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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. 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 8 OF 14

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1 THE COURT: All right, we are here now on the case
2 of 2005-GS-26- -- and I believe it to be -- is it 2927?

3 MR. HUMPHRIES: It's -- I believe it's 25- -- I
4 thought it was 2527. I may be wrong about that. 29;
5 I'm sorry.

6 THE COURT: 2927, is that right?

7 MR. HUMPHRIES: Yeah. I've got it captioned
8 wrong.

9 MS. WILLIAMS: It is, Your Honor.

10 THE COURT: 2927. I was looking at the back of
11 the Indictment and it kind of got cut off. All right,
12 very good. Whereby, that is the State of South Carolina
13 versus Stephen C. Stanko, an Indictment for murder and
14 armed robbery. The State having previously served
15 notice on the defendant with notice to seek the death
16 penalty in this case, we are here today, as I understand
17 it, that the State has a matter regarding its evidence
18 in aggravation, is that correct?

19 MR. HUMPHRIES: Yes, Your Honor.

20 THE COURT: All right, Solicitor, I'll be glad to
21 hear from you.

22 MR. HUMPHRIES: If it please the Court, Your
23 Honor, we'd like to accomplish three things by way of
24 housekeeping today. The first, obviously by statute
25 we're required to serve our notice of evidence in

1 aggravation upon the defendant no later than forty-five
2 days before the call of the case for trial.

3 For the record, Your Honor, we did serve Mr. Diggs,
4 counsel for Defendant Stanko, on July 21st, 2009, by
5 letter with the notice of evidence in aggravation. I
6 will provide him another copy at this time.

7 THE COURT: All right, very good.

8 (Mr. Humphries hands document to Mr. Diggs.)

9 THE COURT: And, Mr. Diggs, as indicated by the
10 Solicitor, you had received that earlier by U.S. Mail?

11 MR. DIGGS: Yes, sir.

12 THE COURT: All right, very good. Thank you, sir.

13 MR. HUMPHRIES: The other two matters, if you
14 would like, at this point, Your Honor, to take up in
15 regard to basically notice issues, we may very well have
16 arraigned Defendant Stanko in this case, but quite
17 frankly, I'm not aware -- I'm not able to determine that
18 from my records, so just as a matter of being more
19 cautious than not, we'd like to go through with a brief
20 arraignment at this time.

21 THE COURT: All right, sir. You may proceed.

22 MR. HUMPHRIES: If it please the Court, if the
23 defendant and his counsel would please stand.

24 (Mr. Diggs and Mr. Stanko stand.)

25 MR. HUMPHRIES: And I will ask Defendant Stanko

MOTIONS

5

1 and his counsel, do you waive reading of the Indictment?

2 MR. STANKO: Yes, sir.

3 MR. HUMPHRIES: This is Indictment Number 2005-GS-
4 26-2927. It's an Indictment, State versus Stephen C.
5 Stanko. It's an Indictment for count one, murder; count
6 two, armed robbery, and I will ask the defendant at this
7 time as to count one, murder, how do you plead?

8 MR. STANKO: Not guilty.

9 MR. HUMPHRIES: And as to count two, armed
10 robbery, how do you plead?

11 MR. STANKO: Not guilty.

12 MR. HUMPHRIES: And how do you wish to be tried?

13 MR. STANKO: By God and my country.

14 MR. HUMPHRIES: At this time I will serve upon
15 both Defendant Stanko and his counsel certified true
16 copies of the Indictment.

17 THE COURT: All right, Mr. Diggs, is there any
18 matters regarding the Indictment that you wish to bring
19 to the Court's attention at this time?

20 MR. DIGGS: Your Honor, not from myself at this
21 time.

22 THE COURT: All right, very good.

23 All right, and you indicated there was another
24 matter, Solicitor?

25 MR. HUMPHRIES: Your Honor, there is one other

1 matter, ---

2 THE COURT: Y'all can have a seat. Thank you very
3 much.

4 MR. HUMPHRIES: --- and that is this: And I place
5 a formal statement in the record barring the objection
6 by the defendant, but in any event, as the Court is well
7 aware, in the first case, Stanko one, arising out of
8 Georgetown County, there is pending a post conviction
9 relief matter. That's before the Honorable J. Michael
10 Baxley.

11 Again, in an abundance of caution, after having
12 spoken with Assistant Attorney General Anthony Mabry,
13 who is handling that case for the State, there has been
14 disagreement and that is this: Presently there is a
15 scheduling order in that matter which will not have that
16 case being heard any earlier than late December, perhaps
17 in January, which obviously is after our projected trial
18 date, and the Attorney General, through Assistant
19 Attorney General Mabry, has stated that they will not
20 have any contact with counsel for Defendant Stanko from
21 the first trial until this case is resolved in November.

22 The only caveat to that, Your Honor, is if for any
23 reason should our case be continued and their case not
24 be continued, obviously at that point they would have to
25 have some contact with the attorneys in order to

MOTIONS

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1 appropriately present their case at post conviction.

2 I have a document, which I will provide to
3 Defendant Stanko and his counsel and would ask that it
4 be filed with the Clerk, and that would be Court's
5 Exhibit 1 for today's purposes, and I will read it into
6 the record, Your Honor.

7 STATEMENT REGARDING ATTORNEY GENERAL MARKED
8 AS COURT'S EXHIBIT NUMBER 1.

9 THE COURT: All right.

10 Now, the Court has, I believe, on two occasions
11 gone over the issue regarding the representation with
12 the defendant, Mr. Stanko, and with his counsel in this
13 particular matter, and it has been made clear by Mr.
14 Stanko that he wishes his current counsel in this
15 particular case to continue. Is there any change in
16 that since the last two times that we addressed this
17 matter, Mr. Diggs?

18 MR. DIGGS: Your Honor, there's no change from my
19 perspective.

20 THE COURT: All right.

21 Mr. Stanko, is there any change in that?

22 MR. STANKO: No, sir. The only thing I would like
23 to ask, Judge, is can my PCR attorney not -- there's
24 been no change, Your Honor.

25 THE COURT: All right.

1 MR. STANKO: Can my PCR attorney not be present
2 for some of these situations whenever items such as this
3 where the Solicitor ---

4 THE COURT: The attorney that you are ---

5 MR. STANKO: Mr. Godfrey.

6 THE COURT: That represents you in the post
7 conviction relief application?

8 MR. STANKO: Yes, sir.

9 THE COURT: Okay.

10 MR. STANKO: I mean, I don't know that he's been
11 apprised of these because I did not -- I only found out
12 myself last night.

13 THE COURT: All right.

14 MR. STANKO: And I don't know if he was apprised
15 of this meeting, and if Mr. Humphries intends to serve
16 me with notices like this wherein agreed-upon contracts
17 are going to be violated in other events, shouldn't Mr.
18 Godfrey be present and understanding of all this?

19 THE COURT: All right, sir, and I appreciate that,
20 Mr. Stanko. Thank you.

21 What I'd have you do, Solicitor, is if you would,
22 if you'd make a copy of this and forward it on to the
23 post conviction relief counsel of Mr. Stanko, but -- and
24 I appreciate you bringing this matter to the Court's
25 attention, but Judge Baxley covered this issue with Mr.

MOTIONS

9

1 Stanko. I've covered it twice with him. He has
2 remained steadfast in his position and has agreed upon
3 that today, that he wants Mr. Diggs to represent him in
4 this matter in Horry County. There has been no change
5 in that position during the entirety of this time, as to
6 when Judge Baxley had it initially, and now that I have
7 this particular case, and I appreciate the matter being
8 raised by the State, but it has been addressed and
9 covered by the Court.

10 Mr. Diggs understands the situation. Mr. Stanko
11 understands the situation. Both of them have expressed
12 the complete ability to cooperate and to properly
13 present the defense of Mr. Stanko in this matter, and
14 Mr. Stanko wants Mr. Diggs to stay on the case, and so I
15 believe that issue has and continues to be resolved, and
16 it really is not an issue in this particular case unless
17 in some circumstance it is raised by the Defense, but
18 unless it is raised by the Defense in the future, that
19 issue has been addressed. It has been concluded, and
20 for the purposes of this Court, it has been resolved.

21 MR. HUMPHRIES: No question, and this ---

22 THE COURT: All right, and I appreciate this, but
23 I take this more as a matter of information, and I would
24 just have you forward a copy of that on to his counsel
25 in the PCR case so they can be aware of it just as a

1 matter of courtesy, all right?

2 MR. HUMPHRIES: Certainly. Thank you.

3 THE COURT: All right, anything else from the
4 State?

5 MR. HUMPHRIES: No, Your Honor.

6 THE COURT: All right, counsel, I'll take this
7 opportunity then, though I had previously communicated
8 with you about this, but to make sure that y'all are
9 aware that the juror questionnaire form that we had
10 previously reviewed and that I had forwarded to counsel,
11 y'all had what the Court considered more than a lengthy
12 opportunity to review it, that that juror questionnaire
13 has been adopted by the Court, has been forwarded to the
14 Clerk of Court without objection by the State or without
15 objection by the Defense, to be used in this particular
16 matter, and that was forwarded on to the Clerk of Court
17 for their use, that juror questionnaire form of fifty
18 questions to be answered by the potential jurors in this
19 particular case, obviously prior to the selection
20 process, so that the information contained in that juror
21 questionnaire would be available to all parties when we
22 ultimately come to the selection process in this
23 particular matter.

24 Anything else regarding that juror questionnaire
25 matter from the State?

MOTIONS

11

1 MR. HUMPHRIES: No, Your Honor. We had no
2 objection to the ---

3 THE COURT: All right. From the Defense?

4 MR. DIGGS: Your Honor, there was the names in one
5 of the questions, and I can't remember which one ---

6 THE COURT: And we -- we forwarded a communication
7 to you after you did that ---

8 MR. DIGGS: Okay.

9 THE COURT: --- indicating to both of y'all, Mr.
10 Diggs and Ms. Williams, that we appreciated your
11 notation, and we changed that. I believe that, if I'm
12 looking at it correctly, was Question 42, and we
13 corrected that before it was forwarded on to the Clerk
14 of Court, but after your notice to us, after your review
15 of it, and that was the one thing that y'all noted, we
16 did communicate back with both of your offices to let
17 you know that we did do that before we forwarded it on
18 to the Clerk of Court. Anything else other than that?

19 MR. DIGGS: No, Your Honor.

20 THE COURT: All right, thank y'all very much.

21 All right, now, is there anything else at this
22 point in time from the State of any matter regarding the
23 State of South Carolina versus Stephen C. Stanko that we
24 need to review at this point in time?

25 MR. HUMPHRIES: Not at this time, Your Honor.

1 THE COURT: All right. Anything else from the
2 Defense, Mr. Diggs, Ms. Williams?

3 MR. DIGGS: Not at this time, Your Honor.

4 THE COURT: Thank you very much.

5 (Conclusion of Transcript of Record.)
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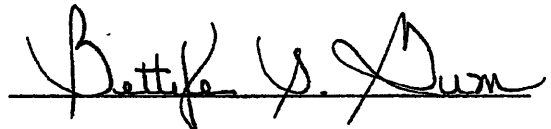
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had and evidence introduced in the
9 hearing of the captioned case, as taken by Dixie Cox
10 Eubank, Official Reporter, and transcribed by me,
11 relative to appeal, in the Court of General Sessions for
12 Horry County, South Carolina.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15

16
17 June 14, 2010

18
19 

20 BETTYE S. GUM, CCR-CVR-CM

21 Certified Court Reporter and

22 Notary Public for South Carolina

23 My Commission Expires: 7/13/14
24
25

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
))
Plaintiff,)
))
-VS-) TRANSCRIPT OF RECORD
))
Stephen Christopher Stanko,)
))
Defendant.)
_____)

October 8, 2009
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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Official Reporter

I N D E X
(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

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E X H I B I T I N D E X

(No Exhibits Marked)

1 THE COURT: All right, we are here in the matter
2 of State of South Carolina versus Stephen Christopher
3 Stanko, Indictment 2005-GS-26-2927, based upon filed
4 motions by the defendant in this particular matter.

5 All right, is the Defense ready to proceed with its
6 motions?

7 MS. WILLIAMS: Your Honor, if I may at this point,
8 my client would like to be able to take his notes while
9 he goes through the trial, but if he sits here
10 handcuffed, he can't, and they've informed me that only
11 upon the direct order from Your Honor can they
12 unhandcuff him in open Court. If I may ask that so that
13 he could take notes.

14 THE COURT: Is there an objection to that from the
15 State?

16 MR. HEMBREE: No, Your Honor.

17 THE COURT: All right. If y'all do not mind,
18 please. Thank you.

19 Who is going to argue the motions?

20 MR. DIGGS: Your Honor, I am going to ---

21 THE COURT: All right, very good.

22 MR. DIGGS: --- because ---

23 THE COURT: We will take them in the order that
24 they were presented. I've got here Defendant's Pre-
25 trial motion number 1, motion to declare Section 17-24-

1 10 unconstitutional, Conclusive Presumption 1. I'll be
2 glad to hear from you.

3 MR. DIGGS: All right. Your Honor, what we're
4 doing with this, if I could have just a second to get my
5 bearings. The problem that we see with this particular
6 statute, and I'm discussing right now 17-24-10, which
7 says it's an affirmative defense to a prosecution for a
8 crime. At the time of the commission of the act
9 constituting the offense, the defendant as a result of
10 mental disease or defect lacked the capacity to
11 distinguish moral or legal right from moral or legal
12 wrong or to recognize the particular act charged as
13 morally or legally wrong.

14 The problem that we have is in reading this we see
15 that there's a conclusive presumption that's contained
16 within the statute that says if you are able to make
17 this distinction in one part of the brain at any
18 particular time, that you are able to do so in a way
19 that the brain functions coherently and, therefore,
20 because of that you're able to make this distinction
21 between legal or moral right and wrong.

22 THE COURT: What it says is it's an affirmative
23 defense to the prosecution for a crime that at the time
24 of the commission of the act, at the time the act was
25 committed ---

1 MR. DIGGS: Right.

2 THE COURT: --- that constitutes the offense the
3 defendant as a result of a mental disease or defect
4 lacked the capacity to distinguish moral or legal right
5 from moral or legal wrong or to recognize the particular
6 act charged as morally or legally wrong, so it's very
7 clear, at the commission of the act did he have a mental
8 disease or defect that caused him not to be able to
9 distinguish moral or legal right from moral or legal
10 wrong or to recognize the particular act charged as
11 morally or legally wrong, very clear, very precise, but
12 I don't see -- what is your issue?

13 MR. DIGGS: The issue is that the decision-making
14 process is complex, consisting of different areas of the
15 brain functioning in concert, each carrying out their
16 own respective jobs, and one area of that brain might be
17 able to communicate in a manner that's consistent with
18 good health, good mental health, and the other area
19 might not be, and we're looking at the overall act, and
20 what I'm saying here is that if we tend to focus on one
21 particular area of the brain where this executive
22 analysis is occurring, for example.

23 THE COURT: It's not focusing on anything.

24 MR. DIGGS: Well, ---

25 THE COURT: It's saying did the defendant have a

1 mental disease or defect at that time or lacked the
2 capacity to distinguish between moral or legal right
3 from moral or legal wrong or to recognize the particular
4 act charged as morally or legally wrong. As from what
5 you're indicating, you're saying there was something
6 wrong with his brain, so I'm assuming you'd have an
7 expert that says because there's something wrong with
8 his brain, he can't distinguish between ---

9 MR. DIGGS: Moral and legal ---

10 THE COURT: --- moral or legal right from moral or
11 legal wrong or to recognize the particular act charged
12 was morally or legally wrong.

13 MR. DIGGS: Right. Let me give you an example.
14 Let's say you've got an individual who has a missing
15 leg. He might recognize how to carry out the functions
16 of walking but not be able to because there's something
17 missing there that's needed in order to properly
18 function in that fashion. He recognizes it, can do it
19 but for this particular missing element that's required
20 in the whole process. The brain ---

21 THE COURT: I don't think that's a -- that's not
22 an applicable example, but what you've got here is a
23 specific standard and it's clear, it's precise, it's
24 understandable, and it's been used for an extended
25 period of time by the states of this United States and

1 the State of South Carolina, and I don't see -- I'm
2 having a hard time understanding what your argument is.
3 Are you saying half the brain is telling him to do "X"
4 and half his brain is telling him to do "Y"?

5 MR. DIGGS: It's kind of like that. It's like ---

6 THE COURT: What's your argument? I just don't
7 understand your argument at all.

8 MR. DIGGS: When we look at a decision that's made
9 in the brain, and in this particular case, let's say
10 we've got a fight or flight impulse that generates from
11 the base of the brain, in a particular area of the
12 brain, and we walk along a time line. That fight or
13 flight impulse is broadcast out through the brain to a
14 different area where it's analyzed, and it's digested,
15 and it's thought about, and a decision is made inside of
16 the brain as to best respond to that situation.

17 Now, it might be that the impulse is perfectly
18 fine, it's working perfectly fine, and as it moves
19 along, it encounters another area of the brain that's
20 defective. Where it might be encountered, a decision is
21 made. There might be at some point, at some level where
22 there's a recognized evaluation made or an evaluation
23 can be made, that it might be wrong or it might be
24 right, and yet it's not functioning to the point that it
25 can direct how to properly respond, if that's making any

1 sense to the Court, ---

2 THE COURT: And ---

3 MR. DIGGS: --- and so ---

4 THE COURT: Then assuming that to be correct, if
5 that's your analysis of the situation, your expert's
6 analysis of the situation, then they should be able to
7 match that up to the standard and give you an opinion.
8 If it prevents them from understanding the -- and
9 distinguish moral or legal right from moral or legal
10 wrong, then I'm sure they'll present that, but you're
11 asking to declare a statute unconstitutional and you're
12 not giving me any reason to do so.

13 MR. DIGGS: Well, the reason is, and what I put in
14 the motion, is there's a conclusive presumption that if
15 one can distinguish moral right from moral and legal
16 wrong, moral and legal right from moral or legal wrong,
17 in one area of the brain ---

18 THE COURT: It doesn't say that. It -- you're
19 adding something to the statute that it doesn't say. It
20 says that the defendant as a result of any kind of
21 mental disease or defect lacks the capacity to
22 distinguish moral or legal wrong from moral or legal
23 wrong or to recognize a particular act charged as
24 morally or legally wrong. You're adding things to the
25 statute and explanations that don't exist in that

1 statute. Continue on.

2 MR. DIGGS: All right. I'm trying -- I'm trying
3 to get a grasp of your argument, your statement ---

4 THE COURT: All right, sir, go ahead. I'm sorry.
5 I've interrupted you. You go ahead.

6 MR. DIGGS: Your Honor, that's -- the point that I
7 want to make, I believe that there is a conclusive
8 presumption in the statute that says if one can
9 recognize moral or legal right and wrong, then you are
10 not insane and you do not have this affirmative defense
11 available to you in that situation, and our point is
12 that if there is a recognition at some level in the
13 brain where that is understood, then that should not
14 deprive a defendant of asserting this insanity, the
15 issue of insanity, as a defense simply because it is
16 there present in part of the brain. It needs to be
17 something that is a result of the entire complex
18 function of the brain in terms of analysis and that's
19 not what this statute allows for.

20 The Solicitor is going to argue right here in this
21 -- along the time line in this part of the brain he
22 fully understood what was right and what was wrong.
23 Then that disqualifies him from invoking insanity as a
24 defense in this case, when the analysis from our
25 perspective should be in the jury's, is along this time

1 line is he able to distinguish, to make these
2 distinctions, in this analysis that's going on inside of
3 his brain, and the answer is no, and he shouldn't be
4 disqualified in that situation simply because -- because
5 back here -- earlier in the time line there was a
6 distinction there that recognized right from wrong.
7 That's the point I'm trying to make.

8 THE COURT: Okay. What is it that you would want
9 the statute to say? Maybe that would help.

10 MR. DIGGS: I would want the statute -- and the
11 Court made reference earlier that this has been in our
12 law for many, many years, and it has been, this whole
13 concept of malice, and malice aforethought, and
14 distinguishing right from wrong. All of those things
15 have been -- you know, they've been factors that have
16 been in our law for as long as we've had the law and for
17 as long as, you know, murder was a -- or a homicide,
18 illegal homicide, was a crime, but it was developed at a
19 time when we didn't have any understanding at all of how
20 the brain was structured, and how it operated, what
21 functions were there inside, at what particular time
22 those functions kicked in.

23 It's like the body. We can see the body walk. We
24 can see a human being walking and taking steps, and we
25 can visualize that -- and we see how that process works.

1 We don't have that luxury when we're talking about the
2 brain and what decision -- or how decisions are being
3 made up there, and our point here is that there are
4 defects that can exist in the brain that we are
5 beginning to understand, that there are defects along
6 the way that are going to completely make it impossible
7 for that brain to function in a way that it was intended
8 and the way we presume it was going to function when the
9 statute was written.

10 And that's what -- that's the complaint I have with
11 the statute, and so what the statute should say is this
12 is a more -- you know, insanity -- insanity is a complex
13 issue. It needs to be taken into account along the
14 entire -- we need to -- when we're going to set a
15 defense and say one can have access to it or not, we
16 need to have an understanding of how the brain operates,
17 where those functions occur in the brain, and the
18 analysis that's done inside the brain, and the statute
19 needs to take that into account and, say, after all of
20 these functions, that there is an understanding of right
21 and wrong morally and legally, then insanity is not
22 applicable in this case and he can't be excused from the
23 conduct on that basis, but the statute doesn't do it.

24 It just says between moral and legal right and
25 wrong, and you presume, Your Honor, with all due

1 respect, that that means you. I would submit there's no
2 taking into account by the Court or anybody else, after
3 reading the statute, where does this distinction lie in
4 that executive analysis, and if it's earlier on in the
5 thinking process, in the mental process of the
6 functioning of the brain, if there's any understanding
7 at that time, at that point in time, of right and wrong,
8 then insanity is not available, and I would submit that
9 that's wrong and it should take into account the
10 determination of whether there is sanity or insanity.

11 THE COURT: All right. When you're talking at an
12 earlier point in time, what are you talking about at an
13 earlier point in time, because the statute focuses on a
14 specific, exact point in time, when the crime was
15 committed, so that's an exact, definable point in time,
16 and you're talking about an earlier point in time?

17 MR. DIGGS: Yes, sir.

18 THE COURT: In reference to the exact reference
19 time that's in the statute, what are we talking about?

20 MR. DIGGS: We're talking about a period of time
21 that's encompassed within that. It's going to be a much
22 -- smaller in duration, Your Honor. We're talking about
23 an executive analysis that occurs inside the brain
24 during the brain function, you know, in terms of
25 microseconds, milliseconds, ---

1 THE COURT: You're talking about right at the time
2 the crime -- right at the time the crime is committed?
3 Is that what you're talking about?

4 MR. DIGGS: That's -- I'm talking about a
5 different point in time. I'm talking about the time
6 that's consumed within the -- the analysis function that
7 occurs within the brain, you know, from the time that
8 impulse might come out of the base of the brain until
9 it's processed in another area of the brain and then
10 acted upon by the actor.

11 THE COURT: Or not acted upon?

12 MR. DIGGS: Correct, and at some point in -- at
13 some point in time, there might be an understanding
14 inside that brain of right and wrong, but that somehow
15 doesn't quite make it to the end of the process and then
16 you have your illegal act that occurs, so if -- if the
17 law is applied ---

18 THE COURT: So you're saying that the
19 understanding of the moral or legal right from moral or
20 legal wrong, there's an understanding, but that doesn't
21 prevent the person from committing it for what reason?

22 MR. DIGGS: You're looking -- you're looking at
23 the function of a brain that's not completely
24 functional, and what we're saying is that that -- the
25 statute would allow a fact finder to make a decision

1 based on part of the functioning of the brain and not
2 the whole functioning.

3 THE COURT: Well, it would seem to me -- it would
4 seem logical that if you have that scenario that you're
5 talking about, then the expert would be able to say
6 though you've got this conflict in the brain and one
7 area recognizes it and the other one doesn't, and this
8 other one -- other area prevails, that he does fall
9 within the statute because his brain was defective in
10 some way and didn't allow him to distinguish moral or
11 legal right from moral or legal wrong.

12 MR. DIGGS: And if that's the way the law is
13 explained to the jury and applied by the jury, we
14 wouldn't have an objection to it.

15 THE COURT: Well, it's very clear. I mean, it's
16 very clear from what the statute says.

17 MR. DIGGS: All right.

18 THE COURT: And then it just depends on the facts,
19 whatever is testified to, did he have the ability to do
20 it or didn't -- because of defects, did he have the
21 ability to do it or didn't he?

22 MR. DIGGS: Right.

23 THE COURT: And it would seem to me that your
24 arguments you're making, that if that's the case, then
25 the expert will say, "No, he didn't," and then that's up

1 to the jury to decipher all that, sift through all that,
2 and make their -- make their decision, but if the expert
3 comes to the conclusion that despite all -- whatever
4 defects or abnormalities there might be or not be, or
5 whatever it is, he still had the ability to distinguish
6 moral or legal right from moral or legal wrong, then
7 it's not available.

8 MR. DIGGS: Well, and if that -- it that's the way
9 the law is applied ---

10 THE COURT: But that's -- that's all a product of
11 the evidence and the scientific analysis that goes into
12 it.

13 MR. DIGGS: All right. What I would ask is -- I
14 mean, I understand what Your Honor's ruling is at ---

15 THE COURT: Well, I mean, I ---

16 MR. DIGGS: --- or not ruling, but what your
17 opinion ---

18 THE COURT: I'm just having a hard -- I guess, and
19 I appreciate it, and I understand what you're saying.
20 I'm just having a hard time understanding what it is
21 about the statute that's unconstitutional in your mind,
22 what issue in there is unconstitutional, because what
23 you're telling me is you may or may not have this
24 evidence, and it seems to fit right within what the
25 statute says.

1 MR. DIGGS: All right. Let's say I -- I'm going
2 to try one more time.

3 THE COURT: All right; I'm sorry.

4 MR. DIGGS: It's not your fault. Let's say I do
5 something that startles you and you respond. I mean,
6 you're startled, and at that initial reaction, there are
7 a whole range of responses that you might entertain.
8 One is -- and they would range from running away to
9 killing, and anywhere in between. It might be a simple
10 -- your reaction might be as simple as, "Stop. Don't do
11 that," or, you know, "You're an idiot," but there's a
12 whole range of responses that might take place, and you
13 might take place -- you might understand at that time
14 that it is illegal to kill me for something as small as
15 I startled you, but when that reaches on down into --
16 that works its way through the functioning areas of the
17 brain, the functional areas, there might be missing
18 elements there in that analysis that would prevent you
19 from fully understanding that -- the way that it would
20 allow you to act in a more appropriate manner, ---

21 THE COURT: Okay.

22 MR. DIGGS: --- okay, and that's what I'm saying.

23 THE COURT: All right.

24 MR. DIGGS: I don't want the State to be able to
25 say, "Look, he understood this was wrong, but

1 nevertheless, he went ahead and he did it anyway," and
2 what we're saying is the statute doesn't take that type
3 of situation into account. It just says, "Look, you
4 knew right from wrong and you're guilty because you knew
5 it," but it's not that simple of a process. It's not
6 that simple, and the statute doesn't take that into
7 account.

8 THE COURT: All right, thank you.

9 Solicitor, in response?

10 MR. HEMBREE: Yes, Your Honor, a couple of things.
11 We step back to what we're really talking about here and
12 that's whether the statute is unconstitutional or not.
13 I appreciate that Mr. Diggs would like to see our
14 statute changed, would like to see the standard changed
15 in South Carolina. He's made that clear. We've had
16 many discussions and motions in this case and other
17 cases regarding that.

18 However, this statute as it stands, and this is
19 going to be the same argument you hear from me on a
20 number of these motions by Defense counsel. This
21 statute is the -- has been a long-standing statute in
22 South Carolina. It has been challenged repeatedly in
23 the appellate courts. It has been affirmed repeatedly.
24 It has been challenged at the Supreme Court level and
25 has been affirmed, so it is a statute that has met

1 constitutional muster time and time again.

2 We had the benefit in this case that we've tried
3 Mr. Stanko in Georgetown County for a somewhat related
4 crime; at least it was a series of crimes. He -- Mr.
5 Diggs at that time offered these same motions, made
6 these same arguments, and I appreciate that he's
7 preserving his right to appeal on these issues, on the
8 constitutionality of these statutes, but in that case,
9 the -- that case has already been appealed to the State
10 Supreme Court and has been affirmed. There has been an
11 appeal to the United States Supreme Court and certiorari
12 has been denied, so not only do we have the weight of
13 precedence in other cases that has found these statutes
14 constitutional, we actually have had the benefit of
15 having this particular set of motions considered by the
16 Court on another case that is very, very closely related
17 with Mr. Stanko, and once again, those -- the statute
18 was affirmed at that time, so, Your Honor, we would
19 respectfully request that the Court deny Mr. Diggs'
20 motion to find 17-24-10 unconstitutional in -- I'm going
21 to kind of, I guess, save a little bit, Judge, and we've
22 got a number of these motions. I can address each one
23 of them, but my argument is going to be essentially the
24 same every time motions ---

25 THE COURT: Well, I tell you what, when Mr. Diggs

1 argues the particular motion, if there's anything you
2 want to add or you want to just indicate to the Court
3 that you rely upon this argument that you have now made,
4 I'll be glad to hear you at that time.

5 MR. HEMBREE: Thank you, Your Honor, and those
6 motions are 1 through 7. I also -- I will say this, and
7 it's sort of a side note, because we talked -- Mr. Diggs
8 talked about a lot of issues in addition to the
9 constitutionality of this motion -- or this statute. He
10 spoke of -- it gives me some concern because I recognize
11 -- as the Court recognized, I sort of had the same issue
12 form in my mind, that if Mr. Diggs is asserting -- and
13 it sounds like he's preparing to assert an insanity
14 defense, and we have been told by counsel that he is not
15 going to assert an insanity defense.

16 Certainly there may be evidence in the penalty
17 phase, but not in the guilt phase is what has been --
18 we've been advised that, and I had Mr. Diggs tell me
19 that he hadn't -- but, you know, I believe the Court
20 dealt with this issue several weeks ago, and the answer
21 was, "We do not intend to assert an insanity defense,"
22 and I think he left the back door open and said, "at
23 this time," but that was the message that was
24 communicated to us, so ---

25 MR. DIGGS: I think he is referring, and with all

1 due respect, I think he's intertwining here the
2 competency issue with the insanity issue.

3 THE COURT: All right. Well, as to what's --
4 let's be clear then. Regarding the crime for which Mr.
5 Stanko is charged, as to the defense of that crime
6 charged, is the Defense going to raise an insanity
7 defense?

8 MR. DIGGS: Yes; yes. We've always done that in
9 this case, Your Honor, and we always have intended
10 to ---

11 THE COURT: All right.

12 MR. DIGGS: And I, you know, am -- I regret
13 anything that I might have said or done that misled the
14 Solicitor, but that's always been our ---

15 MR. HEMBREE: Thank you for clearing that up, Your
16 Honor.

17 THE COURT: All right, very good, so it's clear
18 that that will be raised by the Defense in this
19 particular matter.

20 MR. HEMBREE: Thank you, Your Honor.

21 THE COURT: All right. Regarding the motion to
22 declare 17-24-10 unconstitutional, regarding motion
23 number 1, the conclusive presumption number 1, the Court
24 will respectfully decline to grant your motion as set
25 forth in your written motion to the Court. I do find

1 that the statute, first, to be constitutional, and
2 secondly, I find that the statute allows certain leeway
3 and latitude to present medical and expert evidence and
4 argument as to the legal standard, so it seems to me
5 that the arguments that Defense have made fall well
6 within the bounds of the statute and I see no reason to
7 declare it unconstitutional.

8 MR. DIGGS: Thank you, Your Honor.

9 Number 2 is a very similar argument. It asks that
10 the Court declare the statute unconstitutional because
11 of a presumption that exists within that statute, that
12 if again you can distinguish between moral and legal
13 right from moral and legal wrong in any area of the
14 brain under any circumstances, then one is guilty of the
15 criminal conduct under the circumstances presented in
16 this case, notwithstanding the presence of physical
17 defects in the form of missing volumetric mass within
18 the brain or function that's inadequate.

19 Your Honor, this kind of spills over into this
20 whole idea of mental defect that's diminished -- a lot
21 of people like to refer to as diminished capacity, but
22 it's much more -- it's much deeper in terms of subject
23 matter and merit I would submit. It's different from
24 that, although our courts have in the past liked to kind
25 of throw it in the same container and call it the same

1 thing, but we've got -- and again, I go back to use the
2 physical analogy of a missing limb.

3 We understand about how to walk. We understand how
4 to do that, what it takes to conform your conduct in
5 that fashion, but if you don't have a limb, you're not
6 going to be able to walk and you're not going to be able
7 to run. That's just the way it is, and the brain is the
8 same way. You might have a certain area of the brain
9 again that's working properly and it's sending signals
10 over to the other area, down the block where it's
11 supposed to be analyzed and picked up, and analyzed and
12 certain activities to take place, and it just doesn't
13 occur.

14 It's not ever going to occur because the mass --
15 the material is missing and what is there is not
16 functioning properly, okay, and it's not going to
17 produce the result that we expect, and no matter what's
18 done in terms of training and how much that individual
19 desires to engage in certain conduct that's legal and
20 that's acceptable, it's not going to happen because the
21 brain is not functioning and it's not going to happen,
22 and I would submit that if one is in a situation and has
23 engaged in conduct that we say is illegal,
24 notwithstanding the inability by the actor to make a
25 decision to engage in that conduct, then the law -- then

1 the Eighth Amendment and the Fourteenth Amendments in
2 our state law especially would step in and relieve
3 someone from the legal culpability as a result of that
4 conduct.

5 If you can't conform -- and we're kind of getting
6 into guilty, but mentally ill, but in traditional terms,
7 that's not what I'm talking about. If you can't conform
8 because of a mental defect, then it is repugnant to our
9 Constitution and to our, again, long-standing notion of
10 criminal responsibility in requiring that to be an act
11 or an element of the offense that's been committed.

12 What our evidence is going to show in this case,
13 the way that law is being applied in this case, is that
14 this defendant could not conform because of a defect,
15 not because of a mental -- what did the doctor call it
16 -- personality disorders that he had, personality
17 disorder. He doesn't have a personality disorder. He's
18 got a part of his brain that is missing and it doesn't
19 work, and that's why certain conduct is committed, and
20 I'm saying -- and I understand what the case law is all
21 the way out of the U.S. Supreme Court, all the way up to
22 that level.

23 We say on one hand that malice is going to be an
24 element of a crime, and yet we discard -- we don't even
25 have a right to challenge the ability to form malice.

1 There is something wrong with that -- with the law that
2 allows that kind of situation, and, Your Honor, as we
3 learn more about how the brain is structured and how it
4 works I submit will change, the law will change, but
5 it's got to change -- it's got to start at sometime.

6 THE COURT: Okay, well, and I appreciate what
7 you're saying, but once again, I don't see why that
8 would have the statute to be unconstitutional. If you
9 have the medical scientific expert testimony to back up
10 the statements you're making, then it would seem to me
11 then the logical conclusion from that expert is he can't
12 recognize the act as charged is morally legal -- morally
13 or legally wrong. It just -- one plus one equals two.
14 If they've got that medical scientific expert opinion
15 that he has these problems, then it would seem to me
16 very clearly then they can say, "He doesn't fall within
17 the statute."

18 MR. DIGGS: But what I'm saying, though, Your
19 Honor, is that it should fall within the law. If he is
20 unable ---

21 THE COURT: It does. It fits perfectly with the
22 statute because if that's the expert's scientific
23 medical testimony that's out there, then their opinion
24 then should be he doesn't recognize the particular act
25 charged as morally or legally wrong.

1 MR. DIGGS: Okay. I'm going a step further.
2 Let's say -- and what I'm reaching now, I mentioned the
3 guilty but mentally ill, the capacity to conform. What
4 I'm asking the Court to do -- you know, the bottom line
5 here is to strike down the entire body of case law that
6 says guilty but mentally ill is not a defense to a
7 crime, or as to -- it's not a defense if it's not --
8 what I'm asking the Court to do is to say the guilty but
9 mentally ill concept embodied by our law, that embodies
10 inability to conform, is unconstitutional; it violates
11 fundamental fairness.

12 THE COURT: So you're wanting me to declare 17-24-
13 20 unconstitutional, not 10?

14 MR. DIGGS: When I get to that point, we will.
15 I'm going to ask the Court to do that, ---

16 THE COURT: Okay.

17 MR. DIGGS: --- but at this point ---

18 THE COURT: You're still sticking with 17-24-10?

19 MR. DIGGS: Right, that ---

20 THE COURT: All right. I would find that -- all
21 right, go ahead. I'm sorry.

22 MR. DIGGS: All right. Well, I think you
23 understand.

24 THE COURT: And I appreciate the arguments you're
25 making, but it seems perfectly clear to me from the

1 arguments that you're making that you believe that you
2 have certain medical scientific expert testimony that
3 would indicate certain issues with the defendant's
4 brain, and if they are as you represent, then the
5 expert's opinion should then logically flow and be
6 absolutely covered by 17-24-10. I see no reason to
7 declare 17-24-10 unconstitutional.

8 MR. DIGGS: Okay. It doesn't go far enough
9 because it is requiring a defendant to do something that
10 he's physically -- I'll put it this way, physically
11 incapable of doing. That's what ---

12 THE COURT: Or mentally incapable of doing?

13 MR. DIGGS: Yes, in a physical way. His brain is
14 functioning in a physical way, but it's not -- I don't
15 care how much he tries and how many times he's put in
16 this position, it's going to function the same way over,
17 and over, and over again, and the statute doesn't
18 recognize ---

19 THE COURT: And he would fall perfectly within 17-
20 24-10 from what you're saying, ---

21 MR. DIGGS: Let's go ---

22 THE COURT: --- so I would respectfully decline to
23 grant your motion as to then conclusive presumption
24 number 2, motion number 2.

25 The next one that you have is motion to declare 17-

1 24-10 unconstitutional, arbitrary factor number 1,
2 motion number 3.

3 MR. DIGGS: Right, and if -- what we're saying in
4 this particular motion is that the statute contains an
5 unconstitutional arbitrary factor that allows the
6 prosecution to establish malice aforethought as a
7 requisite element of murder based solely on the conduct
8 of the accused, but it does not allow a defense to
9 establish insanity based on the conduct of the accused.
10 It's a double standard here that is arbitrary.

11 A lot of times when we see a particular action
12 taken in a case, we would say that could only happen --
13 it takes a sick person to do something like that, and we
14 say that in a -- you know, in a way that's rhetorical,
15 but we say that, but for a reason. I would submit that
16 we say that for a reason because deep down inside
17 intellectually we know that person was sick, and yet we
18 can't use that -- the statute expressly says we can't
19 use that for asserting this defense, and that's what's
20 arbitrary and that shouldn't be able to stand under the
21 Eighth Amendment or the South Carolina equivalent.

22 THE COURT: All right, sir.
23 Solicitor.

24 MR. HEMBREE: Once again, Your Honor, both of
25 these statutes have been tried and truly challenged.

1 They've both been upheld constitutionally. Again, I
2 think Mr. Diggs is looking for the Court to essentially
3 throw out the entire body of law regarding mental
4 illness and in the criminal context, we would ask that
5 the Court follow precedent and decline or deny Mr.
6 Diggs' motion.

7 THE COURT: All right, sir.

8 MR. DIGGS: Your Honor, if I could just very
9 briefly ---

10 THE COURT: Yes, sir.

11 MR. DIGGS: At times we understand, you know,
12 things change, science evolves, our information grows,
13 and the law has to change, you know, to recognize that
14 growth and acknowledge the facts that we learn to exist
15 -- that we learned that do exist, you know, with the
16 passage of time. We didn't know these things two
17 hundred years ago when the common law was being
18 developed and was evolving, and simply because something
19 has been tried and true, tested over time, seems to be
20 reliable, I mean, that might make sense; it might be
21 rational, but there might come a time in the evolution
22 of the law where we just acknowledge and bite the
23 bullet, so to speak, and make that change.

24 Stephen's case, Mr. Stanko's case, is one of those
25 situations. We've got what I would submit is compelling

1 scientific, medical evidence regarding the state of the
2 defendant's brain, the structure and the functioning,
3 and it's simply not normal, and it's not something that
4 was decided upon by the defendant. He didn't decide to
5 be that way, and so what we're suggesting here is that
6 this case is a case that presents facts and
7 circumstances and evidence that shows that our laws,
8 notwithstanding our best efforts, need to be changed to
9 take into account the realities of what science now and
10 medicine are showing.

11 THE COURT: All right, sir. I would respectfully
12 decline to grant your motion to declare 17-24
13 unconstitutional under arbitrary factor 1, and I would
14 also add that I disagree with you, your premise. You
15 are coming up with a premise on 17-24-10, and I assume
16 will do the same with 17-24-20, that it's so rigid in
17 its application that it doesn't allow the defense that
18 you're presenting or it unconstitutionally restrains
19 your defense, and I don't see that in any way. I see
20 that they are perfectly connected. The arguments you're
21 making logically are contained within 17-24-10, can be
22 made under 17-24-10. I just -- in addition to denying
23 your motion to declare it unconstitutional, I see no
24 reason to do so.

25 The law in this State and the United States has

1 evolved such to allow you to properly make the arguments
2 that you are presenting before the Court and there's
3 just absolutely no reason to declare the statute
4 unconstitutional in this matter. Thank you. Continue
5 on.

6 MR. DIGGS: Your Honor, the Defense pre-trial
7 motion number 5, I think, is still focusing ---

8 THE COURT: We skipped one. Number 4 is motion to
9 declare 17-24-10 unconstitutional, arbitrary factor
10 number 2.

11 MR. DIGGS: Okay, you're right. What we're asking
12 is to have the Court declare the statute
13 unconstitutional, 17-24-10, again on the basis that it
14 allows the fact finder without any corroborative
15 evidence to conclude that the brain function of the
16 accused was such that it included the capacity to form
17 the intent to commit a malicious act and the ability to
18 carry it out by executive analysis, which occurs inside
19 of the frontal lobes of the brain, and if I could maybe
20 repeat that and make it ---

21 THE COURT: Yes, sir.

22 MR. DIGGS: The statute contains an arbitrary
23 factor that allows the prosecution to establish malice
24 aforethought, which is an element of the crime still,
25 based solely on the conduct of the accused, based solely

1 on his conduct, without requiring any corroborative
2 evidence of his sanity, and what I'm saying is that --
3 that is a critical thought, I would submit, in the
4 process that -- to shift this burden, and I know what
5 some cases have discussed in the past, but, Your Honor,
6 none of those cases are based on this type of evidence.

7 To allow the prosecution to prove its case without
8 delving into the sanity issue is a very subtle shifting
9 of the burden of proof in a case that should be made
10 part of the State's burden of proof in its case in
11 chief.

12 THE COURT: Okay.

13 MR. DIGGS: Do you understand?

14 THE COURT: Yes, sir, and I appreciate that. In
15 this particular case that we're dealing with involving
16 Mr. Stanko, you've clearly stated that not only in the
17 sentencing phase, if it comes to that, if we get to that
18 point in time, but in the guilt phase that an insanity
19 defense is being raised, ---

20 MR. DIGGS: Right.

21 THE COURT: --- so in that regard under the facts
22 of this particular case, the State then certainly has
23 the burden of proving the defendant sane. Don't they
24 have to present evidence of that?

25 MR. DIGGS: Well, they do. What I'm complaining

1 about is I'm saying that they should be required to
2 present that evidence in their case in chief, that ---

3 THE COURT: Well, the case law allows them to do
4 so.

5 MR. DIGGS: I know. That's what's wrong. The
6 statute and the rules allow that. When we know -- we're
7 required to give the State notice of insanity is an
8 issue in the case, ---

9 THE COURT: Right.

10 MR. DIGGS: --- so they can ---

11 MR. HEMBREE: Which we only received today, Your
12 Honor, ---

13 MR. DIGGS: Well, ---

14 MR. HEMBREE: --- which we received today.

15 MR. DIGGS: With all due respect, though, they
16 received it three years ago when ---

17 THE COURT: Let's not -- whatever it is, it's an
18 issue in this case, and let's just move along. Thank
19 you. Go ahead.

