriate penalty to be assessed, and the
4 choices, in that part of the trial, is life imprisonment
5 without the possibility of parole and the death penalty.
6 So, those are the two choices the jury would be faced with
7 in the second phase of the trial.

8 Now, because this is the only time we have to talk to
9 jurors before we select a jury, we're gonna talk about that
10 penalty phase even though there is a chance we may never get
11 to that phase. That's what I mean I'm putting the cart in
12 front of the horse a little bit, but I hope you realize this
13 is the only time that I and the attorneys will get to talk
14 to you about this before the trial begins because the same
15 jury goes right into that next phase of the trial.

16 So, do you understand---

17 A Yes, sir.

18 Q ---why I'm putting the cart in front of the horse?

19 A Yes, sir.

20 Q And I'll explain to you, the defendant in this case,
21 Mr. Blackwell, is presumed to be innocent of the -- those
22 charges, and the fact that we're talking about the penalty
23 phase should not be taken by you to mean anything about him
24 or his case. We will still go through that process that I
25 talked about and we may never get to that penalty phase.

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1 You understand what I'm saying?

2 A Yes, sir.

3 Q Okay. Now, at this time though I'm gonna talk about a,
4 about a criminal case in general. I'm not talking about
5 this case when I'm asking my next questions. I'm saying if
6 you were on a trial for someone who might have been charged
7 with larceny or something of that nature. It's nothing to
8 do with this case. Just your ideas, ideas if you were
9 serving on a jury generally.

10 Okay. Now, if you were on a jury, in a jury, would you
11 be able to listen to and apply the law as given to you by
12 the judge to the facts as found by the jury?

13 A Yes.

14 Q Would you be willing to accept the law and apply it to
15 the facts as find -- you know, accept the law as given to
16 you and apply it to the facts?

17 A Yes.

18 Q Now, is that true even if, let's say while you were
19 sitting in a jury box and the judge is giving you the law to
20 be applied in any case, if you heard something that maybe
21 you didn't agree with, you know, you're thinking about it
22 and you say I don't agree with that, that ought to be the
23 law or maybe the law ought to be different in some fashion,
24 it just didn't fit with your opinions of things, would you
25 be willing to set aside your opinions and take the law

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1 exactly as given to you by the judge being the law in the,
2 in the State, and apply that to the facts?

3 Could you set aside that disagreement you might have
4 with the law?

5 A Yes.

6 Q Now, we're going to be able to -- we're gonna, gonna be
7 talking about this case in particular for a while.

8 Are you -- in this particular case, would you be able
9 to and willing to set aside any information or knowledge you
10 might have about this case or the issues that might be
11 involved in this case, and that can be from any source you
12 may, may have that information, anything you might have read
13 or heard or seen about the case?

14 Would you be willing -- could you set that aside and
15 decide this case purely based upon what you hear in the
16 courtroom?

17 That would be the law and the evidence presented.

18 A Yes.

19 Q Now, I mentioned to you before that a criminal
20 defendant, and, in this case, Mr. Blackwell is presumed to
21 be innocent. I want to explain to you that it's an
22 important concept in our criminal law that a defendant is
23 always presumed by the law to be innocent.

24 Do you understand that concept?

25 A Yes.

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1 Q And do you also understand that, therefore, since a
2 criminal defendant is always presumed to be innocent, a
3 criminal defendant has no burden of proof in a case. The
4 defendant is never required to prove himself innocent of a
5 charge.

6 Do you understand that concept?

7 A Yes.

8 Q Do you also understand the concept that the State, the
9 prosecuting authority, always has the burden of proving the
10 crime, and that burden is to prove that crime or those facts
11 that established that crime by proof beyond a reasonable
12 doubt?

13 Do you understand that concept of the law?

14 A Yes.

15 Q Now, given those factors, once again, I'm gonna kind of
16 ask the same questions again, but I want to be sure I
17 understand, given those things I just talked to you about,
18 would you again be willing to listen to the case and the law
19 and evidence presented to you in the case and render a
20 verdict based solely upon that law and evidence?

21 A Yes.

22 Q Now, I will take it then, if you listen to the law and
23 the evidence, and if you found that evidence did not prove
24 the case beyond a reasonable doubt, that you could find a
25 person not guilty of a crime?

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1 A Yes.

2 Q So, I take it it's your belief, and tell me if I'm
3 wrong, that someone who has been arrested, charged, and
4 indicted is not automatically guilty of a crime?

5 Do you agree that that's true?

6 A Yes.

7 Q Now, let's say, however, that you were sitting on that
8 jury I told you to think about sitting on, and the evidence
9 did convince you of the defendant's guilt beyond a
10 reasonable doubt.

11 would you be someone who could find someone guilty of a
12 crime as charged?

13 A Yes.

14 Q So, are you the kind of person who would listen to the
15 evidence and the law, make up your mind, depending on what
16 that law and evidence is, and you could find someone either
17 guilty or not guilty depending on the law and the evidence?

18 A Yes.

19 Q Now I'm going to get into talking to you, as I told
20 you, that cart I'm putting in front of the horse. We're
21 gonna talk to you a little bit about the death penalty
22 issues that are involved in this case, and I'll go back to
23 talking to you about that method of trying the case, how
24 we're gonna try the case, and I told you that we're, we're
25 going to have a guilt phase of a trial first where we

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1 determine whether or not the defendant is either guilty or
2 not guilty of the crimes that are charged. If the defendant
3 then is found guilty of the crime of murder, we'd go into
4 that second phase of the trial, which is the sentencing
5 phase.

6 Now, at that -- or penalty phase. People call it that
7 interchangeably, in that particular phase of the trial,
8 there's two choices presented to the jury. The choices are
9 either life imprisonment without the possibility of parole
10 or the death penalty.

11 So, do you understand the two choices the jury faced?

12 A Yes.

13 Q You know, in a normal criminal case, usually the jury
14 determines guilt or innocence, and the judge decides the,
15 the appropriate penalty, does the sentencing. In this case,
16 it's different. This is an exception to that general rule
17 where the jury determines the penalty.

18 You understand that this is a different creature or
19 animal in that regard?

20 A Yes.

21 Q Okay. Now, in that separate sentencing phase, the law
22 provides for the presentation, presentation of evidence, and
23 I'll tell you the -- some of the evidence presented in a
24 sentencing phase of a trial, where you get to that point,
25 could be evidence that, that doesn't even come into the case

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1 in the penalty phase. So, it could be new evidence and the
2 types of evidence are described by that statute as being
3 matters that are aggravating circumstances and then there's
4 mitigating circumstances. So, the law provides for the
5 presentation of both of those types of evidence.

6 Now, aggravating and mitigating are words that aren't
7 used by people in everyday language all the time. So, I
8 want to be sure that you understand what that phrase means
9 when the lawyers talk to you about it or I talk to you about
10 it.

11 Aggravating circumstances are circumstances that the
12 law has determined could be introduced into a case that tend
13 to show that the crime of murder is more severe, is more, is
14 deserving of a higher level of punishment than the, the
15 normal murder case would be. Mitigating circumstances are
16 circumstances that the law allows to be introduced which
17 mitigate or make less the, the severity of that crime so
18 that a jury might tend to give a lower sentence, the lower
19 side of the sentence, and, in fact, the law says that the
20 mitigating circumstances is up to the jury. It can be any
21 factor a jury wants to consider. So, it's not limited to
22 any list just on the statute. It could be any factor that a
23 juror finds to be something that ought to mitigate the
24 circumstances.

25 So, when we talk about those fancy words, aggravating,

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1 mitigating, you understand that we're talking about evidence
2 that would tend to make the crime worse or make the, make
3 the punishment more severe or circumstances or facts which
4 the jury might consider to make the crime less severe or the
5 punishment less severe?

6 A Yes.

7 Q So, do you understand what I'm saying when I'm talking
8 about that?

9 A I do.

10 Q Okay. So, that evidence would be presented during that
11 sentencing phase of the trial or the penalty phase of the
12 trial, and once that evidence has been presented, the jury
13 would be instructed by the Court to consider the aggravating
14 and mitigating evidence and reach a verdict as to the
15 appropriate penalty to be assessed.

16 Do you understand what would happen?

17 A Yes.

18 Q All right. Now, I'm gonna ask you to put yourself in a
19 position in your mind. Let's say that you were -- and I'm
20 not talking necessarily about this case. I'm just saying
21 let's say that you were a juror who was on a jury in a case
22 where a murder was charged and the State was seeking a death
23 penalty.

24 So, we're in a case where there's going to be a
25 possibility of two phases in the trial, and let's say we

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1 have gotten to the point in the trial where the jury has
2 found the defendant guilty of murder, and the same jury now
3 is getting ready to come back into the courtroom to begin
4 what I've described as the sentencing or penalty phase of
5 the trial.

6 So, do you understand the position I've asked you to
7 put yourself in?

8 A Yes.

9 Q All right. When you're back in the jury room, there
10 was a sheet of paper down laying on the table and I asked
11 everybody to read it. I don't know if you knew exactly why
12 I asked you to read it, but now you're gonna find out why I
13 asked you to read it. I'm going to go back over with you,
14 and I'm not gonna use the exact language that's on the piece
15 of paper, but I'm gonna describe the three types of jurors
16 that were listed on that sheet of paper, and I'll go over
17 them so that I'm sure you understand which ones we're
18 referring to as we discuss this.

19 All right. The first type of juror that I described on
20 that piece of paper is someone who, before that person
21 has -- walks back into the courtroom for the second part of
22 the trial, has already made up his or her mind. That's a
23 person who believes that, if someone is found guilty of a
24 murder, there's only one appropriate penalty and that
25 penalty is death. So, that juror, every time they come in

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1 in that situation, is gonna vote for the death penalty.

2 The second type of juror I've described to you also has
3 made up his or her mind because that juror believes that the
4 state should never take a life of anyone in retribution or
5 in response to the commission of a crime. Therefore, that
6 juror is always gonna vote for life imprisonment without
7 parole and would never sign a verdict or, or find a verdict
8 for the death penalty.

9 The third juror I described is someone who has not yet
10 made up his or her mind. That person is coming back into
11 the courtroom to listen to the evidence, the aggravating
12 factors and the mitigating factors, and, after listening to
13 that evidence and listening to the law as given to them by
14 the judge, would then have to make up -- make a decision as
15 to what the appropriate penalty might be, either life in
16 prison without parole or the death penalty.

17 Now, as to those three jurors I described, if you were
18 the person standing outside the door getting ready to walk
19 back into the courtroom, which one of those would best
20 describe your situation?

21 A Number two.

22 Q Number two.

23 So, you're someone who, no matter what the severity of
24 the crime might be, you would never sign a, a sentence of
25 death?

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1 A No.

2 Q Okay. Now, ma'am, I'm going to excuse you from any
3 further consideration in the case.

4 Does any -- the attorneys wish to go forward and
5 discuss it any further?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Oh, okay. I'll allow the attorneys to ask
8 you some questions.

9 State.

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

12 THE COURT: Yes, sir.

13 EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q Ms. Reese, my name's Barry Barnette and me and Derrick
16 Bulsa will be prosecuting the case together for the State.
17 I hate to ask you these questions, but I need to and I
18 apologize ahead of time.

19 You was pretty adamant with the judge. You would
20 never -- you would be a number two juror period?

21 A Yes.

22 Q Basically you would never vote for the death penalty?

23 A No.

24 Q And is that from a belief that you have or from --?

25 A Yes.

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1 Q What belief is that from, ma'am?

2 A I just do not believe that because -- if someone is,
3 you know, I mean -- I don't even know how to explain it.

4 Q Take your time. I know, I know it's something you
5 usually don't think about.

6 A If someone is -- if it's proven that someone has taken
7 someone else's life, it's not up to me to, to say it's right
8 to -- for their life to go. I feel like being in prison for
9 life is a, a punishment that is worse than a death penalty.

10 Q So, in your mind, life without parole is worse than the
11 death penalty?

12 A Yes, I do. I mean they should be -- that -- they
13 should think about what has happened forever, you know.

14 Q Yes, ma'am, and I understand from there.

15 And so you would always vote life without parole?

16 You would never vote for the death penalty in that
17 situation?

18 A I would not vote for the death penalty.

19 Q Thank you, ma'am.

20 THE COURT: Mr. McGuire.

21 MR. MCGUIRE: Yes, Your Honor.

22 (Pause.)

23 MR. MCGUIRE: I don't have any questions for you.

24 Thank you.

25 THE COURT: All right, ma'am. I'm gonna find that you

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1 would not be able to sit on the jury in this matter. I'm
2 gonna release you from any further responsibility to the
3 court. The bailiffs will check you out and I want to thank
4 you for your cooperation.

5 THE WITNESS: Okay. Thank you.

6 THE COURT: You're free to go.

7 (WHEREUPON, the following takes place outside the
8 presence of the juror.)

9 THE COURT: All right. We are moving on to panel
10 number five. The first person on that list is Donna
11 Champion. See if she's read my information, and if she has,
12 bring her in.

13 (WHEREUPON, the following takes place within the
14 presence of the juror.)

15 MR. YOUNG: Your Honor, may we approach the clerk right
16 quick while that's going on?

17 THE COURT: To the clerk?

18 MR. YOUNG: Yes, sir.

19 THE COURT: Sure.

20 DONNA CHAMPION, having been
21 previously sworn, testified as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q Have a seat please, ma'am.

25 A (Witness complies.)

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1 Q Just a moment and we'll get started.

2 MR. YOUNG: Thank you, judge. Sorry.

3 THE CLERK: Can I approach?

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 MR. YOUNG: Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 (Pause.)

9 Q Ms. Champion, it's gonna just take a minute. She's got
10 to get some paperwork for us.

11 A Yes, sir.

12 Q Okay. Thank you.

13 A Yes.

14 (Pause.)

15 MR. YOUNG: Your Honor, may we approach the bench?

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

17 THE COURT: All right. Well, let's start talking to
18 Ms. Champion then.

19 Your name is Donna P. Champion?

20 A Donna Ponder Champion.

21 Q Okay. Yes, ma'am.

22 All right. First of all, I want to thank you for your
23 cooperation thus far. I know this is a process like nothing
24 you've ever been involved in before --

25 A No, sir.

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1 Q -- and I can understand that and appreciate it. It's,
2 it's a lot of hurry up and wait and things like, but we're
3 trying to do the best we can to, to schedule people and it's
4 hard to predict how long some of these things will take. I
5 hope you appreciate that. Again, thank you for your, for
6 your corporation.

7 This morning, what we're doing is we're meeting with
8 jurors who are going through a questioning process. The
9 questions we're going to ask you will involve matters that
10 will assist us in selecting a jury. There are no right or
11 wrong answers to the questions that I'm asking or that the
12 attorneys are going to ask. There are only your answers and
13 those answers have to be honest answers from you.

14 Do you understand that?

15 A Yes, sir.

16 Q Now, earlier you took an oath to tell the truth on
17 Monday, and I'm just gonna remind you that oath still
18 applies to your discussions with us now.

19 Do you understand that?

20 A Yes, sir.

21 Q And do you acknowledge that that's true?

22 A Yes, sir.

23 Q You might want to turn a little bit toward me---

24 A Okay.

25 Q ---cause I'm gonna do most of the talking.

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1 A Oh, okay.

2 Q I'll let the attorneys question you once I'm finished.

3 A Okay.

4 Q But we're gonna talk for a while.

5 A I'm kind of nervous.

6 Q And I, and I'm gonna talk to you about that because not
7 everybody sits in that seat that you're sitting in, and, and
8 I know it can be a very hot seat sometimes. We don't want
9 it to be that. We want you to feel comfortable about this
10 because, again, there aren't any right or wrong answers.
11 There's, there's just your answers and that's all we're
12 looking for this morning is your honest responses to our
13 questions.

14 Do you understand what we're doing?

15 A Yes, sir.

16 Q Now, when you left the courthouse on Monday I gave the
17 whole jury instructions. I said not to try to gather any
18 information on your own, not to listen to, watch, or read
19 media reports. Don't discuss the case with anyone and don't
20 allow anyone to discuss it with you and to report anyone who
21 might contact you about your service.

22 Do you remember those instructions?

23 A Yes, sir.

24 Q Have you been able to follow my instructions?

25 A Yes, sir, I told my husband I couldn't watch the TV.

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1 He had to go to another room and then he's also took the
2 papers every morning.

3 Q Well good.

4 So, you have not had any exposure to anything that's
5 out there---

6 A No, sir.

7 Q ---since our meeting on Monday?

8 All right. Now, if you had, if you had had some
9 exposure to something, are you the kind of person who can
10 set that information aside and decide a case based upon what
11 the law and the evidence that you hear inside the courtroom?

12 A Well, before I knew I was gonna be here I did read
13 something, and I have tried to put that out of, out of my
14 mind.

15 Q And do you think you can do that?

16 A I believe so.

17 Q And you think you can decide the case based upon you
18 hear in the courtroom during the trial?

19 A Yes, sir.

20 Q Okay. Now, ma'am, as I said, I'm going to ask you some
21 questions about the case, and, and there aren't any right or
22 wrong answers. If you have any difficulty or problems as we
23 go through this, let me know. If you don't understand what
24 I'm talking about, I'll be glad to explain it again to you.

25 Do you understand what we're doing?

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1 A Yes, sir.

2 Q Now, ma'am, have you ever participated in any type of
3 discussions, Internet blogs, chat rooms?

4 A Oh, no, I don't do that. I don't do that. I'm too
5 old.

6 Q Well, I understand that. I'm getting that way myself.

7 But have you ever participated in any discussion that
8 might involve the death penalty issue?

9 A No, sir.

10 Q Have ever been involved in any political activities
11 such as demonstrations or sending letters to representatives
12 or anything like that---

13 A No, sir.

14 Q ---about matters involving the death penalty?

15 A No, sir.

16 Q Okay. Now, back in the jury room, I had a long list,
17 about three pages long, of peoples' names.

18 A Uh-huh. (Affirmative).

19 Q Did you read that?

20 A Yes, sir.

21 Q Now, those people are people who have been identified
22 to me as possible witnesses in this case. Now, I don't know
23 if they're all gonna testify or not. Generally, when I get
24 those lists, not everybody does testify. But I want to let
25 you know we're gonna assume that all of those people are

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1 gonna testify---

2 A Uh-huh. (Affirmative).

3 Q ---in the case?

4 As to those people, did you see anybody on there that
5 you have ever been related to either by marriage or by
6 blood?

7 A Well, I was a Ponder before I married and I noticed
8 they was a Ponder lady on there. She's---

9 Q Did you recognize her name?

10 A Not really. She may be distant, but she's not
11 immediately kin to me. So --.

12 Q So, you don't have a close social or personal
13 relationship with that person?

14 A No, sir, I just wanted to bring that up cause---

15 Q Well, I, I---

16 A ---the name.

17 Q Well, I appreciate your honesty. That's what we're
18 here about.

19 Now, also, do -- as far as the people on that list, was
20 there anyone on there that you have ever had a close social,
21 personal, or business relationship with?

22 A No, sir.

23 Q All right. Now, ma'am, I want to go over some things
24 now, and I'll be asking you some matters that might be -- I
25 guess they're personal in that I'm gonna ask you about some

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1 things that might involve your opinions or your beliefs or
2 things of that nature. I hope that you're secure enough in
3 what you think and believe that you won't feel threatened by
4 me asking those questions.

5 Is that true?

6 A Yes, sir.

7 Q So, you're gonna be able to participate in this---

8 A Oh, yeah.

9 Q ---and not get upset with me?

10 A No, sir.

11 Q Okay. Good.

12 Now, one of the things I'll eventually get to in my
13 discussion will be a -- what's -- some questions concerning
14 the, the penalties involved in this case, and one of those
15 is the possible death penalty. I want you to understand
16 that in -- by doing that, I'm kind of putting the cart in
17 front of the horse, and I'll tell you why I'm doing that so
18 you'll appreciate what you're doing in, in that regard.

19 In a case such as this, the trial where, where the
20 state is seeking the death penalty for a -- someone who's
21 alleged to have committed a murder, normally we hold a trial
22 concerning guilt or innocence of the charge. Then, if the
23 person is found guilty of the murder, then we hold a
24 separate sentencing trial to determine the appropriate
25 sentence, and the choices are life imprisonment or death

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1 penalty, death or life imprisonment without parole.

2 A Uh-huh. (Affirmative).

3 Q Normally I wouldn't talk to you about the end of the
4 trial because, if the person is found not guilty of the, of
5 the murder, then there wouldn't be any sentencing phase, but
6 I hope you realize that the same jury conducts both
7 proceedings.

8 A Uh-huh. (Affirmative).

9 Q This is the only chance we'll get to talk to a
10 prospective juror about either the guilt side of the trial
11 or the penalty side of the trial. So, since we -- we --
12 since we may not ever get to that, probably I am putting the
13 cart in front of the horse somewhat, but this is the only
14 time we have to talk to you about both phases of the trial
15 in the matter.

16 Do you understand what I'm saying?

17 A Yes, sir.

18 Q In this case, Mr. Blackwell is the defendant. As all
19 defendants are, is presumed to be innocent of the crime
20 that's been alleged, and the fact that we're talking about
21 the penalty shouldn't be taken by you as any reflection on
22 either him or his, his case in the matter. This is simply
23 the only time we get to talk about both possible phases of
24 the trial.

25 Do you understand what I'm saying in that regard?

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1 A Yes, sir.

2 Q Now, I'm gonna get away from that issue for right now.
3 I'll probably come back to that in just a minute.

4 I'm gonna ask you to put yourself as a defendant (sic)
5 in any criminal case. Let's say it's a, a trial for
6 somebody who's maybe been accused of shoplifting or larceny,
7 burglary, some other crime, but you're a juror in a criminal
8 case. I'm gonna ask you some questions about your
9 understandings and, and position in that regard.

10 If you were a juror in any criminal case, would you be
11 willing to listen to the law as instructed to you by the
12 judge?

13 A Yes, sir.

14 Q Now, in doing so, would you be willing to accept the
15 law as instructed by the judge and apply that law to the
16 facts as the jury finds it?

17 A Yes, sir.

18 Q Now, is that true even if when you -- let's say you
19 were sitting in the jury box and the judge is charging the
20 law, and as you're listening to him go over the law, you may
21 hear something that you say I don't know that I agree with
22 that. That's not the way I would do that. So, let's say
23 you hear something in the law that you either disagree with
24 or you, you got a little problem with.

25 A Uh-huh. (Affirmative).

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1 Q Are you the kind of person who could set aside your
2 personal beliefs and apply the law exactly as given to you
3 by the judge to the facts as determined by the jury?

4 A Yes, sir, I could.

5 Q Okay. Now, now, I mentioned to you, in talking to you
6 just then, that a criminal defendant is always presumed to
7 be innocent of the crime for which he's been charged.

8 Do you understand that concept in the law?

9 A Yes, sir.

10 Q And I will also tell you that a criminal defendant is
11 always presumed to be innocent of the crime for which he's
12 been charged, and because the law presumes innocence, the
13 defendant is never required to prove innocence. In other
14 words, he has no obligation to prove anything in a trial.

15 Do you understand that concept?

16 A Yes, sir.

17 Q Now, the only burden of proof in a criminal case is on
18 the State, and the State has an obligation to prove the
19 allegations that the State has made by proof beyond a
20 reasonable doubt to the jury.

21 Do you understand that concept, that the State has the
22 only burden of proof in a case?

23 A Yes, sir.

24 Q Now, let me ask you this. If you were a juror sitting
25 in any case, not talking just about this one, would you be

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1 willing to listen to the law and the evidence, the evidence
2 being the testimony by the witnesses and what came into the
3 record of the case, and based upon what those things are, if
4 you found that the defendant -- that the State had not met
5 its burden of proof, could you find someone not guilty of
6 the charge?

7 A No, sir.

8 Q So, you would always find somebody guilty no matter
9 what?

10 A I mean if the State proved the case.

11 Q Well, you didn't listen to my question then.

12 A Oh, okay.

13 Q So listen to my question.

14 A Okay.

15 Q Let's say that after you considered all of the evidence
16 in the case, and the law as given to you by the judge, if
17 you made a determination that the State had not met its
18 burden of proof --

19 A Okay.

20 Q -- that they had not proved the case beyond a
21 reasonable doubt --

22 A Uh-huh. (Affirmative).

23 Q -- could you find someone not guilty of a charge?

24 A No.

25 Q So, you would always find them guilty?

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1 A I mean -- I guess I'm not saying it right. If the
2 State proved itself, then---

3 Q But that's not what I told you. Now listen. You're,
4 you're changing my question and I want to -- I'm gonna go
5 over it with you one more time to be sure we've got it
6 right.

7 Let's say, after you heard all the evidence, you decide
8 that the State has not met its burden of proof --

9 A Uh-huh. (Affirmative).

10 Q -- that it did not prove guilt beyond a reasonable
11 doubt.

12 Could you find someone not guilty of a crime?

13 Could you sign a sentence that says not guilty if the
14 State had not met its burden of proof?

15 A I don't think I could find them guilty if the State
16 didn't prove to me they were guilty.

17 Q So, you could find a -- someone not guilty of a crime?

18 A If the State didn't prove its case.

19 Q Okay. Well, let me ask you this another way to be sure
20 we've got an understanding.

21 Is it your belief that a person -- if a person has been
22 charged, arrested, and indicted for a crime that they're
23 automatically guilty?

24 A Well, I mean if you have the evidence against them---

25 Q Now, I'm not asking you about the evidence. I'm asking

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1 you -- you want to change my questions. Now, listen to my
2 questions and, and try to answer what I'm asking you.

3 Is it your belief that if a, that if a person has been
4 arrested, charged, and indicted -- so, we're at the stage
5 where they're picked up by the police --

6 A Uh-huh. (Affirmative).

7 Q -- the State makes a charge and a Grand Jury issues an
8 indictment. So those are the three things that have
9 happened so far.

10 A Uh-huh. (Affirmative).

11 Q Is it your belief that, if those three things happened,
12 that a person is automatically guilty of what they've been
13 charged with?

14 A Oh, no. I mean you still have to prove your case.

15 Q So, they'd still have to prove them guilty?

16 A Uh-huh. (Affirmative).

17 Q Okay. Now, let me ask you this.

18 If, however, I'll change the question around, if the
19 state did prove the elements of the crime to you by proof
20 beyond a reasonable doubt --

21 A Uh-huh. (Affirmative).

22 Q -- are you the kind of person that could find somebody
23 guilty under those circumstances?

24 A Yes, sir.

25 Q Now -- so you would be the person, kind of person who

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1 would be able to make up your mind as to the guilt or the
2 innocence of a defendant depending on the strength of the
3 evidence that you've heard and what the testimony or
4 evidence showed to you?

5 So, could you find a person either guilty or not guilty
6 depending on those factors?

7 A Yes, sir.

8 Q The strength of the evidence and what the law says?

9 A Uh-huh. (Affirmative).

10 Q You could go either way?

11 A Yes, sir.

12 Q Okay. Now, I'm going to explain to you that, in most
13 criminal cases, a jury makes a determination as to the guilt
14 or innocence of the defendant of the crime charged, and then
15 the judge decides the appropriate sentence. That's what
16 happens in most cases. The exception to that rule is a case
17 like we're in right now, and as I explained to you, here the
18 jury makes a determination as to the guilt or innocence of
19 the defendant, and if the defendant is found guilty of
20 murder, the State has asked for a -- the penalty of death.
21 So, there's a second trial where the same jury goes in and
22 decides the appropriate sentences to be given for that
23 particular event.

24 So, you understand this is different than most cases?

25 A Yes, sir.

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1 Q Okay. Do you understand how this would work, what I
2 just told you?

3 A Yes, sir.

4 Q Okay. Now, the separate proceeding is a determination
5 to determine the appropriate penalty. There's only two
6 choices. That is life imprisonment without parole or the
7 death penalty.

8 Now, the statute that sets up this method of -- it's
9 called bifurcated trials. That's a fancy word for dividing
10 into two trials. That statute provides that there will be
11 evidence introduced in the, the sentencing or penalty phase
12 of the trial, the second phase of the trial, that's
13 described as either aggravating circumstances or mitigating
14 circumstances.

15 Aggravating circumstances is -- this is -- these are
16 words you don't use in your everyday language. I want to be
17 sure you have an understanding of what we're talking about
18 because the lawyers are gonna ask you about these things as
19 well. I want to be sure you understand what we're talking
20 about.

21 Aggravating circumstances are those kind of
22 circumstances that might tend to make the crime of murder be
23 considered more severe. In other words, deserving a higher
24 punishment.

25 A Uh-huh. (Affirmative).

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1 Q Mitigating circumstances are sentences (sic) which
2 might lessen either the crime, or the person who committed
3 the crime, lessen their culpability so that the jury might
4 tend to give a lower level sentence.

5 A Uh-huh. (Affirmative).

6 Q So, when we talk about aggravating and mitigating
7 circumstances, do you understand what we're talking about?

8 A Yes, sir, one is more severe.

9 Q Aggravating would make it be -- tend to make it more
10 severe in the eyes of the people, and mitigating would be
11 factors that would tend to make the situation less severe or
12 the defendant deserving of a lower, lower---

13 A Uh-huh. (Affirmative).

14 Q ---lower penalty.

15 Do you understand what I mean that, during that
16 phase -- and there might be new evidence introduced in that
17 phase of the trial. There, there may be things that are
18 brought in that aren't even discussed in the penalty -- in
19 that cause we're only dealing with what the penalty would
20 be.

21 So, you understand what I'm talking about?

22 A Yes, sir.

23 Q All right. Now, once that aggravating evidence had
24 been presented and mitigating evidence had been presented,
25 the judge would instruct the jury to consider those factors

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1 and reach the appropriate verdict as to the punishment to be
2 involved.

3 Do you understand what we -- where we are?

4 A Uh-huh. (Affirmative).

5 Q Now, in your mind, I want you to put yourself in a
6 position. Let's say that you were on a jury, and I'm not
7 talking in particular about this case now. On any case.
8 Let's say you were on a jury in a case where the State is
9 seeking the death penalty, and we -- you had completed the
10 first phase of the trial, and, at the end of the first phase
11 of the trial, the defendant was found guilty of a murder.

12 Since the State is seeking the death penalty, that same
13 jury is coming back to the courtroom to start the sentencing
14 phase of the trial.

15 A Uh-huh. (Affirmative).

16 Q Now, do you remember a piece of paper that was back
17 there in the jury room that had three different jurors
18 described on it?

19 A Yes, sir.

20 Q Did you read that paper for me?

21 A Yes, sir.

22 Q All right. I'm gonna go back over those people that
23 were described on that paper with you right now so that you
24 and I understand which juror comes first, second, and third,
25 okay, cause there were three of them described.

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1 Do you remember that?

2 A Yes, sir.

3 Q All right. Now, the first juror that was described on
4 that piece of paper is someone who, before they ever have
5 walked into the door, the door for the second phase of the
6 trial, has already made up his or her mind. That juror
7 believes that the only appropriate penalty for someone who's
8 committed a murder is death, and, therefore, in every case
9 in which that person is put in that position, that person
10 would always vote for the death penalty.

11 The second juror I described on that piece of paper is
12 someone who also has already made up his or her mind. That
13 juror believes that the State should never take a life in
14 response to the commission of a crime. No matter what the
15 severity of the crime might be, that juror will always vote
16 for life imprisonment without parole.

17 Now, the third juror coming into the courtroom hasn't
18 made his or her mind up yet. That juror wants to listen to
19 the factors, aggravating factors and mitigating factors, and
20 based upon what those factors say or shown to them and what
21 the law is, that person then would make up his or her mind
22 as to which of the penalties was the more appropriate
23 penalty given those factors.

24 Do you understand what I mean by the three different
25 jurors?

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1 A Yes, sir.

2 Q Now, I told you to put yourself in the position as
3 someone coming back into the courtroom to begin that phase
4 of the trial.

5 which one of those three jurors would best describe
6 your feelings?

7 A I think I would be the third one.

8 Q So, you think you'd be someone who could come in and
9 make up your mind based on the law and the evidence in the
10 case?

11 A Yes, sir.

12 Q Now, are you someone then who can come back into the
13 courtroom, and depending on the aggravating factors and the
14 mitigating factors, you could possibly sentence someone to
15 the penalty of death?

16 A Yes, sir.

17 Q And by the same token, are you someone who, depending
18 on the aggravating or the mitigating factors, could possibly
19 sentence someone to life imprisonment without ever being
20 paroled?

21 A Yes, sir.

22 Q So, you could sentence someone to either, either phase
23 --

24 A Yes, sir.

25 Q -- either way?

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1 Now, ma'am, I've just got just -- I'm about finished
2 and then I'm gonna get -- let the lawyers talk to you a
3 little bit.

4 If you were selected to serve as a juror in this case,
5 you would be, once the jury is seated and the trial starts,
6 that jury is going to be what we call sequestered. That's
7 another fancy legal phrase, but what that means is that the
8 jury would be with us until the trial is completed. You'll
9 be housed in a hotel. The Marriott will probably be in use,
10 in use for this trial. And you would be there and you
11 would -- all your meals would be paid for. Your lodging
12 would be paid for. You would get transportation wherever
13 you needed to go. We'd see that you got there and got back.
14 So, you'd be cared for well while you were there.

15 You also would receive your pay for being on the jury.
16 It's not a lot. Jurors don't make a lot of money.

17 A No.

18 Q So, it's not something one -- somebody would want to do
19 for a living, but, at any rate, there is payment for the
20 time that you're there, and there's some slight travel
21 because we pay your way to and from the courthouse
22 originally. After that, we transported the -- I say we.
23 The State would transport you after that.

24 So, you understand what we mean by sequestration?

25 A Yes, sir.

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1 Q Now, you would be allowed to make phone calls to
2 people, but it would be monitored so we don't have people
3 being influenced in anyway.

4 But you understand how that would work?

5 A Yes, sir.

6 Q Okay. Now, ma'am, if, if you were in that situation,
7 if you were being sequestered, and I anticipate this trial
8 will take more than a week, but I don't know how much more.
9 Okay. So, that's about the length of time that I'm
10 estimating maybe, but I've been wrong on my estimates
11 before. Sometimes not enough, sometimes too much, but
12 that's my best estimate.

13 Now, if you were in that situation, would that
14 situation pose a serious risk of danger to either your
15 health or your well being?

16 A No. No, sir.

17 Q All right. Now, would that situation pose a serious
18 risk of danger to either the health or well being of someone
19 who's dependent upon you?

20 A Well, it's not that -- my husband -- I have to get my
21 son to school, but mean I guess that's a different subject.

22 Q All right. But -- well, they have buses and things
23 that do that or somebody could take him, but that
24 wouldn't -- would that injure his health or well being?

25 A No, sir.

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1 Q Okay. Now, I'm going to ask the attorneys to go over
2 some things with you. They're gonna have some questions for
3 you. So, you might want to turn your chair around and
4 they're gonna be questioning you for just a moment.

5 All right. Yes, Mr. Young. You may proceed.

6 MR. YOUNG: Thank you, Your Honor.

7 EXAMINATION

8 BY MR. YOUNG:

9 Q Good morning, Ms. Champion.

10 A Hi.

11 Q My name is Boyd Young. We met briefly on Monday. Nice
12 to see you again.

13 I'm gonna start with, on your questionnaire, you were
14 asked a question about the criminal justice system and kind
15 of how you feel about the criminal justice system, and your
16 response was that basically many things are wrong with the
17 criminal justice system, people are doing bad things, and
18 the next thing you know they're back out doing it again.

19 Is that about what you---

20 A Yes. Yes, sir.

21 Q Can you tell me a little bit about what you meant by
22 that?

23 A Well, at the time when I got that, on the news they
24 were a lot of people arrested or one particular person had
25 been arrested, and I think he had just got out that day or

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1 something and went and did it again. So, I mean yeah, it
2 needs to be fixed. Something needs to be done. People
3 are -- just keep doing the same thing over and over and
4 over, you know. They'll go to jail or county lockup and---

5 Q Right.

6 A ---make bail and out doing it again.

7 Q Okay. And it -- and I want to ask you this as it
8 relates to this situation.

9 Do you understand that, in South Carolina, life without
10 the possibility of parole, do you believe that people don't
11 get out after that?

12 A No, sir, once you are sentenced to that I think it's a
13 done deal. You don't get out.

14 Q Right. You die in prison.

15 A Uh-huh. (Affirmative).

16 Q You don't have any questions about that?

17 A No.

18 Q That sentence is fine?

19 A Uh-huh. (Affirmative).

20 Q Okay. And I just wanted to make sure that when we're
21 talking about these issues about what penalty that that's
22 not something that's in your mind that you think you might
23 get out or something like that.

24 A No.

25 Q Okay. Well, let's talk a little bit about your

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1 feelings about the death penalty.

2 Can you tell me how you feel about the death penalty?

3 A Well, I guess I've never really concentrated on it, but
4 if the crime is so severe I am not against it I guess I
5 should -- you should say. I -- you know, if it fits the
6 crime or, you know, the crime was so severe, I don't -- I'm
7 not against it.

8 Q Okay. All right. And, and how about your feelings
9 about life without the possibility of parole?

10 A And, once again, you know, it depends on the, the
11 situation.

12 Q Sure.

13 A I mean how severe was it, what are the factors. You
14 know, you have to take everything into account, you know,
15 what was -- what all went on and how severe was it to choose
16 which way you need to go.

17 Q Okay. And I think I'm following you. Let's -- let me
18 ask it to you this way.

19 Have you heard the phrase sort of an eye for an eye?

20 A Yes, sir.

21 Q And is that a belief that you subscribe to?

22 A No, cause they're still other factors you have to look
23 at. I mean everything's not cut and dry.

24 Q Okay.

25 A And you have to kind of look at the whole picture.

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1 Q Sure.

2 If you were gonna decide what the laws were, what laws
3 we were gonna have, you think you would have a death
4 penalty?

5 A Maybe. Cause some cases I have heard in the past they
6 render that.

7 Q They, they just sort of call out for it?

8 A Yes, sir.

9 Q Well, in South Carolina, and I think the judge talked
10 to you about this, about this a little bit, but the death
11 penalty is only eligible for murder cases, and you
12 understand that?

13 A Yes, sir.

14 Q So, and, in South Carolina, murder means the killing --
15 intentional killing of another person with malice, malice
16 aforethought.

17 Okay. You've heard that before?

18 A Yes, sir.

19 Q And malice is hatred, ill will, hostility toward
20 another person. It's the intentional doing of a wrongful
21 act without just cause or excuse with an intent to inflict
22 injury under circumstances that the law might infer an evil
23 intent. Kind of a mouthful.

24 But do you kind of know what I'm saying there?

25 It's meant to do it intentional killing of an innocent

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1 person.

2 A Yeah.

3 Q Not an accident. Not self-defense. Not heat of
4 passion.

5 Okay. You with me on that?

6 A All right.

7 Q That's what a murder is.

8 So, first you have to find somebody guilty of murder,
9 that intentional killing, and they have to be guilty guilty,
10 beyond any and all reasonable doubt.

11 A Uh-huh. (Affirmative).

12 Q All right. You with me on that?

13 A Yes, sir.

14 SOLICITOR BARNETTE: Objection, Your Honor. That's not
15 a quote -- not guilty beyond any reasonable doubt. I mean
16 not any doubt. It's got to be a reasonable doubt. Just
17 make sure it's phrased right.

18 THE COURT: I thought his question was, was fair, and
19 I'll, I'll overrule the objection.

20 You may proceed, sir.

21 MR. YOUNG: Thank you, Your Honor.

22 So, that's where we start when we first start thinking
23 about these two penalties is a convicted murderer.

24 You with me?

25 A Yes, sir.

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1 Q And at that point in time, prior to hearing the penalty
2 phase of the trial, do you have any leanings one way or
3 another about the death penalty or life without parole just
4 because somebody's been convicted of murder?

5 A No, sir.

6 Q And you're still open to either one?

7 A Uh-huh. (Affirmative).

8 Q Is that where you are?

9 A Yes, sir.

10 Q And, and then the State could offer additional
11 evidence, these aggravating circumstances that we talked
12 about, right --

13 A Yes, sir.

14 Q -- that you heard the judge talk about, something that
15 makes the crime worse.

16 Some of those are eligibility factors, and they'd have
17 to be proven to the jury beyond a reasonable doubt, okay,
18 and all the jurors have to agree that they exist.

19 You with me on that?

20 A Yes, sir.

21 Q And one of those might be that the victim was a child.
22 Okay. You with me at that point?

23 A Yes, sir.

24 Q Now, having heard that evidence, convicted murdered,
25 guilty murderer of a child, and prior to hearing the

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1 mitigation, what are your feelings about the death penalty
2 as the appropriate punishment?

3 Do you have a leaning---

4 SOLICITOR BARNETTE: Objection, Your Honor.

5 Q ---one way or the another?

6 SOLICITOR BARNETTE: He's excluding mitigating
7 circumstances in that case. He just asked her the one
8 aggravator, and I object on that standpoint in trying to
9 stake out the juror on a certain set of facts.

10 MR. YOUNG: And I'm asking if she has, at that point in
11 time, if she's leaning one way or the other before we get to
12 the other part. As I understand---

13 THE COURT: Well, the Court's inquired of her already
14 and she indicated and has explained to her that there are
15 aggravating circumstances that can be presented and
16 mitigating circumstances that can be presented. Her
17 response, at that time, was she would consider both. I'll
18 let you ask the question, but, of course, the, the procedure
19 is that aggravating and mitigating circumstances are
20 presented. So, I'll let you ask the question, but it should
21 be followed up --

22 MR. YOUNG: Yes, sir.

23 THE COURT: -- as I've indicated previously.

24 MR. YOUNG: Yes, sir.

25 Q And, Ms. Champion, I'm not trying to -- you know

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1 they're some people who say, under the murder of a child, I
2 don't need to hear anything else. I can't consider anything
3 else. The only appropriate punishment is the death penalty
4 in that type of case, and I'm just asking is that you?

5 A No, sir, I don't think it is.

6 Q Okay. You're still open to mitigation?

7 A Yes, sir.

8 Q And do you have the leaning towards one penalty or the
9 other or are you kind of still in the middle?

10 A I guess I'm still in the middle.

11 Q Okay. At that point in time, you know, we would talk
12 about stuff about mitigating circumstances.

13 Okay. You with me?

14 A Yes, sir.

15 Q What are the types of things that you would want to
16 know about a person in deciding whether they got life
17 without parole or the death penalty?

18 A I don't know if it's so much about the person. I just
19 want to know the facts about the trial, what happened, the
20 facts that led up to being here.

