

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:
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1 THE COURT: Okay. All right. Now, ma'am, you'd be in
2 that position. The State would pay for all of your meals,
3 your travel. You would be allowed to call family or
4 friends, but those calls would be monitored to be sure there
5 wasn't any discussion about the case because we don't want
6 any outside influences to affect the jury once the case
7 starts.

8 You understand what we're doing?

9 THE WITNESS: Yes.

10 THE COURT: It's okay for you to talk to family or
11 friends about the fact you may have to go away for a few
12 days for jury duty. But do not discuss the case with them.
13 My order, as far as your behavior, continues until we tell
14 you whether you're on the jury or you're released.

15 Okay?

16 THE WITNESS: Okay.

17 THE COURT: So, don't try to gather any information
18 about the case from any source. Don't discuss it with
19 anyone. Don't allow anyone to discuss it with you other
20 than you can mention to family and friends that you're still
21 in the process with this trial, you could be called away,
22 but don't talk about what the case is about, what the issues
23 are, anything other than making arrangements in case you
24 have to be away.

25 THE WITNESS: I understand.

Individual Juror Qualification

1 THE COURT: You understand that?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. And can you follow those directions?

4 THE WITNESS: Yes.

5 THE COURT: All right. Very good.

6 So, we'll call you next. You don't need to get in
7 touch with us---

8 THE WITNESS: Okay.

9 THE COURT: ---unless someone were to contact you about
10 your service on the jury and try to discuss something with
11 you, let us know about that.

12 THE WITNESS: Okay.

13 THE COURT: Okay?

14 THE WITNESS: Yes, sir.

15 THE COURT: If that were to happen.

16 Okay. You're free to go.

17 THE WITNESS: Okay.

18 THE COURT: The bailiffs will check you out. Thank you
19 for your help.

20 THE WITNESS: Thank you, everybody.

21 MR. MCGUIRE: Thank you, ma'am.

22 THE COURT: All right. We'll be in recess until two
23 o'clock.

24 Thank you very much.

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

Individual Juror Qualification

1 THE COURT: All right. State's ready to proceed?

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

3 THE COURT: Defense ready?

4 MR. MCGUIRE: Yes, sir.

5 THE COURT: All right. I believe the next one on our
6 list is Cicely White.

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

9 CICELY WHITE, having been previously
10 sworn, testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q Hi.

14 A Hello.

15 Q Have a seat please.

16 A (Witness complies.)

17 Q And you are Cicely White?

18 A Yes, Cicely.

19 Q All right. I'm gonna be talking to you first. So, you
20 might want to turn your seat a little bit toward me. So,
21 that's -- you're, you're good.

22 A Okay.

23 Q We're gonna be going over some matters with you this
24 afternoon. I don't want you to feel threatened by this
25 process or anything of that nature. Every juror is being

Individual Juror Qualification

1 called in on an individual basis, and we do -- it's, it's a
2 phrase called voir dire. We go through a situation where we
3 ask you about certain things that, that give us information
4 and assist us in picking a jury later on.

5 A Uh-huh. (Affirmative).

6 Q We're not selecting a jury today.

7 A Okay.

8 Q We are still going through the process of qualifying
9 people either for -- on or off of the jury. So, we're gonna
10 be asking a series of questions. I'll start first.

11 A Uh-huh. (Affirmative).

12 Q Then I'll give the attorneys an opportunity to ask
13 questions of you.

14 I will tell you, today, that there are no right or
15 wrong answers to any question that we ask. They're only
16 your answers.

17 A Okay.

18 Q And we want your truthful answers, and, in that regard,
19 I'll remind you that you took an oath earlier to tell the
20 truth to the Court. You're still under that oath now.

21 Do you understand that?

22 A I understand.

23 Q I want to thank you for your patience or your
24 willingness to cooperate. It's been a, a slow process, a
25 tedious process for the people to have to sit back there

Individual Juror Qualification

1 with nothing to do, and I appreciate your willingness to, to
2 hang in there with us and get this done. I understand that
3 it's an inconvenience and we're gonna do everything we can
4 to keep it moving

5 okay?

6 A Okay.

7 Q Now, as I said, I'm gonna be asking you some questions
8 in just a few minutes.

9 One of the questions I want to ask you is, when you
10 left the courthouse earlier this week, I gave some
11 instructions about your behavior in relationship to this
12 case.

13 A Right.

14 Q I indicated or told you that you should not try to
15 gather information about the case on your own. You
16 shouldn't discuss the case with anyone or allow anyone to
17 discuss it with you. You shouldn't watch, listen to, or
18 read any media reports that may concern this case, and
19 should anyone call you about the case that you should let us
20 know.

21 Have you been able to follow those instructions?

22 A I have.

23 Q Okay. So, well -- that's fine.

24 Now, let me ask you this.

25 Are you the kind of person who could, if you, in fact,

Individual Juror Qualification

1 did hear something outside of the courtroom that might
2 pertain in anyway to any of the issues in this case or
3 what's going on, that you could set that matter aside and
4 decide a case, if you were on the jury, based on what you
5 hear in the courtroom and the evidence that's presented
6 during the trial?

7 A Yes.

8 Q Could you do that?

9 A I could.

10 Q Okay. Now, ma'am, have you ever participated in any
11 discussions, group discussions, Internet blogs is what
12 they're called, or chat rooms where the subject might of
13 been something about the death penalty?

14 A No.

15 Q Have you ever participated in any political activity
16 that may of had the death penalty as an issue involved in
17 it?

18 A No.

19 Q Now, there -- back there there was a list of people
20 that we had and it's about three pages long.

21 A Uh-huh. (Affirmative).

22 Q Did you read the list?

23 A I did.

24 Q Did you have a chance to go over it?

25 A I did.

Individual Juror Qualification

1 Q Now, as to the people that are on that list, is there
2 anybody on -- and those are people who have been identified
3 as possible witnesses. I'm not sure whether, in fact, they
4 will testify, but they might testify.

5 But at any rate, as to those people, is there anybody
6 on that list that you have ever been related to by marriage
7 or that you're related to by blood or have you ever had a
8 social or a personal or a business relationship with anyone
9 on the list?

10 A No.

11 Q So, as far as that list is concerned, did you recognize
12 anybody on the list?

13 A Nobody.

14 Q Okay. Thank you.

15 Now, ma'am, I'm going to be asking you some questions,
16 a series of questions, and a lot of it has to do with legal
17 concepts. A lot of it has to do with your position on
18 certain matters. You seem to be a mature enough adult that
19 you would not feel threatened by my asking about those
20 things.

21 I don't think that -- we're not, we're not here to try
22 to invade anyone's privacy, but we may ask you your opinion
23 or your views on certain things.

24 Are you okay with that process?

25 A I'm okay.

Individual Juror Qualification

1 Q Okay. Now, I want to point out one thing to you.

2 To a certain extent we're going to put the cart in
3 front of the horse here, and let me explain what I mean by
4 that.

5 Monday I explained that this trial, if it goes forward,
6 and it's gonna go forward, is divided into two sections or
7 two, two processes. There will be a trial concerning the
8 charges that have been brought, and depending on the verdict
9 on that, on those charges, then there may be a second
10 hearing, a second trial.

11 A Uh-huh. (Affirmative).

12 Q And by that I mean there -- that one of the charges is
13 the offense of murder. The State had requested the death
14 penalty as a possible penalty for that, and, in this state,
15 there -- if someone is found guilty of murder, under those
16 circumstances, there's a second trial that's held concerning
17 the penalties that might be given.

18 Some of the questions and some of the things I'll talk
19 over with you have to do with that second hearing, the
20 possible penalty phase.

21 A Uh-huh. (Affirmative).

22 Q And I want you to know that we're kind of putting the
23 cart in front of the horse in that I'm not sure we'll get to
24 that stage. It's up to what happens. He may or may not.

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q And I want to point out to you that every defendant in
2 this state, any, in any criminal case, is always presumed to
3 be innocent of the crime for which that person's been
4 charged until such time as a jury has found them guilty
5 according to the law and the evidence.

6 Do you understand that that's true?

7 A I do.

8 Q Okay. Well, so, in this case we're gonna be talking
9 about a possible penalty hearing before we ever know what's
10 going to happen in that first hearing, but I want to point
11 out the same jury hears both cases.

12 A Uh-huh. (Affirmative).

13 Q So, while we're selecting that jury, I can't stop in
14 the middle and reselect the jury. The same jury will hear
15 it. So, we don't have any choice but to talk about penalty
16 matters at this stage of the proceeding.

17 You understand that?

18 A I do.

19 Q So, it shouldn't be taken as a reflection against the
20 defendant or his case that we're talking about penalty now.
21 We still have to go through that full process before we get
22 to that stage.

23 Do you understand that?

24 A I understand.

25 Q And do you appreciate that concept?

Individual Juror Qualification

1 A I do.

2 Q Okay. Thank you.

3 Now, a couple of things I want to ask you about.

4 First of all, I want you to imagine that you're a juror
5 in any criminal case now. We're not gonna be talking just
6 about this case. I've been telling jurors, as we do this,
7 think about the fact that you might be a juror in a case
8 where someone's accused of something that's as minor as
9 shoplifting, something like that. So, I'm talking about
10 general principles that are involved in criminal law now
11 that we're gonna talk about that.

12 So, if you were a juror in that type of case, would you
13 be willing to listen to the law as given to you by the
14 judge?

15 A Yes.

16 Q Now, in doing that, would you be willing to accept that
17 law and then apply it -- and let me point out one thing. In
18 every criminal case tried in this Court, and in any Court in
19 this state, the jury is the sole and exclusive judge of the
20 facts. That means the jury has to decide the credibility of
21 the witnesses, what happened, how it happened, when it
22 happened, all the factors that go into whatever's been
23 charged. It's up to the jury to find the facts.

24 A Uh-huh. (Affirmative).

25 Q They're, they're even called the judge of the facts.

Individual Juror Qualification

1 The jury is the judge of the facts during a trial.

2 Now, the judge is considered the judge of the law. So,
3 the judge is the person who gives the law to the jury. The
4 jury applies it to the facts as they find them and then they
5 reach a verdict.

6 Do you understand how that works?

7 A Yes.

8 Q Okay. So -- and, and what I'm gonna say now is would
9 you be willing to accept the law as given to you by the
10 judge and apply it to the facts as the jury finds those
11 facts to be in reaching a verdict?

12 A Yes.

13 Q Now, let me take it a step further.

14 Let's say that you were on the jury sitting in that
15 jury box behind you, and we're trying that case of
16 shoplifting, and I'm explaining to you the law that applies
17 to that charge. And as I'm explaining that law to you, you
18 hear something that I say about the law that you say well,
19 you know, I didn't think the law was that way or you think
20 to yourself that really ought not be the law. That's not --
21 but, but -- so, you hear something that maybe you don't
22 agree with and you don't understand when the judge is giving
23 the law.

24 Nevertheless, would you be willing to accept the law as
25 given to you by the judge and apply that law to the, to the

Individual Juror Qualification

1 facts in reaching a verdict?

2 A Yes.

3 Q Okay. Now, I want to go over some more factors as far
4 as concepts under the criminal law, and the first concept
5 I'm going to mention to you is, and I talked about it just a
6 minute ago, every defendant in every criminal case is always
7 presumed, under the law, to be innocent of the crime for
8 which the charge has been issued.

9 Do you understand that concept?

10 A Uh-huh. (Affirmative).

11 Q Do you agree, agree with that concept?

12 A Yes.

13 Q All right. Now, the next step of that is that, because
14 a defendant is always presumed to be innocent, the defendant
15 is never required to prove his innocence because we presume
16 that he's innocent.

17 Do you understand that concept?

18 A Uh-huh. (Affirmative).

19 Q Do you agree with that one?

20 A I do.

21 Q Now, the next step is that, because a defendant is
22 never required to prove his innocence, and a defendant is
23 never -- is always presumed to be innocent, that a defendant
24 has no burden of proof in a criminal trial. In other words,
25 they are not required to offer any proof whatsoever when

Individual Juror Qualification

1 they're tried for a criminal case, any defendant.

2 You understand that?

3 A I do.

4 Q Now, by the same token, the State has brought the
5 charges in the criminal case.

6 A Uh-huh. (Affirmative).

7 Q So, the State does have a burden of proof in a criminal
8 trial. The State is required to prove the allegations
9 they've made against a defendant and they have to prove
10 those allegations by proof beyond a reasonable doubt.

11 Do you understand that concept under the law?

12 A Yes, sir.

13 Q And do you agree with concept?

14 A I do.

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

16 A Okay.

17 Q If you were on a jury, and if you and your fellow
18 jurors heard all the evidence, and then you heard the law
19 tried, charged by the judge, and you went back in your
20 deliberations and you considered the evidence and you
21 considered the law, and you and your fellow jurors came to
22 the conclusion that the State had not offered enough proof
23 to prove the defendant guilty of the crime beyond a
24 reasonable doubt.

25 You understand where you are?

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q Could you then sign a verdict that would find the
3 defendant not guilty?

4 A Yes.

5 Q Now, by the same token, let's say the State has
6 produced enough evidence to establish the crime by proof
7 beyond a reasonable doubt, and you and your jurors -- fellow
8 jurors came to that conclusion.

9 Could you then sign a verdict that would find someone
10 guilty of a crime?

11 A Yes.

12 Q So, that would indicate to me that you are the kind of
13 person who would want to listen to the facts, the evidence,
14 would want to weigh those facts and determine which is,
15 which is true, which is false, and then based on your
16 determination of the facts and the law given by the judge,
17 you'd want then to decide whether or not someone is guilty
18 or innocent of the crime?

19 Is that true?

20 A Correct.

21 Q Okay. Now, ma'am, I told you that I would get to the
22 point where I was going to talk to you a little bit about
23 this penalty phase of the trial, and, again, I acknowledge
24 I'm putting the cart before the horse in doing that, but
25 this is the only chance I will get to talk to you about

Individual Juror Qualification

1 this.

2 A Okay.

3 Q I mentioned to you earlier that there is a two step
4 trial that we go through.

5 A Uh-huh. (Affirmative).

6 Q The first stage of that trial is what we call the guilt
7 phase of the trial, and, again, that's where the jury
8 decides, based on the evidence presented and the law given
9 by the judge, whether or not the defendant has been proven
10 guilty of the crimes that have been alleged, and that proof
11 has to be beyond a reasonable doubt.

12 So, let's assume that you are serving on a jury in this
13 type of trial, and you've been through that first phase of
14 the, of the trial.

15 A Okay.

16 Q And you and your fellow jurors have found the defendant
17 guilty of the crime of murder.

18 Now, the State, in this case we're talking about, has
19 requested that the jury consider the possibility of a
20 penalty of, of death.

21 A Yes, sir.

22 Q So, because of that, there will be a second trial. The
23 second trial has a different subject than the first trial.

24 A Okay.

25 Q The subject of the second trial is the appropriateness

Individual Juror Qualification

1 or the level of penalty to be assessed for the guilty
2 verdict on the murder.

3 Do you understand that?

4 A Uh-huh. (Affirmative).

5 Q The law that sets up that type of hearing provides for
6 two different kinds of evidence to be presented at that
7 hearing. That statute says that there can be evidence put
8 in concerning what are called aggravating factors or
9 circumstances and also evidence of mitigating factors or
10 circumstances, and the statute actually has a list of those
11 things that, that the, that would constitute aggravating
12 circumstances and mitigating circumstances.

13 Not every murder in this State is death penalty
14 eligible. The State has to prove one of those aggravating
15 circumstances beyond a reasonable doubt before a jury can
16 consider the death penalty. So, there may be one or more of
17 those aggravating circumstances that you get evidence on,
18 but the State has to prove at least one of them.

19 On the other hand, there are mitigating circumstances.
20 There's a list of, I haven't counted them, but maybe ten or
21 more mitigating circumstances listed in the statute that a
22 defendant can bring up that would tend to lessen the
23 severity of what was done. It's still a murder, but it may
24 lessen the severity, and in the eyes of some people, may
25 justify a lower sentence or a lower level sentence.

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1 So, do you understand the difference between what are
2 called aggravating circumstances, they make the situation
3 worse, and mitigating circumstances that modify or lessen
4 the severity of the case?

5 A Yes.

6 Q So, you understand that evidence -- both types of
7 evidence would be admitted during that second trial?

8 A Uh-huh. (Affirmative).

9 Q All right. Now, I want you to, again, imagine that
10 you're on this jury, you and your fellow jurors have found
11 the defendant guilty of the crime of murder. The State has
12 requested the death penalty. So, you're now coming, with
13 your fellow jurors, back to the courtroom to start that
14 second hearing, the second phase of the trial.

15 You understand where I've asked you to put yourself?

16 A Uh-huh. (Affirmative).

17 Q Okay. Now, as you're walking down that hall, I want
18 you to think about a sheet of paper that I had back in the
19 jury room that had three different people -- types of jurors
20 described on that sheet of paper.

21 Do you remember that?

22 A I remember it.

23 Q Okay. I'm gonna go over those people with you again so
24 that we have an understanding cause I'm gonna talk about
25 juror number one, number two, and number three.

Individual Juror Qualification

1 A Okay.

2 Q I don't think they're numbered on that paper.

3 A No.

4 Q So, we're gonna talk about it now so that you and I
5 have it clear as to what I'm talking about in this
6 situation.

7 Now, juror number one is a juror who's walking down the
8 hall getting ready to come into the courtroom and that juror
9 has already made his or her mind up because that juror
10 believes that, in the case where someone is found guilty of
11 murder, that the only appropriate penalty is the death
12 penalty, and in every situation such as this, that same
13 juror would always vote for the death penalty. No matter
14 what the aggravating circumstances or the mitigating
15 circumstances might be. That person's already made up their
16 mind.

17 The second juror I'll talk about is one who's walking
18 down the hallway and that juror also is already made his or
19 her mind up. That juror believes that it is never
20 appropriate for the State to take someone's life in response
21 to the commission of a crime, and that person has that
22 opinion regardless of the severity of the crime or the
23 aggravating circumstances that might be proven or the
24 mitigating circumstances. That person believes that the
25 death penalty is never an appropriate penalty. That person

Individual Juror Qualification

1 then would vote for life imprisonment without the
2 possibility of parole. That's what that means, somebody
3 goes to jail for life and stays there till they're passed
4 away.

5 A Okay.

6 Q That person would always vote for that penalty because
7 they don't believe the death penalty is ever appropriate.

8 The third juror is one who has not yet made his or her
9 mind up. That juror is coming down the hall, and that juror
10 wants to go into that hearing and wants to hear the
11 different factors that might be involved in, in this. In
12 other words, that juror wants to hear what the State has to
13 say to aggravate or make the crime appear to be more severe
14 maybe justifying a higher penalty, and that juror also wants
15 to hear the mitigating factors, the factors that might make
16 the, the crime less severe or some reason why the person
17 would give a lower level penalty.

18 A Okay.

19 Q So, that juror's coming in wanting to hear that
20 evidence, wanting to weigh that evidence. That juror would
21 want to hear the judge's charge concerning those matters,
22 and then, after consulting with their fellow jurors, come up
23 with what they think is the appropriate thing to do given
24 the circumstances.

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q Now, do you understand the differences between those
2 three people?

3 A I do.

4 Q Now, I asked you also to put yourself on that same
5 jury. You're walking down the hall. You're about to walk
6 into the courtroom, and you're getting ready to go in that
7 hearing where they're gonna offer evidence concerning the
8 aggravating circumstances and the mitigating circumstances.

9 Now, of the three people I described to you, which one
10 of those would most closely resemble your feelings as you
11 came into the courtroom?

12 A Number two.

13 Q Number two.

14 So, you're of the opinion that, no matter what the
15 seriousness of the crime might be, you would never give the
16 death penalty as a penalty in a case?

17 A No.

18 Q You don't believe it's ever appropriate, is that
19 correct?

20 A Yes, sir.

21 THE COURT: All right. I'll allow the attorneys to ask
22 questions if you'd like.

23 MR. YOUNG: Very briefly.

24 THE COURT: Yes, sir.

25 EXAMINATION

Individual Juror Qualification

1 BY MR. YOUNG:

2 Q Good afternoon, Ms. White.

3 A Good afternoon.

4 Q Can you tell me a little bit about your feelings about
5 you -- the death penalty is never an appropriate punishment?

6 A I believe in the justice system, but I just don't think
7 that I would have peace with myself deciding someone's fate
8 to death. I agree with the rest of it, in jail for life,
9 and letting that be the outcome of it.

10 Q Well, you know, in South Carolina, the death penalty is
11 never required.

12 Okay?

13 A Okay.

14 Q No juror ever would have to do violence to their
15 conscience and give somebody the death penalty if they
16 didn't feel it was appropriate.

17 A Okay.

18 Q Okay. You with me on that?

19 A Yes.

20 Q But what we do ask people to do is sort of set aside
21 their personal feelings --

22 A Uh-huh. (Affirmative).

23 Q -- and give meaningful consideration to the two
24 punishment options.

25 A Okay.

Individual Juror Qualification

1 Q And one of those is the death penalty.

2 Do you think that you could give it consideration?

3 A No.

4 Q Just not at all?

5 A No.

6 Q Is that part of your religious upbringing or part of---

7 A Personal, what I believe in. I just don't feel like I
8 have that in me to be a deciding factor or decide on a jury
9 to sentence someone to death. I know they probably did a
10 heinous crime, and, you know, taking someone else's life,
11 but I don't think I have peace with myself thinking about
12 playing a part in sentencing someone else to death.

13 Q Sure, and even understanding that you would never have
14 to do it if, if you didn't feel it was appropriate.

15 A You were saying I wouldn't have to do it if I didn't
16 feel it was appropriate?

17 Q Yeah, you would never have to give anybody the death
18 penalty if you didn't feel it was appropriate.

19 A Okay. Well, on -- I don't want to be a part of making
20 that decision sentencing someone to death. Now, if I can
21 sit in on it, and, you know, play a determining factor in
22 whether or not they go to jail and spend life in jail,
23 whatever, I'm open to that because I do believe in the
24 justice system, but when it comes to the death penalty,
25 that's where I draw the line.

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1 Q I understand. Thank you very much, Ms. White.

2 A Thank you.

3 THE COURT: State wish to ask questions?

4 SOLICITOR BARNETTE: No, sir.

5 THE COURT: All right, ma'am. I'm gonna ask, I'm gonna
6 ask you to step back to the jury room for just a moment.

7 THE WITNESS: Okay.

8 THE COURT: Then I'll have you come back.

9 THE WITNESS: Okay.

10 THE COURT: Thank you, ma'am.

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

13 THE COURT: Defense position?

14 MR. YOUNG: She's not qualified, Your Honor.

15 THE COURT: State agree?

16 SOLICITOR BULSA: Yes, sir.

17 THE COURT: All right. I do find she's not qualified.
18 Bring Ms. White back into the courtroom please.

19 THE BAILIFF: Yes, sir.

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

22 THE COURT: All right. Thank you, Ms. White.

23 Ms. White, at this point in time I, I have made a
24 determination. It's been my finding that you will not be
25 proceeding any further in the process. We want to thank you

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1 for your honest answers and complete answers to our
2 questions. So, I'm releasing you from any further
3 responsibility on the jury.

4 THE WITNESS: Okay.

5 THE COURT: The bailiffs will check you out and you're
6 free to go at this time.

7 THE WITNESS: Okay. Thank you so much.

8 THE COURT: Thank you for your cooperation.

9 THE WITNESS: Thank you.

10 THE COURT: Yes, ma'am.

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

13 THE COURT: All right. The next juror is Elizabeth
14 Petty, 199.

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

17 ELIZABETH PETTY, having been previously
18 sworn, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q All right. Good afternoon, Ms. Petty.

22 A Good afternoon.

23 Q How are you today?

24 A I'm fine.

25 Q Good. I want to thank you for your patience with us.

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1 we've been kind of -- I guess we've been kind of jerking
2 people around, getting them up here, making them wait, and
3 I'm sorry if we've done that to you.

4 A Okay.

5 Q But I want to thank you for your continued cooperation
6 in this process.

7 This afternoon, what we're doing is, I'm going to be
8 going over some matters with you.

9 A Uh-huh. (Affirmative).

10 Q We'll let the attorneys also ask some questions of you,
11 and I will tell you that there are no right and there are no
12 wrong answers to any question we ask.

13 We're asking things that would assist us later on in
14 selecting a jury. We are not picking the jury yet. What we
15 are doing is we are qualifying a pool of people from which a
16 jury will be selected at a later time.

17 Do you understand what we're doing?

18 A Uh-huh. (Affirmative).

19 Q Okay. Now, I'll want you to feel comfortable sitting
20 there, as comfortable as you can. Sitting in the witness
21 stand in a courtroom is not the place that you'd like to
22 be---

23 A No.

24 Q ---on a Friday afternoon, and I understand that. But
25 we're gonna try to make you as comfortable as we can as we

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1 do this, and if you have any questions or problems, you let
2 me know and we'll be glad to try to work those things out
3 for you.

4 okay?

5 A okay.

6 Q Now, the last time you were here you were sworn to tell
7 the truth.

8 Do you remember that?

9 A Uh-huh. (Affirmative).

10 Q And I'm going to remind you of that fact and let you
11 know you're still under oath at this time.

12 Do you appreciate that?

13 A Uh-huh. (Affirmative).

14 Q Okay. You have to say yes or no.

15 A I'm sorry. Yes.

16 Q This lady's, this lady's taking it down and to -- see,
17 there's microphones hanging around. So, we have to get a
18 verbal answer.

19 okay?

20 A I'm sorry.

21 Q That's quite all right. People just -- you do that in
22 normal conversation, but this is not really a normal
23 conversation.

24 A Right.

25 Q Okay. So, please answer me verbally as we go along.

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1 There was one other thing I wanted to ask you about
2 from Monday. That is that, on Monday, I asked you to -- not
3 to listen to, watch, or read any media reports about the
4 case. Not to try to go out on your own and gather any
5 information.

6 A Right.

7 Q Not to discuss this case with anyone and not allow
8 anyone to discuss it with you.

9 Do you remember that?

10 A Yes.

11 Q And have you been able to follow those instructions?

12 A Yes.

13 Q Okay. Now, ma'am, at your -- at our meeting earlier I
14 think you responded that perhaps you maybe had heard some
15 information about this case or may have seen something---

16 A Yes.

17 Q ---over the past few months or weeks, is that right?

18 A Yes.

19 Q Now, let me ask you this.

20 Are you the kind of juror who, if you were selected to
21 serve on the jury, could you put aside anything that you
22 might have heard that pertains in anyway to the case and
23 decide the case based upon the evidence and the law that you
24 hear in the courtroom during the trial?

25 A I think so.

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1 Q well, I do you -- you're sure -- are you pretty sure of
2 that or not so sure of that?

3 Are you pretty sure you could do that or not?

4 A Yeah.

5 Q You think you could?

6 A Yes, sir.

7 Q Okay.

8 A Pretty sure.

9 Q Now, I take it then that the information that you may
10 of been in contact with or whatever you thought, thought you
11 might of heard is not something that is caused you to form
12 an opinion in this matter that you couldn't put aside or
13 couldn't, couldn't concentrate on what actually happens
14 during the trial, is that right?

15 A No, I've just read the paper.

16 Q Okay. And -- well, we'll talk about that in just a
17 minute then.

18 A couple of things I want to ask you about.

19 Have you ever been involved in any discussions, any, I
20 guess, formal or informal discussions, with the groups or
21 with other people about issues involving the, the death
22 penalty?

23 A We've discussed it in our Sunday School class in
24 church.

25 Q I understand.

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1 So, it's in just in more of a church setting and that
2 sort of thing?

3 A Yes, sir.

4 Q Okay. Have you ever been involved in any political
5 actions---

6 A No.

7 Q ---in connection with that issue?

8 So, you've never written a letter to the editor --

9 A No.

10 Q -- or written a congressman or a representative or
11 called them or anything like that?

12 A No.

13 Q Okay. Now, this information that you may of seen or
14 heard or read in the paper, is it such that it would prevent
15 you from being able to be fair and impartial in this case to
16 either the State or the defense in the case?

17 A I don't, I don't really think so, no.

18 Q You don't think it would prevent you from being
19 impartial in the case?

20 A No, I mean I could be.

21 Q You could be impartial or you couldn't be impartial?

22 Has it affected you so much that you will not approach
23 this was an open mind?

24 A Oh, no, not at all.

25 Q So, you can approach it with an open mind?

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1 A Yes, sir, I can approach it with an open mind.

2 Q And you could be fair and impartial to both sides?

3 A I think so.

4 Q Okay. All right. Now, there was a list of people back
5 there.

6 A Right.

7 Q Those are people who have been identified to me as
8 people who might be witnesses in this case.

9 A Right.

10 Q I don't know that they're all gonna testify, but they
11 certainly could. So, we're gonna assume that they are.

12 A Okay.

13 Q They just been -- I've asked the parties to identify to
14 me anybody who's a possible witness.

15 Now, on that list, there's a lot of names. About three
16 pages.

17 A Uh-huh. (Affirmative).

18 Q And my concern about that list is that I want to know
19 if, when you went over that list, if there was anybody on
20 that list that you feel has ever been related to you by
21 marriage or is there anybody on that list that is related to
22 you by blood?

23 Are there any relations?

24 A No.

25 Q In-laws---

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1 A No.

2 Q --or blood relations?

3 A No.

4 Q Okay. Now, are there people on that list that you have
5 had -- either had a social, business, or personal connection
6 with?

7 A Yes.

8 Q All right. Can you tell me who those people are?

9 A Robert Rosenberg.

10 Q Okay.

11 A I went to high school --

12 Q with him?

13 A -- with him, and have seen him, off and on, you know,
14 through the years.

15 Q He's with the Sheriff's Office.

16 A Right.

17 Q I know Mr. Rosenberg.

18 All right. Who else?

19 A Matthew Everett, if it's the same one.

20 Q Where did you know him from?

21 A He was a student at my school.

22 Q Okay. Where did you go to school?

23 A No.

24 Q Where did you, where did you---

25 A I work at Roebuck---

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1 Q where you work?

2 A ---Elementary School.

3 Q I see. Okay. Very good. All right.

4 A And his mother was also a friend of mine in high
5 school.

6 Q Okay.

7 A And we kept in touch.

8 Q How long ago was he in school there?

9 A Oh, my goodness. Matthew -- the Matthew that I know --

10 Q Uh-huh. (Affirmative).

11 A -- would probably be close to 30.

12 Q Okay. So, it's been a long time?

13 A Yes.

14 Q Twenty or more years?

15 A Yes.

16 Q Okay. Go ahead.

17 Anyone else?

18 A And Gail Shook.

19 Q All right. And you might -- how might you know her?

20 A She was my Sunday School teacher for years --

21 Q Uh-huh. (Affirmative).

22 A -- at the church that I attended, and her husband was
23 like a grandparent, adoptive grandfather to my daughter.

24 Q I see.

25 All right. Now, let me ask you a couple questions

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1 about those people.

2 A Uh-huh. (Affirmative).

3 Q Let's say that any of them or all of them end up
4 testifying in the case, and I have no clue what they're
5 gonna be testifying about.

6 A Right.

7 Q I don't, I don't -- I'm not getting into that, but
8 they'll be offering some information that might help
9 establish some fact that's in controversy.

10 So, let's assume they're testifying, and if you were
11 sitting over there on the jury, and that, that person was
12 called to testify, would the fact that that person is
13 testifying in the case, would that prevent you from being
14 fair and impartial to both sides of the case?

15 A The two gentlemen, no. But Ms. Shook, she's been a
16 great influence in my life.

17 Q Uh-huh. (Affirmative).

18 A So --.

19 Q So, if she were to testify, it could adversely---

20 A It could.

21 Q ---affect your ability to be fair and impartial?

22 A I think so.

23 THE COURT: All right. All right. Let me, let me ask
24 if anybody wants to follow-up on that question?

25 MR. YOUNG: No, sir.

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1 THE COURT: State?

2 SOLICITOR BARNETTE: No, sir.

3 SOLICITOR BULSA: No, sir.

4 THE COURT: All right, ma'am. I'm gonna ask you to
5 step back to the jury room briefly and then we may have you
6 back.

7 THE WITNESS: Okay.

8 THE COURT: Thank you.

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

11 THE COURT: Defense's position.

12 MR. YOUNG: She's not qualified, Your Honor.

13 THE COURT: State.

14 SOLICITOR BULSA: We agree.

15 THE COURT: Okay. Let's bring her in. We'll release
16 her.

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

19 THE COURT: Ms. Petty, because that witness could
20 affect your impartiality on the case, I'm gonna find that
21 you're not qualified to proceed in our process, our process.

22 THE WITNESS: Okay.

23 THE COURT: So, I'm releasing you at this point in
24 time.

25 THE WITNESS: Okay.

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1 THE COURT: Thank you for your cooperation thus far.

2 THE WITNESS: Thank you.

3 THE COURT: The bailiff will check you out and you have
4 a good weekend.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you, ma'am.

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

9 THE COURT: All right. The next one is Terrance
10 Richardson.

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

13 TERRANCE RICHARDSON, having been previously
14 sworn, testified as follows:

15 EXAMINATION

16 BY THE COURT:

17 Q Sir, have a seat in the -- I say that red seat's the
18 hot seat, but it's not a hot seat. Go ahead and have a
19 seat.

20 How are you doing today?

21 A All right.

22 Q Your name is Terrance J. Richardson, is that right?

23 A Yes, sir.

24 Q And, Mr. Richardson, I'm gonna start off talking to you
25 first. So, you might want to turn a little bit. This wall

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1 here gets in the way if you look that way and I can't see
2 you. So, I like to be able to see you when I'm talking to
3 you.

4 A All right.

5 Q Mr. Richardson, I want to thank you very much for your
6 cooperation in this process so far. I know that we've had
7 people up here and back and forth and, and some people have
8 had to wait a long time. Some haven't had to walk -- wait
9 too long. So, I just thank you for your cooperation in our
10 process thus far.

11 we're going to be talking to you or I'm gonna be
12 talking with you initially in going over some things that,
13 that would be important in selecting a jury in this case.

14 Do you understand what we're doing?

15 A Oh, yes, sir.

16 Q I will be asking questions about things that you maybe
17 not -- have not thought about or heard about before, but
18 there's some things that are important and would assist us
19 in picking a jury. They're no right or wrong answers to my
20 questions or to the lawyer's questions if they get a chance
21 to talk to you. What we're asking for is honest responses
22 from you, and in that, in that respect, on Monday you took
23 an oath to tell the truth to the Court.

24 Do you remember when you did that?

25 A I do, sir.

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1 Q You're still under oath now.

2 Do you understand that?

3 A Yes, sir.

4 Q And you, you accept that fact?

5 A Yes, sir.

6 Q Now, also, on Monday, I gave some instructions to all
7 the jurors about how I wanted you to act in respect to this
8 case while you were away from the courthouse. I told the
9 jurors not to try to gather any information on their own
10 about the case, not to discuss the case with anyone, not to
11 allow anyone to discuss it with them. I told you not to
12 watch, read, or listen to any media reports that might be
13 out there about this case.

14 I guess my question to you now is have you been able to
15 follow instructions?

16 A Yes, sir.

17 Q So, you've been able to comply with everything I've
18 asked you to do?

19 A Yes, sir.

20 Q Okay. Good.

21 Now, let me ask you this, and I don't know if you've
22 heard anything about this case. It doesn't appear that you
23 have. But if you have, have -- if you've heard anything
24 about the case or there's any information that, I don't
25 know, you may of come in contact with that might have to do

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1 with something that's involved in this case, let me say if
2 you're on the jury, are you the kind of person who could set
3 aside outside influences and decide a case based upon the
4 evidence and the law that you hear during the trial?

5 A Yes, sir.

6 Q You could do that?

7 A Yes, sir.

8 Q All right. Now, have you ever participated in any type
9 of, of blog, Internet chat room, discussions, somewhere
10 where something was discussed that had to do with the death
11 penalty?

12 Have you ever been involved in any of those kinds of
13 things?

14 A No, sir.

15 Q Have you ever participated in any political activity
16 such as writing letters to the newspaper, writing letters
17 to, to representatives, calling representatives on the phone
18 concerning the issue of the death penalty?

19 A No, sir.

20 Q So, you've never been involved in any of that type
21 activity?

22 A No, sir.

23 Q Okay. Now, back there in the jury room there is a list
24 of people who are -- it's about three pages, and I'll tell
25 you those people have been identified to me as possible

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1 witnesses in this case. I don't know if all those people
2 are gonna testify or not. I will assume that some of them
3 may not. But if they did, if those people did testify, I
4 want to ask some questions about that.

5 A Okay.

6 Q As you read over that list, did you see anyone on that
7 list that you may have ever been related to by marriage or
8 related by blood to?

9 A No, sir.

10 Q Did you see anybody that was on that list that you may
11 of had a -- may previously or currently have some type of
12 relationship, either business, social, or otherwise, with?

13 A No, sir.

14 Q So, you didn't recognize anyone's name in particular
15 off of that list?

16 A No, sir.

17 Q Okay. That's good.

18 Now, I'm going to go over some things that have to do
19 with the law in general. I'm going to go over some things
20 that have to do with some of the issues involved in this
21 case, and in doing so, I will eventually get to the point
22 where I will discuss with you some things that have to do
23 with the death penalty, and that's because, in this case,
24 that's been -- it's one of the requested penalties that's
25 been requested.

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1 Now, let me explain to you one thing so that you
2 understand something. To a certain extent, our discussion
3 of that issue today is putting the cart before the horse,
4 and let me tell you mean -- tell you what I mean by putting
5 the cart in front of the horse.

6 As -- if this trial proceeds as it could proceed, there
7 will be a hearing at which the jury will decide whether or
8 not the defendant is either guilty or not guilty of the two
9 charges that have been lodged against the defendant, and
10 those charges are a charge of kidnapping and a charge of
11 murder.

12 Now, once that particular hearing has been held, and a
13 verdict is rendered, if the verdict on the murder turns out
14 to be not guilty, that's the end of the case. We won't ever
15 get to anything else in the case. It will be ended at that
16 point in time. However, if the verdict on that murder is
17 guilty, then we would have to hold a separate hearing with
18 the same jury to decide the question of the appropriate
19 penalty.

20 So, what I'm saying is, when I start talking to you
21 about that penalty phase of the trial, I realize and I hope
22 you realize that we may not ever get to that point in the
23 trial. I want you to also realize that, because the same
24 jury does both the guilt phase and the penalty phase of the
25 trial, the only time we have to sit down and talk to people

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1 about the issues involved in the penalty phase is now
2 because once the jury's seated and trying the case, we can't
3 then take people off the jury or put people on the jury.

4 You understand what I'm saying?

5 A Yes, sir.

6 Q I want you to understand that, under the law, the
7 defendant in this case is presumed to be innocent, and the
8 fact that we're talking about the penalty now shouldn't be
9 taken as any kind of reflection against him or against his
10 case in this particular matter. This is simply the only
11 time that we're gonna be able to talk to potential jurors
12 about all of the issues that could be involved in a case.

13 Do you understand what I'm saying?

14 A Yes, sir.

15 Q Okay. Very good.

16 Now, I'm going to go over some matters with you
17 concerning criminal trials and criminal law in general. Not
18 necessarily appealing -- applying to this case, but applying
19 to this case in a way. But it applies to all criminal
20 cases.

21 Do you understand what I'm saying?

22 A Yes, sir.

23 Q And I'll be asking you some questions as we go along so
24 that we have, in our minds, some of these concepts of the
25 criminal law.

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1 The first thing I want you to ask -- answer for me is,
2 if you were a juror on a case, would -- are you the kind of
3 person who could take the law given to you by the judge?

4 Could you do that?

5 A Yes, sir.

6 Q All right. Could you then take that law -- and let me
7 explain one other thing under the criminal law. The jury,
8 in a criminal case, is always the judge of the facts. In
9 other words, the jury decides the facts. The judge gives
10 the law. He explains the law to the jury. So, the jury
11 would decide the truth of the evidence they've heard, the
12 effect, the value, the weight of the evidence that they
13 hear, and then they determine what facts are true from that
14 testimony.

15 So, do you understand the -- how a jury -- what their
16 job is?

17 A Yes, sir.

18 Q Okay. Now, do you understand then that the -- are you
19 the kind of juror that could take the law as given to you by
20 the judge and apply it to the facts as determined by the
21 jury?

22 A Yes, sir.

23 Q One step further.

24 Let's say that you were on a trial of a case. You were
25 listening to the judge explain the law, and I told you the

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1 judge gives the law to the jury. So, you're listening to
2 the judge, and as you're listening to the judge, the judge
3 says something that maybe you either don't agree with or you
4 thought the law was different than that, you didn't know the
5 law was that way.

6 okay?

7 A (Witness nods affirmatively.)

8 Q Now, are you the kind of person then who could accept
9 the fact that the judge is the giver of the law, set aside
10 your personal beliefs or feelings, take the law exactly as
11 the Court gave it to you, and then apply it to the facts as
12 the jury found the facts to be?

13 could you do that?

14 A Yes, sir.

15 Q Now, I'm gonna talk about some other principles under
16 the criminal law.

17 First of all, I will tell you that, under the law, and
18 I've touched on this just a minute ago, under the law of
19 this state and of the United States, every single criminal
20 defendant, no matter how serious the crime is that's alleged
21 against him, every single criminal defendant is presumed to
22 be innocent of that charge.

23 Do you understand that?

24 A Yes, sir.

25 Q And can you accept that concept?

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1 A Yes, sir.

2 Q All right. And for that reason, and, and, and other
3 reasons, but a defendant is never required to prove his
4 innocence. In other words, the defendant does not have to
5 prove that he's innocent because the law presumes that he's
6 innocent.

7 Do you understand that concept?

8 A Yes, sir.

9 Q And because the defendant is not required to prove his
10 innocence, and presumed to be innocent of the charges, that
11 a criminal defendant has no burden of proof in a criminal
12 trial. In other words, the defendant is never required to
13 prove anything during a trial. In fact, he doesn't even
14 have to talk during the trial if he doesn't want to.

15 You understand that concept?

16 A Yes, sir.

17 Q And can you accept that?

18 A Yes, sir.

19 Q Now, I want to flip the coin over. The other party in
20 a criminal trial is the State of South Carolina or the
21 prosecuting authority, whoever's bringing the charges, and
22 they're the ones who have made allegations against the
23 defendant.

24 Do you understand that?

25 A Yes, sir.

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1 Q And the law requires or puts a burden of proof on the
2 accuser, on the prosecuting authority, and that burden of
3 proof is to prove the allegations that they've made and
4 they've got to prove those allegations beyond a reasonable
5 doubt.

6 So, do you understand that, in a criminal trial, only
7 the State has to prove something and they have to prove the
8 allegations beyond a reasonable doubt?

9 Do you understand that concept?

10 A Yes, sir.

11 Q Now, if you were sitting on a jury, and you heard the
12 evidence in the case, and the judge gave you the law, and
13 you and your fellow jurors went back into the jury room, and
14 you're considering those things trying to reach a verdict,
15 and you come to the conclusion that the State did not offer
16 enough proof to prove the case beyond a reasonable doubt---

17 A Okay.

18 Q ---would you have any problem, under those
19 circumstances, signing a verdict that says the defendant is
20 not guilty?

21 A You're saying he's not guilty?

22 Q Yes. Now, listen to the facts again, what I said.

23 A Okay.

24 Q You've listened to the evidence. You've listened to
25 all the, the evidence, the law that's been given, and you

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1 and your jury -- you and your fellow jurors decide the State
2 has not proven the allegations against the defendant to the
3 level of proof beyond a reasonable doubt.

4 A Okay. I understand.

5 Q You understand where we are?

6 A Yes, sir.

7 Q Would you be able to sign a verdict that said the
8 defendant's not guilty?

9 A Yes, sir.

10 Q Now, by the same token, if you were in that same
11 situation, and you and your fellow jurors found that the
12 State did present enough evidence to prove the defendant
13 committed the crime beyond a reasonable doubt, could you, in
14 that circumstance, sign a verdict that would find the
15 defendant guilty of a crime?

16 A Yes, sir.

17 Q That, that tells me that you are, are a juror who could
18 listen to the evidence, listen to the facts, weigh it,
19 determine the value and the weight of the evidence, listen
20 to the law given by the judge, and you could find a
21 defendant either guilty or not guilty depending on what the
22 evidence showed and the law said, is that right?

23 A Yes, sir.

24 Q Also it tells me, I think, that you're the kind of
25 person that understands that just because the defendant has

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1 been arrested, just because a charge has been entered
2 against the defendant, that that doesn't automatically make
3 them guilty of what they've been accused of.

4 Do you understand that?

5 A Yes, sir.

6 Q All right. Now, I'm gonna move on and we're gonna get
7 to that part of the process where I'm gonna talk a little
8 bit about that penalty phase that I told you is putting the
9 cart in front of the horse. But, again, it's the only
10 time -- chance I get to talk to you about this. So, we're
11 gonna do that right now.

12 Okay?

13 A All right.

14 Q Now, let me go into a little more detail about the
15 process that we're in.

16 In a case where the State is seeking the death penalty,
17 the jury is, is formed. It's found -- they're gathered
18 together, and the first thing they do is conduct a trial
19 concerning whether or not the defendant is either guilty or
20 not guilty of the crimes that are alleged, and, at that
21 trial, they would receive evidence on that point. The judge
22 would charge the law, and then they would deliberate and
23 issue a verdict.

24 Now, that verdict could be not guilty of the crimes or
25 guilty of the crimes. But for my example, we're gonna

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1 assume that you're on the jury, you've heard all the
2 evidence, and you have found the defendant, in that case,
3 guilty of the crime of murder. So, a guilty verdict's been
4 issued.

5 Now, the State is asked that the death penalty be
6 imposed for that murder. So then we go into a second
7 hearing or a second trial, and it's referred to as either
8 the penalty phase or the sentencing phase of the trial.
9 That's where we determine the appropriate penalty.

10 You understand that that's a different hearing,
11 different trial?

12 A Yes, sir.

13 Q You understand that?

14 And I will tell you that there will be different
15 witnesses at that trial than appeared in the, in the first
16 hearing because the, the issue is different. No longer
17 does -- do we have to prove whether or not the person did it
18 or not. That's been decided. The question is well, what's
19 gonna be the appropriate penalty for that particular event.

20 Do you understand where we are?

21 A Yes, sir.

22 Q Now, the statute that sets up those hearings, it
23 provides for the introduction of two types of evidence in
24 that hearing.

25 The first type of evidence in that hearing would be

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1 evidence of what is referred to as aggravating
2 circumstances, statutorily aggravating circumstances. The
3 law has a list of factors that a jury might consider in
4 reaching a verdict that would be more severe against the
5 defendant. Perhaps as high as the death penalty. So,
6 there's a list of those things and evidence would be
7 presented about those things from the prosecution.

8 Now, also that same statute has a list of what are
9 called mitigating circumstances, and those are circumstances
10 that the law has determined, if they're proven or if they're
11 shown to you or you accept that they've been shown, those
12 factors might turn -- tend to lessen either the
13 responsibility of the defendant for the crime or lessen the
14 factors on which a jury might decide the penalty. So, those
15 are things that might result in a lower penalty.

16 You understand that there's two types of evidence that
17 would come in at that trial?

18 A Yes, sir.

19 Q You understand that?

20 And there's a list of statutorily mitigating
21 circumstances, and the law also says a jury can consider any
22 factor that they want to consider in mitigation, and can
23 even consider the possibility of simply granting mercy in
24 that case. So, those are the things that a jury has to
25 consider at that hearing.

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1 Do you understand that?

2 A Yes, sir.

3 Q Now, once all that evidence has been presented, both
4 the aggravating evidence and the mitigating evidence has
5 been presented, the judge would charge the jury to go back
6 to the jury room and consider that evidence, aggravating and
7 mitigating, and make a recommendation as to the appropriate
8 penalty, and the choices are life without parole, which
9 means you go to jail and you stay there till you die, or the
10 death penalty, which I think you understand what that means.
11 So, those would be the choices a jury would have to make.

12 So now I've told you that -- to, to, in your mind,
13 think that you're on the jury in this case.

14 You remember that?

15 A Yes, sir.

16 Q And I've told you that we're at the stage where a
17 verdict has been rendered in that first trial, and a guilty
18 verdict has come in finding the defendant guilty of the
19 crime of murder. So now the question becomes what is the
20 appropriate penalty. You're walking down the hallway with
21 your fellow jurors coming back to the courtroom to begin
22 that part of the trial.

23 Do you understand where I've put you?

24 A Yes, sir.

25 Q All right. Now, do you remember a piece of paper that

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1 was sitting on the table back in the jury room that
2 described three different kinds of jurors?

3 A Yes, sir.

4 Q Did you read that paper for me?

5 A Yes, sir.

6 Q All right. Now, I'm going to go back over that, and
7 I'm not gonna quote the paper, but I'm gonna go back and I'm
8 gonna assign a number to the different kind of jurors that
9 were described on that paper. So, we're at the point where
10 you're walking down the hall, coming into the courtroom to
11 start the second phase of the trial.

12 I'm gonna tell you that juror number one, that juror
13 has already made up his or her mind before he is -- he or
14 she ever walks into the courtroom. That juror believes that
15 if someone is found guilty of murder, the only appropriate
16 penalty that can be given is the death penalty, and that
17 juror then has decided, no matter what evidence is presented
18 at that hearing, that person is gonna vote for the death
19 penalty every time.

20 Do you understand that type of, that type of juror?

21 A Yes, sir.

22 Q All right. Juror number two, that's a juror walking
23 back to the courtroom who's also made up his or her mind.
24 That juror believes that the State is never justified in
25 taking someone's life in response to a crime, and so that

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1 person has also already made up his or her mind. That
2 juror, every time, no matter how severe the crime it -- was,
3 no matter what happened, will always vote for life
4 imprisonment without the possibility of parole. That's --
5 that juror would vote that way every time.

6 Now, the third juror is walking down the hall, and that
7 juror has not yet made up his or her mind as to what is the
8 appropriate penalty. That juror wants to listen to the
9 evidence that's presented at the second hearing, wants to
10 consider both the aggravating factors and consider the
11 mitigating factors, and after hearing that evidence, and,
12 after hearing the judge's charge concerning the law to be
13 applied, would then want to go back into the jury room, and
14 with their fellow jurors, reach a decision as to what the
15 appropriate penalty might be.

16 So, do you understand the three different people I've
17 described?

18 A Yes, sir.

19 Q Now, of those three people -- I've told you that you
20 are also in that line of people walking into the courtroom.

21 which one of those three would most closely resemble
22 what your feelings were when you came into the courtroom?

23 A The third juror.

24 Q The third juror?

25 A Yes, sir.

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1 Q So, that tells me that what you would like to do is to
2 come into the jury room -- courtroom, and listen to the
3 evidence, both the aggravating evidence and also listen to
4 the mitigating evidence, and hear the law on a case, and
5 then make a decision based upon those factors, is that
6 right?

7 A Yes, sir.

8 Q Now, let me ask -- let me just take it a little bit
9 further.

10 Let's say that you and your jurors, fellow jurors are
11 in the jury room after we, after we've held that, that
12 hearing, and you're considering the question of what the
13 appropriate penalty is, and you come to the conclusion that
14 the appropriate penalty would be life in prison without ever
15 receiving a parole.

16 Could you sign a sentence in that fashion if the jury
17 reached that conclusion?

18 A Yes, sir.

19 Q Now, on the other hand, if, after considering the
20 aggravation matters and the mitigating matters, if you and
21 your fellow jurors come to the conclusion that the
22 appropriate penalty is the death penalty, could you sign a
23 verdict for the death penalty?

24 A Yes, sir.

25 Q So, you want to decide it based on the evidence during

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1 that hearing, is that right?

2 A Yes, sir.

3 Q All right. Now I'm gonna let the attorneys ask you
4 some questions about all of the things I've gone over. I
5 don't know what all they're gonna ask you about, and I'll
6 ask you to answer their questions for you.

7 okay?

8 A Okay.

9 Q All right.

10 Yes, sir, Mr. Young.

11 MR. YOUNG: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 EXAMINATION

14 BY MR. YOUNG:

15 Q Good afternoon, Mr. Richardson.

16 A How you doing?

17 Q I'm doing all right.

18 It looks like you were sort or born and raised here in
19 Spartanburg, is that right?

20 A Yes, sir.

21 Q All right. well, like the judge talked to you a little
22 bit, I'm gonna ask you some questions about your feelings
23 about the death penalty.

24 okay?

25 A (Witness nods affirmatively.)

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1 Q No right or wrong answers. Just kind of tell me how
2 you feel about it.

3 All right?

4 A All right.

5 Q So, how do you feel about the death penalty?

6 A I believe it's fair depending on the evidence. That's
7 pretty much it.

8 Q Okay. The, the phrase an eye for an eye, have you
9 heard that?

10 A Yes, sir.

11 Q Are you -- when you say it's fair depending on the
12 evidence, do you kind of mean a life for a life?

13 A Yes, sir.

14 Q That if somebody intentionally kills somebody else with
15 malice aforethought --

16 A Yes, sir.

17 Q -- like that's what murder is.

18 A Yes, sir.

19 Q Okay.

20 A The intent to kill, yeah.

21 Q Right.

22 Then you think that the appropriate penalty is the
23 death penalty?

24 A Yes, sir.

25 Q Now, is it always appropriate for that intentional

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1 murder?

2 A It's -- if it's -- if you planned on murdering
3 somebody, like you just want to go out, just hey, I'm gonna
4 kill them, boom, dead, yeah.

5 Q And -- well -- and in South Carolina we don't use the
6 word planned. We use malice aforethought. So, South
7 Carolina, murder is the intentional killing of another
8 person with malice aforethought.

9 A Okay.

10 Q Okay. Malice has a pretty wordy definition, but it
11 means hatred, ill will, or hostility towards another person.
12 When you intentionally try to harm somebody with an evil
13 intent.

14 okay?

15 A Okay.

16 Q Does that sort of make sense to you?

17 A Yes, sir.

18 Q And it doesn't have to be in somebody's mind for a long
19 time. It can happen just like that. You know, if you meant
20 to kill an innocent person, that was what we call malice
21 aforethought.

22 A Okay.

23 Q All right. You with me on that?

24 A Yes, sir.

25 Q So, it sounds to me like, and you just tell me, is that

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1 the -- you think that the only appropriate penalty is the
2 death penalty for somebody that commits that malice murder?

3 A Without any -- if you say if it's not planned?

4 Just had that thought and it just popped in their head?

5 Q They meant to kill an innocent person.

6 A Okay.

7 THE COURT: Well, I'll tell you that the malice does
8 not have to exist for any particular length of time. It
9 just has to exist when the event occurred.

10 THE WITNESS: Okay.

11 THE COURT: So, it could be a very short period of
12 time. It could be a very long period of time. That's that
13 reason there's different kinds of situations in murder.

14 THE WITNESS: Yeah.

15 THE COURT: Okay. So, it can be a short period of
16 time. It could be a long period of time.

17 A Well, given the situation, I mean -- can I give you a
18 situation?

19 Q Yeah, please, please do. There's no right or wrong
20 answers here. Just how you feel, Mr. Richardson.

21 A I guess if, like say a guy's married, comes home, finds
22 his wife in bed with another man, and just snaps, I mean
23 that would be a situation where the death penalty maybe
24 wouldn't be such -- like I could give him the death penalty.
25 I wouldn't say that would be a situation where he'd get the

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1 death penalty.

2 Q Okay. And I, and I understand where you're at.

3 So, let me take it a little bit further when we're
4 talking this malice/murder, that you found somebody guilty
5 of. This intentional meant to do it murder.

6 okay?

7 A Okay.

8 Q That would mean that it wasn't an accident, right?

9 It wasn't in -- somebody acting in self-defense.

10 okay?

11 A Yes, sir.

12 Q And it wasn't somebody who got so angry they couldn't
13 control their actions. We call that heat of passion.

14 SOLICITOR BULSA: Your Honor, I believe that's a mis---

15 THE COURT: I think that may be---

16 SOLICITOR BULSA: ---characterization of the law.

17 THE COURT: ---a mischaracterization of the law.

18 SOLICITOR BULSA: Yes, sir.

19 THE COURT: I'll be glad to go over the mitigating
20 circumstances with the defendant if you'd like for me to.

21 MR. YOUNG: No, sir.

22 THE COURT: Because one of them---

23 MR. YOUNG: No, sir, I'm talking about just a
24 conviction of---

25 THE COURT: One of them is that the defendant was

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1 provoked by the victim into committing the murder is one of
2 them. Another mitigating circumstance is that the murder
3 was committed while the defendant was under the influence of
4 a mental or emotional disturbance.

5 So, there could be some -- I don't think the way you
6 characterized it is exactly right given the statutory
7 mitigators.

8 MR. YOUNG: Sure.

9 THE COURT: So, I'll sustain the objection.

10 MR. YOUNG: Okay.

11 THE COURT: Now, if you want me to go over the
12 mitigators with him I'll be glad to do that so he
13 understands what he would be called upon to consider.

14 MR. YOUNG: Well, no, Your Honor, I'm just trying to
15 distinguish manslaughter.

16 THE COURT: Well, I don't---

17 MR. YOUNG: And what we call somebody acting in heat of
18 passion.

19 THE COURT: I don't think the question went to that,
20 that. But go ahead.

21 well, let's reformulate the question and keep going.

22 MR. YOUNG: Sure.

23 And, Mr. Richardson, I'm just trying to---

24 THE COURT: But I want the, I want the juror to
25 understand that there is a long list of possible mitigating

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1 circumstances and you haven't given him all those.

2 MR. YOUNG: No, I haven't given him any.

3 THE COURT: I understand that.

4 MR. YOUNG: And I just, I just want to talk about a
5 conviction of murder.

6 THE COURT: You asked him about the crime, that's
7 right, but you're not -- haven't countered that with the
8 mitigating circumstances.

9 MR. YOUNG: There would be no mitigating circumstances.
10 Just a conviction of murder.

11 THE COURT: I understand and he needs to be aware that
12 that's what you're asking him.

13 MR. YOUNG: Okay.

14 THE COURT: I think he is now.

15 MR. YOUNG: All right.

16 THE COURT: Go ahead.

17 Q Are you sort of with me on that, Mr. Richardson?

18 A Yeah, a little bit.

19 Q Okay. For somebody to be convicted of murder, in South
20 Carolina, that meant that it was the intentional killing of
21 another with malice aforethought. It wasn't accident. It
22 wasn't self-defense. It wasn't heat of passion.

23 Okay. You with me on that?

24 A Yeah.

25 Q And, and can you tell me your feelings -- you know, the

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1 judge kind of set it up like you and, you and 11 other
2 jurors heard this murder case, and you found somebody guilty
3 guilty, intentional meant to do it murder.

4 Okay. You with me on that?

5 A Uh-huh. (Affirmative).

6 Q And that was sort of where the judge had you coming
7 back into the room, right?

8 A (Witness nods affirmatively.)

9 Q And based on what you're telling me, and how you feel
10 about an eye for an eye, and did somebody intentionally
11 meant to do it, it kind of sounds to me like you would be
12 that first type of juror where you think that the death
13 penalty is the only appropriate punishment.

14 A No, like I said---

15 Q Okay.

16 A No.

17 Q Well, if I'm wrong, please correct me.

18 A No, I mean like, like where I gave the example like a
19 man just came home, just like pull the gun out the drawer,
20 pow, kill the dude, that's not hey, you death penalty right
21 out the bat. No, that's not it.

22 Q Right.

23 A I mean like -- maybe like a life sentence or something
24 like that.

25 Q Okay.

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1 A I mean I have to consider it.

2 Q Sure.

3 A Consider the facts, right?

4 Q Right. Yeah, you do. You have to consider everything.

5 Can you tell me about your feelings about a life
6 penalty, life without parole penalty for that guilty meant
7 to do it murder?

8 A Well -- and you're saying -- you're asking me for in
9 order for somebody to get a life, a life sentence?

10 what, what would I --?

11 Q Yeah, I'm asking you how you feel about that penalty.

12 Is that, is that a severe---

13 SOLICITOR BULSA: Your Honor, that's asking for
14 speculation. He doesn't know what all the facts are gonna
15 be. He's trying to stake him out.

16 THE COURT: well, I think -- are you asking him if he
17 considers that to be a severe penalty or not?

18 MR. YOUNG: I'm asking him if he could consider it to
19 be an appropriate penalty for somebody who's been convicted
20 for murder, yes, sir.

21 THE COURT: Okay. I'll let you ask that question.

22 MR. YOUNG: Yes, sir.

23 A Yeah.

24 Q Okay. So, now we've sort of gotten to the point where
25 we would start that second trial.

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1 okay?

2 A Uh-huh. (Affirmative).

3 Q We got the convicted murderer.

4 You with me?

5 A Uh-huh. (Affirmative).

6 Q And then the State would go first and they get to
7 present evidence about aggravating circumstances.

8 Okay. You with me on that?

9 A Yes, sir.

10 Q And one of those aggravating circumstances would be the
11 death of a child.

12 A Okay.

13 Q Okay. The murder of a child.

14 All right?

15 A Okay.

16 Q You with me on that?

17 A (Witness nods affirmatively.)

18 Q And then the defense would get to present mitigating
19 circumstances.

20 You with me on that?

21 A Yes, sir.

22 Q Now, mitigating circumstances, and like the judge has
23 pointed out, there's a lot of them, and it really comes down
24 to what you believe, how you feel, any reason that you want
25 to vote for the life penalty you can --

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1 A Uh-huh. (Affirmative).