20 MR. DIGGS: Right, and so knowing that, what we're
21 complaining about under this statute is that they don't
22 require -- the statutes and the cases don't require the
23 State to prove sanity in its case in chief. It allowed
24 for a situation that was completely unfair. We have to
25 disclose our evidence, but they don't have to disclose

1 theirs.

2 For example, last time when one of the State's
3 witnesses took the stand, we had no idea that this
4 gentleman was going to testify, what his testimony was
5 going to be, or anything, and we weren't prepared in the
6 least to deal with it, as it turned out in my opinion.
7 It was a fundamental flaw in his analysis of the case,
8 but we didn't have an opportunity to prepare adequately,
9 so in this kind of situation, what I'm suggesting is the
10 statutes are inherently unfair and biased in favor of
11 the prosecution. It sets up a situation where they can
12 surprise us and we don't have a chance to properly
13 prepare for the evidence and rebut it.

14 THE COURT: Well, I mean, I have seen no evidence
15 of that in this particular case. If you -- if that's an
16 issue, then you need to bring that to my attention that
17 that exists, but what we have here now is the Defense
18 saying, "We are going to present an insanity defense in
19 the guilt phase, and if it comes to it, again in the
20 sentencing phase," so clearly the State then has to
21 present evidence of his sanity.

22 MR. DIGGS: Well, right. What I'm saying is
23 initially one of the reasons I was kept on this case was
24 for the continuity of the defense.

25 THE COURT: Right, but -- well, and also at the

1 request of -- the explicit request of Mr. Stanko to have
2 you ---

3 MR. DIGGS: Right.

4 THE COURT: --- present his defense.

5 MR. DIGGS: But what we're saying about this
6 particular statute ---

7 THE COURT: He's requested that.

8 MR. DIGGS: --- is that we can look -- what
9 they're saying is they're going to come in and they're
10 going to present their case in chief, and it's going to
11 take them probably a day and a half. They're going to
12 present evidence of homicide. They're going to present
13 evidence that it was probably committed by Mr. Stanko,
14 and then they're going to rest, and nobody is going to
15 -- and we're not even going to be able to reach the
16 issue of his mental state until we are forced to present
17 evidence on that issue and carry a burden of proof on
18 the issue.

19 THE COURT: All right, so the case law that does
20 not require them to do so, that's your point?

21 MR. DIGGS: Yes.

22 THE COURT: Okay.

23 MR. DIGGS: But that, with all ---

24 THE COURT: They are certainly allowed to, but
25 you're saying the rule -- I don't know that it would be

1 covered by 17-24-10; I don't understand how it would
2 come in 17-24-10, but what you're saying is either in
3 some way the State should be forced -- there's a
4 procedural error here. The State should be forced, if
5 this is an issue, to present its evidence in the guilt
6 phase?

7 MR. DIGGS: Right, and this statute comes into
8 play because it says that it's an affirmative defense
9 that we have the burden of proof on.

10 THE COURT: So that's unfair to begin with ---

11 MR. DIGGS: It is; it is ---

12 THE COURT: --- is what you're saying?

13 MR. DIGGS: --- unfair. It allows for prosecution
14 by ambush, you know, one of those -- we go back to the
15 old days before discovery, and in this case it was
16 hurtful, and we've got a flaw in this case now that's
17 going to take some work to get out, and by flaw in this
18 case, I mean in the prior prosecution, not -- not in
19 this case in Horry County.

20 THE COURT: All right.

21 Solicitor.

22 MR. HEMBREE: Judge, I think the motion, if we
23 keep our discussion based on the motion, Mr. Diggs --
24 taken to its natural conclusion, Mr. Diggs would have us
25 be required to prove the defendant's sanity in every

1 single criminal case that we bring.

2 THE COURT: I think that's what he's arguing.

3 MR. HEMBREE: I think that's what he asking for,
4 and that's not the state of jurisprudence in North
5 America. It's a totally new view of how to handle
6 criminal cases, and there's no -- there's absolutely no
7 support, precedent, or basis for such a request. We'd
8 ask that it be denied.

9 I have a second part, Judge, that I want to touch
10 on. Since Mr. Diggs has kind of thrown the gauntlet
11 about sort of a discovery violation or trial by ambush,
12 let me clarify the situation he's talking about. The
13 witness he's talking about, we didn't know about. The
14 Defense did not provide us the expert opinions, the
15 written documentation they had about their psychiatric
16 medical witnesses.

17 They happened to give us some paperwork when we
18 were arguing the motions. Judge, we were in trial. We
19 were arguing the motions, and that's when we became
20 aware of a neuropsychiatrist that did Mr. Stanko's PET
21 scan, the guy who actually performed it, the doctor who
22 performed it at MUSC, and this wasn't a trial by ambush.
23 This was a name of a witness that we got through the
24 Defense, and whatever we knew about it, we knew at
25 trial, so if there was any ambush going on, we got

1 ambushed. It wasn't -- and I'm not complaining about
2 that. I know the deal. I realize that happens to us.
3 That happens to us frequently in these kind of cases.
4 However, once we became aware of him, we did choose to
5 call him in reply, in reply, which we're allowed to do.
6 We're not required to notify the Defense about a reply
7 witness.

8 THE COURT: Well, again, and I appreciate this
9 case has some history from the previous prosecution, but
10 there doesn't seem to be an issue in this particular
11 case, and I'm not trying to be crass here, but we need
12 to stick with this particular case.

13 Mr. Diggs, if there's an issue about discovery, or
14 notification of witnesses, or some issue in this case,
15 then you need to tell me about it now so that the Court
16 can deal with it and, you know, solve the issue if it's
17 solvable, but maybe you were just making an argument as
18 to -- to show as an example what happened in the past,
19 but ---

20 MR. DIGGS: Right. I'm not saying that they
21 violated the rules in any way. I'm saying they complied
22 with the rules and that's what the rules allow them to
23 do, ---

24 THE COURT: All right.

25 MR. DIGGS: --- and that's what is fundamentally

1 unfair.

2 THE COURT: All right, but so -- what you're
3 saying is fundamentally unfair about this particular
4 section, 17-24-10, is that you have to tell the
5 prosecution before the trial starts, "We're going to
6 raise an insanity defense," ---

7 MR. DIGGS: Right.

8 THE COURT: --- that the Defense ought to be able
9 to not tell anybody about it ---

10 MR. DIGGS: No, with all due respect. We put them
11 on -- I'm not saying they should prove sanity in every
12 criminal prosecution. It's only when we put them on
13 notice that insanity is an issue, which was done in this
14 case.

15 THE COURT: Okay.

16 MR. DIGGS: That require- -- that should shift the
17 burden of proof to the State in their case in chief, I
18 would submit, to show sanity, and then basically that's
19 the crux of this motion.

20 THE COURT: All right. Just one second.

21 It's clear that this issue has been raised before,
22 I mean, not only in this case, but in other cases, and
23 the Supreme Court has -- the South Carolina Supreme
24 Court has ruled on it. I'm looking at one, State v.
25 Smith at 379 S.E.2d 287 back in 1989, but I do not find

1 based upon the Defense's arguments that there's any
2 reason to declare 17-24 unconstitutional regarding this
3 arbitrary factor number 2, and I respectfully decline to
4 grant your motion.

5 Going to the ---

6 MR. DIGGS: And, Your Honor, ---

7 THE COURT: Yes, sir.

8 MR. DIGGS: --- at some point, I think it would be
9 appropriate, and the reason I haven't done it today is
10 because I thought I was approaching this thing in a more
11 general way, but at some point, I will file the
12 appropriate motion to argue against precedent and put
13 everybody on notice for specifically what it is, that
14 it's going to be arising, and, Your Honor, you might
15 have wanted that done today. I don't know, but ---

16 THE COURT: Well, I had anticipated that -- and,
17 of course, with the scheduling order that if you had
18 that particular argument, that you would have filed that
19 motion and brought it to my attention. How long will it
20 be before you can file that written motion with the
21 Court and with the Clerk?

22 MR. DIGGS: Your Honor, I can do that very
23 quickly, ---

24 THE COURT: All right. Well, then, I would ask
25 that you ---

1 MR. DIGGS: --- but I don't want to get in the
2 road -- you know, down the road, and the people in
3 Columbia, in the event that the State does prevail in
4 this case, that we waive that, ---

5 THE COURT: All right, well, ---

6 MR. DIGGS: --- and for them to say, "Well, look,
7 Mr. Diggs, that's really what you were doing back there
8 with Judge John," and I don't want to do that.

9 THE COURT: All right. Well, then, I want, you
10 know, you -- hold on one second here and let me look at
11 the schedule. You'll need to file that motion by next
12 Thursday; that would be the 15th. File it by the 15th
13 and send a copy to the Court and to the Solicitor.
14 After its receipt, assuming I receive it, I will --
15 we'll see when we argue it. We may go ahead and -- hold
16 on a second so I can find the schedule -- go ahead and
17 take time and argue it on that date that we initially
18 meet for -- to look at the jury questionnaires.

19 This is October 23rd. We've got the first meeting
20 at 9:30 A.M. in this courtroom concerning juror
21 responses, so anticipate that we will also argue your
22 motion on that date and time, all right?

23 MR. DIGGS: Okay. Thank you, Your Honor.

24 MR. HEMBREE: Your Honor, if I may be heard on
25 that issue.

1 THE COURT: Yes, sir.

2 MR. HEMBREE: Certainly I concur with Mr. Diggs'
3 desire to file a mo- -- to technically file the motion
4 to argue against precedent so he can cross that "T" and
5 make a complete record. However, Your Honor, today he
6 has been making those very arguments, and I don't -- I
7 guess my objection would be to let him have two bites at
8 the apple.

9 If he wants to -- you know, he's made the motions.
10 He's arguing against precedent currently. I understand
11 he needs to technically file a motion to argue against
12 precedent, but we ask that -- we just don't want to ---

13 THE COURT: I anticipate that by the filing of the
14 motion we're not going to re-hash and ---

15 MR. DIGGS: Right.

16 THE COURT: --- go over the ruling the Court has
17 already made. You're going to make your presentation in
18 a concise manner. If there's something new that the
19 Court has not heard today and ruled on, obviously you
20 will bring that up. If you're going to rely again on
21 all the arguments you've made and bring nothing in
22 addition, then we -- you know, obviously ---

23 MR. DIGGS: Yes.

24 THE COURT: --- it may -- it may not be a lengthy
25 motion, but I'm giving you the opportunity ---

1 MR. DIGGS: Right.

2 THE COURT: --- not only to file the motion, but
3 if you have something in addition, then obviously it
4 needs to be clear in that written motion that you're --
5 "This is something we didn't raise," ---

6 MR. DIGGS: Right.

7 THE COURT: --- "you know, today, on October 8th."

8 MR. DIGGS: We'll make it clear.

9 THE COURT: All right, very good.

10 MR. HEMBREE: Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 All right, so the next one we've got here then is
13 Defense pre-trial motion 5, motion to declare 17-24-10
14 unconstitutional. It says arbitrary factor number 4,
15 motion number 4, was arbitrary factor number 2. I
16 assume we have no arbitrary factor number 3?

17 MR. DIGGS: We haven't filed that yet.

18 THE COURT: All right, so we don't have arbitrary
19 factor number 3. All right, very good.

20 MR. DIGGS: Your Honor, what we are -- this is
21 very similar to the prior argument. It labels insanity
22 under the statute, 17-24-10; it labels an insanity
23 defense as an affirmative defense, requires us to carry
24 a burden of proof in that regard.

25 Logically speaking, I don't see how that does

1 anything other than eliminate the State's burden of
2 proof with respect to the issue of malice aforethought.
3 It goes back previously in the motions that we've argued
4 this morning. They can establish that issue, the
5 presence of malice aforethought, solely on the basis of
6 the seen conduct of the accused, and what we are arguing
7 more specifically in this motion is about requiring this
8 to be an affirmative defense puts the burden of proof
9 clearly on the Defense on that issue, that is
10 unconstitutional, and if it doesn't violate the U.S.
11 Supreme Court -- I mean the U.S. Constitution and the
12 opinions of the U.S. Supreme Court, it certainly ought
13 to violate due process of law in South Carolina, and I'm
14 asking the Court to declare this statute
15 unconstitutional, both with respect to the U.S. Supreme
16 Court and the State Supreme Court -- not the Supreme
17 Court, the Constitution.

18 THE COURT: All right, Solicitor.

19 MR. HEMBREE: I don't need to add to my previous
20 argument, Your Honor.

21 THE COURT: All right. Well, and once again, I
22 think it's covered the state of the law that exists.
23 You've got, I guess, a basic presumption that someone is
24 presumed to be sane, every criminal defendant is
25 presumed to be sane, but when a defendant presents the

1 issue of insanity or offers evidence of insanity, the
2 State doesn't enjoy that presumption. The State has to
3 then present evidence, and that's the case that we have
4 here today, so I don't understand again that there is
5 any reason -- I don't see any reason to declare the
6 statute unconstitutional.

7 Are you arguing that -- the only way that I could
8 see that you're making the argument is that you should
9 never have to tell the State ever until you present it
10 in the trial of the insanity defense?

11 MR. DIGGS: No. I think the -- it's perfectly
12 fine for us to put the State on notice of the presence
13 of that defense ---

14 THE COURT: Well, then the presumption goes away.

15 MR. DIGGS: --- and -- but it doesn't. Under our
16 procedure, we have to establish that as an affirmative
17 defense. It's not part of the State's case in chief.
18 They don't have to prove anything on sanity in order to
19 defeat a summary judgment or a directed verdict motion.
20 We have to present evidence. We have the burden of
21 proof. The statute says the defendant has the burden of
22 proving the defense of insanity by a preponderance of
23 the evidence. That eliminates the need for the State to
24 prove malice aforethought, and that should be
25 unconstitutional.

1 THE COURT: Well, I disagree. They still have
2 that burden. They must show that burden, and they will
3 be required to show and prove that particular aspect of
4 the crime beyond a reasonable doubt, and they will be so
5 required.

6 Motion to declare 17-24 unconstitutional, Defense
7 pre-trial motion number 5, arbitrary factor number 4, I
8 respectfully decline to grant your motion.

9 The next one we have is motion to declare 17-24-20
10 unconstitutional, Defense pre-trial motion number 6, and
11 it just has -- says arbitrary factor.

12 MR. DIGGS: Your Honor, Mr. Stanko wanted to make
13 a comment on that last statute. Could he do that?

14 THE COURT: I'm certain that whatever he would
15 like to add that he will be able to effectively
16 communicate it to his two counsel and y'all can place it
17 in the record. Thank you.

18 MR. DIGGS: He is communicating to me that he had
19 a conversation with his appellate attorneys and they
20 advised him in a manner that was different, contrary to
21 what the Court's statement was just now, and that's why
22 a certain issue was not raised at the appellate level.

23 THE COURT: I have no understanding of what it is
24 that you're telling me, sir.

25 MR. STANKO: Your Honor, what ---

1 THE COURT: No, sir, Mr. Stanko; I'm not talking
2 to you. I'm talking to your attorney, Mr. Diggs.

3 What is it that you're asking me to do, Mr. Diggs?

4 MR. DIGGS: He's commenting, Your Honor. We're
5 not asking you anything at this point. He simply wanted
6 to inform the Court that he had a conversation with Dan
7 Stacy and Kathrine Hudgins at Appellate Defense.

8 THE COURT: Well, number one, I don't want you
9 telling me what he's talked about with his attorneys in
10 confidence.

11 MR. DIGGS: Okay.

12 THE COURT: If he's going to do that, then he's
13 opening himself up to areas that I would expect that you
14 would advise him not to do if he's going to start
15 explaining what private conversations he's had with his
16 counsel in the appellate matter. Then that -- I'm sure
17 that's an area that you would advise him not to do.
18 Continue on. Whatever y'all want to do, you go ahead:

19 MR. DIGGS: We've gone far enough.

20 THE COURT: Thank you, sir. Here we've got 17-24,
21 a motion to declare it unconstitutional, arbitrary
22 factor, Defendant pre-trial motion number 6. Yes, sir.

23 MR. DIGGS: Your Honor, the bottom line is on this
24 motion, this is completely arbitrary, this whole concept
25 of guilty but mentally ill. It's -- again, I come back

1 to the analogy of an individual who is lacking a limb,
2 missing a leg. They're not going to be able to conform
3 their conduct. Somebody who has the same problem in
4 terms of a brain defect, they're not going to be able to
5 conform, and it is unrealistic and unfair to tell that
6 person they're going to be held to the same standard
7 just as it would be to tell a person who doesn't have a
8 limb they're going to be held to the same physical
9 performance, standard. That's what's unconstitutional.

10 This defense is illusory. It doesn't mean a thing.
11 You can still be executed and put to death even if you
12 are guilty but mentally ill, and that's barbaric, and it
13 needs to be changed. I'm asking the Court to declare
14 this unconstitutional and say, "Look, if you can't
15 conform your conduct, you are insane."

16 THE COURT: Yes, sir, Solicitor.

17 MR. HEMBREE: Your Honor, I don't have anything
18 more to add to my previous arguments.

19 THE COURT: All right.

20 MR. HEMBREE: It's essentially the same argument.

21 THE COURT: All right, sir, I respectfully decline
22 to grant Defense pre-trial motion number 6, the motion
23 to declare 17-24 unconstitutional under the arbitrary
24 factor argument as made. Thank you.

25 MR. DIGGS: Your Honor, the next one we have is --

1 it's a similar argument to the one we made previous on
2 17-24-10.

3 THE COURT: All right. This is Defense pre-trial
4 motion number 7, a motion to declare 17-24-20
5 unconstitutional regarding conclusive presumption?

6 MR. DIGGS: Right, and again, there's a
7 presumption contained within the statute that says if
8 you can distinguish between moral or legal right from
9 wrong in one area of the brain, that you're able to
10 carry that out in terms of your conduct, and what the
11 evidence is going to show and what we know now is that
12 these analytical functions that occur inside the brain
13 are not something that automatically occur in everybody.

14 You've got to have brain material. You've got to
15 have the nerves and neurons there and they've got to
16 function properly in order to be able to conform
17 conduct, and the statute presumes that if we know right
18 from wrong -- it's kind of like what I was saying a
19 minute ago. If you know a certain reaction is wrong
20 legally or morally on some level, but you're not able to
21 conform your conduct to that expected of you because of
22 a defect, it's unconstitutional to say that, "Well, here
23 we understood what the situation was, but it wasn't
24 properly analyzed here and acted upon. Then that's just
25 too bad."

1 THE COURT: Are you asking me to say that
2 basically what the -- that the statute is
3 unconstitutional because it ought to be if you're
4 mentally ill, you'll be found not guilty? You can't be
5 guilty but mentally ill. If you're mentally ill in
6 accordance with the statute, you have to be not guilty?
7 Is that what you're asking me?

8 MR. DIGGS: If you're mentally ill and if you're
9 mentally ill because of a certain defect, then you
10 should be not guilty.

11 THE COURT: Okay, so ---

12 MR. DIGGS: That's what I'm saying.

13 THE COURT: So you're attacking the premise of the
14 statute? You say that 17-24-20 should not exist in its
15 entirety? What it should be replaced with is some
16 statute or case law or whatever that if the -- if you
17 have the capacity to distinguish right from wrong or to
18 recognize your act as being wrong, but because of a
19 mental disease or defect you lack the sufficient
20 capacity to conform the conduct to the requirements of
21 the law, you should be found not guilty?

22 MR. DIGGS: Correct.

23 THE COURT: So that's what you're arguing here?

24 MR. DIGGS: Correct.

25 THE COURT: All right. I would respectfully

1 decline to grant your motion to declare 17-24-20
2 unconstitutional under that argument, that being Defense
3 pre-trial motion number 7.

4 MR. DIGGS: All right. Do you want me to hush
5 about that or ---

6 THE COURT: Well, ---

7 MR. DIGGS: What I was going to do is -- I'll go
8 ahead and move on.

9 THE COURT: Well, I don't know. Is there
10 something -- what I was trying to do was to get to your
11 argument? Is that what you're asking me to do and
12 that's what you're asking to say ---

13 MR. DIGGS: Yes; I was asking ---

14 THE COURT: --- that the whole standard is
15 completely wrong? It ought to be a brand new
16 standard, ---

17 MR. DIGGS: There should be, yes.

18 THE COURT: Okay, and what I'm saying is under
19 that argument to me, I am respectfully declining to
20 grant your motion. I find 17-24-20 to be proper and
21 would respectfully decline to re-word it, or to have a
22 new statute or case law, or court rule that would
23 indicate otherwise, basically that has the same wording
24 of 17-24(a), but follows it up with be found not guilty,
25 will be declared not guilty, all right?

1 MR. DIGGS: Okay.

2 THE COURT: Very good. Then the next one we have
3 is Defense pre-trial motion number 8, motion to declare
4 16-3-10, et sequitur, unconstitutional, and it says
5 incomplete evidentiary bias.

6 MR. DIGGS: And, Your Honor, this is the same
7 argument that we made with respect to the prior
8 statutes. Although this statute is 16-3-10, it
9 incorporates the same defects that we were complaining
10 about regarding the statutes in Title 17.

11 THE COURT: And so we're clear, just so the record
12 is clear, 16-3-10 is the definition of murder?

13 MR. DIGGS: Correct.

14 THE COURT: Very good. Okay.

15 MR. DIGGS: It allows you, as the Court, jury, as
16 the fact finder, to make a finding of fact regarding
17 that offense based on an incomplete evidentiary record,
18 one that doesn't take into account the mental status --
19 the structure -- neither the structure nor the function
20 -- the functioning ---

21 THE COURT: And I'll allow you to continue in just
22 a second, but just so that I understand, this is going
23 essentially back to the argument that the State ought to
24 have the burden of proof to prove the defendant sane?

25 MR. DIGGS: Yeah, and it allows the State to

1 satisfy its burden of proof based solely on the conduct
2 of the accused. That's what -- that's the problem with
3 this particular statute.

4 THE COURT: So the underlying premise as against
5 basically every criminal defendant, that they are
6 presumed sane, you are arguing against that?

7 MR. DIGGS: Well, I am when that issue is put into
8 play.

9 THE COURT: There still has to be a notice by the
10 Defense that the defendant is claiming insanity?

11 MR. DIGGS: Right.

12 THE COURT: All right, so when the Defense says
13 this is an issue, the sanity of the defendant is an
14 issue, the State should be required ---

15 MR. DIGGS: Yes.

16 THE COURT: --- by all of these statutes, whatever
17 statutes we're talking about -- in this one, we're
18 talking about 16-3-10 -- to prove the defendant sane?

19 MR. DIGGS: Yes.

20 THE COURT: Very good.

21 MR. DIGGS: And we do that as -- I'm not asking
22 the Court to go more broad than it needs to, but we are
23 facing a certain set of facts in this case, and as
24 applied in this case the statute is unconstitutional.

25 THE COURT: All right.

1 Solicitor.

2 MR. HEMBREE: Your Honor, we would ask that this
3 motion be denied under the same grounds as Defense
4 Motion number 4. This is merely the flip side of that
5 motion, looking at the murder statute as opposed to the
6 insanity statute, and we would respectfully request it
7 be denied.

8 THE COURT: All right, sir.

9 All right, your motion to declare 16-3-10
10 unconstitutional, and that again states that murder is
11 the killing of any person with malice aforethought,
12 either express or implied, as defined by the courts of
13 this state. I would respectfully decline to grant your
14 motion, that is Defense pre-trial motion number 8.

15 All right, the next one that we have is Defense
16 pre-trial motion number 9, motion to declare 16-3-10
17 unconstitutional on the issue of vagueness.

18 MR. DIGGS: Your Honor, the term "malice
19 aforethought," what we are arguing here, fails to
20 acknowledge that malice is a complex concept, or can be,
21 that sometimes things are done, actions are taken
22 completely in the absence of malice simply because of
23 the brain that doesn't function properly. There's not
24 any ill will present necessarily. It's simply a
25 function of the brain where certain parts of the brain

1 are kicking in and working properly and other areas not,
2 and it results in certain actions that appear to be
3 contrary to what we think is acceptable conduct in our
4 society, but it's really the product of a brain that's
5 defective, and the statute is -- doesn't even begin to
6 talk about or taking into account those kinds of
7 consideration, and we don't -- we have a process and a
8 procedure that doesn't even make it a condition of --
9 it's not even required to be discussed in the trial of
10 the case, but what we're saying is that malice
11 aforethought requires multiple brain functions in the
12 way we perceive malice aforethought and by allowing the
13 guilt or innocence of the accused to be judged based
14 solely on the conduct, it allows for a finding that just
15 skips over or hurdles over the fact that the brain
16 operates in a -- the normal, healthy brain operates in a
17 certain way, and when conduct is produced because of an
18 analysis that occurs in a healthy brain and that's fine,
19 then those people ought to be prosecuted. That's what
20 the law presumes; that's what this statute presumes, but
21 it doesn't even cross the draft -- or this statute's
22 mind that malice aforethought might be a complex
23 situation that engages -- that's a product of several
24 different areas of the brain working in concert, and if
25 something in that process is not right, then the end

1 result is not going to be right.

2 It's vague; the statute is vague. It should say,
3 "Look," -- and this presumption stuff should be
4 disallowed about presumed to be sane, not when it's
5 called into question, when Defense counsel gets in the
6 case, and that has been made an issue in the case, this
7 whole process should be examined very closely, and we
8 look at how the brain functions for this individual.
9 You know, if malice exists in the brain, we have the
10 ability now to go down and look at what neuron or what
11 brain cell started with that -- with that idea, with
12 that concept, with that thing, whatever malice is, but
13 now in this case what we're going to show is that the --
14 and the trial of the first case is there. You know,
15 that could be incorporated into this hearing if need be
16 in terms of what the evidence is going to show, but if
17 you've got -- let's go back to my issue or my situation,
18 Your Honor, where I do something that startles you or
19 that startles someone and how they react to that
20 situation, a big startle is something you don't think
21 about, you know. It's a natural reaction that occurs.
22 What happens then, though, is that idea of a big startle
23 is transferred up to a different area inside the brain
24 where it is analyzed and you make judgment -- make
25 judgments about it at that point and then direct your

1 body in terms of what and how to respond, and this
2 statute, that -- if you have an area in the brain that
3 doesn't work properly and it's not going to properly
4 analyze the situation and allowing you to over-react and
5 do something that is extreme, the statute doesn't take
6 any -- it doesn't even begin to consider that.

7 It just says, "Look, this is malice and it can be
8 shown by the conduct," and that's it, and so the statute
9 is vague. It ought to define what malice is. It ought
10 to be the product of a healthy brain that's operating
11 and carrying out the functions of a healthy analysis
12 that's been made in the brain with a criminal intent to
13 do the things that are done in the case.

14 THE COURT: All right. Do you have in regards to
15 your argument a vagueness -- I understand your
16 arguments. You are asking that the statute be declared
17 unconstitutional because malice is not properly defined
18 in the statute?

19 MR. DIGGS: Exactly.

20 THE COURT: All right.

21 MR. DIGGS: And when the statute was written, they
22 probably had no idea how to define it.

23 THE COURT: Did you just for the basis of your
24 argument, and not that it's necessary for it, did you
25 come up with a definition that you wanted?

1 MR. DIGGS: Yeah. Basically what -- I think the
2 definition that we've used is half -- it's on track, but
3 it gets you halfway there. It needs to be the product
4 of a healthy functioning -- properly functioning brain,
5 and if it's not, then the State hasn't proven malice
6 based solely on the conduct.

7 THE COURT: And the defendant should be declared
8 not guilty?

9 MR. DIGGS: Correct -- well, yeah, in that
10 situation, Your Honor, as a result of the State's
11 failure of proof on the issue.

12 THE COURT: All right, sir, so would that
13 logically flow that every person who has an unhealthy
14 brain can commit any act that they would like to and
15 they would have no responsibility for it then?

16 MR. DIGGS: It's more discerning than that, okay?
17 If you've got -- if you've got a level -- a certain part
18 of the brain that's functioning at this level, receiving
19 threats to exist here, dangerous, and the inability --
20 there's a specific area of the brain that puts the brake
21 on that in terms of how you react. I'm saying if that's
22 the case in the example that the Court just gave, then
23 you've got a problem. You've got a situation that
24 shouldn't be analyzed in the criminal law, Your Honor.
25 It should be analyzed in a hospital.

1 THE COURT: So, again, if you have an unhealthy
2 brain, you can commit any act that you'd like to and
3 have no responsibility for it?

4 MR. DIGGS: Unhealthy brain is too broad of a
5 concept to be able to answer that question.

6 THE COURT: All right.

7 MR. DIGGS: If you've got a defect that shows --
8 and we can show that the area of the brain that should
9 be analyzing this particular impulse is not functioning,
10 then the answer to your question is yes if that's what
11 is driving the person's conduct. Okay, it's not malice,
12 Your Honor. It's not malice where there's an intent to
13 do harm and ill will. You know, that's not what's
14 coming out of the brain in this case, and I don't know
15 if it would be so in the example you gave or not.

16 THE COURT: All right, sir.

17 Solicitor.

18 MR. HEMBREE: Your Honor, I don't -- I think Mr.
19 Diggs's argument is pretty well the same argument he's
20 been offering whether it was in the form of arguing
21 against 17-24-10, 17-24-20, in favor of diminished
22 capacity, or against 17 -- or excuse me, 16-3-10. I
23 don't know anything else I could add to our argument on
24 that.

25 THE COURT: All right, sir; thank you.

1 All right, I respectfully decline to grant Defense
2 pre-trial motion number 9, the motion to declare Section
3 16-3-10 unconstitutional due to vagueness.

4 The next motion you have is Defense pre-trial
5 motion number 10, motion to declare 16-3-20
6 unconstitutional due to hypofrontality.

7 MR. DIGGS: Your Honor, hypofrontality is what
8 some experts say is the condition that this defendant
9 has. It consists of two things. One area in the brain
10 up in here (indicating), about an inch or so down inside
11 the brain from the forehead, we've got two problems.
12 We've got a structural defect and we've got a functional
13 defect, and we've got experts in this case both who will
14 testify one as to the structure and one as to the
15 function.

16 It's been measured scientifically. We will have
17 evidence that shows how -- you know, what the state of
18 Mr. Stanko's function and structure -- what the states
19 are, and compare those against what has been determined
20 to be a healthy model composed of mental -- you know,
21 people with good mental health, a big data base which
22 has been put together to show, you know, what the
23 healthy brain and healthy -- mentally healthy
24 individuals should look like in terms of structure and
25 how it should function under certain situations.

1 What this case is going to show is that Mr. Stanko
2 has this condition of hypofrontality. It's not
3 something he chooses to have. It's something that he
4 just has. We can speculate a little bit about how it
5 got there and what causes it, and there will be evidence
6 about that, but the fact of the matter is it's something
7 that exists in this case, again just like a missing limb
8 might be existing from someone born with an obvious
9 physical defect. We can see that. We are learning how
10 to see those types of defects when they exist inside the
11 brain, and that's what we've got in this case.

12 Now, the status of the law in the U.S. is that we
13 can execute Mr. Stanko notwithstanding the presence of
14 this defect, but we don't execute people who are
15 mentally ill -- excuse me, mentally retarded or who are
16 of a certain age, sixteen years old, seventeen years of
17 age. We don't execute them because we know through
18 maybe more obvious observable evidence that there's a
19 problem with these people; their brains aren't working
20 properly, and so we're going to cut them some slack and
21 we, as an evolving society, we're not going to execute
22 those people, because the Eighth Amendment would protect
23 them. We are better than that. We're going to put them
24 in a hospital somewhere or in a prison setting so
25 they're not out and can't do those types of -- engage in

1 those types -- that type of conduct any more. That's no
2 different from -- you know, a brain defect is a brain
3 defect. A disability is a disability.

4 If someone's brain is not functioning properly
5 because of their young age or because of mental
6 retardation, then it's a proper thing that we not
7 execute, and my argument is that in this case the same
8 rationale should apply. We shouldn't execute people who
9 have brain defects, and that's what we have in this
10 case, and our law shouldn't allow for the execution of
11 this person, and we're asking that the statute be
12 declared unconstitutional because it does permit the
13 execution of people like Mr. Stanko, and that's what the
14 State is trying to do in this case. It should be
15 declared unconstitutional and say, "Look, we've taken
16 the step in terms of mental retardation. We've taken
17 the step in terms of age, recognizing that the brain has
18 got to function properly, and in those two cases, the
19 retardation and the young age, it doesn't, so we're not
20 going to execute those people," and we shouldn't.

21 That same analysis applies to Mr. Stanko's case, I
22 would submit, and the statute would be used in an
23 unconstitutional way to neglect to take into account
24 that situation.

25 THE COURT: All right, so what you're attacking is

1 the penalty, ---

2 MR. DIGGS: Correct.

3 THE COURT: --- correct, the death penalty, ---

4 MR. DIGGS: Correct.

5 THE COURT: --- that no other aspect that the --
6 if he was to be found guilty of the crime, that the only
7 punishment that should be allowed is life in prison
8 without the possibility of parole?

9 MR. DIGGS: Your Honor, I'm not backing off from
10 the prior arguments, but on this particular ---

11 THE COURT: Well, see, they don't logically flow,
12 then.

13 MR. DIGGS: Well, if you like, it's kind of ---

14 THE COURT: So then if he has this condition, then
15 he needs to be declared not guilty and set free?

16 MR. DIGGS: Well, under my prior arguments, but
17 let's say ---

18 THE COURT: To have all your arguments flow
19 logically.

20 MR. DIGGS: But you've -- you've rejected those,
21 so now this is a fall-back position to say, "Look, even
22 if he did understand right from wrong and this kind of
23 thing, he's got a disability." It's comparable to
24 retardation, or Mr. Stanko is certainly not retarded,
25 but in terms of the brain structure and function, it's

1 no different, and as an evolving society, we don't
2 execute people like that.

3 THE COURT: All right, sir.
4 Solicitor.

5 MR. HEMBREE: Thank you, Your Honor. I guess
6 first and foremost the question of whether Mr. Stanko
7 has a hypofrontality issue or problem is a matter of
8 dispute. It would be disputed at trial. There are
9 experts that were going to offer contrary opinions to
10 Mr. Diggs' experts, so we'll have to deal with that at
11 that point in time, so this motion assumes that he has
12 that condition, so that would be my first request for
13 you to deny this motion, would be based on the fact that
14 it really assumes a fact that's not in evidence and
15 can't be determined at this time.

16 Your Honor, the -- the -- secondly, you know,
17 that's -- it goes against precedent. This is not a
18 condition that has been recognized by our Supreme Court
19 like mental retardation or like that of a juvenile. It
20 has not been recognized as a condition that would --
21 that would permit or would prevent the imposition of the
22 death penalty. That would be -- that really is going to
23 be a question that will have to be dealt with even if --
24 even if it is proved that Mr. Stanko has this condition.
25 Assuming that and we get over that hurdle, the

1 appropriate place and time for that issue to be argued
2 and determined would be at the appellate level and we'd
3 request that this issue -- I mean, excuse me, this
4 motion be denied at this time.

5 THE COURT: All right.

6 I respectfully decline to grant your motion to
7 declare 16-3-20 unconstitutional as to the penalty to be
8 imposed, that is the death penalty, regarding the
9 argument made in Defense pre-trial motion number 10.

10 In addition to that, once again, it seems to me
11 that it logically flows that if the medical scientific
12 expert evidence is such as presented by Mr. Diggs in his
13 argument, then the logical conclusion of that medical
14 scientific expert opinion should be that he does not
15 have the capacity to distinguish moral or legal right
16 from moral or legal wrong, or to recognize the
17 particular act charged as morally or legally wrong.

18 I understand I am making a statement in addition to
19 what was presented, but again, the arguments by the
20 Defense indicate such a rigidity in the application of
21 these statutes that's not warranted and that's not
22 warranted by the application of case law in this state.
23 Your motion is denied.

24 Defense pre-trial motion number 11, motion for an
25 order requiring the Solicitor to respond in writing to

1 each motion which is contested by the State. Well, they
2 filed something, so obviously we don't need to deal with
3 this motion, correct, Mr. Diggs?

4 MR. DIGGS: Yes, sir.

5 THE COURT: All right, so that one is withdrawn.

6 All right, number 12, Defense pre-trial motion
7 number 12, motion to seal visitor or registration log
8 regarding the defendant. As I understood it, Solicitor,
9 was there an objection to this?

10 MR. HEMBREE: No objection, Your Honor.

11 THE COURT: All right, so granted.

12 All right, Defense pre-trial motion number 13,
13 motion prohibiting extra judicial statements of trial
14 participants. What's the State's position on that?

15 MR. HEMBREE: Your Honor, we -- we don't have any
16 objection to that motion either other than scheduling
17 and logistics matters, and we get frequent calls from --
18 from the media and other interested people about this
19 case and other serious cases and we want to be able
20 to ---

21 THE COURT: Well, as to -- as to when hearings are
22 going to take place?

23 MR. HEMBREE: Correct, Your Honor.

24 THE COURT: Is there any problem with that, Mr.
25 Diggs?

1 MR. DIGGS: Your Honor, could I get him to repeat
2 that? I'm sorry; I was distracted.

3 THE COURT: Basically what he's saying is he
4 doesn't have an objection to your motion number 13, the
5 motion prohibiting extra judicial statements by all of
6 the trial participants, State and Defense, except as to
7 scheduling issues, when a particular motion is going to
8 be heard, when the trial is going to take place, that
9 sort of thing. Is there any problem with that?

10 MR. DIGGS: No, sir, not from me, and let me ask
11 Ms. Williams.

12 MS. WILLIAMS: Beg the Court's indulgence for just
13 a moment. (Ms. Williams and Mr. Diggs speak quietly off
14 the record.)

15 MR. DIGGS: Yeah, we don't have any. That's good.

16 THE COURT: All right, very good.

17 All right, then, let's go on to the next motion,
18 Defendant's pre-trial motion, let's see, 13(a), motion
19 to replace toxic terms commonly used in the trial of a
20 capital case. It says, "Replacing the commonly used
21 terms, death penalty trial and guilt phase, with more
22 neutral terms."

23 All right, Mr. Diggs.

24 MR. DIGGS: Your Honor, what we're trying to do
25 here is put as little alarm as we can, you know, in

1 terms of the minds of the jurors by the way we throw
2 around terms of the process. What we're asking for
3 specifically here, the bottom line is just to use
4 neutral terms of capital case and trial phase as opposed
5 to death penalty case and guilt phase. Did -- do you
6 get my point on that?

7 THE COURT: Yes, sir, I do; I do.

8 Solicitor, what's the State's position on that?

9 MR. HEMBREE: Judge, here's -- I guess I object.
10 Technically I object, but let me just try to walk
11 through that a bit. I don't -- I don't intend to go --
12 or we don't intend to go out of our way to use toxic
13 terms, whatever that means, to sort of spin this thing
14 one way or another. We're -- you know, we will look --
15 we will seek to avoid death -- the term -- we're not
16 using the term "death penalty trial" very often other
17 than to explain to potential jurors that it is a death
18 penalty case. We want to make sure the jurors fully
19 understand at the very beginning of the process when we
20 begin the individual voir dire. Perhaps in an opening
21 argument just laying out the procedure that it's a
22 capital case, you know, that involves we're going to be
23 asking for the death penalty. In that -- that general
24 explanation I could see, you know, using or educating
25 the jury on the fact that it's going to be a death

1 penalty trial. The Court is going to do that as well,
2 but I want to make sure folks understand that because
3 they don't always -- sometimes they don't get it even
4 though we say it over and over again, but I don't intend
5 to use it as some sort of a tool to infect the
6 proceedings. Guilt phase, you know, the trial phase,
7 we'll endeavor to use that term, trial phase, more than
8 guilt phase. It doesn't really matter ---

9 THE COURT: That -- that, I think, ---

10 MR. HEMBREE: It's not going to ---

11 THE COURT: I think as to that part of it as best
12 we can, and I'm not going to make this a hard and fast
13 rule, but as best we can, certainly I think if we're
14 talking about a trial phase and sentencing phase, that
15 probably would be good terminology to try and use both
16 on the State and the Defense, and like I say, I'm not
17 making this a hard and fast rule that cannot absolutely
18 -- the words, you know, death penalty case and guilt
19 phase can't be used, but if we can endeavor to use trial
20 phase, sentencing phase, I think that would be best for
21 all in this case.

22 Certainly there's going to have to be some
23 explanation to the jury, especially when we're doing the
24 initial questioning of the jurors and maybe in the
25 initial explanation to them that what is being requested

1 of the State, the ultimate penalty. It is a death
2 penalty case. They have to understand that to be able
3 to respond to the questions that the Court, the State,
4 and the Defense will pose to them, so I understand the
5 purpose of the motion and I'm asking as a general rule
6 that we abide by that and as indicated by the State,
7 we're not trying to influence in any way the jurors in
8 that regard, so in that respect.

9 So, literally, I am denying your motion, Mr. Diggs,
10 but I am asking the parties to respect what is being
11 offered and certainly if the Defense feels that there is
12 some particular point that's being made at a particular
13 time, please bring that to my attention at that point in
14 time and we will deal with it, all right?

15 MR. DIGGS: Thank you, Your Honor.

16 THE COURT: All right, Defendant's pre-trial
17 motion number 14, motion to restrict use of the word
18 "murder."

19 MR. DIGGS: And, Your Honor, I think probably the
20 Solicitor understands this and probably doesn't do --
21 violate it a lot, but anyway, when we refer to Mr.
22 Turner's death, if we -- you know, during the trial, if
23 we don't call it Mr. Turner's murder. You know, that
24 hasn't been determined yet. That's still at issue in
25 the case, and that's what we're trying to get at in this

1 particular motion.

2 THE COURT: Well, we do have to talk about it. I
3 mean, that is the crime for which he is charged. That's
4 the crime for which he was indicted. He was indicted
5 under count one for the crime of murder, so it's got to
6 be explained in some way to the jury when we're talking
7 about, you know, "This man stands accused of the crime
8 of murder."

9 MR. DIGGS: And, you know, an example might be,
10 "Now, what time, Officer, did you arrive at the murder
11 scene?" you know, or "What time did the murder occur?"
12 those kinds of things.

13 MR. HEMBREE: Judge, if I may, ---

14 THE COURT: Yes, sir.

15 MR. HEMBREE: --- this is -- I see this pretty --
16 really identical to the previous motion. Yeah, we will
17 endeavor to avoid using that term, you know, except when
18 it's absolutely appropriate or called for, certainly in
19 the trial phase of the case. Now, if we get to a
20 penalty phase, it's a different issue, so ---

21 THE COURT: Right, so we're talking about here the
22 trial phase?

23 MR. HEMBREE: Yes, sir, ---

24 THE COURT: All right, very good.

25 MR. HEMBREE: --- but we'll handle it the same

1 way, ---

2 THE COURT: All right, and ---

3 MR. HEMBREE: --- and if we wander afield ---

4 THE COURT: And again, Mr. Diggs, so the record is
5 clear, I am going to respectfully decline to grant your
6 motion as worded, but again, first, if there is
7 something that is being particularly done during juror
8 qualification or any phase of the trial that you have an
9 objection to, please bring that to my attention so we
10 can deal with it at the time, and again, we will
11 endeavor, all the parties, Court, State, Defense, to
12 restrict the matter to the facts at hand and not
13 unnecessarily use the word "murder" or the crime for
14 which he is charged, all right?

15 MR. DIGGS: Thank you, Your Honor.

16 THE COURT: All right. The next one we've got
17 here is Defendant's pre-trial motion number 15, motion
18 for fair trial procedures, and you've got a number of
19 them that you've got set forth. One of them is to allow
20 the Defense to occupy the counsel table nearest the
21 jurors, so your argument on that.

