

VOLUME SIX

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Dorchester County
James E. Lockemy, Circuit Court Judge

RECEIVED

OCT 18 2013

S.C. Supreme Court

MARION BOWMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213468

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

DAVID ALEXANDER
Appellate Defender

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

S. CREIGHTON WATERS
Assistant Deputy Attorney General

ALPHONSO SIMON, JR.
Assistant Attorney General

MICHAEL J. ANZELMO

P. O. Box 11549
Columbia, SC 29211

NELSON MULLINS RILEY &
SCARBOROUGH, LLP
Meridian, 17th Floor
1320 Main Street
Columbia, South Carolina 29201
(803) 255-9589

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

PAGES 2,251-2,700

INDEX

INDEX.....	i

RECORD ON APPEAL FROM DIRECT APPEAL 1 - 5424

TRANSCRIPT DATED OCTOBER 18, 2001 – SCHEDULING CONFERENCE	1
TRANSCRIPT DATED MARCH 5, 2002 – SCHEDULING CONFERENCE	19
TRANSCRIPT DATED MARCH 15, 2002 – MOTIONS.....	70
TRANSCRIPT DATED MARCH 22, 2002 – JURY QUESTIONNAIRE/MOTIONS.....	251
TRANSCRIPT DATED APRIL 9, 2002 – <u>JACKSON v. DENNO</u>	315

TESTIMONY

QUILLIE WALTERS	
Direct Examination.....	320
Cross Examination	324
ALVIN MICHAEL COKER	
Direct Examination.....	341
Cross Examination	344
TIM STEPHENSON	
Direct Examination.....	348
Cross Examination	351
LARRY WILLIAMS	
Direct Examination.....	369
Cross Examination	383
Redirect Examination.....	449

VOLUME TWO

LARRY WILLIAMS	
Recross Examination.....	451

TERRENCE ARNOLD VAN DORAN

Direct Examination.....	457
Cross Examination	463

ALVIN COKER

Direct Examination.....	479
Cross Examination	482

JAMES HELMS

Direct Examination.....	500
Cross Examination	502

ALVIN COKER

Direct Examination.....	513
Cross Examination	517
Redirect Examination.....	525
Recross Examination.....	525

TERRENCE VAN DORAN

Direct Examination.....	526
Cross Examination	530

TRANSCRIPT DATED APRIL 10, 2002 – <u>JACKSON v. DENNO</u>	556

TESTIMONY

JOHN ROGER BARNES

Direct Examination.....	573
Cross Examination	592
Redirect Examination.....	607

LORRAINE CARMICHAEL

Direct Examination.....	613
Cross Examination	621
Redirect Examination.....	630

TRANSCRIPT DATED APRIL 11, 2002 – <u>JACKSON v. DENNO</u>	637

TESTIMONY

CALVIN IVORY MYERS

Direct Examination.....	639
Cross Examination	650
Redirect Examination.....	654

WILLIE J. BAMBERG

Direct Examination.....	659
Cross Examination	668
Redirect Examination.....	669

BARBARA WALTERS

Direct Examination.....	679
Cross Examination	712
Redirect Examination.....	714
Recross Examination.....	714

BENJAMIN SINGLETON

Direct Examination.....	717
Cross Examination	721
Redirect Examination.....	724

MARION BOWMAN, JR.

Direct Examination.....	727

TRANSCRIPT DATED APRIL 12, 2002 – <u>JACKSON v. DENNO</u>	891

TESTIMONY

MARION BOWMAN, JR.

Cross Examination	893

VOLUME THREE

MARION BOWMAN, JR.

Redirect Examination.....	965

WAYNE W. MCALHANY

Direct Examination.....	975
Cross Examination	1003
Redirect Examination.....	1005

TRANSCRIPT DATED APRIL 15, 2002 – <u>JACKSON v. DENNO</u>	1031

TESTIMONY

DOROTHY M. BOWMAN

Direct Examination.....	1034
Cross Examination	1048
Redirect Examination.....	1055

GLENN CHARLES LICHTENBERGER

Direct Examination.....	1059
Cross Examination	1068
Redirect Examination.....	1072

TRANSCRIPT DATED APRIL 17, 2002 – JACKSON v. DENNO

ARGUMENTS	1079

TRANSCRIPT DATED MAY 1, 2002 – MOTIONS 1179

TESTIMONY

TERRENCE A. VAN DORAN

Examination By The Court	1200
Examination By Mr. Bailey.....	1208
Examination By Mr. Cummings	1211
Examination By The Court	1231

TRANSCRIPT DATED MAY 2 – 2002 – JACKSON v. DENNO – RULING..... 1320

TESTIMONY

JAMIE MICHELLE ZENSEN

Examination By The Court	1322
Examination By Mr. Cummings	1332
Examination By The Court	1332

VOLUME FOUR

TRANSCRIPT DATED MAY 3, 2002 – JURY MATTERS 1380

JUROR VOIR DIRE

KIRT LAVERNE WALLACE

Examination By The Court	1383

WILLIAM E. BENSE

Examination By The Court	1389

BRENNEL SIMON

Examination By The Court	1392

JERRY FOWLER

Examination By The Court	1394

HUBERT PRINCE	
Examination By The Court	1398
MICHAEL PATTON WALLER	
Examination By The Court	1400
JIMMY SLOOP	
Examination By The Court	1403
JUROR 004 – BRIAN ALDERSON	
Examination By The Court	1412
Examination By Mr. Cummings.....	1415
MICHAEL P. WALLER	
Examination By The Court	1419
JUROR 160 – WALBURGA KARWINSKI	
Examination By The Court	1421
Examination By Mr. Cummings	1424
JUROR 130 – GAYLA M. HEINRICH	
Examination By The Court	1427
Examination By Mr. Bailey.....	1430
Examination By Mr. Cummings	1432
JUROR 310 – NITZA I. TYUS	
Examination By The Court	1439
JUROR 21 – HEATHER M. BOWERS	
Examination By The Court	1445
JUROR 63 – MARILYN J. CUMMINGS	
Examination By The Court	1449
JUROR 75 – KATHERINE M. DILLEHAY	
Examination By The Court	1453
JUROR 34 – LOLITA B. CABADING	
Examination By The Court	1454
Examination By Mr. Bailey.....	1459
JUROR 48 – JOANNE G. CLEMONS	
Examination By The Court	1462
JUROR 52 – STEVEN D. CONLEY	
Examination By The Court	1466

JUROR 58 – LOUIS J. CREEL	
Examination By The Court	1470
Examination By Mr. Bailey.....	1473
Examination By Mr. Cummings	1474
JUROR 67 – EARL DAVIS	
Examination By The Court	1479
JUROR 90 – JERMAINE EUBANKS	
Examination By The Court	1481
JUROR 92 – PAULA A. EVANS	
Examination By The Court	1485
JUROR 93 – CAROL M. EVERLY	
Examination By The Court	1491
Examination By Mr. Bailey.....	1495
JUROR 90 – JERMAINE EUBANKS	
Examination By The Court	1497
Examination By Mr. Bailey.....	1498
Examination By Mr. Cummings	1500
JUROR 127 – TERESA M. HATCHELL	
Examination By The Court	1508
CHERYL GRAHAM	
Examination By The Court	1515
Examination By Mr. Cummings	1517
JUROR 127 – TERESA HATCHELL	
Examination By The Court	1518
JUROR 135 – GAIL R. HESS	
Examination By The Court	1521
Examination By Mr. Bailey.....	1524
Examination By The Court	1526
JUROR 260 – TONI K. ROMANUS	
Examination By The Court	1528
JUROR 341 – MICHAEL S. WINSTEAD	
Examination By The Court	1532
Examination By Mr. Bailey.....	1546
TRANSCRIPT DATED MAY 9, 2002 – JURY MATTERS	1550

JUROR VOIR DIRE

JUROR 96 – CHARLES K. FERTIG, JR.

Examination By The Court	1553
Examination By Mr. Bailey.....	1556
Examination By Mr. Cummings	1558

JUROR 267 – CAROL O. SAWYER

Examination By The Court	1563
Examination By Mr. Bailey.....	1568
Examination By Mr. Cummings	1569

JUROR 342 – KATHY M. WOODS

Examination By The Court	1574
Examination By Mr. Bailey.....	1576
Examination By Mr. Cummings	1577

JUROR 22 – VICTORIA C. BOX

Examination By The Court	1584
Examination By Mr. Bailey.....	1587
Examination By Mr. Cummings	1588

JUROR 189 – GLORIA J. MAGWOOD

Examination By The Court	1593
Examination By Mr. Bailey.....	1598

JUROR 201 – LISA MCDONALD GIBSON

Examination By The Court	1606

JUROR 222 – LISA NICHOLS

Examination By The Court	1609

JUROR 272 – INEZ S. SHULER

Examination By The Court	1613
Examination By Mr. Bailey.....	1616

JUROR 215 – MICHAEL R. MOSKAL

Examination By The Court	1620

TRANSCRIPT DATED MAY 13, 2002 – JURY QUALIFICATION	1637

JUROR VOIR DIRE

JUROR 26 – ALBERT BRITT

Examination By The Court	1662

VOLUME FIVE

JUROR347 – GEORGE W. YOUNG, JR.

Examination By The Court	1818
Examination By Mr. Bailey.....	1828
Examination By Mr. Cummings	1829

JUROR 293 – LEO J. SULLIVAN

Examination By The Court	1841
Examination By Mr. Bailey.....	1855
Examination By Mr. Cummings	1857

JUROR 342 – KATHY M. WOODS

Examination By The Court	1864
Examination By Mr. Bailey.....	1873
Examination By Mr. Cummings	1876

JUROR 197 – CASEY A. MCCARTER

Examination By The Court	1887
Examination By Mr. Cummings	1899
Examination By The Court	1904
Examination By Mr. Bailey.....	1905

JUROR 159 – SUSAN A. JORDAN

Examination By The Court	1921

TRANSCRIPT DATED MAY 14, 2002 – JURY SELECTION	1941

JUROR VOIR DIRE

JUROR 275 – SHALAYA S. SINGLETON

Examination By The Court	1954
Examination By Mr. Cummings	1963

JUROR 232 – SYLVIA A. PERRY

Examination By The Court	1976
Examination By Mr. Bailey.....	1985
Examination By Mr. Cummings	1987
Examination By Mr. Bailey.....	1992

JUROR 68 – GENE C. DAVIS

Examination By The Court	1996

JUROR 68 – GENE C. DAVIS

Examination By Mr. Cummings	2005
Examination By Mr. Bailey.....	2009

JUROR 348 – KAREN S. YOUNG

Examination By The Court	2013
Examination By Mr. Bailey.....	2021
Examination By Mr. Cummings	2023
Examination By Mr. Bailey.....	2035

JUROR 240 – LORRAINE J. PRINGLE

Examination By The Court	2041
Examination By Mr. Cummings	2051
Examination By Mr. Bailey.....	2053

JUROR 12 – HAROLD L. BAZZLE

Examination By The Court	2065

JUROR 228 – STEPHANIE N. PELLOS

Examination By The Court	2070

JUROR 303 – RHONDA L. TOLER

Examination By The Court	2072
Examination By Mr. Bailey.....	2083
Examination By Mr. Cummings	2085
Examination By The Court	2091

JUROR 230 – RICHARD PEREZ

Examination By The Court	2099
Examination By Mr. Cummings	2108
Examination By Mr. Bailey.....	2112

JUROR 27 – ANTHONY D. BRITT

Examination By The Court	2117
Examination By Mr. Bailey.....	2129
Examination By Mr. Cummings	2133

JUROR 81 – MICHAEL W. DURR

Examination By The Court	2143

JUROR 242 – WENDY H. PROVEAUX

Examination By The Court	2147
Examination By Mr. Bailey.....	2157
Examination By Mr. Cummings	2161
Examination By The Court	2164
Examination By Mr. Cummings	2165
Examination By The Court	2166
Examination By Mr. Cummings	2167
Examination By Mr. Bailey.....	2168

JUROR 67 – EARL DAVIS	
Examination By The Court	2182
Examination By Mr. Cummings	2186

JUROR 209- MARY MILLS - HANHAUSER	
Examination By The Court	2193
Examination By Mr. Bailey.....	2204
Examination By Mr. Cummings	2206

JUROR 298 – KRIS R. TEMPKIN	
Examination By The Court	2225
Examination By Mr. Bailey.....	2242
Examination By Mr. Cummings	2247

VOLUME SIX

JUROR 280 – JONATHAN C. SMALLS	
Examination By The Court	2253
Examination By Mr. Cummings	2266

JUROR 238 – ANDRE B. PORCHER	
Examination By The Court	2272
Examination By Mr. Cummings	2284
Examination By Mr. Bailey.....	2288

JUROR 184 – ERIC P. LOWRY	
Examination By The Court	2297

JUROR 187 – LINDA LYNCH	
Examination By The Court	2310
Examination By Mr. Cummings	2323

JUROR 206 – KATHLEEN A. MCPARTLIN	
Examination By The Court	2329
Examination By Mr. Bailey.....	2340
Examination By Mr. Cummings	2343

JUROR 153 – JERYL W. JOHNSON	
Examination By The Court	2350
Examination By Mr. Cummings	2362
Examination By Mr. Bailey.....	2372
Examination By Mr. Cummings	2375

JUROR 309 – TAMRA L. TYNDELL	
Examination By The Court	2384
Examination By Mr. Bailey.....	2395

Examination By Ms. Hardee-Thomas.....	2397
JUROR 328 – MICHAEL D. WHALEY	
Examination By The Court	2402
Examination By Mr. Cummings	2412
Examination By Mr. Bailey.....	2415
JUROR 321 – MARGARET WASHINGTON	
Examination By The Court	2426
Examination By Mr. Bailey.....	2440
Examination By Mr. Cummings	2443
JUROR 72 – RAYMOND E. DEJONG, II	
Examination By The Court	2448
Examination By Ms. Hardee-Thomas.....	2458
Examination By Mr. Bailey.....	2460
TRANSCRIPT DATED – MAY 15, 2002 – JURY SELECTION	2470
TESTIMONY	
TAMMY J. RUTLAND	
Direct Examination.....	2476
Cross Examination	2479
JUROR VOIR DIRE	
JUROR 178 – EVELYN L. LEWIS	
Examination By The Court	2481
Examination By Mr. Bailey.....	2495
Examination By Mr. Cummings	2497
JUROR 144- JANICE B. HULL	
Examination By The Court	2504
Examination By Mr. Cummings	2521
Examination By Mr. Bailey.....	2531
JUROR 185 – LIANNE LUISI	
Examination By The Court	2536
Examination By Mr. Bailey.....	2546
Examination By Mr. Cummings	2550
JUROR 269 – EDWARD A. SCOTT	
Examination By The Court	2556

JUROR 44 – ANTHONY E. CLARK

Examination By The Court	2561
Examination By Mr. Cummings	2578
Examination By Mr. Bailey.....	2585

JUROR 70 – JONATHAN L. DAVIS

Examination By The Court	2611
Examination By Mr. Cummings	2632
Examination By Mr. Bailey.....	2636
Examination By Mr. Cummings	2642
Examination By Mr. Bailey.....	2645
Examination By The Court	2646

JUROR 202 – LORA S. MCDOUGALL

Examination By The Court	2661
Examination By Mr. Bailey.....	2672
Examination By Mr. Cummings	2675

JUROR 271 – BELINDA H. SHAW

Examination By The Court	2680

JUROR 212 – ANTHONY P. MOLLISH

Examination By The Court	2686
Examination By Mr. Bailey.....	2689
Examination By Mr. Cummings	2691
Examination By The Court	2697

VOLUME SEVEN

JUROR 212 – ANTHONY P. MOLLISH

Examination By Mr. Bailey.....	2706
Examination By Mr. Cummings	2708

JUROR 243 – WANDA A. QUERY

Examination By The Court	2716
Examination By Mr. Cummings	2727
Examination By Mr. Bailey.....	2731

JUROR 279 – JAMES A. SMALLS, JR.

Examination By The Court	2739
Examination By Mr. Cummings	2743

JUROR 148 – RICKY JASCOMB

Examination By The Court	2746
Examination By Mr. Bailey.....	2755
Examination By Mr. Cummings	2757

Examination By The Court	2759
Examination By Mr. Bailey.....	2762
Examination By Mr. Cummings	2764
 JUROR 11 – SHERRI L. BARBOUR	
Examination By The Court	2771
Examination By Mr. Cummings	2780
 JUROR 167 – CATHY L. KILPATRICK	
Examination By The Court	2789
Examination By Mr. Cummings	2804
 JUROR 239 – MARILYN B. PRINE	
Examination By The Court	2815
 JUROR 16 – JANET R. BEST	
Examination By The Court	2825
Examination By Mr. Cummings	2837
Examination By Mr. Bailey.....	2842
Examination By Mr. Cummings	2850
 JUROR 234 – MICKI LEE PITCHFORD	
Examination By The Court	2853
Examination By Mr. Bailey.....	2865
Examination By Mr. Cummings	2868
 JUROR 199 – PRINCESS R. MCCONNELL	
Examination By The Court	2883
 JUROR 301 – SONYA A. THOMPSON	
Examination By The Court	2885
Examination By Mr. Cummings	2899
Examination By Mr. Bailey.....	2901
 JUROR 332 – SUSAN WILGOS	
Examination By The Court	2906
Examination By Mr. Bailey.....	2913
 JUROR 145 – DOUGLAS A. HUTTO	
Examination By The Court	2916
Examination By Mr. Cummings	2931
Examination By Mr. Bailey.....	2933
 JUROR 136 – JANIE M. HILLIARD	
Examination By The Court	2935
Examination By Mr. Bailey.....	2949

Examination By Mr. Cummings	2953
JUROR 119 – KELLY L. GREENHILL	
Examination By The Court	2961
JUROR 313 – MARILYN V. VANPATTEN	
Examination By The Court	2964
TRANSCRIPT DATED MAY 16, 2002 – JURY SELECTION	
2973	
JUROR VOIR DIRE	
JUROR 17 – SUSAN R. BISHOP	
Examination By The Court	2977
Examination By Mr. Cummings	2988
JUROR 168 – KADEDRA D. KINER	
Examination By The Court	2992
JUROR 168 – KADEDRA D. KINER	
Examination By Mr. Bailey.....	3004
Examination By Mr. Cummings	3007
JUROR 308 – LANA N. TURNER	
Examination By The Court	3016
JUROR 103 – ESPEREITA A. FORTUNE	
Examination By The Court	3022
Examination By Mr. Bailey.....	3034
JUROR 305 – BRENDA H. TORRENCE	
Examination By The Court	3037
Examination By Mr. Cummings	3049
Examination By Mr. Bailey.....	3053
JUROR 343 – LYNDA S. WOODY	
Examination By The Court	3059
Examination By Mr. Bailey.....	3064
Examination By Mr. Cummings	3065
JUROR 180 – CHRISTINA M. LOGAN	
Examination By The Court	3077
Examination By Mr. Bailey.....	3090
Examination By Mr. Cummings	3096

JUROR 272 – INEZ S. SHULER	
Examination By The Court	3101
JUROR 110 – PATRICIA N. GEORGE	
Examination By The Court	3111
JUROR 64 – MATT A. CUMMINGS	
Examination By The Court	3121
Examination By Mr. Cummings	3132
Examination By Mr. Bailey	3133
JUROR 295 – ROBERT T. TALLEY	
Examination By The Court	3138

VOLUME EIGHT

JUROR 295 – ROBERT T. TALLEY	
Examination By Mr. Bailey	3151
Examination By Mr. Cummings	3153
JUROR 31 – ROGER D. BROWNLEE	
Examination By The Court	3165
Examination By Mr. Cummings	3175
Examination By Mr. Bailey	3178
JUROR 288 – LISA C. STANFIELD	
Examination By The Court	3185
JUROR 205 – CHRISTINA MCKAY	
Examination By The Court	3191
Examination By Mr. Bailey	3203
Examination By Mr. Cummings	3210
JUROR 317 – DIANNE L. WADE	
Examination By The Court	3216
Examination By Mr. Cummings	3225
JUROR 14 – FREDERICK W. BEAVERSON	
Examination By The Court	3228
Examination By Mr. Bailey	3236
Examination By Mr. Cummings	3239
Examination By Mr. Bailey	3240
Examination By The Court	3242
JUROR 329 – LINDA L. WHEELER	
Examination By The Court	3249

Examination By Mr. Cummings	3257
Examination By Mr. Bailey.....	3262
JUROR 37 – GLEN W. CARROLL	
Examination By The Court	3266
JUROR 33 – JAMI H. BURT	
Examination By The Court	3271
Examination By Mr. Cummings	3280
Examination By Mr. Bailey.....	3282
JUROR 91 – KENNETH G. EVANS	
Examination By The Court	3287
Examination By Mr. Bailey.....	3299
Examination By Ms. Hardee – Thomas.....	3302
JUROR 60 – LYNN H. CROOK	
Examination By The Court	3310
Examination By Mr. Bailey.....	3325
Examination By Mr. Cummings	3329
Examination By The Court	3333
JUROR 253 – RALPH G. RICE	
Examination By The Court	3336
Examination By Mr. Bailey.....	3344
Examination By Mr. Cummings	3348
JUROR 124 – WALLACE M. HAMMONDS	
Examination By The Court	3356
JUROR 294 – DANNIE W. SWEATMAN, JR.	
Examination By The Court	3369
Examination By Mr. Bailey.....	3382
Examination By Mr. Cummings	3383
JUROR 203 – PAULINE E. MCELYEA	
Examination By The Court	3391
Examination By Mr. Cummings	3400
Examination By Mr. Bailey.....	3403
JUROR 325 – MANCENE D. WERTZ	
Examination By The Court	3410
Examination By Mr. Cummings	3417
JUROR 194 – PHIL D. MAYNOR	
Examination By The Court	3425

Examination By Mr. Bailey.....	3440
Examination By Mr. Cummings	3447
Examination By The Court	3456

JUROR 158 – TRACY L. JONES

Examination By The Court	3461
Examination By Mr. Cummings	3473
Examination By Mr. Bailey.....	3476

TRANSCRIPT DATED MAY 17, 2002 – JURY SELECTION/JURY TRIAL	3492

VOLUME NINE

OPENING STATEMENT BY MR. BAILEY	3646

OPENING STATEMENT BY MR. CUMMINGS.....	3659

TESTIMONY

WILLIAM HENRY KOGER

Direct Examination.....	3673
Cross Examination	3680

JOSEPH F. FOGLE

Direct Examination.....	3682
Cross Examination	3687

KEITH RIVERS

Direct Examination.....	3688
Cross Examination	3692

CAROLYN L. BROWN

Direct Examination.....	3698
Cross Examination	3702
Redirect Examination.....	3713
Recross Examination.....	3715

EDWARD WATERS

Direct Examination.....	3717
Cross Examination	3727

YOLANDA S. BOWMAN

Direct Examination.....	3734
Cross Examination	3746

TRANSCRIPT DATED MAY 18, 2002 – JURY TRIAL.....	3757

TESTIMONY

KATRINA WEST

Direct Examination.....	3761
Cross Examination	3766

DENNIS JUDY

Direct Examination.....	3774
Cross Examination	3794

GORDON B. NEWHOUSE

Direct Examination.....	3798
Cross Examination	3803

PERRY CHINNERS

Direct Examination.....	3806
Cross Examination	3811

JAMES P. KICKLIGHTER

Direct Examination.....	3819
Cross Examination	3823

ALVIN COKER

Direct Examination.....	3829
Cross Examination	3842

EDWARD A. PORTER

Direct Examination.....	3847
Cross Examination	3861
Redirect Examination.....	3873
Recross Examination.....	3873

JAMES HELMS

Direct Examination.....	3874
Cross Examination	3913
Redirect Examination.....	3930
Recross Examination.....	3931

DENNIE JUDY

Direct Examination.....	3932
Cross Examination	3934

JANICE E. ROSS

Direct Examination.....	3939
Cross Examination	3952

JAMES J. GADSON	
Direct Examination.....	3957
Cross Examination	3961
LAURIE SHACKER	
Direct Examination.....	3969
Cross Examination	3971
SHEREE BROWN	
Direct Examination.....	3972
Cross Examination	3974
DANA FOWLER SHUTT	
Direct Examination.....	3976
JAMES T. GADSON	
Direct Examination.....	3980
JAMES T. GADSON	
Cross Examination	4022
CAROLYN BROWN	
Direct Examination.....	4039

VOLUME TEN

TRANSCRIPT DATED MAY 19, 2002 – JURY TRIAL.....	4051

TESTIMONY

HIRAM JOHNSON	
Direct Examination.....	4056
Cross Examination	4070
TRAVIS D. FELDER	
Direct Examination.....	4084
Cross Examination	4102
Redirect Examination.....	4110
Recross Examination.....	4111
VALORNA SMITH	
Direct Examination.....	4112
Cross Examination	4118
TERRENCE A. VAN DORAN	
Direct Examination.....	4124

Cross Examination	4132
JAMES A. NETTLES	
Direct Examination.....	4139
Cross Examination	4143
ALVIN COKER	
Direct Examination.....	4149
Cross Examination	4154
DOROTHY M. BOWMAN	
Direct Examination.....	4160
CORDELLIA D. MARTIN	
Direct Examination.....	4163
Cross Examination	4166
KENDRA BOWMAN	
Direct Examination.....	4167
Cross Examination	4178
YOLANDA BOWMAN	
Direct Examination.....	4182
Cross Examination	4187
Redirect Examination.....	4190
DOROTY M. BOWMAN	
Direct Examination.....	4191
Cross Examination	4205
MARK SHEETZ	
Direct Examination.....	4220
Cross Examination	4222
CATHERINE M. SALLEY	
Direct Examination.....	4223
Cross Examination	4225
ALVIN COKER	
Direct Examination.....	4226
Cross Examination	4230
Redirect Examination.....	4232
Recross Examination.....	4233
ALLYSON GREER	
Direct Examination.....	4235

Cross Examination	4238
SALLY M. BOOKHART	
Direct Examination.....	4244
Cross Examination	4250
JAMES HELMS	
Direct Examination.....	4259
Cross Examination	4263
EDWARD PORTER	
Direct Examination.....	4267
Cross Examination	4276
Redirect Examination.....	4288
Recross Examination.....	4290
GRADY A. LAYTON	
Direct Examination.....	4292
Cross Examination	4300
DAVID J. COLLINS	
Direct Examination.....	4307
Cross Examination	4320
Redirect Examination.....	4330
Recross Examination.....	4332
CAROL GOODIER	
Direct Examination.....	4334
Cross Examination	4336
EARL V. ASBELL	
Direct Examination.....	4337
Cross Examination	4340
BETHANY CROOKS	
Direct Examination.....	4341
Cross Examination	4344
TRANSCRIPT DATED MAY 20, 2002 – JURY TRIAL.....	4355
TESTIMONY	
DOROTHY M. BOWMAN	
Direct Examination.....	4358
Cross Examination	4359
Redirect Examination.....	4363

Recross Examination.....	4363
MATTHEW G. FITTS	
Direct Examination.....	4364
Cross Examination	4387
Redirect Examination.....	4410
MARION BOWMAN, JR.	
Examination By The Court	4438
CLOSING ARUGMENTS BY MR. BAILEY.....	4456
CLOSING ARGUMENTS BY MR. CUMMINGS.....	4481

VOLUME ELEVEN

JURY CHARGE	4514
VERDICT.....	4564
TRANSCRIPT DATED MAY 22, 2003 – SENTENCING PHASE	4587
OPENING STATEMENT BY MR. BAILEY	4636
OPENING STATEMENT BY MR. CUMMINGS.....	4644
TESTIMONY	
JOSEPH W. WIMBERLY, III	
Direct Examination.....	4653
Cross Examination	4654
DAVID L. THOMPSON	
Direct Examination.....	4657
Cross Examination	4658
JAMES HELMS	
Direct Examination.....	4660
Cross Examination	4665
JANICE E. ROSS	
Direct Examination.....	4669
Cross Examination	4674
Redirect Examination.....	4676
Recross Examination.....	4678
Direct Examination.....	4689

Cross Examination	4691
CORDILLIA MARTIN	
Direct Examination.....	4692
WAYNE MARTIN	
Direct Examination.....	4703
Cross Examination	4707
MARION BOWMAN, JR.	
Examination By The Court	4734
KENDRA BOWMAN	
Direct Examination.....	4742
Cross Examination	4748
DOROTHY BOWMAN	
Direct Examination.....	4750
MARGARET A. BAUGHMAN	
Direct Examination.....	4761
Cross Examination	4765
Redirect Examination.....	4767
JEFFREY J. YOUNGMAN	
Direct Examination.....	4769
Voir Dire Examination.....	4777
Direct Examination.....	4788
Cross Examination	4811
Redirect Examination.....	4826
FRANKIE MARTIN	
Direct Examination.....	4830
JAMES E. AIKEN	
Direct Examination.....	4832
Cross Examination	4846
Redirect Examination.....	4864
Recross Examination.....	4869
SHARON J. BRANCH	
Direct Examination.....	4882
Cross Examination	4888
Redirect Examination.....	4889
TRANSCRIPT DATED MAY 23, 2002 – SENTENCING PHASE	4894

TESTIMONY

ENRIQUE BADILLO	
Direct Examination.....	4902
Cross Examination	4904

TRAVIS D. FELDER	
Direct Examination.....	4911
Cross Examination	4922
Redirect Examination.....	4926

CLOSING ARGUMENTS BY MR. BAILEY.....	4949

VOLUME TWELVE

CLOSING ARGUMENTS BY MS. HARDEE-THOMAS.....	4975

CLOSING ARGUMENTS BY MR. CUMMINGS.....	4979

JURY CHARGE	5015

VERDICT.....	5051

SENTENCING.....	5067

TRANSCRIPT OF <u>JACKSON V. DENNO</u> HEARING DATED APRIL 5, 2002	5069

TESTIMONY

TERRENCE ARNOLD VAN DORAN	
Direct Examination.....	5074
Cross Examination	5082

ALVIN MICHAEL COKER	
Direct Examination.....	5111
Cross Examination	5120

TERRENCE ARNOLD VAN DORAN	
Direct Examination.....	5161
Cross Examination	5170
Redirect Examination.....	5189
Recross Examination.....	5190

TIM STEPHENSON	
Direct Examination.....	5191
Cross Examination	5199

TERRENCE ARNOLD VAN DORAN	
Direct Examination.....	5227
Cross Examination	5233
Redirect Examination.....	5189
Recross Examination.....	5190
INDICTMENTS.....	5254
ARREST WARRANT	5258
NOTICE OF EVIDENCE IN MITIGATION.....	5259
NOTICE OF INTENT TO SEEK DEATH PENALTY.....	5260
NOTICE OF EVIDENCE IN AGGRAVATION.....	5261
MOTION IN LIMINE REGARDING EVIDENCE.....	5262
MOTION IN LIMINE TO PRECLUDE STATE FROM CALLING AS WITNESSES MEMBER OF THE VICTIM'S FAMILY ...	5263
MOTION TO EXCLUDE PHOTOGRAPHS OF VICTIM	5265
NOTICE OF MOTION AND MOTION TO COMPEL DEFENDANT TO PRODUCE WITNESS LIST	5267
MOTION IN LIMINE TO PROHIBIT TESTIMONY REGARDING ALLEDGED SUFFERING OF THE VICTIM	5269
MOTION FOR IN CAMERA INSPECTION OF THE PROSECUTOR'S FILE.....	5270
MOTION TO COMPLY TO INSURE STATE'S COMPLIANCE WITH DISCLOSURE	5271
MOTION FOR ACCESS TO EXHIBITS.....	5272
MOTION TO PRODUCE.....	5273
NOTICE OF MOTION FOR PRODUCTION OF TAPED OR WRITTEN OR VIDEOTAPED STATEMENTS	5274
MOTION FOR PRODUCTION OF PHYSICAL EVIDENCE.....	5277
MOTION TO DISCLOSE NAMES AND ADDRESSES OF STATE'S WITNESSES.....	5278

MOTION FOR INFORMATION CONCERNING POTENTIAL STATE'S WITNESSES	5279
MOTION FOR DISCOVERY OF WITNESS LIST.....	5280
MOTION FOR LIST OF PROSECUTION WITNESSES	5281
MOTION TO RETAIN EVIDENCE.....	5283
MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION	5285
MOTION TO REVEAL APPLICANTS TO BE EXECUTIONERS.....	5287
NOTICE OF MOTION AND MOTION TO COMPEL PRODUCTION.....	5289
MOTION FOR CHANGE OF VENUE	5292
NOTICE OF MOTION AND MOTION TO DECLARE THE DEATH PENALTY UNCONSTITUTIONAL	5293
MOTION TO REVEAL THE DEAL.....	5294
MOTION TO PRESERVE EVIDENCE FOR INDEPENDENT DNA TESTING.....	5296
NOTICE OF MOTION AND MOTION TO INSPECT	5297
NOTICE OF MOTION AND MOTION IN LIMINE.....	5298
NOTICE OF MOTION AND MOTION TO PRESERVE NOTES.....	5301
STATE'S NOTICE OF MOTION AND MOTION IN LIMINE TO PROHIBIT THE DEFENDANT FROM ARGUING.....	5303
STATE'S NOTICE OF MOTION AND MOTION IN LIMINE TO PROHIBIT THE DEFENDANT FROM ATTEMPTING TO INTRODUCE PENALTY PHASE "EXECUTION OF IMPACT" EVIDENCE.....	5307
MOTION TO SUPPRESS SEARCH WARRANT	5312
MOTION FOR PRODUCTION OF PHYSICAL EVIDENCE.....	5313
MOTION TO RELEASE EVIDENCE FOR INDEPENDENT SCIENTIFIC TESTING.....	5314
AFFIDAVIT OF CLEON C. MAUER.....	5316

MOTION TO PREVENT DISQUALIFICATION OF SCRUPLED JURORS DURING GUILT PHASE.....	5318
MOTION REQUESTING TRIAL JUDGE TO MAKE FINDINGS OF FACTS WHEN JURORS ARE STRUCK FOR CAUSE	5320
MOTION IN THE ALTERNATIVE TO MAKE RESULTS OF POLICE RECORD CHECKS OR INVESTIGATIONS OF JURY VENIRE.....	5322
MOTION TO DISCLOSE PAST AND PRESENT RELATIONSHIPS, ASSOCIATIONS, AND TIES BETWEEN THE PROSECUTING SOLICITORS AND PROSPECTIVE JURORS.....	5324
MOTION FOR INDIVIDUAL EXAMINATION OF PROSPECTIVE JURORS AND SEQUESTRATION OF JURORS DURING EXAMINATION	5326
MOTION TO PREVENT TRIAL JUDGE FROM ASKING CERTAIN LEADING QUESTIONS DURING VOIR DIRE.....	5329
MOTION	5331
MOTION IN LIMINE (EVIDENCE)	5332
MOTION TO PRODUCE CHAIN OF CUSTODY OF ALL EXHIBITS.....	5333
MOTION TO SUPPRESS (STATEMENTS)	5335
MOTION IN LIMINE (STATEMENTS BY DEFENDANT)	5337
MOTION IN LIMINE (OPENING AND CLOSING ARGUMENTS BY THE STATE)	5339
NOTICE OF MOTION AND MOTION TO SUPPRESS THE EVIDENCE, TO WIT THE TESTIMONY OF WAYNE MAURICE MOOD	5341
MOTION FOR AN ORDER PROHIBITING ANY FURTHER COMMENT	5343
NOTICE OF MOTION AND MOTION TO PROHIBIT ELECTRONIC BROADCASTING OF COURT PROCEEDING.....	5344
MOTION FOR INDIVIDUAL VOIR DIRE AND SEQUESTRATION OF JURORS DURING AND AFTER VOIR DIRE	5352
MOTION TO PREVENT DISQUALIFICATION OF JURORS OPPOSED TO CAPITAL PUNISHMENT.....	5355
MOTION TO SEQUESTER THE JURY	5357

MOTION IN LIMINE TO PROHIBIT ANY REFERENCE TO THE TRUTHFULNESS OF A STATE WITNESS BY SOLICITOR.....	5358
NOTICE OF MOTION AND MOTION IN LIMINE.....	5360
NOTICE OF MOTION AND MOTION TO PROHIBIT ELECTRONIC BROADCASTING OF COURT PROCEEDING.....	5362
MOTION FOR AN ORDER PROHIBITING ANY FURTHER COMMENT ABOUT THIS CASE TO THE NEWS MEDIA, T.V. STATION OR RADIO STATIONS	5370
MOTION TO PREVENT DISQUALIFICATION OF JURORS OPPOSED TO CAPITAL PUNISHMENT	5371
NOTICE OF MOTION AND MOTION FOR RECONSIDERATION.....	5373
NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA.....	5390
NOTICE OF MOTION AND MOTION TO INSPECT	5391
MOTION TO RETAIN EVIDENCE.....	5392
NOTICE OF MOTION FOR PRODUCTION OF TAPED STATEMENTS.....	5394
MOTION FOR PRODUCTION OF PHYSICAL EVIDENCE.....	5395
NOTICE OF MOTION FOR PRODUCTION OF TAPED OR WRITTEN OR VIDEOTAPED STATEMENTS	5396
MOTION TO PRESERVE EVIDENCE FOR INDEPENDENT DNA TESTING.....	5397
MOTION TO PRODUCE.....	5398
MOTION	5399

VOLUME THIRTEEN

MOTION FOR IN-CAMERA INSPECTION OF THE PROSECUTOR'S FILE.....	5401
MOTION TO REVEAL GRANT OF IMMUNITY OR OTHER CONCESSIONS	5402
MOTION FOR LIST OF PROSECUTION WITNESSES	5404
MOTION TO COMPLY TO INSURE STATE'S COMPLIANCE WITH DISCLOSURE	5406

MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION	5407
MOTION TO REVEAL THE DEAL	5409
MOTION FOR INFORMATION CONCERNING POTENTIAL STATE'S WITNESSES	5411
MOTION FOR LIST OF PROSECUTION WITNESSES	5412
MOTION FOR DISCOVERY OF WITNESS LIST.....	5414
MOTION TO DISCLOSE NAMES AND ADDRESSES STATE'S WITNESSES.....	5415
NOTICE OF MOTION AND MOTION TO COMPEL PRODUCTION.....	5416
DEFENDANT'S EXHIBIT #3 (INVESTIGATIVE REPORT).....	5419
DEFENDANT'S EXHIBIT #7 (ARREST WARRANT).....	5420
DEFENDANT'S EXHIBIT #8 (ARREST WARRANT).....	5421
STATE'S EXHIBIT #5 (ARREST WARRANT).....	5422
CERTIFICATE OF APPELLANT	5424
DEATH SENTENCE.....	5425
AFFIRMATION OF DEATH SENTENCE.....	5426
FINAL BRIEF OF APPELLANT.....	5427
FINAL BRIEF OF RESPONDENT	5484
FINAL REPLY BRIEF OF APPELLANT	5558
APPLICATION FOR POST-CONVICTION RELIEF DATED APRIL 7, 2006.....	5568
ORDER OF THE UNITED STATES SUPREME COURT DENYING PETITION FOR WRIT OF CERTIORARI FILED JUNE 12, 2006.....	5575
PRELIMINARY PROTECTIVE RETURN FILED OCTOBER 2, 2006.....	5576
RETURN, MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT FILED SEPTEMBER 1, 2006	5578
AMENDED RETURN, MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT FILED MARCH 15, 2007.....	5616

AFFIDAVIT OF DALE DAVIS FILED JUNE 20, 2007	5670
AFFIDAVIT OF MARION BOWMAN FILED JUNE 20, 2007.....	5672
AFFIDAVIT OF DOROTHY BOWMAN FILED JUNE 20, 2007	5673
ORDER RELIEVING CO-COUNSEL, APPOINTING NEW CO-COUNSEL AND SCHEDULING FURTHER MATTERS FILED FEBRUARY 6, 2008	5674
FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF FILED FEBRUARY 28, 2007	5676
MOTION FOR CONTINUANCE FILED MARCH 25, 2008	5685
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF FILED MAY 19, 2008	5689
ORDER REQUIRING DEPARTMENT OF SOCIAL SERVICES TO PRODUCE DOCUMENTS FILED AUGUST 27, 2008.....	5701
RESPONDENT'S OBJECTION TO AMENDMENTS, MOTION TO STRIKE, AND MOTION TO COMPEL DISCOVERY FILED SEPTEMBER 5, 2008.....	5703
THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF FILED SEPTEMBER 8, 2008	5710
NOTICE OF INTENT TO RELY UPON AFFIDAVITS AND OTHER DOCUMENTARY EVIDENCE FILED SEPTEMBER 15, 2008	5727
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPTEMBER 15, 2008.....	5729
TESTIMONY	
JONATHAN DAVIS	
Direct Examination by Mr. Brown.....	5815
Cross Examination by Mr. Waters.....	5824
Redirect Examination by Mr. Brown.....	5829
JAMES TAWAIN GADSON	
Direct Examination by Mr. Brown.....	5847

VOLUME FOURTEEN

JAMES TAWAIN GADSON

Cross Examination by Mr. Waters.....	5910
Redirect Examination by Mr. Brown.....	5932
Recross Examination by Mr. Waters.....	5957
Redirect Examination by Mr. Brown.....	5964
Recross Examination by Mr. Waters.....	5965

POST-CONVICTION RELIEF HEARING TRANSCRIPT

DATED SEPTEMBER 16, 2008.....	5969

TESTIMONY

RICKY DAVIS

Direct Examination by Mr. Brown.....	5978
Cross Examination by Mr. Waters.....	5992
Redirect Examination by Mr. Brown.....	5999
Recross Examination by Mr. Waters.....	6004
Redirect Examination by Mr. Brown.....	6009

DAVID COLLINS

Direct Examination by Mr. Brown.....	6022
Cross Examination by Mr. Waters.....	6097

MARC DEGRAEF

Direct Examination by Mr. Brown.....	6132
Cross Examination by Mr. Waters.....	6183
Redirect Examination by Mr. Brown.....	6199
Recross Examination by Mr. Waters.....	6202
Redirect Examination by Mr. Brown.....	6203

DAVID COLLINS

Further Cross Examination by Mr. Waters.....	6211
Redirect Examination by Mr. Brown.....	6223
Recross Examination by Mr. Waters.....	6233

POST-CONVICTION RELIEF HEARING TRANSCRIPT

DATED SEPTEMBER 17, 2008.....	6246

TESTIMONY

HIRAM JOHNSON

Direct Examination by Mr. Sinclair.....	6251
Cross Examination by Mr. Waters.....	6294
Redirect Examination by Mr. Sinclair.....	6298

Recross Examination by Mr. Waters	6301

VOLUME FIFTEEN

DARIEN WILLIAMS

Direct Examination by Mr. Sinclair	6303
Cross Examination by Mr. Waters	6354
Redirect Examination by Mr. Sinclair	6360

MARY LEMATTY

Direct Examination by Mr. Brown	6364
Cross Examination by Mr. Waters	6376

TRAVIS FELDER

Direct Examination by Mr. Sinclair	6380
Cross Examination by Mr. Waters	6426
Redirect Examination by Mr. Sinclair	6442
Recross Examination by Mr. Waters	6457
Redirect Examination by Mr. Sinclair	6461
Recross Examination by Mr. Waters	6472
Redirect Examination by Mr. Sinclair	6476
Recross Examination by Mr. Waters	6477

TIM STEPHENSON

Direct Examination by Mr. Brown	6485
Cross Examination by Mr. Waters	6518

TERRANCE VAN DORAN

Direct Examination by Mr. Brown	6526
Cross Examination by Mr. Waters	6548
Redirect Examination by Mr. Brown	6554
Recross Examination by Mr. Waters	6556
Redirect Examination by Mr. Brown	6558

POST-CONVICTION RELIEF HEARING TRANSCRIPT

DATED SEPTEMBER 18, 2008	6566

TESTIMONY

TERRANCE VAN DORAN

Recross Examination by Mr. Waters	6571
Redirect Examination by Mr. Brown	6576

ALVIN COKER

Direct Examination by Mr. Brown	6580
Cross Examination by Mr. Waters	6685

Redirect Examination by Mr. Brown.....	6739

VOLUME SIXTEEN

ALVIN COKER

Recross Examination by Mr. Waters	6752

POST-CONVICTION RELIEF HEARING TRANSCRIPT

DATED SEPTEMBER 29, 2008.....	6766

TESTIMONY

JEFF YUNGMAN

Direct Examination by Mr. Brown.....	6785
Cross Examination by Mr. Waters.....	6843
Redirect Examination by Mr. Brown.....	6878
Recross Examination by Mr. Waters	6901

DR. CARL KISSIAH

Direct Examination by Mr. Brown.....	6909
Cross Examination by Mr. Waters.....	6927
Redirect Examination by Mr. Brown.....	6943

DALE DAVIS

Direct Examination by Mr. Brown.....	6946

POST-CONVICTION RELIEF HEARING TRANSCRIPT

DATED SEPTEMBER 30, 2008.....	6997

TESTIMONY

NORBERT CUMMINGS

Direct Examination by Mr. Brown.....	7001

DALE DAVIS

Cross Examination by Mr. Waters.....	7131
Redirect Examination by Mr. Brown.....	7183

VOLUME SEVENTEEN

DALE DAVIS

Recross Examination by Mr. Waters	7206
Redirect Examination by Mr. Brown.....	7208
Recross Examination by Mr. Waters	7228
Redirect Examination by Mr. Brown.....	7232
Recross Examination by Mr. Waters	7241

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 24, 2008	7258

TESTIMONY

MARVA HARDEE-THOMAS	
Direct Examination by Mr. Brown.....	7262
Cross Examination by Mr. Waters	7329
Redirect Examination by Mr. Brown.....	7348

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 18, 2008	7358

TESTIMONY

NORBERT CUMMINGS	
Further Direct Examination by Mr. Brown.....	7361
Cross Examination by Mr. Waters	7499

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 19, 2008	7511

TESTIMONY

NORBERT CUMMINGS	
Further Cross Examination by Mr. Waters	7514

VOLUME EIGHTEEN

NORBERT CUMMINGS	
Redirect Examination by Mr. Brown.....	7686
Recross Examination by Mr. Waters	7732

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 22, 2008	7749

TESTIMONY

WALTER BAILEY	
Direct Examination by Mr. Brown.....	7752
Cross Examination by Mr. Waters	7856
Redirect Examination by Mr. Brown.....	7878
Recross Examination by Mr. Waters	7890

COURT'S EXHIBIT #1, PLAINTIFF'S EXHIBIT #28 (BALLISTICS IMAGING BOOK)	7998

VOLUME NINETEEN

COURT'S EXHIBIT #2, PLAINTIFF'S EXHIBIT #42-ID, and #47 (ALVIN COKER FILE).....	8101

VOLUME TWENTY

PLAINTIFF'S EXHIBIT #1 (INDICTMENT).....	8938
PLAINTIFF'S EXHIBIT #2 (MOTION).....	8940
PLAINTIFF'S EXHIBIT #3 (PLEA AGREEMENT)	8944
PLAINTIFF'S EXHIBIT #4 (WARRANT).....	8948
PLAINTIFF'S EXHIBIT #5 (WITNESS STATEMENT).....	8950
PLAINTIFF'S EXHIBIT #6 (WITNESS STATEMENT).....	8954
PLAINTIFF'S EXHIBIT #7 (POLYGRAPH)	8956
PLAINTIFF'S EXHIBIT #8 (MENTAL EVALUATION).....	8957
PLAINTIFF'S EXHIBIT #9 (SENTENCING SHEET).....	8962
PLAINTIFF'S EXHIBIT #10 (SENTENCING SHEET).....	8964
PLAINTIFF'S EXHIBIT #11 (RICKY DAVIS MEMO).....	8966
PLAINTIFF'S EXHIBIT #12 (APPOINTMENT ORDER)	8967
PLAINTIFF'S EXHIBIT #13 (NOTICE OF APPEAL)	8968
PLAINTIFF'S EXHIBIT #14 (PLEA AGREEMENT)	8969
PLAINTIFF'S EXHIBIT #15 (POLYGRAPH)	8973
PLAINTIFF'S EXHIBIT #16 (STATEMENT).....	8974
PLAINTIFF'S EXHIBIT #17 (WARRANT).....	8975
PLAINTIFF'S EXHIBIT #18 (WARRANT).....	8977
PLAINTIFF'S EXHIBIT #19 (INDICTMENT FOR ARREST WARRANT G371372).....	8979
PLAINTIFF'S EXHIBIT #20 (SENTENCING SHEET).....	8980

PLAINTIFF'S EXHIBIT #21 (INDICTMENT FOR ARREST WARRANT G587667).....	8981
PLAINTIFF'S EXHIBIT #22 (DOCKET SHEET).....	8982
PLAINTIFF'S EXHIBIT #23 (DOCKET SHEET).....	8983
PLAINTIFF'S EXHIBIT #24 (RICKY DAVIS DEPOSITION).....	8984

VOLUME TWENTY-ONE

PLAINTIFF'S EXHIBIT #24-B (FIREARM REPORT).....	9012
PLAINTIFF'S EXHIBIT #25 (LAB BENCH NOTES).....	9015
PLAINTIFF'S EXHIBIT #26 (BOX 3 - 1).....	9026
PLAINTIFF'S EXHIBIT #27 (DEGRAEF C.V.)	9028
PLAINTIFF'S EXHIBIT #29 (MARGARET HAWKINS STATEMENT)	9046
PLAINTIFF'S EXHIBIT #30 (TIARA COLEMAN STATEMENT).....	9047
PLAINTIFF'S EXHIBIT #31 (DR. FRIERSON'S REPORT)	9048
PLAINTIFF'S EXHIBIT #32 (HIRAM JOHNSON MIRANDA RIGHTS FORM).....	9053
PLAINTIFF'S EXHIBIT #33 (HIRAM JOHNSON STATEMENT)	9054
PLAINTIFF'S EXHIBIT #34 (POLYGRAPH)	9055
PLAINTIFF'S EXHIBIT #35 (STATEMENT).....	9056
PLAINTIFF'S EXHIBIT #36 (DARIEN WILLIAMS STATEMENT).....	9057
PLAINTIFF'S EXHIBIT #37 (LETTER).....	9058
PLAINTIFF'S EXHIBIT #38 (WARRANT)	9059
PLAINTIFF'S EXHIBIT #39 (WAIVER OF RIGHTS FORM)	9061
PLAINTIFF'S EXHIBIT #40 (LETTER).....	9062
PLAINTIFF'S EXHIBIT #41 (JAIL RECORDS).....	9063
PLAINTIFF'S EXHIBIT #43 (ARSON INDICTMENT).....	9067

PLAINTIFF'S EXHIBIT #44 (ACCESSORY INDICTMENT)	9069
PLAINTIFF'S EXHIBIT #45 (HANDWRITTEN NOTE).....	9071
PLAINTIFF'S EXHIBIT #46 (HANDWRITTEN NOTE).....	9072
PLAINTIFF'S EXHIBIT #48 (WARRANT)	9073
PLAINTIFF'S EXHIBIT #49 (DOCKET REPORT).....	9077
PLAINTIFF'S EXHIBIT #50 (BOOKING REPORT)	9078
PLAINTIFF'S EXHIBIT #51 (LETTER).....	9079
PLAINTIFF'S EXHIBIT #52 (LETTER).....	9080
PLAINTIFF'S EXHIBIT #53 (AFFIDAVIT).....	9083
PLAINTIFF'S EXHIBIT #55 (EMPLOYMENT HISTORY).....	9085
PLAINTIFF'S EXHIBIT #56 (BOWMAN LETTERS)	9095
PLAINTIFF'S EXHIBIT #57 (MEMO)	9109
PLAINTIFF'S EXHIBIT #58 (MEMO)	9110
PLAINTIFF'S EXHIBIT #59 (DAVIS LOG)	9111
PLAINTIFF'S EXHIBIT #60 (DAVIS MEMO).....	9114
PLAINTIFF'S EXHIBIT #61 (MEMO)	9115
PLAINTIFF'S EXHIBIT #62 (DAVIS MEMO).....	9116
PLAINTIFF'S EXHIBIT #63 (SENTENCING SHEET).....	9117
PLAINTIFF'S EXHIBIT #64 (CHARLES WILLIAMS LETTER).....	9118
PLAINTIFF'S EXHIBIT #65 (IVESTIGATIVE REPORT)	9120
PLAINTIFF'S EXHIBIT #66 (NOTE).....	9121
PLAINTIFF'S EXHIBIT #67 (RICKY DAVIS INTERVIEW).....	9122
PLAINTIFF'S EXHIBIT #68 (WALTER BAILEY LETTER).....	9123

PLAINTIFF'S EXHIBIT #69 (MAY 15 TH LETTER)	9127
PLAINTIFF'S EXHIBIT #70 (CUMMINGS TO MARSHALL LETTER)	9128
PLAINTIFF'S EXHIBIT #71 (INDICTMENT).....	9129
PLAINTIFF'S EXHIBIT #74 (MEMO)	9136
PLAINTIFF'S EXHIBIT #75 (LIFE PROFILE)	9138
PLAINTIFF'S EXHIBIT #76 (EMPLOYMENT APPLICATION).....	9139
PLAINTIFF'S EXHIBIT #77 (APPOINTMENT OF COUNSEL).....	9140
PLAINTIFF'S EXHIBIT #78 (MOTION IN LIMINE)	9141
PLAINTIFF'S EXHIBIT #79 (HARDEE-THOMAS TO BARNES LETTER).....	9170
PLAINTIFF'S EXHIBIT #79-B (KENDRA BOWMAN PLEA AGREEMENT)	9171
PLAINTIFF'S EXHIBIT #80 (DOROTHY BOWMAN PLEA AGREEMENT)	9175
PLAINTIFF'S EXHIBIT #81 (YOLANDA BOWMAN PLEA AGREEMENT)	9179
PLAINTIFF'S EXHIBIT #82 (WALTER BAILEY TRIAL OUTLINE).....	9183
PLAINTIFF'S EXHIBIT #83 - ID (BAILEY TO BARTON LETTER)	9193
PLAINTIFF'S EXHIBIT #84 (BAILEY TO DUKES LETTER).....	9194
PLAINTIFF'S EXHIBIT #85 (DARIEN WILLIAMS INTERVIEW NOTES).....	9195
PLAINTIFF'S EXHIBIT #86 (PROPOSED PLEA OFFER)	9197
PLAINTIFF'S EXHIBIT #87 (BAILEY TO GRIMES LETTER)	9200
PLAINTIFF'S EXHIBIT #88 (BAILEY TO COOPER LETTER)	9201
DEFENSE EXHIBIT #1 (POLYGRAPH)	9202
DEFENSE EXHIBIT #2 (POLYGRAPH)	9203
DEFENSE EXHIBIT #3 (POLYGRAPH REPORT)	9204
DEFENSE EXHIBIT #4 (MARION BOWMAN STATEMENT).....	9214

DEFENSE EXHIBIT #5 (MARION BOWMAN STATEMENT).....	9217
DEFENSE EXHIBIT #6 (MARION BOWMAN STATEMENT).....	9220
DEFENSE EXHIBIT #7 (MARION BOWMAN STATEMENT).....	9222
DEFENSE EXHIBIT #8 (GADSON RAP SHEET).....	9227
DEFENSE EXHIBIT #9 (HIRAM JOHNSON RAP SHEET).....	9228
DEFENSE EXHIBIT #10 (INVESTIGATIVE FILE)	9232
DEFENSE EXHIBIT #11 (JEFF YUNGMAN REPORT).....	9274
DEFENSE EXHIBIT #12 (DALE DAVIS TIME LOG)	9282
DEFENSE EXHIBIT #13 (TRACKING DOCUMENT)	9289
DEFENSE EXHIBIT #14 (REMITTITUR).....	9291
DEFENSE EXHIBIT #15 (RICKY DAVIS COURT RECORDS).....	9313
DEFENSE EXHIBIT #16 (RICKY DAVIS COURT RECORDS).....	9324
DEFENSE EXHIBIT #17 (RICKY DAVIS DOCKET SHEET)	9336
DEFENSE EXHIBIT #18 (BAILEY TO CUMMINGS LETTER).....	9345
DEFENSE EXHIBIT #19 (BAILEY TO CUMMINGS LETTER).....	9346
DEFENSE EXHIBIT #20 (CHECK REGISTER)	9347
DEFENSE EXHIBIT #21 (MINTER BILLING SHEET)	9354
DEFENSE EXHIBIT #22 (BOWMAN POLYGRAPH).....	9356
DEFENSE EXHIBIT #23 (HARDEE-THOMAS TO CUMMINGS LETTER)	9359
DEFENSE EXHIBIT #24 (HARDEE-THOMAS TO NORRIS LETTER).....	9361
DEFENSE EXHIBIT #25 (HARDEE-THOMAS TO BOWMAN LETTER).....	9362
DEFENSE EXHIBIT #26 (CUMMINGS TO HARDEE-THOMAS LETTER)	9363
DEFENSE EXHIBIT #27 (CUMMINGS TO DAVIS LETTER).....	9364

DEFENSE EXHIBIT #28 (CUMMINGS TO HARDEE-THOMAS LETTER)	9366
DEFENSE EXHIBIT #29 (BOWMAN MENTAL EVALUATION)	9367
DEFENSE EXHIBIT #30 (RICKY DAVIS NOTE).....	9376
DEFENSE EXHIBIT #31 (BAILEY TO CUMMINGS LETTER).....	9377
DEFENSE EXHIBIT #32 (CUMMINGS TO BOWMAN LETTER)	9378
DEFENSE EXHIBIT #33 (BAILEY TO CUMMINGS LETTER).....	9380
DEFENSE EXHIBIT #34 (CUMMINGS TO BAILEY LETTER).....	9381
DEFENSE EXHIBIT #35 (BAILEY TO CUMMINGS LETTER).....	9382
DEFENSE EXHIBIT #36 (BAILEY TO CUMMINGS LETTER).....	9383
DEFENSE EXHIBIT #37 - ID (BAILEY TO CUMMINGS LETTER)	9384
DEFENSE EXHIBIT #38 (HARDEE-THOMAS TO BOWMAN LETTER).....	9387
DEFENSE EXHIBIT #39 (HIRAM JOHNSON CIVIL COMPLAINT)	9388
DEFENSE EXHIBIT #40 (HIRAM JOHNSON CIVIL COMPLAINT)	9403
DEFENSE EXHIBIT #41 (HIRAM JOHNSON CIVIL COMPLAINT)	9409
DEFENSE EXHIBIT #42 (HIRAM JOHNSON CIVIL COMPLAINT)	9424
DEFENSE EXHIBIT #43 (BAILEY TO HARDEE-THOMAS LETTER).....	9426
DEFENSE EXHIBIT #44 (BAILEY TO CUMMINGS LETTER).....	9427
ORDER OF THE SOUTH CAROLINA SUPREME COURT CONTINUING JURISDICTION OF JUDGE LOCKEMY FILED DECEMBER 12, 2008	9428
LETTER FROM JOHN SINCLAIR, III, FILED FEBRUARY 4, 2009	9429
LETTER FROM JIM BROWN FILED MAY 7, 2009.....	9431
MOTION TO HOLD POST-CONVICTION PROCEEDINGS IN ABEYANCE PENDING RESOLUTION OF THE MOTION FOR NEW TRIAL IN THE COURT OF GENERAL SESSIONS FILED MAY 22, 2009	9433

ORDER GRANTING CONTINUANCE AND SCHEDULING ORDER FILED MAY 26, 2009	9436
RESPONSE TO MOTION TO HOLD POST-CONVICTION PROCEEDINGS IN ABEYANCE FILED MAY 29, 2009	9438
FOURTH AMENDED APPLICATION FOR POST-CONVICTION RELIEF FILED JUNE 5, 2009	9442

VOLUME TWENTY-TWO

APPLICANT'S AMENDED BRIEF SUPPORTING THE FOURTH AMENDED APPLICATION FOR POST-CONVICTION RELIEF DATED JUNE 12, 2009	9461
ORDER DENYING PETITIONER'S MOTION TO HOLD POST-CONVICTION RELIEF PROCEEDINGS IN ABEYANCE FILED JUNE 15, 2009	9570
POST-TRIAL BRIEF IN OPPOSITION TO APPLICATION FOR POST-CONVICTION RELIEF DATED AUGUST 10, 2009	9571
APPLICANT'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION FILED SEPTEMBER 21, 2009	9773
APPLICANT'S OBJECTIONS TO THE COURT'S INTENTION TO ADOPT THE STATE'S PROPOSED ORDER FILED SEPTEMBER 16, 2011	9802
ORDER DENYING APPLICATION FOR POST-CONVICTION RELIEF FILED MARCH 12, 2012	9820

VOLUME TWENTY-THREE

MOTION TO ALTER OR AMEND JUDGMENT, PURSUANT TO RULE 59(e) FILED MARCH 19, 2012	9951
MEMORANDUM IN SUPPORT OF APPLICANT'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59 FILED APRIL 25, 2012	9952
RESPONSE TO APPLICANT'S MEMORANDUM IN SUPPORT OF APPLICANT'S RULE 59(e) MOTION FILED MAY 2, 2012	9969
ORDER DENYING RULE 59(e) MOTION FILED NOVEMBER 5, 2012	9970
NOTICE OF APPEAL, PROOF OF SERVICE DATED NOVEMBER 19, 2012	9971
MOTION TO REMAND FOR A RECONSTRUCTION OF THE PCR RECORD FILED FEBRUARY 7, 2013	9973

RETURN TO MOTION TO REMAND FOR A RECONSTRUCTION OF THE
PCR RECORD DATED FEBRUARY 19, 2013 9984

REPLY TO THE RETURN TO MOTION TO REMAND FOR A
RECONSTRUCTION OF THE PCR RECORD FILED FEBRUARY 21, 2013.....9990

ORDER DENYING MOTION TO REMAND FOR A RECONSTRUCTION
OF THE PCR RECORD DATED MARCH 21, 2013.....9999

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

PLAINTIFF'S EXHIBIT #72 (PHOTOGRAPH)
PLAINTIFF'S EXHIBIT #73 (PHOTOGRAPH)

Juror 298 Kris R. Tempkin - Examination

1 (Whereupon, the prospective juror returns to the
2 courtroom.)

3 THE COURT: Mr. Tempkin, you have been
4 found to be qualified --

5 MR. TEMPKIN: Okay.

6 THE COURT: -- as a potential juror in this
7 case. That doesn't mean that you are on the
8 jury yet. It just means that you are qualified
9 and that you are a potential juror and you may
10 be selected to serve on this jury.

