

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:
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(NOTEBOOK); DEFENDANT’S EXHIBIT # 10 (BOOK)

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1 Q But you don't have -- you wouldn't change your position
2 just to please them?

3 A Yes.

4 Q Okay. That's all I have. Thank you, ma'am.

5 THE COURT: Mr. Barnette, you're gonna question?

6 SOLICITOR BARNETTE: Yes, sir.

7 May it please the Court, Your Honor?

8 THE COURT: Yes, sir, you may proceed.

9 EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Good morning, Ms. Dendy.

12 How are you?

13 A Morning.

14 Q I'm Barry Barnette. I'll be representing the State
15 along with Derrick Bulsa and Russell Ghent in this case.

16 Let me apologize ahead of time. I have to ask you some
17 questions that we normally wouldn't ask people and normally
18 ask you to answer these questions.

19 I was gonna ask you real quick, the -- what's your view
20 on the death penalty?

21 I know that question was asked, but what, what do you
22 believe about the death penalty?

23 How do you feel about it?

24 A The death penalty I think is killing someone for a
25 murder or anything like that, but for -- I really don't---

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1 Q I apologize. Okay. I'm sorry.

2 A That's not always an option because, once again, you
3 got to proof (sic). You know, you got to figure out what's
4 going on -- whether the death penalty is not really -- I
5 haven't really heard anything about the death penalty. So,
6 I don't really agree with the death penalty.

7 Q You don't agree with the death penalty, ma'am?

8 A Not always, no.

9 Q Okay. Why do you not---

10 THE COURT: Wait a second.

11 Your answer was not always?

12 THE WITNESS: (Witness nods affirmatively.)

13 Q Thank you.

14 why do you not agree with the death penalty, ma'am, if
15 I can ask?

16 A Because if it's murder, then I need to know why, what
17 caused it, or anything like that. We don't really know why
18 the murder, why did he murder anybody. We don't know.
19 Until I can get all the facts and what happened.

20 Q Uh-huh. (Affirmative).

21 what facts would you need for the death penalty?

22 Maybe that's a better question for you.

23 A The gun he had, who was there, you know, just evidence
24 saying -- fingerprints, anything that can show me that he
25 did it.

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1 Q Okay. In order for you to -- I know you said you was
2 against the death penalty, but not always.

3 A I'm not always. Not always.

4 Q Right.

5 what instance would you not be for the death penalty?

6 A If he's not guilty, and they, they might not have
7 enough evidence, and they still give them the death penalty.
8 It's, it's just like this, if he did murder her or whoever,
9 then you got to have proof. If you don't have proof, and
10 they still give him the death penalty, then pretty much he's
11 just died for nothing. If he did commit the crime, I feel
12 like sometimes it's life. Let them -- give them time to
13 think about what he did.

14 Q Uh-huh. (Affirmative).

15 A That's kind of it.

16 Q I know and I hate to ask you these questions. I mean
17 we're, we're just trying to figure out where you stand from
18 that standpoint and things like that.

19 But what factors would lead you to the death penalty?

20 A All the evidence or whatever, whatever the Court brings
21 me. I want to know what happened, why did it happen, what
22 caused this, you know.

23 Q I know we -- Mr. McGuire was talking to you about the
24 court procedures and so forth from there, and just to make
25 one -- sure about one thing. He mentioned to you -- let's

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1 say one person didn't agree with the other 11, and then it
2 would go to the judge, you realize the judge would have to
3 give a life sentence. That he doesn't have a right to give
4 the death. Only person -- the only group that can give the
5 death penalty is the jury.

6 Do you understand that --

7 A Yes, sir.

8 Q -- from there?

9 But obviously you'd want to talk to the other jurors?

10 A Yeah.

11 Q And if you couldn't agree with the other jurors, what
12 would you do then?

13 A If I couldn't?

14 Q Yes, ma'am.

15 A I would still go with what I think.

16 Q Okay.

17 A Because everybody don't agree with everything.

18 Q Sure. I understand that from there.

19 If, at the end of the case, if -- and the
20 aggravating -- one of the aggravating circumstances in this
21 case is the death of a child from there.

22 How do you feel about that?

23 A Well, if -- let's see. I can put myself in this
24 situation cause I have a child. It will be -- yeah, it will
25 be more serious then.

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1 Q Right.

2 I understand and there would be mitigating
3 circumstances also with that.

4 A Yes.

5 Q And I know you've already told Mr. McGuire you'd look
6 at the background obviously of the defendant too.

7 A Yes.

8 Q Taking those two things together, the aggravating
9 circumstance, like I said, one of them is the death of a
10 child, and they got mitigating circumstances. They bring in
11 the background and everything from there. You said you
12 could relate to the aggravator.

13 In what way?

14 I mean the death of a child?

15 A Cause I have a child of my own. So, if it was me in
16 that situation, yeah, it would, it would be rough. No child
17 don't deserve that at all.

18 Q Uh-huh. (Affirmative).

19 I understand.

20 A It's not the child's fault.

21 Q How old is your child if I can ask?

22 A She's six.

23 Q Six, okay, from there.

24 And one thing I wanted to ask you, and I don't know if
25 this is a, I just noticed, and I just want to make sure I

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1 was clear on a comment. You said the police officers need
2 to take more charge in your questionnaire. I just didn't
3 know what that meant from that standpoint.

4 A Oh, no, like investigation, you know, just more
5 evidence. Just evidence.

6 Q So, the evidence is very important to you --

7 A Yes.

8 Q -- from that standpoint it would be, and, obviously,
9 more evidence, the more sure you'd be about your decision --

10 A Yes, sir.

11 Q -- is what you're telling us --

12 A Yes.

13 Q -- from that standpoint?

14 A Yes.

15 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
16 please.

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q One thing about proof and everything. We may -- the
20 state don't have to prove motive, why it happened. They
21 just have to prove -- bring evidence beyond a reasonable
22 doubt proving that a murder did occur.

23 Do you understand that?

24 A Uh-huh. (Affirmative).

25 Q I know some states, I know when we watch TV and

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1 everything, they talk about motive, things like that. In
2 South Carolina, the judge will give you this charge, we
3 don't have to prove motive.

4 Now, motive may be part of it. We may show that to
5 you, but it doesn't need to be proven beyond a reasonable
6 doubt. We just have to prove that the, that the murder
7 occurred with malice aforethought and forethought can be
8 that quick. It don't have to be planned out or anything.
9 It could happen that second.

10 Do you understand that?

11 A Yes, sir.

12 Q So, it's really -- if he had, if the person that did
13 this had that in their heart, malice, to do something to
14 somebody, and it just, and it just be for a split second,
15 that's murder.

16 A Yes, sir.

17 Q Do you understand that?

18 A Yes.

19 Q Okay. Thank you, ma'am, for your time. Thank you for
20 answering my questions.

21 THE COURT: Anything further?

22 MR. MCGUIRE: Nothing further.

23 THE COURT: Ms. Dendy, I'm gonna ask you to step back
24 into the jury room for just a moment.

25 THE WITNESS: Yes, sir.

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1 THE COURT: We'll have you back shortly, and don't
2 discuss what's been going on with the folks back there.

3 okay?

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you, ma'am.

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

8 THE COURT: All right. Defense's position.

9 MR. MCGUIRE: She's qualified.

10 THE COURT: State.

11 SOLICITOR BARNETTE: I agree, Your Honor.

12 THE COURT: All right. The Court would find her
13 qualified.

14 Bring Ms. Dendy back please.

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

17 THE COURT: Ms. Dendy, I've determined that you are
18 qualified to continue in the process. Now, what that means
19 is your name will go on a list along with other jurors that
20 we find to be qualified, and, from that list, a jury will be
21 selected.

22 You understand that?

23 THE WITNESS: Yes, sir.

24 THE COURT: And we will be in touch with you once we
25 finish going through this qualification process. Now, I

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1 expect the qualification process may take maybe into next
2 week, Monday or Tuesday, something like that. So, we'll be
3 calling you, once we get to that point, to give you further
4 instructions on what you should do.

5 Do you understand that?

6 THE WITNESS: Yes, sir.

7 THE COURT: I'm gonna ask the clerk to give you a sheet
8 of paper. Now, on that paper it has the information about
9 the Clerk's Office, and it also has some information that
10 you should consider if you were to come back and ended up on
11 the jury because, as I told you, if you end up on the jury,
12 you'll be staying with us until the trial is been ended.
13 So, if you had -- if you take a medication or something, you
14 need to bring at least a week or more supply with you,
15 clothing that you think you would, you would need.

16 Now, you'll be housed, if you were selected on the
17 jury, at the Marriott Hotel. Be a nice location. Laundry
18 services are available. So, you don't have to bring 20
19 changes of clothes. You can bring whatever you're
20 comfortable with and we'll be glad to help you with that in
21 that regard.

22 Now, I told you so far, and my concern -- my
23 instruction about your behavior continues. In other words,
24 you're to follow my instructions until we either tell you
25 you're on the jury or you're released from jury service.

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1 Do you understand that?

2 THE WITNESS: Yes, sir.

3 THE COURT: So, one of those two things will happen
4 once we get to the end, and -- but you should continue not
5 to listen to, watch, or read media reports. Don't discuss
6 this case with anyone. Don't allow anyone to discuss it
7 with you, and if anybody tries to contact you about this
8 case, let the Clerk's Office know if that happens.

9 So, do you understand our instructions?

10 THE WITNESS: Yes, sir.

11 THE COURT: Now, there's an exception to those rules
12 because, obviously, if you are selected on the jury, and we
13 keep you for a week or a little better, you may need to tell
14 your people you work with, or your family, what's going on.
15 So, it's okay to tell them you're involved in a case, and if
16 you are on the jury, you'll be gone for a little while, and
17 make arrangements for that -- so, you can do that, but don't
18 discuss what the case is about. Don't discuss any of the
19 issues of the case with them. Just make sure so that they
20 understand you'll be busy and you're gonna be unavailable
21 for a little while.

22 So, do you understand my instructions?

23 THE WITNESS: Yes, sir.

24 THE COURT: Can you follow those instructions?

25 THE WITNESS: Yes, sir.

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1 THE COURT: All right. The bailiffs will check you out
2 now. You'll be hearing from the Clerk's Office once we get
3 to the point we do that, and it may not be until sometime
4 next week.

5 THE WITNESS: Okay.

6 THE COURT: Thank you very much.

7 THE WITNESS: Thank you.

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

10 THE COURT: All right. The next name, that's a tough
11 one, Diegocelina Arangure. Maybe I got that right. We'll
12 see.

13 Bring her in please.

14 DIEGOCELINA ARANGURE, having been
15 previously sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Come in please, ma'am. Have a seat please.

19 A (Witness complies.)

20 Q All right. I'm gonna make a, make an effort at your
21 name.

22 Diegocelina?

23 A Yes.

24 Q Arangure?

25 A Arangure.

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1 Q Arangure?

2 A Yes, sir.

3 Q A little more G---

4 A Yes, sir.

5 Q ---on that.

6 okay. All right. Ma'am, first of all, I want to thank
7 you for your cooperation with us thus far. I know this is a
8 little bit of a different situation. You look like you're a
9 little nervous this morning --

10 A Yes.

11 Q -- and I want to caution you there's no need for you to
12 be nervous. There's nothing to be nervous about here.

13 That seat right there where you're sitting, I tease
14 about it being a red seat. It -- sometimes it's a hot seat
15 in here, but today it's not. It is not the hot seat
16 because, I will tell you, we're going to ask some questions.
17 I'll start off asking the questions and then I'll allow the
18 attorneys to ask some questions of you.

19 A okay.

20 Q There are no right or wrong answers to any question we
21 ask. Only your honest answers. Whatever you feel, whatever
22 you believe is what we're asking about. So, there's
23 nothing -- you're not gonna get anything right or wrong here
24 today.

25 So, I'll remind you you were put under oath on Monday

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1 to tell the truth to the Court.

2 Do you remember that?

3 A Yes, sir.

4 Q Do you understand that you're still under oath under
5 that same oath for this discussion today?

6 You understand that?

7 A Yes, sir.

8 Q You acknowledge that that's true?

9 A Yes, sir.

10 Q Okay. Now, don't be nervous. Everything's gonna be
11 all right.

12 okay?

13 A (Witness nods affirmatively.)

14 Q Now, I'm going to go over some things with you and ask
15 some questions. If, at anytime during my questioning, you
16 need a drink of water, you need to -- whatever you need to
17 do let us know. We want you to be comfortable during this
18 process.

19 okay?

20 A Okay.

21 Q Okay. You might want to turn a little bit so I can see
22 you better because they didn't design this courtroom for
23 this process. We've got this big bar here in front of us,
24 and I want to be sure I can see you as I'm talking to you.

25 Okay. Now, I gave you some instructions when you left

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1 the courthouse on Monday. I gave everybody instructions and
2 I told the jury, at that time, not to be gathering any
3 information on your own. Not watching, listening to, or
4 reading any reports in the media. Don't discuss the case
5 with anyone, and don't allow anyone to discuss it with you.

6 Do you remember those instructions?

7 A Yes, sir.

8 Q Now, ma'am, have you been able to follow those
9 instructions thus far?

10 A Yes, sir.

11 Q Okay. Now -- and in that regard, are you the kind of
12 person that you could put aside anything that you may have
13 heard in -- outside of the courtroom that might, in anyway,
14 pertain to this case, and I'm not talking about anything
15 specifically?

16 Could you put that information aside, if you were on
17 the jury, and decide the case strictly based upon the law
18 and the evidence that you hear in the courtroom during the
19 trial?

20 A Yes, sir.

21 Q You could do that?

22 A Yes, sir.

23 Q Okay. Now, have you ever participated in or been
24 involved in any discussions that might have had as its
25 subject the issue of the death penalty?

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1 A No, sir.

2 Q Have you ever been involved in any political activities
3 such as writing letters to a representative or a congressman
4 or a demonstration, any political activities that would have
5 had as its subject the death penalty?

6 A No, sir.

7 Q Now, back in the jury room there was a list of people
8 three pages long, three sheets of paper.

9 Did you read those names that were on those papers?

10 A Yes, sir.

11 Q Did you recognize any of those people as people that
12 you either knew or you were related to?

13 A Maybe if I got a ticket before, I can't see the last
14 name, but it's nobody that I know---

15 Q Okay.

16 A ---and BMB because my sister worked before and we know
17 some ladies over there, but that's it.

18 Q Okay. So, you didn't recognize anybody in particular?

19 A No.

20 Q Well, if any of those -- if anybody you may of had some
21 contact with, let's say that somebody did somehow appear --
22 those are people who might be witnesses in the case. That's
23 the reason their names are on that list. It doesn't mean
24 they for sure are going to testify. It just means that they
25 might testify.

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1 Now, if, if somebody you had an acquaintance with, if
2 they did appear and testify, would you still be able though
3 to render a fair and a just hearing to both the State and
4 the defense in the case?

5 A Yes, sir.

6 Q Okay. Now, I'm going to get into some questions that
7 you -- that some people might consider to be personal. It's
8 about things that you think and believe and know and that
9 sort of thing. I don't want you to feel threatened by those
10 questions. Again, there's not any right or wrong answers.
11 I just want to know what you think and what you, what you
12 understand about certain concepts under the law and certain
13 situations.

14 Do you understand that?

15 A Yes, sir.

16 Q Okay. And if you don't understand my questions when I
17 ask them, and they're sometimes confusing, let me know, I'll
18 be glad to try to go back over those things with you. I do
19 want to point out one thing to you.

20 This is a case in which the State has requested that
21 the Court consider the penalty of the death penalty, and, in
22 that kind of case, the trial will be divided into two
23 different hearings. The first hearing, the first trial will
24 be with a jury and the issue would be deciding the guilt or
25 innocence of the defendant of the charges that have been

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1 brought.

2 Now, if the defendant's found not guilty, that's the
3 end of the case. If the defendant, however, is found guilty
4 of murder, then the question comes up as to what the
5 appropriate penalty should be for that guilty murder, murder
6 verdict, and the same jury then would hear the second part
7 of the trial. So, the jury would decide guilt -- guilty or
8 not guilty, and then, if guilty on murder, the same jury
9 then will take up the question of what the appropriate
10 penalty is.

11 You understand what we're doing?

12 A Yes, sir.

13 Q Okay. Now, normally we wouldn't talk about the
14 penalties that are in a case before the case ever was tried.
15 However, here we're having to go over those things because
16 the same jury will hear both hearings. So, what I'm
17 pointing out to you, the fact that we're talking about the
18 penalty phase at this point in time should not be taken as a
19 reflection against the defendant or his case. It's simply
20 the only time that we will get to talk to the jurors both
21 about the guilt part of the case and the penalty part of the
22 case. So, we've got to talk about both of them at the same
23 time.

24 So, it's not a reflection against the defendant or his
25 case. I will tell you, defendants are presumed to be

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1 innocent. This defendant is presumed to be innocent. That
2 doesn't change. The fact that we're talking about the
3 penalty is simply because this is the only time we can do
4 that.

5 Do you understand what I'm saying?

6 A Yes, sir.

7 Q So, don't hold it against him the fact we're talking
8 about penalty issues. We just don't have any other time to
9 do that.

10 Okay?

11 A Okay.

12 Q You can do that?

13 A Yes, sir.

14 Q Okay. All right. Right now I want you to imagine in,
15 in your mind that you are a juror and you're serving on, on
16 any criminal case. It doesn't have -- not, not this one.
17 Any case. For example, it could be a case where someone is
18 charged with something like shoplifting or taking something
19 that doesn't belong to them, that sort of case, and I'm
20 gonna talk to you about some principles under the law to be
21 sure you understand some principles or are aware of these
22 things.

23 First of all, if you were serving as a juror on any
24 criminal case, would you be willing to listen to the law as
25 told to you by the judge?

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1 would you be willing to do that?

2 A Yes, sir.

3 Q would you then be willing to take that law and apply it
4 to the facts that the jury decides the facts to be in
5 reaching whatever the appropriate or proper verdict is?

6 A Yes, sir.

7 Q Now, would that be true even if, when the judge was
8 charging you the law, in other words, the judge normally
9 tells the jury what the law is to be applied, if while you
10 were listening to that charge, if you heard something that
11 you didn't necessarily agree with, you, you heard something
12 in the law that maybe didn't sit well with you or something
13 like that, would you be the kind of person who could put
14 that disagreement aside and take the law as the judge gave
15 it to you and then apply it to the facts as you found the
16 facts to be?

17 A Yes, sir.

18 Q So, you could do that?

19 You could follow the judge's instructions?

20 A Yes, sir.

21 Q All right. Now, there's some concepts under the law
22 that I want to go over with you to be sure you understand,
23 and so I'm gonna kind of go through these by steps and just,
24 just follow along with me.

25 I mentioned earlier that Mr. Blackwell, and any

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1 defendant in a criminal case, under the law, is always
2 presumed to be innocent of the crime for which the charge is
3 been brought.

4 Do you understand that concept in the law?

5 A Yes, sir.

6 Q And because of the fact that a defendant is presumed to
7 be innocent, that means that a defendant, in a criminal
8 case, is never required to prove innocence. He's never
9 required to prove his innocence because he is presumed to be
10 innocent.

11 Do you understand that concept, that a defendant is
12 never required to prove his innocence or anything in a
13 criminal case?

14 A Yes, sir.

15 Q Now, the only party in a criminal case who has an
16 obligation or a duty to prove anything is the State. That's
17 the parties that brought the charges. They have filed the
18 charges and they have to prove the charges they've brought
19 and they have to prove those by proof beyond a reasonable
20 doubt.

21 So, do you understand the concept that the State, the
22 prosecuting authority, is the only authority who has a duty
23 of proof in a case, and that is proof beyond a reasonable
24 doubt?

25 Do you understand that concept?

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1 A Yes, sir.

2 Q All right. Now, if you were serving on a jury in a
3 criminal case, and this is any criminal case, if you were to
4 listen to the facts and determine the facts, listen to the
5 law as given to you by the judge, and if you determined that
6 the State has not met its burden of proof, in other words,
7 it did not prove the charges beyond a reasonable doubt, are
8 you someone who could sign a verdict that would find the
9 defendant not guilty if the State failed to meet its burden
10 of proof?

11 Do you understand the question?

12 A Yes.

13 Q Okay. So, if the State did not prove the charges,
14 could you sign a verdict saying the defendant is not guilty?

15 A If not proven?

16 Q If not proven.

17 A No.

18 Q So, you would always find the defendant guilty no
19 matter what?

20 A If they don't have the proof, it's innocent.

21 Q That's right. That's what I'm, I'm -- so, could you
22 sign a verdict that says he's innocent?

23 In other words, you're on the jury. You've got to sign
24 the verdict form, the jury has, and the State did not meet
25 it's burden of proof, that it did not prove the case, can

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1 you sign a verdict of not guilty?

2 A Not prove that its guilty?

3 Q Yes, they did not prove that he was guilty.

4 A Yeah, I would sign.

5 Q So, you would sign that saying that the person was not
6 guilty?

7 A (Witness nods affirmatively.)

8 Q You could do that?

9 A Yes, sir.

10 Q So, is it your belief then, and you correct me if I'm
11 wrong, that the fact that a person has been arrested, and
12 charged, and even indicted, if we've gone just that far,
13 that doesn't -- is it your belief that that does not
14 automatically make that person guilty?

15 They've been arrested, and charged, and indicted.

16 A Charged.

17 Q Charged.

18 In other words, the State has accused them of doing
19 something. So, they've been arrested, taken to jail.

20 A But they don't have the proof?

21 Q There's been no proof yet is that -- just because
22 they've been arrested and charged, does that automatically
23 mean that they're guilty?

24 A Yeah.

25 Q So, you think it does mean that they're guilty?

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1 A Yes.

2 Q Just because they've been arrested?

3 A Yes.

4 THE COURT: Okay. Defense wish for me to go further?

5 MR. MCGUIRE: Yeah, I think there might be some
6 confusion.

7 THE COURT: So, you want me to go back over it with
8 her?

9 MR. MCGUIRE: I'm---

10 THE COURT: I'll try one more time.

11 MR. MCGUIRE: Yes, sir.

12 Q Now, ma'am, again, I want you to be sure you
13 understand. I'm not sure you're understanding my questions.
14 So, I want to be sure you understand my questions.

15 My questions is if a person were arrested, and because
16 they were arrested, they would be charged. In other words,
17 they'd be accused of doing whatever they were arrested for,
18 and then that particular charge may of gone to a Grand Jury,
19 and the Grand Jury doesn't determine guilt or innocence.
20 They simply bring the charge to the Court. That's -- I get
21 a paper saying this person's been charged with this.

22 So, if those things -- if that's -- all that had
23 happened, does that automatically, does that mean that that
24 person has to be guilty or could that person be not guilty?

25 A Maybe not be guilty.

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1 Q Maybe not what?

2 A Maybe not be guilty.

3 Q So, they may not be guilty?

4 So, you understand that simply because someone's been
5 arrested and charged with a crime that they may not be
6 guilty?

7 You understand that?

8 A Yes, sir.

9 Q So, is it -- are you the kind of person that would
10 listen to the evidence and weigh the evidence before
11 deciding whether someone is guilty or not guilty?

12 A Yes, sir.

13 Q So, you understand, until you reach that point in
14 deciding, the person is not guilty under the law?

15 Do you understand that?

16 A Yes, sir.

17 Q All right. I'm gonna talk to you for just a minute
18 about the death penalty that's been requested in this case,
19 and, again, I will caution you, the reason we're talking
20 about this is this is the only time I, I or the lawyers will
21 get to talk to you about your position on certain things.

22 Do you understand that, ma'am?

23 A Yes, sir.

24 Q All right. Now, this case is different than the normal
25 case. In a normal case a charge is brought, the case is

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1 tried, the jury decides, they write a verdict, either guilty
2 or not guilty. Now, if the person is found guilty, then the
3 judge normally sets the penalty. He would impose a sentence
4 for the guilty verdict by the jury.

5 Do you understand that's normally how the process
6 works?

7 A I don't understand everything now.

8 Can you repeat it?

9 Q Sure. I'll be glad to repeat it.

10 Do you understand that, in a normal trial, a person is
11 tried by a jury. They're either found guilty or not guilty,
12 and then it would be up to the judge to issue the sentence.
13 In other words---

14 A Yes.

15 Q ---decide what the penalty or the punishment ought to
16 be.

17 Do you understand that?

18 A Yes, sir.

19 Q All right. This case is different where the State is
20 seeking the death penalty. In this case there will be a
21 trial, the first part of the trial, and that will be where
22 the jury will decide whether the person is either guilty or
23 not guilty of the crime.

24 Do you understand that?

25 A Yes, sir.

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1 Q If he's -- if the defendant is found not guilty, that's
2 the end of the trial. If the -- however, if the defendant
3 is found guilty of the crime of murder, so we're at the
4 point where the jury has determined that the person is
5 guilty of murder, then a second trial or a second hearing is
6 held in front of the same jury, and they hear additional and
7 new evidence concerning what the appropriate penalty ought
8 to be.

9 Now, the two choices a jury would have in that case
10 would be either sentence someone to life in prison without
11 ever being paroled or the death penalty. So, those are the
12 two choices a jury would have.

13 So, do you understand that there would be a second
14 trial if the defendant were found guilty of murder?

15 A Yes, sir.

16 Q Now, at the second trial -- and we call that sometimes
17 the sentencing phase or the punishment phase. It doesn't
18 have a formal name, but it's the second phase of that
19 particular trial. There would be evidence and perhaps new
20 evidence from the guilt phase because evidence on what the
21 appropriate penalty would be, punishment would be may be
22 different from whether or not the person did it or didn't do
23 it.

24 Do you see what I'm saying?

25 A Yes, sir.

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1 Q So, at that trial, there would be evidence of what are
2 called aggravating circumstances or mitigating
3 circumstances. Let me explain what that means so that you
4 understand.

5 The Court allows evidence of aggravating circumstances.
6 Those are things which would tend to make the crime of
7 murder to -- appear to be worse perhaps justifying a high
8 level of penalty. Mitigating factors or mitigating
9 circumstances are those kinds of things that would lessen a
10 person's culpability, responsibility for the, the event or
11 would cause a jury to give someone a lesser sentence, a
12 lower sentence. So, evidence would be presented on both
13 sides during that sentencing phase of the trial.

14 Are you understanding me so far?

15 A Yes, sir.

16 Q All right. Now, once that evidence was in, that is the
17 aggravating factors or the mitigating factors, the judge
18 then is required to instruct the jury to consider those
19 factors in recommending an appropriate sentence. The
20 choices, at that time, are either the death penalty or life
21 imprisonment without parole.

22 So, do you understand what would happen at that second
23 phase of the trial?

24 A Yes, sir.

25 Q Okay. Now, I want you to imagine for just a second

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1 that you're in a certain position. Okay. Let's say that
2 you had been selected as a member of a jury that was hearing
3 a case where the State was seeking the death penalty.

4 Can you put yourself in that position?

5 I'm not talking about necessarily this case, but any
6 case.

7 Can you imagine being on that jury?

8 A Well, if I choose I wouldn't be there.

9 Q Oh, I understand that. If you had to choose, you
10 wouldn't be there. I know you're not here voluntarily. But
11 I'm asking you to imagine this, pretend that you're in -- on
12 such a jury just for purposes of my questions.

13 Can you do that for me?

14 Can you pretend that you're on such a jury?

15 A Yes, I guess.

16 Q Okay. Well, if you can't do that, then I can't ask my
17 questions because my questions have to do with you being on
18 that jury.

19 So, can you imagine that you would be on such a jury?

20 A Yes.

21 Q Okay. Now -- and let's say that that jury has heard
22 the first part of the trial, and in the first part of the
23 trial the jury has found the defendant guilty of murder.
24 So, that part of the trial has been completed and there's
25 been a guilty verdict rendered on the question of murder.

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1 Do you understand where we are?

2 A Yes, sir.

3 Q That jury that you're on is coming down the hall of the
4 courthouse walking back into the courtroom, and you're about
5 to begin the second part of that trial. That is where
6 you'll hear evidence concerning what the appropriate penalty
7 ought to be. That evidence will be either things that make
8 it worse or things that lessen the degree of culpability.

9 So, do you understand where you are right now?

10 You're on that jury. You're coming down the hall
11 getting ready to come back into the courtroom to start the
12 penalty or sentencing phase of the trial.

13 Do you understand where we are?

14 A Yes, sir.

15 Q Okay. All right. Now, back in the jury room there was
16 a piece of paper.

17 Do you remember that piece of paper?

18 A Yes, sir.

19 Q Did you read it?

20 A Yes, sir.

21 Q And on that piece of paper there were three different
22 jurors described.

23 Do you remember those three different jurors?

24 A Yes, sir.

25 Q All right. I'm gonna go back over with them you

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1 verbally right now so I'm sure we've got an understanding of
2 what jurors we're talking about.

3 The first juror on that piece of paper that was
4 described is a juror who, before they ever walked back into
5 the courtroom, that juror has already made up his or her
6 mind. That juror has decided that the only appropriate
7 punishment for someone who is found guilty of a murder is
8 the death penalty, and, in every case, that juror is always
9 gonna vote for the death penalty regardless of what's said
10 during that hearing.

11 You understand that person?

12 A Yes, sir.

13 Q The second juror I described has also already made up
14 his or her mind about the issue. That juror doesn't believe
15 that the State is ever justified in taking someone's life
16 in, in response to the commission of a crime. Regardless of
17 what the crime is, regardless of how serious it is, that
18 juror will never vote for the death penalty because that
19 juror believes the only appropriate penalty is life
20 imprisonment without the possibility of a parole.

21 Do you understand those two people---

22 A Yes, sir.

23 Q ---who I'm describing?

24 Now, I described a third juror. That juror has not yet
25 made up his or her mind as to how that person feels about

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1 the case. That juror, excuse me, would have to listen to
2 the evidence, would have to listen to the aggravating
3 factors as well as the mitigating factors and make a
4 decision based on how those factors were weighed in that
5 person's mind. So, that person hasn't made up his or her
6 mind. That person could vote either for the death penalty
7 or for life imprisonment depending on the evidence.

8 Do you understand the three people I've described?

9 A Yes, sir.

10 Q Now, you're also in that group walking back into the
11 courtroom for that hearing.

12 Which one of those three jurors would best describe how
13 you would feel at that time?

14 A I think the second one.

15 Q The second one.

16 So, you're someone who would always vote for life
17 imprisonment, imprisonment?

18 You could never vote for the death penalty?

19 A Yes, sir.

20 THE COURT: All right. Now, wish to ask any questions?

21 MR. MCGUIRE: Just very briefly, judge.

22 THE COURT: Yes.

23 EXAMINATION

24 BY MR. MCGUIRE:

25 Q Good morning, ma'am.

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1 A Good morning.

2 Q My name is Bill, Bill McGuire. I'm one of the lawyers
3 in the case.

4 A Yes, sir.

5 Q What I want, want to ask you a little bit about is why
6 you would always vote for a life penalty and you would not
7 consider the, the death penalty.

8 Can you tell me why?

9 A I think only God can take lifes (sic)?

10 Q So, it's based on that human beings shouldn't be able
11 to have the right to take another human being's life?

12 A Yes, sir.

13 Q Okay. It's not based on something like maybe you've
14 heard about people who got the death penalty that shouldn't
15 get the death penalty because you'd have a front row seat.
16 You'd be in charge. I just want to make sure that if, if
17 you being one of the jurors that could make up your mind,
18 could that overcome your opposition against the death
19 penalty?

20 A Well, I think that the laws can do that, but even if
21 sometime you think that that could be, but I would not vote
22 for the death penalty.

23 Q Okay. Even if the judge told you that the law -- if
24 you were, if you were on a jury, let's pretend -- let's go
25 back to pretending that you're on a jury. Let's pretend

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1 you're in one of the seats.

2 If the judge said could you follow the law, and
3 consider the mitigating circumstances and the aggravating
4 circumstances, and consider a life penalty or a death
5 penalty, could you follow the law?

6 A I think I can do, but inside heart, I might sign the
7 paper, but it's not what really what I, I believe.

8 MR. MCGUIRE: I don't have anything further.

9 THE WITNESS: Thank you.

10 MR. MCGUIRE: Thank you very much, ma'am.

11 THE COURT: State wish to ask any questions?

12 SOLICITOR BARNETTE: No, sir.

13 THE COURT: All right, ma'am. I'm gonna ask you to
14 step back into the jury room for just a moment. I'll be
15 calling you back.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you.

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

20 THE COURT: Defense position.

21 MR. MCGUIRE: While she seems like a very level headed
22 lady, she's not qualified.

23 THE COURT: State take the same position?

24 SOLICITOR BARNETTE: I agree, Your Honor.

25 THE COURT: All right. I would find her not to be

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1 qualified as well.

2 Ma'am, if you'll bring her back for just a moment.

3 (WHEREUPON, the following takes place within the
4 presence of the juror.)

5 THE COURT: Please have a seat, ma'am.

6 (Witness complies.)

7 THE COURT: Ma'am, at this point in time I'm going to
8 release you from any further responsibility in this case. I
9 want to thank you for your cooperation thus far. The
10 bailiffs will check you out and you're free to go. You're
11 no longer under my instructions or requirements.

12 You understand that, ma'am?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. You're free to go.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 And -- all right. The next juror is Bonnie Watson.
18 Bring her in.

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

21 BONNIE WATSON, having been previously
22 sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q All right. Ma'am, your name is Bonnie Watson---

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1 A Yes, sir.

2 Q ---is that right?

3 Ms. Watson, I'm gonna be talking to you first this
4 morning. A little later on the attorneys will be given an
5 opportunity to ask some questions of you. So, if you don't
6 mind, you might want to turn your seat a little bit and face
7 me --

8 A Okay.

9 Q -- because this place wasn't designed really for this.
10 It's got this bar in front of us and I have to move back,
11 but I want to be so we can, we can see each other while
12 we're talking.

13 A Okay.

14 Q I want to thank you very much for your assistance thus
15 far and your cooperation. I know this has been a little bit
16 of a different situation than any situation you've ever been
17 in before. I can appreciate that.

18 Sometimes we call the seat that you're sitting in the,
19 the witness stand, the hot seat, but it's not a hot seat
20 today. I can assure you.

21 We're gonna ask you some questions. There are no right
22 answers to the questions I'm going to ask and there aren't
23 any wrong answers. There's only your answer. We're wanting
24 to get your ideas, your opinions about some things that are
25 important and will assist us in selecting a jury in this

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1 case. We're still in the process of qualifying people to go
2 on the list from which the jury will be selected.

3 You understand what we're doing today?

4 A Yes, sir.

5 Q Now, when you left here -- and let me mention one
6 thing. I told you the only thing we're looking for are your
7 honest answers in this case. You were sworn to tell the
8 truth on Monday to the Court, and I'll remind you of that
9 fact, and make you aware that that oath applies to your
10 discussions with us today.

11 Do you understand that?

12 A Yes, sir.

13 Q And do you acknowledge that you're still under oath?

14 A Yes, sir.

15 Q All right. And I gave you some instructions when you
16 left about your, what you should do, what you shouldn't do,
17 about things like not watching or listening to media
18 reports, not reading anything like that, not discussing the
19 case with anyone, not attempting to gather any information
20 on your own. If anybody tried to contact you, to let us
21 know about those things. So, there were some instructions.

22 Do you remember those?

23 A Yes, sir.

24 Q Have you been able to follow those---

25 A I have.

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1 Q ---since that time?

2 A I have.

3 Q All right. Now, ma'am, as I told you, I'm going to go
4 over some questions with you, and, again, I want to assure
5 you that there aren't any right or wrong answers. I just
6 want to know what you think about these things.

7 First of all, are you the kind of person or are you the
8 kind of juror who could, if you were selected to serve on
9 the jury, who could take the things that you may of heard
10 outside of the courtroom that in anyway pertain to a case
11 like this, in other words, anything that might have any
12 relationship to this case, could you take those things and
13 kind of set them aside and then decide the case based upon
14 the evidence, the testimony that's presented in the
15 courtroom and the law that's given to you in the courtroom?

16 A Yes, sir.

17 Q All right. Now, there was a list of people that was
18 back in the jury room.

19 A Uh-huh. (Affirmative).

20 Q Did you read that list?

21 A I did.

22 Q Those are people who've been identified to me as
23 possible witnesses in the case. Now, I don't know that
24 they're all gonna testify in it, but they've listed anybody
25 who might testify in the case.

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1 Now, from that list, did you recognize anyone's name on
2 there as having been somebody who is ever been related to
3 you either by marriage or blood or anyone who you may have
4 had a business, a social, or a personal relationship with?

5 A No, sir.

6 Q So, you didn't recognize anyone on there?

7 A No, sir.

8 Q Okay. Good.

9 Now, have you ever participated in any kinds of
10 discussions, either formal or informal discussions such as
11 Internet talk, chat rooms, things like that, where the
12 discussions may have centered around the death penalty?

13 A No, sir.

14 Q Have you ever been involved in any political activities
15 such as demonstrations or letter writing campaigns to
16 elected officials or telephone calls to elected officials
17 concerning that same issue?

18 A No, sir.

19 Q So, you've never been involved in any political actions
20 or discussions around the death penalty?

21 A No, sir.

22 Q All right. Now, I want to start getting into some
23 questions that pertain to legal concepts and some questions
24 that center around the case that we're involved in, and
25 before I do that, let me preface that by telling you that,

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1 to a certain extent, by doing so, we're putting the cart
2 before the horse, and let me explain to you what I mean by
3 that.

4 I mentioned, on Monday, that this particular case will
5 involve potentially two different hearings conducted by the
6 same jury, same judge, and everyone else involved, but two
7 different hearings. The first hearing that would be
8 conducted in this case is one where the Court, the judge and
9 the jury, in this case the jury, would decide either that
10 the defendant is guilty or not guilty of the crimes that
11 have been charged. So, that's what we refer to as the guilt
12 phase of the trial.

13 Now, if the defendant is found not guilty of those
14 charges, then there would be no second hearing. That would
15 be the end of the case. However, if the defendant is found
16 guilty of the charge of murder, in that case the State has
17 requested the imposition of the death penalty. So then
18 there would be a second trial conducted again by the same
19 jury that heard the first trial at which new evidence would
20 be presented, not necessarily the same evidence that had to
21 do with guilt or innocence, new evidence that would somehow
22 relate to or pertain to the question of the appropriate
23 penalty for that particular crime, and the choices, at that,
24 that hearing, would be either life imprisonment without
25 parole or the death penalty. So, the jury would be deciding

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1 that issue.

2 Now, I'm gonna be asking you some questions that deal
3 with that penalty phase of the trial, and when I say I'm
4 putting the cart before the horse, we don't know if we'll
5 ever get to that stage of the trial because the first phase
6 has not yet been held, but since we use the same jury in
7 both hearings, this is the only chance we'll get to talk to
8 potential jurors about both the questions in that first
9 phase and the questions in that second phase.

10 So, don't hold anything about the fact we're talking
11 about the penalty phase today against the defendant in this
12 case because the defendant is presumed innocent, and will
13 remain that way until the State has proved its case in that
14 first case. So, the fact that we're talking about the
15 penalty, the penalty phase should not be held against the
16 defendant today. It shouldn't be held against his case in
17 anyway. It's simply the only time that the judge and the
18 lawyers will get to talk to jurors about both phases of the
19 trial because, once we start, the jury's set. We can't then
20 go back and change that.

21 So, do you understand this is the only time we can talk
22 about any of the issues involved in both phases?

23 A Yes, sir.

24 Q So, you can appreciate that?

25 A Uh-huh. (Affirmative).

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1 Q Okay. All right. I just wanted to be sure you had
2 that understanding with me.

3 I want you to put yourself in the position of a juror
4 in a criminal case, and this is any criminal case. I'm not
5 talking about just this one, and I want to go over some
6 things that will kind of be sure you have an understanding
7 of how our system operates to a certain degree.

8 First of all, if you were a juror in any criminal case,
9 would you be willing to listen to the judge's charge
10 concerning the law in the case?

11 A Yes, sir.

12 Q And would you be willing to take that law and apply
13 that law to the facts and then -- in all cases the jury is
14 the finder of the facts.

15 would you be willing to take that law and apply it to
16 the facts as the jury finds them in reaching your verdict?

17 A Yes, sir.

18 Q Now I'm gonna take it a step further.

19 Let's say that when you were listening to the judge's
20 charge on the law, as you were listening to the judge give
21 that charge, the judge says something that maybe you don't
22 agree with or you think doesn't sound right to you.

23 would you be willing to set aside those personal
24 feelings about how the law was given to you and take the law
25 exactly as the judge gives it to you and apply it to the

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1 facts?

2 A Yes, sir.

3 Q Could you do that?

4 A Yes, sir.

5 Q Now, as I mentioned earlier, Mr. Blackwell is, is
6 presumed to be innocent, and I will tell you that that's an
7 important concept under our legal system. That is that
8 every defendant, no matter what the seriousness of the crime
9 might be, is always presumed to be innocent of the charges
10 that are brought against that defendant until such time as
11 they have been proven in a court of law to a jury.

12 Now, do you understand that a defendant is always
13 presumed to be innocent?

14 A Yes, sir.

15 Q For that reason, do you also understand, since there's
16 a presumption of innocence, that the defendant is never
17 required to prove himself innocent of a charge?

18 You understand that concept?

19 A Yes, sir.

20 Q So, for that reason, taken another step further, a
21 defendant has no burden of proof in a criminal trial. They
22 don't have to prove -- no defendant has to prove anything in
23 a criminal trial because the law presumes them to be
24 innocent.

25 Do you understand that?

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1 A Yes, sir.

2 Q Now, the only party in a criminal trial that has a
3 burden of proving something, is responsible to prove
4 something, is the State. That's the entity that's brought
5 the charge.

6 Do you understand that?

7 A Yes, sir.

8 Q And do you also understand that the State has the
9 burden of proving the charges in the indictment, that's the
10 charging document, by proof beyond a reasonable doubt?

11 Do you understand that?

12 A Yes, sir.

13 Q Now, let me ask you a question.

14 If you were a juror sitting on a jury, and you'd heard
15 the evidence and you'd heard the judge give the law, and you
16 go back into deliberations, during your deliberations you
17 come to the conclusion that the State has not met the burden
18 of proof that's required. In other words, they didn't prove
19 the charges beyond a reasonable doubt.

20 Could you then sign a verdict finding a defendant not
21 guilty?

22 A I could.

23 Q By the same token, if you found that the proof did find
24 that -- did show that the defendant had committed the crime
25 by proof beyond a reasonable doubt, are you a person who

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1 could sign a verdict of guilty?

2 A I could.

3 Q So, you're telling me then that you could find someone
4 either guilty or not guilty depending on the strength of the
5 evidence, the proof that's shown to you, and how you've
6 analyzed that evidence?

7 A Yeah.

8 Q So, you could go either way, guilty or not guilty?

9 A Yes, sir.

10 Q Now, I told you that we were gonna put the cart in
11 front of the horse, and I'm gonna do that now. I'm gonna
12 talk to you a little bit about the death penalty and how
13 this particular trial would proceed should we get to that
14 point in the trial. Again, I'm pointing out to you we may
15 not get to that point in the trial, but this is the only
16 chance I get to talk to you about it.

17 In most cases, most criminal cases, a jury makes a
18 determination as to whether the defendant is either guilty
19 or not guilty. Then the case is given back to the judge,
20 and the judge determines, if there's a guilty verdict, the
21 appropriate sentence that ought to be entered. So, in most
22 cases the judge does the sentencing.

23 The exception to that rule is where there's been an
24 alleged murder and the State is seeking the death penalty,
25 and, in that case, if a jury makes a determination of guilt

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1 on the question of murder, then the same jury comes back and
2 makes a determination concerning the appropriate penalty.
3 So, the jury is the one who considers the verdict after a
4 guilty verdict in a murder case.

5 Do you understand that that's where we are in this
6 particular case?

7 A Yes, sir.

8 Q Now, the statute that has set up how the penalty or
9 sentencing phase of the trial -- it's called a bifurcated
10 trial. That's a fancy word for it. In other words, been
11 divided into two, two segments for the -- for one trial.

12 All right. The statute that sets that particular
13 hearing up, it provides for the introduction of what are
14 called aggravating factors or circumstances and mitigating
15 factors or circumstances, and I want to be sure we have an
16 understanding of what those phrases mean because you don't
17 use those words in this context everyday.

18 The aggravating factors are -- it's a list of things in
19 the statute that might tend to make the -- there's been a
20 guilty verdict on murder. So, we know a murder has
21 occurred. Those factors might tend to make that particular
22 situation more severe or worse such that a jury might be
23 willing to give a higher or more severe sentence given those
24 factors.

25 The mitigating factors or circumstances are, are pieces

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1 of evidence, parts of evidence, or things that can be
2 brought into the case that might tend to either lessen the
3 culpability of the defendant or make a jury willing to give
4 a lower or lesser sentence. So those things might urge a
5 lower sentence. So, there's evidence on both sides of the
6 questions presented during the, the penalty or sentencing
7 side of the phrase -- of the case.

8 Do you understand that?

9 A Yes, sir.

10 Q So, you understand what I mean now by aggravating
11 circumstances or mitigating circumstances?

12 A Yes, sir.

13 Q Now, once that evidence has been presented to the jury,
14 the jury would be instructed by the Court to consider both
15 the aggravating and the mitigating circumstances in reaching
16 it's verdict as to the question of the punishment to be
17 given.

18 So, do you understand the purpose for that hearing?

19 A Yes, sir.

20 Q Do you understand now how it would be done roughly?

21 I haven't given you all the details, but that's a
22 overview of how that works.

23 A Yes, sir.

24 Q Do you understand that?

25 A Yes, sir.

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1 Q Now, I want you, for just a minute, to put yourself in
2 a situation theoretically. In other words, in your mind. I
3 want you to think that -- think about or pretend that you're
4 on a jury. You're in a case where the State is seeking the
5 death penalty. The jury has heard the first phase of the
6 trial. In other words, that trial has been finished, a
7 verdict has been rendered by the jury, and the jury has
8 found the defendant in that case guilty of the crime of
9 murder.

10 So, because the State is seeking the death penalty,
11 we're now moving to the second phase of that trial. Just,
12 in your mind, imagine that you're walking down the hallway
13 getting ready to walk back into the courtroom where that
14 sentencing or penalty phase of the trial is about to begin.

15 So, do you understand where I've put you now?

16 A Yes, sir.

17 Q Okay. Now, back on the table in the jury room there
18 was a sheet of paper. It had three different jurors
19 described on that piece of paper, and I'm going to go back
20 over those just briefly to kind of be sure we've got an
21 understanding of which -- when I talk about juror number one
22 or juror number two or juror number three who I'm talking
23 about.

24 Juror number one, as that juror is walking down the
25 hallway to walk back into the courtroom, that juror's

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1 already made up his mind before he ever walks into that
2 hearing. That juror believes that, in every case where
3 someone is found guilty of a murder, that the appropriate
4 penalty, the only penalty should be the death penalty, and,
5 therefore, that juror, every time, is going to vote for the
6 death penalty in that situation.

7 The second juror I described to you is another juror
8 who also is made up his or her mind. That juror has -- is
9 decided already that there is -- that the State is never
10 justified in taking a life in response to a crime. No
11 matter what the crime is, no matter how serious the crime
12 is, they will, in every case and in all situations, vote for
13 life imprisonment without the possibility of a parole.

14 Now, the third juror we described is a juror who, as
15 they walked down the hall and step into the courtroom,
16 doesn't know how he or she is gonna vote, hasn't made up
17 their mind one way or the other. That juror wants to listen
18 to the evidence, listen to the factors that are brought in,
19 both aggravating and mitigating factors, and make a
20 determination as to what that juror believes is the most
21 appropriate penalty based upon the evidence shown during
22 that hearing.

23 Do you understand the three different jurors---

24 A Yes, sir.

25 Q ---I've described?

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1 A Yes, sir.

2 Q Now, I also told you to imagine you're in that line
3 walking into the courtroom.

4 As you come into the courtroom, which one of those
5 three jurors described to you would most likely describe
6 your feelings as you walked in?

7 A The first juror.

8 Q The first juror.

9 So, you have a belief that the most appropriate penalty
10 for a, for a murder is always the death penalty?

11 A Yes, sir.

12 Q All right. Now, does the -- you wish to ask any
13 questions?

14 MR. MCGUIRE: No, sir.

15 THE COURT: State wish to ask any questions?

16 SOLICITOR BARNETTE: No, sir.

17 THE COURT: All right, ma'am. I'm gonna ask you to
18 step back into the jury room briefly, and then I'll be
19 calling you back shortly.

20 THE WITNESS: Okay.

21 THE COURT: Thank you.

22 (WHEREUPON, the following takes place outside the
23 presence of the juror.)

24 THE COURT: I would assume the defense position is not
25 qualified?

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1 MR. MCGUIRE: You assume correctly.

2 THE COURT: State's position, you agree?

3 SOLICITOR BULSA: We agree.

4 THE COURT: All right. Bring her in, Ms. Watson.

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

7 THE COURT: All right. Ms. Watson, at this point in
8 time I'm going to release you from any further
9 responsibility in the case. The bailiffs will be checking
10 you out. You'll be free to go, and so you no longer have
11 any responsibility in the case.

12 THE WITNESS: Okay.

13 THE COURT: All right.

14 THE WITNESS: All right. Thank you, judge.

15 THE COURT: Thank you very much.

16 (WHEREUPON, the following takes place outside the
17 presence of the juror.)

18 THE COURT: All right. We're moving along a little
19 quicker than normally. I'm gonna take a short break at this
20 time. So, we'll take about a ten minute break.

21 Court's in recess.

22 MR. MCGUIRE: Yes, sir.

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

24 THE COURT: State ready?

25 SOLICITOR BARNETTE: State's ready, Your Honor.

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1 THE COURT: Defense ready?

2 MR. MCGUIRE: Yes, sir.

3 MR. ALLEN: Your Honor?

4 THE COURT: Yes, sir, I'm sorry, Mr. Allen. Yes, sir.

5 MR. ALLEN: I'm sorry.

6 Your Honor, I would like to bring the Court's attention
7 to the fact I have received the report of Doctor
8 Schwartz-Watts---

9 THE COURT: All right.

10 MR. ALLEN: ---last night in an email pursuant to the
11 Court's instructions.

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

13 MR. ALLEN: I will pass it up to the Court.

14 THE COURT: Pass it up to my law clerk. I'll
15 consider -- take a look at it.

16 MR. ALLEN: My understanding---

17 THE COURT: Now, I'll point -- I'll ask either side if
18 there's any authority as to your respected positions, and
19 I -- my understanding of the positions is that the defense
20 is refusing to turn that over to the State, is that correct?

21 MR. ALLEN: Yes, Your Honor, and I am passing up, along
22 with that, and I've passed a copy of the case to the
23 solicitor, it's State versus Northcutt, South Carolina
24 Supreme Court case.

25 THE COURT: All right.

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1 MR. ALLEN: That was the case in which the Supreme
2 Court held, as I understand it, that it was error for the
3 trial judge to enlarge Rule 5(b), reciprocal discovery rule,
4 to require, in that particular case, to require the
5 preparation and the disclosure of a report of a defense
6 witness.

7 THE COURT: I don't think I required the report. You
8 told me one was gonna be made. So, I just told you let me
9 look at it when you have it.

10 MR. ALLEN: That is true.

11 THE COURT: All right. Okay.

12 MR. ALLEN: But the point that I guess I'm trying to
13 make is that, as the Court's well aware, we have not invoked
14 Rule 5 for discovery.

15 THE COURT: I have heard that a couple of times in this
16 case.

17 MR. ALLEN: Yes, sir.

18 THE COURT: I'm aware, I'm aware of that, yes, sir.

19 MR. ALLEN: Okay.

20 THE COURT: And so you're taking the position that case
21 would indicate that the Court can not require your
22 participation in mutual discovery?

23 MR. ALLEN: I take the position that Rule 5(b) does not
24 apply in this case, and that if there is not any other rule
25 that the, that the State's relying upon to request a report,

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1 even though it was prepared by a defense witness, that
2 disclosure of that report would be erroneous.

3 THE COURT: Oh, I understand.

4 Okay. Now, State, if you have any authority, you can
5 send it up. I'll hear from you briefly.

6 SOLICITOR BARNETTE: Yes, sir.

7 THE COURT: I didn't plan on holding a full blown
8 hearing on this right at this point in time.

9 SOLICITOR BARNETTE: I understand, Your Honor, I'll
10 make it brief.

11 THE COURT: All right.

12 SOLICITOR BARNETTE: I think we've argued this before.

13 I believe, under Rule 5, we can ask for certain things
14 under that's not -- reciprocal doesn't apply to it, and this
15 is one of the areas of expert witnesses, and I remember --
16 we put on the record -- I'm, I'm -- obviously we've seen her
17 testify so times in Court. She always does a report, and
18 that's been her position, and that's the reason why we know
19 she generates a report. I know that, you know, I'm not
20 getting into they had one or didn't have one. I know it
21 wasn't ordered by the Court. We asked for it cause we know
22 what her practice is---

23 THE COURT: I understand.

24 SOLICITOR BARNETTE: ---from that standpoint.

25 THE COURT: All right. If you have any case law or

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1 anything you want me to consider on that point, Mr.
2 Barnette, you can -- we don't have to rule on this today. I
3 can, can---

4 SOLICITOR BARNETTE: It is, and we've made a previous
5 motion under Rule 702, 703. We made these motions
6 previously also, Your Honor. We'll hand that -- make that
7 part of the record also. And, also, Your Honor, this is an
8 area -- mental retardation is a new area for the Court.

9 THE COURT: Well, I'm not sure she's a mental
10 retardation witness. I was told yesterday she was not an
11 Atkins witness.

12 MR. ALLEN: That is correct, Your Honor, and that's not
13 the point---

14 THE COURT: Or the day before yesterday whenever this
15 came up last.

16 MR. ALLEN: Right. I mean --.

17 THE COURT: Might of been the day before yesterday.

18 MR. ALLEN: I'm losing track of the days as well, but,
19 but that is correct. This -- her report does not have
20 anything to do with the Atkins investigation or mental
21 retardation aspect, and, therefore---

22 THE COURT: And that's one reason I wanted to review it
23 in camera---

24 MR. ALLEN: Yes, sir.

25 THE COURT: ---to see whether or not it, in fact, had

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1 anything to do with that issue.

2 SOLICITOR BARNETTE: I understand and we'll hand up
3 some additional cites later, Your Honor.

4 THE COURT: All right.

5 SOLICITOR BARNETTE: I will plan---

6 THE COURT: Thank you very much.

7 SOLICITOR BARNETTE: I wasn't planning on a full blown
8 hearing either, Your Honor.

9 THE COURT: Okay. Thank you very much.

10 SOLICITOR BARNETT: Thank you, Your Honor.

11 THE COURT: Anything else before Ms. Moore comes in,
12 defense?

13 State?

14 MR. ALLEN: No, Your Honor. Thank you.

15 THE COURT: Bring in Ms. Moore.

16 THE BAILIFF: Yes, sir.

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

19 ALICE MOORE, having been previously
20 sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q Good morning.

24 A Good morning.

25 Q How you doing this morning?

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1 A Fine.

2 Q Your name is, let's see, Alice Moore?

3 A Yes, sir.

4 Q Is that right?

5 Ms. Moore, the first thing I want to do is thank you
6 very much for your cooperation with us in this process. I'm
7 sure you're involved in something now that you've never been
8 involved in before in your life, and so I can appreciate
9 that. And I can understand how, when somebody walks into a
10 place with all these people sitting around and sits up in a
11 chair like that, might be a little nerve racking, might be a
12 little nervous, and I'm gonna tell you right now there's no
13 reason for you to be nervous about this matter or be, be
14 upset.

15 What we're going to do today, and let me explain to you
16 what we're going to do so maybe I'll put you a little more
17 at ease as to what's going on here today, we're still in the
18 process of trying to determine the jurors who might be
19 qualified to serve as jurors in the case. We're not picking
20 juries -- jurors today.

21 What will happen is we -- we're developing a list of
22 people from which a jury will be selected. So, we're not
23 in -- technically selecting a jury at this time. We're
24 simply selecting people who might be able to go forward in
25 the process.

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1 Now, for that reason, the questions we're going to ask
2 you today, there's no right or wrong answers to them. We're
3 not looking for any particular answer. What we are looking
4 for are your honest answers to the questions we're asking,
5 and, of course, in that regard, do you remember, on Monday
6 when you were here, the Clerk of Court swore all the jurors
7 to tell the truth to the Court?

8 Do you remember that?

9 A Yes, sir.

10 Q I'm gonna remind you of that fact because you're still
11 under that oath right now and that oath is to tell the truth
12 to the Court.

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

14 A Yes, sir.

15 Q And you acknowledge that fact?

16 A Yes, sir.

17 Q All right. Now, ma'am, again, if at anytime during our
18 questioning you need a drink of water, you feel
19 uncomfortable, you got a problem, let me know. I'll be glad
20 to try to take care of that for you. We want you to be
21 comfortable while we go through this process.

22 You understand what we're doing?

23 A Yes, sir.

24 Q And I'm gonna be talking to you primarily first. So,
25 you need to turn your chair a little bit more to face me,

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1 that will be fine cause I need to see you while I'm talking
2 to you. Then, when I finish, I'm gonna give the lawyers an
3 opportunity to ask some questions at that time.

4 Do you understand what we're doing?

5 A Yes, sir.

6 Q Okay. Now, also on Monday, when you were here, I gave
7 you some instructions as to -- not just you, the whole jury,
8 as to how to behave or what to do in relationship to this
9 case.

10 Do you remember me telling you things---

11 A Yes, sir.

12 Q ---I wanted you to do?

13 And among the things I talked about, I talked about not
14 trying to gather any information on your own, not to listen
15 to, watch, or read media reports, not to discuss the case
16 with anyone, and don't allow anyone to come discuss it with
17 you.

18 Have you been able to follow my instructions?

19 A Yes, sir.

20 Q So, you've not had any further contact with anybody
21 about this case since Monday, is that right?

22 A No, sir.

23 Q Okay. Now, are you the kind of person who could put
24 anything that you've heard about this case or heard in
25 anyway that in anyway relates to this case, not necessarily

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1 about the case, but something that might relate to this
2 case, could you put that information aside if you were on
3 the jury and be able to decide the case based upon the
4 evidence and the law that you heard during the trial in the
5 courtroom?

6 A Yes, I could put it to the side---

7 Q Okay.

8 A ---from what I hear.

9 Q So, you could decide the case based on what---

10 A what I heard.

11 Q ---goes on in the trial?

12 A Yes, sir.

13 Q Okay. Now, have you ever participated in any
14 discussions with anyone in which form, whether like on the
15 Internet or some other type of forum that people discuss
16 things, have you ever discussed any issues that might
17 involve the death penalty?

18 A No, sir.

19 Q Have you ever been engaged in any political activities
20 such as writing letters to representatives, calling
21 representatives, demonstrations, anything like that about
22 the issue of the death penalty?

23 A No, sir.

24 Q So, you've never been involved in anything of those two
25 natures---

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1 A No, sir.

2 Q ---is that right?

3 Okay. Now -- well, while you were in the jury room I
4 had -- I think there's about three pieces of paper that have
5 lists of names on them.

6 Did you see those papers back there?

7 A Yes, sir.

8 Q Did you look over them?

9 A Yes, sir.

10 Q Now, those people -- those, those names are people who
11 have been identified to me as people who are possible
12 witnesses in the case. I don't know that they're all gonna
13 testify. I don't think they will, but they could. All of
14 those people could be called as witnesses.

15 Now, as to the people whose names you saw on that list,
16 did you recognize anybody's name on the list?

17 A It was one name, but Mike Jones.

18 Q Uh-huh. (Affirmative).

19 A I think I know his wife I think.

20 Q You might know Mr. Jones' wife?

21 A Yes.

22 Q All right. Now, let's, let's assume -- I don't -- in
23 what respect might you know his wife?

24 Work, church, just a person you met?

25 A No, we was raised up in the same neighborhood.

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1 Q Oh, you were raised up in the same neighborhood.

2 Well, ma'am, like me, that looks like that might of
3 been a few years ago, is that right?

4 A Yes, sir.

5 Q Okay. Have you had any contact with her since then?

6 A No, sir.

7 Q Okay. Well, let's assume, let's assume that her
8 husband, Mr. Jones, was a witness in the case.

9 If he were to testify in the case and you were on the
10 jury, would that keep you, in anyway, from giving a fair
11 trial to both sides?

12 A No, sir.

13 Q So, you'd be able to do that?

14 A Yes, sir.

15 Q And I take it that there wasn't anybody on there that
16 you felt like you might of ever been related to in marriage
17 or blood or anything like that?

18 A No, sir.

19 Q And you've never been in business or had any contacts
20 with anyone else as far you know, is that right?

21 A No, sir.

22 Q Okay. All right. Now, let me point out one thing to
23 you about what I'm gonna be doing this morning. I'm gonna
24 be asking you some questions, and it will -- some of the
25 questions will pertain to the first part of this trial.

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1 Some may pertain to the second part of this trial. And
2 in -- I've explained briefly on Monday that this kind of
3 case is divided into two phases. There's a phase where we
4 decide whether or not the defendant is either guilty or not
5 guilty of the charges that have been brought, and depending
6 on that verdict, we may then hold a second trial concerning
7 the appropriate penalty should the defendant be found guilty
8 of murder.

9 So, some of the questions I'm going to ask you about
10 will pertain to that second phase of the trial. That would
11 be the question of the death penalty. We'll get to that in
12 a few minutes, but we're not there yet.

13 But what I want to point out to you is, to a certain
14 extent, by asking you questions about that, I'm putting the
15 cart before the horse, and, in other words, we have not
16 gotten to that stage of the trial yet.

17 A Yes, sir.

18 Q But in seating a jury, if we, if we did fit -- when we
19 do this trial, the same jury that hears the first part of
20 the trial, that's the guilt or innocence part, would also
21 hear the second part of the trial where we're determining
22 the appropriate penalty.

23 So, when we're talking about the penalty, I hope you
24 realize that's not a reflection on the defendant in anyway.
25 It's not a reflection on his, his case that he may have in

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1 anyway. It's simply the only time that we'll get to do
2 these because, once we start the case, the same jury hears
3 both sides and we'll go from one right into the other one.
4 So, this is the only time we could talk about penalty issues
5 even though we're not to that stage of the trial yet.

