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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2017-002281

STEPHEN C. STANKO #6022.....PETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

APPENDIX
VOLUME 2 OF 14

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have to find what is called an aggravating circumstance. Those are some circumstances that would make the situation worse, or exacerbate the situation, and the Court would give those to the jury, and if the jury picked one of those then they could consider the death penalty. It doesn't mean they automatically impose the death penalty. It just means now they have the ability to consider the death penalty as the -- one of the two options; you understand that?

A. Yes sir.

THE COURT: All right. Very good. Now, the jury also must consider, if the Court charges them, mitigating circumstances. Mitigate means to lessen or reduce the charge, reduce the punishment. If the Court charges those to the jury the jury has to, and must consider those before they would consider which penalty to impose.

Now, in this particular case, as a member of the jury, it would be your job to basically set aside anything that somebody might have told you about this case, heard about this case, you think you know about the case. You set all that aside, if you've got any predispositions as to -- a belief as to one punishment is more proper than the other you have to set all those aside and basically come into this courtroom and listen to the facts and evidence, listen to the law that the Court gives, accept the law that the Court gives to you -- whether you agree with it or disagree with it you've got to

accept the law that I will give to the jury and then make your decision, setting aside all other things that you thought or believed about it. You have to leave those outside the courthouse. You understand that? You understand that's ---

A. I understand the concept, but I ---

THE COURT: ---That's what is required. I -- and we will get to that in just one second. But you understand that is what is required of a juror?

A. I understand.

THE COURT: All right. Very good. All right. Now, in circling the categories you circled category (A), correct?

A. Right.

THE COURT: All right. And so that we are both on the same page, and clear about what category (A) is, that's a juror that says, okay, I'm part of this jury and we are just assuming that the jury had unanimously voted to find the Defendant guilty of the crime of murder, and so now we are in the second phase. Before we get to the second phase juror (A) is predisposed to give a death sentence because the jury has already voted to convict the defendant of the crime of murder despite whatever might be presented in the second phase, despite whatever law that the Court might give to the jury, you are already predisposed to that penalty, the death penalty. Would that be a correct ---

A. Absolutely.

THE COURT: All right. And that's -- and not asking you to change any beliefs, but is that a correct explanation of your belief, and how you believe?

A. I mean, I believe if -- if you are convicted of murder then yes, you should be put to death.

THE COURT: All right. Very good. All right.

Further questions from the State at this point in time?

MR. HUMPHRIES: No sir. Thank you, Your Honor.

THE COURT: Further questions from the Defense?

MR. DIGGS: No, Your Honor.

THE COURT: All right. Mr. Rodriguez, if you would, if you would just go with the deputy for one moment, and we will be right with you. Thank you, sir.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 539 MARKED COURT'S EXHIBIT NUMBER 30.)

THE COURT: All right. Position of the State.

MR. HUMPHRIES: He's not qualified.

THE COURT: Defense?

MR. DIGGS: We agree.

THE COURT: All right. I find the juror is not qualified. He obviously indicated he could not follow the Court's instructions, would come into the situation with preconceived ideas, and would not be able to follow his

jurors's oath.

All right. The next one then is Johnny Causey, Jr..

JOHNNY L. CAUSEY, JR., JUROR NUMBER 99, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Causey, what I'm going to do is, I'm going to go over some things with you. I'm going to ask you some questions, and then maybe the State and Defense will have some questions for you. Okay.

A. All right.

THE COURT: Aren't any right or wrong answers here. What I'm looking for -- from you is some direct, straight-forward, honest answers to the questions that I ask. Okay.

A. Right, sir.

THE COURT: Very good. In this particular matter the State has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, the Defendant has pled not guilty to those so that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent, doesn't have anything to prove to you, doesn't have anything to show to you. The State has to prove the Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Right, sir.

THE COURT: Very good. Now, in this particular case

the State has served notice to seek the death penalty, so that means there's potentially two parts to this particular case. In the first part the jury would be hearing the facts and evidence, and would make a decision, a unanimous decision as to whether or not the State has proved it's case, beyond a reasonable doubt, to prove the Defendant guilty of the crimes charged, and if, and only if the jury finds the Defendant guilty of the crime of murder would we even proceed to the second phase, so he would have to be found guilty of the murder by a unanimous decision by the jury to get to the second phase.

A. Yes sir.

THE COURT: Now, in the second phase the jury is actually imposing a sentence. That's different from any other criminal case. All the other criminal cases the Court imposes sentence. In this one the jury is going to impose the sentence, and the two possibilities are, death penalty, life in prison without the possibility of parole, so, when we talk about life, when we just say life, it means life in prison without the possibility of parole. You understand that?

A. Yes sir.

THE COURT: All right. So, for the jury to consider the death penalty the decision has to be unanimous, and they have to find what is called an aggravating circumstance, means to make worse, or to exacerbate the situation. There are

factors that the Court would give to the jury, and if the jury picked one of those and said, yes, that's an aggravating circumstance, then they could consider the death penalty. It doesn't mean they automatically impose it. It just means now they have the ability to consider that as a potential option. You understand that?

A. Yes sir.

THE COURT: The jury can impose life for any reason or no reason whatsoever. The jury has to, before they impose any sentence, has to also consider mitigating circumstances. Mitigate means to lessen or reduce, or reduce the punishment. The Court charges those to the jury, the jury has to listen to those, consider those before they would impose any punishment in this matter. All right.

A. Yes sir.

THE COURT: Now, if you are on the jury and the jury has unanimously decided to impose the death sentence, since they are actually imposing the sentence, the jury has to take pen in hand and sign a form indicating that that, indeed, is their verdict, it is unanimous, and they were part of the jury that imposed the death penalty. You understand that?

A. Yes sir.

THE COURT: All right. Part of your job as a juror in the case is to set aside any kind of preconceived ideas or notions that you might have about the law or any punishment.

If you thought you knew something about the case, or heard something about it, or somebody told you about that you've got to set all that aside, leave it outside the courthouse. You can't bring it into the courtroom. You've got to make your decision, if you are part of the jury, based upon what you hear of the facts and evidence in this case, and the law that the Court gives to you, and from no other source. Do you understand that?

A. Yes sir.

THE COURT: All right. Let me kind of go over some questions with you. Since Friday did you read, listen, look up anything about this case?

A. No sir.

THE COURT: Did you talk to anybody about this case since Friday?

A. No sir.

THE COURT: Now, before Friday, before, you know, you had the Court's instructions not to do that, do you remember hearing anything about this case, or anything about Mr. Stanko, or anything about it at all?

A. Very vaguely. It was -- I don't even remember when it happened. It was a couple of years ago, I guess, but very vague.

THE COURT: Okay. But you remember ---

A. I remember the name.

THE COURT: ---Something happened ---

A. Yes sir.

THE COURT: ---Some time in the past. You remember his name? Did you remember his name at all?

A. Yes sir.

THE COURT: Okay. Remembered his name. Okay. Very good. Now, you understand that's part of what you have to leave outside the courthouse.

A. Correct. Yes sir.

THE COURT: If you are on the jury that can't be part of your decision making process at all. You understand that?

A. Yes sir.

THE COURT: All right. And could you do that?

A. Yes sir.

THE COURT: All right. Now, the law that the Court gives to you, whether ultimately you disagreed with it or disagreed with it, you have to be able, as a member of the jury, to accept the law that the Court will give to you, follow it, apply it to the facts that you would find to be true, but you would be saying in your oath as a juror, that I'm going to follow the law that the Court gives you. Could you do that?

A. Yes sir.

THE COURT: All right. You have circled category (C) on the category juror which best describes you. Is that

right?

A. Yes sir.

THE COURT: And just to review that briefly, that's the type of juror that, if they are on the jury and the jury has unanimously found the Defendant guilty of the crime of murder then -- and we are in the second phase, that the juror would wait until they've heard all the facts and evidence in the second phase, they've heard the law that the Court will give to them, and then with the other members of the jury, would fairly consider a life sentence, will fairly consider a death sentence, and then impose one of the two. Is that correct?

A. Yes sir.

THE COURT: Very good. As I told you, if the jury -- if you are part of the jury and you are part of the jury that unanimously imposes a death sentence, again, you would have to take pen in hand and sign a form indicating that was your verdict. Could you do that?

A. Yes sir.

THE COURT: All right. Is there any question in your mind or -- let's just -- let me be more direct. If you are on the jury and, based upon the right set of facts and circumstances, could you consider and impose a life sentence, based upon the right set of circumstances being presented to you?

A. Yes sir.

THE COURT: Based upon the right set of facts and circumstances being presented to you, could you impose a death sentence?

A. Yes sir.

THE COURT: All right, sir, now, if you are on this jury, the -- to basically prevent any kind of outside influences, or to make sure that the jurors don't have any improper contact with anybody, the jury would have to be sequestered once they are selected, and the case would probably go somewhere from like maybe seven to nine days. That's the best estimation, that it might go that long, and so, understanding that's a hardship on anybody, no question about that, and we know that, but is that such an extreme hardship on you, or anything regarding your health, your family's health, that would cause you concern about being sequestered?

A. No sir.

THE COURT: All right. Very good. And as far as the witnesses, there were not any witnesses that you circled, correct?

A. That's correct. Yes sir.

THE COURT: Very good.

All right. Questions from the State?

MR. HUMPHRIES: I don't have any questions of Mr. Causey.

Thank you, sir.

THE COURT: All right. Questions from the Defense?

MR. DIGGS: Yes. May it please the Court?

THE COURT: Yes sir, Mr. Diggs.

BY MR. DIGGS:

Q. Mr. Causey, how are you this morning?

A. Just fine.

Q. Good. My name is Bill Diggs, and I'm here with Brana Williams, seated over at counsel table. We represent Mr. Stanko in this case, and of course he is seated here between us at counsel table, and we have just a couple of -- or maybe just a few follow-up questions picking up on some of the issues that the Judge brought up.

A. Okay, sir.

Q. Let me ask you, when the -- if you were to serve on the jury, and the evidence has been presented by both of the parties in this case, we expect there could be potentially four verdicts that could be reached in this case. One is guilty, two is not guilty, three is not guilty by reason of insanity, or four, guilty but mentally ill. Now, do you have a bias of which you are aware, do you have any bias that would prevent you from considering the evidence in the case, receiving the instructions of -- from the Court regarding the law, and reaching either of those four verdict according to your view of the evidence?

A. No sir, not -- I mean, as long as I hear the evidence first, yes sir.
Q. Okay. So you wouldn't -- you wouldn't have any bias against any of those possible verdicts, depending on the evidence in the case?
A. No sir.
Q. Okay. Now, can you tell me with any detail what it was that you knew about Mr. Stanko? Can you remember anything at all about the facts in any way?
A. No sir. Like I told the Judge, I really don't. It's -- I don't even -- I guess it was two or three years ago and I don't remember the details of it. I really don't.
Q. All right. At that time did you form any kind of opinion about the case, or did you pretty much just dismiss it?
A. No. I pretty much just dismissed it. I read the paper every day, and I read what's in there and then the next day goes on.
Q. Okay. And if we get to the sentencing phase, understand that to consider a verdict in the case then there would have to be a finding of guilt, follow me?
A. That's correct.
Q. Do you think that you would be predisposed toward either the death penalty or to life imprisonment once you get to that sentencing stage?

A. No. I really can't comment at this time without hearing the facts.
Q. Okay. So you don't believe you would be predisposed to either verdict? It would depend on the evidence ---
A. That's correct, sir.
Q. ---Regarding the sentence?
A. Yes sir.
Q. All right. Would you have any hesitation, or would it cause you pause to sentence an individual to life imprisonment that you had just found guilty of murder?
A. Would I impose on doing that?
Q. Would you have -- would it cause you pause to impose life imprisonment on someone you had just found guilty of murder?
A. Versus what? I mean ---
Q. Well, versus the death penalty.
A. I don't quite understand the question. I'm sorry.
Q. All right. Understand ---
A. I want to make sure I give you the correct answer.
Q. Yes sir. That's what we want. You've just found a defendant guilty ---
A. Correct.
Q. ---Of murder, let's say, there's no doubt in your mind that that act was committed and the defendant was guilty, could you still, under those circumstances, impose a life

sentence on that defendant?
A. I could, yes sir.
THE COURT: Okay. What if even there were an aggravating circumstance in that situation, could you still sentence the defendant to life?
A. That I couldn't answer, I mean, it depends.
Q. Okay. Understand that in order to be eligible for the death sentence at all a defendant has to be guilty of murder that's accompanied by an aggravating circumstance.
A. Yes sir.
Q. Okay. Now, let's suppose you are in a situation where the State has proved to you, to your satisfaction, beyond a reasonable doubt, guilt of murder, and an aggravating circumstance, could you -- having found both of those things, in agreement with the State's position, still impose a life sentence on that defendant?
A. I couldn't answer that at this time, sir.
Q. All right. I want you to try real hard and let me know -- what if the Judge told you that, even in those situations you would have to not only be able to consider life imprisonment but actually impose it if you felt that was warranted by the evidence of the case?
A. Yes sir, I could do that.
Q. Okay. All right.
MR. DIGGS: That's all I have. Thank you very much.

THE COURT: All right. Thank you.

All right, Mr. Causey, let me just ask you one question, based upon what I have discussed with you and the attorneys have discussed with you. Can you give to the State of South Carolina and to the Defendant, if you are member of the jury in this case, a fair and impartial trial, can you be a fair and impartial juror in this case?

A. Yes sir.

THE COURT: Very good. Thank you very much, sir. If you would go with the deputy.

MR. DIGGS: Your Honor, there is one question that we've -- that I overlooked, and that has to do with his dad.

THE COURT: Yes sir.

MR. DIGGS: Of course -- yes. His ---

Your dad works over at North Myrtle Beach, or did for a ---

A. No. He's passed away about eight years ago.

MR. DIGGS: Okay. I'm sorry. I wasn't aware of that. But I was just looking at your sheet ---

A. Yes sir.

MR. DIGGS: ---You know, the questionnaire, that he had been an employee there in the Police Department for forty-one years.

A. That's correct.

MR. DIGGS: Okay. And that -- would that fact affect

your ability to be fair and impartial in the case?

A. No sir.

MR. DIGGS: Okay. I wanted to clear that up, and I apologize about the -- I was ---

A. No. That's okay.

MR. DIGGS: Thank you very much.

THE COURT: Not a problem.

Go ahead, sir. If you would just go with the deputy. Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 99 MARKED COURT'S EXHIBIT NUMBER 31.)

THE COURT: All right, the State's position.

MR. HUMPHRIES: He's qualified.

THE COURT: Defense.

MR. DIGGS: Your Honor, I would argue that he's not qualified because of the hesitation that he had to impose a life sentence in the face of a murder conviction, and one that was accompanied by an aggravating circumstance. I understand what the juror said, that when I put -- rephrased the question and put it to him in a different way, but I would -- I would submit, just based on his demeanor from my perspective, that he would be predisposed to impose death in that situation, and actually every case that would be accompanied by an

aggravating circumstance, which is what you are going to have to have in order to be eligible for a death sentence in the first place. So I would ask you to find him not qualified.

THE COURT: As to the juror's demeanor or response to the questions, I -- what the Court observed was that he was confused by the question. I don't think it was a hesitation. I think he was confused by the question, did not understand the question, and when it became clear to him what you were asking he gave a clear and straight-forward answer to the question.

I find the juror to be qualified. I find that he can be fair and impartial. I find that he will follow the Court's instructions, he will honor his oath. There is nothing that would indicate that -- that would impair his ability in any way to be a fair and impartial juror in this case, and I find him to be qualified.

MR. HUMPHRIES: Your Honor, there's -- can we take up one matter briefly before we bring the next juror in?

THE COURT: Sure.

MR. HUMPHRIES: And this is just for -- you know, it doesn't matter as to Mr. Langway at this time, but we've communicated directly with Mr. Brittain. Mr. Brittain was appointed by Judge Jefferson, and for a period of approximately ten days was the appointed counsel for the Defendant. He was later excused because of a conflict due to

prior representation of the victim, Henry Turner.

THE COURT: All right. Very good.

The next one is Gerald Ellis.

GERALD A. ELLIS, JUROR NUMBER 181, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Ellis, what I'm going to do is, I'm going to go over some things with you. I'm going to ask you some questions. Thereafter maybe the State and the Defense might have some questions for you. Okay.

A. Yes sir.

THE COURT: What I'm going to be -- what I want from you basically is just direct, straight-forward, honest answers to my questions. Not any right or wrong answers here. I just need you to basically directly answer the questions as best you can. Okay.

A. Yes sir.

THE COURT: Very good. Now in this particular case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The Defendant has pled not guilty to those matters, and therefore that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent, doesn't have anything to prove to you or show to you. The State has to prove the Defendant guilty

beyond a reasonable doubt. You understand that?
A. Yes sir.
THE COURT: All right, sir. Now, in this particular case the State has served a notice to seek the death penalty, so that means this case could potentially have two parts. The first part would be that the jury would be listening to the facts and evidence presented in the case, and would make a unanimous decision as to whether or not the facts and evidence they find to be true, that the State -- whether or not the State has carried it's burden of proof to find the Defendant guilty beyond a reasonable doubt. So, would -- the jury would, to even get into the second phase, would have had to have considered all the facts and the evidence, and reached a unanimous conclusion that the Defendant is guilty of the crime of murder beyond a reasonable doubt. You understand that?
A. Yes sir.
THE COURT: In the second phase the jury would be considering, and actually imposing a sentence. That's different from every other case. In all other cases the Court imposes the sentence. In this case the jury actually decides the sentence, and there's two choices, the death penalty, life in prison without the possibility of parole. So, if I say life, or the lawyers say life, that's what it means, life in prison without the possibility of parole; you understand that?
A. Yes sir.

THE COURT: All right. For a jury to impose the death penalty the decision has to be unanimous, and the jury has to find what is called an aggravating circumstance. Aggravate means to make worse, or exacerbate the situation, and if the jury finds an aggravating circumstance -- and the Court would give a list, or point those out to the jury that they could consider, and if the jury found one of those, and picked one of those, then they could consider the death penalty. It doesn't mean they would automatically impose it. It just means then they have the ability to consider that as a sentence option.

The jury also has to consider, before they impose any sentence in this matter, any mitigating circumstances. Mitigate means to lessen, or reduce, or reduce the charge, and the jury would have to listen to those mitigating circumstances before they could impose any penalty in this particular matter, because the jury obviously can impose life, and can impose life for no reason whatsoever. You understand that?

A. Yes sir.

THE COURT: If you are part of the jury, and the jury unanimously finds that they would impose the death sentence in this particular matter, the jury would have to take -- each member of the jury would have to take pen in hand and sign a form, verdict form, indicating that that, indeed, was their

unanimous verdict, and they did choose to impose the death penalty. You understand that?

A. Yes

THE COURT: If you are on a jury one of your jobs as a juror is to come into this courtroom and set aside any ideas, predispositions that you might have about the law, or possible sentence. If you knew anything about the case, or heard anything about the case, or think you know anything about it you have to disregard that, basically you leave it outside the courthouse. You don't bring it into the courtroom. Your job as a juror is to listen to all the facts and evidence presented in this case, listen to the law that the Court gives to you, and then make your decision based upon the facts and evidence presented in this case, and the law that the Court gives to you. Do you understand that?

A. Yes sir.

THE COURT: Very good. Let me go over some questions with you. After we left here on Friday did you read, listen, watch, look up anything about this case?

A. No sir.

THE COURT: Did you talk to anybody about this case after we left on Friday?

A. No sir.

THE COURT: Now, before Friday, and before I told everybody not to do those kind of things, had you heard

anything about this case, remember anything about it, heard the Defendant's name, anything like that?

A. Yes sir.

THE COURT: Okay. As best you can, tell me what you heard or remember, knew about it.

A. Just what I read in the newspaper.

THE COURT: And what was that, as best you can recall?

A. That the Defendant was locked up for murdering people.

THE COURT: Okay. Is that basically what you remember about it?

A. Yes sir.

THE COURT: All right. Now, you understand that's part of what you have to leave outside of the courthouse. You can't let that affect your decision in any way. When you are here in the courtroom and you are part of the jury that's not part of your decision making process at all. It doesn't come up. It's not talked about. It's not thought about. You make your decision based upon what you hear in the courtroom and the law that the Court gives to you. Could you do that?

A. No sir.

THE COURT: You can't do that?

A. No sir.

THE COURT: All right, sir. And why would that be?

A. I'm a retired police officer. Get out in the street for a lot of years, see what's going on, see how lawyers and

everything twist things around, and I just couldn't do it, sir.

THE COURT: All right, sir. You would -- and again, I appreciate your being straight-forward and honest, and the fact that you had this information before, it basically would be impossible for you to forget it if you are sitting on a jury in this case. Is that what you are telling me?

A. Correct, Your Honor.

THE COURT: All right. Very good.

Further questions from the State?

MR. HEMBREE: None, Your Honor.

THE COURT: Further questions from the Defense?

MR. DIGGS: No, Your Honor.

THE COURT: Very good, sir. If you would go with the deputy for a few moments, please. Thank you very much, sir.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 181 MARKED COURT'S EXHIBIT NUMBER 32.)

THE COURT: Just so the record is clear, the juror did circle category (C).

What's the State's position?

MR. HEMBREE: The juror is not qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: We agree.

THE COURT: I find and agree that the juror is not qualified in this particular matter, that he would not have the ability to follow his oath and correctly follow the law, and would be predisposed to render a decision.

All right. The next one is Jennifer Johnson.

JENNIFER D. JOHNSON, JUROR NUMBER 330, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Johnson, what I'm going to do is, I'm going to talk to you about some things. I'm going to be asking you some questions, and after I'm done maybe the State and the Defense may have some questions for you. Okay.

A. Okay.

THE COURT: What I'm looking for is just direct, straight-forward and honest answers to the questions. There are not any right or wrong answers here. We need to find a jury that is fair and impartial, and through the honest answers that's how we find a proper jury for this case. Okay.

A. Okay.

THE COURT: All right, in this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, the Defendant has pled not guilty to those crimes so that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is

presumed innocent, doesn't have anything to prove to you, to show to you. The State has to prove the Defendant guilty beyond a reasonable doubt of the crimes charged. You understand that?

A. I do.

THE COURT: All right. Now, the State has served notice of an intention to seek the death penalty in this particular case, so that means that this case could potentially have two parts. The first part would be, if you are a member of the jury, you listen to the facts and evidence in this case, and would be deciding, based on the facts and evidence you found to be true, whether or not the State carries it's burden to prove the Defendant guilty of the crimes charged beyond a reasonable doubt. If the jury found unanimously -- and everybody would have to find it unanimously -- found the Defendant guilty of the crime of murder, beyond a reasonable doubt, then and only then would we get into the second phase, because if the jury found him not guilty then obviously would couldn't get to the second phase. The second phase is a sentencing phase, and this case is unique in that the jury actually imposes a sentence. Usually the Court imposes a sentence, but in this case the jury would impose the sentence, and there's two possibilities. One is the death penalty and the other is life in prison without the possibility of parole, and when you say life, or the attorneys

might say life, that's what we mean, life in prison without the possibility of parole.

Now, for the jury to impose a death sentence it has to be unanimous, everybody has to agree, and the jury has to find what is called an aggravating circumstance. Aggravate means to make it worse, or to exacerbate the situation, and if the Court would charge to the jury certain aggravating circumstance, and the jury picked one and said that that -- everybody agreed, unanimously agreed to that aggravating circumstance, then the jury could consider the death penalty. It doesn't mean you automatically impose it. It just means then they have that as a possible sentence option, one of the two.

The jury also must consider any mitigating circumstances that the Court would charge to them. Again, mitigate means to lessen, or reduce, reduce the -- reduce the punishment, and the jury would have to consider those before they decided to impose a sentence in this matter because the jury could impose life, you know, for no reason whatsoever. You understand that?

A. I do.

THE COURT: All right. Now, if you are a member of the jury, and the jury has unanimously decided to impose a death penalty in this case, since the jury is actually imposes the sentence the jury -- jurors, members of the jury, has to take

pen in hand, and there's a verdict form, or a form that they have to sign their name to saying, yes, that, indeed, is the unanimous verdict and I did vote to impose this penalty in this case. You understand that?

A. I do.

THE COURT: All right. Now, part of your job as a juror is to come into this courtroom and to set aside any predispositions that you might have, any thoughts you might have about what kind of case, the penalty that might be imposed, if you thought you knew anything about this case, or heard about this case you set all that aside and you leave that outside the courthouse; you don't bring it in the courtroom. You make your decision in the courtroom, as a member of the jury, based upon what you hear, the facts and evidence that you hear, and the law that the Court gives to the jury. That would be a job as a juror that you have if you are a member of that jury. Do you understand that?

A. I do.

THE COURT: All right. Now, let me go over some of the -- some of these questions with you. Since we left here on Friday did you read, watch, listen to, look up anything about this case?

A. No.

THE COURT: Did you talk to anybody about this case?

A. No, I did not.

THE COURT: Now, before Friday, before you knew not to do that, do you remember hearing anything about this case, or somebody talking about it, or hearing the Defendant's name, or anything like that?

A. I do.

THE COURT: All right. What do you remember?

A. I actually remember the -- when it took place.

THE COURT: Okay.

A. And ---

THE COURT: What is it that you can remember about that?

A. I remember the Defendant being accused of taking the lives of two individuals, and I believe he has already been tried for one of those, and that she was a librarian, I believe. I don't recall all of the circumstances, of course, but I do know the names and ---

THE COURT: Okay. All right. Now, you understand that's part of what you have to leave outside of the courthouse.

A. I do.

THE COURT: You can't let that affect your decision, impact your decision in any way. If you are a member of this jury you have to make your decision based upon what you hear in this courtroom and from no other source. So knowing that to be your job as a juror can you do that?

A. I think I can.

THE COURT: Okay. And I appreciate that, and I know it's a hard question, but this really is kind of like a bright line test. You have to have that ability -- and it's fine if you don't. There is no issue or problem with that. But if -- to be part of the jury, if you are going to be a juror you have to be able to, and the Court has to know, as a certainty, that you can set all that aside, that you won't let that affect you in any way, when it comes time to make a decision that won't be part of your thought process, you won't let that impact you. Okay.

A. Okay.

THE COURT: And so again, I need to ask you, do you think you can do that, or no, I don't really think I can do that?

A. I think I could, yes.

THE COURT: All right. Now, I need to -- but -- and I said think. I shouldn't have said think.

A. Okay.

THE COURT: I really need to know, can you do that or no, I can't do that?

A. Yes, I can.

THE COURT: All right. Now, I don't want to be talking you into anything. Is that your decision?

A. Yes.

THE COURT: No question about that?

A. No.

THE COURT: Are you telling me that anything that you heard, or read, or think you know about what happened in the past -- because that might be true or not true -- you are not going to let that affect you in any way when you come in this courtroom as a juror?

A. No, I will not.

THE COURT: All right. Will you base your decisions solely on the facts and evidence presented in this case, and from no other source?

A. Yes sir.

THE COURT: Will you follow the law that the Court will give you and, even if you agreed or disagreed with it, you would follow the law that the Court would give you in this matter?

A. Yes, I would.

THE COURT: All right. When you heard about this case in the past did you form any kind of opinion at that point in time? Do you remember forming an opinion?

A. Yes, I do.

THE COURT: Okay. What was that?

A. I was leaning toward that he was guilty of it.

THE COURT: Okay. Again, -- and again, there's not any right or wrong answers -- can you completely and totally set

that aside?
A. Yes sir.
THE COURT: And you are basically coming into this -- what I'm asking you is, you are coming into this courtroom like a blank slate, you are not going to let that affect you in any way, can you do that?
A. Yes sir.
THE COURT: All right. In general, do you think you have any kind of personal, political, religious, philosophical belief that you believe would prevent you from being a fair and impartial juror?
A. No.
THE COURT: Okay. Now, in this case, regarding the potential witnesses in this matter -- and you didn't circle any of the witnesses, right?
A. No.
THE COURT: All right. And as far as the juror category you circled category (C), correct?
A. That's correct.
THE COURT: And to go over that again is that, if you are on a jury and -- we have to talk in assumptions, I mean, none of this has happened, or may not, but if you are on a jury and the jury finds the Defendant guilty of the crime of murder by a unanimous decision, they believe that the State has proved that to them beyond a reasonable doubt, and we are

in the second phase, the sentencing phase, that -- you are saying that I'll listen to all the facts and evidence in this case, I'll set anything else aside, I'm going to listen to just the facts and evidence in this case, and I'm going to be open to either option, life in prison without the possibility of parole, the death sentence, I'll listen to the law that the Court will give to me as a juror, and then based upon my discussions with the other jurors I'll then make my decision at that point in time.

A. That's correct.

THE COURT: All right. Very good. So, again, go over it one more time. If we are in the sentencing phase, based upon the right set of facts and circumstances, can you fairly consider and impose a life sentence based upon the right set of facts and circumstances?

A. Yes sir.

THE COURT: Based upon the right set of facts and circumstances, can you fairly consider and impose, based upon the right set of facts and circumstances, a death penalty?

A. Yes.

THE COURT: If you are a member of the jury and y'all unanimously vote to impose a death sentence, can you then take pen in hand and sign your name to a form indicating that, indeed, is my unanimous verdict in this particular matter?

A. Yes, I can.

THE COURT: Thank you, Ma'am. All right. What I'm going to do now is let the State and Defense ask a few questions. Okay. Thank you, Ma'am.

A. Uh huh **(indicating positive)**

BY MR. HEMBREE:

MR. HEMBREE: Good morning, Ms. Johnson.

A. Good morning.

MR. HEMBREE: I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit, and I, along with Deputy Solicitor Fran Humphries, and Senior Assistant Solicitor Jimmy Richardson, sitting at the table with me, we will be presenting the evidence on behalf of the State.

A. Yes.

Q. I have a couple of questions. Some of it is going to be a bit repetitive. First I want to talk to you -- maybe set your mind at ease about one part of this process that we are engaged in right now. We are qualifying jurors for the panel, so just because you are qualified doesn't mean necessarily that you will be selected for this jury, but we are going to go through a process -- we sort of start with this many, and we kind of get to a smaller group, and then from that smaller qualified group we will actually select the jury, so you may sit, you may not, if you are qualified.

A. Okay.

Q. The second thing is -- and I don't recall -- Judge John

may have asked you this. If I'm repeating myself I'm sorry. One of the issues that we will be dealing with in this trial, if you are selected, is sequestration, and sequestration is a process where a jury is actually separated. They stay in a hotel room, they have their meals provided for them, and the expenses are, of course, taken care of by the County. We expect the trial of this case -- you wouldn't be sequestered until we actually start the trial, but when we start the trial the trial will take about seven to eight days, something like that. I know -- I don't have to ask you if that's a hardship, because that's a hardship, and it's a lot to ask of the citizens, in doing your public duty, to give us that much, however, my question to you is this. Would that pose any risk to your health, to your safety, or to the health or safety of a close family member if you were to be called for this jury and sequestered for that seven day period?

A. No, it wouldn't.

Q. Thank you. You are in the legal field?

A. Yes, I am.

Q. And you are a legal assistant with the Anderson Law Firm. And your responsibilities there include -- what do you typically do?

A. Draft legal documents, review materials, get things ready for trial.

Q. And what type of -- what type of law does your firm

practice? What type of matters do you work on?
A. It's criminal and civil.
Q. Criminal and civil. I wouldn't -- I don't know that we've had a death penalty case -- I don't think y'all have been involved in a death penalty case ---
A. No.
Q. ---Our office or anybody else?
A. No.
Q. You have some pretty -- I would gather that you have a pretty good sense of the legal concepts -- from just being around the office and working on these kind of matters you have a pretty good sense of some of the legal concepts that Judge John has discussed with you, and things you might hear in this trial.
A. I do.
Q. You have a full understanding about the exposure to the media that you -- that you have had in this case. If you are unable -- if you are unable to absolutely, you know, set that aside, that that's okay. We just need to know because if that's going to influence you in some way then you are really not qualified to sit on the jury.
A. Uh huh **(indicating positive)**
Q. And you can say with certainty as you sit here today, having given it some consideration, or judged -- you can say with certainty that you can set that information aside, or

that -- what you may or may -- what you may have heard in the media or other sources, you can set that aside and confine your decisions solely based on the evidence presented in this courtroom?

A. Yes, I can.

Q. As far as -- you have indicated there is no -- nothing philosophically that you have that would prevent you from sitting on this case. Specifically, I want to ask you about the death penalty, and I know that's probably a familiar question. I don't know how much time you have had to consider that, but certainly you have never been asked to be on a death penalty jury before.

A. No, I have not.

Q. So you have certainly never considered it in that context. What are your thoughts about that? Just go ahead and tell me what your feeling is about the death penalty.

A. I am not opposed to it. I take it very much into consideration because it is someone's life that you are putting on the line, but I am not opposed to it in certain situations.

Q. So, depending on the facts and circumstances you could impose the death penalty, other facts and circumstances you could impose a life sentence ---

A. Yes.

Q. ---Which is what you told Judge John and indicated by

being a type (C) juror.
A. Yes.
MR. HEMBREE: Okay. That's all we can ask of you.
Thank you for your willingness to serve, and I appreciate your time today, and I would ask you to answer any questions Defense counsel might have for you.
THE COURT: All right, Mr. Diggs.
MR. DIGGS: May it please the Court.
THE COURT: Yes sir.
BY MR. DIGGS:
MR. DIGGS: Ms. Johnson, how are you this -- yes, it's still morning -- this morning.
A. I'm fine. Thank you.
MR. DIGGS: Good. My name is Bill Diggs, and this is Brana Williams seated over here, and we represent Mr. Stanko who is seated here between us at counsel table.
And how long did you work in the Clerk's Office?
A. I was in the Clerk's Office in Rowan County for two years.
Q. For how long?
A. Two years.
Q. So you really got a good background of the legal system?
A. I believe so.
Q. And it's good. How does our Clerk stack up?

A. Well, this ---
Q. You don't have to answer. Listen, tell me, if you would, please Ma'am, exactly, the best that you can recall, what it was you heard about Mr. Stanko?
A. Just from the several years ago, the news accounts of the two murders, and of course the America's Most Wanted where he had run, supposedly.
Q. Okay. And I believe you mentioned that you knew he had been tried?
A. Yes.
Q. You remember the outcome of that trial?
A. He was found guilty.
Q. All right. Do you know if he was sentenced?
A. He was.
Q. And do you know what that sentence was?
A. I believe it was death.
Q. All right. And let me ask you this -- and I'm not saying -- I'm not confirming anything that you said, but if you were to sit on this jury, knowing that this is a capital case, the State is seeking the death penalty in this case against Mr. Stanko. Would your knowledge, prior knowledge of the case, undermine your sense of responsibility for making a -- an independent determination in this case with regard to the proper sentence?
A. No.

Q. All right. You understand my question?
A. I do.
Q. Because any time a juror is asked to make a decision about life or -- life imprisonment or a death penalty it's an important and serious decision. Your opinion is that any information that you have about Mr. Stanko would not undermine the serious nature of your -- of the decision that we are calling upon you to make in this case?
A. That's correct.
Q. All right. Let me ask you this. Do you think that there is a prevailing view in the community as to whether or not Mr. Stanko is guilty?
A. I don't know. I'm not -- I'm not familiar enough with, you know, other people's perspectives on it.
Q. All right. If you were to sit on this jury and come back with a verdict of not guilty ---
A. Uh huh **(indicating positive)**
Q. ---Do you feel like you would have to go out into the community and either apologize for your verdict, or explain your verdict?
A. No, I don't.
Q. All right. And do you feel like you are obligated to vote guilty because of some duty that you owe to the community?
A. No, I don't.

Q. Now, in this case there are going to be, we anticipate -- in the first phase of the trial, with respect to the issue of guilt or innocence we anticipate there might be about four verdicts that you could reach, independent of the other, each one in it's own right. That would be guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. Thinking about those potential verdicts that might arise in this case, are you predisposed in any way, to your knowledge, so as to not be able to consider each of those verdicts?

A. I have to be honest, of course, and say yes. I have -- I have some issue with the insanity plea.

Q. And can you explain that for us?

A. I think that in today's society it is used entirely too much. There are people, I have no doubt, that are -- who have mental health issues, but I think that entirely too many people use it just to get out of the situations.

Q. Okay. Now, what would it -- can you give us an overview, perhaps, of what it would take in your mind ---

MR. HEMBREE: Object, Your Honor. He's taking ---

THE COURT: Well, I haven't heard the question. I don't ---

MR. HEMBREE: Well, he's staking out the juror -- what it would take ---

All right. I'll wait for the question.

THE COURT: You probably need to rephrase your question.

Q. Is that a view that's probably -- that's entrenched, or would it take some effort to alter your view on that part?

A. He would have to prove it to me that he -- that someone was, without a doubt, insane, that they did not know what they were doing. I just -- it's hard for me to get past that.

Q. Okay. I understand. Would you be able to follow the law that the Judge instructed with regard to insanity?

A. Yes, I would.

Q. Even if it was contrary to what you felt, or what your personal beliefs were about insanity?

A. Yes, I would.

Q. Any doubt, any hesitation in your mind about that?

A. Not if I'm following the instructions that I'm given. I can ---

Q. Because, you know, the Judge is going to say, now Ms. Johnson, you don't have to worry about what the law is because I'm going to tell you, and I'm going to tell you insanity means this, and if you find this to be the case you have a duty to return that verdict. Now, do you believe that you could do that?

A. Yes, I do.

Q. Even though you are telling me now what you are telling me, you could follow the law and uphold that -- and fulfil

that duty if it's supported by the evidence?
A. Yes, if it's supported by the evidence.
MR. DIGGS: Okay. And that's only fair.
Q. Are you sure?
A. Yes.
Q. Okay. Let me ask you this. Now we might get to the sentencing phase. I have to ask you about this now. It doesn't mean that I think that Mr. Stanko is guilty, but if we don't ask you now we will never have an opportunity.
A. Uh huh **(indicating positive)**
Q. When we get into the sentencing phase you know in order to be there a jury, with you on it if you are a juror, will have to have already found guilty, correct?
A. Correct.
Q. And in order to be a death penalty case, as the Judge has explained to you, there's got to be a guilty verdict as to murder, and an aggravating circumstance. Okay. Remember when the Judge was telling you that?
A. Yes.
Q. Now, if you are on the jury and you've just found guilt as to murder, and then in that sentencing phase you say, well, you know what, I think there's also an aggravating circumstance here, could you impose a life sentence at that point if you felt it was supported by the evidence?
A. I could.

Q. You understand what I'm saying?
A. Yes, I do.
Q. All right. And could you impose a life sentence even though you were asked to do so in the face of a finding of an aggravating circumstance?
A. No.
Q. All right. And do you understand the question I'm asking you?
A. You are asking me, if there is an aggravating circumstance if I could find for life as opposed to the death penalty?
Q. Correct. And what was your response?
A. I said no.
Q. No, meaning what?
A. That I would find for the death penalty instead.
Q. All right. And in that case, if the State proved to you an aggravating circumstance, beyond a reasonable doubt, accompanied a murder, then you would all -- in that case, vote death?
A. If there is the aggravating circumstance, yes.
Q. All right.

MR. DIGGS: Thank you. That's all I have.

A. Okay.

MR. HEMBREE: Your Honor, I've got a ---

THE COURT: You will have an opportunity when I get

done.

Ms. Johnson, let me ask you some questions, please Ma'am.

A. Yes sir.

THE COURT: First, the Anderson Firm, that's a North Carolina firm?

A. Yes, it is.

THE COURT: All right. And so you are familiar with North Carolina Law?

A. I'm fairly new to the law firm ---

THE COURT: Okay.

A. ---So I am just in the midst of everything currently, but I did work for the North Carolina Clerk's Office.

THE COURT: All right. And so your familiarity with laws would more tend to what is the law of the State of South Carolina?

A. Yes.

THE COURT: All right. You understand there could very well be differences between the laws of the State of North Carolina's and the State of South Carolina?

A. Yes sir.

THE COURT: All right, now, in regards to this particular matter the Court will instruct you the law of the case, and if you are on the jury you would have to follow that law whether you agree with it or you disagree with it. Do you

understand that?
A. Yes sir.
THE COURT: And can you do that without hesitation, without question?
A. Yes sir.
THE COURT: The Court will tell you, and the Court would instruct you that even if the jury finds an aggravating circumstance -- because all the aggravating circumstance does is, it gives the ability to the jury to consider the death penalty. Doesn't mean it's automatic. If the jury doesn't find unanimously an aggravating circumstance they can't even consider the death penalty.
A. Uh huh **(indicating positive)**
THE COURT: Do you understand that?
A. I do.
THE COURT: So, you understand that an aggravating circumstance gives the ability to the jury to consider the death penalty?
A. Yes sir.
THE COURT: It does not require -- the jury is never required, and the Court would never instruct the jury they are required to find the death penalty; you understand that?
A. Yes, I do.
THE COURT: The jury can impose life, based on a mitigating circumstances, or for no reason whatsoever; you

understand that?
A. Yes.
THE COURT: And the Court would instruct you that, if the jury unanimously finds an aggravating circumstance they can still impose life, as an act of mercy the jury can impose life. Do you understand that?
A. Yes sir.
THE COURT: Can you follow that law?
A. Yes sir.
THE COURT: Without hesitation, without question, can you follow that law?
A. Yes.
THE COURT: You obviously had, and expressed a belief that, if there is an aggravating circumstance I'm going to vote for the death penalty, but I'm telling you, that gives you the ability to consider -- there is nothing automatic.
A. Okay.
THE COURT: You understand that?
A. I do.
THE COURT: I'm never going to tell the jury that there is anything automatic as far as the death penalty. That's -- I'm never going to tell the jury they have to impose the death penalty if they find (X), (Y) or (Z). Do you understand that?
A. Yes sir.
THE COURT: Because the jury can impose life for a

mitigating circumstances or, as I told you, for no reason whatsoever, just as an act of mercy. You understand that?
A. Yes sir.
THE COURT: You understand that to be the law?
A. Yes sir.
THE COURT: And you will follow that completely and without question?
A. Yes sir.
THE COURT: Questions, Solicitor?
MR. HEMBREE: Your Honor, I don't need to ask any follow-up.
THE COURT: All right. Very good. If you would go with the deputy, please.
(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)
(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 330 MARKED COURT'S EXHIBIT NUMBER 33.)
THE COURT: State's position.
MR. HEMBREE: The juror is qualified, Your Honor. I -- and the only point I would really note, in response to Mr. Diggs' -- one of his last questions that required follow-up he -- he asked the question one way and she -- she said she would listen to all the facts and circumstances, and then he really left her with a different form of the question where if -- if this plus this then would you do this. He didn't -- he didn't

inject the element of, do you want to listen to the facts and circumstances. It was not a -- a complete statement of the law. It implied that one plus one equaled two, and that she -- I fear that the juror did not understand that she would not be required to find for the death penalty in that circumstance, and of course when the Court explained that to her her response changed and she falls back into the situation of being a qualified juror at that point.

THE COURT: All right. Very good.

All right, Mr. Diggs, be glad to hear from you, sir.

MR. DIGGS: Your Honor, I would argue, and we would submit that she's not qualified. I mean, this former Deputy Clerk of Court fully understands what -- within the context of this dialogue, what we were saying, and stated that it would always be a death sentence if it was a murder accompanied by an aggravating circumstance in her mind, so we would say she is not qualified. Plus, given the extra baggage of all of the knowledge that she brings in with respect to the case, prior case, and the fact that he had -- is even under a death sentence we would suggest that she's not qualified.

THE COURT: Very good. Under **Wainwright versus Witt**, **Witherspoon versus Illinois**, and **Morgan versus Illinois** I would find the juror to be qualified. I find, based upon the Court's instructions and questioning of her, that she will follow the law that the Court will instruct her, that she will

honor her oath.

She was, as far as her demeanor and her response to the question, she was extremely straight-forward, honest. The Court got the distinct impression from her that she would absolutely follow the law that the Court gives to the jury, and would follow that without hesitation or question, and would set aside any personal beliefs or opinions that she had, and would follow the Law of the State of South Carolina as the Court would charge her, and I have no question, based upon all that, that she is -- would be fair and impartial, and I, in no way, would -- her, what she has expressed, prevent or substantially impair her performance or her duties in this matter.

MR. DIGGS: Thank you, Your Honor.

I also want to state an additional ground though, just for the record, and being complete on our objection here, that given the knowledge of the prior death sentence that it's an Eighth Amendment violation to -- it just goes -- it's too much for invasion, I would submit, of the Eighth Amendment procedure with respect to the imposition of the death penalty verdict to be able to do that in a fashion that requires heightened degree of reliability and dependability, knowing that the Defendant is already under a death sentence. It just -- the human nature there would be to say, it's not going to really matter what I do in this case because there's another

death sentence, and it's not -- I'm not aware of any case that we've ever had where a sentence of death was sought as against a defendant who was under a death sentence. I might be wrong on that but I just don't recall one.

MR. HUMPHRIES: Say again. I'm -- would he say that again?

MR. DIGGS: So based on those grounds I don't have any -- I mean, we would ask that the Court excuse the witness -- the juror.

MR. HUMPHRIES: Let me just -- just so we can clear that point up for the record. If what I heard is that no juror is qualified that was previously under the knowledge that they were under a death sentence that's entirely untrue. In **Raymond Patterson** two and three, both of which I had some involvement in, the majority of the jurors, not only knew -- some of them in three knew he had been convicted and sentenced to death twice.

MR. DIGGS: That's not my point, with all due respect. Under a death sentence that is presently being moved forward to be carried out wasn't the case in **Patterson**. Those death sentences had been set aside.

THE COURT: Thank you, sir. You've stated your grounds. The Court denies your motion.

MR. DIGGS: Thank you. Thank you for the time.

THE COURT: Bring in Mr. Walsh. We'll take a break

after we go through Mr. Walsh.

MICHAEL P. WALSH, JUROR NUMBER 654, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Walsh, what I'm going to do is, I'm going to go over some matters with you. I'm going to have some questions for you, and after I'm done maybe the State and the Defense might have some questions for you. Okay.

A. Yes sir.

THE COURT: All right. Now, there aren't any right or wrong answers here. What I'm looking for from you is just some direct, straight-forward, honest answers to the questions. You understand that?

A. Yes sir.

THE COURT: Very good. In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. To those crimes the Defendant has pled not guilty. That puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to show to you. The Defendant doesn't have anything to prove to you. The State must prove the guilt of the Defendant of the crimes charged beyond a reasonable doubt. You understand that?

A. Yes sir.

THE COURT: All right, sir. In this particular case the State has charged the -- or rather, the State has filed a notice to seek a death penalty, so that means that this case could potentially have two parts. One would be, the jury would be looking at the facts and evidence presented in this case, and find those facts and evidence that convince them of their truth, and decide whether or not the State has carried it's burden of proof to prove the Defendant guilty of the crimes charged beyond a reasonable doubt. If, and only if the jury finds the Defendant guilty beyond a reasonable doubt of the crime of murder would you we even get to the second phase. You understand that?

A. Yes sir.

THE COURT: Now, in the second phase the jury is going to be considering all these matters and actually impose a sentence, and that's different from every other matter in criminal court because in all other matters the Judge imposes sentence. In this one the jury will actually impose a sentence, and they have the choice between two sentences. One is the death penalty, or life in prison without the possibility of parole. And when we say life, or I might say life, the lawyers might say life, that's what we mean, life in prison without the possibility of parole. For the jury to consider a death penalty the State has to prove, beyond a

reasonable doubt, what is called an aggravating circumstance, and you know, aggravate means to make worse, or exacerbate the situation, and the Court would give to the jury in the instructions any list of those that might be appropriate, and if the jury finds one, and only if the jury finds one could they then consider the death penalty. Just because the jury finds an aggravating circumstance is not -- there's nothing automatic -- the jury can always impose life for any reason, or no reason whatsoever, but to even consider a death penalty the jury has to find, unanimously find, this aggravating circumstance. You understand that?

A. Yes sir.

THE COURT: The jury also has to consider any mitigating circumstance that the Court would charge to the jury. And you know, mitigate means to lessen or reduce the charge, reduce the punishment, and the jury would have to listen to those and consider all those mitigating circumstances before they would reach a decision as to the punishment in this particular matter.

In this particular case, if you are on the jury and the jury reaches a unanimous decision to impose the death penalty, since the jury is actually imposing the sentence, the -- every member of the jury has to take a pen in hand and sign their name to a form indicating that that, indeed, is their verdict, and that they have unanimously imposed the death penalty in

this case. You understand that?

A. Yes sir.

THE COURT: As a member of the jury it would be your job to set aside any kind of preconceived ideas or notions that you might have about the case, or the law, or the possible punishments. If you thought you knew anything about the case, or heard about it, or somebody told you something about it you've got to set all that aside. You've got to leave that outside the courthouse. You can't bring that into the courtroom. You can't use that, or have that affect your decision in any way. You understand that?

A. I do.

THE COURT: You make your decision based solely upon the facts and evidence presented in this courtroom, take the law that the Court will give to you, and then reach your decision. You understand that?

A. Yes.

THE COURT: And as to the law, you have to accept the law that the Court gives to you. I would instruct the jury -- you have to take that whether ultimately you agreed with it or you disagreed with it, you have to accept that law and use it, and apply it to the facts as you so find them to be in this case. You understand that, sir?

A. Yes.

THE COURT: All right, sir. Let's go over a few

questions. Since we left here on Friday did you reach, watch, listen, look up anything about this case?