11 We are hoping that we will be able to
12 select the jury on Thursday at two o'clock.
13 That might be a little bit ambitious. However,
14 if we have to change that time or that day, or
15 both, we will give you a call in plenty of time,
16 all right? But unless you hear back from us be,
17 please, in the courtroom at two o'clock on
18 Thursday ready for jury selection. I'm going to
19 give you something to put that on in just a
20 moment.

21 Here comes Ms. Etheredge. She has a
22 sheet of paper for you that contains some
23 information to help you get ready for your jury
24 service, like packing your clothes to bring and
25 medication that you may need, it tells you where

1 you will be housed in the course of the trial so
2 that you leave that number with your family in
3 the event they need to get in touch with you on
4 an emergency basis, or, of course, your work
5 employment and of course all that will be right
6 here locally.

7 Now, please feel free to talk about
8 the details of where you will be, those phone
9 numbers and those details. However, be mindful
10 that you may not discuss any aspect of this case
11 with anyone or allow anyone to discuss this case
12 with you or expose -- do not expose yourself to
13 any information about this case from any source
14 at all. Do you understand?

15 MR. TEMPKIN: I do.

16 THE COURT: Thank you so much. And I look
17 forward to seeing you Thursday at 2:00.

18 MR. TEMPKIN: Okay. Thank you.

19 THE COURT: Thank you.

20 (Whereupon, the prospective juror exits the
21 courtroom.)

22 (Jonathan C. Smalls, called as a prospective
23 juror, having previously been duly sworn, is
24 examined as follows:)

25 EXAMINATION

1 BY THE COURT:

2 Q. Mr. Smalls, how are you doing?

3 A. Fine.

4 Q. How is your car, is it broken?

5 A. Yes, the wheel messed up.

6 Q. And it broke on the way up here today?

7 A. Yes.

8 Q. It was the wheel?

9 A. Yes.

10 Q. Sorry about that.

11 THE COURT: For purposes of the record this
12 is Mr. Jonathan C. Smalls who is Juror Number
13 280.

14 Q. Mr. Smalls, if you will recall yesterday morning
15 you were sworn along with all the other potential
16 jurors. Do remember that?

17 A. Yes, ma'am.

18 Q. And I just wanted to remind you that that oath
19 you took remains in effect for these questions and
20 answers here today, okay?

21 A. Okay, ma'am.

22 Q. All right. Now, since we talked with you
23 yesterday morning has anybody talked with you about
24 this case or tried to talk to you about this case, or
25 have you inadvertently or otherwise been exposed to

Juror 280 Jonathan C. Smalls - Examination

1 any information about this case?

2 A. Nope.

3 Q. All right. Now, back in the jury room you were
4 given a potential jury list to look at. Did you have
5 an opportunity to do that?

6 A. Yes, ma'am.

7 Q. All right, sir. With regards to each and every
8 name on the potential jury list, Mr. Smalls, have --
9 are you related by blood or marriage, or acquainted
10 with, or do you have any connection, be it direct or
11 indirect, or are you a business associate, or do you
12 have a personal relationship or personal
13 acquaintanceship with any of the individuals on that
14 sheet?

15 A. No, ma'am.

16 Q. All right, sir. Now, I understand, Mr. Smalls,
17 that you are related maybe to --

18 MR. BAILEY: Sam Richardson.

19 Q. To Sam Richardson. Sam Richardson.

20 A. Not that I know of.

21 Q. Have I discovered for you a relative that you
22 were not aware of?

23 A. Must be, because I don't know.

24 Q. Do you know Sam Richardson?

25 A. No, ma'am.

1 Q. You don't even know Sam Richardson?

2 A. No.

3 Q. Well, I may have just added someone to your
4 family reunion.

5 A. Okay.

6 Q. All right. All right. So if I ask you tell me
7 what relation Mr. Sam Richardson is of yours,
8 Mr. Smalls, what would you say?

9 A. None.

10 Q. All right. Well, we'll get back to you on that
11 one at the conclusion of this matter. We might have
12 for you a new family member, but we'll leave that
13 right where it is, okay?

14 A. All right.

15 Q. Okay. Now, when we talked yesterday I asked the
16 whole jury panel certain questions about -- very
17 general questions about this particular case. I
18 asked whether or not anyone had formed an opinion
19 about the case or whether or not anyone had heard or
20 seen or read anything about the case, or whether or
21 not anyone had any bias or prejudice for or against
22 either side in this case. Do you remember me asking
23 those questions, Mr. Smalls?

24 A. Uh-huh (affirmative response).

25 Q. Yes, sir, a yes?

1 A. Yes, ma'am.

2 Q. All right. But as I recall you did not indicate
3 that you had any of those things and none of those
4 things apply to you; is that right?

5 A. Yep.

6 Q. Okay. Now, since we talked yesterday has
7 anything come to your memory that has jogged your
8 memory or put within your knowledge any memory that
9 would cause you to need to change those responses?

10 A. No.

11 Q. All right. In other words, you hadn't thought
12 of anything?

13 A. No.

14 Q. All right. Now, Mr. Smalls, we need to ask you
15 some questions. And I want to talk just a moment
16 about those because I want you to know why I'm asking
17 questions. The first thing I want to tell you is
18 that we are not trying to invade your privacy so
19 please understand that first of all. We are trying
20 to find out how you feel about particular matters,
21 how you feel about them, in other words, what are
22 your opinions.

23 And obviously there aren't any right
24 or wrong answers, your opinions are your opinions and
25 they're just as good and just as valid as anybody

1 else's opinions. And also, please know that we are
2 not challenging in any way your opinions. The only
3 reason why we're asking this information is to find
4 out whether or not how you feel about certain
5 matters, certain of your opinions whether or not they
6 might impact on your jury service, okay?

7 A. Uh-huh (affirmative response).

8 Q. That's a yes, too, wasn't it?

9 A. Yes, ma'am.

10 Q. Okay. Now, one of the things that I'm going to
11 want to ask you about your opinion in a few moments
12 is penalty, specifically the death penalty, because
13 that may be an issue in this case. But I want you to
14 understand, now, the fact that we are talking about
15 penalty at this early stage really is premature.

16 I also want you to understand,
17 obviously this trial hasn't begun, and as I have said
18 yesterday and I'll say it again today, Mr. Bowman is
19 presumed innocent of these charges, but this is the
20 only time that we can talk about the penalty
21 necessarily before the trial ever gets underway. You
22 understand all that?

23 A. Yes.

24 Q. Now, Mr. Smalls, I'm going to be asking you some
25 questions, but I'm going to be asking it in a general

1 sense because it wouldn't be right or proper for me
2 to ask you about this case. You don't know anything
3 about this case and, again, it wouldn't be fair to
4 you, nor would it be right or proper. So I'm going
5 to be asking you these questions in the general,
6 generic sense, okay?

7 And my first question to you is this:
8 If you were a juror in any criminal case, would you
9 be willing to listen to the law as you were
10 instructed by the judge?

11 A. Yeah.

12 Q. And would you be willing to accept that law and
13 apply that law to the facts as you found them to be?

14 A. Uh-huh (affirmative response). Yeah.

15 Q. All right. And even though you might not
16 particularly like that law or even disagreed with it,
17 would you be still be willing to follow the law as
18 you were instructed to do so by the judge?

19 A. Yeah.

20 Q. All right. Now, if you were asked to serve in
21 the case of the State vs. Mr. Bowman, could you
22 decide this case based solely upon what you hear here
23 in the courtroom and disregard anything that you may
24 have seen, or heard, or read about in this case from
25 any source at all, if anything like that should come

1 into your memory?

2 A. Yep.

3 Q. In other words, sometimes jurors at this point
4 they don't remember anything and they can hear
5 something on the jury, something on the testimony
6 that will jog their memory. And the question is if
7 that happened to you, could you disregard your jogged
8 memory and decide this case based on the evidence in
9 the courtroom?

10 A. Yep.

11 Q. Okay. Now, Mr. Smalls, in a criminal case as I
12 know you know and as we talked about briefly
13 yesterday, the State has the burden of proving the
14 guilt of a defendant, any defendant, and this
15 defendant, Mr. Bowman, beyond a reasonable doubt. In
16 other words, no defendant, this defendant,
17 Mr. Bowman, and no defendant ever has to prove
18 himself or herself innocent. A defendant is presumed
19 innocent under the law. Do you understand this?

20 A. Yes, I do.

21 Q. All right. So if you were a juror in any
22 criminal case, would you be willing to listen to the
23 evidence and make your decision based upon whether or
24 not you were convinced that a person is guilty or
25 not?

1 A. Uh-huh (affirmative response). Yeah.

2 Q. All right. And if after you listened to the
3 evidence and you found the facts to be as you would
4 have -- as you would find them to be and applied the
5 law to it, if you were convinced the State had not
6 proven the defendant guilty beyond a reasonable
7 doubt, would you be willing to find that defendant
8 not guilty?

9 A. Yeah.

10 Q. And if, on the other hand, after you considered
11 the evidence and found the facts as you found them to
12 be and applied the law to those facts, if you were
13 convinced that the State had proven a defendant
14 guilty beyond a reasonable doubt, would you be
15 willing to find a defendant or that defendant guilty?

16 A. Yeah.

17 Q. All right, sir. Now, Mr. Smalls, most of the
18 time jurors do not concern themselves with the matter
19 of punishment. Normally that's for the Court to
20 decide punishment, except in the case such as this
21 one. And that is the one case in our law when the
22 jury has to deal with the matter of punishment. And
23 it is in a case such as this one where an individual
24 has been charged with the crime of murder and where
25 the State is seeking the death penalty that the issue

1 of penalty arises for the jury. Do you understand
2 that?

3 A. Yeah.

4 Q. All right. Now, if an individual in a death
5 penalty case is convicted of the crime of murder,
6 then the same jury that convicted him or her must
7 return, must come back and in a separate and
8 different proceeding decide the sentence that the
9 person would get. You understand that?

10 A. Uh-huh (affirmative response).

11 Q. That's a yes?

12 A. Yep.

13 Q. All right. And there are only two choices. One
14 is life imprisonment without the possibility of
15 parole and the other is the death penalty. And that
16 decision would be determined in a second or
17 sentencing, what's call the sentencing phase of the
18 trial. Do you understand this information?

19 A. Yeah.

20 Q. Now, did you have an opportunity to look at this
21 paper that was in the jury room that described
22 essentially three types of jurors?

23 A. Uh-huh (affirmative response).

24 Q. That's a yes?

25 A. Yes, ma'am.

1 Q. All right. I just need Ms. Keil -- I know what
2 you mean, Mr. Smalls, but I need Ms. Keil to be able
3 to take down what you mean.

4 A. All right.

5 Q. And it essentially describes three types of
6 jurors. And do you remember what those three
7 different types of jurors are?

8 A. Somewhat, yeah.

9 Q. You don't have to tell me what they are, but do
10 you know that they describe three types of jurors?

11 A. Uh-huh (affirmative response).

12 Q. That's a yes?

13 A. Yes, ma'am.

14 Q. All right. Now, Mr. Smalls, which of those
15 three types of jurors best describes you? And if you
16 need to refer to it I want you to feel free to do
17 that. But I need to ask you which of those three
18 jurors do you think best describes you?

19 A. Probably number two.

20 Q. You think number two?

21 A. Yep.

22 Q. All right. And describe for me what you think
23 number two says. Take your time.

24 A. I guess it's talking about that -- oh, sorry.

25 Q. Are you okay?

1 A. Yeah. After you like come up with the verdict
2 or whatever.

3 Q. Yes, sir.

4 A. That I don't have to sit here and listen to the
5 punishment that y'all would give.

6 Q. You wouldn't listen to it?

7 A. Yep.

8 Q. Okay. In other words, it wouldn't be any need
9 in the sentencing phase for you?

10 A. No.

11 Q. All right, sir. Well, let me ask you this
12 question: You would not want to hear any evidence
13 regarding what ought to be the proper punishment for
14 one convicted of murder?

15 A. No.

16 Q. Tell me a little bit about that, Mr. Smalls.
17 Why is that?

18 A. Because I had a stepbrother that was in the Navy
19 and he was murdered and that it was ruled accidental
20 so murder cases I don't deal with it, I don't have
21 nothing to do with it.

22 Q. All right. So you would not be willing under --
23 to listen to the evidence and if you found -- if you
24 found it appropriate could you vote for the death
25 penalty?

1 A. No, because I don't believe in execution.

2 Q. All right, sir. All right. So the second
3 sentencing phase of a trial would not be a phase of
4 the trial that would even be needed for you?

5 A. Yep.

6 Q. You wouldn't be interested in hearing any of
7 that?

8 A. Nope.

9 Q. All right, sir. And under -- would there be any
10 circumstances that you are aware of where you would
11 think that the death penalty was appropriate?

12 A. I can't say that because I wouldn't know.

13 Q. You wouldn't know?

14 A. No.

15 Q. All right, sir. And would it be a circumstance
16 then since you don't know whether or not you would
17 want to hear a little bit more about it, sentence?

18 A. I don't know, to tell you the truth.

19 Q. All right, sir. Because here's what I'm trying
20 to find out from you, Mr. Smalls, because what I'm
21 trying to find out from you is that, you know, some
22 people tend one way or the other. You know, they
23 tend to favor the death penalty or they tend to favor
24 life imprisonment. But some people even though they
25 might tend one way or the other, they still would

1 want to hear the evidence and make up their mind
2 because there may be some circumstances that they
3 might think that the death penalty is appropriate or
4 that life imprisonment is appropriate. Do you see
5 what I'm saying?

6 A. (Nodding.)

7 Q. That was a yes?

8 A. Yep.

9 Q. All right. So what I'm trying to find out from
10 you is are you one of those folks that would want to
11 hear testimony during a sentencing, or would that
12 just, if you will, be a circumstance that you know
13 what -- you know, at the time that the guilty
14 sentence would be rendered that you know what the
15 punishment would be and that you wouldn't be
16 interested, you wouldn't need to hear the testimony?

17 A. No interest.

18 Q. No interest. All right, sir. Now, what I'm
19 going to ask you to do at this time is I'm going to
20 ask you to answer any of the questions that these
21 lawyers might have for you, because they're entitled
22 to ask you some questions. And at this time I am
23 going to ask to ask Mr. Cummings if he has any
24 questions.

25

EXAMINATION

1 BY MR. CUMMINGS:

2 Q. Mr. Smalls, good afternoon. I'm Norb Cummings
3 and sitting in the middle there is Mr. Marion Bowman
4 who we represent, that other lady there is Ms. Marva
5 Hardee-Thomas. I thank you for your patience this
6 afternoon, sir. Her Honor's asked you some questions
7 and I'm going to try to ask you some brief questions
8 and then Mr. Bailey as solicitor has some options to
9 ask you any questions.

10 A. All right.

11 Q. And, again, sir, we're not trying to pry, we're
12 not trying to invade your privacy, Mr. Smalls. I
13 just want to go back in the beginning. Are you the
14 type of gentleman or potential juror that you could
15 follow Her Honor's instructions, sir?

16 A. Yeah. I could follow her instructions.

17 Q. Yes, sir. You've been very polite and very kind
18 to Her Honor and answered forthwith when she asked
19 you some questions. Could you sit in that jury box
20 and listen to facts in evidence presented against any
21 citizen and listen to determine guilt or innocence on
22 a charge?

23 A. I can listen to it.

24 Q. Yes, sir.

25 A. Yeah.

1 Q. And could you put your mind together with the
2 other collective 11 jurors and then possibly you,
3 sir, make it 12, and then come back with a verdict of
4 either guilty or not guilty?

5 A. Not really, no.

6 Q. And, again, Mr. Smalls, I'm not trying to -- you
7 know, just keep this thing going, but is that based
8 on religious basis or a personal basis?

9 A. Personal.

10 Q. And the personal basis is what you've hold Her
11 Honor already, that there was a family member that
12 had lost their life somehow, sir?

13 A. Yes, sir.

14 Q. I'm sorry, you have to answer verbally, that's
15 right. And why we ask that, of course, is there's
16 two parts to every trial. The first part is whether
17 or not somebody's guilty or innocent of a crime.

18 A. Yep.

19 Q. And then and only then if the jury were to find
20 somebody guilty of murder would they then go to the
21 second phase. Could you sit as a juror on, what I
22 call, guilt phase of a trial?

23 A. No.

24 MR. CUMMINGS: I thank this gentleman for
25 his honesty and I think Your Honor that's all

Juror 280 Jonathan C. Smalls - Examination

1 the questions, but, please, let me go back to
2 the table for one moment.

3 THE COURT: Certainly. Certainly, Mr.
4 Cummings.

5 (Mr. Cummings and Ms. Hardee-Thomas conferring
6 with Mr. Bowman.)

7 MR. CUMMINGS: Thank you, Judge. Thank
8 you, Mr. Smalls. That's all the questions I
9 have

10 THE COURT: Any questions from the State?

11 MR. BAILEY: No questions, Your Honor.

12 THE COURT: Thank you so much. Mr. Smalls,
13 if you would step right outside this door we
14 will be with you momentarily.

15 (Whereupon, the prospective juror exits the
16 courtroom.)

17 MR. BAILEY: Your Honor, not qualified.
18 Just if the record needs any supplementing his
19 answer to question number 49 he says, "I don't
20 believe in execution. If it all comes down to
21 my decision on whether a person lives or dies
22 that will make me have dreams every night about
23 killing them." So obviously he's not qualified
24 even guilt phase or penalty phase.

25 THE COURT: Thank you.

1 MR. CUMMINGS: May it please the Court,
2 Judge, this is why I asked to go last and I
3 thank Mr. Bailey for standing up first. Your
4 Honor, the last juror was an African-American
5 gentleman, my client is a member of the
6 African-American race. Your Honor, I know
7 you've let me talk a little bit to protect the
8 record, this is just like in the case of
9 Ms. Singleton, the juror who was not qualified.
10 This gentleman has stated in his questionnaire
11 on 49 as the solicitor has correctly stated that
12 he could not put a person to death. And as soon
13 as we mentioned about a murder trial he said he
14 couldn't become involved in it, didn't want to
15 become involved in it and does not believe in
16 capital punishment. I know that disqualifies
17 him under our statutory scheme of the death
18 penalty.

19 He told you that he was a type two
20 juror, Your Honor, based on the constitutional
21 issues that we've raised earlier as well as
22 arguments before you, politely, that this
23 gentleman falls into the same category and I
24 would just ask to protect the record on that,
25 that Mr. Bowman is entitled to a fair trial of

1 his peers. And, Your Honor, that's the second
2 African-American person that has been
3 disqualified because of either personal beliefs
4 of race or beliefs about the death penalty.
5 Thank you, ma'am.

6 THE COURT: All right. I think as I
7 remember his testimony, he even had difficulty
8 with the guilt phase unlike Ms. Singleton. I
9 mean, he even expressed some concerns about his
10 ability to pass on the guilt or the innocence.
11 He equivocated on that. Sometimes he said when
12 I questioned him he indicated to me that he
13 could certainly find the defendant guilty or not
14 guilty, but when you questioned him I thought he
15 equivocated fairly substantially about his
16 ability to participate in the guilt phase as
17 well.

18 I think he must be disqualified under
19 the current case law. He clearly, as I think
20 could be expressed, he is not capable of even
21 considering a sentence of death and I think,
22 therefore, he is disqualified from being a
23 potential juror in this case. Let me have him
24 back. Note your exception for the record.

25 MR. CUMMINGS: Thank you, Judge.

1 THE COURT: Yes.

2 (Whereupon, the prospective juror returns to the
3 courtroom.)

4 THE COURT: Thank you so much for being
5 here today, Mr. Smalls. Based upon your very
6 candid beliefs as you've been so candid with us
7 and I certainly appreciate that, I'm going to
8 disqualify you from the service on this jury
9 because we must have jurors who can consider
10 both as our law provides. I'm going to ask you,
11 Mr. Smalls, not to discuss this matter, or this
12 process, or these questions with any potential
13 jurors. Take care not to talk to any potential
14 jurors or anyone that you think would be a
15 potential juror. Other than that, you are free
16 to talk about this matter as you wish. Thank
17 you so much and you are free to go.

18 (Whereupon, the prospective juror exits the
19 courtroom.)

20 THE COURT: I know Ms. Keil's got to be
21 dragging so we're going to take a short break.
22 We need to keep it limited because we are big
23 time behind at this point. So, Ms. Keil, we're
24 going to let you take a break and when you've
25 rested your fingers, let us know.

1 (Recess, from 3:49 p.m. to 4:07 p.m.)

2 THE COURT: All right. Our next juror then
3 is Andre Porcher, Number 238.

4 (Andre B. Porcher, called as a prospective
5 juror, having previously been duly sworn, is
6 examined as follows:)

7 EXAMINATION

8 BY THE COURT:

9 Q. Hi, Mr. Porcher, come on in and have a seat.
10 How are you doing this afternoon?

11 A. Pretty good. Yourself?

12 Q. Fine. Thanks so much. For our record you're
13 Mr. Andre Porcher, and I note you are Juror Number
14 238, is what I have.

15 Now, Mr. Porcher, if you will
16 remember, I swore you along with all the potential
17 jurors in, I believe, yesterday morning. Do you
18 remember that?

19 A. Yes, ma'am.

20 Q. I would just remind you that oath that you took
21 yesterday carries forth throughout this process and
22 would apply to the questions and the answers that you
23 would give here this afternoon, okay?

24 A. Yes, ma'am.

25 Q. All right, sir. Let me give you a little bit of

1 water, Mr. Porcher, it's getting a little late, I
2 know I'm getting a little dry, you have to be, too.
3 Mr. Porcher says he would like to contribute, along
4 with all the other jurors, to get the judge a watch
5 because the judge obviously isn't keeping such good
6 time. So I apologize for that, but I can't take the
7 watch because I got already too many of them from my
8 other jurors that have been waiting contributed to
9 that same watch fund, so....

10 A. All right.

11 Q. All right, sir. Now, Mr. Porcher, since we
12 talked yesterday morning has anyone talked with you,
13 or tried to talk to you, or approach you about this
14 case in any regard, or have you inadvertently or
15 otherwise been exposed to any information about this
16 case?

17 A. No, ma'am.

18 Q. All right, sir. And when you were back in the
19 jury room, did you have an opportunity to look at the
20 potential witness list?

21 A. Yes.

22 Q. And with regards to each and every name on that
23 list, are you related by blood or marriage,
24 acquainted with, or do you have any direct or
25 indirect connection, do you have a social

1 relationship, a casual relationship, a business
2 relationship or otherwise with any of the individuals
3 on the potential witness list?

4 A. No, I do not.

5 Q. All right. Now, yesterday morning when we
6 talked about this case and I asked some questions
7 about this particular case, my notes indicate that
8 you did not have any opinion or had seen or heard or
9 read anything about this case, or had any bias or
10 prejudice for or against either side in this
11 particular case; is that right?

12 A. That is correct.

13 Q. All right. And since we have talked yesterday,
14 has anything come to your memory that may have jogged
15 your memory or created any information within your
16 knowledge that would change what you just told me?

17 A. No.

18 Q. All right, sir. Now, we need to ask you some
19 questions, Mr. Porcher, and I want to go over that
20 part of the process and talk a little bit about it,
21 because I want you to know that none of us want to
22 invade your privacy. We are going to be asking you
23 some questions about your feelings about certain
24 specific matters and get your opinions about those
25 matters.

1 The reason that we're doing that is
2 just to find out if any of the opinions that you hold
3 could impact on your jury service. Obviously then
4 there are no right or wrong answers and obviously
5 your opinions are just as good, valid, as anybody
6 else's. And we don't challenge your opinions in any
7 regard. It's simply that we need to understand them
8 and see if they might impact on your jury service.

9 One of the things I want to tell you
10 is I'm going to ask you about your opinion in a few
11 moments about penalty, and specifically the death
12 penalty because that may be an issue in this case.
13 But I want you to understand that the fact that we
14 are talking about penalty at this early stage really
15 is premature, because this trial hasn't even begun.

16 And as I have said yesterday and I'll
17 say at this moment again, Mr. Bowman is presumed
18 innocent of these charges, but this is the only time
19 that we can talk about the penalty before the trial
20 ever gets underway.

21 I'm going to be asking you some
22 questions. I'm going to ask those questions in a
23 generic or general sense because obviously I'm not
24 going to talk to you about this case, wouldn't be
25 fair to you, you don't know anything about this case

1 and it would be improper. So I'm not going to ask
2 you about this specific case, but I'm going to ask
3 you just some questions in the general or generic
4 sense. I'll do that now.

5 If you were a juror in any criminal
6 case, would you be willing to listen to the law as
7 you were instructed by the judge?

8 A. Yes, ma'am.

9 Q. All right. And would you be willing to accept
10 that law and apply that law to the facts as you found
11 them to be?

12 A. Yes.

13 Q. And even though you may not particularly like
14 the law, you might even disagree with it, but would
15 you still be willing to follow the law as you are
16 instructed to do so by the judge?

17 A. Yes.

18 Q. Now, if you were asked to serve in the case of
19 the State vs. Mr. Bowman, could you decide this case
20 based upon the evidence in this courtroom, the
21 evidence as you would hear it in the courtroom, and
22 disregard anything that you may have seen, or heard,
23 or read about this case from any source at all if
24 anything like that should come into your memory?

25 A. Yes.

1 Q. In other words, sometimes a juror will hear
2 something during the trial, it will trigger some
3 memory. And the question is if that happened to you
4 would you set that aside and try this case based on
5 the evidence in this courtroom?

6 A. Yes.

7 Q. Yes. That was a yes. Now, in a criminal case
8 as you know, as we talked about some yesterday, the
9 State has the burden of proving the guilt of a
10 defendant beyond a reasonable doubt. In other words,
11 a defendant has no burden to prove his innocence, a
12 defendant never has to prove himself or herself
13 innocent. The burden of proof is always upon the
14 State. And a defendant is always presumed innocent
15 under the law. Do you understand this?

16 A. Yes.

17 Q. All right. Now, if you were a juror in any
18 criminal case would you willing to listen to the
19 facts, listen to the evidence and the law as you were
20 instructed?

21 A. Yes.

22 Q. Now, would you willing in any criminal case to
23 listen to the evidence, make up your mind as to what
24 the facts are and then apply the law as the judge
25 would give it to you to those facts, and if you were

1 convinced that the State had not proven a defendant
2 guilty beyond a reasonable doubt would you be willing
3 to find that defendant not guilty?

4 A. Yes.

5 Q. And on the other hand, if you listened to the
6 evidence, found the facts as you found them to be and
7 applied the law to those facts and after you did so
8 if you were convinced that the State had proven a
9 defendant guilty beyond a reasonable doubt, would you
10 be willing to find that defendant guilty?

11 A. Yes.

12 Q. So you would be willing to listen and make your
13 decision based upon whether or not you were convinced
14 that a person is guilty or not; is that right?

15 A. That's correct.

16 Q. Now, most of the time jurors don't concern
17 themselves with the matter of punishment. Most of
18 the time in the criminal court the matter of
19 punishment is left up to the judge. But there is one
20 case in our law when a jury has to deal with the
21 matter of punishment and that is in a case like this
22 one. It is in a case where an individual has been
23 charged with the crime of murder and where the State
24 is seeking the death penalty.

25 If an individual in a death penalty.

1 case is convicted of the crime of murder, then the
2 same jury that convicted him, or her, of murder must
3 come back and in a separate and different proceeding
4 decide the sentence that the person would get. There
5 are two choices. One is life imprisonment without
6 parole, and the other is the death penalty. The
7 penalty would be determined in a second or a
8 sentencing phase of the trial. Do you understand
9 this information?

10 A. Yes.

11 Q. All right. Now, back in the jury room you also
12 had another piece of paper --

13 A. There's three different types.

14 Q. -- that describes three different types of
15 juror. You obviously remember that. And do you
16 remember the three different types of jurors?

17 A. Yes.

18 Q. I'll just put this there in case you need to
19 refer to it. Which of these types of jurors would
20 best describe you?

21 A. Type three.

22 Q. Type three. In other words, on the issue of
23 sentencing you would want to hear the information,
24 the evidence before you made up your mind as to what
25 was the appropriate sentence; is that right?

1 A. Yes.

2 Q. Now, let me ask you this question: If you heard
3 the evidence and after you heard the evidence in the
4 sentencing part of the trial, and if after you heard
5 that evidence, heard that testimony, you found that
6 it was appropriate that the death penalty be enacted,
7 be the sentence, if you found that that was
8 appropriate and believe that that was appropriate,
9 would you be able to vote for that sentence?

10 A. Yes.

11 Q. In the event that you thought that the death
12 sentence was not appropriate, or for any other reason
13 the person ought to receive life imprisonment, would
14 you be able and willing to vote for a sentence of
15 life?

16 A. Yes.

17 Q. So you would make your decision based upon what
18 you would hear in the courtroom?

19 A. It depends upon how malicious it is.

20 Q. It depends on how malicious it is, it depends
21 upon the facts and circumstances, it depends on the
22 information that you would receive; is that right?

23 A. Yes, ma'am.

24 Q. And you would want to hear that information?

25 A. Yes.

1 Q. And it would be necessary for you to hear that
2 information; in other words, you wouldn't make up
3 your mind just based on -- in other words, this, of
4 course, is a two-step process, first phase is guilt.
5 And if a defendant is found guilty of murder, then in
6 a case such as this then there's the separate
7 proceeding where there's testimony taken, there's
8 evidence given. And on that, based on that
9 information, then you would make up your mind; is
10 that right?

11 A. Yes, ma'am.

12 Q. You wouldn't skip the sentencing phase step?

13 A. No, ma'am.

14 Q. You wouldn't -- just because guilt was rendered
15 you wouldn't make up your mind one way or the other,
16 you would want to hear the information in the
17 sentencing phase?

18 A. Yes, ma'am.

19 Q. All right. Now, if you were chosen to serve as
20 a juror in this case, you and the other jurors would
21 be housed, obviously at county expense, the word is
22 sequestered, you would be housed here in a local
23 motel during the course of the trial. And that's
24 where you would have to stay until the trial is over
25 except, of course, when you're in the courtroom. The

1 period could be as long as two weeks, it could be
2 longer, it could be shorter. Obviously, obviously
3 that would create an inconvenience for you as it
4 surely will for all who serve on this jury. Other
5 than the inconvenience which it would cause anybody
6 who would have to serve in this capacity, would that
7 pose a serious risk of danger to your health or well
8 being, or to that of anybody who is dependent upon
9 you if you had to serve in that capacity?

10 A. It's kind of a tricky question.

11 Q. All right.

12 A. Because I work in Alabama now, so it's kind of
13 tricky. I was waiting to see what type of a decision
14 it was going to be before I went and changed my
15 tickets around since --

16 MR. BAILEY: Your Honor, I'm sorry, I
17 couldn't hear.

18 THE COURT: As I recall, Mr. Porcher works
19 for Nucor Steel. I was thinking of the giant
20 plant in Berkeley County. Nucor Steel. And
21 he's been transferred to Alabama. And he's with
22 us, but Nucor would like him to be in Alabama.

23 Q. Right?

24 A. Yes.

25 Q. Have you had a chance to talk to Nucor to ask

1 them whether they could delay your start time?

2 A. I spoke with my management, but actually I was
3 at the Berkeley plant this morning and I spoke with
4 my management at that time. And it's not a question
5 as to whether or not I can be dismissed to do it,
6 it's just a matter of putting together all my
7 packages that I had in a computer for the start up of
8 the Decatur plant because we're going through a lot
9 of retrofit right now. I was supposed to be in
10 Pennsylvania the middle of June and then I was
11 supposed to be in Germany in July. So July is not an
12 issue, it's just June.

13 Q. Oh, the middle of June is when you are
14 concerned?

15 A. The middle of June is where I'm really
16 concerned.

17 Q. Let me -- middle of June. Can you -- when I
18 think middle of June I'm thinking June 15th.

19 A. Yes.

20 THE COURT: Counsel?

21 MR. BAILEY: I would certainly hope we
22 would be finished by then, Your Honor.

23 MR. CUMMINGS: Same here, Judge. I don't
24 believe there's anything from looking at
25 everything that Mr. Bailey and Mr. Thomas and I

1 have done that we anticipate anything close to
2 June 15th, Judge.

3 Q. I think that all the information that I have,
4 Mr. Porcher, is that this case would not go to June
5 the 15th. It would conclude, I believe,
6 substantially before June the 15th.

7 A. That's not an issue.

8 Q. It's not an issue?

9 A. No, ma'am.

10 Q. You think you can accommodate?

11 A. Yes.

12 Q. Very well. Let me tell you what I'm going to
13 ask you to do for me now, Mr. Porcher. These lawyers
14 no doubt will have some questions for you and I would
15 just ask you to, please, listen to their questions
16 and respond to their questions in just one moment.

17 THE COURT: Mr. Cummings.

18 MR. CUMMINGS: Thank you, Judge.

19 EXAMINATION

20 BY MR. CUMMINGS:

21 Q. Good afternoon, sir.

22 A. Good afternoon.

23 Q. Thank you for your kindness this afternoon on
24 behalf of all of us in the courtroom. I'm Norb
25 Cummings, the young lady over there is Ms. Marva

1 Hardee-Thomas and we're both Court appointed to
2 represent Mr. Marion Bowman, sir, the gentleman
3 sitting right there. What we try to do, sir, is ask
4 jurors questions to try to find citizens that will be
5 fair and impartial jurors. And I think you probably
6 understand why Her Honor asked you all those
7 questions.

8 A. Yes.

9 Q. All right, sir. And I know that jury service is
10 a great inconvenience for every citizen and
11 particularly people that are at professional
12 occupations and degrees, but I'm going to ask you if
13 you would be kind enough to just answer a couple of
14 questions for me and I'll be brief. One of your
15 questions you have a family member in law
16 enforcement, sir?

17 A. Yes.

18 Q. Who is that, sir?

19 A. Nemeyer Sanders. He's a lieutenant at the City
20 of Atlanta Police Department.

21 Q. All right, sir. Would the fact that that person
22 holds a career in law enforcement, would that cause
23 you any substantial impairment in being a fair and
24 impartial juror just because you know somebody in law
25 enforcement?

1 A. No, sir.

2 Q. You've always been the kind of gentleman that
3 holds your civic duty very close or very personal to
4 you?

5 A. Yes.

6 Q. Yes, sir. And that you would give every citizen
7 who comes in this courtroom the presumption that they
8 are innocent until and unless the State proves them
9 guilty like you told Her Honor?

10 A. Yes.

11 Q. All right, Mr. Porcher. And then you served in
12 the United States Navy Reserves for six years?

13 A. Yes, sir.

14 Q. Was that in any kind of way of law enforcement,
15 sir? Or what did you did for Uncle Sam?

16 A. Electronic tech.

17 Q. All right, sir. You understand there's two
18 parts like Her Honor told you, two very important
19 parts to this trial. At the end of the first case if
20 the jury does not find a citizen guilty we stop there
21 and you would understand that, that everybody -- the
22 State has to prove a citizen guilty beyond a
23 reasonable doubt, correct, sir?

24 A. Yes.

25 Q. All right, sir. And we don't even get to the

1 second part unless and until all 12 good people on
2 that jury reach a unanimous verdict about that. And
3 at the second part there's two penalties and only two
4 penalties, sir. One is the jury can vote for life
5 without the possibility of parole, the jury can vote
6 for the death penalty if the facts and circumstances
7 warrant. And I think you've told Her Honor you
8 understand that.

9 A. Yes, I do.

10 Q. And of course the last question I have would be
11 you have not had any contact with law enforcement,
12 you've been out of the area for a while and have not
13 read or seen anything about the news about this, have
14 you?

15 A. No, I haven't.

16 Q. Thank you, sir.

17 MR. CUMMINGS: Beg the Court's indulgence,
18 Your Honor.

19 THE COURT: Sure.

20 (Mr. Cummings and Ms. Hardee-Thomas conferring
21 with Mr. Bowman.)

22 MR. CUMMINGS: Judge, I thank this
23 gentleman, thank you, ma'am. That's all the
24 questions I have.

25 THE COURT: Thank you very much.

1 Yes, sir, Mr. Bailey.

2 EXAMINATION

3 BY MR. BAILEY:

4 Q. Is it Porcher or Porcher (pronunciation)?

5 THE COURT: I'm from Dillon, South
6 Carolina. It's a wonder I can pronounce my own
7 name. I am so sorry, Mr. Porcher, I'm not so
8 good on the French, but neither is anybody else
9 from Dillon.

10 BY MR. BAILEY:

11 Q. Mr. Porcher, just a few questions. And I'm not
12 going ask you about this particular case, you don't
13 know the facts of the case so my questions are going
14 to be of a general nature in regard to the death
15 penalty.

16 A. Yes.

17 Q. Is the death penalty something you've had
18 occasion to think about before this week when you
19 found out you might be a juror on the case where the
20 State is seeking the death penalty?

21 A. Well, actually, Saturday was the first day I
22 realized I was supposed to be here.

23 Q. Okay.

24 A. So really didn't have that much time to ponder
25 on it at all.

1 Q. Okay. Well, just in general terms has the death
2 penalty ever come up in your thoughts, you know,
3 talking to friends, or thinking about it, or anything
4 in the news prompted it?

5 A. Not really, no.

6 Q. Okay. Do you have any religious convictions,
7 any personal convictions in regard to the death
8 penalty that you think might impact your ability to
9 sit on a case where the State is seeking the death
10 penalty?

11 A. No, I don't.

12 Q. Okay. And I won't dwell on this because the
13 judge went over it, Mr. Cummings went over it, but
14 it's potentially a two-part process where we deal
15 with the guilt phase which is like any other criminal
16 trial, where the State is attempting to prove a
17 defendant guilty beyond a reasonable doubt. If that
18 defendant's found guilty of murder then we go into
19 phase two which is the penalty phase. There would be
20 additional testimony, additional instructions from
21 the judge. Then the jury determines the punishment,
22 not the judge. All the judge does, she orders the
23 jury's verdict to happen and it will happen. So
24 based on what that jury's verdict is the judge would
25 order life without parole or the death penalty and

1 that sentence would be carried out.

2 Now, again, I'm not talking about this
3 case, I'm not asking you to predict what you would do
4 in this case, but if we got to that second phase
5 which would mean the defendant's been found guilty of
6 murder beyond a reasonable doubt, could you vote for
7 the death penalty knowing that sentence actually
8 would be carried out?

9 A. Yes. If the crime was truly meriting it, if
10 it's truly malicious, yes, I can.

11 Q. All right. And if all 12 jurors agree, and they
12 would have to agree one way or the other, if all 12
13 jurors agreed they would announce that verdict and
14 each juror's name would be called out one at a time
15 and they would be asked to stand up and announce that
16 verdict out loud. Could you do that if that was your
17 verdict?

18 A. Yes.

19 Q. There's a death verdict form that each juror is
20 asked to sign their names to if they all vote for the
21 death penalty which would result in that execution at
22 some point in time taking place. Could you sign your
23 name to a piece of paper like that if you'd already
24 deliberated and decided that was the appropriate
25 punishment?

1 A. Yes.

2 Q. Okay. All right. Mr. Porcher, I believe that's
3 all I've got. Thank you very much.

4 THE COURT: Thank you.

5 MR. PORCHER: Can I ask you a question?
6 Every week that I have to be here it's costing
7 me \$1,200 of salary.

8 MS. HARDEE-THOMAS: Your Honor, we can't
9 hear him.

10 MR. PORCHER: I am guaranteed \$900 a week
11 in salary, production part of my salary is
12 \$1,200.

13 THE COURT: Mr. Porcher is telling me that
14 it's a tremendous amount of income that it's
15 going to cost him to serve, that his sacrifice
16 is tremendous and it is tremendous. He is
17 correct, it is tremendous. And I would ask this
18 question of you, it is a tremendous sacrifice as
19 it is for you as it is for anyone that serves on
20 this jury. I guess my question to you is that
21 other than the enormous sacrifice that it will
22 cost you, would it put you in any kind of, I
23 guess, financial -- obviously it isn't going to
24 help you financially, but would it put you in
25 any kind of financial risk?

1 MR. PORCHER: No, it wouldn't.

2 THE COURT: It's just an enormity and that
3 I absolutely understand. Let me ask you this
4 question. Have you checked Nucor to see if they
5 have any provision for jury service?

6 MR. PORCHER: Yeah, I'm still guaranteed
7 some of my salary.

8 THE COURT: I understand.

9 MR. PORCHER: Nine hundred dollars a week
10 is my base salary, but the other 12, \$1,300 a
11 week is production salary, so I'm losing quite a
12 good bit in salary.

13 THE COURT: I absolutely understand that.
14 And what I would tell you is that my heartfelt
15 thanks for a community service, but I don't know
16 that that would disqualify you. I would ask if
17 by virtue of the fact that you would be missing
18 the production money would that keep you from
19 being able to pay attention to what we are doing
20 here if you were selected?

21 MR. PORCHER: No.

22 THE COURT: I know that it's just the
23 reality that it's extraordinarily -- and I know
24 that it is such a sacrifice, I know that.
25 Mr. Porcher, would you do me a favor and just

1 step just for a moment right outside the
2 courtroom, we'll be with you in one second.

3 MR. PORCHER: All right.

4 (Whereupon, the prospective juror exits the
5 courtroom.)

6 THE COURT: What says defense?

7 MR. CUMMINGS: I believe he's statutorily
8 qualified, Judge. If I may be briefly heard on
9 the financial issues. I know that Your Honor
10 and with all our help have tried to protect
11 every juror in here. I think as I understood
12 the limited I could hear from this gentleman was
13 that he would miss some production money, but
14 other than that Nucor Steel does honor juror
15 pay.

16 THE COURT: He gets his base production. I
17 mean, he gets his base salary. It's the
18 production that's a problem and his production
19 salary is more than his base salary, it's why
20 this is such a sacrifice.

21 MR. CUMMINGS: Yes, ma'am.

22 THE COURT: Yes, sir.

23 MR. BAILEY: I agree with Mr. Cummings that
24 he is very well qualified. My only concern is,
25 and I think he's probably addressed that

1 although I couldn't hear everything he said.

2 THE COURT: I'm sorry.

3 MR. BAILEY: He's going to be out roughly
4 \$2,400 as a result of jury service which is a
5 pretty good lick.

6 THE COURT: It is. But I asked him would
7 it keep from you being able to pay attention and
8 he said no. All right. Thank you. He's
9 qualified.

10 (Whereupon, the prospective juror returns to the
11 courtroom.)

12 THE COURT: Mr. Porcher.

13 MR. PORCHER: Yes, ma'am.

14 THE COURT: You have been found to be
15 qualified as a potential juror. And let me say
16 that all acknowledge the sacrifice that if you
17 are selected to serve what that means, but you
18 are nonetheless very well qualified as a juror,
19 as a potential juror in the case.

20 If does not mean, this does not mean
21 that you are on the jury yet, but it does mean
22 that you are a potential juror and you may be
23 selected to serve on this jury. We are hoping
24 that we will be able to select the jury on
25 Thursday at two o'clock. This might be a little

1 bit ambitious, and if I have to change the time
2 I'll call you plenty advance time so you'll know
3 not to come at that time and give you a new
4 time, but if you don't hear from us, please
5 report back to the courtroom at two o'clock on
6 Thursday.

7 Here comes Ms. Etheredge, she has a
8 sheet with some instructions to help you get
9 ready for your service, like packing the clothes
10 and bringing medication that you may need. It
11 tells you where you will be housed during the
12 course of the trial so that you can leave that
13 number with your work or your family or anyone
14 that needs that information, and how you can be
15 contacted for any emergencies that would arise
16 either during the day or at night.

17 Please feel free to discuss any of
18 these details, any of these practical matters
19 with anyone that you choose to and need to.
20 However, remember that you may not discuss any
21 aspect of this case with anyone or allow anyone
22 to discuss it with you or expose yourself to any
23 information about this case from any source at
24 all. Do you understand this information?

25 MR. PORCHER: Yes, ma'am.

1 THE COURT: Thank you so much, Mr. Porcher.

2 MR. PORCHER: I have a question.

3 THE COURT: Yes.

4 MR. PORCHER: Can I bring my laptop?

5 THE COURT: Can you bring your laptop? You
6 mean for your jury service? Tell me the
7 information that is on your laptop.

8 MR. PORCHER: It's just a bunch of database
9 information and spreadsheets.

10 THE COURT: For your work?

11 MR. PORCHER: Yes, ma'am.

12 THE COURT: So that you can do your work in
13 the evening?

14 MR. PORCHER: Yes.

15 THE COURT: Would it require you to go
16 online?

17 MR. PORCHER: No. I don't have to check
18 the Ameritrade.

19 THE COURT: Okay. Just in your mind during
20 this period just think big bullish thoughts.
21 Very well. Let me address that. I don't
22 perceive that to be a problem. Going online may
23 be, but having your laptop with you to do your
24 work in the evenings is not a problem, you bring
25 it on. I'll address it and think about it and

1 let you know, but as I tell you at this moment I
2 think that would be fine.

3 MR. PORCHER: Yes, ma'am.

4 THE COURT: Thank you so much.

5 MR. PORCHER: Thank you.

6 THE COURT: All right.

7 (Whereupon, the prospective juror exits the
8 courtroom.)

9 THE COURT: Our next juror is Eric Lowry,
10 Number 184. Thank you.

11 (Eric P. Lowry, called as a prospective juror,
12 having previously been duly sworn, is examined
13 as follows:)

14 EXAMINATION

15 BY THE COURT:

16 Q. Good afternoon, Mr. Lowry. How are you?

17 A. Just fine, ma'am. How are you?

18 Q. Fine, thank you.

19 THE COURT: For the record this is Mr. Eric
20 Lowry, he is Juror Number 184.

21 Q. Mr. Lowry, I want to just remind you, I know
22 that you remember, but I want to remind you that, of
23 course, you were sworn in with all the other
24 potential jurors yesterday morning. Do you remember
25 that?

1 A. Yes, ma'am.

2 Q. The oath that you gave yesterday is still good
3 today and would cover this entire process and would
4 cover the questions and the answers that we would ask
5 of you today, okay?

6 A. Yes, ma'am.

7 Q. Very well. Since we talked with you yesterday,
8 has anyone talked with you about this case or tried
9 to approach you about it, or have you been
10 inadvertently or otherwise been exposed to any
11 information about this case?

12 A. No, ma'am.

13 Q. All right. Now, when you were back in the jury
14 room -- I'm going to just put this here so you can
15 refer to it, but you were given a list called the
16 potential witness list. You can hold it. And I
17 would ask you first of all if you had a chance to
18 look at that?

19 A. Yes, ma'am.

20 Q. And after you had a chance to look at that list,
21 are you related by blood or marriage, acquainted
22 with, are you connected either in a business sense or
23 in a personal sense, albeit maybe casual, are you
24 connected with any of these individuals either
25 directly or indirectly?

1 A. No, ma'am.

2 Q. Very well. I'll take that back from you. Thank
3 you. Now, my notes indicate, Mr. Lowry, that
4 yesterday when we asked whether or not you had any
5 opinion, or had seen, or heard, or read anything
6 about this case or had any bias or prejudice for or
7 against either side in this case that you did not
8 indicate that any of these things applied to you; is
9 that right?

10 A. Yes, ma'am.

11 Q. And since we talked yesterday has anything
12 jogged your memory such that you would need to
13 respond to any of those questions from yesterday?

14 A. No, ma'am.

15 Q. All right. So that you haven't developed any
16 opinions about this case, you hadn't heard anything
17 about it, read anything about it, or seen anything
18 about it, or have any bias or prejudice for or
19 against either of these parties?

20 A. No, ma'am.

21 Q. All right. Now, Mr. Lowry, I'm going to be
22 asking you some questions and I want to tell you that
23 I can assure you that the purpose of asking these
24 questions is not to invade your privacy. And I also
25 want to tell you that the questions that I'm going to

1 be asking are to get your feelings about certain
2 matters, to get your opinion about certain matters,
3 really to find out whether or not those opinions that
4 you hold could impact, may impact on your jury
5 service.

6 Obviously there are no right and wrong
7 answers and obviously your opinions are just as good
8 and just as valid as anybody else's and we do not
9 challenge or intend to challenge them in any way.
10 We're just trying to understand them and get a little
11 information about those opinions, again, to see if
12 they might impact on your jury service.

13 And one of the things I'm going to be
14 asking you about in just a few moments is penalty,
15 specifically the death penalty because that may be an
16 issue in this case. But I want you to understand
17 that the fact that I'm going to be talking with you
18 about penalty at this early stage really is
19 premature, this case has not begun. And as I said
20 yesterday and I will tell you now and I will say so
21 later, Mr. Bowman is presumed innocent of these
22 charges, but this is the only time that we can talk
23 about the penalty necessarily before the trial even
24 gets underway. So, please keep those things in mind.

25 Now, I'm going to be asking you

1 questions in a generic sense. I'm not going to be
2 asking you questions about this case because you
3 don't know anything about this case, wouldn't be fair
4 to you and it would be improper. So I'm not going to
5 be asking you about this case, but I am going to be
6 asking you questions in the generic sense and I will
7 begin that process now.

8 Now, if you were a juror in any
9 criminal case would you be willing to listen to the
10 law as you were instructed by the judge?

11 A. Yes, ma'am.

12 Q. And would you be willing to accept that law and
13 apply it to the facts as you found them to be?

14 A. Yes, ma'am.

15 Q. And even though you might not particularly like
16 that law and you might even disagree with it, would
17 you still be willing to follow the law as you were
18 instructed to do so by the judge?

19 A. Yes, ma'am.

20 Q. All right. Now, if you were asked to serve in
21 the case of the State vs. Mr. Bowman, could you
22 decide this case based solely on what you hear in
23 this courtroom and disregard anything that you may
24 have seen, or heard, or read about this case from any
25 source at all if anything like that should come into

1 your memory?

2 A. I believe so, ma'am.

3 Q. And see what happens sometimes, Mr. Lowry, is
4 while at this point jurors don't remember anything,
5 and they absolutely do not, sometimes they could hear
6 something in a trial and it will trigger a memory.
7 And I'm just asking you could you set that aside if
8 that happened and try this case based on the evidence
9 in this courtroom?

10 A. I believe so, yes, ma'am.

11 Q. All right, sir. Now, in a criminal case as you
12 know and as we talked about briefly yesterday, the
13 State has the burden of proving the guilt of a
14 defendant beyond a reasonable doubt. In other words,
15 a defendant, no defendant, certainly this defendant,
16 has no burden to prove his innocence. A defendant
17 doesn't have to prove anything. The burden is and
18 remains upon the State and all defendants, including
19 this defendant, is presumed innocent under the law.
20 Do you understand this?

21 A. Yes, ma'am.

22 Q. All right. So if you were a juror in any
23 criminal case would you be willing to listen to the
24 facts and the circumstances and the law as you were
25 instructed?

1 A. Yes, ma'am.

2 Q. Now, if you were in any criminal case and you
3 listened to the evidence and you found the facts as
4 you found them to be, you applied the law to the
5 facts as the judge gave you the law, and when you did
6 that if you were not convinced that the State had
7 proven a defendant guilty beyond a reasonable doubt,
8 would you be willing to find that defendant not
9 guilty?

10 A. Yes, ma'am.

11 Q. On the other hand, if you listened to the
12 evidence and found the facts as you found them to be
13 and applied the law to those facts given to you by
14 the Court and you were convinced that the State had
15 proven the defendant guilty beyond a reasonable
16 doubt, would you be willing to find that defendant
17 guilty?

18 A. Yes, ma'am.

19 Q. All right. So you would be willing to listen
20 and to make your decision based upon whether or not
21 you were convinced that the person is guilty or not;
22 is that right?

23 A. Yes, ma'am.

24 Q. Now, most of the time jurors do not concern
25 themselves with punishment. Most of the time in the

1 criminal court that is left up to the judge, but
2 there is one case in our law when a jury has to deal
3 with the matter of judgment and that is in a case
4 like this one. It is in a case where an individual
5 has been charged with the crime of murder and where
6 the State is seeking the death penalty.

7 If an individual in a death penalty
8 case is convicted of the crime of murder then the
9 same jury that convicted him, or her, of the murder
10 must come back and in a separate and different
11 proceeding decide the sentence that the person would
12 get. And there are two choices. One is life
13 imprisonment without parole, and the other is the
14 death penalty. The decision would be determined in
15 that second or sentencing phase of the trial as it is
16 called. Do you understand these things?

17 A. Yes, ma'am.

18 Q. Now, also in the jury room with you, Mr. Lowry,
19 was this piece of paper. And if you will remember
20 and look at that you'll notice that it essentially
21 describes three types of jurors for you. Do you
22 remember those three types of jurors?

23 A. Yes, ma'am.

24 Q. And what they were?

25 A. Yes, ma'am.

1 Q. All right. Which of those three types of jurors
2 best describes you, Mr. Lowry?

3 A. Type three.

4 Q. Type three. In other words, you would be
5 willing to listen to whatever you might hear and once
6 you've listened to the evidence, then if you found it
7 was appropriate to sentence someone to death you
8 would be able and willing to vote for that?

9 A. Yes, ma'am.

10 Q. And on the other hand, if you thought the death
11 sentence was not appropriate or for any other reason
12 that the person ought to receive life imprisonment
13 you would be able, and willing to vote for a sentence
14 of life imprisonment?

15 A. Yes, ma'am.

16 Q. So you would make your decision based upon what
17 you hear in the courtroom?

18 A. Yes, ma'am.

19 Q. All right. Now, Mr. Lowry, if you were chosen
20 to serve as a juror in this case you and the other
21 jurors would be housed, the word is called
22 sequestered, in a local motel during the course of
23 the trial. That's where you would have to stay until
24 the trial is over, except, of course, when you are in
25 the courtroom. This period could be as long as two

1 weeks. It could be longer, it could be shorter, I
2 just don't know the exact duration of the trial.
3 Obviously, obviously that would create an
4 inconvenience for you as it surely will for all who
5 serve on this jury. Other than the inconvenience
6 which it would cause anybody who has to serve and
7 would have to serve in this capacity, would that pose
8 a serious risk of danger to your health or well being
9 or to that of anybody who is dependent upon you if
10 you had to serve in that capacity?

11 A. I just got to pay my child support.

12 Q. All right, sir.

13 A. And my rent. Other than that, no.

14 Q. All right, sir.

15 A. No problem.

16 Q. Talk to me about your rent and your child
17 support. Do you think you would be able to serve on
18 this jury and be able to pay your child support and
19 to pay your rent?

20 A. Yes, ma'am.

21 Q. Very well. Now, Mr. Lowry, these lawyers no
22 doubt are going to have some questions for you and I
23 just ask you to listen to their questions.

24 THE COURT: Mr. Bailey.

25 MR. BAILEY: Thank you, Your Honor.

EXAMINATION

(Ms. Hardee-Thomas and Mr. Cummings conferring with Mr. Bowman.)

MS. HARDEE-THOMAS: Nothing further. Thank you, sir.

THE COURT: Very well. Mr. Lowry, I'm going to ask you to step outside just a moment, you're not even going to have time to sit down and we'll be with you in just a moment.

(Whereupon, the prospective juror exits the courtroom.)

THE COURT: What says the State?

MR. BAILEY: Qualified, Your Honor.

THE COURT: What says defense?

MS. HARDEE-THOMAS: Qualified, Your Honor.

THE COURT: Thank you. Ask Mr. Lowry back in.

(Whereupon, the prospective juror returns to the courtroom.)

THE COURT: Mr. Lowry, you have been found to be qualified as a potential juror in the case. You're welcome to sit or stand, your pleasure. That does not mean that you are on the jury yet. It just means that you are a potential juror and you may be selected to serve

1 on this jury. We are hoping that we will be
2 able to select the jury at two o'clock on
3 Thursday. This may be a little bit ambitious,
4 but if we have to change the time we'll call you
5 and let you know in plenty of advance notice.
6 But unless you hear back from us we are asking
7 that you be back on Thursday at two o'clock.

8 And Ms. Etheredge has some information
9 for you. It also has the time down there. It
10 contains some instruction to help you get ready
11 for jury service like packing clothes, and
12 medication that you may need. It tells you
13 where you will be housed and gives you the
14 number where you can be reached so your family
15 can reach you, or your work, or whomever might
16 need you in the event of an emergency, also has
17 the number to call during the day if you needed
18 to be reached.

19 Please feel free to discuss any of
20 those practical items and details with anyone
21 that you need to and feel like you want to.
22 However, be mindful that you must not discuss
23 this case or any aspect of this case with
24 anyone, or allow anyone to discuss this case
25 with you, or expose yourself to any information

1 about this case from any source. Do you
2 understand this?

3 MR. LOWRY: Yes, ma'am.

4 THE COURT: I look forward to seeing you
5 Thursday at two o'clock. Thank you, Mr. Lowry.
6 (Whereupon, the prospective juror exits the
7 courtroom.)

8 MR. BAILEY: Your Honor, the next juror is
9 one of them that you asked for us to check the
10 record on her.

11 THE COURT: Oh, yes, sir.

12 MR. BAILEY: She had a New York arrest,
13 Mr. Bell called New York, in December 1973 for
14 possession of forged instrument.

15 THE COURT: Yeah.

16 MR. BAILEY: It was a bench warrant issued
17 on that charge in January of 1974. In 1982 she
18 pled guilty to petty larceny which is a class A
19 misdemeanor up to a year, so she would
20 technically be qualified.

21 Your Honor, my concern is that in the
22 question about whether or not she'd ever been
23 arrested she checked no, or answered no, and I
24 would ask that you inquire whether she forgot or
25 what the situation was there.

1 THE COURT: I will. I certainly will.
2 Very well. If we could please have Ms. Linda
3 Lynch.

4 (Linda Lynch, called as a prospective juror,
5 having previously been duly sworn, is examined
6 as follows:)

7 EXAMINATION

8 BY THE COURT:

9 Q. Good afternoon, Ms. Lynch.

10 A. How are you doing?

11 Q. I'm fine. How are you doing this afternoon?

12 A. Good.

13 Q. Put this here. Now, Ms. Lynch, you will
14 remember yesterday morning that you were sworn in
15 along with all the other potential jurors, remember
16 that?

17 A. Yes, ma'am.

18 Q. All right. And that oath that you took
19 yesterday would still cover this process and the
20 questions and answers that we would inquire of you
21 today, okay?

22 A. All right.

23 Q. Now, since we talked yesterday has anyone
24 approached you about the case or tried to talk to you
25 about the case, or have you inadvertently or

1 otherwise been exposed to any information about the
2 case?

3 A. No.

4 Q. All right. Now, back in the jury room there was
5 this list, I'll pass it to you if it would be of any
6 help to you, you were given this list of potential
7 witnesses. I would ask whether, first of all, you
8 had a chance to look at it?

9 A. Yes, I did.

10 Q. And once you've had a chance to look at it, are
11 you related by blood or marriage, or acquainted with,
12 or do you have any personal or casual or business
13 relationship with any of those folks, or are you
14 connected with them in any way directly or
15 indirectly?

16 A. Not knowingly.

17 Q. Not knowingly, very well. Now, yesterday
18 morning I noticed I asked several general questions
19 about this case. And what I remember is that you --
20 when asked if you had seen or heard or read anything
21 or had any information about this case you responded
22 that you had. Now, I don't want to inquire
23 specifically where you received that information or
24 what it was. The only thing that I would ask you
25 about is have you formed an opinion regarding this

1 case such that that opinion might substantially
2 impair or prevent you from being able to be fair and
3 impartial to both these parties?

4 A. Honestly, I really can't, you know, say that I
5 would be, you know, not prejudice because I have
6 heard some things.

7 Q. Well, let's talk about that. First of all, all
8 right, you have heard some things. I would ask have
9 you formed any opinions in this case? Do you have
10 any opinions in this case?

11 A. No, because the source that I heard it from, you
12 know.

13 Q. All right. So you hadn't formed any opinions?

14 A. No.

15 Q. So that the information that you have received,
16 do you believe that that information would
17 substantially impair or keep you from being able to
18 listen to the evidence in this courtroom, listen to
19 my charge on the law, and render a verdict in this
20 matter based upon the evidence in this courtroom, the
21 law as I would give it to you being fair and
22 impartial both to the State and to Mr. Bowman?

23 A. I think I could be.

24 Q. You think you could do that. You think whatever
25 that information that you have received that you can

1 set that information aside?

2 A. Well, I never thought I would be picked for
3 this -- you know, this particular thing, but I think
4 I could be.

5 Q. You think you could set that information aside
6 and be fair and impartial to both sides?

7 A. Yes.

8 Q. All right. All right. Now, and likewise do you
9 feel that you have any bias or prejudice for or
10 against either side, the State or Mr. Bowman?

11 A. No, because I don't know anybody personally.

12 Q. All right. All right. Now, I need to ask you
13 some questions. And I want you to know up front that
14 I am not trying to invade your privacy, I want you to
15 know that. Some of what, most of what I'm going to
16 ask you about is I need to know how you feel about
17 certain matters and what your opinions are.

18 Now, having said that, obviously, if
19 I'm asking you for your opinions there are no right
20 or wrong answers, your opinions are just as good and
21 valid as anybody else's and I am not challenging your
22 opinions and neither is anyone else challenging your
23 opinions. The reason that we ask is just to see
24 whether or not your opinions might impact on the jury
25 service, that's the reason that we do that.

1 Now, in a few moments I am going to be
2 asking you about your opinions regarding penalty, and
3 specifically the death penalty, because that may be
4 an issue in this case. And I want you to understand,
5 though, that the mere fact that I'm talking about the
6 penalty is clearly, I want you to know that I know
7 that this is real premature because the trial hasn't
8 even begun. And as I said yesterday and I'll say
9 again today, Mr. Bowman is presumed innocent of these
10 charges, but this is the only time that we can talk
11 about penalty, necessarily, before the trial even
12 gets underway.

13 Now, Ms. Lynch, when I ask you some of
14 these questions I'm going to be asking them in a
15 general sense, in a generic sense.

16 A. Okay.

17 Q. Because it wouldn't be fair for me to ask you
18 about this case because you don't know anything about
19 this case other than the little bit you've heard, and
20 it wouldn't be appropriate or fair for me to ask you
21 those questions. So the questions I'm going to be
22 asking you I'm going to be asking in generic sense,
23 okay?

24 A. Okay.

25 Q. Now, before I do that you may remember yesterday

1 you and I chatted a minute about the little -- the
2 matter in New York. Do you remember that?