2 Q -- and call it a mitigating circumstance.

3 A All right.

4 Q It could be background. It could be history. It could
5 be disability. It could be anything that you want it to be.

6 You with me on that?

7 A Yes, sir.

8 Q Now, in that situation where you have this aggravator
9 and all -- whatever mitigators you want to find, right?

10 A Uh-huh. (Affirmative).

11 Q Where you have this intentional murder of a child.

12 Okay. You with me?

13 A Yes, sir.

14 Q Do you think that you can give fair consideration to
15 both the death penalty and a life penalty?

16 A Yes, sir.

17 Q You do?

18 A (Witness nods affirmatively.)

19 Q Despite the fact that it is that intentional murder?

20 A Yes, sir.

21 Q Okay. I think, like I was talking to you a little bit
22 about mitigating circumstances versus aggravating
23 circumstances, aggravating circumstances have to be proven
24 to all 12 jurors unanimously beyond a reasonable doubt by
25 the State.

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1 okay?

2 A Okay.

3 Q Now, it's kind of like whether somebody's guilty or not
4 guilty, same burden of proof.

5 A Uh-huh. (Affirmative).

6 Q Okay. You with me?

7 A Yes, sir.

8 Q Mitigating circumstances, on the other hand, do not
9 have a burden of proof. Okay. Each juror is allowed to
10 decide for himself or herself what is mitigating to them.
11 Okay. A reason to vote for life for them.

12 You with me?

13 A Yes, sir.

14 Q It could be something in somebody's background and
15 somebody says well, I see this as a spark of humanity in
16 their background. I want to give that the weight of life
17 and they're entitled to do it.

18 okay?

19 A Okay.

20 Q And all that your other jurors might say is I didn't
21 see that. I'm not gonna vote for life for that reason and
22 that's okay cause it doesn't have to be unanimous. Each
23 juror is allowed to decide it and give it whatever weight
24 they want to.

25 You with me on that?

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1 A Yes, sir.

2 Q So, in that same sense, the death penalty is only
3 available if all 12 jurors agree that the death penalty is
4 appropriate.

5 Okay. And do you have -- you don't have any questions
6 about if you were on a jury and y'all decided that death
7 penalty was appropriate that Mr. Blackwell would be
8 executed?

9 A Yeah -- you -- say it again.

10 Repeat your question. I'm sorry.

11 Q Sure.

12 If all the 12 jurors agreed and decided that the death
13 penalty was appropriate, Mr. Blackwell would be executed.

14 A Okay.

15 Q You understand that?

16 A Yes, sir.

17 Q You don't have any question about what the
18 responsibility of your decision is?

19 A No, sir.

20 Q Okay. And if one juror said well, I think that life
21 penalty is appropriate, then the penalty would be life.

22 A Okay.

23 Q It would be life without the possibility of parole.

24 Do you have any questions about, in South Carolina,
25 whether or not people can get out while serving a life

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1 sentence?

2 A No, sir.

3 Q You understand that life means life?

4 A Yes, sir.

5 Q You die in prison?

6 A Yes, sir.

7 Q The way that people -- we ask jurors to sort of arrive
8 at this decision between life and death is what's called an
9 individual moral judgment.

10 A Okay.

11 Q You with me?

12 A Yes, sir.

13 Q It's kind of like choosing what faith is right for you.
14 You've made your personal decisions about your faith.

15 Is that right?

16 A Yes, sir.

17 Q All right. And you expect people to respect the
18 decisions that you've made?

19 A Yes, sir.

20 Q You recognize that other people may of made different
21 choices about what faith is appropriate for them?

22 A Yes, sir.

23 Q Do you respect the right of them to choose their own
24 personal faith?

25 A Yes, sir.

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1 Q If you saw somebody being bullied to give up what they
2 had arrived at as their individual moral judgment, would you
3 stop it?

4 A Stop bullying?

5 Q Stop the bullying.

6 A Yes, sir.

7 Q And I noticed, on your questionnaire, you were asked a
8 question about if you saw somebody discussing race
9 inappropriately, would you stop it and report it.

10 A Would it be between me and him or two different people?

11 Q It would be between whoever was in the jury room.

12 A Yes, sir. I mean I -- come get somebody to handle it,
13 but I mean I would be like hey, man, chill out.

14 Q Right. This is a respectful process. We're deciding
15 whether or not somebody lives or dies.

16 A Yeah.

17 Q There's no room for that.

18 A Okay.

19 You asked me would I stop it?

20 Q Yes, sir.

21 A Yes, sir.

22 Q Okay. And would you report it?

23 A Yes, sir.

24 Q Mr. Richardson, how do you feel about knowing that your
25 one vote would make the difference between whether or not a

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1 person lived or died?

2 A How do I feel about it?

3 Q Yes, sir.

4 A Given the evidence, if, if I feel like it's right, I
5 feel like it's right.

6 Q Okay. And at the end of the day, there's no, there's
7 no formula as to what penalty is right.

8 You understand that?

9 A Yes, sir.

10 Q There's no -- if you have A and B, then this is the
11 correct penalty, or if you have D and E, this is the correct
12 penalty. It's up to each individual juror to decide for
13 himself or herself what the appropriate penalty would be.

14 A Yes, sir.

15 Q Okay.

16 A I understand.

17 Q So, there's no right or wrong.

18 okay?

19 A Okay.

20 Q It's just how you feel.

21 A Based on my opinion, right?

22 Q Yeah. Right.

23 A Okay.

24 Q It's your opinion.

25 okay?

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1 A Okay.

2 Q Can you do that?

3 A Yes, sir.

4 Q All right. Thank you, Mr. Richardson.

5 That's all the questions I have.

6 THE COURT: Mr. Bulsa.

7 SOLICITOR BULSA: Thank you.

8 EXAMINATION

9 BY SOLICITOR BULSA:

10 Q Mr. Richardson, my name's Derrick Bulsa and this is
11 Solicitor Barnette. We're prosecuting this case. I don't
12 really have any questions for you. I appreciate all your
13 answers. You seem to be very honest and truthful. Thank
14 you for your patience.

15 A Thank you.

16 Q Okay.

17 THE COURT: All right, sir. I'm gonna ask you to step
18 back to the jury room, and then I'll be calling you back in
19 just a moment.

20 Thank you, sir.

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

23 THE COURT: Defense's position on Mr. Richardson.

24 MR. YOUNG: Your Honor, I'd move to strike Mr.
25 Richardson. Don't feel that he's qualified.

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1 I think he's substantially impaired in his ability to
2 follow the law, and that once he has found somebody guilty
3 of murder, intentional murder, he thinks that the only
4 appropriate punishment is the death penalty. The only
5 example that he cited as to when it wouldn't be a death
6 penalty case would be a guy finding his wife in bed with
7 somebody else, which -- and, and I certainly didn't mean to
8 give the wrong legal standard, but -- and I'm not sure that
9 I did, but that's manslaughter, and that's heat of passion.

10 THE COURT: We were talking about mitigators I think
11 when I discussed that with him.

12 MR. YOUNG: And, and I never got to mitigation when he
13 gave that example. He was still on murder.

14 THE COURT: Oh, I understand. I understand that.

15 So, that's your basis is the fact that he used a
16 manslaughter as an example of somebody he would not give the
17 death penalty to?

18 MR. YOUNG: Yeah, that's the one situation where he
19 wouldn't give somebody the death penalty---

20 THE COURT: Of, course -- no, I think he said---

21 MR. YOUNG: ---when it was murder.

22 THE COURT: I don't think he said that was the one.
23 That was an example is the way I remember his testimony, but
24 I'll let the State discuss that with me.

25 Yes, sir.

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1 SOLICITOR BULSA: Your Honor, I've been doing this a
2 long time. I think he actually described a murder. I don't
3 believe finding somebody in the bed is sufficient
4 provocation which justifies a killing in heat of passion.

5 THE COURT: well, that would depend again on the facts
6 and circumstances---

7 SOLICITOR BULSA: Yes, sir.

8 THE COURT: ---involved in it as all these cases do.

9 SOLICITOR BULSA: Yes, sir.

10 THE COURT: The -- excuse me. Yes, sir, Mr. Young.

11 MR. YOUNG: I mean I just -- I mean it -- that's the
12 textbook law school textbook case of what the example of
13 heat of passion is.

14 SOLICITOR BULSA: That's---

15 THE COURT: well, we're not trying that case,
16 Mr. Young, are we?

17 MR. YOUNG: No, sir, and that's, that's not even a
18 murder.

19 THE COURT: well, well---

20 MR. YOUNG: And you couldn't even consider the death
21 penalty.

22 THE COURT: And he, and he wouldn't give the death
23 penalty for it, would you?

24 MR. YOUNG: He wouldn't give the death penalty for
25 somebody who's not guilty of murder, that's correct.

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1 THE COURT: well, that -- I'm not sure that laymen
2 understand those technicalities like you and I do. He was
3 asked for an example of a killing that he or a murder
4 that -- he takes it as a killing I would think -- that he
5 would not give the death penalty for and he was spot on.
6 You don't give one for that.

7 Now, whether he was given all of the choices that he
8 could have for different types of murder or the various
9 aggravating circumstances that might be required, I didn't
10 hear him given those choices. I'm not sure he's aware of
11 them. He didn't go to law school like you and I did.

12 So, I'm gonna view his, his voir dire, as I'm suppose
13 to, the entire voir dire. He was very clear that he would
14 be willing to consider both types of evidence, mitigating
15 or -- evidence as well as aggravating evidence. He
16 indicated that he would make his decision based upon that
17 evidence and the law as given to him by the judge. I do not
18 find that any of his opinions or positions would
19 substantially impair his performance as a juror in this
20 case. I will find him all qualified.

21 Please Mr. -- bring Mr. Richardson back. Thank you.

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

24 THE COURT: Mr. Richardson, have a seat there again,
25 sir.

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1 (Witness complies.)

2 THE COURT: Thank you very much.

3 Again, I want to thank you for your cooperation in the
4 process. I have made a determination that you are qualified
5 to proceed in the process.

6 Now, let me tell you what that means. That means that
7 your name will go into a pool or a list of people, and, from
8 that list of people, ultimately a jury will be selected.
9 That doesn't mean that you're on the jury. It doesn't mean
10 that you're off the jury. It just means that you're still
11 under consideration.

12 Do you understand that?

13 THE WITNESS: Yes, sir.

14 THE COURT: Now, this process is taking a while. We
15 started Monday afternoon, and we're still going on Friday
16 afternoon, and I think we'll be going tomorrow and we'll be
17 going into next week it looks like. So, I can't tell you
18 exactly when we will get to the point where we can stop the
19 process. I suspect it will be maybe around Tuesday or so of
20 next week.

21 So, if -- once we get to that point, the Clerk's Office
22 will be getting back in touch with the jurors that are in
23 the list and you'll get further instructions as to what you
24 should do next.

25 Do you understand that?

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1 THE WITNESS: You said about Tuesday?

2 THE COURT: Sir?

3 THE WITNESS: About Tuesday?

4 THE COURT: I'm thinking about Tuesday, but don't hold
5 me to that because, you know, judges can get long winded.
6 Lawyers can get long winded. Even jurors answering
7 questions can get long winded. It may take a little longer.
8 People may just not want to talk and it may take less time.
9 So, it depends on how these hearings go. So, that's my best
10 guess.

11 I hadn't been guessing so good so far, I can tell you.
12 So, so, I'm gonna do the best I can. But I think that's
13 about when that's gonna happen. Okay. So, don't hold me to
14 it, but it will be next week I'm sure that we'll get back to
15 you.

16 THE WITNESS: Okay.

17 THE COURT: Now, the clerk's gonna give you a sheet of
18 paper. Now, that sheet of paper has some things that I want
19 to make you aware of or have you think about. I'll -- now,
20 we will go into a sequestration situation with the jury.
21 That means that you would be required to stay in a motel
22 while that's going on.

23 Now, if you were required to stay in a hotel and be
24 separate for a period of some days, maybe a week or so,
25 would that pose any kind of risk to your safety or well

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1 being if you did that?

2 THE WITNESS: No, sir.

3 THE COURT: would it pose any risk to the safety or
4 well being of anybody who is a family member or dependent on
5 you?

6 THE WITNESS: No, sir.

7 THE COURT: Okay. So, that's information about things
8 you might want to consider in bringing. I don't know if you
9 take any medications. But if you come back, bring enough to
10 last for about a week and a half or so. That ought to be
11 plenty to take care of that situation.

12 I'm going to tell you that my instructions about your
13 behavior continue until such time as we tell you that they
14 don't continue. So, you're still under my restriction not
15 to try to gather any information about the case. Don't
16 listen to, watch, or read any media reports. Don't discuss
17 this case with anyone and don't let anybody discuss it with
18 you. And if anybody calls you or contacts you about your
19 service on this jury, you call the Clerk's Office and let
20 me, let us know. I'll take the appropriate action.

21 You understand that?

22 THE WITNESS: Yes, sir.

23 THE COURT: Yes, sir, you continue in that.

24 There's an exception to that general rule though. If
25 you need to talk to somebody at your or you need to talk to

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1 a family member about the fact, if you are called back and
2 you do get on the jury, you'll be gone for a few days, you
3 can make those arrangements. But don't talk about the case
4 in doing so. Don't tell them what the case is about. Just
5 tell them that you may have to go away a few days and I need
6 to make some arrangements if that happens.

7 Do you understand what I'm saying?

8 THE WITNESS: Yes, sir.

9 THE COURT: Again, thank you for your help today. We
10 will call you next. You don't have to call us unless
11 somebody bothers you about your service. But we'll call you
12 next and give you your next instructions.

13 Check with the bailiffs. They'll check you out. Hope
14 you have a good weekend.

15 Thank you, sir.

16 THE WITNESS: Thank you.

17 THE COURT: You're free to go.

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

20 THE COURT: All right. The next juror on the list is
21 Laura Matherly.

22 Please bring her out.

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

25 LAURA MATHERLY, having been previously

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1 sworn, testified as follows:

2 EXAMINATION

3 BY THE COURT:

4 Q Ms. Matherly, please have a seat.

5 A (Witness complies.)

6 Q How are you today?

7 A Good.

8 Q Good.

9 Thank you for coming this afternoon, and, again, I want
10 to thank you very much for your cooperation thus far.

11 I assume that you are Laura Matherly, is that right?

12 A Yes.

13 Q Okay. Now, Ms. Matherly, we're going to go over some
14 things with you this afternoon. I want to let you know
15 we're not picking a jury today.

16 A Okay.

17 Q What we're doing is we're interviewing everybody that's
18 on our list as possible jurors, and we are determining those
19 who are in a position to proceed or keep going in the
20 process, and there are some who can't. So, we're going
21 through some things that -- with you.

22 I'll be asking a series of questions. The attorneys
23 will be given a chance to talk to you as well. I will tell
24 you that there are no right or wrong answers to what we're
25 asking you. There's only your honest responses, and that's

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1 all we want is your honest responses.

2 A Uh-huh. (Affirmative).

3 Q So, while -- that's the witness stand in my courtroom,
4 and that gets to be a hot seat sometimes for some people.
5 But it won't be a hot seat for you today.

6 A Okay.

7 Q Everybody's gonna respect you and your opinions. We
8 just really want to talk to you about some things that will
9 assist us later on as we go through the jury selection
10 process.

11 A All right.

12 Q You understand what we're doing?

13 A I do.

14 Q Do you feel comfortable with that, that?

15 A Uh-huh. (Affirmative).

16 Q Okay. And we'll be asking -- some of the things we ask
17 you about may involve some of your beliefs or opinions. You
18 seem to be a, a mature enough person that you won't feel
19 threatened by us asking about that, and I can assure you we
20 won't try to invade your privacy or anything, but we will be
21 asking some questions that you -- some people might consider
22 to be personal, and I hope you don't feel threatened by
23 that.

24 A Okay.

25 Q Is that okay?

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1 A Yes.

2 Q All right. Now, ma'am, I mentioned to you that we want
3 your honest answers.

4 A Okay.

5 Q When you were here on Monday you took an oath to tell
6 the truth.

7 Do you remember that?

8 A I do.

9 Q I want to remind you of that fact, and remind you that
10 oath continues today. So, you're still under oath for
11 purposes of this discussion.

12 You understand that?

13 A I understand.

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

15 A Yes.

16 Q Okay. Now, ma'am, also when you were here earlier I
17 gave the whole jury panel some instructions when they left
18 the courthouse, and those instructions -- and I'll just
19 touch on them briefly so we got an understanding about them.

20 I instructed the jury not to try to gather any
21 information about the case on their own. I asked them not
22 to discuss the case with anyone and not to let anyone
23 discuss it with them. I asked the jury panel not to read,
24 listen to, or watch any media reports about the case, and I
25 also instructed the jury if anyone contacted you about your

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1 service that you should report that to the Clerk's Office.

2 Do you remember my instructions?

3 A Yes.

4 Q Have you been able to follow my instructions?

5 A Yes.

6 Q Okay. All right. Is there any question about whether
7 you were able to follow my instructions?

8 A Well, my mother thinks that she knows what the trial --
9 who the trial is and everything and she called me and I said
10 mama, I really can't talk about this.

11 Q So, you stopped her?

12 A And I held the phone away from my ear.

13 Q All right. Well, I appreciate your doing that. I
14 don't know. My mom's still living, she's 90, and if I held
15 it away from my ear I could probably still---

16 A Still hear her. Okay.

17 Q ---hear her. She's, she's a big talker, but I
18 appreciate you doing that for us.

19 A Okay.

20 Q Okay. Thank you, ma'am.

21 Now, in that regard -- and, and I'm not talking about
22 anything in particular at this time.

23 But do you believe that if you were a juror on a case,
24 that, that you could take and set aside the things you may
25 of heard outside of the courtroom, and focus on deciding the

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1 case based upon the evidence and the law that you heard in
2 the courtroom during a trial?

3 Do you think you could do that?

4 A I could do that.

5 Q All right. Now, ma'am, have you ever participated in
6 any types of, I can't name all the possible things, things
7 like blogs, Internet chat rooms, forums where people get
8 together and discuss issues, things like that, have you ever
9 participated in anything like that where the issue of the
10 death penalty may of have been a subject?

11 A No.

12 Q All right. Have you ever been involved in any
13 political activity such as writing letters to the editors of
14 papers, writing letters to representatives, or calling
15 representatives again concerning any issue involving the
16 death penalty?

17 A No.

18 Q So, you've never been involved in any process like
19 that?

20 A No.

21 Q Okay. Now, ma'am, back in the jury room there was a
22 list of people, about three pages.

23 A Uh-huh. (Affirmative).

24 Q I don't know if they were totally full, but three
25 pages, three papers, that had names on them and I will tell

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1 you that those are people that have been identified to me as
2 people who could possibly be witnesses in the case. I do
3 not know if all of those people are going to testify or not.
4 They are possible witnesses in the case.

5 A Okay.

6 Q But we're gonna assume that they are gonna testify.
7 Now, you read over the list for me?

8 A I did.

9 Q As you read over that list, did you notice anyone on
10 that list that you may have ever been related to by marriage
11 or related to by blood?

12 A No.

13 Q Did you see anybody on that list that you may have had
14 some kind of social, personal, or business relationship
15 with?

16 A Yes.

17 Q Can you tell me who that is --

18 A Dale Blackwell.

19 Q Uh-huh. (Affirmative).

20 A -- use to cut my grass about three years ago.

21 Q Okay. And that's the only person you recognize?

22 A There was a name Michael Turner. He lived in our
23 neighborhood when I was a child growing up. I don't know if
24 he---

25 Q That's been a couple years ago.

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1 A Yeah.

2 Q But I'm not gonna ask you exactly how long ago.

3 A And then Rusty Clevenger, that was the other name---

4 Q All right.

5 A ---which I think everybody's kind of heard of him. So

6 --.

7 Q Well, he's, he's on the -- he's in the news---

8 A Yeah.

9 Q ---a lot around here.

10 A Yeah. So---

11 Q Okay. Now---

12 A And those were the only ones I recognized.

13 Q Let me ask you a question about those people. Let's

14 say that they were witnesses in the case --

15 A Uh-huh. (Affirmative).

16 Q -- and they testified about some fact that, that -- and
17 it may be something in controversy. It may be something not
18 in controversy, but they testified in the case.

19 If you were sitting in the jury and that person
20 happened to appear and testify, would the fact that they had
21 some knowledge about some fact and testified about it, would
22 that affect your ability to be fair and impartial to both
23 sides of the case?

24 A No. I mean I think I would be fair.

25 Q You think you would be fair?

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1 A Yes.

2 Q And you think you could be impartial regardless of
3 whether those people testified or not?

4 A That's right.

5 Q Is that true?

6 A That's true.

7 Q Okay. Now, ma'am, I want to, I want to make you aware
8 of a situation so that you can kind of put some things into
9 context that we're talking about here.

10 A Uh-huh. (Affirmative).

11 Q I touched on the fact, on Monday, that this case will
12 be divided into two different trials potentially.

13 A Right.

14 Q There will be a hearing conducted where the issue of
15 guilt or not, not guilt, either guilty or not guilty on the
16 charges that have been brought, and depending on what the
17 verdict is in that case, there may be another trial at which
18 the possible penalties will be decided. Of course, I will
19 point out to you that, if the verdict on that first trial
20 were not guilty on all charges, there would never be a
21 second hearing.

22 Do you understand that?

23 A Uh-huh. (Affirmative).

24 Q But the way our law is set up, the same jury hears both
25 hearings, both trials, both phases of the trial, and since

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1 we're picking or going about picking a jury that could
2 potentially hear both sides of the trial, this is our chance
3 that we'll have to discuss with you matters that might be
4 involved in the second half of the trial.

5 Now, I want to point out to you that every defendant,
6 in criminal cases, is presumed to be innocent. So, the fact
7 that we're today going to talk to you some about the penalty
8 side of this case should not be taken by you as any
9 reflection on the defendant or his case that's to be
10 presented. This is simply the only time we have to talk to
11 people about issues involved, both in the first part of the
12 trial, and in the second part of the trial.

13 Do you understand that?

14 A Uh-huh. (Affirmative).

15 Q So, you shouldn't, in anyway, take this as some, some
16 indication about the case or about the defendant or his
17 case.

18 A Okay.

19 Q Do you understand that?

20 A I understand.

21 Q Okay. You're, you're comfortable with that?

22 A (Witness nods affirmatively.)

23 Q Okay. Now, some things I want to go over with you.

24 First of all, I want you to imagine, to imagine that
25 you're a juror in a criminal case, and I've been using as an

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1 example, as we've gone along, let's say someone's been
2 charged with the offense of shoplifting. Something totally
3 different from what we're talking about. So, we're talking
4 about juries in general.

5 A Okay.

6 Q And you, you're on a jury.

7 If you were on a jury in this situation, could you
8 accept the law as given to you by the judge?

9 A Yes.

10 Q And let me point out to you that in every case in which
11 a jury is deciding the case in this state, and I think
12 pretty much in the United States, the jury is, is called or
13 defined as the judge of the facts. In other words, the jury
14 decides all issues of fact in the case. That is the
15 truthfulness of the evidence, the -- what happened, when it
16 happened, who did it, how it happened. Those are the things
17 that the jury decides. So, they're considered judges of the
18 facts.

19 On the other hand, the judge is considered the judge of
20 the law. The judge gives the law to the jury.

21 So, do you understand the, the different functions that
22 I and a jury might have in a trial?

23 A Yes.

24 Q So, I'm asking you if you could, if you could take the
25 law from the judge?

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1 Could you do that?

2 A Yes.

3 Q And in doing so, could you take the law from the judge
4 and then apply it to the facts as the jury determines the
5 facts to be in attempting to reach a verdict in the case?

6 A Yes.

7 Q Now, I want to take it a little step further.

8 Let's say you were sitting on a jury. You were
9 listening to the judge charge you of the law of shoplifting.
10 In other words, he's telling you what matter -- what, what
11 is involved in a shoplifting case legally. And as you're
12 listening to the judge charge you on the law, you hear the
13 judge say something that maybe you, maybe you disagree with,
14 maybe you think the law ought to be different from what it
15 is. So, you, you -- when you hear it, it just doesn't quite
16 register with you or it's not something that you were, were
17 expecting or it's something that kind of stands, stood out
18 to you personally.

19 A Okay.

20 Q Would you be willing though to accept the law exactly
21 as a judge gives you, and then apply that law to the facts
22 as the jury found them to be in reaching a verdict and set
23 aside your personal beliefs as to what the law ought to be?

24 Could you do that?

25 A I think I could.

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1 Q Okay. All right.

2 A Yes.

3 Q Now, I want to go over some, some concepts under the
4 law to be sure we have an understanding about these
5 concepts, and I think I can -- if you have a question about
6 what I ask you let me know.

7 A Okay.

8 Q I'll be glad to explain it to you further.

9 A All right.

10 Q First of all, do you understand that it's a basic
11 concept of our law that every defendant, no matter what the
12 seriousness of the crime might be that he's been charged
13 with, is always presumed, by the law, to be innocent of that
14 crime?

15 A Yes.

16 Q Do you understand that?

17 A Uh-huh. (Affirmative).

18 Q Do you understand that, because the defendant is always
19 presumed to be innocent, that the defendant is never
20 required to prove his innocence. He's already presumed to
21 be that.

22 A Okay.

23 Q Do you understand that concept?

24 A I understand.

25 Q And can you accept that concept?

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1 A Yes.

2 Q Now, because the defendant is presumed to be innocent,
3 and is not required to prove his innocence, that a defendant
4 really has gotten no burden of proof during a trial. In
5 other words, the defendant is not required to offer any
6 proof in a trial because he's presumed to be innocent, and
7 is not required to prove his innocence.

8 Do you agree with that?

9 A I agree with that.

10 Q Now, on the other hand, in a criminal trial, the State
11 is the party who has brought the charges. They have filed
12 charges against the defendant. Because they have made the
13 accusations, the law says that the State has the burden of
14 proving those allegations, and they have to prove those
15 allegations beyond a reasonable doubt.

16 Do you understand that concept under---

17 A I understand that?

18 Q ---the law?

19 So, before the defendant could be found guilty, the
20 proof must reach the level of proof beyond a reasonable
21 doubt in the jury's mind.

22 Do you understand that?

23 A I understand that.

24 Q Now, let me ask you just a couple questions putting
25 that into, to effect.

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1 Let's say you were on a jury. You and your fellow
2 jurors look at the evidence that came into a case --

3 A Uh-huh. (Affirmative).

4 Q -- and that evidence did not convince you of the
5 defendant's guilt beyond a reasonable doubt. So, you're at
6 the point where you're considering the case, and you've
7 decided that the evidence wasn't sufficient to reach that
8 burden of proof.

9 Could you, in that circumstance where the evidence was
10 not sufficient, could you sign a verdict that would find the
11 defendant not guilty?

12 A Yes.

13 Q Now, by the same token, if you and your fellow jurors
14 weighed the evidence, looked at the evidence, and decided
15 that the evidence did come to the level that the defendant
16 has been proven guilty beyond a reasonable doubt, could you,
17 in that case, sign a verdict that would find the defendant
18 guilty?

19 A Yes.

20 Q That would indicate to me that you're the kind of juror
21 that would like to listen to the evidence, weigh the
22 evidence for its truth, its value, and effect, and make a
23 decision, one way or the other, based on that evidence and
24 the law, as to whether the defendant is been proven guilty
25 or is not guilty.

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1 Is that correct?

2 A That's correct.

3 Q Do you also have the understanding that just because
4 someone is been arrested, and charged with a crime, that
5 they are not automatically guilty of the crime?

6 A Yes.

7 Q Do you understand that as well?

8 A I understand that.

9 Q Okay. Now, ma'am, we're going to get into some issues
10 now -- I told you that I'd get to the point where I'd put
11 the cart in front of the horse.

12 A Yes.

13 Q I'm there.

14 A All right. We're gonna talk about the issues involved
15 with the penalty phase of the, the trial if we ever get
16 there.

17 A Okay.

18 Q Okay. Now, I want you to imagine for me that you are a
19 juror who's been picked in a case where the State has made
20 the allegation of murder and the State has requested that
21 one of the possible penalties be the death penalty. So,
22 you're gonna be a juror in that case, and I also, in your
23 head, want you to imagine that we have reached the stage of
24 the trial where you have heard all of the evidence from both
25 sides concerning the question of guilt or innocence, and you

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1 and the jury have gone back to the jury room, you've
2 delivered, delivered -- deliberated. Excuse me. You've
3 taken the law given by the judge and applied it to the facts
4 and you have reached the conclusion that the defendant is
5 guilty of the crime of murder.

6 A Okay.

7 Q So, you understand where we are---

8 A I understand.

9 Q ---so far?

10 A Uh-huh. (Affirmative).

11 Q Now, the law says that if that occurs, and the State's
12 seeking the death penalty, that another hearing has to be
13 held using the same jurors that were in the first case, and
14 that hearing is referred to as either the penalty phase or
15 the sentencing phase. It's the phase of the trial where the
16 jury is to consider the evidence surrounding the question of
17 the appropriate penalty, and then make a decision as to what
18 is the appropriate penalty, and in this state, the choices
19 in that circumstance would be either life imprisonment
20 without the possibility of ever being paroled or the death
21 penalty. So, those are the choices that will be placed to
22 the jury.

23 Now, the law that sets up that hearing says that, at
24 that hearing, there will be evidence of what are called
25 aggravating circumstances and then there will also be

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1 evidence presented of mitigating circumstances at that
2 second trial.

3 Now, there is a list in the statute of both kinds of
4 evidence. There's a list of factors that the law recognizes
5 to be aggravating circumstances, and I'll tell you the State
6 has to prove at least one of those for the case to go
7 forward toward the decision of the death penalty.

8 A Uh-huh. (Affirmative).

9 Q And that is proof beyond a reasonable doubt.

10 A Okay.

11 Q But there's a list of those and I'm not gonna go over
12 all of these with you because it's, for, for my purposes,
13 it's not important as to the exact factors in that. But
14 there's a list of those, and those are factors which might
15 tend to cause a juror to find the, while the defendant's
16 been found guilty of murder, we know that, might be willing
17 to give a higher level of penalty for it because of the
18 aggravation or the aggravating circumstances.

19 Now, mitigating circumstances, there's also a list of
20 those in that statute. There's ten of them listed in the
21 statute, ten different factors, that a jury could consider
22 in reaching a, a verdict on the sentence.

23 And also the law goes on to say that a juror can
24 consider other factors besides what's in the statute. In
25 fact, a juror considering the penalty can even consider the

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1 factor of mercy. So, there's, there's those factors also
2 that could be, could be considered by a jury.

3 Now, you -- the jury then would hold a hearing. You
4 would hear evidence concerning aggravating factors and
5 mitigating factors, and then the judge would charge the jury
6 to go into the jury room and consider those factors, both,
7 both kinds of factors. That would be the instruction from
8 the judge, and you would then go back and consider the
9 factors to reach a verdict as to the appropriate sentence.

10 Do you understand the second phase of the trial and
11 what will go on there --

12 A Yes.

13 Q -- if we get there?

14 Now, I've told you to put yourself -- I started this by
15 telling you to put yourself in a position. You're on the
16 jury in that case. You have found the defendant guilty of
17 the crime of murder. So, there's a guilty verdict for that
18 crime. Now we're getting ready to start that second hearing
19 where the evidence will come in on the aggravating factors
20 and mitigating factors.

21 Do you understand where I've asked you to put yourself?

22 A Uh-huh. (Affirmative).

23 Q All right. So, you and your fellow jurors are about to
24 walk down the hall. You're about to walk into the courtroom
25 to start that hearing.

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1 You remember the piece of paper that was back in the
2 jury room that had a description of three types of jurors on
3 it?

4 A Uh-huh. (Affirmative).

5 Q Do remember that?

6 I asked you to read that paper.

7 Did you?

8 A I did.

9 Q Okay. And I'm gonna go over those three types of
10 jurors with you at this point in time just -- and I'm gonna
11 assign a number to them so that you and I understand which
12 juror is which number.

13 Okay?

14 A Okay.

15 Q Now, on the piece of paper I described a juror first as
16 a juror who, when they walked down the hall to come back to
17 the courtroom, that juror's already made his or her mind up.
18 That juror believes that, in every situation where a person
19 is found guilty of a murder, that the only appropriate
20 penalty is the death penalty, and regardless of what those
21 aggravating circumstances are or what those mitigating
22 circumstances are, that juror, every single time, would vote
23 for the death penalty because that juror thinks that's the
24 only appropriate penalty for the crime of murder.

25 Do you understand that juror?

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1 A Right.

2 Q The second juror I described is walking down the hall
3 to come into the courtroom and that juror is made up his or
4 her mind. That juror believes that it is never appropriate
5 for the State to take someone's life in response to the
6 commission of a crime, no matter what the crime is, no
7 matter what -- how serious it is, no matter what those
8 aggravating circumstances might be. That juror believes
9 that that punishment is inappropriate and that juror's gonna
10 vote, every time, for life imprisonment without the
11 possibility of a parole.

12 Do you understand that juror?

13 A Yes.

14 Q Now, the third juror I described on that piece of paper
15 is a juror walking down that hall. That juror has not yet
16 made up his or her mind. That juror wants to come into the
17 courtroom. That juror wants to hear the evidence concerning
18 the appropriate sentence. That would be the aggravating
19 circumstances and the mitigating circumstances. And then,
20 based upon what that evidence showed to the juror and based
21 upon the law as charged by the judge, that juror then would
22 want to deliberate with the fellow jurors and come to a
23 decision that that juror feels is appropriate.

24 Now, do you understand the three different jurors I've
25 described?

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1 A Yes.

2 Q Of those three jurors, I've asked you to imagine you're
3 about to walk into that same courtroom with, with those
4 jurors.

5 One, one of those three would most closely resemble
6 your feelings as you walked into the courtroom?

7 A I think mine would probably be number two.

8 Q Okay.

9 A But if -- it depends on the crime cause I do think some
10 people deserve the death penalty.

11 Q All right. So---

12 A But it depends on what it is. I mean I -- if, if it --
13 if somebody injured my child or anyone in my family, I would
14 want them to get the death penalty.

15 Q In your family?

16 A Yeah, in my family.

17 Q Okay. I see.

18 A I know that's a -- I know that's, you know---

19 Q Well, there's no right or wrong answers, ma'am.

20 A I know everybody feels that way, but---

21 Q I want you to tell me what your beliefs are.

22 But now -- so, you feel like that you would most, more
23 closely resemble number two?

24 A Number two, yes.

25 Q Okay. Well, I'm gonna allow the attorneys to ask you

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1 some questions about this. We're gonna explore it a little
2 further.

3 okay?

4 A okay.

5 THE COURT: All right. State.

6 SOLICITOR BARNETTE: Yes, sir.

7 May it please the Court, Your Honor?

8 THE COURT: Yes, sir, Mr. Barnette.

9 EXAMINATION

10 BY SOLICITOR BARNETTE:

11 Q Good afternoon, ma'am.

12 A Good afternoon.

13 Q And let me introduce myself. I'm Barry Barnette and
14 this is Derrick Bulsa. We'll be representing the State in
15 this matter, and I -- let me apologize ahead of time. I
16 know this is a very tough subject to talk about. This is a
17 subject we just normally don't talk everyday about
18 obviously, and just want to ask you some questions and
19 everything from there.

20 A Okay.

21 Q Before we get to that, I noticed -- are you a nurse,
22 ma'am?

23 A Yes.

24 Q Where do you work at?

25 A At the ambulatory surgery center.

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1 Q And my wife's a nurse.

2 A Okay.

3 Q So, I know it's a very important profession from that
4 standpoint.

5 Let me ask you -- just ask your views on the death
6 penalty. Let me ask you that since --.

7 A Well, I kind of believe that it's not up to me to take
8 somebody else's life. But, like I said, if somebody hurt my
9 grandchild or my daughter, I wouldn't want them to live.

10 Q Okay.

11 A I would -- that's -- I know that's not a really good
12 answer, but that's the way I feel.

13 Q Oh, I understand.

14 A So --.

15 Q There are no wrong or right answers. Let me tell you
16 that ahead of time cause, like I said, we're just trying to
17 figure, figure out how you feel about things --

18 A Okay.

19 Q -- from there.

20 But you don't think it's your place to take someone's
21 life?

22 A I would find it, I would find it very hard. It --
23 there's certain cases out there that, yes, I think I could
24 probably give the death penalty, but it depends on, you
25 know, if they injured a child or I mean if they killed a

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1 child or -- but it would be hard for me.

2 Q Oh, I understand. There's nothing easy in this world
3 unfortunately I mean when it comes to talking about
4 something like this, but I know you kept talking -- it
5 had -- would it have to be a family member for you to even
6 consider it from that standpoint?

7 A I don't think so. I just think that it depends on if
8 it was something that was premeditated, if it was somebody
9 who had killed a child, I think that, you know, I could do
10 the death penalty there. But I know -- I'm more number two
11 I'm just gonna say.

12 Q Oh, I understand.

13 Okay. So, you would say you're a number two juror
14 then?

15 A I would say, yeah, I'm more of a number two juror.

16 Q So, you would -- let me put it this way.

17 You'd want to give life in that situation?

18 You would not want to give the death penalty?

19 A I would have a hard time giving the death penalty.
20 That's what I'll say.

21 Q Cause I know -- physically I notice you're just -- I
22 mean this is hard for you.

23 A Yes.

24 Q I can tell just by looking at that.

25 A It is.

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1 Q And you just wouldn't want to put yourself in a place
2 to judge somebody else.

3 A Yeah.

4 Q You'd feel like trying to judge somebody else, that's
5 not your place?

6 A I think I could give a fair trial to, to whoever it is,
7 but I don't -- I would have a hard time putting someone else
8 to death. Like I said, if it was my family or someone like
9 that, I would definitely want them to get the -- I wouldn't
10 have a hard time then, but --.

11 Q But, you know, we're not talking about---

12 A I know that.

13 Q We're not talking about your -- thank God we're not
14 talking about your family --

15 A Yeah.

16 Q -- from there.

17 A So, I guess I'm saying I'm number two on the, on your
18 list.

19 Q I understand.

20 And that's based off your own personal belief that you
21 don't want to judge somebody or be in that position to put
22 somebody to death I guess?

23 A Exactly.

24 Q Cause you realize, at the -- and I know you not may
25 realize this. At the end of the sentencing hearing, you'd

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1 have to sign a sheet of paper. All 12 jurors would have to
2 sign if they agree on the death penalty.

3 A Yes, I understand.

4 Q And you would have to put your name on that.

5 Let's say you were the last person, and you meant the
6 difference between life and death for that person, if I hear
7 you right, you wouldn't want to put yourself in that
8 position---

9 A No, I would not want to do that.

10 Q ---to judging them?

11 And that would substantially affect you?

12 A Yeah, that would probably be -- yeah.

13 SOLICITOR BARNETTE: One moment, Your Honor, please?

14 THE COURT: Yes, sir.

15 (Pause.)

16 SOLICITOR BARNETTE: Ma'am, thank you for answering my
17 questions obviously.

18 THE COURT: Mr. McGuire, you may interview the juror.

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

20 THE COURT: Yes, sir.

21 EXAMINATION

22 BY MR. MCGUIRE:

23 Q Is it Ms. Gilbert or Matherly?

24 A It's Matherly. It use to be Gilbert.

25 Q Okay.

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1 A Gilbert's my maiden name.

2 Q Got you. Your name is a perfect combination of one of
3 my wife's favorite people, Laura Ingalls and Melissa
4 Gilbert.

5 A Okay.

6 Q Has anybody told you that before?

7 A I've heard that.

8 Q Okay. Well, the -- one factor that we haven't talked
9 about is that -- let me switch gears kind of coming out the
10 gate.

11 It sounds like, if the State was to bring forth the
12 type of evidence, the quantity of evidence, the quality of
13 evidence that proved that the person was deserving of the
14 death penalty, you could, you could do it if it was the
15 special bad enough case?

16 A It was a bad enough case, yes.

17 Q Okay. And you haven't heard any evidence at all.

18 A I don't know about this case.

19 Q Exactly.

20 So, it's -- you can't really make up your mind now, can
21 you?

22 A No.

23 Q And the judge said that the State would have to prove
24 aggravating factors and if one of those aggravating or even
25 more than one aggravating factor was proven, and if it was

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1 the kind of case where you thought the, that the death
2 penalty was warranted, you could follow the judge's law and
3 vote for the death penalty?

4 A Right.

5 Q And I understand that there's some uncomfortableness
6 with that.

7 A Yeah.

8 Q And that---

9 A I wouldn't, I wouldn't want to do that. I mean I know
10 I'm more of a number two person. I would be -- I think I
11 could be -- give a fair trial and be honest about that. But
12 when it came to giving the death penalty, I think I would
13 have a hard time doing that.

14 Q And we would expect people -- I mean the death penalty
15 means taking the life of another human being --

16 A A human person.

17 Q -- which is about the most difficult decision anybody
18 could make in their entire life.

19 A Yeah. Exactly.

20 Q We would expect people to have some high degree of
21 reservation about that, but that's, that's not the task. We
22 would expect people to have some scruples and reservations
23 about that issue. The test is can you follow the law and
24 vote for the death penalty if you thought it was warranted,
25 and vote for the life penalty if you thought that was

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1 warranted.

2 Can you follow that law?

3 A I could follow that law.

4 Q Okay. So, you could do that and you could sign the
5 paperwork necessary if need be?

6 A I don't know if I could sign the paperwork or not.

7 That's very hard. I'm just gonna tell you. I keep telling
8 y'all I'm like more of a number two person.

9 Okay. I mean if it were a family member of mine, I'd
10 want them to get the death penalty. If it's somebody I
11 loved, I'd want them to get the death penalty. But I don't
12 know these people and so it would be very hard for me to
13 give the death penalty to someone else.

14 Q Okay.

15 A Okay.

16 Q And I understand that, and, again, you know -- I agree
17 with you. It would be very hard for, I think, anybody
18 with -- that values human life.

19 A Right.

20 Q We wouldn't want to impanel a jury full of people who
21 would vote death at the drop of a hat. That would be wrong.
22 And we actually expect to have people with reservations that
23 would treat this with the gravity and reservation that it
24 really does demand.

25 So, even though you do, you do indicate that you're

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1 kind of a number two, what I do hear you saying is if the,
2 if the State was to prove an aggravating factor, and it
3 was -- the way the law works in the country, the United
4 States, is that we have a statute that has aggravating
5 factors, and it's designed to narrow the class of defendants
6 eligible for the death penalty. You can't get the death
7 penalty for just murder.

8 Did you know that?

9 A I did know that.

10 Q Okay. It has to be aggravating.

11 A Right.

12 Q And you don't know anything about the case.

13 A I don't know anything about the case.

14 Q And you indicated earlier that maybe if it was a
15 particular kind of victim, like a child, you could consider
16 the death penalty.

17 A Uh-huh. (Affirmative).

18 Q And sort of the 800-pound gorilla in this case is, and
19 I'm just gonna tell you, the victim in this case is a child.

20 Did you know that?

21 A No, I didn't know that.

22 Q Okay. And in that situation, can you contemplate the
23 death penalty as being---

24 SOLICITOR BARNETTE: Objection, Your Honor. He's
25 trying to stake out the juror on that point.

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1 MR. MCGUIRE: I didn't finish really.

2 THE COURT: Well, we -- I've, I've tried to -- when you
3 get into that stage, Mr. McGuire, I've required that we
4 discuss both sides. You brought out an aggravator, but the
5 juror needs to be aware that there are mitigating
6 circumstances as well---

7 MR. MCGUIRE: Sure.

8 THE COURT: ---that could be introduced.

9 MR. MCGUIRE: Absolutely.

10 THE COURT: They're not just one aggravator -- it's not
11 like you're deciding this in a vacuum where we only consider
12 the mitigator -- the aggravator. I think she understands
13 and she's agreed that there would be both aggravating
14 circumstances and mitigating circumstances shown. So, your
15 question, to a certain degree, does not recognize or
16 contemplate the existence of mitigating circumstances that
17 I'm sure would be shown to a jury in this situation. So,
18 it's not just that factor, but a multitude of factors that
19 would be presented.

20 MR. MCGUIRE: I, I agree and I'm gonna follow up on
21 that right now, judge.

22 THE COURT: Let's do that.

23 Q The judge is right. There's a -- there's a whole list
24 of mitigating factors. It can be that the person has no
25 significant history of violence. It can be that they're

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1 under an emotional disturbance or emotional problem at the
2 time. Mental retardation can be a factor. The age or
3 mentality of the person. These are things -- these are some
4 things, but it can not -- and the judge is right. It can be
5 a whole host of things. It can really be almost any reason
6 to vote for, for life, anything you seen in the person's
7 background, their life, in addition to, to things that could
8 actually apply to the incident itself, and that's what
9 mitigation is. I think I -- I think that's a pretty good --
10 the judge might want to add to it, but I think that's a
11 pretty good definition.

12 Do you understand that?

13 A I understand that.

14 Q It's -- and I think the judge used the phrase a whole
15 host of reasons to vote for the life penalty.

16 A Right.

17 Q Okay. And I want to tell you a little bit about the
18 law to see if you're, you're comfortable participating in
19 this system.

20 Okay. First off, the death penalty is never required.
21 Ever.

22 Did you know that?

23 A I did know that.

24 Q Okay. Some people show up and they think the death
25 penalty, if the State proves, you know, aggravator one, two,

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1 and three, death penalty is automatic, and that's never the
2 case, and it sounds like you know that.

3 A Uh-huh. (Affirmative).

4 Yes, I do know that.

5 Q Okay. And no individual juror is ever required to vote
6 for the death penalty. It sounds like you, you have that
7 understanding as well.

8 A Right.

9 Q Okay. And the way we call the decision making process,
10 in the penalty phase, is that it's an individual moral
11 judgment. Every juror gets to vote their individual
12 conscience, and they can agree to disagree.

13 Did you know that?

14 A Yes.

15 Q A traditional trial, you know, if it's a, even a murder
16 trial, robbery trial, burglary trial, if the jurors can't
17 agree, the whole trial has to be done again. It's called a
18 mistrial.

19 In the penalty phase, if the jurors ultimately disagree
20 on the punishment, the judge would take the case and
21 sentence, and he'd sentence to life in prison.

22 A Okay.

23 Q Did you know that?

24 A I think I did know that.

25 Q Okay. You're, you've got---

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1 A They all have to agree. We all would have to agree for
2 the death penalty, yes, and if one person doesn't agree,
3 then it would---

4 Q It would be life.

5 A Exactly.

6 Okay. That's my understanding.

7 Q Okay. You're more sophisticated sometimes. Most
8 people don't understand that, and that's why explain we
9 that, those principles.

10 A Okay.

11 Q Is that a, is that a principle of law that you can
12 respect, that one person, one person wants to vote for life
13 it will be life?

14 A Yes.

15 Q Okay. And if, if people had different views than you,
16 you would respect their opinion?

17 A Yes.

18 Q But you want yours respected?

19 A Yes.

20 Q Okay. And now knowing all this information, with all
21 the mitigation evidence that you could possibly, that you
22 could consider, as the judge said, a whole host of reasons,
23 knowing the death penalty is never required, knowing that it
24 would only -- you would only have to vote for it and sign a
25 piece of paper.

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1 If, in your heart, you thought it was the most
2 appropriate penalty, knowing all of this now, do you think
3 you could follow the judge's instructions and apply the law
4 and the evidence in the case and fairly consider both
5 penalties?

6 A I -- if I were picked I would do -- I could do that.

7 Q Okay. And sign the appropriate, the appropriate
8 paperwork?

9 A Yes.

10 Q Okay. That's all I have for you, ma'am. Thank you so
11 much.

12 EXAMINATION

13 BY THE COURT:

14 Q okay. Ma'am, let me just ask a couple follow-ups by
15 the Court. It was indicated to you, and you've kind of
16 given some inconsistent answers on a, on a couple of points
17 and I want to kind of get down to---

18 A Okay. That's fine.

19 Q ---where we really area.

20 Okay. Once the jury has considered all of that
21 evidence, if the jury, during its deliberations, came to the
22 conclusion that the appropriate penalty was the death
23 penalty, it requires that a verdict is -- be signed by all
24 12 jurors. All 12 jurors have to put their name on that
25 verdict. On one occasion or a couple of occasions you said

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1 you didn't think you could sign a paper that would sentence
2 somebody to death. Just a minute ago you said that you
3 could. That's inconsistent to me.

4 A Okay.

5 Q So, I need for you to tell me, if, if it came down to
6 that point that the jury had agreed that the, that the death
7 penalty was the appropriate penalty---

8 A But I would have to be part of that jury.

9 Q Oh, yes, ma'am.

10 A I would be agreeing to that. So, if I felt that in my
11 heart I could sign it.

12 Q Well, as the attorney pointed out, one person can stop
13 it.

14 A Right.

15 Q It wouldn't be---

16 A If I felt that it wasn't---

17 Q Then it wouldn't be a verdict.

18 A If I felt---

19 Q But the question is could you put pen to the paper and
20 sign the document that it would sentence, sentence somebody
21 to death.

22 A I would have a hard time doing that, but I don't know
23 anything about this case. I think, like I said when I first
24 came in here, that I think some people do deserve the death
25 penalty. I personally don't want to be in that position to

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1 be on the jury to, to do that.

2 Q well, nobody, nobody asked to be here. You didn't.

3 A I know. I know.

4 Q I know that.

5 My -- the answer to my question is?

6 A So if I say no, can I go?

7 Q I can't answer that question not at this point in time.

8 A well, I'm gonna say I'm a number two person.

9 Q What does that mean?

10 A That I would have a hard time -- my answer is I would
11 have a hard time giving someone else the death penalty.

12 Q So, you don't think you could sign that paper or could
13 you sign that paper?

14 A I guess I could sign it if, if I felt that it was
15 warranted. I mean I think there are some cases people need
16 to be put to death.

17 Q So, you say you're more like a number two.

18 Does that mean you're somewhat like a number three?

19 A That's -- you're exactly right. That means I'm
20 in-between right there. I really -- I'm -- you asked me to
21 give honest answers.

22 Q There's no right, there's no right or wrong answers
23 here. It's just your answers.

24 A well, I'm telling you, I'm in -- I want to say one or
25 the other, but there's people out there I think that deserve

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1 the death penalty.

2 Q Okay.

3 A And I've heard cases---

4 Q All right. Now, let me ask you a couple more -- just
5 some follow-up questions.

6 If you were selected to serve on the jury, we will
7 sequester the jury. That means that this juror -- jury
8 would be housed during the term of the trial, the time the
9 trial starts till it finishes, in a hotel here at the
10 Marriott. That jury would be seated for, I estimate, about
11 a week and a half, but -- till the case is over is how long
12 you'd be there. We'd go seven days a week. Once we start
13 the trial we don't stop because we don't want to take
14 anymore time from people's lives that we have to. So, we
15 would go until we're finished.

16 During that time you'll be allowed to call or talk to
17 family. You would -- it would be monitored however.
18 There's a group of people who sit with the jury. We have
19 jury sitters I guess you'd put it. So, they would be sure
20 that you weren't communicating about the case. You'd
21 receive pay for your time. Jury pay's not as much as people
22 make at the job. It's all the law allows, and you'd be paid
23 for travel.

24 Now, my next question to you is, if you were on the
25 jury, you were sequestered, would that, in anyway, pose a

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1 serious risk of harm to either -- to your personal well
2 being?

3 A No.

4 Q Would it pose any serious risk of harm to the personal
5 well being of anyone who's dependent upon you?

6 A No.

7 Q All right, ma'am. I'm gonna ask you, at this point in
8 time, to step back into the jury room. Don't discuss this
9 process with anybody back there. I'll be calling you back
10 in a few minutes and we'll discuss it further.

11 A Okay.

12 Q Thank you, ma'am.

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

15 THE COURT: Defense's position regarding Ms. Matherly.

16 MR. MCGUIRE: She's qualified.

17 THE COURT: State.

18 SOLICITOR BARNETTE: Not qualified.

19 THE COURT: Be happy to hear from you.

20 SOLICITOR BARNETTE: Yes, sir, a couple reasons.

21 One, obviously she's gonna give it to a family member.

22 That was the one thing she kept repeating over and over.

23 She really couldn't consider anything outside of her family,

24 and State versus Leon Drayton, the second trial, 361 S.E.2d

25 91, 1987, the trial judge denied excusing the juror and said

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1 he could not vote for the death penalty---

2 THE COURT: I can't, I can't hear what you're saying.

3 SOLICITOR BARNETTE: I'm sorry. Trial judge did not
4 err in excusing the juror who he stated he could not vote
5 for the death penalty if he did not know the victim.

6 That's basically what she's saying, and if it's a
7 family member, she could do it. If it's not a family
8 member, she can't do it and I would she's not qualified on
9 that and she gave very inconsistent answers on a death
10 warrant from that standpoint. I know the Court asked the
11 question to follow up with that, but just taking her answers
12 as a whole, especially her answer concerning her family
13 member, I think she can definitely do it if it's her family.
14 With her -- with it not being her family, I don't think
15 she---

16 THE COURT: well, she didn't -- also said, Mr.
17 Barnette, that if it was a child. Eerily, could be an issue
18 in this case.

19 SOLICITOR BARNETTE: Yes, sir, I understand. I just
20 don't think she's qualified. I don't think she can -- I
21 mean, she said she couldn't outside of her family members.
22 I think she's disqualified based off of that.

23 THE COURT: Do you want to give me any further argument
24 on your point or do you just want to leave it with where you
25 left it?

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1 MR. MCGUIRE: Can you give me a hint as to how
2 necessary?

3 Are you---

4 THE COURT: well, no, there -- you know, this is one of
5 those ones that's a, that's a close question or I wouldn't
6 be asking for that. I'd make a ruling.

7 MR. MCGUIRE: well, I---

8 THE COURT: If you don't want to discuss it, that's
9 fine with me.

10 MR. MCGUIRE: Oh, no, no, I need to discuss it then.

11 THE COURT: You usually do want to discuss it. Even
12 when you win you want to discuss it. So, I thought you
13 might want to discuss it now. But go ahead.

14 MR. MCGUIRE: well, I'm gonna stay true to form then
15 and talk a little bit.

16 THE COURT: That's fine with me. That's what I'm here
17 for.

18 MR. MCGUIRE: Thank you, judge.

19 Judge, I think, I think that -- yeah, she leans towards
20 the life penalty just like we have -- I think we have some
21 people who lean towards the death penalty. I think the
22 state, in trying to argue to keep certain jurors, used that
23 very phrase. That it's okay to lean, that this person's
24 leaning, or it's okay to lean. That's -- those words, I
25 want to adopt them. I think, if we apply the same standard,

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1 the Court's been very consistent in, in stating the
2 standard. You have to look at all the answers. Even if
3 they're inconsistent, you're looking at it as a whole.

4 She, she mentioned she could do it. She used the
5 phrase I think several times there's some people that
6 deserve the death penalty, and she said she could sign the
7 paperwork several times. She said no sometimes. But when
8 you look at it as a whole, she qualified the answer to yes.
9 we would just ask that we be fed from the same spoon so to
10 speak.

11 THE COURT: All right. I'll go back to one of the
12 cases that I've referred to. I believe it's the Longworth
13 case in which the Court indicated that, in a capital case, a
14 juror may not be excluded for his or her attitude against
15 the death penalty -- capital punishment, punishment unless
16 it would render that juror unable to return a verdict
17 according to law. The standard is whether the juror's views
18 would prevent or substantially impair the performance of his
19 or her duties as a juror.

20 while this juror indicated she was more like a number
21 two, she then went on to describe herself as someone who
22 could give the death penalty under certain circumstances,
23 and said that there were times that it was warranted. She
24 had some difficulty in answering the questions as to whether
25 or not she could sign the verdict, which the law requires a

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1 jury -- juror to do. If she could not sign that verdict,
2 then she could not serve, carry out her function. She
3 indicated that she thought she could, could. Not thought
4 she could, that she could thought eventually. It would be a
5 difficult decision for her, I believe, but one that she said
6 that she could make. I'm gonna find the juror qualified.

7 Bring her in.

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

10 THE COURT: Ms. Matherly, have a seat please.

11 (Witness complies.)

12 THE COURT: I have made the decision that you can
13 continue in our process.

14 THE WITNESS: Oh, goodness.

15 THE COURT: Now, what that means is that you will be
16 called at a later time. Doesn't mean that you're on the
17 jury.

18 THE WITNESS: Okay.

19 THE COURT: It means that you're in the pool for the
20 jury.

21 THE WITNESS: All right.

22 THE COURT: Now, at some -- what, what we're doing is
23 we're preparing a pool of people who could serve on the
24 jury. Once that pool has been completed we will be calling
25 the jurors and giving them further instruction. I suspect

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1 that will be some time next week.

2 THE WITNESS: Okay.

3 THE COURT: Hopefully early next week. It could be mid
4 week. I'm not sure exactly right now. As you can tell,
5 some take longer than others take. So, I can't answer that
6 question for you other than to tell you that we will call
7 you and let you know what you need to do.

8 Give her the sheet of paper please.

9 THE WITNESS: Okay.

10 THE COURT: Ma'am, that document will give you some
11 indications of the things you might need to think of
12 because, if you're called back and you are on the jury, then
13 you would need to be prepared to stay for a little better
14 than a week at a hotel.

15 THE WITNESS: Okay.

16 THE COURT: So, if you're taking medication or anything
17 like that, be sure you have a sufficient supply. Bring
18 whatever personal items you need with you for that period of
19 time. The hotel does have a laundry facility. So, if it
20 goes longer than expected, there's a way to get your clothes
21 cleaned and keep you going. You dress casually on a jury.
22 That's not a problem.

23 Now, I'm gonna tell you also that my instructions will
24 continue until you hear from us. That means that you're not
25 to listen to, watch, or read media reports. You're not to

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1 discuss this case and what's gone on in it with anyone. You
2 are not to let anyone discuss it with you. You're not to
3 make any attempts to try to gather any information on your
4 own.

5 THE WITNESS: Okay.

6 THE COURT: If anyone calls you or contacts you about
7 your service on the jury, there's numbers for the Clerk's
8 Office there, call and report that activity.

9 THE WITNESS: Okay.

10 THE COURT: Other than that, we'll be calling you, and,
11 again, the exception to my general rule is you can talk to
12 family and employers about the fact you may need to be
13 absent. Make arrangements for that, but in doing so, do not
14 talk about the case or the issues that might be involved in
15 the case.

16 Do you understand my instructions?

17 THE WITNESS: I understand.

18 THE COURT: Can you follow my instructions?

19 THE WITNESS: Yes.

20 THE COURT: The bailiffs will check you out. You're
21 free to go at this time.

22 THE WITNESS: Okay. But when they call -- when you
23 call you'll tell me yes or no, whether I'm---

24 THE COURT: We will tell you further instructions.

25 THE WITNESS: Okay. All right.

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1 THE COURT: That's all I can tell you at this point in
2 time.

3 THE WITNESS: Okay. All right.

4 THE COURT: So, you'll receive additional instructions
5 when we call.

6 THE WITNESS: Okay.

7 THE COURT: Thank you.

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

10 THE COURT: All right. Court's gonna take about a ten
11 might break.

12 We're in recess.

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

14 THE COURT: All right. State ready?

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

16 THE COURT: Defense ready.

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: Cory Cheeks.

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

21 CORY CHEEKS, having been previously
22 sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q All right, sir. You might want to turn so you can face

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1 me cause I'm gonna do a lot of talking to you. Maybe then
2 we'll get -- let some other people do some talking to you.

3 okay?

4 A (Witness nods affirmatively.)

5 Q Okay. Your name is Cory Cheeks, is that right?

6 A Yes, sir.

7 Q Now, Mr. Cheeks, you have -- you were here on Monday,
8 and, at that time, you took an oath to tell the truth.

9 Do you remember that?

10 A Yes, sir.

11 Q I'm reminding you of that because you're still under
12 oath at this time.

13 Are you aware of that?

14 A Yes, sir.

15 Q So, what you're telling me now is under oath.

16 You understand that?

17 A Yes, sir.

18 Q You agree to that?

19 A Yes, sir.

20 Q All right. I want to thank you for your cooperation in
21 this process. I know we've had people up here and back and
22 forth and I don't know how, how many times you've been here
23 or how long you've been here, but it's probably been a
24 little while you've been waiting and I appreciate your
25 willingness to do so. Thank you very much.

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1 Now, also, at the, at the meeting we had on Monday I
2 gave the whole jury some instructions. I told the jury not
3 to try to gather any information on their own about the
4 case, not to listen to, watch, or read, read any media
5 reports about the case. I asked the jury not to discuss the
6 case with anyone and not to let anyone discuss the case with
7 them, and also I instructed the jury, if anybody tried to
8 contact them about their service, to let the Clerk's Office
9 know.

10 Do you remember those instructions I gave on Monday?

11 A Yes, sir.

12 Q Have you been able to follow my instructions since
13 Monday?

14 A Yes, sir.

15 Q Okay. Good.

16 Now, I'm gonna be asking you some questions that have
17 to do with a, a lot of things, and I will tell you there's
18 not any right or wrong answers. There's only your answers
19 and we want your answers to be truthful and, and complete
20 answers.

21 Do you understand that, sir?

22 A Yes, sir.

23 Q So, don't feel like you're, you're -- I can assure you
24 everybody's here gonna treat you with respect. You're not
25 sitting in the hot seat. We're not trying to grill anybody

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1 here today. We just want to get your, your ideas and your
2 views about some things and be sure you understand some
3 things that would be necessary for someone on a jury to
4 understand.

5 Do you understand what we're doing?

6 A Yes, sir.

7 Q Okay. Now, first of all, I want to ask you, are you
8 the kind of person that if you were selected to be on a
9 jury, could you set aside anything you might have heard that
10 might have any influence on your decision one way or the
11 other?

12 Could you set aside anything that you've heard outside
13 of the courtroom and decide a case based upon the law and
14 the evidence that was presented to you and in front of you
15 inside the courtroom?

16 A Yes, sir.

17 Q So, you, you could decide it on that information?

18 A Yes, sir.

19 Q All right. Have you ever participated in any
20 discussions or groups that may of discussed anything that
21 has to do with the issue of the death penalty?