A. No.

THE COURT: Did you talk to anybody about this case since Friday?

A. Just to say that I -- I was in jury duty for ---

THE COURT: Okay. So they would know where you were?

A. Yes.

THE COURT: Okay. All right, now, before Friday, before you knew not to look up or have anything to do with the case, do you remember hearing anything about this case?

A. Yes sir.

THE COURT: Okay. What can you remember about it?

A. The previous case, guilty verdict. I don't know if there was life or a death sentence in that particular case, but -- and then this particular case, stories being that there was a murder, stolen truck to get out of town. That's about all I remember from that.

THE COURT: All right, sir. That's what you remember?

A. Yes.

THE COURT: Okay. Now, you understand that's part of what you have to leave outside this courthouse. You understand that?

A. Yes. Yes.

THE COURT: You understand that you can't let that

affect your decision in any way. You can't use it. You can't think about it. Obviously it can't be talked about in the jury room, but even mentally, you can't use that in any way to make your decision in this case. Do you understand that?

A. Yes, I do.

THE COURT: Can you do that?

A. Yes, I can. Since Friday when you were asking the question if anybody is a sole caregiver of a child under seven.

THE COURT: Yes.

A. I'm -- just to save some time. My wife is -- you know, we are together but ---

THE COURT: Yes sir.

A. ---She works a different schedule than I do, and I have a five month old and a nine year old ---

THE COURT: Okay.

A. ---And so I don't know if that makes me the sole caregiver, because when she's not home I'm home.

THE COURT: Okay. Well, let's talk about that. The type of employment ---

A. I didn't know about sequestering. That's why ---

THE COURT: That's Okay. I appreciate your bringing it up.

The type of work that you have right now is?

A. I'm a manager of a wholesale bakery.

THE COURT: And your hours of work again are?

A. Tuesday through Saturday, seven A.M. to five, six.

THE COURT: Okay. And your wife, where is she working?

A. Debordieu, down in -- almost in Georgetown, Debordieu Colony.

THE COURT: Okay. Right. Okay. And what are her hours of work, and when does she go to work?

A. When I get home in the afternoon about -- I'll try and get out at four, four-thirty, right now, while the baby is young ---

THE COURT: Right.

A. ---But normally I work later. Then she goes off to work ---

THE COURT: Okay.

A. ---But she only goes Thursday through Sunday nights, Thursday, Friday, Saturday and Sunday nights.

THE COURT: Okay. All right. And other than yourself and your wife, do you have any outside ---

A. We are from New Jersey so my parents live up there, and we get brief help from a friend that, you know, owns an alterations shop that's right next to where I work.

THE COURT: Okay.

A. So that's convenient for an hour or so but ---

THE COURT: Very good.

A. ---That's about as far as ---

THE COURT: All right. Good.

All right, as to that particular issue, does the State wish to question the juror as to the employment and child care issue?

MR. HEMBREE: (NODS HEAD NEGATIVE)

THE COURT: Does the Defense wish to question the juror as to that particular issue, as to the ---

MR. DIGGS: No. No additional questions.

THE COURT: ---Child care and the employment.

MR. DIGGS: No, Your Honor.

THE COURT: All right. If you don't mind, sir, if you don't -- if you would go with the deputy for just a moment or two, outside. Okay.

A. Sure. All right. Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 654 MARKED COURT'S EXHIBIT NUMBER 34.)

THE COURT: I didn't ask the sequestration question, but it seems to me obvious what his answer was going to be if I asked the sequestration question.

As to that obviously being what appears to be a hardship, and potentially even qualifies under the statute, what is the State's position?

MR. HEMBREE: We would ask that this juror be excused,

Your Honor.

THE COURT: Defense?

MR. DIGGS: Yes, Your Honor. I would move he be transferred to another term.

THE COURT: All right. What I'm going to do, Madame Clerk, I'm -- since he has -- he is engaged in this process through the written answers, and came Friday and he came today, I'm just going to excuse him from jury service rather than transferring this particular juror. All right.

All right, we are going to take a short break and then we will go into panel number eight.

(CONFERENCE BETWEEN THE CLERK AND THE COURT CONCERNING JUROR NUMBER 411, SHARON L. MAPLES.)

THE COURT: All right. Solicitor, did you hear that information from the Clerk?

MR. HEMBREE: Yes, Your Honor. We have no objection to Ms. Maples being excused.

THE COURT: Defense, did you hear that information from the Clerk?

MR. DIGGS: Yes sir. Of course we don't have any objection.

THE COURT: All right. So we will excuse that particular juror, Madame Clerk.

That's Sharon Maples, 411, is excused. All right.

All right, if y'all ---

(THE FOLLOWING TAKES PLACE ON RECORD AS TO JANE POWELL, JUROR NUMBER 510.)

MR. HUMPHRIES: Your Honor, there is -- the other one, since we are talking about that panel, 510, Jane Powell, she indicated she was over sixty-five. Is there any word from her as to whether or not she intends to ---

CLERK OF COURT: I scanned the paperwork on her yesterday and she did not mark the box that she wanted to be excused.

MR. HUMPHRIES: Okay. I know she stood up but -- and maybe she doesn't want -- I hope she doesn't, but ---

CLERK OF COURT: She did not, because I rechecked it yesterday when I finished with the over sixty-five, and she did not check that she wanted the exemption to be excused so I didn't put her in the ---

THE COURT: All right. Well, let me ---

MR. HUMPHRIES: I mean, the only reason I bring it up is because you mentioned it in the context of exemptions, and asked if anybody was sixty-five.

THE COURT: And I did and ---

MR. HUMPHRIES: And then we just said we would put them in the panels and deal with it later.

CLERK OF COURT: And I did find your note.

MS. WILLIAMS: Your Honor ---

THE COURT: She did -- she did say she was over sixty-

five.

MS. WILLIAMS: She approached -- and she approached about the medical. I believe she was one of the ones that approached about maybe a ---

THE COURT: I tell you what, when she comes in I will go over -- I don't have anything about a medical ---

MR. HUMPHRIES: I don't either.

THE COURT: ---But what I'll do is, when she comes in -- what I'll do is, first thing, I'm going to go over the age issue with her and ask her if there's anything else that she wants to tell the Court at that point in time, and then we will see what it is that she says, and then we will go from there. All right. Thank you very much.

We will take a break for about five or ten minutes. Thank you.

(THE FOLLOWING TAKES PLACE AFTER A BREAK.)

THE COURT: Ask Mr. Leckie to come in, please.

PAUL F. LECKIE, JUROR NUMBER 377, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right.

A. Could I say something before we start?

THE COURT: Please.

A. On March 3rd my wife and I signed up for an anniversary cruise ---

THE COURT: Okay.

A. ---And the cruise starts next Saturday. We were leaving for Florida on Thursday.

THE COURT: Okay. So you -- you were going to leave -- let's see, let's look at the calendar here.

A. The date is on there.

THE COURT: The 19th.

A. Yes sir.

THE COURT: The cruise actually goes out on the 21st, and you were going to start traveling on the 19th?

A. Yes sir.

THE COURT: All right. Well ---

A. You know, I certainly want to do my civic duty ---

THE COURT: I appreciate that, and I'm -- I tell you what, this is going to mean you are going to get up and down more than once, but how about -- if you don't mind, will you just go with the deputy. Step outside the door for a second. Let me talk to the lawyers and I'll be right back with you. Okay. Thank you, sir.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 377 MARKED COURT'S EXHIBIT NUMBER 35.)

THE COURT: All right. What -- you heard the dates and the times. What's the State's position?

MR. HEMBREE: Judge, it's going to be kind of close, quite frankly. I think we will be done by Saturday. Personally I think that we will be finished -- should be finished by Saturday, but there's always that -- you know, that sort of wild card situation where we have to delay for a witness or for some other reason, and it could -- we could -- it's ---

THE COURT: And he did indicate he wanted to leave on Thursday. Now the cruise doesn't go out of the port until ---

MR. HEMBREE: Oh, oh Thursday. Oh, that's too close, Judge. Now I ---

THE COURT: It goes out, I believe at noon on the -- Saturday the 21st. It goes out at noon. I mean obviously they have to be -- or they have to be there at noon to -- I guess to check in before that. So, that's when it goes out, but they were going to -- he said they were going to leave Thursday so ---

Anyway, what's the State's position?

MR. HEMBREE: We have no objection to this juror being transferred to another term of court.

MR. DIGGS: No objection.

THE COURT: All right.

Madame Clerk, based on the information provided, going to transfer this particular juror to another term, and if you would, why don't you -- we'll transfer him to next -- next

year. Why don't you transfer him to the week of January 11th, Madame Clerk.

CLERK OF COURT: Yes sir.

THE COURT: All right.

All right. You want to -- I'm just going to send my law clerk around and let her tell the deputy ---

And just get the next one too. That one is transferred. All right.

JANE E. POWELL, JUROR NUMBER 510, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Powell, what I'm going to do is, I'm going to go over some things with you, and the very first thing that I'm going to go over with you -- and you've brought it to the Court's attention, I believe on Friday, and I said that we would talk about it when you came in.

By your birthday you are over the age of sixty-five, and you have set forth -- hope you don't mind me saying that you set forth the age of seventy-three, correct?

A. That's correct.

THE COURT: All right. You understand that, if you would like, the Legislature has determined that any citizen called for jury duty who is over the age of sixty-five may claim an exemption if they want to, so they may ask to be excused from jury service. It's the juror's choice. It's

nothing automatic there, but it's certainly the juror's choice, and I wanted to cover that with you. Understanding you have that exception do you want to claim that exemption or do you want to waive it?

A. I want to waive it.

THE COURT: All right. Thank you very much.

Is there -- let me just go through this real quick, if there's anything else I didn't to talk to you about that.

Now -- and I want to talk to you about this. It's probably a little bit out of order than I normally would, but in conjunction with that, if you are selected on this jury then basically our procedure is, in these types of cases, is to sequester the jury. Now that means that once the jury is selected whoever is on the jury will be houses at a local hotel, transported to and from the hotel to the courthouse, the meals would be provided by the County, but basically you would be with us and sequestered, and not going home for the period of that trial, and the best estimation that I can give you at this point in time is some time period from seven to nine days. That's how long that would take. So, again, understanding that if you are part of the jury -- I know sequestration is a hardship no matter. It's an absolute hardship, but understanding the situation, would sequestration be unduly hard on you, or is there any type of -- either for yourself or any family member, any type of health concern that

you need to bring to the Court's attention, understanding that the jury would be sequestered?

A. No sir.

THE COURT: All right. Thank you very much, Ma'am. Great.

Let me -- again, I'm going to go over some things now with you and as to the matters that -- and when I ask you some questions there aren't any right or wrong answers here. What we are looking for is just direct, straight-forward, honest answers from the potential jurors.

A. Okay.

THE COURT: Very good. In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, the Defendant has pled not guilty to those charges and that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you or show to you. The State has to prove the Defendant guilty of the crimes charged beyond a reasonable doubt. Do you understand that?

A. Yes sir.

THE COURT: All right. Now, in this particular case, Ma'am, the State has filed a notice to seek the death penalty, so that means this trial could potentially have two parts.

Now the first part would be where the facts and evidence and testimony would be presented, and the jury would be faced with the question to find that evidence which convinces them of it's truth, and then to weigh that against the burden the State has to see whether or not the State has proved that defendant guilty beyond a reasonable doubt of the crimes charged. If, and only if the jury find the defendant guilty of a crime of murder by a unanimous decision -- everybody has got to agree -- if they find that's been proven to them by -- beyond a reasonable doubt, then and only then will we get to the second phase. The second phase is called -- basically called the sentencing phase because the jury actually imposes a sentence, and that sets it apart from any other type of criminal case, because normally the Court, the Judge imposes the sentence, but in this case the jury will actually impose the sentence, say what the sentence is, and there will be two choices, death penalty, or life in prison without the possibility of parole, and any member of the jury that is sitting on the jury has to be able to fairly and equally consider both of those and be -- based upon the right set of facts and circumstances, be ready to impose that sentence, whatever one it might be. Do you understand that?

A. Yes sir.

THE COURT: To impose a death penalty in this State the jury, by unanimous decision, has to find an aggravating

circumstance, and that would be a list of factors that the Court would provide to the jury, and if the jury finds one of those then they have the ability to consider the death penalty. It's not automatic. The jury can vote for life in prison for any reason or no reason whatsoever, but to be able to consider the death penalty the jury has to find an aggravating circumstance. You understand that?

A. Yes sir.

THE COURT: All right. As I said, the jury can impose life for any reason, no reason whatsoever. Before the jury imposes sentence they also have to, and must look at any mitigating circumstances that the Court would charge to the jury, and you know, mitigate means to reduce or lessen the charge, lessen the punishment, and the jury would have to look at those and consider them before they would decide any punishment in this case. You understand that?

A. Yes sir.

THE COURT: If you are a member of the jury and the jury unanimously decides to impose a death penalty in the case then, as a member of the jury, since you are actually imposes the sentence, the jury has to take pen in hand and sign their name to a form indicating that that, indeed, is their unanimous verdict, and that they did vote to impose that death penalty. You understand that?

A. Yes sir.

THE COURT: Now, as a member of the jury, if you are a member of the jury, part of your job is to set aside any kind of preconceived ideas or notions you might have about the case, or the possible punishment, or if you heard anything about the case, or thought you knew anything about the case, or somebody told you something, you've got to forget all that. You've got to leave all that outside the courthouse. You can't bring it in the courtroom. You have to make your decision based solely on the facts and the evidence that are presented in this courtroom, follow the law that the Court gives you, and then reach your unanimous decision in this matter; you understand that?

A. Yes sir.

THE COURT: As to the law, you understand that you have to follow the law that the Court gives you, whether ultimately you agreed with it or you disagreed with it, if I -- the Court tells you what the law is you have to follow that and use it, and apply it to the facts as you so find them to be in this case. You understand that?

A. Yes sir.

THE COURT: All right. Very good. Let me go over some questions. Since we left here on Friday did you read, listen, watch, look up anything about this particular case?

A. No sir.

THE COURT: All right. Very good. And did you talk to

anybody since Friday about this case?
A. No.
THE COURT: All right. Now, before Friday, before you knew that you weren't suppose to be doing these things, and obviously we expected it, that -- had you heard anything about the case? Did you remember anything about it, the Defendant's name, anything at all?
A. Yes sir.
THE COURT: What is it that you can remember?
A. I know there was another trial.
THE COURT: Okay.
A. I don't know a lot of the facts about it though.
THE COURT: Okay. Do you remember the result of it, or anything or what happened?
A. I think -- I'm not sure, but I think they imposed the death penalty.
THE COURT: Okay. All right. Now, you understand that's part of what you have to leave ---
A. Right.
THE COURT: ---Outside this courthouse.
A. I understand.
THE COURT: You can't let that affect you in any way. It can't be part of your decision making process, either verbally or even mentally. That's -- you have to make it based solely on the facts and evidence in this case, and the

VOLUME TWO OF EIGHT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEPHEN CHRISTOPHER STANKO,

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law that the Court would give to you. You understand that would be your job as a juror?

A. Yes sir.

THE COURT: My question to you is, can you do that?

A. Yes sir.

THE COURT: All right. No question about it?

A. No question.

THE COURT: Very good. Now, more of a general question. Do you know of any kind of personal, political, religious, philosophical beliefs that you might have that would prevent you from being a fair and impartial juror in this case?

A. No sir.

THE COURT: All right. Now, in this particular case we have -- looking at the witness list you circled one person as possibly you might know that one, and that one was John -- and I'm going to say Gaumer, because I'm not really sure how the name would be pronounced, G.a.u.m.e.r., of Surfside Beach, South Carolina, correct?

A. Right.

THE COURT: Assume that to be the person you know -- the person you know what -- are they employed any way, or how would you know him?

A. I'm not sure. You would have to tell me what he does, because I don't -- I don't -- I recognize the name, but I -- I

know there can be several people that would have that name ---

THE COURT: Okay.

A. --And I wasn't sure. I served on an Advisory Board several years back for the Literacy Council, the Horry County Literacy Council. I don't know him personally ---

THE COURT: Okay.

A. ---But he was on our Board, I believe, if that's the same person.

THE COURT: If it's the same person. Okay. Let's just assume for the sake of this discussion it is the same person, and that person, for whatever reason, is a potential witness in this case, and like I said, I don't know, and we are just assuming that to be the case, the fact that you had had some contact with the person in the past, you understand you can't let that affect your decision making process in any way. You understand that?

A. Yes, I do.

THE COURT: And could you set that aside?

A. I could.

THE COURT: All right. Very good. Also looking at the category of juror that would best describe you you circled (C), correct?

A. Yes sir.

THE COURT: All right. And just to review that real briefly, that's a juror that -- and obviously we are talking

in hypotheticals here, because none of this has happened, and may not happen, but if the jury in the case finds the Defendant guilty of the crime of murder, that's been proven to them beyond a reasonable doubt, and that's their unanimous verdict, and we are in the second phase, the sentencing phase, then the (C) type juror is the juror that says, I'm going to listen to all the facts and evidence that's presented in the second phase, I'm going to listen to the law that the Judge gives me, I'm going to follow that law without question, I'm going to apply that law to the facts and evidence I find to be true, and then I'm going to fairly consider the options that are open to me, and I will be open to either imposing a life sentence or a death sentence based upon the facts and evidence presented. Is that right?

A. Yes sir.

THE COURT: All right. Very good. Let me go a little bit further in that. Assume you are on the jury, you are in the sentencing phase, based upon the right set of facts and circumstances being presented to you can you fairly consider and impose a life sentence, based upon the right set of facts and circumstances?

A. Yes sir.

THE COURT: All right. Again, based upon the right set of facts and circumstances in the sentence phase, can you consider, and could you impose a death sentence, again, on the

right set of facts and circumstances?

A. Yes sir.

THE COURT: All right. If you are on that jury and the jury unanimously votes to find the Defendant -- or I'm sorry -- to oppose the death penalty, the jury unanimously does that -- and it has to be by a unanimous decision, the jury has unanimously decided to -- can you then take pen in hand and on the form sign your name and say, yes, this is my verdict and it was part of the unanimous verdict in this matter?

A. Yes sir.

THE COURT: Thank you, Ma'am. We already covered sequestration, so I'm going to turn over the -- if there's any questions that the State might have for you.

All right, Mr. Richardson.

BY MR. RICHARDSON:

MR. RICHARDSON: Ms. Powell, I don't have any questions. I think Judge John has covered all of them. I do want to introduce myself. My name is Jimmy Richardson, and I'm an Assistant Solicitor. This is Fran Humphries. He is a Deputy. Mr. Hembree, he is the Solicitor. We are going to be presenting the case for the State against Mr. Stanko.

A. Yes sir. Yes sir.

MR. RICHARDSON: Mr. Diggs or Ms. Williams may have some questions for you. Please answer any of those.

A. Okay.

THE COURT: Mr. Diggs or Ms. Williams. Mr. Diggs.

BY MR. DIGGS:

MR. DIGGS: Your Honor, may it please the Court.

THE COURT: Yes sir.

MR. DIGGS: How are you?

A. Fine. How are you?

MR. DIGGS: Good. my name is Bill Diggs, and this is Brana Williams seated over at the table, and we represent Mr. Stanko in this case, and given your responses to some of the questions the Judge asked you I just want to follow up a little bit. You are aware of the prior trial?

A. Yes sir.

Q. And you -- I believe you stated you knew that a certain sentence had been imposed?

A. I'm not really sure about that. I think I do, but I don't really know.

Q. And you think that what was opposed? What do you think the sentence was?

A. I thought it was the death sentence.

Q. All right. Well, let me ask you this. Not confirming for you one way or the other, but if you were to sit on this jury and that case -- or this particular case came to that particular decision making process, would your belief there might be another death sentence somewhere undermine your -- the sense of importance regarding this particular decision?

A. No sir.
Q. Okay. You wouldn't take that decision any lighter because you would think, well, there might already be another death sentence somewhere that ---
A. No.
Q. Okay. It wouldn't affect the seriousness and the duty, sense of responsibility that you felt in this case?
A. No sir.
Q. All right. Let me ask you, do you believe that there is a prevailing sense in this community that Mr. Stanko is guilty?
A. I have never talked to anybody about this case, so I'm not really -- I mean they've never -- except what you might read in the newspaper.
Q. Okay. Do you have -- has anyone talked to you, or make aware -- friends, for example -- for example, friends or family, do they know you are on jury duty in this case?
A. My husband does.
Q. But you don't have any other friends that are aware of it at this point?
A. No sir. I haven't talked about it.
Q. Do you feel like you are obligated to our community to vote guilty in this case ---
A. No sir.
Q. ---To convict Mr. Stanko?

A. Not necessarily, no.
Q. All right. Would it be fair to say you have a sense of obligation to follow the law, and uphold the juror's oath, in the event that you become a juror?
A. Certainly.
Q. Okay. Let me ask you this, we anticipate that the evidence in this case will probably give rise to four possible verdicts, guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. Do you have any personal bias against being able to consider either of those four verdicts?
A. No sir.
Q. And consider and return those verdicts based upon what your view of the evidence is, and the Judge's instruction on the law?
A. Yes sir.
Q. So you wouldn't have any difficulty in returning any of those verdicts as you see -- or as you deem to be supported by the evidence?
A. No sir.
MR. DIGGS: Okay.
Q. Let's assume for a second that there has been a guilty verdict. We have to discuss the sentencing phase at some point, and this is the time we have to talk about it, but let's assume that you are on the jury and you had just voted

guilty, and now we are in the sentencing phase, and at that sentencing phase the State has to show an aggravating circumstance beyond a reasonable doubt. They've got to show that in order to be qualified to seek the death penalty, and if they can't show that then the Judge is going to automatically impose life imprisonment. Okay. But let's suppose that the State does present evidence -- I'm hypothesizing now for this -- purpose of this proceeding, my conversation with you. Let's suppose that they do prove an aggravating circumstance beyond a reasonable doubt, and you agree that has been proven, could you still, nevertheless, vote for a life imprisonment sentence based on what your view of the evidence was?

A. I'm not sure. I don't know whether that the Judge has given us instructions that would ---

Q. Okay. He's never going to tell you to vote death ---

A. Right.

Q. ---Even if you find this the most reprehensible evidentiary record you've ever seen. He's going to say you can vote life for any reason or no reason. But let's assume again that you've convicted him of murder, as part of the jury, and that a -- an aggravating circumstance has been proven beyond a reasonable doubt, making the Defendant eligible for a death sentence, would you be able to view the evidence under those circumstances, and nevertheless, vote

life imprisonment because that's what you felt would be the most appropriate sentence in this case?
A. Yes sir.
Q. Okay. You wouldn't be -- you wouldn't feel like your hands were tied, so to speak, because of the presence of an aggravating circumstance?
A. No sir.
Q. You see what I'm saying?
A. Yes sir.
Q. And again, Ms. Powell, I'm not saying that's present in this case. We'll have to wait and see what the evidence shows, but I'm having to ask you these questions at this time to try to kind of guess at the situations that might confront us at that time, so I can have a better understanding of how you, as a juror, might respond in that circumstance, and just to make sure that you would be able to follow the Judge's instructions on the law, you know, even if that situation presented itself.
A. Yes sir.
Q. Okay. Now, you have a Master's Degree?
A. Yes, I do.
Q. And could I ask you what that -- what area that's in?
A. Education.
Q. Education. And your husband is a lawyer?
A. Yes, he is. He was in the Air-Force, U.S. Air Force.

Q. Did he have a practice as an attorney?
A. No, he never did.
Q. Uh, okay. Did he teach, or ---
A. Yes sir.
Q. Okay. Well, ---
A. I taught English.
Q. How did I do?
A. I'm not judging you.

MR. DIGGS: Okay. Thank you very much. I appreciate your time this afternoon.

THE COURT: All right. Ms. Powell, let me ask you -- as this question. Based upon my discussion with you, and the questions asked of you by the State and questions from the Defense, can you give to the State and to the Defendant a fair and impartial trial in this case? Can you be, without question, a fair and impartial juror in this case?

A. I believe I can.

THE COURT: Thank you, Ma'am. All right. If you would go with the deputy for just a few moments, please Ma'am. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 510 MARKED COURT'S EXHIBIT NUMBER 36.)

THE COURT: What's the State's position?

MR. RICHARDSON: Your Honor, Ms. Powell is qualified.

THE COURT: All right. Defense?

MR. DIGGS: Your Honor, obviously she would be a good juror under other circumstances, but I would suggest she's not qualified in this case based on the knowledge she has, and you know, regarding the prior death sentence, and I understood she said I wasn't -- she's not sure about it, but when we get into this case it's going to become apparent to her, and she's going to know that there is a death sentence pending in the case, so we would make the same motion at this time that we made with Juror 330, and ask the Court to excuse her.

THE COURT: All right. Thank you, sir. I respectfully decline to grant that motion.

Based on the Court's observations of this juror I would say that I was just completely impressed with her honesty, and her commitment to be fair and impartial in this case, to follow her oath, to be exactly the type of juror that the Court would expect, not only expect but would want to have in any circumstance, especially in this, that she can -- no question she can follow her oath, she can follow the Court's instructions as to the law, and there is absolutely nothing that would prevent or substantially impair her performance of her duties in this particular matter. I find her to be qualified.

(A DISCUSSION TAKES PLACE CONCERNING SCHEDULING OF THE

PANELS.)

THE COURT: All right. Then go ahead and ask Ms. Warren to come in, please.

KRISTAL N. WARREN, JUROR NUMBER 658, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Warren, what I'm going to do is, I'm going to go over some things with you, and I'm going to ask you some questions, and when I'm maybe the representative of the State and Defense may have some questions for you. Okay.

A. Uh huh **(indicating positive)**

THE COURT: All right. Now, first off, there aren't any right or wrong answers, okay. What I need from you -- what we really need is just direct, straight-forward, honest answers to the questions. That's all we are looking for. Okay.

A. Yes.

THE COURT: All right. And in this -- and I just remind every juror about this. If you can remember when you are answering the questions to verbally answer. Sometimes we have a tendency to say uh huh or whatever, and the Court Reporter can't take those down.

A. Right.

THE COURT: So if we can just remember that. Okay.

Thank you, Ma'am.

All right. In this particular case, Ma'am, the State of South Carolina has charged the Defendant with the crimes of murder and armed robbery. To those charges the Defendant has pled not guilty, so that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you, show to you. The State has to prove the guilt of the Defendant beyond a reasonable doubt. You understand?

A. Yes.

THE COURT: All right. Now in this particular case the State has filed a notice to seek the death penalty, so that means this possible case -- or this case could have two possible portions. The first part of the case would be that the jury would be looking at whether or not the facts and evidence and testimony presented in this case, which the jury -- whichever that the jury believes to be true, that the State has proved the guilt of the Defendant beyond a reasonable doubt of the crimes charged, whereas the jury does not find the Defendant guilty beyond a reasonable doubt of the crime of murder, then we would never get to the second phase of the trial. You understand that?

A. Yes.

THE COURT: And obviously the decision of the jury has

to be unanimous, everybody has to agree.

Now, in the second phase, that's called the sentencing phase, because what happens is, the jury actually imposes a sentence, and that's different from all other cases. In all other cases the Judge would impose a sentence. In this type of case the jury actually chooses the sentence, and there would be two choices, one is the death penalty, the second is life in prison without the possibility of parole. So if I say life or the lawyers say life that's what we mean, life in prison without the possibility of parole. You understand that?

A. Yes.

THE COURT: To vote for a death sentence the jury would have to unanimously find what is called an aggravating circumstance. Aggravate means to make worse, or to exacerbate the situation. You understand that?

A. Yes.

THE COURT: Also, the jury would have to, and must consider any mitigating circumstances the Court would show, or the Court would charge to the jury, and to mitigate means to lessen, or to reduce, reduce the punishment. You understand that?

A. Yes.

THE COURT: A jury can impose life for one of these mitigating circumstances or for no reason whatsoever. You understand that?

A. Yes.

THE COURT: And just because the jury finds an aggravating circumstance doesn't mean they are obligated in any way to impose the death penalty. That just means they are enabled, or they have the ability then to consider imposing the death penalty, that those are the two choices, and if you find, unanimously find an aggravating circumstance then both those options are available. Do you understand that?

A. Yes.

THE COURT: And as a member of the jury you have to be able to, in that sentencing phase, be open to either possibility, that based upon the facts and circumstances presented, that you could fairly consider both of them and be -- have the ability to impose either a life sentence or to impose a death sentence. Do you understand tt?a

A. Yes.

THE COURT: Another job as a juror would be to leave outside of the courthouse any preconceived ideas or notions that you might have about the law, or about this kind of case, or the possible sentences that might be imposed, and to leave outside the courthouse anything that you knew, heard, somebody told you about this case, what you think you know about it. You have to leave all that outside of the courthouse. You can't bring it into this courtroom. It can't be used by you in any fashion in reaching a decision, or even thinking about

it. It's not part of this particular case. Do you understand that?

A. Yes.

THE COURT: You have to make your decision based solely upon the facts and evidence presented in this case, and from no other source, and follow the law that the Court gives you. Do you understand that?

A. Yes.

THE COURT: In regards to the law, you do have to follow it as the Court instructs you. Whether ultimately you agreed with it or disagreed with it by your oath you say, I will follow that law. Do you understand that?

A. Yes.

THE COURT: In this -- with this let me go over a few questions with you.

Did you read, listen, watch, look up anything about this case since Friday?

A. No.

THE COURT: Since Friday did you talk to anybody about this case?

A. No.

THE COURT: Now, before Friday, and before I gave you all instructions not to do that, do you remember hearing anything about this case from any source, from anybody talking to you about it, or reading it, or hearing about it?

A. Yes.

THE COURT: And what is it that you remember?

A. They said the case was coming up soon.

THE COURT: Okay. And do you remember any kind of description of it of any kind?

A. No.

THE COURT: All right. Do you remember hearing the Defendant's name when that came up?

A. Yes.

THE COURT: Okay. All right. Now, you understand that's part of what you have to leave outside the courthouse. You can't bring into the courtroom. You can't use that in any way, certainly not discussing it with other jurors or even thinking about it when you reach your decision. You understand that?

A. Yes.

THE COURT: And can you do that?

A. Yes.

THE COURT: All right. Can you follow the law that the Court would give to you -- again, whether you agreed with it or disagreed with it, could follow the law that the Court will give you in this case?

A. Yes.

THE COURT: All right. Kind of a general question. Do you know of any kind of personal, political, religious,

philosophical believe that you might have that will prevent you from being a fair and impartial juror in this case?

A. No.

THE COURT: All right. And have you -- did you form any kind of -- or express to anybody any kind of opinion about this case before today?

A. No.

THE COURT: All right. Very good. On the witness list I see that you didn't circle any of the people on the witness list, correct?

A. Right.

THE COURT: All right. And regarding the juror category you selected type (C). Is that correct?

A. Yes.

THE COURT: And to review with you, and just to make sure we are on the same page, that's the juror that, if you are part of the jury and in the first phase the jury has considered all the facts and the evidence, and has unanimously decided the State has proved the guilt of the Defendant beyond a reasonable doubt of the crime of murder, so now we are in the sentencing phase and the juror says, what I'm going to do is listen to all the facts and evidence presented in the second phase, I'm going to listen to the law that the Judge gives to me, and I'm going to fairly consider both options before I make my decision. Is that what you are saying?

A. Yes.

THE COURT: All right. Very good. In this particular matter, because of the type of case it is ---

Well, let me -- before I talk to you about that let me go over one or two other things. If we are in the sentencing phase, under the right set of facts and circumstances that are presented, can you consider, and can you impose a life sentence, under the right set of facts and circumstances being presented to you?

A. Yes.

THE COURT: Under the right set of facts and circumstances being presented to you, could you consider, and could you impose, under the right set of facts and circumstances, a death penalty?

A. Yes.

THE COURT: And if you were part of the jury that unanimously voted to impose a death penalty could you then take pen in hand and sign your name to a form indicating that that would be your unanimous verdict in this matter?

A. Yes.

THE COURT: Very good. Because of the type of case that this is we are going to sequester the jury and make sure there aren't any outside influences, but that means once the jury is selected, and the trial starts, that the jury won't be going home in the evening. They will be going to a motel at

the County's expense. The meals will be provided at County's expense, obviously transportation to and from the courthouse. But the Court understands that's a hardship. There's no question about that, not being able to go home, but is that such an extreme hardship to you, or give you any concern about your health or any family member's health that would cause you pause? Would that bother you?

A. Yes, a little, because I have the small kids at home.

THE COURT: Okay. And your children are how old?

A. Eleven, nine and nineteen months.

THE COURT: Nineteen months?

A. Uh huh **(indicating positive)**

THE COURT: Okay. All right. Do you work outside the home?

A. Yes.

Q. And where is it that you work?

A. Dixie Stampede.

THE COURT: Dixie Stampede. And what are your hours that you work at Dixie Stampede?

A. It varies. Normally in the morning from eight to four.

THE COURT: Eight to four. That's normally the hours. Is that like ---

A. Yes. Unlike we have like kids' shows and stuff, I have to do nights.

THE COURT: Okay. All right. When the older -- the

older children are in school now?
A. Yes.
THE COURT: All right. And your younger child -- that's a little girl; is that right?
A. Right.
THE COURT: How do y'all -- how do you provide for her care during the day, or when you are not there, when you have to work nights?
A. She's in daycare.
THE COURT: In daycare?
A. Uh huh **(indicating positive)**
THE COURT: Okay. How about when you have to works nights at the Dixie Stampede, ho do you rely on?
A. My mom.
THE COURT: Your mom?
A. Uh huh **(indicating positive)**
THE COURT: Okay. She lives here in the area somewhere?
A. Yes.
THE COURT: Okay. Good. If you were on the jury and you were sequestered would you be relying upon your mom then to take care of those responsibilities while you were on the jury?
A. Yes.
THE COURT: All right. Have you mentioned that to her

already?
A. No.
THE COURT: All right. Okay. All right.
What I'm going to do now is, I'm going to let the State and the Defense ask any questions that they would have. All right. Thank you, Ma'am.
A. Uh huh **(indicating positive)**
THE COURT: All right, Solicitor.
BY MR. HUMPHRIES:
MR. HUMPHRIES: Good afternoon, Ms. Warren. How are you?
A. Good, and you?
MR. HUMPHRIES: I'm Fran Humphries. I'm the Deputy Solicitor. I, along with Solicitor Hembree and Senior Solicitor Jimmy Richardson represent the State in this case, and I just have a couple of questions.
A. Okay.
Q. You've got an eleven year old, a nine year old, and a nineteen month old?
A. Yes.
Q. Well, you are looking for a week vacation?
A. I need one. I do need one, but ---
Q. I believe that. And I know it's difficult, but that's just -- it's part of the process, and there are reasons for it. The Court is going to take great pains to make sure that

the jurors are kept separate and apart so they can focus just on this case, in a motel, transportation will be provided, and meals, everything is taken care of, at least in respect to you. The question simply is, there are some folks who, either because of their obligations, or quite frankly, because of their attachments to those that rely on them, that they just can't -- can't focus on the trial because they are apart from their family. But what you've indicated I believe to the Court is, you think your mama is going to be able to fill in the gap for you?

A. She will.

Q. Okay. Well, good. Okay. Let me ask you, this -- you know, this is a capital case. It's a death penalty case -- we've talked a good bit about that -- and you've indicated to the Court that you are the type juror who could give either life or death, depending on the facts and circumstances.

A. Right.

Q. About your -- have you given much thought to capital punishment prior to being involved in this process?

A. No.

Q. Thought about it since Friday?

A. No.

Q. No. Thought about it since you got on the stand?

A. No.

Q. Prior to -- prior to your coming in today what -- what

basically was your opinion about capital punishment, if you have one?

A. Well, it's, I guess fair opportunity to listen to the case and take it from there.

Q. I'm -- but there's nothing about your upbringing, your education, your religion, your philosophical beliefs that would prevent you, not only considering the death penalty, but imposing the death penalty, given the right amount of evidence, the right facts and circumstances; is that right?

A. Right.

Q. Okay. And alternatively you could also give a life sentence if, based on your view of the evidence, the facts and circumstances, you thought it would be warranted; is that right?

A. Yes.

Q. Okay. So you are the type juror, quite frankly, who is coming in with an open mind, and are just waiting to hear what there is to hear before making such a decision; is that right?

A. Yes.

Q. Okay. Now, you know really the only thing that we are looking for -- and we have to do this individually with each juror just to make sure that we have qualified jurors. Qualified jurors aren't necessarily -- and I -- they are not better people than unqualified jurors. People just bring -- they have their own opinions ---

A. Uh huh **(indicating positive)**

Q. ---And when they come into the courtroom we've asked that they be honest about it. I appreciate your honest answers today.

Finally let me ask you this. Is there any reason why you couldn't be a fair and impartial juror, both to the State and to the Defense, and fairly consider and impose either a life or death verdict, depending on the facts and circumstances in this case?

A. No.

MR. HUMPHRIES: That's all I can ask of you. Thank you, Ma'am.

THE COURT: All right, Ms. Williams.

BY MS. WILLIAMS:

MS. WILLIAMS: Thank you, Your Honor.

Ms. Warren, good afternoon.

A. Hi.

MS. WILLIAMS: My name is Brana Williams, and I, along with Bill Diggs, will be representing Mr. Stanko in this trial.

I just want to -- a couple of quick questions. What I -- I just need to make sure I'm clear because I thought you when you were explaining to the Court with your children that -- what I heard was that I thought it would be like an imposition for you to -- I understand it's a hardship, I mean,

more than that, but to be, of course, sequestered, because we anticipate this trial taking maybe seven to nine -- who knows? I mean, it's going to be a while, and you will be in there sequestered. That's it. No outside contact. And I thought I heard a different answer than what I heard the Solicitor say. Can you tell me what you feel about that?

A. Say that again.

Q. If you are sequestered -- because if you are chosen to be on this jury once this trial starts, basically the jury is alone with only the jurors, with -- not with any contact with home. There is not contact with the children. There is no contact with anybody but your fellow jurors during the duration of the trial, and we anticipate this trial taking seven to nine, ten days. We just aren't sure. But it will be a stretch, there is no doubt, and what I want to know is how you feel about that if you are chosen to be on this jury.

A. I have no problem with that. I have help from the family. If I was chosen I'm able to do it.

Q. Okay. Great. I just -- I thought I heard a different answer, and I just wanted to make sure I understood that.

Now, let me ask you something else, when you said that you had some prior knowledge of Mr. Stanko can you tell me -- again, and let me just go ahead and say this. I know the Judge is going to ask you questions. The State has asked you questions. I ask you questions. I know you think, I've

already answered that, but sometimes we have to ask and answer two or three times just to make sure we've got a complete record. Okay.

A. Uh huh **(indicating positive)**

Q. Tell me what you know about Mr. Stanko.

A. The only thing I know about Mr. Stanko is, I looked up the case with the -- the woman and the daughter. When I received the papers I was like, who is Stanko -- I never heard of no Stanko -- and I found out who he was.

Q. And when you looked it up did you find out -- did you determine had there been a prior trial involving Mr. Stanko?

A. Say that again.

Q. Did you learn if he had had a previous trial?

A. Did I learn he had a previous trial. Yes.

Q. And did you learn what the -- that a verdict -- what the outcome of that trial was?

A. No. I can't remember it.

Q. Okay. So you knew there was a trial, but not what happened?

A. Right.

Q. Okay. Let me ask you this. Do you think that coming to court to be called onto the jury, that there are any expectations for what the outcome of the trial ought to be coming into this?

A. Meaning ---

Q. That there is an expectation that he ought to be found guilty.

A. No.

Q. Okay. Do you think -- let me ask you this. As the Judge explained to you, this is a different kind of case. This has the potential to be two separate parts. Okay. And the first part involves with -- the jury makes determination about the potential guilt of the Defendant, and we are thinking that there's going to be four possible verdict for the jury to decide, okay, guilty, not guilty, not guilty by reason of insanity, and guilty but mentally ill. And what will happen is, if it all comes around, and the Judge explains those possible verdicts to you and what they potentially mean, what I need to know is if -- you coming in here today, if you think you may already have some preconceived notion that might make it difficult for you to really consider all four possibilities, and then give us a verdict?a

A. No.

Q. Okay. That's good. That's really all we can ask of you.

Let me ask you this last question. Let's assume that we get through the first phase, okay, and if you are a part of this jury what that means if we get to the second phase -- and the jury would have already found the Defendant guilty of murder, okay, and then when we get to the second phase there

are basically two possible outcomes, life without parole, or a death sentence. Okay. And if we impose a death sentence the Court will instruct you that the State has to prove not only murder but murder plus an aggravating circumstance. Okay. So let's just assume -- and I have to say this. When I ask you these questions we obviously aren't conceding that, but this is the only chance we get to talk to you, so I have to ask all these possibilities now. Okay. So let's just assume that you are part of the jury that found him guilty of murder, you, as the jury, find that the State has proven there is, in fact, an aggravating circumstance, okay, but the Judge will tell you that even though you have found guilty of murder, even though you've found an aggravating circumstance, you don't have to find for death. Okay. The juror has the right to still -- even though you have found for an aggravating circumstance the jury can still find for life. Knowing that, do you think coming into this that you actually lean one way or the other?

A. No.

MS. WILLIAMS: That's all I have.

THE COURT: All right, Ma'am, based upon the questions that the State has asked I would ask that -- Defense asked, let me just ask you this. Do you believe that you can give to the State of South Carolina and to the Defendant a fair and impartial trial, that is, you can be a fair and impartial juror in this case?

A. Yes.

THE COURT: Thank you, Ma'am. If you would just go with the deputy for a few moments, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 658 MARKED COURT'S EXHIBIT NUMBER 37.)

THE COURT: All right. State's position?

MR. HUMPHRIES: She's qualified.

THE COURT: Defense.

MS. WILLIAMS: Your Honor, we would make the motion that, again, that this juror is unqualified based on her prior knowledge, and that -- I mean, in spite of the answers that she gave that she could set it aside we just simply don't think that that is -- that that's possible and that there is entirely too much prior knowledge coming into this case to be fair and impartial in this particular setting.

THE COURT: All right. Based upon the Court's observation of the -- demeanor of the witness while she was answering the questions -- she was very straight-forward and honest, and as regards to her answers, I find that -- I find her to be one that would follow her juror's oath, follow the Court's instructions, be fair and impartial, and I find nothing that would prevent or substantially impair her performance of her duties in this particular matter, therefore

she's qualified.

Will you ask Mr. Beasley to come in, Richard Beasley.

RICHARD BEASLEY, JUROR NUMBER 38,

being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Beasley, I'm going to go over some things with you so you can -- if you would I would ask that -- all I'm asking for is some straight-forward, direct honest answers, okay.

A. Okay.

THE COURT: All right. Very good. Let me go over the -- first with you. I see that your date of birth is July 30th, 1934, and you've placed your age as seventy-five; is that correct?

A. That's correct.

THE COURT: All right, sir. The Legislature has -- South Carolina Legislature has determined that there is an exemption for jurors over the age of sixty-five. It's not automatic. It's up to the juror to choose if they wish to be exempted or excused from jury duty, so since you qualify for that I wanted to cover that with you and ask you if you wanted to claim that exemption to be excused, or you wanted to waive or give up that exemption.

A. I don't ---

THE COURT: Okay. You ---

A. I don't need to be exempted.

THE COURT: All right. So you want to give that exemption up?

A. Yes.

THE COURT: All right. Very good. All right, now, in this particular matter -- and also in conjunction with that, if you are on the jury, and selected as a juror in this case, the jury is going to be sequestered in this particular matter, so sequestered means that, once the jury is selected that you are basically with the Court. You would be housed at a motel. Obviously the cost is provided by the County, meals provided by the County, you are transported to and from the courthouse, basically as a group, so that the jurors are together, and there's limited contact with back home. You don't go home in the evening. Understanding that, does -- and I understand it's a hardship -- there's no question about that -- but that particular situation, does that cause some extra-ordinary hardship to you, or if there was any kind of health concern for a member of your family or yourself, anything like that?

A. No.

THE COURT: All right. Very good. In this particular matter you circled as a category of juror which best describes you as category (A); is that correct?

A. Correct.

THE COURT: All right, sir, and let me review with you

that so that we are both on the same page regarding that. Category (A) is the juror that, if the case has been presented -- and a death penalty case or a capital case has two phases. The first phase is such that the jurors must look at all the facts and evidence presented to see whether or not the State of South Carolina, who has the burden of proof in this case, proves the guilt of the Defendant of the crimes charged beyond a reasonable doubt, and in this case the State has charged Mr. Stanko with the crimes of murder and armed robbery, and the Defendant has pled not guilty to those, and so again, the burden is on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. Defendant doesn't have anything to show to you, prove to you. The State has to prove his guilt beyond a reasonable doubt. So you understand that?

A. Yes sir.

THE COURT: All right. Now, if you are on the jury -- we are doing this as a hypothetical, and don't know if this would even occur, but if it did occur, and the jury convicted the Defendant of the crime of murder, by a unanimous verdict -- and everybody had to agree -- and they find out that he was guilty of that crime beyond a reasonable doubt, and we are in the sentencing phase, category (A), or juror (A) says, I'm going into the sentencing phase with a preconceived idea of notion as to the punishment; I'm not leaving myself open to

the possibility of either of the two options, because the two sentencing options are the death penalty or life in prison without the possibility of parole. Those are the only two options if we are in the second phase. And category (A), or juror (A) says, I'm predisposed, once I have convicted somebody of murder, to impose the death penalty, and would not fairly consider life in prison. Am I saying that correctly?

A. Correct.

THE COURT: All right, sir. Is that a belief that you've had for, you know, a long period of time?

A. Yes sir.

THE COURT: All right. And does that come from your -- basically your past experiences? How did you come to that belief, just in general? Was there anything personal that happened to you, or just a life experiences?

A. Just experience.

THE COURT: All right. Very good. Even if the Court instructed you that the jury must go into the second phase of the trial with an open mind, and can not have pre-determined what they would believe the proper sentence to be, are you telling me that you would listen to that but you really couldn't follow that. Is that what you are telling me?

A. True.

THE COURT: All right. Very good.

Further questions from the State?

MR. HEMBREE: None, Your Honor.

THE COURT: Further questions from the Defendant?

MR. DIGGS: No, Your Honor.

THE COURT: All right, sir. I would appreciate it very much if you would go with the deputy for just one moment, please sir.

A. Thank you.

THE COURT: Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 38 MARKED COURT'S EXHIBIT NUMBER 38.)

THE COURT: All right, the State's position?

MR. HEMBREE: The juror is not qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: We agree.

THE COURT: All right. The Court finds that the juror is not qualified, that he could not fairly follow the Court's instructions nor obey his juror's oath, and therefore he is not qualified in this particular matter.

So, that leaves us with a little bit of a break. We have the next panel, panel nine, coming in at 1:45, so we've got basically a half hour, so I'll see y'all in a half hour.

Thank you very much.

(THE FOLLOWING TAKES PLACE AFTER A BREAK.)

MR. HUMPHRIES: Your Honor, this first juror, Juror Number 290, expressed a belief that would prevent her from being a fair and impartial juror. I think specifically it relates to a religious belief, which she mentions in her questionnaire as well.

THE COURT: All right.

BRENDA L. HOLDERFIELD, JUROR NUMBER 290, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ma'am, could you hand me the forms that you filled out, please Ma'am? Thank you.

All right. Ms. Holder -- it's Holderfield?

A. **(NODS HEAD AFFIRMATIVE)**

THE COURT: All right, Ms. Holderfield, first off I'm going to be talking about some things with you. I'm going to ask you some questions. When I get done there may be some questions from the State or the Defense in this matter, okay?

A. Uh huh **(indicating positive)**

THE COURT: All right. Now, one thing I need to ask for you to do is to give a verbal response to the questions, because the Court Reporter is taking down everything, and the Court Reporter can't take down a nod of the head or an uh huh.

A. Okay.

THE COURT: All right. Thank you, Ma'am. Appreciate it.

There aren't any right or wrong answers here. What I'm looking for is just direct, straight-forward, honest answers to the questions. Okay.

A. Uh huh **(indicating positive)**

THE COURT: All right. In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery, and to those charges the Defendant has pled not guilty. Now that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to show to you. The Defendant doesn't have anything to prove to you. The State must prove the Defendant guilty beyond a reasonable doubt. You understand that?

A. Uh huh **(indicating positive)**

THE COURT: Right. Is that a yes?

A. Yes.

THE COURT: All right. Very good. Thank you, Ma'am.

Now, in this particular case the State of South Carolina has filed a notice to seek the death penalty, and that means that the case could be in two parts. One of those is, the jury would be looking at the decision whether or not the State has produced sufficient evidence to convict the Defendant of the crimes charged beyond a reasonable doubt, and that jury would be called upon to unanimously decide if the evidence

that is presented that they believe to be true, that they could convict the Defendant of the crimes charged beyond a reasonable doubt. If that happens, and only if that would happen, that the jury would convict Mr. Stanko of the crime of murder, beyond a reasonable doubt, we would proceed on to the second phase. That's called the sentencing phase. In that there are two options open to the jury, two sentences available. One is a death penalty, and secondly, is life imprisonment without the possibility of parole.

