

VOLUME EIGHT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

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MARION BOWMAN,

S.C. Supreme Court
PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

Appellate Case No. 2012-213468

APPENDIX

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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Juror 295 Robert T. Talley - Examination

1 may have for you.

2 THE COURT: Mr. Bailey.

3 MR. BAILEY: Thank you, Your Honor.

4 EXAMINATION

5 BY MR. BAILEY:

6 Q. Mr. Talley, I'm Walter Bailey and I'm the
7 solicitor in this case and I'll be prosecuting on
8 behalf of the State of South Carolina. And I have
9 just a very few questions to ask you and my questions
10 are going to relate to the death penalty. And like
11 Judge Goodstein said, we're not talking about this
12 case, you hadn't heard the facts, we're talking just
13 in general.

14 If a jury gets to the second stage of
15 the trial that would, of course, mean they'd already
16 heard some evidence and found that defendant guilty
17 of murder beyond a reasonable doubt, and that second
18 phase is to determine the appropriate punishment. Do
19 you understand that?

20 A. Yes, sir.

21 Q. All right, sir. Whatever the jury's verdict is
22 will be the order of the Court and that order will be
23 carried out. So based on the jury's verdict that
24 person goes to prison for the balance of their life
25 without parole or they're executed.

Juror 295 Robert T. Talley - Examination

1 If you were sitting as a juror in a
2 case of this nature and the case was serious enough,
3 could you vote for the death penalty knowing that
4 sentence would be carried out?

5 A. Yes.

6 Q. And on the other hand, if you felt like based on
7 the evidence and the law the judge gave you that a
8 life without parole penalty was warranted, could you
9 also vote for that?

10 A. Yes, I could.

11 Q. So you could vote for either one depending on
12 what you heard?

13 A. For either one.

14 Q. If the jury elects the death penalty as the most
15 appropriate punishment, then each one of the jurors
16 would be asked to sign their name to a death verdict
17 form. Could you sign your name to a paper like that
18 if you'd already voted and decided on the death
19 penalty?

20 A. Yes.

21 Q. The last thing the jury would be involved in as
22 far as that process would be a process called polling
23 the jury where the jury would come out, the verdict
24 would be announced and each juror's name's called out
25 one at a time, they would be asked to stand up when

Juror 295 Robert T. Talley - Examination

1 their name is called and affirm out loud that that
2 was their verdict and it was still their verdict.
3 Could you do that?

4 A. Yes, I could.

5 Q. Switching gears a little bit, I want to ask you
6 a couple questions about your wife's situation. And
7 you have two adult sons that are in town locally?

8 A. That's correct.

9 Q. And if your wife had some problems they would be
10 able 24 hours a day to attend to her?

11 A. They could, that's correct.

12 Q. All right, sir. And the situation with your
13 wife at the present time is it serious enough where
14 it would distract you from following the trial?

15 A. No, sir. I don't think so.

16 Q. All right, sir. That's all I've got. Thank you
17 very much.

18 THE COURT: Thank you, Mr. Bailey.

19 Mr. Cummings.

20 EXAMINATION

21 BY MR. CUMMINGS:

22 Q. Good afternoon, sir, I'm Norb Cummings.

23 A. Yes, sir.

24 Q. The young lady at that table right there is
25 Ms. Marva Hardee-Thomas, that's Mr. Marion Bowman,

Juror 295 Robert T. Talley - Examination

1 sir. I promise you we really do read these things,
2 Mr. Talley, because you put all the effort into it as
3 well as all the other jurors.

4 A. Sure.

5 Q. And I looked down here and you have a master's
6 degree in education in PE?

7 A. That's correct.

8 Q. Were you a coach?

9 A. Yes, sir. I was a college coach and high school
10 teacher also.

11 Q. And what did you coach?

12 A. I was track and field.

13 Q. All right, sir.

14 A. Coached at the University of Kansas and
15 Tennessee and several different positions.

16 Q. Yes, sir.

17 A. But I had to get out of that because of
18 diabetes.

19 Q. And I understand, sir. And you've been very
20 kind and very forthwith with Her Honor in coming in
21 here and telling us about what happened from the long
22 hours on Monday. As a gentleman to you, sir, as you
23 have been to us, if we work long hours, if we
24 really -- let me go back and rephrase this. Her
25 Honor always protects the jurors.

Juror 295 Robert T. Talley - Examination

1 A. Okay.

2 Q. And that is something that you wouldn't know as
3 an officer of the Court both from Mr. Bailey or I,
4 but it may require long hours depending on what hours
5 Her Honor works the courtroom, depending on what
6 facts in evidence is being presented by the State or
7 if at any time the defense ever chooses to put any
8 evidence up. Do you believe as a gentleman that your
9 health situation could cause you to miss anything, or
10 like you said the other day going down?

11 A. Other than when the sugar drops I don't have a
12 problem.

13 Q. Yes, sir.

14 A. And if I eat regular meals my sugar seems to be
15 okay.

16 Q. All right, sir. And I know Her Honor told you
17 raise your hand, tell her, do whatever if you needed
18 to.

19 A. Yes, sir.

20 Q. And I guess the best question what we're trying
21 to ask is, and it's from your heart and your own
22 words, sir, in special situations or long situations
23 it's your statement to us that you would be okay?

24 A. I would be okay.

25 Q. All right, sir. And, again, caring about your

Juror 295 Robert T. Talley - Examination

1 spouse as everybody in this room has done you believe
2 that with any citizen being put on trial for any
3 crime that you would devote your attention and your
4 sole attention to the trial that you might be in
5 charge of, sir?

6 A. Yes, sir. I would.

7 Q. Okay. I just want to go on a few more questions
8 about the questionnaire, sir, and I thank you for
9 your candor and your kindness.

10 THE COURT: Just in case you need to refer
11 to it, that's your questionnaire.

12 MR. CUMMINGS: Thank you, Judge.

13 Q. On number 29, sir.

14 A. Number 29. Yes, sir.

15 Q. Thank you, sir. It deals with having family
16 members or close personal friends in law enforcement.

17 A. Yes, sir. I have a daughter-in-law that's on
18 the parole and probation for Dorchester County.

19 Q. What is that young lady's name, sir?

20 A. Michelle or Micki Talley.

21 Q. Okay. And would the fact that your
22 daughter-in-law is a probation and parole officer,
23 would that substantially or in any way impair you
24 materially in maintaining you being a fair and
25 impartial juror in any criminal case?

Juror 295 Robert T. Talley - Examination

1 A. Should not.

2 Q. All right, sir.

3 A. Because we don't discuss -- she doesn't discuss
4 what goes on at the office with us and so I don't see
5 a problem at all with that.

6 Q. All right, sir. It doesn't make you lean one
7 way or the other, either pro-law enforcement or
8 citizen?

9 A. No, it does not.

10 Q. If we flip over right to the next page, sir,
11 number 30, and it talks about correction officers or
12 the prison system.

13 A. What -- I don't understand exactly what that --
14 what you meant by what about as a corrective officer
15 in the prison system or jail. Does that mean do I
16 have someone that is in that position?

17 Q. I would state to you, sir, it is my belief that
18 we are trying it find out from any potential juror
19 whether or not they had friends, close family
20 members, sir, or close personal friends as members as
21 correction officers or work in the penal system
22 either in this state or outside the state.

23 A. Well, I listed that as strictly as my
24 daughter-in-law was the only one.

25 Q. For probation and parole?

Juror 295 Robert T. Talley - Examination

1 A. Right, that's correct.

2 Q. All right, sir. And then the next question is
3 number 31, "How about any agency that prosecutes
4 criminal cases, such as solicitor's office, the IRS,
5 state attorney general, or the United States
6 attorney?"

7 A. That was also in reference to my
8 daughter-in-law.

9 Q. Ms. Talley. All right, sir.

10 A. And maybe I misunderstood that initial question
11 that went with that.

12 Q. Thank you, sir. I think that's all the
13 questions I have, sir.

14 And if you'll just beg me one
15 indulgence, Judge, I'll be right back.

16 THE COURT: Certainly. Certainly, Mr.
17 Cummings.

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 gentleman. We thank
22 him.

23 THE COURT: Mr. Talley, I'm going to ask
24 you to step outside the courtroom for just a
25 moment so we can talk about you behind your

Juror 295 Robert T. Talley - Examination

1 back, but you're not going to even have time to
2 sit down.

3 MR. TALLEY: You don't think my ears are
4 going to burn?

5 THE COURT: They're going to burn.

6 MR. TALLEY: Okay.

7 THE COURT: But they won't burn -- by the
8 time they get started burning you'll be back in.

9 MR. TALLEY: Oh, okay.

10 (Whereupon, the prospective juror exits the
11 courtroom.)

12 THE COURT: What says the State?

13 MR. BAILEY: Qualified, Your Honor.

14 THE COURT: What says defense?

15 MR. CUMMINGS: Judge, my only concern, if I
16 may put that on record, is this gentleman's
17 medical condition, and that is totally in Your
18 Honor's province. He stated he could and he
19 would be okay. And I know you control the
20 courtroom and the hours because we've been a
21 product of that lately, but respectfully, Judge,
22 if he does go down I don't know how we'll notice
23 it until it's too late.

24 I'm not trying to pull any junk in
25 here or anything, but the jurors that have been

Juror 295 Robert T. Talley - Examination

1 sick or were sick, even with fibromyalgia or
2 asthma, the Court has looked at greatly.

3 THE COURT: I've required them, though, to
4 either be concerned about it themselves or have
5 a doctor's excuse, neither of which he has.

6 MR. CUMMINGS: Yes, ma'am. My only other
7 concern for your consideration, Judge, is the
8 fact his wife does have MS. I know he says he
9 has two adults, but, again, if something were to
10 happen and I leave that to the Court's province.

11 Other than that, Judge, he is
12 statutorily qualified, I only pointed that out
13 for the record and your consideration and the
14 fact that Mr. Bowman needs jurors to pay close
15 attention to any evidence presented by the
16 State. Thank you, Judge.

17 THE COURT: Thank you so much, Mr.
18 Cummings. Over the objection of the defense I
19 find Mr. Talley qualified. Invite him to come
20 in.

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

23 THE COURT: Mr. Talley, you have been found
24 to be qualified as a potential juror in this
25 case. That doesn't mean you are on the jury

Juror 295 Robert T. Talley - Examination

1 yet, but it does mean that you are a potential
2 juror and you may be selected to serve on this
3 jury. We are hoping to select the jury tomorrow
4 morning at ten o'clock. Now, that might be a
5 little bit ambitious, but if it is we will give
6 you a call. Otherwise if you would please be
7 back in the courtroom at ten o'clock tomorrow
8 morning.

9 Now, I've got a sheet of paper for you
10 and that sheet of paper has suggestions for you,
11 like packing clothes and bringing your
12 medication. Also it says where you will be
13 housed, it has emergency numbers on it, daytime
14 and nighttime, and some other details,
15 practical, I hope, they are.

16 Now, Mr. Talley, please feel free to
17 share that with your family members. In fact,
18 let me give you -- I've got extras, let me give
19 you some extras, you might want to give them to
20 your son so they'll have that information. Your
21 sons, I should say. There are a couple of extra
22 ones so they'll have all of that information and
23 those numbers as well.

24 And when you return in the morning,
25 remember you can leave your bags in the car.

Juror 295 Robert T. Talley - Examination

1 They told me to remind jurors to leave your bags
2 in the car so we don't end up with all those
3 suitcases up in the courtroom.

4 MR. TALLEY: You might have quite a few.

5 THE COURT: Be mindful that you may talk
6 about the details of your sequestration with
7 anyone that you need to, but be mindful not to
8 discuss this case or any aspect of it with
9 anyone or allow anyone to discuss it with you,
10 of course do not expose yourself to any
11 information about this case. Do you understand
12 all that?

13 MR. TALLEY: Yes, ma'am.

14 THE COURT: Thank you so much. I look
15 forward to seeing you in the morning.

16 MR. TALLEY: Thank you.

17 THE COURT: Bye-bye. Remember now when we
18 start this process in the morning, when you come
19 in I don't think there will be any kind of
20 delay, but you just know that maybe not on this
21 side of the bench, but on that side of the bench
22 we have lots of snacks and fruit and the like.
23 And if in the morning for whatever reason you
24 need a snack, even as we're waiting to select
25 the jury, all you have to do is ask one of these

Juror 295 Robert T. Talley - Examination

1 folks and they will get that for you, or let you
2 retrieve any snack that we've got. And we've
3 got a bunch of them.

4 MR. TALLEY: All right. I'll have
5 something. I just read that rule of no food in
6 the courtroom.

7 THE COURT: Well, not for you. Not for
8 you. Not for this trial.

9 MR. TALLEY: Okay.

10 THE COURT: Bye now.

11 MR. TALLEY: Thank you.

12 (Whereupon, the prospective juror exits the
13 courtroom.)

14 THE COURT: All right. Let me mention to
15 you that as Mr. Cummings was leaving he
16 remembered that he went to school with Ben
17 Lafond and that worried him, so he wanted to
18 come back in and tell us that he went to school
19 with Ben Lafond. So would you ask him to walk
20 back in?

21 MR. CUMMINGS: I should have said something
22 before, I didn't think about it.

23 THE COURT: That's okay, Mr. Cummings,
24 that's okay.

25 MR. CUMMINGS: I didn't know if this

Juror 295 Robert T. Talley - Examination

1 matters or not, but Ben Lafond and I, we went to
2 the same high school. And we weren't close
3 friends, I don't really know Ben from Adam
4 anymore, but I didn't know if that was going to
5 do anything, or change anything, or anything
6 like that, you know.

7 THE COURT: You were absolutely appropriate
8 to come back and to share that with us. Let me
9 ask you this question: How long has it been
10 since you saw Mr. Lafond?

11 MR. CUMMINGS: May have bumped into him
12 once since high school and that's, what, 12, 13
13 years.

14 THE COURT: Twelve or 13 years ago.

15 MR. CUMMINGS: I know him, but it's been a
16 long time. We're getting old, Ben.

17 THE COURT: Let me ask you this -- Ben says
18 speak for yourself, but I would ask you if that
19 connection that you have --

20 MR. CUMMINGS: It wouldn't change anything,
21 I mean, you know --

22 THE COURT: All right. So you could
23 disregard that and set that aside?

24 MR. CUMMINGS: Oh, yeah. Yeah. Like I
25 said, I mean, we don't really know each other,

Juror 295 Robert T. Talley - Examination

1 you know, I don't see him or talk to him or
2 anything.

3 THE COURT: That connection wouldn't keep
4 you from being fair and impartial in this trial?

5 MR. CUMMINGS: No.

6 THE COURT: Any questions from the State?

7 MR. BAILEY: None from the State, Your
8 Honor.

9 MR. CUMMINGS: I have no questions of this
10 gentleman. Thank you, Judge.

11 THE COURT: Thank you so much,
12 Mr. Cummings.

13 MR. CUMMINGS: That cleared that up. Thank
14 you. Appreciate it.

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

17 THE COURT: All right. Our next juror is
18 Mr. Roger Brownlee.

19 (Roger D. Brownlee, called as a prospective
20 juror, having previously been duly sworn, is
21 examined as follows:)

22 EXAMINATION

23 BY THE COURT:

24 Q. Hi, Mr. Brownlee. How are you this afternoon?

25 A. Fine. You?

Juror 31 Roger D. Brownlee - Examination

1 Q. Fine, thank you.

2 THE COURT: This is Mr. Roger Brownlee,
3 Juror Number 31.

4 Q. Mr. Brownlee, I want to remind you that when we
5 were together on Monday, which seems like a long time
6 ago now, that you were sworn in at that time along
7 with other potential jurors. Do you remember that?

8 A. I do.

9 Q. I wanted to share with you that the oath you
10 took on Monday still applies to this process and
11 would apply to the answers that you share with us
12 today, okay?

13 A. Yes, ma'am.

14 Q. Now, since we talked with you on Monday, has
15 anyone talked to you about this case or approached
16 you about this case, or have you been exposed to any
17 information about this case?

18 A. No, ma'am. None whatsoever.

19 Q. All right, sir. And back in the jury room did
20 you have an opportunity to review the potential jury
21 list?

22 A. I did.

23 Q. And are you related by blood or marriage or
24 acquainted with or connected with anyone directly or
25 indirectly, do you have a friendship or business

Juror 31 Roger D. Brownlee - Examination

1 association with anyone whose name is listed on the
2 potential witness list?

3 A. No, ma'am.

4 Q. All right, sir. Now, Mr. Brownlee, when we
5 talked the other day I asked the panel if anyone had
6 any opinions or had read or seen or heard anything
7 about this case, or had any bias or prejudice for or
8 against either side. And my notes are that you did
9 not indicate that any of these things applied to you
10 at the time; is that right?

11 A. That's correct.

12 Q. And does that continue today?

13 A. Yes, ma'am.

14 Q. All right.

15 A. I mean, I don't know -- excuse me.. I don't know
16 how long ago this happened, but I mean, you know, I
17 heard about it when it happened, but I hadn't heard
18 anything -- I couldn't even tell you when it
19 happened.

20 Q. All right. In other words, you've had -- after
21 you heard it, that there was some old memory that was
22 jogged but you don't remember much with any
23 specificity?

24 A. That's correct, yes, ma'am.

25 Q. All right, sir. And the state of that memory,

Juror 31 Roger D. Brownlee - Examination

1 such as it is, taking it just like it is.

2 A. That's right.

3 Q. Would that memory in any way impair your ability
4 to be fair and impartial to both sides?

5 A. No, ma'am. It would not.

6 Q. All right. And do you believe that you could --
7 if you were a juror in this case that you could try
8 this case based upon the evidence in this courtroom
9 and completely disregard anything that you may have
10 heard, or read, or seen in the past?

11 A. That's correct.

12 Q. All right. You can set whatever you remember
13 seeing or hearing or whatever, you could set that
14 completely aside?

15 A. Yes, ma'am.

16 Q. All right. Now, we need to ask you some
17 questions, Mr. Brownlee. And I want you to know that
18 we are not trying to invade your privacy, we are just
19 trying to find out how you feel about some matters;
20 in other words, what your opinions are. Obviously
21 there are no right and no wrong answers and your
22 opinions obviously are as good and valid as anybody
23 else's. And please know that we are not in any way
24 challenging your opinions, we just need to try to
25 understand them and see how they might impact on your

Juror 31 Roger D. Brownlee - Examination

1 jury service, okay?

2 A. Yes, ma'am.

3 Q. Now, one of the things that I will want to ask
4 you about in a few moments is penalty, specifically
5 the death penalty, because that may be an issue in
6 this case. And I want you to understand that to talk
7 about penalty at this phase is obviously premature,
8 the trial hasn't even begun yet and Mr. Bowman is
9 presumed innocent of these charges. It's just the
10 reality that if I'm going to talk to potential jurors
11 about penalty I have to do that before the trial
12 begins. So as we go through this process, be mindful
13 that the discussion of penalty is premature and that
14 Mr. Bowman is presumed innocent, okay?

15 A. Yes, ma'am.

16 Q. And also know that I'm not going to be asking
17 you any opinions about this case, because to do that
18 would not be fair to you and it would be improper.
19 The questions that I'm going to be asking you are
20 going to be of a generic, of a general sense, okay?

21 A. Okay.

22 Q. And I would ask you if you were a juror on any
23 criminal case, would you be willing to listen to the
24 law as you were instructed by the judge?

25 A. Yes, ma'am. I would.

Juror 31 Roger D. Brownlee - Examination

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

3 A. That's correct. Yes, ma'am.

4 Q. Even though you might not particularly like that
5 part of the law and even if you disagreed with it,
6 would you still be willing to follow the law as you
7 were instructed to do so by the judge?

8 A. Yes, ma'am.

9 Q. Now, if you were asked to serve in the case of
10 State vs. Bowman, Mr. Bowman, could you decide this
11 case based solely on what you hear in the courtroom
12 and disregard anything that you may have seen or
13 heard or read about the case from any source at all
14 if anything like that came into your memory?

15 And by that here's what I'm asking.
16 Sometimes when jurors are on juries and they don't
17 think they have much memory or any memory at all, and
18 they hear evidence in the case, more memory can get
19 triggered. My question to you is if that happened to
20 you, would you be willing to set that memory of what
21 you'd heard about this case aside and make your
22 decision based on what you hear in the courtroom?

23 A. Yes, ma'am. In the courtroom only.

24 Q. Thank you, sir. Now, in a criminal case as you
25 probably know, as we talked about Monday morning, the

Juror 31 Roger D. Brownlee - Examination

1 State has the burden of proving the guilt of a
2 defendant beyond a reasonable doubt. In other words,
3 a defendant never has to prove himself or herself
4 innocent and a defendant never has to prove anything.
5 The burden always remains upon the State. A
6 defendant also is presumed innocent under the law.
7 Do you understand these principles?

8 A. Yes, ma'am. I do.

9 Q. Now, if you were a juror in any criminal case,
10 would you be willing to listen to the evidence and
11 find the facts as you found them to be and then apply
12 the law to those facts?

13 A. That is correct, yes, ma'am.

14 Q. And after you did that if you were not convinced
15 that a person was guilty beyond a reasonable doubt,
16 would you be willing and able to find that person not
17 guilty?

18 A. Based on the evidence, yes, ma'am.

19 Q. Yes, sir. And on the other hand, if after you
20 listened to the evidence and found the facts as you
21 found them to be and applied the law as the judge
22 gave it to you, if you were convinced that a person
23 was guilty beyond a reasonable doubt would you be
24 willing and able to find that person guilty?

25 A. Yes, ma'am.

Juror 31 Roger D. Brownlee - Examination

1 Q. In other words, you would be willing to listen
2 and make your decision based upon whether or not you
3 were convinced that a person is guilty or not; is
4 that right?

5 A. That's correct, yes, ma'am.

6 Q. Now, most of the time jurors do not concern
7 themselves with the matter of punishment. Most of
8 the time in the criminal court punishment is left up
9 to the judge. But there is one case in our law when
10 a jury has to deal with the matter of punishment and
11 that is in a case like this one, it is in a case
12 where an individual has been charged with the crime
13 of murder and where the State is seeking the death
14 penalty.

15 If an individual in a death penalty
16 case is convicted of the crime of murder, then the
17 same jury that convicted him or her of murder would
18 come back and in a separate and different proceeding
19 decide the sentence that the person would get. And
20 there are two choices. One is life imprisonment
21 without the possibility of parole, and the other is
22 the death penalty. The decision on penalty would be
23 made in a second or what's called a sentencing phase
24 of the trial. Do you understand this information?

25 A. Yes, ma'am. I do.

Juror 31 Roger D. Brownlee - Examination

1 Q. All right, sir. Now, there also was this piece
2 of paper that was back in the jury room with you.

3 Did you have a chance to review this?

4 A. I did.

5 Q. And do you remember essentially that there are
6 three types of jurors listed on this sheet?

7 A. True. Yes, ma'am.

8 Q. And which of those three types of jurors do you
9 think best describes you?

10 A. I would say number three.

11 Q. In other words, you would be willing to listen
12 to whatever evidence there was for you and you would
13 make your decision based upon that evidence?

14 A. Correct.

15 Q. And if after you heard all of the evidence, if
16 you were convinced that a person should receive a
17 sentence of death, then you would be able and willing
18 to vote for that sentence?

19 A. Correct. Yes, ma'am.

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

25 A. That's correct.

Juror 31 Roger D. Brownlee - Examination

1 Q. So you, again, would make your decision on
2 evidence you received in the courtroom?

3 A. Yes, ma'am.

4 Q. Now, if you were chosen to serve as a juror in
5 this case, Mr. Brownlee, you and the other jurors
6 would be housed here locally in a motel, obviously at
7 county expense, for the duration of the trial. The
8 word is called sequestered.

9 A. Yes, ma'am.

10 Q. This trial is anticipated to take as long as two
11 weeks, it could be a little bit longer, but it could
12 be a little shorter also. Obviously that would
13 create an inconvenience for you as it surely will for
14 all who serve on this jury. Other than the
15 inconvenience which it would cause anybody who would
16 have to serve in this capacity, would that pose a
17 serious risk of danger to your health or well being
18 or to that of anybody who is dependent upon you if
19 you had to serve in that capacity?

20 A. No, ma'am. That would be fine.

21 Q. You would be able to do that?

22 A. Yes, ma'am.

23 Q. Mr. Brownlee, these folks, these attorneys have
24 some questions for you and I would just ask that you
25 listen to their questions and answer they questions

Juror 31 Roger D. Brownlee - Examination

1 for them.

2 THE COURT: Mr. Cummings.

3 MR. CUMMINGS: Thank you, Judge.

4 EXAMINATION

5 BY MR. CUMMINGS:

6 Q. Mr. Brownlee, I will be very brief. My name's
7 Norb Cummings, sir, seated at the table is Ms. Marva
8 Hardee-Thomas, we're both Court appointed to
9 represent Mr. Bowman, sir, the gentleman sitting
10 right there. First thing I want to say you just get
11 rid of all the kids at the Citadel and here you are
12 up here with us.

13 A. Yes, sir.

14 Q. No chance to enjoy any peace and quiet.

15 A. Had both commencements this past weekend.

16 Q. Yes, sir.

17 A. Citadel and -- we do printing for the College of
18 Charleston also.

19 Q. I know you've been a busy gentleman.

20 A. Yes, sir.

21 Q. I just want to ask you a few questions about
22 that, sir. And Mr. Brownlee, this is not ever to
23 invade your privacy, sir. You understand the
24 importance of every citizen receiving a fair and
25 impartial trial?

Juror 31 Roger D. Brownlee - Examination

1 A. Yes, sir.

2 Q. I notice that you -- I promise we really read
3 these things. Your military experience, you were in
4 the National Guard, sir, for how many years?

5 A. About a year and a half.

6 Q. All right, sir. So you did your time and then
7 went out in the civilian world?

8 A. Well, I did not do my all complete time. I had
9 an injured knee and I got out on a medical.

10 Q. And how many years ago was that, sir, a long
11 time ago?

12 A. Back in '64, I think it was.

13 Q. Okay. And the reason why I asked that question
14 is a lot of the troopers, a lot of the deputies, and
15 a lot of other professional people and other people
16 try to stay in the National Guard and Reserves to get
17 their reserve time out of the way, or the military
18 time.

19 A. Yes, sir.

20 Q. But that was so long ago that you don't remember
21 anybody around this county or around that witness
22 list?

23 A. Well, yeah. I remember a lot of guys who was in
24 the guard along with me.

25 Q. Yes, sir. But none of them as far as the

Juror 31 Roger D. Brownlee - Examination

1 witness list you saw today?

2 A. No, sir.

3 Q. Thank you, sir. And St. George is a small
4 community. Would you agree with me on that?

5 A. Yes.

6 Q. Okay. And early on you stated for Her Honor
7 when she asked you this question, that you had either
8 heard or somehow obtained some information about
9 something happening; is that correct, sir?

10 A. Yes, sir.

11 Q. All right. And you've told Her Honor again
12 today, sir, that you would be willing to -- anything
13 you have knowledge of it or whatever, you could set
14 it aside. And I think you've been asked this
15 question probably too many times, whatever you had
16 heard, whatever you had learned, leave it at the back
17 door here and only render any decision along with
18 your fellow jurors from what you heard in this
19 courtroom, sir?

20 A. Yes, sir.

21 Q. And as far as your jury service, you are the
22 type of gentleman who would work with the other
23 members, ladies and gentlemen of the jury, and
24 collectively put your mind together?

25 A. Absolutely.

Juror 31 Roger D. Brownlee - Examination

1 Q. And you would not be a gentleman that rushed to
2 judgment or only consider one punishment, you would
3 consider both punishments for any citizen?

4 A. That is correct.

5 MR. CUMMINGS: Beg the Court's indulgence,
6 Your Honor.

7 THE COURT: Yes, sir.

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

10 Q. One last question, Mr. Brownlee. The mere fact
11 that somebody is charged with a crime or arrested,
12 that doesn't automatically mean they're guilty to
13 you, does it?

14 A. No, sir. Not until they're proven guilty.

15 Q. Thank you, sir.

16 THE COURT: Mr. Bailey.

17 MR. BAILEY: Thank you, Your Honor.

18 EXAMINATION

19 BY MR. BAILEY:

20 Q. Mr. Brownlee, I'm Walter Bailey and I'll be
21 prosecuting this case for the State of South
22 Carolina. I want to ask you a couple more questions
23 to kind of follow up on what Judge Goodstein asked
24 you in regard to the death penalty. And, again,
25 we're not talking about this case in particular, you

Juror 31 Roger D. Brownlee - Examination

1 hadn't heard the facts, but my questions are general.

2 If a jury in this kind of a case
3 reaches the second phase, the penalty or the
4 sentencing phase, that, of course, means that person
5 was earlier found guilty of murder beyond a
6 reasonable doubt. They would hear additional
7 evidence and instructions from the judge on the
8 appropriate punishment. Whatever that jury's verdict
9 is has to be unanimous, all 12 have to agree on life
10 without parole or the death penalty. And then the
11 judge imposes that sentence, she orders that jury's
12 verdict to be put into effect and it will happen. So
13 based on that jury's verdict that person will either
14 be executed or go to prison for the rest of his life.

15 Again, I'm not asking for a prediction
16 or anything, but if the facts presented were bad
17 enough and you were in a case like this, could you
18 vote for the death penalty knowing that person's
19 actually going to be executed based on that vote?

20 A. Yes, sir. If the evidence, if it's bad enough,
21 yes, sir.

22 Q. All right, sir. And on the other hand, if you
23 felt like a life without parole sentence was
24 appropriate you could also vote for that?

25 A. Yes, I do.

Juror 31 Roger D. Brownlee - Examination

1 Q. If the jury votes for the death penalty the next
2 thing that happens in the process is that all 12 of
3 them are asked to sign their names to a death verdict
4 form. Could you sign your name to a paper like that
5 if you'd already heard the evidence and voted for the
6 death penalty?

7 A. I'm sorry, would you repeat that again?

8 Q. Yes, sir. If the jury votes for the death
9 penalty, there is a piece of paper back in the jury
10 room, a death verdict form. It's just a paper saying
11 that this jury sentences that person to death and
12 then the foreman and all members of the jury would be
13 asked to sign that paper. If you heard the facts and
14 the law from the judge, voted for the death penalty
15 and the other 11 jurors voted for the death penalty
16 also, could you sign your name to that paper along
17 with the rest of those jurors?

18 A. Yes, I would.

19 Q. If the jury votes for the death penalty they
20 sign the paper, they would come out here from the
21 jury room where you've been earlier, they would be
22 seated out here and each person's name is called out
23 one at a time, it's call polling the jury and each
24 member of the jury would be asked to stand up when
25 their name is called and asked whether that was their

Juror 31 Roger D. Brownlee - Examination

1 verdict and was it still their verdict. Could you do
2 that if that was your verdict, Mr. Brownlee?

3 A. Yes, sir.

4 Q. Thank you, that's all I have. Thank you very
5 much.

6 THE COURT: Mr. Brownlee, I'm going to ask
7 you to step outside the courtroom, you're not
8 even going to have time to sit down. We're
9 going to talk about you when you walk out, but
10 not very for long. Thank you, Mr. Brownlee.

11 MR. BROWNLEE: Walk out this way or this
12 way?

13 THE COURT: Ready to open the door for you,
14 right behind you. Thank you so much,
15 Mr. Brownlee.

16 MR. BROWNLEE: Thank you.
17 (Whereupon, the prospective juror exits the
18 courtroom.)

19 THE COURT: What says defense?

20 MR. CUMMINGS: Statutorily qualified,
21 Judge.

22 THE COURT: What says the State?

23 MR. BAILEY: Qualified, Your Honor.

24 THE COURT: Bring him back in.

25 (Whereupon, the prospective juror returns to the

Juror 31 Roger D. Brownlee - Examination

1 courtroom.)

2 THE COURT: Mr. Brownlee, see, I told you
3 it wouldn't be long.

4 MR. BROWNLEE: Thank you.

5 THE COURT: Mr. Brownlee, you have 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
9 qualified and that you may be selected to serve
10 on this jury.

11 We are hoping, hoping that we will be
12 able to select a jury tomorrow morning at ten
13 o'clock. It might be -- that time might be a
14 little bit ambitious, but if we have to change
15 the time we'll get in touch with you, okay?

16 MR. BROWNLEE: Okay.

17 THE COURT: Here is a sheet of information
18 for you and that gives you some instruction to
19 get you ready for your jury service. It tells
20 you to pack your clothes, bring your medicines
21 that you might need, and gives you emergency
22 numbers both during the day and at night where
23 your family can reach you if they need you.

24 Now, please share that information
25 with anyone with whom you need to share it,

Juror 31 Roger D. Brownlee - Examination

1 particularly those details of where you will be,
2 that sort of thing. However, be mindful that
3 you must not discuss this case or any aspect of
4 it or allow anyone to discuss it with you. And
5 please also be mindful not to expose yourself to
6 any information about this case. Do you
7 understand all that?

8 MR. BROWNLEE: Yes, ma'am.

9 THE COURT: Do you have any questions?

10 MR. BROWNLEE: Well, just one.

11 THE COURT: All right, sir.

12 MR. BROWNLEE: Tomorrow is the selection of
13 the jurors?

14 THE COURT: Yes, sir. Once the jury is
15 selected this trial will get right underway.

16 MR. BROWNLEE: Okay.

17 THE COURT: All right. So be packed and be
18 ready to go. Tomorrow is Friday, so if you're
19 not selected on the jury you're packed, might as
20 well go on a trip.

21 MR. BROWNLEE: Yes, ma'am. Thank you.

22 THE COURT: Thank you so much,
23 Mr. Brownlee.

24 MR. BROWNLEE: Okay.

25 (Whereupon, the prospective juror exits the

Juror 31 Roger D. Brownlee - Examination

1 courtroom.)

2 THE COURT: All right.

3 MR. BAILEY: I just note the next one may
4 have some problems, Judge.

5 MR. CUMMINGS: Yes, Judge.

6 MS. HARDEE-THOMAS: Concur, Your Honor.

7 THE COURT: Very well. Y'all agree the
8 next person should be dismissed?

9 MR. BAILEY: No. There's a problem,
10 though.

11 MR. CUMMINGS: Yeah. Number 45 jumped
12 right out.

13 THE COURT: Right, it does. Well, I'm
14 going to start the examination, I'm going to go
15 right to that.

16 MR. BAILEY: Okay.

17 THE COURT: Just feel free to stand up --

18 MR. CUMMINGS: Jump up.

19 THE COURT: -- if you feel the need. We'll
20 have Ms. Stanfield, please.

21 (Lisa C. Stanfield, called as a prospective
22 juror, having previously been duly sworn, is
23 examined as follows:)

24

25

Juror 288 Lisa C. Stanfield - Examination

EXAMINATION

1
2 BY THE COURT:

3 Q. Hi, Ms. Stanfield.

4 THE COURT: This is Mr. Lisa C. Stanfield,
5 Juror Number 288.

6 Q. Ms. Stanfield, if you will remember Monday, it
7 seems a long time ago now, when we were all together
8 you were sworn in as a potential juror along with the
9 other potential jurors. Let me start again. Monday
10 you were sworn in as a potential juror along with
11 your fellow potential jurors. Do you remember that?

12 A. I do.

13 Q. All right. And I would share with you that the
14 oath that you gave on Monday continues throughout
15 this process and would be applicable to the answers
16 you share with us today.

17 A. Okay.

18 Q. Now, since we've talked on Monday has anyone
19 talked with you about this case or tried to approach
20 you about it or have you been exposed to any
21 information about this case since Monday?

22 A. I've heard someone discussing it and dismissed
23 myself.

24 Q. Thank you very much. All right. In other
25 words, you followed my instructions?

Juror 288 Lisa C. Stanfield - Examination

1 A. Yes.

2 Q. Thank you very much. Did you hear anything or
3 just identified that's what they were talking about
4 and moved?

5 A. I just knew that's what they were talking about
6 and I left the room.

7 Q. Very well. Now, let me get -- we have your
8 questionnaire and we read your questionnaire. We
9 actually do read these questionnaires. And I wanted
10 to, first of all, hand it to you if I can get the
11 paper clip off, and I wanted to ask you about your
12 answer to question number 49. Let me hand that to
13 you, because as I understand it you've been very
14 candid, and I think you were very candid with us on
15 Monday, and expressed there your concern in being a
16 juror in a case such as this case where the crime
17 charged is murder; am I correct?

18 A. Right.

19 Q. Tell me about that.

20 A. My son is a -- is a victim of a murder. It was
21 nine years ago. There was never a conviction, there
22 was never a trial, there was never anything. And due
23 to the circumstances, the person who was murdered was
24 my fiancé, and I had two years of psychiatric
25 treatment. I'm fine, but sometimes I still

Juror 288 Lisa C. Stanfield - Examination

1 experience nightmares due to just -- just scared for
2 my children, I guess, because my son was there and
3 he's a witness. Although he was only 18 months old
4 at the time, it -- I'm concerned for my children and
5 I have nightmares sometimes. That's really the only
6 way that it affects me.

7 Q. All right. Now, let me ask you this question:
8 Do you have -- would that experience in your life,
9 could that, would that experience in your life, could
10 it substantially impair or prevent you from being
11 able to listen to the evidence in this courtroom and
12 make a decision based upon that evidence being
13 completely fair and impartial to the State and
14 Mr. Bowman, necessarily putting aside that experience
15 in your life?

16 A. Could I put it aside?

17 Q. Could you put it aside. Would that experience
18 substantially impair your -- the question really is
19 would it prevent or substantially impair your duties
20 as a juror, really is the question, but you got to
21 know what your duties as a juror are.

22 A. I don't personally feel that it would, but I
23 will not lie and say that I'm afraid that it would
24 make the nightmares occur more often. That's my only
25 fear, is that the nightmares would occur more often.

Juror 288 Lisa C. Stanfield - Examination

1 Other than that, I don't think it would have an
2 effect on me, no.

3 Q. All right. So let me see if I understand what
4 you're telling me. What I'm hearing from you is that
5 your primary concern is that if you were a juror in
6 this case that that experience could generate
7 nightmares for you?

8 A. Correct.

9 Q. Is that your primary concern?

10 A. Correct. Yes, ma'am.

11 Q. All right. Let me ask you about those
12 nightmares because I need to be able to assess what
13 that means for you. Assume that it did that, that it
14 caused you, it -- that being a juror caused you to
15 have nightmares. Tell me what does that mean for
16 your health, if anything? I mean, it may just be
17 terribly unpleasant, but does it have an effect on
18 your health?

19 A. You don't sleep that night. Yes, you do, you
20 become very, very stressed, there is no sleep at
21 night. There's no way to explain it. You're just
22 not comfortable in your own skin, that is the best
23 way I can explain it to you, I'm sorry.

24 Q. That's why I asked the question. You are giving
25 to me what I need to know. In other words, it's not

Juror 288 Lisa C. Stanfield - Examination

1 just an unpleasant dream.

2 A. Right.

3 Q. It's much more than an unpleasant dream.

4 A. That's correct.

5 Q. Very well. Let me tell you there's no way for
6 me to know what your responses would be unless I
7 asked you. I've upset you and I don't want to upset
8 you.

9 A. I'm perfectly fine, I'm more than --

10 Q. I understand that, but I wouldn't -- I don't
11 want to do a thing to bring up unpleasantnesses for
12 you. Do you understand that?

13 A. Thank you. Yes, ma'am.

14 Q. I'll tell you what I'm going to do, may I
15 transfer your service to a civil term?

16 A. Certainly.

17 Q. Oh, thank you for letting me do that, because I
18 think you would be an excellent juror and I'd love
19 for you to have that opportunity. So we will
20 transfer you to a civil term if you will allow me to
21 do that.

22 A. Thank you for your understanding in excusing me.

23 Q. Certainly. Now, I need to ask you to do a
24 couple of things for us.

25 A. Sure.

Juror 288 Lisa C. Stanfield - Examination

1 Q. I'm going to ask you not to discuss with your
2 potential jurors, your other potential jurors the
3 question process, this process. And be mindful now,
4 particularly since you've been through the witness
5 list, be mindful not to discuss this case with anyone
6 that has anything to do with this trial for us.
7 Beyond that you can talk about this with whomever you
8 want to, or you can not talk about it, you own that
9 completely, you make that decision.

10 And please take from all of us a thank
11 you, because we know that you've given to us
12 something very precious, and that's your time and so
13 on behalf of everyone here as well as this community
14 I want to thank you for that.

15 A. Thank you.

16 Q. Thank you. We will send you another notice. It
17 may be later in the summer, the civil term, but we'll
18 just send you another notice.

19 A. Okay. Thank you.

20 Q. Thanks a lot.

21 A. You all have a good day.

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

24 THE COURT: Any objection to transferring
25 Ms. Stanfield from the State?

Juror 288 Lisa C. Stanfield - Examination

1 MR. BAILEY: No objection.

2 MR. CUMMINGS: No, Judge.

3 MS. HARDEE-THOMAS: No objection.

4 THE COURT: All right. Our next juror
5 is -- it is now 2:34. Obviously they have to
6 have an opportunity to read the information, but
7 if Ms. McKay has had an opportunity to do that
8 bring her on in, Ms. Christina McKay.

9 (Christina McKay, called as a prospective juror,
10 having previously been duly sworn, is examined
11 as follows:)

12 EXAMINATION

13 BY THE COURT:

14 Q. Good afternoon, Ms. McKay.

15 A. Hello.

16 Q. How are you?

17 A. Good.

18 Q. Good.

19 THE COURT: This is Christina McKay, who is
20 Juror Number 205.

21 Q. Ms. McKay, you will recall when we were together
22 on Monday that you along with your other fellow
23 potential jurors were sworn in in this matter. Do
24 you remember?

25 A. Yes.

Juror 205 Christina McKay - Examination

1 Q. All right. And I want to remind you that that
2 oath carries for the whole process.

3 A. Okay.

4 Q. And would cover the answers that you would be
5 kind enough to share with us today, okay?

6 A. Okay.

7 Q. All right. Now, since we talked on Monday has
8 anyone talked with you about this case, or approached
9 you about this case, or have you been exposed to any
10 information about this case?

11 A. No.

12 Q. Now, when you were back in the jury room did you
13 have a chance to see the potential jury list?

14 A. Yes.

15 Q. And are you related by blood or marriage or
16 acquainted with, or are you connected directly or
17 indirectly or have any personal or casual or business
18 relationship with any of the individuals whose names
19 are on the list?

20 A. Well, in my paperwork I wrote down I'm a
21 pharmacy technician at Eckerd Drug and so I see
22 hundreds of names and faces a day. And I can say
23 that I do not know any of these people or I'm not
24 related to some of them. Might look a little
25 familiar, I may have seen them or given them their

Juror 205 Christina McKay - Examination

1 prescription, but that would be the extent of it.

2 That's about it.

3 Q. In other words, to be absolutely candid with us,
4 you may have seen these names, you may have seen
5 these people, but the extent of your relationship
6 would be that they would be picking up prescriptions?

7 A. That would be it, yeah.

8 Q. All right. Very well. And I would just ask you
9 the fact that some of these folks may have picked up
10 their prescriptions from you, would that, or could
11 that, in any way impair your ability to be fair and
12 impartial?

13 A. No.

14 Q. All right. Now I'll take that, move that over
15 here.

16 When we were together on Monday I
17 remember asking the panel in its entirety if anyone
18 had any opinions about this matter or had seen or
19 heard or read anything about this case, or had any
20 bias or prejudice for or against either side. And my
21 notes indicate that you did not indicate any of those
22 things applied to you; is that right?

23 A. That's right.

24 Q. And does that remain true today?

25 A. Yes.

Juror 205 Christina McKay - Examination

1 Q. All right. Now, I'm going to be asking you some
2 questions.

3 A. Okay.

4 Q. And I want you to know that I am, I, or no one
5 here is trying to invade your privacy at all. What
6 we are doing is that we're trying to find out a
7 little bit about how you feel about some different
8 matters.

9 A. Okay.

10 Q. What your opinions are. Now, obviously there
11 are no right or wrong answers. Obviously your
12 opinions are as good and valid as anybody else's and
13 we are in no way challenging your opinions. Our
14 purpose, again, is to simply try to understand them
15 and see how they might impact on your jury duty, all
16 right?

17 A. Okay.

18 Q. Now, one of the items, one of the matters that
19 I'm going to talk to you about is the issue of
20 penalty, specifically the death penalty because that
21 may be an issue in this case. But I want you to know
22 that to talk about penalty at this stage is clearly
23 and obviously premature, because the trial has not
24 even begun and because Mr. Bowman is presumed
25 innocent of these charges. And I want you to keep

Juror 205 Christina McKay - Examination

1 that in mind, that this is premature and that
2 Mr. Bowman is presumed innocent. But I do want you
3 to understand that in order for me to talk to a
4 potential juror about penalty, I have to do that
5 before the trial.

6 And also know that the questions that
7 I'm going to be asking of you, the opinions that I'm
8 going to be asking of you I ask in a general sense or
9 a generic sense. I am not asking you about your
10 opinions about this case. To do that would be unfair
11 to you because you don't know anything about this
12 case, it would also be improper so I'm not going to
13 do that.

14 A. Okay.

15 Q. But I am going to ask you questions in the
16 generic sense.

17 A. Okay.

18 Q. Now, if you were a juror in any criminal trial,
19 would you be willing to listen to the law as
20 instructed to you by the judge?

21 A. Yes.

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

24 A. Yes.

25 Q. Even if you didn't like that particular part of

Juror 205 Christina McKay - Examination

1 the law and even if you might disagree with it, would
2 you still be willing to follow the law as you were
3 instructed by the judge?

4 A. Yes.

5 Q. Now, if you were asked to serve in this case, in
6 State vs. Mr. Bowman, could you decide this case
7 based solely on what you hear in this courtroom and
8 disregard anything that you may have seen, or heard,
9 or read about this case from any source if anything
10 like that would come into your mind?

11 Let me tell you what this means.
12 Sometimes when a juror is serving on a jury, they
13 will listen to evidence and sometimes they will hear
14 something that will jog their memory. And for them
15 to say at this point they have no memory of a case is
16 absolutely correct, but sometimes when they hear some
17 of the evidence something will be triggered. So I
18 need to ask you if that happened to you, it may, it
19 may not, but if that happened to you would you be
20 willing to disregard that memory of this case that
21 you may have heard or seen or whatever, and decide
22 this case based on what you hear in the courtroom?

23 A. Yes.

24 Q. Okay. Now, in a criminal case as you may know
25 and as we talked about on Monday, the State has the

Juror 205 Christina McKay - Examination

1 burden of proving the guilt of a defendant beyond a
2 reasonable doubt. You understand this, right? And
3 also a defendant, no defendant ever has to prove
4 himself or herself innocent. Do you understand this
5 as well?

6 A. Yes.

7 Q. A defendant doesn't have to prove anything
8 because a defendant is presumed innocent. Do you
9 understand these principles?

10 A. Yes.

11 Q. All right. Now, if you were a juror in any
12 criminal case would you be willing to listen to the
13 evidence, to find the facts as you found them to be
14 and to apply the law to those facts?

15 A. Yes.

16 Q. And if after you did that you were not convinced
17 of a person's guilt beyond a reasonable doubt, would
18 you be willing and able to find that person not
19 guilty?

20 A. Definitely.

21 Q. And on the other hand, after you listened to the
22 evidence and found the facts as you found them to be
23 and applied the law to those facts, if you were
24 convinced that a person was guilty beyond a
25 reasonable doubt, would you be willing and able to

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1 find that person guilty?

2 A. Yes.

3 Q. Now, in other words, you would be willing to
4 listen and to make your decision based upon whether
5 or not you were convinced that the person's guilty or
6 not?

7 A. Yes.

8 Q. Now, most of the time jurors do not concern
9 themselves with the matter of punishment. Most of
10 the time in the criminal court punishment is a matter
11 that is left up to the judge. But there is one case
12 in our law when a jury has to deal with the issue of
13 punishment and that is in a case like this one, it is
14 in a case where an individual has been charged with
15 the crime of murder and the State is seeking the
16 death penalty.

17 If an individual in a death penalty
18 case is convicted of the crime of murder, then the
19 same jury that convicted him or her comes back and in
20 a separate and different proceeding decide the
21 punishment that the defendant, or that the person,
22 let me say, will get. There are only two choices.
23 One, life imprisonment without the possibility of
24 parole, and the death penalty. The sentence would be
25 determined in that second or sentencing phase of the

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1 trial as it's called. Do you understand this
2 information?

3 A. Yes.

4 Q. Do you have any questions about this
5 information?

6 A. No.

7 Q. All right. Now, back in the jury room you had a
8 chance to look at this paper. Did you look at it?

9 A. Yes.

10 Q. And read it?

11 A. Yes.

12 Q. All right. And it essentially describes three
13 different types of jurors. Do you remember the three
14 different types of jurors?

15 A. Yes.

16 Q. Which of those three types of jurors do you
17 think best describes you?

18 A. Can I explain a little bit?

19 Q. You bet.

20 A. Okay. I think I'm kind of -- you can't really
21 kind of be both in here, but it kind of says one or
22 the other, but kind of a two or a three. I pray and
23 I believe in God, I believe that God handles things
24 in his own way. And unless for some reason I
25 accidentally hated or, you know, at the end of it

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1 really disliked this person and what was done and my
2 feelings changed, unless God came down and told me
3 that this person was to die then I don't think it's
4 by my hand or by my word that it should be done. But
5 like I said, unless for some reason, you know, my
6 views by the end of the case were different, then
7 maybe I would change my mind, I can't -- you know,
8 but having that on my shoulders I think would be a
9 lot, I don't know. Both.

10 Q. That's what this process is for, is for you to
11 share your opinions with us. Let me ask you a little
12 bit about that. I'm hearing that to make that
13 decision would be a very difficult one for you.

14 A. Yeah.

15 Q. It's a difficult decision. However, let me ask
16 you this question: If you listened to all of the
17 evidence and you were convinced that a person should
18 receive the death sentence, and that you thought that
19 that sentence was appropriate under the circumstances
20 as you found them to be, okay, are you with me?

21 A. Yeah.

22 Q. All right. Would you be willing and able to
23 vote for that sentence?

24 A. If I felt that that was right, I would be
25 willing and able to if that's what I felt.

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1 Q. Right. Based on what you heard in the
2 courtroom.

3 A. Yes.

4 Q. And on the other hand, if you thought the death
5 sentence was not appropriate, or for any other reason
6 you thought the person ought to receive life
7 imprisonment, would you be able and willing to vote
8 for a sentence of life?

9 A. Yes.

10 Q. So --

11 A. I'd have to be 100 percent convinced on
12 whichever one I chose, basically. It wouldn't be
13 like a 50/50 thing. It would be 100 or neither,
14 so....

15 Q. All right. I will tell you that -- I will share
16 this with you, that the State has the burden of
17 proving what are called aggravating circumstances.
18 And they must prove aggravating circumstances beyond
19 a reasonable doubt. You will also be asked to
20 consider mitigating circumstances, any and all
21 mitigating circumstances, but -- but I share that
22 with you.

23 In order for there to be the death
24 sentence imposed, there must be a determination by
25 the jury that the State has proven aggravating

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1 circumstances beyond a reasonable doubt. Doesn't
2 mean that the jury can't do whatever the jury chooses
3 to do even if the State's proven aggravating
4 circumstances beyond a reasonable doubt. The jury
5 can still do what the jury chooses to do. The death
6 sentence cannot be imposed unless the jury
7 unanimously found aggravating circumstances beyond a
8 reasonable doubt. Do you understand what I'm telling
9 you?

10 A. Yes.

11 Q. All right. Now, hearing those matters, that
12 information, you would make your decision based upon
13 what you would hear in the courtroom?

14 A. Yes.

15 Q. All right. Now, if you were chosen to serve as
16 a juror in this case, you and the other jurors would
17 be housed in a motel here locally, the word is
18 sequestered. And you would need to remain with us
19 throughout the duration of the trial. And you'd stay
20 at the motel except, of course, when you were here in
21 the courtroom. This period could last as long as two
22 weeks, it could be longer, it could be shorter. I'm
23 just not -- that's an estimate of how long the trial
24 would take, and I'm not sure exactly how long the
25 trial will take.

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1 A. We were hoping to have a jury by today, too, so
2 we'll see.

3 Q. Thank you. Surely 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 no doubt cause anyone who had to serve
7 in this capacity, if you had to serve would that pose
8 a serious risk of danger to your health or well
9 being, or to that of anybody who is dependent upon
10 you if you had to serve in that capacity?

11 A. No.

12 Q. You could do that?

13 A. Yes.

14 Q. I'm going to ask you to please listen to and
15 answer the questions of these lawyers for me if you
16 would.

17 A. Okay.

18 THE COURT: Mr. Bailey.

19 MR. BAILEY: Thank you, Your Honor.

20 EXAMINATION

21 BY MR. BAILEY:

22 Q. Ms. McKay, I'm Walter Bailey and I'll be
23 prosecuting the case and I want to ask you a few
24 questions here. And I apologize ahead of time if I
25 get personal or get repetitive, because the judge has

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1 already asked you a lot of these same type questions.
2 Let me ask you, first of all, about the last thing
3 that Judge Goodstein told you about the jury being
4 put up in a motel or hotel here in St. George for
5 possibly a couple of weeks starting tomorrow. I
6 notice from your questionnaire that you've got
7 children.

8 A. I do.

9 Q. Is that correct?

10 A. Yes.

11 Q. More than one child?

12 A. I have a 19-month-old daughter and a
13 four-year-old son.

14 Q. All right. And being away from children that
15 age for two weeks potentially, could you tell us how
16 you would handle that?

17 A. That would be a little rough.

18 Q. Okay.

19 A. I mean, you know, you're a mom and they're your
20 babies and that's basically it.

21 Q. Yeah.

22 A. But they have their dad and their grandma. If I
23 had to it would be okay.

24 Q. Okay.

25 A. I would not want to leave them.

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1 Q. Right.