22 A No, sir.

23 Q Have you ever engaged in any political activity
24 concerning that issue?

25 A No, sir.

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1 Q So, you've not been involved in any speeches or talks
2 about that or anything of that nature?

3 A No, sir.

4 Q Okay. Back in the jury room there was a list of people
5 that I gave you, about three pages long, and I asked
6 Mr. Ruth back there to tell you to read that.

7 Did you read it?

8 A Yes, sir.

9 Q Now, as to the people that are on that list, those are
10 people who have been identified to me as possible witnesses
11 in the case, and I want to know, as you read over that list,
12 was there anybody on that list that you believed that you
13 might be related to either by blood or marriage or anything
14 like that?

15 A No, sir.

16 Q Was there anybody on those lists of papers that was
17 somebody that you may have had a social, a personal, or a
18 business connection or relationship with?

19 A No, sir.

20 Q So, you didn't notice anybody on there that you had any
21 connection with whatsoever?

22 A No, sir.

23 Q Okay. Very good.

24 Now, I'm going to ask you a series of questions now
25 that, that will be about jury service in general and some

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1 about jury service in this case. Before I do that, I want
2 to be sure that you understand one thing that, that I want
3 to be sure you've got kind of in your mind so you understand
4 what we're doing here.

5 On Monday I touched on the fact that this kind of case
6 is a little different from the normal criminal case.
7 Normally, in a criminal case, you see a jury decides whether
8 somebody's guilty or not guilty, and if they're found
9 guilty, it's up to the judge to then set the penalty or set
10 the sentence.

11 You understand that's how it normally works?

12 A Yes, sir.

13 Q This kind of case where the State is requesting that
14 the death penalty be considered as a possible penalty is
15 different because the law then says that there must be a --
16 first a hearing or a trial---

17 A Okay.

18 Q ---where the question of whether or not the defendant
19 is guilty or not guilty of the charges is decided. Then the
20 same jury that hears that case, if the defendant is found
21 guilty of the crime of murder, then would hold a hearing to
22 determine what is the appropriate penalty to give for that
23 conviction. So, it's different in that in this case the
24 same jury will hold two hearings possibly in order to
25 complete the case.

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1 Now, it's also possible that, if the jury found the
2 defendant not guilty in that first trial, there's no need
3 for them to consider any penalty cause that would be the end
4 of the trial. But, today, we're going to be talking about
5 issues that would be involved in both phases of the trial
6 even though we're not sure we'll ever get to that last phase
7 of the trial.

8 You understand that?

9 A Yes, sir.

10 Q So, I want to tell you and make sure you understand
11 that we're kind of putting the cart in front of the horse by
12 talking about that, but since the same jury would hear both
13 trials, there's no way we can stop in the middle and then
14 ask jurors what they think about the penalty phase and how
15 they would treat it. So, if we're gonna talk about those
16 things we need to talk about it before the trial starts.

17 Do you understand that?

18 A Yes, sir.

19 Q And I will tell you that every defendant in this Court
20 is always presumed to be innocent of the crimes for which
21 they've been charged, and that is true in this case too.
22 This defendant, Mr. Blackwell, is presumed to be innocent of
23 the, of the charges. So, it shouldn't be taken as any kind
24 of reflection against him or against his case that he may
25 put up during the trial that we're talking about the penalty

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1 phase now. It's simply this is the only time we can do
2 that, and we're gonna talk about it now.

3 So, do you understand that concept?

4 A Yes, sir.

5 Q Okay. Thank you, sir.

6 Now, I'll ask you some questions about jury service
7 generally. So, right now I'm talking about if you were
8 selected on a jury, let's say, for someone who had been
9 charged with shoplifting, for example, and you were in the
10 courtroom. The questions I'm gonna ask now just deal with
11 general jury service and your understanding of it.

12 First of all, in a criminal trial, were -- any trial,
13 but especially in a criminal trial, the jury is always the
14 trier of the facts. It's the one that decides the issue of
15 fact. So, it's called the judge of the facts, the jury is,
16 and the judge is always considered the judge of the law. In
17 other words, the judge tells the jury what the law is, and
18 then the jury applies the facts that they find to that law
19 and then they reach a verdict of either guilty or not
20 guilty.

21 So, do you understand how that works?

22 A Yes, sir.

23 Q You accept that as that's the way, that's the way that
24 is?

25 A Yes, sir.

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1 Q Okay. Now, if you were serving on a jury let's say in
2 that case I was talking about, shoplifting case, would you
3 be able to take the law as given to you by the judge and
4 consider it?

5 A Yes, sir.

6 Q Would you be able to take the law as given to you by
7 the judge and then apply it to the facts in the case as
8 determined by the jury in order to reach a verdict?

9 Could you do that?

10 A Yes, sir.

11 Q Let me take it a step further.

12 Let's say that you were sitting in the jury box, and
13 during that trial you're trying somebody for shoplifting.
14 The judge, at the end of the trial, is explaining the law or
15 charging the jury with the law to be applied. As you're
16 listening to the judge tell the law, give the law, you hear
17 something that maybe you don't necessarily agree with or you
18 hear something in that charge that's different from how you
19 understand the law was. So, it's something that's different
20 or maybe it doesn't sit well with you, but it's something
21 the judge is telling you what the law is.

22 Would you be willing to set aside your misgivings or
23 your personal beliefs and take the law exactly as the judge
24 gave it to you and use that law and apply it to the facts in
25 reaching a verdict?

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1 A Yes, sir.

2 Q You could do that?

3 A Yes, sir.

4 Q Now, there are -- there's some other things I wanted to
5 talk to you about as far as the -- some legal concepts. The
6 first one is, under the law that we operate under, a
7 defendant is always presumed to be innocent of the crime for
8 which the defendant has been charged.

9 Do you understand that that's a concept under our law
10 that the defendant is always presumed to be innocent?

11 A Yes, sir.

12 Q You understand that?

13 A Yes, sir.

14 Q Now, for that reason, under our law, a defendant is --
15 never is -- it's never necessary for a defendant to prove
16 his innocence. He's never required to do that because we
17 presume his innocence.

18 Can you accept that concept?

19 A Yes, sir.

20 Q And because a defendant is presumed to be innocent, a
21 defendant is, is never required to prove anything at a
22 trial. In fact, a defendant can go to a trial and never
23 take the stand, never offer any testimony under our law.

24 Do you understand that the defendant is not required to
25 offer any proof or has no burden to prove anything in a

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1 trial?

2 A Yes, sir.

3 Q Now, on the opposite side of that coin, the other party
4 in a criminal case is the State of South Carolina, and they
5 bring the charges against the defendant. And those charges
6 are accusations against the defendant. And since the State
7 brings those accusations, they have to prove those things by
8 proof to the jury and the standard is the proof -- is proof
9 beyond a reasonable doubt.

10 Do you understand that the State is the only party, in
11 a criminal action, who has to prove something in Court?

12 A Yes, sir.

13 Q And that they have to prove guilt beyond a reasonable
14 doubt?

15 Do you understand that?

16 A Yes, sir.

17 Q Now, let's say you're on that jury. You're trying that
18 fellow for shoplifting. You've heard all the evidence now,
19 the judge is charged you with the law to be applied. You
20 and your fellow jurors go back into the jury room, and you
21 consider all that evidence, and compare it to the law that
22 the judge gave you, and you and the jury decide that the
23 State did not offer enough proof to prove the defendant was
24 guilty beyond a reasonable doubt. They did not get to the
25 level they're required to get to.

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1 would you then have any problem in signing a verdict
2 that would find the defendant not guilty?

3 A No, I would have no problem.

4 Q Okay. Now, let's say though that the State did offer
5 enough proof to prove the defendant did it beyond a
6 reasonable doubt.

7 would you have any problem in signing a verdict finding
8 a defendant guilty?

9 A No, I would have no problem.

10 Q So that means to me that if you were a juror, and you
11 would try to decide the case based upon the law and the
12 evidence, the weight, the value, the effect that you decide
13 the evidence has, and you could find the defendant either
14 guilty or not guilty depending on those factors?

15 A Yes, sir.

16 Q Is that true?

17 A Yes, sir.

18 Q Okay. Now, I want to get into a little more detail
19 about this trial that we're -- the kind of trial that we're
20 in now. As I told you, usually the jury, jury decides
21 guilty or not guilty. The judge usually sets the sentence.

22 Now, I told you this process is different. In this
23 case we're gonna have a phase of the trial where that will
24 be the issue, is the defendant guilty or not guilty of the
25 charges that have been brought, and I want you to imagine

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1 that you're on such a jury. You're in a case where the
2 State is seeking the death penalty. One of the charges is
3 the charge of murder. The jury's heard all the evidence,
4 heard all the facts, and goes into its deliberations, and it
5 comes back with a verdict that finds that the State did
6 prove, beyond a reasonable doubt, that the defendant was
7 guilty of a murder, and, therefore, they find the defendant
8 guilty of the crime of murder.

9 So, we're at the stage where we're going to go to that
10 second trial, the same jury is gonna go to second trial and
11 you're on that jury.

12 Now, at the second trial, that's the trial where we
13 have what is called the sentencing phase or the penalty
14 phase of the trial, and there's a statute in our law that
15 says how that trial will be handled, what kinds of evidence
16 will come into that case, and I will tell you that the
17 statute provides that there's a list -- several things that
18 are considered to be aggravating circumstances.

19 By aggravating circumstances we mean circumstances that
20 would cause perhaps a juror to consider giving a higher
21 level of penalty because they aggravate the situation.

22 You understand what I mean by aggravating
23 circumstances?

24 A Yes, sir.

25 Q The same statute says that the defendant can put in

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1 what are called mitigating circumstances, and the statute
2 lists ten of those. There's ten mitigating circumstances,
3 different things that could lessen a defendant's culpability
4 or may lessen the level of penalty that a juror might want
5 to give to that defendant because of those mitigating
6 circumstances. Then the law says, in addition to those ten
7 factors, a jury can consider anything it chooses to consider
8 in mitigation. It can even consider the, the theory or
9 giving of mercy in a case.

10 So, do you understand the different factors that a
11 juror could consider at that second trial?

12 A Yes, sir.

13 Q So, there's -- you have aggravating matters. There are
14 mitigating matters.

15 Do you understand that?

16 A Yes, sir.

17 Q Now, I told you to imagine that you're on a jury. The
18 jury is found the defendant guilty of murder, and that
19 jury's about to come back to the courtroom to make a
20 decision as to what is the appropriate penalty, and the
21 choices that the jury will be given will be life
22 imprisonment without the possibility of ever being paroled,
23 and that's exactly what that means under the law, that
24 person would go to jail and they'd stay there until they
25 passed away, or the death penalty. So, those are the things

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1 the jury has to consider.

2 So, do you understand where I put you?

3 You're getting ready to walk back into the courtroom
4 and start that hearing?

5 A Yes, sir.

6 Q You understand that?

7 A Yes, sir.

8 Q Now, back in the jury room I had a sheet of paper on
9 the table. That sheet of paper described three different
10 jurors. I asked that everyone coming in read that paper.

11 Did you read it?

12 A Yes, sir.

13 Q Now, I'm going to go back over it with you and just
14 kind of get an idea and we're gonna assign a number to those
15 people I described.

16 So, you're walking down the hall with a line of jurors
17 getting ready to go back into the courtroom, and we're gonna
18 talk about the first juror on that piece of paper. We'll
19 call him number one.

20 Juror number one, before he ever walks into the
21 courtroom, that juror has already made his mind up about
22 what he's gonna do. Now, he hasn't heard the aggravating
23 circumstances and he hasn't heard anything about the
24 mitigating circumstances. But that juror is made up his
25 mind because that juror believes that, when someone is

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1 convicted of a murder -- and murder is the intentional
2 killing of another person without legal justification with
3 malice aforethought, and malice means some kind of hatred,
4 ill will, bad feelings, things of that nature. So, he's
5 been found guilty of a murder.

6 Okay. So, the jury -- that, that particular juror,
7 number one, believes that the only appropriate penalty for
8 someone convicted of murder is the death penalty. So, that
9 juror, regardless of the factors, either aggravating or
10 mitigating, is always gonna vote for the death penalty.

11 Do you understand about juror number one?

12 A Yes, sir.

13 Q Juror number two is getting ready to walk into the
14 courtroom too, and juror number two has also -- that juror's
15 already made up his or her mind. That juror believes that
16 the State is never justified in taking a life in response to
17 someone who committed a crime regardless of what the crime
18 is, regardless of how serious the, the things are that were
19 done. Regardless of those aggravating circumstances, that
20 juror believes that the only appropriate punishment is life
21 imprisonment without the possibility of parole. So, that
22 juror, regardless of what's said in that hearing, is always
23 gonna vote for life imprisonment without the possibility of
24 parole.

25 So, do you understand juror number two?

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1 A Yes, sir.

2 Q Now, juror number three I described is someone who's
3 walking into the courtroom and that juror has not yet made
4 up his or her mind. That juror wants to sit in the hearing,
5 listen to the factors that make the crime worse, and the
6 factors that might somehow excuse the defendant and go
7 toward a lesser penalty. So, that juror wants to hear both
8 of those factors before making a decision, and that juror
9 intends, with their fellow jurors, to weigh those factors,
10 take the charge of the judge, and only after hearing
11 everything that there is to hear, would make a decision as
12 to what the appropriate penalty was.

13 So, do you understand juror number one, two, and three?

14 A Yes, sir.

15 Q All right. I told you to, in your mind, believe that
16 you're also walking down that hallway with those jurors, and
17 you're getting ready to walk into the courtroom.

18 Now, of the three jurors I described, one, two, or
19 three, which one would most closely resemble you as you
20 walked into that courtroom, juror one, two, or three?

21 A Three.

22 Q Number three.

23 So, you're someone who would like to hear the evidence,
24 both the bad stuff and the mitigating things, you'd want to
25 hear the instructions from the jury -- judge, and make a

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1 decision based on the law?

2 A Yes, sir.

3 Q Now, let me ask you to take it a step further.

4 Let's assume that you've, you've been through that
5 hearing. You finished the hearing. You've heard all of the
6 evidence. And during your deliberations with your fellow
7 jurors, you come to the conclusion that the appropriate
8 penalty, given those factors, aggravators and mitigators, is
9 life imprisonment without ever having a chance for parole.
10 That's what you decided was best.

11 If that's what you decided with your fellow jurors,
12 could you sign a sentence for life imprisonment without the
13 possibility of parole?

14 A Yes, sir.

15 Q Now, by the same token, if you heard that evidence and
16 you and your fellow jurors discussed it and you came to the
17 conclusion that the death penalty was the appropriate
18 penalty for what happened in this case, could you, in that
19 situation, sign a verdict for the death penalty?

20 A Yes, sir.

21 Q So, you could decide either way depending on what you
22 heard during that hearing?

23 A Yes, sir.

24 Q You would not go in there with your mind made up just
25 because a person had been convicted of murder?

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1 A No, sir.

2 Q Is that right?

3 A Yes, sir.

4 Q All right. Now, I'm going to allow the attorneys to

5 ask questions of you. They may want to discuss this with

6 you further. So, I want you to answer their questions.

7 They're gonna be -- they're not gonna be hard on you. But,

8 again, same situation. No right or wrong answers. Just

9 your answers.

10 okay, sir?

11 A Yes, sir.

12 THE COURT: All right. 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 It's almost good evening, Mr. Cheeks. I'm sorry.

19 A Yes, sir, I know.

20 Q Just ask you a couple questions. I was looking over

21 your sheet.

22 Is it Sigsbees Church of Christ that you go to?

23 A Yes, sir.

24 Q Where's that at?

25 I was just --.

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1 A Monks Grove.

2 Q Monks Grove. Okay. I got you from there.

3 I hate to ask you a couple of questions, but we just
4 need to find out what your feelings is about things and, and
5 just get your opinions on things if that's okay.

6 A Uh-huh. (Affirmative).

7 Q Let me just ask you, what's your opinion on the death
8 penalty if I could?

9 A It depends on the degree of the, of the crime.

10 Q Uh-huh. (Affirmative).

11 A Like if something too, too harsh, you know, I wouldn't
12 have a problem with it, but it's not nothing I just jump out
13 to.

14 Q Right.

15 It's something you'd have to see---

16 A It's not nothing easy just for or he deserve the death
17 penalty. No, I couldn't do it like that.

18 Q I understand.

19 You'd have to look at everything and make that
20 decision?

21 A Everything.

22 Q And you might want to talk a little bit louder so she
23 can hear you too. Okay. I know it's hard. You're soft
24 spoken. I understand from there too.

25 So, tell me, where, where does your belief from the

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1 death penalty come from, life experiences, church, just what
2 you've seen, things like that?

3 A It's stuff I seen or something like that.

4 Q Uh-huh. (Affirmative).

5 A Not no life experience or anything. No, I never dealt
6 with nothing like this. So, I don't---

7 Q Oh, I understand. I hope you never do --

8 A Yeah.

9 Q -- other than this situation. I understand.

10 I notice on your sheet you wrote about the criminal
11 justice system. Sometimes fair, sometimes not.

12 A Uh-huh. (Affirmative).

13 Q If you can tell me a little bit about that and what
14 you, you know, your feeling is about that.

15 A Like, like with the death penalty, I read stories or
16 heard stories of some people being killed and really didn't
17 deserve to be killed.

18 Q Uh-huh. (Affirmative).

19 A So, it's some cases like that.

20 Q I understand.

21 So, so that would -- would that have an affect on you
22 or would you look at the evidence in this case?

23 A Look at the evidence.

24 Q All right. What factors -- I mean what would factor
25 your giving a death sentence in this situation,

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1 aggravation---

2 A Any---

3 Q ---or what would you look at?

4 A I'd look at it all, but, you know, the aggravation and
5 all that.

6 Q Uh-huh. (Affirmative).

7 A I would look at it all. It ain't nothing I just --
8 like I said, I just wouldn't point at somebody and say that
9 he deserves a death penalty without knowing everything
10 that's going on. Everything.

11 Q Sure. I understand.

12 I know you've had, unfortunately, I know you've had
13 some dealings with the criminal justice system --

14 A Uh-huh. (Affirmative).

15 Q -- with CDV.

16 How was the system -- how did the system treat you, if
17 I can ask you that question?

18 A They treated me fair.

19 Q Okay.

20 A They treated me fair.

21 Q Okay. And was it involving a girlfriend --

22 A Uh-huh. (Affirmative).

23 Q -- situation from there?

24 I know these are, you know, always tricky too. I
25 understand that from that situation.

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1 You work for BMW, is that right --

2 A No.

3 Q -- or you work for Leer that does seats for BMW --

4 A Yes, sir.

5 Q -- is that correct?

6 And how many children do you have?

7 A Two.

8 Q How old are they?

9 A One will be one March 23rd and I have a seven year old.

10 Q Okay. Now, I don't know -- you probably don't know
11 this, but one of the aggravators in this case is the death
12 of a child.

13 A Uh-huh. (Affirmative).

14 Q And, like I said, they'll be, they'll be bringing
15 aggravating circumstances as well as mitigating
16 circumstances, and it may be the background of the defendant
17 and, you know, disability or things they bring up. Of
18 course, aggravation, we have two of them. We have to prove
19 one of them beyond a reasonable doubt to you.

20 How do you feel about weighing those aggravators and
21 mitigators, hearing what they are now possibly, and there is
22 a list of the mitigators. There is just two aggravators.
23 We just have to prove one. It's kidnapping and the death of
24 a child under the age of 11, and on the other side they
25 have -- there's gonna be a listing of them. The judge will

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1 give those to you, background of the defendant, you know,
2 disability. I could go through a lot of them with you, but
3 there is a lot on that side.

4 what factors would you look at concerning -- if you
5 knew those factors?

6 A I wouldn't, I wouldn't know. I can't answer that right
7 now. I would---

8 THE COURT: Mr. Barnette, I'm not sure he knows all the
9 mitigating circumstances.

10 THE WITNESS: Yeah, I don't.

11 SOLICITOR BARNETTE: He don't and I, I---

12 THE COURT: There's ten of them. I'll be glad to read
13 them to him if you want me to.

14 SOLICITOR BARNETTE: That's okay. I was trying to -- I
15 know there's a bunch of them. I didn't -- I haven't looked
16 at each one of them individually, judge, to be honest with
17 you. That's the reason---

18 THE COURT: You or the defense ask someone what
19 mitigating circumstances they look at, it puts him at a
20 little disadvantage because he doesn't know that, what that
21 list has on it.

22 SOLICITOR BARNETTE: I agree. I understand from there,
23 judge.

24 with 12 jurors, after they hear -- and like I said, all
25 12 have to agree on the death penalty from that standpoint.

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1 If you got to the point that 11 of them had agreed to
2 the death penalty, and it came to you and everybody agreed
3 that it was the death penalty, and you'd be the last person
4 to sign your name on a death warrant or the death sentence,
5 could you do that?

6 A If it was -- can you repeat the question?

7 Q I'll repeat again. Let me make it -- at the end of, of
8 the, second phase --

9 A Uh-huh. (Affirmative).

10 Q The first phase, guilt or innocence is decided, and
11 that's -- once that's over, you move on to the second phase.
12 Like the judge was telling you about the circumstances and
13 weighing those.

14 After you looked at everything, you come down to the,
15 to what we call the death sentence or the death warrant.
16 All 12 jurors have to agree that the aggravating -- one of
17 the two aggravators has been proven beyond a reasonable
18 doubt. Then if they do agree with the death penalty, all 12
19 of them have to sign their names to the sentencing sheet.

20 If you were the twelfth juror, let's say they handed it
21 around the room to each, everybody, and they hand it to you,
22 do you feel like that you could sign that death warrant
23 knowing that that would be the last signature to put a man
24 to death?

25 A Yes, I could do it.

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

3 THE COURT: Yes, sir.

4 (Pause.)

5 Q And you say you've heard stories about the death
6 penalty and things.

7 where have you heard those stories from if I could ask
8 you?

9 A I've read them.

10 Q Uh-huh. (Affirmative).

11 A I've read different type of stories where people, you
12 know, some people, they got it and then they were --

13 Q Uh-huh. (Affirmative). I understand.

14 But you would look at the evidence in the case --

15 A Uh-huh. (Affirmative).

16 Q -- from there?

17 And if the evidence proved, beyond a reasonable doubt,
18 to your satisfaction that the murder occurred and we proved
19 the aggravating circumstances, is that something that you
20 could consider?

21 A Yes, sir.

22 Q Thank you, sir. Thank you for answering my questions.

23 THE COURT: Is it you, Mr. McGuire?

24 MR. MCGUIRE: Yes, sir, thank you very much, judge.

25 THE COURT: Yes, sir.

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1 EXAMINATION

2 BY MR. MCGUIRE:

3 Q Good afternoon, Mr. Cheeks.

4 How are you doing today?

5 A Good.

6 How about yourself?

7 Q I'm doing good. Thank you for asking. I'm a little
8 tired. I've been doing this and my voice is getting a
9 little scratchy.

10 It sounds like you, you, you could vote for the death
11 penalty in the appropriate case --

12 A Uh-huh. (Affirmative).

13 Q -- if that's what you thought was right, but I think
14 you used the phrase you wouldn't just jump up and do it
15 automatically.

16 A No, it would have to be something -- if I -- if it's a
17 doubt in my mind that he don't deserve it, I'm not gonna say
18 he deserves it.

19 Q Okay.

20 A I'm gonna say he don't deserve it.

21 Q Okay. And I want to talk about the, the last thing the
22 prosecutor was talking to you about, and he said if 11 other
23 people had signed that piece of paper voting for death, and
24 it came to you, could you sign it. The, the one thing I
25 want you to know is if you didn't feel like the death

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1 sentence was appropriate --

2 A I would sign it.

3 Q -- could you not sign it.

4 A I would not sign it.

5 Q Okay. Cause it would be wrong just to throw in with 11
6 other people, right?

7 A I would not sign it. If there's any doubt in my mind,
8 I would not sign it.

9 Q Okay. And you've heard the phrase an eye for an eye.
10 what does that mean to you?

11 A Eye for an eye?

12 Q Yeah, eye for an eye.

13 Is that something you would follow or you---

14 A No.

15 Q No.

16 A lot of times we use that, if you take an innocent
17 life you forfeit yours automatically. That does not seem to
18 describe you.

19 A No.

20 Q Okay. Would you say that the death penalty is a last
21 resort or a last resort?

22 A Yeah.

23 Q Okay. Do you consider the life in prison penalty to be
24 severe knowing that, in South Carolina, life in prison is
25 life without parole, you go in the four walls, and you never

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1 come out?

2 Do you think that's a severe enough punishment
3 sometimes for murder?

4 A Yes.

5 Q Okay. And you could vote for a life sentence if you
6 thought that was the right thing to do?

7 A Yes.

8 Q Okay. I want to talk to you a little bit about how the
9 penalty phase works and how it's a little bit different from
10 what we normally see on TV just so you understand the
11 principles, and to see if you can follow the law.

12 Okay?

13 A Okay.

14 Q A traditional trial, a regular trial, all 12 people
15 have to agree beyond a reasonable doubt, they got the right
16 person, guilty guilty, no reasonable doubt in their mind,
17 and if they can't agree, then the whole trial would have to
18 be done again. They'd have to get a whole new jury someday
19 and redo the whole thing, and what I want to let you know is
20 the penalty phase, the judge told you that a case like this
21 would have a first part, and that would be do they have the
22 right guy, did he commit the crime, that sort of thing. And
23 then if there's a conviction for murder, and then we move
24 into like the second trial. It's a whole second trial and
25 the only thing on the table is should the person get life or

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1 death.

2 Okay. Are you with me?

3 A Uh-huh. (Affirmative).

4 Q Okay. In that penalty trial, jurors can actually be in
5 disagreement. It can be six to six or ten to two or eleven
6 to one even. But if the jury ultimately does not come to
7 agreement as to punishment, the judge would take the case
8 and he would sentence to life without parole.

9 Is that a principle of the law you could follow?

10 A Yeah.

11 Q Okay. You'd be okay if, if 11 people wanted one thing
12 and one person wanted to say the life verdict, you'd be okay
13 letting the one person have that life verdict heard?

14 A Would I be okay with it?

15 Q Well, you---

16 A If they---

17 Q You know, that's a bad question cause you might not be
18 okay with it, but let me ask you this, can you respect it?

19 Could you respect it if you -- one person wanted to
20 vote for life with 11 people wanting death, could you
21 respect them -- would you try to change their -- well, let
22 me -- I want to back up a little bit.

23 The decision making process in the penalty phase is
24 called an individual moral judgment. Okay. It's not adding
25 up numbers. You can't add up things on a board. Math or

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1 science can't solve this for you. It's a moral decision.
2 whatever sits right with somebody's conscience.

3 Are you with me?

4 A (Juror nods affirmatively.)

5 Q Okay. And the law is if it would harm that person's
6 conscience to change that position just to go along with the
7 majority, that would be wrong and in violation of the juror
8 oath.

9 So, if somebody came to an individual moral judgment
10 that the life penalty was their decision, and 11 other
11 people wanted the death penalty, could you let the one
12 person who wants the life penalty have their voice heard in
13 Court knowing that the judge would take the case and
14 sentence to life without parole?

15 A Yes.

16 Q You'd be okay with it -- with that?

17 A Yes.

18 Q Okay. And, and you would want people to respect
19 whatever individual moral judgment you came up with?

20 A Yes.

21 Q And you'd respect theirs?

22 A Yes.

23 Q And you'd be able to let the jury end the day in
24 disagreement if people had different individual moral
25 judgments?

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1 A Yes.

2 Q Okay. That's all I have for you, sir. Thank you.

3 A You welcome.

4 THE COURT: Anything further?

5 SOLICITOR BARNETTE: Nothing further from the State,
6 Your Honor.

7 THE COURT: All right. I'm gonna ask you, sir, Mr.
8 Cheeks, I'm gonna ask you to step back to the jury room for
9 just a moment. I'll be calling for you in just a few
10 seconds.

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

13 THE COURT: State's -- I mean defense position. I'm
14 sorry.

15 MR. MCGUIRE: He's qualified.

16 THE COURT: State.

17 SOLICITOR BARNETTE: I, I agree, even though I don't
18 like his view of the death penalty about the innocence and
19 stuff. Like I said, I think he's qualified.

20 THE COURT: I understand. I think he's -- I find he's
21 qualified.

22 Bring Mr. Cheeks back in please.

23 THE BAILIFF: Yes, sir.

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

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1 THE COURT: Mr. Cheeks, have a seat back in the hot
2 seat again.

3 THE WITNESS: Okay.

4 THE COURT: It wasn't so hot now, was it?

5 THE WITNESS: No, sir.

6 THE COURT: Mr. Cheeks, I have determined that you are
7 qualified to continue in our process.

8 THE WITNESS: Okay.

9 THE COURT: Now, that doesn't mean you're on the jury.
10 That means you're going into a pool of people from which a
11 jury would be picked. We're gonna be going through this
12 qualification process for a couple more days now. Maybe
13 three more, maybe four, I don't know. But when we get to
14 the point where we have a sufficient number from which to
15 draw the jury, we'll begin that jury selection process.

16 So, we're gonna call you once we get to that stage and
17 let you -- give you some additional instructions.

18 Do you understand that?

19 THE WITNESS: Yes, sir.

20 THE COURT: Now, in the mean time, my instructions when
21 you left Monday continue through this process. Don't try to
22 gather any information about the case. Don't listen to,
23 watch, or read media reports. If you hear something about
24 it on TV, turn it off, walk out of the room, whatever you
25 have to do to avoid it. Don't let anybody talk to you about

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1 it and don't talk to anybody about the case, and should
2 someone contact you about your service, I want you to call
3 the Clerk's Office and report that to us so that we know
4 that that's going on.

5 You understand that, sir?

6 THE WITNESS: Yes, sir.

7 THE COURT: The clerk here, if you don't mind, Tonya,
8 give him one of those sheets.

9 That's a sheet of paper that I want you to think about.
10 It's got some suggestions because, if you were selected on
11 the jury, you would be sequestered along with other jury
12 members and, and I assume that -- the fact that you'd have
13 to be there, would that pose any risk to your health at all,
14 anything of that nature?

15 THE WITNESS: No, sir.

16 THE COURT: would it affect the health of anybody else
17 or well being of anybody else?

18 THE WITNESS: No, sir.

19 THE COURT: Okay. All right. So, if you're gonna --
20 if you're there, you need to come prepared to stay for a
21 little better than a week. I think that's how long it will
22 take to try the case.

23 Now, we will be at the Marriott or the jury will be.
24 You can use laundry facilities there if you need to clean
25 clothes and that sort of thing. But if you have medications

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1 that you take, be sure you bring enough to last for more
2 than a week and be prepared for that.

3 Now, one exception to my rule about not talking about
4 the case, if you need to tell family, friends, or your work
5 that you may be going away for jury duty for a few days, you
6 can make those arrangements, but don't tell them what the
7 case is about. Don't tell them anything about the issues
8 involved in the case. In fact, if they ask, the judge told
9 you you can't talk about those things.

10 THE WITNESS: All right.

11 THE COURT: You can just tell them that you might be
12 selected for jury duty, and you might have to spend some
13 time or a few days away while you're doing it, and you can
14 make arrangements that way without talking about the case.

15 Do you understand my instructions?

16 THE WITNESS: Yes, sir.

17 THE COURT: Do you have any questions about it?

18 THE WITNESS: No, sir.

19 THE COURT: Okay. We will be calling you. It will be
20 some time next week, and we'll give you some additional
21 instructions at that time.

22 Again, Mr. Cheeks, thank you for your cooperation.

23 THE WITNESS: You welcome.

24 THE COURT: You're free to go. See the bailiff.

25 (WHEREUPON, the following takes place outside the

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1 presence of the juror.)

2 THE COURT: All right. Ladies and gentlemen, we will
3 adjourn at this time. We will resume at nine o'clock in the
4 morning.

5 Thank you very much.

6 MR. MCGUIRE: Yes, sir. Thank you, judge.

7

8 (WHEREUPON, Court was in recess for the evening.)

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Q Mr. Berry, I'm gonna go over some things with you this morning, and I want to thank you very much for your

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1 cooperation thus far in the process.

2 We're going to be talking to you about or asking some
3 questions and going over some matters. And as we do that, I
4 want to point out to you, as we ask questions, that there
5 aren't any right or wrong answers to our questions. Only
6 your answers.

7 A Uh-huh. (Affirmative).

8 Q We would like for you to be honest in your responses
9 and, in that regard, I'll remind that you were sworn to tell
10 the truth on this past Monday to, to the Court and that,
11 that oath continues at this time.

12 A Uh-huh. (Affirmative).

13 Q Do you understand that, sir?

14 A Yes, sir.

15 Q And you agree that that's true?

16 A Right.

17 Q All right. You may want to turn your chair just a
18 little bit. I'm gonna do most of the talking to you.

19 A Oh, okay.

20 Q And then, when I finish, we'll be talking -- we'll let
21 the lawyers ask some questions as well.

22 A Okay.

23 Q Okay. Now, when you left the courthouse also on Monday
24 I gave you some instructions about your behavior.

25 A Uh-huh. (Affirmative).

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1 Q Do you remember those instructions?

2 A Yes, sir, don't talk to anybody.

3 Q Yes, sir.

4 A Say or talk about the case or anything.

5 Q Don't gather any information on your own, those things.

6 A Right.

7 Q Have you been able to follow my instructions?

8 A Yes, sir.

9 Q Okay. Now, let me ask you a question.

10 If, if you're a juror on the case, do you feel that
11 you're the kind of person who could set aside all outside
12 matters, things that you may have heard on the outside that
13 somehow may have some connection with the case, and I'm not
14 talking about anything specifically, but do you think you
15 could set aside outside matters and decide a case that you
16 were on as a juror based just upon the law and the facts
17 that you hear in the trial during the hearing?

18 A I believe I can.

19 Q Okay. Have you ever participated in any discussions,
20 and, and I don't know in any particular form, any
21 discussions either like on a chat room or a blog on the
22 Internet or in a, a group setting where the discussions
23 involved the death penalty?

24 A Never used it. Never.

25 Q Okay. Never done that?

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1 A No.

2 Q All right. Have you ever been involved in any
3 political activity that involved that issue?

4 A No.

5 Q All right. Now, back in the jury room there was a long
6 list, it's about three sheets of paper, that had names on
7 them.

8 Do you remember that, that list?

9 A Yes.

10 Q Did you read over this list of names?

11 A Uh-huh. (Affirmative).

12 Q Now, as to the people that are on that list, I'll tell
13 you those are people that have been identified to me as
14 people who may be witnesses in the case. I don't know that
15 they're all gonna testify. But we're gonna assume that
16 they're all gonna testify.

17 A Right.

18 Q As to the people that are on that list, did you see
19 anyone on there that you might have ever been related to by
20 marriage or related to by blood or did you see anybody that
21 you might of had a social, personal, or business
22 relationship with?

23 A No.

24 Q So, nobody you recognized that you've had contact with
25 or any type of relationship with?

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1 A No.

2 Q All right. Very good.

3 Now, I want to go over one thing with you and explain
4 it to you. I mentioned on Monday, but I'll remind you now,
5 that this is -- in this type of case that we're involved in
6 now, the law requires that the case be bifurcated. Now,
7 that's a fancy word that means divide something into two
8 parts.

9 Okay. And normally, in a criminal case, any criminal
10 case, let's say a shoplifting case or something like that,
11 the jury would determine the facts in the case, and would
12 issue a verdict, guilty or not guilty, and then the judge
13 would issue the sentence on that type of case. And there's
14 an exception to that rule and that's the case that we're in
15 where, in this case, the State is seeking the potential
16 penalty of the death penalty.

17 In those type of cases, the case is divided into two
18 segment or two parts. The first part is what we call the
19 guilt phase where the, the Court determines the charges and
20 then the defendant is charged -- tried on those charges, and
21 the jury then would issue a verdict, either guilty or not
22 guilty, on those charges.

23 Now, if there's a guilty verdict on the charge of
24 murder, then the law requires that a separate hearing using
25 the same jury is held to determine the appropriate penalty,

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1 and so that's why we say we bifurcate the case. We call it
2 a guilt phase and then a penalty or sentencing phase.

3 Today we're going to be talking about both of the
4 phases to the trial, both the guilt phase and the penalty
5 phase, and I realize that, depending on the verdict in the
6 first case, we may not ever get to that second phase. So, I
7 guess, to a certain extent, by talking about the penalty
8 phase, we might be putting the cart in front of the horse,
9 but because the same jury's gonna be used in both trials,
10 this is the only chance we'll get to talk to you about that
11 second phase of the trial because, once the case begins, we
12 can't stop and re-pick the jury.

13 You see what I'm saying?

14 A Yes.

15 Q So, I want to point out to you that, under the law,
16 every defendant is presumed to be innocent for the crime for
17 which the, the charges have been issued, and, of course, I
18 don't think -- I want to tell you that you should not take
19 this as any adverse reflection of the fact we're talking
20 about the penalty against either the defendant or his case.

21 A Right.

22 Q This is simply the time that we -- only time that we
23 have to talk about these matters.

24 You understand---

25 A Yes, sir.

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1 Q ---what I'm saying---

2 A Yes, sir.

3 Q ---and the concept?

4 So, don't hold it against the defendant we're talking
5 about the penalty today.

6 All right. Thank you, sir.

7 Now, I'm going to go over some legal concepts with you,
8 some things that, that -- some of them are pretty basic and
9 some of them get a little more complicated, but I want to be
10 sure that we have an understanding about some of these legal
11 concepts and how trials work and what juries do.

12 Now, first of all, let me ask you this, and I'll just
13 mention this to you, in every case tried in this Court or
14 any in Court, the jury is always the finder of fact. In
15 other words, they're, they're called the judge of the facts,
16 the jury is. The judge is called the judge of the law. So,
17 so, in other words, the jury determines the facts. They
18 determine who's telling the truth, who's not telling the
19 truth. They decide what happened, when it happened, and who
20 it happened to, and then they come up with a verdict based
21 on those facts. But they have to use the law given to them
22 by the judge cause the judge gives the law in the Court.

23 So, do you understand the different functions---

24 A Yeah.

25 Q ---in the courtroom?

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1 Let me ask you, if you can -- and I want you to
2 imagine, for my next few questions, that you were selected
3 on a jury in a case that hadn't got anything to do with what
4 we're talking about here. Let's say it's a shoplifting case
5 or something like that.

6 Have you ever been on a criminal jury before?

7 A (Witness nods negatively.)

8 Q Okay.

9 A No.

10 Q So, I just want to be sure we have some concepts down
11 then, and, like I say, some of it's pretty basic. It gets a
12 little more complicated as I go along.

13 Okay?

14 A Okay.

15 Q Now, if you were a juror on any criminal case, would
16 you be willing to listen to the law as instructed to you by
17 the judge?

18 A Yes.

19 Q All right. Would you be willing to accept the law and
20 apply that to the facts as you, as a member of the jury,
21 would find them to be?

22 A Yes, sir.

23 Q Now, let me take it a step further.

24 Let's say that you were on that case I was talking
25 about, the shoplifting case, and the, and the judge, at the

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1 close of the trial, is going over the law with you,
2 explaining the law to you. And as you're listening to that
3 judge tell you about the law, you hear something that maybe
4 you didn't think the law was that way or maybe you don't
5 agree with in some fashion. But, in other words, it's
6 something that, that kind of strikes you as odd or funny or
7 you don't like what the judge said about the law.

8 Nevertheless, would you be willing to take the law
9 exactly as the judge instructs it, apply that law to the
10 facts as the jury finds them, and set aside your personal
11 beliefs about the law?

12 A I'd have to.

13 Q So, you think you'd have to?

14 A Yeah.

15 Q That'd be your obligation as well?

16 A Yes, sir.

17 Q All right. Now, some more basic concepts about
18 criminal law.

19 Do you understand that, under the law in this state and
20 the United States, all defendants are presumed to be
21 innocent of the crime for which they've been charged?

22 A Yes, sir.

23 Q And let me -- I'll take these things a step further as
24 we go along.

25 Because a defendant is presumed to be innocent, under

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1 the law, do you understand the concept that a defendant is
2 never required to prove himself innocent because he's
3 presumed innocent?

4 A Right.

5 Q Do you understand that?

6 A Uh-huh. (Affirmative).

7 Q All right. Now, because the defendant is presumed
8 innocent, and because the defendant is not required to prove
9 himself -- himself innocent, do you understand that, in a
10 criminal law (sic), a defendant is never required to prove
11 anything?

12 In other words, the law doesn't require a defendant to
13 prove anything in a criminal trial?

14 A Uh-huh. (Affirmative).

15 Yes, sir.

16 Q You understand that?

17 A Yes.

18 Q So, in other words, a defendant could come and say
19 nothing, and the reason for that is, under the law, the, the
20 entity or the person or the thing that makes the accusations
21 has to prove those accusations.

22 A Right.

23 Q And, in this case, the State is the one who has filed
24 the charges, in other words accused the defendant of the
25 commission of a crime, and, under our law, then the State

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1 has the burden of proof and the only burden of proof---

2 A Yes, sir.

3 Q ---in a criminal trial.

4 Do you understand that?

5 A Yes, sir.

6 Q And that burden of proof is to prove guilt, prove guilt
7 beyond a reasonable doubt.

8 A Yeah.

9 Q Do you understand that concept?

10 A Yes, sir.

11 Q Okay. Well, we're kind of moving along. I'll keep
12 going at it a step each time.

13 Now, let me ask you this, if you were on that jury in
14 that shoplifting case, and you heard all the evidence, you
15 heard the judge's charge on the law, and you and your fellow
16 jurors go back into the jury room and you deliberate about
17 the case, and you come to the conclusion that the State did
18 not prove the crime against the defendant by proof beyond a
19 reasonable doubt, in other words, the State did not get to
20 the level of -- that the law requires, would you have any
21 problem, in that case, signing a verdict of not guilty?

22 A No.

23 Q Now, by the same token, let's say you and your fellow
24 jurors were deliberating in a case and you determined the
25 State did meet its burden of proof, that it did prove that

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1 the gentlemen or the person did whatever they are accused of
2 beyond a reasonable doubt.

3 would you have any difficulty in signing a verdict of
4 guilty?

5 A No.

6 Q Now -- so, that means -- what that tells me is that you
7 would want to listen to the law, the facts, the evidence,
8 you'd want to weigh the evidence---

9 A Right.

10 Q ---in the case, and based upon the truth of the
11 evidence, and the weight of the evidence, and, and the value
12 of that evidence, that's what you'd make your decision on?

13 A Yes, sir.

14 Q Is that what I'm, what I'm hearing?

15 A Yes, sir.

16 Q All right. And do you understand the concept that just
17 because someone has been arrested, and charged with a crime,
18 does not automatically mean they're guilty of that crime?

19 A Right.

20 Q You understand that?

21 A Yes, sir.

22 Q And you agree with that concept?

23 A Yes, sir.

24 Q All right. Now, I told you that -- and I was gonna end
25 up putting the cart in front of the horse. So, I'm to the

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1 point now where I'm gonna put the cart in front of the horse
2 and we're gonna talk about that penalty phase of the case
3 before we ever get to it.

4 A Uh-huh. (Affirmative).

5 Q We may not ever get to it. You know, if the jury
6 acquits the defendant of the charges, there's no penalties
7 to assess.

8 A Right.

9 Q You understand that?

10 A Yeah.

11 Q All right. Now, I told you about the bifurcated trial.
12 We've got a trial that's gonna be concerning the charges,
13 guilty or not guilty, and then we're going to have a
14 separate hearing concerning the appropriate penalty.

15 Now, in this case, the defendant has been charged with
16 the crime of murder. The State is seeking the death
17 penalty, and so the State has that burden of proof to prove
18 those crimes beyond a reasonable doubt.

19 I want you to assume that you're on a trial where the
20 State is seeking the death penalty. You're a juror, juror
21 on that case, and the State has completed that proof, and
22 you and your fellow jurors go back into the jury room, you
23 deliberated, and you decide that the defendant is guilty of
24 the crime of murder beyond a reasonable doubt.

25 A Uh-huh. (Affirmative).

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1 Q So, a guilty verdict has been rendered as to the crime
2 of murder.

3 Now, all murders don't qualify for the death penalty in
4 this state, and I'll explain to you that, when you get into
5 that sentencing phase, in order for that crime to qualify
6 for the death penalty, the State has to prove at least one
7 of what is called a statutorily aggravating circumstance,
8 and there's a statute in our state that lists those things,
9 the things -- and I'm not gonna try to go over all of them
10 with you cause they're several of them that the State can
11 prove, and, in those circumstances, the State has the right
12 to seek the death penalty, but they have to prove those
13 circumstances, again, by proof beyond a reasonable doubt.

14 So, in the sentencing phase, the jury would hear -- and
15 you're gonna hear evidence from people that you may not even
16 have heard in the guilt phase because all of this evidence
17 is as to the appropriate sentence and that wasn't an issue
18 in that first trial.

19 A Uh-huh. (Affirmative).

20 Q So, there's gonna be new witnesses testifying, new
21 information being brought out that you may not of even heard
22 in that first, first case. But the State, first of all, has
23 the burden of proving at least one of those aggravating
24 circumstances by proof beyond a reasonable doubt, and, by
25 aggravating circumstances, those are things that might tend

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1 to make, while the crime of murder is a bad thing, might
2 tend to make it worse, might tend to make it -- make the
3 crime deserving of the higher penalty of death.

4 At that hearing also the law says that the, that there
5 can be evidence of what are called mitigating circumstances,
6 and that's a list of actually ten different things are
7 listed in the code, in the Code of Laws. Those are things
8 that a jury could and should consider in deciding what the
9 appropriate penalty might be, and the law also says that a
10 jury can consider other factors in mitigation beside what's
11 in that statute, and a jury has the right to consider even
12 the element of mercy in, in deciding that, that penalty, one
13 or the other. So, there's evidence of aggravating factors
14 that will be put in in that, that hearing and evidence of
15 mitigating factors that will be put in during that hearing.

16 So, do you understand what would happen---

17 A Yes.

18 Q ---in that sentencing hearing?

19 It would be two types of evidence presented.

20 Now, once all that evidence has been presented to the
21 jury, the judge then would instruct the jury to go into the
22 jury room and consider both kinds of evidence and make a
23 recommendation back to the Court as to the appropriate
24 sentence, and, again, the choices are the death penalty or
25 life imprisonment without the possibility of parole, and I

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1 will tell you that, under our law, that's exactly what it
2 means. Life imprisonment without parole.

3 Now, do you understand the, the way that hearing would
4 be held?

5 A Yes.

6 Q Now, I want you to put yourself, in your mind, in a
7 position. I'll describe the position to you.

8 Let's say you were on the jury that was selected in
9 that particular case. We're not talking about this one, but
10 the case I'm setting up.

11 There was a trial concerning the guilt phase. You and
12 your fellow jurors found the defendant guilty of the crime
13 of murder. You're coming back to the courtroom at this
14 point in time walking down the hallway to get ready to walk
15 back into the courtroom to start that second hearing where
16 there's going to be aggravating circumstances brought out
17 and mitigating circumstances brought out.

18 A Yeah.

19 Q Now, back in the jury room there was a sheet of paper
20 and on that sheet or paper I had three different jurors
21 described.

22 Did you read that paper?

23 A Yeah.

24 Q All right. I'm gonna go back over the people that were
25 described on that paper with you --

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1 A Uh-huh. (Affirmative).

2 Q -- so that -- and I'm gonna give them a number so that
3 you'll understand -- so we'll have an understanding of what
4 we're talking about.

5 All right. As you're walking down that hall, juror
6 number one on that paper, before he ever walks back into the
7 courtroom, he's already made his mind up as to what he would
8 do in this case. That juror believes that anytime someone
9 is commit -- convicted of a murder, regardless of the
10 aggravating or mitigating circumstances, he thinks the only
11 appropriate penalty for that particular crime is the death
12 penalty, and that juror would vote for the death penalty
13 every single time he's in that position.

14 A Uh-huh. (Affirmative).

15 Q Juror number two, when he's walking into that
16 courtroom, or she, that person is already made his or her
17 mind up. That juror believes the State should never take
18 someone's life in, in response to the commission of a crime.
19 No matter how serious it is, no matter what other factors
20 might be involved, that juror would always vote for life
21 imprisonment without parole every time regardless of what
22 the proof is.

23 Now, there's a third juror on that sheet of paper.
24 That juror, walking into the courtroom, has not yet made up
25 his or her mind. That juror wants to listen to the

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1 aggravating factors. That juror also wants to listen to all
2 the mitigating factors. That juror wants then to discuss
3 those things with their fellow jurors, weigh that evidence,
4 and make a decision as to what the appropriate penalty is
5 after hearing both sides, both the aggravating and the
6 mitigating evidence.

7 Now, do you understand the three---

8 A Yeah.

9 Q ---different jurors I've described to you?

10 A Uh-huh. (Affirmative).

11 Q Now, I also told you that you're on that jury too.
12 You're about to walk back into that courtroom with those
13 other people.

14 Of the three people I just described to you, number
15 one, number two, or number three, which one would most
16 closely describe you in that situation?

17 A I think number three.

18 Q Number three?

19 A Yeah.

20 Q Now, that tells me that what you want to do is you want
21 to hear all the evidence, you want to hear both sides, and
22 you have an open mind as to what decision you would make
23 even though the gentleman's been committed, committed (sic)
24 to a murder, but you want to hear those factors before you
25 decide what the appropriate penalty is.

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1 Is that right?

2 A Yes, sir.

3 Q Now, let me take it a step further.

4 Let's say that you complete that hearing. You go back
5 into the jury room with your fellow jurors and you've heard
6 the aggravating factors, you've heard the mitigating
7 factors, and you discuss it with your fellow jurors.

8 If you -- if the jury comes to the conclusion that the
9 appropriate verdict is death, and you come to that same
10 conclusion, would you be willing to sign a sentence
11 sentencing a person to death?

12 A That's kind of hard to say. I don't, I don't think I
13 have the -- if it came to that, I don't think that I
14 honestly have the right to do that.

15 Q Uh-huh. (Affirmative).

16 well, let me explain to you.

17 A Okay.

18 Q Under our law, it's required that, for a death sentence
19 to be rendered --

20 A Uh-huh. (Affirmative).

21 Q -- all 12 jurors, now not just one, but all 12
22 jurors --

23 A Right.

24 Q -- do have to sign the sentence.

25 So, my question to you is, if you came back and you

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1 listened to that evidence again, you deliberated with your
2 fellow jurors, and I'm not asking you to violate your
3 conscience in anyway.

4 A Right.

5 Q But I am asking you, if you came to that conclusion and
6 the jury agreed that that was the verdict and you agreed
7 with that, could you sign that verdict?

8 A I'd have to then.

9 Q Okay. So, you---

10 A I would have to.

11 Q Yeah.

12 Q By the same token, if you and your fellow jurors
13 considered the evidence and came to the conclusion or you
14 came to the conclusion that life imprisonment was the,
15 without parole, was the appropriate sentence, could you sign
16 that sentence as well?

17 A Yes, sir.

18 Q So, I'm hearing you tell me that, depending on the
19 facts and circumstances, depending on your decision,
20 whatever you make, you could sign either---

21 A Right.

22 Q ---the sentence for death or the sentence for life?

23 A Yes.

24 Q Now, I have signed an order in this case ordering that
25 the jury be sequestered, and what that means is we're still

Individual Juror Qualification

1 in the process of gathering a pool of people together from
2 which---

3 A Yes, sir.

4 Q ---we will pull a jury.

5 A Uh-huh. (Affirmative).

6 Q So, after today, you still won't know if you're on the
7 jury or not. We're, we're still getting it together to do
8 that. But when the jury is impaneled, that jury then is
9 going to be required to be at the courtroom during the day
10 and we'll keep them at the Marriott during the night.
11 They'll be a group of people who are there with you, and the
12 purpose of that is to be sure that the jury's not affected
13 by any outside influences.

14 Your meals will be paid for. Your travel will be paid
15 for. You'll receive whatever the normal jury pay is for
16 that period of too time. It's not a lot of money --

17 A Okay.

18 Q -- but it's all the law allows us to pay you, but, at
19 any rate, you get that and you get the -- your travel if you
20 came back and forth from the courthouse. You'll be allowed
21 to talk to family members and things like that, phone calls,
22 but those will be monitored --

23 A Yeah.

24 Q -- so that we're sure nobody's talking about the case
25 or getting any information from outside.

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1 A Yeah.

2 Q So, that would be monitored.

3 So, you understand how that would work?

4 A Yes, sir.

5 Q And it will go on, I anticipate, for maybe a little
6 more than a week would be the length of time.

7 Now, once we start that trial, we don't stop. We go
8 straight through until it's completed. So, we work on the
9 weekends --

10 A Right.

11 Q -- just like we're working today.

12 A Yeah.

13 Q We go, we go through the weekends and we get a -- get
14 it done. So, we try to take as little amount of time out of
15 someone's life --

16 A Yeah.

17 Q -- as possible. But we still try to give a full, fair
18 hearing.

19 A Right.

20 Q Now, my next question to you is if you were in that
21 situation, sequestered, would that, in anyway, pose any
22 substantial risk to your health or well being if you were in
23 that situation?

24 A I don't think so.

25 Q Okay.

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1 A I mean I take blood pressure and---

2 Q Well, I do too.

3 A ---cholesterol medicine. That's no big deal.

4 Q Well, you'll be able to get your medication.

5 A Yeah.

6 Q Okay.

7 A I don't think it would, no.

8 Q Okay. Now, by the same token, if you were in that
9 situation, would it pose any serious risk to the health or
10 well being of anybody who's dependent on you?

11 A Well, I have my wife there and grandkids and, you know,
12 I'm the -- I don't think it would.

13 Q Okay.

14 A I don't think it would.

15 Q All right. Now, I've reached the point in time where
16 I'm gonna let the lawyers ask some questions of you. So, if
17 you don't mind, answer their questions. This is not a hot
18 seat. They're not gonna pick on you. Everybody here is
19 gonna respect you, and, again, all we want is your answers
20 to these questions, and I appreciate your cooperation with
21 me so far.

22 All right. Mr. Barnette.

23 SOLICITOR BARNETTE: May it please the Court, Your
24 Honor.

25 EXAMINATION

Individual Juror Qualification

1 BY SOLICITOR BARNETTE:

2 Q Morning, Mr. Berry.

3 A Morning.

4 MR. MCGUIRE: Judge, I -- I'm sorry. I might be
5 confused. I thought I was suppose to go first.

6 THE COURT: We're still in the middle of panel number
7 12.

8 SOLICITOR BARNETTE: Yeah, the even, the even ones we
9 got.

10 THE COURT: The even ones go---

11 MR. MCGUIRE: I'm sorry. My mistake.

12 THE COURT: ---go with the State I think.

13 MR. MCGUIRE: I apologize.

14 THE COURT: Yeah, I think we're in 12 -- we are in
15 panel 12.

16 Go ahead, Mr. Barnette.

17 SOLICITOR BARNETTE: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 Q Mr. Berry, so you work in Woodruff, is that right?

20 A I -- yeah, I live in Woodruff. I don't work in
21 Woodruff.

22 Q Okay. You live in Woodruff.

23 Okay. I got you from there.

24 How long have you lived in Woodruff, sir?

25 A About 25 years. I transferred from Pennsylvania.

Individual Juror Qualification

1 Q I got you on that.

2 I apologize ahead of time. I've got to ask you some
3 questions that normally we wouldn't ask you --

4 A Okay.

5 Q -- in this situation because it's a death penalty case
6 from that standpoint.

7 I notice your one answer to the judge, when the judge
8 was asking you about signing the sentencing sheet --

9 A Right.

10 Q -- that you, you didn't think that you could judge
11 somebody.

12 Could you tell me a little bit about that?

13 A Well, see I'm a Christian. I don't think it's my right
14 to judge anybody to death. It would be God. He's the
15 ultimate one that's gonna judge us for what we do, good or
16 bad.

17 Q Uh-huh. (Affirmative).

18 A See, that's why I had a little problem that way, but
19 it's under the law. I have to do my part, you know. If
20 this is the law of South Carolina, I have to do it. I have
21 to recognize through the State and I have to do what the law
22 requires me to do.

23 Q But now do you understand that the law will never
24 require you to give the death penalty?

25 A Right.

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1 Q It will never require you to do that.

2 A I mean, but if I had to make a decision, I wouldn't
3 feel comfortable with it, but if that's the way it had to be
4 with the things I had, then I would have to do that, but you
5 know.

6 Q Well, you know, the judge is never gonna tell you to do
7 it.

8 A Right.

9 Q Nobody can tell you to do it. It's something you have
10 to decide. You have to be the judge. You're the judge of
11 the facts.

12 A Right. Yes, sir.

13 Q And you understand, as the judge of the facts, you're
14 gonna determine that?

15 A Yes, sir.

16 Q It will never be determined by the judge or anybody
17 else.

18 Do you understand that?

19 A Yes, sir.

20 Q Do you think you could be comfortable being the judge
21 knowing that it's not required being able to do it?

22 A Well, if it's, if it's not required, and I don't have
23 to, then I would feel comfortable.

24 THE COURT: Well, there may be a difference in
25 semantics here. What I told you is that the jury reached

Individual Juror Qualification

1 that conclusion---

2 THE WITNESS: Conclusion of that---

3 THE COURT: ---of the death penalty, then all are
4 required to sign it.

5 THE WITNESS: If the conclusion---

6 THE COURT: But no one's required to reach that verdict
7 is what the solicitor I think---

8 THE WITNESS: Oh, okay.

9 THE COURT: ---is pointing out.

10 You understand that?

11 THE WITNESS: Yes, sir.

12 Q All right. And the judge is right, exactly right.

13 A Uh-huh. (Affirmative).

14 Q It's a situation where you don't have to do it. You
15 know, understand you're the judge. You're the judge on this
16 case judging if a person should get life or death if you get
17 to that point.

18 A Yes, sir.

19 Q The question that I'm asking you, as a Christian, as a
20 human being, do you think it's in your right to judge
21 somebody else and take somebody else's life?

22 A No. No.

23 Q And where is that coming from, sir?

24 A It's coming from God's word --

25 Q Uh-huh. (Affirmative).

Individual Juror Qualification

1 A -- in the Bible.

2 Q So, God's word would tell you you can't, you can't take
3 another person's life?

4 A Right. Right.

5 Q And you feel like that you, like I said, knowing it's
6 not required, you don't think that you could judge somebody
7 and order somebody else to die?

8 A That's right.

9 Q And that's part of your religious beliefs?

10 A Yes, sir.

11 Q And that's something that, that, that obviously you're
12 a very devout Christian?

13 A Yes, sir.

14 Q And how long have you went to church, sir?

15 A I've been in -- I got saved ever since I was 20 years
16 old.

17 Q Yes, sir.

18 A And -- well, see, I'm a deacon, but I'm not on the
19 board now. I'm off right now for a year. I'll probably go
20 back on---

21 Q Yes, sir.

22 A ---at West End Baptist Church.

23 Q Yes, sir.

24 So, that's a big part of your life?

25 A Yes, it is.

Individual Juror Qualification

1 Q And is it the biggest thing in your life?

2 A Yes.

3 Q And obviously you would follow your, what your beliefs
4 are through the Christian faith?

5 A Right.

6 Q And that's what would ride -- would determine your,
7 your -- what you would do in this case?

8 A Yes, sir.

9 Q And your position is you can not judge somebody else?

10 A Right.

11 Q Thank you, sir, for answering my questions.

12 THE COURT: Defense.

13 EXAMINATION

14 BY MR. MCGUIRE:

15 Q Morning, sir.

16 A Good morning.

17 Q I had a conversation recently with a potential juror in
18 a different case in a different county, and when he was
19 talking about his church's beliefs and his beliefs and, and
20 the law, he said to me, you know, there's, there's God's law
21 and then there's man's law --

22 A Right.

23 Q -- and I can, can follow both, and earlier you
24 indicated to the judge that you were a number three juror on
25 the sheet -- the third category that you could consider---

Individual Juror Qualification

1 A Yes, sir. Oh, yes.

2 Q Okay. And that would be to -- you haven't seen any
3 evidence yet.

4 A Right.

5 Q But that would be the type of juror who would want to
6 see the whole case, all the facts, all the---

7 A Yeah.

8 Q ---mitigation evidence, all the aggravation evidence,
9 and could be fair to both the defendant and the State.

10 A Uh-huh. (Affirmative).

11 Q And you indicated to the judge that was you?

12 A Yeah.

13 Q And that you could consider all of this evidence before
14 making a decision?

15 A Yes.

16 Q And that you could fairly consider both penalties, the
17 death penalty and the life penalty?

18 A Yes, sir.

19 Q Okay. And you wouldn't come into a courtroom with a
20 closed mind?

21 A No. No.

22 Q And that if you were on the jury, and the judge said
23 that the law is you would have to consider all the
24 circumstances in aggravation and all the circumstances in
25 mitigation to come to a rational, moral -- or a decision?

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1 A Yes.

2 Q Okay. And in the law it's called an individual moral
3 judgment. And if you were sitting on the jury, you heard
4 the judge's law, you took the law, you compared it to the
5 facts, and in your discussions with the 11 other jurors you
6 came to the conclusion that, in this particular case, under
7 the facts, under the law, that the death penalty would be
8 appropriate, you could consider that penalty?

9 A It, it might be appropriate, but I still wouldn't want
10 to do that.

11 Q And you know we, we expect people to come to Court with
12 some, some serious reservations about the death penalty --

13 A Right.

14 Q -- because it's such a grave matter.

15 A I, I imagine, in some circumstances, it has to be, but
16 I just don't feel comfortable. You know, I'll, I'll look at
17 all the evidence and everything else, but I still -- I don't
18 want to determine now how that evidence is gonna -- I don't
19 want to make up my mind right here, but this is jury -- my
20 beliefs and the way I feel about it.