A. Uh huh **(indicating positive)** Yes.

THE COURT: Now, as a member of the jury, and anyone who is seated on the jury, must be open to both possible alternatives. They cannot go into the second phase of the trial with any kind of preconceived ideas of what they believe the punishment should be, ought to be. They have to be completely open to be able to consider and impose a life sentence, consider and impose a death sentence, based solely on the facts and evidence that are presented in the courtroom, and from no other source. You have to leave outside the courtroom any preconceived ideas of notions, or beliefs that you might have. You have to accept the law that the Court would give to you, and apply that to the facts and ever presented in this case. Do you understand that?

A. Yes sir.

THE COURT: All right. Now, in this particular matter

you have circled category (A); is that correct?

A. Yes sir.

THE COURT: All right, Ma'am. And let me briefly go over that with you so that we -- make sure we are all on the same page as to what that means, okay. Category (A) is the type of juror that, if they are sitting on the jury and the jury has deliberated in this matter in the first phase, and they have found by a unanimous decision -- because it would have to be a unanimous decision, everybody would have to agree -- that the Defendant is guilty of the crime of murder, and that was proved to them beyond a reasonable doubt, the jury decided that.

Now, in the second phase juror (A) says, I'm going into the second phase with a preconceived notion, idea of what the law is, what the punishment should be in this particular matter, because I've already convicted this person of murder, so I am predisposed to give the death penalty. Is that your understanding of juror (A)?

A. Yes sir.

THE COURT: Is that your personal view?

A. Yes sir.

THE COURT: All right, Ma'am. Is that a long-standing belief that you've had?

A. Yes sir.

THE COURT: And does that come from any personal

experiences you've had, or just your life-long experiences?
A. Based on evidence.
THE COURT: Okay. Evidence that you -- of your -- the -- your life experience, or you mean based on the evidence in a case?
A. Well, just -- it's based on my belief. If you do a crime such as what we are here for, I believe that is the punishment.
THE COURT: All right, Ma'am. And you are saying, despite what the Court would charge to you as a member of the jury you would not be able to overcome your personal belief, and you would go with that rather than the law that the Court would charge to you?
A. Yes. I just -- I believe in the death penalty.
THE COURT: All right. And you believe it's appropriate if a murder has been committed?
A. Yes.
THE COURT: All right. Very good.
Further questions from the State?
MR. HEMBREE: No questions from the State, Your Honor.
THE COURT: Further questions from the Defense?
MR. DIGGS: No, Your Honor.
THE COURT: All right. Very good. Ma'am, if you would go with the deputy for a few moments, please. Thank you.
(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 290 MARKED COURT'S EXHIBIT NUMBER 39.)

THE COURT: State's position?

MR. HEMBREE: The juror is not qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: We agree.

THE COURT: The Court would find that this juror, Number 290, Ms. Holderfield, is not qualified, that she would not be able to follow her oath or the Court's instructions in this matter, and could not be fair and impartial to the State and the Defense.

All right, if we could have Ms. Miller, please.

VICKIE BRADDY MILLER, JUROR NUMBER 448, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Miller, what I'm going to do is, I'm going to go over some matters with you. I'm going to ask some questions of you, and when I get done there may be some questions from the State and the Defense. Okay.

A. Yes sir.

THE COURT: What I'm looking for -- from you is just direct, straight-forward, honest answers to some questions.

A. Okay.

THE COURT: There aren't any right or wrong answers

here. We just need to know your opinions, your beliefs, okay?
A. Right.

THE COURT: All right. Very good. In this particular matter the State of South Carolina has charged the Defendant with the crimes of murder and armed robbery. To those charges the Defendant has pled not guilty. Now that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant has nothing to prove to you, show to you. The State has to prove the guilty of the Defendant of the crimes charged beyond a reasonable doubt. You understand that?

A. Yes sir.

THE COURT: In this particular matter the State has filed notice to seek the death penalty as against the Defendant. That means that there would be basically two stages to the trial, or potentially two stages to the trial. The first stage would certainly be the facts and evidence presented by the State, and the jury would be faced with the question as to find that evidence which convinces them of it's truth, and then weigh that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt. If, and only if the jury found the Defendant guilty of the crime of murder would we even go into the second phase, because if the Defendant was found not guilty then we wouldn't be going

into the sentencing phase. You understand that?
A. Right. Yes sir.
THE COURT: Now, as to the second phase, if you were a member of the jury there would be two possible sentences that the jury could give, death or life in prison without the possibility of parole. When we talk about life that's what we mean, life in prison without the possibility of parole. And a seated juror has to have the ability to be open, to consider, and be able to impose a death penalty or life in prison based upon the proper set of facts and circumstances being presented to him. Do you understand that?
A. Yes sir.
THE COURT: In this particular case, on the list of categories for a juror you have circled (B); is that correct?
A. Yes sir.
THE COURT: All right, now, let's go over that and make sure that you and I are on the same page as to what that means.
A. Okay.
THE COURT: Juror (B), or category (B) means that you are on a jury -- and again, we are talking hypotheticals, because we have to ask these questions.
A. Right.
THE COURT: These things may or -- may never occur, but if you are on the jury and the jury has heard the facts and

evidence presented in the first part of the case, and the jury has found such evidence they believe to be true, and based upon that -- and they believe that the State has proved the Defendant guilty beyond a reasonable doubt of the crime of murder, and so we are in the sentencing phase or the second phase of the trial, and the jury is going to be faced with the question of imposing a sentence -- because they are going to actually impose the sentence. This case is different from any other criminal case. In all other criminal cases the Court, the Judge ---

A. Right.

THE COURT: ---Imposes the sentence. In this type of case the jury actually imposes the sentence. It's one of those, death, or life in prison.

Now Category (B) says, as a member of the jury I'm going into the second phase of the trial predisposed to give life in prison no matter what the facts and circumstances are that are presented to me, no matter what the law is that the Judge charges to me, I'm already predisposed that I'm going to give life as the proper punishment for murder, because obviously you are a part of the jury that had already found the person guilty of murder.

A. Right.

THE COURT: Is that a correct understanding of what you are saying to me?

A. Yes sir.

THE COURT: And is that a firm belief that you have?

A. Yes sir.

THE COURT: And have you had this belief for a long period of time?

A. Yes sir.

THE COURT: Now, in general, is that based upon some personal experience, or just your life experiences, or ---

A. Both. My life experience. I'm a Christian. I don't believe it's our right to take somebody's life, I mean, I don't believe that's my personal right so ---

THE COURT: Okay. And despite what the Court would tell you or instruct you the law of the State of South Carolina is, you are telling me, Judge, because of my religious beliefs I just can't follow that, and I couldn't impose the death penalty. Is that what you are telling me?

A. Right. I really don't want to have that on my conscience.

THE COURT: All right. Thank you, Ma'am.

A. Thank you.

THE COURT: Further questions from the State?

MR. HEMBREE: None, Your Honor.

THE COURT: Further questions from the Defense?

MR. DIGGS: Your Honor, ordinarily I would, but I just perceive the witness's answers, or the juror's answers to be

emphatic, and I think it would be futile for me to try to change those, and so I -- based on that, based her demeanor, her responses, I don't have any questions.

THE COURT: All right. And let's just be perfectly clear about this, Ma'am. There is -- you are telling me that no matter how I instruct the jury -- and you are a part of the jury -- that you are going to put your religious beliefs above the law that the Court would give to you? I'm not saying that to demean or, you know, indicate in any way that's wrong, but I just want to understand that that is your personal belief. Is that right?

A. Yes sir.

THE COURT: All right. Thank you, Ma'am.

A. Thank you.

THE COURT: If you would go with the deputy, please Ma'am.

A. Okay. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 448 MARKED COURT'S EXHIBIT NUMBER 40.)

THE COURT: All right. The State's position in this matter?

MR. HEMBREE: The juror is not qualified, Your Honor.

THE COURT: Defense?

MR. DIGGS: Your Honor, we agree.

THE COURT: All right. I would also state that, under -- certainly under **State versus Sapp**, that the juror's religious beliefs would prevent her from being a fair and impartial juror in this case, that -- that -- and also under **Witherspoon versus Illinois**, that she could not fairly follow the Court's instructions or her juror's oath in this particular matter and be fair to the State and the Defense, and therefore she is not qualified.

All right. It appears that the next juror, Mr. Green, did not appear on Friday, so we will have -- probably have some additional questions for him.

RUSSELL M. GREEN, JUROR NUMBER 251, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Green, you were not with us on Friday during the initial qualification.

A. That is correct.

THE COURT: All right. What happened?

A. I mistakenly assumed that jury duty would begin on Monday and not on Friday.

THE COURT: All right. You didn't look real close to the Summons?

A. I didn't -- I did not pay attention to the date, no sir.

THE COURT: All right. Very good. All right. Well, what I need to do then is ask you some additional questions, and if you need to respond affirmatively to these questions then I need for you to, you know, indicate, or say that that pertains to you. Okay.

A. Yes sir.

THE COURT: All right. Very good. Now, first, going over the witness list in this matter you did circle one person, and that was Don McAllister; is that right?

A. That is correct.

THE COURT: All right. Now, at this point in time I have no idea whether the Don McAllister who might be a potential witness in this case is the Don McAllister you know, and that obviously wouldn't come certain until the person might actually be called to testify, so we are going to have to have some assumptions here. First, what does the Don McAllister that you know, what does he do?

A. He is a stone mason.

THE COURT: All right, now, just assume that the person to be called to testify is the Don McAllister you know. The fact that you know him, can you set that aside and base your decision on this case just on the facts and evidence presented in this case, and from no other source. You won't put any importance on the fact that you might have known this person in the past?

A. No sir, I wouldn't put any extra importance on that factor.

THE COURT: All right. Very good. All right, now, besides that particular potential or possible witness, there wasn't anybody else that you recognized on then list, right?

A. No sir.

THE COURT: All right. Very good. Now, are you related by blood or marriage, close personal friends, in any way enjoyed any kind of personal relationship with the Defendant in this case, or the Defendant's family, that you are aware of?

A. Not that I'm aware of, no sir.

THE COURT: All right, sir, regarding the victim in this matter, Henry Lee Turner, are you related by blood or marriage, close personal friends, acquainted in any way, or had any personal relationship with the victim or his family?

A. No sir.

THE COURT: All right. Very good. Now, have you, or any member of your immediate family, ever had any matters handled by the Fifteenth Circuit Solicitor's Office? That's the prosecuting office that covers Horry and Georgetown Counties.

A. No sir.

THE COURT: All right. Are you related by blood or marriage, close personal friends of anybody employed at the

Fifteenth Circuit Solicitor's Office?

A. No sir.

THE COURT: Very good.

All right, Solicitor, if you would stand, identify yourself and the fellow -- and the staff with you, please.

MR. HEMBREE: Thank you, Your Honor.

My name is Greg Hembree. I'm the Solicitor for the Fifteenth Circuit. Seated next to me is Senior Assistant Solicitor Jimmy Richardson, who will be assisting with the trial of this case. Coming in the back here is Deputy Solicitor Fran Humphries. He will also be assisting in the prosecution of this case.

THE COURT: All right. Thank you very much.

All right, Mr. Diggs and Ms. Williams, if y'all would stand and identify yourselves.

MR. DIGGS: My name is Bill Diggs, and I practice Law in Myrtle Beach. I also have a son who is in practice at Myrtle Beach also. His name is Parnell Diggs.

MS. WILLIAMS: My name is Brana Williams, and I have a practice here in Conway.

THE COURT: Thank you very much.

Are you related by blood or marriage, close personal friends, acquaintances of, know any of these lawyers that have identified themselves to you, or in regards to Mr. Diggs and Ms. Williams, have you ever been clients of their's, currently

or in the past? Any of that apply to you?
A. No sir.
THE COURT: All right. Very good.
All right, this particular matter that we are here about, the Defendant, Mr. Stephen C. Stanko, the State has charged him with the crimes of murder and armed robbery.
Now, prior to coming in here and getting your juror notice had you heard anything about this case, anybody talked to you about it, knew anything, seen anything?
A. Yes sir.
THE COURT: All right. And what might that have been?
A. I remember when the events occurred, whatever it was, three or four years ago, in 2005 or so ---
THE COURT: Okay.
A. ---Because I was a resident of -- I think at the time actually I was a resident of Georgetown County. I lived in Murrells Inlet.
THE COURT: Okay.
A. So, it just seemed to be a hot topic.
THE COURT: All right, now, based upon that did you, at that point in time, did you form some type of opinion about this case in any way, or a belief about this case?
A. Judging by the news reports and the rumor mail that circulates, yes, you know, I would feel it was natural to form an opinion.

THE COURT: And what might that have been?

A. My opinion was that the person they were saying had done -- committed the crime probably committed the crime.

THE COURT: Okay. Now, based upon that, you understand if you are selected as a member of the jury in this case, that you have to set that aside, you have to compartmentalize that. You basically have to box that up, leave that outside of the courthouse. You can't bring that into the courtroom. You have to make your decision, if you are a member of the jury, based upon the facts and evidence you have heard in this case, and from no other source. Not only can you not talk about it with anybody, you can't use it mentally in your deliberations or your thinking about what you might do in this case. Do you understand that?

A. Yes sir.

THE COURT: Can you do that?

A. I believe I could do that. Yes sir.

THE COURT: All right. And I appreciate that, and that's, you know, a response that we get a lot, but unfortunately this is a -- kind of like a bright line test. I have to have a response -- and again, nothing is right or wrong here, but I have to know, if somebody is going to sit on a jury, that they can, with absolute certainty -- if they've heard about something about the case in the past, or they think they know something about the case -- because it might

be true or not true -- they can set that aside. As I said, they leave that outside the courtroom, they don't bring it with them here in court, and they can make their decision completely and solely based on the facts and evidence presented in this case, and from no other source. So knowing that to be the job of the juror, and knowing -- I need a definitive answer from them, yes, Judge, I can do that, or no, I can't.

A. I believe after -- upon further review I'm going to have to say no, I don't know that I would be able -- I would not be able to clear those from my mind.

THE COURT: Okay. You believe that you would ---

A. I think it might affect my decisions.

THE COURT: All right. Despite what the Court would charge you and tell you, that that would be your responsibility, your oath that you would take would say that --

A. I understand that -- yes sir, I understand that it would be my oath that I would take, and I would certainly try diligently to put it aside, but I can't, with a definitive yes, say that I would be able to put it aside. It may still impact my decision.

THE COURT: All right. On that particular issue, before I go any further, does the State wish to question the juror further, on that particular issue?

MR. HEMBREE: No, Your Honor.

THE COURT: On that particular issue, does the Defense wish to question the juror further?

MR. DIGGS: No sir.

THE COURT: All right. Thank you very much.

All right, sir, if you would go with the deputy for just a few moments.

A. Thank you, sir.

THE COURT: Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 251 MARKED COURT'S EXHIBIT NUMBER 41.)

THE COURT: What's the State's position?

MR. HEMBREE: It was clear, Your Honor, that juror Green -- he was obviously thoughtful. He -- he gave it serious consideration through -- to the Court's questioning, and he -- I think he was being honest in his response by the way he presented himself, but he could not set aside what he had heard in the media, or what he had heard in the community about the case. This juror is not qualified.

THE COURT: Very good.

Defense.

MR. DIGGS: Your Honor, we agree with that.

THE COURT: All right. Very good. The Court finds

juror number 251, Mr. Russell Green, to be not qualified, that -- and again, I thought the juror was very straight-forward and honest, and indicated that he could not say that he would be able to follow the oath, and follow the Court's instructions, even knowing that would be what was required of him, so he is not qualified.

All right, the next one is Barbara Carr.

MR. HUMPHRIES: She's sixty-five, Your Honor ---

THE COURT: All right.

MR. HUMPHRIES: ---Over sixty-five.

CLERK OF COURT: She did not request on her form.

THE COURT: All right. But I'll go over that.

BARBARA A. CARR, JUROR NUMBER 90, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Carr, how are you doing, Ma'am?

A. Good, and you?

THE COURT: Good.

What I'm going to do is, I'm going to go over some things with you, and I'm going to be asking you some questions, and start off saying, there aren't any right or wrong answers here. What we are looking for is just direct, straight-forward, honest answers to the questions. Okay.

A. All right.

THE COURT: Thank you, Ma'am. First off, and -- you filled out the juror questionnaire form, and I appreciate that, and you've got your date of birth here of 12/27, 1939, and that puts your age at the age of sixty-nine, correct?

A. I'll be seventy next month.

THE COURT: Seventy next month. Congratulations.

I've always thought there was -- you know, that's right after Christmas so you probably got cheated on presents then, it coming right after Christmas.

A. Yes, I did.

THE COURT: The State of South Carolina, through the General Assembly, has given to all the jurors who are called for service over the age of sixty-five an exemption. It's not an exclusion. It's a opportunity, or it's something given to the personal choice of a juror, and if they are over the age of sixty-five and wish to be excused or exempted from jury service they may ask to do so, so I wanted to cover that with you. Would you like to claim the exemption, or do you want to waive it and give it up?

A. Well, because the holidays are coming I'd like to claim it. I have relatives coming down for Thanksgiving and I need to be with -- need to be there because I'm doing all the cooking and everything for them.

THE COURT: All right. Very good. I appreciate that.

Based upon the claimed exemption by the juror under the

statutes of this State, and her request, then I'm going to grant that exemption. Thank you, Ma'am, and I appreciate you participating in the process, but I will excuse you.

Thank you Ma'am.

A. Oh, thank you. Try me again would you thought, please. I mean, don't try me, call me.

THE COURT: Thank you very much. I appreciate it. Thank you very much, Ma'am.

A. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 90 MARKED COURT'S EXHIBIT NUMBER 42.)

THE COURT: The Court will also note for the record that the juror selected as a category which best described her as category (A), which, in effect, would have disqualified her anyway, but the Court find -- and I understand ---

Well, what was the State's position? I excused her but ---

MR. HEMBREE: She's entitled to the exemption, Your Honor.

THE COURT: What's the Defense's position?

MR. DIGGS: Your Honor, we agree that she should be excused, but based on the category (A) response.

THE COURT: Very good. All right, thank you very much.

I found the juror to be properly excused. All right. Thank you.

This is Joyce Chestnut.

JOYCE ANN CHESTNUT, JUROR NUMBER 103, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right. I'm sorry. State your full name, please Ma'am.

A. Joyce Ann Chestnut.

THE COURT: All right, Ms. Chestnut, what I'm going to do is, I'm going to go over some matters with you. I'm going to have some questions for you, and after I'm done potentially the State and the Defense may have some questions for you. Okay.

A. Okay.

THE COURT: Now, to start off, there aren't any right or wrong answers here. What I'm looking for from you is just direct, straight-forward, honest answers to the questions. That's what we need. Okay.

A. Okay.

THE COURT: Very good, Ma'am. In this particular case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery, and to those charges the Defendant has pled not guilty, so that puts the burden of proof in this case on the State of South

Carolina to prove the Defendant guilty of the crimes charged. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you, show to you. The State must prove the guilt of the Defendant of the crimes charged, beyond a reasonable doubt. Do you understand that?

A. I do.

THE COURT: All right. In this particular case the State has filed a notice to seek the death penalty as against the Defendant. Now, that means that this case could potentially have two parts. In the first part the jury would have the question before it as to, based on the facts and evidence and testimony presented, did the State, from the evidence the jury believes to be true, prove the guilt of the Defendant of the crimes charged beyond a reasonable doubt, and the jury would have to unanimously find. In that, if the jury unanimously found the Defendant guilty of the crime of murder, then and only then would we proceed to the second phase, because the jury would have to unanimously find the Defendant guilty of the murder for us to go to the sentencing phase or the second phase. You understand that?

A. Yes sir.

THE COURT: In the second phase the jury is basically, to boil it down is -- that's -- the jury is going to ultimately impose a sentence in this case. That makes it different from all other criminal cases. In all other

criminal cases the judge imposes the sentence. In this type of case the jury actually says what the sentence is going to be, and the jury would have two choices, the death penalty, life in prison without the possibility of parole. So if I happen to say life, and the lawyers say life, that's what we mean, life in prison without the possibility of parole. You understand that?

A. I do.

THE COURT: If the jury is to impose a death penalty in the case the decision has to be unanimous, and the jury has to find what is called an aggravating factor, or aggravating circumstance. Aggravate means to make worse, or to exacerbate the situation or the circumstance. Now, these would be statutory guideli -- factors that the Court would charge to the jury, and if the jury chose one by a unanimous decision then the jury would have available to it both options. It's not automatic. There is no requirement. The jury is never required to give the death penalty. The jury can impose life for no reason whatsoever, but to consider the death penalty, and to actually impose the death penalty the jury would have to previously pick, unanimously, an aggravating circumstance. The jury also has to consider and look at any mitigating circumstances that the Court would charge to the jury before the jury imposed a sentence in this matter.

Now, mitigate, you know, would mean to lessen, or reduce

the -- reduce the charge, reduce the punishment, and the jury would have to look at those because, as I said, the possibility of life is always open to the jury in this matter, and again, they can do it because of mitigating circumstances, or for no reason whatsoever.

Another job as a member of the jury is, if the jury unanimously finds that the penalty of death is the one appropriate in this particular matter, based on facts and circumstances, and after a unanimous decision of the jury, then, as a member of the jury that was your unanimous vote, you would have to take pen in hand and sign a verdict form, or a form indicating that, indeed, is my unanimous verdict in this matter, along with other members of the jury, to impose this particular penalty. Do you understand that?

A. I do.

THE COURT: Another job as a juror would be that you have to come into this courtroom with any kind -- without any kind of preconceived ideas, of notions of what the law is, or what the case is, your feelings about the particular types of punishment that might be imposed in this particular matter, and if you've heard anything about this case, or thought you knew anything about it, or somebody told you something about it, you've got to disregard all that and leave all of that outside of the courthouse. You can't bring any of that into the courtroom. You basically come in like a blank slate. You

have to listen to the facts and evidence presented in this courtroom, and make your decision solely and completely based upon those facts and evidence, and the law that the Court would charge to you. Do you understand that?

A. I do.

THE COURT: And regarding the law, ultimately even if you agreed or disagreed with it you have to take the law that I would give to the jury, can't have your own set of rules or laws that you come in with. You have to accept the law that I give you, and you apply it to the facts as you so, and all the rest of the members of the jury find to be true. You understand that?

A. Yes.

THE COURT: Very good. Looking at this particular matter there's some questions I would like to go over with you. Since Friday did you read about, watch, listen, look up anything about this case?

A. No.

THE COURT: Did you talk to anybody about this case since Friday?

A. No.

THE COURT: Now, before Friday, and before you had any instructions not to do that, had you heard anything about this case, remember anything, the Defendant's name, anything about this case at all?

A. I have.

THE COURT: Okay. And what can you tell me that you remember?

A. Well, that he was convicted for the one in Georgetown, and that, you know, they thought that he had killed a man in Horry County.

THE COURT: Okay. Regarding the case in Georgetown, do you remember if there was a verdict or a sentence in that?

A. Death.

THE COURT: All right. Now, regarding that particular matter do you understand that was a completely and totally separate matter, and has nothing to do with this particular case. You understand that?

A. Yes. Uh huh **(indicating positive)**

THE COURT: And further, anything that you might have heard, or think you know about this case, whether it's true or not true, you have to set that aside. You have to leave that outside the courtroom.

A. Yes sir.

THE COURT: You can't bring it with you. You have to based your decision solely and completely on the facts and evidence in the case. Do you understand that?

A. Yes.

THE COURT: Can you do that?

A. Yes.

THE COURT: And I'm -- again, you can't use it even mentally. Certainly you can't talk about it with any other member of the jury, but more importantly, you can't even use it mentally to make your decision in this case. It can't be part of your decision-making process at all. Can you do that?

A. Yes.

THE COURT: All right. When you heard about the matter in the past, did you form any kind, or express to anybody any kind of belief or opinion when that -- when you heard about that at that point in time?

A. I just read about it ---

THE COURT: Okay. You don't remember forming any kind of belief about it at that point in time?

A. No.

THE COURT: All right. Very good. Now, in general, do you know of any kind of personal, or political, or religious, or philosophical beliefs that you might have that would prevent you from being a fair and impartial juror in this case?

A. No.

THE COURT: All right. Regarding the witnesses that -- potential or possible witnesses in this case, you didn't circle anything, correct?

A. Yes.

THE COURT: Very good. And regarding the juror

category that would describe you you circled (C), correct?
A. Yes.
THE COURT: And let's go over that just to make sure we are on the same page. That would be -- and again, we are talking hypotheticals -- this could happen, might not happen -- but if you are on the jury and the jury, in the first part of the case has heard facts and evidence and believes the State has proved to it beyond a reasonable doubt the guilt of the Defendant of the crime of murder, and we are in the second phase the jury (C), or category (C) juror says, I've got an open mind; I'm going to listen to all the facts and evidence presented to me in the second phase of the trial; I know I have before me two particular options, death penalty or life in prison without the possibility of parole; I don't have any preconceived ideas of one over the other; I'm open, and could, based upon the right set of facts and circumstances, impose either one, but I'm not inclined to do either one until I've heard all the facts and evidence, and I know the law that the Judge will give to me. Is that what you are telling me?
A. Yes.
THE COURT: All right. Very good. Again, if we are in the sentencing phase, and you are seated as a juror in the case, based upon the right set of facts and circumstances being presented to you, could you consider, and could you impose a life sentence?

A. I could.

THE COURT: Based upon the right set of facts and circumstances being presented to you, could you consider, and could you impose a death sentence?

A. I could.

THE COURT: And if you were on a jury that unanimously decided that that was the right sentence in this case, to impose a death sentence, could you then take pen in hand and sign your name to the form indicating that that, indeed, is your unanimous verdict in this matter?

A. I could.

THE COURT: All right, Ma'am. Now, because of the type of case that this is we are going to sequester the jury. Now, that means that once the trial starts the jury will basically be with us. They will be housed at a hotel or motel or the County's expense, the meals will be provided at the County's expense, the -- obviously be transported to and from by various officials of the County, but you won't be going home at night. We anticipate the -- and it's not so there will be no contact, but you will have limited contact with your family members, because we can't -- once the jury is sequestered they can't be influenced by outside factors in a case like this. So, understanding this is an inconvenience, it's a hardship -- I know that, everybody knows that, there is no question about that -- but is sequestration such an undue or extraordinary

hardship on you that you couldn't do it, or is there some kind of health reason, for a member of your family or yourself, that would keep you from doing that?

A. No. I wouldn't want to do it, but I could do it.

THE COURT: I understand that. I completely understand that. All right. Thank you, Ma'am.

All right. Questions from the State, Solicitor.

MR. HEMBREE: Thank you, Your Honor.

BY MR. HEMBREE:

MR. HEMBREE: Good afternoon, Ms. Chestnut.

A. Good afternoon.

MR. HEMBREE: I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit. I, along with Deputy Solicitor Fran Humphries, and Senior Assistant Solicitor Jimmy Richardson, will be presenting the evidence on behalf of the State in this case.

Judge John covered all the questions that I might have had. I don't have any questions for you. I appreciate your willingness to serve, and I ask that you answer any questions that either Mr. Diggs or Ms. Williams might have for you.

Thank you.

THE COURT: All right. Mr. Diggs.

BY MR. DIGGS:

MR. DIGGS: May it please the Court.

THE COURT: Thank you, sir.

MR. DIGGS: And Ms. Chestnut, how are you this afternoon?

A. I'm fine.

Q. Let me ask you, do you believe there is a prevailing view in the community that Mr. Stanko is guilty?

A. I don't really know. I know what I feel, but ---

Q. What do you feel?

A. Well, I've read it, but you know, all the details I don't know.

Q. All right. Given that, do you feel like you have an obligation to return a guilty verdict in this case to your community?

A. Not an obligation, no.

Q. Do you feel like the community would look to you for that outcome though? Do you think that they would expect you to return a guilty verdict?

A. No. I don't think so.

Q. You don't think so?

A. Uh uh **(NODS NEGATIVE)**

Q. Okay. Given the fact that you know about a death sentence in this case ---

A. Yes sir.

Q. ---I believe that was your testimony ---

A. Yes.

Q. ---Would that undermine the responsibility you would

feel as a juror, or a punishment decision, a reliable punishment decision in this case? Do you understand what I'm saying?

A. Not really.

Q. Do you feel like -- would you go into the sentencing hearing with the attitude, he's already been sentenced to death, I can just do that too, because he -- he's going to be killed under the other death sentence, so it doesn't matter what I do.

A. No, I don't.

Q. Do you see what I'm saying?

A. Yes.

Q. In other words, this is an important and responsible function ---

A. Yes.

Q. ---And would your knowledge about the prior case have any impact on the seriousness with which you evaluated this case?

A. I would consider this separate from the other one.

Q. Okay. Because Mr. Stanko has not been executed ---

A. That's right.

Q. ---And he may not be. We don't know. So, your testimony is, you can approach this independently of any other proceeding, and make a decision based on what you hear in this case?

A. Yes.
Q. And based on what the law is as instructed by the Judge?
A. Yes.
Q. Let's go to the forms of verdict that we might expect to be presented here in the trial in this case, in the first phase, on the issue of guilt or innocence. The possible verdicts that we would anticipate would be guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. Now, would -- do you have any predisposed bias, or -- that would affect your ability to consider each of those possible verdicts on their respective merits in this case?
A. Are you asking me if I would have a problem considering one of those?
Q. Yes.
A. No.
Q. Okay. That's what I'm asking. So, in other words, some people might not like a particular verdict, but the Judge is going to say, look -- and he's already explained to you we are required to take the law as it is, not as what we think it ought to be, or you know, simply because we disagreed with a law we still, in a criminal proceeding, have to follow the law as it exists. So your testimony is, you could consider -- if the evidence raises either one of those verdicts as a possibility for -- let's take insanity, for example, if you

found, based on the definition that the Judge gave you, that it applied in this case, you would be bound, duty bound to vote insanity, not guilty by reason of insanity. Does that -- do you have an aversion, or does that cause a problem for you?

A. No.

Q. Okay. And that's -- that's good. Let's go to the sentencing phase of the case. Because we -- we have to talk about that at this time, so I don't want you to think that we are pre-supposing there is going to be a conviction here simply because we are asking you about it, but we have to ask at this time because it's the only time that we get to talk about it. But, understand that to be in a sentencing proceeding it requires the jury to have already found guilt beyond a reasonable doubt, and to be eligible for a death penalty verdict in this State there is a requirement of an aggravating circumstance to be found beyond a reasonable doubt as well. Do you understand that?

A. Yes.

Q. Now, if you were on a jury and you just found guilt as to murder, plus an aggravating circumstance, would you, at that point, be able to consider and impose a life imprisonment sentence?

A. Yes.

Q. And you would base that on the evidence presented in the case, as a whole?

A. Yes.

MR. DIGGS: Okay. Beg your indulgence just a second. Thank you very much. That's all that I have this afternoon.

A. Thank you.

THE COURT: Ms. Chestnut, let me just ask you, based on what you and I have discussed, and you discussed with the lawyers in this case, can you give to the State of South Carolina and to the Defendant a fair and impartial trial, that is, can you be a fair and impartial juror in this case?

A. I would try my best.

THE COURT: All right. Now, and I appreciate your saying you want to try -- try your best, but again, that's sort of like the bright line test.

A. I would do my best, yes.

THE COURT: All right. Thank you, Ma'am. All right, if you would go with the deputy for just a moment, please. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 103 MARKED COURT'S EXHIBIT NUMBER 43.)

THE COURT: All right, the State's position?

MR. HEMBREE: Your Honor, the juror is qualified. She was very, very direct in responding to the Court about setting

aside what she had heard about the case. She did it repeatedly. She also expressed that she had no -- there was no opinion that she formed at the time.

Likewise, in her response to Mr. Diggs she was very -- she was very clear that she was going to consider the matter of separate trials, and that she -- she knew this was separate and she would confine her -- confine her decision to the evidence in this case. She's qualified.

THE COURT: All right. Thank you.

All right, Mr. Diggs.

MR. DIGGS: Your Honor, we would object to her qualification on the same grounds as we interposed on Juror 330, and Juror 510. We would also object to this juror as well based on her prior knowledge of the case, and the knowledge of the prior -- and the existing death sentence.

THE COURT: All right. Based upon my observations of the juror and her demeanor, her responses to the questions, and the answers that she gave, both to the Court's questioning and to the questions asked by the Defense, I find that this juror would be perfectly capable of following the juror's oath, following the Court's instructions, would apply the law that the Court would give to the facts and evidence that the jury would find in this particular matter. She has indicated a complete desire to be fair and impartial to the State and the Defendant, and I find nothing in the questioning, or in my

observation of her, that would prevent her, or substantially impair her in any way regarding the performance of her duties in this particular matter, and I find her to be qualified.

MR. DIGGS: Thank you, Your Honor.

THE COURT: All right.

(CONFERENCE TAKES PLACE CONCERNING SCHEDULING OF THE JURY PANEL TO BE QUESTIONED NEXT.)

MR. HEMBREE: Judge, since we've got just a minute.

THE COURT: Yes sir.

All right. Hold on one second.

Yes sir.

Did y'all -- come on in.

Yes sir.

MR. HEMBREE: And I feel a little bit -- I was a little embarrassed about this since I was the one who had the bright idea yesterday of cutting our panels down from six to five today, based on how we were progressing yesterday. Now we are moving much quicker. So I stand to suggest that perhaps tomorrow we would want to consider trying to handle six panels instead of five.

THE COURT: Well, I -- let's go over that and make sure, Madame Clerk. Can we look at what we have for tomorrow, and make sure what we have. All right.

(CONTINUED CONFERENCE CONCERNING SCHEDULING OF JURY PANELS FOR TOMORROW.)

THE COURT: If y'all would turn to panel fourteen for a moment, please, counsel, panel fourteen, and look at juror number 208, Jill Fowler. The Clerk of Court just got an e-mail -- and I'm going to read that e-mail to you verbatim -- and we need to discuss that matter.

All right. Counsel, the e-mail that the Clerk of Court got on Ms. Fowler, Juror Number 208. It was number four on the panel of number fourteen. The e-mails says that her children get out of school at 2:30 P.M., she just lost her house, she just got a new job, the people -- or the job that she has they work with her so she can pick up her children from school. She asked if she could be excused. She has a three year old and a twelve year old.

What's the State's position?

MR. HEMBREE: She -- I take it she has no one -- I know you are reading it verbatim. I take it she has no one to take for her children at night?

THE COURT: Well, it says that her job works with her to pick up her children, so whatever the new job is. I mean, I've just read it directly from the e-mail. I don't have any other information.

And she got changed to 1:45, and the children are getting out at 2:30, so that -- I think on top of all of it it generated an e-mail says I've got these issues.

MR. HEMBREE: We don't have any objection to her being

excused, Your Honor.

MR. DIGGS: We don't either.

THE COURT: All right. Very good.

All right, Madame Clerk, we are going to -- you can communicate with Ms. Fowler, and tell her that she is excused.

CLERK OF COURT: Okay. Thank you.

THE COURT: All right.

(FURTHER CONFERENCE TAKES PLACE CONCERNING SCHEDULING OF PANELS FOR TOMORROW.)

THE COURT: All right. You said we had one of the jurors from panel ten, Mr. Bellamy. Is he here?

CLERK OF COURT: Yes sir.

THE COURT: All right. Very good. Let's have him come on in.

JAMES G. BELLAMY, JUROR NUMBER 46, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Bellamy, I'm going to go over some things with you, and what I'm going to do is talk to you a little bit, and I'm going to ask you some questions, and after I'm done there may be some questions from the State and the Defense. Okay.

A. Okay.

THE COURT: Very good. No right or wrong answers here, okay. What I need from you are just direct, straight-forward,

honest answers to the questions, telling us your beliefs, your opinions about the -- and the answers to the questions that are asked. Okay.

A. Okay.

THE COURT: Very good. In this particular case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The Defendant has pled not guilty to those crimes. That puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you. The Defendant has nothing to show to you. The State must prove the Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Yes.

THE COURT: All right, sir. In this particular case the State of South Carolina has served notice to seek the death penalty as against Mr. Stanko. Now that means that this particular case could have two possible parts. The first one is, the jury would listen to all the facts and evidence and testimony presented, find that evidence which convinces them of it's truth, and then decide whether or not the State has carried it's burden of proving the Defendant guilty of the crimes charged beyond a reasonable doubt, because if, and only if the jury finds the Defendant guilty beyond a reasonable

doubt of the crime of murder would we even go to the second part of the trial. Do you understand that?

A. Yes.

THE COURT: The second part of the trial the jury, if they have found the Defendant guilty beyond a reasonable doubt of the crime of murder -- and they have to do that unanimously -- everybody has to agree -- the jury would be facing the decision of imposing the sentence, not only considering, but imposing the sentence. This makes this case unique because in all other criminal cases the Judge imposes the sentence. In this case the jury has to impose the sentence. And they would have two choices, the death penalty, or life in prison without the possibility of parole. And if I say life, or the lawyers say life, that's what we mean, life in prison without the possibility of parole. You understand that?

A. Yes.

THE COURT: Now, if you are a member of the jury you have to -- and we've gone into the second phase of the trial -- you have to go into that without any preconceived idea, notions of what the law is, or what your opinion would be, or favoring one or the other, you have to be completely open to considering and imposing either life in prison without the possibility of parole, or the death sentence. You can't have any predisposition to either one. You can't lean to one or the other. You have to listen to the facts and evidence

presented in the courtroom, listen to the law that the Court would give to you, and then make your decision. Do you understand that?

A. Yes.

THE COURT: And understand that would be your job as a juror, and you would be under oath to do that. You understand that?

A. Yes.

THE COURT: Let's get to the category of jury that -- juror which best describes you. You had (C), you crossed that out and you circled (A), correct?

A. Right.

THE COURT: All right. Let's make sure that you and I both agree what juror (A), or category (A) is. All right.

A. Okay.

THE COURT: Category (A) juror is, they are a part of the jury, the jury has deliberated on the first phase, they've come to a unanimous decision that the State has proved the guilt of the Defendant beyond a reasonable doubt of the crime of murder. So now we are in the second phase, and the jury has before it the two options, life in prison without the possibility of parole, and the death penalty. Juror (A) says, I've got a predisposition; I am predisposed, before I hear any of the facts and evidence in the second part of the case, before I hear the law that the Judge gives to me, I'm already

predisposed that -- because I've convicted that person of murder, I'm going to give the death penalty. That's what juror (A) says. Is that what you are telling me you are?

A. Yes.

THE COURT: All right, sir. Now, is that a firm belief that you have held for a long period of time?

A. No, I just believe basically -- I mean if he -- if they find him guilty, or he's found guilty, that would be the death penalty, yes. I mean, I have it in my mind that yes, that's what I'd want to give him.

THE COURT: If you, in the first phase, found him guilty of murder you would have that in your mind, if I'm going to convict him of murder then when I go to the second phase then I'm imposing the death penalty because I've convicted him of murder. Is that what you are telling me?

A. I -- I guess, yes.

THE COURT: Well, I'm ---

A. Yes. Yes.

THE COURT: I'm not asking you ---

A. Yes.

THE COURT: I'm not -- I don't -- I'm just trying to understand what you are telling me ---

A. Uh huh **(indicating positive)**

THE COURT: ---Because you circled the category ---

A. Right.

THE COURT: ---And I've described that category to you, and that's what that category means, so let's -- let's talk about this a little bit more.

A. Okay.

THE COURT: For the jury to impose the death penalty in this case, number one, it's got to be unanimous, everybody has got to agree, and number two, the jury has got to find an aggravating circumstance. There are certain factors that the Court would charge to the jury and say, if you find one of these then you can consider the death penalty. It's not mandatory. You don't have to impose death penalty. Just because you find an aggravating circumstance doesn't mean you impose the death penalty. It just means that now that open is open to you; you can now consider that to be a possible punishment. The jury can find life in prison without the possibility of parole for any reason or no reason whatsoever. Just as an act of mercy the jury can impose life. You understand that?

A. Yes.

THE COURT: The jury must, based on the Court's instructions as to mitigating circumstances -- and I give those factors to the jury -- the jury has to, they must consider those before they impose a sentence in this matter. Under your oath you would say I will fairly consider those before I decide on any punishment in this matter.

Now, mitigation means to lessen, reduce the punishment, the charge. Do you understand that?

A. Yes sir.

THE COURT: And under your oath you would be charged with that responsibility, and you would have to do that. You understand that?

A. Yes. I know -- I understand now. I got it ---

THE COURT: Okay. I understand that. I just want to make sure that -- that's the law of the State of South Carolina. I want us to be clear that that -- that would be what I would be charging to the jury. So, understanding that if you were on the jury, and that was your duty and responsibility, are you telling me, Judge, I have these beliefs that I have formed before, and now I don't know that I can follow the law. If I -- if the Judge tells you the law, I have to know that you can follow that law. I have to know that, without equivocation, you are going to follow those instructions.

A. Yes, I can do that now. I mean, I misunderstood the question and the -- so, I mean ---

THE COURT: Well, good. Okay. How about -- how about -- why don't I give you the category of jurors back to you, you take whatever time you want to, and you look at them and think about it again, and you tell me what you think would be -- would best describe you, and it's whatever you think.

Again, there's no right or wrong answers here. All right. It's whatever you think. That's what we want to know.

A. It would be (C). I mean when I read it I originally had it, but then it would be (C). I can do that.

THE COURT: All right. All right, so based on what the Court has described to you ---

A. Uh huh **(indicating positive)**

THE COURT: Now, let's be clear about what category (C) is, so when we say category (C), okay.

A. All right.

THE COURT: Category (C) is, the juror -- we are talking about hypotheticals. It may happen, may not happen. But we have to talk about it to find -- to explore all these issues, so category (C) is, the jury has deliberated in the first phase of the trial, the jury has been convinced by the facts and evidence before it that the State has proven the guilt of the defendant beyond a reasonable doubt, and the jury convicted that defendant of the crime of murder, so we are in the second phase, and in the second phase the juror (C), category (C) says, I'm open to both possibilities; I don't have my mind formed to believe one is proper or the other is proper; I know there's two possibilities, death or life in prison without the possibility of parole, but what I'm going to do is, I'm going to listen to all the facts and evidence presented in this second phase; I'm going to listen to the law

that the Judge gives me; I'm going to apply the law that the Judge gives me -- whether I agree with it or disagree with it I'm going to apply it to the facts that the jury finds to be true in this matter, and then and only then am I going to make up my mind as to what penalty is proper in this case. That's category (C).

A. That's the one I want.

THE COURT: All right. That's the one that you believe best describes you?

A. Right.

THE COURT: Is that correct?

A. Yes sir.

THE COURT: All right. Very good. And again, the Court would never instruct the jury that they have to give the death penalty. I would never say that. That's not what the law is. If there's aggravating circumstance the jury can consider, but again, the jury can impose life for mitigating circumstances or for no reason whatsoever, just as an act of mercy. You understand that?

A. Yes.

THE COURT: And you understand that's the law of the State of South Carolina?

A. Yes.

THE COURT: All right, sir, and you can follow that law?

A. Yes sir.

THE COURT: Very good. Now, as a member of a jury another job that you would have is, again, if you have any preconceived ideas of notions, or if anybody talked to you about this case beforehand, or if you read about this case, you heard about this case, or thought about this case before you disregard that. You leave all that outside the courthouse. You don't bring that into the courtroom. You make your decision based solely upon the facts and evidence presented in this courtroom and from no other source. Can you do that?

A. Yes, I believe I could.

THE COURT: All right, sir. Let's go over some general questions. Since Friday have you read, listened, watched, looked up anything about this case?

A. No.

THE COURT: Since Friday did you talk to anybody about this case?

A. No.

THE COURT: All right. Now, before Friday, and you heard the Court's instructions about not doing that, had you heard something about the case in the past, or remembered something about it, or remembered the Defendant's name, or anything like that?

A. Yes.

THE COURT: Okay. And tell me what you remember.

A. Well, basically after I filled out the questionnaire it was the fact of I actually -- I had filled it before and my -- I asked my wife about it and she says, oh, you don't remember everything that was happening, you know, when this situation --

THE COURT: What do you remember that she told you? What can you remember that she said happened?

A. Basically she said -- basically, you don't remember that he was the guy that they locked up for killing his wife, originally, or something, and then actually shooting another man as I -- I didn't remember at that time I filled it out, but I vaguely remember it because that was actually because she was a school teacher or she has a substitute teacher, and she said, actually, I believe they put the school on lock-down at that point or something, and that's what just made it register, and then she told me, and I was like, yes, well now I remember it.

THE COURT: All right. And then you remembered it after that?

A. Yes.

THE COURT: All right, now. You understand that's what you have to set aside and leave outside the courthouse. You can't bring that with you. You can't have it in your mind when you are making your decision in this case. Not only

can -- you don't talk about it. You can't be using it, thinking about it in making your decision in this case. You basically have to have just basically a blank slate. You have to make your decision based solely on what you hear in this courtroom, and from no other source, and if you are a member of the jury, and under the oath that's what you have to do, so understanding that can you do that? And it's -- you know, and again, there's no right or wrong answers here. It's -- and I would have to know from you, yes I can, but -- or no, Judge, I don't think I could do that.

A. I don't think I could one hundred percent, I mean, cause it always kind of -- it would just bounce in my head or something, I guess, just ---

THE COURT: Okay. You think it would come back to you when you are making -- when you are faced with the decision it would come back to you?

A. I think it would have some partial effect. I don't -- you know ---

THE COURT: Okay.

A. ---I mean just remembering, you know, just ---

THE COURT: Okay. And what do you -- do you remember anything about there being any other trial in this matter?

A. Uh uh **(NODS NEGATIVE)**

THE COURT: All right. Very good.

All right. In general, do you know of any kind of

personal, or political, or religious or philosophical belief that you might have that would prevent you from being a fair and impartial juror, in general?

A. No, I don't think so.

THE COURT: All right, sir. I'm going to let the State and the Defense ask you some questions before I ask anything else.

Solicitor.

MR. HUMPHRIES: If it please the Court.

BY MR. HUMPHRIES:

MR. HUMPHRIES: How are you doing, Mr. Bellamy?

A. Good.

MR. HUMPHRIES: I'm Fran Humphries. I'm the Deputy Solicitor. Solicitor Hembree and Senior Solicitor Jimmy Richardson are going to be representing the State in this case, along with me.

Let's talk a little bit about what you've learned about the case from your wife. Now obviously the Judge has correctly charged you that that information that you -- that you possessed from your wife -- and of course I assume her basis of it was, I guess hearing it from the media or whatsoever. We know how that goes.

A. Right.

Q. Sometimes what you read in the paper is true and sometimes it's not.

We are all human, so, you know, what's in our minds is in our minds. What the standard is, Mr. Bellamy, is this, once you get to the point where you have to make a decision, either in the first part of the case where you are determining the guilt of the Defendant, or the last part of the case, the second part of the case where you determine sentence, even though that's in your mind you can't let it impact, or be a part of your decision-making process. I mean, we are not -- none of us, neither the Court nor the Defense or the State are asking you to be a computer where you can just not look in that file. You know what I mean?

A. Right.

Q. you know, because that's just who we are. But it is very important that you can decide this case based only on the evidence that's presented in this courtroom, and nothing that you've heard outside of the courtroom. So understanding that, do you believe that you could base your decision -- and this is a big decision. I know you know. Understanding that, understanding that is the absolute requirement of the law that you base your decision only on the evidence that's presented in this courtroom, and not of anything you might have heard -- of course you don't even know the reliability of what you heard -- knowing that, can you set that aside and decide the case based only on what you hear in the courtroom?

A. I believe I can do that.

Q. Think you can?
A. Uh huh **(indicating positive)**
Q. Okay.
MR. HUMPHRIES: Did the Court wish to go any further in your questioning or do you want me to go ahead and finish?
THE COURT: You can finish, but ---
MR. HUMPHRIES: If you are where you are, Judge, I'm finished.
THE COURT: All right. All right. I'm just going to have to follow up on that then.
You said you think you can. All right.
A. Uh huh **(indicating positive)** I mean if I -- like if I was to hear -- if they proved it point blank, yes, I could make a truthful decision that way. I mean ---
THE COURT: All right. Well, and I appreciate it. Again -- I'm trying to think of the best way to describe it, but it's -- again, I have to know that you can do it, not that yes, I believe I can do that, I think I can do that, or maybe I can, or no, I can't. I have to know yes, I can, or no, Judge, I don't really think I can. It really has to be one or the other, and you have to have that certainty, and the Court has to know that you have that certainty to make sure that you would be qualified, that whatever it is that you were told about the case, whether or not it's true or not, whatever you were told about the case you have to let it go. You've got to

set it aside. You have to say, doesn't matter what I heard over there, I'm making my decision based on what I hear in this courtroom; I'm not letting that over there affect my decision in any way; I can do that, or no, I don't think I can do that. That's the question to you, and it has to be one of the two.

A. I don't think I could, truthfully.

THE COURT: All right. Thank you very much. And I appreciate your being honest with me. That's exactly what I was asking you to be, is straight-forward and honest with me.

Further questions from the State?

MR. HUMPHRIES: Nothing from the State, Your Honor.

THE COURT: Further questions from the Defense?

MR. DIGGS: No, Your Honor.

THE COURT: Very good, sir. If you would go with the deputy for just a few moments, please. Thank you.

A. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 46 MARKED COURT'S EXHIBIT NUMBER 44.)

THE COURT: All right, the position of the State.

MR. HUMPHRIES: He's not qualified.

THE COURT: Defense?

MR. DIGGS: We agree.

THE COURT: All right, the Court finds Juror Number 46, Mr. Bellamy, to be not qualified. I do find that he would not be able to follow the Court's instructions or the oath, and that his ability to perform his duties would be prevented or substantially impaired.