2 A. But, I mean, they would be okay.

3 Q. Okay. All right. Let me ask you a little bit
4 about the death penalty. And like Judge Goodstein
5 said, we're not talking about this case, you hadn't
6 heard the facts of this case, but just talking in
7 general. And I was trying to take notes when you
8 were answering the judge's questions and I think I
9 got down what you said. But as I understood you,
10 correct me please if I'm wrong, that you said that
11 you were either a two or a three type juror?

12 A. Uh-huh (affirmative response).

13 Q. Somewhere between there. And then I think you
14 said that unless God told that you this person was to
15 die that you didn't think you could do it?

16 A. That's right.

17 Q. Okay. So you attend the Mormon church?

18 A. Yes.

19 Q. Okay. And the beliefs that you've expressed to
20 the judge, are those religious beliefs that you've
21 gotten from your church affiliation?

22 A. A lot, yes.

23 Q. Okay. So would I be correct in saying or just
24 interpreting what you said, that you would be looking
25 for some type of a Devine revelation if you got in

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1 the penalty phase?

2 A. I'm not asking God to come to me, no, but I
3 would really have to put my religious feelings aside
4 and have to really dislike this person to give them
5 the death penalty.

6 Q. You would have to dislike the defendant?

7 A. Yes.

8 Q. To give him the death penalty?

9 A. For whatever they did, yes.

10 Q. Okay. When you told Judge Goodstein that you
11 would have to be 100 percent convinced to bring back
12 the death penalty, can you tell me convinced of what?

13 A. That -- well, I guess that's a good question.
14 Well, I guess, I mean, I would have to be 100 percent
15 convinced to say that this person is guilty, is
16 really what I was thinking along the lines of, I
17 don't know. I really don't know where the death
18 penalty and the life -- I mean, I don't know how I
19 would feel or how I would do it, I mean, until the
20 end of the trial or whatever. I just don't know.
21 That's a big decision, that is somebody else's life.

22 Q. Right, it's a big decision.

23 A. Yeah.

24 Q. And we're not asking you to predict what you
25 would do in this case. And I realize it's hard,

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1 we're putting you on the spot, frankly, we're trying
2 to figure out what your thoughts are, but we're
3 trying to separate that from this case because you
4 haven't heard the facts yet.

5 A. That's why you can't get a direct answer because
6 I don't know, so....

7 Q. All right. And, again, I'm not asking you what
8 you would do in this case.

9 A. Yeah.

10 Q. Because you don't know, you hadn't heard the
11 facts. What I'm trying to find out is if the case is
12 bad enough, taking into consideration your religious
13 beliefs --

14 A. If I'm 100 percent sure that this person did it
15 and the crime affected me enough that, like I said, I
16 really -- I just probably would, but I can't say for
17 sure, I mean I don't know.

18 Q. Okay. All right. And please understand there
19 are no right or wrong answers, you know, when we're
20 talking about the one type juror, the two type juror,
21 the three type jurors, one of them is as good as the
22 other. You know, it's not like picking out which
23 one's the best because they're all fine.

24 A. I'm just being honest.

25 Q. I know. And that's what we want you to do.

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1 Okay. If we get into the penalty
2 phase of a death penalty trial that means the jury's
3 already heard testimony and evidence and instructions
4 from the judge and they have decided that person's
5 guilty of murder beyond a reasonable doubt, then if
6 we go into the second part of the trial the
7 testimony's geared toward the appropriate punishment,
8 and there are two choices. Life without parole and
9 the death penalty.

10 In South Carolina the judge doesn't
11 decide ultimately what the punishment is, the jury
12 makes that decision. All the judge is going to do,
13 she's going to order that sentence to be carried out.
14 So based on what that jury says in their verdict that
15 person is either ordered to prison for the rest of
16 their life without parole, and they would actually
17 serve the rest of their life without parole, or she
18 would order that execution and that person would be
19 executed.

20 Now, are you saying that if the case
21 was bad enough you could vote for the death penalty
22 knowing that as a result of that vote that individual
23 is actually going to be executed?

24 A. I think I could. But then on the other hand, I
25 mean when you think about life without parole, I

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1 mean, that's a long time sitting in jail to think
2 about what you've done. And then, like I said, I do
3 believe in God and I believe that that person will
4 stand before him and he will handle that in the way
5 that he chooses. So, I mean, to make it ultimately
6 my decision, but, I mean, I don't know, I may or may
7 not, I just have no idea. I could, yes, but -- or
8 not, you know, I don't know.

9 Q. Okay. Let me ask you this. And I may have
10 asked you this before, but I'm kind of groping around
11 here as you can see. Do you think that your
12 religious beliefs in regard to the death penalty that
13 you have expressed, that unless God told you that the
14 person was to die you didn't think you could do it,
15 do you think those religious beliefs would
16 substantially impair your ability to fairly consider
17 both punishments?

18 A. Not impair, but to be fair, yes. I think I
19 would be fair. I would pray about it and I would be
20 fair.

21 Q. Okay. All right.

22 A. I'm not expecting a revelation or, you know, God
23 to come down in front of me.

24 Q. But religious considerations would enter into
25 your deliberation; would they not?

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1 A. Yes. And I'm just Christian like, you know, a
2 lot of people are and not like -- you know, I don't
3 believe in cults or nothing.

4 Q. Nobody's here to criticize your beliefs.

5 A. I know. I'm just letting you know, that's all.

6 Q. Okay. Ms. McKay, I believe that's all I've got
7 right now. Thank you very much.

8 MR. CUMMINGS: Thank you, Judge.

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

10 EXAMINATION

11 BY MR. CUMMINGS:

12 Q. Ms. McKay, good afternoon. I'm Norb Cummings,
13 seated at the table is Ms. Marva Hardee-Thomas, we're
14 both co-counsels in this case, that's Mr. Marion
15 Bowman, Jr. You've answered a lot of questions from
16 Her Honor and Mr. Bailey. I'll ask you one question:
17 Could you follow Her Honor's law and instructions and
18 consider both types of penalties if you're a juror?

19 A. Yes.

20 MR. CUMMINGS: Thank you, Judge. That's
21 all I have.

22 THE COURT: All right. Let me tell you
23 what I'm going to ask you to do for me now, I'm
24 going to ask you, Ms. McKay, to just step
25 outside the courtroom for just a moment and we

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1 will get you right back in a minute.

2 MS. MCKAY: Okay.

3 THE COURT: Thank you so much.

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

6 THE COURT: Yes, sir.

7 MR. BAILEY: Your Honor, my position, the
8 State's position is that Ms. McKay is not
9 qualified. A juror in a death penalty case has
10 to be able to deliberate, fairly consider both
11 verdicts. Based on the facts and the evidence
12 and putting aside any outside influence, any
13 arbitrary factor that might enter into their
14 deliberative process, Your Honor has previously
15 ruled in a motion in limine that it would be
16 inappropriate for either side to make religious
17 arguments to argue the Old Testament against the
18 New Testament and whatever.

19 And the reason for that, Your Honor,
20 as you know, I mean, you issued the order, is
21 the jurors are supposed to make their decision
22 based on the facts from the witness stand and
23 from the law as you have instructed them. There
24 will be nothing about religion coming out either
25 the law from the Court or testimony or argument

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1 from anybody. So this lady is very religious
2 and she is going to let her religious beliefs
3 enter into her deliberative process, and,
4 therefore, is going to be getting outside of the
5 realm of what she's supposed to be considering.
6 And I think for that reason she should be
7 disqualified for cause.

8 THE COURT: Thank you, Mr. Bailey.

9 MR. CUMMINGS: May it please the Court,
10 Judge. I believe the ruling of the Court,
11 respectfully, motion in limine, is to prohibit
12 the attorneys or the evidentiary called upon to
13 bring God versus Cesar's law in her as Your
14 Honor instructed. Your Honor, the only case
15 that I could find that's even close to being on
16 point is Riddle vs. Stone -- excuse me, Riddle
17 vs. State, 314 S.C. 1443, S.E.2d 557, (1994)
18 where cert was denied.

19 Just taking a caption out of Mr.
20 Bailey's book, it was a Reverend Hicks was
21 unable to say that she would ever consider the
22 death penalty and to the contrary she repeatedly
23 stated that she couldn't give the death penalty.
24 In this case this lady said she could impose
25 both punishments. And, Your Honor, as we read

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1 the standard under the Wainwright and Witt I
2 think she can consider both. And that is the
3 standard as I read 16-3-20. Yes, ma'am, I'm
4 sitting down.

5 THE COURT: Thank you so much. I find that
6 Ms. McKay is qualified. She has told me and
7 told us all that she can consider both. The
8 fact that she's told you she will consult her
9 conscience and part of her happens -- she shared
10 with us happens to involve her religious bailiff
11 was what she chose to share with us, but I'm
12 satisfied that she can consider both. She said
13 that she would sure have to dislike what the
14 person did to impose the death penalty. I think
15 that's probably pretty wise on her part, so I
16 think she's qualified. Over the objection of
17 the State I will qualify her. Bring her in,
18 please.

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

21 THE COURT: Thank you. Right here. Thank
22 you, Ms. McKay. Ms. McKay, you have been found
23 to be qualified as a potential juror in this
24 case. That does not mean that you are on the
25 jury yet.

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1 MS. MCKAY: Okay.

2 THE COURT: It just means that you may be
3 selected to serve on this jury. Now, we are
4 hoping that we'll be able -- as you know, I was
5 hoping for today, now I'm hoping for tomorrow
6 morning at ten o'clock. And this, again, may be
7 a little ambitious and we may have to push that
8 time back a little bit, but I'm satisfied that
9 we should be able to select this jury tomorrow.
10 If I have to move the time back a little bit, we
11 will call you and let you know.

12 MS. MCKAY: Okay.

13 THE COURT: Now, if you don't hear from us,
14 please be back in the courtroom at ten o'clock
15 in the morning.

16 MS. MCKAY: Okay.

17 THE COURT: That's a sheet of paper and
18 what that paper does, it obviously sets down the
19 time that you are to return and it reminds you
20 to pack your clothes, bring any medication that
21 you need, gives you emergency numbers that you
22 can be reached both during the day and at night
23 and gives you where you will be housed, so you
24 can share that with your family.

25 Now, in the event -- I've already told

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1 you if I need to call you that we will do that.
2 I'm going ask you if you don't hear from us, be
3 back here at ten o'clock, packed, ready to go,
4 but leave your suitcase in your car if you can.

5 MS. MCKAY: So just plan on doing it
6 almost?

7 THE COURT: Yes. Exactly. I always tell
8 folks, particularly if it's Friday and if you're
9 not selected on the jury, you're packed, you can
10 go on a vacation. Go away for the weekend.

11 MS. MCKAY: Okay.

12 THE COURT: But if you would be so kind as
13 to be back here tomorrow. Talk about those
14 details with your mom, your husband, anybody
15 else that you want to or need to. But be
16 mindful that you must not talk about this case
17 or any aspect of it, or expose yourself to any
18 information about this case. Very well. Thank
19 you. See you tomorrow.

20 MS. MCKAY: Okay. Should I go out that
21 way?

22 THE COURT: You can go either way.
23 (Whereupon, the prospective juror exits the
24 courtroom.)

25 THE COURT: All right. Our next juror is

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1 Ms. Wade, Ms. Dianne Wade.

2 (Dianne L. Wade, called as a prospective juror,
3 having previously been duly sworn, is examined
4 as follows:)

5 EXAMINATION

6 BY THE COURT:

7 Q. Good afternoon, Ms. Wade, how are you?

8 A. Fine. How are you?

9 Q. Fine, thank you.

10 THE COURT: This is Dianne Wade, Juror
11 Number 317.

12 Q. Now, Ms. Wade, I want to remind you back Monday,
13 seems a long time ago now, you were placed under oath
14 Monday morning along with the other potential jurors.
15 Do you remember that?

16 A. Uh-huh (affirmative response).

17 Q. That oath remains in effect and would apply to
18 the answers that you will share with us this
19 afternoon, okay?

20 A. Okay.

21 Q. Now, has anyone talked with you or tried to
22 approach you about this case, or have you been
23 exposed to any information from any source about this
24 case since Monday?

25 A. No.

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1 Q. I was just noticing from the questions, the
2 general questions that I had asked on Monday, that
3 you have an affiliation with defense counsel?

4 A. I'm not sure if it's an affiliation. I know
5 Norb Cummings.

6 Q. How do you know him?

7 A. He represented my husband.

8 Q. He did? How long ago was that?

9 A. Two and a half years ago.

10 Q. All right. Very well. Would the fact that you
11 have that connection with Mr. Cummings, could that,
12 might that interfere with your ability to be
13 completely fair and impartial to both sides?

14 A. I don't think so.

15 Q. Can you set whatever that connection is
16 completely aside and try this case based on the
17 evidence in this courtroom and disregard that?

18 A. Yes.

19 Q. All right. Very well. Now, there was in the
20 jury room with you a potential witness list. Did you
21 have an opportunity to review it?

22 A. I did.

23 Q. And are you related by blood or marriage, or
24 acquainted, do you have any personal or casual
25 relationship with anyone, or a business association

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1 with anyone, or are you connected directly or
2 indirectly with anyone whose name is on the potential
3 witness list?

4 A. There were two names that I recognized.

5 Q. Okay. You can refer to it, please.

6 A. Matt Fitts.

7 Q. Matt Fitts?

8 A. And I don't know if it's the Matt Fitts that I
9 know.

10 Q. Okay.

11 A. He's actually a friend of my brother's, I
12 haven't seen him in 20 years, but my family knows his
13 family.

14 Q. I understand.

15 A. And the other one is Dr. West.

16 Q. Okay.

17 A. He is a psychologist for both of my children for
18 ADD.

19 Q. Okay. Let me ask you this question: Would the
20 connection that you have with Mr. Fitts which you
21 said you hadn't seen him this 20 years, but there was
22 once a close relationship between he and your family?

23 A. Yeah. He was in high school with my brother.

24 Q. All right.

25 A. I don't know him.

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1 Q. I understand. Would that have any bearing on
2 your ability to be a fair and impartial juror in the
3 trial of this case?

4 A. No.

5 Q. Likewise with Dr. West, would your connection
6 with that potential witness, Dr. West, have any
7 bearing on your ability to be a fair and impartial
8 juror in the trial of this case, fair and impartial
9 juror?

10 A. No.

11 Q. Now, could you set aside the connection both
12 with Mr. Fitts and with Dr. West such that you can
13 decide this case based upon what you would hear in
14 this court without regard to your connection with the
15 potential witness?

16 A. Yes.

17 Q. All right. Now, the other day when I was asking
18 the whole jury panel if they had any opinions about
19 this case or had heard or read or seen anything about
20 this case, or if they had any bias or prejudice for
21 or against either side, my notes indicate that none
22 of those things applied to you.

23 A. No.

24 Q. Is that right?

25 A. Uh-huh (affirmative response).

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1 Q. All right. And would that remain your response
2 here today?

3 A. Yes.

4 Q. All right. Now, I need to ask you some
5 questions, we need to ask you some questions and I
6 want you to know that we are not trying to invade
7 your privacy.

8 A. Okay.

9 Q. What we need to do is to ask you some questions
10 to find out how you feel about certain matters, in
11 other words to get your opinions about certain
12 matters. And I want you to know that there are no
13 right or wrong answers. Obviously your opinions are
14 as good and valid as anybody else's, no one here is
15 going to challenge your opinions at all. We just
16 simply need to understand them, so that we can see
17 how they might impact on your jury service.

18 Now, one of the things I'm going to be
19 asking you about in a few moments is penalty, the
20 death penalty. And I want to say to you that
21 obviously for me to ask you about penalty at this
22 early stage is premature, the trial has not begun yet
23 and Mr. Bowman is presumed innocent of these charges.
24 So keep those ideas in mind as I talk about penalty,
25 and know that the only reason that I'm talking about

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1 penalty at this time is because I need to talk to
2 potential jurors about penalty and I obviously have
3 to do that before the case begins. And the reason
4 that I have to talk about penalty is because it may
5 be an issue in this case, okay?

6 A. Okay.

7 Q. Now, I'm going to be asking you these questions
8 in a general or a generic sense. I am not asking you
9 your opinions about this trial, about this matter,
10 because that wouldn't be fair to you because you
11 don't know anything about this matter. It also would
12 be improper, so I'm not going to do that.

13 Now, if you were a juror in any
14 criminal case, would you be willing to listen to the
15 law as you were instructed by the judge?

16 A. Yes.

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

19 A. Yes.

20 Q. Even though you might not particularly like that
21 part of the law and you may disagree with it, would
22 you still be willing to follow the law as you were
23 instructed to do by the judge?

24 A. Yes.

25 Q. Okay. Now, if you were asked to serve in the

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1 case of the State vs. Mr. Bowman, would you, could
2 you decide this case based solely on what you hear in
3 the courtroom and disregard anything that you may
4 have seen or heard or read about this case from any
5 source at all if anything like that should come to
6 your mind?

7 A. Yes.

8 Q. In other words, if during the course of this
9 trial your memory was jogged, could you set that
10 memory aside?

11 A. I think so.

12 Q. All right. Now, in a criminal case as you may
13 know and as we talked about Monday, the State has the
14 burden of proving a defendant guilty beyond a
15 reasonable doubt. A defendant never has to prove
16 himself or herself innocent, a defendant never has to
17 prove anything because the burden remains upon the
18 State and a defendant is presumed innocent. Do you
19 understand these principles?

20 A. Yes.

21 Q. Okay. So if you were a juror in any criminal
22 case, would you be willing to listen to the evidence
23 and find the facts as you found them to be based upon
24 the evidence and then apply the law given to you by
25 the judge to the facts?

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1 A. Yes.

2 Q. Okay. And after you had done that, if you were
3 not convinced that a person was guilty beyond a
4 reasonable doubt, would you be willing and able to
5 find that person not guilty?

6 A. Yes.

7 Q. On the other hand, once you listened to the
8 evidence and found the facts as you found them to be
9 and applied the law to those facts, if you were
10 convinced of a defendant's or of a person -- used
11 person first time, so I'll use person second time --
12 guilt beyond a reasonable doubt, would you be willing
13 to find that person guilty?

14 A. Yes.

15 Q. In other words, you would be willing to listen
16 and to make your decision based upon whether or not
17 you were convinced that a person is guilty or not; is
18 that right?

19 A. Yes.

20 Q. Now, most of the time jurors do not concern
21 themselves with the matter of punishment. Most of
22 the time in the criminal court punishment is a matter
23 for the judge. But there is one case in which a jury
24 must and does deal with the matter of punishment and
25 that is in a case like this one, it is in a case

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1 where an individual has been charged with the crime
2 of murder and when the State is seeking the death
3 penalty.

4 If an individual in a death penalty
5 case is convicted of the crime of murder, then the
6 same jury that convicted him or her comes back and in
7 a separate and different proceeding decides the
8 punishment that the person would get. And there are
9 two choices. One, life imprisonment without the
10 possibility of parole, and the second or other
11 possible punishment is the death penalty. The
12 penalty would be determined in the second or
13 sentencing phase of the trial as it is called. Do
14 you understand this information?

15 A. Yes.

16 Q. Now, you had a chance to look at the paper in
17 the jury room?

18 A. Uh-huh (affirmative response).

19 Q. It essentially has three types of jurors listed
20 on it and described for you. Do you remember that?

21 A. Yes.

22 Q. Which of those three types of jurors best
23 describes you?

24 A. Juror two.

25 Q. Juror two?

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1 A. (Nodding.)

2 Q. All right. Tell me what -- describe for me what
3 that means to you.

4 A. I don't agree with the death penalty. I
5 couldn't sit there and agree to put somebody to
6 death, I couldn't do that.

7 Q. All right. In other words, once a defendant,
8 once a person is found guilty you would not need the
9 second phase, you would not need the sentencing
10 phase?

11 A. Right.

12 Q. Because there would be nothing for you to hear
13 because you would know what the punishment would be?

14 A. Right.

15 Q. And under no circumstances would you impose the
16 death penalty, you'd always impose life?

17 A. Yes.

18 Q. Let me ask if these lawyers have any questions
19 for you. Thank you so much.

20 THE COURT: And, Mr. Cummings.

21 MR. CUMMINGS: Thank you, Judge.

22 EXAMINATION

23 BY MR. CUMMINGS:

24 Q. Good afternoon, ma'am. I think politely you
25 know me, I'm Norb Cummings. Seated at the table is

Juror 317 Dianne L. Wade - Examination

1 Ms. Marva Hardee-Thomas, ma'am, and we both have been
2 appointed by Her Honor to represent Mr. Bowman. I'm
3 just going to be very brief with you, ma'am, and I
4 thank you for your candor and your forthwith answers
5 to Her Honor, please.

6 If I asked you numerous questions, the
7 basis of your answer is that you are a person who
8 would not give the death penalty no matter the facts
9 or circumstances were presented to you by the State
10 in aggravating factors?

11 A. That's correct.

12 Q. And you could be a juror to determine guilt or
13 innocence of any citizen on any kind of charge?

14 A. Yes.

15 Q. It was just that you choose not to want to even
16 consider the possible penalty of the death penalty?

17 A. That's right.

18 Q. Okay.

19 MR. CUMMINGS: Beg the Court's indulgence,
20 Judge.

21 THE COURT: Yes.

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

24 Q. Ma'am, just one more briefly, I apologize.

25 Ms. Wade, would you be willing to follow Her Honor's

Juror 317 Dianne L. Wade - Examination

1 instructions as to law and the evidence?

2 A. Yes.

3 Q. Could you follow Her Honor's instructions,
4 consider both penalties?

5 A. I don't think I could. I couldn't.

6 Q. Thank you for your candor, ma'am. Thank you.

7 THE COURT: Mr. Bailey?

8 MR. BAILEY: No questions, Your Honor.

9 THE COURT: Very well.

10 Ms. Wade, I am going to disqualify you
11 from your service on this jury because we must
12 under the law have jurors who can consider, or
13 have the capacity to consider both punishments.
14 However, you're about to leave us so I do need
15 to give you some instructions. I would ask that
16 you not discuss this process with any of your
17 fellow potential jurors. And also, of course,
18 you've seen the witness list, if you would be so
19 kind as to not discuss this matter with anyone
20 associated with this trial which is about to
21 start. Beyond that, you can talk to anybody
22 that you wish to about this matter.

23 Let me say to you this: Let me thank
24 you for your time, let me acknowledge the gift
25 that you have given to all of us and certainly

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1 to your community and thank you for that. And
2 you are free to go.

3 MS. WADE: Thank you.

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

6 THE COURT: We've been going on for two
7 hours and 15 minutes. How is everybody doing?
8 Anybody need to take a break?

9 MR. CUMMINGS: It would be nice to take a
10 break. And if I could just --

11 THE COURT: I am going to ask you that --
12 of course, over the objection of the defendant.

13 MR. CUMMINGS: Thank you, ma'am.

14 THE COURT: Very well. All right. Do you
15 want to take about a five-minute break
16 everybody? Great.

17 (Recess, from 3:15 p.m. to 3:26 p.m. p.m.)

18 THE COURT: All right. If you could invite
19 Mr. Beaverson to come in.

20 (Frederick W. Beaverson , called as a
21 prospective juror, having previously been duly
22 sworn, is examined as follows:)

23 EXAMINATION

24 BY THE COURT:

25 Q. Hi, Mr. Beaverson.

Juror 14 Frederick W. Beaverson - Examination

1 A. Hello.

2 Q. How are you?

3 A. All right.

4 Q. Good.

5 THE COURT: Let me say for the record this
6 is Mr. Frederick W. Beaverson, Juror Number 14.

7 Q. Mr. Beaverson, you will remember that when we
8 were together on Monday that you were sworn in as a
9 potential juror?

10 A. Yes, ma'am.

11 Q. That oath that you took on Monday still
12 continues, you don't have to be resworn today and
13 would apply to the answers that you will share with
14 us, okay?

15 A. Okay.

16 Q. Now, since we talked on Monday has anyone talked
17 with you about this case, or approached you about it,
18 or have you inadvertently or otherwise been exposed
19 to any information about this case?

20 A. No.

21 Q. All right. Now, when you were back in the jury
22 room did you have a chance to look at the potential
23 witness list?

24 A. Yes.

25 Q. Let me hand it to you in case you need it.

Juror 14 Frederick W. Beaverson - Examination

1 A. Okay.

2 Q. Are you related by blood or marriage, acquainted
3 with, or do you have any business association or
4 personal acquaintanceship or friendship, or are you
5 otherwise directly or indirectly connected to any of
6 those folks?

7 A. No.

8 Q. Thank you very much. Now, when we were together
9 on Monday I asked some general questions about this
10 case. I asked whether or not anyone had any opinions
11 about this case, whether or not anyone had seen or
12 heard or read anything about this case, whether or
13 not anyone had any bias or prejudice for or against
14 either side. My notes indicate that you did not
15 indicate that any of these things applied to you.
16 Was that right?

17 A. Right.

18 Q. And does that remain true today?

19 A. Right.

20 Q. Now, I'm going to be asking you some questions.
21 And, first of all, I'm not trying to invade your
22 privacy; secondly, I will tell you what I'm about,
23 what I'm trying to find out, what we are trying to
24 find out is your opinions about certain matters to
25 see how they might impact on your jury service, okay?

Juror 14 Frederick W. Beaverson - Examination

1 A. Okay.

2 Q. Obviously there are no right or wrong answers
3 and obviously we know that your opinions are as good
4 as anybody else's, as valid as anybody else's. We
5 are not about challenging those opinions at all, we
6 just need to understand what they are. Now, in a few
7 moments I'm going to be asking you your opinions
8 about penalty, specifically the death penalty because
9 that may be an issue in this case.

10 And I want you to know that obviously
11 it's premature. It's premature because the case
12 hasn't begun, the trial hasn't begun. It's also
13 premature because Mr. Bowman is presumed innocent of
14 these charges. It's simply a reality that in order
15 for me to talk to potential jurors about the issue of
16 penalty, I have to do that before the trial begins.
17 So keep in mind as I go through those questions that
18 it's premature to be asking or discussing penalty,
19 it's necessary, but it's still premature, and that
20 Mr. Bowman is presumed innocent, okay?

21 A. Uh-huh (affirmative response).

22 Q. That was a yes, wasn't it?

23 A. Yes. Yes.

24 Q. Thank you. And also I'm going to be asking you
25 questions in a generic sense, in a general sense,

Juror 14 Frederick W. Beaverson - Examination

1 because obviously you don't know anything about this
2 case, you don't have any opinions about this case and
3 it wouldn't be fair or proper for me to ask you about
4 your opinions about this case. So the questions I'm
5 going to be asking are going to be in a general
6 sense, okay?

7 A. Okay.

8 Q. Now, if you were a juror in any criminal case,
9 would you be willing to listen to the instructions on
10 the law that were to be given to you by the judge?

11 A. Yes.

12 Q. Would you be willing to accept that law and
13 apply that law to the facts as you found the facts to
14 be?

15 A. Yeah.

16 Q. And would you do that even if you didn't
17 particularly like that part of the law and even if
18 you 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. Now, if you were asked to serve on the case of
23 the State vs. Mr. Bowman, could you decide this case
24 based upon the evidence in this courtroom, based on
25 what you hear in this courtroom, and disregard

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1 anything that you may have seen or heard or read
2 about this case from any source at all should
3 anything like that pop into your mind later?

4 A. Yeah.

5 Q. In other words, sometimes the trial itself can
6 jog a memory. So could you set it aside if that
7 happened?

8 A. Uh-huh (affirmative response).

9 Q. That was a yes, too?

10 A. Yes. Yes.

11 Q. Now, in a criminal case as you very well may
12 know and certainly as we talked about on Monday, the
13 State has the burden of proving a defendant guilty
14 beyond a reasonable doubt. A defendant never has to
15 prove himself or herself innocent. A defendant
16 doesn't have to prove anything. The burden is always
17 on the State and a defendant is always -- and you'll
18 learn as our law and we'll talk about that more, but
19 a defendant is presumed innocent under the law. Do
20 understand these principles?

21 A. Yes.

22 Q. You've probably heard them before?

23 A. Yep.

24 Q. All right, sir. Now, if you were a juror in any
25 criminal case, would you be willing to listen to the

Juror 14 Frederick W. Beaverson - Examination

1 evidence, find the facts as you found them to be and
2 then apply the law given to you by the judge to those
3 facts?

4 A. Yes.

5 Q. And if after you did that if you were not
6 convinced of a defendant's guilt beyond a reasonable
7 doubt, would you be willing to find him or her not
8 guilty?

9 A. Yeah.

10 Q. On the other hand, if after you listened to the
11 evidence and found the facts as you found them to be
12 and applied the law to those facts, if you were
13 convinced the defendant was guilty beyond a
14 reasonable doubt, would you find that person guilty?

15 A. Yeah.

16 Q. Now, what you're telling me I think pretty
17 clearly is that you would be willing to listen and
18 make your decision based on whether or not you were
19 convinced that a person was guilty or not, right?

20 A. Yes.

21 Q. Now, most of the time jurors do not concern
22 themselves with punishment. Most of the time in
23 criminal court punishment's a matter for the Court,
24 for the judge. But there's one case in our law when
25 a jury has to deal with the issue of punishment and

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1 that's a case like this one, it is in a case where an
2 individual has been charged with the crime of murder
3 and the State is seeking the death penalty.

4 If an individual in a death penalty
5 case is convicted of the crime of murder, then the
6 jury that convicted him or her comes back and in a
7 separate and different proceeding decides what the
8 sentence will be. There are two choices. One, life
9 imprisonment without the possibility of parole, and
10 the other is the death penalty. That decision is
11 made and determined in that second or sentencing
12 phase as it's called. Do you understand this
13 information?

14 A. Yeah.

15 Q. Now, back in the jury room you had this piece of
16 paper?

17 A. Uh-huh (affirmative response).

18 Q. And it essentially describes for you three types
19 of jurors. Do you remember the three types of
20 jurors?

21 A. Yes.

22 Q. Which of those three types of jurors do you
23 think best describes you?

24 A. One.

25 Q. One?

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1 A. Uh-huh (affirmative response).

2 Q. All right, sir. In other words, if a defendant,
3 or a person was found guilty of the crime of murder,
4 you wouldn't need a sentencing phase, you wouldn't
5 need to hear anything about the circumstances of the
6 person because you would know what the sentence was?

7 A. Yes.

8 Q. And that would be your sentence in all cases?

9 A. Yeah.

10 Q. All right, sir. Let me see if these lawyers
11 have any questions for you.

12 Mr. Bailey.

13 MR. BAILEY: Thank you, Your Honor, very
14 brief.

15 EXAMINATION

16 BY MR. BAILEY:

17 Q. Mr. Beaverson, I'm Walter Bailey and I'll be
18 prosecuting the case. There are no right or wrong
19 answers, I just need to ask you a little bit about
20 your thoughts on death penalty.

21 Without telling me any specifics, can
22 you think of any situation in which a convicted
23 murderer should get life without the possibility of
24 parole as opposed to the death penalty?

25 A. I guess it depends on the circumstances leading

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1 up to what caused him to do that. If he's defending
2 himself then, no, he shouldn't die for defending
3 himself.

4 Q. Okay. Well, we're getting into --

5 MR. CUMMINGS: Judge, I'm going to object
6 to any more specifics, I think those questions
7 were for general purposes.

8 THE COURT: Yes. You can proceed, Mr.
9 Bailey.

10 Q. In the situation you mentioned, Mr. Beaverson,
11 that would not be a murder case, self-defense would
12 not even be a criminal offense. If you were picked
13 on a jury in a murder case the judge would instruct
14 you as to what the law is as far as murder. But
15 murder is the killing of someone with malice
16 aforethought.

17 Now, in this situation where the State
18 is seeking the death penalty we start out with the
19 guilt phase. That's like any other criminal trial
20 where the jury is there to decide whether or not the
21 State can prove by evidence they introduce that
22 defendant guilty of murder with malice aforethought
23 beyond a reasonable doubt. And if the jury is
24 convinced that he is guilty of murder with malice
25 aforethought, then we go into the second phase where

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1 the jury hears additional evidence to determine the
2 punishment.

3 If you were on a jury in a case like
4 that, you found a defendant guilty of murder with
5 malice aforethought and went into that penalty phase,
6 would you already have your mind made up that you're
7 going to give him the death penalty because he
8 committed a murder, or would you want to hear
9 whatever came out in that second part of the trial
10 before making up your mind?

11 A. I would want to hear everything before I made my
12 mind up.

13 Q. All right, sir. And based on what you heard in
14 that second phase of the trial, could you vote for
15 life without the possibility of parole?

16 A. Yeah.

17 Q. Okay.

18 MR. BAILEY: Your Honor, that's all I have
19 at this juncture.

20 THE COURT: Yes, sir. Thank you.

21 MR. BAILEY: Yes, ma'am.

22 THE COURT: Mr. Cummings.

23 MR. CUMMINGS: Thank you.

24

25

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EXAMINATION

2 BY MR. CUMMINGS:

3 Q. Good afternoon, sir, I'm Norb Cummings, that's
4 Mr. Marva Hardee-Thomas there, and that's Mr. Marion
5 Bowman, sir. Mr. Beaverson, you appear to be a
6 gentleman of real strong convictions, you were very
7 forthwith with Her Honor and, again, in answering Mr.
8 Bailey's questions. And when you came right out and
9 Her Honor asked you looking at the three types of
10 jurors what type of juror was close to you or what
11 you would relate to, sir, and you said you were type
12 one, which believes that if somebody was convicted of
13 murder they should get the death penalty; is that
14 fair to say, sir?

15 | A. Yes, sir.

16 Q. And you hold that conviction very close?

17 A. Yes, sir.

18 Q. And do you believe that you are a type one
19 juror, sir?

20 A. Yes, sir.

21 Q. And that you would lean towards the imposition
22 of death penalty if somebody's convicted of murder?

23 | A. Yes, sir.

24 Q. That's all the questions I have. Thank you very
25 much.

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1 THE COURT: Yes, sir, Mr. Bailey.

2 EXAMINATION

3 BY MR. BAILEY:

4 Q. Mr. Beaverson, I hate to keep at you here, but
5 this is the only chance we get to talk to jurors
6 before we pick a jury to start this case. Do you
7 have a copy of that paper with the three types of
8 jurors in front of you there?

9 THE COURT: He does.

10 A. Yes, sir.

11 Q. All right, sir. If you would, if you'll refer
12 to type three, type three juror.

13 A. Yes, sir.

14 Q. Where it says this type three of the juror,
15 although the guilt of the defendant has been
16 determined would not have his or her mind made up in
17 advance concerning punishment. This juror would need
18 to hear the facts and circumstances in aggravation or
19 mitigation and would want to listen to and follow the
20 law as the judge charges the jury before he or she
21 could make the decision regarding punishment. And if
22 the facts so warranted, this juror could bring in a
23 verdict of life imprisonment without the possibility
24 of parole. Also if the facts so warranted the juror
25 could bring in a verdict of the death penalty.

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1 Now, a few minutes ago I understood
2 you to say that you would want to hear -- if you got
3 to the second phase of the trial would want to hear
4 what came out during that second part of the trial,
5 and that based on what you heard that you could
6 potentially vote for life without the possibility of
7 parole; is that correct?

8 A. That's right.

9 Q. All right, sir. So looking at that type three
10 juror again, and looking at the type one juror that
11 doesn't care what comes after the second phase, their
12 mind's made up, which one would you say you are now?

13 A. I believe in being fair and whatever.

14 Q. Yes, sir.

15 A. Some circumstances may not require the death
16 penalty.

17 Q. Yes, sir. All right, sir.

18 A. But I believe if you take the life of an
19 innocent person yours should go, too.

20 Q. All right.

21 A. But if there are circumstances lead up to that
22 then maybe, yeah, he would need life in prison.

23 Q. Okay. And you would want to wait and hear what
24 the facts are; is that correct?

25 A. Uh-huh (affirmative response).

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1 Q. Thank you.

2 EXAMINATION

3 BY THE COURT:

4 Q. I don't understand. I mean, you seem so certain
5 both ways. What do you mean?

6 A. I believe in an eye for an eye and a tooth for a
7 tooth.

8 Q. What do you mean in the circumstances leading up
9 to it?

10 A. I mean, was it a robbery? I mean, what was it
11 that made whoever kill the person.

12 Q. I'm with you. Okay. All right, sir. I
13 understand. I'm going to ask you to do this for me,
14 I'm going to ask you to step outside, please, sir,
15 and let us talk for just a moment, we'll get you
16 right back in.

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

19 THE COURT: He's confused about -- he's
20 telling us he's a type one I'm afraid, but he
21 doesn't understand -- he wants them not to be
22 guilty of murder is what concerns me.

23 MR. BAILEY: Your Honor, what I thought he
24 was saying was that, for example, if there was a
25 robbery involved in the murder, if that was the

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1 motive for the murder, then potentially would
2 be --

3 THE COURT: Unh-unh (negative response).
4 If he shot somebody because of a robbery is what
5 I real clearly understood him to say. In other
6 words, if you are being robbed and you shot
7 someone.

8 MR. BAILEY: Okay. Well, he may have -- he
9 may have been meaning that or he might have
10 meant --

11 THE COURT: I mean, I'm concerned about
12 that he's not understanding the two. Because
13 he's -- he is so strong and he's telling you
14 both.

15 MR. BAILEY: Your Honor --

16 THE COURT: I'm going to examine him some
17 more about that.

18 MR. BAILEY: Consider instructing him, I
19 know this is getting a little bit ahead of the
20 game, but instructing him just very briefly on
21 what murder is and distinguish that from self-
22 defense.

23 THE COURT: I will do that, because I
24 think -- I think that he is confusing a defense
25 to the underlying charge of murder and --

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1 because I think what he's telling us is he's a
2 type one, but he's looking for defenses to the
3 crime so let me -- let me get him in and examine
4 him a little more.

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

7 BY THE COURT:

8 Q. I've got a couple of other questions to be sure
9 that we are singing on the same sheet of music.

10 A. Okay.

11 Q. Now, I want you to listen very carefully to me.
12 The crime of murder is defined as the intentional
13 killing of someone with malice aforethought. Malice
14 has many definitions in the law, but one of the
15 definitions is a depraved heart, okay? So murder,
16 that is the definition of murder.

17 If you are defending yourself, if
18 someone is trying to hurt you or robbing you, those
19 are defenses to the crime of murder. Do you
20 understand that?

21 A. Uh-huh (affirmative response).

22 Q. That's a difference. Those are what's called
23 defenses to murder. So here's what I need to be sure
24 that you and I are looking at the same sheet of
25 music. The train -- in the event that a juror in a

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1 capital case is considering the sentence, the train
2 has passed the defenses to the crime of murder
3 because the 12 jurors have unanimously found and
4 convicted the person of murder. That means forget
5 the defenses to the underlying crime of murder, okay,
6 this -- in a capital case for you to ever get to the
7 sentencing phase those defenses are gone because the
8 jury has found a person guilty of murder, which is
9 defined under the law as an intentional killing with
10 malice aforethought. Okay. Are you with me?

11 A. Uh-huh (affirmative response).

12 Q. Okay. Now, what I don't understand is this:
13 What I don't understand is, is if you would listen --
14 because when we talk about listening to all the
15 evidence, the evidence has to do with not whether or
16 not the person is guilty of murder or not, the second
17 phase deals with evidence as it's relevant to the
18 punishment.

19 A. So if he woke up this morning and decided he's
20 going to kill somebody and he went out and killed
21 them, then he should get the death penalty?

22 Q. Well, what I'm trying to find out from --

23 A. I mean, is that what you're --

24 Q. What I'm trying to ask you is because when you
25 made the comment I would listen to the facts and

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1 circumstances like a robbery is what you said.

2 A. Right.

3 Q. What I thought you were meaning is, you know, if
4 somebody was trying to rob somebody and they killed
5 somebody, then I would want to hear that before I
6 decide if they were going to get the death penalty or
7 not.

8 A. Right.

9 Q. That would be a defense to the underlying charge
10 of murder.

11 A. So if the State proves that he went out with
12 intention to kill this person.

13 Q. He or her, whomever.

14 A. He, she, it, then, yes, he should get the death
15 penalty if he killed that person because he
16 intentionally set out to kill that person.

17 Q. That's what I wanted to get clear with you
18 about.

19 A. Okay.

20 Q. I wanted to get clear with you because I wanted
21 to distinguish between defenses to the crime of
22 murder.

23 A. What led up to it and what he did.

24 Q. That's right.

25 A. Okay.

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1 Q. Because the train's passed that station when you
2 look at sentencing to see if you would be willing to
3 listen to the evidence and make your determination
4 about sentencing. But you need to know when you tell
5 us that, that this person has already been convicted
6 of murder. Do you understand that?

7 A. Been convicted of murder his sentence should be
8 the death penalty.

9 Q. Well, I'm going to let -- in other words, you
10 don't care about any mitigating circumstances?

11 A. What would be the care of taking somebody's
12 life?

13 Q. Okay. Hold on. Hold on.

14 THE COURT: Does that prompt any questions?

15 MR. BAILEY: He's convinced me he's number
16 one, Judge.

17 MR. CUMMINGS: Yes, Judge. I thank this
18 gentleman very much.

19 THE COURT: Let me say this to you. First
20 of all, you have been very clear and I thank you
21 for your clarity, but let me share with you that
22 in a case such as this case we must have jurors
23 that can look at both in that sentencing phase.
24 So your opinion, remember I told you, is just as
25 as valid as anybody else's, so I want you to

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1 know that.

2 I'm going to be able to excuse you
3 from any further service on this jury, A; but,
4 B, doesn't mean I'm not grateful to you for your
5 precious time that you have given to all of us
6 and to our community. I would ask that do you
7 this for me, I would ask that you not discuss
8 with your fellow prospective jurors this part of
9 the process. And obviously you know at this
10 point not to talk to anyone who's involved in
11 this trial, right?

12 MR. BEAVERSON: Right.

13 THE COURT: And take good care. Thank you
14 so much.

15 MR. BEAVERSON: All right.

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

18 THE COURT: All right. Our next juror is
19 Ms. Linda Wheeler. Hold on, Ms. Wheeler, just
20 one second, just one second.

21 MR. BAILEY: Just note number 50, Judge.

22 THE COURT: Well, okay. All right. If you
23 would invite Ms. Wheeler in.

24 (Linda L. Wheeler, called as a prospective
25 juror, having previously been duly sworn, is

Juror 329 Linda L. Wheeler - Examination

1 examined as follows:)

2 EXAMINATION.

3 BY THE COURT:

4 Q. Hi, Ms. Wheeler. How are you?

5 A. I'm great. How about you?

6 Q. Good, thank you. Ms. Wheeler, if you will
7 remember on Monday, and that seems like a long time
8 ago now, but if you'll remember on Monday morning you
9 were sworn in with all the other potential jurors,
10 remember that? That oath continues throughout this
11 process so we don't need to place you under oath
12 again, I just remind you of it, okay?

13 A. Yes.

14 Q. Great. Now, since we talked with you on Monday,
15 has anybody talked with you about this case, or
16 approached you about this case, or have you been
17 inadvertently or otherwise exposed to any information
18 about this case?

19 A. No, ma'am.

20 Q. All right. And when you were back in the jury
21 room did you have an opportunity to look at the
22 potential jury list? This one, potential jury list.
23 You did?

24 A. Oh, yes, ma'am.

25 Q. And are you related by blood or marriage, or a

Juror 329 Linda L. Wheeler - Examination

1 acquainted with, or do you have any connection with
2 any of the folks or that list, are you a personal
3 friend, a casual friend, a business associate or the
4 like with any of the folks listed on the potential
5 witness list?

6 A. No, ma'am.

7 Q. Okay. Now, when we talked on Monday I asked
8 questions of the general panel, like do you have any
9 opinions about this case, have you read or heard or
10 seen anything about this case, do you have any bias
11 or prejudice for or against either side. And my
12 notes reflect that you did not indicate that any of
13 those things applied to you.

14 A. None.

15 Q. That was so then?

16 A. Still so.

17 Q. Is it so now?

18 A. Still so.

19 Q. It continues, all right. Now, I need to ask you
20 some questions. And please know that we are not
21 trying to invade your privacy, we're just trying to
22 find out how you might feel about some matters; in
23 other words, what your opinions are, okay?

24 A. Okay.

25 Q. And the reason that we need to know a little bit

Juror 329 Linda L. Wheeler - Examination

1 about your opinions is so that we can see if they
2 might impact on your jury service, that's why. We
3 certainly are well aware that your opinions are as
4 valid and as good as anybody else's and we're not
5 going to challenge them. And there are obviously no
6 right or wrong answers to any of my questions, we're
7 just, again, trying to find out how you feel about
8 certain things.

9 And in a few moments I'm going to be
10 asking you about penalty, specifically the death
11 penalty. But I want to tell you that it's obviously
12 premature to talk about penalty because the trial
13 hasn't begun and certainly Mr. Bowman is presumed
14 innocent of these charges. However, in order for me
15 to understand prospective or potential jurors'
16 opinions about penalty I have to do that before the
17 trial. You understand that?

18 A. Yes, ma'am.

19 Q. That makes sense?

20 A. Yes.

21 Q. All right. So please keep in mind as we go
22 through that process that to talk about penalty is
23 premature and Mr. Bowman's presumed innocent, okay?

24 A. Okay.

25 Q. Very well. Now, I'm going to be asking you

Juror 329 Linda L. Wheeler - Examination

1 these questions in a generic or a general sense. I'm
2 not going to be asking your opinions about this case
3 because that wouldn't be fair to you, you don't know
4 anything about this case and it would be improper.
5 So I'm not asking you about your opinions on this
6 case, I'm asking them in the general sense.

7 And to that end, if you were a juror
8 on any criminal case would you be able to listen to
9 the instructions on the law given to you by the
10 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 part of the law, you may have some disagreement
17 with it, but would you still be willing to follow the
18 law as it was instructed to you by the judge?

19 A. Yes, ma'am.

20 Q. Now, if you were asked to serve on a jury in the
21 State vs. Mr. Bowman, could you decide this case
22 based upon what you hear in terms of the evidence in
23 this courtroom and disregard anything about this case
24 that you may have seen or heard or read that comes
25 into your mind, that gets jogged into your memory by

Juror 329 Linda L. Wheeler - Examination

1 something you hear at trial?

2 A. Yes, ma'am.

3 Q. Now, in a criminal case as you now, and we have
4 certainly talked about it on Monday, the State has
5 the burden of proving the guilt of a defendant beyond
6 a reasonable doubt. A defendant never has to prove
7 himself or herself innocent. In fact, the defendant
8 doesn't have to prove anything. The burden is always
9 upon the State. You understand that?

10 A. Yes, ma'am.

11 Q. And do you further understand that a defendant
12 is presumed innocent under the law?

13 A. Yes, ma'am.

14 Q. All right. Now, if you were a juror in any
15 criminal case, would you be willing to listen to the
16 evidence and find the facts as you found them to be
17 and then apply the law to those facts? And the law,
18 of course, would be given to you by the judge.

19 A. Yes, ma'am.

20 Q. And after you did that if you were not convinced
21 of a person's guilt beyond a reasonable doubt, could
22 you find that person not guilty?

23 A. Yes, ma'am.

24 Q. And on the other hand, if after you listened to
25 the evidence, found the facts and applied the law to

Juror 329 Linda L. Wheeler - Examination

1 the facts as you found them to be, you were convinced
2 that a person was guilty and had been proven guilty
3 beyond a reasonable doubt, could you find that person
4 guilty?

5 A. Yes, ma'am.

6 Q. All right. So you would be willing to listen
7 and to make your decision based upon whether or not
8 you were convinced that a person is guilty or not,
9 right?

10 A. Correct.

11 Q. Now, most of the time jurors do not concern
12 themselves with the matter of punishment. Most of
13 the time in the criminal court the matter of
14 punishment's left up to the judge. There is,
15 however, one case in our law when a jury has to deal
16 with the matter of punishment and that is a case like
17 this one. It is a case where an individual has been
18 charged with the crime of murder and where the State
19 is seeking the death penalty. If an individual in a
20 death penalty case is convicted of the crime of
21 murder, then the same jury that convicted him or her
22 must come back and in a separate and different
23 proceeding must decide the punishment for that
24 person. Punishment of one or two kinds, the first
25 option is life imprisonment without the possibility

Juror 329 Linda L. Wheeler - Examination

1 of parole, the other option is the death penalty.
2 That sentencing decision is made in that second
3 proceeding which is also called the sentencing phase
4 of the trial. Do you understand this information?

5 A. Yes, ma'am.

6 Q. Okay. Now, did you have a chance to look at
7 this sheet in the jury room that essentially
8 describes for you three types of jurors?

9 A. (Nodding.)

10 Q. Would you describe yourself as a type one, type
11 two, or type three juror? And please feel free to
12 refer to it.

13 A. Type three.

14 Q. You are a type three. In other words, you would
15 be willing to listen to whatever you might hear and
16 make your decision based upon what you hear in the
17 courtroom?

18 A. That's what you're supposed to do.

19 Q. And if after you listened to all the evidence if
20 you were convinced that the sentence, the death
21 sentence was appropriate, would you then be able to
22 vote for a sentence like that?

23 A. Yes, ma'am.

24 Q. If, on the other hand, you thought that the
25 death sentence was not appropriate or for any other

Juror 329 Linda L. Wheeler - Examination

1 reason the person ought to receive a life
2 imprisonment, would you be able and willing to vote
3 for that sentence?

4 A. Yes, ma'am.

5 Q. So you'd make that decision based upon -- that
6 decision for life imprisonment or for the death
7 penalty based upon what you would hear in the
8 courtroom?

9 A. Yes, ma'am.

10 Q. If you were chosen to serve as a juror in this
11 case, you and the other jurors would be housed here
12 in a local motel throughout the duration of the
13 trial, the term is sequestered, which would be, of
14 course, at county expense. Now, we would need you to
15 stay with us until the trial is over, which is
16 anticipated to be as long as two weeks. It could be
17 a little longer, it could be a little shorter, I'm
18 not sure exactly how long the trial will take.

19 Obviously that would create an
20 inconvenience for you as it surely will for all the
21 jurors who serve on this jury. Other than the
22 inconvenience which it would surely cause anybody who
23 had to serve in this capacity, would that pose a
24 serious risk of danger to your health or well being,
25 or to anybody who is dependent upon you if you had to

Juror 329 Linda L. Wheeler - Examination

1 serve in that capacity?

2 A. No. Not other than my boss would be a little
3 upset.

4 Q. Oh, all right. You would be able to do that?

5 A. Yes, ma'am.

6 Q. Very well. Would you answer each of the
7 questions that these lawyers may have for you,
8 please, ma'am.

9 THE COURT: And Mr. Cummings.

10 EXAMINATION

11 BY MR. CUMMINGS:

12 Q. Good afternoon, Ms. Wheeler, I'm Norb Cummings.
13 The nice young lady at the end of the table is
14 Ms. Marva Hardee-Thomas, the gentleman sitting there,
15 ma'am, is Mr. Marion Bowman, Jr., ma'am. I was just
16 going ask you a few brief questions if I may, please.

17 A. Okay.

18 Q. This is the only chance we get to talk to people
19 and qualify them as potential jurors with Her Honor's
20 control of the courtroom.

21 Ms. Wheeler, you work on the Air Force
22 base, correct?

23 A. Correct.

24 Q. All right. And obviously I see it's in quality
25 control or something if I'm not mistaken?

Juror 329 Linda L. Wheeler - Examination

1 A. That's correct.

2 Q. C-17's?

3 A. No, ground maintenance.

4 Q. The fun stuff?

5 A. Yes.

6 Q. Okay. And the reason I ask that is there are a
7 lot of law enforcement officers that are also
8 reservists and other things. And you work around a
9 lot of different people?

10 A. I work for a contractor out there. I don't work
11 specifically for the Air Force.

12 Q. Oh, all right. So an independent contractor?

13 A. Correct.

14 Q. And I further see on there your husband is a
15 firefighter supervisor. And he's been out there a
16 long time?

17 A. Yes, he has.

18 Q. Would the mere fact that your spouse is a
19 firefighter and may work with law enforcement
20 personnel, would that substantially impair your
21 ability to remain a fair and impartial juror in this
22 case based solely on the evidence, the facts that's
23 presented in here?

24 A. No, sir.

25 Q. You seem to be a very strong and independent

Juror 329 Linda L. Wheeler - Examination

1 minded lady.

2 A. Very.

3 Q. And the reason we ask that is, again, to go
4 through here. And you've had good dealings with law
5 enforcement people and you've had some bad
6 experiences with law enforcement people. And you're
7 able to set those aside and nothing would
8 substantially impair you or ability to be a fair and
9 impartial juror?

10 A. No, sir.

11 Q. Okay. And then you have somebody in law
12 enforcement it says on your questionnaire?

13 A. Yes.

14 Q. All right. Could you share that with us,
15 please?

16 A. Sure. He's an adopted nephew.

17 Q. Yes, ma'am.

18 A. By marriage.

19 Q. Okay. Do you know who he works for, what he
20 does?

21 A. He works for Summerville Police Department. He
22 works at the high school working with the young
23 people.

24 Q. Do you know that gentleman's name?

25 A. Yes, Shawn Tumbleston.

Juror 329 Linda L. Wheeler - Examination

1 Q. And the fact that you know him by the adopted --
2 you know, along the family line there, I won't go
3 back over that, would that substantially impair you
4 to be a fair and impartial juror toward Mr. Bowman?

5 A. No, sir.

6 Q. Okay. And you've not -- there is one issue on
7 here, question number 50, if you care to --

8 THE COURT: I'm sorry, let me give her --
9 there you go.

10 Q. Thank you, Ms. Wheeler.

11 A. Oh, I don't need this. I know what I -- I
12 remember.

13 Q. Number 50. You're doing great. You're a breath
14 of fresh air for all of us. There's a question in
15 there that says what I feel about this questionnaire.
16 Would you -- again, no right or wrong answers,
17 nobody's trying to pry, we're just trying to find out
18 from each juror their expressed opinions or their
19 inner opinions.