3 A. Uh-huh (affirmative response).

4 Q. And I just noticed -- I wanted to show you this,
5 ask you about this. Hold on one second. Just these
6 are the questions right here. And you hold that.
7 Like number 23 and 24 and 25, take I guess number 25.
8 No, number 26. Well, not that one. I guess number
9 25.

10 A. Okay.

11 Q. And I wanted to ask you because you got in there
12 no, but then you had that little matter up in New
13 York and I wanted to just ask you --

14 A. Well, they had told me when that happened that
15 the case would be sealed when I went to the drug, so
16 I just left it as it was.

17 Q. I understand.

18 A. I never thought it was going to come up again.

19 Q. All right. Your understanding was that that
20 would be information that would come off your record,
21 you say be sealed?

22 A. Yes.

23 Q. What do you mean when you say be sealed?

24 A. They said it was going to be sealed because I
25 was going into a drug rehab.

Juror 187 Linda Lynch - Examination

1 Q. Okay. Sometimes that happens to folks,
2 Ms. Lynch, and then the paperwork doesn't happen or
3 whatever, that's why I asked you.

4 A. Okay.

5 Q. That's the reason. We have a procedure in South
6 Carolina that's called expungment is what that's
7 called, and sometimes folks just forgot to follow up
8 on the paperwork. But that was your understanding?

9 A. Yes, that was my understanding.

10 Q. Okay. So did you do -- you went into the rehab?

11 A. Yes.

12 Q. You felt like you did your deal and you thought
13 that's what was going to happen?

14 A. Yes, to make restitution.

15 Q. Okay. I understand. Let me shift on you now.
16 I'm going ask you that if you were a juror in any
17 criminal case would you be willing to listen to the
18 law as you were instructed by the judge?

19 A. Yes.

20 Q. Would you be willing to accept that law and
21 apply it to the facts as you found them to be?

22 A. Yes, if I fully understood.

23 Q. All right. And even though you might not
24 particularly like the law, you might even disagree
25 with it, would you be still willing to follow the law

1 as you were instructed to do so by the judge?

2 A. Yes.

3 Q. And if you were asked to serve in the case of
4 State vs. Bowman, could you decide this case based
5 solely on what you would hear in this courtroom and
6 disregard anything that you may have seen, or heard,
7 or read about this case from any source at all?

8 A. I would try to be.

9 Q. Okay. Do you believe you could do that?

10 A. I think so.

11 Q. Okay. Because to be honest with you this is
12 kind of my chance to ask you that because I really
13 need to be -- I need to know whether or not you would
14 be able to do that, listen to the evidence in this
15 courtroom, listen to my charge on the law and render
16 a verdict based upon the evidence in this courtroom,
17 the law as I give it to you being fair and impartial
18 both to the State and to Mr. Bowman. That's really
19 the question. Do you believe you could do that?

20 A. Yes.

21 Q. Now, in a criminal case as you know and as we
22 talked yesterday, the State has the burden of proving
23 the guilt of a defendant, any defendant, beyond a
24 reasonable doubt. In other words, a defendant, no
25 defendant, this defendant, Mr. Bowman, has no burden

Juror 187 Linda Lynch - Examination

1 to prove his innocence. He is presumed innocent in
2 the law. All defendants are presumed innocent under
3 the law. Do you understand these principles?

4 A. Yes.

5 Q. All right. Now, if you were a juror in any
6 criminal case would you be willing to listen to the
7 facts, circumstances, and the law as you're
8 instructed?

9 A. Yes.

10 Q. Now, based upon the evidence in the courtroom if
11 you were a juror in a criminal case and you listened
12 to the evidence, found the facts as you found them to
13 be and you applied the law as the judge would give
14 you to those facts, if you were not convinced that
15 the State had proven a defendant guilty beyond a
16 reasonable doubt, would you be willing and able to
17 vote for a verdict of not guilty?

18 A. Yes.

19 Q. On the other hand, if you listened to the
20 evidence in the case, any case, listened to the
21 judge's charge on the facts, listen -- let me start
22 at over because what I just told you wasn't right, so
23 I'm going to start over.

24 A. All right.

25 Q. Okay. If you were a juror in a criminal case,

Juror 187 Linda Lynch - Examination

1 you listened to the evidence, you found facts as you
2 found them to be, you applied the law as the judge
3 gave you to those facts and you were convinced that
4 the State had proven a defendant guilty beyond a
5 reasonable doubt, would you be willing to find that
6 defendant guilty?

7 A. Yes.

8 Q. All right. Now, in other words, you would be
9 willing to listen and make your decision based upon
10 whether or not you were convinced that the person was
11 guilty or not; is that right?

12 A. Yes.

13 Q. Now, most of the time jurors don't concern
14 themselves with the matter of punishment. Most of
15 the time in criminal court that's left up to the
16 judge, but there is one case in our law when a jury
17 has to deal with the matter of judgment and that's a
18 case like this one. It's a case where an individual
19 has been charged with the crime of murder and where
20 the State is seeking the death penalty.

21 If an individual in a death penalty
22 case is convicted of the crime of murder, then that
23 same jury that convicted him or her of murder must
24 come back and in a separate and different proceeding
25 decide the sentence that that person would get.

1 There are two choices. One, life imprisonment
2 without the possibility of parole, and the death
3 penalty.

4 That would be determined, the
5 punishment would be determined in that second or
6 sentencing phase of the trial. Do you understand
7 what I'm telling you here?

8 A. Yes.

9 Q. All right. Now, there's another piece of paper
10 in the jury room with you, Ms. Lynch, and I'd ask you
11 if you had a chance to look at that paper?

12 A. Yes.

13 Q. And essentially it describes three types of
14 jurors.

15 A. Yes.

16 Q. Do you remember these three types?

17 A. Yes.

18 Q. All right. Now, which of those three types of
19 jurors best describes you?

20 A. I would have to say I would choose life in
21 prison. I couldn't give somebody the death penalty,
22 I wouldn't personally do it.

23 Q. All right. And let me ask you this question:
24 Are you telling me that insofar as you are concerned
25 you would never need the sentencing phase because you

Juror 187 Linda Lynch - Examination

1 wouldn't be interested in hearing anything about the
2 circumstances --

3 A. I would listen to the charges and everything
4 like that, but you said two choices, you said life in
5 prison or the death penalty.

6 Q. Yes.

7 A. So that wouldn't be up to us as jurors?

8 Q. Well, it would be up to you as jurors. And
9 listen to what I'm going to ask you. There's a
10 difference, Ms. Lynch, and even tending towards one
11 penalty or another penalty versus that you would
12 never be willing to consider the death penalty. So
13 the question that I would have for you is are you
14 telling me that under no circumstances would you
15 consider the death penalty, or are you telling me
16 that you -- you know, that you tend towards life
17 imprisonment, but you would list be to the --

18 A. I would listen to the case, but I couldn't
19 choose the death penalty.

20 Q. All right. There are no circumstances that you
21 could impose the death sentence?

22 A. I couldn't imagine, no.

23 Q. Okay. You couldn't imagine imposing the death
24 penalty?

25 A. No.

Juror 187 Linda Lynch - Examination

1 Q. And you thought about that?

2 A. Yes.

3 Q. All right. Can I ask you this?

4 A. Okay.

5 Q. Why would you then want to hear the facts and
6 circumstances in the sentencing phase?

7 A. Because I was under the impression that you had
8 a choice, either life or death. That's not the case?

9 Q. Yes, the jury does have a choice. And that's
10 why they -- that's why they have this, you have the
11 sentencing phase.

12 A. I'm saying you -- I'm saying that we don't have
13 a choice like between whoever gets picked to deal
14 with it and, you know, when we're making that
15 decision.

16 Q. Tell me what you mean.

17 A. Like between whoever's in the -- when it's time
18 for sentencing or whatever, you pick it or we pick?

19 Q. Oh, the jurors. Normally, normally, normally in
20 criminal court the judge is in charge of the
21 punishment, but in a case such as this case the jury
22 has to deal with the matter of punishment. That's
23 why assuming just as we talked a moment ago if an
24 individual in a death penalty case is convicted of
25 the crime of murder, then the same jury that

Juror 187 Linda Lynch - Examination

1 convicted him or her of murder comes back and they
2 have another proceeding, have testimony, receive
3 information, then the jury then makes the decision
4 whether the punishment would be life imprisonment
5 without parole or the death penalty. Those are the
6 two choices that the jury makes. And the jury makes
7 that decision based upon the information received in
8 the sentencing phase.

9 So the question that I have for you is
10 that if after -- would there be and could you after
11 hearing the information, the evidence, the
12 circumstances in the sentencing phase, if you found
13 the death penalty appropriate could you vote for that
14 sentence?

15 A. I honestly couldn't answer that. I really don't
16 think so.

17 Q. All right. Let me tell you what I'm going to
18 ask you to do at this point. I'm going to ask you to
19 answer any questions that these lawyers would have
20 for you.

21 THE COURT: And, Mr. Cummings.

22 MR. CUMMINGS: Thank you, Judge.

23 EXAMINATION

24 BY MR. CUMMINGS:

25 Q. Good afternoon, Ms. Lynch.

1 A. Hi.

2 Q. I'm Norb Cummings, that young lady over there is
3 Ms. Marva Hardee-Thomas, that young man right there
4 is Mr. Bowman.

5 A. Hi.

6 Q. Again, you've been so kind and so polite to Her
7 Honor in answering the judges' questions and I know
8 you'll do the same for me and if Mr. Bailey, the
9 solicitor, has any questions for you.

10 I just want to be very specific. If
11 somebody's on trial, any case, any criminal case like
12 Her Honor was trying to give you an example of.

13 A. Yes.

14 Q. And you were called upon along with the 11 good
15 people, plus you, ma'am, to determine guilt or
16 innocence, could you do that?

17 A. Yes.

18 Q. And then later on as you know there may be a
19 second part if and when a citizen is ever found
20 guilty of the crime of murder, then and only then
21 would it go to what we call the penalty phase. And
22 at that point like Her Honor says and she's the boss,
23 only two possible types of punishment. And the jury
24 would have to listen to everything, or they don't
25 have to listen to anything because nobody has to ever

1 prove themselves in anything, but the jurors are
2 going to have to at least listen to what's presented.

3 Could you do that?

4 A. I would listen.

5 Q. And then at the end of that all 12 of the good
6 citizens, okay, not just one individual, 12 people
7 would have to come up with a decision as to
8 punishment. And at that point it's either life
9 without the possibility of parole or the
10 implementation of the death penalty some day, some
11 time. You understand that?

12 A. I understand that.

13 Q. Okay. And then -- and you'll probably be asked
14 some questions about whether or not you could vote
15 for the ultimate penalty if the facts and
16 circumstances so warrant, Ms. Lynch. And could you
17 do that?

18 A. Me personally I couldn't vote for the death
19 penalty.

20 Q. And is that based on religious basis, or on a
21 personal opinion basis, ma'am?

22 A. Personal opinion from past, past experience in
23 my family and stuff.

24 Q. And no matter what questions I would ask you or
25 Her Honor or Mr. Bailey and anybody as officers of

Juror 187 Linda Lynch - Examination

1 the Court, that you are such a strong believer in
2 that that you would not change your opinion? I mean,
3 there's no trick questions in here.

4 A. No.

5 Q. And so that is your principle and your statement
6 no matter what I ask you, you could never vote for
7 the death penalty?

8 A. No.

9 MR. CUMMINGS: Beg the Court's indulgence,
10 Your Honor.

11 THE COURT: Yes, sir.

12 (Mr. Cummings and Ms. Hardee-Thomas conferring
13 with Mr. Bowman.)

14 MR. CUMMINGS: Judge, that's all the
15 questions I have of this nice lady.

16 THE COURT: Thank you, Mr. Cummings.

17 MR. BAILEY: Would you indulge me one
18 second, Your Honor? Your Honor, no questions.

19 THE COURT: If you would just step outside
20 the courtroom, we will be with you very shortly.

21 MS. LYNCH: Okay.

22 (Whereupon, the prospective juror exits the
23 courtroom.)

24 MR. CUMMINGS: Judge, due to the late
25 nature of the hour, and I'll be very brief if

Juror 187 Linda Lynch - Examination

1 you will indulge me.

2 THE COURT: Sure.

3 MR. CUMMINGS: We've had Juror Singleton,
4 Juror Smalls, now Juror Lunch. They are all
5 members of cognizable class of race and I would
6 just ask to preserve that issue on the record
7 that they can be jurors in the guilt part.
8 Mr. Smalls had some difficulty once he learned
9 in my humbled opinion that it was a murder case,
10 but was answering your questions all the way
11 through until we got to the end where we started
12 talking about punishment. But, Your Honor, I
13 would just note for the record, please, that
14 this is the third black person that has said
15 they were a type two juror because they just
16 don't believe in the death penalty either
17 religiously or because of personal convictions,
18 ma'am.

19 THE COURT: I don't think anybody has said
20 religiously, though, Mr. Cummings.

21 MR. CUMMINGS: I thought Ms. Singleton did,
22 Judge, unless I'm in error.

23 THE COURT: All right. The record will
24 show what that is.

25 MR. CUMMINGS: Yes, ma'am.

Juror 187 Linda Lynch - Examination

1 THE COURT: Very well. Anything to add to
2 that?

3 MR. CUMMINGS: No.

4 THE COURT: Very well. I find that
5 Ms. Lynch is disqualified because she is unable
6 to under any circumstances impose the death
7 penalty. Please send her in.
8 (Whereupon, the prospective juror returns to the
9 courtroom.)

10 THE COURT: Ms. Lynch, I want to thank you
11 so much for being with us. In this type of case
12 we must have jurors who can impose either
13 punishment and, therefore, I must disqualify you
14 from your service on this jury. But I certainly
15 thank you so much for being here, I thank you
16 for your patience and your valuable, precious
17 time that you've given to us.

18 What I would ask of you, though, is
19 that if you would, please, not discuss this
20 process, any of the questions with any potential
21 jurors. And if you're not sure whether or not
22 someone is a potential juror in this matter, I
23 would ask you to certainly err on the side of
24 not discussing this matter with them.

25 Beyond that, beyond, of course, anyone

Juror 187 Linda Lynch - Examination

1 involved with this case in any way, beyond those
2 two groups of people you can talk about this
3 matter if you want to and certainly would be
4 appropriate for you to do that. Thank you so
5 much and you are free to go.

6 MS. LYNCH: Thank you.

7 THE COURT: Bye, Ms. Lynch.

8 (Whereupon, the prospective juror exits the
9 courtroom.)

10 THE COURT: All right. Ms. Kathleen
11 McPartlin, 206.

12 (Kathleen A. McPartlin, called as a prospective
13 juror, having previously been duly sworn, is
14 examined as follows:)

15 EXAMINATION

16 BY THE COURT:

17 Q. Ms. McPartlin, how are you?

18 A. Fine.

19 Q. If you would please be seated. For the record
20 this is Ms. Kathleen A. McPartlin; is that correct?

21 A. That's right.

22 Q. Juror Number 206. Ms. McPartlin, I guess you
23 would be part of the jury group back there that wants
24 to take up a collection for the judge to have a new
25 watch; is that right? That's okay because you know

1 what, I got the whole drawer full of watches at home
2 from all the times I've had folks waiting, but I do
3 appreciate your patience with us so much.

4 A. Okay.

5 Q. And let me just remind you that yesterday one of
6 the first things that we did was place you, along
7 with all the other potential jurors, under oath. And
8 that oath of course remains in effect for this
9 process today and would cover these questions and
10 answers, okay?

11 A. Okay.

12 Q. Very well. Now, since we talked with you
13 yesterday, has anyone talked with you about this case
14 or tried to approach you in any regard about this
15 case, or have you inadvertently or otherwise been
16 exposed to any information about this case?

17 A. The only thing I heard was that it was going to
18 be sequestered.

19 Q. All right.

20 A. That's all I heard.

21 Q. That's all you heard?

22 A. Yeah, that's all I heard.

23 Q. You heard that sometime between yesterday and
24 today?

25 A. Yeah.

1 Q. All right. You didn't hear anything other than
2 that?

3 A. Oh, no. No.

4 Q. All right. When you were back in the jury room
5 you were given a list of potential witnesses. And
6 I'll place that in front of you just in case you need
7 to look at it. And I would ask you, first of all,
8 did you have a chance to look at the list?

9 A. Yes, I did.

10 Q. Once you have looked at the list, are you
11 related by blood or marriage, or acquainted with, or
12 have any business or personal acquaintanceship or
13 friendship, or are you connected with anyone listed
14 on this list either directly or indirectly?

15 A. No, ma'am.

16 Q. All right. I'll take that back from you.

17 A. Okay.

18 Q. My notes that I have indicate that when we
19 talked in those general terms yesterday about this
20 case, that you indicated that you did not have any
21 opinion, that you hadn't seen, heard, or read
22 anything about this case, or that you had any bias or
23 prejudice for or against either side in this case.
24 Did you not indicate that any of those things applied
25 to you? In other words, by your silence I took that

1 to mean that none of those things applied to you; is
2 that right?

3 A. Correct. Correct.

4 Q. And since we talked yesterday has anything come
5 into your memory that may have jogged your memory or
6 created any knowledge that would change any of those
7 answers?

8 A. No.

9 Q. All right. Now, we need to ask you some
10 questions. I want to just talk about the purpose and
11 what kinds of questions sort of in a general sense
12 and tell you that. First thing that I want to tell
13 you is that we are not trying to invade your privacy,
14 that's the first thing I want to tell you.

15 A. Okay.

16 Q. The second thing I want to tell is that what we
17 are about is to find out how you feel about certain
18 issues, certain matters.

19 A. Okay.

20 Q. We want to get your opinions about those
21 matters. And the reason that we want to do that is
22 because we want to know whether or not those opinions
23 may impact on your jury service.

24 A. Okay.

25 Q. Obviously there are no right or wrong answers,

1 and obviously your opinions are just as good and
2 valid as anybody else's. We just need to understand
3 them, know about them. And clearly no one here is
4 going to challenge those opinions.

5 A. Okay.

6 Q. And we just need to have some sense of what they
7 are to see if they will impact your jury service.

8 A. All right.

9 Q. And one of the things that I'm going to want to
10 ask you about in just a few moments is penalty,
11 specifically the death penalty, because that may be
12 an issue in this case. But I want you to understand
13 that the fact that we're going to be talking about
14 penalty is real premature because the trial hasn't
15 even begun yet.

16 A. Okay.

17 Q. And as I have said, Mr. Bowman is presumed
18 innocent of these charges, but the only time that we
19 can talk about penalty, necessarily, is before the
20 trial ever gets started.

21 Now, if you -- and I'm going to ask
22 you some questions and I'm going to ask you in
23 general, generic terms because it wouldn't be fair
24 for me to ask you about this trial because you don't
25 know anything about this trial, this case, and it

1 would be improper for me to do that, so I'm going to
2 ask you generically, in general terms.

3 A. Okay.

4 Q. And I'm going to begin that now. If you were a
5 juror in any criminal case, would you be willing to
6 listen to the law as you were instructed by the
7 judge?

8 A. Uh-huh (affirmative response).

9 Q. That's a yes?

10 A. Yes.

11 Q. I know what you mean.

12 A. I'm sorry.

13 Q. That's okay, I know what you mean. I just need
14 Ms. Keil to know what it is that you are telling me.
15 I know what you mean. Would you be willing to accept
16 that law and apply it to the facts as you found them
17 to be?

18 A. Yes.

19 Q. And even though you might not particularly like
20 that law, or you might not agree with it at all,
21 would you still be willing to follow the law as you
22 were instructed to do so by the judge?

23 A. Yes.

24 Q. And if you were asked to serve in the case of
25 the State vs. Mr. Bowman, could you decide this case

1 based solely upon what you would hear in this
2 courtroom and disregard anything that you may have
3 seen, or heard, or read about this case from any
4 source at all if anything like that should come into
5 your memory?

6 A. Yes.

7 Q. What I mean by that is that sometimes as a
8 juror's sitting on a case and they hear information,
9 sometimes there will be a memory that will be jogged
10 during the case. I ask you this question simply in
11 the event that if that happened to you, would you be
12 willing to set that aside and try this case based on
13 the evidence in this courtroom?

14 A. Yes.

15 Q. All right. Very well. In a criminal case,
16 Ms. McPartlin, and as we talked about yesterday, the
17 State has the burden of proving a defendant guilty
18 beyond a reasonable doubt, any defendant, and this
19 defendant, Mr. Bowman. In other words, a defendant
20 never has to prove himself innocent, or herself
21 innocent. A defendant is always presumed innocent
22 under the law. I'd ask if you understand these
23 ideas?

24 A. Yes, I do.

25 Q. So if you were a juror in any criminal case,

1 would you be willing to listen to the facts and the
2 circumstances in the law as you were instructed?

3 A. Yes.

4 Q. And as you did so, if you listened to the
5 evidence and you found the facts as you found them to
6 be and then applied the law to those facts, and after
7 you did that if you were not convinced that the State
8 had proven a defendant guilty beyond a reasonable
9 doubt, would you be willing to find that defendant
10 not guilty?

11 A. Absolutely.

12 Q. On the other hand, if you listened to the
13 evidence and if you found the facts as you found them
14 to be, applied the law as the judge would give that
15 law to you and you were convinced that the State had
16 proven a defendant guilty beyond a reasonable doubt,
17 would you find that defendant guilty?

18 A. Yes.

19 Q. All right. So you would be willing to listen
20 and make your decision based upon whether or not you
21 were convinced that the person is guilty or not; is
22 that right?

23 A. Yes.

24 Q. All right. Now, most of the time jurors do not
25 concern themselves with the matter of punishment.

1 Most of the time in the criminal courtroom punishment
2 is left up to the judge. But there is a case, one
3 case in our law when a jury has to deal with the
4 issue and the matter of punishment and that is in a
5 case like this one, it is in a case where an
6 individual has been charged with the crime of murder
7 and where the State is seeking the death penalty.

8 If an individual in a death penalty
9 case is convicted of the crime of murder, then the
10 same jury that convicted him or her of murder must
11 come back and in a separate and different proceeding
12 decide the sentence that that person would get. And
13 there are two choices. One is life imprisonment
14 without the possibility of parole, and the other is
15 the death penalty. That decision, again, would be
16 determined in that second or sentencing phase of the
17 trial as it is called. Do you understand this
18 information?

19 A. Yes, I do.

20 Q. Now, I have another sheet of paper that is with
21 you in the jury room and I'm just going to pass it up
22 to you in case you need to review it. Have you had a
23 chance to look at that sheet?

24 A. Yes, ma'am.

25 Q. And it describes three types of jurors. Do you

1 remember those three types of jurors?

2 A. Yes, I do.

3 Q. Which of those three types of jurors best
4 describes you? Look at it now if you need to
5 refresh.

6 A. Three.

7 Q. Type three. In other words, you would be
8 willing to listen to whatever you might hear --

9 A. I would definitely have to.

10 Q. -- in the sentencing phase?

11 A. Yes.

12 Q. And once you had heard that information, that
13 evidence, and you determined that and if you
14 determined that it was appropriate to sentence
15 someone to death, would you be able and willing to
16 vote for that?

17 A. If the circumstances were right, yes, I would.

18 Q. All right. And likewise if you thought that the
19 death sentence was not appropriate, or for any other
20 reason the person ought to receive life imprisonment,
21 would you be able and willing to vote for a sentence
22 of life imprisonment?

23 A. Yes.

24 Q. So you would make the decision based upon what
25 you would hear in the courtroom?

1 A. Absolutely, yes.

2 Q. All right. Now, if you were chosen to serve as
3 a juror in this case, you and the other jurors would
4 be housed at county expense, and the word is
5 sequestered. You would be housed. You all would be
6 housed here in a local motel during the course of the
7 trial and that's where you would have to stay until
8 the trial is over, except, of course, when you are in
9 the courtroom. This period could be as long as two
10 weeks, it could be longer, it could be shorter. I
11 don't know what the exact extent of the law -- of the
12 law -- of the trial will be.

13 Obviously that would create a
14 substantial inconvenience for you as it surely will
15 for all who serve on this jury. Other than the
16 inconvenience which it would cause anybody who would
17 have to serve in this capacity, would that pose a
18 serious risk of danger to your health or well being,
19 or to that of anybody who is dependent upon you if
20 you had to serve in that capacity?

21 A. No.

22 Q. You would be able to do that?

23 A. (Nodding.)

24 Q. That's a yes?

25 A. Yes.

1 Q. All right. I'm going to ask if you would,
2 please, answer any questions that I'm confident that
3 these lawyers might have for you.

4 A. Okay.

5 THE COURT: Mr. Bailey.

6 MR. BAILEY: Thank you, Your Honor.

7 EXAMINATION

8 BY MR. BAILEY:

9 Q. Ms. McPartlin, I'm Walter Bailey and I'll be
10 prosecuting this case for the State. How are you
11 doing?

12 A. Fine.

13 Q. I have a few questions to follow up on what the
14 judge asked. And I'm not talking about this case,
15 I'm going to talk in general about the death penalty.

16 A. Okay.

17 Q. You haven't heard the facts of this case, so I'm
18 not asking you to predict what you would do, but just
19 in general terms. Is the death penalty something
20 you've ever had occasion to think about before this
21 week when you found out you might be on this jury?

22 A. Honestly, no.

23 Q. All right. Do you have any religious or
24 personal beliefs or opinions that you think might
25 impact you if you get picked in this case?

1 A. No, sir.

2 Q. All right. And you understand what the judge
3 told you, that we wouldn't even be addressing
4 punishment unless that defendant was found guilty of
5 murder beyond a reasonable doubt in the first part of
6 the trial. And if that occurs then we go into phase
7 two. And the judge doesn't decide the punishment,
8 the jury makes that decision.

9 A. Right.

10 Q. What the judge does, she orders that jury
11 sentence to be carried out and it will be carried
12 out.

13 A. Okay.

14 Q. So, again, without asking you to predict what
15 you would do, if you did get picked on a jury in a
16 death penalty case where the State is seeking the
17 death penalty, the defendant's found guilty of murder
18 beyond a reasonable doubt and then we go into phase
19 two. You told the judge you could listen to the
20 testimony and the additional instructions and that
21 you could vote potentially for life without parole or
22 death penalty depending on what you heard; is that
23 correct?

24 A. Yes.

25 Q. Okay. Knowing that sentence would be carried

1 out if you thought the death penalty was appropriate
2 you could vote for it?

3 A. If the circumstances were right, yes.

4 Q. All right. If all -- whatever the jury's
5 verdict is, all 12 have to agree.

6 A. Right.

7 Q. Life without parole or the death penalty.

8 A. Right.

9 Q. If all 12 jurors vote for the death penalty the
10 process is, first of all, back in the jury room after
11 they made the decision there would be a death verdict
12 form, each juror that voted for the death penalty,
13 again, it would be unanimous, would be asked to sign
14 their names to that paper which would result at some
15 point in the future in that defendant being executed.
16 If the case was bad enough for you to vote for the
17 death penalty, could you sign your name to a paper
18 like that knowing that a person would eventually be
19 executed based on that document?

20 A. Yes, sir. If what I heard in the courtroom I
21 thought it needed to be done, yes, I could.

22 Q. All right. If all 12 jurors vote for the death
23 penalty back in the jury room, they sign that
24 document, they would come out here and they would be
25 seated in these chairs, that verdict would be

1 announced and then each juror would be asked to stand
2 up when their name is called and say out loud if
3 that's their verdict and still their verdict. Could
4 you do that --

5 A. Yes, sir.

6 Q. -- if that was your verdict? Okay. I believe
7 one other question in regard to your questionnaire.
8 You had asked initially to be rescheduled at a later
9 date because of your job. Have you got that under
10 control now?

11 A. Yes, I do.

12 Q. Where you've got arrangements made?

13 A. Everything's covered, yes.

14 Q. That would not be a consideration then?

15 A. No, that would be fine.

16 Q. That's all I've got. Thank you very much.

17 THE COURT: Yes, sir, Mr. Cummings.

18 MR. CUMMINGS: Thank you, Judge, Solicitor.

19 EXAMINATION

20 BY MR. CUMMINGS:

21 Q. Good afternoon, ma'am', I'm Norb Cummings. The
22 young lady over there is Ms. Marva Hardee-Thomas and
23 both she and I have been court appointed to represent
24 Mr. Marion Bowman over there in the white shirt,
25 ma'am. I'm going to ask you a few questions, but a

1 lot of them have already been covered by both Her
2 Honor and Mr. Bailey.

3 A. Okay.

4 Q. And as you have pretty well figured out by now,
5 and could tell by the way you pay close attention to
6 the questions back and forth by the other nice folks,
7 but you understand that everybody's innocent until
8 they walk in this courtroom and the State proves them
9 guilty beyond a reasonable doubt and until and unless
10 that happens nothing else happens?

11 A. Yes, sir.

12 Q. I think that you hold that pretty close to you
13 as a strong principle.

14 A. I do. I know.

15 Q. And I know as a property manager sometimes you
16 deal with law enforcement either by good reasons or
17 bad, right?

18 A. Yes, we do.

19 Q. And in your questionnaire, and I promise you we
20 don't waste pen and paper without having a good
21 reason, okay?

22 A. Okay.

23 Q. But you've not put down anything about good
24 experiences or bad experiences with any law
25 enforcement officers, right?

1 A. As far as ever dealing with them it's just been
2 like on a basic -- like this morning they were there
3 because somebody passed out, you know, it's just been
4 come and go. Not where I've actually had to sit down
5 and give a long explanation or anything.

6 Q. Or talk personally about a case or anything?

7 A. Never. I've never had to do that.

8 Q. And particularly when the deputy served the
9 civil summons about coming to jury duty, none of the
10 officers talked to you personally about this case?

11 A. We don't even see them. It actually goes on the
12 door and I've never actually had to go through with a
13 complete eviction before, so....

14 Q. But as far as this case we actually got your
15 jurors summons that came in the mail.

16 A. Right.

17 Q. None of the officers talked to you about any
18 jury service or anything?

19 A. No.

20 Q. Does your apartment complex or property
21 management supply law enforcement with what I call a
22 security discount?

23 A. Yes, we do.

24 Q. Can you give us the name of the officer or
25 officers who do that, please?

1 A. That would be Chad --

2 Q. Take a moment.

3 A. I can tell you his apartment number.

4 Q. Okay.

5 A. I can't remember his name.

6 Q. How about this, do you know what color car he
7 drives, what agency he works for?

8 A. He is a state trooper.

9 Q. State trooper, okay.

10 A. Yes.

11 Q. The only reason we ask that is to make sure that
12 there's no law enforcement involvement that would
13 cause you to be substantially impaired being a fair
14 and impartial juror; is that correct?

15 A. Right.

16 Q. All right. And it's not to pry. We don't know
17 what kind of discount they get. All right. And,
18 Madam Juror, what we're trying to find out now is the
19 most important part, that is you have no reasons,
20 either passion, prejudice, or bias that would
21 substantially impair you today to listen to all the
22 evidence like you told Her Honor you would do, and
23 then apply the law as you find the facts in here
24 along with your other 11 good jurors, and you could
25 do that?

Juror 206 Kathleen A. McPartlin - Examination

1 A. Yes, I can.

2 Q. And as a result of that you would not feel any
3 pressure or any community involvement when you were
4 done with this case since you had to deal back with
5 law enforcement?

6 A. Not at all.

7 Q. And you say that openly because you're such a
8 strong lady about your convictions?

9 A. Yeah, I think I am.

10 Q. And further you understand that nobody, the jury
11 does not have to vote for the death penalty.

12 A. Right.

13 Q. That's why you put all your good minds together.
14 And that the jury has a right and a constitutional
15 right to listen and look at life without the
16 possibility of parole if somebody was ever found
17 guilty of murder.

18 A. Right.

19 Q. And you could do that also with your fellow
20 jurors?

21 A. Absolutely.

22 MR. CUMMINGS: Beg the Court's indulgence,
23 Judge.

24 THE COURT: All right.

25 (Mr. Cummings and Ms. Hardee-Thomas conferring

Juror 206 Kathleen A. McPartlin - Examination

1 with Mr. Bowman.)

2 MR. CUMMINGS: Judge, that's all the
3 questions I have of this nice lady. Thank you.

4 THE COURT: All right. Ms. McPartlin, I'm
5 going to ask you to step out the door so we can
6 talk about you behind your back, but we will not
7 be two seconds.

8 MS. MCPARTLIN: Thank you.

9 THE COURT: Well, we may be two, we may be
10 five. Thank you, Ms. McPartlin.
11 (Whereupon, the prospective juror exits the
12 courtroom.)

13 THE COURT: What says the State?

14 MR. BAILEY: Qualified, Your Honor.

15 THE COURT: What says the defense?

16 MR. CUMMINGS: Statutorily qualified,
17 Judge.

18 THE COURT: Yes, sir.

19 (Whereupon, the prospective juror returns to the
20 courtroom.)

21 THE COURT: It may have already been five
22 seconds.

23 MS. MCPARTLIN: I know.

24 THE COURT: You have been found to be
25 qualified, Ms. McPartlin, and I want to tell you

Juror 206 Kathleen A. McPartlin - Examination

1 that that doesn't mean that you are on the jury
2 yet. It just means that you are a potential
3 juror and you may be selected to serve on this
4 jury. And we are hoping to select the jury on
5 Thursday at two o'clock. It might be a little
6 ambitious, but if we have to change the time
7 we'll let you know in plenty of time in advance.

8 MS. MCPARTLIN: Okay.

9 THE COURT: But unless you hear from us we
10 are asking that you be back on Thursday at two
11 o'clock. And Ms. Etheredge has got a paper for
12 you with that and some other information on it
13 for you and that has information about asking
14 you to get your clothes packed and ready, to
15 bring any medications that you will need. It
16 tells you where you will be housed, it gives you
17 a daytime emergency number and a nighttime
18 emergency number. Please feel free to share
19 that with your family and anyone else that may
20 need that information and those details.

21 However, be mindful that you may not
22 discuss any aspect of this case with anyone or
23 allow anyone to discuss any aspect of this case
24 with you, and do not expose yourself to any
25 information about this case from any source,

Juror 206 Kathleen A. McPartlin - Examination

1 okay?

2 MS. MCPARTLIN: Yes, ma'am.

3 THE COURT: Do you understand?

4 MS. MCPARTLIN: Yes, I do.

5 THE COURT: I look forward to seeing
6 Thursday at 2:00. Bye.

7 (Whereupon, the prospective juror exits the
8 courtroom.)

9 THE COURT: All right. And that is
10 Mr. Jeryl Johnson, Number 153.
11 (Jeryl W. Johnson, called as a prospective
12 juror, having previously been duly sworn, is
13 examined as follows:)

14

15 EXAMINATION

16 BY THE COURT:

17 Q. Good afternoon, Mr. Johnson. I understand
18 there's a group back there that's getting up a
19 collection to get me a new watch; is that right?

20 A. They're hungry.

21 Q. Well, we can handle the food part. Let me tell
22 you that you all can just keep your money because I
23 got a whole drawer at home full of watches, but in
24 any event I apologize for keeping you back there.
25 And we've certainly been out here working and I

1 appreciate your patience so very much.

2 THE COURT: And for our record, this is

3 Mr. Jeryl Johnson.

4 Q. Am I pronouncing that correctly?

5 A. Uh-huh (affirmative response).

6 THE COURT: Juror Number 153.

7 Q. Mr. Johnson, if you will recall yesterday
8 morning you were placed under oath with all the other
9 potential jurors, remember that?

10 A. Yes, ma'am.

11 Q. I would just tell you that that oath continues
12 into this process and would cover any questions and
13 answers that we would go over here today, okay?

14 A. Uh-huh (affirmative response).

15 Q. All right. Now, I understand so clearly what
16 you mean because you and I are having a discussion.
17 I would ask you just if you could answer audibly so
18 that Ms. Keil can take that down. I don't want her
19 having to interpret what it is you mean, I want that
20 to be clear from you, okay?

21 A. Okay.

22 Q. Thank you so much. Now, Mr. Johnson, since we
23 talked yesterday has anyone talked with you about
24 this case, or tried to approach you about this case,
25 or have you inadvertently or otherwise been exposed

1 to any information about this case?

2 A. No.

3 Q. All right. Now, when you were back in the jury
4 room there should have been, I'm confident that there
5 was, the potential witness list back there.

6 A. Yes.

7 Q. I would ask whether or not, first of all, have
8 you had an opportunity to review the list?

9 A. I did.

10 Q. And are you related by blood or marriage,
11 acquainted with, or are you associated in terms of
12 business, or do you have any personal or casual
13 relationship, are you connected with any of the
14 individuals on this list either directly or
15 indirectly?

16 A. No.

17 Q. All right, sir. I'll take that back from you.
18 Now, I wanted to -- there are a couple of -- just
19 upon questioning yesterday, first of all, you
20 indicated that you had some affiliation with the
21 solicitor's office or someone in the solicitor's
22 office. Tell me who, Mr. Johnson.

23 A. Mr. Robbins.

24 Q. Mr. Robby Robbins. Very briefly, how do you
25 know Mr. Robbins?

1 A. We're members of the same church, we play golf
2 together, he lives around the corner from me, we're
3 members of the Summerville Exchange Club together.

4 Q. All right, sir. And would you describe your
5 relationship then as a personal relationship?

6 A. Yes.

7 Q. Do you visit in his home, or does he visit in
8 your home?

9 A. No.

10 Q. All right. So you would say that you all have a
11 personal friendship relationship?

12 A. Yes.

13 Q. All right, sir. Now, would that friendship that
14 you have with Mr. Robbins, and as I understand it Mr.
15 Robbins is not going to be involved in this trial,
16 but would that relationship that you have with
17 Mr. Robbins in any way keep you from being able to be
18 fair and impartial both to the State as well as to
19 Mr. Bowman?

20 A. I don't think so.

21 Q. All right. Do you feel as though you can set
22 that relationship completely aside and try this case
23 based upon the evidence in this courtroom and the law
24 as I give it to you?

25 A. Yes.

1 Q. Completely unaffected by your friendship with
2 Mr. Robbins?

3 A. Yes.

4 Q. All right, sir. Now, you also indicated that
5 you had had some information previously about this
6 case. I'm not going to inquire specifically what
7 that was or what the source of it was, but I would
8 ask of you as a result of that information have you
9 formed any opinions about this matter?

10 A. I don't think so.

11 Q. All right, sir. And do you feel that you can
12 put that information completely aside and if you were
13 selected as a juror in this case try this case based
14 upon the evidence in this courtroom and the law as I
15 would give it to you?

16 A. I think so.

17 Q. And do you believe that the information that you
18 have received, do you believe that it would
19 substantially impair your ability, or prevent you
20 from being able to listen to the evidence, listen to
21 my charge on the law and render a verdict being fair
22 and impartial to both sides?

23 A. I don't believe so.

24 Q. You don't believe that that would have any
25 effect?

1 A. I don't believe it would impair it.

2 Q. All right. Now, you did not indicate that you
3 had any bias or prejudice for or against either side
4 in this case; is that correct?

5 A. That's correct.

6 Q. All right. And since we talked yesterday, has
7 there been any jogging of your memory, or any
8 knowledge that has come to you, or anything else that
9 would change your opinion regarding your bias and
10 prejudice?

11 A. No.

12 Q. In other words, would you continue to be free
13 from any bias or prejudice for or against either
14 party in this case?

15 A. Yes.

16 Q. All right. Now, is there any other information
17 that has come to your mind, or any memories that have
18 been jogged regarding any other information that you
19 have received in this case, or any opinions that you
20 may have?

21 A. No.

22 Q. Now, we need to ask you some questions,
23 Mr. Johnson. And I wanted just to talk a couple
24 moments about those questions because I want you to
25 know first of all that we are not trying to invade

1 your privacy. What I want to tell you is that we are
2 trying to find out how you feel about certain
3 matters; in other words, we're trying to find out
4 what some of your opinions are. And the reason that
5 we're doing that is to find out whether or not any
6 opinions that you hold might impact on your jury
7 service, that's the purpose of these questions.

8 And obviously there are no right or
9 wrong answers, and obviously your opinions are just
10 as good and valid as anybody else's opinions and we
11 do not challenge them in any way. We're just, again,
12 trying to find out whether or not your opinions could
13 impact on your jury service.

14 Now, one of the things that I'm going
15 to want to ask you about in a few moments is penalty,
16 your opinions about penalty, and specifically your
17 opinion about the death penalty because that may be
18 an issue in this case. But I want you to understand
19 that the fact that we are talking about penalty at
20 this early stage really is premature because the
21 trial hasn't begun. And as I said yesterday and say
22 again, Mr. Bowman is presumed innocent of these
23 charges, but this obviously is the only time that we
24 can talk about the penalty before the trial actually
25 begins.

1 And I'm going to also talk to you in
2 generic or general terms about these opinions because
3 obviously you don't know anything except what you, I
4 gather, limited information that you told me about
5 and it wouldn't be fair or proper for me to ask you
6 about this case, so I'm just going to ask about -- in
7 a general sense or a generic sense about criminal
8 cases. And I would ask you if you were a juror in
9 any criminal case, would you be willing to listen to
10 the law as you were instructed by the judge?

11 A. Yes.

12 Q. Okay. And would you be willing to accept that
13 law and apply that law to the facts as you found them
14 to be?

15 A. Yes.

16 Q. And would you be willing to do that even if you
17 didn't particularly like the law or even if you
18 disagreed with it, would you still be willing to
19 follow the law as you were instructed to do so by the
20 judge?

21 A. Yes.

22 Q. And if you were asked to serve in a case in this
23 case, the State vs. Mr. Bowman, could you decide this
24 case based solely upon what you would hear in this
25 courtroom and disregard anything that you may have

1 seen or heard or read about this case from any
2 source?

3 A. I think so.

4 Q. And in a criminal case as you know and as we
5 talked about briefly yesterday, the State has the
6 burden of proving the guilt of the defendant beyond a
7 reasonable doubt. In other words, a defendant, no
8 defendant, this defendant, Mr. Bowman, has no burden
9 to prove himself innocent because a defendant is
10 presumed innocent under the law. Do you understand
11 these ideas?

12 A. Yes.

13 Q. Now, if you were a juror in any criminal case,
14 would you be willing to listen to the facts, listen
15 to the evidence, and listen to the law as you were
16 instructed?

17 A. Yes.

18 Q. And in that event would you be willing to listen
19 to the evidence and determine what the facts are from
20 the evidence that you heard and then apply the law as
21 the judge will give it to you to those facts, and if
22 you are not convinced that the State had proved the
23 defendant guilty beyond a reasonable doubt would you
24 be willing to find that defendant not guilty?

25 A. Yes.

1 Q. On the other hand, if you listened to the
2 evidence and found the facts and applied the law
3 given to you by the judge and you were convinced the
4 State had proven a defendant guilty beyond a
5 reasonable doubt, would you be willing to find that
6 defendant guilty?

7 A. Yes.

8 Q. Now, you would then be willing to listen and
9 make your decision based upon whether or not you were
10 convinced that the person is guilty or not; is that
11 right?

12 A. Yes.

13 Q. Now, most of the time jurors do not concern
14 themselves with a matter of punishment. Most of the
15 time in the criminal court punishment is left up to
16 the judge. There is one case in our law when a jury
17 has to deal with the matter of judgment and that is
18 in a case like this one. It is in a case where an
19 individual has been charged with the crime of murder
20 and where the State is seeking the death penalty.

21 If an individual in a death penalty
22 case is convicted of the crime of murder, then that
23 same jury that convicted him or her of murder would
24 come back and in a separate and different proceeding
25 decide the sentence that that person would get.

1 There are two choices. One, life imprisonment
2 without the possibility of parole, and the other is
3 the death penalty. That would be, the punishment
4 would be determined in a second or sentencing phase
5 of the trial as it is called. Do you understand this
6 information?

7 A. Yes.

8 Q. Now, back also in the jury room with you there
9 was this piece of paper and I'd ask if you had an
10 opportunity to look at that piece of paper which
11 essentially describes three types of jurors.

12 A. I did.

13 Q. And which of those three types of jurors best
14 describes you? And you can review it now if you need
15 to.

16 A. Well, I remember the types, it's just that I'm
17 not real sure. I'm not certain whether I would be --
18 whether I would consider myself a type one or a type
19 three juror.

20 Q. All right.

21 A. As I thought about it in the -- in the waiting
22 room I think I'm probably a type three juror, but the
23 circumstances under which I would think a penalty
24 other than the death penalty would be appropriate are
25 narrow.

1 Q. All right. All right. Let me ask you then,
2 some of these questions you've obviously addressed.
3 If you -- obviously you've indicated that if you
4 listen to the evidence and the information in the
5 sentencing phase, in the second phase, and you found
6 that the death penalty was appropriate, then you
7 could and would be willing to vote for that?

8 A. Yes.

9 Q. And on the other hand, if you thought that the
10 death sentence was not appropriate, or for any other
11 reason that the person ought to receive life
12 imprisonment, would you be able and willing to vote
13 for a sentence of life imprisonment?

14 A. Yes.

15 Q. All right. So you would make your decision
16 based upon what you would hear in the courtroom?

17 A. Yes.

18 Q. You would consider all of the information
19 presented to you and based upon that information then
20 you would make your decision?

21 A. Yes.

22 Q. Now, Mr. Johnson, if you were chosen to serve as
23 a juror in this case you and the other jurors would
24 be housed, which the word is sequestered, in a local
25 motel during the course of the trial. And that is

Juror 153 Jeryl W. Johnson - Examination

1 where you would have to stay until the trial is over
2 except when you are in the courtroom. This period
3 could be as long as two weeks or longer, it could be
4 shorter. I simply don't know the exact duration of
5 what this trial will take.

6 Obviously that would create an
7 inconvenience for you as it surely will for all who
8 serve on this jury. Other than the inconvenience
9 which it would cause anybody who would have to serve
10 in this capacity, would that pose a serious risk of
11 danger to your health, or well being, or to that of
12 anybody who is dependent upon you if you had to serve
13 in that capacity?

14 A. I don't think so.

15 Q. All right. You would be able to do that?

16 A. Yes.

17 Q. Mr. Johnson, no doubt these attorneys are going
18 to have some questions for you and at this time I'm
19 going to give them an opportunity to ask you
20 questions which they may have.

21 THE COURT: Mr. Cummings.

22 MR. CUMMINGS: Thank you, Judge.

23 EXAMINATION

24 BY MR. CUMMINGS:

25 Q. Good afternoon, Mr. Johnson. One thing I wanted

1 to state for the record and open up is I also live in
2 Pine Forest Country Club on Congressional Boulevard
3 and a member of the country club there. You and I
4 have not had any professional dealings,
5 relationships, and the other day when Her Honor asked
6 you about knowing people in either the defense or
7 prosecution you had no knowledge of me?

8 A. No.

9 Q. Is that right, sir?

10 A. That's correct.

11 Q. All right. And knowing Mr. Robbins who is my
12 neighbor also, would the fact that knowing him cause
13 any substantial impairment or cause you any
14 substantial concern about serving on a jury against
15 your neighbors and friends?

16 A. No, I don't think it would.

17 Q. All right. And you would not favor the State or
18 the defense in this case, one way or the other, just
19 from knowing somebody or knowing -- having to --
20 living in the same neighborhood?

21 A. No.

22 Q. You wouldn't find it uncomfortable?

23 A. No.

24 Q. Okay. And the reason I ask that -- and, again,
25 we really do read these things, study these things,

1 Mr. Johnson. And what did you do in the Air Force?

2 I see you were a Russian linguist?

3 A. Well, that was -- I was in the Army then.

4 Q. Oh, I'm sorry, in the Army then. But you
5 retired from the Air Force?

6 A. Yes, I did.

7 Q. Okay.

8 A. I was a flight test engineer and I spent the
9 last eight years on the faculty at the Air Force
10 Academy.

11 Q. All right. And obviously with the academics out
12 there you were one of the people that we dreaded in
13 calculus. Did you teach calculus?

14 A. I did.

15 Q. All right. Did you have any involvement at all,
16 and I'm not trying to ask you to reveal anything that
17 you did in your service capacity in national security
18 or otherwise, but did you do anything concerning law
19 enforcement or protection of the United States
20 directly? I don't mean just like being a member of
21 the military like we were or in a capacity of being
22 like on the flight line or ready to flight.

23 A. I don't understand what you mean by the
24 question.

25 Q. Intelligence gathering or anything of a covert

Juror 153 Jeryl W. Johnson - Examination

1 nature?

2 A. I was in intelligence gathering, yes.

3 Q. Did you work closely with any of the law
4 enforcement agencies, like FBI, or National Security
5 Services?

6 A. I was assigned to the National Security Agency.

7 Q. All right, sir. Would that cause you any
8 substantial bias or reason to favor, I hate to use
9 the word law enforcement or security enforcement, in
10 your capacity as a potential juror, sir?

11 A. I don't see any conflict.

12 Q. Okay, sir. And you know why we ask these
13 questions. We try to get a juror that's fair and
14 impartial, doesn't know anything about the facts of
15 the case and tries to render a decision as you told
16 Her Honor based on the facts and the evidence as she
17 allows in here.

18 All right, sir. Mr. Johnson, you've
19 had some questions here. And, again, we don't mean
20 to personalize this, you'll probably never see me
21 again other than passing us in traffic, Robby or I.
22 Your home was burglarized. Was that in this area?

23 A. No, that was in Las Vegas.

24 Q. In Las Vegas, sir. Did that cause you, again,
25 to have any substantial bias or prejudice for in

1 favor of the police against a citizen charged with
2 that crime?

3 A. Well, at the time it did, yes.

4 Q. Yes, sir. I understand that. That's why we ask
5 these questions. And how long ago was that, sir?

6 A. It's been about 20 years, 25 years.

7 Q. And there's been no incidents where you've had
8 any involvement with the solicitor's office in our
9 county?

10 A. No.

11 Q. No reason to call upon their services?

12 A. No.

13 Q. All right, sir. And you've had both good and
14 bad experiences with law enforcement. I think you
15 said in your questionnaire you had good and bad?

16 A. Yes.

17 Q. Would either of those substantially impair your
18 decisions or reason to be a juror in this case?

19 A. I don't think that it would.

20 Q. Nothing really would arouse any reasons to take
21 one side or the other?

22 A. No.

23 Q. All right, sir. And then probably the most
24 difficult question I ask you and I, again, do not
25 mean to cause you any harm, sir, is that you've had

1 two family members who were -- who lost their lives
2 in some capacity?

3 A. That's correct.

4 Q. And I think it was a question dealing with
5 homicide, sir?

6 A. Yes, they both were.

7 Q. All right. And, again, would the fact of that
8 situation, and we don't know anything about it,
9 either Mr. Bailey or I, would that fact cause you any
10 substantial impairment or reason not to want to serve
11 as a juror in a potential murder case?

12 A. Well, I don't think so.

13 Q. All right, sir. And, again, and I know,
14 Mr. Johnson, I'm going to ask you the most direct
15 question I can and this is the only time we are ever
16 allowed to do that to any citizen, any good juror or
17 potential juror, sir, to try to get their true
18 feelings, their true opinions out ahead of time. And
19 not to put you on the spot, but I noticed a moment
20 ago you said you think so. Would this cause you any
21 concern or questions that you may not want to serve
22 in this case?

23 A. Well, it doesn't cause me any concern right now,
24 but during the course of the case I don't know. I
25 don't think that it would.

1 Q. Yes, sir. At that point it would cause
2 potentially Her Honor or Mr. Bailey and I even to
3 have some legal issue and that's why we try to ask
4 ahead of time because if it was going to cause you
5 any hesitation, sir, and being the good gentleman you
6 are and the fact that you've done 24, 24 years in?

7 A. Nineteen.

8 Q. Nineteen, okay. But you hit the retirement?

9 A. Yes, sir.

10 Q. That you obviously are a man of principle and a
11 man of conviction and therefore you understand the
12 importance of these questions and that's why we ask
13 you these, sir.

14 A. I do.

15 Q. And do you believe that it would cause you to
16 hesitate to want to serve on any case that dealt with
17 a case of murder?

18 A. Well, I don't believe that it would.

19 Q. All right, sir. And a few moments ago when Her
20 Honor asked you the type juror you were you did state
21 you believed you were type one and then after further
22 reading it you may be a type three?

23 A. Well, at first I was not sure which type --

24 Q. Yes, sir.

25 A. -- best described me. But on further reading I

1 believe that I'm a type three. But as I said, I
2 think the circumstances that a defendant found guilty
3 by the facts would warrant a penalty other than the
4 death penalty would be special circumstances.

5 Q. Very narrow I think?

6 A. Very narrowly defined, yes.

7 Q. And you understand, sir, that if Her Honor were
8 to tell you it should be the other way, it should be
9 very broad and that the jury would have to be, all 12
10 members of jury would have to be convinced to issue
11 the ultimate penalty, would that cause you any
12 discomfort or substantially impair your way of being
13 a potential juror in this case?

14 MR. BAILEY: Your Honor, I want to object
15 to the form of that question and be heard on
16 that at the appropriate time.

17 THE COURT: All right. Let me ask you to
18 ask it again, Mr. Cummings. I don't know that I
19 was actually following it.

20 Q. Would the fact that the jury has the right to
21 consider any facts or circumstances in the penalty
22 phase, sir, and that the State in seeking the
23 ultimate penalty all 12 jurors would have to find
24 aggravating factors and be unanimous as to that,
25 would you have any hesitations about wanting to vote

1 for life imprisonment because of your own personal
2 convictions and your strong beliefs and your
3 ideologies, sir?

4 A. Well --

5 MR. BAILEY: Your Honor.

6 THE COURT: I'm so sorry, Mr. Johnson.

7 Just a second. Can you change the form,
8 substantially, impair, or prevent.

9 Q. Would that substantially impair your beliefs in
10 this case, sir, if you were to hear that, your
11 beliefs about the death penalty?

12 A. Well, let me just, if I could.

13 THE COURT: Sure.

14 A. If I could just say the question was originally
15 asked whether I, based on my own judgment on the
16 facts of the case --

17 Q. Yes.

18 A. -- could return a verdict for life imprisonment.

19 Q. Correct, sir.

20 A. And the answer to that is yes. But I just say
21 that my own judgment would guide me into believing
22 that those circumstances would be narrowly defined.

23 Q. All right.

24 A. It would take strong facts of the case to make
25 me -- it would take strong facts, strong mitigating

1 circumstances to make me believe that the verdict
2 should be life imprisonment.

3 Q. And not the other way around where there would
4 be strong facts of an aggravating factor to convince
5 you to give the ultimate penalty?

6 A. The verdict of guilty on a charge of murder is a
7 substantial fact.

8 Q. So you believe that anybody who was convicted of
9 murder should receive the ultimate penalty, sir, of
10 murder; is that fair?

11 MR. BAILEY: Objection. Your Honor, that's
12 not what he said.

13 A. No, not anyone. Not anyone who was convicted,
14 but I would think that it would apply in most cases.

15 Q. There's no right or wrong answers, Mr. Johnson,
16 I promise you, that's why we do this. We argue, we
17 look to jurors that are going to give fair and
18 impartial decisions based on the facts and the
19 evidence. But, again, sir, this is the only chance
20 we get to find out in our proceedings under the law
21 here a juror's true opinions or feelings as to their
22 beliefs about the types of penalty that a juror in
23 this state votes for.

24 A. I understand.

25 Q. And that it's a collective decision of the 12

Juror 153 Jeryl W. Johnson - Examination

1 minds on the jury that render that decision, sir.

2 A. I understand that.

3 Q. When you said that you have narrow reasons why
4 you would give life without the possibility of
5 parole, it makes anybody question whether or not you
6 lean more towards imposition of the death penalty
7 versus life imprisonment. And that's my question,
8 whether or not --

9 A. Well, I think that's true.

10 Q. What I just said is true in your words?

11 A. Yes, I think that's true.

12 Q. Mr. Johnson, I thank you very much.

13 MR. CUMMINGS: Beg the Court's indulgence.

14 THE COURT: All right.

15 (Mr. Cummings and Ms. Hardee-Thomas conferring
16 with Mr. Bowman.)

17 MR. CUMMINGS: Judge, I thank this
18 gentleman and thank you very much and thank you,
19 sir.

20 THE COURT: Thank you very much.

21 EXAMINATION

22 BY MR. BAILEY:

23 Q. Mr. Johnson, I'm Walter Bailey and I'll be
24 prosecuting the case. Let me apologize up front if I
25 have to replot some ground that's already been

1 plowed, but I have to just for my own edification.
2 And I'm not trying to talk down to you because you've
3 been through this before and I know you understand
4 the process, but just for the record we would start
5 after the guilt phase of the trial which is like any
6 other trial, any other criminal trial where the State
7 is attempting to prove someone guilty beyond a
8 reasonable doubt. And this particular case one of
9 the charges is murder, so we would be attempting to
10 prove murder beyond a reasonable doubt.

11 If we're unable to do that, the State
12 of South Carolina cannot prove, convince that jury
13 beyond a reasonable doubt the defendant's guilty of
14 murder then that's the end of it, we all go home. On
15 the other hand, if the jury is convinced that the
16 State has proven the defendant guilty beyond a
17 reasonable doubt of murder, then and only then do we
18 go into phase two which would be the penalty phase.

19 In the penalty phase there would be
20 additional evidence, additional instructions from the
21 judge that would relate to the appropriate
22 punishment. The two options as you know would be
23 life without parole or the death penalty. Not
24 talking about this case because you don't know the
25 facts and I'm not going to ask you to speculate or

1 any conjecture on this case, but in general if you
2 were on a jury and found the defendant guilty of
3 murder and went into the second phase, the penalty
4 phase, would you be willing at that point to listen
5 to whatever additional testimony came out and
6 whatever instructions the judge gave before deciding
7 on life without parole or the death penalty?

8 A. Yes.

9 Q. And depending on what you heard, could you vote
10 for life without parole?

11 A. Yes, I could.

12 Q. And you could also vote for the death penalty?

13 A. Yes, I could.

14 Q. Now, if all of the jurors -- whatever verdict
15 the jury comes up with has to be unanimous. If all
16 12 jurors vote for the death penalty they would be
17 asked to announce that verdict out loud when their
18 names are called. Could you do that?

19 A. Yes.

20 Q. Could you sign your name to a death verdict form
21 that could result in that execution taking place if
22 that was your verdict and your decision and the
23 decision of the rest of the jurors?

24 A. Yes.

25 Q. All right, sir. Thank you, that's all I have.

1 MR. CUMMINGS: Just a couple on redirect,
2 I'm sorry.

3 EXAMINATION

4 BY MR. CUMMINGS:

5 Q. Mr. Johnson, if you didn't hear anything, as you
6 know a citizen has got a right to remain --

7 MR. BAILEY: Objection. Your Honor, if I
8 could be heard on that.

9 MR. CUMMINGS: I think we probably have to
10 argue outside this gentleman's --

11 THE COURT: I was just trying to see -- I
12 think I understand where you're headed.
13 Mr. Johnson, if you would be so kind as to step
14 outside the courtroom just for a few moments for
15 us. Thank you so much.

16 (Whereupon, the prospective juror exits the
17 courtroom.)

18 THE COURT: Let me hear the whole question
19 first, though, Mr. Bailey. Yes, sir.

20 MR. CUMMINGS: If you were not -- if you
21 weren't going to hear anything from any citizen
22 either in guilt phase or in a penalty phase,
23 would that cause you to have that narrow view
24 dealing with life imprisonment or the ultimate
25 penalty? Because this gentleman clearly has

Juror 153 Jeryl W. Johnson - Examination

1 said he would narrowly find mitigation factors
2 which makes him a type one juror. That's my
3 question.

4 THE COURT: What was the question again?

5 MR. CUMMINGS: Judge, I want to ask him if
6 he didn't hear anything, if he hears nothing
7 from a defendant from any citizen or any case,
8 or didn't hear anything in mitigation even,
9 would that cause him to have that narrow view to
10 want to vote for the death penalty? He said,
11 he's shifting the burden. If you don't agree
12 with that, Judge, that's the clearest example of
13 the type one juror other than coming in here
14 saying I'm a type one juror.

15 THE COURT: Okay. Yes, sir, Mr. Bailey.

16 MR. BAILEY: Your Honor, he never did, he
17 never gave any burden shifting answers that I
18 can recall. And what Mr. Cummings is asking to
19 do is to give a hypothetical scenario and then
20 asking this potential juror to speculate on what
21 he would do in a vacuum when he doesn't even
22 know what the State's evidence would be, so I
23 would object to it on that basis.

24 MR. CUMMINGS: That's what we've been doing
25 here. We've been trying to make this the most

1 generic type of questioning all through this
2 procedure, respectfully, Judge.

3 THE COURT: What you want to ask him is if
4 the defendant didn't put up any evidence at all,
5 what would you do?

6 MR. CUMMINGS: Yeah.

7 THE COURT: How can he make that decision?

8 MR. CUMMINGS: Judge, because his own
9 statements said he only narrowly constricts
10 himself to looking at only narrowly not imposing
11 the death penalty. And that is the gentleman's
12 own words. And if I am wrong I apologize to
13 you, but I'm just trying to get a fair and
14 impartial jury here.

15 THE COURT: I know, I understand.

16 MR. BAILEY: Your Honor, of course --

17 THE COURT: I'm not going to let you ask
18 him that question, though. In other words, if
19 you don't hear -- if you hear nothing from the
20 defendant what will you do? The reason that's
21 not fair is because what that doesn't -- he
22 wouldn't get that chance because what your
23 question doesn't have as a component part is the
24 fact that the State's had to prove an
25 aggravating circumstance beyond a reasonable

1 doubt. Nobody's talked about that with him.

2 So, I mean, what he's telling you
3 is -- you know, is I think what he's saying is
4 that just as we had an earlier juror that he
5 tends towards the death penalty, but he's going
6 to listen to the evidence and there are
7 circumstances when he would give life. And he
8 thought about was he a number one, and he's not
9 number one. He's number three, but he's sharing
10 with us that he has a limited -- that he may not
11 be as open as some other folks, so I don't want
12 you -- I don't think that that question is a
13 fair question. I think you're asking him to
14 speculate and I don't think that's fair to him
15 if he doesn't have any facts and circumstances
16 like, you know, if you found somebody guilty and
17 there's no other evidence what would you do? I
18 don't think that's a fair question.

19 I mean, I think you can certainly
20 elicit from him information. I mean, he's
21 already told you even if there is evidence he's
22 going to be narrow, he said that.