21 Q Sure. We would never ask you to make up your mind
22 ahead of time.

23 A Right.

24 Q That would be impossible.

25 A Right.

Individual Juror Qualification

1 Q And I understand that you would have a high degree of
2 not being comfortable with signing a, a -- the paperwork for
3 the death penalty.

4 A Right.

5 Q But in the law, it's actually not -- that's not the,
6 the test. The test is could you follow the law, and I'm
7 asking you if, if -- could you do that?

8 could you follow the law?

9 A I don't think God's gonna judge me if I obey the law
10 cause that's what we're suppose to do. Now, if I have to
11 obey the law, I'm gonna obey the law and I'm gonna pray
12 about it and make a decision. You know, if that's God's
13 will, then I'm gonna do it.

14 Q Sure.

15 A But I don't want to break the law.

16 Q Right.

17 This would not, this would not be an experience that
18 would be comfortable for you with regard to the death
19 penalty?

20 A That wouldn't be comfortable, no.

21 Q Okay. But, but it sounds like, if you got the
22 instructions from the judge, you're the kind of guy that
23 would follow those instructions right down the line?

24 A I don't want to get put in jail. So, I mean if that's,
25 if that's the way he tells me to I'm gonna have to do it. I

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1 have to obey the law.

2 Q Right.

3 A So, even if I feel reservations the other way that I
4 didn't want that, I still have to obey the law and his
5 order.

6 Q Okay. Okay. And if the law was to consider all the
7 aggravation evidence---

8 A Right.

9 Q ---all that mitigation evidence---

10 A Uh-huh. (Affirmative).

11 Q ---fairly consider both penalties, you could do that?

12 A Right.

13 Q And you could sign the appropriate paperwork?

14 A I'd have to.

15 Q And when -- and when -- and going back to the
16 description of the jurors, the one, the two, and the three,
17 the three being the person who comes in with an open mind---

18 A Right.

19 Q ---ready to see all the evidence, will make a decision
20 based on the evidence and follow the law, that's you?

21 A I'd have to be.

22 Q And you'd be a number three juror?

23 A Yeah.

24 Q That's all I have, sir. Thank you.

25 THE COURT: State wish to ask any other questions?

Individual Juror Qualification

1 SOLICITOR BARNETTE: Yes, sir, I would on that.

2 THE COURT: Yes, sir, try to keep it to new matters.

3 SOLICITOR BARNETTE: Yes, sir.

4 EXAMINATION

5 BY SOLICITOR BARNETTE:

6 Q Talking about the law --

7 A Right.

8 Q -- from that standpoint, the law will never tell you to
9 give the death penalty.

10 A I understand.

11 MR. MCGUIRE: Objection. Not new material.

12 THE COURT: Beg your pardon?

13 MR. MCGUIRE: Objection. That's not new material.

14 It's already been covered by the State.

15 SOLICITOR BARNETTE: Your Honor, he talked about the
16 law.

17 THE COURT: well, he didn't finish his question. So, I
18 don't know exactly where that's going, Mr. McGuire.

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: I try to let you fellows finish your
21 questions and then I'll -- if you still have an objection,
22 let me know.

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: Excuse me, Mr. Barnette. Go ahead.

25 SOLICITOR BARNETTE: Thank you, Your Honor.

Individual Juror Qualification

1 Q You realize -- Mr. McGuire was telling you about the
2 law and everything, but the law will never tell you to give
3 the death penalty --

4 A Right.

5 Q -- in this case.

6 In this situation, your religious beliefs would be with
7 your God, is that right?

8 A Right.

9 MR. MCGUIRE: Objection. That's already been covered.

10 THE COURT: Let's go to new things, Mr. Barnette.

11 SOLICITOR BARNETTE: Okay.

12 Q And you would follow God's word?

13 A Right.

14 Q Is that right?

15 MR. MCGUIRE: Same objection, Your Honor.

16 SOLICITOR BARNETTE: No, he -- no, he---

17 THE COURT: Overruled.

18 SOLICITOR BARNETTE: Thank you, Your Honor.

19 Q And you would -- you said you'd even pray to God?

20 A Uh-huh. (Affirmative).

21 Q Which I understand, believe me. I understand from
22 being a Christian myself.

23 But God would tell you what to do?

24 A That's right. He'd give me the clear conscience and
25 the mind of what I'd have to do.

Individual Juror Qualification

1 Q Yes, sir.

2 A Because if it's a tough decision, all decisions have to
3 be prayed about---

4 Q Yes, sir.

5 A ---before you get into anything like this. It's always
6 better to talk to God and he can tell me and help me through
7 it.

8 Q Uh-huh. (Affirmative).

9 And obviously God and your beliefs are a big part of
10 your being?

11 A They sure are, yes.

12 Q And the part of that beliefs if you can not judge
13 another person?

14 MR. MCGUIRE: Objection. That's not a new question.
15 It's been asked and answered.

16 SOLICITOR BARNETTE: I think---

17 THE COURT: well, there's been some different answers
18 given by this witness on that point or differing answers and
19 I'll let him explore it further.

20 Overruled.

21 SOLICITOR BARNETTE: Thank you, Your Honor.

22 Q Basically you would follow your beliefs that you
23 couldn't judge another person?

24 A Right.

25 Q And that's a belief you would follow?

Individual Juror Qualification

1 A That's right.

2 SOLICITOR BARNETTE: Thank you, Your Honor.

3 EXAMINATION

4 BY THE COURT:

5 Q Let me ask just a couple of questions, Mr. Berry.

6 You and I were talking about -- let's go back to that
7 fellow that's on a shoplifting case.

8 A Uh-huh. (Affirmative).

9 Q And you said you understood that on the burdens of
10 proofs, and you and your fellow jurors got to the point that
11 you felt that the State had met its burden of proof, then
12 you would not hesitate to sign a guilty verdict --

13 A Uh-huh. (Affirmative).

14 Q -- that the State had met its burden of proof on
15 something. Of course now that's judging a fellowman.

16 A True.

17 Q So, can you elaborate on that a little bit because---

18 A Yes, sir.

19 Q ---that's, that's -- that, that -- you then, just in
20 response to the last question I heard, said that you don't
21 feel that you could judge your fellowman. So---

22 A There's a difference---

23 Q So, let's talk about that.

24 A There's a difference between the two.

25 Q Yes, sir.

Individual Juror Qualification

1 A He's a shoplifter.

2 Q Okay.

3 A If I could -- if he's guilty, and I say he's guilty,
4 he's gonna go to jail for a while.

5 Q Yes, sir.

6 A On the other one, this guy's going -- I have to sign a
7 death. See there's a difference.

8 Q Well, so, it's not the judging the person. It's the
9 issue.

10 A It's the thing of it.

11 Q It's the result of the judging.

12 A Right. See there's two differences there.

13 Q Oh, I understand, I understand that difference, but I
14 wanted to know if your problem was in being -- sitting in
15 judgment on somebody in a legal sense. Not in a moral
16 sense, and not in, not in, not in a religious sense.

17 A I can, I can---

18 Q But sitting, sitting in judgment as to whether or not
19 they've committed a crime or didn't commit a crime, you
20 have -- you understand that that---

21 A Yeah.

22 Q ---is required of people---

23 A Right.

24 Q ---who are citizens and you have to do that.

25 A Right.

Individual Juror Qualification

1 Q Is that what I'm hearing?

2 A Yeah, I can do that.

3 Q Okay. So, the real issue is the possible penalty?

4 A Yes, the death penalty.

5 Q All right. Now, I'm gonna get back to that juror
6 walking back into the courtroom.

7 A Uh-huh. (Affirmative).

8 Q And I described those three different people.

9 Now, number two is a person who doesn't believe that,
10 that the State is ever justified in putting anyone to death,
11 and, therefore, would never vote for the death penalty. I'm
12 sure you're not a number one who would always vote for the
13 death penalty.

14 A Oh, no.

15 Q So, I'm not gonna talk about number one. I'm gonna
16 talk about number two and number three. Again, number,
17 number two is already made up his or her mind. They don't
18 believe in that, that, that penalty. Don't believe the
19 state's justified in doing that, whether it's on religious
20 grounds or whatever grounds. But that person believes --
21 doesn't believe that that's an appropriate penalty no matter
22 what the seriousness of the crime might be, no matter what
23 was done, that would never be appropriate.

24 Number three would be someone who could, could give the
25 death penalty if, if the situation warranted, but also could

Individual Juror Qualification

1 give life in prison.

2 So, you understand the difference between those two?

3 A Right.

4 Q I asked you to which -- as to which one most resembled
5 you coming into the courtroom.

6 A Well, number two would be then.

7 Q Okay. So, you're someone who would more than likely
8 never give the death penalty if---

9 A Right.

10 Q ---there was a way not to?

11 A If it was a way that I couldn't, I would, you know,
12 don't give it.

13 Q Uh-huh. (Affirmative).

14 A But I mean---

15 Q Cause see, see, the lawyers made the point that the
16 state, there's no formula to this.

17 A Yeah.

18 Q There's no add up these factors and these factors and
19 if it comes up to a number we give this or we give that.

20 A Right.

21 Q So, it's a, it's a judgment call --

22 A Yes.

23 Q -- by, by people on the jury.

24 You understand that?

25 A Yes, sir.

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1 Q So, it requires it -- for it to be a number three
2 juror, you have to be willing to say I'll consider both
3 fair, fairly and I'll make a determination based on the law
4 and the facts that I've heard. A number two juror is
5 someone who says, no matter what the circumstances are, no
6 matter how serious it was, I don't think it's ever justified
7 to give someone the death penalty.

8 Now, I'm gonna ask that question again, which of those
9 three jurors most---

10 A I'm gonna---

11 Q ---closely---

12 A ---have to go with number two then.

13 Q You're gonna go with two?

14 A Yes, sir.

15 THE COURT: All right. I'll allow any follow-up
16 questions.

17 EXAMINATION

18 BY MR. MCGUIRE:

19 Q Morning, sir.

20 A Yes, sir.

21 Q I understand that, that you have some serious
22 reservations about contemplating the death penalty---

23 A Right.

24 Q ---for another human being, and -- however, that's,
25 that's not the test that we're all gonna look at to see if

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1 you could be a good juror, a fair juror, a qualified juror.
2 The test is can you follow the law, and when the judge puts
3 you in that position where you and 11 other jurors found a
4 man guilty beyond a reasonable doubt of murder, which means
5 the intentional taking of an innocent life with malice,
6 malice being described as hatred, ill will, hostility
7 towards somebody, and deliberately acting to harm them
8 under -- without any justification or legal excuse under
9 circumstances that would infer an evil intent. So, it's the
10 intentional taking of an innocent life with evil intent.
11 You and 11 other people found that beyond a reasonable
12 doubt.

13 Now, you're walking down the hallway with your 11 other
14 jurors, this is where the judge puts you, and you're about
15 to come in Court for this second trial that, that the law
16 requires.

17 Now, the two jurors would already have his mind made
18 up. Before he even got into that second trial, he knows
19 what he's gonna do. He's never gonna consider the
20 aggravation evidence, the mitigation evidence, even though
21 the judge would say the law is you have to consider
22 aggravation and mitigation evidence to reach a decision,
23 this juror -- and remember you're already on the jury.

24 Okay. This -- could you follow that instruction,
25 consider the aggravation, the mitigation evidence, and then

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1 look at the evidence and the law and reach a decision and
2 fairly consider both the life penalty and the death penalty?

3 A I have to stick with number two.

4 Q Okay. That's all I have for you, sir. Thank you.

5 THE COURT: Anything further?

6 SOLICITOR BARNETTE: No, sir.

7 THE COURT: All right. Mr. Barry, at this time I'm
8 gonna release you from any further responsibility in the
9 case. I want to thank you for your cooperation. You've
10 been honest with us this morning. That's all I wanted you
11 to do.

12 THE WITNESS: Okay.

13 THE COURT: And I appreciate your, your willingness to
14 come forward and participate. The bailiffs will show you
15 out. You're free to go.

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

18 THE COURT: All right. Based on the juror's responses,
19 I'll find that he's not qualified.

20 MR. MCGUIRE: Yes, sir.

21 THE COURT: Any argument -- anybody disagree with the
22 ruling?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All right. Well, you---

25 MR. MCGUIRE: If I can just put it on the record.

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1 THE COURT: Sure. Go ahead.

2 MR. MCGUIRE: That -- in looking at his answers as a
3 whole, he did give some inconsistent answers. I would say
4 this one goes into the category of a close call, maybe
5 somewhere Mr. Anderson who was seated earlier, and we would,
6 we would argue that he is, is qualified and should be
7 presented.

8 THE COURT: I heard the argument. He clearly
9 indicated, after given the chance to reflect on it, while he
10 originally said he was a three, he went back to a number
11 two, and then after repeated questions, he repeated that
12 answer about three or four times. I think he came to the
13 conclusion, after hearing all of the possibilities and what
14 is and is not required of a juror, that he could never
15 consider fairly the death penalty. So, I find him not
16 qualified.

17 All right. The next one is Mathew Perry.

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

20 MATHEW PERRY, having been previously
21 sworn, testified as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q Sir, you are Mathew Perry?

25 A That's correct.

Individual Juror Qualification

1 Q All right, sir. You may want to turn your chair
2 slightly and kind of face me because I'm gonna do most of
3 the talking to begin with, and then, later on, the attorneys
4 will be talking to you. The way this thing's designed here,
5 it's hard for me to see you unless we kind of move back and
6 face each other.

7 So, first of all, I want to thank you for your
8 cooperation. I know we've kind of had you up here yesterday
9 and now we've got you back this morning, and it's because
10 some of these interviews take longer than others, and it's,
11 it's hard to estimate times. But I thank you for your
12 cooperation. I'm sure that it's something like you've never
13 been involved in before --

14 A Yes, sir.

15 Q -- and I can appreciate that.

16 I kid some of the people who come in here that it's
17 kind of interesting that the witness seat in my courtroom is
18 a red chair. It must mean it's a hot seat, and sometimes it
19 is. But today it's not, I can assure you. The lawyers and
20 I just really want to talk with you about the situation.

21 We're still in the process of gathering a pool of
22 people together from which a jury will be selected. So,
23 we're not selecting jurors today. We're selecting people
24 who can continue in the process and be eligible to be
25 jurors.

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1 So, do you understand what we're doing today?

2 A Yes, sir.

3 Q Now, I'm going to be asking you some questions to begin
4 with, and then the attorneys will ask you some questions.
5 I'm going to tell you that there are no right or wrong
6 answers to our questions. There's only truthful, honest
7 answers from you, and I'll remind you you took an oath on
8 Monday to tell the truth to the Court.

9 A Yes, sir.

10 Q You remain under that oath at this time.

11 Do you acknowledge that fact?

12 A Yes, sir.

13 Q Okay. Also, when you left the courthouse on Monday, I
14 gave instructions to the entire jury panel. Those
15 instructions were to not watch, listen, or read any media
16 reports, listen to or read any media reports, not to try to
17 gather any information independently, not to discuss the
18 case with anyone, and not to allow anyone to discuss the
19 case with you, and if anyone tried to contact you about your
20 service, to please report that to the Clerk's Office.

21 Do you remember my instructions?

22 A Yes, sir.

23 Q Now, have you been able to follow my instructions since
24 Monday?

25 A Yes, sir.

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1 Q All right. Now, I note that, in our, our discussions,
2 I asked some questions and had people stand up and -- about
3 them, but I didn't explore that any further because I knew
4 we'd be talking to people individually. And during that
5 process there was a question that I asked about people who
6 may have heard something about this case or have seen
7 something about this case, and I believe you responded to
8 that.

9 Is that correct?

10 A Yes, sir.

11 Q Okay. Now, it -- was this in the form of some kind of
12 news report or something of that nature?

13 A Yes, sir, newspaper article.

14 Q Newspaper article.

15 Now, let me ask you this and I'm not gonna ask you the
16 details of that because that's not, not as important to me
17 as whether or not that particular information would have
18 caused you to express -- either form or express some opinion
19 about the case such that you would not be able to sit in a
20 courtroom, listen to the evidence during the trial, listen
21 to the arguments by the lawyers, and listen to the, to the
22 law charged by the judge, and be able to make a decision
23 based on the information that, that you hear in the
24 courtroom.

25 In other words, has your opinion been so altered that

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1 you could not give a fair hearing on the facts and the law
2 to both parties in this case?

3 A I would say, as far as phase one of the trial for guilt
4 or innocence, I would have no problem, you know, going
5 through that part.

6 Q Yes, sir.

7 A With the phase two portion, I probably formed some
8 opinions and would have a difficult time.

9 Q would it affect your ability to make a decision in that
10 case?

11 A Yes, sir.

12 Q All right. So, you don't think you could give someone
13 a fair trial in this situation?

14 A Ah.

15 Q And I can get -- I can delve into it further if you'd
16 like for me to about the issues that would come up and how
17 they would be presented.

18 A I guess I would not be able to on both parts of the
19 trial.

20 Q Okay. So, you feel like you've already formed an
21 opinion and you could not give a fair trial in this case?

22 A That would be correct.

23 THE COURT: Okay. Let me ask the attorneys if they
24 wish to ask any questions.

25 MR. MCGUIRE: No, sir.

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1 THE COURT: State wish to ask any?

2 SOLICITOR BULSA: No, sir.

3 THE COURT: All right. Mr. Perry, then I'm gonna
4 excuse you from this process.

5 THE WITNESS: Okay.

6 THE COURT: You're free to go at this time. See the
7 bailiff and they'll check you out.

8 THE WITNESS: Thank you.

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

11 THE COURT: I find Mr. Perry to be not qualified.
12 Is the next group in there?

13 THE BAILIFF: They just came in, Your Honor.

14 THE COURT: Just came in.

15 So, we'll need to give them a minute.

16 THE BAILIFF: Yes, sir.

17 THE COURT: The first one is gonna be Todd Danielson.
18 So, have him read the information and as soon as he's ready
19 let me know.

20 THE BAILIFF: Okay. Your Honor, Mr. Fullenwinder?

21 THE CLERK: He's on this panel.

22 THE COURT: Yes.

23 THE BAILIFF: He's on his way.

24 THE COURT: He's on his way?

25 THE BAILIFF: Yes, sir.

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1 THE COURT: Okay. All right. Good.

2 SOLICITOR BARNETTE: May I step out for one second,
3 Your Honor?

4 THE COURT: Yes, sir, it's gonna be just a moment.
5 We'll take a short recess. I'll stay on the bench.

6 MR. MCGUIRE: Thank you, judge.

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

8 THE COURT: All right. The first one on our list is
9 Mr. Todd Danielson.

10 THE BAILIFF: Yes, sir.

11 THE COURT: Bring him in.

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

14 TODD DANIELSON, having been previously
15 sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Sir, have a seat in the chair there.

19 A Yes, sir.

20 Q Good morning.

21 A Morning.

22 Q First of all, I want to thank you for your cooperation
23 in coming in this morning. Saturday morning, it's a little
24 unusual to be in Court, but sometimes we have to work some
25 different hours. Again, thank you for coming in. I thank

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1 you for your participation in the system.

2 I tease some of the jurors, when they come in, that
3 seat that you're in, usually it's the hot seat in my
4 courtroom. It's a red chair. But today it's not.

5 What we're going to do is be asking some questions of
6 you. I'll ask the questions to begin with, and then I'll
7 allow the attorneys to ask questions as well.

8 Now, there aren't any right or wrong answers to what
9 I'm going to go over with you. There's only your answers.
10 As long as you give us honest answers, that's all we're
11 asking for, and we don't keep score on these things. It's
12 just a matter of what we're doing is we're in the process of
13 selecting a group of people from which the jury will be
14 selected. So, we have not yet gotten to the point where we
15 are picking people to be on the jury. We are picking people
16 who are qualified to be on the jury is the way the law
17 refers to it.

18 Now, I'll remind you, on Monday, when you were in the
19 courtroom, you took an oath to tell the truth.

20 Do you recall that?

21 A I do.

22 Q And the reason I'm reminding you of that is because
23 that oath applies to our communications now. So, you're
24 still under oath.

25 Do you acknowledge that?

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1 A I do.

2 Q Also, when you left the courthouse on Monday, I gave
3 instructions to the entire jury panel. Briefly, those
4 instructions were not to attempt to gather any independent
5 information concerning the case, not to listen to, watch, or
6 read any media reports, not to discuss the case with anyone,
7 don't allow anyone to discuss it with, with you, and if
8 someone were to contact you about your service on the jury,
9 to please report that to the Clerk's Office. So, in a
10 nutshell that's what I went over.

11 Do you remember those instructions?

12 A I do.

13 Q Have you been able to follow those instructions since
14 last Monday?

15 A I have.

16 Q All right. Now, as I told you, I'm going to go over
17 some matters with you. Again, they're aren't any right or
18 wrong answers to my questions.

19 The first question is have you ever participated in any
20 discussions, chat rooms, blogs, things where the subject of
21 those discussions was the death penalty?

22 A No.

23 Q Have you ever participated in any political actions
24 regarding that issue and that would include things like
25 writing letters to an editor, sending letters to or phone

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1 calling representatives, things of that nature?

2 You ever participated in any of that surrounding the
3 death penalty?

4 A No.

5 Q Now, are you the kind of person who, if you were
6 selected on a jury in any case, that you could put aside any
7 factors that you may have heard from other sources that
8 would have anything to do with the issues in that case, and
9 focus on deciding the case based upon the law and the
10 evidence that you hear inside the courtroom during the
11 trial?

12 A I would.

13 Q All right. Now, let me ask you about a list of names
14 that I put on the table back in the jury room.

15 A Okay.

16 Q About three sheets of paper.

17 Do you recall all those names?

18 A I don't recall all of them.

19 Q Well, do you remember -- did you read them?

20 A I did.

21 Q Okay. Now, as you read over them, did you notice
22 anyone that you have ever been related by marriage to or
23 related by blood to or was there anyone on there that you
24 have any social, personal, or business relationships with?

25 A None at all.

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1 Q So, you didn't recognize anyone that would have an
2 affect on you if they testified?

3 A I recognized one name.

4 Q Uh-huh. (Affirmative).

5 A That Allen Wood.

6 Q Right.

7 A I think his, his daughter was the age of mine as they
8 were growing up and I just recognize that name.

9 Q I see.

10 A No social interaction.

11 Q So, so, if he testified, it would not affect your
12 ability to be fair---

13 A No.

14 Q ---and impartial?

15 A No.

16 Q Is that correct?

17 A That's right.

18 Q Okay. Now, there's one concept I, I need to go over
19 with you because it's a little -- this, this -- these cases
20 that we're involved in are different cause they're handled
21 in a much -- a different fashion than we normally do, but
22 as -- I, I touched on this on Monday.

23 The, the case in -- where a State, the State is seeking
24 a death penalty, that case is what we refer to as
25 bifurcated, which means it's divided into two stages or

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1 phases, and let me explain to you briefly what that means.
2 There would be, once the trial starts, there would be a
3 hearing at which the defendant's guilt or innocence of the
4 charges that have been brought would be determined, and
5 that's what -- we refer to that as the, as the guilt phase
6 of the trial.

7 Now, one of the charges that's been brought against the
8 defendant is the charge of murder. The State is seeking the
9 death penalty as an option in that particular case. So, if
10 a defendant were to be found guilty of murder, then there
11 will be a separate hearing to determine what the appropriate
12 penalty would be.

13 Now, the same jury in this trial will hear the first
14 and the second phase. But now obviously, if the defendant
15 were to be found not guilty of the crime of murder, there
16 would never be a second hearing. That's the end of the case
17 for that -- as far as the trial is concerned.

18 So, today though we're going to be talking about issues
19 that would be involved in both the guilt phase of the trial
20 and the penalty phase of the trial, and I don't want you to
21 take that as any reflection upon the defendant that we're
22 talking about the penalty before we've ever decided the
23 guilt phase because, since the same jury hears both cases,
24 the only time that we can discuss issues that are involved
25 in the entire case is before we select a jury.

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1 So, please don't, in anyway, hold the fact that we're
2 talking about the penalty phase of the trial now against the
3 defendant or his case. The defendant is presumed innocent
4 of the charges. That is true in all cases and in this case
5 as well, and it should not be a reflection on his case that
6 we're talking about the penalty phase. This is just the
7 only time that we can do that.

8 Do you understand that concept and what I'm talking
9 about?

10 A Yes, sir.

11 Q Can you accept that?

12 A Yes, sir, I do.

13 Q Okay. Now, we will be talking about some matters that
14 may, may involve your opinions about things or beliefs about
15 things. You seem to be a mature enough individual that you
16 won't feel threatened by people asking about your opinions
17 or beliefs.

18 Am I correct in that?

19 A You are.

20 Q So, you can cooperate in the process?

21 A Sure. Sure.

22 Q Okay. Now, I'm going to go over some matters that are
23 going to be general principles of the law to be sure we have
24 an understanding on these things as we go forward, and see
25 whether or not you agree with the general principles of the

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1 law.

2 So, first of all, I want to ask you to, in your mind,
3 pretend that you are a juror who's been selected in a
4 criminal case, but this criminal case is not this one.
5 Let's say it's a case where someone's charged with
6 shoplifting. I'll just use that as an example.

7 All right. And I'm gonna ask you some, some principles
8 about the case and how the jury should, should behave and
9 the issues the jury should consider to see if we have an
10 agreement or an understanding on these things.

11 okay?

12 A Yes.

13 Q Now, if you were a juror in any case, and I'll take the
14 shoplifting as a case, would you be willing to accept the
15 law as given to you by the judge?

16 A I would.

17 Q And let me point out to you that in every single
18 criminal case, no matter what the seriousness of the crime
19 is, in this state the judge is always the judge of the law.
20 In other words, the judge is the person who gives the law to
21 the jury to be applied. The jury is always the judge of the
22 facts. That means the jury is the entity in the courtroom
23 who decides such things as who's telling the truth, who did
24 what, when, and where, whether the facts meet the
25 requirements of the crime that's charged, and whether the

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1 State met its burden of proof. So, the jury is the trier of
2 the facts.

3 Do you understand that?

4 A I do.

5 Q All right. Now, would you, as a juror, be willing to
6 accept the law as given to you by the judge and then apply
7 it to the facts as the jury found the facts to be in order
8 to reach a verdict in the case?

9 A I would.

10 Q Now, let me take that a step further just to kind of
11 put a twist on that.

12 Let's say that you and your fellow jurors were in that
13 shoplifting case and you heard all the facts, the lawyers
14 had finished their arguments, and it's time for the judge to
15 charge the law. The judge is explaining the law to the jury
16 during the, during the -- what's called the charge. And as
17 you're listening to the judge give you the law, something
18 you hear maybe you don't agree with, maybe you believe that
19 the law was different from that. So, you hear something
20 that you don't feel comfortable with in what the judge is
21 giving you the law.

22 You understand that -- what I'm talking about?

23 A I do.

24 Q Now, would you be the juror -- would you be a juror
25 though who would be willing to set aside those personal

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1 issues you might have and be willing to accept the law
2 exactly as the judge gives you and then apply that law to
3 the facts?

4 A I would.

5 Q You could do that?

6 A I would.

7 Q All right. Now, some other things I want to go over
8 with you to see if we have an agreement or an understanding.

9 There's a basic principle of our law that all people
10 who are charged with the commission of a crime are presumed
11 to be innocent of that crime.

12 Have you -- do you understand that principle?

13 A Uh-huh. (Affirmative).

14 Q Do you agree with that?

15 A I do.

16 Q Now, because all people are -- who are charged are
17 presumed to be innocent, in our state and in every state as
18 far as I know, a defendant is never required to prove his
19 innocence because he's presumed to be innocent.

20 Can you accept that concept?

21 A I do.

22 Q Now, I'm gonna take that a step further.

23 Because a defendant is presumed to be innocent and is
24 never required to prove his innocence, that means, during a
25 criminal trial, a criminal, a criminal defendant is not

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1 required to offer any evidence or to prove anything in a
2 case. In other words, a defendant can remain silent if he
3 chooses to throughout the trial.

4 Do you understand that a criminal defendant has no
5 burden of proof in a case?

6 A I do.

7 Q Now, on the other side of that coin, the State of South
8 Carolina would be the other party in any criminal
9 proceeding. That entity would have brought charges against
10 someone, made accusations against someone. And because they
11 are the moving party, the party who's seeking for the Court
12 to do something, they do have a burden of proof and that
13 burden of proof is to prove the defendant guilty of the
14 crime charged by proof beyond a reasonable doubt.

15 Do you understand that concept?

16 A I do.

17 Q Do you agree with it?

18 A I do.

19 Q And could you accept that?

20 A I could.

21 Q All right. I'm gonna take all of that a step further.

22 Let's say that you were on a jury. You and your fellow
23 jurors heard all evidence and heard the law. You stepped
24 back in the jury room, began your deliberations, and you and
25 your fellow jurors came to the conclusion that the state did

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1 not present sufficient proof to prove the case beyond a
2 reasonable doubt.

3 would you have any difficulty in signing a not guilty
4 verdict on a defendant?

5 A I would not.

6 Q All right. The same question, on the other side, is if
7 you went back in your deliberations and you determined the
8 State had presented sufficient proof to find a defendant
9 guilty beyond a reasonable doubt, would you have any
10 misgivings in signing a verdict of guilty against a
11 defendant?

12 A I wouldn't.

13 Q All right. So, it sounds like to me that you are the
14 kind of person who wants to listen to the law, wants to
15 listen to the facts, and make a determination as to whether
16 or not a defendant is either guilty or not guilty based on
17 those factors.

18 Is that right?

19 A Yes.

20 Q And do you also accept the fact or the principle that,
21 just because someone has been arrested and charged in a
22 case, does not automatically make them guilty of that crime?

23 A Yes.

24 Q You understand that there's -- that does have to be
25 proven?

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1 A I do.

2 Q Okay. Now, I told you that we're kind of putting the
3 cart before the horse because we're talking about the
4 penalty phase before we ever know we're gonna get there, and
5 I explained to you the need for doing, the necessity for
6 doing that. So, we're gonna talk now about the penalty
7 phase of, of a capital trial, and, and, in doing so, I want
8 you to, in your mind's eye, put yourself in the position
9 that you have been selected on a jury. It is a case where
10 the State is alleging murder, and it is a case where the
11 State is seeking the imposition of the death penalty for
12 that particular murder.

13 Do you understand where we, where we are?

14 A I do.

15 Q Let's assume that the trial has proceeded to the point
16 that there has been a hearing on the question of guilt. You
17 and your fellow jurors have gone out into the jury room and
18 you have deliberated and you have reached a verdict, beyond
19 a reasonable doubt, that the defendant committed the crime
20 of murder. So, because the State is seeking the death
21 penalty, the jurors would be coming back to the courtroom to
22 consider the question of the appropriate sentence.

23 Now, in that sentencing phase, there's a statute that
24 we have that sets up that particular phase of the trial.
25 The statute states that there will be two types of evidence

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1 or two types of information that can be presented to a jury
2 and it lists a list of what are called statutory --
3 statutorily aggravating circumstances, and those are
4 circumstances where, if they were proven to a jury beyond a
5 reasonable doubt, cause, again, the State is presenting
6 those and they have to be -- the State always has to prove
7 things beyond a reasonable doubt. So, if -- they have
8 proven to a jury, beyond a reasonable doubt, those are
9 factors which might tend to cause a jury to go toward the
10 higher level of penalty.

11 Do you understand what a statutorily aggravating
12 circumstance will be -- would be?

13 A Right.

14 Q I'm not listing them for you. There's a list, but it's
15 not deciding a case today.

16 A I understand the concept, yeah.

17 Q So, it's not necessarily important that we talk about
18 what they are.

19 A Okay.

20 Q Now, by the same token, that statute has a list of ten
21 enumerated mitigating circumstances. Those are
22 circumstances, which, if shown to a jury, and those don't
23 have to be proven beyond a reasonable doubt because they're
24 presented by the defense possibly. Those factors are
25 factors which might tend to cause a juror, or someone on the

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1 jury, to, to move toward or be willing to give the lesser
2 level of penalty in that case.

3 So, do you understand what's meant by statutorily
4 aggravating circumstances and statutorily mitigating
5 circumstances?

6 A I do.

7 Q Okay. So -- and those would be presented during that
8 second phase of the trial.

9 Now, once that evidence was presented to the jury, it
10 would be then the judge's responsibility to charge the jury
11 that the jury should go out and consider both the
12 aggravating circumstances and the mitigating circumstances,
13 and in coming back and recommending a certain level of
14 punishment to the Court.

15 Now, the choices in that hearing would be life
16 imprisonment without the possibility of ever being paroled
17 or the death penalty. So, those are the choices that the
18 jury would have.

19 So, do you understand how that hearing would be done,
20 and that hearing would involve new witnesses other --
21 people other than who testified in the guilt phase because
22 the issue now is the appropriate penalty. Not whether or
23 not the person did it or didn't do it. So, you'd have
24 people who would testify concerning the appropriate penalty
25 or factors that a jury might consider in arriving at that

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1 recommendation.

2 So, do you understand what would go on in that second
3 hearing?

4 A I do.

5 Q Okay. Now -- and the fact that the Court would
6 order -- would instruct the jury to consider those factors
7 in other words.

8 A (Witness nods affirmatively.)

9 Q All right. I told you to put yourself in the position
10 that you were on that jury that, that had gone through the
11 first phase of that trial and had found a defendant guilty
12 of murder. You and your fellow jurors are walking down the
13 hallway. You're about to walk back into the courtroom.

14 Do you remember a piece of paper that I had on the
15 table back in the jury room that described three
16 different---

17 A I do.

18 Q ---types of jurors?

19 I'm gonna go back over those with you and I'm gonna
20 assign a number to them so that we have an understanding of
21 what we're talking about.

22 Juror number one on that piece of paper was a juror,
23 who before he, he or she ever walked into the courtroom for
24 that second hearing, would of already made his or her mind
25 up. That juror believes that, in any -- every situation

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1 where someone is convicted of the crime of murder, that the
2 only appropriate penalty is the death penalty. So,
3 therefore, that juror, no matter what's said in that
4 hearing, a person's been found guilty, and they have, they
5 already have been, that person would always vote for the
6 death penalty every time.

7 Juror number two is a juror who has also already made
8 up his or her mind. That juror believes that the death
9 penalty is never an appropriate penalty for any offense,
10 and, therefore, no matter what the aggravating circumstances
11 were or the mitigating circumstances, that person will
12 always vote for life imprisonment without the possibility of
13 parole because they don't believe that the death penalty is
14 ever appropriate under any circumstances.

15 The third juror is someone who's coming into the
16 courtroom and that juror wants to hear the evidence. They
17 want to hear the aggravating factors. They want to hear the
18 mitigating factors. They want to discuss those matters with
19 their fellow jurors in deliberation. They want to listen to
20 the law as given to them by the judge, and that particular
21 juror, number three, then would make a decision based on the
22 evidence as presented, both the aggravating or -- evidence
23 that tends to make it worse, and the mitigating or the
24 evidence that tends to lessen either the culpability or the
25 level of penalty, and then make a decision based on those

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1 factors. So, that juror has not yet made up his or her
2 mind. That juror wants to hear the evidence and make a
3 decision based on the evidence and law.

4 I've described three jurors to you that are in that
5 line coming back into the courtroom for that second phase of
6 the trial and you're in line too. You're coming in cause
7 you're on that jury.

8 Now, which of those three individuals best describes
9 how you would feel coming into the courtroom?

10 A I would be the third juror.

11 Q So, you'd be the third juror?

12 A Yes, sir.

13 Q Now, let's -- I'm gonna carry that a step further to be
14 sure we have an understanding. That tells me that you'd
15 want to come into the courtroom, you'd want to hear the
16 factors that are involved in the case, and the factors that
17 might weigh on whether or not someone should receive any
18 particular penalty, and after hearing that, then you would
19 want to make a decision based on the law and the evidence
20 presented to you.

21 Is that right?

22 A Yes.

23 Q Now, if you and your jurors were to deliberate on that
24 issue, and if, if you and your fellow jurors came to the
25 conclusion that the death penalty was the appropriate

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1 penalty, could you then sign a verdict giving the death
2 penalty?

3 A I could.

4 Q Now, by the same token, if you and your fellow jurors
5 came to the conclusion the most appropriate penalty was life
6 imprisonment without the possibility of parole, and I'll
7 just tell you, because it will come out in the trial, it is
8 the law in South Carolina that's what it means. Someone who
9 goes to prison, stays there for life. They don't leave
10 until they've passed away. So, you and your fellow jurors
11 felt that that was the most appropriate penalty.

12 Could you sign a sentence in that direction as well?

13 A I could.

14 Q Okay. Now, I've got just a couple of other things that
15 I want to talk to you about.

16 First of all, I have signed a sequestration order in
17 this case, and what that means is, once the jury is
18 impaneled in this case, once they're picked, they will then
19 go -- come to the courthouse, hear the case, but in the
20 evenings they'll be housed in a local hotel, the Marriott.
21 During that period of time, the jurors would receive all
22 their meals paid for. They'll receive all their travel.
23 You'll receive jury pay, which is not nearly as much as
24 anybody in the world makes, but it would be some pay for
25 your time and there would be some reimbursement for your

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1 travel to and from the courthouse.

2 During that sequestration, you would be allowed to talk
3 with family or friends, but all calls by the jury would be
4 monitored. There are a group of people who are retired SLED
5 agents who do this around the State. They travel around and
6 work with juries to see that they are not subject to any
7 outside influence during the trial, and that's the purpose
8 of that is to be sure that no one is influenced by outside
9 forces during the trial, or information, and then I expect
10 the trial will last maybe a little over a week. I'm not,
11 I'm not -- can't say that definitely. That's my best
12 estimate.

13 Now, my question -- and, of course, during that time,
14 you'd be -- whatever medication you might take or anything
15 like that would be available, I can assure you.

16 Now, if you were in that situation, you were
17 sequestered, would that situation post (sic) any serious
18 risk to your well being by you being in that situation?

19 A No.

20 Q Would that pose any serious risk to the health or well
21 being of anyone who might be dependent upon you?

22 A No.

23 Q All right. Now, at this point in time I'm going to
24 allow the attorneys to ask questions of you or go over some
25 matters with you. I'm sure you'll cooperate in answering

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1 their questions as well.

2 All right. Mr. McGuire.

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

4 THE COURT: Yes, sir.

5 EXAMINATION

6 BY MR. MCGUIRE:

7 Q Good morning, Mr. Danielson.

8 A Morning.

9 Q My name is Bill, Bill McGuire. I'm one of the lawyers
10 on the case. This is my opportunity to ask you questions.
11 I apologize in advance. It's kind of prying and asking you
12 personal questions, but this is kind of the way we have to
13 do it.

14 With regard to the death penalty, do you think we use
15 it too seldom, too often, about right?

16 Do you have an opinion?

17 A I would say it's used about right. I think, you know,
18 the way he's described it, in the case of aggravating
19 circumstances, I think that's appropriate. I don't see
20 cases where it's used inappropriately. So, I say it's about
21 right.

22 Q Okay. The phrase an eye for an eye, you've heard that
23 obviously.

24 Does that resonate with you?

25 A Yeah.

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1 Q The phrase if somebody takes an innocent life, they
2 should forfeit theirs, does that resonate with you?

3 A Yes.

4 Q The -- if the -- I want to put you in that same place
5 the judge put you a while ago, which is on that jury. You
6 and 11 other people have found, beyond a reasonable doubt,
7 that a person has deliberately killed an innocent person --

8 A Okay.

9 Q -- with malice aforethought, and malice is described as
10 hatred, ill will, hostility towards somebody, deliberately
11 acting to harm them, without any kind of legal justification
12 or excuse under circumstances where we would infer an evil
13 intent. So, it's an intentional taking of an innocent life
14 with an evil motive.

15 A Okay.

16 Q In that situation, what are your thoughts about the
17 death penalty?

18 THE COURT: Well, I've asked you to indicate that there
19 would also be mitigating factors introduced at that hearing
20 as well.

21 Q Okay. And you remember the judge talked to you about
22 mitigating factors. Some people, when they realize it's an
23 intentional, deliberate killing, they don't need to hear
24 mitigating factors.

25 Does that describe you?

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1 A As, as the way he's described it, again, I would say
2 no, that there does have to be those mitigating
3 circumstances. Yet, that's separated a little bit of
4 personal feelings with the way that the law would be applied
5 I guess and the way he's not -- there's a big difference,
6 but that the way he's described it, that there would be
7 mitigating circumstances, and those would have to be
8 disclosed and considered for that. That just with the
9 murder, even with aggravated circumstances, that that may or
10 may not be sufficient in my mind as well as the way that the
11 law looks at it.

12 Q Okay. When, when you hear the phrase mitigating
13 circumstances, what do you think of?

14 what does that mean to you?

15 SOLICITOR BARNETTE: Objection, Your Honor. I think
16 he's asking to speculate. The mitigating circumstances will
17 be charged by the Court.

18 THE COURT: well, there are statutorily enumerated
19 mitigating circumstances, and if you're asking him if he
20 knows what those are, I would doubt that he does. I have
21 them in front of me and I'll be glad to read those to him so
22 he'll understand what you're talking about, and perhaps that
23 would be the best thing to do if you wanted to talk about
24 mitigating circumstances.

25 MR. MCGUIRE: well, let me go on if I could. we'll

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1 maybe come back to it.

2 THE COURT: I'll be glad to explain it to him if you'd
3 like for me to so he -- I, I don't want him to answer it in
4 a vacuum because most laymen don't know exactly what they
5 are. In fact, I couldn't quote them to you. I can read
6 them to you.

7 MR. MCGUIRE: Sure. Well---

8 THE COURT: So, so I don't expect him to know what they
9 are.

10 MR. MCGUIRE: Sure.

11 THE COURT: So, in that regard -- and, sir, if you'd
12 like for me to go over those with you I will. I'll let you
13 answer his questions. But if the questions come out what
14 are mitigating circumstances, statutorily I can tell you
15 what they are. I can tell you that the law also allows the
16 jury to consider things other than what's on the list if the
17 jury chooses to, and the jury can consider the factor of
18 mercy if the jury wishes to consider that factor as well as
19 a mitigating circumstance.

20 All right. Mr. McGuire, you may proceed.

21 MR. MCGUIRE: Yes, sir.

22 What I want to do is lay a little bit more detail down
23 so we're, we're on the same page. Examples of mitigating
24 circumstances are that the age and mentality of the person
25 who commits the, the crime.

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1 THE COURT: why don't I just read them to him?

2 I think that might be the best way to do it.

3 MR. MCGUIRE: I'd object to the ones that---

4 THE COURT: I'll, I'll do that, Mr. McGuire. Just give
5 me a chance to do so.

6 MR. MCGUIRE: Yes, sir, if I could just put on the
7 record I would object to reading---

8 THE COURT: well---

9 MR. MCGUIRE: ---ones that don't apply to the case.

10 THE COURT: well, this is not a fact specific, specific
11 hearing and it's not allowed to be.

12 MR. MCGUIRE: I understand.

13 THE COURT: You've asked him about mitigating
14 circumstances, and, and I think the juror has a right to
15 know what that list includes.

16 MR. MCGUIRE: Okay.

17 THE COURT: And so I'm gonna go over it with him.

18 The mitigating circumstances are, number one, that a
19 defendant -- that can be. Obviously it's not in every case.
20 These are the ones that are statutorily enumerated.

21 The defendant has no significance history of past prior
22 criminal convictions involving the use of violence against
23 another person.

24 Number two. The murder was committed while the
25 defendant was under the influence of mental or emotional

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1 disturbance.

2 Number three. The victim was a participant in the
3 defendant's conduct or consented to the act.

4 Number four. The defendant was an accomplice in the
5 murder committed by another person and his participation was
6 relatively minor.

7 Number five. The defendant acted under duress or under
8 the domination of another person.

9 Number six. The capacity of the defendant to
10 appreciate the criminality of his conduct or to conform his
11 conduct to the requirements of law was substantially
12 impaired.

13 Number seven. The age or mentality of the defendant at
14 the time of the crime.

15 Number eight. The defendant was provoked by the victim
16 into committing the murder.

17 Number nine. The defendant was below the age of 18 at
18 the time of the crime.

19 Number ten. The defendant had mental retardation at
20 the time of the crime. Mental retardation means
21 significantly subaverage general intellectual functioning
22 existing concurrently with deficits in adaptive behavior and
23 manifested during the developmental period.

24 Now, that's the ten statutory mitigating circumstances,
25 and, of course, there are aggravating circumstances too. I

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1 haven't read those to you. If you want those I'll be glad
2 to do that, and I told you the law allows jurors to consider
3 other factors besides what's on the list and consider the
4 concept of mercy.

5 So, when we talk about mitigators, those are the things
6 we're talking about. Not all of those would necessarily
7 apply to this case, but we have not tried this case yet.
8 So, it's open to proof at this point in time.

9 You may proceed, Mr. McGuire.

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

11 THE COURT: Yes, sir, you're welcome.

12 Q Now, knowing all of that, and the, and the judge would,
13 I think, underscore that he would charge the jury that any
14 individual juror could vote for life for any reason, no
15 reason, or mercy alone, and that, while there's a list,
16 mitigation evidence can actually be a whole host of things.
17 There's a lot of things that would not be on the list. For
18 instance, if somebody was remorseful or if a juror saw maybe
19 something in his upbringing or his relationship to his
20 family. So, you can have things that are actually not on
21 the list too. So, it's a whole host of things.

22 A Uh-huh. (Affirmative).

23 Q Now, knowing all that, some people might say that, in
24 certain aggravating circumstances, that I wouldn't be able
25 to consider or the mitigating circumstances really wouldn't

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1 be relevant when it came to fixing punishment between death
2 and life, and what I'm asking you to do is think about the
3 case where the victim is a young child.

4 In that situation, would the mitigating circumstances
5 be relevant to you in fixing punishment between death and
6 life?

7 A Yes, it would.

8 Q Okay. And why is that?

9 A As I understand the process as it's been laid out here,
10 you consider all the mitigating factors as well as all the
11 aggravating factors and take those into, I guess, like a
12 balance in weighing in on that decision. So, I would take
13 both sides of those and consider all of the factors.

14 Q And it's kind of a -- it's kind of splitting hairs, but
15 the law is we just ask you to consider everything. We don't
16 actually balance away. It's not a, it's not a mathematical
17 formula in where are you listed, you know, this and this and
18 how many are counted, it's just consider, and the judge
19 would charge all jurors that the decision making process for
20 the individual juror is for them to consider mitigation and
21 aggravation---

22 A Uh-huh. (Affirmative).

23 Q ---and come to their own individual moral judgment.

24 Did you know that, that's how it worked?

25 A As the way you described it, yeah.

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1 Q But you do now?

2 A Yeah.

3 Q Okay.

4 A So, yes, I would consider those mitigating factors I
5 would say.

6 Q And you could, you could -- you would not automatically
7 vote for the death penalty based on the aggravating factor
8 of a child victim?

9 A No.

10 Q Okay. You could still look at the defendant, his walk
11 in life, who he is as a person, all those factors that the
12 judge listed?

13 A I would.

14 Q Okay. Now, there was a pamphlet that was handed out in
15 the big room when everybody came the first day and it talked
16 about what happens when jurors disagree in a regular trial,
17 and the result is actually what's called a mistrial, and the
18 whole trial has to be done again.

19 A Uh-huh. (Affirmative).

20 Q If the jurors in this case, in the first phase, did the
21 person commit the crime, did he do it beyond a reasonable
22 doubt, that sort of thing, if the jurors disagreed we would
23 have a mistrial, but if everybody agreed that the person was
24 guilty, then we would go to a, to a penalty trial, and it's
25 a whole separate trial. Okay. And we even usually have a

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1 little break between the two.

2 So, I want to put you in the position of now you're on
3 the, the penalty part of the case. The guilt is over.
4 Everybody agreed the person was guilty.

5 Now, I want to point out to you that the penalty phase
6 is different from the -- a traditional trial in that
7 ultimately the jurors can actually end up agreeing to
8 disagree, and, if that happened, the judge would take the
9 case and he would sentence to life without parole, and the
10 case would never have to be done again.

11 Q Did you under -- do you know that?

12 A I didn't know that.

13 Q Okay. And I tell you that because I don't want any
14 individual juror to operate under the misconception that
15 this thing would have to be done again if there was
16 disagreement --

17 A Okay.

18 Q -- that it would be final and the jury would not have
19 failed in its mission.

20 A Okay.

21 Q And the way we, we get to this process is the
22 individual moral judgment is that thing called mitigation
23 evidence, and every individual juror has the right to value
24 whatever mitigation evidence is right for them, and there
25 doesn't have to be agreement on that either.

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1 Did you know that?

2 A I didn't.

3 Q Okay. For instance, you know, the judge listed some of
4 the mitigating factors and there's, there's gonna be a
5 catchall just saying anything -- that any reason that, that
6 a juror sees to vote for life is mitigation.

7 A Okay.

8 Q And what I'm gonna do is just give you an example of
9 how it works and ask you if this is a principle of the law
10 you can respect and follow.

11 A Okay.

12 Q A juror sitting over here might say I saw something in
13 the way he was raised, his background, how he came up in
14 life that resonated with me, and I want to vote for life for
15 that reason. All 11 others might say well, we didn't see
16 that, and we're not -- we don't think it's there, but this
17 person has an absolute right to vote their individual moral
18 judgment even though the other people may disagree on that
19 evidence.

20 Did you know that?

21 A I didn't know that.

22 Q Okay. Cause we always think about juries speaking with
23 one voice and being unanimous.

24 A Right.

25 Q But it's not that way in the penalty phase. Another

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1 juror over here could say I saw something redeeming in his
2 relationship with his children or grandchildren, and I saw a
3 spark of humanity there, and I would vote for life for that
4 reason, and, again, all 11 might say well, we didn't really
5 see that. That's okay. That juror can give that the weight
6 of life.

7 Another juror might say I heard the judge say we could
8 vote for life for any reason, no reason, or mercy alone. I
9 can't put into words my moral position. I'm gonna put it
10 down -- I'm gonna vote for life for no reason. The death
11 penalty just doesn't sit right, okay, and you can see how
12 they all have different reasons. They don't have to be in
13 agreement, and they could just give whatever evidence
14 carries the weight of life -- for them the weight of life.

15 Is that a principle of law you can respect and follow?

16 A I could.

17 Q And you can participate in the system?

18 A Yes.

19 Q And you can respect other people if they had a
20 different individual moral judgment than you?

21 A I could.

22 Q If you saw -- the law is if it would harm somebody's
23 conscience to change their individual moral judgment, and
24 somebody says based on---

25 SOLICITOR BARNETTE: Your Honor, I'm gonna object at

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1 this point. I mean at this point -- I don't think the law
2 says that. I think the law says that the jury -- and
3 obviously the judge will be instructing the Court. Not us.

4 THE COURT: Well, the Court -- I'll point out that, to,
5 to the juror, that the Court doesn't instruct a jury on how
6 to deliberate. The jury has the right to deliberate as it
7 chooses. So, when he says people can make up their mind on
8 any subject, they certainly have a right to do that.

9 There's nothing wrong with that. But jury deliberations
10 certainly entails the discussions of the issues among the
11 jurors in formulating those opinions. The purpose of a jury
12 is to get a cross section of individuals who bring a lot of
13 different experiences to bear. So, it's not -- the Court
14 never instructs a jury on how to deliberate.

15 Now, the Court would get involved only if someone -- if
16 there was a fight broke out in the jury room. Never had
17 that happen. But if that were to happen, then the Court
18 might be involved in that situation. But I can assure you,
19 the Court never gives instructions to a jury on how they
20 conduct their discussions. That's up to the jury.

21 But, but, again, that means that there -- the jury's
22 free to, to discuss the matters fully and freely among
23 themselves in reaching their decisions.

24 You may proceed, Mr. McGuire.

25 MR. MCGUIRE: Thank you.

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1 And the reason I tell you these things is because that
2 we have a lot of rules in Court. Some of them are for me,
3 some for the government lawyers, some for the judge even,
4 but some are for you in that everybody's entitled to
5 fairness and respect. That's the only reason I bring that
6 up is so that you know you're entitled to fairness and
7 respect as are everybody else.

8 A Okay.

9 Q And would it be -- it would be wrong for somebody
10 for -- to be bullied for instance and come over to a
11 majority after they reached their individual moral judgment.

12 Could you prevent that from happening?

13 A Yes.

14 Q That's all I have for you. Thank you, sir.

15 THE COURT: Mr. Barnette.

16 SOLICITOR BARNETTE: May it please the Court?

17 THE COURT: Yes, sir.

18 EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q Morning, Mr. Danielson.

21 A Morning.

22 Q I'm Barry Barnette and this is Derrick Bulsa. We'll be
23 representing the State and presenting the State's side of
24 the case. Just a few questions.

25 I notice your wife's a school teacher.

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1 A Yes, she is.

2 Q She teaches at Dorman?

3 A She does.

4 Q Very good school. So, I'm familiar and I believe you
5 went to -- did you go to Georgia Tech and Clemson?

6 A I did.

7 Q Both --

8 A That's correct.

9 Q -- from there?

10 So, just a little bit just to follow-up. I'm not gonna
11 ask you a bunch of questions, but there's one thing I wanted
12 to make sure, and the judge, like I said, the judge charges
13 you. You follow that law. The law -- but what we would
14 submit to you is there is aggravating circumstances and
15 mitigating circumstances. Both sides may prove both of
16 them. Just that happens, you can still give the death
17 penalty if you think it's appropriate in that situation if
18 all 12 jurors agree. And if all -- for example, if all 12
19 jurors can not agree, it is right, it does go to the judge,
20 but the judge has to give a life without parole sentence.

21 A Okay.

22 Q The only people that can give the death penalty is the
23 jury themselves cause you're the judge of the facts on the
24 case. Just wanted to clear that up with you there.

25 A I understand.

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1 Q Thank you very much for talking to me.

2 A Okay.

3 THE COURT: Anything to follow-up on any new matters?

4 MR. MCGUIRE: No, sir.

5 THE COURT: All right, sir. I'm gonna ask you to step
6 back to the jury room for just a moment. Then I'll call you
7 back.

8 THE WITNESS: Okay.

9 THE COURT: Thank you, sir.

10 THE WITNESS: Okay.

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

13 THE COURT: Defense position.

14 MR. MCGUIRE: Qualified.

15 THE COURT: State.

16 SOLICITOR BARNETTE: Agree.

17 THE COURT: All right. Bring him back then. I need to
18 talk to him further.

19 I do find him qualified.

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

22 THE COURT: That didn't take long, Mr. Danielson. Have
23 a seat please.

24 (Witness complies.)

25 THE COURT: I have made the determination that you will

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1 stay in my process. Now that means that you will go into a
2 pool of jurors from which a jury will ultimately be
3 selected. So, I've got some things I need to go over with
4 you so that we have an understanding about this.

5 First of all, I want to have the clerk, Ms. Camp, is
6 gonna hand you a piece of paper, and I told you that we were
7 gonna sequester the jury. Those are just some suggestions
8 of things you probably ought to think about before we call
9 you. I expect the calls to go out maybe Tuesday of next
10 week or so to the people to -- as to -- for further
11 instructions, what we'll instruct you to do.

12 You should -- in the mean time, my orders concerning
13 your behavior should continue. Don't try to gather any
14 information. Please don't read, listen to, or watch media
15 reports about the case. Don't discuss the case with anyone
16 and don't allow anyone to discuss it with you. And if
17 anybody calls you or contacts you about your service, call
18 the Clerk's Office. There's numbers on that sheet of paper.
19 So, if you have any questions or anything, you can call in
20 and just let them know that something like that has
21 occurred.

22 But, again, my instructions will continue until we
23 either inform you that you're on the jury, in which case
24 then you would be in a sequestered position, or we released
25 you.

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1 So, you understand where we are?

2 THE WITNESS: I do.

3 THE COURT: Now, one exception to my rule. If you need
4 to inform family or, or somebody with your employment that
5 you may be away for a few days in the not too distant
6 future, you certainly can do that.

7 But in doing so, don't mention the case name. Don't
8 discuss the issues in the case. It's amazing how you
9 mention the case name, immediately people want to talk to
10 you about it if they know anything about that sort of thing.

11 So, just say I'm in the process of jury selection, I
12 could be called away for a few days, and if I am, these
13 are -- make whatever arrangements you need to make.

14 okay?

15 THE WITNESS: Okay.

16 THE COURT: But we do anticipate starting the trial
17 next week and possibly Tuesday or after.

18 THE WITNESS: Can I mention one situation to you?

19 THE COURT: Yes, sir.

20 THE WITNESS: I've got vacation plans. Be out of the
21 country starting March 27th.

22 THE COURT: I would hope we---

23 THE WITNESS: It doesn't sound like that will be a
24 conflict.

25 THE COURT: I don't think that will be a problem. We

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1 do have alternates on a -- on these juries. So, if
2 something happens with one of our jurors, it would be up to
3 me to decide how to handle that.

4 Okay. But I anticipate it will be over by then
5 although I'm -- I have tried cases for 30 or more days
6 before. So, hopefully that's not the case.

7 All right, sir. So, any other questions from you?

8 THE WITNESS: No, sir.

9 THE COURT: All right. The bailiff will check you out.
10 We'll be in touch with you. Thank you, sir.

11 THE WITNESS: Thank you.

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

14 THE COURT: All right. The next juror is Sonia Wright.

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

17 SONIA WRIGHT, having been previously
18 sworn, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q You're Ms. Wright?

22 A Yes, sir.

23 Q Have a seat please.

24 A (Witness complies.)

25 Q Thank you.

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1 You may want to turn so you can face me---

2 A Okay.

3 Q ---cause I'm gonna do most of the talking. I'm not
4 gonna do it all.

5 A Okay.

6 Q But we'll get to the lawyers in just a few minutes.

7 A Okay.

8 Q I want to thank you for your cooperation with us. I
9 know this is a little different than anything you've ever
10 been involved in---

11 A Yes, sir.

12 Q ---and it ought to be that way. That's just the way it
13 is.

14 A Yes, sir.

15 Q But thank you for your, your patience and your
16 cooperation.

17 A Yes, sir.

18 Q I'm gonna go over some matters with you today, and when
19 I finish the attorneys will get a chance to do that. We're
20 gonna be asking questions of you. I will tell you now that
21 there are no right or wrong questions (sic). Even though
22 that's the witness stand, I tell -- tease people about that
23 being a hot seat. It's red, but it's not today. Nobody --
24 we're gonna respect you and there's not gonna be anybody
25 trying to badger you or anything like that.

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1 A Okay.

2 Q We just want honest answers to our questions from you,
3 and I will remind you that you were put under oath on Monday
4 to tell us the truth.

5 A Yes, sir.

6 Q And you still are under oath.

7 Do you appreciate that?

8 A Absolutely.

9 Q And you acknowledge that?

10 A Yes, sir.

11 Q Okay. Now, I gave some instructions to you when you
12 left the courthouse. I give it to everybody. Not just to
13 you. But I told people not to listen to, watch, or read
14 media reports, not to discuss the case with anyone, not to
15 allow anybody to discuss the case with you. I asked you not
16 to try to gather information independently, and if anybody
17 called you or contacted you about the case to let us know.

18 A Yes, sir.

19 Q Have you followed those instructions?

20 A Absolutely, yes, sir.

21 Q So, you, you have had no problem in keeping up with
22 what I've asked you to do?

23 A No, sir.

24 Q Okay. Thank you very much.

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, I'm going to go over some things with you, as I
2 indicated, that, that are issues that could come up in this
3 case or issues that might be of some concern in this case,
4 and there are no right or wrong answers. Again, just
5 yours---

6 A Yes, sir.

7 Q ---and that's all we're looking for.
8 okay?

9 A Okay.

10 Q Now, the first question I have for you, have -- has
11 you -- have you ever participated in any discussions or
12 forums or group discussions about issues involving the death
13 penalty?

14 A No, sir.

15 Q Have you ever engaged in any political activity
16 involving that issue?

17 A No, sir.

18 Q So, you've never written a letter to the editor or---

19 A No.

20 Q ---or sent a letter to a congressman or called---

21 A No.

22 Q ---a congressman or representative?

23 Never done anything like that?

24 A No, sir.

25 Q Okay. That's fine.

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1 Ma'am, are you the kind of person who could, if you
2 were selected on a jury, and I'm talking about any case, and
3 this one in particular, if you were selected on a jury,
4 could you put aside outside matters, influences, things you
5 might have heard about or know about that might have some
6 relevance to the issues that are in the, in the case that
7 you're hearing and decide the case that you're on just upon
8 the law and the evidence presented in the courtroom during
9 the trial?

10 A Yes, sir.

11 Q Okay. Now, there was a list of people back there in
12 the jury room.

13 A Yes, sir.

14 Q And those are people who have been identified to me as
15 possible witnesses in the case by both sides, and did you
16 read the list for me?

17 A Yes, sir.

18 Q Now, as you read over that list, did you notice anyone
19 on there that you believed that you're related to either by
20 blood, marriage, now or formerly?

21 A No, sir.

22 Q Okay. Is there anybody that was on that list that you
23 may have had some social, personal, or business contact with
24 in the past?

25 A No, sir.

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1 Q So, if any of those people were to testify, it would
2 not affect your ability to be fair and impartial?

3 A Absolutely not, no, sir.

4 Q Okay. Now, I want you to understand one thing as we go
5 forward in this, this matter and it's a little bit -- this
6 is different from any other case. You know, normally, when,
7 when I try a case, and let's say it was like for shoplifting
8 or something that simple, the jury would come in. They
9 would hear the evidence and the testimony and all the
10 factors that go into it, then I would charge them concerning
11 the law, and then they would reach a verdict, either guilty
12 or not guilty, and if they find a person guilty, then it
13 would be the judge's responsibility to sentence that person
14 to whatever they believe the appropriate sentence is.