6 You understand that I'm kind of putting the cart before
7 the horse, but---

8 A Yes, sir.

9 Q ---I kind of have to. I don't have much choice.

10 You understand that?

11 A Yes, sir.

12 Q And I hope you won't hold the fact that I'm talking
13 about these things now against the defendant in anyway or
14 against his case.

15 A No, sir.

16 Q You wouldn't do that?

17 A No, sir.

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

19 Now, I'm going to go over some things that are concepts
20 under the law to be sure you understand -- have some
21 understanding of these things, and, and I'll just kind of
22 lead you through it, and if you have a question about what
23 I'm asking about, let me know.

24 First of all, if you were a juror on a case, would you
25 be willing to listen to the law as given to you by the judge

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1 in that trial?

2 A Yes, sir.

3 Q And would you be willing to, to take the law that the
4 judge gives to you, and apply it to the facts -- and I'll
5 tell you, in every case, the jury is the finder of the
6 facts. They determine what the true facts are in the case.

7 So, would you be willing to take the judge's law and
8 apply it to the facts as decided by the jury in reaching a
9 verdict in the case?

10 A Yes, sir.

11 Q Now, I'm gonna take this a step further.

12 Let's say, if you were sitting on the jury, and you
13 were listening to the judge tell you about the law, and it
14 could be about any case, not just this case, any kind of
15 case, if you were listening to the judge talk about the law,
16 and as you listened to the judge talking, you might hear him
17 say something about the law that you say well, I don't
18 really agree with that. That's not the way that ought to
19 be. However, that's what the judge told you was the law.

20 A Yes, sir.

21 Q Now, would be, in that case if that were to happen,
22 would you be willing to set aside your personal beliefs and
23 take the law as the judge gives it to you and apply it to
24 the facts to reach a verdict?

25 A I could put it to the side.

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1 Q You could put it to the side?

2 A Yes, sir.

3 Q Okay. Now, there's some concepts under the law that I
4 want to be sure we have an understanding on.

5 First of all, I mentioned briefly just a minute ago,
6 but I'll go back to it now, the law presumes, in every
7 criminal case, no matter how serious the crime might be, the
8 law presumes that the defendant is always innocent of the
9 crime that he's been charged with.

10 Do you understand that---

11 A Yes, sir.

12 Q ---concept?

13 All right. And for that reason, when a case comes to
14 trial, the defendant is never required to prove his
15 innocence because we presume that he's innocent.

16 Do you understand that as well?

17 A Yes, sir.

18 Q And do you understand that, since the defendant is not
19 required to prove innocence, the defendant really has no
20 responsibility to prove anything during a trial.

21 Do you understand that concept?

22 A Yes, sir.

23 Q So that means that, in a criminal trial, the only party
24 to that, and the parties would be the State, who filed the
25 charges, and the defendant, who's been charged with

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1 something, the State is the only party who has to prove
2 anything in a case, and the State, since they brought the
3 charges, has to prove those charges beyond a reasonable
4 doubt. They have to prove -- provide proof beyond a
5 reasonable doubt.

6 Do you understand that the State has the only burden of
7 proof in a criminal case?

8 A Yes, sir.

9 Q Now, let me take this a step farther. Let's say that
10 you were sitting on a jury in any criminal case, I'm not
11 talking about this one, but any criminal case, and you and
12 your fellow jurors heard all the evidence, and the evidence
13 was completed, the judge gave you the law, and you went back
14 into the jury room and you were considering that law and the
15 evidence, and you came to the conclusion that the State had
16 not proven its case beyond a reasonable doubt. In other
17 words, they didn't offer evidence beyond a reasonable doubt.

18 In that situation, would you be willing to find someone
19 not guilty of the charge if the State did not provide the
20 proof?

21 A Yes, sir.

22 Q Now, by the same token, if the State did provide enough
23 proof to prove the case against a defendant beyond a
24 reasonable doubt, would you be willing to then sign a
25 verdict that would find the defendant guilty of the crime?

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1 A Yes, sir.

2 Q So, I think what you're telling me, ma'am, is that you
3 would decide the case based upon the evidence and the law,
4 and depending on the strength of that evidence, and
5 depending on what the law said, you could possibly find the
6 defendant either guilty or not guilty of any crime?

7 A Yes, sir.

8 Q Now, we're gonna talk -- I told you I'd get to the
9 point where I was gonna talk about that penalty phase of
10 this trial, and I'm to that point now, and I explained to
11 you earlier that it's a two part trial.

12 Now, in most criminal cases the jury determines guilt
13 or innocence, and if a person's found guilty, the judge
14 decides the penalty.

15 You understand that's how it's normally done?

16 A Yes, sir.

17 Q Now, the difference is, is a case just like this one
18 where the State is asking that the death penalty be imposed
19 if guilt is found on the murder.

20 Now, in a case like this, there is a trial where the
21 jury determines whether or not someone's guilty or not
22 guilty of the crimes, and if there is a guilty verdict as to
23 the murder, then we move to another trial. It's a -- what
24 we refer to as a penalty phase or a sentencing phase, and
25 the same jury that heard the first case hears the second

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1 part of the trial as well.

2 Now, at that second trial, the statute that sets up
3 those trials provides for the introduction of certain
4 evidence, and the evidence that comes in that second part of
5 the trial might be totally different evidence from the
6 first. In -- the first case is decide whether or not the
7 person did it or didn't do it. The second trial is to
8 decide what the appropriate penalty might be for that crime.

9 So, there's different issues, do you understand that,
10 in the, in the case?

11 So there's---

12 A Yes, sir.

13 Q And in the second trial, the law provides for, for
14 evidence of what's called aggravating circumstances or
15 matters or mitigating circumstances or matters. Let me
16 explain to you what's meant by those phrases because we
17 don't use those in this context all the time.

18 Aggravating factors or circumstances are those kind of
19 circumstances or factors, and they're set out in the
20 statute, that might tend to make a murder, while a murder is
21 a crime and it's bad, it might tend to make it more severe
22 or more deserving of a higher punishment so that it, that
23 they're, they're, they're aggravating circumstances.
24 They're circumstances that make the crime worse, and it
25 might cause a juror to give a worse punishment.

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1 The other type of factors that a jury is suppose to --
2 is, is required to listen to in that hearing are what are
3 called mitigating circumstances. Those are factors that
4 might tend to either lessen the, the responsibility of the
5 defendant for the crime or, or might give a jury some reason
6 to give a lower penalty for that crime. So, that's what we
7 mean by aggravating circumstances and mitigating
8 circumstances.

9 Do you understand what I'm talking about, what would be
10 presented at that second hearing?

11 A Yes, sir.

12 Q Okay. Now, once a jury has heard both the aggravating
13 evidence and the mitigating evidence, the judge would
14 instruct the jury to, to consider both types of evidence and
15 go back and deliberate to render a verdict concerning the
16 appropriate penalty. And the -- again, the penalty choices
17 would be life imprisonment without the possibility of ever
18 receiving a parole or the death penalty. So, those are the
19 things the jury would be considering during that second
20 hearing.

21 Do you understand what that hearing is about and how
22 that would work?

23 A Yes, sir.

24 Q For a minute I want you to imagine that you're in a
25 situation now in your head. Think about this.

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1 Let's say that you are on a jury that got picked in a
2 case where the State was seeking the death penalty, and that
3 jury had heard -- already heard the first part of that trial
4 where the, where the question was is the person guilty or
5 not guilty of the charge, and let's say that jury that
6 you're on had decided that that defendant was guilty of
7 murder. So, you'd rendered a guilty verdict on murder.

8 Since the State's asking for the imposition of the
9 death penalty, the law requires that we hold that second
10 hearing to determine what the appropriate penalty is.

11 Do you understand where we are so far?

12 A Yes.

13 Q Okay. Do you understand it?

14 A Yes, sir.

15 Q Okay. All right. Now, now, in your mind, think about
16 you're on this jury. The defendant has been found guilty of
17 murder. You're walking down the hallway getting ready to
18 step back into the courtroom, and you're gonna start that
19 hearing about the appropriate penalty, whatever it is.

20 Now, do you remember there's a piece of paper back
21 there in the jury room that I asked you to read that
22 described three different kinds of jurors.

23 Do you remember that piece of paper?

24 A Yes, sir.

25 Q Did you read that piece of paper?

Individual Juror Qualification

1 A Yes, sir.

2 Q All right. Now, I'm gonna go back over it with you
3 briefly. I won't use the exact words that were on that
4 paper, but I'm gonna get an understanding with you as to
5 what I'm talking about about those three jurors.

6 okay?

7 A Can I say one thing?

8 Q Yes, ma'am.

9 A I don't think I could do the death penalty.

10 Q well, let me finish my question and then we'll---

11 A okay.

12 Q ---then we'll talk about that.

13 okay?

14 A okay.

15 Q All right. Now, the first juror on that list that I
16 gave you, that piece of paper, that was a juror, who before
17 that juror ever walked back into the courtroom, has already
18 made up his or her mind. That juror believes that anytime
19 someone is convicted of a murder that the only appropriate
20 penalty is the penalty of death, and so that juror is gonna
21 vote for the death penalty every single time they walk into
22 the courtroom.

23 The second juror I described on that piece of paper is
24 a juror who believes that the State should never take the
25 life of anyone in response to the commission of any crime.

Individual Juror Qualification

1 No matter how serious that crime might be. So, that juror
2 has already made up his or her mind too. That juror, on
3 every occasion, is gonna vote for life without parole.

4 The third juror on that piece of paper, as they walked
5 back into the courtroom, hasn't made up his or her mind.
6 That juror wants to listen to the evidence, listen to the
7 facts, listen to the aggravating circumstance, listen to the
8 mitigating circumstances, and based on what those
9 circumstances are and how that jury finds -- juror finds
10 them, that juror could vote for either the death penalty or
11 life imprisonment without parole depending on the evidence.

12 So, do you understand now the three jurors I've
13 described?

14 A Yes, sir.

15 Q Number one would always vote for the death penalty.
16 Number two would always vote for life imprisonment without
17 parole. Number three wants to listen to the facts and
18 circumstances before they make up their mind.

19 Now, I told you to put yourself in that same jury
20 walking back into the courtroom. So, that's where you are.

21 Which one of those three jurors would most likely --
22 most closely describe how you would feel as you walked into
23 the courtroom?

24 A I think number three.

25 Q Number three.

Individual Juror Qualification

1 Now, number three is the one who wants to listen to the
2 facts and circumstances, wants to listen to all the
3 evidence, mitigating and aggravating, before that person
4 makes up their mind.

5 Is that the way you think you would be?

6 A Yes, sir.

7 Q Now, let me ask you this question.

8 Does that mean that, depending on the facts and
9 circumstances that were presented during that, that trial,
10 during the, the penalty or, or guilt -- the sentencing phase
11 of the trial, that depending on that you could, you could
12 possibly sign a verdict for life imprisonment without
13 parole?

14 A Yes, sir.

15 Q Does that, by the same token, mean that, after you've
16 listened to all the facts and circumstances, aggravation and
17 mitigating, you could sign a verdict that would provide for
18 the death penalty?

19 A I don't know. I don't know about that.

20 Q Well, I want you -- there's no right or wrong answer,
21 ma'am. There's only your answer.

22 A I don't think I could really do the death penalty.

23 Q So, you don't -- you could sign a verdict that would be
24 for the death penalty?

25 A Yes, sir.

Individual Juror Qualification

1 Q Okay. I'm gonna allow the attorneys to ask questions
2 if they wish to do so.

3 MR. MCGUIRE: Thank you, judge.

4 EXAMINATION

5 BY MR. MCGUIRE:

6 Q Good morning, Ms. Moore.

7 A Good morning.

8 Q I want, I want to talk to you a little bit about our
9 procedure, and you can spin around, and not only -- I don't
10 want you to get a crook in your back. I think the judge is
11 pretty much done talking to you and I'll, I'll be over here.
12 I want to talk to you a little bit about our law and our
13 procedure to see if this is something that you could follow
14 cause that's what we're here to determine, if you are the
15 kind of person who could follow the law as the judge would
16 instruct the jury, could you take the law from the judge,
17 apply it to facts, the evidence, and reach a verdict.

18 And I want to start with -- I'm not -- I'm gonna skip
19 over the guilt phase of the case cause that -- we all know
20 what that is just from watching TV. I'm gonna talk to you
21 more about the penalty phase.

22 Okay. The judge put you in a position in your mind
23 that, you know, pretend that you're on a jury, and then now
24 you're about to start the penalty phase of the case, okay,
25 and the law that applies to the penalty phase is different

Individual Juror Qualification

1 from any other trial that we have, and I'm gonna tell you
2 some principles and ask you if you, if you knew these things
3 and ask you your thoughts about them.

4 Did you know that the death penalty is never required?

5 A No, I didn't.

6 Q Okay. Not in -- the law is the death penalty is never
7 required. Not in the worse case. Not in this case. Not in
8 any case. It sounds like you didn't know that before.

9 A No.

10 Q Okay. And no individual juror would ever be required
11 to automatically vote for death.

12 Did you know that?

13 A No.

14 Q Okay. Each individual juror would be able to make up
15 their mind for themselves individually. In fact, the
16 decision of an individual juror in the penalty phase is
17 called an individual moral judgment.

18 Did you know that?

19 A Yes, sir.

20 Q Okay. And each individual juror would be able to vote
21 their conscience, and the jury doesn't have to agree in
22 penalty, and what I mean is, for instance, some people might
23 want to vote for the death penalty, and some people might
24 want to vote for the life penalty, and, ultimately, they
25 could end the day agreeing to disagree.

Individual Juror Qualification

1 Did you know that?

2 A Yes, sir.

3 Q Okay. There's no requirement -- and this is the
4 penalty phase we're talking about. The guilt phase would
5 have to be unanimous.

6 In the penalty phase, if there was disagreement, the
7 judge would take the case and he would sentence, and he
8 would sentence to life without parole.

9 Did you know that?

10 A Yes.

11 Q Okay. And there's no, there's no reason for you to
12 know these things. I'm trying to just tell you the
13 principles to see if this is a system you could participate
14 in.

15 okay?

16 A All right.

17 Q Now that you know that you would never be required to
18 vote for the death penalty, that each and every individual
19 juror could vote their conscience, that the jury would not
20 have to agree as to the penalty, knowing that, do you think
21 you could sit and hear the case and be fair to both sides,
22 consider all their evidence, the State's evidence, consider
23 all the defense evidence, and vote your conscience?

24 Could you consider all the evidence?

25 A Yes, sir.

Individual Juror Qualification

1 Q And if the judge said that, that, to determine if you
2 could be a, a juror, you'd -- he'd have to know that you
3 could follow the law, and if he said the law is you have to
4 listen to mitigation evidence and aggravation evidence and
5 fairly consider both penalties, life and death, could you do
6 that?

7 A Yes, sir.

8 Q And if it came to it where, let's say you are on that
9 jury, you've sworn to try the case based on the evidence and
10 the law, and could you follow the law where, if you thought
11 that the aggravating circumstances were of the quantity or
12 quality to make the crime so bad, could you sign the
13 paperwork for the death verdict?

14 A I don't think so.

15 Q Okay. That's all I have for you, ma'am. Thanks so
16 much.

17 THE COURT: Any questions---

18 SOLICITOR BARNETTE: No.

19 THE COURT: ---from the State?

20 SOLICITOR BARNETTE: No, sir.

21 THE COURT: All right, ma'am. I'm gonna ask you to
22 step back to the jury room briefly.

23 THE WITNESS: Okay.

24 THE COURT: Thank you, ma'am.

25 (WHEREUPON, the following takes place outside the

Individual Juror Qualification

1 presence of the juror.)

2 THE COURT: Defense have a position thus far?

3 MR. MCGUIRE: while I admire her scruples, she's not
4 qualified.

5 THE COURT: State agree?

6 SOLICITOR BULSA: We agree, yes, sir.

7 THE COURT: All right. Bring Ms. Moore back.

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

10 THE COURT: Back in the hot seat, Ms. Moore.

11 (Witness complies.)

12 THE COURT: All right. Ms. Moore, I'm going to release
13 you from any further responsibility in this case. You'll be
14 seeing the bailiff. They'll check you out, and, at this
15 time, you're free to go, and, again, I want to thank you for
16 your cooperation in the process. You're free to go. Thank
17 you, ma'am.

18 THE WITNESS: Thank you.

19 THE COURT: All right. We're gonna be starting on
20 panel number eight.

21 Caroline Fritch, see if she's ready.

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

24 CAROLINE FRITCH, having been previously
25 sworn, testified as follows:

Individual Juror Qualification

1 EXAMINATION

2 BY THE COURT:

3 Q Have a seat please, ma'am.

4 A (Witness complies.)

5 Q All right. You are Caroline Fritch, is that right?

6 A Yes, sir.

7 Q Is that right?

8 Did I say that right?

9 A Yes, sir, you did.

10 Q Okay. All right. Ms. Fritch, I'm going to be going
11 over some matters with you along with the attorneys this
12 morning, and, first of all -- this morning, it's still
13 morning. I had to check.

14 I want to thank you very much so far for your
15 cooperation in the process. I understand that it's probably
16 unlike anything you've ever been involved in before.
17 There's been a lot of time changing and switching and that
18 sort of thing, and I want to apologize to you about it, but
19 it's kind of the nature of the beast. That's the way we do
20 things and it's because we're trying to get things right if
21 we can. So sometimes it takes a long time. Sometimes we do
22 it fairly quickly. But, again, thank you for your
23 cooperation thus far.

24 A Okay.

25 Q Now, today we're going to be asking some questions of

Individual Juror Qualification

1 you. We're still in the process of determining juror
2 qualifications. There are no right or wrong answers to the
3 things I'm going to talk to you about and the lawyers will
4 talk to you about. There's only your answers and all we
5 want are your honest answers to the questions that we have.

6 Do you understand that?

7 A Yes, sir.

8 Q Now, when you were here on Monday you took an oath.
9 That oath was to be honest and truthful with the Court.
10 That oath still applies to this discussion.

11 Do you understand that?

12 A Yes, sir.

13 Q And do you acknowledge that?

14 A Yes, sir.

15 Q Okay. Now, ma'am, when you left the courthouse I gave
16 you instructions to the entire jury panel concerning how you
17 were to behave after that, that meeting, and I asked you, at
18 that time, not to listen to, watch, or read media reports,
19 not to try to gather any information on your own, not to
20 discuss the case with anyone or allow anyone to discuss it
21 with you, and if anyone contacted you, to report it to the
22 Clerk's Office.

23 Do you remember my instructions?

24 A Yes, sir.

25 Q Have you been able to follow those instructions?

Individual Juror Qualification

1 A Yes, sir.

2 Q All right. Now, are you the kind of person who could
3 put aside anything that you may have heard outside of the
4 courtroom that might in anyway relate to this case, not --
5 maybe not specifically on the case, but are you the kind of
6 person who could put aside anything that you may have heard
7 outside of the courtroom and decide a case based upon the
8 law and the evidence that you hear in the trial during the
9 trial of the case?

10 A Yes, sir.

11 Q Now, have you ever participated in any discussions,
12 either on the Internet or discussion groups or forums or
13 anything of that nature, where the subject matter of that
14 discussion would of been issues involving the death penalty?

15 A No, sir.

16 Q Have you ever been involved in any political activities
17 that might involve that issue?

18 A No, sir.

19 Q Now, back in the jury room there was a list of people,
20 about three pages, three sheets of paper. It was -- maybe
21 not full pages, but three sheets of paper.

22 A Right.

23 Q That had a list of jurors of -- a list of witness
24 names. Those are people who are identified to me as
25 possible witnesses in the case.

Individual Juror Qualification

1 Did you -- did anyone on there -- did you recognize any
2 of those names or any of those people?

3 A No, sir.

4 Q So, it would -- would it be true then that it's your
5 belief that you are not related by either blood or marriage
6 to any of those people?

7 A Correct.

8 Q And it would also, also be your belief that you've
9 never had any close social, business, or personal ties to
10 any of those people?

11 A Correct.

12 Q Okay. Now, let me go over one concept with you so that
13 I'm sure you and I have an understanding about this. You
14 might want to turn your chair a little bit because you and I
15 will be talking mostly---

16 A Okay.

17 Q ---and then the lawyers will get involved in just a
18 minute. This thing's not set up very well for us to see
19 each other.

20 A Okay.

21 Q So, I like to watch you while I'm talking to you.

22 Now, this -- I mentioned on Monday that this particular
23 case, the type of case we're in, involves a two step process
24 whereby there would be a trial concerning the allegations
25 that have been made, the charges that have been brought.

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1 And depending on the verdict on those, we may or may not
2 hold a second trial in which the same jury would consider
3 the appropriate penalty that's involved.

4 Now, normally it would be putting the cart before the
5 horse to talk about penalties before we've ever decided
6 whether or not we're going to get to that stage or not.

7 A Uh-huh. (Affirmative).

8 Q However, in a situation where the same jury will hear
9 both the first case and the second case, there's no way we
10 can stop in the middle of the trial and discuss just the
11 penalty phase after the verdict's been rendered and re-pick
12 a jury. We're gonna use the same jury.

13 You understand what I'm saying?

14 A Yes, sir.

15 Q So, I want to point out to you that, that it's no
16 reflection upon the defendant or his defense or his case
17 that we're talking about the penalty phase before we've ever
18 determined the guilt phase.

19 A Okay.

20 Q It's simply the only time we can do this. So, at this
21 point in time we will talk about issues that may be involved
22 in the first part of the trial and the second part of the
23 trial, but you shouldn't take that as any kind of reflection
24 against the defendant or his case.

25 Do you understand what I'm saying?

Individual Juror Qualification

1 A Yes, sir.

2 Q I want to be sure we had that understanding as we go
3 through this.

4 Now, I'm going to go through some conceptional things
5 to be sure that we've got an understanding about some of the
6 concepts that will be involved if you were participating in
7 the case.

8 First of all -- and I'm gonna talk about you being a
9 juror in a case. I'm not talking about this case. It'd be
10 any criminal case. It could be a case where somebody's
11 charged with shoplifting or burglary or something of that
12 nature, but this is generally concepts under the law.

13 A Okay.

14 Q All right. Now, if you were serving as a juror in the
15 case, in any criminal case, would you be willing to listen
16 to the law as given or charged to you by the judge?

17 A Yes, sir.

18 Q Would you be willing to take the law as charged to you
19 by the judge and apply it to the facts as decided by the
20 jury, and in every case, in a criminal case, the jury is
21 always the determiner or the decider of the facts.

22 A Uh-huh. (Affirmative).

23 Q So, would you be willing to take the law given to you
24 by the judge and apply it to the facts as the jury
25 determined them in reaching a verdict in a case?

Individual Juror Qualification

1 A Yes, sir.

2 Q I'm gonna take this, this one step further.

3 Let's say that you were on the jury, the judge was
4 going over the law with you, charging the law to you, and
5 while you were listening to that charge on the law you heard
6 something that you -- maybe you didn't quite didn't agree
7 with.

8 A Uh-huh. (Affirmative).

9 Q You thought maybe that's not the way it ought to be,
10 but that's what the judge said the law was.

11 A Right.

12 Q Are you the kind of person who could set aside your
13 personal beliefs or feelings and take the law exactly as the
14 judge gave it to you in reaching a verdict in a case?

15 A I believe so.

16 Q So you could do that?

17 A Yes, sir.

18 Q All right. Now, there's some legal concepts that I
19 think we need to talk about to be sure we have an
20 understanding about before we go any further. I mentioned
21 to you earlier that, that Mr. Blackwell is presumed to be
22 innocent in the case. Every defendant in every criminal
23 case, no matter what the seriousness of the crime might be,
24 under our legal system, is always presumed to be innocent of
25 the charges for which a charge has been brought.

Individual Juror Qualification

1 Do you understand that concept?

2 A Yes, sir.

3 Q And for that reason, because a defendant is presumed to
4 be innocent, a defendant is never required, in a criminal
5 trial, to prove his innocence.

6 Do you understand that as well?

7 A Yes, sir.

8 Q Now, by the same token, in a criminal case, the other
9 party, the State, does have a burden of proof. The State,
10 in every criminal case, is the only party who is required to
11 bring proof to Court and they have to bring proof to prove
12 the allegations contained in the charges by proof beyond a
13 reasonable doubt.

14 Do you understand that the State is the only party, in
15 a criminal case, who has a burden of proving their case?

16 A Yes, sir.

17 Q Do you understand those, those concepts?

18 A I do.

19 Q Are you okay with those concepts?

20 A Yes. Right.

21 Q All right. All right. Good.

22 Now, if you were sitting on a jury, and if the -- I'm
23 kind of taking these things a step further.

24 Let's say that you were on a jury, you listened to all
25 the evidence, listened to the law, and you and your fellow

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1 jurors came to a conclusion, and that is that the State did
2 not meet the burden of proving the defendant guilty beyond a
3 reasonable doubt.

4 Are you the kind of person who could sign a verdict of
5 not guilty?

6 A Yes.

7 Q Now, by the same token, if you were on a jury, you
8 listened to the evidence and the law, and you and your
9 fellow jurors came to the conclusion that the State did
10 prove the case beyond a reasonable doubt.

11 Are you the kind of person who could sign a verdict of
12 guilty against a defendant?

13 A Yes, sir.

14 Q So, that means to me that, depending on the evidence
15 and the strength of the evidence and the law that, that's
16 given to you by the judge, that, depending on those factors
17 and your weighing of those factors, you could sign a verdict
18 either of guilty or not guilty against any defendant in a
19 trial you participated in?

20 A Yes, sir.

21 Q Okay. Now, is it your belief that, just because
22 someone has been arrested, charged, and perhaps even
23 indicted of a crime, but not tried, that because they've
24 been arrested and charged and those things have happened,
25 that they're automatically guilty of the crime?

Individual Juror Qualification

1 A No.

2 Q So, you believe that some people who've been arrested
3 or charged are not guilty of a crime?

4 A Correct.

5 Q Okay. Now we're gonna talk a little bit now -- I told
6 you we'd get to the point where I'd put the cart in front of
7 the horse. We're there now. I'm gonna talk to you a
8 little bit about the penalties that are involved in this
9 case, and I'm gonna point out to you that, in a normal
10 criminal trial that we conduct here all the time, the jury
11 will decide -- their verdict will be either guilty or not
12 guilty of the crime that was charged. If they find the
13 defendant guilty, then it's the judge's responsibility to
14 sign the sentence and present the sentence. The jury
15 doesn't determine the sentencing in our system.

16 Do you understand that that's how that works?

17 A Yes.

18 Q Now, there's an exception to that rule and we're in
19 that exception, and that is where the State is seeking a
20 penalty of the death penalty. And when we're in a case such
21 as that where there's an allegation that a murder has
22 occurred and someone's charged with that murder, and the
23 State is asking for the death penalty, in this kind of a
24 situation we bifurcate the trial. That's a big word and
25 that word simply means we divide it into two phases.

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q The first phase, as I pointed out, would be a guilt or
3 innocence phase as to the charge that's involved, and the
4 jury then would hear the evidence on whether or not the
5 person did it, whether they're criminally responsible, and
6 then issue a verdict either that they are guilty or not
7 guilty. If the verdict was guilty of the crime of murder,
8 the State has requested that the death penalty be imposed,
9 and when that happens, our system says that the same jury
10 that heard this first phase of the trial will then come and
11 sit in the second phase of the trial. That second phase of
12 the trial is what we refer to as the penalty or the
13 sentencing phase of the trial.

14 A Uh-huh. (Affirmative).

15 Q The purpose of that hearing is for the jury to
16 determine the appropriate penalty and there are two choices
17 under that. There is life imprisonment without parole or
18 the death penalty. So, those are the choices that the jury
19 would have to, to make.

20 Now, at that second hearing the law provides for the
21 introduction of new evidence. The first hearing's about
22 whether or not the person's criminally responsible for, for
23 what happened.

24 A Uh-huh. (Affirmative).

25 Q And -- so, the second though is to determine the level

Individual Juror Qualification

1 of the type of penalty. So, different evidence would come
2 into that case. The law provides that there could be
3 factors that are referred to as aggravating factors. There
4 could be factors that are referred to as mitigating factors.

5 A Okay.

6 Q Now, you may know what those terms mean, but I want to
7 be sure we have an understanding.

8 Aggravating factors would be the proof of certain
9 circumstances or facts that might tend to make, while the
10 crime of the, the crime of murder is a serious crime, it
11 might make that situation -- make it worse, make -- make the
12 person who did that act deserving of a higher level of
13 penalty.

14 A Uh-huh. (Affirmative).

15 Q Mitigating factors, on the other hand, are things that
16 are set out in the statute or they can be anything a juror
17 wants to consider in mitigation. Those are factors that
18 would tend to lessen a person's culpability or lessen the
19 level of penalty that one might receive for that particular
20 event.

21 A Right.

22 Q So, that second trial would be based on that evidence,
23 aggravating factors and/or mitigating factors.

24 Do you understand what---

25 A Yes.

Individual Juror Qualification

1 Q ---that hearing is for?

2 A Yes, sir.

3 Q Now, once that evidence has been presented or heard by
4 the jury, then the judge would instruct the jury to go back
5 into the jury room and consider those factors and to reach a
6 verdict as to the appropriate penalty that they wish -- that
7 they were recommending.

8 So, do you understand how that hearing would generally
9 operate?

10 I'm not going into a great deal of detail, but I want
11 to be sure you understand the concepts that we're doing
12 here.

13 A Yes, sir.

14 Q Now, I want you, in your mind, to, to put yourself in a
15 position. Let's say that you were on a jury in that
16 particular type of trial, and that jury had heard the first
17 part of the trial, and, during that trial, received evidence
18 as to the culpability of the, of the defendant for the
19 charges, and had rendered a guilty verdict on the charge of
20 murder. So, the law requires then, when the State's seeking
21 the death penalty, that that same jury come back to the
22 courtroom and begin the sentencing or the penalty phase of
23 the trial.

24 So, you're on that jury. You're walking down the
25 hallway coming back to the courtroom getting ready to walk

Individual Juror Qualification

1 in to begin that trial where you'll be receiving evidence of
2 aggravating and mitigating circumstances.

3 A Uh-huh. (Affirmative).

4 Q Back in the jury room I had another sheet of paper.
5 That sheet of paper described three different jurors.

6 Did you read that paper?

7 A Yes, sir.

8 Q I'm gonna go over it with you briefly so I'm sure you
9 and I have a correct understanding of the different types of
10 jurors that were described on that piece of paper.

11 A Okay.

12 Q The first juror described on that piece of paper,
13 before that juror ever walks into the courtroom for that
14 second hearing, that juror's already made up his or her
15 mind.

16 A Uh-huh. (Affirmative).

17 Q That juror believes that, where someone has been
18 convicted of a murder, that the only appropriate penalty for
19 a murder is the death penalty. So, every time that juror
20 was in that situation and, in every case, that juror is
21 gonna vote for the death penalty.

22 A Uh-huh. (Affirmative).

23 Q The second juror I described also has made up his or
24 her mind. That juror does not believe that the State is
25 ever justified in taking a life in response to a crime, and,

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1 therefore, every time that juror is in that situation, that
2 juror will always vote for life imprisonment without parole
3 regardless of the severity of the crime and regardless of
4 any other factors. That juror believes the only appropriate
5 penalty in this situation would be life imprisonment without
6 parole.

7 A Right.

8 Q The third juror that I described has not yet made up
9 his or her mind. That juror has not decided the case --
10 that issue one way or the other. That juror wants to listen
11 to the aggravating circumstances and wants to listen to the
12 mitigating circumstances, and based on that, and the law as
13 charged by the judge, would make a decision as to the
14 appropriate penalty to be levied in that case.

15 Do you understand the differences between the three
16 jurors I described?

17 A Yes, sir.

18 Q Now, I asked you to put yourself in that position too.
19 You're walking down the hallway. You're getting ready to
20 walk into the courtroom to begin that phase of the trial.

21 Of those three jurors I've described, which one would
22 most closely resemble you?

23 A The last juror.

24 Q The number three?

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q The one who wants to listen to the -- both sides---

2 A Yes, sir.

3 Q ---and make a decision based upon the law and the
4 evidence?

5 A Yes, sir.

6 Q All right. Now, does that mean that, depending upon
7 the facts and circumstances and the evidence that's shown
8 during that trial, that you could possibly sign a sentence
9 for life imprisonment without parole?

10 A Yes, sir.

11 Q By the same token, depending upon the aggravating
12 circumstances and the mitigating circumstances you heard,
13 could you possibly sign a sentence for the death penalty?

14 A Yes, sir.

15 Q So, you could sign either way depending on the
16 evidence?

17 A Yes, sir.

18 Q One other thing I want to go over with you. I'm
19 about -- just about finished with my questioning.

20 A Okay.

21 Q All right. Now, I have signed an order in this case
22 sequestering the jury. Now let me explain to you what that
23 means.

24 A Okay.

25 Q I think you got an idea, but I'm gonna, I'm gonna go

Individual Juror Qualification

1 over it with you so I'm sure you understand.

2 Once the jury has been chosen, and we're not doing that
3 today --

4 A Uh-huh. (Affirmative).

5 Q ---that jury, and we're starting the trial, that jury
6 then would be sequestered, which means we put them in a
7 position where they're not subject to any outside
8 influences.

9 A Uh-huh. (Affirmative).

10 Q That jury would be staying with us at the -- not with
11 us. Not with me. With the Court at the Marriott. There
12 would be a group of people who do this all over the State,
13 who handle jurors.

14 A Uh-huh. (Affirmative).

15 Q They would be there monitoring the situation.

16 Now, during that time the jurors would have their meals
17 paid. They would have travel paid. Everything would be
18 taken care of while you're serving on the jury.

19 A Uh-huh. (Affirmative).

20 Q You'd be allowed to communicate with family and
21 friends, but it would be monitored cause we want to be sure
22 that there's no information being passed around concerning
23 the trial or what's going on in the trial. So, that would
24 be monitored.

25 A Uh-huh. (Affirmative).

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1 Q I suspect that this case will take in excess of a week
2 to try. I don't think it will be much more than that, but I
3 can't, I can't predict exactly what it will be because I
4 don't control exactly who all is called as witnesses and
5 that sort of thing, but that's my best estimate.

6 I will tell you that, once we start the trial, we
7 continue until we're finished. We work weekends, whatever
8 we have to do, until the case has been ended.

9 A Uh-huh. (Affirmative).

10 Q So, it would be a -- we would take up as little of the
11 juror's time as we can, and, and get the case handled in a
12 fair fashion.

13 A Uh-huh. (Affirmative).

14 Q So, so, it would go on until we finished.

15 Now, my -- during that time, the jurors would receive
16 pay for their jury time that they're there. It's not as
17 much as people get paid at work, but it's all the law
18 allows, and they would receive travel for their own use of
19 their own transportation and coming and going from the
20 courthouse.

21 Now, my question to you is, if you were in that
22 situation, if you were sequestered with a jury, would that
23 in anyway pose any serious risk to either your health or
24 your well being?

25 A No, sir.

Individual Juror Qualification

1 Q Would it pose any serious risk to the health or well
2 being of anyone who's dependent upon you?

3 A No, sir.

4 Q All right. Now, at this time -- point in time I'm
5 going to ask the attorneys to ask some questions of you.
6 I'll ask you to respond to them. You may want to turn cause
7 they're gonna be standing out that way.

8 A All right.

9 Q Okay.

10 All right. Mr. Barnette, are you gonna be first?

11 SOLICITOR BARNETTE: Yes, sir.

12 May it please the Court?

13 THE COURT: Yes, sir.

14 EXAMINATION

15 BY SOLICITOR BARNETTE:

16 Q Morning, ma'am.

17 A Hi.

18 Q Hi. My name is Barry Barnette. Myself, Derrick Bulsa,
19 and Russell Ghent will be representing the State in this
20 case.

21 A Okay.

22 Q Let me apologize ahead of time. We're gonna be asking
23 you some questions that you normally wouldn't be asked
24 about, but, like I said, the type case it is, we just need
25 to ask those questions if that's okay.

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q One thing I wanted to ask you, I notice you have horses

3 --

4 A Uh-huh. (Affirmative).

5 Q -- on your back.

6 Can you tell me a little bit about that?

7 A I work for a nonprofit in teaching therapeutic riding
8 lessons for people with disabilities or disadvantaged.

9 Q I got you and, and athletics, is that part of it too?

10 I noticed the athletics and horses together.

11 Is that---

12 A Yeah. Well, I just like -- I've always been involved
13 in sports growing up and competed at horse shows and that
14 type of things. So, I just kind of continued that through
15 my life and do other activities.

16 Q I understand. Well, I'm sort of like you in that
17 sense.

18 A Yeah.

19 Q You know, through the years, sports, your kids involved
20 in sports and things like that. So, I understand.

21 You was talking about the disabilities and things.

22 Is there a certain kind of disability that you're
23 dealing with with those children?

24 A All kinds. Yeah, from learning disabilities all the
25 way to various physically impaired people that come and

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1 ride, and the horse is used as a tool to help facilitate in
2 whatever deficits that they have in a non kind of clinical
3 setting. So --.

4 Q I understand and, and appreciate you doing all that too
5 by the way.

6 One thing I will mention to you and the judge had
7 mentioned to you about mitigating circumstances and
8 aggravating circumstances, and one of the mitigators that
9 will be presented is, is a disability. Not saying -- they
10 have to -- you know, they'll be presenting it. You'll have
11 to give it the weight that it deserves from there.

12 A Okay.

13 Q Would that affect you in anyway concerning your
14 decision?

15 A I mean I don't like have a perceived one way or the
16 other, you know, like judgment I guess. It just -- I'd have
17 to hear what the circumstances -- what the disability is I
18 guess. I wouldn't have---

19 Q Sure.

20 A ---probably a judgment on what -- just because I hear a
21 diagnosis doesn't necessarily mean that I would conclude
22 something---

23 Q I understand.

24 A ---based on that diagnosis if that makes sense.

25 Q All right. So, in other words, if it's -- just your

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1 working with people with disabilities wouldn't be the
2 driving factor with you from that standpoint?

3 A Right.

4 Q I got you from that.

5 Let me ask you, what's your -- what's is your position
6 on the death penalty?

7 I hate to ask you that kind of personal question, but
8 since this is so much---

9 A No, I am for the death penalty.

10 Q So, what you mean for, if the facts were aggravating
11 enough---

12 A If it's enough, yeah, I mean if it, if it warrants the
13 death penalty, then I'm okay with it -- doing that.

14 Q I understand.

15 But, like you said, if you didn't think it warranted it
16 you could give a life without parole sentence---

17 A Correct.

18 Q ---like the judge said?

19 A Yes, sir.

20 Q Cause, like I said, what we do, we present -- and both
21 sides -- we're, we're kind of skipping the guilt phase.
22 we're going to the sentencing phase.

23 A Yes.

24 Q And, like I said, you'd still have to find the
25 defendant guilty beyond a reasonable doubt, but, if you did,

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1 we'd be dealing with a murder case.

2 A Uh-huh. (Affirmative).

3 Q And all murders in South Carolina are not death penalty
4 eligible. There has to be an aggravating circumstance we
5 have to prove beyond a reasonable doubt.

6 A Okay.

7 Q And the aggravator in this case involves a small child.

8 A Uh-huh. (Affirmative).

9 Q And then there's mitigators that will be presented by
10 the defense, background and everything, and a disability
11 that he'll be presenting also---

12 A All right.

13 Q ---to lessen the effects of the crime.

14 Are you, are you the type of juror that could hear from
15 both sides first, like hear from us -- we'll go first
16 presenting our aggravators, and they'll present their
17 mitigators afterward.

18 would you listen to both sides before you'd give a
19 verdict in this case?

20 A Yes, of course.

21 Q And, obviously, if you felt like the, the evidence
22 warranted, you could give a death sentence in this case?

23 A Yes.

24 Q But, at same times, if you feel like the evidence
25 didn't warrant or the evidence warranted a life without

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1 parole sentence, you could do that also?

2 A Yes, sir.

3 Q You're the type of juror, if I understood right, that
4 would listen to both sides --

5 A Yes, sir.

6 Q -- and weigh it?

7 You wouldn't automatically give death on every murder
8 case?

9 A No. No, sir.

10 Q Or you wouldn't automatically give life?

11 A Correct.

12 Q You'd decide it based off what you heard in that case?

13 A Uh-huh. (Affirmative).

14 Q And every case stands on its merits from that
15 standpoint?

16 A Yes, sir.

17 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
18 please.

19 THE COURT: Yes, sir.

20 (Pause.)

21 Q Please answer any questions they may have for you,
22 ma'am. Thank you for answering mine.

23 THE COURT: Mr. McGuire.

24 MR. MCGUIRE: Thank you, judge.

25 THE COURT: Yes, sir.

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1 EXAMINATION

2 BY MR. MCGUIRE:

3 Q Excuse me. I've been talking a lot.

4 A Yeah, I'm sure you guys have all been talking.

5 Q I know you've been waiting a lot. Please forgive us
6 for all that.

7 My name's Bill, Bill McGuire. I'm one of the lawyers
8 in the case, and you, you indicated that you were, you were
9 for the death penalty, and, and, if you were king of South
10 Carolina and the question came before you should we have the
11 death penalty or not, it sounds like you would vote to keep
12 the death penalty?

13 A Yes, sir.

14 Q And why is that?

15 A I just feel like there's, there's got to be some
16 punishment involved. There has to be, you know, there's
17 something that you -- that there are crimes that are bad
18 enough that you have to pay your -- for your life for it,
19 you know, committing those crimes.

20 Q Okay. Do you think the death penalty is a deterrent?
21 Does it stop crime?

22 A I would hope so.

23 Q Okay.

24 A Yes, I mean I would think it would be.

25 Q Do you think we use the death penalty about right, too

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1 much, not enough?

2 A I mean honestly I'm not probably super educated on how
3 often the death penalty is given and how often it actually
4 is enforced. So, I don't know that I can really speak to,
5 to that exactly, but I mean I feel like it's probably a, you
6 know, a fair thing to have in our system, judicial system.

7 Q Okay. And I want to step back a little bit and, and
8 make sure we're communicating, we're on the same page.
9 Sometimes we use words we assume you know what they mean and
10 we make bad assumptions.

11 A Okay.

12 Q We've used the term murder. We haven't defined it
13 yet---

14 A Uh-huh. (Affirmative).

15 Q ---and you probably don't know the technical definition
16 of murder in South Carolina, is that right?

17 A That's -- yeah, that's correct.

18 Q You don't have any reason---

19 A I don't -- I hope -- yes, thankfully I have not needed
20 to know that definition of murder.

21 Q Right. Most people don't.

22 A Right.

23 Q So, I'm gonna, I'm gonna help you and I'm gonna give it
24 to you and then we'll talk about it.

25 A Okay.

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1 Q Murder, in South Carolina, is the intentional
2 deliberating killing of another person with malice
3 aforethought --

4 A Uh-huh. (Affirmative).

5 Q -- and malice is defined as hatred, ill will, hostility
6 towards another person --

7 A Right.

8 Q -- and acting deliberately to harm them under
9 circumstances where the law would infer an evil intent. So,
10 it's an intentional deliberate act with an evil intent to
11 take an innocent life.

12 A Right.

13 Q In that situation, what are your thoughts about the
14 death penalty?

15 A I would have to say I would be for the death penalty.

16 Q Okay.

17 A They're intentionally and with malice and evilness
18 killing another person, then I feel like they should pay for
19 their -- with their life for doing that.

20 Q Okay. If it's not -- if it's no extenuating
21 circumstances like---

22 A Correct.

23 Q ---self-defense---

24 A Correct.

25 Q ---or accident. If it's, if it's intentional, they

Individual Juror Qualification

1 knew right from wrong --

2 A Right.

3 Q -- chose to kill, they should get the death penalty?

4 A Yes, sir.

5 Q And the life penalty would not be sufficient to punish
6 that kind of intentional killing?

7 A Not in my feelings.

8 Q Okay.

9 A No.

10 Q And you seem pretty firm in your answers.

11 A Yeah.

12 Q And are they a reflection of your value system?

13 A Oh, I mean I would think so. I mean I just feel like,
14 you know, why burden the justice system with paying for a
15 person like that, keeping them in prison when I feel like
16 they give -- their life has no value anymore. That might be
17 harsh, but I feel like their actions that led to murdering
18 another human being, their life has no more value being
19 behind, you know, behind bars.

20 Q Okay. And---

21 A So, why pay for that?

22 why have another person---

23 Q And they shouldn't be able to live out their years on
24 the tax payer dime so to speak?

25 A Pretty much. I'm self-employed so I really would like

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1 my money to go somewhere that's useful.

2 Q Okay. And that's a view that you hold?

3 A Yes.

4 Q And that would be a factor in your decision making
5 process?

6 A Correct.

7 Q Okay. And, again, your answers that you've given
8 today, this is obviously a very serious topic.

9 A Right.

10 Q And your answers are a reflection of your kind of moral
11 code or what's right and wrong?

12 A Yes.

13 Q And you hold these, these -- this -- these values
14 deeply?

15 A Yes.

16 Q They're deeply held?

17 A Yes.

18 Q Okay. And I can't change your mind?

19 A No, I mean -- if the definition that you gave me of
20 murder is what happened, then, then that would not change my
21 mind, but if there are mitigating circumstances and those
22 type of things, then obviously that would be a different
23 scenario.

24 Q Okay. When you think about mitigating circumstances,
25 are you thinking about things like maybe it was self-defense

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1 or accident, the facts of the crime---

2 SOLICITOR BARNETTE: Your Honor, now I'm gonna object
3 to that, Your Honor. That's not the definition of
4 mitigating circumstances.

5 THE COURT: Be a little more precise. If you're gonna
6 use the phrase---

7 MR. MCGUIRE: Sure.

8 THE COURT: ---and you're gonna define it, you ought
9 to---

10 Q Yeah, I just want to know what you're thinking when,
11 when you say---

12 THE COURT: well, see, for her -- for you to get her
13 thinking though, you're gonna have to give her correct
14 information.

15 Q The judge is---

16 THE COURT: I want to be sure her thinking is based on
17 correct information.

18 MR. MCGUIRE: Sure.

19 when you, when you say mitigating circumstances, what
20 are you thinking about?

21 A Like self-defense. Like you said, if there is some
22 type of mental instability that's going on. I mean I have
23 no, I have no idea what could, would be happening between
24 the two individuals, you know, to result in murder.

25 So, maybe there was some issue way back when or there's

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1 revenge. I mean I don't know. I mean -- but I, I would
2 feel like if the definition that was given of murder is
3 knowing right from wrong, they killed somebody with malice,
4 that the other person, you know, had no, you know, basically
5 innocence and was murdered, that, you know, person doing the
6 murdering needs to pay.

7 Q And that would be the death penalty?

8 A Correct.

9 MR. MCGUIRE: If I could have just one second, judge.

10 (Pause.)

11 MR. MCGUIRE: That's all I have. Thank you so much.

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 Ms. Fritch, I just want to make sure we're clear on
19 some things cause, like I said, I know several questions was
20 asked to you. I just want to make sure that we're clear
21 about what your answers are.

22 A Okay.

23 Q If I heard you right, there was certain -- they're
24 certain things that you would look at that -- basically you
25 wouldn't automatically give the death penalty if a murder---

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1 A Correct.

2 Q ---was committed?

3 A Correct.

4 Q In other words, basically you would look at mitigating
5 circumstances?

6 A Uh-huh. (Affirmative).

7 Q That could be like a disability, things of that nature.

8 A Yes, sir.

9 Q Okay. So, I know he kept saying your value system.
10 Your value system is to be fair---

11 A Uh-huh. (Affirmative).

12 Q ---in this case, it that right?

13 A Correct.

14 Q And your feelings would be, if I -- you're for the
15 death penalty?

16 A Correct.

17 Q But you wouldn't automatically give the death penalty
18 in this situation?

19 A Correct.

20 Q And I know you was talking about money and so forth,
21 you know, some people says it cost more to put people to
22 death---

23 A Uh-huh. (Affirmative).

24 Q ---because of the legal system and so forth.

25 So, really it's more based off what you feel then about

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1 the money situation?

2 A That, and probably my knowledge of it, but I've not
3 heard that argument that it costs more money to put people
4 to death. I've not heard that before, but, again, I don't
5 research, you know, the -- capital punishment. So, this is
6 just from, you know, things that I've gathered and heard
7 throughout my life and the way that I feel about the social
8 system and --.

9 Q Right.

10 Like I said, you're not -- this isn't something you
11 think about everyday---

12 A Right. No, no.

13 Q ---the death penalty, is it?

14 And like you---

15 A That's why I feel like I can -- I feel like hopefully I
16 can be fair once I listen to both sides. Not saying
17 automatically, but given a set of guidelines to be fair.

18 Q I guess, just to be fair, you lean towards the death
19 penalty, but it does not mean that you would give the death
20 penalty---

21 A Correct.

22 Q ---in every case?

23 A Yes, that would probably be a fair statement.

24 Q Right.

25 So, in other words, like you said, you talk about

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1 mitigating circumstances and self-defense and things, that
2 was dealt in the first phase.

3 A Yes.

4 Q What I mean is that's the guilt or innocence.

5 A Right.

6 Q That's a defense, self-defense, accident, things like
7 that would be a defense to the, to the charge itself.

8 A Uh-huh. (Affirmative).

9 Q That's not mitigating circumstances.

10 A Uh-huh. (Affirmative).

11 Q Mitigating circumstances is like a disability by the
12 defendant, his background, the way he was raised, things
13 like that. That's mitigating circumstances.

14 A Right.

15 Q Would you listen to those circumstances before you'd
16 pass a judgment---

17 A Yes, sir.

18 Q ---in this case?

19 A I would.

20 Q So, just because the aggravator -- just because you
21 lean towards it don't mean that you automatically give that
22 death penalty?

23 A Yes, sir.

24 Q And it wouldn't be based off money or anything?

25 It would be based off the facts you heard?

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1 A Correct.

2 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
3 please.

4 THE COURT: Yes, sir.

5 (Pause.)

6 Q And could you, could you consider a life sentence
7 without parole, and you realize this is without parole?

8 A Right.

9 Q People never get out---

10 A Right.

11 Q ---from there?

12 That is something you could consider in this case?

13 A Yes, sir.

14 Q And you realize if the -- all 12 jurors have to agree
15 to give a death penalty---

16 A Uh-huh. (Affirmative).

17 Q ---in this case?

18 If one juror disagrees, then the judge would sentence
19 and give a life without parole sentence.

20 A Okay.

21 Q And that's just -- like I say, that's a learning
22 process I'm sure --

23 A Yeah, it is.

24 Q -- from there.

25 But, just to make sure from that, you would listen to

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1 both aggravators and mitigators---

2 A Yes, sir.

3 Q ---before you made any decision --

4 A Yes, sir.

5 Q -- even though you lean possibly towards the death
6 penalty?

7 A Correct.

8 Q You wouldn't automatically give that?

9 A Correct.

10 Q Like the judge had instructed you, you're a number
11 three juror, is that right?

12 A Correct.

13 Q It wouldn't be based off the money?

14 A No.

15 Q Wouldn't be based off a strong feeling for there?

16 It would be based off the facts that you heard in this
17 case today --

18 A Yes, sir.

19 Q -- or I guess later that you would hear?

20 A Correct.

21 Q And I apologize for asking you all these questions.

22 A No, that's fine. That's fine.

23 THE COURT: Anything further from the defense?

24 MR. MCGUIRE: Yes, sir.

25 EXAMINATION

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1 BY MR. MCGUIRE:

2 Q When we were talking earlier I thought I understood
3 that if, if the, if the proof was --

4 A Uh-huh. (Affirmative).

5 Q -- beyond a reasonable doubt, you and 11 other
6 jurors --

7 A Uh-huh. (Affirmative).

8 Q -- found that a person was guilty, they got the right
9 guy, and that the intent -- he knew right from wrong, he
10 intentionally, with evil intent --

11 A Uh-huh. (Affirmative).

12 Q -- took an innocent life, that that's the kind of case
13 that would call for the death penalty?

14 A Yes.

15 Q And that the life penalty was not severe, if the person
16 meant to do it, and it's beyond a reasonable doubt, that the
17 life penalty wouldn't be appropriate?

18 A Yes, sir.

19 Q Okay. And I want to talk to you a little bit about --
20 well, no, that's all I have. Thank you.

21 A Okay.

22 EXAMINATION

23 BY THE COURT:

24 Q I have just a couple of questions, Ms. Fritch.

25 You seem to have given some inconsistent answers on

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1 this.

2 A Okay.

3 Q So, I want to see if I can clear up the inconsistency
4 that I hear.

5 A Okay.

6 Q You indicated to me that you would be -- remember the
7 situation I told you to put yourself in. The jury has
8 already found the defendant guilty of murder.

9 A Uh-huh. (Affirmative).

10 Q So, the, the legal definition of murder has been met.

11 A Uh-huh. (Affirmative).

12 Q And you're coming back into the courtroom for that
13 second phase of the trial where the appropriate sentence is
14 to be decided.

15 A Uh-huh. (Affirmative).

16 Q You indicated to me that juror number three was more
17 like what you would be like.

18 A Uh-huh. (Affirmative).

19 Q That would be someone who would want to listen to the
20 law, listen to the evidence, both aggravating circumstances
21 and mitigating circumstances --

22 A Right.

23 Q -- and that your mind would not be made up simply on
24 the fact that the person had been found guilty of a murder.

25 A Uh-huh. (Affirmative).

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1 Q You would want to hear the other factors before you
2 decided the appropriate penalty.

3 A Uh-huh. (Affirmative).

4 Q Then, in response to the defense's questions, you said
5 that if someone were found guilty of the definition of a
6 murder, that the only -- that your feeling is the only
7 appropriate penalty would be the death penalty. That seems
8 to be somewhat inconsistent to me.

9 A Right.

10 Q Do you follow me?

11 A I understand where you're coming from.

12 Q And -- so, I'm gonna ask you to explain where we are.

13 A I think---

14 Q where you are really. Not where we are.

15 A Yeah.

16 Q where you are.

17 A I guess when he was explaining it, the definition of
18 murder, I was thinking more of like in a vacuum like there
19 was no mitigating or aggravating circumstances --

20 Q Uh-huh. (Affirmative).

21 A -- that would decide, you know, death---

22 Q well, guilt or innocence is decided without reference
23 to -- whether they're guilty or not guilty is decided
24 without reference to---

25 A Right.

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1 Q ---aggravating or mitigating circumstances.

2 A Okay.

3 Q You only hear that in the second phase of the trial.

4 A Okay.

5 Q So, we're, again, you're in the situation --

6 A Right.

7 Q -- walking into the courtroom --

8 A Right.

9 Q -- where guilt has been determined for murder.

10 A Uh-huh. (Affirmative).

11 Q Now the question is the appropriate penalty.

12 A Right. Like -- I guess then, you know, that, I guess,
13 with a little more understanding, I probably would be more
14 of the second juror, but after -- I would like---

15 Q Well now the second juror would never vote for the
16 death penalty.

17 A Well, I'm sorry.

18 Q Let's, let's---

19 A I would lean towards the death penalty.

20 Q You would lean towards the death penalty?

21 A Yeah, coming into the courtroom, it would be, if the---

22 Q Well, see, that wasn't my -- let's, let's -- I hate to
23 quibble, but I'm not trying to quibble. I really need to
24 kind of get an idea of where we are.

25 A Right.

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1 Q The first juror would always go for death.

2 A Uh-huh. (Affirmative).

3 Q Doesn't matter what's said in there, what's done in
4 there.

5 A Right.

6 Q Every time someone's been found guilty of a murder,
7 they're gonna give the death penalty regardless.

8 A Uh-huh. (Affirmative).

9 Q The second juror is never gonna give the death
10 penalty --

11 A Uh-huh. (Affirmative).

12 Q -- cause that person doesn't believe it's proper. The
13 death penalty is not correct. They would never vote for the
14 death penalty. They will always vote for life in prison
15 without parole.

16 A Uh-huh. (Affirmative).

17 Q The third juror wants to listen to the evidence,
18 aggravating factors and mitigating factors, and the law sets
19 out what those are. Especially on the aggravating side. On
20 the mitigating side it sets out some. But then there's --
21 it says that the jury can consider anything, even mercy---

22 A Right.

23 Q ---in whether or not to, to impose the death penalty --

24 A Right.

25 Q -- mitigating side. So, that juror wants to listen to

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1 the evidence presented in the sentencing phase --

2 A Uh-huh. (Affirmative.)

3 Q -- before the juror makes up his mind as to what the
4 appropriate penalty is, and I asked you to tell me which one
5 best described you, and now that you've gone through the
6 questioning further, I'll be glad to hear from you on that.

7 A I mean I still feel like the, the third juror. I mean
8 I would, I would like to be able to be objective and listen
9 to both sides, mitigating and aggravating, after they were
10 found guilty.

11 Q Okay. So, you wouldn't automatically feel that the
12 death penalty was required because a murder had occurred?

13 A No, I do not feel like that.

14 Q And you wouldn't automatically think that life was
15 required?

16 A True.

17 Q You would want to listen to both sides---

18 A Yes.

19 Q ---mitigating and -- so, you, you don't think that, in
20 every case, that the death penalty is required or the life
21 penalty?

22 A Correct.

23 THE COURT: Okay. Any other questions?

24 MR. MCGUIRE: Yes, sir.

25 EXAMINATION

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1 BY MR. MCGUIRE:

2 Q This is in response to a point that the, the prosecutor
3 brought up.

4 A Uh-huh. (Affirmative).

5 Q And he said if one juror voted for life, that the, the
6 verdict would be life.

7 A Uh-huh. (Affirmative).

8 Q Is that -- you know, we always think about juries
9 speaking with one voice and being unanimous.

10 If that was the case in, in this case, if one juror
11 wanted to vote for life, is that a, is that a position you
12 could respect, that the jury would not be unanimous?

13 A I think I would have to respect it cause that's the way
14 the law is. So --.

15 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
16 this line of questioning. I don't think it's any new
17 material that's been brought up from this standpoint.

18 THE COURT: well, we've, we've kind of gotten -- this
19 one is a little different.

20 SOLICITOR BARNETTE: Yes, sir.

21 THE COURT: I'm gonna, I'm gonna---

22 SOLICITOR BARNETTE: Okay.

23 THE COURT: ---relax my rules slightly.

24 MR. MCGUIRE: Thank you, Your Honor.

25 THE COURT: You welcome, Mr. McGuire.

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1 Q I didn't address this at all because I focused my
2 questions on, on your feeling about the death penalty for
3 that intentional killer.

4 A Uh-huh. (Affirmative).

5 Q And it sounds like you're, you're very close between
6 the number one and number three.

7 A Uh-huh. (Affirmative).

8 Q And that's your honest opinion?

9 A Right.

10 Q Okay. In the penalty phase, there, there is mitigation
11 evidence, and that is -- or it can be mitigation evidence.
12 I could present, I could present nothing. I could present
13 stuff, and what if the mitigation evidence was the
14 defendant's background, sort of his characteristics, his
15 walk in life, how he was raised --

16 A Right.

17 Q -- would that be relevant in fixing punishment for the
18 intentional killing of an innocent person?

19 A Yes, sir.

20 Q Okay. And why is that?

21 A Just because some people, their perception of what is
22 right and wrong can be skewed by the family they grew up in
23 or did not grow up in, and life-style that they didn't have
24 any control over when they were younger, and how they formed
25 what is right and wrong in their own minds might not be --.

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1 Q Okay. But now to, to -- in the guilt phase, to convict
2 for murder, you would have to be satisfied that the person
3 knew right from wrong.

4 A Okay.

5 Q Okay. So, in that case where the person knew right
6 from wrong --

7 A Uh-huh. (Affirmative).

8 Q -- chose to---

9 SOLICITOR BARNETTE: Your Honor, now we're starting to
10 stake out the juror. We're getting to the point now where
11 we're getting right and wrong, things like that.

12 THE COURT: Well, Mr. McGuire, there's -- we're getting
13 into defining criminal responsibility, M'Naghten test,
14 things of that nature.

15 Is that where we're headed?

16 MR. MCGUIRE: No, sir, just that, that obviously the,
17 to be convicted of murder in South Carolina, the person has
18 to know right from wrong.

19 THE COURT: I think -- to, to stand trial --

20 MR. MCGUIRE: Yes.

21 THE COURT: -- that's true. Everybody that stands
22 trial.

23 MR. MCGUIRE: Exactly.

24 THE COURT: Otherwise we don't hold the trial.

25 MR. MCGUIRE: Right.

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1 So, the judge and I are in agreement that, to convict
2 somebody for murder in South Carolina, they have to -- they
3 have to be capable of understanding right from wrong.

4 A Okay.

5 Q And choose to kill an innocent person.

6 A Okay.

7 THE COURT: But the test isn't the degree to which they
8 appreciate those things. It's whether they can or can't.

9 MR. MCGUIRE: Exactly.

10 THE COURT: So -- since we're defining that test.

11 MR. MCGUIRE: Sure.

12 THE COURT: Okay.

13 Q The -- and I'll use that word, that phrase. They can
14 appreciate the difference between right and wrong.

15 In that situation, where the person can appreciate the
16 wrongfulness of his actions --

17 A Uh-huh. (Affirmative).

18 Q -- however chooses to kill an innocent person, in that
19 situation, would the background of the defendant be relevant
20 in fixing punishment?

21 A I would not, I would think it was relevant in that
22 situation. If they, if they, through the trial, that
23 it's -- if they know right from wrong and it's been shown
24 they know right from wrong, and they still chosen -- then
25 they, you know, been proven to murder an innocent person,

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1 then I would say the background probably does not hold as
2 much relevance for me.

3 Q Okay. And that's because people are responsible for
4 their actions?

5 A Correct.

6 Q If they make choices?

7 A Correct.

8 Q And they're capable of making choices?

9 A Correct.

10 Q If someone knows -- can appreciate right from wrong and
11 they choose to kill, that seems to warrant the death
12 penalty?

13 A Correct.

14 Q Okay. That's all I have. Thank you.

15 THE COURT: All right. Mr. Barnette, I think we're
16 gonna go on with this one. You may proceed.

17 SOLICITOR BARNETTE: Yes, sir. Thank you.

18 EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q I apologize first for going through this.

21 A All right.

22 Q But there's some, there's some things that we just need
23 to know from that standpoint.

24 The way he explained it to you---

25 THE COURT: Mr. McGuire, I wish you'd talk low enough

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1 so we can't hear you up here.