23 MR. CUMMINGS: I guess you've ruled over my
24 question and I'll --

25 THE COURT: I have, absolutely, over the

1 objection --

2 MR. CUMMINGS: -- be happy to bring the
3 gentleman back in.

4 THE COURT: Absolutely. If you phrase it
5 another way I certainly -- but I am
6 uncomfortable with you asking him if you didn't
7 hear anything from the defendant what would you
8 do, what would your verdict be? I don't think
9 that's fair to him. Yes, sir. Bring him in.
10 (Whereupon, the prospective juror returns to the
11 courtroom.)

12 THE COURT: Thank you, Mr. Johnson.

13 BY MR. CUMMINGS:

14 Q. Mr. Johnson, is it fair to say that, again,
15 looking at the penalty phase here you would be more
16 inclined to lean towards the death penalty as to life
17 imprisonment, sir?

18 A. Yes, that's fair to say.

19 Q. Thank you.

20 MR. CUMMINGS: That's all the questions I
21 have.

22 THE COURT: Thank you.

23 MR. BAILEY: Nothing further, Your Honor.

24 THE COURT: Very well. Mr. Johnson, I'm
25 going to now ask you to step back out so we can

Juror 153 Jeryl W. Johnson - Examination

1 talk about you. And then we'll get you right
2 back in.

3 (Whereupon, the prospective juror exits the
4 courtroom.)

5 THE COURT: All right. Mr. Bailey.

6 MR. BAILEY: Your Honor, I contend he is
7 qualified and for the same basis we argued
8 earlier about, I forget which one it was, in
9 which there was a leaning towards the death
10 penalty but the juror could listen to the facts
11 and consider and impose life without parole or
12 the death penalty. I think he's clearly in that
13 category and I would submit he is qualified.

14 THE COURT: All right. Thank you.

15 Yes, sir, Mr. Cummings.

16 MR. CUMMINGS: Thank you, Judge. I don't
17 believe he is qualified and I would move --

18 THE COURT: Give me some case law. And
19 what you're telling me -- you're right, he has a
20 tendency towards the death penalty, but he can
21 listen to the facts and circumstances and he can
22 impose life, but he's told us that he can listen
23 and there are circumstances but they're narrow
24 circumstances. Just like the lady that said it
25 would have to be very malicious for her to give

1 the death penalty a few moments ago, okay?

2 MR. CUMMINGS: Yes, ma'am.

3 THE COURT: So let me hear from you about
4 that, Mr. Cummings.

5 MR. CUMMINGS: And that's why the last
6 lady --

7 THE COURT: Give me some case law.

8 MR. CUMMINGS: Yes, ma'am, case law.
9 Judge, unfortunately in our life lately there's
10 been not much case law that deals with waffling
11 jurors. It is totally up to the judge to
12 determine statutorily qualified. We look at
13 Wainwright, we look at George.

14 THE COURT: I don't think he waffled. I
15 think he was straight up, and that what he told
16 you was that he will listen to the evidence, he
17 is capable of giving a life sentence, but it's
18 narrow. I mean, he told you that. He tends --
19 he's got a tendency.

20 MR. CUMMINGS: And Your Honor will charge
21 this jury, as I understand the charge would be
22 that they are to consider the capital
23 punishment, Judge, based on aggravating factors.

24 THE COURT: Yes, sir.

25 MR. CUMMINGS: And then they are to

1 consider mitigating factors by statute or any
2 factor that a jury may want to impose, including
3 mercy.

4 THE COURT: Yes.

5 MR. CUMMINGS: I believe this type of juror
6 would not believe in an issue of mercy.

7 THE COURT: But as you know all he's got to
8 do is agree to consider mitigation. He's said
9 he would listen to the evidence. I'm just
10 looking for case law.

11 MR. CUMMINGS: I understand the ruling,
12 yes, ma'am.

13 THE COURT: I'm looking for case law on his
14 statement about the narrowness of it, his
15 narrowness tantamount to always give a death
16 penalty.

17 MR. CUMMINGS: The answer to that is no,
18 Judge, everything we've read. Thank you very
19 much over my objection.

20 THE COURT: Note your exception. The
21 record is very clear, Mr. Cummings, that
22 certainly what he's indicated. Thank you.
23 (Whereupon, the prospective juror returns to the
24 courtroom.)

25 THE COURT: Mr. Johnson, you have been

Juror 153 Jeryl W. Johnson - Examination

1 found to be qualified as a potential juror in
2 this case. That doesn't mean that you are on
3 the jury yet, but it means that you are a
4 potential juror and you may be selected to serve
5 on this jury. We are hoping that we will be
6 able to select the jury on Thursday at two
7 o'clock.

8 This may be a little ambitious, and if
9 we have to change the time we will certainly
10 call you and let you know, but unless you hear
11 from us I'm going to ask you to please be back
12 in the courtroom on Thursday at two o'clock.

13 And Ms. Graham has a sheet of paper
14 for you, has that date on it and time -- not
15 date, but the day and time. And that sheet
16 gives you some instructions to help you get
17 ready for your jury service, like packing your
18 clothes, bringing any medications that you might
19 need, it gives you where you will be located and
20 the numbers and any emergency numbers for you to
21 call here during the day to -- as well as in the
22 evening, those numbers are on that sheet of
23 paper.

24 You are free to discuss these
25 practical details with anyone whom you choose

1 who needs to know. However, be mindful that you
2 may not discuss any aspect of this case with
3 anyone and do not allow anyone to discuss any
4 aspect of this case with you. And, please, do
5 not expose yourself to any information about
6 this case from any source at all. Do you
7 understand these instructions?

8 MR. JOHNSON: I do.

9 THE COURT: Thank you so much, Mr. Johnson.
10 I look forward to seeing you Thursday at two
11 o'clock.

12 MR. JOHNSON: Thank you.

13 THE COURT: Bye now.

14 (Whereupon, the prospective juror exits the
15 courtroom.)

16 THE COURT: Next is Ms., I believe it's
17 Tyndell, Ms. Tamra Tyndell.

18 (Tamra L. Tyndall, called as a prospective
19 juror, having previously been duly sworn, is
20 examined as follows:)

21 EXAMINATION

22 BY THE COURT:

23 Q. Good afternoon, Ms. Tyndell, how are you?

24 A. I'm fine.

25 Q. I understand that there is a collection being

1 picked up in the jury room to get the judge a watch
2 because of the time because y'all I know are
3 convinced that my watch is broken. But let me tell
4 you I got a whole drawer full of watches and don't
5 need another watch, so I'm going to have to refuse
6 you guys, and, please, accept my apologies for
7 keeping you in the jury room this long. You think I
8 would be better at gauging time, and the older I get
9 the worse I get, so thank you so much for your
10 patience this afternoon.

11 Now, Ms. Tyndell, if you will recall
12 yesterday morning you were sworn in with all the
13 other prospective, potential jurors and I want just
14 to tell you that the oath that you gave is still with
15 us during this process and would encompass the
16 questions and the answers that you will share with us
17 today, okay?

18 A. Sure.

19 Q. Okay. Since we were together yesterday has
20 anyone talked with you about this case, or tried to
21 approach you about it, or have you been inadvertently
22 or otherwise exposed to any information about this
23 case?

24 A. There was a couple people at work that asked me
25 to tell them about it, but I couldn't tell them.

1 Q. All right. You just said can't discuss it?

2 A. Right.

3 Q. Did they honor what you said?

4 A. They didn't like it, but....

5 Q. They didn't like it, but they honored it?

6 A. Right.

7 Q. Very good. Thank you for that, for following my
8 instructions, Ms. Tyndell.

9 Now, when you were back in the jury
10 room you were given a list called the potential
11 witness list. I'm going to put that there in the
12 event that you would need to refer to that. And I
13 would ask first of all if you've had a chance to look
14 at the list?

15 A. Yes, ma'am.

16 Q. And having looked at the list, are you related
17 by blood or marriage, acquainted with, or you
18 personally know anyone, or business -- have any
19 business association with anyone on the list, or are
20 you connected with them in any regard directly or
21 indirectly?

22 A. No, ma'am.

23 Q. All right. Now, my notes indicate that when we
24 talked about this matter briefly yesterday, and I
25 asked some questions, that when I asked folks to

1 stand up if you had any opinions or if you'd heard or
2 seen or read anything, or if you had any bias or
3 prejudice for or against either side, remember I
4 asked those folks to stand up?

5 A. Uh-huh (affirmative response).

6 Q. My notes indicate that you did not indicate that
7 any of those things applied to you; is that right?

8 A. Right. That's correct.

9 Q. All right. Since we talked yesterday has
10 anything come to your memory, or your memory been
11 jogged or anything generated any memory that would
12 cause you to need to change your responses from
13 yesterday?

14 A. No.

15 Q. Or your lack of response, I should say?

16 A. No, ma'am.

17 Q. All right. Now, Ms. Tyndell, I'm going ask you
18 some questions, and before I do that I just want to
19 be real clear that we are not trying to invade your
20 privacy. What we're trying to do is to find out your
21 feelings about certain matters and your opinions
22 about those matters to see if your opinions might
23 impact on your jury service, that's the purpose for
24 these questions. And let me, therefore, say that
25 there are no right or wrong answers. And obviously

1 your opinions are just as good and just as valid as
2 anybody else's opinions and we're certainly not
3 challenging those opinions, we just need to know a
4 little bit, understand a little bit about them just,
5 again, to see if those opinions might impact on your
6 jury service.

7 Now, one of the things that I want to
8 ask you about in just a few moments is penalty,
9 specifically the death penalty, because this may be
10 an issue in this case. But I want you to understand
11 that the mere fact that we're talking about penalty
12 at this stage is nothing other than this is the only
13 time we get to talk about it before trial and it is
14 premature that we would even talk about penalty at
15 this stage. This trial hasn't even begun so to
16 discuss penalty at this point is absolutely
17 premature, particularly considering that Mr. Bowman
18 is presumed innocent of these charges. But, again,
19 this is necessary because this is the time that we
20 can talk with folks about penalty before the trial
21 gets underway.

22 Now, I'm going to ask you questions
23 and I'm going to do that in a general and generic
24 sense because it wouldn't be fair for me to ask you
25 about this case because you don't know anything about

1 this case, so I am going to be asking you questions
2 in a generic sense. And to that end I would ask you
3 if you were a juror in any criminal case, would you
4 be willing to listen to the law as you were
5 instructed by the judge?

6 A. Of course.

7 Q. And would you be willing to accept that law and
8 apply it to the facts as you found them to be?

9 A. Yes, ma'am.

10 Q. And even though you might not particularly like
11 that law and you might even disagree with it, would
12 you still be willing to follow the law as you were
13 instructed to by the judge?

14 A. Yes, ma'am.

15 Q. And if you were asked to serve in the case of
16 the State vs. Mr. Bowman, could you decide this case
17 based solely upon what you would hear in this
18 courtroom and disregard anything that you may have
19 seen, or heard, or read about this case from any
20 source at all --

21 A. Yes, ma'am.

22 Q. -- if anything like that should come to your
23 memory?

24 A. (Nodding.)

25 Q. What happens sometimes for folks is at that

1 point they have no memory. Sometimes they could hear
2 something in a trial and that will somehow trigger a
3 memory or whatever. This question's really designed
4 to ask you are you willing in the event that that
5 occurs to disregard that memory and listen to what is
6 going on in this courtroom, listen to the evidence in
7 this courtroom?

8 A. Yes, ma'am.

9 Q. All right. Now, Ms. Tyndell, in a criminal --
10 as you know and as we talked about a little bit
11 yesterday, the State has the burden of proving the
12 guilt of a defendant beyond a reasonable doubt. In
13 other words, a defendant, no defendant, and
14 Mr. Bowman, this defendant, has no burden to prove
15 himself or herself innocent. A defendant, all
16 defendants, are presumed innocent under the law. And
17 I'd ask if you understand these ideas?

18 A. Yes, ma'am. I do.

19 Q. So if you were a juror in any criminal case
20 would you be willing to listen to the facts or listen
21 to the evidence and the law as you were instructed?

22 A. Yes, ma'am.

23 Q. And in listening to the evidence, or in being a
24 juror, rather, on a criminal trial, any criminal
25 trial, would you be willing to listen to the evidence

1 and find the facts as you found them to be from the
2 evidence and then apply the law to those facts, and
3 if you were not convinced that the State had proven
4 the guilt of the defendant beyond a reasonable doubt,
5 would you be willing to find that defendant not
6 guilty?

7 A. Yes, ma'am.

8 Q. On the other hand, if you were a juror in a
9 criminal case, listened to the evidence, found those
10 facts as you found them to be based on the evidence,
11 you applied the law given to you by the Court, by the
12 judge, and upon doing that if you were convinced that
13 the State had proven a defendant guilty beyond a
14 reasonable doubt would you be willing and able to
15 find that defendant guilty?

16 A. Yes, ma'am.

17 Q. All right. Now, in other words, you would be
18 willing to listen and to make your decision based
19 upon whether or not you were convinced that the
20 person is guilty or not; is that right?

21 A. Yes, ma'am.

22 Q. Now, most of the time jurors are not concerned,
23 do not concern themselves with the matter of
24 punishment. Most of the time, particularly in
25 criminal court, punishment is left up to the judge.

1 But there is one case in our law when a jury has to
2 deal with the matter of punishment and that is in the
3 case like this one. It is in a case where an
4 individual has been charged with murder, the crime of
5 murder, and when the State is seeking the death
6 penalty.

7 If an individual in a death penalty
8 case is convicted of the crime of murder, then the
9 same jury that convicted him or her would come back
10 and in a separate and different proceeding the jury
11 would have to decide the sentence, the penalty that
12 the person would get or receive. And there are two
13 choices. One, life imprisonment without the
14 possibility of parole; and two, the death penalty.
15 That penalty, the punishment would be determined in
16 the second, or as it's known the sentencing phase of
17 the trial. And do you understand this information?

18 A. Yes, ma'am. You explained it yesterday.

19 Q. I'm glad you were paying attention yesterday,
20 too. Now, in the jury room there was also this piece
21 of paper that describe three different types of
22 jurors, essentially that's what it does. Do you
23 remember these three types of jurors?

24 A. Yes, ma'am.

25 Q. Which of these three types of jurors do you

1 believe best describes you?

2 A. Number three.

3 Q. Number three?

4 A. Uh-huh.

5 Q. In other words, you would be willing to listen
6 to the evidence in the courtroom, to listen to the
7 information given to you, and base your opinion on
8 that information, that evidence?

9 A. Yes, ma'am.

10 Q. And if you found based on the information, based
11 on that evidence, that the death penalty was
12 appropriate would you be able and willing to vote for
13 the death penalty?

14 A. Yes, ma'am.

15 Q. On the other hand, if you thought that the death
16 sentence was not appropriate, or for any other reason
17 that the person ought to receive life imprisonment,
18 would you be able and willing to vote for life
19 imprisonment?

20 A. Yes, ma'am.

21 Q. So you would make that decision based on what
22 you heard in the courtroom?

23 A. Exactly.

24 Q. If you were chosen to serve as a juror in this
25 case you and the other jurors would be housed, would

1 be sequestered is the term, here in a motel locally
2 during the course of the trial. And you would remain
3 there, you'd have to stay there until the trial is
4 over, obviously except for when you are in the
5 courtroom. This period could be as long as two weeks
6 or longer. It could be less. I don't know the exact
7 duration of the trial.

8 Obviously that would create an
9 inconvenience for you as it surely will for all who
10 serve on this jury. Other than the inconvenience
11 which it would cause anybody who would have to serve
12 in this capacity, would that pose a serious risk of
13 danger to your health or well being, or to that of
14 anybody who is dependent upon you if you had to serve
15 in that capacity?

16 A. I don't perceive any problem.

17 Q. You don't perceive that?

18 A. Unh-unh (negative response).

19 Q. You would be able to do that?

20 A. Uh-huh (affirmative response).

21 Q. Now, Ms. Tyndell, these lawyers no doubt will
22 have questions for you and I thank you for responding
23 to their questions.

24 THE COURT: Mr. Bailey.

25 MR. BAILEY: Thank you, Your Honor.

EXAMINATION

1

2 BY MR. BAILEY:

3 Q. Ms. Tyndall, I'm Walter Bailey and I'll be
4 prosecuting this case for the State and I just need
5 to ask you a few questions. And I'm not going to ask
6 you about this particular case, you don't know the
7 facts and circumstances, so my questions are going to
8 be general in regard to the death penalty.

9 A. Right.

10 Q. And you understand this is potentially a
11 two-part process where we start out with the guilt
12 phase and in that part of the trial it's like any
13 other criminal trial where the State is going to be
14 introducing evidence to try to convince the jury the
15 defendant is guilty of murder beyond a reasonable
16 doubt. If the jury is convinced that the defendant
17 is guilty of murder beyond a reasonable doubt, then
18 we go into the second phase, the penalty phase where
19 there would be additional testimony, additional
20 instructions from the judge. And the jury decides
21 what the punishment is, life without parole or the
22 death penalty. What the judge will do is they will
23 order, she will order the jury sentence be put into
24 effect. So based on that jury's verdict the
25 defendant gets life without parole or he's executed.

1 Again, I'm not asking you what you
2 would do in this case, but if you thought the case
3 was bad enough to justify the death penalty, could
4 you vote for the death penalty knowing that person
5 actually would be executed based on that jury's vote?

6 A. I could.

7 Q. All right. And whatever decision the jury
8 reaches would have to be unanimous, all 12 would
9 agree. And if all 12 jurors after hearing the facts
10 and the law voted for the death penalty, each one of
11 the jurors would be asked to sign their names to a
12 paper, a death verdict form, which would result in
13 that execution taking place at some point in the
14 future. Could you sign your name to a paper like
15 that along with the other jurors if that was your
16 decision?

17 A. Yes.

18 Q. Could you get up in open Court when your name is
19 called out and announce that, say it out loud if that
20 was your decision?

21 A. Yes.

22 Q. Ms. Tyndall, that's all I have. Thank you very
23 much.

24 THE COURT: Thank you very much,
25 Mr. Bailey.

1 Yes, ma'am, Ms. Hardee-Thomas.

2 EXAMINATION

3 BY MS. HARDEE-THOMAS:

4 Q. Good afternoon, Ms. Tyndell. How are you? My
5 name is Attorney Marva Hardee-Thomas, with me is Mr.
6 Cummings at the table and Mr. Marion Bowman at the
7 table. We're representing Mr. Bowman. I just want
8 to ask you a few questions. You stated on your
9 questionnaire that you had immediate family or close
10 friend that was a victim of a crime and that this was
11 a friend of yours you indicated?

12 A. Yes, ma'am.

13 Q. And this person was physically hit by her
14 husband and pushed out of a moving car.

15 A. Yes, ma'am.

16 Q. Did you witness that?

17 A. No, I didn't. This was all --

18 Q. But you were questioned by the police?

19 A. Yes, ma'am.

20 Q. Okay. Knowing that information, would that
21 charge you to veer off with the defense or the
22 prosecution in any way?

23 A. I wasn't there.

24 Q. Okay. All right. Also you indicated that an
25 immediate family member and a close personal friend

1 was charged with a crime. You understand that in
2 this situation you may have to listen to the -- you
3 will have to listen to the facts and render a
4 decision in that. Would that cause you to veer one
5 way or the other?

6 A. No.

7 Q. Okay. You would listen to all the facts and
8 circumstances in the case and render a decision based
9 on what you hear?

10 A. Of course.

11 Q. Okay. You also indicated that you have a
12 brother in the military and he's a police officer in
13 the Army?

14 A. Yes, ma'am.

15 Q. Okay. Having that information, you may hear the
16 police may be involved, would that have you to
17 substantially impair, or -- I'm sorry, to give credit
18 to the police more so than not?

19 A. No, it's just a job.

20 Q. Okay. One more question. I believe I have all
21 the questions.

22 MS. HARDEE-THOMAS: Can you give me one
23 second?

24 THE COURT: Very well.

25 MS. HARDEE-THOMAS: No further questions.

1 THE COURT: Thank you so much.

2 Ms. Tyndell, I'm going ask you to step
3 right outside the courtroom, you won't have time
4 to sit down most probably.

5 MS. TYNDELL: Okay.

6 THE COURT: We'll be right with you and
7 we're going to talk about you behind your back.
8 If you'll step right out and step right back.
9 (Whereupon, the prospective juror exits the
10 courtroom.)

11 THE COURT: What says the State?

12 MR. BAILEY: Qualified, Your Honor.

13 THE COURT: What says the defense?

14 MS. HARDEE-THOMAS: Qualified, Your Honor.

15 THE COURT: Thank you. Have her come back
16 in.

17 (Whereupon, the prospective juror returns to the
18 courtroom.)

19 THE COURT: Ms. Tyndell, you have been
20 found to be qualified -- and you can sit right
21 back down -- as a potential juror in the case.
22 And this does not mean that you are on the jury
23 yet, it just means that you are a potential
24 juror and you may be selected to serve on this
25 jury.

1 We are hoping that we will be able to
2 select the jury on Thursday at two o'clock. And
3 this may be a little ambitious. If we have to
4 change the time we'll call you in plenty of time
5 for you to have notice not to come. Unless you
6 hear from us we are going to be asking that you
7 be back on Thursday at two o'clock.

8 And Ms. Graham has a sheet of paper to
9 give you that contains some instructions to help
10 you get ready for your jury service, like
11 packing your clothes, any medication that you
12 would need, telling you where you'll be, and
13 also giving you phone numbers that you can be
14 reached in the event of an emergency both during
15 the day as well as at night.

16 Feel free to share that information of
17 those practical details with anyone that you
18 choose and need to. However, remember that you
19 may not discuss any aspect of this case with any
20 juror or allow anyone to discuss this case with
21 you or expose yourself to any information about
22 this case from any source at all. Do you
23 understand me?

24 MS. TYNDELL: Yes.

25 THE COURT: Thank you so much, Ms. Tyndell.

Juror 309 Tamra L. Tyndell - Examination

1 I look forward to seeing you on Thursday at two
2 o'clock.

3 MS. TYNDELL: Can I have a pen so I can
4 write that down?

5 THE COURT: It should be on the bottom.
6 Does that say Thursday at 2:00?

7 MS. TYNDELL: It sure does.

8 THE COURT: Thank you.

9 MS. TYNDELL: Thank you.

10 THE COURT: All right.

11 (Whereupon, the prospective juror exits the
12 courtroom.)

13 THE COURT: Our next prospective juror is
14 Michael Whaley. That's for some reason -- maybe
15 I'm just a little bit tired.

16 MR. CUMMINGS: Old George Whaley's family,
17 that's the other one.

18 THE COURT: There wasn't an issue, nobody
19 said when we get to Whaley we need to talk about
20 something.

21 MR. BAILEY: I don't think so. He's got a
22 little bit of rap sheet, but not disqualifying.

23 THE COURT: That's what I remember, that's
24 exactly what I remember from yesterday. If we
25 could have Mr. Michael Whaley.

Juror 328 Michael D. Whaley - Examination

1 (Michael D. Whaley, called as a prospective
2 juror, having previously been duly sworn, is
3 examined as follows:)

4 EXAMINATION

5 BY THE COURT:

6 Q. You are you Mr. Michael Whaley?

7 A. That's me.

8 THE COURT: For our record this is

9 Mr. Michael Whaley, who is Juror Number 328.

10 Q. Mr. Whaley, you will recall that yesterday
11 morning that you were sworn in with the other
12 prospective jurors. Do you remember that?

13 A. Yes, ma'am.

14 Q. All right. And I would just tell you that the
15 oath that you took yesterday --

16 A. Right.

17 Q. -- is still in effect.

18 A. All right.

19 Q. And continued to cover this proceeding and the
20 questions and answers that we would share with you
21 today.

22 A. All right.

23 Q. All right. Since yesterday morning, since we
24 talked yesterday.

25 A. Right.

1 Q. Has anyone talked with you about this case, or
2 tried or approached you about this case, or have you
3 inadvertently or otherwise received any information
4 about this matter?

5 A. No.

6 Q. All right, sir. Now, back in the jury room you
7 were shown a copy of the potential witness list. And
8 I, first of all, ask you if you'd had a chance to
9 look at it?

10 A. Yes.

11 Q. You've had ample chance to look at it, haven't
12 you, Mr. Whaley?

13 A. Yes.

14 Q. And are you related by blood or marriage or
15 acquainted with, or do you have any business or
16 personal or casual relationship, or are you connected
17 with any of these individuals either directly or
18 indirectly?

19 A. No.

20 Q. All right, sir. Now, my notes show, Mr. Whaley,
21 that when we asked certain questions yesterday, for
22 example, if you had any opinion about this particular
23 case or any bias or prejudice for or against either
24 of these parties, or if you had heard or read or seen
25 anything, any information about this particular case,

1 my notes indicate that you were silent on those
2 issues which indicated to me that none of these
3 things applied to you; is that right?

4 A. That's exactly right.

5 Q. All right. Since we talked yesterday has
6 anything come to your memory or jogged your memory in
7 any regard that you do remember hearing something
8 about this matter, or anything has happened that
9 would cause you to need to change your response from
10 yesterday?

11 A. No.

12 Q. Or lack thereof, I guess I should say, lack of
13 response yesterday.

14 A. No, I know nothing.

15 Q. All right, sir. Now, I'm going to ask you,
16 we're going to ask you some questions, Mr. Whaley.
17 Before we do that I want to tell you a couple things.
18 First and foremost we don't want to invade your
19 privacy.

20 A. All right.

21 Q. And secondly, the purpose of us asking these
22 questions is to find out a little bit about how you
23 feel about certain matters to get your opinions about
24 that.

25 A. Okay.

1 Q. The reason for doing that is to find out or
2 understand a little bit about those opinions to see
3 if those opinions might impact on your jury service,
4 okay?

5 A. All right.

6 Q. Now, obviously there are no right or wrong
7 answers.

8 A. All right.

9 Q. And obviously your opinions are just as good and
10 valid as anybody else's.

11 A. All right.

12 Q. And obviously we're not challenging at all your
13 opinions, we just simply need to understand and know
14 a little bit about them so that we can determine
15 whether or not those opinions might impact on your
16 jury service.

17 One of the things that I will ask you
18 about in a few moments is about penalty, specifically
19 the death penalty. And I'm going to ask you about
20 that because that may become an issue in this case.

21 A. All right.

22 Q. But I want you to understand that the fact that
23 we're talking about penalty at this early stage, it
24 really is premature.

25 A. Okay.

1 Q. Because the trial hasn't begun. And as I've
2 already said and will certainly repeat, Mr. Bowman is
3 presumed innocent of these charges.

4 A. Right.

5 Q. But this is the only time when we can talk about
6 the penalty, necessarily, before the trial ever gets
7 underway.

8 A. All right.

9 Q. Now, I'm going to be asking you some questions,
10 I'm going to try to do that in a generic sense.

11 A. Okay.

12 Q. I do not intend to ask you about this trial
13 because it would not be fair to you, you don't know
14 anything about this matter.

15 A. Right.

16 Q. It wouldn't be proper for me to ask you about
17 this trial, but I'm going to ask you about some
18 information in general, in generic terms.

19 A. Okay.

20 Q. Now, if you were a juror in any criminal case,
21 would you be willing to listen to the law as you were
22 instructed by the judge?

23 A. Yes.

24 Q. All right, sir. And would you be willing to
25 accept that law and apply it to the facts as you

1 found them to be?

2 A. Yes.

3 Q. And even though you might not particularly like
4 that law, or you may even outright disagree with it.

5 A. Right.

6 Q. But even so would you still be willing to follow
7 the law as you were instructed to do so by the judge?

8 A. Yes, I would.

9 Q. If you were asked to serve in the case of State
10 vs. Mr. Bowman, could you decide this case based upon
11 the evidence and what you would hear in this
12 courtroom and disregard anything you may have seen or
13 heard or read about this case or any source at all if
14 anything like that should come to your memory?

15 A. Yes, ma'am.

16 Q. In other words, sometimes jurors will be sitting
17 on a case and something will jog their memory that
18 they hear. If that happened to you would you
19 disregard that and decide this case based on the
20 evidence that you hear?

21 A. I would disregard that, yes, ma'am.

22 Q. Thank you. Now, in a criminal case as I'm sure
23 you know and as we talked about briefly yesterday,
24 the State has the burden of proving the guilt of a
25 defendant beyond a reasonable doubt. In other words,

1 a defendant never has to prove himself or herself
2 innocent. A defendant is presumed innocent under the
3 law. Do you understand these ideas?

4 A. Yes, ma'am.

5 Q. So if you were a juror in any criminal case
6 would you be willing to listen to the facts, listen
7 to the evidence and the law as you are instructed?

8 A. Yes, ma'am.

9 Q. Based upon -- well, let me begin this way. If
10 you were a juror in a criminal case, would you, could
11 you listen to the evidence, find the facts as you
12 found them to be, apply the law to those facts, and
13 if you were not convinced that the State had proven a
14 defendant's guilt beyond a reasonable doubt, would
15 you be willing and able to find that defendant not
16 guilty?

17 A. Yes, I could.

18 Q. On the other hand, if you were a juror in a
19 criminal case, listened, determined what facts were
20 based on the evidence, applied the law the judge gave
21 you to those facts and if you were convinced that the
22 State had proved the guilt of the defendant beyond a
23 reasonable doubt, would you be willing and able to
24 find that defendant guilty?

25 A. Yes, I can.

1 Q. So you would be willing to listen and make your
2 decision based upon whether or not you were convinced
3 that a person is guilty or not; is that right?

4 A. Yes, ma'am.

5 Q. Now, most of the time jurors do not concern
6 themselves with the matter of punishment. Most of
7 the time in a criminal court the punishment is left
8 up to the judge. There is one case in our law when a
9 jury has to deal with the matter of judgment and that
10 is a case such as this one. It is in a case where an
11 individual has been charged with the crime of murder
12 and the State is seeking the death penalty.

13 If an individual in a death penalty
14 case is convicted of the crime of murder, then the
15 same jury that convicted him or her of murder must
16 come back, and in a separate or different proceeding
17 decide the sentence that that person would get.
18 There are two choices. One, life imprisonment
19 without the possibility of parole, and the death
20 penalty. This decision, the sentencing decision
21 would be determined in the second or sentencing phase
22 of the trial as it is called. Do you understand
23 these ideas?

24 A. Yes, ma'am.

25 Q. Now, in the jury room with you there was this

1 piece of paper.

2 A. Yes, ma'am.

3 Q. And it essentially describes three types of
4 jurors for you.

5 A. Yes, ma'am.

6 Q. Do you remember those three types of jurors and
7 what they were?

8 A. Yes, ma'am.

9 Q. Which of those three types of jurors best
10 describes you?

11 A. Type three.

12 Q. And would you be willing to listen to whatever
13 you might hear and if you thought it was appropriate
14 based on the information, the evidence that you
15 receive, if you thought it was appropriate to
16 sentence someone to death, do you believe that you
17 would be willing and able to vote for that?

18 A. Yes, I could.

19 Q. On the other hand, if you thought the death
20 sentence was not appropriate or for any other reason
21 the person ought to receive life imprisonment, would
22 you be able and willing to vote for a sentence of
23 life imprisonment?

24 A. Yes, I could.

25 Q. So you would make the decision based upon what

1 you would hear in the courtroom?

2 A. Yes, ma'am.

3 Q. If you were chosen to serve as a juror in this
4 case, you and the other jurors would be housed,
5 obviously at county expense, the word is sequestered,
6 in a local motel for the course of the trial. That's
7 where you would have to stay until the trial is over
8 except when you are in the courtroom.

9 A. Right.

10 Q. This period could be as long as two weeks or
11 longer, it could be shorter also.

12 A. Right.

13 Q. Obviously that would create an inconvenience for
14 you as surely it will for all who serve on this jury.
15 Other than the inconvenience which it would cause
16 anybody who would have to serve in this capacity,
17 would that pose a serious risk of danger to your
18 health or well being or to that of anybody who is
19 dependent upon you if you had to serve in that
20 capacity?

21 A. I could do it.

22 Q. You would be willing to do that?

23 A. Yes, ma'am.

24 Q. All right. Mr. Whaley, I'm going to ask that
25 you listen to the questions of these attorneys who

1 I'm certain will have questions of you as they are
2 entitled to.

3 A. Okay.

4 THE COURT: And Mr. Cummings, Ms.
5 Hardee-Thomas, I'll turn to you.

6 MR. CUMMINGS: Thank you, Judge.

7 EXAMINATION

8 BY MR. CUMMINGS:

9 Q. Good evening now, I'm Norb Cummings, that lady
10 over there is Ms. Marva Hardee-Thomas and we've both
11 been Court appointed to represent Mr. Bowman, the
12 gentlemen in the white shirt.

13 A. Okay.

14 Q. I see you work for Promed.

15 A. Yes, sir.

16 Q. I promise you, all the lawyers and the judge
17 will read what you fill out first.

18 A. Okay.

19 Q. What exactly do you do for Promed, sir?

20 A. I'm a delivery person there, I set up home
21 equipment for the elderly and disabled.

22 Q. All right, sir. But you don't transport people?
23 The only reason I ask that --

24 A. No, sir.

25 Q. It's not an ambulance?

1 A. No, sir.

2 Q. Okay. And I'll move on because we try to find
3 out basically what the jurors do and whether or not
4 you work closely with law enforcement, if you like
5 were driving an ambulance or other things.

6 A. Right. No, sir. I do not.

7 Q. Okay. Mr. Whaley, you've listened to Her Honor,
8 she's asked you lots of questions. And of course I'm
9 just going to ask you a few and Mr. Bailey has the
10 right to ask you questions as solicitor.

11 A. Okay.

12 Q. You appear to be a gentleman of strong
13 convictions, that you understand that everybody that
14 comes in this room is presumed innocent until and
15 unless the State proves them guilty beyond a
16 reasonable doubt?

17 A. Yes, I do.

18 Q. And you believe in that philosophy?

19 A. Yes, I do.

20 Q. And as a juror you would work closely with your
21 other jurors in determining the facts and
22 circumstances of the case; would you not, sir?

23 A. Yes, I would.

24 Q. And you would take the law as Her Honor tells
25 you the law is?

1 A. Yes, sir.

2 Q. All right. And thereafter until and unless
3 somebody was convicted of murder we wouldn't even get
4 to the second part or the second phase of the case.

5 A. Right.

6 Q. And you understand that?

7 A. Yes, sir.

8 Q. And at that point, sir, the jury would have only
9 two options, either the jury combined impose the
10 death penalty or the jury combined would impose life
11 without the possibility of parole. And you could do
12 that along with your fellow jurors?

13 A. Yes, sir.

14 Q. And if the facts and circumstances warranted, or
15 for any reason like Her Honor would tell you, the
16 jury could find for life without the possibility of
17 parole. You understand that?

18 A. Yes, sir.

19 Q. Okay. And you're willing, again, at that point
20 in the second part of the case to follow Her Honor's
21 instructions and listen to the law as she gives it
22 there also?

23 A. Yes, sir.

24 MR. CUMMINGS: Beg the Court's indulgence,
25 Judge.

1 THE COURT: All right, sir.

2 (Mr. Cummings and Ms. Hardee-Thomas conferring
3 with Mr. Bowman.)

4 MR. CUMMINGS: That's all the questions we
5 have of this gentleman. Thank you, Judge.

6 THE COURT: Thank you.

7 Mr. Bailey.

8 MR. BAILEY: Thank you, Your Honor.

9 EXAMINATION

10 BY MR. BAILEY:

11 Q. I'm Walter Bailey, I'll be prosecuting this case
12 for the State and I need to ask you a few more
13 questions.

14 A. All right.

15 Q. And the questions I'm going to ask you about the
16 death penalty do not pertain to this case, in
17 particular you haven't heard the facts, they're of a
18 general nature, all right?

19 A. All right.

20 Q. Before I get into that you and all the other
21 jurors fill out a questionnaire for the Court.

22 A. Yes, sir.

23 Q. And we've all been over that. I need to ask you
24 a couple questions about your answers.

25 A. Okay.

1 Q. One of questions, I forget which number it was,
2 asked whether or not a potential juror had a negative
3 experience with law enforcement and I think you
4 indicated --

5 A. Actually, I should have changed my answer to
6 that because I do have one positive input --

7 Q. Okay.

8 A. -- on that. If you would like to hear it I'll
9 go ahead and share it with you.

10 Q. Sure. Okay.

11 A. I believe the chief of police in Ridgeville, I
12 think it's Mr. Wilson, I believe is his name.

13 Q. Okay.

14 A. I think that's his last name, Jeff Wilson I
15 believe is chief of police there. And he cut me a
16 break which he did not have to do, he went to the
17 judge himself. It was a speeding ticket is actually
18 what it was.

19 Q. Okay. All right.

20 A. He went to the judge himself, talked to the
21 judge for me, they excused me from that ticket.

22 Q. Okay.

23 A. And that is a positive input that I had.

24 Q. All right, sir.

25 A. From law enforcement.

1 Q. Okay.

2 A. Why I put negative, I had a couple of shady
3 deals where I did not commit those crimes.

4 Q. Okay.

5 A. But I was a young man at the time, didn't really
6 know the law like I know it now.

7 Q. Okay.

8 A. If I knew it like I know it now I would have
9 done things differently.

10 Q. Okay. All right.

11 A. I do have a conviction for a crime that I did
12 not commitment, but, you know, I was young and scared
13 at the time.

14 Q. Okay.

15 A. That's why I took the conviction, took the easy
16 way out.

17 Q. Okay. Could you tell me about that? What kind
18 of crime it was that you were charged with?

19 A. Well, it was actually my next door neighbor's
20 house, there were five people there, they were all
21 partying, drinking, whatever.

22 Q. Right.

23 A. And someone broke into one of their guest's
24 vehicle in the front yard.

25 Q. Okay.

1 A. There were five people there, they swore it was
2 me. It was not me. I happened to be home alone that
3 night, my mother was gone.

4 Q. Okay.

5 A. I had no one on my side and five people against
6 me.

7 Q. Okay.

8 A. Which they really had no hard core evidence,
9 fingerprints or none of that type stuff saying that
10 it was me, just the five people that were there which
11 were obviously drinking that night.

12 Q. Right.

13 A. All saying it was me. I felt like I didn't have
14 a chance so I plea bargained the deal.

15 Q. Okay.

16 A. Because I didn't want to do prison time --

17 Q. All right.

18 A. -- for something I didn't do so I just took the
19 plea bargain to petty larceny, I believe it was.

20 Q. Okay. Hold on one second, let me get my glasses
21 here because I can't see without them up close.

22 Okay. And you also said that you had
23 a shoplifting charge I think about a year ago?

24 A. Actually, that was with my brother --

25 Q. Okay.

1 A. -- and sister-in-law. And this is the honest to
2 God's truth, they were up to no good, I did not know
3 it.

4 Q. Okay.

5 A. I was just visiting them over the Christmas
6 holidays. We were at a department store, I told his
7 wife that I was going to go outside and have a
8 cigarette, sit outside on the bench. So she has her
9 shopping bag, she asks me if I would, you know, hold
10 onto it for her, take it out there with her.

11 Q. Okay.

12 A. Me, I did not know that it contained stolen
13 merchandise.

14 Q. Okay.

15 A. I really did not know this information. So I'm
16 sitting out there, the security guard comes up to me,
17 I didn't have a problem whatsoever, and next thing
18 you know I'm going to jail for something I didn't
19 even know what was going on.

20 Q. Okay.

21 A. That was just another bum deal that I got.

22 Q. All right. Let me ask you this. The fact that
23 you had been falsely charged a couple of times with
24 things you didn't do.

25 A. Right.

Juror 328 Michael D. Whaley - Examination

1 Q. Do you think that would in any way impact in
2 your ability to be a fair juror to the State?

3 A. No, I don't. I believe in right and wrong.

4 Q. Okay. All right. So you can put those
5 unfortunate experiences aside?

6 A. Right.

7 Q. And judge this case based on this case?

8 A. Yes, sir.

9 Q. All right, sir.

10 A. Just because I feel like I got a bum deal, I
11 wouldn't give a bum deal to someone else.

12 Q. Okay. All right. And in regard to the death
13 penalty, again, we're talking in general.

14 A. Right.

15 Q. Could you -- before you found out you might be a
16 juror on a case like this where the State's seeking
17 the death penalty --

18 A. Right.

19 Q. -- had you ever given any thought to the death
20 penalty?

21 A. Thoughts to the death penalty?

22 Q. Yes, sir.

23 A. I feel like if the law warrants the death
24 penalty, then it should be issued.

25 Q. All right.

1 A. But I don't think you should just give someone
2 the death penalty just so.

3 Q. Right. Okay. You understand this is
4 potentially a two-part process where we have the
5 guilt phase, that's like any other criminal trial.

6 A. Yes, sir.

7 Q. Where the State is up there putting up evidence
8 to try to convince the jury if the person's guilty of
9 whatever they're charged with beyond a reasonable
10 doubt.

11 A. Right.

12 Q. And in a case where one of the charges is murder
13 and the State seeks the death penalty, if the jury
14 finds that defendant guilty of murder beyond a
15 reasonable doubt we go into phase two where
16 additional testimony comes up, additional
17 instructions from the judge and then the jury decides
18 the punishment and not the judge.

19 A. Right.

20 Q. What the judge is going to do is once all 12
21 jurors vote one way or the other, life without parole
22 or the death penalty.

23 A. Right.

24 Q. She would order that jury's verdict to be the
25 order of the Court, it would be carried out.

1 A. Right.

2 Q. Okay. So the jury, not the judge, makes that
3 decision. And I'm not going to ask you again what
4 you would do if you got picked in this case, but just
5 in general if you got to that second part of the
6 trial, of a trial, could you vote for the death
7 penalty knowing that sentence actually would be
8 carried out, that person would be executed if the
9 case is bad enough?

10 A. Yes, I could.

11 Q. Okay. And on the other hand, if you felt like a
12 life sentence was the appropriate sentence you could
13 vote for that?

14 A. Then I could vote for that.

15 Q. If all 12 jurors vote for the death penalty
16 they're asked to sign their names to a death verdict
17 form that's going to result in that defendant being
18 executed. Could you sign your name to a paper like
19 that knowing that that person would be executed?

20 A. Yes, sir.

21 Q. Could you get out here and stand up when your
22 name is called out and announce out loud that that
23 was your verdict?

24 A. Yes, sir.

25 Q. Okay. Mr. Whaley, I think that's all I've got.

1 Thank you very much.

2 THE COURT: All right. Mr. Whaley, I'm
3 going to ask you to step right outside the
4 courtroom for just a moment just so we can talk
5 about you for a second behind your back.

6 MR. WHALEY: Okay.

7 THE COURT: Thank you, Mr. Whaley.
8 (Whereupon, the prospective juror exits the
9 courtroom.)

10 THE COURT: What says the defense?

11 MR. CUMMINGS: Statutorily qualified,
12 Judge.

13 THE COURT: What says the State?

14 MR. BAILEY: I agree.

15 THE COURT: Send him back in, please.
16 (Whereupon, the prospective juror returns to the
17 courtroom.)

18 MR. WHALEY: Wasn't too bad.

19 THE COURT: See, very short. Mr. Whaley,
20 you have been found to be qualified as a
21 potential juror in this case. That doesn't mean
22 that you're on the jury yet.

23 MR. WHALEY: Okay.

24 THE COURT: It just means that you are a
25 potential juror and you may be selected to serve

1 on this jury.

2 MR. WHALEY: Okay.

3 THE COURT: We are hoping that we will be
4 able to select the jury on Thursday at two
5 o'clock. Thursday at two o'clock.

6 MR. WHALEY: Okay.

7 THE COURT: This may be a little ambitious
8 and if we have to change it, the time, we will
9 call you and let you know. But unless you hear
10 back from us we are asking that you be back on
11 Thursday at two o'clock.

12 Ms. Graham's got a sheet and on that
13 sheet is the time Thursday at two o'clock as
14 well as some other instructions to help you get
15 ready for your jury service.

16 MR. WHALEY: Okay.

17 THE COURT: Like packing your clothes.

18 MR. WHALEY: Right.

19 THE COURT: Remember to pack any
20 medications that you might need. It tells you
21 where you will be housed --

22 MR. WHALEY: Okay.

23 THE COURT: -- during the course of the
24 trial, and it also gives you emergency numbers
25 during the day and in the evening so that any

1 family members or anyone might need to reach
2 you.

3 Now, please feel free to discuss these
4 practical details with anyone that you choose to
5 do so.

6 MR. WHALEY: Okay.

7 THE COURT: However, be mindful that you
8 must not discuss this case with anyone or any
9 aspect of this case, and you must not allow
10 anyone to discuss the case or any aspect of it
11 with you. Do not expose yourself to any
12 information about this case from any source.

13 MR. WHALEY: Okay.

14 THE COURT: You understand all this?

15 MR. WHALEY: Yeah. I just got one question
16 for you.

17 THE COURT: Sure. Yes, sir.

18 MR. WHALEY: I don't know if I provided you
19 my work number or not in case someone should
20 need to call me.

21 THE COURT: You give that right to me.

22 MR. WHALEY: 832-8397.

23 THE COURT: I got it.

24 MR. WHALEY: I got another number there,
25 too, it's 345-2978. That's a cell phone because

Juror 328 Michael D. Whaley - Examination

1 I'm a delivery driver and that could be --

2 THE COURT: I got your cell. Thank you so
3 much, Mr. Whaley.

4 MR. WHALEY: Thank you so much.

5 THE COURT: And I look forward to seeing
6 you Thursday.

7 MR. WHALEY: Okay.

8 (Whereupon, the prospective juror exits the
9 courtroom.)

10 (Margaret Washington, called as a prospective
11 juror, having previously been duly sworn, is
12 examined as follows:)

13 THE COURT: For the record this is Ms.
14 Margaret Washington and she is Juror Number 321.

15 EXAMINATION

16 BY THE COURT:

17 Q. Now, Ms. Washington, if you will recall
18 yesterday you were sworn in with all the potential
19 jurors, remember that?

20 A. Yes, ma'am.

21 Q. And the oath that you took yesterday still
22 applies and it will continue throughout this process
23 and with the questions and answers that we share with
24 you today, okay?

25 A. Okay.

1 Q. All right. Now, since we talked yesterday,
2 Ms. Washington, has anybody talked with you about
3 this case, or tried to approach you about it, or have
4 you been inadvertently or otherwise exposed to any
5 information about the case?

6 A. No, I haven't.

7 Q. And when you were back in the jury room you
8 should have seen, I'm going to just place it here in
9 case you need to refer to it.

10 A. Okay.

11 Q. A list of potential witnesses. And I would ask
12 if you had an opportunity to look at the list?

13 A. Yes, I did.

14 Q. All right. And with regards to the names on
15 this list are you related by blood or marriage, or
16 acquainted with or connected directly or indirectly,
17 do you have a personal, business relationship or
18 acquaintanceship with any of the folks listed on that
19 potential witness list?

20 A. No, ma'am. I'm not.

21 Q. Very well. I'll take that away. Now, yesterday
22 I had an opportunity to talk with you, or talk with
23 the jury panel and ask some questions. The questions
24 were whether or not anyone had any opinion about the
25 case, or whether or not anyone had seen or heard or

1 read anything about the case, or whether or not
2 anyone had any bias or prejudice for or against
3 either of these parties. And my notes indicate that
4 you didn't have any response to any of those
5 questions. Is that right, none of those apply to
6 you?

7 A. None whatsoever.

8 Q. Very well. And since we talked yesterday, has
9 anything jogged your memory and you now remember
10 something about this matter, or you need to maybe
11 respond to something that you didn't respond to
12 yesterday?

13 A. No.

14 Q. All right.

15 A. No, no.

16 Q. Now, Ms. Washington, I'm going to -- and we need
17 to ask you some questions.

18 A. Okay.

19 Q. I'm going to tell you a little bit about the
20 questions we need to ask you just before we ask them
21 and to ensure you that we are not trying to invade
22 your privacy.

23 A. Okay.

24 Q. We just need to find out a little bit of
25 information about how you feel about some matters; in

1 other words, what your opinions are. And I want to
2 tell you up front, ain't no right or wrong answers
3 and your opinions are just -- your opinions are as
4 good and as valid as anybody else's opinions. And
5 we're not challenging your opinions in any regard.
6 We just need to know a little bit and understand a
7 little bit about your opinions just to see if they
8 have any impact on your jury service, okay?

9 A. Okay.

10 Q. All right. Now, one of the things that I will
11 talk to you about in just a little bit is about
12 penalty, and specifically the death penalty. But
13 before I actually question you or talk to you about
14 that, I want to tell you that the only reason we're
15 going to talk about it now is because it might be an
16 issue in the case. And I certainly want you to
17 understand that the fact that we're talking about
18 penalty at this early stage clearly is premature.
19 However -- well, let me say to you it's premature
20 because the case hasn't even begun, the trial hasn't
21 begun.

22 And as I said yesterday and I tell it
23 to you again today, Mr. Bowman is presumed innocent
24 of these charges, but obviously this is the only time
25 that we can talk about penalty necessarily before the

1 trial gets underway. You understand that?

2 A. Yes. Yes, I do.

3 Q. Now, the questions that I'm going to ask you I'm
4 going to ask you in a general sense. I'm not going
5 to ask you about this case because you don't know
6 anything about this case.

7 A. Not at all.

8 Q. And that wouldn't be fair to you and it wouldn't
9 be proper.

10 A. That's true.

11 Q. But I am going to ask you some questions in a
12 general sense and I'm going to do that starting now.

13 A. Okay.

14 Q. And would ask you if you were a juror in any
15 criminal case, would you be willing to listen to the
16 law as it was instructed to you by the judge?

17 A. Yes, I would.

18 Q. All right. And would you be willing to accept
19 that law and apply that law to the facts as you found
20 them to be?

21 A. Yes, I would.

22 Q. All right. Even though the particular law that
23 the judge gave you, you might not like it or you
24 might not really agree with it, but even so would you
25 be willing to follow the law as you were instructed

1 to do so by the judge?

2 A. I would.

3 Q. All right. Now, if you were asked to serve in
4 the case of the State vs. Mr. Bowman, could you
5 decide this case based solely upon what you would
6 hear in the courtroom and disregard anything that you
7 may have seen or heard or read about this case from
8 any source at all, should anything like that come
9 into your memory? Let me tell you what I'm talking
10 about.

11 A. Okay.

12 Q. Let me give you a little bit more explanation.

13 A. Okay.

14 Q. Sometimes, sometimes when a juror is at this
15 stage they don't have any memory at all of any of the
16 events or anything about a case, but sometimes when
17 they are sitting on a jury and they'll hear
18 something, that will like jog a little memory and
19 then here they are and they, you know, didn't have
20 any memory, but it little memory. This question is
21 asking you if that happens to you, will you set that
22 little memory aside and try this case based on what
23 you hear in the courtroom?

24 A. What -- you want my opinion?

25 Q. Well, no, I want to ask you if you think you

1 could do that. In other words, if based at some
2 point in this trial should you hear something in the
3 trial and it jogs a memory of maybe you heard
4 something before the trial began, would you be
5 willing to set that aside what you heard? See, at
6 this point you don't think you know anything about
7 this case, right?

8 A. Not at all.

9 Q. What this question is designed to ask you about
10 is that if you heard something during, if you were
11 sitting on this jury and this trial was underway and
12 you heard something and during the trial and that
13 jogged your memory and you said, you know, I remember
14 hearing something about that a couple years ago or
15 whatever or a year ago, if that happened to you, I'm
16 not saying it will because it probably won't, but if
17 it did, if that happened to you, could you set that
18 memory aside and --

19 A. Yes.

20 Q. -- continue to listen to the evidence?

21 A. Yes, I could.

22 Q. And make up your mind based on what you heard in
23 this courtroom?

24 A. Yes, I could.

25 Q. Okay. All right.

Juror 321 Margaret Washington - Examination

1 A. Yes, I could.

2 Q. Now, I want to talk about some other things for
3 a moment. In a criminal case, as I'm sure you know
4 and as we talked about yesterday, the State has the
5 burden of proving the guilt of a defendant, any
6 defendant, and this defendant and Mr. Bowman, the
7 State has the burden of proving the guilt of a
8 defendant beyond a reasonable doubt. In other words,
9 a defendant never has the burden to prove himself or
10 herself innocent. The burden always remains on the
11 State of South Carolina. A defendant is presumed
12 innocent under the law. I would just ask if you
13 understand these ideas?

14 A. Yes, I do.

15 Q. All right.

16 A. Yes, I do.

17 Q. Now, if you were a juror in any criminal case,
18 would you be willing to listen to the evidence and to
19 listen to the law as you were instructed?

20 A. Yes, I would. I would listen to the law.

21 Q. All right. And if you were a juror in any
22 criminal case and you -- would you be willing to
23 listen to the evidence and find those facts as you
24 found them to be and then apply the law as the judge
25 gives it to you, and if after you did that you had,

1 you were not convinced, you were not convinced that
2 the State had proved the guilt of the defendant
3 beyond a reasonable doubt, would you be willing and
4 able to find that defendant not guilty if you didn't
5 think, in other words, if you didn't think that the
6 State had proven that the defendant was guilty, would
7 you be willing to find him or her not guilty?

8 A. Yes, I would.

9 Q. All right. On the other hand, if you listened
10 to the evidence, found the facts as you found them to
11 be and applied the law to those facts and if you
12 believe that the State had proved the defendant
13 guilty beyond a reasonable doubt, in any criminal
14 case, I'm not talking about this one, any criminal
15 case, you believe that the State had proved the
16 defendant guilty beyond a reasonable doubt, would you
17 be willing and able to find a defendant guilty?

18 A. The only way that I would have to listen to both
19 sides.

20 Q. Yes.

21 A. And when I listen to both sides then I could
22 make up my mind.

23 Q. You would listen to all the evidence?

24 A. I would listen to all.

25 Q. Of the evidence?

1 A. Of the evidence and then --

2 Q. I understand. And based upon the facts and the
3 circumstances -- well, let me ask you this way. You
4 would be willing to listen and make your decision
5 based upon whether or not you were convinced if a
6 person is guilty or not; is that right?

7 A. Uh-huh (affirmative response).

8 Q. In other words, you'd make up your own mind;
9 would you not?

10 A. Yes.

11 Q. You would be willing to listen and make your
12 decision based on what you heard in the courtroom?

13 A. That's true.

14 Q. In any criminal court, I mean in any criminal
15 case?

16 A. Yes.

17 Q. Yes.

18 A. Yes.

19 Q. All right. Now, most of the time jurors do not
20 concern themselves with punishment. Most of the time
21 in the criminal court punishment is a matter for the
22 judge, it's the judge deals with the issue of
23 punishment. But there is a case in our law when a
24 jury has to deal with the matter of punishment. And
25 that is in the case like this case. It is in a case

1 where an individual has been charged with the crime
2 of murder and where the State is seeking the death
3 penalty.

4 If an individual, if a person in a
5 death penalty case is convicted, is found guilty of
6 the crime of murder by the jury, then that same jury
7 that convicted him or her, convicted the person of
8 murder, comes back and in a separate and different
9 proceeding where they hear more information, they
10 hear evidence, decide the sentence that the person
11 would get. And there are two choices in that event.
12 One is life imprisonment without the possibility of
13 parole, and the other possible sentence is the death
14 penalty. That punishment, whether it's life
15 imprisonment or the death penalty is determined, is
16 decided in the second or the sentencing phase of the
17 trial. Do you understand what I'm telling you, you
18 understand this information?

19 A. Yes, I do.

20 Q. Okay. All right. Now, Ms. Washington, did you
21 have an opportunity to look at this piece of paper
22 that was in the jury room?

23 A. Yes, I did.

24 Q. And it essentially describes three types of
25 jurors; type one, type two, and type three. And I

1 would just ask of you, which of these three types of
2 jurors do you think best describes you?

3 A. Number three.

4 Q. Number three.

5 A. Number three.

6 Q. In other words, you would be willing to listen
7 to the information, the evidence in this courtroom
8 and make up your mind based on that evidence; is that
9 right?

10 A. Yes. Yes.

11 Q. Now, let me ask you some other questions. If
12 you were a juror in a criminal case, and based on the
13 information that you received if you decided that it
14 was appropriate that the defendant receive the death
15 penalty, you've listened to the evidence, have heard
16 the evidence and you thought about it and if you
17 think it is appropriate that the defendant be given
18 the death penalty, would you be able to vote for the
19 death penalty if you believed that was appropriate?

20 A. If that was?

21 Q. Yeah, if that's what found to be appropriate.

22 A. If that's what I find to be appropriate?

23 Q. Yes, ma'am.

24 A. That's the way I would go.

25 Q. All right. In other words, you would listen to

1 the evidence?

2 A. I will listen to the evidence.

3 Q. And that -- all right. Now, on the other
4 hand --

5 A. Okay.

6 Q. -- if you thought the death sentence was not
7 appropriate, or for any other reason a person ought
8 to receive life imprisonment, would you be able and
9 willing to vote for a sentence of life imprisonment?

10 A. Yes, I would.

11 Q. All right. So you would make the decision of
12 the death penalty or life imprisonment based upon
13 what you would hear in the courtroom?

14 A. What I heard in the courtroom.

15 Q. Okay. Now, Ms. Washington, if you were chosen
16 to serve as a juror in this case you and the other
17 jurors would be housed by the county, and the word is
18 sequestered, but you would be housed by the county
19 here locally in a motel at the county's expense, your
20 meals of course would be provided by the county.
21 During the course of the trial that's where you would
22 stay, you would stay with us until the trial's over
23 except when you came to the courtroom. This period
24 could be as long as two weeks, it would be a little
25 bit longer, but it could be a little bit shorter

1 also.

2 Obviously that would create an
3 inconvenience for you as it surely will for all who
4 serve on this jury. Other than that inconvenience,
5 which it will surely cause anybody who would have to
6 serve in this capacity, would that pose a serious
7 risk of danger to your health or well being, or to
8 that of anybody who is dependent upon you if you had
9 to serve in that capacity?

10 A. No, it wouldn't, because it's just the two of us
11 at home.

12 Q. All right. You would be able --

13 A. My husband.

14 Q. Okay. And you would be able to do that?

15 A. If I was chosen.

16 Q. If you were chosen.

17 A. If I was chosen.

18 Q. Thank you so much Ms. Washington. Now, at this
19 time no doubt these folks are going to have some
20 questions for you.

21 A. Okay.

22 Q. So I'm going to just ask you to listen to their
23 questions and answer their questions.

24 THE COURT: And Mr. Bailey.

25

EXAMINATION

1
2 BY MR. BAILEY:

3 Q. I'm Walter Bailey, I'll be representing the
4 State handling the prosecution here. We appreciate
5 you being here so long, I know it's getting late in
6 the day. I need to ask you a few more questions,
7 kind of follow up on what Judge Goodstein has asked
8 you.

9 A. Okay.

10 Q. I'm not going to ask you about this case, Ms.
11 Washington, because you don't know anything about the
12 case, it wouldn't be fair to ask you about it.

13 A. Not at all.

14 Q. But just in general I want to talk to you about
15 the death penalty and ask you whether or not before
16 this week when found out you might be on a jury where
17 the State's seeking the death penalty, had you ever
18 thought about the death penalty?

19 A. No, I have never. But if you do something that
20 you shouldn't do and it come to that, well, so be it.
21 And you do something that you has to be locked up for
22 the rest of your life, so be it because you should
23 know right from wrong.

24 Q. Yes, ma'am. Okay. And I notice from your
25 questionnaire, and you filled out the paperwork and

1 everybody else did too, that you go I think to the
2 Baptist church. You go every week; is that correct?

3 A. Baptist, yes.

4 Q. All right. And do you have any either religious
5 or personal beliefs about the death penalty that you
6 think might have any effect on your ability to sit as
7 a juror in this kind of a case?

8 A. No, I don't think so.

9 Q. Okay.

10 A. No.

11 Q. And you understand from what the judge told you
12 earlier that this is potentially a two-part process
13 where we start out with the guilt phase, the guilt
14 phase is like any other criminal trial where the jury
15 is just concerned with whether or not the State can
16 prove that defendant guilty of what he's charged with
17 beyond a reasonable doubt. And of course if we can't
18 do that, that's the end of the process, we all go
19 home.

20 But on the other hand, if the jury
21 finds that defendant's guilty of murder then we go
22 into the phase two, the penalty phase, where the jury
23 decides what punishment that person ought to get for
24 the crime of murder. They have two choices. Life
25 without parole or the death penalty. There would be

1 additional evidence that would come out, the judge
2 would instruct on the law that applied to the
3 punishment, then the jury decides the punishment not
4 the judge, the jury does. All the judge would do,
5 the judge would order that sentence to be carried out
6 and it would be carried out.

7 So again I'm not going to ask you,
8 Ms. Washington, what you'd do in this case because
9 you hadn't heard the facts, but if those facts were
10 bad enough could you vote for the death penalty
11 knowing that person actually would be executed based
12 on that vote?

13 A. I could.

14 Q. And all 12 jurors have to agree one way or the
15 other, life without parole or the death penalty.

16 A. Okay.

17 Q. If they all agree on the death penalty, there's
18 a piece of paper, a death warrant or death verdict
19 form and each one of those jurors is asked to sign
20 their name to that paper and that would result in
21 that execution taking place at some point in the
22 future. Could you sign your name to a paper like
23 that if you heard the evidence and the other jurors
24 agreed with you that that was the appropriate
25 sentence?

1 A. Yes, I think I could do that.

2 Q. Okay. All right. The other thing the jury
3 would be asked to do if all of them vote for the
4 death penalty, they come out and they announce the
5 verdict, each juror's name is called out one at a
6 time, they would be asked to stand up in open court
7 here, say out loud that was their verdict, still
8 their verdict. Could you do that if that was your
9 verdict?

10 A. Yes, if it come to it I could do that.

11 Q. Ms. Washington, I believe that's all I got.
12 Thank you very much.

13 THE COURT: Thank you, Mr. Bailey.

14 Mr. Cummings.

15 EXAMINATION

16 BY MR. CUMMINGS:

17 Q. Good evening, young lady.

18 A. Good evening.

19 Q. Like Mr. Bailey and Her Honor we would also like
20 to thank you so much for waiting so late on us. That
21 young lady over at the table there is Ms. Marva
22 Hardee-Thomas, both she and I have been Court
23 appointed to represent Mr. Bowman, the gentleman in
24 the white shirt there, ma'am, so he's the gentleman
25 that would be on trial in this case. And my

1 question, and I only have a couple of questions and
2 give you my word on this.

3 A. Okay.

4 Q. You understand there's a basic principle of law
5 that Her Honor would give and that is that no citizen
6 ever has to come into a courtroom and prove
7 themselves innocent and they have the right to remain
8 silent.