20 A. Okay. I was a little concerned when I received
21 the questionnaire because I thought it details some
22 personal information that I didn't feel would affect
23 my ability to serve as a juror.

24 Q. Yes, ma'am.

25 A. So I didn't understand what the point of the

Juror 329 Linda L. Wheeler - Examination

1 questionnaire was. But she has made it quite clear
2 what it was for.

3 Q. Let me share something with now, also Mr.
4 Bailey, Her Honor tries to make it real clear to us
5 what her opinions and facts are, but you're
6 comfortable in serving this in case?

7 A. I don't have a problem.

8 Q. You could consider anything and everything
9 that's presented in this courtroom?

10 A. Only what's presented in this courtroom is
11 what's important.

12 Q. And you would not be a lady to rush to judgment
13 and you would consider if we ever got that far both
14 types of punishments?

15 A. That's correct.

16 Q. Thank you very much.

17 MR. CUMMINGS: And I beg the Court's
18 indulgence.

19 THE COURT: Certainly.

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

22 MR. CUMMINGS: That's all the questions we
23 have of this nice lady. Thank you, Judge.

24

25

Juror 329 Linda L. Wheeler - Examination

EXAMINATION

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BY MR. BAILEY:

Q. I'm Walter Bailey, I'll be prosecuting this case along with Ben Lafond over here. I want to thank you for being here and apologize to keep you waiting this late and I'll try to ask you a few questions.

What I'm going to ask you about, Ms. Wheeler, is the death penalty. And like the judge said, we're not going to talk about this case, you hadn't heard the facts so my questions are general. And I want to kind of run real quickly through the process that we go through when the State seek the death penalty. The judge did it, so you probably are going to get mad at me for repeating it, but just bear with me a minute, okay?

We start out with the guilt phase, that's like any other criminal trial. And I think you may have served on a jury before?

A. One time before, yes.

Q. Okay. Criminal case or civil case?

A. Yes, sir. It was in a civil case, yes, sir.

Q. The first part of this trial is going to be kind of like that case, the State is trying to convince the jury beyond a reasonable doubt that the defendant's guilty of the crime that he's charged

Juror 329 Linda L. Wheeler - Examination

1 with. In this case one of the offenses is murder and
2 we're seeking the death penalty. If the jury is
3 convinced beyond a reasonable doubt of the guilt of
4 murder then we go into the penalty phase. The jury
5 hears additional testimony, additional instructions
6 from the judge that's geared toward the appropriate
7 punishment. Then the jury votes. They have to vote
8 unanimously, all 12 life, all 12 death.

9 Whatever that jury's verdict is the
10 judge is going to order it to happen and it will
11 happen. My question to you is, and, again, I'm not
12 asking for prediction, but if what you heard was bad
13 enough, could you vote for the death penalty knowing
14 that as a result of that vote that person's actually
15 going to be executed?

16 A. Yes, sir.

17 Q. And on the other hand, if you felt like a life
18 without parole sentence was appropriate, you could
19 also vote for that?

20 A. Yes, sir.

21 Q. If the jury votes for the death penalty, they're
22 then asked to sign their names to a death verdict
23 form. Could you sign your name to a paper like that
24 if that was your vote?

25 A. Sure.

Juror 329 Linda L. Wheeler - Examination

1 Q. Could you announce that verdict out loud when
2 your name is called out?

3 A. Sure.

4 Q. Ms. Wheeler, that's all I've got. Thank you
5 very much, ma'am.

6 THE COURT: Thank you, Ms. Wheeler. I'm
7 going ask you to step outside, you will not be
8 outside of this room long enough to sit down, if
9 you will step right outside for just a moment.
10 (Whereupon, the prospective juror exits the
11 courtroom.)

12 THE COURT: What says the defense?

13 MR. CUMMINGS: Statutorily qualified,
14 Judge.

15 THE COURT: What says the State?

16 MR. BAILEY: Qualified, Your Honor.

17 THE COURT: Thank you, gentlemen.

18 Bring her back in, please.

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

21 THE COURT: See, I told you it wouldn't be
22 long. Ms. Wheeler, you have been qualified to
23 be a potential juror in this case. That does
24 not mean you are on the jury yet, but it means
25 that you are a potential juror and you may be

Juror 329 Linda L. Wheeler - Examination

1 selected to serve on this jury. We are hoping
2 that we'll be able to select a jury tomorrow
3 morning at ten o'clock.

4 However, this may be a little
5 ambitious. If I have to change the time, if we
6 need to change the time we will give you a call
7 this evening or very early in the morning and
8 delay you a little bit. We're going to pick the
9 jury tomorrow, I just don't know if it's going
10 to be at 10:00 or perhaps a little later. But
11 if you don't hear from us I'm going to ask you
12 to be back in the courtroom at ten o'clock
13 tomorrow morning ready to go.

14 Now, I'm going to give you this sheet
15 of paper and it has some instructions for you on
16 that sheet of paper. It contains some
17 instructions to help you get ready for your jury
18 service, like packing clothes, bringing your
19 medication. It has the numbers down there where
20 you can be reached during the day and in the
21 evening in the event that there's an emergency.

22 Feel real free to share that
23 information with anyone that you need to, who
24 needs to know where you are and how to reach
25 you, but let me remind you not to discuss this

Juror 329 Linda L. Wheeler - Examination

1 matter or any aspect of it, or allow anyone to
2 discuss it with you, and please do not expose
3 yourself to any information about this case from
4 any source. And I look forward to seeing you in
5 the morning. Thank you so much.

6 MS. WHEELER: Thank you.

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

9 THE COURT: And Mr. Carroll. Ms. Wheeler
10 out, Mr. Carroll in.

11 (Glen Carroll, 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, Mr. Carroll.

17 A. Hi.

18 Q. How are you doing?

19 A. Could be better.

20 Q. I'm sorry.

21 THE COURT: For our record, this is
22 Mr. Glen Carroll, Number 37.

23 Q. Tell me what's wrong.

24 A. Oh, I didn't get a call telling me not to come
25 in at one o'clock, so I've been sitting there since

Juror 37 Glen W. Carroll - Examination

1 12:30.

2 Q. Oh, my goodness. So how bored have you been on
3 a scale of one to ten?

4 A. Oh, I don't know.

5 Q. At least an eight or a nine, right?

6 A. I kept amused.

7 Q. Bless your heart. Well, I sure do appreciate
8 you being here, especially that long, and I want to
9 acknowledge certainly the gift that you've given all
10 of us. And that's your precious time, that's all any
11 of have got is our time, so I certainly thank you for
12 it, okay?

13 Mr. Carroll, you will remember that
14 when we were together on Monday, which seems like a
15 long time ago now, you were placed under oath. Do
16 you remember that?

17 A. (Nodding.)

18 Q. That's a yes?

19 A. Right. Right. Yes, correct.

20 Q. And I wanted to share with you that that oath
21 remains in effect today and would be in effect for
22 the answers that you would share with us today, so I
23 don't need to place you under oath again, okay?

24 A. Okay.

25 Q. Now, since we were together on Monday has anyone

Juror 37 Glen W. Carroll - Examination

1 talked to you or approached you about this case, or
2 have you inadvertently or otherwise been exposed to
3 any information about this case?

4 A. Still don't know what it's about.

5 Q. All right, sir. Now, back there with you you've
6 had -- you probably memorized the names of the
7 witnesses.

8 MR. BAILEY: I apologize, could we approach
9 the bench for sidebar?

10 MR. CUMMINGS: Yes.

11 THE COURT: Sure. Actually, hold on for
12 us.

13 (Whereupon, a bench conference was held
14 off the record in the presence of the
15 prospective juror, but out of the hearing of the
16 prospective juror.)

17 BY THE COURT:

18 Q. We just noticed a detail and we're going to get
19 you to help us figure this out. Come look up here
20 with me. You have got down here your date of birth
21 [REDACTED]. That's you? You and I are about the same
22 age. Do you have a son that's a Glen Carroll?

23 A. Oh, yeah.

24 Q. Who was born [REDACTED]?

25 A. Yeah.

Juror 37 Glen W. Carroll - Examination

1 Q. He appreciates you being here for him. Don't
2 tell me he gave you the jury summons?

3 A. He doesn't live in Summerville anymore.

4 Q. Where does he live?

5 A. In Charleston.

6 Q. He does?

7 A. You sent that to my address.

8 Q. Did he used to live in Dorchester County here?

9 A. Yeah. Used to live with me, yeah.

10 Q. He did? You know what's happened?

11 A. I wasted a lot of time.

12 Q. You've wasted a lot of time. You know what,
13 he's got his driver's license --

14 A. It's still probably registered.

15 Q. It is. And that's exactly what got picked up.
16 Did he ever register to vote in Dorchester County?

17 A. I'm not sure.

18 Q. Probably not. It's his driver's license. He
19 has not changed the address on his driver's license.

20 Well, he owes you dinner I think, don't you?

21 A. At least.

22 Q. At least. He may owe you yard work or something
23 else. That's exactly what's happened. That's your
24 son?

25 A. Uh-huh (affirmative response).

Juror 37 Glen W. Carroll - Examination

1 Q. Well, you know what? You are free to go. Thank
2 you, Mr. Carroll.

3 A. Okay.

4 Q. Tell your son from all of us we think he owes
5 his dad a dinner and a movie. Thank you.

6 A. Okay. Bye.

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

9 THE COURT: All right. That just about
10 caught us back up. All right. Mr. -- or
11 Ms. Jami Burt.

12 Everyone concedes that's a wrong
13 person?

14 MR. CUMMINGS: Yes, Your Honor. And we're
15 all looking because he filled that out up here
16 the other day.

17 THE COURT: He did?

18 MS. HARDEE-THOMAS: Yes.

19 THE COURT: Well, then he was really
20 polite. Under those circumstances he was a
21 really nice guy.

22 (Jami H. Burt, called as a prospective juror,
23 having previously been duly sworn, is examined
24 as follows:)

25

Juror 33 Jami H. Burt - Examination

EXAMINATION

2 BY THE COURT:

3 Q. How are you, Ms. Burt?

4 A. Fine.

5 THE COURT: This is Ms. Jami Burt who is

6 Juror Number 33 for purposes of our record.

7 Q. Ms. Burt, do you remember when we were together

8 | the other day that you along with the other potential

9 jurors were put under oath?

10 A. Yes, ma'am.

11 Q. That oath just continues, we don't need to do

12 that again.

13 A. Okay.

14 10. It would apply to the answers that you share

15 with us today, okay?

16 | A. Yeah.

17 Q. Now, since we talked on Monday has anyone talked

18 || with you about this case, or tried to approach you

19 | about it, or have you inadvertently or otherwise been

20 exposed to any information about this case?

21 | A. No, ma'am.

22 Q. All right. When you were back in the jury room

23 | you had back there a potential witness list?

24 A. Yes, ma'am.

25 Q. Are you related by blood or marriage, acquainted

Juror 33 Jami H. Burt - Examination

1 with, or do you have any direct or indirect
2 connection, be it casual friendship or business
3 association, with any of the folks who are listed on
4 the potential witness list?

5 A. No, ma'am.

6 Q. All right. Now, when I asked the questions of
7 the whole panel on Monday, and that list of questions
8 was do you have an opinion about this case, have you
9 read, or seen, or heard anything about this case,
10 have you developed any bias or prejudice for or
11 against either of these sides, my notes show that you
12 did not indicate any of these things applied to you.
13 Does that remain today?

14 A. Yes, ma'am.

15 Q. All right. So I'm going to ask you some
16 questions.

17 A. Okay.

18 Q. And I want you to know that we are not trying to
19 invade your privacy. We are just simply trying to
20 see how you feel about certain matters, what your
21 opinions are. And let me share with you that the
22 reason that we're doing that is to see how your
23 opinions might impact your jury service, that's the
24 purpose for this inquiry.

25 A. Okay.

Juror 33 Jami H. Burt - Examination

1 Q. Now, understanding that -- I hope you understand
2 that there are no right or wrong answers.

3 A. Okay.

4 Q. And I also want you to understand that we
5 certainly know that your opinions are just as valid
6 and good as anybody else's and we are not here to
7 challenge your opinions in any regard, okay?

8 A. Okay.

9 Q. Now, in a moment I'm going to be asking you
10 about penalty. I'm going to be asking you
11 specifically about death penalty and your opinion
12 about that. I want to tell you at this juncture that
13 I know that for us to be discussing penalty when the
14 trial hasn't even begun is extremely premature, it's
15 obviously premature. It's premature because the case
16 hasn't begun and because Mr. Bowman is presumed
17 innocent of these charges.

18 A. Yes, ma'am.

19 Q. However, if I'm going to talk to prospective or
20 potential jurors about penalty, necessarily I have to
21 do that before the trial.

22 A. Right.

23 Q. So I want you to keep in mind two things:
24 Number one, just to talk about penalty is premature;
25 and number two, that Mr. Bowman is presumed innocent

Juror 33 Jami H. Burt - Examination

1 of these charges, okay?

2 A. Okay.

3 Q. And also I'm going to be asking you your
4 opinions in a general sense and in a generic sense.
5 I'm not going to ask you about your opinions in this
6 case because that wouldn't be fair to you because you
7 don't know anything about this case.

8 A. Right. Right.

9 Q. And it would be improper for me to do that, so
10 I'm not going to do that. So if you were a juror in
11 any criminal case, would you be willing to listen to
12 the law as it was instructed to you by the judge?

13 A. Uh-huh (affirmative response).

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

16 A. Yes.

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

21 A. Yes.

22 Q. If you were asked to serve in this case, in the
23 case of the State vs. Mr. Bowman, could you decide
24 this case based solely on the -- what you hear in the
25 courtroom and disregard anything that you may have

Juror 33 Jami H. Burt - Examination

1 heard, or seen, or read about this case from any
2 source at all, should what you hear at the trial jog
3 some of those memories? All right, let me tell you.

4 A. Okay.

5 Q. Let me explain that to you. Sometimes when a
6 person is serving on a jury and they hear evidence,
7 they'll hear something that will trigger a memory
8 about the case.

9 A. Okay.

10 Q. You know, I did hear something about that. So
11 at this juncture I need to ask you if that happened
12 to you, it may and it may not, but if that happened
13 to you would you just be willing to set that memory
14 aside and try this case based on the evidence in this
15 courtroom?

16 A. Oh, yes. Yeah.

17 Q. Okay. In a criminal case as you probably know
18 as we talked about on Monday, the State has the
19 burden of proving a defendant guilty beyond a
20 reasonable doubt. A defendant never has to prove
21 himself or herself innocent, they are presumed
22 innocent. In fact, a defendant never has to prove
23 anything because the burden of proof is always on the
24 State. I would just ask if you understand these
25 principles?

Juror 33 Jami H. Burt - Examination

1 A. Uh-huh (affirmative response).

2 Q. Probably from civic lesson. Civics grade is
3 what, fifth grade?

4 A. Yeah.

5 Q. All right. Now, if you were a juror in any
6 criminal case, would you be willing to listen to the
7 evidence, find the facts as you found them to be,
8 apply the law that the judge would give you to those
9 facts?

10 A. Uh-huh (affirmative response).

11 Q. That's a yes?

12 A. Uh-huh (affirmative response).

13 Q. Uh-huh (affirmative response).

14 A. Yes, ma'am.

15 Q. Thank you. And once you had done that if you
16 were not convinced that a person was guilty beyond a
17 reasonable doubt, would you be willing and able to
18 find that person not guilty?

19 A. Yes, ma'am.

20 Q. And on the other hand, if after you listened to
21 the evidence, found the facts as you found them to
22 be, applied the law as the judge gave it to you, if
23 you were convinced that someone had been proven
24 guilty beyond a reasonable doubt, would you be
25 willing to find that person guilty?

Juror 33 Jami H. Burt - Examination

1 A. Yes.

2 Q. So you would be willing to listen to the
3 evidence and make your decision based upon whether or
4 not you were convinced that a person is guilty or
5 not; is that right?

6 A. Yes.

7 Q. Now, most of the time jurors do not concern
8 themselves with the matter of punishment. Most of
9 the time in the criminal court punishment is a matter
10 for the judge. However, there is one case in our law
11 when a jury has to deal with the matter of punishment
12 and that is in a case like this one, it is in a case
13 where an individual has been charged with the crime
14 of murder and where the State is seeking the death
15 penalty.

16 If an individual in a death penalty
17 case is convicted of the crime of murder, then the
18 same jury that convicted him or her of murder comes
19 back and there is a different and a separate
20 proceeding and out of that proceeding the jury must
21 determine the sentence that the person would get.
22 There are two choices.

23 A. Right.

24 Q. Life imprisonment without the possibility of
25 parole and the death penalty. That determination is

Juror 33 Jami H. Burt - Examination

1 made in that second, or it's called the sentencing
2 phase of a trial.

3 A. Right.

4 Q. You understand this?

5 A. Yes, I do.

6 Q. Now, there was another piece of paper back
7 there. Did you have a chance to look at this piece
8 of paper?

9 A. Yes, I have.

10 Q. It essentially describes for you three types of
11 jurors. Do you remember the three types of jurors?

12 A. Yes, I do.

13 Q. Which of those three types jurors do you think
14 best describes you?

15 A. Type three.

16 Q. In other words, you would be willing to listen
17 to the evidence in the courtroom and base your
18 decision on what you hear in the courtroom?

19 A. I would have to.

20 Q. Norfolk Southern is on the way.

21 (Train.)

22 Now, would you be willing to listen to
23 the evidence in this courtroom, or any courtroom,
24 because, again, this is the generic sense, if you
25 were a juror in a capital case and in the sentencing

Juror 33 Jami H. Burt - Examination

1 phase of a trial, would you be willing to listen to
2 the evidence and consider the evidence, and if you
3 were convinced that a sentence of the death penalty
4 was appropriate, would you be able and willing to
5 vote for that sentence?

6 A. Yes, ma'am.

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

12 A. Yes.

13 Q. You would make up your mind based on what you
14 hear in the courtroom?

15 A. Oh, yes.

16 Q. Now, if you were chosen to serve as a juror in
17 this case, you and the other jurors would be housed
18 locally in a motel during the trial. The word is
19 sequestered. We would need you to stay with us,
20 motel at night, trial here in the courtroom during
21 the day, obviously county expense, throughout the
22 trial. This trial is expected to last at least a
23 period of at least two weeks. It could go a little
24 bit longer, but it could be a little bit shorter
25 also.

Juror 33 Jami H. Burt - Examination

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

9 A. I don't believe so.

10 Q. You would be able to do that?

11 A. Yes.

12 Q. Well, if you would, please, Ms. Burt, answer any
13 questions that these lawyers would have for you.

14 THE COURT: Mr. Cummings.

15 MR. CUMMINGS: Thank you, Judge.

16 EXAMINATION

17 BY MR. CUMMINGS:

18 Q. Good afternoon, Ms. Burt.

19 A. Hi.

20 Q. I'm Norb Cummings, that is Ms. Marva
21 Hardee-Thomas.

22 A. Hi.

23 Q. We are both Court appointed to represent this
24 gentleman, Mr. Marion Bowman, ma'am.

25 A. Hi.

Juror 33 Jami H. Burt - Examination

1 Q. I'm just going to be very brief with some
2 questions and I appreciate your kindness and your
3 candor. You understand, ma'am -- and, again, I
4 understand you work for a law firm?

5 A. Yes, I do.

6 Q. Okay. And while working there you've done
7 strictly plaintiffs' cases, not criminal law in any
8 way; is that correct?

9 A. No. I work in the operations department of
10 Ness, Motley.

11 Q. And that's all you do?

12 A. Yes.

13 Q. You don't work for one particular lawyer?

14 A. No, I keep the building going. I don't work for
15 a lawyer.

16 Q. All right. In any criminal case any defendant
17 is presumed innocent until and unless the State
18 proves him guilty beyond a reasonable doubt.

19 A. Right.

20 Q. You would hold that conviction dear and believe
21 in that?

22 A. Oh, yeah.

23 Q. We don't even get to the second phase, ma'am,
24 unless and until State has proven that person guilty
25 of murder. And at that point there are two possible

Juror 33 Jami H. Burt - Examination

1 sentences for the jury to consider, one is life
2 without the possibility of parole and the other is
3 the death penalty. And you could sit as a fair and
4 impartial juror considering all the evidence and
5 considering the two types of punishment?

6 A. I'm sorry?

7 Q. You could consider both types of punishment?

8 A. Oh, yes.

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

10 THE COURT: All right.

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

13 MR. CUMMINGS: That's all the questions we
14 have of this nice lady. Thank you, Judge.

15 THE COURT: Mr. Bailey.

16 EXAMINATION

17 BY MR. BAILEY:

18 Q. Ms. Burt, I'm Walter Bailey, I'm the solicitor
19 and I'll be prosecuting this case. I appreciate you
20 being here, I got a few more questions for you, okay?

21 A. Yes, sir.

22 Q. Try not to drag it out too much.

23 A. Okay.

24 Q. I am going to ask you about the death penalty.

25 And like the judge said the questions are in general,

Juror 33 Jami H. Burt - Examination

1 we're not going to talk about this case because you
2 hadn't heard the facts of the case.

3 A. Right.

4 Q. So just in general. We start out in a situation
5 like this where the State is seeking the death
6 penalty with the guilt phase. That's like any other
7 criminal trial where the focus is whether or not the
8 State has convinced the jury that the defendant's
9 guilty of the crime he's charged with beyond a
10 reasonable doubt.

11 In a case where the crime is murder,
12 it's been alleged and the State seeks the death
13 penalty, if the jury finds that person guilty of
14 murder we then go into the second phase. And the
15 focus shifts from the crime, proving the crime has
16 been committed to the appropriate punishment. There
17 would be additional testimony, instructions from the
18 judge that relate to punishment. Then the jury has
19 two options, life without parole and the death
20 penalty.

21 Whatever that jury's verdict is the
22 judge will order that to be carried out and will be
23 carried out. So based upon that jury's verdict that
24 defendant is either going to prison for the balance
25 of his life without parole or he's executed.

Juror 33 Jami H. Burt - Examination

1 A. Correct.

2 Q. And, again, I'm not asking for a prediction or
3 anything in this case, but if you were in a situation
4 like that and you get into the second phase of the
5 trial and the facts were bad enough, could you vote
6 for the death penalty knowing that as a result of
7 that vote that person actually will be executed?

8 A. Yes.

9 Q. And on the other hand, if you felt like a life
10 sentence was appropriate you could also vote for
11 that?

12 A. Oh, yes.

13 Q. If all 12 jurors vote for the death penalty
14 there's a death verdict form that each one of the
15 jurors is asked sign their name to. Could you sign
16 your name to a document like that if that was your
17 vote?

18 A. Yes, sir.

19 Q. And could you announce that vote out loud if
20 your name was called out and you were asked to stand
21 up and affirm that vote?

22 A. Yes.

23 Q. Ms. Burt, that's all I've got. Thank you very
24 much.

25 THE COURT: Thank you, Mr. Bailey.

Juror 33 Jami H. Burt - Examination

1 Ms. Burt, I'm going to ask you to step
2 outside the courtroom. You would not even have
3 time to sit down and I'm going to get you right
4 back in.

5 MS. BURT: All right.

6 THE COURT: Thank you so much.

7 MS. BURT: Thank you.

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

10 THE COURT: What says the State?

11 MR. CUMMINGS: Statutorily qualified,
12 Judge.

13 MR. BAILEY: Qualified, Your Honor.

14 THE COURT: Thank you. Very well.

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

17 MS. BURT: Didn't have time to sit down.

18 THE COURT: I told you you wouldn't have
19 time. You can sit down now, though. Ms. Burt,
20 you have been found qualified as a juror for
21 this trial. It doesn't mean you are on the jury
22 yet, but it does mean you are qualified and you
23 may be selected on this jury.

24 We are hoping to be able to select the
25 jury tomorrow at ten o'clock. Now, this may be

Juror 33 Jami H. Burt - Examination

1 a little ambitious, and if we have to set that
2 time back a little bit we will call you and let
3 you know. We're going to select the jury
4 tomorrow I anticipate, but we may have to push
5 the time back a little bit. But unless you hear
6 from us we are asking that you be back tomorrow
7 at ten o'clock.

8 And here's a piece of paper for you
9 with some instructions about what to bring and
10 where you will be and the emergency numbers
11 where you can be reached both in the daytime and
12 the nighttime. I want you to feel free to share
13 that information with anyone who might need to
14 reach you or that you would want to know where
15 you are going to be.

16 Now, with regards to anything about
17 this case, remember not to discuss this case or
18 any aspect of it, or allow anyone to discuss it
19 with you. And do not expose yourself to any
20 information about this case from whatever
21 source, okay?

22 MS. BURT: Yes, ma'am.

23 THE COURT: And I look forward to seeing
24 you tomorrow.

25 MS. BURT: Okay.

Juror 33 Jami H. Burt - Examination

1 THE COURT: Thank you.

2 MS. BURT: You're welcome.

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

5 MR. CUMMINGS: Before the next juror comes
6 in I just wanted to let Your Honor know that
7 I've got Mr. Bowman's permission to go back and
8 talk to Ms. Davis for a moment and I'll be right
9 back in and Ms. Thomas will take the next
10 witness -- next potential juror, excuse me.

11 THE COURT: Very well. Thank you. All
12 right. Mr. Kenneth Evans.
13 (Kenneth G. Evans, called as a prospective
14 juror, having previously been duly sworn, is
15 examined as follows:)

16 EXAMINATION

17 BY THE COURT:

18 Q. Hi, Mr. Evans.

19 A. Sit here?

20 Q. Yes, right there. Thank you. Mr. Evans, you
21 will remember when we were together Monday, it's been
22 a while ago, remember when you were sworn in with the
23 other potential jurors?

24 A. Yes.

25 Q. All right, sir. Let me remind you that that

Juror 91 Kenneth G. Evans - Examination

1 oath still applies. We don't need to place you under
2 oath again and your oath would apply to the answers
3 that you would share with us today, okay?

4 A. Okay.

5 Q. Now, since we talked on Monday has anyone talked
6 with you about this case or tried to approach you
7 about it, or have you been exposed to any information
8 about this case at all?

9 A. No.

10 Q. All right. And when you were back in the jury
11 room did you have a chance to look at the potential
12 witness list?

13 A. I did.

14 Q. And are you related by blood or marriage,
15 acquainted with or connected with, or do you have any
16 personal or business or otherwise relationship with
17 any of the individuals on the potential witness list?

18 A. No.

19 Q. All right, sir. Now, my notes show that when I
20 had a chance to ask the whole panel questions that
21 you had some connection with defense counsel. Who
22 was that?

23 A. Yes. Ms. Hardee.

24 Q. Ms. Hardee-Thomas?

25 A. Yes.

Juror 91 Kenneth G. Evans - Examination

1 Q. All right. What is the nature of that
2 connection?

3 A. My son. She had represented my son in a case
4 that he was involved with.

5 Q. All right. How long ago has that been, years,
6 months?

7 A. No, it's been years. It's probably been five
8 years, roughly.

9 Q. All right. And as a result of that connection
10 with Ms. Hardee-Thomas, do you think that you can set
11 that connection aside and be a fair and impartial
12 juror in this case?

13 A. Yes.

14 Q. And do you think the fact that you know Ms.
15 Hardee-Thomas could impact or bear on your ability to
16 be fair and impartial?

17 A. I didn't understand.

18 Q. They're very similar. Will the fact that you
19 know her have any bearing on your ability to be fair
20 and impartial?

21 A. No.

22 Q. Can you set that relationship aside, the
23 professional relationship I understand with your son,
24 but whatever that relationship is could you set that
25 aside and be fair and impartial to both sides?

Juror 91 Kenneth G. Evans - Examination

1 A. Yes.

2 Q. All right. I also note that to the question did
3 you know anything about this case, have you read
4 anything about it or seen anything about it, that you
5 also acknowledged that --

6 A. Right.

7 Q. -- on Monday. And was that -- tell me, I don't
8 know what you saw or heard, but I am interested was
9 it, you know, TV, was it media, or was it a person?

10 A. It was in the *Summerville Journal Scene* last
11 week.

12 Q. I understand. And did you form any opinions
13 about this case as a result of having seen that
14 article?

15 A. No.

16 Q. All right. Can you set that information
17 completely aside and try this case based on the
18 information in this courtroom?

19 A. Yes.

20 Q. And would that article impair your ability to be
21 fair and impartial?

22 A. No.

23 Q. Very well. Now, I had also asked whether or not
24 you had formed -- this is with the general panel,
25 whether or not you had formed any opinion or whether

Juror 91 Kenneth G. Evans - Examination

1 or not you have any difficulty being fair and
2 impartial, did you have any bias or prejudice for or
3 against either side. And I didn't indicate that you
4 had any response to that; is that correct?

5 A. That's correct.

6 Q. And that continues to today?

7 A. Yes.

8 Q. All right, sir. Now, I need to ask you some
9 questions about how you feel about certain matters.

10 A. Okay.

11 Q. About your opinions about certain matters.

12 A. Okay.

13 Q. But I want you to know that we don't ask those
14 to invade your privacy, first of all. The reason we
15 are asking those questions is to understand and know
16 a little bit about your opinions to see how they
17 might impact on your jury service.

18 A. Okay.

19 Q. We certainly know and acknowledge that your
20 opinions are as good and valid as anybody else's and
21 that none of us will challenge your opinions. That's
22 not at all what we are about here. And obviously
23 there are no right or wrong answers, we simply need
24 to understand a little bit about your opinion so that
25 we can, again, just determine if it might have any

Juror 91 Kenneth G. Evans - Examination

1 impact on your jury service.

2 A. Okay.

3 Q. In a moment, in a few moments I am going to be
4 asking you for your opinion regarding penalty, the
5 death penalty, because that may be an issue in this
6 case. I want you to understand that to talk about
7 penalty when the trial has not even begun is
8 obviously premature.

9 A. Uh-huh (affirmative response).

10 Q. The reason that we talk about it at this time is
11 because it gives me an opportunity to talk to
12 potential jurors obviously before the case begins, so
13 if I'm going to talk to them about penalty I've got
14 to do it before trial, necessarily.

15 A. Right.

16 Q. So I'm going to ask you as we go through the
17 discussion about penalty particularly, that you keep
18 in mind that to talk about it is premature and that
19 Mr. Bowman is presumed innocent of these charges. Do
20 you understand that?

21 A. (Nodding.)

22 Q. All right, sir. Now, the questions that I'm
23 going to be asking I'm going to be asking you in a
24 generic or a general sense.

25 A. Okay.

Juror 91 Kenneth G. Evans - Examination

1 Q. It would neither be proper or fair for me to ask
2 you your opinions about this case, mainly because you
3 know very little about it and you have no opinions.
4 But it still would be improper and it wouldn't be
5 fair. So the opinions I'm going to be asking you
6 about are going to be asked in a general or generic
7 sense, okay?

8 A. Okay.

9 Q. If you were a juror in any case would you be
10 willing to listen to the charge, the instruction on
11 the law given to you by the judge?

12 A. Yes.

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 if you didn't particularly like that
17 provision of the law and perhaps you would disagree
18 with it, would you still be willing to follow the law
19 as you were instructed to do by the judge?

20 A. Yes.

21 Q. If you were asked to serve in the case of State
22 vs. Mr. Bowman, could you decide this case based upon
23 the evidence in this courtroom and disregard anything
24 that you may have seen, or heard, or read about from
25 any source at all?

Juror 91 Kenneth G. Evans - Examination

1 A. Yes.

2 Q. And would you be willing to do that for any
3 memories that might be jogged during the course of
4 the trial?

5 A. Yes.

6 Q. In a criminal case as you know and as we talked
7 about on Monday, the State has the burden of proving
8 a defendant guilty beyond a reasonable doubt. A
9 defendant never has to prove himself or herself
10 innocent. In fact, a defendant never has to prove
11 anything. The burden is always on the State. And a
12 defendant is presumed innocent under the law. Do you
13 understand these principles?

14 A. Yes.

15 Q. Do you have any questions of me about these
16 principles?

17 A. (Shaking head.)

18 Q. Now, if you were a juror in any criminal case,
19 in any criminal case, would you be willing to listen
20 to the evidence, find the facts as you would find
21 them to be, and apply the law given to you by the
22 judge to those facts?

23 A. Yes.

24 Q. And if after you did that you were not convinced
25 of a person's guilt beyond a reasonable doubt, could

Juror 91 Kenneth G. Evans - Examination

1 you, would you find that person not guilty?

2 A. If I wasn't convinced I would.

3 Q. That's correct. On the other hand, if you
4 considered the evidence and found the facts as you
5 found them to be and applied the law to those facts
6 given to you by the judge and you were convinced of a
7 person's guilt beyond a reasonable doubt, would you,
8 would you be willing to find that person guilty?

9 A. Yes.

10 Q. Now, needless to say you would be willing to
11 listen and make your decision based upon whether or
12 not you were convinced that a person is guilty or
13 not?

14 A. Yes.

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

24 If an individual in a death penalty
25 case is convicted of the crime of murder, then that

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1 same jury that convicted him or her comes back and in
2 a separate and different proceeding decides the
3 sentence that the person is going to get. There are
4 two choices: Life without the possibility of parole
5 and the death penalty. That decision is based upon
6 that second or sentencing phase of the trial as it's
7 called. Do you understand this information?

8 A. Yes.

9 Q. Now, back also in the jury room with you was
10 this document. And, please, if you need to look at
11 it, grab it and look at it. And it essentially
12 describes three types of jurors. Do you remember the
13 document?

14 A. Yes.

15 Q. Have you had an opportunity to look at it?

16 A. Yes.

17 Q. Do you remember the three types of jurors?

18 A. Yes.

19 Q. Which of those three types of jurors do you
20 think best describes you?

21 A. The last one.

22 Q. Number three?

23 A. Yeah.

24 Q. Type three. In other words, you would be
25 willing to listen to whatever evidence there was in

Juror 91 Kenneth G. Evans - Examination

1 the courtroom and make your decision based upon that
2 evidence?

3 A. Yes.

4 Q. And if after you listened to the evidence if you
5 were convinced that a sentence of death was
6 appropriate, would you be able to vote for that
7 sentence?

8 A. Yes.

9 Q. Would you be willing to vote for that sentence?

10 A. Yes.

11 Q. On the other hand, if you thought 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 imprisonment?

16 A. Yes.

17 Q. All right, sir. Now, if you were chosen to
18 serve as a juror in this case, you and the other
19 jurors would be housed, and the word is sequestered,
20 here in a local motel throughout the course of the
21 trial which is expected to last up to two weeks, it
22 could be a little bit longer, it could be a little
23 bit shorter. You would have to stay with us, stay in
24 the motel except when you are here in the courtroom.

25 This no doubt would create an

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1 inconvenience for you as it surely will for anyone
2 who would have to serve on this jury. Other than the
3 inconvenience which it would surely cause anybody who
4 would have to serve in this capacity, would that pose
5 a serious risk of danger to your health or well
6 being, or to that of anybody who is dependant upon
7 you if you had to serve in that capacity?

8 A. It would be dubious.

9 Q. It would be very inconvenient.

10 A. If it started next week and if I was chosen,
11 we've got my youngest son graduating from high
12 school.

13 Q. On the --

14 A. On Thursday he's graduating and I've got
15 relation coming down next -- actually, this Saturday
16 for the week.

17 Q. I understand.

18 A. But....

19 Q. I understand you have family coming in?

20 A. Yes.

21 Q. And the graduation is on Thursday?

22 A. Thursday.

23 Q. What time is the graduation?

24 A. I'm not really sure. I think it's 7:00 or 6:00,
25 I'm not sure.

Juror 91 Kenneth G. Evans - Examination

1 Q. 6:00 or seven o'clock in the evening. All
2 right, sir. Let me think about that. And meanwhile
3 let me ask you to answer the questions of these folks
4 that will no doubt have questions for you.

5 A. All right.

6 THE COURT: Mr. Bailey.

7 MR. BAILEY: Thank you, Your Honor.

8 EXAMINATION

9 BY MR. BAILEY:

10 Q. I'm Walter Bailey and I'll be prosecuting this
11 case for the State, I need to ask you a few questions
12 that relates primarily to the death penalty.

13 A. Okay.

14 Q. And like the judge said, we're not going to talk
15 about this case because you hadn't heard the facts in
16 the case so I'm talking in general.

17 A. Okay.

18 Q. All right, sir. Have you ever been on a jury
19 before?

20 A. No, sir.

21 Q. Okay. The first part of this trial is going to
22 be like any other criminal trial where the focus is
23 on whether or not the State has charged someone with
24 a crime, can convince the jury of his guilt beyond a
25 reasonable doubt. In this case the crime is murder,

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1 one of the crimes that's been charged, and we're
2 seeking the death penalty.

3 In a case like this if the jury is
4 convinced beyond a reasonable doubt the defendant is
5 guilty of murder, then we shift to the second phase
6 where the focus is not on guilt or innocence, it's on
7 the appropriate punishment of a person found guilty
8 of murder. And there would be additional evidence,
9 additional instructions from the judge.

10 Then the jury unanimously, all 12 of
11 them, would have to vote one way or the other, life
12 without parole or the death penalty. Whatever that
13 jury's verdict is the judge would order that sentence
14 to be carried out and it would be carried out. In
15 other words, that that person would either go to
16 prison for the rest of their life without parole or
17 they're going to be executed by lethal injection.

18 Now, again, I'm not asking you to
19 predict what you'd do if you get picked on this case,
20 but if you were picked in a case like this and 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 based on that vote?

24 A. Yes. I mean, it's kind of a theoretical
25 question.

Juror 91 Kenneth G. Evans - Examination

1 Q. Right.

2 A. But I'd have to listen to everything before I
3 would do it.

4 Q. Okay.

5 A. I mean, that's where I'm at.

6 Q. All right, sir. If you thought a life sentence
7 was appropriate after listening to everything, you
8 could vote for a life sentence?

9 A. Yes.

10 Q. Or for the death penalty if you felt that was
11 appropriate after listening to everything?

12 A. Yes, sir.

13 Q. If all 12 jurors vote for the death penalty
14 there's a verdict form, a death verdict form, and
15 each one of the jurors is asked to sign that paper.

16 A. I understand.

17 Q. That's going to result -- it's part of the
18 process, but it will result in that execution
19 occurring at some point.

20 A. Okay.

21 Q. Could you sign that paper if that was your vote
22 after hearing all the facts?

23 A. Yes.

24 Q. Could you announce that decision out loud?
25 There's a process called polling the jury where the

Juror 91 Kenneth G. Evans - Examination

1 verdict would be announced and all the jurors' names
2 would be called out one at a time and they would be
3 asked to stand up and affirm that was their verdict
4 and it's still their verdict.

5 A. Yes.

6 Q. Could you do that?

7 A. Yes, sir.

8 Q. That's all I've got and I thank you very much.

9 THE COURT: Thank you. Ms. Hardee-Thomas.

10 MS. HARDEE-THOMAS: Thank you.

11 EXAMINATION

12 BY MS. HARDEE-THOMAS:

13 Q. Good afternoon, Mr. Evans. You indicated to the
14 solicitor and to Her Honor that you're a type three
15 juror, that you can impose a life sentence as well as
16 a death sentence?

17 A. Yes.

18 Q. So you hold the presumption of innocence dearly?

19 A. Yes.

20 Q. Now, sir, you indicated that you were a victim
21 of violence?

22 A. Yes, ma'am.

23 Q. At Charter Hospital?

24 A. Yes.

25 Q. Having been exposed to something of that nature,

Juror 91 Kenneth G. Evans - Examination

1 would that impair, substantially impair you from
2 rendering a verdict in any case?

3 A. No.

4 Q. Okay. You also indicated you have an opinion
5 with regards to people who are not married and commit
6 infidelity. If you hear something of that nature,
7 would that substantially impair your decision in
8 regards to --

9 A. No. That's just my personal -- I mean, people
10 do what they want, but it's not my choice.

11 Q. Thank you. Thank you. You believe you could be
12 fair and impartial?

13 A. Yes.

14 Q. And could you follow Her Honor's instructions
15 with the law?

16 A. Yes.

17 Q. No further questions.

18 THE COURT: All right. I'm not concerned
19 particularly about the graduation on Thursday, I
20 think that's -- is the graduation -- where is
21 the graduation?

22 MR. EVANS: North Charleston. It's on
23 South Montague.

24 THE COURT: Yes.

25 MR. EVANS: He goes to Baptist High School

Juror 91 Kenneth G. Evans - Examination

1 over there.

2 THE COURT: I got you, he goes to the
3 Baptist High School. So that concerns me less
4 than how much -- I'm a little bit -- let me
5 explain this to you. We hope to select a jury
6 tomorrow.

7 MR. EVANS: I see.

8 THE COURT: And begin the trial tomorrow.
9 So you would be sequestered beginning tomorrow.
10 Going to the graduation on Thursday is not a
11 problem, but I'm concerned about the relation
12 that's coming into town.

13 MR. EVANS: I am, too.

14 THE COURT: Yeah. I mean, can you tell me
15 a little bit more about that?

16 MR. EVANS: Well, they're coming in for a
17 week, they're coming in Saturday.

18 THE COURT: Right.

19 MR. EVANS: And they'll be here for a week
20 and they'll leave next Saturday.

21 THE COURT: How close relation?

22 MR. EVANS: It's my wife's parents, my
23 in-laws.

24 THE COURT: Your in-laws?

25 MR. EVANS: Yes, ma'am. Timing's

Juror 91 Kenneth G. Evans - Examination

1 everything.

2 THE COURT: Isn't it? It is. It is. Can
3 you quantify for he how difficult that would be
4 for you?

5 MR. EVANS: I'm as close with my
6 father-in-law as I am my own father and I've got
7 time, vacation time scheduled for next week, a
8 couple days, but....

9 THE COURT: Okay.

10 MR. EVANS: I also feel there's a service
11 to my community also, so, you know, I'm kind of
12 juggling that, so....

13 THE COURT: Me, too. I certainly hate to
14 lose you. Can I get you to step outside for
15 just a moment?

16 MR. EVANS: Yes, ma'am.

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

19 THE COURT: Thank you so much. Both of you
20 are going to tell me I'm sure that he is
21 qualified.

22 MS. HARDEE-THOMAS: Without question, Your
23 Honor.

24 MR. BAILEY: Yes, ma'am.

25 THE COURT: What I'm hearing from him is

Juror 91 Kenneth G. Evans - Examination

1 I'm hearing from him certainly that if -- that
2 if we need him to serve he will serve. Let me
3 just ask you this at this juncture: Do either
4 of you perceive any problem with our SLED folks
5 taking him to that graduation on Thursday?

6 MR. BAILEY: No, I don't. I think there
7 have been a couple others that have problems
8 with the same thing, I have no objection to
9 them, either.

10 MR. CUMMINGS: Judge, out of all those
11 things that we've done here today and of course
12 the past week, we both have been hospitable to
13 each other and as members of the bar, and I
14 think we would like to work with the jurors. I
15 mean, I'm just coming back in, but Your Honor --

16 THE COURT: Great. Do you think maybe he
17 could have some time with his in-laws?

18 MR. BAILEY: Sure. I don't see any problem
19 at all with that. I mean, Mr. Cummings and I
20 have been involved in a case where the jury was
21 released for like three days under strict
22 instructions and there were no problems.

23 MR. CUMMINGS: And they did, they followed
24 that judge's instructions like they'll follow
25 yours.

Juror 91 Kenneth G. Evans - Examination

1 THE COURT: What I'm going to do, I'm going
2 to ask him to stay with us and tell him that we
3 will try to work -- the graduation is not going
4 to be a problem and just tell him that it would
5 be our intention to work with him so that he
6 could see his family some.

7 MS. HARDEE-THOMAS: Thank you.

8 MR. BAILEY: He's also pretty close to the
9 end, too, he may not even get reached with the
10 four alternates, so....

11 THE COURT: Right. All right. Yeah.
12 You're right. You're a math wizard, Mr. Bailey.

13 All right. Ask him to come in. I've
14 been so focused on I've got to have this number,
15 you know.

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

18 THE COURT: Mr. Evans, you have been found
19 to be qualified as a potential juror in this
20 case and I am going to ask you to come to the
21 jury selection tomorrow. If you are selected to
22 serve on this jury it would be our intention
23 to -- clearly to accommodate the graduation and
24 to accommodate some time with your family. I
25 have to work out how we're going to do that, but

Juror 91 Kenneth G. Evans - Examination

1 that's going to be our intention, okay?

2 MR. EVANS: Okay.

3 THE COURT: Very well. So let me just tell
4 you that I'm going to ask you to be back in the
5 courtroom tomorrow morning at ten o'clock.

6 MR. EVANS: Okay.

7 THE COURT: Now, that might be premature,
8 if it is we will give you a call and let you
9 know. So if you have an answering machine
10 before you come up you might just want to check
11 your answering machine.

12 MR. EVANS: I don't. Lightening took it
13 out. So if it changes you want me here at
14 10:00?

15 THE COURT: If it doesn't change I want you
16 here at 10:00 tomorrow. And here's the sheet
17 with some instructions, emergency numbers, day
18 and night, where you're going to be, suggestions
19 about packing clothes, bringing medicines and
20 the like. Share that information with your
21 family.

22 MR. EVANS: Bring this with me tomorrow?

23 THE COURT: Right.

24 MR. EVANS: I don't know if I have enough
25 clothes for 14 days.

Juror 91 Kenneth G. Evans - Examination

1 THE COURT: Well, we might have to wash.

2 MR. EVANS: They have a washing machine?

3 THE COURT: You know what, that has been
4 done. If you run out of clothes, you let me
5 know and we'll take care of it, how about that?

6 MR. EVANS: Okay.

7 THE COURT: And I would ask you to be with
8 us in the morning at 10:00.

9 MR. EVANS: Okay.

10 THE COURT: Be mindful to share that
11 information, those practical details with anyone
12 with whom you need to, but do not discuss this
13 matter or any aspect of it or allow anyone to
14 discuss it with you and do not expose yourself
15 to any information about this case.

16 MR. EVANS: Okay.

17 THE COURT: All right?

18 MR. EVANS: All right.

19 THE COURT: Thank you so much. See you
20 tomorrow.

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

23 THE COURT: All right. We need Ms. Crook.
24 (Lynn H. Crook, called as a prospective juror,
25 having previously been duly sworn, is examined

Juror 60 Lynn H. Crook - Examination

1 as follows:)

2 EXAMINATION

3 BY THE COURT:

4 Q. Hi, Ms. Crook.

5 A. Hello.

6 Q. How are you?

7 A. Pretty good.

8 THE COURT: This is Ms. Lynn Crook, who is
9 Juror Number 60.

10 Q. I'm going to have to apologize to you at the
11 beginning because I have a friend who's name is Lynn
12 Crooks, so let me apologize in advance because I know
13 that's going to come out.

14 A. That's okay.

15 Q. So let me tell you that up front. Ms. Crook, do
16 you remember when we were together on Monday, it
17 seems so long ago, but when we were together on
18 Monday and you were sworn in with the other potential
19 jurors?

20 A. Yes.

21 Q. Let me share with you that that oath remains in
22 effect throughout this process and to the answers
23 that you will give us today.

24 A. Certainly, yes.

25 Q. Okay. All right. So we don't need to reswear

Juror 60 Lynn H. Crook - Examination

1 you.

2 A. No.

3 Q. All right. Now, has anyone talked to you about
4 this case or tried to approach you about this case,
5 or have you had any information about this case at
6 all since Monday?

7 A. No.

8 Q. All right. Now, did you have an opportunity to
9 look at for me the witness list, here it is, the
10 names on the potential witness list?

11 A. Yes.

12 Q. Are you related by blood or marriage, acquainted
13 with, do you have any business or personal or casual
14 relationship, are you connected directly or
15 indirectly with any of the folks that are here on the
16 potential witness list?

17 A. I recognized five names on the list.

18 Q. All right. I'm going to do this, I'm going to
19 take the five names and then we'll talk about them,
20 okay?

21 A. Okay.

22 Q. Who are they?

23 A. Can I see the list?

24 Q. That's what it's here for.

25 A. Okay. The first one is Captain Perry Chinnors.

Juror 60 Lynn H. Crook - Examination

1 Q. Okay.

2 A. Ernest Hill.

3 Q. Okay.

4 A. Dennis Judy.

5 Q. Okay.

6 A. There was one on the other list that is not on
7 this one.

8 Q. Let me give you this one.

9 A. Okay.

10 Q. I didn't realize there were two different ones.

11 A. Wayne McAlhany and Joey Wimberly.

12 Q. All right. Now, tell me how you know
13 Mr. Chinnners.

14 A. He is my husband's cousin.

15 Q. And how often do you see him?

16 A. Probably once a month.

17 Q. Obviously you visit in each other's homes?

18 A. Family gatherings.

19 Q. At family gatherings?

20 A. Yes.

21 Q. All right. Now, do you think that if

22 Mr. Chinnners was a witness in this case, that his

23 presence as a witness would have any bearing on your

24 ability to be a fair and impartial juror in the trial

25 of this case?

Juror 60 Lynn H. Crook - Examination

1 A. Yes.

2 Q. All right. Okay. Tell me just a little bit
3 more about that.

4 A. Tell me, explain to me what we're talking about
5 here. Our communication, or -- I mean, obviously I
6 wouldn't have any communication with him before the
7 trial.

8 Q. That's right. That's right. In other words, if
9 he was a juror -- I mean, not a juror, if he was a
10 witness in this case would that have an impact? I'll
11 give you a couple of ways it could have an impact.
12 Would it have an impact -- would you be able to
13 assess his credibility as you would any other witness
14 in the case, or because of your personal relationship
15 with him you couldn't do that, A; B, would you have
16 some concern if he was on one side of the other, I
17 don't know if he is, but if he's on one side or the
18 other that you would be concerned about the next
19 family reunion because you would think about that as
20 you were trying to make a decision, that in your mind
21 would be, you know, things like that?

22 A. As I know him I think I would be able to
23 anticipate how he would feel about his -- I would
24 probably be able to anticipate how he would answer,
25 or the way he would be going with his answers.

Juror 60 Lynn H. Crook - Examination

1 Q. All right. Okay.

2 A. Is that what we're getting here? Does that
3 help?

4 Q. Would you be concerned if he was associated with
5 one side or the other, would you be worried about the
6 next family reunion if you didn't agree with his
7 position that he would think, golly, I can't believe
8 you didn't agree with my position, or would that even
9 enter into your thought processes?

10 A. Probably not.

11 Q. Okay. All right. Are you concerned that it
12 might?

13 A. Well, I'm always concerned about family and I
14 wouldn't want there to be a conflict, but I wouldn't
15 foresee that there would be.

16 Q. Okay. Now, could you then set -- well, let me
17 go back to the question because when I asked the
18 question would the fact that he is a witness have any
19 bearing on your ability to be a fair and impartial
20 juror in the trial of this case and you answered yes.

21 A. Okay.

22 Q. So tell me about that.

23 A. Let me say no then. Let me say no then, because
24 I wasn't following all the wording, okay?

25 Q. All right. And could you set aside your

Juror 60 Lynn H. Crook - Examination

1 connection with Mr. Chinnners and decide this case
2 based solely upon what you would hear in the
3 courtroom without regard to your connection with
4 Mr. Chinnners?

5 A. Yes.

6 Q. Okay. Tell me about Mr. Hill, how you know
7 Mr. Hill.

8 A. He had to come to my in-law's house because of a
9 break-in at their home.

10 Q. Okay. And how long ago was that?

11 A. Two years, I think.

12 Q. Have you seen him in two years?

13 A. In passing.

14 Q. In passing?

15 A. Yes.

16 Q. So you would describe your relationship to be
17 what, professional?

18 A. Yes.

19 Q. Okay. And would your connection with Mr. Hill
20 have any bearing on your ability to be fair and
21 impartial?

22 A. No.

23 Q. Could you set that connection aside and try this
24 case based on the evidence in this courtroom?

25 A. Yes.

Juror 60 Lynn H. Crook - Examination

1 Q. Now, tell me about your relationship with
2 Mr. Judy, or Ms. Judy.

3 A. Dennis Judy. I know he and his family, but I
4 have very little connection.

5 Q. All right. Do you all visit in each other's
6 home?

7 A. No.

8 Q. And do you believe that your relationship with
9 Mr. Judy could in any way have any bearing upon your
10 ability to be a fair and impartial juror?

11 A. No, it would have none.

12 Q. Can you set that relationship aside and try this
13 case based on evidence in this courtroom?

14 A. Yes.

15 Q. All right. And with regards to Mr. McAlhany,
16 how do you know Mr. McAlhany?

17 A. He was in school with me.

18 Q. Okay. How often do you see Mr. McAlhany?

19 A. Rarely ever.

20 Q. Do you all visit in each other's homes?

21 A. No.

22 Q. All right. Would your connection with
23 Mr. McAlhany have any bearing on your ability to be
24 fair and impartial?

25 A. No.

Juror 60 Lynn H. Crook - Examination

1 Q. Can you set that relationship aside and try this
2 case based on the evidence in this courtroom?

3 A. Yes.

4 Q. All right. And regarding Mr. Wimberly, how do
5 you know Mr. Wimberly?

6 A. I know his family.

7 Q. Okay. All right. And the fact that
8 Mr. Wimberly may be a witness in this case, does that
9 have any bearing on your ability to be a fair and
10 impartial juror in this case?

11 A. No.

12 Q. Can you set that relationship completely aside
13 and try this case based on the evidence that you will
14 hear in this courtroom?

15 A. Yes.

16 Q. All right. Anyone else that you recognized on
17 the list?

18 A. No.

19 Q. Okay. Now, if you will recall on Monday I asked
20 whether or not any members of our jury panel had any
21 opinions about this case, or had any prejudice for or
22 against, or bias for or against either of the
23 parties. And my records indicate that you did not
24 indicate that either of those things apply to you; is
25 that right?

Juror 60 Lynn H. Crook - Examination

1 A. That's correct.

2 Q. My notes do indicate, though, that you had seen,
3 or read, or heard information about the case?

4 A. (Nodding.)

5 Q. What was just -- I don't know what you heard,
6 but what was the source, was it media, or...?

7 A. Yes. I did hear it some in the media and I
8 heard talk in the community when it did happen.

9 Q. Okay. All right. And as a result of the media
10 coverage and the talk in the community, do you have
11 any opinions regarding this case?