21 Q Sure.

22 A I don't really consider -- I don't know. I guess I
23 shouldn't say I don't consider the person, but I need to
24 know all the facts.

25 Q And I understand what you're saying, and in a, and this

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1 is something that I really kind of struggled with a lot too,
2 and especially about how to ask this.

3 So, the facts about what happened, you know, we got the
4 right guy, was it intentional, did he mean to do it, all of
5 that is heard during that first trial --

6 A Uh-huh. (Affirmative).

7 Q -- the first phase trial. Did he do it, did he not do
8 it, and those facts have been heard and decided. He did it,
9 meant to do it, had a malicious intent to kill an innocent
10 child.

11 Okay. That's been decided --

12 A Okay.

13 Q -- and I just want to make sure this other stuff that
14 we're talking about, mitigating circumstances, who the
15 person is, what their walk in life was like, how they grew
16 up, how they were raised, what their future might be like,
17 those are what I'm talking about in mitigation.

18 You with me?

19 A Oh, yes, sir.

20 Q Now, now, my question to you is are those things that
21 are important to you?

22 A To somewhat. I mean somewhat. That makes you who you
23 are, but, on the other hand, you have a responsibility. I
24 mean --.

25 Q You made a choice --

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1 A Yeah.

2 Q -- right?

3 And I think that's what I hear you saying. You
4 chose---

5 A Uh-huh. (Affirmative).

6 Q If you chose to do this---

7 A And I know everybody's life is hard, and every -- you
8 know.

9 Q Sure.

10 A I mean you do have to take that into account, but, on
11 the other hand, nobody told you to do these---

12 Q Right.

13 A ---things. So, I mean I guess everything -- you have
14 to hear everything and work it out.

15 Q Those things about the, the background and growing up
16 hard, are those things that you could give meaningful
17 consideration to as a reason to vote for a life penalty?

18 A If, if it fits I think I could.

19 Q Okay. Do you think that a defendant would have to
20 prove to you as to why he should get a life penalty?

21 A Oh, yes, sir.

22 Q Now -- so that means you kind of start off that death
23 is the appropriate punishment for this intentional murder,
24 but the defense might be able to show you a reason as to why
25 not to give the death penalty?

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1 A I guess. It'd have to be proved I mean or shown what
2 happened. I mean---

3 Q Sure.

4 A ---what was the circumstances.

5 Q But would, would I have to prove to you as to why a
6 life penalty was an appropriate penalty?

7 A Yes, sir.

8 Q Okay. The way the, the law works and the judge told
9 you a little bit about this is that the starting point is
10 life. Life is the appropriate penalty.

11 Okay. You with me on that?

12 A Uh-huh. (Affirmative).

13 Q And then if an aggravating circumstance is proven
14 beyond a reasonable doubt, the jury gets to consider the two
15 punishments.

16 You understand where I am on that?

17 A Yes, sir.

18 Q Now, it sounds to me like you might be saying well, for
19 me, it's death penalty unless---

20 SOLICITOR BARNETTE: Objection, Your Honor.

21 THE COURT: I did not -- I did not charge that.

22 SOLICITOR BARNETTE: Like I said, he's started to get
23 into staking---

24 THE COURT: well, no, I did not charge her as to
25 anything about burden of proofs during sentence. You

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1 mentioned the judge charged her on that. I didn't charge
2 her on that, didn't get into who had the burdens of proof on
3 the sentencing phase of the trial. I don't remember
4 mentioning that.

5 MR. YOUNG: I may of misspoke. I meant to say will
6 charge you on the burden of proof.

7 THE COURT: well, I misunderstood your question then.
8 So, I did not -- I haven't told her, explained to her what
9 the burdens are in the sentencing process---

10 MR. YOUNG: Sure.

11 THE COURT: ---at this point in time.

12 MR. YOUNG: Of course.

13 THE COURT: So, I didn't know that that was
14 appropriate.

15 MR. YOUNG: Of course.

16 THE COURT: You may proceed.

17 Q So, it sounds to me like you might start at death and
18 require the defense to show you a reason as to why life
19 would be the appropriate penalty?

20 A Yes, sir, I mean it would have to be proved either way.

21 Q Okay. well, you know that's sort of the thing about
22 this, this penalty that we're talking about. There's no
23 check box. There's no life if A, B, and C exists. This is
24 the appropriate penalty if D, E, and F. This is the
25 appropriate penalty. It's up to each juror to decide for

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1 him or herself.

2 You with me on that?

3 A Yes, sir.

4 Q Is that something that you feel that you could do?

5 A Yes, sir.

6 Q Okay. We -- and we talked a little bit -- I talked to
7 you a little bit about these aggravating circumstances and
8 the State proving beyond a reasonable doubt the existence of
9 an aggravating circumstance, right?

10 A Yes, sir.

11 Q And I'm gonna compare that to mitigation circumstances.
12 Not have a burden of proof. Okay. It's a little bit weird,
13 but each juror gets to decide for himself or herself what is
14 or isn't mitigated.

15 You with me on that?

16 A Yes, sir.

17 Q And, and while background, how somebody grew up, might
18 not be important to you, it might be important to somebody
19 else.

20 Okay?

21 A Uh-huh. (Affirmative).

22 Q And that's okay. The law allows y'all to disagree on
23 that.

24 A Yes, sir.

25 Q You with me on that?

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1 One juror may say I, for that reason alone, wanted to
2 vote for life and that's okay.

3 All right?

4 A Uh-huh. (Affirmative).

5 Q And would you allow them to do that?

6 A You mean go against what I believe or what I---

7 Q would, would you allow them to have their own belief?

8 A Sure. I mean I can't tell anybody else what to do. I
9 can only tell myself.

10 Q Sure, and I, and I artfully asked this question.

11 But what, what we call this judgment about whether or
12 not a person, another human lives or dies, we call it an
13 individual moral judgment.

14 Okay?

15 A Uh-huh. (Affirmative).

16 Q Like choosing what faith is right for you. You've made
17 choices about your faith.

18 A Uh-huh. (Affirmative).

19 Q And you expect other people to respect your choices.

20 A Yes, sir, because I would expect, you know, respect
21 them.

22 Q Cause other people may of made different choices about
23 what faith is right for them?

24 A Uh-huh. (Affirmative).

25 Q And you respect their right to do that?

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1 A Yes, sir.

2 Q And if somebody were being bullied to change what they
3 had arrived at as their individual moral judgment, would you
4 stop it?

5 A I -- yeah.

6 Q And I think -- there was a question on your
7 questionnaire about race, and said if somebody were
8 improperly using race to make a decision would you stop it
9 and report it.

10 A Uh-huh. (Affirmative).

11 Q And you checked that you would.

12 A Uh-huh. (Affirmative).

13 Q Right?

14 A Yes, sir, I don't believe in bullying.

15 Q Right.

16 And you would stop it and report it---

17 A Uh-huh. (Affirmative).

18 Q ---if you saw it happen?

19 A Yes, sir.

20 Q You understand that if all 12 jurors decide, for their
21 individual moral judgment, they all agree that the death
22 penalty is the appropriate punishment, then Mr. Blackwell
23 would be killed?

24 A Yes, sir.

25 Q You understand that?

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1 A Uh-huh. (Affirmative).

2 Q You don't have any questions about that?

3 A No, sir.

4 Q Okay. And if all 12 jurors decide that life is the
5 appropriate punishment, the punishment would be life without
6 the possibility of parole, dying in prison?

7 A Uh-huh. (Affirmative).

8 Q You understand that?

9 A Uh-huh. (Affirmative).

10 Q And if one juror said well, for me, the appropriate
11 punishment is life, that's my individual moral judgment,
12 that's my vote, I'm done, then the punishment would be life.

13 Okay?

14 A Uh-huh. (Affirmative).

15 Q You okay with that?

16 A Yes, sir.

17 Q On making these things, these individual moral
18 judgments, sometimes people have to agree to disagree.

19 A Uh-huh. (Affirmative).

20 Q Are you okay with that?

21 A Oh, yeah.

22 Q Ms. Champion, how do you feel knowing that your one
23 vote, your individual decision could make a decision between
24 whether or not a person lives or dies?

25 A It's really hard. It's nerve racking to have

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1 somebody's life in your hands, and you hope you can only
2 make the best decision for the case.

3 Q Okay. Thank you, Ms. Champion.

4 THE COURT: State.

5 SOLICITOR BARNETTE: May it please the Court, Your
6 Honor?

7 THE COURT: Yes, sir, Mr. Barnette.

8 EXAMINATION

9 BY SOLICITOR BARNETTE:

10 Q Ms. Champion, good morning. I'm Barry Barnette, and
11 Mr. Bulsa, we're representing the State in the case.

12 I apologize ahead of time asking you any questions,
13 and, like I said, you've already been asked a lot of
14 questions, but I need to follow up some with you.

15 Okay?

16 A Okay.

17 Q When defense was talking to you about the, about the
18 questions they asked and whatever, you realize that the
19 defendant never has a burden of proof. It's always on the
20 State.

21 A Yes, sir.

22 Q And the judge explained that to you from there. I know
23 he asked you some questions that basically you'd start out
24 with death, but that's not true. If I understood your
25 answer right, basically you felt like you'd wait and you'd

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1 hear everything before you made a decision.

2 A Yes, sir, nothing's set in stone till everything's
3 presented.

4 Q Right.

5 And like you said, we have to go through a guilt phase,
6 and if we get through the guilt phase, and you and the jury
7 comes back guilty, and you're on that jury, you'd hear from
8 both sides again.

9 A Uh-huh. (Affirmative).

10 Q You'd hear from us on aggravating circumstances, and
11 you'd hear from them on mitigating circumstances.

12 You understand that?

13 A Yes, sir.

14 Q And we had to prove our aggravating circumstances
15 beyond a reasonable doubt in order for the death penalty to
16 be imposed.

17 A Uh-huh. (Affirmative).

18 Q They don't have to prove anything. Now, they do prove
19 up mitigation circumstances, and the mitigators they present
20 may be a disability or something like of that nature as
21 well.

22 Would you listen to those?

23 A Yes, sir, I would listen to everything and take
24 everything into account.

25 Q And you realize they don't have to prove those beyond a

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1 reasonable doubt. They just bring that to mitigate the
2 crime that occurred --

3 A Uh-huh. (Affirmative).

4 Q -- in that situation.

5 would that be something that you would look at in that
6 situation also?

7 A Yes, sir, I mean I would have to take everything into
8 account I mean before I can sentence somebody to death. I
9 mean I would have to hear everything you know.

10 Q Right.

11 You're not predisposed to death just because it's a
12 death penalty case?

13 A Oh, no, sir. No, sir.

14 Q And if I understood right, I mean watching your
15 responses, this is a serious decision for you?

16 A Oh, yes.

17 Q And -- but could you consider the death penalty if
18 enough aggravation was brought to that?

19 A Yes, sir, I don't have a problem.

20 Q Okay. I understand. But at the same time, if, if
21 their mitigation or the evidence or something in the, in the
22 sentencing phase would point to life without parole, you
23 wouldn't have any problem voting life without parole either,
24 would you?

25 A No, sir.

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1 Q And you realize even -- let's say we've proven an
2 aggravating circumstance, and we just have to prove one of
3 them to you to your satisfaction beyond a reasonable doubt,
4 and even if they prove all their mitigators, you still come
5 back with a death sentence.

6 Do you understand that?

7 A Yes, sir.

8 Q Even, even if both sides prove everything in the case?

9 A Uh-huh. (Affirmative).

10 Q And, at the end, ma'am, if you had 12 -- if 12 people
11 had to sign the sentencing sheet at the end, could you sign
12 that sentencing sheet if the death penalty was appropriate
13 in this case?

14 A Yes, sir.

15 SOLICITOR BARNETTE: One moment, Your Honor, please.

16 (Pause.)

17 SOLICITOR BARNETTE: Thank you, ma'am. Thank you for
18 answering my questions.

19 THE COURT: Anything to follow up, Mr. Young?

20 MR. YOUNG: No, Your Honor.

21 THE COURT: All right, ma'am. I'll ask you to step
22 back to the jury room for just a moment. I'll have you back
23 shortly.

24 Okay?

25 THE WITNESS: Oh, okay.

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1 THE COURT: Thank you, ma'am.

2 (WHEREUPON, the following takes place outside the
3 presence of the juror.)

4 THE COURT: Defense position.

5 MR. YOUNG: Your Honor, we'd move to strike her for --
6 Ms. Champion for cause. She was pretty clear that she is a
7 burden shifter. She would require the defense to prove why
8 life was the appropriate punishment, which is contrary to
9 the law. She rejects certain categories of mitigation such
10 as growing up hard and background are not relevant to her in
11 her penalty decision making process. I know that the State
12 tried to rehabilitate her and saying well, that's not true,
13 you would be open to both, and she said that she would in
14 response to a leading question where she was told that---

15 THE COURT: Well, pretty much all the questions asked
16 of her were leading from both sides, but that's all right.
17 Go ahead.

18 MR. YOUNG: That's the State's -- that's the defense
19 position.

20 THE COURT: Thank you, Mr. Young.
21 State's position.

22 SOLICITOR BARNETTE: Your Honor, we'd ask the juror be
23 found qualified based off her responses. She was very open
24 and very truthful coming forward. Obviously defense tried
25 to trap her in this situation and kept going back and forth,

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1 but the bottom line is she would listen to both sides. She
2 would listen to the law.

3 The problem was I don't know if he quoted the law
4 correctly. I know Your Honor, Your Honor said at the same
5 time basically had the same concerns from there, and I think
6 she became confused with his questions, but I think the
7 bottom line this is a serious thing. You can tell the way
8 she was breathing. You could tell the way she was acting on
9 the stand or on the -- basically through her answers that
10 this is a serious matter for her, and I think she'd give the
11 proper weight in this case, and she's exactly the kind of
12 juror that we would need on this case.

13 THE COURT: Well, as a -- as always, I am required to
14 examine the voir dire -- the entire voir dire, all of it, in
15 the line -- in this case, and I do find that the, the times
16 when she did discuss the possibility or the -- that she may
17 require someone to prove something to avoid the death
18 penalty, I'm not sure she had been instructed on the law.
19 She made clear that she would be willing to follow the
20 Court's instructions even if she disagreed with the Court's
21 instructions -- with the law as stated by the Court.

22 But at this time she's received no instructions as to
23 the burden of proofs that people might have or lack thereof
24 in a sentencing proceeding. She made it clear, on
25 several -- on many occasions, that she would have an open

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1 mind on the, during the sentencing and -- proceeding and
2 would consider both aggravating and mitigating
3 circumstances.

4 So I'm going to find that, based on that, as well as
5 the demeanor of the witness, the juror as she testified, I
6 find that she is qualified to serve and I qualify her as
7 such.

8 Bring her back in please.

9 (WHEREUPON, the following takes place within the
10 presence of the juror.)

11 THE COURT: All right. Ms. Champion, I have made a
12 determination that you are qualified to proceed in this, in
13 this process. That doesn't mean you're on the jury. That
14 means -- what we're doing now is qualifying a list of
15 people. From that list a jury will be selected. So, you
16 may or may not be on the jury. We'll find out once this
17 process has been completed.

18 What I am going to tell you is that -- I'm gonna give
19 you a sheet of paper.

20 You want to go ahead and hand her that sheet of paper?

21 THE CLERK: Yes, sir.

22 THE COURT: Now, ma'am, on that is just some
23 information that -- for -- to -- for you to think about.
24 When you're called back, if you're called back to the
25 courthouse, it may be for you to go on the jury, and if you

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1 go on the jury, you will be, as I said, sequestered. So,
2 you need to be prepared to stay a little longer than a week.

3 Now, the place you'll be staying does have laundry
4 facilities and things like that. So, don't be concerned
5 about those things. We'll see that you're well taken care
6 of, but you'll need to bring the things that you would need
7 to stay with us. If there's medication that you take or
8 something like that, be sure you have that available with
9 you when you come back.

10 Now, my order concerning your behavior will continue.
11 That means you shouldn't discuss the case with anyone.
12 Don't try to gather any information about the case. Turn
13 off the television. Don't read the newspapers I think is
14 the way you did it. So, keep on doing those things.

15 Now -- and if anybody tries to contact you about your
16 service, please report it to us. I'd like to know that
17 cause I'll take the appropriate action should that occur.

18 Now, there's an exception to that rule. You may need
19 to talk to your employer or your spouse, family, and let
20 them know that if you're called back, you may be staying for
21 a little while, and to be sure that there -- they have made
22 preparation for that if that occurs.

23 Okay. So, it's okay to talk to them about that. But
24 do not discuss the case or what it's about or the issues
25 that might be involved.

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1 You understand what I'm saying?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right. So, at this point in time I'm
4 gonna allow you to go. But you'll be hearing from us again.
5 I suspect it will be a few days before we get back in touch
6 with you. But, as I said, until that time my order
7 concerning your behavior will continue.

8 THE WITNESS: Okay.

9 THE COURT: Okay. So, they're gonna check you out.
10 Do you have any questions?

11 THE WITNESS: So, I just am on standby until I hear
12 from you?

13 THE COURT: You're on standby until you hear from us.
14 we'll get -- you'll get a call from the Clerk's Office.
15 we'll give you further instructions as to what you need to
16 do.

17 THE WITNESS: Okay.

18 THE COURT: Okay. Do we have your appropriate phone
19 numbers I assume?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. Thank you very much.

22 THE WITNESS: Thank you.

23 (WHEREUPON, the following takes place outside the
24 presence of the juror.)

25 THE COURT: The next individual will be Diane Marcotte,

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1 160. Be sure she's read the information and bring her out.

2 THE BAILIFF: Yes, sir.

3 (WHEREUPON, the following takes place within the
4 presence of the juror.)

5 DIANE MARCOTTE, having been previously
6 sworn, testified as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q Have a seat please, ma'am.

10 A (Witness complies.)

11 Q All right. You are Diane -- is it Marcotte?

12 A Yes, sir.

13 Q Did I say right?

14 A Yes, sir.

15 Q All right. I got lucky today then.

16 All right. Ms. Marcotte, you may want to turn your
17 chair just a little bit because I'm gonna talk to you for a
18 while, and then we're gonna let the lawyers ask you some
19 questions. So, I'll -- you know when that's gonna happen,
20 but it's gonna be -- I'm gonna be talking and asking you
21 some questions to begin with.

22 First of all, I want to thank you for your continued
23 cooperation with us in this process. I know this is like
24 nothing you've ever been involved in before, and it's a lot
25 of hurry and some waits and changing things, and I

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1 appreciate your flexible, flexibility and willingness to
2 assist us in this matter. So, thank you very much.

3 what we're going to do this morning is continue the
4 qualification process for the jury. We're going to be
5 asking you some questions and going over some things. I
6 want to tell you that there's no right or wrong answers to
7 our questions. What we want are honest and truthful
8 answers.

9 A Okay.

10 Q I'll remind you you took an oath on Monday to tell the
11 truth to the Court. You're still under that oath now.

12 Do you acknowledge that?

13 A Yes, sir.

14 Q And you accept that as being true?

15 A Yes.

16 Q Okay. I don't want you to -- the seat you're sitting
17 in is sometimes considered the hot seat in this courtroom.
18 Maybe that's why we have the red one. I don't know if
19 that's true or not. But I don't want you to feel that way
20 today.

21 A I don't.

22 Q We're not here to try to embarrass anybody or pry into
23 anything other than the information we need to have, but,
24 again, there aren't any right or wrong answers. There's
25 only truthful answers.

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1 You understand that, ma'am?

2 A Yes, I do.

3 Q All right. Now, since we talked earlier, Monday, have
4 you been able to follow my instructions?

5 A Yes, with one exception.

6 Q All right. Tell me what the exception is.

7 A I was on my way to bed Monday night, and my husband had
8 the news on, and the name Blackwell was mentioned---

9 Q Uh-huh. (Affirmative).

10 A ---and an eight year old child---

11 Q Okay.

12 A ---and that's all I heard.

13 Q Did you hear anything other than those two facts?

14 A No, sir, but I thought oh, my goodness.

15 Q Okay. Well---

16 A And then---

17 Q Well, let me ask you this.

18 A I wasn't watching the news. I was---

19 Q It's something you just heard in the house?

20 A Gathering stuff up and it must of been almost the first
21 story because I didn't watch the news that night.

22 Q Okay. All right. Well, let me, let me ask you this.

23 Are you the kind of person that could put aside

24 anything that you may of heard outside of the courtroom,

25 anything you might of heard that may, in anyway, pertain to

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1 this case, and be willing to come into the courtroom and
2 decide the case based upon the law and the evidence---

3 A Yeah.

4 Q ---that you hear inside the courtroom?

5 A Yes, sir, cause I didn't really hear anything.

6 Q Okay. And that particular information, would that, in
7 anyway, prevent you from being able to do what I just asked
8 you---

9 A No.

10 Q ---being able to come to the courtroom and decide the
11 case based on the law and the evidence?

12 A No.

13 Q Okay. Now, I'll be asking questions, as I told you,
14 and the first one I'm gonna ask you -- and some of these you
15 may think are a little far out, but we have to ask these
16 questions.

17 A Okay.

18 Q Have you ever participated in any type of discussions,
19 whether it be on the Internet or any other forum, in which
20 issues involving the death penalty were discussed?

21 A I worked for the Department of Corrections in Michigan.

22 Q Uh-huh. (Affirmative).

23 A I worked for the deputy warden.

24 Q Uh-huh. (Affirmative).

25 A So, yes.

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1 Q Okay. In what respect was it discussed?

2 In, in -- was it concerning whether or not it's
3 appropriate or whether or not the law should be that way or
4 is it -- was it concerning the particular cases that might
5 be involved?

6 A No, I, I think the context was that in some cases it's
7 appropriate.

8 Q Okay.

9 A That some crimes aren't resolvable, aren't -- there,
10 there was a belief with the people I worked with---

11 Q Uh-huh. (Affirmative).

12 A ---for example, that pedophiles were not retrievable.

13 Q Okay. All right.

14 A That if they were let out of prison, that they would
15 continue---

16 Q Well, that's not -- that's, that's someone that goes to
17 prison and doesn't get out. This is -- I was talking about
18 the death penalty in particular right now.

19 A Right.

20 Q We're gonna talk about some other things later on.

21 A Right. So, so, in, in some cases I must say that I do
22 believe that some crimes could be punished with the death
23 penalty.

24 Q Okay. I understand that.

25 So, you've had discussions about what would be

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1 appropriate or wouldn't be appropriate?

2 A Right. Because one of my questions is, and it's South
3 Carolina, does life imprisonment mean never paroled or does
4 it mean 50 or 25 years?

5 Q Well, I can answer that for you because it means they
6 would never be paroled.

7 A Okay.

8 Q They would die in prison.

9 A That would make a difference to me too.

10 Q Okay. Well, that's the law.

11 A I didn't know.

12 Q Okay. All right. All right. Now, the discussions
13 that you had, would those discussions prevent you from being
14 able to listen to both sides of the case and make a decision
15 based on the law and the evidence presented to you?

16 In other words, do you have a preconceived notion---

17 A No.

18 Q ---that all crimes you will do something in particular
19 in a particular case?

20 A No.

21 Q Okay.

22 A No.

23 Q All right. Now, have you ever participated in any
24 political activities that would involve the issue of the
25 death penalty such as a demonstration or writing letters to

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1 Congressmen or---

2 A No, sir.

3 Q ---representatives, anything like that?

4 All right. Now, back in the jury room we had a list of
5 people.

6 A Yes.

7 Q A long list of people. I will tell you those are
8 people that have been identified to me as possible witnesses
9 in the case. I don't know if they're all gonna testify, and
10 generally, when I get one of those lists, everybody doesn't
11 testify.

12 A Right.

13 Q But they possibly could. So, if they possibly could,
14 they've been put on that list.

15 Now, did you read the list?

16 A Yes, I didn't recognize anybody.

17 Q Okay. That -- so, I take it you're not related by
18 blood or marriage---

19 A No.

20 Q ---to anybody on that list---

21 A No.

22 Q ---is that right?

23 A Or neighbors, no.

24 Q Have you ever had a business or a social relationship
25 with anyone on the list?

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1 A No.

2 Q Okay. So, you didn't recognize anyone?

3 A No, sir.

4 Q Okay. That answers my questions.

5 Now, we're going to get into some -- a little more
6 personal questions. Some of them may involve beliefs or
7 opinions that you have. You appear to be a, a mature person
8 who that wouldn't threaten you or make you, in anyway, feel
9 uncomfortable.

10 So, are you able to go through that, that process and
11 listen to that---

12 A Uh-huh. (Affirmative).

13 Q ---without feeling threatened in anyway?

14 A Yes, sir.

15 Q Okay. Now, one of the things I'm going to ask you
16 about, I'll eventually get there, will be matters obviously
17 involving the possible death penalty in this case, and I
18 want to let you know that right, right now that we end up,
19 by doing that, are kind of putting the cart in front of the
20 horse.

21 A Yes, I understand.

22 Q The reason for that is that, in this state and in, in
23 most states, these type of trials are what we call
24 bifurcated. They're divided into two phases of the trial.
25 The first phase is where the issues of guilt or innocence of

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1 the crimes charged is decided, and if a defendant is found
2 guilty of murder, then the State, when they seek the death
3 penalty, we would go into a penalty phase to decide the
4 appropriate penalty in this case, and so it's possible we
5 may never get to that phase depending on the verdict in the
6 first part. But that's why I'm saying I'm putting the cart
7 in front of the horse when we talk, talk about the penalty
8 at all.

9 I want to explain to you though that this is the only
10 time we'll have to do this. Once the jury is impaneled and
11 starts on the guilt phase, they also would hear the penalty
12 phase so -- if we got to that point. So, there's no time to
13 stop and look into those issues during the trial.

14 So, we're -- again, Mr. Blackwell, the defendant, is
15 presumed to be innocent in this case.

16 A Uh-huh. (Affirmative).

17 Q We have not completed the first part of the trial to
18 get to the second part of the trial, and I'm telling you you
19 should not take from the fact that we have these discussions
20 in anyway as a reflection upon him or his case in this
21 matter.

22 Do you understand that?

23 A Yes, I do.

24 Q This is simply the only time we have to discuss all of
25 the matters, both guilt and penalty matters, with jurors.

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1 A Yes.

2 Q Okay. Now, I'm gonna ask you just some basic concept
3 questions to begin with. If you were a juror in any
4 criminal case, and I'm not talking specifically about this
5 one, any criminal case, would you be willing to listen to
6 the law as you were instructed that law by the judge?

7 A Yes.

8 Q would you be also willing to accept the law as given to
9 you by the judge and then apply that law to the facts as
10 determined by the jury in reaching a verdict?

11 A Yes.

12 Q Now, is that true even if you were sitting in the jury
13 box, and, as you listened to the judge give you that law,
14 let's say that as he was going through his charge something
15 caught your attention and you said I don't really agree with
16 the way the law is there, that's not something that I would
17 agree with, would you -- are you the kind of the -- juror
18 who would accept the law exactly as given to you by the
19 judge and then apply that law to the facts or would you let
20 your personal feelings get in the way of that process?

21 In other words, could you set your personal feelings
22 aside and apply the law as given to you by the judge to the
23 facts even if you might disagree with what the law says?

24 A Yes, I think I could, yes.

25 Q Okay. Now, some other concepts under the law I want to

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1 go over with you is that, in the -- and since you've been
2 involved to, to some degree in the, in the penal system, you
3 may already know these things, but I want to be sure you
4 understand these basic concepts.

5 I mentioned earlier that Mr. Blackwell, as a criminal
6 defendant, is presumed to be innocent in the case, and
7 because of that presumption of innocence, a defendant is
8 never required to prove anything in any criminal trial.

9 Do you understand that concept?

10 A Yes.

11 Q So that -- because of that presumption of innocence.
12 But -- and by the same token, the State has the burden of
13 proof in a criminal trial, the only burden of proof, and
14 that is to prove the allegations that they have made by
15 proof beyond a reasonable doubt.

16 Do you understand that concept?

17 A Yes, I do.

18 Q All right. Now, now, this question's a little
19 convoluted. So, listen to it carefully.

20 If you were in a situation where you were a juror in a
21 case, would you be willing to listen to the law, as given to
22 you by the judge and the evidence as presented from the
23 witness stand, and if you found that the State had not met
24 that burden of proof, are you someone who could find someone
25 not guilty of the charge?

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1 A Yes.

2 Q Now, that would tell me, in other words, that just
3 because a person has been arrested, charged, and indicted,
4 that they're not automatically guilty of the crime.

5 Do you agree with that concept?

6 A Yes, I agree with that.

7 Q Now, however now, if the evidence did convince you of a
8 defendant's guilt beyond a reasonable doubt, are you someone
9 who could enter a guilty verdict against someone?

10 A Yes.

11 Q Now, we're going to talk for a minute about the penalty
12 involved in this case cause it's, it's a little bit unusual
13 under the law.

14 Most cases where someone is found guilty of a crime by
15 a jury the judge does the sentencing. That law is different
16 in the case where someone is -- where the State is seeking
17 the death penalty.

18 In a death penalty case, the -- we go through a phase
19 of the trial where guilt or innocence is determined by the
20 jury. Again, should the jury find the defendant guilty of
21 murder, then the second question has to be answered and that
22 is the appropriate penalty. There's two appropriate
23 penalties under the law of this state. That is either life
24 imprisonment without the possibility of parole or the death
25 penalty. So, those are the two choices.

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1 But the same jury that hears the guilt phase also hears
2 the penalty phase. So, that jury would then go into that
3 penalty phase of the trial.

4 You understand the, the framework---

5 A Yes, sir.

6 Q ---that I'm talking in?

7 A I understand.

8 Q All right. Now, the law that governs how the penalty
9 or sentencing phase of the trial is set up provides for the
10 introduction of evidence or, or evidence in the matter, and
11 it's kind of -- that statute divides it into two categories
12 or, or kinds of evidence. One type is what, what is --
13 would be evidence concerning aggravating factors. The other
14 type of evidence that's provided to be put into the penalty
15 phase is mitigating factors.

16 Now, those are words that some -- you use sometimes,
17 but maybe not in this context. So, I want to tell you what
18 we mean by that type of evidence. The evidence that would
19 be toward an aggravating factor would be factors that the
20 law takes to -- that would make -- we got a guilty verdict
21 as to murder, that would make that particular crime, the
22 penalty for that crime more severe. Aggravating matters,
23 things that would make a juror more likely to give a higher
24 level sentence as opposed to a lower level sentence.

25 The law also provides that mitigating factors can be

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1 considered by the jury and evidence can be put in on that
2 subject as well. Those are factors that might tend to
3 either lessen the severity of the crime or put the defendant
4 in a better light so that a jury would more -- would be more
5 inclined toward giving a lesser sentence.

6 A Okay.

7 Q So, do you understand the difference between
8 aggravating and mitigating evidence?

9 A Yes, sir.

10 Q But the law provides that both types of evidence can be
11 put in, and the mitigators are not limited to just what's in
12 the statute. In other words, you can put in -- a, a lot of
13 things can be put into a trial. Not just what's in the
14 statute.

15 So, do you understand what I mean by aggravating and
16 mitigating circumstances?

17 A Yes, sir.

18 Q Now, once that evidence, evidence has been put in, then
19 the Court, the judge would instruct the jury to consider
20 those factors in determining the appropriate verdict and the
21 choices are either death or life imprisonment without the
22 possibility of being paroled.

23 Now, I want you to put yourself in a position. I'm
24 gonna describe the position to you.

25 Let's say that you were on a jury in which the death

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1 penalty is being sought for a murder, and let's say that
2 jury had gone through a trial on the question of guilt or
3 innocence, and that particular jury has found the defendant
4 guilty of the crime of murder. So, there's been a guilty
5 verdict entered on that particular charge.

6 As I stated to you, the law then provides that a
7 separate hearing be held, but the same jury would hear both
8 things -- both, both hearings. The separate hearing now is
9 on the penalty or sentencing phase of the trial, and let's
10 say that you're on that jury and you, you're coming into the
11 door into the courtroom. So, you're about to walk back into
12 the courtroom to begin that, that phase of the trial.

13 Back on the table in the jury room I had a sheet of
14 paper that described three different types of jurors.

15 Do you remember that paper?

16 A Yes, I do.

17 Q Did you read that paper?

18 A Yes, sir.

19 Q All right. Now, I'm gonna remind you -- I'm not gonna
20 use the exact words used on the paper, but I'll remind you
21 of the three types of jurors that were described on that
22 sheet of paper.

23 The first type of juror would be a person who, before
24 he ever set foot back into the courtroom for that sentencing
25 phase, would of already made up his or her mind. That juror

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1 believes that, anytime someone is convicted of the crime of
2 murder, that the only appropriate penalty is the death
3 penalty, and so that juror would always vote for death no
4 matter what the aggravating or mitigating circumstances
5 might be. That's the first juror.

6 A Uh-huh. (Affirmative).

7 Q The second juror, when they come to that door to come
8 back inside, also has made up his or her mind. That juror
9 feels or believes that it's never appropriate for the State
10 to take the life in response to the commission of any crime
11 no matter how severe or serious it might be, and that person
12 would always vote, vote for life imprisonment without parole
13 in every case.

14 The third juror, as they come to the door of that
15 courtroom, hasn't made up his or her mind. That juror wants
16 to listen to the facts and circumstances, the aggravating
17 facts as well as the mitigating facts, and based upon those
18 facts and the law as instructed, would make a decision based
19 upon the facts presented during that hearing as to what the
20 appropriate penalty might be. Either a vote for the death
21 penalty or a vote for life imprisonment without parole.

22 Do you understand what I mean by the three different
23 jurors?

24 A Yes, sir.

25 Q Now, I told you to put yourself in that position coming

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1 into the courtroom.

2 which one of those three jurors would best describe
3 your feelings as you came into the courtroom?

4 A I would be the third.

5 Q So, you would be a person who would want to listen to
6 the---

7 A Yes.

8 Q ---aggravating factors as well as the mitigating
9 factors---

10 A Yes.

11 Q ---before you made a decision in the case?

12 A Yes.

13 Q Now, let's say that you listened to those factors, and,
14 after listening to those factors, you came to the conclusion
15 that the appropriate penalty for that offense would be a
16 death sentence.

17 could you vote for a death sentence?

18 A Yes.

19 Q Now, let's say that you're also a person though who
20 decided that the appropriate penalty, after hearing all of
21 the factors, is life imprisonment without parole.

22 could you vote for life imprisonment without parole---

23 A Yes.

24 Q ---in that circumstance?

25 So, you'll decide it based on the law and the evidence

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1 as presented during the trial?

2 A Yes.

3 Q Now, I've just got -- I'm about finished. So, I'm
4 getting close to the end.

5 A Okay.

6 Q Now -- for what I've got to ask you. The lawyers will
7 want to talk to you certainly.

8 Now, I've, I've -- I have entered what's called a
9 sequestration order in this case. That means that, once the
10 jury is impaneled, once we have the jury impaneled, that
11 jury will be housed in a location, actually the Marriott
12 hotel here in town, it's not a bad place to be, for the
13 duration of the trial. During that period of time you would
14 be transported any -- wherever you needed to go. You'd
15 receive your meals paid for. You'd receive -- of course,
16 you'd be in a situation where your calls would be monitored
17 and things like that, but you could talk to people on the
18 outside, but there'd be restrictions on what you could do or
19 couldn't do because we want to be sure that the jury's not,
20 in anyway, affected by outside influences. So, there would
21 be a sequestration order in effect.

22 I expect the trial will last a week or better. I will
23 tell you that, once we start the trial, we normally go
24 everyday until we're finished. We don't stop for weekends
25 and things of that nature. So---

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1 A Okay.

2 Q ---it would be -- we'll try to move it along as quickly
3 as possible, but be sure we cover everything. So, that's,
4 that's -- so, I suspect the trial will take a little more
5 than a week perhaps is what my best estimate is right now.

6 Now, my question to you is if you were in the situation
7 where you were sequestered with a jury, would that, in
8 anyway, pose a serious risk to your personal health or well
9 being?

10 A No.

11 Q would it pose a serious risk to the personal health or
12 well being of anyone who might be dependent upon you?

13 A No.

14 Q All right. Now I'm gonna ask that you answer questions
15 for the attorneys. So, you might want to turn your chair
16 around. They're going to be coming from that direction.

17 A Okay.

18 Q And we'll proceed at this time.

19 Mr. McGuire.

20 MR. MCGUIRE: Thank you very much, judge.

21 THE COURT: Yes, sir.

22 EXAMINATION

23 BY MR. MCGUIRE:

24 Q It's still morning.

25 Good morning, Ms. Marcotte, how are you doing?

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1 A Fine. Thank you.

2 Q I, I obviously stood and introduced myself to the whole
3 panel the other day, but my name's Bill, Bill McGuire. I'm
4 one of the lawyers on the case and this is my opportunity to
5 ask you some questions.

6 A Yes.

7 Q Appreciate you bearing with us. I know sometimes
8 Court's not the most efficient system, and you've been
9 waiting a while and forgive us all for that.

10 You've got some experience with regard to some criminal
11 justice issues based on your, your work with Michigan
12 Department of Corrections?

13 A Yes, sir.

14 Q Okay. And, of course, some of our laws are a little
15 bit different than other states, and I just want to be clear
16 that, in South Carolina, life without parole is life without
17 parole.

18 A Yes, that's what I didn't understand.

19 Q Yes, ma'am. I know other states are different and, in
20 fact, I use to practice in Georgia. We had parole in
21 Georgia. But here, in South Carolina, when the, when a
22 judge says the only two choices in a case are, are life
23 without parole and prison or the death penalty, it really is
24 life without parole. There's no work credits or parole
25 opportunity or anything else. No furlough opportunities at

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1 all. It's go in prison and never come out, and now you know
2 that.

3 A Yes, thank you.

4 Q Okay. What I wanted to talk to you a little bit about
5 is, is how a capital trial can be very different from a
6 traditional trial. Obviously, from watching TV, news, we
7 all have an idea of how a regular trial works, and that's
8 the whole jury has to agree, beyond a reasonable doubt, got
9 the right guy, he did it, and all 12 absolutely have to
10 agree, and all the issues are really issues of fact. The
11 penalty phase of a capital trial is different. The decision
12 making, it's called an individual moral judgment.

13 Did you know that?

14 A No, I did not.

15 Q Okay. And it's not a collective process. It's not a
16 majority type thing.

17 Now, for the death penalty to be imposed, all 12 jurors
18 would have to do two things, find an aggravating
19 circumstance beyond a reasonable doubt, and find that the
20 death penalty was appropriate beyond a reasonable doubt.

21 Now, with regard to the life penalty, it doesn't have
22 to be a majority type situation, and there's not a majority
23 required for several things. For instance, what's called
24 mitigation evidence.

25 Do you remember the judge's comments about mitigation

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1 evidence?

2 A Yes.

3 Q They can be any reason to vote for the life penalty,
4 and just so you know some of the principles of law, the
5 death penalty's never required in any case in South
6 Carolina.

7 Did you know that?

8 I'm not sure if you knew that.

9 A I wouldn't think it would be required.

10 Q Right.

11 A Right.

12 Q Some people in your chair come here thinking that if
13 the State proves A, B, or C that the death penalty is
14 required.

15 A No, I wouldn't think so.

16 Q Okay. Well, it's not. It's not in any case, the worse
17 case, or this case, and, and when it comes to, to a juror
18 reaching their individual moral judgment, they can look at
19 any fact that, that -- they can find any fact for a reason
20 to vote for life. It can be things that we present. It can
21 be things that you see in the case that, that the lawyers
22 didn't even try to present to you, but you can see it and
23 you can find it, and all 12 jurors don't have to agree that
24 it exists.

25 Are you with me?

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1 A Yes.

2 Q And just by sort of example or analogy, you know, a
3 juror sitting right here could say I saw something in the
4 defendant's -- the way he grew up that resonated with me and
5 I'm gonna vote for life for that one reason. Somebody over
6 here might say well, I didn't see that, but I saw something
7 else. I saw a relationship with his family or his children
8 or his grandkids and that resonated with me and that person
9 can have their own separate reason, and the judge would
10 charge the jury that a jury can vote for life, a juror, an
11 individual juror, can vote for life for any reason, no
12 reason, or mercy.

13 Did you know that was the law?

14 A Yes, I would think so.

15 Q Okay. And so, so a juror over here could say, you
16 know, I can't put into words my feelings why I think life is
17 the appropriate penalty, but, but I remember the judge
18 saying I could vote for life for no reason and so I'm gonna
19 do that, and I don't have the words to defend my position,
20 but it doesn't -- the death penalty doesn't sit right for
21 me. That's my individual moral position.

22 Can you see how everybody could have a different
23 position?

24 A They probably would.

25 Q You expect some disagreement, right?

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1 A I'm sure, yes.

2 Q Sure.

3 And if somebody had a different opinion than you, you
4 would respect it?

5 A Yes.

6 Q And you would want your opinion respected?

7 A Absolutely.

8 Q And if somebody reaches their own individual moral
9 judgment, the law is that if it would harm their conscience
10 to change that position, that would be wrong. It would be a
11 violation of their oath.

12 So, if you saw somebody reach their individual moral
13 judgment, reach their position, and you saw an effort to say
14 try to swing them to a majority and give up that individual
15 moral judgment, would you stop that?

16 Could you stop that?

17 A I wouldn't do it. I can see some people doing it
18 though. I don't know how I would stop it.

19 Q Well, one thing you could do is you could send a note
20 out to the judge --

21 A Okay.

22 Q -- and say that we believe that a juror has reached
23 their individual moral judgment, their position, and there's
24 an effort to get her to, to change that just to, just to
25 satisfy a majority. You could send a note out saying that.

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1 A Okay.

2 Q Okay. And, and could -- would you do that?

3 A Yes, I would.

4 Q Okay. And there was a, there was a pamphlet that was
5 given out to the jurors in the big room when everybody came.
6 It indicated that, that if jurors disagreed, a trial, a
7 trial would have to be tried again. But in the penalty
8 phase of a capital case, there's room for disagreement, and
9 I want you to know that if the jurors didn't agree on
10 punishment, the case would, in fact, end. It would never
11 have to be tried again. The Court would take the case in
12 sentence and I tell you that so that you wouldn't think the
13 jury failed in its, its mission.

14 A Okay.

15 Q Okay. Did you know that?

16 A No, I wondered about that.

17 Q A lot of people have that question and we don't want
18 you operating under a misconception that the case would have
19 to be tried again. It's obviously a very big expensive type
20 of endeavor and we want you to be satisfied that, even if
21 the jury disagrees with punishment, the case would, in fact,
22 end and never have to be tried again.