15 Do you understand that's how it normally works?

16 A Yes, sir. Yes, sir.

17 Q Okay. This process is different because this is a case
18 where the State had requested the imposition of the death
19 penalty.

20 MR. YOUNG: Your Honor?

21 THE COURT: Yes.

22 MR. YOUNG: I apologize for interrupting.
23 May we approach real quickly?

24 THE COURT: Certainly.

25 (WHEREUPON, a bench conference was held out of the

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1 hearing of the juror at this time.)

2 Q Well, ma'am, the, the attorneys have told me that you
3 sent in a questionnaire earlier.

4 A Yes, sir.

5 Q They have reviewed that questionnaire and they have
6 agreed that you can be released from this process.

7 okay?

8 A Okay.

9 Q So, we're gonna excuse you at this point in time. You
10 see the bailiff. You're free to go.

11 A Okay. Thank you.

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

14 THE COURT: If you'll put on the record---

15 MR. YOUNG: Yes, sir, Your Honor.

16 On her questionnaire she was asked about the -- how she
17 feels about the criminal justice system. She says it's
18 messed up. Killers and rapist are running free all the
19 time. She was asked about police officers. She said that
20 they did take advantage of their role. She was asked about
21 the prosecutor, she said they lie all the time, do not trust
22 them. She was asked about defense attorneys. She said all
23 attorneys lie just to defend their client.

24 I wanted to -- I approached the State and asked if we
25 could agree to excuse her. I didn't want to give either

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1 side some sort of unfair---

2 THE COURT: Do you agree---

3 MR. YOUNG: ---unfair advantage.

4 SOLICITOR BARNETTE: I agree, Your Honor, cause, like I
5 said, it's the type juror that you have no idea -- obviously
6 she don't like the system. She don't like attorneys. She
7 don't like anything.

8 THE COURT: I'll find her disqualified.

9 MR. YOUNG: Thank you, Your Honor.

10 THE COURT: Thank you for helping me on that one.

11 All right. Why don't we take just a short break.
12 we'll take about a five or ten minute break. Then we'll
13 start.

14 The next juror is gonna be Stacy Fullenwinder.

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

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

17 MR. MCGUIRE: Yes, sir.

18 THE COURT: Defense ready?

19 MR. MCGUIRE: Yes, sir.

20 THE COURT: Stacy Fullenwinder please.

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

23 STACY FULLENWINDER, having been
24 previously sworn, testified as follows:

25 EXAMINATION

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1 BY THE COURT:

2 Q Have a seat please, sir.

3 A (Witness complies.)

4 Q Sir, if you'll turn kind of towards me.

5 You're Stacy Fullenwinder, is that right?

6 A Yes, sir.

7 Q Mr. Fullenwinder, I'm going to go over some things with
8 you today and ask you some questions, and I'm going to tell
9 you there are no right or wrong answers to my questions.

10 There's only truthful answers from you. So, don't feel like
11 we're trying to pin you down or put you in a hot seat.
12 We're not doing that today. We just want to get your ideas
13 and opinions about some things.

14 Do you understand that?

15 A Yes, sir.

16 Q Now, when you left the courthouse on Monday, you were
17 sworn to tell the truth.

18 Do you remember that?

19 A Yes, sir.

20 Q You're still under oath to tell me the truth now.

21 Do you understand that as well?

22 A Yes, sir.

23 Q I gave you some instructions when you left the
24 courthouse, along with everybody else, and that was to not
25 gather any information about the case, not to talk about it

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1 with anyone, or let anybody talk to you about it, and not to
2 listen to, watch, or read media reports.

3 Do you remember those instructions?

4 A Yes, sir.

5 Q Have you been able to follow those instructions?

6 A Yes, sir.

7 Q Okay. Good.

8 Now, sir, I'm gonna ask you some questions. Then I'll
9 let the attorneys ask some questions of you, and then -- and
10 this process, I think you'll find it's not, not a really bad
11 situation.

12 Again, we're not trying to invade your privacy or
13 anything, but we do want to get honest answers to the
14 questions. If you have any difficulties or problems while
15 this is going on, let me know. We'll be glad to take care
16 of it.

17 okay?

18 A Yes.

19 Q Now, have you ever participated in any discussions that
20 may have involved the death penalty?

21 A No, sir.

22 Q Have you ever participated in any political actions
23 that may have involved the death penalty?

24 A No, sir.

25 Q So, you've never written a letter to the editor or

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1 called up a congressman or anybody like that and said how
2 you feel about that?

3 A No, sir.

4 Q Okay. Now, are you the kind of person who, if you were
5 sitting on a jury, could put aside any things that you might
6 have heard or seen on the outside of the courtroom and
7 decide a case based on the law and the evidence that you
8 hear in the courtroom during the trial?

9 A Yes, sir.

10 Q You could do that?

11 A Yes, sir.

12 Q All right, sir. Now, back in the jury room, there's a
13 list of people's names.

14 Did you look over those sheets of paper back there?

15 A Yes, sir.

16 Q As you looked over it, did you recognize anyone in
17 there that you might be related to or that you ever had any
18 business or social contacts or relationships with?

19 A No, sir.

20 Q So, you didn't recognize anybody in there that would
21 affect you if they were to testify in this case?

22 A No, sir.

23 Q Okay. Now, we're going to be talking about some -- a
24 lot of things today. One of the things we'll end up getting
25 to is questions concerning that death penalty issue that I

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1 talked to you about, but there's one thing I want you to
2 understand before we get there. I talked about this on
3 Monday and I'll go back over it with you again.

4 Now, in, in most criminal cases, the jury comes in, the
5 judge tries a case, the jury hears the evidence, the judge
6 tells the jury what law -- what the law is, and then the
7 jury issues a verdict and that verdict is either guilty or
8 not guilty of the crime that's being tried. And if the
9 defendant -- if the defendant is found guilty, then it's up
10 to the judge to issue a sentence for whatever they've been
11 found guilty of.

12 Do you understand that's how that works?

13 A Yes, sir.

14 Q Now, there's a, there's an exception to that general
15 rule and that is, in a case where the State is seeking the
16 death penalty, what happens is we hold a trial, like any
17 other criminal trial, to determine whether the defendant is
18 guilty or not guilty of the crimes that were charged. One
19 of those crimes would be murder.

20 If the defendant were to be found guilty of murder
21 then, and where the death penalty is being sought, the same
22 jury that heard whether or not he's guilty would then come
23 back and hold a second hearing, and, in that hearing, there
24 would be evidence concerning what's the appropriate sentence
25 to be given.

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1 Do, do you understand that a death penalty trial
2 involves a first trial, and if there's a guilty verdict on
3 murder, then a second trial concerning the appropriate
4 penalty, but the same jury handles both of them?

5 You understand that?

6 A Yes, sir.

7 Q I'm pointing that out to you because today we're gonna
8 be asking you about that penalty phase of the trial, but we
9 hadn't gotten there yet. So, we're kind of putting the cart
10 in front of the horse. The defendant has not yet had a
11 trial to determine whether or not he's guilty or not on the
12 first trial.

13 So, I want to tell you that the defendant is presumed
14 to be innocent of the crimes that have been charged, and it
15 shouldn't be a reflection against him or his case that we're
16 talking about the penalty phase of the trial today because
17 I'll tell you, once we select the jury, that jury's gonna
18 hear both trials. So, we can't stop after he's been found
19 guilty and do anything about the jury's composition. It's
20 already there. So, the only time we can talk about this
21 penalty phase is before we pick the jury.

22 You understand that?

23 A Yes, sir.

24 Q Okay. So, don't hold that against the defendant that
25 we're talking about the penalty phase. This is just the

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1 only time we can do it before we select the jury.

2 You understand that?

3 A Yes, sir.

4 Q All right. Now, I'm going to go over some concepts
5 with you under the law, and I'll, I'll kind of lead you
6 through this, and as we do this, I want you to imagine that
7 you've been selected on a jury and we're charging somebody
8 for shoplifting -- I mean we're charging somebody with
9 shoplifting. We're trying them for that offense. Something
10 that has nothing to do with this case. But I want to go
11 over some general concepts in the law and see if we've got
12 an agreement about these things.

13 Okay. The first thing I'm going to ask you, if you
14 were a juror on any criminal case, would you be willing to
15 take the law from the judge and accept the law from the
16 judge as given to you?

17 A Can you explain it to me a little more?

18 Q Sure.

19 I talked to you a little bit ago that, that the jury
20 comes in and the jury is the group that determines the facts
21 in the case. They decide who's telling the truth, what
22 happened, when and where. But the judge -- and so they are
23 considered the judge of the facts, the jury is.

24 The judge is considered the judge of the law in a
25 trial. In other words, the judge charges the jury or tells

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1 the jury what law applies to that kind of case. So, the
2 jury then takes the facts as they decide them and they take
3 the law as the judge gives it to them and that's how they
4 reach a verdict. They decide whether or not the defendant
5 has been found guilty or proved guilty of the crime
6 described in the law.

7 A Yes, sir.

8 Q You understand how that works?

9 A Yes, sir.

10 Q So, my question is would you be willing to accept the
11 law as given to you by the judge?

12 A Yes, sir.

13 Q All right. Now, the next step is -- let's say that
14 you're sitting on the jury and the judge is charging you the
15 law, telling you the law. And as you're listening to that
16 judge, you might hear something that he says that, that
17 maybe you thought the law was different. You didn't think
18 it was that way, and then the judge tells you the law that's
19 different from what you may have heard or what you might
20 think it is.

21 would you be willing to set aside your personal beliefs
22 or feelings and take the law exactly as the judge gave it to
23 you in deciding the case?

24 A Yes, sir.

25 Q So you could do that?

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1 A Yes, sir.

2 Q All right. Now, some, some principles under the law I
3 want to ask you about.

4 First of all, one of the principles that, that our law
5 is based on is that a defendant is always presumed to be
6 innocent of the crime for which the defendant is charged.

7 Do you understand that the law presumes a defendant to
8 be innocent?

9 A Yes, sir.

10 Q Do you agree with that?

11 A Yes, sir.

12 Q All right. Now, because a defendant is presumed to be
13 innocent by the law, a defendant is not required by the law
14 to prove his innocence because he's already presumed to be
15 innocent.

16 You understand that?

17 A Yes, sir.

18 Q Do you agree with that?

19 A Yes, sir.

20 Q I'm gonna take it a step further.

21 Because a defendant does not have to prove his
22 innocence and because a defendant is presumed to be
23 innocent, then a defendant is not required to prove anything
24 in a criminal trial. In other words, there's no requirement
25 that a defendant come to Court to prove anything. A

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1 defendant has a right to remain silent if he chooses to.

2 Do you agree with that and understand that?

3 A Yes, sir.

4 Q Now, on the other hand, the State has brought charges
5 in any criminal case against a defendant. They have accused
6 him of committing some crime or her of committing some
7 crime.

8 Do you understand the State brings the charges?

9 A Yes, sir.

10 Q And because the State is the one making the
11 accusations, our law requires that the State must prove the
12 allegations that they've made by proof beyond a reasonable
13 doubt.

14 Do you understand that?

15 A Yes, sir.

16 Q And do you agree with that?

17 A Yes, sir.

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

19 Let's say you were on a jury. You and your fellow
20 jurors heard all the evidence. The judge is charged you on
21 the law. You go back to the jury room to talk about the
22 case and try to reach a verdict. You come to the conclusion
23 that the State did not produce enough evidence to prove the
24 defendant guilty beyond a reasonable doubt.

25 In that circumstance, could you sign a verdict that

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1 would find a defendant not guilty --

2 A Yes, sir.

3 Q -- since the State didn't prove it?

4 A Yes, sir.

5 Q You could do that?

6 A Yes, sir.

7 Q Now, by the same token, if you were on that jury and
8 you and your fellow jurors decided that the State did
9 produce enough evidence to prove guilt of the defendant
10 beyond a reasonable doubt, could you sign a verdict finding
11 a defendant guilty---

12 A Yes, sir.

13 Q ---in that situation?

14 So it sounds like to me that you could either find a
15 defendant guilty or not guilty depending on the strength of
16 the evidence and the value or the weight of the evidence and
17 you could go either way depending on what you heard in the
18 trial?

19 A Yes, sir.

20 Q Is that true?

21 A Yes, sir.

22 Q Okay. Now, one other concept of the law I want to talk
23 to you about.

24 Is it your belief that just because someone's been
25 arrested and just because someone's been accused of a crime,

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1 is it your belief that they're not automatically guilty of
2 the crime?

3 A Yes, sir.

4 Q That's your belief?

5 A Yes, sir.

6 Q Okay. Now, I'm gonna go back to what I talked to you
7 about just a few minutes ago, and that is this bifurcated or
8 divided trial that we're talking about that we're involved
9 in, and I'm gonna talk to you now primarily about the second
10 part of that trial. In other words, here's where I'm gonna
11 put the cart in front of the horse. I'm gonna talk about
12 something we may not get to, but if we do, we need to talk
13 about it.

14 So, I want you to pretend that you, you have been
15 selected on a jury that's in a case where the State is
16 alleging someone committed murder. The State has asked that
17 the, that the death penalty be imposed against that
18 defendant.

19 All right. The trial has proceeded, and you're on the
20 jury, and the -- you, you and your fellow jurors heard all
21 the evidence, all the witnesses concerning guilt, whether or
22 not the defendant did it, what he did and whether it fits
23 the definition of that crime, and you've deliberated and you
24 and your fellow jurors decided the State did meet its burden
25 of proof. They proved, beyond a reasonable doubt, that the

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1 defendant committed a murder, and so you and your fellow
2 jurors have signed that verdict finding the defendant guilty
3 of that murder.

4 Do you understand where we are in that crime?

5 A Yes, sir.

6 Q Now, because the State has asked for the imposition of
7 the death penalty, you're about to go into the second phase
8 of that trial, and that's what we call either the penalty or
9 the sentencing phase of the trial. That's where the jury
10 decides what the appropriate sentence is, and the choices
11 during that trial are either life imprisonment without the
12 possibility of ever being paroled, and that is what that
13 means. In other words, if someone goes to jail under those
14 circumstances they stay there until they die. The other
15 choice is the death penalty, which means -- you know what
16 that means.

17 A Yes, sir.

18 Q Somebody would be executed if it came to that. So,
19 those are the choices facing the jury.

20 Now, I'll tell you, at that second sentencing trial,
21 there's a statute that sets up that trial. It explains how
22 it will be conducted and what will happen, and, in that
23 statute, it provides for two different kinds of evidence to
24 be put into the record. One of -- one kind of evidence is
25 called aggravating circumstances.

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1 Now, we already know that the defendant has been found
2 guilty of a murder. So, murder's been committed. He's been
3 found guilty of it, and the statute says that the State has
4 the right to bring in, in fact, has the obligation to prove
5 at least one of those aggravating circumstances, and there's
6 about ten, ten of them, eight of them. I don't -- I haven't
7 counted them to be sure exactly how many there are, but
8 there's a number of them. Not every one of them applies to
9 every case.

10 But they have to prove at least one of those
11 aggravating circumstances, and that's information that would
12 tend to make a murder -- see, not every murder is subject to
13 the death penalty in this state, but it would make a murder
14 aggravated such that it was subject to the death penalty.
15 It would make the crime seem to be worse. It might cause a
16 juror to want to give a higher level of penalty, those
17 aggravating circumstances.

18 Now, the same statute also provides that the, that the
19 court will allow in what are called mitigating, mitigating
20 circumstances or evidence, and there's a statutory -- in the
21 statute there's ten of those listed in the statute, and not
22 all of those apply to every case. But they are things that
23 would tend to, in the eyes of some jurors, make the crime of
24 murder either less severe or something for which a juror
25 might be willing to give the lower penalty.

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1 So, you understand the difference between aggravating
2 circumstances and mitigating circumstances?

3 A Yes, sir.

4 Q Okay. Now, once all that evidence has been given to a
5 jury at that trial, the judge instructs the jury to go into
6 the jury room and consider both the -- both kinds of
7 evidence, either the aggravating evidence or the mitigating
8 evidence, and consider that in reaching a verdict and I'll
9 tell you that juries also have the right to consider things
10 outside of that list. They can consider other factors that
11 they think are important in reaching a verdict on what is
12 the appropriate decision and the jury has the right to
13 consider mercy.

14 So, do you understand that the jury can consider
15 anything in reaching that verdict that's within the
16 evidence?

17 A Yes, sir.

18 Q Do you understand that?

19 A Yes, sir.

20 Q All right. Now -- so the jury then would decide and
21 make a recommendation back to the State as to the
22 appropriate sentence, either life in prison without parole
23 or the death penalty.

24 You understand how that trial -- you understand how it
25 would be handled, that second trial?

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1 A Yes, sir.

2 Q And I'll tell you you'll hear different witnesses in
3 that trial then you would in the guilt trial. Guilt is
4 whether or not the person did it. Sentencing is factors
5 that might weigh in what type of sentence is most
6 appropriate. So, you'll hear people that maybe didn't even
7 testify, testify in the second trial.

8 You understand that?

9 A Yes, sir.

10 Q Now, I asked you, at the beginning of this, to pretend
11 that you're on that jury.

12 Okay. You're coming down the hallway at the
13 courthouse. You're getting ready to walk back into the
14 courtroom, and when you walk back in they're gonna start
15 that hearing on the appropriate penalty, the sentencing
16 phase of the trial.

17 So, do you understand where I put you?

18 A Yes, sir.

19 Q All right. Back in the jury room there was a sheet of
20 paper on the table. That sheet of paper described three
21 different jurors.

22 Did you read that paper?

23 A Yes, sir.

24 Q All right. I'm gonna go back over that with you now
25 and I want to assign those three different jurors a number,

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1 okay, as we go through discussing them.

2 Okay. Juror number one on that piece of paper, before
3 that juror ever walks in the courtroom door to start the
4 second hearing, that juror's already made his or her mind
5 up. That juror believes that, in every case where a murder
6 is committed and someone is found guilty of a murder, that
7 the only appropriate penalty is the death penalty, and that
8 juror, every time, is going to vote for the death penalty,
9 and has not even heard any of the evidence at that point in
10 time. That juror decided that's the way they're gonna vote.

11 Juror number two, that juror has also made his or her
12 mind up. That juror, walking down that hall, doesn't
13 believe that it's ever appropriate for the State to take the
14 life of an individual in response to the commission of any
15 crime. No matter what the seriousness of it is, no matter
16 what the aggravating circumstances is, it's never
17 appropriate to, to impose the death penalty. So, that
18 juror's made up his or her mind that they're gonna vote for
19 life in prison every time.

20 Juror number three is walking into the courtroom and
21 that juror doesn't know exactly what that juror is gonna do.
22 That juror wants to listen to the evidence, both the
23 aggravating evidence and the mitigating evidence, listen to
24 those factors, listen to the testimony that's given, and
25 then, after discussing the matter with the fellow, fellow

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1 jurors, make a decision as to what would be the most
2 appropriate thing to do given those factors, aggravating and
3 mitigating.

4 Now, do you understand the difference between one, two,
5 and three?

6 A Yes, sir.

7 Q You understand that.

8 Now, I asked you to pretend that you're on that jury.
9 You're walking down that hall. So, you're about to walk
10 into the courtroom with those jurors.

11 which one of those three jurors would most closely
12 resemble your feelings at that point in time?

13 A Number three.

14 Q Number three.

15 So, you would want to be somebody who listened to both
16 the, the bad -- the aggravating things and the mitigating
17 things, and you haven't made up your mind one way or the
18 other as to what you would do just because the person's been
19 convicted of murder, is that right?

20 A Yes, sir.

21 Q You'd want to listen to it and then make a decision
22 based on those factors?

23 A Yes, sir.

24 Q Now, let me take it a step further.

25 Let's say that you sit through that hearing, and you

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1 listen to that evidence, and you've heard it all, the judge
2 then charges you with the law that will apply to that part
3 of the case, and then you go back into the jury room to
4 begin your deliberations.

5 If you and your fellow jurors, if you individually,
6 along with your fellow jurors, came to the conclusion that
7 the most appropriate sentence was life in prison without the
8 possibility of a parole, could you sign a sentence like
9 that?

10 A Yes, sir.

11 Q But at the same token, if you and your fellow jurors
12 came to the conclusion that the death penalty was the most
13 appropriate penalty, could you sign a sentence like that?

14 A Yes, sir.

15 Q So, you're telling me that you could, could, could sign
16 a sentence either way depending on what the evidence showed
17 you during that hearing?

18 A Yes, sir.

19 Q All right. Now, I've got just a couple more questions
20 and then I'm gonna let the attorneys talk to you.

21 I have signed a sequestration order in this case. Now,
22 what that means is, once the jury is chosen, they're
23 impaneled, that jury will be at the courthouse during the
24 day listening to the testimony, and, in the evening, they're
25 gonna be taken over to the Marriott hotel. They'll be

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1 sequestered by a group of, of, of people who handle those
2 things, and by that we mean, while they can call family or
3 friends, those calls will be monitored. They will not be
4 allowed to watch news reports or media reports. They will
5 cut out the articles in the paper that might have to do with
6 the case before people read the newspaper.

7 The reason for that is we don't want that jury to be
8 influenced by anything from the outside. We want them just
9 to hear the case based on what goes on in the courtroom.

10 A All right.

11 Q Now, that, that, that process will go on as long as the
12 trial lasts. I anticipate the trial may last a little more
13 than a week is what I'm thinking at this point in time. I
14 will tell you that, once we start that trial, we go seven
15 days a week until we're done. So, we, we try to take up as
16 little amount of time from peoples' lives as we can, but we
17 want to give a full hearing to the case. So, we'll hear the
18 whole case, but we'll try to move it along and get, get it
19 done.

20 So, you understand what sequestration means?

21 A Yes, sir.

22 Q All right. Now, if you were on the jury, and if you
23 were sequestered, would that pose any kind of serious risk
24 to your health or well being in that situation?

25 A No, sir.

Individual Juror Qualification

1 Q Would it pose any serious risk of harm to anyone who's
2 dependent on you as far as their health or well being?

3 A No, sir.

4 Q Now, I'm gonna ask the attorneys to, to discuss the
5 matters with you. They'll ask some questions. So, you
6 might want to turn your chair to face them.

7 Mr. McGuire, I think you're first.

8 MR. MCGUIRE: Yes, sir. Thank you very much, judge.

9 THE COURT: Yes, sir.

10 EXAMINATION

11 BY MR. MCGUIRE:

12 Q Good morning.

13 Is it Mr. Fullenwinder?

14 A Yes, sir.

15 Q My name's Bill, Bill McGuire. I'm one of the lawyers
16 in the case, and I want to ask you some questions if you
17 don't mind.

18 Well, from what I hear you saying to the judge is, if
19 you found somebody guilty of murder, you wouldn't
20 automatically vote for the death penalty?

21 A No, sir.

22 Q Okay. You could take into account what are called
23 mitigating circumstances, and that can be -- the judge is
24 told other people it's just a whole host of things that you
25 could consider. It could be anything in the person's

Individual Juror Qualification

1 background. It could be things that happened around the
2 time of the crime, their age or mentality, their emotional
3 state, mental retardation, all kinds of things.

4 And you could consider all these things?

5 A Yes, sir.

6 Q Okay. They'd be important to you in making your
7 decision?

8 A Yes, sir.

9 Q Okay. And I want to talk to you a little bit about --
10 there's a pamphlet in the big room when all the jurors got
11 together way back on Monday, and it said that, if the jurors
12 couldn't agree on a guilty verdict or not guilty verdict,
13 the whole trial would have to be done again. It's called a
14 mistrial, and that's true in the first part.

15 Remember how the judge said there would be two parts,
16 two trials?

17 A Yes, sir.

18 Q That's true for the first part. If the jury couldn't
19 decide if somebody was guilty of murder or not, and it
20 wouldn't -- and they couldn't agree one way or the other, it
21 would have to be a mistrial and the case would have to be
22 done again. But if there's a conviction in the first phase,
23 and we go to the penalty phase, the jury ultimately does not
24 have to be in agreement.

25 Did you know that?

Individual Juror Qualification

1 A Now, now I do.

2 Q Now you do.

3 A Yes, sir.

4 Q I mean a lot of this information is gonna be new to you
5 and if you hadn't heard it before, you just let me know and
6 I'm gonna explain it and I'm gonna, I'm gonna talk to you
7 about these principles of law and see if you can follow
8 them.

9 okay?

10 A (Witness nods affirmatively.)

11 Q So, the way we actually ultimately get there is a
12 process called an individual moral judgment. The judge
13 would let everybody vote their own conscience basically, and
14 people can vote their conscience different ways obviously.

15 And if you saw somebody voting one way, even though you
16 might vote the other way, you could respect them?

17 A Uh-huh. (Affirmative).

18 Q Okay. And you'd want your position to be respected?

19 A Yes, sir.

20 Q Okay. And the way we get there is that thing called
21 mitigation, and I'm gonna give you an example to show you
22 how it can, how unanimity -- where everybody doesn't have to
23 agree and let's see if you can agree with that principle.

24 okay?

25 A (Witness nods affirmatively.)

Individual Juror Qualification

1 Q A juror sitting right here might say I saw something in
2 the person's background, their walk in life, their life
3 history, and I'm gonna vote for life for that reason, and
4 all the 11 other jurors might say well, we didn't see that,
5 but that person has a right to say well, I saw it, I'm gonna
6 give it the weight of life, I want to vote for life for that
7 reason.

8 Somebody over here might say I saw something, the way
9 he interacted with his grandkids or his family, and I found
10 that redeeming, and the 11 other jurors might say well, you
11 know, we didn't see that, but the person has the right to
12 say well, I saw it, I'm gonna give it whatever weight I
13 want, I'm gonna vote for life for that reason, and the judge
14 would charge the jury, any individual juror can vote for
15 life for any reason, no reason, or mercy alone, and somebody
16 might say I heard the judge say that. I don't have the
17 words to tell you what my position is, but the death penalty
18 doesn't sit right with me. I'm gonna go with the no reason,
19 and everybody else will say no reason, that seems kind of
20 silly, but they all have the right to have their own
21 individual position, and they all don't have to agree.

22 Can you see that?

23 A Yes, sir.

24 Q Is that a system that you can respect and participate
25 in?

Individual Juror Qualification

1 A Yes, sir.

2 Q Okay. And if somebody, again, had a different position
3 than you, you could respect that?

4 A Yes, sir.

5 Q In, in South Carolina, if it would -- once somebody
6 reaches their individual moral judgment -- and that's what
7 it's called in the penalty phase. The decision to vote one
8 or the other, it's called the individual juror's moral
9 judgment, and it's actually wrong for somebody to change
10 their position just to go with the majority. Like if they
11 wanted to come over to the majority just to go ahead---

12 SOLICITOR BULSA: Your Honor, objection. I believe
13 that's a misstatement. That's not wrong for somebody to do
14 that.

15 THE COURT: Not wrong for someone to do what?

16 SOLICITOR BULSA: To change their opinion and to join
17 in with the majority. He's, he's making it sound like they
18 could never do that.

19 THE COURT: Well, a jury is expected to deliberate,
20 discuss the issues involved among themselves, and come to --
21 they end up coming to their decision, but the Court always,
22 if the Court ever gets involved in the jury discussion,
23 which it doesn't generally, but it -- if I were to give a
24 charge on it, I would ask them to consider both sides'
25 positions in formulating their own positions. So, while

Individual Juror Qualification

1 it's an independent final judgment, the jury's expected to
2 deliberate and discuss all issues together.

3 MR. MCGUIRE: Absolutely.

4 THE COURT: All right. So, that's -- it's not just
5 a -- it's not -- decisions aren't made in a vacuum, in other
6 words. It's a full discussion, but, again, each juror's
7 entitled to come to his own conclusion from those
8 discussions.

9 Q And just to be clear on that, we expect civil
10 discourse, exchange of views, and what's called deliberation
11 to talk about the case, right?

12 And, and we see that on TV and we would expect
13 everybody to do that. What's not allowed is for somebody to
14 say my individual moral judgment is for the life penalty,
15 but I just want to end this thing. So, I'm just gonna hop
16 over to the majority. That would be wrong.

17 A Uh-huh. (Affirmative).

18 Q And you wouldn't let anybody do that?

19 A No, sir.

20 Q If you saw somebody being bullied, people were trying
21 to make somebody do that, you wouldn't let that happen?

22 A No, sir.

23 Q Okay. And I tell you just so you know that they're a
24 lot of rules in Court. Some of them are for the lawyers and
25 people out here, but some of them are for y'all and

Individual Juror Qualification

1 everybody's entitled to fairness and respect.

2 A Yes, sir.

3 Q That why I tell you that. Thank you. That's all I
4 have for you.

5 A All right.

6 THE COURT: Mr. Bulsa, you may question the juror.

7 SOLICITOR BULSA: Thank you, Your Honor.

8 EXAMINATION

9 BY THE SOLICITOR BULSA:

10 Q Hi, Mr. Fullenwinder.

11 A Hi.

12 How you doing?

13 Q I'm Derrick Bulsa. This is Barry Barnette, prosecuting
14 this case.

15 You look a little familiar.

16 Have we spoken before maybe in a case or something?

17 A No.

18 Q Have you been a witness in a case?

19 A No.

20 Q No.

21 Okay. All right. You live up in the Boiling Springs
22 area?

23 A Yes, sir.

24 Q Okay. I noticed you work for Top Quality Detail.
25 where is that located?

Individual Juror Qualification

1 A Right behind -- right beside the Spartanburg Auto
2 Auction.

3 Q Okay. Across---

4 A Right, right off of Asheville Highway.

5 Q Okay.

6 A Behind Morgan---

7 Q Off Asheville Highway?

8 A Yeah, behind Morgan's Used, Used Cars.

9 Q Been doing that for about three years?

10 A Yes, sir.

11 Q Okay. All right. And you have two children?

12 A Yes, sir.

13 Q Do they live with their mom?

14 A Yes, sir.

15 Q What's her name?

16 A Marquita Smith.

17 Q Marquita Smith.

18 A Yes, sir.

19 Q Did you see them fairly, fairly often?

20 A Yeah, every day.

21 Q Okay. Everyday. Well, good.

22 So, you're really involved in their lives?

23 A Yeah.

24 Q All right. And I noticed you attend church at Holden's
25 Chapel ever so often?

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q It's a Baptist Church, isn't it?

3 A Yes, sir.

4 Q Okay. And you -- what are their views on the death
5 penalty?

6 A I'm not sure. I -- we never really got into all of
7 that.

8 Q Okay. What are your views on the death penalty?

9 A I mean if they deserve it, then I feel like they
10 probably need it.

11 Q Okay. So, you feel it's appropriate in certain
12 circumstances?

13 A Yes, sir.

14 Q Okay. So, you have no problem in judging people?

15 A No, sir.

16 Q So, you can sit in judgment in the guilt phase as well
17 as in the sentencing phase?

18 A Yes, sir.

19 Q So, you'd have no problem signing a document saying I
20 agree that this man should die?

21 A No, sir.

22 Q Okay. Well, I hate to bring this matter up, but you
23 stood up in the initial qualifications back on Monday in
24 reference to a criminal record.

25 what was that for?

Individual Juror Qualification

1 A Possession of a firearm.

2 Q A firearm.

3 About when was that?

4 A I would say in 2005. Somewhere around there.

5 Q Okay. Well -- and did you plead guilty?

6 A Yes, sir.

7 Q Would that affect your ability to weigh this case?

8 A No, sir, not at all.

9 Q Is that gonna impact your -- the way you look at police
10 officer's when they testify?

11 A No, sir.

12 Q Which agency arrested you?

13 A The Spartanburg County.

14 Q Spartanburg County?

15 A Uh-huh. (Affirmative).

16 Q Do you remember the particular deputy?

17 A No, I don't know.

18 Q You don't?

19 A No.

20 Q Okay. But that wouldn't affect your ability to --?

21 A No.

22 Q Okay. Cause there might be a lot of officers
23 testifying.

24 What is, what is your viewpoint of the officer -- of an
25 officer?

Individual Juror Qualification

1 A I mean they do their job.

2 Q Do their job?

3 A Uh-huh. (Affirmative).

4 Q Okay. Do you respect them?

5 A Yes, sir.

6 Q All right. Now, you have any question about what your
7 role would be in this matter?

8 A No, sir.

9 Q Okay. So -- so, you could fairly decide whether
10 somebody should be sentenced to death?

11 A Yes, sir.

12 Q And you could fairly consider whether they deserve the
13 life sentence?

14 A Yes, sir.

15 Q All right, sir.

16 (Pause.)

17 Q Now, I know you probably haven't given it much thought
18 in the past, but you probably have this week cause the judge
19 told you this was a death penalty case, and what have you
20 been thinking about?

21 what would your views be?

22 A I really ain't thought about it like as serious as I am
23 now. I mean now it's like dawning on me like if I really
24 could, you know, be involved in someone, you know, just in
25 their death, you know.

Individual Juror Qualification

1 Q Right. It's a serious matter and that's what we're
2 trying to get to.

3 A Yeah.

4 Q Since you started thinking about, what are your
5 thoughts?

6 A I mean I still feel the same way that I mean if they,
7 if they done it, I mean, and they deserve it, then they
8 deserve it. But I was just thinking about it, you know,
9 that's a lot to have on you, you know, dawning on you that
10 you somewhat participated in someone's death --

11 Q Right.

12 A -- to say.

13 Q But now that you've thought about---

14 A I could do it.

15 Q You sure?

16 A Positive.

17 Q Okay. That's all I have. Thank you, sir.

18 THE COURT: Any new matters?

19 MR. MCGUIRE: No, sir.

20 THE COURT: All right. Mr. Fullenwinder, please step
21 back to the jury room for just a moment and I'll have you
22 back in just a second.

23 THE WITNESS: All right.

24 THE COURT: Thank you, sir.

25 (WHEREUPON, the following takes place outside the

Individual Juror Qualification

1 presence of the juror.)

2 THE COURT: Defense's position.

3 MR. MCGUIRE: He's qualified.

4 THE COURT: State.

5 SOLICITOR BULSA: We agree.

6 THE COURT: Bring Mr. Fullenwinder back please.

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

9 THE COURT: Have a seat please sir.

10 (Witness complies.)

11 THE COURT: All right. Mr. Fullenwinder, what we're
12 gonna do is I'm -- I have found you qualified to proceed in
13 our, our process. That doesn't mean you're on the jury.
14 That means you will be in a pool of names from which the
15 jury will be selected. The next time you hear from us,
16 which I expect to be sometime hopefully, excuse me, early
17 next week, we'll be giving you some additional instructions
18 on what you need to do.

19 In mean time, I want you to continue to follow my
20 instructions about what you should do. Don't listen to,
21 watch, or read any media reports. Don't discuss the case
22 with anyone. Don't allow anyone to discuss it with you.
23 And if anybody contacts about the case, call the Clerk's
24 office and let them know.

25 You understand those instructions?

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1 THE WITNESS: Yes, sir.

2 THE COURT: The clerk is gonna give you a sheet of
3 paper. It's got some information on there. That
4 information will give you some information about some things
5 you might want to think about because, if you come back and
6 you're on the jury, you'll be staying with us for maybe a
7 little more than a week. So, you'll need to bring some
8 things you need and that will give you some reminders of
9 things you might want to think about.

10 Now, there's one exception to my, my rule not to talk
11 about the case. If you need to talk to either your family,
12 a friend, or someone at your work and let them know that if
13 you're called back to jury duty you're gonna be gone for a
14 few days, you can do that, but don't tell them what the case
15 is about. Don't tell them the case name. Don't discuss the
16 case with them. If they ask you about it, tell them the
17 judge said you can't talk about it.

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. But you can tell somebody you're
20 about to be on jury duty, and you may be gone a few days,
21 and make arrangements with them so that they understand
22 what's going on.

23 You understand what I'm saying?

24 THE WITNESS: Yes, sir.

25 THE COURT: So, don't discuss the case, but you can

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1 make arrangements if you're, if you're picked on a jury.

2 Now, at this time the clerk's gonna, gonna check you
3 out. Again, you'll be hearing from us next. You'll get a
4 phone call giving you some additional instructions on what
5 to do.

6 THE WITNESS: Yes, sir.

7 THE COURT: You may leave. Thank you, sir.

8 THE WITNESS: All right.

9 THE COURT: Appreciate your help this morning.

10 THE WITNESS: Yes, sir.

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

13 THE COURT: All right. The next person is Ray
14 Rothenburg.

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

17 RAY ROTHENBURG, having been previously
18 sworn, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q Sir, have a seat in the, in the chair there.

22 A All right.

23 Q I tease people about it being red as the hot seat --

24 A Well---

25 Q -- but it's not the hot seat.

Individual Juror Qualification

1 A I got a red shirt on too.

2 Q There we go. But this is -- it's not gonna be a hot
3 seat today. I promise.

4 Okay. We're gonna treat you with respect today.
5 That's not gonna be a problem.

6 Today, what we're gonna do is, is basically interview
7 you, go over some things with you. We're in the process of
8 getting a pool of people together from which a jury will be
9 selected. So, this is not juror selection. We're still,
10 technically, qualifying people for the jury.

11 A All right.

12 Q Do you understand where we are?

13 A Yes, sir.

14 Q Now, I will tell you the questions I'm about to go over
15 with you, there are no right or wrong answers. There's only
16 your answers and we just want honest responses to the things
17 we ask you about.

18 A Okay.

19 Q You understand where we are?

20 A Yes, sir.

21 Q Okay. Now, we'll end up asking you about some of your
22 opinions about some things or your positions regarding some
23 things. I hope you're mature enough not to feel threatened
24 by people asking you about that.

25 Am I correct?

Individual Juror Qualification

1 A Yes, sir.

2 Q Okay. Now, I want to remind you, when you left the
3 courthouse on Monday --

4 A Yes, sir.

5 Q -- at that time you had taken an oath to tell the Court
6 the truth.

7 A Yes, sir.

8 Q That oath applies to these discussions as well.

9 Do you understand that?

10 A Yes, sir.

11 Q And you agree that that's true?

12 A Yes, sir.

13 Q Okay. The next thing I want to ask you about, when you
14 left the courthouse earlier, I had given you some
15 instructions concerning what you should do while you're
16 away.

17 A Yes, sir.

18 Q And those were, basically, not to try to do independent
19 research about the case.

20 A Yes, sir.

21 Q Don't gather any information on your own. Don't read
22 or watch or listen to media reports. Don't discuss the case
23 with anybody --

24 A Yes, sir.

25 Q -- and don't allow anybody to discuss it with you --

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1 A Yes, sir.

2 Q -- and report any contact if somebody called you about
3 that.

4 A Yes, sir.

5 Q Did you follow my instructions?

6 A Yes, sir.

7 Q So, we're good on that?

8 A Yes, sir.

9 Q Okay. Very good.

10 Now, I will be going over some matters with you, and I
11 guess one of the first things I want to ask you is are -- if
12 you were selected on any jury, not just this one, any jury,
13 would you be able -- would you be the kind of person who
14 could set aside outside influences, things you might have
15 briefly heard about the case, or things that might pertain
16 to the issues in the case, and decide the case that's in
17 front of you as a juror based upon the law, the evidence,
18 the testimony you hear during that trial?

19 A Yes, sir.

20 Q So, you could decide the case based on what goes on in
21 the courtroom?

22 A Yes, sir.

23 Q Okay. Have you ever participated in or been involved
24 in any type of discussion, organized or otherwise,
25 concerning issues involving the death penalty?

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1 A No.

2 Q Have you ever been involved in any political activity
3 that may have dealt with issues involved in the death
4 penalty?

5 A No, sir.

6 Q Back in the jury room there was a list of people.
7 About three sheets of paper.

8 A Yes, sir.

9 Q Did you read those folks?

10 A Yes, sir.

11 Q Now, as to the people that were listed on that piece of
12 paper, as you read over it, did you notice anybody that you
13 might -- may have been related to either by blood or
14 marriage?

15 A No, sir.

16 Q Did you notice anyone's name that might be someone that
17 you've had some kind of social, business, or personal
18 relationship with?

19 A No, sir.

20 Q So, there was no -- I take it there was no one's name
21 on that paper that, if they testified during the trial, it
22 would affect your ability to be fair and impartial?

23 A No, sir.

24 Q Okay. Now, let me go over one concept with you to be
25 sure that you've got this in your mind because it's -- this

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1 is a little different.

2 Normally when we try a criminal case in this Court, a
3 jury comes in. The jury is the sole judge of the facts.
4 Their job is to listen to the testimony. They decide the
5 truth of the evidence they hear and they decide who did
6 what, when, and where, and then they take the law as the
7 judge gives them, apply that law to those facts to see if
8 they match, and before they reach a verdict.

9 A Okay.

10 Q Do you understand that that's how that would normally
11 occur?

12 A Yes, sir.

13 Q And normally when that happens, the judge, if the
14 person is found guilty, is the person or the entity who
15 decides what the appropriate sentence is. The jury doesn't
16 do sentencing. They just determine guilt or not guilty.

17 A Yes, sir.

18 Q You understand that?

19 A Yes, sir.

20 Q There's an exception to that rule. The exception to
21 that rule is a case where the State is alleging that a
22 murder has occurred and they're alleging that that murder
23 qualifies for the imposition of the death penalty cause not
24 all murders do --

25 A Uh-huh. (Affirmative).

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1 Q -- and they seek that penalty.

2 Now, in that kind of case when the death penalty is
3 being sought, that is a bifurcated trial. I mentioned this
4 on Monday, but I want to go back over it with you now cause
5 I want to make a point about it.

6 A Uh-huh. (Affirmative).

7 Q The bifurcated trial, that means you divide something
8 into two parts. The first part is just like the trial I
9 described to you earlier.

10 A Uh-huh. (Affirmative).

11 Q The jury comes in. They decide whether or not the
12 defendant -- what they did, when they did it, how they did
13 it, and they decide whether or not the State has proven that
14 the defendant is guilty of the crime of murder. Now, if the
15 defendant is found not guilty, that's the end of the trial.
16 we don't go to the sentence question. If the defendant is
17 found guilty, then we go to the sentencing question.

18 A Yes, sir.

19 Q The same jury in this case would hear both trials. In
20 other words, they would hear the guilt phase. Then they
21 would hear the sentencing or penalty phase.

22 A Okay.

23 Q Now, because we use the same jury to decide both
24 questions, the only time we can talk to potential jurors
25 about both issues, both questions, is before they're picked

Individual Juror Qualification

1 because once they're picked, and the verdict's rendered --

2 A Uh-huh. (Affirmative).

3 Q -- we can't then throw people on or get new people on.
4 We got to use the same jury.

5 A Yes, sir.

6 Q So, for that reason, we're going to be talking about --
7 some of the things we'll be talking about have to do with
8 that penalty phase before we've ever made a determination as
9 to whether or not the defendant is guilty or not guilty of
10 the crime.

11 A Uh-huh. (Affirmative).

12 Q So, that's what I mean we may be putting the cart in
13 front of the horse.

14 A Okay.

15 Q Now, I want to caution you, the defendant, in every
16 criminal case, including this one, is always presumed to be
17 innocent, and the fact that we're talking about the penalty
18 phase of the trial should not be taken by any juror as a
19 reflection against the defendant or his case. It's just
20 this is the only time that we can talk to a jury, before we
21 pick them, about all of the issues that could be involved in
22 the case.

23 A Uh-huh. (Affirmative).

24 Q Do you understand why we're gonna talk about things
25 that we haven't gotten to yet?

Individual Juror Qualification

1 A Yes, sir.

2 Q Okay. You appreciate that?

3 A Uh-huh. (Affirmative).

4 Q Okay. Now, I'm going to go over some things with you
5 that would pertain generally to criminal cases. I want to
6 get your ideas about some concepts under the criminal law,
7 be sure you're aware of some things, and see if you can
8 agree or are okay with those concepts and, and I guess rules
9 or theories of law.

10 The first thing I'm going to mention to you is, if you
11 were a juror, would you be willing to listen to the law as
12 charged by the judge?

13 A Yes, sir.

14 Q Then would you be willing, as a juror, to take the law
15 that the judge gives you, and apply it to the facts the jury
16 decides, and, using those factors, reach a verdict in the
17 case?

18 A Yes, sir.

19 Q I'm gonna take it a step further.

20 Let's say that you're on a case, and I've been using a
21 shoplifting case as my example. Let's say you're on a case
22 where someone's accused of shoplifting. You've heard the
23 evidence. It's time for the judge to charge the jury with a
24 law -- explain the law to the jury to be applied to the
25 case. While you're listening to that charge, while the

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1 judge is, is giving the charge, let's say he says something
2 about the law that maybe you didn't understand the law was
3 that way or maybe you think the law really ought to be
4 different than that, but it's not. The judge gives you the
5 law, but you think it ought to be different. So, something
6 doesn't sit well with you about what the judge told you
7 about the law.

8 would you still be in a position or would you still be
9 able to take the law as the judge gave it to you, apply that
10 law to those facts in reaching a verdict?

11 A Yes, sir.

12 Q So, you could set aside your personal ideas or beliefs
13 about what the law is or what it ought to be --

14 A Yes, sir.

15 Q -- is that right?

16 Okay. Now, some other concepts that I want to go over
17 with you and see if you agree with it.

18 Under the law of this country, this state, every
19 defendant is always presumed to be innocent of the crime for
20 which he's been charged.

21 Do you agree with that concept?

22 A Yes, sir.

23 Q Now, I'll take it a step farther because a defendant is
24 presumed to be innocent of a crime, a defendant is never
25 required to prove his innocence in a Court. He's presumed

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1 innocent.

2 Do you agree with that concept --

3 A Yes, sir.

4 Q -- that a defendant's not required to prove himself
5 innocent because he's presumed already to be innocent?

6 A Yes, sir.

7 Q Okay. I'm gonna take that a step further.

8 Because of the fact that a defendant is never required
9 to prove himself innocent, do you agree or understand that a
10 criminal defendant, in a case, is never required to offer
11 any proof, he has no burden of proof in a case because the
12 law presumes him to be innocent.

13 You understand that a defendant is not required or
14 doesn't have to put up any evidence unless he wants to?

15 A Yes, sir.

16 Q Do you understand that?

17 A Uh-huh. (Affirmative).

18 Q Do you agree with that concept?

19 A Yeah.

20 Q Now I'm gonna flip the coin over. Let's go to the
21 other side of a criminal case and that is the party who's
22 bringing the charge, and that normally is the State. The
23 State accuses someone of a crime. They bring the charges.

24 And because the State is the one that brought the
25 accusations, do you understand that the State does have a

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1 burden of proof in a criminal case?

2 It's up to them to bring in proof that proves to a jury
3 that a defendant is guilty by proof beyond a reasonable
4 doubt.

5 A Yes, sir.

6 Q Do you understand that?

7 A Yes, sir.

8 Q Do you agree with that concept---

9 A Yes, sir.

10 Q -- that it's the State's obligation to prove a case?

11 A Yes, sir.

12 Q Okay. Now, let me -- I'm gonna -- I keep taking things
13 a step further. So, let's talk a little bit more.

14 Let's say you're on a jury. You and your jury --
15 fellow jurors heard the whole case, heard the evidence,
16 heard the law from the judge, went into the jury room doing
17 your deliberations and come to the conclusion that the State
18 did not meet its burden of proof. It didn't offer enough
19 evidence to convince you or the jury that the defendant
20 committed the crime beyond a reasonable doubt.

21 would you have any difficulty, in that case, signing a
22 verdict that would find that defendant not guilty?

23 A No, sir.

24 Q By the same taken, if you went back, same situation,
25 but this time you did believe the State had produced enough

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1 evidence to prove the defendant guilty beyond a reasonable
2 doubt. Your fellow jurors agree with you.

3 would you have any problem in signing a verdict finding
4 a defendant guilty in that circumstance?

5 A No, sir.

6 Q I take it then that you're telling me that you could
7 find a defendant either guilty or not guilty depending on
8 the evidence, the strength of that evidence, the truth of
9 the evidence, as well as the law given by the judge?

10 A Yes, sir.

11 Q Is that true?

12 A Yes, sir.

13 Q You'd want to weigh those things in making that
14 decision?

15 A Yes, sir.

16 Q One other thing, is it your belief that a person, just
17 because they've been arrested and just because they've been
18 charged with a crime, that doesn't mean they're
19 automatically guilty of a crime?

20 Do you agree with that concept?

21 A Yes, sir.

22 Q All right. Now, I'm going to move on that cart that
23 I'm gonna put in front of the horse. I'm gonna talk about
24 that penalty phase of a, of a potential trial that could
25 come up, and I want you to put yourself mentally, in your

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1 mind's eye, in a position.

2 Let's say that you got selected on a jury. That jury
3 is hearing a case where the State is alleging murder, and
4 has requested that the death penalty be considered as a
5 possible verdict in that case. So, the death penalty is
6 been requested. So, you're seated on that jury. You have
7 heard the first phase of this trial. You and your fellow
8 jurors have come to the conclusion that the defendant is
9 guilty of the crime of murder. So, a verdict's been issued
10 finding the defendant guilty of that crime.

11 Now, because of that guilty verdict, and because the
12 State is requesting the death penalty, we're moving now to
13 that second hearing --

14 A Uh-huh. (Affirmative).

15 Q -- sentencing or penalty phase.

16 Do you understand where we are?

17 A Yes, sir.

18 Q Now, there's a statute that sets up how that hearing
19 should be held in our state, and that statute provides for
20 two different types of evidence to be considered by the
21 jury. One type of evidence is what is referred to as
22 aggravating circumstances.

23 Now, aggravating circumstances, there's a list of those
24 things in the statute. I'm not gonna read them all to you
25 because we're not deciding a case today.

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1 A Uh-huh. (Affirmative).

2 Q We're talking about the concept of the case and how
3 you, you'd handle it, but there's a list of those
4 aggravating circumstances, and the law requires that the
5 State must prove at least one of those aggravating
6 circumstances by proof beyond a reasonable doubt in order
7 for the defendant to be eligible for the death penalty.

8 okay?

9 A (Witness nods affirmatively.)

10 Q So, those are factors which would tend to make a
11 murder, while a murder's not a good thing, it would tend to
12 make that crime perhaps more severe in the eyes of a juror.
13 Perhaps more deserving of the higher level of punishment
14 rather than the lower level of punishment.

15 You understand what an aggravating circumstance would
16 be?

17 A Yes, sir.

18 Q The kind of thing it would be.

19 A Uh-huh. (Affirmative).

20 Q All right. Now, we're gonna talk about then, on the
21 other side, that same statute provides, and there's a list
22 of ten of these factors in that statute, that are called
23 mitigating circumstances. Those are circumstances that if
24 the -- someone were to prove that to a jury, and that, that
25 doesn't have to be proven beyond a reasonable doubt because

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1 that's not part of the State's case, but if it were shown to
2 the jury sufficiently that they would consider it, those are
3 factors that would perhaps lessen the severity of the crime
4 or make someone less deserving of the higher punishment,
5 maybe more deserving of the lower punishment.

6 So, you understand the difference between aggravating
7 and mitigating circumstances?

8 A Yes, sir.

9 Q Okay. Well, once that evidence had been presented,
10 either aggravating evidence or mitigating evidence to the
11 jury, the judge then, the statute says, will charge the jury
12 to consider those factors, go back and deliberate. In other
13 words, discuss among themselves the different factors and
14 then come to a conclusion as to what they recommend as the
15 appropriate penalty.

16 Do you understand this process we're going through?

17 A Yes, sir.

18 Q And those two penalties, the choices are life in prison
19 without the possibility of parole and that is what that
20 means. You go to prison, you stay there till you die. The
21 other would be the death penalty. So, those are the two
22 possible sentences that would come out of that hearing, and
23 the judge, again, would instruct the jury to consider all
24 those factors and then come back and make a recommendation.

25 So, do you understand how and what that hearing is

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1 about and how it works?

2 A Yes, sir.

3 Q Now, I told you to imagine you were on that jury, and
4 you and your fellow jurors have found the defendant guilty
5 of the crime of murder.

6 A Uh-huh. (Affirmative).

7 Q So, that's been proven. He's a convicted murderer at
8 that point in time.

9 So, now we're coming back to the, to the courtroom, and
10 as you walk down that hall, you're walking down the hall
11 with your fellow jurors.

12 Do you remember a sheet of paper that I left on the
13 table back there --

14 A Uh-huh. (Affirmative).

15 Q -- that described three different types of jurors?

16 A Uh-huh. (Affirmative).

17 Q Did you read it?

18 A Yeah.

19 Q Okay. And I'm gonna go back over it with you. I'm not
20 asking---

21 A Okay.

22 Q This is not a quiz---

23 A I know.

24 Q ---to see if you remember all that.

25 A Yeah.

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1 Q But I'm gonna go back over it with you because I'm
2 gonna assign a number to these people, and then we're gonna
3 talk about them.

4 Okay. Juror number one, on that sheet of paper, the
5 first one, would be somebody that, when they walked into
6 that door, that juror's already made up his or her mind.
7 That juror believes that anytime someone is convicted of a
8 murder, that the only appropriate penalty is the death
9 penalty, and that juror doesn't care about the aggravating
10 circumstances or the mitigating circumstances. If someone
11 is convicted of murder, the only appropriate penalty is
12 death and he -- that jurors is gonna vote for death every
13 time.

14 Juror number two has already made up his or her mind as
15 well. Now that juror believes that the State is never
16 justified in taking the life of someone in response to the
17 commission of a crime, and that's regardless of those
18 aggravating matters, things that might make it worse,
19 regardless of the mitigating circumstances, that juror's
20 gonna vote for life in prison without parole every single
21 time.

22 The third juror is a juror who has not yet made up his
23 or her mind as to what the appropriate thing is to do. That
24 juror wants to come into the courtroom and listen to the
25 evidence that's gonna be presented, both evidence that makes

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1 the situation more aggravated or worse or -- and the
2 evidence that perhaps mitigates the situation and makes it
3 less likely that they'll give the higher penalty, and, after
4 hearing both sides, wants to sit down with their fellow
5 jurors, consult with them, deliberate is the word we use,
6 before they reach a decision as to what the appropriate
7 penalty is, and I'll tell you that a jury has the right to
8 consider not just the mitigating circumstances, but any
9 circumstance they think is appropriate in mitigation, and
10 the jury has the right to even consider mercy if they wish
11 to do so in making that decision.

12 So, those are the three kinds of jurors that I
13 described to you on that paper.

14 A Uh-huh. (Affirmative).

15 Q You remember it?

16 A Uh-huh. (Affirmative).

17 Q One, two, and three.

18 Now, I've told you to pretend or put in your mind's eye
19 that you're in that same jury. You're walking down the hall
20 and you're fixing to walk into the door of the courtroom to
21 begin that second hearing.

22 Of the three jurors I've described to you, which one of
23 them would most closely resemble you when you walked in?

24 A Three.

25 Q All right. Now, what that tells me is that you're

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1 somebody who wants to hear all the evidence, you want to
2 hear all the factors, you want to weigh those factors before
3 you make a decision as to what's appropriate, is that right?

4 A Yes, sir.

5 Q Now, I'm gonna take it -- as I do, I kick it up a notch
6 every so often, but in the words of Emeril, the guy on TV,
7 so, I'm gonna kick it up a notch.

8 Let's say that you were on that jury. You heard the
9 evidence. The judge instructed you to go back and consider
10 all that evidence and you did, and you reach a conclusion,
11 along with all of your fellow jurors, that the death
12 penalty's the appropriate penalty in this situation.

13 would you be someone who could sign a verdict for the
14 death penalty?

15 A Yes, sir.

16 Q And by the same token, if you and your fellow jurors
17 come to the conclusion that the most appropriate penalty is
18 the life in prison without the possibility of ever getting a
19 parole, could you sign that verdict as well?

20 A Yes, sir.

21 Q So, you could sign either verdict depending on how the
22 case comes out in your mind?

23 A Yes, sir.

24 Q All right. Now, one other thing I want to go over with
25 you before I turn the lawyers loose on you. I'm just

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1 teasing about that. I'll let them ask some questions.

2 I have signed an order in this case sequestering the
3 jury.

4 A Uh-huh. (Affirmative).

5 Q What that means is, once the jury is formed, once it's,
6 it's constituted, that jury will, in the daytime, come in
7 the courtroom, listen to the case, but in the evenings
8 they'll be taken over to the Marriott. You'll stay there.
9 There is a group of retired SLED agents who regularly help
10 us with sequestering juries. They do that -- they know how
11 to do it. They do it a lot. So, they would be there and
12 they would see to it that no outside influence would affect
13 the jury.

14 Now, jurors are allowed to call family or friends, but
15 those calls will be monitored. Television shows are limited
16 as to what you can see. None -- probably no new shows or
17 anything like that.

18 A Hunting and fishing, that would be good.

19 Q Hunting and fishing will be all right. That won't get
20 you in trouble. And, of course, the -- any reading material
21 would be monitored. So, you see that -- in other words,
22 you'd be in that situation. You'd be there for as long as
23 the trial goes on.

24 Now, once we start these trials, we don't stop. We go
25 seven days a week until the case is done. We try to take as

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1 little amount of time out of people's live as we can. But
2 we want to have a full and complete trial too. So, it can
3 sometimes take about a week, a week and a half, somewhere in
4 that range to complete one of these cases.

5 A Uh-huh. (Affirmative).

6 Q Okay. But we want to be sure every -- everybody's
7 heard. But you would be sequestered for that length of
8 time.

9 Now, during that time, you'd receive pay as a juror,
10 and I tease jurors all the time. I say don't plan to retire
11 on jury pay cause it's not gonna work, but it's not as, it's
12 not as much as you might make working a job. You'd get pay
13 for your travel to and from the courthouse. So, you'd
14 receive that kind of compensation for the time that you're
15 there.

16 Now, my question to you is about all of that, if you
17 were put in that situation, if you were sequestered, would
18 it pose any serious risk to the health or well being of you?

19 A No.

20 Q Would it pose any serious risk to the health or well
21 being of anyone who's dependent on you?

22 A No.

23 Q All right. Now that completes my questioning. I'm
24 gonna allow the attorneys to talk with you and ask some
25 questions. When they finish I'll be talking with you again.

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1 A Okay.

2 THE COURT: All right. Mr. McGuire.

3 MR. MCGUIRE: Thank you, judge.

4 EXAMINATION

5 BY MR. MCGUIRE:

6 Q It's still morning just barely. You've probably been
7 waiting a long time. I apologize for that.

8 A No problem.

9 Q We're out here working hard, and sometimes it's not the
10 most efficient system.

11 Mr. Rothenburg, I'm just gonna have a conversation with
12 you. Just pretend we're on your front porch in rocking
13 chairs or on the back deck. Okay. I'm just gonna ask your
14 thoughts and you just tell me the truth.

15 All right?

16 A Okay.

17 Q Do you think the death penalty is used too seldom,
18 about right, too often?

19 You, you have an opinion in there?

20 A No, not really. No, I haven't really been around it
21 too much.

22 Q Around --?

23 A The death penalty or nothing like that, you know, cause
24 like I, you know, I don't watch the news very often. If I
25 ever watch the news, it's gonna be on the weather. So, most

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1 times it's, you know, I'm working. I work a pretty good
2 bit. So --.

3 Q I got you.

4 A You know, I don't keep up with a lot of stuff myself.

5 Q Okay.

6 A My wife does, but I don't.

7 Q All right. Well now I'm just gonna ask you about your
8 personal views, and you've heard the phrase an eye for an
9 eye.

10 A Uh-huh. (Affirmative).

11 Q Does that -- what does that mean to you?

12 A Well, it's kind of hard to say really. I mean if
13 somebody's hurting somebody in my family or something like
14 that, you know, I think it's, you know, I need to step in
15 and help out. Something like that, you know. It's just --
16 I don't believe in stuff to -- as far as being hurt and
17 stuff like that. I've stepped in in stuff myself and I
18 don't even know the people who they was, you know, just to
19 try to help somebody out type deal.

20 Q Okay. Sometimes you hear the phrase take an innocent
21 life, forfeit your life.

22 Does that resonate with you?

23 A No.

24 Q Okay. Okay. The judge was talking to you about
25 aggravating factors, mitigating factors, aggravators make it

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1 worse, mitigation can make it look less. But it's not just
2 facts of the crime. It can be anything, a whole host of
3 reasons.

4 A Uh-huh. (Affirmative).

5 Q In terms of mitigation evidence --

6 A Uh-huh. (Affirmative).

7 Q -- it could be a man's whole walk in life, his life
8 history, how he grew up, things he's done to other people,
9 things that have been done to him. Just almost any reason a
10 juror can think of to vote for life.

11 You wouldn't -- you're not the kind of person who, if
12 the State proved that an intentional killing, that you would
13 automatically vote for -- automatically vote for the death
14 penalty?

15 A No, sir.

16 Q Okay. You can take into account those things, the
17 man's walk in life, what's going on in his head, maybe that
18 sort of thing?

19 A Yeah.

20 Q Okay. You wouldn't -- and sometimes -- and sometimes
21 the aggravator can be pretty impactful. In this case it's
22 the death of a child.

23 A Uh-huh. (Affirmative).

24 Q Is your position still the same, that, even in a, in a
25 case like that with that very emotional factor, the death of

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1 a child, could you still consider all those mitigation---

2 A Yeah.

3 Q ---type evidence?

4 A Uh-huh. (Affirmative).

5 Q And why would that still be important to you?

6 A Well, you just need to know all of the facts. Not just
7 part of the facts.

8 Q Okay.

9 A You need to know both sides of the story.

10 Q Okay. So, sometimes a man can commit a heinous act,
11 but he doesn't, based on his walk in life, deserve the death
12 penalty?

13 A Yeah.

14 Q Okay. And you're looking at the man to find that out?

15 A Yes, sir.

16 Q Okay. One thing I want to talk to you about is these
17 trials have, like the judge said, two parts. There's the
18 traditional first part --

19 A Uh-huh. (Affirmative).

20 Q -- like a regular trial, do you have the right guy,
21 guilty beyond a reasonable doubt, that sort of thing. And
22 then, if there's a conviction, then you go to a penalty
23 phase.