22 MR. DIGGS: Your Honor, I don't know if there's
23 any psychological or, you know, any evidence that's been
24 developed about this, but it just seems to me to be fair
25 once in a while to allow the Defense to have that

1 position in the courtroom. You know, of course, it's
2 never been -- I've never had that situation occur. When
3 a juror sits in that box and they look across at us,
4 they see the friendly faces of the prosecution there
5 close to them. We're way over here. I don't know if
6 there's some psychological -- you know, maybe -- maybe
7 we could -- if the Court is not inclined to grant this,
8 maybe we could change now and then, you know, to rotate,
9 but it just seems to be a little bit unfair to always
10 put the defendant way over here kind of to be isolated
11 out from everybody.

12 THE COURT: Is it -- and I'm just asking you a
13 question. Is it your understanding that this has been
14 the accepted practice and norm because the State has the
15 burden of proof?

16 MR. DIGGS: It's always been told to me that way,
17 Your Honor, and I've always heard that, but ---

18 THE COURT: Despite that, you would ---

19 MR. HEMBREE: We'll waive the burden of proof,
20 Your Honor, and we'll move wherever he wants us to
21 move ---

22 THE COURT: Well, I appreciate that -- but I
23 appreciate that, and I don't mean to make light of that,
24 but I honestly think that that is a good and rational
25 reason to have the State to occupy that particular

1 table. Once again, I have not -- certainly not in this
2 particular case, nor have I ever been presented with any
3 kind of evidence of any kind or any studies of any kind
4 that have studied juries to say that they are more
5 inclined to do something because somebody is sitting at
6 a table closer to them. I have never seen anything that
7 would indicate that's a basis.

8 MR. DIGGS: Your Honor, one thing that happened in
9 this very courtroom, ---

10 THE COURT: All right.

11 MR. DIGGS: --- it was another judge, but there
12 was a lot of -- of course, the victim's families. This
13 was in a sentencing phase, so I can use the word
14 "victim." We were in this courtroom and the families,
15 of course, tend to sit behind the Solicitor, and there
16 was a lot of facial expressions being exchanged between
17 the jurors and the family, and it would certainly cut
18 down on that, ---

19 THE COURT: Well, it might, but I think -- I think
20 it's -- I don't -- I mean, you're talking about what, an
21 extra ten feet. You know, it's not a great distance. I
22 can't imagine that, you know, using that, somebody's
23 eyesight is so bad that they can't see facial
24 expressions at one table or another, but certainly if
25 there is something improper that you see going on in any

1 trial, whether it's this trial or any trial, you bring
2 that to the Court's attention and it will get handled
3 right then. I mean, that's -- that's not something
4 that's going to be allowed.

5 All right, I'm going to respectfully decline to
6 grant your motion to occupy the counsel table nearest
7 the jury box.

8 Number two, allowing the jurors to choose their own
9 foreperson, I will take that under advisement and I may
10 very well do that. It has been argued that -- and I see
11 some validity in the argument that you ask the jury at
12 the very beginning, no matter what kind of case it is,
13 civil, criminal, whatever it might be, to choose their
14 foreperson because that gets them in the mode of
15 communicating, talking to each other, a way to introduce
16 themselves to each other so that they have the ability
17 to communicate later on, which is absolutely necessary
18 when it comes to the discussion phase, when they are
19 allowed to discuss the matter, so I will take that under
20 advisement and indicate to you I might very well do
21 that.

22 Number three is not to sequester jurors.

23 MR. DIGGS: What we're asking here is we
24 understand that the Court sequesters the jurors for the
25 benefit of the defendant so the jurors won't be

1 prejudiced by reading or hearing news articles, news
2 accounts, television and that kind of thing, but the
3 Court always instructs jurors not to do that anyway, it
4 puts a lot of -- it puts a burden on the jurors. They
5 don't like to be sequestered and away from the families,
6 away from their homes, and it certainly tends to make
7 the Court feel pressured to hurry up and get this thing
8 over with as quickly as possible so we could keep that
9 inconvenience to a minimum, but I find that the
10 negatives outweigh the positives.

11 In this case, we're asking, you know, the Court
12 instructs the jurors not to read the newspapers or watch
13 T.V. and I would submit they could be trusted to do that
14 and would come in and tell the Judge, you know, tell the
15 Court, when violations of that instruction occurred. We
16 don't want to be in a situation where we are required to
17 go late into the evening and work late nights and
18 weekends simply because we want to hurry up and get
19 things over with so the jurors can go home. We think
20 that it would be a more fair procedure to do it like
21 most other cases where jurors are not sequestered, and
22 certainly during the trial not to sequester the jurors,
23 and we're asking also not to sequester during even the
24 deliberations.

25 Other trials occur where there are not

1 sequestrations and we believe that justice is
2 administered in those situations and we believe that it
3 could be in this case as well without the sequestration,
4 so we're asking the Court not to do that on this case --
5 on this occasion.

6 THE COURT: All right, Solicitor.

7 MR. HEMBREE: May it please the Court, Your Honor.
8 We would oppose this motion and request that the Court
9 deny it. You know, we often hear Defense counsel say
10 death is different, you know, death penalty cases are
11 different. In this -- certainly in this instance, we
12 would very much agree. The sequestration of jurors not
13 only protects the defendant's rights to prevent the jury
14 from being exposed to something that might corrupt their
15 assimilation of information and ultimately their
16 deliberations, but it also protects the process.

17 It keeps a controlled environment where we can
18 eliminate those sorts of concerns and problems because
19 it is very -- and it's different in a death penalty case
20 because it lasts so much longer. We are looking at a
21 case -- the last one I tried was three weeks long.
22 This one is scheduled for two weeks long. It is almost
23 unreasonable to ask a jury to say, "Yeah, I'm going --
24 I'm going to, you know, be able to go home and live my
25 life every other way, except I'm never going to turn on

1 that television set, or never going to walk through the
2 room where my husband or wife is watching television, or
3 I'm never going to -- you know, if the newspaper is in
4 the trash can, I'm not going to see it."

5 The other part about a death penalty case is that
6 it -- there's no other case that attracts more attention
7 both by the media and by the public, and it just -- not
8 keeping that jury in a confined atmosphere just is
9 screaming for some sort of a problem either in exposure
10 to a media, exposure to a friend, or somebody that might
11 stop by the house, a co-worker, somebody that you might
12 talk to in your off hours, exposing them to -- well, any
13 other influence. I mean, there's so -- there's a world
14 of them out there, and people are interested, and
15 they're talking about it in the community, and if
16 somebody happens to stop by the grocery store on the way
17 home coming back from court one night, what's to say
18 that they don't overhear the conversation in line. They
19 didn't even ask for that. They didn't even participate
20 in it. They were -- but they overheard this discussion
21 and then somehow that affected them or infected the
22 process, so, Your Honor, it would be -- even more than
23 protecting the defendant, it is about protecting the
24 process.

25 The last point on this is that in recent years,

1 there have been -- there's sort of a cottage industry
2 that's developed with the capital defense bar. They
3 become very, very aggressive about making contacts with
4 jurors on death penalty cases post-trial, and they are
5 pretty good at questioning them and, you know, really
6 creating a problem. I fear that -- you know, although
7 there are actually some rules that are being
8 contemplated to address that very problem currently
9 being considered by Judge Hayes' Criminal Rules Revision
10 Subcommittee, so -- because of that very issue.

11 To sequester them, you at least eliminate a big
12 chunk of that sort of problem. You eliminate that
13 possibility assuming that they're going to be questioned
14 or contacted by defense -- folks working for the defense
15 after the trial. We know where they were. You know, we
16 know -- we don't have to worry about, "Well, did you
17 happen to stop by the grocery store?" "Did you happen
18 to see a newspaper?" We don't have to worry about those
19 questions because the Court through its order can
20 eliminate those things and protect the process. We'd
21 ask the Court to deny this motion.

22 THE COURT: All right, sir. Well, in my decision
23 I'm not taking into consideration any issues about what
24 might happen post-trial. I'm not taking that into
25 consideration. My job in this particular case or one of

1 my responsibilities and duties as a trial judge is to
2 ensure justice and fairness to all the participants in
3 this trial. I think based on the facts of this
4 particular case, the fact that a case has already been
5 tried in Georgetown County involving this particular
6 defendant and the ultimate penalty imposed in that
7 particular case, I believe that in this particular case
8 sequestration of the jury is not only proper but
9 warranted, so to ensure the absolute, as best I can, the
10 fairness and justice to all, I am going to order the
11 sequestration of the jury in this particular case.

12 MR. HEMBREE: Thank you, Your Honor.

13 THE COURT: All right. The next one you have is
14 prohibit the SLED agents from guarding the jurors. I
15 guess my first question would be if I don't enlist the
16 aid of State Law Enforcement to do this, who has vast
17 experience in doing it in a number of cases and
18 understanding the restrictions and the complications
19 that are involved in this, who am I going to get to do
20 it?

21 MR. DIGGS: Well, are you asking me?

22 THE COURT: Yes, sir. Who am I -- who am I going
23 to turn to because you don't want me to have the County
24 Police do it. I mean, I can't reach over to Marion
25 County and tell the Marion County Sheriff "I've got to

1 have your deputies over here in Horry County and do
2 something." I can't do that, so who is going to -- who
3 is going to guard them and ensure the fairness that is
4 absolutely necessary?

5 MR. DIGGS: And counsel points out the fact that
6 you're going to have these law enforcement agents
7 possibly from the same agency testifying during the
8 trial of the case, and then their cohorts on, you know,
9 the same -- from the same agency guarding the jurors.

10 Your Honor, in terms of who might do it, I don't
11 know. I know that when we put the jurors in -- when we
12 lock them up, and that's what happens when they're
13 sequestered, and they get told where to go, and what to
14 do, and law enforcement is doing that, it just puts a
15 different spin on the case, a different atmosphere on
16 that case that's different from any other case, and it
17 doesn't benefit the defendant in my opinion. It hurts
18 the defendant. It kind of adds -- I would submit that
19 there is anger that comes from having to be sequestered
20 anyway and all of this, and then it's to the point where
21 they have to even be guarded by law enforcement
22 officers. It's not something that's going to -- the
23 only possible effect it could have on the trial is to in
24 some way put the Defense or the defendant in a bad
25 light.

1 In terms of how to do it, I'm not sure. Maybe we
2 can discuss that further. I'm not sure.

3 THE COURT: All right, sir.
4 Solicitor.

5 MR. HEMBREE: Your Honor, the folks that are --
6 the sequestration team is trained to be a sequestration
7 team. It's not just something they stumble into.
8 They're actually -- you know, SLED actually has a
9 protocol and procedure for training them, and how
10 they're supposed to behave, and how they're supposed to
11 be -- to not show any favoritism, you know, just to
12 basically be caretakers.

13 Most of the agents are retired SLED agents. You
14 know, many of them have been away from the agency for
15 quite sometime. We often have deputies that are
16 actually made part of that team as well. They remain in
17 plain clothes to try to minimize their law enforcement
18 connections and ties. They are sworn in as officers of
19 the court, so there are many steps that are taken to
20 prevent any sort of inappropriate or improper contact
21 with the jurors or any sort of influence that these
22 folks might bring upon that jury.

23 You know, I would hazard a guess that many of the
24 jurors don't even realize that these folks are SLED
25 agents. They just know that these are the people that

1 are taking care of them. Your Honor, it's -- again,
2 it's been a method that's been used for a long, long
3 time. You know, we've gotten pretty good at it. I
4 think SLED -- not we, but I think SLED has gotten very
5 good at that, and to try to depart and create a brand
6 new system in this case when sequestration is so
7 necessary, I think would be kind of throwing caution to
8 the wind, and we'd ask that this motion be denied.

9 THE COURT: All right. Regarding this particular
10 part of the motion, I'm going to respectfully decline to
11 grant it. I do believe that the requirements that the
12 Court will place upon the personnel will require them
13 not to have any kind of inappropriate contact with the
14 jurors, that there are things that are done to lessen
15 their connection with law enforcement, such as the use
16 of civilian clothing, and taking all this in and
17 balancing all the competing interest in this case, I
18 intend to use the State Law Enforcement Division
19 sequestration team in this particular matter.

20 All right, the last one in this particular motion
21 for fair trial procedures is the forbid showing
22 defendant in cuffs or shackles in the presence of jurors
23 or potential jurors, and as I understand it, the State
24 does not have a general objection to this conditioned
25 upon the actions of the defendant?

1 MR. HEMBREE: No objection, Your Honor. I mean,
2 it's really a security question. We don't have a
3 position on that other than what is required by -- it's
4 really not our issue. It's really more that -- of a
5 Department of Corrections or Sheriff's Department issue
6 than it is ours, so we take no position.

7 THE COURT: All right. My intention is that when
8 a jury or potential jurors are present that the
9 defendant at that point in time would not be handcuffed
10 or shackled. Now, that does not prevent the Department
11 of Corrections or the Sheriff's Office from using other
12 methods that are available to them. There is a belt
13 that is used that is worn under the clothing that the
14 Court would find acceptable to be used in these
15 circumstances.

16 Now, all this is conditioned upon the actions of
17 the defendant. Depending upon how the defendant
18 presents himself in front of the potential jurors or
19 jurors, certainly my intentions could be changed and his
20 presentation could be further restricted, but I'm sure
21 the Defense attorneys will communicate with Mr. Stanko
22 and I'm sure Mr. Stanko understands that certainly it's
23 in his best interest to be able to effectively
24 communicate with his lawyers in this case and to present
25 a proper image to the jurors in this particular matter,

1 and so initially we will start off without the use of
2 handcuffs or shackles. Other devices can be used, and
3 then we will see how the matters progress and if further
4 restrictive devices are necessary, then we will deal
5 with it as the situation presents.

6 All right, is there anything else? That's all I
7 saw in that particular motion. Is there anything else
8 in that particular motion?

9 MR. DIGGS: (No response.)

10 THE COURT: All right. The next one we have is
11 Defense pre-trial motion number 16, motion for pretrial
12 disclosure of exculpatory and impeaching information
13 pursuant to, I'm assuming Rule 5, Brady v. Maryland, the
14 cases that have come after Brady v. Maryland that have
15 dealt with this particular issue.

16 The first question I have is, Mr. Diggs, is there
17 any information that you have now in y'all's possession
18 that the State has not complied with Rule 5, South
19 Carolina Rules, or Brady v. Maryland, or any of its
20 progeny thereafter? Is there any ---

21 MR. DIGGS: Your Honor, there is not. I don't
22 know if it's directly applied -- or applicable to this
23 motion, but there are journals that we've been trying to
24 get that are in possession of the State somewhere.

25 THE COURT: Journals about what?

1 MR. DIGGS: These are journals that Mr. Stanko had
2 kept or generated prior to his arrest.

3 THE COURT: Okay, some -- something that
4 apparently he authored and that was seized from him when
5 he got arrested?

6 MR. DIGGS: All right. They were taken from Ms.
7 Ling's home.

8 THE COURT: Solicitor, are you aware of anything
9 such as this?

10 MR. HEMBREE: They may be in Georgetown. Have
11 y'all looked at attorney stuff?

12 MR. DIGGS: We went down there before the last
13 trial and they weren't there. There were some journals
14 there, but those were not the ones that we're talking
15 about.

16 THE COURT: Well, I tell you what, if you can, Mr.
17 Diggs, can you communicate with the State maybe in a
18 more explanatory fashion than some journals. Give them
19 some idea of what it is you are looking for, and then,
20 Solicitor, you will communicate with all the agencies,
21 even the ones down in Georgetown and see if somewhere in
22 some evidentiary file, or in the Clerk's file, and see
23 if we can't locate it.

24 All right, anything else?

25 MR. DIGGS: (No response.)

1 THE COURT: Now, Solicitor, in the response that
2 you have made to the Court, the written response, and
3 I'm taking from that that you believe, excluding this
4 particular issue, that -- you believe that the State has
5 complied with the requirements of Rule 5, Brady v.
6 Maryland, and the cases that have come thereafter?

7 MR. HEMBREE: Yes, Your Honor.

8 THE COURT: All right. Mr. Diggs, obviously if
9 there is something that you become aware of subsequent
10 to this hearing, then you bring it to the Court's
11 attention and we will deal with it at that point in
12 time, but I -- as regards to those journals, I'm asking
13 you to communicate with the State, the State to
14 cooperate with you in trying to locate those, if they
15 are to be located, and if any issues continue from that
16 particular matter, you let me know.

17 MR. DIGGS: Your Honor, there was some reference
18 to those journals, I believe, in Dr. Crawford's
19 testimony at the last trial, and if the Solicitor has a
20 transcript of that, he might could look at that and that
21 might hone in exactly what it is we're trying to get.

22 THE COURT: All right. Well, and then maybe if
23 y'all can -- y'all can cooperate and y'all know
24 apparently what it is that you are looking for. If you
25 can tell the State, "In all the stuff that you've given

1 us, we don't find X, Y, and Z that was talked about at
2 the last trial," whatever it is, and so if it becomes an
3 issue for the Court, it will be sufficiently defined for
4 me so I know what you're talking about, because right
5 now it's extremely vague to me what you might be talking
6 about, so if it comes a point in time when you want me
7 to deal with it or I have to become involved with it, it
8 needs to be clear what you are asking for.

9 All right, the next motion is number 17, motion to
10 preserve physical evidence. Is there any objection to
11 that from the State?

12 MR. HEMBREE: No, Your Honor.

13 MR. DIGGS: Your Honor, they -- in fact, we have
14 an appointment to review that evidence tomorrow, ---

15 THE COURT: All right, and ---

16 MR. DIGGS: --- so I think the State is ---

17 THE COURT: --- and just as a continuing
18 obligation that the State had and would have to preserve
19 this, it continues.

20 All right, the next one -- all right, now that one
21 was labeled 17, and I noted -- am I missing 18? Y'all
22 didn't give me 18, or there isn't an 18?

23 MR. DIGGS: That was a change of venue motion,
24 Your Honor, and it ---

25 THE COURT: That hasn't been presented to me?

1 MR. DIGGS: It hasn't been presented.

2 THE COURT: All right, so Defendant's pre-trial
3 motion number 19 is, again, a motion for preservation of
4 evidence. Again, is there any objection to that from
5 the State?

6 MR. HEMBREE: No, Your Honor.

7 THE COURT: All right, very good.

8 All right, Defendant's pre-trial motion number 20,
9 a motion for law enforcement officers to retain rough
10 notes. What is it you're asking, Mr. Diggs?

11 MR. DIGGS: Well, I don't know if this is the time
12 at this point, but in the investigation of these cases,
13 law enforcement might have made notes, booklets, you
14 know, some information ---

15 MR. HEMBREE: We don't have any objection to this
16 motion, Your Honor.

17 THE COURT: All right, very good; very good, and
18 that's the end of the motions that I was made aware of.
19 Is that correct?

20 MR. DIGGS: Your Honor, can I go back and talk
21 about the sequestration again and maybe ask a question?

22 THE COURT: Sure.

23 MR. DIGGS: Now, in the third week, if we go into
24 the third week of trial, that's the week of
25 Thanksgiving, and I'm sure the Court is aware of that

1 and has thought about that already, but again, it would
2 be -- we're asking not to put the jurors under pressure
3 that ---

4 THE COURT: If this trial -- if this trial goes
5 into a third week, we'll deal with it. From what's been
6 presented to me at this point in time, I see no reason
7 why it would go into a third week. We can work
8 sufficiently hard and long enough to accommodate all the
9 parties, but if it comes to play, we'll deal with it at
10 that point in time, but I don't anticipate it will ever
11 be an issue in this case.

12 Anything else?

13 MS. WILLIAMS: Your Honor, ---

14 THE COURT: Yes, ma'am.

15 MS. WILLIAMS: --- the one thing I thought that we
16 may need to -- because I think it may have been what
17 Solicitor Hembree was addressing, initially -- I think
18 it was at the first of September whether or not we were
19 going to schedule a Blair hearing, and we agreed and via
20 e-mails communicated that at this point we weren't
21 contesting Mr. Stanko's competency under Blair to stand
22 trial at the date of trial, and I think that may have
23 been where the confusion arose, but I also thought that
24 at that time Your Honor may have wanted to specifically
25 address that and make sure we created a record of why we

1 did not have a Blair hearing, was at least my
2 understanding with our communication at that time, and I
3 want to make sure we address that at this ---

4 THE COURT: All right. Well, why don't you do
5 that, please. What was the -- if you would, Mr. Diggs.

6 MR. DIGGS: Why we don't need a Blair hearing?

7 THE COURT: Yes, sir.

8 MR. DIGGS: I believe he understands, that being
9 Mr. Stanko understands the charges against him. I think
10 he is capable of assisting in his defense. I have had
11 an opportunity to work with Mr. Stanko for an extended
12 period of time, longer than in most cases, and with
13 respect to the two issues I think that would be at issue
14 in the Blair hearing, he certainly can do those things.

15 Now, I'm not saying -- you know, we thought about
16 this a good bit before we took the position that we
17 didn't need a Blair hearing. It does not mean that
18 sanity is not an issue in this case, you know, as we've
19 discussed in the other prior motions because it is an
20 issue, but with respect to those -- his competency to
21 understand the charges and to assist us in his defense,
22 he can do that, and for that reason -- and there are
23 other strategic reasons that I don't really want to
24 disclose any further than that, but that's our position.

25 THE COURT: All right.

1 Solicitor, let me hear from you.

2 MR. HEMBREE: Your Honor, we don't have any basis
3 to ask for a Blair hearing. We don't have any reason to
4 believe whatsoever that Mr. Stanko is suffering from any
5 sort of mental defect that would have affected him at
6 the time or today, or the day of the trial.

7 THE COURT: Well, nothing has been presented to me
8 that would -- by the State or the Defense to bring the
9 issue to the forefront. It has not been presented or
10 questioned by the State. It has not been presented or
11 questioned by the Defense. In fact, there's an
12 affirmative statement by the Defense that it is not
13 necessary. Therefore, the Court finds no reason to
14 conduct a Blair hearing, there being -- these matters
15 not being presented to it nor questioned by the Defense
16 in any way, understanding the requirements of -- that
17 would be covered under a Blair hearing, so I do not see
18 the necessity of conducting it, it not being an issue
19 that has been presented to the Court in any way.

20 All right.

21 MR. DIGGS: Your Honor, before we conclude, there
22 are a couple of things I would like to address. One is
23 I'm going to ask the Court if Mr. Stanko could stay in
24 Horry County during the pendency of his case so he's not
25 -- or from now until the trial -- well, that he be

1 brought up here, you know, as the date of the trial
2 approaches and that he remain here. I assume that he
3 will remain here.

4 THE COURT: Well, we've got a meeting October
5 23rd, 2009, at which time we were going to address any
6 other motion, the motion to argue against precedent, if
7 that comes up, as well as that's the first meeting here
8 in this courtroom regarding the juror responses that
9 have been forwarded out to the potential jurors in this
10 case.

11 I might listen to you at that point in time from
12 there or maybe after the second meeting, which is just a
13 week later, October 30th, but we will bring that back to
14 my attention when we meet again on October 23rd, if you
15 would, all right, Mr. Diggs?

16 MR. DIGGS: Okay.

17 THE COURT: If you would bring it back to my
18 attention when we meet at that point in time.

19 MR. DIGGS: All right, and I do want to state --
20 Your Honor knows obviously, but he is at Lieber. We are
21 about a two and a half hour drive one way, so any
22 time ---

23 THE COURT: I understand that, but, you know,
24 we're looking at October 23rd. That is a full two weeks
25 plus before this trial would start.

1 MR. DIGGS: Okay.

2 THE COURT: So what I'm asking you to do is bring
3 it again to my attention at that point in time if you
4 would, all right?

5 MR. DIGGS: All right.

6 MS. WILLIAMS: Your Honor, ---

7 THE COURT: Yes, ma'am.

8 MS. WILLIAMS: --- we have determined, based on
9 the Indigent Defense guidelines, for our investigator to
10 be at trial, we have to get -- I mean, we can get
11 funding for her to do prior to court and all of this,
12 but for her to physically be present in the courtroom at
13 trial based on their guidelines, we have to get the
14 Court's permission to allow her to be there, and at this
15 point we're asking for the Court -- we think that when
16 the trial comes that we will need for her to be here.
17 There will be things that develop ---

18 THE COURT: If you will -- if you will put that to
19 me in writing with some basic rationale for that as you
20 understand the procedure in this matter, and we're not
21 talking about anything in particular to this case, just
22 the general procedure is, any time a request for any
23 type of assistance by the Defense is now made to the
24 Circuit Court, we have been asked to forward that to
25 Indigent Defense to allow them to have some response to

1 it, just as you would any motion, so give it to me as
2 quick as you can. I'll forward it on to them. I'll
3 make a decision.

4 You know, I might very well be inclined to grant
5 your request, but I would like for you to put it in
6 writing to me and I can forward it on to Indigent
7 Defense and then we'll -- we'll deal with it. Since
8 you're asking for something to happen starting basically
9 November 9th, we've got plenty of time, but get it to me
10 as quick as you can so I can get it to them and get an
11 answer back to you.

12 MS. WILLIAMS: Yes, sir, and the other is that the
13 orders that we've had so far that we've had to deal with
14 ex parte, we would ask that the Court please seal these
15 orders, at least with regard to our expert services as
16 well.

17 THE COURT: All right. I thought that that had
18 been ---

19 MS. WILLIAMS: At this point we have not filed
20 them because they weren't sealed.

21 THE COURT: Oh, they haven't been filed?

22 MS. WILLIAMS: No, sir. They're signed ---

23 THE COURT: Okay, they haven't been filed?

24 MR. DIGGS: We still have them in our possession.

25 THE COURT: All right; okay.

1 MS. WILLIAMS: And we have submitted copies -- we
2 have submitted signed copies, but we haven't filed them.

3 THE COURT: Very good..

4 Solicitor, is there any problem with that?

5 MR. HEMBREE: No, Your Honor, no objection at all.

6 THE COURT: All right, so you can file those with
7 the Clerk and just during the pendency of the action,
8 Madam Clerk, they will be sealed. After that, obviously
9 they can be unsealed because all those names will be
10 known anyway, so just during the pendency of the action;
11 when the trial is completed, you open them all back up
12 again.

13 Okay, anything else, ma'am?

14 MS. WILLIAMS: Yes, sir. May we approach briefly,
15 including counsel, State's counsel?

16 THE COURT: Yes, ma'am.

17 (A Bench conference was held off the record.)

18 THE COURT: Anything else, Mr. Diggs, Ms.
19 Williams?

20 MR. DIGGS: Not at this time from the Defense.

21 THE COURT: All right, from the State, Solicitor?

22 MR. HEMBREE: Yes, Your Honor. We have a number
23 of discovery motions that were filed back in July that
24 we just need to -- I think we can go through these
25 rather quickly, ---

1 THE COURT: All right.

2 MR. HEMBREE: --- and hear what Defense's response
3 might be. We haven't had any written responses from
4 them on these motions, so ---

5 THE COURT: Hold on one second, Solicitor. I'm
6 sorry.

7 (Pause)

8 THE COURT: All right, Solicitor.

9 MR. HEMBREE: Thank you, Your Honor. First was a
10 standard request for discovery. It's entitled Request
11 for Discovery, Number 1, dated and filed. It was filed
12 July 21st. It was first where -- in our first paragraph
13 we're asking for any books, papers, documents,
14 photographs, any documents or things of that nature that
15 Defense intends to offer at trial.

16 We've not received anything from Defense in
17 response to this discovery request. I don't know that
18 -- they may not be intending to introduce any documents,
19 video tapes, presentations, anything of that nature, but
20 I know in the first trial they offered quite a few
21 exhibits, and we would like to have the benefit of those
22 exhibits.

23 MR. DIGGS: Yeah, any -- those exhibits would --
24 they may be used again, and we would just like to put
25 the State on notice of that.

1 THE COURT: Are you saying ---

2 MR. HEMBREE: We'd like to get a copy of them,
3 Judge.

4 MR. DIGGS: But he already has those.

5 MR. HEMBREE: They're exactly the same?

6 MR. DIGGS: Exactly.

7 THE COURT: All right, so let's be clear now.
8 We're talking about the prior trial that occurred in
9 Georgetown County, and exhibits, documents that were
10 used in that trial, those would be the same ones if you
11 use them in this trial?

12 MR. DIGGS: Correct.

13 THE COURT: There's nothing new in addition to
14 that?

15 MR. DIGGS: No.

16 THE COURT: Very good.

17 MR. HEMBREE: Judge, as you were talking, Ms.
18 Williams was whispering over to me that we have
19 everything that they have so far, which implies to me
20 that there are other exhibits that you intend and
21 anticipate using that you are waiting to get. Is that
22 -- I've got one saying yes and one saying no.

23 THE COURT: All right. Do we know of anything at
24 this point in time?

25 MS. WILLIAMS: At this point we know of nothing

1 else. To make sure, obviously there's nothing ---

2 THE COURT: Right, right, so I'm just saying at
3 this point in time that your intention is if you're
4 going to use them, it's all the stuff that y'all used
5 previously in the previous trial. You don't know of
6 anything right now. Obviously if something new comes
7 up, you'll alert everybody to that?

8 MS. WILLIAMS: Yes, sir. That exactly was my
9 intention. I just don't want us to be hammered into ---

10 THE COURT: All right. Well, I understand that,
11 but, I mean, what you're telling me, you don't know of
12 anything now, but if something new comes up, you'll --
13 as soon as it comes up, you'll make everybody aware of
14 it?

15 MS. WILLIAMS: Yes, sir.

16 MR. HEMBREE: That's all I can ask, Your Honor.
17 As soon as it comes up, ---

18 THE COURT: I understand. I understand, and
19 everybody understands their obligations here.

20 MR. HEMBREE: Judge, the second part of this
21 request was for any results, tests, experiments in
22 connection with any experts that the Defense intends to
23 call in this case. We have received some material
24 through the first trial, again. That may be what we're
25 seeing again, but if there's any additional material,

1 experiments, tests, reports, anything of that nature,
2 that's new that we do not already have in our
3 possession, if they ---

4 THE COURT: All right, so that would be as to any
5 written documentation or documents to be referred to by
6 an expert, or items to be -- physical items to be
7 referred to by an expert?

8 MR. HEMBREE: Yes, Your Honor.

9 MR. DIGGS: We don't have anything at this point,
10 but if we do, and we may, I'll immediately make it
11 available.

12 THE COURT: All right, so communicate -- what I'd
13 ask that you do, Mr. Diggs, if you communicate with your
14 experts and ask them if they anticipate there's anything
15 else new or anything that you're not aware of, that they
16 make you aware of it so you can forward it on to the
17 State, all right?

18 MR. DIGGS: Yes, sir.

19 THE COURT: Thank y'all.

20 MR. HEMBREE: Thank you, Your Honor. Our second
21 request for discovery has to do with alibi and mental
22 illness as defenses. We have not received a response as
23 to whether alibi -- maybe we have received a response as
24 to alibi; I'm not sure, but there's no alibi ---

25 MR. DIGGS: No alibi ---

1 THE COURT: Alibi is not a defense, but obviously
2 mental illness is.

3 MR. HEMBREE: And, of course, mental illness will
4 be a defense in the case.

5 THE COURT: So mental illness is. All right, very
6 good.

7 MR. HEMBREE: In our request for discovery, number
8 4, we request the names and addresses of any potential
9 expert witnesses the Defense intends to rely on in this
10 case. Again, we have a -- because we have the benefit
11 of having gone through this process once before, we have
12 a number of folks that we expect will be witnesses, but
13 I didn't know if there were any additional witnesses, if
14 there's any additional expert witnesses that the Defense
15 intends to rely upon in this case.

16 MR. DIGGS: Well, we do -- there's a possibility
17 that we will. We don't know yet, but if that becomes
18 the case, we will immediately let him know, and I can
19 tell the Court. We can have an answer for this question
20 probably within five to seven days.

21 MR. HEMBREE: A week is certainly ---

22 MR. DIGGS: Right.

23 THE COURT: All right, so what we're saying is by
24 -- just so we're clear here, by the 16th, then, by the
25 16th?

1 MR. DIGGS: Yes, sir.

2 THE COURT: Very good, by October 16th.

3 Anything else, Solicitor?

4 MR. HEMBREE: The only other matter I have, Your
5 Honor, was just a point of clarification on the
6 scheduling order. We had on a -- I think we're just
7 looking at an old scheduling order -- a hearing
8 scheduled for November 3rd and November 4th. Are those
9 still ---

10 THE COURT: All right, let me see. Let me look at
11 the scheduling orders. Hold on just one second and let
12 me find those, please. And which dates were you talking
13 about, again, Solicitor? I'm sorry.

14 MR. HEMBREE: I'm looking at the scheduling order
15 dated February 24th of 2009.

16 THE COURT: Now, there was another one that was
17 March 4th.

18 MR. HEMBREE: I've got a feeling that's what you
19 probably ---

20 THE COURT: There's an amended scheduling order
21 that was March 4th. I don't know how much it changed.

22 MR. HEMBREE: I'm looking at November 3rd and
23 Wednesday, November 4th, attorneys ---

24 THE COURT: All right. It says, "Attorneys
25 provide witness list to the Court. Conference to" --

1 okay, we have obviously amended that to have those
2 conferences on the 23rd and the 30th. We sent that to
3 you in writing.

4 MR. HEMBREE: Right. That's what we think, yes,
5 sir.

6 THE COURT: Okay, so yeah, that was amended. You
7 got that, basically that one-page document that sets
8 forth on the 23rd, we were going to have the first one.
9 On the 30th, we're going to have the second one, so,
10 yes, it's amended in that regard, certainly, yes, ---

11 MR. HEMBREE: Thank you, Judge.

12 THE COURT: --- and just so everyone is aware,
13 obviously the Defense, y'all have that, and I gave a
14 copy to the law enforcement, so, you know, they're aware
15 obviously that Mr. Stanko needs to be back here, you
16 know, for that first meeting on the 23rd, okay?

17 MR. HEMBREE: Thank you, Your Honor.

18 THE COURT: Okay. Anything else?

19 MR. HEMBREE: Nothing else from the State.

20 THE COURT: All right.

21 Yes, ma'am?

22 MS. WILLIAMS: One moment, please, Your Honor.

23 (Pause)

24 THE COURT: Ms. Williams.

25 MS. WILLIAMS: Your Honor, the other -- the last

1 question that I had, if Your Honor had made any
2 decisions, and I realize we are a little in advance,
3 about the actual trial itself, meaning the length and
4 terms. Are we going to go later, possibly on Saturdays
5 or not, and the reason that I ask this is obviously we
6 have experts to bring in, and the Solicitor and I had
7 discussed how long we think their case in chief may be,
8 how long we -- we were trying to sort of guesstimate
9 when we think we will begin our case. Therefore, we
10 will kind of know when we need to bring in experts,
11 plane flights, those type of logistics, ---

12 THE COURT: Right.

13 MS. WILLIAMS: --- is what I was hoping that if we
14 have any idea, we might could possibly address.

15 THE COURT: Well, I guess at first it starts off
16 with the State, how long you anticipate your case will
17 take, understanding that, you know, we will be working
18 -- I'm not saying we're going to be, you know, here
19 until the wee hours of the morning, but I don't
20 anticipate we're going to be stopping at five o'clock.
21 We will continue on for a while into -- into the evening
22 before we recess. It depends on where we are in the
23 stage of the trial and any unknown factors, if
24 somebody's plane, you know, got canceled and they can't
25 come until tomorrow, you know, or whatever it is, but as

1 I indicated, you know, we will work and move along in
2 the particular case.

3 Any general idea of how long you think the State's
4 case -- just some kind of ballpark idea here?

5 MR. HEMBREE: My guesstimate, Your Honor, would be
6 probably three days for jury qualification. That would
7 just be, you know, just kind of looking at other cases
8 in the past.

9 THE COURT: Right; right.

10 MR. HEMBREE: It may run a little longer because
11 the case has received a lot of -- quite a bit of
12 attention, as well as there may be some people who can't
13 get qualified ---

14 THE COURT: Additional questions.

15 MR. HEMBREE: --- so it may take a little
16 longer, ---

17 THE COURT: Right.

18 MR. HEMBREE: --- but I think three days is fair.

19 THE COURT: All right.

20 MR. HEMBREE: Probably two days -- once we start
21 opening arguments, I would say two days to conclude the
22 State's case in chief.

23 THE COURT: All right. I would -- so you have
24 that understanding, and so we will continue on. Is it
25 the first week that there's -- when is it that there was

1 a State holiday? There was a holiday -- all right, we
2 have no State holiday. We will be holding Court that
3 particular day, so just so that y'all understand that,
4 the 11th, we'll be holding Court that particular day, so
5 that's not a holiday, in this particular matter, so I
6 would anticipate that we would continue the trial of
7 this case each and every day until the jury reaches a
8 verdict in the trial phase. We will be working each and
9 every day until they reach -- and then we will have that
10 one-day break.

11 Does that mean Saturdays and Sundays? Yes, it
12 means Saturdays and Sundays. We will work every single
13 day until the trial phase concludes. Okay, is that
14 sufficiently clear? That is the best I can tell you.

15 All right, thank you very much.

16 (Conclusion of Transcript of Record.)
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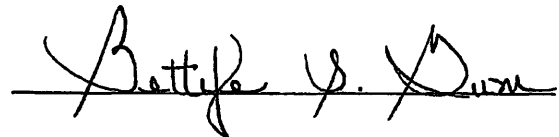
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had and evidence introduced in the
9 hearing of the captioned case, as taken by Dixie Cox
10 Eubank, Official Reporter, and transcribed by me,
11 relative to appeal, in the Court of General Sessions for
12 Horry County, South Carolina.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15
16

17 June 21, 2010

18
19 

20 BETTYE S. GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina
23 My Commission Expires: 7/13/14
24
25

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
) Plaintiff,)
) -VS-) TRANSCRIPT OF RECORD
) Stephen Christopher Stanko,)
) Defendant.)

October 23, 2009
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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I N D E X
(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

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E X H I B I T I N D E X

(No Exhibits Marked)

1 THE COURT: All right, we had scheduled for today
2 to start reviewing the juror responses. Mr. Diggs, you
3 did file a motion to argue against precedent and a
4 motion to disclose scientific evidence.

5 MR. DIGGS: Right.

6 THE COURT: Let's -- let's dispose of those now
7 first, please.

8 MR. DIGGS: Just for your information, Your Honor,
9 Brana Williams is here in the building. She, the last I
10 heard, was in a Family Court hearing on the second
11 floor, and she said that if she were not here at 9:30,
12 that she expected to be here in a relatively short time,
13 so I will leave it to your discretion if you want to go
14 ahead and proceed.

15 THE COURT: Well, was she going to argue the
16 motions ---

17 MR. DIGGS: No.

18 THE COURT: --- or were you going to argue the
19 motions?

20 MR. DIGGS: I am going to argue.

21 THE COURT: All right. Well, then, if you're
22 going to argue the motions, let's go forward.

23 MR. DIGGS: All right. Your Honor, the first one
24 I'd like to address is the motion to disclose scientific
25 evidence. It concerns the anticipated use by the

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1 prosecution of expert testimony in the case.

2 Under our -- I think it's Rule 5, that rule
3 requires the prosecution to disclose evidence that is
4 intended for use in the case in chief. I would argue
5 that is -- in this case, two grounds: One, it's not
6 really a fair procedure. It doesn't give us any kinds
7 of heads up or ability to prepare to meet or challenge
8 in any way whatever their evidence is in that regard,
9 but in this case I would argue that we don't need to do
10 that.

11 The prosecution knows what basically our testimony
12 is going to be. It's going to be basically the same
13 testimony that was introduced at the trial in this
14 matter in Georgetown County, and so I would argue that
15 the State should go ahead and disclose to us now
16 whatever evidence they intend to use in rebuttal if that
17 ends up being the proceeding or the procedure that is
18 used in this case, go ahead and disclose that to us now
19 so that it won't be a complete surprise at the trial
20 when that evidence is introduced.

21 THE COURT: All right, Solicitor, what's your
22 position?

23 MR. HEMBREE: Your Honor, we -- this kind of
24 harkens back to some of the issues we dealt with at the
25 last hearing. We do not have any additional evidence,

1 any documents or other -- other CDs, or other --
2 photographs or other materials in addition to what we
3 provided to Defense or what Defense actually provided to
4 us in the last trial, so it's -- I guess we have the
5 benefit that we have already sort of shared those --
6 that information, and we have -- the Defense is well
7 aware of what -- what the reply testimony is going to
8 essentially be as much as we are aware of what their --
9 what their case in chief on the psychiatric issues is
10 going to be, so we don't have anything in addition to
11 provide.

12 THE COURT: That has already been disclosed to
13 them is what you're telling me?

14 MR. HEMBREE: That's correct.

15 THE COURT: You've already previously -- and let's
16 be clear about that. In this particular case that we're
17 here about in these proceedings, notwithstanding what
18 might have happened in Georgetown, in these proceedings,
19 have you disclosed to them the -- and complied with the
20 dictates of Rule 5 and Brady v. Maryland?

21 MR. HEMBREE: Yes, we have complied with Rule 5,
22 absolutely, Your Honor, but we are not required, as Mr.
23 Diggs accurately points out, we are not required to
24 provide reply evidence as part of Rule 5. That's merely
25 -- it's just limited to our case in chief, and that's

1 been provided.

2 The -- we've not been provided any material, any
3 discovery from Mr. Diggs or his -- or Ms. Williams in
4 this case at all, so I guess if -- when we want to talk
5 about just this case, and that's a good question, we've
6 not been provided any discovery by Mr. Diggs, nor have
7 we -- I do not believe we've provided him the things
8 that we had from the first case regarding reply,
9 although I know that he has them because we actually
10 received that material from him.

11 THE COURT: All right.

12 MR. DIGGS: Your Honor, I think we kind of went
13 over that last time. It would be expensive for us to
14 reproduce the same evidence that we've already provided
15 to them, ---

16 THE COURT: All right.

17 MR. DIGGS: --- and as I stated last time, I
18 believe, we don't have any additional scientific
19 evidence that would go beyond what we introduced into
20 the trial of the case in Georgetown.

21 THE COURT: All right, so let's be clear about
22 this, then, so that when it is reviewed in the future
23 we're all on the same page and under the same
24 understanding. I'm hearing from both of you that
25 basically you have adopted the positions and it is the

1 position of each party that the information that you
2 previously disclosed in the Georgetown case that
3 involved Mr. Stanko, that you intend to rely upon that
4 information and evidence again, and that each of you
5 understands that, and if there was any necessity to make
6 a copy of any document or receive another copy of a
7 document, that you would request that of the other side/

8 But as far as the State's information, you're
9 relying upon not only what you've provided in this case,
10 but what you provided to them or what was developed in
11 the Georgetown trial, and as far as the Defense is
12 concerned, all the information you used in the
13 Georgetown case, you intend to rely upon in this case,
14 and since you have previously disclosed it to the State,
15 as a result of the expense that would naturally then
16 flow to the citizens of this State, there is not a
17 necessity to re-copy that information?

18 MR. DIGGS: Correct.

19 THE COURT: Is that right?

20 MR. DIGGS: Yes, sir.

21 MR. HEMBREE: Yes, Your Honor.

22 THE COURT: All right.

23 MR. DIGGS: Your Honor, to be specific, what we're
24 talking about are M.R.I. results, PET scan results that
25 were done, and also the images that were introduced by

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1 Dr. Spicer in the testimony that he presented last time
2 at the trial. Those are the -- and I think the
3 Continuous Performance Examination that was conducted by
4 Dr. Einhorn.

5 THE COURT: All right. Now, if there are any
6 written documents, reports, procedures that are in
7 writing, that have been reduced to writing, that have
8 been done or accomplished since that trial or have been
9 discovered since that previous trial, obviously those
10 need to be, on both sides, turned over to each other.
11 Everybody is under that understanding? Mr. Diggs.

12 MR. DIGGS: Yes, sir. We have -- do you want me
13 to identify those or just tell the Court we'll turn them
14 over?

15 THE COURT: I just want to make sure -- well, if
16 you know about them and they haven't now been turned
17 over to the State, yes, I would like you to tell me what
18 they are.