23 Is that a principle of law that would---

24 A You've already reached the decision---

25 Q Of guilt.

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1 A ---of guilt, but they can't decide on the punishment?

2 Q Yes.

3 A And then it would probably be up to the judge?

4 Q Exactly.

5 A So -- okay. Yeah.

6 Q Is that a principle you're okay with?

7 A Yes.

8 Q Okay. That's all I have for you, ma'am.

9 A Thank you very much.

10 Q Thank you very much, ma'am.

11 A Thank you.

12 THE COURT: Mr. Barnette.

13 SOLICITOR BARNETTE: May it please the Court, Your
14 Honor?

15 THE COURT: Yes, sir.

16 EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Good morning, ma'am.

19 A Good morning.

20 Q I'm Barry Barnette and this is Derrick Bulsa. We're
21 representing the State in the case --

22 A Yes, sir.

23 Q -- from there. I just need to ask you some questions,
24 and, like I said, the -- hopefully -- I apologize ahead of
25 time just asking the questions about your belief and what

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1 you think about things --

2 A That's fine.

3 Q -- from there. I notice you, when you was talking to
4 the judge, you said you needed to know if life meant life
5 without parole.

6 A Yes, sir.

7 Q And that meant something to you.

8 Could you tell me what you mean by that?

9 A Well, once somebody's found guilty of a heinous crime,
10 and is given life imprisonment, in Michigan, even a lifer
11 had to be seen every seven years for parole. Had to see
12 this Parole Board every seven years.

13 Q Uh-huh. (Affirmative).

14 A It's my feeling that if a crime is so terrible that
15 someone was given life imprisonment, I don't think there
16 should be a possibility of parole. But that's my personal
17 opinion. But then I worked with a lot of nasty people and a
18 lot of nice people.

19 Q Uh-huh. (Affirmative).

20 A But I think once a decision is made, unless there's an
21 appeal to the Court and there are, are -- is new evidence, I
22 don't think there should be a possibility of parole.

23 Does that make sense?

24 Q I agree with you.

25 A Okay.

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1 Q We agree.

2 what I'm wondering about, in Michigan, did they have
3 the death penalty?

4 A No, sir.

5 Q Okay. So, you never really would, the---

6 A Did they think there should be?

7 Q Uh-huh. (Affirmative).

8 A People in corrections, a lot of people did think there
9 should be.

10 Q what do you think?

11 A I think, in some cases, there should be.

12 Q Uh-huh. (Affirmative).

13 I understand.

14 A I could name probably one of the only ones and that is
15 a pedophile that murders a child, and, and I -- I'm very
16 much a child's advocate, and if that would dismiss me from
17 any case, then I do feel that I have to say that that is one
18 case that I would feel that there should be the possibility
19 of a death penalty.

20 Q And like I said, that's -- you're talking about the
21 possibility of a death penalty.

22 A The possibility.

23 Q You're not saying that you would give the death
24 penalty---

25 A No, sir.

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1 Q ---from there?

2 Okay. I understand from there.

3 But you understand one of the aggravators in this case
4 is the death of a child and you understand---

5 A That's what I heard Monday night as I was going to bed,
6 which I was -- I wasn't trying to hear the news. I heard
7 that.

8 Q I understand.

9 A But there would be mitigating and aggravating
10 circumstances, so, no, I would not have made up my mind one
11 way or the other. I don't know the case at all.

12 Q Sure.

13 And you're not expected to try at this point. I was
14 just letting you know that ahead of time from there.

15 A I don't -- you know, I don't know the circumstances.

16 Q But it's a situation where -- well, let me ask you this
17 question, what I'm trying to see, just because you've been
18 in the Department of Corrections cause I'm familiar with
19 Department of Corrections too, and obviously it's a very
20 tough place.

21 A It is. Yes.

22 Q Just -- you don't think life without parole would fit
23 every crime in this, in every case?

24 A No, I do not.

25 Q Okay. So, you see the possibility of a death

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1 sentence -- what I'm saying is just because you've seen
2 people in the, in the jail, in the Department of
3 Corrections, don't mean you automatically vote life because
4 of the kind of life they live there?

5 A No, be, because there are good people in -- doing time
6 in prison.

7 Q Uh-huh. (Affirmative).

8 There's also bad people --

9 A Absolutely.

10 Q -- from there, and you realize, once you listen to both
11 sides, like I said, we'll present -- and we have to prove
12 our aggravators beyond a reasonable doubt --

13 A Yes, sir.

14 Q -- to you as well as the case. I know we're kind of
15 getting ahead of ourselves, but we have to talk about the
16 sentencing phase cause it is a death penalty case. They
17 also present mitigators --

18 A Yes, sir.

19 Q -- showing things that they think that would lessen the
20 crime from there, and in favor -- and things to tell you
21 about the defendant and so forth.

22 You'd weigh both those along, is that right?

23 A Absolutely, yes.

24 Q Okay. If, if you thought the death penalty was
25 appropriate, would you give the death penalty?

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1 A Yes.

2 Q Okay. And you realize, at the end of it, you'd have
3 to -- 12 people have to sign a sentencing sheet saying they
4 all agree for the death sentence.

5 Could you do that?

6 A Yes, I wouldn't want to. I will say that.

7 Q Uh-huh. (Affirmative).

8 A It isn't something I would want to do.

9 Q Sure.

10 A But I could do it.

11 Q Uh-huh. (Affirmative).

12 Let me ask you this question, if you got -- if it came
13 down to you, let's say all 11 jurors agree for the death
14 penalty, and you had to be the 12th juror, do you think, and
15 like, like I said I know, we don't -- well, obviously you
16 thought about the death penalty before obviously being in
17 the line of work you've been in before.

18 Is there anything in your background or anything that
19 would say I can't do it?

20 A No, if the evidence proved it I could do it.

21 Q Uh-huh. (Affirmative).

22 A If it was proven to me, I could do it.

23 Q And, like I say, I know it's gonna be a tough
24 situation. It's a tough situation for anybody being in and
25 we appreciate that.

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1 A Right, it would not be an easy thing.

2 Q Uh-huh. (Affirmative).

3 Cause what, what I'm just asking is if you can do it
4 because---

5 A I could do it.

6 Q ---like -- from there and life wouldn't be
7 automatically your choice?

8 A No, sir.

9 Q Just because of the line of work you've done and so
10 forth cause I know you have a different prospective than any
11 other juror I think that we've dealt with here.

12 A Oh, I'm sorry.

13 Q No, it's not your fault. I mean it's just you know---

14 A That's part of my life experiences.

15 Q Yes, ma'am, it is. I mean it's very unique.

16 A Life, life imprisonment would not be a bed of roses.

17 Q No, and we both -- we all know what I think in the
18 system.

19 A Absolutely.

20 Q And that's the reason why I just want to make sure that
21 won't affect your decision one way or the other from there.

22 A No. No, it wouldn't.

23 Q Would you base it off the facts you saw here in the
24 courtroom as well as the aggravators and the mitigators?

25 A Yes, sir. Yes.

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1 Q And just one thing, if, if we proved the aggravators or
2 just -- we just have to prove one of them. There is two.

3 But if we prove one of the aggravators to you, and they
4 prove all the mitigators, you realize you could still come
5 back with a death sentence?

6 It's not like a balancing act or anything. You decide.
7 Like I said, you make a decision, as a juror, as well as the
8 other 11 jurors --

9 A Okay.

10 Q -- from there, and you understand, even if both sides
11 prove everything, you could still find death, you could
12 still find life, it's still up to you what the decision
13 would be?

14 A Okay.

15 SOLICITOR BARNETTE: One moment, Your Honor.

16 A I understand, yes, sir.

17 Q Yes, ma'am, I appreciate it. I know these are tough
18 questions and I had to ask them from there --

19 A Yes.

20 Q -- cause, like I said, your background's different from
21 any other juror.

22 A Yes.

23 SOLICITOR BARNETTE: One moment, Your Honor, please.

24 THE COURT: Yes, sir.

25 (Pause.)

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1 Q Let's talk -- I know you talked about pedophiles or
2 whatever, but what's your experience with -- about that?

3 A When I worked in the prison, I had prisoners that
4 worked for me. I was in charge of the newspaper that the
5 prisoners wrote. I was the secretary for the deputy and the
6 chaplain, and I never wanted to work with a pedophile
7 because I didn't think I could be fair to that person. I
8 wanted to be able to treat the people that worked with me,
9 or for me, I wanted to be able to treat them with respect,
10 and I always felt that I couldn't do that for a pedophile.
11 I work with sex offenders, I worked with murderers, and I
12 much preferred the murderer.

13 Q Uh-huh. (Affirmative).

14 A But I could not have worked -- I didn't think I could
15 work fairly with a pedophile for his fairness.

16 Q The---

17 A It sounds funny, but it -- do you---

18 Q No, I understand, believe me.

19 A Okay.

20 Q I do.

21 A I didn't think, you know, everything in prison is very
22 formal, Mr. Jones, Mr. Smith, but I think I would always be
23 aware of that man's crime, and I didn't think it would be
24 fair to him. Where when I worked with a murderer or sex
25 offender, that wasn't there, that, that feeling of not being

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1 a worthwhile person.

2 Q So, you consider the pedophile and the murderer two
3 different groups all together?

4 A Absolutely two different people.

5 Q Okay. So, it'd be---

6 A A man who murders might just murder once.

7 Q Uh-huh. (Affirmative).

8 A But I, I felt, and I think it has even been proven,
9 that a pedophile is always a pedophile, that they're not
10 curable.

11 Q Okay. Let me rephrase that.

12 So, you considered different child cases different from
13 the standpoint?

14 If one involves sex and one didn't involve sex, would
15 that be different to you?

16 A Yes, that would. That would be different.

17 Q Okay. But you talk about the, the case involving a
18 child.

19 would you have a strong feeling about that?

20 A I do think I would, yes, sir.

21 Q Okay. But obviously you would take all the factors
22 involved with that?

23 A Yes, I would.

24 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
25 please.

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1 THE COURT: Yes, sir.

2 (Pause.)

3 Q Thank you, sir -- thank you, ma'am, for answering my
4 questions.

5 A You welcome.

6 THE COURT: Anything further for the juror?

7 MR. MCGUIRE: Just very briefly, Your Honor.

8 EXAMINATION

9 BY MR. MCGUIRE:

10 Q The government attorney asked if you were the one
11 person that was not in agreement with 11 other people, was
12 there anything in your background that would just prevent
13 you from voting for the death penalty, I'm paraphrasing a
14 little bit, and I'm just gonna ask you a follow-up to that
15 question.

16 Would you vote your conscience?

17 A Yes.

18 Q No matter, no matter eleven to one, ten to two?

19 A Yes, I would.

20 Q And you wouldn't count numbers?

21 A I'm sorry. I wouldn't.

22 Q Okay. It's whatever your individual moral judgment
23 would be, you would vote that?

24 A Yes, I would.

25 Q And, and you would respect if somebody else had an

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1 individual moral judgment, if they got to that spot, you'd
2 want them to vote their conscience?

3 A Yes.

4 Q And, in fact, sometimes people refer to, once you've
5 reached that individual moral judgment, every individual has
6 a duty and obligation to have that voice, that vote heard in
7 court, and you would want everybody to have that right?

8 A I would have to do that for myself.

9 Q Yes, ma'am.

10 A Yes.

11 Q And you'd respect everybody else's right to do that?

12 A Yes.

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

14 A You're welcome.

15 SOLICITOR BARNETTE: Just one question to follow-up,
16 Your Honor.

17 THE COURT: Yes, sir.

18 EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q Ma'am, obviously you'd have your own opinions once
21 you've heard and everything.

22 would you listen to the other 11 jurors and---

23 A Yes, I would.

24 Q ---listen to their opinions from that?

25 A Yes.

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1 Q And would y'all try -- and obviously try to reach some
2 kind of end of the case if you could --

3 A Yes.

4 Q -- from there?

5 Okay. Thank you, ma'am.

6 THE COURT: All right. Ma'am, I'm gonna ask you to
7 step back to the jury room for just a moment. I'll be
8 calling you back shortly.

9 THE WITNESS: Okay.

10 THE COURT: Thank you.

11 (WHEREUPON, the following takes place outside the
12 presence of the juror.)

13 THE COURT: Defense's position.

14 MR. MCGUIRE: Despite being a little nervous about her
15 answers regarding children, she's qualified.

16 THE COURT: State.

17 SOLICITOR BARNETTE: I agree, Your Honor.

18 THE COURT: All right. Bring her in.

19 (WHEREUPON, the following takes place within the
20 presence of the juror.)

21 THE COURT: Have a seat please, ma'am.

22 (Witness complies.)

23 THE COURT: Now, ma'am, I am going to find that you are
24 qualified to remain in the process. Now, that doesn't mean
25 you're on the jury. What that means is you're going on a

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1 list of names from which the jury will be selected.

2 THE WITNESS: Okay.

3 THE COURT: The process of qualifying people for the
4 jury I expect will take a few more days. I can't predict
5 how long because every person's interviews varies in length.
6 So, it's difficult---

7 THE WITNESS: It takes a long time, yes, sir.

8 THE COURT: ---for me to tell you how long that will
9 take, but I will tell you the instructions I've given you
10 concerning information and discussions, all that continues
11 from this point until you hear from the Court again.

12 THE WITNESS: Okay.

13 THE COURT: Now, you'll get a call from the Clerk's
14 office as to what to do next, and, again, it's gonna be a
15 few days before you get that call, and if -- when you get
16 that call, you may be asked to come back to the courthouse.
17 You have a sheet you can give her?

18 THE CLERK: Yes, sir.

19 THE WITNESS: Thank you.

20 THE COURT: This, this sheet has on it just some
21 information that you need to think about when you -- if
22 you're called to come back to the courthouse, you need to
23 come prepared to stay with us. In other words, bring, bring
24 a bag, bring what clothes you'll need to stay for a little
25 more than a week I would expect. Where you'll be staying,

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1 we'll have laundry facilities and things like that, but if
2 you have medications or personal items that you need to
3 bring, bring those with you when you come and bring a little
4 more than a week supply of those things so that you'll,
5 you'll have those things available to you.

6 THE WITNESS: Yes, sir.

7 THE COURT: Now, while I'm gonna instruct you not to
8 discuss this case or the issues involved in this case with
9 anyone, you can discuss your preparations like people at
10 home. I don't know if you work.

11 THE WITNESS: Yes, but just my husband.

12 THE COURT: Yeah.

13 Okay. Well, just make him aware that if you're called
14 back, you may be staying for a while and whatever
15 preparations you need in that regard. If you have to fix
16 his lunch or whatever, go ahead and do whatever you need to
17 do. But at any rate, be prepared to stay with us when you
18 come back. You can talk about those preparations with him,
19 but do not discuss the case with him.

20 THE WITNESS: I won't.

21 THE COURT: And try not to listen to any more
22 television, news, and that sort of thing.

23 THE WITNESS: I was avoiding it at the time.

24 THE COURT: No, I understand. So, you're still in the
25 process. My order will continue concerning your behavior.

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1 Do you understand that?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right. The bailiffs will check you
4 out. You'll be hearing from the Clerk's Office and I expect
5 that to be several days before we do that.

6 THE WITNESS: Thank you.

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

8 (WHEREUPON, the following takes place outside the
9 presence of the juror.)

10 THE COURT: All right. We're gonna take a short break.
11 Court will be in recess for about ten to 15 minutes. Maybe
12 more like ten.

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

14 SOLICITOR BARNETTE: May we approach for one second,
15 Your Honor?

16 THE COURT: Please do.

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

18 THE COURT: All right. State ready on Blasingame?

19 SOLICITOR BARNETTE: State's ready.

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: Defense ready?

22 MR. YOUNG: Yes, sir.

23 THE COURT: Bring Robert P. Blasingame in.

24 (WHEREUPON, the following takes place within the
25 presence of the juror.)

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1 ROBERT P. BLASINGAME, having been
2 previously sworn, testified as follows:

3 EXAMINATION

4 BY THE COURT:

5 Q Sir, you might want to change -- move that -- just turn
6 your chair a little bit. I'm gonna be talking to you to
7 begin with, and then, later on, as this process goes on, the
8 attorneys may be talking to you, but right now I'll be
9 asking you some questions and discussing some matters with
10 you.

11 A All right.

12 Q You are Robert P. Blasingame, is that correct?

13 A Yes, sir.

14 Q Now, Mr. Blasingame, I'm gonna ask you to speak up a
15 little bit because these folks would like to hear what you
16 have to say to me.

17 A Yes, sir.

18 Q So, if you could do that for me.

19 Now, Mr. Blasingame, I want to thank you for your
20 cooperation thus far. I realize this whole process was an
21 inconvenience to people. I appreciate that fact. We'll try
22 to make it as little of an inconvenience as possible, but
23 it's going to be, for anyone who's involved in it, it's an
24 inconvenience and I understand that.

25 Now, when you left the courthouse on Monday I had given

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1 some instructions. Those instructions were to not listen
2 to, watch, or read media reports. Don't discuss the case
3 with anyone. Don't allow anyone to discuss it with you.
4 Don't try to gather any information about the case on your
5 own, those kinds of things.

6 You remember those instructions?

7 A Yes, sir.

8 Q Have you been able to follow them since then?

9 A Yes, sir, pretty, pretty---

10 Q Well, have you followed them?

11 A Yeah, I tried. Yeah, I have.

12 Q Okay. All right. Just want to be sure.

13 Now, I'm gonna ask some questions, and, like I said,
14 the attorneys will probably have some questions if you get
15 to that stage. I'm gonna tell you there aren't any right or
16 wrong answers to my questions. What we want are honest
17 answers from you, and earlier you took an oath to tell the
18 truth to the Court. You're still under that oath.

19 You understand that?

20 A Yes, sir.

21 Q You acknowledge that fact?

22 A Yes, sir.

23 Q Okay. So -- and, and I don't want you -- that seat
24 right there sometimes is, is -- I mentioned a while ago it's
25 red. Sometimes that's considered a hot seat in this

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1 courtroom cause that's where people testify from, but the --
2 I don't want you to feel that way today because we're not
3 here to try to embarrass anyone or pry too deeply into your
4 personal life, but we do need to get some questions asked,
5 answered because we're still in the process of qualifying
6 the people that will go on the list from which the jury will
7 be chosen.

8 Do you understand what we're doing?

9 A Yes, sir.

10 Q And do you feel comfortable with this process?

11 A Yes, sir.

12 Q Okay. All right. Now, have you ever participated in
13 any kind of discussions, whether on the Internet or in some
14 other fashion, about issues that might be concerning the
15 death penalty issue?

16 A No, sir.

17 Q Have you ever participated in any political activity
18 such as a demonstration or sending letters to
19 representatives, things like that, around issues that might
20 be involving the death penalty?

21 A No, sir.

22 Q Now, are you the kind of juror who could put aside
23 anything that you may have seen or heard that has any
24 connection whatsoever with this case, and I'm not talking
25 about anything in particular, but, in general, things that

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1 might have a connection with the case and be able to decide
2 the issues involved in this case based upon what you hear in
3 the courtroom, what -- the law and the evidence?

4 Could you do that?

5 A Yes, sir.

6 Q Now, back in the jury room there was a list of people,
7 three pages, three different sheets anyway.

8 Did you read that list?

9 A Yes, sir.

10 Q Those are people that have been identified to me as
11 people who might be witnesses in the case. I don't know if
12 they'll all be called. I don't -- I suspect they won't all
13 be called, but we're gonna assume that all of those people
14 might be witnesses in the case.

15 Do you understand that?

16 A Yes, sir.

17 Q Now, as to those, those people on that list, was there
18 anybody on that list that you're related to either by blood
19 or marriage now or formerly?

20 A No, sir.

21 Q Is there anybody on that list that you have any kind of
22 social, personal, or business connection with?

23 A No, sir.

24 Q So, you didn't know anybody on that list?

25 A Not a single name.

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1 Q well, that's fine. That's, that's good. That's what
2 we want to know because, if you did, we need to know if that
3 would affect your ability to be on the jury obviously.

4 Okay. Now, I'm going to ask you some questions now
5 that, that I guess they may be personal in nature, will ask
6 some opinions of yours, things like that. I would hope that
7 you're secure enough in your opinions and beliefs that
8 you'll be able to answer those questions without feeling
9 threatened.

10 Is that correct?

11 A Yes, sir.

12 Q Okay. Now, one of the things we'll eventually get to
13 in my discussions with you is a discussion concerning the
14 death penalty, which is a potential issue in this case, but
15 I want to mention one thing to you about the fact that we're
16 talking about that because, to a certain extent, by talking
17 about it now, we're kind of putting the, the cart before the
18 horse in this case, and what I mean by that is that, in this
19 type of case, there will be potentially two phases of the
20 case.

21 The first phase would be the jury, whoever that is,
22 would decide whether or not the defendant is guilty of the
23 crimes that are charged. That -- and, and once that
24 particular phase of the trial has ended, should the jury
25 have found the defendant guilty of the crime of murder, the

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1 State has requested that the death penalty be imposed. So,
2 if that guilty verdict for murder comes in, only then would
3 we reach the question of what penalty ought to be imposed,
4 either death or life imprisonment without parole.

5 So, we may not even get to that stage of the
6 proceedings. That's why I'm saying, by talking about it
7 right now, we're putting the cart in front of the horse
8 maybe. But I want you, want you to appreciate one thing.
9 We're picking the jury and that same jury would hear both
10 sides of the cases, of that case. So, this is the only
11 chance we have to talk to jurors about these matters before
12 the case starts. So, that's the reason we'll be talking
13 about the penalty possibilities even though we may not ever
14 get to that part of the trial.

15 So, do you understand what I mean by we're putting the
16 cart before the horse?

17 A Yes, sir.

18 Q And as to the defendant, I want you to be aware, the
19 defendant is presumed to be innocent in this case, and
20 the -- and the charges that are brought against him. So,
21 the fact that we're talking about penalty issues now
22 shouldn't be taken by you as a reflection as to anything
23 about him or his case in this matter.

24 Do you understand that?

25 A Yes, sir.

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1 Q It's just the only time we have to talk about these
2 things is now.

3 okay?

4 A Yes, sir.

5 Q Now, I want you to, in your mind, put yourself in the
6 position where you're a juror in a criminal case. Now,
7 that's any criminal case. I'm not talking about just this
8 one. It can be something where somebody's charged with
9 shoplifting or theft or something like, any criminal case.
10 But you're a juror in the criminal case, and in this
11 situation, I'm gonna ask you, if, if you were a juror, would
12 you be willing to listen to the law as instructed to you by
13 the judge in that trial?

14 A Yes, sir.

15 Q Would you be willing to accept that law and then apply
16 the law to the facts as the jury decided the facts to be?

17 A Yes, sir.

18 Q Now, would that be true even if you were sitting in the
19 jury box and the judge was describing the law to you, and at
20 some point in time, about something in the law, he would say
21 something that maybe you didn't agree with or you didn't,
22 you didn't think the law ought to be that way?

23 So, as you're listening to the law you say well, I'm
24 not sure I agree with that.

25 would you be willing, as a juror, to accept the law

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1 exactly as the judge gave you, regardless of your personal
2 feelings, and apply that law to the facts in reaching a
3 verdict in the case?

4 A Yeah.

5 Q You could do that?

6 A Yes, sir.

7 Q Okay. Now, now, as I mentioned before, a criminal
8 defendant -- there's some concepts under the law I want to
9 go over with you to be sure you understand these concepts
10 about the law. The first one is I mentioned that, that the
11 defendant, Mr. Blackwell, any criminal defendant, is always
12 presumed innocent of the crime for which a charge is being
13 issued.

14 Do you understand that that defendant always has that
15 presumption of innocence?

16 A Yes.

17 Q And do you understand, for that reason, the defendant,
18 in a criminal case, never has to prove himself innocent
19 because he's already presumed to be innocent?

20 Do you understand that concept?

21 A Yes, sir.

22 Q By the same token, the State has the only burden of
23 proof in a criminal case. That burden of proof is to prove
24 the allegations that have been made beyond a reasonable
25 doubt.

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1 So, do you understand that the State has the only
2 burden of proof in a criminal case?

3 A Yes, sir.

4 Q Okay. Now, I'm gonna ask you another question about
5 this. You're sitting on a jury and this is not in this
6 case. In any case.

7 Let's say that you were sitting on a jury, and if you
8 told me you'd be willing to listen to the law and the
9 evidence and decide the case, and if, after listening to the
10 law and the evidence, you decided that the State had not met
11 its burden of proof, it hadn't proved it beyond a reasonable
12 doubt, under those circumstances, would you be willing to
13 join in a verdict of not guilty for a defendant?

14 A No.

15 Q So, you think a defendant is always guilty of a crime
16 that's been committed?

17 A Oh, no, sir, I misunderstood you. I'm sorry.

18 Q You maybe did misunderstand me.

19 A Yeah, I did.

20 Q Let me say the case again.

21 The situation is you're on a jury. You've listened to
22 the law and the evidence, and when you -- when that's all
23 been finished, you decided the State did not meet its burden
24 of proof. In other words, it didn't prove the defendant
25 guilty beyond a reasonable doubt.

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1 would you be willing then, in that circumstance, to
2 join in a verdict of not guilty?

3 A Yes, sir, I would.

4 Q Now, but by the same -- so, I take it then that you
5 believe that, just because someone has been arrested,
6 indicted, charged with a crime, that because those things
7 exist, that doesn't automatically mean somebody's guilty?

8 A No, sir.

9 Q All right. Now, by the same token though, if you were
10 sitting on a jury, you heard all the law and the evidence,
11 and after considering those things, you did believe the
12 State has met its burden of proof beyond a reasonable doubt,
13 would you be then willing to sign off on a verdict of guilty
14 against someone?

15 A Yes, sir.

16 Q So, depending on the facts and circumstances, you could
17 find somebody either not guilty or guilty, is that correct?

18 A Yes, sir.

19 Q All right. Now, I told you we were gonna get to the
20 point where we're gonna talk about the death penalty a
21 little bit. So, we've reached that stage in this
22 proceeding, and I will tell you that generally, in criminal
23 cases, most criminal cases, a jury will determine whether
24 someone is guilty or innocent or not guilty of a crime, and
25 once that's done, it's up to the judge to decide or set the

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1 appropriate sentence, whatever that is, and the judge
2 decides the sentence. That's a normal case.

3 Now, I told you earlier that this is different, a case
4 where you're seeking the death penalty. Our state law
5 provides that we hold an initial hearing to determine guilt
6 or innocence of the charges just like you normally would.
7 But if the defendant is found guilty of murder and the State
8 is seeking the death penalty, that same jury will come back
9 to the courtroom for a separate hearing to determine what
10 the appropriate penalty ought to be. So, the jury
11 determines the penalty in this type of case. So, it's
12 different than the normal case.

13 Do you understand that?

14 A Yes, sir.

15 Q So, it's a -- the law calls it a bifurcated trial.
16 It's been divided into two parts. So, the same jury would
17 come back and do that.

18 Now, does -- the state law that sets up the penalty
19 phase of the trial, that law provides for the introduction
20 of evidence at that hearing, and so there can be new
21 evidence brought into that hearing on the issue of the
22 appropriate sentence that wouldn't be brought in in the
23 guilt phase.

24 Do you see what I'm saying?

25 A Yes, sir.

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1 Q It would be new evidence that could be brought in.
2 That evidence is described in that statute as being
3 aggravating circumstances or mitigating circumstances.

4 Now, aggravating circumstances -- and since you don't
5 normally use those words in everyday language in this
6 concept, I want to be sure that you understand what I mean
7 when I say an aggravating circumstance or a mitigating
8 circumstance.

9 Aggravating circumstances are those factors, under the
10 law, that tend to make people take the fact -- there's a
11 conviction for murder, but it may make that crime appear to
12 be more severe, more serious, such that a juror might be
13 willing to give a defendant a higher or a worse sentence.

14 Mitigating circumstances, on the other hand, would be
15 evidence or information that might lessen the defendant's
16 either culpability for the crime or lessen their, their need
17 to be punished in some fashion so that a juror might tend to
18 lessen the level of punishment.

19 So, in that sentencing phase, the law provides that,
20 that there can be evidence brought in both concerning
21 aggravating matters, things that make it worse, or
22 mitigating matters, things that make it less severe.

23 So, do you understand that that's a separate trial
24 where there would be separate evidence on both types of
25 factors?

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1 A Yes, sir.

2 Q Okay. Now, once that evidence has been presented to a
3 jury, then the judge would instruct the jury to consider
4 that evidence, aggravating evidence and mitigating evidence,
5 and come to a conclusion or a decision concerning the
6 appropriate penalty to be assessed.

7 Now, the penalty in this case would be a possibility of
8 the death penalty or life imprisonment without ever
9 receiving a parole. That means you go to prison and you
10 stay there till you die.

11 Do you understand --

12 A Yes, sir.

13 Q -- what, what that is?

14 Now, I want you to put yourself in a position. I want
15 you to put yourself in the position that you're on a jury.
16 That jury is in a case where the State is seeking the death
17 penalty. You have tried the case to the point where a
18 verdict has been reached on the charge of murder, and that
19 verdict, according to the jury that you're on, was that the
20 defendant was guilty of the murder.

21 Now, because the State is seeking the death penalty,
22 that same jury is going to be coming back to the courtroom
23 for the purpose of conducting the sentencing hearing or the
24 penalty hearing.

25 You understand the position I've put you in?

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1 A Yes, sir.

2 Q So, you're walking in with your fellow jurors, getting
3 ready to walk into the courtroom to start the sentencing
4 phase where you're going to hear aggravating evidence and
5 mitigating evidence.

6 Now, back in the jury room I put a piece of paper in
7 there that described three different jurors.

8 Do you remember that paper?

9 A Yes, sir.

10 Q Did you read it?

11 A Yes, sir.

12 Q All right. I'm gonna go back over those things with
13 you because you don't have the paper in front of you right
14 now, and I'll remind you the, the different jurors I
15 described on there so that you and I have an understanding
16 of what I'm talking about.

17 Now, the first type of juror that was described on that
18 piece of paper would be a juror who, just before they
19 stepped into the jury -- the courtroom to start the
20 sentencing phase would have already made up his or her mind.
21 Now, that juror believes that, in any case where a person
22 has been convicted of a murder, that the only appropriate
23 penalty is death, and, therefore, that juror knows that, in
24 every case where a conviction for a murder has occurred,
25 that juror is gonna vote for the death penalty every time.

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1 Now, the second juror that I described on that piece of
2 paper was another juror who had already made up his or her
3 mind. That juror believes that it's never appropriate for
4 the State to take a life in response to the commission of
5 any crime no matter how serious that crime might be. So,
6 regardless of what the aggravating or mitigating
7 circumstances might be, that juror intends to vote every
8 time for life imprisonment without parole.

9 The third juror coming into the courtroom hasn't made
10 up his or her mind yet. They have not decided what the
11 appropriate penalty is. That juror wants to listen to the
12 aggravating circumstances and the mitigating circumstances,
13 and after considering those circumstances, is going to
14 decide on which type of penalty is appropriate.

15 Now, as to -- I've told you to put yourself in the
16 position where you're coming in with that jury yourself.

17 Now, as to yourself, which of those three jurors would
18 best describe you as you walked into the courtroom?

19 A Probably the third one.

20 Q So, it would be the third one?

21 A Yes, sir.

22 Q Well, based on what you just told me then, is it true
23 that you would be willing to listen to the evidence, the
24 aggravating factors and the mitigating factors, and after
25 listening to that evidence, and being charged with the law

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1 by the judge, if you found that the appropriate penalty was
2 the death penalty, you could enter a verdict for death, is
3 that correct?

4 A Yes, sir.

5 Q Now, by the same token, if you considered the evidence,
6 the aggravating circumstances and the mitigating
7 circumstances, you're telling me that, if you decided the
8 appropriate penalty would of been life imprisonment without
9 parole, you could enter a sentence for the or a verdict for
10 that as well?

11 A Yes, sir.

12 Q So, you could decide the case either way based on the
13 evidence presented during that, that phase of the trial?

14 A Yes, sir.

15 Q All right. Now, I've got a couple of other questions
16 and then I'm gonna let the lawyers talk to you.

17 I have entered a sequestration order in this case.
18 what that means is, once the jury is impaneled, the jury
19 will be with us until the trial is completed. I suspect the
20 trial may take a week or a little longer. Once we start the
21 trial, we work straight through. we work weekends until
22 we're finished. So, sometimes it doesn't take the full
23 number of business days for a week. So, it would be a
24 straight number of days.

25 During that period of time, the -- a juror sitting on

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1 the jury would have all of their meals paid for. They would
2 have all of their transportation and lodging paid for. The
3 juror would receive pay for jury service. It's not as much
4 as someone makes at a regular job, but it is pay
5 nevertheless, and they would receive travel money when they
6 come and go from the courthouse. So, those would be the
7 things that would be happening during that period of time.

8 Now, during sequestration, people are allowed to, to
9 make phone calls, but they're monitored by the, by the SLED
10 agents who are monitoring the jury and the kinds of things
11 you can see on television and read would be monitored as
12 well.

13 So, do you understand what a sequestration means?

14 A Yes, sir.

15 Q It's -- it keeps the jury from being influenced by any
16 outside influences while the trial's going on.

17 A Yes, sir.

18 Q Okay. Now, my question to you is if you were put in
19 that situation, in, in and sequestration, would that -- and
20 I understand it would be an inconvenience, but would it pose
21 a serious risk of danger to either your -- to your personal
22 health or well being?

23 A No, sir.

24 Q If you were put in that situation, would it pose a
25 serious risk or danger to the health or well being of anyone

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1 dependent on you?

2 A I don't -- no.

3 Q All right. Now, I'm gonna ask you to answer questions
4 for the lawyers, and they're gonna have some questions of
5 you, and when they're finished I'll discuss the matter with
6 you further.

7 All right. Mr. Young.

8 MR. YOUNG: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 EXAMINATION

11 BY MR. YOUNG:

12 Q Good afternoon, Mr. Blasingame.

13 You doing all right?

14 A Yes, sir.

15 Q All right. Like the judge told you, there's no right
16 or wrong answers here. We're just kind of getting your
17 thoughts and feelings about some things.

18 Okay?

19 A Yes, sir.

20 Q All right. Well, let's talk a little bit about the
21 death penalty.

22 Okay?

23 All right?

24 A Yes, sir.

25 Q Okay. Can you tell me, how do you feel about the death

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1 penalty?

2 A I feel that some, in certain situations, if, if that's
3 the fair -- if that's the fair punishment, I think that it
4 should be utilized.

5 Q Let me ask you this.

6 The phrase an eye for an eye, you've heard that?

7 A Yes, sir.

8 Q Is that something that resonates with you?

9 Is that something that you believe in?

10 A Yeah, it is.

11 Q Is that in the context of a murder?

12 I mean if you take an innocent life, then you should
13 forfeit your life?

14 A Yeah, I do. I agree with that.

15 Q So, in, in talking about murder, you know, murder is a
16 legal term that we use, and, in South Carolina, what murder
17 means is the intentional killing of another with malice
18 aforethought.

19 You with me?

20 A Yes, sir.

21 Q Now, malice aforethought is hatred or ill will or
22 hostility towards another person. It's the intentional
23 doing of a wrongful act without just cause of excuse. It's
24 with an intent to inflict injury under circumstances that
25 the law would infer an evil intent.

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1 You with me on that?

2 A Yes, sir.

3 Q It wasn't an accident. It wasn't self-defense. It
4 wasn't heat of passion. This is meant to kill an innocent
5 person. They didn't do anything to them. Didn't deserve
6 it.

7 You with me on that?

8 A Yes, sir.

9 Q It sounds to me like what you're telling me is if you
10 found somebody guilty of murder, being that intentional
11 deliberate killing --

12 A Yes, sir.

13 Q -- then you think that the death penalty is the
14 appropriate punishment?

15 A Yes, sir.

16 Q And that's always the appropriate punishment for that
17 intentional murder?

18 A In my opinion, yes.

19 Q The judge was talking to you a little bit about the
20 types, the types of jurors, and, like I said, there's no
21 right or wrong answers here. There's just kind of how you
22 feel, and we were talking about before you come back into
23 the courtroom to hear the second phase trial, right?

24 You recall that?

25 A Yes, sir.

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1 Q Okay. And it seems to me that you're telling me that
2 before we get to that second phrase trial, based on that
3 conviction of murder, you have sort of made up your mind
4 that the death penalty is the appropriate punishment?

5 A Not necessarily. I would allow y'all to present more
6 evidence and maybe change my mind, but if they prove that he
7 done it, I mean a hundred percent, then that would be my
8 decision, yes.

9 Q Okay. What type of things might change your mind?

10 A I mean depending on what the witnesses said and nothing
11 added up or if I mean any little bit of doubt would, would
12 make me second guess. I mean I would definitely think about
13 it. I wouldn't just boom, murder the guy, cause somebody
14 said he done it. It'd have to be a lot of, a lot of
15 evidence.

16 Q You would have to be satisfied beyond a reasonable
17 doubt --

18 A Yes.

19 Q -- that the person is guilty of murder?

20 A Yes.

21 Q Okay.

22 A It's somebody's life --

23 Q Right.

24 A -- you're dealing with it.

25 Q Right.

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1 And that decision's over. Okay. That decision has
2 been made. You, eleven other people, are all unanimously
3 satisfied, beyond a reasonable doubt, they got the right
4 guy, he did it, it was an intentional murder.

5 Okay. That is decided during the first trial.

6 You with me?

7 A Yes, sir.

8 Q Now, now, since that -- those decisions have been made,
9 okay, now are you telling me that, after you make that
10 decision, for you, the only appropriate punishment is death?

11 A Probably, yes.

12 Q Okay. Stuff like a person's background, like how they
13 grew up, how they were raised, it sounds to me like that
14 stuff was not important to you in deciding which penalty is
15 appropriate?

16 A A little maybe. I mean it wouldn't be solely based on
17 that, no.

18 Q Okay. And having made up your mind that the death
19 penalty is the appropriate punishment for the guilty
20 murderer, right --

21 A Yeah.

22 Q -- and, and I just don't understand how you could give
23 consideration to, you know, how the murderer grew up?

24 A I don't know. I probably wouldn't, honestly.

25 Q And that's all we can ask for you is your honest

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1 opinion.

2 Okay. Now, the State would have the opportunity to
3 present what's called aggravation, right, and the defense
4 would have the opportunity to present mitigation. One of
5 the aggravating circumstances is -- might be that the victim
6 of the murderer was a child.

7 Okay. You with me on that?

8 A Yes, sir.

9 Q Some people would say, where you have the guilty
10 murderer, and the person that was murdered was a child, I
11 don't need to hear anything else, that's all I'm gonna
12 listen to, for me, the only appropriate punishment is the
13 death penalty.

14 Is that you?

15 A No, sir.

16 Q Okay. Why not?

17 A Because I mean honestly I don't know any of the
18 situations. I don't know what led up to it. I know nothing
19 about this case. So, I don't---

20 Q Right.

21 A I don't know anything about it. So, it, to me, would
22 be wrong just to judge somebody with what I was told. I
23 would need to hear a lot of evidence, but with it being a
24 child, well, that would definitely touch my heart in a
25 different place. So, yeah, it would probably be more --

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1 yeah, I don't know the answer I'm looking for here.

2 Q I'm not looking -- I'm not looking for any particular
3 answer.

4 A I'm saying I don't know the words I'm looking for to
5 describe the situation with an innocent -- or harming an
6 innocent child. Definitely enrages me a little probably.

7 Q And, and it's okay.

8 THE COURT: I didn't hear what your last sentence was.
9 what did you say?

10 THE WITNESS: I said knowing that somebody harmed an
11 innocent child, yeah, it does kind of make me upset and it
12 does bother me.

13 THE COURT: Okay. I'm sorry. I just couldn't hear
14 you. Thank you, sir.

15 THE WITNESS: Yes, sir.

16 Q And it's okay. You know, some people say, in that type
17 of case, I can't be a fair juror. I could only consider one
18 penalty, and I'm asking you is that you?

19 A No, I could be fair.

20 Q Okay. You could consider giving somebody a life
21 penalty?

22 A Depending on the situation, yes. I mean it really
23 depends on the evidence also.

24 Q Sure.

25 How would you consider life without the possibility of

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1 parole penalty for that guilty murderer?

2 A I wouldn't like it because he's still -- he's guilty
3 and he's alive and he's doing stuff that the person that's
4 dead can't do or never do and, to me, it's just not fair.

5 Q Okay. Well, could you give a guilty murderer a life
6 without parole penalty?

7 A Probably not.

8 Q At the end of the day, after all the evidence is heard
9 and the trial is coming to an end, the jurors are called
10 upon to make this decision about life and death.

11 Do you understand that?

12 A Yes, sir.

13 Q And then if all 12 jurors agree that the death penalty
14 is appropriate, then Mr. Blackwell will be put to death.

15 You have any concerns about that, any questions about
16 that?

17 A No, sir.

18 Q And you understand that that's what would happen?

19 A Yes, sir.

20 Q Now, if one juror decided that life was the appropriate
21 punishment, then the punishment would be life.

22 Okay. You with me on that?

23 A Yes, sir.

24 Q The way that each juror arrives at that decision is
25 what we call an individual moral judgment.

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1 Okay. You with me on that?

2 A Yes, sir.

3 Q An individual moral judgment is like choosing what
4 faith or not faith is right for you.

5 You've made your personal decisions about faith,
6 haven't you?

7 A Yes, sir.

8 Q And you expect other people to respect the decision
9 that you've made?

10 A Yes, sir.

11 Q You recognize that other people may of made different
12 decisions than yours?

13 A Yes, sir.

14 Q You respect their right to make that decision?

15 A Yes, sir.

16 Q And if you saw somebody being, being bullied or told
17 that their individual moral judgment was wrong, would you
18 stop it?

19 would you stop the bullying?

20 A Yes, I would say something to somebody.

21 Q Right.

22 Just like on the questionnaire, I think you answered a
23 question about if you saw somebody making improper racial
24 comments, right, you said that you would stop it and that
25 you would alert the judge?

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1 A Yeah, I would notify the judge, yes.

2 Q And you would do the same in that type situation --

3 A Yes, sir.

4 Q -- when somebody is being bullied?

5 A Yes, sir.

6 Q Thank you, Mr. Blasingame.

7 SOLICITOR BARNETTE: May it please the Court, Your
8 Honor?

9 THE COURT: Yes, sir, Mr. Barnette.

10 EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q Good afternoon, Mr. Blasingame. I guess we're in the
13 afternoon now.