All right. Would the first one there, Ms. Waterston, Sylvia Waterston, be there?

DEPUTY SHERIFF: Yes sir.

THE COURT: Very good.

SYLVIA W. WATERSTON, JUROR NUMBER 660, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Waterston, what I'm going to do is, I'm going to talk to you about certain things, and then I'm going to ask you some questions, and when I'm done the State may have some questions and the Defense may have some questions for you. Okay.

A. All right.

THE COURT: Aren't any right or wrong answers here. What we are looking for is just direct, straight-forward, honest answers to the questions. That's what we need. Okay.

A. That's easy.

THE COURT: Very good, Ma'am. In this particular case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The

Defendant has pled not guilty to those charges, so that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. He doesn't have anything to prove to you or show to you. The State has to prove the guilt of the Defendant of the crimes charged beyond a reasonable doubt. Do you understand that?

A. I do.

THE COURT: All right. Now, in this particular case the State of South Carolina has filed notice to seek the death penalty as against the Defendant, so that puts this case in a procedure that there could be two parts. The first part would be that the jury would be faced with the decision as to whether or not the State of South Carolina has shown to it, by the facts and evidence, evidence that it believes, and evidence which convicts the Defendant of the crimes charged beyond a reasonable doubt, because if, and only if the jury finds, and convicts the Defendant of the crime of murder, beyond a reasonable doubt, would we even get to the second phase of this trial. You understand that?

A. Right.

THE COURT: In the second -- that's called penalty phase because the jury actually imposes a penalty. That makes it different from any other criminal case. In all other criminal cases the Judge writes the sentence, but in this case

the jury actually imposes a penalty, and you've got two possible choices, the death penalty, life in prison without the possibility of parole. And when I might say life, or the attorneys might say life, that's what we mean, life in prison without the possibility of parole.

Now, for a jury to -- do you need a tissue or something?

A. I've got -- my contact is bothering me.

THE COURT: Okay.

A. I might try to get it out.

THE COURT: All right.

A. Did I get it out? I don't know. It's not bothering me now. Maybe I lost it. Go ahead. If I lose it I lose it.

THE COURT: I'm sorry. All right. In this particular case, if the jury is going to consider the possibility of a death penalty the jury has to find what's called an aggravating circumstance. It's a factor that is in the statues, and that the Court would charge the jury, and if the jury unanimously finds an aggravating circumstance then the jury could consider a death penalty. A jury is never required to give the death penalty, but to even consider the sentence the jury has to find, unanimously, an aggravating circumstance.

A. What is an aggravating circumstance?

THE COURT: Aggravating circumstance -- there's certain categories that the Court would provide to you, and I can't

give you examples because then I would be talking about the case, and I can't talk about the case right now.

A. Okay.

THE COURT: But in general aggravate means to make worse ---

A. Right.

THE COURT: ---Or to exacerbate the underlying situation.

A. Right.

THE COURT: Okay. But I would charge to the jury the factors to be considered, and if the jury picked one or more, or whatever -- the jury has to pick one -- if they pick one then they can consider the death penalty. If the jury doesn't pick any aggravating circumstances then the jury does not have that option in front of it.

A. Okay.

THE COURT: The jury also has to consider mitigating circumstances. Again, those are factors that the Court would state to the jury -- but mitigate means to reduce or to lessen the punishment, lessen the charge -- but the jury would have to consider all those before they impose the sentence, to -- to examine all of those factors, and so -- because the jury obviously can impose life because of the mitigating factors, or the jury can impose life for no reason whatsoever. That option is always open to the jury.

Now, in this particular case if the jury found an aggravating circumstance, unanimously, and the jury unanimously came to the conclusion that the death penalty should be imposed, because the jury is imposing a sentence the members of the jury then have to take pen in hand and sign a verdict form saying that that's my unanimous decision, and that is the penalty that I have imposed in this particular matter. You understand that?

A. Yes sir.

THE COURT: Also as a member of the jury a member of your -- a part of your duties and responsibilities would be to come into the courtroom with any kind of preconceived ideas or notions of the law, or facts of the case, or your beliefs about a particular penalty, and if you heard anything about the case in the past, or knew anything about it, or thought you knew something about it, or somebody told you something, you've got to disregard all that. You've got to leave all of that outside the courthouse. You can't bring it with you. You have to make your decision based solely upon the facts and evidence presented in this courtroom, and from no other source. You take the law the Court gives to you, apply it to the facts you find to be true, and then make your decision, but the rest of it you can't use that. You certainly can't talk about it to the other members of the jury, but mentally you can't use that to help you deliberate or reach your

decision. It can't be part of your decision. Do you understand that?

A. **(NODS HEAD AFFIRMATIVE)**

THE COURT: All right. The law this Court gives to you you have to apply. Whether ultimately you agree with it or disagree with it when you take your oath you say, Judge, you tell me what the law is and I'm going to apply it to the facts that I and the other members of the jury find to be true in this matter. You understand that?

A. Uh huh **(indicating positive)**

THE COURT: All right. Very good. Please remember you have to say yes or no because ---

A. Yes. Got you.

THE COURT: ---The Court Reporter can't take down Uh huh.

Okay. Let me just ask you some general questions. Since we were here on Friday have you read, watched, looked up anything about this case?

A. No.

THE COURT: Since we were here on Friday did you talk about this case with anybody?

A. No.

THE COURT: Now, before Friday, before I gave you the instructions not to do that had you heard anything about this in the past in any way?

A. A little here and there. Yes.

THE COURT: Okay. Can you remember anything about what you heard?

A. Basically just what's on the radio.

THE COURT: Okay. And what was that? As best you can remember, what was it?

A. I think that this guy has already been convicted of a crime, murder, and been sentenced to death.

THE COURT: Okay. All right, now, you understand that would be -- if that's true ---

A. That's a different case.

THE COURT: That's a different case, and it's part of what you have to leave outside the courthouse.

A. I understand that.

THE COURT: You can't bring it with you. You can't use it. It can't impact your decision in any way. You understand that?

A. Uh huh **(indicating positive)**

THE COURT: Can you do that?

A. Sure.

THE COURT: All right. Very good. When you heard about the matter in general in the past, or whatever it is that you remember about it, do you remember forming any kind of belief or opinion at that point in time?

A. Forming a belief or opinion?

THE COURT: Yes Ma'am, at that point.

A. No.

THE COURT: Okay. Very good. In general, do you know of any kind of personal, political, religious, philosophical beliefs that you might have that would keep you from being a fair and impartial juror in this case?

A. I don't think so.

THE COURT: All right. Regarding the witness list in this matter you did not circle any of the potential witnesses, correct?

A. To my knowledge I don't know any of those people.

THE COURT: Very good. And regarding the category of juror you circled (C), correct?

A. Correct.

THE COURT: And so we are on the same page about that, regarding category (C) that's the jury that -- and again, we are talking about these in hypotheticals -- it could happen, it might not happen -- but if you are on the jury, the jury has deliberated in the first phase, based on the facts and evidence presented they found unanimously that the Defendant was guilty of the crime of murder beyond a reasonable doubt, so we are in the second phase. Juror (C), or category (C) juror says, I'm not going into the sentencing phase with any kind of predisposition as to the sentence; I'm going to hear all the facts and evidence presented in this case; I'm going

to listen to the law that the Judge gives to me; only after all that will I then fairly consider both sentences and then, along with the other members of the jury in discussions impose a sentence at that point in time; is that correct?

A. Correct.

THE COURT: Very good. So, assume again you are in the sentencing phase, under the right set of facts and circumstances being presented to you in the sentencing phase could you consider, and could you impose a life sentence, under the right set of facts and circumstances?

A. Yes.

THE COURT: Again, under the right set of facts and circumstances being presented could you consider, could you impose a death sentence under the right set of facts and circumstances being presented?

A. Yes.

THE COURT: You are in the situation where the jury has reached a unanimous decision, and has said that the proper punishment in the case is the death sentence, can you then take pen in hand and sign your name to the form saying yes, that is my verdict; I was part of the unanimous verdict in that regard?

A. Yes.

THE COURT: All right. In this case, because of the type of case it is, we are going to need to sequester the jury

once the jury is selected. As you might imagine what that means is you would be staying, obviously at the County expense, at a hotel with all the other jurors, meals would be provided, you would be transported to and from the courthouse by County officials, but you wouldn't be going home in the evening. I understand, everybody understands that's a hardship, no question about that, but being sequestered, is that such an undue hardship, or is there any kind of health concern, any member of the family or yourself, that you couldn't be sequestered? And the length of time -- let me tell you so -- the best I can tell you so you have a full understanding -- the best we can tell you is, the length of time would probably be seven to nine days. That's what it would be.

A. At this point my daughter is pregnant. She is having contractions, and I'm on call to come.

THE COURT: Okay.

A. In addition, I am the only one who can do my job.

THE COURT: Okay. What is your job?

A. I have a picture framing shop, and I'm the one that makes the frames and puts them together. I have a clerk who can help me during the day, but not being able to work at night is an issue.

THE COURT: Okay. Okay. Just regarding your daughter, is it the first child?

A. Third.

THE COURT: Third.

A. That's why it's so important. They won't even let the little ones in the hospital now ---

THE COURT: Okay.

A. ---Because of the Swine flu.

THE COURT: Yes, the flu, so ---

A. Yes. So I have to get them before she has the third one.

THE COURT: Okay. Where is your daughter?

A. Wilmington.

THE COURT: Wilmington, North Carolina?

A. Uh huh **(indicating positive)**

THE COURT: Okay. And the other -- the other children, how old are they?

A. One is five and one is two.

THE COURT: Okay. All right. Very good.

All right. The State would have questions at this point in time?

MR. HEMBREE: Yes, Your Honor.

BY MR. HEMBREE:

MR. HEMBREE: Hey, Ms. Waterston. Is it Waterston?

A. Yes.

MR. HEMBREE: I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit, along with Deputy Solicitor Fran

Humphries, and Senior Assistant Solicitor Jimmy Richardson I will be presenting the evidence on behalf of the State of South Carolina.

A. Uh huh **(indicating positive)**

MR. HEMBREE: If you are selected for this jury we will be spending some time together.

Let me ask you about your daughter's situation a little bit. Let me explore that a bit. You say that she is having contractions like as we speak?

A. She had some yesterday. She said they quieted down.

Q. How far along is she, if I may ask?

A. She -- they first said she was going to be due the first of December, but the doctor has now said that if she doesn't have the baby by Thanksgiving he will induce.

Q. Okay. So you say you are subject to be ---

A. I'm there. I'm it.

Q. ---Called -- I mean, if she were to go into labor today ---

A. I'm gone.

Q. ---You are gone. And of course there is no way to predict her ---

A. Babies have that ---

Q. Yes.

A. ---You know, and this is a boy child so ---

Q. They are temperamental. I take it that you are going

to -- you are -- your daughter is relying on you to care for her other ---

A. Correct. Uh huh **(indicating positive)**

Q. ---Your grandchildren while she's in the hospital.

A. Yes.

Q. How old are they?

A. Five and two.

Q. Would -- of course the Judge has talked to you about sequestration, but would the fact that you have this sort of looming at any minute in any way be a distraction to you if you were asked to serve on this jury?

A. Yes, I -- yes, I mean, I'm the only one that can go and take care of them.

Q. It's ---

A. It's me.

Q. It's you. So this is something that would weigh heavily on your mind?

A. Yes. It's me.

Q. Do you believe it might even affect your ability to serve effectively on the jury?

A. I mean, yes, I mean I -- it bothered me just when I was here on Friday. I went out to the car to call her to make sure she was still okay.

Q. I've got you. So this is something that's ---

A. Yes.

Q. ---Part of your life every single minute ---
A. Right. I'm talking to her every day.
Q. ---At this stage, this stage of the game?
A. Uh huh **(indicating positive)**
MR. HEMBREE: I don't believe I have any further questions ---
THE COURT: Thank you, Solicitor.
MR. HEMBREE: ---Of this potential juror, Your Honor.
THE COURT: Mr. Diggs, or Ms. Williams?
MR. DIGGS: Your Honor, we don't have any objection to transferring the juror, I mean, we don't have any questions.
THE COURT: All right. Ms. Waterston, if you wouldn't mind, if you would just go with the deputy for just a moment, please Ma'am.
A. All right.
THE COURT: Thank you, Ma'am. Appreciate it very much.
(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)
(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 660 MARKED COURT'S EXHIBIT NUMBER 45.)
THE COURT: What's the State's position?
MR. HEMBREE: Your Honor, we would ask that this juror be transferred to another term also. She's got a pretty serious obligation that she's facing, and has indicated that it might even -- even to the point that it could affect her

ability to serve, so we would ask that she be -- and considering sequestration, we would ask that she be transferred.

THE COURT: All right. And Defense agrees with that, is that correct, Mr. Diggs?

MR. DIGGS: We do agree.

THE COURT: All right. Very good.

Madame Clerk, why don't you transfer this jury, and let's -- why don't we -- looking at the calendar we will give her plenty of time. Why don't you transfer her to the week of May 17th, Madame Clerk. You transfer her to the week of May 17th, please. All right. Thank you, Ma'am.

All right, let the juror know she's transferred.

All right. And could we have Ms. Snyder, Sandra Snyder, come in. This one, apparently, is a teacher, as I understand it, so we will have to talk to the juror about that when she comes in.

SANDRA M. SNYDER, JUROR NUMBER 594, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Snyder, what I'm going to do is, I'm going to talk to you about certain things. I'm going to be asking you some questions, and when I'm done the representatives of the State and the Defense may have some questions for you. Okay.

A. Okay.

THE COURT: There are no right or wrong answers here. What I'm looking for are just a direct, straight-forward, honest answers to the questions posed. That's all that I expect and would want from you. Okay.

A. Okay.

THE COURT: Very good. First thing, your employment. You are currently a teacher at one of the Horry County schools. Is that right?

A. Yes, Conway High School.

THE COURT: Conway High School. And what grade, or what subjects?

A. I teach nine through twelve, Art and Photography.

THE COURT: Okay. What is your schedule, please?

A. Well, I also have a second job. I also teach online college courses in the evening, so I do that as well, for college, but during the day I'm there from eight o'clock until about four o'clock, every day.

THE COURT: At Conway High School?

A. Yes. Yes.

THE COURT: Okay. And that's Monday through Friday?

A. Correct.

THE COURT: All right. Very good. All right, now, I read these out Friday and said we would talk about them when you were individually questioned, and you did mention at that

point in time that you are a teacher. The Legislature has set forth that, if you are a full time student, or a full time teacher you can have your jury service transferred to another time, and it's transferred, in accordance with the statute, to the summer, when school is not in session, so basically you are giving up some of your summer vacation to be a juror. That's what happens. Now, that's not a mandatory requirement. It's an option given to a juror who finds themselves in that position, summoned for jury duty, and the fact that they would be a full time student or a full time teacher, and they have available to them then the option to be excused for that particular week, to be transferred to the summer when they are not teaching school at that point in time.

So, understanding that is an option open to you do you want to exercise that option, or do you want to waive or give up that option?

A. Well, I definitely had a hard time with the whole substitute issue and stuff right now because there's a shortage of subs, so it was hard for that, and I thought, I would like to exercise that option because I have the two months every year off.

THE COURT: Okay.

A. Yes.

THE COURT: All right. Very good.

Further questions on that particular issue from the

State?

MR. HEMBREE: None, Your Honor.

THE COURT: From the Defense?

MR. DIGGS: No sir.

THE COURT: All right. What I'm going to do is -- I have a calendar in front of me. Usually school is basically done the first week in June?

A. Yes, around the 9th or so.

THE COURT: Okay.

Madame Clerk, if you would -- now we've got court the 14th, but I don't want to send you right into -- June 28th, Madame Clerk. If you will transfer the juror to the week of June 28th.

You will get another Summons from the Clerk of Court, but that will be the week you are summoned to. All right.

A. The 28th?

THE COURT: 28th of June. That's a Monday. And you will report downstairs. It would be different. You would report downstairs in the jury assembly room, downstairs on the first floor. It's basically right straight off from the entrance-way, but that's where you would report.

A. Okay.

THE COURT: All right.

A. Right.

THE COURT: Thank you, Ma'am.

A. That's it?

THE COURT: Yes Ma'am.

A. All right. Thank you.

THE COURT: Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 594 MARKED COURT'S EXHIBIT NUMBER 46.)

MR. HUMPHRIES: Before the next juror comes in, she expressed that she -- that she would be -- she would not be a fair and impartial juror based on her beliefs ---

THE COURT: All right. That's Ms. Delphia Wilson ---

MR. HUMPHRIES: ---In general qualifications.

THE COURT: ---690. All right. Let's see ---

Unable to be impartial - victim of a crime.

All right, ask Ms. Wilson to come in, please.

DELPHIA M. WILSON, JUROR NUMBER 690, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Wilson, what I'm going to do is, I'm going to talk to you about certain things, and then I'm going to be asking you some questions, and then representatives of the State and the Defense might have some questions to ask of you. Okay.

A. Yes.

THE COURT: All right. Now, aren't any right or wrong answers here. What I want from you, and what I really need from you is just direct, straight-forward, honest answers to the questions that I ask. That's all I expect and hope to -- that you would honor that. Okay.

A. Yes sir.

THE COURT: Very good. Now, in this particular case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The Defendant has pled not guilty to those crimes. That puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you or show to you. It's the State's burden to prove the Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Yes, I do.

THE COURT: All right. In this particular case the State of South Carolina has filed a notice to seek the death penalty as against Mr. Stanko. Now, that makes the case such that it could have two possible parts. The first part would be the -- based upon the facts and evidence presented the jury would consider all those facts and evidence, find that evidence which convinces it of it's truth, and then see whether or not the State has proved the guilt of the

Defendant, beyond a reasonable doubt, of the crimes charged. The jury would have to unanimously so find. If the jury does not unanimously -- would not unanimously find the Defendant guilty of the crime of murder then we wouldn't even go into the second phase. There would be no need for it. You understand that?

A. Yes, I do.

THE COURT: In the second phase the jury would be considering, and actually would be imposing a sentence in this matter. That makes it different than any other criminal case. In all other criminal cases the Judge imposes the sentence. In this particular case the jury actually decides the sentence. The jury has two choices, death penalty, life in prison without the possibility of parole. So if I say life or the lawyers says life, that's what it means, life in prison without the possibility of parole. You understand that?

A. Yes.

THE COURT: Very good. For a jury to consider imposing the death penalty the jury would have to find what is called an aggravating circumstance. Aggravate means to make worse, or exacerbate the situation. There are certain factors that the Court would charge the jury. If the jury found one of those, picked one of those by a unanimous decision then the jury could consider the death penalty. There's no -- it's nothing automatic. That just gives the jury the ability to

consider the death sentence, because if they don't find an aggravating circumstances can't even consider a death penalty, because you have to find one of those to even -- for that to even be a possibility. You understand that?

A. Yes sir.

THE COURT: The jury also has to consider and look at all the mitigating factors that the Court would charge them. Again, those would be factors that would tend to reduce or lessen the punishment, lessen the charge. The jury would have to look at all those, consider all those before they impose any kind of penalty in the case. Do you understand that?

A. Yes.

THE COURT: A jury can impose life in this case because of the mitigating circumstances, or for no reason whatsoever. Just as an act of mercy the jury could impose a life sentence. Do you understand that?

A. Yes.

THE COURT: If you are a member of the jury, and the jury unanimously finds an aggravating circumstance, and the jury unanimously votes to impose the death penalty in the case, because the jury is imposing the death sentence the jury actually -- all the members of the jury have to actually take pen in hand and sign a form indicating that the, indeed, is their verdict, and it is the unanimous verdict of the jury to impose the death penalty. You understand that?

A. Yes.

THE COURT: The law that the Court would give to you, you understand that you have to apply that law -- whether ultimately you agreed with it or disagreed with it you have to apply that law to the facts as you would so find them to be, along with all the other members of the jury. You understand that?

A. Yes.

THE COURT: It would also be a job as a juror, if you are a juror in the case, if you came into this courtroom with any preconceived ideas of what the law is, what it ought to be, what it should be, or if you came into the courtroom with any preconceived notions of the facts of the case, or the particular punishment, or you heard about this matter in any way, you've got to set all that aside. You can't bring any of that into the courtroom. You can't use any of that. You have to make your decision based solely and completely on the evidence -- facts and evidence that's presented in this courtroom, and the law the Court gives you, and that's the only basis you can make your decision on. You understand that?

A. Yes.

THE COURT: You have to let -- anything that happened in the past you have to let that go. You can't bring that into the courtroom. You can't allow that to affect your

decision in this matter. Do you understand that?
A. Yes.
THE COURT: Understand that would be your job as a juror if you were selected, correct?
A. Yes.
THE COURT: All right. Now, in this particular matter you indicated that -- well, first, have you heard anything about this case, know anything about it ---
A. Yes.
THE COURT: ---Anything in the past?
Okay. Tell me what that was? Was is it you remember, or think you know about it?
A. I remember when he murdered a woman, and raped her daughter, and tried to take her life also. I work in the area, and I remember watching all the news, and just how I felt about the whole thing.
THE COURT: Okay. And I appreciate the fact -- and I'm sorry I have to explore that with you. How did that make you feel?
A. It made me feel terrible for the victims.
THE COURT: Okay. And not wanting you to explore with me in any detail what happened in the past, but you did note that -- in your juror questionnaire form, that -- you indicated that you -- in the past you live with an abusive man, correct?

A. Yes, I did.

THE COURT: All right. Does this fact -- unfortunately that it did happen, do you think that would impact your ability to be fair and impartial in this case?

A. Yes, I do.

THE COURT: Okay. And understanding that that is what happened in the past, and knowing that the Court would expect every member of the jury, whatever their past may be, that they have to -- as I said, you have to leave that outside the courthouse. You can't let it affect your decision in this way, and understanding that's what the Court would expect of a juror, because of your past experiences are you telling me that -- that that would carry forward with you, even into the courtroom?

A. What I know already know of the case would carry forth in the courtroom.

THE COURT: Okay. Would that affect your decision in this matter?

A. I believe it would.

THE COURT: All right. And you are telling me you just wouldn't be able to set that aside and basically compartmentalize that and not let it affect your decision. Is that what you are telling me?

A. In this case I have thought about it, and I don't believe I can set aside.

THE COURT: All right. Thank you, Ma'am. I appreciate you being very straight-forward and honest with me about that. Thank you.

Solicitor, further questions?

MR. HEMBREE: No, Your Honor.

THE COURT: Defense, any further questions?

MR. DIGGS: No, Your Honor.

THE COURT: Thank you, Mr. Diggs.

All right, Ma'am, if you don't mind, if you would just go with the deputy for a few moments, please.

A. Thank you.

THE COURT: Thank you, Ma'am.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 690 MARKED COURT'S EXHIBIT NUMBER 47.)

THE COURT: State's position?

MR. HEMBREE: The juror is not qualified in this case, Your Honor.

THE COURT: Defense.

MR. DIGGS: Your Honor, we agree, and move that he be excused -- she.

THE COURT: All right. I do find the juror is not qualified. I find that she would not be able to follow the Court's instructions and to obey her oath to -- and would

allow past experiences and past information to -- or past experiences to affect her decision in this matter, and would not be able to comply with her oath. She is not qualified.

All right, Ms. Lisa McGee.

MR. RICHARDSON: Your Honor ---

THE COURT: Yes sir.

MR. RICHARDSON: ---Before she comes in, she lists as her occupation a school bus driver.

THE COURT: Okay.

MR. HUMPHRIES: And support staff, whatever that means.

THE COURT: All right.

LISA DAWN McGEE McKENZIE, JUROR NUMBER 424, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: Yes Ma'am. Your full name, please Ma'am.

A. My full name is Lisa Dawn McGee McKenzie.

THE COURT: All right. Thank you, Ma'am.

All right. Excuse me just one moment, please.

All right, Ma'am, you have -- I see you've listed in your juror questionnaire form -- are you currently employed as a special needs bus driver for the Horry County Schools? Is that your current employment?

A. I'm currently employed, but out on sick leave.

THE COURT: All right. And -- and regarding the sick leave, is that something -- what's the -- without going into

great detail what is the nature of that?
A. They haven't diagnosed anything yet on it.
THE COURT: Okay. How long have you been seeing medical professionals or doctors about it?
A. September.
THE COURT: Since September. Okay. Have you -- what was -- what has been the frequency of you been being -- going to doctors and doing tests and that sort of thing?
A. Up until recently I had appointments every other week.
THE COURT: Okay. Have you seen doctors just locally, or have you seen doctors elsewhere?
A. I have seen basically locally, but I'm working on getting in to see a specialist out of State.
THE COURT: Okay. Where might that be? Just ---
A. In Maine.
THE COURT: In Maine. Okay. All right. But as far as any diagnosis the local doctors have not been able to give you a definitive diagnosis; is that what you are ---
A. That's correct.
THE COURT: All right. Again -- and I don't mean to pry, and I'm sorry for having to ask you these questions, but it's important that we have the information to see about a person's availability to be a juror. In general, what kind -- how does this affect your daily life, the condition that you have?

A. Well, basically with the medications that I have, according to this D.O.T. regulations, a person cannot drive with narcotics in their system.

THE COURT: Okay. And what is it that you take?

A. Oxycodone, Triazidon and Prilosec.

THE COURT: How often do you take these?

A. The Prilosec and the Triazidon is daily.

THE COURT: Okay. And how about the Oxycodone?

A. As needed.

THE COURT: Okay. When was the last time, or what kind of frequency have you been taking that?

A. I'm normally one that doesn't take a lot of pain meds unless I have to. I think out of the whole bottle I've taken four in thirty days.

THE COURT: Okay. Very good. All right. In that regard -- and assume you were a member of the jury in this particular case, and understanding that, you know, we would be here in the courtroom, and seated in the jury box, and you would be there listening to the evidence and testimony presented. You would be there for, say, an hour and a half or so, or maybe longer before a break would be taken. There would be breaks for lunch, but you know, that would be, you know, consistently the whole day. How -- would that affect you in any way?

A. It depends on the day.

THE COURT: Okay.

A. I mean that's all I can say. It's an intermittent -- the pain that I have is an intermittent pain in the left side, and it depends on the day.

THE COURT: Okay. All right. If you are a member of the jury in this particular case the jury is, of necessity, because of the type of case, going to be sequestered once it's selected. That means for a period of seven to nine days the jury would be -- obviously at the County's expense -- at a hotel, meals provided, obviously be transported to and from the motel, to the courthouse, and wherever, but you wouldn't be going home in the evening. You would be with us until the case was over, and the expectation is that this case would take approximately from seven to nine days to finish once it starts. You understand that?

A. Yes.

THE COURT: Understanding that would be the process -- and understanding it's a hardship on anybody. I understand that. Everybody understands that. How would -- would that cause you any particular problems, health-wise, that you know of?

A. Not health-wise.

THE COURT: Okay. Otherwise?

A. The fact that I have a twelve year old, a ten year old, and a seven year old.

THE COURT: Okay. Are they attending school now?
A. Yes, they are.
THE COURT: Okay. Here in Conway, or at the Beach, or where?
A. In Conway.
THE COURT: Conway. Okay. Now, when they get off of school who picks them up?
A. Typically my mother picks up my daughter from school, and my brother takes -- and gets my boys off the bus.
THE COURT: Okay. All right. And if you were on the jury and sequestered is that what would happen?
A. Typically.
THE COURT: Okay. Assume you were sequestered, and obviously you would not be going home, who would be taking care of the three children?
A. They would go between my mother, my brother, and on the nights their father doesn't work.
THE COURT: Okay. Where -- where does he work at?
A. M. Grande.
THE COURT: I'm sorry. Where?
A. The M. Grande in Myrtle Beach.
THE COURT: M. Grande in Myrtle Beach. Okay. All right. And he works there at night during the week?
A. Mondays and Tuesdays it's three to eleven, and other -- the rest of the days it's twelve to eight.

THE COURT: Twelve to eight. Okay. Twelve to eight. Okay. That's -- okay. M. Grande is -- that is a hotel?

A. It's a hotel on 77th Avenue.

THE COURT: 77th Avenue. Okay. And so that would be twelve noon to eight P.M.?

A. Yes.

THE COURT: All right. Very good.

All right, regarding those issues, any questions from the State at this point in time, just as to those particular issues? Do you want to explore that any further?

MR. HEMBREE: No, Your Honor.

THE COURT: Defense.

MR. DIGGS: Not from the Defense.

THE COURT: All right. If you could, Ma'am -- and I apologize for having to get you to come in and come out, but if you don't mind, could you step outside with the deputy for just one moment, please.

Thank you, Ma'am.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 424 MARKED COURT'S EXHIBIT NUMBER 48.)

THE COURT: All right. Let me hear from the State.

MR. HEMBREE: Your Honor, we ask that Juror McKenzie be disqualified. She's got three small children. It just sounds

like between her illness, her medications, and the quite complicated arrangements it would take to get her children cared for while her husband works these night shifts, that it just would be too great a hardship on her to be sequestered, and we would ask that she be excused.

THE COURT: All right. What's the Defendant's position?

MR. DIGGS: Your Honor, we agree with that. If she's medically not qualified to drive a bus I would question whether she would be qualified to sit on a jury of this nature, in a case of this nature, so we would ask she be excused.

THE COURT: All right. Very good. What I'm going to do in this particular matter, based on the information that has been provided to the Court by the juror under oath I'm going to excuse this particular juror from service.

All right. Let's let her know that she is excused. Okay.

(CONFERENCE TAKES PLACE AMONG THE COURT, CLERK OF COURT, AND ALL COUNSEL CONCERNING JURORS SCHEDULED TO APPEAR.)

(THE FOLLOWING TAKES PLACE AFTER A BREAK.)

THE COURT: All right. If we could have then Juror Bonnie Oguin come in, please, Bonnie Oguin.

BONNIE OGUIN, JUROR NUMBER 480, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Oguin, what I'm going to do is, I'm going to talk to you about certain things, and then I'm going to have some questions for you, and then when I'm done maybe the representatives of the State and Defense may have a few questions for you. Okay.

A. Okay.

THE COURT: Thank you. Now, there aren't any right or wrong answers here, okay.

A. Okay.

THE COURT: What I need from you are just direct, straight-forward, honest answers to the questions that are asked. I need to know, you know, your opinions, beliefs, or the responses to the questions, all we need. Okay.

A. Thank you.

THE COURT: Very good. Now, in this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. To those charges the Defendant has pled not guilty. The Defendant, therefore, is presumed innocent. The State has the burden of proof to prove the Defendant guilty beyond a reasonable doubt. The Defendant doesn't have anything to prove to you. The Defendant doesn't have anything to show to you. The State must prove the Defendant guilty beyond a reasonable doubt. You understand that?

A. Yes sir.

THE COURT: Now, in this particular case the State has served a notice to seek the death penalty as against Mr. Stanko. Now that means this case could potentially have two parts. The first part the jury would be looking at all the facts and evidence presented in this case, and making a decision based upon the facts and evidence the jury finds to be true to see whether or not the State has proved the guilt of the Defendant of the crimes charged beyond a reasonable doubt, because if, and only if the jury finds the Defendant guilty of the crime of murder, beyond a reasonable doubt, would we even go to the second phase of the trial. You understand that?

A. Yes sir.

THE COURT: All right. Now, in the second phase the jury is going to be faced with imposing a sentence in this matter. If the jury has already found the Defendant -- and we are talking about hypotheticals -- it may happen, may not happen -- but if the jury finds the Defendant guilty of the crime of murder, beyond a reasonable doubt, then the jury is going to actually impose or decide the sentence in this case. That makes it different from any other criminal case. In all other criminal cases the Judge imposes the sentence. In this type of case the jury imposes the sentence. And there's two choices the jury has, life in prison without the possibility

of parole, or death. Those are the two choices. And when we talk about life, and I might say life or the lawyers might say life, that's what we mean, life in prison without the possibility of parole. You understand that?

A. Yes sir.

THE COURT: For a jury to consider giving the death penalty in the case the jury would have to find what's called an aggravating circumstance, and those are certain factors that the Court would charge to the jury, and if the jury unanimously chose one then the jury would be able to consider imposing the death penalty, because without choosing an aggravating circumstance the jury would not even have before it the ability to impose death penalty. You understand that?

A. Yes sir.

THE COURT: Just because the jury finds an aggravating circumstance doesn't mean the jury is required to impose the death penalty. The jury is never required to do that. The Court would never instruct the jury to do that, because the option of bringing -- or giving a life sentence, or imposing a life sentence in this matter is always open to the jury. The jury can do it for a reason, or for no reason whatsoever the jury can impose a life sentence. Do you understand that?

A. Yes sir.

THE COURT: Before a jury imposes a sentence in this matter the jury has to -- they must consider any mitigating

circumstance that the Court charges to the jury. Again, those are factors that would tend to reduce or lesser the charge, lessen the punishment in the matter. The jury would have to look at all those, and consider all those before they impose a punishment in this matter. If the jury in this particular case, based upon deliberation, unanimously finds an aggravating circumstance, unanimously decides to impose the death penalty -- because it has to be unanimous -- to impose the death penalty it has to be unanimous, everybody has got to agree -- the jury unanimously decides in this particular case, based on the facts and circumstances presented, that the death penalty was proper, since the jury is actually imposing the sentence the jury -- every member of the jury has to take pen in hand and sign a form indicating that, indeed, is their verdict, and they have been part of the unanimous verdict imposing the death penalty in that case. Do you understand that?

A. Yes sir.

THE COURT: Part of your job as a juror, if you are selected as a juror in the case, would be to come into the courtroom with any kind of preconceived ideas of what the law is, any preconceived ideas about the case, about the sentences to be imposed, if you heard about the case in the past, or thought you knew something about it, or somebody told you something, you've got to disregard all of that. You've got to

set all of that aside. You basically leave it outside the courthouse. You don't bring it into the courtroom. You have to decide this case based solely upon the facts and evidence presented in this courtroom and from no other source. You understand that?

A. Yes sir.

THE COURT: You also have to follow the law that the Court would give you, that I would instruct the jury. You have to follow that law. Whether ultimately you agreed with it or disagreed with it, when you take your oath you are saying, Judge, I'm going to follow the law that you give to me, and I'm going to apply it to the facts that I, as a member of the jury, and the jury finds to be true in this particular matter. You understand that?

A. Yes sir.

THE COURT: All right, Ma'am. Let's go over some questions. Since we left here on Friday have you read, listened to, looked up anything about this case?

A. No sir.

THE COURT: Have you talked to anybody about this case since Friday?

A. No sir.

THE COURT: Now, since I gave y'all those instructions on Friday not to do that, beforehand you didn't know that. Just -- you know ---

A. Right.

THE COURT: So there's the potential -- and you possibly could have heard something about this case, and that's fine, so did, in the past, before Friday, had you heard anything about this case, or anybody talk to you about it? Do you know anything about it whatsoever?

A. No. Just when it happened.

THE COURT: When it happened?

A. Yes.

THE COURT: Okay. What is it that you can remember now?

A. That he had murdered his girlfriend, and left the daughter for dead. Like I said, this has been so long ago I'm not sure.

THE COURT: Okay.

A. And then came into Conway and murdered a man in Conway.

THE COURT: Okay. Now, you understand that that's part of what you have to leave -- if you are member of the jury you have to leave all that, what you think you know about it, you have to leave that outside the courthouse. You can't bring that with you. Basically like a blank slate ---

A. Uh huh **(indicating positive)**

THE COURT: ---You are coming into the courtroom, you listen to all the facts and evidence presented in this case, make your decision based on the facts and evidence in this

case, the law the Court would give to you, and don't let anything that you think you might know about it in the past affect your decision in any way. You understand that?

A. Yes sir.

THE COURT: Can you do that?

A. Yes sir.

THE COURT: All right, Ma'am. Can you follow the law that the Court would give to you? Even if for some reason you didn't agree with it could you follow the law that the Court would give to you in this case?

A. Yes sir.

THE COURT: All right, Ma'am. When you heard about this matter in the past do you remember forming any kind of opinion or belief at that point in time when you heard about it in the past?

A. No sir. I really don't remember that much about it, and just kind of wiped it out.

THE COURT: Okay. Very good. Thank you, Ma'am. On the ---

MR. DIGGS: Your Honor, could we get her to repeat that. I'm sorry. I just couldn't hear.

THE COURT: Okay. Could you repeat the answer again, please Ma'am?

A. Yes sir. I said I really don't remember that much about it, and I just haven't really given it any thought since

then.

THE COURT: Okay. All right. Thank you.

The witness list that we have, you didn't circle anybody, that you knew anybody, correct?

A. Right. I don't know anyone.

THE COURT: All right. Very good. And on the list of categories of jurors which would best describe you you circled (C), correct?

A. Yes sir.

THE COURT: Now let's talk about that just for a second so we make sure we are on the same page, and we agree what a category (C) juror -- type (C) juror is.

That's the kind of juror that -- and again, we are talking in hypotheticals, you know, something may happen or may not happen, but if you are on a jury in a case and in the first part of the case the jury has deliberated in this matter, found certain facts and evidence to be true, they have found that the State has proved the Defendant guilty of the crime of murder beyond a reasonable doubt, so we are in the second phase of the trial, so the type (C) juror says, going into the second phase of the trial I'm not predisposed to give any kind of penalty or punishment in this matter; I understand there's two choices, life in prison without the possibility of parole, or the death penalty, but I'm not predisposed to either one of them; I'll listen to both; I'll give both due

consideration; I could impose either one of them, but what I'm going to do is, I'm going to listen to all the facts and evidence in this case; I'm going to listen to the law that the Judge gives to me, and then, along with my fellow members of the jury I'm going to deliberate and reach my decision as to what penalty should be imposed. Is that what you understand a juror (C) to be?

A. Yes sir.

THE COURT: And that would describe it, correct?

A. Yes sir.

THE COURT: Very good, Ma'am. Talking about that in the same vane, just again, assumptions here, assume you are on the jury and we are in the second phase, based upon the right set of facts and circumstances being presented to you could you consider, and could you impose a life sentence?

A. Yes sir, I could.

THE COURT: Based upon the right set of facts and circumstances being presented, could you consider, and could you impose a death penalty?

A. Yes sir.

THE COURT: If you are a member of the jury and the jury unanimously decides that the proper punishment is death, and with that you remember, you have to take pen in hand and sign the form that indicates that, indeed, is the unanimous verdict of all the jurors in this case, could you do that?

A. Yes sir.

THE COURT: Very good. In this particular matter, because of the type of case that it's going to be, when the jury is selected -- obviously not now, but when the jury is all selected the jury is going to be sequestered. Now, that means that the jury will be housed -- obviously all this is County expense -- at a hotel, meals provided. You will be transported to and from -- or wherever you need to go, by County officials, but you won't be going home in the evening, because we have to make sure that the jury is not influenced and -- by any manner that they shouldn't, and are focused solely and completely on the case. Understanding that's an inconvenience and a hardship on anybody -- I understand that, everybody understands, no question about that -- but is that such an undue hardship, or exceptional hardship, or -- regarding any health of any family member or yourself that would -- would affect your ability to be sequestered?

A. No sir. I'm just not used to being away from home, and would not -- once ---

THE COURT: Wouldn't like it. I understand that, and appreciate that, and -- but otherwise it's not some undue or extreme hardship; it's a hardship but not an undue or extreme one, correct?

A. No sir.

THE COURT: All right. Very good. Thank you, Ma'am.

Further questions from the State at this point in time?

MR. HUMPHRIES: I don't have any questions for Ms. Oguin.

Thank you, Ma'am.

THE COURT: All right. From the Defense, questions? Mr. Diggs.

MR. DIGGS: If it please the Court.

BY MR. DIGGS:

MR. DIGGS: Ms. Oguin, how are you this afternoon?

A. Okay.

Q. Now, let me ask you, did you say that you could set aside your views concerning what you know about the case?

A. Yes sir.

Q. Let me ask you this, do you -- are you familiar with whether or not there was a trial held in this Stanko matter?

A. I lost track of what was going on with it, and when I got the Summons for jury duty someone mentioned that -- you know, that he had been sentenced.

Q. Okay. And that was what kind of sentence, do you know?

A. I believe they said it was the death penalty.

Q. Okay. And let's assume that's correct for a moment, and you are selected to serve on this jury, would having knowledge about a prior death sentence undermine your ability to be responsible in terms of the -- filling the juror responsibilities in this case, in other words, would you feel

like we are just kind of going through the motions here for no good reason?

A. No sir, because I think this is, what, an entirely different matter ---

Q. Okay.

A. ---Case.

Q. And let me ask you this, do you believe that there is a prevailing view in our community that Mr. Stanko is guilty of this crime?

A. I can't answer that. I have not followed that closely enough, and I don't know any people in Conway.

Q. Do you believe that you owe an obligation to the community to convict him?

A. If the evidence proves so, yes.

Q. All right. What if the evidence doesn't prove that under the instructions that you are given by the Trial Court?

A. Well, I would have to hear the evidence, and I would -- I would do what I felt was right.

Q. And right with respect to what?

A. Whether life in prison or death.

Q. Well, let me ask you this, we anticipate, based on the evidence that's available to present in this case, there may be -- there's likely to be four potential verdicts, guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. Did I go through those too quickly?

A. No.
Q. Guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. Now, if you were selected to serve on this jury do you have a predisposition against, or a bias against any of the foregoing verdict forms?
A. No sir, I guess not.
Q. Do you know of any diff -- when you say you guess not, can you explain to me what you mean by that?
A. Well, I just -- I never thought there would be those options, I mean, I thought it was -- I didn't realize there was that many options.
Q. Yes Ma'am. Okay. But based on the evidence in the case, and the instructions of Court, you don't have any predisposition to not follow the law with respect to those potential -- any of those potential verdicts?
A. No. I would follow the law.
Q. Regardless?
A. Regardless.
Q. Even if it involved a not guilty of some sort?
A. Yes sir.
Q. Okay. Now, do you feel like there would be any pressure upon you to go back into the community and face your friends and family and so forth if you rendered a not guilty verdict in this case for whatever reason?
A. No sir.

Q. And would that be because you were following your oath as a juror?
A. Well, because I don't -- well, I haven't discussed it with anybody, and ---
Q. Okay.
A. ---Very few people even know that I'm here, so very few people even know I was part of it.
Q. Okay. So your testimony is, notwithstanding your knowledge about Mr. Stanko, you could consider all of the evidence in this case and render any one of those four verdicts that you felt was best supported by the evidence in the case, under the instructions that the Judge gives at that time?
A. Yes sir.
Q. Okay. Regardless of what some other jury did in some other case?
A. Yes sir.
Q. Okay. Now, let me talk to you for just briefly about the sentencing phase in the event that you are on the jury and the jury finds guilty beyond a reasonable doubt. Now you are faced with a sentencing option, and in order to render a death sentence, to vote for a death penalty verdict, the State has got to prove an aggravating circumstance beyond a reasonable doubt. Even in that situation that's just to get to the point where a jury can even vote on the death penalty. Do you

follow me?
A. I think so.
Q. Okay. So, having just found murder beyond a reasonable doubt, and an aggravating circumstance beyond a reasonable doubt, could you still fairly consider life imprisonment without parole in that circumstance?
A. That's hard to say without hearing the circumstances.
Q. Okay. But you understand, that's always going to be the choice, regardless of the circumstances. Every death penalty can only be voted on if there's a murder beyond a reasonable doubt, coupled with an aggravating circumstance beyond a reasonable doubt. That's always going to be the fact. Now, given that situation would you be predisposed to vote death as opposed to life?
A. I'm not quite sure what you are asking here. It's almost like you are asking me if I would say death or life? Is that what you are wanting me to say, death or life?
Q. No Ma'am. I want you to tell me, once you are on the jury, and you have concluded that there was guilt beyond a reasonable doubt, and then we move into the sentencing phase, and the State begins to present evidence of an aggravating circumstance, which is what the Judge is going to tell you they are required to do in order to ask for a death sentence, okay, and then we get to the end of that hearing and you believe the State did, indeed, present evidence in this case

of an aggravating circumstance, coupled with the murder, would you be predisposed in that situation to vote death as opposed to life imprisonment?

A. Yes sir.

Q. Okay. And would you do that -- without knowing specific facts would it be fair to say you would be in that position in every case?

A. Well, that's where you said specific facts.

Q. Yes Ma'am. Without any specific facts, just that foundation, that two-tiered foundation, so to speak, murder you found beyond a reasonable doubt, and then on top of that an aggravating circumstance beyond a reasonable doubt, you would -- in every case where those two factors were combined, would vote death?

A. Yes sir.

MR. DIGGS: Okay. Thank you very much, and that's all I have.

THE COURT: Ma'am, let me ask you some questions. Let me see that I understand what you are telling me. Okay.

The Court would instruct the jury that to consider a death penalty the jury has to find an aggravating circumstance that's been proved to them beyond a reasonable doubt. The jury has to find that to even consider the death sentence. Do you understand that?

A. Yes sir.

THE COURT: All right. Now, just because the jury finds a aggravating circumstance -- and the Court would instruct the jury to this -- that doesn't mean the jury automatically finds the death penalty, because the Court is never going to instruct the jury that they have to find the death penalty. The jury can give life for a reason, or for no reason whatsoever, just as an act of mercy. If there is an aggravating circumstance or there's more than one aggravating circumstance the jury finds, the jury can decide to impose a life sentence. There is not an automatic situation there. Do you understand that?

A. Yes sir.

THE COURT: All right. Understanding that a life sentence is always open to the jury, no matter what the facts and circumstances are presented, even with aggravating circumstances, understand that. Now, you are on the jury, the jury has voted previously to find the Defendant guilty of murder beyond a reasonable doubt. In the second phase the jury finds, beyond a reasonable doubt, an aggravating circumstance, would you then say, I've got to vote for the death penalty, or would you consider, and be able to impose either one?

A. Yes sir.

THE COURT: Which one would that be? What would that be?

A. Either.

THE COURT: Either one of them?

A. Either one of them.

THE COURT: All right. Now, do you understand life is -- life in prison without the possibility of parole is always an option, no matter what the facts are presented to you, and proved to you by the State beyond a reasonable doubt, that's always an option. Do you understand that?

A. Yes sir.

THE COURT: All right. And only if the jury finds an aggravating circumstance could the jury even begin to consider the death penalty. Do you understand that?

A. Yes.

THE COURT: If they find an aggravating circumstance they could give death, or they can give life, because again, you can give life at any point in time for any reason. You understand that?

A. Yes sir.

THE COURT: All right. Can you do that?

A. Yes sir.

THE COURT: Can you follow the Court's instructions, no question, no hesitation, follow the Court's instructions and apply that law to the facts that you find to be true in this case?

A. Yes sir.

THE COURT: Without question?

A. Right. Yes sir.

THE COURT: All right.

Further questions from the State?

MR. HUMPHRIES: No sir, Your Honor. Thank you.

THE COURT: Further questions from the Defense?

MR. DIGGS: Not at this time.

THE COURT: All right. Very good.

All right, Ma'am, if you don't mind, if you would go to -- with the deputy for just a few moments, please. Thank you, Ma'am.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 480 MARKED COURT'S EXHIBIT NUMBER 49.)

THE COURT: State's position?

MR. HUMPHRIES: Your Honor, this -- this juror, 480, is qualified. As has happened on a couple of occasions -- and I interposed an objection at one time based on the fact that it was an incomplete statement of the law -- it provides the juror absolutely no context in which to respond honestly to that situation. Of course the Court has cured it on every occasion almost without -- without exception, where that question has been answered in that fashion. Once further questioned by the Court they've always said they could give

either life or death, depending on the circumstances, but clearly in this case this juror, after having been fully advised of the law and the context of that question has indicated she would be a qualified juror.

THE COURT: Thank you.

Defense. Mr. Diggs.

MR. DIGGS: Your Honor, I couldn't disagree more with the Solicitor. What we have here, with all due respect, is a juror who has set out her position, and then upon enticement, with all due respect, by the Court, conformed her responses again to what was needed, and with all due respect again, I would submit, to what the Court was trying to elicit from her.

Your Honor, this is a juror who has knowledge of the death sentence that's pending right now against Mr. Stanko, and we have to object to the Court's efforts here to rehabilitate this juror after she has indicated that she would always vote for death in the event that there was a guilty verdict coupled with a mitigating circumstances -- or excuse me -- an aggravating circumstance, and so I would submit that the Court -- or to the Court, she is not qualified to be in this case because of her knowledge about the pending death sentence.

And in addition to that, Your Honor, we would respectfully object to the Court's questioning that rehabilitated this juror after she had set out a position that

rendered her unqualified.

THE COURT: All right. As to the positions presented by the Defense as to previous knowledge the juror clearly indicated that she could set any information that she might have about this case aside, follow her oath, follow the Court's instructions, and fairly and impartially decide this particular case.

As to this juror's demeanor, based upon my observations of her, she was very thoughtful. She was very honest in her answers. I will state for the record, I found Mr. Diggs' questions to be confusing. I couldn't understand what he was asking, so I'm -- whether or not the juror did or not, I will just state as a fact, I couldn't understand what the questions were that Mr. Diggs was asking.

Based upon the Court's questioning of the juror it was clear that she would follow the Court's instructions. She clearly said -- and without equivocation in any manner said that she would fairly and impartially consider all options, would not be predisposed in any way until she heard all the facts and evidence in this case.