2 MR. MCGUIRE: Oh, I'm sorry.

3 THE COURT: That's all right.

4 Go ahead.

5 Q Going, going back, obviously mitigation and disability,
6 things like that, are important to you --

7 A Uh-huh. (Affirmative).

8 Q -- from that standpoint?

9 And murder is the intentional killing of another from
10 that standpoint. However, like I say, all murders are not
11 treated as death penalty. There has to be certain
12 aggravators that's involved with that, and, obviously, if
13 you got to the sentencing phase, you may be leaning towards
14 the death penalty, but you would think that you would wait
15 until you heard everything before you made your final
16 decision?

17 A Right, because I guess new evidence could be introduced
18 as well, right.

19 Q Right. I mean exactly. There would be new evidence
20 introduced by both sides.

21 A Uh-huh. (Affirmative).

22 Q We can introduce it as well as the defense from that
23 standpoint, and, like I said, would you give consideration
24 to that mitigating circumstances as well as---

25 A I mean I would, I would. Yes, I would listen to it.

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1 Q All right. And, like you said, you'd weigh that
2 against the aggravating circumstances, wouldn't you?

3 A Yes, sir.

4 Q And you'd fairly try to listen to that, even though you
5 have a lean towards it, you would, if you felt like the
6 mitigators was proven, possibly you could give a life
7 without parole sentence?

8 A Yes, sir.

9 Q And you think -- so, you wouldn't automatically have
10 your mind made up when you walked back into this room?

11 A I wouldn't automatically, no, sir.

12 Q Okay. But you'd weigh the evidence and you'd look at
13 the evidence and make a decision based off the evidence?

14 A Yes, sir.

15 Q And, and the mitigators would -- could make a
16 difference in your situation, not saying they would, but
17 could be?

18 A Yes, sir.

19 Q As well as the aggravators could make the situation,
20 could, could make -- factor into your decision too?

21 A Yes, sir.

22 Q Like I said, the right and the wrong's already dealt
23 with by the time you get back from there.

24 A Uh-huh. (Affirmative).

25 Q And the murder would be a murder when you came back for

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1 the sentencing phase?

2 A Uh-huh. (Affirmative).

3 Q So -- but like you said, you wouldn't walk through that
4 door and automatically have your mind made up, would you?

5 A I would not think so.

6 Q Okay.

7 A I would want to be fair for that process.

8 Q And like you'd said, you'd listen to both aggravators
9 and -- circumstances --

10 A Yes, I would.

11 Q -- in that situation as well as the mitigators?

12 A Yes, sir.

13 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

14 EXAMINATION

15 BY THE COURT:

16 Q All right. I'm just gonna ask a couple more questions,
17 and we'll be -- hopefully be finished, Ms. Fritch.

18 Now, is there anything about your feelings on the issue
19 of capital punishment that would prevent you from being able
20 to follow the Court's instructions on the law concerning the
21 conducting of that second hearing?

22 A No, sir.

23 Q Even, even if the Court's instructions were to consider
24 both aggravating circumstances and also the instructions
25 would be to consider mitigating circumstances, you would be

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1 able to follow that direction and consider both things
2 before a verdict is reached?

3 A Yes, sir.

4 Q Is that what you're telling me?

5 A Yes, sir.

6 THE COURT: Okay. Anything further?

7 MR. MCGUIRE: No, sir.

8 SOLICITOR BARNETTE: No, sir.

9 THE COURT: All right. I'm gonna ask you to step back
10 to the jury room for just a minute and we'll be talking with
11 you shortly.

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

14 THE COURT: Defense's position.

15 MR. MCGUIRE: Move to strike the juror for cause. Her
16 answers indicate that, when you use plain language that she
17 understands, we're talking about somebody who deliberately,
18 deliberately intentionally took a life and that's proven
19 beyond a reasonable doubt, consistently answered the death
20 penalty was appropriate.

21 THE COURT: Well, it would be appropriate.

22 MR. MCGUIRE: Well, she actually said it would be --
23 that the life penalty wouldn't be severe enough or
24 appropriate to punish that kind of intentional killing. So,
25 she said death penalty and life penalty was not appropriate.

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1 That leaves her at one place, the death penalty.

2 THE COURT: well, she said both things, and just
3 respond -- it depends how the question was asked apparently.

4 MR. MCGUIRE: And I think -- I agree with that. I
5 think it is how the question is asked. All the prosecutor's
6 questions were very leading, and we, we gave her room---

7 THE COURT: Both ways. They were all leading.

8 MR. MCGUIRE: well, I disagree. I mean I think I gave
9 her the opportunity to give honest answers without leading,
10 and I think, when you look at the way the questions were
11 posed, the language used---

12 THE COURT: I disagree, but go ahead. That -- it
13 doesn't matter.

14 MR. MCGUIRE: I understand. I think she's
15 automatically death penalty when the elements of murder
16 without regard to the child victim, and she also indicated
17 that background, characteristics of the defendant would not
18 be relevant in her decision making process when I was
19 talking to her. I don't know why we would make an effort to
20 save her. We have plenty of jurors, and if we seat her, I
21 think -- well, you know my position. I think it violated
22 Mr.---

23 THE COURT: well, we're not seating anybody.

24 MR. MCGUIRE: I understand. well, present her for
25 being sat. It's depending on the use of the strikes, the --

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1 and, and I think, when you look at the, the responses as a
2 whole, it's, it's a -- I would say that it's a pretty --
3 it's pretty darn clear that she's substantially impaired.
4 Automatic is not the test. You don't have to be automatic
5 and one hundred percent in every case all the time. It's
6 substantial impairment, and I think that, that obviously
7 encompasses---

8 THE COURT: Let me ask you a question. I'm just -- I'm
9 looking at a quote from the Longworth case. I believe it's
10 the case you handed up.

11 MR. MCGUIRE: Yes, sir.

12 THE COURT: That says, in a capital case, and this is
13 kind of the flip side of what you're arguing, it says that a
14 juror may not be excluded for his or her attitude against
15 capital punishment unless it would render that juror unable
16 to return a verdict according to the law.

17 Is that still the law in this State?

18 MR. MCGUIRE: Yes, sir, and the---

19 THE COURT: So --.

20 MR. MCGUIRE: I'm sorry.

21 THE COURT: Well, what does that mean to you?

22 MR. MCGUIRE: That's what I was gonna say, and I think
23 that is -- are they substantially impaired, are they so
24 leaning towards the death penalty that they can't fairly---

25 THE COURT: And I agree it's a close question in this

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1 one. I'm not disagreeing with you it's a close question.

2 MR. MCGUIRE: Sure.

3 THE COURT: That's the reason I allowed you to bend the
4 rules, my rules a little bit.

5 MR. MCGUIRE: Yes, sir. Yes, sir, and I appreciate
6 that. I mean I think -- I mean given the magnitude of this
7 case, and we have other jurors, there's -- an effort to save
8 this one, when given her responses, especially when she
9 even---

10 THE COURT: Well, let's don't -- it's not an effort to
11 save anybody. I'm just trying to make a ruling---

12 MR. MCGUIRE: Oh, sure.

13 THE COURT: ---based on what I'm suppose to rule.

14 MR. MCGUIRE: Sure.

15 THE COURT: And I'm not counting how many I have. I
16 can call more. I mean that's, that's not a problem.

17 MR. MCGUIRE: Yes, sir, I think that -- I think, when
18 you look at her responses, she's substantially impaired.
19 It's -- I agree with you. It's -- I wish she would of said
20 automatic all the time. You know, she actually---

21 THE COURT: She never said that.

22 MR. MCGUIRE: I know. I said I wish, I wish she said
23 that.

24 THE COURT: She didn't.

25 MR. MCGUIRE: She didn't, but now she did, in response,

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1 in response to the Court's question, she, she, she took back
2 her number three answer a little or she was about to and say
3 well, I guess I'm closer to number two, and then you had to
4 correct her and say well, two is always the life person, and
5 then, when I talked to her, I said it sounds like you're
6 right there between where she, where she---

7 THE COURT: well, she never -- the reason I thought
8 that was not a proper answer is because she never indicated
9 a leaning in that direction.

10 MR. MCGUIRE: well, I agree.

11 THE COURT: So, I thought she must of picked the wrong
12 number. I wasn't trying to get her to change her answers.

13 MR. MCGUIRE: Oh, I agree.

14 THE COURT: It seemed to me that was -- she had
15 forgotten the order that they were in or something.

16 MR. MCGUIRE: I think she meant to say one.

17 THE COURT: She never indicated a preference in that
18 direction.

19 MR. MCGUIRE: Sure. I think she meant to say one,
20 and---

21 THE COURT: Maybe so. I don't know. She didn't.

22 MR. MCGUIRE: Right, and when I, when I was talking to
23 her, I said it sounds like you're, you're right there
24 between the one and the three.

25 THE COURT: I understand.

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1 MR. MCGUIRE: And I think---

2 THE COURT: Let me give the State a chance to say
3 something.

4 All right.

5 SOLICITOR BARNETTE: I think, Your Honor, she's not
6 substantially impaired. She may lean towards the death
7 penalty, but that's not the test like you pointed in the
8 State versus Longworth case from that standpoint, and the
9 other thing I've got a real problem with, and I agree,
10 there's leading questions asked all the way across the
11 board, but the thing that bothered me about leading
12 questions asked by the defense was especially the one where
13 he tried to use self-defense, accident as mitigators.
14 They're not mitigators and he threw that out, and obviously
15 an uneducated, an uneducated juror, and she admitted she's
16 uneducated about the death penalty situation, he planted
17 that in there, and that's incorrect.

18 THE COURT: I did note that that was not a correct
19 statement of the mitigators.

20 SOLICITOR BARNETTE: And the problem I've got with it
21 is, from that standpoint, when you try to plant it in that
22 circumstance saying those are, are mitigators when they're
23 not, and then it becomes confusion is when, when is the
24 sentencing phase, when is the guilt phase to that juror from
25 that standpoint.

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1 I think she basically understood the Court's question
2 from that standpoint. I -- obviously she leans towards
3 that, but that don't disqualify her because she leans to it.
4 The bottom line is she said she could listen to mitigators.
5 She deals with disabilities in children everyday apparently
6 through the horse situation.

7 She also -- and basically, basically she didn't bat an
8 eye concerning the age of the victim in this case. It was
9 all centered on the murder definition that was given with a
10 definition by the defense about the mitigators that was
11 wrong.

12 THE COURT: Let me ask counsel one thing. It really
13 doesn't have anything to do with the question in front of
14 us.

15 Both of you have kind of complained about leading
16 questions. I'll be glad to exclude all leading questions
17 from this point forward.

18 MR. MCGUIRE: Suits me.

19 SOLICITOR BARNETTE: Your Honor, I don't know if that's
20 the law to be honest with you.

21 THE COURT: I don't know if there is any law --

22 SOLICITOR BARNETTE: Yes, sir, I understand.

23 THE COURT: -- on that.

24 MR. MCGUIRE: And judge?

25 THE COURT: I think it's in the Court's discretion as

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1 to what the -- how the questioning will go, but both of you
2 are complaining about leading, leading questions. We can
3 stop leading questions if y'all want to.

4 MR. MCGUIRE: I just want to respond briefly to the---

5 THE COURT: Yes, sir.

6 MR. MCGUIRE: ---the, the mitigation issue with regard
7 to self-defense, accident. I think everybody who's got some
8 experience with these cases, very often jurors do think
9 mitigation can be extenuating circumstances with regard to
10 the crime, like self-defense, accident, especially because
11 we use that definition in South Carolina that mitigation
12 evidence can make the crime less worse. We actually tie it
13 to the crime in the definition. I wasn't trying to tell
14 her, obviously, that mitigating means defenses to the first
15 phase issue of somebody being guilty of murder. All I
16 wanted---

17 THE COURT: Well, I've always -- I think I've always
18 told them they can consider anything they want to consider
19 in mitigation.

20 MR. MCGUIRE: And that is the law. You're right. And
21 I wanted to know what she was thinking, and when I
22 specifically asked her about background and character of the
23 defendant---

24 THE COURT: Yes, sir.

25 See this, this is the problem when we get into these

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1 specific questions because we don't have enough time to
2 educate someone who's not educated in the law on things like
3 the M'Naghten test and things like that. When we start
4 asking for their conclusions about legal matters that they
5 have -- there's no way in the world they can be educated on
6 those things, layman, and that's one of the difficulties we
7 have and I take that into consideration in considering the
8 responses because we -- we're starting to ask them legal
9 concepts and legal -- asking them to draw legal conclusions
10 on things that they have no background from which to make
11 those conclusions. So, I guess I'll take it -- give it the
12 weight I think I choose to give it.

13 All right. I do acknowledge this one is a close
14 question. I understand that. She seemed to be a very
15 intelligent individual. Her responses were lucid and, and
16 considered. She described herself as a juror number three,
17 and I gave her an opportunity, after the other questioning,
18 to, to withdraw her position in that regard, but she didn't.
19 She, she continued to say she'd be a number three. She
20 indicated that she'd be willing to consider mitigating
21 circumstances, and perhaps the most important thing that she
22 said to the Court was that she would be willing to follow
23 the Court's instructions concerning how -- her behavior
24 during the trial. She would be willing to accept those
25 instructions in spite of her disagreement with those

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1 instructions.

2 Of course, the Court will instruct the jury to consider
3 all factors in reaching a decision during the penalty phase
4 of the trial, and she indicated she could do that. She
5 could set aside her personal beliefs and follow those
6 directions, and I'm not sure that's absolutely necessary
7 since she did say she felt like she could consider
8 mitigating factors and would not have her mind made up
9 already.

10 So, while I am -- I do agree it's a close question. I
11 will find her qualified to serve.

12 MR. MCGUIRE: And---

13 THE COURT: All right. Let's bring in Ms. Fritch.

14 MR. MCGUIRE: I think -- I just wanted to make sure I'm
15 preserved on the record.

16 THE COURT: I think you objected to that.

17 MR. MCGUIRE: I did.

18 THE COURT: Okay. Bring her in.

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

21 THE COURT: All right. Ms. Fritch, I have determined
22 that you can continue in your process.

23 Now, where we are is that we're in the process of
24 qualifying people to possibly serve on the jury. Doesn't
25 mean that you'll be on the jury or not. Later on, when we

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1 finish the qualification process, a jury will be selected.
2 You'll receive some additional information from the Court
3 when we get to that stage in the process.

4 The clerk is gonna give you a little sheet of paper
5 here. That has information on how to contact the clerk. It
6 also has information concerning, if you were called to come
7 back, some things you ought to think about.

8 THE WITNESS: Okay.

9 THE COURT: I suspect, as I told you, the length of the
10 trial may be longer than a week. I don't know if you take
11 medications or anything of that nature, but bring whatever
12 personal things you need to be able to stay that long. The
13 jury will be housed at the Marriott. There will be laundry
14 facilities available. So, you know, if we, if we run longer
15 than we -- than I've estimated, we'll be able to accommodate
16 you in that situation.

17 My instructions up to this point in time will continue.
18 That means that you should not discuss the case with anyone
19 or allow anyone to discuss it with you. You should not
20 watch, listen to, or read any media reports about this
21 matter. You should not try to gather any information about
22 the case on your own, and if anyone tries to contact you
23 about the case, please let us know at the Clerk's Office.

24 THE WITNESS: Okay.

25 THE COURT: Now, do you understand the instructions

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1 that I've given you now and on Monday?

2 THE WITNESS: Yes, sir.

3 THE COURT: They will continue until I tell you or
4 you're told that you've been released from those
5 instructions.

6 Do you understand that?

7 THE WITNESS: Yes, sir.

8 THE COURT: I anticipate we'll be calling jurors
9 sometime early next week.

10 THE WITNESS: All right.

11 THE COURT: I can't tell you exactly when that will be,
12 be you'll hear from the Clerk's Office and receive
13 additional instructions.

14 Now, the one exception to my instructions are that you
15 can talk over, with family or people that you work with, the
16 fact that if you are called back you may be gone for a
17 period of time --

18 THE WITNESS: Yes, sir.

19 THE COURT: -- to make arrangements at your employment
20 or make arrangements with family members so that you're
21 prepared.

22 THE WITNESS: Okay.

23 THE COURT: But in doing so, don't talk about the
24 nature of the case. Don't discuss the case with anyone.
25 Just say that you may be called for jury duty and you may

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1 have to be gone for several days.

2 THE WITNESS: So, will that be as early as next week
3 that we will get the call?

4 THE COURT: I expect that it will be some time I'm --
5 all of my estimates about the time in this case have been
6 wrong.

7 THE WITNESS: Okay. I see.

8 THE COURT: So, I can tell you that, okay, but I can't
9 tell you that for sure.

10 THE WITNESS: Okay.

11 THE COURT: So, we will---

12 THE WITNESS: Once a jury has been picked, then the
13 trial will get under way?

14 THE COURT: What's gonna happen, once we get the pools
15 set, then we'll start selecting jurors from that pool.

16 THE WITNESS: Okay.

17 THE COURT: We have not set the pool completely yet.

18 THE WITNESS: All right.

19 THE COURT: So -- and we're now on Thursday. I expect
20 it will be sometime next week before we're finished.

21 THE WITNESS: Okay.

22 THE COURT: And -- so, I wish I could give you a
23 definite date in time, but I can't do that.

24 THE WITNESS: Okay.

25 THE COURT: I'd be, I'd be wrong and again I'd be

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1 apologizing to you again.

2 THE WITNESS: All right.

3 THE COURT: You're free to go. Thank you very much.

4 THE WITNESS: Thank you.

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

7 THE COURT: All right. I'm gonna break for lunch at
8 this time. We'll come back at two o'clock.

9 Court's in recess for lunch.

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: Thank you.

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

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

14 SOLICITOR BARNETTE: State's ready, Your Honor.

15 THE COURT: Defense ready?

16 MR. MCGUIRE: Yes, sir.

17 THE COURT: The next juror on the list is John W.
18 Douglas.

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

21 JOHN DOUGLAS, having been previously
22 sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q Have a seat, Mr. Douglas.

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1 A (Witness complies.)

2 Q Mr. Douglas, first of all, I want to thank you for your
3 cooperation. I know we've had you up and down and around a
4 good bit, and I want to thank you for continuing to
5 cooperate with us.

6 A No problem.

7 Q All right. Now, Mr. Douglas, I'm gonna go over some
8 matters with you today, some questions, and I'll tell you
9 that there aren't any right answers. There's no wrong
10 answers. We're just trying to learn more about you.
11 Perhaps some of the things you think or consider, consider
12 and we're still in the process of qualifying people for the
13 jury.

14 You understand what we're doing?

15 A Uh-huh. (Affirmative). Uh-huh. (Affirmative).

16 Q All right. When you -- I say there's no right or wrong
17 answers. There's only honest answers that you have, and
18 I'll remind you that you took an oath to tell the truth on,
19 on Monday and you're still under that oath now.

20 Do you acknowledge that?

21 A Yes.

22 Q All right. Now, I also gave you some instructions on
23 Monday concerning your behavior. I asked you not to try to
24 gather any information on your own. Don't read or watch any
25 media reports. Don't talk about the case with anyone, and

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1 don't allow anyone to discuss it with you.

2 Have you been able to follow those instructions?

3 A Yes.

4 Q All right. Now, I'm going to ask some questions as I
5 indicated. If, at anytime during this process, you have any
6 concern or have, have a problem let me know. We'll be glad
7 to deal with that issue when it comes up.

8 Okay, sir?

9 A (Witness nods affirmatively.)

10 Q Now, have you ever participated in or been involved in
11 any discussions in any form whatsoever concerning issues
12 involving the death penalty?

13 A Any forums?

14 Q Any, any place where people are discussing it such as
15 it could be on the Internet. It could be in a, in a chat
16 room. It could be---

17 A Oh.

18 Q ---anything like that.

19 A Okay. No.

20 Q Okay. Now, have you ever been involved in any
21 political activities concerning issues that might surround
22 the death penalty?

23 A No.

24 Q Are you the kind of person who could put aside anything
25 that you may have heard, seen, or read that might have

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1 anything to do whatsoever with this case and decide this
2 case based strictly upon the evidence and the law that
3 you'll hear inside the courtroom?

4 A I have to say no.

5 Q Okay. Have you heard anything that, that would affect
6 your opinion about this case?

7 A Well, it was -- I was sitting there, it was that Monday
8 night, just watching the news --

9 Q Yes, sir.

10 A -- and stuff popped up on the news.

11 Q Oh, so you did see something on the news since Monday?

12 A Yes, sir. Yes, I didn't, I didn't search it. It
13 popped up.

14 Q I didn't ask you whether you searched it or not. I
15 asked you if you saw, watched, or listened to any news
16 report.

17 A Oh, okay. I'm sorry.

18 Q Okay. Did you?

19 A Well yes.

20 Q Okay. Would that affect your ability to be a juror on
21 this case?

22 A Yes.

23 Q So, it caused you to make up your mind about something?

24 A Well, yes.

25 Q Okay. And, and -- so, you don't feel that you could be

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1 fair in the trial of this case?

2 A No.

3 THE COURT: Okay. I'm gonna ask if anyone else would
4 like to ask any questions of this witness --

5 MR. MCGUIRE: No, sir.

6 THE COURT: -- or this juror?

7 SOLICITOR BARNETTE: No, sir.

8 THE COURT: Okay. Sir, I'm gonna excuse you from any
9 further service in the case. Ask you to see the bailiff.
10 You're free to go.

11 THE WITNESS: Thank you.

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

14 THE COURT: I have found Mr. Douglas to not be
15 qualified.

16 Mr. Anderson.

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

19 RICHARD ANDERSON, having been previously
20 sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q Sir, have a seat please.

24 A (Witness complies.)

25 Q Your name is Richard A. Anderson, is that right?

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1 A That's correct.

2 Q All right. Now, Mr. Anderson, I want to, first of all,
3 thank you for your cooperation in our process. I know it's
4 been a lot of inconvenience already, and I'm, I'm sorry for
5 that. But we're trying to do a thorough job and it's hard
6 to set the timing on all these things. So, again, thank you
7 for your cooperation thus far.

8 I'm going to go over some things with you today. We're
9 still in the process of qualifying people for the jury.
10 We're going to be asking some questions of you. I will tell
11 you about the questions that we're going to ask, that there
12 are no right answers and there are no wrong answers.
13 There's only your answers. We're wanting to get your ideas
14 and thoughts about certain things. So, I hope you
15 understand that there's -- that we're not looking for any
16 particular answer. We just want to get your thoughts and
17 your ideas.

18 Do you understand that, sir?

19 A Yes, sir.

20 Q When you were at the courthouse on Monday you took an
21 oath to tell the truth. I will remind you you're still
22 under that oath at this time. That is to respond truthfully
23 to the questions that, that the Court's asking and I'll be
24 asking some questions and the attorneys will be asking
25 questions also.

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

2 A Yes, sir.

3 Q And you acknowledge that fact?

4 A Yes, sir.

5 Q All right, sir. When you left the courthouse on Monday
6 I gave you some instructions concerning such things as not
7 to gather any information about the case, not to listen to
8 or watch media reports. Don't discuss the case with anyone.
9 Don't allow anyone to discuss it with you.

10 You remember those instructions?

11 A Yes, sir.

12 Q Have you been able to follow those instructions?

13 A I have.

14 Q All right, sir. Now, are you the kind of person who
15 could put aside anything that you may of heard from any
16 source about anything that might be involved in this case or
17 anything that might have to do with this case?

18 Could you put those matters aside and be able to decide
19 this case based upon the law and the evidence that you hear
20 in the courtroom during a trial?

21 A I think I could.

22 Q Okay. Now, have you ever been involved in any
23 situation where issues concerning the, the question of the
24 death penalty have been discussed?

25 A Such as?

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1 Like?

2 Q Well, some -- you can get on, on the Internet. You can
3 get on anything and get into what are called chat rooms
4 where people talk about different issues, different matters,
5 people that have interests like that. So, there's those
6 kinds of things. There are groups that either support the
7 death penalty or don't support the death penalty. They
8 conduct seminars and, and discussions.

9 So, have you ever participated in anything where that
10 issue was being discussed?

11 A I was in a debate in high school.

12 Q Oh, in high school.

13 That's been a couple years ago.

14 A Yes, sir.

15 Q And -- so -- and it had to do with the death penalty
16 issue?

17 A It was a presidential debate.

18 Q Oh, presidential debate, but I'm talking about things
19 that have to do with the death penalty.

20 A Well, that was one of the issues.

21 Q Oh, that was one of the issues in that debate?

22 A (Witness nods affirmatively.)

23 Q Okay. I see.

24 So, were you assigned by your teacher to take a side
25 and, and to prepare it or how did that work?

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1 A I think I got to pick the side.

2 Q You got to pick the side and you picked one side of the
3 debate or the other?

4 A Yes, it was, it was the Bush Quayle election.

5 Q I see. That's been a long time ago.

6 A It has.

7 Q Okay. All right. Well, would that discussion, would
8 that affect your ability to be a juror in this case?

9 A I don't think it would.

10 Q Okay. Well, maybe I'll develop that a little further
11 as I ask you some more questions.

12 You ever been involved in any political activities such
13 as writing to congressmen or representatives or political
14 demonstrations or anything like that that would have to do
15 with the death penalty?

16 A No, sir.

17 Q Okay. Now, are you the kind of person that could put
18 aside anything that you might have heard from any source
19 that might have any connection whatsoever with the issues or
20 the things that are involved in this case and decide this
21 case, if you were a juror, based solely upon the law and the
22 evidence that you hear in the courtroom?

23 A I hope I could.

24 Q Well, I need some definite answers.

25 Do you -- can you -- could you do that?

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1 A I think so.

2 Q If you were instructed by the judge to consider only
3 the law and the evidence as presented, could you do that?

4 A Well, I'm not fully aware of the, the whole law.

5 Q Oh, I understand that. I'm just asking if you're the
6 kind of person though who would try to follow the directions
7 of the judge and be in a position to try to set aside any
8 outside matter?

9 A I would try to follow your instructions, sir.

10 Q Okay. So, you would be willing to do that?

11 A Yes, sir.

12 Q Okay. Now, while you were in the jury room, there was
13 a list of people, names.

14 Do you remember seeing that list?

15 A Yes, sir.

16 Q And on that list, I guess it was three pages long, we
17 have listed people who have been identified to me as people
18 who might be witnesses in this trial.

19 Now, did you recognize the names of anyone on that list
20 as someone that you know or that you're friends with or that
21 you're somehow related by blood or marriage to?

22 A No, sir.

23 Q So, you didn't recognize any of those people as
24 acquaintances of yours or someone you've had contact with?

25 A No, sir.

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1 Q Okay. Now, I'm going to get into some questions in
2 just a minute that will -- that are kind of personal I guess
3 or have to do with your opinions on things and how you
4 believe on certain things. You seem to be someone who's
5 mature enough that it wouldn't bother you too much if I
6 asked questions like that.

7 Is -- do you agree that you'd be able to handle that
8 kind of question?

9 A I think so.

10 Q Okay. Well, you -- could you do it?

11 A Yes. Yes, sir.

12 Q You tend to say think so and that's one of you -- but I
13 need to -- we need some definite answers of, of, of -- about
14 things.

15 Okay. Now, I want to point out one thing to you so I'm
16 sure that we got an understanding about this. I told you,
17 on Monday, that if we tried the case that we're involved in
18 now that it will be a two step trial. It would be a trial
19 where there would be a trial concerning the charges that are
20 brought, and depending on the result of that trial, then we
21 would -- may conduct a second hearing using the same jury in
22 both hearings.

23 The first hearing would be to determine whether or not
24 the defendant is guilty or not guilty of the charges that
25 have been lodged. Of course, if the defendant is found not

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1 guilty of those charges, there would not be a second
2 hearing. That would be the end of the case.

3 Now, however, if the defendant were to be found guilty
4 of the crime of murder, the State is requested that there be
5 imposed a death penalty for that, and if -- so, if he were
6 found guilty of murder, we'd have to hold a second hearing
7 where the jury would consider the appropriate penalty to be
8 levied in this case.

9 You understand that that's -- it's a two step process
10 and we only get to that second step if the defendant were
11 found guilty in the first step?

12 A Yes, sir.

13 Q You understand that?

14 A Yes, sir.

15 Q Now, I want to -- we're gonna be talking, as we go
16 through this, about some matters that involve that second
17 hearing, the, the penalty phase, and I just want to point
18 out to you that, that we're kind of putting the cart in
19 front of the horse by doing that. In other words, we
20 don't -- we haven't gotten to that stage of the trial.
21 There's a possibility we could -- might -- may not get to
22 that stage of the trial, and the defendant, in every
23 criminal case, including this one, is always presumed to be
24 innocent of the crimes for which the charges have been
25 entered.

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1 And so I want to point out to you that, because we're
2 talking about the penalty phase of the trial, that shouldn't
3 reflect in anyway on the defendant, Mr. Blackwell, or on his
4 case concerning the, the guilt or innocence of the charge.
5 It's just that the same jury would handle both cases, and if
6 we're going to talk to potential jurors about the first or
7 the second part of the trial, we've got to do it right now
8 before the trial starts.

9 So, do you understand the fact that we're talking about
10 the penalty doesn't mean that we're already at that stage?

11 A Yes, sir.

12 Q We've got a lot of things to go through before we get
13 to that stage.

14 You understand that?

15 A Yes, sir.

16 Q And can you appreciate what I'm saying about that?

17 A I can.

18 Q Okay. Now, some things that I want to ask you in
19 general about if you were a juror and your understanding of
20 the law. We'll go through those things right now.

21 Let's say you were selected as a juror in any criminal
22 case. Not necessarily this one. It could be a case
23 involving a theft or something like that, and you're sitting
24 on the jury and my first question for you, would you be a
25 juror who could accept the law as the judge gave it to you?

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1 A Yes, sir.

2 Q Could you also then take that law and apply it -- and
3 in every case tried in this Court the jury determines the
4 facts of the case. That's always the jury's job, to decide
5 what the facts are.

6 So, could you take the law that the judge gave you and
7 apply it to the facts as the jury that you were on found
8 those facts and reach a verdict in that fashion?

9 A Yes, sir.

10 Q Now, let me take it a step further. Let's say you were
11 on the jury and the judge was going over the law, charging
12 you with the law to be applied, and as you listened to the
13 judge talk about the law, you heard something that you might
14 not agree with or you think really wasn't -- doesn't sound
15 right to you as far your personal belief.

16 Are you the kind of person that, if you heard something
17 like that, something that you didn't agree with when the
18 judge was charging you the law, could you set aside your
19 personal beliefs, as far as that matter is concerned, and
20 accept the law as the judge told it to you and apply that
21 law to the facts in order to reach a verdict?

22 A Yes, sir.

23 Q Okay. Now, there's a couple of concepts concerning the
24 law that I want to go over with you to be sure that, that
25 you, that we have an understanding about. I mentioned, just

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1 a few minutes ago, that every defendant in a criminal case
2 is presumed to be innocent.

3 So, do you understand that concept that, no matter what
4 the charge is, the law presumes every defendant to be
5 innocent of that charge?

6 Do you understand that?

7 A Yes, sir.

8 Q And since the law presumes that a defendant is innocent
9 of the charge, then a defendant, in a criminal trial, is not
10 required to prove his innocence because we presume that he's
11 innocent.

12 Do you understand what I'm saying?

13 A Yes, sir.

14 Q Do you accept that concept that a defendant is not
15 required to prove his innocence?

16 A Is that even if he's caught and guilty?

17 Q well, now see where -- you're putting -- you might be
18 putting the cart in front of the horse.

19 A Okay.

20 Q Let me, let me explain to you what I'm talking about.

21 Now, we've got a defendant, he's been charged with a
22 crime, and I'm not gonna get into the circumstances of his
23 arrest.

24 A Right.

25 Q I'm just saying he's been charged with a crime.

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1 A Okay.

2 Q Of course, he's entitled to a trial by a jury.

3 A Yes, sir.

4 Q Now, once the jury is heard the entire case, then the
5 jury decides whether he's guilty or not guilty.

6 A Okay.

7 Q But we're at the stage where someone's just been
8 charged with a crime.

9 Do you follow me?

10 A I follow you.

11 Q And so when we're -- when he's charged with a crime and
12 we're getting ready to start the trial, my question to you
13 was, first of all, the law presumes that he's innocent until
14 he's proven guilty in front of a jury. So, he's presumed to
15 be innocent. You said you could accept that, that concept.

16 A I can accept that.

17 Q And then my next thing was that, do you understand
18 that, during that trial, before the jury returns their
19 verdict, he's not required to prove anything during that
20 trial because the law presumes him to be innocent.

21 Can you accept that concept?

22 A I can.

23 Q Now, the next step is that, since he's not required to
24 prove himself innocent, a defendant has no burden of proof
25 during the trial. In other words, he's not required to

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1 testify or produce any evidence during the trial.

2 Do you understand that?

3 A I do.

4 Q Now, the State, however, the person whose brought the
5 charges, under our system, does have a burden of proof.
6 They have to prove those allegations to the jury by proof
7 beyond a reasonable doubt.

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

10 A Yes, sir.

11 Q The defendant's not required to prove anything.

12 So, do you understand that?

13 A I do.

14 Q And can you accept those concepts?

15 A I can.

16 Q All right. Now, if you were on a jury in a criminal
17 trial, and you sat through that trial where the State
18 brought in their evidence and the defense put up whatever
19 evidence they want to, they don't have to put up anything,
20 and you're in your deliberations, and the jury and you have
21 found that the State did not prove the allegations they
22 brought beyond a reasonable doubt, if you were in that
23 situation where the State -- the jury has determined the
24 State didn't prove it, could you sign a verdict that says
25 the defendant is not guilty?

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1 A Yes, sir.

2 Q Now, on the other hand, let's say the State did prove
3 the allegations beyond a reasonable doubt, and you and your
4 fellow jurors decide that, could you then sign a verdict
5 that says the defendant is been found guilty of that charge?

6 A Yes, sir.

7 Q So, are you telling me that the, based upon the law and
8 the evidence and the strength of the evidence you hear, you
9 could either find a defendant, in a criminal case, either
10 guilty or not guilty depending on the evidence?

11 A Yes, sir.

12 Q So, you could do that?

13 A Yes, sir.

14 Q All right. Now, we're gonna talk for a minute about
15 the kind of case we're in here and a case where the death
16 penalty is being sought, and I'm gonna go back through that
17 explanation with you about how this particular process
18 works. I already told you that there's a two step process
19 in the trial.

20 The first trial that's held in front of the jury is a
21 question of whether or not the defendant is guilty of the
22 crime that's charged. Just like I was talking to you
23 earlier. That's -- there would be proof as to whether or
24 not the defendant is criminally responsible under the
25 statute -- under the charges that have been brought, and the

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1 jury, in the case we're talking about, has found the
2 defendant guilty.

3 Now, one of the charges that they have found the
4 defendant guilty of is the charge of murder. Now, the State
5 is requesting that the death penalty be imposed, and I told
6 you that, in that kind of case, there's a second hearing
7 that's held using the same jury that heard the first case.

8 This second hearing is called the penalty or the
9 sentencing phase of the trial, second, and there would be
10 new evidence. New people would come in and testify. More
11 evidence would be received. The jury would hear evidence,
12 but this evidence is, is evidence that's being presented
13 concerning what is the appropriate penalty to be assessed in
14 this case, and if you're in that situation where a, a
15 defendant has been found guilty of murder, and not all
16 murders qualify for the death penalty, but has been found
17 guilty of murder, and the State is requesting the death
18 penalty, and we go into that second hearing, that second,
19 second trial, then the kind of evidence that can be
20 introduced in that hearing is evidence which we call
21 aggravation -- aggravating circumstances or mitigating
22 circumstances. There's two different kinds of evidence that
23 can come in. Let me explain to you what we mean by those
24 phrases.

25 Aggravating circumstances or evidence of aggravation is

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1 evidence that tends to show that the offense was -- somehow
2 the defendant is worthy of a higher punishment. There's a
3 reason why the defendant should be punished to the, to the
4 highest level. So, those are circumstances of aggravation,
5 things that may make this crime deserving of a higher
6 punishment.

7 A Okay.

8 Q Mitigating evidence is evidence which may somehow
9 either reduce the defendant's culpability for that
10 particular crime or evidence as to why a jury should not,
11 should not impose a penalty of death. Impose a penalty of
12 life imprisonment without the possibility of parole. Those
13 are the choices.

14 Do you understand the difference between aggravating
15 evidence and mitigating evidence?

16 A Yes, sir.

17 Q Okay. So, that's the two types of evidence that could
18 be introduced during that trial, that second trial.

19 Now, once all the evidence had been introduced during
20 that trial, the Court then would instruct the jury to go
21 back into the jury room and consider the evidence that
22 you've heard during that, that hearing, either aggravating
23 evidence and mitigating evidence, and after that
24 consideration, make a determination as to what sentence is
25 being recommended, either life in prison without parole or

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1 the death penalty. So, those are the -- that, that would be
2 the job of the jury at that hearing.

3 So, do you understand what that hearing would be about?

4 Do you understand that?

5 A Yes, sir.

6 Q And do you understand the fact that there would be
7 evidence on both sides of the question put before the jury?

8 A Yes, sir.

9 Q Now, back in the jury room I had a sheet of paper on
10 the table. It described three different types of jurors.
11 I'm gonna go over what it said, I'll paraphrase it, won't
12 quote it exactly, so that you and I have an understanding as
13 to the three different types of jurors that were on that
14 paper.

15 The first -- and, and I want you to put yourself in the
16 position, sir, that you're on the jury in this case -- on
17 the case that I just talked about. You have been on the
18 jury and you have decided, with the other -- your fellow
19 jurors, that the defendant is guilty of the crime of murder.
20 So, that issue has been decided.

21 The question now is what's the appropriate penalty to
22 be imposed. You're about to walk back into the courtroom
23 with your fellow jurors and start that hearing and start
24 receiving that evidence.

25 Do you understand where I want you to imagine yourself

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1 to be?

2 A Yes, sir.

3 Q Okay. Now, those three jurors I described to you are
4 as follows:

5 Juror number one, the first one I described, that
6 juror, before he ever walks into that second hearing in
7 that -- in this trial, he's already made up his mind. He is
8 a person who believes that anyone who is convicted of the
9 crime of murder is always -- should always be subject to the
10 penalty of death. He thinks that's the only appropriate
11 penalty for someone who's committed murder.

12 The second juror has also already made up his or her
13 mind. That juror would never vote for the death penalty
14 because that juror believes that the State should never take
15 a life in response to the commission of a crime. So, no
16 matter what the seriousness of the crime, no matter what the
17 aggravating circumstances might be, that juror is gonna vote
18 for the life, life in prison without the possibility of
19 parole every time. Will never vote for the death penalty
20 cause they don't believe it's a proper penalty.

21 The third juror I'm talking about, that juror has not
22 made up his or her mind one way or the other as to how that
23 juror's gonna vote on this question. That juror is planning
24 on going into the hearing, listening to the aggravating
25 evidence, the evidence that tends to make the crime worse,

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1 and would listen to the mitigating information, things that
2 might tend to make someone, punish someone at a lesser
3 level. So, that juror wants to hear both types of evidence,
4 and after hearing both types of evidence, then would make a
5 decision based upon the law as charged to the juror by the
6 judge and based upon the evidence as that juror heard the
7 evidence, aggravating and mitigating evidence.

8 So, do you understand the three different kinds of
9 jurors I've, I've described?

10 A Yes, sir.

11 Q Now, I also told you to imagine you're on that jury.
12 You're about to walk back into that hearing. You're --
13 they're about to begin that sentencing or penalty phase of
14 the trial.

15 Of the three jurors I described, which one of those
16 jurors would most closely resemble you in that situation?

17 A Well, can you expound on the charge of murder?

18 Q Yes, sir, be glad to.

19 Murder involves the killing of a person with malice
20 aforethought without legal justification. Malice is
21 described as, as either a hatred or an ill will or a
22 hostility towards another person. It's the intentional
23 doing of a wrongful act without just cause or excuse and
24 with the intent to inflict some type of injury or, or under
25 circumstances the law might infer some evil intent. So,

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1 it's the unjustified killing of a, of an individual. That's
2 what murder is.

3 Now, there are homicides that are justifiable and are
4 not murder. In self-defense, if someone's killed, that's
5 not considered a murder. There are murders where people are
6 killing in the heat of passion, and that's not a, a murder.
7 In order for a murder to qualify for the death penalty,
8 there must be an aggravating circumstance found by the jury
9 before that person is subject to the death penalty.

10 So, there's -- not every murder is one that would be
11 subject to the death penalty. It's -- it requires a finding
12 of a circumstance of aggravation. Like I told you, those
13 aggravating circumstances before someone could be subject to
14 the death penalty, and I'm not -- I can't charge you --
15 there's, there's a list of those different factors that,
16 that could be involved.

17 Do you understand?

18 A Yes, sir.

19 Q So, so, not every murder would qualify for the death
20 penalty. In this particular case the State is alleging that
21 this, this particular event does qualify for the death
22 penalty, and, of course, the defense is alleging that there
23 are circumstances, mitigating circumstances, that should be
24 considered. So, that's where we are.

25 But did I answer your question?

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1 A I'm still kind of curious about mitigating
2 circumstances.

3 Q Yes, sir. Tell me what you're curious about.

4 A I'm just trying to think of some.

5 Q Well, I could pull out the statute and go over all of
6 them, but let me explain one thing to you. Mitigating
7 circumstances, there's a list of those things that might be,
8 be considered mitigating circumstances, but mitigating
9 circumstances are defined by the law as anything a juror
10 might want to consider in reducing the punishment. It can
11 even include mercy where someone simply says I, I realize it
12 was a bad crime, I realize it was a bad situation, but I
13 tend to -- I want to have mercy on that person. So, it's
14 almost impossible to totally define mitigating circumstances
15 because mitigating circumstances can be anything a juror
16 wants to consider in reducing the culpability of a
17 defendant. So, it would be up to the juror to decide those
18 things.

19 Now, now, the defense may bring in evidence that would
20 be considered -- that they want you to consider in thinking
21 about mitigating circumstances.

22 Have I answered your question now?

23 Do you have other, other concerns?

24 A I think I'm good.

25 Q Okay. Now, we're back to the question though about

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1 the, the -- we're back to coming into the courtroom. I've
2 described three jurors. Number one would always vote for
3 the death penalty in a case where someone's been found
4 guilty of a murder. The second person would never vote for
5 the death penalty where someone's been found guilty of a
6 murder. The third one wants to hear all the facts and
7 circumstances, aggravating factors, mitigating factors,
8 before that person makes up their mind as to how they would
9 do.

10 So, those are the three people, and I've asked you
11 which one most would resemble you if you were in that
12 situation.

13 A I would need to hear all the circumstances.

14 Q So, you think you'd need to hear both the bad things
15 and the mitigating things before you made up your mind what
16 the appropriate action would be?

17 A Yes, sir.

18 Q Now, let me, let me take it kind of a step further and
19 let's talk about this.

20 Does that mean that if you, you could come into that
21 hearing, listen to both sides, and based on your findings
22 concerning those factors that have been put in front of you,
23 if you found that the defendant was deserving of the death
24 penalty, then you could sign a verdict for death?

25 A Yes, sir.

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1 Q By the same token, if you listened to those factors,
2 aggravating factors and mitigating factors, you could, if
3 you decided it appropriate, you could sign a sentence for
4 life imprisonment without parole?

5 A Yes, sir.

6 Q So, you could find either way depending on the evidence
7 that you heard?

8 A Yes, sir.

9 Q Okay, sir. Now, I just have a couple more questions.
10 Then I'm gonna let the attorneys ask questions of you.

11 I have signed an order in this case that provides for
12 the jury to be sequestered. What that means is that, once
13 we start the trial, which we haven't technically started the
14 trial yet, the jury that's picked though would be
15 sequestered. That jury would be housed in a hotel here at
16 the Marriott. All that -- the jury's meals would be
17 provided. Travel would be provided. All expenses would be
18 taken care of while you're on the jury.

19 You'd also receive the pay that a juror receives for
20 serving on a jury, but that's not as much as people make at
21 work, but it is some compensation while you're here. And
22 you'd be allowed to talk to family and friends, but it would
23 be monitored by the people who are taking care of the jury
24 so that we're sure there aren't any outside influences that
25 might affect the jury while the trial's going on.

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1 So, do you understand about sequestration?

2 A I do.

3 Q Now, I expect the trial will last more than a week, but
4 not -- I don't think it will last two weeks, but, you know,
5 I don't know. We'll see how that works out. I don't think
6 it would go that long, but it's possible that it could, but
7 that's about how long I think the case will go on once it
8 gets started.

9 Now, my question to you is, if you were in that
10 situation and you were sequestered, would that situation
11 pose any serious risk of harm to you or your personal well
12 being?

13 A Not that I'm aware of.

14 Q Okay, sir. Now, as to that situation, would it pose
15 any serious risk of harm to the personal well being or the
16 health of anybody who is dependent on you?

17 A Not that I'm aware of.

18 Q Okay, sir. Now I'm gonna ask you to talk to the
19 lawyers, answer their questions, and then we'll talk a
20 little bit later on once they're done.

21 Mr. Bulsa?

22 SOLICITOR BULSA: Thank you, Your Honor.

23 May it please the Court.

24 EXAMINATION

25 BY SOLICITOR BULSA:

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1 Q Good afternoon, Mr. Anderson.

2 A Afternoon.

3 Q My name's Derrick Bulsa. I, along with Solicitor
4 Barnette and Russell Ghent, will be prosecuting this case.
5 We introduced ourself on Monday. It's been a long week. I
6 appreciate your questions to the judge to clarify some
7 things cause this is an unusual process. You said you
8 participated in a debate back in high school.

9 What were your viewpoints on the death penalty?

10 A I support the death penalty.

11 Q Okay. But with that in mind, you keep an open mind to
12 consider other factors to determine whether that's
13 appropriate?

14 A It's a pretty serious penalty, so, yes, sir, I do.

15 Q Cause you understand -- the judge defined murder to
16 you, and the, the punishment of death is never required,
17 right?

18 In fact, there has to be additional circumstances for
19 the State to even ask for a death sentence. A typical
20 murder case does not get to this second stage.

21 All right. And given your description to the judge of
22 the type of juror you are, it sounds like you'd be the type
23 that would want to listen to both aggravating circumstances
24 as well as the mitigating circumstances?

25 A Yes, sir.

Individual Juror Qualification

1 Q Is that right?

2 A (Witness nods affirmatively.)

3 Q Okay. Cause that's what we're looking for. We're
4 looking for fair jurors.

5 Can you, can you fairly consider a life sentence for
6 someone who's been convicted of murder?

7 A I've never been asked to do it before, but I would
8 think I can.

9 Q Okay. And by the same token, could you fairly consider
10 the death sentence for somebody that's been convicted of
11 murder?

12 A Yes, sir.

13 Q Are you predisposed one way or the other?

14 A Well, I lean towards the death penalty, yes, sir.

15 Q Okay. But that doesn't mean you would automatically
16 give it?

17 A It does not.

18 Q Okay. Now, they're gonna be aggravating circumstances.
19 The alleged victim in this case is a young child. There's
20 gonna be mitigating circumstances where some disabilities on
21 the defendant's part might be alleged.

22 Would you give those equal weight in deciding your
23 verdict or your, your punishment?

24 A Again, I think I would hear, I would hear all
25 circumstances.

Individual Juror Qualification

1 Q Okay. Now, I wanted to go over a couple things on your
2 juror information sheet.

3 You, you noted that you were a police cadet in high
4 school?

5 A I was.

6 Q what does that entail?

7 A what little I remember of it, we, we met at the
8 Sheriff's Office and we were exposed to the trade of law
9 enforcement.

10 Q Okay. All right. Was that at Pickens High School?

11 A Yes, sir.

12 Q All right. And you noted that your parents had
13 actually been victims of a crime.

14 was that crime ever solved?

15 A No, sir.

16 Q It was not.

17 Okay. And that you actually had your truck broken
18 into.

19 was that solved?

20 A I think they did find the guy, yes, sir.

21 Q was that here in Spartanburg County?

22 A It was.

23 Q Okay. Was he prosecuted?

24 A I received a letter. I'm not sure what happened to
25 him.

Individual Juror Qualification

1 Q All right. How long ago was that?

2 A That was several years ago.

3 Q Okay. And your parents, where were they victimized?
4 what county?

5 A That would be Spartanburg County.

6 Q That's Spartanburg too?

7 A (Witness nods affirmatively.)

8 Q Okay. Well -- so, that was investigated, but never
9 solved?

10 A I've not heard of them solving it.

11 Q Okay. All right. But -- so, you don't remember if
12 they went to Court or not?

13 A I know they did not go to Court.

14 Q Okay. And I hate to ask you this question, but I need
15 to know if it's gonna affect your opinion.

16 You listed that your mother actually was accused of
17 something.

18 Was that here in Spartanburg County?

19 A No, that was Pickens County.

20 Q Pickens.

21 Okay. And that was resolved in a---

22 A Yes, sir.

23 Q ---fair fashion?

24 A I, I think so.

25 Q You think so.

Individual Juror Qualification

1 Okay. All right. Just one moment if I may.

2 (Pause.)

3 Q Okay. And you have children?

4 A I do.

5 Q Okay. And everybody loves children. That's one of the
6 aggravators. I want to make sure you can understand that
7 you need to counter that information with what the defense
8 would be presenting in mitigation.

9 Can you be fair and weigh both, both sides?

10 A Again, I would, I would try to listen.

11 Q Okay.

12 A I can't tell you how I would --.

13 Q Cause you don't know exactly---

14 A Right.

15 Q ---what everything is gonna be, right?

16 A No, sir, I don't.

17 Q Okay. And they're gonna be parts in the murder case,
18 the murder side of this that aren't gonna come out until the
19 sentencing phase. So, it's important that you don't go into
20 that second stage predisposed to anything like you told the
21 judge you wouldn't.

22 Okay. And can you abide by that rule?

23 A I'll give it my best shot.

24 Q Okay. Okay. All right. We're just looking for
25 fairness and understanding.

Individual Juror Qualification

1 Can you, can you fairly consider a life sentence for
2 somebody that was just convicted of a murder?

3 A As opposed to the death penalty?

4 Q Yes, sir.

5 A I think so, yes.

6 Q And would you enter into discussions with other juror
7 members about what the appropriate punishment should be?

8 A That's our job, isn't it?

9 Q It is. I just want to make sure you understand that.

10 A Yes, sir.

11 Q Okay. And you'd listen to everybody's position and
12 weigh, and weigh the case accordingly?

13 A Yes, sir.

14 Q All right. Thank you.

15 THE COURT: Mr. McGuire.

16 MR. MCGUIRE: Thank you, judge.

17 THE COURT: Yes, sir.

18 EXAMINATION

19 BY MR. MCGUIRE:

20 Q Good afternoon, sir.

21 A Good afternoon.

22 Q My name's Bill, Bill McGuire. I'm one of the lawyers.
23 I stood up and introduced myself to you and it has been a
24 long time. I'm one of the lawyers on the case and I'm gonna
25 ask you some questions if you don't mind.

Individual Juror Qualification

1 A Okay.

2 Q Tell me what the phrase eye for an eye means to you.

3 A It means if you put my eye out, then your eye gets
4 poked out.

5 Q All right. In, in terms of capital punishment or the
6 death penalty, does it have a meaning to you?

7 A Yes.

8 Q And what is that meaning?

9 A Kill and be killed.

10 Q Okay. Some people might use the phrase if you take an
11 innocent life, you forfeit yours.

12 Is that a statement that you would agree with?

13 A Yes.

14 Q And when you wrote -- I think you were on the debate
15 team and you dealt with the death penalty.

16 Tell me your position that you took.

17 A Well, we were just -- it's a mock debate of
18 presidential candidates and Republican Party's position on
19 the death penalty was that they supported capital
20 punishment. So, that was my position.

21 Q Okay. And what I want to do is I'm gonna, I'm gonna
22 put you in the -- a situation much like the judge did.

23 Remember when he, he said, in your mind, I want you to
24 see yourself on a jury, and I want to -- I'm gonna ask you
25 to do the same. You're on the jury. You've heard a case.

Individual Juror Qualification

1 The case was a murder case. The judge is already defined
2 murder. It's the deliberate intentional taking of an
3 innocent life with hostility and hatred towards that person
4 under circumstances that would imply evil. So, it's a meant
5 to do it killing like the judge said. Not self-defense or
6 anything like that.

7 In that situation, you just convicted the person beyond
8 a reasonable doubt, got the right person, he meant to do it,
9 and there's no doubt -- no reasonable doubt in your mind
10 about that, okay, and the 11 others agree with you. Okay.
11 That's where you are right now. You've, you've signed the
12 verdict form, convicted, guilty, guilty murder.

13 Are you with me?

14 A Yes, sir.

15 Q At -- in that point -- that's the point you are.

16 What, what, in your mind, can you think of that would
17 be relevant in considering a life sentence?

18 A I don't know. That's really in your court.

19 Q Okay. What if I didn't present anything?

20 Would you start at death?

21 A Yes.

22 Q And you'd end at death?

23 A Yes.

24 Q And I'd have to come and prove something to you to get
25 you off that?

Individual Juror Qualification

1 A Yes.

2 Q Okay. And you can't think of anything that might be?

3 A Again, that's, that's you.

4 Q Up to me?

5 A That's up to you.

6 Q What about, what about the background, characteristics
7 of the person who did the killing, how they grew up, their
8 walk in life, their life experience, their life history,
9 would that be relevant in fixing punishment for that
10 intentional killing?

11 A I would struggle with that.

12 Q And why is that?

13 A I just -- I -- there's so many people that's done good
14 and come from a very bad background.

15 Q Okay. People can make their own choices despite a
16 tough go of it?

17 A Yes.

18 Q Okay. And so I'm gonna ask you again, a person's walk
19 in life, their life experiences, kind of who they are, their
20 life history, would that be relevant in fixing punishment in
21 that intentional killing?

22 A I don't think so.

23 Q Okay. And your answers today are a reflection of your,
24 your value system?

25 A Yes.

Individual Juror Qualification

1 Q Your moral code --

2 A Yes.

3 Q -- of what's right and wrong?

4 A Yes.

5 Q Okay. And I can't charge your views, can I?

6 A My moral code?

7 Q I can't charge your value system.

8 A Oh, I hope not.

9 Q I don't think I've got the talent either.

10 All your, your answers to me have been truthful?

11 A Yes, sir.

12 Q And honest?

13 A Yes, sir.

14 Q And sincere?

15 A Yes, sir.

16 Q That's all I have for you. Thank you, sir.

17 SOLICITOR BULSA: Just briefly.

18 THE COURT: Mr. Bulsa.

19 EXAMINATION

20 BY SOLICITOR BULSA:

21 Q Mr. Anderson, would you disregard anything the defense
22 tried to present to you in mitigation?

23 A Can you give me an example?

24 Q would you refuse to listen to their side of the story?

25 A Oh, no, sir.

Individual Juror Qualification

1 Q Okay. Cause that's what the judge presented to you as
2 the type three juror, somebody that would be open minded
3 towards aggravation and mitigation.

4 A Right.

5 Q Is that what you are?

6 A Yes.

7 Q Okay. Cause you can't vote for death---

8 MR. MCGUIRE: Your Honor, I've got an objection.

9 The -- with regard to mitigation evidence, the law is to
10 give it meaningful consideration. Not merely listen to it.

11 THE COURT: I'm gonna ask the juror to step back to the
12 jury room. I'll call on you in just a moment, sir. Okay.

13 THE WITNESS: Yes, sir.

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

16 THE COURT: All right, sir. You may give me your
17 authority.

18 MR. MCGUIRE: Your Honor, I don't have a case on hand,
19 but I think it's Locket -- I think it's Lockett versus
20 Eddings, McCray. I'm trying to think of some other ones.

21 THE COURT: Pass up copies please.

22 MR. MCGUIRE: Well, it might take a little bit to find
23 that, but it's---

24 THE COURT: Okay. I've got time.

25 (Pause.)

Individual Juror Qualification

1 THE COURT: Okay. While she's looking for that, the
2 subparagraph C of 16-3-20 says the judge shall consider or
3 he shall include in his instructions to the jury for it to
4 consider mitigating circumstances otherwise authorized or
5 allowed by law and the following statutory aggravating
6 circumstances. So, the judge's instructions, and I've been
7 telling every defendant (sic) this, would be for the jury to
8 consider both. I didn't see that qualifier you put on it.

9 Meaningful?

10 MR. MCGUIRE: Give effect to.

11 THE COURT: I didn't see that as though as part of the
12 statute. It says the judge -- again, I'm gonna read again
13 what it says the judge should do. He shall include in his
14 instructions for the jury for it to consider.

15 Now, the consideration of those factors would be --
16 what, what consideration they give to it would be up to the
17 jury, what weight they give it to you. I don't think the
18 Court, as a matter of law, would instruct any of, any
19 particular aggravating circumstance or mitigating
20 circumstance for them to give any of them any particular
21 level of consideration. If there's a case that says the
22 judge should instruct that, I'd love to see it because I
23 didn't understand -- I do think the judge should order them
24 to consider them.

25 I've just never had a situation where, in any crime,

Individual Juror Qualification

1 where the judge would instruct the jury the level of
2 consideration they should give to anything. That's up to
3 them, in my opinion, my understanding of the law.

4 MR. MCGUIRE: And, judge, the language in Eddings, and
5 we'll find some more case law for you, but it---

6 THE COURT: well, on this point now would be the time.
7 We're gonna rule on it now.

8 MR. MCGUIRE: All right. First off, I'll start off by
9 saying, and I understand that the case is being printed off
10 right now, but I can start with Eddings, which is a case in
11 my hand---

12 THE COURT: And in what -- tell me, is that a South
13 Carolina case or---

14 MR. MCGUIRE: Oh, no, it's a United States Supreme
15 Court case.

16 THE COURT: Okay.

17 MR. MCGUIRE: It's Eddings v. Oklahoma. I can pass up
18 a, a copy to the, to the Court. But I'll start off by
19 saying that the, the prosecutor's statement of or the
20 question, could you listen to something before doing
21 something, well that's not the test. It's can you consider
22 the evidence.

23 THE COURT: well, you used the word meaningful
24 consideration, and I just -- again, I have to go -- my test
25 is whether someone can follow the judge's instructions and

Individual Juror Qualification

1 the law.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: And I didn't see the word meaningful before
4 consider in our statute.

5 MR. MCGUIRE: It's not in the statute. I agree with
6 you.

7 THE COURT: Okay. I didn't see it.

8 MR. MCGUIRE: All right.

9 THE COURT: And I'm not aware that a judge ever
10 instructs a jury what degree of consideration they should
11 give to any evidentiary fact one way or the other. That
12 would be a comment on the facts by the judge, and judge's
13 aren't suppose to do that.

14 MR. MCGUIRE: Yes, sir, and the, the case of Eddings
15 indicated that---

16 THE COURT: well, it sounds like we're in agreement.
17 You don't have to read it to me.

18 MR. MCGUIRE: well, if I could make a record. It is a
19 capital case.

20 THE COURT: well, are you -- on what?

21 MR. MCGUIRE: That I---

22 THE COURT: I thought we agreed.

23 Are you agreeing that our statute doesn't use the word
24 meaningful consideration?

25 MR. MCGUIRE: I agree that's not in our statute.

Individual Juror Qualification

1 THE COURT: Okay. Are you in agreement that a judge
2 should not instruct a jury concerning what degree of
3 consideration they should give to any particular evidentiary
4 fact, be it aggravation or mitigation?

5 MR. MCGUIRE: I believe that the Court should instruct
6 that they can -- they must consider all mitigation evidence.

7 THE COURT: Yes, sir, that's what I said. We're in
8 agreement.

9 MR. MCGUIRE: And -- but also I would ask the Court to
10 instruct the jury ultimately that what they can not do is
11 just give it no weight as a matter of fact or law.

12 THE COURT: Well, I don't think I'll ever do that. So,
13 we're in a disagreement now.

14 MR. MCGUIRE: And that's, that's why I was gonna read a
15 little bit from this case if I could.

16 The United States Supreme Court went on to say, in
17 Eddings, there's some limitations placed on the Court from
18 considering mitigation evidence. The Court -- the United
19 States Supreme Court indicated we find that the limitations
20 placed by these Courts upon the mitigating evidence they
21 would consider violated the rule in Lockett. Just as the
22 State may not, by statute, preclude the sentencer from
23 considering any mitigating factor, neither may the sentencer
24 refuse to consider, as a matter of law, any relevant
25 mitigating evidence.

Individual Juror Qualification

1 In this instance, it was as it -- it was as if the
2 trial judge had instructed a jury to disregard the
3 mitigating evidence and it's---

4 THE COURT: The trial judge didn't do that.

5 They're talking about the actions of the jury, aren't
6 they?

7 MR. MCGUIRE: This was a, this was a decision by a
8 judge for -- at the trial court level.

9 THE COURT: That's not what I asked you. I said
10 they're describing actions by the jury. Not the judge's
11 instructions to the jury.

12 MR. MCGUIRE: They're actually describing the actions
13 of the judge. The judge, in his opinion, indicating what he
14 did consider and what he did not consider, and, as a matter
15 of law, he refused to consider a particular piece of
16 mitigation evidence, which was the defendant's background
17 and varying---

18 THE COURT: What was the issue in that case?

19 MR. MCGUIRE: Whether, whether the failure to
20 recognize, as a matter of law, the mitigating factor of a
21 very harsh upbringing. The judge indicated that he would
22 not find that, as a matter of law, to be mitigating.

23 THE COURT: So, the judge didn't charge to the jury?

24 MR. MCGUIRE: No, this is the judge describing his own
25 decision making process. The judge was the sentencer.

Individual Juror Qualification

1 THE COURT: I'm confused. The judge was the senator --
2 sentencer?

3 MR. MCGUIRE: In this case, yes, sir.

4 THE COURT: Oh, okay. That's a whole different matter.

5 MR. MCGUIRE: And if I could pass up Eddings versus
6 Oklahoma, and the Court went on to say that the sentencer
7 may be -- may determine the weight to be given relevant
8 mitigating evidence, but they may give it no weight by
9 excluding such evidence from their consideration.