14 So, my name is Barry Barnette. Me and Derrick Bulsa is
15 prosecuting the State's case involved in this. Just want to
16 ask you a few questions, and I apologize ahead of time. I
17 know it's a lot we're throwing at you and a lot of talking
18 to you about -- and everything. If you don't understand my
19 questions, please let me know too cause I know we ask
20 confusing questions at times from there.

21 I know, in listening to you answer your questions,
22 there was some, some that you answered that obviously you'd
23 have to look at all the evidence before you made the
24 decision?

25 A Yes, sir.

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1 Q I notice he's asking leading questions to you trying to
2 lead you to one point or another, and we just want to know
3 what your opinions---

4 MR. YOUNG: I object to that characterization.

5 THE COURT: All right. I'll ask the attorney not to
6 characterize questions, but go ahead.

7 SOLICITOR BARNETTE: Yes, sir, thank you, Your Honor.

8 Q Looking at -- basically let's say we get through the
9 guilt phase and we're to the sentence phase at that point.
10 Like Judge Couch explained to you, you have aggravating
11 circumstances, and there is two aggravators in this case,
12 and they'll be mitigating circumstances the defense will
13 present from there, and one of the mitigators would be maybe
14 a disability or something like that. From the State's side,
15 one of the aggravators is a death of a child in this
16 situation.

17 Before you make a decision on the death penalty, would
18 you automatically give the death penalty on every murder
19 case?

20 A No.

21 Q would you give -- automatically give life without
22 parole on every case?

23 A No.

24 Q what would you do?

25 would you look at both sides and hear from both sides

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1 before you made a decision like that?

2 A Yes, sir.

3 Q Now, if I remember right, you said it would be a tough
4 decision for you to do the death penalty.

5 A Well, if, if proven guilty without a shadow of a doubt,
6 then no, it wouldn't be that tough.

7 Q Uh-huh. (Affirmative).

8 A Not for me.

9 Q I understand.

10 Well, obviously, obviously we have to prove beyond a
11 reasonable doubt to you. We have to prove the aggravators.
12 Not beyond a shadow of a doubt, but beyond a reasonable
13 doubt from that standpoint.

14 But at same time, the mitigating circumstances, like I
15 say, if he has a disability, other circumstances they may
16 bring up to you, would that factor into your decision too on
17 what the sentence would be?

18 A Probably not.

19 Q It wouldn't?

20 You wouldn't look at their stuff or look from that
21 standpoint?

22 A No, I probably wouldn't.

23 Q Okay. You wouldn't look at anything they had on their
24 side?

25 A Well, I mean wrong is wrong, and that's my opinion.

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1 SOLICITOR BARNETTE: Okay. I have no further
2 questions, Your Honor.

3 THE COURT: All right. Anything further?

4 MR. YOUNG: No, Your Honor.

5 THE COURT: All right. I'll ask you to step back to
6 the jury room. I'll bring you back shortly.

7 (WHEREUPON, the following takes place outside the
8 presence of the juror.)

9 THE COURT: All right, sir. Defense's position.

10 MR. YOUNG: Your Honor, we move he be challenged for
11 cause. Mr. Blasingame is not qualified.

12 THE COURT: State.

13 SOLICITOR BARNETTE: I agree, Your Honor.

14 THE COURT: All right. I'll find him not qualified and
15 excuse him in this case.

16 All right. Bring Mr. Blasingame back please.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 THE COURT: All right. Mr. Blasingame, I have found
20 you to not be qualified to proceed in this case. That means
21 we're gonna release you from any further responsibilities at
22 this time. The bailiffs will check you out. Again, I want
23 to thank you for your cooperation up to this point in time.
24 You're free to go. 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. We have reached Stephanie
4 Partridge in this matter. At a bench conference the State
5 informed the Court that Ms. Partridge is currently charged
6 with the commission of a crime in this county. According to
7 the prosecutors, she has entered an admission of guilt and
8 is entering the PTI program at this point in time.

9 Have I correctly stated the situation?

10 SOLICITOR BULSA: Your Honor, she admitted -- gave a
11 written statement to the police admitting to her guilt and
12 she has asked to enroll in PTI. That decision has not been
13 made.

14 THE COURT: So, she's not yet been approved yet?

15 SOLICITOR BULSA: She's not been. There's an issue
16 about restitution.

17 THE COURT: I understand.

18 SOLICITOR BULSA: That's got to be ferreted out first.

19 THE COURT: I see.

20 Okay. But she has signed some statement with the
21 police admitting guilt?

22 SOLICITOR BULSA: Yes, sir.

23 THE COURT: All right. And I believe the State is
24 moving that she be disqualified for cause at this time, is
25 that correct?

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1 SOLICITOR BULSA: Yes, sir.

2 THE COURT: Now, I'll be happy to hear from the defense
3 concerning that request.

4 MR. MCGUIRE: Sure.

5 Your Honor, I think this is similar to a situation
6 where somebody may of been arrested by local law
7 enforcement. We always run into these typical situations
8 where people might have an arrest. We always want to make
9 sure they don't have any hard feelings towards the people
10 just doing their job.

11 You know, it cuts both ways. I'm sure they could say
12 well, we have a real fear that she could or would harbor a
13 grudge and maybe try to frustrate us in -- with her
14 deliberations and verdict, and over here we could have a
15 concern that she might, while her PTI application is
16 pending, maybe try to throw them a bone and deliver a
17 verdict that they would like. So, it kind of cuts both
18 ways. I just want to see who we have and if she can be fair
19 and follow the law.

20 THE COURT: All right. Well, at this point in time
21 she's not been found guilty of any crime, is that correct?

22 SOLICITOR BULSA: That's correct, Your Honor.

23 THE COURT: So, she still remains someone who's been
24 charged?

25 SOLICITOR BULSA: Yes, sir.

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1 THE COURT: All right. Well, I'm gonna inquire. That
2 doesn't disqualify her automatically. It may be, as Mr.
3 McGuire indicated, it could cut both ways. If the
4 prosecution is allowing her to go to PTI, she may be happy
5 with the prosecution. I don't know. I guess we need to
6 find out her position in that regard.

7 SOLICITOR BULSA: And I guess, I guess our point would
8 be I'm not sure it's fair to her to put her in that position
9 to try to weigh that out, but if the Court wants to inquire,
10 I understand.

11 THE COURT: She has been selected on the jury panel --
12 venire and so far I haven't heard anything that
13 automatically disqualifies her. So, I'm going to inquire of
14 her.

15 SOLICITOR BULSA: Yes, sir.

16 THE COURT: We'll see where we go. We've put people in
17 uncomfortable positions quite often in this courtroom.

18 SOLICITOR BULSA: Yes, sir.

19 THE COURT: Bring her in please, Ms. Partridge.

20 (WHEREUPON, the following takes place within the
21 presence of the juror.)

22 STEPHANIE PARTRIDGE, having been previously
23 sworn, testified as follows:

24 EXAMINATION

25 BY THE COURT:

Individual Juror Qualification

1 Q Have a seat please, ma'am.

2 A (Witness complies.)

3 Q Ms. Partridge, you may want to turn that chair so you
4 can see me because I'm going to be talking to you a good bit
5 to begin with.

6 A Okay.

7 Q What we're doing, at this point in time, is we have
8 reached the stage where we're continuing to try to qualify
9 people for the jury panel.

10 A Yes, sir.

11 Q We're not picking the jury yet.

12 A Okay.

13 Q We're trying to get a list of people from which the
14 jury is going to be picked.

15 A Yes, sir.

16 Q You understand that?

17 A I do.

18 Q This type of case allows us to do what is called
19 individual discussions with jurors, and so that -- we're
20 going to go through the process. I'll be asking some
21 questions. Then I'll let the attorneys have an opportunity
22 to ask questions of you.

23 Do you understand what we're doing today?

24 A Yes, sir.

25 Q I want to thank you for your cooperation thus far. I

Individual Juror Qualification

1 realize that's probably like nothing else you've ever been
2 involved in.

3 Is that correct?

4 A That is correct.

5 Q And it's a lot of hurry up and wait, and I appreciate
6 the fact that you've been willing to cooperate thus far.

7 A No problem.

8 Q All right. Now, I'm going to tell you that, as I ask
9 questions, there aren't any right or wrong answers to the
10 questions. We're trying to get your beliefs or opinions on
11 certain things, and I will remind you that you took an oath
12 to tell the truth to the Court on Monday. That oath
13 continues right now.

14 Do you understand that?

15 A I do.

16 Q So, you're still under oath for this discussion.

17 A Yes, sir.

18 Q You acknowledge that?

19 A Yes, sir.

20 Q Okay. Now, since I talked with you on Monday, I gave
21 you some instructions about how you were to behave. You
22 shouldn't try to gather any information about the case,
23 listen to, watch, or read media reports, discuss the with
24 anyone or allow them to discuss the case with you.

25 A Right.

Individual Juror Qualification

1 Q Have you been able to follow my instructions since that
2 time?

3 A Yes, sir.

4 Q Now, have you been exposed to any information that
5 would cause you to express or form an opinion about this
6 matter at this time?

7 A That would form or express an opinion, no.

8 Q Okay.

9 A And receiving since Monday, no.

10 Q Okay. Well, let me ask you this.

11 Are you the kind of person who would come, if you were
12 selected to serve on the jury, could come into the
13 courtroom, set aside any outside or extraneous matters that
14 might have anything to do with what's going on in the
15 courtroom, and decide the case based upon the law and the
16 evidence that's presented during the trial?

17 A Yes, sir.

18 Q Now, have you ever participated in any discussions,
19 they call them blogs or chat rooms, things like that,
20 anything of that nature that might have involved any
21 discussions concerning such things as the death penalty?

22 A Absolutely not.

23 Q Have you ever participated in any political activities
24 such as demonstrations or letter writing to Congressmen or
25 representatives about that death penalty issue?

Individual Juror Qualification

1 A No, I have not.

2 Q while you were waiting I had a list of people, a long
3 list of people.

4 A Uh-huh. (Affirmative).

5 Q Did you read that list for me?

6 A Yes, I did.

7 Q Okay. Now, as to the people that were on the list, is
8 there anybody on that list that you've ever been related by
9 marriage to or are you related by blood to?

10 A No.

11 Q Is there anyone on that list that you may have had a
12 social, business, or personal relationship with?

13 A Yes.

14 Q Can you give me the name of someone who that might be?

15 A Elizabeth Sima, the principal of Reidville Elementary
16 School.

17 Q And can you tell me in what context do you know her?

18 A My children went to Reidville Elementary. Well,
19 currently and have gone to Reidville Elementary.

20 Q So, you've met her in that---

21 A Yes.

22 Q ---that manner?

23 A Yes.

24 Q All right. Now, let's put yourself in this position
25 because those people were identified to me as possible

Individual Juror Qualification

1 witnesses.

2 A Uh-huh. (Affirmative).

3 Q I don't know if they'll all testify or not.

4 A Okay.

5 Q Quite often we get lists like that and a good many
6 people don't testify. We're gonna assume that she's
7 testifying in the case.

8 A Okay.

9 Q If you were sitting on the jury and she came to
10 testify, testify about some fact that may have some
11 relevance to the case, would the fact that you have known
12 her in the past, would that keep you from being fair and
13 impartial to both sides of the case?

14 A Would it keep me?

15 No, it would not.

16 Q Would it prevent you from being fair and impartial to
17 both sides?

18 A It would not prevent me, no.

19 Q Okay. So, you'd be able to listen to that testimony
20 and it would not affect your decision one way or the other
21 simply because you knew her?

22 A Exactly.

23 Q Okay. Now, I'm going to be asking some -- a series of
24 questions. Some of which will be about your opinions or
25 beliefs on things. You appear to be someone who's mature

Individual Juror Qualification

1 enough that you wouldn't feel threatened by the fact that
2 I'm asking you about your opinions.

3 Is that a correct statement?

4 A Correct.

5 Q Okay. Now, as we go through these things, I will end
6 up getting to the point where I'll be asking you about the
7 death penalty because that's a possible issue in this case.

8 A Uh-huh. (Affirmative).

9 Q But I want to point out something to you about that
10 discussion. It -- when I discuss that with you, I'm kind of
11 putting the cart in front of the horse in this case because
12 the way this process works, in a case where the death
13 penalty is being sought, we have what's called a bifurcated
14 trial. That's a fancy legal word for meaning we divide the
15 case into two trials in effect.

16 what we do is we have a trial where we try the issue of
17 guilt or innocence of the charges that have been brought
18 against the defendant. There's two indictments.

19 A Right.

20 Q So that we would conduct that hearing.

21 Now, if the, the jury finds the defendant guilty of the
22 crime of murder, the State has requested that the death
23 penalty be considered.

24 A Right.

25 Q Now, that means we would have a separate sentencing

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1 trial in which new evidence would be presented only on the
2 issue of the appropriate penalty that ought to be given.

3 A Right.

4 Q And those choices are either life imprisonment without
5 parole or the death penalty. So, we have a bifurcated
6 trial. I told you I'm gonna end up getting to where we talk
7 about the death penalty. So, I'm kind of putting the cart
8 before the horse here. I'm gonna be talking about the
9 penalty phase of this trial before we've ever even finished
10 the part that says we're gonna get there.

11 The reason for that is I want to explain to you is
12 we're in the jury qualification. This is the only chance
13 that I or the lawyers will get to talk to the, to the
14 potential jurors and discuss these matters that we need to
15 discuss with you. We may never get to that stage of the
16 trial, but this is our opportunity to talk you. We can't
17 stop the case in the middle of that trial and then start
18 talking about those issues because the jury's already
19 selected at that time.

20 A Okay.

21 Q I want to point out to you that the defendant,
22 Mr. Blackwell, is presumed to be innocent of the, of the
23 charges, and that fact that we're talking about the penalty
24 at this time shouldn't be a reflection on either him or his
25 case. This is simply the only time we have to do this.

Individual Juror Qualification

1 Do you understand what I'm saying?

2 A I understand, sir.

3 Q Okay. Now, I want you, you to be -- to put you in a
4 position where you're a juror in a criminal case. Now, I'm
5 not talking about this one necessarily. I want to talk
6 about some concepts of the law and get your opinion
7 concerning these concepts of the law.

8 First of all, I want you to believe that you're on a,
9 on a jury trying a case such as a shoplifting case or a
10 burglary case, something on that nature, okay, another
11 criminal case.

12 If you were serving as a juror in a criminal case,
13 would you be the kind of person who would be willing to
14 listen to the law as you were instructed the law by the
15 judge?

16 A Yes.

17 Q Would you be willing to accept the law and apply it to
18 the facts as the jury found the facts in reaching a verdict
19 in the case?

20 A Yes.

21 Q Now, is that true even if, when the judge is charging
22 you with the law, you're listening to the charge, and you
23 hear something in that charge that you may not agree with or
24 you didn't understand the law was that way, that may of
25 surprised you in some fashion?

Individual Juror Qualification

1 I guess my question is, if you heard something like
2 that in the charge on the law, could you put your personal
3 beliefs and feelings aside and take the law exactly as the
4 judge gave it to you and apply it to the facts in reaching a
5 verdict?

6 A Yes.

7 Q Now, now, I mentioned to you that Mr. Blackwell is
8 presumed to be innocent. Now, I will tell you that, in
9 every criminal case that comes in front of the Court, the
10 defendant, in that case, is always presumed to be innocent.

11 Do you understand that concept in the law?

12 A Yes.

13 Q And I will tell you that because a defendant is
14 presumed to be innocent, a defendant is never required to
15 prove himself innocent. He's presumed to be innocent. So,
16 a defendant is never required to prove innocence.

17 Do you understand that?

18 A Uh-huh. (Affirmative).

19 Q For that reason, the only party, in a criminal case,
20 who has any burden of proof in a criminal trial is the
21 State.

22 A Uh-huh. (Affirmative).

23 Q And the State has the burden of proving the allegations
24 contained in the indictment by proof beyond a reasonable
25 doubt.

Individual Juror Qualification

1 Do you understand that concept?

2 A Yes.

3 Q So, the State has the only burden of proof. The
4 defendant has no burden of proof. The defendant is presumed
5 to be innocent.

6 You understand all those concepts?

7 A Uh-huh. (Affirmative).

8 Q Okay. Now, let me ask you a question. Try to ask
9 this -- I've had some confusion on this question with some
10 other people. So, I want you to listen carefully to what
11 I'm saying.

12 Let's say you're sitting on a jury. You have heard the
13 evidence in a case, the testimony and the other evidence.
14 You heard the judge's charge on the law and you're getting
15 ready to go into your deliberations. In your own mind you
16 have determined that the State has not met its burden of
17 proof. In other words, it did not prove the defendant
18 guilty beyond a reasonable doubt.

19 Under that circumstance, are you someone who could sign
20 a verdict finding a defendant not guilty --

21 A If -- yes.

22 Q -- if the State did not prove its case?

23 A Yes.

24 Q Now, by the same token, let's say that you have
25 determined that the State did prove a defendant was guilty

Individual Juror Qualification

1 beyond a reasonable doubt.

2 A Uh-huh. (Affirmative).

3 Q Would you be willing to sign a verdict that said a
4 defendant is guilty?

5 A Yes.

6 Q So, you wouldn't have any trouble, based on the law and
7 the evidence, in finding a defendant either guilty or not
8 guilty depending on what the evidence says, is that right?

9 A That's correct.

10 Q Okay. Now, I told you I'd get to talking to you about
11 the penalty phase of the trial, and I'm going to explain to
12 you, again, that, in most criminal cases, a case is tried,
13 the jury decides whether the defendant is guilty or not
14 guilty. If the defendant's found guilty, then the judge
15 would set the penalty. That's what the normal procedure is.

16 A Uh-huh. (Affirmative).

17 Q This case is different because, in this case, we have
18 that trial where the jury, again, decides guilt or innocence
19 on the charges. But here, if the jury finds the defendant
20 guilty of murder, then the jury holds a hearing to determine
21 the appropriate penalty and it decides what the appropriate
22 penalty is.

23 So, you understand the basic difference between a
24 normal criminal case and the one that we're engaged in now?

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q And I'm going to tell you that the statute that sets up
2 that second hearing is called -- we call it the penalty
3 phase or the sentencing phase of a trial. The statute that
4 sets that up, it provides that evidence can be introduced in
5 that phase, and some of the evidence will be new in the
6 case. It will be evidence that wasn't even talked about
7 during the guilt cause it's evidence that has to do with
8 what penalty's appropriate. Not whether he was guilty or
9 innocent.

10 A Okay.

11 Q So, there would be new evidence presented during that
12 trial.

13 The types of evidence that are allowed, that's allowed
14 to be put into the record by that statute is what are called
15 aggravating circumstances and mitigating circumstances.

16 Now, those are words that you don't use everyday, and
17 especially in this context. I want to be sure you
18 understand what we mean by an aggravating circumstance or a
19 mitigating circumstance.

20 The aggravating circumstances are factors that would
21 tend to -- well, let me explain. The defendant's already
22 been found guilty of a murder.

23 A Uh-huh. (Affirmative).

24 Q The question is the penalty. So, the aggravating
25 circumstances would tend to show that the crime was a more

Individual Juror Qualification

1 severe crime or a crime deserving a greater punishment. In
2 other words, things that would aggravate the situation and
3 cause a juror to perhaps give a more, more stringent
4 punishment than otherwise a juror might give.

5 Then, mitigating circumstances is evidence which
6 somehow tends to lessen either the culpability of the
7 defendant for what happened or provides information tending
8 to have a juror perhaps go toward a lesser sentence. So,
9 that's what we mean by evidence in mitigation. Things that
10 would tend to, to make a juror give a lower or a lighter
11 sentence than the aggravating circumstances.

12 But in the sentencing phase, both types of evidence
13 would be presented to a jury and some of it would be new
14 evidence to the trial.

15 Do you understand that?

16 A I do.

17 Q Now, once that evidence is presented to the jury, then
18 the judge would instruct the jury to go back into the jury
19 room and consider the evidence on both sides, aggravating
20 and mitigating, and reach a verdict as to two possible
21 verdicts. One is the death penalty or the other is life
22 imprisonment without the possibility of ever being paroled.
23 So, the jury would go back and consider those questions.

24 Do you understand that?

25 A Yes.

Individual Juror Qualification

1 Q All right. Now, I want to ask you to put yourself in a
2 position. Let's say that you were on a jury that was
3 engaged in a trial of a case involving a situation where a
4 murder's been alleged and the State is seeking a death
5 penalty. Let's say that the trial is proceeded to the point
6 where the jury that you're on has decided the defendant is
7 guilty of the crime of murder. So, a murder has been -- a
8 guilty verdict has been rendered.

9 Now, by the law, as I told you, the statute sets up a
10 separate sentencing or penalty phase of the trial. So that
11 same jury that you're on is about to walk back into the
12 courtroom in order to receive evidence of aggravating and
13 mitigating circumstances and then make a decision on the
14 appropriate penalty.

15 So, you -- do you understand you're with your fellow
16 jurors?

17 You're about to walk back into the courtroom to start
18 the second phase of the trial.

19 Do you understand where I've put you?

20 A Uh-huh. (Affirmative).

21 Q Now, there's a sheet of paper back in the jury room.

22 A Yes.

23 Q It described three possible jurors, three different
24 kind of jurors.

25 A Yes.

Individual Juror Qualification

1 Q I'm gonna go over that with you briefly so that we can
2 get in our mind what we're talking about off of that paper
3 cause I didn't give you an explanation about that. I just
4 put it back there.

5 Now, juror number one, on that sheet of paper, that's
6 the first type of juror described and that juror, before
7 that juror ever walks back into the courtroom, has already
8 made up his or her mind. That juror believes that anytime
9 someone is convicted of a murder that the only appropriate
10 penalty is death. So, that juror is not going to listen to
11 the facts and evidence. He's already made up his mind that
12 that's the only appropriate penalty that can be given in
13 this particular case.

14 Now, the second juror I'm gonna describe is another
15 juror who, before they walk into the courtroom to hear any
16 evidence from the, in the case on the sentencing, that juror
17 is already made up his or her mind. That juror has a firmly
18 held belief that the State has no right and should never
19 take the life of a person in response to the commission of
20 any crime, no matter how serious that crime might be. That
21 person is always every time gonna vote for life imprisonment
22 without the possibility of a parole.

23 Now, the third juror is a juror, coming into the
24 courtroom, who hasn't made up their mind either way. That
25 juror wants to listen to both the aggravating evidence --

Individual Juror Qualification

1 circumstances and listen to the evidence in mitigation. It
2 may tend to lessen the, the event. And based upon the
3 evidence that that juror hears, that juror intends to make
4 up his or her mind as to the appropriate punishment that
5 ought to be rendered in the case.

6 So, do you understand the position that I've put you
7 in?

8 A Uh-huh. (Affirmative).

9 Q Now, as to -- and I asked you to put yourself in the
10 position that you're with that jury. You're getting ready
11 to walk back in.

12 A Uh-huh. (Affirmative).

13 Q Which of those three jurors would best describe your
14 position or your feeling at this time?

15 A I would be the third juror.

16 Q So, you would be the third juror?

17 You would be willing then to listen to the evidence,
18 aggravating and mitigating, and make a decision then as to
19 the appropriate penalty, is that correct?

20 A Uh-huh. (Affirmative).

21 Q Now, if you were to listen to that evidence, and if you
22 were to decide that the death penalty was the appropriate
23 penalty, would you be a juror who would be willing to sign a
24 verdict for the death penalty?

25 A If that's what's being asked of me by the law. So yes.

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1 Q You would be willing to do that?

2 A Uh-huh. (Affirmative).

3 Q Now, by the same token, if you found that the
4 appropriate penalty, you listened to the aggravating and
5 mitigating circumstances, you decided that the appropriate
6 penalty should be life in prison without the possibility of
7 parole, could you sign a sentence in that fashion as well?

8 A Definitely.

9 Q So, you're telling you you'd listen to the facts and
10 circumstances on both sides of the case to make a decision?

11 A Uh-huh. (Affirmative).

12 Q All right. Now, ma'am, I'm gonna make you aware that
13 I've signed a sequestration order in this case.

14 A Uh-huh. (Affirmative).

15 Q Sequestration order simply means that, when a jury is
16 impaneled, they'll be kept separate. They won't be allowed
17 to go home. They'll be staying in a motel. They'll get all
18 their meals that -- the county will provide the meals.
19 we'll provide transportation. The -- I think we'll be at
20 the Marriott is the one that the jury's gonna be sequestered
21 at. You would be able to make telephone calls and that sort
22 of thing, but everything's monitored.

23 A Uh-huh. (Affirmative).

24 Q The TV shows that you watch will be monitored, and the
25 reading material would be reviewed. The idea is to keep the

Individual Juror Qualification

1 jury from being influenced by outside factors while the
2 trial goes on. That could take -- the trial could take a
3 little more than a week I think to try the case, and so the
4 jury would be sequestered for that period of time.

5 You would receive juror pay as required by law. It's
6 not as much as somebody makes at a job, but it's, it's some
7 pay. You'd receive travel money back and forth from the
8 courthouse during -- for anytime you had to pay for travel
9 to get here or back, or back.

10 Now, my question to you, if you were in a sequestration
11 situation, would that situation pose, pose any kind of
12 serious risk to your, your personal health or well being?

13 A No.

14 Q Would it pose any sort of substantial or serious risk
15 to the health or well being of anyone dependent upon you?

16 A No.

17 Q All right. Now, one other thing has been brought to my
18 attention in this process, and that is that you might have
19 some type of criminal charge pending.

20 A Yes, sir.

21 Q Is that true?

22 A Yes, sir.

23 Q Now, that case has not yet been adjudicated. You've
24 not -- it apparently has not been any finding of guilt or
25 anything. You haven't been tried and you haven't pled

Individual Juror Qualification

1 guilty.

2 Is that correct?

3 A Correct.

4 Q Now, there is some concern that that may cause you to
5 be prejudiced one way or the other against either the State
6 or the defense because you've had some involvement with the,
7 with the criminal justice process.

8 Do you feel that that process would cause you to be,
9 not be able to be fair and impartial to both the State and
10 the defense in the trial of this case?

11 A Not at all.

12 Q Okay. So, you don't think that would affect your
13 decision making process at all?

14 A They're irrelevant.

15 Q Okay. All right. I'm gonna ask the attorneys to --
16 now to ask some questions of you. If you'll please respond
17 to them, and then we'll -- I'll talk to you when they
18 finish.

19 A Sure.

20 THE COURT: Yes, sir, Mr. McGuire.

21 MR. MCGUIRE: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 EXAMINATION

24 BY MR. MCGUIRE:

25 Q Good afternoon, Ms. Partridge.

Individual Juror Qualification

1 A Good afternoon.

2 Q I looked at the clock. We've been here all morning,
3 and then you've probably been waiting a long time.

4 A Ditto.

5 THE COURT: Yeah, her too.

6 Q And we all apologize for that.

7 A That's all right.

8 Q We're out here working very hard --

9 A Yeah.

10 Q -- and anyway, forgive us please.

11 A No, you're fine. You're fine.

12 Q What I want to do is talk to you a little bit about
13 your, your understanding of the system with regard to a, a
14 capital trial, and my guess is you really don't know how,
15 how it really works.

16 A I'm willing to learn. Teach me.

17 Q And, and I'm just gonna go over some principles about
18 how it works and some principles of law and I'll just ask
19 you if you can respect them and follow them, and, and that's
20 what we're all here for.

21 okay?

22 A (Witness nods affirmatively.)

23 Q Now, the first part of the trial, and the judge talked
24 to you a little bit about that, that's the traditional,
25 we've all seen it on TV. That's the who done it, did they

Individual Juror Qualification

1 get the right guy, beyond a reasonable doubt, did he do it.

2 A Uh-huh. (Affirmative).

3 Q That's the traditional trial, and a capital trial would
4 move into a second phase, and that's to determine just
5 punishment, that's it, and the, the two choices that the
6 juror, jurors would have would be the life penalty, which is
7 life in prison without parole. In South Carolina, when we
8 say without parole, we mean it. It's without parole.

9 Did you know that?

10 A No, but I do now.

11 Q Okay. I use to practice law in Georgia. We had parole
12 there. Some other states have it. We don't have it here in
13 South Carolina. So, if the jury was to find life, it'd be
14 life.

15 A Okay.

16 Q And now you know that.

17 A Okay.

18 Q Okay. And the other choice would be the death penalty.

19 Now, the only way the State can get the death penalty
20 is they have to prove an aggravator, at least one
21 aggravating circumstance beyond a reasonable doubt. All 12
22 jurors would have to agree on that, and then the jurors
23 would have to agree that the death penalty is the
24 appropriate decision also beyond a reasonable doubt.

25 okay?

Individual Juror Qualification

1 A (Witness nods affirmatively.)

2 Q Now, the life penalty decision is a little bit
3 different in that it's not a collective or a majority
4 process anymore. It's an individual process.

5 Did you know that?

6 A No.

7 Q Okay.

8 A Can I ask you to clarify --

9 Q I am.

10 A -- just so I can appreciate it.

11 Q That's exactly what I'm going to do, and I'm gonna do
12 it by example so it's crystal clear.

13 Q Okay. And what I mean by that is that individual
14 jurors can have their own reason to vote for the life
15 penalty, and nobody else has to agree with them. Okay. And
16 the way -- in fact, the judge would charge, if you were to
17 be on this jury, the judge would charge you that you can
18 vote for the life penalty for any reason, no reason, or
19 mercy alone.

20 Did you know that?

21 A No.

22 Q But you now do?

23 A Yes.

24 Q Is that a principle of the law that you could respect?

25 A Definitely.

Individual Juror Qualification

1 Q And the, the other thing that, that exist in the
2 penalty phase is that people can have different reasons for
3 voting -- to vote for the life penalty and other people can
4 disagree with them. For instance, a juror sitting say right
5 here could say I saw something in the way this person was
6 raised, the defendant who's before you, I saw something in
7 his background, the way he was raised, and I saw a spark of
8 humanity in that, and that's gonna be my reason to vote for
9 life.

10 A Uh-huh. (Affirmative).

11 Q And everybody else could say he didn't see that, but
12 they can say well, it worked for me. So, I'm gonna vote for
13 life for that, and somebody over here could say I saw a
14 relationship that that man had with his family, with his
15 children, with his grandchildren, and that resonated with
16 me, and all the other people could say well, I didn't, I
17 didn't see that and the person could say well, that did it
18 for me, I'm gonna give that the weight of life.

19 Another juror could say I heard the judge say I could
20 vote for life for, for no reason or mercy, and I don't have
21 the words to defend my position or to articulate it, but it
22 doesn't sit right with me, the death penalty, and I'm gonna
23 vote for life for no reason because that's where I am, and
24 you can see -- and everybody else could say, well, we don't
25 really agree with that, but that's your right.

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1 A Uh-huh. (Affirmative).

2 Q Can you see how it works?

3 A Uh-huh. (Affirmative).

4 Q Is that a system that you can participate in?

5 A I can.

6 Q And respect?

7 A Uh-huh. (Affirmative).

8 Q And the decision making process, in the penalty phase,
9 is called an individual moral judgment. Again, it's not a
10 collective majority type thing, and when somebody reaches
11 their individual moral judgment as to the penalty, they have
12 a duty and an obligation to have that position heard in
13 Court.

14 Is that a principle of law you could follow and
15 respect?

16 A Yes.

17 Q Even if somebody had an individual moral judgment
18 different from yours?

19 A Definitely.

20 Q Okay. You could respect their position?

21 A Definitely.

22 Q And in the pamphlet that everybody was given the first
23 day --

24 A Uh-huh. (Affirmative).

25 Q -- it said that, if there was disagreement, if a, if

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1 the jury didn't agree and the trial was a mistrial --

2 A Uh-huh. (Affirmative).

3 Q -- have to be tried again --

4 A Uh-huh. (Affirmative).

5 Q -- and I want to correct that for you right now.

6 In the penalty phase of a capital case, the jury can
7 disagree as to punishment and report out to the judge. The
8 judge would take the case and sentence and it would end, and
9 I tell you that because I don't want you operating under
10 false information that the case would have to be tried again
11 by another jury.

12 A Okay.

13 Q Okay. I just don't want anybody to think that they
14 have to reach a verdict or it's gonna have to be redone.

15 A Okay.

16 Q It would be final.

17 A Okay.

18 Q Is that a principle of law you can respect?

19 A Definitely.

20 Q Okay. If there -- on the questionnaire, we had, we had
21 a question about race and it was about if there was
22 something improper in the jury room, if race came up and it
23 would be improper, could you report that out, and you said
24 you could do that.

25 A Uh-huh. (Affirmative).

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1 Q If you saw somebody who reached their individual moral
2 judgment, and the law is if it would harm their conscience
3 to change their position, that they're suppose to stay there
4 with that individual moral judgment.

5 And if you saw somebody reach that position, and
6 somebody else was trying to get them to abandon it, to come
7 over to a majority position, could you step in and report
8 that and say well, if -- that person has a duty and
9 obligation to have their voice heard in Court?

10 Could, could you prevent bullying I guess in a jury
11 room?

12 A Yes.

13 Q And you---

14 A I do that all the time with my kids.

15 Q I know -- I saw you have---

16 A Sorry.

17 Q ---an eleven and a seven year old.

18 A Yes---

19 Q I have two six year olds. So, I'm with you.

20 A Sorry.

21 Q No, no, no, I'm -- I've been in your shoes many times,
22 and I have to prevent that as well, and you can do it just
23 by passing a note out to the judge.

24 A Okay.

25 Q In fact, the law requires that these proceedings be

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1 conducted with dignity, and we would expect some civil
2 discourse, but if it goes beyond that and gets to bullying
3 or bad behavior, you can report that out to the judge.

4 A Uh-huh. (Affirmative).

5 Q Could you do that?

6 A Yeah.

7 Q Okay. That's all I have for you. Thanks, ma'am.

8 A Uh-huh. (Affirmative).

9 THE COURT: Mr. Bulsa.

10 SOLICITOR BULSA: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 THE WITNESS: Can I ask one question on that though?

13 MR. MCGUIRE: Oh, sure.

14 THE WITNESS: If it -- if a juror does report, is there
15 protection against the hostile juror against the one that
16 does report or is it done anonymity?

17 THE COURT: That would up to the judge to decide the
18 appropriate action to take.

19 THE WITNESS: Okay.

20 MR. MCGUIRE: He would, he would certainly take care of
21 that.

22 THE WITNESS: Okay.

23 MR. MCGUIRE: You don't have to worry about that.

24 THE WITNESS: All right. Okay.

25 THE COURT: All right. Now, Mr. Bulsa.

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1 SOLICITOR BULSA: Thank you, Your Honor.

2 EXAMINATION

3 BY SOLICITOR BULSA:

4 Q Hello, Ms. Partridge.

5 A Hey.

6 Q I'm Derrick Bulsa. This is Solicitor Barnette. We're
7 prosecuting this case.

8 A Yes.

9 Q Okay. Ma'am, I want to ask you a few questions about
10 your questionnaire.

11 A Yes.

12 Q Okay. I noticed that you listed your religious
13 affiliation as Jehovah witnesses.

14 A I'm -- it's nondenominational. I was raised as
15 Jehovah's witnesses. I am currently nothing.

16 Q Okay. All right. So, do you follow the Jehovah
17 witnesses view on the death penalty?

18 A I don't know what a Jehovah witness view of the death
19 penalty is.

20 Q Okay. Okay.

21 A I know that the, the scriptures definitely have a
22 strong bearing on how I feel. On the one hand, I do believe
23 an eye for an eye. On the other hand, they're also Three
24 Cities of Refuge for people who might of been guilty, but
25 yet there was a, a place for them to reside and live their

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1 lives normal -- I mean as balanced.

2 Q Okay.

3 A That's my opinion.

4 Q Okay. That's, that's a good interpretation and
5 understanding.

6 A It's one or the other. That's it.

7 Q All right. So, you can look at both sides of the case
8 --

9 A Yeah.

10 Q -- so to speak?

11 A Yeah.

12 Q Have you given much thought to the death penalty?

13 A Actually, yes.

14 Q How so?

15 A Not necessarily as in giving thought to it. I'm an
16 information junky and I watch National Geographic and I
17 coincidentally, some months ago, watched life -- People on
18 Death Row cause I just -- it fascinates me, the mindset,
19 those type, the people that are there and the ramifications,
20 what put them somebody there, and they're so many factors.
21 I mean you could have the same crime committed, but the
22 motive, situation, circumstances, environment, there's so
23 many variables that you can't, you can't combine everything
24 together.

25 Q Okay. So---

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1 A Does that make any sense?

2 Q In a way it does. I want, I want to go, go a little
3 bit further on that. So --.

4 A Okay.

5 Q So, how did that impact upon your view of the death
6 penalty?

7 A That it's understandable that, that the law would allow
8 that to take place. Whether, you know, that it offers both
9 options because both options are solutions to different
10 situations. I think the only injustice is that women aren't
11 put on Death Row as well, which I -- but that's just my
12 personal opinion.

13 Q Right. Right.

14 Okay. You think there's some crimes women should be
15 subjected to the death penalty, but aren't, are not?

16 A Yeah. Yeah, I mean -- yeah.

17 Q Okay. Can you think of some instances where you think
18 the death penalty should automatically be given?

19 A Automatically like say with a just trial or
20 automatically just --?

21 Q If, if somebody's convicted of murder --

22 A Right.

23 Q -- is there a situation where you would not consider
24 the other side, but just---

25 A No.

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1 Q ---say he should---

2 A No.

3 Q Okay.

4 A Hu huh. (Affirmative).

5 Q All right. So, you're open minded to all the
6 circumstances?

7 A Yes.

8 Q Okay. Now, the judge told you there's gonna be
9 aggravating circumstances and mitigating circumstances.

10 A Right.

11 Q And when the mitigating -- one of the aggravating
12 circumstances is a young child is the alleged victim.

13 A Uh-huh. (Affirmative).

14 Q And some of the mitigating circumstances is the
15 defendant's background and perhaps a disability.

16 A Uh-huh. (Affirmative).

17 Q Considering those two, would you lean one way or the
18 other?

19 A No, because circumstances are different.

20 Q Okay. You'd wait to hear it all played out?

21 A Yeah.

22 Q Okay. Now, I just want to reference one other thing
23 you noted in your questionnaire. You listed that you
24 suffered a loss yourself in January of 2014.

25 Check fraud?

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1 A Yes, sir.

2 Q Is that an open case?

3 Did you report that to the police?

4 A I went through -- it was my own stupidity. I was
5 selling items on Craig's List, and I did not mail the or I
6 did not ship the product, but the individual sent me a bogus
7 check in which that I, according to our agreement, cashed it
8 and used some of those monies to then wire transfer, and
9 then I got stuck with the bad check that I then had to pay.

10 Q Okay. So, it was an Internet kind of deal?

11 A Yes, exactly.

12 Q So, did you report it to anybody to try to recover
13 anything?

14 A The bank, and I went to the fraud department in the
15 bank, and I'd actually talked to the company that the check
16 was stolen from out of Texas, and they said that their
17 account had been violated, the company had been, and there
18 was no repercussion that they could do. I went to the bank
19 and it did get turned over to that authority but because of
20 the, the contacts that I had been working with through the
21 Internet were one contact phone number, which, of course,
22 can be random, was in Beaufort here in South Carolina, and
23 one was in Texas, and one was in California, and one was in
24 Michigan. So, there was no police department that I could
25 actually go to report it because I had no idea---

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1 Q I understand.

2 A So, that's why I actually went through the bank and
3 worked with the bank on that one.

4 Q Okay. So, you didn't go to the Sheriff's Office and
5 say, hey---

6 A No.

7 Q ---please look into this?

8 A No.

9 Q Okay. Now, I hate to go into this, but the judge
10 mentioned it about your pending case with the Sheriff's
11 office.

12 A Yes.

13 Q Are they the prosecuting agency in your case?

14 A Yes.

15 Q And you're, you're aware that they're the prosecuting
16 agency in this case?

17 A Yes, I do.

18 Q And it's not gonna impact your decision at all?

19 A No, it shouldn't. There's no correlation.

20 Q Okay. I understand that---

21 A Yeah.

22 Q ---but I just want you---

23 A Yeah.

24 Q You're gonna need to be comfortable because you're
25 gonna be hearing a lot of witnesses coming up here.

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1 A Uh-huh. (Affirmative).

2 Q Okay. And you can set that aside --

3 A Oh, yeah.

4 Q -- and decide this case on its merits?

5 A Yeah.

6 Q You mentioned knowing one of the witnesses.

7 A Uh-huh. (Affirmative).

8 Q Who is that again?

9 A Elizabeth Sima. She's the principal---

10 Q In Woodruff?

11 A ---of the elementary school.

12 Q Okay. All right. That's another -- she was actually
13 the complainant in the case also.

14 A Yes.

15 Q Okay.

16 A I have the utmost respect for Elizabeth and I have a
17 very unique relationship with her. She's an amazing
18 principal and, and, again, it's, it's compartmentalization.

19 Q And you, you feel---

20 A There's just---

21 Q ---confident you can do that?

22 A This is me and my stupidity, my issue, and this has
23 nothing to do with that, and whether she's involved in both
24 is irrelevant.

25 SOLICITOR BULSA: Okay. Just one moment please.

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1 (Pause.)

2 SOLICITOR BULSA: All right. Thank you, ma'am.

3 THE COURT: Anything further from the defense?

4 MR. MCGUIRE: Nothing further, judge.

5 THE COURT: All right. Ma'am, I'm gonna ask you to
6 step back into the jury room. I'll have you come back in
7 just a moment.

8 THE WITNESS: Sure.

9 THE COURT: Okay. Thank you.

10 (WHEREUPON, the following takes place outside the
11 presence of the juror.)

12 THE COURT: Defense's position on Ms. Partridge?

13 MR. MCGUIRE: She's qualified, judge.

14 THE COURT: The State.

15 SOLICITOR BULSA: Agree.

16 THE COURT: All right. Bring her back in.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 THE COURT: Have a seat please, ma'am.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. First of all, I'm gonna ask the
22 clerk to give you a little sheet of paper.

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

24 THE COURT: I have determined that you are qualified to
25 proceed in this process. Now, that doesn't mean you're on

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1 the jury.

2 THE WITNESS: Uh-huh. (Affirmative).

3 THE COURT: That means that you'll go on a list from
4 which a jury will be selected. We're in the process of
5 qualifying jurors, and we have to qualify about 36 or so.
6 It's gonna take a little while. We may be a couple more
7 days getting that process completed, but when we finish,
8 you'll be hearing from the Clerk's Office about what you
9 need to do next.