24 A Uh-huh. (Affirmative).

25 Q But it's like a whole trial just on the issue of life

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1 or death.

2 A Uh-huh. (Affirmative).

3 Q And that's the only thing in front of the jury in that
4 second trial. One of the things that's really important is
5 that the jury not make up their mind about penalty before
6 they actually get to see all that evidence.

7 A Uh-huh. (Affirmative).

8 Q Cause it'd be wrong to make up your mind when you
9 don't, when you don't have the full story.

10 A Uh-huh. (Affirmative).

11 Q Is that a principle of law you could respect?

12 A Yes, sir.

13 Q It would be wrong for the jury to engage in discussions
14 about penalty before they heard all the penalty evidence?

15 A Yes, sir.

16 Q Can we count on you to, to make sure that's the case?

17 A Yes, sir.

18 Q And make sure your fellow jurors would discuss the
19 case?

20 A Yes, sir.

21 Q Just like the judge said, don't talk to people about
22 this case---

23 A Uh-huh. (Affirmative).

24 Q ---before you come to jury selection.

25 A I've had to do that a lot this week. Make sure -- I

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1 can't talk about this.

2 Q Put your hand up---

3 A Yeah.

4 Q ---and say I can't talk about it.

5 A Can't talk about it.

6 Q If you're at a dinner table with the, if you got on the
7 jury, and you're on the -- at the dinner table with a juror
8 person, somebody wants to talk about a piece of evidence or
9 maybe the penalty or what should happen, can you put your
10 hand up and say we're not suppose to do that --

11 A Yeah.

12 Q -- the judge said not to that do?

13 A Yeah.

14 Q You could do that?

15 A Oh, yeah.

16 Q And, again, I want to talk to you a little bit more
17 about the, how the penalty phase is different from the, the
18 first phase or the regular part of the trial. There's a
19 pamphlet that was given out on the first day of jury
20 selection, and it said if the jury couldn't agree as to
21 guilty or not guilty, the case would be a mistrial and have
22 to been tried again.

23 A Uh-huh. (Affirmative).

24 Q And that's the -- true for the first page -- phase of
25 this trial, the guilty or not guilty part.

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1 A Uh-huh. (Affirmative).

2 Q But if the -- if there's a finding of guilt there, the
3 jury would move to that penalty phase the judge told you
4 about.

5 A Uh-huh. (Affirmative).

6 Q Now, in that phase, if the jury ended in disagreement
7 about punishment, the case wouldn't be a mistrial.

8 A Uh-huh. (Affirmative).

9 Q Not technically cause it would end. The judge would
10 take the case and he would sentence.

11 A Uh-huh. (Affirmative).

12 Q Did you know that?

13 A Yes, sir.

14 Q Okay. You did know that?

15 A Uh-huh. (Affirmative).

16 Q A lot of people don't know that.

17 A Yeah.

18 Q All right. And his sentence would be life without
19 parole. That's an automatic feature built into the system.

20 A Uh-huh. (Affirmative).

21 Q If the jurors ultimately disagree, the case would be
22 passed over to the judge. He would end it and he would
23 sentence to life without parole.

24 A Uh-huh. (Affirmative).

25 Q Is that a principle you could agree with?

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1 A Yes.

2 Q Okay. Even if just one juror, just one juror out of 12
3 said I'm gonna vote for the life penalty, and that's where I
4 am, and it would hurt my conscience to change my position,
5 would you be okay with the case going to the judge eleven to
6 one---

7 A Yeah.

8 Q ---and letting the judge sentence?

9 A Yeah.

10 Q And you would respect that one person?

11 A Uh-huh. (Affirmative).

12 Q And allow them to have their voice, their vote heard in
13 Court?

14 A Yeah.

15 Q Even though it would be different than yours?

16 A Yeah.

17 Q There's also a thing called mitigation -- well, the
18 judge is told you about mitigation evidence. It's -- and,
19 you know, we, we so often think about juries speaking with
20 one voice or unanimity that I want to point this one more
21 thing to you, and it's a principle of law and I'm gonna ask
22 you if you can agree with it. In that with that mitigation
23 evidence, one juror say sitting here can say I saw something
24 in the man's background, his walk in life, his life history
25 that resonated with me and I want to vote for the life

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1 penalty for that, and the 11 other jurors might say, well,
2 we didn't see that little piece of evidence that you say you
3 see. But it's okay for this person to say well, I see it
4 and I want to give it the weight of life.

5 Is that a principle of law you could respect?

6 A Yeah.

7 Q Even if, again, they see something in the case that you
8 don't see and y'all disagree, you'd still respect their
9 position?

10 A Yeah.

11 Q Another juror might say I saw something in the man's
12 character, background, like a relationship with his family,
13 or his grandkids, and they might say I'm gonna -- that was
14 redeeming to me, that I saw a spark of humanity there, I'm
15 gonna vote for life for that, and you can see how it's
16 different from the other person, and, again, the 11 other
17 jurors might say we didn't see that, but that person, again,
18 has the ability to vote for life for that reason.

19 A Uh-huh. (Affirmative).

20 Q And you can respect that?

21 A Yes, sir.

22 Q The judge would tell the jury that any one individual
23 juror can vote for the life penalty for any reason, no
24 reason, or mercy alone. Another jury might -- a jury member
25 might say I don't have the, the words to put my position

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1 into the words, but the death penalty just doesn't feel
2 right for me.

3 Could you respect that?

4 A Yes, sir.

5 Q Okay. And let them have their position heard even
6 though it might be different from yours?

7 A Yes, sir.

8 Q Okay. I want to talk to you a little bit more about
9 the bullying we -- and you stepping in to make sure people
10 weren't hurt. The, the law describes a decision, in the
11 penalty phase, as an individual juror's individual moral
12 judgment. It's not a question science or math can answer.
13 It's just a -- what your conscience says.

14 A Uh-huh. (Affirmative).

15 Q And the law is if it would harm their conscience, do
16 violence to their conscience to change the position just to
17 go along with the majority, that would be wrong.

18 Did you know that?

19 A Uh-huh. (Affirmative).

20 Q Okay.

21 A Yes, sir.

22 Q And if, if you saw somebody bullied, being bullied to
23 do that, can we count on you to step in and make sure that
24 doesn't happen?

25 A Yes, sir.

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1 Q A lot of rules in Court.

2 A Yes, sir.

3 Q Some of them are for me.

4 A Yeah.

5 Q Some of them are for people out there, but some of them
6 are for you.

7 A Uh-huh. (Affirmative).

8 Q And the rules indicate that the proceedings should be
9 carried out with dignity and respect.

10 A Yes, sir.

11 Q And I can count on you to enforce that?

12 A Yes, sir.

13 Q Thank you, sir. That's all I have.

14 A Thank you.

15 THE COURT: Mr. Bulsa.

16 SOLICITOR BULSA: Thank you, Your Honor.

17 THE COURT: Your juror.

18 SOLICITOR BULSA: Yes, sir.

19 EXAMINATION

20 BY SOLICITOR BULSA:

21 Q How you doing, Mr. Rothenburg.

22 A All right.

23 How about you?

24 Q Good.

25 I'm Derrick Bulsa. This is Barry Barnette. We're

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1 prosecuting this case. I believe you actually know somebody
2 that works in our office.

3 A Yes, sir.

4 Q Rick Gregory?

5 A Rick Gregory.

6 Q And how well do you know Rick?

7 A I grewed up with him.

8 Q Did you go to high school with him?

9 A Went to high school.

10 Q Okay. So, a good 30 years then?

11 A Yeah.

12 Q You moved from Baltimore---

13 A Yeah, to here.

14 Q ---in high school?

15 A From high school down -- I finished high school down
16 here.

17 Q Okay. Are y'all still in the same community?

18 A No, he's -- well, he -- they don't live far from me
19 now. He has moved close to where I lived. But I don't see
20 him very often. The only time I ever see him is me and his
21 brother -- matter of fact, I was at his brother's son's
22 birthday party last night. So -- but Rick wasn't there.
23 You know, I don't, I don't see Rick much unless he's around
24 Eddie, Eddie, his brother---

25 Q Okay.

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1 A ---I see him---

2 Q Okay. So, you're better friends with him.

3 A ---you know.

4 Q Okay.

5 A Or I'll see him out at the store or something like
6 that. I'll stop and speak to him.

7 Q Okay. Well, good.

8 And you're a mechanic?

9 A Yes, sir.

10 Q Doing all your life?

11 A Yes, sir.

12 Q All right. Good for you.

13 I noticed your wife use to work with a law firm?

14 A Yes.

15 Q What kind of work---

16 A Ruth Cate.

17 Q What did she do for her?

18 A She's a secretary.

19 Q Secretary?

20 A Yes, she's the lady that would sit up front and took
21 the messages and wrote up -- typed up her stuff.

22 Q Okay. And she also worked for Pat Anderson?

23 A Yeah, she was a secretary then too.

24 Q Okay. All right. And in your questionnaire you
25 mentioned that your house was broken into in 1999.

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1 A Yes, sir.

2 Q Was that ever solved?

3 A No.

4 Q Never was. It's kind of hard to catch a burglar.

5 What did your wife do for Tyger River Correctional

6 Institution?

7 A She was a secretary down there too.

8 Q Secretary?

9 A Yeah, she---

10 Q How often -- how long did she work there?

11 A Two years I think.

12 Q Okay.

13 A I think it was about two years.

14 Q Okay. Did y'all ever talk about---

15 A No.

16 Q ---life in---

17 A Hu huh. (Negative).

18 No.

19 Q Okay.

20 A She didn't, she didn't bring that stuff home.

21 Q Okay. Okay.

22 A I'm glad. I don't want to hear it.

23 Q All right. And Mr. McGuire went over a lot of things
24 that -- about the juror's roles.

25 You understand it's -- the main role of the jury is to

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1 listen and to discuss and deliberate when they hear both
2 sides?

3 A Uh-huh. (Affirmative).

4 Q Could you do that?

5 A Yes, sir.

6 Q And would you expect everybody else to do that?

7 A Yes, sir.

8 Q Okay. And while the law would require the jury to find
9 beyond a reasonable doubt, the aggravating circumstances,
10 you don't have to. That's not the standard for the
11 mitigating circumstances.

12 A Uh-huh. (Affirmative).

13 Q You understand that?

14 A Yes, sir.

15 Q But you can find mitigating circumstances and still
16 give somebody the death penalty.

17 You understand that?

18 A Yes, sir.

19 Q Cause it's not a magic formula.

20 A Uh-huh. (Affirmative).

21 Q All right. And you would sit and listen to both sides?

22 A Yes, sir.

23 Q And it's, it's a tough call.

24 A Oh, yeah.

25 Q It's -- we don't ask people to take it lightly.

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1 A Uh-huh. (Affirmative).

2 Q All right. All right. Thank you, Mr. Rothenburg.

3 A Thank you.

4 THE COURT: Any follow-ups, Mr. McGuire?

5 MR. MCGUIRE: Oh, no, sir, judge.

6 THE COURT: All right, sir. I'm gonna ask you to step
7 back into the jury room for just a moment.

8 THE WITNESS: Okay.

9 THE COURT: I'll call you back in just a second.

10 THE WITNESS: All right.

11 THE COURT: Thank you, sir.

12 THE WITNESS: Thank you.

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

15 THE COURT: Defense position.

16 MR. MCGUIRE: Qualified.

17 THE COURT: State.

18 SOLICITOR BULSA: Agree.

19 THE COURT: All right. I so find.

20 Bring Mr. Rothenburg back.

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

23 THE COURT: Have a seat, Mr. Rothenburg.

24 (Witness complies.)

25 THE COURT: Again, I want to thank you for your

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1 cooperation this morning.

2 Your name stays in the pool at this point in time for
3 jury consideration.

4 THE WITNESS: All right.

5 THE COURT: That doesn't mean you're on the jury. That
6 just means you're in the pool from which we'll pull the
7 jury.

8 THE WITNESS: Okay.

9 THE COURT: I expect we'll get to that point in this
10 trial perhaps maybe Tuesday next week. I, I'm not sure. It
11 just depends on how long these interviews take and when we
12 get the appropriate number in the pool, and then we can stop
13 and start selecting a jury.

14 THE WITNESS: Okay.

15 THE COURT: So, we will -- we will get -- be in touch
16 with you next.

17 THE WITNESS: Okay.

18 THE COURT: You don't have to call us back until we've
19 called you back.

20 THE WITNESS: Okay.

21 THE COURT: And we'll let you know where you stand at
22 that point in time.

23 THE WITNESS: Okay.

24 THE COURT: Now, in the mean time, my order about how
25 you're suppose to behave continues.

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1 THE WITNESS: Okay.

2 THE COURT: Don't try to gather any information. Don't
3 discuss it with anyone. Don't allow them to discuss it with
4 you, and if anybody tries to contact you, let us know and
5 don't listen to, watch, or read media reports. You know
6 the---

7 THE WITNESS: Yes, sir.

8 THE COURT: You know the thing.
9 Okay. And can you follow that for me?

10 THE WITNESS: Yes, sir.

11 THE COURT: Now, there's an exception to that. I told
12 you, if you come back and you're on the jury, you're gonna
13 be staying with us.

14 THE WITNESS: Yes, sir.

15 THE COURT: And so, for that reason, you may need to
16 tell employers or family members. But if you get a call
17 back for jury duty, you'll be missing for a few days.

18 THE WITNESS: Okay.

19 THE COURT: So, whatever you have to do to make
20 arrangements, it's okay to do that. But in doing so, don't
21 tell them the name of the case, what the case is about. You
22 don't know what all the case is about yourself.

23 THE WITNESS: Hu huh. (Negative).

24 THE COURT: But, but don't discuss it with them. Don't
25 get into a discussion about the type of case, what it's

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1 about. Just let them know you're in, in line to possibly be
2 on a jury, and if you get picked you'll be gone a few days.

3 THE WITNESS: Okay.

4 THE COURT: That's all you need to tell him and make
5 arrangements.

6 THE WITNESS: I'll do that.

7 THE COURT: All right. Now, there's a sheet of paper.

8 THE WITNESS: All right.

9 THE COURT: Ms. Camp's gonna give you that. That sheet
10 of paper has on it things you might want to think about in
11 gathering up some things to come back because, if you're
12 selected, you'll be here.

13 If you take some medications, things like that, be sure
14 you have enough for a couple weeks just to be sure.

15 THE WITNESS: Okay.

16 THE COURT: It's probably too much, but at least that's
17 better than not having enough.

18 THE WITNESS: I got a little compartment of medicines.

19 THE COURT: Okay. That's a smart way to do it.

20 So, make your preparations and we'll call you back in I
21 expect early to mid-week you'll hear from us.

22 THE WITNESS: Okay.

23 THE COURT: Okay?

24 THE WITNESS: All right.

25 THE COURT: They'll check you out.

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1 THE WITNESS: All right.

2 THE COURT: You're free to go now.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Thank you, sir.

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

7 THE COURT: All right. Let's try one more before we
8 break for lunch.

9 MR. MCGUIRE: Judge?

10 THE COURT: Yes, sir.

11 MR. MCGUIRE: Can I -- can we take just a two minute
12 break?

13 I'm notified that the hotel is trying to call me. I
14 just want to make sure my hotel room's not on fire or
15 something.

16 THE COURT: Yeah, go, go call your hotel room. I don't
17 want it to be on fire either.

18 MR. MCGUIRE: I don't want to be in the street.

19 SOLICITOR BARNETTE: We'll step one for one second,
20 judge.

21 THE COURT: All right. Y'all go ahead.

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

23 THE COURT: Are you able to go forward, Mr. McGuire?

24 MR. MCGUIRE: My stuff's not on the street. I'm ready
25 to go forward.

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1 THE COURT: Well, good. That's a good thing.

2 All right. Let's bring back -- this is off of panel
3 now Number 14, Karen Trejo.

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

6 KAREN TREJO, having been previously
7 sworn, testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q Ms. Trejo, have a seat for me please.

11 A (Witness complies.)

12 Q Did I say your name right, Trejo?

13 A Yes, you did.

14 Q Okay. Ms. Trejo, we're gonna talk about some things
15 today. I'm gonna be going over some things with you.

16 I'll tell you that we're still in the process of
17 qualifying people for the jury panel. We're not picking a
18 jury today. We are going over some things that are of
19 importance in selecting the jury. So, we'll be asking you a
20 good many questions. Some of them may be about your beliefs
21 or personal views about some things. I hope you're
22 confident enough in your opinions that you can answer those
23 without feeling threatened.

24 Is that correct?

25 A That's correct.

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1 Q And I can assure you, ma'am, while you're sitting in
2 the hot seat usually, that's the witness stand in my
3 courtroom, it won't be a hot seat today. Everybody will
4 treat you with respect. There's not gonna be a problem, and
5 the only answers that you, that you, that you've given us,
6 there aren't right answers, and there aren't wrong answers.
7 It's just your answers --

8 A Okay.

9 Q -- and we just want your honest responses to our
10 questions.

11 Now, you took an oath to tell the truth when you were
12 here on Monday.

13 A Absolutely.

14 Q I will tell you that still applies to, to you.

15 Do you acknowledge that?

16 A Yes.

17 Q Okay. Also, when you left Monday, I had told the jury,
18 and you are part of that jury, some things about how you
19 were to behave in relationship to this case. In other
20 words, you shouldn't discuss it with anyone. You shouldn't
21 listen to media reports, read them. You shouldn't try to
22 gather any information independently.

23 You remember those instructions?

24 A I do.

25 Q Have you been able to follow those instructions?

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1 A I have.

2 Q Okay. Now, ma'am, in that respect, are you the kind of
3 juror who could put aside, if you were on a jury and I'm not
4 talking about just this case, any case that you were sitting
5 on, could you put aside things that you heard outside the or
6 see outside the courtroom and, and decide the case that was
7 in front of you based upon the law and the evidence that you
8 heard in the courtroom during the trial?

9 A Yes, I could.

10 Q You could do that?

11 A Yes.

12 Q All right. Now, let's go over just a couple things
13 here now.

14 Now, first of all, have you ever participated in any
15 discussions kind of in a group setting, could be like a chat
16 room on the Internet, something like that, but have you ever
17 been in any discussions where the subject of those
18 discussions was the death penalty?

19 A No.

20 Q Have you ever been involved in any political activities
21 surrounding the death penalty?

22 A No.

23 Q Back in the jury room there was a list of people back
24 there.

25 Did you read that list for me?

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1 A I did.

2 Q It's about three pages, wasn't it?

3 A Sure was.

4 Q Now, ma'am, those are people who have been identified
5 to me as possible witnesses in the case. Now, it doesn't
6 necessarily mean they're going to testify, but it means they
7 could possibly testify.

8 A Uh-huh. (Affirmative).

9 Q And so, as to those people on the list, as you read
10 over that list, did you notice anyone on there who you have
11 ever been related to by marriage or that you're related to
12 by blood or that you've had any social, business, or
13 personal relationships with?

14 A No.

15 Q So, if any of those people were to appear as witnesses
16 during the trial, I take it then it would not affect your
17 ability to be fair and impartial in the case.

18 A No.

19 Q Okay. Now, ma'am, there's one thing that I want to
20 talk to you about and explain something that's different
21 about this case. It's just the, the nature of the way it's
22 done and I want to be sure you've got an understanding about
23 this.

24 I mentioned, on Monday, that this type of case where
25 the State is seeking a death penalty is divided into two

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1 parts. It's called bifurcating a trial. In other words, we
2 divide the issues up into two separate hearings or trials.

3 The first hearing that we would conduct is a hearing
4 concerning the allegations that have been made, and the
5 jury's job then would be to issue a verdict of either guilty
6 or not guilty on the charge, and one of the charges is that
7 a murder occurred, and that -- for that charge, the State is
8 requesting the death penalty.

9 Now, I'm talking -- to a certain extent, later on,
10 we're gonna put the cart in front of the horse because that
11 hearing's never been held. There's been no verdict in that
12 case in this particular situation, but we're gonna start --
13 talk to you some about that second trial even though we
14 haven't gotten there yet, and even though we may not get
15 there because, if the defendant were to be found not guilty
16 of the main charges, there's no reason to hold a penalty
17 phase whatsoever.

18 So, you understand that, that we're putting the cart in
19 front of the horse---

20 A I do.

21 Q ---if we even talk about that second phase?

22 A I do.

23 Q But I hope you appreciate that the way this case works,
24 the jury that hears that first part of the case has to hear
25 the second part of that case.

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1 A Correct.

2 Q So, if we're going to talk to potential jurors about
3 all the issues that could come up during the trial, we're
4 gonna have to talk about those penalty factors now even
5 though we don't know whether we're gonna get to that or not.

6 A Okay.

7 Q So, I want to just tell you, and I want you to
8 appreciate the fact, that the fact that we are going to
9 discuss, at some point in time the penalty phase of the
10 trial and the penalties that are involved, it should not be
11 taken by you as any reflection upon the defendant or upon
12 his case that he might present during the trial. It's
13 simply that this is the only time that we have to talk to
14 the jurors who would hear both sides of the case before we
15 start the trial.

16 You understand that?

17 A Yes, I do.

18 Q And do you appreciate what I'm saying in that regard?

19 A I do.

20 Q Okay. Now, ma'am, I'm going to go over with you some
21 concepts about the law. In doing so, I want you to imagine
22 that you've been selected to serve on a jury involving
23 something like a shoplifting case. That doesn't have
24 anything to do with this case. It's just you're a juror in
25 a criminal case, and I will tell you that, in the usual

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1 criminal case, the judge is the, is the judge of the law.
2 In other words, the judge is the one who gives the law to
3 the, to the jury for them to use.

4 On the other hand, the jury is considered the judge of
5 the facts during a trial, and we call them that during the
6 trial, the judge of the facts, and that means the jury has
7 to decide what's true and what's not true. They have to
8 decide what happened, when it happened, how it happened,
9 whether or not those facts fit the crime that are alleged.
10 So, the jury is the determiner of the facts.

11 Can you accept the fact that we have dual roles?

12 A Yes.

13 Q I would be the one who judged the law. The jury would
14 be the, the fact judge.

15 Do you understand that?

16 A I do.

17 Q Okay. And could you -- you accept that as---

18 A Yes.

19 Q ---the way it works?

20 Okay. Now, let me ask you, if you were on a jury in
21 that shoplifting case, would you be willing to take the law
22 from the judge in the case?

23 A Yes.

24 Q All right. Now, if, if you took that law, would you
25 then be willing to apply that law to the facts as the jury

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1 decided it going for a verdict?

2 A Yes.

3 Q I'm gonna add a little something to this to see how, to
4 see if it has an effect.

5 Now, let's say you were on that shoplifting case.
6 You're sitting in the jury box and the judge goes over the
7 law with you.

8 A Uh-huh. (Affirmative).

9 Q And as he's explaining the law about shoplifting to you
10 he tells you something that maybe doesn't agree with what
11 you thought the law was or he tells you something that you
12 just don't agree with altogether. So, you've heard
13 something that either doesn't sit well with you or sounded
14 unusual to you.

15 Are you the kind of person though who could set your
16 personal feelings aside, accept the law exactly as the judge
17 gave it to you, and use that law in deciding the case?

18 A I am.

19 Q So, you could do that?

20 A Yes.

21 Q All right. Now I'm gonna go on with some other factors
22 under the law. Tell me if you agree with this, this concept
23 of the law, that every defendant, in every case, no matter
24 what the seriousness of the crime might be, is always
25 presumed by the law to be innocent of the crime for which a

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1 charge has been brought?

2 A Yes.

3 Q You agree that they're innocent?

4 A I do.

5 Q Presumed innocent?

6 A Presumed innocent.

7 Q Now, because a defendant is presumed to be innocent of
8 the crime, and do you understand that, under the law of this
9 State, a defendant is never required to prove his innocence.
10 Innocence is presumed. So, the defendant doesn't have to
11 prove innocence.

12 Do you agree with that?

13 A Yes.

14 Q Okay. Now, because a defendant is presumed to be
15 innocent and because a defendant is not required, is not
16 made to prove his innocence, do you understand that, at a
17 criminal trial, a defendant is not required to prove
18 anything at the trial?

19 In other words, a defendant can come to his trial and
20 not say a single word if the defendant chooses to do so.
21 So, I guess, in short, a defendant has no burden of proving
22 anything in a criminal trial.

23 Do you understand that concept?

24 A I do.

25 Q Now, I'm gonna go to the other side of the coin now.

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1 On the other hand, the other party in a criminal case,
2 which is the State or the prosecuting authority, usually the
3 State of South Carolina, and the State has made an
4 allegation in the case. They allege that someone committed
5 a crime, and because the State is the party making the
6 allegations, our law says the State does have a burden of
7 proof in a criminal trial. It's their obligation to come to
8 the trial and prove guilt beyond a reasonable doubt.

9 A Correct.

10 Q Do you agree with that concept?

11 A I do.

12 Q Now, I'm gonna add a little something -- as I do, I
13 kind of add a little something to it as we go.

14 Now, if you were on that jury I told you you were on,
15 and you and your fellow jurors heard the whole shoplifting
16 case, the judge charged you on the law, you went back in the
17 jury room, did your deliberations, you and your fellow
18 jurors came to the conclusion that the State did not meet
19 its burden of proof, in other words, it did not provide
20 proof that proved the defendant guilty beyond a reasonable
21 doubt, would you have any problem, in that situation, of
22 signing a verdict of not guilty on the defendant?

23 A No.

24 Q Now, on the other side of that coin is, if you went
25 back there, you deliberated and you came to the conclusion

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1 that the State did prove the defendant guilty beyond a
2 reasonable doubt, then would you have any difficulty in
3 signing a guilty verdict against that defendant?

4 A No.

5 Q So, you could go either way?

6 A I could go either way.

7 Q Would it depend then upon the evidence presented and
8 the truth of the evidence and the law as given by the judge?

9 A Yes.

10 Q So, that's what you'd base it on?

11 A I would.

12 Q Okay. Now, I told you that I would reach the point
13 where I put the cart in front of the horse, and so here --
14 I'm, I'm to that point that I'm gonna put the cart in front
15 of the horse. In this case, I want you to imagine that
16 you've been selected to serve on a jury in a case where the
17 charge is murder, and the State has requested the death
18 penalty. So, you're on that jury.

19 A Okay.

20 Q And we have done the first part of that trial, the
21 first half of that trial, because, in a normal case, the
22 jury decides guilt or innocence and the judge does the
23 sentencing. In this case, jury decides guilt or innocence,
24 but then the jury does the sentencing.

25 Do you understand the difference?

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1 A I do.

2 Q So, you're on that case. The jury has decided the
3 defendant is guilty of murder and issued a verdict that way.
4 So, he -- the defendant is now a convicted murderer in the
5 case.

6 A Okay.

7 Q The law then provides that there will be a second
8 hearing held. That hearing is referred to as either the
9 sentencing hearing or the penalty hearing.

10 Now, the law also provides for the kinds of things that
11 can be put into evidence at that trial, and you will
12 probably, at that trial, hear from totally different
13 witnesses than you heard from in the first trial. In the
14 first trial the issue is who did what, when, and where. In
15 the second trial the issue is what's the appropriate thing
16 to do about this, what is the appropriate penalty.

17 So, you see the difference between those two hearings?

18 A I do.

19 Q Now, in the second hearing, one type of evidence that
20 the law provides for, it provides that the State can
21 introduce what are called aggravating circumstances or
22 aggravators. There's a list of those. I'm not gonna read
23 them all to you because some of them don't apply to this
24 case. Some may.

25 A Uh-huh. (Affirmative).

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1 Q But it's up to the State to prove at least one of those
2 aggravating circumstances by proof beyond a reasonable doubt
3 before a guilt, a death sentence could be issued. But at
4 any rate, you would hear evidence concerning whatever
5 aggravating circumstances the State wanted to put in, and
6 those are circumstances which might tend to make a murder,
7 which -- while a murder's not -- it's not a good thing, it's
8 a bad thing, but those factors might tend to make it even
9 worse whereby a jury might be willing to or would give
10 someone a higher level sentence because there's -- there are
11 aggravating matters.

12 Do you understand what that is?

13 A The other side of that coin is that the, that same
14 statute provides a list of mitigating circumstances.
15 There's ten of them. Some of them may or may not apply to
16 this case, and those aren't required to be proven beyond a
17 reasonable doubt. They're -- the evidence is introduced and
18 then the jury decides what weight they choose to give to
19 those things, and there's a, there's a -- like I said,
20 there's ten of those things listed, but then the law says
21 that the jury could consider anything it wants to consider
22 in mitigation, and a jury can even consider the element of
23 mercy in reaching a verdict.

24 So, those are the things that would tend to lessen the
25 severity of a murder such that someone might give a lesser

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1 penalty.

2 So, do you understand that there would be two types of
3 evidence at that trial?

4 A I do.

5 Q Okay. Now, once that evidence is introduced, then the
6 judge charges the jury to go back into the jury room and
7 consider that evidence and then make a recommendation on
8 sentencing, and there's no formula as to how that's done.
9 That's up to the jury to decide what's the appropriate thing
10 to do.

11 Now, I told you to pretend that you're on the jury that
12 is convicted this defendant of murder. You and your fellow
13 jurors are walking back down the hall. You're about to come
14 in the door of the courthouse and you're about to begin that
15 second trial. It has not started yet. It's about to start.

16 You understand where I put you?

17 A I do.

18 Q Okay. Now, back in the jury room there was a sheet of
19 paper. It has listed on it three different jurors.

20 Do you remember that sheet of paper?

21 A I do.

22 Q Did you read it?

23 A Yes.

24 Q Now, I'm gonna go back over it with you, and I'm not
25 gonna use the exact language that was on that paper, but I'm

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1 gonna do so and I'll give the -- each of those types of
2 jurors a number so you and I can talk about who we're
3 talking about.

4 The first juror on that piece of paper, as that juror
5 walked to the door of the courtroom, has already made up his
6 or her mind before that juror's heard any evidence about
7 that issue. That juror believes that, when someone is
8 convicted of a murder, no matter what the aggravating
9 circumstances are, no matter what the mitigating
10 circumstances is, that juror believes the only appropriate
11 penalty for someone convicted of murder is the death
12 penalty. So, that juror will vote, every single time, for
13 the death penalty regardless of those other factors.

14 You understand that juror?

15 A I do.

16 Q Now, the next juror, number two, that's a juror who
17 also has made up his or her mind. That juror believes that
18 it is never appropriate for the State to take anyone's life
19 in response to the commission of a crime. No matter what
20 the seriousness of it might be, no matter what the
21 aggravating circumstances might be, that juror believes that
22 the only appropriate punishment is life in prison without
23 the possibility of parole, and so that juror's gonna vote
24 that way every time without listening to the evidence in the
25 second hearing.

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1 The third juror in that line has not made up his or her
2 mind. That juror is walking into the courtroom. That juror
3 wants to hear the evidence, aggravating evidence and
4 mitigating evidence, and after hearing that evidence, wants
5 to consider it, deliberate with their fellow jurors, and
6 then come up with a decision as to appropriate punishment
7 given both the aggravating and mitigating circumstances.

8 Now, do you understand the difference between one, two,
9 and three?

10 A I do.

11 Q Now, I told you to put yourself in the position that
12 you're also about to walk back into that courtroom.

13 Now, of the three jurors I've described to you, which
14 one of them most closely resembles you coming back into the
15 courtroom?

16 A Number three.

17 Q Number three.

18 Now, ma'am, let me -- I'm gonna -- as I do, I kind of
19 develop that, that position.

20 Let me ask you, if you were on a jury, and you had
21 heard the evidence, and you and your -- both aggravating and
22 mitigating and you and your juror -- jury was back in the
23 jury room, and that jury came to the conclusion that the
24 appropriate penalty was life, life imprisonment without the
25 possibility of parole, could you then sign a sentence that

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1 would sentence someone to that punishment?

2 A I would.

3 Q Now, on the other hand of that, if you and your juror
4 -- jury determined, after all your deliberations, discussing
5 your various positions among each other, you came to the
6 conclusion that the only appropriate penalty for this
7 situation, based on that evidence, is the death penalty,
8 could you then sign that penalty?

9 A I could.

10 Q Okay. So, you would want to weigh the evidence, then
11 decide the decision based on aggravation matters and
12 mitigation matters?

13 A Exactly.

14 Q And you wouldn't want to decide one side or the other
15 unless you heard both, is that right?

16 A Not unless I heard both.

17 Q Okay now. I have signed a sequestration order in this
18 case.

19 Now, what that means is that, once a jury's picked,
20 that jury will come to the courthouse, listen to the
21 evidence, but, in the evening, that jury's gonna spend the
22 night at the hotel over here, at the Marriott. There will
23 be a group of retired SLED agents and police officers who do
24 these things around the State who will be jury sitting.
25 They'll be over there with you, and they will want to be --

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1 the purpose of that is to be sure the jury's not influenced
2 by any outside influences, that you decide the case based
3 just on what you hear in the courtroom.

4 A Exactly.

5 Q Okay. And that's the purpose of that.

6 Now, during that sequestration, you will be allowed to
7 talk to family and friends. You could still make a phone
8 call and talk to people, but there's gonna be somebody
9 monitoring that phone call cause they want to be sure that
10 someone's not getting information about the case or giving
11 information about the case. So, those would be monitored.

12 You would be paid for your time. You'd receive jury
13 pay during that period of time, but jury pay is set by
14 statute, and it's not as much as people make in their normal
15 jobs. So, I'll just tell you that's, that's what you would
16 get, and there's travel if you have to use your personal car
17 coming and going from the courthouse. But while you're
18 there, all of your meals are paid for, all your travel's
19 paid for. So, there's no expense to you for being in that
20 situation.

21 Now, do you understand how that would work?

22 A Yes.

23 Q Okay. My next question is, if you were in that
24 situation and you were sequestered, would that pose any
25 serious risk to either your health or your well being?

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1 A No.

2 Q Would it pose any, any serious risk of danger or damage
3 to anyone's health or well being who's dependent on you?

4 A No.

5 Q All right. Now, ma'am, I've completed my questions at
6 this point in time. I'm gonna allow the attorneys to ask
7 some questions of you, and then, when they finish, I'll be
8 talking with you again.

9 All right. Mr. Barnette, I believe you'll be going
10 first on this panel.

11 SOLICITOR BARNETTE: Yes, sir.

12 May it please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 EXAMINATION

15 BY SOLICITOR BARNETTE:

16 Q Morning, ma'am.

17 How are you?

18 A Good morning.

19 Q I'm Barry Barnette. This is Derrick Bulsa. We'll be
20 representing the State in the case.

21 A Nice to meet you.

22 Q Nice meeting you. I'm sorry -- we're gonna have to ask
23 you some questions. I hate to ask you those questions, but
24 the type of case it is, we need to ask you a few questions.

25 A Correct.

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1 Q One thing want -- do you -- you got six children?

2 A Yes.

3 Q It is -- can you tell me what the two youngest ones
4 are?

5 I notice they had -- you had four on there, but I
6 didn't see what the ages of the bottom two were.

7 A The -- 22 and 23.

8 Q Okay.

9 A Yeah.

10 Q So, you look a lot longer than that with kids having
11 that --

12 A I will be 50 in September.

13 Q Okay. Well, you don't, you don't look like -- you
14 don't look like you'd have that many kids and everything
15 else from there.

16 A Thank you.

17 Q Just a couple things.

18 I noticed on your sheet you had mentioned that -- make
19 sure I read it correct.

20 And you realize the judge will give you the law. It
21 doesn't really -- I mean we're gonna talk to you about it,
22 but the judge ultimately is the one who determines the law
23 in this case from there.

24 A Right.

25 Q That will be given to you from there.

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1 A Yes.

2 Q But I notice you said the defense has to prove their
3 client is not guilty of the charges on it. I just want to
4 make sure you understand. They don't have any burden of
5 proof. The burden is actually on us. We have to prove it.

6 A That's correct.

7 Q And it may of been a misunderstanding. I just wanted
8 to make sure --

9 A Yes. Correct.

10 Q -- from there.

11 And like the judge says, we'll go through two phases.
12 we'll have the guilt phase which is -- it decides if the
13 defendant's guilty or not guilty of the murder charges, and
14 there's actually two charges. There's a murder charge and a
15 kidnapping charge involved with it, and after that, if, if a
16 guilty verdict's returned on the murder case, then we go to
17 the second phase.

18 In the second phase we have what we call aggravating
19 circumstances, like the judge says, and mitigating, and
20 there's ten of them. And I don't have them memorized. I
21 hate -- on the mitigating side -- and the judge can read
22 them to you if you need them. There's a lot of them from
23 there. And there is two aggravators in this case.

24 To let you know, one of the aggravators is the death of
25 a young child in this situation, and the mitigator -- if you

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1 need -- the judge can read them to you. I know it's
2 background, mental retardation, things -- I might ask him to
3 read them to you just to make sure that you understand. The
4 two aggravators---

5 THE COURT: I'll be glad to go over them with her.

6 SOLICITOR BARNETTE: Yes, sir.

7 THE COURT: Just give me one second.

8 SOLICITOR BARNETTE: Yes, sir.

9 THE COURT: Ma'am, these are the mitigators that are
10 contained in the statute, but there are -- the jury can
11 consider, consider anything in considering it to be a
12 mitigating factor in the case. These are the ones that are
13 listed in the statute. Again, some of which may or may not
14 apply in this situation.

15 Number one. The defendant has no significant history
16 of prior criminal conviction involving the use of violence
17 against another person.

18 Number two. The murder was committed while the
19 defendant was under the influence of mental or emotional
20 disturbance.

21 Number three. The victim was a participant in the
22 defendant's conduct or consented in the act.

23 Number four. The defendant was an accomplice in a
24 murder committed by another person and his participation was
25 entirely -- was relatively minor.

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1 Number five. The defendant acted under duress under --
2 or under the domination of another person.

3 Number six. The capacity of the defendant to
4 appreciate the criminality of his conduct or conform his
5 conduct to the requirements of law was substantially
6 impaired.

7 Number seven. The age or mentality of the defendant at
8 the time of the crime.

9 Number eight. The defendant was provoked by the victim
10 into committing the murder.

11 Number nine. The defendant was below the age of 18 at
12 the time of the crime.

13 Number ten. The defendant had mental retardation at
14 the time of the crime, and mental retardation means a
15 significant subaverage general intellectual functioning
16 existing concurrently with deficits in adaptive behavior and
17 manifested during the developmental period.

18 Now, those are the ones that are listed in the statute.
19 Again, a jury can consider other factors in mitigation if it
20 wishes to do so, and can consider the issue of mercy or the
21 question of mercy, and, again, some of those may or may not
22 apply. That's just what's in the statute.

23 You understand that?

24 THE WITNESS: Yeah, I do.

25 THE COURT: So, those are the kinds of things we're

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1 talking about when we say mitigators.

2 okay?

3 THE WITNESS: Okay.

4 SOLICITOR BARNETTE: Thank you, Your Honor, for reading
5 those.

6 THE COURT: Yes, sir.

7 Q And we have two aggravators, aggravators of the death
8 of a young child under, under the under age of 11 as well as
9 kidnapping is the two aggravators, and we'd have to prove
10 one of those to your satisfaction beyond a reasonable doubt.
11 We don't have to prove both of them. We can prove both of
12 them. We have to prove one of them. If we prove one of
13 them, then obviously they can be considered for the death
14 penalty at that point.

15 We go first in the sentencing phase just like we do in
16 the trial, in the regular trial, and then we'd present
17 our -- the reason why we think aggravators should be proven,
18 why he should be put to death in that situation.

19 Then the defense would get a chance to put up their
20 mitigation evidence like what the judge talked about. They
21 go, go and present all the evidence that they have.

22 Are you type of juror that would not automatically vote
23 one way or the other until you heard all that evidence from
24 both sides?

25 A I would like to hear both sides of the evidence.

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1 Q Yes, ma'am.

2 You can give me -- consideration to the State's
3 evidence as well as the defense's evidence?

4 A Yes.

5 Q And just because the aggravators are what they are, you
6 wouldn't automatically give death or life?

7 You'd wait until you hear from both sides from---

8 A Correct.

9 Q And you'd want to hear from both sides?

10 A I would want to hear both, both sides.

11 Q And once you heard from both sides, then you could
12 determine the appropriate sentence that you would think is
13 appropriate?

14 A Correct.

15 Q And you realize all 12 of you would have to agree on a
16 death verdict---

17 A Yes.

18 Q ---in that situation?

19 And, for example, if one of them -- if, if they can not
20 reach a verdict, then the judge would have to take over
21 sentencing and then he would impose life without parole.
22 The only people that can do the death penalty is the jury
23 themselves.

24 A Correct.

25 Q You understand that?

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1 A I do.

2 Q Okay. From there.

3 And if you felt like a death sentence was appropriate
4 in this case after you heard from everything, everybody,
5 could you sign your name to a, to the death sentence?

6 A I could.

7 Q Okay. At the same time, if you heard the evidence and
8 decided that, that basically that the life sentence was
9 appropriate, life without parole, which means he'll never
10 get out, life without parole, do you think you could do that
11 also?

12 A I could.

13 Q So, you're the type of juror, like the judge asked you,
14 that could listen to everything?

15 A Yes.

16 Q And you'd make a decision based off that?

17 A Yes.

18 Q You wouldn't be automatic one way or the other till you
19 heard it?

20 A No.

21 SOLICITOR BARNETTE: One moment, Your Honor, please.

22 THE COURT: Yes, sir.

23 (Pause.)

24 SOLICITOR BARNETTE: Thank you, ma'am, for answering my
25 questions. I apologize for asking.

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1 THE WITNESS: You're fine. Thank you.

2 SOLICITOR BARNETTE: Thank you.

3 THE COURT: Mr. Allen.

4 MR. ALLEN: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 EXAMINATION

7 BY MR. ALLEN:

8 Q Good afternoon, Ms. Trejo.

9 A Good, good afternoon.

10 Q I'm Clay Allen. I'm one of the attorneys representing
11 Ricky Blackwell in this case and I just have a few
12 questions. I think a lot of my questions, I hope, have been
13 asked by now.

14 A Yes.

15 Q In a situation that, that we're talking about, we're
16 talking about murder, which is the unlawful killing of
17 another person with malice aforethought.

18 You understand?

19 A I do.

20 Q Malice being generally a hatred or ill will or
21 hostility towards another.

22 A I do.

23 Q The intentional doing of a wrongful act without just
24 cause or excuse --

25 A I do.

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1 Q -- or with intent -- and with the intent to inflict
2 injury or under circumstances where the law would infer an
3 evil intent.

4 You follow what I'm saying?

5 A I do.

6 Q Okay. Now, knowing and understanding, as it's been
7 explained, that you will also hear aggravating circumstances
8 as well as mitigating circumstances, can you tell me what
9 your views on the death penalty are in this situation?

10 A I -- the death penalty is something that I would have
11 to consider after hearing everything, both sides of the
12 story. Death penalties should only be given if it's
13 necessary, if, if everything has been proven against that
14 person.

15 Q Okay. Now, of course, you understand that, even if
16 everything is proven, you know, even if the State proves an
17 aggravating -- the aggravating factors that they talked
18 about --

19 A Correct.

20 Q -- and even if it's -- of course, it's proven that the
21 individual's guilty of murder, you understand that no one is
22 required to vote for the death penalty?

23 A I do.

24 Q Okay. That -- and you understand that, when we talk
25 about mitigating circumstances as the judge has explained to

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1 you, and we're sort of going over generally, mitigating
2 circumstance is not really a defense to the actual crime of
3 murder.

4 You understand that?

5 A I do.

6 Q Okay. But it's something that can be, can be
7 considered by the jurors as a reason not to impose the death
8 penalty?

9 A Correct.

10 Q Can you tell me what are your thoughts on a sentence of
11 life in prison without the possibility of parole as an
12 appropriate punishment in the situation we're talking about.

13 A After hearing from both sides, I would have, I would
14 consider -- I would talk with my fellow jurors and---

15 Q Uh-huh. (Affirmative).

16 A ---and we all should decide. Not just one person. It
17 should be a whole group thing, and if, if circumstances do
18 come down to where you just have to if -- decide either
19 maybe life in prison with, without parole might be the
20 most -- the best or I'm just, you know, I'd like to hear
21 both sides before I decide.

22 Q Okay. Now, you understand, and I think Mr. Barnette
23 touched on it a little bit, that when we get to the -- what
24 we call the second phase of the trial, the penalty phase --

25 A Correct.

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1 Q -- that, of course, jurors are expected to deliberate
2 and discuss among themselves---

3 A Correct.

4 Q ---everything that they've heard and whatnot?
5 You understand that?

6 A I do.

7 Q And, of course, it's required that the jurors must
8 unanimously, un -- I have trouble with that one word. All
9 12 jurors must agree as to whether or not an aggravating
10 circumstance has been proven.

11 You understand that?

12 A I do.

13 Q But you understand that, in discussing and weighing and
14 determining mitigating circumstances, that the jury does --
15 all 12 jurors do not have to agree on any particular
16 mitigating circumstance.

17 You understand that?

18 A I do.

19 Q For example, one juror may hear something, might be
20 something in the background of the defendant that resonates
21 with them, and they may choose to vote life for that
22 particular situation.

23 You follow me?

24 A I do.

25 Q And yet another juror may have heard something else.

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1 Maybe the way he relates to another individual child,
2 grandchild, or something like that.

3 A Uh-huh. (Affirmative).

4 Q And that may resonate with them and they may say well,
5 you know, I find that mitigating and I want to vote for life
6 for that particular reason.

7 You follow what I'm saying --

8 A I do.

9 Q -- even though none of the others---

10 A Correct.

11 Q ---feel that way?

12 And then there's maybe another juror who may say, well,
13 now, wait a minute, the judge said we can vote for life
14 imprisonment for any reason, no reason, or for mercy alone.
15 while I can't explain it, I want to vote for life in prison.

16 Do you follow what I'm saying?

17 A I do.

18 Q Okay. And, and can, can you respect other juror's
19 positions?

20 A I do.

21 Q Okay. And even though the jurors are expected to
22 deliberate and discuss it and it comes down to that when a
23 juror has made up or has come to their own individual moral
24 judgment as to what's right in this case --

25 A Uh-huh. (Affirmative).

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1 Q -- no juror's asked to harm their conscience and
2 abandon an individual moral judgment after they've
3 considered everything.

4 You follow what I'm saying?

5 A I do.

6 Q And in that situation, unanimity is not required as the
7 solicitor -- you follow what I'm saying?

8 A I do.

9 Q Okay. And as the solicitor mentioned, if the jurors
10 could not determine, could not agree on one punishment or
11 the other, in this situation that would be brought back to
12 the Court, and then the judge would take it and impose life
13 without parole.

14 You follow what I'm saying?

15 A I do.

16 Q Okay. During the course of jury deliberation, if you
17 find or if you think that, that maybe one juror is bullying
18 another juror to either change what that juror has arrived
19 at, their individual moral judgment, would you be able to
20 stop it or bring it to the Court's attention?

21 A I would --

22 Q Okay.

23 A -- bring it to the Court's attention.

24 Q Yes.

25 Okay. We don't want you to harm, get harmed in

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1 stopping anything, but you could bring it to the Court's
2 attention that civility has left the jury room and we need
3 help.

4 A I would.

5 Q Okay. Thank you.

6 If the Court please?

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. ALLEN: Don't have any other questions.

10 Thank you.

11 THE WITNESS: Thank you.

12 SOLICITOR BARNETTE: Just one question, Your Honor,
13 just to follow up from Mr. Allen.

14 THE COURT: Yes, sir.

15 EXAMINATION

16 BY MR. ALLEN:

17 Q And like I say, ma'am, please remember how the judge
18 instructs you if you get to that point from there, but you
19 could find aggravating circumstances and mitigating
20 circumstances and still give the death penalty.

21 Do you understand that?

22 A I do.

23 Q Okay. Thank you, ma'am.

24 THE COURT: Ms. Trejo, I'm gonna ask you to step back
25 into the jury room for just a moment and then I'll call you

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1 back out.

2 okay?

3 THE WITNESS: Okay.

4 THE COURT: Thank you for your cooperation, ma'am.

5 THE WITNESS: You welcome.

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

8 THE COURT: Defense position.

9 MR. ALLEN: I believe she's qualified.

10 THE COURT: State.

11 SOLICITOR BARNETTE: Agree, Your Honor.

12 THE COURT: All right. Bring Ms. Trejo back in the
13 courtroom please.

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

16 THE COURT: It didn't take long, did it, ma'am?

17 THE WITNESS: It didn't.

18 THE COURT: All right. Ma'am, I'm gonna find that you
19 are qualified to continue in our process. That doesn't mean
20 you're on the jury. That means you're in the pool from
21 which the jury could be picked. I expect our process to
22 take probably through Monday. Probably sometime on Tuesday
23 you'll be hearing from the Clerk's Office concerning what
24 you do next in the case.

25 Now, until that time, my instructions concerning your

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1 behavior will continue. You should not listen to, read, or
2 watch any media reports about this case. Don't try to
3 gather any information on your own. Don't discuss it with
4 anyone. Don't allow anyone to discuss it with you.

5 Do you understand those instructions?

6 THE WITNESS: I understand.

7 THE COURT: Can you follow those instructions?

8 THE WITNESS: Yeah, I can.

9 THE COURT: Ms. Camp is gonna give you a sheet of
10 paper. I told you that the jury will be sequestered if
11 you're selected. Those are some things you might want to
12 think about as far as bringing items with you so that you
13 can stay a little over a week is what I'm estimating.

14 There's a laundry in the hotel. You can get things
15 washed if you need to. But that, that will give you an idea
16 of things to bring---

17 THE WITNESS: Okay.

18 THE COURT: ---if you're called back. You'll get some
19 instructions from the Clerk's Office.

20 THE WITNESS: Okay.

21 THE COURT: I -- one exception to my rule about not
22 talking about the case. If you need to mention to your
23 family or an employer or someone like that, that if you're
24 called back to jury duty, you'll go missing for a few days.
25 You'll be gone for a few days. So, whatever arrangements

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1 you need to make with them, let them know. Do that without
2 talking about this case though.

3 THE WITNESS: No problem.

4 THE COURT: If anyone tries to engage you in a
5 discussion about this case, you know the answer, can't talk
6 about it. The judge told me not to.

7 THE WITNESS: No speaking of the case.

8 THE COURT: All right. So, you understand the rules?

9 THE WITNESS: I do.

10 THE COURT: Okay. Well, I want to thank you for coming
11 in on a Saturday and helping us today. The bailiff will
12 check you out at this time and we'll be in touch with you
13 when we're ready to proceed.

14 THE WITNESS: Okay.

15 THE COURT: Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: Yes, ma'am.

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

20 THE COURT: All right. We're gonna be in recess until
21 two o'clock.

22 Thank you very much.

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

24 THE COURT: All right. The next juror on our list is
25 Keith Sanders.

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1 See about Mr. Sanders for me.

2 THE BAILIFF: Yes, sir.

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

5 KEITH SANDERS, having been previously
6 sworn, testified as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q Have a seat please, sir.

10 A (Witness complies.)

11 Q All right. Your name I believe is Keith Sanders---

12 A That's correct.

13 Q ---is that right?

14 Okay. Mr. Sanders, first of all, I want to thank you
15 for your cooperation with us today. I know we've had you in
16 and out a little bit today, and you kind of fell at the
17 crack at lunch and I'm sorry about that. But I do thank you
18 for your cooperation with us thus far.

19 I'm gonna be talking with you first. So, you may want
20 to move your seat back---

21 A All right.

22 Q ---a little bit. This wasn't really designed for this
23 type of thing, but we make it work.

24 I'm going to be going over some things with you, asking
25 you some questions, and I want to tell you there are no

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1 right or wrong answers to what I'm going to ask you.
2 There's only your honest responses is all we're looking for.

3 You understand that, sir?

4 A Yes, sir.

5 Q In that regard, you were sworn to tell the truth on
6 Monday to the Court. That oath still applies to your
7 discussions today.

8 You acknowledge that?

9 A Yes, sir.

10 Q And, on Monday, I gave you instructions, along with the
11 other jurors, as to how to behave in relationship to this
12 Court -- this case. You were instructed not to try to do
13 independent research or gather information on your own, not
14 to talk it over with anybody, or allow anyone to discuss it
15 with you, not to watch, listen, or read media reports and to
16 report anyone who might contact you about the case.

17 Do you remember those instructions?

18 A Yes, I do.

19 Q Have you been able to comply with those instructions
20 since Monday?

21 A I have.

22 Q Okay. Now, as I told you, we're going to go over some
23 questions with you. I'll do that at this time. If, at
24 anytime you feel uncomfortable -- sometimes that's the hot
25 seat in my courtroom because that's the witness stand. But

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1 I can assure you you'll be treated with respect today. It's
2 just a question of going over some things with you.

3 What we're doing is we're in the process of, of
4 completing the jury pool from which a jury will be drawn.
5 So, if you were still in the pool, you still are not on the
6 jury yet. It's still a process of selection from there.

7 Do you understand what we're doing today?

8 A Yes, I do.

9 Q So, this is our chance to talk to you individually.
10 okay?

11 A (Witness nods affirmatively.)

12 Q And the law allows that in this type of case.

13 The first question I have for you, have you ever
14 participated in or responded to any type of group
15 discussion, blog, Internet chat room, anything of that
16 nature where the subject of those discussions would of been
17 the death penalty?

18 A No, I have not.

19 Q Have you ever participated in any political activity in
20 regard to that subject?

21 A No, sir.

22 Q Now, are you the type of juror who could put aside
23 anything that you may of heard or seen previously if you
24 were on a jury and be able to decide a case that was in
25 front of you on a jury based upon the law and the evidence

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1 that you hear in the courtroom during the trial?

2 A Yes, sir.

3 Q Now, while you were coming in, there should of been a
4 list of individuals, three pages, names on it.

5 A Yes.

6 Q Did you go over that list?

7 A Yes, I did.

8 Q As to those individuals, as you read the list, was
9 there anyone on there that you recognized that you may have
10 been ever related to by marriage or related by blood or was
11 there anyone on there that you ever had a social, personal,
12 or business relationship with?

13 A There was no one on the list that I saw.

14 Q So, you didn't recognize any of those names?

15 A No, sir.

16 Q So if those people were to be witnesses in the case,
17 then I take it that would not affect your ability to be fair
18 and impartial to both sides?

19 A That's correct.

20 Q Okay. Now, I'm going to be getting into some more
21 questions in just a minute. Some of them will be concerning
22 your beliefs or opinions on things. You seem to be a, a
23 mature enough adult that it will not bother you at all that
24 I ask you about those things.

25 Am I correct about that?

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1 A That's correct.

2 Q Okay. Some people get upset when you start asking
3 their opinions of things. I just want to be sure you'll be
4 comfortable with that.

5 A Some will question it.

6 Q That's right. Everyone is different.

7 Now, I touched on this on Monday, on Monday, but I want
8 to be sure that we have an understanding about one concept
9 that I think's very important in this case.

10 Usually, in a case, criminal case, the jury is the
11 determiner of the facts. They're the judge of the facts is
12 what we refer to. In other words, the jury decides who did
13 what, when, where, how, who's telling the truth, who's not
14 telling the truth. So, the jury judges the facts that are
15 presented, and the judge is the giver of the law. In other
16 words, the judge gives the jury the law, instructs them on
17 the law, and then the jury applies the law to the, to the
18 facts as they determine them in reaching a verdict.

19 You understand that concept of how that works in our
20 system?

21 A Yes, I do.

22 Q Okay. Now, I want to point out one thing to you.

23 This case is different because our statutes provide
24 that, in the situation where the State is alleging a murder,
25 and the State is seeking the possible penalty of death,

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1 that, in that situation, the trial would be bifurcated,
2 which means divided into two parts.

3 A Right.

4 Q The first part, the only subject of that trial is the
5 guilt or innocence of the defendant of the charges, and
6 that's conducted like any other trial. Again, the jury
7 determines the facts, the judge gives the law, the jury
8 renders a verdict, renders a verdict as to the charges that
9 are before the Court.

10 Now, if the defendant is acquitted on those charges,
11 especially on the charge of murder, there is no need then
12 for any type of penalty hearings because that's the end of
13 the case. Of course, if the defendant is convicted of
14 murder, then we would move on to that second hearing using
15 the same jury, however. That poses a little bit of a
16 dilemma for us because that means if we're going to discuss
17 matters that could come up in the entire trial, we
18 necessarily, before we actually select the jury and begin
19 the trial, have to discuss that penalty phase of the
20 hearing, and, of course, the defendant has -- is presumed to
21 be innocent. He's never been proven to be guilty.

22 So, when we talk about that penalty phase of the
23 hearing, I want you to understand that should not be a
24 reflection upon the defendant or his case. It's simply the
25 only time that we can talk to prospective jurors about those

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1 issues since, if you're selected, you serve on the entire
2 case.

3 Do you understand that concept and what I'm saying?

4 A Yes, I do.

5 Q Okay. Can you -- you under -- you're okay with that I
6 suppose?

7 A Yes.

8 Q Okay. All right. Now, I'm going to talk about some
9 general principles about criminal cases. Some of them are
10 extremely basic, and then I'll kind of add some twist to it,
11 and we'll build up as we move on.

12 I want you to, to imagine that you're a juror on a
13 criminal case, not this one. I've been using, as an
14 example, a, a case where someone's accused of shoplifting.
15 So, you're on a jury. The case, the case before you is a
16 shoplifting case. It's a criminal case.

17 I want, I want to ask you, if, if you were a juror on
18 such a case, would you be willing to accept the law as given
19 to you by the judge?

20 A Yes, sir.

21 Q Would you be willing to use that law and apply it to
22 the facts as the jury determines those facts in attempting
23 to reach a verdict in the case?

24 A Yes, sir.

25 Q Now, let me add a little twist to that.

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1 Let's say that you're in the jury box, the judge is in
2 the process of charging you the law of shoplifting. And as
3 you're listening to the judge give that law, he goes over
4 something that you -- either you didn't believe the law was
5 that way or you thought it was somehow different or you
6 didn't agree with what he said about the law. You thought
7 that, you thought the law ought to be different. It ought
8 to be changed. Some -- you know, the Legislature should do
9 something about that.

10 All right. So you've heard that. You've heard
11 something that somehow doesn't sit well with you.

12 Would you be the kind of person, however, that could
13 set aside your personal beliefs or personal feelings and
14 accept the law as given to you by the judge and then apply
15 it to the facts?

16 A Yes, sir.

17 Q Okay. Now, I'm gonna go over some other basic criminal
18 law, but it's something that I want to be sure we have an
19 understanding about.

20 Do you agree with the principle under our jurisprudence
21 that says that all persons who are charged with the
22 commission of a crime are presumed to be innocent of that
23 crime until proven guilty?

24 A Definitely.

25 Q You agree with that.

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1 All right. Now, the next step is do you also agree
2 with the premise, since a defendant is presumed to be
3 innocent, that the defendant is never required to prove
4 himself innocent of a crime---

5 A Yes, I agree.

6 Q ---cause he's presumed to be innocent?

7 Now, the next step is do you understand then that, at a
8 criminal trial, since the defendant is presumed to be
9 innocent and is not required to prove his innocence, that
10 the defendant has no burden of proof in a criminal trial.
11 In other words, the defendant is not required to prove
12 anything in a criminal case. In fact, can remain silent if
13 he chooses to.

14 Do you agree with that premise?

15 A Yeah, definitely.

16 Q Now, on the other hand, the State is the entity that is
17 brought charges in this shoplifting case. Therefore, they
18 do have a burden of proof. That burden of proof is to prove
19 the allegations in the indictment by proof beyond a
20 reasonable doubt.

21 Now, do you understand that the State has that burden
22 of proof in criminal cases?

23 A Yes, sir.

24 Q Now, if you were on a jury, the one in shoplifting, you
25 hear the whole case, the judge charges you on the law, you

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1 go back to your deliberations, you and the jury determine
2 that the State did not present enough proof to reach the
3 level of proof beyond a reasonable doubt, would you have any
4 difficulty in signing a verdict of not guilty for that
5 defendant?

6 A Not at all.

7 Q And, on the other hand, if you found that the State had
8 proved its case beyond a reasonable doubt, do you have any
9 problem, problem in signing a verdict against a defendant of
10 guilty?

11 A I do not think I have a problem with that.

12 Q So, I think what you're telling me is you would like to
13 listen to the evidence, weigh that evidence, determine its
14 truthfulness, and based on the evidence and the law given to
15 you by the judge, you would try to reach an appropriate
16 verdict, either guilty or not guilty, is that correct?

17 A That is correct.

18 Q Okay. Now, do, do you also agree with the premise
19 that, just because someone has been arrested, and charged,
20 and/or indicted of a crime, does not necessarily mean that
21 they are guilty of that crime?

22 You agree with that, sir?

23 A I'd agree with that statement.

24 Q All right. Now, I tell people that we get to the point
25 where I have to put the cart in front of the horse and I've

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1 reached the point where I have to do that, and I'll explain
2 to you what I mean by that.

3 I'm gonna start off by asking you to imagine that
4 you've been selected as a juror in a case in which the State
5 is alleging a murder and is seeking the death penalty.

6 Okay. And, in that case, you and your fellow jurors
7 have been impaneled. The State has conducted that first
8 hearing, the one that's concerning guilt or innocence, and
9 based upon the evidence and the law charged to you, you and
10 your fellow jurors have deliberated. You've determined that
11 the State met its burden of proof and you have found the
12 defendant guilty of the murder.

13 So, you understand the stage of the trial that we're
14 in?

15 A Yes, sir.

16 Q The defendant has now been convicted of murder in this
17 case. The law then requires that a second hearing be held
18 using the same jury, as I told you, and that same jury then
19 is going to determine the appropriate penalty involved.