12 A. I didn't hear specifics, so, no, I don't.

13 Q. All right. And could you, would you be willing
14 to completely set that information aside and
15 disregard completely that information that you have
16 received and decide this case based upon the evidence
17 in the courtroom?

18 A. Yes.

19 Q. All right. Now, you also indicated that you
20 had -- you knew someone, perhaps, in the solicitor's
21 office?

22 A. Yes.

23 Q. Tell me who.

24 A. Robby Robbins.

25 Q. All right. And would your connection with Mr.

Juror 60 Lynn H. Crook - Examination

1 Robbins in any way impair your ability to be a fair
2 and impartial juror in this case?

3 A. I don't think so.

4 Q. Okay. Can you set aside your connection with
5 Mr. Robbins and try this case based on the evidence
6 in this courtroom?

7 A. Yes.

8 Q. Now, since we have talked on Monday is there
9 anything else that has occurred that leads you to
10 believe that you have an opinion, or anything else
11 that you have seen, or read, or heard about this
12 particular matter, or any bias or prejudice that you
13 would have?

14 A. No.

15 Q. Now, we need to ask you some questions, and I
16 want you to know that we are not trying to invade
17 your privacy. We are just trying it find out how you
18 may feel about some matters; in other words, what
19 your opinions are. There are no right or wrong
20 answers. And obviously your opinions are just as
21 good and just as valid as anybody else's, as you
22 know. And we are not here to challenge those
23 opinions in the least. We are only here to try to
24 understand them and see how they might impact on your
25 jury service..

Juror 60 Lynn H. Crook - Examination

1 Now, one of the things that I'm going
2 to be asking you about is penalty, specifically the
3 death penalty because that might -- that may be an
4 issue in this case. But I want you to understand
5 that the fact that we are talking about penalty is --
6 in this early stage is very premature, obviously the
7 trial hasn't begun, obviously Mr. Bowman is presumed
8 innocent of these charges. However, in order for me
9 to talk to prospective jurors or potential jurors
10 about penalty I have to do that before the trial
11 begins. Do you understand all that?

12 A. Certainly.

13 Q. Please keep in mind that when we talk about
14 penalty that it is premature and that Mr. Bowman is
15 presumed innocent, all right?

16 A. Uh-huh (affirmative response).

17 Q. Now I'm going to be talking to you in general
18 terms because it would not be proper or appropriate
19 for me to ask you about your opinions about this
20 case, number one you don't know about this case so
21 I'm not going to do that. I'm going to be asking you
22 in the general or generic sense. And ask you if you
23 were a juror on any criminal case would you be able
24 to listen to the judge's instructions on the law?

25 A. Yes.

Juror 60 Lynn H. Crook - Examination

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

3 A. Yes.

4 Q. Even if you didn't agree with that part of the
5 law particularly?

6 A. Yes.

7 Q. All right. Now, if you were asked to serve in
8 the case of State vs. Bowman, could you decide this
9 case based solely on what you hear in this courtroom
10 and disregard anything that you may have seen or
11 heard or read about this case from any source at all
12 if anything like that should come to your memory?

13 What do I mean by that? Sometimes
14 jurors -- you know, you have read some things,
15 sometimes jurors have memories about the case that
16 are jogged during the trial because of the testimony.
17 And I would just ask you if that happened to you can
18 you set those thoughts aside, that memory aside and
19 try this case based on the evidence in the courtroom?

20 A. I would have to say probably that if I
21 remembered any instances, and as you stated that as I
22 have said I don't know any specifics, but if they did
23 come to mind I would probably feel like they would
24 come into play in my decision.

25 Q. You do?

Juror 60 Lynn H. Crook - Examination

1 A. I would have to be honest and say yes.

2 Q. Okay. In other words, if you had any memories
3 of things that you had read about this case, that you
4 don't remember now and they came up during the trial,
5 what you're telling me is that rather than being able
6 to decide the case based upon what you hear in the
7 courtroom, based on the evidence that you would be
8 swayed by that memory?

9 A. I --

10 Q. And please be honest with me. Yes?

11 A. I would take the evidence that is presented and
12 make my decision, but there would always be that in
13 my mind that would be affecting that decision.

14 Q. Okay. And you are concerned about your ability
15 to set that completely aside?

16 A. Yes. I would have to be honest and say yes.

17 Q. All right. All right. Very well.

18 THE COURT: Let me ask counsel if you have
19 any questions about that?

20 MR. CUMMINGS: Can we just have a matter of
21 law outside this young lady's presence for just
22 a moment?

23 THE COURT: Sure. Absolutely.

24 Yes, ma'am. If you would just step
25 outside for just a moment.

Juror 60 Lynn H. Crook - Examination

1 (Whereupon, the prospective juror exits the
2 courtroom.)

3 MR. CUMMINGS: May it please the Court.

4 THE COURT: Yeah.

5 MR. CUMMINGS: I'll say it out loud, Walter
6 probably cannot read my writing. My client has
7 a criminal record. He got -- caught a YOA
8 charge 1997 for burglary of Wimberly's house,
9 Joey Wimberly. As she just told us she's
10 friends and knows Mr. Wimberly. I don't -- the
11 case in chief we're not sure about anything yet,
12 penalty phase, she's friends with all these
13 people, I don't know how in God's name to ask
14 her a question about that without putting my
15 client in jeopardy of a juror hearing of a
16 crime. And, Judge, she's married to a code
17 enforcement officer in the county, employed
18 within the county walls, she knows five people
19 right now potential witnesses, she's saying
20 she's not sure if she would be fair or just.

21 On the safe side I would move to
22 excuse her for cause based on her statements and
23 further, Judge, to let the Court know that it's
24 too late in a matter of law to have a juror come
25 up and say, well, I can't really be fair now,

Juror 60, Lynn H. Crook - Examination

1 somebody's been charged with the crime of a
2 family or friend. And I don't want to run out
3 of jurors here.

4 MR. BAILEY: Of course, none of what Mr.
5 Cummings said with the possible exception of her
6 ability --

7 THE COURT: Wimberly.

8 MR. BAILEY: -- if her memory is jogged is
9 disqualifying. The fact that she knows
10 Mr. Wimberly, he would be a potential penalty
11 phase witness, of course. It isn't like it's
12 her house or her family member, it's just
13 somebody she knows and she said it wouldn't make
14 any difference.

15 The only concern I have at this point,
16 Your Honor, is what she expressed to Your Honor.
17 I'd like to develop that a little bit more.

18 THE COURT: Sure. Sure. Yeah, I'm not
19 ready to --

20 MR. CUMMINGS: And, Judge, while you're up
21 there doing that if you look at her question
22 number 50 she suffers from severe migraines.

23 THE COURT: I know, I saw that.

24 MR. CUMMINGS: Actually misses time from
25 work.

Juror 60 Lynn H. Crook - Examination

1 THE COURT: I saw that. I saw that.

2 MR. LAFOND: Your Honor, may I get my
3 questionnaire, my jury sheet?

4 THE COURT: No. You got it.

5 MR. LAFOND: Thank you.

6 THE COURT: I think at this point what I'm
7 inclined to do is I want you -- I do want you to
8 develop that because I'm -- see -- and just see
9 what happens with your questioning about that.

10 MR. CUMMINGS: All right.

11 THE COURT: Very well. Thank you.

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

14 THE COURT: Thank you so much for that.

15 MS. CROOK: Yes.

16 THE COURT: All right. Yes, sir. Thank
17 you, Mr. Bailey.

18 EXAMINATION

19 BY MR. BAILEY:

20 Q. Ms. Cook, I'm Walter Bailey and I want to ask
21 you a few more questions to kind of follow up on what
22 the judge asked you. As I understand what you're
23 saying is that you've heard something about this
24 case, either through the news media or talk in the
25 community.

Juror 60 Lynn H. Crook - Examination

1 A. Yes.

2 Q. But you don't have any specific recollections of
3 it at this time?

4 A. No, I don't.

5 Q. Okay. And your concern would be that if during
6 the course of the trial something came back to you --

7 A. Yes.

8 Q. -- that you couldn't forget it; is that right?

9 A. Right. As I sit here I couldn't tell you what
10 I've heard.

11 Q. Okay.

12 A. But I would be concerned that as the witnesses
13 spoke, as the testimony was given, if something came
14 back, and I'm not saying that it would.

15 Q. All right.

16 A. But if something came back to me that would
17 probably affect my decision.

18 Q. All right. Now, if something did come back to
19 you that was the same as the testimony obviously it
20 wouldn't make any difference, would it?

21 MR. CUMMINGS: Objection, Your Honor, that
22 goes to the rest of the jurors.

23 MR. BAILEY: I don't follow his objection,
24 so I can't respond to it.

25 THE COURT: Let me hear the question again,

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1 Mr. Bailey, I'm sorry.

2 MR. BAILEY: Okay.

3 Q. Let me back up a little bit, Ms. Crook, I
4 apologize for getting you caught in the middle of the
5 lawyer stuff here, but I need to go through it.

6 A. That's okay.

7 MR. BAILEY: To a certain degree, Your
8 Honor, speculative because she doesn't remember
9 anything.

10 Q. If what you remembered was the same information
11 as the testimony that triggered that memory,
12 obviously there would be nothing different between
13 what you heard outside of court and what you heard in
14 court?

15 A. Right.

16 Q. So would that be a problem?

17 A. I would assume not, no.

18 Q. And the other possibility would be if you heard
19 something in court under oath and it reminded you
20 that you may have heard something different outside
21 of court, that would be the other potential
22 situation, right?

23 A. Right.

24 Q. Okay. And something's in your mind, you can't
25 just will yourself to forget it.

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1 A. Right.

2 Q. But if that situation arose could you kind of
3 compartmentalize that, just put it over here and
4 follow the judge's instructions that you would have
5 to make any decision that you made based on the sworn
6 testimony that you heard in court, do you think you
7 could go through that mental exercise and do that?

8 A. I'd have to say yes.

9 Q. Okay.

10 A. I mean, logically you try to do that.

11 Q. Okay.

12 A. Opinions that you form come from other people's
13 opinions sometimes.

14 Q. Right.

15 A. And if that were what I heard, someone's
16 opinion, and it came back to me in the process of all
17 this, yes, I could compartmentalize it, but I would
18 say to some extent it would affect my decision.

19 Q. But that opinion could be wrong or could be
20 right?

21 A. Right.

22 Q. And if you were instructed to take the facts
23 from the sworn testimony under oath, could you --

24 A. I see what you're saying, yes.

25 Q. Could you do that?

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1 A. Yes.

2 Q. You could. Thank you, ma'am.

3 MR. BAILEY: That's all I've got at this
4 point, Your Honor.

5 THE COURT: I understand just at this
6 point. Thank you, Mr. Bailey.

7 Yes, sir, Mr. Cummings.

8 MR. CUMMINGS: Thank you, Judge.

9 EXAMINATION

10 BY MR. CUMMINGS:

11 Q. Ms. Crook, and I thank you for being very candid
12 with Her Honor and Mr. Bailey, I know when you try to
13 do this it's uncomfortable.

14 A. Yes, it is.

15 Q. It caused you enough concern when Her Honor
16 asked you about that question that you were very
17 forthwith with the judge and said that you had heard
18 something about this and you would have a concern or
19 worry that might substantially impair you if you
20 heard something pop up during the trial; is that what
21 you're saying?

22 A. Yes.

23 Q. And being the lady that you are you want to make
24 sure you told Her Honor and Mr. Bailey and I that you
25 had a concern about that because it's important for a

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1 juror to be fair, unbiased, and to listen to only
2 what they hear in here, facts in evidence about that,
3 so they're not substantially impaired in their
4 decision making being a fair and impartial juror; is
5 that correct, ma'am?

6 A. Yes.

7 Q. And, again, since you had that care or concern
8 and correctly shared that with Her Honor and Mr.
9 Bailey and I, do you in your heart and in your
10 feelings believe that you could be a fair and
11 impartial juror, think you can, you know, put things
12 in different compartments in your brain?

13 A. I would like to say, yes, I could. Now, what I
14 pose as impartial might be different from someone
15 else's interpretation, but I would do my best. If I
16 was chosen I would, yes, have to do my best to -- I'd
17 have to say that.

18 Q. Yes, ma'am. But then, again, and why -- and,
19 again, I apologize for objecting, that's the only way
20 we get to do it. I understand that facts in evidence
21 or anything that's testified in the courtroom is what
22 the jury has to determine, credibility is one issue;
23 number two, whether or not they take the facts.

24 And, again, Her Honor cannot have
25 anything to do about the facts, she rules on

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1 evidence, protects the jurors and she's the boss.
2 But if you hear something from, I'll pick a name,
3 Mr. Wimberly and you're listening to things, or
4 Mr. Chinnners, and if that kicks something out --

5 MR. BAILEY: Your Honor, this is getting
6 into speculation when he gets into specific
7 people, what they may or may not say, when she
8 has no recollection of anything she heard. I
9 object to it.

10 MR. CUMMINGS: If I may be heard on that
11 just a moment. I think this young lady said
12 it's family and she thought she could set that
13 aside and be impartial on that. But I'm trying
14 to deal with the compartmentalizing. If you
15 remember that something was said by one of those
16 people or that triggers something, would that
17 have special significance to you. And that
18 would be my answer back to Mr. Bailey's
19 objection.

20 THE COURT: Okay.

21 Q. Would that --

22 THE COURT: I'll let her answer that.

23 A. I lost all of that, I'm sorry.

24 Q. Would anything of like potential juror that you
25 may know or be acquainted with --

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1 A. Witness.

2 Q. Yes, ma'am, witness. Excuse me, I apologize,
3 we're talking about jurors, it's on my brain. Any
4 potential witness in this courtroom, and if you heard
5 something and that triggered something, would that
6 substantially impair your ability to be a fair and
7 impartial juror? Take your time, please.

8 A. I guess the only way I know to answer that is if
9 I were to recollect something and people form their
10 opinions, like I said, from other people's opinions
11 sometimes when you're not present at whatever the
12 situation is --

13 Q. Yes, ma'am.

14 A. -- I might could compartmentalize it. I can
15 tell you that I would try, that's the only thing I
16 can say. I would try to compartmentalize it and go
17 from there, you know, facts here, testimony here,
18 remembrances here.

19 Q. And we appreciate the candor. And why we ask
20 this is to make sure that if you don't feel
21 comfortable serving on this case I know you would
22 tell Her Honor and if you believe that any -- there
23 might be a substantial impairment to you sitting as a
24 fair and impartial juror. There's no problem with
25 that as long as everybody tells Her Honor ahead of

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1 time and lets the facts be known and that's why we do
2 this.

3 A. I see.

4 Q. And if that were something you wanted to talk to
5 Her Honor or tell her about that, then that is your
6 province, ma'am, not anybody else's to challenge your
7 integrity.

8 A. Right.

9 MR. CUMMINGS: At that point I would also
10 sit down and reserve any right to ask this lady
11 any more questions in case she wants to speak
12 with Her Honor.

13 THE COURT: Sure. Thank you.

14 EXAMINATION

15 BY THE COURT:

16 Q. Does that jog anything for you one way or the
17 other? Talk about jogging memories.

18 A. You mean as far as what I've recollected?

19 Q. Yeah.

20 A. No. At this point, no.

21 Q. Let me be real clear with you, okay? Because,
22 see, here's the thing, I got to figure it out now if
23 you can be a fair and impartial juror.

24 A. Yes.

25 Q. And now I'm worried that something's going to

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1 jog your memory and you're not going to be fair and
2 impartial anymore. I mean, that's what I'm concerned
3 about. Are you concerned about that? Because there
4 have got to be 12 fair and impartial jurors in this
5 case.

6 A. Yes.

7 Q. That's what there's got to be. That cannot be
8 compromised.

9 A. Quite honestly, as far as being fair I would try
10 to be fair. I'm worried about it, though, because I
11 don't feel that it is my place to determine someone
12 else's guilt or innocence. I'd have to put it that
13 way.

14 Q. Okay.

15 A. I mean, even though I realize how our system
16 works.

17 Q. Right.

18 A. And we have to get people from our community to
19 do this thing.

20 Q. Sure.

21 A. Some people can do this without any qualms. It
22 would weigh on me for quite some time.

23 Q. Okay. Thank you so much. I got it. I've got
24 your concern. And on that basis I am going to excuse
25 you from your service on this jury, Ms. Crook, and

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1 I -- a couple things. First of all, I want to thank
2 you for your candor, it's not easy to be -- it's not
3 easy to share with us that kind of candor and I
4 appreciate that so very much, that's the first thing.
5 The second thing is that I appreciate so much your
6 time and I want you to know that I know how precious
7 that is, so I thank you for that.

8 A. Sure.

9 Q. And I would ask of you if you would please not
10 discuss this part of the process with any of your
11 prospective and -- fellow prospective jurors. And if
12 you would, of course, not discuss this matter with
13 anyone associated with it. And you obviously know
14 some of the potential witnesses and I would ask you
15 to be very careful that you not have any discussions
16 about this matter or anyone else that is associated
17 with this case.

18 A. Yes, ma'am.

19 Q. However, beyond that if you want to talk about
20 it you are free to talk about it.

21 A. Okay.

22 Q. Thank you so much.

23 A. Thank you.

24 (Whereupon, the prospective juror exits the
25 courtroom.)

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1 THE COURT: Okay. Mr. Ralph Rice.

2 (Ralph G. Rice, called as a prospective juror,
3 having previously been duly sworn, is examined
4 as follows:)

5 EXAMINATION

6 BY THE COURT:

7 Q. You're Mr. Ralph Rice and you're Juror Number
8 253?

9 A. Yeah.

10 Q. Mr. Rice, do you remember when we were together
11 on Monday and you were sworn in with the other
12 potential jurors?

13 A. Yeah.

14 Q. I want to tell you the oath you took then is
15 still good and will apply to the answers that you
16 would give us today, okay?

17 A. Uh-huh (affirmative response).

18 Q. Now, sir, since we talked with you on Monday,
19 has anybody talked with you about this case, or tried
20 to approach you about this case, or have you been
21 exposed to any information about this case?

22 A. No, ma'am.

23 Q. All right, sir. I need you to keep your voice
24 up for me just a little bit.

25 A. No.

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1 Q. Thank you so much. When you were back in the
2 jury room did you have an opportunity to review the
3 potential witness list?

4 A. Yes, I did.

5 Q. All right. And are you related by blood or
6 marriage, or acquainted with, do you have any
7 personal or business relationship, or are you
8 connected with any of the folks whose names are on
9 the potential witness list?

10 A. No.

11 Q. All right, sir. I'll put that back down here.
12 Now, Mr. Rice, when we were together on Monday and I
13 asked folks, I had an opportunity to ask folks
14 whether or not they had any opinion about the case,
15 whether they had read, heard, seen anything about the
16 case, or had any bias or prejudice about the case, my
17 notes indicate that none of those things applied to
18 you; is that right?

19 A. That's correct.

20 Q. And is that true even to today?

21 A. Yes.

22 Q. All right. Now, I've got some questions that I
23 need to ask you, Mr. Rice. And I want to tell you
24 that we're not asking you these questions to invade
25 your privacy, we are asking these questions to learn

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1 a little bit about your opinions, about how you feel
2 about certain matters. And we need to know that and
3 understand that so that we can see how your opinions
4 might impact on jury service, okay?

5 A. Uh-huh (affirmative response).

6 Q. Obviously there are no right or wrong answers,
7 obviously your opinions are just as good and valid as
8 anybody else's and we clearly are not here in any way
9 to challenge those opinions, we are just here to
10 learn a little bit about them, okay?

11 A. Okay.

12 Q. In a little bit I'm going to be asking you about
13 penalty, and specifically the death penalty because
14 that may come up in this case. Clearly to talk about
15 penalty at the point in time before a trial even
16 begins is very premature. Obviously it's also
17 premature because Mr. Bowman is presumed innocent of
18 these charges. However, I need to discuss penalty
19 with potential jurors and the only time I can do that
20 is before the trial. So, please keep in mind those
21 two matters, that talk about penalty is a premature
22 time now --

23 A. Yeah.

24 Q. -- and that Mr. Bowman is presumed innocent,
25 okay?

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1 A. Correct.

2 Q. I'm going to be talking to you in terms of
3 generics. I'm not going to ask you your opinions
4 about this case because that wouldn't be fair to you
5 because you don't know anything about this case.

6 A. No.

7 Q. And it wouldn't be right and it wouldn't be
8 proper. So I'm going to be asking you your opinions
9 about generic or general, in general terms, okay? If
10 you were a juror in any criminal trial, would you be
11 willing to listen to the law as it was given to you
12 by the judge?

13 A. Yes.

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

16 A. Yes.

17 Q. Even though you might not particularly like that
18 part of the law, or even if you disagreed with it,
19 would you still be willing to follow the law as you
20 were instructed to do so by the judge?

21 A. Yes. Yes.

22 Q. Now, if you were asked to serve in the case of
23 State vs. Bowman, could you decide this case based
24 upon the evidence in the courtroom?

25 A. Yes, I can.

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1 Q. And if, and for whatever reason, something you
2 may have seen or heard in the past got jogged from
3 your memory from something that you heard in the
4 trial, would you set that memory aside and still
5 decide this case based on the evidence in this
6 courtroom?

7 A. Yes, I could.

8 Q. All right. Now, in a criminal case as you well
9 may know and as we talked about on Monday, the State
10 has the burden of proving a defendant guilty beyond a
11 reasonable doubt. You understand that?

12 A. Yes.

13 Q. A defendant never has to prove himself or
14 herself innocent and a defendant never has to prove
15 anything because he or she is presumed innocent. You
16 know that?

17 A. Yes.

18 Q. And you understand that?

19 A. Yes.

20 Q. All right. Now, if you were a juror in any
21 criminal case, would you be willing to listen to the
22 evidence?

23 A. Yes.

24 Q. Would you be willing to find those facts as you
25 found them to be and would you be willing to apply

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1 the law to those facts as given to you by the judge?

2 A. Yes.

3 Q. And once you did that if you were not convinced
4 that a person's guilt had been proven beyond a
5 reasonable doubt, would you be willing and able to
6 find that person not guilty?

7 A. Yes, I would.

8 Q. And by the same token, if you listened to the
9 evidence and found the facts as you found them to be
10 and applied the law given to you by the judge and if
11 you were convinced that the defendant -- that a
12 person was guilty beyond a reasonable doubt, would
13 you be willing and able to find that person guilty?

14 A. Yes, I would.

15 Q. Now, so you would be willing to listen and make
16 your decision based upon whether or not you were
17 convinced that a person is guilty or not?

18 A. Yes.

19 Q. Now, most of the time, Mr. Rice, jurors don't
20 concern themselves with the matter of punishment.
21 Most of the time in the criminal court that is left
22 up to the judge. There is one case in our law when a
23 jury has to deal with the matter of punishment and
24 that is in the case like this one, it is in a case
25 where an individual has been charged with the crime

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1 of murder and where the State is seeking the death
2 penalty. If an individual in a death penalty case is
3 convicted of the crime of murder, that means that 12
4 jurors were convinced that this person was guilty
5 beyond a reasonable doubt of the crime of murder.
6 Then the jury, the same jury that convicted that
7 person of murder, must come back and in a separate
8 and different proceeding decide the sentence that the
9 person would get.

10 There are only two choices. Number
11 one, life imprisonment without the possibility of
12 parole, and one is the death penalty. That
13 determination, the sentencing would be determined in
14 a second or sentencing phase of the trial as it's
15 called. Do you understand this information?

16 A. Yes.

17 Q. Now, also back in the jury room with you was
18 this piece of paper that essentially describes three
19 jurors, jurors one, two, and three. Do you remember
20 that paper?

21 A. Yes.

22 Q. And do you remember the three types of jurors?

23 A. Yes.

24 Q. Which of those three types of jurors best
25 describes you?

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1 A. I believe number three.

2 Q. Number three. In other words, you would be
3 willing to listen to the evidence and make up your
4 mind about what the appropriate sentence for a person
5 is based upon what you hear in the courtroom?

6 A. Yes.

7 Q. And if after you listened to that evidence if
8 you believed and were convinced that a sentence of
9 death was appropriate, then and in that event would
10 you be able to vote for that sentence?

11 A. Yes, I would.

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

17 A. Yes, I would.

18 Q. So, again, you would make up your mind based on
19 what you heard in the courtroom?

20 A. Yes, I would.

21 Q. If you were chosen to serve as a juror in this
22 case, Mr. Rice, you and the other jurors would be
23 housed here locally in a motel during the course of
24 the trial, the term is called sequestered, and you'd
25 need to stay with us until the trial is over at the

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1 motel except, of course, when you were in the
2 courtroom. And, of course, that would be at the
3 county's expense. This period could be as long as
4 two weeks or longer. Now, it could be shorter, I'm
5 just not exactly sure how long it's going to.

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. Not really, no.

15 Q. You would be able to do that?

16 A. Yes.

17 Q. Thank you so much, Mr. Rice. Mr. Rice, these
18 lawyers have some questions for you also. And I'm
19 going to just ask Mr. Bailey to come forward.

20 MR. BAILEY: Thank you, Your Honor.

21 EXAMINATION

22 BY MR. BAILEY:

23 Q. Mr. Rice, how are you doing?

24 A. All right.

25 Q. I'm Walter Bailey and I'll be prosecuting this

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1 case, I want to ask you a few more questions.

2 A. Okay.

3 Q. And I want to ask you about the death penalty.

4 A. All right.

5 Q. And like Judge Goodstein said, we're not going
6 to talk about this case, you hadn't heard the facts,
7 we're just talking in general, you know, a case like
8 this, for example.

9 A. Uh-huh (affirmative response).

10 Q. The first part of the trial where the State is
11 charging somebody with murder and seeking the death
12 penalty is like any other criminal trial where the
13 State is attempting to prove the defendant that's
14 been charged is guilty of what he's charged with
15 beyond a reasonable doubt. And I think from your
16 questionnaire you'd been on a jury before; is that
17 correct?

18 A. I have.

19 Q. And was that a criminal jury?

20 A. I've been on one criminal and one civil.

21 Q. Okay. So this case is going to be, the first
22 part, anyway, just pretty much like that criminal
23 case you were already on. When the State seeks the
24 death penalty, if the jury finds that defendant
25 guilty of murder beyond a reasonable doubt, we then

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1 shift into the second phase of the trial which is the
2 penalty phase or the sentencing phase. And there
3 will be additional evidence that would come out,
4 additional instructions from the judge to the jury.
5 And once the jury hears all of that they have a
6 decision to make. They've got two choices: Life
7 without parole or the death penalty. And all 12
8 jurors have to eventually agree on one or the other.

9 And what the judge does, once that
10 jury reaches the verdict and unanimously says one or
11 the other, life or death, she will order that
12 sentence to be carried out and it will be carried
13 out. So based on that jury's verdict that defendant
14 either goes to prison for the rest of his life or
15 he's executed.

16 Now, my question to you, and, again,
17 we're not talking about this case, but let's say in a
18 case like this, if the facts that you heard in the
19 second part of that trial were bad enough, could you
20 vote for the death penalty knowing that that person
21 actually would end up being executed based on that
22 jury's vote?

23 A. If the evidence showed that he was or not, if
24 the evidence showed that the death penalty was
25 warranted, I would vote for it, yes.

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1 Q. All right, sir. On the other hand, if you felt
2 leak the death penalty was not warranted, that a life
3 sentence was warranted.

4 A. Yeah.

5 Q. You could vote for that also; is that correct,
6 sir?

7 A. Yes.

8 Q. All right. Assuming the jury votes for the
9 death penalty, then there's a death verdict form,
10 just a piece of paper that's in the jury room and
11 each one of the jurors would be asked to sign their
12 name to that. Could you sign that if that was your
13 decision?

14 A. Yes.

15 Q. And if the jury votes for the death penalty and
16 they sign that paper they then come out in the
17 courtroom here and they're seated in these chairs and
18 each person on the jury would have his name called
19 out one at a time and you'd be asked to stand up when
20 your name was called, announced out loud that that
21 was your verdict, if it's still your verdict. Could
22 you do that if that was your verdict?

23 A. Yes.

24 Q. Mr. Rice, I think that's all I've got. Thank
25 you very much.

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1 THE COURT: Thank you, Mr. Bailey.

2 Mr. Cummings.

3 EXAMINATION

4 BY MR. CUMMINGS:

5 Q. Good afternoon, Mr. Rice. I'm Norb Cummings,
6 sir, that young lady there is Ms. Marva Hardee-Thomas
7 and we're both appointed to represent Mr. Marion
8 Bowman, Jr. there, sir. I am going to be very brief,
9 you answered a lot of questions for Her Honor and Mr.
10 Bailey, sir.

11 A. Yeah.

12 Q. Mr. Rice, I know Mr. Bailey asked you this
13 especially, you served on both kinds of juries. And
14 you understand and you appear to be a gentleman of
15 strong convictions that believes that every citizen
16 is innocent until proven guilty beyond a reasonable
17 doubt?

18 A. Yeah.

19 Q. And you would hold that principle of innocence
20 until and unless that's proven to you, sir?

21 A. Yeah.

22 Q. All right. Now, one of the issues that may come
23 into play is if and when any citizen is ever
24 convicted of murder, if that happens then and only
25 then do we get to the second part, sir, and that's

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1 the penalty phase like Her Honor told you. For no
2 reason or for whatever reason the 12 members of the
3 jury decide on life they can do that. Would you be
4 willing to consider that?

5 A. Yes.

6 Q. You'd also be willing according to your sworn
7 testimony that you would consider the death penalty
8 sir?

9 A. Uh-huh (affirmative response).

10 Q. All right. And one of the questions I have and
11 this is not meant to embarrass you, sir, and, please,
12 don't hold it against me, when we read these things,
13 we really do, question number 50 there's a wonderful
14 lady in here that says I wrote for Ralph his answers,
15 Verna L. Rice. Can you tell us who that wonderful
16 lady is, sir?

17 A. That's -- Verna L. Rice is my mother.

18 Q. Okay. That's Mom, okay.

19 A. Yeah.

20 Q. Could you just briefly explain to Her Honor and
21 I how come Mom wrote the answers out instead of you,
22 sir?

23 A. Well, my writing isn't that legible.

24 Q. Yes, sir.

25 A. And sometimes it's hard to read. It's hard to

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1 read my writing.

2 Q. Yes, sir.

3 A. I read very well, but my writing isn't really up
4 to snuff and it changes every time I write. I never
5 write the same way twice.

6 Q. You would have been a wonderful doctor. And,
7 Mr. Rice, what I'm getting to is that each and every
8 one of these answers that Her Honor -- and this
9 document's signed under penalty of perjury, are these
10 Mr. Ralph Rice's answers as Mom just wrote it down?

11 A. Yeah. These are answers that I would give, yes.

12 Q. All right. And that would be the important part
13 there. That's the only reason I ask you is because
14 if you did not write those answers, then it would not
15 be your sworn issues on that. And you understand the
16 importance of that?

17 A. Yes.

18 Q. And you understand when you were talking with
19 Her Honor a few moments ago, everything you told her
20 would have to be the truth and the utmost truth?

21 A. Yes.

22 Q. All right. Mr. Rice, I thank you.

23 MR. CUMMINGS: I beg the Court's
24 indulgence.

25 THE COURT: Sure.

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

3 MR. CUMMINGS: Thank you, Judge. That's
4 all the questions we have of this gentleman

5 THE COURT: Thank you. Mr. Rice, I'm going
6 to ask you to just step outside the courtroom
7 for just a moment. Do not even sit down because
8 you're not going to have time. We'll be right
9 back with you.

10 MR. RICE: Okay.
11 (Whereupon, the prospective juror exits the
12 courtroom.)

13 THE COURT: Mr. Bailey.

14 MR. BAILEY: Qualified, Your Honor.

15 THE COURT: Mr. Cummings?

16 MR. CUMMINGS: Thank you, Judge. I think
17 the gentleman is qualified. The only concern I
18 have, it's just like with Mr. Davis, somebody
19 else fills out the questionnaires. He's
20 explained it, though, and if he's satisfied Her
21 Honor then....

22 THE COURT: All right. It's exactly right,
23 you can look at the handwriting. You can look
24 at the first page, it's his handwriting, and you
25 can see where he went and got some help to

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1 finish it out, so yeah.

2 MR. CUMMINGS: Thank you, Judge, he's
3 statutorily qualified other than that.

4 THE COURT: Thank you so much. Ask him to
5 come back in.

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

8 THE COURT: Mr. Rice, you have been found
9 to be qualified as a potential juror in the
10 case. Now, that does not mean that you are on
11 the jury yet. It just means that you are a
12 potential juror and you may be selected to be on
13 this jury. We are hoping, hoping, hoping that
14 we will be able to select the jury on Friday,
15 tomorrow, at ten o'clock.

16 This may still be a little bit
17 ambitious, I may need to push that time back a
18 couple of hours, but if I need to push that back
19 I would let you -- somebody would call and let
20 you know that, okay?

21 MR. RICE: Fine.

22 THE COURT: But unless you hear from us
23 would you be, please be back at ten o'clock in
24 the morning. And I'm going to give you this
25 sheet of paper, it says Friday at ten o'clock.

Juror 253 Ralph G. Rice - Examination

1 And it has some other information on that for
2 you, like to remind you to pack your clothes and
3 bring any medicines that you might need for the
4 period, and where you would be staying. It
5 gives you emergency numbers during the day and
6 at night. Please feel free to share that
7 information with anyone that you need to or
8 choose to share that information with.

9 But also be mindful that you must not
10 talk about this case or any aspect of it, and do
11 not expose yourself to any information at all
12 about this case. And thank you so much and I
13 look forward to seeing you tomorrow. You
14 understand all this?

15 MR. RICE: Yeah. So I'll be here at 10:00.

16 THE COURT: Ten o'clock unless you hear
17 from us.

18 MR. RICE: Okay.

19 THE COURT: Thanks so much, Mr. Rice.

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

22 THE COURT: All right. We now need Mary
23 Palmer.

24 MR. BAILEY: She was excused.

25 THE CLERK: She was over 65.

State vs. Bowman Volume XVIII

1 THE COURT: Nobody has updated me.

2 MR. CUMMINGS: Yes, ma'am.

3 THE COURT: I'm doing the mushroom thing.

4 MR. BAILEY: Born in 1902.

5 THE COURT: She was Ms. 1902. So now we're
6 into the five o'clock. Great. Then let us
7 have, please, there's a gentleman that was
8 here -- oh, he just arrived, he didn't get the
9 word about being here.

10 THE CLERK: Right. We got two that didn't
11 get the word, but one was four o'clock, but for
12 5:30 so he's been here a little while. And one
13 was for 5:30 originally, then changed to nine in
14 the morning, but he didn't get the word so he's
15 staying, too.

16 THE COURT: Very good. Now, there's a
17 gentleman who didn't have telephone access and
18 he's been here since four o'clock for his 5:30
19 appointment. Who is he?

20 THE CLERK: Mr. Hammond.

21 THE COURT: Mr. Hammond. Do you all object
22 to taking Mr. Hammond out of step since he's
23 been here? He won't come out of step in terms
24 of his number.

25 MR. BAILEY: Okay.

State vs. Bowman Volume XVIII

1 THE COURT: I won't move him out, it's just
2 as an accommodation, we will just interview
3 first. I'm not going to move him out of the
4 lineup.

5 MR. CUMMINGS: Based on that, sure.

6 MR. BAILEY: Just to be sure I follow what
7 we're doing here, I've got 41 qualified now and
8 we're going to go to 43, is that...?

9 THE COURT: We got to have 43. I was
10 contemplating going to 45.

11 MR. BAILEY: Okay.

12 THE COURT: Why? Let me tell you why.

13 MR. BAILEY: I didn't say why. You're
14 reading my mind, I guess.

15 THE COURT: Yeah, yeah, yeah. The why
16 part -- come here, let me see you all.

17 (Whereupon, a bench conference was held off the
18 record.)

19 (Recess, from 5:45 p.m. to 5:54 p.m.)

20 THE COURT: Mr. Wallace Hammonds.

21 MR. BAILEY: If he qualifies he would be
22 45. Or we don't know where he would be.

23 THE COURT: No, he would be. Oh, no, not
24 Mr. Hammonds, no, no, because he's down and he
25 would be 44. Forty-four is what I have.

State vs. Bowman Volume XVIII

1 MR. BAILEY: Okay.

2 (Wallace M. Hammonds, called as a prospective
3 juror, having previously been duly sworn, is
4 examined as follows:)

5 EXAMINATION

6 BY THE COURT:

7 Q. Hi, Mr. Hammonds.

8 A. Hi.

9 Q. How are you?

10 A. So far so good.

11 Q. I'm so glad. Mr. Hammonds, you will remember
12 when we were together on Monday, gosh, it seems like
13 a long time ago, but when we were together on Monday
14 you were sworn in as a potential juror. Do you
15 remember that, with all the other folk?

16 A. Yes.

17 Q. All right, sir. And I would just tell you that
18 the oath that you took on Monday is still good today
19 and it still applies to the questions and the
20 answers, of course, that you'll share with us today,
21 okay?

22 A. Yeah, yeah. Sure.

23 Q. All right. Now, since we were here on Monday,
24 Mr. Hammonds, has anybody talked to you or approached
25 you about this case, or have you been exposed to any

Juror 124 Wallace M. Hammonds - Examination

1 information about this case?

2 A. No.

3 Q. All right, sir. Now, did you have a chance to
4 look at the potential witness list back there?

5 A. I did. I did, yeah.

6 Q. Are you related by blood or marriage?

7 A. No. I don't identify any names on that list.

8 Q. You don't identify any names on this list, okay.

9 A. No.

10 Q. Now, if you will recall on Monday I went over
11 some questions like did you have any opinion about
12 this case, had you read or seen or heard anything
13 about this case and had you -- did you have any bias
14 or prejudice for or against either of these parties.
15 And you did not indicate to me that any of those
16 things applied to you; is that right?

17 A. That's correct.

18 Q. And that continues to today?

19 A. Yeah, sure it does.

20 Q. Okay. Mr. Hammond, I have certain questions
21 that I need to ask you. And I want to tell you that
22 I absolutely have no intention of invading your
23 privacy, so I want you to relax about that.

24 A. Yeah. Go ahead.

25 Q. And also I want to tell you that the purpose of

Juror 124 Wallace M. Hammonds - Examination

1 my questions is to learn a little bit about some of
2 your opinions, to see if those opinions would or
3 might impact on your jury service, okay?

4 A. Yes.

5 Q. Be mindful there are no right or wrong answers.
6 And we are certainly not going to challenge your
7 opinions, and of course they're as good and fine and
8 valid as anybody else's and be aware of that, too,
9 okay?

10 A. Certainly.

11 Q. All we need to do is learn a little bit about
12 them, okay? And I am going to be asking you in a few
13 moments about your opinion about penalty, about the
14 death penalty. And I want you to also -- and I want
15 to say -- well, let me tell you first the reason I'm
16 even going to ask you about that is because it may be
17 an issue in this case. So I need to ask you about
18 it, but I want you to know that it's real premature
19 to ask you about that right now because the trial
20 hasn't even begun and because Mr. Bowman is presumed
21 innocent under the law. So I'm going to ask you to
22 just keep that in mind as we go through these
23 questions, okay?

24 A. Yeah.

25 Q. All right, sir. Now, I'm also going to be

Juror 124 Wallace M. Hammonds - Examination

1 asking you these questions in a general or generic
2 sense, because it wouldn't be fair for me to ask you
3 specifically about this case and I'm not going to ask
4 you about this case, but I am going to ask you your
5 opinions in a general sense, okay?

6 A. Yes.

7 Q. Mr. Hammonds, I would ask if you were a juror in
8 any criminal case, would you be willing to listen to
9 the instructions on the law given to you by the
10 judge?

11 A. Certainly, yeah.

12 Q. All right, sir. And would you be willing to
13 apply that law to the facts as you would find them to
14 be?

15 A. Yes.

16 Q. Even though you might not particularly like that
17 part of the law or you might even feel like you
18 disagree with it, but would you still be willing to
19 follow the law as you were instructed to do so by the
20 judge?

21 A. I would.

22 Q. Now, in the event that you were asked to serve
23 on the case of State vs. Bowman, could you decide
24 this case based upon the evidence in this courtroom,
25 that you would hear in the courtroom?

Juror 124 Wallace M. Hammonds - Examination

1 A. That would be the only way.

2 Q. Thank you, sir. And if something in your memory
3 got jogged by something you heard in the courtroom
4 about maybe I heard something about that, or maybe I
5 saw something about that, could you set this memory
6 aside and focus on what was in this courtroom?

7 A. I could.

8 Q. All right, sir. Now, in a criminal case as you
9 know and as we talked about on Monday, the State has
10 the burden of proving the guilt of a defendant beyond
11 a reasonable doubt. A defendant never has to prove
12 himself or herself innocent, they are presumed
13 innocent under the law and the State always maintains
14 the burden of proof. You understand this,
15 Mr. Hammonds, do you?

16 A. I do.

17 Q. All right, sir. Now, if you were a juror in any
18 criminal case, would you be willing to listen to the
19 evidence, find the facts as you found them to be, and
20 then apply the law to those facts as the judge would
21 give it to you?

22 A. I would.

23 Q. And after you did that if you were not convinced
24 of a person's guilt beyond a reasonable doubt, would
25 you be willing and able to find that person not

Juror 124 Wallace M. Hammonds - Examination

1 guilty?

2 A. I would.

3 Q. And on the other hand, if after you listened to
4 all the evidence, found the facts as you found them
5 to be, applied the law to those facts, if you were
6 convinced that a person was guilty beyond a
7 reasonable doubt would you be willing and able to
8 find that person guilty?

9 A. Sure.

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

✓ 14 A. That's right.

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

24 If an individual in a death penalty
25 case is convicted of the crime of murder, which means

Juror 124 Wallace M. Hammonds - Examination

1 that the 12 jurors all were convinced that a person
2 was guilty of the crime of murder beyond a reasonable
3 doubt and they found him or her guilty, that's the
4 first part. And for this question that has happened.

5 A. That's happened.

6 Q. Then the same jury that convicted him or her of
7 murder must come back.

8 A. Oh, yes.

9 Q. And in a separate and different proceeding
10 decide the sentence that that person would get.

11 A. Yes.

12 Q. And there are two choices. One is life
13 imprisonment without the possibility of parole, and
14 the other is the death penalty. That would be
15 determined in that second or sentencing phase of the
16 trial.

17 A. Understood. Understood.

18 Q. All right. Now, back in that jury room with you
19 there was this piece of paper that essentially
20 described the three types of jurors. Do you remember
21 that paper? I'm going to hand it to you.

22 A. Okay.

23 Q. Which of those three types of juror best
24 describes you?

25 A. Number two.

Juror 124 Wallace M. Hammonds - Examination

1 Q. Number two. Tell me why. Describe for me why
2 number two.

3 A. That's the way I feel. That's a feeling I have.
4 You know, I'm not a staunch an eye for an eye and --

5 Q. Yes, sir.

6 A. Like I would -- and I think that the penalty
7 itself would have to go along with the case.

8 Q. Yes, sir.

9 A. Okay?

10 Q. Yes, sir. In other words --

11 A. Blatant murder, you know, we come up and find
12 blatant murder, you know, number one would more or
13 less apply. Then, again, if it's another -- it's the
14 circumstance that must apply to each one of these,
15 that's what I'm trying to say.

16 Q. I understand.

17 A. Okay.

18 Q. In other words, depending upon what you learned
19 about in that second phase of the trial.

20 A. Right.

21 Q. Then you would have to hear that before you can
22 make up your mind?

23 A. Right.

24 Q. All right, sir. And if you in that second
25 phase, if you listened to all the evidence.

Juror 124 Wallace M. Hammonds - Examination

- 1 A. Okay.
- 2 Q. And you were convinced after you listened to all
3 that evidence that the death sentence was
4 appropriate.
- 5 A. Yeah.
- 6 Q. Could you vote for that sentence?
- 7 A. Oh, yeah.
- 8 Q. All right, sir.
- 9 A. Yeah.
- 10 Q. All right, sir. And on the other hand, if you
11 didn't think the death sentence was appropriate, or
12 for any other reason that you thought a person ought
13 to receive a sentence of life imprisonment, could you
14 vote for that sentence?
- 15 A. I could.
- 16 Q. So you would make up your mind based on what you
17 heard in the courtroom?
- 18 A. Certainly.
- 19 Q. Now look at type number three for me, just look
20 at it for me.
- 21 A. All right. I read that.
- 22 Q. What do you think?
- 23 A. That doesn't apply to me. That's too wishy
24 washy. I didn't like that. That didn't apply to me.
- 25 Q. That didn't apply to you. All right. Very

Juror 124 Wallace M. Hammonds - Examination

1 well. Very well. All right, sir. Now, let me tell
2 you what, Mr. Hammonds --

3 MR. CUMMINGS: Judge, ma'am, just one more,
4 please.

5 THE COURT: Hold on one second.

6 MR. CUMMINGS: Judge, Walter and I just
7 approach for a moment?

8 THE COURT: You're fine.

9 MR. HAMMONDS: No, I'm not.

10 THE COURT: Yes, you are.

11 (Whereupon, a bench conference was held off the
12 record.)

13 Q. All right, sir. Now, even though you think
14 those words are wishy washy, what you're telling me
15 is that you need to hear in that sentencing phase all
16 the evidence?

17 A. Yeah, yeah, yeah.

18 Q. And you make up your mind on that evidence?

19 A. Yes.

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

Juror 124 Wallace M. Hammonds - Examination

1 are in the courtroom. This period could be as long
2 as two weeks or longer.

3 Obviously, that's going to 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 that would have to serve
7 on this jury and in this capacity, would that pose a
8 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. Since Monday.

12 Q. Since Monday?

13 A. My wife has been diagnosed with cancer and she
14 just started chemo today.

15 Q. Oh, Mr. Hammonds, I understand. Then it would?

16 A. It would.

17 Q. It would. It surely would.

18 A. Right now, you know.

19 Q. It surely would, okay.

20 MS. HARDEE-THOMAS: Your Honor.

21 Q. It surely would. It surely would. All right.

22 THE COURT: I need to share that with them.

23 Let me do that quietly. Shall I do that
24 quietly? Let me see you, counsel.

25 (Whereupon, a bench conference was held off the

Juror 124 Wallace M. Hammonds - Examination

1 record.)

2 THE COURT: Mr. Hammonds, allow me.

3 Mr. Hammonds has just shared with me that since
4 he was here on Monday that his beloved, his
5 wife, has been diagnosed with cancer and has
6 this day begun chemotherapy. Counsel, I am
7 happy to hear from you, I'm happy for you to
8 question Mr. Hammonds, but that under those
9 circumstances this man should be, and I'm going
10 to excuse him. But I -- certainly under the
11 law, Mr. Cummings, particularly, and you, Mr.
12 Bailey, are entitled to ask him questions, but
13 let me just inform you that that is his
14 circumstance and that is compelling.

15 MR. BAILEY: State has no questions, Your
16 Honor.

17 MS. HARDEE-THOMAS: No.

18 MR. CUMMINGS: Based on the representations
19 this gentleman has made to the Court and with
20 the most humble way of saying we wish you the
21 best and peace, I think Your Honor's ruled.

22 THE COURT: But I don't want to keep you --
23 you understand you are welcome to examine him.

24 MR. CUMMINGS: No. Mr. Bowman just yanked
25 me on the coat and said don't ask this gentleman

Juror 124 Wallace M. Hammonds - Examination

1 any questions; is that correct, sir?

2 MR. BOWNAN: Yes, ma'am.

3 THE COURT: Thank you for your time, it's a
4 gift. I want you to know I know that's a gift.
5 The only thing I would ask of you is that you
6 not discuss this process with your fellow
7 prospective jurors.

8 MR. HAMMONDS: Oh, yeah.

9 THE COURT: And then anybody associated
10 with this case, of course you can't talk about
11 it, you know that. But anybody else you're free
12 to talk about it if you wish. Thank you so
13 much. Anything for work, you need any kind of
14 excuses for work?

15 MR. HAMMONDS: No, I can handle that.

16 THE COURT: Good luck to you, Mr. Hammonds.
17 We have your bride in our thoughts and prayers.

18 MR. HAMMONDS: I appreciate that.

19 THE COURT: You bet. Yes, sir.

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

22 THE COURT: Mr. Sweatman.

23 (Dannie W. Sweatman, Jr., called as a
24 prospective juror, having previously been duly
25 sworn, is examined as follows:)

Juror 294 Dannie W. Sweatman, Jr. - Examination

EXAMINATION

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BY THE COURT:

Q. How are you, Mr. Sweatman?

A. I'm pretty good.

Q. Good. Mr. Sweatman, you will remember when we were together on Monday that you were placed under oath with all the other prospective jurors.

A. Right.

Q. I would just tell you that that oath still remains in effect and would be -- I don't have to put you under oath again because it's still good.

A. Okay.

Q. Still works for the answers that you would give us. Now, Mr. Sweatman, since we talked with you on Monday, has anybody talked to you, or tried to approach you, or have you exposed yourself inadvertently or otherwise to any information about this case?

A. No.

Q. All right, sir. Now, back in the jury room there was the prospective witness list.

A. Right.

Q. Did you have a chance to look at it?

A. Yes.

Q. And are you related by blood or marriage or

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 acquainted with, or have a business or casual or
2 personal relationship or any connection direct or
3 otherwise, with any of the folks who are listed on
4 the potential witness list?

5 A. No.

6 Q. All right, sir. Now, when we were together on
7 Monday I asked prospective jurors whether or not
8 anybody had an opinion, whether or not anybody knew
9 or had read or had seen anything about this case, or
10 whether or not anybody had a bias or a prejudice for
11 or against either side in this case. And my notes
12 indicated that none of those applied to you; is that
13 right?

14 A. That's right.

15 Q. And does that continue to today?

16 A. Yes, ma'am.

17 Q. Mr. Sweatman, I've got some questions that I'm
18 going to ask you, but I did want to give you a little
19 bit of explanation about the questions themselves.
20 The purpose of these questions is just to find out a
21 little bit about how you feel about certain matters,
22 to get your opinion, if you will. The reason for
23 that is so that we can determine whether or not your
24 opinions might have any impact on your jury service,
25 that's the purpose of it.

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 A. Okay.

2 Q. We are aware that your opinions are as good and
3 valid as anybody else's and I want you to know that
4 there are no right or wrong answers and that we
5 certainly aren't here to challenge any of your
6 opinions, we just need to understand and hear a
7 little bit about them, okay?

8 A. Okay.

9 Q. And in a few moments I'm going to be asking you
10 your opinion about penalty, specifically the death
11 penalty, because that may be an issue in this case.
12 But I want you to know that asking about penalty at
13 this point clearly is premature because the trial
14 hasn't begun, Mr. Bowman is presumed innocent of
15 these charges, but there's no other way for me to
16 talk with prospective jurors about how they feel
17 about that issue unless I do it at this point.

18 So, please keep in mind that the
19 discussion is one of a premature matter and that
20 Mr. Bowman is presumed innocent. Would you do that
21 for me, too?

22 A. Yes, ma'am.

23 Q. And, Mr. Sweatman, also I'm going to be asking
24 you questions in a generic or a general sense. I'm
25 not going to ask you about your opinions about this

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 case because that wouldn't be fair to you and it
2 would be improper, so I'm not going to do that. But
3 I am going to ask you opinions in the generic or
4 general sense, so just know that that's what I'm
5 asking and it would be the general sense and to that
6 end I'm going to start that now.

7 If you were a juror in any criminal
8 case, in any criminal case, would you be willing to
9 listen to the instructions on the law as the judge
10 gave them to you?

11 A. Yes.

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

14 A. Right.

15 Q. Even if you didn't like that part of the law,
16 even if you disagreed with it, would you still be
17 willing to follow the law as you were instructed by
18 the judge?

19 A. Right.

20 Q. Right means yeah, doesn't it?

21 A. Yeah.

22 Q. Now, if you were to serve in the case of the
23 State vs. Mr. Bowman, could you decide this case
24 based solely on the evidence in this courtroom and
25 disregard anything that you may have seen or heard or

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 read about this case from any source at all, if
2 anything like that should come to your memory? Let
3 me tell you what I'm talking about. Sometimes when
4 jurors are sitting on cases they listen to the
5 evidence and they'll hear something and that will jog
6 their memory. My question simply at this point is if
7 that happened to you, would you be willing to set
8 that memory aside and try the case based on what you
9 hear and in the courtroom?

10 A. Yes.

11 Q. All right, sir. Now, in a criminal case as you
12 very well may know and as we talked about on Monday,
13 the State has the burden of proving the defendant
14 guilty beyond a reasonable doubt and a defendant
15 never has to prove himself or herself innocent. A
16 defendant never has to prove anything, the burden is
17 always on the State and a defendant is always
18 presumed innocent. Do you know these and understand
19 these matters?

20 A. Not really.

21 Q. Okay. Let me go over those with you again,
22 okay, to make sure you understand them.

23 A. Okay.

24 Q. Under our law a person is presumed innocent.

25 A. Right.

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 Q. The State has the burden of proving a defendant
2 guilty beyond a reasonable doubt. And that's the
3 State's burden. An individual, a person never has to
4 prove himself or herself innocent because the --
5 because the burden of proof is always upon the State
6 to prove someone guilty beyond a reasonable doubt.

7 A. I understand.

8 Q. Are you with me? Before I probably -- it didn't
9 sound quite right when it came out so thank you for
10 pointing that out to me. But you do understand those
11 principles?

12 A. Right.

13 Q. Okay. Now, if you were a juror in any criminal
14 case, you would be willing to listen to the evidence,
15 find the facts as you found them to be, and apply the
16 law that the judge would give to you to those facts?

17 A. Right.

18 Q. And if you were not convinced that a person is
19 guilty, a person had been proven guilty beyond a
20 reasonable doubt and you were not convinced, would
21 you be willing and able to find that person not
22 guilty?