10 THE WITNESS: Okay.

11 THE COURT: Now, in the mean time, my order concerning
12 how you behave as far as this case is concerned will
13 continue.

14 THE WITNESS: Yes, sir.

15 THE COURT: Don't discuss it with anyone. Don't watch
16 or listen to media reports. Don't try to gather information
17 on your own, and if anybody tries to contact you about it,
18 let the Clerk's Office know that.

19 THE WITNESS: Okay.

20 THE COURT: So, that continues until I tell you it
21 doesn't continue any further.

22 THE WITNESS: Okay.

23 THE COURT: Okay. Now, there's an exception to that in
24 that, if you come back, I explained sequestration.

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

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1 THE COURT: That paper has to do with things that you
2 might want to consider in bringing if you're summoned to
3 come back to the courthouse because you'll need to prepare
4 to stay for maybe a little more than a week. Where you'll
5 be, they'll be laundry services and things like that. So,
6 you can get clothes washed if you needed that, but you may,
7 you may have medicines or personal items, things you need to
8 prepare for that length of time.

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

10 THE COURT: It's okay to talk to employers and/or
11 family members about the fact that you may, when you come
12 back, be staying for a period of time --

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

14 THE COURT: -- so that you can make any personal
15 arrangements, but in doing so, don't talk about the case.
16 Don't talk about any of the issues in the case. It's okay
17 to say you're still being considered for the jury, but---

18 THE WITNESS: Okay.

19 THE COURT: ---that's it. Don't talk about that.
20 You understand what I told you?

21 THE WITNESS: Yes, sir.

22 THE COURT: Are you willing to accept those -- that
23 responsibility?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Now, we'll be calling you. Like

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1 I said, it may be a few days. We haven't forgotten about
2 you. We've just got to get through this process before we
3 give you further instructions.

4 You understand that?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. The bailiff will check you out.
7 We'll be back in touch.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you.

10 (WHEREUPON, the following takes place outside the
11 presence of the juror.)

12 THE COURT: All right. We'll be in recess until two
13 o'clock for lunch.

14 Thank you very much.

15 MR. MCGUIRE: Thanks, judge.

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

17 THE COURT: All right. State ready to go forward?

18 SOLICITOR BARNETTE: State's ready, Your Honor.

19 THE COURT: Defense ready?

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: All right. Let's bring in George Lamb.

22 (WHEREUPON, the following takes place within the
23 presence of the juror.)

24 GEORGE LAMB, having been previously
25 sworn, testified as follows:

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1 EXAMINATION

2 BY THE COURT:

3 Q Sir, have a seat.

4 A (Witness complies)

5 Q Thank you, sir.

6 A Good morning.

7 Q Well, good afternoon.

8 A Good afternoon I should say.

9 Q Probably been all morning maybe, but, sir, you may want
10 to turn your chair so you can look at me. This thing kind
11 of gets in the way. It wasn't designed for this, but I'm
12 gonna be talking with you first, and then, in a little
13 while, the attorneys will be talking with you.

14 We're gonna go over some matters that would be
15 pertinent to us concerning your potential service on the
16 jury. So, we're still in the process of qualifying people
17 for the jury. We have not picked anyone for the jury, and
18 even today, you'll just -- you'll either be qualified to
19 continue in the process or we'll, we'll release you if
20 you're unqualified.

21 You understand that, sir?

22 A Yes, sir.

23 Q Now, the -- I'm gonna ask you a series of questions or
24 a number of questions, and I'll just tell you there aren't
25 any right or wrong answers to those questions. There's only

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1 truthful answers that are yours, and so, I'm gonna remind
2 you that you were put under oath morning Monday to tell the
3 truth to the Court, and you're, you're still under oath for
4 the purposes of this discussion.

5 Do you realize that, sir?

6 A Yes.

7 Q And you acknowledge that that's true?

8 A Yes.

9 Q Okay. Now, when you left the courthouse earlier I gave
10 you some instructions on things you could do and you
11 couldn't do. You -- didn't want you to try to gather any
12 information about the case on your own. Didn't want you to
13 watch, read, or listen to media reports. I asked you not to
14 discuss the case with anyone, and not allow anyone to
15 discuss it with you.

16 Have you been able to follow my instructions in that
17 regard?

18 A Yes.

19 Q Now, have you, have you ever participated in any type
20 of discussion, chat room, anything like that, where the
21 subject of the discussion might of been the death penalty?

22 A No.

23 Q All right.

24 A I don't think so.

25 Q Have you ever engaged in any political activity such as

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1 a demonstration or a, a writing -- letter, letter writing
2 campaign to a Legislator or something --

3 A No.

4 Q -- about the death penalty?

5 A No.

6 Q Nothing about the death penalty?

7 A No.

8 Q All right. Now, are you -- let me ask you this.

9 Are you the kind of person who could put aside some --
10 any matter that you may have heard from any source about
11 anything that might relate to this trial and decide this
12 case, if you were on a jury, based solely on the law and the
13 evidence that you hear in the courtroom during the trial?

14 Could you do that?

15 A Yes.

16 Q Now, there was a long list of people back in the jury
17 room, about three pages --

18 A Uh-huh. (Affirmative).

19 Q -- and I asked that you look over that.

20 Did you?

21 A Yes.

22 Q All right. Now, as to the people on that list, I will
23 tell you that's a list of people that have been identified
24 to me as possible jurors, possible witnesses in the case.

25 Excuse me.

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1 Now, I don't know that all those people are going to
2 testify. Quite often they don't. But we're gonna assume
3 that all of them are for the purposes of my questioning, and
4 as to those people, have you ever been related by marriage
5 or by blood to any of the people on that list to your
6 knowledge?

7 A No.

8 Q Have you ever had any social, business, or personal
9 relationship with anyone on that list?

10 A None that I recognized.

11 Q So, you didn't recognize anyone off of that list?

12 A No.

13 Q Well then you won't have any problems as far as the
14 witnesses are concerned.

15 Now, I'm going to ask you -- I'm gonna start getting
16 into some questions about your opinions and how you would
17 handle serving on a jury, and I will tell you that, again,
18 there's not any right or wrong answers. We just want your
19 honest answers concerning the questions I'm about to ask
20 you, and I believe you're probably secure enough in your
21 opinions and beliefs that you're not gonna feel threatened
22 by this process.

23 A No.

24 Q I know that seat sometimes is a hot seat in this
25 courthouse. That's where the witnesses have to sit. But I

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1 hope you're at ease and you feel comfortable about what
2 we're doing.

3 A Doesn't bother me a bit.

4 Q Okay. Very good.

5 Now, one of the things I'm going to be getting into
6 later on, I'm not right at this moment, but I will later on,
7 are your opinions concerning the death penalty because, as
8 you're aware, this trial, in this trial, the State is
9 seeking that as one of the possible verdicts in the case.

10 Now, in my discussions with you at this point in time,
11 I'm -- I want, I want you to understand that I'm kind of
12 putting the cart before the horse here because the way this,
13 this particular proceeding is going to work, this case will
14 go to trial on the two charges that have been brought
15 against the defendant, and a jury, whoever the jury is then,
16 will, first of all, decide whether or not the defendant is
17 either guilty or not guilty as to those two charges.

18 Now, if a verdict of guilty is issued on the murder
19 charge by that jury, because the State is seeking the death
20 penalty, there would be a separate hearing or trial that
21 would be begun and we call that either the penalty or the
22 sentencing phase in which the jury would participate in
23 deciding the ultimate punishment to be given for that
24 particular crime. So, it's what we call a bifurcated trial.

25 Now, I say I'm putting the cart before the horse

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1 because what I'm asking, gonna ask you about when I ask
2 about that penalty phase, I don't know that we'll ever get
3 to that phase. It's possible that we wouldn't. However, I
4 want to point out to you that, in picking a jury, the same
5 jury would hear both of those trials. In picking a jury,
6 once the jury's seated for the first part of the trial, we
7 can't stop in the middle and talk about these things at that
8 point in time because that jury's already selected. So,
9 this is really the only time that we can talk to you about
10 any of the issues that might come up in the whole trial.
11 So, I want to point out to you that, that the -- we may not
12 get to that penalty phase depending on the verdict in the
13 first part of the trial.

14 Now, I will -- I'm going to -- in telling you that I
15 will tell you that the defendant in this case,
16 Mr. Blackwell, as all defendants, is presumed to be innocent
17 of the charges for which he's been charged, those first
18 charges that would be the first part of the trial, and the
19 fact that we're talking about the penalty phase should not
20 serve as a reflection either on him or on his case in this
21 matter because, of course, this is the only time we can talk
22 about these things.

23 Do you understand what I'm trying to explain to you?

24 A Yes, sir.

25 Q Okay. Now, I'm gonna ask you some -- about some -- I'm

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1 gonna put you in some positions if you were on a jury. Kind
2 of imagine yourself in these spots.

3 Let's say that you had been picked to serve on a jury
4 in a criminal case, and I'm not talking about this case.
5 I'm just talking about any general, any general criminal
6 case that this could be for something like shoplifting or
7 somebody had stolen something, something of that nature.

8 So, if you were a juror on a, on a criminal case, would
9 you be willing to listen to the law as instructed to you by
10 the judge in that, in that position?

11 A I'd want to.

12 Q Okay. And in doing so, would you be willing then to
13 take the law as the judge gave you, apply that law to the
14 facts as the jury finds those facts, and use that in
15 reaching a verdict in the case?

16 A Yes.

17 Q Now, let me -- I'm gonna take this a step further.
18 Let's say you were in the jury and the judge was charging
19 you concerning the law in this case, whatever it is, and as
20 you're listening to the judge charge the law, you hear
21 something that maybe you don't agree with in the law or you
22 hear something that you weren't expecting, didn't
23 understand, you didn't, didn't know that was the law or had
24 a little discomfort with something the judge instructed you
25 about the law. So, somehow the law doesn't agree with your

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1 personal beliefs or your personal understanding.

2 would you be willing to set aside your personal
3 feelings, take the law exactly as the judge gives you, gives
4 it to you, then apply that law in reaching a verdict?

5 A Yes.

6 Q Now, I want to go over some general concepts in the
7 criminal law to be sure you understand them and that you
8 are, you're comfortable with those concepts under the law.

9 The first thing I want to go over with you, I mentioned
10 the defendant in this case, and in every case, a defendant
11 is always presumed under the law to be innocent of the crime
12 for which the, the indictment has been issued.

13 Do you understand that concept?

14 A Yes.

15 Q Do you also understand the concept that, because a
16 defendant is presumed to be innocent, that the defendant
17 does not have to prove anything in a criminal trial?

18 There is no burden of proof on a defendant. In other
19 words, a defendant is never required to prove himself
20 innocent of a charge.

21 Do you understand that concept?

22 A Yes.

23 Q Because of that, the next step would be the only party
24 in a criminal case who has any burden of proof is the State,
25 and the State has the burden of proving the allegations

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1 contained in the indictment of the charge by proof beyond a
2 reasonable doubt.

3 Now, do you understand that concept as well --

4 A Yes.

5 Q -- that the only burden of proof is on the State?

6 A Yes, I understand it.

7 Q Now, let me, let me ask -- tell -- I'm kind of
8 developing this and taking it one step forward. So you
9 understand that the defendant is presumed to be innocent and
10 the defendant -- the State has the only burden of proof.

11 Let's say you were on a jury. The -- all the evidence
12 has been presented, the judge charged the law, and you
13 sit -- you, in the jury room, are thinking well, as I go
14 through the evidence and I go through the law, it's my
15 finding or belief that the State did not prove the defendant
16 guilty beyond a reasonable doubt.

17 In that case, would you be able to issue a verdict
18 finding a defendant innocent of a crime?

19 A Yes.

20 Q Now, by the, the -- so, I take it then that it's your
21 understanding or belief that just because a person has been
22 charged with a crime, has been arrested, and indicted,
23 because those things have taken place, it's not
24 automatically true that that defendant is guilty?

25 A That's correct.

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1 Q That's your understanding?

2 A Yeah.

3 Q All right. Now, by the same token, if you were back in
4 that jury room and you went over the evidence and the law in
5 a case, and then you decided well, the State has met its
6 burden of proof in the case, it has proven the allegations
7 in the indictment by proof beyond a reasonable doubt, would
8 you be willing to sign off on a guilty verdict against
9 someone?

10 A Yes.

11 Q Now, that means to me that -- you're telling me, I
12 think, that you would be able to decide a case, depending
13 upon the strength of the evidence that you've heard,
14 depending on the law that's been charged to you, and
15 whatever the testimony and evidence showed you from that,
16 that you would be in a position to find someone, someone
17 either guilty or not guilty of that crime?

18 A Yes.

19 Q Is that true?

20 All right. Now, we're gonna -- I told you I'd get to
21 the point where I was gonna talk to you about the death
22 penalty because it is being sought, sought in this
23 particular case, and generally I'll tell you that, in most
24 criminal cases, what happens is the jury determines the
25 guilt or innocence of a defendant, either guilty or not

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1 guilty. If they find the defendant guilty, then it's up to
2 the judge to decide the appropriate sentence. That's
3 normally the case.

4 The exception to that rule is the kind of case that
5 we're in right now, and that's where the State is seeking
6 the death penalty, and, in this case, the jury finds whether
7 or not the defendant is guilty or not guilty of the charge,
8 the crimes charged. If the defendant is found guilty of, of
9 murder, then it would be up to that same jury to conduct a
10 second hearing. That second hearing we can refer to as
11 either a sentencing hearing or a penalty hearing, and, in
12 that particular event, new evidence would be presented. It
13 would be a -- evidence concerning the question of the
14 appropriate penalty would be presented, and the jury then
15 would be the one who would determine, and there's two
16 choices in this case, either life imprisonment without the
17 possibility of, of parole, or the death penalty.

18 Do you understand that that's the point that we're in,
19 that's the type of case that we're in?

20 A Yes.

21 Q And I will advise you that the statute that sets up
22 this particular method of trial governs or sets out the kind
23 of things or the type of evidence that is presented during
24 that second phase or part of the trial, the, the penalty
25 phase or the, the sentencing phase, and that particular

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1 statute provides that there are certain factors that will be
2 considered to be aggravating factors, and there are certain
3 factors that would be considered to be mitigating factors,
4 and I want to define those terms in a little more detail for
5 you because, while you might use aggravating or mitigating,
6 I'm not sure you use them in the legal concept -- context.
7 So, I want to be sure you have an understanding of what I'm
8 talking about.

9 The, the type of evidence that we would consider to be
10 aggravating in this State would, would be certain factors,
11 and they're enumerated in the statute, that might tend, even
12 though there's been a guilty finding on the murder, might
13 tend to make that particular crime or that event more
14 severe, worse. In other words, those are factors that a
15 jury might consider in giving a defendant the higher
16 penalty.

17 The other factors that are, that are involved,
18 involved, mitigating factors. Those are factors -- and
19 mitigating factors can be any fact -- mitigating factors a
20 juror chooses to, to use, but those mitigating factors are
21 factors that might, while there's a murder occurred, might
22 tend to lessen the culpability of a defendant or offer some
23 reason why a juror might give a lesser sentence than, than,
24 then the higher one. So we have aggravating circumstances
25 that can be proven and mitigating circumstances that can be

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1 proven.

2 You understand the concept I'm talking about?

3 A Yes, sir.

4 Q Now, once that evidence has been presented to a jury,
5 both aggravation, aggravating circumstances and mitigating
6 circumstances, then the judge instructs the jury, would
7 instruct the jury to begin deliberations and consider both
8 aggravating and mitigating circumstances in arriving at what
9 the jury finds to be the appropriate sentence in this case.
10 Again, either the death penalty or life imprisonment without
11 the possibility of parole. Excuse me.

12 Now, do you understand the purpose of this hearing that
13 I'm talking about?

14 A Yes, sir.

15 Q All right. Now, I'm gonna ask you to put yourself in a
16 position in, in your mind.

17 Let's say that you're on a jury that's been picked to
18 try a case in which the State is seeking the death penalty,
19 and that particular jury has already heard the evidence as
20 to whether or not the defendant is guilty or not guilty of
21 the offense, and has reached a verdict that the defendant is
22 guilty of murder. So, there's been a guilty verdict issued
23 on the murder.

24 Now that -- as you know now, that same jury is going to
25 come back and hear the evidence as to aggravation,

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1 aggravating circumstances or mitigating circumstances in
2 setting the penalty.

3 Do you understand the position I'm asking you to put
4 yourself in?

5 A Yes.

6 Q So, you're on a jury, you're coming down the hallway,
7 you're about to go into the courtroom to start that second
8 hearing. Now, there was a sheet of paper that I put on the
9 table back there in the jury room that I asked you to read
10 and it described three different jurors.

11 Do you remember that piece of paper?

12 A Yes.

13 Q All right. I'm gonna go back over those jurors
14 briefly. I'm not gonna use those exact words, but remind
15 you as to what jurors we're talking about so you'll
16 understand which ones I had on that piece of paper.

17 The first juror on that piece of paper, as he, as he or
18 she would come to the door of the courthouse, would already
19 have made up his or her mind before hearing a single word of
20 testimony in that sentencing hearing. That juror is a
21 person who believes that anytime someone is convicted of, of
22 any murder that the only appropriate penalty is the death
23 penalty. So, that juror has already made up his or her mind
24 that, no matter what the hearing might reveal, they're
25 always gonna vote for the death penalty.

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1 The second type of juror on that piece of paper is
2 someone who also has already made up his or her mind. That
3 particular juror believes that the State has no right
4 whatsoever to take someone's life in response to a crime.
5 So, that juror has already decided that he or she is gonna
6 vote for life imprisonment without the possibility of parole
7 and will do so in every case no matter what the severity of
8 the crime might be. So that juror has already made up his
9 or her mind coming into the, that hearing.

10 The third type of juror on that piece of paper has not
11 made up his or her mind about what -- how they're going to
12 vote, either for the death penalty or not -- or for life in
13 prison without parole. That juror is wanting to hear the
14 evidence, listen to both the aggravating circumstances and
15 the mitigating circumstances, and once having heard that
16 evidence, is willing to make up their mind based upon the
17 evidence and the law presented during the trial. So those
18 are the three types of people I described to you on that
19 piece of paper.

20 Do you remember those folks?

21 A Yes, sir.

22 Q Now, I also asked you, at the start of this little
23 exercise, to, to imagine you're on that jury too. You're
24 coming down the hall. You're getting ready to walk into the
25 courtroom.

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1 Now, of the three jurors I just went over with, with
2 you, which one of those jurors would most -- more than
3 likely describe your position?

4 A Number three.

5 Q Number three.

6 So, you feel that you're a person who would want to
7 hear the evidence, aggravating circumstances and mitigating
8 circumstances, before making a decision on the penalty?

9 A Yes.

10 Q And based on what you heard in that hearing, you could,
11 depending on what you hear, if you found it to be necessary,
12 you could vote or, or sign off on a verdict in favor of the
13 death penalty?

14 A Yes.

15 Q And, again, depending on the circumstances you hear,
16 both aggravating and mitigating, you could possibly then
17 sign off on a verdict for life in prison without parole?

18 A Yes.

19 Q So, you're gonna wait to hear the, the evidence in that
20 situation --

21 A Yes.

22 Q -- and make up your mind according to that evidence, is
23 that right?

24 A That's correct.

25 Q Now, I want to go over with you a situation I want you

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1 to be aware of. I have signed a sequestration order in this
2 case. That means that, once the jury is impaneled, that
3 jury would be sequestered for the period of the time of the
4 trial. I estimate that time right now, and it's my best
5 estimate, I don't think you can hold me to this, but it's
6 the best estimate I have, to be probably a little over a
7 week. Maybe a week and a half, somewhere in that
8 neighborhood.

9 I'll tell you that, once the trial starts, we don't
10 stop for weekends or anything. We'll just go and work till
11 we're finished. So, that's, that's how that case is tried,
12 and I expect it will take about that length of time.

13 During that time, jurors would be required to stay in a
14 local hotel. We're gonna be at the Marriott or they'll be
15 at the Marriott, and they'll be officers there to be sure
16 nobody bothers the juror and they're secure.

17 The -- during that time, you would have all of your
18 meals paid for by the State. All your transportation would
19 be paid for by the State. So, there wouldn't be any expense
20 to you. You would be paid the normal jury pay for everyday
21 that you're on the jury. It's -- you may be already
22 retired. So, I won't tell you don't plan to retire on it,
23 but it's not as much as somebody would pay, get paid during
24 the work. You know that. I do too. And you would also
25 receive your travel when you had to travel to and from the

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1 courthouse. So, you would receive that. So, that's the
2 situation you'd be in for the length of time of the trial.

3 So, do you understand what I'm talking about?

4 A Yes.

5 Q Now, during that time you'd be allowed to make phone
6 calls, but they'd be monitored. We -- and you'd be allowed
7 to have -- read papers, but we'd check to be sure they
8 weren't anything in there that would affect the trial. So,
9 it would be a controlled situation.

10 You understand that?

11 A Yes.

12 Q Now, if you were in that situation, would that
13 situation, in anyway, pose any serious risk to your personal
14 health or well being?

15 A No.

16 Q Would it pose any serious risk to anyone else's
17 personal health or well being?

18 A No, I live alone.

19 Q Okay. So, that would not be a problem?

20 A No.

21 Q Okay. Now, I'm gonna ask the attorneys to, to ask
22 questions if they like to ask you. I'll ask you answer to
23 their questions as, as we move along. So, we'll be letting
24 them do questioning.

25 Mr. Barnette, you're gonna go first I believe?

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1 SOLICITOR BARNETTE: Yes, sir.

2 THE COURT: All right. Thank you.

3 SOLICITOR BARNETTE: May it please the Court, Your
4 Honor?

5 THE COURT: Yes, sir.

6 EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Good afternoon, Mr. Lamb.

9 How are you, sir?

10 A Fine. Thank you.

11 Q We was briefly introduced earlier, but my name is Barry
12 Barnette, and this is Derrick Bulsa. We'll be representing
13 the State in the case.

14 There's a couple questions I just wanted to ask you
15 just in background just information, and, like I say, I may
16 ask you some questions and hopefully it won't offend you
17 from there just to see what your thoughts is on things.

18 A All right.

19 Q I noticed you lived up in Pennsylvania, West Union
20 area, for a period of time.

21 A I grew up there.

22 Q Grew up there.

23 Would you be involved -- I was trying to read the
24 employer.

25 A Duer Carolina Coil.

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1 Q Coil.

2 Okay. What kind of company was that?

3 A We make large coil springs.

4 Q Oh, okay. So, you're around the steel mills up there,
5 coal mining and everything up through there?

6 A Exactly.

7 Q Yeah.

8 A And a farmer.

9 Q And a farmer?

10 A We farmed for 20 years.

11 Q I see. Well, kind of ironic cause I'm originally from
12 West Virginia. My dad's a farmer. My grandfather was a coal
13 miner, the whole nine yards. So, I know that area up in
14 there. So, I was just -- and it's funny to hear about
15 farmers. People don't think there's farmers in the hills,
16 but there is from there.

17 Going back -- like I say, I looked through your
18 questionnaire and everything, and you understood the judge's
19 instructions?

20 Basically---

21 A Yes.

22 Q ---if we get to the second phase of the trial, and, of
23 course, we have to go through a guilt phase first. We have
24 aggravating circumstances. Not all murders are treated the
25 same. If there's an aggravator, it can be considered for

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1 the death penalty in that situation, and in the sentencing
2 phase, there's also mitigators that's presented by the
3 defense, and basically the jury hears from both sides.

4 It's sort of like, the first part of the trial, it's a
5 different evidence part, and aggravators could be -- for
6 example, one of the aggravators in this case is the death of
7 a small child in this case, and there's also mitigators
8 they'll be presenting, the background of the defendant,
9 possible disability, and things like that.

10 Could you listen to all that evidence, and then, before
11 you made a decision, what the appropriate sentence would be
12 --

13 A Yes.

14 Q -- and just because you hear from us first and hear
15 about our aggravators, would you automatically give death
16 because of that---

17 A No.

18 Q ---or would you listen -- but you'd listen to the other
19 side before you did that?

20 A You have to present the evidence to make him guilty.
21 That's what I would listen for. If you present your case
22 properly and it's -- it makes him guilty, then it's up to me
23 to decide whether, whether it's a case that there were
24 circumstances beyond his control or whether it was an
25 aggravated situation where he did it all on his own.

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1 Q Okay. I understand and those are factors you would
2 look at---

3 A Oh, absolutely.

4 Q ---and determine that from there, and there's just not
5 one category would make -- just cause it's death of a child
6 doesn't mean you'd automatically give the death penalty?

7 A No.

8 Q You'd listen to all the evidence before you made a
9 decision and be death or life in that situation?

10 A Right.

11 Q And you'd just be -- you'd be the type juror, the third
12 type, we call it jury type number three in this case, and
13 you'd be the type of juror that would listen to everything
14 before you made that decision?

15 A Absolutely.

16 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
17 please.

18 THE COURT: Yes, sir.

19 (Pause.)

20 SOLICITOR BARNETTE: Thank you, sir. Please answer any
21 questions they may have for you.

22 THE COURT: Mr. McGuire.

23 MR. MCGUIRE: Thank you, judge.

24 THE COURT: Yes, sir.

25 EXAMINATION

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1 BY MR. MCGUIRE:

2 Q Good afternoon, Mr. Lamb.

3 A Hi.

4 Was your lunch good?

5 Q It was. Thank you for asking.

6 How about yours?

7 A Not bad. I saw you coming into the lunchroom.

8 Q Oh, okay. Well actually I went to Subway.

9 A I know where you went. That's where I was.

10 Q Oh, I didn't -- your, your eyes are sharper than mine
11 cause I did not remember you from being---

12 A And I'm a lot older than you are.

13 Q You are. I probably look like a child.

14 But I, I was about to say I would of said hi if I
15 recognized you, but I wouldn't of been able to cause you're
16 a juror. I would of had to wait till right now, but, but I
17 hope your lunch was good as well.

18 Let me ask you this. With regard to the death penalty,
19 do you think the country or this state uses the death
20 penalty about right, too much, not enough?

21 What are your thoughts about that?

22 A I don't know.

23 Q Okay.

24 A I don't follow death penalty cases. It's not something
25 that I, I don't -- I doesn't -- it's not that I don't want

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1 to be involved in it. I like the Court system. If you've
2 been overseas, you see Court systems that are a lot
3 different, and, as far as I'm concerned, the Court system in
4 the United States, it may -- while it may not be perfect,
5 it's sure the best there is.

6 Q I'd agree with you on that. I agree with you on that.

7 Let me ask you this. With regard to, to the death
8 penalty, if you were in charge for a day, if you were
9 governor of South Carolina for a day and you had the choice
10 to have the death penalty or not, what would you do?

11 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
12 that question because the government don't determine if we
13 have the death penalty or not. Mr. McGuire knows that.

14 THE COURT: well, that's true. I guess he's saying if
15 I was the fellow making the laws, what would he do, and I'll
16 let him ask the question.

17 Q Let's say you were the king of South Carolina---

18 A You mean the Legislature?

19 Q ---or the General Assembly, if you were head of the
20 General Assembly or you had control of the, the Legislature,
21 if it was up to you to have the death penalty or not, would
22 we have it?

23 A Yes.

24 Q And why is that?

25 A There are crimes that are committed that I think

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1 regard, in regards to the death penalty, that's more than
2 warranted. It's, it's a case where such aggravation is, is
3 brought upon people that people are killed, and when they
4 are killed, it's depending on the circumstances. Now, not
5 all cases are death penalty cases. Some cases, there are
6 circumstances, even though a murder is committed, the
7 situation it's committed in, is -- would be life
8 imprisonment.

9 But one thing that I have never understood about the
10 law and I probably, at my age, I probably never will, I
11 don't understand why we put them -- a person away -- in some
12 states there is no death penalty. So, we put people away in
13 institutions that are so tight that you couldn't get a mouse
14 into them, and we put them there for life and we pay for
15 them. Literally the people that have been -- well, the
16 families or their friends or whoever of the murder victim is
17 paying this gentleman -- this person to be in prison. I
18 mean that's ridiculous.

19 Q Do you think that the cost of putting somebody up in
20 prison for life is a factor that you would consider with
21 regard to the voting for a death penalty or not?

22 A No.

23 Q And why is that?

24 A Well, you've got to balance the judgment against,
25 against the crime. If the crime has been such that it

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1 doesn't warrant the death penalty, then it's up to us, we
2 who are free, to make sure that this doesn't ever happen
3 again.

4 Q Okay. Just to make sure we're on the same page.

5 In South Carolina, life in prison without parole is
6 truly life in prison without parole. There's no possibility
7 of ever getting out.

8 A I understand that.

9 Q Okay. So, for instance, I practiced law in Georgia for
10 a little while and we actually had parole in Georgia, and
11 different states have different laws obviously, and, in
12 South Carolina, if it's life without parole, you go in and
13 you never leave the wall of the prison.

14 Do you -- you're clear on that?

15 A I understand that.

16 Q Okay. You wouldn't vote for the death penalty based on
17 some fear that somebody might get out?

18 A No.

19 Q Okay.

20 A I've seen too many prisons built.

21 Q Yes.

22 Earlier you indicated that, that there were some
23 murders that warranted the death penalty, and you said well,
24 some do and some don't.

25 Tell me about the ones that, that don't.

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1 A Well, if there are circumstances -- I think, with
2 people, who are we -- some people are afraid of the dark.
3 My wife was, for instance, and we found out later that her
4 mother locked her in the coal cellar for days.

5 Something like that, what do you do?

6 She -- could she have come out and killed her mother?
7 who knows?

8 I mean you don't know what the mental situation is.
9 Sanity is -- has always been a -- something that I've, one,
10 I've marveled at because some people can take a great deal
11 of aggravation and come out of it completely all right.
12 Other people can only take a little aggravation and they
13 blow up.

14 Q Yeah.

15 A I mean that's just the way it is.

16 Q Yeah, I think we're seeing that with soldiers coming
17 back from the Middle East, for instance.

18 A Oh, absolutely. I've seen soldiers like that.

19 Q And then you---

20 A I mean let's be realistic. I'm 79 years old.

21 Q Yes, sir.

22 A I've lived through the depression and five major wars.
23 I've seen a lot of people in very different situations.

24 Q Yes, sir, and, in fact, you were in the Army and it
25 looks like around the time of Vietnam?

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1 A No.

2 Q No?

3 A Well, yes and no. I was in Germany actually at the
4 time.

5 Q Okay.

6 A I saw a law there that made me enjoy the law of the
7 United States. I, I use to get into town quite a bit
8 because of the fact that I picked up soldiers for the Army
9 --

10 Q Yes, sir.

11 A -- and I watched the German police, Bundesbahn, came
12 in, pulled a man over for driving erratically, pulled him
13 out of the car and beat the living tar out of him, and I
14 thought to myself boy am I glad I'm an American.

15 Q I, I agree with you.

16 I want to go backwards just a little bit to make sure
17 we're absolutely on the same page. We've used the term
18 murder in, in talking with you so far, but we haven't
19 actually defined it yet, and as you sit there, my guess is
20 no one's ever told you what the technical definition of
21 murder in South Carolina is.

22 A No.

23 Q Okay. It's, it's essentially the intentional killing
24 of another person with malice aforethought, and malice is
25 described as having hatred, ill will, hostility towards

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1 another person, and you act to cause them harm, injury, with
2 no justification or excuse under circumstances where the law
3 infers an evil intent. So, it's basically intentionally and
4 deliberately killing somebody with an evil intent.

5 Are you with me?

6 A Yes.

7 Q In that situation, what are your thoughts about the
8 death penalty?

9 A I would enforce it.

10 Q When you say -- use the word enforce, what does that
11 mean?

12 A If it went before a jury, and they were found guilty,
13 then I think they would be eligible for the death penalty.

14 Q Okay. Would, in your view, would the death penalty
15 always be appropriate in that intentional killing situation?

16 A No.

17 Q Why not?

18 A Well, we don't know the -- you haven't given me any
19 circumstances as to why it happened.

20 Q Okay.

21 A That's the reason you have a trial. You have a trial
22 to bring these circumstances out, both good and bad.

23 Q Sure.

24 And I want to double-check something and make sure that
25 we're correct in something. The judge talked to you about

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1 mitigation circumstances, aggravation circumstances, things
2 that can raise or lower sort of the, the badness of the
3 crime. But sometimes there can be a single factor that's so
4 strong or so powerful or impactful that it could actually
5 cause somebody to be predisposed to one penalty one way or
6 the other.

7 In the situation where the aggravating factor is the
8 death of a child, would that---

9 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
10 this point. He's trying to stake out the witness on that
11 one fact.

12 THE COURT: I'm gonna ask you to step back to the jury
13 room just a minute. Let me take up something with the
14 lawyers.

15 Thank you, sir. I'll bring you back once we've had a
16 discussion about this.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Mr. Barnette.

20 SOLICITOR BARNETTE: Your Honor, this is obviously --
21 he's went -- being around just asking him so many different
22 questions, so many different times trying to trip up and the
23 juror's been honest with him and has told him he has to
24 basically look at the circumstances and now he's trying to
25 get to one specific point. He's trying to make it very fact

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1 specific. He wants to try to eliminate this juror. He's
2 trying to do it anyway he can and that's the question he's
3 gonna go forward on.

4 THE COURT: All right. Well, let me see what Mr.
5 McGuire has to say about it.

6 MR. MCGUIRE: Judge, it's the same question that was
7 very carefully crafted by me to try to meet the Court's
8 concerns. This is the one -- it's the same question that we
9 actually had the court reporter play back and you indicated
10 that yes, you would allow it. It's because I do mention
11 aggravating and mitigating circumstances.

12 THE COURT: You hadn't gotten to it yet when the
13 objection was made.

14 MR. MCGUIRE: You're right. I didn't get to the end of
15 the question, but I -- you can see where I prefaced it with
16 the judge talked to you about the mitigation evidence, the
17 aggravation evidence. So, I brought him back to that, and
18 then yes, I do have an obligation I think to protect
19 Mr. Blackwell's rights to see if this one impactful factor
20 could impact him so profoundly as to predispose him to one
21 penalty, and I was gonna do that in the question that was
22 gonna meet all the Court's concerns with regard to he still
23 knows about aggravation and mitigation.

24 THE COURT: Mr. Barnette.

25 SOLICITOR BARNETTE: And, Your Honor, I -- if you take

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1 the questions as a whole you know exactly where he's going.
2 He's hitting every which way he can and he's gonna go in and
3 try to single out one single factor, the key factor in this
4 case, and I understand what he's telling the Court, but if
5 you take all the questions, that's exactly where he's going
6 to.

7 THE COURT: well, you know, I've -- I think I've had a
8 consistent position on this. My, my concern, Mr. McGuire,
9 and I -- you hadn't finished the question yet. So, I'm
10 gonna let you finish whatever question you're gonna ask. I
11 don't know where we're going, but, you know, my concern is
12 that the question not ask a juror to speculate or pre-commit
13 on how a juror might vote based on any particular fact, and
14 I also want to be sure that the question does not seek to
15 discover, in advance, what a prospective jurors would be
16 under a certain state of evidence.

17 You understand where we are?

18 MR. MCGUIRE: No, I don't cause we've, we've kind of
19 had different objections and actually kind of different --.

20 THE COURT: well, I think you've gone at it from
21 several different angles---

22 MR. MCGUIRE: Yeah.

23 THE COURT: ---maybe and there's been objections to
24 those different angles.

25 MR. MCGUIRE: And, and, and---

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1 THE COURT: And I understand what, what you're trying
2 to do.

3 MR. MCGUIRE: Sure.

4 I take great exception with the government lawyer's
5 characterization that I'm trying to get rid of a juror. I
6 may embrace this, this juror and fight to keep him qualified
7 as long, as long as he's not biased in anyway. To say that
8 I have---

9 THE COURT: well, the question, the question is whether
10 he can carry out his function as, as a juror and follow the
11 instructions of the Court and be willing to consider all the
12 factors the Court's asking him to consider. That's the real
13 question.

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: And I've told you earlier I don't think a
16 question is appropriate where it places one aggravating
17 circumstance in front of a juror in a vacuum without any
18 indication that there would be other evidence to
19 counterbalance it because I'm gonna give you a chance to put
20 in counterbalancing evidence. It will be there when, when
21 the case comes up.

22 Again, I'll read that when a defendant seeks to ask a
23 juror to speculate or pre-commit on how that juror might
24 vote, based on any particular facts, the questions raised
25 beyond the purpose and protection of Morgan.

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1 MR. MCGUIRE: I tell you -- does that, that come from a
2 case?

3 THE COURT: Yes, sir, that, that's, that's referring
4 to -- that comes from -- let's see. Let me be sure I'm
5 correct on this. It's talking about Morgan versus Illinois,
6 which is 504 U.S. 719, 1992 U.S. Supreme Court case. That's
7 what it's referring to.

8 The cases that I have cited, and I'll, I'll just tell
9 you they are, this comes out of an article that I've gotten,
10 United States versus Johnson, which is 366 F Supp 822 at
11 Page 845, and also you could see United States versus
12 McVeigh, 153 F.3d 1166, Tenth Circuit, 1998. I'm not gonna
13 allow you to stake out jurors on particular facts.

14 SOLICITOR BARNETTE: And, Your Honor, I know he keeps
15 referring to us as government lawyers, but I think we're
16 both paid by the same source. So, he's a government lawyer
17 too I guess. I just wanted to point that out.

18 THE COURT: Well, Mr. Barnette, I never held the fact
19 that you receive your check from the government, as do I,
20 against you.

21 SOLICITOR BARNETTE: I understand.

22 THE COURT: And I certainly wouldn't hold that against
23 Mr. McGuire either.

24 SOLICITOR BARNETTE: Thank you.

25 MR. MCGUIRE: That just comes from my days in Federal

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1 Court, judge. They always refer to themselves as the
2 government in Federal Court.

3 THE COURT: So, so, again, you know, I've had stake out
4 questions as -- defined as questions that asks a juror to
5 speculate or pre-commit as to how that juror might vote
6 based on any particular fact. So, if you're asking him one
7 particular fact, and you're asking him how he's gonna vote
8 on that fact, that would be staking out in my estimation.

9 MR. MCGUIRE: And I just very---

10 THE COURT: And that's about where you are. You're
11 getting really really close. I've ruled on that
12 consistently. I've allowed you to ask those questions, that
13 question as long as it -- at least you qualify it by
14 indicating there would be evidence presented on the other
15 side at that point in time and you hadn't gotten that far.
16 And I've also told you that I will weigh that question, and
17 the answer, based on what I just told you as far as whether
18 it's a proper question or not.

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: Okay.

21 All right. Mr. Barnette, does that deal with your---

22 SOLICITOR BARNETTE: Yes, sir. Thank you, Your Honor.

23 THE COURT: ---issue?

24 Mr. Young, do you want to take up something with me?

25 I'll be glad to hear from you.

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1 MR. YOUNG: No, sir.

2 (Pause.)

3 THE COURT: I've got a whole series of cases and stuff
4 about what staking out questions are like. I didn't give
5 you all the quotes, all the cases that I'm using on my
6 position.

7 MR. MCGUIRE: Do you want me to?

8 THE COURT: No. But I will tell you that I have -- we
9 have gone through several cases on this issue, and South
10 Carolina generally doesn't allow that. That's what I -- it
11 started out with that procedure. I know California
12 apparently does. We're not in California.

13 MR. MCGUIRE: Yeah, I mean I think it's -- just going
14 back to I think things we can agree about, if he does -- if
15 he was to answer the question that yes, that particular
16 fact, if it's a child victim, I wouldn't want to hear
17 anything else. I don't need to hear anything else.

18 THE COURT: Well, I understand that, but, again,
19 that -- that's what I'm talking about. If you say one fact,
20 one aggravating fact that our, our, our Supreme Court and
21 our Legislature has said, based on that fact alone you can
22 give somebody the death penalty. So, if you just simply ask
23 him about one aggravating fact, and say would you give the
24 person the death penalty given that fact, our Legislature,
25 of course, says that's perfectly -- you can do that. He

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1 could do that.

2 MR. MCGUIRE: But he can't do it automatically.

3 THE COURT: Well, but see -- the way you have been
4 asking the question, Mr. McGuire---

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: ---you just asked that factor alone and you
7 don't give him the mitigating possibilities.

8 MR. MCGUIRE: I mean---

9 THE COURT: You don't give him any -- you follow me?

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: Now, that's the reason for my ruling the
12 way I've gone, gone in the thing is that for -- to simply
13 ask one -- if I were to take that list of aggravators in the
14 statute---

15 MR. MCGUIRE: Yes, sir.

16 THE COURT: ---and I simply asked a, a potential juror,
17 if you found that this was true beyond a reasonable doubt, I
18 don't know how you ask the question, well, you kind of
19 pounded on him, and then you say now. Would you find a
20 fellow -- would you give a fellow the death penalty for
21 that. Well, the statute says he can, and follow the law,
22 and I've got to decide whether he'll follow the law or not.
23 Yes, he could do that. He could say yeah, I'll give him the
24 death penalty.

25 The question is whether he would follow the Court's

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1 instructions, which would be to weigh both sets of factors,
2 and make a decision based on all the factors. That's what
3 staking out is. You're taking one small thing and you're
4 getting a response on that one small item, and that's when
5 I'm saying it is not a proper question. And I'll say it
6 throughout this trial. I promise you.

7 MR. MCGUIRE: I count on that.

8 THE COURT: And I hope you respect the Court's decision
9 on that.

10 MR. MCGUIRE: I do.

11 THE COURT: I think you've preserved your position that
12 you don't agree with that, and you certainly have done that
13 I think. It's in the record.

14 MR. MCGUIRE: Well, I certainly don't want to run afoul
15 of any Courts -- your Court, you, judge, your ruling. I
16 mean if I'm -- if you're telling me that we absolutely can
17 not mention the word child or phrase child victim---

18 THE COURT: But they, they -- I've let them do that,
19 but they've -- it has to be -- if you're going to put it to
20 a, a particular juror --

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: -- and you're gonna say that if that was
23 proven, you -- one time you were using the black heart
24 thing, the description of, of malice, and---

25 MR. MCGUIRE: I think I've got yours memorized now.

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1 THE COURT: Oh, I've been paying attention. The,
2 the -- if you just give them that factor alone, and put it
3 to them that way, as I indicated, I think that is staking
4 out a juror and almost predisposes a juror to give the
5 response that would put -- run them afoul of the, of the
6 Court requirement, and I want, I want an honest response
7 given all of the factors that somebody's faced with.