20 Now, there's a statute that sets up those hearings. It
21 describes the kind of evidence that the Court can accept
22 in -- during that hearing, and I will tell you that the
23 witnesses at that hearing will probably be different
24 witnesses than the ones that testified in the guilt phase
25 because the issues are different. The first case is whether

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1 or not the defendant is guilty of the crime. The second
2 phase is the issue of what is the appropriate penalty to be
3 given.

4 You understand the difference between the two hearings?

5 A Yes, I do.

6 Q All right. The statute that sets up that second
7 hearing provides that evidence can be admitted on what are
8 called aggravating circumstances or aggravating factors. In
9 fact, the law states that, before the death penalty can be
10 sought, the State must prove at least one of the statutorily
11 listed aggravating factors by proof beyond a reasonable
12 doubt before that penalty could be given.

13 So, at least one of those factors, before the penalty
14 is given, would have to be proven beyond a reasonable doubt,
15 but there's a list of things that, that would serve as
16 statutorily aggravating circumstances. I'm not gonna read
17 that list to you at this time, but it is a list of several
18 different factors and those are all factors which would tend
19 to make a juror, while the crime of murder is a bad thing,
20 might make a jury look at it as a more even worse thing such
21 that it would deserve a higher level of penalty such as the
22 death penalty. So, those are aggravating factors.

23 The statute also provides a list of ten factors that it
24 calls mitigating factors. These are factors that, that a
25 defendant can place into the record, and they don't apply to

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1 every case, but they may apply to every case. But those
2 factors are factors that a jury can consider in reaching a
3 verdict as to the appropriate penalty, and those are things
4 that might tend, while a murder, again, is a bad thing, may
5 tend to lessen the culpability or lessen the level of
6 penalty one would want to give for that crime, and perhaps
7 make a jury move toward the lower penalty. And, again, the
8 penalties are life in prison without the possibility of
9 parole. That's means you go to jail and stay there till you
10 pass away and/or the death penalty. So, those are the
11 choices at that point in time.

12 Now, those -- and I will tell you that while there is a
13 list of mitigating factors, the law also recognizes that any
14 jury or juror can consider any factor that they feel is in
15 mitigation. They're not limited to just what's on that
16 list, and it states even that jurors have the right to
17 consider the element of mercy in, in a case. So, even while
18 that's not in the statute, jurors can consider that.

19 So, do you understand what I mean by aggravating
20 circumstances and mitigating circumstances?

21 A Yes, I do.

22 Q Okay. Now, the statute goes on to say that the judge,
23 once the evidence is in, will instruct the jury to consider
24 both aggravating and mitigating circumstances in reaching a
25 verdict as to the appropriate penalty that the jury wants to

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1 recommend.

2 Now, I asked you to imagine that you were on the jury
3 in that case. You've completed the first part of the trial.
4 A guilty verdict's been rendered on murder. You and your
5 fellow jurors are walking down the hall, you're getting
6 ready to walk into the door to go into the courtroom to
7 start the second phase of the trial.

8 Do you now understand where I've asked you to put
9 yourself?

10 A Uh-huh. (Affirmative).

11 Q All right. Now, back in the jury room there was a
12 sheet of paper. On there there was described three
13 different jurors. I'm gonna go over those with you and I'll
14 assign a number to each one of them as we go through that.

15 The first juror that was described on that paper, as he
16 walks down the hall towards the courtroom, has already made
17 up his or her mind. They hadn't heard any evidence in the,
18 in the penalty phase, but that juror believes that anytime
19 someone is committing -- convicted of the intentional
20 killing of someone else without legal justification, anytime
21 that occurs, that the only appropriate penalty is death.
22 So, that juror has already decided, since the gentleman's
23 guilty of murder, that the only appropriate penalty is the
24 death penalty. That's juror number one.

25 Juror number two, walking into that courtroom, has also

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1 already made up his or her mind. That juror believes that
2 it's never appropriate for the State to take a life in
3 response to the commission of a crime. And so, therefore,
4 no matter what the aggravating circumstances are, no matter
5 what the mitigating circumstances are, that juror will
6 always vote for life in prison without the possibility of
7 parole every time.

8 The third juror I described is one who's getting ready
9 to walk into the door and that juror hasn't made up his or
10 her mind at that point in time. That juror wants to listen
11 to the aggravation, the aggravating circumstances, and they
12 want to listen to the mitigating circumstances, and they
13 want to consider all the other factors I've mentioned, and
14 listen to the evidence and then listen to the judge's charge
15 on the law, and only then go back into the jury room, in, in
16 deliberation with their fellow jurors, reach a conclusion as
17 to what they think might be the appropriate penalty.

18 Now, do you understand the three jurors I've described?

19 A Yes, I do.

20 Q One, two, and three.

21 Now I've asked you to imagine you're about to walk into
22 the courtroom too, and I'm gonna ask you which one of those
23 three jurors most closely would resemble you walking into
24 the courtroom?

25 A I, I believe I would be juror number three.

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1 Q All right.

2 A I think that the, the duty part of jury duty is to
3 follow the law and apply it---

4 Q I see.

5 A ---as instructed.

6 Q well, then let me just follow-up on that with just a,
7 just a couple of questions.

8 That means, to me, that you would want to listen to
9 both, both evidence, both aggravation and mitigation, you'd
10 want to listen to the law given by the judge on the subject,
11 and then you'd want to deliberate and try to reach a
12 decision as to the proper penalty.

13 If you got in that situation, and you and your fellow
14 jurors determined that the appropriate penalty was life in
15 prison without the possibility of parole, would you have any
16 difficulty in signing that type of a verdict?

17 A No, I would not.

18 Q Now, if, on the other hand, you and your fellow jurors
19 unanimously agreed that the appropriate penalty is death,
20 could you sign a verdict for death on a person?

21 A It's a---

22 Q It's not an easy question.

23 A well, obviously it's a very serious question.

24 Q Yes, it is.

25 A And so---

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1 Q But could you sign that?

2 A I believe I can, yes, I could do that---

3 Q You could do that?

4 A ---if that situation called for it.

5 Q All right. Now, I've got just a couple of things to go
6 over with you and then I'm gonna let the attorneys talk to
7 you.

8 I have signed a sequestration order in the case. That
9 means that, if the jury's impaneled, once they're impaneled,
10 they'll come to the courtroom and hear the facts, hear the
11 evidence, but, in the evening, they're going to go with a
12 group of people that will be with them to the Marriott and
13 spend the night. During that period of time, the jury will
14 have -- all their meals will be provided. Travel will be
15 provided. Obviously lodging will be provided. So, they'll
16 be no expense to the jurors during that period of time.
17 Each juror will receive their statutorily allowed jury pay,
18 but it's not nearly what anybody makes in the real world,
19 but it is jury pay, and you would receive travel to and from
20 the courthouse for your personal vehicle when you came and
21 went from the courthouse.

22 A Uh-huh. (Affirmative).

23 Q Now, I expect the length of this trial to be a little
24 over a week in length, and I'll tell you, once we start a
25 case such as this, we go seven days a week until we're

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1 finished. That's so we'll take as little time as possible
2 out of peoples' lives, and, and, of course, it allows us --
3 but we want to go however long it takes to try the case and
4 do it properly, but we do go until we're finished.

5 Do you understand that?

6 A Yes, sir.

7 Q Now, my question to you about sequestration is if you
8 were in that situation, would that pose any type of serious
9 risk to your safety or your well being?

10 A No, it would not.

11 Q would it pose any kind of serious risk to the safety or
12 well being of anyone who's dependent upon you?

13 A No.

14 Q All right. Now, I've completed my questioning. I'm
15 gonna allow the attorneys to ask some questions and I may
16 follow up on some of their questions when I finish. So, at
17 this time we'll proceed.

18 Mr. Barnette, are you gonna do that?

19 SOLICITOR BARNETTE: Yes, sir, I am.

20 THE COURT: You may proceed.

21 SOLICITOR BARNETTE: May it please the Court?

22 THE COURT: Yes, sir.

23 EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Good afternoon, Mr. Sanders.

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1 We're gonna ask you some questions and I apologize
2 ahead of time cause, like I said, I know this is a tough
3 subject to talk about. Like I said, you was just talking
4 with the judge there. But let me just ask you a few
5 questions there.

6 Do you work for Fluor Daniel?

7 A Yes, I do.

8 Q Okay. What's your position there, sir?

9 A I work in the IT department.

10 Q Okay. With computers---

11 A Yes.

12 Q ---and help with all that?

13 I got you on that.

14 And before this, did you live in Texas --

15 A I did.

16 Q -- is that right?

17 Where at, in Houston?

18 A In the Houston area.

19 Q Okay. I got you on that.

20 And one thing I was gonna check too, was your father a
21 pastor?

22 A Yes, he was.

23 Q Which church was that?

24 A He was a pastor of a Pentecostal Church in Alabama.

25 Q In Alabama.

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1 Okay. Got that. And I guess that comes to the
2 question, when you was answering questions from the judge or
3 whatever, what's your opinion about the death penalty or
4 does it come from your religious beliefs, your personal
5 beliefs, personal beliefs?

6 A At one point in my life I would say that -- I would of
7 said that the death penalty was too harsh. But I have seen
8 some cases, you know, where it's like okay, there are
9 circumstances where a person can commit a crime and there
10 are circumstances involved with that crime where they
11 basically forfeit their right to, you know, right to life
12 basically.

13 Q Uh-huh. (Affirmative).

14 A So, I do realize that, under the law, there are those
15 circumstances that do arise, and -- but you can forfeit your
16 life as a result --

17 Q Okay. And is it---

18 A -- of those circumstances.

19 Q And has this came from your past experiences or what
20 you've seen or heard and things like that?

21 A Yeah, it's just kind of over time, you know, you think
22 about it, you know, occasionally it will come up and, you
23 know, you'll see something on TV or something, and, you
24 know, give you a time to ponder on that. You hope you never
25 are on a trial where that's the case, but---

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1 Q I understand.

2 A ---when you actually have to make that decision---

3 Q Yes, sir.

4 A ---it's something you take very seriously. It's not --
5 you don't enter into it lightly.

6 Q No.

7 A But even the guilt or innocence is, is, you know, it's
8 a serious matter.

9 Q And I can appreciate that cause it is very serious. I
10 understand that.

11 And the reason why we're asking you these questions to
12 see -- obviously we'd like to know your opinion, but, at the
13 same time, to see -- obviously we don't want a juror that
14 will automatically give death or automatically give life.
15 We want somebody that can listen hear -- and hear both sides
16 and make it and it's a tough decision. And the thing is I
17 just want to make sure it's nothing in -- the Pentecostal
18 Church, does it -- does it have a position on the death
19 penalty?

20 A You know, I don't know that they do. It's generally a
21 conservative organization.

22 Q Uh-huh. (Affirmative).

23 And I didn't know.

24 A So---

25 Q I know some churches do, some don't, and, like I say,

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1 I'm not as familiar with Pentecostal. I know the church. I
2 know there's folks that belong to it, but I'm not as
3 familiar with maybe some other groups.

4 A And it may even vary between churches as far as, you
5 know, it's not something that's preached or taught --

6 Q Uh-huh. (Affirmative).

7 A -- as, as a particular position on the death penalty.

8 Q I got you.

9 You belong to the one in Spartanburg I think --

10 A Yes, I do.

11 Q -- on that?

12 Okay. And like the judge told you, I'm not gonna go
13 through all of them with you, but they're several mitigators
14 and the judge will be glad to give those to you if you want
15 to hear that. There's gonna be two aggravators that we're
16 gonna present, and what it is, you -- and I'm assuming we're
17 going through the guilt and innocence part of it. We're
18 just fast forwarding to the second part of the trial cause
19 you still have to hear the first part where you still have
20 to prove the innocence or the guilt -- I mean prove the
21 guilt or the innocence.

22 Let me rephrase that. That's a bad term the way I used
23 it. The State has to prove the guilt of the defendant
24 beyond a reasonable doubt, and we're assuming that's already
25 been done, that he's been found guilty of murder, and he's

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1 got two charges placed against him. It's the guilt -- that
2 would be murder and kidnapping in that situation. And our
3 two aggravators are a death of a young child as well as
4 kidnapping a young child is the two aggravators, and the
5 mitigators the judge will give to you. There's a list of
6 them. There's about ten of them here, his background,
7 possible mental retardation of the defendant, and things
8 like that. There's different things that will be presented
9 by the defense, and you'd hear from both sides concerning
10 that.

11 Is that something that you, that you could do in that
12 situation is hear, hear a case cause I know -- it's a very
13 sensitive case involving the death of a child obviously from
14 there.

15 Is that something that you can give consideration to
16 and listen to in this case?

17 A Yes, sir.

18 Q Okay. And, like I said, and not all cases in South
19 Carolina are death penalty eligible cases of murder.
20 There's usually got to be an aggravator and we have to prove
21 that beyond a reasonable doubt from there, and the other
22 thing too is we'll go first just like we do in the first
23 phrase. The second, the second phase, in the sentencing
24 phase, we present our evidence. The defendant presents
25 their evidence, and then you would listen to -- and all the

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1 jurors would have to discuss it.

2 All 12 have to agree on death from there. It can't --
3 if, if one disagree or whatever, then the judge would take
4 it over and the judge, judge can not give a death sentence.
5 Only the jury can give a death sentence. The judge would
6 have to do a life without parole sentence and that's without
7 parole. That means he can't get out cause I know, in some
8 states, you can and some states you can't. This is one you
9 can't from there.

10 But, you know, there's nothing that you have personally
11 that would keep you from giving the death penalty or
12 anything from that, anything judgment wise or anything from
13 that?

14 A No.

15 Q So, if you felt like it was appropriate and the
16 appropriate circumstances you could give that death
17 sentence?

18 A Yeah, like -- I mean like I mentioned before, it's
19 something you take seriously because you know you're gonna
20 live with that verdict from now on and---

21 Q Yes, sir.

22 A ---it's -- so, okay, well I want to make sure I do the
23 right thing.

24 Q And is something you could live with if you felt like
25 it was appropriate?

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1 A Yes.

2 Q Okay. And like the judge says, at the end of the, end
3 of the sentencing phase, all 12 jurors, if they decide death
4 was appropriate, would sign what we call the death sentence
5 or death warrant in this situation, and if it came down to
6 you being the last juror and so you know the other 11 have
7 already signed it, and you just wind up being the last one,
8 could you sign?

9 A I think I would -- probably would have made my mind up
10 prior to signing it.

11 Q Yes, sir.

12 A And so, yes.

13 Q Yes, sir.

14 Okay. One moment, Your Honor, please.

15 (Pause.)

16 THE COURT: Yes, sir.

17 Q Thank you. I apologize for asking these questions. I
18 know this is a conversation you usually don't have between
19 two people, but thank you for answering my questions.

20 THE COURT: Mr. McGuire.

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

22 THE COURT: Yes, sir.

23 EXAMINATION

24 BY MR. MCGUIRE:

25 Q I'm gonna pick up -- let me introduce myself. I don't

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1 want to be rude. My name's Bill, Bill McGuire. I'm one of
2 the lawyers. I represent Mr. Blackwell along with Mr. Clay
3 Allen over there.

4 I want to pick up on the last thing the prosecutor
5 talked to you about, and that was if 11 people had signed
6 could you be the last signature. Obviously you know that
7 just because 11 people would be in favor of the death
8 penalty, it would be wrong for you to just sign it just to
9 make it a majority or unanimous jury.

10 A I guess the thing I was trying to say there is the
11 order of the signatures really would not matter because, at
12 that point, you would have been through---

13 Q Finished your---

14 A ---the whole process---

15 Q Right.

16 A ---and yeah, if it's -- if I felt, for some reason,
17 that that was not the case, well, I would try to convince my
18 fellow jurors to listen to my side of it -- the situation,
19 but, yeah, I mean it really is a matter of conscience at
20 that -- conscience at that point.

21 Q It is. In fact, the law describes it as an individual
22 moral judgment, and the law is that, once a juror reaches
23 their individual moral judgment, if it would harm their
24 conscience to change that position just to like go along
25 with the majority, that would be wrong. It sounds like you

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1 know that or feel that that's appropriate.

2 SOLICITOR BARNETTE: Your Honor, I object. He asked
3 that question before and that's not the law. I mean
4 basically, you know, they have a right to discuss. They
5 have a right to talk with all the other jurors. It doesn't
6 mean that they don't have to be able to switch their mind
7 and make their mind up. They still got to discuss it.

8 THE COURT: Well, the law encourages jurors to
9 deliberate on any question. They may discuss it with other
10 jurors. Jurors have the right to change their minds.
11 Giving an instruction on that particular point, and
12 generally judges don't instruct jurors on how to deliberate,
13 but in giving that, you urge jurors to consider all
14 viewpoints and even their own and to examine their own for
15 its correctness and properness.

16 So, the deliberation is a process and so I'll, I'll
17 just say that for what it's worth. But how a jury handles
18 those deliberations is generally up to the jury.

19 MR. MCGUIRE: Absolutely.

20 THE COURT: All right.

21 Q There's a famous case. It's called Allen. That's
22 where the language comes from. If it would harm somebody's
23 conscience or do violence to their conscience or change
24 their position, that is wrong, and it sounds like you're in
25 agreement with that principle.

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1 A Yes, I, I -- can I add something to that?

2 Q Sure. This is your time. Everything you say is
3 correct.

4 A I've served on juries before and I have been in kind of
5 on both sides of that fence where -- I was on a case where,
6 by the time we got to the jury room, I had a pretty good
7 idea of what I thought about it. And when I got in there I
8 found that most of the jury had the opposite opinion, and so
9 it's like well, as we discussed it through, you begin to see
10 the other jurors change their minds, and, in the end, they
11 all agreed with what I initially had.

12 But on another case that I was on, it's like as I heard
13 the jury discuss, it's like well, I understand what they're
14 saying here, and so I found that my opinion could change as
15 we talked through all of the, you know, you know, all the
16 evidence. So -- and so I've seen it from both sides of that
17 aspect.

18 Q Sure. And I think you indicated that you were on a
19 jury in Texas.

20 A (Witness nods affirmatively.)

21 Q And the result was a not guilty verdict?

22 A There were a couple. I've been on a couple of juries.

23 Q Really. You are -- you need to go buy a lottery
24 ticket. Most people are lucky not to be chosen at all.

25 A I talked to my fellow South Carolinians. I've been

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1 here like eight years, and many of them have never been on a
2 jury, and it's like some of them are like well, it's -- they
3 don't understand. So --.

4 Q Like I said, you should go buy a lottery ticket.

5 So, in talking a little bit more about this penalty
6 phase, there was a pamphlet that was handed out in the, the
7 big room when everybody assembled, and it talked about a, a
8 mistrial. You know, if the jurors could not agree as to a
9 result, guilty not guilty, and that's true. That type of --
10 a regular trial would end in a mistrial if the jury didn't
11 agree and the case would have to be retried.

12 Assuming you go through -- you're on this jury you go
13 through the first phase and there's a conviction, a person
14 did it beyond a reasonable doubt, then, as the judge told
15 you, you would go into a second trial and the only issues
16 before the jury would be penalty, life and death, and
17 ultimately the jurors can, can end the day not agreeing, and
18 the case would not have to be retried. Some people could
19 vote for death, some people could vote for life, and
20 ultimately, if that's where people were, their individual
21 moral judgment, their conscience just kept them in those
22 positions, the judge would ultimately eventually take the
23 case and sentence, and, like the prosecutor told you, that
24 sentence would be, under our law, automatically a life
25 without parole sentence. And as the prosecutor told you, in

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1 South Carolina, life means life. You die in prison. No
2 doubt about that.

3 You don't have any doubt about that?

4 A Correct.

5 Q Okay. And with regard to how the jury can be not in
6 agreement, it applies to issues not just with the ultimate
7 decision, the punishment, but it also goes and applies to
8 the evidence finding that the jury can engage in. What I
9 mean by that is jurors can have different reasons to vote
10 for the life penalty. A juror, say sitting here, could say
11 I saw something in the man's walk in his -- walk in life,
12 his -- the way he was raised, his upbringing, his walk in
13 life, and there was something there that resonated with me
14 and I want to vote for life for that, and other people might
15 say well, we didn't see that. But this person can find it
16 all by themselves, no one has to agree, and they can give it
17 the weight of life if they so choose.

18 Somebody here might say I saw a relationship with the
19 man and his family, his grandkids, I saw a spark of humanity
20 there that resonated with me, I'm gonna vote for life for
21 that reason. And the other jurors might say well, I didn't
22 really see that or I didn't value that, but no one has to
23 agree. That juror can vote for life for that reason or
24 other reasons, and, in fact, the judge would charge the
25 jurors that they can vote for life for any reason, mercy

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1 alone, or even no reason, no reason, and another juror might
2 say I can't articulate, put in words why the death penalty
3 doesn't sit with me in this case, but that's where I am,
4 that's my conscience, I don't have the words to describe it
5 to you, that's where I am. And you can see how people are
6 in disagreement, they don't have to agree, but it's okay.

7 A Yes, I understand.

8 Q And we have to remind you to say yeah cause she has to
9 type something down.

10 And you would respect other people's conscience, their
11 individual moral judgment?

12 A Yes, I would.

13 Q You'd expect your position to be respected?

14 A Definitely.

15 Q You know we have a lot of rules in Court. Some are for
16 me, some are for the defendants or for the State. There's
17 some rules for you too, and that is that the proceedings be
18 conducted with dignity and fairness, and that includes
19 jurors in the jury room. If you saw somebody who said I've
20 reached where my conscience is, I've reached my individual
21 moral judgment, I don't want to change my position, but you
22 saw somebody being bullied, could you stop that?

23 A Yes, you'd, you'd have to respect each person's opinion

24 --

25 Q Okay.

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1 A -- and give it its proper credence.

2 Q Okay.

3 A So --.

4 Q The only other thing I want to talk to you about is,
5 when a trial proceeds, you know, like the judge is already
6 told you about don't discuss the case, don't try to gather
7 information. Well, once a trial starts, it's inappropriate
8 for the jury to discuss the case at all. Everybody has to
9 be their own individual island, and they have to keep their
10 memory sharp and remember the evidence as they remember it,
11 and they can only deliberate when the judge tells them it's
12 okay, and while the trial's going on, that's not the time.

13 Is that a rule that you can live by?

14 A Yeah. Well, Texas has the same---

15 Q Everybody has that rule.

16 A So, I --.

17 Q And the other thing is that certainly with regard to
18 every individual juror, it would be inappropriate to decide
19 what the penalty should be until you heard all the evidence
20 in the penalty phase. It would be wrong to decide the
21 penalty just based on facts in the guilt part of the case.

22 Can you see why that would be?

23 A Yes, I could see that.

24 Q Okay. And if you saw -- if you're on the jury and you
25 saw deliberations, people talking about the potential

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1 punishment and what it should be, essentially premature
2 deliberations, could we count on you to stop that too?

3 A Yes, I, I don't know what the proper procedure is,
4 whether you inform the judge or the bailiff or whatever.
5 But, you know, I --.

6 Q Generally, sequestration, there would be officers
7 keeping you nice and safe and comfortable, and, upon your
8 return to Court, you could inform the judge with a note.

9 Is that something you think you could do?

10 A Yes, sir.

11 Q Okay. That's all I have for you, sir. Thank you.

12 THE COURT: Mr. Barnette.

13 SOLICITOR BARNETTE: Just one or two, Your Honor --

14 THE COURT: Yes, sir.

15 SOLICITOR BARNETTE: -- for clarification purposes.

16 EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q And I was just gonna ask you, the juries that you've
19 been on in Texas, what kind of cases were there?

20 A The two, two primary ones, there was one -- it was a
21 perjury and obstruction of justice case in Federal Court.

22 Q Yes, sir.

23 A And the evidence -- I don't know how much you want me
24 to elaborate.

25 Q Go ahead if you want to if you can.

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1 A The evidence for the prosecution was, there's a large
2 number of shredded papers.

3 Q Yes, sir.

4 A And the company had been ordered to turn over all their
5 documents to, to whoever it was and---

6 Q Police, sheriffs?

7 A ---they had subpoenaed further documents. And so their
8 evidence was a lot of these shreds of papers that they
9 brought in saying well, they're shredding their documents.
10 They're not presenting them to us.

11 Q Got you.

12 A And so what happened was that -- well, their, their
13 reason that they gave was that well, they were really
14 shredding duplicate copies because they had multiple copies
15 of documents, and so they're shredding the extras since they
16 had to send out for Xeroxes.

17 Q I got you.

18 A And the defense then -- the government had put together
19 assembled shredded documents, and the defense, when they
20 came up, they pulled from the government's documents that
21 they Xeroxed and handed over to them the exact same
22 documents that the government had put, put back together,
23 and so, in that particular case, yeah, we felt that they had
24 not -- that the burden of proof had not been met.

25 Q Yeah, I can understand that -- on that.

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1 A So --.

2 Q And the other case you were talking about?

3 A The second case was a -- it was a civil case where a
4 man had been injured by a vault, a bank vault, a bank vault
5 door that had fell over on him.

6 Q Uh-huh. (Affirmative).

7 A And so --.

8 Q And you don't have to go any further. I'm just
9 curious---

10 A Okay.

11 Q ---if it was another criminal case or whatever.

12 A Those were the two cases.

13 Q Okay. And the other thing I wanted to mention to you,
14 I know Mr. McGuire talked to you about the aggravating
15 circumstance and mitigating circumstance.

16 Do you realize that if both sides prove mitigation as
17 well as aggravation, you can still find for the death
18 penalty if you thought it was appropriate in that case?

19 A (Witness nods affirmatively.)

20 Q I just wanted to mention that to you from there, and,
21 like I said, the judge will ultimately give you the law in
22 the case.

23 A Okay.

24 Q Thank you, sir.

25 THE COURT: Any further questions?

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1 MR. MCGUIRE: Nothing further, judge.

2 THE COURT: Sir, I'm gonna ask you to step back into
3 the jury room for just a minute. I'll call you back. Thank
4 you, sir.

5 THE WITNESS: Thank you, sir.

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

8 THE COURT: Defense's position.

9 MR. MCGUIRE: Qualified.

10 THE COURT: State.

11 SOLICITOR BARNETTE: I agree.

12 THE COURT: Bring him in.

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

15 THE COURT: Mr. Sanders, that wasn't a very long wait.

16 I have determined that you are qualified to remain in
17 our process. What that means is we're gonna continue
18 qualifying jurors and I expect this process will take into
19 the first part of next week. We're not working tomorrow.
20 So, it will probably be Monday or Tuesday we will complete
21 the pool. We'll be in a position, at that time, to choose
22 the jury. So, the next time you, you will get a call from
23 us as to what you need to do next.

24 So, until that time, I will caution you that my
25 instructions concerning your behavior continue. You

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1 should -- give him the sheet, Ms. Camp.

2 You should consider, if you have to come back, being
3 prepared to come and stay, as I said, for a little more than
4 a week. If you take medications, be sure you have enough of
5 those medications with you, things like that. And it's okay
6 for you to talk to employers or family and explain that
7 you're in the middle of jury selection, a jury selection
8 process. That, if you're selected, you will be away for a
9 few days, and that's about all you should talk to them as
10 far as -- you shouldn't talk to them anything about what the
11 charges are, what the case is about. Don't get into a
12 discussion with what the case is about. Just make them
13 aware that, if you're selected, you will be have -- have to
14 be away for a period of time. So, you make those
15 arrangements. It's okay to do that.

16 You understand that, sir?

17 THE WITNESS: Yes, I do.

18 THE COURT: Okay. Can you follow my directions in the
19 mean time?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. So, the next time you will hear
22 from us will be from us and we will give you some additional
23 instructions at that time.

24 THE WITNESS: Okay.

25 THE COURT: And I expect that to be probably Tuesday or

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1 so along in there. I don't control exactly how fast or slow
2 the process goes.

3 All right. Thank you for your cooperation---

4 THE WITNESS: Thank you.

5 THE COURT: ---thus far. The bailiffs will show you
6 out.

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

9 THE COURT: The next juror is Reginald Fowler.

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

12 REGINALD FOWLER, having been previously
13 sworn, testified as follows:

14 EXAMINATION

15 BY THE COURT:

16 THE BAILIFF: Have a seat please.

17 Q Have a seat please, sir.

18 A (Witness complies.)

19 Q Thank you.

20 Mr. Fowler, you may turn -- want to turn that chair
21 around so you can kind of be facing me because we're gonna
22 talk for just a minute.

23 A All right.

24 Q And then, in a little while, I'm gonna let the lawyers
25 ask you some questions. You may have to turn back around.

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1 But because of the way this thing's built, we kind of have
2 to face each other back here.

3 A All right.

4 Q All right now. I want to thank you, first of all, for
5 your cooperation coming in on a Saturday afternoon. It's
6 not a lot of fun, but sometimes we have to do what we have
7 to do. So, we do appreciate your cooperation so far.

8 We're going to be asking you some questions this
9 afternoon, going over some things with you. I will tell you
10 that we're still in the process of getting a group of people
11 together from which we will select a jury.

12 A All right.

13 Q We've been doing that all week long. So, we're now --
14 we're getting, we're getting closer to the conclusion of
15 that process.

16 A Uh-huh. (Affirmative).

17 Q But at any rate -- so, we're gonna go over some things
18 with you. We're not picking a jury today. We are simply
19 deciding who, who can continue in the process with us.

20 A Oh, okay.

21 Q You understand what we're doing?

22 A Yes, sir.

23 Q I -- now, as I ask these questions, I want to let you
24 know that there aren't any right or wrong answers. We're
25 not looking for any particular answer. What we are looking

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1 for are your answers and we want them to be honest answers.

2 Do you understand that, sir?

3 A I understand.

4 Q Now, Monday you took an oath to tell the truth to the
5 Court. That oath still applies now. So, you're still under
6 oath as far as your discussions with the Court and with the
7 attorneys are concerned.

8 Do you understand that?

9 A I understand.

10 Q Okay. And you don't -- you acknowledge that that's
11 true?

12 A That's true, yes.

13 Q And I gave you some instructions when you left the
14 courthouse also, the whole jury. I said not to watch,
15 listen to, or read any media reports, not to try to gather
16 any information on your own. Don't discuss the case with
17 anyone and don't allow them to discuss it with you.

18 Do you remember those instructions?

19 A I do.

20 Q Have you been able to follow them?

21 A Yes, sir.

22 Q Okay. So, we're good on that, is that right?

23 A Yes, sir.

24 Q All right. Now -- and in that, that regard,
25 Mr. Fowler, are you the kind of person who, if you were

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1 sitting on a jury in any case, could you put aside any
2 matters that you may of heard in -- from any source that
3 might pertain to anything going on in the case and
4 concentrate on deciding the case based upon the law and the
5 evidence that you hear in the courtroom during that trial?

6 Could you do that?

7 A You say any case?

8 Q well, I'm just saying in any particular case.

9 would you -- in other words, would you try to decide
10 the case based upon what you've heard in the courtroom and
11 not what you heard outside of the courtroom?

12 A Yes.

13 Q Okay.

14 A Yeah.

15 Q Could you do that?

16 A Yes, sir.

17 Q You could do that.

18 All right. Sometimes my questions are confusing and I
19 understand that because they're kind of technical. So, if
20 you have a question about what I ask, just like then, get me
21 to explain and I'll be glad to explain it to you.

22 A All right.

23 Q All right. Now, have you ever participated in any
24 discussions, formal or informal, like on the Internet or
25 something like that, where the subject of the discussions

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1 was the death penalty?

2 A No.

3 Q Have you ever been involved in any political activities
4 that involve that issue?

5 A No, sir.

6 Q So, you've never written a letter to a congressman or
7 made a phone call to someone either supporting or opposing
8 the death penalty?

9 A No, sir.

10 Q You've never done that, right?

11 A No.

12 Q Okay. Now, back in the jury room we had a list of
13 potential witnesses and that's what that was. There was
14 three sheets of paper.

15 A Yes, sir.

16 Q A lot of names on those, on those pages. Those are
17 people that the lawyers have told me could possibly be
18 witnesses in this case.

19 A Oh, okay.

20 Q Now, I don't know if all of them -- I don't think all
21 of them are gonna testify, but let's assume they are.

22 Did you read those lists for me?

23 A I did.

24 Q Now, as to the people you read on that list, did you
25 notice anybody on there that you have ever been related to

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1 either by marriage or blood?

2 A No.

3 Q Did you see anybody on that list that you have had some
4 kind of social, business, or personal relationship with?

5 A No, sir.

6 Q So, if any of those people were to appear as witnesses
7 in the trial, I assume then it would not affect your ability
8 to be fair and impartial to both sides?

9 A It wouldn't affect it.

10 Q It wouldn't affect it?

11 A No.

12 Q Okay. All right. Let's move on to the next things I
13 want to talk about, and before we get any further into my
14 discussion, because, in a minute I'm gonna start asking you
15 your opinions about some things, let me explain one thing to
16 you so that I'm sure you -- we have an understanding about
17 some things. I mentioned, on Monday, that this case is one
18 where the State is alleged a murder. They're alleging --
19 and they are requesting that the Court consider issuing a
20 judgment of the death penalty. So, that's the type of case
21 we're in.

22 Normally, in a criminal case, the jury would come in
23 and decide the question of guilt or innocence, and when they
24 finished deciding whether the person's guilty or innocent,
25 then the judge would sign -- would, if they're found guilty,

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1 the judge would issue a sentence to that person. So, the
2 jury doesn't get involved in sentencing. That's different
3 in this case that we're involved in now because we're, in
4 this case where they're seeking the death penalty, not only
5 does the jury decide whether the person is guilty or
6 innocent of the crime, if they find the person guilty of
7 murder, the next trial is where the -- what the appropriate
8 punishment ought to be.

9 A Oh, okay.

10 Q So, it's what's called a divided or a bifurcated trial.
11 The reason I'm telling you about that right now is my
12 questions, in a few minutes, are gonna get into that second
13 part of the trial where the question is what's the
14 appropriate penalty to be assessed for this.

15 I want to tell you the defendant is -- here is presumed
16 to be innocent under the law. The fact that we're gonna be
17 talking about what the appropriate penalty is should not be
18 taken as any reflection on either him or his case he's about
19 to present.

20 A Okay.

21 Q He's still entitled to a fair trial on the question of
22 whether he's guilty or not. I want to point out to you
23 though, since the same jury hears both sides of the case,
24 when we're picking that jury at the very start, we have to
25 talk not only about the guilt or innocence part of the case,

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1 we also got to talk about that second part of the case cause
2 we can't stop in the middle and switch juries.

3 okay?

4 A No.

5 Q So, do you understand?

6 A Yes, sir.

7 Q So, this is the only chance I'll get to do this with
8 you.

9 A Oh, okay.

10 Q So, the only reason I'm talking about penalties today
11 is because I need to talk it over with you and this is the
12 only chance I'll get to do it before the jury is selected.

13 A Okay.

14 Q You understand that?

15 A Yes, sir.

16 Q And you're okay with that?

17 A I'm okay with that.

18 Q All right. Good.

19 Now, I'm going to go over some legal concepts with you.
20 I want to be sure that you and I have an understanding of
21 these legal concepts, and for purposes of our discussions, I
22 want you to imagine that you're on a jury that's trying
23 somebody for shoplifting.

24 Okay. Does that -- you can put yourself in that
25 position?

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1 You're on a jury---

2 A I can do that, yes, sir.

3 Q ---where a fellow or a lady is charged with
4 shoplifting.

5 Now, just -- first of all, some basic questions about
6 this situation.

7 Do you understand that a defendant, in a criminal case
8 in the United States, is always presumed to be innocent of
9 the crime that's been charged until the jury finds that
10 person guilty in a trial?

11 You understand that?

12 A I understand that.

13 Q So, the defendant is always presumed to be innocent.

14 Now, by the same token, since a defendant is presumed
15 to be innocent, a defendant is never required to prove his
16 innocence because it's presumed that he's innocent. So, he
17 doesn't have to prove that to anybody.

18 Do you understand that concept?

19 A I understand that.

20 Q And do you agree with that, that's the way it ought to
21 be?

22 A It ought to be like that, yes.

23 Q Okay, sir. Now, I'll take it a step further.

24 Since the defendant is presumed to be innocent, since
25 you've agreed that a defendant does not have to prove his

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1 innocence, since we presume he's innocent, do you understand
2 that, at a trial, when a case is tried, the defendant is not
3 required to prove anything at that trial?

4 In other words, the defendant does not have to put up
5 any evidence. In fact, in our country a defendant could
6 remain silent if they chose to remain silent at a trial.

7 You understand that concept?

8 A I understand that.

9 Q And do you agree with that concept?

10 A I agree, yes, sir.

11 Q Now, on the other side of that, the State is the party,
12 in a criminal case, that has brought the charges. They
13 accused somebody of a crime, and because they've accused --
14 they're the accuser, they're the ones saying that somebody
15 did something, the law says that the State has the only
16 burden of proof in a criminal trial. In other words, the
17 State has to prove the defendant's guilt and they have to
18 prove that guilt by proof beyond a reasonable doubt.

19 Do you understand that concept?

20 A Uh-huh. (Affirmative).

21 Q And do you agree that that's the way that ought to be
22 too?

23 A Yes, sir.

24 Q The person making those accusations ought to have to
25 prove it?

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1 A Yes, sir.

2 Q You agree with that concept?

3 A I do.

4 Q Okay. Now, let me ask you -- I'm gonna take it another
5 step further and keep kind of upped the ante.

6 A Okay.

7 Q Okay?

8 A All right.

9 Q All right. Let's say that you are on a jury, on that
10 jury. You're charged -- you're trying a shoplifting case.
11 You and your fellow jurors have heard all the evidence and
12 you -- the jury is the finders of the facts. They determine
13 what all the facts are, whether somebody's telling the
14 truth, when, what, and where things happen. So, the jury's
15 in charge of finding the facts. The judge is in charge of
16 charging the law to the jury. So, the judge tells the jury
17 what the law is for them to apply to the facts that they
18 find.

19 All right. Let's say you're in the position where you
20 and your fellow jurors go back into the jury room. You
21 deliberate as to what you heard. You talk about it back and
22 forth, and y'all -- all of you come to the conclusion that
23 the state did not present enough evidence to prove the
24 defendant guilty beyond a reasonable doubt. They did not
25 meet their burden of proof.

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1 would you have any difficulty in signing a verdict
2 finding that defendant not guilty?

3 A No.

4 Q Okay. By the same token, if the State did prove, by
5 evidence beyond a reasonable doubt, that the defendant
6 committed the crime, could you then sign a verdict that
7 would find the defendant guilty?

8 A Yes.

9 Q I take it then you're telling me you're the kind of
10 juror who, based on the strength of the evidence, what's
11 been proven and shown to you, you could find someone either
12 guilty or not guilty depending on what the case and the
13 facts show?

14 A Yes, sir.

15 Q So, you could do that?

16 A I could do that.

17 Q All right. And I want to ask you one other thing.

18 Is it your belief that, just because someone's been
19 arrested, just because they've been charged with a crime,
20 that that does not mean that they're automatically guilty?

21 Do you agree that that's true?

22 A I do agree with that, yes.

23 Q Okay. Now I'm going into some things about that second
24 phase of the trial now. So, I'm getting into those things
25 that are putting the cart in front of the horse. The

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1 defendant's not been found guilty, but we've got to talk
2 about some issues that deal with that second part of the
3 trial.

4 A All right.

5 Q So, I'm gonna get to that now.

6 Okay. I want you, in your mind, to think you, you are
7 in a certain position. Okay. I'm gonna describe it to you.
8 So, kind of put yourself in this position.

9 You've been selected to serve on a jury.

10 A Okay.

11 Q That jury is being picked for a case in which the State
12 has alleged the defendant committed murder. For that
13 murder, the State has requested that the death penalty be
14 imposed. So, you're -- you've been picked on that jury.

15 Now, you and your fellow jurors come to the courthouse
16 and you listen to all the evidence about how it happened,
17 when it happened, what the witnesses have to say about it.
18 So, you've heard all that evidence. You've gone into the
19 jury room, you deliberated, gone over the charges, gone over
20 the evidence, and the jury has reached a verdict unanimously
21 that the defendant is guilty of murder.

22 A All right.

23 Q So, a guilty verdict has been rendered against that
24 defendant for murder.

25 Now, where the State requested a death penalty, I told

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1 you that that same jury that hears that first part of that
2 case has to come back and hear the second part of the case,
3 what's the appropriate penalty to give. That's the second
4 part.

5 A Okay.

6 Q So, you're about to go into that second hearing as to
7 what the appropriate penalty is.

8 Now, there's a statute in our code that sets up the
9 procedure for that particular second hearing. It provides
10 for two types of evidence to be introduced. The statute
11 provides that there can be evidence put into the record
12 concerning aggravating circumstances. That would be stuff,
13 stuff -- information that the State would bring forward to
14 prove or try to prove that, while a murder has occurred,
15 they're certain aggravating circumstances that might cause a
16 jury to give a higher penalty.

17 A Okay.

18 Q And I, I looked over it. There's about 12 different
19 categories with some subparts in the statute. So, it's a
20 lot of different factors the State can prove, but I'll tell
21 you, the State has to prove at least one of those
22 aggravating factors by proof beyond a reasonable doubt in
23 order for the death penalty to be a possibility here.

24 A Okay.

25 Q So, do you understand that you would hear evidence

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1 about things that tend to make that crime of murder even
2 worse?

3 A Yes, sir.

4 Q Now, by -- that same statute provides that there can be
5 evidence introduced at that hearing of what are called
6 mitigating factors.

7 Now, mitigating factors are things that might make the
8 crime or the level of punishment needed for that crime
9 lower, to make it, make the jury go toward the lower level
10 of penalty, and the statute that has -- it has ten different
11 categories of mitigating factors in it. Now, not all of
12 those apply to this case. Not all of the other aggravating
13 factors apply, but the parties have alleged that some of
14 them do.

15 Okay. So, the statute says you'll hear aggravating
16 factors, you'll hear mitigating factors. And in addition to
17 those ten mitigating factors that are in the statute, the
18 law even allows a jury to consider any factor that they
19 think is mitigating and the jury can even consider the
20 possibility of mercy.

21 So, do you understand what, what the jury's gonna be
22 making a decision on?

23 A I do.

24 Q Once that evidence has been presented to the jury, the
25 statute says the judge will charge the jury or instruct the

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1 jury to consider those factors, aggravating and mitigating,
2 in making a decision.

3 So, do you understand what that hearing's gonna be
4 about?

5 You understand the kinds of evidence you'll get?

6 I'm not telling you specifically what they are, but
7 we're not trying that case today.

8 A Oh, I understand you.

9 Q But -- so, you're on that jury. You're walking down
10 the hallway to come back into the courtroom, and do you
11 remember that there was a paper that I had back on the table
12 in the jury room that described three---

13 A Yes.

14 Q ---different jurors?

15 A Yes, sir.

16 Q I'm gonna go over that with you in -- not exactly as
17 written back there, but in principle what I was talking
18 about there and I'm gonna give each one of those jurors a
19 number.

20 All right. Now, as you're walking back into the
21 courtroom, there's a juror walking in there with you, and
22 he's just like the first one I described, number one. He is
23 somebody who's already made his mind up as to how he's gonna
24 vote before he ever walks into that hearing as to the
25 aggravating and mitigating circumstances. That juror

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1 believes that anytime someone is convicted, convicted of a
2 murder, that's the intentional killing of an innocent person
3 with malice aforethought under circumstances that, that the
4 Court may -- I mean the Court may infer evil intent. In
5 other words, there's been a murder proven. That juror
6 believes that, in every case, the only appropriate penalty
7 is the death penalty, and he's gonna vote for the death
8 penalty every single time.

9 Juror number two is walking into the courtroom, and
10 juror number two's also made up his or her mind. That juror
11 believes that it's never appropriate for the State to take
12 someone's life in, in punishment for a crime, and,
13 therefore, that juror does not care what the mitigating
14 circumstances -- I mean the aggravating circumstances might
15 be or the mitigating circumstances. That juror believes
16 it's never appropriate to give the death penalty. So, that
17 juror's gonna vote for life in prison without parole and
18 that's what that sentence means, life in prison without ever
19 getting out. That juror would vote for that sentence every
20 single time.

21 There's a third juror in line. That juror hasn't made
22 his or her mind up yet. That juror wants to come into the
23 courtroom. That juror wants to hear the aggravating
24 evidence and the mitigating evidence. That juror wants to
25 hear the judge charge the law on the subject, and then that

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1 juror wants to go back into the jury room and deliberate
2 with their fellow jurors and come to a conclusion as to what
3 the appropriate penalty might be. So, that juror has not
4 yet made up his or her mind as that juror comes back into
5 the courtroom. That's juror number three.

6 Now, I told you too that you were in that jury. You're
7 walking back into the courtroom with those people.

8 Now, as you walk into that courtroom, which one of
9 those jurors best resembles how you would feel about that
10 case?

11 A Juror two.

12 Q Juror two.

13 So, you're of the opinion that it's never appropriate
14 to give someone the death penalty no matter what the
15 seriousness of the crime might be?

16 A No.

17 Q So, you would vote for life imprisonment every single
18 time?

19 A Yes, sir.

20 Q Is that what you're telling me?

21 A Yes, sir.

22 THE COURT: All right. Attorneys wish to follow up
23 with any questions?

24 SOLICITOR BULSA: No, sir.

25 THE COURT: State wish to ask any questions?

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1 Oh, I'm sorry.

2 MR. MCGUIRE: Just extremely briefly.

3 THE COURT: Yes, sir.

4 EXAMINATION

5 BY MR. MCGUIRE:

6 Q Good afternoon, sir.

7 A Afternoon.

8 Q Some folks show up with a reservation about the death
9 penalty, and an inability to give the death penalty based on
10 something like wrongful convictions. The -- maybe the wrong
11 person was convicted.

12 Is that part of your belief?

13 A No.

14 Q This is more of a moral---

15 A It is.

16 MR. MCGUIRE: Okay. That's all I have, judge.

17 THE COURT: All right. Sir, I'm going to, at this
18 point in time, excuse you from any further service in the
19 case. The bailiffs will show you out.

20 Thank you for your help and assistance. You're free to
21 go.

22 THE WITNESS: Thank you, sir.

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

25 THE COURT: Ms. Camp.

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1 (Pause.)

2 THE COURT: All right. I believe the next name is
3 Edward Grabarkiewiez.

4 How did you like that?

5 Grabarkiewiez, call Mr. Grabardiewiez.

6 Let's see if I got that one right.

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

9 EDWARD GRABARKIEWICZ, having been
10 previously sworn, testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q Sir, come in and have a seat please.

14 A Yes, sir.

15 Q All right. Your name is Edward Grabarkiewicz?

16 A Yes, sir.

17 Q Did I get that right?

18 A Yes, sir.

19 Q Oh, man, I'm doing good I think.

20 A Yes, sir.

21 Q My name is Couch and I have some problems with my name
22 too and it's just a short name.

23 A There you go.

24 Q I'm sure you have a problem with yours.

25 A Every day.

Individual Juror Qualification

1 Q I bet you do.

2 Well, I want to thank you very much for of all -- for
3 your cooperation.

4 A Yes, sir.

5 Q Being here at three o'clock on a beautiful Saturday
6 afternoon is probably not your plan of having a good time.
7 Sitting in that seat's probably not where you want to be. I
8 can appreciate all those things. I do also appreciate you
9 doing -- your doing your duties in this situation.

10 A Yes, sir.

11 Q So, thank you very much for your cooperation thus far.

12 A Yes, sir.

13 Q All right. Now, sir, I'm going to go over some things
14 with you today that have to do with your possible service on
15 the jury in this case.

16 Now, we are not picking a jury today. What we're doing
17 is we're going over information with people who are still
18 within the process, and we're going to be asking a lot of
19 questions, and so it's more of a fact gathering situation
20 and this information will help us later on when we, in fact,
21 do pick the jury.

22 A Yes, sir.

23 Q So, we're gonna ask questions. I'll tell you there are
24 no right answers. There aren't any wrong answers to these
25 questions. There's only your answers, and we want your

Individual Juror Qualification

1 honest answers to the questions we ask.

2 Do you understand that?

3 A Yes, sir.

4 Q Now, we may be asking some things about your opinions
5 or your beliefs or things of that nature. You seem to be a
6 mature adult who does not mind discussing those things with
7 someone.

8 A Absolutely.

9 Q Okay. So, you don't have a problem with that process?

10 A No problem at all.

11 Q Even though that seat's red, it's not a hot seat today.

12 A Yes, sir.

13 Q It's gonna be -- we're gonna be -- everybody will be
14 respectful to you here today. It's not, not something where
15 everybody's trying to trap you or do anything like that.

16 A Absolutely.

17 Q You feel comfortable about that?

18 A Absolutely.

19 Q All right. Now, Monday, when you left the courthouse,
20 you had been sworn to tell the truth that day. I'm
21 reminding you of that fact because that oath continues right
22 now. You're still under oath for purposes of this
23 discussion.

24 A Yes, sir.

25 Q Do you acknowledge, acknowledge that?

Individual Juror Qualification

1 A Yes, I do.

2 Q All right. Also you were given some instructions,
3 along with your fellow jurors, about not trying to gather
4 any information, not discussing the case with anybody, not
5 looking at any media reports or listening to those things,
6 and to report anybody's contact with you should somebody try
7 to contact you.

8 You remember those instructions?

9 A I do.

10 Q Have you been able to follow those instructions?

11 A I have been able to follow them.

12 Q Okay. Very good.

13 Now, I'm going to ask a series of questions. Once I
14 finish the attorneys are given an opportunity to talk to you
15 as well, and, again, as I indicated, we're just looking for
16 your honest answers. We're not interested in any particular
17 answer.

18 A Yes, sir.

19 Q Now, first of all, I'm going to ask you, have you ever
20 participated in any discussions in any formal way or even
21 informal way, like in an Internet chat room, something like
22 that, where the discussions would of been about issues
23 surrounding the death penalty?

24 A No, sir.

25 Q Have you ever been involved in any political activities

Individual Juror Qualification

1 that may have had as its subject the death penalty?

2 A No, sir.

3 Q So, you've not been involved in anything that would of
4 dealt with that particular issue?

5 A No, sir.

6 Q All right. Now, are you the kind of individual who
7 would be able to put aside outside matters that may in
8 anyway touch on a case that you're on, any case that you're
9 on as a jury, and, and focus on deciding the case based upon
10 the evidence and the law that you hear in the courtroom
11 during that trial?

12 A Yes, sir.

13 Q So, you could do that?

14 A Absolutely.

15 Q Now, there -- back in the jury room I had a list of
16 people, about three sheets of paper worth, a lot of folks.

17 A Yes, sir.

18 Q They're -- all those names are people that have been
19 identified to me as possible witnesses in the trial. I had
20 you read it because I want to ask you some questions about
21 those people.

22 As you read over that list, did you notice anybody on
23 that list that you have ever been related to by marriage or
24 are related to by blood?

25 A No, sir.

Individual Juror Qualification

1 Q Did you see anyone on that list that you might have had
2 any kind of social, business, or other personal relationship
3 with?

4 A No, sir.

5 Q So, I'm gonna take it then that if any of those people
6 were to testify during the trial, that the fact that they
7 were testifying would not affect your ability to be fair and
8 impartial to both sides of the case?

9 A That is correct.

10 Q That's true?

11 A Yes, sir.

12 Q Okay. All right. Now, there's a concept I need to go
13 over with you. I want to be sure that you have an
14 understanding of and have an appreciation of and it's
15 something that's a little unusual. And the reason I say
16 it's unusual is ordinarily, in every criminal case that I
17 normally try in Court, the jury comes in and they
18 determine -- they're called the finders or judges of the
19 facts, and the jury listens to the evidence, the testimony,
20 looks at the evidence, if there's documents or other things
21 to look at, and they decide what the facts are. They decide
22 who's telling the truth. They decide who did what, when,
23 and where, and how, and that sort of thing. And then the
24 jury is asked to, to go back and render a verdict as to
25 whether or not the State has proved its allegations that its

Individual Juror Qualification

1 made by proof beyond a reasonable doubt.

2 So, the jury is the finder of fact. If the jury finds
3 the defendant guilty, then it's up to the judge to do the
4 sentencing. In other words, the judge then issues a
5 sentence based on his listening to the case and what went on
6 and what he thinks is appropriate, but the jury's not called
7 upon to issue any sentences in the cases. That's ordinarily
8 the case.

9 Do you understand that?

10 A Yes, sir.

11 Q I mentioned on Monday that this case is different. Our
12 laws set this procedure up for this type of case, and the
13 type of case I'm talking about is where the State is
14 alleging that a murder has occurred, that someone's
15 responsible for that murder, and that that person, if found
16 guilty, they are seeking the death penalty in that case.

17 A Yes, sir.

18 Q In that situation, our statute sets up a bifurcated
19 trial. In other words, we divide the case into two trials.
20 The same jury hears both trials, but the first trial is the,
21 is the question of guilt or innocence about the charges.
22 That's a normal trial just like the one I described to you.
23 The jury listens to the evidence, weighs the evidence, hears
24 the law from the judge, and decides whether to issue a
25 guilty or not guilty verdict.

Individual Juror Qualification

1 If the defendant is found guilty, the law provides that
2 that same jury must come back in a separate trial and
3 consider what the appropriate punishment ought to be, and
4 that -- those choices are life in prison without the chance
5 of ever being paroled and the death penalty.

6 A Yes, sir.

7 Q And that life sentence means exactly what it says.
8 Someone would go to jail. They would be there until they
9 pass away.

10 So, do you understand --

11 A I do.

12 Q -- the process?

13 A Yes, sir.

14 Q And we're in that type of case here where the, where
15 the State is seeking the death penalty in this case.

16 I'm going over all of that to get back to this. As I
17 ask my questions, some of my questions will deal with that
18 second phase of the trial, the penalty phase of the trial,
19 and in a certain extent I'm putting the cart in front of the
20 horse because we haven't gotten to that stage of the trial.
21 The defendant is always presumed to be innocent of the
22 crimes for which the charges have been issued. That's true
23 in this case and in every case that's tried in my courtroom.

24 So, by talking about the penalty phase, we haven't
25 gotten there yet, and we may never get there yet. But I

Individual Juror Qualification

1 hope you appreciate, since the same jury has to hear both
2 trials, the only time that I or the lawyers get to talk to
3 someone about any issue that could come up in the case,
4 especially issues in that second half of the trial, we've
5 got to do it before the jury's been selected.

6 A Yes, sir.

7 Q So, we don't have any choice but to talk about those
8 issues now.

9 A Yes, sir.

10 Q You realize that?

11 A I do.

12 Q It should not be taken as a reflection against the
13 defendant or his case that we're talking about the penalty
14 today. This is simply the only time we can do that.

15 A I understand.

16 Q You appreciate that process?

17 A I do.

18 Q Okay. Now, I'm going to go over some concepts under
19 the law. Some of them are very basic and then I'm gonna put
20 some twists on them to kind of get -- so we have an
21 understanding about some things that, that, that are
22 concepts, legal concepts, doing with criminal -- dealing
23 with criminal cases.

24 I want you to imagine that you're a juror on a case
25 where someone's been accused of shoplifting. Very basic

Individual Juror Qualification

1 situation.

2 All right. Now, if you're on that jury, do you
3 understand that a, that or are you the type of juror who
4 could accept the law as provided to you by the judge?

5 A Yes.

6 Q And by accepting that law, could you then take that law
7 and apply it to the facts as you, the juror, finds those
8 facts to be in trying to reach a verdict in a case?

9 A I could.

10 Q Now, here's the twist I'm gonna put on it.

11 Let's say you're sitting on that jury in that
12 shoplifting case, and the judge -- you've heard all the
13 evidence -- the arguments by the lawyers, and the judge
14 always charges the law right before the jury goes in for
15 their deliberations. So, the judge is going over the law of
16 shoplifting with you, and as he talks about that, that law,
17 you hear something that maybe you either didn't understand
18 the law was that way or maybe you don't agree with what the
19 judge said the law is, but that's what the judge said.

20 Now, are you the kind of person that could set aside
21 your personal feelings or your beliefs about that issue and
22 take the law exactly as the judge gives it to you and apply
23 it to the facts as the jury finds them to be?

24 A I could.

25 Q Could you do that?

Individual Juror Qualification

1 A Yes, I could.

2 Q All right. Now, there's some other concepts of the law
3 that I want to be sure you've got an understanding of and I
4 have too.

5 First of all, do you agree with the concept that every
6 defendant in every criminal case, no matter what the
7 seriousness of the crime might be, is always presumed to be
8 innocent of that charge until that charge has been proven in
9 a Court of law in front of a jury?

10 A I do.

11 Q Now, by the same token, do you understand that, in this
12 state and in every state that I know of in the Union, a
13 defendant, in a criminal case, is never required to prove
14 his innocence because he's presumed to be innocent?

15 Do you understand that concept?

16 A I do.

17 Q Do you agree with that?

18 A I do.

19 Q I'm gonna take that a step farther.

20 Because a defendant is presumed to be innocent, and
21 because a defendant has no burden of proving his innocence,
22 do you understand that, at a criminal trial, a criminal
23 defendant is never required to prove anything in a case?

24 In other words, the defendant has the right to sit
25 there and remain silent if he chooses to at the trial?

Individual Juror Qualification

1 Do you understand that---

2 A I do---

3 Q ---concept?

4 A ---understand that.

5 Q And do you agree with that concept?

6 A I do.

7 Q Now, the -- I'm gonna go to the other side of the coin
8 now. On the other side of the case is the State. The State
9 of South Carolina is always the prosecuting authority in
10 this state. They are the ones who have made allegations,
11 criminal allegations against a defendant, in the, the
12 shoplifting case. They've alleged somebody committed
13 shoplifting. Because they are the complaining party, the
14 one who's filed the charges, the law places upon that party
15 the burden of proving those allegations, and the burden of
16 proof is to prove those allegations beyond a reasonable
17 doubt.

18 A Yes, sir.

19 Q Do you understand that concept?

20 A I do.

21 Q And do you agree with that concept?

22 A I do.

23 Q Now, I'm gonna take it even a step further.

24 You and your fellow jurors have heard all of the
25 evidence in that shoplifting case. You've heard the charge

Individual Juror Qualification

1 on the law. You go back into the jury room, you begin your
2 deliberations. You finally come to the conclusion that the
3 State did not prove the allegations in the indictment by
4 proof beyond a reasonable doubt. In other words, they did
5 not meet the burden of proof that they had.

6 In that circumstance, would you have any problem in
7 signing a, a verdict for the defendant of not guilty?

8 A I would have no problem with that.

9 Q All right. Now, by the same token though, if you were
10 in the jury room, the jury concluded that the State did
11 prove the defendant guilty beyond a reasonable doubt, do you
12 have any problem in signing a verdict finding a defendant
13 guilty of such a crime?

14 A I have no problem with that.

15 Q I think you're telling me then that you are a person
16 who could either find a defendant guilty or not guilty in
17 any particular case, but that would be dependent upon the
18 strength of the evidence, the -- your view of the value or
19 the weight of the evidence, and the law that's charged by
20 the judge?

21 Is that the---

22 A Absolutely.

23 Q Is that the way you'd want to handle that?

24 A Absolutely.

25 Q One other concept I want to talk to you about.

Individual Juror Qualification

1 Is it also your belief that just because someone's been
2 arrested, charged, and indicted that does not automatically
3 make them guilty of any crime?

4 You agree with that concept?

5 A I do agree with that.

6 Q All right. Now, I'm gonna get to some, some things
7 that have to do, as I told you, about that cart I'm putting
8 in front of the horse.

9 A Absolutely.

10 Q Okay. I want you to imagine that you are a juror.
11 Now, I'm gonna get you off the shoplifting case now. You've
12 been selected in a case where the state is alleged that a
13 murder is occurred. The State has also requested that the
14 death penalty be entered in that charge -- in that case.
15 You've been selected as a member of the jury, and the jury
16 has completed the first part of that trial.

17 So, you have heard all of the evidence about the event,
18 how it occurred, when, where, how, looked at whatever
19 physical evidence there is, you and your juror -- you and
20 the jury go back and deliberate. The jury and you come to
21 the conclusion that the state did prove the allegations of
22 murder against the defendant beyond a reasonable doubt. So,
23 you have now found the defendant guilty of murder. So, the
24 defendant is now a convicted murderer.

25 Do you understand that?

Individual Juror Qualification

1 A I do.

2 Q This law that we have then provides that the same jury
3 that you're on needs to come back and start the second phase
4 of that trial. That is to determine what the appropriate
5 penalty for that murder is.

6 A Yes, sir.

7 Q And not all murders in our state are death penalty
8 eligible.

9 Did you know that?

10 A I did not know that.

11 Q Okay. What's required is, for a murder to be death
12 penalty eligible, is that an aggravating circumstance must
13 be proven. The statute that sets up that second trial sets
14 out what those factors could be. Those are aggravating
15 circumstances, and the State must prove at least one of
16 those aggravating circumstances beyond a reasonable doubt
17 before the case is death penalty eligible.

18 Do you understand that?

19 A I do.

20 Q And the aggravating circumstance evidence, and there's
21 a whole list of them. The State can prove more than one.
22 They have to prove at least one, but they can prove more
23 than one. And those are factors that a jury might consider,
24 and in considering that, it might cause a juror to want to
25 give a higher penalty, the higher penalty. That's what we

Individual Juror Qualification

1 mean by aggravating circumstances.

2 A I understand.

3 Q The same law that sets up that hearing that provides
4 for those kind of -- that kind of evidence also provides for
5 evidence of what's called mitigating circumstances, and
6 there's about ten listed in the statute of different factors
7 a jury can consider to each -- to -- even though a murder
8 occurred, which is a bad thing, but would -- might tend to
9 cause a jury to give the lower level sentence because of
10 those factors.