And further I would indicate as part of the record that before there were any questions posed to this juror whatsoever she categorized herself as a category (C) juror, on her own, looking at the form, without any input from anyone at any point in time, and again reaffirmed that at the very beginning

of the questioning before we got into any further questions. There is no question that this juror is absolutely qualified in this particular matter, based upon her answers -- based upon the Court's observations of her there is no question in the Court's mind, based upon my observations and her questions, that she can fairly and impartially carry out her duties in accordance with the Court's instructions, and her oath, and there is nothing in the record that would show that she was prevented or substantially would impair her performance in her duties in this regard.

MR. DIGGS: Thank you, Your Honor. I don't have anything further.

THE COURT: All right. The juror is qualified. Let's have Ms. Gloria Morris come in, please.

GLORIA L. MORRIS, JUROR NUMBER 459, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Morris, what I'm going to do is, I'm going to talk to you and cover certain things, and then I'm going to be asking you some questions, and then maybe the representatives of the State and the Defense may have some questions for you at that point in time. Okay.

A. Okay.

THE COURT: What we are looking for, and what -- all I'm asking you to do is just give me and the lawyers just

direct, straight-forward, honest answers to the questions. That's all. There aren't any right or wrong answers here. We just need to know how you want to respond, and what you believe regarding the questions that are asked. Okay.

A. Okay.

THE COURT: Very good. In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. To those charges the Defendant has pled not guilty. That puts the burden of proof in this case on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you. The Defendant doesn't have anything to show to you. The State must prove the Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Yes.

THE COURT: Now, in this case the State has filed a notice to seek the death penalty as against Mr. Stanko, so that means that this case could possibly have two parts. In the first part the jury would be looking at all the facts and evidence and testimony presented to see, and find that evidence which the jury is convinced to be true, and then weigh that evidence against the State's burden as to whether or not the State has proved the Defendant guilty of the crimes charged beyond a reasonable doubt, for if, and only if the

jury, by a unanimous decision, everybody agrees that the State has proved the Defendant guilty beyond a reasonable doubt of murder do we even get to the second phase of the trial. Do you understand that?

A. Yes.

THE COURT: All right. Assume -- and we've got to talk about assumptions and things that may or may not happen so that we fully explore all the issues -- but assume the jury has well and truly deliberated in this case, and reached it's unanimous decision that the State has proved the Defendant guilty of the crime of murder beyond a reasonable doubt, and now we've gone into the second, or sentencing phase of the trial, the jury will have before it the decision to actually impose a sentence. That makes this case, or this type of case unique, because in all other cases the Judge imposes the sentence. In this case, this type of case, the jury actually decides the sentence, and the jury will have two choices, death or life in prison without the possibility of parole, and if I might say life, or the lawyers might say life, that's what we mean, life in prison without the possibility of parole. You understand that?

A. Yes sir.

THE COURT: Now, looking at that -- and when the jury is faced with those decisions and those choices, for a jury to even consider the death penalty the State has to prove, and

the jury would have to find, beyond a reasonable doubt, an aggravating circumstance. Now those are certain factors that the Court would charge to the jury. But to aggravate means to, you know, make worse, or to exacerbate the situation. But if the jury found one of those aggravating circumstance or factors then the jury could consider the death penalty. It's not automatic. The jury would never be charged, nor is never required to give the death sentence. The jury can impose life for a reason or no reason whatsoever. Just as an act of mercy the jury can impose life. You understand that?

A. Yes sir.

THE COURT: So, the jury has to find an aggravating circumstance just to even consider imposing the death penalty, and before the jury reaches a consensus as to a verdict the jury has the consider and look at any mitigating circumstances that the Court would charge to the jury, and again, those might be -- or would be factors that might lessen or reduce the charge or the punishment, and the jury would have to look at all those and consider all those before the jury imposed a sentence in this particular matter. Do you understand that?

A. Yes sir.

THE COURT: If you are part of the jury -- and again, we are talking about hypotheticals or possibilities -- if you are part of the jury and the jury, as part of it's deliberations, makes this unanimous decision -- because it has

to be unanimous to impose a death penalty -- unanimously decides to impose the death sentence, the jury has unanimously found an aggravating circumstance, and unanimously finds that the proper punishment, knowing there's two choices, picks the death penalty. If you are part of the jury then all the jury then, thereafter, since you are imposing a sentence, have to take pen in hand and sign your name to the form saying that, indeed, is my verdict, and I'm part of that unanimous verdict in this particular matter. Do you understand that?

A. Yes.

THE COURT: All right. Another part, or another job as a juror in this case, or as a juror in the case would be, if you came into the courtroom with any preconceived ideas of what the law is, or any aspects of the trial, or the punishment, or you had heard about the case in any way, or somebody told you something about it, or you thought you knew something about it, you've got to set all that aside. You have to compartmentalize that. You have to leave all that outside the courthouse. You can't bring them into the courtroom with you. You have to make your decision based solely and completely on the evidence that you've heard in this courtroom, and the law that the Court will give to you. Do you understand that?

A. I understand.

THE COURT: All right. You understand that would be

your job as a juror in this case?
A. Yes.
THE COURT: All right. And we'll talk about that again in just a second.
Since Friday have you read, listened, watched, looked up anything about this case?
A. No.
THE COURT: Have you talked to anybody about this case since Friday?
A. No.
THE COURT: Now, before you had the Court's instructions on Friday not to do that, beforehand, had you heard anything about this case, heard, listened to, watched anything, knew anything about this case?
A. Actually, I've known quite a bit about it from back in 2006.
THE COURT: Okay. And what is it that you can remember that you know about it?
A. I remember the first trial, and reading about it in the paper and watching it on T.V., and heard about this crime as well.
THE COURT: Okay. All right, now, do you remember what -- any verdict that might have been reached in that trial? Do you remember what that was?
A. Yes, I remember.

THE COURT: What was that?

A. It was guilty.

THE COURT: Okay. And do you remember any punishment that might have been associated with that?

A. Death penalty, I believe.

THE COURT: Okay. Now, when you heard all that, do you remember at that point in time forming or expressing any belief or opinion, when you heard all that? Do you remember doing that?

A. Yes.

THE COURT: What was that?

A. I -- I guess I felt that there was a -- it was -- guilty was the right decision.

THE COURT: All right. Based upon what you had heard and read at that point in time?

A. Uh huh **(indicating positive)** Uh huh **(indicating positive)**

THE COURT: All right. Now, understanding all that, do you understand that if you would be a juror in this particular case you would have to set all that aside; you can't bring any piece of that into this courtroom. You have to leave it all outside. You can't -- certainly can't talk about it to any other member of the jury, but even mentally, you can't use that to form your opinion about this particular case in any way. You can't use it to make your decision in this case in

any way. So as a juror that's what you would have to do. Do you understand that would be your job?

A. I understand.

THE COURT: All right. So then the question is, can you do that?

A. I think it would be difficulty.

THE COURT: All right. And I appreciate that. So, let me understand. The Court, as part of it's instructions to the jury, would tell the jury if you heard anything about this case, I'm telling you again, you can't have that as part of your decision-making process in this case in any way. You can't let anything that you think you know about the case, whether it's true or not true, affect your decision in this case. You must, you have to make your decision based solely upon what you hear in this courtroom and from no other source. Those would be the instructions of the Court.

Now, understanding those to be the instructions of the Court, and your juror oath would require you to do that, understanding that would be the case, again, can you do that, or are you telling me, Judge, I don't think I can do that?

A. I don't think I can.

THE COURT: All right. You believe that what you've heard about it in the past would ultimately affect how you would decide this case?

A. I'm afraid it would.

THE COURT: All right. Thank you, Ma'am.

Further questions from the State?

MR. HEMBREE: No questions from the State, Your Honor.

THE COURT: Questions from the Defense?

MS. WILLIAMS: None from the Defense, Your Honor.

THE COURT: All right. Thank you very much.

If you don't mind, Ma'am, if you would just take a moment and go with the deputy, and be right back with you. Okay.

Thank you, Ma'am.

A. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 459 MARKED COURT'S EXHIBIT NUMBER 50.)

THE COURT: Position of the State?

MR. HEMBREE: Ms. Morris is not qualified, Your Honor.

THE COURT: Defense.

MS. WILLIAMS: We would agree, Your Honor.

THE COURT: All right, the Court finds that Juror Number 459, Ms. Gloria Morris, is not qualified. I find that, based upon her answers, that she would not be able to perform her duties in accordance with the Court's instructions and her juror's oath in this matter. She is not qualified.

All right. Make sure that those are all the jurors that

are back there before we go, please. Okay.

DEPUTY SHERIFF: That's all.

THE COURT: That's all. Very good.

All right, counsel, the jurors, again, will report tomorrow morning at nine o'clock, and we will begin. Obviously y'all will be here ahead of time. If you've got any matters please feel free to bring them up.

Is there anything at this point in time from the State?

MR. HEMBREE: Nothing from the State, Your Honor?

THE COURT: Anything at this point in time from the Defense?

MR. DIGGS: No sir.

THE COURT: All right. Very good. Counsel, I'll see y'all tomorrow morning prior to nine o'clock. Thank you.

(THE FOLLOWING TAKES PLACE ON THE NEXT DAY, NOVEMBER 11, 2009.)

THE COURT: All right. We are on, as I see, panel eleven, so let's start off with the first one, Ms. Kyna Triplett.

CLERK OF COURT: Number one is not here, Judge.

THE COURT: Okay. Let's -- yes, go to the next one, the number two then.

RANDALL W. BROUGHTON, JUROR NUMBER 69, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Broughton, what we are going to do is, I'm going to talk to you about a few things, ask you some questions, and then the representatives of the State and Defense may have some questions for you. Okay.

A. Okay.

THE COURT: No right or wrong answers here, just looking just for direct, straight-forward honest answers to the questions. Okay. Very good, sir.

In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, the Defendant has pled not guilty to the charges, and that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent of the crimes which he is charged. Defendant doesn't have anything to prove to you or show to you. The State must prove the Defendant guilty beyond a reasonable doubt. You understand that?

A. Yes sir.

THE COURT: All right, sir. In this particular matter the State of South Carolina has filed notice to seek the death penalty. That means that the case can have, essentially, two parts. In the first part the jury would be looking at all the facts and evidence presented, find that evidence which convinces it of it's truth, and then weigh that against the

State's burden to prove the Defendant guilty beyond a reasonable doubt, because if, and only if the State proved the Defendant guilty of the crime of murder would we even go into the second phase. You understand that?

A. Yes.

THE COURT: Now in the second phase that's the -- we call it the sentencing phase, because the jury actually imposes the sentence. That makes it different from any other criminal case where the Judge normally imposes sentence. Here the jury imposes sentence, and there's two possibilities, the death penalty, life in prison without the possibility of parole. So if I might happen to say life, or the lawyers say life, that's what we mean, life in prison without the possibility of parole.

For a jury to consider the death penalty the State has to prove, and the jury has to find, beyond a reasonable doubt -- the jury has to find this unanimously -- an aggravating circumstance. Now that's a factor that the Court would -- there's a list of them the Court will charge the jury, and if the jury found one of those, unanimously found one of those, then the jury could consider the death penalty. Just because the jury finds an aggravating circumstance doesn't mean they have to find the death penalty. There's no -- nothing automatic. The jury is never required to find the death penalty. The jury can always impose life, for a

reason, or for no reason whatsoever. You understand that?
A. Yes.
THE COURT: All right, sir. Now, the jury also must, before they consider a sentence and impose a sentence, must look at any mitigating factors that the Court charges to the jury. That, again, would be a list that the Court would tell the jury, and the jury would have to look at those. Mitigate means to lessen or reduce the charge, reduce the punishment. You understand?
A. Yes.
THE COURT: All right, sir. Now, if the jury -- and you are part of the jury -- and obviously we are talking about hypotheticals here, things that may or may not happen -- but if you part of the jury and the jury has convicted the Defendant guilty of murder beyond a reasonable doubt, gone into the sentencing phase and the jury unanimously finds an aggravating circumstance, unanimously then finds that the death penalty is a proper option, since the jury is actually imposing the sentence the jury would then -- members of the jury would then have to, on a piece of paper, take pen in hand and sign their name to this verdict form indication that, indeed, is their unanimous verdict, and has imposed the death penalty in the case. You understand that?
A. Yes.
THE COURT: Another job that a jury would have is --

and all the members of the jury would be required -- is to come into the courtroom with any kind of -- without any kind of preconceived ideas of what the law is, what the -- any preconceived ideas about the possibilities of the sentences, they have to leave outside the courthouse anything that they thought they knew about the case, or somebody told them, or they heard about that, because you have to decide the case solely and completely based upon the facts and evidence presented in the courtroom, and from no other source. You understand that?

A. I do.

THE COURT: You understand that's the job of the jury?

A. Yes.

THE COURT: All right. And we'll talk about that more, but you understand, being a member of the jury, that's what you would be required to do. You understand that?

A. Right. So -- yes, I -- yes.

THE COURT: All right, sir. Okay. All right. Well, I'm -- we'll talk about that in just a second.

A. Okay.

THE COURT: All right. And you also are required to follow the law that the Court would give to you, even if you ultimately didn't -- or you agreed with it or disagreed you've got to follow the law that I would give to the jury, and without question. You understand that?

A. Yes.

THE COURT: All right. Now, since Friday -- did you read, listen, watch, look up anything about this case since Friday?

A. Tried not to. If it came on T.V. I turned it and, you know, yes, tried, you know ---

THE COURT: Okay.

A. ---Obviously if -- it's hard to stay away.

THE COURT: Completely.

A. Yes.

THE COURT: All right. Very good. And did you talk to anybody about this case since Friday?

A. Not specifically. Other jurors, if they got called or not. I knew a few people here that day, Friday, and they said they got called in or not called in, and things like that, but not the case itself.

THE COURT: Okay.

A. Right.

THE COURT: All right. Now, before Friday, had you read or heard, or knew anything about this case?

A. Yes.

THE COURT: Okay. And tell me -- and that -- there's nothing wrong with that. Tell me what that you can remember about it, or what you believe you know about it, as best you

can.
A. Well, most of the circumstances of the first trial, and the sentencing, and then the ---
THE COURT: Okay. So you were aware there was a previous ---
A. Henry Turner's -- right.
THE COURT: Okay. And do you remember what the result of that was?
A. The first trial?
THE COURT: Yes sir.
A. Guilty, and ---
THE COURT: And what was the sentence that was imposed?
A. ---And a death penalty.
THE COURT: All right, sir. Now, you understand that that's part of what you have to leave outside the courthouse. If you are a member of the jury you have to not let that affect, or impact your decision in this case in any way; you understand that?
A. Yes.
THE COURT: All right, sir. So my question to you is, you've heard something about it in the past. Can you set that aside? Can you come into this courtroom and not let that affect or impact your decision in any way?
A. Yes.
THE COURT: All right, sir. Now, and you understand

that that's obviously, you know, an important part of being fair and impartial in this case, is to treat this matter completely and totally separate from anything else that might have happened. You understand that?

A. Yes.

THE COURT: All right, sir. That this case stands on it's on, all alone; it cannot be affected by any other proceeding or anything else that happened; it stands by itself. You understand that?

A. Yes.

THE COURT: All right. Very good.

A. Can I ask a question?

THE COURT: Yes sir, please, be glad for you to.

A. Personal feelings. I worked at a golf shop when he was in shopping for, he said his son, and I kind of had some dealings a couple ---

THE COURT: With Mr. Turner?

A. No, Mr. Stanko.

THE COURT: Oh, with Mr. Stanko -- had come in.

A. Yes. Yes, just personal feelings of ---

THE COURT: Okay. So you worked at a golf store and, you know, Mr. Stanko came in and when this happened you recognized that you had had some personal dealings with him?

A. Yes.

THE COURT: All right, sir.

A. I mean, I -- you know, like not just talking. He picked some golf equipment out for things. He talked about his Jaguar, and didn't have a check to pay for everything and then said I'll be back in a few days and left a number, and I called that number and it wasn't valid, and then, like two or three weeks after that I -- is, you know, like the news and stuff, the accounts of it, and I recognized the face and this ---

THE COURT: Okay. So -- all right, so -- okay. Well, and I appreciate ---

A. I don't know if that -- you know, I tried to put that aside, but like ---

THE COURT: No. No sir, and you needed to -- obviously you know that's --

A. ---Personal ---

THE COURT: I appreciate that. You needed to bring that to the Court's attention. Okay, now, you've obviously had some personal contact with the Defendant. Again, that's something that you have to leave outside of the courthouse. Again, that is something that cannot, in any way, can't in any way affect your decision in this particular matter, so the question then, obviously is, can you do that?

A. I -- I -- yes, I think so, but I mean, of a personal -- like -- like thinking back over the circumstances that happened I kind of had some hard feelings of ---

THE COURT: You had some hard feelings at that -- at that point in time.

A. ---Hey, he's -- he was trying to -- you know, to get everything and not, you know ---

THE COURT: Okay. All right.

A. ---But yes is the answer, I think, is ---

THE COURT: Yes, that you could set that aside?

A. Correct.

THE COURT: All right. Very good. Just in general, do you know of any kind of personal, or political, or religious, or philosophical belief that you have that would prevent you in any way from being a fair and impartial juror, of any kind?

A. I don't -- I don't have any, no.

THE COURT: All right. Very good. All right. In this particular matter you obviously did circle Mr. Stanko as somebody that you knew as a potential witness in this case, and you've described that to me, correct?

A. Correct.

THE COURT: Other than that you didn't circle anybody else, right?

A. No one else, no.

THE COURT: All right. Very good. And as far as the category of juror which would best describe you you circled category (C), correct?

A. Correct.

THE COURT: All right. And so that we are both on the same page on that, category (C) is the juror that -- and again, we are just talking in hypotheticals, may happen or may not happen -- but you are on the jury, the jury, in the first part of the case, finds evidence they believe to be true. They find that the State has produced evidence, they find the Defendant guilty beyond a reasonable doubt of the crime of murder. So we are in the second phase, and in the second phase the juror (C), or category (C) says, I'm not going in with any kind of preconceived ideas of what the sentence will be in this case; I'm open to either on; I could impose either one, but I haven't made up my mind; what I'm going to hear is all the facts and evidence presented in the second phase; I'm going to listen to the law that the Court gives to me, and then along with my fellow jurors going to make a decision as to what the proper sentence in this matter is. Is that what you are saying?

A. Yes.

THE COURT: All right. And just to follow up on that, you are on a jury and you are in the sentencing phase. Based on the right set of facts and circumstances being presented to you, can you consider, and could you impose a life sentence? Under the right set of circumstances being presented to you?

A. Yes.

THE COURT: All right. Under the right set of facts

and circumstances being presented to you could you consider -- could you impose a death sentence under the right set of facts and circumstances being presented?

A. Yes, when -- yes.

THE COURT: All right. Very good. Now, if you are part of that unanimous jury that finds that the death penalty is proper unanimously -- that would have to be a unanimous decision -- can you then take pen in hand and sign your name to the verdict form indicating that, indeed, is the unanimous verdict of the jury in this case?

A. Yes sir.

THE COURT: All right. Thank you very much.

Further questions from the State.

MR. HEMBREE: Thank you, Your Honor.

Good morning, Mr. Broughton.

A. Hi.

BY MR. HEMBREE:

MR. HEMBREE: Hi. I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit. I, along with Fran Humphries, Deputy Solicitor ---

A. Hi.

MR. HEMBREE: ---And Jimmy Richardson, our Senior Assistant Solicitor, will be trying this case on behalf of the State. If you are selected on this jury we will get to spend a little bit of time together, so I appreciate your being here

this morning. Thank you for your willingness to serve.

Just a few questions. May be a bit repetitive, so I apologize if I tend to go over the same things twice.

One of the things that Judge John has asked you about involves your ability to not only consider but impose life or death, given the appropriate facts and circumstances. Just to talk a little bit about this process. There is a two-stage process. The Judge touched on that. The first stage of the trial is called the guilt phase sometimes. It's the trial phase. The question in that phase of the trial would be, did Mr. Stanko take the life of Henry Turner or not. That's the extent of the -- that's the -- that's all that the jury really has to decide in the first phase. If they decide that we move on to a second phase. There's a little break in between the two, a short time, before we start the second phase. The second phase is the sentencing phase. The jury will decide what Mr. Stanko's sentence would be. In South Carolina, before you can even consider a death penalty, you have to find that there was a statutory aggravating circumstance, and the Judge will tell you about that. He'll give you a list of them. You would have to find as a jury -- you know, if you decided there's no statutory aggravating circumstance then life without parole is a potential sentence. If there is a statutory aggravating circumstance then you kind of have -- the next part of that analysis would be, what's the sentence.

A. Okay.
Q. In South Carolina, under our law, you don't have to find for death. There's not a formula under which you have to find for death. In other words, you can find him guilty; you could find a statutory aggravating circumstance and you could still say that it's appropriate -- that the sentence of life is appropriate.
A. Okay.
Q. Are we clear on that?
A. Yes.
Q. Okay. I just want to make sure that you have an understanding of how that works. Okay.
A. Correct.
Q. It can be kind of confusing. But we have to overcome those first two hurdles for the jury to even consider that. Clear on that?
A. Okay. Yes.
Q. And I believe I've heard your testimony to be that you would be -- you would be open-minded, that you would be able to consider either a penalty of life without parole, or death, depending upon the evidence and the facts and circumstances, even if a statutory aggravating was proven. Is that a fair characterization of kind how you -- you are viewing this thing?
A. Yes.

Q. Okay. You testified that you know a little bit about it, saw something in the news, but you are able to set that aside and find your decision through the evidence that's presented in this courtroom?

A. That's correct.

Q. Okay. And I know you've had a -- that Mr. Stanko came in as a customer at some point, might of had a little -- at the time you had a -- I think you said you had sort of a little bit of a hard feeling, you know, when he didn't show back up, and took all your time and effort and you put these -- kind of looked -- looked like you were going to make a sale and then he didn't come back in.

A. Yes. I mean, more of like a fraudulent reasoning too. I mean, talking about his car being in the shop, the Jaguar, and doing a benefit tournament and -- or a fundraiser in Columbia, and things like that, that kind of -- you know, he was using that as a reason to -- and then left his checkbook in the Jaguar, and let me come back tomorrow and pay, and you know, things like that. Got little of a hard feeling there, so ---

Q. But you understand that if you were selected for this jury you've got to leave that outside, past experiences outside, and just judge Mr. Stanko based solely on the evidence ---

A. On the evidence.

Q. ---On the facts, the testimony that's presented in this courtroom. Can you do that for us, sir?
A. Yes.
MR. HEMBREE: Very good. That's all that we can ask of you. I appreciate your -- again, your willingness to serve.
Please ans -- answer any questions that Defense counsel might have for you.
A. Yes.
MR. HEMBREE: Thank you, sir.
A. Okay. Thanks.
THE COURT: All right, Mr. Diggs.
MR. DIGGS: May it please the Court.
THE COURT: Yes sir.
BY MR. DIGGS:
Q. Mr. Broughton, you were -- you feel like you were almost a victim of some kind of criminal activity committed by Mr. Stanko?
A. Yes.
Q. Yes. He was trying to steal golf clubs or equipment from the store ---
A. Right.
Q. ---Is that correct?
A. Right.
Q. All right. And so really you would be in a position to offer testimony about his general character ---

A. Yes.
Q. ---If need be?
A. Yes.
Q. Okay. And is there any doubt in your mind that there's not a mistaken identity here? You are pretty sure it was Mr. Stanko?
A. I'm sure.
Q. Okay. Do you feel like there's any obligation on your part to return a guilty verdict in this case?
A. No. It's not an obligation. No.
Q. Okay. Do you think that the community would expect you to return a guilty verdict?
A. No. I don't think there's any expectations, no.
Q. You don't -- you don't perceive any expectations in the community about whether he should be convicted or not?
A. No, I don't.
Q. In the -- you had up close and personal communication, interaction with Mr. Stanko. Do you recall the -- I know you've been pretty specific ---
A. Uh huh **(indicating positive)**
Q. ---Now, you know, in some of the details, pointing out some of the details, especially in the dialogue that occurred. Do you recall now, looking back on it, any other impressions that you might have picked up on at that time?
A. Well, not any more than what I'm making. I mean, just,

you know, well-dressed, and in the -- kind of the way -- on the cell phone three or four times, hey, I'm going to Columbia and we are raising money for such and such charity, and just --

Q. Okay. Did you ever think back now, upon reflection, that there wasn't -- something wasn't quite right about that encounter?

A. No, not -- not really. At the time I didn't. He had mentioned his son, and like Tiger Woods, and I'm in the golf business and you know, wanted all Niki, and that's -- you know, wanted to play golf with his son, and all that came across, and that was probably all not true, but, you know.

Q. We anticipate, initially, that the jury would be hearing testimony that would give rise to possibly four different verdicts, guilt -- you know, guilty, not guilty, not guilty by reason of insanity, or guilty but mentally ill. Now, after you had a chance to hear all of the evidence from the prosecution and from the defense, and hearing instructions from the Judge about what the law is with respect to each of those four possible verdicts, could you consider fairly each of the four verdicts and render a decision based on the evidence presented in the case?

A. Yes.

Q. All right. You don't have any particular aversion to any -- either of those four verdict forms?

A. I don't have any particular aversions, no.
Q. Okay. In other words, you could follow the law even if you felt like, I don't like this law, you know, I don't think that should be the law, but even having that feeling you could put it aside and follow what instructions the Judge gave you?
A. I could. Yes.
Q. Okay. Now, in the sentencing phase -- and let's assume now that there's been a guilty verdict returned, and you are having to consider what the punishment would be that you are going to vote for, either life imprisonment or the death penalty. As both the Judge and the Solicitor have pointed out, there has to also be an aggravating circumstance in the case, that accompanies the murder, okay, otherwise the State can't even seek the death penalty. So, having found murder beyond a reasonable doubt, and the aggravating circumstance that the State alleges, could you still consider a life imprisonment sentence?
A. Yes.
Q. Okay. And you appeared to be a little hesitant, but are you sure about that?
A. I'm sure. I thought you were going to ask me if -- could I consider the death sentence.
Q. Oh, okay. You were waiting for me ---
A. I was ---
Q. Okay.

A. ---Getting ahead of you there, but I could ---
Q. Would you ---
A. I could consider both.
Q. Okay. Could you consider both equally?
A. Yes.
Q. Depending on all of the evidence in the case.
A. Right. Life sentence with a lot of remorse, and ---
Q. Okay. I understand what ---
A. ---Hopefully -- hopeful -- yes.
Q. All right.

MR. DIGGS: That's all I have, and I appreciate your time this morning.

A. Okay. Okay.

THE COURT: Mr. Broughton, one matter that I need to cover with you, and I neglected to do so at the beginning. If, where -- if you are selected on the jury, and you are a part of this jury, because of the type case it would be you would be sequestered. That means that you would be at a hotel -- obviously is at the County's expense -- but you -- at a hotel, the meals would be provided, transported to and from the courthouse, or wherever we need to go, the -- you are not going home for the evening during the trial proceedings. You understand that?

A. Yes.

THE COURT: All right. And the best estimation we have

for that would be like seven to nine days. Now, understand that's a hardship. No question, that's a hardship on anybody, but is that such an undue hardship on you, or is there any kind of a health concern that a member of your family have or you have that this would cause it to be more than what would be a normal hardship? Not saying that you like it. I understand that.

A. Home life, no, no problem, and work-wise, I'm in the golf business. I run a golf course, and this is our busy time of the year so that would ---

THE COURT: Okay. What golf course is that?

A. Man-O-War Golf Course in Carolina Forest.

THE COURT: All right. Okay. And what is your particular job?

A. I'm Director of Golf. I just -- I run the golf operations.

THE COURT: For -- for the Man-O-War course?

A. For Man-O-War, yes.

THE COURT: Okay. Approximately how many employees that -- not people that -- I'm not particularly talking about people that maintain the course, but could help do the job that you actually do? Who else is there that could do that?

A. Well, I'm Director of golf. I have a head pro that we equally share responsibilities, and he could do that. I oversee the golf pro shop and the golf carts and the outside

staff, and the carts, not the golf course itself.

THE COURT: Okay. Just approximately, how long has the head pro been there, at Man-O-War?

A. Three years, and dealt with the company seven years. At my course three years.

THE COURT: Three years. Okay. Great. Thank you.

Anything on that particular matter from the State?

MR. HEMBREE: No, Your Honor.

THE COURT: From the Defense?

MR. DIGGS: No, Your Honor.

THE COURT: Very good.

Could you go with the deputy for just a few moments, sir. Thank you very much.

A. Okay. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 69 MARKED COURT'S EXHIBIT NUMBER 51.)

THE COURT: Position of the State?

MR. HEMBREE: Your Honor, although the juror answered the questions appropriate -- he indicated he could set aside his exposure to the media -- very -- had no problem with that, and also indicated he could set aside his personal experiences with Mr. Stanko, this is such a unique situation -- and there will be testimony in the penalty phase of this trial regarding

scams and conduct -- I mean very specific conduct that matches up so closely to the scam that Mr. Stanko apparently was trying to pull on Mr. Broughton that it is my belief that it may -- may be virtually impossible for him not to allow that experience to impact his verdict, and although I'm -- I respect his answers, he doesn't know what we are going to be presenting, and I do, and based on that I feel like he really is in a situation of being more of a witness than a juror, and to put him in that role would not be the -- I just don't think would protect the integrity of the process to the degree that we wish to protect it, and we would ask that he be disqualified.

THE COURT: All right.

Defense. Mr. Diggs.

MR. DIGGS: Your Honor, we would submit he's not qualified. He could well be a witness in the case.

THE COURT: I find that he's not qualified based upon his personal dealings with the Defendant in this particular case, and what could be presented by the parties, so I'm going to find him to be not qualified in this particular matter.

MR. HEMBREE: Thank you, Your Honor.

THE COURT: All right. Let's check and see if Ms. Triplett showed up, if not, just bring the next one.

KYNA TRIPLETT, JUROR NUMBER 634, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Triplett, what I'm going to do is, I'm going to talk about some things with you, ask you a few questions. The State may have some questions for you, and the Defense also. No right or wrong answers here. Just looking for direct, straight-forward, honest answers to the questions. Okay.

A. Okay.

THE COURT: Very good. In this particular matter, Ma'am, the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The Defendant has pled not guilty to those charges, so that would put, and does put the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant has nothing to show to you or prove to you. The State must prove the guilt of the Defendant beyond a reasonable doubt. You understand that?

A. Yes.

THE COURT: The State of South Carolina has filed notice to seek the death penalty in this case, therefore this case could have two parts. In the first part the jury would be looking at whether or not the State has produced sufficient evidence for the jury -- which the jury believes to be true, which the jury is convinced beyond a reasonable doubt that the

Defendant is guilty of the crimes charged, because if, and only if the jury finds the Defendant guilty beyond a reasonable doubt of the crime of murder could we even go into -- would we even proceed into the second phase of the trial. You understand that?

A. Yes.

THE COURT: Now, the second phase of the trial the jury, in this particular matter, would actually be imposing a sentence. That's what makes it different from any other case. The Judge normally imposes sentence. In this one the jury imposes the sentence, and there's two possibilities, death, or life in prison without the possibility of parole. When we talk about life that's what we mean, life in prison without the possibility of parole. So the jury has those two options before it in the second phase. To consider, to even come to the point of considering a death penalty the jury has to find what is called an aggravating circumstance, and those would be factors the Court would charge to the jury, and if the jury picked one of those, and found that aggravating circumstance by a unanimous decision, then the jury could consider the death penalty. The jury is never required -- and I would never charge the jury that they are required in any case to give the death penalty, because the jury can always give life for a reason, or for no reason whatsoever. Those will always be options and alternatives open to the jury.

The jury also must, before they impose any sentence in this case, consider and look at any mitigating circumstances that the Court would charge to the jury. Mitigate means to reduce or lessen the charge or the punishment. Now, in this particular matter, if you are part of the jury, and the jury unanimously finds that the sentence of death is the appropriate penalty in this particular matter then the jury, since they are imposing sentence, would have to take -- each member of the jury would have to take pen in hand and sign basically a verdict form, or form that indicates that, indeed, is their verdict, and that they were part of the unanimous jury that did that. You understand that?

A. Yes.

THE COURT: Part of your job, if you are a member of the jury, is to come in the courtroom with any -- without any kind of preconceived ideas of what the law is, what the process is, any preconceived ideas about possible sentences of any kind. If you heard about this case in the past, knew anything about it, somebody talked to you about it, you've got to completely set all of that aside. You cannot bring that into the courtroom. As a member of the jury you have to decide this case completely and solely based upon the facts and evidence presented in this courtroom, and from no other source. Do you understand that?

A. Yes.

THE COURT: All right. You also have to accept the law that the Court gives to you. If, for some reason you either agree with it or disagree with it you have to accept it and use the law that the Court gives to you. You understand that?

A. Yes.

THE COURT: Since we left Friday did you read, watch, listen to, look up anything about this case?

A. No.

THE COURT: Since Friday, have you talked to anybody about this particular case?

A. No.

THE COURT: Now, before Friday, before I gave the instructions not to do that, did you, or had you in the past, heard about this case, knew anything about it whatsoever?

A. No. I had no knowledge.

THE COURT: No knowledge of it. Okay. Very good. And in general, do you know of any kind of personal, political, religious, philosophical belief that would prevent you from being a fair and impartial juror in this case?

A. I have very strong feelings about capital punishment.

THE COURT: And what might those be, please Ma'am?

A. If someone is proven, beyond a reasonable doubt, that they are guilty, I believe in -- strongly in capital punishment, but I do not believe in our appeal system.

THE COURT: Okay.

A. I believe people, if they are convicted, should be done away with immediately.

THE COURT: All right, Ma'am. Now, understand that is a -- an opinion that you have, you understand that whatever the process after trial is has nothing to do with this particular case. You understand that? Whatever the appeal process, or whatever any process there might be after the trial is concluded cannot, in any way, affect your decision in this case. It can't affect it at all. Do you understand that?

A. I understand what you are saying. I would tell ---

THE COURT: Well then, I would have to follow up with that.

A. Uh huh **(indicating positive)**

THE COURT: Can you do that?

A. I don't believe I can, because I have very strong feelings about the appeal system.

THE COURT: All right. In that -- and I described the process, and let me talk about the first part of it with you first, as far as the -- being able to consider or impose a life sentence, consider or impose a death sentence. Just because someone is convicted of murder, and we are in the second phase and the jury even finds unanimously, beyond a reasonable doubt, an aggravating circumstance, that does not automatically mean -- there's no automatics here -- does not

mean the person would -- the jury imposes the death sentence, because the jury can impose a life sentence for any reason, no reason whatsoever. A jury could impose a life sentence as an act of mercy, in the face of aggravating circumstance. Do you understand that?

A. Yes.

THE COURT: Again, can you fairly consider that, and can you do that, if you have the right set of facts and circumstances?

A. I don't think so.

THE COURT: All right. Further questions from the State?

MR. HUMPHRIES: No.

Thank you, Ma'am.

THE COURT: Defense?

MR. DIGGS: No, Your Honor.

THE COURT: Thank you, Ma'am. Go to the deputy, please Ma'am. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 634 MARKED COURT'S EXHIBIT NUMBER 52.)

THE COURT: What's the position of the State?

MR. HUMPHRIES: She's not qualified, Judge.

THE COURT: Defense.

MR. DIGGS: Your Honor, we agree.

THE COURT: All right. The Judge would -- the Court would find that this particular juror is not qualified. She could not follow the Court's instructions or follow her juror's oath in this particular matter. She is not qualified.

All right, can we have Beverly Pittman, please.

MS. WILLIAMS: Your Honor, may we ---

THE COURT: Yes.

MS. WILLIAMS: Can we approach?

THE COURT: Certainly.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right. Ask Ms. Pittman to come in, please. Thank you.

BEVERLY B. PITTMAN, JUROR NUMBER 508, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Pittman, what we are going to do is, I'm going to be asking you some questions. I'm going to talk about some things. When we get done the representative of the State might have some questions, and the Defense also. Okay.

A. Right.

THE COURT: Now, what I'm looking for, and all we are looking for is just some kind of direct, straight-forward, honest answers to the questions asked. That's -- no right or

wrong answers here. Just need to know how you feel, or respond to the questions. Okay.

A. Okay.

THE COURT: Very good. In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, the Defendant has pled not guilty to those charges, so that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to show to you or prove to you. The State has to prove the guilt of the Defendant of the crimes charged beyond a reasonable doubt. You understand that?

A. Yes.

THE COURT: All right. Now in this particular matter the State has served notice to seek the death penalty as against Mr. Stanko. Now, that means this case could have potentially two parts. The first part would be, the jury would consider the facts and evidence presented in this matter, and find that evidence which convinces it of it's truth, and then weigh that evidence against the burden the State has to prove the Defendant guilty beyond a reasonable doubt. If, and only if the jury finds the Defendant guilty beyond a reasonable doubt of murder would we even go into the second phase of the trial. Do you understand that?

A. Yes.

THE COURT: In the second phase -- it's what we call the sentencing phase because the jury actually imposes a sentence in this matter. Usually, in all other cases, the Court, Judge, would impose a sentence. In this type of case the jury actually chooses or imposes the sentence. There's two choices, life in prison without the possibility of parole, or a death sentence. And if I might say life, or the lawyers say life, that's what we mean, life in prison without the possibility of parole.

For the jury to consider a death sentence in this particular matter the jury has to unanimously find, and it has to be proved to them by -- beyond a reasonable doubt, what's called an aggravating circumstance. Aggravate means to make worse, exacerbate the situation. But there would be factors that the Court will charge to the jury, and the jury, if they picked one and found that unanimously, could then consider the death penalty, because if they don't find an aggravating circumstance they can't even consider the death penalty as an option. The jury is never required -- I would not charge a jury that they are required in any circumstance to give a death sentence. They have the ability to consider it if they find an aggravating circumstance. The jury could give life for a reason, or for no reason whatsoever at any point in time. You understand that?

A. Yes.

THE COURT: The jury also has to look at any mitigating circumstance that the Court would charge to the jury. And mitigate means to lessen or reduce the charge or the punishment, and before the jury chose any option the jury had looked, and must look at those mitigating factors or circumstances that the Court would charge. You understand that?

A. Yes.

THE COURT: If you are part of the jury -- and obviously we are talking here in hypotheticals, things may happen, may not happen -- but if you are a part of the jury and the jury unanimously finds the Defendant guilty of the crime of murder and we are in the second phase and the jury unanimously finds an aggravating circumstance, and then the jury unanimously finds that the death sentence ought to be the proper sentence because the jury is imposing the sentence there's a form that each member of the jury has to take pen in hand and sign, and saying that's their unanimous verdict and they did vote -- unanimously to vote -- to impose the death penalty. You understand that?

A. Yes.

THE COURT: The job as a member of the jury -- and all this is part -- part of a juror's oath, and every member of the jury has to come into the courtroom without any kind of

preconceived ideas of what the law is, any preconceived biases toward any type of penalty, have to be open and be able to listen to it all, open to be able to consider and impose either one based upon the right set of facts and circumstances. If you heard about this case in the past, somebody told you something about it, you've got to disregard that, because you have to make your decision based solely on the facts and evidence presented in this courtroom and from no other source. Do you understand that?

A. Yes.

THE COURT: Let's go over a few questions. Since Friday did you read, listen, watch, look up anything about this case?

A. No.

THE COURT: Since Friday, did you talk to anybody about this case?

A. No.

THE COURT: Now, before Friday you didn't have any instructions to do that, so did you happen to hear anything about this case in the past, know anything about it, anything at all?

A. No.

THE COURT: All right. Very good. A question in general. Do you know of any kind of personal, political or religious or philosophical belief that you might have that

would keep you from being a fair and impartial juror?
A. No.
THE COURT: All right. Very good. On the witness list you did not circle anybody as knowing any of the witnesses, correct?
A. That's correct.
THE COURT: Very good. And as the type of category of juror you circled (C), correct?
A. Correct.
THE COURT: Let's go over that real briefly so we make sure we are on the same page what category (C) or juror (C) type is. Again, hypothetically speaking, you are on the jury, the jury has convicted the Defendant beyond a reasonable doubt of the crime of murder. We are in the second phase, you are going into the second phase, juror (C), or category (C) juror says, I'm not predisposed to any sentence, life or death, what I'm going to do is, I'm going to listen to all the facts and evidence presented in the second phase, I'm going to listen to the law that the Judge gives to me and then, with discussions with my fellow jurors, I'm going to come up with what I believe to be the right and just punishment in this particular matter. Is that what you are saying?
A. That's what I'm saying.
THE COURT: All right. Very good. So, with that just a little bit, if we are in the second phase or sentencing

phase can you fairly consider, and could you fairly, under the right set of facts and circumstances being presented, impose a life sentence?

A. Yes.

THE COURT: Also, based upon the right set of facts and circumstances could you consider, and could you impose a death sentence?

A. Yes.

THE COURT: And if you are part of that unanimous jury that imposes a death sentence could you then take pen in hand and sign that form indicating that, indeed, is your unanimous verdict in this matter?

A. Yes.

THE COURT: Very good. All right, the last thing I need to cover with you is, because of the type of case that it is once the jury is selected, we have the jury and we are going to start the trial, the jury in this case needs to be sequestered. Now, the trial -- the best estimate that we have for this trial, once it starts, would take seven, eight, nine days, something in that range. Being sequestered means that the jury will stay -- obviously this is all at the County expense -- at a hotel, the meals provided. Obviously you are transported to and from the courthouse by County officials. But obviously you are not going home during the trial because we have to make sure the jury -- there's no outside influences

and they -- regarding this particular case. So, I understand that's a hardship. No question about that, that's a hardship on anybody, but is that such an undue hardship on you, or is there any kind of health concern of any family member or yourself that would cause this to be such an undue hardship on you?

A. No.

THE COURT: All right. Thank you, Ma'am.

All right, questions by the State.

MR. HUMPHRIES: Good morning, Ms. Pittman. How are you?

A. Fine.

BY MR. HUMPHRIES:

MR. HUMPHRIES: I'm Fran Humphries. I'm the Deputy Solicitor. Solicitor Hembree, and Senior Solicitor Jimmy Richardson and I will be representing the State.

I just have a few questions.

Q. Actually, I've got a few things to say, and then I've got some questions.

This -- as the Judge has told you, this is a very unique process. It's unlike any other process in criminal law, in that, number one, it has two parts, and the Judge has talked to you a little bit about that. The first part is solely the question of whether or not the Defendant, Stephen Stanko, is guilty of murder. The second phase is the penalty phase. And

during that phase the jury will be proved evidence from the State called evidence in aggravation, basically things that are bad about the Defendant, his conduct and his character. The Defense will have an opportunity to present evidence in mitigation, things that may be good about the Defendant, or things that may lessen the level of culpability, and then the jurors, all twelve of them, would have to make a decision for either death or life, and this is the kind of juror we want. The juror, going into that second phase, after there has been -- already been a conviction for murder, we need a juror who can go into that second phase of the trial, that is, with a mind that's not made up as to whether the sentence should be death or life, but have an open mind.

Before the jurors can even consider a death verdict the State would have to prove to you beyond a reasonable doubt the existence of one or more aggravating circumstances. They are statutory, and the Judge will tell you what they are. So I want you to understand that you don't automatically get to consider death in the sentencing phase until that's done. And on the other hand, you will never be asked that question, life or death, unless we do that, so that's going to happen in every capital case in which the jury has an opportunity to sentence to death. There would be a conviction for murder, and there would be a finding of an aggravating circumstance. Okay. So what -- what we really need to know is this -- and

honestly, the Judge has told you, and we'll all tell you, there are no right or wrong answers. There are only truthful answers. People that are unqualified as jurors are not bad people. People that are qualified jurors aren't necessarily good people, but they are people who go into that second phase, and even after a finding of an aggravating circumstance in combination with a murder, then that they can vote fairly, consider and impose either a death verdict or a life verdict, depending on the facts and circumstance presented. And of course my question then you is, are you that type of juror?

A. I think so.

Q. And you don't come into this process with any predisposition about what you think the sentence should be?

A. No.

Q. Because you really don't know anything about this case?

A. No.

Q. And let me ask you this. I think the Judge mentioned this to you. If the jury, the collective jury, all twelve of you, were to decide that death would be the appropriate verdict you would be provided a jury form called "Recommendation of Death", okay. Now, it's not really -- it's not just a recommendation. Whatever the jury decides that's what this Court is going to do. Okay. And I think he's told you that this is unique because the jury sentences as opposed to the Judge. Very unique. If the jury collectively decides,

after the finding of an aggravating circumstance, that death is the appropriate verdict there will be a form provided by the Court to consider the recommendation of death, and it will have twelve signature lines. Obviously the significance in the twelve signature lines is, each juror would have to sign his name indicating his vote. Now, would the fact that you would have to sign your name to that form sentencing this Defendant to death, would that substantially impair you from your ability to fairly consider and impose the death penalty if you thought it was the right thing?

A. No.

Q. Let me ask you finally, can you be a fair and impartial juror both to the State of South Carolina and to the Defendant in this case?

A. Yes.

MR. HUMPHRIES: That's all I can ask of you, Ms. Pittman. Thank you, Ma'am.

THE COURT: All right, Mr. Diggs.

MR. DIGGS: May it please the Court, Your Honor.

THE COURT: Yes sir.

BY MR. DIGGS:

Q. Ms. Pittman, how are you this morning?

A. Fine, sir. Thank you.

Q. You attended C.P.C.C..

A. Yes.

Q. I was there at one time myself. I was looking -- we might have been there at the same time.

Let me ask you this, given -- the Solicitor mentioned the initial phase of the trial and what the jury is going to be asked to determine, you know, whether Mr. Stanko killed Mr. Turner, and it's a little bit beyond that. We expect the evidence will raise potentially four different verdict choices. One would be guilty, two would be not guilty, three, not guilty by reason of insanity, or guilty but mentally ill. So there could be a wider array of issues that would have to be determined at that first phase other than guilt or innocence. Okay. And what I want to ask you is, do you know of any reason why you could not fairly consider either of those four verdicts, if supported by evidence?

A. No.

Q. Okay. You would be willing to have an open mind about it, and make a decision based on the facts that you determined them to be, along with what the Court's instructions would be on the law?

A. Yes.

Q. Okay. You don't feel there's an obligation on your part to return a guilty verdict?

A. No.

Q. All right. And you have no obligation to the community at large to do so?

A. No.
Q. Okay. Now, in the second phase, in the event that you are on the jury and the jury determines that there is a -- that the Defendant is guilty, and that a aggravating circumstance exists in the case that would make it possible for the jury to consider a death penalty, do you have any opinion about leaning one direction over the other? In other words, would you lean more toward a life sentence, or would you lean more toward a death sentence, or do you think it would depend on the evidence in the case, and only at that time could you make a decision?
A. It would depend on the evidence. I would be able to --
-
Q. Okay. In every case?
A. Right.
MR. DIGGS: Okay. I don't believe I have anything further at this time, and I appreciate your time this morning.
A. Thank you.
THE COURT: All right, Ms. Pittman, if you don't mind, if you would go with the deputy for just a few moments. Thank you, Ma'am.
(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)
(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 508 MARKED COURT'S EXHIBIT NUMBER 53.)

THE COURT: State's position.

MR. HEMBREE: The jury is qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: She's qualified.

THE COURT: All right. The Court finds that this juror is qualified, that she can follow the Court's instructions and obey her juror's oath in this particular matter.

All right. The next one is Linda Orsimarsi.

LINDA J. ORSIMARSI, JUROR NUMBER 484, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Orsimarsi, what I'm going to do is, I'm going to talk to you about a few things. I'm going to have a few questions for you. Then after I'm done maybe the represent of the State or Defense might have some questions for you. Okay.

A. Uh huh **(indicating positive)**

THE COURT: All right. Now, one thing I'll ask for you is, the Court Reporter has to take down everything that we say, so I need for you to say yes or no because if she puts uh huh in there no -- and somebody is reading it they don't know what that means. All right.

A. Okay.

THE COURT: Very good. Thank you, Ma'am. All right. There aren't any right or wrong answers, okay. I'm just

looking for -- and everybody is just looking for direct, straight-forward, honest answers to the questions that we ask. Okay.

A. Uh huh **(indicating positive)**

THE COURT: Very good. Is that a yes?

A. Yes.

THE COURT: Thank you, Ma'am. Now, in this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, to that -- to those charges the Defendant has pled not guilty. Now that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you or show to you. The State has to prove the Defendant guilty of the crimes charged beyond a reasonable doubt. Do you understand that?

A. Yes.

THE COURT: Very good. Now in this particular matter the State has filed a notice to seek the death penalty in this particular case, so that means this case could have two parts. In the first part the jury would be considering all the facts and evidence presented, finding those -- finding the facts and evidence that they are convinced are true, and then weigh that evidence against the State's burden to prove the Defendant guilty of the crimes charged beyond a reasonable doubt. If,

and only if the jury finds the Defendant guilty unanimously -- everybody on the jury has to agree -- unanimously finds the Defendant guilty of the crime of murder, beyond a reasonable doubt, would we even get into the second phase of the trial. You understand that? Okay. Let me explain that to you. The first part of it is, it's a trial where the State has charged -- and they are saying, Mr. Stanko, we believe you have committed the crimes of murder and armed robbery, and here's our facts, here is our evidence, and the jury is listening to those facts and that evidence, and making a decision, State, did you prove the guilt of the Defendant of those two crimes beyond a reasonable doubt, based upon the facts and evidence you have presented in this case. That would be the jury's job in the first part of the trial. Do you understand that?