8 If someone is on a jury in a penalty phase, they are
9 going to be given, by statute, as I've given to them,
10 aggravating circumstances and mitigating circumstances.
11 Those are going to be there for them to make a decision, and
12 the question is can they follow the Court's instructions,
13 which the statute says the Court must instruct the jury that
14 they are to consider both aggravating and mitigating
15 circumstances.

16 Now, if, if his position is I won't consider any
17 mitigating circumstances, I'm always gonna vote for the
18 death penalty, that juror's got a problem.

19 MR. MCGUIRE: That's what I'm trying to uncover.

20 THE COURT: well, I understand that, but you're trying
21 to do it by, by -- in such a fashion that you're putting
22 one -- you have -- you were when you started, just putting
23 out one aggravating circumstance and not mentioning the fact
24 there were other things on the table to consider.

25 MR. MCGUIRE: I agree with that.

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1 THE COURT: And I'm not gonna allow that.

2 MR. MCGUIRE: You've made that clear.

3 THE COURT: Okay.

4 MR. MCGUIRE: Although I mean I would state that I
5 think that we, we -- our -- and I think you stated it
6 earlier that I've made it pretty clear that I disagree with
7 that, that I think we should be able to ask that question
8 and follow-up in an informal way to develop---

9 THE COURT: I, I understand that that was your
10 position, but I have given you some case law and some things
11 that indicate that, when you ask a juror about a particular
12 fact, that's staking out --

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

14 THE COURT: -- and that's where I am.

15 MR. MCGUIRE: Yes, sir.

16 THE COURT: Okay. Let's bring the gentleman back.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 THE COURT: Sir, you can have a seat. I've dealt with
20 the lawyers concerning some issues that really don't concern
21 you, and I've -- we've -- I think we've come to an
22 understanding, I hope so, and I'm gonna allow the attorneys
23 to continue their questioning.

24 Mr. McGuire.

25 MR. MCGUIRE: Thank you, judge.

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1 CONTINUED EXAMINATION

2 BY MR. MCGUIRE:

3 Q Mr. Lamb, I just -- I've kind of lost track of where we
4 were a little bit. You're -- not only are your eyes
5 probably sharper than mine, your memory's probably sharper
6 too. So, let me go back a little bit and make sure we're on
7 the same page.

8 we talked about the definition of murder in South
9 Carolina, which is the intentional killing of another person
10 with malice aforethought. Malice being that, that
11 hostility, hatred, ill will towards somebody where you
12 intend to, to create -- engage in a deliberate act to harm
13 them without any justification or excuse under circumstances
14 that the law would infer evil. So, it's the intentional
15 killing of somebody with evil intent, and that's the
16 definition of murder.

17 Are we -- are you with me?

18 A Yes.

19 Q Okay. And then, in a capital case, that would of
20 already been decided beyond any reasonable doubt before
21 going to a penalty trial.

22 Do you understand that?

23 A Yes.

24 Q Yes.

25 Okay. And the State would have to prove an aggravator

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1 beyond a reasonable doubt to make the person eligible for
2 the death penalty.

3 Okay. Now in this case, one of the aggravators that
4 the case -- the State would prove or, or offer evidence of
5 would be that the victim is a child.

6 Are you with me?

7 A Okay.

8 Q Now, the judge talked to you earlier about mitigation
9 evidence, aggravation evidence, things that can lessen or,
10 or heighten the, the badness of the crime.

11 Are you with me?

12 A Yes.

13 Q And sometimes a factor, an individual factor could be
14 so great where somebody might say I don't need to hear
15 anything else. I can make up my mind just based on that
16 very significant factor of the aggravator being a child
17 victim.

18 Does that describe you?

19 A I think what describes me is the fact that I would
20 weigh the facts as they were given. Not, not from before.

21 Q Okay.

22 A I mean you have to -- I think, in a case like that, you
23 would have to consider the fact that if the State proved
24 that this gentleman was guilty, that's guilty of what the
25 evidence that they had brought. If there's new evidence or

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1 evidence that would substantiate a difference of opinion or
2 a different circumstance in the penalty phase, then you'd
3 have to consider that separately.

4 Q Okay. When you say circumstance or, or another thing
5 in the penalty phase, what are you thinking about there?

6 A Well, there could be aggravating circumstances involved
7 that, that would of led to it. That's always a possibility.
8 None of us are perfect.

9 Q Sure.

10 Are you saying somebody could be angered to the point
11 or moved to the point of doing something that they wouldn't
12 normally do?

13 A Possibly.

14 Q Okay.

15 A That isn't the only circumstance, but it's possible.

16 Q Okay. What else are you, you contemplating there?

17 A Well, I think people can be driven to a point -- and
18 even outside circumstances can do it. How many times have
19 we seen people in -- coming from a mill town, which I did,
20 and very stressful jobs, I've seen them break under the
21 stressful job. I mean it happens.

22 Q Sure.

23 A And you have to consider those facts as well.

24 Q Okay. Okay. What I'm gonna do now is ask you a little
25 bit about or I want to talk to you a little bit about the

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1 penalty phase and how it's, how it's different. It's
2 structured differently from a traditional trial. Just from
3 watching TV or, or being in Germany and seeing other legal
4 systems, I mean you probably have more insight than the
5 average person.

6 But a traditional trial is the, you know, all 12 jurors
7 have to agree, they got the right guy, it's beyond a
8 reasonable doubt, he's guilty of the crime. That's the,
9 that's a traditional trial, and we think in terms of the
10 jury being unanimous and speaking with one voice. But the
11 penalty phase of a capital trial is, is different, and it's
12 a very individual process, and that's what I want to talk to
13 you about now.

14 Okay?

15 A All right.

16 Q The -- did you know that the death penalty is never
17 required?

18 It's never automatic.

19 A No.

20 Q Okay. Did you, did you have some ideas that, in some
21 cases, the death penalty was automatic?

22 A No.

23 Q Okay. The death penalty in South Carolina is never
24 required. Not in this case. Not in the worse case. Not in
25 any case.

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1 Did you know that?

2 A No, I didn't know that.

3 Q Okay.

4 A I don't know South Carolina law.

5 Q Right. That's, that's why we're all here.

6 THE COURT: Of course, he'd be charged the law during
7 the trial.

8 MR. MCGUIRE: Of course.

9 Q And this is my opportunity to see if you can, and what
10 the judge says is our job, all of our jobs here to see if
11 you can follow the law, and that is, with regard to that
12 individual process, the penalty phase process, that decision
13 making is called an individual moral judgment.

14 Have you ever heard that phrase before?

15 A Yes.

16 Q Okay. And what I'm gonna do is just give you an
17 example of how it can be different and I want to ask you if
18 you can just agree that this is a principle of law that you
19 can respect and follow.

20 Okay?

21 A (Witness nods affirmatively.)

22 Q In the penalty phase, one juror say sitting here could
23 say I see something in the person's upbringing, how he was
24 raised, and I want to vote for life for that reason, and
25 everybody else can say well, I really didn't see that, and

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1 nobody has -- this person can vote for life even if other
2 people say well, I don't agree with that.

3 Is that a principle that you can respect?

4 A Yes, it's your individual opinion. That's what they're
5 asking for.

6 Q Exactly. Your individual conscience, voting your
7 individual conscience, your individual moral judgment.

8 Another juror sitting say here could say well, the
9 judge charged that we could vote for the life penalty for
10 any reason, no reason, or mercy, and I want to just, on
11 mercy alone, vote for the life penalty and everybody else
12 could say well, I don't really think he deserves mercy, but
13 can you see how that person can have their own individual
14 opinion?

15 A Everybody has their own opinion.

16 Q And you'd respect that?

17 A Absolutely.

18 Q And you, you'd be entitled to have respect for your
19 opinion?

20 A Exactly.

21 Q And, you know, the rules are that this process has to
22 be conducted with dignity, and while we expect civil
23 discourse in the jury deliberation room, we don't expect it
24 to get undignified.

25 If you saw somebody reach their individual moral

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1 judgment, and it would harm their conscience to change their
2 vote, and somebody was trying to get them to change it, to
3 come along with the majority, could you step in and prevent
4 that?

5 A Yes, I've done it.

6 Q You seem to be the kind of---

7 A Not in a trial.

8 Q I'm sorry?

9 A Not in a trial, but I've stepped in a few times.

10 Q It sounds like you're a man opposed to bullying?

11 A I -- with a name like Lamb, you get opposed to
12 bullying. I was known as Lamb Chops most of my, most of my
13 childhood.

14 Q Well, it sounds like we can, we can count on you to
15 make sure that there's, there's dignity in the proceedings,
16 that no bullying would happen, and if you found yourself in
17 need of an ally to stop something bad, you can send a note
18 out to the judge.

19 Okay?

20 A That's good.

21 Q And what I want to let you know that in the brochure
22 that was handed out to all the jurors in the big room, it
23 indicated that if there was disagreement as to the verdict
24 that a trial would have to be retried, the whole thing would
25 have to be done again, and---

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1 A Mistrial.

2 Q A mistrial. Exactly.

3 And, you know, in the, in the penalty phase of a
4 capital case, that's not true. There can be disagreement as
5 to punishment. Some folks can vote for death. Some folks
6 can vote for life, and the judge might even tell you, you
7 know, if you came back and said we are in disagreement, the
8 judge might say well, give it another try, but ultimately
9 it's okay to end the day in disagreement. The judge would
10 take the case and sentence and the case would be over and
11 never have to be retried.

12 Do you understand that?

13 A I do now.

14 Q And the reason I tell you that is because nobody would
15 want the jury to operate on misinformation thinking that if
16 they didn't get a unanimous verdict that the case would have
17 to be done all over again, and I don't want y'all to think
18 you would fail in that regard.

19 Do you understand that?

20 A I understand that. I understand too that the mistrial,
21 if it happens in the main trial, main part of the---

22 Q It would have to be done again.

23 A ---it would have to be done over, is that correct?

24 Q That is correct. That is correct. And the judge would
25 tell you there's no reason any other 12 jurors would be any

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1 better than you folks, and he would say please give it
2 another try because there's no reason to think another jury
3 would be any better at making the decision. When it comes
4 to the penalty though, it does end. If there's
5 disagreement, the judge would take the case in sentence, and
6 the jury would not have failed. For -- you know, in a
7 matter so grave whether somebody lives and dies, you can
8 expect to have disagreement.

9 wouldn't you agree?

10 A We can always have disagreement.

11 Q Yes, sir. I think those are all the questions I have
12 for you, sir. Thank you very much.

13 A Thank you.

14 THE COURT: Yes, sir, Mr. Barnette.

15 SOLICITOR BARNETTE: Just a couple on redirect, Your
16 Honor.

17 THE COURT: Yes, sir.

18 EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q Mr. Lamb, one thing I have to -- you obviously know who
21 the king of South Carolina is. It is the Legislature. I
22 agree a hundred percent with you on that.

23 Just a couple things. He had mentioned, you know, the
24 sentencing phase about the law and obviously the judge will
25 give you the law and you'll follow that law. It doesn't

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1 matter what me -- what I say or Mr. McGuire says. It's what
2 he says --

3 A I understand that.

4 Q -- from there.

5 But just to let you know two things. One thing, he
6 talks about the mistrial at the sentencing phase. The
7 mistrial would -- it wouldn't be left to the judge. It
8 would be a life sentence at that point in the sentencing
9 phase.

10 Do you understand that?

11 A No, but I do now.

12 Q Okay. In order to get death, all 12 have to agree. If
13 all 12 don't agree, then it becomes a life sentence.

14 A I understand that part.

15 Q Yes, sir.

16 And the, the second thing I want to point out to you,
17 if the jury found aggravating circumstances as well as
18 mitigating circumstances, you could still give a death
19 sentence even if you found everything on both sides that
20 they presented. It'd still be up to you. Be a life or
21 death decision for the jury.

22 A I understand that.

23 Q Okay. Thank you, sir. Thank you for answering my
24 questions.

25 A Certainly.

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1 MR. MCGUIRE: Nothing further, judge.

2 Thank you, Mr. Lamb.

3 THE COURT: Sir, you may step back to the jury room.
4 I'll be calling for you in just a moment. Thank you, sir.

5 (WHEREUPON, the following takes place outside the
6 presence of the juror.)

7 THE COURT: Defense position.

8 MR. MCGUIRE: Despite the government lawyer thinking I
9 was trying to get rid of him, this man's qualified.

10 THE COURT: And---

11 SOLICITOR BARNETTE: I agree, Your Honor.

12 THE COURT: All right. I'll find him to be qualified.
13 Please bring Mr. Lamb in one more time.

14 (WHEREUPON, the following takes place within the
15 presence of the juror.)

16 THE COURT: That wasn't long, was it, Mr. Lamb?

17 THE WITNESS: No.

18 THE COURT: Have a seat, sir.

19 All right. Mr. Lamb, I'm gonna ask the clerk to give
20 you a, a sheet of paper here, and then I'm gonna go over
21 some things with you. I have found you to be qualified to
22 continue in the jury selection process. Doesn't mean you're
23 on the jury. That means you're in the, the panel the jury
24 will be selected from.

25 what's gonna happen is we're gonna continue in this

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1 qualification process. We'll be interviewing other jurors.
2 And once we reach the point of we're going to select the
3 jury, we will be contacting people to come back into the
4 courthouse.

5 I told you about the sequestration situation. That
6 sheet of paper is just to give you some ideas and some
7 things to think about because, when you come back, you'll
8 need to come back prepared to stay because, if you're on the
9 jury, you will be staying with us. You won't be going back
10 home right then.

11 You understand that?

12 THE WITNESS: Yes.

13 THE COURT: Now, during this period of time while we're
14 still qualifying people to get a jury together, my order
15 concerning how you're to act or behave will continue. In
16 other words, don't be trying to gather information about the
17 case on your own.

18 THE WITNESS: No.

19 THE COURT: Don't listen to, watch, or read any media
20 reports about this case. Don't discuss the case with
21 anyone. Don't allow anyone to discuss it with you. If
22 anyone contacts you about your service on the jury, let the
23 clerks know -- office know immediately. We will take the
24 appropriate action should somebody do that.

25 Now, it's okay for you to talk to family, friends, or I

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1 don't guess you're working now.

2 You got, you got a job?

3 THE WITNESS: No, I'm retired.

4 THE COURT: Okay. So, you can talk to an employer
5 about the time, the fact that you're gonna be absent for a
6 while and make arrangements for that. Again, you'll be
7 allowed to call people and that sort of thing. So, you
8 won't fall totally off the face of the earth, but, but you
9 will be restricted in what you can do and what you can say.

10 So, at any rate, you can talk to them about that, but
11 don't mention the case name. Don't mention what it's about
12 because that will lead to a discussion that I don't permit.

13 Do you understand what -- my instructions?

14 THE WITNESS: Yes.

15 THE COURT: Do you agree to abide by those
16 instructions?

17 THE WITNESS: Yes.

18 THE COURT: So, you'll be getting a call from the, from
19 the Clerk's Office about your future service. It may be a
20 few days because this process is taking longer than I ever
21 expected it to take, but we'll get through it. When we get
22 through it, we'll be in a position to take care of the jury
23 at that time.

24 So, you understand where we are?

25 THE WITNESS: Will I be notified at that time whether I

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1 am a juror or not?

2 THE COURT: well, you know, here's -- possibly. It's
3 all I can tell you. There is a procedure that we could use
4 that you would be. There is a procedure that we could use
5 where you come back and we'd select a jury while you're
6 here. I don't know yet. I'll be able to let you know that
7 at that time.

8 THE WITNESS: In my farm lingo, that's hedging.

9 THE COURT: It is hedging. It's exactly what it is.
10 You got it exactly right. So, if you'll see the bailiff.
11 They'll check you out and we'll be in touch with you, sir.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Thank you very much.

14 (WHEREUPON, the following takes place outside the
15 hearing of the juror.)

16 THE COURT: All right. Has Ms. Murriel come in?

17 THE BAILIFF: Yes, sir.

18 THE COURT: All right. See if she's ready.

19 (WHEREUPON, the following takes place within the
20 presence of the juror.)

21 THE COURT: Hi.

22 THE WITNESS: Hi.

23 THE COURT: Come in a have a seat please.

24 All right. Ma'am, you may want to turn your seat so
25 you can see me.

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1 THE WITNESS: Okay.

2 THE COURT: Cause I'm gonna do most of the talking.

3 SOLICITOR BARNETTE: Your Honor?

4 THE CLERK: Judge?

5 SOLICITOR BARNETTE: That's not the juror you think.

6 THE CLERK: That's not, that's not---

7 THE COURT: That's not Ms. Murriel?

8 THE WITNESS: No.

9 THE COURT: Savannah Murriel?

10 THE BAILIFF: What's the jury number, sir, Your Honor?

11 THE COURT: 181.

12 THE CLERK: 181.

13 THE BAILIFF: Okay.

14 THE COURT: Okay. I'm sorry, ma'am. We'll get you
15 back in a little bit.

16 THE BAILIFF: 181.

17 (WHEREUPON, the following takes place within the
18 presence of the juror.)

19 SAVANNAH MURRIEL, having been previously
20 sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q Come in and have a seat please, ma'am. Don't be afraid
24 of me.

25 Ma'am, if you'll turn so you can face me please. Move

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1 around.

2 A (Witness complies.)

3 Q Thank you.

4 Your name is Savannah -- is it Murriel or Murriel?

5 A Murriel.

6 Q Murriel. Okay. Well, I'll get it right in a minute.

7 All right. Ms. Murriel, I'm gonna go over some matters
8 with you at this time.

9 I want to, first of all, thank you for your cooperation
10 in this proceeding. I understand that we've had you up here
11 and back and forth and I apologize about that, but it's
12 because we haven't been able to keep on our schedule here,
13 and so it's our fault, not your fault, and I thank you for
14 your cooperation.

15 Today I'm going to be going over some matters with you,
16 asking you some questions. When I finish, I'll -- the
17 attorneys will be allowed to also question you about some
18 things. We're going to be talking to you about matters that
19 would pertain to your service as a potential juror in this
20 case.

21 Now, I'm gonna tell you, there's not any right answers.
22 There's no wrong answers to these questions. Only your
23 answers, and they need to be honest and truthful.

24 Do you understand what I'm saying?

25 A No.

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1 Q Beg your pardon?

2 A I guess---

3 Q You, you what?

4 A I guess -- I don't know. I'm scared. I'm sorry.

5 Q Well, there's, there's no need to be scared about this
6 and that's the reason I'm talking to you about it at this
7 point in time. In other words, I'm not asking -- I'm not
8 trying to make you answer a question in any fashion. All's
9 I want you to do is tell me what you think and what you
10 believe.

11 Do you understand what we're doing here today?

12 A Yes, sir.

13 Q Are you gonna be able to do that?

14 A Yes, sir.

15 Q Okay. Now, the last time I saw you you were here at
16 the courthouse. We went over some things with you, and, at
17 that time, I gave you some instructions. I told you -- told
18 all the jurors, not just you, but I told all the jurors not
19 to try to gather any information about the case, not to
20 listen to, or watch any media reports or read any media
21 reports, not to discuss the case with anyone. Don't allow
22 anyone to discuss it with you, and I also said, if anybody
23 contacted you, to let us know.

24 Have you been able to follow those instructions?

25 A Yes, sir.

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1 Q So, you have not read anything, listened to anything---

2 A No, sir.

3 Q ---talked to anyone about the case?

4 A No, sir.

5 Q All right. Now, ma'am, are you the kind of person that
6 if you did hear something or know something about this case
7 from the outside that you believe you could set that
8 information apart and, if you were on a jury, decide the
9 case only upon what you hear in the courtroom?

10 Could you do that?

11 A Can you explain that again?

12 Q Sure.

13 Are, are you the kind of juror that, if you were
14 sitting on a jury, and let's say -- if you'd heard anything
15 that, in anyway, pertains to this case, that you would be
16 able to set that aside and decide the case based on what you
17 hear in the courtroom during the trial?

18 Could you do that?

19 A Yes, sir.

20 Q You've got to speak up. There's a lot of people here
21 wanting to hear what you have to say. So, you need to
22 speak---

23 A Okay. I'm sorry. I'm shy.

24 Q Okay. I understand that you may be shy, but you just
25 need to speak to me.

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1 Can you do that?

2 A Yeah.

3 Q Okay. Could you do that, could you set those things
4 aside --

5 A Yes.

6 Q -- and decide the case based on what you hear in the
7 courtroom?

8 A Yes, sir.

9 Q Okay. Speak up for me now.

10 A All right. Yes, sir.

11 Q All right. There's no -- you don't need to be scared
12 of anybody in here. Nobody's gonna do anything to you.
13 We're, we're all here just to learn a little more about you.

14 Okay?

15 A Okay.

16 Q Now, have you ever participated in any discussions in
17 any manner, Internet discussions, anything in which the
18 question of the death penalty was discussed?

19 A No, sir.

20 Q Have you ever participated in any political activity---

21 A No, sir.

22 Q Let me finish.

23 which would include things like demonstrations or
24 letter writing that had as its subject the death penalty?

25 A No, sir.

Individual Juror Qualification

1 Q So, you've never been involved in any discussions at
2 all in any form about the death penalty?

3 A No, sir.

4 Q Okay. Now, when you were back in the jury room there
5 was a list of people, a long list of people's name, about
6 three pages.

7 Did you read those?

8 A Yes, sir.

9 Q Now, as to those people, did you know anybody on that
10 list?

11 A No, sir.

12 Q So, you're not related by blood or marriage to anyone
13 on the list---

14 A No, sir.

15 Q ---is that -- okay. And have you ever had any social
16 or business or personal relationships with any of those
17 people?

18 A No, sir.

19 Q Okay. So, if they were a witnesses -- witnesses in a
20 trial, that wouldn't affect your decision one way or the
21 other as to who they are?

22 In other words, the fact that -- who they are would not
23 affect your decision, is that right?

24 A No, sir.

25 Q Okay. Now, I'm going to go into some questions now

Individual Juror Qualification

1 that would involve questions concerning your opinion on
2 certain things, and, again, there's no right or wrong
3 answer. There's just your answer and I want it to be an
4 honest and truthful answer.

5 You understand you're still under oath at this time
6 from before?

7 Do you know that?

8 A Yes, sir.

9 Q Okay. Now, one of the things I end up asking you about
10 are your opinions or views concerning matters involving the
11 death penalty because that's involved in this case, the
12 possible penalty of death. So, I'll be talking to you about
13 that when I get to that point in time.

14 I just want to point out to you that this trial will
15 involve a hearing to determine whether or not the defendant
16 is guilty of the crimes that have been charged against him,
17 and if a guilty verdict is rendered on the crime of murder,
18 then there would be a separate trial, a sentencing phase of
19 the trial, in which the jury, same jury, would be deciding
20 what was the appropriate penalty, whether it would be life
21 or death.

22 Do you understand -- life without parole or death.

23 Do you understand that that's the way this will be
24 handled?

25 A Sir?

Individual Juror Qualification

1 Q Do you understand that?

2 A Yes, sir.

3 Q Okay. Now, we're gonna talk a little bit about that
4 penalty phase, but I want to point out to you that we
5 haven't yet gotten to the point where he's been found guilty
6 of anything. So, we may not ever get to that penalty phase
7 and, to, to a certain extent, by talking about the penalty
8 phase, we might be putting the cart in front of the horse a
9 little bit here. We might be talking about something that
10 really needs to be talked about at the end, but we have to
11 do that because the same jury hears both trials, and we have
12 to pick the jury for the first part of it, and so there
13 won't be an opportunity to talk to the jurors about that
14 penalty phase except now before the trial starts.

15 Do you understand that's why we're doing that?

16 A Yes, sir.

17 Q And I'm gonna point out to you that Mr. Blackwell is,
18 is, as a defendant, is presumed to be innocent under the
19 law, and the fact that we're talking about the penalty phase
20 shouldn't be taken by anyone to, to be a reflection upon him
21 or his case. It's just this is the only time we have to
22 talk about that.

23 Do you understand that?

24 A Yes, sir.

25 Q Okay. Now, I'm gonna ask you to pretend, in your mind,

Individual Juror Qualification

1 that you're a juror in a criminal case where someone has
2 been charged with a crime, and I'm not talking about this
3 case. It could be any criminal case.

4 Can you put yourself in that position?

5 Can you imagine that you're a juror in a case?

6 A (Witness nods negatively.)

7 Q Beg your pardon?

8 A No, sir, I don't know.

9 Q I'm asking you can you put yourself in a position that
10 you're a juror in a criminal case.

11 Can you do that in your mind?

12 A I'm sorry. I don't understand.

13 Q Well, let's say that there was a trial being conducted
14 and we picked juries in trials to decide whether people are
15 guilty or innocent, and I'm asking you to pretend that you
16 are a juror in one of those cases.

17 Can you do that?

18 A Yes, sir.

19 Q Okay. Now, if you were a juror in a criminal case,
20 would you be able to take the law as the judge applies it --
21 gives it to you and follow that law?

22 A Yes, sir.

23 Q Would you be able to take the law and apply it to the
24 facts as the jury finds it -- you to and render a verdict
25 according to the law and the evidence?

Individual Juror Qualification

1 A Yes, sir.

2 Q Would that be true even if you heard something in the
3 law that you didn't agree with or you didn't understand when
4 you first heard it as that being the law?

5 So, if you had some disagreement with what the law is,
6 could you set that disagreement aside and apply the law
7 exactly as the judge gave it to you to the facts as you
8 determined them?

9 Could you do that?

10 A Yes, sir.

11 Q All right. Now I'm gonna talk to you a little bit
12 about some concepts under the law to be sure I -- you
13 understand what these concepts mean. First of all, I
14 mentioned to you that Mr. Blackwell, the defendant in this
15 case, and the defendant in any criminal case, is presumed,
16 by the law, to be innocent of the crime for which he's been
17 charged.

18 Do you understand that that's the law in this country
19 and this state?

20 A Yes, sir.

21 Q That all defendants are presumed to be innocent?

22 A Yes, sir.

23 Q And, for that reason, a defendant in a criminal case is
24 not required to prove himself innocent of anything because
25 he's presumed to be innocent.

Individual Juror Qualification

1 Do you understand that concept?

2 A (Witness nods negatively.)

3 Can you say it again?

4 Q Sure. I'll be glad to go over that.

5 I was saying that because a, a defendant is presumed to
6 be innocent, he's not required to prove himself innocent.

7 Do you understand that?

8 A (Witness nods affirmatively.)

9 Q And do you understand that, that, in a criminal trial,
10 the only party that would have the burden of proof would be
11 the State, and the State would have to prove guilt beyond a
12 reasonable doubt.

13 Do you understand that?

14 A Yes, sir.

15 Q So, you understand the concept that defendants are
16 always presumed to be innocent and don't have to prove
17 innocence, they're presumed that way, and the State has the
18 only burden of proof.

19 Do you understand those two concepts?

20 A Yes, sir.

21 Q Okay. Now, let me ask you this question.

22 Again, you're on a jury. You've heard the whole case.
23 You've heard all the testimony. You've heard the judge give
24 you the law.

25 So, do you understand where we are?

Individual Juror Qualification

1 A Yes, sir.

2 Q Now, in that case, after you've considered the evidence
3 and after you've considered the law, if you find that the
4 State has not proven the allegations that they made against
5 the defendant, could you issue a verdict of not guilty for
6 that defendant?

7 A You have to break it down for me. I'm sorry.

8 Q Well, again, let's say you're on a jury, and you've
9 listened to the evidence in the case, you've heard the law
10 from the judge, and you've reached a conclusion that the
11 State did not prove the defendant guilty of a crime beyond a
12 reasonable doubt.

13 Could you then issue a verdict in favor of the
14 defendant and find the defendant not guilty?

15 A Yes, sir.

16 Q By the same token, if you found that the State had
17 proven its case beyond a reasonable doubt, could you issue a
18 verdict of guilty against a defendant?

19 A Yes, sir.

20 Q All right. Now, are you telling me that you would
21 decide a case, guilty or innocent, based on the evidence,
22 the strength of the evidence that you hear in the case?

23 A (No response.)

24 Q Ma'am, I'm gonna let you step back into the jury room.
25 Would you take her back to the jury room for me?

Individual Juror Qualification

1 THE BAILIFF: Yes, sir.

2 (WHEREUPON, the following takes place outside the
3 presence of the juror.)

4 THE COURT: I don't know the condition of this juror.
5 Based on her demeanor and what I've observed, I do not think
6 she'll be qualified to serve. She's not answering my
7 questions appropriately and does not seem to understand. My
8 observation is that she seems to kind of come and go out of
9 consciousness as to what I'm talking about.

10 Now, if you wish for me to continue the examination,
11 I'll be glad to hear from you on that.

12 Defense.

13 MR. MCGUIRE: Yes, sir, that would be my request.

14 THE COURT: You want me to continue?

15 MR. MCGUIRE: Yes, sir.

16 SOLICITOR BARNETTE: Your Honor, I would object cause
17 I'd like to put on the record what I've seen, and, of
18 course, the Court did that. I don't know if she's under the
19 influence of drugs or what. Something's, something's
20 obviously wrong. I don't know if it's from a drug
21 standpoint or from a mental disability standpoint. I don't
22 know. But obviously she's taking very long pauses. You've
23 had to explain several times to her and she's got---

24 THE COURT: But she goes into a position of almost like
25 a trance where she doesn't even seem to understand.

Individual Juror Qualification

1 Is this the young lady that we had problems with during
2 jury assembly---

3 THE CLERK: This is.

4 THE COURT: ---where she broke down and went into a---

5 THE CLERK: Yes.

6 THE COURT: ---panic attack of some kind?

7 THE CLERK: Yes, she said that she was -- she had some
8 learning disabilities.

9 THE COURT: Okay. I see.

10 The clerk had indicated to me that, during one of the
11 breaks when we had the assembly earlier, that one juror had
12 kind of broken down and, and I'm informed now that this was
13 this particular juror.

14 Based on my observations, Mr. McGuire, it would be
15 fruitless for us to go forward. I'm gonna find her
16 disqualified based on her demeanor, her inability to respond
17 appropriately to questions, and her apparent coming and
18 going out of consciousness while I was talking to her.

19 MR. MCGUIRE: Yes, sir, I -- obviously, from being kind
20 of way over here, don't have the ability to see her. She's
21 a---

22 THE COURT: Oh, I understand that, but I'm, I'm
23 relating truthfully what I have seen.

24 MR. MCGUIRE: I'm sure.

25 THE COURT: I promise you.

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1 MR. MCGUIRE: Yeah, I'm just saying I don't have the --
2 if you're going to excuse her, it would be over my
3 objection.

4 THE COURT: That's fine.

5 Bring her in please.

6 Just one second. Hold her out.

7 THE BAILIFF: Okay.

8 THE COURT: Hold her out.

9 Is there something else you'd like to bring up, Mr.
10 McGuire?

11 I saw you conferring with cocounsel. I'll be glad to
12 hear whatever you want me to hear on this juror.

13 MR. MCGUIRE: Yes, sir, it's just that -- judge, we're
14 very conscious of our duty not to fail Mr. Blackwell on the
15 record --

16 THE COURT: I want you to be.

17 MR. MCGUIRE: -- without -- with regard to preserving
18 an issue and we help each other sometimes. I hope that's
19 not bothering the Court.

20 THE COURT: It's not bothering me. It's just I had
21 called for her back in and you were standing in front of the
22 counsel table conferring. So, I asked that she be held out
23 and I'm asking you if there's something else you want me to
24 consider.

25 MR. MCGUIRE: Yes, sir.

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1 THE COURT: I don't know what else you want me to do.

2 MR. MCGUIRE: Well, when I -- I mean I would put on the
3 record that, for instance, when Ms. Champion was being
4 questioned by the Court, the Court asked her the same types
5 of questions over and over again. She seemed to
6 misunderstand and we, we qualified her.

7 THE COURT: Ms. Who?

8 MR. MCGUIRE: Champion.

9 THE COURT: Oh, yeah, but I didn't see her go in and
10 out of consciousness.

11 MR. MCGUIRE: I understand, and, and---

12 THE COURT: I related that this lady goes in and out of
13 consciousness.

14 MR. MCGUIRE: Yes, sir, and I -- of course, I didn't --
15 I can't see that and I take your word absolutely.

16 THE COURT: Well, I'll let you interview her if you'd
17 like.

18 MR. MCGUIRE: I would, I would ask to.

19 THE COURT: Sure. That's fine.

20 Bring her in.

21 THE BAILIFF: Yes, sir.

22 SOLICITOR BARNETTE: Your Honor, I just note my
23 objection.

24 THE COURT: Well, I'm gonna let him---

25 SOLICITOR BARNETTE: I mean I understand---

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1 THE COURT: well, I'm gonna let him do whatever he
2 thinks he needs to do up to a point.

3 (WHEREUPON, the following takes place within the
4 presence of the juror.)

5 THE COURT: Ma'am, have a seat please.

6 (Witness complies.)

7 THE COURT: You're gonna need to turn around and face
8 the, the courtroom. Mr. McGuire wants to ask you some
9 questions.

10 MR. MCGUIRE: Thank you, Your Honor.

11 THE COURT: Ma'am, turn around and face the courtroom
12 please.

13 EXAMINATION

14 BY MR. MCGUIRE:

15 Q Yeah, I'm just gonna ask you a couple of questions.

16 Is it Ms. Murriel?

17 A (Witness nods affirmatively.)

18 Q You're gonna have to say yes or no. I saw you shake
19 your head.

20 A Yes.

21 Q That's a yes.

22 A Sorry.

23 Q I just---

24 A Yes, sir.

25 Q I just want to make sure that we understand each other

Individual Juror Qualification

1 here and that you can understand a little bit about what's
2 going on to see if you can be a juror.

3 Okay. Do you understand my questions so far?

4 A Say that again.

5 Q I really haven't asked you a question.

6 Do you think you could decide a criminal case based on
7 the evidence presented in Court?

8 A No.

9 Q No.

10 Can you tell me why?

11 A I don't understand what's going on cause I --.

12 Q Do you not understand my question?

13 A No, I don't.

14 Q Okay. Well, criminal---

15 A No, sir.

16 Q Criminal cases are decided by evidence that --
17 testimony or evidence brought into Court. A jury would sit
18 right here. They'd be able to see people testify. They'd
19 see evidence brought into Court. For instance like bullets
20 or pictures and people would talk and testify.

21 Could you listen to all of that and decide if somebody
22 was guilty or not?

23 A Yes---

24 Q Okay.

25 A ---sir.

Individual Juror Qualification

1 Q When I say guilty or not, that's basically do they have
2 the right person, did they commit a crime, and did they---

3 A Okay.

4 Q Do you understand that?

5 A Yes, sir.

6 Q Okay. And if somebody was guilty beyond a reasonable
7 doubt, would you find them guilty?

8 A Yes, sir.

9 Q Okay. In your mind, if you saw the evidence that
10 indicated that somebody did a crime and you were satisfied
11 beyond a reasonable doubt they had the right person and the
12 evidence supported them being found guilty, you could find
13 them guilty?

14 A Yes, sir.

15 Q Okay. And if there wasn't enough evidence to convince
16 you, beyond a reasonable doubt, that they had the right
17 person, could you vote not guilty?

18 A Yes, sir.

19 Q Okay. Have you understood all my questions so far?

20 A Yes, sir.

21 Q Okay. And with regard to a murder case, the jury would
22 actually be able to decide penalty, and the two penalties
23 would be life without parole and the death penalty.

24 Could you -- would you be able to make that choice
25 based on evidence in Court based on people testifying---

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1 SOLICITOR BARNETTE: Your Honor, I'm gonna object. He
2 compounded the question. He's asking---

3 THE COURT: It is a compound question.

4 Q In a, in a death penalty case, a capital case, the
5 jurors get to decide punish.

6 Could you listen to all of the evidence and the, the
7 law from the judge to decide whether to vote for life or
8 death?

9 A Yes, sir.

10 Q You could do that?

11 A Yes, sir.

12 Q And could you be fair to the State and listen to all
13 the evidence presented by the State?

14 A Yes, sir.

15 Q Could you be fair to the defense and listen to all the
16 evidence presented by the defense?

17 A (No response.)

18 Q Could you, could you listen and consider evidence
19 presented by the defendant, the defense, me?

20 A Yes, sir.

21 Q Okay. And could you listen to the law that's -- that
22 the judge would say?

23 A (No response.)

24 Q If you were a juror you would sit over here and he
25 would tell you what the law is.

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1 Could you listen to the law?

2 A Yes, sir.

3 Q And could you apply the law and look at the evidence
4 and make up your mind as to the life verdict or the death
5 verdict?

6 A Yes, sir.

7 Q Have you understood all my questions?

8 A Yes, sir, I have.

9 Q And, and you think you'll be able to do that and be
10 fair to both sides?

11 SOLICITOR BARNETTE: Your Honor, he keeps compounding
12 the questions. He needs to ask the question and let her
13 answer.

14 MR. MCGUIRE: I'll rephrase it.

15 Could you be fair to both sides and that means -- well,
16 could you be fair to both sides, the State and the defense?

17 A Yes, sir.

18 Q Okay. That's all I have for you, ma'am. Thank you so
19 much.

20 A Uh-huh. (Affirmative).

21 THE COURT: All right. I'll ask you to step back to
22 the jury room.

23 Do you wish to ask -- wait a second, ma'am.

24 Do you wish to ask any questions, Mr. Barnette?

25 SOLICITOR BARNETTE: No, sir, I'll wait until---

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

2 THE WITNESS: Uh-huh. (Affirmative).

3 (WHEREUPON, the following takes place outside the
4 presence of the juror.)

5 THE COURT: Yes, sir.

6 MR. MCGUIRE: I move that she be qualified, judge.

7 THE COURT: What?

8 MR. MCGUIRE: I move that she be qualified.

9 THE COURT: We haven't gone through the entire
10 interview.

11 MR. MCGUIRE: Well then I move that she be presented
12 for qualification. I'm sorry. I, I --.

13 THE COURT: Okay.

14 MR. MCGUIRE: -- I jumped ahead a bit. I just mean I,
15 I move that she be presented for further qualification.

16 THE COURT: Yes, sir, Mr. Barnette.

17 SOLICITOR BARNETTE: Your Honor, the first thing I was
18 gonna suggest, if the Court decides to go on, obviously you
19 need to finish about the type of jurors and everything about
20 that. But it's obvious. I mean she's got all kinds of
21 issues going on. I mean even going out of the jury room,
22 she's turned back around and she's just -- she don't know
23 where she's at, and---

24 THE COURT: It's obvious to me there's something wrong
25 with this juror based on her behavior on Monday, based on

Individual Juror Qualification

1 her behavior in this courtroom today in answering my
2 questions in a one-on-one interview. I see no reason to
3 change my finding that this juror could not be qualified.
4 So, I'm gonna find that she's not qualified.

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: And you can take exception. It's noted.

7 MR. MCGUIRE: Thank you.

8 I don't need, don't need to do anything else to protect
9 the record?

10 THE COURT: I don't think so.

11 MR. MCGUIRE: Thank you.

12 THE COURT: Bring her back in please.

13 (WHEREUPON, the following takes place within the
14 presence of the juror.)

15 THE COURT: Have a seat please, ma'am.

16 (Witness complies.)

17 THE COURT: Ma'am, I have determined that you are not
18 qualified -- you're about to cry.

19 Are you okay?

20 THE WITNESS: I'm okay.

21 THE COURT: You sure?

22 THE WITNESS: (Witness nods affirmatively.)

23 THE COURT: Okay. I've determined that you are not
24 qualified to proceed with the jury selection process in this
25 matter, and I'm gonna excuse you at this time. The bailiffs

Individual Juror Qualification

1 will check you out.

2 THE WITNESS: Okay. Thank you.

3 THE COURT: Thank you.

4 (WHEREUPON, the following takes place outside the
5 presence of the juror.)

6 THE COURT: I will further put on the record, during
7 that discussion with her, she was shaking the whole time and
8 appeared that she was about to cry and panicked. Also I
9 will point out that when she was instructed to be back after
10 lunch today at two o'clock, she failed to appear at that
11 time and came in substantially late for her appointment.
12 So, those are other factors that I've considered in
13 determining whether or not she would be a qualified juror in
14 this case.

15 Angela Bradley.

16 (WHEREUPON, the following takes place within the
17 presence of the juror.)

18 ANGELA BRADLEY, having been previously
19 sworn, testified as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q Now, Ms. Bradley, we're gonna let you stay this time I
23 believe cause you are Angela Bradley, is that right?

24 A Yes, sir.

25 Q Okay. Now, Ms. Bradley, I'm gonna ask you to kind of

Individual Juror Qualification

1 turn and face me --

2 A Okay.

3 Q -- cause you're gonna be talking with me for the first
4 part of this.

5 A Okay.

6 Q Later on we're going to let the attorneys ask some
7 questions of you, but because of the way this is
8 constructed, we're probably gonna have to face each other --

9 A Okay.

10 Q -- for you to see me.

11 A Okay.

12 Q Now, a couple things I want to go over with you. I
13 want to thank you for your cooperation so far. I know we've
14 kind of, I guess I'd put it, jerk people around. We've had
15 you here, sent you home, things like, and different -- odd
16 hours. It's because this process takes a time and different
17 people take longer, and I apologize for the inconvenience if
18 there's been any.

19 I will tell you that, that what we're going to do now
20 is go through a series of questions. I will explain to you
21 that there are no right answers. There's no wrong answers
22 to these questions. There's only your answers.

23 A Yeah.

24 Q We want truthful and honest answers to the questions
25 I'm about to ask you.

Individual Juror Qualification

1 Now, you were put under oath on Monday to tell the
2 truth. That oath still applies to your testimony now.

3 Do you understand that?

4 A Yes, sir.

5 Q And do you accept that fact?

6 A Yes, sir.

7 Q Okay. When I talked with you last on Monday I was
8 giving a lot of instructions to the jury. I told you how to
9 act. I said not to listen to any media reports, read or
10 watch any, don't discuss the case, don't allow anyone to
11 discuss it with you, and, also, if anybody contacted you, to
12 report that.

13 Have you followed my directions since then?

14 A Yes, sir.

15 Q All right. Now, if there was anything that you had
16 heard, and I don't -- I'm not talking about anything
17 specific, anything that you had heard or seen on the outside
18 that may, in some way, have some affect or impact on this
19 case, could you put those factors aside and decide this case
20 solely upon the law and the evidence that you hear during
21 the trial?