11 A I understand.

12 Q So, there's about ten of them listed in the statute,
13 but then the statute -- the law goes on to say that the jury
14 can consider anything it wants to consider in mitigation.
15 So, it's not limited to that list, and it says the jury can
16 consider the factor of mercy. So, those are all factors
17 that a jury could consider in reaching a verdict as to the
18 appropriate sentence, aggravating circumstances and
19 mitigating circumstances.

20 Now, the law says that at -- once that evidence has
21 been presented to the jury, aggravating and mitigating
22 evidence, the judge will charge the jury to go out, in
23 deliberations, and consider both aggravating and mitigating
24 circumstances and come back with a recommendation as to what
25 the appropriate penalty is, life in prison or the death

Individual Juror Qualification

1 penalty.

2 A I understand.

3 Q So, do you understand how that second trial would work?

4 A I do understand.

5 Q I told you to put yourself in the position of a jury
6 that that jury in that case is convicted the defendant of
7 the murder. You're coming down the hallway in the
8 courthouse. You're getting ready to walk back into the
9 courtroom to start the second part of the trial.

10 A Yes, sir.

11 Q Back in the jury room I put a piece of paper on the
12 table.

13 Do you remember that piece of paper?

14 A I do.

15 Q It described three different jurors.

16 A I do.

17 Q I'm gonna go over them with you again. I'm not gonna
18 say it exactly like it is on the paper.

19 A That's fine.

20 Q But I think you'll understand what I'm talking about.

21 A Yes, sir.

22 Q All right. Juror number one is a juror who has, before
23 he ever walks into that courtroom, has already made up his
24 or her mind. That juror believes that, when someone is
25 convicted of the intentional killing of an innocent person,

Individual Juror Qualification

1 that the only appropriate penalty is the death penalty.
2 That juror does not want to hear the aggravating
3 circumstances or the mitigating circumstances. That juror
4 believes that he would vote for death in every case where a
5 murder's occurred.

6 Juror number two, that juror has also already made up
7 his or her mind. That juror believes that it's never
8 appropriate to take someone's life in response to the
9 commission of a crime. So, no matter what the aggravating
10 circumstances are, no matter what the crime was, that
11 juror's always gonna vote for life in prison without the
12 possibility of parole every time.

13 The third juror on my piece of paper has not yet made
14 up his or her mind. That juror wants to listen to the
15 factors that are involved in the case, aggravation and
16 mitigation. He wants to listen to those factors, listen to
17 the evidence that's presented, and I'll tell you, in the
18 second hearing, there will be people who will be there
19 testifying that don't testify in the first trial. They'll
20 be people there to testify on those factors that have
21 nothing to do with real guilt or innocence. They have to do
22 with the level of penalty.

23 A I understand.

24 Q But he wants to listen to that evidence. Also wants to
25 listen to the judge's charge on the law on the subject, and

Individual Juror Qualification

1 then go into the jury room and deliberate with his or her
2 fellow jurors and reach a decision as to what the
3 appropriate penalty might be.

4 Now, do you understand the three jurors I talked about?

5 A I do.

6 Q One, two, and three?

7 A I do.

8 Q Now, I told you also you're on that same jury. You're
9 about to walk back into the courtroom, and, as you're
10 walking through that door to come into the courtroom, which
11 one of those three jurors must closely resembles how you
12 feel?

13 A Juror number three.

14 Q Juror number three?

15 A Yes, sir.

16 Q So, you're telling me that what you would like to do is
17 to go into that room, listen to the evidence, the
18 aggravating evidence and the mitigating evidence, consider
19 that evidence in light of the law as charged by the judge,
20 with your fellow jurors, and then you would want to make a
21 decision, and only after hearing all that would you want to
22 make a decision --

23 A Yes, sir.

24 Q -- about the appropriate penalty?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, let me take this another step. I always do that.
2 I take it another step.

3 A Yes, sir, I understand.

4 Q Let's say that you and your fellow jurors considered
5 the -- all that evidence that was presented during the
6 sentence of the penalty phase, and at that -- if, after
7 considering that evidence, you decided that the appropriate
8 penalty was life in prison without the possibility of
9 parole, could you sign a sentence granting life in prison
10 without parole?

11 A Yes, I could.

12 Q By the same token, if you and your fellow jurors
13 deliberated, considered all the factors, and came to the
14 conclusion that the appropriate penalty was the death
15 penalty, could you then sign a verdict giving the death
16 penalty?

17 A Yes, I could.

18 Q So, you could go either way depending on the evidence
19 and how the, how the, how the jury ends up?

20 A Yes, sir.

21 Q All right. One other thing I'll talk to you about and
22 then I'm going -- I'll allow the attorneys to talk to you
23 briefly.

24 A Yes, sir.

25 Q I have signed a sequestration order in this case.

Individual Juror Qualification

1 That's a fancy legal word.

2 A Yes, sir.

3 Q But what that means is that, once the jury's impaneled,
4 once they're seated, they'll be in the courtroom to hear the
5 evidence as the trial goes on. But, in the evenings,
6 they're gonna spend the night over at the Marriott together.
7 We've got a group of individuals who handle juries on a
8 regular basis. They'll be there with them. The purpose of
9 sequestration is to keep the jury from being influenced by
10 any outside factor during the trial of the case, and so
11 that's the reason we go through that exercise.

12 A Yes, sir.

13 Q Now, during that period of time where the jury is
14 sequestered, the jury would receive all of their meals paid
15 for. They would receive all their travel paid for, their
16 lodging would be taken care of. So, there wouldn't be any
17 expense to a juror for being in that position.

18 A I understand.

19 Q You have -- would have the right to make communications
20 with family or friends, but they would be monitored.

21 A Yes, sir.

22 Q They -- we don't want outside influences affecting the
23 jury.

24 A I understand.

25 Q So, there would be a monitoring of that process.

Individual Juror Qualification

1 Now, my question to you -- and I will tell you that
2 jurors receive their pay as a juror for that period of time.
3 Now, jury pay in this state is not what somebody makes at a
4 regular job.

5 A I understand, yes, sir.

6 Q But it's all the law allows. We'll see that you get
7 it.

8 A I understand.

9 Q And there would also be travel for your personal
10 vehicle coming to and from the courthouse.

11 A I understand.

12 Q Now, if you were in that situation, if you were
13 sequestered during the trial of the case, and I expect it
14 maybe will last a week or more -- one other factor I'll tell
15 you. Once we start these trials we don't stop. We go seven
16 days a week until the case is ended.

17 A I understand.

18 Q We try to take as little time out of peoples' lives as
19 possible to do it. We still want to give a full and fair
20 trial of the case too.

21 A I understand.

22 Q Once we start, we go until we're finished.

23 A Yes, sir.

24 Q So, there wouldn't -- there would be no weekends off or
25 things like that.

Individual Juror Qualification

1 A I understand.

2 Q We work right through.

3 A Yes, sir.

4 Q Now, if you were in that situation, would that
5 situation pose any, any substantial risk to your health or
6 your well being to be in that situation?

7 A Oh, no.

8 Q Would it pose any risk to the health or well being of
9 anyone who's dependent upon you if you would be in that
10 situation?

11 A No, sir.

12 Q All right. That completes my questioning at this point
13 in time. I'll allow the attorneys to ask questions. I may
14 follow-up with some questions when they're finished.

15 A Yes, sir.

16 THE COURT: All right. Mr. Bulsa.

17 SOLICITOR BULSA: Thank you, Your Honor.

18 EXAMINATION

19 BY SOLICITOR BULSA:

20 Q Hello, Mr. Grabarkiewicz.

21 A Yes, sir.

22 Q I'm Derrick Bulsa. I don't know if you remember me.
23 We were actually at Boiling Springs together. I was a
24 couple years ahead of you.

25 A Oh.

Individual Juror Qualification

1 Q I remember you use to run a lot back then.

2 A That was many years ago, yes, sir.

3 Q Is that correct?

4 A Yeah.

5 Q Do you still run?

6 A No, sir.

7 Q No, you don't.

8 A No, sir.

9 Q I actually run a little bit myself. My daughter runs
10 cross-country.

11 Do any of your daughters run?

12 A No.

13 Q They don't?

14 A No, sir.

15 Q I notice you have three daughters?

16 A Yes, sir.

17 Q Okay. All right. Thank you for being here.

18 This is Barry Barnette. He's the solicitor. We're
19 gonna be prosecuting this case.

20 A Yes, sir.

21 Q You -- I was watching closely as you listened to the
22 judge. You were paying very close attention and very
23 attentive. I appreciate that.

24 A Yes, sir.

25 Q This is a serious matter and all we want to do now is

Individual Juror Qualification

1 to make sure you understand and don't have any questions.

2 A Yes, sir.

3 Q You understand the guilt phase is separate?

4 We've got to prove, beyond a reasonable doubt,
5 somebody's guilty of murder, and then we can move to the
6 second phase if there's an aggravating circumstance and we
7 believe it exists.

8 A Yes, sir.

9 Q And that's what we intend to do in this case. So,
10 that's a whole separate process.

11 would -- once you found somebody guilty of murder,
12 would you have any predisposition to go either way, life or
13 death?

14 A The options are possible, you know. The options are
15 there. I'd have to weigh out every possibility.

16 Q Okay.

17 A But I would be very -- I'm very, I'm very observant and
18 I pay attention to detail. So, the option is possible.

19 Q Okay. So, you would -- but you wouldn't be predisposed
20 to say I'm gonna vote death, I'm gonna vote life?

21 A No.

22 Q You look at both sides and look at all the
23 circumstances?

24 A Yes, sir.

25 Q So, you could fairly consider each, each option?

Individual Juror Qualification

1 A I would fairly, yes.

2 Q Okay. Now, one of the main aggravators in this case is
3 the death of a young child, and the mitigators would be a
4 variety of options including disability of the defendant.

5 would you weigh both of those accordingly and consider
6 life and death?

7 A Yes, I would.

8 Q Okay.

9 A I would weigh them.

10 Q Okay. What are your views of the death penalty if I
11 may ask?

12 A The options are a possibility for both. I have to -- I
13 would have to weigh out -- I would have to be in that --

14 Q Okay.

15 A -- situation. It's hard for me to say one way or the
16 other because I don't have the facts in front of me. I'm
17 not gonna give a stated fact that I don't have.

18 Q I notice you---

19 A So, I would have to weigh out the options in it.

20 Q Okay. I notice you were raised Catholic.

21 A I was in a Catholic Church for quite a few years before
22 moving to South Carolina. My dad was in the Navy for 30
23 years.

24 Q Okay.

25 A We were in the Catholic Church when we came to South

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1 Carolina in 1973. My mother being Southern Baptist. We---

2 Q Okay.

3 A ---participate in Southern Baptist, but I have not
4 been actively involved in a church in quite a few years.

5 Q Okay. So, you know the Catholic Church pretty much
6 opposes the death penalty?

7 A I understand the Catholic Church's beliefs --

8 Q Okay.

9 A -- as much as I understand the Baptist belief.

10 Q Okay. I didn't know if that would factor into your---

11 A Absolutely not.

12 Q ---difficulties?

13 Okay. Okay. Just one second.

14 (Pause.)

15 Q Now, when you go on -- when we go into the second
16 phase, would you give careful consideration to both
17 aggravating circumstances as well as the mitigating
18 circumstances?

19 A I would give careful consideration to the whole thing.

20 Q Okay.

21 A Every bit of it.

22 Q All right. That's all we can ask.

23 A Yeah, I'm not -- I do not miss on details. I will
24 follow it.

25 Q And at the end of the day, if the jury decides, as a

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1 group and individually that the death sentence is
2 appropriate, could you sign a death warrant?

3 A As stated to the judge, yes, I could.

4 Q Okay. Now, you understand this process. The
5 deliberation would be a discussion process, deliberation,
6 and that people are expected to interchange and share
7 opinions.

8 Can you---

9 A I understand.

10 Q ---respect that?

11 A I understand---

12 Q Okay.

13 A ---and respect that, yes, sir.

14 Q Okay. Okay. And you would be open to listening to
15 other peoples' views as well as your own?

16 A Absolutely.

17 Q Okay. Thank you, sir.

18 A Yes, sir, thank you.

19 THE COURT: Mr. Allen.

20 MR. ALLEN: Yes, Your Honor. Thank you.

21 THE COURT: Yes, sir.

22 EXAMINATION

23 BY MR. ALLEN:

24 Q Good afternoon.

25 A Good afternoon.

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1 Q I'm Clay Allen. I'm one of the attorneys representing
2 Ricky Blackwell.

3 A Yes, sir.

4 Q And I just want to take a moment of your time to ask a
5 few things.

6 I take it, by your answer to Mr. Bulsa's questions
7 concerning your views on the death penalty, I mean have you
8 thought about it a lot or is that something that you've---

9 A I've had no---

10 Q ---thought about a great deal?

11 A ---reason to think about it.

12 Q I'm sorry?

13 A I've had no reason to think about the death penalty.

14 Q Sure.

15 A But I am able to make a decision based on the facts. I
16 pretty well listen and understand details. So, it's an,
17 it's an option, and I understand that also. So, I will be
18 able to weigh your options or the options of the Court as
19 the judge has instructed me to.

20 Q Sure.

21 Well, let me ask you this.

22 With respect to the death penalty, do you think it's
23 used too much, not enough, or just about right or do you
24 have an opinion?

25 A I do not have an opinion on that cause I do not have

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1 facts in each case. I don't have a fact to make an opinion
2 on that.

3 Q Okay. That's fair enough.

4 If you had things your way, let's say that all of a
5 sudden you became the ruler of the State of South Carolina
6 and could make the laws, would you have a death penalty?

7 A That option is a possibility.

8 Q Okay. So, you would keep it as a possibility?

9 A That option is a possibility, yes, sir.

10 Q Okay. Tell me your views, if you would, on the life
11 imprisonment without the possibility of parole as a penalty
12 for murder.

13 Do you -- how do you view that?

14 A That option is also a possibility.

15 Q Okay.

16 A Again, I have to have the facts of the case.

17 Q Okay. So, it just depends on that case?

18 A The case, the facts, yes.

19 Q Okay. The facts of the case, you mean how the offense
20 occurred?

21 A How everything. You know, not just one. Everything.

22 Q Sure.

23 A I look at the whole pie. Not a piece of the pie.

24 Q Okay. Right and I'm not asking you to---

25 A No, no, I understand---

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1 Q ---look at one piece of the pie.

2 A ---and understand where I'm coming from.

3 Q Sure.

4 So, you -- so, the aggravating circumstances as well,
5 as well as the mitigating circumstances?

6 A Yes, sir.

7 Q Is that correct?

8 A Yes, sir.

9 Q Okay. One thing I want to make clear and I think the
10 judge did, as the judge always does a very good job of it,
11 but I want to make clear we understand.

12 When we talk about mitigating circumstances, we're not
13 talking about a defense to the, to the charge.

14 Do you understand that?

15 A I understand.

16 Q Okay. But just some other factors that, that may tend
17 to lessen the culpability or, or may -- make the offense
18 seem less severe.

19 A I understand.

20 Q You follow what I'm saying?

21 A I understand.

22 Q Okay. Do you understand, and I think you do, but do
23 you understand that, in weighing out the possibilities,
24 after you hear the case, the aggravating circumstances, the
25 mitigating circumstances, you understand that the death

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1 penalty is never required?

2 A I understand that also.

3 Q Okay. And that, of course, life imprisonment without
4 the possibility -- without the possibility of parole always
5 is an, is an option?

6 A I understand that.

7 Q Okay. Also we talk about jury decisions, and I think
8 you got a pamphlet on that this week.

9 You remember the, the---

10 A I have.

11 Q ---the pamphlet?

12 A Yes, sir.

13 Q And it mentions something about if the jury can not
14 make a decision that it would be a mistrial and the case
15 would have to be tried again.

16 Do you remember that part of the pamphlet?

17 A I remember briefly part of it, yes, sir.

18 Q Okay.

19 A I understand that.

20 Q Okay. And, of course, that's accurate in just about
21 all cases. It's also accurate when we're talking about a
22 case like this where we talk about the, the first phase that
23 the judge described, the guilt phase. In other words, if
24 the jury can not make a determination of the case, if the
25 charges of murder has been proven beyond a reasonable doubt,

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1 that, that would be a mistrial.

2 You follow what I'm saying?

3 A I understand what you're saying, yes.

4 Q But in the second phase it's different. That if the
5 jury, after discussing it, deliberating on it, and
6 considering all the evidence and all the factors, if the
7 jury still couldn't come to a decision, you understand that
8 there's a procedure in the law that allows that information
9 or that -- you know, that, that information to be relayed to
10 the judge and the judge will take the case and would
11 sentence?

12 You understand that?

13 A I understand that.

14 Q And, of course, that sentence would be life without the
15 possibility of parole?

16 A I do understand that, yes, sir.

17 Q You also understand that when we -- of course, part of
18 the, the requirements of the law is that the jury, in
19 determining -- in looking at the evidence that the State
20 puts up on the aggravating factors that are listed in the
21 statute that the jury has to be unanimous in their decision
22 on that if they -- if that's been proven beyond a reasonable
23 doubt before the jury can consider the death penalty.

24 You understand that?

25 A I understand that also.

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1 Q But when viewing mitigating circumstances, do you
2 understand that the jurors are not required to be unanimous
3 in their decision on any one particular mitigating factor or
4 mitigating information?

5 You understand what I'm saying?

6 A I understand what you're saying, yes.

7 Q In other words, I don't want to belabor it, but I will
8 just a little bit if you don't mind.

9 A No.

10 Q If one juror sees something, some piece of mitigating
11 evidence, and that evidence takes, for them, the weight of
12 getting life without the possibility of parole, that that
13 juror can make that decision.

14 A I do understand that.

15 Q And, of course, other jurors may not view it the same
16 way, and I believe the judge is mentioned that a juror's
17 allowed to consider life without the possibility of parole
18 for any reason or no reason or for mercy itself.

19 A That is an option. I understand that.

20 Q That's an option.

21 A Yes.

22 Q And, of course, none of my questions are designed to
23 ask you to commit today because you haven't heard the case.

24 A I definitely understand what you're saying.

25 Q Is that right?

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1 A Yes, sir.

2 Q During your jury deliberations, if it gets in the
3 situation where I'm gonna say civility has left the jury
4 room, in other words, that somebody's being bullied because
5 of their strongly held belief, would you be able to step in
6 and, and stop the bullying or notify the authorities that
7 civility has left the jury room?

8 A Absolutely.

9 Q Okay. You, you seem like a strong minded individual.
10 I kind of got that impression. I just want to make sure.

11 A Yes, sir.

12 Q Okay. And, lastly, of course, there are a number of
13 rules of the courtroom in Court. Some that govern the way
14 the lawyers behave, and some that govern the way other
15 participants, including the jurors, behave.

16 Do you follow what I'm saying?

17 A I understand.

18 Q And one of those rules is that, while the case is
19 ongoing, while the evidence for one phase or the other is
20 being presented, the jurors are not allowed deliberate or
21 discuss the -- that evidence.

22 A I understand that also.

23 Q And then you understand that if, overnight or during
24 the break, some of the jurors would begin discussing what
25 they've heard, that would be a violation of what the judge

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1 will instruct them as well as the jurors.

2 A I understand that.

3 Q And you could report that or you could stop that?

4 A Absolutely.

5 Q Okay.

6 A I understand.

7 Q Thank you.

8 A Yes, sir.

9 MR. ALLEN: One second please.

10 THE COURT: Anything further from the State?

11 MR. ALLEN: No, excuse me. I was just looking at my
12 cocounsel and I'm officially saying thank you.

13 THE COURT: Oh, thank you. Yes, sir.

14 State have any other questions?

15 SOLICITOR BULSA: No, sir.

16 THE COURT: All right. Sir, I'm gonna ask you to step
17 back into the jury room for just a moment.

18 THE WITNESS: Yes, sir.

19 THE COURT: Then I'll call you out.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Thank you.

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

24 THE COURT: Defense's position.

25 MR. ALLEN: He's qualified, Your Honor.

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1 THE COURT: State.

2 SOLICITOR BULSA: We agree.

3 THE COURT: All right. I agree. I find him qualified.
4 Bring him in please.

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

7 THE COURT: Have a seat please, sir.

8 THE WITNESS: Yes, sir.

9 THE COURT: Well, Mr. Grabarkiewicz, I have determined
10 that you are qualified to move forward in our process. That
11 doesn't mean you're on the jury.

12 THE WITNESS: Okay.

13 THE COURT: That means you're still within the pool
14 that could be on the jury.

15 THE WITNESS: Yes, sir, I understand.

16 THE COURT: I'm gonna ask Ms. Camp to give you a sheet
17 of paper.

18 THE WITNESS: Yes, ma'am, thank you.

19 THE COURT: On that paper is some information on how to
20 contact the Clerk's Office if necessary. Also it has some
21 information you might want to consider. If you receive a
22 call from us to report for jury duty, you would need to get
23 together some things cause you'll be staying for us -- with
24 us a little while.

25 THE WITNESS: I understand.

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1 THE COURT: So, if you take medications, be sure you
2 have enough for more than a week and that sort of thing.

3 THE WITNESS: I understand.

4 THE COURT: Now, my instructions concerning your
5 behavior continue.

6 THE WITNESS: I understand.

7 THE COURT: Don't listen to, watch, or read media
8 reports. Don't discuss the case with anyone. Don't allow
9 anyone to discuss it with you. Report any contact to us and
10 don't try to gather, excuse me, any independent evidence on
11 your own.

12 THE WITNESS: I understand.

13 THE COURT: Okay. There's an exception to that rule.
14 If you need to talk to family or employers about the fact
15 that if you get that call back to report that you may be,
16 you may go missing for a few days.

17 THE WITNESS: I understand.

18 THE COURT: You need to make arrangements to let them
19 know you would -- might be on jury duty. Be sure though to
20 make it clear to them you can't discuss the case with them.
21 You can't answer questions about the case. You just need to
22 let them know that you need to have those preparations
23 ready.

24 THE WITNESS: I understand.

25 THE COURT: So, you take care of that for me?

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1 THE WITNESS: I absolutely can.

2 THE COURT: All right. So, you will hear from us next.
3 We won't ask you to call in. We'll be calling you this time.
4 I expect that call to be sometime around Tuesday of next
5 week.

6 THE WITNESS: Okay.

7 THE COURT: And you'll receive additional instructions
8 at that time.

9 THE WITNESS: Yes, sir, I understand.

10 THE COURT: Okay. The bailiffs will show you out.
11 Thank you for spending your Saturday with us.

12 THE WITNESS: Thank you.

13 THE COURT: Yes, sir.

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

16 THE COURT: All right. We're gonna take about a ten
17 minute break at this point in time.

18 The Court will be in a short recess.

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

20 THE COURT: State ready to go forward?

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

22 THE COURT: Defense ready?

23 MR. MCGUIRE: Yes, sir.

24 THE COURT: All right. Kimberly Henson.

25 (WHEREUPON, the following takes place within the

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1 presence of the juror.)

2 KIMBERLY HENSON, having been previously
3 sworn, testified as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q Hi.

7 A Hey.

8 How are you?

9 Q Have a seat please.

10 A (Witness complies.)

11 Q Thank you, ma'am.

12 You might want to slide back a little bit and turn and
13 face me because I'm gonna be talking to you first.

14 A Okay.

15 Q And then we'll let the lawyers talk to you.

16 A All right.

17 Q Okay. You must be Kimberly Henson, is that right?

18 A Yes, sir.

19 Q Now, Ms. Henson, first of all, I want to thank you very
20 much for your cooperation in this process. I was just
21 looking at this sheet. Your panel was originally scheduled
22 to be here at four o'clock on Wednesday and here we are at
23 four o'clock on Saturday. So, I might of missed my estimates
24 just a little bit.

25 A It's okay.

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1 Q But I appreciate your flexibility and of your
2 willingness to come in this afternoon. So, thank you very
3 much.

4 A You welcome.

5 Q Okay. We're gonna go over some matters with you --
6 when I say we, myself and the attorneys. We're gonna go
7 over some matters with you that would have to do with jury
8 selection in this case. We are not selecting the jury
9 today.

10 A Uh-huh. (Affirmative).

11 Q We are going over a pool of individuals who could serve
12 on the jury. So, once we get that pool together, then we
13 will go into jury selection.

14 A Okay.

15 Q Do you understand what we're doing?

16 A Yes, sir.

17 Q We're gonna ask questions and I'll tell you that there
18 aren't any right or wrong answers.

19 A Okay.

20 Q There's only your answers --

21 A Okay.

22 Q -- and those answers we want to be honest.

23 A Okay.

24 Q You understand that?

25 A Yes, sir.

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1 Q So, in that regard, you were at the courthouse on
2 Monday.

3 A Uh-huh. (Affirmative).

4 Q You took an oath to tell the truth.

5 A Yes.

6 Q You remember that?

7 A (Witness nods affirmatively.)

8 Q That oath still applies at this time.

9 Do you understand that?

10 A Yes, sir.

11 Q Okay. Also, when you left the courthouse Monday, I
12 gave you instructions to the entire jury panel not to try to
13 gather any information on your own, not to listen to, watch,
14 or read media reports, not to discuss the case with anyone,
15 and not to let anyone discuss it with you.

16 A Right.

17 Q You remember those instructions?

18 A Yes, sir.

19 Q Have you been able to follow those instructions?

20 A Yes, sir.

21 Q Okay. Now, ma'am, are you the kind of person that, if
22 you were selected on a jury, that you could hopefully, or
23 you tell me, could you set aside any outside influences,
24 things that might, you might have heard, listened to, that
25 might pertain to any issue in the case and decide the case

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1 that's been -- in front of you, if you were on a jury, by
2 the evidence that's presented during the trial and the law
3 charged to you by the judge?

4 Could you do that?

5 A Yes, sir.

6 Q Now, ma'am, have you ever participated in any
7 discussions, formal, organized discussions, or unorganized
8 discussions, where the death penalty was the subject?

9 A Yes, back in school.

10 Q Okay. So, it was a school.

11 Was it a debate or---

12 A Yes, it was a---

13 Q ---just a discussion in class?

14 A Debate in class.

15 Q Okay. So, there was -- somebody took the side in
16 favor, somebody took the side against---

17 A Uh-huh. (Affirmative).

18 Q ---and you talked---

19 A Yes.

20 Q ---both sides?

21 A Yes, sir.

22 Q Well, how long ago is that been, ma'am?

23 A Oh, my gosh. Since 1989, '90.

24 Q A while---

25 A Something like that.

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1 Q A while back?

2 A Quite a while.

3 Q Okay. All right. And I'm not gonna ask about your
4 opinions on that right now. I'll get to that later.

5 okay?

6 A Okay.

7 Q Now, ma'am -- so that's been a long time ago?

8 A Oh, yeah.

9 Q Now, have you ever participated in any type of
10 political activities, that would be things like letter
11 writing to representatives, writing letters to editors of
12 newspapers, anything like that, on the issue of death, the
13 death penalty?

14 A No, sir.

15 Q Okay. Now, ma'am, back in the jury room there was a
16 list of people and it was about three sheets of paper long.
17 Did you look over that list?

18 A Yes, sir.

19 Q Read the names on there?

20 A Uh-huh. (Affirmative).

21 Q Now, as you read over the names, was there anybody on
22 those papers that you believed that you have ever been
23 related to by marriage or are you related by blood to?

24 A No, sir.

25 Q Was there anybody on any of those papers that you feel

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1 that you had a social, a personal, or a business
2 relationship with?

3 A Yes, sir.

4 Q Tell me who that might be.

5 A Lorin Williams, one of the investigators. Tony Patton,
6 paramedic. I use to work with him.

7 Q Uh-huh. (Affirmative).

8 Q Were you a paramedic at one time?

9 A Yes, sir.

10 Q Okay.

11 A At Spartanburg EMS.

12 Q All right.

13 A Rusty Clevenger, Robin Forest, Cletus Blackwell. I
14 actually knew him from -- my dad run a business in Chesnee.

15 Q Okay.

16 A So, I knew him. Louise Scruggs from personal and from
17 a school standpoint. Bill Hayes, school and business.

18 Q He use to be at the high school, didn't he?

19 A Yeah.

20 Q I knew Bill Hayes from there.

21 All right. Any, anyone else?

22 A Ms. Ponder. Lottie Jolley.

23 Q Oh, a good many people.

24 A Yeah.

25 Q All right. Let me ask you about those folks. Those

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1 people are listed as possible witnesses in the case.

2 A Uh-huh. (Affirmative).

3 Q Now, I don't know for sure if they're testifying. I'm
4 gonna assume that they all are gonna testify.

5 A Okay.

6 Q Now, is there any of those people that you had
7 acquaintances with -- and it sounds like most of them are
8 either business or school---

9 A Yes.

10 Q ---related.

11 If any of those people that if they were to be a
12 witness about some question in the case, would -- if you --
13 and you were on the jury, would that affect your ability
14 though to be fair and impartial to both the State and the
15 defense if you were on the jury?

16 A No, sir.

17 Q So, the fact that they testified wouldn't make you
18 automatically decide the case one way or the other?

19 A No.

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

21 Now, I'm going to start asking you some personal
22 questions. Some of these questions will be -- when I say
23 personal, it will be about your opinions, your ideas about
24 things.

25 A Okay.

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1 Q You seem to be a person who's secure enough in your
2 ideas---

3 A Yes, sir.

4 Q ---is that you won't mind if I talk about that.

5 A No.

6 Q Okay. Just wanted to be sure you were comfortable with
7 that process.

8 Now, one thing I need to make you aware of that, that
9 it's of importance.

10 A Uh-huh. (Affirmative).

11 Q I want to -- it's a concept I want to be sure you're
12 comfortable with and you understand.

13 A Okay.

14 Q Now, I mentioned, on Monday, the fact that this case is
15 a case where the State is alleged a murder.

16 A Uh-huh. (Affirmative).

17 Q They're alleging that the defendant should be subject
18 to the death penalty. When that occurs, then the case is
19 what we call bifurcated under the law. See, normally when I
20 do a criminal case, the jury comes in and the jury is the
21 judge of the facts.

22 A Okay.

23 Q The judge is the judge of the law.

24 A Uh-huh. (Affirmative).

25 Q And that means the juries listen -- the jury listens to

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1 the testimony, the evidence, whatever evidence or documents
2 come into the record, and then they weigh that evidence for
3 truthfulness, how much weight they give to it, what they --
4 how much they think it weighs in their decision, and so they
5 decide the issues of fact, and the judge gives the law to
6 the jury.

7 Do you understand that?

8 A Uh-huh. (Affirmative).

9 Q And then they can -- they take that information, they
10 reach a verdict as to guilty or not guilty on the charge for
11 the defendant.

12 Now, in a normal case, that would be the end of the
13 jury's responsibility. Once they rendered that verdict, the
14 judge then decides to -- what the sentence ought to be if
15 the person's found guilty.

16 A Okay.

17 Q You understand that?

18 A Yes, sir.

19 Q This case is different where they're seeking the death
20 penalty.

21 A Okay.

22 Q What we do is we have a first trial and that -- the
23 first part of the trial is just like the trial I talked
24 about.

25 A Okay.

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1 Q The jury comes in, listens to the evidence as to the
2 guilt or the innocence of the defendant concerning the
3 charges.

4 A Uh-huh. (Affirmative).

5 Q They weigh the evidence once it's been finished, and
6 the arguments of the lawyers, and they take the law given by
7 the judge and they give a verdict, either guilty or not
8 guilty.

9 A Uh-huh. (Affirmative).

10 Q Now, if the defendant is found not guilty, that's the
11 end of the case. We don't go into what, what the penalty
12 ought to be cause he's been found not guilty.

13 A Right.

14 Q So, is -- when we start talking about that penalty
15 phase, and I'm gonna get into talking about that in a
16 minute, I hope you understand that we may never get to that
17 stage of this trial, and I want you to also understand that
18 the defendant is presumed to be innocent of any charge. No
19 matter what the seriousness of the charge might be, he is
20 presumed to be innocent.

21 Now, since the same jury hears both the, the penalty --
22 the, the guilt phase and the penalty phase, when we're
23 qualifying a jury or discussing matters with a jury, the
24 only time we can talk about matters that would pertain to
25 that penalty phase is before the trial starts cause, once

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1 the trial starts, the same jury does both of them if it's
2 necessary.

3 A Right.

4 Q So, the fact that we're going to be talking today about
5 the penalty phase of that trial --

6 A Uh-huh. (Affirmative).

7 Q -- should not be taken by you as any reflection on the
8 defendant or his case here. It's simply the only time that
9 we can discuss it --

10 A Okay.

11 Q -- and it does not reflect that we have prejudged the
12 case or have any opinion about that. It's just this is the
13 only time we can talk about this.

14 A Okay.

15 Q Do you understand that?

16 A Yes, sir.

17 Q Are you comfortable with that---

18 A Yes, sir.

19 Q ---with that?

20 A Uh-huh. (Affirmative).

21 Q Okay. Now, ma'am, I want you to imagine that you're a
22 juror and I've been, for about a week now, using as the
23 example that maybe you're a juror on a case where someone's
24 been accused of shoplifting. Doesn't have anything to do
25 with this case, and I want to talk about some general

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1 principles under the law --

2 A Uh-huh. (Affirmative).

3 Q -- and see if you agree with me about those
4 principles --

5 A Okay.

6 Q -- and if you're comfortable with those principles.

7 Okay. The first thing I want to ask you is if you're a
8 juror on any case, that shoplifting case, would be willing
9 to accept the law as charged to you by the judge?

10 A Yes, sir.

11 Q All right. And, and in accepting that law, would you
12 be willing to take the law as given to you by the judge,
13 apply those to the facts as the jury finds them cause I told
14 you the jury's the judge of the facts --

15 A Right.

16 Q -- and use that formula in reaching a verdict in the
17 case?

18 A Yes, sir.

19 Q Now, I want to take it a little step forward and add
20 another element to that.

21 A Okay.

22 Q Let's say you were sitting on that trial about a
23 shoplifting case.

24 A Uh-huh. (Affirmative).

25 Q You've heard all the arguments by the lawyers. You've

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1 already heard all the evidence in the case and it's reached
2 the point in time just before deliberations where the judge
3 charges the jury with the law.

4 A Okay.

5 Q He gives you the law to apply in the case.

6 A Okay.

7 Q So, let's say I was reading or giving the law to you
8 about shoplifting.

9 A Uh-huh. (Affirmative).

10 Q And as I was giving you that law you heard me say
11 something that you either didn't agree with or you didn't
12 think the law was that way. You didn't think that was what
13 the law was --

14 A Uh-huh. (Affirmative).

15 Q -- that you heard the judge tell you that.

16 Now, would you be the kind of juror who could set aside
17 your personal beliefs or feelings, set those aside, and take
18 the law exactly as the judge gave it to you and apply that
19 to the facts in reaching a verdict?

20 A I believe so.

21 Q So, you could do it that way?

22 A Yes.

23 Q Okay. Now, some other principles under the law I'm
24 gonna talk about.

25 Do you agree with the principle under the law that we

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1 operate that every defendant in every criminal case, no
2 matter how serious the charge might be, is always presumed
3 to be innocent of that charge until guilt has been proven to
4 a jury in a trial?

5 A Yes.

6 Q Now, by the same token, do you also understand or is
7 it -- do you agree with the premise that a defendant is
8 never required, in any trial or in any stage of a criminal
9 proceeding, to prove his innocence?

10 A Yes.

11 Q You agree with that?

12 A Uh-huh. (Affirmative).

13 Q Now, because a defendant is presumed innocent, and
14 because the defendant is not required to prove his
15 innocence, do you understand that, at a criminal trial, a
16 defendant is not required to offer any proof at all about
17 anything?

18 A Yes.

19 Q A defendant has no burden of proof.

20 A Right.

21 Q A defendant, in fact, has the right to remain silent
22 throughout the trial if the defendant wants to.

23 A Yes.

24 Q You agree with that principle of the law?

25 A Uh-huh. (Affirmative).

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1 Q All right. Now I'm gonna go to the other side of the
2 case. We're gonna talk about the entity that has brought
3 the charge, the State.

4 The State has filed charges against someone. Those
5 charges, in this case we're talking about, are shoplifting.
6 Because the State is the complaining party, they're required
7 to prove the allegations that they've made in Court, and
8 they have to prove that to proof beyond a reasonable doubt.

9 Now, do you understand that?

10 A Yes, sir.

11 Q Do you agree that that's the way it ought to be as
12 well?

13 A Yes, sir.

14 Q Okay. Now, now, if you were sitting on a jury and,
15 this same shoplifting case --

16 A Okay.

17 Q -- you've heard all the evidence, gotten the charge on
18 the law. You and your fellow jurors want to go back to the
19 jury room, you begin your deliberations. You come to the
20 conclusion that the State did not meet its burden of proof.
21 It did not prove the defendant guilty beyond a reasonable
22 doubt.

23 A Okay.

24 Q You understand where you are?

25 A Yes, sir.

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1 Q Would you have any problem, in, in that case, signing a
2 not guilty verdict, verdict for a defendant?

3 A No, sir.

4 Q All right. Now, by the same token, if the State did
5 offer proof beyond a reasonable doubt, would you have any
6 difficulty in signing a guilty verdict against a defendant?

7 A No, sir.

8 Q I think what you're telling me is you're the kind of
9 juror that -- who would listen to the evidence, weigh the
10 evidence on both sides --

11 A Uh-huh. (Affirmative).

12 Q -- decide what's truthful and what's not truthful, and
13 based upon that weight of evidence, you could find somebody
14 either guilty or not guilty of a crime, is that correct?

15 A Yes, sir.

16 Q Okay. Now, I'm going to move onto where I'm going to
17 put the cart in front of the horse.

18 A Okay.

19 Q I told you I was gonna get there.

20 A Okay.

21 Q So, I'm, I'm where I'm gonna do that and I'm gonna put
22 you in a different trial at this time.

23 A Okay.

24 Q What I'm gonna tell you is that we have got a situation
25 where there has been a charge given by the State against a

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1 defendant alleging murder.

2 A Okay.

3 Q And the State has notified all parties that they intend
4 to seek the death penalty.

5 A (Witness nods affirmatively.)

6 Q So, you now know that that means this trial is gonna be
7 divided into two parts.

8 A Okay.

9 Q Okay. There's going to be a guilt phase and then a
10 sentencing phase.

11 A Okay.

12 Q All right. Now, we're going to assume that you and
13 your fellow jurors, you got on the jury, have gone through
14 the guilt phase of the trial, and you've listened to the
15 evidence, you've listened to the law charged by the judge.
16 You've gone back into the jury room, and after your
17 deliberations, you determined that the State, in fact, did
18 prove that the defendant was guilty of murder beyond a
19 reasonable doubt. So, the -- you've come out, you give that
20 verdict, and that means the defendant is now a convicted
21 murderer in the case.

22 A Okay.

23 Q Do you understand that?

24 A Yes, sir.

25 Q Now, the law that sets that up says that there has to

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1 be a second phase of the trial since the State is asking for
2 the death penalty.

3 A Uh-huh. (Affirmative).

4 Q That's referred to as the penalty or the sentencing
5 phase of the trial. The statute that sets up that
6 particular trial sets out certain proof either that has to
7 be shown or can be shown during that particular hearing. At
8 that hearing it provides that the State can provide evidence
9 of what are called aggravating circumstances.

10 Now, we all know that a murder is not a good thing.

11 A Uh-huh. (Affirmative).

12 Q That's a bad thing.

13 A Yeah.

14 Q But these aggravating circumstances, and there's a list
15 of about ten or twelve of them and some of them even have
16 subparts in the statute.

17 A Uh-huh. (Affirmative).

18 Q So, I'm not gonna try to name them all right now unless
19 you want me to.

20 A No.

21 Q But there's a list of aggravating circumstances that a
22 jury can consider, and those are factors that could tend to
23 make the jury tend to go toward a higher or a worse penalty
24 level.

25 A Okay.

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1 Q So, those are aggravators, aggravating circumstances.

2 The same statute that says -- and the State has to
3 prove at least one of those beyond a reasonable doubt --

4 A Okay.

5 Q -- for there to be any consideration of the death
6 penalty.

7 On the other hand, the statute also provides for
8 introduction of evidence on what is called mitigating
9 circumstances. Now, there's ten of those listed in the
10 statute, but the law also says that a jury can consider any
11 factor it wants to consider in mitigation, and it also says
12 a jury has the right to consider mercy as well. So, there
13 are the things that a jury can consider in setting the, the
14 verdict or the decision on the penalty. But those
15 mitigating factors, I said there's ten of them, those are
16 factors which might cause a juror to tend or lean toward a
17 lower penalty as opposed to the higher one.

18 So, do you understand the difference between
19 aggravation -- aggravating and mitigating circumstances?

20 A Yes, sir.

21 Q All right. The statute that sets up that hearing says
22 that, once that evidence is been presented to the jury, that
23 the judge will instruct the jury to consider that evidence,
24 both kinds of evidence, in deciding what the appropriate
25 penalty ought to be, and, in this case, the jury would

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1 recommend or come back to the Court to recommend a
2 particular sentence. The choices are the death penalty or
3 life in prison without the possibility of parole, and that
4 is what it's mean -- that means what it says.

5 A Okay.

6 Q Someone goes to jail. They stay there for life.

7 So, do you understand what that, that hearing is
8 about --

9 A Yes, sir.

10 Q -- and what would happen?

11 A Uh-huh. (Affirmative).

12 Q Okay. Now, back in the jury room I had a sheet of
13 paper laying on the table.

14 A Uh-huh. (Affirmative).

15 Q And it described three different kinds of jurors.

16 Do you remember that paper?

17 A Yes, sir.

18 Q I'm gonna go back over that with you. I won't follow
19 the exact wording of that paper, but I'm gonna go back over
20 it, and we're gonna give each of those jurors a number --

21 A Okay.

22 Q -- and be sure we've got an understanding --

23 A Okay.

24 Q -- as to who they are.

25 Now, I've put you in the position you're on this jury.

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1 You've found the defendant guilty of murder.

2 A Uh-huh. (Affirmative).

3 Q He's convicted of that crime. So now we're coming back
4 for sentencing.

5 A Uh-huh. (Affirmative).

6 Q You're walking down the hallway. You're getting ready
7 to step into the courtroom and start that penalty phase
8 hearing.

9 A Okay.

10 Q Okay. Juror number one on the paper, that juror,
11 before that juror ever walks into the courtroom, has already
12 made up his or her mind. That juror believes that anytime a
13 person is convicted of a murder, the intentional killing of
14 a person without legal cause, and there's a long definition,
15 with malice aforethought -- I'm not gonna read the whole
16 definition unless you want it.

17 A No.

18 Q I'll be glad to read it to you.

19 A That's okay.

20 Q But it, but it -- but convicted of a murder.

21 That juror believe when someone's convicted of a
22 murder, that the only possible, only appropriate penalty is
23 the death penalty, and every time that juror would be put in
24 that position and he'd come into the courtroom and he'd vote
25 for the same thing even before the hearing's held.

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1 The second juror that I described is another juror
2 that's already made up his or her mind. That juror believes
3 that it is never appropriate to take the life of someone in
4 response to a crime, and so, therefore, that juror, every
5 single time, no matter what the aggravation factors might
6 be, no matter how serious the crime might of been, will
7 never vote for the death penalty, will always vote for life
8 imprisonment without parole because that juror believes
9 that's the only appropriate penalty in this situation.

10 The third juror has not yet made up his or her mind.
11 That juror wants to come into the courtroom. That juror
12 wants to hear the evidence concerning aggravation. Also
13 hear the evidence concerning mitigation. Also consider any
14 factors that that juror thinks that they ought to consider.
15 In other words, they want to hear the evidence and then
16 weigh the evidence in light of the Court's instructions and
17 then go back into the jury room and, and, after deliberation
18 with their fellow jurors, make a decision as to what they
19 think the appropriate penalty ought to be.

20 Do you understand the difference between jurors one,
21 two, and three?

22 A Yes, sir.

23 Q Now, I told you to put you -- yourself in the position
24 that you're walking back into the courtroom. You're about
25 to start that hearing concerning the, the factors to be

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1 weighed.

2 Which one of those jurors most closely resembles how
3 you would feel walking into that courtroom?

4 A I'd probably -- I would say three.

5 Q Number three?

6 A Uh-huh. (Affirmative).

7 Q Now, let me see -- let me follow up to be sure I
8 understand what you're saying.

9 That means to me that you would like to come into the
10 courtroom, you'd like to listen to the aggravating
11 circumstances, you'd like to listen to the mitigating
12 circumstances, you'd like to listen to the judge's charge on
13 the law, and, after considering all those factors, only then
14 would you want to make up your mind as to what the proper
15 penalty ought to be.

16 A Yes, sir.

17 Q Is that what you're telling me?

18 A Yes, sir.

19 Q Now, let me also take it another step forward.

20 Let's say that you and your fellow jurors did that.
21 You've listened to the evidence, you heard the judge's
22 charge, you heard both sides, and then you went back into
23 the jury room, and after deliberations, you and your fellow
24 jurors decided that the only appropriate penalty in this
25 case was life in prison without the possibility of parole.

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1 Could you sign a verdict like that?

2 A Yes, sir, if, if the information was there.

3 Q I understand. Well, I'm, I'm telling you.

4 A Yes.

5 Q You had it all laid out and you've considered it.

6 okay?

7 A Okay. Yes.

8 Q Now, let's say that you had all the information laid
9 out to you again, things that made it worse, aggravators,
10 things that maybe modified it or mollified it, in other
11 words, things that are, are mitigating circumstances, you've
12 heard the law from the judge, again, you've considered it
13 with your fellow jurors, and you've reached the conclusion
14 that the death penalty is the appropriate penalty.

15 Could you sign a verdict for the death penalty?

16 A Yes, sir.

17 Q Let me ask two more questions and then I'm gonna stop.

18 A Okay.

19 Q All right. I have signed a sequestration order in this
20 case.

21 A Uh-huh. (Affirmative).

22 Q Sequestration order is a fancy legal phrase, but I'll
23 explain what it means. You may know, but I'll just, I'll
24 just tell you.

25 A Okay.

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1 Q It means that when a jury finally, we pick the final
2 jury, that jury will come into the courtroom, we'll start
3 the trial, hear the evidence, and, at the end of the day,
4 the jury's gonna go over to the Marriott with a group of
5 people who will be sitting with them, juror sitters I guess
6 they are, and they'll be staying there until the trial is
7 over.

8 A Okay.

9 Q Now, the county is going to pay for the lodging, food,
10 transportation during that period of time. There won't be
11 any expense to a juror for being in that situation. The
12 juror would be allowed to call family or friends if you'd
13 like to, but the calls will be monitored. The purpose of
14 sequestration is so the jury won't be affected by any
15 outside influences during the trial. In other words, the
16 jury is just gonna consider what's going on in the courtroom
17 during the trial --

18 A Uh-huh. (Affirmative).

19 Q -- like I started off talking about.

20 A Right.

21 Q You remember that?

22 A Yes, sir.

23 Q So, that, that's the purpose of sequestration.

24 Now, it would, it would last as long as the trial goes
25 on. I expect the trial -- this trial will last longer than

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1 a week. I don't think it will last longer than two weeks,
2 but I can't tell you where it will be in-between that time.

3 A Uh-huh. (Affirmative).

4 Q Now, I will tell you that, while you are sequestered,
5 you do receive pay at the rate allowed for jurors.

6 A Uh-huh. (Affirmative).

7 Q It's not as much as people make on the -- in the real
8 world, but it's all the law allows, and you'd receive travel
9 if you had to use your personal vehicle coming and going
10 from the courthouse.

11 A Okay.

12 Q Now, do you understand what sequestration means?

13 A Yes, sir.

14 Q All right. Now, if you were in the situation where you
15 were sequestered, would that pose any serious risk to your
16 health or your well being?

17 A I don't think so, no.

18 Q Would it pose any serious risk to anyone else's health
19 or well being?

20 A It could possibly.

21 Q And tell me what that is.

22 A I am a critical care nurse at Greenville Memorial in
23 CCU.

24 Q Uh-huh. (Affirmative).

25 A And we're actually short staffed currently with nurses.

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1 Q Right.

2 A And it would -- we're not always able to get
3 supplemental staffing to get -- so it could be detrimental
4 to a patient because I can't be at work.

5 Q Okay. Well, is there something that I need to consider
6 from your work about your circumstances or your employer?

7 In other words, let's put it this way. If you went to
8 your employer and you explained to them that you're still in
9 a jury selection process---

10 A Uh-huh. (Affirmative).

11 Q ---if you're selected you'll be out of pocket for a few
12 days --

13 A Uh-huh. (Affirmative).

14 Q -- can they work around that?

15 A I would say so.

16 Q So, you think that they can do that?

17 A Yes.

18 Q Well, we won't ask you to come -- in fact, if you
19 get -- if we get past this situation, I will instruct you
20 that you should do that.

21 A Okay.

22 Q Go see your employer and make them aware that you may
23 be out of pocket for some period of time --

24 A Okay.

25 Q -- and we'll see that that's taken care of.

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1 A Yes, sir.

2 Q So, you think that would solve that problem?

3 A Yes, I think so.

4 Q Okay. I'm gonna ask the lawyers to talk to you at this
5 point in time.

6 A Okay.

7 Q And when they finish asking questions I may have some
8 more for you.

9 A Okay.

10 Q We'll see what happens.

11 A Okay.

12 THE COURT: Mr. McGuire.

13 MR. MCGUIRE: Your Honor, we have no questions for Ms.
14 Henson. Thank you.

15 THE COURT: The State, do you wish to ask any
16 questions?

17 EXAMINATION

18 BY SOLICITOR BARNETTE:

19 Q Let me just ask -- just introduce myself if I could.

20 Ms. Henson, I'm Barry Barnette and this is Derrick
21 Bulsa. We'll be representing the State.

22 A Yes.

23 Q At this time the attorneys usually ask questions.

24 A Okay.

25 Q So, that's the reason -- sorry. I got caught by

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1 surprise a little bit. I thought they would ask questions
2 before we did. So from there.

3 But, Ms. Henson, basically -- like the judge told you,
4 it's a situation where you have to weigh out your options
5 and things like that, and it's a situation where, assume we
6 get through the guilt phase --

7 A Right.

8 Q -- really we're talking about the sentencing phase
9 right now, the second phase. You're the type of juror that
10 could hear the aggravating circumstances, aggravating
11 circumstances as well as the mitigating circumstances.

12 A Yes, sir.

13 Q Is that right?

14 For example -- and the judge can give you -- the
15 mitigators I can't remember. There's a bunch of them. It's
16 a---

17 THE COURT: There's ten of them --

18 Q There's ten of them.

19 THE COURT: -- that are listed. Now, you can consider
20 anything as a mitigator that's even not on the list if you'd
21 like to do that.

22 THE WITNESS: Okay.

23 Q Okay. It's a long list.

24 THE COURT: You're not limited to just that list, but
25 there is a list of ten of them.

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1 THE WITNESS: Okay.

2 Q Okay. And we present the aggravators obviously. We're
3 the State.

4 A Okay. We'd go first just like we did in the first part
5 of the trial. We'd go first in the sentencing phase, and
6 one of the allegations -- aggravators is a small child, the
7 death of a small child, and then they'd present their
8 mitigators, which is there's like ten of them from that
9 standpoint, background of the defendant, a mental
10 retardation possibly, things like that that they'd present
11 things of that nature.

12 A Yes, sir.

13 Q We have to prove our aggravator beyond a reasonable
14 doubt.

15 A Right.

16 Q And you understand that --

17 A Yes, sir.

18 Q -- from that standpoint?

19 Could you fairly listen to both sides and give
20 consideration to both sides knowing the aggravators and the
21 circumstances -- you'd want to know both, is that right?

22 A Yes, sir.

23 Q And you wouldn't automatically walk in, before you
24 heard all that evidence, and make a decision one way or the
25 other until you heard it?

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1 A No, sir.

2 Q So, you're not automatically voting for death?

3 A No.

4 Q You wouldn't automatically vote for life?

5 A No.

6 Q You would listen to everything before you made that
7 decision --

8 A Yes, sir.

9 Q -- from there?

10 And, like I said, you'd listen to what the judge
11 instructed you on that, wouldn't you --

12 A Yes, sir.

13 Q -- from there?

14 And you realize that all 12 jurors have to agree --

15 A Yes, sir.

16 Q -- to get a death sentence?

17 A Yes, sir.

18 Q If one of them decides not to, it goes to the judge and
19 he would give a life without parole sentence --

20 A Okay.

21 Q -- in that situation?

22 So, you understand, in order for death to be imposed,
23 it'd have to be imposed by the jury?

24 It can not be imposed by the judge?

25 A Yes, sir.

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1 Q The judge just follows the recommendation of the jury
2 if it's a death sentence?

3 A Okay. Yes, sir.

4 Q But if it goes to him, if it's -- if they can't reach a
5 verdict in the sentencing phase, then he would step in and
6 give a life without parole verdict in that case?

7 A Yes, sir.

8 SOLICITOR BARNETTE: One moment, Your Honor, please.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q Just one other thing.

12 Do you know Cletus Blackwell or know of him?

13 A Yes, sir.

14 Q How do you know him?

15 A My grandfather and, and Cletus Blackwell were friends
16 from long ways back. Plus my dad ran a service station in
17 the Town of Chesnee and I waited on him multiple times when
18 he bought gas from us or had any type of mechanical issues
19 or anything he'd come by there.

20 Q Okay. And would that have any affect on your decision
21 in this case?

22 A I don't believe it would.

23 Q Okay. And I know you said you don't believe it would.

24 would, would it have any affect though cause that's
25 something we need to know?

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1 A I'd be afraid it would just for the fact it's somebody
2 that I've known for years and years and years. I would like
3 to say no, it wouldn't, but I'm afraid I'd still have that
4 in the back of my mind.

5 Q I understand and that's what -- we're just trying to be
6 honest---

7 A No, you're fine. That's the reason I wanted to be
8 honest with, with you about saying that.

9 Q Yeah, and we appreciate it cause, like I said, we need
10 to know if it's gonna affect you --

11 A I agree.

12 Q -- from there.

13 Okay. Thank you, Your Honor.

14 THE COURT: Anything further?

15 SOLICITOR BARNETTE: No, sir.

16 THE COURT: With to follow-up with any questions?

17 MR. MCGUIRE: Just very briefly, Your Honor.

18 THE COURT: Yes, sir.

19 EXAMINATION

20 BY MR. MCGUIRE:

21 Q Hey, Ms. Henson.

22 How you doing?

23 A I'm good.

24 How are you?

25 Q I know you might have something in the back of your

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1 head cause you knew somebody.

2 A Uh-huh. (Affirmative).

3 Q I know you knew some school teachers and Mr. Cletus
4 Blackwell.

5 A Uh-huh. (Affirmative).

6 Q But if you were on the jury, and the judge said that
7 you -- the only reason, the only reason knowing somebody
8 would make a difference is if they said something, would you
9 give more weight to what they said or would you be biased
10 in, in their favor for some reason.

11 Is that where you are?

12 A I think I would maybe give him a little bit more weight
13 from what they said just because of somebody I knew and knew
14 their background. But I don't think I would take -- be
15 biased just cause they said something that I'd automatically
16 believe what they said if that makes sense.

17 Q Yeah.

18 Did you know some of the officers on the list too?

19 A Yes, sir.

20 Q Okay. So, if they said something, you would know them,
21 so you might have a tendency to believe what they said --

22 A Yes.

23 Q -- or give it greater weight?

24 A Yes, for the fact I've worked with them on a
25 professional basis.

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1 Q Right. I think when you were an EMT.

2 A Uh-huh. (Affirmative).

3 Q Okay. And if a school teacher or a -- if a school
4 teacher that you knew or Mr. Cletus Blackwell said
5 something, would you give it more weight as well cause you
6 know them?

7 A I, I possibly would. I think it would be one of those
8 things where it's according to what was said whether I would
9 give it more weight. I can't say yes or no --

10 Q Okay.

11 A -- for sure.

12 Q Okay. All right. The judge might have some more
13 questions for you. Those are the ones I have for you.

14 A Okay.

15 EXAMINATION

16 BY THE COURT:

17 Q Well, Ms. Henson, what I'm gonna do is apparently
18 you've testified, and you're under oath at this time, that
19 the fact that you know the family or knew the father and you
20 knew some of these other witnesses that you might tend to
21 give their testimony more weight I think is what I heard.

22 A Yes.

23 Q Is that still the case?

24 A I think so, yes.

25 Q All right. Well, ma'am, given that situation, I think

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1 it's gonna be best that I excuse you from this process.

2 A Okay.

3 Q The bailiffs will show you out and you're free to go,
4 but thank you for your cooperation.

5 A Thank you.

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

8 THE COURT: All right. I have found Ms. Henson to be
9 disqualified because of her answers.

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: Next would be Daphne Billings.

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

14 DAPHNE BILLINGS, having been previously
15 sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Have a seat please.

19 A Yes, sir.

20 Q How are you this afternoon?

21 A Good. Thank you.

22 Q Bet you never thought you'd be sitting in a courtroom
23 at 4:30 on a Saturday afternoon.

24 A I can not say I ever thought I would, no, sir.

25 Q See you never know what life comes --

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1 A I know.

2 Q -- or has in store, do you?

3 A Very much so.

4 Q All right. Ma'am, let me tell you what we're doing
5 here.

6 We're gonna be going over some questions and some
7 matters with you that would pertain to your possible service
8 on the jury in this matter. We're in the process of still
9 doing what we call qualification --

10 A Okay.

11 Q -- which means we're going through, talking with
12 jurors, and we're developing a pool of jurors from which we
13 will ultimately pull the jury.

14 A Yes.

15 Q So, if you go past today, it doesn't mean you're
16 automatically on the jury or not on the jury. It means that
17 you would still be under consideration though.

18 A Okay.

19 Q You understand what we're doing?

20 A Yes, sir.

21 Q As we go through this process I'm going to be asking
22 you some questions. The attorneys are gonna be asking you
23 some questions, and I will tell you there aren't any right
24 or wrong answers to what we ask. There's only your answers.

25 A Okay.

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1 Q And we want you to be truthful with us.

2 A I will.

3 Q Now, I'll remind you that, when you were here on
4 Monday, you took an oath to tell the truth.

5 A Yes, sir.

6 Q Do you remember that?

7 A Yes, sir.

8 Q I'm gonna remind you of that because I want you to
9 understand that oath still applies to your testimony today.

10 A Okay.

11 Q Do you understand that?

12 A Yes, sir.

13 Q And do you acknowledge that that's true?

14 A Yes, sir.

15 Q When you left on Monday I gave a set of instructions to
16 the jury. I'll just, in a nutshell, I will go over them.
17 That was to not try to gather any information on your own.

18 A Uh-huh. (Affirmative).

19 Q Not to listen to, watch, or read media reports.

20 A Uh-huh. (Affirmative).

21 Q Not to discuss the case with anyone or allow anyone to
22 discuss it with you, and if anybody called you or contacted
23 you about your service, let the clerk know that that
24 occurred.

25 A Yes, sir.

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1 Q Have you been able to follow my instructions?

2 A Yes, I have.

3 Q So, we're okay on that, up to this point in time?

4 A Yes, sir.

5 Q All right. Very good.

6 Now, Ms. Billings, I -- as I said, I'm gonna ask some
7 questions, and if anytime you feel uncomfortable about this,
8 you let me know.

9 A Okay.

10 Q We, we will be asking some opinions of yours or beliefs
11 of yours, and, and you seem to be a mature enough adult that
12 you can talk about those things without feeling threatened.

13 A Uh-huh. (Affirmative).

14 Q And I can assure you, nobody's gonna pick on you today.

15 A Okay.

16 Q I've been teasing that that's usually the hot seat in
17 my courtroom because that's where the witnesses sit.

18 A Sure.

19 Q And I've seen some get picked on there. But that's not
20 gonna happen to you today.

21 A Okay.

22 Q Okay.

23 A Sure.

24 Q Everybody's gonna be respectful, and if you don't
25 understand something we're talking about, you let us know.

Individual Juror Qualification

1 A Okay.

2 Q We'll be glad to stop and get it straightened out for
3 you.

4 A Okay.

5 Q Okay. Now, the first questions I have, have you ever
6 participated in any type of discussions, blogs, Internet
7 sites, anything where the subject of the discussion would of
8 been the death penalty?

9 A Not on the Internet. In conversation I have.

10 Q Okay. When you say conversation, that's with other
11 individuals --

12 A With other individuals.

13 Q -- or family---

14 A Yes.

15 Q ---members or something like that?

16 A Yes, sir.

17 Q Nothing organized?

18 A No. No, sir.

19 Q So, it wasn't like you were at some forum where people
20 were talking about the death penalty---

21 A No.

22 Q ---or something like that?

23 A No.

24 Q Yeah, I think a lot of people have mentioned it or
25 talked about it.

Individual Juror Qualification

1 A Yeah.

2 Q You see things on the news and stuff like that.

3 A Absolutely.

4 Q Okay. Now, have you ever participated in any political
5 discussion or activities related to the death penalty --

6 A No.

7 Q -- where you would write a letter to the editor or call
8 a representative or a congressman and urge them to vote one
9 way or the other?

10 A No.

11 Q Okay. Now, ma'am, if you were on a jury, would you be
12 the kind of juror who could concentrate on what is going on
13 in the trial and put aside any outside influences or
14 anything that might be outside the courtroom and try to
15 decide the case based upon the law and the evidence that you
16 hear in the trial?

17 A I would try.

18 Q Uh-huh. (Affirmative).

19 A I have to be honest and say I'm from Chesnee. So, I
20 did not realize until I kept looking at the defendant when I
21 was in here and going I know I know this man, I know I know
22 this man.

23 Q Uh-huh. (Affirmative).

24 A And it hit me later, after I was out of here, that -- I
25 mean Chesnee's a small town. You, you know what's going on.