A. Yes.

THE COURT: All right. If the jury finds the Defendant guilty of the crime of murder, beyond a reasonable doubt, and as I said, it has to be a unanimous decision, because everybody has got to agree, but if the jury finds the Defendant guilty of the crime of murder beyond a reasonable doubt then we would proceed to the second phase of the trial. But if the jury doesn't find the Defendant guilty of the crime of murder then obviously we would not go to the second phase, or the penalty phase of the trial. Do you understand that?

A. Yes.

THE COURT: All right. Very good. Now, in the second phase of the trial, as I said, the penalty phase, or sentencing phase, the jury actually imposes a sentence. The jury decides the sentence in this particular matter. That makes it different from any other criminal case. In all other cases the Judge imposes sentence. In this case the jury picks the sentence, and there's two possibilities, death, or life in prison without the possibility of parole. And if I happen to say life, or the lawyers say life, that's what we mean, life in prison without the possibility of parole. Those are the two options that are available to the jury in the second phase of the trial.

Now, for the jury to consider imposing a death sentence the jury would have to find unanimously what is called an aggravating circumstance. Aggravate means to make worse, or exacerbate the situation. But those are statutory factors the Court would charge them, and if the jury picks one, and the jury unanimously finds that aggravating circumstance then they can consider the death penalty. It's not automatic. They are not required -- because the jury -- and I would never charge the jury -- never required to give the death sentence. That's an option open to the jury, but the jury is never required to do so even if you find an aggravating circumstance, because the jury can impose life for any reason,

or no reason whatsoever. You understand that?
A. Yes.
THE COURT: All right. The jury also must consider any mitigating circumstances that the Court charges to them before the jury decides on a sentence. Mitigate means to lessen or reduce the charge, reduce the punishment. The jury would have to consider those before the jury imposed a sentence in this matter. Do you understand that?
A. Yes.
THE COURT: All right. Very good. Now, if you are part of the jury -- and again, we are speaking of hypotheticals, things that may or may not happen -- but if you are part of the jury and the jury unanimously finds the Defendant guilty of the crime of murder, the jury unanimously finds an aggravating circumstance, and then the jury unanimously decides that the death penalty is the proper penalty to impose in this particular matter, because the jury is imposing the sentence each member of the jury has to take pen in hand and sign a form indicating that that, indeed, is the unanimous verdict of the jury, and the jury unanimously voted to impose the death penalty in this matter. Do you understand that?
A. Yes.
THE COURT: All right. Part of your job as a juror in this case would be to come into this courtroom without any

preconceived ideas of the law, without any preconceived ideas as to what penalty to impose. If you heard about the case, or knew anything about it in the past you have to set all that aside. Basically you leave all that outside the courthouse. You come into this courtroom, and when you take your juror's oath you say, I'm going to listen to the facts and evidence in this case, I'm going to follow the law that the Judge gives to me, and then and only then will I make my decision, and I will not be influenced by anything else, not any ideas I had, or beliefs I had before I came in the courtroom, not anything I might have heard about this case; I'm making my decisions solely and completely on the facts and evidence presented in this courtroom, and from no other source. That would be the juror's job. Do you understand that?

A. Yes.

THE COURT: All right. The question then is, can you do that? And before you answer it, that's the question that's -- this is sort of like a bright line rule here. You have to be able to say yes, Judge, I can do that, or no, Judge, I don't think I can do that.

A. No, I don't think I can do that.

THE COURT: And why would that be?

A. Just because of what I've heard.

THE COURT: Okay. And what is it that you've heard?

A. From the case prior, and -- and ---

THE COURT: And what was that?

A. Just that he had murdered his girlfriend and did some things to her daughter, and it just kind of -- that's what I kind of remember.

THE COURT: Okay. And are you telling me that -- and understanding that you would have to set that aside, it's -- the best example I can give to you is, you leave it outside the courthouse. You don't bring it into the courtroom or the jury room.

A. It's already there. I don't know how to get rid of it.

THE COURT: All right. All right. Do you believe that that would affect you -- when it comes time to make a decision would that affect how you would decide the case?

A. I think so.

THE COURT: All right.

Questions from the State?

MR. RICHARDSON: No questions, Your Honor.

THE COURT: Questions from the Defense?

MR. DIGGS: No, Your Honor.

THE COURT: All right, if you would go with the deputy for a few moments, Ma'am, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 484 MARKED COURT'S EXHIBIT NUMBER 54.)

THE COURT: State's position?

MR. RICHARDSON: Judge, she's not qualified.

THE COURT: Defense.

MS. WILLIAMS: Your Honor, we would agree.

THE COURT: The Court would find this juror not to be qualified in this particular matter, that it would be impossible for her to set aside any preconceived ideas that she had, and would not be able to follow her juror's oath in this particular matter.

All right, the next one is Ariane Joyce.

ARIANE E. JOYCE, JUROR NUMBER 347, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Joyce, what I'm going to do is, I'm going to go over some things with you. I'm going to be asking you some questions. When I get done asking the questions the representative of the State or the Defense may have some questions for you. Okay.

A. Okay.

THE COURT: All right. Very good. There are no right or wrong answers. Okay. What I'm looking for is just direct, straight-forward, honest answers to the questions that I ask. Okay. Very good.

In this particular matter, Ma'am, the State of South Carolina has charged the Defendant, Mr. Stanko, with the

crimes of murder and armed robbery. Now, the Defendant has pled not guilty to those charges, and so that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent, comes into the courtroom presumed innocent. The Defendant doesn't have anything to show to you, prove to you. The State has to prove the Defendant guilty beyond a reasonable doubt. You understand that?

A. Yes sir.

THE COURT: Very good. In this particular matter the State of South Carolina has filed a notice to seek the death penalty as against Mr. Stanko. That means this particular case could have two parts. The first part would be that the jury would be looking at all the facts and evidence presented, and finding that evidence which convinces it of it's truth, and then weigh that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt, because if, and only if the jury finds the Defendant guilty of the crime of murder, beyond a reasonable doubt, would we even go into the sentencing phase of the trial. You understand that?

A. Uh huh **(indicating positive)**

THE COURT: All right. Very good. And I have to ask that you say yes or no because the Court Reporter is taking all that down ---

A. Okay.

THE COURT: ---And when you type out uh huh nobody knows what that means. Okay.

A. Yes sir.

THE COURT: Thank you, Ma'am. In the second phase of the trial, for the jury to consider the death penalty as an option the jury would have to find unanimously what is called an aggravating circumstance. Aggravate means to make worse, or exacerbate the situation. Those are statutory factors that the Court would charge to the jury, and if the jury picks one unanimously then they have the ability to consider the death penalty, because if they don't pick an aggravating circumstance they can't even consider the death penalty. You understand that?

A. Yes.

THE COURT: Now, the jury is never required, and I would never charge the jury they are required, at any point in time, to give the death penalty. It's an option, but the jury is never required to do so. The jury can always impose life for a reason, or for no reason whatsoever. You understand that?

A. Yes sir.

THE COURT: Now, the jury also has to, before they reach a decision on the punishment, has to look at any mitigating circumstances that the Court would charge to the jury. Mitigate means to lessen, or reduce the charge, or the

punishment, and the jury would have to consider all those before the jury would impose a sentence. And we are talking in hypotheticals, but if you are part of the jury, and the jury, you know, has unanimously found the Defendant guilty of the crime of murder, and the jury has unanimously found an aggravating circumstance, and the jury unanimously decides that the death penalty is the appropriate penalty in this case, since the jury is actually imposing a sentence in this case that makes it different from any other criminal case. All other criminal cases the Judge imposes sentence. In this case the jury imposes the sentence. So since the jury is imposing the sentence, you know, every member of the jury has to take pen in hand and sign a form indicating yes, this is my unanimous verdict, and yes, I did unanimously vote with the other members of the jury to impose the death penalty. You understand that?

A. Yes. I understand.

THE COURT: All right. Now, under your juror's oath you have to -- every juror is required to come into the courtroom without any kind of preconceived ideas of what the law is, without any preconceived biases toward any kind of sentence. If you heard about the case in the past, or knew anything about the case you -- you say, I'm going to set that aside, I'm going to leave that outside the courtroom and I'm going to make my decision based upon what I hear in this

courtroom and from no other source. Do you understand that?
A. Yes sir.
THE COURT: Very good. Let me ask you a few questions, if I could. Since Friday have you read, looked up, talked about this case in any way?
A. No, I have not.
THE COURT: And you haven't talked to anybody about it?
A. No sir.
THE COURT: Very good. Now, before Friday, before you had the instructions not to do that, do you remember hearing anything about this case in any way, Defendant's name, or anything about this case?
A. The name sounds familiar. I think maybe -- I think I've heard it a couple of years ago. I'm not sure.
THE COURT: Okay.
A. And then I did see his name in the newspaper ---
THE COURT: Okay.
A. ---But didn't read further, so didn't bring to my attention.
THE COURT: All right. Very good. So basically what you are telling me is that the name rings a bell, but other than that ---
A. Yes.
THE COURT: ---You don't remember anything about it?
A. No sir.

THE COURT: All right. Very good. Now, this is kind of a -- just a general question. Do you know of any reason why -- do you have any kind of personal, or political, religious, philosophical belief that would -- you believe would keep you from being a fair and impartial juror?

A. No sir.

THE COURT: All right. On the witness list you didn't circle anybody?

A. Nobody sounds familiar.

THE COURT: Very good. And as to the type of category of juror you circled (C), correct?

A. Yes sir.

THE COURT: All right. And let me talk about that for just a moment, make sure we are on the same page as what juror (C) is. Again, we are talking about hypotheticals, may happen, may not happen. You are on the jury, the jury, in the first part of the -- first phase of the trial has unanimously decided the -- based on the evidence presented that, beyond a reasonable doubt, the Defendant is guilty of the crime of murder. Going into the second phase juror (C), or category (C) juror says, I don't have any predispositions as to the sentence either way, I'm going to keep an open mind, what I'm going to do is, I'm going to listen to all the facts and evidence presented in the second phase of the case ---

A. Uh huh **(indicating positive)**

THE COURT: ---I'm going to take the law that the Judge gives to me, apply it to the facts and evidence find to be true, and then reach a decision. Is that correct?

A. Yes sir. I have to know the facts

THE COURT: Very good. So let me just follow up with that just real quick. You are on the jury, we are in the second phase or the sentencing phase of the trial. Based on the right set of facts and circumstances being presented to you could you consider, and could you impose a life sentence, based on the right set of facts and circumstances being presented to you?

A. I could.

THE COURT: All right.

A. Yes.

THE COURT: Again, based upon the right set of facts and circumstances being presented to you could you consider -- could you impose a death sentence, based upon the right set of facts and circumstances being presented to you?

A. Yes, I could.

THE COURT: All right. Assume again you are on the jury and you unanimously voted, with the other members of the jury, that the death penalty is the proper penalty in this case can you then, as I described, take pen in hand and sign your name to the form indicating that that, indeed, is your unanimous verdict in this matter?

A. Yes, I could.

THE COURT: Thank you, Ma'am.

All right. The last thing I want to cover with you is, because of the nature of this case once the jury is selected -- we have all the jurors that are going to be on this particular case -- that jury panel is going to be sequestered. That means -- obviously at County expense -- they will be housed at a motel, meals are taken care of, provided for, you are transported to and from by County officials, but in the evening you are not going home. You are staying at motel.

Now, I understand -- there is no question that's a hardship.

A. Yes.

THE COURT: No question about that, absolutely. But, is that such an undue hardship on you -- is there some kind of health concern for you or a member of your family that that's such an undue hardship on you?

A. No health concern, but I do have a two year old little girl that I would miss.

THE COURT: Okay. Let's talk about that just -- and I completely understand that. Who would be caring for your little girl when you are not there?

A. Her father, or my parents, or his family.

THE COURT: Okay. They are local?

A. They are local.

THE COURT: So you ---

A. Miles down the road. Can't avoid them.

THE COURT: All right. Very good. All right. Good. Thank you, Ma'am.

Please answer any questions the State might have.

A. Yes sir.

THE COURT: Thank you.

MR. RICHARDSON: Hey, Ms. Joyce.

A. Hi.

BY MR. RICHARDSON:

MR. RICHARDSON: My name is Jimmy Richardson, and I'm an Assistant Solicitor here in Horry County. This is Fran Humphries, to all that -- and he's the Deputy, and Mr. Hembree is the elected Solicitor.

And I don't want to go into this too much, but this is -- it's a rarity, a death penalty case. We -- you know, every murder doesn't qualify for the death penalty case.

A. Yes sir.

Q. And just so that we are all on the same page -- of course Judge John has talked with you about this, but there's two parts to this trial.

A. Yes.

Q. The first part is simply whether or not Stephen Stanko killed Mr. Henry Turner, did he murder him, and if you, along with eleven others, find that he did that then we would go to

part two.
A. Right.
Q. And part two, that's what Judge John was talking with you about, mitigating circumstances and aggravating circumstances.
A. Yes.
Q. And at some point you would have to find that there was an aggravating circumstance -- and we'll give you that later. I'm just not at liberty to give you ---
A. I've got to know all the facts before I even consider.
Q. Right. Well, and what that is is kind of murder plus.
A. Right.
Q. Murder alone is not enough for a death penalty, but murder plus an aggravating circumstance, and then you get to decide, along with your fellow jurors, whether or not you want -- this qualifies for the death penalty first of all, and then do we give life, or do we give death ---
A. Yes.
Q. ---And there's no right answer.
A. No.
Q. And the Judge is going to tell you, there's never a circumstance where you would have to give the death penalty, but what we want to make sure is that you really are that type (C) juror, that I have no great heartburn with giving somebody life in prison, even if there is murder and aggravating

circumstances, and I'm that type person that I would have no great heartburn if proven murder plus an aggravating circumstance, giving the death penalty.

A. Depending on what it is, I could really do it.

Q. Okay. Well, have you given much consideration to the death penalty, or capital cases?

A. Never really thought about it.

Q. Okay. And it's like Judge John said, at some point you would have to sign and state, you know ---

A. Right.

Q. ---I am -- not only do I find, but now that I've found I'm actually signing this paperwork, one of twelve.

A. Right.

Q. Would that give you any concern if the other eleven jurors decided that it was the death penalty?

A. If I believe, myself, from the facts, that that's what he deserves then I'll sign.

Q. That's perfect. That's what we are looking for, wanting somebody to keep an open mind, that's not predisposed to say I'm going to only give life, regardless of what he does, or regardless of what he does I'm going to give death. We don't want that.

A. I mean, I don't like to, but if I think he deserves it then ---

MR. RICHARDSON: I understand. And I think that's all

the questions that I have for you.

I would like for you to answer any questions that the Defense might have for you. Okay.

A. Thank you.

MR. DIGGS: May it please the Court.

THE COURT: Yes sir, Mr. Diggs.

BY MR. DIGGS:

MR. DIGGS: Ms. Joyce, how are you this morning?

A. Good. How are you?

MR. DIGGS: My name if Bill Diggs, and this is Brana Williams, and we represent Mr. Stanko who is seated at the table here between us.

A. Uh huh **(indicating positive)**

Q. A couple of questions I want to follow up with, based on the questioning that was asked of you earlier. In this case, at the first part of the case ---

A. Yes.

Q. We anticipate that the evidence that's presented there is going to present the possibility of four verdicts.

A. Right.

Q. One would be guilty, one would be not guilty, one would be guilty -- or not guilty by reason of insanity, and one would be guilty but mentally ill.

A. Yes.

Q. Do you have any predisposed feelings that would prevent

you from fairly considering either of those four verdicts?
A. Not right now.
Q. Not right now?
A. No, not right now.
Q. Okay. You would be able to listen to the evidence and based on what your finding of the evidence was ---
A. I would have to before I made my mind.
Q. ---And then you would -- based on the law charged to you by the Judge you would vote ---
A. On what I ---
Q. ---Depending on what you felt the evidence showed?
A. Yes. Right.
Q. Okay. Now, do you believe that you have an obligation to the community to return a guilty verdict?
A. Not to return a guilty verdict, no.
Q. Okay. And do you believe that -- let's say you were chosen to sit on this jury and you returned a verdict of something other than guilty, do you believe you would have an obligation to go back into the community and explain that verdict?
A. No.
Q. Okay. And that would be because of what?
A. I just feel it would be my decision so ---
Q. Okay. Your decision to participate in this proceeding, and follow the law that's given to you ---

A. Right.
Q. ---Regardless of what anybody else might think?
A. Yes.
Q. Okay. Do you feel like you would be predisposed to give a certain verdict in a sentencing phase?
A. No.
Q. Do you prefer life over death, or vice versa, death over life?
A. Depending on what happened.
Q. Okay. You understand what we mean by mitigating circumstances, and aggravating circumstances?
A. No. Can you explain?
Q. Well, the State has to prove a murder ---
A. Right.
Q. ---And an aggravating circumstance. That's something that, by our statutory law, makes the murder a little -- makes that individual ---
A. More harsh.
Q. ---Worse.
A. Okay.
Q. Here you go. And even if the State proves that the Defendant always has an opportunity to introduce what's called mitigating evidence, things that might weigh in support of a life sentence ---
A. Okay.

Q. ---Notwithstanding this other evidence that you've already determined and found. So that's what we mean by mitigating evidence.

A. Okay.

Q. Would you be able to wait and listen to all of that evidence, from both sides ---

A. Yes.

Q. ---Before you made a decision as to what to do in this case?

A. Yes.

MR. DIGGS: Okay. Thank you very much for your time. I think that's all the questions I have.

A. Thank you.

THE COURT: Ms. Joyce, if you don't mind, if you would go with the deputy for a few moments, please. Thank you, Ma'am.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 347 MARKED COURT'S EXHIBIT NUMBER 55.)

THE COURT: State's position?

MR. RICHARDSON: Your Honor, she's qualified.

THE COURT: Defense.

MR. DIGGS: We agree.

THE COURT: The Court would find this juror to be

qualified, and would follow the Court's instructions and her juror's oath.

All right. We go to David Dimaio.

CLERK OF COURT: He was not here ---

THE COURT: He was not here earlier? Oh, not here Friday.

CLERK OF COURT: Yes sir.

MR. DIGGS: Your Honor, can I take a break for about two minutes?

CLERK OF COURT: And we do not know why.

THE COURT: All right. Would it be possible to continue on in your absence, or no. Ms. Williams is gone.

Oh there she is. Okay. She was right behind you.

MR. DIGGS: Your Honor, I'll be right back, probably before you even get him sworn.

THE COURT: All right. Very good. Okay. Very good. Good.

DAVID DIMAIO, JUROR NUMBER 157, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Dimaio, first, you weren't here on Friday, and you had been summoned to come here on Friday. What happened?

A. Actually I was traveling cross country from Tucson, Arizona, and I had called Thursday ---

THE COURT: Okay.

A. ---To find out if it would be all right if I was not --

-

THE COURT: Very good.

A. ---I was going to be late Friday.

THE COURT: Right. And the Clerk told you that you could come in whenever they instruct you to come in?

A. Yes sir.

THE COURT: Very good. All right, now, since you weren't here on Friday there's some questions that I'm going to need to ask of you, and if you need to respond to that question then, you know, just tell me one way or another. All right.

The witness list that you were provided, you didn't circle as far as knowing any of the potential witnesses in this case, correct?

A. I don't know them personally, but I've heard of a few of the names written down.

THE COURT: Okay. Can you look through there and tell me who it is that you might have heard of?

A. The last name, Stanko, and I believe it's Jeffrey.

THE COURT: Okay. But you've heard that name?

A. Yes sir.

THE COURT: All right. Very good. The fact that -- all right. Are you related by blood or marriage, close

personal friends, acquaintances of anybody bearing the last name Stanko?

A. No sir.

THE COURT: All right. Very good. Are you related by blood or marriage, close personal friends, acquaintances of the alleged victim in this matter, Henry Lee Turner?

A. No sir.

THE COURT: Very good. In this particular matter have you ever had any matters of any kind, you or members of your immediate family, have any matters of any kind handled by the Fifteenth Circuit Solicitor's Office? That's the prosecuting office covering Horry and Georgetown.

A. No.

THE COURT: All right. Are you related by blood or marriage to anybody employed at the Fifteenth Circuit Solicitor's Office?

A. No.

THE COURT: All right, Solicitor, if you could, stand and identify yourself, please sir.

MR. HEMBREE: Thank you, Judge John.

Hi, Mr. Dimaio. I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit. Seated next to me is Deputy Solicitor Fran Humphries, and Senior Assistant Solicitor Jimmy Richardson, our legal assistant Peggy Snowden will also be helping us on this case.

THE COURT: All right, and Mr. Diggs and Ms. Williams.

MR. DIGGS: Good morning. My name is Bill Diggs. I practice law in Myrtle Beach, and I also have a son, Parnell Diggs, who practices with me, however, his office is in Garden City.

MS. WILLIAMS: My name is Brana Williams, and I have an office here in Conway.

THE COURT: All right, sir, are you related by blood or marriage, close personal friends, acquaintances of, know any of these lawyers that have introduced themselves to you?

A. None.

THE COURT: All right. Very good. I'm going to go into a question now that -- whether or not you have any kind of personal, religious, philosophical belief that you would believe would prevent you from being a fair and impartial juror, and in that I'm going to go into the category of juror that you said best describes you, okay.

A. Yes sir.

THE COURT: You circled (A), correct?

A. That's correct.

THE COURT: All right, now, in circling (A) let me kind of go over that with you and make sure we are on the same page then. All right.

Again, we are talking about hypotheticals that may or may not happen here. If you are on the jury, and the jury in

this particular matter hears facts and evidence in the case, presented by the State, the State having the burden of proof to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent, doesn't have anything to prove to you, show to you. The State has to prove the Defendant guilty beyond a reasonable doubt. You understand that's the law?

A. Yes sir.

THE COURT: All right. So, on the jury, the jury hears all the facts and evidence, weighing that evidence, finding that evidence which convinces the jury of it's truth, and then decides that there is sufficient evidence to convict the Defendant beyond a reasonable doubt of the crime of murder. All right, so we are just assuming that has occurred.

Category (A) juror, or juror (A) says, I've been a part of this jury that has unanimously found the Defendant guilty of the crime of murder, before I hear any other facts and evidence in the sentencing phase, or the second phase of this trial to decide the sentence I'm already predisposed, without hearing anything, to give a death sentence, and would not fairly consider imposing a life sentence or the death sentence; I've already made up my mind before I heard all the facts and evidence on the sentencing phase, and even before I know the law that the Judge will charge to me about the sentencing phase. That's what juror (A) says. Is that the

type of juror you are?

A. Yes sir.

THE COURT: And why is that?

A. My mother was killed in a domestic dispute.

THE COURT: Okay.

A. My father killed her.

THE COURT: All right.

A. It was my belief from that point forward that he should have received the death sentence, and instead received a life sentence where he did die in prison.

THE COURT: Okay.

A. So I have a strong conviction for it, and that's my honest belief.

THE COURT: And I appreciate that, and certainly -- and I'm -- there's nothing at all wrong with that. When I asked for was straight-forward and honest answers, and I appreciate that, and that's what I wanted from you.

Further questions from the State?

MR. HEMBREE: No, Your Honor.

THE COURT: Further questions from the Defense?

MR. DIGGS: No sir.

THE COURT: Thank you, sir. I appreciate it very much. If you would go with the deputy for just a moment, please. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 157 MARKED COURT'S EXHIBIT NUMBER 56.)

THE COURT: State's position?

MR. HEMBREE: The juror is not qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: We agree.

THE COURT: All right, the Court would find that the juror is not qualified, he could not follow the Court's instructions nor obey his juror's oath in this particular matter.

TONJA L. LEIDIG, JUROR NUMBER 378, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Leidig ---

A. Yes sir.

THE COURT: ---What I'm going to do is, I am going to go over some things with you, and I'm going to be asking you some questions, and when I'm done the representatives of the State and the Defense may have some questions for you. Okay.

A. Yes sir.

THE COURT: All right. No right or wrong answers here, okay. I'm just looking for direct, straight-forward, honest answers to the questions asked. Okay, Ma'am?

A. Yes sir.

THE COURT: Thank you, Ma'am. In this particular case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The Defendant has pled not guilty to those charges so that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. He doesn't have anything to show to you or prove to you. The State has to prove the Defendant guilty beyond a reasonable doubt. You understand that?

A. Yes sir.

THE COURT: In this case the State has filed a notice to seek the death penalty as against Mr. Stanko in this case. That means we could have two parts to the trial. The first part the jury would consider the facts and evidence presented by the State to see if there are enough facts and evidence which the jury believes to convict the Defendant of the crimes charged beyond a reasonable doubt. If, and only if the jury convicted the Defendant beyond a reasonable doubt of the crime of murder would we even go into the second or sentencing phase. You understand that?

A. Yes sir.

THE COURT: Now, the sentencing phase -- and it's called that because the jury actually -- or the punishment phase, actually the jury imposes the sentence, and it makes a difference, because normally the Judge imposes sentence. In

this here the jury picks the sentence, and there's two choices, life in prison without the possibility of parole, or death penalty.

Now, for a juror to be qualified they have to be able to -- and again we are talking about hypotheticals that may happen or may not happen, but if the jury has convicted the Defendant of murder beyond a reasonable doubt, going into the second phase the jury has to -- and all the jurors have to set aside any beliefs they might have. They can't go into the second phase with any kind of predisposed ideas of what they believe about a type of penalty. They have to be able to fairly consider and impose a life sentence or fairly consider and impose a death sentence. They are open to either possibility. They have to hear all the facts and evidence in the second phase, take the law that the Court gives to them, and then, based upon their discussions, render a true and just verdict. Do you understand that?

A. Yes sir.

THE COURT: Now, in this particular matter you circled category (A). Okay. All right, now, so that we are on the same page here let me go over category (A) with you. Category (A) is a juror that says, I've been part of a jury that has unanimously found the defendant guilty of the crime of murder beyond a reasonable doubt, before we even get into the second phase or the sentencing phase I'm already predisposed to give

the death penalty, even before I hear the facts and circumstances to be presented in the second phase, even before I know the law that the Judge is going to give me about the second phase I'm already predisposed to give death sentence.

Now, is that what you are telling me the type of juror that you would be?

A. Pretty much, because I'm for the death penalty.

THE COURT: Okay.

A. I ---

THE COURT: Okay.

A. ---Rather than life imprisonment. If somebody commits murder I'm for the death penalty.

THE COURT: Okay. And you can certainly -- people can be for or against the death penalty, and that's -- that doesn't disqualify a person from being a juror. What you have to be able to do is, I have this opinion outside the courthouse, but in the courtroom I'm going to fairly and impartially consider both sentences, I'm not going to lean one way or the other, I'm going to listen to all the facts and evidence presented, I'm going to follow the law that the Judge gives me, and then, without reference to my belief outside the courthouse I'm going to make a decision based on the facts and evidence in the case. That's what the juror has to do, so my question to you is, can you do that?

A. I don't know if I could or not, because I am -- I'm

really pro death penalty as far as, if somebody commits murder we are accountable for what we do.

THE COURT: All right. Very good. And I appreciate that, Ma'am, and certainly don't take my questions in any way. I have to have ---

A. I know.

THE COURT: ---Straight-forward and honest answers from you, and I'm getting that, and I appreciate that very much.

Further questions from the State?

MR. HUMPHRIES: No, Your Honor.

THE COURT: From the Defense?

MR. DIGGS: No sir.

THE COURT: Very good, Ma'am. If you wouldn't mind going with the deputy for one moment, please. All right. Thank you, Ma'am.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 378 MARKED COURT'S EXHIBIT NUMBER 57.)

THE COURT: All right, position of the State.

MR. HUMPHRIES: She's not qualified.

THE COURT: Defense.

MR. DIGGS: We agree.

THE COURT: The juror -- the Court would find that the juror is not qualified, could not follow the Court's

instructions, nor the juror's oath.

MR. HUMPHRIES: Any particular reason we took her out of order?

THE COURT: Other than she walked in the door and said her name was Ms. Leidig.

CLERK OF COURT: I'm fixing to tell you.

THE COURT: Okay.

(DISCUSSION BETWEEN THE COURT AND THE CLERK OF COURT.)

THE COURT: Okay. Well, great. They just happened to call out her name. That's why they -- okay. That's why we did it.

JOYCE E. SPENGLER, JUROR NUMBER 597, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Spengler, what I'm going to do is, I'm going to go over some matters with you. I'm also going to ask some questions, and when we are done with that there might be some questions from the State and the Defense. Okay.

A. Okay.

THE COURT: All right. No right or wrong answers here. Looking for direct, straight-forward, honest answers from you. Okay.

A. All right.

THE COURT: Very good. The first thing I need to cover

with you, the State of South Carolina has set forth certain exemptions, and when a juror reaches the age of sixty-five they are able to claim an exemption. It's not an excusal. It is something -- a right granted to the juror that if they want to exercise that right, and want to be excused they can be, so it's a personal right to the juror.

A. Uh huh **(indicating positive)**

THE COURT: Since you would qualify for that, with your birthday being 12/24/39 -- you get cheated out on those birthday and Christmas presents, don't you?

A. How about that? I know.

THE COURT: They -- but since that's your birthday you have that option or you have that right, so I need to ask you, do you want to exercise and be given that exemption or do you want to waive it and give it up?

A. I will waive it.

THE COURT: All right. Thank you, Ma'am. I appreciate that very much.

In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, the Defendant has pled not guilty to those crimes. That puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent, doesn't have anything to prove to you or show to you. The State has

to prove the guilty of the Defendant beyond a reasonable doubt. You understand that?

A. Yes.

THE COURT: Very good. Now, in this matter the State has filed notice to seek the death penalty as against Mr. stanko. That means this case could potentially have two parts. The first part would be that the jury would listen to all of the facts and evidence in this case, and find that evidence which they believe to be true, and then weigh that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt. If, and only if the jury finds the Defendant guilty of the crime of murder, beyond a reasonable doubt, would we even go into the second or sentencing phase. You understand that?

A. Yes sir.

THE COURT: Now in the sentencing phase -- and it's called that because the jury imposes a sentence. There's two options, life in prison without the possibility of parole, or the death sentence. Those are the two options. And when we -- if I might happen to say life, or the lawyers might happen to say life that's what we mean, life in prison without the possibility of parole. Those are the two options.

Now, the jury, to even consider the death penalty, decides -- already has convicted the defendant of the crime of murder beyond a reasonable doubt, but also unanimously has to

find an aggravating circumstance. Now those are factors that the Court would charge to you, but aggravated general -- you know, that means to make worse, or to exacerbate the situation or the circumstances. So the jury would have to find this aggravating circumstance, or one or more, whatever, would have to find it even to consider the death penalty. The jury is never required to impose the death sentence, and I wouldn't charge the jury that, and the jury is not -- not required even if they find an aggravating circumstance, because the jury can impose life for a reason or no reason whatsoever at any time. Do you understand that?

A. Yes.

THE COURT: Now, the jury also has to fairly consider any mitigating circumstances that the Court would charge to the jury, and you know, mitigate means to lessen or reduce the charge, or reduce the punishment. Those factors, the jury would have to listen to those and consider those before they decided on a sentence in this particular matter. You understand that?

A. Yes.

THE COURT: Very good. If you are part of a jury -- and again, we are talking about hypotheticals here, they may or may not happen -- but if you are part of the jury and the jury has unanimously found the Defendant guilty of the crime of murder, and the Defendant **(sic)** has unanimously found an

aggravating circumstance, and then the jury unanimously decides that the death penalty is appropriate in this case, since the jury is actually imposing sentence each member of the jury then has to -- there's a form that the -- each juror has to sign indicating that that, indeed, is the unanimous verdict, and everybody did vote to impose the death penalty. You understand that?

Q. Yes.

THE COURT: All right. As a member of the jury it would be your duty and responsibility to come in the courtroom without any kind of predisposition, predisposed dispositions about the law, predisposed as to any kind of outcome, predisposed as to any sentence that might be appropriate. You have to leave all that outside the courthouse. If you heard anything about this case, knew anything about it at all, or thought you knew anything about it you've got to leave all that outside the courthouse because you've got to make your decision based solely and completely on the facts and evidence presented in the courtroom and from no other source. Do you understand that?

A. Yes.

THE COURT: And you also have to follow the law that the Court would give to you, that I would charge to the jury. Whether ultimately you agreed with it or you disagreed with it when you take your oath you say, Judge, I'm going to follow

the law that you give to me. You understand that?
A. Right.
THE COURT: Very good. Let me go over a few questions with you. Since Friday have you read, listened to, looked up anything about this case?
A. No, I have not.
THE COURT: All right. And since Friday did you talk to anybody about this case?
A. No.
THE COURT: Very good. Now, before Friday, and before you had the instructions not to do that, had you heard anything about this case in any way? Could you remember anything about it at all?
A. I may have seen a headline but -- in the newspaper or something, but that would be it.
THE COURT: Okay. Can you remember anything? Does it bring to mind anything right now?
A. No.
THE COURT: Very good. Okay. Now, this is more of a general type question. Do you know of any kind of personal or political, religious, philosophical belief that you might have that would keep you from being a fair and impartial juror in this case?
A. No, I don't.
THE COURT: Very good. The witness list -- you didn't

circle anybody on the witness list, correct?

A. Correct.

THE COURT: Very good. And as to the juror category you circled (C), correct?

A. Right.

THE COURT: Let's go over that briefly so we make sure we are on the same page. Category (C) juror, or juror (C) says, you know, again, hypothetically, I'm a member of the jury -- in the first part of the case, based on the evidence that's been presented I'm a part of this jury that's unanimously found the defendant guilty of the crime of murder, so now we are in the second phase. Going into the second phase I've got an open mind, I can fairly consider and impose either a life sentence or a death sentence, it's going to be based upon the facts and evidence that are presented in the second phase, and it's going to be based upon the law that the Judge will give to me, and after all of that then, with my fellow jurors, I'll reach a fair and just verdict in this matter. Is that right?

A. Correct.

THE COURT: Very good. To follow up with that just a little bit. We are in the sentencing phase, are you telling me that you can fairly consider, and could fairly impose, based upon the facts and circumstances that might be presented to you, a life sentence?

A. Yes.

THE COURT: Are you telling me that you could fairly consider, you could fairly impose, based upon the facts and circumstances that would be presented to you, a death sentence?

A. Yes.

THE COURT: If you are part of the jury that has unanimously found that the death sentence is the proper sentence could you then take pen in hand and sign your name to that form that indicates this, indeed, is the unanimous verdict of all the jurors in this case?

A. Yes, I could.

THE COURT: Thank you, Ma'am.

All right. The last thing that I want to cover with you is, because of the type of case this is we -- the jury is going to be sequestered in this particular matter. That means once the jury is selected, got them all together and the trial starts, then the jury will be together till the end of the trial. That means they will be -- obviously all this is at County's expense -- house at the hotel, meals provided for, you know, County officials transport you to and from the -- to the courthouse, you are not going home at night, and your access to family and friends is limited. It's not going to be, you know, completely cut off but it is limited. So, understanding that's a hardship, there is no question about

that, understand that completely ---

A. Yes.

THE COURT: ---But is that such an undue hardship on you, or undue hardship regarding, you know, the health of a family member or yourself?

A. No.

THE COURT: All right. Thank you, Ma'am.

Please answer any questions the State might have for you.

BY MR. HEMBREE:

MR. HEMBREE: Good morning, Ms. Spengler.

A. Good morning.

MR. HEMBREE: I'm Greg Hembree. I'm the Solicitor for Horry and Georgetown Counties. I, along with Deputy Solicitor Fran Humphries and Senior Assistant Solicitor Jimmy Richardson, will be trying this case on behalf of the State. Judge John has covered all the questions that I might have. I just want to thank you for your willingness to serve.

Please answer any questions Defense counsel has for you.

THE COURT: All right. Mr. Diggs or Ms. Williams. Mr. Diggs.

BY MR. DIGGS:

MR. DIGGS: May it please the Court.

THE COURT: Yes sir.

MR. DIGGS: How are you this morning?

A. I am fine. Thank you.

MR. DIGGS: Good. My name is Bill Diggs, and this is Brana Williams seated here at the counsel table with me, and we are representing Mr. Stanko who is seated here between us this morning.

In response to one of the Judge's questions you indicated you might have seen a headline about this case.

A. This particular case?

Q. About Mr. Stanko.

A. It was a while ago.

Q. Do you remember anything about what the headline referred to?

A. No, I do not.

Q. Okay. So you can't provide me any details about Mr. Stanko or any former history ---

A. No.

Q. ---Or any history involving him?

A. No. It was one of those things that you see a headline in the newspaper and you are not interested so you don't read it.

Q. Okay. I understand. Let me ask you this. Do you feel like knowing that there was -- I mean, at least there were headlines out there. Do you feel like there would be any obligation on your part to return a verdict of guilty on behalf of the community?

A. No.
Q. And you don't -- would it be fair to say that you don't believe the community -- that you owe an obligation to the community -- let me put it that way -- to return a verdict of guilty?
A. No. I owe an obligation to what I am told in here.
MR. DIGGS: That's perfect.
Q. Let me ask you, we would anticipate in this case, initially when the jury begins to hear evidence, that that evidence might raise the possibility of four different -- one of either four different verdicts. Could be plain guilty, could be not guilty, could be not guilty by reason of insanity, could be guilty but mentally ill. Do you have any bias in your mind against being able to fairly consider any of the foregoing verdicts?
A. No. No.
Q. Okay. You would be able to fairly weigh the evidence and, based on the Judge's instructions, come up with either of those four verdicts if required by that evidence?
A. Yes.
Q. Okay. And with respect to a sentencing decision let's assume that you are on the jury and the jury has returned a verdict of guilty, and the State has proven the aggravating circumstance that the Judge referred to that allows the jury then to proceed to making a decision about life or death, in

that situation do you think you would be predisposed to vote one way over the other?

A. No.

Q. You would be able to fairly consider all of the evidence in both verdicts?

A. That's correct.

Q. Okay. And would it be fair to say that you would want to hear all of the evidence before you were asked to make a decision about sentencing?

A. Yes.

Q. Of course. And that's something you would want to hear?

A. Definitely.

MR. DIGGS: Okay. Thank you very much. That's all I have at this time.

THE COURT: Thank you, Ma'am.

All right, Ms. Spengler, if you don't mind if you would go with the deputy for just a moment, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 597 MARKED COURT'S EXHIBIT NUMBER 58.)

THE COURT: On this particular juror, the State's position?

MR. HEMBREE: Ms. Spengler is qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: We believe so, Your Honor.

THE COURT: All right. I find that the juror is qualified.

(THE FOLLOWING TAKES PLACE AFTER A BREAK.)

MARY B. BATES, JUROR NUMBER 35, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Bates, let me -- what I'm going to do is go over some things with you. I'm going to have -- talk to you a little bit, have some questions, and what I'm looking for is just -- there's no right or wrong answers here. I just want some direct, straight-forward, honest answers to the questions. Okay.

A. Okay.

THE COURT: Very good, Ma'am. In this particular case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The Defendant has pled not guilty to the charges. Now that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you, show to you. The State has to prove the Defendant's guilt beyond a reasonable doubt. Do you understand that?

A. Yes.

THE COURT: Very good. In this particular case the State has filed a notice to seek the death penalty in this particular case. Now, that means there -- potentially have two parts to the trial. The first part of the trial is as -- the jury would look at all the facts and evidence presented to see whether or not the State has produced, in the minds of the jurors, sufficient evidence to prove the guilty of the Defendant of the crimes charged beyond a reasonable doubt, because if, and only if the jury convicts the Defendant of the crime of murder, beyond a reasonable doubt, would we even get into the second phase or the sentencing phase, the punishment phase of the trial. Do you understand that?

A. Yes.

THE COURT: Now, in the second phase the jurors in that phase, by their oath, have to go into the second phase of the trial without any predispositions of any kind, any beliefs as to the law, as to the type of punishment, if they knew anything about the case they've left that outside of the courthouse, so they are basically -- as far as the second phase what they -- what the juror's oath, and what the jurors are required to do is listen to all the facts and evidence presented in the courtroom, take the law that the Court gives to them, and then after fair and honest deliberation, reach a just verdict in this matter. Do you understand that?

A. Yes.

THE COURT: All right. Now, in this particular matter looking at the category of juror you have circled (B); is that correct?

A. Yes.

THE COURT: All right. Now let me go over that with you to make sure that we are on the same page here. All right. We are talking about hypotheticals, may or may not happen, but assume you are on the jury and in the first phase the jury has deliberated and reached an unanimous decision that the State has proved the guilty of the Defendant beyond a reasonable doubt of the crime of murder, and the jury has unanimously convicted the Defendant of that crime. You understand that?

A. Uh huh **(indicating positive)**

THE COURT: Now we are in the second phase. In the second phase, before we go into the second phase juror (B) says, before I've heard any of the facts and evidence that are going to be presented in this second phase, before I know the law that the Jude is going to give me about this second phase of the trial I'm already predisposed, in this case, to give a life sentence, I will not fairly consider nor could I fairly impose a death sentence in any case. Is that what you are telling me?

A. Yes.

THE COURT: All right. You are telling me that under -- there are no circumstances in which you could fairly consider or impose a death penalty. Is that right?

A. Right. I can tell you -- I mean it's just -- I can tell you why but ---

THE COURT: Okay. I'll be glad for you to.

A. It's just personal reasons.

THE COURT: Yes Ma'am.

A. I was involved in an accident in the early nineties and the result was the death of somebody, and I honestly, on my conscious -- every day I life with the guilt of having this man killed and I just can't have another death on my mind.

THE COURT: Very good. Thank you, Ma'am.

Further questions from the State?

MR. HEMBREE: No, thank you, Your Honor.

THE COURT: Further questions from the Defense? Ms. Williams?

MS. WILLIAMS: No sir.

THE COURT: All right. Thank you very much, Ma'am. If you would go with the deputy for just a moment, please, Ma'am. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 35 MARKED COURT'S EXHIBIT NUMBER 59.)

THE COURT: All right. State's position.

MR. HEMBREE: Your Honor, Ms. Bates is not qualified to serve on this jury.

THE COURT: All right. Defense.

MR. DIGGS: Your Honor, we agree, and I want to state for the record, we did not feel that it would be beneficial to try to rehabilitate her given that history that she stated on the record, and so that's why we didn't follow up.

THE COURT: All right. And if y'all will recall, I think she brought that to everyone's attention ---

MR. DIGGS: Yes sir.

THE COURT: ---That she had been involved in a vehicular accident in which she had caused the death of ---

MR. DIGGS: Yes sir.

THE COURT: ---Someone, and I understand, and I do find that she is not qualified in this particular case, and could not fairly follow the Court's instructions or -- so she's not qualified.

SIOBHAN M. STEVENS, JUROR NUMBER 608, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Stevens, what I'm going to do is, I'm going to talk to you a little bit about the matter, and I'm going to ask you some questions, and when I'm done the representatives of the State and the Defense may have some

questions for you. Okay.

A. Okay.

THE COURT: Very good. No right or wrong answers here, okay. I'm just looking for direct, straight-forward, honest answers from you to the questions that we might ask. Okay.

A. Okay.

THE COURT: Very good. Now, in this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. To those charges the Defendant has pled not guilty. Now that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you or show to you. The State has to prove the Defendant's guilt beyond a reasonable doubt. Do you understand that?

A. Yes.

THE COURT: Now, in this particular case the State has served notice to seek the death penalty as against Mr. Stanko. Now, for the jury to consider imposing a death sentence -- and let me cover that first. When I say impose a sentence, that's actually what's going to happen in this case. The jury will actually impose the sentence. That makes it different from any other type of case. In any other case the judge would impose sentence. In this type of case the jury actually

imposes a sentence, and there will be two choices, death or life in prison without the possibility of parole, and I -- if I might happen to say life, the lawyers might have to say life, that's what we mean, life in prison without the possibility of parole. You understand that?

A. Yes.

Q. For a jury to even consider imposing the death penalty the jury would have to unanimously find what is called an aggravating circumstance. Aggravate means to make worse, or exacerbate the situation. Now, there are certain statutory factors that the Judge would charge to the jury if they apply, and the jury would have to pick one of those and unanimously find an aggravating circumstance before they could even consider imposing the death penalty. And the Court would, obviously, never charge the jury that they are required to find the death penalty, and just because the jury finds an aggravating circumstance they are not required to impose the death penalty. The jury is never required to do that. The jury can impose life for a reason, or for no reason whatsoever.

The jury also must look at any mitigating circumstances that the Court would charge to the jury. Now, mitigate means to lessen, or reduce the charge, reduce the punishment. The jury would have to look at all those, any one that's charged by the Court, before the jury could impose any type of

sentence in this particular matter.

If we reach the second phase of the trial -- you know obviously we are talking about hypotheticals that could happen or not happen, but if we reach the second phase of the trial, and you are part of the jury and that means the jury has already found the Defendant guilty of the crime of murder beyond a reasonable doubt, and then the jury has unanimously found an aggravating circumstance, and then the jury unanimously finds that the death penalty should be the proper sentence imposed in this matter, if you are part of this jury each juror then has to take pen in hand and sign their name to a form indicating that that, indeed, is their unanimous verdict in this particular matter. Do you understand that?

A. Yes.

THE COURT: As a member of the jury, and by your oath you would have to come into this courtroom without any preconceived ideas of what the law is. You would have to set aside, if you had any, predisposition as to any type of sentence that might be appropriate. You have to set aside and leave outside of the courthouse anything that you might have heard or read, or think you know about this particular case, because your job as a juror is to look at the facts and evidence presented in this case and make your decision solely and completely based upon the facts and evidence presented in this case and from no other source. Do you understand that?

A. Yes.

THE COURT: You also have to take the law that the Court would charge to the jury. I would charge the jury, and you would have to take that law and apply it to the facts as you so find them to be. Whether ultimately you agreed with the law or you don't agree with law by your oath you say, I will accept the law the Judge gives me and apply it to the facts I find to be true in this matter. Do you understand that?

A. Yes.

THE COURT: Let me go over a few questions with you, Ma'am. Since Friday have you read, watched, looked up anything about this case?a

A. No, I have not.

THE COURT: Since Friday have you talked to anybody about this case?

A. No.

THE COURT: Now, before Friday, before you had those instructions not to do that, do you remember anything about this case, hearing about it, reading about it, listening, anything?

A. The only thing I remember is when I got my paperwork, the Summons, the name was like familiar, but no.

THE COURT: Okay. And other than the name, did that bring back any kind of -- any details or -- of any kind?

A. No.

THE COURT: All right. Very good. All right, now, in general -- this is more of a general question. Do you know of any kind of personal, political, religious, philosophical belief that you have that might keep you from being a fair and impartial juror in this case?

A. No.

THE COURT: All right. Regarding the information that we have given to you, gave you the witness list, and you didn't circle anybody on the witness list, correct?

A. Yes.

THE COURT: All right. And then as to the category of juror which best describes you you circled category (C); is that right?

A. Yes.

THE COURT: Now let's go over that just to make sure you and I are on the same page of what that means because, again, we are just talking about a hypothetical that may happen or may not. You are on the jury and in the first phase of the trial the jury has considered all the facts and evidence, and based upon the facts and evidence has unanimously decided that the State has proved the guilt of the Defendant of the crime of murder beyond a reasonable doubt, so we've gone into the second phase. Going into the second phase the category (C) juror, or type (C) juror says, I don't have

any predisposition as to the sentence, I'm open and I could impose a life sentence, I'm open and I could impose a death sentence, what I'm going to do is, I'm going to listen to all the facts and evidence presented in the second part of the trial, the sentencing phase, and then I'm going to listen to the law that the Judge gives to me, and then with my fellow jurors I'm going to come up with a just verdict in this matter. Is that what you are saying?

A. Yes.

THE COURT: Covering that just a little bit more. We are in the sentencing phase, you are part of the jury, are you telling me that, under the right set of facts and circumstances being presented to you you could fairly consider and impose a life sentence?

A. Yes.

THE COURT: Again, based upon the right set of facts and circumstances being presented to you could you consider, and could you impose a death sentence?

A. Yes.

THE COURT: Again, you are on the jury, the jury has unanimously found the Defendant guilty of the crime of murder, the jury has unanimously found an aggravating circumstance, and then the jury unanimously decides that the death penalty is the proper penalty in this particular case, being a part of that jury could you then take pen in hand and sign your name

to the form indicating that that, indeed, is your unanimous verdict in this particular matter?

A. Yes, I could.

THE COURT: All right. Because of the type of case that this is, once the jury is selected, all the jurors are together in the jury for this particular case, that jury is going to be sequestered. Now that means that once the trial starts that the jury, obviously at County's expense, is going to be housed at a motel, meals provided, and you are transported to and from the courthouse by County officials. You are not going home in the evening, you are staying with us during the trial. The best estimation that I could give to you as to the length of trial would be approximately seven, eight, even nine days. That would be the length of the trial. That is the best estimation I can give you. Understand, this is a hardship, no question about that's a hardship on anybody, but being sequestered, is that such an undue hardship on you, or is it -- does it cause any kind of health concern to a member of your family or to you being sequestered?

A. No.

THE COURT: All right. Thank you, Ma'am.

Please answer any questions that the State may have.

BY MR. HEMBREE:

MR. HEMBREE: Thank you, Your Honor.

Hi, Ms. Stevens.