23 A. Repeat it again.

24 Q. Sounds like a trick question. The question is,
25 would you be willing to listen to the evidence and

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 make your decision based upon whether or not you were
2 convinced that a person is guilty or not?

3 A. I'd say yes.

4 Q. Yes, sir. In other words, if you listened to
5 the evidence, find the facts as you found them to be
6 and applied the law, if after you've done that if you
7 are not convinced somebody is guilty, would you find
8 them guilty?

9 A. No.

10 Q. I mean, if you didn't think they were guilty
11 would you find them guilty, I mean?

12 A. No.

13 Q. All right. That's really what the question is.
14 And so if you went through that exercise, listened to
15 the evidence, found the facts as you found them to be
16 and applied the law, if you were not convinced that a
17 person had been proven guilty beyond a reasonable
18 doubt, would you be willing and able to find them not
19 guilty?

20 A. I'm still getting confused.

21 Q. All right. Tell me what you're confused about.
22 In other words, you understand that the State, before
23 somebody can be convicted, the jury has to believe
24 that someone is guilty beyond a reasonable doubt. Do
25 you understand that?

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 A. Right. Right.

2 Q. Okay. So if you were on a jury in any criminal
3 case and you did not think, you were not convinced
4 that the State had done that, that the State had not
5 proven somebody guilty beyond a reasonable doubt, you
6 wouldn't find them guilty, would you?

7 A. No. No.

8 Q. What would you do, you would find them not
9 guilty?

10 A. I imagine so.

11 Q. Okay. Because the jury's got -- you know, when
12 a jury deliberates they got to find a defendant
13 guilty or not guilty, okay? So what I'm saying is if
14 you weren't convinced that they were guilty --

15 A. I wouldn't find them guilty.

16 Q. You would find them not guilty?

17 A. Right.

18 Q. Right?

19 A. Right.

20 Q. Exactly. So are you following me now?

21 A. I think so.

22 Q. In other words, would you find someone guilty
23 that you thought --

24 A. That was not guilty?

25 Q. Yeah, exactly.

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 A. No, all right.

2 Q. And would you have to be convinced that someone
3 was guilty before you were willing to find them
4 guilty?

5 A. Right. Right.

6 Q. Okay. All right. I think we're there.

7 A. It took a little bit to get in there.

8 Q. Well, you know, that's all right. Now, most of
9 the time jurors do not concern themselves with the
10 matter of punishment. Most of the time in the
11 criminal court that is left up to the judge. But
12 there is one case in our law when a jury has to deal
13 with the matter of punishment and that is in the case
14 like this one, it is in a case where an individual
15 has been charged with the crime of murder and where
16 the State is seeking the death penalty.

17 If an individual in a death penalty
18 case is convicted of the -- convicted of the crime of
19 murder, let me tell you what will happen. If the 12
20 members of the jury are convinced that someone is
21 guilty of murder beyond a reasonable doubt in a death
22 penalty case, after the jury has convicted that
23 person they come back and in a separate and different
24 proceeding that jury, the same jury that earlier
25 convicted him or her of murder, comes back and

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 considers the issue of what ought to be the
2 punishment. There are two choices. I'm going to
3 sneeze. Excuse me. One is life imprisonment without
4 the possibility of parole, and the other is the death
5 penalty. The decision of penalty is made in that
6 second or sentencing phase of the trial as it's
7 called. Do you understand this information?

8 A. I think so what you asked.

9 Q. In other words, obviously in a death penalty
10 trial --

11 A. Right.

12 Q. -- if a defendant is not found guilty of murder
13 then the case is over.

14 A. Right.

15 Q. But in the event that a defendant, him or her,
16 is found guilty of murder, then that same jury comes
17 back in what's call the sentencing phase, and listen
18 to the evidence, listen to the instructions from the
19 judge and then the jury makes the determination if
20 the defendant should receive a penalty of life
21 imprisonment without parole or the death penalty.

22 A. I understand.

23 Q. Okay. Now, have you had a chance to look at
24 this paper --

25 A. Yes.

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 Q. -- that was in the jury room? And it
2 essentially describes three types of jurors, right?
3 Did you have a chance to look at the three types?

4 A. Yeah. I went over it three or four times.

5 Q. Good for you. Now, which of those three types
6 of jurors do you think best describes you?

7 A. More type three.

8 Q. Type three. In other words, you would be
9 willing to listen to the evidence and make up your
10 mind based upon what you hear in the courtroom?

11 A. Yes, ma'am.

12 Q. In other words, if after you listened to the
13 evidence, if you found, if you were convinced that a
14 person ought to receive a death sentence then you
15 would be willing and able to vote for that sentence?

16 A. Right.

17 Q. And on the other hand, if you didn't think that
18 the death sentence was appropriate or for any other
19 reason you thought the person ought to receive life
20 imprisonment, then you would be able and willing to
21 vote for that sentence?

22 A. Yeah. Right.

23 Q. So you would make your decision based on what
24 you heard in the courtroom?

25 A. Right.

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 Q. Now, Mr. Sweatman, if you were chosen to serve
2 as a juror in this case you and the other jurors
3 would be housed here locally in a motel, the word is
4 sequestered. And you would remain with us during the
5 course of the trial. The trial is expected to last
6 about two weeks, could be a little bit longer, could
7 be a little bit shorter. Obviously that would create
8 an inconvenience for you as it surely will for all
9 who serve on this jury. Other than the inconvenience
10 which it would cause anybody who would have to serve
11 in this capacity, would that pose a serious risk of
12 danger to your health or well being, or to that of
13 anybody who is dependent upon you if you had to serve
14 in that capacity?

15 A. It's more my job, mostly that.

16 Q. It's mostly your job?

17 A. Right.

18 Q. Tell me about your job.

19 A. In other words, I work for my dad, but he's not
20 able to work and me and my brother runs the company.
21 And we got a crew of fellows who have to work so
22 somebody has to be there to work them.

23 Q. Yeah.

24 A. It's more like that.

25 Q. I understand. Do you think that your brothers

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 can handle it just for the period about two weeks?

2 A. When's this going to start?

3 Q. Tomorrow.

4 A. Next weekend I got a family reunion.

5 Q. The next weekend you have a family reunion.

6 Where is that family reunion?

7 A. Ladson.

8 Q. It's in Ladson. How long does the family

9 reunion last?

10 A. Friday to early that Sunday.

11 Q. What are you supposed to do at the family

12 reunion?

13 A. I'm supposed to cook.

14 Q. You're supposed to cook?

15 A. Barbecue a hog.

16 Q. You are?

17 A. Yeah.

18 Q. And do your brothers know how to do that?

19 A. They're not with this family, the other side of
20 the family.

21 Q. Oh, it's your wife's family?

22 A. Right.

23 Q. You reckon they would be willing to help out,
24 help you do that?

25 A. I don't know, I guess I have to.

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 Q. I understand. I understand. Let me think about
2 that, okay? Let me ask you to, please, answer
3 questions that these folks, these lawyers have for
4 you if you would be so kind.

5 THE COURT: I think Mr. -- I think you went
6 first. I don't think either one of you went.

7 MR. BAILEY: I don't remember.

8 THE COURT: Mr. Bailey, I think you're up.

9 EXAMINATION

10 BY MR. BAILEY:

11 Q. I'm Walter Bailey, I'll be prosecuting the case.
12 And I think the judge pretty much asked most of the
13 questions, I want to ask you a couple more and this
14 is in regards to the death penalty. And, again,
15 we're not talking about this case in particular, you
16 hadn't heard the facts.

17 A. Right.

18 Q. But if you were on a jury and the death penalty
19 became an issue and you and the other jurors voted
20 for the death penalty, could you sign a piece of
21 paper saying that's what your vote was?

22 A. Yes.

23 Q. Along with the other jurors?

24 A. (Nodding.)

25 Q. And if you were asked to -- there's something

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 called polling the jury where if all the jurors vote
2 for the death penalty then each one of names are
3 called out and they're asked to say out loud if
4 that's their verdict. Could you do that if that was
5 your verdict?

6 A. Yes.

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

8 THE COURT: Thank you very much, Mr.

9 Bailey.

10 Yes, sir, Mr. Cummings.

11 EXAMINATION

12 BY MR. CUMMINGS:

13 Q. I'm Norb Cummings, this is Ms. Marva
14 Hardee-Thomas and we are both appointed to represent
15 Mr. Marion Bowman here, sir. I'm just going to ask
16 you a few questions, also I promise you you'll be
17 able to get out of that chair. One of my first
18 questions is you did put down in your questionnaire
19 that you had back surgery and it hurts you to sit
20 down for a long time?

21 A. Right.

22 Q. You know, if there's any discomfort or whatever
23 you can talk to Her Honor about that.

24 A. Right.

25 Q. So that would not substantially impair you to be

Juror 294 Dannie W. Sweatman, Jr. - Examination

1 a fair and impartial juror in this case if you were
2 sitting on a jury, any back problems?

3 A. No. I done sat in that chair, it feels all
4 right.

5 Q. All right, sir. And then I would ask you also,
6 you said in here you had six weeks to complete a job.

7 A. Right.

8 Q. And you, Mr. Sweatman, probably understand the
9 importance of any citizen being tried by his peers,
10 that every juror pay attention and just dedicate
11 themselves to being in this courtroom.

12 A. Right.

13 Q. And I think Her Honor was trying to get the
14 feeling from you about whether you could set that
15 aside and be a juror in this case, if needed.

16 A. Right.

17 Q. All right, sir. And on your questionnaire, and
18 I don't know if I'm reading correctly, it appears the
19 last page hasn't been signed, Mr. Sweatman. I don't
20 know if Her Honor has your copy up there?

21 THE COURT: Let me see. I do not see it.

22 Q. And the reason I would ask you that, sir, a lot
23 of times it's a long questionnaire, it takes a long
24 time to fill it out. Was that an oversight on your
25 part?

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1 A. Yes, sir.

2 THE COURT: There you go. Are you willing
3 to sign that now? Here's the rest of it. Do
4 you need to glance at the rest of it,
5 Mr. Sweatman?

6 MR. SWEATMAN: No.

7 (Mr. Sweatman signs his jury questionnaire
8 form.)

9 Q. Mr. Sweatman, I'm sorry, just a few more
10 questions. When it came to -- Her Honor asked you a
11 question about guilt or innocence, and I understand
12 you were asked a lot of questions and you're trying
13 to watch your responses back. I'm just trying to ask
14 you real simple questions right now and if I confuse
15 you, sir, you'll stop me and tell me, right?

16 A. Yes.

17 Q. All right, sir. Do you believe in the
18 fundamental principle that every citizen is innocent
19 until proven guilty?

20 A. Right.

21 Q. And you would entitle any citizen to that
22 principle?

23 A. Right.

24 Q. And you would follow Her Honor's instructions as
25 to that?

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1 A. Right.

2 Q. All right. And then only if the State proved
3 this person guilty beyond a reasonable doubt to the
4 jury's satisfaction you would not vote for guilt; is
5 that correct?

6 A. Right.

7 Q. And thereafter you're the type of gentleman that
8 if somebody had been convicted of murder you would
9 consider both types of punishments before voting?

10 A. Right.

11 Q. And you would not take that lightly, sir?

12 A. Right.

13 MR. CUMMINGS: Beg the Court's indulgence,
14 Your Honor.

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

17 MR. CUMMINGS: That's all the questions of
18 this gentleman. Thank you, Judge.

19 THE COURT: I'd like for you to be with us,
20 Mr. Sweatman, and I'm sitting here thinking
21 about the family reunion and the need to do the
22 hog and the work next week. If you were to
23 serve on this jury, would you be worried about
24 with work next week?

25 MR. SWEATMAN: Not as much as I would the

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1 family reunion because it's been planned and
2 I'm -- it's like 80 to 100 people there and I'm
3 supposed to cook all this food for it and I'm
4 the only one doing the cooking. That's the
5 main -- I wouldn't worry about the work as much
6 as I would that.

7 THE COURT: As much as that. And you got
8 80 or 100 people. How long have you all planned
9 for you to do that, Mr. Sweatman?

10 MR. SWEATMAN: Three months. It's an every
11 year thing.

12 THE COURT: I understand. Let me ask you
13 to step outside for just a moment, if you will
14 let me confer.

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

17 THE COURT: I think he's statutorily
18 qualified, but I'm worried about -- I'm worried
19 about what he's worried about, which is the
20 family reunion cooking. What says the State?

21 MR. BAILEY: Your Honor, he didn't mention
22 the cooking on the questionnaire as far as being
23 any problem, so apparently when he filled that
24 out that wasn't really a big deal with him. He
25 mentioned back surgery and work problems. But,

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1 of course, any juror that gets sequestered is
2 going to miss out on stuff, especially this time
3 of the year and all and I don't think a
4 sacrifice he would make in missing that would be
5 any greater than what a lot of other jurors are
6 going to be doing, that's just my position.

7 MR. CUMMINGS: Personally I don't think the
8 gentleman spent a lot of time on the
9 questionnaire. I know he didn't sign it. I did
10 not want to embarrass this man or have him take
11 any anger out on our client, ma'am.

12 THE COURT: Sure.

13 MR. CUMMINGS: But obviously it didn't
14 matter if he signed it or not. If he wants out
15 I would rather have him go and have somebody
16 that could pay attention and I'll leave it to
17 the Court's discretion.

18 THE COURT: Yes.

19 MR. BAILEY: Your Honor, I was just going
20 to add we qualified Mr. Porcher that's going
21 to -- he's going to loose \$2,500 or so because
22 of this and if you compare the relative
23 detriment to these two people certainly he's
24 taking a bigger hit than Mr. Sweatman. I would
25 think somebody else can flip a hog, I mean it's

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1 not rocket science. Never mind. Getting ready
2 to say too much.

3 MR. CUMMINGS: Me, too.

4 THE COURT: All right. Bring him back in.
5 (Whereupon, the prospective juror returns to the
6 courtroom.)

7 THE COURT: Mr. Sweatman, you are
8 statutorily qualified to serve as a juror in
9 this case. And obviously that doesn't mean that
10 you would be selected on the jury. I've thought
11 about what to do about the cooking the next
12 weekend and my problem is, is that I've got so
13 many -- everybody's -- it's an inconvenience for
14 everybody that's serving on this jury. What I
15 need to ask you to do is to see if you can find
16 someone to help you with that obligation because
17 we need you. Of course, you know, and if you
18 are selected we need you.

19 But I'm going to ask you to come on
20 back tomorrow at ten o'clock, I'm going to give
21 you some instructions that are going to help you
22 prepare for -- here you go, this is for you.
23 And if we got to back that up from ten o'clock
24 tomorrow morning we'll call and let you know,
25 but I need you to at least see this evening

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1 what, if anything, you can do about that to get
2 some help at the family reunion. If you could
3 do that I sure would appreciate it because you
4 are statutorily qualified and we hate to lose
5 you.

6 I would ask you to share that
7 information, obviously you need to share that
8 information with your family, but, however, you
9 cannot discuss this trial, you cannot discuss
10 this case or any aspect of it or allow anybody
11 to discuss it with you. Or clearly do not
12 expose yourself to any information about the
13 case, but share that information with your
14 family as you may need to.

15 MR. SWEATMAN: Okay.

16 THE COURT: Check with them tonight and
17 just see if y'all can work something out and
18 then if you can't, let me know tomorrow. Would
19 you do that?

20 MR. SWEATMAN: Okay.

21 THE COURT: Thank you so much,
22 Mr. Sweatman.

23 MR. SWEATMAN: Ten o'clock right here?

24 THE COURT: Come on out here. But if we
25 need to back that time up we'll let you know.

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1 MR. SWEATMAN: Okay.

2 THE COURT: Thank you.

3 MR. SWEATMAN: Thanks.

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

6 THE COURT: I think I would probably want
7 to get out of that.

8 THE CLERK: Maybe he'll cook a hog for us.

9 THE COURT: All right. Pauline McElyea.
10 (Pauline C. McElyea, called as a prospective
11 juror, having previously been duly sworn, is
12 examined as follows:)

13 EXAMINATION

14 BY THE COURT:

15 Q. Good afternoon. Is it McElyea?

16 A. Yes, ma'am.

17 Q. I'm from Dillon and I pronounced that right, I'm
18 so proud.

19 THE COURT: For our record this is Pauline
20 McElyea who is Juror Number 203.

21 Q. Ms. Mcelyea, you remember when you were with us
22 on Monday, that you were sworn in with the other
23 potential jurors in this case; do you remember that?

24 A. Yes, ma'am.

25 Q. All right. And I wanted to tell you that that

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1 oath is still good because it will carry us through
2 this process and would apply to the answers that
3 you'd share with us today, okay?

4 A. Yes, ma'am.

5 Q. Now, since we were together on Monday has
6 anybody talked to you about this case or approached
7 you about this case, or have you received any
8 information about this case?

9 A. No.

10 Q. All right.

11 A. No, ma'am.

12 Q. Now, when you were back in the jury room were
13 you given a list of potential witnesses?

14 A. Yes, ma'am.

15 Q. And did you look at that list?

16 A. Yes, ma'am.

17 Q. And are you related by blood or marriage or
18 acquainted with, or have any personal or casual or
19 business association, or are you connected directly
20 or indirectly with any of the folks who are on the
21 potential witness list?

22 A. No, ma'am. None of that.

23 Q. All right. All right. Now, when we were
24 together on Monday I asked whether or not any members
25 of our jury panel had any opinions about this case,

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1 whether or not anybody had read or seen or heard
2 anything about this case, or whether or not anybody
3 had any bias or prejudice for or against either side
4 in this case. And my notes indicate that none of
5 those things applied to you; is that right?

6 A. Yes, ma'am.

7 Q. Does that continue today?

8 A. Yes, ma'am.

9 Q. Okay. Now, Ms. McElyea, I need to ask you some
10 questions and I want to talk just for a little bit
11 about the questions themselves.

12 A. Okay.

13 Q. Because I want to tell you that the purpose of
14 our questions, number one, is not to invade your
15 privacy. The purpose of our questions are to find
16 out a little bit about how you feel about certain
17 matters, some of your opinions. The reason that we
18 need to understand a little bit about your opinions
19 is to see how your opinions might impact on your jury
20 service, and that's the purpose.

21 Obviously your opinions are as good as
22 and valid as anybody else's, obviously there aren't
23 any right or wrong answers at all, and certainly no
24 one's going to challenge any of your opinions, we
25 simply need to understand a little bit about them,

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1 all right?

2 A. Yes, ma'am.

3 Q. Now, in a little while I'm going to be asking
4 you your opinion about penalty, the death penalty
5 specifically. But I want to tell you that obviously
6 to talk about penalty now is premature. We hadn't
7 even started the trial yet and Mr. Bowman is presumed
8 innocent of these charges. However, I need to ask
9 about penalty and get opinions about penalty because
10 it may be an issue in this case, and I need to know
11 what jurors, some of their opinions are before the
12 trial begins. That's the reason that we do this
13 prematurely. Please remember that. Please remember
14 that the discussions about penalty are premature.

15 A. Yes, ma'am.

16 Q. And also keep in mind that as we go through
17 those questions particularly that any defendant, and
18 certainly Mr. Bowman, is presumed innocent of these
19 charges, okay?

20 A. Yes, ma'am.

21 Q. All right. Now, the questions that I'm going to
22 ask you I'm going to be asking them in general terms.
23 Because it would not be fair for me to ask you your
24 opinions about this case because you don't know
25 anything about it and that wouldn't be fair to you

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1 and it would be improper, so I will not ask you about
2 this case.

3 A. Okay.

4 Q. Your opinions about this case. I am going to
5 ask you your opinions in the generic or general
6 sense, okay?

7 A. Yes, ma'am.

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

11 A. Yes, ma'am.

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

15 A. Yes, ma'am.

16 Q. Even though you might not like that part of the
17 law, you might even disagree with it, but even so
18 would you still be willing to follow the law as you
19 were instructed to do by the judge?

20 A. Yes, ma'am.

21 Q. All right. Now, if you were asked to serve on
22 the case of State vs. Mr. Bowman, could you decide
23 this case based upon the evidence in this courtroom
24 and disregard anything that you may have seen or
25 heard or read about this case from any source if

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1 anything like that came into your memory? In other
2 words, if you were sitting on this jury and you heard
3 something in the testimony and that jogged a memory
4 of yours about something that you read or seen or
5 heard about this case, would you set that memory
6 aside and make your decision based on the evidence in
7 this courtroom?

8 A. Yes, ma'am.

9 Q. All right. Now, in a criminal case as you know
10 and as I talked briefly on Monday, the State has the
11 burden of proving a defendant guilty beyond a
12 reasonable doubt. A defendant never has to prove
13 himself or herself innocent, they are presumed
14 innocent. Do you understand these principles?

15 A. Yes, ma'am.

16 Q. Okay. And if you were a juror in a criminal
17 case, would you be willing to listen to the evidence,
18 find the facts as you found them to be, take the law
19 as the judge gives it to you and apply it to those
20 facts, could you do that in any criminal case?

21 A. Yes, ma'am.

22 Q. All right. And when you did that if you were
23 not convinced that a person was guilty beyond a
24 reasonable doubt, could you find that person not
25 guilty?

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1 A. Yes, ma'am.

2 Q. And on the other hand, after you listened to the
3 evidence and found the facts as you found them to be
4 and applied the law to those facts, if you were
5 convinced that a person was guilty beyond a
6 reasonable doubt, could you find that person guilty?

7 A. Yes, ma'am.

8 Q. In other words, you would be willing to listen
9 and make your decision based upon whether or not you
10 were convinced if a person was guilty or not?

11 A. If I was convinced, yes, ma'am.

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

21 If an individual in a death penalty
22 case is convicted of the crime of murder, then the
23 same jury that convicted him or her comes back and in
24 a separate and a different proceeding the jury
25 decides what the punishment will be, what is the

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1 punishment or the penalty that the person will get.

2 And there are two choices. One, life imprisonment

3 without the possibility of parole, and the death

4 penalty. The decision on sentencing is made in that

5 second or sentencing phase as it's called. Do you

6 understand these ideas?

7 A. Yes, ma'am.

8 Q. All right. Now, have you had a chance to look

9 at the other sheet of paper that was back in the jury

10 room with you that essentially describes three types

11 of jurors?

12 A. Yes, ma'am.

13 Q. And do you remember the three types of jurors?

14 A. Basically, yeah. Every word, no.

15 Q. Exactly. And let me tell you that's why it is

16 here, you can hold onto it and review it if you need

17 to.

18 A. Yeah.

19 Q. My question to you is which of those three types

20 of jurors best describes you?

21 A. Three.

22 Q. Number three. In other words, you would be

23 willing to listen to the evidence in that sentencing

24 phase and make your decision based upon what you hear

25 in the court?

Juror 203 Pauline E. McElyea - Examination

1 A. Yes, ma'am.

2 Q. In other words, if after you listened to all the
3 evidence if you were convinced that a person should
4 receive the death penalty, then would you be able and
5 willing to vote for that sentence?

6 A. Yes, ma'am.

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

12 A. Yes, ma'am.

13 Q. So you would -- again, you would make your
14 decision based on what you heard in the courtroom?

15 A. Yes, ma'am.

16 Q. If you were chosen to serve as a juror in this
17 case, you, along with the other jurors, would be
18 housed here locally, obviously at county expense.
19 The word is sequestered. You would remain here and
20 stay in a motel, of course, in the evenings, be here
21 with us in the courtroom during the day and you would
22 remain with us until the case is over. The trial is
23 expected to last approximately two weeks, it could be
24 longer, it could be shorter.

25 Obviously, that would create an

Juror 203 Pauline E. McElyea - Examination

1 inconvenience for you as it surely will for all who
2 serve on this jury. Other than the inconvenience
3 which it would surely cause anybody who will serve in
4 that capacity, would that pose a serious risk or
5 danger to your health or well being, or to anyone who
6 is dependent upon you if you had to serve in that
7 capacity?

8 A. No. No, ma'am.

9 Q. You would be willing to do that?

10 A. Yes, ma'am.

11 Q. Thank you so much.

12 A. Only thing that's going to miss me is my
13 kitty-kitties.

14 Q. Do you think somebody could come in and feed the
15 kitties?

16 A. I am sure my husband will.

17 Q. Would you be willing to answer the questions
18 that these lawyers have got for you? Thank you so
19 much.

20 THE COURT: And, Mr. Cummings.

21 EXAMINATION

22 BY MR. CUMMINGS:

23 Q. Good afternoon, ma'am, I'm Norb Cummings.

24 A. Hello.

25 Q. That young lady over there is Ms. Marva

Juror 203 Pauline E. McElyea - Examination

1 Hardee-Thomas and the gentleman sitting there is Mr.
2 Marion Bowman, Jr., ma'am. Her Honor has asked you a
3 lot of questions, ma'am, and I want to try to be
4 brief and ask you just a few more.

5 A. Okay.

6 Q. In this, in any criminal trial you understand
7 the importance that every citizen is presumed
8 innocent until and unless the State proves anybody
9 guilty beyond a reasonable doubt?

10 A. Yes, sir.

11 Q. And you hold that conviction close to your
12 heart, ma'am?

13 A. Yes, sir.

14 Q. And along that line we would not even get into
15 any part of what -- the death penalty or life without
16 the possibility of parole for a juror until and
17 unless the State proves somebody guilty of murder.

18 A. Yes, sir.

19 Q. I know you followed Her Honor's instructions
20 really well on that.

21 A. Yes, sir.

22 Q. I know when you were reading the form at first
23 you didn't know all the words to it, but you're real
24 comfortable to the type three juror that could listen
25 to both and would not rush to judgment and would put

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1 their mind together with the collective other jurors?

2 A. Yes, sir.

3 Q. And just a few questions for you, ma'am. One of
4 the things in your questionnaire, and I promise you
5 we really read these things. Are you working
6 anywhere right now?

7 A. No, sir.

8 Q. So you finally decided you're going to retire
9 and enjoy life a little bit?

10 A. Yes, sir.

11 Q. And your spouse is still with the Air Force
12 base?

13 A. Yeah. He's not in the Air Force anymore, but he
14 works there.

15 Q. On the base, all right. And just sort of
16 general -- and I don't want to know the addresses or
17 whatever, how long have you lived around the
18 Dorchester County area?

19 A. In Dorchester just two years.

20 Q. Yes, ma'am. And in South Carolina?

21 A. Since 1975.

22 Q. So you've been here a long time.

23 A. We were transferred here.

24 Q. And you didn't read anything about this in
25 newspapers, or have no independent knowledge of it?

Juror 203 Pauline E. McElyea - Examination

1 A. I only heard about it once and that was the day
2 I came in, Monday morning.

3 Q. Yes, ma'am.

4 A. And they had said on television that they were
5 picking a jury for a trial in Georgetown, that's the
6 only thing I've ever heard about it.

7 Q. All right, ma'am. And if you'll beg me one
8 moment I think that may be the end of my questions.

9 A. Okay.

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

12 MR. CUMMINGS: That's all the questions we
13 have of this nice lady. Thank you, Judge.

14 THE COURT: Thank you.

15 Mr. Bailey.

16 EXAMINATION

17 BY MR. BAILEY:

18 Q. I'm Walter Bailey and I'll be prosecuting the
19 case, I appreciate you being here and staying this
20 late with us.

21 A. Thank you, sir.

22 Q. I want to ask a little bit about the death
23 penalty. When I ask you those questions I'm not
24 talking about this case, because like the judge said
25 you hadn't heard the facts.

Juror 203 Pauline E. McElyea - Examination

1 A. Yes, sir.

2 Q. So this is a general nature, okay? Is the death
3 penalty something that you've ever thought about in
4 the past?

5 A. I haven't -- I thought about it, yes, but I
6 haven't dwelled on it.

7 Q. All right. So it's just something that you knew
8 it existed, but you hadn't really spent a lot of time
9 pondering over it?

10 A. No. I've watched trials and said whether or not
11 I would have given the death penalty or not, other
12 than that, no.

13 Q. Okay. And the three types of jurors that were
14 on that piece of paper, you're pretty well convinced
15 you're that third type of juror that would pretty
16 much have an open mind on the death penalty?

17 A. If I'm convinced beyond a shadow of a doubt that
18 the person or whoever is guilty.

19 Q. Okay.

20 A. Then that's my decision.

21 Q. Okay. Let me back up just a little bit because
22 as you know there's a two-part process that we would
23 go through potentially here. And the first part is
24 called the guilt phase. That's like any other
25 criminal trial and that's where the State is

Juror 203 Pauline E. McElyea - Examination

1 attempting to prove to the jury's satisfaction that
2 what that defendant is charged with he's guilty of
3 beyond a reasonable doubt. And that's what the judge
4 would instruct the jury, that they would have to be
5 convinced of proof of guilt beyond a reasonable
6 doubt. And you used the word shadow of a doubt and
7 you hear that on television sometimes and all, but
8 the instruction would be a reasonable doubt.

9 A. Yes, sir.

10 Q. And that would, of course, pertain to the guilt
11 phase. And if the State's unable to convince the
12 jury of guilt beyond a reasonable doubt, of course
13 that's the end of it like Mr. Cummings said. But on
14 the other hand, if the jury is convinced beyond a
15 reasonable doubt that defendant's guilty of murder,
16 then we go into the second phase of the trial. So
17 anytime we're dealing with the second phase of a
18 trial we're dealing with a convicted murderer or we
19 wouldn't be at that second phase.

20 A. Yes, sir.

21 Q. Do you follow me so far?

22 A. Yes, sir.

23 Q. Okay. That second phase is different than the
24 first phase because the focus is on the appropriate
25 punishment, life without parole or the death penalty.

Juror 203 Pauline E. McElyea - Examination

1 So you're no longer concerned with guilt or
2 innocence, that's been established.

3 A. Yes, sir.

4 Q. Now, if you were -- not this case, but say a
5 case in general like this, if you got to that second
6 phase of the trial where you're dealing with
7 punishment, already found the fellow or woman,
8 whoever, guilty of murder, would you have an open
9 mind during that second phase and depending on what
10 you heard could you sentence that person to life
11 without parole?

12 A. Yes, sir. I think so, yes.

13 Q. All right. And, again, I'm not asking you what
14 you would do, just depending --

15 A. What I could do.

16 Q. -- what you heard, yes, ma'am.

17 A. Yes, sir.

18 Q. All right. On the other hand, if you felt like
19 the circumstances warranted a death penalty, could
20 you vote for the death penalty knowing that that
21 sentence would actually be carried out?

22 A. Yes, sir. I really believe I could, yes, sir.

23 Q. All right. Now, whatever that jury's verdict
24 is, and by the way, all 12 jurors have to agree on
25 one or the other.

Juror 203 Pauline E. McElyea - Examination

1 A. Yes, sir.

2 Q. So it's got to be a unanimous verdict. And
3 whatever it is, whether it's life without parole or
4 the death penalty, the judge is going to order that
5 sentence carried out and it will be carried out based
6 on that jury's verdict. So the jury decides the
7 punishment, the judge orders it, then it happens,
8 okay?

9 And my question to you is whether or
10 not you could in an appropriate case vote for the
11 death penalty as a juror knowing that as a result of
12 that vote that person actually would be put to death?

13 A. That's what the death penalty is.

14 Q. Yes, ma'am.

15 A. Yes, sir.

16 Q. Okay. So you could?

17 A. Yes, sir.

18 Q. All right. If all 12 jurors vote for the death
19 penalty then they're asked to sign their names to a
20 death verdict form.

21 A. Yes, sir.

22 Q. A piece of paper saying they voted for the death
23 penalty and they all signed it.

24 A. Yes, sir.

25 Q. Could you sign that if that was your decision?

Juror 203 Pauline E. McElyea - Examination

1 A. Yes, sir.

2 Q. Could you announce that decision out loud when
3 your name was called if that was your decision?

4 A. Yes, sir.

5 Q. Okay. All right, ma'am. That's all I've got.
6 Thank you very much.

7 A. Okay.

8 THE COURT: Thank you so much. I'm going
9 ask you, Ms. McElyea, just to step outside,
10 don't even sit down, just step outside for just
11 a moment for me.

12 MS. MCELYEA: Okay.

13 THE COURT: We'll get you right back in.
14 You will not have time to sit down.

15 MS. MCELYEA: Okay.

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

18 THE COURT: What says the defense?

19 MR. CUMMINGS: Statutorily qualified,
20 Judge.

21 MR. BAILEY: Qualified, Your Honor.

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

24 THE COURT: I told you that would be quick.
25 Ms. Mcelyea, you have been found to be qualified

Juror 203 Pauline E. McElyea - Examination

1 as a potential juror in this case. It does not
2 mean now that you are on the jury yet.

3 MS. MCELYEA: Thank you.

4 THE COURT: It just means that you are a
5 potential juror and you may be selected to serve
6 on this jury. We are hoping to select the jury
7 tomorrow at ten o'clock in the morning. This
8 might be a little bit ambitious, and if we need
9 to move the time back a little bit we'll call
10 you and let you know, but if you don't hear from
11 us come on and be here at 10:00 in the courtroom
12 for me, okay?

13 MS. MCELYEA: Yes, ma'am.

14 THE COURT: Now, that sheet of paper has
15 got some information to help you get ready for
16 your jury service, it tells you about packing
17 your clothes, bringing any meds you need, it's
18 got the emergency numbers where you can be
19 reached during the day and at night. And it
20 also has some other information on there, some
21 practical tips and that sort of thing. Please
22 feel free to share that information with anybody
23 that you need to and choose to.

24 MS. MCELYEA: Okay.

25 THE COURT: However, remember not to

Juror 203 Pauline E. McElyea - Examination

1 discuss this case or anything to do with this,
2 any aspect of it, do not let anyone discuss it
3 with you and, of course, do not allow yourself
4 to be exposed to any information about this
5 case.

6 MS. MCELYEA: Yes, ma'am.

7 THE COURT: I look forward to seeing you in
8 the morning. Thanks so much, Ms. McElyea.

9 MS. MCELYEA: Thank you, ma'am.

10 (Whereupon, the prospective juror exits the
11 courtroom.)

12 THE COURT: All right. We will have
13 Mr. Mancene Wertz.

14 MR. CUMMINGS: Let me stand up and stretch
15 my back, Judge. Sorry.

16 THE COURT: You can stand, absolutely.

17 MR. CUMMINGS: Thank you.

18 (Mancene D. Wertz, called as a prospective
19 juror, having previously been duly sworn, is
20 examined as follows:)

21 EXAMINATION

22 BY THE COURT:

23 Q. Mr. Wertz, how are you doing?

24 A. All right.

25 Q. Good. Mr. Wertz, do you remember when we were

Juror 325 Mancene D. Wertz - Examination

1 together on Monday?

2 A. Yes.

3 Q. That you took an oath along with the other
4 prospective jurors, remember that?

5 A. Yes, ma'am.

6 Q. And I would just tell you that that oath is
7 still good, it lasts for the whole process and would
8 apply to the answers that you would share with us
9 today, okay?

10 A. Yes, ma'am.

11 Q. Now, have you talked to anybody about this case
12 or has anybody approached you or tried to talk to
13 you, or have you inadvertently or otherwise been
14 exposed to any information about this case since we
15 were together on Monday?

16 A. No, ma'am.

17 Q. All right. Now, when you were back in the jury
18 room, Mr. Wertz, did you get a chance to look at the
19 potential jury list?

20 A. Yes, ma'am.

21 Q. And are you related by blood or marriage or
22 acquainted with anybody, a personal friend or a
23 casual friend, or any sort of business associate?
24 What I'm asking is are you connected either directly
25 or indirectly with anyone whose name is on this list?

Juror 325 Mancene D. Wertz - Examination

1 A. No, ma'am.

2 Q. All right, sir. Now, Mr. Wertz, when we were
3 together on Monday I asked some questions of the
4 whole panel about this case and I asked if anyone had
5 any opinions about this case, whether or not anyone
6 had heard or seen, read anything about the case, or
7 if anyone had a bias or prejudice for or against
8 either side in this case. And my notes indicate that
9 you -- none of those things applied to you; is that
10 right?

11 A. Oh, well, when they stated that -- you know,
12 when they had the paper that was a long time ago, so
13 I didn't really remember that.

14 Q. Okay. That was going to be my next question.
15 Has anything this week kind of made you think about
16 it?

17 A. Oh, no, ma'am. I didn't read any paper or
18 anything like that.

19 Q. You didn't read anything this week?

20 A. No.

21 Q. But you remember reading something about it last
22 year or wherever, in the past?

23 A. In the past, but, you know, I can't remember
24 that far back.

25 Q. I understand. I do understand. And anything

Juror 325 Mancene D. Wertz - Examination

1 about what you read in the past that might, or could,
2 interfere with your ability to be a fair and
3 impartial juror in this case?

4 A. I don't think so.

5 Q. You don't think so? All right. Do you remember
6 anything that you read?

7 A. Just basically what the case is about.

8 Q. Okay. And did you form any opinions about this
9 case from what you read in the past?

10 A. No, ma'am.

11 Q. No, okay. And do you believe that you can set
12 aside that information that you had, that you read,
13 and if you were picked as a juror in this case listen
14 to the evidence and make your decision based upon the
15 information, based upon the evidence that you receive
16 in this courtroom?

17 A. I think so.

18 Q. Okay.

19 A. But, see, one thing about me now, if you was to
20 speak -- if you was to speak to me, you know, I'll
21 forget stuff. Like say you explaining the case to
22 me.

23 Q. Right.

24 A. I'll remember right that minute, but minutes
25 later I might forget what the whole thing was going

Juror 325 Mancene D. Wertz - Examination

1 on. I get disoriented sometimes. I'm not saying all
2 the time, but sometimes.

3 Q. Sometimes you do. We talked about that because
4 you were telling me you had chronic asthma.

5 A. Yes, ma'am.

6 Q. And you were worried about being able to sit and
7 listen, all right. Tell me why you would think you
8 might get -- why do you get disoriented sometimes?

9 A. I'm always like that. Even in school I'm like
10 that. So if I have a test I have to study right
11 before the test. I can't study overnight because I
12 forget. If you was to tell me something to do, if I
13 don't go do it right then I am going to forget. I
14 don't know why I'm like that, I am just like that.

15 Q. Have you ever seen a doctor about that?

16 A. No, ma'am.

17 Q. You haven't, okay. So does that cause you some
18 concern?

19 A. It does, but, you know, I'm so used to living
20 like that.

21 Q. I understand it.

22 A. I just deal with it.

23 Q. Well, let me ask you this question, Mr. Wertz:
24 This trial is expected to last two weeks, so if you
25 heard information in the first week are you telling

Juror 325 Mancene D. Wertz - Examination

1 me you wouldn't remember it by the time the trial was
2 over with?

3 A. Not all of it.

4 Q. Not all of it?

5 A. I can prove that. I have friends, and if you
6 tell me something you got to keep reminding me
7 because I will forget. Stuff I need to do I just
8 will forget. I'm not saying -- I'm not saying I
9 wouldn't want to, you know, not do my duty, you know,
10 what I'm supposed to do.

11 Q. I'm not hearing that.

12 A. I'm just explaining that's how I am.

13 Q. You want me to know that.

14 A. Yes, ma'am.

15 Q. That you've got that concern.

16 A. Yes, ma'am.

17 Q. That that's a condition you got. Well, let me
18 ask you this question: Are you in school?

19 A. I'm in school two more weeks.

20 Q. That's right. We talked about that you'll be in
21 school in two more weeks. Now, like did you have
22 trouble like at exam time in school?

23 A. I did because if I hadn't studied right before
24 the exam -- like it's stuff that I knew like from
25 just going to school from over a period of time

Juror 325 Mancene D. Wertz - Examination

1 that's different, like a couple -- like one exam is
2 open book so I had the notes already, so that's how,
3 you know, I did good on that.

4 Q. Right.

5 A. And like other tests I had to, you know, study
6 before the test. If I study overnight I will forget.

7 I can't -- I just learned, I just memorized my
8 girlfriend's number like last week and I've been
9 going with her almost seven months.

10 Q. You didn't tell her that, did you?

11 A. I didn't tell her.

12 Q. Thank goodness. That wouldn't have been very
13 cool. All right. And so I understand what you're
14 telling me, what you're telling me is that you are
15 concerned about your ability to remember over the
16 course?

17 A. I have a short memory lapse.

18 Q. All right. You're short-term memory's okay, but
19 your longer term memory is a problem?

20 A. That's right. Yes, ma'am.

21 Q. Gosh, I am so grateful to you for sharing that
22 with me.

23 THE COURT: Counsel, and I think Mr.

24 Bailey -- no, Mr. Cummings.

25 MR. CUMMINGS: Thank you, Judge. May I ask

Juror 325 Mancene D. Wertz - Examination

1 this man --

2 THE COURT: I want you to talk to him.

3 EXAMINATION

4 BY MR. CUMMINGS:

5 Q. I'm Norb Cummings, Ms. Marva Hardee-Thomas and I
6 represent Mr. Bowman I'm just going to ask you a few
7 questions based on what you've just told us in the
8 courtroom here, sir. Now, you study chemistry
9 according to your questionnaire.

10 A. Yes, sir.

11 Q. If I had done well in chemistry I think I would
12 have went to med school instead of law school.
13 You've been at is it Denmark College, sir, for two
14 years?

15 A. Denmark Tech.

16 Q. For two years?

17 A. Yes, sir.

18 Q. What is your grade average, sir?

19 A. 2.7.

20 Q. Okay. And I know you said you study hard like
21 every college student studies. Is it your testimony
22 today under oath to Her Honor that you cannot recall
23 or remember what is said to you, like if we talk
24 about certain things today in this courtroom,
25 tomorrow you could not remember that?

Juror 325 Mancene D. Wertz - Examination

1 A. I'll forget. I'll remember bits and pieces, but
2 I don't remember the whole thing, that's what I'm
3 explaining to you.

4 Q. Yes, sir. And are you willing to listen in the
5 courtroom?

6 A. I'll listen, yeah. I have no choice but to
7 listen.

8 Q. Well, I mean, and that's why we try to talk to
9 jurors about finding out about whether they're
10 willing to listen and whether or not they're willing
11 to work with their other jurors, you know, put your
12 collective mind together with the other jurors.

13 A. Okay.

14 Q. And the only way we ask this is to ask you
15 whether or not your concern about your ability to
16 have long-term memory problems, whether that would
17 substantially and materially impair you to be a fair
18 and impartial juror. And that's the main question to
19 Her Honor is whether or not it's going to affect you.

20 THE COURT: That's right. Mr. Cummings is
21 exactly right.

22 Q. And all we do is ask you to answer from your
23 heart, sir, okay?

24 A. That's true. I wouldn't be able to remember --
25 like if we had, you explain something to me I did,

Juror 325 Mancene D. Wertz - Examination

1 you know, what you're doing now.

2 Q. Yes, sir.

3 A. You talked to us and like if I wasn't refreshed
4 or you just went on and went straight through, I
5 would be like I wouldn't remember what you said.
6 Like Monday half the stuff I don't remember what you
7 said. But I'm telling the truth, you know.

8 THE COURT: I know you are. What's going
9 through my mind is I wonder how many people are
10 in the exact same boat with you, though.

11 MR. WERTZ: Okay. I'm not saying -- you
12 know, I'm not trying to disrespect you in any
13 way.

14 THE COURT: I do understand what you're
15 saying, Mr. Wertz, completely. And the question
16 is from Mr. Cummings is no one, no one
17 understands your situation like you do and the
18 only question is do you think, do you think that
19 this condition that you are describing to us
20 would substantially impair your ability to
21 perform your duties as a juror?

22 MR. WERTZ: It would, because if I was in
23 his shoes I wouldn't want a juror like me if you
24 can't remember what's going on. Because, you
25 know, you want everybody to be alert and paying

Juror 325 Mancene D. Wertz - Examination

1 attention and remember all the details that the
2 lawyers present. And, you know, I wouldn't want
3 a juror like me, person like me, you know. I'm
4 downing myself on that.

5 THE COURT: Yeah, I don't like that. I
6 don't like to hear you do that, Mr. Wertz. All
7 right. Mr. Wertz, would you do me a favor? Do
8 you have any questions?

9 MR. BAILEY: I don't know. Excuse me one
10 second, please.

11 THE COURT: Certainly.
12 (Pause in proceedings.)

13 MR. BAILEY: No questions, Your Honor.

14 THE COURT: All right. All right. Let me,
15 let me ask you to do that for me, is just step
16 outside just a moment, let me have a little
17 conference here, Mr. Wertz.

18 MR. WERTZ: Yes, ma'am.
19 (Whereupon, the prospective juror exits the
20 courtroom.)

21 THE COURT: Well, he's so candid and it's
22 obviously he has great concerns about a
23 condition that he has.

24 MR. CUMMINGS: One of the first things,
25 Judge, as we started this thing and I think Your

Juror 325 Mancene D. Wertz - Examination

1 Honor heard me if I could put something on the
2 record here, I look down here and Ms. Thomas
3 pointed out to me he's studying chemistry which
4 is remembering anatomical numbers, remembering,
5 you know, charts and data I don't want to
6 forget. He's got two years of college, got a
7 2.7 grade point average, did better than I did
8 as a jock. But what happens here is until he
9 said the last words that if I was in this
10 fellow's shoes I wouldn't want me as a juror, I
11 was going to keep on and keep going only because
12 to see if it really was real or not.

13 Of course, you know, we don't want to
14 just excuse a juror who may not want to serve,
15 but, you know, Her Honor said that he appeared
16 candid to you.

17 THE COURT: Very much so.

18 MR. CUMMINGS: Again, until he said those
19 magic words to me I would not move to exclude
20 him yet, but until he said those words I
21 wouldn't want to be in that fellow's shoes,
22 that's exactly why we need fair and impartial
23 jurors and why we go through this. If he's
24 telling me he can't --

25 THE COURT: For the record what concerns

Juror 325 Mancene D. Wertz - Examination

1 me, if he cannot -- if he cannot remember the
2 testimony, then that puts him at a disadvantage.
3 That means that he is not equipped with the
4 information that he would need to deliberate and
5 puts him at a disadvantage of other jurors who
6 do remember. And if he's recognizing that he
7 has a condition, I'm very concerned about that.

8 MR. CUMMINGS: Yes, ma'am. And on question
9 number 19 he states he's been chosen three times
10 for jury duty.

11 THE COURT: I know.

12 MR. CUMMINGS: That's why I was going to
13 get to that until he said that question, but I'm
14 just going to turn to my client on the record
15 while this gentleman's out and ask Mr. Bowman if
16 he wants us to continue on with this type of
17 gentleman that says he can't remember and he may
18 become instead of a person of an independent
19 mind become a follower in the jury room and just
20 go along with, okay, fine, or whatever. What do
21 you say?

22 MS. HARDEE-THOMAS: Don't ask him.

23 MR. CUMMINGS: I think I want to ask him on
24 the record right now, other than that I'll
25 continue on.

Juror 325 Mancene D. Wertz - Examination

1 MS. HARDEE-THOMAS: I don't know this
2 gentleman, Your Honor, and I heard him, but I
3 didn't believe anything he said. To make a 2.7
4 being -- especially at Denmark they would fail
5 you. They just don't socially promote you.

6 THE COURT: Okay.

7 MS. HARDEE-THOMAS: But apparently he
8 doesn't want to be here.

9 THE COURT: Okay.

10 MS. HARDEE-THOMAS: But, of course, I'm
11 leaving it up to my client and he indicated he
12 felt that he was lying, too, so if he's gone to
13 that point....

14 MR. CUMMINGS: The answer of my client is
15 if this guy doesn't want to be here then we
16 don't want that kind of juror, anyway. And we
17 said that early on in jury selection and I would
18 move based on his representations and the fact
19 that Your Honor is the judge of the credibility
20 of witnesses and how bad he says I wouldn't want
21 to be in his shoes, I would move to excuse this
22 gentleman.

23 I know he's a member of the
24 African-American race, my client is also, but,
25 Judge, it wouldn't matter if this was the man

Juror 325 Mancene D. Wertz - Examination

1 from Mars if he's not going to pay attention.

2 THE COURT: Very well. He's saying that he
3 cannot. Very well. We will excuse him.

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

6 THE COURT: Thank you. Thank you so much,
7 Mr. Wertz. We are going to be able to excuse
8 you on the basis that you have explained. I --
9 for your own purposes for your own needs I urge
10 you to be evaluated and see if there's some help
11 that you can get with that. The problem that
12 you tell me that you have, I am going to be able
13 to excuse you and I'm going to ask that you not
14 discuss this process with any of your potential
15 jurors.

16 MR. WERTZ: Yes, ma'am.

17 THE COURT: Your fellow potential jurors,
18 let me say. And also do not discuss this matter
19 with anyone who has anything to do with this
20 trial, any of the witnesses or anyone who has
21 anything to do with it, okay?

22 MR. WERTZ: Okay.

23 THE COURT: Beyond that you can talk about
24 this matter if you want to.

25 MR. WERTZ: Okay.

Juror 325 Mancene D. Wertz - Examination

1 THE COURT: And finally, Mr. Wertz, I want
2 to thank you for your time, thank you for your
3 patience as we've gone through this process.

4 MR. WERTZ: So I'm excused?

5 THE COURT: You're excused.

6 MR. WERTZ: Thank you.

7 THE COURT: You're welcome.

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

10 THE COURT: Who is next? We have Phil
11 Maynor.

12 (Phil D. Maynor, called as a prospective juror,
13 having previously been duly sworn, is examined
14 as follows:)

15 EXAMINATION

16 BY THE COURT:

17 Q. How are you doing, Mr. Maynor?

18 A. Fine, ma'am.

19 THE COURT: This is Phil Maynor, Juror
20 Number 194.

21 Q. Mr. Maynor, when we were together on Monday you
22 will remember that you took an oath along with your
23 other potential jurors?

24 A. Yes, ma'am.

25 Q. That oath remains in effect today. I just share

Juror 194 Phil D. Maynor - Examination

1 that with you, okay?

2 A. Yes, ma'am.

3 Q. Now, since we talked on Monday have you spoken
4 with anyone, or has anyone approached you, or have
5 you been exposed inadvertently or otherwise to any
6 information about this case?

7 A. None whatsoever.

8 Q. Thank you. And when you were back in the jury
9 room did you have an opportunity to look at the
10 potential jury list -- witness list? I'm sorry.

11 A. Yes, ma'am. I looked at the witness list. I
12 don't recognize anybody on there. I mean, there's a
13 possibility that if I see their face, there's a
14 possibility one of these persons might be on here,
15 but I don't recognize no names.

16 Q. All right. You recognize no names?

17 A. No names.

18 Q. You're not related -- so far as you can tell you
19 are not related by blood or marriage or acquainted or
20 connected to any of those folks at all?

21 A. Not at all.

22 Q. All right, sir. Now, when we were together on
23 Monday I asked whether or not anybody had any
24 opinions about this case, whether or not anybody had
25 read or seen or heard anything about this case, or

Juror 194 Phil D. Maynor - Examination

1 whether or not anybody had any bias or prejudice
2 about this case. And my notes indicate that you had
3 read or seen or heard, you had some information about
4 the case; is that right?

5 A. That's right.

6 Q. And did you get that information from the media?

7 A. I got that right here in the courtroom, ma'am,
8 before, you know.

9 Q. All right. From some fellow jurors?

10 A. Yes.

11 Q. All right, sir. Tell me about that. Did you
12 have a conversation?

13 A. No. We were just, you know, early in the stage.

14 Q. Yeah.

15 A. You know, just by people figuring it out with
16 the big crowd and everything we know it's something
17 big. And I said, I know it's something big. And one
18 of the people, I can't remember her name, but she
19 said it's a murder case.

20 Q. Oh, all right.

21 A. And that's -- you know, that's all I know about
22 it.

23 Q. That was the extent of it?

24 A. That was the extent of it.

25 Q. I told you that when I went through the

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1 indictments, too, didn't I?

2 A. Right.

3 Q. When I read through the indictment so you knew
4 that both from me as well as from your fellow juror?

5 A. Right.

6 Q. Did anybody else make any comments about it?
7 You don't need to tell me the context, but that is
8 the extent of it, the nature of the case?

9 A. That's the nature of it.

10 Q. Very well.

11 A. There's one thing that I left out and I would
12 like to clear this.

13 Q. Please.

14 A. Being in the military I'm also -- I'm a prison
15 escort.

16 Q. Okay.

17 A. And I thought I would let the Court know that.
18 I have my escort badge and I escort prisoners from
19 the Navy brig to the Air Force.

20 Q. Okay. How often do you do that?

21 A. I just done it probably about a week ago.
22 Sometimes it goes in spurts. Usually two or three
23 times a month.

24 Q. A month.

25 A. But if we get -- we use them as a work force, so

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1 if we need them more often then I'll go get them.

2 Q. I understand.

3 A. They're minor offenses.

4 Q. Okay.

5 A. They're not criminal.

6 Q. Let me ask you this question: As a result of
7 that involvement, would that impact in any regard on
8 your ability to be fair and impartial in this trial?

9 A. Well, by nature I'm a compassionate person. I
10 mean, I don't mean -- you know, I'm being honest, I'm
11 being very honest, I'm a Christian person.

12 Q. Okay. I'm talking about the transporting of the
13 prisoners, is all I'm talking about.

14 A. No.

15 Q. Would the fact that you transport prisoners have
16 any impact on your ability to be fair and impartial?

17 A. No.

18 Q. Since we were together on Monday, I gather you
19 didn't -- you don't need to change your answers from
20 anything that's happened from Monday from today.

21 Have you developed any opinions?

22 A. No.

23 Q. You hadn't read or heard or seen anything about
24 this case?

25 A. No.

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1 Q. And you haven't developed any bias or prejudices
2 for or against either of these folks, either of these
3 sides?