19 MR. DIGGS: Well, we don't have it yet, but I
20 anticipate a report from the crime scene analyst. As
21 the State knows, he was just here in town recently.
22 They were with us when he reviewed the evidence in the
23 case. I anticipate a report coming. We haven't
24 received that yet, but I don't have any objection to
25 making that available when we receive it.

1 THE COURT: As soon as you receive it?

2 MR. DIGGS: Yes, sir, as soon as we receive it.

3 THE COURT: All right, very good. Other than
4 that, are you aware of anything else?

5 MR. DIGGS: Not at this point now. Now, there may
6 be a report on the software issue, but at this point, I
7 don't have anything that I intend to even use at trial,
8 but just to give the State notice, we may -- that may
9 develop in the next few days.

10 THE COURT: All right, very good.

11 MR. HEMBREE: Your Honor, I just -- I guess as I
12 consider these issues, it does seem like there may be
13 enough gray area here that it warrants Mr. Diggs, Ms.
14 Williams, and Mr. Humphries, and I, and Mr. Richardson
15 sitting down, and making -- just confirming that we --
16 we have everything they intend to introduce on the --
17 with the experts, and they've gotten everything that we
18 have. I know that we've seen it all amongst each other,
19 but I don't want to take a risk that we begin the trial
20 and they, you know, ---

21 THE COURT: All right. Well, y'all -- y'all make
22 sure you accomplish that before next Friday, the 30th.
23 Y'all accomplish that before the 30th, sit down and look
24 at it, review it, and if you've got issues, then you
25 need to let me know and that will be a perfect time on

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1 the 30th to cover it and resolve it. I think my office,
2 though I was earlier this week holding Court in
3 Georgetown, and I think my office sent to y'all an
4 e-mail and reminded you about certain things that you
5 needed to send to me before we started the trial, I
6 think by -- I think the date was November 3rd, I
7 believe, but if -- I just wanted to remind y'all about
8 that.

9 If you don't recall getting that e-mail this week
10 on maybe Tuesday or Wednesday, you let me know because I
11 intended it to have been sent out to you, I think, on
12 Tuesday, but y'all remember that. There's certain
13 obligation -- or information that I need from y'all on
14 -- by the 3rd.

15 All right, so with that, I will leave it to you
16 gentlemen that the parties sit down before the 30th,
17 next Friday, and review the evidence and information,
18 and if you've got any issues, y'all let me know.

19 MR. HEMBREE: Thank you, Your Honor.

20 THE COURT: All right, that would then take care
21 of the motion to disclose scientific evidence, would it
22 not?

23 MR. DIGGS: Yes, sir.

24 THE COURT: All right, very good.

25 Your motion to argue against precedent.

1 MR. DIGGS: Your Honor, the first part of that
2 motion we've argued previously. What we're seeking here
3 is to have the prosecution present all of its evidence
4 in the case in chief when it presents all of the
5 evidence that it has on the issue of guilt or innocence,
6 and as you recall, we argued that particular aspect of
7 the procedure last time. This motion was just to cover
8 in writing for the record the type of precedent in South
9 Carolina that we're seeking to have the Court set
10 aside, ---

11 THE COURT: All right.

12 MR. DIGGS: --- and to rule -- or allow us to
13 argue against in this particular case, and I would take
14 the position that because, you know, this type of motion
15 has to be filed at the appellate level, and because of
16 the rule in South Carolina that issues be preserved,
17 that we would probably be safe to follow this procedure
18 at this point just so there won't be any issue down the
19 road about what was raised and what was not.

20 THE COURT: Anything in addition that the State
21 wants to argue in opposition to the motion?

22 MR. HEMBREE: No, sir, Your Honor.

23 THE COURT: All right, very good.

24 The Court would rely upon the rulings and the
25 explanations that I made previously when all these

1 issues were presented to the Court. There was not a
2 written motion at that point in time to argue against
3 precedent, but it was clear that was what the Defense
4 was doing and made it clear in its argument, and the
5 Court so understood it and made its rulings in that
6 regard, so what I'd do is adopt and reaffirm those
7 previous statements of the Court and rulings when I
8 respectfully declined to grant your motion as it was
9 presented to the Court.

10 MR. DIGGS: Your Honor, the second part of the
11 motion deals with precedent in South Carolina that
12 allows the jury to conclude or find sanity or insanity
13 based solely on lay testimony or circumstantial
14 evidence, and while it might be a good practice to allow
15 lay and circumstantial evidence to be considered in the
16 totality of the circumstances, I would argue and the
17 Defense in this case would argue sanity and insanity is
18 sufficiently a complex issue that would require expert
19 testimony.

20 I would argue that there's simply no way that a lay
21 jury is equipped to understand whether or not a
22 defendant is sane or insane without expert testimony on
23 that issue, where -- and I think the State recognizes
24 that. I think -- and I would submit simply, you know,
25 because we have a procedure in South Carolina on the

1 issue either of competency to stand trial, or sanity, or
2 mental health issues, that there's a statutory procedure
3 that has to be followed, you know, in that situation
4 where those questions are raised, and to just jump that
5 and throw it aside and say, "We don't need any of that.
6 The jury can just disregard all of that and just make a
7 decision based solely on the evidence in the case from
8 lay witnesses," I would argue that certainly in a death
9 penalty situation where the Eighth Amendment is
10 applicable, you've got to have a respect or heightened
11 degree of reliability in those factual findings that the
12 lay testimony rule in South Carolina simply doesn't --
13 and is not equipped to meet that standard.

14 And we're asking the Court to allow us to argue
15 against that precedent to say, "Look, there's got to be
16 expert testimony on that issue, especially --
17 particularly in a death penalty case before a lay jury
18 can make a decision based on lay evidence alone," and so
19 we're asking the Court to allow us to argue against
20 precedent in that respect.

21 I'm not sure that we argued this or touched on it
22 last time, so it may be somewhat of a new issue that
23 goes beyond the last hearing.

24 THE COURT: All right, very good.

25 Before I turn to you, Solicitor, Ms. Williams, I

1 understand that you were -- you joined us during the
2 arguments by Mr. Diggs and you were in Family Court
3 earlier. We had resolved the issue about the -- or the
4 motion to disclose scientific evidence and part of that
5 is a requirement of the attorneys to meet before next
6 Friday to review all the matters and make sure that all
7 evidence has been -- and information has been disclosed
8 between -- between the parties so that when we come here
9 on the 30th, if there are any issues or questions, it
10 can be raised to the Court, so just to alert you to that
11 particular aspect now.

12 MS. WILLIAMS: Thank you, Your Honor, and I
13 apologize for being late. It was ---

14 THE COURT: No, ma'am. You were otherwise
15 occupied in Court and Mr. Diggs indicated these were
16 motions that he intended to argue, so that's why I
17 proceeded.

18 All right, Solicitor, in the point that Mr. Diggs
19 was making in his motion.

20 MR. HUMPHRIES: We would object to any departure
21 from the longstanding precedent regarding the
22 sufficiency of lay testimony or circumstantial evidence
23 to support a finding of sanity. Insanity, as you know,
24 it has a legal, medical definition which is set out by
25 statute. We are not asking lay witnesses, nor would it

1 be proper to ask lay witnesses, "Is the defendant sane
2 or insane?"

3 We're simply gathering information from which the
4 jury, the finders of the fact, based on the charge given
5 by the Court with the legal, medical definition if, in
6 fact, he was sane or insane, so this is not purely a
7 medical finding. It is a legal, medical finding, and in
8 any event, Your Honor, as Mr. Diggs knows, the State did
9 not rely solely on lay witness testimony or
10 circumstantial evidence to support the jury's finding of
11 sanity in the last case. An expert was presented, and
12 as a result of the verdict, clearly the defendant found
13 -- the defendant was found sane under the medical, legal
14 definition, so we would object to any departure from the
15 long-standing precedent.

16 THE COURT: All right, sir. All right, as to this
17 particular issue, the Court will respectfully decline to
18 grant your motion to overturn and -- well, to argue
19 against precedent or to overturn prior rulings allowing
20 for lay testimony and actually for the jury to
21 understand the issue as to sanity or insanity based upon
22 the Court's instructions without the necessity of
23 medical testimony.

24 Also, I would indicate that there's been nothing
25 presented to me that would indicate that the jury is

1 incapable of understanding or following the Court's
2 instructions as to the legal definition, and nothing has
3 been presented to me that would show that a jury is
4 incapable of following the Court's instructions without
5 medical testimony being provided.

6 What's your next argument, sir?

7 MR. DIGGS: If I just could follow up on that for
8 the record. Certainly by the time we get in this trial
9 and instructions are given, there will have been
10 evidence presented. Perhaps I could have done a better
11 job encapsulating that at this time.

12 THE COURT: Well, you might want to renew your
13 motion at that point in time ---

14 MR. DIGGS: Exactly.

15 THE COURT: --- because I don't have anything in
16 front of me right now.

17 MR. DIGGS: Okay, and if that's a concern, I
18 certainly would like to treat this as a motion in limine
19 and renew this at the appropriate time in the trial.

20 THE COURT: Well, I'll be glad for you to renew it
21 if you deem it necessary or proper to do so, ---

22 MR. DIGGS: Okay.

23 THE COURT: --- but certainly, you know, part of
24 this is there's just a lack of information in front of
25 me to make any kind of determination.

1 MR. DIGGS: I think what Mr. Humphries alluded to,
2 it may be moot at that point because they may go ahead
3 and have expert ---

4 THE COURT: Have that presented, I don't know, but
5 anyway, let's just leave it at that. Obviously one of
6 the reasons that I'm denying the motion is I don't have
7 that sufficient information in front of me and if you
8 want to renew that motion at a later time in the trial,
9 I'll be glad for you to do so.

10 MR. DIGGS: Thank you, Your Honor.

11 THE COURT: All right.

12 MR. DIGGS: The next one is dealing with a guilty
13 but mentally ill verdict itself. Now, we argued this to
14 a certain extent last time, but I'm going a little bit
15 further -- well, no. I think we probably argued this
16 the last time.

17 What we're doing here is saying, "Look, for the
18 State to go ahead and recognize the guilty but mentally
19 ill, that people are mentally ill, and that, you know,
20 it has a legal significance sufficiently so, that the
21 legislature needs to address it." We cite a couple of
22 Supreme Court cases that talk about the Eighth
23 Amendment's applicability to -- and the Fourteenth
24 Amendment, I think, applicability to the death penalty
25 and certain mental states ---

1 THE COURT: So you basically want to put the -- if
2 a person is found to be guilty but mentally ill, you
3 want to put them in the same category as persons with
4 disabilities or special needs that cannot be executed
5 or ---

6 MR. DIGGS: Correct.

7 THE COURT: --- juveniles of a certain age that
8 cannot be executed ---

9 MR. DIGGS: Yes, sir.

10 THE COURT: --- you would want to put -- add to
11 that category ---

12 MR. DIGGS: Correct.

13 THE COURT: --- a person who was declared to be
14 guilty but mentally ill?

15 MR. DIGGS: Yes, sir, and because the courts in
16 the Atkins case and the other one -- I skipped -- we
17 cited in the -- Roper v. Simmons, when the Court
18 stresses the degree -- it's the degree of culpability in
19 the case that warrants the death penalty, and in that
20 guilty but mentally ill situation, the culpability
21 simply is -- it is not there or is greatly diminished,
22 and so the reasoning and rationale for those two
23 opinions, the Atkins opinion and the Roper opinion,
24 would be applicable to a guilty but mentally ill
25 situation as well, and so we're asking the Court to

1 overrule some of the precedent in -- like the State v.
2 Wilson specifically, and, Your Honor, we point out that
3 the State v. Wilson was -- I mean, it relied on evidence
4 -- case law from the nineteenth century, and we
5 certainly are progressed beyond that point in terms of
6 our technology and our understanding about mental
7 illness and the effect that it can have on a person's
8 conduct and ability to conform to the requirements of
9 the law. It's time to re-visit that and say, "Look, we
10 need to update the policy in this regard at this time,"
11 so that's the basis for our motion.

12 THE COURT: All right, very good.
13 Solicitor.

14 MR. HUMPHRIES: Number one, I guess we need to
15 take issue with the defendant's assertion that his
16 culpability is greatly reduced as a result of what could
17 be a GBMI verdict. Your Honor, this is -- this motion
18 is not ripe. There is nothing in the record at this
19 time which would suggest that the jury could even find
20 guilty but mentally ill, so I would say first it's very
21 premature.

22 Secondly, Your Honor, while it is true that the
23 U.S. Supreme Court has placed certain restrictions on
24 the death penalty in regard to mentally retarded
25 persons, certain mentally retarded persons, and people

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1 under the age of seventeen, clearly, clearly, Your
2 Honor, there was the opportunity for a GBMI defendant
3 sentenced to death to have been considered at the same
4 time, there is no U.S. Supreme Court case which
5 restricts a death sentence in that situation, so I would
6 say, number one, there is no standard. There is no
7 precedent set for that. Number two, it is not ripe and
8 it's premature, and we would object under any
9 circumstances.

10 THE COURT: All right, thank you.

11 As to the particular issue being presented that the
12 Court would find at this point in time that there's no
13 evidence before the Court that would allow the Court to
14 rule on this particular matter.

15 I am going to allow the Defense if the evidence in
16 this case is such that would form the basis for this
17 argument, I'll be glad for them to renew their argument
18 at that -- at that point in time. All right, Mr. Diggs?

19 MR. DIGGS: Yes, sir; thank you.

20 THE COURT: All right, very good, and you had a
21 fourth argument?

22 MR. DIGGS: We did.

23 THE COURT: All right, yes, sir.

24 MR. DIGGS: Your Honor, this one, I would ask
25 permission to argue against the precedent of Gill v.

1 State and State v. Santiago. Gill v. State is a State
2 Supreme Court case, and Santiago is a Court of Appeals
3 case that cites the Gill precedent. It says that
4 psychiatric testimony about I.Q. levels -- or in the
5 Gill case, a low I.Q. and having the requisite mental
6 state to commit malicious crimes, the precedent holding
7 that that type of evidence is not relevant to the case
8 because South Carolina doesn't recognize what's called
9 diminished capacity.

10 Our argument is that the case law is too broad and
11 it's too -- it's not intended for situations such as
12 that presented in this particular case, where we focus
13 in on a particular defect, and so what we're asking --
14 and we're basing this primarily on the State
15 Constitution, that our due process, prohibitions, gets
16 -- you know, violations of due process and cruel and
17 unusual punishment on the state level should allow for
18 presentation of evidence on the defendant's inability to
19 form a necessary element of the offense, and so these
20 decisions, I would argue, are based on a misapplication
21 or a misunderstanding of the medical evidence that's in
22 mainstream medical science at this day and time and is
23 not good policy as a result of the inconsistency with
24 mainstream medical science.

25 And, Your Honor, again, it may be premature at this

1 time, as Mr. Humphries says. We can certainly agree to
2 hold -- to revisit this issue after the presentation of
3 the evidence in the case, but based on what we
4 anticipate the evidence to be and based on what the
5 evidence was that was presented in the trial of the case
6 in Georgetown for this defendant, we are arguing -- we
7 are asking permission to argue against the precedent of
8 Gill v. State and State v. Santiago in the trial of this
9 case.

10 THE COURT: All right. Solicitor.

11 MR. HUMPHRIES: Our appellate courts as late as, I
12 believe, the week before the first trial in this case
13 reaffirmed their holding that this state, among many
14 others, does not recognize the defense of diminished
15 capacity. I guess we need to do this just in terms of
16 logistics and planning at this time.

17 You know, what we're going to ask the Court after
18 the State's case in chief, if the Defense intends to
19 offer evidence regarding diminished capacity in their
20 case in chief in the guilt phase, the State would move,
21 and will move, at that time that, number one, that that
22 testimony be proffered before this Court, because our
23 position is if the testimony and the evidence goes to
24 diminished capacity that is not recognized and,
25 therefore, is not relevant to be heard before the jury

1 in the guilt phase, so we'll ask the Court to preview
2 that testimony outside the presence of the jury and to
3 make a ruling regarding its admissibility.

4 We would object to its admission into evidence if,
5 in fact, the evidence they intend to submit is to
6 support a diminished capacity which is not recognized as
7 a defense in South Carolina, so number one, we say that
8 our appellate courts have been firm on this rule, as
9 most states across the nation have been.

10 Number two, if they intend to offer that evidence,
11 that it be proffered before the Court, that the Court
12 make a finding as to whether it's admissible or not
13 admissible, relevant or not relevant, and if it relies
14 on the defense of diminished capacity, we would ask the
15 Court not to admit it as it is absolutely irrelevant.

16 THE COURT: All right, sir. Well, ---

17 MR. DIGGS: Your Honor, do you want me to respond
18 to that?

19 THE COURT: Sure.

20 MR. DIGGS: He made the same motion last time. We
21 had to bring in an expert solely for the purpose of
22 presenting evidence in advance. The Judge heard the
23 evidence, said, "This is not diminished capacity; it's
24 evidence of insanity. I'm going to allow it," and so
25 the State didn't appeal that. It's the law of the case

1 with respect to this defendant, and so I would submit
2 that it's really a non-issue.

3 The problem -- what, I guess, -- what I'm asking to
4 do, and the Court doesn't really even need to go --
5 well, what we're asking in response to Mr. Humphries'
6 argument is that the State not be permitted to even make
7 the argument of diminished capacity because that's not
8 -- I guess what we're doing is anticipating them making
9 that argument, and we're saying that's not a legitimate
10 defense.

11 We don't pretend -- we don't intend to present
12 evidence and a defense of diminished capacity. What
13 happens though invariably when we present evidence of
14 insanity, they say, "No, it's not that. It's a
15 diminished capacity, and we don't recognize that."
16 Diminished capacity is a smoke screen that's been
17 invented by the prosecution to divert attention away
18 from what the central issue in the case is, and that's
19 insanity, and when you start to look, we don't really
20 know what insanity is, kind of a nebulous concept of
21 when we try to start specifically pinning it down, then,
22 you know, that's when they -- the prosecution starts
23 saying, "No, that's diminished capacity. It's not
24 insanity, and we don't recognize that." It's just a way
25 to try to chip away at what the legitimate defense of

1 insanity is, and it diverts attention from the real
2 issue, ---

3 THE COURT: All right.

4 MR. DIGGS: --- and that's why we made the motion.

5 THE COURT: Okay. First, it's clear that in the
6 State of South Carolina by the appellate court
7 decisions, there is no defense of diminished capacity.
8 Everybody recognizes that, and if there was an intention
9 to do that by the Defense, then that's not proper in
10 this state.

11 Now, as to the defense of insanity, that obviously
12 is proper. What may be necessary, and it's -- y'all
13 help me with this. The testimony that we're talking
14 about occurred in the -- not in the trial phase, but in
15 the second phase of the trial, is that correct, or did
16 it happen in the trial phase?

17 MR. HUMPHRIES: No, sir. No, sir. It happened in
18 the trial phase, ---

19 THE COURT: All right.

20 MR. HUMPHRIES: --- and let's be clear about this.
21 We put -- we required the Defense -- the Court required
22 the Defense to put it up, to make a call regarding its
23 admissibility or not, and the Court said, "This is
24 Santiago, but I'm going to let you do it anyway in an
25 abundance of caution," and that's not the law of this

1 case in any event.

2 THE COURT: All right. Well, what will be
3 necessary is prior to you putting on the witness -- and
4 what is the name of the witness so I know it? Y'all
5 obviously already know what the name of the witness is,
6 but I don't. Who is it?

7 MR. DIGGS: We have two psychiatrists who will
8 testify that this defendant was insane.

9 THE COURT: All right.

10 MR. DIGGS: Now, that's not diminished capacity.
11 That's insanity.

12 THE COURT: All right.

13 MR. DIGGS: Dr. Thrasher ---

14 THE COURT: Thrasher, ---

15 MR. DIGGS: --- and Sachy.

16 THE COURT: And I'm sorry, the other one was?

17 MR. DIGGS: S-A-C-H-Y.

18 THE COURT: S-A-C-H-Y, and how do you pronounce
19 that?

20 MR. DIGGS: Dr. Sachy.

21 THE COURT: Sachy, all right. Before Drs.
22 Thrasher and Sachy testify before the jury, then the
23 Court will hold an in camera hearing or hearing prior to
24 they -- their testimony, and we'll rule on the issue
25 presented at that point in time.

1 MR. DIGGS: Your Honor, ---

2 THE COURT: Go ahead.

3 MR. DIGGS: We respectfully object to that because
4 the testimony will be that he was insane, not diminished
5 -- suffering from diminished capacity per se, and I
6 would submit that the law doesn't require that. If
7 we've got an expert who says insanity, then I would
8 argue that there's no need to put that up, just to have
9 the witness come here and testify to that effect to back
10 up what I'm telling the Court ---

11 THE COURT: Well, I need to -- I need to know what
12 their definition of insanity is. It's clear, as best it
13 can be through the Court's decisions, what the Court has
14 said about the defense of diminished capacity, and if
15 the experts' definition of insanity is the same as the
16 definition as set forth in the Court opinions for
17 diminished capacity, then I need to know that.

18 MR. DIGGS: Yeah. We're not going to do that.

19 MR. HUMPHRIES: That's precisely the issue and
20 that's exactly what they did last time.

21 MR. DIGGS: It's not ---

22 THE COURT: Well, gentlemen, gentlemen, let's not
23 argue about that, and I appreciate that. Y'all have the
24 benefit of having heard all these witnesses and had the
25 benefit of examination and cross examination before. I

1 was not the trial judge of that particular proceeding,
2 so -- and obviously this is a different proceeding. I
3 understand that there was a prior proceeding, but this
4 is a completely and totally separate case in that
5 regard.

6 I understand that maybe for the purposes of
7 judicial economy, certain documents may not need to be
8 produced because of the burden that it will put upon the
9 citizens of the State of South Carolina for --
10 ultimately to pay for it when it's already been done. I
11 can understand that, but as to legal issues, this is a
12 brand new proceeding. What happened in the other
13 proceeding is not going to come up in the new one. It's
14 not going to be talked about.

15 The jury is not going to be able to use that in any
16 regard, so what we're going to do so that I understand
17 and have the ability to make a ruling on the matter
18 being presented is I need to know -- and I don't know
19 that we need to go into the entirety of the testimony of
20 Drs. Thrasher and Sachy, but I have to have an
21 understanding of their testimony before it is presented
22 so that the Court knows that we are not talking about
23 diminished capacity, which is not allowed.

24 I don't know what Dr. Thrasher is going to say. I
25 don't know what Dr. Sachy is going to say because I

1 didn't hear them before, so ---

2 MR. DIGGS: Your Honor, could I make a request
3 that we do that? Last time it presented a problem for
4 us merely by scheduling considerations. These are --
5 Dr. Sachy is not from here. He's in private practice,
6 so I would ask if we could maybe have that testimony
7 presented at a time when he could be here for trial as
8 well.

9 THE COURT: I don't have a problem with having
10 that hearing prior to his testimony. I don't anticipate
11 that that is going to take an extraordinarily long
12 period of time. I don't intend for it to be the
13 entirety of his testimony. I intend to let's focus on
14 what the legal definition of diminished capacity is and
15 what his definition of insanity is and see how they
16 compare or don't compare at all, and that's the issue
17 that we're going to talk about.

18 If they are not the same or there are significant
19 differences, then it may very well be that the testimony
20 is allowed in that regard and I might put before the
21 jury at some point in time, and y'all might want to work
22 on that, some statement to the jury that the State of
23 South Carolina does not recognize the defense of
24 diminished capacity, and put some legal definition of
25 what that actually is as far as a jury instruction, and

1 that the testimony being presented here is on the
2 defense issue of insanity so that -- and what I'm --
3 since I'm suggesting this, I think that's something that
4 y'all ought to work on so that if and when I allow this
5 testimony there is some instruction to the jury so that
6 they understand their duties and responsibilities as
7 governed by the law in this State, understanding you may
8 not agree with it, but I'm going to be following the law
9 as recognized in this State as far as there not being a
10 defense of diminished capacity.

11 Any argument that you're making to present that,
12 I'm not going to allow because I think that's clear in
13 the State, but -- so before Dr. Thrasher testifies, and
14 it can be right before Dr. Thrasher testifies, I don't
15 have any problem with that, or Dr. Sachy, I don't have a
16 problem with that, because we're not going to have, you
17 know, three hours of testimony from them. We're going
18 to focus on the issue, ---

19 MR. DIGGS: Right.

20 THE COURT: --- okay?

21 MR. DIGGS: Yeah, but the last time, I think it
22 consumed pretty much an entire day.

23 THE COURT: Well, it's not going to, all right?
24 It's not going to. We're going to focus on the issue.
25 You know the case law. You can pull out the definition

1 of diminished capacity, and you can have him testify
2 first thing what is my -- what is his definition of
3 insanity, and we're going to compare the two, and if
4 they're exactly the same, then there's an issue.

5 If they're not the same, there are significant
6 differences, then fine, we'll move along and hear it,
7 but I do want y'all to work on and give to me before the
8 trial starts some kind of curative instruction to the
9 jury -- or not curative, but explanatory instruction to
10 the jury that diminished capacity is not recognized in
11 the State of South Carolina and I'm allowing this
12 testimony on the Defense issue of insanity, and so that
13 they are clear, what it's being presented for and how
14 the Court is allowing it, so y'all -- y'all work on
15 that. We're not going to spend a lot of time because
16 it's not necessary, all right?

17 MR. DIGGS: Thank you, Your Honor.

18 THE COURT: All right, so we're not ruling on it
19 right now. I will rule on it when Dr. Thrasher and Dr.
20 Sachy are presented to me on the issue. I think we've
21 narrowed down the issue. I think it's going to be real
22 clear. They give me their definition; we'll compare it
23 to the legal definition and we'll see how it -- how it
24 works out at that point in time, all right?

25 MR. DIGGS: Thank you, Your Honor.

1 THE COURT: Good deal.

2 MR. DIGGS: That's all our -- all that we have at
3 this time.

4 THE COURT: Good.

5 MR. HUMPHRIES: Your Honor, we do have ---

6 THE COURT: Yes, sir.

7 MR. HUMPHRIES: --- one housekeeping matter, and it
8 happens every time you try a case either twice or try
9 cases which are interconnected, and we talked a great
10 bit about the expense of having to reproduce certain
11 exhibits and documents.

12 In light of that, Your Honor, we have an order
13 which we will ask counsel for the defendant to stipulate
14 to or to consent to substituting copies for record on
15 appeal from the last case so that we're able to pull the
16 exhibits that were introduced by the State and, of
17 course, the Defense has the ability to do the same thing
18 for our exhibits from the case in Georgetown so that we
19 can re-use them in this record, because as Mr. Diggs has
20 indicated, they are essentially the same, or, at
21 least, ---

22 THE COURT: Right, but just so obviously there's
23 no indication on its face that it was used in a previous
24 court proceeding, but other than that, is there any
25 problem with that, Mr. Diggs?

1 MR. DIGGS: No.

2 THE COURT: All right, very good.

3 MR. HUMPHRIES: What we do, and I'm sure the court
4 reporter is aware, we'll take everything to make sure
5 that there is absolutely no evidence that it has been
6 admitted at another trial, and oftentimes we have had to
7 actually pull the exhibit numbers off after some -- but
8 it's -- really, that's the court reporter's ---

9 THE COURT: Well, y'all will work with the court
10 reporter, and I'm going to be expecting y'all to work
11 with the court reporter to try and get these matters
12 resolved before they're actually introduced at the
13 trial.

14 MR. HUMPHRIES: Well, no question. We'll have a
15 list of the examples and we will have them prepared.
16 It's not something that we're unaccustomed to,
17 unfortunately.

18 THE COURT: All right.

19 MR. DIGGS: And, Your Honor, ---

20 MR. HUMPHRIES: And I'm going to hand this up to
21 the Court at this time.

22 MR. DIGGS: --- we don't have an order to hand up,
23 but obviously we're going to make the motion to do the
24 same thing with our -- any exhibits that were introduced
25 by the Defense.

1 THE COURT: All right.

2 MR. HUMPHRIES: What we've done, Your Honor, just
3 so there's no question about the record on appeal, is
4 we've numbered the exhibits we intend to pull out.
5 We've attached the court reporter's list of exhibits,
6 and when we take a document or an exhibit out of the
7 record, we replace it with a photograph so there's
8 documentary evidence, not just itemized, but actually a
9 picture, ---

10 THE COURT: All right.

11 MR. HUMPHRIES: --- so there's no question about
12 the identity of that exhibit.

13 THE COURT: All right, sir.

14 MR. DIGGS: And, Your Honor, ---

15 THE COURT: Yes, sir, Mr. Diggs.

16 MR. DIGGS: --- Ms. Williams just pointed out it
17 would be good if we could do that, coordinate with the
18 prosecution, because they always have to be with us
19 anyway, maybe when that's done, we could go along and do
20 it at the same time to get those exhibits and ---

21 MR. HUMPHRIES: Sure. We're going to do it very
22 quickly, so if you will get your order. I'll have it
23 filed, Your Honor, and we will make sure the Court has a
24 copy and the Defense has a copy.

25 THE COURT: Thank y'all. All right, anything else

1 from the State?

2 MR. HUMPHRIES: No, sir.

3 THE COURT: Anything else from the Defense?

4 MR. DIGGS: No, Your Honor. Could we take a brief
5 recess?

6 THE COURT: Sure. We'll just take five minutes
7 and then we'll get started with the jurors then. Thank
8 you.

9 (OFF THE RECORD)

10 ON THE RECORD

11 THE COURT: All right, Solicitor, do y'all have
12 your rollcall list and information?

13 MR. HEMBREE: Yes, Your Honor.

14 THE COURT: And, Madam Clerk, you gave them a copy
15 of this cover sheet, too?

16 THE CLERK: Yes, sir. They have everything.

17 THE COURT: All right, very good, and Mr. Diggs
18 and Ms. Williams, y'all have got a copy of the rollcall
19 list and the Clerk's information?

20 MR. DIGGS: Yes, sir. With your permission, I
21 would ask if we could stand around here. We have one
22 screen that we're going to look at and share.

23 THE COURT: That's fine, yes, sir. That's not a
24 problem. Can y'all move the microphone down to that
25 other end of the table, please, if you don't mind. Good

1 deal.

2 All right, though it may not be the quickest or
3 fastest way to do this, I'm going to go down the
4 rollcall list alphabetically, the information we'll
5 cover and make decisions on the ones we need to. If the
6 person is coming in, I'm just going to say, "They're
7 coming in," and we're going to skip on to the next one
8 because I don't see any necessity of dealing any --
9 dealing with them at that point in time.

10 All right, number 1, Kristina M. Aaronson, unable
11 to locate. The Sheriff is still trying to find that
12 particular person.

13 THE CLERK: No, sir; we have an affidavit.

14 THE COURT: You now have an affidavit?

15 THE CLERK: I have an affidavit on both of these.
16 If they've got something -- if it's blank, that's when
17 the Sheriff has located them.

18 THE COURT: All right. There is a Sheriff's
19 affidavit on number 1, that they are unable to locate
20 Kristina M. Aaronson in Horry County. Address given is
21 a church address. Neighbors did not know her. They
22 left a card in the church mailbox, an affidavit of the
23 Sheriff of Horry County.

24 All right, if y'all have any objections, issues of
25 any kind, I'm expecting the State and the Defense to

1 raise those with me. I don't see the necessity of
2 asking you every time do you have a problem. If you've
3 got a problem, you've got an issue, please speak up and
4 let me know.

5 Is that agreeable to the State?

6 MR. HEMBREE: Yes, Your Honor.

7 THE COURT: Defense?

8 MR. DIGGS: Yes, sir.

9 THE COURT: Very good. All right, the next one,
10 Theresa Adkins, unable to locate. The Sheriff's
11 affidavit states that they are unable to locate Theresa
12 A. Adkins in Horry County. Her neighbor and cousin,
13 Marcella Hellum, states that Theresa A. Adkins has moved
14 to Marion County, in the Nichols part of Marion County.

15 All right, number 3, Agripino is coming in. Number
16 4, Aklin is coming in. Number 5, Morrison is coming in.

17 Mayra Alfonso, that's -- the Sheriff is still
18 trying to locate that particular person?

19 THE CLERK: That's correct.

20 THE COURT: All right, very good. Carolyn S.
21 Allen, the Sheriff is still trying to locate that
22 particular person.

23 The next one we've got is Cleve Allen, school
24 employee. All right, we would look to 14-7-845,
25 postponement of jury service for students and school

1 employees. If a school employee is selected for jury
2 service during the school term, requests -- the service
3 must be postponed to a date that does not conflict with
4 the school term. A school employee is a person employed
5 as a teacher, certified personnel at the building level,
6 bus driver -- that's what they've got. Now, this
7 particular person says they are a security guard at the
8 North Myrtle Beach Middle School and want to be excused
9 until the summer. What is the State's position?

10 MR. HEMBREE: Your Honor, we have no objection to
11 him being excused until the summer.

12 THE COURT: What is the Defense position?

13 MR. DIGGS: Yeah, we don't have an objection.

14 THE COURT: All right, very good.

15 All right, Madam Clerk, you can so inform and
16 change this particular juror to jury service in the
17 summer. We don't have a list of when that is, but just
18 one of the first two weeks in June.

19 All right, number 9, Layton Allen is coming in.

20 Norma Allen is over sixty-five. All right,
21 14-7-840, exemption from jury service, "No person is
22 exempt from service as a juror in any court of the State
23 except men and women sixty-five years of age or over."
24 All right, what is in this affidavit, there's a
25 statement that Ms. Allen is seventy years old. She

1 suffered a stroke in June 2004, unable to drive. What
2 is the State's position?

3 MR. HEMBREE: No objection to her being excused,
4 Your Honor.

5 THE COURT: The Defense position?

6 MR. DIGGS: Your Honor, with all due respect, we
7 understand the juror's situation and are sympathetic to
8 it, but our position has to be that, you know, sixty-
9 five is not what sixty-five used to be, and we lose a
10 lot of wisdom and experience in this situation, and we
11 object to excusing anybody pursuant to that statute
12 simply because it denies ---

13 THE COURT: So you're saying that 14-7-840 is
14 unconstitutional?

15 MR. DIGGS: Well, it is unconstitutional and it's
16 just bad policy as well.

17 THE COURT: All right. I would respectfully
18 decline to grant your motion to state that 14-7-840 is
19 unconstitutional. 14-7-840 says, "No person is exempt
20 from service as a juror in any court of this state
21 except men and women sixty-five years of age or over."
22 The wording of that states that, therefore, if you read
23 it, men and women over the age of sixty-five -- I'm
24 sorry -- men and women sixty-five years of age or over
25 are exempt. It is clear, explicit. It is not -- and I

1 would respectfully decline to grant your motion to
2 declare it unconstitutional. That person is excused.

3 MR. DIGGS: Your Honor, could -- and, of course,
4 we base it on the fact that the segment -- that segment
5 of the population right now is growing, is significant
6 in size more so than it was when that statute was
7 written.

8 Also, I'm asking for permission to apply that to
9 every person so I don't -- I mean every person over
10 sixty-five so I don't have to make a motion every time
11 that ---

12 THE COURT: If you have -- no, sir. If you have
13 an objection to that particular person, you're going to
14 need to raise it.

15 MR. DIGGS: All right, even if it's the same ---

16 THE COURT: This person is -- the date of birth,
17 so it's clear, is January 25, 1939, age seventy, and
18 further regarding this particular juror, there is
19 information that the juror suffered a stroke in June of
20 2004.

21 MR. DIGGS: Well, and I understand that, and it
22 may be that that might be a different ground for
23 excusing her, but she didn't say in there that she was
24 incapacitated because of the stroke. My wife has had a
25 stroke, but she could certainly serve on a jury.

1 THE COURT: Very good. That juror is excused.
2 Thank you very much.

3 MR. HEMBREE: Your Honor, I think Mr. Diggs is
4 trying to argue diminished age. I'm concerned about
5 that.

6 THE COURT: All right. I do find 14-7-840 to be
7 constitutional.

8 Wesley S. Allen is coming in, number 11. Number
9 12, James B. Allison -- I'm sorry; that was 11. Number
10 12 is coming in. Number 13, James Alvey, is coming in.
11 Robert E. Ambrose, over sixty-five.

12 MR. DIGGS: Your Honor, we'd have the same
13 objection on that one.

14 THE COURT: All right, and this one, the juror was
15 born on June 9th, 1927. It indicates an age of eighty-
16 two.

17 MR. HEMBREE: No objection, Your Honor.

18 THE COURT: This juror also indicates that he is
19 blind in his right eye. His left eye has a cataract
20 that needs removal. He's hard of hearing. He's had
21 previous injuries to his knees and right foot, needs the
22 use of a cane, takes medication, and I find this
23 particular juror is exempt. Thank you very much.

24 MR. DIGGS: And, Your Honor, I had stated on the
25 record, I believe, earlier -- I just wanted to make sure

1 that was there again.

2 THE COURT: Yes, sir. Juror Number 19, Tina
3 Angelo, is coming in.

4 MR. HUMPHRIES: And, Your Honor, just for
5 housekeeping, we stopped with ---

6 THE COURT: Did I skip over -- I had skipped over
7 15; I'm sorry. 15, Darren Anderson, the Sheriff is
8 still trying to locate that person.

9 Juror number 16, Robert Anderson, the Sheriff is
10 still trying to locate that person.

11 Number 17, Thomas Andre, the juror is coming in.

12 Let's look at -- I'm sorry. Number 18, John
13 Angelino, over sixty-five. His date of birth is
14 February 13th, 1942, his age, sixty-seven. It says that
15 he is suffering from prostate cancer and currently being
16 treated for this disease. What's the State's position?

17 MR. HEMBREE: No objection to him being excused.

18 THE COURT: Defense?

19 MR. DIGGS: Your Honor, we're not going to object
20 on this one, but it's because of that cancer treatment
21 that he's undergoing and not because of the age.

22 THE COURT: All right, very good.

23 The next one, number 19, Tina Angelo, is coming in.

24 Number 20, Sandra K. Appleby, served June 24th,

25 '08. 14-7-250 states that, "The names of those who are

1 drawn and attend a session of court as a member of a
2 jury pool must be placed in an envelope and must not be
3 put back in a jury box until the first revision of the
4 jury list provided for after they have so been drawn to
5 the end that no person is required to serve as a juror
6 more than once in three calendar years.

7 Nothing contained in this article may be construed
8 to be in conflict with the provision of law as to
9 selecting by lot from the Grand Jury six members to
10 serve for the ensuing year. Nothing contained in this
11 article prohibits a person whose name has been properly
12 drawn and who desires to serve as a juror from serving
13 more frequently than once every three calendar years,
14 except no person shall serve as a juror more than once
15 every calendar year," so if it was within the calendar
16 year, they cannot. They are allowed to if it's been
17 within three years.

18 This particular person indicated that they served
19 June 24, 2008. I did not note -- did they specifically
20 request to be excused, Madam Clerk? Did you see that in
21 there?

22 THE CLERK: When we did the affidavit, they had
23 called us. That's why we did the affidavit. They
24 called us.

25 THE COURT: All right. In response to number

1 forty-nine?

2 MR. HEMBREE: Number 29?

3 THE COURT: No, I'm sorry. In -- it's number 20,
4 but question number 49. They say, "Is there any
5 information about you which you feel the Judge and the
6 attorneys should know in reference to your ability to
7 serve as a juror?"

8 Oh, this juror is also a teacher and prefers jury
9 duty during the summer, besides having jury duty in June
10 of 2008, so this juror is a teacher and wishes to be
11 excused. Any objection to that from the State?

12 MR. HEMBREE: No, Your Honor.

13 MR. DIGGS: No, Your Honor.

14 THE COURT: Very good.

15 The next one, 21, Jennifer A-R-A-U-J-O, is coming
16 in.

17 Number 22, Matthew Arbaugh, is coming in.

18 23, Tina Arms, is coming in.

19 Number 24, Catherine T. Arthur is over sixty-five.
20 Date of birth is January 21, 1939. She indicates her
21 age is seventy and a half. She also ---

22 MR. DIGGS: Your Honor, we don't ---

23 THE COURT: I'm sorry?

24 MR. DIGGS: We don't object to your excusing this
25 witness because of her medical answers.

1 THE COURT: All right, because of the medical
2 reasons and the doctors appointments that are apparently
3 for the medical conditions that she does have.

4 All right, is there any objection from the State?

5 MR. HEMBREE: No objection from the State, Your
6 Honor.

7 THE COURT: All right, very good.

8 Number 25, Richard Ashley, is over sixty-five, and
9 date of birth is 5/18/1941, age sixty-eight, and wishes
10 to be excused. What is the State's position?

11 MR. HEMBREE: We have no objection to his being
12 excused, Your Honor.

13 THE COURT: Defense?

14 MR. DIGGS: Your Honor, we object on the grounds
15 that the statute, the sixty-five or older statute, is
16 unconstitutional.

17 THE COURT: All right, very good. I'm going to
18 exempt this particular -- excuse this particular juror.

19 All right, 26, the Sheriff is still looking.

20 27, the Sheriff is still looking.

21 28, James Bailey, over sixty-five. Date of birth
22 is 10/10/28, age eighty. Also, juror information
23 supplied by his wife states that he has had a stroke and
24 is not able to attend. He is under a doctor's care.

25 The State's position?

1 MR. HEMBREE: No objection, Your Honor.

2 THE COURT: Defense position?

3 MR. DIGGS: Well, in reliance on the statement
4 that they are not able to attend, we don't have an
5 objection.

6 THE COURT: All right, sir; thank you.

7 All right, the next one is 29, Beverly Baker, over
8 sixty-five. Date of birth is 3/1/37, age seventy-two.

9 All right, the State's position, please.

10 MR. HEMBREE: No objection to Ms. Baker being
11 excused, Your Honor.

12 MR. DIGGS: We object.

13 THE COURT: All right, sir. I'm going to excuse
14 this particular juror. Just for the record, and all
15 these documents are part of the record anyway, but ---

16 MR. DIGGS: What? I'm sorry.

17 THE COURT: I'm sorry. All these documents are
18 part of the record, but I just ---

19 MR. DIGGS: Right.

20 THE COURT: --- I just wanted to note one of Ms.
21 Bailey's responses, that she's a firm believer in good
22 old-fashioned common sense.

23 MR. DIGGS: There you go. I submit my case.

24 THE COURT: And I appreciate it. She wishes to be
25 excused. I'm going to excuse her.

1 All right, the next one, unable to locate juror
2 number 30, Pierre Barkhuizen. The Sheriff's affidavit
3 says is unable to locate that individual in Horry
4 County. No driver's license is found. Checked DMV;
5 moved from the address that the county officials had
6 approximately three years ago.

7 All right, the next one, 31, Karen Barr, is coming
8 in.

9 32, William Barry, is unable to locate. The
10 Sheriff's affidavit indicates that they are unable to
11 locate William J. Barry in the confines of Horry County
12 and no forwarding information was found by the Sheriff's
13 Department.

14 The next one, 33, Bartomeo, is coming in.

15 Number 34, the Sheriff is still looking.

16 35, Mary Bates, is coming in.

17 36, Christopher Baucom, we have no longer resides
18 in Horry County. Affidavit from the Sheriff indicates
19 that they are unable to locate Christopher J. Baucom in
20 the confines of Horry County. The individual moved to
21 the State of California in 2005.

22 The next one, Darryl Bayne, the Sheriff is still
23 looking.

24 38, Richard Beasley, is coming in.

25 39, Irene Beaver, is over sixty-five. Date of

1 birth was 9/21/1925. Let's see, what would that
2 calculate out to?

3 THE CLERK: Eighty-four.

4 THE COURT: That would be eighty-four. All right,
5 Ms. Beaver is eighty-four, has requested under the
6 statute not to serve. What is the State's position?