22 A Yes, sir.

23 Q Now, have you ever participated in any type of a --
24 they call them blogs, chat rooms, talks, discussions about
25 any issues that might involve the death penalty?

Individual Juror Qualification

1 A No, sir.

2 Q Have you ever participated in any political type
3 activities such as a demonstration or a letter writing
4 campaign to a representative about the---

5 A No, sir.

6 Q ---about the death penalty?

7 A No, sir.

8 Q All right. Now, ma'am, when you were back there in the
9 courtroom -- in the jury room, excuse me, there was a list
10 of people I gave you to read. It's about three pages long
11 or three sheets of paper.

12 Did you read that list?

13 A Yes, sir.

14 Q Did you recognize the names of anyone on that list?

15 A Yes, sir.

16 Q All right. Well, let me ask you just a couple specific
17 questions.

18 Are you related by blood or have you ever been related
19 by marriage to anyone on that list?

20 A Not on that list.

21 Q Okay. Now, is there any of those people that you have
22 some type of social, business, or personal relationship
23 with?

24 A Just -- I guess you would say social, personal.

25 Q Okay. Well, tell me who that might be.

Individual Juror Qualification

1 A Only my ex-husband works for the Spartanburg County
2 Sheriff's Office.

3 Q Oh, I see.

4 A So---

5 Q Okay.

6 A ---there are several in there that I either know the
7 name. I also know---

8 Q So, you've heard their names before?

9 A Yes, I also work for Spartanburg County.

10 Q I see.

11 And was there anybody in there that you would consider
12 a close personal friend or anything of that nature?

13 A No, not close personal.

14 Q Well, those people are on that list because they've
15 been identified to me as potential or possible jurors (sic).
16 I don't know if they're all gonna testify, but they
17 certainly have the right to.

18 Now, if you were sittted on the -- seated on the jury,
19 one of those people that you have heard of or know
20 testified, would that affect your ability to be fair and
21 impartial to both sides during the trial?

22 A No, sir.

23 Q So, have no effect at all?

24 A No, sir.

25 Q Okay. Now, I'm going to go into some questions, a

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1 series of questions and they may get a little more personal
2 as I go along because some of them will involve things like
3 your opinions on certain matters, your ideas, your beliefs,
4 things like that, and I want to tell you it's not our, our
5 purpose here to try to invade anybody's privacy. It is our
6 purpose though to gather information that would be important
7 in deciding the jury and picking a jury in this case.

8 I would assume that you're comfortable enough in your
9 beliefs and your opinions that it would not cause you any
10 concern to talk about these things.

11 A No, sir.

12 Q Is that correct?

13 A Yes.

14 Q All right. I just wanted to be sure that wasn't a
15 problem.

16 Now, eventually I will get to a discussion of matters
17 concerning the death penalty because that's a possible issue
18 in this case, and I want to let you know that I realize, and
19 I want you to realize, that, by doing so, I'm putting the
20 cart in front of the horse in this situation because, in
21 this case, the defendant has been charged with commissions
22 of a crime. Part of the State's request, they have
23 requested that he be subjected to the -- potentially to the
24 death penalty if he were to be found guilty of the crime of
25 murder.

Individual Juror Qualification

1 Now, we haven't started the trial. So, there's been no
2 determination of guilt or innocence. So, to talk about
3 penalties at this point in time is really premature. It's
4 putting, again, the cart before the horse.

5 I want to explain to you though that the same jury that
6 hears the question of guilt or innocence would also then
7 hear the penalty phase of the trial. So, there's not going
8 to be a time, other than before the trial, to talk about all
9 of the issues including penalties.

10 So, I will tell you a defendant is always presumed to
11 be innocent of the crimes that he's been charged with, and
12 the fact that we're talking about penalties shouldn't be
13 taken by you in anyway to reflect adversely on the
14 defendant, Mr. Blackwell, or his case. It's simply this is
15 the only time we can address these issues before we start
16 and before we pick the jury.

17 Do you understand what I'm saying---

18 A Yes, sir.

19 Q ---and why I'm saying that?

20 A Yes, sir.

21 Q Okay. Now, I want you to -- I'm gonna ask you a couple
22 of times to use your imagination. I want to you imagine
23 that you're on a jury panel in a case, but not this case,
24 any criminal case. It could be a burglary, a larceny, a
25 shoplifting, whatever, but you're on a jury, and I'm going

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1 to ask you certain things about how you would act as a
2 juror, what you would do as a juror.

3 A Yes.

4 Q First of all, if you were a juror in a criminal case,
5 would you be willing to listen to the law as instructed to
6 you by the judge?

7 A Yes, sir.

8 Q would you be willing to accept the law as given to you
9 by the judge and apply it to the facts as the jury and you
10 found?

11 A Yes, sir.

12 Q Now, in doing that, I'm gonna take it a step forward,
13 let's say that while you're on the jury, you're listening to
14 the judge tell you about the law, and as you're listening,
15 you hear something that maybe you don't agree with. You
16 think maybe the law shouldn't be that way or it should be
17 different in some fashion.

18 would you be willing to set aside your personal beliefs
19 and take the law exactly as the judge gave you and apply it
20 to the facts in reaching a verdict in the case?

21 A Yes, sir.

22 Q So, you think you could set aside those personal
23 beliefs?

24 A Yes, sir.

25 Q All right. Now, in this particular case, in the

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1 Blackwell case, I want to know whether or not you feel that,
2 again, that you could set aside any information you may of
3 heard outside of the courtroom or even so far during this
4 trial and decide the case solely on the evidence you hear
5 during the trial of the case?

6 A Yes, sir.

7 Q Could you do that?

8 All right. Now, I'm gonna go over some concepts under
9 our criminal law to be sure you have an understanding of
10 these. I think everybody probably does, but I want to be
11 sure that, that we have a basic understanding of some
12 things.

13 First of all, under the law of this State and the
14 United States, everyone who is charged with a crime is
15 presumed by the law to be innocent of the crime for which
16 they've been charged.

17 Do you understand that concept?

18 A Yes, sir.

19 Q Now, because they're presumed to be innocent, that
20 means that they don't have to prove that -- a defendant is
21 never required to prove his innocence. He's presumed to be
22 innocent.

23 Do you understand that concept?

24 A Yes, sir.

25 Q That means that, that the only entity or group in a

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1 trial, in a criminal trial that has to prove anything is the
2 State, and the State has to prove the allegations in the
3 indictment by proof beyond a reasonable doubt.

4 Do you understand or accept the concept that the State
5 is the only party that has the burden of proof?

6 A Yes, sir.

7 Q Okay. Now, I'm going to ask if you were -- again,
8 imagine you're on a jury, you've heard a case, and you've
9 heard all the evidence, you've heard the law, you're in
10 deliberations, and you've reached a conclusion that the
11 State did not prove the guilt of the defendant beyond a
12 reasonable doubt. In other words, the State has not met its
13 burden of proof.

14 In that situation, would you, as a juror, be able to
15 sign a not guilty verdict for a defendant?

16 A Yes, sir.

17 Q Now, by -- on the other -- so, is it your belief then
18 that or understanding that if someone has been arrested,
19 charged, and indicted of a crime that they're not
20 automatically guilty of a crime?

21 A I do.

22 Q You agree with that?

23 A I do agree with that.

24 Q Okay. Now, by the same token, if you were in a jury
25 room and you'd heard all the law and evidence and, and you

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1 decided that the State, in fact, did meet its burden of
2 proof in the case, and has proven the defendant guilty
3 beyond a reasonable doubt, are you a person who could sign a
4 verdict that found the defendant guilty of the crime?

5 A Yes, sir.

6 Q Now, does, does that mean, and I think it means, that
7 you would be willing to make up your mind depending on the
8 strength of the evidence that you heard, the testimony, what
9 it showed, and you could find a person either guilty or not
10 guilty depending on the law and the evidence?

11 A Yes, sir.

12 Q All right. Now, we're gonna talk -- I told you we'd
13 get around to talking about the death penalty and so we're
14 gonna talk about that a little bit at this point in time. I
15 mentioned to you earlier, but I'll go back over with you,
16 the way this type of case works is different from the
17 average case. Most criminal cases, the jury decides either
18 guilty or not guilty. If the defendant is found guilty,
19 then it's up to the judge to decide the appropriate sentence
20 to be given. That's in most cases. The exception happens
21 to be the case that we're in.

22 In a death penalty case where the death penalty has
23 being requested, there is a trial concerning the guilt or
24 innocence of the defendant of the crimes charged, and if the
25 defendant is found guilty of murder, then there is a

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1 separate hearing, which is referred to as the penalty phase
2 or the, the sentencing phase of the trial, and so that same
3 jury then hears new evidence that pertains to the -- how
4 severe the, the sentence ought to be. In other words,
5 evidence concerning what's the appropriate sentence.

6 So, the same jury hears, hears both stages of the
7 trial. There's a guilt phase, and, at the end of the guilt
8 phase, we only get to that sentencing phase if the defendant
9 has, in fact, been found guilty of the crime of murder. So,
10 we're at the stage where that has been determined.

11 So, you understand what I'm talking about?

12 A Yes, sir.

13 Q Now, the law that sets up that sentencing or, or
14 penalty phase of the trial, it provides certain things.
15 It provides for basically two types of evidence that can be
16 presented during that particular hearing.

17 One type of evidence is referred to as aggravating
18 circumstances.

19 Now, the other type is what's called mitigating
20 circumstances. I'll talk about these phrases to be sure you
21 understand what we mean cause the lawyers may use these
22 phrases when they ask you questions. I want to be sure you
23 have an understanding of what I'm talking about.

24 Aggravating circumstances are circumstances that are
25 set out under the statute. There's a list of them. The

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1 State has to prove at least one of them, and those are
2 circumstances that might tend to make the crime of murder,
3 it might tend to make a jury want to offer, offer the higher
4 punishment. In other words, these are things that aggravate
5 that crime, that make -- that might tend to make a jury give
6 the higher penalty as opposed to the lower penalty.

7 Mitigating circumstances are the opposite. Those are
8 factors or, or matters that the jury should consider to
9 decide whether or not that somehow mitigates the crime. It
10 either lessens the culpability for the crime or it somehow
11 lessens the, the amount of punishment that a defendant
12 should receive for that crime.

13 So, the crime's already been decided. Murder has been
14 decided, but this is issues concerning whether we give a
15 higher penalty or a lower penalty. So, it's aggravation or
16 mitigation evidence.

17 Once that evidence is all been put on the record, then
18 the judge would charge the jury that the jury should go out
19 and consider both aggravating and mitigating evidence and
20 reach a determination as to the appropriate penalty. The
21 only two choices in that case would be either the death
22 penalty or life imprisonment without the possibility of ever
23 being paroled. So, those are the two choices.

24 So, do you understand how that second hearing would be
25 handled?

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1 A Yes, sir.

2 Q Now, I'm gonna ask you to use your imagination again at
3 this point in time.

4 Let's say you were on a jury in a death penalty case.
5 Your jury had heard all of the evidence on the guilt phase.
6 So there's been a verdict that's been rendered indicating
7 that the defendant is guilty of murder. So, that means,
8 since the State has requested the death penalty as a
9 possible penalty, that means they'll have to be that second
10 hearing, that second trial held, to determine the level of
11 the punishment.

12 So, you're in the hallway coming toward the, the room,
13 the courtroom getting ready to go back in and conduct that
14 trial.

15 Do you understand where I've put you -- in the position
16 I've put you in?

17 A Uh-huh. (Affirmative).

18 Q You're on the jury. You're going back into the
19 sentencing phase.

20 Do you understand that?

21 A Yes.

22 Q You have to speak verbally cause this lady's taking it
23 down.

24 A Yes, sir.

25 Q Okay. Now, do you remember a piece of paper that I had

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1 on the table back there in the jury room that described
2 three different jurors?

3 Do you remember that?

4 A Yes.

5 Q All right. I'm gonna go over those three different
6 jurors with you again so you and I've got a clear
7 understanding as to what I'm talking about as far as that,
8 that -- those particular jurors.

9 Now, the first juror I described on that paper, as he
10 would be coming or she would be coming down the hall to the
11 courtroom, that juror's already made up his or her mind as
12 to what he's gonna do or she's gonna do. That juror
13 believes that the only appropriate punishment for a murder
14 is the death penalty, and they're not gonna consider the
15 evidence. They've already decided that the person is guilty
16 of murder. Then I'm gonna vote for death because that's the
17 only appropriate punishment that, that should be given.

18 The second juror is somebody who already -- has already
19 made up their mind as well. That person believes that a,
20 that the State should never take someone's life in, in, in
21 punishment for a crime. That juror, no matter what the
22 severity of the crime might be, that juror believes the only
23 possible punishment in that situation is life without the
24 possibility of parole.

25 So, you got one juror that believes that, that only

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1 death penalty can be given. The other juror believes that
2 only life imprisonment could be given.

3 The third juror on that list was somebody who had not
4 yet made up their mind. That person wants to go into the
5 hearing. They want to hear both the aggravating evidence
6 and the mitigating evidence and consider both of those,
7 those matters together and reach a decision as to what they
8 think is the appropriate punishment. That is either the
9 death penalty or life in prison without parole depending --
10 depending on the facts and evidence that are shown.

11 Now, do you understand what I've described as far as
12 these three different people?

13 A Yes, sir.

14 Q Now, you're also in that line coming into the courtroom
15 with the jury that's returned.

16 Which of those three jurors would best describe your
17 feelings as you came back into the courtroom?

18 A Juror number three.

19 Q So, number three is the juror who is wanting to listen
20 to the evidence, both aggravating and mitigating, before
21 reaching a decision as to the proper punishment, is that
22 correct?

23 A Yes, sir.

24 Q Now, ma'am, does that mean that, that, if you were to
25 hear the evidence concerning the sentencing issues, and if

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1 you were to find yourself in a position that you believed
2 that the death penalty was the appropriate penalty, that you
3 could agree to or sign off on a verdict giving the death
4 penalty?

5 A Yes, sir.

6 Q Does that also mean that if you heard the evidence and
7 you considered both aggravating and mitigating, and you
8 decided that the appropriate sentence is life in prison
9 without parole, then you could sign a verdict for life in
10 prison without parole?

11 A Yes, sir.

12 Q So, you could find either way depending on the
13 evidence, is that correct?

14 A Yes, sir.

15 Q Now, I need to make you aware of one thing and then ask
16 you some more questions. I have signed a sequestration
17 order in this case.

18 Now, what that means is that, once the jury is formed,
19 once they've, they've been, been sworn in, they will be then
20 housed, during the period of the trial, at a local hotel.
21 We're gonna use the Marriott Hotel in this case. And during
22 that period of time, all of your meals would be taken care
23 of, travel -- travel back and forth to the courthouse would
24 be taken care of. So -- and the housing would be taken care
25 of by the, by the State. The jurors who are serving would

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1 be getting their pay as jurors. Not enough to retire on,
2 but it's all the law allows. So, it's an, it's an amount of
3 money for pay, and money for travel back and forth to the
4 courthouse.

5 You would be allowed to communicate with family, but it
6 would be monitored. There would be people there watching
7 the jury. We want to be sure that there's no outside
8 influences on the jury when they decide the case based on
9 what goes on in the courtroom. So, that's the reason for
10 that, that proceeding.

11 But at any rate, my question to you is if you were on
12 that jury and you were in that position, and I think that
13 the actual trial of the case will take a little more than a
14 week perhaps, maybe a week and a half. I'm not sure. But I
15 will tell you that once we start that trial, we will go
16 seven days a week until we're finished. So, we won't stop
17 until the case is over with. But -- so, it will be a period
18 of time.

19 My question to you is, if you were in that situation,
20 would that situation pose a serious risk to your health or
21 well being?

22 A No, sir.

23 Q would that situation pose a serious risk to the health
24 and well being of anyone who's dependent on you?

25 A No, sir.

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1 Q All right. Now, at this point in time I'm gonna allow
2 the attorneys to ask questions of you. So, might need to
3 turn your chair to face them.

4 Mr. Bulsa, are you gonna go first?

5 SOLICITOR BULSA: Yes, sir.

6 THE COURT: Yes, sir, you may proceed.

7 SOLICITOR BULSA: Thank you.

8 EXAMINATION

9 BY SOLICITOR BULSA:

10 Q Hello, Ms. Bradley. My name is Derrick Bulsa.

11 I believe you know Mr. Barnette, right?

12 A (Witness nods affirmatively.)

13 Q Your boys played ball together?

14 A Yes, over probably 15 years ago.

15 Q Okay. All right. And now he's at Newberry?

16 A He's at Newberry College, yes, sir.

17 Q I noticed you were born in Germany?

18 A Yes, sir, I'm an Army -- my dad's---

19 Q An Army brat?

20 A Yes, an Army Brat, yes.

21 Q Okay.

22 A Retired military.

23 Q Okay. I was Army National Guard for a while. So, I
24 know a little bit about that.

25 Okay. And you wound up in Spartanburg?

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1 A Yes.

2 Q You attend church at New Spring?

3 A Yes, sir.

4 Q Is that the church that meets at the Marriott?

5 A Yes, sir.

6 Q Okay. That's the big one?

7 A Yes, sir.

8 Q It's all over the State, right?

9 A Yes.

10 Q But I noticed that you were raised Catholic?

11 A Yes, sir.

12 Q And does that impact your views of the death penalty at
13 all?

14 A No, it really doesn't. I, I guess, because of where
15 we've been or where my circumstances of being raised
16 military, you're pretty much -- it's just a whole another
17 world that you live in. Being raised Catholic, yes, there
18 are things that I agree with still in my faith. There are
19 things that I do not agree in in my faith. When I went
20 through my divorce, obviously you can tell I have not been
21 back to the Catholic Church.

22 Q Okay. All right. And you were married to a police
23 officer?

24 A Yes.

25 Q Are you still friends with some police officers?

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1 A I work for Spartanburg County. I know several of
2 them---

3 Q Okay.

4 A ---you know.

5 Do I know them?

6 Yes, I know them, but not --.

7 Q Okay. All right. Okay. Well, it seems like you're
8 pretty open to listening to everything before you make up
9 your mind.

10 A Yes.

11 Q I mean you'd have to do that on the guilt phase --

12 A Yes.

13 Q -- just as well on the penalty phase, and the judge
14 commented about aggravating circumstances and mitigating
15 circumstances, and you seem to be a person that would wait
16 to hear both sides and then take all the information to make
17 a fair assessment and render a good judgment?

18 A Yes.

19 Q Is that fair to say?

20 A Yes, I don't believe everything is black and white. I
21 mean, I mean there's, there's always a middle, and you have
22 to be open. I mean that's -- I guess that's part of that
23 military child. You know, I grew up, like I said, my mom is
24 Filipino. My dad is, you know, white. I mean so, my whole
25 life has been that, you know --

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1 Q Okay.

2 A -- that middle ground.

3 Q Gray.

4 All right. And that's what we're trying to get at.
5 We're trying to get people who could listen to both sides
6 and make a fair assessment and basically consider life and
7 death and you seem to be that kind of person that could do
8 that?

9 A Yes, sir.

10 Q Now, the aggravating -- one of the aggravating
11 circumstances is the alleged victim is a young child. One
12 of the mitigating circumstances might be the defendant is
13 some, in some way disabled.

14 Would those two factors -- how would you weigh those
15 two factors?

16 A I have disability in my family. So, I deal with that
17 on, you know, with several of my cousins, and from the time
18 they were born till now. As small children, I'm not -- that
19 might be --

20 Q Okay.

21 A I'm a mom --

22 Q Right.

23 And---

24 A -- you know.

25 Q I mean everybody's got small children in their family,

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1 but that wouldn't sway you one way in particular---

2 A No.

3 Q ---or not?

4 A No.

5 Q So, you could add -- you could fairly consider a life
6 sentence?

7 A Yes, sir.

8 Q And you could fairly consider a death sentence?

9 A Yes, sir.

10 Q Okay. All right. Thank you, ma'am. That's all I've
11 got. Appreciate your time.

12 THE COURT: Mr. Young, is it gonna be you this time?

13 MR. YOUNG: Yes, sir.

14 THE COURT: All right. Glad to have you. Proceed.

15 EXAMINATION

16 BY MR. YOUNG:

17 Q Afternoon, Ms. Bradley.

18 A Afternoon.

19 Q I think -- I know Mr. Bulsa touched on this just a
20 little bit.

21 A lot of the witnesses involved in the case are gonna
22 be police officers, right?

23 A Yes.

24 Q And some of them you may recognize. Some of them you
25 may not.

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1 Given your experience with your ex-husband in law
2 enforcement, would you judge the credibility of their
3 testimony differently than other witnesses?

4 A No.

5 Q Either for or against?

6 A No, sir.

7 Q You understand that they're just like everybody else?

8 A Yes, sir.

9 Q And you judge their credibility like you would --

10 A Yes, sir.

11 Q Okay. Good to know.

12 I want to back up a little bit and talk to you just
13 sort of -- kind of in general about your feelings about the
14 death penalty.

15 A I really, I really don't have -- I mean I don't really
16 have one.

17 Q Okay.

18 A You know, I thought about it the other day when I left
19 here. You know, how do I -- do I really have a stand or do
20 I really have a feeling?

21 I really don't.

22 Q Okay.

23 A You know, growing up Catholic, you think you know
24 everything is this way, but then, as you go through life,
25 you realize that it's not --

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1 Q Right.

2 A -- you know. So, I really don't -- I can't say I have
3 one way or the other that I feel about it.

4 Q Sure.

5 Let me ask it to you this way.

6 If you got to decide what the laws were gonna be, would
7 you have a death penalty?

8 A I think there are certain circumstances that, yes, it
9 probably needs to be in place.

10 Q Okay. Can you tell about some of those circumstances?

11 A I mean I'm looking back at things that, you know,
12 serial killers. I mean that, there, you know, that you
13 watch on TV, you know --

14 Q Sure.

15 A -- things of that nature, you know, did, did that
16 warrant it?

17 I mean killing 30, 40, 50 people, you know, that would
18 be my -- probably say yes, he should of gotten the death
19 penalty.

20 Q Okay. That's fair enough.

21 How about the phrase an eye for an eye.

22 You've heard that phrase?

23 A Yeah, I don't believe -- I mean personally it's not my
24 place. I mean, you know, not my place to judge. Not my
25 place to pass that -- just because it was done to me. I, I

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1 don't believe that.

2 Q Okay. That's a good answer.

3 Do you think that maybe we should -- that killing,
4 taking a life should only be done as sort of a last resort?

5 A Possibly, yes. I mean, I mean if it came down to -- I
6 guess that whole mother instinct, if it's coming to my kid
7 or whatever, you know, I'm gonna do what I have to do to
8 protect him --

9 Q Sure.

10 A -- or, you know, or myself at that point. You know, I
11 mean but I guess that's one of those things that, yeah, it
12 should be a last resort.

13 Q Okay. We've talked a little bit about -- you and I
14 have talked a little bit about the death penalty, and now
15 we're sort of gonna go back to where the judge was with you.
16 We were talking about the death penalty for somebody whose
17 been convicted of murder, okay, and murder, in South
18 Carolina, means the intentional killing of another with
19 malice aforethought.

20 Okay. That means that -- well, malice is defined as
21 hatred, ill will, or hostility towards another person. It's
22 the intentional doing of a wrongful act without just cause
23 and excuse with an intent to inflict injury or under
24 circumstances that the law would infer an evil intent.

25 You with me on that?

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1 A Yes.

2 Q Meant to do it, their intent was to kill an innocent
3 person, wasn't an accident, wasn't mistake, it's not
4 self-defense, not justified.

5 Okay. Are you with me on that?

6 A Yes.

7 Q That's what guilty of murder means.

8 Okay?

9 A I don't -- again, it's that, that touchy, that black --
10 that gray area.

11 Q Sure.

12 A I murdered someone out of self-defense or I murder
13 someone in self-defense, I mean how do you -- you know what
14 I mean?

15 You can't---

16 Q And if you were acting in self-defense, it's not
17 murder.

18 A Right.

19 Q You can't commit a murder in self-defense. That's a
20 justifiable homicide.

21 A Right.

22 Q Okay.

23 A I don't, I don't really know how I would -- again, you
24 know, it all comes down to what caused that or, you know,
25 what pushed that person to that point.

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1 Q Sure.

2 And I think I've sort of inartfully done this, and
3 you're one step ahead of me, and I just wanted us to agree
4 that that's what, when we're talking about the penalty
5 phase, we're talking about the penalty phase for a guilty
6 murderer, and we need to be on the same page about what a
7 guilty murderer is --

8 A Right.

9 Q -- and what's been decided because, in a minute, we're
10 gonna talk about these things called mitigating
11 circumstances, right?

12 A Right.

13 Q And the judge talked to you a little bit about that,
14 and I don't want to get you confused like mitigating
15 circumstance doesn't mean like mitigate the murder.

16 You with me on that?

17 A Right.

18 Q It doesn't mean make the murder self-defense or make
19 the murder an accident.

20 Okay?

21 A Okay.

22 Q You with me on that?

23 A Yes.

24 Q Okay. So, we have this guilty murderer, okay, and
25 we've talked about that. You're with me on what that means.

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1 Meant to do it, not an accident, not self-defense.

2 okay?

3 A okay.

4 Q So, when you have somebody who is a guilty murderer,
5 how do you feel about the appropriateness of the death
6 penalty?

7 A Again, I said I don't really have a stand on it. I
8 hadn't really ever given it any taught. I mean it's not
9 something that oh, I feel this way or I'm totally for it or
10 I'm totally -- I really hadn't gone either way with it.
11 It's not something that I've sat and thought about. I mean
12 it really isn't.

13 Q Sure.

14 A So, I, again, I can't tell you that I'm totally for it
15 or I'm totally against that. I really don't know.

16 Q That's perfect and you understand that sometimes --
17 there are some people who say---

18 A I'm totally for it, I'm totally---

19 Q ---for guilty---

20 A I don't have a feeling for it. I mean I'm not really
21 sure where I stand on that because I'm not -- it's like I
22 said. It's not something I've sat down and said I'm for
23 this or against. I really don't know.

24 Q Okay. And the State mentioned to you the -- one of the
25 aggravating circumstances would be the victim being a small

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1 child.

2 A Right.

3 Q And you said -- I think you said---

4 A Yeah, I'm not sure how I would---

5 Q ---might give you pause.

6 A Well, I'm a mom. You know, I mean I, I raised a child,
7 you know. To see it in a different, what form, you know,
8 I'm not sure how it would affect me.

9 Q Okay. It sounds to me like you're -- you are sure that
10 it doesn't make you automatically---

11 A No.

12 Q ---think that a particular penalty is appropriate?

13 A No, it does not.

14 Q That you would be open to a life penalty for somebody
15 who was a guilty murderer---

16 A Yes, sir.

17 Q ---of a child?

18 One of the things that the defense would have an
19 opportunity to present, present to you would be these things
20 that we've talked about, sort of mitigating circumstances.
21 Like not mitigate murder, but mitigate the appropriate
22 penalty for a particular defendant.

23 Okay. Some of that stuff would be like what the State
24 talked about. Like whether or not he had a disability, how
25 he grew up, how he was raised, what opportunities he had,

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1 had he done good stuff, had he done bad stuff. All of those
2 types of circumstances.

3 Are you with me?

4 A Uh-huh. (Affirmative).

5 Q Are those types of things, how somebody was raised,
6 their background, their upbringing, are those important to
7 you in deciding whether or not a person lives or dies?

8 A Everybody's raised differently.

9 Q Uh-huh. (Affirmative).

10 A I know how I was raised. I know how I raised my child.
11 It doesn't -- I can't control you once you hit a certain
12 point. I am a mom forever, but, you know, I hope that I
13 instilled in you what you needed to carry through your life.
14 But no, I mean I can't -- you can't control -- I guess you
15 can't control after a certain point in that person's life --

16 Q Right.

17 A -- you know. I mean if you -- I mean I've watched it
18 with other children. I mean -- my son's older. So, I have
19 watched children go completely south per se, you know, and
20 come from good families or not come from so good families
21 and still done well and, and are good. So, I mean I
22 can't -- I mean that's one of those areas that you can't --
23 are you a product of your environment, not necessarily.

24 Q And I understand, I understand exactly what you're
25 saying.

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1 what, what kind of things would you want to know about
2 a particular defendant who was guilty of murder in deciding
3 which penalty was appropriate?

4 A I mean it is important to know, you know, where -- you
5 know, did it start from the beginning in his, in his life.
6 Did it, you know, did it happen later in life. what type of
7 illness is this. You know, what type of -- what is he
8 suffering from. You know, those type of things.

9 Q Those things would be important to you?

10 A Uh-huh. (Affirmative).

11 Q All right. So, stepping back just a little bit -- so,
12 the mitigation stuff that we were talking about, like
13 somebody's background might not be important to you, but it
14 might be important to a different juror, okay, and so
15 mitigation is different than aggravation in that mitigation
16 doesn't have to be found by all the jurors.

17 Okay. You okay with that?

18 A Uh-huh. (Affirmative).

19 Q Not each juror has to agree on what's---

20 A Right.

21 Q ---mitigating. Any -- this juror might vote for a life
22 penalty based on this piece of mitigation and how he was
23 raised. This juror might vote for a life penalty based on a
24 different piece of mitigation, but it resonates with them.

25 A Right.

Individual Juror Qualification

1 Q You okay with that?

2 A Yes.

3 Q And there's no burden of proof. It's whatever -- how a
4 juror in particular feels.

5 Okay?

6 A Yes.

7 Q And it's not like aggravation because aggravation has
8 to be proven beyond a reasonable doubt. All the jurors have
9 to agree that it exists.

10 Okay. You understand the difference?

11 A Yes.

12 Q You okay with the difference?

13 A Yes.

14 Q They -- the way that that works or one of the ways it
15 works is what we call sort of an individual moral judgment,
16 that jurors are called upon to decide between these two
17 penalties.

18 Okay. With me?

19 A Yes.

20 Q There's no checklist as to what penalties are right.
21 You know, once an aggravating circumstance has been proven
22 beyond a reasonable doubt, the jurors have found that,
23 they're entitled to consider each penalty. There's no
24 checklist as to how they're arrived at and which one is
25 correct.

Individual Juror Qualification

1 okay?

2 A Okay.

3 Q Is cause -- it's sort of your individual moral judgment
4 about which one you feel is appropriate, most appropriate
5 for you.

6 okay?

7 A Okay.

8 Q If all 12 jurors decide that the death penalty is
9 appropriate, that's what their individual moral judgment is,
10 then you understand that Mr. Blackwell would be put to
11 death?

12 A Yes, sir.

13 Q You don't have any questions about your sentence not
14 being carried out, that would be the sentence?

15 A No.

16 Q I mean it's not a recommendation to the Court. That's
17 what the---

18 A That's what---

19 Q That's what would happen.

20 A Right.

21 Q Now, if one of the jurors said, for me, I found this
22 particular piece of mitigation, support it to me, and I'm
23 gonna vote life or -- based on that decision. If one juror
24 votes for a life penalty, then the penalty is life.

25 okay?

Individual Juror Qualification

1 A Yes.

2 Q That's a protection that is built into the law for
3 people facing the death penalty is that one juror could vote
4 for life.

5 okay?

6 A Okay.

7 Q So, it wouldn't be a mistrial. It wouldn't have to be
8 done again, and the penalty phase, it would be over and the
9 sentence would be ended.

10 okay?

11 A Okay.

12 Q Can you tell me sort of briefly how do you feel about
13 knowing that your vote makes a difference between whether or
14 not a person lives or dies?

15 A Again, I mean I don't -- it all goes back to that whole
16 thing. I've not really sat here or, in, in my forty years,
17 and said, you know, I'm for this or I'm against this. I
18 mean I don't -- again, I don't -- I mean that's one of those
19 things that you walk out, do you have that conscience. I
20 mean does it weigh on you. You know, what -- you know, I'm
21 not sure cause I've not ever been put in that situation.

22 You know what I mean?

23 I'm not really sure how I feel. I know that, you know,
24 with, with the evidence that can -- I mean everybody's
25 innocent until proven guilty and that's -- that comes down

Individual Juror Qualification

1 to that whole thing. You know, I'm not -- I'm not sure how
2 I, how I feel about it---

3 Q And---

4 A ---or which way I would or how my conscience could
5 take, you know, can I send this man to the death penalty.
6 You know, I'm not sure how I feel about that.

7 Q Okay. And, and just -- you said everybody's innocent
8 until proven guilty, right?

9 A Uh-huh. (Affirmative).

10 Q And you understand that, and I'm sure that you do, but
11 I just need to make sure that we're on the same page, that
12 you don't decide punishment until after guilt has been
13 decided?

14 A Right.

15 Q Guilty guilty, that question is long over by the time
16 you're asked to decide whether or not a person lives or
17 dies?

18 A Correct.

19 Q Okay.

20 A At that point, like I said, I'm not sure. I'm not
21 sure. I mean I've not been put in that situation or I don't
22 know how I would -- how I'd handle that, you know. Again, I
23 don't feel it's -- it all comes down, I guess, I believe for
24 that faith of, you know, is it my place to pass that
25 judgment or to pass that on to somebody. I don't know.

Individual Juror Qualification

1 Q Okay. Fair enough.

2 Thank you very much, Ms. Bradley.

3 A Thank you.

4 THE COURT: Mr. Bulsa?

5 SOLICITOR BULSA: Yes, sir.

6 THE COURT: You have some additional questions, you
7 may---

8 MR. MCGUIRE: Yes, sir.

9 EXAMINATION

10 BY SOLICITOR BULSA:

11 Q Ms. Bradley, if you're part of a jury that unanimously
12 decides on a death sentence, you would be asked to sign a
13 form that would be recorded that this man is punished
14 pursuant to the death sentence.

15 Could you sign such a form?

16 A If -- and that's what I was saying. If there is enough
17 evidence to say yes, that there's not a doubt to say yes,
18 he's guilty, this is what has to be done, then, then yes---

19 Q Okay.

20 A ---then, then I could do that.

21 Q And you understand that this, this is a process of
22 discussion and communication among the jurors?

23 You don't just listen and then---

24 A Right.

25 Q ---make up your mind?

Individual Juror Qualification

1 You discuss the matter?

2 A Yes.

3 Q Okay. Thank you, ma'am.

4 A You're welcome.

5 MR. YOUNG: Your Honor, may I follow up one thing that
6 was brought up?

7 THE COURT: Certainly, as long as it's something new.

8 MR. YOUNG: Yes, sir.

9 EXAMINATION

10 BY MR. YOUNG:

11 Q Ms. Bradley, I just want to follow up on one thing.

12 You had mentioned, when Mr. Bulsa was talking to you,
13 if somebody was proven guilty, and beyond a doubt, doubt, a
14 shadow of a doubt, and it was required, you could sign it.

15 A Yes.

16 Q And I want you to understand that the death penalty is
17 never required.

18 A Okay.

19 Q Is that, is that your understanding?

20 A I mean I guess it's one of those things that you sat
21 down, that until you're in that situation, I mean, you know,
22 here is what we feel -- I don't know how I feel, you know.
23 If it was -- if I felt that's what was or that's what needed
24 to be done, then I could sign that. If I don't feel that
25 that needed to be done, then no, I wouldn't sign it.

Individual Juror Qualification

1 Q And you would vote your individual---

2 A And I would vote with my own self, yes.

3 Q And that the law is always satisfied with a life
4 penalty. In this case or any case, the life penalty is
5 always satisfactory. Okay. The death penalty is never
6 required or automatic.

7 A Okay.

8 Q Thank you.

9 THE COURT: Ma'am, I'm gonna ask you, at this point in
10 time, to step back into the jury room just a minute. I'll
11 call you back in a second.

12 THE WITNESS: Okay.

13 THE COURT: Thank you, ma'am.

14 (WHEREUPON, the following takes place outside the
15 presence of the juror.)

16 THE COURT: Defendant's position?

17 MR. YOUNG: She's qualified, Your Honor.

18 THE COURT: State.

19 SOLICITOR BULSA: Agree.

20 THE COURT: All right. You can bring Ms. Bradley back
21 in.

22 (WHEREUPON, the following takes place within the
23 presence of the juror.)

24 THE COURT: Have a seat again.

25 (Witness complies.)

Individual Juror Qualification

1 THE COURT: All right. Ms. Bradley, I have determined
2 or decided that you are qualified to proceed with this
3 process. What's gonna happen now is we're going to give you
4 a sheet.

5 You want to hand her that sheet---

6 THE CLERK: Yes, sir.

7 THE COURT: ---Tonya?

8 Thank you.

9 All right. That sheet has some things -- just some
10 things for you to think about because, if you come back and
11 you're put on the jury, you're gonna be staying for that
12 week, week and a half, for that period of time. So, that
13 gives you some ideas of things you might need to bring with
14 you to be prepared to stay.

15 My order concerning your behavior concerning this case
16 will continue until you're either seated on the jury or
17 we've released you.

18 THE WITNESS: Okay.

19 THE COURT: Do you understand that?

20 THE WITNESS: Yes, sir.

21 THE COURT: Are you willing to do that?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Now, I will tell you though
24 that you can speak to family, or employers, or employees, or
25 anybody to let them know that you may be busy for a little

Individual Juror Qualification

1 while.

2 THE WITNESS: Yeah.

3 THE COURT: Don't discuss this case or what it's about
4 because that, again, would violate my order, but you can
5 indicate that you may be seated on a jury, and you may have
6 to be gone while the trial is going on, and you may have to
7 work out some things. I understand that.

8 Okay. So, when you're called back -- and, again, this
9 process may take a few more days before we're finished. I
10 don't know exactly when it will be ended, but we'll be
11 contacting you through the Clerk's Office and letting you
12 know what you need to do next.

13 THE WITNESS: Okay.

14 THE COURT: But, in the mean time, my order still
15 stands.

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. They'll check you out and you're
18 free to go.

19 THE WITNESS: Thank you.

20 THE COURT: Thank you for coming today.

21 (WHEREUPON, the following takes place outside the
22 presence of the juror.)

23 THE COURT: All right. The Court's gonna take about a
24 five to ten minute break.

25 Court's in recess.

Individual Juror Qualification

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

2 THE COURT: All right. Mr. Barnette, is the State
3 ready?

4 SOLICITOR BARNETTE: State's ready, Your Honor.

5 THE COURT: All right. And I assume the defense is
6 ready---

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: ---cause you were ready earlier?

9 MR. MCGUIRE: That's right.

10 THE COURT: And we're gonna ask for Vicki Smith.

11 (WHEREUPON, the following takes place within the
12 presence of the juror.)

13 VICKI SMITH, having been previously
14 sworn, testified as follows:

15 EXAMINATION

16 BY THE COURT:

17 Q Ms. Smith, have a seat for me.

18 A (Witness complies.)

19 Q You may want to turn your chair so that you can kind of
20 face me because you'll be talking to me for the first part
21 of this and then we'll let the lawyers ask some questions of
22 you.

23 okay?

24 A Okay.

25 Q First of all, I want to thank you for your cooperation.

Individual Juror Qualification

1 I know this is probably none like anything you've ever been
2 involved in as far as me changing the times and doing all
3 the things we're doing, making you wait, and I apologize,
4 but sometimes that's the nature of the beast up here, and
5 we're just trying to do the best we can. But, again, sorry
6 we've had to do that to create that inconvenience---

7 A I understand.

8 Q ---for you.

9 We're gonna be asking some questions of you today, and
10 I'm gonna tell you that there's no right or wrong answers.
11 There's no wrong answers. There's only your answers and we
12 want your honest answers to the questions.

13 Now earlier, you were here Monday, you took an oath to
14 tell the truth to the Court and you remember doing that?

15 A Yes, sir.

16 Q I want you to understand that oath still applies to
17 your communications with the Court.

18 Do you realize that?

19 A Yes, sir.

20 Q You accept that fact?

21 A I do.

22 Q Okay. Now, ma'am, we're here to gather some, some
23 general information. We're not here to try to change your
24 mind on anything. We're really more here trying to find out
25 some things about you.

Individual Juror Qualification

1 The last time I saw you in the, in the courtroom across
2 the, the way over there, I gave some instructions as to how
3 you should behave while you're away from the courthouse as
4 it relates to this case, and, among the things I told you,
5 was not to discuss the case. Don't gather any information
6 on your own. Not to listen or read media reports, listen to
7 or watch those, and don't let anybody talk to you about it
8 or you talk to anyone.

9 Do you remember those instructions?

10 A I do, yes, sir.

11 Q Have you been able to follow them thus far?

12 A I have.

13 Q All right. Now, ma'am, is -- have you been exposed to
14 anything that, that would cause you to either form or
15 express an opinion about anything involved in this case thus
16 far?

17 A No, sir.

18 Q Now, have you ever participated in any type of
19 discussion, whether it be personal or over the Internet, in
20 which the issue of the death penalty would of been
21 discussed?

22 A I have discussed it, yes, sir.

23 Q And can you tell me in what, what setting that might of
24 been?

25 A Um.

Individual Juror Qualification

1 Q Was it casual conversation or---

2 A Casual.

3 Q ---something formal or---

4 A Casual with family.

5 Q Casual conversation.

6 Family members, things like that?

7 A Or co-workers.

8 Q I understand.

9 Okay. And that's probably true for a lot of people.

10 Okay. Have you ever been -- though been involved in

11 that issue so much that you would of gotten involved in

12 political activities such as writing letters to

13 representatives or demonstrating or something like that?

14 Have you ever been involved in the death penalty issue
15 to that extent?

16 A I did write a letter to an out-of-state Attorney
17 General.

18 Q Uh-huh. (Affirmative).

19 A I think it was New York. It concerned the death of a
20 state trooper.

21 Q Uh-huh. (Affirmative).

22 A And it was involving the death penalty.

23 Q Well, that case involved the death penalty or were you
24 urging a position on that?

25 A The case involved the death penalty.

Individual Juror Qualification

1 Q Okay. So, you were writing about the case?

2 A Yes, sir.

3 Q Were you urging any particular punishment or were you
4 just writing about the case?

5 A Um.

6 Q I'm trying to get some idea of the nature of the
7 letter.

8 A Yes, sir.

9 Q I don't want to know all the details, but would it,
10 would it have been one where you were urging them to do
11 something in particular?

12 A Yes, sir.

13 Q Okay.

14 A I was urging the death penalty.

15 Q You were urging the death penalty in that case?

16 A Yes, sir.

17 Q How long ago was that?

18 A It's been many years ago. I --.

19 Q Well, about---

20 A Probably ten I would say.

21 Q More than ten years.

22 Okay. Well, I'm of the age everything seems a lot
23 closer than it really is.

24 A Me too.

25 Q Okay. All right. So, recently you've not taken any

Individual Juror Qualification

1 position on that with anyone?