9 A. Yes.

10 Q. And you understand that. And until and unless
11 the State proved them guilty beyond a reasonable
12 doubt, they are innocent and presumed innocent
13 always. And you would follow that principle of law
14 by Her Honor?

15 A. That's true.

16 Q. All right. So now the second question, even
17 though the first one was long, was you stated that
18 you had to hear both sides of the story. But you
19 understand that if Her Honor were to tell you that it
20 doesn't have to be two sides of the story, the State
21 has to prove somebody guilty, you would follow the
22 boss's orders, the judge's orders, and you would not
23 hold that against anybody, would you?

24 A. No, but I would like to hear both sides.

25 Q. Yes, ma'am.

Juror 321 Margaret Washington - Examination

1 A. I would like to hear both sides and when I hear
2 both sides then I could --

3 Q. Make an informed decision. I said two questions
4 and I'm going to sit down.

5 MR. CUMMINGS: Beg the Court's indulgence.
6 Thank you.

7 (Mr. Cummings and Ms. Hardee-Thomas conferring
8 with Mr. Bowman.)

9 MR. CUMMINGS: That's all the questions we
10 have of this nice lady. Thank you, Judge.

11 THE COURT: Ms. Washington, let me tell you
12 what I'm going to ask you to do, is I'm going to
13 ask you just to step right outside the courtroom
14 for just a moment to give us just a moment to
15 confer. We will not be long, I promise you.
16 Thank you, Ms. Washington.

17 MS. WASHINGTON: Yes, ma'am.

18 THE COURT: Yes, ma'am. We are going to be
19 talking about you, too.

20 (Whereupon, the prospective juror exits the
21 courtroom.)

22 THE COURT: All right. What says the
23 State?

24 MR. BAILEY: Qualified, Your Honor.

25 THE COURT: What says the defense?

Juror 321 Margaret Washington - Examination

1 MR. CUMMINGS: Statutorily qualified.

2 THE COURT: Thank you.

3 (Whereupon, the prospective juror returns to the
4 courtroom.)

5 THE COURT: Thank you so much for that,
6 Ms. Washington. Let me tell you that you have
7 been found to be qualified as a potential juror
8 in this case. This doesn't mean that you are on
9 the jury yet, it just means that you are a
10 potential juror and you may be selected to serve
11 on this jury.

12 MS. WASHINGTON: Okay.

13 THE COURT: We are hoping to select the
14 jury on Thursday at two o'clock. And while this
15 time might be a little ambitious, if we have to
16 change the time I'm going to call you in plenty
17 of time, I won't call you, the clerk's office
18 will call you in plenty of time.

19 MS. WASHINGTON: Okay.

20 THE COURT: Unless you hear from us we are
21 going to need you back at two o'clock on
22 Thursday. And I know you might need a ride; is
23 that right?

24 MS. WASHINGTON: Yes. Yes.

25 THE COURT: So if you haven't heard from us

1 I want you to call the sheriff's deputy at -- so
2 in plenty of time for them to come get you,
3 okay?

4 MS. WASHINGTON: I certainly will.

5 THE COURT: Let me give you this little
6 piece of paper because that's got some
7 information on that for you. What it does is it
8 just tells you about packing your clothes,
9 bringing your medicine, gives you some telephone
10 numbers that you might need for emergency
11 purposes and just gives you some other
12 information just to share with Mr. Washington
13 and your family or anybody that you wish.

14 Now, please feel free to share that
15 information with anyone that you wish. However,
16 be mindful that you must not discuss this case
17 with anyone or let anybody discuss this case or
18 any aspects with you, or expose yourself to any
19 information about this case from any source,
20 okay?

21 MS. WASHINGTON: Thank you so much.

22 THE COURT: Thank you so much. And I look
23 forward to seeing you on Thursday at two
24 o'clock.

25 MS. WASHINGTON: Thank you so much.

Juror 321 Margaret Washington - Examination

1 THE COURT: Thank you, Ms. Washington. And
2 they're going to take you home. They're waiting
3 on you.

4 MS. WASHINGTON: Thank you again.

5 THE COURT: Thank you, Ms. Washington.
6 (Whereupon, the prospective juror exits the
7 courtroom.)

8 THE COURT: Raymond Dejong, II.
9 (Raymond E. Dejong, II, called as a prospective
10 juror, having previously been duly sworn, is
11 examined as follows:)

12 THE COURT: Hi, Mr. Dejong. For purposes
13 of the record this is Mr. Raymond E. Dejong, II,
14 Juror Number 72.

15 EXAMINATION

16 BY THE COURT:

17 Q. Now, Mr. Dejong, if you will recall you were
18 sworn in yesterday morning along with all the other
19 potential jurors. Do you remember that?

20 A. Yes.

21 Q. And I wanted to just tell you that the oath that
22 you gave yesterday, it remains in effect for this
23 whole process which would include our dialogue today
24 and the answers that you would give today, okay?

25 A. Okay.

1 Q. Now, since we talked with you yesterday, has
2 anyone talked with you about this case or tried to
3 approach you about it or have you inadvertently or
4 otherwise been exposed to any information about this
5 case from any source?

6 A. No.

7 Q. Now, when you were back in the jury room for
8 that really short period that you were back there,
9 Mr. Dejong, did you have an opportunity to look at
10 this list?

11 A. Yes.

12 Q. And this, of course, is the potential witness
13 list. I would ask you whether or not you are related
14 by blood or marriage, or acquainted with, if you have
15 any connection, be it direct or indirect, if you have
16 a personal relationship, casual relationship, or a
17 business relationship with any of the individuals
18 listed on the potential witness list?

19 A. No.

20 Q. All right, sir. Now, Mr. Dejong, yesterday when
21 I had an opportunity to ask some more general
22 questions about this particular case, and those
23 questions were whether or not you had an opinion or
24 you had seen or heard or read anything about this
25 case or whether or not you had a bias or a prejudice

1 for or against either of these parties, I recorded in
2 my notes that you did not indicate that any of those
3 things applied to you.

4 A. Correct.

5 Q. That's right? Since we talked yesterday,
6 anything jog your memory such that you need to
7 respond to these questions?

8 A. No.

9 Q. All right, sir. Now, I do need to ask you some
10 questions, and I want to talk just a moment about the
11 purpose of these questions. First thing I'm going to
12 tell you is nobody wants to invade your privacy, I
13 want to assure you of that. Second thing I want to
14 tell you is that really what we're going to be asking
15 you is to tell us a little bit about your feelings
16 about certain matters, your opinions if you will.
17 And the reason that we're going to be asking you
18 these questions and asking you for your opinions is
19 just to learn a little bit about them, understand a
20 little bit about your opinions to see if your
21 opinions might impact on your jury service and that's
22 the reason for it.

23 Obviously, there are no right or wrong
24 answers to my questions, and obviously your opinions
25 are just as good and just as valid as anyone else's

1 and we are not here for the purpose of challenging
2 your opinions in any regard. Again, we are only here
3 to learn a little bit about them and to see if they
4 would have any impact on your jury service.

5 Now, one of the things that I would
6 want to talk to you about and get your opinion about
7 in a few moments is penalty, specifically the death
8 penalty because that may be an issue in this case.
9 But I want you to understand that the fact that I'm
10 going to be and these lawyers certainly may be
11 talking about penalty at this very early stage is
12 really premature, because the trial hasn't begun and
13 as I said yesterday and I will repeat here today,
14 Mr. Bowman is presumed innocent of these charges and
15 it's so important for you to keep that in mind.

16 Now, these -- the reason that we have
17 to talk about penalty at this point is because, quite
18 frankly, it's the only time that we can talk about
19 penalty, necessarily, before the case begins, before
20 the trial begins.

21 Now, when I ask you these questions I
22 want you to know this: I'm not going to be asking
23 you about this case, this trial. Number one, you
24 don't know anything about this trial; number two, it
25 wouldn't be right to do that to you; number three, it

1 wouldn't be proper. So I'm not going to be asking
2 you any questions about this case. I'm going to be
3 asking you about just criminal trials in general, in
4 the generic sense.

5 Now, I'll begin to do that now. If
6 you were a juror in any criminal case, would you be
7 willing to listen to the law as you were instructed
8 by the judge?

9 A. Yes.

10 Q. Would you be willing to accept that law and
11 apply that law to the facts as you found them to be?

12 A. Yes.

13 Q. Even though you might not particularly like that
14 law, that particular law, or even if you didn't agree
15 with it, if you disagreed with it, would you still be
16 willing to follow the law as you were instructed to
17 do so by the judge?

18 A. Yes.

19 Q. Now, if you were asked to serve in the case of
20 State vs. Mr. Bowman, could you decide this case
21 based solely upon what you hear in this courtroom?
22 And I'll ask that, could you do that?

23 A. Yeah.

24 Q. And disregard anything that you may have heard
25 or seen or read about this case from any source at

1 all, if anything like that should come into your
2 memory? In other words, sometimes with a juror
3 sitting on a trial they'll begin to hear the evidence
4 or the testimony, something will get jogged. So my
5 chance to ask you should that happen to you, would
6 you set that memory aside and decide this case based
7 on the evidence in this courtroom?

8 A. Yes.

9 Q. All right. The law, of course, as I give it to
10 you. Or would you do that in any criminal case?

11 A. Yes.

12 Q. All right. Now, in a criminal case as I'm sure
13 you know and as we talked briefly about yesterday,
14 the State has the burden of proving the guilt of a
15 defendant beyond a reasonable doubt. In other words,
16 a defendant, no defendant, certainly this defendant,
17 has no burden to prove himself or herself innocent.

18 A defendant doesn't have to prove anything. A
19 defendant is presumed innocent under the law, all
20 defendants are presumed innocent under the law, and
21 this defendant, Mr. Bowman, is presumed innocent
22 under the law. Do you understand these ideas?

23 A. Yes.

24 Q. These principles, if you will. Now, if you were
25 a juror in any criminal case, would you be willing to

Juror 72 Raymond E. Dejong, II - Examination

1 listen to the facts and circumstances and the law as
2 you were instructed?

3 A. Yes.

4 Q. And if you were a juror in any criminal case,
5 would you be willing to listen to the evidence, find
6 the facts as you found them to be, apply the law
7 given to you by the Court, and if after having done
8 that, if you were not convinced that the State had
9 proved the guilt of a defendant beyond a reasonable
10 doubt, would you be willing to find that defendant
11 not guilty?

12 A. Yes.

13 Q. In the event, on the other hand, after you
14 listened to the evidence, found the facts as you
15 found them to be, applied the law given to you by the
16 Court, if after you did that you were convinced that
17 the State had proven the guilt of a defendant beyond
18 a reasonable doubt, would you be willing to find that
19 defendant guilty?

20 A. Yes.

21 Q. In other words, would you be willing to listen
22 and to make your decision based upon whether or not
23 you were convinced that a person is guilty or not?

24 A. Yes.

25 Q. Now, most of the time jurors do not concern

1 themselves with the matter of punishment. Most of
2 the time in the criminal courtroom and in the
3 criminal court that is left up to the judge,
4 punishment is left up to the judge. But there is one
5 case in our law when a jury has to deal with the
6 matter of punishment and that is a case like this
7 case. It is in a case where an individual has been
8 charged with the crime of murder and where the State
9 is seeking the death penalty.

10 If an individual in a death penalty
11 case is convicted of the crime of murder, then the
12 same jury that convicted him or her then returns,
13 comes back and in a separate and different proceeding
14 decides the sentence the person would get. There are
15 two choices. One is life imprisonment without the
16 possibility of parole, and the other is the death
17 penalty. The sentence, the penalty, would be
18 determined in that second or sentencing phase of the
19 trial. Do you understand what I'm telling you, this
20 information?

21 A. Yes.

22 Q. Now, you have had a chance to look at this paper
23 which was back there with you in the jury room and I
24 placed it there in case you need to review it. And
25 it essentially describes three types of jurors for

1 you. Do you remember those three types of jurors and
2 what they were?

3 A. Yes.

4 Q. Which of those three types of jurors, three
5 types best, which one of those three types of jurors
6 best describes you?

7 A. Type three.

8 Q. In other words, you would be willing to listen
9 to whatever you might hear and if you thought it was
10 appropriate after you had listened to the evidence,
11 if you thought it was appropriate to sentence someone
12 to death, then you would be able and willing to vote
13 for that sentence?

14 A. Yes.

15 Q. On the other hand, if you thought that the death
16 sentence was not appropriate, or for any other reason
17 that the person ought to receive life imprisonment,
18 you would be able and willing to vote for a sentence
19 of life imprisonment?

20 A. Yes.

21 Q. So you would make up your decision based upon
22 what you would hear in the courtroom?

23 A. Correct.

24 Q. If you were chosen to serve as a juror in this
25 case, you and the other jurors would be housed at

1 county expense locally in a motel during the course
2 of the trial. That's where you would stay until the
3 trial is over except when you come to the courtroom.
4 This period could be as long as two weeks, it could
5 be longer, it could be shorter. Obviously I don't
6 know how the exact duration of what this case will
7 be. And obviously that would create an inconvenience
8 for you as it surely will for all who serve on this
9 jury.

10 Other than the inconvenience which it
11 would cause anybody who would have to serve in this
12 capacity, would that pose a serious risk of danger to
13 your health or well being or to anybody who is
14 dependent upon you if you had to serve in that
15 capacity?

16 A. No, just an inconvenience.

17 Q. I understand that you would be able to do that?

18 A. Able, yes.

19 Q. Knowing that it's inconvenient, knowing that it
20 is a sacrifice I'm well aware.

21 A. Uh-huh (affirmative response).

22 Q. Would you do this for me, Mr. Dejong, no doubt
23 these lawyers will have some questions for you. If
24 you will please respond to their questions.

25 THE COURT: And, Ms. Hardee-Thomas, yes.

1

2

3

EXAMINATION

4 BY MS. HARDEE-THOMAS:

5 Q. Good afternoon, Mr. Dejong. My name is Attorney

6 Marva Hardee-Thomas and I along with Mr. Norbert

7 Cummings was appointed to represent Mr. Marion Bowman

8 in this case. He's seated at the table here.

9 Now, you indicated to the judge that

10 you are a type three juror and that you could impose

11 a life sentence or a death sentence based on the

12 circumstances.

13 A. Correct.

14 Q. Okay. You could sign your name on the dotted

15 line and impose a life sentence?

16 A. Yes.

17 Q. And you could sign your name on the dotted line

18 and impose a death sentence?

19 A. Yes.

20 Q. If the police arrest someone, do you believe

21 that that person is guilty?

22 A. No.

23 Q. Okay. And would you be able to give the

24 defendant a fair trial?

25 A. My opinion, yes.

1 Q. Okay. And would you be able to follow the law
2 as Her Honor gives it to you?

3 A. Yes.

4 Q. Okay.

5 MS. HARDEE-THOMAS: Beg your indulgence,
6 Your Honor.

7 THE COURT: All right.

8 (Ms. Hardee-Thomas and Mr. Cummings conferring
9 with Mr. Bowman.)

10 Q. You indicated in your questionnaire that an
11 immediate family member or close friend had been the
12 victim of a crime.

13 A. Yes.

14 Q. Who was that?

15 A. Myself.

16 Q. Okay. And it was an assault in high school?

17 A. Yes.

18 Q. Would you hold that against anyone with regards
19 to rendering a verdict in this case?

20 A. No.

21 Q. Okay. You also indicated in your questionnaire
22 that you had a bad or negative experience with law
23 enforcement.

24 A. Yes.

25 Q. What was that about?

Juror 72 Raymond E. Dejong, II - Examination

1 A. Every time I get pulled over.

2 Q. Okay. Knowing that, would that render you to
3 make --

4 A. No.

5 Q. -- an impartial decision with regards to
6 anything you may hear?

7 A. No.

8 Q. Okay. That's about it. Thank you very much?

9 THE COURT: Thank you.

10 Mr. Bailey.

11 EXAMINATION

12 BY MR. BAILEY:

13 Q. Mr. Dejong, I'm Walter Bailey, I'll be
14 prosecuting the case for the State. I need to ask
15 you a few more questions. I want to talk to you
16 about the death penalty in general. I'm not going to
17 ask you about this case because you hadn't heard the
18 facts, so just in general before you found out you
19 might be a juror in this kind of a case where the
20 State's seeking the death penalty, had you ever
21 thought about the death penalty?

22 A. Yes.

23 Q. Could you tell us just in your own words, no
24 right or wrong answers, what your thoughts were?

25 A. In my opinion I'm for the death penalty.

1 Q. Okay. And anything particular prompted you to
2 think of the death penalty before you found out about
3 this case here?

4 A. Politics in general.

5 Q. Okay. Now, you understand that we would not
6 even be addressing the death penalty issue unless and
7 until the defendant is found guilty of murder in the
8 first phase of the trial?

9 A. Correct.

10 Q. So just by the way it works anytime a jury is
11 considering life without parole or the death penalty,
12 you're dealing with somebody you've already convicted
13 of murder beyond a reasonable doubt. When that
14 happens you go into the penalty phase, there's
15 additional evidence that comes out, additional
16 instructions on the law from the judge, the jury has
17 two options, life without parole, the death penalty.
18 Whatever the choice is it has to be unanimous, all 12
19 jurors have to agree one way or the other. And
20 whatever that jury's verdict is, the judge is going
21 to carry that sentence out, she will order that to
22 happen, that person either goes to prison for life
23 without parole or they're executed based on that
24 jury's verdict.

25 Now, again I'm not going to ask you

Juror 72 Raymond E. Dejong, II - Examination

1 what you would do if you get picked on this case, you
2 hadn't heard the facts, but if the facts were bad
3 enough would you impose the death penalty knowing
4 that decision actually would be carried out?

5 A. Yes.

6 Q. And on the other hand, if you thought the facts
7 warranted a life sentence, could you vote for a life
8 sentence?

9 A. Yes.

10 Q. Okay. Now, if all 12 jurors vote for the death
11 penalty they're then asked to sign their names to a
12 death verdict form. Could you sign your name to a
13 paper like that knowing that person would eventually
14 be executed?

15 A. Yes.

16 Q. Could you stand up and announce that decision
17 out loud when your name was called if that was your
18 decision?

19 A. Yeah.

20 Q. Okay. Mr. Dejong, that's all I've got. Thank
21 you very much.

22 THE COURT: All right. Mr. Dejong, I'm
23 going to ask you to step outside just a moment
24 so we can talk about you behind your back.

25 MR. DEJONG: Oh, okay.

Juror 72 Raymond E. Dejong, II - Examination

1 THE COURT: We'll be right with you. You
2 will not even have time to sit down.

3 (Whereupon, the prospective juror exits the
4 courtroom.)

5 THE COURT: All right. What says the
6 defense?

7 MS. HARDEE-THOMAS: Qualified, Your Honor.

8 THE COURT: What says the State?

9 MR. BAILEY: Qualified, Your Honor.

10 THE COURT: Thank you. Bring him back in.
11 I find him qualified.

12 (Whereupon, the prospective juror returns to the
13 courtroom.)

14 THE COURT: Mr. Dejong, you can be seated.
15 You've been found to be qualified as a potential
16 juror in the case. And that does not mean that
17 you are a juror yet, it just means that you are
18 a potential juror and may be selected to serve
19 on this jury. We are hoping that we will be
20 able to select the jury on Thursday at two
21 o'clock. Thursday at two o'clock. I'll give
22 you something with that day and time on it.
23 This may be a little ambitious, and if we have
24 to change the time we will call you in plenty of
25 time for you to know that. But unless you hear

Juror 72 Raymond E. Dejong, II - Examination

1 from us, we are asking that you be back in the
2 courtroom at two o'clock on Thursday.

3 And Ms. Etheredge, you want to hand it
4 to him or you want me to hand it to him? This
5 is the sheet for you, Mr. Dejong, that has some
6 instructions to help you get ready for your jury
7 service like packing clothes and bringing your
8 medication that you may need. It tells you
9 where you will be housed during the course of
10 the trial so that you can leave the number with
11 your family so that they can reach you in the
12 event of an emergency. It also has a daytime
13 phone number also in the event that an emergency
14 should arise and they need to contact you.

15 Please feel free to discuss these
16 practical details with anyone that you choose
17 to, your family, folks at work, anyone that you
18 need to. However, please be mindful that you
19 may not, you must not discuss any aspect of this
20 case or allow anyone to discuss this case or any
21 aspects of it with you, and you must not expose
22 yourself to any information about this case from
23 any source. Do you understand these
24 instructions?

25 MR. DEJONG: Yes.

Juror 72 Raymond E. Dejong, II - Examination

1 THE COURT: Mr. Dejong, I look forward to
2 seeing you Thursday at two o'clock.

3 MR. DEJONG: Okay.

4 (Whereupon, the prospective juror exits the
5 courtroom.)

6 THE COURT: All right. Now, counsel,
7 Ms. Graham needs to go over with us the status
8 of the affidavits of non-service which we have
9 received from the sheriff's department so that
10 we can begin to finalize, and hopefully in the
11 morning we will be able to finalize our jury
12 list.

13 THE CLERK: Yes, ma'am.

14 THE COURT: If you will announce or --

15 THE CLERK: Mr. Cummings still has them.

16 THE COURT: Oh, all right. Have you all
17 had an opportunity to review? I don't know why
18 you would have.

19 MS. HARDEE-THOMAS: We only not reviewed,
20 we put them in our booklets. We'll get them
21 out.

22 THE COURT: You need -- are you telling me
23 you need this evening to look at them?

24 MS. HARDEE-THOMAS: Well, no, to get them
25 out of the booklets because we put them in our

1 file.

2 THE COURT: Oh, okay. You need tonight to
3 look at them?

4 MS. HARDEE-THOMAS: No, ma'am.

5 THE COURT: I'm not understanding. I'm
6 sorry.

7 MS. HARDEE-THOMAS: She gave us some
8 statements and we actually put them in our
9 books.

10 THE COURT: Oh, all right.

11 MS. HARDEE-THOMAS: We have them on our
12 statements as, you know, not being here but we
13 need to get them back for the clerk. I did not
14 know they were not our copies.

15 THE COURT: I understand. You did not
16 realize you had the originals. Have you had a
17 chance to review them?

18 MS. HARDEE-THOMAS: Yes, Your Honor, we
19 have.

20 THE COURT: Are there any exceptions to
21 those affidavits?

22 MS. HARDEE-THOMAS: None.

23 THE COURT: No?

24 MS. HARDEE-THOMAS: None.

25 MR. BAILEY: None from the State.

1 THE COURT: None from the State either,
2 very well. I think what we will do then is look
3 to you, Ms. Gram, understanding that there are
4 no objection to the stacks that you got, you
5 received today, and other than this one more
6 juror that you need to talk to us about.

7 THE CLERK: And everybody's aware of it.

8 THE COURT: All right. Then we'll look for
9 hopefully a final inventory tomorrow, final
10 accounting from you regarding our jurors. And
11 you have some information, let me hear from you.

12 THE CLERK: This is a doctor's statement
13 from Mr. John Richardson, I think he was a juror
14 earlier in the week and he has now presented a
15 doctor statement.

16 THE COURT: All right. Have you all had a
17 chance to review this doctor statement?

18 MS. HARDEE-THOMAS: We have, Your Honor.

19 THE COURT: And let me hear from you.

20 MR. CUMMINGS: Defense has no objection.

21 MS. HARDEE-THOMAS: No objection.

22 MR. CUMMINGS: No objection based on the
23 doctor's excuse, Judge.

24 MR. BAILEY: No objection from the State,
25 Your Honor.

1 THE COURT: Very well. Then he will be
2 excused based on his medical condition with
3 consent from both the defense and from the
4 State.

5 All right. Anything further for this
6 evening?

7 MR. BAILEY: Nothing from the State, Your
8 Honor.

9 MR. CUMMINGS: Nothing else from tonight,
10 Judge.

11 THE COURT: Thank all so much, and let me
12 express an appreciation to the court personnel.
13 You all have been great today, I know it's been
14 a long day. Thank you so much for today and I
15 look forward to seeing you in the morning.

16 - - - o0o - - -
17
18
19
20
21
22
23
24
25

2469

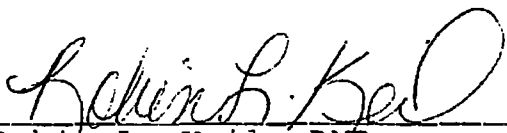
STATE OF SOUTH CAROLINA)
: C E R T I F I C A T E
COUNTY OF DORCHESTER)

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 11th day of August 2003.



Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

2470

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) CASE NO. 01-GS-18-0348, 0349

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME XVII Pages 2470 - 2972
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) JURY SELECTION
MARION BOWMAN, JR.,) May 15, 2002
Defendant.) St. George, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein

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

Walter M. Bailey, Jr., Esquire
Benjamin Lafond, Esquire
B. Harrison Bell, Jr., Esquire
Office of Solicitor
First Judicial Circuit
140 North Main Street, Suite 102
Summerville, SC 29483
For the State of South Carolina

Norbert E. Cummings, Jr., Esquire
Law Office of Norbert E. Cummings, Jr.
100 South Main Street
Summerville, SC 29483

-and-

Marva A. Hardee-Thomas, Esquire
Law Office of Marva A. Hardee-Thomas
130 East Richardson Avenue
Summerville, SC 29483
For Marion Bowman

Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit
Post Office Box 3335
Summerville, SC 29484-3335

I N D E X

<u>WITNESSES</u>	<u>Page</u>	<u>Line</u>
TAMMY J. RUTLAND		
Direct Exam By Mr. Bailey	2476	20
Cross-Exam By Mr. Cummings	2479	2
JUROR 178 EVELYN L. LEWIS		
Examination By The Court	2481	22
Examination By Mr. Bailey	2495	8
Examination By Mr. Cummings	2497	24
JUROR 144 JANICE B. HULL		
Examination By The Court	2504	15
Examination By Mr. Cummings	2521	2
Examination By Mr. Bailey	2531	10
JUROR 185 LIANNE LUISI		
Examination By The Court	2536	19
Examination By Mr. Bailey	2546	20
Examination By Mr. Cummings	2550	2
JUROR 269 EDWARD A. SCOTT		
Examination By The Court	2556	12
JUROR 44 ANTHONY E. CLARK		
Examination By The Court	2561	2
Examination By Mr. Cummings	2578	11
Examination By Mr. Bailey	2585	12
JUROR 70 JONATHAN L. DAVIS		
Examination By The Court	2611	13
Examination By Mr. Cummings	2632	6
Examination By Mr. Bailey	2636	4
Examination By Mr. Cummings	2642	10
Examination By Mr. Bailey	2645	16
Examination By The Court	2646	24
JUROR 202 LORA S. MCDOUGALL		
Examination By The Court	2661	12
Examination By Mr. Bailey	2672	2
Examination By Mr. Cummings	2675	2
JUROR 271 BELINDA H. SHAW		
Examination By The Court	2680	15
JUROR 212 ANTHONY P. MOLLISH		
Examination By The Court	2686	2
Examination By Mr. Bailey	2689	14
Examination By Mr. Cummings	2691	2
Examination By The Court	2697	21
Examination By Mr. Bailey	2706	2
Examination By Mr. Cummings	2708	13
JUROR 243 WANDA A. QUERY		
Examination By The Court	2716	23
Examination By Mr. Cummings	2727	4
Examination By Mr. Bailey	2731	15
JUROR 279 JAMES A. SMALLS		
Examination By The Court	2739	24

Examination By Mr. Cummings	2743	18
JUROR 148 RICKY JASCOMB		
Examination By The Court	2746	2
Examination By Mr. Bailey	2755	15
Examination By Mr. Cummings	2757	8
Examination By The Court	2759	23
Examination By Mr. Bailey	2762	21
Examination By Mr. Cummings	2764	12
JUROR 11 SHERRI L. BARBOUR		
Examination By The Court	2771	3
Examination By Mr. Cummings	2780	2
JUROR 167 CATHY L. KILPATRICK		
Examination By The Court	2789	24
Examination By Mr. Cummings	2804	15
JUROR 239 MARILYN B. PRINE		
Examination By The Court	2815	10
JUROR 16 JANET R. BEST		
Examination By The Court	2825	7
Examination By Mr. Cummings	2837	13
Examination By Mr. Bailey	2842	21
Examination By Mr. Cummings	2850	10
JUROR 234 MICKI LEE PITCHFORD		
Examination By The Court	2853	8
Examination By Mr. Bailey	2865	2
Examination By Mr. Cummings	2868	20
JUROR 199 PRINCESS R. MCCONNELL		
Examination By The Court	2883	11
JUROR 301 SONYA A. THOMPSON		
Examination By The Court	2885	25
Examination By Mr. Cummings	2899	19
Examination By Mr. Bailey	2902	1
JUROR 332 SUSAN WILGOS		
Examination By The Court	2906	18
Examination By Mr. Bailey	2913	6
JUROR 145 DOUGLAS A. HUTTO		
Examination By The Court	2916	19
Examination By Mr. Cummings	2931	19
Examination By Mr. Bailey	2933	6
JUROR 136 JANIE M. HILLIARD		
Examination By The Court	2935	11
Examination By Mr. Bailey	2949	1
Examination By Mr. Cummings	2953	18
JUROR 119 KELLY L. GREENHILL		
Examination By The Court	2961	1
JUROR 313 MARILYN V. VANPATTEN		
Examination By The Court	2964	5

1 (May 15, 2002.)

2 THE COURT: All right. Good morning,
3 everyone.

4 MR. BAILEY: Good morning.

5 THE COURT: And Ms. Graham wants to go over
6 the jury information real quick for us.

7 THE CLERK: Yes, ma'am. These are some
8 returns from the sheriff's department no service
9 and both attorneys has looked at these and
10 consented to them. Juror 306, De Tran; Juror
11 322, Tonya Way; Juror 290, Billie Stewart; Juror
12 1, Reginald Abbitt; Juror 3, Amanda Allen; Juror
13 Number 9, James Avery; Juror Number 47, Teresa
14 Clark; Juror 65, Katheryn Currier; Juror 113,
15 John Gilliard; Juror 117, Paul Graham; Juror
16 118, James Green, Jr.; Juror 150, Jennifer
17 Jenkins, Juror 181 (sic), Jeffrey Looney; Juro
18 214, Patrina Morpew; Juror 218, Nicole Naseem;
19 Juror 220, Karl Neal; and Juror 289, Carol
20 Sterling. These were the no service that Ms.
21 Hardee-Thomas gave back to me. And we have one
22 more. And Juror 290, Brian Mannino.

23 MR. CUMMINGS: That's the one Your Honor's
24 going to deal with, as I understand.

25 THE CLERK: That's right. This is the

1 Columbus, Ohio, that we're going to call in for
2 a contempt hearing in August.

3 THE COURT: What is that gentleman's name?

4 THE CLERK: Brian Mannino.

5 THE COURT: Brian Mannino is not present.
6 Obviously he's not going to be able to serve on
7 the jury, but I have already scheduled a
8 contempt hearing for him because of his conduct
9 to date. But other than Mr. Mannino, my
10 question for you would be do you, in fact,
11 consent, or is there any question regarding the
12 non-service by the sheriff's department?

13 MR. CUMMINGS: Other than Mr. Mannino, no,
14 Your Honor.

15 MS. HARDEE-THOMAS: Nothing from the
16 defense.

17 MR. BAILEY: None from the State, Your
18 Honor.

19 THE COURT: Very well. Those folks will be
20 excused on the basis of non-service. Where does
21 that put us in terms now of our jury panel?

22 THE CLERK: Judge, this morning I'm going
23 to start marking these off, then I'll give you a
24 report at your next break.

25 THE COURT: Thank you so much. Excellent.

1 All right. Anything before we begin
2 this morning?

3 MR. BAILEY: Your Honor, the only thing I
4 can think of is that there was one juror that we
5 mentioned that Mr. Messervy's secretary
6 overheard on a cell phone. I think he's in the
7 10:30 panel, but she's here, she's in the
8 courtroom. I don't know whether you want to
9 hear from her before the juror's called or what.
10 She is here.

11 THE COURT: All right. Counsel, what would
12 be your preference, do you want to go ahead and
13 hear from her so that you'll know what her
14 position is before he's questioned?

15 MR. CUMMINGS: Judge, for lack of time, if
16 this lady wants to come up and testify to what
17 she heard and can identify the juror, I'll do
18 whatever Your Honor's pleasure, I mean it
19 doesn't matter to us. And the only question of
20 course would be in the context. And I know
21 that's for cross, but in the context sometimes
22 it's --

23 THE COURT: Exactly. The only reason I
24 thought that we may want to hear what she has to
25 say is that might better prepare, quite frankly,

1 you all to be able to question if that's
2 appropriate if you decide to do that.

3 MS. HARDEE-THOMAS: That's correct.

4 THE COURT: I think that probably is the
5 way to proceed. All right. Let's call her.

6 MR. BAILEY: Call her now?

7 THE COURT: She just walked in.

8 THE CLERK: Put your left hand on the Bible
9 and raise your right hand, state your full name
10 for the record, please.

11 THE WITNESS: Tammy Jo Rutland.

12 (Tammy J. Rutland, called as a witness, having
13 first been duly sworn, is examined and testifies
14 as follows:)

15 THE CLERK: Have a seat.

16 THE COURT: If you'll state your name for
17 our record, please, ma'am.

18 THE WITNESS: Tammy Jo Rutland.

19 DIRECT EXAMINATION

20 BY MR. BAILEY:

21 Q. Ms. Rutland, where are you employed?

22 A. First circuit solicitor's office, Jim Messervy
23 office, attorney at law.

24 Q. All right. And, Ms. Rutland, were you present
25 at the courthouse Monday of this week?

1 A. Yes, I was.

2 Q. Okay. And at some point Monday did you go
3 outside to smoke a cigarette?

4 A. Yes, I did.

5 Q. All right. And would you state where you were
6 when you went out to smoke a cigarette, this front
7 door, back door?

8 A. I was at the back corridor.

9 Q. Okay.

10 A. I was taking a cigarette out to light it before
11 I went out because it's windy.

12 Q. Okay. What, if anything, occurred as you went
13 outside to light a cigarette?

14 A. There was a juror down there, a gentleman on the
15 cell phone.

16 Q. Okay.

17 A. He made a comment.

18 Q. Before you get to that, how close did you get to
19 him?

20 A. Probably from me to you.

21 Q. All right. And did he have a juror sticker
22 on --

23 A. Yes, he did.

24 Q. -- at that time? All right. And could you
25 describe him?

1 A. Braided hair, probably early to middle 20s,
2 maybe 24, 25, medium height, baggy pants,
3 greenish-white shirt.

4 Q. Black male?

5 A. Yes, he was a black male.

6 Q. All right. And what, if anything, did you
7 overhear?

8 A. I heard him say that "I ain't finding anybody
9 guilty in any case."

10 Q. Okay. And he was saying that into the cell
11 phone?

12 A. To a person on the cell phone.

13 Q. Okay. And did you subsequently observe him in
14 the -- up here, upstairs in the courtroom?

15 A. Yes.

16 Q. Okay. And did you learn his name through
17 process of names being called out by the Court?

18 A. Yes, I did.

19 Q. Okay. Who was it?

20 A. I believe it was Jonathan Davis.

21 Q. All right. Okay. Please answer any questions
22 Mr. Cummings or Ms. Hardee-Thomas may have for you.

23 A. Yes, sir.

24

25

CROSS-EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. Good morning, Ms. Rutland. I don't mean to make
4 this uncomfortable because you and I are professional
5 friends and colleagues; are we not?

6 A. Yes.

7 Q. You normally go out the back door and have your
8 leisure break as a normal course whenever you're up
9 here at the courthouse, correct?

10 A. Correct.

11 Q. So it's not something you did intentionally or
12 something you did based on any representations by law
13 enforcement or any other members of the solicitor's
14 office, correct?

15 A. No, sir.

16 Q. And as you were out there is it normally your
17 practice to stay away from jurors or potential jurors
18 because you are employed by the solicitor's office?

19 A. Yes.

20 Q. All right. When you saw the people wearing the
21 juror buttons, did you move away?

22 A. Well, actually when I first -- he was coming
23 down the hallway in the back, like where the snack
24 machines are.

25 Q. Yes, ma'am.

1 A. And I had stopped there to pull my lighter and a
2 cigarette out to light prior to going out and he was
3 walking up on the cell phone. And as I was going out
4 the back door to smoke he had made that comment. And
5 then I went up and just started talking to a police
6 officer that was outside that I'm familiar with.

7 Q. Okay. Is it fair to say, ma'am, that you did
8 not hear the full context of the conversation, you
9 didn't hear both sides?

10 A. That's correct.

11 Q. And it was just a one-sided -- and how long was
12 that comment for a period of time, how long was it
13 made, seconds?

14 A. A couple seconds.

15 Q. All right. Was it repeated in your presence at
16 any time?

17 A. No.

18 Q. And when Mr. Bailey was asking you about how far
19 away he was to where you were, I'm standing at the
20 end of what we call where madam court reporter is, so
21 in feet would you care to guesstimate the footage
22 here between approximately where I'm standing where
23 Mr. Bailey is or was and I am now to you?

24 A. You mean to approximate?

25 Q. Yes, ma'am. If you would approximate that,

1 please.

2 A. Twelve feet.

3 Q. Okay.

4 A. Ten, 12 feet.

5 Q. Not a trick question, just trying to get it on
6 the record how many feet you were apart.

7 A. Sure.

8 Q. Again, once you heard that you reported it to
9 whom, ma'am?

10 A. Jim Messervy.

11 MR. CUMMINGS: Thank you. That's all the
12 questions I have of this nice lady, Judge.

13 THE COURT: Thank you.

14 MR. BAILEY: No redirect, Your Honor.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Let us have our
17 first juror. That would be Evelyn Lewis.

18 (Evelyn L. Lewis, called as a prospective juror,
19 having previously been duly sworn, is examined
20 as follows:)

21 EXAMINATION

22 BY THE COURT:

23 Q. Good morning, Ms. Lewis.

24 A. Hi, how are you?

25 Q. Fine. How are you?

Juror 178 Evelyn L. Lewis - Examination

1 THE COURT: Now, for purposes of our record
2 this is Ms. Evelyn Lewis, she's Juror Number
3 178.

4 Q. Now, Ms. Lewis, you will recall Monday morning
5 when we were together that you were sworn in along
6 with the other potential jurors. Do you remember
7 that?

8 A. Yes, ma'am.

9 Q. Let me tell you that the oath that you took then
10 still applies to the questions and answers that we
11 will receive from you today, okay?

12 A. Okay.

13 Q. Thank you. Since we talked with you Monday has
14 anyone talked with you about this case or tried to
15 approach you about it, or have you inadvertently or
16 otherwise been exposed to any information about this
17 case?

18 A. No.

19 Q. All right. Now, when you were back in the jury
20 room you were given a sheet that looks like this,
21 it's the potential witness list. And I would ask
22 you, first of all, if you've had an opportunity to
23 review the list?

24 A. Yes, I did.

25 Q. And after having reviewed the list are you

1 related by blood or marriage, acquainted with, or do
2 you have any connection, direct or indirect, are you
3 a casual friend, a personal friend, a business
4 associate and the like of anyone whose name is listed
5 on the potential witness list?

6 A. No.

7 Q. All right. Now, Ms. Lewis, when we spoke on
8 Monday and I asked you some general questions about
9 this case you did not indicate that you had any
10 opinion about this case or that you had read or seen
11 or heard anything about this case, or that you had
12 any bias or prejudice for or against either side in
13 this case; is that right?

14 A. Well, I did hear about it that morning, I read
15 it in the paper.

16 Q. You read about it, the article in the paper?

17 A. Yeah.

18 Q. All right.

19 A. That Monday morning.

20 Q. All right. As a result of that information,
21 Ms. Lewis, do you believe that that information could
22 substantially impair or prevent you from being able
23 to be a juror in this case, and if you were selected
24 as a juror in this case being fair and impartial to
25 both sides?

1 A. It wouldn't make any difference.

2 Q. All right.

3 A. No.

4 Q. Now, has anything else jogged your memory or
5 created anything in your knowledge since we were
6 together Monday that you need to tell me about?

7 A. No. Not that I can think of.

8 Q. All right. Now we need to ask you some
9 questions and I want you to know that we are not
10 trying to invade your privacy.

11 A. Okay.

12 Q. And also let me tell you that what we're trying
13 to do is we're trying to get your feelings about
14 certain matters, trying to get your opinions about
15 them. The reason that we're trying to get your
16 opinions about these certain matters is to find out,
17 understand whether or not your opinions could impact
18 on your jury service. I would tell you there are no
19 right and no wrong answers. And obviously your
20 opinions are just as good and valid as anybody
21 else's, we're not challenging them. We're, quite
22 frankly, just trying to learn a little bit about it,
23 understand a little bit about your opinions --

24 A. Okay.

25 Q. -- to see if they might impact on your jury

1 service.

2 One of the things that I am going ask
3 you about in a few moments is penalty. I need to get
4 your opinion on the death penalty because that may be
5 an issue in this case. But I want you to understand
6 that the fact that I'm going to be asking you about
7 penalty at this early stage is really premature,
8 because the trial hasn't begun and because Mr. Bowman
9 is presumed innocent of these charges. It's just
10 reality that this is the time that I have to
11 necessarily talk with you about penalty before the
12 trial begins.

13 Now, I'm going to be asking you some
14 questions, but I'm going to be asking you these
15 questions in a generic and general sense, because I'm
16 not going to ask you about this case because that
17 wouldn't be fair to you because you don't know
18 anything about this case.

19 A. No.

20 Q. And it would be improper. So the questions that
21 I am going to be asking you are going to be in the
22 generic sense.

23 A. Okay.

24 Q. Now, if you were a juror in any criminal case,
25 would you be willing to listen to the law as you were

1 instructed by the judge?

2 A. Yes.

3 Q. And would you be willing to accept that law
4 given to you by the judge and apply it to the facts
5 as you found them to be?

6 A. Yes.

7 Q. And even though you may not particularly like
8 the law and you might even disagree with it, would
9 you still be willing to listen to the law given to
10 you by the judge and follow the law given to you by
11 the judge?

12 A. Yes.

13 Q. All right. Now, if you were asked, Ms. Lewis,
14 to serve in the case of State vs. Bowman, could you
15 decide this case based solely upon what you would
16 hear in this courtroom?

17 A. I'd have to, yeah. If I heard it, all the facts
18 and everything.

19 Q. Exactly.

20 A. Right.

21 Q. The evidence in this courtroom.

22 A. Right.

23 Q. In other words, would you be willing to decide
24 this case based solely on what you hear in this
25 courtroom and disregard anything that you may have

Juror 178 Evelyn L. Lewis - Examination

1 seen or heard or read about this case from any source
2 at all?

3 A. Yeah.

4 Q. Even if anything like that came into your memory
5 during the trial?

6 A. I would still --

7 Q. Because sometimes, Ms. Lewis, that happens.

8 A. Yeah.

9 Q. Sometimes what happens to folks is that they're
10 sitting on the jury, they'll be listening to the
11 testimony and something will jog their memory. So I
12 got to ask you now if that happened to you, sometimes
13 it does, most of the time it doesn't.

14 A. Yeah.

15 Q. Sometimes it does. If that would happen to you
16 would you set that memory aside, try this case based
17 on the evidence in this courtroom?

18 A. I would go by the evidence.

19 Q. Okay. Now, in a criminal case as we talked a
20 little bit about on Monday, and I'm sure you know the
21 State has the burden of proving the guilt of a
22 defendant beyond a reasonable doubt. The State
23 always has the burden of proving a defendant, any
24 defendant, this defendant, Mr. Bowman, guilty beyond
25 a reasonable doubt. In other words, a defendant

Juror 178 Evelyn L. Lewis - Examination

1 never under our law ever has to prove himself or
2 herself innocent because a defendant under our law is
3 always presumed innocent. They do not have to prove
4 anything, a defendant. Do you understand these
5 principles, these ideas?

6 A. I understand.

7 Q. All right. So if you were a juror in any
8 criminal case would you be willing to listen to the
9 facts and listen to the evidence and the law given to
10 you by the judge?

11 A. Yes.

12 Q. All right. Now, if you were a juror in any
13 criminal case would you be willing to listen to the
14 evidence, find the facts as you would find them to be
15 based on that evidence, apply the law given to you by
16 the judge to the facts as you've found them to be,
17 and in the event that you did not believe, you did
18 not, you were not convinced that the State had proven
19 a defendant guilty beyond a reasonable doubt, would
20 you be willing and able to find that defendant not
21 guilty?

22 A. After all the facts have been presented?

23 Q. Yes, ma'am.

24 A. I don't think so. I mean, if I had all the
25 facts saying, you know, that this person did it.

1 Q. No, no. If you had all the -- if you listened
2 to the evidence.

3 A. Uh-huh (affirmative response).

4 Q. Applied the law to it, and if after you did that
5 that, you were not convinced of the defendant's guilt
6 beyond a reasonable doubt, would you be willing to
7 find that defendant not guilty?

8 A. If just I -- you know.

9 Q. Yes, ma'am.

10 A. I had all of it.

11 Q. You had all of it. You listened to the
12 evidence, you listened to the law and found the facts
13 as you found them to be, you decided what had
14 happened. And after you did that you didn't think
15 that the person had been proven guilty beyond a
16 reasonable doubt, you did not, would you be willing
17 to find that person not guilty?

18 A. Yeah, I guess. Yeah. If I felt that he didn't
19 do it.

20 Q. Yes, ma'am.

21 A. Or she, yes.

22 Q. Yes, ma'am.

23 A. I would, you know, I couldn't do it, I couldn't
24 say they did it.

25 Q. Okay. In other words, would you be -- if you

1 were not convinced, because you understand now the
2 State has the burden of proof.

3 A. Yeah.

4 Q. A defendant doesn't have to prove a thing.

5 A. Yeah.

6 Q. Because they're presumed innocent; do you
7 understand that?

8 A. Uh-huh (affirmative response).

9 Q. But if the State, after you heard everything
10 that you did not believe that the State -- you were
11 not convinced that the State had proven a person
12 guilty beyond a reasonable doubt --

13 A. Then I couldn't say they were guilty, no.

14 Q. All right. You couldn't say they were guilty?

15 A. No.

16 Q. Would you be willing to say they were not
17 guilty?

18 A. Yeah, if I didn't feel, you know.

19 Q. Okay. Okay. And by the same token, if you
20 listened to the evidence, found the facts as you
21 found them to be and applied the law to those facts,
22 if you were convinced that the State had proven a
23 defendant guilty beyond a reasonable doubt would you
24 be willing and able to find the defendant guilty?

25 A. Yes.

1 Q. All right. Now, would then you be willing to
2 listen and make your decision based on whether a
3 person is guilty or not based upon the evidence --
4 let me start over.

5 A. Okay.

6 Q. Let me start over because I don't want to
7 confuse you.

8 Would you be willing to listen and
9 make your decision based upon whether or not you were
10 convinced that a person is guilty or not?

11 A. Yes, I think so.

12 Q. Okay. Now, most of the time, Ms. Lewis, jurors
13 do not concern themselves with the matter of
14 punishment. Most of the time in the criminal court
15 punishment is left up to the judge. But there is one
16 case in our law when a jury has to deal with the
17 matter of punishment, and that is in a case like this
18 one. It is in a case where an individual has been
19 charged with the crime of murder and where the State
20 is seeking the death penalty.

21 Now, if an individual in a death
22 penalty case is convicted by the jury of the crime of
23 murder, then the same jury who convicted that person
24 comes back and in a separate and different proceeding
25 decides the sentence that the person would get. Do

1 you understand this information?

2 A. Uh-huh (affirmative response).

3 Q. All right. There are only two choices. One is
4 life imprisonment without the possibility of parole,
5 the other is the death penalty. The sentence would
6 be determined in a second, or what's called the
7 sentencing phase of the trial. In other words, there
8 are two phases to the trial, maybe. First there's
9 the guilt phase. And if, of course, and only if a
10 defendant is found guilty by all the jurors
11 unanimously then there's the second phase or the
12 sentencing phase where the same jury comes back,
13 hears information, there's a separate proceeding,
14 evidence taken. And based upon that second
15 proceeding or that sentencing phase then the jury
16 deals with and renders its decision regarding
17 sentencing. Do you understand this?

18 A. Yes.

19 Q. Okay. Now, back in the jury room there's also
20 this piece of paper and you will notice essentially
21 that it describes three types of jurors for you. Do
22 you remember seeing this paper?

23 A. Uh-huh (affirmative response).

24 Q. And do you remember the three types of jurors
25 and what they were?

Juror 178 Evelyn L. Lewis - Examination

1 A. Uh-huh (affirmative response).

2 Q. That's a yes?

3 A. Yes. I'm sorry.

4 Q. That's okay. You and I are having a
5 conversation and that's certainly normal.

6 A. Okay.

7 Q. Which of those three types of jurors best
8 describes you?

9 A. The third one.

10 Q. Third one. In other words, you would be willing
11 to listen to the evidence and make your decision
12 based on what you hear in the courtroom?

13 A. Yes.

14 Q. Now, let me ask you this question: If you
15 thought, after listening to the evidence if you
16 thought that the death sentence was appropriate,
17 could you, would you be willing and able to vote for
18 that sentence?

19 A. Yes.

20 Q. And on the other hand, if you thought that
21 sentence was not appropriate, after, of course, you
22 listened to all the evidence if you thought the death
23 sentence was not appropriate, or for any other reason
24 the person ought to receive life imprisonment, would
25 you be able and willing to vote for a sentence of

1 life?

2 A. Yes.

3 Q. All right. So you would make the decision based
4 upon what you hear in the courtroom?

5 A. Yes, ma'am.

6 Q. All right. Now, if you were chosen to serve as
7 a juror in this case, Ms. Lewis, you and the other
8 jurors would be housed at county expense here locally
9 in a motel, the word is sequestered. And you'd have
10 to stay with us until the trial is over except, of
11 course, when you're in the courtroom. This period
12 could be as long as two weeks, it could be longer, it
13 could be shorter. I just don't know the exact
14 duration of the trial.

15 Now, obviously that would create an
16 inconvenience for you as it will surely create an
17 inconvenience for all who serve on this jury. Other
18 than the inconvenience which it would cause anybody
19 who has to serve in this capacity, would that pose a
20 serious risk of danger to your health or well being,
21 or to the health and well being of that -- of anyone
22 who is dependent upon you if you had to serve in this
23 capacity?

24 A. No, it wouldn't.

25 Q. You would be able to do that?

1 A. Yes.

2 Q. Thank you, Ms. Lewis. Now, I'm going to -- in a
3 moment these lawyers I am sure will have questions
4 for you so if you will just listen to their questions
5 and answer their questions.

6 THE COURT: Mr. Bailey.

7 EXAMINATION

8 BY MR. BAILEY:

9 Q. Ms. Lewis, how are you doing? I'm Walter Bailey
10 and I'll be prosecuting this case for the State. I
11 noticed from your questionnaire that you had been on
12 a jury one time in the past; is that correct?

13 A. Uh-huh (affirmative response).

14 Q. Been a good while back?

15 A. Yeah, about five years.

16 Q. All right. Was that a criminal case or a civil
17 case?

18 A. No, civil.

19 Q. Civil, okay. All right. Let me explain just a
20 little bit more about the process we go through
21 because it's potentially a two-part process where we
22 start out with the guilt phase that's like any other
23 criminal trial. And in that part of the trial the
24 State is going to be introducing evidence to convince
25 that jury the defendant's guilty of murder beyond a

1 reasonable doubt.

2 If the defendant's found guilty of
3 murder then we go into the second part of the trial,
4 the penalty phase. And in that part of the trial
5 there would be additional evidence that would come
6 out, additional instructions from the judge that
7 would be geared toward helping that jury determine
8 the appropriate punishment. And as the judge said,
9 there are two choices, the life without parole and
10 the death penalty. Whatever that jury's verdict is
11 all 12 have to agree one way or the other, then the
12 judge would have that sentence carried out and it
13 would be carried out. So that's basically the
14 process we go through.

15 And I'm not going to ask you to
16 predict what you would do if you get picked on this
17 case, you hadn't heard the facts. And you've told
18 Judge Goodstein you would want to wait and hear all
19 those facts before you made up your mind; is that
20 correct?

21 A. Yes.

22 Q. Okay. My question to you is if the facts were
23 bad enough could you vote for the death penalty
24 knowing that that person actually would be executed
25 at some point in the future?

Juror 178 Evelyn L. Lewis - Examination

1 A. Yes.

2 Q. All right. And on the other hand, if you felt
3 like it warranted a life without parole sentence you
4 could also vote for that?

5 A. Yes.

6 Q. Part of a process when the jury deliberates and
7 comes in with a unanimous decision is that there's a
8 death verdict form if they vote for the death penalty
9 in which each juror would be asked to sign their name
10 to that paper. Could you sign that paper along with
11 the other jurors if that was your decision?

12 A. Yes.

13 Q. And if you voted for the death penalty could you
14 come out here, and all the jurors would be sitting in
15 these chairs here, and when your name is called out
16 announce out loud if that was your decision?

17 A. Yes.

18 Q. All right. Ms. Lewis, that's all I have. Thank
19 you very much.

20 A. Thank you.

21 Q. Yes, ma'am.

22 THE COURT: Yes, sir, Mr. Cummings.

23 EXAMINATION

24 BY MR. CUMMINGS:

25 Q. I'm Norb Cummings.

1 A. Hi.

2 Q. The other young lady sitting at the table here
3 is Ms. Marva Hardee-Thomas, she's co-counsel. We're
4 both Court appointed representing Mr. Bowman, this
5 gentleman in the white shirt here, ma'am. I'm going
6 to ask questions. It's going to sound like all we do
7 is repeat each other. Please understand Her Honor's
8 the boss and she'll control the courtroom and protect
9 the jurors, ma'am.

10 When you were talking to Her Honor a
11 few moments ago it appeared you might have been a
12 little bit nervous. Because I get nervous when I
13 have to if she's looking at me, too. And that's
14 understandable. But what would I like to do now, and
15 being the polite lady you are I know you'll grant me
16 the courtesy back of letting me just satisfy a couple
17 questions with you.

18 A. Okay.

19 Q. When Her Honor asked you about the presumption
20 of innocence you understand that is a constitutional
21 basis, that is a fundamental right of every citizen.
22 Ms. Lewis, you would hold that dear to you; would you
23 not?

24 A. Yeah.

25 Q. You also believe that no citizen ever has to

1 come into a courtroom and prove themselves innocent
2 or has to do anything.

3 A. No.

4 Q. And you would not hold that against any citizen,
5 would you?

6 A. No.

7 Q. Okay. Because I think that was part of the
8 colloquy between you and the judge that might have
9 been a little confusing.

10 A. Yeah.

11 Q. I just wanted to make sure I heard you
12 correctly, ma'am.

13 A. Yeah.

14 Q. When we started in here the mere fact that you
15 read something in the paper, would that substantially
16 impair your opinions or cause any reasons to be
17 favoring one side or the other based on what you just
18 read in the newspaper on Monday?

19 A. No.

20 Q. And you understand that's nothing but a
21 newspaper story?

22 A. Exactly.

23 Q. And the indictments that Her Honor held up in
24 here were nothing but mere allegations?

25 A. Right.

1 Q. And you believe -- and, again, you've been a
2 strong lady on this point, that unless you hear
3 things, unless you basically satisfied beyond a
4 reasonable doubt to you, you would do what was right
5 and follow Her Honor's law and set aside anything
6 you've read or anything else you've heard about this
7 case?

8 A. Right.

9 Q. And, again, I thank you for you being forthwith
10 with me, very outright about that. When it comes to
11 somebody being charged with a crime, you wouldn't be
12 the kind of person that would automatically believe
13 if the police arrest somebody they automatically did
14 it?

15 A. Excuse me?

16 Q. You're not the kind of person that if somebody's
17 arrested that they're automatically guilty of what
18 they did?

19 A. No.

20 Q. You would give the benefit of the doubt to
21 anybody according to our law and constitution?

22 A. Right.

23 Q. I know it says you work on Kiawah. I promise
24 you we really read these things everyone fills out,
25 okay? Could you please just share with us what you

1 do on that lovely island?

2 A. I work at Property Management, I keep all the
3 offices and conference centers and stuff like that, I
4 take care of all that.

5 Q. You get to enjoy that nice place?

6 A. Exactly. I love it.

7 Q. Obviously you'll be spending potentially some
8 time up here in the lovely city of St. George. And
9 the reason why we say that now it's not going to
10 cause you inconvenience, you've told Your Honor that
11 and you've told Mr. Bailey that?

12 A. Exactly.

13 Q. Probably the most important question I would ask
14 you is in your heart and in your mind you could be a
15 fair and impartial juror and base your sole decisions
16 along with your other good jurors on what you heard
17 in this courtroom and only what you heard in this
18 courtroom?

19 A. Yes.

20 Q. And follow Her Honor's law?

21 A. Yes.

22 MR. CUMMINGS: Beg the Court's indulgence,
23 Judge.

24 THE COURT: Surely.

25 (Mr. Cummings and Ms. Hardee-Thomas conferring

1 with Mr. Bowman.)

2 MR. CUMMINGS: Judge, that's all the
3 questions we have of this nice lady. Thank you,
4 Judge.

5 THE COURT: Thank you so much.

6 Ms. Lewis, let me tell you what I'm
7 going to ask you to do. I'm going to ask you to
8 step outside the courtroom for just -- you're
9 not going to have time to sit down.

10 MS. LEWIS: Okay.

11 THE COURT: Yeah. So we can talk about
12 you.

13 MS. LEWIS: Okay.

14 (Whereupon, the prospective juror exits the
15 courtroom.)

16 THE COURT: What says the State?

17 MR. BAILEY: Qualified, Your Honor.

18 THE COURT: What says the defense?

19 MR. CUMMINGS: Statutorily qualified, Your
20 Honor, based on those questions.

21 (Whereupon, the prospective juror returns to the
22 courtroom.)

23 THE COURT: I told you it wasn't going to
24 be long. Ms. Lewis, you have been found to be
25 qualified as a potential juror in this case.

Juror 178 Evelyn L. Lewis - Examination

1 This does not mean that you are on the jury yet,
2 but it does mean that you are a potential juror
3 and you may be selected to serve on this jury.
4 We are hoping that we will be able to select the
5 jury on Thursday at two o'clock, Thursday at
6 2:00. It may be a little ambitious. And if we
7 need to change the time, that's got the time
8 there for you, we will call you back and let you
9 know.

10 MS. LEWIS: So I need to be here at 2:00?

11 THE COURT: At two o'clock on Thursday.
12 Now, I've just given you a sheet of paper and
13 that contains some information to help you get
14 ready for your jury service.

15 MS. LEWIS: Okay.

16 THE COURT: Like packing your clothes that
17 you're going to need, bringing any medications,
18 it's got the emergency numbers for the daytime
19 and the nighttime, tells you where you will be
20 and gives you some other information. Feel free
21 to discuss this information with whomever you
22 may need to, family, job, that sort of thing.
23 However, be mindful that you must not discuss
24 this case or any aspect of this case, or allow
25 anyone to discuss this case or any aspect of it

Juror 178 Evelyn L. Lewis - Examination

1 with you. Do you understand this information?

2 MS. LEWIS: Yes.

3 THE COURT: And know that I look forward to
4 seeing you Thursday at 2:00.

5 MS. LEWIS: Okay.

6 THE COURT: Thanks, Ms. Lewis.

7 MS. LEWIS: Thank you.

8 (Whereupon, the prospective juror exits the
9 courtroom.)

10 THE COURT: Janice Hull.

11 (Janice B. Hull, called as a prospective juror,
12 having previously been duly sworn, is examined
13 as follows:)

14 EXAMINATION

15 BY THE COURT:

16 Q. Good morning, Ms. Hull.

17 A. Hi.

18 Q. How are you?

19 A. I'm fine.

20 Q. Good.

21 THE COURT: This is Ms. Janice Hull, who is
22 Juror Number 144.

23 Q. Now, Ms. Hull, if you will recall when we were
24 together Monday, it seems a long time ago now, but
25 when we were together Monday you were sworn in with

1 all the other potential jurors. Do remember that?

2 A. Yes.

3 Q. All right. I just wanted to share with you that
4 the oath that you took on Monday still applies to
5 this process and it would apply to the -- to the
6 answers that you will share with us and the question
7 and answering that we will do this morning for a few
8 moments, okay?

9 A. Okay.

10 Q. All right. Now, since we talked with you on
11 Monday has anybody talked to you or tried to approach
12 you, or have you inadvertently or otherwise received
13 any information, been exposed to any information
14 about this case?

15 A. I looked at the paper, you know, the headlines
16 in the paper the day I was -- Monday, and I saw that
17 it said something about jury selection.

18 Q. All right.

19 A. And I recognized the name, but I didn't read the
20 article.

21 Q. All right. Then when you recognized it you went
22 on to something else. Very well. I think then you
23 well followed the instructions of the Court, so thank
24 you for that.

25 Now, when you were back in the jury

1 room, Ms. Hull, there was this sheet of paper. I
2 just hand it to you in case you need to refer to it,
3 the potential witness list. I, first of all, ask you
4 did you have a chance to look at the list?

5 A. Yes.

6 Q. All right. With regards to each and every name
7 on that list, each and every person on that list, are
8 you related by blood or marriage, acquainted with, or
9 do you have any direct or indirect connection with
10 anyone, are you a casual friend, a personal friend,
11 any sort of business associate, are you connected
12 with any of these folks in any regard?

13 A. No.

14 Q. Very well. Now, when we talked on Monday my
15 notes indicate that you mentioned that you had some
16 affiliation with defense counsel, Ms. Hull; is that
17 right?

18 A. Well, I have worked for a dentist that
19 Ms. Thomas --

20 Q. I understand. In other words, you worked for a
21 dentist and she used to come to the dentist.

22 A. Yes.

23 Q. I got you. Professional acquaintanceship, I
24 guess?

25 A. And I do know some of Dr. -- I mean --

Juror 144 Janice B. Hull - Examination

1 Q. You did work for a dentist?

2 A. Mr. Lafond's family, but....

3 Q. Because he has family members who are in the
4 dental field; is that right?

5 A. Right.

6 Q. Okay.

7 A. Or his sister-in-law.

8 Q. Okay.

9 A. And brother.

10 Q. Brother. Because his brother is an...?

11 A. Oral surgeon.

12 Q. I was going to say super dentist, an oral
13 surgeon. Tell me, let me ask you this question: Are
14 you currently working in the dental field?