4 A. Well, I'm just going to be honest. I'm going to
5 have to be honest.

6 Q. That's what you're supposed to be.

7 A. I have a tendency to -- usually if somebody's
8 coming to court, there's been offense. That doesn't
9 mean they're guilty, but there's -- when somebody
10 comes to court there's been a problem. And, I mean,
11 I would think, I would hope that I'd be fair enough,
12 you know, I would be fair completely, that I wouldn't
13 let that hound, but it still weighs on my mind that,
14 you know, I want to do the right thing. What I'm
15 trying to say is I'm afraid I would follow towards
16 law enforcement more than anything else.

17 Q. Okay. Do you hold the opinion that if someone
18 has been arrested for a crime that they must have
19 done something wrong?

20 A. No, because I know there's --

21 Q. Do you hold the opinion that because somebody
22 was arrested for a crime and indicted and brought to
23 trial that they must have done something wrong?

24 A. No, I don't think that. I mean, but it sort of
25 enters my mind why would they be here to start with.

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1 Q. Okay. Do you understand that a person is
2 presumed innocent under the law?

3 A. Exactly. And I would hope that I would have the
4 same chance myself, yeah.

5 Q. Okay.

6 A. And I understand that's what makes our country
7 great.

8 Q. Yeah. And do you understand that the State has
9 the burden of proving someone guilty beyond a
10 reasonable doubt?

11 A. Yes, ma'am.

12 Q. And that a defendant doesn't have to prove
13 himself or herself innocent?

14 A. Yes, ma'am.

15 Q. Doesn't have to prove a thing?

16 A. Right.

17 Q. And they're presumed innocent?

18 A. Yes, ma'am.

19 Q. Okay. All right. All right, sir. Your
20 concern, I gather, is that you are concerned that you
21 may favor law enforcement, but I'm also hearing from
22 you commitment to principles of that someone is
23 innocent until proven guilty?

24 A. That's right. That's right.

25 Q. That you believe that the State ought to and you

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1 understand that they have the burden to prove someone
2 guilty beyond a reasonable doubt?

3 A. That's right. That's right.

4 Q. All right, sir. Let's go through some more
5 questions and see where we are. Now, I'm going to be
6 asking you some questions and let me tell you what
7 I'm after. I'm trying to learn a little bit about
8 how you feel about certain matters, get your opinions
9 about them. Understanding that, you know, your
10 opinions are as valid as anybody's, as good as
11 anybody's. Understanding that I'm not here and these
12 folks aren't here to challenge those opinions, we're
13 only here to learn about them and see if your
14 opinions might impact on your jury service, okay?

15 A. Right.

16 Q. And we're also not here to invade your privacy,
17 either. But I will tell you that in a little bit I'm
18 going to be asking you some questions about penalty
19 because I want to get your opinion about the death
20 penalty specifically. And I also want you to
21 understand that these questions that I'm asking are
22 premature, this trial hasn't begun.

23 A. Right.

24 Q. And so Mr. Bowman is presumed innocent of these
25 charges, so when I talk about penalty it's clearly

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1 done prematurely. It's just reality that in order to
2 ask prospective potential jurors about penalty, you
3 have to do that before the case begins. So as I ask
4 you these questions I would ask that you keep in mind
5 that to talk about penalty is premature and
6 Mr. Bowman is presumed innocent of these charges,
7 okay?

8 A. Yes, ma'am.

9 Q. All right. Now, I'm also going to talk to you
10 in general terms. I'm not going to ask you about
11 your opinions about this case because that would be
12 wrong and it wouldn't be fair to you, so I'm not
13 going to do that. I'm going to be asking you your
14 opinions about matters in general, okay?

15 A. Okay.

16 Q. If you were a juror in any criminal case, would
17 you be willing to listen to the law as it is
18 instructed to you by the judge?

19 A. Yes, ma'am.

20 Q. And would you be willing to apply that law to
21 the facts as you found them to be?

22 A. Yes, I would.

23 Q. Even though you might not particularly like that
24 part of the law, or you might not particularly agree
25 with it, would you still be willing to follow the law

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1 as you were instructed by the judge?

2 A. Yes, ma'am.

3 Q. If you were asked to serve in the case of the
4 State vs. Mr. Bowman, could you decide this case
5 based upon the evidence in this courtroom and
6 disregard anything that you would have read or seen
7 or heard about this case?

8 A. Yes, I could.

9 Q. Could you do that even if during the course of
10 the trial something jogged your memory and you have a
11 memory of something that you may have read in the
12 past? Because that happens to jurors sometimes.
13 Would you be willing to set that aside and decide
14 this case based on the evidence that you hear in this
15 courtroom?

16 A. Ma'am, I'm going to be perfectly honest with
17 you, until that happens I would think that I have
18 enough character that I could do that.

19 Q. All right.

20 A. But until that happened I wouldn't know until
21 that actually would happen. I would say yes right
22 now.

23 Q. All right.

24 A. I know that's an answer that probably is --

25 Q. I want the truth. I am not at all interested in

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1 any particular answer.

2 A. But I wouldn't discount the fact that I'm -- you
3 know, I'm a human being that -- but I would want to
4 do the right thing. I've always wanted to do the
5 right thing.

6 Q. Okay, sir. So are you telling me while you
7 certainly don't know 100 percent, that you think you
8 could do that?

9 A. I'm pretty sure I could do that.

10 Q. Okay. All right, sir. Now, in a criminal case
11 as you know and as we talked and we certainly talked
12 about it on Monday, the State has the burden of
13 proving the guilt of any defendant beyond a
14 reasonable doubt. Wait on Norfolk Southern.

15 (Train.)

16 A defendant never has to prove himself
17 or herself innocent or prove anything, the burden of
18 proof is always upon the State and a defendant is
19 always -- the defendant is presumed innocent under
20 the law. Do you understand these principles?

21 A. Yes, I do.

22 Q. All right. Now, so if you were a juror in any
23 criminal case, would you be willing to listen to the
24 evidence, find the facts as you found them to be,
25 apply the law as the judge would give to you to those

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1 facts, and if you were not convinced that a person
2 was guilty beyond a reasonable doubt, you believe the
3 State had not proved a person guilty beyond a
4 reasonable doubt, would you be willing and able to
5 find that person not guilty?

6 A. Yes, ma'am. Can I say one thing?

7 Q. All right.

8 A. I could find that person not guilty if I was the
9 only one out of 12.

10 Q. All right. All right.

11 A. That's -- I would fight.

12 Q. I understand.

13 A. I wouldn't live with that. I wouldn't live with
14 sending an innocent person.

15 Q. I understand. And on the other hand, if after
16 you listened to the evidence and found the facts as
17 you found them to be and applied the law to those
18 facts, if you were convinced that a person was guilty
19 beyond a reasonable doubt, would you be willing and
20 able to find that person guilty?

21 A. Yes, ma'am.

22 Q. All right. Now, in other words, what I'm
23 hearing is you would be willing to listen to the
24 evidence and make your decision based upon whether or
25 not you were convinced that a person is guilty or

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1 not?

2 A. That's correct.

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

5 Most of the time in the criminal court that is left
6 up to the judge, punishment's left up to the judge.

7 However, there is one case in our law when a jury has
8 to deal with the issue of punishment and that is in
9 the case like this one, that is in a case where an
10 individual has been charged with the crime of murder
11 and where the State is seeking the death penalty.

12 If an individual in a death penalty
13 case is convicted of the crime of murder, then the
14 same jury that convicted him or her comes back and in
15 a separate and different proceeding decide the
16 punishment of that person. There are two choices.
17 One, life imprisonment without the possibility of
18 parole, and the death penalty. That sentencing is
19 determined in the second or sentencing phase of the
20 trial as it is called. Do you understand this
21 information?

22 A. Yes, ma'am.

23 Q. All right. Now, did you have a chance to look
24 at the paper back in the jury room with the different
25 kinds of jurors?

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1 A. Yes, I did.

2 Q. And do you recall that there are three,
3 essentially three types of jurors described?

4 A. Yes, ma'am.

5 Q. And do you remember what the three types of
6 jurors were?

7 A. I don't remember. I mean, I remember one was --

8 Q. You don't have to. Here.

9 A. I can look at it.

10 Q. That's what it's here for.

11 A. There was one, type one that says --

12 Q. Hold on, because I'm going to ask you this
13 question.

14 A. Sure.

15 Q. Which of those three types of jurors do you
16 think best describes you?

17 A. Number three.

18 Q. Why is that? Because you would be willing to
19 listen to the evidence in the courtroom and make up
20 your mind based upon what you hear in the courtroom?

21 A. Yes, ma'am. Yes, ma'am.

22 Q. And if after you listened to the evidence, if
23 you were convinced that the penalty of death was
24 appropriate, would you be willing and able to vote
25 for that sentence?

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1 A. I would, but I wouldn't want to.

2 Q. I understand. But you would and you could?

3 A. I would and I could.

4 Q. All right.

5 A. But I wouldn't -- I really would -- I would
6 have -- you know, I would really have a problem with
7 it, but I could.

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

13 A. Yes, I would.

14 Q. You would make up your mind based on evidence in
15 the courtroom?

16 A. Yes, ma'am.

17 Q. All right. Now, Mr. Maynor, if you were chosen
18 to serve as a juror in this case you and the other
19 jurors would be housed here in St. George in a motel
20 for the duration of the trial, you would be
21 sequestered. What that would mean is, is that you
22 would be in the motel or else when you weren't here
23 working here in the courtroom on the trial.

24 Obviously -- well, let me tell you this. I need to
25 tell you that the anticipated duration would be two

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1 weeks. It could be longer, it could be shorter.

2 Now, obviously this would create an
3 inconvenience for you as it would for all who serve
4 on this jury. Other than the inconvenience which it
5 would surely be on anyone who had to serve in this
6 capacity, would that pose a serious risk or danger to
7 your health or well being or to that of anybody who
8 is dependent upon you if you had to serve in that
9 capacity?

10 A. No, I don't think so.

11 Q. You think you would be able to do that?

12 A. Yes, ma'am.

13 Q. Mr. Maynor, I'm going ask that you listen to the
14 questions of the lawyers and answer their questions.

15 THE COURT: All right. Mr. Bailey.

16 MR. BAILEY: Thank you, Your Honor.

17 EXAMINATION

18 BY MR. BAILEY:

19 Q. Mr. Maynor, how are you doing? I'm Walter
20 Bailey and I'll be prosecuting the case. I need to
21 ask you a few more questions and what I want to do is
22 ask you about the death penalty, ask your thoughts
23 and beliefs on the death penalty. And let me say two
24 things; number one, and I think the judge already
25 said this, there are no right or wrong answers; and

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1 number two, we're not talking about this case, we're
2 just talking in general.

3 If you could just -- you've been
4 answering a lot of questions here, but if you could
5 just in your own words tell us what your thoughts and
6 beliefs are on the death penalty.

7 A. Okay. The death penalty is our judicial system
8 of -- it should only be used when it's really needed,
9 I mean when it's the only way that we feel the crime
10 is so severe that it required the death penalty.
11 Earlier in my life I opposed the death penalty,
12 whatsoever, because I felt that no one should take
13 nobody's life based on my Christian upbringing. But
14 since I've been an adult I've changed my views on the
15 death penalty and I understand that sometimes it is
16 needed to correct society.

17 Q. All right, sir. And the reason I asked you that
18 question was that in response to a question from the
19 judge that you said that you wouldn't want to impose
20 the death penalty and that you would have a problem
21 with it, and that's what prompted me to ask you just
22 for that explanation.

23 A. I would have a problem with it if there was
24 any -- if I felt any bit the person was innocent, any
25 at all.

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1 Q. Okay.

2 A. I would really have a problem with the death
3 penalty.

4 Q. Okay. All right.

5 A. I would have a problem with any person that I
6 thought was an innocent person dying. I think that
7 is something that I would have to live with for the
8 rest of in life.

9 Q. Okay. And you understand as part as a two-part
10 process that we potentially go through here, the
11 first part of that trial, the guilt phase, deals with
12 the issue of guilt and innocence.

13 A. Right.

14 Q. And that's the point at which the jury would
15 determine whether or not that individual is, in fact,
16 proven guilty beyond a reasonable doubt.

17 A. Right.

18 Q. So anytime we got to that second phase of the
19 trial that would kind of necessarily mean you're
20 dealing with a convicted murderer or you wouldn't be
21 there.

22 A. Right. I could understand if it was proven a
23 convicted murderer, but I'd still -- I would still
24 struggle. I'm being personally --

25 Q. Sure.

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1 A. I would understand that it would be the right
2 thing to do, but I as a human being I would still --
3 giving anyone the death penalty, I would still
4 struggle with it somewhat, I'm not going to lie to
5 you.

6 Q. It's a serious, serious thing.

7 A. It's a serious thing. And I'm in the military
8 so I understand, you know, what -- you know, what we
9 have to do, and we have to fight and we have to --
10 you know, we have to control society. But taking
11 someone's life is very -- I'd have to -- you know,
12 all the circumstances, I would just have to agree
13 with that.

14 Q. And you understand that in South Carolina the
15 way the death penalty structure works is that if we
16 get to that second point in the trial the judge
17 doesn't decide the punishment, that's the jury's
18 obligation to decide the punishment?

19 A. I understand that now.

20 Q. And all 12 would have to agree life without
21 parole or the death penalty. All the judge would do
22 is order that jury's verdict to happen and it would
23 happen.

24 A. I would understand that that would be my duty as
25 a juror and by the State of South Carolina to impose

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1 that, but that wouldn't say that I would like to do
2 that.

3 Q. All right, sir. Now, it would never be your
4 duty or it would never be mandatory, there would
5 always be an option in that penalty phase.

6 A. Right.

7 Q. And what I guess what I need to ask you and be
8 real clear on this, is whether or not given your
9 thoughts and beliefs in the death penalty whether you
10 could fairly consider both options if we got to the
11 penalty phase?

12 A. I think so.

13 Q. All right, sir.

14 A. If anything, I would lean more towards life
15 imprisonment than the death penalty, but I could.

16 Q. All right, sir. And if all 12 jurors vote for
17 the death penalty there's a death verdict form that
18 would result in that person actually being executed
19 at some point in the future, and each one of those
20 jurors would be asked to sign their names on the
21 dotted line more or less. Could you do that, sir,
22 knowing that it would result in that execution taking
23 place?

24 A. Yes, I could.

25 Q. Could you announce that verdict out loud?

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1 A. I don't know if I could do that or not.

2 Q. Okay.

3 A. I'm being honest... I could, but --

4 Q. Let me explain that a little bit to you because
5 I kind of did that real quick. If the jury votes for
6 the death penalty they would take the vote back in
7 the jury room where you all have been waiting to come
8 out here. And they would come out here and they
9 would sit in these chairs, the clerk would announce
10 the verdict. And then each one of the jurors would
11 be asked to stand up when their name is called and
12 they would be asked is this your verdict and is it
13 still your verdict. So could you do that?

14 A. Yes.

15 Q. All right, sir. When you said you weren't sure
16 you could do it, what were you thinking then?

17 A. Well, I was thinking more like, you know, I
18 guess I've been watching too much TV, but, you know,
19 the foreman of the jury, I was thinking more like
20 that.

21 Q. Okay.

22 A. Announce the verdict.

23 Q. If you were just potentially elected foreman of
24 the jury, appointed foreman by the judge would
25 that --

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1 A. I would prefer not to be, but....

2 Q. Okay. All right. Again, I know it's getting
3 late and I hate to keep coming at you.

4 A. That's okay.

5 Q. But this is the only chance we get to talk to
6 jurors. Tell us why you would prefer not to be a
7 foreman.

8 MR. CUMMINGS: Judge, I'm going to object
9 at this point. I don't think that's a proper
10 question in this stage.

11 THE COURT: Can you direct him to an area
12 that worries you, that you're concerned about?
13 Y'all want to approach on that?

14 (Whereupon, a bench conference was held off the
15 record in the presence of the prospective juror
16 but out of the hearing of the prospective
17 juror.)

18 BY MR. BAILEY:

19 Q. Okay. Let me just ask you one kind of final
20 question to kind of sum it up, and I may have asked
21 this before, but given everything that we've talked
22 about do you think that if you were picked as a juror
23 on this case and we got to the penalty phase that you
24 could fairly consider both options?

25 A. Yes, sir. No problem.

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1 Q. All right, sir. Thank you. That's all I have.

2 THE COURT: Thank you, Mr. Bailey.

3 Yes, sir, Mr. Cummings.

4 EXAMINATION

5 BY MR. CUMMINGS:

6 Q. Just a few. I promise you this is going to be
7 brief.

8 A. That's fine.

9 Q. I'm Norb Cummings, the young lady right there is
10 Ms. Marva Hardee-Thomas and that's Mr. Marion Bowman,
11 Jr., sir. All right. First thing I wanted to just
12 get right out of the box is we thank you very much
13 for answering Her Honor's questions very candidly and
14 then Mr. Bailey's questions. Mr. Bailey asked a lot
15 of questions that I would have asked, so I'll keep
16 mine down.

17 You work like a chaser, just move
18 people from one spot to another as part of your
19 duties in the military?

20 A. Yeah. It's just an additional duty, it's -- I'm
21 a food service person, I'm a cook, I'm a manager
22 by -- in the military, but from time to time I need
23 prisoners that we have to -- we use them as a work
24 force and --

25 Q. Yes, sir. And these are guys that are like

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1 either Article 15 or non-judicial punishment kind of
2 guys?

3 A. Right. They're just guys and they done a little
4 something bad and they're serving a little bit
5 more -- they're serving time in the Navy brig, you
6 know.

7 Q. All right. But because of that, and, again, you
8 came in here very openly and very honestly, sir,
9 you're not a sworn law information person, like SP or
10 AP?

11 A. No.

12 Q. Basically it's just moving them there so they
13 can work and then they go back to the housing
14 facility?

15 A. Right. I mean, I could strip search them or
16 anything like that just like any other, but I'm not a
17 law enforcement officer, no.

18 Q. All right, sir. And the mere fact that you do
19 that, would that substantially or materially impair
20 your abilities to carry out your duties as a juror as
21 Her Honor would instruct you to be a fair and
22 impartial juror, the fact that you do that?

23 A. I don't think it would impact. I mean, I don't
24 think it would impact because I always see the good
25 in human beings whether a prisoner or -- you know, I

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1 believe people should have chances and -- but, you
2 know, even at that I don't think that would impact it
3 and that's what I'm trying to say.

4 Q. All right, sir. I know the elected sheriff of
5 this county had a breakfast club meeting with you one
6 time and you put down on your questionnaire, and I
7 promise you we really read these things, that you
8 know a lot of guys in law enforcement?

9 A. Yes, I do.

10 Q. Just the mere fact that you know a lot of guys
11 in law enforcement, again, that would not cause you
12 any substantial problems or cause you any to
13 substantially impact on your jury service in this
14 courtroom, sir?

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

17 Q. All right, sir.

18 A. I mean, I respect law information because I have
19 a lot of friends in law enforcement and I'm the
20 nation's policeman, so....

21 Q. And, again, why I say that, but I -- you have
22 told everybody in this room that you would follow
23 this judge's instructions, obey the law that she
24 gives you and to follow that and put that with any
25 facts and evidence that you good ladies and gentlemen

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1 may get in that jury box?

2 A. That's right.

3 MR. CUMMINGS: Beg the Court's indulgence,
4 Judge.

5 THE COURT: Sure. Mr. Maynor, you sure
6 have been patient with us today. The hour's
7 late, don't look at the clock.

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

10 BY MR. CUMMINGS:

11 Q. Again, sir, I would just ask you one more
12 question, and I think my voice is big enough to ask
13 it back here. You understand that no jury has to
14 impose the ultimate penalty of death, you could
15 consider both options?

16 A. Yes, sir. I understand that.

17 Q. So that's clear. I mean, I want to make sure we
18 both understand that.

19 A. That's clear.

20 MR. CUMMINGS: Thank you, Judge. That's
21 all questions we have of this gentleman.

22 THE COURT: Mr. Maynor, I want you to step
23 outside the courtroom for just a moment. Do not
24 sit down because you're not going to have time
25 to sit down and then we'll get you right back

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1 out.

2 MR. MAYNOR: Okay. I've got a question for
3 you. I think I've asked you before, but I'm not
4 a legal resident of South Carolina.

5 THE COURT: Your domicile is here?

6 MR. MAYNOR: Because of the military I
7 reside in Dorchester County for the last two
8 years, but I'm not legally --

9 THE COURT: Do you have a residence here?

10 MR. MAYNOR: I don't think so, because on
11 my pay statement on my military it says South
12 Dakota.

13 THE COURT: Where do you live?

14 MR. MAYNOR: I live in Dorchester County.

15 THE COURT: Okay. And you live in a house?

16 MR. MAYNOR: I live in a house.

17 THE COURT: Do you own the house?

18 MR. MAYNOR: Me and the bank.

19 THE COURT: You and the bank own the house.
20 Have you got a driver's license?

21 MR. MAYNOR: Yes, I do.

22 THE COURT: It's a South Carolina driver's
23 license?

24 MR. MAYNOR: Yes, it is. I know where
25 you're getting from.

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1 THE COURT: When you get out of the
2 military where are you going to live, in
3 Dorchester County?

4 MR. MAYNOR: Dorchester County or North
5 Carolina, one.

6 THE COURT: Very well. I'm satisfied your
7 domicile is here.

8 MR. MAYNOR: I just wanted to make sure.

9 THE COURT: It's an issue of domicile
10 versus an issue of legal residence for military
11 purposes.

12 MR. MAYNOR: Because a lot of military
13 people -- I could have elected and said that --
14 I could have got the military to probably get me
15 out of this jury thing, but I didn't.

16 THE COURT: You think?

17 MR. MAYNOR: I think, but I don't know. I
18 mean, I'm just thinking --

19 THE COURT: They might have to send --

20 MR. MAYNOR: See, I've got to leave in the
21 latter part of August. Or I'm supposed to leave
22 and I don't know where I'm going, so that's
23 something -- I don't know how long the trial's
24 lasting.

25 THE COURT: This one's not anticipated to

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1 last more than two weeks. Well, that's not
2 true. Two weeks is an estimate, it could be a
3 little bit longer, could be a little bit
4 shorter, too. You'll be out of here by August,
5 I'll line up behind that one. Thank you so
6 much, Mr. Maynor, if you'll just step right
7 outside.

8 MR. MAYNOR: Thank you.

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

11 MR. BAILEY: Your Honor, I believe he's
12 qualified, death qualified. Although he leans
13 toward number two, he is qualified. My concern,
14 Your Honor, is the domicile issue, I think of
15 Pug Ravenel when I think of domicile. And I
16 understood him to say Monday that he was -- his
17 home of record as far as military was also home,
18 but he lived in Dorchester County and he
19 intended to make this his permanent home. And
20 now he's saying that he may be going to North
21 Carolina, so if he doesn't have a firm intention
22 to remain here after his military service that
23 would make --

24 THE COURT: I think the question is does he
25 remain here, does he have a present intention to

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1 remain here is the question. I didn't ask him
2 that, but I may bring him back in for purposes
3 of the record and ask him does he have a present
4 intention to remain here.

5 MR. BAILEY: I thought he said something
6 different Monday.

7 THE COURT: I'm with you.

8 MR. CUMMINGS: Judge, I know he attached a
9 letter. We've made some markings on it so I
10 would not pass it up to the bench, but he wrote
11 a letter of 17th April 2002 to Ms. Graham and
12 I'll let you be the judge of what you interpret
13 this letter to be. It says I do own a home at
14 8356 Bideford Court, North Charleston, SC. I'll
15 leave it to you.

16 THE COURT: Okay. Let me talk to him.
17 Whoa, whoa. Before he does that, assuming that
18 he tells me what I think he is, is that he has a
19 present intention to remain within the state of
20 South Carolina.

21 MR. BAILEY: Then there's no problem. I
22 think if he's undecided whether he's going to
23 stay here or go to North Carolina it gets into a
24 gray area.

25 THE COURT: That's sometime in the future.

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1 All he needs is a present intention to stay in
2 South Carolina.

3 MR. BAILEY: He's here now because of
4 military duty, he doesn't have any options.

5 THE COURT: I'm satisfied. He owns a home
6 here, he has a South Carolina driver's license.
7 I think, quite frankly, there's a question of
8 whether or not he's a resident of South Dakota.
9 He has a South Carolina driver's license, he
10 owns property within South Carolina. I know for
11 tax purposes or whatever they let them pick
12 wherever they want to pick. Most of them I
13 thought picked Florida because they didn't have
14 state income tax, but if he has -- I think he
15 has intention of it, but I'm going to ask him
16 does he have a present intention to remain here,
17 not in the future but the present.

18 What says the defense?

19 MR. CUMMINGS: Judge, we have no objection
20 and I made sure we talked to Mr. Bowman about
21 that, no objection.

22 THE COURT: Thank you.

23 MR. CUMMINGS: If that becomes an issue.

24 THE COURT: Let me have this man back.

25 (Whereupon, the prospective juror returns to the

Juror 194 Phil D. Maynor - Examination

1 courtroom.)

2 EXAMINATION

3 BY THE COURT:

4 Q. Thank you so much, Mr. Mayor. About the -- sit
5 down. About this issue over your domicile, you own a
6 home in South Carolina in Dorchester County?

7 A. Yes, ma'am.

8 Q. And you have a present intention to remain here?

9 A. In South Carolina, yes. Not necessarily
10 Dorchester County, but....

11 Q. But in South Carolina?

12 A. In South Carolina.

13 Q. All right. You're talking about when you get
14 out of the military?

15 A. Well, we're in the process of selling our home,
16 we might could go to Berkeley County.

17 Q. I got you. But right now you live in Dorchester
18 County. When you go home you're going to Dorchester
19 County?

20 A. I'm going to Dorchester County.

21 Q. And what you're telling me is that I'm thinking
22 about that maybe, well, sell our home and move to
23 Berkeley County, but right now your present intention
24 is that you'll remain in Dorchester County?

25 A. Yes, ma'am.

Juror 194 Phil D. Maynor - Examination

1 Q. Because you live here.

2 A. We got our house for sale.

3 Q. Until the house sells you plan to live in
4 Dorchester County, right?

5 A. Yes, ma'am. I have no other option.

6 Q. Thank you. And you have a South Carolina
7 driver's license?

8 A. I have I have a South Carolina driver's license
9 and I live in South Carolina.

10 Q. You vote in South Carolina, you have a South
11 Carolina voter registration?

12 A. Yes, I think so, because I voted for the
13 president.

14 Q. In Dorchester County?

15 A. In Dorchester County.

16 Q. All right. Now, Mr. Maynor, you have been found
17 to be qualified as a potential juror in this case.

18 That does not mean that you are on the jury yet, it
19 just means that you are a potential juror and you may
20 be selected to serve on this jury.

21 We are hoping, hoping to select the
22 jury tomorrow morning at ten o'clock. And that might
23 be a little bit ambitious. And we'll call you first
24 thing in the morning if we're not going to be able to
25 stick with that time, but I think we probably will be

Juror 194 Phil D. Maynor - Examination

1 able to do that.

2 A. Do I need to be here at 10:00?

3 Q. You do. You do. Here's a sheet with some
4 instructions for you to help get ready with your jury
5 service. It has things like packing and numbers
6 where you can be reached, where you're going to be
7 and things like that. Please feel free to share
8 those instructions with anyone that you choose to
9 because it's got information that your family members
10 will need where you can be reached in the event of an
11 emergency.

12 However, please be mindful not to
13 discuss this matter or any aspect with anyone and do
14 not expose yourself to any information about this
15 case. Now, if you're packed, when you come leave
16 your bag down in the car.

17 A. Okay.

18 Q. Your suitcase. But listen, if you're not
19 selected on this jury I recommend a weekend holiday,
20 you'll be packed. Thank you so much, Mr. Maynor. I
21 look forward to seeing you in the morning.

22 A. Okay.

23 Q. Bye.

24 (Whereupon, the prospective juror exits the
25 courtroom.)

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1 THE COURT: All right. Could we please
2 have Mr. Scott Kuhn?

3 THE CLERK: No, ma'am.

4 LIEUTENANT EDWARDS: Ms. Jones, Tracy
5 Jones.

6 THE COURT: Tracy Jones.

7 THE CLERK: The next group was 5:30 this
8 afternoon, we rescheduled them for 9:00 a.m.

9 THE COURT: That's right.

10 THE CLERK: And Mr. Tracy Jones, we were
11 unable to get in touch with him.

12 THE COURT: Oh, okay. All right.
13 Here's -- yeah, but maybe not. We have
14 Mr. Tracy Jones who is here. And we could
15 certainly examine Mr. Jones to see if he
16 qualifies. Obviously he may and he may not. He
17 is out of order, the next person is Mr. Scott
18 Kuhn. I ask your pleasure.

19 MR. CUMMINGS: Yes, ma'am. Beg the Court's
20 indulgence.

21 THE COURT: Certainly. Certainly.

22 MR. CUMMINGS: 157, Jones.

23 THE CLERK: 158.

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

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1 MR. CUMMINGS: Judge, we have Mr. Bowman's
2 permission to examine this juror out of order.
3 I don't know the solicitor's pleasure.

4 MR. BAILEY: That's fine, Your Honor, but
5 if he qualifies I'm just wondering if we got to
6 bring the other fellow that's ahead of him here
7 tomorrow.

8 THE COURT: That was our agreement
9 beforehand.

10 MR. BAILEY: Okay.

11 THE COURT: Unless you all are willing to
12 step him out of order. I'm not going to at all
13 in any way insist on that unless you guys want
14 to do that, it's up to you.

15 MR. BAILEY: I don't have any problem
16 swapping the order, Your Honor.

17 THE COURT: All right. And you're telling
18 me that Mr. Bowman is comfortable doing that as
19 well?

20 MR. CUMMINGS: Correct, Judge, thank you.
21 We'll swap order. And put that on the record.

22 THE COURT: All right. Very well. Send in
23 Mr. Jones.

24 (Tracy L. Jones, called as a prospective juror,
25 having previously been duly sworn, is examined

Juror 158 Tracy L. Jones - Examination

1 as follows:)

2 EXAMINATION

3 BY THE COURT:

4 Q. Hi, Mr. Jones.

5 A. Hi.

6 Q. How are you?

7 A. All right. How are you all doing?

8 Q. Fine. Mr. Jones, I appreciate you being here so
9 much. I'm so sorry that we weren't able to reach you
10 to let you know that your panel had been rescheduled
11 for in the morning, but we're going to go ahead
12 and -- since you're here and you've waited we're
13 going to go ahead and examine you at this time; is
14 that okay with you?

15 A. That's fine.

16 THE COURT: Now, this is Tracy Jones, Juror
17 Number 158.

18 Q. Now, Mr. Jones, do you remember Monday, it seems
19 so long ago now, do you remember Monday when you were
20 sworn in with your other fellow potential jurors?

21 A. Right.

22 Q. Let me share with you that the oath that you
23 took then still is good now and is good for the
24 answers that you will give us, that you'll share with
25 us, okay?

Juror 158 Tracy L. Jones - Examination

1 A. Okay.

2 Q. Let me ask you since we were together on Monday
3 has anybody talked to you or tried to approach you
4 about this case, or have you received any information
5 about this matter in any regard?

6 A. People at the job asked me what the case is
7 about.

8 Q. Did they really?

9 A. Yeah.

10 Q. What did you tell them?

11 A. I'm not at liberty to talk about it.

12 Q. Thank you so much for doing that. So what
13 you're telling me, people have asked you and you
14 followed my instructions?

15 A. Yeah.

16 Q. Thank you for that. Great. So my notes --
17 well, let me ask you this: Did you have a chance to
18 look at the potential witness list?

19 A. Yes.

20 Q. And are you related to blood or marriage or
21 acquainted with, connected in any regard, a casual
22 friendship, a business relationship, or otherwise
23 with anyone on the list?

24 A. The names on the list is not familiar.

25 Q. None of them?

Juror 158 Tracy L. Jones - Examination

1 A. None of them.

2 Q. All right, sir. Now, the notes that I have
3 indicate that when I talked about things like do you
4 have an opinion, do you know anything about this
5 case, have you heard anything about this case, do you
6 have a bias or a prejudice for or against either
7 side, my notes indicate that none of those things
8 applied to you; is that right?

9 A. As far as I know, yeah.

10 Q. Okay. In other words, you don't have an opinion
11 about this case?

12 A. No.

13 Q. You don't know anything about this case?

14 A. No.

15 Q. And you don't have any bias or prejudice for or
16 against either side?

17 A. No.

18 Q. All right, sir. And so that's what you told me
19 on Monday, and that continues today?

20 A. Correct.

21 Q. All right. There are some questions that I want
22 to ask you. And I want to talk about the questions
23 I'm going to ask you for just a moment because I want
24 you to understand why I'm asking.

25 A. All right.

Juror 158 Tracy L. Jones - Examination

1 Q. I will tell you that I'm not asking them to
2 invade your privacy. And I'm going to ask you some
3 questions about how you feel about certain matters
4 because I'm looking for your opinions.

5 A. Right.

6 Q. The only reason I'm looking for your opinions is
7 so we can see if your opinions might impact on your
8 jury service, it's just that simple.

9 A. Okay.

10 Q. Now, please know that we know that your opinions
11 are just as valid and good as anybody else's. And
12 we're not here to challenge your opinions in any
13 respect or in any regard, we're just here to learn
14 something about them.

15 Now, I'm going to be asking you some
16 questions in a few moments about penalty,
17 specifically the death penalty. And I wanted to say
18 a couple things about that. The first thing is to
19 talk about penalty now is very premature.

20 A. Right.

21 Q. Obviously the trial hasn't begun yet.

22 A. Correct.

23 Q. Obviously Mr. Bowman is presumed innocent of
24 these charges, so this is premature to talk about it.

25 A. Right.

Juror 158 Tracy L. Jones - Examination

1 Q. The only reason I'm asking you about it now is
2 that I need to know what your -- some of your
3 opinions are about that penalty, about the death
4 penalty because it may be an issue in this case.

5 A. Correct.

6 Q. And I don't know how to do it other than if I
7 want to ask potential jurors about penalty before
8 they're jurors then we've got to do it before the
9 trial begins.

10 A. Right.

11 Q. So that's the reason that I ask you to remember
12 that it's premature, Mr. Bowman is presumed innocent,
13 but yet I still need to have your opinion about that
14 matter.

15 A. Right. Right.

16 Q. Also the context that I'm going to ask you
17 questions are going to be in the general context.

18 A. Okay.

19 Q. Because I am not going to ask you your opinions
20 about this case because you don't know anything about
21 this case.

22 A. Right.

23 Q. It wouldn't be fair to you and it would be
24 improper, so I'm not going to do that.

25 A. Okay.

Juror 158 Tracy L. Jones - Examination

1 Q. But I am going to ask you your opinions in the
2 general or generic sense.

3 A. Okay.

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

8 A. Yeah.

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

11 A. Right. If it's the law, yeah.

12 Q. Okay. And would you be willing to follow the
13 law and apply the law even if you didn't particularly
14 like that part of the law and even if you disagreed
15 with it, would you still be willing to follow the law
16 as you are instructed to do so by the judge?

17 A. Yeah.

18 Q. And 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, and in the
21 event that you were on the jury and something that
22 you heard jogged a memory of something that you had
23 heard about this case in the past, could you set that
24 memory aside and decide this case based on the
25 evidence in this courtroom?

Juror 158 Tracy L. Jones - Examination

1 A. Yes.

2 Q. Very well. And let me tell you that in a
3 criminal case as you know and as we talked about on
4 Monday, the State has the burden of proving a
5 defendant guilty beyond a reasonable doubt.

6 A. Okay.

7 Q. And a defendant never has to prove himself or
8 herself innocent because they are -- a defendant is
9 presumed innocent. The burden to prove guilt beyond
10 a reasonable doubt always remains with the State.
11 You understand all that?

12 A. Yes.

13 Q. All right. Now, if you were a juror in any
14 criminal case, would you be willing to listen to the
15 evidence, find the facts as you found them to be, and
16 apply the law as the judge gave it to you to the
17 facts as you found them to be?

18 A. Yeah.

19 Q. And when you did that if you were not convinced
20 of a person's guilt beyond a reasonable doubt, would
21 you be willing and able to find that person not
22 guilty?

23 A. I would have to.

24 Q. Likewise, if after you listened to the evidence,
25 found the facts as you found them to be, applied the

Juror 158 Tracy L. Jones - Examination

1 law to those facts, if you found and you were
2 convinced that a person was guilty beyond a
3 reasonable doubt, would you be able to find that
4 person guilty?

5 A. Yeah.

6 Q. All right, sir. Now, what you're telling me, I
7 think I hear loud and clear, is that you would be
8 willing to listen and make your decision based upon
9 whether or not you were convinced that a person was
10 guilty or not, right?

11 A. Absolutely.

12 Q. Now, most of the time jurors do not concern
13 themselves with the matter of punishment. Most of
14 the time in criminal court punishment is a matter for
15 the judge.

16 A. Right.

17 Q. But there's one case in our law when a jury has
18 to deal with the issue of punishment, the matter of
19 punishment, and that is a case like this one, it is
20 in a case where an individual has been charged with
21 the crime of murder and where the State is seeking
22 the death penalty.

23 Now, if an individual in a death
24 penalty case is convicted of the crime of murder,
25 what that means is the 12 people on the jury heard

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1 the evidence, found the facts as they found them to
2 be, applied the law and were convinced beyond a
3 reasonable doubt, all of them, unanimously, that the
4 person was found guilty, then the person is convicted
5 of the crime of murder.

6 At that point in a death penalty case
7 the jury, the same jury that convicted him or her,
8 comes back and then in a different and separate
9 proceeding decides the punishment. And the options
10 are two: One, life imprisonment without the
11 possibility of parole; and two, the death penalty.
12 That sentencing decision is made, determined in that
13 second or sentencing phase of the trial is what it's
14 called. Do you understand this information?

15 A. So far.

16 Q. All right. In other words, it's -- you know,
17 there's a trial as any other criminal trial where the
18 issue is the person guilty or not guilty.

19 A. Uh-huh (affirmative response).

20 Q. If the person's not found to be guilty or found
21 not guilty, that's the end of it. But in the event
22 that the jury finds that person guilty beyond a
23 reasonable doubt, unanimously.

24 A. Right.

25 Q. Then the person has been convicted of the crime

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1 of murder.

2 A. Right.

3 Q. And then that jury, that same jury turns its
4 attention to sentencing.

5 A. Right.

6 Q. And hears evidence, receives evidence and then
7 makes a decision regarding punishment.

8 A. Right.

9 Q. Is that clear?

10 A. Uh-huh (affirmative response).

11 Q. All right. Now, did you have a chance to look
12 at this sheet that hopefully was in the jury room?

13 A. Yes.

14 Q. And this sheet essentially describes three
15 different types of jurors. Did you -- did you see,
16 could you tell that there were essentially three
17 different kinds of jurors?

18 A. Yeah.

19 Q. Which of those three types of jurors do you
20 think best describes you?

21 A. Number three.

22 Q. Number three. In other words, you would be
23 willing to listen to the evidence, to hear that
24 evidence, and if you were convinced after you
25 listened to the evidence, if you were convinced that

Juror 158 Tracy L. Jones - Examination

1 the appropriate penalty in any capital case that you
2 would be sitting on the sentencing, not this one, I
3 am not talking about this case, but in a capital case
4 for which you were participating in the sentencing
5 part.

6 A. Right.

7 Q. If you were convinced that it was appropriate to
8 impose a sentence of death and you thought that was
9 appropriate, would you be willing and able to vote
10 for that sentence?

11 A. Yes. If the facts --

12 Q. Yes.

13 A. -- pointed that direction.

14 Q. Yes.

15 A. If the law --

16 Q. In other words, you would listen to the
17 evidence, you would listen to the charge on the law
18 from the judge?

19 A. Right.

20 Q. And if you were convinced that that was
21 appropriate, could you vote for that sentence?

22 A. Yes.

23 Q. On the other hand, if you thought the death
24 sentence was not appropriate, or for any other reason
25 the person ought to receive a life imprisonment,

Juror 158 Tracy L. Jones - Examination

1 would you be able and willing to vote for a sentence
2 of life imprisonment?

3 A. Yeah.

4 Q. All right. So you would make the decision,
5 death penalty, life imprisonment, based upon the
6 evidence that you would receive in the courtroom?

7 A. The crime should fit the punishment.

8 Q. Exactly. Exactly.

9 A. Yeah.

10 Q. Now, if you were chosen to serve as a juror in
11 this case, you, along with the other jurors, would be
12 housed here locally in a motel, here locally. The
13 term is called sequestered. You need to remain with
14 us for the duration of the trial which is anticipated
15 to be two weeks, it could be a little bit longer and
16 it could be a little bit shorter. I know that
17 obviously this would create an inconvenience for you.

18 A. Yeah.

19 Q. As it would surely for all who serve on this
20 jury. Other than the inconvenience which it would
21 surely cause anybody that had to serve in this
22 capacity, would that pose a serious risk of danger to
23 your health or well being, or to that of anybody who
24 is dependent upon you if you had to serve in that
25 capacity?

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1 A. It would be a big inconvenience, but I think we
2 would be able to work it out somehow.

3 Q. You would be able to do that?

4 A. I think so.

5 Q. Thank you so much. Mr. Jones, would you,
6 please, answer the questions that these lawyers may
7 have for you.

8 A. Sure.

9 THE COURT: All right. Who went last?

10 MR. CUMMINGS: I think I'm next.

11 THE COURT: You're next. Okay,

12 Mr. Cummings.

13 EXAMINATION

14 BY MR. CUMMINGS:

15 Q. I'm Norb Cummings, the young lady seated at the
16 table is Ms. Marva Hardee-Thomas and both of us have
17 been Court appointed to represent Mr. Marion Bowman
18 Jr., sir. Thank you for your kindness and your
19 patience and your prompt answers back to Her Honor
20 and I'm just going to ask you a few.

21 A. Okay.

22 Q. Very first thing, and I promise you we really
23 read these questionnaires of jurors that take the
24 time to fill out. You work at Trident Hospital, sir?

25 A. Yes.

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1 Q. Would you be willing to, please, share with me
2 what you do down at Trident Hospital?

3 A. I'm a physical therapist aide.

4 Q. All right, sir.

5 A. Meaning I assist the therapist.

6 Q. Okay, sir. And because I saw you were with the
7 first responders, could you tell us what department
8 you were with? Or looks like first responder at one
9 time.

10 A. Oh, well, that was a street accident.

11 Q. Oh, an accident one time?

12 A. Okay.

13 Q. And then you donate some money to the police and
14 firemen, like when the guys are out there with the
15 buckets or boots?

16 A. No. They call the house for a donation so I
17 send them one.

18 Q. Okay. The mere fact that you do that, or that
19 you even went one time as a first responder, would
20 that in any way materially or substantially impair
21 your ability to carry out your jury duties in here to
22 be a fair and impartial juror to any citizen?

23 A. No.

24 Q. You're shaking your head no.

25 A. Why should that --

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1 Q. You wouldn't favor one side or the other, law
2 enforcement?

3 A. Not at all.

4 Q. All right, sir. And along that line you appear
5 to be a gentleman of strong convictions and you hold
6 your civic duty very responsible. And the reason I
7 ask that is because Her Honor asked you about the
8 great inconvenience and you told her you would be
9 willing to work around that.

10 A. Right.

11 Q. And you would be willing --

12 A. I'll try.

13 Q. Yes, sir. And you would be willing to work and
14 devote all your attention here --

15 A. Right.

16 Q. -- to the importance of this case?

17 A. Right.

18 Q. And you would make sure that every citizen gets
19 a fair and impartial trial?

20 A. Right.

21 Q. And you're the type of gentleman who could work
22 collectively with your other jurors?

23 A. Yes.

24 Q. And accordingly, sir, you hold those principles
25 of every citizen is innocent until and unless proven

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1 guilty beyond a reasonable doubt?

2 A. Correct.

3 Q. And then further, sir, that, again, you would be
4 the kind of gentleman who would consider both
5 punishments if and when somebody was convicted of
6 murder?

7 A. The punishment should fit the crime.

8 Q. And you wouldn't be the type of gentleman that
9 would not be willing to consider both, life
10 imprisonment without the possibility of parole or the
11 ultimate penalty, the death penalty?

12 A. Right.

13 MR. CUMMINGS: Beg the Court's indulgence,
14 Your Honor.

15 THE COURT: All right.

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

18 Q. Mr. Jones, that's all the questions. I promised
19 I would be brief.

20 A. Okay.

21 THE COURT: Mr. Bailey.

22 EXAMINATION

23 BY MR. BAILEY:

24 Q. I'm Walter Bailey and I'll be prosecuting the
25 case. I need to ask you a few questions. And I'm

Juror 158 Tracy L. Jones - Examination

1 going to ask you about the death penalty. And like
2 the judge said, we're not going to talk about this
3 case because you hadn't heard the facts.

4 A. Right.

5 Q. So we're just talking in general.

6 A. Okay.

7 Q. Is the death penalty something that you've ever
8 given any real in-depth thought to before you found
9 out you might be on this jury?

10 A. I have in conversations with other people, yeah.

11 Q. Okay. You've been answering a lot of questions,
12 but could you just tell us in your own words what
13 your thoughts and beliefs are on the death penalty
14 now?

15 A. Well, like I said multiple times today, I think
16 the crime should fit the punishment.

17 Q. Okay.

18 A. I mean, I am not the one to -- you know,
19 everybody has got to answer to their own god, you
20 know, and I have to live on this earth and in this
21 land whereas I got to follow the rules just like
22 everybody else.

23 Q. Okay.

24 A. So I figure like this: We walk close enough
25 with God we'll be all right.

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1 Q. All right. And you understand that we wouldn't
2 even be dealing with that life and death issue, life
3 without parole or the death penalty unless and until
4 the jury's already found that person guilty of murder
5 beyond a reasonable doubt?

6 A. Right. Right.

7 Q. So anytime that jury's considering the
8 punishment they're dealing with a convicted murderer.
9 Whatever that jury decides has got to be unanimous,
10 all 12 agree on life without parole or all 12 have to
11 agree on the death penalty.

12 A. Okay.

13 Q. And then the judge is going to impose that
14 sentence.

15 A. Okay.

16 Q. In other words, the jury makes the decision, the
17 judge makes sure that decision is carried out.

18 A. Correct.

19 Q. So I'm not -- again, not going to ask you what
20 you would do in this case, I don't want to predict,
21 I'm just -- theoretically if you were on a jury in a
22 case like this and what you heard was bad enough in
23 the penalty phase, could you vote for the death
24 penalty knowing that as a result of that vote that
25 individual actually is going to get executed?

Juror 158 Tracy L. Jones - Examination

1 A. Yeah.

2 Q. And by the same token if you felt like a life
3 sentence was warranted, you could also vote for
4 that; is that correct?

5 A. Right.

6 Q. If the jury votes for the death penalty there's
7 a death verdict form that each one of the jurors is
8 asked to put their name to. Could you sign a paper
9 like that if that was your decision?

10 A. Yeah.

11 Q. Last thing the jury would be involved in would
12 be if they vote for the death penalty and sign this
13 paper, they come out here and sit in these chairs and
14 the verdict is announced. Each one of those jurors
15 would probably be asked to stand up when their name
16 is called and announce out loud that was their
17 verdict and it was still their verdict. Could you do
18 that if that was your verdict?

19 A. Yeah.

20 Q. Mr. Jones, that's all I've got. Thank you very
21 much.

22 THE COURT: Mr. Jones, I'm going ask you to
23 step right outside the courtroom. Do not sit
24 down, you will not have time I do not believe to
25 sit down and we will be right back with you.

Juror 158 Tracy L. Jones - Examination

1 MR. JONES: Okay.

2 THE COURT: Thank you so much.

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

5 THE COURT: What says the defense?

6 MR. CUMMINGS: Statutorily qualified,
7 Judge.

8 THE COURT: What says the State?

9 MR. BAILEY: Qualified, Your Honor.

10 THE COURT: I figured one of you would say
11 ye-ha. Ask him to step back in.

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

14 THE COURT: Mr. Jones.

15 MR. JONES: Yes.

16 THE COURT: You have been found to be
17 qualified as a potential juror in this case.
18 That does not mean that you are on the jury yet,
19 but it does mean that you are qualified to serve
20 on this jury and you may be selected to serve on
21 this jury. We are hoping that we will be able
22 to select the jury tomorrow morning at 10:00
23 a.m.

24 MR. JONES: Okay.

25 THE COURT: I have a sheet of paper for you

Juror 158 Tracy L. Jones - Examination

1 somewhere. Oh, right here, but I need to write
2 that on here. Friday. If for any reason we
3 need to put that time back we will certainly get
4 in touch with you, but I think that will work
5 just fine. There you go.

6 Now, again, if we have to change the
7 time we will call you back. The sheet that you
8 have has some instructions on it for you and it
9 will tell you where you will be and gives you
10 some emergency numbers that you can certainly
11 share with your family, and some of the things
12 that you may need like clothes and medication
13 and that sort of thing.

14 Please, feel free to share that
15 information with your family or with anybody
16 else you choose to so they will have that
17 information. But do be mindful not to discuss
18 this case or allow anyone to discuss it with you
19 or any aspect of it. And as you know, do not
20 expose yourself to any information about this
21 case. Thank you so much, Mr. Jones, and I look
22 forward to seeing you in the morning at ten
23 o'clock.

24 MR. JONES: All right.

25 THE COURT: Thank you so much. Good

Juror 158 Tracy L. Jones - Examination

1 evening.

2 Tell him to step back in. I'm so
3 sorry, come back in the courtroom. Tomorrow
4 morning at ten o'clock in the courtroom.

5 MR. JONES: Okay.

6 THE COURT: Leave your bag in the car,
7 okay?

8 MR. JONES: Okay.

9 THE COURT: You know what I mean, your
10 packed bag, not your clothes bag.

11 MR. JONES: Right.

12 THE COURT: Thank you.

13 (Whereupon, the prospective juror exits the
14 courtroom.)

15 THE COURT: Great. Thanks. All right.
16 That gives us 45 qualified jurors. My plan is,
17 and as we've already discussed before, hopefully
18 we will not lose any of our qualified jurors.
19 However, there have been a couple of folks who
20 have called the clerk's office and remembered
21 things going on so we will have to deal with
22 them in the morning.

23 Also the additional jurors I would
24 propose that if we have to remove any of our
25 qualified jurors, then everybody just moves up a

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1 notch. If we do not need to replace any of the
2 qualified jurors, then my plan is to drop the
3 beginning with -- it would be Mr. Jones, the
4 last jurors qualified so that we end up when we
5 get ready to actually select the jury with 43
6 qualified jurors. Because my plan is, of
7 course, to have 12 jurors and four alternates.
8 Is that clear to everyone?

9 MR. BAILEY: Yes, ma'am.

10 MR. CUMMINGS: Yes, ma'am.

11 THE COURT: Very well. Now, how long do
12 you think that we will need to hear motions
13 tomorrow?

14 MR. CUMMINGS: Judge, since we got the
15 majority of them I don't think it shouldn't take
16 more than an hour.

17 THE COURT: All right.

18 MR. CUMMINGS: But, again, if you'll be a
19 little more lenient to us in case it does carry
20 over into oral argument.

21 THE COURT: Sure.

22 MR. CUMMINGS: Some of the issues I think
23 would be very brief. And I know Mr. Bailey has
24 one other motion he wants to argue back also.

25 THE COURT: All right.

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1 MR. CUMMINGS: I was just trying to think
2 for us. I passed a note to co-counsel about
3 trying to get together tomorrow after you do
4 this and how not to poison the rest of the folks
5 who can figure out a way to get off the jury,
6 too, because I know I've heard just from being
7 back here and listening to Madam Clerk that
8 Mr. Porcher's wife wants him off and other
9 people. I mean, not from Cheryl, but, I mean,
10 walking around back here from the clerk's office
11 and other people that this lady is making phone
12 calls. And I apologize, I was looking right at
13 Ms. Graham, but I meant to say clerk, I meant to
14 say the clerk's office.

15 THE COURT: You heard it from Ms. Etheredge
16 is who you heard it from.

17 MR. CUMMINGS: Probably. I guess, Judge,
18 what I'm saying is if these jurors get around
19 the other people it could poison a lot. I don't
20 know how Your Honor wants to handle each
21 individual hardship case.

22 THE COURT: I'm not going to allow them to
23 stand up in open court and do that.

24 MR. CUMMINGS: Yes, ma'am.

25 THE COURT: I was thinking about that a

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1 moment ago.

2 MR. CUMMINGS: Yes, ma'am.

3 THE COURT: I think what we will probably
4 need to do is probably set up for a while in the
5 jury room and hear those in the jury room.

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: And --

8 MR. BAILEY: Judge, how many have we heard
9 from that they have a problem, out of curiosity?

10 THE COURT: Thank you for asking me that.
11 What I remember is Ms. Porcher, but I remember
12 on his questionnaire he was divorced so let me
13 share that with you. I'm not sure about that
14 issue at all, we may hear nothing. I understand
15 a Torrance. Was that a Ms. Torrance?

16 MR. BAILEY: Ms. Torrance. A blond-haired
17 lady.

18 THE COURT: Right. Right. Ms. Torrance
19 has an issue. Who else has an issue,
20 Ms. Etheredge. Ms. Torrance had some concerns?

21 MS. ETHEREDGE: Deborah Krueger.

22 THE COURT: What is she concerned about?

23 MS. ETHEREDGE: She said she was going on a
24 trip on June the 8th through the 27th. I told
25 her I didn't think it would last until June 8th,

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1 for her to talk to you about it tomorrow.
2 Brenda Torrance, her husband's out of town, but
3 she said if she can use the phone -- if she gets
4 picked if she can use the phone she can take
5 care of everything.

6 THE COURT: Oh, okay. That's right,
7 immediately use the phone.

8 MS. ETHEREDGE: Uh-huh.

9 THE COURT: So we really have Ms. Torrance
10 and Mr. Porcher. Maybe not Mr. Porcher, maybe
11 just Ms. Porcher who I understand is an ex-wife.
12 You're telling me that somebody's calling and
13 maybe they shouldn't be calling?