10 THE COURT: So what's that got to do with this
11 situation?

12 MR. MCGUIRE: Well, that, that when the prosecutors
13 used the word could you sit and listen to something before
14 making a decision, listen is not the test. It's consider.
15 And in -- consider's been interpreted by a number of Courts
16 to, to mean give a fact -- and let me find some language
17 here for the Court. For instance, in Henry versus Texas---

18 THE COURT: Mr. McGuire?

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: I agree with you. The statute says the
21 judge shall instruct the jury -- I've read it. Let me read
22 it one more time. Now listen carefully. It says that the
23 judge will -- let me read it exactly cause you may call me
24 out if I don't read it exactly. Let me get it up here.
25 Just one second.

Individual Juror Qualification

1 The judge shall consider or he shall include in his
2 instructions to the jury for it to consider mitigating
3 circumstances.

4 MR. MCGUIRE: Yes, sir, and in that---

5 THE COURT: I'm not disagreeing with you.

6 MR. MCGUIRE: Yeah, and what I'm saying is the United
7 States Supreme Court has expounded upon the word consider
8 and what that means, and I can, I can quote for the---

9 THE COURT: Well, we're not -- we aren't -- we're
10 questioning this gentleman as to whether or not he, I don't
11 know if he used the word consider or not, but whether he
12 would listen to it. He didn't get to how much weight he
13 might give to it, and I don't know that, at this inquiry, we
14 get into what weight he might give it since he doesn't know
15 what it is.

16 How can we find out how much weight he gives to
17 something that he doesn't know what it is?

18 MR. MCGUIRE: Well, I'm not saying how much weight.
19 I'm just saying that we need to -- before we -- if we're
20 gonna have the prosecutors define the test of what does it
21 mean to really consider or fairly consider mitigation
22 evidence, the listen test is not it, and, for instance, in
23 Tunark v. Drecky, the United States Supreme Court indicates
24 that with regard to mitigation evidence, the sentencer must
25 be able to consider and---

Individual Juror Qualification

1 THE COURT: Mr. McGuire, I have agreed with you.

2 MR. MCGUIRE: But---

3 THE COURT: I have agreed with you, Mr. McGuire.

4 MR. MCGUIRE: Again---

5 THE COURT: When you win, you stop arguing.

6 MR. MCGUIRE: Okay. I just, I just wanted the Court
7 to -- it's more than just consider.

8 THE COURT: I have agreed with you, Mr. McGuire.

9 MR. MCGUIRE: It's -- okay.

10 THE COURT: Thank you.

11 MR. MCGUIRE: Thank you.

12 THE COURT: That was tough, agreeing with you.

13 MR. MCGUIRE: I'm a sore winner too, judge.

14 THE COURT: Must be.

15 All right. Mr. Bulsa, I don't know exactly -- what,
16 what relief are you seeking here?

17 MR. MCGUIRE: From this, from this moment -- first off,
18 I'd like to be able to readdress the juror obviously after
19 Mr. Bulsa.

20 THE COURT: I haven't stopped you.

21 MR. MCGUIRE: Oh, I know. I'm just saying that's -- I
22 plan to do that, but from this point on, if we're going to
23 ask jurors if they can consider mitigation evidence, we
24 can't use the phrase could you sit and listen before --
25 listen to mitigation before making a decision.

Individual Juror Qualification

1 THE COURT: I'm not sure he was using that as a word
2 of -- as a matter of law, and I don't know how far he would
3 get, and I will weigh it using the test you mentioned.

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: All right. That was tough.

6 Bring the juror back in.

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

9 THE COURT: All right. Sir, I'm gonna allow Mr. Bulsa
10 to continue to ask questions of you.

11 Okay, sir?

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you for your patience.

14 THE WITNESS: Okay.

15 CONTINUED EXAMINATION

16 BY SOLICITOR BULSA:

17 Q I think the point I was trying to make is are you the
18 type of juror that could sit and listen to the aggravating
19 circumstances, listen to the mitigating circumstances---

20 SOLICITOR BARNETTE: Same objection, Your Honor.

21 Q ---and consider---

22 THE COURT: He hasn't finished his question, Mr.
23 McGuire.

24 MR. MCGUIRE: Yes, sir.

25 THE COURT: If you'll let him finish and then I'll give

Individual Juror Qualification

1 you a chance to object.

2 MR. MCGUIRE: Yes, sir.

3 THE COURT: Thank you, sir.

4 Q And then consider both of those pieces of evidence that
5 you've just listened to in making your decision as to what
6 the appropriate punishment could be?

7 A Yes, sir.

8 Q Okay. And would you follow the Court's law that he
9 would direct you that you need to consider all the
10 mitigating circumstances as well as the aggravating
11 circumstances before you made your decision?

12 A Yes, sir.

13 Q And would you discuss those with the other jurors?

14 A Yes, sir.

15 Q Thank you, sir.

16 THE COURT: Mr. McGuire, you indicated you may have
17 some other questions.

18 MR. MCGUIRE: Yes, sir.

19 EXAMINATION

20 BY MR. MCGUIRE:

21 Q And we actually require a little bit more of people
22 than just to listen. I mean that's, that's a pretty simple
23 thing to do. It means you won't plug your ears running out
24 of the room. The law is to consider and give effect to
25 certain evidence.

Individual Juror Qualification

1 Can you think -- again, I want to put you at that point
2 of conviction where you just found a murderer guilty beyond
3 a reasonable doubt of an intentional killing of a young
4 child.

5 In that situation, can you think of anything that you
6 would consider and give effect to in terms of---

7 SOLICITOR BULSA: Your Honor, we object. He's staking
8 out the juror at this time in this matter.

9 THE COURT: Well, at, at this point in time, I guess
10 we're getting to the point where I -- well, let me ask the
11 juror to step outside for just a minute, sir. Thank you.

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

14 THE COURT: It's almost getting to the point in this
15 proceeding that I think I'm going to have to start reading
16 the aggravating circumstances and read all the possible
17 mitigating circumstances to the jurors.

18 Is that where we are?

19 MR. MCGUIRE: I don't object to that.

20 THE COURT: I didn't say you objected to it. It's
21 highly usual. I don't think I've ever been in one of these
22 proceedings where we've gotten to that point.

23 MR. MCGUIRE: I'm not sure what the Court wants to do
24 or thinks is necessary.

25 THE COURT: Well, it's, it's -- you're asking about,

Individual Juror Qualification

1 when you talk about mitigators -- of course, he asked what
2 mitigators were. He wanted to know what kind of things
3 would be mitigators, and I suppose, at this point in time, I
4 just need to go over all of them with this particular juror
5 and let him know what the possible ones are and what the
6 possible ones aren't, but I don't intend to do this every
7 time. He asked for it. I'll give it to him.

8 MR. MCGUIRE: That -- I don't have any objection to the
9 Court's---

10 THE COURT: It seems to me we're getting close to,
11 again, staking out jurors, and I'm not gonna allow that.

12 MR. MCGUIRE: I mean I -- based on the fact that the
13 state's objection is always staking out, whether it -- it
14 applies to apparently every imaginary---

15 THE COURT: No, no, no. I read yesterday what it was
16 and I'll be glad to read it again today, Mr. McGuire, if you
17 didn't listen.

18 MR. MCGUIRE: Well, I was asking this particular juror
19 if there was anything in a defendant's background and
20 character that he could consider and give effect to in terms
21 of weighing a life sentence and he wasn't allowed to answer
22 and that's obviously not staking out. I'm asking him to
23 come up with answers from his own, his own mind and
24 experience. I'm not leading him. I'm not giving him any
25 information.

Individual Juror Qualification

1 THE COURT: I didn't -- I just said he had asked for
2 all the mitigators, and I think, for him to be able to
3 answer the questions that he's being asked at this stage by
4 both sides, we're gonna end up trying the case on every
5 juror if we do -- keeping going in the direction we're going
6 and we're not gonna do that.

7 That's not what this is about. This is to determine
8 whether or not a juror can, can carry out the juror's
9 function. That is to listen to the law, listen to the
10 evidence, and be fair minded about those things. It's not
11 about how the juror's gonna decide any particular issue
12 about any particular fact. That's what it's suppose to be.

13 All right. Bring the juror back.

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

16 EXAMINATION

17 BY THE COURT:

18 Q Mr. Anderson, earlier you had asked me about what are
19 mitigating circumstances that might be considered.

20 A Yes.

21 Q And given the level of questioning that the attorneys
22 are pursuing you on, I think it would be appropriate that I
23 just go over with you, in any case, what the statute says
24 are possible mitigating circumstances.

25 Now, I will tell you that the law also says a juror can

Individual Juror Qualification

1 consider any factor in addition to these possible things,
2 and I'm not going to try to tell you whether any or all of
3 these apply in this case because that -- we're not trying
4 the case today.

5 You understand where we are?

6 A Yes, sir.

7 Q All right. Mitigating circumstances can be a defendant
8 has no significant history of prior criminal conviction
9 involving the use of violence against another person.
10 That's one.

11 Two. The murder was committed while the defendant was
12 under the influence of mental or emotional disturbance.

13 Number 3. The victim was a participant in the
14 defendant's conduct or consented, consented to the act.

15 Number 4. The defendant was an accomplice in the
16 murder committed by another person and his participation was
17 relatively minor.

18 Number 5. The defendant acted under duress or under
19 the dominance of another person.

20 Number 6. The capacity of the defendant to appreciate
21 the criminality of his conduct or to conform his conduct to
22 the requirements of the law was substantially impaired.

23 Seven. The age or mentality of the defendant at the
24 time of the crime.

25 Number 8. The defendant was provoked by the victim

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1 into committing the murder.

2 Number 9. The defendant was below the age of 18 at the
3 time of the crime.

4 Number 10. The defendant had mental retardation at the
5 time of the crime. Mental retardation means significantly
6 subaverage general intellectual functioning existing
7 concurrently with deficits in adaptive behavior and
8 manifested during the developmental period.

9 Now, those are the statutory mitigating circumstances,
10 but the law says the defendant -- that the jury can also use
11 other mitigating circumstances. So, we don't limit it just
12 to that list, but those are some that have been recognized
13 under the statute.

14 So, when we talk about mitigating circumstances, it
15 could include any or all of those factors or it can
16 conclude, include any factor a juror considers to be a
17 mitigating factor.

18 Now do you understand what we're saying when people
19 talk about mitigating factors?

20 A Yes, sir.

21 Q So, you understand that those are the possibilities?

22 A Yes, sir.

23 THE COURT: All right. I'll allow you to continue your
24 examination.

25 MR. MCGUIRE: Thank you, Your Honor.

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1 EXAMINATION

2 BY MR. MCGUIRE:

3 Q I'm looking at the clock too. It's getting late.
4 we'll get you out of here in just a couple seconds.

5 With regard to you're at that point of conviction,
6 guilty guilty, murder murder, meant to do it, intentional
7 killing, can you think of any mitigating circumstance that
8 you would consider -- give effect to in deciding to go
9 from -- in deciding death or life?

10 A Can I talk to the judge?

11 Q Sure.

12 THE COURT: Yes, sir.

13 THE WITNESS: That list that you read, I'm suppose to
14 consider those circumstances in forming opinions?

15 THE COURT: The statute says that the Court will
16 instruct the jury to consider both aggravating circumstances
17 and mitigating circumstances, and the statute I just read to
18 you is the list of possible mitigating circumstances that
19 the statute recognizes. But, again, there can be other
20 factors besides those things. But the instruction from the
21 judge would be for you to consider any of those things that
22 were proven or shown to you by the evidence that's in that
23 hearing.

24 We're not trying this case today. So, I'm not gonna
25 let us get into all the possible evidence that might exist

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1 on any of these mitigators. The question is whether or not
2 you would be willing to consider, as the Court will instruct
3 you to consider, those factors before you set a, a potential
4 penalty.

5 would you be willing to consider those?

6 THE WITNESS: I would consider them, yes.

7 THE COURT: Okay, sir.

8 MR. MCGUIRE: I don't have anything further, judge.

9 THE COURT: All right. Anything further from the
10 State?

11 SOLICITOR BULSA: No, sir.

12 THE COURT: All right, sir. You may step back to the
13 jury room.

14 Thank you very much.

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

17 THE COURT: Defense position.

18 MR. MCGUIRE: Move to strike for cause. This juror
19 indicated that he was automatic death penalty. The only
20 time---

21 THE COURT: When did he do that?

22 MR. MCGUIRE: When I was talking to him, that he would
23 automatically -- the death penalty was always appropriate
24 and that the life penalty was not appropriate for
25 intentional killing. The only time -- and he also said

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1 that---

2 THE COURT: well now when he says when -- you asked
3 that question quite often. I've kind of been wondering
4 about that. You asked if it would be appropriate.

5 MR. MCGUIRE: And the follow-up---

6 THE COURT: It is, it is appropriate.

7 MR. MCGUIRE: Oh, sure. Yeah, it's -- we -- it's
8 provided in the law.

9 THE COURT: Yes, sir.

10 MR. MCGUIRE: But when you say that it's appropriate
11 and the life penalty is not appropriate, that only leaves
12 one option, death penalty, and I believe that was the
13 context in the conversation I had with him.

14 Also, he indicated that mitigation, when I was speaking
15 to him, mitigation evidence was not relevant, and the only
16 time he indicated that it was something he could consider
17 was when he was instructed that he, he would be told by law
18 he had to consider it.

19 THE COURT: well, that's what the statute says. I'm
20 just going by what the statute says.

21 MR. MCGUIRE: I'm just saying---

22 THE COURT: And you asked me to go over it with him.

23 MR. MCGUIRE: Sure. And my position is that if
24 somebody -- if someone's told the law -- the Court will tell
25 you what the law is, you must consider mitigation evidence,

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1 here's some mitigation examples, can you follow the law and
2 do that, can you consider them, I think it invites really
3 only one response, which is sure I can follow the law and
4 consider it.

5 THE COURT: well, he -- the gentleman asked for me to
6 list those for him. I did and I read the statute to him.

7 MR. MCGUIRE: Sure. And just---

8 THE COURT: All right. That's, that's okay.

9 Go ahead and state your other grounds, Mr. McGuire.

10 MR. MCGUIRE: That---

11 THE COURT: I'm sorry.

12 MR. MCGUIRE: well, that we move to strike for cause,
13 that he's impaired in that he's substantially impaired
14 because he's predisposed to the death penalty and he's
15 mitigation impaired. He can't consider -- I don't think,
16 when you look at his answers as a whole, he doesn't consider
17 mitigation evidence relevant, and to present this juror
18 would violate Mr. Blackwell's Sixth and Fourteenth Amendment
19 rights to an impartial juror.

20 THE COURT: Thank you.

21 The State.

22 SOLICITOR BULSA: Your Honor, Mr. Anderson is clearly
23 taking this serious -- this proceeding very seriously. He
24 sought numerous explanations from the Court, and he can
25 clearly follow the law. He -- I asked him specifically if

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1 he was predisposed and he said he was not.

2 THE COURT: In taking his responses as a whole, it
3 would be my finding that Mr. Anderson is not disqualified.
4 The standard is whether his views would prevent or
5 substantially impair his performance or his duties as a
6 juror. When I explained to him the possible mitigators, and
7 he understood what they were, and explained to him that the
8 statute says that the Court will charge those and will
9 instruct the jury to consider that, he indicated that he
10 would be able and be in a position to consider those factors
11 if they were proven. So, I'm gonna find that Mr. Anderson
12 is qualified.

13 All right. Bring Mr. Anderson back please.

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

16 THE COURT: All right. Mr. Anderson, I have determined
17 that you can continue in our proceeding of our process. Let
18 me explain to you where we go from here.

19 We are now in the process of qualifying people to serve
20 as potential jurors. We're not picking a jury at this point
21 in time. That will be done once we've completed this
22 qualification process.

23 I expect that's gonna take a few more days it appears.
24 So, I can't tell you exactly when we will complete this
25 process. I will tell you we will, but we will be back in

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1 touch with you.

2 There is a sheet the clerk will give you.

3 Ma'am, can you give him that sheet?

4 (The clerk complies.)

5 THE COURT: That sheet has a list of matters that you
6 should consider if you have to come back. As I told you, if
7 you go on to the jury, you will be with the other jurors,
8 set aside or sequestered during the trial. So, that gives
9 you some indication of some things that you might need to
10 plan for.

11 Now, my instructions concerning your behavior continue.
12 That is you should not listen to, watch, or read any media
13 reports about the case. You should not discuss the case
14 with anyone or allow anyone to discuss it with you. And if
15 anyone tries to contact you about the case, please report
16 that to the Clerk's Office.

17 There's an exception to that rule, and that is
18 obviously, if you're selected on the jury and you're gonna
19 be away for a week or more, then you need to let some people
20 know that that could happen. So, if your employer needs to
21 know that or you may need to make arrangements there, you
22 have the right to talk to them about that. Family members
23 might need to do that so they can make arrangements.

24 But in doing so, don't talk about the case or the
25 issues in the case. Just let them know that you might be

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1 selected in a jury situation, and it may require your
2 absence for a period of time, and then make whatever
3 arrangement you need to make.

4 You understand how you'd handle that?

5 THE WITNESS: Yes, sir.

6 THE COURT: Can you follow my instructions in the mean
7 time?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right, sir. At this time you're free
10 to go. We will be contacting you. I expect that will be
11 sometime next week.

12 You understand that, sir?

13 THE WITNESS: Yes, sir, I do have a conference starting
14 Sunday.

15 Do I need to cancel that?

16 THE COURT: Well, sir, I can't tell you exactly when
17 we're going to start. I don't know -- how long does that
18 conference last?

19 THE WITNESS: I should be back Tuesday night.

20 THE COURT: Well, sir, you need to be close enough
21 where we can get you by phone, leave us a phone number, and
22 close enough you can get here if you need to get here within
23 a few hours.

24 THE WITNESS: Okay.

25 THE COURT: Okay, sir. Thank you very much.

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

3 THE COURT: All right. Check to see if Ferrall
4 Erickson is ready. Thank you.

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

7 FERRALL ERICKSON, having been previously
8 sworn, testified as follows:

9 EXAMINATION

10 BY THE COURT:

11 Q Sir, have a seat please.

12 A (Witness complies.)

13 Q How you doing today?

14 A I'm doing good.

15 Q Good.

16 Well, first of all, I want to apologize to you. You're
17 probably a little mad at me or something by now --

18 A No.

19 Q -- cause we've had you up here and had you waiting and
20 I apologize about that process.

21 A Yes, sir.

22 Q But I will tell you that we've been busy. We've been
23 working, and we're -- hopefully can go over some things with
24 you today and we're in the process of qualifying people to
25 go on a pool from which the jury will be selected. We're

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1 not selecting the jury today.

2 A Okay.

3 Q We're just still talking to folks.

4 Do you understand that?

5 A Right, yes, sir.

6 Q I'm gonna be asking you some questions about yourself
7 and, and your beliefs, things like that, and so -- and when
8 I finish the lawyers are gonna ask some questions of you.

9 Do you understand what we're doing?

10 A I do.

11 Q Okay. Now, I hope you won't feel threatened by this
12 process.

13 A I'll try not to.

14 Q I hope you're comfortable enough that you understand
15 that there aren't any right answers. There aren't any wrong
16 answers. There's just your answers. And we want those
17 answers to be truthful.

18 I'll remind you you're still under oath from Monday
19 when you took an oath to tell the truth before the Court.
20 You're still under that oath.

21 Do you understand that, sir?

22 A I do.

23 Q Also, when you left the courthouse on Monday, I gave
24 you some instructions as to how you should behave, what you
25 should do during your absence. I told you about not trying

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1 to get any information on your own, not watching or
2 listening to or reading news reports, not discussing the
3 case with anyone.

4 Have you been able to follow my instructions?

5 A Yes, I have.

6 Q All right, sir. And, in, in that regard, are you the
7 kind of person that could put aside anything that you might
8 hear on the outside or see on the outside that might have
9 any connection with this case and decide this case solely
10 based on the law and the evidence that you hear during the
11 trial and the trial of the case?

12 A Yes, I am.

13 Q You could do that?

14 A Uh-huh. (Affirmative).

15 Q All right, sir. Now, have you ever participated in any
16 discussions or, or blogs or Internet chat rooms or anything
17 of that nature that might had -- have had as its subject the
18 death penalty?

19 A No, I don't believe so.

20 Q Okay. Have you been involved in any political activity
21 that had, had as its subject the death penalty such as a
22 demonstration or writing letters to people or writing a
23 letter to the editor or something like that?

24 A No, I haven't.

25 Q Never been involved in anything like that?

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1 A (Witness nods negatively.)

2 Q All right. Now, back in the jury room there was a list
3 of people, long list of people. Those are people who are
4 potential witnesses in the case.

5 Did you read that?

6 A I did.

7 Q Okay. Did you see any names on there that you
8 recognized?

9 A I did not. I just moved here like five or six years
10 ago.

11 Q So, you hadn't been a resident here for a long time?

12 A No.

13 Q Okay. So, I take it then that there's nobody on that
14 list that you're related to in anyway or have ever been in
15 business with or had a social relationship with---

16 A No.

17 Q ---as far as you know?

18 A I didn't recognize anybody.

19 Q Okay. Good.

20 Now, I'm going to be going over some matters with you
21 that might involve discussions concerning your opinions and
22 things of that nature, and, in doing so, we'll end up
23 talking about, finally, the death penalty in -- because it
24 is an issue that could come up in this case. In doing so, I
25 want to caution you about one thing.

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1 To a certain extent we're putting the cart in front of
2 the horse and I'll tell you why we're doing that. Because,
3 in this particular proceeding, there will be a hearing where
4 the guilt or innocence of the defendant concerning the
5 original charges in this case will be decided.

6 Now, if the jury, if the jury were to find that the
7 defendant is not guilty of those charges, that would be the
8 end of the matter. There wouldn't be any second phase of
9 the trial. If the defendant found the defendant guilty --
10 if the jury found the defendant guilty, I'll get it right in
11 a second, guilty of murder, then the State is requested a
12 death penalty. There would be a separate hearing on the
13 issue of what penalty is appropriate. So, there's a
14 possibility of two different hearings or trials in this
15 matter.

16 We call it bifurcating a case. In other words,
17 dividing into two different cases or two different issues.

18 But the reason I'm mentioning it to you is because we
19 don't know if we'll even get to that second phase of the
20 trial. We're still gonna have to talk about that to you
21 today because, once a jury is impaneled, it's gonna hear
22 both trials.

23 A Yes, sir.

24 Q We can stop in the middle once the guilt phase is
25 finished and talk to you about the penalty phase because the

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1 jury's already impaneled then. So, the only time we can
2 talk to prospective jurors about the first or the second
3 phase is now during this process.

4 So, please don't take it as any reflection against the
5 defendant cause the defendant's presumed to be innocent of
6 the charges. That we're talking about the penalty phase
7 before guilt is ever been decided, please don't take that as
8 an adverse reflection against him or his case.

9 Do you understand what I'm saying?

10 A I do.

11 Q It's just we've got to talk about the whole case at
12 this time if we're going to talk about it.

13 You appreciate that?

14 A Uh-huh. (Affirmative).

15 Q Okay. All right. Now, I'm going to talk to you in
16 general about some, some concepts in the law to be sure that
17 we've got an understanding and you've got an understanding
18 of certain things.

19 First of all, I'm going to ask you to imagine you're on
20 a jury. Not this case. It could be any case. It could be
21 a robbery, a burglary, anything of that nature.

22 Let's say that you're on a jury, and I'm going to ask
23 you, if you were on a jury, could you and would you be
24 willing to accept the law as given to you by the judge as
25 the law in the case?

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1 A Yes.

2 Q Could you and would you take that law and apply it
3 to -- and I'll tell you, in every case tried, every criminal
4 case tried, the jury is always the finder of the facts.

5 would you take the law that the judge gave to you and
6 apply it to the facts as the jury, you, on the jury, find
7 them, and use that in reaching a verdict?

8 A Yes, I would.

9 Q Now, let me -- I'm gonna take it a step further and see
10 what your response is to this. If you were listening to the
11 charge given by the judge, and there was something in that
12 charge that you did not agree with, you felt like it just
13 didn't sound right to you, in other words, it went against
14 maybe a personal opinion you might have, would you be
15 willing to set aside then your personal opinion and take the
16 law exactly as the judge gave you, and, again, use that law
17 with the facts to reach a verdict?

18 A would I be allowed to question that?

19 Q well, again, you would -- I want to tell you, if you're
20 sitting on a jury, the judge is the judge of the law. He
21 charges the law and the question is -- to you is, would you
22 be willing to accept the law as given to you by the judge
23 and use that in applying the facts?

24 A Yeah, I mean if it's the law it's the law.

25 Q well, the judge is the, the giver of the law in the

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1 case. So --.

2 A Yes, sir.

3 Q I want to be sure we under -- you have an understanding
4 of that concept, and if you're willing to do that, and you
5 can do that.

6 A Yes.

7 Q You could do that.

8 All right. Now, a few other concepts I want to talk to
9 you about.

10 I mentioned just a minute ago that Mr. Blackwell, and
11 every criminal defendant in every criminal case in this
12 state and in the United States, is always presumed to be
13 innocent of the crime for which the, the indictment or
14 charge has been issued.

15 Do you understand that?

16 A I do.

17 Q Do you understand that, because the defendant is
18 presumed to be innocent, that at a trial of the case, the
19 defendant is not required to prove anything in a trial. The
20 law presumes him to be innocent. He has the right to stand
21 on that if he wants to.

22 You understand that?

23 A I do.

24 Q So, there's no burden of proof on a defendant in a
25 criminal trial.

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1 By the same token, the State is a party to the, to the
2 criminal action, and the State does have a burden of proof.
3 The State has made allegations and it has the burden of
4 proving the allegations by proof beyond a reasonable doubt.

5 So, do you understand that, in a criminal proceeding,
6 the only party that has any obligation to prove anything is
7 the State and they must prove the allegations beyond a
8 reasonable doubt?

9 Do you understand that concept?

10 A I do understand that.

11 Q Now, taking that concept a step further, let's say that
12 you were on a jury, you heard all the evidence, the judge
13 gave you the law, you and your jurors go back into the jury
14 room and you deliberate, you come to the conclusion that the
15 State did not prove its case, prove the allegations beyond a
16 reasonable doubt.

17 In the situation where you have determined the State
18 did not prove the case, would you be willing to sign a
19 verdict of not guilty for that defendant?

20 A Yes, I would.

21 Q Now, by the same token, if the State did prove its case
22 beyond a reasonable doubt, would you be able to sign a
23 verdict of guilty against the defendant in that case?

24 A Yes, I would.

25 Q Does that mean -- I guess it means to me that you would

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1 weigh the evidence, make a determination of what evidence
2 convinces you of its truth, based upon that proof, you could
3 find a defendant either guilty or not guilty depending on
4 the level of evidence presented by the State, is that
5 correct?

6 A That's correct.

7 Q Okay. Now, the last thing I'll ask you about these
8 legal concepts is, is it your, is it your belief and
9 understanding that, just because a person has been arrested,
10 charged with a crime, perhaps even indicted by a Grand Jury,
11 even though those three steps have been done, that -- is it
12 your understanding that that does not automatically make a
13 defendant guilty of the crime?

14 A That's correct.

15 Q Okay. Now, we're gonna talk specifically about the
16 penalty in this case, and that is the death penalty. And in
17 doing so, I'm going to tell you that, in the normal criminal
18 case that comes in front of the Court, the, excuse me, the
19 jury decides the question of guilt or innocence. They find
20 the defendant either guilty or not guilty, and once that's
21 been done, if the defendant were found guilty, the judge
22 handles the sentencing of the defendant.

23 You understand that's how it normally works?

24 A Yes, sir.

25 Q The difference here is the State is seeking the death

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1 penalty, and where the State seeks the death penalty, there
2 are special statutes that set up the procedure that has to
3 be followed in those types of cases, and the trial, as I
4 indicated, is bifurcated in that case. In other words,
5 there is a trial in which the jury that's impaneled decides
6 whether the defendant is guilty or not guilty of the charge.
7 If the defendant is found guilty of murder, that same jury
8 then goes into another trial. There's new witnesses, new
9 evidence presented because the issue in that trial is
10 different than the first.

11 The first is whether or not the defendant committed the
12 crimes, guilty or not guilty. The second trial is
13 concerning the appropriate penalty that's to be given in the
14 case, and the choices in that hearing would be the death
15 penalty or life imprisonment without the possibility of a
16 parole.

17 So, do you understand the basic difference between
18 those two proceedings?

19 A I do.

20 Q Now, the statute that sets up that second proceeding
21 also sets out the types of evidence that can be presented
22 during those, those proceedings -- that proceeding, the
23 penalty phase and the sentencing phase. It's described in
24 the statute as either aggravating circumstances or
25 mitigating circumstances. I want to touch on that so that

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1 you understand the difference between the two.

2 Aggravating circumstances are those kinds of
3 circumstances that might tend to make the murder, it's a
4 murder, and, of course, not all murders, under the law,
5 qualify for the death penalty. You have to at least an --
6 at least one aggravating circumstances -- circumstance
7 proven. So, the aggravating circumstances are matters which
8 might tend to make a jury feel like the higher level of
9 punishment was appropriate.

10 Mitigating circumstances are circumstances which might
11 cause a jury to lessen the penalty, and there's, there's a
12 whole list of possible mitigating circumstances, but, in
13 addition to that, the law allows the jury to determine its
14 own mitigating circumstances or even use mercy as a, as a
15 reason for giving a sentence. So, those are the things the
16 jury would be considering in that second phase of the trial.

17 So, do you understand that that trial is about the
18 possible sentence and the things that might make the
19 situation worse or might make the situation better as far as
20 the defense is concerned?

21 Do you understand that?

22 A I do.

23 Q All right. Now, I want you to put yourself in, in, in
24 a position and I'm gonna give the position to you.

25 Let's say that you got selected on a jury in a case

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1 where the State is seeking the death penalty. That jury has
2 gone through the first phase of the trial, and the first
3 phase of the trial is a determination of whether the
4 defendant is guilty or not guilty of the crimes, and let's
5 say the jury has determined that the, the defendant is
6 guilty of the crime of murder.

7 So, that issue has been decided. Guilt has been found.
8 The State's asking for the death penalty. So, the law says
9 that same jury has to go into the second hearing to
10 determine the appropriate penalty, and, again, new witnesses
11 will come forward, new testimony will be given concerning
12 the various factors that the jury can consider in reaching
13 the decision on the verdict.

14 Now, you're on that jury. The jury is walking down the
15 hallway. It's about to come back into the courtroom to
16 begin that sentencing hearing. It hasn't begun yet. You're
17 getting ready to start it.

18 So, do you understand where you are?

19 A I do.

20 Q Now, there was a sheet of paper back there in the jury
21 room. On the sheet of paper there were three different
22 jurors described.

23 Do you remember that piece of paper?

24 A I do.

25 Q I'm gonna remind you about those three different

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1 jurors.

2 Okay. On that piece of paper we described the first
3 juror as somebody who, before he ever walked back into the
4 courtroom to start that next phase of the trial, that juror
5 has already made up his or her mind. That juror believes
6 that the only appropriate punishment for the crime of murder
7 is the death penalty, and that juror then, in every case,
8 would vote for the death penalty.

9 The second juror is someone who also has already made
10 up his or her mind. That juror believes the State should
11 never take a life for the commission of a crime, and,
12 therefore, no matter what the seriousness of the crime, no
13 matter what the aggravating circumstances are or the
14 mitigating circumstances, that juror is always gonna vote
15 for life imprisonment without the possibility of parole.
16 That juror would never vote for the death penalty.

17 Now, the third juror hasn't made up his or her mind
18 yet. That juror is coming into the courtroom, wants to
19 listen to the evidence that's presented, both aggravating
20 factors and mitigating factors, and then consider that
21 evidence before reaching a decision as to whether or not --
22 whatever the appropriate punishment ought to be.

23 So, do you understand the three different jurors I've
24 described?

25 A I do.

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1 Q Now, I told you to imagine you were with that same
2 group of people walking back into the courtroom.

3 Of the three jurors I described to you, those three
4 possibilities, which one would more than likely describe how
5 you would feel coming into the courtroom?

6 A I would be number three.

7 Q So, you believe that you would be a juror who would
8 want to listen to both the, the bad things, the
9 mitigating -- the, the aggravating circumstances, and you
10 would want to listen to the mitigating circumstances before
11 you made that decision?

12 A I would have to.

13 Q Okay. Now, let me ask you another question.

14 If you considered those factors, both sets of factors,
15 and if you and your fellow jurors came to the conclusion
16 that the death penalty was the appropriate penalty, could
17 you sign a verdict for that penalty?

18 A I could.

19 Q And if you and your fellow jurors, after your
20 consideration of the evidence and any mitigating factor you
21 chose to consider, you decided that the appropriate penalty
22 was life in prison without parole, could you sign a verdict
23 in that fashion?

24 A I could.

25 Q So, you're -- you would want to hear the evidence on

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1 both sides and weigh that evidence before you made a
2 decision in the case?

3 A Absolutely.

4 Q Now, let me ask you one other question. Maybe two
5 other questions actually. I may not have told you the truth
6 about that.

7 I've signed an order which sequesters the jury in this
8 case. What that means is, once the trial starts, the jury
9 will be housed in a local motel when the Court's not in
10 session. We will start and we will try the case everyday of
11 the week until we finish. We'll go weekends, whatever,
12 until the case is over.

13 I expect this case will take longer than a week, but
14 shorter than two weeks. Don't know where it's gonna fall in
15 there, but that's what I, that's what I anticipate.

16 Now, my question -- and during that time, I will tell
17 you that your food and lodging is taken care of.
18 Transportation to and from the courthouse is taken care of.
19 You would be allowed to communicate with family, but it
20 would be monitored cause we don't want any outside
21 influences affecting, affecting the jury. You would receive
22 pay from the State for your time on the jury, but it's jury
23 pay, it's set by statute, and it's probably not as much as
24 you're use to making, but it's all the law allow, and you'd
25 receive some travel when you come to and from the

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1 courthouse.

2 So, do you understand what sequestration means?

3 A I do.

4 Q Okay. My question to you is, if you were in a
5 situation, if you were sequestered, would that pose a, a
6 serious risk to either your health or your well being?

7 A No, not at all.

8 Q Would it pose a serious risk of harm to the health or
9 well being of anyone who's dependent upon you?

10 A No, it wouldn't.

11 Q All right. Now, I've completed my questions at this
12 time. I'm going to allow the attorneys to go over some
13 matters with you, and then I'll talk with you when they
14 finish.

15 Mr. Bulsa.

16 SOLICITOR BULSA: Thank you, Your Honor.

17 EXAMINATION

18 BY SOLICITOR BULSA:

19 Q Good afternoon, Mr. Erickson.

20 A Hey. How are you?

21 Q I noticed you use to live in Rock Hill?

22 A Yes, I did.

23 Q You said you just moved here about five years ago?

24 A Yes.

25 Q I actually lived in Rock Hill myself for a while, and

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1 you're the son of a pastor?

2 A I am.

3 Q What denomination?

4 A Pentecost.

5 Q Pentecostal.

6 Okay. All right. And your children attend Boiling
7 Springs High School?

8 A Yes.

9 Q Okay. Good. I live in the Boiling Springs community
10 myself. Thank you for being here.

11 I'm Derrick Bulsa. This is Mr. Barnette and Mr. Ghent.
12 We're prosecuting the case. I'm gonna go over a few things
13 that the judge went over just to make sure we're clear.

14 A All right.

15 Q The judge is the judge of the law as he's instructed
16 you. You're gonna be the judge of -- you might be the judge
17 of the facts if you be -- you would be if you're selected on
18 the, on the jury, and that means you would listen to the
19 facts of the case and decide whether somebody's guilty or
20 not.

21 Okay?

22 A That's right.

23 Q That's stage one. If he's guilty we go to stage two in
24 this kind of case.

25 Now, the murder is the unlawful killing of another

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1 human being with malice aforethought. That would be the --
2 one of the charges that would be before you. If the verdict
3 is guilty in that case, then, because of the circumstances
4 in this case, the State would be asking for a death
5 sentence.

6 You feel comfortable with participating in that?

7 A Yes, I'm comfortable.

8 Q Okay. And then we -- basically we go to stage two
9 where the State would present aggravating circumstances that
10 the judge described. The defense would present mitigating
11 circumstances.

12 Would you be able to consider both the aggravating
13 circumstances and the mitigating circumstances together in
14 passing judgment?

15 A No problem.

16 Q Okay. Now, this is a little bit different from the,
17 the fact finding stage. You're still gonna be fact finding,
18 but you're also gonna be issuing punishment.

19 Are you comfortable with that?

20 A Yes, sir.

21 Q Okay. And let me just ask, what are your views of the
22 death penalty?

23 Do you have any?

24 Have you given any thought?

25 A Not a whole lot. I, I know on my questionnaire it

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1 asked me about justice, and I wrote down that justice will
2 always prevail, and I guess that that's just a means that I
3 live by according to the law and the facts and the evidence
4 that's presented. That's what I have to go by.

5 Q Okay. So, let me, let me, I guess, ask it this way.

6 A Maybe I didn't answer it.

7 Q In your mind, could -- could the death penalty be
8 justice as well as a life sentence be justice?

9 A Yes.

10 Q Okay. It would be -- would it -- would you be weighing
11 both circumstances---

12 A Yes, I would.

13 Q ---and deciding what justice is?

14 A Yes, I would.

15 Q And you're comfortable with being part of that justice
16 system?

17 A Yes, sir.

18 Q Okay. And -- now, one of the things that make this
19 case different is one of the aggravators would be the fact
20 that the victim is a young child.

21 Okay. Now, we would be presenting that, as the State,
22 as an aggravator. The defense would be presenting
23 mitigation evidence on behalf of the defendant such as maybe
24 a disability or something in his background.

25 would you be able to consider both of those in weighing

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1 your decision?

2 A I believe so.

3 Q Okay. Would it -- would you be predisposed to vote one
4 way or to the other?

5 A I'm sorry?

6 what do you mean by that?

7 Q Would you be -- meaning once you got out of the guilt
8 phase and you walked into that sentencing phase, would you
9 be predisposed before hearing anything to vote either---

10 A Oh, no.

11 Q ---life or death?

12 A No.

13 Q What was that answer?

14 A No.

15 Q No.

16 Okay. Thank you.

17 THE COURT: Mr. Young.

18 EXAMINATION

19 BY MR. YOUNG:

20 Q Afternoon, Mr. Erickson.

21 A How are you?

22 Q I'm doing well. Thanks for asking. I hadn't stood up
23 in a while.

24 So, you were talking a little bit about your feelings
25 about the death penalty, and it sort of seems like you

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1 haven't given it a whole lot of thought.

2 Is that right?

3 A That's true.

4 Q If you got to decide what the laws were gonna be, do
5 you think that you would have a death penalty?

6 A I guess basically I just have to go according to the
7 law and I guess there's different, different stages that
8 would have to apply to the stages of, you know, the evidence
9 that was brought before me.

10 Q I think I understand.

11 A Do you understand what I'm saying?

12 I---

13 Q I think I understand what you're saying. For sure.

14 Let me ask you this.

15 If you got to decide what the law was gonna be, you get
16 to write the law, you know, do we have a death penalty as a
17 society or do we not have a death penalty as a society?

18 A I would have to say, under certain circumstances, yes.

19 Q And they're certain circumstances that you think the
20 death penalty would be called out for?

21 A Yes.

22 Q Can you tell me about those?

23 A I guess, in my mind, it would have to be something that
24 was planned out, thought about, intentionally done. That,
25 that really weighs heavy on my mind.

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1 Q Sure.

2 Anything else on that?

3 A I guess that's the --

4 Q Okay.

5 A -- the little -- the end of it, you know.

6 Q Sure.

7 A The heavy end of it I guess you could say.

8 Q And there's no right or wrong answers.

9 A Yeah.

10 Q We're just trying to ask you your thoughts.

11 That sort of planned out, thought about intentional
12 murder that you're talking about, could you learn anything
13 about that person you think that would make you think that
14 the life without the possibility of parole penalty would be
15 appropriate?

16 A Yes.

17 Q Like what?

18 A I believe so. Well, I would basically -- I'd be going
19 by what I heard in Court cause I don't know anything else
20 about him. You know, I have to strictly go by what I hear
21 in Court.

22 Q Well, what types of things would you want to hear to
23 decide between those two punishments?

24 A I guess maybe background, history of the person, what
25 type of character a person was. You know, I mean I guess

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1 that's all I can really go by.

2 Q Sure. And---

3 A You know, it could be some things, I don't, I don't
4 know, in their past or whatever. I don't know.

5 Q I, I understand what you're saying.

6 That type of stuff, that background, character, what's
7 happened to them in their past, you know, I think that
8 you're telling me that that stuff would be an important part
9 for you to know in choosing whether or not to give him the
10 death penalty or life without the possibility of parole?

11 A Yeah, I would like to know that before I made any
12 decisions, yes.

13 Q I understand.

14 If I tell you the phrase sort of an eye for an eye --
15 we grew up hearing that. I'm sure, as a son of a pastor,
16 you may of heard it more than most.

17 A Yeah.

18 Q Can you tell me what that means to you?

19 A Well, basically that's how they lived in the old
20 Testament under the law. I know today it's not quite that
21 way. So, I accept it the way it is today.

22 Q So, it sounds like that's not a punishment philosophy
23 that you would---

24 A No, it's not.

25 Q ---subscribe to?

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1 We've talked a little bit or you've talked or been
2 talked to a little bit about murder and what murder is.
3 It's the intentional killing of an innocent person with
4 malice aforethought, right?

5 A Yes.

6 Q You understood that?

7 A Yes.

8 Q Meaning it wasn't self-defense, wasn't accident, all
9 that type of stuff.

10 You're with us on that, right?

11 A Yes.

12 Q When you're talking about guilty of murder, that's what
13 you mean, right?

14 A That's it.

15 Q And there -- and the reason I say that is cause -- and
16 I think that you're clear on what mitigation is, and
17 mitigation as far as like the background and life history of
18 a particular defendant.

19 A Uh-huh. (Affirmative).

20 Q Right?

21 A Yes.

22 Q That's what you mean?

23 A Yes.

24 Q So, aggravation, like Mr. Bulsa was talking to you
25 about, the aggravating circumstances, those circumstances

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1 are things that have to be proven to all 12 jurors
2 unanimously beyond a reasonable doubt.

3 Okay. You with me on that?

4 A I am.

5 Q Just like, just like finding guilty or not guilty, all
6 12 jurors have to agree unanimously beyond a reasonable
7 doubt and then a fact is proven.

8 Okay?

9 A That's right.

10 Q Mitigation, and under our law, mitigation is different.
11 Okay. It's a protection built in for defendants who are
12 facing the death penalty.

13 You with me?

14 A Okay.

15 Q Mitigation doesn't have a burden of proof. It's up to
16 each juror to decide for himself or herself what is
17 mitigating to them.

18 All right?

19 A That's right.

20 Q One juror may see something in a person's background
21 that is important to them that they find mitigating that
22 they say, for that reason, I want to vote for a life penalty
23 and they're entitled to do that.

24 Okay. Another juror may say well, I didn't see that in
25 the background, but I saw this about a person's character,

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1 and, for me, I want to vote for the life penalty based on
2 that reason alone. Okay. And the law allows for that.

3 Are you with me on that?

4 A Yes.

5 Q Does that sound like a fair way to do it when you're
6 deciding whether or not a person lives or dies?

7 A It does.

8 Q Even if all of the jurors say I didn't see anything
9 that the defense presented to me, I didn't see anything in
10 Court, nothing resonated with me as being mitigating,
11 they're still entitled to consider a life without the
12 possibility of parole sentence.

13 Okay?

14 A Uh-huh. (Affirmative).

15 Q And we call that a mercy verdict.

16 You're familiar with that term mercy?

17 A Yes.

18 Q And, and mercy -- can you tell me what -- the only way
19 I know to sort of ask it is sort of mercy, do you think that
20 somebody earns mercy or is something that's freely given?

21 A It will be freely given.

22 Q Okay. Cause if it's -- we'd have to ask people like
23 why you choose freely given. It's sort of like well, you
24 can't earn mercy. It's sort of grace and---

25 A Yes.

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1 Q ---and comes from somewhere else. Just kind of comes
2 from who you are.

3 A Yes.

4 Q Is that how you feel about it?

5 A Yes.

6 Q The way that -- just a couple more questions to finish
7 up with you, Mr. Erickson.

8 If all 12 jurors decide that death is the appropriate
9 punishment, then a death sentence would be carried out. Mr.
10 Blackwell would be put to death.

11 You understand that?

12 A I do.

13 Q You don't have any questions or concerns about that?

14 A No.

15 Q Now, if one juror arrives at their decision that a life
16 verdict was the appropriate verdict, okay, then the sentence
17 would be life without the possibility of parole.

18 Okay. You have any questions about that?

19 A No, I don't.

20 Q They don't have to agree.

21 Okay?

22 A Okay.

23 Q You can agree to disagree, right?

24 A (Witness nods affirmatively.)

25 Q You've heard that phrase before?

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1 A I have.

2 Q When -- we call this decision about whether or not
3 another human being lives or dies, we call it an individual
4 moral judgment.

5 Make sense to you?

6 A Yes, it does.

7 Q Individual moral judgments are kind of choosing what
8 faith is right for you. You've made your personal decisions
9 about your faith.

10 Is that right?

11 A That's correct.

12 Q And you expect other people to respect the decision
13 that you've made?

14 A Yes.

15 Q You recognize that they're other people who have made
16 different decisions about what faith is, is right for them.

17 A Yes.

18 Q You respect their right to make that decision?

19 A I do.

20 Q If you saw somebody being bullied, harassed, or yelled
21 at to change what they had arrived at as their individual
22 moral judgment, would you stop it?

23 A I probably would.

24 Q And I think that there was a question on your juror
25 form about like if you somebody using improper racial

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1 comments, would you stop it and report it, and you checked
2 that you would.

3 Right?

4 A Yeah, it's not right.

5 Q Right.

6 Just like bullying is not right?

7 A That's right.

8 Q And you would stop it and report it too?

9 A That's correct.

10 Q Mr. Erickson, how do you feel knowing that your vote
11 would make the difference between whether or not a person
12 lives or died?

13 A I just would feel that justice is being carried out.
14 That's about the only way I can put it.

15 Q Whichever way it came down?

16 A Whichever way, yes.

17 Q Thank you, Mr. Erickson. That's all the questions I
18 have.

19 A Thanks.

20 THE COURT: Mr. Bulsa.

21 SOLICITOR BULSA: Just briefly.

22 THE COURT: Yes, sir.

23 EXAMINATION

24 BY SOLICITOR BULSA:

25 Q Mr. Erickson, thank you for answering our questions. A

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1 couple more.

2 A Okay.

3 Q Mr., Mr. Young was going over the right of jurors to
4 decide on different parts of the evidence.

5 You understand, if the jury can't decide, the decision
6 then goes to the judge and it would be a life sentence?

7 A Yes.

8 Q Only the jury can decide death.

9 A Okay. I got you.

10 Q All right. And if the jury decides death, they would
11 have to -- everybody would have to sign their name to what
12 we call a death warrant.

13 Could you sign your name to such a piece of paper?

14 A Yes, I believe so.

15 Q Okay. All right. Thank you, sir.

16 THE COURT: Anything further from the defense?

17 MR. YOUNG: No, Your Honor.

18 THE COURT: All right. Sir, you may step back to the
19 jury room.

20 THE WITNESS: All right.

21 THE COURT: We'll call you back out in just a moment.

22 THE WITNESS: Okay.

23 THE COURT: Thank you.

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

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1 THE COURT: Defense position?

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

3 THE COURT: State.

4 SOLICITOR BULSA: Agree.

5 THE COURT: I'll find him as such.

6 Bring him back in please.

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

9 THE COURT: All right. Mr. Erickson, you're going to
10 continue in our process.

11 THE WITNESS: Okay.

12 THE COURT: That means we found you qualified to
13 proceed. That doesn't mean you're on the jury. That means
14 you're on the list for the jury.

15 THE WITNESS: Okay.

16 THE COURT: Now, what's gonna happen is we're gonna
17 continue to go through this qualification process, and it
18 appears that may go over into -- a little bit into next week
19 maybe. Once we have -- we're in a position to actually to
20 choose the jury, the Clerk's Office will be back in touch
21 with you concerning further instructions.

22 Do you understand that?

23 THE WITNESS: Yes.

24 THE COURT: And I assume the phone numbers we have are
25 the good ones for you, is that right?

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1 THE WITNESS: Yes, sir.

2 THE COURT: They're gonna give you a sheet of paper.
3 Can you do that for me, Tonya?

4 THE CLERK: Yes, sir.

5 THE COURT: Thank you, ma'am.

6 All right. That's just gonna remind you about some
7 things you might want to consider because, when you come
8 back, you'll need to bring with you, if you come back,
9 such -- enough stuff to stay for a little better than a
10 week. So, if you take some medications, things like that,
11 be sure you have enough of whatever medication you use to
12 last that long or whatever.

13 Now, my instructions concerning your behavior continue.
14 In other words, don't watch any media record about this. If
15 it comes on the TV, turn it off. Don't---

16 THE WITNESS: I don't have a TV. So --.

17 THE COURT: Okay. Well, that -- you're a smart man.

18 And, and, and don't discuss the case with anyone.
19 Don't allow anyone to discuss it with you. Don't try to
20 gather any information about the case, and if anybody
21 contacts you, please let the Clerk's Office know if they
22 contact you about the case so that we can take the
23 appropriate action.

24 THE WITNESS: Okay.

25 THE COURT: I'll make an exception to that rule. If

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1 there's family members you need to discuss the fact that if
2 you're chosen you may be gone for a few days, and somebody
3 at work needs to know that, you can tell them that you're in
4 the process -- in a jury selection process, that if you're
5 called you may be gone for a few days, and make whatever
6 arrangements you need to do to take care of that.

7 I expect we'll be getting in touch with you sometime in
8 the Monday or Tuesday, but don't hold me to that. My time
9 estimations so far have been terrible. So, that's the best
10 I, best I can come up with.

11 So, at this time the clerk's gonna release you. You'll
12 hear from us next. If you have a problem or something, let
13 us know. But other than that, we'll call you.

14 Okay?

15 THE WITNESS: All right.

16 THE COURT: Thank you, sir.

17 THE WITNESS: Thank you.

18 THE COURT: All right. We're gonna take about a five
19 to ten minute break. When we come back we'll be starting on
20 panel number nine with Linda Jeffries will be the first one.

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

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

23 SOLICITOR BARNETTE: State's ready, Your Honor.

24 THE COURT: Defense ready.

25 MR. MCGUIRE: Yes, sir.

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1 THE COURT: Linda Jeffries please.

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

4 LINDA JEFFRIES, having been previously
5 sworn, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q You're Linda Jeffries?

9 A Yes, sir.

10 Q Ms. Jeffries, I want to thank you for your cooperation
11 and your patience with us thus far. I hope you're still
12 patient cause we've tried your patience I'm sure, but
13 this -- it's very difficult sometimes to predict how long
14 some of these things will take. Some people take a lot
15 longer than others, and I apologize to you about any
16 problems we've caused you so far as a result of that.

17 We're still in the process of trying to get a juror
18 qualified to serve. We're working through the jury to, to
19 determine people's qualifications to serve and we're
20 continuing that process with you this afternoon.

21 I'm going to be asking you a series of questions, and
22 then, later on, the lawyers will ask you some questions that
23 pertain to issues that could come up in this case. I'll
24 tell you there aren't any right answers. There's not any
25 wrong answers to our questions. We're not seeking any

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1 particular answer. We're seeking your answers, truthful and
2 honest answers, and in that, in that regard I will tell you
3 that the oath that you took on Monday to tell the truth
4 continues at this time. You're still under oath to tell the
5 Court the truth.

6 Do you understand that, ma'am?

7 A Yes, sir.

8 Q And the -- I gave you a set of instructions when you
9 left the courthouse earlier that you weren't to try, to try
10 to gather any information on your own. You shouldn't watch
11 or listen to any media reports about the case, and that you
12 should not discuss the case with anyone or allow anyone to
13 discuss the case with you.

14 Have you been able to comply with those instructions?

15 A Yes, sir.

16 Q Now, are you -- let me ask you this.

17 Are you the kind of person who could decide a case
18 based upon the law and the evidence that you hear in the
19 courtroom, and in doing that, be able to exclude anything
20 that you may have heard outside of the courtroom that might
21 have anything whatsoever to do with this case?

22 A I think so.

23 Q Okay. Now, have you ever participated in any type of
24 discussions, Internet discussions, blogs, I don't know
25 what -- forums, anything like that where the issue or any

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1 issues concerning the death penalty may have been discussed?

2 A I've talked with friends about it.

3 Q Okay. So, those would be more casual conversations
4 then some type of formal---

5 A Right.

6 Q ---thing, is that right?

7 A Right.

8 Q And that's occurred, I guess, over a period of years,
9 not as any---

10 A Basically when things come up in the media --

11 Q Right.

12 A -- about a case or something that like.

13 Q Okay. All right. Now, have you ever participated then
14 in any type of political activities surrounding that issue
15 such as demonstrations or letter writing campaigns or
16 calling representatives, anything like that?

17 A No.

18 Q Now, back in the jury room there was a list of people's
19 names.

20 A Uh-huh. (Affirmative).

21 Q A rather lengthy list of people's names.

22 A Right.

23 Q Did you get a chance to go over that list?

24 A I did.

25 Q Did you recognize anyone on there as either being

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1 related to you in anyway or being someone that you've had a
2 close social, personal, or business relationship with?

3 A No.

4 Q So, you didn't recognize anyone in there?

5 A No.

6 Q Okay. Now, I'm going to be going over a series of
7 questions with you, and there's one thing I want to explain
8 to you so that I'm sure you understand or have a concept
9 concerning.

10 I mentioned, on Monday, that this particular type of
11 trial is what we refer to as a bifurcated trial. Now, what
12 that means is that the issues involved in this case are
13 divided into two possible hearings, two different hearings.

14 A Right.

15 Q There will be, when the jury's impaneled, there will be
16 a hearing concerning the charges that have been filed. In
17 this case, two indictments, and, as to those charges, the
18 jury would be called upon to render a verdict of either
19 guilty or not guilty. Sometimes referred to as the guilt
20 phase of the trial.

21 A Right.

22 Q And depending on what, what that verdict would be, then
23 there would possibly be a second hearing or trial using the
24 same jury. The same jury would be in both cases.

25 A Okay.

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1 Q Now, the first case, if the verdict in the murder
2 charge were guilty, then that would mean that a second
3 hearing would have to be held to consider the possible
4 penalty, and the consideration would be concerning life
5 imprisonment without parole or the death penalty.

6 Now, I'm not predicting and don't know whether we will
7 even get to that second hearing or not.

8 A Okay.

9 Q But today I'm going to be talking to you about issues
10 that could concern both the first hearing and the second
11 hearing. I'm going over this with you to point out that the
12 only time we will have to talk over with possible jurors the
13 issues that could be in both hearings is now.

14 A Okay.

15 Q Because I can't stop the trial in the middle when we
16 know we're gonna have a second hearing and begin to discuss
17 those matters cause the jury's already seated and impaneled.

18 So, I guess what I'm saying is I want to point out that
19 the defendant is presumed to be innocent of the charges that
20 are -- that have been filed against him, and that
21 presumption of innocence continues. The fact that we're
22 talking about the penalty issues should not be a reflection
23 either on the defendant or his case in this matter. It's
24 simply the only time that we can talk about these issues.
25 So, we will be talking about penalty issues before the guilt

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1 issue's ever been decided.

2 A Okay.

3 Q So, I'm putting the cart in front of the horse, but
4 it's because it's the only place I can put the cart. It's
5 the only time we can discuss these things.

6 So, do you understand and appreciate what I mean by---

7 A Yes, sir.

8 Q ---putting the cart in front of the horse here?

9 Okay. Now, one of the things I'm going to talk to you
10 about eventually will be your opinion concerning the
11 possible penalty in this case. So, that's one of the things
12 that could be an issue in the case and we'll get to that in
13 just a few minutes.

14 Now, I'm gonna talk to you, first of all, about some
15 general concepts of the law and general duties and
16 responsibilities that someone, as a juror in a criminal
17 case, might have.

18 A Yes, sir.

19 Q So, for this discussion, initially I want you to
20 imagine that you've been selected to serve on a jury in a
21 criminal case. Not this case. It could be any case.
22 Someone's accused of shoplifting or stealing something or
23 something of that nature. So, you're in a criminal case,
24 and I want to be sure you have an understanding of some
25 concepts under the law.

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1 First of all, if you were selected to serve as a juror,
2 would you be willing to listen to the law as charged to you
3 by the judge during the trial?

4 A Yes, sir.

5 Q Would you be willing to take the law that the judge
6 charged you and apply it to the facts as the jury determined
7 those facts, and I will tell you, in every criminal case,
8 the jury is the sole judge of the facts.

9 So, would you be willing to take the law that the judge
10 gives you and apply it to the facts that the jury has
11 determined in reaching a verdict in a case?

12 A Yes, sir.

13 Q I'm gonna take it a step further now.

14 Let's say that you were sitting in the jury box and the
15 judge is charging the law to the jury. In other words, I
16 would be telling the jury what the law is in this
17 particular -- that pertains to this case. This -- the case
18 that you're trying. And, during that charge, you might hear
19 something that perhaps you didn't either agree with or you
20 thought maybe the law should of been different in some
21 fashion than it is.

22 Would you be willing to accept, however, the law
23 exactly that the judge gave you and use that in applying it
24 to the facts?

25 In other words, could you set aside your personal

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1 feelings as to what the law is or what it ought to be and
2 take the law just exactly as the judge gives you and apply
3 it to the facts as the jury's determined those facts?

4 A Yes, sir.

5 Q So, you could do that?

6 A Yes, sir.

7 Q Now, ma'am, some other things I want to mention to you
8 cause these are concepts under the law, and be sure you have
9 an understanding of these and agree with the concepts I'm
10 going to be talking to you about.

11 The first concept is that, under the law and I
12 mentioned it briefly just a minute ago, everyone who is
13 charged with a crime in, in this state and in the United
14 States is always presumed, under the law, to be innocent of
15 the charge that they've been charged under.

16 Do you understand---

17 A Yes, sir.

18 Q ---that there is a presumption of innocence for all
19 defendants?

20 A Yes, sir.

21 Q Now, because a defendant has that presumption of
22 innocence, that means the defendant is never required to
23 offer any proof during a trial. In other words, the
24 defendant is presumed to be innocent. So, there's no
25 requirement that the defendant prove anything during a

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1 trial.

2 You understand that the defendant has no burden of
3 proving anything during a trial?

4 A Yes.

5 Q By the same token, the State is the party that is
6 brought a charge in a criminal case. That means the State
7 does have a burden of proof in a criminal trial. That is
8 their responsibility is to prove the allegations that have
9 been made, and they have to prove those allegations by proof
10 beyond a reasonable doubt.

11 Do you understand that concept --

12 A Yes, sir.

13 Q -- that the State has the only burden of proof in a
14 criminal trial?

15 A Yes, sir.

16 Q I'm gonna, I'm gonna take it a step forward -- further.
17 You're on a jury. You've already heard all the evidence in
18 the case. The judge is charged the law. You and your
19 fellow jurors are considering the case, and you come to the
20 conclusion that the State has not met the burden of proof
21 that it has. It did not prove the allegations beyond a
22 reasonable doubt.

23 A Uh-huh. (Affirmative).

24 Q Under those circumstances, would you be willing to sign
25 a verdict that would find the defendant not guilty?

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1 A Yes.

2 Q Now, by the same token, if the State did meet its
3 burden of proof to prove the allegations beyond a reasonable
4 doubt, would you be willing then to sign a verdict of guilty
5 against someone?

6 A Yes.

7 Q Now, I take it then that you would be able to find a
8 person either guilty or not guilty, but that would depend
9 upon the proof that was offered in the case as well as the
10 law as charged by the judge?

11 Is that a correct statement?

12 A Yes, sir.

13 Q And I also believe, from what you've told me, that it's
14 your belief that simply because someone has been arrested
15 for a crime or even charged with a crime, those facts do not
16 make someone automatically guilty of that crime?

17 Do you agree with that?

18 A True.

19 Q I told you then I would get to the point where I would
20 talk to you about the possible penalty in this case.

21 A Okay.

22 Q And that's the seeking of the death penalty, and I'm
23 gonna go into a little more detail about the way -- the
24 procedure that we'll follow and what would go on in that,
25 that proceeding.

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1 I told you earlier that, in a case where the State is
2 seeking the death penalty, the case is bifurcated or divided
3 into two trials. Normally, when someone is charged with the
4 commission of a crime, the jury's function is to decide
5 whether they're guilty or not guilty, and if they're found
6 guilty, then it's the judge's responsibility to pass
7 sentence, to sign the sentence, whatever that is, whatever
8 fine or time or probation, things of that nature.

9 You understand that that's---

10 A Yes.

11 Q ---how it normally works?

12 A Okay.

13 Q In this type of case, however, where a death penalty is
14 being sought, the first part of that trial is like the
15 normal trial. The jury determines whether the defendant is
16 either guilty or not guilty of the charges that have been
17 brought against the defendant.

18 A Okay.

19 Q Now, if the defendant is found guilty of the offense of
20 murder, the State has requested the imposition of the death
21 penalty. In that circumstance, the same jury that heard the
22 first case then would come back to the Court for another
23 hearing at which there might be, in fact, I'm sure there
24 will be different evidence presented from different
25 witnesses than appeared in the first case because the issue

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1 now is the type of penalty to be assessed. It's no longer
2 guilt or innocence. Guilt or innocence of the crime has
3 been determined, and, under the law of this state, not all
4 murders require the death penalty.

5 In other words, there has to be certain factors that
6 exist before a sentence of death can be entered. So, not,
7 not every murder would qualify. But, in this case, we've
8 got a guilty finding for murder, we're coming back in for
9 the penalty phase, and the statute that sets up that penalty
10 phase of the trial sets out some things that, that -- how
11 it's to be conducted, and it says that, at that particular
12 trial, there will be evidence presented both of aggravating
13 factors or circumstances and also evidence will be presented
14 of mitigating circumstances. I want to be sure you
15 understand what we mean by those two phrases.

16 Aggravating circumstances would be evidence that's
17 presented that would tend to make the crime that the
18 defendant has been convicted of make someone want to perhaps
19 give that person a greater penalty or the more severe
20 penalty. Mitigating circumstances, however, would be
21 circumstances that would somehow make a jury perhaps want to
22 give the defendant a lesser penalty.