15 A. I am with a periodontist now. That's just right
16 across the street from where I was.

17 Q. All right. Where did you used to work?

18 A. I worked for Dr. Andrews, then I worked for
19 Randall & Hafner.

20 Q. Yeah.

21 A. And then now I work for Dr. --

22 Q. Let me talk to you like this then, all right.
23 Now, how long -- let me ask you this question with
24 regards to Ms. Hardee-Thomas. You would just see her
25 when she would come in for appointments?

Juror 144 Janice B. Hull - Examination

1 A. Uh-huh (affirmative response).

2 Q. Who was the dentist?

3 A. Dr. Hafner. I was her assistant.

4 Q. I'm with you. And do you know Mr. Lafond and
5 his family by virtue of his family's -- his brother I
6 think as you've indicated is an oral surgeon?

7 A. I have met his family and I go to the church
8 that they belong to.

9 Q. That they attend, all right. And is that his
10 family, or Mr. Lafond, or everybody?

11 A. What do you mean?

12 Q. Does the whole family go there, do you know? Do
13 you see Mr. Lafond there?

14 A. I haven't seen him there. I've seen his
15 sister-in-law.

16 Q. You'll be telling on him.

17 A. And I worked with his other sister-in-law.

18 Q. Okay. You worked with his other --

19 A. For a short time when she was a hygienist at Dr.
20 Andrews'.

21 Q. I got you. I understand. As a result of
22 knowing those, these folks, and let me just describe
23 it sounds to me like it is an acquaintanceship, a
24 professional acquaintanceship certainly with Ms.
25 Hardee-Thomas and with regard to Mr. Lafond's family

1 personal acquaintanceship, casual acquaintanceship
2 and personal acquaintanceship. Is that a fair
3 description?

4 A. I would say casual.

5 Q. Casual. Y'all don't visit in each other's
6 homes?

7 A. No.

8 Q. All right. Would those relationships in any way
9 impair your ability to be fair and impartial to the
10 State and to Mr. Bowman?

11 A. I don't think so.

12 Q. Can you set that relationship, those
13 relationships completely aside and try this case
14 based on the evidence in this courtroom and the law
15 as I will give it to you?

16 A. I think I could.

17 Q. And you're satisfied that you could?

18 A. Uh-huh (affirmative response).

19 Q. Do you have any question about that?

20 A. No.

21 Q. No, all right. Now, other than the affiliation
22 which you had with defense counsel, you've told me
23 about Mr. Lafond, other than those affiliations my
24 notes reflect that you did not indicate that you had
25 any opinion about this case, or that you had any bias

1 or prejudice for or against either of these parties
2 because you didn't indicate that those things applied
3 to you on Monday.

4 Has anything jogged your memory, come
5 into your mind that would indicate to you that you
6 need to change those responses?

7 A. No. I mean, I may have read something in the
8 past. I mean, the names sort of sounded familiar.

9 Q. Okay.

10 A. So I can't say that I haven't read anything
11 about the case --

12 Q. Okay.

13 A. -- when it happened or whatever, but I don't
14 remember any of the details.

15 Q. Let me ask you this question: If you were
16 selected to serve on this jury, State vs. Mr. Bowman,
17 would you be willing and could you decide this case
18 based upon the evidence in this courtroom, setting
19 aside anything that you have read or heard or seen
20 about this case even if, even if something that was
21 said during the trial jogged a memory, could you set
22 that completely aside, disregard that memory, and try
23 this case based on this evidence, on the evidence in
24 this courtroom?

25 A. I think so.

1 Q. Okay. Do you have any question in your mind
2 that you would be unable to do that?

3 A. No, I don't think.

4 Q. All right. So far as you are concerned you
5 believe that you would be able to do that?

6 A. I think so.

7 Q. Because this is kind of my chance to know that.
8 Do you know what I'm saying? Are you satisfied that
9 you would, in fact, be able to listen to the evidence
10 in this courtroom, listen to my charge on the law and
11 render a verdict based upon that unaffected by
12 anything that you may have heard or read or seen
13 about this case?

14 A. I hope so. I mean, I think I could.

15 Q. You think you could, okay. All right. Do you
16 want to share with us any concerns that you have
17 about that?

18 A. No. I just think it's one of those things that
19 you don't really know until you're in that position.

20 Q. Okay.

21 A. I mean, you might say I would do this in this
22 situation, but I don't think you know unless you're,
23 you know, confronted with that.

24 Q. Okay.

25 A. I mean, it would just be hard to say.

1 Q. You think it would be hard to say? In other
2 words, is it hard to say that I will listen to all
3 the evidence, I will listen to everything that
4 everyone has to say, or anybody has to say? We're
5 going to talk a little bit about that.

6 A. Oh, no. I mean, I don't think it will be hard
7 to say that.

8 Q. I'll make the decision based upon that.

9 A. Try to be.

10 Q. The fact that I may have read something or heard
11 something or seen something, I'm going to put that
12 aside because I'm going to make my decision based on
13 what I see and what I hear in this courtroom. Is
14 that difficult for you to do?

15 A. No.

16 Q. Okay.

17 A. No.

18 Q. All right. Very well. Now, I need to ask you
19 some other questions.

20 A. Okay.

21 Q. But I want to tell you I am not asking these
22 questions for the purpose of invading your privacy.
23 And I want to tell you the whole purpose of asking
24 these questions, just as we've been doing, is to get
25 your feelings about certain matters, get your

1 opinions about certain matters. And I want to tell
2 you that the reason that we're doing that, we'll be
3 asking you about your opinions, is to see if your
4 opinions might impact on your jury service, that's
5 the whole purpose.

6 A. Okay.

7 Q. Obviously your opinions are just as good and
8 just as valid as anybody's else's, obviously there
9 aren't any right or wrong answers, and obviously
10 we're not challenging your opinions in the least. We
11 are simply trying to understand them a little bit so
12 that we can see if they might impact on your jury
13 service. And that's this whole purpose.

14 Now, in a few moments I'm going to be
15 asking you about penalty, and specifically the death
16 penalty. And I want you to know that the mere fact
17 that I'm talking about penalty at this point is real
18 premature, the trial hasn't even begun --

19 A. Uh-huh (affirmative response).

20 Q. -- at this point. And as I said yesterday and I
21 will tell you now and I'll even talk about it in a
22 little bit, Mr. Bowman is presumed innocent of these
23 charges. And I want you to remember that. It's just
24 that this is the opportunity for me to ask
25 prospective jurors about penalty before the case.

1 begins. So I am truly putting the cart before the
2 horse which is why it's real important that as I ask
3 you these questions that you remember that I'm asking
4 these prematurely, but I have to. And keep in your
5 mind that Mr. Bowman is presumed innocent of these
6 charges.

7 All right. Now, I'm also going to be
8 asking you questions and I'm going to be asking them
9 in the generic sense. Because it wouldn't be fair
10 for me to ask you about this case because you don't
11 know anything about this case or you haven't heard
12 any facts, you haven't heard any evidence. And that
13 would be improper and as well as unfair. So I'm not
14 going to be asking you about this case, I'm going to
15 be asking you in a generic general sense.

16 And I would ask you to that end if you
17 were a juror in any criminal case, would you be
18 willing to listen to the law as you're instructed by
19 the judge?

20 A. Yes.

21 Q. And would you be willing to accept that law and
22 apply the law given to you by the judge to the facts
23 as you found them to be?

24 A. Yes.

25 Q. That's a yes?

1 A. Yes.

2 Q. I can hear you just fine, but I'm a little bit
3 worried about Ms. Hardee-Thomas over there and a
4 little bit worried about Mr. Lafond.

5 A. Okay.

6 Q. All right. Now, and would you be willing to do
7 that even if you didn't particularly like that
8 little -- that part of the law or if you completely
9 disagreed with it, would you still be willing to
10 follow the law as you were instructed to by the
11 judge?

12 A. Yes.

13 Q. All right. Now, in a criminal case, as I am
14 sure you know, we talked a little bit about it on
15 Monday, but I want to reiterate it now, the State
16 always, always has the burden of proving the
17 defendant -- the guilt, proving the guilt of a
18 defendant, and this defendant, all defendants in
19 criminal cases beyond a reasonable doubt. Remember
20 that? Remember hearing about that? Probably had it
21 in civics. Remember we talked about that on Monday?

22 A. Yes.

23 Q. And do you understand that?

24 A. Yes.

25 Q. And do you also understand that a defendant, no

1 defendant, and Mr. Bowman, never has to prove himself
2 or herself innocent. You understand that as well?

3 A. Yes.

4 Q. They don't have to prove anything. You
5 understand that?

6 A. Yes.

7 Q. A defendant, all defendants, and Mr. Bowman,
8 clearly all defendants under our law are presumed
9 innocent. Do you understand that as well?

10 A. Yes.

11 Q. All right. So if you were a juror in any
12 criminal case would you be willing to listen to the
13 evidence and the law as you were instructed?

14 A. Yes.

15 Q. All right. And if you were a juror in any
16 criminal case, and you're a juror, would you listen
17 to the evidence, and after you'd listened to the
18 evidence if you found the facts as you found them to
19 be, you applied the law to those facts, and when you
20 did that if you were not convinced that the State had
21 proven the guilt of a defendant beyond a reasonable
22 doubt, would you be willing to find and able to find
23 that defendant not guilty?

24 A. Yes.

25 Q. On the other hand, if you were a juror in a

1 criminal case, any criminal case, listened to the
2 evidence and found the facts as you found them to be,
3 applied the law to those facts, if you were convinced
4 the State had proven the guilt of a defendant beyond
5 a reasonable doubt, would you be able and willing to
6 find that defendant guilty?

7 A. Yes.

8 Q. In other words, would you be willing to listen
9 and to make your decision based upon whether or not
10 you were convinced that a person is guilty or not?

11 A. Yes.

12 Q. Now, Ms. Hull, most of the time, most of the
13 time jurors do not concern themselves with the issue
14 of punishment. Most of the time, particularly in
15 criminal court, that's left up to the judge. But
16 there is one case in our law when a jury has to deal
17 with the issue of punishment, the matter of
18 punishment. And that's a case like this case. It's
19 in a case where an individual has been charged with
20 the crime of murder and where the State is seeking
21 the death penalty.

22 If an individual in such a case, it's
23 called a death penalty case, if an individual in a
24 death penalty case is convicted, which means he is
25 found guilty by 12 people unanimously beyond a

1 reasonable doubt and he's found -- he or she is found
2 guilty of the crime of murder, then that same jury
3 that convicted the person comes back in a different
4 proceeding. And in that separate and different
5 proceeding they hear other information, other
6 testimony, other evidence and decide the sentence for
7 that person.

8 There are two choices. One, life
9 imprisonment without the possibility of parole, and
10 the other is the death penalty. The decision
11 regarding sentencing, punishment, is determined in
12 that second, or as it's called the sentencing phase
13 of the trial. Do you understand this information?

14 A. Yes.

15 Q. Now, there was another piece of paper in the
16 jury room. Did you have a chance to look at that?

17 A. Yes.

18 Q. All right. And it describes three types of
19 jurors essentially on this piece of paper. Do you
20 recall that?

21 A. Yes.

22 Q. All right. Which of those three types of jurors
23 best describes you?

24 A. Type three.

25 Q. All right. By that you would be willing to

1 listen to whatever information was provided, and
2 listen to it, and after you had heard all the
3 evidence you would then make up your mind?

4 A. Yes.

5 Q. And if you thought that it was appropriate that
6 someone be sentenced to death based upon everything
7 that you heard, would you be willing and able to vote
8 for a sentence of death?

9 A. I think so.

10 Q. And if you thought that the death sentence was
11 not appropriate, or for any other reason the person
12 ought to receive life imprisonment, would you be able
13 and willing to vote for a sentence of life
14 imprisonment?

15 A. Yes.

16 Q. All right. So you would make up your mind, you
17 would make your decision based upon what you heard in
18 the courtroom?

19 A. Yes.

20 Q. All right. Now, if you were chosen, Ms. Hull,
21 to serve as a juror in this case, you and the other
22 jurors would be housed in a motel here in St. George,
23 the word is sequestered, obviously at county expense.
24 And you would have to stay here with us until the
25 trial is over, of course except when you're in the

1 courtroom. This period could last up to two weeks or
2 longer, but it could be shorter as well. I just
3 don't know the exact duration that the trial will
4 take.

5 Obviously that would create an
6 inconvenience for you as it will all who serve on
7 this jury. Other than the inconvenience which it
8 will no doubt cause anybody who will have to serve in
9 this capacity, would that pose a serious risk of
10 danger to your health or well being, or to the health
11 or well being of anyone who is dependent upon you if
12 you had to serve in that capacity?

13 A. I don't think so. I mean, my employer wouldn't
14 be too happy I don't think, but....

15 Q. Yeah, all right. You would think you would be
16 able to do that?

17 A. Health wise, no.

18 Q. All right. Very well. Thank you. I'm going to
19 ask if these counsel, these lawyers have any
20 questions for you. And I think that they -- I'm
21 confident that they will, so I'll ask that you answer
22 their questions.

23 THE COURT: Mr. Cummings, Ms.

24 Hardee-Thomas.

25

EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. Good morning, Ms. Hull, I'm Norb Cummings. The
4 other young lady sitting at the table I think you
5 know in some capacity in your good work, Ms. Marva
6 Hardee-Thomas. I was going to ask if she was a good
7 patient or not. You got a chance now.

8 A. She is.

9 Q. You're being very polite and I'm just trying to
10 break the ice a little bit. And that's Mr. Marion
11 Bowman, ma'am, sitting in the chair in the white
12 shirt.

13 Ms. Hull, the very first thing is
14 please understand there's no right or wrong answers
15 here. And I know you know a lot of professional
16 people here in the room and you know them and live in
17 the same community. And that's one of the blessings
18 that we have about living in our area where we live,
19 we do have friendships, we know each other, we're all
20 colleagues.

21 I know when you first answered the
22 jury summons as part of your civic duty that you put
23 in there asking to be excused because of work-related
24 issues for Dr. Common at that point; is that correct,
25 ma'am?

1 A. Yes.

2 Q. And I know in there also -- I promise you we
3 really read these things. You asked to have your
4 service transferred to at least until after the 27th
5 when you would be off for a week. And Her Honor,
6 and, again, she's the boss, and when she asked you
7 the questions about it I know that you were very
8 polite and very kind in doing your civic duty and
9 said that this would not be a hardship on you; is
10 that correct?

11 A. I don't think so.

12 Q. Okay. And that's why we tried to ask you the
13 questions here, because as you know, any citizen that
14 comes into the courtroom they are asking those
15 jurors, the jury of their peers, to give them a fair
16 and impartial trial. And I know you take your civic
17 duty very responsible.

18 A. (Nodding.)

19 Q. She can't take that head nod down, I'm sorry. I
20 know you're answering yes.

21 A. Yes.

22 Q. That just happens --

23 THE COURT: May I just explain that to you?

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: What happens is that we end up

1 in conversation.

2 MS. HULL: Right.

3 THE COURT: And Mr. Cummings is now in
4 conversation with you. He knows exactly what
5 you mean with a nod of the head as did I.

6 MS. HULL: I thought he was just making a
7 statement, I didn't know I was supposed to
8 respond.

9 THE COURT: Well, that's all right. And
10 what happens is, is that Ms. Keil will be taking
11 down what it says is affirmative nod.

12 MS. HULL: Okay.

13 THE COURT: And what I think is probably
14 better is rather than having Ms. Keil who most
15 probably would interpret your head nod
16 correctly, it's always better for folks to say
17 yes and no.

18 MS. HULL: Okay.

19 THE COURT: That way we keep Ms. Keil out
20 of the interpretation process.

21 MR. CUMMINGS: Thank you, Your Honor.

22 Q. The reason I asked that, ma'am, that would not
23 cause you an economic hardship, missing work, would
24 that?

25 A. No.

1 Q. Okay. And then, again, this is where we ask
2 some questions and they may tend to appear to be
3 invading your privacy, but we only have this
4 opportunity to speak to you good folks and to try to
5 make sure that every citizen gets that fair and
6 impartial trial, ma'am.

7 A. Okay.

8 Q. I notice you stated on the last page there's a
9 family member that has -- is in need of nursing care
10 or some help if I'm not in error. My mother was a
11 homemaker and you explained it to me --

12 A. Oh, the parents.

13 Q. I don't want to put words in your mouth.

14 A. I can't remember what it was.

15 Q. Okay.

16 A. What the question was on the last page.

17 Q. I'm sorry, ma'am.

18 THE COURT: Let me just get it for her.

19 MR. CUMMINGS: Good.

20 THE COURT: There you go. It's on the last
21 page?

22 MR. CUMMINGS: Yes, ma'am.

23 THE COURT: Okay. Here you go.

24 A. Oh, I think I was just expounding on what I
25 didn't have room for.

1 Q. Yes, ma'am. The family situation.

2 A. I think that was just when you were asking about
3 what your parents did.

4 Q. Yes, ma'am.

5 A. No, there's no hardship.

6 Q. Okay. And there's nobody in any nursing
7 facility? I know that your father had passed away --

8 A. No.

9 Q. -- in January.

10 A. Right.

11 Q. I didn't know if your mom being alone would
12 cause a hardship on you.

13 A. No. She's with my sister in Georgia.

14 Q. Thank you, Ms. Hull. Thank you for sharing it
15 with us. And then there's a question, as you're
16 holding that question number 42 that, again, is very
17 personal and I ask your kindness in the next colloquy
18 that you and I will have here in a moment.

19 A. Okay.

20 Q. Yes, ma'am. If you were ever sitting on a jury
21 in any kind of criminal case and you heard anything
22 about some sort of abusive nature, would you be able
23 to set aside that fact and what happened back --
24 whatever happened in your young life so that it would
25 not substantially impact you in being a fair and

1 impartial juror on any citizen who might have to
2 answer to those mirror allegations?

3 A. I don't think that would sway my opinion.

4 Q. Yes, ma'am. You understand why we have asked
5 that question?

6 A. Yes.

7 Q. Make sure there's no biases or prejudices.

8 A. No.

9 Q. Any deep-felt things that you cannot set aside.
10 And I thank you as the lady that you are for telling
11 me that. You also, according to your questionnaire,
12 donate money to a lot of agencies and a lot of
13 charities. It says in here you give to Mothers
14 Against Drunk Drivers.

15 A. Yes.

16 Q. Okay.

17 A. Well, I haven't recently, but I have in the
18 past.

19 Q. Yes, ma'am. Would that fact alone, or the fact
20 that you contribute to -- and there's two, at least
21 two organizations in here that deal with law
22 enforcement, the other is the Fraternal Order of
23 Police, would the fact that you contribute to those
24 agencies cause you any reason to hesitate or
25 substantially impair your decisions to render a fair

1 and impartial verdict in a courtroom in here, the
2 fact that you were helping an agency that either
3 combats crime or stops driving while intoxicated or
4 DUI?

5 A. No. I don't think that would sway my opinion.

6 Q. Yes, ma'am. And I think there was one other
7 issue in here that I guess sometime in Chattanooga,
8 Tennessee, your mom and dad's home was burglarized or
9 vandalized?

10 A. Yes.

11 Q. And, again, that would not cause you any
12 substantial impairment to your decision process in
13 here to be a fair and impartial juror?

14 A. No.

15 Q. And it happened a long, long time ago?

16 A. Quite a while. I mean, I didn't live with them
17 when it happened.

18 Q. Yes, ma'am. I thank you, ma'am.

19 MR. CUMMINGS: If you'll beg the Court's
20 indulgence I'll just....

21 THE COURT: Sure.

22 (Mr. Cummings and Ms. Hardee-Thomas conferring
23 with Mr. Bowman.)

24 Q. Ms. Hull, just a couple more. And, again, I'm
25 not trying to be stretching this out. You were very

1 kind and very polite in answering Her Honor's
2 questions about somewhere saying you're not sure or
3 you think you can. And that's what happens out here
4 and why we talk to good people like you, because
5 you've been very frank and very forthwith with your
6 answers. And it's kind of hard for jury service and
7 everybody in the room understands that.

8 Would the mere fact that you know
9 Mr. Lafond's family, and I'm sure your doctor makes
10 referrals probably, or they get referrals from other
11 people, would that fact at all substantially impact
12 your ability to sit as a fair and impartial juror?

13 A. No.

14 Q. And I know that in question number 45, which is
15 a very complicated question, and it says, "Do you
16 feel that the community opinion and peer pressure
17 would have an effect on your ability to be
18 impartial?" And your answer was "I don't honestly
19 know."

20 And that's basically the same kind of
21 answer that you stated for Her Honor a little while
22 ago if I'm not mistaken, ma'am.

23 A. Well, I mean, we're not supposed to be reading
24 anything or listening to anything.

25 Q. Yes, ma'am.

1 A. So I would say, no, it wouldn't affect my
2 opinion.

3 Q. Okay. All right. And then on the next page
4 continuing with the same question, 45, it says, "Do
5 you feel that the fact you will have to return to
6 work and live in the community after rendering a
7 decision will have an affect on your ability to be
8 impartial?" And I believe your words were "Not
9 really sure."

10 Could you just expound on that, ma'am?
11 If you had to sit as a juror on this case would that
12 cause you any concern or any harm in particular in
13 the way you answered that question back on the
14 questionnaire?

15 A. I guess what I was thinking of was if it was
16 going to be public knowledge who the jurors were on
17 this case.

18 Q. I'll let Her Honor address the juror issues, but
19 if I were to tell you that this is a public courtroom
20 as you well know, and we don't close the doors for
21 any reason because we want the whole world to see how
22 we do justice, and meaning the State and the defense
23 and Her Honor's protection, if I told you as an
24 officer of the Court that Her Honor protects the
25 jurors utmost, that is the utmost thing that she will

Juror 144 Janice B. Hull - Examination

1 do in here, and render a fair and impartial trial by
2 the law, would that satisfy you in your jury service?

3 A. Yes.

4 Q. Now, as you know this is public and there's
5 already been some press about this. Would that cause
6 you some concern in being a juror now that there may
7 be press coverage of this, again, with Her Honor's
8 protection, ma'am?

9 A. No. I don't think that would.

10 Q. Okay. So that would not have a substantial
11 impact on you being a juror in this case and render a
12 fair and impartial --

13 A. No.

14 Q. Okay. And then the next question "Do you feel
15 that the media presence in this community will have
16 an effect on you?" You did state "No."

17 A. I did.

18 Q. Okay. And then the last one "Do you feel that
19 the high publicity surrounding this case will have an
20 effect on your ability to be impartial?" And you
21 politely stated "I don't know."

22 A. Well, as I said a minute ago, if I'm not
23 supposed to be reading or listening or hearing
24 anything about the case if I was on the jury, then I
25 would say that I wouldn't know about the publicity.

1 Q. Yes, ma'am. And there would be no effect after
2 your jury service?

3 A. No.

4 Q. Thank you.

5 MR. CUMMINGS: That's all the questions we
6 have of this nice lady. And thank you, Judge.

7 THE COURT: Thank you.

8 Yes, sir, Mr. Bailey.

9 EXAMINATION

10 BY MR. BAILEY:

11 Q. Ms. Hull, I'm Walter Bailey and I'll be
12 prosecuting this case for the State along with
13 Mr. Lafond. I want to ask you a few questions. And
14 my questions I'm going to relate primarily to the
15 death penalty and your thoughts and beliefs on that.
16 When I ask these questions I'm not referring to this
17 case because you hadn't heard the facts, I'm just
18 speaking in general.

19 A. Okay.

20 Q. All right. As you know this is a case where the
21 State is seeking the death penalty, so it's
22 potentially a two-part process. We start out with
23 the guilt phase. That's like any other criminal
24 trial where the State is going to be introducing
25 evidence in an effort to prove to the jury that that

1 defendant is guilty of murder beyond a reasonable
2 doubt.

3 If the jury finds the defendant guilty
4 of murder then we go into phase two, the penalty
5 phase. There would be additional testimony,
6 additional instructions from the judge, then the jury
7 would unanimously decide on one of those two
8 verdicts, life without parole or the death penalty.
9 And whatever that jury's decision, unanimous decision
10 is, the judge will order that decision to be carried
11 out and it will be carried out so that person gets
12 life without parole or will be executed based on the
13 jury's verdict and not on the judge's decision. Do
14 you understand that?

15 A. Yes.

16 Q. All right. And, again, I'm not asking you to
17 predict what you would do in this case, you hadn't
18 heard the facts, but if the facts were bad enough
19 where your opinion had warranted a death penalty,
20 could you vote for the death penalty knowing that
21 that vote along with the other 11 votes would result
22 in that execution actually taking place?

23 A. Yes.

24 Q. All right. If all 12 jurors after hearing the
25 facts and the law unanimously vote for the death

1 penalty, the next thing in the process is that each
2 juror's asked to sign their name to a death verdict
3 form which is going to result in that person being
4 executed at some point in the future. Could you sign
5 your name to a paper like that if that was your
6 decision?

7 A. Yes.

8 Q. The last thing the jury would be involved in,
9 they would come out here and be seated in these
10 chairs out here, the verdict would be announced and
11 then each juror would be asked to stand up when their
12 name is called and say out loud that this was their
13 verdict, if it's still their verdict. Could you do
14 that if it was your verdict?

15 A. Yes.

16 Q. All right. Ms. Hull, that's all I've got.
17 Thank you very much.

18 THE COURT: All right. Let me tell you
19 what we're going to do now, Ms. Hull. I'm going
20 to ask you to step outside the courtroom. And
21 pass me that back. We will not be -- you won't
22 have time to sit down, I don't believe,
23 Ms. Hull.

24 MS. HULL: Okay.

25 THE COURT: Thank you very much. And we'll

1 be with you shortly. And we are going to talk
2 about you behind your back. Thank you,
3 Ms. Hull.

4 (Whereupon, the prospective juror exits the
5 courtroom.)

6 THE COURT: What says defense?

7 MR. CUMMINGS: May it please the Court,
8 Judge. Based on the representations made by
9 this lady, the statements that she's made, the
10 statement that she can be a fair and impartial
11 juror, she's statutorily qualified.

12 THE COURT: Thank you.

13 MR. BAILEY: Qualified, Your Honor.

14 THE COURT: Thank you. Tell her to come
15 back in.

16 (Whereupon, the prospective juror returns to the
17 courtroom.)

18 THE COURT: Ms. Hull, you have been found
19 to be qualified as a potential juror in this
20 case. This does not mean that you are on the
21 jury yet, but it does mean that you are a
22 potential juror and you may be selected to serve
23 on this jury. We are hoping, hoping that we
24 will be able to select this jury Thursday,
25 tomorrow, at two o'clock in the afternoon. And

1 this may be a little bit ambitious. And if we
2 have to change the time we will certainly let
3 you know in plenty of time so that you'll not
4 come up at two o'clock. However, if you do not
5 hear from us, please be back here in the
6 courtroom at two o'clock on Thursday.

7 I'm going to give you a sheet of
8 paper, there you go, that has on that some
9 instructions for you to help you get ready for
10 your jury service, like packing your clothes,
11 bring whatever medications that you might need,
12 it tells you where you will be housed, gives you
13 emergency numbers both for the daytime and for
14 the nighttime, and gives you some other
15 information.

16 Please feel free to share these
17 details with anyone that you choose to, want to.
18 However, be mindful that you must not discuss
19 this case or any aspect of this case with
20 anyone, or allow anyone to discuss this case or
21 any aspect with you. And do not expose yourself
22 to any information about this case from any
23 source at all. Do you understand these
24 instructions?

25 MS. HULL: Tomorrow I'm supposed to do

1 this?

2 THE COURT: Two o'clock. Pack up, be back
3 and ready to go. If your bag is packed and
4 you're not selected to serve on the jury, take a
5 trip.

6 MS. HULL: Go somewhere.

7 THE COURT: Take a trip because you'll be
8 packed.

9 MS. HULL: All right.

10 THE COURT: Thank you, Ms. Hull. I look
11 forward to seeing you tomorrow.
12 (Whereupon, the prospective juror exits the
13 courtroom.)

14 THE COURT: All right. Lianne Luisi.
15 (Lianne Luisi, called as a prospective juror,
16 having previously been duly sworn, is examined
17 as follows:)

18 EXAMINATION

19 BY THE COURT:

20 Q. Good morning.

21 A. Good morning.

22 Q. All right. You got to help me. I got Lianne.

23 A. Lianne Luisi.

24 Q. Luisi. Just like it's spelled?

25 A. Yeah.

Juror 185 Lianne Luisi - Examination

1 THE COURT: For our record, this is
2 Miss Luisi who is Juror Number 185, Lianne
3 Luisi.

4 A. Yes, ma'am.

5 Q. Miss Luisi, I got it. Miss Luisi, you will
6 remember that when we were together Monday which
7 seems so long ago now, but when we were together on
8 Monday at that time you were sworn in with the other
9 potential jurors, remember that?

10 A. Yes, ma'am.

11 Q. I just tell you that that oath continues
12 throughout this process and would certainly encompass
13 the questions and answers that we're going to talk
14 about today, okay?

15 A. Okay.

16 Q. All right. And since we talked Monday has
17 anyone talked with you about this case or tried to
18 approach about you this case, or have you
19 inadvertently or otherwise exposed yourself to any
20 information about this case?

21 A. No, ma'am.

22 Q. All right. Now, when you were back in the jury
23 room you were shown this, these couple, what are
24 there, three sheets of paper, the potential juror
25 list. I ask you, first of all, did you have a chance

1 to look at the list?

2 A. Yes, ma'am.

3 Q. And after you looked at the list are you related
4 by blood or marriage or acquainted with, have any
5 direct or indirect connection, be it casual
6 friendship, or casual relationship, close personal
7 friendship, or any sort of business association with
8 any of these folks?

9 A. No, ma'am.

10 Q. All right. Now, when we talked on Monday I
11 asked some questions of the jury panel, such as do
12 you have an opinion, do you have any bias or
13 prejudice for or against either of these parties, or
14 have you read or seen or heard anything about this
15 case. And my notes reflect that you didn't have --
16 none of those things applied to you; is that right?

17 A. Yes, ma'am.

18 Q. Okay. Anything happen between Monday and today
19 to jog your memory about any of these issues?

20 A. No, ma'am.

21 Q. Okay. Now, I've got some questions that I'm
22 going to ask you, but first of all I want you to know
23 we're not trying to invade your privacy. The whole
24 purpose of these questions is to ask your feelings
25 about some specific issues, to get your opinions

1 about them. And the reason that we're going to be
2 doing that is to see if there's anything about your
3 opinions that might impact on jury service. And to
4 that end let me also say there are no right and wrong
5 answers, your opinions are as good and valid as
6 anybody else's and we're not challenging them at all.
7 We just need to understand a little bit about them.

8 Now, I want you to also know that in a
9 few moments I'm going to be asking you about penalty
10 and your opinions about the death penalty. And I
11 want to tell you up front that it's obvious that to
12 ask you about penalty is real premature. This case
13 hasn't begun yet, and as I said yesterday and will
14 say now, will say it again, Mr. Bowman is presumed
15 innocent of these charges. It's just simply that the
16 reality is if I'm going to ask you about penalty and
17 ask prospective jurors about penalty I've obviously
18 got to do that premature, prematurely. So keep in
19 mind as we go through this process that while we may
20 be talking about penalty, it's premature and
21 Mr. Bowman is presumed innocent of these charges.

22 Okay. Now, I'm also going to ask you
23 some questions, but I'm going to be doing that in the
24 generic or general sense because it obviously
25 wouldn't be fair for me to ask you about this case

1 because you don't know anything about this case and
2 it wouldn't be fair and it would be improper, so the
3 questions that I'm going to be asking you are going
4 to be in the generic sense.

5 So I'm going to start that now. If
6 you were a juror in any criminal case would you be
7 willing to listen to the law as instructed by the
8 judge?

9 A. Yes, ma'am.

10 Q. And would you be willing to accept the law and
11 apply it to the facts as you found them to be?

12 A. Yes, ma'am.

13 Q. And would you be willing to do that even if you
14 didn't like the law that the judge gave you, or if
15 you even disagreed with it?

16 A. Yes, ma'am.

17 Q. All right. Now, if you were asked to serve in
18 the case of State vs. Mr. Bowman, could you decide
19 this case based solely on what you hear in the
20 courtroom, the evidence in the courtroom? That
21 sounds like a trick question, doesn't it?

22 Let me talk to you a little bit about
23 that and say this to you: Sometimes, sometimes when
24 a juror sits on a jury and they hear something it
25 will trigger something in their memory. Even now you

1 have no memory at all, sometimes -- and it doesn't
2 happen all the time by any stretch of the
3 imagination, but sometimes it does, so the question
4 that I would have for you if you had that happen and
5 you heard something, I remember hearing something
6 about that, that happens to jurors sometimes.

7 A. Right.

8 Q. Would you be willing to set that aside?

9 A. Yes, ma'am.

10 Q. Disregard that memory and try this case based on
11 the evidence in this courtroom?

12 A. Yes, ma'am.

13 Q. All right. That made more sense now, didn't it?

14 A. Yeah.

15 Q. Okay. Now, in a criminal case as I'm sure you
16 know and as we talked about a little bit on Monday,
17 the State, the State of South Carolina has the burden
18 of proving the guilt of any defendant, certainly of
19 this defendant, Mr. Bowman, beyond a reasonable
20 doubt. They have the burden of proving the guilt
21 beyond a reasonable doubt. Do you remember that?

22 A. Yes.

23 Q. Okay. You understand that?

24 A. Yes, ma'am.

25 Q. A defendant never has to prove himself or

1 herself innocent. Do you understand that?

2 A. Yes, ma'am.

3 Q. The burden is always on the State. You
4 understand that?

5 A. Yes, ma'am.

6 Q. And a defendant is always presumed innocent
7 under the law.

8 A. Yes, ma'am.

9 Q. All right. Now, so if you were a juror in any
10 criminal case, would you be willing to listen to the
11 evidence and to the law as it was instructed to you
12 by the judge?

13 A. Yes, ma'am.

14 Q. Okay. Now, if you were a juror on any criminal
15 case, would you be willing to listen to the evidence,
16 and after, of course, you'd listened to the evidence
17 and found the facts as you found them to be and then
18 applied the law to those facts, because as you've
19 already said you would be willing to do, if after you
20 went through that process if you were not convinced
21 that the State had proven a defendant guilty beyond a
22 reasonable doubt as is their burden, if you were not
23 convinced that they had met that burden, would you be
24 able and willing to find a defendant not guilty?

25 A. Yes, ma'am.

1 Q. And on the other hand, if after you listened to
2 the evidence and found the facts as you found them to
3 be, applied the law given to you by the judge to
4 those facts, if after you went through that process,
5 if you were convinced of a defendant's guilt beyond a
6 reasonable doubt and you were convinced that the
7 State had met its burden of proof, would you be able
8 and willing to find that defendant guilty?

9 A. Yes, ma'am.

10 Q. In other words, you would be willing to listen
11 and make your decision based upon whether or not you
12 were convinced that the person was guilty or not; is
13 that right?

14 A. Yes, ma'am.

15 Q. Now, most of the time, most of the time jurors
16 do not concern themselves with the issue of
17 punishment. Most of the time the issue of penalty
18 and punishment are matters for the judge. But there
19 is one case in our law when the jury has to deal with
20 the issue of punishment, penalty. And that is a case
21 like this case where an individual has been charged
22 with the crime of murder and the State is seeking the
23 death penalty.

24 And in that case if an individual is
25 convicted of the crime of murder, then the same jury

1 that convicted him or her comes back and listens to
2 more information, more testimony, more evidence. And
3 the same jury that convicted him or her comes back
4 and after listening to that information in a separate
5 and different proceeding decides the penalty, the
6 punishment. And there are two choices. One is life
7 imprisonment without the possibility of parole, the
8 other is the death penalty. And that decision is
9 determined by the jury in that second or sentencing
10 phase of the trial as it's called. Do you understand
11 this information?

12 A. Yes, ma'am.

13 Q. All right. Now, in the jury room with you there
14 was this piece of paper. And on this piece of paper
15 it essentially sets out three types of jurors. Do
16 you remember the three types of jurors?

17 A. Yes, ma'am.

18 Q. Which of these three types of jurors do you
19 think best describes you?

20 A. I believe type three.

21 Q. In other words, you would be willing to listen
22 to the information, listen to the evidence in making
23 your decision regarding penalty or punishment; is
24 that right?

25 A. Yes, ma'am.

1 Q. And if you listened to the information and you
2 listened to the evidence, and after you listened to
3 the information and the evidence if you were
4 convinced that it was appropriate and you thought
5 that the death sentence should be imposed, would you
6 be able and willing to do that, to vote for that
7 sentence?

8 A. Yes, ma'am.

9 Q. On the other hand, if you thought that the death
10 sentence was not appropriate, or for any other reason
11 that a person ought to receive life imprisonment,
12 would you be able and willing to vote for a sentence
13 of life imprisonment?

14 A. Yes, ma'am.

15 Q. So you would make that decision based upon the
16 information you would receive in the courtroom?

17 A. Yes, ma'am.

18 Q. All right. Now, if you were chosen to serve as
19 a juror in this case you and the other jurors would
20 be housed in a motel here in St. George, of course at
21 county expense, the word is sequestered. And you
22 would be sequestered, you would be housed throughout
23 the duration of the trial. You would have to stay
24 with us, except, of course, when you're in the
25 courtroom. This period could be as long as two

1 weeks, it could be longer, it could be shorter. I'm
2 not sure what the exact duration of the trial would
3 be.

4 Obviously that would create an
5 inconvenience for you as it surely will for all who
6 serve on this jury. Other than the inconvenience
7 which it will cause anybody who has to serve in this
8 capacity, would that pose a serious risk of danger to
9 your health or well being, or to the health or well
10 being of anyone who is dependent upon you if you had
11 to serve in this capacity?

12 A. No, ma'am.

13 Q. You'd be able to do that?

14 A. Yes, ma'am.

15 Q. Now, Miss Luisi, I am going to ask you to listen
16 to the questions from these attorneys, as I'm sure
17 they will no doubt have, and answer their questions.

18 THE COURT: And Mr. Bailey.

19 EXAMINATION

20 BY MR. BAILEY:

21 Q. Miss Luisi, I'm Walter Bailey and I'll be
22 prosecuting this case for the State along with Ben
23 Lafond, who stepped out a few minutes. I need to ask
24 you some questions, there are no right or wrong
25 answers. The questionnaire you filled out you said

1 you had taken some courses at Tech.

2 A. Yes, sir.

3 Q. Is that a full course load you're taking?

4 A. It is for the fall or spring semesters.

5 Q. Okay.

6 A. I'm out on summer semester.

7 Q. You're out now. So if you were on this jury for
8 a couple weeks it wouldn't interfere with Tech or
9 anything of that nature?

10 A. No, sir.

11 Q. Okay. Let me talk to you a little bit about the
12 death penalty. And I'm not talking about this case,
13 I'm just talking in general. You hadn't heard the
14 facts at all, don't know anything about this case,
15 right?

16 A. Yes, that's correct.

17 Q. So I'm just going to talk in general. We start
18 off in a situation where the State is charging
19 somebody with murder and seeking the death penalty
20 with the guilt phase. That's like any other criminal
21 trial where we'll be putting up evidence, there will
22 be instructions from the judge. And that first part
23 of the trial will be geared toward introducing
24 evidence where the State is trying to convince the
25 jury the defendant is, in fact, guilty of murder

1 beyond a reasonable doubt. The jury makes that
2 decision.

3 If the jury finds him guilty of
4 murder, then we go into the second part of the trial,
5 there would be more evidence, more instructions from
6 the judge. The second part of the trial is all about
7 punishment. The jury has two choices if we reach
8 that second stage, one choice is life without parole
9 and one is the death penalty. And all 12 jurors have
10 to agree on one punishment or the other. Once they
11 make that decision, the judge is going to order that
12 sentence carried out.

13 So based on that jury's decision,
14 Judge Goodstein would order the individual to serve
15 life without parole and he would serve life without
16 parole, or she would order his execution and he would
17 be executed.

18 Now, again, I'm not asking you to
19 predict what you'd do, you hadn't heard the facts,
20 but if we got to that second part of the trial and
21 you felt like the facts presented to you were bad
22 enough to warrant the death penalty, could you vote
23 for it knowing that person actually would be executed
24 based on that jury vote?

25 A. Yes, sir. If I completely felt like that was

1 the case.

2 Q. All right. On the other hand, if you felt like
3 a life sentence was appropriate you would vote for
4 that; is that correct?

5 A. Yes, sir.

6 Q. If all 12 jurors hearing the facts think that
7 the death penalty is the most appropriate sentence
8 they're asked to sign their names to a death verdict
9 form, all 12 of them, that's going to result in that
10 person being executed at some point. If you heard
11 the facts and the law, decided on the death penalty
12 and the other 11 jurors agreed with you, could you
13 sign a paper like that?

14 A. Yes, sir.

15 Q. If that happens, then what happens is the jury
16 comes out here, they're seated in these chairs out
17 here and each person's name is called out one at a
18 time, they would be asked to stand up when their name
19 is called and say out loud that that was their
20 verdict. Could you do that?

21 A. Yes.

22 Q. Thank you. That's all I have. Thank you very
23 much.

24

25

EXAMINATION

1

2 BY MR. CUMMINGS:

3 Q. I'm Norb Cummings, that other young lady over
4 there is Ms. Marva Hardee-Thomas, we're both Court
5 appointed to represent Mr. Bowman, that gentleman in
6 the white shirt. I bet you never thought the civic
7 classes you took not so long ago would come to play
8 like this, huh?

9 A. No, sir.

10 Q. The reason why we do this, and we thank you very
11 much for your candor and kindness as you were to Her
12 Honor and Mr. Bailey, the solicitor. And holding
13 those principles very dear that a citizen is presumed
14 innocent until proven guilty beyond a reasonable
15 doubt, you believe in that, don't you?

16 A. Yes, sir.

17 Q. And you would follow the law as the judge, we
18 call her the boss, okay, but as the judge says in
19 here?

20 A. Yes, sir.

21 Q. And you would set aside anything you've heard or
22 anything you've read anywhere else including any
23 papers lately, and follow the law and the facts as
24 presented in this room only?

25 A. Yes, sir.

1 Q. And you would take that oath and you would do
2 that. And you understand that just because
3 somebody's charged with a crime doesn't mean they're
4 guilty of it?

5 A. Yes, sir.

6 Q. And you believe in that principle also?

7 A. Yes, sir.

8 Q. And you would work with your other collective
9 jurors and arrive at a decision that the jury
10 believes is true and correct?

11 A. Yes, sir.

12 Q. All right. And as part of that do you
13 understand that the guilt phase nothing even about
14 the death penalty comes into play until and unless
15 some citizen is convicted beyond a reasonable doubt
16 of that murder charge?

17 A. Yes, sir.

18 Q. And then the second part starts. And, again,
19 Her Honor would tell us what law comes in and what
20 facts come in by rules of evidence.

21 A. Yes, sir.

22 Q. And you would be willing to listen to everything
23 or anything?

24 A. Yes, sir.

25 Q. And you really understand that a citizen never

1 has to do anything to convince anybody they're
2 innocent, right?

3 A. Yes, sir.

4 Q. And going with that now, obviously talking about
5 the ultimate penalty and the ultimate punishment, you
6 understand the jury can do both, life without the
7 possibility or parole and you would consider that
8 along with your other fellow jurors. And you would
9 consider the death penalty case along with your
10 fellow jurors.

11 A. Yes, sir.

12 Q. And just because somebody's charged with a crime
13 you wouldn't lean one way or the other, right?

14 A. No, sir.

15 MR. CUMMINGS: Beg the Court's indulgence,
16 Judge.

17 THE COURT: Yes, sir.

18 (Mr. Cummings and Ms. Hardee-Thomas conferring
19 with Mr. Bowman.)

20 MR. CUMMINGS: Judge, that's all the
21 questions we have of this nice lady. Thank you.

22 THE COURT: Let me tell you what I'm going
23 to ask you to do now, step outside the courtroom
24 for about five seconds, probably. We'll be
25 right back with you. Yes, we're going to talk

Juror 185 Lianne Luisi - Examination

1 about you.

2 MISS LUISI: Okay. Thank you.

3 (Whereupon, the prospective juror exits the
4 courtroom.)

5 THE COURT: What says the State?

6 MR. BAILEY: Qualified, Your Honor.

7 THE COURT: What says the defense?

8 MR. CUMMINGS: Statutorily qualified.

9 (Whereupon, the prospective juror returns to the
10 courtroom.)

11 THE COURT: Miss Luisi, you have been found
12 to be qualified as a potential juror in this
13 case. That does not mean that you are on the
14 jury yet, but it does mean that you are a
15 potential juror and you may be selected to serve
16 on this jury. We are hoping to select this jury
17 tomorrow, Thursday, at two o'clock.

18 MISS LUISI: Okay.

19 THE COURT: So let me tell you it might be
20 a little bit ambitious, but if we have to change
21 the time I will let you know, the clerk's office
22 will give you a call. But if you do not hear
23 from us I want you to be back here in the
24 courtroom at two o'clock Thursday.

25 MISS LUISI: Thursday.

Juror 185 Lianne Luisi - Examination

1 THE COURT: Now, this sheet of paper that
2 I've just given you has got some instructions
3 for you to help you get ready for your jury
4 service, it's got some instructions, like
5 packing and bringing with you anything that you
6 may need for the duration, like medication or
7 whatever. It tells you where you will be
8 housed, it gives you the daytime and the
9 nighttime emergency numbers for anyone that
10 needs to get in touch with you for that reason.

11 And please know that you can discuss,
12 certainly these practical things you can tell,
13 you know, your folks, your friends where you're
14 going to be.

15 MISS LUISI: Yes, ma'am.

16 THE COURT: But be mindful that you cannot
17 and must not discuss this case or any aspect of
18 it or allow anyone to discuss the case with you,
19 don't you talk about it, don't you let anybody
20 talk to you about it and do not expose yourself
21 to any information regarding this case from any
22 source at all. Do you understand these
23 instructions?

24 MISS LUISI: Yes, ma'am.

25 THE COURT: I look forward to seeing you

Juror 185 Lianne Luisi - Examination

1 tomorrow at 2:00.

2 MISS LUISI: Thank you.

3 THE COURT: Bye, Miss Luisi.

4 (Whereupon, the prospective juror exits the
5 courtroom.)

6 THE COURT: All right. Mr. Edward Scott,
7 Juror Number 269.

8 MR. CUMMINGS: Before Buster does it.

9 THE COURT: Yeah.

10 MR. BAILEY: We just --

11 MS. HARDEE-THOMAS: Want you to be aware of
12 this.

13 THE COURT: Hold on. Step back. Step
14 back. Stop him. Hold on one second. One
15 second.

16 MR. BAILEY: Your Honor, we just want to
17 call your attention to his response on
18 question --

19 THE COURT: Whoa, whoa.

20 MR. CUMMINGS: Door's open.

21 THE COURT: All right.

22 MR. BAILEY: We just want to call your
23 attention to his response to question 49. And
24 we might be able to save some time on this.

25 THE COURT: Okay. In other words, I look

1 for you perhaps to be standing up.

2 MS. HARDEE-THOMAS: Yes, ma'am.

3 THE COURT: Okay. I'll ask him. I think
4 I'll ask him that directly.

5 MR. CUMMINGS: Thank you, Judge.

6 MR. BAILEY: Thank you, Your Honor.

7 THE COURT: Thank you. Yes, sir.

8 (Edward A. Scott, called as a prospective juror,
9 having previously been duly sworn, is examined
10 as follows:)

11 EXAMINATION

12 BY THE COURT:

13 Q. Good morning, Mr. Scott.

14 A. Good morning.

15 THE COURT: And for our record this is
16 Mr. Scott. I've got it right here, Mr. Edward
17 A. Scott, Jr., Number 269.

18 Q. Now, Mr. Scott, you will remember when we were
19 together on Monday that you along with the other
20 potential jurors were sworn in, were sworn in at that
21 time, gave an oath.

22 A. Right.

23 Q. All right, sir. Let me remind you that that
24 oath remains in effect today and will cover this
25 process, okay?

- 1 A. Okay.
- 2 Q. All right. You understand that?
- 3 A. Uh-huh (affirmative response).
- 4 Q. That's a yes?
- 5 A. Yes.
- 6 Q. All right. And since we talked with you on
- 7 Monday, has anyone talked with you about this case or
- 8 tried to approach you about this case, or have you
- 9 inadvertently or otherwise been exposed to any
- 10 information about this case?
- 11 A. No.
- 12 Q. All right, sir. Now, let me share with you that
- 13 we have, of course, your questionnaire that you
- 14 returned to the clerk's office and we've had an
- 15 opportunity to review it. And I'm going to show it
- 16 to you because I note that on question number 49 what
- 17 you say is you don't want anything to do with it.
- 18 A. No, I don't.
- 19 Q. Tell me about that.
- 20 A. I just don't think it's my job to judge them.
- 21 Q. Why is that?
- 22 A. We have one judge the way I was raised.
- 23 Q. Yes, sir.
- 24 A. And that's God Almighty.
- 25 Q. Okay.

1 A. He'll take care of all that and I'm not supposed
2 to. That's the way the old man raised me.

3 Q. Okay. Okay. So what you are telling me is that
4 you -- tell me a little more about that. Because
5 what I want to ask you, I'd rather hear from you
6 before I ask you anything, so tell me, tell me a
7 little bit more about what you mean about that. Are
8 you talking about the penalty part?

9 A. I was raised in the church not supposed to
10 judge, judge not, you know, that's the way he raised
11 me.

12 Q. Okay. All right. In other words, so you're
13 saying that -- very well. All right. Very well.
14 Mr. Scott, let me say to you that I'm going to
15 disqualify you from further service on this jury
16 based upon your responses and going to excuse you
17 from any further participation.

18 I am going to ask that you not discuss
19 this process with anyone who is a potential juror in
20 this case. And if you have any question about
21 whether somebody is or isn't a potential juror in
22 this case, I'm going to ask you to refrain from
23 discussing this matter with them.

24 Obviously you should not, must not
25 discuss this case with anyone involved in this case

1 other than jurors, anyone who may be a witness, et
2 cetera, also in this case. And you are -- beyond
3 that you can talk about it with anybody that you
4 would like and you're free to go.

5 A. Yes, ma'am. Thank you, ma'am.

6 Q. Yes, sir.

7 (Whereupon, the prospective juror exits the
8 courtroom.)

9 THE COURT: Any objection from the State?

10 MR. BAILEY: None from the State, Your
11 Honor.

12 THE COURT: Any from the defense?

13 MS. HARDEE-THOMAS: None from the defense,
14 Your Honor.

15 MR. CUMMINGS: Mr. Bowman concurs with
16 that. We thank the Court, absolutely. We want
17 nothing to do with it.

18 MR. BAILEY: Your Honor, the next
19 individual is Anthony Clark.

20 THE COURT: Yes.

21 MR. BAILEY: Would just point out to the
22 Court that in question 25, have you ever been
23 accused of a crime, he's put "No." We ran his
24 rap sheet and he has a 1985 arrest for assault
25 in St. George, 1990 arrest for pointing a

Juror 44 Anthony E. Clark - Examination

1 firearm, and a 2000 arrest for fraudulent check
2 and it would seem unusual that he would forget
3 all those.

4 THE COURT: Tell me which question you're
5 referring to?

6 MR. BAILEY: Number 25.

7 THE COURT: Twenty-five.

8 MR. BAILEY: Have you been accused of a
9 crime.

10 THE COURT: All right, okay. "Have you
11 ever been investigated, ever been accused of a
12 crime?" "No." Let me make my notes of those
13 dates. Let me get -- where's a sticky? Great.
14 Okay. Nineteen --

15 MR. BAILEY: Eighty-five was simple
16 assault.

17 THE COURT: Got it.

18 MR. BAILEY: 1990, pointing a firearm.

19 THE COURT: Okay.

20 MR. BAILEY: And 2000, fraudulent check.

21 THE COURT: All right. Mr. Clark, if you
22 would send in Mr. Anthony Clark.

23 (Anthony E. Clark, called as a prospective
24 juror, having previously been duly sworn, is
25 examined as follows:)

EXAMINATION

1
2 BY THE COURT:

3 Q. Hi, Mr. Clark.

4 A. How are you doing?

5 Q. Fine.

6 THE COURT: And for our record this is

7 Mr. Anthony Clark who is Juror Number 44.

8 Q. Now, Mr. Clark, you will recall on Monday you

9 were sworn in with all the other potential jurors?

10 A. Yeah.

11 Q. Do you remember that?

12 A. Yes.

13 Q. All right. And that oath that you gave then

14 applies to this process here today and the questions

15 and the answers here today, okay?

16 A. I do.

17 Q. All right. And you've got that microphone. I

18 just need you to be sure you keep your voice up so

19 Ms. Keil can hear you and Ms. Hardee-Thomas can hear

20 you way over there, okay?

21 A. Okay.

22 Q. And if you've got that much volume we'll be in

23 good shape, okay?

24 A. Okay.

25 Q. Thank you. Now, since we talked with you on

1 Monday has anyone approached you about this case, or
2 tried to talk to you about this case, or have you
3 inadvertently or otherwise received any information
4 about this case?

5 A. No, I haven't.

6 Q. All right. Now, when you were back in the jury
7 room you were given the potential witness list. I'm
8 going to put that there for you so you can look at
9 it. And I'd ask if you had a chance to look at that?

10 A. Yes, I have.

11 Q. And are you related by blood or marriage, or
12 acquainted with, or directly or indirectly connected
13 with, have any kind of personal relationship,
14 professional, business association with any of the
15 folks on that list?

16 A. I think I went to school with Ernest Hill.

17 Q. Okay.

18 A. And I recognize a couple of names, but I'm not
19 sure of the faces.

20 Q. Oh, all right. All right. Now, regarding
21 Mr. Hill, the fact that you have maybe some
22 connection with Mr. Hill, you went to school with
23 him, do you see him much now?

24 A. No, I don't.

25 Q. Okay. How long has it been since you've seen

Juror 44 Anthony E. Clark - Examination

1 Mr. Hill?

2 A. Yesterday.

3 Q. Oh, yesterday?

4 A. In the courtroom.

5 Q. In the courtroom. Monday in the courtroom?

6 A. Monday in the courtroom.

7 Q. Okay. Do you all visit each other's homes?

8 A. No, we don't.

9 Q. Okay. Other than Monday how long had it been
10 since you saw him?

11 A. It had probably been maybe a year or so.

12 Q. A year or so, all right. Would that connection
13 that you have had with Mr. Hill, would that have any
14 bearing upon your ability to be a fair and impartial
15 juror in the trial in this case?

16 A. No, it wouldn't.

17 Q. All right, sir. Now, who were the other names
18 that you think you might know?

19 A. Ricky Davis.

20 Q. Ricky Davis. Same question with regards to
21 Ricky Davis. Assume for just the moment that you may
22 know Ricky Davis, would that be a close personal
23 relationship or just --

24 A. No.

25 Q. All right. Do you visit in his home and does he

1 visit in your home?

2 A. No.

3 Q. All right. How do you think maybe you know
4 Mr. Davis?

5 A. I think we went to school together.

6 Q. Okay.

7 A. If it's the same Ricky Davis.

8 Q. If it's the same Ricky Davis. We'll assume for
9 purposes of my question that it is. If that is the
10 same Ricky Davis, would that connection have any
11 potential, or have any bearing on your ability to be
12 a fair and impartial juror in the trial of this case?

13 A. No, it wouldn't.

14 Q. All right. And who else?

15 A. Kathy Heywood.

16 Q. Kathy Heywood. And how, if that is the Kathy
17 Heywood that you know, who is she, how do you know
18 her?

19 A. I think I used to work with her mom.

20 Q. Okay.

21 A. If I'm not mistaken.

22 Q. Okay. Would the fact that Kathy Heywood may be
23 a witness in this case have any bearing on your
24 ability to be fair and impartial if you were a juror
25 in the trial of this case?

Juror 44 Anthony E. Clark - Examination

1 A. No. I don't think, no.

2 Q. All right. Could you set -- with regards to
3 Mr. Hill, Mr. Davis, and Ms. Heywood, could you set
4 aside those connections and decide this case based on
5 what you would hear in court without regard to your
6 connection with these potential witnesses?

7 A. Yes, I could.

8 Q. Okay. Now, let me ask you this question,
9 Mr. Clark. And I'm looking at your questionnaire
10 where it says "Have you been accused of a crime?" Do
11 you see that? Here, let me pass you your
12 questionnaire. Do you see that where it says, "Have
13 you ever been accused of a crime?" Do you see that
14 question, number 24?

15 A. Yes.

16 Q. And you have down there that you have not --

17 A. Yes.

18 Q. -- been accused of a crime. We have benefit
19 of -- or I have benefit of some information and the
20 information that I have says that -- and you tell me
21 now if I got the wrong information, all right? Says
22 that in 1985 that you were convicted of simple
23 assault, that in 1990 that you were convicted of
24 pointing a firearm, and in 2000 that you were
25 convicted of fraudulent check. Now, the information

1 that I have, is that right or wrong?

2 A. One was right the other the ones are wrong.

3 Q. Okay. Which one's right?

4 A. The pointing a firearm was wrong.

5 Q. Okay. That one is wrong, all right.

6 A. And the check was wrong.

7 Q. And the check is wrong?

8 A. Yes.

9 Q. You've not been convicted of those? Were you
10 arrested of those two things?

11 A. Yes.

12 Q. I understand. So you were arrested. Tell me
13 why you -- because the question is were you accused
14 of a crime, right?

15 A. Yes.

16 Q. Tell me why that information is not on the
17 questionnaire?

18 A. The gun conviction was not a conviction, it
19 was -- the matter was dropped.

20 Q. Okay. But it says accused.

21 A. Yes.

22 Q. Okay.

23 A. The story behind that is I was getting off from
24 work one day --

25 Q. I don't need to know the story, I don't want to

Juror 44 Anthony E. Clark - Examination

1 invade your privacy like that. The only question
2 that I have for you is why were these incidents not
3 on the questionnaire?

4 A. Well, for one thing I didn't even think it was
5 important.

6 Q. Okay.

7 A. I thought the case had been dropped so it
8 wouldn't be --

9 Q. Okay.

10 A. -- there.

11 Q. Okay.

12 A. The check, it was a \$13 check wrote for dog
13 food.

14 Q. Again, I truly do -- I want you to understand
15 that I don't need to know the circumstances, I don't
16 want to pry into the circumstances in your privacy.
17 My only question for you is why were those not on the
18 sheet? Because it says, you know, "Have you been
19 accused of a crime?". And that says, "No." That's
20 why. That's the only reason why. Yes, sir.

21 A. Again, I didn't even think it was relevant.

22 Q. Okay. Okay. All right. I understand. That's
23 fine. Thank you so much. Now, when we talked on
24 Monday my notes indicate that you had read, seen, or
25 heard something about the case, about this case. I'm

1 not going to ask you any specifics about what you
2 read or heard or the information, how you received
3 it, I'm not going to ask you that information. What
4 I'm going to ask you is this: Have you formed any
5 opinions about this case as a result of that
6 information?

7 A. No, I haven't.

8 Q. All right, sir. And then I would ask can you
9 set that information that you have received, can you
10 set that information completely aside and try this
11 case being fair and impartial to both sides?

12 A. Yes, I can.

13 Q. All right. And can you put that information
14 that you've received completely aside and try this
15 case based on the evidence in this courtroom?

16 A. Yes, I could.

17 Q. And completely disregard that information that
18 you have had previously?

19 A. Yes, I could.

20 Q. All right. Now, you also, with regards to the
21 information about whether or not you had any bias or
22 prejudice for or against either side, when that
23 question was asked you didn't respond because I
24 gather it didn't apply to you because you didn't have
25 any bias or prejudice, right?

1 A. That's correct.

2 Q. All right. Has anything, any other information
3 jogged your memory or come to your mind that you need
4 to change those responses from Monday?

5 A. No. I haven't, no.

6 Q. Okay. Now, I need to ask you some other
7 questions, Mr. Clark. And I wanted to talk a little
8 bit about the questions and then I'm going to get
9 into the questions. First thing I want to tell you
10 is I do not want to invade your privacy. And what
11 I'm going to be doing is I'm going to be asking you
12 some questions to get from you your feeling, your
13 opinions about certain matters.

14 And I want to tell you up front that
15 your opinions are just as valid and good as anybody
16 else's, I want you to know that I know that. I also
17 want you to know that no one is going to challenge
18 your opinions because they're just as good and valid
19 as anybody else's. And I also want to tell you there
20 aren't any right or wrong answers to my questions.
21 I'm just trying to learn a little about and
22 understand a little bit about your opinions to see if
23 they'll have -- see if they will have any impact on
24 your jury service and that's the reason for that.

25 Now, in a moment I'm going to be

1 asking you your opinions about penalty, and
2 specifically the death penalty, because that may be
3 an issue in this case. And I want you to understand
4 that obviously the fact that we would even be
5 discussing penalty at this time is real premature.
6 It's premature because the case, the trial hasn't
7 even begun and because Mr. Bowman is presumed
8 innocent of these charges. However, in order for me
9 to talk about penalty with prospective jurors I
10 obviously have to do that necessarily before the
11 trial begins.

12 So as we talk about particularly the
13 issue of penalty, I want you to keep in mind that
14 it's premature, (a), and that Mr. Bowman is presumed
15 innocent. Okay?

16 A. Yes.

17 Q. Now, I'm also going to ask you these questions,
18 but I'm going to ask them in a generic sense, which
19 means that I'm not going to ask you anything
20 specifically about this case because that wouldn't be
21 proper or fair for me to do that. I'm going to be
22 asking you these questions and I'm going to be doing
23 that in a generic, in a general sense, okay?

24 A. Yes.

25 Q. All right. Now, I would ask if you were a juror

1 in any criminal case would you be willing to listen
2 to the law as instructed by the judge?

3 A. Yes, I would.

4 Q. And would you be willing to accept that law and
5 apply it to the facts as you found them to be?

6 A. Yes, I would.

7 Q. Even though you might not particularly like the
8 law and you might even disagree with it, would you be
9 still be willing to follow the law if you were
10 instructed to do so by the judge?

11 A. Yes, I would.

12 Q. Now, if you were asked to serve in the case of
13 the State vs. Mr. Bowman, would you decide this case
14 based on the evidence in this courtroom and not on
15 anything that you may have heard or seen previously?

16 A. Yes, I would.

17 Q. Can you set that completely aside?

18 A. Yes, I would.

19 Q. All right. And in a criminal case as you know
20 and as we talked on Monday, the State has a burden of
21 proving the guilt of a defendant beyond a reasonable
22 doubt. Do you understand this principle?