14 MR. BAILEY: Ms. Krueger is not qualified.

15 MR. CUMMINGS: Is not qualified.

16 THE COURT: Well, maybe she wanted to be.

17 MS. ETHEREDGE: Well, I didn't look on the
18 list, she just said that.

19 THE COURT: She will be thrilled when we're
20 able to tell her not a problem, she'll be
21 thrilled.

22 MR. CUMMINGS: We haven't reached her yet.

23 MR. BAILEY: She can go on her trip.

24 THE COURT: Again, thanks to court
25 personnel, y'all are awesome and outstanding, I

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1 know the hour is late. Please, understand this
2 should be our late -- other than perhaps for
3 deliberation periods, this hopefully will be our
4 last evening. I do not intend to try, we get
5 into the trial, as I told you it's my intention
6 to go from 9:00 to 6:00 and that would be it.

7 MR. BAILEY: What time tomorrow, Your
8 Honor?

9 THE COURT: Jury's coming in at 10:00.

10 THE CLERK: Yes, ma'am.

11 THE COURT: I would say 9:00.

12 MR. BAILEY: 9:00.

13 THE COURT: Because I've got that matter to
14 take care of in the morning.

15 MR. BAILEY: Sure.

16 THE COURT: But that I start that business
17 at 7:30, so I'm hoping to be up here by 9:00,
18 7:30, 7:15.

19 MR. CUMMINGS: May it please the Court,
20 Judge, this is a housekeeping matter. We would
21 like to have our client over with us to review
22 the jury again tomorrow morning. And we know
23 normally they would not prepare to bring him
24 over until -- I don't mean to put any
25 inconvenience on the security staff or anybody

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1 else, but we would like to work with him to go
2 over the jury issues.

3 THE COURT: Sure. What time?

4 MR. CUMMINGS: Getting up here by 8:30,
5 nine o'clock, I would like to do the same thing.

6 THE COURT: Sure. Absolutely.

7 MR. CUMMINGS: And then further, Judge, one
8 more thing that is not within your province
9 completely, but Monday night my client, and he
10 waited until today to tell us to not cause any
11 issues, they've taken the phone or phone
12 privileges away from max side and the only way
13 he has any contact to us or my office or
14 Ms. Thomas's office or his mom which is the only
15 person he can contact who has not been charged,
16 he does not violate any rules, he's not done
17 anything wrong, they've just taken the phone
18 away from him.

19 I would ask while we're getting ready
20 to do this now in particular to have his mind
21 and ability to speak to people or to tell
22 somebody something like they heard from somebody
23 or whatever, I would ask if there's any way
24 possible that even if we have to draft an order
25 tonight to ask that he be allowed to have

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1 certain phone issues or phone privileges.

2 THE COURT: Why do you -- do you have any
3 understanding why that one had changed?

4 MR. CUMMINGS: I mean, I might be better
5 addressed to ask one of the -- I guess they had
6 some sort of disruption, or happened to have
7 some trouble putting the people back in the
8 cells over on max while we were in court. And
9 because of that, I guess, you know, the old rule
10 is if one person's bad everybody is punished,
11 the phone was taken away from max, maximum
12 security, and that's where my client is housed.

13 You know, we'll draft an order, Your
14 Honor, and then just ask the sheriff if he would
15 at least allow somebody to get Mr. Bowman to
16 have access to a phone if and when he needs to.
17 And I'm not trying to belabor the Court to keep
18 us here later tonight.

19 THE COURT: What I'll do is, Smitty, can
20 you see if -- just for tonight find out what
21 their concern is and just ask them to provide
22 him with contact, with access tonight and if
23 there's a problem we'll handle it tomorrow, I'll
24 hear from him tomorrow. But just for tonight
25 before this jury is selected in the morning if

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1 they would give him phone privileges tonight.
2 You can probably figure that. Don't you think
3 you can probably do that?

4 MR. CUMMINGS: We thank this gentleman
5 because obviously he's going to have to spend
6 extra time now going across the street and
7 asking other people.

8 THE COURT: He does that anyway, he's the
9 most amazing person. He -- you know, I saw --
10 you see people walking on the side of the road
11 and, you know, you call Smitty and he dashes to
12 everybody's help, so he's remarkable. Look at
13 him being shy. We love you, Smitty.

14 All right. Thank you. All right. We
15 will then be -- if I can stand up we will be
16 adjourned for today. Thank all so much.

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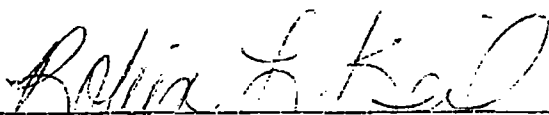
STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER) : C E R T I F I C A T E

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 25th day of August 2003.



Robin L. Keil, RMR,
Resident Court Reporter
First Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 :
 COUNTY OF DORCHESTER) CASE NO. 01-GS-18-0348, 0349

ORIGINAL

STATE OF SOUTH CAROLINA,) VOLUME XIX Pages 3492 - 3756
)
 Plaintiff,) TRANSCRIPT OF RECORD
)
 -versus-) JURY SELECTION/JURY TRIAL
)
 MARION BOWMAN, JR.,) May 17, 2002
)
 Defendant.) St. George, South Carolina

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The Honorable Diane S. Goodstein

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1 (May 17, 2002.)

2 THE COURT: Thank you all so much and
3 please be seated, everyone.. Ladies and
4 gentlemen, thank you very much for your return
5 here as jurors today. We are ready now to
6 proceed to the final jury selection process that
7 will be involved in the trial of this case. All
8 of you have been summoned here to come back as
9 qualified jurors in the process that we began on
10 Monday of this week.

11 Now I need to ask you, ladies and
12 gentlemen, since we talked with you last,
13 whenever that was, I remind you, of course, that
14 you are still under oath. First of all, have
15 any of you seen, heard, read anything about this
16 case, or been exposed to any information about
17 this case from any source at all? If you have,
18 please stand. I find no one standing. Thank
19 you.

20 Secondly, I need to know if since you
21 left me in the qualifying process that we
22 engaged in during the week on the various days
23 beginning on Monday and ending yesterday, if
24 anything has happened that would change your
25 qualifications to serve as a juror in this case.

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1 If so, please stand. All right. All I want you
2 to do, of course, is to give me your name. Yes,
3 ma'am, your name.

4 A JUROR: Pauline McElyea.

5 THE COURT: Yes, ma'am.

6 A JUROR: Jami Burt.

7 THE COURT: Y'all may be seated. Thank
8 you.

9 Yes, ma'am.

10 A JUROR: Kathleen McPartlin.

11 THE COURT: Yes, sir.

12 A JUROR: George Young.

13 A JUROR: Kenneth Evans.

14 THE COURT: All right. What I will do is
15 we will retire to the jury room and we will get
16 you all back in and speak with you individually.
17 Please do not discuss whatever your situation is
18 with your fellow potential jurors and we will be
19 with you in just a few moments. All right. Let
20 us retire.

21 Just one minute. I think what we'll
22 do, I'm trying to think. Since there are so
23 many of us I don't think we can get everybody in
24 that room. I think what I will do, let's do
25 this, ladies and gentlemen, and I'll ask you for

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1 your patience. Let me ask you jurors as I look
2 and compare the number of you and the number of
3 us it's probably about equal. Let me invite you
4 to go out and enjoy the morning and I'll ask if
5 you jurors just go ahead, if you'll vacate the
6 courtroom for me with the exception of
7 Ms. McElyea, you stay in here with us. And
8 everyone else if you will just -- you go and
9 take a break, you can do whatever you want to
10 do. If you even want to ride up and get a
11 little breakfast, that will be fine. It will
12 probably take us 45 minutes to go through this
13 process, so you all just be back here in the
14 courtroom at eleven o'clock.

15 MR. BAILEY: Your Honor, can we approach,
16 please?

17 THE COURT: You all approach. Just a
18 second in case I need to change what I'm doing.
19 (Whereupon, a bench conference was held off the
20 record in the presence of the jury panel but out
21 of the hearing of the jury panel.)

22 THE COURT: All right. Let's see. A few
23 more details, ladies and gentlemen. We need to
24 go through the roll call just to be sure all of
25 you are here. I think you are, but let us just

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1 quickly go through the roll call. All you need
2 to do is just stand and acknowledge your
3 presence when Ms. Graham calls the roll. And
4 then what we're going to do is those of you that
5 just gave me your name that have those concerns,
6 I want you to remain, just stay seated, all of
7 you, and then I'll give you a little bit more
8 instruction at that point. All right.

9 Yes, ma'am, Ms. Graham, call the roll.

10 (Roll call.)

11 THE COURT: Thank you all so much. All
12 right. Now, other than the folks that need to
13 speak with us this morning, and I'll amend the
14 time, you all go just be at ease, maybe catch a
15 little bit of breakfast. And truth is by the
16 time we do what we need to do it will probably
17 be close to an hour. Why don't we say be back
18 ready to clear the metal detectors at 11:15.
19 11:15, ladies and gentlemen. Be at ease. If
20 you all would vacate now. And those of you that
21 need to speak with you {sic}, if you will
22 remain.

23 (Whereupon, the jury panel leaves the
24 courtroom.)

25 (Whereupon, Pauline C. McElyea enters the

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1 courtroom and is seated.)

2 EXAMINATION

3 BY THE COURT:

4 Q. Yes, ma'am. Come around. Yes, ma'am. Come on
5 back around. Ms. McElyea, I remind you as you make
6 your way up that, of course, you remain under oath.
7 Just have a seat. All right. Yes, ma'am.

8 A. I forgot to pack a bag.

9 Q. Oh, you forgot to pack your bag.

10 A. I'm sorry, I just forgot it.

11 Q. That's not a problem. That is not a problem.

12 A. I thought I was in trouble. Thank you. That's
13 it. That's all.

14 Q. That's wonderful. Tell me where you live.

15 A. Summerville. In Goose Creek -- I mean, yeah,
16 Summerville.

17 Q. In Summerville. How long is it, do you think
18 it's going to take you to go and get your bag and
19 come back?

20 A. It's takes 45 to get up there, 45 minutes to get
21 back, half an hour to pack.

22 Q. All right.

23 A. I've got everything ready, I just forgot to do
24 it.

25 Q. I'm not laughing at you I'm just delighted that

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1 you're well and that's all it is, to be honest with
2 you, because that's very easy to remedy. What we
3 will do is stay for the qualification process and
4 we'll send someone with you to get you there and get
5 you back as efficiently as we can. It's not a
6 problem.

7 A. Good.

8 THE COURT: Buster, we'll send somebody.

9 Q. This is Lieutenant Edwards, you will meet him
10 and his group in just a few moments and they will
11 assist you to get back to Summerville and get back.

12 A. Oh, thank you.

13 Q. No, bless your heart, that's not a problem. If
14 we had a little bit longer I would tell you to go
15 ahead, but why don't you go have some breakfast and
16 relax and then come on back at 11:15, hear my
17 introductory remarks and then we'll send you on your
18 way.

19 A. Thank you, ma'am.

20 Q. Not a problem.

21 A. Thank you.

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

24 THE COURT: All right. Send in Ms. Burt.

25 (Whereupon, Jami H. Burt enters the courtroom

State vs. Bowman - Volume XIX

1 and is seated.)

2 EXAMINATION

3 BY THE COURT:

4 Q. Yes, ma'am. Ms. Burt, if you would be seated
5 right here. Of course you main under oath. Yes,
6 ma'am.

7 A. I don't have adequate care for my children. I
8 can't be sequestered for that long without talking to
9 them and being able to be there with them.

10 Q. Well, we went through that yesterday.

11 A. Well, my brother lives with me.

12 Q. Okay.

13 A. And I thought that he would be able to take care
14 of them, but he said he wouldn't do it, so....

15 Q. Your brother refused to tell you that he would
16 help with your children?

17 A. My husband doesn't live here and I'm not
18 comfortable being away. I didn't realize you weren't
19 going to be able to talk to them or anything like
20 that.

21 Q. How old are your children?

22 A. Thirteen and 11.

23 Q. Okay. And your brother, tell me the
24 circumstance with your brother. What is he refusing
25 to do that you were anticipating that he would be

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1 able to do?

2 A. Well, I thought that he would watch them for me
3 for the two weeks, but he does not want to do that.
4 And the way my brother is I don't feel comfortable
5 with him saying that and letting him watch my
6 children.

7 Q. Is it a situation that -- to be honest, that
8 your concern is that you don't think you'll be able
9 to speak with your children at all during the period?

10 A. I didn't realize that I wasn't going to be able
11 to talk to my kids, yeah, that bothers me very bad.

12 Q. Okay. Well, that might be able to be resolved.

13 A. They're my life and I don't want to go that long
14 without talking to them.

15 Q. I understand that.

16 A. And they're upset, too, and stuff, so....

17 Q. Well, let me ask you this question: If we can
18 resolve the contact with your children, do you think
19 that your brother would come around?

20 A. I don't know. He's a drifter, you know, he just
21 does what he wants, he's not a stable, you know,
22 sit-down person. If you met my brother you'd
23 understand.

24 Q. I mean, if he's --

25 A. Do I have to be sequestered?

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1 Q. Yeah.

2 A. Do you have to be sequestered?

3 Q. Yes, you have to be sequestered. You do have to
4 be sequestered. Let me think about it. What I don't
5 understand about your brother is, is he going to --
6 he lives with you?

7 A. Yes.

8 Q. How old is your brother?

9 A. Thirty-nine.

10 Q. You have a 39-year-old brother who is living
11 with you and he would not be willing to provide
12 reasonable supervision for your children for two
13 weeks?

14 A. No.

15 Q. You're going to let him live with you?

16 A. You have to understand my family.

17 Q. Why did you not bring this up yesterday?

18 A. Well, I didn't realize, I thought Jay would. I
19 thought my brother would because he does live with
20 me. I didn't think it would be any problem.

21 Q. All right. Well, let me ask you just to step
22 back out, Ms. Burt, let me confer.

23 A. Okay.

24 THE COURT: Have her stand right there, I
25 don't want her back in the jury room.

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1 (Whereupon, the prospective juror exits the
2 courtroom.)

3 THE COURT: I thought maybe that her
4 concern really was her inability to have
5 contact, it really wasn't about the brother.
6 You know, and of course needless to say it's
7 frustrating, this circumstance. And, quite
8 frankly, I don't believe I was anticipating
9 exactly this kind of circumstance where folks
10 just are not able to make the appropriate
11 arrangements. What says the State?

12 MR. BAILEY: Your Honor, either one of two
13 possibilities, either she's got a legitimate
14 problem with the brother and the children in
15 which case she obviously couldn't follow the
16 testimony, or the other possibility is she's
17 exaggerating the situation intentionally to get
18 out of jury service.

19 THE COURT: That's right.

20 MR. BAILEY: In either scenario I don't
21 want her.

22 MR. CUMMINGS: Judge, I wholeheartedly
23 agree with Mr. Bailey on the same two points. I
24 wanted to wait a moment and make sure Mr. Bowman
25 had a chance to collect his thoughts and think

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1 about it because as we went down the jury list
2 these were the final people we concentrated on,
3 these 45. I'm going to -- asked Mr. Bowman a
4 moment ago, I checked with co-counsel, we want
5 jurors that are going to pay attention here also
6 and we want jurors not to be worried about, and
7 then later on trying to get off in the middle of
8 the trial that's going to cause us even more
9 problems.

10 THE COURT: All right. Well, I'm not
11 inclined to excuse her at this point. I
12 think -- is there -- I should look this way. Is
13 there someplace that we can place these folks
14 that I hadn't made up my mind?

15 MR. CUMMINGS: I think that room to the
16 right is vacant right now, I'll check with my
17 SLED agents.

18 THE COURT: All right. Ask Ms. Burt to
19 just wait there. Just tell her to wait in the
20 grand jury room for a little bit. All right.
21 Let me think about her. All right. Let me talk
22 to Ms. McPartlin.

23 (Kathleen A. McPartlin enters the courtroom and
24 is seated.)
25

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EXAMINATION

1

2 BY THE COURT:

3 Q. Good morning, Ms. McPartlin. All right. Of
4 course you remain under oath.

5 A. Yes.

6 Q. All right. Tell me what your concern is.

7 A. My husband's brother has been battling cancer
8 for the last year and a half and we got a call
9 Wednesday night that he doesn't have long to live.
10 And we need to go to Minnesota. They said possibly a
11 week, but it's -- oh, I mean, they don't know for
12 sure. So I just wanted to let everyone know that the
13 situation has come up. If you want me here I'm more
14 than happy to be here, but....

15 Q. If he passes you're certainly in trouble?

16 A. I would like to go with my husband, yes, I
17 would.

18 Q. Thank you for sharing that with us. We're going
19 to place you in another room.

20 A. Okay.

21 Q. Actually at this moment step right outside and
22 let me see if we can give you....

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

25 THE COURT: Yes, sir.

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1 MR. CUMMINGS: That's not a problem we can
2 fix. The other phone calls maybe with the other
3 lady to calling her children might satisfy her,
4 but if he dies I don't know if she's going to
5 want to be excused to go to the funeral with her
6 husband's brother which means we would --

7 THE COURT: I think we would excuse her in
8 the event that he --

9 MR. CUMMINGS: Yes, ma'am.

10 THE COURT: -- passes, but I don't hear
11 from her any unwillingness to remain with us in
12 the event that occurs.

13 What says the State?

14 MR. CUMMINGS: Thank you, ma'am.

15 MR. BAILEY: Your Honor, as long as we're
16 able to get -- I'm not sure what's going to
17 happen to the rest of these people.

18 THE COURT: I know.

19 MR. BAILEY: As long as we're able to get
20 at least, say, three alternates I would not
21 foresee a problem in seating her. My only
22 concern is that we get a bunch of others bailing
23 out and we get down to somebody who's probably
24 50/50 chance they're going to be leaving us
25 during the course of the trial is my concern.

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1 THE COURT: Exactly.

2 MR. BAILEY: Also she appeared to me, now
3 you were closer to her than I was --

4 THE COURT: She's emotional talking about
5 it.

6 MR. BAILEY: Looked like she was going to
7 burst into tears, so it may be affecting her
8 right now.

9 THE COURT: All right. Let me get her back
10 in and let me tell her we're....

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

13 BY THE COURT: ,C 81Dh

14 Q. Ms. McPartlin, let me tell you two things.
15 First thing that I want to tell you is -- first thing
16 I want to tell you is that I'm so sorry about your
17 circumstance. The second thing that I want to tell
18 you is that if you think you would be able to stay
19 with us and be with us and mentally be able to
20 listen, then I would love to have you stay. I would
21 like to have you stay. Obviously should he pass,
22 then obviously you would go.

23 A. I would definitely want to go, yes.

24 Q. Indeed. Do you think you would be able to
25 remain with us, because hopefully he'll --

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1 A. I would like to stay as long as I could go if he
2 passed so that he would go back home.

3 Q. Oh, indeed.

4 A. Yes. I do not have a problem with staying.

5 Q. Very well. Stay with us back in the grand jury
6 room just as we go through this process and I'll give
7 you an absolute definitive that's where we are, okay?
8 But I don't think that will be a problem.

9 A. Okay.

10 (Whereupon, the prospective juror exits the
11 courtroom.)

12 THE COURT: All right. Let me talk to
13 Mr. George Young.

14 (George W. Young, Jr. enters the courtroom and
15 is seated.)

16 EXAMINATION

17 BY THE COURT:

18 Q. Yes, sir, Mr. Young. I just remind you that
19 you, of course, remain under oath. Yes, sir.

20 A. I think when I was here Monday I mentioned the
21 idea that my wife home schools and I have a son
22 graduating this Friday. I don't know whether when
23 this court case would start or anything, but my wife
24 had reiterated and told me something that I really
25 didn't think of, being home schoolers I would need to

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1 definitely be there for his graduation which would be
2 this Friday afternoon.

3 Q. From 4:00 to 6:00?

4 A. Actually it starts at about 7:00.

5 Q. Oh, okay.

6 A. But I would need to be there probably -- until I
7 get changed probably earlier than that, somewhere
8 around 4:00 and probably later at night. But I would
9 need to be there because me and my wife would be --
10 actually since being home schooled we would give him
11 his diploma.

12 Q. Not going to be a problem.

13 A. Okay. I just wanted to make sure.

14 Q. Four o'clock might be a little -- do you think
15 you could -- do you have your dress clothes with you?

16 A. No, ma'am. I don't.

17 Q. All right. You need to be there at 7:00, you've
18 got to --

19 A. I have to go back to my house to change.

20 Q. Okay. All right. And then go onto the
21 graduation?

22 A. Yes, ma'am.

23 Q. And that's at 7:00?

24 A. Graduation starts at seven o'clock.

25 Q. You need to be there early?

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1 A. I need to be there early.

2 Q. All right. I don't think that's going to be a
3 problem working out. You understand, though, that
4 you have to go with one of the members that you
5 hadn't met yet, but we have a SLED detail and they
6 would certainly go with you and participate with you
7 since you would be sequestered, but getting you there
8 is not going to be a problem.

9 A. Okay.

10 Q. Step right outside the door for me, Mr. Young.
11 (Whereupon, the prospective juror exits the
12 courtroom.)

13 THE COURT: Of course, this is one of the
14 circumstances that we knew would occur. I
15 really anticipate that he would need to go to
16 the graduation. I don't know that he needs to
17 leave at 4:00 to get home and to change and then
18 to get to the graduation at 7:00, sounds to me
19 like probably 5:00 would work, and that would
20 probably be fine for us today I would think as
21 well. But I don't think there would be a
22 problem if he's selected.

23 MR. BAILEY: I agree.

24 MR. CUMMINGS: Same here, Judge. And
25 that's your province and how you allow that.

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1 THE COURT: Okay. Send him back in because
2 I can let him go on and break.

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

5 THE COURT: Mr. Young, that's not going to
6 be a problem at all. So, of course, come on and
7 stay with us. I might ask you to go in terms of
8 dressing a little bit closer to 5:00, but we'll
9 get you there, just depends on -- I'm going to
10 be mindful around four o'clock so we can break
11 around a witness, so I know you're going to be
12 able to get changed and get where you need to
13 be, so that's not going to be a problem.

14 I wanted to tell you come on back in,
15 don't worry about that, and send you on your
16 break instead of keeping you in the room and you
17 can go about your business. So you'll come on
18 back about 11:15, right?

19 MR. YOUNG: Yeah.

20 THE COURT: Thank you, Mr. Young. He's
21 leaving and he'll be back at 11:15.

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

24 THE COURT: All right. The next one is
25 Mr. Evans, we have his medical information. I

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1 know who he is. I'm going to step him aside
2 right now, we know what his circumstance is. We
3 need to mark as a Court's Exhibit, letter from
4 Mr. Evans. And he's been examined this morning
5 by his doctor, David Baggett, who says that he
6 suffers from generalized anxiety disorder, that
7 his condition is exacerbated by thoughts of
8 claustrophobia and agoraphobia and that all of
9 his symptoms are -- he's having symptoms of
10 those, of his generalized anxiety disorder. In
11 the opinion of his doctor all of these symptoms
12 are in response to stress associated with the
13 process of jury selection, so we'll mark that
14 now and see where we are at the end. Let me
15 talk to Mr. Raymond Dejong.

16 (Marked for purposes of the record was
17 Court's Exhibit 31, letter from Dr. Baggett.)

18 (Whereupon, Raymond E. Dejong, II enters the
19 courtroom and is seated.)

EXAMINATION

20
21 BY THE COURT:

22 Q. Yes, sir, Mr. Dejong.

23 A. I just wanted to let you know I get an allergy
24 shot every week.

25 Q. Okay.

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1 A. And I have to get the allergy shot in Orangeburg
2 at the doctor.

3 Q. When do you normally get the shot?

4 A. Tuesdays, Tuesday afternoon.

5 Q. Okay. Do you know how late the doctor's office
6 is open?

7 A. I think they're open until 5:00 or 6:00, I'm not
8 sure.

9 Q. 5:00 or 6:00, all right. What is the doctor's
10 name?

11 A. Dr. Blackwell.

12 Q. Dr. Blackwell. I wonder if it would be possible
13 to get Dr. Blackwell to send -- to be able to send
14 the shot, or we could get the shot and bring it to
15 St. George and have someone give it to you here,
16 maybe the health department, do you think that's
17 possible? We'll check on that.

18 A. I don't know. I have no idea.

19 Q. All right. We will work on that detail.

20 A. Okay.

21 Q. And see what we can do.

22 A. Also work wanted me to mention I'm the exclusive
23 person over several things at my work, being out for
24 two to three weeks would be a very hardship on them.
25 I work for Electrolux Home Products, I'm one of the

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1 engineers over packaging, steering wheels, tires. We
2 produce riding lawn mowers, they wanted me to mention
3 that to you.

4 Q. Okay. Tell them you did.

5 A. Okay. That's all I can do.

6 Q. Exactly. Would you do this for me, between now
7 and 11:15, can you call the doctor's office and just
8 explain the situation and ask them is it possible to
9 have someone transport the shot to St. George and
10 have it be given in St. George just to save the
11 travel time? In other words, instead of taking your
12 arm to the shot, can we bring the shot to the arm?

13 A. I could try to do that.

14 Q. We can get the health department to give it to
15 you here. You are going to get it, don't worry about
16 that. But if you could call them during this period
17 that would be excellent, but we'll do one or the
18 other.

19 A. Okay.

20 Q. If they can't do that, if they don't think
21 that's possible, if you could let -- just find out
22 how late they're open.

23 A. Okay.

24 Q. All right.

25 A. Yeah.

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1 Q. And how early they open.

2 A. They open at 8:00. Or actually they can't give
3 the shot until 9:00, that's when the doctor gets
4 there.

5 Q. Okay. Find out that information for us.

6 A. Okay.

7 Q. Thank you, Mr. Dejong.

8 A. Thank you.

9 Q. We will get you a telephone.

10 (Whereupon, the prospective juror exits the
11 courtroom.)

12 THE COURT: Buster, you probably don't know
13 where the telephones are. Back on this side.

14 THE CLERK: He can use our little room.

15 THE COURT: The little room on the side.

16 All right. Let me speak to
17 Ms. Barbour.

18 (Whereupon, Sherri L. Barbour enters the
19 courtroom and is seated.)

20 EXAMINATION

21 BY THE COURT:

22 Q. Hi, Ms. Barbour. If you will recall, of course,
23 that you remain under oath.

24 A. Yes, ma'am.

25 Q. Tell me what your concern is.

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1 A. You and I have a mutual friend, even though I
2 don't know you, it's Bill and Libby Hearn.

3 Q. Right.

4 A. I don't know if that mattered. It concerned me.

5 Q. Thank you so much. Thank you so much for your
6 candor. If you recall, nobody ever asked you if you
7 had any connection with the judge.

8 A. Okay.

9 Q. So thank you for sharing that. That's
10 absolutely not a problem.

11 A. Okay. The other question was I know some folks
12 who work for Charleston County, I didn't know if that
13 was a problem.

14 Q. That work for Charleston County. Charleston
15 County Charleston County?

16 A. Yes. Husband and wife.

17 Q. Okay.

18 A. Terry Boatwright, I believe he works for the
19 Charleston County Sheriff's Department.

20 Q. Okay.

21 A. And his wife works for the jail.

22 Q. Okay.

23 A. And they're my neighbors and I go to church with
24 them. I didn't know if that mattered.

25 Q. Okay.

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1 A. This all bothered me at three o'clock in the
2 morning and I wanted to make sure.

3 Q. Very well. All right. Did you list them on the
4 questionnaire? I don't know if it asked family.

5 A. I don't believe I did. I didn't know if --

6 Q. Let's see. Hold on one second.

7 A. Those people I don't see all the time, but I do
8 go to church with them.

9 Q. Oh, okay. Do you have a family member or
10 personal friend that is employed in law enforcement?

11 A. I think I answered no.

12 Q. Okay. All right. And you want to tell us that
13 you know them?

14 A. Yes.

15 Q. Okay.

16 A. They're members of our store, so I don't see
17 them all the time and I just know them. I've known
18 them.

19 Q. You know them, okay.

20 A. Yes.

21 Q. Are you close to them?

22 A. I don't know how to define close and that's why
23 I had a problem with that.

24 Q. I got you.

25 A. I've known them since '93.

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1 Q. When you read the questionnaire and you thought
2 about that, did you think about them and say, well,
3 this is a personal friend and I don't think they're a
4 personal friend?

5 A. Well, more than that I thought about my brother
6 who used to work for the correctional institute, but
7 he's not there anymore.

8 Q. Okay.

9 A. He hasn't been there in a while so that was like
10 the first thing that entered my mind. And then over
11 the last few days just thinking about things.

12 Q. Sure.

13 A. Like I've gone to the movies with her, but over
14 the last few years we haven't really done anything
15 together.

16 Q. Okay.

17 A. I still see them in church, though, and I just
18 wanted to make sure that wasn't a problem.

19 THE COURT: Any questions from the State of
20 Ms. Barbour along those lines?

21 MR. BAILEY: None from the State.

22 MR. CUMMINGS: One moment, please.

23 THE COURT: Sure.

24

25 BY THE COURT:

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1 Q. Let me just ask you this question while they are
2 looking for your information: As a result of that
3 relationship, could you set those relationships
4 completely aside and try this case being fair and
5 impartial to both sides?

6 A. Yes, I could.

7 Q. All right. Would those friendships have any
8 impact on your jury duty?

9 A. No.

10 Q. All right. Just a second, see if Mr. Cummings
11 has any questions.

12 MR. CUMMINGS: Judge, I have no questions
13 at this time of this lady.

14 THE COURT: Thank you.

15 Thank you, Ms. Barbour. Yeah, that's
16 fine. Would you step back in the grand jury
17 room for me for just a moment?

18 MS. BARBOUR: Okay.

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

21 THE COURT: Yes.

22 MR. CUMMINGS: Going down here it's no, no,
23 no as to corrections and law enforcement. Your
24 Honor was just sitting next to her and looked at
25 her face as she answered these questions back,

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1 brought them back up, we've had several jurors
2 excused for not answering the questions
3 correctly, particularly about whether they were
4 arrested or whether they weren't.

5 THE COURT: Yeah. This one says personal
6 friend. And I think what had her hung up was
7 whether or not they were personal friends. And
8 from what I heard from her, and she was trying
9 to struggle with whether or not they were
10 personal friends and I gather didn't think they
11 were personal friends at three o'clock this
12 morning, thought she would be best in just
13 saying she knew them.

14 MR. CUMMINGS: Yes, ma'am.

15 THE COURT: From what I can tell from the
16 neighbors her problem was personal friend.
17 Let's see.

18 MR. CUMMINGS: Mr. Boatwright.

19 THE COURT: And it says family member that
20 is employed in law enforcement. And she said
21 her brother was employed a long time ago as a
22 correctional officer. Is there another place?
23 Because that one says is and he's not an is, he
24 would be a was, but let's look.

25 MR. CUMMINGS: That would be the only

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1 reason, Judge, if we had gotten those answers
2 elicited from her during that I would have been
3 able to cross-examine her on that. I know you
4 offered us the opportunity now. I don't think
5 there was a deliberate attempt to hide it here,
6 Judge, I just put it on the record, again, it
7 would have been helpful if they answered them
8 correctly.

9 THE COURT: Absolutely. I don't think the
10 responses disqualifies her. I'm satisfied,
11 particularly having seen her before when we voir
12 dired her and seen her now, I think she's the
13 kind of person that would worry if something
14 came into her mind that she -- whatever came
15 into her mind she better share it with us. From
16 what she tells me she went to the movie with the
17 neighbor one time and that's been several years
18 ago. I think that she doesn't consider, from
19 what I can tell as a personal friend, so it
20 wasn't applicable for her. However, she just at
21 three o'clock this morning started worrying and,
22 you know, she just seems to be the kind of
23 person that would be most concerned and so I
24 think that's why she wanted to amend it in that
25 regard.

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1 With regard to her number 29 as it
2 regards her brother, this does say do you have a
3 family member or personal friend that is
4 employed in law enforcement. And she says he's
5 not now but was. And all of these seem to be
6 phrased -- and number 30 says what about as a
7 correctional officer in the prison system or at
8 a jail. And, again, it begins with "is" in 29.
9 So I think that from what she says he was a
10 correctional officer some time ago, so I think
11 that she would not be disqualified.

12 All right. Just let me ask
13 Ms. Barbour to step back in.
14 (Whereupon, the prospective juror returns to the
15 courtroom.)

16 THE COURT: Hi, Ms. Barbour. Ms. Barbour,
17 thank you for sharing that information with us.
18 I appreciate you sharing that with us. As far
19 as I can tell your brother is no longer a
20 correctional officer. It appears this is
21 couched in terms of the present so that's good
22 to know that information, but I'm satisfied
23 that's fine that it wasn't on the sheet.

24 And from what I can -- from what I --
25 you were telling me the other is not a problem

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1 either because it was because of where the
2 person fell in the category of your life, this
3 relationship with the folks in the neighborhood,
4 so you're fine.

5 MS. BARBOUR: Okay.

6 THE COURT: Thank you. Please take your
7 break until about 11:15.

8 MS. BARBOUR: Go back out this way?

9 THE COURT: You can go any way you want to.
10 Go back outside and enjoy this beautiful day.

11 (Whereupon, the prospective juror exits the
12 courtroom.)

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

15 THE COURT: Yes, sir, Mr. Dejong.

16 MR. DEJONG: They're open until 2:00 today.

17 THE COURT: Okay.

18 MR. DEJONG: Normal hours are 8:00 to 5:00.

19 THE COURT: Okay.

20 MR. DEJONG: They can't give the shot until
21 9:00. The bottle can be released, but it has to
22 be released to me. They're only open until 2:00
23 today and the nurse is there until 12:00 today.

24 THE COURT: And you need to receive the
25 shot by next Tuesday?

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1 MR. DEJONG: Yes. I get it once a week.

2 THE COURT: I'm trying to think whether it
3 would be better to go today or on Monday. We
4 might send you today. We'll see how it goes.

5 MR. DEJONG: Okay.

6 THE COURT: Remind me to talk to our SLED
7 detail and see what is going to be better, but
8 we'll either send you for the bottle today or
9 we'll send you for it Monday, okay?

10 MR. DEJONG: Yeah. I just wanted to let
11 you know.

12 THE COURT: Thank you, that's great. You
13 take your break now until 11:15, go outside or
14 read, just be back at 11:15.

15 MR. DEJONG: Okay.

16 THE COURT: All right. Thank you.

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

19 (Whereupon, Kris R. Tempkin enters the courtroom
20 and is seated.)

21 EXAMINATION

22 BY THE COURT:

23 Q. Yes, sir. Mr. Tempkin, let me remind you that
24 you remain under oath. You can be seated. Tell me
25 what the problem is.

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1 A. I was mistaken in telling you that my baby,
2 nine-month-old daughter, was going to be christened
3 on the 22nd. It's not the 22nd, it's the 2nd.

4 Q. Of...?

5 A. Of this coming up month.

6 Q. Of June?

7 A. Yes, ma'am.

8 Q. What time?

9 A. I'm not sure. It's in Ohio, so I would have to
10 drive to Ohio. And I understand that this is very
11 important and I don't want to hinder that in any way.

12 Q. Let me ask you this question: It's the 2nd of
13 June instead of the 22nd of June?

14 A. It's the 2nd.

15 Q. Of June?

16 A. Yes, ma'am.

17 Q. Instead of the 22nd of June?

18 A. Yes, ma'am.

19 Q. When did you realize that problem?

20 A. Yesterday.

21 Q. Okay.

22 A. I figured it out because I mentioned it to the
23 wife and I had talked about it.

24 Q. Sure. Sure.

25 A. And she said it's the 2nd. And I was like, um,

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1 okay, I apologize.

2 Q. When would you need to leave?

3 A. The 30th -- or the 31st is when I was scheduled
4 to leave from work as well.

5 Q. When did you schedule to leave from work on the
6 31st, Mr. Tempkin?

7 A. That was two months ago.

8 Q. You just forgot?

9 A. Yes, ma'am.

10 Q. Because there's no 31st kind of near the 22nd.
11 I understand the 2nd and the 22nd, but there's no
12 31st near the 22nd.

13 A. Right. When I realized it I reached in my glove
14 compartment to get a lighter out of there because I
15 needed to -- that's beside the point, but I needed to
16 get -- I got -- I have two forms, there's two
17 different dates I have for work that I put in for
18 time off. And I faxed a copy of it and I put a copy
19 in the glove compartment. I pulled that out and saw
20 that date. And then I spoke with my wife about it
21 and I confirmed it with her and she said, yes, that's
22 what the time you put in. So I was absent minded in
23 thinking that it was the 22nd at all.

24 Q. What kind of plans have been made in Ohio for
25 the christening?

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1 A. Her whole family and some of my family is coming
2 up there from Florida. I'm taking off from work, my
3 wife is taking off from work. It's the church that
4 my wife went to and her pastor and from what I
5 understand it's tough to get that.

6 Q. Okay.

7 A. I hate to put that on you. I must say that my
8 wife -- I said, you know, what would you like me to
9 do and I presented the situation to my wife. And she
10 said you do what you have to do, do your civic duty
11 if that's what you need to do. So all I can say is I
12 guess I can do what I can.

13 Q. All right. Let me ask you to step right outside
14 the courtroom for me, Mr. Tempkin.

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

17 THE COURT: What says the State?

18 MR. BAILEY: Your Honor, I'm more concerned
19 about his contact with Ms. Hardee-Thomas that
20 was unauthorized. And you had clearly told
21 jurors not to discuss the case, and to approach
22 one of the lawyers basically ex parte when she
23 was there on something totally unrelated I think
24 was inappropriate, so that does concern me and I
25 would move that he be excused for cause for that

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1 reason.

2 MR. CUMMINGS: Judge, I don't know the
3 context other than what we heard from Ms. Thomas
4 that there was something about tell my boss why
5 I got to be put away for two weeks. This matter
6 right here with Her Honor starting today we
7 didn't anticipate, of course, how rapid we did
8 the jury questions and how rapidly we got a
9 jury, we figured at the most two weeks.

10 Two weeks from today he could be here
11 and he can drive to Ohio one day since we got
12 that brand new highway that goes 77 mostly all
13 the way up to Ohio. I would ask that he stay.
14 If Your Honor finds he has violated your rules
15 as to jury selection and jury orders, then so be
16 it. But the way it was presented to us is that
17 I guess he was trying to convince his boss, see,
18 ask her why I got to be put away for two weeks.
19 I'll leave that to Your Honor's province.

20 THE COURT: All right. Put him in the
21 grand jury room for now, let me think about it.

22 All right. Let me talk to
23 Mr. Jonathan Davis.

24 (Whereupon, Jonathan L. Davis enters the
25 courtroom and is seated.)

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EXAMINATION

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BY THE COURT:

Q. Yes, sir, Mr. Davis. Of course, you remain under oath. Tell me what your concern is.

A. Okay.

Q. Keep your voice up so everybody can hear you.

A. My female friend is related to him and I want to know if that was a problem.

MR. CUMMINGS: Judge, I can't hear this young man.

THE COURT: He said my female friend is related to Mr. Bowman.

A. Uh-huh (affirmative response).

Q. Okay. How is she related to Mr. Bowman?

A. She's like cousin.

Q. How do you know that?

A. Because she was like her cousin supposed to be on trial for killing some girl and burned up her car or something like that.

Q. When did you have that conversation, Mr. Davis?

A. She told me last night on the phone.

Q. Well, didn't I tell you not to talk about this case?

A. I didn't talk about it.

Q. Or have anyone talk to you about it?

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1 A. She was talking about it because she said she
2 saw it on the news.

3 Q. Mr. Davis, don't you remember that I instructed
4 you not to discuss this matter or allow anyone to
5 discuss it with you?

6 A. I told her I couldn't talk about it, so I was
7 like -- she asked me, she was like what you going to
8 jury duty for? I was like, well, I don't know about
9 the case yet. And she was like, oh.

10 Q. Well, tell me how it came up that she gave all
11 that information, she gave you information?

12 A. Her aunt, her aunt know about it.

13 Q. How did you find all that out, Mr. Davis?
14 You've obviously talked to somebody about it. Who
15 all have you talked to about this case?

16 A. I didn't talk to anybody about it.

17 Q. You didn't tell me yesterday that her aunt knew
18 about it when we talked earlier, their aunt knew
19 about it and your girlfriend was related and she
20 had --

21 A. I didn't know her aunt was related to him.

22 Q. I know, the other day, because you would have
23 told me the other day, right?

24 A. Uh-huh (affirmative response).

25 Q. The other day when you were in here if you knew

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1 that your aunt knew about all this information you
2 would have told me, wouldn't you?

3 A. Yes.

4 Q. So you've obviously found out about it between
5 when you were here before and today, right?

6 A. Yes.

7 Q. So you've talked about this case?

8 A. I haven't talked about it.

9 Q. How do you know it then?

10 A. Because she told me. She was telling me she was
11 like --

12 Q. Who is she?

13 A. Sequanna (phonetic) Coltar.

14 Q. Okay.

15 A. She told me, she was like you know my cousin on
16 trial? I was like, your cousin? She was like, yes.
17 He was like on trial for killing someone and burning
18 up her car. I was like, oh, okay. She was like,
19 well, I heard you're going to jury duty, is that the
20 case you're going for? I was like, well, I don't
21 know what the case about yet. She was like, oh,
22 okay. And then I changed the subject.

23 Q. Well, then how did you know about your aunt knew
24 about it?

25 A. Her aunt. Her aunt told her that was her

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1 cousin.

2 THE COURT: Any questions from the State?

3 MR. BAILEY: Yes.

4 EXAMINATION

5 BY MR. BAILEY:

6 Q. Mr. Davis, give me the name of your girlfriend
7 again, please.

8 A. Sequanna Coltart.

9 Q. C-o-l-t-a-r?

10 A. Uh-huh (affirmative response).

11 Q. Okay. And do you recall who placed the call in,
12 did you call her or did she call you?

13 A. I called her.

14 Q. Okay. When did you call her up?

15 A. I called her last night around eleven o'clock.

16 Q. Okay. On a cell phone?

17 A. Cell phone.

18 Q. Okay. All right. And why did you call her?

19 A. I talk to her every night.

20 Q. Okay. And during the course of that
21 conversation she told you that -- how did it come up
22 that you were on jury duty?

23 A. She said she heard about it.

24 Q. All right. Well, how did she know you were on
25 the jury?

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1 A. Because when I walked out Monday I didn't take
2 this off.

3 Q. Okay. So you had your jury badge on?

4 A. Yeah. Walking down the street and went to the
5 store.

6 Q. Okay. Well, I thought you talked to her on the
7 telephone?

8 A. I did.

9 Q. Okay. Did she see you with the jury badge on
10 before you called her up?

11 A. No. She said she heard about it.

12 Q. She heard you were on the jury?

13 A. I was on jury duty.

14 Q. Did she tell you who -- somebody saw you with
15 your jury badge and then told your girlfriend that
16 she saw them?

17 A. I guess. I guess that's how she heard.

18 Q. Okay. When she said I heard you're on a jury,
19 what did you tell her? What else did you say, first
20 of all?

21 A. She asked me about the case.

22 Q. Okay. And what did she ask you?

23 A. She was like is that the same, you know, case
24 you on? And I was like, I don't know.

25 Q. When she said is that the same case you're on,

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1 something must have led up to that because same case
2 would relate back to something that was said about a
3 case, right? Do you follow me?

4 A. No.

5 Q. Okay. Well, let me do it this way. Inasmuch
6 detail as you can remember would you just tell us,
7 you know, everything that went on in that phone
8 conversation?

9 A. Yes.

10 Q. From the time the phone rang and she picked it
11 up.

12 A. All right. We was talking about, you know,
13 going to church Sunday.

14 Q. Okay.

15 A. And then she was like, well, my aunt, she was
16 like, you know, we kin to these guys, or these people
17 from Branchville. And I was like, oh, okay.

18 Q. She said that before y'all talked about jury
19 service?

20 A. Yeah.

21 Q. She just started out of the blue and said we're
22 kin to these people from Branchville?

23 A. Yeah. We was talking about family because
24 wanted to know if we was related or not.

25 Q. And did she say who the people were in

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1 Branchville?

2 A. No, she didn't say.

3 Q. Didn't say who it was?

4 A. She didn't say any names.

5 Q. What else did she say?

6 A. She said her aunt -- she said one of her aunts
7 lived like, I guess, two or three houses down from
8 her cousin, her cousin killed a girl.

9 Q. What's your aunt's name? Or her aunt's name?

10 A. Tonya Coltart.

11 Q. Tonya Coltart, okay. And she said that Tonya
12 Coltart lived two or three houses down from somebody
13 that had killed a girl?

14 A. Uh-huh (affirmative response).

15 Q. And by that time in the conversation had y'all
16 talked about jury service?

17 A. No.

18 Q. Okay.

19 A. She asked me whether I was on the jury about
20 that case.

21 Q. After she told you about that aunt and living
22 next door to somebody that's charged with murdering a
23 girl she asked you?

24 A. Yes.

25 Q. I heard you're on jury service, are you on that

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1 case?

2 A. Yes.

3 Q. Okay. How did it go then?

4 A. I told her I didn't know about the case yet.

5 Q. Well --

6 A. So I changed the subject.

7 Q. But you had heard the judge when she read the
8 indictment and asked, went through that list of
9 people and all that, so you did -- you did know that
10 that was the case, didn't you?

11 A. Uh-huh (affirmative response).

12 Q. But you told her you didn't know what she was
13 talking about?

14 A. Yes.

15 Q. What happened next, what did she say?

16 A. We just started talking about something else.

17 Q. Okay. Just a second.

18 MR. BAILEY: Bear with me one second,
19 please, ma'am.

20 THE COURT: Surely.

21 (Pause in proceedings.)

22 Q. Mr. Davis, regardless of who said what, you were
23 participating in a telephone conversation in which
24 this case was discussed after the judge told you not
25 to discuss the case with anybody; is that correct?

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1 A. We didn't discuss anything.

2 Q. Okay. You didn't hang the phone up when she
3 started talking about the case, did you?

4 A. She just asked me a question. I told her --

5 Q. She went into some detail about the name of the
6 aunt, how far down from the house it was, what the
7 relationship was, the fact that a girl was killed and
8 a car was burned up. And during that entire
9 information that you were getting you didn't attempt
10 to cut her off before she finished what she wanted to
11 tell you?

12 A. I didn't know what she was saying.

13 Q. Huh?

14 A. I didn't know what she was saying until, you
15 know, she finished.

16 Q. Okay. At what point during that conversation
17 did you realize she was talking about this case?

18 A. When she said about the guy that killed a white
19 girl.

20 Q. Okay.

21 A. And burned up her car.

22 Q. You didn't say anything about a white girl
23 earlier, did you?

24 A. No, but, you know.

25 Q. What else did she tell you, Mr. Davis?

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1 A. That's all.

2 MR. BAILEY: Your Honor, that's all I have.

3 THE COURT: Thank you, Mr. Bailey.

4 Yes, sir, Mr. Cummings.

5 EXAMINATION

6 BY MR. CUMMINGS:

7 Q. Mr. Davis, I want to make sure now, did you
8 learn of any family association by the name of Gantt?
9 I mean, did you learn of any family association?

10 A. What do you mean by that?

11 Q. Well, family association is you had a list of
12 all the witnesses back there, Your Honor's got it
13 right next to you right there. When you heard the
14 name of this aunt or the aunt's talking about
15 something, did that ring as to what side of the
16 family tree anybody might be?

17 A. No, sir.

18 Q. Do you know this aunt?

19 A. Yes.

20 Q. All right. And what is her full name?

21 A. I just know her by Tina Coltart.

22 Q. Tina Coltart, okay. Have you spoken to her about
23 this case?

24 A. No, sir.

25 Q. All right. Your lady friend, sir, and I'm

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1 trying to be as polite as I can to you, okay, the
2 purpose of your phone call last night was to talk
3 about this case?

4 A. No, sir.

5 Q. When a topic of this case came up, what were
6 your exact words to her following Her Honor's
7 instructions?

8 A. I was like, I don't know anything about that.

9 Q. Okay. Did you continue to talk to the lady?

10 A. Yes.

11 Q. About what?

12 A. About other things.

13 Q. All right. Did you ever offer any information
14 or any facts about you and the jury and Her Honor's
15 instructions, please?

16 A. No, sir.

17 Q. Based on the telephone conversation you had last
18 night, would that substantially or materially
19 interfere with you being a fair and impartial juror?

20 A. No, sir.

21 Q. You don't know who this lady's related to, this
22 aunt?

23 A. No, sir.

24 Q. Okay. Would that fact affect you in your jury
25 deliberations?

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1 A. No, sir.

2 Q. What that short conversation was with that lady
3 that you had last night, would that affect you?

4 A. No, sir.

5 Q. Mr. Bailey asked you a question a few moments
6 ago and, again, sometimes we ask things that other
7 people don't hear. Was there any mention of arson in
8 this phone conversation?

9 A. Of burning up the car?

10 Q. Yeah.

11 A. Yes.

12 Q. Okay. You heard Her Honor read a murder
13 allegation and an arson allegation, correct?

14 A. Yes, sir.

15 Q. When you heard those things, what happened?
16 What did you tell her?

17 A. I just let her finish and then when she said --

18 Q. You just let her talk?

19 A. Yeah, I just let her talk.

20 Q. Did you understand Her Honor's instructions?

21 A. Yes.

22 Q. Did you understand you were not to talk about
23 this case?

24 A. Yes.

25 Q. All right. Are you telling this judge today you

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1 did not talk about this case?

2 A. I did not say anything about the case.

3 Q. When this lady started talking about things that
4 she heard or talked about other people to, did you
5 tell her to stop?

6 A. I told her I couldn't talk about it.

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

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

10 Q. Did you let this lady know while you were having
11 the phone conversation that you could not talk to her
12 about it?

13 A. No.

14 Q. You did not?

15 A. Say that again.

16 Q. Did you let your girlfriend know that you
17 couldn't talk about the facts of this case?

18 A. Oh, yes, sir.

19 MR. CUMMINGS: That's all the questions I
20 have, Judge.

21 THE COURT: Mr. Davis, I'm going to ask you
22 to step outside the door, please, sir.

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

25 THE COURT: Yes, sir, Mr. Bailey.

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1 MR. BAILEY: Of course the State would move
2 he be disqualified for cause. His story that he
3 was walking around town with a jury sticker on
4 and some unknown person saw the jury sticker, he
5 called his girlfriend and then she started out
6 of the blue talking about this case is just
7 totally incredible and he obviously ignored
8 instructions from the Court. The harm, of
9 course, is not him talking to somebody else and
10 relaying information to somebody that's not
11 going to hear this case, the harm is in him
12 getting information from some outside source
13 after you told him not to and he clearly did
14 that.

15 THE COURT: The other part is, and let me
16 add to you, and I'm going to hear from you, Mr.
17 Cummings, but you might want to address how
18 come every time one of you asked him a question
19 there was more information, more information.
20 Because I remember you said tell me everything
21 that was said. And then all of a sudden it was
22 a white girl that was added. And then you led
23 him and say, yeah, but you told her you couldn't
24 talk about it? Right, I told her I couldn't
25 talk about it. Which is not what he said when

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1 Mr. Bailey examined him at all.

2 So, Mr. Cummings, let me hear from
3 you.

4 MR. CUMMINGS: Judge, this puts us in a
5 great quandary as you well know. We have fought
6 hard to keep Mr. Davis on the jury in the
7 beginning when he was sought to be removed for
8 cause by the State. Just for the record, Judge,
9 and, please, I'm trying to be as candid in
10 candor as I can. From talking with counsel and
11 looking at everything we have in discovery and
12 everything else that he is not -- this lady is
13 not related to Mr. Bowman in any way, shape, or
14 form. We believe the family tree lies to
15 Mr. Gadson, a gentleman who may testify in this
16 case.

17 Your Honor, respectfully, I guess we
18 can all -- we obey Your Honor's orders because
19 we know, we practice, and we understand and
20 respect the Court to the utmost. I don't know
21 how when you tell people out here not to talk
22 about it, but yet we have jurors that read
23 something in the paper about it which is not the
24 same thing, other than when Your Honor tells
25 somebody to do something they've got to do it to

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1 the letter and I understand that as an officer
2 of the Court. I'm standing up here making the
3 best argument I can.

4 THE COURT: I understand.

5 MR. CUMMINGS: I have an African-American
6 male who is going to be left off the jury now.
7 I have an African-American client who we're not
8 doing anything about race, Mr. Bailey has not
9 stood up and said he wanted anybody off on race.
10 And I put that on the record and I know better
11 than that in that particular case.

12 Your Honor, respectfully, I want to
13 say that the only reason why I bring up the race
14 is that's going to great a proportionality
15 argument that perhaps we did not have prior to
16 this, because we had qualified at least three
17 black people for this jury and my client's
18 entitled to a cross-section of the community,
19 he's entitled to be tried by his peers, he's
20 entitled to be having jurors within the
21 community, in particular of his race and his
22 culture to at least appear here on a jury.

23 Your Honor, respectfully, I don't know
24 if he can set that aside. I know Your Honor's
25 going to ask him questions, I don't know if it's

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1 going to substantially, materially impact him as
2 a juror. If you find he's violated your order I
3 can stand up here and argue infinitum or to ad
4 nauseam to, quote, a friend of mine, but
5 respectfully, Judge, I'm asking that this juror
6 be kept, I'm asking that we not lose this juror.
7 I don't think he had the intent to violate or
8 the spirit to violate Your Honor's order.

9 Respectfully, Judge, what little
10 information he's read you've already published
11 to the jurors in the indictment and once he
12 starts being sequestered there won't be any
13 contact at all from anybody. This is the one
14 range I'm sure if we ask every juror out here if
15 they talked to their spouse about the case I
16 would hope and pray that none of them have done
17 it.

18 THE COURT: All right. Thank you. I'm
19 going to exclude him. I'm going to exclude him
20 for cause, I'm going to excuse him for cause.
21 My notes indicate that when he -- when I asked
22 the question originally on Monday who had any
23 information about this case he didn't stand up
24 then based on my notes. And he obviously has
25 more information than he's even shared with us

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1 this morning, because it continued to come out
2 based on who was asking him a question, more
3 information about this case.