A. Hello.

MR. HEMBREE: I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit. I, along with Deputy Solicitor Fran Humphries, and Senior Assistant Solicitor Jimmy Richardson, will be trying this case on behalf of the State of South Carolina. If you are selected on this jury and if you are found -- the process is this today. We are going through and qualifying jurors. Once they are qualified we will be selecting jurors out of that panel, so you may be found qualified. Doesn't necessarily mean that you will sit on this jury, but that's where we are at this stage.

Judge John covered all the questions I might have. I don't have anything additionally for you. I want to say I truly appreciate your willingness to serve, and if you would please give your attention to Defense counsel. They may have a few questions for you.

THE COURT: All right. Mr. Diggs. Ms. Williams.

BY MS. WILLIAMS:

MS. WILLIAMS: Just briefly. May it please the Court.

THE COURT: Yes Ma'am.

MS. WILLIAMS: Good morning. I still think it's morning, Ms. Stevens.

My name is Brana Williams and I, along with Bill Diggs, will be representing Mr. Stanko in this trial.

Just briefly. There are a couple of things I just want

to make sure that we understand, and if I ask some things that the Judge has already said I apologize. We just have to repeat things sometimes.

If you are selected to be a part of this jury this case will actually have -- could possibly have two different phases, okay. In the first part we are thinking, and we, being the Defense, think that there may be four possible verdicts that you, if you are part of the jury, might have to consider, guilty, not guilty, guilty but mentally ill, or not guilty by reason of insanity. What I want to ask you is if you know of anything that you may feel or believe now coming into this, that might cause you to not really be able to think about all four of those possibilities if they were presented to you.

A. No.

Q. Okay. Let me ask you -- you answered when the Judge asked you about the pretrial -- anything you may have known about Mr. Stanko and you said you just basically knew his name. Is that right?

A. That's correct.

Q. So you don't remember anything else?

A. No, just a little bit that was on the news before I came in here Friday.

Q. Can you tell me what little bit that was?

A. Just that the case was coming up. That's it.

Q. Do you remember getting ---
A. But I didn't know what it involved, what the details were.
Q. Okay. That's what I was getting to, and thank you for that. Let me just ask you this. Part of that, as I said, if you get qualified to be a part of this jury -- and the unqualified people aren't bad people. The qualified people aren't necessarily good people, but we have to have jurors who can consider both a death sentence and a life sentence, okay. And what I want to ask you is, do you think that, coming into this, that you maybe have a lean one way or the other, leaning toward a life sentence or leaning toward a death sentence?
A. No, I do not.
MS. WILLIAMS: Okay. That's all the questions that I have. Thank you.
THE COURT: All right. Ms. Stevens, if you don't mind if you could go with the deputy for a just a moment, please Ma'am.
A. Okay.
THE COURT: Thank you, Ma'am.
(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)
(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 608 MARKED COURT'S EXHIBIT NUMBER 60.)
THE COURT: State's position.

MR. HEMBREE: Ms. Stevens is qualified, Your Honor.

THE COURT: Defense.

MS. WILLIAMS: Your Honor, we believe that this juror is qualified.

THE COURT: All right. The Court finds that juror number 608, Ms. Stevens, is qualified, she would be able to follow the Court's instructions, follow the terms of her oath, and she is qualified.

All right. Could we have the next juror, please.

JIMMY L. WATSON, JUROR NUMBER 662, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Watson, what I'm going to do is, I'm going to talk to you about a few things, then I'm going to be asking you some questions, and then maybe the representative of the State and the Defense may have some questions for you. Okay. All right, sir.

Now, there aren't any right or wrong answers here. What I'm looking for -- from you is just some direct, straight-forward, honest answers to the questions that I ask. Okay.

A. **(NODS HEAD AFFIRMATIVE)**

THE COURT: All right, sir. Now, I need for you to answer out loud when asked a question because the Court Reporter has to take down everything, and we can't put on the record a shake of the heard or an uh huh or something like

that. Okay.

A. All right.

THE COURT: All right. Very good. Now, in this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The Defendant has pled not guilty to those charges. That puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove or show to you. You understand that?

A. Uh huh **(indicating positive)** Yes.

THE COURT: All right. Thank you, sir.

In this particular case the State has filed notice to seek the death penalty as against Mr. Stanko. Now that means that this case could have two possible parts. In the first part the jury is going to look at and listen to all the facts, evidence and testimony presented, find that evidence which convinces the jury that it's true, and then weigh that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt because if, and only if the jury finds the Defendant guilty beyond a reasonable doubt of the crimes charged would we go into the second phase, the penalty phase or the sentencing phase. Do you understand that?

A. Yes.

THE COURT: And the second phase is called the sentencing phase or penalty phase because the jury actually imposes the sentence. This is different than any other criminal case. In all other criminal cases the Judge imposes the sentence. In this case the jury will actually impose the sentence. The jury will have two choices. One is life in prison without the possibility of parole, the second is the death penalty. For the jury to impose the death penalty in a case the jury unanimously has to find what is called an aggravating circumstance. That means all the jurors find this statutory factor, some factors that the Court will charge to the jury, the jury will -- if they find it to be true, and everybody agrees, and they unanimously pick this aggravating circumstance then the jury can consider the imposition of the death penalty, because the jury is never required, and the Court would never tell the jury they are required in any way to give the death penalty. It's an option they have, but they are not required to do it, so, the jury can impose life for a reason, or no reason whatsoever.

Before imposing a sentence the jury must also consider any mitigating factors. Now mitigate means to lessen, or reduce the punishment or the charge, and the jury would have to look at those before the jury imposed any sentence in this particular matter.

If you are on the jury and -- and we are talking about

hypotheticals here that could happen, or may not happen, but for the purposes of the questions I -- we need to assume you are on the jury. You are part of the jury that has unanimously decided that the Defendant is guilty beyond a reasonable doubt of a crime of murder, and then in the second phase, as part of the jury, you had found an aggravating circumstance, unanimously, and then as part of the jury the jury has unanimously found that the death penalty is the appropriate penalty. Since the jury is actually imposing a sentence each member of the jury needs to take pen in hand and sign their name to a verdict form indicating that that, indeed, is their unanimous verdict in imposing the death penalty in this case. Do you understand that?

A. Yes.

THE COURT: As a member of the jury you would be required to come into this courtroom without any preconceived ideas of what the law is. If you had any predisposition as to a life sentence or a death sentence you have to leave that outside of the courthouse. You have to be able to fairly consider and have the ability to impose either a life sentence, without the possibility of parole, or a death sentence, based upon the facts and circumstances being presented.

If you knew anything about the case, or heard about the case beforehand, or thought you knew anything about the case,

you have to leave that outside the courthouse. You have to make your decision based upon the facts and evidence presented in this courtroom and from no other source. You understand that?

A. Yes.

THE COURT: And you have to follow the law that the Court would give to you, so the instructions that I would give to the jury as to the law you have to follow those. Whether ultimately you agreed with them or disagreed with them by your oath you say, Judge, I'm going to follow the law that you give to me. You understand that?

A. Yes.

THE COURT: Let's go over a few questions. Again, no right or wrong answers here. After Friday have you read, listened, looked up anything about this case?

A. No.

THE COURT: After Friday did you talk to anybody about this case?

A. No.

THE COURT: Now, before Friday, before you had those instructions not to do that, do you remember hearing anything about this case, or reading anything, anything that you can remember about it at all?

A. No.

THE COURT: All right. There's nothing at all that

seems familiar to you, about -- hearing about it in the past at all?

A. No.

THE COURT: All right. Very good. A question -- it's more of a general type question. Do you know of any kind of personal or political, or religious or philosophical belief that you have that would keep you from being a fair and impartial juror in this case?

A. No.

THE COURT: In this particular matter regarding the witness list you didn't circle anybody, correct?

A. No.

THE COURT: Is that right?

A. Right.

THE COURT: All right. And regarding the category of juror that best describes you you circled (C); is that right?

A. Right.

THE COURT: All right. Let me go over that with you and make sure we are on the same page about a (C) juror, or a category (C) juror. That's a juror that, in the first part of the trial they have looked at all the facts and evidence in the case, and based upon the facts and evidence, and the evidence they find to be true they believe, unanimously, all the jurors believe that the State has proved the guilt of the Defendant of the crime of murder beyond a reasonable doubt,

and the jury has convicted the Defendant of the crime of murder beyond a reasonable doubt, and now we are in the second phase. Before going into the second phase or the sentencing phase of the trial (C) -- the category (C) juror says, I don't have any preconceived ideas of what the punishment should be in this case, I am going to fairly listen to all the facts and evidence in this case, I have the ability to consider and to impose either a life sentence or a death sentence, what I'm going to do is listen to all the facts and evidence, I'm going to take the law that the Judge gives to me, going to discuss the case with the fellow jurors and then come up with a just verdict in this matter. Is that what you are telling me?

A. Yes.

THE COURT: All right, sir. Let's go over that just a little bit more. You are on the jury, we are in the sentencing phase of the trial, are you telling the Court that, under the right set of facts and circumstances being presented to you you can fairly consider, and could impose a life sentence?

A. Yes.

THE COURT: Again, based upon the right set of facts and circumstances being presented to you can you fairly consider, and could you impose a death sentence?

A. Yes.

THE COURT: If you are part of the jury that

unanimously considers and imposes a death sentence can you then take pen in hand and sign your name to the verdict form saying, this indeed is my unanimous verdict to impose the death penalty? Could you do that?

A. Yes.

THE COURT: All right, sir. Now, because of the type of case that this is, when the jury is selected for this particular case, at that point in time the jury would be sequestered. Now that means, obviously at County expense, all the jurors are staying at a hotel, the meals are provided, you are transported to and from by County officials, but you are not going home for the evening. Understand that that's a hardship, no question about it, but is being sequestered such an undue hardship on you, or is there any type of health concern for a member of your family or yourself that this would be an undue hardship on you?

A. No.

THE COURT: Very good, sir. Answer any questions the State might have for you, sir.

MR. HEMBREE: Thank you, Your Honor. May it please the Court?

THE COURT: Yes sir.

BY MR. HEMBREE:

MR. HEMBREE: Hi, Mr. Watson.

A. How are you doing?

MR. HEMBREE: I'm doing okay. How about you?

A. All right.

MR. HEMBREE: I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit, and I, along with Deputy Solicitor Fran Humphries, who is in the striped tie, and Senior Assistant Solicitor Jimmy Richardson will be representing the State of South Carolina in this case, and if you happen to get selected for this jury then we will be spending a little bit of time together.

One thing about this process that we are in now, we are in the process where we are merely qualifying jurors. We are kind of, you know, putting them through this questioning process to determine if they are qualified. Just because you are qualified doesn't necessarily mean that you will serve, but you might, so when you leave today you won't know until we actually select the jury which situation it will be.

I have really only one question. Judge John covered everything else that I would have asked about. I notice in your juror questionnaire that you are related to Maurice Jones. A. Yes.

Q. ---Works at the Horry County Police Department.

A. Right.

Q. He is your brother?

A. Right.

Q. And you know, I don't know, are y'all -- are y'all --

y'all stay pretty close?
A. Across town from each other.
Q. Okay. So you live in Loris?
A. Right.
Q. And he is -- you have not heard anything about this -- well, you said you hadn't heard anything at all about this case from the media sources.
A. No.
Q. You have not talked with Maurice about this case at all?
A. No. He wouldn't have mentioned it to me no way.
Q. Hasn't mentioned it to you. Got you. The fact that he happens to be working in law enforcement, would that have any effect on your ability to be fair and impartial in this case?
A. No.
Q. You can set that relation -- or at least -- not the relationship, but the fact that he works in the Police Department aside and make your judgment, your decision based solely on the evidence, the facts, the testimony that are presented in this courtroom?
A. Yes.
MR. HEMBREE: That's about all we can ask of you. I appreciate that. I thank you for your willingness to serve.
Defense counsel may have a couple of questions for you. Please give him your kind attention. Thank you.

THE COURT: All right. Mr. Diggs. Ms. Williams.

MR. DIGGS: May it please the Court.

THE COURT: Yes sir, Mr. Diggs.

BY MR. DIGGS:

MR. DIGGS: Mr. Watson, how are you?

A. I'm fine.

MR. DIGGS: Good. Good.

My name is Bill Diggs, and this is Brana Williams, and we are representing Mr. Stanko who is seated here at the table with us this afternoon in the courtroom.

A couple of questions I wanted to follow up on with you. As we sit here this afternoon do you have any preconceived opinions about Mr. Stanko's guilt or innocence?

A. No.

Q. Okay. And do you feel any obligation to the community to return a guilty verdict?

A. No.

Q. And would you be able to listen to the evidence that was presented in the case and return a verdict based on that evidence?

A. Yes.

Q. Now, let me tell you what I believe we are going to be called upon to do at the first phase of the trial, based on the evidence in the case. There may be as many as four possible verdicts in this case. The first would be guilty, or

not guilty, not guilty by reason of insanity, or guilty but mentally ill. Now, do you have any preconceived bias that would prevent you from considering fairly any of those verdicts that would be supported by the evidence?

A. No.

Q. Okay. And based on the evidence presented at the trial, and based on the law that's been given to you by the Judge, you could consider either of those four verdicts and render your decision in accordance therewith?

A. Yes.

Q. Okay. Let me move on to the sentencing phase. Let's suppose you are on the jury in the case, and a guilty verdict is reached, at which time the jury is going to have to decide what punishment to impose, and during that hearing on the punishment the State presents evidence of an aggravating circumstance, and you believe the circumstance has been proven beyond a reasonable doubt, do you understand that then, and only then would you be able to consider a death sentence?

A. Yes.

Q. All right. But even though there is an aggravating circumstance that's been proven to your satisfaction you could still consider a life imprisonment?

A. Repeat that question.

Q. Would you still be able ---

A. No, before that.

Q. ---Life imprisonment.
A. Before that.
THE COURT: The whole question. He wants you to repeat the whole question.
Q. If the State has proven the existence of an aggravating circumstance beyond a reasonable doubt, in conjunction with the guilt of the Defendant beyond a reasonable doubt, would you be able to consider fairly a life sentence in that case?
A. Yes.
Q. Okay. Because, would it be fair to say, there might be mitigating evidence that would weigh in favor of a life sentence. Do you understand what I'm saying?
A. Sort of.
Q. Okay. There may be some reason that you hear exists in this case about this Defendant that makes you decide you want to be merciful, given that circumstance. Does that make sense?
A. Yes.
Q. And would you be in agreement with me that you would want to wait and hear about that before you made a decision about whether or not to put him to death?
A. Yes.
Q. Would that be fair to say?
A. Yes.
Q. So you would want to hear all of the evidence in the

case, both in aggravation and mitigation ---

A. Yes.

Q. ---Of the punishment, before you made a decision?

A. Yes.

Q. Okay. And would you do that in this case?

A. Yes.

MR. DIGGS: Of course. Thank you very much.

That's all I have at this time.

THE COURT: All right. If you would, Mr. Watson, if you could just go with the deputy for just a few minutes, please. Thank you, sir.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 662 MARKED COURT'S EXHIBIT NUMBER 61.)

THE COURT: What's the State's position?

MR. HEMBREE: Mr. Watson is qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: We believe he is qualified.

THE COURT: All right, I find the juror to be qualified, he can follow the Court's instructions, and follow his juror's oath in this particular matter. He is qualified.

All right. Could we ask the next juror to come in, please.

TINA M. ANGELO, JUROR NUMBER 19,

being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Angelo, what I'm going to do is, I'm going to be asking you some questions. I'm going to talk to you about certain things and ask you some questions.

Now, you were not here with us on Friday, and the reason for that was?

A. I just kind of -- was misinformed in the information that was sent to me. First off, I thought that I would be contacted if I was needed.

THE COURT: Okay. So you thought that they would call you in when and if you were needed?

A. Yes sir.

THE COURT: All right. All right. Very good. All right. Well, since you weren't with us on Friday I'm going to have to go and ask you some additional questions, and first thing, you went through the potential or possible witnesses in this case, correct?

A. Yes sir.

THE COURT: And you didn't circle anybody as far as knowing any of them, right?

A. No.

THE COURT: All right. Very good. All right, now, are you related by blood or marriage, close personal friends, acquaintances of, know the Defendant, Stephen Stanko or his

family?
A. No.
THE COURT: Are you related by blood or marriage, close personal friends, acquaintances of, know the family of the alleged victim, Henry Lee Turner, in this matter?
A. No.
THE COURT: All right. Now, have you, or any member of your immediate family, ever had any matters of any kind handled in any way by the Fifteenth Circuit Solicitor's Office? That's the prosecuting office that covers Horry and Georgetown Counties?
A. No.
THE COURT: All right. Is any member of your immediate family or yourself related by blood or marriage, close personal friends of anybody employed at the Fifteenth Circuit Solicitor's Office?
A. No.
THE COURT: All right. Very good.
All right, Solicitor, if you would stand and identify yourself, and the members of your staff, please.
MR. HEMBREE: Thank you, Your Honor.
Hi, Ms. Angelo. I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit. Seated next to me is Fran Humphries. He's our Deputy Solicitor. On this side is Jimmy Richardson. He's our Senior, one of our Senior Assistant

Solicitors, and Peggy Snowden is one of our Legal Assistants that's going to be helping us on the case.

THE COURT: All right, Mr. Diggs and Ms. Williams.

MR. DIGGS: Your Honor.

My name is Bill Diggs, and I practice law in Myrtle Beach, and I also have a son who practices there with me. His office, however, is down at Garden City.

MS. WILLIAMS: My name is Brana Williams, and my office is here in Conway.

THE COURT: All right, Ma'am. Of the attorneys that have -- that have been introduced to you, are you related by blood or marriage, close personal friends, acquaintances of, know any of these lawyers?

A. No.

THE COURT: And regarding the private practices of law of Mr. Diggs and Ms. Williams have you ever been clients of theirs, either in the past or currently?

A. No.

THE COURT: All right. Very good. Do you know of any kind of personal, political, religious, philosophical belief that you might have that would prevent you from being a fair and impartial juror in this case?

A. No.

THE COURT: Okay. All right. Were you, in any prior employment, associated with law enforcement in any way?

A. No.

THE COURT: Do you have any current family members who are now in law enforcement, or were in the past in law enforcement?

A. My sister.

THE COURT: Okay. And your sister is ---

A. She was a paralegal in Ohio.

THE COURT: In Ohio?

A. Yes.

THE COURT: Okay. Very good. All right. Are you, or any member of your immediate family, a member of any kind of victim's rights or law enforcement support organizations? Let me give you some examples. This is not an exhaustive list of any kind, but just kind of give you an example of what I'm talking about, Mothers against Drunk Driving, Citizens Against Violent Crime, the South Carolina Law Enforcement Officers Association, South Carolina Sheriffs Association, just something of that ---

A. I believe my sister may be in Mothers Against Drunk Driving.

THE COURT: Okay. Very good. All right, now, this particular case, do you know of anything that you believe you have heard about this case in the past at all?

A. I have followed it some in the paper.

THE COURT: All right. And what do you remember about

it?

A. Just the -- what the -- what he's been accused of.

THE COURT: Okay. What I'm asking you is, can you tell me what you remember, what it is that you remember reading or hearing about? What was it?

A. The girlfriend being murdered, a man that was murdered in Murrells Inlet, I believe.

THE COURT: Okay. Do you remember anything else about it at all?

A. No. Just what I've read in the paper. I mean, I know I said that before but I ---

THE COURT: Okay.

A. ---Mean, verbatim, no, I can't like ---

THE COURT: No. No. That's what I'm saying. I understand that you have heard about it in the past. What I'm trying to find is, as you sit here today, right now, what is it that you can remember?

A. Just that the girlfriend was murdered ---

THE COURT: Okay. And other than that you don't remember any other details or anything else?

A. ---And the man in Murrells Inlet. Not -- not ---

THE COURT: Okay. Very good. All right, now, the next question I'm going to ask is either, you, yourself, or a member of your immediate family, ever been the victim of a crime? Now I'm not going to be asking you to give me any

details about that, but I want to know if you've ever been the victim of a crime, or a member of your immediate family have ever been the victim of a crime.

A. Like burglary.

THE COURT: Okay. And was that yourself or a family member?

A. Myself, and several family members.

THE COURT: Okay. All right, and when you heard about this case in the past, do you remember expressing any kind of opinion or belief to anybody before, forming any kind of opinion or belief when you heard about it?

A. Sure.

THE COURT: And what was that?

A. That I just thought that this man was a horrible person.

THE COURT: Okay. Very good. And let's talk about this more in general, and I'm going to have some more specific questions for you. Okay.

In this case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, to those charges he has pled not guilty. Now that means the Defendant is presumed innocent. The State of South Carolina must prove the Defendant guilty beyond a reasonable doubt. The Defendant doesn't have anything to prove to you or show to you. The State has to prove the

Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Yes.

THE COURT: All right. In this particular case the State has filed a notice to seek the death penalty. Now that means this case could have two parts. The first part would be, the jury would listen to the facts and evidence presented, and based upon the facts and evidence presented, that the jury finds to be true, they weigh that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt of the crimes charged because if, and only if the jury finds the Defendant guilty of the crime of murder, beyond a reasonable doubt, would we even go into the sentencing phase or the second phase of the trial. You understand that?

A. I believe so.

THE COURT: All right. What question do you ---

A. You've actually explained it pretty -- pretty good.

THE COURT: All right. Now, in the second phase -- and as I said, it's the sentencing phase or the penalty phase because the jury actually imposes the sentence or the penalty in this case. Normally, in all other criminal cases, the Judge imposes the sentence. In this type of case the jury picks the sentence, and there's two possibilities, life in prison without the possibility of parole, and the death sentence. As a member of the jury, if you are a member of the

jury, you've got to come into the proceedings with an open mind, and be able to fairly and impartially consider, and have the ability to impose either sentence, based upon the facts and circumstances presented. Do you understand that?

A. Yes.

THE COURT: All right. For a jury to consider a death penalty the State has to prove by -- beyond a reasonable doubt, and the jury has to unanimously find an aggravating circumstance. Now those are certain factors that the Court would charge to the jury, but for the jury to even consider a death penalty they have to unanimously first find this aggravating circumstance. You know, aggravate means to make worse, or exacerbate the situation. You understand that?

A. Yes.

THE COURT: The jury also must look at any mitigating circumstances that the Court would charge to the jury. The jury can impose life for a mitigating circumstance, or a jury can impose life for no reason whatsoever. The jury is never required -- even if they find an aggravating circumstance the jury is never required to impose a death sentence. Do you understand that?

A. Yes.

THE COURT: There's two options, and the jury can consider both of them, but they can only consider the death penalty unless they first unanimously find an aggravating

circumstance, and if they do that then both of the options are open to the jury to consider as to which to impose. Do you understand that?

A. Yes.

THE COURT: All right. Very good. If you are on the jury you have to -- well, before that. If you are on the jury and the jury unanimously, in the first part, finds the Defendant guilty of the crime of murder, and then in the second phase the jury unanimously finds an aggravating circumstance, and then the jury, after due deliberation, unanimously finds that the death penalty is the proper punishment in this case, if you are part of the jury, since you are actually imposing the sentence, each member of the jury has to take pen in hand and sign a form indicating that that, indeed, is the juror's unanimous verdict imposing the death penalty in this case. Do you understand that?

A. Yes.

THE COURT: If you are part of the jury you have to come into the courtroom without any kind of predisposition as to what the law is. If you had any ideas as to what a proper punishment might be you have to set that aside. You have to be open to be able to consider and impose either a life sentence or a death sentence based upon the facts and circumstances presented in that case. Do you understand that?

A. Yes.

THE COURT: You have to make sure that, if you heard anything about this in the case **(sic)**, or somebody told you anything about it in the past you set that aside -- you leave that outside the courthouse -- and you make your decision based solely and completely upon the facts and evidence you've heard in this case, and not from any other source. Do you understand that?

A. Yes.

THE COURT: All right. Let me ask you a few questions. You understand that you have to follow the law that the Court gives to you. Whether ultimately you agreed with it or disagreed with it when you take your oath you say, Judge, I'm going to follow the law that you give to me, and apply it to the facts and evidence I find to be true in this case. You understand that?

A. Yes.

THE COURT: And can you do that?

A. To the best of my ability, absolutely.

THE COURT: All right. Well, and I appreciate it, and I want you to be direct and straight-forward with me, but I have to know -- if you are going to be a member of the jury I have to know that when I give the instructions to the jury, when I give the law to the jury, that they will, without question, without hesitation, follow that law and apply it to the facts as the jury finds to be true in this case, so I'm

asking you, can you do that?

A. Yes.

THE COURT: All right. Very good. As I told you, anything that you think you know about the case, or you might have heard sometime in the past about it, you understand you have to set that aside, you have to leave that outside the courthouse, you can't bring it in the courtroom with you. When you make your decision in this case, or any decision in this case, it has to be based solely and completely on the evidence, testimony presented in the courtroom, not influenced by anything else. Do you understand that?

A. Yes.

THE COURT: Can you do that?

A. I believe it would be very hard for me to.

THE COURT: Okay. And why would that be?

A. I -- I -- just from reading it. I believe that -- I just think that he -- the case before should have already -- I don't think it should have even gotten to this point.

THE COURT: Okay. All right, from what you have read and heard in the past you believe that you couldn't set that aside, or keep that out of your mind when you were making a decision?

A. I would do my best to as I said. I know that's not the best answer but I would try to.

THE COURT: Okay. I understand that you would try to.

Again, what I have to have from you is an answer that, Judge, I know that as a member of the jury I'm going to be instructed that -- I'm basing my decision completely on the facts and evidence in this case, anything I thought I knew about this case in the past I've left that outside the courtroom, it's not part of this case, I won't consider it at all. That's what I need to know. Yes, Judge, I can do that, or no, I don't think I can do that.

A. I don't think I could do that.

THE COURT: All right. Thank you, Ma'am.

Further questions from the State?

MR. RICHARDSON: No questions, Your Honor.

THE COURT: Questions from the Defense?

MS. WILLIAMS: None from the Defense, Your Honor.

THE COURT: All right. Very good. Ma'am, if you wouldn't mind, if you would go with the deputy for a few moments, please Ma'am. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 19 MARKED COURT'S EXHIBIT NUMBER 62.)

THE COURT: All right. What's the State's position?

MR. RICHARDSON: She doesn't qualify, Your Honor.

THE COURT: Defense.

MR. DIGGS: She's not qualified.

THE COURT: All right. The Court would find the juror to be not qualified. I do -- she could not follow the Court's instructions nor her oath to be fair and impartial in this matter.

All right, could you ask Ms. Dupree to come in, please.

LINDA C. DUPREE, JUROR NUMBER 167, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, what I'm going to do, Ma'am, is, I'm going to talk to you a little bit about this matter. I'm going to ask you some questions. There aren't any right or wrong answers here. Okay.

A. Okay.

THE COURT: What I'm looking for from you is just some direct, straight-forward, honest answers to the questions that are asked. Okay.

A. Yes.

THE COURT: Very good. In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with crimes of murder and armed robbery. Now, the Defendant has pled not guilty to those charges. Now that puts the burden on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt of the crimes charged. The Defendant doesn't have anything to prove to you, to show to you. The State has to prove the guilt of the Defendant of the

crimes charged beyond a reasonable doubt. Do you understand that?

A. Yes sir.

THE COURT: Now, in this case the State of South Carolina has filed notice to seek the death penalty. That means this case could possibly have two parts. In the first part the jury is going to look at the facts and evidence presented, and to decide whether or not the State has proved the guilt of the Defendant beyond a reasonable doubt of the crimes charged because if, and only if the jury convicts the Defendant of the crime of murder, beyond a reasonable doubt, would we even get to the second -- or the second -- the sentencing phase of the trial. Do you understand that?

A. Yes sir.

THE COURT: All right, now, we call it the second phase, the penalty phase or the sentencing phase because the j jury actually imposes a sentence in this case. That's different from any other criminal case. In all other criminal cases the judge imposes sentence. In this type of case the jury actually imposes the sentence, and there's two types, or two possible penalties that can be invoked in this case. One is, life in prison without the possibility of parole, and the other is the death penalty. The jury must come into the courtroom and be able to fairly consider, and have the ability, based upon the right set of facts and circumstances,

to impose either penalty, not have any predisposition one way or another, not influenced one way or another, but to be open to being able to consider and impose either sentence. Do you understand that?

A. Yes sir.

THE COURT: All right. For a jury to impose a death penalty the jury must first find what is called an aggravating circumstance. That has to be -- come from the evidence. It would be a factor that the Court would charge the jury, and if the jury finds that to be true, it's been proved to the jury beyond a reasonable doubt, and the jury picks that aggravating factor or factors then the jury has the ability to consider the death penalty, because if the jury doesn't find an aggravating circumstance they don't even have the ability to consider the death penalty. Do you understand that?

A. Yes.

THE COURT: The jury must, before they impose any sentence, consider mitigating factors, or mitigating circumstances. Now those -- mitigating factors means to lessen, or reduce the punishment, or reduce the charge, and before the jury looks at anything the jury would have to look at those mitigating factors. Now, the jury is never required to impose the death penalty. The jury can, if they find an aggravating circumstance, impose the death penalty, but they are not required to. The jury can impose life because of a

mitigating circumstances or for no reason whatsoever the jury could impose life. Do you understand that?

A. Yes sir.

THE COURT: All right. Talking in hypotheticals here that may or may not happen. If you are on the jury and the jury has unanimously found the Defendant guilty of the crime of murder beyond a reasonable doubt, and the jury has found unanimously an aggravating circumstance, and then the jury deliberates and unanimously finds that the death penalty is the proper penalty in this case, if you are a member of the jury, and you participate in that, and found all that unanimously, at the end you would have to take -- since you are imposing a sentence here -- you have to take pen in hand and sign your name to a form that says, as part of this jury I have unanimously found to impose the death penalty in this case. Do you understand that?

A. Yes sir.

THE COURT: All right. As a member of the jury, under your oath, you need to come into the courtroom with any kind of preconception of what the law is. You cannot be predisposed to any type of sentence. If you heard about the case in any way you've got to set all that aside, you've got to leave that outside the courthouse, because you've got to base your decision solely and completely on the facts and evidence that are presented in this courtroom and from no

other source. Do you understand that?
A. Yes sir.
THE COURT: All right. Let me go over some questions with you. Since Friday have you read, listened, watched, looked up anything about this case?
A. No sir.
THE COURT: Since Friday have you talked to anybody about this case?
A. No.
THE COURT: All right, now, before Friday, and before you got the instructions not to do that do you remember hearing anything about this case in any way? Do you remember reading about it, hearing about it, watching it, seeing anything about this case?
A. Well, I did not remember reading anything about this case until right about the time we were sending our papers back.
THE COURT: Yes Ma'am.
A. There was an article in the paper and I thought, oh, I remember reading that. I just don't focus on those things too much ---
THE COURT: Sure.
A. ---And that was the last time I read anything about it.
THE COURT: Okay. Can you recall anything about what you read, anything that sticks out in your mind as you sit

here today that you can remember about what you read back then?

A. Nothing jumps out at me, other than that it was -- he was being charged with murder.

THE COURT: Okay. And basically, other than that, you can't remember any kind of details or anything like that?

A. Uh uh **(NODS NEGATIVE)**

THE COURT: Okay.

A. Yes. I just -- I kind of flip through the newspaper. I don't focus on anything too strongly.

THE COURT: Good. Good. Thank you, Ma'am.

All right. This is more -- this is more of a general question. Do you know of any kind of personal or political, or religious or philosophical belief that you might have that would keep you from being a fair and impartial juror in this case?

A. No sir.

THE COURT: All right. Going back to when you remember seeing something in the paper, do you remember at that point in time forming or expressing any kind of belief of any kind, or opinion about the case in any way?

A. No. Because there's so much of that that goes on.

THE COURT: Very good. All right. Good. Can you -- and as part of your oath you would be required to do so, but I need to ask you. Can you follow the law that the Court would

give to you. Whether ultimately you agreed with it or disagreed with it under your oath you say, when I hear the law from the Judge I am going to follow that law. Can you do that?

A. Yes.

THE COURT: Very good. Looking at the paperwork you didn't circle any of the witnesses that are potentially witnesses in this case. You didn't circle any of them, right?

A. Right.

THE COURT: Very good. And as to a category of juror you circled category (C), correct?

A. Yes sir.

THE COURT: All right. Now, let me go over that briefly with you, make sure we are on the same page here. Category (C) says, I'm a member of the jury, and the first part of the trial, based upon the facts and evidence presented the jury has deliberated and found the Defendant guilty of the crime charged of murder beyond a reasonable doubt based upon those facts and evidence. Now, going into the second phase, the sentencing phase, I don't have any predisposition as to the sentence at all. I'm not leaning to life. I'm not leaning to death. What I'm going to do is, I'm going to hear all the facts and evidence presented in the second phase, I'm going to listen to the law that the Judge gives to me, and then with my fellow jurors I'm going to reach a just verdict

in this matter. Is that what you are telling me?
A. Yes sir.
THE COURT: All right. Very good, Ma'am. Following up on that just real briefly. You are a juror in the sentencing phase of the trial, based upon the right set of facts and circumstances being presented to you are you telling me that you can fairly consider and impose a life sentence?
A. Yes.
THE COURT: Again, based upon the right set of facts and circumstances being presented to you can you fairly consider and impose the death sentence?
A. Yes.
THE COURT: If you are a member of the jury and the jury unanimously votes to impose the death penalty in the case can you then, as I indicated, take pen in hand, sign your name to the form indicating that, indeed, is your unanimous verdict in this matter?
A. Yes sir.
THE COURT: All right, now, the last thing I need to cover with you. Because of the nature of this case the jury in this case, once they are selected, once we get all the jurors selected, would be sequestered. Now that means during the trial you would be with us, all this at the County expense. You would be housed at a motel, the meals would be provided and you would be transported by County officials to

and from the courthouse, but you wouldn't be going home in the evening. You would have contact with your family but it's limited. Okay. So understanding, this is a hardship, no question about that. It's a hardship on anybody, but is that such an undue hardship on you, or is there any health concern of a family member or yourself that this would cause an undue hardship on?

A. No. No.

THE COURT: All right. Thank you, Ma'am.

Please answer any questions the State might have for you.

BY MR. HEMBREE:

MR. HEMBREE: Good afternoon, Ms. Dupree.

A. Hi.

MR. HEMBREE: Hi. I'm Greg Hembree. I'm the Solicitor for Horry and Georgetown Counties.

A. Okay.

MR. HEMBREE: At the table with me is Deputy Solicitor Fran Humphries, and Senior Assistant Solicitor Jimmy Richardson. The three of us will be representing the State on this case. We will present the evidence on behalf of the State, so if you happen to be selected as a juror in this case we will be spending a little bit of time with you.

One thing about this process we are going through, just for clarification. Today we are going through a qualification

process. It doesn't mean -- we aren't going to have -- if you are found to be qualified as a juror in this case it doesn't mean that you will necessarily be selected. We will actually do a selection later in the week, but -- so when you walk out the door today you are not in -- you might find out -- you will find out whether you are qualified or not, but you won't know if you are on the jury yet or not, so you will find out -- we will find out in a day or two about that.

My -- I really -- Judge John covered nearly every single question that I had for you. I only really have one. I noted in your juror questionnaire that -- I believe your husband is retired Philadelphia police officer. Is that correct?

A. Yes. That was after he got out of Vietnam.

Q. Okay.

A. When he came home from Vietnam, so that was around Seventy -- he had only worked for two years, about two years. He wasn't -- he didn't retire from there.

Q. Understood. He -- I've got you now.

A. He worked for Pennsylvania Department of Transportation.

Q. Okay. I saw that on there too, but I wanted -- I think I saw that on there ---

A. Yes.

Q. ---But I saw the police officer, and I wasn't sure, but his career was not in law enforcement.

A. No. No.
Q. He had a few years at that. His career was in the Department of Transportation. So nothing about his experience in law enforcement that would affect your ability to be a fair and impartial juror in this case?
A. No. No.
MR. HEMBREE: All right. That's -- those are all the questions I have. Defense counsel may have a couple of questions for you. Please give them your kind attention.
THE COURT: All right, Mr. Diggs.
MR. DIGGS: May it please the Court.
THE COURT: Yes sir.
BY MR. DIGGS:
MR. DIGGS: Ms. Dupree, how are you?
A. I'm good. How are you?
MR. DIGGS: Pretty good. Pretty good.
We introduced ourselves on Friday, but again, I'm Bill Diggs, and this is Brana Williams.
A. Hi.
MR. DIGGS: We are representing Mr. Stanko and he is seated here at the table with us this afternoon.
Do you remember anything else about the article that you read in the newspaper? You mentioned that he was -- you knew he was charged with a murder. I believe that was something that you remembered.

A. Yes.
Q. Do you remember if there was any other trial?
A. I don't think so.
Q. Okay. You don't -- okay. Good. Let me ask you this. Do you believe that you have an obligation in this situation to return a verdict of guilty with respect to the community? Do you owe the community an obligation, for example, to return a guilty verdict?
A. No.
Q. Okay. And that's good, because that would be contrary to everything the Judge just went over with you, correct?
A. Uh huh **(indicating positive)** Yes.
Q. And let me ask you this, with respect to the actual trial of the case, and the presentation of evidence, we believe that the evidence will likely give rise to as many as four possible verdicts in the case, a verdict of guilty, a verdict of not guilty, a verdict of guilty but mentally ill, or not guilty by reason of insanity. And what I want to ask you is if you have any personal feelings about either of those verdicts that would prevent you from fairly considering them if supported by the evidence?
A. No.
Q. Okay. With respect to the sentencing, understand that, as the Judge has explained, before we get to a sentencing proceeding there has to be a finding of guilt, and before you

can consider a death penalty there has to be a finding of an aggravating circumstance.

A. Uh huh **(indicating positive)**

Q. Then, and only then, do we get to the sentencing decision of death or life imprisonment. If we were to reach that point do you believe you would be leaning toward either particular sentence, or would you fairly consider each of them based on the evidence in the case?

A. Could you say that again, please sir?

Q. Do you believe that you would lean toward the death penalty, or lean toward life imprisonment?

A. I can't tell you that right now.

Q. Okay. It would depend on the evidence in the case?

A. Yes.

Q. And you would certainly want to hear all of the evidence, whether aggravating or in mitigation, of the punishment to be imposed, correct?

A. Yes.

Q. And you wouldn't be predisposed to vote either way until you had heard all the evidence?

A. That's right.

MR. DIGGS: Okay. That is really all I have for this afternoon, and I appreciate your time.

A. You too.

THE COURT: All right, Ms. Dupree, if you don't mind if

you would just go with the deputy for a few moments, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 167 MARKED COURT'S EXHIBIT NUMBER 63.)

THE COURT: All right, what's the State's position?

MR. HEMBREE: Ms. Dupree is qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: Your Honor, I would object to her being qualified based on her knowledge of the prior murder charge. I would submit we simply don't need to use her in this case, and so based on that I would ask that she be excused.

THE COURT: I -- based upon the witness's answers to the questions there is no question in the Court's mind that she can be fair and impartial to the State and the Defense, that she can fairly -- and would follow the Court's instructions, follow her oath. There is nothing that she said, nothing in her presentation, nothing from her demeanor or countenance that would prevent or impair her performance of her duties in this particular matter, so the Court finds her to be absolutely qualified.

All right. That would be the jurors until 1:45 then, so we have a little bit of a longer break today than we have had, but I will see y'all again then at 1:45.

All right. Thank you very much.

(AFTER SOME DISCUSSION OFF THE RECORD IT WAS LEARNED THAT A JUROR WAS PRESENT WHO WAS SCHEDULED TO BE QUESTIONED AFTER THE LUNCH BREAK.)

THE COURT: All right. No, I mean if they are here. If they are here we are going to take care of them. I didn't think there was anybody here.

Counsel, it appears that this is Mr. Finley, Steven Finley who is already here, Juror Number 200.

STEVEN J. FINLEY, JUROR NUMBER 200, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Finley, what I'm going to do is, I'm going to go over some things with you and then we are going to -- I'll ask you some questions, and when I'm done there may be some questions from the State and the Defense for you, okay.

A. Okay.

THE COURT: Now, not any right or wrong answers here, just looking for direct, straight-forward, honest answers to the questions I've asked. Okay.

A. Yes sir.

THE COURT: Very good, sir. Go over a few things with you. The State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, the Defendant has pled not guilty to those. That puts the

burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant has nothing to show or prove to you. The State must prove the Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Yes sir.

THE COURT: In this particular case the State has filed notice to seek the death penalty. That means this case could have two parts. The first part would be that the jury would look at all the evidence presented, look at that, weigh it against the State's burden to prove the Defendant guilty beyond a reasonable doubt and if, and only if the jury finds there is sufficient evidence to convict the Defendant guilty of the crimes charged would we even go into the second phase or sentencing phase, because only if the jury finds the Defendant guilty beyond a reasonable doubt of the crime of murder would we ever get to the sentence phase. You understand that?

A. Yes sir.

THE COURT: All right, sir. We say the sentence phase or penalty phase because the jury actually imposes the sentence or the penalty in this case. That's different from any other criminal case. Only a judge imposes a sentence. In this case the jury will actually impose the penalty and the sentence in this case, and there's two possibilities, life in

prison without the possibility of parole, or a death sentence. Do you understand that?

A. Yes sir.

THE COURT: For a jury to even consider imposing the death penalty the jury, in the second phase of the trial, has to find what is called an aggravating circumstance. It has to be done unanimously. All the jury has to agree to it. It has to be proved to them beyond a reasonable doubt. If the jury finds an aggravating circumstance they can consider the death penalty. There's no automatic. You don't have to impose it, but the jury can then consider it. Both options are then open to the jury to consider, because if the jury doesn't find an aggravating circumstance, you know, to make worse, to exacerbate the situation, then the jury can't even consider the death penalty. You understand that?

A. Yes.

THE COURT: Before the jury imposes any sentence the jury must consider any mitigating circumstances that the Court charges to the jury. These are certain factors that might tend to reduce or lessen the charge or the punishment, and the jury would have to look at those before the jury imposed any sentence. The jury can impose life because of the mitigating circumstance, or the jury could impose life for no reason whatsoever. Do you understand that?

A. Yes.

THE COURT: If you are part of the jury and the jury unanimously finds the Defendant guilty beyond a reasonable doubt of the crime of murder the Defendant -- the jury unanimously finds an aggravating circumstance, and then the jury unanimously finds that the death penalty is the proper penalty in this case, because the jury is imposing a penalty all the members of the jury would then have to take pen in hand and sign their name to a form indicating that, indeed, is their unanimous verdict in this matter, to impose the death penalty. Do you understand that?

A. Yes.

THE COURT: If you are part of the jury in this case it would be your responsibility to come into the courtroom with any kind of preconceived ideas of what the law is. You can't have any predisposition as to any particular penalty. You have to be open to be able to consider and impose both based upon the right set of facts and circumstances. If you knew anything about this case, heard about this case in the past you have to set that aside. You have to leave that outside the courthouse. You can't bring it into this courtroom. It not only can't be talked about, you can't use it mentally in making any kind of decision in this case. Do you understand that?

A. Yes.

THE COURT: You have to make your decision based solely

and completely based upon the facts and evidence presented in this courtroom and from no other source. Do you understand that?

A. Yes.

THE COURT: You have to follow the law that the Court would give to you. Whether you agreed with it or disagreed with it you have to, under your oath, say I will follow the law that Judge gives me in this matter. Do you understand that?

A. Yes.

THE COURT: All right, sir, let's go over a few questions. After Friday, have you read, listened, watched, looked up anything about this case?

A. No.

THE COURT: After Friday had you talked to anybody about this case?

A. No.

THE COURT: Now, before you had those instructions on Friday did you hear anything about this case, or read anything, or remember anything being said about this case in the past?

A. Yes.

THE COURT: Okay. And as you sit here today tell me what it is that you remember hearing in the past?

A. I remember, it was a while back when it first happened,

that they had arrested somebody and that he was accused of murdering a woman.

THE COURT: Okay.

A. And I believe I've heard since then that he was convicted of that ---

THE COURT: Of that particular offense?

A. Yes.

THE COURT: Okay. All right, now, you understand that is part of what you would have to set aside and leave outside of this courthouse. If you are a member of the jury you can't use that -- obviously you can't talk about it, but you can't use it in any way to think about or to make your decision in this particular case. Do you understand that?

A. Yes.

THE COURT: All right, sir. Can you do that?

A. Think so.

THE COURT: All right, sir. And I appreciate that, and I understand that's the answer that most everybody gives, but this is sort of like a bright line situation here. Under the juror's oath you are saying to the Court, if I knew anything about this, or thought I knew anything about this case, whether it's true or not true, I'm leaving that outside the courthouse, I'm not using it in any fashion whatsoever, I'm not going to use it to make a decision in this case, I'm going to make my decision solely and completely based upon the facts

and evidence presented in this case and not from any other source. So understanding that would be the job as a juror my question to you then is -- and it either has to be, Judge, I can do that, Judge, I don't think I can do that. So, knowing that to be your job, can you do that?

A. Yes.

THE COURT: Very good. When you heard about something in the past do you remember forming any kind of opinion or belief at that point in time, when you heard about that in the past?

A. Not other than if someone is arrested you assume that they had -- someone thinks they had something to do with it.

THE COURT: Okay. All right. You understand that, again, would be something that you would completely set aside and not use that in making your decision in this case?

A. Yes.

THE COURT: All right. And you -- can you do that?

A. Yes.

THE COURT: Very good. On the witness list you didn't circle any of the witnesses, correct?

A. Right.

THE COURT: All right, sir. And as a category of juror you circled (C), correct?

A. Yes.

THE COURT: And let's review that briefly to make sure

we are on the same page here. Category (C) -- and we are talking about hypotheticals, may happen or may not -- but you are on the jury and in the first phase the jury has deliberated in this case, based upon the facts and circumstances, has unanimously decided, everybody has agreed, that the Defendant is guilty of the crime of murder, and we have gotten to the second phase. In the second phase, and before anything is presented, juror (C), or category (C) juror says, I'm not predisposed to any sentence in this case, I may have been part of a jury to convict the defendant of murder, but going into the sentencing phase I am open, and I will consider, and I could impose either a life sentence or a death sentence, what I'm going to do is, I'm going to listen to all the facts and evidence presented in the second phase of the trial, I'm going to listen to the law that the Judge gives me, and then with my fellow jurors I'm going to reach a just verdict in this matter. Is that what you are saying?

A. Yes.

THE COURT: Very good. Following up on that just a little bit, we are in the sentencing phase, are you telling me that based upon the right set of facts and circumstances being presented to you you could fairly consider and impose a life sentence?

A. Yes.

THE COURT: Again, based upon the right set of facts

and circumstances being presented to you in the sentencing phase could you consider, and could you impose a death sentence?

A. Yes.

THE COURT: If you are part of the jury that unanimously finds that the death sentence is the proper sentence in this matter can you, as a member of that jury, then take pen in hand and sign your name to the form indicating that, indeed, is the unanimous verdict of the jury in this matter?

A. Yes.

THE COURT: All right, now, because of the kind of case that this is, when the jury is selected, when we have the jury that's going to be in this particular case and the trial starts the jury, at that point in time, is going to be sequestered. That means, at the County expense you are going to be housed in the motel, meals provided, you are transported to and from by County officials, means you are not going home in the evening. You would have limited contact with your family. I understand that's a hardship on anybody. There is no question about it. That's a hardship. But is that, in your circumstance, such an undue hardship, or is there any kind of health concern of any family member or yourself that that would cause you an undue hardship?

A. No.

THE COURT: All right, sir. Thank you.

Further questions from the State?

MR. HUMPHRIES: No, thank you.

THE COURT: All right. Questions from the Defense?

MS. WILLIAMS: Just briefly.

BY MS. WILLIAMS:

MS. WILLIAMS: Good afternoon, Mr. Finley. I'm Brana Williams, and Bill Diggs and myself will be representing Mr. Stanko in this case, seated at our table.

I just have a couple of questions. When the Judge asked you if you had any prior knowledge you said that you had some. Now tell me again what that knowledge was, please.

A. I remember that it was all over the news -- it was a while back -- and that there was somebody arrested for -- charged with murdering a woman.

Q. Do you recall -- do you know if there was a trial in that situation?

A. I had heard at some point that he was convicted of that.

Q. And do you know of any -- the sentence that might have been imposed in any ---

A. I think I heard that it was the death sentence.

Q. Okay. Let me ask you, do you -- the Judge has already discussed this with you, and I know that, and I'll repeat some of the same things over and over again, I apologize, but this

is our only chance to do this, so you'll just have to kind of bear with us on that, okay.

But let me ask you, don't you think that it would be -- or wouldn't you -- would you agree that it would be really hard to put all of that out of your mind if you were chosen to be on this jury?

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

Q. You think you could do that?

A. I think I could, yes.

Q. Okay. And that's good, because what we will need for you to do is to be able to base your decision, if you are a part of this jury, on exactly what you hear in the courtroom, and what the Judge tells you the law is, and everything -- and just that limited amount of information. Okay.

A. Yes.

Q. Let me ask you this, and this is a unique situation because this could possibly be a two-part trial, okay, and in the first part, if you are selected as part of this jury, we are anticipating that there should be four possible verdicts for the jury to consider, okay, guilty, not guilty, not guilty by reason of insanity, and guilty but mentally ill. Okay. Do you think, or are you aware of anything about you, or your beliefs, or your philosophical beliefs that might make considering all four of equally difficult for you?