23 A. Yes.

24 Q. Do you understand that a defendant never has to
25 prove himself or herself innocent, do you understand

1 that?

2 A. Yes.

3 Q. A defendant never has to prove himself, or never
4 has to prove anything. Do you understand that?

5 A. Yes, I do.

6 Q. That the burden of proof is always on the State.
7 Do you understand that?

8 A. Yes, I do.

9 Q. All right. And that Mr. Bowman, any defendant
10 in a criminal case, is always presumed innocent. You
11 understand that?

12 A. Yes, I do.

13 Q. Now, if you were a juror in any criminal case,
14 would you be willing to listen to the evidence and
15 the law as you were instructed?

16 A. Yes, I would.

17 Q. And after you had listened to the evidence,
18 found the facts as you found them to be, applied the
19 law to it that the judge gave you, if you were not
20 convinced that the State had proved the defendant
21 guilty beyond a reasonable doubt, would you be
22 willing and able to find that defendant not guilty?

23 A. Yes.

24 Q. And likewise, if after I listened to the
25 evidence, made the findings of fact as found them to

1 be, applied the law given to you by the judge, if you
2 were convinced that the State had proven a defendant
3 guilty beyond a reasonable doubt, would you be
4 willing and able to find that defendant guilty?

5 A. Yes, I would.

6 Q. So you would be -- so depending on what the
7 facts and circumstances were you would be willing to
8 listen, make your decision based upon whether or not
9 you were convinced that a person is guilty or not?

10 A. Yes.

11 Q. All right. Now, most of the time, Mr. Clark,
12 jurors do not concern themselves with the issue of
13 punishment, that's normally in a criminal matter left
14 up to the judge. I don't mean to imply this is not
15 normal, but let me say that most of the time the
16 punishment is left up to the judge, except in a case
17 like this case where in our law a jury has to deal
18 with the matter of punishment. And that is in the
19 case, again, such as this one. It is in a case where
20 an individual has been charged with the crime of
21 murder and where the State is seeking the death
22 penalty.

23 And in a case such as that if an
24 individual in a death penalty case is convicted of
25 the crime of murder, then the same jury that

1 convicted him or her must come back and in a separate
2 and different proceeding decide the sentence that the
3 person's going to get. And there are two choices.
4 One is life imprisonment without the possibility of
5 parole, and the other is the death penalty. The
6 sentence, the penalty, would be decided, determined
7 in a second or sentencing phase of the trial. Do you
8 understand this information?

9 A. Yes, I do.

10 Q. All right. Now, back in the jury room you also
11 had a piece of paper that had on it three types of
12 jurors. Do you recall this piece of paper and the
13 three types of jurors?

14 A. Yes, I do.

15 Q. Which type of the three jurors best describes
16 you?

17 A. Type three.

18 Q. Type three. In other words, you would be
19 willing to listen to whatever you might hear and if
20 you thought it was something and make up your mind
21 based upon what you would hear in the courtroom?

22 A. Yes. Yes.

23 Q. And if after you listened to the information and
24 the evidence in the courtroom if you thought it was
25 appropriate that someone would be sentenced to death,

1 would you be willing and able to vote for that
2 sentence?

3 A. No, I wouldn't.

4 Q. All right, sir. Now, let me ask you this
5 question: If -- well, you've already told me you
6 would be willing to listen to the evidence, right?

7 A. Yes.

8 Q. And if after you listened to the evidence, if
9 after you listened to that evidence if you thought it
10 was appropriate that the death sentence be imposed,
11 would you be able and willing to vote for that
12 sentence?

13 A. No.

14 Q. All right. Are there any circumstances that you
15 believe you would be willing to vote for the death
16 sentence?

17 A. Yes.

18 Q. All right. And would you know that based upon
19 what you heard in the courtroom?

20 A. Yes.

21 Q. All right. So what you're telling me is that
22 you would be able to listen to what -- the
23 information in the courtroom and based upon that
24 information then you would vote for the sentence that
25 thought was appropriate?

1 A. Yes.

2 Q. And based on some circumstances that would be a
3 death sentence and based on some circumstances that
4 would be a life sentence; is that what you're telling
5 me?

6 A. Yes.

7 Q. All right. So what you're telling me is that
8 some -- based on some circumstances you could vote
9 for the death sentence?

10 A. Yes.

11 Q. All right.

12 A. I guess so, yes.

13 Q. All right. And if you -- in that instance you
14 would be able to vote for the death sentence?

15 A. Yes.

16 Q. All right. Obviously at this point you don't --
17 and I'm asking these questions in a very general
18 sense and in a very generic sense. It's always
19 easier, I gather, if you had the facts and you would
20 know. Obviously I'm asking you in a generic and in a
21 general sense.

22 So, if you thought that the death
23 sentence was not appropriate or for any other reason
24 the person ought to receive life imprisonment, would
25 you be able and willing to vote for a sentence of

Juror 44 Anthony E. Clark - Examination

1 life imprisonment?

2 A. Yes.

3 Q. All right. So you would make your decision
4 based on what you would hear in the courtroom?

5 A. Yes, I would.

6 Q. And that could be either of those sentences?

7 A. Yes.

8 Q. All right. Now, if you were chosen to serve as
9 a juror in this case, you, along with the other
10 jurors, would be housed in a motel at county expense,
11 the word is sequestered. You would be housed here,
12 again, in a local motel during the course of the
13 trial. And that's where you would have to stay until
14 the trial is over, of course except when you are in
15 the courtroom. This period could be as long as two
16 weeks or longer, it could be shorter, I just don't
17 know what the period is going to be.

18 Now, obviously that would create an
19 inconvenience on you as it surely will for all who
20 serve on this jury. Other than the inconvenience
21 which it would cause anybody who would have to serve
22 in this capacity, would that pose a serious risk of
23 danger to your health or well being, or to that of
24 anybody who is dependent upon you if you had to serve
25 in that capacity?

Juror 44 Anthony E. Clark - Examination

1 A. No, it wouldn't.

2 Q. All right, sir. You would be able to do that?

3 A. Yes.

4 Q. All right. Now, Mr. Clark, these attorneys no
5 doubt will have questions for you as they certainly
6 are entitled to, and I would just ask that you listen
7 to their questions and answer their questions.

8 THE COURT: And, Mr. Cummings, Ms.

9 Hardee-Thomas.

10 EXAMINATION

11 BY MR. CUMMINGS:

12 Q. I'll be very brief. Good morning, Mr. Clark.

13 A. Good morning.

14 Q. I'm Norb Cummings, sir, and that young lady
15 sitting at the table over there is Ms. Marva
16 Hardee-Thomas. And both she and I are Court
17 appointed to represent Mr. Marion Bowman Jr., sir,
18 the gentleman in the white shirt.

19 And I just want to take a few moments,
20 Her Honor's gone over a lot of questions with you,
21 there are no right or wrong answers like the boss
22 says, okay? And we're just trying to find jurors
23 that are going to be fair and impartial and give the
24 State and the defendant a fair and impartial trial.
25 And can you do that, sir?

1 A. Yes, I can.

2 Q. Can you follow the law and instructions as Her
3 Honor would give you, I mean just whatever the judge
4 says you would follow and do?

5 A. Yes.

6 Q. And this judge has asked you if the facts and
7 circumstances in a case, and of course we never even
8 get that part until and unless somebody is found
9 guilty of murder by all 12 members of the jury, sir,
10 and you understand that?

11 A. Yes.

12 Q. But then we don't even get to the second part
13 until and unless that has been proven to the jury's
14 satisfaction beyond a reasonable doubt. And then in
15 the second phase there's two possible penalties:
16 Life without the possibility of parole, and you've
17 told Her Honor you could vote for that along with the
18 other jurors if that was so fit. And you have to
19 answer yes or no, sir, I'm sorry.

20 A. Yes.

21 Q. Okay. And then also you told Her Honor that you
22 could along with your fellow jurors, vote for the
23 death penalty if the facts and circumstances so
24 warrant?

25 A. Yes.

Juror 44 Anthony E. Clark - Examination

1 Q. All right. And there's no question about that?

2 A. There's always a question, but I mean yes and
3 no. I mean, I would have to -- I can't answer that.

4 Q. You wouldn't take this jury service light?

5 A. No, I wouldn't take it light.

6 Q. You wouldn't take punishment of any citizen
7 light, would you, sir?

8 A. No.

9 Q. So is it fair to say you want to hear all the
10 facts and circumstances first before collectively
11 putting your mind with the other good folks and
12 coming up with a verdict first, yes or no sir?

13 A. Yes.

14 Q. And then whatever the proper punishment may be
15 if this gentleman or a citizen is put to a trial
16 facing the ultimate penalty?

17 A. Yes.

18 Q. Okay. But you could do what Her Honor instructs
19 you to do?

20 A. Yes.

21 Q. All right. Now, the reason I say that is you
22 have no substantial impairment in following her
23 instructions or her duties, correct?

24 A. No.

25 MR. BAILEY: Judge, I want to object to the

Juror 44 Anthony E. Clark - Examination

1 blatant leading.

2 THE COURT: All right. Be mindful of that,
3 Mr. Cummings, but you proceed.

4 MR. CUMMINGS: Thank you, Judge.

5 Q. I'll just go back a little bit now. You were
6 handed a questionnaire?

7 A. Yes.

8 Q. What date were you handed this questionnaire,
9 sir?

10 A. It was I think May the 1st. I think it was May
11 the 1st.

12 Q. Because I looked on the signature, if I'm in
13 error now, it looks like it says May 16th, 2002.

14 A. May 16th.

15 Q. That's tomorrow, if I'm not mistaken. My
16 calendar is not off because we've been up here for a
17 while.

18 THE COURT: Let me hand Mr. Clark his
19 questionnaire.

20 Q. Take a look at it.

21 THE COURT: Mr. Clark, while you're looking
22 at that I'm going to pour you a little water.
23 I'm going to put that right there for you now if
24 you need it, it's right there.

25 A. I think it's May 6th.

Juror 44 Anthony E. Clark - Examination

1 Q. May 6th?

2 A. Yeah.

3 Q. I'm sorry.

4 A. M-a-y 6.

5 Q. Okay, sir. That's why we ask people. And of
6 course when you filled this out and in particular
7 dealing with the issues that Her Honor asked you
8 questions about, about incidents of law enforcement
9 in your prior life, you started to put a word there
10 first that's been crossed out on question number 25.
11 What was that word, sir?

12 A. "Have you ever been accused of a crime?"

13 Q. Yes, sir. What's the first word next that has
14 some scribble on it?

15 A. "No." But I put in small letters and I just
16 changed to capital.

17 Q. All right, sir. Was there any attempt on your
18 part to deceive this Court or deceive the answers in
19 this when you answered "No" on that question?

20 A. No.

21 Q. Okay. And I'm not going to ask you to repeat
22 your explanation of why you put "No" there. Did you
23 understand question number 25, sir?

24 A. No. Not particularly, no.

25 Q. What was your understanding --

1 A. Convicted of a crime.

2 Q. Convicted of a crime?

3 A. Yes.

4 Q. And is that why you answered "No," sir?

5 A. That's why I answered "No."

6 Q. Nobody's trying to put words in your mouth. Was
7 there any deliberate attempt on your part to answer
8 in a negative here for any purposes?

9 A. No.

10 Q. Okay. Now, there are certain requirements of
11 jurors, a juror if and when we ever got to a penalty
12 phase would have to put their minds with that
13 collective 11 other members of the jury, and they'll
14 have to do certain things by law if we ever get to
15 that penalty phase, okay, you understand, Mr. Clark?

16 A. Yes, I do.

17 Q. And part of the statutory requirement is if you
18 and your fellow jurors on any case were to decide
19 that the death penalty was appropriate on a citizen,
20 you would statutorily have to vote for that with your
21 fellow jurors. Are you able to do that?

22 A. Yes. Yes.

23 Q. All right. You would also then be given a piece
24 of paper by Her Honor to the jury, the jurors get
25 together and each citizen would have to sign a

1 document saying that that is their verdict. Could
2 you do that?

3 A. Yes.

4 Q. Then afterwards if --

5 MR. BAILEY: Let me belatedly object to
6 that question about each citizen would have to
7 sign it. Mr. Cummings knows that no juror has
8 to sign anything or come to any particular
9 decision.

10 MR. CUMMINGS: I understand that, Judge.
11 I'll rephrase.

12 THE COURT: Thank you.

13 BY MR. CUMMINGS:

14 Q. And, Mr. Bailey's correct, sir, I apologize. If
15 a document was presented in front of you with jurors,
16 could you sign that document if you found it
17 appropriate, sir?

18 A. Yes.

19 Q. Then there may come a time where you would have
20 to stand up if and when a verdict is ever reached in
21 this case on this second part, and Her Honor or the
22 clerk of court, somebody in here would ask you the
23 following questions: Is this your verdict, and is it
24 still your verdict? And would you be the type of
25 gentleman or juror that could stand up and announce

Juror 44 Anthony E. Clark - Examination

1 his verdict publicly and not be worried about stating
2 your verdict out in public?

3 A. Yes.

4 MR. CUMMINGS: Beg the Court's indulgence.

5 THE COURT: All right.

6 (Mr. Cummings and Ms. Hardee-Thomas conferring
7 with Mr. Bowman.)

8 MR. CUMMINGS: Judge, no further questions
9 of this gentleman. Thank you, Judge.

10 THE COURT: Very well.

11 EXAMINATION

12 BY MR. BAILEY:

13 Q. Mr. Clark, I'm Walter Bailey and I'll be
14 prosecuting the case and I need to ask you a few
15 questions. I think the judge and maybe Mr. Cummings
16 told you this, but there are no right or wrong
17 answers, all right? And the one thing I would ask of
18 you is that you not give me an answer just because
19 you think that's the answer I want. We need to know
20 what's really in your mind and heart, okay?

21 A. Yes.

22 Q. I want to ask you about the death penalty.
23 Before I do that I want to ask you about a couple
24 things that you've got in the questionnaire. And
25 you've already been asked about the questionnaire,

1 so.... You had indicated that you had had a negative
2 experience with law enforcement at some point?

3 A. Yes.

4 Q. Could you tell me about that?

5 A. On the gun charge I was working at Carolina
6 Industries, I had just got off from work, I go to --
7 where I go to every day to get gas and go home.

8 Q. Okay.

9 A. On this particular day an individual who had
10 been drinking and calling confused me, the police
11 already had been called, attacked me in my vehicle.
12 And I nice and politely asked him to leave. I went
13 in the store to tell the owner about it and when I
14 came back out he had got exceptionally mad. And I
15 had a hunting rifle that I had had in my trunk.

16 Q. Okay.

17 A. And when he attacked me I went for it. When the
18 law was called one of the officers treat me very
19 roughly.

20 Q. All right.

21 A. And I thought I was the victim.

22 Q. Okay. And is there anything else? Is that what
23 you had in mind when you indicated there is a
24 negative law enforcement experience?

25 A. Yes.

Juror 44 Anthony E. Clark - Examination

1 Q. Would the fact that you had that experience do
2 you believe cause you any problems if you sat as a
3 juror in this case?

4 A. No.

5 Q. Okay. Let me ask you something else. You had
6 indicated also that your brother had been charged
7 with a crime?

8 A. Yes.

9 Q. Would that situation cause you any problems as
10 far as if there are law enforcement officers that
11 testify?

12 A. No.

13 Q. Okay. All right. Let me go back, and I want to
14 talk about the death penalty. When I ask you these
15 questions I'm not talking about this case because you
16 hadn't heard the facts of this case, it wouldn't be
17 fair to try to get you to predict what you'd do when
18 you hadn't heard anything, so I'm talking in general
19 terms about the death penalty.

20 And you understand that this is
21 potentially a two-part process, we start out with the
22 guilt phase. That's like any other trial, the State
23 is going to be putting up evidence to attempt to
24 convince that jury that the defendant is guilty of
25 what the State says he's charged with.

Juror 44 Anthony E. Clark - Examination

1 In a case where one of the charges is
2 murder and the State seeks the death penalty, if the
3 jury convicts that person of murder then we go into
4 the second phase of the trial. And the purpose in
5 having that second part, that penalty phase, is to
6 put up additional evidence, additional instruction
7 from the law from the judge. And the jury would then
8 decide on the appropriate punishment, either life in
9 prison without the possibility of parole or the death
10 penalty. All 12 jurors would have to agree one way
11 or the other and then the judge based on that jury's
12 verdict will order that sentence to be carried out.
13 So based on that jury's verdict that defendant is
14 going to be sent to prison for life without parole or
15 he's going to be executed. So that's the process
16 that we would go through and I wanted to make sure
17 you clearly understood that.

18 A. Yes.

19 Q. That it isn't the judge that decides the
20 punishment, the jury decides the punishment.

21 A. Yes.

22 Q. All right, sir. Now, let me ask you this about
23 the death penalty: Is it something that you've
24 thought about before this week when you found out you
25 might be a juror?

Juror 44 Anthony E. Clark - Examination

1 A. Yes.

2 Q. All right, sir. Could you tell us when you --
3 what prompted you to think about the death penalty?

4 A. My mother was a preacher and we've always been
5 raised to think that killing and -- killing is wrong.

6 Q. All right.

7 A. And what you see on TV these days, you know,
8 with people murdering and all the other situations
9 going on and it's hard to make up -- I mean, it's
10 hard to make up your mind, but it's one thing that's
11 constant, you believe in what your parents told you.

12 Q. Right. Okay.

13 A. And but as an individual you have your own
14 beliefs.

15 Q. Okay.

16 A. And my belief may be different from my parents'.

17 Q. Okay.

18 A. And she believe it that it's wrong to kill
19 anything.

20 Q. All right.

21 A. You know, and I believe that in some cases, you
22 know, it's warranted.

23 Q. All right. And you are talking about now the
24 death penalty as opposed to murder, is that what you
25 said?

1 A. Yes.

2 Q. Okay. Now, when the judge asked you about the
3 death penalty, you at first said you were a type
4 three juror, that's the kind of juror that would want
5 to hear the facts and circumstances and could come
6 back with life imprisonment, could come back with the
7 death penalty.

8 A. Yes.

9 Q. And by the way, no one of these three types is
10 the right type, they're all right. There are
11 different ways people think about the death penalty
12 and no one is any better than the other one, okay?

13 A. Yes.

14 Q. I want to make sure you understand that.

15 A. Yes.

16 Q. Okay. And after saying that the judge asked you
17 at one point whether or not you could impose the
18 death penalty and you said, "No, I couldn't." Do you
19 recall that?

20 A. Yes.

21 Q. All right, sir. Can you tell us why you said
22 that? And, again, I'm not trying to put you on the
23 spot, I'm not trying to get you to say anything that
24 you don't really feel in your heart and mind, but I
25 just need -- it looked a little different at one

1 point than another point.

2 A. Again, listen to her instructions.

3 Q. Okay.

4 A. As she instructed voting with my other peers on
5 the jury.

6 Q. Okay.

7 A. I think I could vote for the death penalty.

8 Q. Okay. And you understand that you would never
9 have to vote -- no matter what the instructions were
10 you would never have to vote for the death penalty?

11 A. Yes, I do.

12 Q. And given an option between life without parole
13 and the death penalty, could you fairly consider both
14 sentences or would you always vote for the death
15 penalty -- I mean, vote for life?

16 A. I could fairly consider both.

17 Q. You could consider both. Could you not only
18 consider it, but could you vote for the death penalty
19 knowing that person would be executed?

20 A. Yes.

21 Q. Okay. The judge asked you basically the same
22 question a second time and you again said, "No." Can
23 you tell us why you said "No" then and now you're
24 saying that you could do it?

25 A. Well, you ask the same question in different

Juror 44 Anthony E. Clark - Examination

1 ways, people give different answers.

2 Q. Okay.

3 A. Especially if they are not listening very
4 carefully.

5 Q. Okay. All right. Well, I'm trying to listen
6 carefully and trying to get the right answer. Can
7 you just tell us in your own words what your thoughts
8 and beliefs are about the death penalty as a
9 punishment for murder?

10 A. Well, I believe when murder is involved with a
11 child, you know --

12 MR. CUMMINGS: Judge, I'm going to object.

13 THE COURT: Yes, absolutely.

14 MR. CUMMINGS: That goes outside the scope.

15 THE COURT: Mr. Bailey, I think your
16 question, what you are asking him or what you
17 are eliciting from him are specific instances
18 and as you know that's impermissible.

19 MR. BAILEY: I agree, Your Honor, and I did
20 not know what his answer would be, I was just
21 trying to get his --

22 THE COURT: I do understand that.

23 MR. BAILEY: Okay.

24 THE COURT: And what I'm saying is that you
25 are not obligated to give specific information

1 and so I've stopped that answer. If you'll ask
2 him another question.

3 MR. BAILEY: Your Honor, can I take up a
4 brief matter of law in regard to this?

5 THE COURT: You certainly may. Would you
6 step outside for me just a second?

7 (Whereupon, the prospective juror exits the
8 courtroom.)

9 MR. BAILEY: Your Honor, I'm at a little
10 bit of a dilemma because I realize that we can't
11 stake out jurors and we can't get case specific
12 or get into hypotheticals. However, there is a
13 line of cases in the state saying that the
14 ability to impose a death penalty only a certain
15 personal standard is satisfied would not qualify
16 a juror. And some -- if I can briefly cite a
17 couple of those cases, State vs. Drayton, in
18 which the Court held that the trial judge did
19 not err in excusing a juror who said he could
20 not vote for the death penalty if he didn't know
21 the victim.

22 THE COURT: Right.

23 MR. BAILEY: Also State vs. Cain who said
24 if the juror could not impose the death penalty
25 unless he had been a witness to the murder.

1 THE COURT: Right.

2 MR. BAILEY: There's a State vs. Davis
3 where the juror said she could never impose the
4 death penalty on a mentally retarded defendant.

5 THE COURT: Right.

6 MR. BAILEY: And State vs. Longworth in
7 which the juror said that she had a child the
8 defendant's age and would find it difficult to
9 impose the death penalty on a young person.

10 So I'm not sure how this information
11 came out, I would assume it was blurted out or
12 else in the earlier days of the death penalty in
13 this state that they may have a different
14 standard than what we're using now, we've been
15 using the last several years. But obviously
16 this is an individual, Mr. Clark, who's given
17 some inconsistent responses to the Court,
18 primarily.

19 He obviously has some personal
20 standard in his mind. Maybe if it was my own
21 child was killed or my mother or something like
22 that where he would impose the death penalty.
23 And our Court has held repeatedly in all of
24 these cases that that is not sufficient, that
25 you have some personal standard where he might

Juror 44 Anthony E. Clark - Examination

1 not ever be qualified if it was a family member
2 or something. So I think he's in that category,
3 but I don't know how to elicit what's in his
4 mind without asking him.

5 THE COURT: Okay. Yes, sir, Mr. Cummings.

6 MR. CUMMINGS: Thank you, Judge. I thank
7 my colleague. Your Honor, first thing I would
8 like to say, Section 16-3-20 is the law on the
9 standard for capital case jurors. And in
10 Wainwright vs. Witt, and if I may, just the
11 constitutional standards whether the juror's
12 views would prevent or substantially impair the
13 performance of his duties as a juror in
14 accordance with his instructions and his oath.

15 This gentleman stated he could follow
16 the law and your instructions. This gentleman
17 is the opposite of Mr. Johnson the other day.
18 First Johnson comes out here and says he's
19 number one, then he's a three. And that happens
20 in here with the people listening to us and with
21 Her Honor's instructions. And, again, I thought
22 Mr. Johnson was very forthwith and Your Honor's
23 ruled on that and I only have kind of like the
24 other side of the rainbow.

25 Your Honor controls the voir dire,

Juror 44 Anthony E. Clark - Examination

1 that is the standard, that is the law. Why
2 other judges did issues on those case, you know,
3 in particular might have been a case specific
4 nature. But, Judge, I objected respectfully
5 against my solicitor into getting into the
6 personal mind of these jurors. We've not done
7 that as of yet. All we've been saying is if the
8 facts and circumstances in a general case come
9 out. And I think that would be the standard and
10 I would ask Your Honor to uphold that standard.
11 And, again, also State vs. Chaffee, a 1984 case,
12 Judge.

13 THE COURT: Yes, sir. Anything further,
14 Mr. Bailey?

15 MR. BAILEY: Not in regard to that, Your
16 Honor.

17 THE COURT: All right. I am not going to
18 allow there to be any questioning of this juror
19 because it very well may be that you're going to
20 get a colloquy of what comes to his mind of the
21 cases that he thinks are the worst cases and
22 that's not fair to him nor is that appropriate
23 under the law. And I think that's what you were
24 about to get. What he did not say as he blurted
25 that answer out was, well, you know, I could

1 give it in a case like this. And then you're
2 going to give it in a case like this and a case
3 like this. And those -- then his mind popped in
4 the worst murders to him as they came to his
5 mind. That has no relevancy here.

6 What's relevant is whether he can
7 listen to the evidence and make his decision
8 based upon the evidence which he has addressed.
9 And if he gets -- obviously if he gets enough
10 from those circumstances, if that's what you
11 glean from this he's going to listen to the
12 evidence and if it seems to him to be
13 appropriate, that's what's appropriate. What
14 you didn't hear is, you know, I could only give
15 the death penalty in an instance where a child
16 was killed. What he was saying, I could do it
17 in that one.

18 MR. BAILEY: I think he was going to say
19 that if he kept on going.

20 THE COURT: We're not going to be able to
21 find that out.

22 MR. BAILEY: I know. I understand.

23 THE COURT: I think that's an impermissible
24 line of questioning. And I think you can ask
25 him as you have could you listen to the

Juror 44 Anthony E. Clark - Examination

1 circumstances, but not the specifics which is
2 where we were going.

3 MR. BAILEY: Okay. Thank you, Your Honor.

4 THE COURT: Very well. Thank you. Yes,
5 bring him.

6 (Whereupon, the prospective juror returns to the
7 courtroom.)

8 THE COURT: Thank you, Mr. Clark.

9 All right. And you may proceed.

10 BY MR. BAILEY:

11 Q. Mr. Clark, again, I'm going to tell you there
12 are no right or wrong answers and whatever answer you
13 give me as long as that's your honest belief is the
14 correct answer, okay?

15 A. Yes.

16 Q. Now, I'm going to kind of go over some of the
17 stuff Mr. Cummings asked you. And I apologize for
18 repeating, but this is so important to all of us and
19 we need to make sure we fully understand how each
20 juror's thinking before we actually sit down and pick
21 this jury in a couple of days. Do you understand
22 that?

23 A. Yes.

24 Q. Okay. Going back to the process if we get in
25 that second phase of the trial, you understand the

Juror 44 Anthony E. Clark - Examination

1 jury makes that decision?

2 A. Yes.

3 Q. And what I need to find out from you is if the
4 case is bad enough could you vote for the death
5 penalty as a juror knowing that as a result of that
6 vote that individual that's been on trial in front of
7 you is actually going to be put to death by lethal
8 injection or the electric chair?

9 A. Yes.

10 Q. Could you sign your name to a piece of paper, a
11 death verdict form, that would result in that person
12 being executed?

13 A. Yes.

14 Q. Could you stand up in open court and announce
15 out loud that was your decision if that was your
16 decision?

17 A. Yes.

18 Q. Thank you. That's all I have.

19 THE COURT: Very well. Mr. Clark, I'm
20 going to ask you to step back outside again,
21 just give us a few moments and we'll get you
22 right back in. Do you mind if I keep the
23 questionnaire? Do you need it?

24 MR. CLARK: No.

25 THE COURT: All right. Thank you.

1 (Whereupon, the prospective juror exits the
2 courtroom.)

3 THE COURT: What says the defense?

4 MR. CUMMINGS: Statutorily qualified,
5 Judge.

6 THE COURT: What says the State?

7 MR. BAILEY: Your Honor, I agree as far as
8 death qualification he is statutorily qualified.
9 I would like to note for the record his -- of
10 course the record speaks for itself, his
11 equivocation in his initial responses to the
12 Court and the fact that he did equivocate.

13 Your Honor, probably, or possibly a
14 greater concern I've got that I wanted to also
15 address to the Court is the question I think
16 it's 25 in the questionnaire that Mr. Clark
17 filled out. He has signed the questionnaire,
18 the declaration that says, and I quote, "I
19 declare under penalty of perjury that all of my
20 answers to the questions contained in this
21 questionnaire and attached explanation sheets
22 are true and correct to the best of my
23 knowledge. Signed in Dorchester County, South
24 Carolina." And he signed that.

25 Your Honor, that question 25 is clear,

Juror 44 Anthony E. Clark - Examination

1 unambiguous. And for the record that reads
2 "Have you been accused of a crime?"

3 And he wrote "no" one time in small
4 case, scratched that out and wrote "NO" in
5 capital letters. Your Honor, this was not a
6 situation where Mr. Clark had forgot that he had
7 had these arrests. It's a situation where he
8 clearly remembered the arrests, he remembered
9 the details, he gave a long explanation of it.
10 And at one point he said that he thought they
11 just applied to convictions, that the simple
12 assault charge did result in a conviction, he
13 didn't list that. The other two were arrests
14 without convictions. But his explanation for
15 that was not that he didn't understand it, but
16 that he didn't think it was important and
17 relevant.

18 And, Your Honor, these jurors are
19 charged with the responsibility of taking the
20 law from you and they have to be entrusted to do
21 that. And if he will not accept the
22 responsibility to answer a question truthfully
23 and honestly that he knows the answer to, then I
24 have concerns about his ability or his
25 willing -- not his ability, but his willingness

Juror 44 Anthony E. Clark - Examination

1 to accept the law from the Court and I would ask
2 he be disqualified on that basis.

3 THE COURT: Thank you, Mr. Bailey.

4 Yes, sir, Mr. Cummings.

5 MR. CUMMINGS: Thank you, Judge. Your
6 Honor, again, I asked this gentleman when he
7 fill out his questionnaire and he gave us the
8 date. I thought it said on the 16th, but we
9 take him what he says. Your Honor, a lot of
10 people, especially people that are poor or, you
11 know, lacking of a situation where they have
12 money, they don't know how things can be
13 expunged and they don't know how you go about
14 the legal process of obtaining their record back
15 or their life back. And we find that all too
16 often, rap sheets forever. We're talking about
17 a 1985 situation, and a 1990 situation, and a
18 1995 situation where there's no convictions. So
19 in and of themselves those two issues would not
20 statutorily bar this man under Rule 609 or any
21 other rule.

22 THE COURT: However, the problem -- stay
23 with me.

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: Because I am also concerned

Juror 44 Anthony E. Clark - Examination

1 about it. What about the fact that he was
2 untruthful on the questionnaire?

3 MR. CUMMINGS: Judge, I understand you
4 judge the credibility of witnesses in this room
5 today until the jury is seated. My question is
6 whether or not he was untruthful or whether or
7 not in his mind he didn't believe it was
8 relevant. And that's the juror's mind, not us.
9 And whether or not he put any significance to
10 the 1985 simple assault and battery.

11 Again, Judge, I have to defer to you
12 sitting up there listening whether or not
13 Mr. Clark was deceitful, like I asked him was he
14 trying to pull a deceit on this Court. And his
15 answer, Judge, you heard it and I'm not going to
16 keep beating it.

17 You know, I don't know how to get
18 people to comply with everything that we have to
19 ask them to do. Some people are real reluctant.
20 I mean, I've been trying to pull information
21 about jurors do you think you can? I'm not
22 sure. And then we hold them to the answers they
23 give us in here after we all ask them you really
24 can do this and they're saying yes.

25 THE COURT: I was trying to get him to give

1 me an explanation that -- I was concerned about
2 his explanation. I am concerned about his
3 explanation, I'm concerned about that.

4 MR. CUMMINGS: I understand that, Judge.
5 That would be the --

6 THE COURT: All right, Mr. Cummings.

7 MR. CUMMINGS: If I may, just one more
8 statement, Judge.

9 THE COURT: Yes, please.

10 MR. CUMMINGS: The only thing I would like
11 to say is this gentleman's an African-American
12 person. And we're not dealing with race on this
13 issue, we're dealing with the fact that this
14 gentleman in his mind didn't appear relevant or
15 important. And I just wanted to state that on
16 the record and I know that these questionnaires
17 are to try to elicit the most information we can
18 from a juror, and I can't speak for what
19 somebody says and what they write other than ask
20 them questions about it. Thank you, Judge.

21 MR. BAILEY: Judge, if I might say this for
22 the record. I don't care what race any of these
23 jurors are. I care how they answer the
24 questionnaires, I care how they respond to the
25 questions in court. That's my only question.

Juror 44 Anthony E. Clark - Examination

1 And I have no control over what they put in the
2 questionnaire or what their responses are, but,
3 again, I'm certainly not trying to exclude
4 anybody because of their race, I don't care.
5 And the demographics are the demographics and
6 there's nothing Mr. Cummings or I can do about
7 that.

8 THE COURT: All right. Over the objection
9 of the defense I am going to disqualify
10 Mr. Clark and I think the record needs to
11 reflect why. We had I think two or three
12 hearings regarding the questionnaire. And the
13 questionnaire was very carefully crafted by the
14 State and the defense obviously with ultimate
15 decision-making processes by the Court. And the
16 individuals swear to the accuracy of the
17 information on the questionnaire. And
18 throughout this process this questionnaire has
19 been given and the requirement that these
20 prospective jurors be truthful on this
21 questionnaire has had a substantial status in
22 this process, as it should.

23 And I feel that it is incumbent upon
24 me to be mindful that Mr. Clark, despite the
25 admonition in the questionnaire itself to be

1 truthful, was not truthful. Whether or not he
2 thinks it's relevant is unimportant. Whether or
3 not he chooses to share the information does not
4 mean that he can thwart this process. His
5 explanations I find were not credible. I think
6 he knew that the question was applicable to him,
7 he put yes and scribbled it out and put no. And
8 I think that he intended knowingly, therefore,
9 not to put accurate information on this
10 questionnaire.

11 So the question was placed on this
12 questionnaire after a lot of thought and
13 consideration by counsel, by the Court, and I
14 feel compelled not to disregard the failure to
15 be candid and truthful on the questionnaire.
16 And I think we've done that throughout this
17 process, so I am going to disqualify Mr. Clark.
18 Bring him back in, please.

19 (Whereupon, the prospective juror returns to the
20 courtroom.)

21 THE COURT: Thank you, Mr. Clark. I want
22 to thank you so much for your time that you have
23 given to this process; however, I am going to
24 disqualify you from service on this jury. And
25 the reason, quite frankly, that I'm going to do

Juror 44 Anthony E. Clark - Examination

1 that, and I'm going to share it with you,
2 Mr. Clark, is that I have great concerns about
3 the inaccuracy of the information on your
4 questionnaire because there is a section where
5 it says that you swear to the truth of that
6 information, so I just want you to understand
7 that.

8 However, I want to thank you for your
9 time which is so valuable that you've given to
10 this process. I want to also share with you
11 that I'm going to direct you not to discuss this
12 process or these questions with any prospective
13 jurors. If you think somebody might be a
14 prospective juror or in any other way be
15 involved in this trial, I'm going to instruct
16 you not talk about this matter with them.
17 However, anybody else you are at liberty to talk
18 about this matter if you want to, you have
19 that -- that's solely up to you. And, again, I
20 thank you for your presence here today and for
21 your time both Monday and today, but I would
22 release you and you can go about your business.

23 MR. CLARK: Thank you.

24 THE COURT: Thank you, Mr. Clark. Let's
25 take a short break, shall we?

1 (Recess, from 11:30 a.m. to 11:46 a.m.)

2 MR. BAILEY: Your Honor, this next juror is
3 the one that Ms. Rutland had testified about the
4 cell phone.

5 THE COURT: Oh, thank you. I'm with you.
6 All right. Yes, ma'am, Ms. Graham.

7 THE CLERK: Also this morning we have a
8 juror, Josephine Gibson, Number 112, which is on
9 panel 12 for 5:30, sent a doctor's excuse in
10 asking to be excused and I've given it to both
11 attorneys.

12 MR. BAILEY: No objection from the State,
13 Your Honor.

14 THE COURT: Thank you. She's 65 years of
15 age.

16 MR. CUMMINGS: Beg your indulgence, Your
17 Honor.

18 THE COURT: Yeah. She's also 65 years of
19 age so I share that with you, too.

20 All right. Yes, go ahead, Ms. Graham,
21 we're waiting on you.

22 THE CLERK: We're waiting for Mr. Cummings.

23 MR. CUMMINGS: We're just reading one
24 thing, Judge, please.

25 THE COURT: Sure.

1 (Pause in proceedings.)

2 MR. CUMMINGS: Your Honor, as to Juror
3 Number 112 we have shared this information with
4 Mr. Bowman and with his consent based on this
5 doctor's excuse from Dr. William Edwards we
6 would agree to medically excuse this young lady.

7 THE COURT: And she's 65 also.

8 MR. CUMMINGS: Yes, ma'am. Born in '37.

9 THE COURT: Very well, yes. Great.

10 THE CLERK: You can have it, that's yours.

11 MR. CUMMINGS: Are you sure?

12 THE CLERK: That's yours.

13 THE COURT: Counsel, let me just tell you
14 that with regards to Mr. Davis I would be
15 inclined when I ask him the questions, and I
16 think there will be a point in the colloquy
17 where it is, if you will, a lead-in to asking
18 him whether or not he's able to find someone
19 guilty and he thinks that they are guilty,
20 because I gather that's where the issue is. And
21 I will ask him whether or not he has ever -- or
22 if he has made a statement recently to anyone if
23 he would never find anybody guilty and see what
24 he says.

25 What I am reluctant to do and what I

1 am concerned about doing, is I don't know that I
2 am comfortable somebody heard you on the
3 telephone and this is what she heard. I mean,
4 I'm uncomfortable doing that to a juror. But I
5 think that I am inclined to perhaps approach the
6 issue, but I don't know that I am just going to
7 interrogate him directly on the -- I'm happy to
8 hear from him. If you think you need to do more
9 then I'll probably leave it up to you.

10 MR. BAILEY: I think that's probably as far
11 as you should go. I don't know that I would be
12 allowed to get into that.

13 THE COURT: We'll just see where it goes.
14 I'm not willing to get into a he said/she said
15 situation, I don't think that's appropriate.
16 All right. You understand what I'm saying?

17 MR. CUMMINGS: I agree, Judge. Because one
18 thing is, you know, we can't pit witnesses
19 against each other and this is a juror.

20 THE COURT: Exactly.

21 MR. CUMMINGS: And we're supposed to stay
22 away from those people with badges. And I
23 understand this is an accidental thing and I
24 have nothing other than the utmost respect and
25 kindness for Ms. Rutland and how the solicitor's

1 office approached and did that, but I know that
2 when we see those name tags we stay away from
3 everybody.

4 THE COURT: Ms. Rutland will probably wear
5 earmuffs from here on out. But in any event,
6 that's how I'm going to handle it and I just
7 wanted to share that with you. Okay.

8 Mr. Jonathan Davis.

9 (Jonathan L. Davis, called as a prospective
10 juror, having previously been duly sworn, is
11 examined as follows:)

12 EXAMINATION

13 BY THE COURT:

14 Q. Good morning, Mr. Davis.

15 A. Good morning.

16 Q. I can still say good morning, I got about
17 another seven minutes. How are you doing?

18 A. Fine.

19 THE COURT: Again, for the record this is
20 Mr. Jonathan L. Davis, Juror Number 70.

21 Q. Now, Mr. Davis, you remember when we were
22 together Monday, gosh, it seems like a long time ago
23 now, but do you remember on Monday morning you took
24 an oath along with the other jurors, you remember
25 that?

1 A. Yes.

2 Q. And I just wanted to tell you that the oath that
3 you took then is still good. You don't have to take
4 another one, it's still good for the questions and
5 the answers that we're going to go through here
6 today, okay?

7 A. Okay.

8 Q. All right. Now, I would ask of you whether or
9 not since we were together on Monday if anybody has
10 approached you about this case or tried to talk to
11 you about the case, or if you've inadvertently or
12 otherwise been exposed to any information about this
13 case?

14 A. No.

15 Q. Okay. Now, when you were back in the jury room
16 did you have a chance to look at this potential
17 witness list?

18 A. Yes.

19 Q. All right, sir. And with regards to the folks
20 listed on that list, are you related by blood or
21 marriage, or acquainted with, or do you have any
22 direct or indirect connection, or do you have any
23 personal or casual relationship, or any kind of
24 business association with any of the folks listed on
25 the potential witness list?

Juror 70 Jonathan L. Davis - Examination

- 1 A. By name, no, I don't know.
- 2 Q. Just by name?
- 3 A. Yeah.
- 4 Q. Let me ask you this question: Share with me
- 5 just the names that you think maybe you recognize.
- 6 Here, you take it. First of all, just share with me
- 7 the names.
- 8 A. Okay. Like Ricky Davis.
- 9 Q. Okay.
- 10 A. Like some other ones, you know, like --
- 11 Q. You take your time.
- 12 A. Some of the Browns.
- 13 Q. Some of the Browns?
- 14 A. Yeah.
- 15 Q. Read those names for me, would you?
- 16 A. Carolyn Brown.
- 17 Q. Okay.
- 18 A. Kendra Bowman.
- 19 Q. Kendra Bowman, okay. Do you want to flip
- 20 through that again and take a quick look? I want to
- 21 be sure we got everybody.
- 22 A. Ernest Hill.
- 23 Q. Okay.
- 24 A. That's all.
- 25 Q. That's okay. That's all?

Juror 70 Jonathan L. Davis - Examination

1 A. Yeah.

2 Q. Thank you. Now, with regards to Mr. Davis, how
3 do you think you know Mr. Davis, or connected with
4 him?

5 A. He's like -- if that's the same one.

6 Q. Yes, I understand.

7 A. The cop.

8 Q. The cop, okay.

9 A. Yeah, I know him.

10 Q. All right. You just know him, you just know him
11 and know that he is a police officer, cop?

12 A. Yeah.

13 Q. Okay. How about Mr. Carolyn Brown?

14 A. Like I know that name, you know, I can't put a
15 face with it.

16 Q. The name just seems familiar, okay.

17 A. The name.

18 Q. And Ms. Kendra Bowman, how do you know

19 Ms. Kendra Bowman?

20 A. Same.

21 Q. It's a name you think you might recognize. And
22 Mr. Ernest Hill?

23 A. I know him as -- you know, I talk with him.

24 Q. Okay. Do you all visit in each other's houses?

25 A. No, not like that.

1 Q. When you see him you know who he is and y'all
2 talk?

3 A. Yeah.

4 Q. Would you say you have a casual relationship
5 with him?

6 A. You could say that.

7 Q. Okay. Now, let me ask you, would the connection
8 that you have with the Ricky Davis have any bearing
9 on your ability to be a fair and impartial juror in
10 this trial?

11 A. No.

12 Q. How about Ms. Carolyn Brown, any connection you
13 have with her that might have any bearing on your
14 ability to be a fair and impartial juror?

15 A. No.

16 Q. And same with Ms. Kendra Bowman, any connection
17 you have with her that might have any bearing on your
18 ability to be fair and impartial?

19 A. No.

20 Q. And the same with Mr. Ernest Hill, would the
21 fact that Mr. Ernest Hill might be a witness in this
22 case have any bearing on your ability to be a fair
23 and impartial juror in this trial?

24 A. No.

25 Q. All right. Let me ask you this: Can you set

1 that connection aside if you were a juror in this
2 matter and be fair and impartial to both sides?

3 A. Yes.

4 Q. Same with Ms. Kendra Bowman?

5 A. Yes.

6 Q. The same with Ms. Brown?

7 A. Yes.

8 Q. The same with Mr. Ricky Davis?

9 A. Yes.

10 Q. So all these four folks, I gather that you
11 recognize the other names, but Mr. Hill you have a
12 friendship with?

13 A. Yeah.

14 Q. With regards to each and every one of those
15 folks, the fact that they may be a witness in this
16 case, you can set that aside and try this case based
17 on the evidence in this courtroom and be able to give
18 both sides a fair and impartial trial?

19 A. Yes.

20 Q. Okay. Now, since we were together on Monday --
21 well, before I ask you that, let me ask you this
22 question: On Monday I asked if you remember some
23 questions, more generalized questions about this
24 case. And my notes indicate that you did not
25 indicate that you had any opinion about this case or

1 that you had seen or heard or read anything about
2 this case, or that you had any bias or prejudice for
3 or against either of these parties, State or
4 Mr. Bowman. And on Monday when I asked if anyone
5 needed to respond to those questions, my notes
6 indicate that none of these things applied to you; is
7 that right?

8 A. That's true.

9 Q. And since that time has anything jogged your
10 memory and you need to respond to either have an
11 opinion, or having seen or heard or read something or
12 anything about this case, or that you have any bias
13 or prejudice, do you need to tell me anything about
14 that now?

15 A. No, ma'am.

16 Q. All right, sir. So your responses that you gave
17 Monday continue?

18 A. (Nodding.)

19 Q. That's a yes?

20 A. Yes.

21 Q. Let me tell you, let me tell you two things.
22 You and I are having a conversation and we're right
23 here together. But all the way over to
24 Ms. Hardee-Thomas.

25 A. Uh-huh (affirmative response).

Juror 70 Jonathan L. Davis - Examination

1 Q. She needs and wants to hear what you have to
2 say. Ms. Keil, who is our court reporter, needs to
3 be able to just hear what you say. And I think
4 probably Mr. Bailey can hear what you're saying. So
5 just be mindful of that for me, all right?

6 A. Okay.

7 Q. Thank you. Mr. Davis, I have some questions
8 that I want to ask you, but I want to talk to you
9 just a moment about the questions because the first
10 thing I want you to know is I do not want to invade
11 your privacy, that is not the purpose of these
12 questions.

13 What I'm going to be doing is I'm just
14 going to be asking you some questions because I need
15 to know how you feel about certain matters, I just
16 need to know about your opinions. And the reason
17 that I need to know those opinions is to see if your
18 opinions might have any impact on your jury service,
19 and that's the reason that I ask you. And I want you
20 to know this: I'm certainly aware that there aren't
21 any right or wrong answers, and I want you to be
22 mindful of that. There are no right, there are no
23 wrong answers.

24 I also want you to know that it's
25 obvious to me and everyone here and I'm sure it is to

1 you, too, that your opinions are just as valid and
2 good as anybody else's opinions. And we are
3 absolutely not here to challenge any of your
4 opinions. We are only here to try to understand a
5 little bit about them and, again, to see how they
6 might impact on your jury service. And that's the
7 purpose for these questions, okay?

8 A. Okay.

9 Q. And in a moment I'm going to be asking you some
10 questions about penalty, and specifically the death
11 penalty because that might be an issue in this case.
12 But I want you to understand that the fact that I am
13 talking about penalty at this stage, it is premature,
14 and I know it's premature, and I want to share with
15 you that it's premature. It's just -- obviously
16 because this trial hasn't even begun. And as I said
17 Monday and I'll say now and I will repeat, Mr. Bowman
18 is presumed innocent of these charges. It just is a
19 reality that I need to ask jurors something about
20 penalty because that is one of those issues that we
21 need to have some information about necessarily
22 before the case begins. So that's why we ask those
23 questions about penalty, albeit premature. Do you
24 understand?

25 A. Yes.

1 Q. As I ask these questions of you, particularly
2 about penalty, please keep in mind that they are
3 premature and that Mr. Bowman is presumed innocent of
4 these charges, okay?

5 A. Okay.

6 Q. All right. Now, the questions that I'm going to
7 be asking you are going to be generic, they are going
8 to be general questions. I am not going to be asking
9 you any questions about this case because it wouldn't
10 be fair to you because you don't know anything about
11 this case and it would be improper. So I'm not going
12 to ask you about this case, but I am going to be
13 asking you in the generic sense.

14 A. Okay.

15 Q. In the general sense, okay? And I'm going to
16 start that now. If you were a juror in any criminal
17 case would you be willing to listen to the law as you
18 were instructed by the judge?

19 A. Yes.

20 Q. Would you be willing to accept that law and
21 apply that law to the facts as you found them to be?

22 A. Yes.

23 Q. Even though you might not like particularly that
24 law or might even disagree with it, would you still
25 be willing to follow the law as you were instructed

1 to do by the judge?

2 A. Yes.

3 Q. And if you were asked to serve in the case of
4 the State vs. Mr. Bowman, could you decide this case
5 based solely upon what you would hear in the
6 courtroom and disregard anything that you may have
7 seen or heard or read about this case from any source
8 at all, should anything like that come to your
9 memory?

10 Let me explain a little bit to you
11 about that because that can be a little bit
12 confusing. What I'm saying, asking you is whether or
13 not you can try this case based on the evidence in
14 this courtroom. You've already told me you hadn't
15 heard anything about this case and you don't know
16 anything about this case. So the reason I ask that
17 question is that sometimes when the juror is sitting
18 on a jury and they're listening to the evidence,
19 sometimes they'll hear something and that will jog
20 their memory. Doesn't happen all the time, but it
21 does happen sometimes.

22 The reason that I ask the question of
23 you at this juncture is that I need to know whether
24 or not you would be able in the event that happened
25 to you, to take whatever that memory is, set it

1 aside, disregard it and listen to the evidence in the
2 courtroom?

3 A. Yes.

4 Q. Okay. That made more sense, didn't it?

5 A. Yeah.

6 Q. All right. Now, in a criminal case as you know
7 and as we talked about Monday, the State always has
8 the burden of proving the guilt of a defendant beyond
9 a reasonable doubt, any defendant, and Mr. Bowman.
10 Do you understand that?

11 A. No.

12 Q. All right. All right. Let me -- thank you for
13 sharing that with me. The State always has the
14 burden of proving the guilt of a defendant beyond a
15 reasonable doubt. The defendant, a defendant, never
16 has the burden of proving anything, and a defendant
17 never has to prove himself or herself innocent. Do
18 you understand that?

19 A. Yes.

20 Q. The State always has the burden of proof. Do
21 you understand that?

22 A. Yes.

23 Q. Okay. And under our law a defendant, any
24 defendant, is presumed innocent. Do you understand
25 that as well?

Juror 70 Jonathan L. Davis - Examination

1 A. Yes.

2 Q. Okay. Now, so if you were a juror in any
3 criminal case, would you be willing to listen to the
4 evidence and to listen to the law as you were
5 instructed?

6 A. Yes.

7 Q. Okay. Now, if you were a juror in any criminal
8 case and you listened to the evidence as you told me
9 you could and you found the facts as you found them
10 to be from listening to the evidence and you took the
11 law that the judge gave to you and you applied it to
12 those facts, if after you did that you were not
13 convinced that the State had proven the defendant
14 guilty beyond a reasonable doubt, would you be
15 willing and able to find that defendant not guilty?

16 A. Yes.

17 Q. Okay. On the other hand, if you listened to the
18 evidence, if you found those facts as you found them
19 to be, you applied the law given to you by the judge,
20 and if after you did that you were convinced that the
21 State had proven the guilt of the defendant, or of a
22 defendant, beyond a reasonable doubt, would you be
23 willing and able to find that defendant guilty?

24 A. Yes.

25 Q. Have you ever expressed that you would not find

1 a defendant guilty?

2 A. What do you mean by that?

3 Q. Well, I mean have you ever said, you know, I
4 don't care if I ever served on a jury I'd never find
5 a defendant guilty? Have you ever said anything like
6 that or felt that way?

7 A. No.

8 Q. All right. In other words, you're telling me
9 that you would be willing to listen to the evidence,
10 make your decision based upon whether or not you were
11 convinced that the person is guilty or not?

12 A. Yes.

13 Q. All right. And you would be willing -- and let
14 me just ask this again. Insofar as you are concerned
15 in the event you thought the State had proved a
16 defendant guilty beyond a reasonable doubt, you could
17 and you would be willing to find that defendant
18 guilty?

19 A. Yes.

20 Q. All right. In other words, you would listen to
21 the evidence in this courtroom?

22 A. Yes.

23 Q. And depending upon what you found the facts to
24 be you would find someone, a person, either guilty or
25 not?

1 A. Yes.

2 Q. Okay. Now, most of the time jurors don't
3 concern themselves with the matter of punishment.
4 Most of the time in a criminal court that's left up
5 to the judge. But there is one case in our law when
6 a juror -- but there is one case in our law when a
7 jury has to deal with the matter of punishment and
8 that is in a case like this one, it is a case where
9 an individual has been charged with the crime of
10 murder and where the State is seeking the death
11 penalty.

12 If an individual, if a person in a
13 death penalty case is convicted of the crime of
14 murder, then the same jury that convicted him or her
15 comes back and in a separate and a different
16 proceeding decide the sentence that the person would
17 get. And there are two choices. One, life
18 imprisonment without the possibility of parole, or
19 the death penalty. Those are the two possible
20 penalties.

21 The penalty would be determined in the
22 second or what's call the sentencing phase of the
23 trial. Do you understand this information, that it
24 is a -- that there are two parts, that there can be
25 two parts?

1 A. Yes.

2 Q. Not necessarily, but there can be. In other
3 words, a jury first deals with the what's called the
4 guilt phase. And only in the event that the jury
5 unanimously finds the defendant guilty beyond a
6 reasonable doubt, in that event then the jury, same
7 jury, returns for what's called the sentencing phase
8 and listens to the testimony and the evidence in the
9 courtroom. Based upon that evidence then, that jury
10 in the sentencing phase sentences the defendant to
11 either life imprisonment without the possibility or
12 parole or the death penalty. Do you understand that?

13 A. Yes.

14 Q. Is that fairly clear?

15 A. Yes.

16 Q. Okay. Now, when you were back in the jury room
17 did you see this piece of paper?

18 A. Yes.

19 Q. All right. Did you have a chance to review that
20 as well?

21 A. Yes.

22 Q. All right. If you want to look at it, you hold
23 it, you look at it if you want to because it
24 essentially describes three types of jurors for you.
25 Do you remember those three types of jurors and what

1 they were? You take a minute.

2 A. Not really.

3 Q. Take a minute and just refresh yourself, that's
4 fine.

5 A. (The prospective juror complies.) Three.

6 Q. All right. That was my next question. Which of
7 those three types of juror best describes you is
8 three?

9 A. Type three.

10 Q. Type three, all right. And in other words, you
11 would be willing to listen to whatever you might hear
12 and make your decision based upon what you hear in
13 the courtroom?

14 A. Yes.

15 Q. And if based upon what you hear in the
16 courtroom, if you thought, if you thought, if you
17 found that it was appropriate to sentence someone to
18 death, in that event you would be willing and able to
19 vote for that sentence?

20 A. Can I say something before I answer that?

21 Q. Sure.

22 A. It's like I don't feel that I can, you know,
23 sentence somebody like that, to death or whatever, or
24 if he innocent, you know. And then the Court seem --
25 to me seem, you know, that's he's guilty, then I

Juror 70 Jonathan L. Davis - Examination

1 sentence him to death and he's really innocent, but
2 if he is guilty and I see that he's -- that, you
3 know, that they didn't convict him, then he go out
4 and do it again, then, you know....

5 Q. I understand. I understand. Well, now, I want
6 you to listen to me for a moment, okay? Because I
7 think it's so important that you understand that in
8 order for a juror to even reach the point of penalty,
9 I want you to listen carefully because it's very
10 important because I hear what you're concerned about,
11 for a juror to reach this point, Mr. Davis, of
12 considering the penalty, that juror has already been
13 convinced of the guilt of a defendant beyond a
14 reasonable doubt. If the jurors, if all, if the 12
15 jurors are not convinced of the guilt of a defendant
16 beyond a reasonable doubt, they don't even get here.
17 They don't even get there. When they get -- when the
18 jury gets to the point of considering sentencing they
19 are convinced, have been convinced that the defendant
20 is guilty beyond a reasonable doubt.

21 So what I want you to know is that you
22 wouldn't even be talking about sentencing, see,
23 that's why I told you that this is all premature,
24 okay, it's real premature. Keep that in mind, that
25 this is so premature, but I have to ask you in this

1 general, generic sense. But as I ask you in this
2 general, generic sense, and I am not talking to you
3 about this case, do you understand that?

4 A. Uh-huh (affirmative response).

5 Q. In the generic sense the jury before it even
6 thinks about sentencing has already passed that
7 point. In other words, the jury has been unanimously
8 convinced to each and every juror's satisfaction that
9 the defendant is guilty beyond a reasonable doubt.
10 Are you with me?

11 A. Yes.

12 Q. So, if you will, on the question that I am
13 asking you about this case in the generic, general
14 sense, guilt is determined, okay? So for the
15 purposes of my question be mindful of that, okay,
16 guilt is determined. This hypothetical, this juror
17 in this general, generic sense now is past that
18 station, if you will, that's done. So, this juror
19 that I'm talking about in the sentencing phase
20 doesn't have that question, okay?

21 A. Okay.

22 Q. See, because if they weren't convinced of the
23 defendant's guilt beyond a reasonable doubt they
24 would not be in the sentencing phase, okay?

25 A. Okay.

1 Q. All right. So let's set that aside for purposes
2 of this question, okay?

3 A. Okay.

4 Q. All right. So this juror now has crossed --
5 already determined guilt and is in the sentencing
6 phase, all right?

7 A. Uh-huh (affirmative response).

8 Q. This juror, and I'm asking you and in the
9 generic sense, to get to the sentencing phase,
10 listened to all the evidence, listened to all the
11 information, and the question that I have for you is
12 that once you've done that, once you've listened to
13 all the information, if you found, if you thought it
14 was appropriate that the death sentence, death
15 penalty be imposed, the question that I would have
16 for you is that if you found that to be appropriate
17 could you vote for that sentence?

18 A. Yes.

19 Q. All right. And if you thought that the death
20 sentence was not appropriate or for any other reason
21 the person ought to receive life imprisonment, you
22 would you be able and willing to vote for a sentence
23 of life imprisonment?

24 A. Yes.

25 Q. Okay. So you would make the decision based upon

1 what you would hear in the courtroom?

2 A. Yes.

3 Q. All right. Now, if you were chosen to serve as
4 a juror in this case you and the other jurors would
5 be housed here in a motel at county expense in
6 St. George, the word is sequestered. What that means
7 is, is that you would stay here with us during the
8 course of the trial and would stay at the motel, of
9 course, except when we're in court. This period
10 could be as long as two weeks, it could be longer,
11 but it could be shorter also, I just don't know what
12 the exact duration of the trial will be.

13 Obviously that would create an
14 inconvenience for you as it surely will for all who
15 serve on this jury. Other than the inconvenience
16 which it would no doubt cause anybody who would have
17 to serve in this capacity, would that pose a serious
18 risk of danger to your health or well being, or to
19 that of anybody who is dependent upon you if you had
20 to serve in that capacity?

21 A. No.

22 Q. You would be able to do that?

23 A. Yes.

24 Q. All right. Mr. Davis, the lawyers now have an
25 opportunity to ask you some questions, and at this

1 time I'm just going to ask that you answer their
2 questions.

3 THE COURT: All right. Mr. Cummings or Ms.
4 Hardee-Thomas. Mr. Cummings.

5 EXAMINATION

6 BY MR. CUMMINGS:

7 Q. Good morning, sir, I'm Norb Cummings. It's
8 afternoon now, I apologize. And the young lady over
9 there is Ms. Marva Hardee-Thomas, the other young man
10 is Mr. Marion Bowman, sir.

11 Mr. Davis, I'm going to go back a
12 little bit now and just start off by trying to talk
13 to you and ask you that you understand from listening
14 to Her Honor that the first part of any trial is
15 whether or not a jury can determine if a citizen is
16 guilty beyond a reasonable doubt by putting all the
17 jurors' minds together, listening to the evidence and
18 the facts, and then they come up with a decision in
19 their collective minds. Do you understand that, sir?

20 A. Yes.

21 Q. And you would be willing to follow Her Honor's
22 instructions and obey the law as she gives it in
23 arriving at your conclusion with your fellow jurors?

24 A. Yes.

25 Q. After that, and until then we don't even get

1 into the second part. And the reason why we ask
2 gentlemen and ladies questions about how they're
3 going to serve on a jury or what they might do is to
4 try to make sure we get a fair and impartial panel.
5 It is not it invade your privacy, no right or wrong
6 answer, sir. I think you've understood that from Her
7 Honor's questions.

8 A. Yes.

9 Q. You said you were a type three juror. Is that
10 your word, sir?

11 A. Yes.

12 Q. Okay. And then you were asked questions whether
13 or not, again, that you would put your mind
14 collectively with the other members of the jury and
15 reach a punishment that would fit the facts and
16 circumstances that the jury would find. Would you do
17 that?

18 A. Yes.

19 Q. And you would not take jury service lightly,
20 would you, sir?

21 A. No.

22 Q. All right. In your questionnaire, and this is
23 just a question, you were asked whether or not you've
24 ever had a positive experience with law enforcement?

25 A. Yes.

1 Q. And do you remember what you put down about
2 that, about positive about law enforcement? If you
3 don't remember Her Honor will let you see her form.
4 Question number 27.

5 THE COURT: Let's get that to him in any
6 event. There you go.

7 A. Yes.

8 Q. What was your answer, sir?

9 A. I joined the police cadet in St. George.

10 Q. When was that, sir?

11 A. Two years ago.

12 Q. Two years ago, okay. Now, since you've been up
13 in jury duty starting Monday and were around the
14 courthouse, you've answered certain questions back
15 for Her Honor today about your involvement as a juror
16 and not reading or not hearing anything about this
17 case?

18 A. Yes.

19 Q. All right. You've not read anything in
20 particular about the facts of this case in any
21 newspapers?

22 A. No.

23 Q. Nobody's approached you about talking about this
24 case?

25 A. No.

1 Q. Okay.

2 MR. CUMMINGS: Beg the Court's indulgence,
3 Your Honor.

4 THE COURT: Sure.

5 Q. Excuse me, sir, one moment.

6 (Mr. Cummings and Ms. Hardee-Thomas conferring
7 with Mr. Bowman.)

8 Q. Just a few questions, sir. As you know, every
9 juror who comes in here is protected by Her Honor.
10 And that nobody, okay, can invade the province of the
11 jury, nobody can hurt the jurors. My question to you
12 is have you ever made a decision that you would never
13 find anybody guilty of any crime and expressed that
14 since you've been called to jury duty, sir?

15 A. No.

16 Q. That's all the questions I have.

17 MR. CUMMINGS: Thank you, Judge. And thank
18 you, sir.

19 THE COURT: All right. Mr. Bailey.

20 MR. BAILEY: Your Honor, could I check on
21 the real time? I couldn't hear one of the
22 answers I was concerned about.