7 MR. HEMBREE: No objection to her being excused,
8 Your Honor.

9 THE COURT: Defense?

10 MR. DIGGS: Your Honor, we object.

11 THE COURT: All right. She is excused.

12 All right, the next one is number 40, Cheryl
13 Becker. We have some medical information on her. We
14 have a statement from the Center of Hope, Myrtle Beach,
15 LLC. "This is to inform you that Cheryl Becker is a
16 patient at Center of Hope, Myrtle Beach, under the care
17 of Dr. McCarthy. We are a methadone clinic that treats
18 opioid addiction and patients are required to medicate
19 on-premises every day."

20 All right, what is the State's position?

21 MR. HEMBREE: Your Honor, the State's position is
22 that Ms. Becker should be excused based on her medical
23 condition. It also indicates, I noted in there, that
24 she's -- it requires her to go to the methadone clinic
25 for treatment every single day. That's -- I fear that

1 the condition that the methadone would put her in would
2 undermine her ability to serve effectively as a juror,
3 especially considering that the jurors are going to be
4 sequestered and she's going to be kept -- you know, kept
5 away from her home and unable to get her treatments.

6 THE COURT: All right, sir. What is the Defense
7 position?

8 MR. DIGGS: Your Honor, we agree, the diminished
9 capacity defense to jury service would be applicable
10 here.

11 THE COURT: You believe that there is a sufficient
12 medical excuse, is that correct?

13 MR. DIGGS: Yes, sir.

14 THE COURT: Very good.

15 41, the Sheriff is still looking.

16 42, Leroy Beckwith, is coming in.

17 43, Daniel Begley, the Sheriff is still looking.

18 44, Madgie Bell, is coming in.

19 45, Rosanne Bell, is coming in.

20 46, James Bellamy, is coming in.

21 47, Jennifer Bellamy, pre-school children. The
22 statute regarding pre-school children, 14-7-860, "The
23 presiding judge for cause may -- shown may excuse any
24 person from jury duty at any term of court if the Judge
25 considers it advisable. But no juror who has been drawn

1 to serve at any term of the court may be excused except
2 for good and sufficient causes, which, together with his
3 application, must be filed in the office of the clerk of
4 court and remain on record.

5 A person who is" -- and then they have primary
6 caretaker, may have -- I'm sorry, is the -- Subsection
7 1, B-1, "has legal custody and duty of care of a child
8 less than seven years of age."

9 All right, Ms. Bellamy indicates in her information
10 and from the Clerk's affidavit that she has a pre-school
11 child under the age of seven and does not work outside
12 the home. She is at home during the day with her child.
13 The child does not attend daycare.

14 What's the State's position?

15 MR. HEMBREE: Your Honor, based on the affidavit
16 that I've reviewed, she appears to have the -- to meet
17 all the criteria to seeking exemption and we would have
18 no objection to her being -- her being excused from this
19 trial.

20 THE COURT: All right. The State's position?

21 MR. HUMPHRIES: The defendant's position.

22 THE COURT: I'm sorry; I'm sorry. That was the
23 State's position.

24 The defendant's position? I'm sorry. Mr. Diggs.

25 MR. DIGGS: Your Honor, we don't have any

1 objection.

2 THE COURT: All right. 47 is excused.

3 48, Lucille Bellamy, is over sixty-five. The
4 birthday is 12/18/33, indicates an age of seventy-five.
5 Also, we have a doctor's certificate from the -- from
6 Dr. Mario S. Mango that indicates that Ms. Bellamy has
7 been diagnosed with dementia and Alzheimer's.

8 Any objection from the State?

9 MR. HEMBREE: No, Your Honor.

10 THE COURT: Defense?

11 MR. DIGGS: No.

12 MS. WILLIAMS: Your Honor, we don't object on
13 those grounds because of her medical condition.

14 THE COURT: Correct.

15 49 is coming in.

16 50 is coming in.

17 31 is -- I'm sorry. 51, we have information of
18 deceased. What kind of information do we have?

19 THE CLERK: We have a death certificate.

20 THE COURT: We have a death certificate for that
21 -- a copy of the death certificate. That person was
22 deceased January 31, 2008.

23 All right, the next one is 52, Steve Berbes. He's
24 over sixty-five, wishes to be excused. Date of birth
25 6/12/1942, age sixty-seven. The State's position?

1 MR. HEMBREE: No objection to Mr. Berbes being
2 excused.

3 THE COURT: The Defense position?

4 MR. DIGGS: Your Honor, we object based on the age
5 criteria.

6 THE COURT: All right, sir. I'm going to excuse
7 the juror.

8 Number 53 is coming in.

9 54 is coming in.

10 55, Dominick Bezmen, is a student. All right,
11 referring back to the previous statute that I read,
12 we've got documentation here from Horry-Georgetown
13 Technical College dated September 23rd, 2009, that Mr.
14 Bezmen is enrolled in the Fall 2009 term of Horry-
15 Georgetown Technical College, a program of associated
16 and applied science, undergraduate studies; major is
17 general studies, fifteen credit hours of work that the
18 student is taking this particular Fall.

19 Regarding the request of the student to be
20 transferred to the summer, what is the request of the
21 State or the position of the State?

22 MR. HEMBREE: The position is Mr. Bezmen is
23 entitled to the continuation of his service to another
24 time.

25 THE COURT: Defense?

1 MR. DIGGS: We don't object, Your Honor.

2 THE COURT: All right, sir. He's continued to the
3 summer. Madam Clerk, you will pick a time in June for
4 him, please.

5 All right, the next one is over sixty-five, 58
6 (sic) Marilyn Bigham. She has -- she is -- date of
7 birth is 8/25/1942, indicating an age of sixty-seven.
8 Though it is not a statutory exemption, the Court does
9 note in this particular request that this particular
10 juror has a cruise vacation that they have already paid
11 for during the term of court.

12 What's the State's position?

13 MR. HEMBREE: No objection to Ms. Bigham being
14 excused.

15 THE COURT: Defense?

16 MR. DIGGS: No objection based on the fact that
17 she's got the vacation booked and paid for.

18 THE COURT: All right, very good. She is excused,
19 Madam Clerk.

20 The next one is 57, Gwendl Blondmonville, a medical
21 excuse.

22 THE CLERK: This is a medical excuse and you will
23 need to read it.

24 THE COURT: Well, apparently we need to look at
25 this one. All right, do they have a copy of this?

1 THE CLERK: They do.

2 THE COURT: All right, State and Defense, I
3 believe y'all have a copy of the written statement of
4 Ms. Blondmonville regarding this particular matter.

5 MR. HEMBREE: Yes, Your Honor, we do have a copy
6 of the statement.

7 THE COURT: It honestly is not really a medical
8 excuse. Since I stated medical excuse, I just wanted to
9 be clear for the record. It's obviously not a medical
10 excuse. It is obviously an issue that could be covered
11 with direct questioning of the -- of Ms. Blondville --
12 Blondmonville.

13 What is the State's position at this point in time
14 requir- -- as to this juror being required to come in?

15 MR. HEMBREE: Your Honor, although she does fairly
16 clearly express that she may -- she may have difficulty
17 serving on this jury because of her knowledge of the
18 victim, Laura Ling, the victim in the Georgetown case,
19 Laura Ling, and she had some -- actually expresses some
20 knowledge of the defendant, Stephen Stanko, through her
21 work with Voc. Rehab., I don't believe that her
22 statement is as definitive as would be necessary to
23 express ---

24 THE COURT: Very good.

25 MR. HEMBREE: --- that she renders -- you know,

1 that she cannot be a fair and impartial juror.

2 THE COURT: All right.

3 MR. HEMBREE: We would ask that this juror be at
4 least required to come in ---

5 THE COURT: Okay.

6 MR. HEMBREE: --- and be queried by the Court, and
7 at that point, it very well could be that she's excused,
8 but we just need more information.

9 THE COURT: All right, I understand. Very good.
10 Would the Defense position be the same?

11 MR. DIGGS: Well, we don't feel that she needs to
12 come in, Your Honor, so ---

13 THE COURT: All right. Well, I -- it may very
14 well be that this person is going to be excused, but I
15 do think that it does not fall within the necessary
16 statutory requirements. It is a person that needs to
17 come in and then explain the situation and so forth.

18 All right, the next one, 58, Lloyd Blythe, is over
19 sixty-five, wishes to be excused. Date of birth
20 indicated as July 13th, 1932, age of seventy-seven.

21 The State's position?

22 MR. HEMBREE: No objection to Mr. Blythe being
23 excused.

24 THE COURT: Defense?

25 MR. DIGGS: We object, Your Honor, if the age is

1 the only basis for the exemption.

2 THE COURT: Very good. I am going to excuse the
3 juror.

4 All right, the next one we have is an affidavit
5 from the Sheriff that they no longer reside. That's
6 number 59, Lester Bodkin. Unable to locate Lester H.
7 Bodkin, III, in Horry County. Now lives in Florence,
8 South Carolina.

9 The next one, Number 60, Glenn (sic) Boggs, is
10 coming in.

11 61, the Sheriff is still looking.

12 62, Ernest Bone, over sixty-five. This juror --
13 well, let's see. We've got a birthdate here of -- he's
14 got an age of seventy-three. I was looking for his
15 birthdate in here -- 1936. Okay, there it is. Okay; it
16 wasn't on the other sheet. He says that he is retired
17 and obviously requests to be excused from jury duty
18 basically because of his age. The State's position?

19 MR. HEMBREE: No objection to Mr. Bone being
20 excused, Your Honor.

21 THE COURT: All right. Defense position?

22 MR. DIGGS: We object.

23 THE COURT: All right, sir, and, I mean, his
24 written statement about his health condition is in the
25 record, but I believe it's proper, him being over

1 seventy-three, to be excused.

2 All right, the next one is 63, Kathryn Bowman, over
3 sixty-five. She says she's over sixty-five, wishes to
4 be excused. Date of birth, June 24, 1929, age of
5 eighty. What is the State's position?

6 MR. HEMBREE: No objection to Ms. Bowman's
7 excusal.

8 THE COURT: Defense?

9 MR. DIGGS: We object.

10 THE COURT: All right, very good. I'm going to
11 excuse -- excuse her. The Court also notes her
12 responses as to her medical condition in this particular
13 matter.

14 All right, 64, the Sheriff is still looking.

15 65 is coming in.

16 Number 66, Geraldine Brancheau, is over sixty-five.
17 Birthday, 11/15/1927, age of eighty-one, and asks to be
18 excused. The State's position?

19 MR. HEMBREE: No objection to Ms. Brancheau being
20 excused, Your Honor.

21 THE COURT: The Defense?

22 MR. DIGGS: We object.

23 THE COURT: All right, sir. I'm going to excuse
24 Ms. Brancheau based upon the information set forth in
25 her juror explanation sheet.

1 All right, the next one we've got is 67, is coming
2 in.

3 68 is coming in.

4 69 is coming in.

5 70 is coming in.

6 71, Jack Brown, over sixty-five. Date of birth of
7 5/14/1934, age seventy-five, wishes to be excused. The
8 State's position?

9 MR. HEMBREE: No objection.

10 THE COURT: Defense?

11 MR. DIGGS: We object.

12 THE COURT: Very good. I'm going to excuse Mr.
13 Brown in this particular matter.

14 72, Joan Bruno, no longer resides. We have an
15 affidavit from the Sheriff, was unable to locate Joan M.
16 Bruno in the confines of Horry County, and the Sheriff
17 states that this particular party moved to the State of
18 North Carolina in the year 2007.

19 73, the Sheriff is still looking.

20 74 is over sixty-five. William Burriss, a birthday
21 of 2/12/1941, age sixty-eight. The State's position?

22 MR. HEMBREE: No objection, Your Honor.

23 THE COURT: Defense?

24 MR. DIGGS: He should serve, Your Honor, so we
25 would object.

1 THE COURT: All right, sir. I am going to excuse
2 this particular juror.

3 The next one, 75, is a student, Maranda Burroughs.
4 We've got documentation from Horry-Georgetown Technical
5 College as to -- dated October 2nd, 2009, as to Ms.
6 Burroughs' Fall schedule, taking developmental english,
7 developmental mathematics, developmental reading; those
8 courses are set forth specifically.

9 What's the State's position?

10 MR. HEMBREE: The State's position is that this
11 juror meets the criteria to seek a deferment ---

12 THE COURT: Service in the summer?

13 MR. HEMBREE: Yes, sir.

14 THE COURT: All right, very good. Defense?

15 MR. DIGGS: We don't object.

16 THE COURT: All right. Madam Clerk, you will
17 transfer this juror to the summer, please, ma'am.

18 76, the Sheriff is still looking.

19 77 is unable to locate, Bryn Butler. The affidavit
20 of the Sheriff says unable to locate K. Bryn Butler in
21 the confines of Horry County. The house is vacant that
22 was the address and is for sale.

23 All right, the next one, 78, is coming in.

24 79 is also unable to locate, Wendell Butts. The
25 Sheriff's affidavit says unable to locate Wendell G.

1 Butts in Horry County. The DMV's address is the same,
2 but there's no person that's at that particular address
3 that the officials of Horry County have. The Post
4 Office has no forwarding, and the apartment office that
5 governs the apartment complex that this apartment is has
6 no forwarding address or information about Mr. Butts.

7 Number 80, Angelique Bynum is deceased. The
8 residents state they have no way to contact the family
9 members. The resident at the address that was located
10 -- that the Sheriff has for this particular individual
11 states that the person is deceased.

12 All right, the next one, unable to locate
13 Kristopher S. Byrd, number 81. The Sheriff's affidavit,
14 unable to locate Kristopher S. Byrd in the confines of
15 Horry County. The subject is deployed to Iraq, serving
16 in the United States Army, and was previously stationed
17 in Hawaii, and all this information comes from his
18 mother.

19 The next one, 82, Elizabeth Calamari, over sixty-
20 five, wishes to be excused. Date of birth, August 23rd,
21 1937, age seventy-two. The State's position?

22 MR. HEMBREE: No objection, Your Honor.

23 THE COURT: Defense?

24 MS. WILLIAMS: Your Honor, we would object based
25 on the age requirement.

1 THE COURT: All right, very good. I am going to
2 excuse Ms. Calamari.

3 The next one is 83, is coming in.

4 84, the Sheriff is still looking for that
5 particular person.

6 85 is over 65, Merle D. Callison, has a date of
7 birth of February 11, 1942, age sixty-seven. The
8 State's position?

9 MR. HEMBREE: No objection to his being excused.

10 THE COURT: Defense?

11 MS. WILLIAMS: Your Honor, we would object based
12 on the age requirement.

13 THE COURT: All right, very good. I'm going to
14 excuse Mr. Callison.

15 The next one is Phyllis Campbell, over sixty-five,
16 has a date of birth of 10/29/1935, age seventy-three,
17 will obviously be -- shortly be, in a few days, seventy-
18 four. The State's position?

19 MR. HEMBREE: No objection, Your Honor.

20 THE COURT: Defense?

21 MS. WILLIAMS: Your Honor, we don't object based
22 on what she states with regard to her medical situation.

23 THE COURT: Very good. This witness is excused --
24 or juror is excused.

25 87 is coming in.

1 88 is coming in.

2 89 is coming in.

3 90 is coming in.

4 91, the Sheriff is still looking.

5 92, we have a medical excuse. We have a statement
6 from Dr. Domagoj Coric of the Carolina Neurosurgery and
7 Spine Associates saying that the patient is currently
8 under his active care. The patient underwent spine
9 surgery on March 3rd, 2008, continues to have ongoing
10 pain and discomfort. The patient is unable to sit for
11 long periods of time, and there is a request to be
12 excused.

13 The State's position on 92?

14 MR. HEMBREE: Yes, sir. I'm just reviewing his
15 material. We have no objection to this juror being
16 excused.

17 THE COURT: All right. The Defense position?

18 MS. WILLIAMS: Your Honor, we don't object based
19 on his medical situation.

20 THE COURT: All right, very good. We'll excuse
21 this particular juror.

22 All right, 93 is coming in.

23 94 is a student. We have documentation from
24 Coastal Carolina University dated September 24th, 2009,
25 regarding enrollment verification. Current course load

1 indicates a biology course, a lab biology, another
2 biology course, another biology course, another biology
3 course, another lab biology, another biology course,
4 obviously majoring in biology.

5 The State's position?

6 MR. HEMBREE: No objection.

7 THE COURT: Defense?

8 MS. WILLIAMS: Your Honor, we don't object to this
9 student being transferred or excused.

10 THE COURT: Transferred to the summer? All right.
11 Transfer the student to the summer, please.

12 All right, 95 is coming in.

13 96 is over sixty-five. Date of birth on that one
14 is 7/3/1933, age seventy-six, wishes to be excused. The
15 State's position?

16 MR. HEMBREE: No objection.

17 THE COURT: Defense?

18 MS. WILLIAMS: Your Honor, we would object based
19 on just simply it being the age disqualification.

20 THE COURT: All right. I'm going to excuse that
21 particular juror.

22 Number 97 is Zella Catansariti, over sixty-five.
23 Date of birth is 1/3/1937, wishes to be excused. What's
24 the State's position?

25 MR. HUMPHRIES: No objection.

1 THE COURT: Defense?

2 MS. WILLIAMS: Your Honor, we would object based
3 on simply the age requirement. We did not see any
4 medical excuse.

5 THE COURT: All right, very good. I'm going to
6 excuse this particular juror.

7 Number 98, the Sheriff is still looking.

8 99 is coming in.

9 100 is no longer resides. The Sheriff's affidavit
10 on juror number 100, Cali Cergol, states unable to
11 locate Cali Allison Cergol in Horry County, moved out of
12 state in 2007, now living in the State of Michigan.

13 All right, 101 is coming in.

14 102 is coming in.

15 103 is coming in.

16 104 is coming in.

17 105 is over 65, Patricia Clark. Date of birth,
18 9/20/1933, age seventy-six. The State's position?

19 MR. HUMPHRIES: No objection.

20 THE COURT: Defense?

21 MS. WILLIAMS: We don't have any objection based
22 on her medical issues, Your Honor, that she set forth.

23 THE COURT: All right, very good. This witness is
24 -- juror is excused.

25 106 is coming in.

1 107 is coming in.

2 108, the Sheriff is still looking for that
3 particular person.

4 109 apparently has a medical excuse. We have here
5 a statement from Patrick Ryan, states that Ms. Bonnie
6 Colassi has irritable bowel syndrome which causes her to
7 have uncontrollable diarrhea especially when she is
8 nervous. The State's position?

9 MR. HUMPHRIES: Please excuse her.

10 THE COURT: Defense?

11 MS. WILLIAMS: We don't object, Your Honor, based
12 on her medical condition.

13 THE COURT: All right. She's excused.

14 Number 110 is over sixty-five, Dix Colbert. Date
15 of birth, 5/2/1935. He also has medical information
16 that he has set forth that indicates that he is starting
17 radiation therapy for a cancerous condition that needs
18 to be done five days a week. The State's position?

19 MR. HUMPHRIES: Excuse him.

20 THE COURT: Defense?

21 MS. WILLIAMS: No objection based on that medical
22 condition, Your Honor.

23 THE COURT: Excused.

24 Number 111 indicates they are a school employee.
25 There's a statement from the principal of Conway

1 Elementary School that states that Ms. Cole is employed
2 as a data quality clerk at the Conway Elementary School.

3 MR. HUMPHRIES: No objection.

4 THE COURT: Okay, no objection from the State.
5 Defense?

6 MS. WILLIAMS: No objection, Your Honor.

7 THE COURT: All right, excused -- I'm sorry;
8 transferred. I'm sorry. She's is transferred to the
9 summer, Madam Clerk.

10 All right, the next one is unable to locate, 112,
11 Scott Collins. The affidavit of the Sheriff says unable
12 to locate Scott C. Collins in the confines of Horry
13 County, could not be located at the Post Office box
14 number given on the address. They are unable to find
15 that particular person.

16 The next one has a medical excuse, 113, Wilmina
17 Collins. It's a statement from Conway Physicians Group.

18 MR. HUMPHRIES: I've been working on it, Judge. I
19 think it says ---

20 THE COURT: It says, okay, "Excuse from jury duty
21 due to her hearing and inability to sit for" ---

22 MR. HUMPHRIES: "Prolonged periods."

23 THE COURT: --- "prolonged periods." All right.
24 It also indicates down at the bottom is apparently this
25 person -- looking in the information area, a caregiver

1 for a person who is ninety years of age.

2 MR. HUMPHRIES: No objection.

3 THE COURT: Defense?

4 MR. DIGGS: Your Honor, I don't guess we have any
5 objection here.

6 THE COURT: All right, very good. That one is
7 excused.

8 All right, the next one is 114, unable to locate.
9 The Sheriff's affidavit states that they are unable to
10 locate Brandy S. Connolly in Horry County. The same
11 address was at the DMV, but the Sheriff was unable to
12 find that particular person at the address stated.

13 All right, 115 is coming in.

14 116, the Sheriff is still looking.

15 117, over sixty-five, Eugene Cook. Date of birth,
16 1/8/1943. He is sixty-six. You'll also note the
17 information that is set forth in a written statement of
18 Mr. Cook as far as the travel plans. What's the State's
19 position?

20 MR. HUMPHRIES: No objection.

21 THE COURT: Defense?

22 MS. WILLIAMS: Your Honor, we don't object based
23 on that information with regard to his travel plan.

24 THE COURT: All right. He is excused.

25 118, the Sheriff is still looking.

1 119 is coming in.

2 120, the Sheriff is still looking for that
3 particular person.

4 121 is coming in.

5 122 is coming in.

6 123 is coming in.

7 124 is over sixty-five, Rosemary Cottrell. Date of
8 birth, 2/15/1928, age eighty-seven. The State's
9 position?

10 MR. HUMPHRIES: No objection, Your Honor.

11 THE COURT: Defense?

12 MS. WILLIAMS: Your Honor, we don't object based
13 on the fact that she says she has hearing issues and the
14 medical situation.

15 THE COURT: All right, very good. This one is --
16 124 is excused.

17 125, the Sheriff is still looking.

18 126, the Sheriff is still looking.

19 127 indicates no longer resides in Horry County.
20 An affidavit of the Sheriff states they are unable to
21 locate Caroline R. Cox in Horry County, and they moved
22 to the State of New York on -- in the year of 2008 and
23 has a driver's license in the State of New York dated
24 9/2/2008.

25 All right, Number 128, Rachel Cox, indicates that

1 she served December 3rd, 2008. The Clerk's affidavit
2 indicates that she served December 3rd, 2008. The
3 State's position?

4 MR. HUMPHRIES: No objection.

5 THE COURT: Defense?

6 MR. DIGGS: No objection.

7 THE COURT: Excused.

8 129, the Sheriff is still looking.

9 130 is over sixty-five, Edna Crusenberry. Date of
10 birth, 5/17/1940, sixty-nine, wishes to be excused, and
11 also indicated previous service in January of 2008
12 regarding jury court. The State's position?

13 MR. HUMPHRIES: No objection.

14 THE COURT: Defense?

15 MS. WILLIAMS: Your Honor, we don't have any
16 objection based on what she stated in her affidavit and
17 the fact that she has served fairly recently.

18 THE COURT: All right, very good, all right, so
19 juror number 130 is excused.

20 131 is coming in.

21 132 no longer resides. The Sheriff's affidavit
22 states that this person does not reside in the State of
23 South Carolina, resides in the State of West Virginia.

24 The next one we have is also no longer resides,
25 number 133, Gretchen Cunningham. The Sheriff's

1 affidavit states that unable to locate Gretchen S.
2 Cunningham in the confines of Horry County, moved to 320
3 Spencer Street, Orlando, Florida.

4 134 is coming in.

5 135 is no longer resides. The Sheriff's affidavit,
6 unable to locate David G. Dalesky in Horry County, moved
7 to 25 Green Pasture Road, Lewisburg, North Carolina.

8 136 we have as deceased. Obituary -- we do have an
9 obituary from the newspaper indicating that this
10 particular person died May 16th, 2009.

11 All right, number 137, -- all right, do y'all have
12 the information about the person's travel schedule, I
13 assume, from the State and Defense?

14 MR. HUMPHRIES: We do.

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

16 MR. HEMBREE: Your Honor, it's a little unclear to
17 me, but it looks like he's -- this person is flying out
18 on November 1st, and he doesn't really -- it's not
19 really clear when they are returning unless I'm missing
20 something.

21 THE COURT: No. It just -- it does indicate
22 leaving November 1st from Myrtle Beach to Charlotte,
23 Charlotte to San Francisco, San Francisco to Hawaii.
24 Obviously they don't have when they will return -- oh,
25 they do, November 7th, coming back November 7th, Hawaii

1 to -- let's see, Hawaii to Chicago, Chicago to
2 Charlotte, Charlotte to Myrtle Beach, on November 7th.

3 MR. HEMBREE: Just in the nick of time.

4 THE COURT: All right. The State's position is
5 the juror should come in?

6 MR. HEMBREE: Yes, Your Honor.

7 THE COURT: Defense?

8 MS. WILLIAMS: Yes, sir.

9 THE COURT: All right, very good. Madam Clerk,
10 you will tell them ---

11 THE CLERK: They will not be able to report on the
12 6th. It will be the 9th before they come in.

13 THE COURT: Right. Now, you know all the jurors
14 are coming in on the 6th?

15 MR. HEMBREE: Yes, Your Honor.

16 THE COURT: All right, so obviously this one,
17 we'll just have to have this juror report on -- we'll
18 just put him in a panel then because, you know, having
19 all the jurors come in on the 6th, which is a Friday,
20 before they come back on the 7th, so your position is
21 we'll put them in a panel and we'll just tell them to
22 come in the next week whenever it is that we want them
23 to come in?

24 MR. HUMPHRIES: Yes, sir.

25 MR. HEMBREE: That makes good sense, Judge.

1 MS. WILLIAMS: That will be fine.

2 THE COURT: All right, very good.

3 All right, 138 is coming in.

4 139 is a student, Caroline Dargan. We have a
5 enrollment verification certificate from Coastal
6 Carolina University dated October 5th, 2009, indicating
7 that the person is currently enrolled as a student at
8 Coastal Carolina. Is there any -- well, what's the
9 position of the State?

10 MR. HEMBREE: No objection, Your Honor.

11 THE COURT: Defense?

12 MS. WILLIAMS: No objection, Your Honor.

13 THE COURT: All right, transferred to the summer.

14 All right, the next one is 140, Skipper Davies, a
15 student. We have a statement from the University of
16 South Carolina, the University Registrar, indicates that
17 the student is enrolled less than half-time for the Fall
18 2009, inclusive dates are August 16th to December 14,
19 2009, the College of Arts and Sciences, major political
20 science, minor military science. The student is
21 classified as a senior. What is the State's position?

22 MR. HEMBREE: No objection to his being
23 transferred, Your Honor.

24 THE COURT: Defense?

25 MS. WILLIAMS: No objection, Your Honor.

1 THE COURT: All right, is transferred to the
2 summer.

3 All right, 141 is over sixty-five. Date of birth
4 for Eldora Davis is 11/10/32, wishes to be excused; age
5 seventy-six. What's the State's position?

6 MR. HEMBREE: No objection, Your Honor.

7 THE COURT: Defense?

8 MS. WILLIAMS: Your Honor, we would object based
9 on the age qualification.

10 THE COURT: All right. I am going to excuse the
11 -- excuse the juror.

12 All right, 142, 143, and 144, the Sheriff is still
13 looking for those individuals.

14 145 is coming in.

15 146 is over sixty-five.

16 THE CLERK: 146 or 147?

17 THE COURT: Are both over sixty-five. 146 says
18 over sixty-five on mine.

19 THE CLERK: I do not have an affidavit on that one
20 it does not look like.

21 THE COURT: All right, so why don't we -- do y'all
22 have any in your computer information, or any
23 information on juror number 146? From the State, do you
24 have anything?

25 MR. HEMBREE: No, Your Honor.

1 THE COURT: Okay.

2 THE CLERK: They were born in 1940, though.

3 THE COURT: Okay. What I'm going to request that
4 you do is have the Sheriff communicate again with that
5 particular juror, number 146, and let's get the
6 information. We'll review that one on the 30th.

7 THE CLERK: Yes, sir.

8 THE COURT: All right, very good.

9 147, Thomas Davis, over sixty-five. Date of birth,
10 3/21/1942, wishes to be excused. The State's position?

11 MR. HEMBREE: No objection, Your Honor.

12 THE COURT: Defense?

13 MR. DIGGS: We would object.

14 THE COURT: This witness -- this juror is excused.

15 148, Shirley Days, has a medical excuse statement
16 from Waccamaw Primary Care, LLC. She is unable to sit
17 for greater than ten minutes. I'm looking for any
18 further information. What's the State's position?

19 MR. HUMPHRIES: Your Honor, I would excuse her.
20 In addition, I reviewed the criminal histories. She was
21 convicted of food stamp fraud. I am unsure as to
22 whether or not that would disqualify her, but based on
23 her doctor's excuse, we have no objection.

24 THE COURT: All right, sir. Defense?

25 MR. DIGGS: We don't object.

1 THE COURT: All right, sir. That particular
2 witness is excused -- juror is excused.

3 All right, 149 is coming in.

4 150 is coming in.

5 151 is coming in.

6 152, over sixty-five, Joseph A. Depasquale. Date
7 of birth, 3/1/1940, falls within the exemption of being
8 over sixty-five. What's the State's position?

9 MR. HUMPHRIES: No objection.

10 THE COURT: Defense?

11 MR. DIGGS: Your Honor, we object.

12 THE COURT: All right. I'm going to excuse the
13 juror.

14 153, unable to locate. The Sheriff's affidavit
15 states that they are unable to locate Roxanne N. Derr,
16 D-E-R-R, in Horry County. There is no phone listing or
17 power information.

18 Okay, 154 is coming in.

19 155 is coming in.

20 156 is coming in.

21 157 is coming in.

22 158, the Sheriff is still looking.

23 159 is coming in.

24 160, over sixty-five, Walter Dombroski. Date of
25 birth, 1/17/1935. The State's position?

1 MR. HUMPHRIES: No objection.

2 THE COURT: Defense?

3 MR. DIGGS: Your Honor, we object to the age
4 exemption.

5 THE COURT: All right, very good. I'm going to
6 excuse the juror.

7 The next one is 161, Melton Dotson, over sixty-
8 five. Date of birth, 10/15/1940, wishes to be excused.
9 The State's position?

10 MR. HEMBREE: No objection.

11 THE COURT: Defense?

12 MR. DIGGS: Your Honor, we object to that one.

13 THE COURT: All right. I'm going to excuse the
14 juror.

15 162 is coming in.

16 163 is over sixty-five. Date of birth, 3/15/1934,
17 seventy-five. The State's position?

18 MR. HEMBREE: No objection.

19 THE COURT: Defense?

20 MS. WILLIAMS: Your Honor, we don't object based
21 on what she states that the medical situation is
22 regarding her household.

23 THE COURT: Very good. Excused.

24 All right, the next one is 164, unable to locate.
25 The Sheriff's affidavit states that unable to locate

1 Thomas J. Duncan in Horry County, is gone from the
2 address one year, possibly living in Greenville, South
3 Carolina, does have a driver's license indicating a
4 Greenville, South Carolina, address.

5 The next one, 165, Marjorie Dunn, is over sixty-
6 five, wishes to be excused. Date of birth, 7/10/39, age
7 seventy-eight (sic). What's the State's position?

8 MR. HEMBREE: No objection.

9 THE COURT: Defense?

10 MR. DIGGS: Your Honor, we don't object based on
11 her overall medical condition.

12 THE COURT: Very good. Excused.

13 166 is coming in.

14 167 is coming in.

15 168 is over sixty-five, Ted E. Durni. Date of
16 birth, 11/7/1931, age seventy-seven. The State's
17 position?

18 MR. HEMBREE: No objection.

19 THE COURT: Defense?

20 MR. DIGGS: Your Honor, we would object. He might
21 -- we might not have an objection later, but just based
22 on the overview of the information he gave us, we
23 object.

24 THE COURT: All right, very good. The Court does
25 note the medical information stated in the juror

1 information sheet. He is excused.

2 All right, Number 169 is over sixty-five. Date of
3 birth, 12/15/32. The State's position?

4 MR. HEMBREE: No objection, Your Honor.

5 THE COURT: Defense?

6 MS. WILLIAMS: I'm sorry, Your Honor; what number?

7 THE COURT: It is 169, over sixty-five, age
8 seventy-six.

9 MS. WILLIAMS: We would object due to the age
10 requirement, Your Honor.

11 THE COURT: All right. Excused.

12 170 is coming in.

13 171, employed by the Horry County Police
14 Department, is that correct?

15 MR. HUMPHRIES: He is.

16 THE COURT: He's an officer. He has -- well,
17 being with the Horry County Police Department, he's in
18 the National Guard and has orders to leave Horry County
19 to report to Fort Stewart, Georgia, to be deployed to
20 Afghanistan. The State's position?

21 MR. HEMBREE: No objection to being excused, Your
22 Honor.

23 THE COURT: Defense?

24 MS. WILLIAMS: No objection, Your Honor.

25 THE COURT: Excused.

1 172 is coming in.

2 173 is over sixty-five. Date of birth, 1/31/1937.

3 It also indicates certain health reasons, wishes to be
4 excused. The State's position?

5 MR. HEMBREE: No objection.

6 THE COURT: Defense?

7 MR. DIGGS: We object.

8 THE COURT: I am going to excuse that particular
9 juror.

10 All right, 174 is over sixty-five, Walter Edwards.
11 Date of birth, 1/8/1927, age eighty-two. The State's
12 position?

13 MR. HEMBREE: No objection, Your Honor.

14 THE COURT: Defense?

15 MR. DIGGS: Your Honor, we don't object; it's the
16 pain, I guess, that he's referring to there.

17 THE COURT: All right, sir. He's excused.

18 175, Therese Eldred, school employee. In the
19 documentation, it says -- it says that she home-schools
20 her children. Let's look at the ages; do we have in
21 here the ages of the children? Thirteen, nine, and
22 seven. All right, what's the State's position?

23 MR. HUMPHRIES: No objection, Your Honor.

24 THE COURT: Defense?

25 MR. DIGGS: Your Honor, we have to object. Is

1 that exemption based on the home-schooling?

2 MR. HUMPHRIES: Did you read the -- why don't we
3 take a look, Bill.

4 THE COURT: You read through her complete juror
5 questionnaire -- number 42?

6 MR. DIGGS: We don't ---

7 THE COURT: Very good. All right, we'll excuse
8 this particular juror.

9 All right, 176 was -- he had a trip planned. Do we
10 have something from 176?

11 THE CLERK: What did I give you?

12 THE COURT: 177. All right, 176 is Steven Elias,
13 has certain information about being in Florida 11/4
14 through 11/12, and I have a written statement from the
15 particular person. All right, what's the State's
16 position?

17 MR. HEMBREE: I don't have any -- we don't have
18 any objection to Mr. Elias being excused.

19 THE COURT: Defense?

20 MS. WILLIAMS: No objection, Your Honor.

21 THE COURT: All right. Transfer them to another
22 week if you would.

23 All right, 177, Billy Elliott, a medical excuse by
24 a doctor from Walker Urgent & Family Care, LLC. The
25 State's position?

1 MR. HUMPHRIES: Relying on the doctor's
2 professional opinion and nothing else, the State would
3 not object.

4 THE COURT: Defense?

5 MR. DIGGS: We don't object.

6 THE COURT: Well, there's some documentation --
7 there's something there from Social Security. I'm not
8 sure what that was, but excused.

9 All right, Carl Elliott, 178, over sixty-five.
10 Date of birth, 6/13/1939, age seventy. The State's
11 position?

12 MR. HUMPHRIES: No objection.

13 THE COURT: Defense?

14 MR. DIGGS: We object.

15 THE COURT: I'm going to excuse the juror.

16 All right, 179 is coming in.

17 180 is coming in.

18 193, pre-school children.

19 MS. WILLIAMS: Your Honor, if we may, just for a
20 moment, we just realized we are missing Page 16.

21 THE COURT: Oops, and I did, too. I skipped right
22 over because -- that's right. Yeah, I just jumped from
23 180 to 193, so ---

24 THE CLERK: If you would give us one second.
25 About seven o'clock last night, my copy machine was

1 about shot.

2 THE COURT: All right, so let's -- yeah, we need
3 Number 16. Why don't we just continue on and then we'll
4 come back to that particular page. Why don't we do
5 that.

6 Let's see, the top of the next page, then, is 193.
7 193, Ashley Feliciano.

8 MR. HUMPHRIES: There's no objection from the
9 State on that.

10 THE COURT: Defense?

11 MR. DIGGS: Your Honor, we have to -- no, no
12 objection.

13 THE COURT: All right. Excused.

14 All right, 194 is over sixty-five, Nancy Fellenz.
15 Date of birth, 10/27/1942, age sixty-six. The State's
16 position?

17 MR. HUMPHRIES: No objection.

18 THE COURT: Defense?

19 MR. DIGGS: We object.

20 THE COURT: All right. I'm going to excuse this
21 particular juror.

22 195 is coming in.

23 196 is over sixty-five. Date of birth, 6/14/1940,
24 Harold Ferrell. All right, the State's position?

25 MR. HUMPHRIES: No objection.

1 THE COURT: Defense?

2 MR. DIGGS: Well, I think we're going to have to

3 object.

4 THE COURT: All right. I'm going to excuse this

5 particular juror.

6 All right, 197 is coming in.

7 198 is coming in.

8 199 is coming in.

9 200 is coming in.

10 201, unable to locate. The affidavit of the

11 Sheriff says unable to locate David M. Fisher in Horry

12 County. Address has been changed on the DMV, but there

13 is no forwarding, and no forwarding from the Post

14 Office.

15 202, the Sheriff is still looking.

16 203, the Sheriff is still looking.

17 204, the Sheriff is still -- oh, I'm sorry. 204 is

18 coming in.

19 205 is over sixty-five. Date of birth, 1/27/1935,

20 Shirley Ford, age seventy-four, wishes to be excused.

21 The State's position?

22 MR. HUMPHRIES: No objection.

23 THE COURT: All right. Defense?

24 MR. DIGGS: We object, Your Honor.

25 THE COURT: All right. Excused.

1 206 is over sixty-five, Robert Formica. Date of
2 birth, 9/19/1938, age seventy-one. The State's
3 position?

4 MR. HUMPHRIES: No objection.

5 THE COURT: Defense?

6 MR. DIGGS: We have the same objection.

7 THE COURT: All right. Excused.

8 207, the Sheriff is still looking.

9 208 is coming in.

10 209, the Sheriff is still looking.

11 210, deceased; death certificate attached. The
12 person died -- was the age of ninety-one, and the date
13 of -- 4/17/2008 -- 4/17/2008, died at the age of ninety-
14 one.

15 All right, the next one, 211, is over sixty-five,
16 wishes to be excused. Date of birth, 4/22/1934. The
17 State's position.

18 MR. HUMPHRIES: No objection.

19 THE COURT: Defense?

20 MR. DIGGS: Your Honor, we object.

21 THE COURT: Excused.

22 212, unable to locate. The Sheriff's affidavit,
23 unable to locate Dan R. Franklin in the confines of
24 Horry County. No such address as 2925 Carriage Row
25 Lane. A Department of Motor Vehicles' photo shows a

1 Summerville address.

2 The next one, 213, is coming in.

3 214 is over sixty-five, Eleanor Freeman. Date of
4 birth, 3/24/1933. All right, the State's position?

5 MR. HUMPHRIES: No objection.

6 THE COURT: Defense?

7 MR. DIGGS: We object, Your Honor.

8 THE COURT: I am going to excuse the juror.

9 215 is coming in.

10 216, Cheryl Fritz, says they have a Federal juror
11 summons.

12 MR. HUMPHRIES: No objection.

13 THE COURT: All right. Has a Federal juror
14 summons to appear in Columbia on November 3rd, may not
15 be available on 11/6, and the Federal summons is
16 attached thereto. What's the Defense's position?

17 MR. DIGGS: No, we don't object.

18 THE COURT: All right, so we now can go to --
19 let's go then to Page 16, the one that we skipped over,
20 going to juror number 181, is coming in.

21 182 is over sixty-five. Okay, 182, Louella Ellis,
22 date of birth, 6/23/1936, age seventy-three. The State?

23 MR. HUMPHRIES: No objection.

24 THE COURT: Defense?

25 MR. DIGGS: We object.

1 THE COURT: Excused.

2 All right, 183, the Sheriff is still looking.

3 184, unable to locate. Affidavit of the Sheriff,
4 unable to locate Mandi Y. Elwood in Horry County.

5 Checked DMV, address at house, Post Office, no change on
6 address, but unable to locate the individual.

7 185, the Sheriff is still looking.

8 186 is coming in.

9 187 is coming in.

10 188, unable to locate. The Sheriff's affidavit
11 states unable to locate James M. Evans in Horry County.
12 Subject did not change address through DMV, but has
13 moved from address. No forwarding address found.

14 189 is over sixty-five, Robert D. Everhart. Date
15 of birth, 3/23/1931, age seventy-eight. The State's
16 position?

17 MR. HUMPHRIES: No objection, Your Honor.

18 THE COURT: Defense?

19 MS. WILLIAMS: Your Honor, we would object based
20 on the age criteria.

21 THE COURT: All right. Excused.

22 190 is coming in.

23 191 is coming in.

24 192, the Sheriff is still looking.

25 All right, looking at where we are, number 217, and

1 that one has a medical excuse, a statement from the
2 Medical University of South Carolina, Division of
3 Gastroenterology-Hepatology, MUSC. The State has it.
4 What's the State's position?

5 MR. HEMBREE: No objection to Ms. Frye being
6 excused.

7 THE COURT: Defense?

8 MR. DIGGS: No objection.

9 THE COURT: Excused.

10 218 is coming in.

11 219, Beth Fungaroli, school employee. We have a
12 earning statement here from the Horry County Schools, a
13 recent pay stub, employed as a teacher. Any -- what's
14 the State's position?

15 MR. HEMBREE: No objection to this juror being
16 transferred.

17 THE COURT: Defense?

18 MR. DIGGS: No objection.

19 THE COURT: Excused.

20 All right, 220, says -- Lynn Gallagher, says they
21 have a trip planned.

22 MR. HUMPHRIES: We don't object, Your Honor.

23 THE COURT: Defense?

24 MR. DIGGS: No objection.

25 THE COURT: All right. That one is excused -- or,

1 I'm sorry, transferred. You will transfer that
2 particular juror.

3 All right, we've got 221 is no longer resides. The
4 Sheriff's affidavit, unable to locate Katherine D.
5 Gander in Horry County. Moved to Goose Creek, South
6 Carolina, December of 2006.

7 222, the Sheriff is looking.

8 223, unable to locate, Robert Garcia. The
9 Sheriff's affidavit states unable to locate Robert
10 Garcia in Horry County. Per a mail carrier, Garcia has
11 not lived there in two years. No forwarding address per
12 Loris Post Office.

13 The next one, 224, the Sheriff is still looking.

14 225 is over sixty-five, Marylen Garvey. Date of
15 birth, 12/31/1935, does not wish to serve. The State?

16 MR. HEMBREE: No objection.

17 THE COURT: Defense?

18 MR. DIGGS: We object.

19 THE COURT: Excused.

20 226, James Gasque, a medical excuse statement from
21 Pain, Spine, and Sports Medicine, C. Gregory Kang, M.D.,
22 two back surgeries. The State's position?

23 MR. HUMPHRIES: No objection.

24 THE COURT: Defense?

25 MR. DIGGS: No objection.

1 THE COURT: Excused.

2 227, the Sheriff is still looking.

3 228, no longer resides. The Sheriff's affidavit
4 states unable to locate Melanie E. Gee, G-E-E, in Horry
5 County. The subject now lives in the State of Florida.

6 229 is coming in.

7 230, the Sheriff is still looking.

8 231 is coming in.

9 232, over sixty-five, Charles Gidney. Date of
10 birth, 4/9/1943, wishes to be excused. The State's
11 position?

12 MR. HUMPHRIES: No objection.

13 THE COURT: Defense?

14 MR. DIGGS: We object, Your Honor.

15 THE COURT: All right. He also would -- the Court
16 would also note that he's already purchased airplane
17 tickets for an out-of-state travel to Dallas, Texas,
18 November 11th through November 15th, 2009. I'm going to
19 excuse the juror.