23 So, do you understand the difference between
24 aggravating and mitigating?

25 A Yes.

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1 Q And the statute actually has a list of the factors in
2 it, both aggravating factors and mitigating factors, that a
3 jury can consider, and the judge is charged with the
4 obligation of charging the jury as to what factors are --
5 should be and will be considered.

6 Now, once all that evidence has been presented, the
7 judge then would charge the jury to consider the factors,
8 mitigating and aggravating, in reaching a verdict and
9 recommending a verdict of either the death penalty or life
10 imprisonment without the possibility of ever being paroled.
11 So, those are the two choices that the jury would be put to.

12 Now, I want, for just a minute, for you to, in your
13 mind's eye, put yourself in a situation. Let's say that you
14 were on a jury. You were selected and serving on a jury in
15 a case where the death penalty is being sought, and that
16 jury has gone through that first hearing on the question of
17 guilt or innocence, and the jury has unanimously found that
18 the defendant is guilty of the crime of murder.

19 So, that means that same jury now is getting ready to
20 come back into the courtroom to, to consider the question of
21 the appropriate penalty, to hold that second sentencing
22 hearing where your -- where evidence of aggravating factors
23 and evidence of mitigating factors.

24 So, do you understand the position I've asked you to
25 put yourself in?

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1 A Yes.

2 Q You remember the sheet of paper that was back in the
3 jury room---

4 A Yes, sir.

5 Q ---that described three different types of jurors?

6 I'm going to talk to you about those three types of
7 jurors so I'm sure that we have an understanding of the
8 three types of jurors.

9 The first type of juror on that piece of paper is a
10 juror who, as he walked down the hall to come to the
11 courtroom, that juror's already made up his or her mind
12 before hearing any evidence in that phase of the trial.
13 That jury has decided that -- is of the opinion and of the
14 belief that the only appropriate penalty for someone who's
15 convicted of a murder is the death penalty, and, in every
16 case, that, that particular juror is going to vote for or
17 recommend the death penalty.

18 The second type of juror I described is one who is also
19 already made up his or her mind. That juror believes that
20 there is no justification for the State to ever take
21 someone's life as a result of the commission of a crime,
22 and, so, therefore, they would, under every circumstance,
23 regardless of how severe the crime was or any other factor,
24 they would always vote for life imprisonment without the
25 possibility of there ever being a parole. That juror would

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1 never vote for the death penalty. So, those two jurors have
2 already made up their minds.

3 The third juror I described is someone who hasn't made
4 their mind up yet as to what the appropriate thing is to do.
5 That person would want to listen to the evidence, both
6 aggravating evidence and mitigating evidence, and after
7 hearing that evidence and hearing the judge's charge or
8 charge on the law, would then make a decision as to what the
9 appropriate penalty might be. Be that either life
10 imprisonment or the death penalty.

11 Do you understand the differences I've described
12 between these three people?

13 A I think it's kind of confusing between two and three.

14 Q Okay.

15 A Because---

16 Q Well, let me finish my question. I just want to, first
17 of all, know do you understand those three people?

18 A Oh, yes, sir.

19 Q Okay. Now, let me ask you this. I'd asked you to put
20 you, yourself in the position of someone walking down that
21 hallway getting ready to walk into that room.

22 Of the three jurors I just described, which one of
23 those would most closely resemble you as you walked back
24 into that courtroom?

25 A Number three.

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1 Q which one?

2 A Number three.

3 Q Now, ma'am, does that mean that if you went in and
4 heard the evidence, and you weighed -- considered both types
5 of evidence, that if you found that the evidence justified a
6 sentence of life imprisonment without the possibility of
7 parole, that you could sign a sentence in that fashion?

8 A For that, yes.

9 Q All right. Now, if you and your fellow jurors
10 considered the evidence and if you found that the
11 circumstances justified a sentence of death, could you sign
12 a verdict in -- that could find for the death penalty?

13 A I don't think so.

14 Q So, you don't think you could do that under any
15 circumstance?

16 A No.

17 THE COURT: Okay. Defense wish for me to continue my
18 questioning or would you like to ask some questions?

19 MR. YOUNG: Your Honor, I just ask a couple---

20 THE COURT: Okay.

21 MR. YOUNG: ---directly related to the point.

22 THE COURT: I'll be glad to let you do so.

23 EXAMINATION

24 BY MR. YOUNG:

25 Q Good afternoon, Ms. Jeffries.

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1 A Hello.

2 Q My name is Boyd Young. We met briefly on Monday. Just
3 a couple of questions real quick.

4 I know that you've given a lot of thought to the death
5 penalty and how you feel about it.

6 A Yes.

7 Q Is that fair to say?

8 A Yes.

9 Q Particularly over the past couple of days?

10 A Yes.

11 Q The judge was asking you some questions and he asked
12 you earlier questions about following the law and would you
13 follow the law as he gave it to you even if you sort of
14 disagreed with it.

15 Do you recall those questions?

16 A Yes.

17 Q And you told him that you would.

18 A Yes.

19 Q And that you would try to set your personal feelings
20 aside --

21 A Yeah.

22 Q -- and follow the law as he gave it to you?

23 A Yes.

24 Q Is that right?

25 Sure.

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1 And when it comes to this issue about the death penalty
2 or life without the possibility of parole, the law is always
3 satisfied with a life penalty. The death penalty is never
4 required.

5 Okay?

6 A Okay.

7 Q No juror ever has to do harm to their conscience and
8 vote for death if they don't feel it's appropriate.

9 Okay?

10 A Okay.

11 Q The way that we get there is we call these individual
12 moral judgment between aggravation and mitigating
13 circumstances.

14 Okay?

15 A Okay.

16 Q You with me on that?

17 A Yes.

18 Q Now, a juror can find mitigation in however they want
19 to define it, and there's a reason for them to vote for a
20 life penalty if they feel that it's appropriate.

21 Okay?

22 A Okay.

23 Q Even if they don't find any mitigation, they can vote
24 for a life penalty based on how they feel about mercy alone.

25 A Yes.

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1 Q Okay. You with me on that?

2 A Yes.

3 Q So, what the law requires from jurors is that, if an
4 aggravating circumstance is proven to the jury beyond a
5 reasonable doubt, and all the jurors agree that it exist,
6 you with me?

7 A Uh-huh. (Affirmative).

8 Q Murder plus an aggravating circumstance.

9 A Okay.

10 Q It then authorizes the jury to consider the death
11 penalty as a possible punishment option.

12 Okay?

13 A (Witness nods affirmatively.)

14 Q You with me?

15 A Uh-huh. (Affirmative).

16 Q And the jury has these two options to choose between,
17 right?

18 A Uh-huh. (Affirmative).

19 Q Now, can you give meaningful consideration to the two
20 options, that being death penalty or life without the
21 possibility of parole, and decide which one's right for you?

22 A I have to live with myself after this trial, and this
23 has been very challenging this week thinking about this. I
24 worked in the psychosocial field, the mental health field,
25 and, and with rehabilitation quite a few years now, and I

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1 always think there's room for mercy and redemption. It's
2 very difficult because there's some very horrendous things
3 that have come into my life that I have heard that people
4 do, and that I probably do feel very strongly that they
5 deserve the death penalty.

6 But at the end of the day, I don't know that I could
7 live with myself. I think very strongly that there's a lot
8 of people that should be put behind bars and never see -- be
9 allowed in society again, yes, I could do that. But to sign
10 my name to somebody's death, I couldn't do it. I just
11 couldn't do it.

12 Q Even if you thought that it was the appropriate
13 sentence you couldn't sign it?

14 A Even if it was my family I couldn't do it.

15 Q Thank you. Thank you, Ms. Jeffries.

16 A I couldn't.

17 THE COURT: Any questions from the State?

18 SOLICITOR BARNETTE: None from the State, Your Honor.

19 THE COURT: Ma'am, I'll ask you to step back to the
20 jury room for just a moment and then I'll have you back
21 shortly.

22 (WHEREUPON, the following takes place outside the
23 presence of the juror.)

24 THE COURT: Defense position?

25 MR. YOUNG: She's not qualified, Your Honor.

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1 THE COURT: The State agree?

2 SOLICITOR BARNETTE: We agree, Your Honor.

3 THE COURT: All right. Bring Ms. Jeffries in.

4 (WHEREUPON, the following takes place within the
5 presence of the juror.)

6 THE COURT: Ms. Jeffries?

7 THE WITNESS: Yes.

8 THE COURT: Just have a seat briefly.

9 (Witness complies.)

10 THE COURT: I want to thank you again for your
11 cooperation in this process. I'm going to release you from
12 any further responsibility in this matter. The bailiffs
13 will check you out, and, again, thank you for your help and
14 assistance.

15 THE WITNESS: I am---

16 THE COURT: You're free to go.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Thank you, ma'am.

19 (WHEREUPON, the following takes place outside the
20 presence of the juror.)

21 THE COURT: All right. The next juror on our list is
22 Willem Van Der Plaat.

23 Ask Mr. Van Der Plaat to step in.

24 I hope I got that right.

25 (WHEREUPON, the following takes place within the

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1 presence of the juror.)

2 WILLEM VAN DE PLAAT, having been previously
3 sworn, testified as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q Have a seat please, sir.

7 A (Witness complies.)

8 Q Thank you.

9 Sir, you may want to turn the chair a little bit. I'll
10 be talking to you first.

11 A Yes.

12 Q So, you can face me --

13 A Okay.

14 Q -- and we'll talk to begin with. A little later on the
15 attorneys may be asking you some questions.

16 A Okay.

17 Q And we may turn you back around then.

18 A Understood.

19 Q All right. You are Willem Van Der -- is it Plaat or
20 Plaat?

21 Plaat?

22 A Plaat.

23 Q Plaat.

24 Okay. Dutch?

25 A Dutch, yes.

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1 Q Okay. Very good.

2 Now, Mr. Van Der Plaat, today we're going over with
3 your fellow jurors and yourself some questions that we have
4 that pertain to this case. I will tell you that we're still
5 in the process of qualifying people as to whether or not
6 they will go into the jury pool for jury selection. That
7 has not yet been decided in, in your case and in the people
8 who come after you, but we're going through this process by
9 talking to each juror individually.

10 A Okay.

11 Q You understand that?

12 A Yes, sir.

13 Q So, you're not being treated any differently than any
14 other juror in this process.

15 A Right.

16 Q We're going to ask you a series of questions today. I
17 will tell you there are no right or wrong answers to these
18 questions. There's only your answers.

19 A Uh-huh. (Affirmative).

20 Q And they need to be your truthful and honest answers,
21 and, in that regard, I'll remind you that you took an oath
22 on Monday to tell the truth.

23 A Uh-huh. (Affirmative).

24 Q That oath still applies to your discussions with us
25 now.

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1 Do you understand that?

2 A I understand.

3 Q All right. And -- so, please don't feel threatened by
4 what we're doing.

5 A Uh-huh. (Affirmative).

6 Q Again, everybody here is, is gonna get along just fine,
7 and, and, again, there's -- we're not looking for any
8 particular answers. We're just trying to find out some
9 things about you.

10 A Okay.

11 Q You understand that?

12 A Yes, sir.

13 Q When you left the courthouse on Monday I gave you some
14 instructions about your behavior --

15 A Uh-huh. (Affirmative).

16 Q concerning this case --

17 A Uh-huh. (Affirmative).

18 Q -- and that, that instruction was not to try to gather
19 any information about this matter from any source, not to
20 read any or listen to or watch any media reports, not to
21 discuss the case with anyone, and don't discuss -- allow
22 anyone to discuss it with you, and should anybody contact
23 you about your service, to let the clerk know about that.

24 A Yeah.

25 Q Now, have you been able to follow my instructions since

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1 Monday?

2 A Yes.

3 Q Okay. Now, in that regard, are you the kind of person
4 you think that you could set aside anything that you might
5 have heard that may pertain in anyway to this, this matter
6 and decide the case, if you were on the jury, based upon the
7 law and the evidence that you heard in the courtroom during
8 the trial?

9 A I believe so, yes.

10 Q Okay. Is -- has there been anything that you've heard
11 or know about this case that in anyway might affect your
12 decision in this case?

13 A No, I haven't heard anything on this.

14 Q Okay. Now, have you ever participated in any types of
15 discussions, and I -- in any forum, in any manner --

16 A Uh-huh. (Affirmative).

17 Q -- concerning issues that might involve the question of
18 the death penalty?

19 A would like among friends also apply cause yes.

20 Q well, I'm mainly looking for people who might go so far
21 as to talk on, on Internet blogs --

22 A Uh-huh. (Affirmative).

23 Q -- or chat rooms or get together with people in some
24 type of a forum to talk about that thing. I know that, from
25 time to time, people might mention it in connection with

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1 this, with a case.

2 A Uh-huh. (Affirmative).

3 Q But I'm interested in someone who might be so
4 interested in that issue that they seek out people to talk
5 about it.

6 A No.

7 Q Have you ever been in that situation?

8 A No.

9 Q All right. Have you ever participated in any political
10 activities that might involve the issue of the death
11 penalty?

12 A No.

13 Q Now, there was a list of people that I had back in the
14 jury room, about three sheets of paper.

15 A Uh-huh. (Affirmative).

16 Q Did you read over those names?

17 A Yes.

18 Q Did you see anyone on there that you recognized them
19 or, or have any connection, excuse me, connection with any
20 of them?

21 A No.

22 Q Okay. So, I take it then you -- it's your belief that
23 you're either not related to any of them or that you've
24 never had any type of business, social, or personal
25 relationship with?

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1 A That's correct.

2 Q Okay. Those are people who are identified as possible
3 witnesses in the case. I just wanted to be sure there
4 wasn't someone on there that you had some close relationship
5 with.

6 A No.

7 Q So, that's the reason we're going into those things.

8 I need to explain to you a little bit about what we're
9 doing here, and I'm gonna explain this to you for a reason.

10 I mentioned briefly on Monday and I mention to you, to
11 you, to you again that this particular trial actually
12 there's a possibility of two different trials taking place.

13 A Okay.

14 Q What -- the way this is handled is there's an
15 allegation of murder and kidnap in this case.

16 A Uh-huh. (Affirmative).

17 Q There will be a hearing by a jury and that jury will
18 make a determination as to guilty or not guilty as to those
19 two charges. In this case the State is seeking the death
20 penalty. So, if there's a guilty verdict on the murder
21 charge, then a separate hearing would be held concerning the
22 appropriate penalty.

23 A Understood. Understand.

24 Q During my discussions, as I ask you questions, some of
25 my questions will relate to that possible penalty. They

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1 already have.

2 A Uh-huh. (Affirmative).

3 Q And to a certain extent, I'm putting the cart in front
4 of the horse --

5 A Uh-huh. (Affirmative).

6 Q -- instead of the cart behind the horse because I'm
7 asking you about things that have to do with the penalty
8 phase of the trial, and we've not even decided whether we're
9 gonna get that far. But I want to explain to you that this
10 is the only time that either I or the lawyers can discuss
11 the issues involved in the whole trial with you --

12 A Uh-huh. (Affirmative).

13 Q -- before the jury is selected. If we waited to talk
14 about the penalty matters until that issue came up, the jury
15 would already be seated and there wouldn't be anyway to use
16 that information in selecting the jury.

17 A I understand.

18 Q So, it's necessary that we discuss things about the
19 penalty part of the trial before we even start the trial.

20 A Uh-huh. (Affirmative).

21 Q And I want to point out to you that the defendant, in
22 this case, as every defendant is in every case in this state
23 and in this country, is presumed to be innocent of the
24 crimes that have been charged, and the fact that we're
25 talking about penalties is, in no way, a reflection either

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1 on him or his case in this matter. This is simply the only
2 time we can do this effectively.

3 A Okay.

4 Q Do you understand that?

5 A Yes.

6 Q All right. Now, I'm going to be asking you about some
7 of your opinions and beliefs and things of that nature. I
8 would hope that you're secure enough in your beliefs and
9 opinions that you won't feel threatened by those questions.
10 It's not an intent to invade your privacy.

11 So, do you feel that you could comfortably participate
12 in this---

13 A I believe so.

14 Q ---process?

15 A Yes.

16 Q Okay. Now, I'm going to go over some matters that
17 involve general concepts of what goes on in criminal cases
18 or in the criminal law.

19 First of all, I want you to imagine that you are a
20 juror in some criminal case.

21 A Uh-huh. (Affirmative).

22 Q Not necessarily this one. Maybe some case where
23 someone's been charged with shoplifting or something of that
24 nature, and I want to ask you some basic things to be sure
25 we have an understanding about the criminal law and

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1 basically how that works.

2 A Uh-huh. (Affirmative).

3 Q The first question I have, if you were selected as a
4 juror in the case I described, would you be willing to
5 accept the law as the judge gives you in the case?

6 A Yes.

7 Q would you be willing then to take that law -- and I
8 point out to you, in every criminal case, the jury is the
9 sole judge of the facts. In other words, the jury
10 determines what facts are true and what facts are not true.

11 So, would you be willing to take the law that the judge
12 gives you and apply it to the facts as the jury that you're
13 on found them to be in reaching a verdict in the case?

14 A Yes, I would.

15 Q Now, the next thing's a little bit -- a little step
16 further beyond that.

17 Let's say while you were on that jury and you're seated
18 in the jury box, the judge is explaining the law to be
19 applied in the case, that, as you're listening to that law,
20 you hear something -- the judge says something about the law
21 that maybe you don't agree with exactly or you thought the
22 law was different than that, and the judge tells you
23 something that you really weren't expecting, would you be
24 willing to set aside your personal beliefs or opinions and
25 accept the law exactly as the judge stated the law to you

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1 and apply it to the facts in reaching a verdict?

2 Could you do that?

3 A I believe so. I mean it, it may be tricky cause
4 personal beliefs do play a small role.

5 Q Well, I understand they do. But, of course, you would
6 have explained to you, during the trial, that the judge is
7 the sole judge of the law.

8 A Uh-huh. (Affirmative).

9 Q And it would be your obligation to take that law---

10 A Yeah.

11 Q ---and apply that way.

12 Could you do that?

13 A I believe so, yes.

14 Q All right. Now, I mentioned to you earlier that the
15 defendant in this case is presumed to be innocent, and I
16 will point out to you that that's true about every defendant
17 in every criminal case in our system.

18 Do you understand the concept that all defendants, in
19 criminal cases in this state and in this country, are
20 presumed to be innocent of the crime for which they've been
21 charged?

22 A Yes.

23 Q For that reason, do you understand the concept that if
24 a defendant is presumed to be innocent --

25 A Uh-huh. (Affirmative).

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1 Q -- then the defendant really has no obligation to prove
2 himself innocent because he's already presumed to be
3 innocent. So, the defendant is never required to prove his
4 innocence.

5 Do you understand that?

6 A Yes, I do.

7 Q Now, by the same token, since a defendant is not
8 required to prove innocence, and is presumed to be innocent,
9 that the defendant has no burden in a case of proving
10 anything during a trial because he's presumed innocent
11 during a trial.

12 A Uh-huh. (Affirmative).

13 Q Can you -- do you understand that?

14 A Yes, I understand that concept, yes.

15 Q Now, the other thing I'll point out to you that the
16 other party in a criminal trial, the State, is the one who's
17 made the accusations against the defendant. Because of
18 that, our law puts a burden of proof upon the State --

19 A Uh-huh. (Affirmative).

20 Q -- and the State has the burden of proving those
21 accusations by proof beyond a reasonable doubt.

22 A Yes, sir.

23 Q Do you understand that concept?

24 A Yes, I do.

25 Q And do you agree with that concept?

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1 A I do.

2 Q Now, taking all of this a step further, let's say you
3 were on that jury, you heard all the evidence, you heard the
4 judge give you the law, you went back into the jury room
5 with your fellow jurors, you discussed the case, deliberated
6 on the case, and then you came to the conclusion that the
7 State has not -- did not meet its burden of proof. In other
8 words, the State, during the trial, did not offer proof
9 beyond a reasonable doubt to prove the defendant guilty.

10 In that circumstance, would you have any difficulty in
11 signing a not guilty verdict for a defendant?

12 Do I need to explain it to you again?

13 A No, no, I understand the concept. It's just -- I can't
14 help but feel -- I may be overthinking things where if, in
15 another case, what do you call it, that may not have been,
16 what do you call it, the issue. I may, I may still have
17 personal feelings where I'm kind of like hey.

18 Q Well, do you---

19 A I think I do understand, what you call it, where it's
20 coming from, but, yeah, indeed if the, the -- I assume the
21 prosecutor, the State side didn't present their facts, what
22 you call it, beyond a reasonable doubt, that I would
23 probably be inclined to say well, maybe, regardless of what
24 I think, they haven't proven it, been able to prove it
25 correctly. So---

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1 Q So, you could sign a verdict---

2 A I could.

3 Q ---of not guilty?

4 A Yes.

5 Q Okay. Now, by the same token though, if you were in a
6 criminal case, you and fellow jurors decided the State did
7 meet its burden of proof, that it did prove the defendant
8 guilty beyond a reasonable doubt, would you have any
9 hesitancy in signing a guilty verdict against a person?

10 A No, again, under the same arguments, if the, if what
11 was proven is really beyond a reasonable, reasonable stated
12 doubt, then---

13 Q You could sign a guilty verdict?

14 A I could, I could sign a guilty verdict.

15 Q Okay. So, I take it then that you would want to weigh
16 the law and the evidence in any case and make a
17 determination as to whether or not you find the State had
18 met its burden of proof or not?

19 A Correct.

20 Q And also I think then it would be your belief that
21 simply because a person's been arrested, and charged with
22 the commission of a crime, just because those two things
23 have happened, it doesn't mean that a person is
24 automatically guilty of the crime?

25 Is that a correct statement of your belief?

Individual Juror Qualification

1 A Yes, that's correct.

2 Q All right. Now, I'm going to move on to, to something
3 else. I told you that I would talk briefly or talk -- we
4 may not talk briefly. We may talk for a while about the
5 possible penalty in this case, the death penalty.

6 A Uh-huh. (Affirmative).

7 Q And I explained to you that, that -- well, I didn't
8 explain this to you and let me explain this to you.

9 In, in a normal criminal case, in most criminal
10 cases --

11 A Uh-huh. (Affirmative).

12 Q -- in most criminal cases, the jury's job is, when they
13 come in, is to listen to the evidence, determine the facts,
14 and listen to the law, and then decide whether the defendant
15 has, has -- is, is guilty or not guilty based on that
16 standard of proof I talked about.

17 A Uh-huh. (Affirmative).

18 Q Proof beyond a reasonable doubt.

19 A Uh-huh. (Affirmative).

20 Q So, if a jury, if a jury finds a defendant guilty of a
21 crime, normally then it becomes the judge's responsibility
22 to determine the appropriate sentence and to issue the
23 sentence, sign the sentence, and present it to the
24 defendant.

25 You understand that's how it's normally handled?

Individual Juror Qualification

1 A Yes.

2 Q Okay. Now, there's a difference in one case, one type
3 of case, and that's the one that we're in now. That's the
4 case where the State has sought the death penalty, and where
5 the State seeks the death penalty, we divide the case into
6 two times.

7 That first trial that we would have is just like the
8 normal criminal trial we talked about.

9 A Uh-huh. (Affirmative).

10 Q There's a charge. The State presents its evidence.
11 Defense can present whatever it chooses to because it has no
12 burden of proof.

13 A Uh-huh. (Affirmative).

14 Q And then the jury decides whether or not the State has
15 met its burden of proof as to those charges.

16 Now, if the jury decides the State did meet the burden
17 of proof as to the charges, then it would issue a guilty
18 verdict on the charges. So, what would happen here is one
19 of the charges is the charge of murder.

20 A Uh-huh. (Affirmative).

21 Q We're presuming that the jury has found the defendant
22 guilty on that charge, and then we would move on to the
23 second phase of the trial, and that's what we call the
24 sentencing or the penalty phase of the trial.

25 A Okay.

Individual Juror Qualification

1 Q And in this case, the judge doesn't conduct that trial.
2 He's there and he presides, but the jury also goes into that
3 particular trial, and the jury considers and recommends the
4 level of the penalty to be provided in this case. So, in
5 this case, the jury participates in the sentencing or the
6 penalty phase of the trial.

7 You understand that---

8 A Yes.

9 Q ---it's different in that regard?

10 A Yes, I do.

11 Q Now, at that particular phase of the trial there are
12 statutes, the statutes, the laws that set up how that trial
13 will be conducted and what can be done or what can be
14 presented at that trial, and I would point to you that, at
15 that phase of the trial, the issue no longer is whether or
16 not the defendant is guilty or not because that's been
17 decided.

18 A Yeah.

19 Q The only issue is the level of punishment to be given
20 in this situation.

21 So, you would have witnesses appear in that part of the
22 trial who probably didn't testify in the first part of the
23 trial because they're testifying on a different issue,
24 different subject.

25 Do you understand what I mean by that?

Individual Juror Qualification

1 A Yes.

2 Q All right. Now, the statutes that set up that part of
3 that trial provide that there can be evidence presented for
4 what are called statutorily aggravating circumstances.
5 There's a list of those circumstances that the State, that
6 can be presented in the statute, and those circumstances are
7 circumstances that might make a juror who's sitting in that
8 case --

9 A Uh-huh. (Affirmative).

10 Q -- that might make the juror more willing to give a
11 higher level penalty. In other words, make the juror tend
12 to think about going with the more serious penalty.

13 A Uh-huh. (Affirmative).

14 Q The other set of evidence that, that can be presented
15 in that is what are called mitigating circumstances, and
16 there's a list of those in the statute as well of the
17 different things that a juror could consider as a mitigating
18 circumstance, but the law also says that the jury has the
19 right to consider any other factors it chooses to consider,
20 and the jury can even consider the question of simple mercy
21 --

22 A Uh-huh. (Affirmative).

23 Q -- in that, in that situation.

24 So, there's -- all of those factors are listed in there
25 that the jury -- that the evidence can be presented on. So,

Individual Juror Qualification

1 there would be evidence of aggravation and evidence of
2 mitigation.

3 So, do you understand that they'll be two types of
4 evidence presented in that case?

5 A Yes.

6 Q All right. So, that's how this is conducted, and then
7 the jury would deliberate after the judge -- once that
8 evidence is presented, the judge would instruct the jury to
9 consider all of the evidence, aggravating and mitigating,
10 and go out and then make a recommendation on sentencing.

11 A Uh-huh. (Affirmative).

12 Q So, that's how that's done.

13 So, do you understand how that would work?

14 A Yes, I do.

15 Q All right. I want you to imagine that you're in a
16 situation.

17 A Uh-huh. (Affirmative).

18 Q Let's say that you were someone who was selected on
19 that case we've been talking about to serve on that case as
20 a juror. You sat through the first part of the trial and
21 you and your fellow jurors have issued a guilty verdict as
22 to the charge of murder.

23 A Uh-huh. (Affirmative).

24 Q So, that means, since the State is requested the
25 imposition of the death penalty, there has to be a second

Individual Juror Qualification

1 hearing held at which we would receive evidence of
2 aggravation or mitigation.

3 A Uh-huh. (Affirmative).

4 Q So, do you understand where we are?

5 A Yes.

6 Q All right. You're in -- with your fellow jurors.
7 You're coming down the hallway at the courthouse. You're
8 getting ready to walk into the courtroom where that second
9 phase of the trial is going to be held.

10 So, do you know clearly where you are?

11 A Yes.

12 Q All right. Back in the jury room there was a piece of
13 paper. On the piece of paper I had three paragraphs. Each
14 paragraph described a juror.

15 Do you remember that paper?

16 A Yes, I do.

17 Q Did you read it?

18 A Yes.

19 Q Now, I'm going to go back over with you the three
20 different types of jurors that were described on that piece
21 of paper.

22 A Uh-huh. (Affirmative).

23 Q The first one is someone who, before they walked into
24 the jury -- back into the courtroom to start that second
25 trial has already made his or her mind up. That juror

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1 believes that, in any case where someone commits a murder,
2 that the appropriate penalty is the death penalty, and that
3 particular juror is always gonna vote in favor of the death
4 penalty in every case.

5 A Uh-huh. (Affirmative).

6 Q The second juror I described is someone who also has
7 already made his or her mind up before they walked into the
8 courtroom. That juror is someone who believes the State is
9 never justified in taking a life in response to the
10 commission of a crime, and, therefore, that juror will
11 always vote for life imprisonment without the possibility of
12 parole because that, that person -- and that person would
13 not consider the severity of the crime.

14 A Uh-huh. (Affirmative).

15 Q In other words, in every particular instance, that
16 particular juror is going to vote for life imprisonment
17 without parole.

18 The third juror is someone who is walking to the door.
19 That juror has not made up his or her mind one way or the
20 other.

21 A Uh-huh. (Affirmative).

22 Q That juror wants to hear the evidence that's to be
23 presented, aggravating evidence and mitigating evidence.
24 And after hearing that evidence, and receiving the charge on
25 the law from the jury, I mean from the judge, that

Individual Juror Qualification

1 particular member of the jury would then try to make --
2 well, try to make a decision as to the appropriate penalty
3 to be assessed. That being life imprisonment, imprisonment
4 or the death penalty.

5 Do you understand now the three different jurors that I
6 described to you?

7 A Yes.

8 Q Now, I told you to put yourself walking into that
9 courtroom too.

10 A Uh-huh. (Affirmative).

11 Q Of the three jurors I described to you, which of those
12 most closely would resemble how you would feel coming into
13 the courtroom?

14 A Most likely number three.

15 Q So, you feel that you would be a juror who would want
16 to hear the aggravating evidence --

17 A Yes.

18 Q -- and the mitigating evidence, and then make a
19 decision based on what that evidence said as to what the
20 appropriate penalty would be?

21 A Yes.

22 Q Then let me ask you the next question.

23 If you and your fellow jurors were to go over the
24 evidence and review the evidence, and if you felt that the
25 best penalty or the most appropriate penalty was life

Individual Juror Qualification

1 imprisonment without the possibility of parole, could you
2 sign a verdict for life imprisonment without the possibility
3 of parole for someone convicted of murder?

4 A Yes.

5 Q By the same token, if, after you've reviewed the
6 evidence and looked at the proof, and if you felt that the
7 most appropriate penalty for the, the situation before you
8 was the death penalty, could you sign a verdict in favor of
9 the death penalty?

10 A I could. It definitely would be harder than the other
11 one, but I definitely could.

12 Q I understand.

13 So, that, that -- you could possibly do that?

14 A Yes.

15 Q All right. Now, let me -- I've just got a couple of
16 other things I need to talk to you about.

17 I have signed a sequestration order in this case.

18 A Uh-huh. (Affirmative).

19 Q What that means is that, once the jury is impaneled and
20 we actually start the trial of the case, the jury will be
21 kept separate, will be lodged at a local hotel here at the
22 Marriott. There would be people go with the jury at all
23 times to be sure no one --

24 A Uh-huh. (Affirmative).

25 Q -- got to you or talked to you.

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q The idea is to keep the jury away from any outside
3 influences so the jury is only considering what goes on
4 during the trial.

5 During that time the county would pay for meals,
6 travel. In other words, you'd be taken care of by the
7 county during that period of time.

8 A Yeah.

9 Q You'd receive a -- an amount for jury pay for the time
10 that you were there.

11 A Uh-huh. (Affirmative).

12 Q They don't pay you as well as they do at BMW I'm sure.

13 A Probably not.

14 Q But, but there would be some pay and there would be
15 some money for travel --

16 A Okay.

17 Q -- as well to and from the courthouse.

18 Now, you would be allowed to talk to family and friends
19 during that period of time.

20 A Uh-huh. (Affirmative).

21 Q But those calls would be monitored to be sure there's
22 no discussion about the case or the issues in the case.

23 A Yeah, I understand.

24 Q Do you understand that?

25 A Yes.

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1 Q Now, what I've described to you, if you were put into
2 that situation, would that situation pose any type of, of
3 threat or problem as to your personal well being?

4 A No, the only two things that would concern me is I do
5 have a pet cat at home that would be taken care of.
6 Fortunately not as difficult as a dog, but nonetheless. And
7 also I do take some maintenance medication. I'd have to
8 make sure I have access to those.

9 Q Sure.

10 well, you'd be -- you'd have access to your
11 medications.

12 A Okay.

13 Q Absolutely. And, and by that token, you've already
14 mentioned your pet cat.

15 would, would that situation pose a threat to any other
16 person, their personal well being?

17 A No, not that I'm aware of.

18 Q Okay.

19 A I mean they'll miss me at work I'm sure, but---

20 Q well, we'll -- you -- and I'm gonna talk to you about
21 that if we get that far --

22 A Okay.

23 Q -- in just a few minutes.

24 Okay. All right. Now I'm gonna ask the attorneys to
25 discuss it with you.

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1 A Uh-huh. (Affirmative).

2 Q They have the right to ask questions.

3 A Okay.

4 Q When they finish I'll talk with you again.

5 A All right.

6 THE COURT: Yes, sir, Mr. Young.

7 EXAMINATION

8 BY MR. YOUNG:

9 Q Good afternoon, Mr. Van Der Plaat.

10 A Afternoon.

11 Q I know -- you've kind of been all over the world.

12 A Yes, I have.

13 Q Can you give me just sort of a brief sort of thumbnail
14 sketch of where you were born and where you were raised?

15 A Sure. I am, what you call it, both -- just to -- let
16 me back up a little bit. Go front and then go back.

17 I'm both a recently naturalized U.S. citizen. I have
18 also a Dutch passport. I am technically, what do you call
19 it, Dutch origin. I was born in Guatemala. My dad was a
20 diplomat for the Dutch Embassy, and from there we moved to,
21 and let me see if I get this right, we call Guatemala, and
22 then it was Indonesia, Poland, Kenya, Spain, Uruguay. I
23 spent some time in Holland trying to go to college there,
24 but, when you've attended only English speaking schools,
25 that was a little difficult.

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1 Q Yeah.

2 A I ended up in Rhode Island and then started working in
3 Michigan, Texas, Denver, and out here.

4 Q Okay. Let's see. I spent like one afternoon in
5 Arhaus. I think it was one of the best afternoons I've had.

6 A Yeah.

7 Q Let me talk to you a little bit about sort of your
8 feelings about the death penalty.

9 Can you just tell me kind of in general?

10 A I'm not, what you call it, if asked point blank, I'm
11 not efficient, what do you call it, completely against it.
12 The one fear I do have is if, what we call it, someone is
13 indeed innocent, but somehow, through misfortune or whatever
14 else, could be -- they can't prove that and we put someone
15 innocent to death. That obviously has, what do you call it,
16 something that would bother me if I ever found out, hey, DNA
17 results after the fact proved that, for example, he wasn't,
18 what do you call it, guilty.

19 That would bother me, but I also feel, on the same --
20 on the other side of the coin, that there are people in this
21 society that really could pose a threat, and maybe the only
22 way, you know, to deal with them is to put them to death.

23 Q If I hear you right, sounds to me like you're saying
24 that the death penalty should be an option, but maybe it
25 should be an option of last resort?

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1 A Yes, that might be a good way of putting it.

2 Q Okay.

3 A Yeah.

4 Q I think I'm with you.

5 And as far as the, the sort of innocence versus guilty
6 part --

7 A Uh-huh. (Affirmative).

8 Q -- when you're talking about that with the judge, you
9 understand that first you, you would of found that a person
10 was guilty beyond a reasonable doubt of murder.

11 A Uh-huh. (Affirmative).

12 Q Intentional meant to do it with malice aforethought.

13 A Yup.

14 Q Killed an innocent person. Not self-defense. Not an
15 accident.

16 A Okay.

17 Q You with me on that?

18 A Yes.

19 Q So, that would of been decided by you on the guilty not
20 guilty part.

21 A Uh-huh. (Affirmative).

22 Q If you had a question or a concern about well, they
23 didn't have the DNA or something like that --

24 A Uh-huh. (Affirmative).

25 Q -- then you would have the option of voting not guilty

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1 at that point in time.

2 A You mean at that stage where---

3 Q Right.

4 A ---decides -- yes, that's true. I would make---

5 Q Okay.

6 A ---a choice there, yes.

7 Q And I'm, and I'm just trying to make sure that I
8 don't -- I just want to make sure we're on the same page.

9 For that guilty murder, guilty guilty --

10 A Uh-huh. (Affirmative).

11 Q -- you with me on that?

12 A Yes.

13 Q And what are your feelings about the death penalty
14 under that situation?

15 A If indeed they're, what do you call it, guilty beyond a
16 reasonable, what do you call, doubt, I'd be inclined to,
17 but, as I think the judge mentioned, I would have to see
18 the, the aggravated and the mis -- what was the other?

19 Q Mitigating circumstances.

20 A Mitigating circumstances because my own conscience
21 doesn't allow me just to say, oh, guilty, please just
22 discard of them. I would like to, I guess, for lack of a
23 better description, determine the -- if I can, motive or
24 intensity behind the, the act of murder.

25 Q Sure. I think I understand, I understand what you're

Individual Juror Qualification

1 saying.

2 So, we'd sort of get to that.

3 You're not saying that, like you just said, you
4 wouldn't just give somebody the death penalty because
5 they're---

6 A No.

7 Q ---guilty guilty of murder?

8 A No. Exactly.

9 Q And then the State would actually have to prove another
10 thing before you could consider the death penalty or life
11 without the possibility of parole, and that -- and that's
12 what they're talking about, that aggravating circumstance.

13 A Exactly. Yes.

14 Q Okay. So, an aggravating circumstance is something
15 that the State has to prove, again --

16 A Uh-huh. (Affirmative).

17 Q -- unanimously, beyond a reasonable doubt, to all the
18 jurors.

19 You with me on that?

20 A Yes.

21 Q And one of the aggravating circumstances that you might
22 be asked to consider in this case is that -- is the death of
23 a child.

24 A Uh-huh. (Affirmative).

25 Q Okay. At that point in time, prior to, you know, you

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1 haven't heard all the mitigation stuff yet --

2 A Yup.

3 Q -- but at that point in time, just based on that factor
4 alone, how do you feel about the death penalty?

5 A Because a child is involved?

6 Q Yes, sir.

7 A I can't say that I wouldn't be somewhat, what you call
8 it, unbiased being a father myself.

9 Q Yes, sir.

10 A I have a four year old. So, that may have an initial
11 reaction like oh, yeah, that, that isn't cool, but I would
12 also try to fight my own emotions to try to say, hey, maybe
13 I do have to still listen to the mitigating circumstances.

14 Q Okay. I'm with you on that.

15 A Yeah.

16 Q So, let's talk about that for a second, these sort of
17 mitigating circumstances.

18 A Uh-huh. (Affirmative).

19 Q And I think that you, you understand and we're not
20 talking about mitigating murder.

21 A No.

22 Q We're not talking about making it an accident or
23 anything like that. We're talking about -- mitigating
24 circumstances are facts or factors --

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q -- that the jury can consider in favor of a life
2 punishment for---

3 A Uh-huh. (Affirmative).

4 Q ---a guilty murder.

5 A Exactly. It's not -- mitigating is not trying to, what
6 you call it, make him unguilty.

7 Q Sure.

8 A It's just saying these are his circumstances of the,
9 the murder that he's guilty of and it will help determine
10 the degree of punishment.

11 Q Sure.

12 A Yup.

13 Q Or the circumstances of the murderer.

14 A Yup. No, I think I would probably listen to -- I'd be
15 doing both and would still consider back in my mind, yes,
16 the man has been proven guilty and now we're at the next
17 step, what, what you call it, what do we punish him with.

18 Is it severe enough for the death penalty or is, you
19 know, life in prison more appropriate?

20 So, you know, I'm trying to answer my own question
21 there and I'm having some trouble with it.

22 Q Take your time.

23 A Yeah, seriously I would have to consider both, and then
24 really determine is it worthy of death penalty or, or the
25 other, and then try to, as best I can, isolate my own

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1 personal feelings. For example, knowing that if a child was
2 involved, hey, that could of been my child, you know, off
3 with his head.

4 Q Uh-huh. (Affirmative).

5 A I'd have to really kind of put on the emotional brakes
6 to, what you call it, try to keep the facts straight.

7 Q Sure. And I think that that would be difficult for
8 everybody.

9 A Yup.

10 Q And, and I guess -- and my question to you is---

11 A Uh-huh. (Affirmative).

12 Q -- this stuff about the background of the, the
13 murderer---

14 A Uh-huh. (Affirmative).

15 Q -- how, how he was raised, how he grew up, what's
16 happened to him, what he's done to other people --

17 A Uh-huh. (Affirmative).

18 A -- is that type of stuff important to you in
19 determining which of these two penalties is appropriate?

20 A I would, I think, take them into account, yes.

21 Q Okay. Do you think that a life in prison --

22 A Uh-huh. (Affirmative).

23 Q -- and you understand, in South Carolina, life in
24 prison means you die in prison?

25 There's no chance or opportunity for release?

Individual Juror Qualification

1 A Okay. Well, no, I didn't know that, but now I do.

2 Q Okay. Could that ever be a severe enough punishment
3 for that guilty murderer of a child?

4 A I mean the fact that, yeah, life, life imprisonment
5 isn't just a fixed amount of years, and then, even without
6 parole, he may still get out, that is still pretty severe.
7 But it, again, depending on maybe how, how brutal the murder
8 was or whatever circumstance may, what you call it, change
9 my, my final verdict on that. I would -- it really depends
10 on, on the, on that information.

11 I could go either way either on that I guess. I don't,
12 I don't really see, because it's forever life in prison,
13 you're essentially letting someone remain alive, but without
14 a life. Whereas, in the other case, you're actually taking
15 the life, which, okay, depending on, on some people's
16 beliefs, is worse than the two. But being locked up for
17 life with essentially no life to live anymore seems just as
18 drastic to be honest with you.

19 Q Okay. I think I understand what you're saying.

20 I talked to you a little bit about these sort of
21 mitigating factors, background, how he was raised, his
22 character, stuff like that.

23 A Uh-huh. (Affirmative).

24 Q Mitigation is also different from aggravation in that
25 it doesn't have a burden of proof.

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1 A Okay.

2 Q Okay. Each juror gets to decide for himself or herself
3 what is mitigating to them.

4 A Uh-huh. (Affirmative).

5 Q It -- there's no step proof. Nobody has to agree with
6 them that they're right about it. If it's right for an
7 individual juror, they're entitled to give it the weight of
8 law.

9 A Yup.

10 Q They're entitled to vote for a life penalty based on
11 that reason.

12 A Okay.

13 Q Even if there's not a reason, we have what's called a
14 mercy alone verdict --

15 A Uh-huh. (Affirmative).

16 Q -- where I just feel like being merciful or---

17 A Yes.

18 Q ---extending mercy to a person and a juror can vote for
19 life for that reason.

20 A Okay.

21 Q That reason alone.

22 You with me on that?

23 A Yes, I understand.

24 Q That -- and that's a system of protection that we have
25 set up for defendants who are facing the death penalty.

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1 A Uh-huh. (Affirmative).

2 Q You understand that?

3 A Yes, I do.

4 Q That make sense to you?

5 A Yes. No, it does.

6 Q Seems fair?

7 A Yup.

8 Q You understand that if all the jurors decide that death
9 penalty is the appropriate verdict, and is --

10 A Uh-huh. (Affirmative).

11 Q -- all 12 agree, and they write that death is the
12 appropriate verdict, you understand Mr. Blackwell --

13 A Uh-huh. (Affirmative).

14 Q -- will be put to death?

15 A Yes.

16 Q You don't have any questions or concerns about your
17 sentence not being carried out?

18 A You mean if I were like the only one out, out of
19 that---

20 Q No, no, I mean if you and all the jurors agree that
21 death was the appropriate verdict --

22 A Uh-huh. (Affirmative).

23 Q -- you don't have any concern about your sentence not
24 being the one that the Court gives?

25 A No, that wouldn't be.

Individual Juror Qualification

1 Q Okay. Whatever the jury decides --

2 A Yes.

3 Q -- is what it is?

4 A Yes.

5 Q And if one juror decides that life is the appropriate
6 penalty --

7 A Uh-huh. (Affirmative).

8 Q -- then the sentence is life without the possibility of
9 parole?

10 A Yes, I understand that.

11 Q Okay. They don't have to agree?

12 A So, it doesn't need to be unanimous?

13 Q It does not.

14 A Okay.

15 Q If one juror says life --

16 A Uh-huh. (Affirmative).

17 Q -- it's life.

18 A Okay.

19 Q If all 12 jurors say death, it's death.

20 A Understood.

21 Q Okay. Make sense?

22 A Yeah, that's the first, first I heard of it, but --.

23 Q Sure.

24 It's not like, in the first phase, guilty or not
25 guilty --

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q -- if all the jurors don't agree, then we'd do it
3 again.

4 A Okay.

5 Q we'd have a mistrial.

6 A Uh-huh. (Affirmative).

7 Q We start over.

8 A Understood.

9 Q Okay?

10 A Okay.

11 Q But in the penalty phase --

12 A Uh-huh. (Affirmative).

13 Q -- if all the jurors -- if one juror says life, then
14 it's life and the trial is over.

15 A Okay.

16 Q It doesn't have to be redone.

17 A Understood.

18 Q The way that we ask jurors to sort of arrive at this
19 decision is what's called an individual moral judgment.

20 A Uh-huh. (Affirmative).

21 Q Okay. You with me?

22 A Yes.

23 Q Individual moral judgment is like choosing how to raise
24 your child. You've made decisions about what's appropriate
25 in raising your child.

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1 A Correct.

2 Q And you expect people to respect those decisions that
3 you've made?

4 A Yes.

5 Q And you recognize that other people may of made
6 different decisions about their children?

7 A Yes.

8 Q And you respect their right to make that decision?

9 A I do.

10 Q And you expect them to expect your right -- I mean your
11 decision?

12 A I would hope so, yes.

13 Q If you saw somebody being bullied, and I'm not talking
14 about in a discussion --

15 A Uh-huh. (Affirmative).

16 Q -- but if somebody were actually being bullied to
17 change what they had arrived at as their individual moral
18 judgment, would you stop it?

19 A You mean stop the person being bullied?

20 Q Stop the, stop the bullying.

21 A It -- yeah, it's easy to say maybe it would depend, but
22 I think my initial, what you call it, gut feeling would be
23 yes, if, if I don't endanger myself in doing so, I would
24 definitely try to stop the bullying.

25 Q Sure.

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1 And there was a question on your jury questionnaire---

2 A Sure.

3 Q ---you were asked about if you saw somebody improperly
4 using racial slurs --

5 A Uh-huh. (Affirmative).

6 Q -- would you stop it and would you report it.

7 A Yes.

8 Q And you checked, and you checked yes---

9 A Yes.

10 Q ---yes, that you would, and I'm asking you the same
11 thing.

12 would -- if you saw somebody being bullied to give up
13 what they had arrived at in their heart as their individual
14 moral judgment --

15 A Uh-huh. (Affirmative).

16 Q -- would you stop it and report it?

17 A Yes. No, I would.

18 Q I think that's all the questions I have, Mr. Van Der
19 Plaat.

20 A Okay.

21 Q Thank you very much.

22 THE COURT: Mr. Barnette.

23 SOLICITOR BARNETTE: May it please the Court, Your
24 Honor.

25 THE COURT: Yes, sir.

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1 EXAMINATION

2 BY SOLICITOR BARNETTE:

3 Q We're almost to good evening. So --.

4 A Yes, that's okay.

5 Q I'm sorry.

6 My name's Barry Barnette, sir.

7 A Uh-huh. (Affirmative).

8 Q Along with me is Russell Ghent and Derrick Bulsa.

9 We're representing the State in the case.

10 A Okay.

11 Q And let me apologize ahead of time.

12 A Uh-huh. (Affirmative).

13 Q We're gonna ask you some questions that we normally
14 wouldn't be asking people.

15 A Uh-huh. (Affirmative).

16 Q But, like I said, since it's a death penalty case
17 involved from there, and I did see -- I was impressed, I was
18 really impressed with all where you've been cause I think
19 you've been about everywhere there is.

20 A Yes.

21 Q Have you seen different justice systems?

22 A Fortunately, no.

23 Q Okay. Good.

24 A By that I mean not having been caught into getting into
25 trouble and stuff myself. So, I haven't witnessed it there,

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1 but I am aware, having lived in those countries, that the
2 justice systems are quite different in different places.

3 Q I'm sure. I'm asking --

4 A So, yeah.

5 Q I figured they were completely different in some -- I
6 mean each area probably totally different from each other --

7 A Oh, yes.

8 Q -- from there.

9 One thing I was curious about was, you was talking
10 about you've had discussions about the death penalty.

11 A Yeah, but just usually among friends. Not in any forum
12 kind of setting. Just agree, disagree.

13 Q But can you just tell me a little bit about those
14 discussions with your friends there.

15 A Well, it, it always comes up to where I, what you call
16 it, I'm, I'm deathly afraid that you can always put the
17 wrong person to death.

18 Q Uh-huh. (Affirmative).

19 A But at the very same time, I feel a need for it because
20 there are people or groups of people that pose a threat to
21 society that serve no purpose to society, and if there's no
22 other means other than, what you call it, you know, life
23 without parole, then the death penalty may be something to,
24 what you call, consider.

25 Q I understand from there.

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1 You said -- you mentioned personal opinions I know in
2 the questions earlier.

3 A Uh-huh. (Affirmative).

4 Q What kind of personal opinions did you have or anything
5 concerning that?

6 A Uh-huh. (Affirmative).

7 Q Like when the judge was asking you about following the
8 law and things like that, you was worried about your
9 personal opinions on that.

10 Can you tell me a little bit about that if you can?

11 A Just, I guess, I guess the way I'm kind of wired, if we
12 can use that, that expression, when I encounter a situation,
13 for example, let's just use the bullying situation as---

14 Q Yes, sir.

15 A ---as an example.

16 Q Please.

17 A I would be initially probably shocked and kind of
18 disgusted by hey, what, why are you bullying this person,
19 but then the initial feeling is before I start running in
20 there like, what do call it, you know, save the day --

21 Q Uh-huh. (Affirmative).

22 A -- I don't know the facts. Maybe there's something
23 going on there that I'm not aware of. Maybe they're -- the
24 bullying is, is happening because of something this other
25 person did. I don't know the facts behind the whole

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1 situation. So, I'm very, I'm very cautious to jump to a
2 conclusion.

3 Q Uh-huh. (Affirmative).

4 A Even though my initial belief would be dude, that's
5 just wrong, but, at the same time, like wait. You know,
6 it's kind of wait and hold pattern. I'm like do we know
7 everything, is, is the bullying maybe -- I doubt it would
8 be, but is it, what do you call it, is it deserved.

9 Q Uh-huh. (Affirmative).

10 A I don't know those things. I need more information
11 before I can really reach kind of a verdict on that.

12 Q Because -- basically your background---

13 A Yeah.

14 Q ---and your education and everything. You want as
15 much information as you can.

16 A Yes, and being an engineer as well, we like your data.
17 So --.

18 Q Sure. I understand from there.

19 Looking -- I know you just found out that, that life
20 means life without parole.

21 A Yes.

22 Q It's not being able to be released.

23 Does that change your view on the death penalty knowing
24 that that would be the other possibility in this case?

25 A I got to say initially it didn't, but when I heard it's

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1 they're stuck there for life, never getting out, it -- I'd
2 be lying saying if it didn't sway it a little bit, that that
3 option is, is also there. That say hey, that this person
4 will never harm anyone else, but he'll remain alive until
5 the end of his, his time instead of the death penalty.

6 They're -- there's a -- I would say it's an opt out,
7 but I still think, depending on, on maybe how, how brutal
8 and that kind of how -- you know, bring, bringing that back
9 into the fray, as much as I try to, you know, remove myself,
10 there's always gonna be a little bit of a personal opinion
11 in the judgment.

12 Q Uh-huh. (Affirmative).

13 A And even though I can put the brakes on and say well,
14 this is what he's been proven guilty, we're doing the
15 sentencing phase, here's mitigating circumstances, here's
16 the aggravating circumstances, well, could that sway me
17 either way, I guess I'd have to say yes, they could sway me
18 either way depending on, what you call it, what it comes to
19 be.

20 Q I guess what I'm just wondering about is would you
21 consider the life sentence a more appropriate sentence in
22 this situation or would you -- tell me about your feelings
23 about that.

24 Do you think it's a -- I noticed you mentioned by him
25 being there the rest of his life --

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1 A Yeah.

2 Q -- not getting out, do you feel that's a more severe
3 penalty than the death penalty --

4 A Uh.

5 Q -- from your earlier discussions with Mr. Young?

6 A Well, to be honest, I mean to be locked up without a
7 life, but still being kept alive, can be just as, a brutal
8 instead of just ending it right there. So --.

9 Q Well, you know, in jail they still have, you know, they
10 can watch TV, things like that.

11 A That, that---

12 Q That's not gonna put---

13 A There's truth to that too.

14 MR. YOUNG: Object to the conditions.

15 THE COURT: Beg your pardon?

16 MR. YOUNG: I'm gonna object to the description of
17 confinement conditions unless we want to start going through
18 that.

19 SOLICITOR BARNETTE: I'll just rephrase the question

20 THE COURT: All right. Please do, sir. Thank you.

21 SOLICITOR BARNETTE: I'll go from there.

22 But you, you consider that a more severe penalty than
23 the death penalty?

24 A No, I think the death penalty would still be, in my, in
25 my book, would be more severe than, what do you call it,

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1 life in prison.

2 Q Okay. I understand.

3 I know that the -- Mr. Young, when he was talking to
4 you, was -- the aggravating -- one of the aggravators is the
5 death of a young child---

6 A Uh-huh. (Affirmative).

7 Q ---in there, and then you had the mitigators and
8 everything.

9 would you listen to the State's aggravation from there?

10 would that be one of the factors in your decision from
11 there --

12 A Yes, it would be.

13 Q -- from there?

14 And are you personally against the death penalty?

15 I know -- that's just---

16 A No, it's a fair question. I mean, based maybe on the
17 fact that I'm always afraid you could send the wrong person
18 away, I would say yes, I'd be against it. But, again, on
19 the -- because I always try to see both sides of the coin, I
20 also see that there's a place for it. I'm just afraid that
21 it can be mis, what do you call it, misguided or
22 misappropriated in a sense.

23 Q well, let me ask you a question.

24 A Uh-huh. (Affirmative).

25 Q If you was firmly -- I mean let's say you was firmly

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1 convinced --

2 A Uh-huh. (Affirmative).

3 Q -- that the evidence was that this man, this person did
4 this --

5 A Yeah.

6 Q -- would that help your decision from that standpoint
7 where there's no question that this person did it?

8 A I believe so, yes.

9 Q Okay. And would that make an easier decision for you?
10 Of course, you still have to look at the aggravating
11 circumstances---

12 A Yes, I would.

13 Q ---and the mitigating circumstances, but from what,
14 what you're telling me, one of the main decisions for you is
15 you want to make sure you get the right guy or the right
16 person?

17 A Correct.

18 Q And if you do have the right person, that makes a whole
19 different decision for you---

20 A Yes.

21 Q ---from there?

22 And one moment, Your Honor, please.

23 THE COURT: Yes, sir.

24 (Pause.)

25 Q Thank you, sir. I'm sorry about asking you all those

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1 questions.

2 A No, no.

3 Q It's just we had to get you to ask them --

4 A That's all right.

5 Q -- to answer them for us.

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

8 THE WITNESS: Yes.

9 THE COURT: And then I'll have you back in just a few
10 minutes.

11 THE WITNESS: Okay.

12 THE COURT: Thank you, sir.

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

15 THE COURT: All right. Defense's position?

16 MR. YOUNG: Qualified, Your Honor.

17 THE COURT: State.

18 SOLICITOR BARNETTE: I agree, Your Honor.

19 THE COURT: The Court will find him qualified.

20 If you would please bring the gentleman back. Thank
21 you.

22 (WHEREUPON, the following takes place outside the
23 presence of the juror.)

24 THE BAILIFF: Have a seat.

25 THE WITNESS: Same seat?

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1 THE COURT: Yes, sir, back in the seat one more time.
2 I won't, I won't be long this time.

3 THE WITNESS: Sure.

4 THE COURT: Sir, we're going to -- you're gonna
5 continue on the process.

6 THE WITNESS: Okay.

7 THE COURT: What that means is we're going to continue
8 to go through developing this pool of jurors. When we reach
9 the point that we're ready to select the juror or the jury,
10 the clerk will be back in touch with you.

11 THE WITNESS: Okay.

12 THE COURT: I anticipate that that will be sometime
13 early next week.

14 THE WITNESS: Okay.

15 THE COURT: I will tell you that, in the mean time, my
16 instructions concerning your behavior continue.

17 THE WITNESS: Uh-huh. (Affirmative).

18 THE COURT: Don't try to gather any information about
19 the case. Don't listen to, watch, or read media reports.
20 Don't discuss the case with anyone. Don't allow anyone to
21 discuss it with you, and let us know if someone tries to
22 contact you about your service.

23 THE WITNESS: Okay.

24 THE COURT: There's an exception to that. She's gonna
25 give you a sheet of paper.

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1 THE WITNESS: Okay.

2 THE COURT: If you're called back, you need to be
3 prepared to stay with us. I anticipate the length of the
4 trial to be a little longer than a week.

5 THE WITNESS: Okay.

6 THE COURT: If you have medications, you indicated---

7 THE WITNESS: Uh-huh, yes.

8 THE COURT: ---bring a supply sufficient perhaps for
9 two weeks so you'll have plenty.

10 THE WITNESS: Okay.

11 THE COURT: But be sure you have that stuff with you.

12 Also, an exception to my general instructions are that
13 you are allowed to discuss with your employer or your family
14 members the fact that if you're called back and you happen
15 to get on the jury that you will be unavailable for a series
16 of days.

17 THE WITNESS: Okay.

18 THE COURT: So that -- you maybe can take care of
19 something with your work or something like that. So, you
20 can tell them that you're -- you may be selected on a jury,
21 and if you are, you'll be gone for a few days, and -- but
22 don't talk to them about what the case is about --

23 THE WITNESS: No.

24 THE COURT: ---what the issues are. Just make
25 arrangements for that if that occurs.

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1 THE WITNESS: Okay. And you had mentioned that, during
2 this sequestration, I can still contact family --

3 THE COURT: Yes.

4 THE WITNESS: -- provided it's---

5 THE COURT: It will be monitored---

6 THE WITNESS: ---monitored.

7 THE COURT: ---just to be sure you don't discuss the
8 case or they don't discuss it with you.

9 THE WITNESS: Okay. Is that a problem if I speak to my
10 parents in my native tongue?

11 THE COURT: Well, it could be. I've had -- I've never
12 had that request. So, I don't---

13 THE WITNESS: I usually do. That's why.

14 THE COURT: We'll, we'll talk about that among
15 ourselves.

16 THE WITNESS: Okay.

17 THE COURT: I don't think we have too many Dutch
18 speakers here --

19 THE WITNESS: Okay.

20 THE COURT: -- but we -- I don't know. I was surprised
21 you'd never been in Aruba before. That's, that's a Dutch
22 speaking province.

23 THE WITNESS: It is. I've been to Curacao, but not
24 Aruba.

25 THE COURT: I see. Okay. Pretty place down there.

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1 Anyway, so, I will -- the clerk will be in touch with
2 you.

3 THE WITNESS: Okay.

4 THE COURT: Again, early next week we'll let you know
5 something. In the mean time, our, our instructions
6 continue, and, again, thank you for your cooperation.

7 THE WITNESS: Okay.

8 THE COURT: They'll check you out. You'll hear from us
9 sometime next week.

10 THE WITNESS: Okay.

11 THE COURT: All right.

12 THE WITNESS: And I just have one question right quick?

13 THE COURT: Yes, sir.

14 THE WITNESS: When you talk about, what you call it,
15 not watch media, should I withhold watching any local news?

16 THE COURT: I would suggest not watching the local news
17 cause you never know when they might---

18 THE WITNESS: No, that's true.

19 THE COURT: ---say something.

20 THE WITNESS: Cause I watch it just usually for
21 traffic.

22 THE COURT: And if you have the remote, you can mute it
23 or turn it off.

24 THE WITNESS: Yeah.

25 THE COURT: Maybe you could.

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1 THE WITNESS: Okay. Nothing---

2 THE COURT: You'll be running a risk by doing that.

3 THE WITNESS: Yeah. No, no. I understand.

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

5 THE WITNESS: Yes, sir.

6 THE COURT: Have a good day.

7 THE WITNESS: You too.

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

10 THE COURT: All right. We'll adjourn for the evening.
11 We'll start back at nine o'clock in the morning.

12 Thank you very much.

13 MR. MCGUIRE: Yes, sir. Thank you, judge.

14

15 (WHEREUPON, Court was in recess for the evening.)

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1 Friday, 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: Yes, sir.

7 THE COURT: All right. Let's bring in Alfred Jones.

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

10 ALFRED JONES, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Mr. Jones, have a seat for me.

15 A (Witness complies.)

16 Q Good morning.

17 A Good morning.

18 Q I want to thank you very much for your cooperation. I
19 know you had a long wait yesterday --

20 A Yes.

21 Q -- and then we ended up calling you back this morning.
22 Unfortunately it's very difficult to time how long these
23 interviews will take because it varies depending on how
24 things go. But, again, I want to thank you for your
25 cooperation thus far.

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1 A You're welcome.

2 Q Let me tell you, we're going to go through some things
3 with you today, and we'll be asking questions. I'll start
4 off asking questions and then, in a little while, the
5 attorneys will be given an opportunity to ask questions of
6 you as well.

7 A Okay.

8 Q I want to tell you, as we ask these questions, there
9 are no right or wrong answers to the questions. We only
10 want your answers, whatever you have to tell us concerning
11 what we're talking about.

12 A Okay.

13 Q You understand that, sir?

14 A Yes, sir, I do.

15 Q I understand it's very uncomfortable sometimes to be
16 sitting in that seat. We don't want you to be
17 uncomfortable. There's certainly nothing to fear here and
18 everybody's gonna treat you with respect. That's not gonna
19 be a problem. And if you have any difficulty or problems
20 during this process, let me, let me know. We'll be glad to
21 try to make you comfortable.

22 Okay, sir?

23 A Thank you.

24 Q Now, on Monday, and that it seems like a long time ago,
25 I guess it was, you took an oath to tell the truth to the

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1 Court. I want to remind you that that oath continues at
2 this time. You're still under oath for this, the
3 questioning now.