23 THE COURT: Yes.

24 MR. BAILEY: Okay.

25 THE COURT: Sure.

1 MR. BAILEY: Thank you, Your Honor.

2 THE COURT: Certainly.

3 EXAMINATION

4 BY MR. BAILEY:

5 Q. Mr. Davis, I want to say the same thing the
6 judge said and Mr. Cummings said, that there are no
7 right or wrong answers, okay?

8 A. Okay.

9 Q. All I ask is that you not just tell me something
10 because you think that's what I want to hear.
11 Because what I want to hear is what's in your heart
12 and mind, okay?

13 A. Okay.

14 Q. All right. You live in St. George; is that
15 right?

16 A. Yes.

17 Q. Do you have any friends, do you spend any time
18 in Branchville?

19 A. No.

20 Q. Okay. Now, Carolyn Brown and Kendra Bowman both
21 live in the Branchville area and --

22 MR. CUMMINGS: Judge, I'm going to object,
23 this is issue specific. The only question is
24 whether they know the jurors, respectfully.

25 MR. BAILEY: Trying to find out, Your

Juror 70 Jonathan L. Davis - Examination

1 Honor. Of course I'm trying to find out if he
2 does, in fact, know them. He said he couldn't
3 put a face with a name and I'm just trying to
4 find out if he knows potential witnesses, I
5 think that's crucial.

6 THE COURT: All right. I'll allow you to
7 go a little bit.

8 MR. BAILEY: Okay.

9 Q. The Carolyn Brown that you think you may know,
10 where does she live?

11 A. Well, I don't know really where she live. I
12 seen her in St. George, talked to her, you know.

13 Q. All right. You talked to her, okay. And the
14 Kendra Bowman that you know, where does she live?

15 A. I think Reevesville.

16 Q. All right. And do you know anybody else in
17 Kendra Bowman's family, like brothers, sisters,
18 parents, anybody?

19 A. No.

20 Q. Okay. And do you know these people well?

21 A. No.

22 Q. Okay. When is the last time you think you've
23 seen either Carolyn Brown or Kendra Bowman?

24 A. Last month.

25 Q. Okay. And do you recall where you saw them?

1 A. Yeah.

2 Q. Where was that?

3 A. Like right in front of my house.

4 Q. Okay. Were they together?

5 A. No.

6 Q. And which one was it you saw in front of your
7 house?

8 A. Kendra.

9 Q. Kendra, okay.

10 A. I don't know if that's the right -- they call
11 her something else, I can't remember right now.

12 Q. All right. Can you tell me what she looks like,
13 about how old she is and --

14 A. She about maybe 30, she's kind of tall.

15 Q. Okay.

16 A. For a female she's kind of tall.

17 Q. Okay. How about is she heavy set, or skinny, or
18 what?

19 A. She's like in between.

20 Q. Okay. And you think she has a nickname, but
21 you're not sure what the nickname is?

22 A. Yeah.

23 Q. Okay. You don't know anybody else in her family
24 that you're aware of; is that right?

25 A. No.

1 Q. Okay. All right. Okay. Mr. Davis, you were
2 here Monday; is that correct?

3 A. Yes, sir.

4 Q. Okay. And I couldn't hear everything you said
5 when the judge asked you some questions, and so I
6 might have some of those same questions over again
7 because I just couldn't hear back here. But one of
8 the questions that she asked you was whether or not
9 you had ever expressed any opinion that you wouldn't
10 find somebody guilty. Do you remember that question?

11 A. Not really.

12 Q. Okay. Well, let me ask you it again then.
13 Either Monday, or any other time, have you ever told
14 somebody that you wouldn't find anybody guilty?

15 A. No.

16 Q. Okay. Are you sure of that?

17 A. I'm sure.

18 Q. Okay. And you've not discussed the case with
19 anybody?

20 A. No.

21 Q. On the telephone?

22 A. No.

23 Q. Okay. All right. Let me talk to you a little
24 bit about the process that we go through in the state
25 of seeking the death penalty. We start out with the

1 guilt phase. That's like any other criminal trial
2 where the State puts up evidence trying to convince
3 the jury that the defendant is guilty of what they're
4 charged with, that's the guilt phase.

5 And if that person is found guilty of
6 murder and the State is seeking the death penalty,
7 then that jury goes into that second phase, the
8 penalty phase. And the jury hears some additional
9 testimony and additional instructions from the judge,
10 then the jury decides what that punishment ought to
11 be. And there are two choices. Life imprisonment
12 without the possibility of parole or the death
13 penalty.

14 And after hearing all of the facts and
15 the law the jury votes, they take a vote. And all 12
16 have to agree, one or the other. Whatever that
17 jury's verdict is the judge orders that to happen and
18 it will happen. So based on that jury's verdict the
19 judge is going to order that defendant to serve the
20 rest of his life in prison or she's going to order
21 him to be executed and he's going to be executed. So
22 that's the process we go through. Do you understand
23 that?

24 A. Yes, sir.

25 Q. All right. And, again, I'm not going to ask you

1 what you would do in this case, you hadn't -- don't
2 know anything about the case, do you?

3 A. No, sir.

4 Q. Okay. But if you felt like it was a very, very
5 serious case in the penalty phase, could you vote for
6 the death penalty knowing that as a result of that
7 vote by Jonathan Davis and the other jurors, that
8 person, that defendant, actually is going to be
9 executed by lethal injection or put in the electric
10 chair?

11 A. Yes.

12 Q. Could you sign your name to a death verdict form
13 along with the other jurors knowing that as a result
14 of signing that paper that person is either going to
15 get lethal injection or the electric chair?

16 A. Yes.

17 Q. Could you stand up here in open court and
18 announce that decision out loud? Let me explain that
19 to you. There's a process called polling the jury
20 where if the jury votes for the death penalty they
21 all come out here and they sit down and each juror's
22 name is called out, they're asked to stand up and
23 announce that that death penalty is their verdict.
24 Could you do that?

25 A. No. (

1 Q. You could not do that?

2 A. (Shakes head.)

3 Q. Thank you.

4 MR. BAILEY: That's all I have at this
5 time, Your Honor.

6 MR. CUMMINGS: Your Honor, if I may just
7 briefly.

8 THE COURT: Yes.

9 EXAMINATION

10 BY MR. CUMMINGS:

11 Q. Mr. Davis, I'm not going to try to trick you,
12 not try to put any words in your mouth. You've told
13 the solicitor, you told Her Honor you could
14 collectively vote with the jurors to impose the death
15 penalty if, as Mr. Bailey stated, very serious issues
16 were there and the jury along with you were to find
17 that's the appropriate punishment. You said you
18 could do that?

19 A. Yes.

20 Q. Okay. Then you could sign your name to a piece
21 of paper the other jurors would do if the jurors
22 found, because it was so very serious, that the
23 ultimate punishment would be imposed?

24 A. Yes.

25 Q. And you said you could do that. Now, you

1 understand polling a jury, and again, if you don't
2 understand Mr. Bailey or I, that's why Her Honor's
3 here, not a trick question, not to intimidate
4 anybody. All it would mean is like we're in the room
5 right now and all 12 citizens, all the jurors on that
6 jury, not just one person would get to stand up. And
7 they're only asked two questions and they're asked is
8 this your verdict and the second question is it still
9 your verdict. The reason why we say we do that open
10 in public and polling is we never want to hide what
11 goes on in this courtroom. We give every citizen a
12 fair and impartial trial, correct, sir?

13 A. Yes.

14 Q. Could you stand up along with your other
15 citizens if you were picked on this jury and express
16 what you just voted for?

17 A. Maybe.

18 Q. And could you please share with us why you
19 either could not or why you're saying maybe now, sir,
20 why you would not be able to state that out, sir, in
21 public?

22 A. Probably nervous.

23 Q. Would that be the only reason? Would you be --
24 and, again, I'm not trying to ever say this in any
25 particular case, would you ever be embarrassed about

1 your verdict that you and the other jurors would
2 render?

3 A. No.

4 Q. Would you ever be ashamed or trying to hide
5 something from the public by not wanting to stand up?

6 A. No.

7 Q. Would it be solely based on nervousness knowing
8 that Her Honor would protect the jury?

9 A. Yes.

10 Q. As you see, all the lawyers, we stand here and
11 nobody goes past the railings or the bar or anything.
12 Would you be nervous because of what we are and who
13 we are?

14 A. No.

15 Q. What would cause the nervousness then,
16 Mr. Davis? And this is why we want your words, sir,
17 not ours.

18 A. Just to have to do that part.

19 Q. Could you do that if Her Honor asked Madam Clerk
20 or any other people, including herself, to say jury
21 please rise and ask those two questions, could you do
22 that if Her Honor instructed a clerk to ask you those
23 questions?

24 A. Yes.

25 Q. Would you -- and, again, I apologize to you,

Juror 70 Jonathan L. Davis - Examination

1 sir, as a gentleman, would you lie about your
2 verdict?

3 A. No.

4 Q. Would you hide your verdict?

5 A. No.

6 Q. The only reason why you would be reluctant to
7 stand up is nervousness?

8 A. Yes.

9 Q. But could you do it?

10 A. Yes.

11 Q. Thank you.

12 MR. CUMMINGS: That's all the questions I
13 have of this gentleman.

14 THE COURT: Okay. Yes, sir.

15 EXAMINATION

16 BY MR. BAILEY:

17 Q. Mr. Davis, I apologize, I hate to keep you up
18 here and ask the same questions over and over, but
19 this is the only chance we get to talk with jurors
20 before we pick a jury. And your answers, again, they
21 have to be your answers. And, again, I would ask
22 you, please, don't tell me something because you
23 think that's what I want to hear, okay? I just want
24 to know what you think.

25 I went over the process that you go

1 through when the State seeks the death penalty. And
2 if the jury finds that the death penalty is
3 appropriate they would vote on it. And you said that
4 you could do that --

5 A. Yes.

6 Q. -- is that right? And they would sign their
7 name to a death warrant, death verdict form. You
8 said you could do that?

9 A. Yes.

10 Q. Okay. And then I asked you if you could get out
11 here in open court and sit in one of these chairs and
12 when they call the name Jonathan Davis out, whether
13 or not you could stand up and announce out loud in
14 this courtroom in front of everybody that that was
15 your verdict and it would result in the defendant
16 being executed. And you told me no, you could not do
17 that.

18 A. Yes.

19 Q. Is that still your answer?

20 A. Yes.

21 Q. Thank you.

22 THE COURT: All right.

23 EXAMINATION

24 BY THE COURT:

25 Q. Mr. Davis, here's where -- here's certainly

1 where I am at this point. I am not understanding.

2 Can you explain to us? Because, I mean, you
3 obviously told Mr. Bailey one thing and you told Mr.
4 Cummings the other and I just want to understand
5 where you're coming from. Can you tell me that?

6 A. All right. Like he said it in a different form,
7 whatever.

8 Q. Okay.

9 A. But I understand what he's saying. To the
10 question that both of them asked me, no, I couldn't
11 do it.

12 Q. You couldn't do --

13 A. I couldn't stand up and say that.

14 Q. Say what? Say what?

15 A. That I can give somebody a death penalty like
16 that.

17 Q. You couldn't say it?

18 A. No.

19 Q. You couldn't say it?

20 A. I couldn't say it.

21 Q. You could write it?

22 A. I can write it.

23 Q. You can participate in it, you can participate
24 in the decision-making process and vote for that
25 sentence?

1 A. Yeah.

2 Q. Okay. Tell me why, why you can write it, you
3 can vote for it, but you couldn't say it? Help me
4 understand that.

5 A. All right. I can write it because, you know,
6 I'm there, that's -- I'm hearing everything and I'm
7 putting it together, then I can write it, but as in,
8 you know, nervousness, I'm standing up looking at,
9 you know, everyone and saying it is different.

10 Q. What do you think you would have to say?

11 A. I'm giving him or her a death penalty.

12 Q. You think that's what -- those would be the
13 words you would have to say?

14 A. Uh-huh (affirmative response).

15 Q. Is that what you're telling me?

16 A. Yes.

17 Q. You would have to say those words?

18 A. Yes.

19 Q. All right. Now, do you understand that that's
20 the -- set the words aside for me for just a moment.
21 You understand that that's what you would -- that's
22 what you would be doing, that would be your
23 participation in the writing and the voting, you
24 understand that?

25 A. Yes.

1 Q. Okay. Here are the two questions. Let me tell
2 you the two questions.

3 A. Okay.

4 Q. Let me tell you that the process is called
5 polling the jury, that's what the process is called.
6 And there are two questions that get asked of the
7 jurors. Here are the two questions, okay? The clerk
8 asks, sometimes the judge asks these two questions,
9 but these are the two questions. In the event that
10 this jury is polled these will be the two questions.
11 Okay. Typically and normally in any criminal case
12 when a jury is polled these are the two questions,
13 okay?

14 A. Okay.

15 Q. And the jurors have to stand, one at a time they
16 stand. The clerk or the judge says Madam or
17 Mr. Juror, is this your verdict? The juror answers
18 yes or no. The second question is, is it still your
19 verdict? And the juror says yes or no. The jurors
20 do not stand up and say I sentence so and so to
21 death.

22 A. Oh, okay.

23 Q. That is not what they say.

24 A. All right. I understand.

25 Q. Did you not understand that before?

Juror 70 Jonathan L. Davis - Examination

- 1 A. Not before.
- 2 Q. You thought you had to do --
- 3 A. Yeah.
- 4 Q. -- the words that you told me before?
- 5 A. (Nodding.)
- 6 Q. That's a yes?
- 7 A. Yes.
- 8 Q. Okay. The two questions that are asked, again,
- 9 is this your verdict? The juror answers yes or no.
- 10 Is it still your verdict? The juror answers yes or
- 11 no. Does that make a difference for you?
- 12 A. Yes.
- 13 Q. Tell me how.
- 14 A. Saying it as in, you know, saying the words and,
- 15 you know, looking at the -- just saying yes or no,
- 16 that's easier than actually saying the words.
- 17 Q. But, again, understanding what the result would
- 18 be you can consider, and found appropriate you could
- 19 write your name on the piece of paper?
- 20 A. Yes.
- 21 Q. For the death penalty?
- 22 A. Yes.
- 23 Q. And you can vote for the death sentence?
- 24 A. Yes.
- 25 Q. Okay.

1 THE COURT: Very well. Does that prompt
2 anything from either of you?

3 MR. CUMMINGS: No other questions from the
4 defense, Your Honor.

5 THE COURT: All right.

6 MR. BAILEY: No other questions at this
7 time, Your Honor.

8 THE COURT: Thank you. Now, what I'm going
9 to ask you to do for me to is step right outside
10 the door and just give me a few moments and
11 we'll get you to come right back in, Mr. Davis.
12 (Whereupon, the prospective juror exits the
13 courtroom.)

14 THE COURT: All right. What says defense?

15 MR. CUMMINGS: May it please the Court,
16 Judge. As to the issue of juror qualification
17 we believe the gentleman is statutorily
18 qualified. I'm not aware of any automatic
19 disqualification with the fact that a citizen --
20 usually the defense has to make the motion at
21 that point to poll the jury. In a particular
22 case like this usually the State really wouldn't
23 have a reason to poll the jury into the penalty
24 phase as I'm aware of it, judge. If I'm in
25 error I know Mr. Bailey or you will correct me.

1 But as to the penalty phase polling the jury
2 here would be up to the defense. I'm not saying
3 it's going to happen or not happen, we're way
4 premature on the issue.

5 I think the fact the gentleman's own
6 reluctance to be statutorily qualified in my
7 humble opinion would be nervous when standing
8 up. I think every person in this room so far
9 has been nervous both on the stand and in the
10 significance of this case, Your Honor. I would
11 just like to put that on the record, please.

12 THE COURT: All right.

13 MR. BAILEY: Your Honor, I would ask he be
14 removed for cause.

15 THE COURT: I'm so sorry, before you do
16 that I have a question I need to ask of the
17 defense. Do you agree that in the event that
18 this -- in the event that the jury is polled in
19 the sentencing phase.

20 MR. CUMMINGS: Yes, ma'am.

21 THE COURT: That those are the two correct
22 questions?

23 MR. CUMMINGS: Yes, ma'am. Absolutely as
24 Your Honor asked him.

25 THE COURT: All right. You agree with

1 that, Ms. Hardee-Thomas?

2 MS. HARDEE-THOMAS: I concur, Your Honor.

3 THE COURT: All right. In other words, you
4 agree that those are the two correct polling
5 questions?

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: Is this your verdict, is this
8 still your verdict?

9 MR. CUMMINGS: Yes, ma'am. And I did not
10 ask this juror what their answer would be
11 because, again, we've tried to be in this vacuum
12 in here and we don't want to know because --
13 because they would not know, so I asked him in
14 the generic sense.

15 THE COURT: Yes, sir, Mr. Bailey.

16 MR. BAILEY: I have several situations in
17 regard to Mr. Davis. One, of course, being the
18 testimony given under oath by Ms. Rutland about
19 the telephone conversation that she overheard,
20 she described him by name and by description.
21 And she was very clear in what she heard. When
22 you asked him about that, and maybe it was my
23 imagination, but it looked like he was a little
24 taken aback like, you know, something that I
25 didn't think you knew. I mean, that was the

1 impression I got from his looks. So, again,
2 that's a credibility issue between Ms. Rutland
3 and Mr. Davis.

4 Second thing that's of concern is that
5 he apparently knows the defendant's sister. And
6 the description he gave wasn't a hundred percent
7 the way I recall her being, but -- and that's
8 corroborated by the fact that he apparently
9 knows Carolyn Brown who was in that same circle,
10 so I would be very concerned. She will be
11 testifying. Both of these people will be
12 testifying. So if, in fact, he does know them,
13 then I think he should be disqualified for that
14 reason alone.

15 And next, Your Honor, would be the
16 responses he gave you initially he didn't
17 understand the State's burden of proof. You had
18 to go through that with him a few times and it
19 just appeared to me that he was not
20 understanding, that you would explain it to him
21 and that he would go through it and had kind of
22 a blank look. And of course if the juror's
23 mentally disqualified under State vs. Gaskins,
24 the Court has a right and a duty to excuse them.

25 Your Honor, the questions he gave on

1 signing the death verdict form he first said
2 he's number three. And then I'm trying to read
3 my handwriting. I think -- and after that in
4 response to the question he says that I don't
5 feel that I can sentence someone to death. Then
6 he said he could vote for it. And in response
7 to signing the -- to being polled he first said
8 that he couldn't do it when I asked him, Mr.
9 Cummings got up there he said maybe, then he
10 said he could. I got back up there and he said
11 he couldn't and then you got up there and he
12 said he could. So I don't -- I don't think he
13 knows his own mind much less being able to share
14 that with us. So, Your Honor, I would ask for a
15 combination of all those reasons that he be
16 disqualified for cause.

17 THE COURT: What says the defense,
18 qualified, unqualified?

19 MR. CUMMINGS: I believe, Judge, he's
20 statutorily qualified. I don't even want to get
21 into pitting or other things unless I have to.

22 THE COURT: Thank you, Mr. Cummings. I
23 find him qualified and let me put my reasons,
24 let me state my reasons. The easiest one I
25 think is the concluding one. And I watched it

1 and I watched the way that you all were asking
2 him the questions and I watched him get confused
3 which is why I tried to with open-ended
4 questions have him tell me what was worrisome
5 about that.

6 Because he was real clear he could
7 sign the death penalty, he was real clear he
8 could vote for the death penalty if he thought
9 that was appropriate. And I couldn't -- it
10 didn't make sense to me why he had trouble with
11 the polling. And then unless, unless he had
12 concerns about having to stand up and say a
13 colloquy. And that was clearly to me what he
14 was uncomfortable about.

15 And he said that. I mean, he said I
16 can't stand up and say that. And it was real
17 clear, his relief, I could see it, I could
18 certainly hear it when he heard the polling
19 questions. And he expressed himself I thought
20 very well about that, so I really don't -- I'm
21 not concerned about that, that was I think
22 clearly a misunderstanding.

23 With regards to the telephone call, I
24 think he was probably taken aback because he may
25 have been offended by the fact that somebody was

Juror 70 Jonathan L. Davis - Examination

1 standing around listening to him as he made a
2 telephone call here. He's a person on a jury
3 and I don't -- so if he had any reaction that
4 very well could have, that could have easily
5 have been his reaction. He does a civic duty,
6 comes up here, all of a sudden people are saying
7 he's having conversations and he probably felt
8 very uncomfortable about that.

9 And I think to some extent my feeling
10 about that is that folks who work with our
11 system, our jury systems are supposed to stay
12 away from jurors. And I absolutely understand
13 that that was 100 percent inadvertent, but I'm
14 not going to find myself having -- having
15 credibility decisions to make between a
16 potential juror and someone that overheard a
17 telephone call by that juror. Insofar as I am
18 concerned, I'm not willing to find that based on
19 that information that this juror isn't willing
20 to do those things that he told me he could do
21 under oath. So I'm not willing to do that.

22 With regards to the fact that he had
23 had to -- happily, I'm happy to explain and did
24 explain. I think he did understand, I think he
25 did feel some nervousness on the stand. And

1 some jurors I noticed the concepts are easy and
2 they pick them right up, and some of them, maybe
3 it's my words, seem to take a little more
4 explanation, but clearly when he understood what
5 I was talking about, you can certainly perceive
6 understanding on his part.

7 And I didn't see that his level of
8 understanding was certainly outside the range of
9 what I have seen from the jury panel as a whole,
10 so I'm not concerned about that either and for
11 those reasons find that he is qualified.

12 MR. BAILEY: Your Honor, I'm sorry, just
13 for the record.

14 THE COURT: Sure.

15 MR. BAILEY: I just wondered if you wanted
16 to address the situation about the sister and
17 the Carolyn Brown.

18 THE COURT: Oh, thank you so much. Yes,
19 sir. Thank you so much. With regards to the
20 witnesses, I think I asked him to assume for the
21 purposes of my question that he knew those
22 folks. He was a little bit concerned about the
23 names and the faces, but I asked him to assume
24 that he knew those folks and I asked him whether
25 or not he could set his relationship aside, his

Juror 70 Jonathan L. Davis - Examination

1 connection aside and give to both sides a fair
2 and impartial trial and he said he could.

3 I don't think there's any law, that I
4 am aware of, just because you know, you know,
5 witnesses in a case, relatives of a defendant,
6 that that in and of itself disqualifies a juror,
7 but if I've missed something please point that
8 out to me. And that's why we go through the
9 colloquy to ask folks if they can set it aside.
10 Thank you so much for that reminder, over the
11 exception of the State.

12 If you will invite Mr. Davis back in.
13 (Whereupon, the prospective juror returns to the
14 courtroom.)

15 THE COURT: Mr. Davis, you have been found
16 to be qualified as a potential juror in the
17 case. That doesn't mean you are on the jury
18 yet, it just means that you are a potential
19 juror and may be selected to serve on this jury.
20 We are hoping that we will be able to select the
21 jury on Thursday at 2:00, tomorrow at 2:00. And
22 I think that's probably a little ambitious at
23 this point. If we have to change that time we
24 will call you probably in the morning and let
25 you know, but unless you hear back from us

1 please be here tomorrow at two o'clock.

2 Now, here's a sheet of paper for you,
3 it's got Thursday two o'clock as a reminder on
4 that sheet. And it contains some instructions
5 to help you get ready for your jury service,
6 like packing clothes, bringing any medicines
7 that you might need and it tells you where you
8 will be housed, gives you emergency numbers both
9 during the day and at night in case anyone needs
10 to reach you for an emergency.

11 Please feel free to discuss the
12 details of where you'll be and telephone numbers
13 and the like with anyone that you choose to, but
14 remember you must not discuss this matter or
15 allow anyone to discuss it with you. You must
16 not even discuss any aspect of this case with
17 anyone or allow anyone to discuss any aspect
18 with you. Do not expose yourself to any
19 information about this case from any source at
20 all. Do you understand this?

21 MR. DAVIS: Yes.

22 THE COURT: All right. And I look forward
23 to seeing you tomorrow at 2:00.

24 MR. DAVIS: Okay.

25 THE COURT: All right. Kind of listen out

Juror 70 Jonathan L. Davis - Examination

1 for a phone call tomorrow, too, okay, because we
2 might be falling behind like a lot, okay?

3 MR. DAVIS: Okay.

4 THE COURT: Thanks, Mr. Davis. Take care.
5 (Whereupon, the prospective juror exits the
6 courtroom.)

7 THE COURT: All right. Ms. Lora McDougall.
8 (Lora S. McDougall, called as a prospective
9 juror, having previously been duly sworn, is
10 examined as follows:)

11 EXAMINATION

12 BY THE COURT:

13 Q. Hi, Ms. McDougall.

14 A. Hi.

15 Q. How are you?

16 A. Just fine.

17 Q. I am so sorry to keep you back there. We have
18 fallen behind, so I apologize for keeping you back
19 there so long. But please know that our time with
20 each juror is very important, so just know that. I'm
21 not good at estimating time.

22 Ms. McDougall, you will recall when we
23 were together on Monday that you took an oath with
24 the other prospective jurors.

25 A. Yes.

1 Q. Remember that?

2 A. Uh-huh (affirmative response).

3 Q. Let me just tell you you don't have to take
4 another one, that oath continues throughout this
5 process and will continue over the questions and
6 answers that we would share with you today, okay?

7 A. Yes.

8 Q. And of course you'd share your answers, we would
9 share the questions and you share the answers.

10 Now, since we talked with you Monday
11 morning has anyone talked to you or tried to approach
12 about you this case, or have you inadvertently or
13 otherwise been exposed to any information about this
14 case?

15 A. No.

16 Q. All right. Now, when you were back in the jury
17 room you were shown a list of potential witnesses and
18 I would ask if you've had a chance just to look at
19 it?

20 A. Yes, I have.

21 Q. And after you have looked at it, are you related
22 by blood or marriage, acquainted with, do you have
23 any personal or casual or business relationship or
24 connection with any of these folks, are you connected
25 with any of these potential witnesses either directly

1 or indirectly?

2 A. No, ma'am.

3 Q. All right. Now, my notes show, Ms. McDougall,
4 when I asked the questions on Monday and if you had
5 any opinion, if you'd heard anything or read anything
6 about this matter, knew anything about this matter,
7 or if you had any kind of prejudice for or against
8 either side that you did not respond to any of those
9 things which leads me to believe that none of those
10 things apply to you.

11 A. That's correct.

12 Q. Is that right?

13 A. That's right.

14 Q. And does that still remain correct?

15 A. Yes, ma'am.

16 Q. Nothing's jogged your memory, nothing, no
17 knowledge has come to you that you need to tell me?

18 A. No. I didn't even live here when you said it
19 supposedly happened.

20 Q. Oh, all right. Okay. How long have you lived
21 in Dorchester County?

22 A. Well, I just moved back here, so....

23 Q. All right.

24 A. It's been maybe seven months.

25 Q. Okay, okay. Now, we have to ask you some

1 questions about your feelings about some particular
2 matters. And I wanted just to give you a little bit
3 of preliminary discussion about that because I want
4 you to know that first and foremost we're not trying
5 to invade your privacy. We are interested in your
6 opinions, some of your opinions. And the reason that
7 we are is we just want to know a little bit about you
8 so that we can see if your opinions might have any
9 impact on your jury service and that's sort of the
10 beginning and the end of what we're about.

11 Obviously then there are no right and
12 no wrong answers. Not a soul here would challenge
13 your opinions because your opinions are just as valid
14 and good as anybody else's opinions and we certainly
15 know that. We're just trying to find out a little
16 bit, understand a little bit about your opinions
17 again as they may impact your jury service.

18 Now, in a few moments I'm going to be
19 asking you your opinion about penalty, specifically
20 the death penalty. And I want to tell you that for
21 me to ask you about penalty at this point, at this
22 early stage is obviously very premature.

23 A. Uh-huh (affirmative response).

24 Q. And particularly when Mr. Bowman, of course, is
25 presumed innocent. But because the death penalty may

1 be an issue in this case and because I need to ask
2 jurors some questions about penalty before the case
3 begins, it's necessary for me to do that, to talk
4 about this issue prematurely.

5 So I would just ask that you keep in
6 your mind those two facts, that I'm asking you about
7 penalty. This is obviously premature, and keep in
8 mind obviously that Mr. Bowman is presumed innocent
9 of these charges.

10 Also when I ask you these questions
11 I'm going to be asking them in a very general,
12 generic sense. Because obviously you don't know
13 anything about this case, it wouldn't be fair and it
14 would be improper to ask you about the specific case,
15 so I'm not asking you about that. I'm going to ask
16 you questions in general terms and we'll do that now.

17 All right. If you were a juror in any
18 criminal case, would you be willing to listen to the
19 law as you were instructed to do so by the judge?

20 A. Yes, ma'am.

21 Q. And would you be willing to accept that law and
22 follow that law and apply that law to the facts as
23 you found them to be?

24 A. Yes.

25 Q. And would you do that even if you didn't

1 particularly like that law or even if you disagreed
2 with it?

3 A. Yes.

4 Q. All right. If you were asked to serve in a
5 case, this case of the State vs. Mr. Bowman, could
6 you decide this case based upon what you would hear
7 in the courtroom and could you disregard anything
8 that you may have seen or heard or read about this
9 case from any source at all?

10 Let me tell you what I'm talking
11 about. If anything like that should come to your
12 mind, what sometimes happens to a juror is that even
13 though at this juncture they don't believe they know
14 anything about the case, they have no memory,
15 particularly someone that's been back as recently as
16 you have, sometimes what will happen to a juror on a
17 jury is they'll hear something in the course of the
18 trial and that will jog a memory. It doesn't happen
19 all the time, but it does happen.

20 My question to you is in the event
21 that that would happen to you would you be willing to
22 set that memory aside, to disregard that memory and
23 try this case based on the evidence in this
24 courtroom?

25 A. Yes, ma'am.

1 Q. All right. Could you do that?

2 A. Yes.

3 Q. All right. Now, in a criminal case as you know
4 and as we talked about briefly on Monday, the State
5 has the burden of proving the guilt of a defendant
6 beyond a reasonable doubt. Do you understand that?

7 A. Yes, ma'am.

8 Q. You understand that a defendant has no burden to
9 prove himself or herself innocent?

10 A. Yes.

11 Q. The defendant doesn't have to prove anything.
12 Do you understand that?

13 A. Yes.

14 Q. And that a defendant under our law is presumed
15 innocent. Do you understand that as well?

16 A. Yes.

17 Q. All right. So if you were a juror in any
18 criminal case, would you be willing to listen to the
19 facts, listen to the evidence and the law as you are
20 instructed?

21 A. Yes, ma'am.

22 Q. All right. So if you listened to the evidence
23 and found the facts as you found them to be, you were
24 a juror in any criminal case, you had listened to the
25 evidence, found the facts as you found them to be,

1 you've applied the law to those facts, if you were
2 not convinced that the State had proved the guilt of
3 a defendant beyond a reasonable doubt would you be
4 willing and able to find a defendant not guilty?

5 A. Of course.

6 Q. All right. On the other hand, if you listened
7 to the evidence, if you -- and found the facts as you
8 found them to be, applied the law that the judge gave
9 you to those facts, if you were convinced that the
10 State had proven the guilt of the defendant beyond a
11 reasonable doubt would you be willing and able to
12 find that defendant guilty?

13 A. Yes, ma'am.

14 Q. All right. Now, you would then be willing to
15 listen and make your decision based upon whether or
16 not you were convinced that the person was guilty or
17 not; is that right?

18 A. Yes, ma'am.

19 Q. All right. Now, most of the time jurors do not
20 concern themselves with the matter of punishment.
21 Most of the time in a criminal case punishment is
22 left up to the judge. But there is one case in our
23 law when a jury has to deal with the matter of
24 punishment and that is a case like this one, this is
25 in the case where an individual has been charged with

1 the crime of murder and where the State is seeking
2 the death penalty.

3 If an individual in a death penalty
4 case is convicted of the crime of murder, then the
5 same jury that convicted him or her must come back
6 and in a separate and different proceeding must
7 decide the punishment that the person would receive,
8 would get. And there are only two choices. One is
9 life imprisonment without the possibility of parole,
10 and the other is the death penalty. The punishment,
11 the penalty, would be determined in that second or
12 sentencing phase. Do you understand this
13 information?

14 A. Yes, ma'am.

15 Q. Okay. Now, this paper that I'm showing you, did
16 you have a chance to look at this paper in the jury
17 room?

18 A. Yes, I did.

19 Q. And it essentially describes three types of
20 jurors. Do you remember those three types of jurors?

21 A. Yes, I do.

22 Q. All right. Which of those three types of jurors
23 would you say best describes you?

24 A. I would say type three.

25 Q. Type three. In other words, you would be

1 willing to listen to whatever you might hear in the
2 courtroom during that second or sentencing phase and
3 make your decision based upon what you hear in the
4 courtroom?

5 A. Yes, ma'am.

6 Q. And if after you listened to that information
7 and evidence in the courtroom if you thought it was
8 appropriate that someone be sentenced to death, would
9 you be able and willing to vote for that sentence?

10 A. Yes, ma'am.

11 Q. If, on the other hand, you thought that the
12 death sentence was not appropriate, or for any other
13 reason the person ought to receive life imprisonment,
14 would you be able and willing to vote for a sentence
15 of life?

16 A. Yes, ma'am.

17 Q. Okay. So you make your decision based upon --

18 A. The evidence.

19 Q. -- the evidence in the room?

20 A. Uh-huh (affirmative response).

21 Q. And that's a yes?

22 A. Yes, ma'am.

23 Q. That's okay. I just don't want Ms. Keil to have
24 to interpret what you mean. I know what you mean,
25 all right?

1 Now, if you were chosen to serve as a
2 juror in this case you and the other jurors would be
3 housed, you would have to stay here in St. George in
4 a local motel, and the word is called sequestered,
5 during the course of the trial. You just have to
6 stay until the trial is over except, of course, when
7 you come into the courtroom. The period could be as
8 long as two weeks, it could be longer, it could be
9 shorter.

10 Obviously that would create an
11 inconvenience for you as it surely will for all who
12 serve on this jury. Other than the inconvenience
13 which this would cause anybody who has to serve in
14 this capacity, would that pose a serious danger or
15 serious risk of danger to your health or well being
16 or to that of anybody who is dependent upon you if
17 you had to serve in that capacity?

18 A. No.

19 Q. All right. You would be able to do that?

20 A. Yes.

21 Q. All right. Let me tell you, I'm going to ask
22 you, Ms. McDougall, to answer the questions that
23 these lawyers, these counsel may have for you.

24 THE COURT: All right, Mr. Bailey.

25 MR. BAILEY: Thank you, Your Honor.

EXAMINATION

1
2 BY MR. BAILEY:

3 Q. Ms. McDougall, how are you doing? I'm Walter
4 Bailey and I'll be representing the State and I'll be
5 prosecuting the case, just a few questions.

6 A. Okay.

7 Q. And I'm going to ask you about the death
8 penalty. And like the judge said, we're not going to
9 talk about this case, you hadn't heard the facts, but
10 just in general, okay? Before you found out that you
11 might be a juror on a case where the State is seeking
12 the death penalty, have you ever had occasion to
13 think about the death penalty?

14 A. I guess just from what people occasionally talk
15 about.

16 Q. Okay. And as a result of that did you develop
17 any either personal or religious beliefs about the
18 death penalty?

19 A. Not really.

20 Q. Okay. So you have no strong feelings?

21 A. No.

22 Q. Preexisting feelings, okay. And you understand
23 that we wouldn't even be dealing with that issue
24 unless and until the defendant's found guilty of
25 murder in the first phase of the trial?

1 A. Yes.

2 Q. That first part of the trial is like any other
3 criminal trial where the jury's dealing with whether
4 or not the State can prove a defendant guilty beyond
5 a reasonable doubt.

6 A. Yes.

7 Q. If that defendant's found guilty of murder then
8 we go into phase two. There's more evidence, more
9 instructions from the judge. And the way it works in
10 South Carolina is the jury makes the decision on
11 punishment, life without parole or the death penalty.
12 And all 12 of them must agree. And what the judge
13 would do then, once that jury's verdict is in, she
14 orders that sentence to be put into effect, based on
15 the jury's verdict that person goes to prison for the
16 rest of their life without parole or they're
17 executed. So that's the process.

18 A. Yes.

19 Q. And, again, I'm not asking you to predict what
20 you would do, you haven't heard the facts, but if the
21 facts presented to you were bad enough, could you
22 vote for the death penalty knowing that person
23 actually would be executed?

24 A. Yes. I wouldn't like to make the decision, but,
25 yes.

1 Q. Okay. It's a serious decision, I mean nobody's
2 minimizing that. If all 12 jurors vote for the death
3 penalty there's a verdict form, a death verdict form,
4 and each juror would be asked to sign their name to
5 that paper that would result eventually in that
6 execution taking place.

7 A. Yes.

8 Q. Could you sign a paper like that along with the
9 other jurors?

10 A. Yes.

11 Q. The last thing that the jury would be involved
12 in is they would come out here and they would be
13 seated in these chairs, it's a process called polling
14 the jury after the death verdict was announced if
15 that was the verdict. Each juror's name would be
16 called out and they would be asked to stand up when
17 their name is called and affirm out loud that was
18 their verdict and it's still their verdict. Could
19 you do that?

20 A. Yes.

21 Q. Okay. Ms. McDougall, that's all I've got.
22 Thank you very much.

23 THE COURT: Mr. Cummings.
24
25

EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. Good afternoon, ma'am. I'm Norb Cummings, the
4 other young lady right there is Ms. Marva
5 Hardee-Thomas and we've been Court appointed to
6 represent Mr. Marion Bowman, the gentleman in the
7 white shirt right there, ma'am. I'm going to try to
8 be very brief. Every time we say that we tend to ask
9 more questions than we should.

10 You hold -- and you were very
11 forthwith and very outright with your questions
12 whenever Her Honor asked you questions and Mr.
13 Bailey. And I think you hold that presumption of
14 innocence very special and you believe in that as
15 part of the your civic duty?

16 A. Yes.

17 Q. And that you would never, just because somebody
18 has been charged with a crime or you read somebody in
19 a paper or a policeman arrested somebody, you would
20 not believe they are automatically guilty of
21 something, would you?

22 A. No, of course not.

23 Q. You would want to hear everything in this
24 courtroom, you would want to hear everything in this
25 courtroom that the State has to do to prove beyond a

1 reasonable doubt if somebody's guilty before you
2 would vote that way; is that correct, ma'am?

3 A. Yes.

4 Q. And then as you know from everybody asking you
5 this now, there's two parts to this. And if we ever
6 get to the second part you would put your collective
7 minds with the jurors and vote as you and the jurors
8 deem appropriate?

9 A. Uh-huh (affirmative response).

10 Q. And you understand that nobody ever has to vote
11 for the death penalty, that they can consider life
12 without the possibility of parole. And you're
13 willing to do that?

14 A. Yes.

15 Q. And in your jury service here as Her Honor has
16 told you, we're going to be the -- the jurors have to
17 be sequestered. And I noticed on there that you
18 stated you had two children. And I don't want to ask
19 their ages and I am not trying to ask you your age,
20 but that would not cause you any harm or
21 consideration of an undue burden to you? It's going
22 to be a great inconvenience.

23 A. Well, sure it would be an inconvenience, but my
24 mother lives nearby.

25 Q. So you're willing to serve and there would not

1 be any reason for you not to want to serve on this
2 jury?

3 A. Yes.

4 Q. Because I know how special it is, we just passed
5 mama's day and that's the only reason why we would
6 ask you that question is if you had brought up a
7 hardship to you, ma'am. I want to thank you very
8 much for your candor and your answers.

9 MR. CUMMINGS: Beg the Court's indulgence,
10 Your Honor.

11 THE COURT: All right.

12 MR. CUMMINGS: That's all the questions we
13 have of this nice lady, and I thank you, ma'am.

14 THE COURT: If you'll stand outside for
15 just a moment and we'll have you come right back
16 in.

17 MS. MCDOUGALL: Okay.

18 THE COURT: So we can talk about you.
19 Okay. Thank you.

20 (Whereupon, the prospective juror exits the
21 courtroom.)

22 THE COURT: What says the State?

23 MR. BAILEY: Qualified, Your Honor.

24 THE COURT: What says the defense?

25 MR. CUMMINGS: Statutorily qualified,

1 Judge.

2 THE COURT: Yes.

3 (Whereupon, the prospective juror returns to the
4 courtroom.)

5 THE COURT: Ms. McDougall, you've been
6 found to be qualified as a potential juror in
7 this case. That does not mean that you are on
8 the jury yet, but it does mean that you are a
9 potential juror and you may be selected to serve
10 on this jury. We are hoping, hoping that we
11 will be able to select the jury tomorrow at two
12 o'clock. That's got to be a little ambitious,
13 right? If we have to change this time we'll
14 call you, probably call you in the morning, so
15 sort of listen out for a call from us. If
16 you've got an answering machine maybe check it
17 before you come up here tomorrow, because if you
18 don't hear from us I want you to come on back in
19 at two o'clock tomorrow, but, please, check your
20 answering machine.

21 MS. MCDUGALL: Okay.

22 THE COURT: And listen out for the phone
23 tomorrow morning. Now, we have a piece of paper
24 for you that has Thursday at two o'clock on
25 there as a reminder and it has some instructions

1 for you to get you ready for your jury service.
2 It has some emergency numbers on there also for
3 you where you can be reached both during the day
4 and at night, tells you where you will be
5 housed, has some practical information on that
6 for you. Please feel free to share that
7 information with whoever you need to or want to.

8 However, be mindful that you may not
9 discuss this case nor any aspect of it or allow
10 anyone to discuss this case, any aspect of this
11 case with you. And, please, do not expose
12 yourself to any information about this case at
13 all. Do you understand?

14 MS. MCDOUGALL: Yes, ma'am.

15 THE COURT: Thank you so much. I look
16 forward to seeing you hopefully tomorrow at
17 2:00. Thank you.

18 (Whereupon, the prospective juror exits the
19 courtroom.)

20 MR. BAILEY: You may want to look for a
21 sign, early sign on this next one, Judge.

22 THE COURT: Got you, okay.

23 MR. CUMMINGS: Thank you, Judge.

24 THE COURT: Thank you. Wait a minute. I
25 got to look a minute.

1 MR. CUMMINGS: You got to look at this one.

2 MS. HARDEE-THOMAS: It's specifically the
3 last page.

4 THE COURT: The last page? All right. Oh,
5 my. I think I'll inquire of that first, very,
6 very early. I'm not going to go through the
7 whole colloquy. Gosh, thanks y'all. Will you
8 ask Ms. Shaw to please step in?

9 MR. CUMMINGS: I told the judge it goes
10 like a submarine, you're going down.

11 (Belinda H. Shaw, called as a prospective juror,
12 having previously been duly sworn, is examined
13 as follows:)

14 EXAMINATION

15 BY THE COURT:

16 Q. Hi, Ms. Shaw.

17 A. Hi.

18 THE COURT: This is Ms. Belinda Shaw, our
19 Juror Number 271.

20 Q. Now, Ms. Shaw, let me ask you if you will
21 remember Monday, remember that you were sworn along
22 with the other potential jurors on Monday?

23 A. Yes.

24 Q. You don't need to take another oath because that
25 oath carries right on into this process and will

1 cover the answers that you will give to the questions
2 that we'll share with you, okay?

3 A. Okay.

4 Q. Very well. Since we talked Monday has anybody
5 talked to you or tried to approach you about this
6 case, or have you had any information about this case
7 from any source?

8 A. No.

9 Q. All right. Now, Ms. Shaw, you were kind enough
10 to return the questionnaire that we asked you to and
11 I'm going to get right to what I think are concerns
12 that you have expressed and ask you to -- can you
13 tell me a little bit about what I see as your
14 concerns about serving on a jury?

15 A. In this situation here?

16 Q. Yes, ma'am. In this situation.

17 A. It would be very hard for me because of the
18 things that I went through in the past.

19 Q. Okay.

20 A. And things that I know that I found out later.

21 Q. Okay. All right. I just need you to share.
22 And these folks have had an opportunity to look at
23 your questionnaire and we do not want to pry into
24 your personal business.

25 A. Well, I don't mind.

1 Q. And we're very sensitive about that so let me
2 share that with you. I notice that you had family
3 members who have met their demise. And you talk
4 about murders for which there were trials or pleas,
5 or is that your --

6 A. There was --

7 Q. Charges?

8 A. Charge, yes.

9 Q. There were charges brought?

10 A. Yes. And there was a trial.

11 Q. And there were, okay. And two family members.
12 What is the relationship to you?

13 A. One was my brother, okay.

14 Q. Okay.

15 A. And the other one would be my uncle, he's a
16 deputy chief of Dorchester County, his daughter
17 versus my mother's uncle in Cottageville that got
18 killed, a police officer.

19 Q. Oh, yes, I do remember that, certainly. I know
20 what you're talking about.

21 A. And, you know, she was related to my husband and
22 then the uncle by my mom and, you know, it was hard
23 because I had to try and stay neutral on both sides,
24 so it was real -- it's still difficult.

25 Q. I understand that. As a result of that

Juror 271 Belinda H. Shaw - Examination

1 experience is that why you have indicated that it
2 would be difficult for you --

3 A. Yes.

4 Q. -- to serve on this jury? All right. Very
5 well. I'm going to see if these lawyers have any
6 questions of you about that.

7 A. If it's anything else I would not mind doing it,
8 but I don't think I could in this case, I would be
9 too emotional.

10 Q. And I noticed at this moment you were becoming
11 tearful, I noticed that, too, Ms. Shaw.

12 THE COURT: Any questions from you?

13 MR. BAILEY: None from the State, Your
14 Honor.

15 MR. CUMMINGS: None from the defense,
16 Judge. Thank you.

17 THE COURT: Ms. Shaw, again, we do not wish
18 to cause you any upset at all, please understand
19 that.

20 MS. SHAW: I know, I do.

21 THE COURT: However, we did need that
22 information from you. And I am so grateful to
23 you for the time that you have given to us as we
24 have gone through this process. And because I
25 see that at this moment I agree with you, it

Juror 271 Belinda H. Shaw - Examination

1 would be very difficult, and as a result of that
2 I'm going to excuse you. Well, may I transfer
3 you to a civil term?

4 MS. SHAW: Sure, that would be fine.

5 THE COURT: I will do that because I hate
6 to lose you as a juror.

7 MS. SHAW: But that's okay.

8 THE COURT: I'm going to transfer you to a
9 civil term, all right?

10 MS. SHAW: Okay.

11 THE COURT: Because that way you'll have an
12 opportunity to participate in that process and I
13 look forward to seeing you in a civil term. Let
14 me just ask you to do this for us: Don't
15 discuss this process or anything about this case
16 with anyone that might be involved in this case
17 or with any of your fellow prospective jurors.
18 And if you think, of course, over the next few
19 days that you might be talking to a prospective
20 juror, just don't talk about this. Talk about
21 anything else, but don't talk about this matter,
22 okay?

23 MS. SHAW: Okay.

24 THE COURT: Thank you so much. And, again,
25 thank you so much for your time.

Juror 271 Belinda H. Shaw - Examination

1 MS. SHAW: Thank you.

2 THE COURT: And you're free to go.

3 MS. SHAW: Okay. Thank you.

4 (Whereupon, the prospective juror exits the
5 courtroom.)

6 THE COURT: Any exception from the State?

7 MR. BAILEY: None from the State, Your
8 Honor.

9 THE COURT: From the defense?

10 MR. CUMMINGS: Absolutely none, Judge, and
11 we all concur.

12 THE COURT: Very well. If we may have,
13 please, Mr. Mollish. Let me share with you also
14 that Mr. Mollish, he and Mr. Durr, as I recall,
15 were sitting near each other and he also
16 indicated that he had an opinion in this case,
17 so let me just....

18 MR. CUMMINGS: Yes, ma'am.

19 THE COURT: I will inquire of him that, but
20 I just wanted you all to know that I was going
21 to ask him about that. All right.

22 (Anthony P. Mollish, called as a prospective
23 juror, having previously been duly sworn, is
24 examined as follows:)

25

EXAMINATION

1

2 BY THE COURT:

3 Q. Good afternoon, Mr. Mollish.

4 A. Hi.

5 Q. All right, sir. For our record this is

6 Mr. Anthony Mollish.

7 A. That's correct.

8 Q. Who is Juror Number 212. Mr. Mollish, you will
9 recall that on Monday you were placed under oath with
10 all the other prospective jurors, remember that?

11 A. That's right.

12 Q. And you do not need to take another oath because
13 I would remind you that that oath remains in effect
14 throughout this process and would cover the answers
15 you would share with us here today, okay?

16 A. Okay.

17 Q. All right. Now, since we talked with you on
18 Monday, has anyone talked to you or tried to approach
19 you about this case, or have you inadvertently or
20 otherwise been exposed to any information about this
21 case?

22 A. No.

23 Q. All right, sir. Now, when you were back in the
24 jury room did you have an opportunity to look at the
25 potential witness list?

1 A. I did.

2 Q. And I would ask of you whether or not you are
3 related by blood or marriage, acquainted with, or if
4 you have any direct or indirect connection, or if you
5 have a business or personal or casual relationship
6 with any of the individuals listed on the witness
7 list?

8 A. I do.

9 Q. First of all, if it's more than one would you
10 tell me first the names of the folks?

11 A. Well, the person is listed twice on there and
12 it's Alice Bothman.

13 Q. All right. Anyone else?

14 A. That's all.

15 Q. Okay. Tell me how you know Ms. Bothman, very
16 briefly?

17 A. Her husband was my -- I mean, her father was my
18 boss.

19 Q. Her father was your boss?

20 A. That's right. So I've been at their house.
21 I've known her for 35 years.

22 Q. All right. And you visited in her home. She's
23 visited in your home?

24 A. That's right.

25 Q. All right. And do you believe that if she was a

1 juror {sic} in this case that given your connection
2 with her, do you believe that your connection with
3 her could impair your ability to be a fair and
4 impartial juror in this case?

5 A. I don't think so.

6 Q. You can set that relationship aside and try this
7 case based on the evidence in this courtroom?

8 A. Right.

9 Q. All right, sir. Now, I know that when I asked
10 certain or general questions on Monday you shared
11 with us that you had heard, read, or seen information
12 on this case. I'm not going to inquire of you what
13 you've heard or saw with any specificity, but as I
14 understand it you had read, heard, or seen
15 information about this case; is that right?

16 A. That's correct.

17 Q. All right. And I also made a notation that you
18 indicated on Monday that you had formed or expressed
19 an opinion on this case; is that correct as well?

20 A. That's correct.

21 Q. Had you formed it, or had you formed it and
22 expressed it, or had you expressed -- well, had you
23 just formed it, or had you formed it and expressed
24 it?

25 A. I didn't express an opinion. I formed an

1 opinion after I read the article.

2 Q. Very well. Now, let me ask you this question:

3 Do you believe that the opinion that you formed would
4 impair substantially, I guess I should say could or
5 would substantially impair or prevent you from being
6 able to be fair and impartial to both sides, to the
7 State and to Mr. Bowman?

8 A. I think it could.

9 Q. All right, sir. Very well. I'm going to ask
10 these lawyers if they have any questions of you.

11 THE COURT: Mr. Bailey.

12 MR. BAILEY: Just very briefly.

13 EXAMINATION

14 BY MR. BAILEY:

15 Q. Mr. Mollish, what newspaper did you read the
16 article in that you think?

17 A. Summerville Scene.

18 Q. All right, sir. You subscribe to the
19 Summerville Scene?

20 A. Yes.

21 Q. All right, sir. Have you ever read anything in
22 that particular newspaper or any other newspaper, a
23 news article that you later found out it had factual
24 inaccuracies in it?

25 A. That's correct.

1 Q. Okay. So not everything you read in the paper
2 is true?

3 A. That's right.

4 Q. All right, sir. And knowing that, that whatever
5 you read may or may not be correct, if you got picked
6 as a juror in this case, and let's talk about the
7 guilt phase of the trial which is -- punishment's got
8 nothing to do with it, just the guilt phase. The
9 jury would be sworn to listen to the testimony and
10 accept the facts as they find those true facts to be
11 from the sworn testimony. Could you do that, could
12 you not necessarily forget about what you read, but
13 could you set that aside?

14 A. I think I could set it aside.

15 Q. And base your decision strictly on what you
16 heard in the courtroom?

17 A. Right.

18 Q. All right, sir.

19 MR. BAILEY: Your Honor, that's all I have
20 at this point.

21 THE COURT: All right. Yes, sir.

22 MR. CUMMINGS: Thank you, Judge,

23 Mr. Bailey.
24
25

EXAMINATION

1
2 BY MR. CUMMINGS:

3 Q. Sir, I'm Norb Cummings and along with that young
4 lady right there we are Court appointed to represent
5 Mr. Marion Bowman.

6 A. Okay.

7 Q. If I mispronounce your name, sir, I apologize,
8 as a gentleman to you.

9 A. That's correct.

10 Q. There are no right or wrong answers in here,
11 sir, and as you well know from the type of gentleman
12 that you are, sir, and how honest you've been with
13 Her Honor, Mr. Bailey and coming in here sharing your
14 thoughts, deep personal feelings with us. Every
15 citizen that comes in this room is presumed innocent.

16 A. (Nodding.)

17 Q. And I know that you're nodding yes, and I know
18 madam court reporter has got to write down what you
19 say verbally, sir. When you read that article, and
20 you appear to be a very polite, intelligent, very
21 civic-minded gentleman, when you read that article it
22 caused you from what I heard, sir, to form an
23 opinion, and almost when Her Honor asked you about
24 expressing it, something that you could verbalize or
25 vocalize to me. Is that fair to say, sir?

1 A. That's right. When I read the article I didn't
2 realize that was the case.

3 Q. Yes, sir.

4 A. And --

5 Q. All right. And right away it hit you in some
6 way and somehow within your person; is that fair to
7 say, sir?

8 A. That's right.

9 Q. And now knowing that you are a potential juror
10 in this and trying to get a jury of this gentleman's
11 peers to render a fair and impartial verdict, would
12 the fact that you read that article and knowing,
13 yeah, that sometimes the press takes things out of
14 context or sometimes they go and even pay people to
15 get the scoop, could you as a gentleman and a person
16 sworn to your oath, sir, could you honestly set aside
17 what your personal feelings were and give this -- any
18 citizen a fair and impartial trial after you formed
19 or expressed that opinion within your heart and
20 possibly to Her Honor a few moments ago?

21 A. Well, I think I could.

22 Q. All right, sir. And based on that you would
23 have no hesitations in sitting in judgment here along
24 with your fellow jurors or any citizen even despite
25 what you read?

1 A. No.

2 Q. All right, sir. And then this is just briefly
3 now. You had asked Her Honor the other day, I know
4 Meade and Westvaco had merged, and you had some very
5 important business meetings here and been a lot of
6 layoffs out here. Does this cause you any hardship,
7 or undue hardship would be the better word politely,
8 sir, that would cause you not to want to serve on
9 this case?

10 A. Well, it would cause me hardships because I have
11 to be on the road quite a bit the next six months.

12 Q. Yes, sir.

13 A. And it will cause hardship. I'm due next week
14 to be in Michigan the whole week.

15 Q. All right, sir. If Your Honor and, again, Mr.
16 Bailey's as an officer of the Court and I am also,
17 sir, if we were to tell you that if you're either,
18 say, lucky enough or unlucky enough to be chosen as a
19 juror in this case, that you would be sequestered.
20 And I don't want to invade Her Honor's province about
21 this, and, again, if you have any questions that's
22 what Her Honor's here for, sir. But if you were told
23 that you would be sequestered, put up in a motel for
24 anywhere from two weeks, maybe even longer, maybe
25 shorter, would that cause you undue harm or concern

1 and possibly take your mind away from this case?

2 A. Well, it would certainly cause me hardship.

3 Q. Yes, sir. And I know I kind of asked you a
4 twofold question.

5 A. I would have to conduct some business.

6 Q. I understand.

7 MR. CUMMINGS: And, Judge, I beg the
8 Court's indulgence and I don't want to belabor
9 this issue with this gentleman.

10 THE COURT: Surely.

11 MR. CUMMINGS: Judge, I would like to try
12 to -- perhaps Mr. Bailey and I have a colloquy
13 with the Court outside this gentleman's --

14 THE COURT: All right. Mr. Mollish, I'm
15 going to ask you to step right outside, I may
16 have some other questions for you in just a
17 moment. Please step right outside.

18 MR. MOLLISH: Okay. Thank you.

19 (Whereupon, the prospective juror exits the
20 courtroom.)

21 THE COURT: Let me tell you why I did that.
22 I think that insofar as the opinion of having
23 read the newspaper, I think I am satisfied at
24 least at this point, that could change if we
25 have more colloquy, but clearly at this he's

1 been rehabilitated I think and I'm satisfied at
2 this point he can set that opinion aside.

3 And that was another area that I
4 thought we would get into because on Monday he
5 was pretty adamant about this merger and his --
6 his needs. I do not -- Mr. Bailey, I'm happy to
7 go through the colloquy with him and see where
8 we are. However, I know this is going to be
9 the -- most probably the other issue that I
10 anticipate with him, but I want you to know that
11 I'm happy to go through the remaining colloquy
12 with him. And I think he's going to be back to
13 telling me about going to Michigan and he's
14 supposed to go somewhere else right after that,
15 et cetera. Which is what he told us the other
16 day.

17 Tell me, would you care for me to go
18 through that and see if he has a different
19 opinion?

20 MR. BAILEY: Yes, ma'am. Yeah. In other
21 words, just instead of getting into the general
22 stuff go into his work conflict now; is that
23 what you're asking?

24 THE COURT: Yes, sir. Because I think for
25 the purposes of where we are he's alleging that

1 he has this hardship. I think that if -- I
2 think it is likely if I go through all the other
3 questions and assume for the moment that he is
4 statutorily qualified, we're going to be back to
5 his concern about the Meade-Westvaco.

6 MR. BAILEY: The conflict first.

7 THE COURT: Yes. Because he was so adamant
8 about it the other day.

9 MR. CUMMINGS: And none of us here, Judge,
10 including your Honor, has even asked him about
11 sitting next to Mr. Durr or hearing about that
12 and he didn't bring that up. And I would, just
13 like we did earlier, trying not to invade
14 Mr. Davis' {sic} right to privacy as a juror, or
15 potential juror, I'm real reluctant to go beyond
16 you protecting all the jurors in here about us
17 asking what they talked about here to each
18 other.

19 THE COURT: That's easy. I'm not going to
20 do that.

21 MR. CUMMINGS: Yes, ma'am.

22 THE COURT: I'll ask the generic questions.
23 Let me hear from you about that, Mr. Bailey,
24 about his alleged hardship.

25 MR. BAILEY: Your Honor, so far he appears

1 to be the same category as Mr. Porcher as far as
2 having an important job and something that he
3 needed to be doing, but it wouldn't create -- I
4 forgot the terminology you're using, it wouldn't
5 create any danger to him.

6 THE COURT: I think what I'll do is let me
7 go on through the colloquy, let me see where he
8 ends up. And what I will ask of him when I
9 reach that point is he said I've got to transact
10 business, let me find out what -- did you all
11 hear that comment?

12 MR. BAILEY: I did. And I don't know
13 whether he's talking about on the laptop at
14 night or what he was --

15 THE COURT: Let's see what that is. I
16 think that's appropriate.

17 Yes, sir. Bring him back in.

18 (Whereupon, the prospective juror returns to the
19 courtroom.)

20 EXAMINATION

21 BY THE COURT:

22 Q. Thank you, Mr. Mollish. I have a few more
23 questions for you.

24 A. Okay.

25 Q. Now, there are some questions that I need to ask

1 of you. And I want you to know that I am not trying
2 to invade your privacy.

3 A. Okay.

4 Q. What I am going to be trying to do is I want to
5 find out a little bit about how you feel about
6 certain matters and want to get your opinions about
7 these matters. And I want you to know that obviously
8 there are no right or wrong answers and the opinions
9 which I'm going to be asking you for, I want you to
10 know that certainly we are aware that your opinions
11 are just as good and valid as anybody else's and no
12 one will challenge your opinions. What we are trying
13 to do is to understand your opinions about certain
14 matters and to see whether or not those opinions
15 might impact on your jury service.

16 Now, in a few moments I'm going to be
17 asking you about penalty, specifically the death
18 penalty, because that might be an issue in this case.
19 But I want you to understand that the fact that I am
20 asking you about penalty is obviously premature at
21 this early stage, the trial hasn't begun. And as I
22 said Monday and will reiterate now and again,
23 Mr. Bowman is presumed innocent of these charges.
24 This is the only time that we can talk about the
25 penalty necessarily before the trial gets underway.

1 Now, I'm going to be asking you
2 questions in a generic or general sense. I'm not
3 going to be asking you any questions about this case
4 because it wouldn't be fair to you, it would be
5 improper, so I'm not going to do that. I'm going to
6 be asking you questions in the generic sense. And
7 I'll do that now.

8 If you were a juror in a criminal
9 case, in any criminal case, would you be willing to
10 listen to the law as you were instructed by the
11 judge?

12 A. Yes, I would.

13 Q. And would you be willing to accept that law and
14 apply it to the facts as you found them to be?

15 A. Yes.

16 Q. Even though you might not particularly like the
17 law, you might even disagree with it, would you still
18 be willing to follow the law as you were instructed
19 to do so by the judge?

20 A. Yes.

21 Q. If you were asked to serve in the case of the
22 State vs. Mr. Bowman, could you decide this case
23 based solely upon what you would hear in this
24 courtroom?

25 A. I think I could.

1 Q. And disregard anything that you may have seen or
2 heard or read about this case?

3 A. Uh-huh (affirmative response).

4 Q. That's a yes?

5 A. Yes.

6 Q. All right. In a criminal case as you know and
7 as we talked briefly Monday, the State has the burden
8 of proving the guilt of a defendant beyond a
9 reasonable doubt. In other words, a defendant never
10 has to prove himself or herself innocent or have the
11 burden of proof of anything. The burden is always on
12 the State to prove a defendant guilty and a defendant
13 is always presumed innocent under the law. Do you
14 understand this?

15 A. Yes.

16 Q. Now, if you were a juror in any criminal case,
17 would you be willing to listen to the facts and the
18 law as you are instructed?

19 A. Yes.

20 Q. And based upon the evidence which you would
21 listen to and find the facts as you found them to be,
22 applied the law to those facts, the law to be given
23 to you by the judge, if after you considered the
24 facts and the law if you were not convinced that the
25 State had proved the defendant guilty beyond a