20 233, the Sheriff is still looking.

21 234, John Gira, has a trip planned 11/23 it says.

22 MR. HUMPHRIES: Your Honor, I hope that's not a
23 problem.

24 MS. WILLIAMS: Your Honor, the trip that was
25 planned out to Texas was 231, right?

1 THE COURT: Was -- no, 231 is coming in. 232,
2 Charles Gidney.

3 MS. WILLIAMS: Has the trip?

4 THE COURT: And is over sixty-five, but had the
5 trip to Dallas, Texas, the second week of -- or part of
6 -- or, I think, part of the first week, into the second
7 week.

8 Okay, now we're on 234, John Gira. I'm going to
9 require this particular juror to come in and we'll
10 review that with them when there's a -- when we have
11 them in the panel.

12 235, over sixty-five -- over sixty-five. Date of
13 birth, 8/8, 1935, seventy-four. The State's position?

14 MR. HUMPHRIES: No objection.

15 THE COURT: Defense?

16 MR. DIGGS: We object.

17 THE COURT: I'm going to excuse the juror.

18 236 is coming in.

19 237 is coming in.

20 238, no longer resides. The Sheriff's affidavit
21 states that they now live in Spartanburg County -- or
22 Spartanburg, South Carolina, a copy of their driver's
23 license indicating the address in Spartanburg, South
24 Carolina.

25 239 is coming in.

1 240 is coming in.

2 MR. HEMBREE: Your Honor, ---

3 THE COURT: I'm sorry.

4 MR. HEMBREE: I'm sorry, Your Honor. If I may on
5 239, I know he's scheduled to come in. I just want to
6 make the Court aware of this. He has been convicted of
7 a crime that carries over a year in another
8 jurisdiction. It appears that he is not qualified to
9 serve. I don't know -- we've not run across this yet.
10 I didn't know if the Court wanted to bring him in to
11 make those inquiries or to save him a trip.

12 THE COURT: What's the Defense's position in that?

13 MR. DIGGS: Your Honor, we don't really take a
14 position, whatever your ---

15 THE COURT: Well, if -- if the Defense does not
16 agree, then we'll have to have him come in and verify
17 that he has that criminal record then.

18 MR. HEMBREE: Thank you, Your Honor.

19 THE COURT: All right, very good.

20 MR. HEMBREE: Your Honor, I don't know if the
21 Court wishes us to, as we run across those -- as we go
22 through this list, ---

23 THE COURT: Well, yeah, if you have those and you
24 know that there is -- somebody has a criminal record,
25 you know, I would like you to let me know so we can at

1 least make the note even if we have them coming in, or
2 we might be able to deal with them now, but so that
3 everybody is aware that that issue is ---

4 MR. DIGGS: Your Honor, could we approach the
5 bench for a second?

6 THE COURT: Absolutely.

7 (A Bench conference was held off the record.)

8 THE COURT: Mr. Diggs, you indicated that you have
9 a previously scheduled short Family Court hearing in
10 just a few moments and you wish to attend that. Have
11 you explained that to your client?

12 MR. DIGGS: Yes, sir.

13 THE COURT: And, Mr. Stanko, do you have an
14 objection to Mr. Diggs leaving for a short period of
15 time and this matter being handled by Ms. Williams, or
16 do you want Mr. Diggs here present the whole time?

17 MR. STANKO: I have no objection to that or any
18 problem with that, sir.

19 THE COURT: All right, very good. Any -- anything
20 from the State?

21 MR. HEMBREE: No, sir.

22 THE COURT: All right, very good.

23 All right, Mr. Diggs, if you'll just -- obviously
24 when you're done, just come back and let us know. We
25 will take a lunch break at some period of time here, but

1 we'll see where that is.

2 All right, 240 is coming in.

3 241 is over sixty-five. Francis Gore, date of
4 birth, 9/3/1942, age sixty-seven. They also have them
5 as a -- a statement from the principal of Myrtle Beach
6 High School that Mr. Francis Gore is a full-time
7 employee at the Myrtle Beach High School, so what is the
8 State's position?

9 MR. HEMBREE: No objection to this juror being
10 excused.

11 THE COURT: Defense?

12 MS. WILLIAMS: Your Honor, we don't have any
13 objection based on the fact that he is a full-time
14 school employee.

15 THE COURT: Thank you very much.

16 All right, 242, they are looking; the Sheriff is
17 still looking.

18 243, the Sheriff is still looking.

19 244 is over sixty-five, wishes to be excused. Date
20 of birth, 5/18/1937, age seventy-two. The State?

21 MR. HEMBREE: No objection, Your Honor.

22 THE COURT: Defense?

23 MS. WILLIAMS: Your Honor, we would object based
24 on the age requirement.

25 THE COURT: All right. I'm going to excuse the

1 juror.

2 All right, 245, unable to locate. The Sheriff's
3 affidavit states that unable to locate Elizabeth A.
4 Goyak in Horry County, moved from address given, left no
5 forwarding address. DMV shows no change of address.

6 246 is coming in.

7 247 is coming in.

8 248, the Sheriff is still looking.

9 249, pre-school children, indicates that Ms. Kim
10 Grate has a two month old child, does not work outside
11 the home. The State's position?

12 MR. HEMBREE: No objection to the juror being
13 excused.

14 THE COURT: Defense?

15 MS. WILLIAMS: Your Honor, we do not object.

16 THE COURT: Excused.

17 All right, 250 is coming in.

18 251 is coming in.

19 252 indicates they served January 28th, 2008, and
20 the Clerk so verifies that they served on jury duty
21 January 28th, 2008. Also, there was a written statement
22 by the -- by the juror. The State's position?

23 MR. HEMBREE: No objection to this juror being
24 excused.

25 THE COURT: All right. Defense?

1 MS. WILLIAMS: No objection, Your Honor.

2 THE COURT: All right, very good. Excused.

3 All right, 253. We've got a written statement from
4 juror number 253, Janice Greenwood.

5 MR. HUMPHRIES: Your Honor, we've read it. The
6 only day that appears to be a difficulty for this juror
7 is the 6th.

8 THE COURT: Do you wish that they then be excused
9 from reporting on November 6th and then they -- we would
10 put them on a panel?

11 MR. HUMPHRIES: Yes, sir.

12 THE COURT: Okay. Defense, do you have a problem
13 with that?

14 MS. WILLIAMS: No, sir. That's fine.

15 THE COURT: All right, very good. Madam Clerk, if
16 you'll just so inform the juror, that will be the
17 procedure, all right?

18 THE CLERK: Yes, sir.

19 THE COURT: Thank you, ma'am. Now, there was two
20 of those. Do you have those noted specifically?

21 THE CLERK: Yes, sir, I do.

22 THE COURT: Because we need to make sure,
23 especially when those two come in on a panel that those
24 are sworn, because the panel will be sworn on November
25 6th and those two won't be there, so you need to make

1 sure you make some special notes that when those come
2 in, you will need to place those two jurors, or if
3 there's any more, under oath at that point in time, all
4 right?

5 THE CLERK: Yes, sir.

6 THE COURT: All right, thank you, and if y'all
7 will help us all remember about that, please.

8 254, the Sheriff is still looking.

9 255, the Sheriff is still looking.

10 256 has a trip planned. All right, we've got a
11 written statement from the juror. What is the State's
12 position?

13 MR. HUMPHRIES: No objection, Your Honor.

14 THE COURT: Defense?

15 MS. WILLIAMS: No objection, Your Honor.

16 THE COURT: All right. If you will transfer this
17 -- this particular juror to another term of court, all
18 right, Madam Clerk?

19 THE CLERK: Yes, sir.

20 THE COURT: All right. 257 is coming in.

21 258 is coming in.

22 259 is coming in.

23 260 is coming in.

24 261 is coming in.

25 262, over sixty-five, Bernice Hardee. Date of

1 birth, 8/3/1928, also has a medical reason about a total
2 knee replacement, age eighty-one. The State's position?

3 MR. HEMBREE: No objection.

4 THE COURT: Defense?

5 MS. WILLIAMS: No objection based on that medical
6 reasoning, Your Honor.

7 THE COURT: All right. Excused.

8 All right, 263, Loretta Hardee, indicates she works
9 with the Horry County Police Department and also
10 indicates something -- something about a trip that says
11 she also works with the Horry County Police Department
12 Warrant Division.

13 MR. HUMPHRIES: She's a licensed officer with
14 powers of arrest. We have no objection.

15 THE COURT: Defense?

16 MS. WILLIAMS: No objection.

17 MR. HUMPHRIES: No, I'm sorry; let me correct
18 that. She's the admin. with the Police Department. Her
19 husband ---

20 THE COURT: She's an administrative assistant,
21 uniformed patrol; place of employment, Horry County
22 Police Department.

23 MR. HUMPHRIES: Right. Her husband actually is
24 the certified law enforcement officer.

25 THE COURT: All right, so she is not ---

1 MR. HUMPHRIES: She ---

2 THE COURT: She works for the Horry County Police
3 Department?

4 MR. HUMPHRIES: Yes, sir. She will be
5 available ---

6 THE COURT: Working with the Horry County -- "I
7 work with the Horry County Police Department" ---

8 MR. HUMPHRIES: Based on her travel plans, she
9 will be available that Monday.

10 THE COURT: But it also says that she worked with
11 the -- daily with the officers that worked this case is
12 what she indicates.

13 MR. HUMPHRIES: Yes, sir, in the course of that.

14 THE COURT: It's a response to Question 49.

15 MR. HUMPHRIES: Yes, sir, no question.

16 THE COURT: What's the Defense's position in this?

17 MS. WILLIAMS: Your Honor, we would submit that
18 she should be excused from even appearing.

19 THE COURT: All right. I'm going to excuse her
20 from this particular case. You're going to transfer to
21 another week of court, but you'll excuse her from this
22 particular case.

23 All right, 264, over sixty-five. Date of birth,
24 3/5/1933, age seventy-six. The State's position?

25 MR. HEMBREE: No objection, Your Honor.

1 THE COURT: Defense?

2 MS. WILLIAMS: We don't object based on his
3 medical condition he discussed in his affidavit, Your
4 Honor.

5 THE COURT: All right, very good. Excused.

6 All right, 265 is coming in.

7 266, the Sheriff is still looking.

8 267 has a Federal juror summons.

9 MR. HEMBREE: No objection, Your Honor.

10 MS. WILLIAMS: No objection from the Defense, Your
11 Honor.

12 THE COURT: All right, and that juror summons or
13 information is so attached. They are excused.

14 All right, 268 is coming in.

15 269 no longer resides. The Sheriff's affidavit
16 states unable to locate Casey N. Harris in Horry County.
17 Subject now resides in Atlanta, Georgia, and there's
18 certain information indicating address, 309 Summer Place
19 Drive, Dunwoody, Georgia.

20 All right, 270, the Sheriff is still looking.

21 271 no longer resides. The Sheriff's affidavit,
22 unable to locate Lisa A. Hartman in Horry County. No
23 phone, power. Moved to -- out of state to the State of
24 Pennsylvania.

25 272, the Sheriff is still looking.

1 273, over sixty-five. Date of birth, 5/20/1942.

2 All right, the State's position?

3 MR. HEMBREE: No objection.

4 THE COURT: Defense?

5 MS. WILLIAMS: Your Honor, we would object based
6 on the age requirement.

7 THE COURT: I'm going to excuse the juror.

8 We've got 274 being a prison guard, the statute
9 being 24-3-930, "All guards, keepers, employees, and
10 other officers employed at the penitentiary shall be
11 exempted from serving on juries and from military or
12 street duty. Employees of county or municipal
13 correctional facilities, employees of any county or
14 municipal jails, prisons, work camps, overnight lock-up
15 facilities while performing their officially assigned
16 duties shall have the status of peace officers anywhere
17 in the state."

18 MR. HUMPHRIES: No objection, Your Honor.

19 THE COURT: All right. The Defense?

20 MS. WILLIAMS: No objection, Your Honor.

21 THE COURT: All right. Excused.

22 275 is coming in.

23 276, Jack Heins, is deceased. The newspaper
24 obituary indicates the date of death to be July 30th of
25 2008.

1 277 is coming in.

2 278, over sixty-five, Robert Hemingway. Date of
3 birth, 3/4/1938, wishes to be excused, age seventy-one.
4 The State?

5 MR. HEMBREE: No objection.

6 THE COURT: Defense?

7 MS. WILLIAMS: Your Honor, we don't object based
8 on his saying that he was eighty percent blind.

9 THE COURT: All right, very good. Excused.

10 279 is coming in.

11 280 is coming in.

12 281, coming in.

13 282, coming in.

14 283, over sixty-five. Date of birth, 5/31/1938,
15 wishes to be excused. State's position?

16 MR. HEMBREE: No objection.

17 THE COURT: Defense?

18 MS. WILLIAMS: We object based on the age
19 requirement, Your Honor.

20 THE COURT: All right. Excused.

21 284, coming in.

22 285, over sixty-five. Date of birth, 5/15/1932,
23 wishes to be excused, age seventy-seven. State's
24 position?

25 MR. HEMBREE: No objection.

1 THE COURT: Defense?

2 MS. WILLIAMS: Your Honor, we place the same
3 objection.

4 THE COURT: Very good. I'm going to excuse the
5 juror.

6 The next one, Kindel Hickman, 286, says served
7 January 8th, 2009. Any objection from the State?

8 MR. HEMBREE: No objection, Your Honor.

9 THE COURT: Defense?

10 MS. WILLIAMS: No, sir.

11 THE COURT: All right, very good. Excused.

12 The next one, 287, is coming in.

13 288 is a school employee. That's Elwanda Hodge.

14 There's a statement from the principal of Loris
15 Elementary School. All right, what's the State's
16 position?

17 MR. HEMBREE: No objection to a transfer, Your
18 Honor.

19 THE COURT: Defense?

20 MS. WILLIAMS: No objection as well, Your Honor.

21 THE COURT: Transferred to the summer.

22 All right, we're probably going to work until about
23 twelve-thirty. We'll break for lunch at twelve-thirty
24 just so y'all know.

25 All right, 289 is over sixty-five. Date of birth,

1 7/18/1933, age seventy-six. State? The State's
2 position?

3 MR. HEMBREE: No objection, Your Honor.

4 THE COURT: Defense?

5 MS. WILLIAMS: We do not object based on what she
6 says the condition of her husband is, Your Honor, at
7 all.

8 THE COURT: Very good. Excused.

9 All right, 290 is coming in.

10 291 is coming in.

11 292, unable to locate.

12 MR. HEMBREE: Your Honor, let me -- as we move on,
13 it appears that juror number 291 has a criminal record
14 that would render that person ineligible to serve.

15 THE COURT: All right. Defense, do you have
16 information about that or not? Do you have a copy
17 of ---

18 MS. WILLIAMS: No, sir, we have no information
19 regarding any of that.

20 THE COURT: Okay. State, if y'all don't mind, if
21 y'all want to -- could you give them a copy of whatever
22 it is, the NCIC or whatever it is that y'all have, and
23 what we'll do is, Madam Clerk just note this one for
24 November 30th -- or I mean October 30th, next Friday,
25 and we'll review it again at that point in time, all

1 right?

2 THE CLERK: Yes, sir.

3 MS. WILLIAMS: Thank you, Your Honor.

4 THE COURT: Good, and Ms. Williams, if you would
5 on that one previously that we had that had a criminal
6 record, if you could get that -- again, the State will
7 give you that information. Y'all review that, and then
8 we'll look at those persons next Friday and see if we
9 still want them to come in, all right?

10 MS. WILLIAMS: Yes, sir.

11 THE COURT: All right, very good.

12 282 -- I'm sorry; 292, unable to locate, David
13 Holland. The Sheriff's affidavit, could not locate
14 anyone at this address. Mail in box was not addressed
15 to this particular individual, David Holland.

16 All right, 293, Linda Hollandsworth. We have a
17 medical statement. Y'all have that information. What's
18 the State's position?

19 MR. HUMPHRIES: We don't object. I don't know if
20 she comes under any statutory exemption, but ---

21 THE COURT: Well, it does indicate -- there is a
22 statute about the individual that is a caretaker for a
23 disabled person, so it looks from the statement of the
24 Professor of Medicine at ---

25 MR. HUMPHRIES: We don't object.

1 THE COURT: --- from Charleston, MUSC, that she
2 would fall under ---

3 MS. WILLIAMS: We do not object either, Your
4 Honor.

5 THE COURT: All right, very good. All right, so
6 that is --293 is excused.

7 All right, 294 is coming in.

8 295, the Sheriff is still looking.

9 296 is over sixty-five. Date of birth, 2/14/1938,
10 age seventy-one. The State's position?

11 MR. HEMBREE: No objection, Your Honor.

12 THE COURT: Defense?

13 MS. WILLIAMS: Your Honor, we object based on the
14 age requirement.

15 THE COURT: All right. Excused.

16 All right, Mr. Diggs, I see that you're back.
17 You've probably been back, but I just noticed. I just
18 wanted to note that for the record.

19 MR. DIGGS: Thank you, Your Honor.

20 THE COURT: All right, 297 is coming in.

21 298, 299, 300, all coming in.

22 301 is over sixty-five. 301 over sixty-five, Sam
23 Huggins. Date of birth, 9/18/1935, age seventy-four.
24 The State's position?

25 MR. HEMBREE: No objection, Your Honor.

1 THE COURT: Defense?

2 MS. WILLIAMS: We would object based on the age
3 requirement, Your Honor.

4 THE COURT: All right. Excused.

5 All right, 302 is coming in.

6 303 is a school employee. Let's see what we have
7 here. Place of employment, Horry County Middle School
8 -- or Myrtle Beach Middle School, seventh grade teacher,
9 science. All right, what's the State's position?

10 MR. HEMBREE: No objection to a transfer, Your
11 Honor.

12 THE COURT: Defense?

13 MS. WILLIAMS: No objection, Your Honor.

14 THE COURT: All right. Transfer her to the
15 summer, please, ma'am.

16 All right, 304, the Sheriff is still looking.

17 305, unable to locate. The Sheriff's affidavit,
18 unable to locate Trissie O. Huskey in Horry County.
19 Moved to 300 Grove Road, Greenville, South Carolina.

20 306 is over sixty-five. Date of birth, 6/14/1944,
21 Mary L. Husman, wishes to be excused. What's the
22 State's position?

23 MR. HEMBREE: No objection.

24 THE COURT: Defense?

25 MS. WILLIAMS: We would object based on the age

1 requirement, Your Honor.

2 THE COURT: All right. I'm going to excuse the
3 juror.

4 All right, 307, the Sheriff is looking.
5 308, the Sheriff is looking.
6 309 is coming in.
7 310, the Sheriff is looking.
8 311, the Sheriff is looking.
9 312, over sixty-five, Ida Irvine. Date of birth,
10 4/28/1938, wishes to be excused, seventy-one. The
11 State's position?

12 MR. HEMBREE: No objection.

13 THE COURT: Defense?

14 MR. DIGGS: We object, Your Honor.

15 THE COURT: All right. Excused.
16 313, the Sheriff is looking.
17 314, unable to locate. The Sheriff's affidavit,
18 unable to locate Gussie M. Isom in Horry County. No
19 answer at this address. Unable to find any forwarding
20 information.

21 315 coming in.
22 316 coming in.
23 The Sheriff is looking for 317, 318, and 319.
24 320, 321, and 322 are coming in.
25 323, unable to locate. The Sheriff's affidavit,

1 unable to locate Fennie B. Jenerette in Horry County.
2 Neighbors say the person didn't live -- doesn't live
3 there, moved last year.

4 324, the Sheriff is still looking.

5 325 and 326 are coming in.

6 327, over sixty-five. Date of birth, 11/1 -- I'm
7 sorry; 6/14/1938, Beulah N. Johnson, wishes to be
8 excused, and there's a written statement from the juror,
9 age seventy-one. The State's position?

10 MR. HEMBREE: No objection, Your Honor.

11 THE COURT: Defense?

12 MR. DIGGS: No objection.

13 THE COURT: Excused.

14 MR. HEMBREE: Your Honor, just one matter that
15 kind of ran by me. Number 325, ---

16 THE COURT: Yes, sir.

17 MR. HEMBREE: --- we do have a criminal history on
18 juror 325. It appears that she would not be qualified
19 to serve. We'll provide that to Defense counsel and
20 deal with that on -- next week.

21 THE COURT: Next Friday. All right, very good.

22 328, the Sheriff is still looking.

23 329, 330, 331, 332, and 333 are coming in.

24 334 is over sixty-five. Date of birth, 8/16/1942,
25 Lila Johnson, wishes to be excused, age sixty-seven.

1 The State's position?

2 MR. HEMBREE: No objection.

3 THE COURT: Defense?

4 MR. DIGGS: No objection, Your Honor. We do that
5 based on her occupation.

6 THE COURT: All right, very good. I'm going to
7 excuse her on the age requirement.

8 335, unable to locate. The Sheriff's affidavit
9 states that unable to locate Nathan A. Johnson in the
10 confines of Horry County. No forwarding or change of
11 address located.

12 336, over sixty-five. Date of birth, June 4, 1936,
13 Pecolia Johnson, wishes to be excused, age seventy-two.

14 The State's position?

15 MR. HEMBREE: No objection, Your Honor.

16 THE COURT: Defense?

17 MR. DIGGS: We object.

18 THE COURT: Excused.

19 All right, 337 indicates they are an employee of
20 the county in the finance department. Any reason that
21 person should not come in, from the State?

22 MR. HEMBREE: No, Your Honor.

23 THE COURT: From the Defense?

24 MR. DIGGS: No, Your Honor.

25 THE COURT: Have them come in, Madam Clerk.

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1 338 and 339 are coming in.

2 340 is a school employee.

3 THE CLERK: Excuse me. Since we made the list, we
4 got some more information that 338 now wishes to use
5 their exemption.

6 THE COURT: All right, so -- I don't know if y'all
7 have that. We've got here a written statement from the
8 -- we're talking about juror number 338, Tony L.
9 Johnson. A written statement from the wife of Mr.
10 Johnson states that he's over sixty-five. Let's see,
11 the age is 8/26/1940, which would be over sixty-five.
12 It also says he wears a hearing aid, has a serious
13 hearing problem. "I have to speak very loud for him to
14 hear me. Also, his hands and arms shake so bad that he
15 would not be able to write notes."

16 All right, what's the State's position on juror
17 number 338?

18 MR. HEMBREE: No objection to Mr. Johnson being
19 excused.

20 THE COURT: Defense?

21 MR. DIGGS: Your Honor, we don't object based on
22 the hearing difficulty.

23 THE COURT: All right. Excused; 338 is excused.

24 All right, 340, school employment. Here's a
25 statement by the principal that Jerry Jones is a full-

1 time employee at Myrtle Beach Elementary during this
2 particular school year. The State's position?

3 MR. HEMBREE: No objection that Mr. Jones be
4 transferred.

5 THE COURT: All right. Defense?

6 MR. DIGGS: No objection.

7 THE COURT: All right. Transfer that particular
8 juror to the summer, please, ma'am.

9 All right, 341, ---

10 MR. HUMPHRIES: Your Honor, we don't object to a
11 transfer in this case.

12 THE COURT: All right. This is a statement letter
13 from the South Carolina Forestry Commission as to this
14 particular juror. The State does not object. What is
15 the Defense position based upon the information provided
16 by the South Carolina Forestry Commission?

17 MR. DIGGS: We don't object.

18 THE COURT: All right. Madam Clerk, if you will
19 transfer, and transfer them to -- why don't we transfer
20 them to some term in February.

21 All right, 342 and 343 are coming in.

22 344, unable to locate. The Sheriff's affidavit,
23 they are unable to locate Shetan M. Jordan in Horry
24 County, no phone or power. Place of employment, Wal-
25 Mart terminated them three months ago.

1 345, 346, 347, 348 are coming in.

2 349 served November 17th, 2008. What's the State's
3 position on that?

4 MR. HEMBREE: No objection to Mr. Kascher being
5 excused.

6 THE COURT: Defense?

7 MR. DIGGS: No objection.

8 THE COURT: Excused.

9 350, unable to locate. The Sheriff's affidavit
10 states that Evan G. Kay cannot be located in Horry
11 County. The current resident has lived at given address
12 for over a year, does not know Evan G. Kay, and unable
13 to locate.

14 351 has some type of letter. All right, what's the
15 State's position on juror number 351?

16 MR. HEMBREE: This juror should be required to
17 come in and ---

18 THE COURT: All right. The Court agrees.
19 Defense?

20 MR. DIGGS: We agree.

21 THE COURT: All right, very good. Have the juror
22 come in, please.

23 352 is coming in.

24 353 is over sixty-five. Date of birth, 4/26/1921.

25 What's the State's position?

1 MR. HEMBREE: No objection to Mr. Kearns being
2 excused.

3 THE COURT: Defense?

4 MR. DIGGS: We object.

5 THE COURT: Excused.

6 354 is coming in.

7 355 is over sixty-five. All right, the State's
8 position?

9 MR. HEMBREE: No objection.

10 THE COURT: I'm sorry. The date of birth is
11 8/28/1920. All right, the Defense position?

12 MR. DIGGS: We object.

13 THE COURT: All right, Mr. Kearns being eighty-
14 nine. All right, excused.

15 The next one, 356, Ann Kessler, over sixty-five.
16 Date of birth, 8/7/1935. The State's position?

17 MR. HEMBREE: No objection.

18 THE COURT: Defense?

19 MR. DIGGS: We object.

20 THE COURT: That juror wished to be -- all these
21 jurors wish to be excused, and I'm going to excuse that
22 particular juror.

23 357 says no longer resides. Affidavit of the
24 Sheriff, unable to locate Susan M. Kime, K-I-M-E, in
25 Horry County. Moved to Mall of Georgia Boulevard in

1 Buford, Georgia.

2 All right, 358, the Sheriff is looking.

3 359, Delphia King, medical excuse, a statement from
4 Conway Physicians Group. "Please excuse from jury duty
5 due to current medical condition because she would not
6 be a good candidate at this time."

7 MR. HUMPHRIES: Looking at her actual juror
8 questionnaire, she's a diabetic. She's had laser
9 surgery on both eyes, makes it difficult to see,
10 arthritis in hands, fingers. She says hearing is no
11 problem, but you can't hear her, can't sit for long
12 periods of time," and she's on numerous medications.

13 THE COURT: All right. What's the State's
14 position?

15 MR. HUMPHRIES: We would -- we would not object to
16 her being excused.

17 THE COURT: All right. Defense?

18 MR. DIGGS: We don't object.

19 THE COURT: All right, excused.

20 All right, 360 no longer resides -- unable to
21 locate. All right, I'm sorry; unable to locate. The
22 Sheriff's affidavit says unable to locate Judy King in
23 Horry County. This address needs a condo number. Could
24 not locate which condo she lives in. Neighbors do not
25 know her. Unable to locate.

1 Okay, 361 is a student. We've got a -- got
2 documentation here from Horry-Georgetown Tech whereby
3 the juror is taking developmental english, developmental
4 mathematics, and developmental reading, among others.
5 What's the State's position?

6 MR. HEMBREE: No objection to Ms. King being
7 transferred, Your Honor.

8 THE COURT: Defense?

9 MR. DIGGS: No objection.

10 THE COURT: Transfer the juror to the summer,
11 please.

12 262 (sic) is coming in.

13 263 (sic) coming in.

14 Two -- 362 is coming in.

15 363 is coming in.

16 364 is over sixty-five. Date of birth, June 18,
17 1937, Deverre Knickel wishes to be excused, age seventy-
18 two. The State's position.

19 MR. HEMBREE: No objection, Your Honor.

20 THE COURT: Defense?

21 MR. DIGGS: We don't object based on her (sic)
22 hearing impairment.

23 THE COURT: All right, very good. Excused.

24 All right, the next one is 365, Katherine Kohler.

25 Date of birth, 10/26/1941, over sixty-five. The State's

1 position?

2 MR. HEMBREE: No objection, Your Honor.

3 THE COURT: Defense?

4 MR. DIGGS: No objection.

5 THE COURT: Excused.

6 366, the Sheriff is still looking.

7 367, Joseph Konopka, over sixty-five. Date of
8 birth, 3/18/1927. The State's position?

9 MR.. HEMBREE: No objection, Your Honor.

10 THE COURT: Defense?

11 MR. DIGGS: We object.

12 THE COURT: All right. The juror being eighty-
13 two, excuse the juror.

14 All right, the next one, 368, Jo Ann Kovach, over
15 sixty-five. Date of birth, 10/7/1938, wishes to be
16 excused. The State's position?

17 MR. HEMBREE: No objection.

18 THE COURT: Defense?

19 MR. DIGGS: We don't object based on her medical
20 history.

21 THE COURT: All right, very good. Excused.

22 369, the Sheriff is still looking.

23 370 is coming in.

24 371, over sixty-five. That is Joseph Landau. Date
25 of birth, 7/29/1944, wishes to be excused. The State's

1 position?

2 MR. HEMBREE: No objection, Your Honor.

3 THE COURT: Defense?

4 MR. DIGGS: The Defense objects.

5 THE COURT: All right. Excused.

6 And we have 372, is coming in.

7 All right, we're going to stop, Counsel, for lunch.

8 If we come back at 1:45, is that a problem, Solicitor?

9 MR. HEMBREE: 1:45, not at all, Your Honor.

10 THE COURT: All right, Defense?

11 MR. DIGGS: Yes, sir.

12 THE COURT: Very good. We'll resume at 1:45.

13 Thank you very much.

14 (OFF THE RECORD-Lunch Recess)

15 ON THE RECORD

16 THE COURT: To continue on, we start at 373, and a
17 medical excuse for 373. All right, we have a statement
18 from Carolina Health Specialists as to Annette Larosa.
19 What's the State's position, and there was a written
20 statement from the witness -- the juror also.

21 MR. HEMBREE: Your Honor, we'd ask that this
22 witness be excused.

23 THE COURT: Any objection?

24 MR. DIGGS: No, Your Honor.

25 THE COURT: All right, excused.

1 All right, 374, unable to locate. The Sheriff's
2 affidavit states that they are unable to locate Amie R.
3 Larson in Horry County; checked DMV, no change of
4 address. Moved from address listed back in 2006 per the
5 management company to Midtown, New York.

6 The next one, 375, is coming in.

7 376, the Sheriff is still looking.

8 377 is coming in.

9 378, a medical excuse. There's a medical excuse
10 and a statement from the employer and a medical
11 statement from North Myrtle Beach Internal Medicine,
12 Inc. What's the State's position?

13 MR. HEMBREE: Your Honor, I guess it would be our
14 position that this -- this potential juror needs to come
15 in. The excuse, it's very, very broad in general, and
16 she's working, so apparently it doesn't -- it's not a
17 type of an illness that prevents her from working
18 because she works for Sturhs & Becker Construction
19 Company, and they're talking about an economic hardship
20 and they're trying to get her excused for that. It just
21 seems a bit vague.

22 It appears that the Court may want to inquire of
23 her about ---

24 THE COURT: What's the Defense position in that?

25 MR. DIGGS: Your Honor, we agree with what the

1 prosecution stated.

2 THE COURT: All right, very good. Madam Clerk,
3 you will require this juror to come in, please.

4 All right, 379, a statement from the witness (sic).
5 I assume y'all have a copy of that. What's the State's
6 position?

7 MR. HEMBREE: Bear with us just a moment.

8 THE COURT: Yes, sir.

9 MR. HEMBREE: Once again, Your Honor, this sounds
10 a bit -- at least on this issue as to her travel plans,
11 it sounds like she's going to be back, driving home --
12 well, no, maybe not. She may not make it back. We'd
13 ask that this juror be excused, Your Honor.

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

15 MR. DIGGS: We don't object.

16 THE COURT: All right, is excused -- I'm sorry,
17 Madam Clerk, if you'd transfer, rather. Thank you,
18 ma'am.

19 All right, 380 is coming in.

20 381, over sixty-five. Date of birth, 9/14/1941,
21 Michael E. Lenhart, wishes to be excused. The State's
22 position?

23 MR. HEMBREE: No objection.

24 THE COURT: Defense?

25 MR. DIGGS: No objection, Your Honor, because of

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1 the hearing issue.

2 THE COURT: All right, sir. Excused.

3 182 (sic) is coming in. I'm sorry; 382 is coming
4 in.

5 383 is deceased. The jury summons was returned by
6 the wife indicating that the husband was deceased.

7 All right, 384, over sixty-five. Date of birth,
8 8/18/1940, Vonnah Lett, age sixty-nine. The State's
9 position?

10 MR. HEMBREE: No objection, Your Honor.

11 THE COURT: Defense?

12 MR. DIGGS: Your Honor, we don't have an objection
13 based on the family illness that is present.

14 THE COURT: All right, very good. Excused.

15 385, the Sheriff is looking for that particular
16 person.

17 386 and 387 are coming in.

18 388, the Sheriff is looking.

19 389, 390, 391, 392, 393 are coming in.

20 394, over sixty-five. Date of birth, 7/1/1942,
21 Minnie Long, wishes to be excused, sixty-seven. All
22 right, the State's position?

23 MR. HEMBREE: No objection.

24 THE COURT: Defense?

25 MR. DIGGS: Your Honor, we don't object, but based

1 on the fact that she has to care for others during the
2 day.

3 THE COURT: All right, excused.

4 The next one, 395, over sixty-five. Date of birth,
5 3/29/1927, William H. Long, wishes to be excused,
6 eighty-two. The State's position?

7 MR. HEMBREE: No objection.

8 THE COURT: Defense?

9 MR. DIGGS: Your Honor, we would object.

10 THE COURT: All right. I'm going to excuse the
11 juror.

12 The next one, 396, says, "Attends school at night
13 on-line." The State is going to require this particular
14 juror to come in.

15 All right, the next one, 397, work letter. All
16 right, we've got a letter from the juror. What's the
17 State's position?

18 MR. HEMBREE: Your Honor, there's no statutory
19 basis or no clear statutory -- or this doesn't present a
20 clear statutory basis for him to be excused. We'd ask
21 that this juror be required to come in.

22 THE COURT: All right. Defense?

23 MR. DIGGS: Your Honor, we don't object to your
24 excusing him.

25 THE COURT: All right. Well, we're going to have

1 the juror come in and we'll deal with it at that point
2 in time.

3 Have that juror come in, please.

4 398 is a student, James Lordo. We have a statement
5 here from Horry-Georgetown Technical College dated
6 October 7, 2009. They classify him as a full-time
7 student at Horry-Georgetown Technical College. What's
8 the State's position?

9 MR. HEMBREE: No objection to his being
10 transferred, Your Honor.

11 THE COURT: Defense?

12 MR. DIGGS: Yes, no objection.

13 THE COURT: All right. Transfer to the summer,
14 Madam Clerk.

15 All right, 399, we have some letter about work.
16 All right, would the State's position be that the juror
17 should be required to come in?

18 MR. HEMBREE: Yes, Your Honor.

19 THE COURT: All right, Defense?

20 MR. DIGGS: We agree.

21 THE COURT: All right. Have the juror come in,
22 please, Madam Clerk.

23 400 is unable to locate. The Sheriff's affidavit
24 states that unable to locate Jamie W. Lowry in Horry
25 County. No longer lives at given address. Current

1 tenants have lived there for over one year.

2 401 and 402 are coming in.

3 403, the Sheriff is looking for that particular
4 person.

5 404, over sixty-five. Date of birth, 6/15/1927,
6 Jane M. Mack, requests to be excused, age eighty-two.
7 The State's position.

8 MR. HEMBREE: No objection to her being excused,
9 Your Honor.

10 THE COURT: Defense?

11 MR. DIGGS: Your Honor, we would object.

12 THE COURT: I'm going to excuse the juror.

13 The next one, 405, is a student. We have a
14 statement here from Horry-Georgetown Technical College
15 indicating the student is taking a number of courses in
16 the science wing, and it's for the fall term, as well as
17 hotel, restaurant, and travel, and contemporary
18 mathematics. What is the State's position?

19 MR. HEMBREE: We'd ask that the juror be
20 transferred to another term.

21 THE COURT: Defense?

22 MR. DIGGS: Yes, we don't object to that, Your
23 Honor.

24 THE COURT: All right. Transfer her to the
25 summer, please, ma'am.

1 406 ---

2 MR. HEMBREE: Your Honor, could we go back to 405
3 very briefly?

4 THE COURT: Yes.

5 MR. HEMBREE: 405, just for -- this is really for
6 the Clerk's benefit, appears not to be qualified to
7 serve based on a prior conviction, prior criminal
8 conviction. She may just want to note that for her
9 records instead of transferring her to another time.
10 She may want to take her off the -- off the list.

11 THE COURT: Very good.

12 406, Gerald Madeiras, over sixty-five. Date of
13 birth, 4/11/1940. What's the State's position? Wishes
14 to be excused.

15 MR. HEMBREE: No objection.

16 THE COURT: Defense?

17 MR. DIGGS: Your Honor, we don't have an
18 objection, but that's based on his overall health issues
19 and not the age issue.

20 THE COURT: All right, very good.

21 407 is coming in.

22 408, the Sheriff is still looking for that
23 particular person.

24 409, is a school employee. We have a statement
25 from the Horry County School System. This particular

1 juror is a teacher with the Horry County Schools. The
2 State's position?

3 MR. HEMBREE: No objection to this juror being
4 transferred to another term.

5 THE COURT: Defense?

6 MR. DIGGS: No objection.

7 THE COURT: Transfer her (sic) to the summer,
8 please, ma'am -- or him; I'm sorry.

9 410 no longer resides. The Sheriff's affidavit
10 states unable to locate Werner Mansouri in Horry County.
11 The driver's license number gives an address in
12 Knoxville, Tennessee.

13 411, 412, 413 are coming in.

14 414 says a school employee. All right, we've got a
15 statement here from the First Presbyterian Church,
16 looking at the juror questionnaire indicates that the
17 place of employment is the First Presbyterian Church
18 Growing Tree Pre-School, lists the job description as
19 assistant teacher for eleven years. What's the State's
20 position?

21 MR. HEMBREE: Your Honor, I don't recall if the
22 statute distinguishes between what type of school. I
23 believe this would qualify and we would ask that she be
24 transferred to another term.

25 THE COURT: Defense?

1 MR. DIGGS: Yeah, I guess if it's a school and
2 they've got students, ---

3 THE COURT: All right.

4 MR. DIGGS: --- we don't object.

5 THE COURT: Transfer her to the summer, please,
6 ma'am.

7 415 is coming in.

8 416, unable to locate. The Sheriff's affidavit
9 states unable to locate Teresa A. Maust in Horry County.
10 The house is empty at the given address.

11 417, we've got a medical excuse. All right, it's a
12 statement from Keith Wyche, M.D., cardiologist, Waccamaw
13 Cardiology. What's the position of the State as to 417?

14 MR. HEMBREE: No objection to Ms. Mays being
15 excused.

16 THE COURT: Defense?

17 MR. DIGGS: No objection.

18 THE COURT: All right, excused.

19 The Sheriff is looking for 418.

20 419, 420, we've got no longer resides. The
21 Sheriff's affidavit indicates -- I'm sorry. The Clerk's
22 affidavit indicates based upon the juror's driver's
23 license that the juror is a resident of the State of
24 North Carolina, lives in Tabor City.

25 411, 412, 413 are coming in -- I'm sorry. I went

1 -- wait a minute. I'm sorry. 420 was the one we were
2 talking about. 420, there was a proper excuse.

3 All right, 421, the Sheriff is looking for that
4 one.

5 422, unable to locate. The Sheriff's affidavit
6 states that unable to locate Leroy McDonald in the
7 confines of Horry County. No forwarding found by the
8 Sheriff's Office.

9 423, 424 are coming in.

10 425, the Sheriff is still looking.

11 426 is coming in.

12 427, unable to locate. The Sheriff's affidavit
13 states that unable to locate Michael F. McGrath in Horry
14 County. Never could locate this subject after several
15 attempts at home address. No further information found.

16 Regarding 428 and 429, those jurors are coming in.

17 430, the Sheriff is still looking.

18 421 (sic), student, got documentation here from
19 Horry-Georgetown Technical College indicating the juror
20 is taking fourteen credit hours, college chemistry,
21 english composition, american history, elementary
22 spanish. What's the State's position?

23 MR. HEMBREE: The State requests that this juror
24 be transferred.

25 THE COURT: Defense?

1 MR. DIGGS: No objection.

2 THE COURT: Transfer the juror to the summer,
3 please, ma'am.

4 432, the Sheriff is looking for that particular
5 person.

6 433 is coming in.

7 434, over sixty-five. Date of birth, 9/28/1943,
8 Beverly S. McMillen, wishes to be excused. What's the
9 State's position?

10 MR. HEMBREE: Ask that this juror be excused, Your
11 Honor.

12 THE COURT: Defense?

13 MR. DIGGS: We object if it's based on age.

14 THE COURT: All right, excused.

15 435, over sixty-five, Mary McNair. Date of birth,
16 2/14/1939, wishes to be excused, seventy years of age.
17 The State's position?

18 MR. HEMBREE: No objection to the juror being
19 excused, Your Honor.

20 THE COURT: All right. What's the position of the
21 Defense?

22 MR. DIGGS: The same objection.

23 THE COURT: All right, excused.

24 436 is coming in.

25 437, a medical excuse. We've got a statement here

1 from Conway Medical Center to certify that the juror was
2 admitted to Conway Medical Center on 10/13/2009, had
3 spinal surgery on 10/13/2009, discharged on 10/16/2009.
4 What's the -- there's a written statement from the juror
5 also. What's the State's position?

6 MR. HEMBREE: Your Honor, I'm reading here. In
7 addition to the letter from the hospital, I read her
8 personal note that's attached here. She indicates that
9 she's going to be -- that her doctors tell her she's
10 going to be out of work eight to twelve weeks, so it's
11 been a rather short time frame. It sounds like it's a
12 fairly serious surgery. We'd ask that she be excused,
13 Your Honor.

14 THE COURT: Defense?

15 MR. DIGGS: No objection.

16 THE COURT: All right, excused.

17 All right, 438 is coming in.

18 439, the Sheriff is looking.

19 440, over sixty-five. Date of birth, 11/10/1942,
20 Daniel Menich, wishes to be excused, sixty-six. What's
21 the State's position?

22 MR. HEMBREE: We would ask that this juror be
23 excused, Your Honor.

24 THE COURT: Defense?

25 MR. DIGGS: We don't object based on his vacation

1 THE COURT: All right, excused on age.
2 All right, 443, unable to locate. The Sheriff's
3 affidavit states unable to locate Denise A. Mileski in
4 Horry County. No longer lives at given address. No
5 forwarding found by the Sheriff's Department.
6 444 is coming in.
7 445, over sixty-five. Date of birth, 2/13/1940,
8 Diann Miller. Over sixty-five, wishes to be excused,
9 sixty-nine. What's the State's position?
10 MR. HEMBREE: No objection, Your Honor.
11 THE COURT: Defense?
12 MR. DIGGS: Your Honor, we don't object based on
13 the medical situation and the law enforcement ---
14 THE COURT: All right, excused.
15 446 is coming in.
16 447, over sixty-five. Let's see, 447, over sixty-
17 five. Date of birth, 8/12/1942, Richard Miller, over
18 sixty-five, wishes to be excused, age sixty-seven. The
19 State's position?
20 MR. HEMBREE: No objection, Your Honor.
21 THE COURT: Defense?
22 MR. DIGGS: Your Honor, we object to the
23 exemption.
24 THE COURT: All right, excused.
25 448 is coming in.

1 449, unable to locate. The Sheriff's affidavit,
2 unable to locate Gina M. Mills in Horry County, unable
3 to find this person. Found different address, but
4 nobody there.

5 MR. HEMBREE: Your Honor, if I might, going back
6 to 448, this is yet another one that has a criminal
7 history. I just want to note that for the benefit --
8 we'll set that aside, provide it to Defense counsel, and
9 we can deal with that when 448 comes in.

10 THE COURT: All right, very good.

11 All right, 449 (sic), they've got -- you can see
12 the travel statement by the juror. What's the State's
13 position?