A. No Ma'am.

Q. Okay. So you could consider all four of them if the circumstances are presented, and the facts and evidence are presented to you, right?
A. Yes.
Q. Okay. Great. And let's just assume now that we get to the second part of this, and we aren't going -- you know, I -- we just have to talk about it because we are here, but if we get to the second part of it obviously what it means is that the jury has found Mr. Stanko guilty, and then we go to the second part, and there are only two possible outcomes in that part, okay, either a death sentence or life without parole, okay, and to get to a death sentence the State is going to have to prove to you that you have murder plus an aggravating circumstance. Okay. And let's just assume that they have done that to you, as part of this jury, satisfaction, and the Judge is going to tell you that even if they prove murder, plus the aggravating circumstance, that you, as a juror, still have the opportunity to consider and impose life without the possibility of parole. Okay. What I want to ask you is, if you think sitting here now that you have a lean one way or the other. If you are part of this jury, and that you think that the State has proven to you murder plus the aggravating circumstance, that you would lean toward death or toward life?
A. I would probably lean toward life.
Q. You think so?

A. I think so.
Q. Okay. But you are telling me though that when the Judge instructs you, based on all the circumstances and everything, you could consider the death penalty, and could impose it if you thought it were appropriate?
A. Yes.
Q. And you could lean, and impose a life without parole if you thought it was appropriate?
A. Yes.

MS. WILLIAMS: That's all the questions I have. Thank you.

THE COURT: All right, Mr. Finley, if you would, if you would go with the deputy for a few moments, please sir. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 200 MARKED COURT'S EXHIBIT NUMBER 64.)

THE COURT: State's position?

MR. HUMPHRIES: He's qualified.

THE COURT: Defense.

MR. DIGGS: Your Honor, this illustrates a dilemma that we are in here. We object. We don't think he's qualified. Ordinarily in a capital case this would be the type of juror that we are looking for, someone who would be, so-called, soft

on capital punishment, inclined to vote life, but he knows about the death sentence that was imposed in the case. He would know that a jury had already heard our -- the type of evidence we would have in support of an insanity verdict, and would know it was rejected, and I would submit there is no way this juror should be qualified and sit on a jury panel, or be part of this jury, and based on those reasons we would ask the Court to disqualify him.

THE COURT: All right, first, there was absolutely no information here, that's been presented, that he knows anything about any kind of defense of any kind that was presented in the other trial. He knows there was another trial. He knows there was an outcome to that trial, but he expressed absolutely no information about what was presented, so there's nothing that would indicate that he would know what was presented in the past. That's just not part of the evidence that's -- regarding this particular juror, but be that as it may, this juror has said, without question, that he can fairly and impartially follow the Court's instructions, follow his juror's oath, that he would be fair and impartial to the State and the Defense. There is nothing in the juror's answers in any way that would prevent him, or substantially impair him in any way in the performance of his duties as a juror in this case. He was very straight-forward, his demeanor, the way he presented himself was direct, open,

honest, and this Court has no question that he is qualified.

We are going to take a break and we will come back approximately 1:45. Thank you.

(THE FOLLOWING TAKES PLACE AFTER LUNCH.)

THE COURT: All right. I believe we have Mr. Angel Castillo out there.

ANGEL R. CASTILLO, JUROR NUMBER 95, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Castillo, could you hand me the paperwork that you have, please sir. Thank you, sir.

All right, sir, what I'm going to do is, I'm going to talk to you about a few things, and then I'm going to ask you a few questions, and then the representatives of the State and the Defense may have some questions for you. Okay, sir?

A. Okay.

THE COURT: Very good. Now, there are no right or wrong answers here, okay.

A. Okay.

THE COURT: The -- what I need from you are just direct, straight-forward, honest answers to the questions or the matters that have to be talked about, okay. Very good.

In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. To those charges the Defendant has

pled not guilty. That puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to show to you. The Defendant doesn't have anything to prove to you. The State must prove the Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Yes sir.

THE COURT: All right, sir. In this particular case the State of South Carolina has filed notice to seek the death penalty as against Mr. Stanko. That means that the trial could be in two parts. The first part would be -- the first part of the trial would be where the jury would look at all the facts and evidence presented, testimony presented, to see what evidence the jury believes to be true, and then weighing that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt. If, and only if the jury finds the Defendant guilty of a crime of murder, beyond a reasonable doubt, would we go to the second phase or the sentencing phase of the trial. You understand that?

A. Yes sir.

THE COURT: Now, we call it the sentencing phase or the penalty phase because the jury actually imposes a sentence, and actually imposes the penalty, which makes it different from any other criminal case. In all other cases the Judge

imposes sentence. In this one the jury imposes the sentence, and there's two possibilities, life in prison without the possibility of parole, the death penalty. Those are the only two choices that are open and are available to the jury in the sentencing phase of the trial. You understand that?

A. Yes sir.

THE COURT: Now, for a jury to consider the death penalty the jury first unanimously has to find what is called an aggravating circumstance. Now, aggravate means to make worse, or to exacerbate the situation, and there would be certain factors that the Court would charge to the jury, and if the jury picked one of those, found one of those unanimously then the jury could consider the death penalty. It's not automatic. The jury is not required to give the death penalty. It just means that now the jury can consider both options, because if the jury doesn't find aggravating circumstance they can't even consider the death penalty. Do you understand that?

A. Yes sir.

THE COURT: So, before the jury imposes a sentence in this matter the jury also must consider any mitigating circumstance, and mitigate means to reduce or lessen the punishment or the charge, and the Judge would charge the jury those factors, and the jury would have to look at those before they impose any sentence in this case. You understand that?

A. Yes sir.

THE COURT: Now, the jury can impose life because of those mitigating circumstances, or the jury can impose life for no reason whatsoever. You understand that?

A. Yes sir.

THE COURT: The jury cannot impose the death penalty until the jury finds an aggravating circumstance, and that just means they have the ability to do so. Not a requirement at any point in time, ever, to find the death penalty. You understand that?

A. Yes sir.

THE COURT: All right, sir. Now, if you are part of the jury and the jury has unanimously found the Defendant guilty of the crime of murder, beyond a reasonable doubt, and we go to the sentencing phase, and the jury finds an aggravating circumstance, unanimously, and then the jury, after deliberating, finds that the death penalty is the appropriate penalty in this matter, and so unanimously finds for that sentence at that point in time, since the jury is actually imposes the sentence, the jury will take pen in hand and each member of the jury will sign a form indicating that, indeed, is the unanimous verdict of the jury, imposing the death penalty. You understand that?

A. Yes sir.

THE COURT: All right, sir. If you are a juror in this

particular case you have to come into this courtroom without any kind of preconceived ideas of what the law is. You have to take the law that I give to you, that the Judge gives, and accept it. Whether you agree with it or disagree with it or disagree with it you have to accept it. You understand that?

A. Yes sir.

THE COURT: You can't come into the courtroom with any predisposition as to a potential sentence. As a member of the jury you have to be open to consider and impose either life or death. You don't have any predisposition, or lean to one or the other. You base your decision based on the facts and evidence presented in the sentencing phase, and the law that the Court charges you, but you don't go in there with any predisposition. You understand that?

A. Yes sir.

THE COURT: All right. Let's go over a few questions. Since Friday have you read, listened, watched, looked up anything about this case?

A. No.

THE COURT: Since Friday, have you talked to anybody about this case?

A. No.

THE COURT: Now, before Friday, before you had the instructions not to do that do you remember reading anything, or hearing anything, or seeing anything about this case

sometime in the past?
A. Not that I can recall. No.
THE COURT: All right. Very good. Does the name of the Defendant ring any bells with you at all?
A. No.
THE COURT: All right. Very good. On the witness list you didn't circle anybody as knowing any of the possible or potential witnesses, right?
A. Right.
THE COURT: All right. A question in general, do you know of any kind of personal, political, religious, philosophical belief that you might have that would keep you from being a fair and impartial juror in this case?
A. No.
THE COURT: All right. Very good. Regarding the category of juror which best describes you you circled (C), correct?
A. Yes sir.
THE COURT: All right. And let's talk about that for just a second, and make sure we are on the same page here. Category (C) juror -- we are talking about hypotheticals here, that could happen or not happen -- but regarding the jury, the jury finds the Defendant guilty of the crime of murder beyond a reasonable doubt and we are here in the sentencing phase of the trial, the category (C) juror, or type (C) juror says, I'm

not going into the sentencing phase with any predisposition as to the sentence, I know there's two possible sentences, life or death, but I'm not predisposed to either one, what I'm going to do is, I'm going to listen to the facts and evidence presented in the second phase, I'm going to listen to the law that the Judge gives to me, and then with my fellow jurors I'm going to come up with a just verdict in this matter.

A. Yes sir.

THE COURT: All right. That's what you are telling me?

A. Yes sir.

THE COURT: Very good. Follow up with that just a little bit. Again, assume we are in the sentencing phase, based upon the right set of facts and circumstances being presented to you could you consider, and could you impose a life sentence?

A. Yes.

THE COURT: Based upon the right set of facts and the right set of circumstances being presented could you impose a death sentence?

A. Yes, I could.

THE COURT: Now, assume you are part of the unanimous jury that agrees, aggravating circumstance, unanimously votes for the death penalty, the death sentence, could you then take pen in hand and sign your name to the form indicating that that, indeed, is the unanimous verdict of the jury in this

matter?

A. Yes, I could.

THE COURT: All right. Very good. Now, in this matter, because of the type of case that it is the jury is going to be sequestered in this matter once they are ultimately selected, once we have a jury that's going to hear this case. That means when the trial starts this jury is going to be -- this is obviously at County expense -- housed at a motel, meals provided. They are transported by County officials to and from the courthouse, but you are not going home in the evening. You have to stay with us during the trial. The best estimate I can give you for the length of the trial, once it starts it's going to be seven, eight to nine days. That's the best estimate I can give you as to the length of the trial once it starts. Now, understanding this is a hardship on anybody -- I know that, everybody knows that and understand that -- but is being sequestered such an undue hardship on you, or is there some kind of health concern of any family member or yourself that would cause this to be an undue hardship on you?

A. No.

THE COURT: All right. Thank you, sir.

Answer any questions the State may have, please sir.

BY MR. HEMBREE:

MR. HEMBREE: Good afternoon, Mr. Castillo.

A. Good afternoon.

MR. HEMBREE: I'm Greg Hembree. I'm the Solicitor for the Fifteenth Circuit. I, along with Fran Humphries who is seated right over here -- he's our Deputy Solicitor -- and Jimmy Richardson who's right here, he's one of our Senior Assistant Solicitors. We will be trying the case together on behalf of the State.

Judge John covered all the questions that I might have had for you, so I don't have any questions for you. I just want to let you know that we really appreciate your willingness to serve, and if you would, give your attention to Defense counsel. They may have a few questions for you.

Thank you, Mr. Castillo.

THE COURT: All right, Mr. Diggs.

MR. DIGGS: May it please the Court.

THE COURT: Yes sir.

BY MR. DIGGS:

MR. DIGGS: Mr. Castillo, what was your response to the Court's question about whether you had had an knowledge about the case?

A. My response was, I didn't really have any knowledge about the case or ---

Q. Okay. You don't remember hearing Mr. Stanko's name at any time?

A. No.

Q. Okay. Do you feel in this situation that you are obligated to return a guilty verdict on behalf of the community?
A. Yes.
Q. You understand what I'm asking you?
A. Yes.
Q. Do you think that the community looks to you and expects you to return a guilty verdict?a
A. Well, I think they look to me as part of a representative of the community ---
Q. Okay.
A. Okay. ---As a citizen of this County. Again, you know, before anybody is proven guilty you do have to listen to all the facts.
Q. Okay. Let me ask you this. We might see evidence in the first case, the first part of the trial that raises the possibility of four different verdicts. That would be guilty, not guilty, not guilty by reason of insanity, and guilty but mentally ill. Are you aware of any bias that you have that would prevent you from reaching either of those verdicts that you felt would be supported by the evidence and the law as instructed by the Court?
A. No.
Q. Okay. You don't have any aversion to either of those verdicts, possible verdicts that I mentioned?

A. No.
Q. Okay. Now, with respect to the sentencing phase of the case, should there be a guilty verdict you would have to proceed, if you were on the jury, to the next phase of the trial wherein the State would have to convince you beyond a reasonable doubt that an aggravating circumstance existed in the case. That would entitle them to seek a death sentence. Follow me?
A. Yes.
Q. Now, at that point would you feel obligated to return a death sentence?
A. Yes.
Q. Okay. And do you expect that the community would be looking to you in that regard because the State is, indeed, seeking the death penalty in the case?
A. Yes, I believe so.
MR. DIGGS: Okay. All right, that's all I have at this time, and thank you very much for your answers.
A. Okay.
THE COURT: Solicitor, since you didn't ask any questions any questions you would like to ask?
MR. HEMBREE: Yes, Your Honor, I would like to go back a few more.
THE COURT: All right. Very good.
BY MR. HEMBREE:

Q. Mr. Castillo ---
A. Yes sir.
Q. ---Couple of questions Mr. Diggs asked you. I fear -- it was difficult for me to follow him, and I don't know that you know -- I don't know if he got to exactly how you feel ---
A. Okay.
Q. ---So I just want to sort of pursue these a little more.
A. Okay.
Q. The first is about the community's expectation in rendering a guilty verdict.
A. Okay.
Q. I'm going to ask it a different way.
A. Okay.
Q. Do you -- you said that -- if I understood your testimony you said that you believed the community expected you to serve sort of as their representative?
A. Yes.
Q. And that you needed to hear all the facts and evidence?
A. That's right.
Q. Now Mr. Diggs -- I think what Mr. Diggs was trying to -- or at least the way I interpret his question was -- do you feel like there is pressure on you from, you know, the public, or the community -- do you feel like there's pressure on you to decide this case a particular way, or do you think that the

expectation is for you to be fair and impartial and listen to everything and then render a verdict?

A. I think to be fair and impartial, to listen to all evidence, and then render a verdict.

Q. Do you feel any pressure at all ---

A. No.

Q. ---Either one way or the other?

A. No. No.

Q. And now I'm talking about the sentence. One of the things that might -- Mr. Diggs might not have made so clear is that when it comes to sentencing, even if there is a finding of an aggravating circumstance -- Judge John talked a little bit about aggravating circumstance -- Mr. Diggs just touched on it -- but Judge John would tell you, if you were on this jury, that you never have to find for death, you always have the option to vote for life ---

A. Right.

Q. ---Even if he's found guilty you can vote for life. If he's found guilty and you find there is an aggravating circumstance you can vote for life?

A. Yes.

Q. Would you be able -- understanding that would you be able to follow that principal of law?

A. Yes.

Q. You would keep an open mind and be able to vote for

life even if there's an aggravating circumstance, if you thought that's the right thing to do?

A. Yes.

Q. Okay. Based on the evidence ---

A. Based ---

Q. Based on the facts ---

A. Exactly.

Q. ---Based on the whole issue?

A. What is presented, you know, to us, or the jurors, facts and evidence that -- you know, everything is laid out on the table.

Q. Do you -- one -- and I know this is kind of a similar question, but do you feel any pressure whatsoever to vote for death or for life from any source ---

A. No.

Q. ---A little clean slate right now?

A. Yes.

MR. HEMBREE: Very good. That's all I can ask of you. I appreciate your responses.

Mr. Diggs may have some more questions for you. The Court may also.

THE COURT: Mr. Diggs.

MR. DIGGS: Just very briefly.

THE COURT: Yes sir.

BY MR. DIGGS:

MR. DIGGS: Mr. Castillo, in the event that the State has proved guilt beyond a reasonable doubt, and they have convinced you beyond a reasonable doubt that an aggravating circumstance existed in the case, at that point would you feel obligated to return death sentence?

A. Yes.

THE COURT: All right. And to follow up on that question then, Mr. Castillo, even though knowing that you don't have to you would feel obligated to do so?

A. Yes sir.

THE COURT: Very good. All right. Thank you. If you would go with the deputy for a few moment, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND JUROR QUESTIONNAIRE FOR JUROR NUMBER 95 MARKED COURT'S EXHIBIT NUMBER 65.)

THE COURT: State's position.

MR. HEMBREE: Your Honor, although I think Mr. Castillo is -- became confused by the way the questions were asked by Mr. Diggs, and then he seemed to be rehabilitated, and kind of went back to his initial question, I'm not -- you know, it's possible that he really does feel some obligation to vote for death if there was an aggravating circumstance, and out of an abundance of caution we would ask that he be excused.

THE COURT: Mr. Diggs.

MR. DIGGS: We agree.

THE COURT: All right. I would find that the juror is not qualified. There is some question as to whether he can faithfully follow out the Court's instructions and follow his juror's oath, so therefore I find he's not qualified.

All right, Ms. Velvadean, please, Velvadean Vaught. I'm sorry, Velvadean Vaught.

VELVADEAN VAUGHT, JUROR NUMBER 642, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Ms. Vaught, what I'm going to do is now, I'm going to talk to you a little bit, and I'm going to be asking you some questions, and then the representative of the State and the Defense may have some questions for you, okay. All right. Is that all right, Ma'am?

A. Yes sir.

THE COURT: All right. Thank you, Ma'am. Now, first I need to tell you, everything that we say and do is being recorded by the Court Reporter right there, and so all the answers that you give have to be out loud, have to be like yes or no. You can certainly explain it, but we can't have a nod of the head or something like uh huh because the Court Reporter doesn't know what that means, okay.

A. Okay.

THE COURT: Thank you, Ma'am. In this particular case

the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. To those charges the Defendant has pled not guilty. That puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant has nothing to show to you or to prove to you. The State must prove the guilt of the Defendant beyond a reasonable doubt. Do you understand that?

A. Yes sir.

THE COURT: In this case the State of South Carolina has filed notice to seek the death penalty as against Mr. Stanko. With that, the jury in this case will actually impose the sentence. That makes it different from any other case. In any other criminal case the Judge would impose the sentence. In this particular case, in this type of case, the jury imposes the sentence. So in that, regarding the imposition of a sentence there could be two possibilities, life in prison or death. Do you understand that?

A. Yes sir.

THE COURT: Now, we don't even get to that second phase or that sentencing phase of the trial unless and until, in the first phase of the trial the jury would find the Defendant guilty of the crimes charged beyond a reasonable doubt, based upon the evidence presented, and that the jury believes to be true, the jury finds from that evidence that the Defendant

committed the crimes and finds the Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Yes sir.

THE COURT: If the jury finds the Defendant guilty beyond a reasonable doubt of the crime of murder then the jury would go into the sentencing or the penalty phase of the trial. In the sentencing or the penalty phase of the trial the jury could only consider the option of a death penalty if it finds an aggravating circumstance. Now that's a factor that means to make worse, or to exacerbate. If the jury finds this mitigating -- I'm sorry -- this aggravating circumstance, then the jury could consider the death penalty. It doesn't mean that the jury automatically imposes a death penalty. It just means that that gives the jury the ability to consider imposing the death penalty. Do you understand that?

A. Yes sir.

THE COURT: The jury must look at any mitigating circumstances that the Court tells the jury about or charges the jury. Before the jury imposes any sentence in the case they have to consider any mitigating circumstance. Do you understand that?

A. Yes sir.

THE COURT: The jury can always impose life. The jury can impose life because of a mitigating circumstances, or could impose life for no reason whatsoever. Do you understand

that?
A. Yes sir.
THE COURT: The jury can only consider the death penalty if they find an aggravating circumstance, and that means then that both life and death are a possible option at that point in time. Do you understand that?
A. Yes sir.
THE COURT: If you are part of the jury and in the first phase being part of the jury -- and we are just talking about a hypothetical that could happen or may not happen -- but you are part of the jury, in the first phase the jury unanimously finds the defendant guilty of the crime of murder beyond a reasonable doubt, so we've gone into the second phase or the sentencing phase, and the jury in that phase found an aggravating circumstance, unanimously, everybody agreed, and then the jury unanimously -- everybody agreed that the death penalty was a proper penalty in this matter, if you are part of that jury could you then take pen in hand and sign your name to the verdict form saying that that, indeed, is your -- part of the jury's unanimous verdict, and it is your verdict, to impose the death penalty in this case? Could you do that?
A. Yes sir.
THE COURT: All right, Ma'am. As a member of the jury it's your job to come into the courtroom without any preconceived ideas of what the law is. You have to accept the

law as the Court would give it to you. Do you understand that?

A. Yes sir.

THE COURT: You can't have any predisposition as to a proper sentence. You have to listen to all the facts and evidence presented, find that evidence which convinces you of it's truth, and then, based upon the facts and evidence, and the law the Court will give to you, decide a proper penalty if the defendant has been found guilty of the murder beyond a reasonable doubt. You understand that?

A. Yes sir.

THE COURT: If you heard about this case before, or you knew anything about it, or anybody had talked to you about this you understand you have to set that aside. You can't bring that into the courtroom. You understand that?

A. Yes sir.

THE COURT: It can't be part of your decision in this case. It can't be part of your thinking about this case in any way. Do you understand that?

A. Yes sir.

THE COURT: All right, Ma'am, let me ask you some questions then, some other questions. Since Friday, have you read, listened, looked up anything about this case?

A. No sir.

THE COURT: Have you talked to anybody about this case

since Friday?
A. No sir.
THE COURT: Now, before Friday, had you heard anything about this case, heard the Defendant's name, anything that you -- someone said happened, or read that might have happened in this case?
A. No sir.
THE COURT: All right. Is the name of the Defendant familiar to you at all?
A. Not at all.
THE COURT: All right, Ma'am, do you know of any kind of personal, or political, or religious or philosophical belief that you believe would prevent you from being a fair and impartial juror in this case?
A. No sir.
THE COURT: All right. In this particular case you did not circle any witnesses as far as knowing any of the particular possible witnesses, correct?
A. Right.
THE COURT: And then as far as the category of juror you circled category (C), correct?
A. Yes sir.
THE COURT: All right, Ma'am, and let's go over that real briefly and make sure we are on the same page here.
A. Okay.

THE COURT: Category (C) juror is -- and again, it's a hypothetical, may or may not happen -- but you are on the jury and in the first phase of the trial the jury has heard the facts and evidence, and based on the facts and evidence, has unanimously decided that the Defendant is guilty of the crime of murder beyond a reasonable doubt, and then we've gone into the second phase. In the second phase the type (C) juror says, I'm not predisposed to give any particular sentence, I know that I can sentence the Defendant to life, I know that I can sentence the Defendant to death, I have taken an oath and said that I would fairly consider both, and based on the right set of facts and circumstances I would impose either one, but I'm not predisposed or leaning to one or the other, I'm open to either one, and I'm going to listen to all the facts and circumstances in the second part of the case, and I'm going to listen to the law that the Judge gives me, and then with my fellow jurors I'm going to reach a just verdict in this matter. Is that what you are telling me?

A. Yes sir.

THE COURT: All right, Ma'am, let me go over that -- follow up on that just a little bit. Assume again you are a juror on the case and you are in the sentencing phase or the second phase of the trial, are you telling me that based upon the right set of facts and circumstances being presented to you you could consider, and you could impose a life sentence?

A. Yes, I can.

THE COURT: All right, Ma'am, again, based upon the right set of facts and circumstances being presented to you in the second part of the trial, could you consider, and could you impose a death sentence?

A. Yes, I could.

THE COURT: All right, Ma'am, and it seemed to me that you hesitated more when I asked you about death than I did with life, and that's certainly understandable. When and if you are a member of a jury you have to -- and to be part of the jury -- you understand that it depends on the facts and circumstances presented. When you go into the second part of a trial -- assuming that you are a juror and you are in the second part of the trial -- that you are open, and you would not only consider, but you could impose, that is, give either one of them, you could give a life sentence, you could give the death sentence. Can you do that?

A. Yes, I can.

THE COURT: Very good. Now, if you are part of a unanimous jury that decides that the death penalty is the proper sentence in this matter can you then take pen in hand and sign your name to the verdict form saying that you are a part of this jury and I have unanimously, with the other members of the jury, decided that the death penalty is the proper sentence in this case, could you do that?

A. Yes, I could.

THE COURT: Very good. Now, because of the type of case that this is once the jury is selected the jury is going to be sequestered. That means at the County expense you are going to be housed at a motel, the meals will be provided, you will be transported to and from by County officials, but you won't be going home at night. You are going to be with the Court until the case is over with once the jury is selected. The best estimate, how long that's going to be, that I can give you is seven, eight, nine days. Understanding that's a hardship -- that's a hardship on anybody, and I understand that, everybody understands that -- but is that such an undue or great hardship on you, or is there any kind of health concern of any family member or yourself that that would be an undue hardship on you, being sequestered?

A. No sir.

THE COURT: Thank you, Ma'am.

Further questions from the State?

MR. HUMPHRIES: Just briefly. Thank you, Judge.

THE COURT: Thank you, sir.

BY MR. HUMPHRIES:

MR. HUMPHRIES: Well, good afternoon, Ms. Vaught. How are you doing?

A. I'm doing fine.

MR. HUMPHRIES: I'm Fran Humphries. I'm the Deputy

Solicitor. Solicitor Hembree and Senior Solicitor Jimmy Richardson and I will be representing the State in this trial, and this is just an opportunity for us to talk a little bit.

It's unusual in criminal cases -- have you ever served on a criminal jury?

A. I've never been a juror in my life.

MR. HUMPHRIES: Never?

A. Never.

MR. HUMPHRIES: Well, it's a great honor, and it's also a great burden, but it's very important, and I know that you know that. Well this is different than any other criminal case that we have, number one, because you and I are talking here together, and that doesn't happen in other criminal cases, so that's unusual. The other thing is, in this kind of case, unlike any other case, the jurors themselves will be the ones that hand down the sentence. In most cases the Judges hand down the sentences, and the jurors just determine the guilt of the accused.

But in this case we've got two parts, and the Judge has talked to you a little bit about it. First part of the case the only thing the jurors consider is whether or not the Defendant, Stephen Stanko, killed Henry Turner. Once that is decided, and if it's decided that he did, we go to that second trial within this trial, and that's the sentencing phase, and of course we have to talk to you right now about your feelings

about the death penalty because we can't stop in the middle of the trial and say, well, we know you found him guilty now let's talk a little bit about whether or not you are qualified to serve in the sentencing phase, so we have to do it ahead of time.

Now, what we are trying to determine is whether or not you are a qualified juror. Now, when I say qualified that doesn't mean that if you were unqualified that you would be a bad person, or that you are a better person for being qualified. It really has to do with how you feel, and so that's why we talk to you.

Now, let me ask you a little bit about the death penalty. Have you given much thought over your life to the death penalty or capital punishment?

A. No. I ain't never thought about it one way or another.

Q. Never did?

A. No sir.

Q. And let me ask you, since you got your -- you know, got those papers -- because you know -- let me ask you this, when you got those papers to fill out for the juror information ---

A. Uh huh **(indicating positive)**

Q. ---Did you know this was going to be a death penalty case then?

A. No, I did not.

Q. What about Friday, when you came in on Friday?

A. No, I did not.
Q. Okay. How about after Friday? Once he -- once the Judge talked to you did you know then?
A. I know when he started discussing it Friday ---
Q. Now let me ask you this ---
A. ---But ---
Q. ---Over the weekend have you thought about it?
A. No sir.
Q. Haven't?
A. No.
Q. Well, tell me, can you share with me what your thoughts are on the death penalty or capital punishment?
A. No.
Q. You just don't have any particular thoughts about it?
A. No sir.
Q. Okay. Well, that's fair. That's fair. Now, the Judge has told you that once you get into that sentencing phase you have to be able to either give the death penalty or life in prison, not just consider them, but under the right set of circumstances, with the right amount of evidence, be able to consider and impose either life or death, depending on your view of the evidence. Do you understand that?
A. Do I feel like I could?
Q. Do you feel like you could do either one?
A. Yes.

Q. Okay. Now, when we talk about imposing sentence what we are talking about is -- well, I'll put it this way. Let's say, for instance, you are sitting on the jury, and you and the other members of the jury have returned a verdict of guilty in the first part, guilty of murder, we move on into the second phase, and the State -- that's us -- we present enough evidence in aggravation -- that's things that are bad about the Defendant -- and other evidence which would prove to you that there is an aggravating circumstance -- and the Judge will tell you what those are -- they are all statutory and in our law -- but there will be some for you to consider, and let's say that you and the other jurors decide that an aggravating circumstance exists, that we have proved that to you, okay, then, and only then will you and the other jurors be able to even consider giving a death verdict. Okay. Are you with me so far?

A. Yes sir.

Q. Okay. Because I know this is different so, you know, stop me if I'm telling you too much.

Now, once we get to that point the jurors will deliberate -- of course you will get an opportunity to hear evidence in mitigation, if the Defense offers it, which may be things that are good about the Defendant, or things that might lessen his level of responsibility or culpability, and let's say after you've considered all of that -- and of course the

Court is going to have to tell you you have to consider all, particularly the mitigating circumstances, once you do all that you and the other eleven members of the jury decide we believe that the death verdict is the appropriate verdict for this Defendant for his crimes, based on his character, what the Court will provide you with is a form, and there's this form that's called Recommendation of Death. On that form there are twelve signature lines. Now, that form says Recommendation of Death, but I can tell you, whatever this jury recommends to the Court that's what is going to happen, okay, so what I need to be sure of is this. Knowing that you would have to sign your name to a verdict form that would sentence this Defendant to death do you believe, understanding that, that you could do that, under the right set of circumstances, given the right amount of evidence, knowing all along that there is never anything to bind you or require you to vote for death, you can always pick life, do you think that you could do that, sign your name to that recommendation form?

A. Yes, I could.

Q. And can you be fair both to the State of South Carolina and to the Defendant in this case?

A. Yes, I can.

MR. HUMPHRIES: Ms. Vaught, that is all we can ask of you. I really do appreciate it. Thank you, Ma'am.

A. Uh huh **(indicating positive)**

THE COURT: All right, Mr. Diggs or Ms. Williams.

MS. WILLIAMS: No sir. We don't have any questions. Thank you.

THE COURT: All right. Thank you.

All right, if you would, Ms. Vaught, if you don't mind, if you would go with the deputy for a few moments, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 642 MARKED COURT'S EXHIBIT NUMBER 66.)

THE COURT: State's position.

MR. HUMPHRIES: She's qualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: Your Honor, we believe she's qualified.

THE COURT: The Court would find her to be qualified, that she could follow the Court's instructions. She is qualified.

(DISCUSSION BETWEEN THE CLERK OF COURT AND THE COURT CONCERNING SCHEDULING OF A POTENTIAL JUROR FOR VOIR DIRE.)

THE COURT: Our next one is Walter Cumbow.

WALTER D. CUMBOW, JR., JUROR NUMBER 13, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Cumbow, what I'm going to do is, I'm going to go over some things with you and I'm going to

talk to you about a couple things. I'm going to ask you some questions, and when I'm done the representatives of the State and Defense may have some questions for you. Okay, sir?

A. Yes sir.

THE COURT: There aren't any right or wrong answers here. Okay. I'm just looking for direct, straight-forward, honest answers to the questions or the things we talk about, okay.

A. Right.

THE COURT: Very good. In this particular matter the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. Now, that -- to those charges the Defendant has pled not guilty. That puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent, doesn't have anything to prove to you, doesn't have anything to show to you. The State has to prove the Defendant guilty beyond a reasonable doubt. You understand that?

A. Yes sir.

THE COURT: The State in this case has served notice to seek the death penalty as against Mr. Stanko in this particular matter. Now, that means this case could have two parts. The first part would be that the jury would consider all the facts and evidence in the case and find that evidence

which the jury believes to be true, weigh that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt, and if, and only if the jury convicts the Defendant of the crimes charged beyond a reasonable doubt would we go into the second phase or the sentencing phase of the trial. You understand that?

A. Yes sir.

THE COURT: Now if the jury finds the Defendant guilty of the crime of murder, beyond a reasonable doubt, then the jury would be looking at the sentencing phase or the penalty phase, and we call it that because the jury has to impose the sentence or the penalty in this case. There's two choices, life in prison without the possibility of parole, the death sentence. Those are the two choices. And if I might just say life, or the attorneys might just say life, what we mean is life in prison without the possibility of parole. You understand that?

A. Yes sir.

THE COURT: When the jury is faced with those sentencing options for the jury to even consider the death penalty the jury first has to find unanimously -- everybody has to agree -- to an aggravating circumstance. Aggravating circumstance is one to make worse, to exacerbate the situation. Now there are certain factors that the Court will charge to the jury and if the jury picked one of those factors

and said unanimously yes, that's an aggravating circumstance and find in this case, then the jury could consider the death penalty. Not automatically required to. The jury is never required to give the death sentence. The jury could give life for a reason or for no reason whatsoever, but until the jury finds, unanimously, an aggravating circumstance they can't even consider the death penalty. That just means, once they've found an aggravating circumstance, both options are now open to the jury to decide.

The jury also has to look at any mitigating circumstances that the Court charges to the jury before the jury imposes any sentence in the matter, and you know, mitigate means to reduce or lessen the punishment or the charge in the matter. Now, if you are a member of the jury in this particular matter -- and we are talking about hypotheticals here that could happen or may not happen -- but if you are a member of the jury, and the jury has unanimously found the Defendant guilty of the crime of murder beyond a reasonable doubt, and we are here in the sentencing phase, and the jury finds unanimously an aggravating circumstance, and then after deliberating the jury unanimously decides to impose the death penalty in this particular case, it's the responsibility of the jury, since they are imposing the sentence, to take pen in hand, take the verdict form and sign their name to the verdict form indicating that, indeed, is the

unanimous verdict of the jury in this particular matter to impose the death penalty. You understand that?

A. Yes.

THE COURT: If you are part of the jury you can't come into the courtroom with any preconceived ideas of what the law is. You have to follow the law that the Court gives to you. Whether ultimately you agree with it or disagree with it you've got to follow the law that the Court gives you. You understand that?

A. Yes sir.

THE COURT: You can't have any predispositions as to any possible sentence or outcome of this case. You can't -- you have to be open -- in the second phase you have to be open to consider, and have the ability to impose life. You have to be open, and be able to consider and impose death, based upon the facts and circumstances. You are not predisposed to one or the other. You listen to all the facts and evidence presented in the case, you listen to the law that the Court gives to you, and then make up your mind based on that.

Let's go over some questions. After Friday, did you read, listen, watch, look up anything about this case?

A. No sir.

THE COURT: Since Friday did you talk to anybody about this case?

A. No sir.

THE COURT: All right, now, before Friday, and before you had the instructions not to do that, do you remember seeing anything about this case, hearing anything about this case, anything about this case?

A. Quite a bit.

THE COURT: All right, sir, and what I need for you to do is, as you are sitting here today, tell me what you remember.

A. I remember mostly the news accounts of the first trial, and the sentence that was imposed from the first trial. Basically I remember most all the news coverage and the allegations ---

THE COURT: Okay.

A. ---And something that I didn't realize until we got into court Friday. When my original questionnaire asked if I knew the Defendant ---

THE COURT: Right.

A. ---The name did not ring a bell ---

THE COURT: Okay.

A. ---But once I saw the face it did.

THE COURT: Okay. Do you recognize that from the news reports?

A. Well, no, from actually the convenience store where my wife works.

THE COURT: Okay.

A. That's a place that I've frequented, well, basically every day that I was on my way to work ---

THE COURT: Okay.

A. ---And I remember running into Mr. Stanko there several times.

THE COURT: Okay. What kind of interaction did you have with Mr. Stanko at the convenience store?

A. Mostly just passing by, nodding, or hello every once in a while, which I do with everybody.

THE COURT: Okay. All right. Any impressions or beliefs from that interactions in any way?

A. Not really, no.

THE COURT: Okay. Nothing sticks out in your mind about those occurrences in any way?

A. No sir.

THE COURT: All right, sir, now, that would be part of -- we'll go back to what you might have heard about the -- anything about the case, but those interactions, you understand you have to set that aside. You can't have that impact or influence your decision in any way. Do you understand that?

A. I understand but ---

THE COURT: Okay. Well, and I appreciate that, but under your oath as a juror, if you are a juror, you have to be saying to the Court, you know, I had these interactions but

I'm leaving that outside the courthouse, I'm not using it in making my decision, I'm not thinking about it, I'm not letting it affect my decision in any way whatsoever. So, knowing that would be your job, could you do that?

A. I'm not sure. I don't know how -- I don't know how to answer that.

THE COURT: Okay. All right. How about let's talk about what you heard about this case, or anything else in the past. Again, you have to be able to completely and totally set that aside. It's basically like you compartmentalize it and you leave it outside the courthouse. When you are deciding this case it certainly can't come up with any other juror, but even then you can't be using it, you can't be thinking about it, referring back to it to make your decision in this case. And that's -- it's basically like a bright line test here. If -- again, no right or wrong answers, but if -- to be a member of the jury you have to be able to say, well, I heard that stuff in the past, Judge, but I'm leaving it outside the courthouse, I'm not going to think about it, I'm not going to use it, it's not going to be part of my decision in any way, so yes, I can do that, or no, Judge, I don't think I can do that. So what would you -- what is your answer to me?

A. I'm not sure I could do that.

THE COURT: Okay. All right. Do you believe that

because of the interactions that you might have had with Mr. Stanko at the convenience store, and what you heard in the past, that that would tend to impact how you would decide this case?

A. It's quite possible, yes.

THE COURT: All right. Very good.

Questions from the State?

MR. HEMBREE: We have no questions, Your Honor. Thank you.

THE COURT: Questions from the Defense?

MR. DIGGS: No sir.

THE COURT: All right. If you would, sir, if you don't mind, just go with the deputy for just a moment.

A. All right.

THE COURT: All right. Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JUROR.)

(THREE PAGE WITNESS LIST AND CATEGORY QUESTIONNAIRE FOR JUROR NUMBER 131 MARKED COURT'S EXHIBIT NUMBER 67.)

THE COURT: All right, the State's position.

MR. HEMBREE: The juror is unqualified, Your Honor.

THE COURT: Defense.

MR. DIGGS: Not qualified.

THE COURT: Very good. I -- the Court finds that Juror Number 131, Mr. Cumbow, is not qualified based upon his past

interaction with the Defendant, and that would cause him to not be -- be able to follow the Court's instructions and his juror's oath.

All right. The next group was at 3 o'clock. You want to see if there's anybody here?

WESLEY S. ALLEN, JUROR NUMBER 11, being first duly sworn, states as follows:

BY THE COURT:

THE COURT: All right, Mr. Allen, what I'm going to do is, I'm going to talk to you about some things. I'll be asking you some questions. When I'm done the representatives of the State and the Defense may have some questions for you. Okay.

A. Okay.

THE COURT: One thing I want to cover first, in the initial qualification you had brought up that you thought you had served within the last three years. The Clerk of Court looked that up and your jury duty that you served was actually in August of 2005, so ---

A. Okay.

THE COURT: ---That would fall without the three years, but I wanted to tell you, we did look it up and the Clerk went to the records and that was when you served. Okay.

A. Okay. Not a problem.

THE COURT: Very good. No right or wrong answers here,

okay. What I'm looking for is just direct, straight-forward, honest answers to the questions and the things we've talked about. That's all -- all we need. Okay. Very good.

In this particular case the State of South Carolina has charged the Defendant, Mr. Stanko, with the crimes of murder and armed robbery. The Defendant has pled not guilty to those charges, so that puts the burden of proof on the State of South Carolina to prove the Defendant guilty beyond a reasonable doubt. The Defendant is presumed innocent. The Defendant doesn't have anything to prove to you, show to you. The State has to prove the Defendant guilty beyond a reasonable doubt. Do you understand that?

A. Yes sir.

THE COURT: All right. Now in this particular case the State has served notice to seek the death penalty as against Mr. Stanko, so that means that this particular case could have two parts. In the first part the jury would be looking at the facts and evidence to see if -- to find that evidence that the jury believes to be true, and then weigh that evidence against the State's burden to prove the Defendant guilty beyond a reasonable doubt because if, and only if the jury finds the Defendant guilty of the crimes charged beyond a reasonable doubt will we get to the second phase or the sentencing phase of the trial. You understand that?

A. Yes sir.

THE COURT: Now, assume that the jury has found the Defendant -- because that's -- you know, we've got to talk in hypotheticals here, you know, nothing is happening and may not happen -- but assume the jury has found the Defendant guilty of the crime of murder beyond a reasonable doubt, and we are in the sentencing phase. We call it that because the jury actually imposes the sentence. That makes this case, or this kind of case different from any other criminal case. In all other criminal cases the Judge imposes the sentence. In this type of case the jury actually imposes the sentence. And the sentence possibilities are two, life in prison without the possibility of parole, or the death penalty. Those are the only two options. And if I might happen to say life when I'm talking to you, or the lawyers say life, that's what we mean, life in prison without the possibility of parole. Understand that?

A. Yes sir.

THE COURT: Now, regarding those two options that are available to the jury, for the jury to even consider the death penalty, to have that as an option, the jury has to first unanimously -- means everybody -- agree on an aggravating circumstance. Aggravate means to make worse, or exacerbate the situation, but those are certain -- there are certain statutory factors that the Court would charge to the jury, and if the jury picked one, found one unanimously, then the jury

could consider the death penalty, would have both options open to it. Nothing automatic. Doesn't mean the jury has to find the death penalty. It just means that they can then consider the death penalty. You understand that?

A. Yes sir.

THE COURT: The jury has to look at any mitigating circumstances. Now mitigate means to lessen or reduce the charge or the punishment and the Court would charge those to the jury, and the before the jury imposed any kind of sentence in this case the jury would have to look at those mitigating circumstances. Do you understand that?

A. Yes sir.

THE COURT: Assume you are a member of the jury and the jury has convicted the Defendant of the crime of murder beyond a reasonable doubt. Going into the sentence phase the jury has found an aggravating circumstance beyond a reasonable doubt, and then the jury, after deliberating, unanimously finds that the death penalty is the proper sentence in this case, if you are part of that jury that has so found one of the requirements is, since you are actually imposing the sentence the jury, on a form, has to take pen in hand and sign their name saying that, indeed, is the unanimous verdict and I did vote to impose the death penalty in this case. Do you understand that?

A. Yes sir.

THE COURT: If you are part of the jury one of your jobs is that you come into the courtroom without any predetermination as to what the law is. You take a law that the Court gives you and apply it to the facts as you so find them to be. You understand that?

A. Yes sir.

THE COURT: You can't be predisposed as to any outcome. You can't be predisposed as to any particular sentence. You have to be open to -- if you are in the sentencing phase you have to be open to consider and impose a life sentence, or open to consider or impose the death sentence, don't lean one way or the other, you are not predisposed one way or the other. What you do is, you listen to all the facts and the evidence, listen to the law and then, with the other fellow members of the jury, make up your mind. Do you understand that?

A. Yes, I do.

THE COURT: Since Friday, have you read, listened, watched, looked up anything about this case?

A. I just basically avoided what was coming on T.V., and you know, of course kind of hard to see what's popping up, but no, I have not read anything.

THE COURT: All right. Good deal. And have you talked to anybody since Friday about this case?

A. No sir.

THE COURT: All right, now, before Friday, obviously before you had the instructions not to do that, do you remember anything about this in the past, coming up, remember reading about it, or hearing about it, or watching it, seeing anything about this?

A. Yes, I do.

THE COURT: Okay. Now, as you sit there today I want you to tell me the best you can what you remembered hearing or seeing. What was that?

A. Recalling that -- from what I remember he was convicted of, I believe murdering his girlfriend, and sexually assaulting, I believe the girlfriend's daughter, and that this up and coming trial that he was also accused of this particular case of murder.

THE COURT: Okay. All right. Now, understand that regarding that information, which could be correct or not correct, whatever it is, you have to set that aside. You have to box that up. You have to leave that outside the courthouse. You can't bring it with you in the courtroom. As a juror you take your oath and say, I'm going to make my decision based solely and completely on the facts and evidence presented in this courtroom and from no other source, I'm not going to let anything else affect my decision other than what I hear in this courtroom. Do you understand that?

A. Yes, I do.

THE COURT: And my question to you is, understanding that would be your job as a juror, can you do that?

A. Yes, I can.

THE COURT: All right. Very good. Now, when you heard something in the past about the particular matter do you remember forming an opinion at that point in time, or a belief at that point in time?

A. Certainly.

THE COURT: Okay. And what was that?

A. Of course what anyone would say normally, at least in the back of their mind, you know, oh my God, you know, what has this guy done.

THE COURT: Okay.

A. You know, just shock and disgust.

THE COURT: Okay. Very good. Understanding, again, regarding that particular feeling, opinion, whatever it might be, again, that's something you have to box up. You have to completely leave that outside the courthouse. If you are here, you are part of this jury, when you take your oath you say to the Judge, doesn't matter what I might have been exposed to in the past, that's not going to affect my decision in any way, I take my oath and I will listen to the facts and evidence in this case, make my decision solely and completely on the facts and evidence in this case. Understanding that to be the job of the juror can you do that?

A. Yes, I can.

THE COURT: Very good, sir. Now, kind of a general question. Do you know of any kind of personal, political, religious, philosophical belief that you might have that would prevent you from being a fair and impartial juror in this case?

A. No, I do not.

THE COURT: All right. Regarding the witnesses in this case, you didn't circle any of the witnesses, correct?

A. That's correct.

THE COURT: All right. Very good. And regarding the category of juror which best described you you circled (C), correct?

A. That is correct.

THE COURT: All right. Let's go over that real briefly and make sure we are on the same page as juror (C). What juror (C) says, I'm a member of the jury and in the first part of the trial I, along with all the other members of the jury unanimously had convicted the defendant guilty of the crime of murder beyond a reasonable doubt, now we are in the sentencing phase. In the sentencing phase I didn't bring any predispositions of any kind, I'm not leaning to life, I'm not leaning to death, I'm open to either possibility, I will fairly consider and could impose a life sentence, I will fairly consider and could impose a death sentence, but that's

going to be based upon the facts and evidence presented in the second part of the trial, and not based on any other consideration. Is that correct?

A. That's correct.

THE COURT: All right. Very good. To follow up on that just a little bit here. You are on the jury, you are in the sentencing phase. Are you telling me you can, based upon the right set of facts and circumstances being presented to you you could fairly consider and impose a life sentence?

A. Yes, I could.

THE COURT: Based upon the right set of facts and circumstances being presented to you you could fairly consider and impose a death sentence?

A. Yes, I could.

THE COURT: Now, if you are part of the jury that would unanimously agree and impose a death sentence can you, as I describe, take pen in hand and sign your name to the form indicating that that, indeed, is the unanimous decision of the jury in this matter?

A. Yes, I could.

THE COURT: All right. The last thing I need to cover with you is, because of the type of case that this is the jury in this matter is going to be sequestered. That means once the jury is selected, we have the jury that's going to hear this case, then they would, obviously at County expense, be

housed at a motel, meals taken care of, transported to and from by County officials, but you are not going home in the evening. You are with us for the trial. The best estimate as to how long that will take, the best estimate I can give you is, once it starts, seven, eight, nine days. That's the best estimate that I can give you. Understanding that's a hardship -- there is no question about that, everybody knows that and understands it, it's a hardship to do that, but is being sequestered such an undue hardship on you, or is there some kind of health concern of a family member or yourself that would be -- being sequestered would be an undue hardship on you?

A. Something has come up relatively recently.

THE COURT: Okay.

A. When I first signed the papers stating that I would be available for jury duty I had no problems at all with that. I came back from Iraq in the middle of May.

THE COURT: Okay.

A. And my -- the nature of my employment is a defense contractor.

THE COURT: Okay.

A. Not wanting to, you know, undergo another hardship of another year or so overseas the wife and I decided that I should find work at home.

THE COURT: Okay. Good.

A. Up till that point I really had no opportunity. Something has come about in about the past two weeks with another company. I used to work for DineCorp. This is a different company, and the way the system works is, if you are accepted they pretty much say, okay, you need to be here at this particular orientation and training on this particular date, can you be there, can you not. If I cannot be there, and especially if I cannot respond then I'm by-passed in the entire process. They won't put it on a back burner. They won't say ---

THE COURT: They would just let you go.

A. They won't -- yes. They won't say that, you know, well, I'm going to go ahead and hold this guy's application for another month, they move on to the next person, and I'm still out of work.

THE COURT: Okay.

A. So that is somewhat of a hardship, yes sir.

THE COURT: Okay. Now, have -- has that come up? Have they ---

A. Yes.

THE COURT: They have told you -- and when -- have they told you to report, or asked you to come, or when is it?

A. My resume was accepted last Wednesday through a company called AeroTech, and that's the -- the search agent, basically, and the company that I would be going to work for

is located up in Wisconsin as far as for training.

THE COURT: Okay.

A. Once the training is completed, between three and six weeks, I would be stationed down in Charleston.

THE COURT: Okay.

A. But as I said before, once my application or my resume is accepted -- I already have let him know, the agent, of the jury duty and the fact that I needed to speak in this particular forum.

THE COURT: Okay.

A. Because I had already accepted the application for the jury duty ---

THE COURT: Right. So when -- when would you be expected to report to Wisconsin if they gave you the job?

A. If I was to go home tonight and say I'm available he would contact the company, they would finalize the offer, the offer would come through, and at that point they would tell me you need to be here at this particular point in time, here is your plane ticket, or they would say, you need to finalize your medical report, your clearance certificates, etcetera, etcetera. It's hard to say. It's not like going to work at your local eatery down the street.

THE COURT: Right.

A. It's more of a situation where, once they accept you there's -- there's a phone interview. You go through the