4 Do you understand that?

5 A Yes, I do.

6 Q Do you acknowledge that?

7 A Yes, I do.

8 Q Also, on Monday, I gave you some instructions
9 concerning your behavior in relationship to this particular
10 case.

11 A Yes, sir.

12 Q Among the things I told you, I told you not to listen
13 to, watch, or read media reports, not to discuss the case
14 with anyone. Don't allow anyone to discuss it with you and
15 let us know if someone contacted you about this.

16 A Yes.

17 Q Now, have you been able to following those
18 instructions?

19 A I have.

20 Q Okay. Good.

21 Now, let me ask you this.

22 Are you the kind of person that you could put aside
23 things that you might hear on the outside -- any, and I
24 don't -- anything that might relate in anyway to this case,
25 and if you were selected to serve on the jury, could you

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1 decide the case based on the evidence and the law that you
2 hear inside the courtroom during the trial?

3 A Yes, I could.

4 Q You could do that?

5 A Yes, sir.

6 Q Okay, sir. Now, have you ever participated in, been
7 involved in, have you ever been a part of any discussions on
8 the Internet or in some type of a meeting or forum or
9 anything of that nature where the discussion concerned
10 issues that involved the death penalty?

11 A No, I wouldn't of done anything like that, no.

12 Q Okay. And have you ever been involved in any political
13 activities that might involve the issue of the death
14 penalty?

15 A No.

16 Q Okay. So, you've never written any letters to a
17 congressman or anybody or written a letter to an editor in
18 the paper or anything like that?

19 A No.

20 Q Okay. Now, there was a list of people back there in
21 the jury room, about three sheets of paper.

22 A Yes, sir.

23 Q Do you remember that---

24 A Yes.

25 Q ---that list?

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1 Did you read those names?

2 A Yes, few.

3 Q Okay. Now, is there -- was there anybody on that list
4 that you saw that you might be related to either by blood or
5 marriage or anyone that you have ever had a close social,
6 personal, or business relationship with?

7 A No, I didn't know anybody.

8 Q So you didn't recognize any names off that list?

9 A Did not.

10 Q Okay. Thank you, sir.

11 A You're welcome.

12 Q I'm going to get into some questioning now that has to
13 do with legal concepts and, and legal matters that may have
14 to do with this case. Some of the questions some people
15 might think are personal in nature. I want you to know
16 we're not trying to invade anyone's privacy by these
17 questions. However, they're questions that need to be
18 discussed and answered and so we will ask them.

19 I would hope that you are secure enough in your beliefs
20 or your opinions that you'll be able to tell us those things
21 without any kind of fear or anything of that nature.

22 A Okay.

23 Q Am I correct in saying that --

24 A (Witness nods affirmatively.)

25 Q -- you'll be able to discuss this with us?

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1 A I'll do my best.

2 Q All right. The first thing I want to point out to you
3 is that we're putting, to a certain extent, as I ask you
4 these questions, at some point in time I'll be putting what
5 we call the cart in front of the horse.

6 A Okay.

7 Q I explained briefly, on Monday, that this type of trial
8 that we're involved in, there will be one hearing where the
9 guilt or innocence of the defendant will be determined by
10 the jury as to the charges that have been brought, and, in
11 this case, the charges are kidnapping and murder. So, those
12 are the two charges that have been brought in this case.

13 Now, once that's been completed, that same jury is
14 going to go into what's called a sentencing phase or a
15 penalty phase of the trial, and that, that discussion then
16 would involve, if there was a guilty verdict in the first
17 one on murder, that discussion would discuss -- would
18 involve the appropriate penalty that's to be handed out in
19 the case. So, there's a two phase trial.

20 Some of my questions are going to deal with that first
21 phase of the trial. Some of my questions are going to deal
22 with the second phase of the trial.

23 Now, I'll tell you, if we have the first phase of the
24 trial and the defendant is found not guilty of murder, we
25 won't even have the second phase of the trial. That won't

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1 occur.

2 So, I want you to know that, because I'm talking about
3 that second phase, that shouldn't be a reflection on the
4 defendant or his case in this matter. It's just that, if I
5 don't talk about the -- all of the issues that could come up
6 now, we won't have a chance to stop in the middle and
7 re-pick a jury. The same jury's gonna hear both sides. So,
8 I don't have any choice or we don't have any choice. If
9 we're gonna talk about any of the possible issues that could
10 come up in this case, we've got to do that right now.

11 So, do you understand why I might be talking about the
12 penalties when we haven't even decided whether or not we'll
13 get to that hearing?

14 A Okay.

15 Q Do you understand that, that---

16 A Yes.

17 Q ---I'm not doing that for any reason other than this is
18 the only chance we get to do that?

19 A Okay.

20 Q You understand that?

21 A Yes.

22 Q Okay. Now, a couple of questions generally about
23 service on a jury and so I want you to imagine or, or
24 pretend that you've been selected on a jury that's involved
25 in a criminal case. Not this one. Let's say it's a case

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1 involving somebody that's been charged with shoplifting or
2 something like that. So, you're on a criminal court jury.

3 My first question to you, if you were serving on a
4 jury, would you be able to accept and listen to the law as
5 charged to you by the judge?

6 A Yes.

7 Q All right. Would you be then able to accept the law
8 that's been given to you by the judge and apply it to -- and
9 I'll tell you, in every criminal case, the jury is the only
10 finder of fact in those cases. The jury determines what the
11 facts are.

12 Okay. So, would you be able to take the law that the
13 judge gives to you, because the judge always gives the law
14 to the jury, apply it to the facts that the jury has
15 determined, and able to reach -- and put yourself in a
16 position to reach a verdict in the case?

17 A Yes, I would.

18 Q You could do that?

19 A I could.

20 Q Now, I'm gonna step it up a little notch.

21 Let's say that you're in that trial. You're listening
22 to the judge tell you about the law, and as you're listening
23 to what the judge is, is charging you, telling you what the
24 law is, you hear something that he says that maybe
25 doesn't -- you don't agree with or maybe it's something that

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1 you didn't understand that that was the law and it's kind of
2 a surprise to you. So, you hear something that's a little
3 different that doesn't, doesn't square with what your notion
4 or idea of the law was. So, you've heard something from the
5 judge that doesn't, doesn't quite fit with you.

6 A Okay.

7 Q Are you the kind of person that, if the judge tells you
8 you must take the law and apply it to the facts as you find
9 them, could you set aside your beliefs or your understanding
10 and accept the law as the judge gives you and apply it to
11 the facts?

12 could you do that?

13 A Not always, no.

14 Q So, you're saying, on a occasion, you would not accept
15 what the judge told you about the law?

16 A If it's something I'm not sure if I don't agree.

17 Q So, if you don't agree with it you could not do that?

18 A Okay.

19 THE COURT: All right. Wish for me to continue?

20 MR. MCGUIRE: Yes, sir.

21 Q Okay. Now, sir, let me ask that question one more time
22 now.

23 You're saying that, on occasion, if your ideas did not
24 square with what the judge said, you would go with your
25 ideas, not with what the judge said?

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1 A Yes, sir.

2 Q Is that right?

3 A Yes.

4 Q Okay. All right. Now, a criminal defendant is always
5 presumed to be innocent of the charges for which the, the
6 indictment might have been issued.

7 You understand that?

8 A I do.

9 Q Do you -- can you accept the fact that a, that a
10 criminal defendant is always considered to be innocent of
11 the, of the crime---

12 A Yes.

13 Q ---until, until the trial and we'll get into that in
14 just a second?

15 For that reason, do you understand and accept the
16 premise that a criminal defendant is never required to prove
17 anything in a, in a criminal case?

18 Because he's presumed innocent, he does not have to
19 prove anything?

20 Do you understand that?

21 A Yes.

22 Q All right. Do you understand that the State has the
23 burden of proof in a criminal case, the only burden of
24 proof, and that burden is to prove the allegations that the
25 State has made beyond a reasonable doubt?

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1 A (Witness nods affirmatively.)

2 Q You understand that?

3 A Yes, sir.

4 Q Now, for that reason, is it your belief that, just
5 because someone's been arrested and charged with a crime,
6 that they're not automatically guilty of the crime?

7 A Right.

8 Q Do you believe that?

9 A I do.

10 Q Now, let me ask you this.

11 If you were to hear evidence that convinced you of a
12 defendant's guilt beyond a reasonable doubt, in other words,
13 you've heard -- you and the jury have listened to the
14 evidence in the case, and it convinces you of the
15 defendant's guilt beyond a reasonable doubt, and it squares
16 with the law the judge gave you, could you sign a guilty
17 verdict against a defendant?

18 A Yeah, I guess so.

19 Q Well, I don't need to guess. I need to know if you
20 could do that.

21 A If the evidence says so, yes.

22 Q Okay. So, if the evidence said they were guilty beyond
23 a reasonable doubt, you could sign a guilty verdict?

24 A Yeah.

25 Q But by the same token, if the evidence didn't show that

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1 the defendant was guilty beyond a reasonable doubt, could
2 you then sign a not guilty verdict for a defendant?

3 A Yeah.

4 Q You could do that?

5 A Yes.

6 Q You got to answer me verbally.

7 A Yes.

8 Q See, this lady is taking this stuff down.

9 A Okay.

10 Q So, you got to speak up and talk to me now.
11 okay?

12 A Okay.

13 Q You're starting to just shake your head.

14 Okay. So, just---

15 A Okay.

16 Q So tell me, tell me -- speak to me.

17 So that means, to me, that you would listen to the
18 strength of the evidence, the testimony in the case, and
19 make a decision then as to whether someone is guilty or not
20 guilty, is that right?

21 A Yes.

22 Q But you're telling me you may not accept the law the
23 judge gives you?

24 You may use your own ideas in making that decision?

25 A If you said he said something that I don't like, it

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1 don't click with me, then I don't know.

2 Q Then you use what you---

3 A Then I would be like yeah.

4 Q You would use what you think the law is?

5 A (Witness nods affirmatively.)

6 Q All right.

7 MR. MCGUIRE: We don't request anymore questions.

8 THE COURT: Okay. Sir, I'm gonna excuse you at this
9 point in time.

10 THE WITNESS: Okay.

11 THE COURT: You're gonna be free to go. The bailiffs
12 will check you out. Thank you very much.

13 THE WITNESS: Thank you.

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

16 THE COURT: I believe the next juror is Stephanie
17 Mitchell.

18 MR. YOUNG: She had the name change, Your Honor.

19 THE COURT: Beg your pardon?

20 MR. YOUNG: I think she wrote on the form Thrift.

21 THE COURT: I just have -- it's on my sheet from the
22 Clerk's Office. So, I'm sorry.

23 MR. YOUNG: Yes, sir, I---

24 THE COURT: I'll talk with her about that.

25 MR. YOUNG: Yes, sir.

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1 THE COURT: Thank you.

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

4 STEPHANIE MITCHELL, having been
5 previously sworn, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q Ma'am, you may need to move back a little bit because
9 you're gonna be talking to me for just a few minutes --

10 A Oh, okay.

11 Q -- and this wasn't designed very well for that purpose.
12 So let me talk to you.

13 You are -- on the list you're listed as Stephanie
14 Mitchell?

15 A Yes, sir.

16 Q And you've had a name change?

17 A Yes, I got divorced in November.

18 Q Okay. And what is your name, name now, legal name?

19 A Stephanie Mitchell. It was Stephanie Thrift.

20 Q I see.

21 So, Stephanie Mitchell is your correct name now?

22 A Yes, sir.

23 Q All right. Very good.

24 Now, Ms. Mitchell, first of all, I want to thank you
25 for your cooperation thus far. This is not been an easy

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1 process for you or for us, but we're -- we, we have to go
2 through the process. We need to go through the things we
3 have to do. I want to thank you for your cooperation thus
4 far and your participation.

5 This morning, what we're doing is we're talking with
6 individual jurors, as we have been doing all week. So,
7 you're, by far, not the first person to sit in that seat,
8 and we're gonna be going over some questions that we have in
9 relationship to your possible service on the jury.

10 I'm gonna tell you, the questions we're asking you or
11 talking to you about, there are no right or wrong answers.
12 They're, they're only your answers, your honest answers, and
13 that's all we're seeking is your honest answers concerning
14 the matters we're gonna talk about.

15 You understand what we're doing?

16 A Yes, sir.

17 Q Okay. And we're gonna be, at some point in time,
18 talking to you about some of your opinions on things or
19 beliefs on things, and I would hope that you would be a
20 person who is secure enough in what you think and what you
21 believe that you'd be able to talk about that without
22 feeling threatened.

23 Is, is -- am I correct in that?

24 A Yes, sir.

25 Q And I know some people think that's the hot seat in

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1 this, in this courtroom. I tease, tease about it being a
2 red chair. But it is not gonna be a hot seat today, I
3 promise you. Nobody's gonna try to pick on you or do
4 anything like that. Again, we're just trying to seek some
5 information from you this morning. If, at any point time,
6 you feel uncomfortable or need, need something, let us know.
7 we'll be glad to do that.

8 okay?

9 A (Witness nods affirmatively.)

10 Q All right. Now, ma'am, when, when you left the
11 courthouse before, you had taken an oath to tell the truth
12 to the Court cause I asked you a lot of questions on Monday.

13 A Yes, sir.

14 Q Do you remember that process?

15 A Yes, sir.

16 Q I want to remind you of that because you're still under
17 that same oath to tell the truth to the Court.

18 Do you understand that?

19 A Yes, sir.

20 Q And do you acknowledge that's true?

21 A Yes, sir.

22 Q Okay. Also, when you left the courthouse on Monday, I
23 had given you some instructions concerning your behavior
24 while you were away from the courthouse --

25 A Yes, sir.

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1 Q -- as it relates to this case, and those instructions
2 would of been not to watch, listen, or read any media
3 reports about the case, not to try to gather any information
4 on your own about the case, not to discuss the case with
5 anyone and not to allow anyone to discuss it with you.

6 So, do you remember those instructions?

7 A Yes, sir.

8 Q And have you been able to follow those thus far?

9 A Yes, sir.

10 Q All right. Now, I would -- I want to know, are you the
11 kind of person that -- could you put aside the matters you
12 may of heard somewhere outside of the courtroom and decide a
13 case based upon what you hear in the courtroom during the
14 trial?

15 A I'm gonna be honest, my son come home talking about
16 something that's -- I don't know if it's involved in this
17 case, but I know a kid's involved and I have a small child.
18 So, probably not.

19 Q Okay. Tell me what you mean by that.

20 A My son come home and said that he was -- told his
21 teacher he was -- you know, I might be late picking him up
22 cause I was at jury duty, and they're talking about a case
23 that's going on with some little kid getting shot.

24 Q Uh-huh. (Affirmative).

25 A And I have a small child, and I don't think any kid

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1 should get, should get killed for no reason.

2 Q Okay. Well, I can, I can -- I don't think anybody
3 would disagree with that opinion, that children should not
4 be killed for, for no reason.

5 A I mean no child should.

6 Q Oh, I understand that.

7 So, but is that the extent of your opinion?

8 A So, if this is what this is about, then my mind would
9 be made up.

10 Q In what regard?

11 A In that whatever they're seeking for him.

12 Q Tell me what that means. I need your honest opinion.

13 A I mean I'm not for sure. I heard you say something
14 about the death penalty.

15 Q Well, the death penalty is being sought in this case.

16 A Yes, I would -- I mean my mind -- I have a small child.

17 Q So, in every---

18 A If this involves this -- yes, sir, in my mind---

19 Q I'll let you finish.

20 Go ahead.

21 A But if it's involving -- if this is what's this is
22 about, my mind would be made up point blank.

23 Q As to the punishment that should be given --

24 A Yes, sir.

25 Q -- or as to the guilt or innocence of the defendant?

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1 A The guilt.

2 Q And the punishment?

3 A Well, I'm not for sure about that because I would want
4 somebody to die if they killed my kid, but -- honestly.

5 Q Okay. So, your mind would be made up about that?

6 A I guess so, yes, sir.

7 THE COURT: All right. Wish for me to question any
8 further?

9 MR. MCGUIRE: No, sir.

10 THE COURT: State?

11 SOLICITOR BULSA: No, sir.

12 THE COURT: All right, ma'am. I'm gonna disqualify you
13 in this case, and I'm sorry you talked to somebody about it.
14 I asked you not to do that.

15 THE WITNESS: I didn't -- no, my son come home talking
16 about it.

17 THE COURT: And I'm sorry you listened to what he had
18 to say.

19 All right. You're free to go.

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

22 THE COURT: Oh, I did find her not qualified by the
23 way.

24 MR. MCGUIRE: Yes, sir, we accept.

25 THE BAILIFF: Your Honor?

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1 THE COURT: Yes.

2 THE BAILIFF: He's bringing the other four jurors.

3 THE COURT: So, they're bringing them around right now?

4 THE BAILIFF: Yes.

5 THE COURT: Let me know when they're ready.

6 THE BAILIFF: Okay.

7 THE COURT: All right. Thank you.

8 SOLICITOR BARNETTE: May I step out for one second,

9 Your Honor?

10 I'll be right back.

11 THE COURT: Yes, sir.

12 (Pause.)

13 THE BAILIFF: Your Honor, he's reading the papers.

14 THE COURT: All right. Just let me know when they
15 finish.

16 The first one is Robert Stevens.

17 THE BAILIFF: Yes.

18 THE COURT: Okay. Thank you.

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

21 ROBERT STEPHENS, having been previously
22 sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q Have a seat please, sir.

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1 A (Witness complies.)

2 Q You are Robert B. Stephens?

3 A Yes, sir.

4 Q All right. Mr. Stephens, how are you this morning?

5 A I'm good.

6 You?

7 Q Oh, I'm fine. Thank you.

8 Let me go over some things with you and kind of give
9 you an idea of what we're doing this morning and what's
10 going on.

11 We're going to be asking some questions of you. Some
12 of which relate to this case. Some of which relates --
13 relate to your ideas and opinions generally.

14 I want to thank you for your cooperation thus far. I
15 know we've kind of changed things around as we've gone cause
16 we have to be flexible because there's no specific time that
17 these interviews take. Some of them are short and some of
18 them are fast --

19 A Yes.

20 Q -- or longer. So, it just, it just depends on the
21 situation. So, I want to thank you for your willingness to
22 be flexible with us this week.

23 A Okay.

24 Q Okay. Now, we're -- as I said, we're gonna be asking
25 you some questions and I want to tell you there are no right

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1 or wrong answers to these questions. We're not seeking any
2 particular response from you. What we want to do is to get
3 your ideas, in certain cases, your opinions about some
4 matters so that the information can be used by the attorneys
5 in selecting the jury and by the Court in determining
6 whether you're qualified to continue in the process.

7 We're not picking a jury now. That will be done in the
8 future once we have gotten, gotten a pool of people that
9 have been found to have been -- be qualified to serve on the
10 jury in this situation.

11 A Okay.

12 Q You understand what we're doing?

13 A Yes, sir.

14 Q Please don't feel threatened by having to sit in the
15 witness stand. I tease everybody about that being a hot
16 seat. It's red and we put people in it, but it will not be
17 a hot seat today I can promise you. Everybody's gonna treat
18 you with respect and we're gonna just go through this and
19 try -- and ask the questions we need to ask about this
20 matter.

21 A Yes, sir.

22 Q Okay. So, you're able to help me with that?

23 A Yes, sir.

24 Q When you were here on Monday you took an oath. That
25 oath was to tell the truth. The oath continues now. So,

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1 you're still under oath for this discussion.

2 Do you acknowledge that?

3 A Yes, sir.

4 Q Okay. Also, when you left here on Monday, I gave you
5 some instructions about things you should or should not do
6 in relationship to this case --

7 A Yes, sir.

8 Q -- and I'm just kind of gonna go over them briefly with
9 you. I had asked you not to try to gather any information
10 on your own. I'd asked you not to discuss the case with
11 anyone or allow anyone to discuss the case with you, and I'd
12 asked you, if anyone tried to contact you about your
13 service, to report it and not listen to, watch, or read
14 media reports concerning this.

15 Do you remember the instructions I gave you?

16 A Yes, sir.

17 Q Have you been able to follow those thus far?

18 A Yes, sir.

19 Q Okay. Good.

20 Now, have you ever participated in or have you ever
21 been involved in any type of organized or semi-organized
22 discussions in which those discussions would have involved
23 issues surrounding the death penalty?

24 A Can you clarify that anymore?

25 Q Well such -- have you ever been on an Internet chat

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1 room or a blog or have you been in, in some place where
2 people were, were discussing that issue and you participated
3 in the discussions?

4 A No, sir, I mean the only time I've ever heard anything
5 like that or a discussion is, you know, in church, if it's
6 right or wrong, but---

7 Q I understand.

8 Okay.

9 A But that's it.

10 Q So, you haven't had, had -- heard some discussion about
11 that. I assume that's among members or in a Sunday school
12 class.

13 A Yeah, it's in Bible class, yes, sir.

14 Q Okay. I understand.

15 Now, have you ever participated in any political
16 activities such as contacting representatives,
17 demonstration, letters to the editor, things like that
18 around issues involving the death penalty?

19 A No, sir.

20 Q No political activities?

21 A No, sir.

22 Q Now, there's, there's been some information in the, in
23 the public about this case, and, and, of course, generally
24 there's information about these types of cases in the, in
25 the public realm, and my question is are you the kind of

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1 person that, if you were selected to serve on a jury and you
2 were brought into the courtroom to decide the case based
3 upon the law and the evidence in the trial, could you set
4 aside those outside influences and focus on the evidence
5 that's presented in the trial and the law given to you by
6 the judge in reaching a decision?

7 A Yes, sir, I'd like to think I could.

8 Q You think you could?

9 A Yeah.

10 Q Okay. Now, there was a list of people back there in
11 the jury room. You just looked at it I believe. Those are
12 people who've been identified to me as people who could
13 possibly be a witness in the case. There's a long list --

14 A Yeah.

15 Q -- and I don't know that all those people will end up
16 testifying, but I will tell you that those are the people
17 who could testify during the trial.

18 Now, as to those people that are on that list, is there
19 anyone on that list that you recognize as someone that
20 you've ever been related to by marriage or that you're
21 related to by blood or is there anyone on that list that you
22 may of ever had a close social, personal, or business
23 relationship with?

24 A No, sir.

25 Q Okay. So, you didn't recognize anybody there that---

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1 A I didn't.

2 Q ---influence you in anyway if they testified and you
3 were on the jury?

4 A No, sir, I didn't see anybody on there.

5 Q Okay. All right. As I asked questions in this
6 process, I'm going to be asking some questions and some of
7 them will get to your personal views and, and beliefs about
8 some things. You seem to be a fairly secure adult. I would
9 assume then that you would not feel threatened by the fact
10 that we may ask some of those questions.

11 A No, sir.

12 Q would you be able to respond to them and participate in
13 that discussion?

14 A Yes, sir.

15 Q Okay. Now, one thing I want to point out to you and be
16 sure that we, you and I have an understanding on it, I've
17 gone over it with several people.

18 This meeting that we're having with jurors, to a
19 certain extent, some of the questions are kind of like
20 putting the cart in front of the horse, and let me explain
21 to you what I mean by that.

22 I mentioned, on Monday, that this type of trial is
23 divided into two different hearings. There would be a
24 hearing where the issue -- the only issue would be whether
25 or not the defendant is guilty of the crimes that have been

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1 charged.

2 A Right.

3 Q And we call that the guilt phase of the trial where
4 we -- where it's decided whether he's guilty or not.

5 Now, obviously, if the defendant was found not guilty
6 of the charges, there won't be a second phase of the trial.
7 That won't even happen. And if the defendant were to be
8 found guilty of the crime of murder, since the State is
9 requested one of the penalty options as being the death
10 penalty, then there would have to be a second trial.

11 Do you understand that?

12 A Yes, sir.

13 Q And that would be concerning the penalty to be given in
14 the case.

15 Now, some of the questions I'm going to ask you about
16 will deal about with that penalty phase, and I'm gonna point
17 out to you we haven't gotten there yet---

18 A Right.

19 Q ---and, and we may never get there. There's a
20 possibility that would never happen.

21 So, that's what I mean, to a certain extent, my
22 questioning today is gonna be somewhat like putting the cart
23 in front of the horse, but I'll point out to you that,
24 because the same jury is going to have to hear the first
25 phase of the trial and hear the second phase of the trial,

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1 there's no opportunity to change or do anything about the
2 jury in the middle of that.

3 A Right.

4 Q So that we -- by, by -- it's necessary that if we're
5 gonna talk about any issues that have to do with the penalty
6 phase, we have to do it now.

7 So, the reason I'm pointing that out to you is I want
8 you to understand that every defendant, including this
9 defendant, is presumed to be innocent of the charges that,
10 that have been lodged against him. Our discussion of
11 penalties in this matter should not be taken as any type of
12 reflection against that defendant or his case in this, this
13 matter. It's simply this is the only chance we'll get to
14 talk about these issues. So, we need to talk about them
15 now.

16 A Right.

17 Q So, do you understand what I'm saying by that?

18 A Yeah, we're just talking about our views of the, of
19 penalties like that.

20 Q Yes, we will be talking about some of that cause we
21 could possibly get there, and if you were on the jury, you
22 could possibly be involved in those discussions.

23 So, do you understand why I'm talking about it now?

24 A Yes, sir.

25 Q Okay. Thank you.

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1 Now, I'm going to talk generally about criminal cases
2 in general, how juries work generally in those cases. So,
3 I'm not talking specifically about this case right now.

4 A Okay.

5 Q Let's say that you were selected to serve on a jury
6 panel in a case, and I've been using as an example of
7 someone who's been charged with shoplifting let's say. So,
8 you're on a criminal jury.

9 would you be the kind of juror that could accept the
10 law as the judge gave it to you and apply that law?

11 A Yes, sir.

12 Q would you be able to -- and I'll tell you, in every
13 criminal case, the jury, in any criminal case, is the sole
14 judge of the facts in our system. In other words, the jury
15 determines what happened, when it happened, who did it, that
16 sort of thing. So, they, they, they deal with the facts.
17 The judge gives the law and he's the sole judge of the law.

18 So, if you were a, a juror in a criminal case, could
19 you take the law and apply it to the facts as the jury
20 determines them in reaching a verdict?

21 A Yes, sir.

22 Q Could you participate in that system?

23 A (Witness nods affirmatively.)

24 Q Now, my -- I want to take it a step further.

25 Let's say that you were sitting on the jury. You'd

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1 heard all the evidence and the judge, just before
2 deliberations, always charges the jury on the law that's to
3 be applied. So, the judge is telling you about the law, and
4 as the judge tells you about the law, he may say something
5 that you think well, I didn't think the law was that way,
6 you might not necessarily agree with it, or you might say,
7 you know, I believe something different, I don't think the
8 law ought to be that way.

9 So, do you see where I'm, I'm putting you?

10 A Uh-huh. (Affirmative).

11 Q Now, if you were on the jury and the judge had charged
12 you that this is the only law you can use in making a
13 decision, could you set aside your personal views, accept
14 the law as the judge gives it to you, and apply it to the
15 facts that the jury determines?

16 A Yes, sir.

17 Q You could do that?

18 A (Witness nods affirmatively.)

19 Q All right. Now, I'm gonna go over some, some
20 principles in the criminal law to be sure that we have an
21 understanding about these principles and that you don't have
22 any problems with these principles.

23 The first principle I'm gonna go over with you is that,
24 in every criminal case, the defendant is always presumed to
25 be innocent.

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1 Do you agree with that principle?

2 A Yes, sir.

3 Q Do you understand it?

4 A Yes, sir.

5 Q All right. And that's of a crime that's been, been
6 brought.

7 For that reason, a criminal defendant is never -- has
8 no burden of proof during a criminal trial. The law
9 presumes his innocence so that the defendant is not
10 obligated to prove anything in a criminal trial.

11 Do you understand that principle?

12 A Clarify that a little bit more.

13 Q Well, it, it -- the, the principle of law is that a
14 defendant is never required to prove his innocence.

15 A Okay.

16 Q He has no burden of proving his innocence.

17 A Right.

18 Q Since the law presumes that he's innocent --

19 A Right.

20 Q -- he has no obligation, during a trial, to prove
21 anything.

22 A Okay.

23 Q He could sit there silently if he wishes to, and, and
24 not -- he's not -- in other words, no one's ever required to
25 present evidence in a criminal case.

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1 A Okay.

2 Q Do you understand that?

3 A Yes, sir, I understand that now.

4 Q And do you agree with that principle?

5 A Yes, sir.

6 Q All right. The next step is that, since the State is
7 the entity or party that has brought the charges, the State
8 does have a burden of proof in a criminal case, and that
9 burden of proof is to prove the allegations that are
10 contained in the indictments by proof beyond a reasonable
11 doubt.

12 Do you understand that principle?

13 A Yes, sir.

14 Q And could -- you can live with that principle, is that
15 right?

16 A Yes, sir.

17 Q All right. Now I'm gonna take it a step further.

18 Let's say that you were on a jury. You and your, your
19 fellow jurors had listened to the evidence and, and were in
20 a position to decide the facts. You'd listened to the law
21 given to you by the judge. You're in your deliberations.

22 All right. The -- as you deliberate, the jury agrees
23 that the State has failed to meet its burden of proof. It
24 did not prove the allegations beyond a reasonable doubt.

25 So, do you understand that situation?

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1 A Yes, sir.

2 Q Would you, as a juror, be willing to sign onto a
3 verdict that would find a defendant not guilty of a crime?

4 A Yes, sir.

5 Q Now, by the same token, the jury's determined the State
6 has proved the, the crimes alleged by proof beyond a
7 reasonable doubt.

8 Are you someone who could sign off on a verdict that
9 would find the defendant guilty of a crime?

10 A Yes, sir.

11 Q So, I take it from what you're telling me that you're
12 the kind of person who could listen to the law and the
13 evidence, weigh the evidence, determine its strength and its
14 value, and based upon those factors, you could find the
15 defendant either guilty or not guilty depending on those
16 issues?

17 A Yes, sir.

18 Q Is that true?

19 A Yes, sir.

20 Q Okay. Now, I'm going to get into talking about this
21 penalty phase of the trial now. I told you I'd get to that
22 point. I'm, I'm there now. We're gonna talk about that,
23 that issue, and I will tell you that, as I did earlier, but
24 I'm gonna go into some more detail. The -- this case is a
25 case in -- one in which the State is seeking the death

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1 penalty. So, it's one of the penalty options that's
2 available.

3 In this type of case, the case is what we call legally
4 bifurcated, which is divided into two, two different
5 hearings. The first trial, I told you, is the guilt phase
6 of the trial, and that was kind of the things I was just
7 talking to you about. In other words, finding someone
8 either guilty or not guilty of the, of the crimes alleged.

9 Now, if the defendant is found guilty in this case of
10 the crime of murder, then we move onto the second phase of
11 the trial, and the same jury would hear both phases of the
12 trial. They would come back.

13 Now, in that second hearing, there's a statute that
14 has -- that is set up that describes that proceeding and it
15 tells us how that proceeding will be handled, okay, and it
16 will -- it provides for the introduction of new evidence
17 because evidence as to what the appropriate penalty is may
18 not be relevant to whether the person did it or did not do
19 it.

20 So, that second hearing will involve new matters, new
21 issues that have to be decided that may or may not relate to
22 that first trial.

23 You understand that there would be new people
24 testifying, new issues discussed?

25 A Yes, sir.

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1 Q Now, that statute provides for the introduction of both
2 what are called aggravating circumstances and evidence of
3 mitigating circumstances, and the statute actually sets out
4 the categories of aggravating circumstances, and I'm not
5 going to try to go over all of those with you. There's a
6 number of them that can be -- things that might tend to make
7 the, the, the conviction for murder more severe and might
8 cause a juror -- jury to give a higher level of penalty.

9 The statute also provides and has a list of, of a good
10 number, I don't have -- never counted it exactly, of
11 mitigating circumstances. Now, those are circumstances that
12 a person could present to a jury that may cause a jury to
13 give a lesser penalty, something at a different level.

14 So, do you understand, when I say aggravating and
15 mitigating, what I'm talking about?

16 A Yes, sir.

17 Q All right, sir. Now -- and as far as aggravating
18 circumstances, there's a list of those. It's, it's a fairly
19 long list. But it also says that a jury can consider any
20 other mitigating circumstances it chooses to. It's not
21 limited to that -- what's on that list, and can even
22 consider the, the question of mercy.

23 So, do you understand the different things that a jury
24 could consider?

25 A Yes, sir.

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1 Q Okay. Now, at that trial, both sides will be allowed
2 to bring in evidence as to aggravating and mitigating
3 circumstances. Once that evidence has been presented, then
4 the judge gives a charge to the jury to consider those
5 factors, aggravating and mitigating circumstances, and the
6 jury is then called upon to recommend the appropriate
7 penalty and that is either death or life in prison without
8 the possibility of parole.

9 So, do you understand that type of trial?

10 A Yes, sir.

11 Q And do you understand how that would operate?

12 A (Witness nods affirmatively.)

13 Q Okay. Now, that's a long explanation, but the reason I
14 do that is I want you to imagine that you're in a situation.
15 Let's say that you got selected on a jury that's -- the
16 question could possibly be the death penalty --

17 A Right.

18 Q -- and that jury has gone through the first part of
19 that trial, and has rendered a verdict as to the, the
20 charges, and one of the verdicts is guilty of murder.

21 So that means, since the State is requested the
22 possibility of the death penalty and -- for that conviction,
23 you're about to walk back into the courtroom to begin the
24 hearing, the separate hearing, on the issue of the
25 appropriate penalty.

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1 Do you understand where I've put you now --

2 A Yes, sir.

3 Q -- in your mind?

4 Okay. Now, do you remember a piece of paper that I put
5 back in the jury room --

6 A Uh-huh. (Affirmative).

7 Q -- that described three different types of people?

8 A (Witness nods affirmatively.)

9 Q I'm gonna go over those again with you so that you --
10 we have an understanding of who's who on that list.

11 Okay. And you walked down the hall, there's a line of
12 people -- jurors getting ready to go in. One of those
13 jurors has already made up his or her mind. That particular
14 juror believes that, in every case in which someone is
15 convicted of any murder, no matter how serious it is, no
16 matter what the factors might be involved in it, that juror
17 believes the only appropriate penalty is the death penalty.
18 And so in every case he's ever gonna be in involving that,
19 when he comes into that room, that juror is gonna vote for
20 the death penalty.

21 There's another juror, number two. Number two's
22 already made up his mind too or her mind. That juror
23 believes that it's never appropriate for the State to take a
24 life in response to a crime, and so, in every case, no
25 matter what the crime is or how serious the crime is or what

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1 the factors are, that juror would never vote for the death
2 penalty. They believe that life imprisonment without parole
3 is the only appropriate penalty.

4 Juror number three is a juror who hasn't made his or
5 her mind up yet. That juror wants to go back into the
6 courtroom. That juror wants to listen to the -- things that
7 make it worse, the aggravating issues, and also wants to
8 listen to the mitigating issues. And based upon the
9 strength of that evidence, based upon their own beliefs and
10 convictions, then would make a decision as to what that
11 juror thinks is the most appropriate penalty. Be it either
12 the death penalty or life imprisonment without the
13 possibility of parole.

14 Now, do you have set in your mind the three different
15 jurors I've described?

16 A Yes, sir.

17 Q Now, I told you to imagine, at the beginning of this,
18 that you're on that jury too. You're walking down the hall
19 getting ready to go in the courtroom.

20 of the three individuals I just described to you,
21 jurors, which one most closely resembles you?

22 A Be number three.

23 Q Number three.

24 So, that means you're telling me you're somebody who
25 wants to hear the aggravating issues and the mitigating

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1 issues?

2 A Yes, sir.

3 Q You'd want to consider those. You'd want to hear the
4 judge's charge on the law.

5 And based on all of those factors, weighing that out,
6 you would want to then make an appropriate decision as to
7 whether you would be in favor of the death penalty or be in
8 favor of life imprisonment without parole?

9 A That's who, that's who I'd want on my jury.

10 Q Well, I'm, I'm asking you if that's what you would do.

11 A Yes, sir, that's what I would do.

12 Q That's what you'd do?

13 A Yes, sir.

14 Q Okay. Now, I'm gonna take it a step further.

15 Let's say that you and your fellow jurors hear that
16 evidence, you hear the judge's charge on the law, you go
17 back into the jury room, and you are deliberating, and the
18 jury comes to the conclusion that the appropriate penalty is
19 death.

20 would you be a juror who would sign a verdict then for
21 death?

22 A Yes, sir.

23 Q Now, the same is true if the jury deliberated, listened
24 to the evidence, both sides, aggravating and mitigating,
25 took the, took the charge of the law by the judge, and

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1 decided the appropriate sentence for this, this situation
2 would be life imprisonment without the possibility of
3 parole.

4 Could you sign off on a verdict like that?

5 A Yes, sir.

6 Q Now -- so, I take it then you, you would want to hear
7 the evidence and consider all the factors before a decision
8 is made, is that correct?

9 A Yes, sir.

10 Q Now, a couple of other things I need to discuss with
11 you. I have signed a sequestration order in this case.

12 what that means is, once the jury is chosen and once
13 the jury's impaneled and the trial is begun, that jury will
14 be kept away from any outside influences so that we don't
15 have anything that will cause them, from the outside of the
16 trial, influencing them. So, they'll be staying at a motel.
17 Actually not a motel. We're gonna use the Marriott here.

18 All of your meals would be paid for. All of the
19 transportation, excuse me, transportation would be taken
20 care of.

21 Now, jurors would be allowed to talk with family
22 members, but those calls would be monitored.

23 A Okay.

24 Q There's, there's a group of people who are -- do this
25 for a living. They travel around and take care of juries.

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1 So, those people do that all the time, and they would be
2 monitoring those phone calls.

3 You'd receive your juror's pay for the time that you're
4 there. It's allowed by law. It's not as much as I'm sure
5 you make at your work, but it's, it's all the law allows us
6 to pay jurors, and travel, if you're required to do any of
7 your personal travel like getting to and from the
8 courthouse, things like that.

9 A Yes, sir.

10 Q So, that's what we would do in a sequestration. I
11 expect this trial would last for a little over a week. I
12 will tell you that, once we start the trial, we don't stop.
13 We go seven days a week until the case is ended. So, we try
14 to take as little a chunk of time out of people's lives as
15 we can, but to still have a full and complete hearing.

16 So, do you understand how that would work?

17 A Yes, sir.

18 Q My, my next question to you is, if you were in that
19 situation, would that pose any serious risk to your health
20 or your personal well being?

21 A No, sir.

22 Q All right. Would it pose a serious risk to anyone's,
23 anyone else's personal health or well being that might be
24 dependent upon you?

25 A No, sir.

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1 Q All right. Now, at this time I'm going to allow the
2 attorneys to examine you. They're gonna ask some questions.
3 They'll be different from the ones I have, and I'm sure
4 you're gonna cooperate with their questions.

5 A Yes, sir.

6 THE COURT: All right. Mr. Barnette.

7 SOLICITOR BARNETTE: May it please the Court?

8 THE COURT: Is it you?

9 SOLICITOR BARNETTE: Yes, sir.

10 May it please the Court, Your Honor.

11 EXAMINATION

12 BY SOLICITOR BARNETTE:

13 Q Morning, Mr. Stephens.

14 A Morning.

15 Q How are you?

16 A Good.

17 Q My name's Barry Barnette. Myself and Derrick Bulsa
18 will be prosecuting the case for the State, and let me
19 apologize ahead of time. We're gonna ask you some questions
20 that normally we wouldn't ask people in these situations,
21 but it -- with the type case it is, we need to go through it
22 if that's okay.

23 A Yes, sir.

24 Q One thing before I get started.

25 I notice your wife's a nurse?

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1 A Yes, sir.

2 Q Where does she work at?

3 A She works for a dialysis clinic, DCI.

4 Q DCI here in town. My wife's a nurse. That's the
5 reason I was asking that question. So, I was just, just
6 curious from that standpoint.

7 I notice you mentioned, in talking to the judge, you
8 had discussions in church about the death penalty.

9 A Yes, sir.

10 Q Could you tell me a little bit about that?

11 A You know, I guess that's one of the things that always
12 comes up in people's mind, you know, is it, is it, I guess,
13 morally correct for that. We just have, you know, the
14 verses in Romans that talks about not bearing a sword in
15 vain, and respecting the government and the laws because
16 he -- because God put them in place so that, you know, we
17 would be ruled right. You know, it's not something that --
18 it's not a go to thing, but if it was to happen, you know,
19 if the law deemed it, then we're to go -- abide by it.

20 So, those are the kind of discussions that we have.
21 It's not, you know, it's not weeks that we have discussions.
22 It just, you know, once in a while, and I teach a Bible
23 class sometimes and every once in a while that will come up
24 in, in topic with the teenagers, you know, and then we just
25 let the Bible speak for what it has to say and we get it out

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1 of that.

2 Q I got you.

3 So, your view would be basically what you just stated,
4 the, the view I guess y'all been teaching in class and so
5 forth?

6 A Yes, sir.

7 Q I believe -- the judge went through this with you. I
8 just want to make sure. Obviously we get through the guilt
9 phase, found guilty of murder --

10 A Correct.

11 Q -- in that case, and the murder is with malice
12 aforethought. Basically a situation where somebody has an
13 ill will towards somebody from there, and malice, it could
14 be that quick. It can be -- it don't have to be anything
15 planned out or premeditated or anything like that. It's
16 just---

17 A Right.

18 Q ---that ill will when you kill somebody from there.

19 A Okay.

20 Q And then once you prove -- once that's proven to you,
21 and that's -- so, you come back for the second phase after
22 the guilt, the guilt's been established. It's sort of like
23 a different sentencing -- I mean it's different evidence
24 from that standpoint. You can use evidence from the first
25 phase, but the second phase is new evidence we produced.

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1 The State will produce aggravating circumstances, and
2 we have to prove those beyond a reasonable doubt in their --
3 in this case we do have two and one of them is the death of
4 a child in this case.

5 Then there's mitigating factors that the defense will
6 present, and it can be any kind of factor. They don't have
7 to prove them beyond a reasonable doubt or anything, but
8 they can demonstrate them or show them to the jury and you
9 can use them if you want to. It's really up to you to
10 decide how you want to use that, and part of the mitigation
11 may be a disability or something like that from that -- that
12 they'll introduce in the evidence in that case.

13 Are you the type of juror that can hear from both
14 sides---

15 A Yes, sir.

16 Q ---and then you, you wouldn't decide, automatically,
17 just cause they're guilty of murder that they could be in
18 the death penalty?

19 A No, sir.

20 Q And you're not the type juror that would automatically
21 give life in that situation---

22 A No, sir.

23 Q ---cause you would listen to both sides---

24 A Yes, sir.

25 Q ---and make the decision based off what you heard in

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1 that case?

2 A (Witness nods affirmatively.)

3 Q Just because the aggravators may be what they are, you
4 wouldn't just base it off that?

5 You would base it off of hearing from both sides?

6 A Right.

7 Q And you wouldn't make a decision until you heard that
8 also?

9 A Right.

10 SOLICITOR BARNETTE: One moment, Your Honor, please.

11 THE COURT: Yes, sir.

12 (Pause.)

13 Q Mr. Stephens, sorry about those questions, but thanks
14 for asking (sic) for us.

15 A That's okay. I understand.

16 THE COURT: Mr. McGuire.

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

18 EXAMINATION

19 BY MR. MCGUIRE:

20 Q Good morning, Mr. Stephens.

21 A Morning.

22 Q How are you doing?

23 I'm gonna, since your conversation began with a little
24 bit of religion, I'm gonna ask you, have you heard the
25 phrase an eye for an eye?

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1 A Yes, but --.

2 Q Does that resonate with you?

3 A That's Old Testament.

4 Q It is.

5 A It's old Testament. That's before, you know, the New
6 Testament---

7 Q Okay.

8 A -- was established and, you know, things were under the
9 New Testament if you're a Christian.

10 Q Okay. Do you think the death penalty is a last resort?

11 A Yes, sir.

12 Q Okay. Do you think life without parole is a harsh
13 penalty?

14 A It's harsh, yes.

15 Q Do you think that we use the death penalty about right
16 or too often or too seldom?

17 Do you have an opinion?

18 A My only opinion is that you just don't hear of it much.

19 Q Right.

20 A But I mean I -- as, as that belief, you know, we
21 started out as a religious, religious belief, I also have to
22 say, you know, I think life is, is precious. So, you
23 know -- in that religious belief. So, you know, I think a
24 death penalty, if it, if it comes up, you know, it needs to
25 fit the bill, you know, if it's, if it's used. It needs

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1 to -- all the facts need to say that.

2 Q Okay. And the judge, when he was talking to you, he,
3 he sort of put you in an imaginary place, and that is you
4 and 11 other people have found a person guilty beyond a
5 reasonable doubt of the crime of murder. Murder, in South
6 Carolina -- you've probably never heard the definition of
7 murder in South Carolina.

8 A Have not much.

9 Q And if I asked you what it was you'd probably say you
10 need me to give it to you.

11 A Yeah.

12 Q Okay. Murder in South Carolina, is defined as the
13 intentional killing of an innocent person with malice
14 aforethought, and malice is hostility, hatred, ill will
15 towards somebody, and the deliberate act to harm them
16 without legal justification or excuse and under
17 circumstances where one could infer an evil intent.

18 Okay. So, I'm gonna put you in that place where the
19 judge put you. You just found somebody guilty beyond a
20 reasonable doubt of that crime, and that the victim was a
21 child, and there's no right or wrong answer here. It's just
22 your personal view.

23 what are your thoughts about the death penalty in that
24 situation?

25 SOLICITOR BARNETTE: Objection, Your Honor. My

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1 previous objection about fact specific questions in that
2 situation.

3 THE COURT: Well, I've asked you to ask that question
4 and include the possibility of mitigating circumstances as
5 well.

6 Q Some people might say, in that situation, that the
7 deliberateness, the intentional, the intentional killing of
8 an innocent child, that they don't really need to hear much
9 more in terms of mitigation evidence or maybe about
10 background. When we talk about mitigation evidence,
11 sometimes that's like the background, character, the life
12 history of the, the defendant, and some folks might say, if
13 it's an intentional killing of an innocent child, for me,
14 that calls out for the death penalty.

15 Is that you?

16 A No, I mean I need to hear it all.

17 Q Okay.

18 A It's -- everybody, everybody's an innocent life, you
19 know, also.

20 Q Okay. What I want to talk to you a little bit now is,
21 is, is how a capital case is just completely different from
22 a traditional trial. The judge put you in that position
23 where you and 11 other people found the person guilty of, of
24 murder.

25 If there was disagreement in -- with the jury,

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1 somebody, somebody said well, I think he's not guilty,
2 somebody said guilty, if the -- excuse me. I been talking a
3 lot the last couple of days.

4 If there was disagreement as to guilty or not guilty,
5 that would be what's called a mistrial, and the case would
6 have to be done over.

7 A Right.

8 Q In the penalty phase, now let's say all 12, just like
9 the judge put you there, if all 12 said guilty of murder,
10 then we would basically start a second trial and the only
11 focus would be punishment. That would be the death penalty
12 or the life penalty, and, first off, I want to tell you that
13 do you know life in South Carolina is life without parole?

14 If you get it, you never leave the walls of the prison.
15 You die in prison.

16 A No, I didn't know how long the term was. I just
17 knew -- hear the term life.

18 Q Sure, and I use to, for instance, I use to practice in
19 Georgia and we had parole there. South Carolina doesn't.
20 It's just some states are different. But now you know that
21 life means life without parole.

22 A Correct.

23 Q Okay. And you would accept that charge from the judge
24 if he told you that's exactly what it means?

25 A Correct.

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1 Q Okay. Now, the penalty phase is different from that
2 guilt phase, and if there's disagreement as to punishment,
3 the judge would take the case and he would sentence and his
4 sentence would automatically be life without parole.

5 Okay. For instance it could be 11 people calling out
6 for the death penalty, but one person said it doesn't sit
7 right with me, and the one vote for the life penalty would,
8 would result in the judge giving life.

9 Did you know that?

10 A Uh-huh. (Affirmative). I knew that, you know,
11 deliberate or not, if everybody didn't coincide together on
12 both, but I didn't know that. You know, I knew he had the
13 ultimate penalty -- to penalize.

14 Q Okay. You knew that the buck sort of stopped with the
15 judge?

16 A Yeah, I knew that part.

17 Q Okay. A lot of people don't know and that's why we
18 have this opportunity to talk to you, and with regard to the
19 penalty phase, the decision making process is referred to as
20 an individual moral judgment. You're kind of voting your
21 conscience. It's not a, it's not a decision that math can
22 answer or science. It's just what sits right with a, with a
23 person with their moral system, and there can also be
24 disagreement with the mitigation evidence, and I'm just --
25 I'm gonna give you an example just to, to show you, by

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1 example, and I'm gonna ask you if this is a process you can
2 agree with.

3 Okay. A juror might be sitting here and might say I
4 saw something in the person's upbringing or the way they
5 were that raised that resonated with me. I'm gonna vote
6 life for that. Somebody over here might say I saw a
7 relationship that he had with his grandchildren or family or
8 something like that and that resonated with this person.
9 And the judge would say that any individual juror could,
10 could vote for life for any reason, no reason, or mercy
11 alone, and somebody on the end could say I just -- I can't
12 really put it into records, I can't articulate it, but the,
13 the judge told me I could vote for life for no reason.

14 Can you see how they have different reasons and nobody
15 would have to agree?

16 Is that a process that you could respect and
17 participate in?

18 A Yes, sir.

19 Q And you would, you would want somebody, once you
20 reached your decision, to respect yours?

21 A Right.

22 Q And you would respect theirs?

23 A (Witness nods affirmatively.)

24 Q I'm sorry. You have to answer.

25 A Yes, sir. Yes, sir. I'm sorry. Yes, sir.

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1 Q We have to remind people every once in a while that --
2 to answer out loud, and if you -- the way it's described in
3 the law is, if it would harm someone's conscience to change
4 their individual moral judgment for the purpose of just
5 going with the majority, that that would be actually a
6 violation of the juror oath. It would be wrong.

7 If you saw somebody trying to sway somebody and bully
8 somebody, come over to the majority, give up their
9 individual moral judgment, could we count on you to stop
10 that?

11 A Yes, sir.

12 Q Okay. One thing you could do is you could write a note
13 out to the judge and just say dignity is left the
14 proceedings and we need to get back to that because while we
15 expect some civil discourse---

16 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
17 this point. I think that's going way too overboard in that.

18 Q I tell you that because they're a lot of rules in
19 court.

20 SOLICITOR BARNETTE: Objection, Your Honor.

21 THE COURT: I need to -- I guess I need to rule on the
22 objection.

23 The objection is?

24 SOLICITOR BARNETTE: The objection, Your Honor, is
25 obviously they can talk about the procedures and whatever,

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1 but telling a juror what to do concerning notes and
2 everything else, I've got an objection to that. That's
3 going way overboard.

4 THE COURT: We're not in a position of instructing
5 jurors on how to behave at this point in time.

6 MR. MCGUIRE: Sure.

7 THE COURT: So, let's, let's move on.

8 MR. MCGUIRE: Yeah, and I'll move on.

9 I'll just tell you they're a lot of rules in court.
10 Some of them are for, for me, some for the State, but some
11 for y'all too.

12 A Yeah.

13 Q And we want y'all to be treated fairly too.

14 A Okay.

15 Q Thank you.

16 Oh, I'm sorry. If I could have just one second, judge?
17 (Pause.)

18 Q Sometimes I forget to ask something.

19 You know, we talked about mitigation evidence and sort
20 of in a general term. Tell me what you think that means.

21 A Mitigation is to get together and talk about something.

22 Q Okay. Okay. If the, if the judge was to tell you that
23 the evidence that might come from the defense, evidence that
24 I might present to you, it could be any reason to vote for
25 the life penalty -- you know, you're, you're, you're at that

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1 point where the judge puts you where you convicted somebody
2 beyond a reasonable doubt, intentional killing of another
3 person, malice aforethought.

4 Tell me what kind of evidence -- a reason to vote for
5 life that you might think of.

6 what would you think of when I say that?

7 A I would, I would I just have to have the facts show
8 beyond a reasonable doubt that, you know, what the accused
9 or what the fact or what the, the case is accused of is
10 beyond a reasonable doubt, and, you know, I don't know. I'd
11 just have to hear it all.

12 Q If you were satisfied that all the evidence that we
13 presented, none of it negated murder, that, after hearing
14 whatever you might hear from the defense side, you're
15 absolutely sure, beyond a reasonable doubt, they got the
16 right guy, intended to do it, knew what he was doing, it's
17 not an accident, not self-defense---

18 SOLICITOR BARNETTE: Objection again, Your Honor.

19 THE COURT: Are you asking him how to decide a case in
20 a particular situation?

21 MR. MCGUIRE: No, sir.

22 SOLICITOR BARNETTE: I mean that's a---

23 THE COURT: I won't allow you to do that.

24 MR. MCGUIRE: Sure.

25 THE COURT: So, let's not go there. He's not being

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1 called upon to judge this case or any case without having
2 heard the evidence.

3 MR. MCGUIRE: Of course.

4 THE COURT: You may proceed.

5 Q And I'm not gonna go into specific evidence, but you're
6 there at that point, you've convicted, with 11 other people,
7 beyond a reasonable doubt, you got the right person, they
8 intentionally chose to kill an innocent person with malice
9 aforethought---

10 SOLICITOR BARNETTE: Your Honor, I'm gonna object
11 again. He's compounding a question putting all kind of
12 facts in it.

13 THE COURT: He hasn't finished the question.

14 SOLICITOR BARNETTE: Okay.

15 THE COURT: What's the question, Mr. McGuire?

16 Q What I'm doing is I'm putting you at that same point
17 the judge put you in. You and 11 other people found the
18 person guilty beyond a reasonable doubt, got the right guy.
19 It's the intentional killing of another person with malice
20 aforethought, and there's no doubt in your mind that
21 whatever circumstances were offered, it didn't negate that,
22 that the person was absolutely, beyond a reasonable doubt,
23 guilty of murder. In that situation, is the death penalty
24 appropriate for you without regard to defense evidence?

25 A If, if you're asking all the evidence points correctly

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1 to the, to the defendant?

2 Q Yes.

3 THE COURT: Are you asking him if he would disregard
4 defense evidence?

5 Is that the question?

6 MR. MCGUIRE: Yes.

7 THE COURT: Okay.

8 SOLICITOR BARNETTE: Your Honor, I would object at this
9 point cause he's thrown in so many different facts.

10 THE WITNESS: I'm confused.

11 THE COURT: It is a very confusing question to the
12 Court---

13 SOLICITOR BARNETTE: I agree.

14 THE WITNESS: I'm confused.

15 THE COURT: ---as well.

16 MR. MCGUIRE: Let me see if I can do a better job.

17 THE COURT: Let's try not to confuse him.

18 Q Let me see if I can do a better job.

19 A Okay.

20 Q I just want to make sure that we're, we're talking
21 about the same stuff, and some evidence the defense might
22 offer might be backgrounds, characteristics of the
23 defendant, how he grew up, that sort of thing, kind of who
24 he is, his life history.

25 But if all the evidence, to use your words, pointed

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1 straight to the evidence, he was guilty guilty beyond a
2 reasonable doubt, would that background type evidence be
3 relevant to you in fixing the punishment for that
4 intentional murder?

5 A Yes.

6 Q Okay. And tell me when -- tell me why that is.

7 A If, if an individual from a really rough upbringing or
8 something, those, those characteristics can add or can
9 aggravate the individual. You know, I've known -- me and my
10 wife have talked of cases of how a child, two, two months
11 old, is neglected and then, you know, you see it at the age
12 of seven and eight, you see a dependency, and, you know,
13 of -- that's not normal in a seven or eight year old, and
14 it's just amazing of how little things, you know, at an
15 early age, can add to that. So, that's, that's where I'm
16 coming from, you know, as far as that. But I don't know if
17 that answers your question or not.

18 Q Are you saying that maybe somebody's walk in life
19 could, could be such where they are deserving of mercy?

20 A I think it's definitely needed to be in an
21 accountant -- account of the whole situation.

22 Q Okay.

23 A As I said, all the facts, you know, before the verdict.

24 Q In, in talking about mercy, is mercy something that is
25 earned or freely bestowed upon somebody?

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1 A As a Christian, I would say it's freely bestowed.

2 MR. MCGUIRE: Okay. If I could have just one second,
3 judge?

4 THE COURT: Yes, sir.

5 (Pause.)

6 MR. MCGUIRE: That's all I have.

7 Thank you so much, sir.

8 THE COURT: State wish to ask any additional questions?

9 SOLICITOR BARNETTE: Just one or two, Your Honor, very
10 briefly.

11 THE COURT: Yes, sir.

12 SOLICITOR BARNETTE: Just to clarify some things.

13 EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q I just want to make sure -- I know there was a lot of
16 questions asked of you there. I just want to make sure.

17 You realize, as a juror, you could talk to the other
18 jurors?

19 Y'all would look at the evidence and make sure---

20 A Right.

21 Q Y'all could, could come and talk about the evidence in
22 the case?

23 A Yes, sir.

24 Q You do have your individualism, but at the same time
25 you can work as a group too?

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1 A Right.

2 Q You understand that?

3 A Yes, sir.

4 Q And one thing I wanted to make sure, all 12 have to
5 agree on the death penalty, and, like I say, if it's given
6 to the judge, the judge can not give the death penalty
7 himself. It has to be given by the jury. He can only give
8 life without parole.

9 A Okay.

10 Q So, I just wanted to make sure it was clear for you on
11 that.

12 A Yes, sir.

13 Q No problem. Thank you, sir.

14 A Yes, sir.

15 SOLICITOR BARNETTE: Sir, I'm gonna ask you to step
16 back into the jury room. Don't discuss this process with
17 anyone back there.

18 THE WITNESS: Yes, sir.

19 THE COURT: They get to find out about it on their own.

20 THE WITNESS: Okay.

21 THE COURT: But I'll call you back in just a few
22 minutes.

23 THE WITNESS: Yes, sir.

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

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1 THE COURT: Defense's position.

2 MR. MCGUIRE: He's qualified.

3 THE COURT: State.

4 SOLICITOR BARNETTE: Agreed.

5 THE COURT: All right. Let's bring Mr. Stephens back
6 in please.

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

9 THE COURT: Sir, that didn't take long.

10 THE WITNESS: That didn't take long.

11 THE COURT: I have found that you are in -- qualified
12 to proceed in the process. That doesn't mean you're on the
13 jury.

14 THE WITNESS: Right.

15 THE COURT: What that means is you're in the pool of
16 people from which a jury can be selected.

17 THE WITNESS: Okay.

18 THE COURT: So, we're -- this process is taking much
19 longer than I thought it would, and so I expect we'll be
20 coming to a conclusion early next week.

21 THE WITNESS: Okay.

22 THE COURT: So, during the period of time between now
23 and then, you won't hear any more from us. You will
24 eventually get a call from the Clerk's Office with
25 additional instructions as to what to do.

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1 THE WITNESS: Okay.

2 THE COURT: In the mean time, my instructions
3 concerning your behavior continue.

4 THE WITNESS: Yes, sir.

5 THE COURT: Don't watch, listen to, or read media
6 reports. Don't try to gather information on your own.
7 Don't discuss the case with anyone. Don't allow anyone to
8 discuss it with you. The clerk's gonna hand you a little
9 sheet of paper.

10 THE WITNESS: Okay.

11 THE COURT: And this is just a reminder, a list of
12 things you might want to think about because, if you're
13 called back to the courthouse, you will need to bring with
14 you your personal items and clothing you think you might
15 need and you can dress casually for jury duty, but you'll
16 need to bring things back to be able to stay for that period
17 of time, more than a week.

18 THE WITNESS: I see.

19 THE COURT: Now, where you're staying will have laundry
20 facilities if you need to wash some things and stuff. That
21 can be taken care of for you. But if you have medications,
22 things like that, be sure you plan for that length of time
23 that you would be here.

24 Except -- one exception to my rule about not talking to
25 folks. Obviously, if you're called back, and you have to

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1 spend a little over a week with us, I would expect you'll
2 need to at least mention that to your family, and maybe your
3 employer, and let them know that that's a possibility. Not
4 definitely gonna happen, but do so in such a way that you
5 don't discuss the case or what might be going on in the
6 case.

7 THE WITNESS: Right.

8 THE COURT: What you can tell them is I'm in a jury
9 selection process. There's a chance I may be called away,
10 and if I am, it will happen probably sometime next week or
11 so. And if that happens, I'll let you know and you
12 understand I'll be there.

13 THE WITNESS: Yes, sir.

14 THE COURT: And make the same arrangements with your
15 family, but don't discuss the case at anytime.

16 You understand what I'm asking you to do?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay. Mr. Stephens, again, thank you for
19 your cooperation.

20 THE WITNESS: Yes, sir.

21 THE COURT: They're gonna check you out today. You'll
22 hear from us next.

23 THE WITNESS: Okay.

24 THE COURT: So, you don't call us unless you have some
25 issues come up. If somebody tries to call you about your

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1 service, please let the clerk know. There's numbers there
2 on that sheet of paper---

3 THE WITNESS: Okay.

4 THE COURT: ---that can help you with that.

5 THE WITNESS: Okay.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you.

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

10 THE COURT: Next one is Michael McIntyre, is that
11 right?

12 THE CLERK: Yes, sir.

13 THE COURT: Check and see if Michael McIntyre is ready.

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

16 MICHAEL MCINTYRE, having been previously
17 sworn, testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q Mr. McIntyre, have a seat there. I tease people that
21 that's the jury -- that's usually where a witness will
22 seat -- sit during court and it's red. I say I tease people
23 about it being the hot seat.

24 A It is.

25 Q It's not the hot seat today I can assure you.

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1 A Okay.

2 Q I want to thank you for your cooperation in rearranging
3 things to be here. I understand that we've been kind of
4 starting and stopping and that sort of thing, and
5 unfortunately that's just the way this process is going,
6 and, again, I appreciate your willingness to cooperate with
7 us in that regard. Thank you.

8 A All right. You're welcome.

9 Q Now, a couple of things I need to go over with you to
10 be sure you understand what's going on. Maybe I can make
11 you feel a little more at ease in what's going on here
12 today.

13 We're gonna be discussing some things with you that
14 will pertain to this trial in general. We're going to be
15 asking your opinions or ideas or thoughts on certain things.
16 There are no right or wrong answers to my questions or --
17 the, the lawyers will get a chance to ask some questions as
18 well. So, don't think that you got to think of what the
19 right answer is. That's not it. I want your honest answer
20 as far as you're concerned.