14 MR. DIGGS: That's 450.

15 THE COURT: 450, yes. I'm sorry; 450.

16 MR. HEMBREE: It appears it's a prepaid vacation,
17 Your Honor, and we don't have any objection to excusing
18 Mr. Mills.

19 THE COURT: What's the Defense position?

20 MR. DIGGS: No objection.

21 THE COURT: 451 is coming in.

22 452, all right, as a result of the Clerk following
23 up on juror number 452, there's an additional statement
24 from the juror that the person that she is the care
25 provider for is her mother-in-law. The husband is in

1 prison. All right, what's the State's position as to
2 juror number 452?

3 MR. HEMBREE: It appears based on this -- kind of
4 reviewing this correspondence that Ms. Moore would have
5 a statutory exemption. We would ask that she be
6 excused.

7 THE COURT: Defense?

8 MR. DIGGS: Now we're talking about juror 452?

9 THE COURT: That's correct.

10 MR. DIGGS: No objection.

11 THE COURT: All right.

12 All right, 453 is over sixty-five. Date of birth,
13 11/8/1939, Jimmy Moore, sixty-nine, wishes to be
14 excused. The State's position?

15 MR. HEMBREE: No objection.

16 THE COURT: Defense?

17 MR. DIGGS: No objection, but based on his wife's
18 health, but not his age.

19 THE COURT: All right, very good. Excused.

20 454, unable to locate. The Sheriff's affidavit
21 states that unable to locate Jeannette L. Moreland in
22 Horry County. Subject not here. Moved over one year.

23 455, a medical excuse. We've got a statement here
24 from Hearing Healthcare. All right, the State and
25 Defense have a copy of it. What's the State's position?

1 MR. HEMBREE: No objection to this juror being
2 excused, Your Honor.

3 THE COURT: Defense?

4 MR. DIGGS: Your Honor, we don't have an
5 objection.

6 THE COURT: All right, excused.

7 456, over sixty-five. Date of birth, 5/25/1935,
8 Inez Morgan, over sixty-five, wishes to be excused, age
9 seventy-four. Also indicates her -- there's a statement
10 from the juror as to her medication. All right, what's
11 the State's position?

12 MR. HEMBREE: No objection, Your Honor.

13 THE COURT: Defense?

14 MR. DIGGS: No objection based on her medication.

15 THE COURT: All right, very good. Excused.

16 457, over sixty-five, Louise Morgan. Date of
17 birth, 10/12/1930, age seventy-eight, wishes to be
18 excused. The State's position?

19 MR. HEMBREE: No objection.

20 THE COURT: Defense?

21 MR. DIGGS: Your Honor, we don't object, but it's
22 based on the health of her husband.

23 THE COURT: All right, excused.

24 458 and 459 are coming in.

25 460, unable to locate. The Sheriff's affidavit

1 states that unable to locate Meghan R. Morris in Horry
2 County. Per the new homeowner, states they've lived at
3 the given address for three years. No forwarding
4 address found at the Loris Post Office.

5 The next one, 461, school employee. I have
6 something here from the -- from Horry-Georgetown
7 Technical College, the department chair of associated
8 health sciences as to the juror stating that she is an
9 anatomy and physiology instructor for the college.
10 What's the State's position?

11 MR. HEMBREE: The State requests this juror be
12 transferred.

13 THE COURT: Defense?

14 MR. DIGGS: We don't object.

15 THE COURT: All right. Transfer, Madam Clerk.
16 462 is coming in.

17 463, the Sheriff is looking.

18 464, a medical excuse. It says that -- here it
19 says that Arlette Muffley, who is the juror, as her
20 statement says that she is the sole caregiver for her
21 eighty-two year old mother-in-law, Mary Muffley. What
22 is the State's position?

23 MR. HEMBREE: Your Honor, just looking at this,
24 she's got a -- she works full-time, it appears, at First
25 Baptist Church or First Baptist Child Development Center

1 as a teacher eight to five. We'd ask that she be tran-
2 -- I think she just has ---

3 THE COURT: All right. Ask her to come in?

4 MR. HEMBREE: Ask that she be transferred, Your
5 Honor.

6 THE COURT: Okay, I'm sorry. I was confused. Do
7 you wish that ---

8 MR. HEMBREE: No, sir. I think -- I think she's
9 -- I think she probably has the exclusion as a teacher
10 to be transferred.

11 THE COURT: Okay. All right. Very good. Okay,
12 I'm sorry. All right, very good.

13 All right, Defense?

14 MR. DIGGS: We agree.

15 THE COURT: All right. If you would transfer her,
16 please, ma'am, to the summer.

17 465, over sixty-five. Date of birth, 12/17/1939,
18 Maureen Muller, over sixty-five, wishes to be excused,
19 age sixty-nine. What's the State's position?

20 MR. HEMBREE: No objection.

21 THE COURT: Defense?

22 MR. DIGGS: We object.

23 THE COURT: Is excused; the juror is excused.

24 466, the Sheriff is looking.

25 467, 468 are coming in.

1 469, over sixty-five. Date of birth, 8/11/1921,
2 Lucile M. Nalley, over sixty-five, eighty-eight years
3 old, wishes to be excused. The State's position?

4 MR. HEMBREE: No objection.

5 THE COURT: Defense?

6 MR. DIGGS: Your Honor, no objection based on her
7 hearing impairment.

8 THE COURT: All right, excused.

9 470 has some type of statement. What's the State's
10 position?

11 MR. HEMBREE: Your Honor, it appears that Michelle
12 and Glenn are getting married on the 7th. I'm looking
13 -- it looks like -- I think I'm looking at an invitation
14 here, and therefore, I would request that the Court put
15 this juror, Thomas Nanick, on a panel assuming he'll be
16 back after that weekend.

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

18 MR. DIGGS: Your Honor, we don't object if you
19 reschedule the juror.

20 THE COURT: The information not only that is here,
21 but also the Clerk has, is obviously they are getting
22 married on November 7th, 2009, the day after they are
23 reporting, and then were to go on their honeymoon the
24 following week. I am going to transfer this particular
25 juror to another term of court, Madam Clerk.

1 MR. HEMBREE: That's fine. Is this guy -- is this
2 juror going on the honeymoon? I think those are -- it
3 appears that the ones that are getting married are
4 Michelle Claire ---

5 THE COURT: I'm sorry. Then maybe I misread it.

6 THE CLERK: They're just staying the week in New
7 Jersey.

8 THE COURT: Okay, then, I'm sorry.

9 MR. HEMBREE: I didn't have that information.

10 THE COURT: Okay, I'm sorry.

11 THE CLERK: I didn't know until His Honor just
12 told me.

13 THE COURT: Okay, well, all right, so they are
14 going -- so they are going to the wedding, going to a
15 wedding on November 7th, is that right, Madam Clerk?

16 THE CLERK: Yes, sir.

17 THE COURT: All right, and then their intention
18 was to stay for the remainder of the next week in New
19 Jersey?

20 THE CLERK: As per their conversation with Donna.

21 MR. HEMBREE: Your Honor, I'd like to change my --
22 our position would be that we have no objection to this
23 juror being excused.

24 THE COURT: Defense, again; I'm sorry.

25 MR. DIGGS: We don't object.

1 THE COURT: All right, transfer. Transfer, yes,
2 ma'am.

3 471 coming in.

4 472 coming in.

5 473, the Sheriff is still looking.

6 474, unable to locate. The Sheriff's affidavit
7 states unable to locate Herbert S. Nodine in Horry
8 County. New address that was found appears to be a
9 vacation condo.

10 The next one, 475, is over sixty-five. Date of
11 birth, 12/30/1928, Edna Norris, eighty, wishes to be
12 excused. Also gives a written statement of all the
13 medication that she is taking. The State's position?

14 MR. HEMBREE: No objection, Your Honor.

15 THE COURT: Defense?

16 MR. DIGGS: No objection based on her health.

17 THE COURT: Excused.

18 The next one is 476, Reba Norris. Date of birth,
19 8/31/1916, Ms. Norris being over sixty-five wishes to be
20 excused, ninety-three, and apparently she is residing at
21 Agape' Senior Home. What's the State's position?

22 MR. HEMBREE: No objection, Your Honor.

23 THE COURT: Defense?

24 MR. DIGGS: Your Honor, we would object if it's
25 based solely on the age.

1 THE COURT: All right. I'm going to excuse the
2 juror.

3 All right, 477, 478, 479, and 480 are coming in.

4 481, Dorothy Oldham, over sixty-five. Date of
5 birth, 6/13/1942. Dorothy A. Oldham, age sixty-seven,
6 wishes to be excused. The State's position?

7 MR. HEMBREE: No objection.

8 THE COURT: Defense?

9 MR. DIGGS: No objection; there's an illness ---

10 THE COURT: Excused.

11 MR. DIGGS: --- in the family.

12 THE COURT: Very good.

13 482, Robert L. Oliver, over sixty-five. Date of
14 birth, 2/4/1933, wishes to be excused, age seventy-six.
15 The State's position?

16 MR. HEMBREE: No objection.

17 THE COURT: Defense?

18 MR. DIGGS: Your Honor, based on his health, we
19 don't have an objection.

20 THE COURT: All right, excused.

21 The next one is 483, Nicholas Oppen. Date of
22 birth, 12/17/1924, wishes to be excused. What's the
23 State's position?

24 MR. HEMBREE: No objection, Your Honor.

25 THE COURT: Defense?

1 MR. DIGGS: Your Honor, we do object on age.

2 THE COURT: All right. I'm going to excuse the
3 juror.

4 484, 485 are coming in.

5 486, got them as a school employee. I've got
6 basically a little bit of information indicating it's
7 apparently a wage statement of some kind from Little
8 People's College, Bridgewater Academy, job title, Pre-K
9 teacher. It says length of present employment, sixteen
10 years. What's the State's position?

11 MR. HEMBREE: We would request that the juror be
12 transferred to another term of court.

13 THE COURT: Defense?

14 MR. DIGGS: Yeah, we don't object.

15 THE COURT: All right. Transfer, Madam Clerk,
16 please.

17 487, the Sheriff is still looking.

18 488, a medical excuse. Let's see what we have
19 here. All right, it says the baby her -- the baby is
20 due November 26th, 2009. What's the State's position?

21 MR. HUMPHRIES: We ask that this juror be excused.

22 THE COURT: Defense?

23 MR. DIGGS: We don't object, Your Honor, if you
24 postpone that.

25 THE COURT: All right. Excuse the juror.

1 The next one, 489, is Geoffrey J. Parsons, a
2 medical excuse from South Strand Internists, P.A.,
3 unable to perform jury duty as he is sole caregiver to
4 handicapped family member, so under that particular
5 section, a handicapped brother apparently. It says,
6 "Mother recently died." He's taken over the care of his
7 handicapped brother.

8 All right, what's the State's position?

9 MR. HEMBREE: We don't have any objection to him
10 being -- well, maybe transferred, Your Honor. He's got
11 a -- he's also a part- -- he works for Coastal Carolina
12 full-time, so he's able to manage both of those things.
13 Of course, this juror will be sequestered. I would ask
14 he be transferred to another term.

15 THE COURT: All right, sir. What's the Defense's
16 position?

17 MR. DIGGS: We don't object.

18 THE COURT: All right.

19 490 is coming in.

20 491, the Sheriff is still looking.

21 492, unable to locate.

22 THE CLERK: Do you want me to transfer 489?

23 THE COURT: Yes, transfer that one.

24 492, the Sheriff's affidavit says unable to locate
25 Melanie J. Patrick in Horry County. Moved to the State

1 of Ohio in 2006.

2 493, a medical excuse. We've got a document here
3 from the Social Security Administration. On just the
4 first page of it, Office of Hearing and Appeals,
5 indicating that they -- a fully favorable decision,
6 found you disabled on December 16th, 2004, because of
7 impairments to the back so severe that you are unable to
8 perform sustained work. You are precluded from your
9 injuries from working eight hours a day, five days per
10 week. What's the State's position?

11 MR. HEMBREE: No objection to this juror being
12 excused, Your Honor.

13 THE COURT: Defense?

14 MR. DIGGS: Your Honor, we don't object.

15 THE COURT: All right, excused.

16 494, 495, 496 are coming in.

17 497 we have as deceased. A copy of a death
18 certificate is attached, deceased May 26, 2008.

19 498, unable -- or, sorry, no longer resides. The
20 Clerk's affidavit shows that the juror does not reside
21 in the State of South Carolina from the information the
22 Clerk has.

23 All right, 499, the juror is coming in.

24 500, the Sheriff is looking.

25 501, over sixty-five. Date of birth, 9/4/1938,

1 Gloria Perritt, Ms. Perritt being seventy-one, wishes to
2 be excused. The State's position?

3 MR. HEMBREE: No objection, Your Honor.

4 THE COURT: Defense?

5 MR. DIGGS: No objection based on her health.

6 THE COURT: Excused.

7 502, unable to locate. The Sheriff's affidavit
8 states unable to locate Shannon E. Peterson in Horry
9 County. Subject has moved out of the state.

10 503 is coming in.

11 504, the Sheriff is looking.

12 505 and 506 are coming in.

13 507, the Sheriff is looking.

14 508 is coming in.

15 509, the Sheriff is looking.

16 510 is coming in.

17 511, a medical excuse. I have a statement from
18 Inlet Medical Associates. It basically states that she
19 is hard of hearing. She can't hear in a large room.
20 The person speaking has to be facing her so she can lip-
21 read. What's the State's position?

22 MR. HEMBREE: No objection to excusing this juror,
23 Your Honor.

24 THE COURT: Defense?

25 MR. DIGGS: No objection.

1 THE COURT: Excused.

2 512 and 513 are coming in.

3 514, we've got no longer resides. The Sheriff's
4 affidavit states unable to locate Earl S. Proffitt in
5 Horry County. Now lives in Rock Hill, South Carolina.

6 515, 516 are coming in.

7 517, 518, the Sheriff is still looking..

8 519 has no longer resides. The Sheriff's affidavit
9 states that Donna R. Rakovan -- is unable to locate
10 Donna R. Rakovan in Horry County, moved to Pennsylvania
11 in April of 2008.

12 The next one, 520, Joanne P. Rankin. Date of
13 birth, 9/10/1942, over sixty-five. Ms. Rankin, being
14 sixty-seven, wishes to be excused. What's the State's
15 position?

16 MR. HEMBREE: No objection, Your Honor.

17 THE COURT: Defense?

18 MR. DIGGS: We object.

19 THE COURT: Excused..

20 All right, 521, Joseph Ray, we've got a work
21 letter. Let's see what that is. It's from Charles Ray
22 of Ray Realty. It indicates that he has prepaid for a
23 business-related matter on November 11th, returning
24 November 17th. What's the State's position?

25 MR. HEMBREE: We would ask that this juror be

1 transferred to another term.

2 THE COURT: Defense?

3 MR. DIGGS: No objection.

4 THE COURT: All right, ma'am, if you'll transfer
5 this juror, please, ma'am.

6 522 is coming in.

7 523, over sixty-five. Date of birth, 10/9/1927,

8 Paul E. Reinhardt, eighty-two, wishes to be excused.

9 The State's position?

10 MR. HEMBREE: The State has no objection, Your
11 Honor.

12 THE COURT: All right. Defense?

13 MR. DIGGS: Your Honor, we don't object because of
14 the hearing problem and his health.

15 THE COURT: All right. Excused.

16 524 is coming in.

17 525, over sixty-five. Date of birth, 10/18/1934,

18 Jessamine Richardson, wishes to be excused. What's the

19 State's position?

20 MR. RICHARDSON: No objection, Your Honor.

21 THE COURT: Defense?

22 MR. DIGGS: We object.

23 THE COURT: Excused.

24 526, Samuel Richardson. Date of birth, 4/20/1939,
25 over sixty-five. Mr. Richardson, seventy years old,

1 wishes to be excused. The State's position?
2 MR. RICHARDSON: No objection, Your Honor..
3 THE COURT: Defense?
4 MR. DIGGS: We object.
5 THE COURT: Excused.
6 427 (sic), Zorah Richardson. Date of birth,
7 5/30/1940, over sixty-five.
8 THE CLERK: What was the number?
9 THE COURT: 527, Zorah S. Richardson. Ms.
10 Richardson, sixty-nine, wishes to be excused. The
11 State's position?
12 MR. RICHARDSON: No objection, Your Honor.
13 THE COURT: Defense?
14 MR. DIGGS: Your Honor, she apparently cares for
15 her husband who has Alzheimer's, so we don't object.
16 THE COURT: All right. Excused.
17 428 (sic), the Sheriff is still looking for that
18 particular person.
19 429 (sic), the Sheriff is looking for them.
20 430 (sic) is coming in.
21 THE CLERK: Judge, I think it's 530.
22 THE COURT: It is. What did I say? I'm sorry.
23 528, the sheriff is looking for that particular
24 juror.
25 529, the Sheriff is looking for that particular

1 Administration's statement, the juror questionnaire
2 indicating that she has short-term memory problems, the
3 medication that she's taking, ---

4 MR. DIGGS: Your Honor, we withdraw ---

5 THE COURT: --- the back pain that she is in, I am
6 going to excuse her. Thank you, sir.

7 MR. DIGGS: Thank you.

8 THE COURT: All right, Maryanne Robinson, it says
9 she served jury duty June 4 of '07, so the automatic
10 exemption for one year does not apply. She has to
11 request being excused, which she has done within the
12 three years. What's the State's position?

13 MR. RICHARDSON: Your Honor, we would have no
14 objection to her being excused.

15 THE COURT: Defense?

16 MR. DIGGS: No objection.

17 THE COURT: Excused.

18 437 (sic), over sixty-five. Date of birth,
19 7/5/1938, Sanford Robinson. Mr. Robinson, being
20 seventy-one, wishes to be excused. The State's
21 position?

22 MR. RICHARDSON: No objection, Your Honor.

23 THE COURT: Defense?

24 MR. DIGGS: No objection.

25 THE COURT: Excused.

1 All right, 438 (sic) no longer resides. 538 no
2 longer resides. I'm sorry. Unable to locate Lisa M.
3 Rock in Horry County, moved to 401 Vermont Avenue,
4 Hagerstown, Maryland.

5 539, Ryan Rodriguez, is coming in.

6 540, the Sheriff is still looking for that
7 particular person.

8 541, over sixty-five. Date of birth, 8/9/1936,
9 Thomas J. Rogers, seventy-three years of age, wishes to
10 be excused. The State's position?

11 MR. RICHARDSON: No objection, Your Honor.

12 THE COURT: Defense?

13 MR. DIGGS: Your Honor, we don't object, but it's
14 based on the relation to law enforcement.

15 THE COURT: He's excused because of age.

16 542 is coming in.

17 543, over sixty-five. Date of birth, 3/1/1939,
18 Nonnita M. Rooney, age seventy, wishes to be excused.
19 The State's position?

20 MR. RICHARDSON: No objection, Your Honor.

21 THE COURT: Defense?

22 MR. DIGGS: No objection.

23 THE COURT: Excused.

24 The next one, 544, Amy E. Ross, says school
25 employee. Place of employment, Horry-Georgetown

1 Technical College, adjunct faculty instructor. Business
2 hours, 9:00 to 3:00. Length of employment, two years.
3 The State's position?

4 MR. RICHARDSON: No objection to her being
5 transferred, Your Honor.

6 THE COURT: Defense?

7 MR. DIGGS: No objection.

8 THE COURT: Transfer, Madam Clerk, please.

9 545, the Sheriff is still looking.

10 546, we've got as a school employee. We've got a
11 statement here from Horry County Schools, Daisy
12 Elementary, and she works as a speech therapist, 7:15 to
13 3:00. Length of employment, three years, ten months.
14 The State's position?

15 MR. RICHARDSON: No objection to a transfer, Your
16 Honor.

17 THE COURT: Defense?

18 MR. DIGGS: No objection.

19 THE COURT: Transfer, Madam Clerk, please.

20 547 is coming in.

21 548, the Sheriff is looking.

22 549 is coming in.

23 550 no longer resides. The Sheriff's affidavit
24 states that unable to locate Harriet A. Russell in Horry
25 County. Moved to Winston-Salem, North Carolina.

1 The next one, 551, the Sheriff is still looking.

2 552 is coming in.

3 553, unable to locate. All right, unable to locate
4 Peter J. Salerno, Sr. in Horry County. It is indicated
5 by the Sheriff's affidavit could not find a driver's
6 license or any more information.

7 554, unable to locate. The Sheriff's affidavit
8 states unable to locate Corisa L. Salinas in Horry
9 County. Unable to find any information on this person.

10 Juror 555, the Sheriff's affidavit, unable to
11 locate Napier Denise H. Salter in Horry County. Not a
12 good address. No forwarding found.

13 556, over sixty-five. Date of birth, 8/20/1942,
14 Elizabeth Sambleson. Ms. Sambleson, age sixty-seven,
15 wishes to be excused. The State's position?

16 MR. RICHARDSON: The State has no objection, Your
17 Honor.

18 THE COURT: Defense?

19 MR. DIGGS: We object.

20 THE COURT: Excused.

21 557, 558, and 559 are coming in.

22 560, over sixty-five. That is William H. Schrock.
23 Date of birth, 12/14/1928. Mr. Schrock, being eighty
24 years of age, wishes to be excused. The State's
25 position?

1 MR. RICHARDSON: No objection.

2 THE COURT: Defense?

3 MR. DIGGS: We object.

4 THE COURT: Excused.

5 561 is coming in.

6 562, we have unable to locate. The Sheriff's
7 affidavit states that unable to locate Jenna C. Scissons
8 in Horry County. Moved to the State of Georgia in June
9 of 2008.

10 563 and 564 are coming in.

11 565 states she cannot understand English. Looking
12 at the juror information, some of it appears to be
13 filled out in Spanish and some of it in English. What
14 is the State's position?

15 MR. RICHARDSON: The State would have no problem
16 with this juror being excused, Your Honor.

17 THE COURT: Defense?

18 MR. DIGGS: No objection.

19 THE COURT: All right, excused.

20 566, the Sheriff is still looking.

21 567 and 568 are coming in.

22 569, over sixty-five. Date of birth, 9/11/1942,
23 Brenda K. Shoemaker. Ms. Shoemaker, age sixty-seven,
24 wishes to be excused, also gave some medical
25 information. The State's position?

1 MR. RICHARDSON: No objection, Your Honor.

2 THE COURT: Defense?

3 MR. DIGGS: No objection based on that
4 information.

5 THE COURT: Excused.

6 570 is coming in.

7 571 has some type of statement. Let's see, a
8 travel schedule. He's a senior vice president,
9 operations, House of Blues Clubs, and gave a summation
10 of his weekly travel schedule. What's the State's
11 position?

12 MR. RICHARDSON: Your Honor, it would appear that
13 this is not anything unexpected. It appears he travels
14 weekly, so we would ask that he come in.

15 THE COURT: All right, very good.

16 Does the Defense agree?

17 MR. DIGGS: Yes, sir.

18 THE COURT: All right. Ask that juror to come in,
19 please, ma'am.

20 All right, 572 is coming in.

21 573, a medical excuse, Dorothy A. -- Dorothy
22 Simpson. It's from Pain, Spine, and Sports Medicine.
23 It just says, "Please excuse from jury duty due to low
24 back condition." What is the -- the employment appears
25 to be Edward Jones Investments; job title or

1 description, senior branch administrator. Business
2 hours, 9:00 to 5:00. Length of employment, thirteen
3 years. It does indicate a back condition and certain
4 medication. What's the State's position?

5 MR. RICHARDSON: The State would ask that she come
6 in.

7 THE COURT: Defense?

8 MR. DIGGS: We agree.

9 THE COURT: Have the juror come in, please, ma'am.
10 574 indicates a trip planned. Let's see what that
11 is. 574 is Willard Simpson. He plans to be out of the
12 country from November 2nd through the 10th, 2009, and as
13 per the statement, it's apparently in Canada is where
14 he's going. What's the State's position?

15 MR. RICHARDSON: Your Honor, the State would have
16 no objection to him being transferred.

17 THE COURT: Defense?

18 MR. DIGGS: No objection.

19 THE COURT: All right. Transfer this juror,
20 please, ma'am.

21 575 is coming in.

22 576, a medical excuse. 576, a statement from
23 Waccamaw Cardiology. Due to recent heart attack and
24 stents, her heart and heart arteries, re-admitted to
25 hospital with atrial fibrillation. This was dated

1 September 23rd, 2009. What's the State's position?

2 MR. RICHARDSON: The State would have no objection
3 to a transfer, Your Honor.

4 THE COURT: Defense?

5 MR. DIGGS: No objection.

6 THE COURT: We'll excuse the juror, Madam Clerk.

7 577, coming in.

8 578, unable to locate. The Sheriff's affidavit
9 states unable to locate Francis P. Siratt in Horry
10 County, could not find house or mail box number.
11 Neighbor did not know name.

12 579, 580, 581, the Sheriff is still looking.

13 582 is coming in.

14 583, 584, the Sheriff is looking.

15 585, a school employee, Amy Smith. A statement
16 here from the principal of North Myrtle Beach Middle
17 School. She's currently employed as a school teacher
18 at North Myrtle Beach Middle School. The State's
19 position?

20 MR. RICHARDSON: No objection to a transfer, Your
21 Honor.

22 THE COURT: Defense?

23 MR. DIGGS: No objection.

24 THE COURT: Transfer her to the summer, Madam
25 Clerk.

1 586 is coming in.

2 587, a trip planned, Henry Smith. All right, you
3 have the information. What's the State's position?

4 MR. RICHARDSON: Your Honor, we would ask that he
5 be empaneled on the 9th. It looks like he's coming
6 back ---

7 THE COURT: So excuse him from the 6th and have
8 him come in on Monday or whenever he is placed on a
9 panel on the 6th?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: All right. Does the Defense agree?

12 MR. DIGGS: Yes, sir.

13 THE COURT: All right. Madam Clerk, we'll note
14 this is another one that we'll need to swear when they
15 come in.

16 All right, 588, the Sheriff is still looking.

17 589, no longer resides. Affidavit of the Clerk
18 indicates that though she -- the juror lives in the
19 Murrells Inlet area, it's the Georgetown County part of
20 Murrells Inlet, so she does not live in Horry County.
21 (Juror 590 is skipped by the Court.)

22 All right, 591, over sixty-five. Date of birth,
23 10/24/1942, Morris Smith. Mr. Smith, being sixty-seven,
24 wishes to be excused. The State's position?

25 MR. RICHARDSON: No objection, Your Honor.

1 THE COURT: Also indicated he received a
2 misdemeanor criminal sentence for insurance fraud. The
3 Defense's position?

4 MR. DIGGS: We object.

5 THE COURT: Did you have any information on his
6 criminal status?

7 MR. RICHARDSON: Bear with me just a second, Your
8 Honor.

9 THE COURT: Well, I'm going to -- he's over sixty-
10 five. I'm going to excuse him, but I'll also note the
11 criminal record of that particular juror.

12 All right, 592 is coming in.

13 593, the Sheriff is looking.

14 594, the Sheriff -- I'm sorry -- is coming in.

15 595, unable to locate. All right, we've got the
16 Sheriff's affidavit, unable to locate Charles L. Soles
17 in Horry County. Now resides at 462 Cox Ann Road in
18 Tabor City, North Carolina.

19 All right, 596, the Sheriff is still looking.

20 597 and 598 is coming in.

21 599, over sixty-five, Kenneth Staley. Date of
22 birth, 4/20/1943, Mr. Staley being sixty-six, wishes to
23 be excused. The State's position?

24 MR. RICHARDSON: No objection, Your Honor.

25 THE COURT: Defense?

1 MR. DIGGS: We object.

2 THE COURT: Excused.

3 600, the Sheriff is looking.

4 601 and 602, the Sheriff is looking.

5 603, over sixty-five. Date of birth, 8/20/1937,

6 Wayne G. Staves, being seventy-two and wishes to be

7 excused. Also indicates the problems that his wife has

8 being permanently disabled. The State's position?

9 MR. RICHARDSON: No objection, Your Honor.

10 MR. DIGGS: Yeah, no objection, Your Honor, based
11 on that latter statement.

12 THE COURT: All right, excused.

13 604 no longer resides. The Sheriff's affidavit
14 states that unable to locate Lyndsi D. Stearn in Horry
15 County, moved to Philadelphia, Pennsylvania.

16 The next one is 605, Ruth Stebbins. Date of
17 birth, 5/24/1939, over sixty-five. Ms. Stebbins,
18 being age seventy, wishes to be excused. The State's
19 position?

20 MR. RICHARDSON: No objection, Your Honor.

21 THE COURT: Defense?

22 MR. DIGGS: No objection based on her illness.

23 THE COURT: All right, very good. Excused.

24 We've got 606, unable to locate. The Sheriff's
25 affidavit states unable to locate Ryan T. Stefanides in

1 Horry County. Checked Post Office and DMV, no
2 information found.

3 The Sheriff is looking for 608 and 607 -- 607 and
4 608.

5 609 says school employee. All right, I've got a
6 card showing a -- dated August 19th, 2009, showing a
7 faculty I.D. card from Socastee High School. Looking at
8 the juror information line, place of employment,
9 Socastee High School, science department, 7:45 to 3:45,
10 sixteen years. The State's position?

11 MR. RICHARDSON: No objection to a transfer, Your
12 Honor.

13 THE COURT: Defense?

14 MR. DIGGS: No objection.

15 THE COURT: Transfer to the summer, Madam Clerk.
16 The Sheriff is looking for 610, 611, 612.

17 613, over sixty-five. Date of birth, 7/1/1923,
18 Opal P. Suggs, Ms. Suggs, being eighty-six, wishes to
19 be excused. The Defense position? I'm sorry. The
20 State's position? I'm sorry.

21 MR. RICHARDSON: No objection, Your Honor.

22 THE COURT: All right, and the Defense position
23 on ---

24 MR. DIGGS: No objection, Your Honor, ---

25 THE COURT: I'm sorry?

1 MR. DIGGS: No objection based on the health.

2 THE COURT: All right, excused.

3 614, Dennis M. Sullivan, over sixty-five. Date of
4 birth, 7/11/1943. Mr. Sullivan, being sixty-six, wishes
5 to be excused. What's the State's position?

6 MR. RICHARDSON: No objection.

7 THE COURT: Defense?

8 MR. DIGGS: Your Honor, we don't object because of
9 vacation plans that apparently have been paid for.

10 THE COURT: All right. I'm going to excuse the
11 juror.

12 615, the Sheriff is looking.

13 616, no longer resides. 616, the Sheriff's
14 affidavit says unable to locate Dennis S. Szakacs in
15 Horry County. Moved to North Brunswick, New Jersey.

16 617, Roslyn V. Szymanski. Unable to locate Roslyn
17 Szymanski in Horry County by the Sheriff's affidavit.
18 Moved to San Jose, California.

19 The next one is 618, medical information. This is
20 Russell G. Taylor. This medical information is as a
21 result of his wife's situation and treatment with the --
22 having been transferred recently from Magnolia OB-GYN to
23 the Hollings Cancer Center at MUSC, talking about the
24 severity of her diagnosis, and he being her
25 transportation.

1 The State's position?

2 MR. RICHARDSON: No objection, Your Honor.

3 THE COURT: Defense?

4 MR. DIGGS: No objection.

5 THE COURT: Excused.

6 619 indicates they are a school employee. We have
7 a statement here -- well, just a statement of the person
8 saying they are a school employee and wish to be
9 transferred. Let's look at their juror information. It
10 says place of employment, Horry County School, indicates
11 he is a grounds-building custodian, 6:00 to 6:00.

12 What's the State's position?

13 MR. RICHARDSON: No objection, Your Honor.

14 THE COURT: Defense?

15 MR. DIGGS: No objection.

16 THE COURT: All right. You can transfer him to
17 another term.

18 620 no longer resides. Affidavit of the Sheriff
19 says unable to locate William H. Temple in Horry County.
20 Now residing in Charleston, South Carolina.

21 621 and 622, the Sheriff is still looking.

22 623, over sixty-five. Date of birth, 6/15/1928.

23 David A. Thomas, being eighty-one, wishes to be excused.

24 The State's position?

25 MR. RICHARDSON: No objection, Your Honor.

1 THE COURT: Defense?

2 MR. DIGGS: We object.

3 THE COURT: Excused.

4 624, unable to locate. The Sheriff's affidavit
5 states that unable to locate Dwight J. Thomas in Horry
6 County. Tried several times; no answer at this
7 residence. No forwarding found.

8 625, the Sheriff is still looking.

9 626, no longer resides. The Sheriff's affidavit
10 states that unable to locate Ginger H. Thompkins in
11 Horry County. Moved to Valles Mines, Missouri.

12 All right, 627, unable to locate. The Sheriff's
13 affidavit says unable to locate Brandon J. Tilley in
14 Horry County. No change on DMV; no forwarding found at
15 Post Office or apartment.

16 628, the Sheriff is still looking.

17 629, over sixty-five. Date of birth, 1/20/1944,
18 Bonnie S. Todd. Ms. Todd wishes to be excused. The
19 State's position. The State's position?

20 MR. RICHARDSON: No objection, Your Honor.

21 THE COURT: Defense?

22 MR. DIGGS: No objection.

23 THE COURT: 630, Charlie C. Todd. Date of birth,
24 1/18/1929, over sixty-five. Mr. Todd, being eighty, and
25 indicating he was unable to fill out the questionnaire,

1 wishes to be excused. The State's position?

2 MR. RICHARDSON: 630, Your Honor?

3 THE COURT: 630, over sixty-five.

4 MR. RICHARDSON: Your Honor, the State has no
5 objection.

6 THE COURT: Defense?

7 MR. DIGGS: Your Honor, we don't object based on
8 his inability to fill out the paperwork.

9 THE COURT: Very good. Excused for age.

10 631, 632, 633, 634, the Sheriff is still looking.

11 635, unable to locate. All right, the Sheriff's
12 affidavit says unable to locate William B. Truitt in
13 Horry County. Checked with maintenance, but believe
14 this subject passed away two years ago. There's a
15 person by the name of Vaughn in the residence.

16 Regarding 636, unable to locate. The Sheriff's
17 affidavit says unable to locate Sandra R. Trull in
18 Horry County. No phone listing. No such numeric
19 address.

20 637, and 638, and 639, the Sheriff is still
21 looking.

22 640, unable to locate. The Sheriff's affidavit
23 says unable to locate Douglas A. Valero in Horry County.
24 Driver's license suspended for failure to pay. No
25 longer at this address.

1 641 and 642, the Sheriff is still looking.

2 643, we have as a criminal record. We have a copy
3 here of an incarcerated inmate search from the South
4 Carolina Department of Corrections, for assault with
5 intent to kill, sentence length nine years, and he
6 started his incarceration 3/4/2009. The State's
7 position?

8 MR. RICHARDSON: We would wish that he be excused.

9 THE COURT: Defense?

10 MR. DIGGS: We agree.

11 THE COURT: He's excused because of his criminal
12 record.

13 All right, 644, unable to locate. The Sheriff's
14 affidavit indicates unable to locate Michael M. Vereen
15 in Horry County, no forwarding, no phone, and no power.

16 645, unable to locate. The Sheriff's affidavit
17 indicates unable to locate Jennifer L. Volpe in Horry
18 County. No one at address given. The South Carolina
19 tag number not registered to Volpe that was at the
20 address.

21 646, over sixty-five, Arlene Vong. Date of birth,
22 12/16/1932. Ms. Vong, being seventy-six, wishes to be
23 excused. The State's position?

24 MR. RICHARDSON: No objection.

25 THE COURT: Defense?

1 MR. DIGGS: Your Honor, she says she's in bad
2 health, so we don't object.

3 THE COURT: Excused.

4 647, the Sheriff is still looking for that person.

5 648, unable to locate. The Sheriff's affidavit
6 indicates unable to locate Ayeshia S. Walker in Horry
7 County. No longer lives there. Unknown where she
8 moved. She still has mail at this address and new
9 tenants send it back. Current tenant, Claire Johnson,
10 has lived there for almost one year and does not know
11 this person.

12 All right, for 649, unable to locate. The
13 Sheriff's affidavit indicates to locate Deborah Walker
14 in Horry County. Clara Johnson has lived at this
15 address for a year.

16 650, the Sheriff is still looking.

17 651 is a student. All right, we've got a statement
18 here from Horry-Georgetown Tech indicating that they are
19 registered and taking courses for the Fall of 2009, a
20 full-time nursing student. What's the State's
21 position?

22 MR. RICHARDSON: No objection, Your Honor, to a
23 transfer.

24 THE COURT: Defense?

25 MR. DIGGS: No objection.

1 THE COURT: All right. Transfer her to the
2 summer, please, Madam Clerk.

3 652, unable to locate. The Sheriff's affidavit
4 indicates unable to locate Renee F. Wallace in Horry
5 County. Unable to find any further information or
6 driver's license information.

7 653 is over sixty-five, Christina Walsh. Date of
8 birth, 9/4/1940. Ms. Walsh, being sixty-nine, wishes to
9 be excused. It also says she has a disabled son that
10 she cares for. The State's position?

11 MR. RICHARDSON: No objection, Your Honor.

12 THE COURT: Defense?

13 MR. DIGGS: No objection based on that ground.

14 THE COURT: All right, excused.

15 All right, 654, 655, 656, 657, 658, the Sheriff is
16 still looking for those individuals.

17 658 (sic) is coming in.

18 660, the Sheriff is still looking.

19 661, 662, the Sheriff is still looking.

20 663, Estelle B. Weaver, over sixty-five. Date of
21 birth, 11/25/1925. Ms. Weaver, being eighty-three
22 years of age, wishes to be excused. The State's
23 position?

24 MR. RICHARDSON: No objection, Your Honor.

25 THE COURT: Defense?

1 MR. DIGGS: We object.

2 THE COURT: Excused.

3 The Sheriff is looking for 664.

4 665 says over sixty-five, Mildred H. Welch.

5 5/31/1938, Ms. Welch being seventy-seven, wishes to be
6 excused. The State's position?

7 MR. RICHARDSON: No objection.

8 THE COURT: Defense?

9 MR. DIGGS: We object.

10 THE COURT: Excused.

11 All right, 666, Virginia A. Welles, over sixty-
12 five. Date of birth, 9/12/1927. Ms. Welles, being
13 eighty-two years of age, wishes to be excused. The
14 State's position?

15 MR. RICHARDSON: No objection, Your Honor.

16 THE COURT: Defense?

17 MR. DIGGS: Your Honor, we object.

18 THE COURT: Excused.

19 All right, the Sheriff is looking for 667, 668,
20 669, 670, 671, 672.

21 673, the indication being a student. We have
22 information here from Coastal Carolina University
23 indicating current enrollment. The date of the
24 enrollment and a verification certificate is October
25 14th, 2009. The State's position?

1 MR. RICHARDSON: No objection to a transfer, Your
2 Honor.

3 THE COURT: Defense?

4 MR. DIGGS: No objection.

5 THE COURT: Transfer her to the summer, please,
6 ma'am.

7 674, over sixty-five. Date of birth, 2/22/1944,
8 Ronald B. Whetstone. Mr. Whetstone, being over
9 sixty-five, wishes to be excused. The State's
10 position?

11 MR. RICHARDSON: No objection.

12 THE COURT: Defense?

13 MR. DIGGS: We object.

14 THE COURT: Excused.

15 All right, 675, William R. Whisnant, over sixty-
16 five. Date of birth being 9/6/1929. Mr. Whisnant,
17 being eighty years of age, wishes to be excused. The
18 State's position?

19 MR. RICHARDSON: No objection, Your Honor.

20 THE COURT: Defense?

21 MR. DIGGS: We object.

22 THE COURT: Excused.

23 676, there's an indication unable to locate. The
24 Sheriff's affidavit states that unable to locate
25 Timothy J. Whitbeck in Horry County. House at given

1 address is empty. No forwarding information.

2 The Sheriff is looking for 677.

3 678, Wanda White. Date of birth, 3/1/1934, over
4 sixty-five. Ms. White, being seventy-five, wishes to be
5 excused. Also, the Court notes certain medical
6 information she provided. The State's position?

7 MR. RICHARDSON: No objection, Your Honor.

8 THE COURT: Defense?

9 MR. DIGGS: Okay, we agree, Your Honor, based on
10 the medical.

11 THE COURT: 678 excused.

12 All right, 679, Bernice A. Whittington. Date of
13 birth, 9/28/1922, Ms. Whittington being eighty-seven
14 years of age, wishes to be excused. The State's
15 position?

16 MR. RICHARDSON: No objection, Your Honor.

17 THE COURT: Defense?

18 MR. DIGGS: No objection based on her health.

19 THE COURT: Excused.

20 The next one is 680, Allison R. Wible. Date of
21 birth, 1/9/1943. Ms. Wible, being sixty-six, wishes to
22 be excused. The State's position?

23 MR. RICHARDSON: No objection.

24 THE COURT: Defense?

25 MR. DIGGS: Again, Your Honor, no objection based

1 on the health of the juror.

2 THE COURT: All right, excused.

3 681, William Wickliffe. Date of birth, 8/2/1944.

4 Mr. Wickliffe, being over sixty-five, wishes to be
5 excused. The State's position?

6 MR. RICHARDSON: No objection, Your Honor.

7 THE COURT: Defense?

8 MR. DIGGS: We object, Your Honor.

9 THE COURT: Excused.

10 All right, the Sheriff is looking for 682, 683,
11 684, 685, and 686.

12 687 indicates they are over sixty-five. Date of
13 birth, 10/17/1942, Barbara F. Williamson. Ms.
14 Williamson being seventy-two (sic), wishes to be
15 excused. What's the State's position? I'm sorry. I
16 had the wrong date of birth. Her date of birth,
17 1/30/1937. I'm sorry; date of birth, 1/30/1937, age
18 seventy-two. What's the State's position?

19 MR. RICHARDSON: No objection, Your Honor.

20 THE COURT: Defense?

21 MR. DIGGS: Your Honor, because she says she's
22 ill, we don't object.

23 THE COURT: Excused.

24 The Sheriff is looking for 688.

25 689, we've got an unable to locate. The Sheriff's

1 affidavit indicates that unable to locate David L.
2 Wilson in Horry County. No forwarding address per Loris
3 Post Office.

4 690, the Sheriff is still looking.

5 691, unable to locate Rickey Wilson. Unable to
6 locate Rickey J. Wilson in Horry County by the
7 Sheriff's affidavit. Could not locate anyone at this
8 address.

9 The Sheriff is still looking for 692, 693, 694,
10 695, 696, 697.

11 698, we've got an unable to locate. The Sheriff's
12 affidavit says unable to locate Constance C. Yun in
13 Horry County. Moved from given address. No forwarding
14 found.

15 699, unable to locate. The Sheriff's affidavit
16 states unable to locate Nathaniel D. Zinnel in Horry
17 County. House address -- house at this address is for
18 sale. No forwarding found.

19 700, the Sheriff is still looking.

20 All right, we have gone through the information
21 that we have. We've set up another date for next
22 Friday. Counsel will go over the ones that the Sheriff
23 was still searching for at that point in time.

24 Also, there were a few that we had a criminal
25 record and the State was going to give those to the

1 Defense and then we could review those individuals with
2 a criminal record also next Friday.

3 Anything further from the State at this point in
4 time?

5 MR. HEMBREE: No, Your Honor.

6 THE COURT: From the Defense?

7 MR. DIGGS: No, Your Honor.

8 MS. WILLIAMS: Well, Your Honor, the only thing I
9 was going to say was we briefly discussed it last time
10 about having our client transported from Lieber to be
11 left here.

12 THE COURT: And I'm going to allow him once he is
13 transported back on the 30th.

14 MS. WILLIAMS: Well, Your Honor, what we were
15 going to have to -- if it would be okay if we could
16 actually have him on the 2nd. Apparently there's
17 something going on at Lieber that weekend, but either
18 to ---

19 THE COURT: Well, he has to be here on the 30th.

20 MS. WILLIAMS: Yes, sir.

21 THE COURT: Okay, so you want him to go back and
22 then come back on the 2nd.

23 MS. WILLIAMS: On Monday.

24 THE COURT: On Monday?

25 MS. WILLIAMS: Yes, sir. That -- that is our

1 request, and if that would be okay, we can obviously do
2 an order for you.