2 A No, sir.

3 Q Would the fact that you had written that letter, would
4 that, in anyway, affect your ability to be fair and
5 impartial in this particular case?

6 A No, sir.

7 Q Now, there was a list of people back in the jury room
8 that I asked you to look at and go over.

9 Did you do that for me?

10 A Yes, sir, I did.

11 Q About three, three different sheets of paper, a lot of
12 names. Those are people who have been identified to me as
13 possible witnesses in the case. I don't know if they'll
14 testify or not, but we'll assume that they all are.

15 As to the people whose names are on that list, have you
16 ever been related by marriage or are you related by blood to
17 anyone whose name was on that list?

18 A No, sir.

19 Q Have you ever had any kind of social, close social,
20 personal, or business relationship with any of the people on
21 that list?

22 A Yes, sir.

23 Q And can you tell me who that might be?

24 A Kathy Pearson who works at the DMV.

25 Q Uh-huh. (Affirmative).

Individual Juror Qualification

1 A A working relationship with her.

2 Q Okay.

3 A I think I counted about ten deputies --

4 Q Okay.

5 A -- that I know through working with them.

6 Q Well, I think I saw -- remember when you stood up in
7 there, you said you might be a security guard at the
8 hospital.

9 Is that what I remember you saying?

10 A Yes, sir.

11 Q So, does your business bring you into contact with a
12 good many deputies and things like that?

13 A Actually my previous.

14 Q What you did before?

15 What did you do before?

16 A State trooper.

17 Q Oh, you're a retired, retired state trooper?

18 A Yes, sir.

19 Q Okay. I understand.

20 Now, let me ask you this.

21 If any of those people that you knew on the list, let's
22 assume they did testify in the case, let's assume that you
23 were a juror in the jury, would the fact that you know them
24 in some capacity or some, some degree, would that affect
25 your ability though to be fair and impartial to both sides

Individual Juror Qualification

1 of the case?

2 A I have a lot of respect for them.

3 Q Yes, ma'am.

4 A But I don't think it would affect the way I judge the
5 case or it might --.

6 Q Okay. Let me ask you, let me ask you the question in a
7 different way cause I'm sure this will come up.

8 well, would the fact that they are police officers,
9 would that cause you to give their testimony greater
10 credibility than the testimony of any other witness or would
11 you weigh them the same, by the same standards?

12 A I would probably give them more credibility.

13 Q You would be willing to give them more credibility?

14 A Yes, sir.

15 Q All right. Now, ma'am, is that because you know them
16 personally or because of their position?

17 A I know some of them personally.

18 Q Okay. Ma'am, I'm gonna ask you to step back into the
19 jury room for just a moment. Thank you.

20 (WHEREUPON, the following takes place outside the
21 presence of the juror.)

22 THE COURT: All right. I've not decided whether I
23 would qualify or disqualify her. Obviously that's a, that's
24 an issue that is of some concern to the Court. I'll be glad
25 to hear from you on that at this time if you wish to take a

Individual Juror Qualification

1 position or I'll be glad to go forward with my inquiry if
2 you'd like me to do that.

3 MR. MCGUIRE: Judge, we---

4 THE COURT: I don't know if you take the position that
5 that answer's fatal and you want to hear me on that or if
6 you want to have me continue to interview her and get her
7 views on other matters.

8 MR. MCGUIRE: We would move to strike her at this
9 point, that that would be a fatal error. We have some
10 issues with regard to -- they're gonna be some facts in
11 dispute, and credibility of the officers will be important.

12 THE COURT: State.

13 SOLICITOR BARNETTE: I disagree with Mr. McGuire on the
14 facts being disputed. I don't think there's gonna be hardly
15 any facts in dispute in the guilt phase. However, I think
16 the law is clear that if she takes a police officer's word
17 over a regular witness' word, it's gonna be fatal.

18 THE COURT: I think, I think it may be fatal as well.
19 So, I'm gonna excuse her and find her not to be qualified.

20 Bring her back in please.

21 (WHEREUPON, the following takes place within the
22 presence of the juror.)

23 THE COURT: Ms. Smith, have a seat please.

24 (Witness complies.)

25 THE COURT: Ms. Smith, what we're in the process of

Individual Juror Qualification

1 doing is qualifying people to move on in the jury selection
2 process. I appreciate your honesty and your answers today,
3 and I'm in a situation where, of course -- and I understand
4 exactly why you said what you said, but you've indicated
5 that you might give a police officer's word greater
6 credibility than any other witnesses, and that would be a
7 situation where you might be weighing the, the evidence in
8 an unequal fashion.

9 So, I'm gonna find that you're not qualified to proceed
10 and I'm gonna release you from any further responsibility.
11 I appreciate your, your attention though to your duties and
12 your willingness to help us out.

13 THE WITNESS: All right. Thank you.

14 THE COURT: See the bailiff. They'll excuse you.

15 THE WITNESS: All right.

16 THE COURT: Thank you very much.

17 (WHEREUPON, the following takes place outside the
18 presence of the juror.)

19 THE COURT: I'd asked the clerk to have six people
20 available and we've gone through six. We've gone through it
21 pretty quick this afternoon. So, we'll start at nine
22 o'clock in the morning.

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: We're in recess till then.

25

Individual Juror Qualification

(WHEREUPON, Court was in recess for the evening.)

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Individual Juror Qualification

1 Thursday, March 6th, 2014

2

3 THE COURT: All right. State ready to proceed?

4 SOLICITOR BARNETTE: State's ready, Your Honor.

5 THE COURT: Defense ready?

6 MR. MCGUIRE: Your Honor, if I can, if I can just put
7 one thing on the record just briefly.

8 THE COURT: Yes, sir.

9 MR. MCGUIRE: If I could approach?

10 THE COURT: Sure.

11 MR. MCGUIRE: Yesterday Your Honor quoted from the case
12 of United States versus Johnson, 366 F Supp 2d 822, and we
13 pulled the case and read through it. And while the language
14 that the Court quoted is certainly contained in the case,
15 the ultimate conclusion of the case -- of the Court rather
16 is that what I refer to as case specific questions are, in
17 fact, appropriate, and if the Court would turn to Page 20.

18 THE COURT: well, I've been allowing you to ask case
19 specific questions. You, you've been putting -- you've been
20 asking jurors about situations where it involves a child
21 murder and I have not stopped you from asking those
22 questions. But what I was saying is that it needs to be
23 tempered by a balancing so that the jury is aware that
24 there's other evidence available. That's what I've been
25 requiring.

Individual Juror Qualification

1 MR. MCGUIRE: Yes, sir, but the Court's also indicated
2 that it's placing less value on the responses.

3 THE COURT: Well, that's up to me and I'm -- I do that
4 on a case-by-case basis depending on the juror, what the
5 responses are. I'm required, as I understand it under the
6 Longworth case, to review the entire voir dire and make a
7 decision based on everything. Not any particular response
8 to any particular question.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: That's what I've been trying to do.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: So, to tell me that I'm deciding it based
13 on one response or how I weigh a response, that's up to me.

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: I have indicated that if you were to ask a
16 question where you simply asked about one aggravating
17 circumstance in a vacuum, without giving the juror the
18 information that other information would be provided at that
19 hearing -- and I'm going by our statute. The statute
20 requires that the, the Court receive both aggravating
21 evidence and mitigating evidence, and then it says that the
22 Court will, will instruct the jury to consider those things.
23 The statute says that they've -- they are instructed to do
24 that.

25 MR. MCGUIRE: I agree.

Individual Juror Qualification

1 THE COURT: So, that's what I'm trying to follow is the
2 statute --

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: -- that they -- that you don't -- a juror's
5 not called upon to decide a case based on one aggravating
6 circumstance ever in this state.

7 MR. MCGUIRE: I agree, and obviously our position is
8 that there's---

9 THE COURT: That doesn't happen.

10 MR. MCGUIRE: ---if there's that one -- if it's case
11 specific to a child case---

12 THE COURT: I've been letting you ask about a child.
13 I've not stopped you from asking that question, have I?

14 MR. MCGUIRE: Sometimes.

15 THE COURT: Maybe I'm missing something here.

16 MR. MCGUIRE: Well---

17 THE COURT: I've not allowed you to simply say if
18 that's the only factor, would you always do this. I'm not
19 gonna let you go there because that is not what a juror is
20 faced with in this State. Maybe I'm -- you know, I read the
21 statute and it says that the Court will receive aggravating
22 evidence and mitigating evidence --

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: -- and it goes on to say the Court will
25 instruct, will instruct the jury to consider both.

Individual Juror Qualification

1 MR. MCGUIRE: Yes, sir, I just wanted to make sure I'm
2 not afoul of the Court's ruling.

3 THE COURT: well, again, I've -- I have not stopped you
4 from asking about a situation where it involved a child
5 murder, have I?

6 MR. MCGUIRE: I, I think, yes, in some cases, yes.

7 THE COURT: No, sir, I think you've asked those
8 questions. I've just said you can't simply ask it in the
9 fashion where that's the only thing the juror's called upon
10 to consider --

11 MR. MCGUIRE: Yes, I think you---

12 THE COURT: -- cause that's not what happens.

13 MR. MCGUIRE: Oh, I agree and I think in, in sometimes
14 we would break the process down into one question being the
15 starting point of, you know, if you're the one factor---

16 THE COURT: And when I said I would consider the
17 questions with less -- give them less weight --

18 MR. MCGUIRE: Yes, sir.

19 THE COURT: -- it's when you ask it in such a fashion
20 that it is in a vacuum, that the juror is not given the
21 alternative that there is other information that would be
22 available besides that one bit of information.

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: That's when I'll give it less weight.

25 MR. MCGUIRE: And --.

Individual Juror Qualification

1 THE COURT: So, so, don't try to tell me what weight
2 I'm giving the things, and it doesn't -- again, it's on a
3 juror by juror basis. I listen to the way they talk, how
4 they talk, their demeanor. There's a lot of factors that a,
5 a Court would consider and I'm to consider, according to, to
6 the cases, all of the voir dire. Not just one specific
7 issue.

8 MR. MCGUIRE: Yes, sir.

9 THE COURT: Okay, sir. So, that's what I'm trying to
10 do is follow the cases in that regard.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: I don't want you to try to stake the judge
13 out.

14 MR. MCGUIRE: Well, if I could do that that would be
15 great.

16 THE COURT: Well, I'm not gonna let you do that.

17 MR. MCGUIRE: I don't think I have the talent to do
18 that.

19 THE COURT: All right. But I'll be happy to read the
20 case again. I think it does have the language in it that I
21 quoted.

22 MR. MCGUIRE: Oh, it certainly does. It's just that
23 the Court ultimately comes to the conclusion that they find
24 the case specific questions are not only appropriate but
25 necessary to impanel a jury.

Individual Juror Qualification

1 THE COURT: I understand that and I'm letting you
2 ask---

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: ---questions that are case specific. But
5 I'm requiring it be done in a situation where the juror's
6 made aware that there would be other information available,
7 which the statute in this state requires.

8 MR. MCGUIRE: Yes, sir, and if I could, if I could make
9 a request of the Court and that would be---

10 THE COURT: Yes, sir.

11 MR. MCGUIRE: ---that, that I think it's more effective
12 for us if we do it in a, in a two-point -- a two part
13 process where we do ask them about the aggravating factor
14 and we don't discuss mitigation at that, that moment in
15 time, but then we follow up.

16 THE COURT: Well, again, that's when I will do my
17 weighing.

18 MR. MCGUIRE: I understand. I understand. And knowing
19 that, I'm just saying, I'm just saying that---

20 THE COURT: However you want to ask your questions.

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: I'm not telling you how to ask your
23 questions.

24 MR. MCGUIRE: Thank you.

25 THE COURT: I have, I have the right though to weigh

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1 the responses and consider all of the voir dire --

2 MR. MCGUIRE: Of course.

3 THE COURT: -- all of the responses because if we get
4 to the point where you're questioning, they've already
5 responded to me that they can consider both sides.

6 MR. MCGUIRE: Sure.

7 THE COURT: So, I'm, I'm, I'm trying to consider all of
8 the voir dire, which I'm suppose to do.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: All right. And there were other cases that
11 I've considered as well besides that one. I indicated that
12 yesterday, and I've got a list of things that I've looked
13 at---

14 MR. MCGUIRE: Yes, sir.

15 THE COURT: ---besides that case.

16 MR. MCGUIRE: Yes, sir.

17 THE COURT: You know, South Carolina doesn't have a
18 case specific on this that I found.

19 Do you know of one?

20 MR. MCGUIRE: No, sir, the only thing that I can find
21 is Longworth and Davis, which, which---

22 THE COURT: which it's kind of dicta. It's not really
23 the holding.

24 MR. MCGUIRE: Oh, absolutely, you're right.

25 THE COURT: So, I've looked, I've looked at them. You

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1 know, South Carolina really hasn't made a pronouncement on
2 how far they would let you go in staking out a juror. So
3 --.

4 MR. MCGUIRE: Maybe this case will---

5 THE COURT: Well, who knows. That's what's we do these
6 for.

7 All right. But if you know of one, tell me.

8 MR. MCGUIRE: Oh, no, sir.

9 THE COURT: Okay.

10 MR. MCGUIRE: Longworth and Davis is as close as it
11 gets.

12 THE COURT: Okay. Thank you.

13 MR. MCGUIRE: Yes, sir.

14 THE COURT: Now, are we ready to proceed with Andrea
15 Dendy?

16 MR. MCGUIRE: Yes, sir.

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: All right. Let's bring Ms. Dendy in.

19 (WHEREUPON, the following takes place within the
20 presence of the juror.)

21 ANDREA DENDY, having been previously
22 sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q All right. Your name, I believe, is Andrea Dendy, is

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1 that right?

2 A Yes, sir.

3 Q Now, Ms. Dendy, I'm gonna be talking to you first, and
4 because of the way this set up is here, I -- you might want
5 to turn your chair just a little bit so you and I can see
6 each other.

7 A (Witness complies.)

8 Q Okay. All right. First of all, I want to thank you
9 very much for your cooperation thus far. I know we've been
10 kind of starting and stopping and we've given you times and
11 changed times, and I appreciate your cooperation so far.
12 Okay. We do thank you for that.

13 Now, I want to tell you that I'm gonna go over some
14 matters with you at this time. When I finish, I'll let the
15 attorneys also go over some things with you. So, this is
16 our opportunity to talk to you about things that pertain
17 generally to these cases and also some things that pertain
18 to this case.

19 Do you understand what we're doing right now?

20 A Yes, sir.

21 Q And I'm gonna tell you there's not any wrong -- right
22 or wrong answers to any questions that I'm gonna ask you or
23 that the attorneys are gonna ask you. There's only your
24 answers and we want you to be honest and truthful about the
25 answers you give us.

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1 Now, on Monday, it seems like a long time ago, I guess
2 it was a long time ago, you took an oath to tell the truth
3 to the Court.

4 Do you remember that?

5 A Yes, sir.

6 Q All right. So, you're still under that oath now. That
7 oath applies to what you tell me now.

8 Do you under -- do you acknowledge that you are under
9 oath?

10 A Yes, sir.

11 Q Okay. Now, since we last talked, which was on Monday,
12 I gave you some instructions then and I -- about how you
13 were to proceed in this case, and I told not to read or
14 watch any media reports, don't listen to any, don't talk to
15 anyone about the case, don't allow anyone to talk to you
16 about the case, and if anybody had contacted you to let us
17 know.

18 So, my question now is has you -- have you been able to
19 follow those directions so far?

20 A Yes, sir.

21 Q Now, has anyone tried to contact you about this case?

22 A No, sir.

23 Q Now, have you ever participated in or been involved in
24 any discussions, whether it be on the Internet or in a group
25 setting or anything like that, where the issue of the death

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1 penalty was discussed?

2 A No, sir.

3 Q Have you ever been involved in any political activities
4 such as a demonstration or letter writing to representatives
5 or any type of political activity involving the issue of the
6 death penalty?

7 A No, sir.

8 Q Now, are you the kind of person who could set aside
9 things that you might have heard outside of a courtroom, and
10 I'm not talking about anything in particular now, if
11 anything in general that might pertain to this case, could
12 you set that information aside and then decide the case
13 based on what you hear and see in the courtroom during the
14 trial?

15 A Yes, sir.

16 Q You could do that?

17 A Yes, sir.

18 Q Now, I gave -- there was a list back in the jury room,
19 long list of people's names. About three pages I'm told is
20 what it ended up being.

21 Okay. Now, did you look over that list?

22 A Yes, sir.

23 Q Was there anybody on that list or a name that you
24 recognized as somebody you knew?

25 A No, sir.

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1 Q Was there anybody on there that you had ever been
2 related to by blood or marriage?

3 A No, sir.

4 Q And have you ever had any kind of business or social
5 relationship with anyone who's on there?

6 A No, sir.

7 Q Okay. Those are people who are identified as possible
8 witnesses and we're just trying to find out if you have any
9 connection with any of the witnesses, and, if so, what that
10 might be.

11 Now, I'm going to get into a series of questions that
12 will be a little more personal. It's gonna get into some
13 things maybe about your opinions and how you think and that
14 sort of thing about, about matters that would maybe pertain
15 to this case, and I would hope that you're a person who is
16 secure enough in your ideas and your thinking that if we
17 asked you about those things you would not feel threatened
18 by that, is that correct?

19 A Yes, sir.

20 Q So, this won't bother you or frighten you in any
21 manner?

22 A No, sir.

23 Q You know, the seat you're sitting in sometimes is the
24 hot seat here. That's the witness chair. And I don't want
25 you to feel that -- ill at ease. So, if you have any

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1 problems or difficulties during this, let you know. We'll
2 be -- try to make you be, be -- try to make you comfortable
3 in this process.

4 A Yes, sir.

5 Q All right. Now, we're gonna be talking to you told --
6 as I told you, about a good many things that pertain to this
7 case, and I want to touch on one thing to begin with.

8 I mentioned, on Monday, how this case would go and I'll
9 just go over that with you again briefly.

10 In this case, the defendant has been charged with two
11 offenses. This case will be tried in this fashion. In
12 other words, we will try, first of all, a hearing or a trial
13 on the question of the defendant's guilt or innocence of
14 those two charges.

15 Now, if the defendant were to be found not guilty of
16 the charges, that would be the end of the case. If the
17 defendant, however, is found guilty of the offense of
18 murder, then we would hold another hearing, but we use the
19 same jury, same jury would be sitting on both cases, and
20 that second hearing would be to determine the appropriate
21 penalty that might be involved for a conviction on murder.
22 So, it's what's called the sentencing or penalty phase of
23 the trial that we would go into.

24 Now, that's -- talking about those issues that are
25 involved in that second hearing is kind of putting the cart

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1 before the horse because we don't know if we're ever gonna
2 get there for sure. It's up to the jury to decide the
3 issues, and we -- if, again, if -- there's a possibility
4 that hearing would never be held. But because the same jury
5 hears both, we have to talk about those issues in that
6 second trial or second hearing now if we're gonna talk to
7 you about it at all because, once the case starts, we're not
8 gonna be doing this process again. So, this is the only
9 time or the only opportunity that I or the lawyers will have
10 to talk to you about either of those hearings. Either the
11 guilt hearing or the penalty hearing.

12 Do you understand why we're doing it the way we're
13 doing it?

14 A Yes, sir.

15 Q I will tell you that every defendant, including this
16 defendant, is, is presumed innocent of the charges that have
17 been filed and the fact that we're talking about the penalty
18 hearing today, as part of what we talk about, is no
19 reflection on him or his case. It's simply the only time we
20 can talk about this.

21 Do you understand what I'm saying?

22 A Yes, sir.

23 Q Okay. Now, I'm going to go over some things with you,
24 first of all, that would apply to criminal cases generally.
25 If you were -- if you had been brought in here and you were

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1 serving on the jury, and let's say someone was here charged
2 with an offense like shoplifting or larceny, having taken
3 something that didn't belong to them, something like that,
4 and you were sitting on a jury, these questions will be
5 pertaining to that kind of situation. They don't really
6 necessarily pretend -- pertain to this case, but they do in
7 that this is a criminal case and that would be a criminal
8 case.

9 Do you understand what I'm saying?

10 A Yes, sir.

11 Q All right. Now, first of all, if you were a juror in
12 any criminal case, would you be the kind of person who would
13 be willing to listen to the law as instructed to you by the
14 judge?

15 A Yes, sir.

16 Q Would you be willing to take the law as given to you by
17 the judge and then apply it to the facts as the jury
18 determined the facts in reaching a verdict in the case?

19 A Yeah.

20 Q Now, would that be true even if, when you were
21 listening to the judge tell you the law, that, as you
22 listened to that law being given, that there might be
23 something in there that you didn't necessarily agree with
24 that, that didn't sit well with you, or something like that?

25 So, if you heard the judge and he gave you the law and

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1 there was something in there that you didn't agree with,
2 would you still be able to take the law as the judge gave it
3 to you and apply it to the facts in the case in reaching a
4 verdict in the case?

5 A Yes, sir.

6 Q Okay. Now, there's a few concepts in the law that I
7 want to go over with you and be sure that we have an
8 understanding on these, and you understand how this, how the
9 process works in our country. The first is, I mentioned
10 earlier that, that, that Mr. Blackwell, and every criminal
11 defendant, is presumed to be innocent of the charge for
12 which an indictment has been issued.

13 Do you understand that concept?

14 A Yes, sir.

15 Q And because the, the defendant is presumed to be
16 innocent of the charge for which the indictment is issued,
17 the, the defendant is never required to prove himself
18 innocent in a charge. In other words, there is a
19 presumption. We presume they're innocent. So, they don't
20 have to prove innocence. There's nothing for them to prove.
21 So, there's no burden of proof on a defendant in a criminal
22 case. They're not required to prove anything.

23 Do you understand that concept?

24 A Yes, sir.

25 Q Now, on the other hand, our law requires that the

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1 State, the person bringing the charges, has a duty to prove
2 the charges by proof beyond a reasonable doubt. So, the
3 State is the only party in a criminal case that has a burden
4 of proof.

5 Do you understand that concept?

6 A Yes, sir.

7 Q Now, I would take it then that you would understand and
8 believe that someone who is been accused of a crime, that
9 may of been arrested, and may have -- there may have been an
10 indictment issued by a Grand Jury, even though those three
11 things have occurred, I think that it would be your belief
12 that that does not necessarily mean or automatically mean
13 that that defendant's guilty of the crime.

14 Is that true?

15 You understand that.

16 A Uh-huh. (Affirmative).

17 Q Okay. Now, if you were serving on a jury, and if you
18 had listened to the evidence in a case, and you were back in
19 the jury room considering that evidence, if you found that
20 the State had not proven the allegations in the charge, the
21 indictment, beyond a reasonable doubt, if you find that they
22 did not reach their level of proof, could you be a juror who
23 could sign a verdict of not guilty on that defendant?

24 A Yes, because they don't have any proof.

25 Q Okay. So, you understand they have to prove it?

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1 A Yes.

2 Q Okay. Now, by the same token, if the State did present
3 enough proof to establish that the defendant had committed
4 the crime beyond a reasonable doubt, are you the kind of
5 person who could sign a verdict finding the defendant guilty
6 of a crime?

7 A Yes.

8 Q So, you could go either way depending on the proof,
9 either guilty or not guilty, is that correct?

10 A Yes, sir.

11 Q All right. Now I'm going to talk to you a little bit
12 about the penalty that's involved in this case, and, again,
13 I've told you we're putting the cart in front of the horse
14 by doing that, but this is the only time I can talk to you
15 about this situation.

16 All right. I'm going to, to explain to you again that,
17 in normal criminal cases, the jury determines the guilt or
18 innocence of the defendant, they find them either guilty or
19 not guilty, and if the jury finds a defendant guilty, then
20 it's up to the judge to determine the appropriate sentence
21 and the judge levies or hands out or gives the sentence in
22 most criminal cases.

23 Do you understand that?

24 A Yes, sir.

25 Q Now, in this case, this is the exception to that rule

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1 where the State is seeking the penalty of the death penalty
2 or is requesting that, in this case, we have, again, a trial
3 in which guilt or innocence of the charges is decided.

4 Again, if the defendant is found not guilty, that's the
5 end of the case. If the defendant is found guilty of the
6 crime of murder, and that's the only crime for which the
7 death penalty can be given in this state, then we would move
8 onto the second phase of the, of the trial. The same jury
9 that heard the first phase would be hearing the second
10 phase. So, the same jury comes back and starts a whole new
11 hearing, and, and, at that time, the question is the
12 appropriate penalty.

13 Now, there's two choices during that, that hearing.
14 The choices are life imprisonment without the possibility of
15 parole and the death penalty. So, those are the two choices
16 in that second hearing.

17 You understand that?

18 A Uh-huh. (Affirmative).

19 Q Now, the statute that sets up that, that hearing
20 provides that there would be evidence presented in that
21 hearing. The evidence was -- is described in -- is two
22 different types of evidence. There is what, what is called
23 aggravating circumstances and mitigating circumstances.

24 Now, those are kind of words that you don't use
25 everyday. So, I want to be sure we got an understanding

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1 what that means. Aggravating factors or aggravating
2 circumstances are factors that, that can be shown to a jury
3 that might tend to make the jury give a higher level
4 penalty. In other words, things that make -- we've
5 already -- he's already been found guilty of a murder. So,
6 there's been a murder occurred, and there will be a
7 punishment, one of the two. But these are factors that
8 might make a juror vote for the higher level of punishment.

9 Mitigating circumstances, and the jury's required to
10 take that evidence as well during that hearing, are factors
11 that might make the events seem less deserving of a higher
12 level of penalty. In other words, might mitigate or, or
13 lower the jury's decision as far as what penalties to
14 render.

15 So, do you understand that, that -- both types of
16 evidence would be presented during that trial and it may be
17 evidence that you haven't heard before because it wasn't
18 necessary to establish guilt. It may be evidence that only
19 goes to the penalty or the level of penalty that ought to be
20 given.

21 So, you understand it's different evidence?

22 A Yes, sir.

23 Q And it would be evidence on two different sides,
24 aggravating and mitigating.

25 Do you understand that?

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1 A Uh-huh. (Affirmative).

2 Q Now, I want you, in your mind, to put yourself in a
3 position. I'm gonna, I guess, imagine where you are.

4 Let's say that you were selected as a juror in a case
5 where the State is seeking the death penalty, and you have
6 completed the first half of the trial or first part of the
7 trial, and that is the question of guilt or innocence that's
8 been tried. The jury has issued a verdict, your jury, the
9 jury that you're on, and the verdict on the murder charge
10 was guilty. So, in this situation, that same jury that
11 you're on is coming back to the courtroom to decide the
12 question of the appropriate penalty.

13 So, do you understand the position, the position I've
14 asked you to put yourself in?

15 A Uh-huh. (Affirmative).

16 Q Let's say you're coming down the hallway getting ready
17 to walk into the courtroom.

18 Now, back in the jury room there was another sheet of
19 paper, and on that sheet of paper there was three
20 descriptions of jurors.

21 Do you remember that paper?

22 A Uh-huh. (Affirmative).

23 Q Did you read it?

24 A Yes, sir.

25 Q All right. Now, I'm gonna go back, kind of go back

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1 over those three types of jurors that we're talking about so
2 that I'm sure that you and I have an understanding about
3 those three types of jurors.

4 The first type of juror that I've described on that
5 paper is a juror who, before that juror ever walked through
6 that door to come back into the courtroom for that second
7 hearing, that juror has already made up his or her mind.
8 That juror is a person who believes that the only
9 appropriate punishment for a murder is the death penalty.
10 That means, on every occasion and every time, that juror
11 will vote for the death penalty. Regardless of what goes on
12 in the hearing, that juror's gonna vote for the death
13 penalty.

14 The second juror that I described is a juror who
15 already has made up his or her mind as well. That juror has
16 decided and believes that it is never appropriate for the
17 state to take the life of someone in response to a crime no
18 matter what the crime is, no matter how serious or lack of
19 seriousness it was. In other words, that juror believes the
20 only appropriate penalty is life without parole. So, that
21 juror is always going to vote for life without parole.

22 The third juror that's walking into the courtroom, that
23 juror has not yet made up his or her mind as to how that
24 juror's gonna vote on the penalty. That juror is going to
25 have to listen to the evidence, both aggravating factors and

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1 mitigating factors, and weigh the evidence, weigh that
2 evidence, and come up with a decision as to what that juror
3 thinks is the most appropriate penalty given the factors
4 presented during that hearing.

5 Now, as to those three jurors, which one of those
6 jurors would most likely describe how you would be as you
7 came back into the courtroom for that hearing?

8 A I would be the one that I want proof. I need to know
9 what's going on before I make my decision.

10 Q Okay. So, you'd be like number three, the one that
11 would have to listen to the evidence before making a
12 decision as to whether it would be appropriate to be death
13 or life without parole?

14 A Yes.

15 Q All right. Now, one other thing I need to go over with
16 you.

17 I have signed a order sequestering the jury in this
18 case. What that means is that once the jury -- once we
19 arrive at a jury -- what we're doing now is just qualifying
20 a list of people, and from that, that list, the jury will be
21 selected. So, this, this is not jury selection today. This
22 is just preparing the list of people from which a jury will
23 be selected.

24 Do you understand that?

25 A Yes, sir.

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1 Q But let's say that you were on the list and you got
2 selected and you were impaneled with a jury. My
3 sequestration order requires that those jurors, once the
4 trial starts, will be housed in a motel. They'll be
5 provided meals. They'll be provided transportation. Now,
6 you will be able to communicate with family, but it will be
7 monitored, that sort of thing, but you would be put in a
8 situation where you wouldn't be affected by outside
9 influences until the trial has ended.

10 Now, I expect the trial will last a little over a week,
11 maybe a week and a half, that's my best estimate, but I've
12 been wrong before. Sometimes they end sooner. Sometimes
13 they take longer. But I -- that's my best estimate and I'll
14 ask you, once we start the trial of that case, we, we run
15 the case continuously. In other words, we don't stop for
16 weekends. We go until the case is over. So, it wouldn't be
17 that we have -- you'd have days doing nothing. We, we would
18 get the case moving along. So, that's the situation you'd
19 be in if you ended up on the jury.

20 Now, my question to you about that is that if you were
21 put in that situation, if you were in that group and you
22 were being kept separate for that period of time, would that
23 fact present any type of danger to either your health or
24 your well being to be in that situation?

25 A No, sir.

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1 Q Would that situation endanger the health or well being
2 of anyone who might be dependent upon you?

3 A No, sir.

4 Q All right. So, I'm going to now ask the attorneys to
5 ask some questions of you, and I'll ask you to respond to
6 them just like you have with me, and we can proceed at this
7 time.

8 Mr. McGuire.

9 MR. MCGUIRE: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. MCGUIRE:

12 Q Good morning.

13 A Good morning.

14 Q My name's Bill, Bill McGuire. I'm one of the lawyers
15 in the case. This is my opportunity to ask you some
16 questions, and did I, did I -- is your name pronounced -- is
17 it Ms. Dendy?

18 A Yes, sir.

19 Q Okay. Do you think the death penalty is used too much,
20 not enough, about right?

21 Do you have any thoughts about that?

22 A About right.

23 Q About right?

24 A Uh-huh. (Affirmative).

25 Q Have you ever followed any death penalty cases in the

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1 news or heard about any?

2 A No, sir.

3 Q Okay. You don't remember the last one that may of been
4 in the headlines?

5 A No, sir.

6 Q Okay. Do you -- when the judge says life without
7 parole, do you know that, in South Carolina, life without
8 parole really is life without, a person would go to prison
9 and never get out?

10 A Yes, sir.

11 Q Okay. We use to have parole. We don't anymore.

12 Do you think life without parole is a severe penalty?

13 A Yes, sir, I wouldn't consider the death penalty for him
14 cause, like he was saying, I need proof. You have to have
15 proof.

16 Q You have to have proof---

17 A Yeah.

18 Q ---that they got the right guy. He's absolutely
19 guilty.

20 In that situation, what I'm gonna do is make sure we're
21 absolutely on the same page. Sometimes lawyers are terrible
22 communicators, and we're asking you your thoughts about the
23 death penalty in murder cases, but we haven't defined murder
24 yet. I'm gonna do that for you now.

25 Okay. And, in South Carolina, the definition of murder

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1 is the intentional, deliberate killing of another person
2 with malice aforethought, and malice is described as
3 hostility, ill will, hatred towards somebody with an intent
4 to harm them under circumstances that would indicate an evil
5 intent. So, it's not, it's not an accident. It's not
6 self-defense. It's an intentional choosing to kill an
7 innocent person.

8 In that situation, what are your thoughts about the
9 death penalty?

10 A I agree, but I don't because I mean like we was saying,
11 you don't know what that person was going on with that
12 person or, you know, it's just hard to tell. I got to know
13 proof, what's going on with them, what's wrong, you know.

14 Q Okay. So, so, you would want to know what's going on
15 with the person who committed the crime?

16 A (Witness nods affirmatively.)

17 Q Kind of what brought them to that point?

18 A (Witness nods affirmatively.)

19 Q Would their background, like how they grew up, things
20 that they've done to other people, things that have been
21 done to them, would things like that be important?

22 A Yeah.

23 Q Okay. Okay. And what I want to -- the capital cases
24 where, you know, a case where the State's asking for the
25 death penalty, they're completely different from every other

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1 criminal trial in South Carolina. We usually have an idea,
2 from watching TV or the news, kind of how a regular trial
3 works. You know, you -- 12 jurors, they all have to agree,
4 they all have to be unanimous, and they have to find
5 somebody guilty, and they all have to agree to all the
6 facts -- on the facts that makes somebody guilty.

7 well, the penalty phase in a capital case is actually
8 different. It's a very individual process.

9 Did you know that?

10 A Uh-huh. (Affirmative).

11 Q Okay. And that each individual juror is essentially
12 asked to vote their conscience.

13 Did you know that?

14 A Uh-huh. (Affirmative).

15 Q That it's not -- there's not a requirement for a
16 majority every time.

17 The -- did you know that?

18 A Yeah.

19 Q Okay. The pamphlet that was handed out to -- in the
20 big room when everybody came indicated that if there's
21 disagreement -- if the jurors were in disagreement with the
22 result of a case that it would have to be tried over. In a
23 capital case, that's not true. You can have different
24 jurors have different positions and they can end the day in
25 disagreement. The judge would take the case, he would

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1 sentence, and the case would be over.

2 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
3 this point. I don't think that's the proper statement of
4 the law.

5 THE COURT: Well, in fact, let me clarify I think.
6 That would be true in the penalty phase.

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: Not necessarily in the guilt phase.

9 MR. MCGUIRE: Oh, let me make sure we're absolutely
10 clear about that.

11 THE COURT: There's two phases to the trial.

12 MR. MCGUIRE: Sure. Absolutely.

13 Let me make sure that I don't mislead you. If I, if I
14 was to mislead you, it would obviously be an accident. The
15 judge's right.

16 In the guilt phase, that's just like a completely
17 regular trial, and if the jury disagreed if somebody was
18 guilty or not guilty, the case would have to be tried again.

19 Okay. So -- and I'm talking about the penalty phase,
20 and what that would mean is like the jury, like the judge
21 said in his preliminary comments, the jury would of already
22 convicted somebody. They would of all agreed, all 12,
23 beyond a reasonable doubt, got the right person, they
24 committed the crime.

25 Okay. And then, like the judge said, there would be a

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1 separate hearing, a whole new trial to determine punishment.
2 That's the only thing that would be on the table would be
3 punishment, life and death, and in that situation, if the
4 jury was in disagreement about punishment, some people
5 wanted life, some people wanted death, in that case, if they
6 couldn't agree, the judge would take the case and he would
7 sentence.

8 Okay. I just -- I tell you that cause I don't want you
9 to think that if that actually happened that the jury failed
10 in its mission in anyway.

11 Is that a, is that a -- can you -- is that a principle
12 of law that you can agree with?

13 A Yes.

14 Q Okay. And the way that works is there doesn't have to
15 be agreement as to reasons why jurors would vote for the
16 life penalty, and I'm just gonna give you an example so I'm
17 crystal clear in that. I'm gonna ask you if that's, if
18 that's a principle of law you could follow.

19 For instance, one juror here could say I saw something
20 in the person's background, how he grew up, that resonated
21 with me, I'm gonna vote for life for that, and all the other
22 jurors could say well, we didn't really see that, and the
23 person can say well, I saw it, I'm voting for life for that
24 reason, and that's okay.

25 Is that a principle of law you could respect?

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1 A (Witness nods negatively.)

2 Q You can't respect?

3 A No.

4 Q You would have to -- you would want everybody to agree?

5 A I wouldn't, but I want to know more about him. Just
6 because what he's did, you know, background don't mean it's
7 the same now. Like people changes from then, you know.

8 Q Oh, I see.

9 A It might not be nothing serious again. But now, it's
10 --.

11 Q Okay. And what I'm doing is I'm just, by way of
12 example, I'm just trying to illustrate how everybody could
13 have their own different position, and, in fact, the judge
14 would charge the jury that in any individual juror can vote
15 for the life penalty for any reason, no reason, or mercy
16 alone.

17 Did you know that was the law in South Carolina?

18 A (Witness nods affirmatively.)

19 Q Okay. And you could see how somebody over here could
20 say I'm just gonna vote for mercy. The death penalty
21 doesn't, for this person, doesn't sit with me, and I'm just
22 gonna bestow mercy and they can have that individual reason,
23 and no one else has to agree with them, but that can be
24 their own individual conscience, and they can have that
25 right to vote just based on that.

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1 could you respect their position?

2 A Yes, but, like he say, everybody got to come to one
3 conclusion.

4 Q well, actually that's, that's exactly why I'm talking
5 to you. Everybody doesn't have to come to one conclusion,
6 and the way the law described is is that the decision---

7 THE COURT: well, that, again, is true of the penalty
8 phase.

9 MR. MCGUIRE: Oh, sure.

10 And this isn't the penalty phase.

11 THE COURT: Not true in the guilt phase. So, I don't
12 want to confuse -- ma'am, let me see if I can explain this
13 to you.

14 There's two different trials as I told you. There is a
15 situation where you determine whether he's guilty or not
16 guilty of the crime that's charged, and that is what we call
17 the guilt phase, and, of course, it could be guilty or not
18 guilty. But in that hearing, for a verdict to be reached,
19 guilty or not guilty, it must be unanimous. All jurors must
20 agree.

21 THE WITNESS: Uh-huh. (Affirmative).

22 THE COURT: I think what this attorney is talking about
23 is the second phase of the trial, which is the penalty or
24 sentencing phase, and during that phase of the trial,
25 unanimity is not necessarily required. A result can be

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1 reached without unanimity.

2 You understand the difference?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. Good.

5 Go ahead, Mr. McGuire.

6 MR. MCGUIRE: Thank you.

7 Okay. And I'm sorry if I'm not being very clear, and I
8 appreciate the judge clearing that up. He's exactly right.

9 In essence, what that means is, if you take it to its
10 sort of ultimate conclusion, just one person could say I
11 have my reasons to vote for life or maybe even no reason
12 cause the judge could say you could vote for life for no
13 reason. One person, if they say my individual conscience
14 tells me to vote for life, all 11 other people can vote the
15 death penalty. But as long as one person says I'm gonna
16 vote for life, then the judge would take -- could take the
17 case and sentence and the case could end.

18 Is that okay with you?

19 A No.

20 Q It's not okay and why is that?

21 A Cause it's one person against everybody else.

22 Q Okay. You would want a majority?

23 A Yes.

24 Q I mean not---

25 A I would want---

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1 Q I'm sorry. Not a majority.

2 You would want all 12 to agree?

3 A Yeah, I would come to agreement in what I feel is
4 right.

5 Q Okay. Let me ask you this.

6 If your position was that the appropriate punishment
7 was life, and 11 other people wanted death, the death
8 penalty, would you, if it would harm your conscience to
9 change your position, would you stay on life and not change
10 your vote?

11 A No.

12 Q No.

13 You would go with the majority?

14 You would go with the other 11?

15 A (Witness nods affirmatively.)

16 MR. MCGUIRE: Okay. If I could have just one second,
17 judge.

18 (Pause.)

19 Q Yeah.

20 Again, the way the, the Court would -- the law
21 describes this decision making process in the penalty phase
22 is that it's an individual moral judgment. It's not a
23 question of fact. Science can't -- science or math or
24 anything like that can't come up with the answer. Just
25 what, what's inside a human being, and it's kind of like a

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1 very personal moral choice like whether to bring a child
2 into the world or what religion to raise your child maybe.
3 Very deeply moral questions.

4 And if you, in your opinion, reached the point where,
5 for you, your individual moral judgment was that the
6 defendant should receive a life sentence and 11 other people
7 wanted death, would you vote your conscience or would you go
8 with the 11 other people?

9 A I would do what I feel.

10 Q What you feel?

11 A Yeah.

12 Q Okay. So, you would vote your conscience, whatever was
13 right for you, without regard to the other people?

14 A Yeah.

15 Q If your heart said I'm gonna go this way and 11 other
16 people wanted to go the other way, you would say my moral
17 conscience says I'm doing this and I'm doing it?

18 A It's not what my heart feels. It's what I know. It's
19 what I think.

20 Q Okay. What you know to be right?

21 A Yeah.

22 Q Okay. And you would want people to respect your
23 position?

24 A (Witness nods affirmatively.)

25 Q And---

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1 A Just that's what I think. That's what was given to me,
2 the proof, and that's --.

3 Q Okay. It sounds like, it sounds like, based on
4 considering everything, evidence from the State, evidence
5 from the defense, that it's going to tell you what your
6 conscience is gonna, is gonna be?

7 A (Witness nods affirmatively.)

8 Q And is that you -- have to say yes or no.

9 A Yes.

10 Q You can't nod cause she had to take it down --

11 A Yes.

12 Q -- and she can't say nod.

13 So, so, what I'm hearing, and tell me if I'm wrong,
14 that your conscience, your position, your individual moral
15 judgment, you're gonna get there by listening to everything?

16 A Yes.

17 Q Everything from the State, everything from the defense?

18 A Yes.

19 Q And once you get to your -- where your conscience is
20 firm on what's right for you, as a, as a, as who you are in
21 the penalty phase, you can vote your conscience even if
22 other people disagree with you?

23 A Yes.

24 Q And you can respect -- you can respect their position?

25 A Yes.