21 You understand what I'm saying?

22 A Yes, sir.

23 Q Okay. So, don't feel threatened by this process.
24 We're not here to invade anybody's privacy, but we are here
25 to find out some things that will assist the Court and the

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1 lawyers in selecting a jury in this matter.

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

3 A Yes, sir.

4 Q Okay. Now, when you left the courthouse on, on Monday
5 you had taken an oath to tell the truth to the Court.

6 Do you remember that oath?

7 A Yes, sir.

8 Q I'm gonna remind you that oath still applies to our
9 discussions right now and to this meeting this morning.

10 Do you understand that that's the case?

11 A Yes, sir.

12 Q And do you acknowledge that that's true?

13 A Yes, sir.

14 Q Okay. Also I gave you some instructions concerning the
15 things you could do and couldn't do in relationship to this
16 trial.

17 Do you remember me talking about that?

18 A Yes, sir.

19 Q All right. Now, the things I told you to do -- not to
20 do was I told you not to get -- to try to gather information
21 about this case on your own. I told you not to listen to,
22 watch, or read media reports about the case. I told you not
23 to discuss the case with anybody. Don't allow anybody to
24 discuss it with you, and if anybody contacted you about this
25 matter to let our clerk know.

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1 You remember those instructions?

2 A Yes, sir.

3 Q Have you been able to follow my instructions?

4 A Yes, sir.

5 Q So, you've been able to take care of those things up to
6 this point in time?

7 A Yes, sir.

8 Q Okay. Very good.

9 Now, one question I have for you, in, in that regard,
10 if there was anything that you -- and I'm not talking about
11 anything in particular now. I'm just talking generally.

12 If there was anything that you had heard outside of the
13 courtroom that may have anything to do with this case or the
14 issues involved in this case, that sort of stuff, are you
15 the kind of person that if you came into the courtroom and
16 were instructed by the judge to decide the case based upon
17 just the law and the evidence that you hear in the trial,
18 could you set aside any outside influences and decide the
19 case based on what you hear in the courtroom?

20 A Yes, sir.

21 Q Now, there was a list of people back there in the jury
22 room, about three sheets of paper.

23 Do you remember all those names I gave you?

24 A Yes, sir.

25 Q Those are people who have been identified to me as

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1 people who might be witnesses in a case. Now that doesn't
2 mean they're definitely gonna testify, but it means they
3 could testify. We're gonna assume for my questions that all
4 of them are gonna testify.

5 Now, as you read over that list, was there anybody on
6 that list that you read that you believe that you are either
7 related to by blood or now or formerly related to by
8 marriage or was there anybody on that list that you've ever
9 had a close personal or a social or a business relationship
10 with?

11 A No, sir.

12 Q So, you didn't recognize anybody's name on that list as
13 somebody you've had contact with?

14 A No, sir.

15 Q Okay. Good.

16 Now, I want to go over one thing with you to be sure
17 we've got an understanding about this in our minds. I told
18 you, on Monday, and I don't know if you remember this. So,
19 I'll go over it with you again.

20 This case involves a situation where there's an
21 allegation of a kidnapping and a murder. The State has
22 requested that the Court consider a death penalty in the
23 case. They requested that penalty. For that reason, this
24 case is going to be divided into two phases or two steps
25 because that's the way they're handled. They'll be a phase

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1 at which the guilt or innocence of the defendant of the
2 charges are, are tried.

3 Now, if the defendant were to be found not guilty of
4 those charges -- and then that hasn't been decided at this
5 point in time. That's still got to be tried. So, if the
6 defendant were found not guilty, there will never be a
7 penalty phase of the trial. The case will be ended right
8 then cause he's not guilty.

9 Now, however, if the defendant were found guilty of
10 the, of the crime of murder, because of the State's request,
11 then that same jury would hear the second phase of the
12 trial. In other words, the same jury that heard the guilt
13 phase would come back for the penalty phase.

14 You understand that?

15 A Yes, sir.

16 Q The reason I'm going over this with you is cause we're,
17 today, we're gonna kind of put the, to a certain extent,
18 we're gonna put the cart in front of the horse, and by that
19 I mean we're gonna talk -- a little bit of what we're gonna
20 talk about is gonna be about that second phase of the trial,
21 the proper penalty, the appropriate penalties, things like
22 that. So, we're gonna be talking about that. But we're
23 talking about it today and the defendant is never been found
24 guilty of the crimes at this point in time. So, we may not
25 ever get to that trial.

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1 But I hope you appreciate that, since the same jury
2 will hear both phases of the trial, if we're gonna talk to
3 you about it at anytime, we've got to talk to you about it
4 before we start the trial. So, we're gonna talk about the
5 penalty issues, but, again, the defendant is presumed to be
6 innocent. The fact that we're talking about the penalty
7 today should not be taken by anybody who sits on the jury as
8 any reflection against him or his case in this, in this
9 matter. It's simply that this is the only time we can talk
10 about all of the issues in the trial, both the guilt phase
11 of the trial and the penalty phase of the trial.

12 You understand what I'm explaining to you?

13 A Yes, sir.

14 Q So, so, don't take it as any, any reflection against
15 him or his case that we'll talk about the penalty in this
16 matter from time to time.

17 You understand that?

18 A Yes, sir.

19 Q Okay. Very good.

20 Now, the first thing I want to do is go over some
21 general concepts that we have in our law involving criminal
22 cases and be sure that we've got an understanding about
23 these things, and that you can accept the things I'm gonna
24 tell you.

25 The first thing I will tell you, and I just mentioned

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1 it just a second ago, but I'll go back and mention it to
2 you.

3 In every criminal case, no matter what the seriousness
4 of the crime might be in this state and in the United
5 States, every defendant is presumed to be innocent of the
6 crimes that have been charged against that defendant.

7 Do you understand that all defendants are presumed to
8 be innocent?

9 A Yes, sir.

10 Q Do you, you agree with that premise?

11 A Yes, sir.

12 Q Now, the next step I'll go to is that because a
13 defendant is presumed to be innocent, the law presumes
14 innocence, that a defendant also is never required to prove
15 his innocence. In other words, we presume innocence. He
16 doesn't have to prove it.

17 You understand that concept?

18 A Yes, sir.

19 Q And do you agree with that?

20 A Yes, sir.

21 Q Now, the second thing I will tell you is that because
22 of that, a defendant, in a criminal trial, is never required
23 to produce any evidence at all. In other words, we don't
24 make defendants get on the stand or present any evidence
25 during a case.

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1 Do you understand that?

2 A Yes, sir.

3 Q Now, the next thing I'll tell you is that since the
4 State brings the charges in a criminal case, they have
5 alleged a charge against a defendant. The State does have a
6 burden of proof in a criminal case. The State has the
7 burden of proving the guilt of the defendant of the crimes
8 charged, and that proof has to be by proof beyond a
9 reasonable doubt.

10 Do you understand that premise?

11 A Yes, sir.

12 Q And do you agree with that one?

13 A Yes, sir.

14 Q All right. I'm gonna take all of this a step further.

15 Let's say that you were on a jury and you and your
16 fellow jurors have listened to the evidence. You've heard
17 the judge charge you or give you the law on a case, and
18 after you've considered all the evidence in the trial,
19 you've considered the law, you and your fellow jurors have
20 decided that the State did not prove the defendant guilty
21 beyond a reasonable doubt. They didn't meet their burden of
22 proof in the case.

23 Could you then sign a verdict finding it -- that
24 defendant not guilty?

25 A Yes, sir.

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1 Q Now, by the same token, if you were on a jury and the
2 State had presented its evidence, and after you and the jury
3 discussed the evidence, you decided that the State did prove
4 the defendant guilty beyond a reasonable doubt. So, they
5 met their burden of proof.

6 Could you then sign a verdict that would find a
7 defendant guilty in that situation?

8 A Yes, sir.

9 Q So, what you're telling me is that, that you could find
10 the defendant either guilty or not guilty depending upon the
11 weight of the evidence and the law that was given to you by
12 the judge, is that correct?

13 A Yes, sir.

14 Q Now, is it also your understanding that just because
15 someone has been arrested and someone has been charged that
16 they're not automatically guilty of the crime?

17 Do you understand that?

18 A Yes, sir.

19 Q And do you agree with that premise?

20 A Yes, sir.

21 Q Now we're going to talk a little bit about the, the
22 penalty involved -- the penalty phase of this trial, and I
23 told you I'm now putting the cart in front of the horse, I
24 understand that, but it's the only time I get to talk to you
25 about this. So, I'm gonna talk to you about it at this

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1 time, and as I mentioned to you, there is a two -- the law
2 sets up a two step or two phase trial in this situation.

3 At the first trial, the only issue is whether or not
4 the defendant is guilty or innocent of the crimes charged.
5 So, we're talking about a case where a defendant has been
6 found guilty and guilty of the crime of murder. So, the
7 jury's, the jury's decided that the defendant is guilty of
8 that crime.

9 Now, in this state not all murders are deserving of the
10 death penalty, and our, our law sets up this second phase of
11 the trial in which different witnesses would testify,
12 different evidence would be brought in because the issues
13 are different. The first case, the first case is guilt or
14 innocence. The second case is well, what's the appropriate
15 thing to do in this situation as far as the penalty is
16 concerned.

17 So, do you understand it would be a different trial
18 than the first one?

19 A Yes, sir.

20 Q All right. And the law says that, at that trial,
21 there's two types of evidence that can be introduced, and
22 there -- and it's divided up or called either aggravating
23 circumstances or mitigating circumstances. That means that
24 at the, the law that says that there are certain factors and
25 they're some -- they're set out in the statute. There's a

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1 list of things that would -- could make the particular
2 murder, cause the defendant's been found guilty of murder,
3 make that person more deserving of the higher punishment.
4 Those are aggravating circumstances. That's what we call
5 them.

6 There's also circumstances that the law allows to be
7 brought into the Court, and there's a list of those as well,
8 but it's not limited just to that list. But there is a list
9 of factors that a jury could consider in perhaps lessening
10 the level of punishment. So, at that second trial the jury
11 would be called upon to listen to both aggravating
12 circumstances and mitigating circumstances.

13 So, do you understand what, what would happen at that
14 second hearing?

15 A Yes, sir.

16 Q Now, once all that evidence had been given to the jury,
17 both aggravating and mitigating, the judge would charge the
18 jury to consider that evidence, go out and, and listen to
19 the evidence, deliberate concerning that evidence, consider
20 it, and return then a verdict as to a recommendation as to
21 the appropriate penalty.

22 So, do you understand what would go on there?

23 A Yes, sir.

24 Q Now, I want you, in your mind, to kind of imagine or
25 put yourself in a position.

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1 Let's say that you had been selected on a jury in a
2 case where the State is alleging a murder. They're also
3 requesting the death penalty, and you and your fellow jurors
4 have heard the first half of that case. In other words, you
5 have decided that the defendant is guilty of the crime of
6 murder. So now the question becomes what is the appropriate
7 penalty for that particular crime, and so you and your
8 fellow jurors are coming back to the courtroom. You're
9 walking down the hall toward the door getting ready to walk
10 into the courtroom to start the second phase of that trial
11 where you're gonna hear evidence as to what the appropriate
12 penalty is.

13 So, do you understand the position I've asked you to
14 put yourself in?

15 A Yes, sir.

16 Q Okay. Now, back in the jury room there was a sheet of
17 paper. It described three different types of jurors.

18 Did you read that paper?

19 A Yes, sir.

20 Q I'm gonna briefly go over those, those types of jurors
21 again so that you and I have an understanding as to what I'm
22 talking about when I say juror number one and juror number
23 two.

24 Now, juror number one, that would be a juror who,
25 before that juror ever walked back into the courtroom for

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1 that second hearing, that juror's already made his or her
2 mind up. That juror has decided or believes that, in any
3 case there's a murder, that's the intentional killing of
4 someone without legal justification with malice
5 aforethought, there's a legal definition of that, that juror
6 decides that for, anytime someone's convicted, convicted of
7 a murder, that the only appropriate penalty is death, and so
8 that juror, every time, is gonna vote for the death penalty.

9 Do you understand what I mean by that juror?

10 A Yes, sir.

11 Q Juror number two is walking into the courtroom and that
12 juror is also made up his or her mind. That juror believes
13 that the State is never justified in taking someone's life
14 in response to a crime and that juror then will vote every
15 time for life imprisonment without the possibility of the
16 parole. That juror won't listen to the aggravating
17 circumstances. That juror doesn't care about the severity
18 of the crime. That juror believes that every time she -- he
19 or she would vote for life imprisonment without parole
20 because the State has no right to take someone's life.

21 You understand that juror?

22 A Yes, sir.

23 Q Now, the third juror is coming into the courtroom and
24 that juror hasn't made his or her mind up yet. That juror
25 wants to listen to the evidence, and when I say evidence,

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1 that would be the aggravating factors and the mitigating
2 factors. That juror would want to listen to that evidence,
3 and would want to then take the judge's instructions under
4 the law as to what to do and then go out and weigh that
5 evidence and then decide as to what the appropriate penalty
6 might be. Either life imprisonment without parole or the
7 death penalty.

8 So, do you understand the differences between those
9 three people I talked about?

10 A Yes, sir.

11 Q All right. Now, I also told you to pretend that you're
12 on that same jury. You're getting ready to walk back into
13 the courtroom and start -- and the Court's about to start
14 that phase of the trial where you're gonna hear evidence as
15 to the things that make it worse and the things that, that
16 perhaps excuse it or make it lesser.

17 Of the three people I talked about, juror one, two, or
18 three, which one would most closely describe you coming back
19 into the courtroom?

20 A Juror three.

21 Q So, you think you're someone who could come into the
22 courtroom and listen to the aggravating or bad factors and
23 listen to the mitigating or lessening factors and then weigh
24 those factors before you make a decision as to what to do?

25 A Yes, sir.

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1 Q So, that's the kind of person you think you are?

2 A Yes, sir.

3 Q Well let me take it a step further. Let's say you were
4 on the jury. You went through that hearing I just talked
5 about, and you'd heard the aggravating and mitigating
6 circumstances during that hearing, and you and your fellow,
7 fellow jurors discuss it and decide that the appropriate
8 penalty is the death penalty.

9 Could you sign off on a verdict for the death penalty
10 if you had found that that was the appropriate penalty?

11 A Yes, sir.

12 Q And, by the same taken, if you and your fellow jurors
13 decided that that wasn't the appropriate penalty, the
14 appropriate penalty would be to put the person in jail for
15 life without parole -- and that's exactly what it means.
16 He'll be there for life for the rest of his life.

17 Could you sign off on that verdict as well?

18 A Yes, sir.

19 Q So, again, you would want to hear the facts, the
20 evidence that had to do with what made it worse or what made
21 it lesser before you made a decision?

22 A Yes, sir.

23 Q All right. I've got just a couple more questions for
24 you, Mr. McIntyre.

25 I have signed a sequestration order in this case. That

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1 means that, once the jury is impaneled, once the trial
2 begins, in that, in that situation, the jury that's, that's
3 picked would be then what we call sequestered, would be kept
4 away from outside influences. So, you'd only consider
5 what's going on during the trial.

6 That means you'd be housed in a local hotel or motel.
7 We're gonna use the Marriott Hotel. There would be -- meals
8 would be provided. You'd have all your meals paid for. All
9 the travel you needed, they'd take you everywhere you needed
10 to go during that period of time.

11 Now, you would be allowed to talk to family and friends
12 and things of that nature and we have -- sometimes, if
13 there's a break, there's some activities you could do. But
14 they'll be a group of people there monitoring what goes on.
15 So, if you call somebody in the family, somebody will
16 monitor that call so that nobody discusses the trial that
17 you're in.

18 So, do you understand what sequestration means?

19 A Yes, sir.

20 Q And we have -- you have televisions and stuff like
21 that, but we, we make sure that you don't watch anything
22 that has to do with the trial. So, they'll be entertainment
23 in the evenings, things like that. So, it's not as bad as
24 it sounds.

25 Okay. Now, let me ask you this. You also would

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1 receive pay as a juror for the days that you were there,
2 your jury pay. It's not as much as someone makes in a
3 regular job, but it is some pay for your time, and you would
4 receive any travel if you had to use your personal car
5 coming and going from the courthouse.

6 So, do you understand how that would work?

7 A Yes, sir.

8 Q Now, would that situation, if you were in it, would it
9 pose any serious risk to your health or personal well being?

10 A No, sir.

11 Q Would it pose any serious risk to the health or the
12 personal well being of anyone that's dependent on you?

13 A No, sir.

14 Q All right. Now, I've completed what I wanted to ask
15 you about. The lawyers want to go over some things with you
16 and they have a right to do so. So, we're gonna let them
17 ask questions of you. Please be responsive to their
18 questions. Thank you for your cooperation with me.

19 Yes, sir, Mr. Barnette.

20 SOLICITOR BARNETTE: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir.

23 EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Morning, Mr. McIntyre.

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1 A Morning.

2 Q How are you?

3 A All right.

4 Q My name is Barry Barnette. Myself and Derrick Bulsa
5 will be representing the State in the case.

6 Let me apologize ahead of time. I want to ask you some
7 questions that we normally wouldn't ask you, and, like I
8 say, I think you already know cause the type case it is from
9 there.

10 One thing I wanted to ask you, is Reverend Jackson your
11 preacher at Cornerstone?

12 A Yes, sir.

13 Q Okay. He's a good fellow. I've known him for a long
14 time. So, I know he's been there for a long time --

15 A Yes, sir.

16 Q -- from there.

17 One thing I wanted to ask you is what, what's your
18 views on the death penalty?

19 A Well, I like to hear all the circumstances before I
20 make a judgment call on that, and I mean basically that's
21 the way I think about it.

22 Q Uh-huh. (Affirmative).

23 Where you gather your views on the death penalty --
24 where do you gather them from?

25 Is it from personal experience, from the church, from

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1 different things or --?

2 A Just from different things.

3 Q Could you tell me a little bit about those things?

4 A Well, I mean I, I'd like to hear the case, get the
5 whole story on the case before just making a verdict on
6 somebody's life cause you never know the circumstances. I
7 mean I have had a cousin that was brutally murdered and
8 still today they haven't found out how he was killed, but,
9 you know, that's the way it is. That's the way life is.

10 Q Unfortunately you're right. I do understand from the
11 standpoint.

12 who was your cousin that was killed?

13 A His name was Joseph Luna. He was from New York. It
14 was all over the news at one point in time.

15 Q I remember which case you're talking about from there.

16 In looking at -- and I think you've sat on a jury
17 before, is that right --

18 A Yes, sir.

19 Q -- from there?

20 When was that?

21 Do you remember?

22 A That's probably about, probably about ten years ago.

23 Q And there -- was it in this courthouse, in this
24 courthouse?

25 A Yes, sir.

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1 Q Okay. From there.

2 what kind of case was it if I could ask?

3 A It was a rape case.

4 Q Okay. Did either one of us prosecute it?

5 I'm just curious.

6 A No.

7 Q Okay. I didn't know from that standpoint. I just
8 wanted to check from there, from there.

9 In looking at that -- I notice it was not guilty.

10 was there -- what happened in that case that---

11 A It just wasn't enough evidence to prove it.

12 Q I got you from there.

13 In -- I notice you have small children---

14 A Yes, sir.

15 Q --in there?

16 Do you have three children in total if I remember right

17 --

18 A I have three.

19 Q -- from there?

20 Okay. And I believe one goes to the community college
21 and the other two I think they're not in preschool yet, are
22 they?

23 A No.

24 Q They are in day care --

25 A Yeah.

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1 Q -- at this point?

2 Got you from there.

3 Looking at the case, they're, they're gonna be, like
4 the judge says, aggravating circumstances and mitigating
5 circumstances, and one of the aggravating circumstances is
6 the death of a child from that standpoint, and is that
7 something that you could hear and listen to in this case
8 from that standpoint --

9 A Yeah.

10 Q -- from there?

11 Is the situation -- what circumstances would you be
12 looking for concerning the death penalty and things like
13 that?

14 A I mean I would have to look at it, was it like
15 premeditated or things like that. You know, like he had
16 planning on doing it, you know, or something just kept
17 leaving. He just kept doing something over and over.

18 Q But that would be the only case or would there be other
19 cases or --?

20 A Well, probably other cases. I just have to, you know,
21 be as it -- I hear the evidence.

22 Q I got you from there.

23 And like I said, they would present mitigating
24 circumstances, and, of course, I know from what your answers
25 are, you would listen to those too from that standpoint --

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1 A Yes, sir.

2 Q -- from there?

3 But you're not against the death penalty. You're not
4 really for it. You just think it's appropriate in the
5 appropriate situation --

6 A Yes, sir.

7 Q -- from -- and you'd have to listen to the facts in the
8 case --

9 A Yes, sir.

10 Q -- from there?

11 Just take a moment, Your Honor, just to look over --.

12 THE COURT: Yes, sir.

13 Q And I notice you're a forklift driver too, is that
14 right --

15 A Yes, sir.

16 Q -- from there?

17 How long have you worked as a forklift driver?

18 A Four years.

19 Q Okay. And is your brothers truck drivers --

20 A Yes, sir.

21 Q -- on top of that?

22 How long they been driving trucks?

23 A Oh, one's about been 20 years. The other about 18.

24 Q In order to drive a truck you have to have a CDL
25 license, don't you?

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1 A Yes, sir.

2 Q Okay. Do you have a CDL license?

3 A No, sir.

4 Q I didn't know. I know your brothers probably did
5 driving that.

6 One moment, Your Honor, please.

7 THE COURT: Yes, sir.

8 (Pause.)

9 Q Mr. McIntyre, just one or two more questions.

10 At the end of the -- we get through the guilt phase.
11 We get through the sentencing phase, and we get to that
12 point where all 12 jurors go back. They've heard the
13 aggravating circumstances, the mitigating circumstances, and
14 if all 12 have to agree to have -- for the, the death
15 sentence to be imposed. Let's say 11 of them has signed it.
16 They hand you the sheet of paper and they said you need to
17 sign it.

18 Would you -- could you sign it and be the last person
19 to give the death sentence in that case?

20 A Yes, sir.

21 SOLICITOR BARNETTE: Thank you, Your Honor.

22 Thank you, sir, for answering my questions.

23 THE COURT: Mr. McGuire, your juror.

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

25 THE COURT: Yes, sir.

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1 EXAMINATION

2 BY MR. MCGUIRE:

3 Q Good morning, Mr. McIntyre.

4 How you doing?

5 A Morning. Fine. How you?

6 Q My name's Bill, Bill McGuire. I'm one of the lawyers
7 in the case and this is my opportunity to ask you some
8 questions.

9 Okay?

10 A (Witness nods affirmatively.)

11 Q And I apologize for them. Some, some of them might
12 seem personal, but this is our only opportunity to find out
13 what you're thinking.

14 I'm gonna ask you a little bit about -- sort of general
15 thoughts about the death penalty.

16 What are your thoughts about the death penalty in
17 general?

18 A I think it's appropriate when it's, when it's
19 appropriate for.

20 Q Okay. And what was -- what is, what's it appropriate
21 for?

22 A I mean like if someone just, just kept on aggravating
23 somebody or they had it premed, premeditated murder, you
24 know, had always say that they was gonna do it and just, you
25 know, things like that.

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1 Q Okay. Okay. And do you think that the death penalty
2 deters crime?

3 Does it prevent people from committing crime or murder?

4 A No.

5 Q Okay. Do you think life without parole is a severe
6 penalty?

7 A No.

8 Q why is that?

9 A Because I feel if you did the crime you got to do the
10 time.

11 Q Okay.

12 A That's all.

13 Q And I want to put you in that same place the judge put
14 you a little while ago. You and 11 other people convicted
15 somebody of murder. That means beyond a reasonable doubt,
16 you and 11 other people agreed that a person intentionally
17 took the life of an innocent person. It's an intentional
18 killing with malice aforethought. That's how South Carolina
19 describes it, and malice is defined as hostility, hatred,
20 ill will towards somebody, and deliberately trying to harm
21 them under circumstances -- without legal justification or
22 excuse under circumstances where we can infer an evil
23 intent. So, you and 11 other people found that beyond a
24 reasonable doubt.

25 In that situation, what are your thoughts about the

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1 death penalty?

2 A I think it would be appropriate --

3 Q Okay.

4 A -- if they came up to it.

5 Q Okay. So, if you were sure you got the right guy, he
6 meant to do it, the life penalty wouldn't be sufficient
7 enough to punish that type of killing?

8 A No.

9 THE COURT: I think his answer was it was appropriate.
10 Go ahead.

11 MR. MCGUIRE: Yes, sir.

12 Q And I think you just said no, that the life penalty
13 wouldn't be appropriate or severe enough to punish that kind
14 of intentional killing?

15 A I mean it all depends on the evidence.

16 Q Okay. But the evidence is you got the right guy beyond
17 a reasonable doubt.

18 Is the -- is the life penalty appropriate---

19 THE COURT: Well, now, you're -- I've limited you on
20 asking these questions, Mr. McGuire, to also include that
21 there would be mitigating circumstances introduced as well
22 at the, at the sentencing hearing, and so -- and I'm
23 instructing this witness that there would be both types of
24 evidence. So, I'm not gonna allow you, in a vacuum, just to
25 talk about the crime itself. You also -- I've required that

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1 also the witness be made aware that there would be
2 mitigating evidence as well. So, that's been my ruling
3 consistently.

4 MR. MCGUIRE: Thank you, judge.

5 THE COURT: Yes, sir.

6 Q The judge just mentioned mitigating circumstances and
7 very often that is evidence of the defendant, the person who
8 did the killing, their walk in life, their life history, how
9 they grew up, that sort of thing, and some people might take
10 the position, if it's an intentional, deliberate killing of
11 an innocent person, that the background of the killer isn't
12 relevant in fixing punishment between life and death.

13 Does that describe you?

14 A Yes.

15 Q Okay. And, and why is that?

16 A I mean cause I mean -- I just have to look at the
17 stuff. I mean cause you can have a bad life and just get --
18 be in the wrong place at the wrong time.

19 Q Okay.

20 A I mean you could have a good life and be in the, at the
21 wrong place at the wrong time.

22 Q Okay. And so in terms of when, when it comes to fixing
23 that punishment, the -- are you saying that the person's
24 upbringing, their life history, that is or is not important
25 or relevant in deciding that life and death question?

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1 A It's not irrelevant cause you can have the best life
2 experience and just one day snap or, you know, just be
3 caught at the wrong place at the wrong time.

4 Q Okay. It's irrelevant?

5 It's not relevant or is it relevant?

6 THE COURT: He said it's not irrelevant.

7 A It's not relevant.

8 Q It's not relevant.

9 THE COURT: I thought he said it's not irrelevant.

10 MR. MCGUIRE: I'm sorry. That's what I'm trying to
11 figure out.

12 Is it -- does it -- for you, when it comes to fixing
13 that punishment with the life penalty, the death penalty,
14 the background stuff of the defendant, does that, does that
15 factor in there or not?

16 A No.

17 Q No.

18 And -- okay. When -- if you were, if you were on a
19 jury, the -- with regard to the guilt phase, all 12 people
20 would have to agree that the person's guilty, and if there's
21 disagreement, the case would be a mistrial. We'd have to do
22 it again.

23 In a, in a criminal case that's a capital case, a
24 murder case that's a capital case, the penalty phase is
25 different from any other trial that we have in South

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1 Carolina, and it becomes an individual process, and
2 individual jurors can kind of vote their conscience, and
3 they can disagree.

4 Could you agree to disagree with other people?

5 A Yes.

6 Q Okay. The decision making process is actually referred
7 to as an individual moral judgment. It's a personal
8 decision kind of like what religion to be or bring a child
9 into the world. The law is that once somebody reaches their
10 individual moral judgment, that it would -- if it would harm
11 their conscience to come over to the majority just to have a
12 majority, that would be wrong.

13 Could you respect that principle of law?

14 A Yes.

15 Q Okay. The way that works is somebody, another juror,
16 not you, but some other juror could say I saw something in
17 the defendant's life that meant something to me, I want to
18 vote for life for that. Somebody over here could say I saw
19 a relationship with his family members or grandkids or
20 something like that, and that, that's gonna be my reason to
21 vote for life and somebody might say I don't really have
22 words for it cause the judge said we could vote for life for
23 any reason, no reason, or mercy. Can't really put my
24 decision in words, but I'm gonna vote for life cause it just
25 doesn't sit -- the death penalty just doesn't sit right for

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1 me.

2 Can you see how they all have different reasons?

3 A Yes, sir.

4 Q And nobody has to agree?

5 A Yes, sir.

6 Q Is that a principle of law you can respect?

7 A Yes, sir.

8 Q And a process you could, you could have respect for?

9 A Yes, sir.

10 Q Okay. And you would want people to respect your
11 individual moral judgment?

12 A Yes, sir.

13 Q And you would respect theirs?

14 A Yes, sir.

15 Q And if one juror voted for the life penalty, do you
16 understand that the sentence would be life?

17 The judge would take the case and he would sentence to
18 life.

19 Did you know that?

20 A No, sir.

21 Q Okay. That's the way it works. If one person voted
22 for life, and there was disagreement, 11 to 1 even, but if
23 the person said I've reached my individual moral judgment, I
24 want to be respected, I want to have that to be my vote,
25 then the judge would have to take the case and sentence to

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1 life.

2 Is that a principle that you can respect?

3 A Yes, sir.

4 MR. MCGUIRE: Okay. If I could have just one second.

5 THE COURT: Yes, sir.

6 (Pause.)

7 MR. MCGUIRE: That's all I have. Thank you so much,
8 sir.

9 THE COURT: Mr. Barnette, anything further?

10 SOLICITOR BARNETTE: Yes, sir, just a few follow-ups
11 there, Your Honor.

12 THE COURT: Yes, sir.

13 EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q I just want to make sure. I got confused with the
16 questions. So, I'm gonna try not to ask confusing questions
17 from that standpoint.

18 On mitigating circumstances, if presented by the, by
19 the defense, would you give that consideration when you're
20 listening to it in the sentencing phase?

21 A Yes, sir.

22 Q And would you give consideration to the aggravating
23 circumstances?

24 A Yes, sir.

25 Q And you would give consideration to both things before

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1 you made your decision?

2 A Yes, sir.

3 Q Just because we prove our case doesn't mean you are
4 automatically gonna vote death. You're gonna listen to
5 everything before -- and give consideration to everything
6 before you give a life or death sentence, is that right?

7 A Yes, sir.

8 Q And you understand that, as a jury, you can talk to
9 each other, and obviously talk about the evidence, talk
10 about the case. So, all 12 of you can talk to each other
11 before y'all make a decision.

12 A Yes, sir.

13 Q And you understand that?

14 A Yes, sir.

15 Q I know you've been on the jury before. So, you
16 understand that, but I just want to make sure, after what
17 was discussed with you, that, that was clear.

18 A Yes, sir.

19 Q No problem. Thank you, sir, for answering my
20 questions.

21 THE COURT: Anything further?

22 MR. MCGUIRE: Nothing further, judge.

23 THE COURT: All right. Mr. McIntyre, I'll ask you to
24 step back into the jury room. Don't talk about this process
25 with anybody. They all get to find out on their own.

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1 THE WITNESS: Okay.

2 THE COURT: Step back there. I'll call you back there
3 in just a minute.

4 THE WITNESS: All right. Thank you.

5 THE COURT: Thank you, sir.

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

8 THE COURT: Defense position.

9 MR. MCGUIRE: Move to strike for cause. I think his
10 answers revealed he's automatic death penalty if a person
11 intentionally committed the crime. Obviously that's --
12 murder is intentional in South Carolina. He also indicated
13 that he was mitigation impaired, that the background of the
14 defendant, the defendant's life history, so to speak, would
15 not be relevant when it came to fixing---

16 THE COURT: I heard that answer differently than you
17 did, but that's all right.

18 MR. MCGUIRE: And I'd move to strike for cause.

19 THE COURT: Yes, sir, Mr. Barnette.
20 I understand your motion.

21 MR. MCGUIRE: Yes, sir.

22 THE COURT: The same one you make each, each time you
23 object?

24 MR. MCGUIRE: Person's Sixth and Fourteenth Amendment.

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

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1 SOLICITOR BARNETTE: Your Honor, I -- he's qualified.
2 I mean the problem was with Mr. McGuire's questions is he
3 confused him so much. I couldn't even follow him. I mean,
4 you know, and he says not irrelevant. He gave him the
5 answer and everything, and then he goes back and it was
6 obvious the juror didn't understand the question. That's
7 the reason I went -- basically asking a question back to
8 make sure we understood where he stood and he does from
9 there.

10 THE COURT: As always, I'm required to review the
11 entire voir dire. Not just one isolated question. The
12 witness has been a juror before. He participated in a case
13 where the defendant was found not guilty. That doesn't have
14 anything to do with this case cause this is independent
15 other than it shows he does have an understanding of the
16 system. He understand how it works. He indicated, on many
17 occasions, I didn't count them all, but probably 10 or 12,
18 that he would be willing to listen to all factors including
19 aggravating and mitigating circumstances, and so viewing the
20 voir dire as a whole, I find Mr. McIntyre to be qualified.

21 All right. Bring Mr. McIntyre back in.

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

24 THE COURT: All right. Mr. McIntyre, I have found you
25 to be qualified to continue in the process. We're not

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1 picking a jury today. What we are doing is we are preparing
2 a pool from which a jury will be finally picked.

3 So, you're not on the jury yet, and you may not be on
4 the jury, but I do want to tell you some things about what I
5 want you to do from this point forward.

6 The instructions I gave you concerning your behavior
7 continue. They will continue until we have either informed
8 you that you're on the jury or you're released. So, you
9 should not listen to, watch, or read media reports. Don't
10 discuss the case with anyone. Don't allow anyone to discuss
11 it with you. Should anybody try to contact you about your
12 service on the jury, please let us know about that fact, and
13 don't try to gather any information about this case on your
14 own.

15 You understand those instructions?

16 THE WITNESS: Yes, sir.

17 THE COURT: And you said you've been able to follow
18 them.

19 THE WITNESS: Yes.

20 THE COURT: Okay. I want you to continue to follow
21 them. There's a sheet of paper Ms. Camp is gonna give you.

22 Now, that sheet of paper has on it just some reminders,
23 some things you might want to consider because I told you
24 the jury will be sequestered. If you're called back, you
25 might be staying for a little more than a week. I tell you

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1 that we start with the trial, and once we start it we don't
2 stop until we get the case ended. So, we try to take up as
3 little of a person's life as possible in, in this trial, but
4 still have a full and fair hearing of the case.

5 So, it may take a little more than a week for this case
6 to be tried. It may take a little more. It may take a
7 little less. But whatever the attorneys require and the
8 Court feels is necessary we will do.

9 Okay. Now, there's an exception to my ruling. I
10 understand you may need to talk to people at your work or
11 may need to talk to family members about the fact that, if
12 you get the call to come back and be on the jury, then you
13 may be gone for a little while. So, you need -- may need to
14 make some arrangements. So, it's okay for you to talk to
15 people about those, those matters. But do not -- in doing
16 so, do not talk about the case, what the case is about.
17 Just let them know that you have been -- you're in a jury
18 selection process. You may or may not be on the jury, and
19 if you are, you need to make some plans as to what would --
20 if you're gonna be away.

21 Do you understand what I'm saying?

22 THE WITNESS: Yes, sir.

23 THE COURT: Can you follow those instructions for me?

24 THE WITNESS: Yes, sir.

25 THE COURT: Now, we will get in touch with you next.

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1 You won't -- you don't need to call us unless somebody tries
2 to bother you about your service on the jury. But you
3 don't -- we will call you when we, when we next need, need
4 to deal with you and we'll give you instructions at that
5 time as to what to do.

6 So, do you understand what we're gonna go?

7 THE WITNESS: Yes, sir.

8 THE COURT: I suspect this preparing the jury pool
9 thing is gonna take probably into next week. So, we'll
10 probably be calling you sometime I would think before
11 wednesday, but maybe not. We'll see how that goes. But you
12 will get a call from us next as to what to do next.

13 You understand where we are?

14 THE WITNESS: Yes, sir.

15 THE COURT: And you're gonna follow my instructions?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. The bailiffs will check you
18 out. You're free to go.

19 THE WITNESS: All right.

20 THE COURT: Thank you for your help this morning.

21 THE WITNESS: Thank you.

22 (WHEREUPON, the following takes place outside the
23 presence of the juror.)

24 THE COURT: All right. Court's gonna take about a ten
25 minute break.

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1 Court's in recess.

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

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

4 SOLICITOR BARNETTE: State's ready, Your Honor.

5 THE COURT: Is defense ready?

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Patrick Cont.

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

10 PATRICK CONT, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Hi. Have a seat please, sir.

15 A (Witness complies.)

16 Q All right. Your name I believe is Patrick Cont, is
17 that right?

18 A That's correct.

19 Q All right. Mr. Cont, there's some things that I'm
20 going to go over with you this morning. This is not
21 designed very well for this purpose. So, you may need to
22 slide back or turn to be able to face me.

23 The -- we're going to be asking some questions of you.
24 I say we. I'll ask first. The attorneys will be given an
25 opportunity to ask questions of you as well.

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1 I will tell you now there are no right or wrong answers
2 to these questions. There's only your answers and they have
3 to be honest answers. In that regard, I'll remind you that
4 you were placed under oath on Monday. You remain under oath
5 for this discussion.

6 Do you acknowledge that?

7 A Yes, I do.

8 Q All right. Also I asked you some questions -- not
9 asked you. Gave you some directions on Monday concerning
10 your behavior in relationship to this case.

11 You remember those instructions?

12 A I do.

13 Q They included such things as not gathering any
14 information on your own, not listening to or watching or
15 reading media reports, not discussing the case with anyone,
16 and not allowing discussion with you about the case.

17 Have you been able to follow those directions?

18 A I have.

19 Q Now, let me just ask you, in that regard, are you the
20 kind of individual who could, if you had heard anything
21 outside of the courtroom that might, in anyway, have
22 anything to do with the issues in this case or what might be
23 going on, could you come into the courtroom and decide this
24 case based upon the law and the evidence as given to you in
25 the courtroom during the trial?

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1 A Yes, sir.

2 Q Now, have you ever participated in any type of
3 discussion, I call them forums, let's say Internet chat
4 rooms, blogs, places where people meet to discuss things, in
5 which the subject of the discussions might have been the
6 death penalty?

7 A No.

8 Q Have you ever been involved in any political activity
9 in that regard such as demonstrations, writing letters to
10 the editor, writings letters to members of the Legislature,
11 Congress, things like that?

12 A No.

13 Q Now, back in the jury room there was a list of people,
14 a long -- I guess three page list of names. Those are
15 people who've been identified to me as possible witnesses in
16 the case. I don't expect all of them to testify, but we'll
17 assume, for purposes of our discussion, that they are all
18 gonna testify.

19 In reading over that list, did you notice anyone who
20 you may have ever been related to by marriage or related to
21 by blood or did you notice anyone that you may have had a
22 close social, personal, or business relationship with?

23 A Not a close.

24 Q Okay. Is there someone you are acquainted with?

25 A Doctor Wren.

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1 Q Okay. He is the pathologist at Spartanburg Regional.

2 So, you have met him or know him?

3 A Yes.

4 Q Now, let's assume that he's gonna be a witness in the
5 case, and let's assume you were a juror in the case.

6 would the fact that he testified, would that affect
7 your ability to be fair and impartial to both the State and
8 the defense in this matter?

9 A Not at all.

10 Q Okay. Now, I'm going to go over some basic concepts
11 with you and I might -- I may be kind of whistling in the
12 wind on this with you, but I have to go over these things
13 with you.

14 The first thing I want to mention to you is that my
15 discussion with you today, and I'm sure the attorneys at
16 some point in time will get around to the penalties that
17 are, that are asked for in this case, and, to a certain
18 extent, we are putting the cart before the horse, and I want
19 to be sure you have an appreciation of that.

20 A Okay.

21 Q This case would be bifurcated, which means it will be
22 two different trials. The first will have to do with
23 whether or not the defendant is guilty or innocent of the
24 crimes that have been charged. If the defendant were to be
25 found guilty of the crime of murder, the State has requested

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1 the imposition of the death penalty. Because of that, the
2 same jury that would of heard the guilt phase of the trial
3 would be then asked to consider the appropriate penalty
4 that's involved.

5 Now, in talking about the penalty that's involved,
6 we're doing that without ever knowing whether or not we'll
7 get to that stage of the trial. A defendant is always
8 presumed to be innocent. The defendant has the right to
9 present a defense if the defendant chooses to. The fact
10 that we're talking about the penalty phase of this trial
11 during our discussions should not be taken by anyone as a
12 reflection on the defendant or his case in this matter. It
13 is simply the only time that we have an opportunity to talk
14 about the entire case, including the possible penalties,
15 because we can't stop in the center of the trial and, and
16 reconstitute the jury when the law requires the same jury to
17 hear both sides of the case.

18 So, do you understand what I'm saying?

19 A I do.

20 Q You understand why I'm saying that?

21 A Yes, I do.

22 Q Okay. Now, a couple of basic legal principles I'm
23 going to go over with you. It shouldn't take just a minute,
24 but I want to be sure we -- you understand that.

25 If you were a juror, would you be willing to accept the

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1 law as given to you by the judge?

2 A Yes, sir.

3 Q Would you be willing to accept the law as given to you
4 by the judge and then apply that law to the facts as the
5 jury determines it because the jury's the sole judge of the
6 facts?

7 A Yes.

8 Q Now, would that be true even though if -- let's say
9 during the charge on the law, and this is in any case, not
10 just this one, if you were in the jury and the judge charged
11 you with the law to be applied let's say in a shoplifting
12 case, and you heard the law, and as you were listening to
13 the law you might say well, I don't necessarily agree with
14 what he just said or maybe I don't think that's the way the
15 law ought to be, it ought to be different, are you the kind
16 of person who could set aside those personal misgivings
17 about the law and accept the law as given to you by the
18 judge and apply it to the facts as determined by the jury?

19 A I certainly would try.

20 Q Okay. Do you think you could do that?

21 A I think so.

22 Q Okay. Now, I have a couple of other basic matters in
23 criminal law I want to talk to you about. Under the -- and
24 I touched on it just a minute ago when I talked about
25 Mr. Blackwell and his case.

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1 Under the law, no matter what the seriousness of the
2 crime might be, a defendant is always presumed to be
3 innocent of that crime until that crime has been proven to
4 the jury by proof beyond a reasonable doubt.

5 So, do you understand that a defendant is always
6 presumed to be innocent?

7 A Yes.

8 Q And because of that presumption, a defendant is not
9 required, at a criminal trial, to present any evidence if
10 the defendant chooses not to because there's a presumption
11 of innocence.

12 A Right.

13 Q Do you understand that?

14 A Absolutely.

15 Q Now, do you also understand that, therefore, the
16 defendant has no burden of proof in a criminal trial. In
17 other words, the Court does not require a defendant or would
18 never require a defendant to prove himself innocent because
19 he is presumed to be innocent.

20 Do you understand that concept?

21 A Yes, sir.

22 Q And can you accept all of those things I just
23 mentioned?

24 A Yes, sir.

25 Q By the same token, the State brings the charge. So,

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1 therefore, the State has the obligation or the burden of
2 proving the charges beyond a reasonable doubt, by proof to
3 that level. So, the State is the only party in a criminal
4 proceeding that has any burden of proof.

5 Do you understand that concept?

6 A I do.

7 Q I'm gonna take it a step further.

8 Let's say you were on that shoplifting case jury, and,
9 and you listened to all of the evidence, all the facts, the
10 judge charged you concerning the law, and you and your
11 fellow jurors determined that the State had not proven its
12 case beyond a reasonable doubt. It had not met its burden
13 of proof.

14 would you have any difficulty in signing a not guilty
15 verdict in that situation?

16 A No.

17 Q And by the same token, the same case, however the jury
18 decides the State had met its burden of proof, it had proved
19 the case beyond a reasonable doubt.

20 would you have any misgivings in signing a guilty
21 verdict against a defendant in that situation?

22 A Not at all.

23 Q All right. Now, I take it then that you would be the
24 kind of person that would want to weigh the evidence, the
25 strength of it, the value of the evidence, take the law,

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1 apply the law to the evidence, and reach a verdict based on
2 the strength of the evidence, is that correct?

3 A That's correct.

4 Q Now I'm going to get into talking a little bit about
5 where I told you I was gonna go, and that is some, some
6 matters concerning the penalty that's involved in the case.

7 I told you earlier the case is bifurcated. There's two
8 different trials. The first trial is simply concerning the
9 guilt or the innocence of the defendant concerning the
10 charges. So, the evidence presented, at that particular
11 hearing, would be evidence that bears on that question, is
12 the defendant guilty or not guilty of the crime charged.

13 The second part of the trial, if a guilty verdict is
14 rendered on the murder charge, we get into what's called the
15 penalty phase of the trial or the sentencing phase as has
16 been referred to, and that is the, the jury returns to
17 consider the appropriate penalty.

18 Now, the statute that sets up that second hearing
19 provides for evidence of either aggravating matters or
20 mitigating matters. I want to be sure we have an
21 understanding of what we're talking about in that regard.
22 The aggravating factors -- and there's a list of them in the
23 statute of possible aggravating factors. The State has to
24 prove at least one of them to be able to go forward on the
25 death penalty, but, at any rate, there's a list of those

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1 aggravating factors and those are all factors that would
2 perhaps tend to cause a juror -- a jury or a juror to go
3 toward the more severe sentence in this case.

4 The statute also has a list of mitigators and it's a
5 fairly long list of things that would serve to mitigate
6 someone's either culpability for the crime cause they been
7 found guilty of the crime. But their, their criminal
8 responsibility for that crime or factors that a jury might
9 want to consider in deciding the severity of the punishment,
10 and those factors might tend to lessen the severity of the
11 punishment. So, the statute provides that both types of
12 evidence can and will be presented to the jury and the jury
13 would have that information in making the decision.

14 So, do you understand what we're talking about---

15 A I do.

16 Q ---as far as aggravators or mitigators?

17 A I do.

18 Q And the judge would instruct the jury, once all that
19 evidence had been presented to the jury, the instruction
20 from the Court would be for the jury to consider those
21 factors, aggravators and mitigators, and to then recommend
22 an appropriate punishment for Court. So, that would be the
23 charge the jury would have in that process.

24 Now, so you have an understanding of what that hearing
25 is about?

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1 A I do.

2 Q I want you, in your mind, to put yourself in this
3 position, this position.

4 Let's say that you have been selected as a juror in a
5 criminal case, and, in that criminal case, the State is
6 alleging murder and is requesting the death penalty.

7 Let's say you and your fellow jurors have tried the
8 first half of that case and you have found, beyond a
9 reasonable doubt, that the defendant is guilty of the crime
10 of murder. So now the question becomes what is the
11 appropriate penalty to be given. So, you and your fellow
12 jurors are about to walk back into the courtroom to start
13 that second part of the trial, the penalty or sentencing
14 phase of the trial.

15 You understand where I put you?

16 A Absolutely.

17 Q Back on the table in the jury room there was a paper
18 that had three different jurors described.

19 You remember the piece of paper?

20 A I do.

21 Q I'm going to go over those people with you briefly just
22 so that we have an understanding of which one is which.

23 All right. The first one I described on that piece of
24 paper, that's a juror who, before he ever sets foot in that
25 courtroom for that second hearing, that juror would of

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1 already made up his mind. That juror believes that anytime
2 anyone is convicted of the crime of murder, the intentional
3 killing of an innocent person with malice aforethought or
4 under circumstances where the law might infer malice, so
5 that person's been found guilty of that crime, so that
6 person believes that in every case, no matter what the, the
7 aggravators are or what the mitigators are, that person
8 believes the only appropriate penalty is the, is the death
9 penalty, and will always, every time, vote for the death
10 penalty.

11 Do you understand that juror?

12 A I do.

13 Q Juror number two is coming into the courtroom and that
14 juror has already made up his or her mind as well. Now,
15 that juror believes that it's never appropriate for the
16 state to take a life in response for a crime, and so that
17 juror will not consider the aggravating circumstances or the
18 mitigating circumstances. That juror will, every time, vote
19 for life imprisonment without the possibility of parole.

20 You understand that juror?

21 A I do.

22 Q The third juror I described on that piece of paper has
23 not made his or her mind up. That juror wants to come into
24 the courtroom and they want to hear the evidence on the list
25 of statutory aggravators. They want to hear the evidence on

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1 the list of statutory mitigators, and I will tell you, while
2 there's a list in the statute of matters that might mitigate
3 the crime, there's also -- the statute says the jury can
4 consider any factor it wants to in mitigation and can even
5 go so far as to consider mercy. So, there's, there's that
6 full range.

7 But anyway, that second juror that's coming into the
8 courtroom believes that -- I mean the third juror that's
9 coming into the courtroom wants to listen to the aggravating
10 evidence, the mitigating evidence, listen to the judge's
11 charge concerning that matter, and then go back into the
12 jury room, and with the fellow jurors, determine what the
13 appropriate punishment is.

14 So, that's the three jurors I've described back there.

15 Do you remember those folks?

16 A I do.

17 Q Now, I told you to imagine you were also on that same
18 jury. You're about to walk back into the courtroom.

19 So, as you're walking into the courtroom, which one of
20 those three people I described would best describe you
21 walking in?

22 A Would best describe---

23 Q Yeah.

24 A ---or most describe?

25 Q Number one, number two, or number three.

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1 A Probably number one.

2 Q So, you believe that the only appropriate penalty would
3 be the death penalty?

4 A You, in your instructions---

5 Q Yeah, I'll---

6 A ---and description you mentioned, in every -- each and
7 every case -- I would say each and every case, but it would
8 be close to that.

9 Q Then you---

10 A I would certainly listen to mitigating factors.

11 Q Well now then I don't -- you're giving me some -- a
12 mixed message here.

13 A I am. I am.

14 Q And so I want you to, I want you to tell me which one
15 though would best describe you, and you think it's number
16 one?

17 A I'd have to say that.

18 Q Okay. All right.

19 State wish to ask questions?

20 SOLICITOR BARNETTE: No, sir.

21 THE COURT: Defense wish to ask questions?

22 MR. MCGUIRE: No, sir.

23 THE COURT: All right, sir. Then I'm gonna release you
24 from any further responsibility in the case. The bailiffs
25 will check you out. Thank you for your cooperation in the

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1 matter.

2 THE WITNESS: Thank you.

3 (WHEREUPON, the following takes place outside the
4 presence of the juror.)

5 THE COURT: Based on his responses, I find Mr. Cont to
6 be not qualified.

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: All right. Next is Frances, I believe it's
9 Vensel, V-E-N-S-E-L.

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

12 FRANCES VENSEL, having been previously
13 sworn, testified as follows:

14 EXAMINATION

15 BY THE COURT:

16 Q Ma'am, have a seat please.

17 A (Witness complies.)

18 Q Thank you very much.

19 I believe your name is Frances, Frances -- and it is
20 vensel?

21 A Yes.

22 Q Did I say it right?

23 A Yes, sir.

24 Q Well, good. I got lucky on that one. You might want
25 to slide back a little bit.

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1 A Oh sure.

2 Q This is designed not for this process. So, I have to
3 get people to move back so I can see while I'm talking to
4 me.

5 A No worries.

6 Q Because what we're gonna do this, this -- I guess we're
7 still morning. We're going to be going over some things
8 with you. I'll be doing most of the talking to begin with
9 and asking most of the questions. At some point in time
10 I'll allow the attorneys to ask questions of you if we, if
11 we get to that position.

12 But now, as we go through this and we're going to be
13 asking you questions, I want, first of all, to tell you
14 there are no right or wrong answers to the questions we're
15 going to ask. This is not a quiz or a test. What we're
16 seeking to do is to get some information from you, honest
17 information. That information will assist us in ultimately
18 selecting a jury in this case. We're not picking the jury
19 today. We are deciding who is qualified to go into the pool
20 for jury selection.

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

22 A Yes, sir.

23 Q I don't want you to feel threatened by this. I -- that
24 seat right there is the witness stand in my courtroom, and
25 that's usually the hot seat. People get on there and --

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1 it's not gonna be that way today. I'm sure you'll be
2 treated with respect from both sides in the case, and so
3 that's -- this is simply an information gathering process.

4 Do you understand that?

5 A Yes, sir.

6 Q You have any problem with cooperating in that?

7 A Oh, no.

8 Q Okay. Now, when you left the courthouse on Monday you
9 had taken an oath to tell the truth.

10 Do you remember that?

11 A Yes, sir.

12 Q That oath still applies to this communication both with
13 the Court and with the attorneys.

14 Do you understand that?

15 A Yes, sir.

16 Q And do you acknowledge that?

17 A Yes, sir.

18 Q Also, when you left the courthouse on Monday, I had
19 given you some instructions concerning how I wanted you to
20 behave in relationship with this case while you're away from
21 the courthouse.

22 Do you remember my instructions?

23 A Yes, sir.

24 Q And I will just briefly go over it with you. I
25 instructed the jury, the entire jury, not to try to gather

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1 any information on your own.

2 A Uh-huh. (Affirmative).

3 Q Not to listen to, watch, or read any media report about
4 the case, not to discuss the case with anyone, not to allow
5 anyone to discuss the case with you. And if someone should
6 of contacted you or might have contacted you about the case,
7 please report that to us.

8 Have you been able to follow my instructions?

9 A Yes, sir.

10 Q And so you've been able to comply with what I asked you
11 to do?

12 A Yes, sir.

13 Q Now, in that regard, and I'm not talking about anything
14 in particular right now, but do you feel that you would be
15 the kind of juror, if you were on a jury, that you could set
16 aside anything that you might have heard that pertained to
17 the case on the outside or anything that in anyway related
18 to any issue that might be in the case and, and decide the
19 case based upon the law and the evidence that would be
20 presented to you during a trial?

21 A Yes, sir.

22 Q So you think you could do that?

23 A Yes, sir.

24 Q All right. Now, ma'am, back there in the jury room
25 there was a list of people. About three pages.

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1 A Uh-huh. (Affirmative).

2 Q Did you read over that list?

3 A Yes, sir.

4 Q Now, those are people that have been identified to me
5 as a, as a group of people who might be witnesses in this
6 case.

7 A Uh-huh. (Affirmative).

8 Q I don't think that all of them are gonna testify, but I
9 do think that most of them or some of them will. And so
10 we're gonna assume that they all are gonna testify for this
11 question.

12 As you read over that list, did you see anybody that
13 you feel or remember that might be -- have been related to
14 you by marriage at anytime or are they related by blood or
15 have you -- is there anybody on there that you might of had
16 a social, business, or personal relationship with?

17 A No, sir.

18 Q So, you didn't recognize anybody on there that would
19 affect you in your service as a juror?

20 A No, sir.

21 Q Okay. Now, I want to mention one thing to you at this
22 point in time. I mentioned to the jury on Monday, I don't
23 know if you remember it, but I'll go back over it with you.
24 This case is one in which the State is seeking a possible
25 death penalty at the end of the trial, and, if the case

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1 proceeds as it should under the law, there would be a
2 hearing on the question of guilt or innocence of the charges
3 that have been brought. There's two charges. So, the, the
4 state would, would present evidence and the jury would
5 decide if the defendant was either guilty or not guilty.

6 Now, if the defendant were to be found guilty on the
7 charge of murder, the State has requested the death penalty
8 in this case, which means there would be a separate trial
9 held by the same jury, however, that heard the first part of
10 the case, and that jury then would receive evidence
11 concerning the appropriate penalty to be had.

12 What I'm trying to point out to you is we're gonna
13 start asking questions. Some of the questions may deal with
14 that penalty phase of the trial.

15 A Uh-huh. (Affirmative.)

16 Q I want to point out to you that the defendant, in this
17 case, as the defendant in every case, is presumed to be
18 innocent however, and is never guilty of an offense until
19 the jury finds the defendant guilty. That hasn't happened.
20 May not happen in this case. But because the same jury
21 would -- in this case would hear the beginning of the trial,
22 the penalty, the guilt or innocence part and the penalty
23 part, if we're gonna talk to you about your, your position
24 in regard to matters involving the penalty we have to do it
25 now. We can't wait until the case is started and then

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1 change the jury around because it's going to be the same
2 jury.

3 A Uh-huh. (Affirmative).

4 Q What I'm trying to point out to you is the fact that
5 we're talking about the penalty today, in some of our
6 questions, should not be in -- should not give any adverse
7 reflection upon the defendant. It shouldn't be an adverse
8 reflection upon his case in this matter. It is simply the
9 only time that we can talk about the entire trial, both the
10 first part of the trial, the guilt phase, and the penalty
11 phase.

12 Do you understand what I'm saying?

13 A Yes, sir.

14 Q And do you appreciate that concept?

15 A Yes.

16 Q Okay.

17 A I do.

18 Q Now, I want to go over a few things about jury service
19 with you and some of them are very basic.

20 For purposes of my next few questions, let's pretend
21 that you've been selected on a jury. Let's say the case
22 involves shoplifting or something like that. It doesn't
23 involve anything to do with this case, and I'm gonna get
24 your understanding and ideas about some basic concepts about
25 your law so -- I'm sure you may understand these things, but

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1 we'll talk about it.

2 If you were a juror in a case, would you be willing to
3 accept the law as given to you by the judge?

4 A Yes, sir.

5 Q By -- in accepting that law then -- and let me preface
6 this by saying in every criminal case that comes into this
7 courtroom the jury is the judge of the facts. In other
8 words, the jury determines what happened, how it happened,
9 when it happened, that -- they all -- always determine what
10 the facts are in any case. So, the jury is the judge of the
11 facts.

12 So, when I'm getting back to is that, would you, as a
13 juror, be willing to accept the law as the judge gives to
14 you and then apply it to the facts as the jury determines
15 those facts to be in reaching a verdict in a case?

16 A Yes.

17 Q I'm gonna throw in a little twist and see what your
18 feeling is here.

19 A Okay.

20 Q Let's say that you were sitting in the jury box in that
21 trial, and you're listening to the judge charge you on the
22 law, and as you're listening to the judge charge the law,
23 you might hear some -- hear him say something that maybe you
24 disagree with, you didn't understand the law is that way,
25 you thought the law was some other way, but the judge tells

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1 you this is the law, he charges you with the law.

2 Are you the kind of person who could set aside those
3 misgivings or, or personal beliefs and take the law exactly
4 as the judge gave it to you and apply it to the facts as the
5 jury decides the facts in reaching a verdict?

6 A I believe so, yes, sir.

7 Q So, you think you could compartmentalize to the point
8 where you just took what the judge said and apply it in a
9 case?

10 A If you told me what the law was and how I was to apply
11 it, yes.

12 Q You would follow it?

13 A Yes, I would do that.

14 Q You would follow that?

15 A Uh-huh. (Affirmative).

16 Q Okay.

17 A Yes, sir.

18 Q Now, I'm gonna ask you about some basic legal concepts
19 to be sure that you understand them and you don't have any
20 problem with those concepts concerning the law.

21 I mentioned just a few minutes ago about the defendant
22 in this case, Mr. Blackwell, and it's true about every
23 defendant, that all defendants in -- under our system are
24 always presumed to be innocent.

25 Do you understand that that's a basic concept in our

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1 law?

2 A Oh, yes, sir.

3 Q And do you agree with that?

4 A Yes, sir.

5 Q And because of the fact that a defendant is presumed to
6 be innocent, a defendant is never required then in a trial
7 to prove his innocence because the law presumes he's
8 innocent.

9 So, do you understand that concept --

10 A Yes.

11 Q -- that a defendant is never required to prove his
12 innocence---

13 A Yes, sir.

14 Q ---in a case?

15 Now, take it another step, if -- a defendant is
16 presumed to be innocent by the law. The defendant does not
17 have any burden of proof during a criminal trial. In other
18 words, a defendant, because he's not required to prove his
19 innocence, is presumed to be innocent, has no obligation to
20 prove anything during a trial.

21 Do you understand that concept?

22 A Yes, sir.

23 Q And can you accept that concept?

24 A I think so, yes, sir.

25 Q Okay. Now, the next step is the State is the entity

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1 that brings the charges. They, they allege the charges, and
2 our, our law then places the burden on the State --

3 A Yes.

4 Q -- to prove the defendant's guilt and that burden is to
5 prove guilt beyond a reasonable doubt.

6 Do you understand that concept?

7 A Yes, sir.

8 Q And do you agree with that concept?

9 A Yes, sir.

10 Q All right. I'm gonna take it another step further.

11 Let's say that you're on that jury I talked about. You
12 and your fellow jurors have heard all the evidence. The
13 judge is charged you with the law to be used in the case,
14 and you go back into the jury room. And after your
15 deliberations, you, you come to the conclusion or the jury
16 comes to the conclusion that the State has not proven guilt
17 beyond a reasonable doubt. So, the State didn't meet its
18 burden of proof.

19 would you have any difficulty in signing a verdict
20 finding a defendant not guilty in those situations?

21 You understand where you are?

22 A Yeah. Yeah, I think so. I mean---

23 Q So, you could sign a verdict saying not guilty?

24 A Yes.

25 Q So, the State did not meet its burden.

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1 Could you do that?

2 A Yes.

3 Q Now, by the same token, flip the coin over, let's say
4 that the State did meet its burden of proof, proved it
5 beyond a reasonable doubt. The jury's agreed that that's
6 what happened --

7 A Uh-huh. (Affirmative).

8 Q -- could you sign a document that would find the
9 defendant guilty of a crime?

10 A Yes, sir.

11 Q So, it sounds like to me that you believe you're the
12 kind of juror who could find that -- a person either guilty
13 or not guilty based upon the weight, the value, the truth of
14 the evidence that you've heard during the trial, coupled
15 with the law given to you by the judge?

16 A I believe so, yes, sir.

17 Q So, you think you could do that?

18 A Uh-huh. (Affirmative).

19 Q All right. Now, ma'am, I'm, I'm going to now talk to
20 you a little bit about the penalty phase of this trial, and
21 explain some concepts to you about that.

22 I've explained to you that we have a guilt trial --

23 A Yes.

24 Q -- to determine whether the defendant is guilty or not
25 guilty of the charges. If the defendant were to be found

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1 not guilty, that's the end of the case. It's over. If the
2 defendant is found guilty on the charge of murder, then the
3 separate trial is held for -- to determine the penalty or
4 the appropriate sentence.