4 I thought I heard him say, and this
5 concerns me, that the aunt -- that it's clear to
6 me that he says that his girlfriend or fiancée
7 is related to Mr. Bowman through an aunt.

8 Here's another concern that I have. I gather,
9 in other words, as I understand what he's saying
10 his girlfriend's aunt is the one who gave her
11 the information and it's through that connection
12 that she -- that he understands that she is
13 related to Mr. Bowman. And that's the lady that
14 told her that they have a cousin who killed a
15 white girl and set the car and the body on fire.

16 So I have more concerns than just the
17 fact that he failed to follow my instructions,
18 which is sufficient. I'm concerned that now his
19 girlfriend -- and they're supposedly a
20 relationship, I think that concerns me
21 tremendously, that in his mind that a relative
22 of Mr. Bowman is saying that Mr. Bowman killed
23 the alleged victim in this case. I'm very
24 concerned about that as well, so that adds to my
25 concern that it's the nature of this information

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1 that he has shared.

2 MR. CUMMINGS: Judge, if I may.

3 THE COURT: Yes.

4 MR. CUMMINGS: Not to interrupt Your Honor,
5 but it is not Mr. Bowman's relative, it is
6 Mr. Gadson. Just to make sure I make the record
7 clear.

8 THE COURT: Tell me this. What difference
9 does it make in reality if that's what the juror
10 thinks, Mr. Cummings? Did not he -- answer
11 this. Did I misunderstand him?

12 MR. CUMMINGS: Yes, ma'am.

13 THE COURT: I thought he said my cousin is
14 related to him, Mr. Bowman. Did I misunderstand
15 that?

16 MR. BAILEY: That's what he said, Your
17 Honor.

18 THE COURT: Isn't that what he said?

19 MR. CUMMINGS: Judge, he may --

20 THE COURT: Please hear what I'm saying.

21 MR. CUMMINGS: Yes, ma'am. I am.

22 THE COURT: What difference does it make if
23 he is, in fact -- if the relationship is to
24 Mr. Gadson? Because here's where my concern is,
25 he isn't going to go home and straighten it out

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1 with her, he's not going to talk to the girl.

2 MR. CUMMINGS: No.

3 THE COURT: And say that really is Gadson
4 now, that's not Mr. Bowman. So maybe when the
5 aunt said that the relative maybe killed
6 somebody, she was really talking about Gadson
7 and not about Bowman. See, he doesn't get a
8 chance to get that straight now.

9 MR. CUMMINGS: Other than through facts and
10 evidence in this court, Judge.

11 THE COURT: Oh, okay.

12 MR. CUMMINGS: And I understand that. And,
13 Your Honor, you are right, logically I have no
14 difference with Her Honor's statement.

15 THE COURT: I mean, my concern is, is that
16 I have -- I have dual concerns. I have the
17 concern that is huge in my mind that I don't
18 think he didn't follow my instructions. But I'm
19 also concerned, and I need to put on the record
20 because this is my ruling, that the information
21 as relayed by the juror is that the juror has
22 had the information from Mr. Bowman's relative
23 that incriminates Mr. Bowman. I'm not going to
24 allow him to serve.

25 MR. CUMMINGS: Thank you, Judge.

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1 THE COURT: Thank you. Note the exception
2 from the defense.

3 MR. CUMMINGS: Yes, ma'am.

4 THE COURT: All right. Let me talk to --
5 no. Put him back in the grand jury room. Let
6 me talk to Mr. Sweatman.

7 (Whereupon Dannie W. Sweatman, Jr. enters the
8 courtroom and is seated.)

9 EXAMINATION

10 BY THE COURT:

11 Q. Hi, Mr. Sweatman. If you would please be
12 seated. Yes, sir.

13 A. It was about what I talked with you yesterday
14 about the family reunion.

15 Q. Yes, sir. You, of course, remain under oath.
16 Yes, sir, Mr. Sweatman.

17 A. You wanted to know if I could find anyone and I
18 couldn't.

19 Q. Okay.

20 A. So that's mainly about what it was.

21 Q. Okay. If you are serving on this jury,
22 Mr. Sweatman, have you told your family members that
23 they may need to find an alternative food source?

24 A. Yeah.

25 Q. Okay. You have informed them of that?

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1 A. Yes.

2 Q. Okay. And what did they say other than, oh, my
3 goodness?

4 A. They didn't know what to say, really.

5 Q. Okay. Okay. All right thank you.

6 THE COURT: Any questions from either of
7 you?

8 MR. BAILEY: None from the State, Your
9 Honor.

10 MR. CUMMINGS: None from defense, Judge.

11 THE COURT: All right. Thank you,
12 Mr. Sweatman. If you'll step back out, please.
13 (Whereupon, the prospective juror exits the
14 courtroom.)

15 THE COURT: All right. I think I've
16 spoken --

17 THE CLERK: How about Kenneth Evans?

18 THE COURT: I do know that, I've got him on
19 paper, I know about Mr. Evans.

20 All right. Let me just review the
21 situations with everyone that now has a concern.
22 We have Ms. McPartlin who is willing to stay,
23 but may need, we may need to use an alternate
24 for Ms. McPartlin. We have Mr. Sweatman who is
25 supposed to cook for the weekend for the family

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1 reunion, we have -- that's not a problem.

2 That's not a problem. We have Ms. Burt who is
3 concerned about her brother caring for the
4 children.

5 We have Mr. Tempkin who has a couple
6 of problems, one of which he's got the
7 christening in Ohio, the other is that he didn't
8 follow my instructions and didn't tell me that
9 he didn't follow my instructions. And we have
10 Mr. Evans who has the medical problem. And we,
11 of course, have lost now Mr. Davis.

12 Now, we, of course, selected two extra
13 folk. We have -- one of those is gone so we now
14 have one extra and then one, two, three -- we
15 have five folks left who want to be excused from
16 their jury service. That will mean that we will
17 have only three alternates is what that means.
18 Let me hear from you about -- just about the
19 number situation first and then we'll handle the
20 folks individually.

21 MR. BAILEY: Your Honor, we may be able to
22 have more than that because I have not
23 reassessed my strikes yet, but obviously
24 Mr. Davis was going to be one of my strikes, so
25 I may not exercise all my strikes and if that's

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1 the case then we may potentially be able to get
2 more, but I don't know until I know who --

3 THE COURT: We're going to have minimally
4 three is what I guess I should say.

5 MR. BAILEY: Okay.

6 THE COURT: All right.

7 MR. CUMMINGS: The way the luck has been
8 going towards the defense lately about people
9 not following Her Honor's instructions, not
10 wanting to stay for jury service, I'm looking at
11 my client here saying I'm waiting for the roof
12 to fall on me. Judge, if you think with the
13 facts we can go with three alternates so be it,
14 I just don't know. If that lady's husband
15 passes away -- or excuse me, brother's husband
16 passes away then we're going to be down to two
17 and I will leave that to Your Honor's province.

18 MR. BAILEY: If push comes to shove and we
19 do have some unfortunate situation where we get
20 down to 12 jurors and one of them has some
21 problem, if the problem's of a temporary nature
22 as a final, last result we could do as we did in
23 the former trial Mr. Cummings and I had, is just
24 suspend the trial for several days and basically
25 put the jurors under house arrest and reconvene.

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1 THE COURT: I've had to do that before in a
2 matter so I'm aware that that certainly could be
3 done.

4 MR. BAILEY: We're hoping we won't have to,
5 but that would be a potential solution if we get
6 to that point.

7 MR. CUMMINGS: I agree with Mr. Bailey,
8 Judge, and I thank you for reminding me of that,
9 as long as these people will follow your
10 instructions.

11 THE COURT: Maybe with the help of SLED we
12 won't have any more problems.

13 MR. CUMMINGS: Yes, ma'am.

14 THE COURT: Let me tell you what I'm
15 inclined to do, I'm inclined to ask
16 Ms. McPartlin to stay and if we have to excuse
17 her then, we will have to excuse her. I am
18 inclined to excuse Mr. Evans because of his
19 medical problems. I am inclined to excuse
20 Ms. Burt because I don't think she's going to be
21 able to pay attention with her situation with
22 the children. I'm going to excuse Mr. Tempkin
23 because he obviously didn't follow my
24 instruction. I'm not concerned about the trip
25 to Ohio. I'm thinking about bringing him back

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1 in on contempt, in fact, to be honest with you,
2 along with Mr. Davis.

3 MR. CUMMINGS: Judge, let me just protect
4 the record as to Mr. Tempkin.

5 THE COURT: Yes, please.

6 MR. CUMMINGS: Again, it's within your
7 province, ma'am, but on behalf of the defense
8 we're trying to find a fair and impartial jury,
9 a jury of my client's peers. He is a younger
10 male out of the jury cross-section, he is a
11 gentleman, Judge, that was called to jury
12 service, he said he could serve, he was
13 statutorily qualified. I know, Your Honor, that
14 I have -- the only legal right I have to
15 challenge of course once you've ruled is just
16 note my objection on the record and why, I've
17 done that I believe to the best of my ability.
18 If somebody violates your orders, you find that,
19 that is your province.

20 I told my client that once you make
21 the call as far as people violating your rules,
22 the only thing I can do is ask respectfully that
23 Your Honor reconsider in your own mind and find
24 that he did violate your orders to --

25 THE COURT: I'm going to talk to

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1 Mr. Tempkin about that, but I was just going to
2 tell you I may not slow down, I may move right
3 along once I hear that.

4 MR. CUMMINGS: Again, with Ms. Burt, if you
5 think satisfactorily she can make arrangements,
6 again, your call, Judge, but I think we're
7 running out of jurors and I respectfully ask
8 Ms. Burt please stay on on behalf of the
9 defense.

10 THE COURT: Thank you.

11 MR. CUMMINGS: Yes, ma'am.

12 THE COURT: Thank you so much. And I very
13 well may be doing this over the objection.
14 Mr. Sweatman is qualified. My concern is due to
15 his frustration about letting his entire family
16 down I'm concerned about his ability,
17 particularly over that weekend where I
18 anticipate we're going to be continuing that he
19 is going to be distracted, so I'm inclined to
20 excuse him as well.

21 All right. Let me begin by asking
22 first let me talk to Mr. Tempkin.

23 (Whereupon, Kris R. Tempkin enters the courtroom
24 and is seated.)

25

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EXAMINATION

1

2 BY THE COURT:

3 Q. Yes, sir. Mr. Tempkin, of course you remain
4 under oath. I'm concerned, and I wanted to give you
5 an opportunity to tell me and you did not, so I will
6 ask you directly. You did not tell me that you
7 approached Ms. Hardee-Thomas last night, talked to
8 her about this trial. Why didn't you tell me that
9 when you were here before?

10 A. I was -- I wanted to, but I felt that I was
11 dismissed before I -- that was my fault. I wanted
12 to. That's originally my intention was to come in
13 here and let you know about that.

14 Q. You violated my order, Mr. Tempkin. I told you
15 when you left here do not discuss this matter or any
16 aspect of it or allow anyone to discuss it with you.
17 Do you remember me telling you that?

18 A. Yes, ma'am.

19 Q. All right, sir. You're in contempt of Court,
20 Mr. Tempkin. Aside from -- I am going to disqualify
21 you, but I'm going to disqualify you for cause
22 because you violated my order.

23 A. I apologize.

24 Q. I'm going to fine you \$100, Mr. Tempkin, and I'm
25 going to give you some time to pay that to the Court.

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1 And I find that you are in contempt of court, I find
2 you in contempt of Court for failing to follow my
3 instructions, that you talked about this matter, you
4 approached the lawyer in this case. That is
5 completely unacceptable when you were directly told
6 not to. And I'll give you ten days to pay that money
7 to the clerk of court and I'm going to excuse you,
8 I'm going to disqualify you from service on this
9 jury. Good bye.

10 (Whereupon, the prospective juror exits the
11 courtroom.)

12 THE COURT: All right. Let me talk to
13 Mr. Davis.

14 (Whereupon, Jonathan L. Davis enters the
15 courtroom and is seated.)

16 EXAMINATION

17 Q. Mr. Davis, I find that you have violated my
18 order in talking about this case or having someone
19 talk to you about this case. I asked you, instructed
20 the jury panel on Monday not to discuss the matter or
21 allow anyone to discuss it with them. I did that
22 again when I finished your individual voir dire.
23 What I told you was not to discuss this matter or any
24 aspect of it or allow anyone to discuss it with you
25 and you violated my order. I'm going to hold you in

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1 contempt for that, Mr. Davis. I'm going to fine you
2 \$50 for that and expect you to pay that to the clerk
3 of court within ten days.

4 If you violate my order again, let me
5 suggest that you not do that, Mr. Davis. And I'm
6 going to disqualify you for cause from this jury. We
7 would have all liked to have had you serve or had an
8 opportunity to serve on this jury. I am sure that
9 Mr. Bowman would have liked to have had an
10 opportunity to have you serve on this jury, but you
11 have to follow instructions and rules, Mr. Davis, and
12 I gave you that instruction directly and you violated
13 my order. You're excused.

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

16 THE COURT: All right. Let me see
17 Ms. Burt.

18 (Whereupon Jami H. Burt enters the courtroom and
19 is seated.)

20 EXAMINATION

21 BY THE COURT:

22 Q. Ms. Burt, now, as -- you can have a seat. As I
23 understand your circumstance, you -- I cannot do
24 anything from this end in terms of contact with kids
25 by phone to satisfy you. The problem really is with

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1 your brother; is that right?

2 A. Yes, ma'am.

3 Q. All right. I wish I had known before that your
4 babysitting was as -- when you told me that you could
5 handle matters that you couldn't, because the process
6 relied upon your ability to be a qualified juror.

7 A. Yes, ma'am.

8 Q. And you let me down.

9 A. Yes, ma'am.

10 Q. But nonetheless, this process needs jurors who
11 can pay attention, who can be focused. This is an
12 extremely important matter and one that I must have
13 jurors focused.

14 A. Oh, yes, ma'am.

15 Q. And I don't now rely on your ability to focus
16 because you haven't been able to handle your
17 situation with your children, so I am going to excuse
18 you on that basis.

19 A. Okay.

20 Q. All right.

21 A. Thank you.

22 Q. Very well.

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

25 THE COURT: Let me have Mr. Evans. Do you

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1 all want to examine Mr. Evans? We're certainly
2 going to make these medical matters a part of
3 the record.

4 MR. CUMMINGS: I would at least like to
5 have him in here and have you put it on the
6 record, please. I know you noted all my
7 exceptions and objections as to the other
8 jurors.

9 THE COURT: Yes, all of those.

10 MR. CUMMINGS: Thank you, ma'am.

11 MR. BAILEY: I would have no questions of
12 Mr. Evans based on the letter from Dr. Baggett.

13 THE COURT: Let me have then Mr. Sweatman.
14 (Dannie W. Sweatman, Jr. enters the courtroom
15 and is seated.)

16 EXAMINATION

17 BY THE COURT:

18 Q. Hi, Mr. Sweatman. Thanks for giving me that
19 chance to think about your situation. You certainly
20 were absolutely candid with me when we talked
21 yesterday about your concern and I appreciate you
22 trying to find somebody else. And what worries me
23 is, and I guess I should ask you this question: If,
24 if I asked you to serve on the -- at least on the
25 weekend when the family reunion would be, would you

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1 be distracted, would you be worried?

2 A. Yes.

3 Q. That's what I figured.

4 A. It would make me more upset than anything else.

5 Q. I know that. You feel like you let people down.

6 A. Yeah.

7 Q. And you shared that with me and I appreciate you
8 trying to find someone else, I really do,
9 Mr. Sweatman, because we would like to have you be
10 with us to be honest with you. But you shared that
11 with me and you've done what I asked you to do which
12 is certainly trying to find somebody to fill in, so I
13 am going to excuse you from -- well, let me transfer
14 your service because I think you would be a fine
15 juror to another week.

16 A. I don't mind doing it, just like I say, it's at
17 the wrong time.

18 Q. You've been very clear about that, Mr. Sweatman,
19 and I appreciate that so much and I am going to
20 excuse you -- I'm not going to excuse you, I'm going
21 to transfer you.

22 A. Okay.

23 Q. Thank you, Mr. Sweatman. Y'all have a good
24 reunion now.

25 A. Thank you.

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1 Q. Fix some good stuff.

2 A. Yeah.

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

5 THE COURT: All right. And then we're
6 waiting on Mr. Evans.

7 (Whereupon, Kenneth G. Evans enters the
8 courtroom and is seated.)

9 EXAMINATION

10 BY THE COURT:

11 Q. How are you doing? Come on quick, I know I got
12 to talk to you quick. I have your letter, your
13 letter and the letter from Dr. Baggett. And I just
14 need you to confirm on the record that those things
15 are true?

16 A. Those are true.

17 Q. And, in fact, we looked for you and you weren't
18 able to come immediately because I understand you
19 were in the restroom which really sort of in reality
20 confirms what's in the letter from Dr. Baggett. I
21 noticed a willingness on your part yesterday to try
22 to serve, but I can see a difference in you today,
23 it's just one of those things you feel like you can't
24 do.

25 A. It's wearing on me bad, so....

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1 Q. Okay. Very well.

2 THE COURT: Any questions from the
3 attorneys?

4 MR. BAILEY: None from the State, Your
5 Honor.

6 MR. CUMMINGS: None from the defense,
7 Judge. We thank this gentleman for his candor.

8 THE COURT: We're going to miss you, but
9 we'll see you soon. Thank you so much,
10 Mr. Evans.

11 (Whereupon, the prospective juror exits the
12 courtroom.)

13 THE COURT: Let the record also reflect
14 that he was very nervous and tearful and did not
15 look like the same human being that was here
16 yesterday. All right. And, of course, his
17 problem is he has an anxiety disorder.

18 All right. Now, let me talk to
19 Ms. McPartlin, too.

20 (Whereupon, Kathleen A. McPartlin enters the
21 courtroom and is seated.)

22 EXAMINATION

23 BY THE COURT:

24 Q. Ms. McPartlin, I'm just going to ask you to just
25 stay with us as long as you can.

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1 A. Okay.

2 Q. We don't want to lose you. And that's why we
3 have alternates, okay? Thank you.

4 A. Thank you.

5 Q. And you can just join your -- you can join your
6 other folks if you need to run to the ladies' room or
7 whatever, you can do that, but then we're going to
8 put you all back in the courtroom. Thank you so
9 much.

10 A. Thank you. Can I go out this way?

11 Q. Yes, ma'am. You can come on and be seated. If
12 you need to run, take a quick break, that's fine,
13 because we're going to be a few minutes.

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

16 THE COURT: All right. Now, counsel, I
17 think now we need to retire. We could do the
18 strike here and keep them outside.

19 MR. BAILEY: Your Honor, if we could have a
20 few minutes before striking due to losing these
21 people, I need to kind of renumber things.

22 THE COURT: Sure. Do we need to give you
23 all a new list or would that --

24 MR. BAILEY: No.

25 MR. CUMMINGS: That's fine.

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1 THE COURT: Just let you keep what you have
2 with your notes.

3 MR. CUMMINGS: We thank Madam Clerk for the
4 list.

5 THE COURT: Obviously let me review with
6 you the numbers that have been -- that are now
7 stricken from the list.

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: Thirteen, 25, 39, 40, 42.

10 THE CLERK: Yes, ma'am.

11 MR. CUMMINGS: Yes, ma'am.

12 MR. LAFOND: Yes.

13 THE COURT: Thank you. All right. Yes.
14 How long do you think you all will need for
15 that?

16 MR. BAILEY: Ten minutes.

17 MR. CUMMINGS: I was going to say ten or
18 15, if you'll give us just an extra little time
19 to come in.

20 THE COURT: Sure.

21 MR. CUMMINGS: The only other thing we have
22 concerned is this morning, and it was
23 inadvertent, is that while everybody's sitting
24 out here they're watching Mr. Bowman come out
25 stiff legged and I walked in front of him so

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1 nobody would see it. If these jurors come in
2 and we come out from the back we're going to
3 be --

4 THE COURT: Don't let the jury in. Do not
5 let the jurors in. Just tell them they're going
6 to have about another 15 to 20 minutes, be at
7 ease.

8 MR. CUMMINGS: Thank you, Judge.

9 THE COURT: Okay.

10

11 (Recess, from 11:38 a.m. to 11:53 a.m.)

12 THE COURT: Thank you so much. And please
13 be seated.

14 Yes, sir.

15 MR. CUMMINGS: Yes, ma'am. Also, Judge, I
16 wanted to make sure my client understands how
17 we're going to select the jury that's going to
18 be trying this case.

19 THE COURT: Okay.

20 MR. CUMMINGS: And I would ask Your Honor
21 if you would just take a moment and how we have
22 talked about how we're going to do this so
23 Mr. Bowman hears it on the record from the
24 bench.

25 THE COURT: Thank you so much.

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1 MR. CUMMINGS: Yes, ma'am.

2 THE COURT: Yes, sir. We propose to do a
3 paper strike, Mr. Bowman. And we have qualified
4 jurors in the order in which they were qualified
5 because they were placed in the hopper and then
6 randomly selected, of course, which is how
7 they've been on the different panels. The ones
8 that were qualified are listed in order in which
9 they were on the panels and then qualified. It
10 would be the same as if they were pulled out of
11 the hopper. And we did it one by one but, of
12 course, they were placed on panels.

13 Now, what we propose to do is rather
14 than have them individually, their names called
15 and have them come through and come through the
16 gates and turn around and face counsel and have
17 you all select them, if you will, in front of
18 them, we just propose to do that on paper
19 instead of doing that with them approaching.

20 MR. BOWMAN: Yes, ma'am.

21 THE COURT: Is that adequate, do you think,
22 Mr. Cummings?

23 MR. CUMMINGS: Yes, ma'am. And I thank you
24 very much, Your Honor and co-counsel.

25 THE COURT: All right. Now, as I

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1 understand it the way that we will proceed is we
2 will call the names one at a time. Of course
3 the State has five strikes and the defense has
4 ten. We will -- I am hopeful that we will be
5 able to select four alternates, but it may only
6 be three, but I don't think it will be less than
7 that. It is my hope that we will have enough
8 folks to select four alternates. And the names
9 will be called one at a time and offered to the
10 State and then to the dense. Is that an
11 acceptable process?

12 MR. BAILEY: Yes, ma'am.

13 MR. CUMMINGS: Yes, ma'am. And, of course,
14 Judge, we just ask you for a little extra time,
15 indulge us so we can have that conversation.

16 THE COURT: Yes. Please, don't feel
17 rushed.

18 MR. CUMMINGS: Thank you, ma'am.

19 THE COURT: Then at the conclusion what I
20 would do is place the number of alternates back
21 in the hat, with your permission we'll use the
22 hopper, and then I wanted to go ahead select and
23 alternates now so that we'll know the
24 alternates -- well, what am I trying to say?
25 How they will serve.

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1 MR. CUMMINGS: Yes, ma'am.

2 THE COURT: How they will serve. First
3 alternate serve, the second alternate serve, et
4 cetera, so we don't have to -- if we need one we
5 don't have to track down Ms. Graham. All right?

6 MR. CUMMINGS: Yes, ma'am.

7 THE COURT: Ready to go?

8 MR. BAILEY: State's ready, Your Honor.

9 MR. CUMMINGS: Defense is ready, Your
10 Honor.

11 THE COURT: Do you understand what we're
12 doing, Ms. Graham?

13 THE CLERK: Yes, ma'am.

14 George Young, Jr. (white male). What
15 says the State?

16 MR. BAILEY: Present the juror.

17 THE CLERK: The defense?

18 MR. CUMMINGS: Present the juror. Excuse
19 me. Swear the juror, Madam Clerk.

20 THE CLERK: Juror Leo Sullivan, Jr. (white
21 male). What says the State?

22 MR. BAILEY: Present the juror.

23 THE CLERK: The defense?

24 MR. CUMMINGS: Swear the juror, please.

25 THE COURT: Juror Kathy Woods (white

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1 female). What says the State?

2 MR. BAILEY: Present the juror.

3 THE CLERK: The defense?

4 MR. CUMMINGS: Please strike Madam Juror
5 from this trial.

6 THE CLERK: Juror Sylvia Perry (while
7 female). What says the State?

8 MR. BAILEY: Present the juror.

9 THE CLERK: The defense?

10 MR. CUMMINGS: Please strike Madam Juror
11 from this trial.

12 THE CLERK: Juror Gene Davis (white male).
13 What says the State?

14 MR. BAILEY: Present the juror.

15 THE CLERK: The defense?

16 MR. CUMMINGS: Swear the juror.

17 THE CLERK: Juror Karen Young (white
18 female). What says the State?

19 MR. BAILEY: Present the juror.

20 THE CLERK: The defense?

21 MR. CUMMINGS: Please strike Madam Juror
22 from this trial.

23 THE CLERK: Juror Lorraine Pringle (black
24 female). What says the State?

25 MR. BAILEY: Present the juror.

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1 THE CLERK: The defense?

2 MR. CUMMINGS: Swear Madam Juror, please.

3 THE CLERK: Juror Rhonda Toler (while
4 female). What says the State?

5 MR. BAILEY: Present the juror.

6 THE CLERK: The defense?

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

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

10 MR. CUMMINGS: Please strike Madam Juror
11 from this trial.

12 THE CLERK: Juror Richard Perez (white
13 male). What says the State?

14 MR. BAILEY: Present the juror.

15 THE CLERK: The defense?

16 MR. CUMMINGS: Swear the juror, please.

17 THE CLERK: Juror Anthony Britt (white
18 male). What says the State?

19 MR. BAILEY: Present the juror.

20 THE CLERK: The defense?

21 MR. CUMMINGS: Beg the Court's indulgence,
22 Madam Clerk.

23 THE COURT: Surely.

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

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1 MR. CUMMINGS: Please strike this juror
2 from this trial.

3 THE CLERK: Juror Wendy Proveaux (white
4 female). What says the State?

5 MR. BAILEY: Present the juror.

6 THE CLERK: The defense?

7 MR. CUMMINGS: If you'll indulge us, Judge.

8 THE COURT: All right.

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

11 MR. CUMMINGS: Please strike the juror.

12 THE COURT: What was that?

13 MR. CUMMINGS: Strike the juror, ma'am,
14 Your Honor.

15 THE COURT: All right.

16 THE CLERK: Mary Mills-Hanhauser (white
17 female). What says the State?

18 MR. BAILEY: Present the juror.

19 THE CLERK: The defense?

20 MR. CUMMINGS: Strike the juror, please.

21 THE COURT: I'm showing that that is the
22 seventh strike.

23 MR. CUMMINGS: Yes, ma'am.

24 THE CLERK: Juror Andre Porcher (black
25 male). What says the State?

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1 MR. BAILEY: Present the juror.

2 THE CLERK: The defense?

3 MR. CUMMINGS: Judge, just for the record
4 Mr. Porcher has not said anything else, he has
5 not done anything else back here, no other
6 letters, phone calls. Based on that, please,
7 swear Mr. Juror.

8 THE CLERK: Eric Lowry (white male). What
9 says the State?

10 MR. BAILEY: Present the juror.

11 THE CLERK: The defense?

12 MR. CUMMINGS: Beg the Court's indulgence,
13 Madam Clerk, Your Honor.

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

16 MR. CUMMINGS: Please swear Mr. Lowry.

17 THE CLERK: Juror Kathleen McPartlin (white
18 female). What says the State?

19 MR. BAILEY: Present the juror.

20 THE CLERK: The defense?

21 MR. CUMMINGS: Beg the Court's indulgence,
22 Madam Clerk.

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

25 MR. CUMMINGS: Please swear Madam Juror.

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1 THE CLERK: Juror Jeryl Johnson (white
2 male). What says the State?

3 MR. BAILEY: Present the juror.

4 THE CLERK: The defense?

5 MR. CUMMINGS: Please strike Mr. Juror.

6 THE CLERK: Tamra Tyndell (white female).
7 What says the State?

8 MR. BAILEY: Present the juror.

9 THE CLERK: The defense?

10 MR. CUMMINGS: Please swear Madam Juror.

11 THE CLERK: Juror Michael Whaley (white
12 male). What says the State?

13 MR. BAILEY: Excuse the juror.

14 THE CLERK: Juror Margaret Washington
15 (black female). What says the State?

16 MR. BAILEY: Present the juror.

17 THE CLERK: The defense?

18 MR. CUMMINGS: Please swear Ms. Madam
19 Juror.

20 THE CLERK: Juror Raymond Dejong (white
21 male). What says the State?

22 MR. BAILEY: Present the juror.

23 THE CLERK: The defense?

24 MR. CUMMINGS: Beg the Court's indulgence,
25 ma'am.

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1 THE COURT: Surely.

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

4 MR. CUMMINGS: Please swear the juror,
5 Madam Clerk.

6 MR. BAILEY: Can I check a second to count
7 here, Cheryl?

8 THE CLERK: Yes, sir.

9 MR. BAILEY: Eleven jurors?

10 THE CLERK: Yes, sir.

11 THE COURT: Yes.

12 MR. BAILEY: Eight strikes for the defense,
13 one for the State?

14 THE COURT: That's correct.

15 MR. CUMMINGS: Correct.

16 THE CLERK: Everybody's ready?

17 MR. BAILEY: Yes, ma'am.

18 THE CLERK: Juror Evelyn Lewis (white
19 female). What says the State?

20 MR. BAILEY: Present the juror.

21 THE CLERK: The defense?

22 MR. CUMMINGS: Please strike Ms. Lewis.

23 THE CLERK: Juror Janice Hull (white
24 female). What says the State?

25 MR. BAILEY: Present the juror.

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

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

4 MR. CUMMINGS: Please strike the juror.

5 THE COURT: That is the defense's tenth
6 strike.

7 MR. CUMMINGS: Tenth strike.

8 THE CLERK: Juror Lianne Luisi (white
9 female). What says the State?

10 MR. BAILEY: Present the juror.

11 THE CLERK: The defense?

12 MR. CUMMINGS: Swear the juror, Madam
13 Clerk.

14 MR. BAILEY: That's 12.

15 THE COURT: That's 12.

16 THE CLERK: These are for the alternates?

17 THE COURT: Alternates, yes, ma'am.

18 THE CLERK: Juror Lora MacDougall (white
19 female). What says the State?

20 MR. BAILEY: Present the juror.

21 THE CLERK: The defense?

22 MR. CUMMINGS: Please swear madam
23 alternate.

24 THE CLERK: Juror Wanda Query (white
25 female). What says the State?

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1 MR. BAILEY: Give me one second, please.

2 THE CLERK: Yes, sir.

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

5 MR. CUMMINGS: Judge, it's two and one?

6 THE COURT: I'm sorry, two and one.

7 MR. CUMMINGS: Thank you, ma'am.

8 MR. BAILEY: Present the juror.

9 THE CLERK: The defense?

10 MR. CUMMINGS: Beg the Court's indulgence,
11 Madam Clerk, I apologize.

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

14 MR. CUMMINGS: Please swear Madam Juror.

15 THE COURT: Alternate Number Two.

16 THE CLERK: Juror Ricky Jascomb (white
17 male). What says the State?

18 MR. BAILEY: Just a second, please.

19 Present the juror.

20 THE CLERK: The defense?

21 MR. CUMMINGS: Beg the Court's indulgence,
22 Madam Clerk.

23 THE COURT: Surely.

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

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1 MR. CUMMINGS: Just for our record I don't
2 believe I've used any of the defendant's two
3 strikes?

4 THE CLERK: For the alternates.

5 MR. CUMMINGS: Yes, ma'am. For the
6 alternates we would move to strike Mr. Jascomb,
7 excuse me.

8 THE CLERK: Juror Sherri Barbour (white
9 female). What says the State?

10 MR. BAILEY: Present the juror.

11 THE CLERK: The defense?

12 MR. CUMMINGS: Please strike the juror from
13 this trial.

14 THE CLERK: Juror Janie Hilliard (black
15 female). What says the State?

16 MR. BAILEY: Please excuse the juror.

17 THE CLERK: Juror Kadedra Kiner (black
18 female). What says the State?

19 MR. BAILEY: Present the juror.

20 THE CLERK: The defense?

21 MR. CUMMINGS: Swear the alternate, Madam
22 Clerk.

23 MR. BAILEY: Alternate Number Three?

24 THE CLERK: Yes, sir.

25 THE COURT: Yes.

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1 THE CLERK: Juror Brenda Torrance (white
2 female). What says the State?

3 MR. BAILEY: Present the juror.

4 THE CLERK: The defense?

5 MR. CUMMINGS: Please swear madam
6 alternate.

7 THE CLERK: That is four alternates.

8 THE COURT: I know it. Counsel, I think
9 four alternates is what we've planned and is
10 sufficient. I'll hear from you if either of you
11 have any objection or express any concern.

12 MR. BAILEY: None from the State, Your
13 Honor.

14 MR. CUMMINGS: Judge, the only concern we
15 would have is that when -- if I may get the name
16 correctly here, if Ms. Kathleen McPartlin may
17 have a emergency in the family that would leave
18 us with three alternates. If Your Honor is
19 satisfied with that, so be it, I just pointed
20 that up to the Court for the record.

21 THE COURT: Counsel, let me see you just a
22 second.

23 MR. CUMMINGS: Yes, ma'am.

24 (Whereupon, a bench conference was held off the
25 record.)

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1 THE COURT: Thank you, counsel, for that,
2 I'm satisfied that four should be sufficient.

3 All right. Are there any matters
4 regarding the -- other than, of course, in terms
5 of the qualification of the jury, other than the
6 matters which have already been raised, are
7 there any other matters regarding the
8 qualification or the selection of the jury from
9 the State?

10 MR. BAILEY: Not from the State, Your
11 Honor.

12 THE COURT: From the defense?

13 MR. CUMMINGS: Judge, just from the
14 defense, and if I may, please, just for the
15 record.

16 THE COURT: All right.

17 MR. CUMMINGS: Your Honor, respectfully as
18 to a cross-section requirement, we've lost one
19 potential black male this morning, Your Honor.
20 Judge, and that is a groups that is distinctive,
21 it's a black male or an African-American male,
22 Judge, an African-American female that would be
23 a cross-section of the community. It is
24 particular that my client is a member of a
25 recognizable cognizable race and, Your Honor,

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1 respectfully, the loss of that one juror has
2 affected -- I think we now have three black
3 people on the jury out of all the selection
4 we've done, including an alternate, so that
5 would leave two as I see the jury list, only two
6 black people on the jury and one alternate. If
7 I'm wrong I know that Her Honor will correct me.

8 MR. BAILEY: Three, Your Honor.

9 MR. CUMMINGS: Three. Porcher.

10 THE COURT: Yes.

11 MR. CUMMINGS: Ms. Lorraine Pringle and
12 Ms. Washington, that's three. Excuse me.

13 THE COURT: Yes, on the jury, and then
14 one --

15 MR. CUMMINGS: One alternate.

16 THE COURT: So four.

17 MR. CUMMINGS: So it will be four total,
18 yes, ma'am.

19 THE COURT: In a jury of 12.

20 MR. CUMMINGS: Twelve plus three
21 alternates.

22 THE COURT: Right. So four out of 16 is
23 about 25 percent.

24 MR. CUMMINGS: Yes, ma'am. Your Honor,
25 just to put that in there based on the loss of

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1 one juror we would have had a better percentage
2 cross-wise for my client. I know and I stated
3 earlier for the record that I did not think
4 there was any deliberate attempt to ever
5 introduce the race issue in our jury selection,
6 but I noted that the loss of that one man would
7 affect the makeup racially of this jury.

8 Your Honor, we believe that the
9 representation of this group in venires, this
10 jury that's selected is not fair and reasonable
11 in relation to the numbers of such persons in
12 this community. And further, Judge, that this
13 group is under-represented due to a systematic
14 exclusion of the group in the jury selection
15 process. Not by our clerk's office, but just by
16 the material of how jurors are selected in this
17 state.

18 THE COURT: How so?

19 MR. CUMMINGS: I would ask Your Honor --

20 THE COURT: You have the burden of proving
21 that, so pass up.

22 MR. CUMMINGS: Absolutely, Judge, I state
23 that to you openly. The loss of that one juror
24 would have affected my client having at least
25 another member of his recognizable cognizable

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1 class and because of the way the jurors are
2 selected and of course the way the jurors --

3 THE COURT: Interestingly enough -- and is
4 it the position of the defense that the juror
5 should have been allowed to serve despite what
6 the Court found, or as an additional ground?

7 MR. CUMMINGS: As an additional ground,
8 Judge. Not as the Court found because, Your
9 Honor, you heard something of course, I heard
10 something and perhaps with the selection process
11 of how the evidence would have -- might have
12 come out, if any of this did come out, the
13 gentleman would have learned that the truth of
14 the matter about what family relations were
15 where. I understand the Court's great concern,
16 make sure we have fair and impartial jurors, we
17 spent five days now doing this. And, Your
18 Honor, I understand your ruling. My only motion
19 was for the fact that this gentleman happened to
20 be a black male.

21 THE COURT: I understand.

22 MR. CUMMINGS: Unfortunately disobeyed Her
23 Honor's instructions and that's the reason why
24 he was struck for cause as you found, ma'am.

25 THE COURT: Thank you so much. I will

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1 respectfully deny your motion and allow this
2 jury to stand over the objection of the defense.

3 MR. CUMMINGS: Thank you, ma'am.

4 THE COURT: Thank you so much. Anything
5 further before we bring our jury in? Oh, yeah,
6 thank you, I wanted to go ahead with our four
7 alternates, go ahead and select them. Obviously
8 there is no -- there's no blind person or child
9 under the age of ten in the courtroom, and,
10 therefore, Madam Clerk of Court, if you will
11 appoint someone to -- that you can rely upon to
12 take the cylinders out. Maybe, Madam Clerk, if
13 you'll get Ms. Etheredge.

14 THE CLERK: That will be fine.

15 MR. BAILEY: The State would waive any
16 requirement of a child or a blind person.

17 MR. CUMMINGS: Same here, Judge. We've got
18 a total jury selection here that has been
19 protected.

20 THE COURT: Thank you very much. They
21 finally changed that. When there is -- when
22 there's no blind person or child under the age
23 of ten within the courtroom then the clerk of
24 court can appoint someone.

25 MR. BAILEY: Okay.

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1 MR. CUMMINGS: Thank you, Judge.

2 THE CLERK: Alternate Number One would be
3 Juror Wanda Query.

4 THE COURT: Okay.

5 THE CLERK: Alternate Number Two will be
6 Kadedra Kiner, alternate Number Three will be
7 Lora McDougall, and Alternate Number Four will
8 be Brenda Torrance.

9 THE COURT: All right. If you'll invite
10 the jury in.

11 (Whereupon, the jury panel enters the
12 courtroom.)

13 THE COURT: All right. Ladies and
14 gentlemen, we have, I promise, been working
15 while you were on your break. And at this time
16 I'm going to ask Ms. Graham if she will, please,
17 call forward our 12 jurors and our four
18 alternates. Ms. Graham.

19 THE CLERK: As I call your name, please
20 come forward and have a seat in our jury box.
21 George Young, Jr., Leo Sullivan, Jr., Gene
22 Davis, Lorraine Pringle, Richard Perez, Andre
23 Porcher, Eric Lowry, Kathleen McPartlin, Tamra
24 Tyndall, Margaret Washington, Raymond Dejong,
25 Lianne Luisi. As our alternates, Alternate

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1 Number One, Wanda Query; Alternate Number Two,
2 Kadedra Kiner; Alternate Number Three, Lora
3 McDougall; and Alternate Number Four Brenda
4 Torrance. That's 16.

5 THE COURT: Ladies and gentlemen, I will
6 get back to you in just a moment.

7 Now, ladies and gentlemen, for those
8 of you who were not fortunate enough to have
9 been selected as jurors in the trial of this
10 case, I do want to thank you for your
11 cooperation with us throughout the process.
12 Long though it has been throughout the week, I
13 am certain, and I think I actually heard you
14 breathe a collective sigh of relief that you
15 will not be serving with us.

16 I do hope, however, truly, that
17 sometime in your life you will get a chance to
18 serve on a jury and get a greater appreciation
19 of the importance of people like you, submitting
20 yourselves to this type of service. It is a
21 difficult job, but it is a necessary one. We
22 thank you for your cooperation with us this week
23 in getting this far through this part of the
24 process. I want to acknowledge the gift of your
25 time to your community and to all of us.

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1 Ladies and gentlemen, those of you who
2 were not selected are free to go. I ask
3 everyone else in the courtroom, please, to
4 remain seated while these jurors leave. If you
5 wish to stay for a few moments, of course happy
6 to have you, but if you're going to leave, I ask
7 you to leave at this time.

8 If anybody needs a work excuse, the
9 clerk's office, which is downstairs, the office
10 is the last one on the right will have them for
11 you. Thank you so much.

12 (Whereupon, the jury panel is excused.)

13 THE COURT: Ladies and gentlemen, let me
14 give you an overview of what we're going to be
15 doing right now, then I'll introduce you to
16 these folks in just a moment. And then I want
17 you to know I'm going to let you go on to the
18 motel and get situated and get some lunch, we
19 have some things that we need to finish so that
20 we are ready for trial and then we'll get right
21 into the trial after you've had an opportunity
22 to do those things.

23 Ladies and gentlemen, the first thing
24 that I wanted to tell you is I want to talk a
25 moment about seating assignments. And to that

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1 end I would tell our four alternates -- let me
2 see. Would you read those out for me, Ms.
3 Graham?

4 THE CLERK: Sure. Alternate Number One,
5 Wanda Query; Alternate Number Two, Kadedra
6 Kiner; Alternate Number Three, Lora McDougall;
7 and Alternate Number Four, Brenda Torrance.

8 THE COURT: When you all return as our
9 alternates I'm going to ask you to assume the
10 back four chairs, one, two, three, four. The
11 reason that I want you to have those seats is so
12 I can keep up with you as our alternates. And
13 in my mind whenever I hold court that's where my
14 alternates sit, so if you all with do that. You
15 don't need to do it now, but when you return if
16 you all would take those seats. It doesn't
17 matter along as the four of you are in those
18 seats. There's no rhyme or reason to which of
19 those four you sit in, but if you would just
20 stay in those four seats for me that way I can
21 keep up with you as our alternates. It is not
22 so I know where to put the Whoopee cushion, I
23 promise.

24 And also I wanted to talk to you about
25 the presiding juror. Our law provides that you

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1 should have a presiding juror. They're also
2 called forepersons. And the foreperson has
3 additional tasks of a juror. The presiding
4 juror, the foreperson, will take physical
5 possession of the verdict forms and indicate on
6 some of the verdict forms information which I
7 will go over with you later. The presiding
8 juror also moderates the jury deliberations just
9 to be sure that each and every juror has an
10 opportunity to participate in the deliberations.
11 And the presiding juror is also the spokesperson
12 for the jury in the event that the jury needs to
13 communicate with me for whatever reason. So
14 those are the tasks of the presiding juror.

15 Our law provides that a presiding
16 juror can be selected in one of two ways.
17 Either the judge can appoint the presiding
18 juror, or the jury can select its own presiding
19 juror. I am going to ask you on one of our
20 breaks to select your own presiding juror. And
21 when you have selected your presiding juror,
22 that juror will assume this seat in the front
23 where Ms. Torrance is right now and keep that
24 seat throughout the trial. And when you have
25 selected your presiding juror, if the presiding

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1 juror would give me a note to that effect, you
2 can tell me when you return, or like I say give
3 me a note, or you can just say in that seat and
4 see if I figure it out that you keep that seat.
5 Any of those methods is perfectly fine so long
6 as at some point I learn who your presiding
7 juror is.

8 Now, beyond the presiding juror seat
9 and the four alternate seats y'all can sit
10 anywhere you want, you can change seats, you can
11 keep the same. There's no assigned seating
12 whatsoever beyond those seats. Now, obviously
13 if you have difficulty hearing you may want to
14 talk to the folks in the front row and see if
15 they will accommodate you, and I am confident
16 that they will, so that you can sit a little
17 closer.

18 Now, I want to introduce you at this
19 point to the detail that's with us from our
20 State Law Enforcement Division that will have
21 you in their custody for the balance of the
22 trial. Now, you will -- at this point in time
23 I'm going to ask Lieutenant Edwards, who is the
24 leader of the detail, if he would be so kind as
25 to introduce the members of the detail to you.

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1 Lieutenant Edwards.

2 LIEUTENANT EDWARDS: Good morning, ladies
3 and gentlemen. The team consists of Retired
4 SLED Agent Vance Spoon, Retired SLED Agent Jeff
5 Rogers -- I'm sorry Jim Rogers, correction.
6 Retired SLED Agent Dean McGaha, Retired SLED
7 Agent Blanche McFadden, Retired SLED Agent Rick
8 McLeod.

9 THE COURT: All right. Thank you so much,
10 Lieutenant Edwards.

11 Ladies and gentlemen, they are not
12 only governed by the law, but they also have
13 strict SLED guidelines that they go by to help
14 you and them in situations of this sort. And I
15 want you to know that one thing that I am
16 absolutely confident of is that before this
17 matter is over they will be your friends. I
18 want to talk a little bit with you about their
19 duties and their tasks so you'll understand that
20 a little more fully, but before I do that I'm
21 going to ask Ms. Graham to please swear in your
22 SLED detail.

23 THE CLERK: Would you please raise your
24 right hands? Do you swear or affirm that you
25 will keep this jury sworn as this jury, that you

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1 will suffer no person to speak to them or any of
2 them without the leave of the Court, neither
3 speak to them or any of them yourself without
4 such leave, so help you God?

5 (All SLED agents say "I do.")

6 THE COURT: Thank you all so much. Now, I
7 want you to pay, I hope you pay particular
8 attention to the oath that your detail just
9 took. It will give you, hopefully, I'm sure you
10 listened to it, and it gave you a greater
11 appreciation of what their responsibilities are
12 during this trial. You all have great
13 responsibilities, and so do they. You will hear
14 their responsibilities outlined for you, or you
15 heard them as they just took their oath.

16 Now, as you no doubt know this is a
17 very experienced group of SLED agents and their
18 task is to escort you to and from the courtroom.
19 They will be with you at the motel, they will
20 see to your security and your comfort and your
21 convenience so far as they can do that. They
22 will take you to meals. You will get to know
23 them real well before the case is over. They
24 are very experienced at doing this type of
25 thing. They know what they're doing and they've

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1 done this many times before. Look at the
2 smiles. They've done this many times before.
3 Before this is all over you will think of them
4 as your friends, you will get to be friends with
5 them and you will realize that they are here for
6 your benefit and for your protection as well as
7 for your comfort and convenience.

8 Now, ladies and gentlemen, they are
9 responsible, these highly trained officers as
10 you know from SLED, they are responsible for
11 seeing that you are not exposed to any
12 information about this case, or any outside
13 influence that might bear on your ability to
14 serve as a juror in this case while you are in
15 this care.

16 Now, you will likewise, all of you,
17 all 12 of you as well as our four alternates,
18 will surely, surely not only get to know them,
19 but certainly I'm confident get to respect what
20 it is that they do. And, again, it is their
21 job, it is their duty to be there for you, to
22 keep you from receiving any sort of outside
23 influence, they will take you, again, to and
24 from meals and the like.

25 One of the issues that has arisen this

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1 morning and I just want to share that with you,
2 is that some of you have brought reading
3 materials with you, which is perfectly fine.
4 They are going to ask just to review those
5 reading materials. Because you see, ladies and
6 gentlemen, the information that you have during
7 the course of this trial is important. We,
8 again, do not mean to invade your privacy in the
9 least; however, we just need to be sure that the
10 information that -- or your books that you would
11 be reading would not in any way compromise or
12 impact on your ability to be a fair and
13 impartial juror as I know all of you have
14 expressed to all of us your willingness to be.

15 Now, when you get tired of standing,
16 you all can come sit.

17 Now, ladies and gentlemen, the entire
18 process that we have been about since you've got
19 here on Monday morning, Monday morning, has been
20 designed to the single end that we have 12
21 jurors and four alternates who are going to be
22 able to try this case as fair and impartial
23 jurors who have not heard anything or read
24 anything or know anything about this case that
25 would have an impact on their ability to be fair

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1 and impartial. Who do not have any views that
2 would interfere with their ability to serve in
3 cases of this sort and who have not been exposed
4 and will not be exposed to any publicity or any
5 information about this case outside of the
6 confines of this courtroom.

7 Everything that we have done to this
8 point has been designed to ensure that.
9 Everything that we do in regard to your care and
10 keeping, keeping you sequestered, keeping you
11 here until the trial is over, is designed to see
12 that this type of integrity of the judicial
13 process and the jury system will continue.

14 The oath that our SLED detail just
15 took was, of course, to keep you free from
16 outside influence, to see that no one discusses
17 this case with you, and that you do not discuss
18 the case with anyone else, and that they don't
19 discuss the case with you, and that you don't
20 discuss the case with them. All of this is
21 designed to ensure that process.

22 I tell you again, and I will tell you
23 every time before you leave this courtroom, that
24 you are not to discuss this matter or allow
25 anyone to discuss this matter with you during

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1 the course of this trial. When the trial is
2 over and when I make it very plain to you, and I
3 promise you that I will make it very plain to
4 you, you will be able to talk about this case as
5 much as you need to and in as great detail as
6 you need to in order to help you render your
7 verdict, but until that time you cannot discuss
8 it amongst yourselves. And obviously you can't
9 talk with anybody else about it or let anybody
10 else talk with you about it, and you cannot
11 expose yourself to any publicity that might be
12 generated as a result of this trial.

13 Now, we are taking great pains to see
14 that you will not be exposed to those sorts of
15 things, but if inadvertently something should
16 come to your mind or attention, I want you to
17 let it be known to me immediately upon your
18 return to the courtroom. Because I have to know
19 those things and we have to deal with them at
20 that time, so you appreciate the sanctity of the
21 system that you are involved in and why we have
22 been doing all that we have been doing
23 throughout the week, to take care of the very
24 serious business that is before you and that is
25 before us.

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1 Now, ladies and gentlemen, the first
2 thing that we are going to do is that I am going
3 to let you go, but only temporarily. You are
4 going to go and the SLED agents are going to
5 escort you or lead you to the motel here locally
6 where you will be staying. They will see that
7 you are assigned and put up in your rooms and
8 that you are unpacked in there to the extent
9 that you need to be unpacked or want to be
10 unpacked, and getting used to your surroundings.

11 There will be lunch which is already
12 awaiting you in one of your hospitality rooms
13 I'll call it, and I want you to have your lunch
14 there also. We still have a few more matters
15 that we have to take care of here in preparation
16 for beginning this trial. We have to do those
17 things outside your presence. It's going to
18 take us probably about an hour and a half, could
19 take as long as two hours to accomplish those
20 things, so I will not ask for you all to come
21 back until this afternoon.

22 When you come back this afternoon you
23 will be sworn in as jurors and we will begin
24 this trial. Until then, ladies and gentlemen,
25 please remember my instructions to you and

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1 follow the SLED agents. They will get you
2 settled in, they will take care of your car
3 keys. Once you are settled in they will attend
4 to all of these matters. Thank you, ladies and
5 gentlemen.

6 Now, Lieutenant Edwards, do you want
7 to tell the jurors now or do you want to meet
8 with them briefly? Very well, ladies and
9 gentlemen, if you will go with Lieutenant
10 Edwards, he's going to place you in the jury
11 room.

12 Regarding cell phones. Regarding cell
13 phones. And one of the problems is long
14 distance charges between St. George and the rest
15 of the world. If you want to make long distance
16 telephone calls, if you have a cell phone that's
17 going to be fine, if you have your cell phone in
18 your car as some of you may, what we will do,
19 what our plan at this time is, is to let you
20 leave your cell phones with your detail. When
21 you get ready to make your phone call, then
22 you'll give the -- our SLED detail will give
23 your cell phone to you, you can make as many
24 long distance cell phones as you want to. And
25 then once you have concluded that, if you will

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1 place the cell phone back with our SLED agents.

2 Those of you that may have left your
3 cell phones at home or someone else has it and
4 you want them, just let the SLED agents know and
5 we'll talk about how to get those to you. And
6 those of you that don't have a cell phone but
7 will need to make long distance calls, just give
8 your SLED detail that information of what it is
9 that you need and they will address it to me and
10 we will certainly accommodate you as much as we
11 can.

12 Anything further at this time?

13 LIEUTENANT EDWARDS: No, ma'am.

14 THE COURT: Thank you. You will now follow
15 Lieutenant Edwards. Be mindful not to discuss
16 this matter or allow anyone to discuss it with
17 you.

18 (Whereupon, the jury retires to the jury room at
19 12:44 p.m.)

20 THE COURT: Thank you, Mr. Taylor.

21 All right. I know that we have a
22 number of matters. I would like to take a break
23 and I know that you all would, too. If you
24 would organize for me the motions, because I've
25 been receiving them a little bit along at a

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1 time. Let's have a list of the motions that we
2 need to hear, just if you will tell me when we
3 return the ones that you all need heard. Let's
4 get our motions heard. And be mindful, counsel,
5 that it will be at that time that I will ask you
6 if you intend -- I will ask you regarding your
7 opening statement.

8 MR. CUMMINGS: Yes, ma'am.

9 THE COURT: If we need to talk about that
10 matter let me know, all right? Very well.
11 Let's take about -- well, I'll tell you what.
12 Let's take a break now and then you all come
13 back in chambers and we'll talk about how long
14 we'll take a break.

15 (Lunch recess, from 12:45 p.m. to 1:35 p.m.)

16 THE COURT: All right. Mr. Cummings, on
17 some of your motions you had mentioned while you
18 were filing the motions, in some instances they
19 had even been done orally, would you for the
20 record just do a rundown on those?

21 MR. CUMMINGS: Yes, ma'am. If I can just
22 get my co-counsel's attention, I gave her the
23 ones in the backroom. Thank you, Judge. The
24 first motion would be, Judge, to allow us to
25 voir dire, requests for voir dieres. You had