5 In that trial, the issues are different than in the
6 first trial.

7 A Okay.

8 Q The first trial had to do with whether or not he
9 committed the crime and whether he -- the State is proven
10 its case. The second trial though is to determine the
11 appropriate penalty that's involved. So, there's different
12 types of evidence that come in in that part of the trial.

13 The statute that sets up that phase of the trial talks
14 in terms of two different types of evidence. One type of
15 evidence is what are called statutory aggravating
16 circumstances, and there's a list in the statute of, of the
17 circumstances that, while a murder's been committed, might
18 tend to make that crime more, make the, make the punishment
19 more severe based on those factors if they exist, and I'll
20 tell you, in these cases, the law requires the State must
21 prove at least one of those aggravating circumstances out of
22 that statute in order for the death penalty to be a
23 possibility.

24 A Uh-huh. (Affirmative).

25 Q So, there's a list of those things in the statute as to

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1 what the State would, would prove as to aggravation.

2 There's also a list in that statute of factors that
3 would be mitigating factors. Those are factors that
4 would -- a jury, when listening to those, may, may consider
5 them in giving the lesser level of penalty. Things that
6 might somehow reduce the culpability of the defendant or, or
7 explain his, his conduct such that a jury might give him a
8 lower sentence rather than the higher sentence.

9 So, do you understand what I'm saying by aggravating
10 evidence and mitigating circumstances --

11 A I think so, yes, sir.

12 Q -- that would come into that case?

13 A Uh-huh. (Affirmative).

14 Q Now, once that evidence has been presented to the
15 judge, I mean to the jury, the judge then instructs the jury
16 to consider that evidence, aggravating evidence and
17 mitigating evidence, in going back into the jury room,
18 deliberating about those factors, and making a
19 recommendation back to the, to the Court as to the
20 appropriate penalty and the appropriate penalties would be
21 either the death penalty or life imprisonment without the
22 possibility of ever being paroled and that is what that
23 means. Someone would go to jail and stay there.

24 So, do you understand that phase of the trial?

25 A I think so.

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1 Q Okay. Now, I want you to imagine something in your
2 mind for just a second.

3 Let's say that you are a juror. You've been selected
4 in a case. That case is a trial for murder. The State is
5 seeking the death penalty in that case. You and your fellow
6 jurors have heard the first phase of the trial, the evidence
7 as to guilt or innocence, and the jury has determined and
8 issued a verdict finding the defendant guilty of the crime
9 of murder. So, we've got a situation where the defendant
10 has been convicted of that crime.

11 We're now getting ready to walk into the courtroom to
12 start the second phase of the trial.

13 A Uh-huh. (Affirmative).

14 Q The second phase of this trial, by statute, is the
15 hearing where the jury would receive evidence concerning the
16 appropriate penalty and then make a recommendation.

17 So, do you understand where we are --

18 A Yes.

19 Q -- and if you're on that jury, where you are?

20 A Uh-huh. (Affirmative).

21 Q Now, I want you to imagine walking down the hallway,
22 getting ready to walk back into the courtroom to start the
23 hearing concerning the possible sentence, the sentencing
24 phase.

25 There was a sheet of paper that I laid down on the

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1 table back there and asked all people, before they come in,
2 to read it.

3 Did you read it?

4 A Yes, sir.

5 Q It described three different jurors, and I'm going to
6 go back over those so that you and I have an understanding
7 as to which ones are which.

8 Okay. The first juror described on that piece of
9 paper, before that juror ever walks through the door to come
10 into the courtroom, that juror's already made up his or her
11 mind. They don't really need to go to that hearing because
12 that particular juror believes that, every time someone is
13 convicted of murder, that the only appropriate penalty is
14 the death penalty, and, therefore, regardless of what the
15 mitigating evidence that's put in, that jury will -- juror
16 will always vote for the death penalty.

17 The second juror I want to describe is already made his
18 or her mind up as well. That juror believes that it's never
19 appropriate for the State to take a life in response to the
20 commission of a crime, no matter what the crime is, no
21 matter how serious it is, no matter what the aggravating
22 circumstances is -- are. That juror is always gonna vote
23 for life imprisonment without the possibility of parole.
24 Those two jurors have made up your minds.

25 The third juror is someone who's walking back into that

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1 courtroom. That juror has not yet made up his or her mind.
2 That juror could vote for life imprisonment or for death
3 based upon the evidence that's heard in that hearing, and,
4 depending on the factors, aggravating factors and depending
5 on the mitigating factors, plans to make a decision based
6 upon those factors and the law as charged to them by the
7 judge during that part of the trial.

8 Do you understand the three different jurors I just
9 described?

10 A Yes, sir.

11 Q Okay. Now, I asked you to, in your mind's eye, imagine
12 that you're also in that line of jurors walking back into
13 the courtroom.

14 Of the three jurors I just described, which one would
15 most closely resemble your feelings as you walked into the
16 courtroom?

17 A I've been puzzling over this question in my mind while
18 we're waiting.

19 Q Uh-huh. (Affirmative).

20 A If the defendant was found guilty at that point walking
21 into the courtroom---

22 Q We're presuming that we've completed---

23 A ---and it's already done that---

24 Q Yeah, the jury -- the defendant has been found guilty.

25 A But you're telling me that you're gonna give me a list

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1 of mitigating factors, and it would determine what the
2 proper sentence is?

3 Q Well, the -- let me -- you've got a little question
4 about that. Let me explain to you what that is. These are
5 factors that the law has said a jury can consider in making
6 that decision. There's probably no way that that decision
7 can be calculated on a piece of paper. In other words, it's
8 not as -- it is -- in fact, the law says that a, a juror --
9 I mentioned -- there's a set of mitigating factors, but the
10 jurors, jurors can consider not only those mitigating
11 factors, but any other factor a juror thinks ought to go
12 toward mitigation, and a jury can also consider the question
13 of simple mercy.

14 A Right.

15 Q So, there's -- so, the -- while there's a set list, a
16 list of aggravating circumstances, the mitigating,
17 there's -- that's a list, but then it's kind of open ended
18 as far as what a jury can do.

19 So, do you understand that, that?

20 So, it's up to the jury to decide. There would -- the
21 judge would charge concerning the law, what you should
22 consider, and the charge would be that you would have to
23 consider both aggravating and mitigating circumstances in,
24 in making a determination as to what you feel is the
25 appropriate penalty. So, that's the charge, but I can't

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1 give you a formula as to if you find two aggravators and two
2 mitigators --

3 A Uh-huh. (Affirmative).

4 Q -- that that automatically means you have to do either.

5 A Right.

6 Q It's up to the jury to make that decision. So, I can't
7 tell you that that's what would happen. For purpose of the
8 hearing though is to give the jury information that tends to
9 make the crime worse or information that tends to lessen the
10 defendant's culpability, and give that information to a jury
11 to consider.

12 A Okay.

13 Q And that's the, the statute talks about the fact that
14 the Court would instruct the jury to consider both in
15 reaching a decision.

16 A Uh-huh. (Affirmative).

17 I think I would probably be more leaning towards the
18 one that would be for the death penalty.

19 Q So, you think you would be one who would more than
20 likely, regardless of the situation---

21 A Uh-huh. (Affirmative).

22 Q -- regardless of the factors, would always vote for the
23 death penalty?

24 A Uh-huh. (Affirmative).

25 THE COURT: Okay. Any further questions from the

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1 defense?

2 MR. MCGUIRE: No, sir.

3 THE COURT: Any from the State?

4 SOLICITOR BARNETTE: Just a couple, Your Honor.

5 THE COURT: Yes, sir.

6 EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Good morning, ma'am.

9 A Hi.

10 Q I'm Barry Barnette, and Derrick Bulsa with me, we're
11 representing the State. I just wanted to ask you a couple
12 questions cause, like I said, the judge asked you. I just
13 want to make sure that we're clear from there.

14 You said you had a leaning.

15 Do you feel like you're in any one of those three
16 categories or --?

17 A I think I'm -- I think I'm in the top, the first
18 category probably. Well, I don't, I don't think that I
19 would come in -- I think, at that point, I would be more in
20 the first category honestly. I feel like if, if the guilty
21 sentence had been given, the State is allowing for the death
22 penalty, and I would probably go that direction.

23 Q But you understand, and I think the judge was
24 explaining this to, you don't automatically have to go to
25 the death penalty.

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1 A Uh-huh. (Affirmative).

2 Q The death penalty is never automatic. It's a situation
3 where you'd have to look, you know, you have mitigators as
4 well as aggravators. That's put up there.

5 A Uh-huh. (Affirmative).

6 Q Things that, that will heighten the crime to maybe to
7 the death penalty level, and things that may mitigate it to
8 the lower level, life without parole.

9 A Uh-huh. (Affirmative).

10 Q So, I'm saying it's not something that you have to do
11 just cause they're found guilty from there.

12 A Uh-huh. (Affirmative).

13 Q And the law won't tell you. I mean you could -- you
14 never have to find the death penalty. You -- the law will
15 never tell you that. That's something that you have to
16 determine based off the evidence.

17 A Uh-huh. (Affirmative).

18 Q Basically, the law will tell you, you know, it's a
19 situation where all 12 jurors have to agree on the
20 aggravator from that standpoint.

21 A Uh-huh. (Affirmative).

22 Q The thing is I don't want you to feel like, if it's
23 guilty, you automatically have to do that.

24 Is that the way you feel?

25 A To some degree, yes, I do I think.

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1 Q Okay.

2 A I can see -- I could see where I may -- the mitigators
3 would have to be huge --

4 Q Uh-huh. (Affirmative).

5 A -- in my opinion to really sway me to that side.

6 Q I guess is the better question, and the---

7 A So, as the prosecutor, and as the defense, the defense
8 attorney, the defense attorney would be bringing forward
9 those mitigators, is that correct, and then the prosecutors
10 would bring, be bringing forward the aggravators?

11 Q That's correct. Yes, ma'am.

12 A Is that correct?

13 Q Yes, ma'am.

14 A And so it would be up to the defense attorney to give
15 the mitigators that would override my, I think, inside of
16 myself, the idea that really, at the point of guilt, he
17 is -- the, the, the person would be at the penalty of death
18 themselves.

19 Q But you understand the law's not telling you, just
20 because they're found guilty, means that you have to give
21 the death penalty?

22 A I agree with that, yes, sir.

23 Q Yeah.

24 What, I guess, the Court wants, you know, leaning one
25 way or the other is, is, isn't, isn't what the Court's

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1 looking at. The Court's looking at would you automatically
2 give a life sentence or a death sentence in a certain
3 situation. I mean just because he's found guilty, will you
4 automatically give death. That's the question.

5 A I think that, in that, then I would say that I would be
6 in the number three category. I could, I could weigh it out
7 and consider, consider not giving the death penalty. But
8 there would have to be a really good reason not to.

9 Q But you understand they don't have to prove anything?

10 A Right.

11 Q The burden of proof is on us. We have to prove the
12 aggravators beyond a reasonable -- we have to prove the case
13 first to you --

14 A Right.

15 Q -- guilty beyond a reasonable doubt, and -- but the
16 sentencing phase is actually a second, basically a second
17 phase. It's new evidence is introduced. It's dealing just
18 with sentencing. It's not dealing with guilt or
19 innocence---

20 A Right.

21 Q ---at that point from that standpoint. So, basically
22 it's a situation where, like I said, we, we present the
23 aggravators from there, and they're mitigators, and they
24 don't have to prove anything, and it could be anything.
25 Like the judge told you, it could be mercy. It could be

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1 anything picked out from the air that you think is that
2 appropriate in that situation.

3 A Right.

4 Q They'll present evidence obviously from there. They
5 don't even have to from that standpoint.

6 A Uh-huh. (Affirmative).

7 Q Mercy would be considered no matter if they did present
8 no aggravators to you -- I mean no mitigators. I apologize
9 on that.

10 Now, one thing, to be fair to you from this standpoint.

11 A Uh-huh. (Affirmative).

12 Q We'll be presenting two aggravators, and one of them is
13 the death of a child. Now, they'll be presenting their
14 mitigators, and their mitigators would be a disability
15 possibly be presented, his background, things that they
16 think is pertinent that you need to know as a juror.

17 The question is can you listen to those aggravators and
18 mitigators fairly and make a decision based off everything
19 you hear in the sentencing phase once you get done with the
20 guilt phase?

21 A I believe so.

22 Q Okay. So -- but I want to be fair and let you know
23 what, what both sides would be presenting to you --

24 A Uh-huh. (Affirmative).

25 Q -- because, the thing is, the thing is you have to give

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1 consideration to both sides.

2 Do you think you could give that consideration to both
3 sides?

4 A I think so.

5 Q Okay. In that situation -- and you understand murder
6 is -- we have to prove it with malice aforethought, and
7 basically that's an intentional type murder. One with evil
8 will, things like that. But, like I say, that's just
9 dealing with the guilt or innocence.

10 A Right, that's the guilt or innocence phase, right?

11 Q Right. The sentencing phase is a totally different
12 phase.

13 A Totally different animal.

14 Q It is.

15 A Uh-huh. (Affirmative).

16 Q So, from that standpoint, you could listen to the
17 aggravators?

18 A Uh-huh. (Affirmative).

19 Q You could listen to the mitigators?

20 A Uh-huh. (Affirmative).

21 Q And give consideration to both before you came to your
22 decision?

23 A I would give consideration to both.

24 Q Right.

25 And you'd make a decision?

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1 A Uh-huh. (Affirmative).

2 Q It wouldn't automatically be death. It wouldn't
3 automatically be life. It'd be based on what you hear in
4 that sentencing phase.

5 A Yes.

6 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
7 please.

8 THE COURT: Yes, sir.

9 (Pause.)

10 Q Thank you, ma'am, for answering my questions.

11 A You welcome.

12 THE COURT: Mr. McGuire.

13 EXAMINATION

14 BY MR. MCGUIRE:

15 Q Good morning, Ms. Vensel.

16 A Hi.

17 Q I think when you earlier started your conversation
18 about which juror were you, and you said you were leaning
19 towards the number one position.

20 A Uh-huh. (Affirmative).

21 Q Okay. And what I want to tell you is this is a day
22 where everything you say is absolutely right cause we're
23 only asking for your opinions, your thoughts, your feelings,
24 your held beliefs.

25 A Uh-huh. (Affirmative).

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1 Q So, there's never a wrong answer. Whatever you say is
2 right as long as it's truthful.

3 Okay?

4 A Uh-huh. (Affirmative).

5 Q And that's all, all we can ask of you is to be candid
6 and truthful.

7 What I'm gonna do is, you know, the -- there might be
8 some folks and you might be one of them, and I want, I want
9 to ask you about that mitigation type evidence because,
10 generally, it's, it's about a person's background, how they
11 grew up, their walk in life, their life history, did they
12 grow up poor, what kind of education, that sort of thing,
13 and I think you said you'd have to have some huge things to
14 talk you out of death.

15 A Uh-huh. (Affirmative).

16 Q And that your starting position would be the death
17 penalty.

18 A Uh-huh. (Affirmative).

19 Q And you'd look to the defense to prove something to get
20 you off of that.

21 A Yes.

22 Q Okay. And to be clear, what we're talking about -- and
23 I'm gonna start a little bit where the, the judge puts you.
24 You and 11 other people convicted a person, beyond a
25 reasonable doubt, got the right person, and they committed a

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1 murder, the intentional killing of an innocent person with
2 malice aforethought.

3 A Uh-huh. (Affirmative).

4 Q Hatred, ill will, hostility towards the victim, an
5 intent to harm. No, no legal excuse, justification, and
6 under circumstances where we would infer an evil intent.
7 That's malice. And the victim would be a child.

8 In that situation, the background of the defendant,
9 would that be relevant in fixing your decision?

10 A I think so, yes.

11 Q Would it---

12 A I mean well, I mean at the point that they're guilty, I
13 mean I would think I would be just -- they're guilty, right?

14 Q Yes.

15 A And then I would be coming into the sentencing phase
16 and then there would be, once again, the aggravators given
17 and the mitigators given, and then I would evaluate those
18 things in the context of the guilty verdict --

19 Q Okay.

20 A -- and check out with the decision.

21 Q Okay. And you said it would have to be something
22 really huge to get you off the death penalty.

23 Can you give me an example of what would be huge?

24 A I just -- I can't even think of anything off the top of
25 my head that would pull me off of that. I mean -- but, I'm

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1 sure that you're very creative.

2 Q You might overestimate my abilities, ma'am.

3 In your, in your whole imagination, and your life
4 experience, can you think of one thing that can move you
5 from that death position?

6 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
7 this point. He's starting to stake out the witness on
8 different things.

9 THE COURT: Well, she, she was the one, in her
10 testimony, who indicated it would have to be something big.
11 I don't know if he's staking out the witness now. He's just
12 following up on that response. I'll let him do so.

13 MR. MCGUIRE: Thank you, judge.

14 So, my question was, as you sit there, you know, with
15 all of your life experience behind you, your creativity,
16 imagination, can you think of anything that would be huge to
17 move you off that death penalty position?

18 A We've already been able to establish evil intent as a
19 part of the guilty verdict. So, what that would mean is
20 that the defendant has done it willfully. I mean he's
21 planned it out. He's is intentionally done this---

22 THE COURT: Well, ma'am, I'm gonna tell you, we're
23 getting into a very technical definition of murder. Our law
24 requires that that evil intent, or malice is what it's
25 referred to, can't -- doesn't have to exist for any

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1 particular length of time. It just has to exist at the time
2 of the act.

3 THE WITNESS: At the time of the act.

4 THE COURT: So, it doesn't necessarily mean that
5 there's been a, a premeditation, planning it out scenario.
6 It could. May not.

7 Do you follow me?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 THE WITNESS: But it just seems like death is so finite
11 anyway. I mean the -- at the point that a person gets to,
12 or in my, in my opinion, you know, if I was in a situation
13 and I got to the point where I actually killed somebody
14 else, intentionally, and it was proven out intentionally, I
15 just can't imagine anything that would pull me off of
16 thinking that an equivalent consequence was appropriate.

17 Q Sometimes we hear the phrase eye for an eye or if you
18 take an innocent life you forfeit yours.

19 A Uh-huh. (Affirmative).

20 Q Do those statements resonate with you?

21 A They do resonate with me, but only because the State of
22 South Carolina supports the option. If the State of South
23 Carolina did not support the option for the death penalty,
24 then, of course, I would be looking at degrees of how long
25 he would be staying in jail.

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1 Is that correct?

2 Q Well, I'd have to draw upon my experience of other
3 states. I did practice in Georgia, and different states
4 have different definitions for murder. In fact,
5 premeditation, murder one, premeditated murder, you'll see
6 that in some states. But I think we stick with, if we
7 could, South Carolina, and---

8 A Okay.

9 Q I mean there are some states that don't have the death
10 penalty obviously.

11 Did you know that?

12 A Oh, yes.

13 Q Okay.

14 A Of course.

15 Q And, in some states, life without parole means life
16 without parole. Some states, life means life, but you can
17 get parole in 20 years. It's different all over, but we
18 need to stick, if we could---

19 A Probably here in South Carolina.

20 Q Sure.

21 A Right.

22 Q So, so, I'm, I'm taking it that you can't think of
23 anything that would move you off that.

24 THE COURT: Just one second.

25 MR. MCGUIRE: Oh, sure.

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1 THE COURT: I've got to talk to her about something.

2 (Pause.)

3 THE COURT: I'm sorry. I had to take care of some
4 administrative things.

5 MR. MCGUIRE: Of course, judge.

6 THE COURT: Go ahead.

7 Q So, we're just back to my question, which is, you know,
8 how, how could you -- could you truly and fairly consider or
9 how could you consider a life sentence for somebody who's
10 guilty of intentionally taking the innocent life of a child?

11 A I don't think I could.

12 Q Okay. Okay. And your answers today are a reflection
13 or your value code?

14 A I believe so, yes, sir.

15 Q Your, your moral code?

16 A Right.

17 Q Of what's right and wrong?

18 A Uh-huh. (Affirmative).

19 Q And that emanates from a deep place?

20 A Uh-huh. (Affirmative).

21 Q And all your questions to me have been genuine?

22 A I, I believe so. I've tried.

23 Q And truthful. That's all we can ask for.

24 A Yes, I really think that the, the process brings
25 forward what the ultimate decision will be.

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1 Q Okay. But, in your mind, as you sit there, once it's
2 proven, the intentional taking of an innocent life of a
3 child, there's nothing that you can think of that could
4 be---

5 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
6 that. He's asked that question twice and now he is staking
7 out the juror asking that one factor.

8 THE COURT: Let's not use one factor.
9 Rephrase the question please.

10 Q In the -- obviously the situation we would be in, the
11 jury would of convicted of murder.

12 A Uh-huh. (Affirmative).

13 Q The intentional taking of an innocent life with malice,
14 evil intent.

15 A Uh-huh. (Affirmative).

16 Q The State would have to come and prove an aggravator.
17 In this case, the killing of a, of a child.

18 A Uh-huh. (Affirmative).

19 Q And then we talked about the mitigation type of
20 evidence, background of a killer.

21 A Uh-huh. (Affirmative).

22 Q As you sit there, you can't think of anything, in terms
23 of mitigation, that could move you from a death sentence to
24 considering a life sentence?

25 A I really can't.

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1 Q Okay. And as long as that's an honest answer, that's,
2 that's all we can ask of you.

3 A Uh-huh. (Affirmative).

4 Q And I appreciate it. That's all I have. Thank you,
5 ma'am.

6 A Thank you.

7 THE COURT: Anything further from the State?

8 SOLICITOR BARNETTE: Just one, one or two questions on
9 follow-up, Your Honor.

10 EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q I just want to make sure.

13 Did -- and Mr. McGuire talked -- he talked a lot about
14 a life sentence, but do you realize, in South Carolina, it's
15 life without parole?

16 It means he'll never get out.

17 Did you understand that during the questioning?

18 A Yes.

19 Q Okay. From that.

20 would that change your decision concerning mitigating
21 circumstances, aggravating circumstances in the sentencing?

22 A I don't think so.

23 Q Thank you, ma'am.

24 SOLICITOR BARNETTE: That's all the questions I have,
25 Your Honor.

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1 THE COURT: All right. Ma'am, I'm gonna ask you to
2 step back to the jury room for just a moment. Don't discuss
3 the process with anyone back there please.

4 THE WITNESS: Oh, yes, sir.

5 THE COURT: They get to find out on their own.

6 THE WITNESS: I'm the last one.

7 THE COURT: That's okay.

8 THE WITNESS: I'm by myself.

9 THE COURT: Okay. There may be a couple back there
10 now. We'll see. You're the last one in your group. That's
11 true.

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

14 THE COURT: Defense position.

15 MR. MCGUIRE: Move to strike for cause.

16 THE COURT: State.

17 SOLICITOR BARNETTE: I agree, Your Honor. I --.

18 THE COURT: I determined she was not qualified.
19 Bring Ms. Vensel back in please.

20 THE BAILIFF: Yes.

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

23 THE COURT: Ma'am, have a seat just briefly.

24 THE WITNESS: Okay.

25 THE COURT: I'm going to advise you that I'm going to

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1 release you from any further responsibility in this matter.
2 So, you no longer have to follow my instructions. You're no
3 longer under consideration. So, you've been released from
4 this matter.

5 Okay?

6 THE WITNESS: Okay. Thank you.

7 THE COURT: See the, see the bailiff. They'll check
8 you out. Thank you for your cooperation.

9 THE WITNESS: Thank you.

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

12 THE COURT: All right. Let's see. Barbara Collins,
13 bring her in please.

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

16 BARBARA COLLINS, having been previously
17 sworn, testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q Have a seat please, ma'am.

21 A (Witness complies.)

22 Q And you might want to slide back a little bit. I'm
23 gonna be talking to you mostly to begin with, and this is --
24 this thing gets in the way here. So, if you need to get
25 where you can see me, that will be fine.

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1 A Okay.

2 Q Okay. Your name is Barbara Collins?

3 A Yes.

4 Q Ms. Collins, first of all, I want to thank you for your
5 cooperation. I know we've kind of had you sitting for a
6 little while and I apologize, but we never know how long or
7 fast these things are gonna go, and we have to be prepared
8 to go forward. So, I want to thank you for your cooperation
9 to begin with.

10 A Yes, sir.

11 Q Now, what we're going to do today is we're gonna be
12 talking to you about some matters that would be important to
13 us if we, if we -- when we get to the point of selecting a
14 jury. Right now we're in the process of qualifying people
15 for the jury. At some point in time we will have a pool of
16 people from which we will select the jury.

17 So, we're in the process of going through and talking
18 to each juror individually. So, you're not the only one in
19 this situation. Everybody's been in this situation.

20 I -- that's the witness stand normally in my courtroom,
21 and I like to tell people, when they come in, you're in the
22 hot seat. But you're not really. Because what we're gonna
23 do is we're gonna ask questions. There's no right or wrong
24 answers to our question. So, we don't -- we're not looking
25 for any particular answer. We're looking for honest answers

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1 from you.

2 Do you understand that?

3 A Uh-huh. (Affirmative).

4 Q And in that regard, earlier in the week, you were sworn
5 to tell the truth when you were here on Monday. You're
6 still under oath at this time.

7 Do you understand that?

8 A Yes.

9 Q And you acknowledge you're under oath?

10 A Yes.

11 Q Okay. And I gave you some instructions when you left
12 the courthouse. I asked you not to try to gather any
13 information on your own about the case. I asked not to
14 listen to, watch, or read media reports that might come out
15 about the case. I asked you not to discuss the matters with
16 anyone, and not allow anyone to discuss it with you, and
17 also I said if anybody tried to contact you about your
18 service on the jury, please let us know about that. So,
19 those were the instructions.

20 Have you been able to follow those instructions?

21 A Yes.

22 Q Okay. Now, as I told you, we're going to be going over
23 some matters that, that some people might consider to be
24 personal in nature. It's not our purpose here to try to
25 invade anyone's privacy. That's not what we're doing, but

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1 we are gonna ask you some questions that would be important
2 in jury selection in this matter.

3 You understand that?

4 A Yes, sir.

5 Q Now, ma'am, on Monday you mentioned to us that you
6 may -- you stood up and answered that you might of seen,
7 heard, or read some news accounts about the case or
8 something of that nature.

9 Let me ask you this, are you the kind of person who, if
10 you were selected to serve on the jury, could you put --
11 could you decide the case based upon the law and the
12 evidence that you hear in the trial, during the trial, and
13 be able to not consider anything that might have anything to
14 do with the case?

15 Could you do that?

16 A Could you repeat that again?

17 Q If you were selected to serve on the jury in the case,
18 are you the kind of person who could come into the court,
19 decide the issues that are before you in the court based
20 upon what you hear in the courtroom, the evidence and the
21 law as given to you by the judge, and, in other words,
22 disregard anything that you may have heard outside?

23 A Yes.

24 Q So, you think you could do that?

25 A Yes.

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1 Q So, I, I take it then that the things that, that you
2 may have heard, and I'm not gonna get into any great detail
3 at this point in time, are things that have not caused you
4 to make up your mind to such that you---

5 A Right.

6 Q ---would not consider the whole case?

7 A No.

8 Q Okay. Is that correct?

9 A Yes.

10 Q All right. Now, ma'am, have you ever participated in
11 any type of discussions -- and these days there's so many
12 ways to discuss things. You can get on-line and go into a
13 chat room or you can get on a blog or you can do -- there's
14 just -- I'm not gonna try to name them all.

15 But have you ever participated in any type of
16 discussions where the subject may have been the death
17 penalty?

18 A Repeat that again please.

19 Q Yeah.

20 Have you participated in any discussions -- and I'm
21 looking right now -- I know that, from time to time, people
22 might -- there might be a case on TV and somebody say well,
23 they're seeking the death penalty. That may of been a
24 casual conversation when the death penalty was mentioned.
25 I'm looking more into whether or not you participated in any

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1 type of discussions where there was some type of discussion
2 about that subject by a group of people or -- you follow
3 what I'm saying?

4 A Yeah.

5 Q A more formal situation than---

6 A Yes.

7 Q ---casual conversation.

8 A Yes.

9 Q You ever participated in anything like that?

10 A Conversations probably, yes.

11 Q Private conversations?

12 A Yes. Correct.

13 Q But not in any type of public forum---

14 A No.

15 Q ---or anything of that nature?

16 A No.

17 Q Okay. Take it a step further.

18 Have you ever participated in any political activity
19 involved in that issue such as writing letters to the
20 editor, sending letters to representatives, congressmen,
21 legislators, things like that?

22 A No.

23 Q Okay. Back in the jury room there was a list, a rather
24 lengthy list, of names. Those are people who've been
25 identified as people who could be -- possibly be witnesses

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1 in the case.

2 Did you read the list?

3 A Yes.

4 Q Now, as to that list of people, as you read over it,
5 did you notice anyone in there that you felt that you have
6 ever been related to by either marriage or blood or was
7 there anybody on that list that you may have had some kind
8 of social, personal, or business relationship with?

9 A One person.

10 Q Okay. Tell me about that.

11 A He -- Robert Jackson. He's my physician.

12 Q So, he's your doctor?

13 A Yes.

14 Q Okay. Well, obviously he may be involved as having
15 treated somebody or something in the case. He could
16 testify.

17 So, let's say you were sitting on the jury, and Doctor
18 Jackson came in and testified about some fact or matter in
19 the case.

20 would the fact that he served as a witness in the case,
21 would that prevent you from being able to be fair and
22 impartial to both the State and the defense in this matter?

23 A No.

24 Q So, you could still be impartial---

25 A Yes.

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1 Q ---even though he might testify?

2 A Yes.

3 Q Okay. Anyone else that you saw?

4 A Hu huh. (Negative).

5 Q All right. Now I'm going to be getting into some, some
6 matters that will involve your personal opinions on things.
7 You look like you're a mature enough person that you would
8 not feel threatened by someone asking you about those
9 things.

10 Am I correct in that?

11 A Yes.

12 Q So, you think you can participate in this?

13 A Yes.

14 Q Okay. Now, one thing I, I want to point out to you
15 that -- we are going to end up talking about eventually the
16 penalty phase of this trial, and I want to point out to you
17 that we really are putting the cart in front of the horse if
18 we were to do that.

19 What I'm saying is that, in this type of case where the
20 State is seeking a death penalty, there is a two part trial.
21 It's called a bifurcated trial, and what that means is that
22 the law provides that there be a trial held to determine
23 whether or not the defendant is guilty of the crimes that
24 are charged, and the -- that jury would hear that and make a
25 decision as to whether or not the defendant is guilty or not

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1 guilty of -- in this case, there's two crimes that have been
2 charged, kidnapping and murder. So, those are the two
3 crimes that are charged.

4 If the State, if, if -- excuse me. If the jury finds
5 the defendant guilty of those, those charges, and, in the
6 case of murder, guilty of murder, the law provides for a
7 second trial. The same jury would hear then the question of
8 the appropriate penalty to be had.

9 So, do you understand that the law provides for that to
10 happen?

11 A (Witness nods affirmatively.)

12 Q Now, of course, if the defendant were to be found not
13 guilty of those crimes, there would never be a second phase
14 to the trial, but because we have to talk about the whole
15 trial, and selecting the jury, cause the same jury hears
16 both sides, we necessarily will have to talk about, to some
17 extent, the penalties involved and that's before we've ever
18 got past the question of whether the defendant is guilty or
19 not guilty.

20 So, to a, to a certain degree, our discussions today
21 involve putting the cart in front of the horse. But if I'm
22 going to talk to jurors about this, I've got to talk to you
23 now because, once the jury is seated, that same jury hears
24 both sides of the case.

25 So, do you understand that it should not be a

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1 reflection against the defendant, and it should not be any
2 reflection against his case for us to talk about the penalty
3 because this is the only time we can do that?

4 Do you understand that?

5 A Uh-huh. (Affirmative).

6 Yes.

7 Q Okay. Now, ma'am, I want to talk to you about a few
8 things about service on a jury.

9 Have you ever been on a jury before?

10 A Uh-huh. (Affirmative).

11 No.

12 Q Okay. So, this is new to you?

13 A Yes.

14 Q All right. Let me go over some basic concepts and see
15 if you and I have an agreement about these things or an
16 understanding about these things.

17 In any trial, in any trial, the jury is the sole judge
18 of the facts. Any criminal trial. So, the jury determines
19 who, what, when, where, the truth of the testimony. They
20 determine the facts in the case.

21 Do you understand that?

22 A Yes.

23 Q The jury -- the judge is the sole judge of the law. In
24 fact, it's referred to that the jury is the judge of the
25 facts. The judge is the judge of the law. So, that means

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1 that the judge is the one who gives the law to the jury to
2 be applied in every case.

3 Now, my question to you is if you were a juror, would
4 you be willing to listen to the judge's charge concerning
5 the law?

6 A Yes.

7 Q To take it a step farther, would you willing -- be
8 willing to accept the law that the judge gives to you---

9 A Yes.

10 Q ---in the case?

11 Now I'm gonna take that a little step farther and test
12 that a little bit to be sure that, that you understand that.

13 Let's say that you were sitting on a jury -- as a juror
14 in a case. Shoplifting might be the crime. You're sitting
15 on the jury and the judge is charging you with the law of
16 shoplifting, and as you hear the judge explain the law that
17 pertains to that offense, you hear something that you either
18 don't agree with or you thought the law was different when
19 you came into the courtroom on that subject. And so it's
20 either a little bit of a surprise to you or something that
21 you just thought, you thought the law ought to be different.

22 Are you, are you the kind of person who could take your
23 ideas of as to what ought to be right, set that aside, and
24 take the law exactly as the judge gives it to you, and then
25 apply it to the facts as the jury finds the facts to be in

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1 reaching a verdict in the case?

2 Could you do that?

3 Did you understand the situation?

4 A Yes, I -- I'd have to talk to the jury about it. I
5 mean I --.

6 Q Well, again, my question is---

7 A I think---

8 Q ---could you -- if, if you were told that the judge is
9 the law, giver of the law, jury's determiner of the facts,
10 the judge is charged you concerning the law, could you take
11 the law as the judge gave it to you, even though you might
12 not understand it that way or agree with it when he tells
13 you that, could you though accept it and apply that---

14 A Yes.

15 Q ---to the facts?

16 A I'd have to accept it, yes.

17 Q Do you think you could do that?

18 A Yeah.

19 Q Okay. Now, there's some other things I want to talk to
20 you about as far as concepts under the law, of -- under
21 criminal law. So, just follow with me on this just a minute
22 cause I kind of build it up as we go along.

23 First of all, is it your understanding that every
24 criminal defendant, no matter what the seriousness of the
25 crime he's charged with might be, that every criminal

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1 defendant is presumed, under the law, to be innocent of that
2 crime until he is proven guilty?

3 A Yes.

4 Q Do you understand that concept?

5 A I do.

6 Q And, for that reason, do you also understand that a
7 defendant, in a criminal case, is never required by the law
8 to prove himself innocent. So, since he's presumed to be
9 innocent, he has nothing to prove and is not required to
10 prove his innocence.

11 Do you understand that concept?

12 A Yes.

13 Q And do you agree with that?

14 A Yes.

15 Q Okay. And, for that reason, in a criminal trial, a
16 defendant has no burden of proof. In other words, the
17 defendant is not required, by the judge or the Court, to
18 prove anything during a trial.

19 Do you understand that concept?

20 A Yes.

21 Q By the same token, the State, that's the party who is
22 filed the charges, brought the charges against the
23 defendant, does have a burden of proof in a criminal trial.
24 The State has the burden of proving the allegations it is
25 made by proof beyond a reasonable doubt.

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1 Do you understand that concept --

2 A Yes, sir.

3 Q -- that the state is the only party in the case who has
4 a burden of proving anything?

5 A Uh-huh. (Affirmative).

6 Yes.

7 Q That doesn't mean the defendant can't prove something,
8 but he's not required to do that.

9 You understand that?

10 A Yes.

11 Q Now, let me take that a step farther.

12 If you were sitting on a jury listening to a trial, if
13 you and your fellow jurors, after you've heard all the
14 evidence, you've heard the judge charge the law, if you went
15 back into the jury room and you discussed the case among
16 yourselves, and the jury and you came to the conclusion that
17 the State did not prove the defendant guilty beyond a
18 reasonable doubt, they did not present enough proof to meet
19 their burden of proof, could you sign then a verdict finding
20 a defendant not guilty of the crime?

21 A (No response.)

22 Q Do you understand what I said?

23 You're on the jury. The jury's -- I'm gonna pick out
24 shoplifting again. The defendant's been charged with
25 shoplifting, and the State did not present enough evidence

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1 to meet its burden of proof in the case.

2 A Uh-huh. (Affirmative).

3 Q So, they did not prove the defendant guilty beyond a
4 reasonable doubt.

5 Could then you sign a verdict that finds the defendant
6 not guilty under those circumstances?

7 A I could, yes.

8 Q And I'm gonna flip the coin over.

9 Let's say the State did present enough proof to prove
10 that the defendant committed the crime beyond a reasonable
11 doubt, and your fellow jurors and you have come to that
12 conclusion.

13 Could you then sign a verdict that finds the defendant
14 guilty of the crime?

15 A Yes.

16 Q So, now I take it that it's your understanding that,
17 just because someone's been arrested, just because someone's
18 been charged, that they're not automatically guilty just
19 because of those two things?

20 Do you agree with that?

21 A Yes.

22 Q So, are you the kind of person then that would want to
23 hear the evidence, weigh the evidence---

24 A Yes.

25 Q ---determine its truth, its value, its effect, apply

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1 that evidence to the law, and then make a verdict that
2 you---

3 A Yes.

4 Q ---think is appropriate?

5 Is that what you'd like to do?

6 A Yes.

7 Q Okay. Now, ma'am, I want to go over some other things
8 with you, and I'm going to get now to that part of the trial
9 I told you that I would get to, and that is that second part
10 of the trial, and let's talk about that for just a second.

11 I explained to you that in a case where the State is
12 seeking the death penalty, we divide the trial up into two
13 stages. The first stage is a stage called the guilt phase,
14 and, in the guilt phase, the only question is whether or not
15 the defendant is, in fact, guilty of the crimes that are
16 charged. So, the evidence that's presented during that
17 hearing would be evidence that would either tend to show
18 that the defendant did what the State alleges that he did or
19 didn't do what the State did -- alleges that he did.

20 Now, let's assume that you are on the jury such as
21 this, and you have completed that first stage of the trial,
22 and so, at this point in time, the jury has found this
23 defendant guilty of the crime of murder.

24 Do you understand where we are?

25 A (Witness nods affirmatively.)

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1 Q The State is seeking the death penalty. So, we are now
2 getting ready to go into the second phase of the trial.
3 That's the penalty or sentencing phase.

4 Do you understand what I'm talking about now?

5 A Yes.

6 Q Now, in the sentencing phase, the statute that sets
7 that trial up provides that there's two types of evidence
8 that can come into that trial. That's evidence that are
9 considered to be aggravating matters and also evidence of
10 mitigating matters and those are fancy words. I'll try to
11 explain it to you in a little, little more understandable
12 language.

13 There's a list in the statute that sets out the factors
14 that would be aggravating factors. I'm not gonna try to
15 tell you all of them. They're several of those in the
16 statute. And those are factors that would tend to make the
17 crime seem to be more severe. Therefore, justifying a jury
18 or a juror giving a higher level of sentence.

19 Do you understand what I mean by something that
20 aggravates the situation?

21 A (Witness nods affirmatively.)

22 Q And the State's required, before the death penalty can
23 be issued, that at least one of those aggravating factors
24 has to be proven beyond a reasonable doubt.

25 Now, the mitigating factors are factors which might,

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1 even though the defendant's been convicted of murder, might
2 tend to cause a jury or a juror to give the defendant a
3 lesser sentence, things that mitigate his conduct or what
4 happened.

5 So, in the statute -- and the law says the jury's not
6 required to follow just that list. In other words, the jury
7 can mitigate the situation by anything the jury finds to be
8 mitigating, and the jury, in fact, can even give mercy,
9 which is what it says. It's mercy in that situation.

10 So, that's the hearing that you're about to go into.
11 In other words, that's -- if you're on this jury. You found
12 the defendant guilty of murder. He's a convicted murderer
13 at that point in time. The issue is what the appropriate
14 penalty is and that same jury is getting ready to walk back
15 into the courtroom and conduct that hearing where you will
16 hear aggravating matters and mitigating matters.

17 Do you understand where I've put you?

18 A Uh-huh. (Affirmative).

19 Q Ask you to be.

20 A In the middle.

21 Q Well, that puts you on the jury.

22 A Yeah. Right.

23 Q I don't know if you're in the middle of anything, but
24 you're in the middle of a trial. You are definitely in the
25 middle of a trial.

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1 All right. Now, imagine in your mind's eye that you're
2 walking down the hall getting ready to walk back into that
3 courtroom to start that second part of the trial. Back in
4 the jury room there was a piece of paper, and on that piece
5 of paper I had three different jurors described.

6 Did you read that paper?

7 A Yes.

8 Q Now, I'm going to go back over those people on that
9 paper and I'm gonna number them one, two, and three, and
10 then we're gonna talk about it just a little bit.

11 Okay. The first juror I had on that piece of paper is
12 somebody who, when they're walking down the hall. Coming
13 back into that courtroom, that juror has already made up his
14 or her mind. That juror believes that if someone is
15 convicted of the crime of murder, that the only appropriate
16 punishment is death, and, therefore, that juror, every
17 single time that they might be put in that same situation,
18 is always gonna vote for the death penalty because, once
19 someone's convicted of murder, that's the only thing that
20 juror thinks is appropriate.

21 The second juror on that paper has already made up his
22 or her mind as well. That juror doesn't believe that the
23 state is ever justified in taking a life in, in response to
24 the commission of any crime. So, no matter how serious it
25 is, no matter what the aggravating circumstances are, that

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1 juror will always vote for life imprisonment without the
2 possibility of a parole because that juror doesn't think
3 that the death penalty is ever an appropriate remedy.

4 The third juror I had on that piece of paper that's
5 walking back into that courtroom hasn't made up his or her
6 mind. That juror wants to go into that hearing, listen to
7 the aggravating circumstances, listen to the mitigating
8 circumstances, then listen to the judge charge the law on
9 the subject. And once that juror has heard the aggravating
10 circumstances and the mitigating circumstance, only then
11 would that juror be in a position to make up his or her
12 mind. And, at that point in time, the judge would order
13 them to consider those factors in reaching a verdict.

14 So, do you understand the three different jurors I've
15 talked about?

16 A Uh-huh. (Affirmative).

17 Q One would always vote for the death penalty. One would
18 always vote for life. One would want to weigh the evidence,
19 bad evidence and good evidence I guess is one way, way to
20 put it, aggravating circumstance, mitigating circumstance,
21 before reaching a verdict.

22 So, do you understand those three different jurors?

23 A (Witness nods affirmatively.)

24 Q Is that yes?

25 A Yes.

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1 Q This lady's taking down what you're saying.

2 A Yes.

3 Q So you have to answer verbally

4 A Yes.

5 Q Okay. Thank you, ma'am.

6 Now, I told you to imagine you're also on that same
7 jury. You're walking down the hall. You're about to walk
8 into the courtroom to start that trial, the second part of
9 the trial.

10 of the three people I described to you, one, two, or
11 three, which one best describes you?

12 A Three.

13 Q Number three?

14 A Uh-huh. (Affirmative).

15 Q So, you're telling me you would want to listen to both
16 sides, aggravating and mitigating, that you would not make
17 up your mind simply because of the aggravating circumstances
18 or the mitigating circumstances, you would want to weigh it
19 all?

20 A Yes.

21 Q And then make what you think is the appropriate
22 decision?

23 A Yes.

24 Q Is that what you're telling me?

25 A Yes.

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1 Q Now, let me take this a step further.

2 Let's say that you were on the jury, you heard all the
3 evidence, the judge charged you with the law, you went back
4 and started your deliberations, and the jury agreed that the
5 most appropriate penalty is life imprisonment without the
6 possibility of a parole.

7 Would you be willing, in that circumstance, to sign a
8 verdict that would give that defendant life imprisonment
9 without parole, and that's what that means, go to jail for
10 life, stay there for life?

11 You understand that?

12 A Yes.

13 Q Could you sign such a verdict?

14 A Yes.

15 Q Now, let's flip the coin. Let's say that you and your
16 fellow jurors went back into the jury room, you considered
17 all the evidence, considered the judge's charge on the law,
18 and based on the facts and circumstances and all the
19 evidence, you and the jury decided the most appropriate
20 penalty was the death penalty.

21 Could you then sign a, a verdict for the death penalty?

22 A Yes.

23 Q All right. Now, ma'am, I'm going to ask you now to
24 answer questions for the lawyers. They're gonna be talking
25 to you about some of the things I've already talked about.

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1 They may ask the questions differently, but, again, I want
2 you to respond to their questions. When they have finished,
3 then I'll talk to you again.

4 Okay?

5 A Yes.

6 Q So, you may want to turn. They're gonna be coming from
7 that direction.

8 Mr. McGuire.

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

10 THE COURT: Yes, sir.

11 EXAMINATION

12 BY MR. MCGUIRE:

13 Q Good morning, Ms. Collins.

14 A Good morning.

15 Q There's nothing to be nervous about here today.

16 THE COURT: Well, that's easy for us to say, isn't it,
17 ma'am?

18 Q Yeah, we do this all the time.

19 So, this is the one day where everything you say is
20 100 percent absolutely correct and right because all we can
21 do is ask you questions about your, your beliefs, your
22 thoughts, your feelings, and as long as you tell us what
23 they are, you're a hundred percent correct. There's never a
24 wrong answer today.

25 Okay?

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1 A Yes.

2 Q Does that make you feel a little better?

3 A Yes.

4 Q Okay. I want to, I want to start just with some
5 general questions about your thoughts about the death
6 penalty.

7 Do you think we use the death penalty too seldom, about
8 right, too often?

9 Do you have an opinion?

10 A I don't really have an opinion on it. I just think if
11 the circumstances and the trial depend on what kind of
12 conviction or whatever is involved.

13 Q Okay.

14 A I mean I just -- I don't know if I want to say that I
15 don't think we use it enough. I mean I really -- it just
16 depends on the circumstances and whatever the crime is.

17 Q Okay. If you were governor of South Carolina, king of
18 South Carolina, and the day came and you could choose to
19 have the death penalty or not have the death penalty, what
20 would be your choice?

21 A Have the death penalty --

22 Q Okay.

23 A -- depending on the crime and the situation, the
24 circumstances.

25 Q Okay. You would just reserve it for certain types of

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1 cases?

2 A Yes.

3 Q what types?

4 A whatever -- you know, murder, and, you know, just
5 murder.

6 Q Okay.

7 A Yeah.

8 Q And we actually---

9 A How serious the crime is.

10 Q Okay. And when you say how serious, what are you
11 thinking about?

12 A I guess just killing and I mean I really don't know a
13 lot of cases.

14 Q Okay. Have you -- you've probably heard the phrase an
15 eye for an eye.

16 A Uh-huh. (Affirmative).

17 Q Does that -- or the phrase if you take an innocent life
18 you forfeit yours.

19 Do these phrases -- what do these phrases mean to you,
20 if anything?

21 A Well, I really -- I mean I, I feel as the -- you really
22 should not -- I mean you just don't take a life. I mean
23 when you kill somebody.

24 Q Okay. I'm gonna go back and, and put you where the
25 judge put you a little while ago.

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1 Okay?

2 A Yes.

3 Q And that was you were on the -- when you said you were
4 in the middle of it, you're actually -- you're on a jury and
5 you and 11 other people have convicted a person of murder.
6 Murder, in South Carolina, is the intentional killing of an
7 innocent person with malice aforethought. Malice is defined
8 as, as hatred, hostility, ill will towards the person they
9 kill and they intend to harm them under circumstances that
10 would imply an evil intent. So, it's not an accident. Not
11 self-defense. It's the intentional killing.

12 Are you with me?

13 A (Witness nods affirmatively.)

14 Q Okay. Now, the judge also told you about mitigation
15 type evidence, and that can be the defendant's life history.
16 Sort of how he grew up maybe, education, schooling, that
17 sort of thing. I'm gonna put you right there where you and
18 the eleven---

19 THE COURT: It can be more than that. There's a
20 statutory list, ma'am, of mitigators. It's not just
21 someone's background. That's one of the things you can
22 consider. But there's a lot -- there's a long list of those
23 things.

24 Okay. Excuse me. Go ahead.

25 Q It's generally referred to as the record and character

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1 of the, the person. Everything that's been done to them,
2 things they have done to other people, their walk in life.
3 Just about everything to do with their life really.

4 At that point of, of, of you just convicted a person of
5 the intentional killing, and in this case it would be a
6 child, can you think of anything in the defendant's
7 background that would be relevant in fixing the punishment
8 between life and death?

9 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
10 this question from that standpoint. He's saying background.
11 He's not giving the whole picture about mitigating
12 circumstances.

13 THE COURT: I'll sustain the objection.

14 MR. MCGUIRE: Judge, if I could---

15 THE COURT: I'll be glad to read the mitigators to her
16 if you'd like for me to. They're statutory.

17 MR. MCGUIRE: I---

18 THE COURT: So we -- I just think she has the right to
19 know what you're talking about, and you tend to ask her
20 about just his background. But there's other things that
21 are mitigators as well that might be a factor, aren't there?

22 MR. MCGUIRE: Well, many of them don't apply in this
23 case.

24 THE COURT: Oh, I'm not -- we're not getting fact
25 specific in this inquiry. I wouldn't allow that.

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1 MR. MCGUIRE: Sure.

2 THE COURT: So, I'll be glad to go over those
3 mitigators with her if you'd like for me to.

4 There's more than just one, ma'am, I can assure you.
5 There's a good number of mitigators in the statute.

6 Go ahead.

7 Q And I think I, I used the term just a second ago, it
8 could be basically any, anything in a person's life history.
9 It's various -- it's---

10 THE COURT: Well, there's more than that in there too
11 Now, Mr. McGuire, if you're gonna characterize what the
12 mitigators are, again, why don't we just go over them with
13 this person?

14 MR. MCGUIRE: The---

15 THE COURT: That might be the easiest way to do it.

16 MR. MCGUIRE: That will be fine.

17 THE COURT: Give me a moment to get there.

18 MR. MCGUIRE: Judge, I'm sorry. I didn't want you to
19 think you were waiting on me.

20 THE COURT: Oh, no, sir, I'm, I'm, I'm getting there.
21 I just have to pull it up on my computer.

22 Ma'am, these are the things that the statute -- and,
23 again, this list is not all inclusive. This, this list
24 is -- can't -- the jury has the right to consider things
25 outside of those lists as well, but these are the things

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1 that the statute refers to as mitigating circumstances.

2 The -- number one. The defendant has no significant
3 history of prior criminal convictions involving the use of
4 violence against another person. That's the first one.

5 Number two. The murder was convicted (sic) while the
6 defendant was under the influence of mental or emotional
7 disturbance.

8 Number three. The victim was a participant in the
9 defendant's conduct or consented to the act.

10 Number four. The defendant was an accomplice in the
11 murder committed by another person and his participation was
12 relatively minor.

13 Number five. The defendant acted under duress or under
14 the domination of another person.

15 Number six. The capacity of the defendant to
16 appreciate the criminality of his conduct or conform his
17 conduct to the requirements of the law was substantially
18 impaired.

19 Number seven. The age or mentality of the defendant at
20 the time of the crime.

21 Number eight. The defendant was provoked by the victim
22 into committing the murder.

23 Number nine. The defendant was below the age of 18 at
24 the time of the crime.

25 Number ten. The defendant had mental retardation at

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1 the time of the crime. Mental retardation means
2 significantly subaverage general intellectual functioning
3 existing concurrently with deficits in adaptive behavior and
4 manifested during the developmental period.

5 Now, that's the numbered mitigators that are in the
6 statute, but a juror could also consider other factors
7 outside of that list in mitigation as well.

8 So, do you -- by talking about mitigating factors,
9 there are---

10 THE WITNESS: A lot.

11 THE COURT: ---a lot---

12 THE WITNESS: Yeah.

13 THE COURT: ---that the jury could consider in any
14 given case.

15 Do you understand what I'm saying?

16 THE WITNESS: Yeah.

17 THE COURT: Just want to be sure that was clear.

18 Okay. It's not just the defendant's background.

19 THE WITNESS: Yeah.

20 THE COURT: It's a lot of things.

21 All right. You may proceed.

22 MR. MCGUIRE: Thank you, ma'am, or thank you, judge,
23 rather.

24 THE COURT: Yes, sir.

25 Q And the---

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1 THE COURT: Just wanted to be sure we were clear as to
2 what is meant by mitigators.

3 Q Oh, sure and I think I said it was basically anything
4 in the person's, you know, their walk in life. There are
5 some in addition that are a little bit more focused on the
6 facts of the, the case.

7 THE COURT: Yes, there are.

8 Q And in knowing all of that, and you're at that point
9 where you just convicted a person, deliberately
10 intentionally taking the innocent life of a child, are these
11 background factors, these mitigating factors that the judge
12 referenced, are they, to you, as -- just as you, your -- as
13 a person, your true belief, will be relevant in that
14 decision to fix punishment between life and death?

15 A Yes.

16 Q And why is that?

17 A Well, it would be -- you'd have to look at all the
18 evidence I mean on both sides.

19 Q Okay.

20 A It would---

21 Q And what would, what would, in looking at the
22 mitigation, is there anything that speaks out to you and you
23 can say I would give---

24 SOLICITOR BARNETTE: Objection, Your Honor. Now we're
25 getting into staking out the juror to find out what factors

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1 she's looking at.

2 THE COURT: I will sustain the objection.

3 Q Okay. You indicated that you heard some information
4 about this case.

5 A Pardon me?

6 Q Earlier you indicated you heard some information about
7 this case and the -- I think the media?

8 A Well, I didn't -- the judge had said that, but I don't
9 recall saying that.

10 THE COURT: Well, ma'am, we just take notes when we do
11 the jury interview on Monday.

12 THE WITNESS: I know.

13 THE COURT: And, and we had a note that---

14 THE WITNESS: But see I -- when you---

15 THE COURT: ---you may of, you may of -- it may of been
16 you had someone in your family who was a victim of a violent
17 crime.

18 THE WITNESS: No, no.

19 THE COURT: Was that the case?

20 THE WITNESS: No, that wasn't me.

21 THE COURT: Okay. Well, maybe we got that wrong. I'm
22 sorry.

23 THE WITNESS: Yeah, cause when you said that I, I
24 should of spoke up.

25 THE COURT: Okay. Well, we try to take notes.

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1 THE WITNESS: I should of---

2 THE COURT: There's a lot going on. Maybe we missed
3 it.

4 THE WITNESS: Right.

5 THE COURT: That's fine.

6 Go ahead.

7 THE WITNESS: Yeah. No, I never had---

8 THE COURT: Straighten us out. If we're wrong, please
9 straighten us out.

10 THE WITNESS: Right. I never, never heard of -- about
11 the case.

12 Q Okay.

13 A Anything.

14 Q Okay. And what I'm gonna do now is talk to you a
15 little bit about how this kind of case is different from any
16 other trial in South Carolina, any other criminal trial.
17 The, the judge talked to you about the first phase. That's
18 the guilt/innocence phase of the trial where it's do they
19 have the right person, is he guilty beyond a reasonable
20 doubt, is he guilty of the crime.

21 Okay. And assuming that there's a conviction for the
22 crime, in this case murder, then the jury would then go into
23 a, a second trial, a second part of the trial, and the only
24 focus there would be punishment, and the choices would be
25 the life penalty and the death penalty. And when we say the

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1 life penalty in South Carolina, the judge may have already
2 told you this, but it's -- life is life in prison. If you
3 go in, you never leave the walls of the prison and you die
4 there.

5 Did you know that?

6 A (Nods affirmatively.)

7 Q You did know that?

8 A Yeah.

9 Q Okay. Some other states have parole and stuff like
10 that. We don't. It's life. And with regard to that
11 penalty phase, it's different than the first phase in a
12 couple respects and I'm just gonna ask if you can respect
13 and follow the law with regard to the penalty law.

14 Okay?

15 A (Witness nods affirmatively.)

16 Q First, there was a pamphlet that was given out in the
17 big room when all the jurors assembled on the first day, and
18 it indicated if there was disagreement in a trial that the
19 case would have to be done over, and that's the first phase
20 of the trial. You know, if you got the right guy, if he's
21 guilty beyond a reasonable doubt, and that's true. If the
22 jury can't agree, it has to be retried.

23 In the penalty phase it's different.

24 Did you know that?

25 A (Witness nods affirmatively.)

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1 Q Okay. And if the jurors ultimately disagree as to
2 punishment, the judge would actually take the case and
3 sentence and the case would end.

4 Did you know that?

5 A (Witness nods affirmatively.)

6 Q Okay. You did know that. Good.

7 I tell you that because we don't want the jury
8 operating under a misconception that the case would have to
9 be tried over. It would end. The judge would sentence. It
10 would be life without parole in prison.

11 That's a principle you can respect?

12 A Yes.

13 Q Okay. Excuse me. And the process is more individual
14 in the penalty phase. The decision making process is called
15 an individual moral judgment. It's not a question of
16 science or fact. It's just people's conscience, their own
17 moral judgment, and it can be based on different things that
18 the juror doesn't agree on, and what I want to do is give
19 you an example and just see if we're clear on that.

20 For instance, a juror here could say I saw something in
21 the, the person's upbringing, his, his, the way he was
22 raised and that resonated with me. I saw a spark of
23 humanity there, and I'm gonna vote for life for that. And
24 some other jurors might say, well, I didn't really see that,
25 but that juror has a right to say well, I'm gonna vote for

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1 life for that and maybe some other reasons too.

2 Another juror could say well, I saw something with the
3 person's relationship with their children, their children,
4 their grandchildren, and that spoke to me. I'm gonna vote
5 for life for that, and the judge would charge the jury, they
6 could vote for the life penalty for any reason, no reason,
7 or mercy alone, and another juror might say I don't have the
8 words to tell you why I want to vote for the life penalty.
9 I just feel that it's the right thing to do. That's my
10 individual moral judgment.

11 Can you see how they all have different reasons?

12 A (Witness nods affirmatively.)

13 Q Can you, can you respect a principle of law that it
14 let's people vote for the life penalty for different
15 reasons?

16 A Yes.

17 Q Can you say---

18 A Yes.

19 Q We always have to remind folks to say yes or no.

20 A Yes.

21 Q Thank you for doing that.

22 And an individual moral judgment is some -- it's a,
23 it's not a, like I say, it's not a fact or science type
24 question. It's kind of like whether to bring a child into
25 the world or, or what faith to be, and you could respect

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1 other people's individual moral judgments?

2 A Yes.

3 Q And you want them to respect yours?

4 A Yes.

5 Q And in a, in a matter so important as this, could you
6 agree to just disagree with the other jurors and let the
7 judge sentence?

8 A Yes.

9 Q Okay. I mean we'd expect you to talk and listen to
10 each other --

11 A Right.

12 Q -- have some civil discourse, but if you reached your
13 individual moral judgment, the law is it would harm your
14 conscience to change your position, that would be wrong.

15 So, if you, if you reached your individual moral
16 judgment, no matter what it is, could you stay there?

17 A Yes.

18 Q And have that voice heard in Court?

19 A Uh-huh. (Affirmative).

20 Q Even if it was different than other people?

21 A Yes.

22 Q And you would want them to have their voice heard in
23 court?

24 A Yes.

25 Q Even if it's different from you?

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1 A Yes.

2 Q That's all I have for you, ma'am. Thank you.

3 THE COURT: Mr. Barnette.

4 SOLICITOR BARNETTE: May it please the Court, Your
5 Honor?

6 THE COURT: Yes, sir.

7 This won't go on too much longer.

8 THE WITNESS: No, that's fine.

9 THE COURT: I heard you sigh a little bit.

10 THE WITNESS: No, I just like---

11 THE COURT: I understand. It won't go on too much
12 longer.

13 SOLICITOR BARNETTE: It won't.

14 THE WITNESS: I'm through the first phase.

15 THE COURT: All right. Go ahead, Mr. Barnette.

16 EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Ms. Collins, I'll be easy from there. I just want to
19 introduce myself. I'm Barry Barnette. I'm the prosecutor
20 along with Derrick Bulsa. We're gonna be prosecuting the
21 case presented for the State.

22 I just noticed you was born in New York?

23 A Yes.

24 Q What brought you down to South Carolina?

25 A My husband's a physician. We had -- we transferred

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1 with his company.

2 Q I got you on that or whatever.

3 well, thank you for answering our questions and thank
4 you for taking the time to talk to us.

5 A Thank you.

6 SOLICITOR BARNETTE: Thank you, Your Honor.

7 THE COURT: Okay. Anything further?

8 MR. MCGUIRE: No, sir.

9 THE COURT: All right, ma'am. If you'll step back to
10 the jury room briefly. I'll have you come back in just a
11 minute.

12 THE WITNESS: Okay.

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

15 THE COURT: Defense position.

16 MR. MCGUIRE: She's qualified.

17 THE COURT: State.

18 SOLICITOR BARNETTE: I agree.

19 THE COURT: Court finds that she is qualified.

20 Bring, bring Ms. Collins back.

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

23 THE COURT: That didn't take long, did it?

24 THE WITNESS: No.

25 THE COURT: All right. Ma'am, now let me tell you

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1 where we are. I have determined that you are qualified to
2 continue in our process.

3 Now, what that means is we're in the process of
4 qualifying a pool of jurors. From that pool the ultimate
5 jury will be selected. So, I don't know whether you'll be
6 on the jury at this point in time or not.

7 It's gonna take us, I would think, until maybe Tuesday
8 of next week or so to get this process completed. So, we
9 will be back in touch with you after that time and let you
10 know what you need to do next.

11 THE WITNESS: Okay.

12 THE COURT: All right. The clerk is gonna give you a
13 little sheet of paper.

14 THE WITNESS: Thank you.

15 THE COURT: Now, on that is some suggestions to you,
16 some reminders. The jury will, if, if qualified, will be
17 sequestered for a period of time. Now sequestration means
18 that you'd be kept in a hotel room. You'd be there till the
19 trial is completed. It may take about a week or so, and I
20 assume that that process would not pose a risk to your
21 personal health or safety?

22 THE WITNESS: No.

23 THE COURT: Okay. And would it pose a risk to the
24 personal health or safety of anyone else?

25 THE WITNESS: No.