3 THE COURT: Okay. What is it that we can't -- I'm
4 sorry; I just don't understand. Why is it that when he
5 comes here on the 30th he would just not stay until the
6 trial was over with?

7 MS. WILLIAMS: The Court's indulgence one minute.

8 THE COURT: Yes.

9 MS. WILLIAMS: Your Honor, what it is, is there's
10 a fellowship seminar at the prison that weekend that Mr.
11 Stanko would like to participate in.

12 THE COURT: I appreciate that. What I'm going to
13 have is if -- and I understand that y'all need to work
14 with Mr. Stanko and I want him here for your help. When
15 he comes on the 30th, then he'll stay with us until the
16 end of the trial proceedings in this matter.

17 Madam Clerk, if you will communicate with the
18 Sheriff and inform the Sheriff and make sure that they
19 are aware that Mr. Stanko will be with us starting the
20 30th of October, next Friday, until the trial is
21 concluded in this matter, all right?

22 THE CLERK: Yes, sir.

23 THE COURT: All right, thank you, ma'am.
24 Anything further from the State?

25 MR. HEMBREE: No, Your Honor.

1 THE COURT: Anything further from the Defense?

2 MR. DIGGS: No, Your Honor.

3 THE COURT: Thank you very much.

4 (Conclusion of Transcript of Record.)

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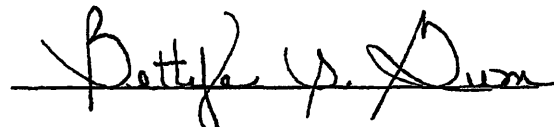
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF Horry)

3
4 I, the undersigned Bettye S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had and evidence introduced in the
9 hearing of the captioned case, as taken by Dixie Cox
10 Eubank, Official Reporter, and transcribed by me,
11 relative to appeal, in the Court of General Sessions for
12 Horry County, South Carolina.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15
16
17 July 7, 2010

18
19 

20 BETTYE S. GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina
23 My Commission Expires: 7/13/14
24
25

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
) Plaintiff,)
) -VS-) TRANSCRIPT OF RECORD
) Stephen Christopher Stanko,)
) Defendant.)

October 30, 2009
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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I N D E X
(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

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E X H I B I T I N D E X

(No Exhibits Marked)

1 THE COURT: All right, looking at the roll call
2 list, Madam Clerk, I understand from the number that the
3 Sheriff is looking at, there are still a few that the
4 Sheriff is still looking for. Do you have that, ma'am?

5 THE CLERK: I do.

6 THE COURT: All right. Could you tell me those?

7 MS. WILLIAMS: Your Honor, I'm sorry; if I may
8 before we begin, the Court has to direct if we may have
9 Mr. Stanko's -- at least one hand free so that he can
10 take his notes during the proceeding.

11 THE COURT: All right. Please, if y'all don't
12 mind doing that, to release one hand so he can make some
13 notes, please.

14 Thank y'all.

15 MS. WILLIAMS: Thank you, sir.

16 THE COURT: All right, Madam Clerk, go ahead.

17 THE CLERK: Yes, sir.

18 Number 6, Mayra Alfonso. Number 26, Thomas
19 Aumiller. 37, Darryl Bayne. 43, Daniel Begley. 84,
20 Rolando Calixto. 98, Ray Caulk. 116, Eryca Cook.

21 THE COURT: Hold on one second. All right.

22 MR. HEMBREE: Judge, I'm just curious. What are
23 these? Which ---

24 THE CLERK: These are the ones the Sheriff ---

25 THE COURT: The Sheriff is still looking for.

REVIEW OF ROLLCALL LIST FOR PANEL

4

1 MR. HEMBREE: Okay, understood.

2 THE CLERK: 129, Robert Crowe. 185, Stuart
3 Emmons. 209, Nicolas Fowler. 255, Richard Gregory.
4 272, Deborah Hattem. 540, Melody Rogers. 545, Scott
5 Roth.

6 THE COURT: All right, hold on one second. All
7 right, go ahead.

8 THE CLERK: 600, Barbara Stanley. And 686,
9 Barbara Williamson.

10 THE COURT: All right, so those are the numbers of
11 the ones that the Sheriff is still trying to locate or
12 get some information on.

13 Now what we'll do is go to the ones that since last
14 Friday the Sheriff has located and we'll go to the first
15 one that's number 7, Carolyn S. Allen, and I've got
16 information that this juror is over sixty-five. Her
17 birthday, 10/7/42, age sixty-seven, does not wish to
18 serve. The State's position?

19 MR. HEMBREE: No objection, Your Honor.

20 THE COURT: Defense?

21 MR. DIGGS: Your Honor, we would object.

22 THE COURT: All right. I'm going to excuse this
23 particular juror.

24 Number 15 is unable to locate by the Sheriff. It
25 states it's -- the Sheriff's affidavit states unable to

1 locate Darren J. Anderson in Horry County. Moved from
2 given address. No forwarding found.

3 Number 16, we have some information about a
4 commissioned law enforcement officer. He works for
5 Probation, is that correct, Madam Clerk?

6 THE CLERK: A DEU Unit, a DEU officer, I think,
7 from Probation, out of Probation. That's what he had
8 told me.

9 THE COURT: All right. Solicitor, do we have --
10 is that the information y'all have?

11 MR. HEMBREE: Yes, Your Honor, that's he an
12 officer with South Carolina Probation, Pardon, & Parole
13 Services, and they do have someone assigned to the DEU
14 Task Force, so I don't -- either way, he's a
15 commissioned law enforcement officer.

16 THE COURT: All right, very good, and the
17 Defense's position?

18 MR. DIGGS: Your Honor, we don't -- he's being
19 excused, is that correct?

20 THE COURT: Well, that's what I'm asking you.
21 He's ---

22 MR. DIGGS: All right. Well, we don't object to
23 him being excused and we ask that he be excused.

24 THE COURT: All right, very good. He is excused.
25 All right, the next one we have, then, is Number

1 27.

2 THE CLERK: She came in to see me this morning.
3 She could not read or write in English.

4 THE COURT: All right. The Clerk informs me that
5 this juror came in to speak to the Clerk this morning,
6 indicates she cannot write the English language and as
7 it indicates, barely is able to speak the English
8 language. What is ---

9 MR. HEMBREE: The State has no objection to
10 excusing this juror.

11 THE COURT: Defense?

12 MR. DIGGS: We don't object to her being excused.

13 THE COURT: All right, excused.

14 The next one we have, then, is Number 41 ---

15 THE CLERK: Number 34.

16 THE COURT: Oh, I'm sorry. Okay, 34; I'm sorry.
17 I skipped over somebody. Number 34; I'm sorry.

18 Number 34, Jay T. Basham. The Sheriff's affidavit
19 indicates that unable to locate Jay T. Basham, Jr. in
20 Horry County. Not at given address. No forwarding
21 found.

22 All right, now we'll go to Number 41. That juror
23 did fill out the juror questionnaire and is coming in.

24 The next one after that, then, is Number 61,
25 Margaret Bolt, over sixty-five, wishes to be excused.

1 Date of birth, 8/23/1921. The State's position?

2 MR. HEMBREE: No objection to excuse this juror.

3 THE COURT: Defense?

4 MR. DIGGS: Your Honor, we would object.

5 THE COURT: Excused.

6 The next one is juror number 64. Juror number 64
7 has filled out the juror questionnaire form and will be
8 coming in.

9 The next one is juror number 73. Juror number 73
10 has filled out the juror questionnaire form and will be
11 coming in.

12 The next one is juror number 76. Juror number 76
13 has filled out the juror questionnaire form and will be
14 coming in.

15 The next one we need to go to is juror number 91.
16 The Sheriff's affidavit indicates that is unable to
17 locate Candace A. Carter in Horry County. Advised by
18 foster father this person is in the military in the
19 State of Kansas. Has been serving in the military for
20 three years. The State's position?

21 MR. HEMBREE: Please excuse this juror, Your
22 Honor.

23 THE COURT: Defense?

24 MR. DIGGS: Your Honor, we don't object to an
25 excusal.

1 THE COURT: All right, excused.

2 The next one we have is juror number 108. The
3 Sheriff's affidavit indicates that Samantha N. Clemmons
4 -- unable to locate Samantha N. Clemmons in Horry
5 County. Now resides in Hallsboro, North Carolina.

6 The next one we have is juror number 112. Let's
7 see, 112, unable -- we've got here unable to locate. It
8 says, "Review for criminal history." That was the one
9 -- we might have gone over 112 last time, but we
10 indicated there was a criminal history.

11 Solicitor, y'all gave a copy of that to the
12 Defense?

13 MR. HEMBREE: I believe we have not yet, Your
14 Honor.

15 THE COURT: Okay. Well, how about y'all do that.
16 I had hoped we had so they could make a decision on
17 that, but ---

18 MR. HUMPHRIES: Your Honor, is this an unable to
19 locate?

20 THE COURT: I'm sorry; this was an unable to
21 locate, so we don't have to worry about them. All
22 right, I'm sorry. I was just looking at the notes on
23 the side instead of the UTL on the other side.

24 All right, let's go to 118. I'm sorry. All right,
25 118, Lucinda A. Cook has a medical excuse, let's see,

1 from Pain, Spine, and Sports Medicine. It says, "Please
2 excuse from jury duty." I don't know what that word is,
3 and then it's some word that I cannot decipher -- "to
4 medical problems." Looking at the juror questionnaire
5 form to see if that will help us in any way -- do y'all
6 have a copy of the juror questionnaire form?

7 MR. HUMPHRIES: We do, Your Honor.

8 THE COURT: If y'all will look at the answers to
9 questions 21 and 48.

10 MR. HUMPHRIES: Yes, sir. We don't have any -- we
11 don't have any problem with excusing that juror.

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

13 MR. DIGGS: Your Honor, we don't have any
14 objection to her being excused.

15 THE COURT: All right. We'll excuse juror number
16 118, Madam Clerk.

17 All right, so 120, apparently we were going to
18 review for criminal history, but the Sheriff has
19 indicated -- here is the Sheriff's affidavit, unable to
20 locate Thomas C. Cooper in Horry County. Vacant mobile
21 home at given address. No forwarding found, so that's
22 120.

23 All right, the next one we have, then, is 125.
24 We've got a statement from the juror, Erin Counts,
25 indicates she has two children under the age of seven,

1 is unable to provide alternative or adequate child care.
2 It is her notarized affidavit to that effect. What is
3 the State's position?

4 MR. HEMBREE: Your Honor, Ms. Counts would be
5 entitled to an excusal. We would ask that she be
6 excused.

7 THE COURT: Defense?

8 MR. DIGGS: No objection.

9 THE COURT: All right, excused.

10 All right, Juror Number 126, we have a copy of a
11 death certificate. The juror died on 10/5/09.

12 The next one is juror -- let's see, number 142.
13 She indicates in her verification to the Clerk that she
14 is the primary caretaker of a disabled person, or a
15 person age sixty-five or older who cannot care for
16 themselves. Let's look at the juror -- got a place of
17 employment, though, as Blue Cross-Blue Shield, claims
18 associate. Business hours, 8:00 to 4:00; length of
19 employment, fifteen years. This apparently is one
20 employee that does work from home through -- for Blue
21 Cross-Blue Shield through a computer set-up at home.

22 Do we have any information about who this person is
23 that they're taking care of?

24 MR. HUMPHRIES: The husband. I think it's the
25 husband.

1 MR. HEMBREE: She says the husband is totally
2 disabled.

3 THE COURT: It says spouse's name is Robert C.
4 Davis -- oh, retired/disabled. I'm sorry, so it does
5 indicate the spouse is retired/disabled. Oh, here it
6 is, 23: "My husband is a hundred percent disabled," in
7 question number 23. All right, what's the State's
8 position?

9 MR. HEMBREE: We'd ask that Ms. Davis be excused.

10 THE COURT: Defense?

11 MR. DIGGS: We -- we agree and join in the motion.

12 THE COURT: All right, excused.

13 All right, the next one is 143. The Sheriff's
14 affidavit, unable to locate Henry A. Davis in Horry
15 County, gone from given address for two weeks. No
16 forwarding found. That's juror number 143.

17 The next one that we have is 144. The Sheriff's
18 affidavit, unable to locate Jimmy D. Davis in Horry
19 County. Not at given address. No forwarding found.

20 Going to juror number 158, juror number 158 filled
21 out the juror questionnaire and is coming in.

22 Then we go to juror number 183. There was a change
23 in the address for juror number 183, filled out the
24 juror questionnaire form and is coming in.

25 Going down to juror number 192, the only

1 information we have from juror number 192 is a statement
2 from Surgical Associates of Myrtle Beach signed by Mark
3 R. Borowicz, M.D., reference Donna Hinson, juror number
4 192. "To whom this may concern: "Donna Hinson has been
5 called to serve jury duty on 11/9/09. Her husband,
6 Donald Hinson, is scheduled to have major surgery on the
7 same day and she will need to be with him. Therefore,
8 Mrs. Hinson will be unable to serve as a juror at that
9 time."

10 What's the State's position?

11 MR. HEMBREE: Your Honor, we ask that this juror
12 be required to come in on the 6th. It's just unclear
13 here if that major surgery is going to require her to be
14 with him for a period of time or just the 9th. If it's
15 just the 9th, we could certainly address that by -- even
16 if she was selected in a first-day panel, we could just
17 carry her -- her voir dire over until the 10th or 11th.

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

19 MR. DIGGS: Your Honor, we don't object to her
20 being excused. The doctor said major surgery. You
21 know, that probably includes some follow-up time, and so
22 we don't object to her being excused and rescheduled.

23 THE COURT: Do we have a phone number for this
24 individual, Madam Clerk? We didn't get anything else
25 other than this document?

1 I'll excuse this particular juror.

2 THE COURT REPORTER: Barbara Farmer is listed on
3 mine as juror 192.

4 THE CLERK: What number is on that?

5 THE COURT: That's right.

6 THE CLERK: What number is written on the top up
7 there?

8 THE COURT: 192; 192, and this is as to Donna
9 Hinson. I'm sorry..

10 THE CLERK: We have the wrong number on there.

11 THE COURT: I'm sorry. We were talking about the
12 wrong particular person, so who is ---

13 THE COURT REPORTER: Barbara Farmer is listed as
14 192.

15 THE COURT: Barbara Farmer is 192. Thank you,
16 Madam Court Reporter. I'm sorry.

17 So what do we have for Ms. Barbara Farmer? Do we
18 have anything on her?

19 THE CLERK: We don't have anything on her.

20 THE COURT: I don't know what Ms. Hinson's number
21 is.

22 MR. HUMPHRIES: She doesn't appear.

23 MR. HEMBREE: She may be summoned for another term
24 of court, Judge.

25 THE CLERK: I bet you she is for my other November

1 the 9th.

2 THE COURT: She probably is. That's what it is,
3 so do we have anything on 192 at all? Let's look at
4 192.

5 MR. DIGGS: Your Honor, she's over sixty-five.

6 THE COURT: Did we address that last time?

7 THE CLERK: No, we did not address that last time.

8 THE COURT: Do we have a questionnaire?

9 THE CLERK: We do not because I got it mixed up
10 with the other one.

11 THE COURT: All right, so we're going to add 192,
12 Barbara Farmer, to the Sheriff's list and the Sheriff
13 will go out and try and get some information on juror
14 number 192, all right?

15 THE CLERK: I'm sorry, Your Honor.

16 THE COURT: That's all right.

17 Okay, 202, I've got a note here is a review for
18 criminal history.

19 THE CLERK: I have no paperwork.

20 THE COURT: 202, did y'all -- Solicitor, that was
21 something y'all had, a criminal history? Did you give a
22 copy of that to the Defense?

23 MR. HEMBREE: We have not. We can share it with
24 him.

25 THE COURT: All right. What do we have on

1 juror ---

2 MR. HEMBREE: We have a breaking into motor
3 vehicle. It was five years suspended on five years
4 probation, a conviction in 1996.

5 THE COURT: All right. Mr. Diggs, what's the
6 Defense's position on juror number 202?

7 MR. DIGGS: Your Honor, we don't object to him
8 being excused based on his history.

9 THE COURT: All right, very good. 202 is excused
10 then.

11 All right, going to juror number 203, we have an
12 affidavit from the Sheriff's Office, unable to locate
13 Clara W. Ford in Horry County. Not at given address.
14 Subject possibly living in Murrells Inlet. Her neighbor
15 could not obtain a physical address. Obtained phone
16 number; called, left message. No response. That was
17 203.

18 All right, 207, we did have a matter about criminal
19 history, but we have a Sheriff's affidavit unable to
20 locate, unable to locate Jonthan Foster in Horry County.
21 Not at this address. No such name at the United States
22 Postal Service. No forwarding found.

23 The next we go down to is 222. This juror did fill
24 out the juror questionnaire and supplied that
25 information. Was there some criminal history

1 information that you had, Solicitor?

2 MR. HEMBREE: Yes, Your Honor.

3 THE COURT: What is that?

4 MR. HEMBREE: He was convicted of burglary in the
5 second degree, received a sentence of thirty-six months
6 probation. That was in 1993. It's a rather lengthy
7 record, Your Honor. I can go through it if you'd like
8 me -- a controlled substance -- if you need to.

9 MR. DIGGS: Your Honor, we don't need any
10 additional information. We don't object to his excusal.

11 THE COURT: All right. The Defense agrees for an
12 excusal?

13 MR. DIGGS: Yes, sir.

14 THE COURT: All right, excused.

15 MR. HEMBREE: Thank you.

16 THE COURT: All right, the next one we have then
17 is 224. 224 filled out the juror questionnaire form and
18 will be coming in. There was a change of address on
19 that particular juror.

20 227, juror number 227, filled out the juror
21 questionnaire form and will be coming in.

22 All right, go to juror number 230. We've got a
23 Sheriff's affidavit, unable to locate Stephens L.
24 Gibbons, Jr. in Horry County. Post Office box inactive
25 since 2003. No physical address available from the

1 United States Postal Service.

2 Going to juror number 233, the Sheriff's affidavit,
3 unable to locate Jamie E. Giffen in Horry County.
4 Vacant mobile home at given address. No forwarding
5 found.

6 We need to go down, it looks like, to juror number
7 239. Y'all had some criminal history information on
8 239, Solicitor?

9 MR. HEMBREE: Yes, Your Honor. This is Mr. Dario
10 Gonzalez. He has a criminal conviction for non-support
11 in another -- this is in Calvert County, Maryland. He
12 was sentenced to three years, suspended on two years and
13 three hundred and fifty-eight days probation. That's
14 the extent of his criminal record.

15 THE COURT: All right. What's the Defense's
16 position?

17 MR. DIGGS: No objection to excusal.

18 THE COURT: All right, excused.

19 All right, the next one is 242. The Sheriff's
20 affidavit, unable to locate Kenneth E. Gore in Horry
21 County, not at given address, no forwarding found.

22 The next one we have then is juror number 243.
23 Juror number 243 filled out the juror questionnaire and
24 will be coming in.

25 Then we go down to juror number 248. The Sheriff's

1 affidavit, unable to locate Barbara C. Grant in Horry
2 County. No forwarding found.

3 Then we go to juror number 254. The Sheriff's
4 affidavit, unable to locate Patricia A. Gregory in Horry
5 County. No forwarding found.

6 Just so we cover it and we, I'm sure, will probably
7 deal with it again later, 259, y'all have looked at
8 juror number 259 and aware who juror number 259 is?

9 MR. HEMBREE: Yes, Your Honor. That would be Mr.
10 Humphries' brother-in-law.

11 THE COURT: And that would be the Deputy
12 Solicitor's brother-in-law.

13 MR. HUMPHRIES: He says he would rather come in
14 and not be selected so he wouldn't get selected for
15 another panel, for another jury.

16 THE COURT: What is -- does the Defense have any
17 position at this point in time?

18 MR. DIGGS: Your Honor, we don't object to him
19 being excused, given the relationship. I realize it's
20 an in-law, and normally that would be something we would
21 like, but we don't object to him being excused.

22 THE COURT: All right. What I am going to do is
23 transfer Mr. Guest to another term of court. Preferably
24 you will make it a term of civil court and not criminal
25 court, all right?

1 THE CLERK: Yes, sir.

2 THE COURT: Thank you, Madam Clerk.

3 All right, going to juror number 266, the Sheriff's
4 affidavit, unable to locate Crystal J. Hardwick in Horry
5 County. This person has moved out of the State of South
6 Carolina.

7 The next one we have is juror number 270. The
8 Sheriff's affidavit says unable to locate Phyllis A.
9 Hart in Horry County. Moved to Texas in 2007 and there
10 is a report from the South Carolina DMV where the South
11 Carolina driver's license was surrendered, returning to
12 the State of Texas.

13 You have some information on 291, Solicitor, Morris
14 M. Holiday?

15 MR. HEMBREE: Yes, Your Honor. It appears Mr.
16 Holiday was convicted of armed robbery in Duffy County,
17 Georgia, in 1979.

18 MR. DIGGS: No objection, Your Honor.

19 THE COURT: All right. He is excused.

20 All right, juror number 295, the Sheriff's
21 affidavit, unable to locate Jessica A. Holloway in Horry
22 County. No forwarding found. Left card; no response,
23 295.

24 The next one is juror number 304, Fred Hunter, Sr.
25 Date of birth, 5/29/1943, is over the age of sixty-five.

1 Wishes to be excused. What's the State's position?

2 MR. HEMBREE: No objection, Your Honor.

3 THE COURT: Defense?

4 MR. DIGGS: We object.

5 THE COURT: Excused.

6 All right, the next one we go down is to juror
7 number 307, filled out the juror questionnaire form, is
8 coming in. There was a change of address for that
9 particular juror.

10 Juror number 308, the Sheriff's affidavit states
11 unable to locate Cammy A. Hyman in Horry County. Now
12 resides in Georgetown County, and there was attached to
13 that the driver's license record or information from the
14 DMV showing the Georgetown County address.

15 Number 310, the information we have from the
16 affidavit of the Clerk is that this particular juror is
17 deceased, and there's a copy of the obituary. The juror
18 died on January 16th, 2009.

19 The next one is juror number 311, unable to locate
20 James G. Inman in Horry County. No power; no phone.
21 Not in the South Carolina Department of Motor Vehicle
22 file base.

23 Going down to juror number 313, the Sheriff's
24 affidavit, unable to locate Melissa A. Isaacson in Horry
25 County. No forwarding found. Left card; no response.

1 Going to juror number 317, the Sheriff's affidavit,
2 unable to locate Charles T. Jackson in Horry County.
3 Moved from given address. No forwarding found.

4 The next juror, number 318, affidavit from the
5 Clerk of Court stating that the juror is in the military
6 stationed in Washington, D.C., through information
7 supplied by his mother. He had also called the Clerk's
8 Office and the return number was the Washington area
9 code of 202.

10 All right, going to juror number 319, that juror
11 filled out the juror questionnaire form, is coming in.
12 Solicitor, you have some information on this particular
13 juror?

14 MR. HEMBREE: We had a criminal record on juror,
15 Minnie Jackson.

16 THE COURT: Okay.

17 MR. HEMBREE: It indicates that she has a burglary
18 -- well, a number -- quite a number of convictions, but
19 the earliest one, 1991, for burglary of a building,
20 which she was convicted in Harris County, Texas, and
21 received a three year sentence.

22 THE COURT: All right. I will just note it for
23 the record her place of employment is with the Horry
24 County School System as a substitute teacher.

25 All right, going on to juror number 324, the

1 Sheriff's affidavit states unable to locate Kristina M.
2 Jennings in Horry County. No forwarding information
3 could be found.

4 The next -- I'm sorry; 325, Solicitor, Tracey L.
5 Jenrette, you have some information?

6 MR. HEMBREE: Yes, Your Honor. Ms. Jenrette was
7 convicted, among other things, -- her first conviction
8 was for a forgery in 1991 here in Horry County. She
9 received three years, suspended on two years probation.

10 THE COURT: Mr. Diggs?

11 MR. DIGGS: No objection, Your Honor.

12 THE COURT: All right, excused. Thank you.

13 MR. HEMBREE: Thank you, Your Honor.

14 THE COURT: All right, the next, 328, the Clerk's
15 affidavit, this juror has passed away. A copy of the
16 obituary is attached showing that Ms. Johnson died on
17 November 2nd, 2007.

18 332, we do have the juror questionnaire form filled
19 out now. Solicitor, you have some information about a
20 criminal history?

21 MR. HEMBREE: Yes, Your Honor, if I may. It
22 indicates there is a conviction for bringing contraband
23 into the jail in 1993, for which she received three
24 years concurrent with another charge. She had her
25 driver's license suspended also. Conspiracy to

1 distribute cocaine and marijuana. There appears to be a
2 marijuana charge also, a marijuana conviction.

3 THE COURT: All right, Mr. Diggs?

4 MR. DIGGS: No objection, Your Honor.

5 THE COURT: All right, excused.

6 339, the place of employment for this particular
7 juror is he is an Horry County police officer. The
8 State's position? 329 -- 339; I'm sorry. 339, William
9 P. Johnson, William Paul Johnson, employed at the Horry
10 County Police Department, it says for 2.7 years.

11 MR. HUMPHRIES: He's disqualified.

12 THE COURT: Defense?

13 MR. DIGGS: We agree.

14 THE COURT: Excused.

15 The next one we go to is 358. The Sheriff's
16 affidavit, unable to locate David J. King in Horry
17 County. Not at this address. Left card; no response.
18 No forwarding found for this particular juror.

19 Then we go on to juror number 366. Juror number
20 366 filled out the juror questionnaire and is coming in.

21 All right, juror number -- the next one is juror
22 number 369. The Sheriff's affidavit, unable to locate
23 Denise M. Kurdi in Horry County. No forwarding found.
24 Left card; no response.

25 All right, juror number 376. The Sheriff's

1 affidavit, unable to locate June S. Lawson in Horry
2 County. Now resides in the State of Ohio. We've got a
3 report from the DMV indicating that the South Carolina
4 driver's license was surrendered, indicating that the
5 driver was returning to the State of Ohio.

6 All right, the next one we go on then to is juror
7 number 385. This juror has filled out the juror
8 questionnaire form and is coming in.

9 388 filled out the juror questionnaire form and is
10 coming in.

11 391, Solicitor, we had marked that down for a
12 review for criminal history.

13 MR. HEMBREE: Yes, Your Honor. Upon further
14 review, that is not this juror.

15 THE COURT: Okay, very good. So that juror will
16 continue to come in, and we have their paperwork
17 already.

18 All right, let's go to juror number 400, was an
19 unable to locate. Juror number 400, unable to locate.
20 I think we also had a review for criminal history. I
21 don't have the Sheriff's affidavit for 400, Jaime W.
22 Lowry.

23 What information did you have for the crim- ---

24 THE CLERK: We did that one on the ---

25 THE COURT: We already did that one?

1 THE CLERK: We dealt with that one on 10/29.

2 THE COURT: I'm sorry. We already did that one.

3 THE CLERK: I just had it because of the criminal
4 history.

5 THE COURT: All right, so we already covered that
6 one the last time, I'm sorry, with the Sheriff's
7 affidavit.

8 All right, let's go on then to 403. The Sheriff's
9 affidavit, unable to locate Alexandra I. MacFarlane in
10 Horry County. Not at given address. Checked Post
11 Office. No phone. Checked with current resident. No
12 forwarding found. Unable to locate.

13 Juror -- let's see, 405. Solicitor, it says review
14 for criminal record.

15 MR. HEMBREE: Your Honor, she was transferred to
16 another term, I believe, 405 was.

17 THE COURT: Okay; all right, transferred out, but
18 then something came in for -- okay, well, we'll just
19 have to ---

20 THE CLERK: Well, I have the criminal record from
21 the Solicitor's Office, and I didn't know if you wanted
22 to address it. I just put it in if you did want to
23 address it.

24 THE COURT: Do you still have that with you?

25 MR. HEMBREE: No, Your Honor, we don't have it.

1 THE COURT: All right, so we'll just have to deal
2 with that whenever she's ---

3 THE CLERK: I transferred to the first or second
4 week in June.

5 THE COURT: We'll just have to deal with it at
6 that point in time, then.

7 All right, 408, juror number 408, was located,
8 filled out the paperwork, the juror questionnaire form,
9 and is coming in.

10 All right, we need to go down to juror number 412.
11 I think we had gone over this particular person last
12 time, but we did not review their request for an
13 exemption, indicating that they are the primary
14 caretaker of a disabled person over -- or a person over
15 the age of sixty-five who cannot care for themselves.
16 That's the spouse -- the spouse is disabled, and they
17 have requested the exemption regarding that. What is
18 the State's position? They are not currently employed
19 or do not show employment.

20 MR. HEMBREE: We have no objection to this juror
21 being excused, Your Honor.

22 THE COURT: All right. Defense?

23 MR. DIGGS: We don't -- we don't have any
24 objection on this case.

25 THE COURT: All right, excused.

1 All right, number 418. There was a change of
2 address. The juror has been located, filled out the
3 juror questionnaire form and is coming in.

4 Going to 419, the Sheriff's affidavit, unable to
5 locate William S. McClain in Horry County. No
6 forwarding information could be found. This address
7 appears to be a weekend home.

8 Then we go to juror number 421. The Sheriff's
9 affidavit, unable to locate Jack D. McCoy in Horry
10 County. Checked power company, checked South Carolina
11 Department of Motor Vehicles, checked phone book. No
12 information found.

13 Juror number 425. The Sheriff's affidavit, unable
14 to locate Judy B. McGinnis in Horry County. Not at this
15 address. Checked Post Office. No phone. Checked with
16 neighbor. No forwarding information found.

17 Juror number 430. The Sheriff's affidavit, unable
18 to locate Miranda B. McLaughlin in Horry County. Now
19 residing at 906 Horry Street, Georgetown, South
20 Carolina, and there is a report here from the Department
21 of Motor Vehicles indicating the Georgetown County
22 address.

23 Going now to juror number 432. The Sheriff's
24 affidavit, unable to locate Brian E. McLeland in Horry
25 County. Checked address given, no answer. Left card;

1 no response. No forwarding information found.

2 All right, go to juror number 436, gentlemen.

3 We've got the affidavit of Peggie G. McNeil. Date of
4 birth, 10/1/1931, requests to be excused, age seventy-
5 eight. The State's position?

6 MR. HEMBREE: No objection, Your Honor.

7 THE COURT: Defense?

8 MR. DIGGS: Your Honor, we object.

9 THE COURT: Excused.

10 Go down then to juror number 439. The Sheriff's
11 affidavit, unable to locate Nilsson Ste. Mendoza in
12 Horry County. Not in the South Carolina Department of
13 Motor Vehicle records. No forwarding address found.

14 We've got here juror number 448, review for
15 criminal record, Solicitor.

16 MR. HEMBREE: Your Honor, I am not completely
17 convinced that this Vickie B. Miller is the same Vickie
18 B. Miller we have in our criminal history. Does the
19 Clerk have a ---

20 THE COURT: All right.

21 MR. HEMBREE: Madam Clerk, do you have a Social
22 Security number for her?

23 THE CLERK: That's not on the questionnaire.

24 MR. HEMBREE: Okay, so ---

25 THE CLERK: I do have her paperwork, though.

1 THE COURT: Well, we'll just have juror number 448
2 come in, then, and then we will just note that for the
3 record, gentlemen, and y'all -- we'll just make sure we
4 find out that information when we talk to that
5 particular juror.

6 MR. HEMBREE: Thank you, Your Honor.

7 THE COURT: All right, let's go to 463. The
8 Sheriff's affidavit, unable to locate John M. Motto in
9 Horry County. Now living in the State of Maryland, and
10 there was an information -- a paste-up that this juror
11 had sent in indicating working in and showing an address
12 of out of state.

13 All right, 466, Thomas G. Murray. That juror was
14 located, filled out the juror questionnaire form and he
15 is coming in.

16 471, you've got noted for review for criminal
17 history, Solicitor.

18 MR. HEMBREE: Yes, Your Honor. It appears that
19 Mr. Nealy was convicted of possession of stolen vehicle
20 in Horry County in 1991, received a sentence of one
21 year, suspended on one year probation.

22 THE COURT: All right, Mr. Diggs?

23 MR. DIGGS: We don't object.

24 THE COURT: All right, excused.

25 All right, the next one we then go to is 473.

1 There was a change of address for this particular juror.
2 They have filled out the juror questionnaire form and
3 are coming in.

4 Going down then to juror number 487, that juror was
5 located, filled out the juror questionnaire form and is
6 coming in.

7 Going down to juror number 491, the Sheriff's
8 affidavit, unable to locate Jessica L. Patrick in Horry
9 County. Checked Post Office. No phone. Checked with
10 letter carrier. Moved to New York. The home that was
11 in South Carolina is leased to someone else.

12 Let's look at 495. Apparently y'all don't have
13 this particular fax that Madam Clerk just got this
14 morning. I will read it verbatim. It's got apparently
15 a Santee Cooper logo on it, and it says, "Attention:
16 Clerk of Court. My name is Ronald K. Peavy. I received
17 a juror summons for Circuit Court," and that's juror
18 number 495, "for Circuit Court for the term beginning
19 the week of November 6, 2009. The intent of this letter
20 is not to answer my summons for jury duty. It is to
21 have it delayed to another term of court. Since
22 receiving the summons, I have been promoted to
23 supervisor at my work and will need to be out of town
24 November 10th and November 11th to attend training
25 classes. These front-line supervision classes are only

1 offered on a limited basis and it will be many months
2 before they are offered again. These classes are
3 critical for new supervisors to attend as part of their
4 initial training and to complete the promotion process.
5 If more clarification is needed, please let me know and
6 I can have my management provide you with any necessary
7 paperwork," and just says, "Thanks, Ronald Kevin Peavy,
8 juror number 495," with a phone number.

9 What would be the State's position?

10 MR. HEMBREE: Your Honor, we really don't have a
11 position one way or the other. That's such a close
12 call. I don't have any objection to his being excused.

13 THE COURT: Defense?

14 MR. DIGGS: We don't object to him being
15 transferred, Your Honor.

16 THE COURT: All right. Let's transfer him to
17 another term of court, please, Madam Clerk.

18 All right, the next one then we would go down to is
19 juror number 500. The Sheriff's affidavit states unable
20 to locate Natasha P. Pepper in Horry County. Moved to
21 Georgetown County.

22 Go down then to juror number 504, Joe W. Phillips.
23 The Sheriff's affidavit, unable to locate Joe W.
24 Phillips in Horry County. The lady next door stated
25 this person moved two years ago.

1 Go to juror number 507, if y'all will. There was a
2 change of address. The juror did fill out the juror
3 questionnaire form. They checked the block that says,
4 "I have legal custody and duty of care of child under
5 the age of seven and am unable to provide adequate child
6 care while performing jury duty." It does -- and the
7 juror questionnaire form indicates place of employment;
8 it says "Unemployed, but part-time Horry-Georgetown
9 Technical College professor Monday and Wednesday, 1:15
10 to 4:15." Looking at the -- where it has for children,
11 has one that's eight and one that's twenty, so what's
12 the State's position?

13 MR. HEMBREE: Your Honor, we'd ask that this juror
14 be required to come in.

15 THE COURT: All right. Does the Defense agree?

16 MR. DIGGS: We agree.

17 THE COURT: All right. Have the juror come in on
18 the 6th, please.

19 Juror number 509, there is no doctor's excuse. The
20 information we have from the Deputy that visited this
21 person to get them to fill out the juror questionnaire
22 form verifies the statement on the juror questionnaire
23 form that says that the person is disabled, and if you
24 look at question number 21, disability, walked with a
25 cane, and wheelchair. It also has the answer to number

1 48, bad memory loss. What's the State's position?

2 MR. HEMBREE: We would ask this juror be excused,
3 Your Honor.

4 THE COURT: Defense?

5 MR. DIGGS: Yeah, we would, too, based on his
6 anxiety and depression.

7 THE COURT: All right, very good. Based on the
8 information provided, I find the juror should be
9 excused.

10 All right, let's go down then to juror number 517.
11 The Sheriff's affidavit, unable to locate Tyrell C.
12 Pyatt in Horry County. Now resides in Charleston, South
13 Carolina, have a copy from the Department of Motor
14 Vehicles indicating a Charleston, South Carolina,
15 address.

16 Juror number 518, there was a change of address.
17 The juror has filled out the juror questionnaire form
18 and is coming in.

19 528, we did get a juror questionnaire form filled
20 out by this particular person. I have here there was a
21 review for criminal history, Solicitor.

22 MR. HEMBREE: That is correct, Your Honor. Let me
23 go back just for the record. We also had a review on
24 number 524.

25 THE COURT: 524, all right. I didn't see that.

1 MR. HEMBREE: And I've reviewed -- sorry, Your
2 Honor. In more carefully reviewing that, I'm not
3 convinced that that's the same person, and we'd ask that
4 that person come in.

5 THE COURT: All right, sir, great, so we're having
6 524 come in. Good.

7 MR. HEMBREE: And give me one moment to take a
8 look at 528. Yes, Your Honor, it appears that Mr.
9 Michael Richburg was convicted of burglary in 1986 in
10 Horry County and received a youthful offender sentence
11 of one to six years.

12 THE COURT: All right. The Defense position?

13 MR. DIGGS: We don't object to his being excused.

14 THE COURT: All right, sir. 528 then is excused.

15 All right, it looks like we need to look at number
16 533 for review for criminal history -- oh, I'm sorry;
17 529 first.

18 529, the juror was located, filled out the juror
19 questionnaire form and is coming in.

20 All right, 533, reviewed for criminal history. We
21 also have a Sheriff's affidavit, unable to locate Angel
22 L. Rivera in Horry County. Not at given address. No
23 forwarding found. Unable to locate.

24 534, the juror was located, filled out the juror
25 questionnaire form, and is coming in.

1 Going to 548, the change of address for that juror,
2 the juror filled out the questionnaire form and is
3 coming in.

4 All right, go to juror number 551, Broaddus L.
5 Rutledge. The Clerk's affidavit, -- date of birth,
6 3/21/1933, and is over sixty-five; wishes to be excused.
7 The State's position?

8 MR. HEMBREE: No objection, Your Honor.

9 THE COURT: Defense?

10 MR. DIGGS: We object.

11 THE COURT: Excused.

12 Okay, 559, Solicitor, we've got a review for
13 criminal history?

14 MR. HEMBREE: Yes, Your Honor. It appears that
15 Mr. Schreiber was convicted of possession of narcotics
16 and received -- this was in -- it's an out of state
17 record, Your Honor. I have to interpret it a little
18 more. It was a 1982 conviction, four years suspended on
19 four years probation.

20 THE COURT: All right. Mr. Diggs?

21 MR. DIGGS: No objection.

22 THE COURT: Excused.

23 All right, 563. Let's look at 563, if we could,
24 Counsel. The juror questionnaire indicates the place of
25 employment, the South Carolina Department of Health and

1 Environmental Control. Current job title or
2 description, law enforcement. There is a statement, a
3 facsimile, that the Clerk of Court received from this
4 individual. I'll read it to you verbatim.

5 "Mrs. Huggins, I wanted to inform to whom it" -- it
6 says "my." I assume it is "may concern. I am now and
7 have been since 1980 a full-time law enforcement officer
8 with the State of South Carolina, DHEC. I do have
9 statewide jurisdiction and authority to enforce laws of
10 the state. My concern is being a police officer, does
11 this disqualify me from serving as a jury member. If
12 so, I would like to know because I am having a
13 camping/hunting trip planned with my son for the 6th
14 through the 9th of October," and he goes on to talk
15 about this rewarding him for his grades and things of
16 that nature.

17 What's the State's position about his law
18 enforcement exemption?

19 MR. HEMBREE: Your Honor, I know Officer Sechler
20 and he is a -- he does have statewide jurisdiction,
21 statewide powers of arrest, and he would not be
22 qualified.

23 THE COURT: All right. Defense?

24 MR. DIGGS: We agree.

25 THE COURT: All right, excused.

1 Going to 566, a Sheriff's affidavit. Unable to
2 locate Derrick D. Seymore in Horry County. No
3 forwarding information can be found.

4 Going to juror number 579, a Sheriff's affidavit,
5 unable to locate Tammy R. Sizemore in Horry County.
6 Checked address given; no answer. Left card; no
7 response. No forwarding information found.

8 Juror number 580 has filled out the juror
9 questionnaire form and is coming in.

10 Juror number 581, a Sheriff's affidavit. Unable to
11 locate Billijo N. Small in Horry County. Has moved to
12 Ocean Isle Beach, North Carolina.

13 Go to 583, a Sheriff's affidavit. Unable to locate
14 Nathan J. Small in Horry County. No such address found.
15 No forwarding information found.

16 Let's go to 584. There was a change of address.
17 The juror did fill out the juror questionnaire form. We
18 have a date of birth of 11/7/1941. The juror has
19 requested to be excused for being over sixty-five. The
20 State's position?

21 MR. HEMBREE: No objection, Your Honor.

22 THE COURT: Defense?

23 MR. DIGGS: We object.

24 THE COURT: Excused.

25 All right, going to number 588, a Sheriff's

1 affidavit. Unable to locate Kelly E. Smith in Horry
2 County. Not at given address. No driver's license.
3 Checked Post Office. Checked letter carrier. No
4 forwarding found.

5 Going then to 593, a Sheriff's affidavit. Unable
6 to locate Willie J. Smith in Horry County. Per driver's
7 license information, this person is now living in
8 Beaufort County.

9 Juror number 596, a Sheriff's affidavit. Unable to
10 locate Elena L. Speedling in Horry County. Not at given
11 address. No forwarding found.

12 Go to juror number 601. The juror was located,
13 filled out the juror questionnaire form, and is coming
14 in.

15 As to juror number 602, the juror was located, has
16 filled out the juror questionnaire form, and is coming
17 in.

18 607, the juror was located. The juror has filled
19 out the juror questionnaire form, and is coming in.

20 608, the juror was located. The juror has filled
21 out the juror questionnaire form, and is coming in.

22 610, the juror was located, has filled out the
23 juror questionnaire form, and is coming in.

24 611, the juror was located, has filled out the
25 juror questionnaire form, and is coming in.

1 612, the juror was located. The juror has filled
2 out the juror questionnaire form, and is coming in.

3 Go to -- something is noted on here. I don't know
4 if we covered them before, but we've got 615 is coming.
5 The juror has filled out a questionnaire form, and is
6 coming in.

7 Let's go down then to 621. The juror was located.
8 A juror questionnaire form was filled out, and the juror
9 is coming in.

10 Looking at 622, the juror was located. The juror
11 has filled out the juror questionnaire form, and is
12 coming in.

13 All right, let's go to juror number -- let's see --
14 I'm sorry. Going back to -- or going to juror number
15 625, a Sheriff's affidavit on juror number 625. Unable
16 to locate William G. Thomas, Jr. in Horry County. Not
17 at given address. No forwarding found.

18 Look at 628. The juror was located, has filled out
19 the juror information form, and is coming in.

20 The next one is juror 631. The juror was located,
21 has filled out the juror questionnaire form, and is
22 coming in.

23 632, the juror was located, has filled out the
24 juror information sheet, and is coming in.

25 633, the juror was located, has filled out the

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1 juror information form, and is coming in.

2 634, the juror was located, has filled out the
3 juror information sheet, and is coming in.

4 Go to juror number 637. The juror was located, has
5 filled out the juror information sheet, and is coming
6 in.

7 MR. HEMBREE: Your Honor, which number was that?
8 I'm sorry.

9 THE COURT: 637, Diane E. Tyler.

10 MR. HEMBREE: Thank you.

11 THE COURT: Juror number 638, the juror was
12 located, has filled out the juror information sheet, and
13 is coming in.

14 639, the juror was located. The juror has filled
15 out the juror information sheet, and is coming in.

16 Go to 641, an affidavit from the Sheriff. Unable
17 to locate Mary C. Valvano in Horry County. Not at given
18 address. No forwarding found.

19 Go to 642. The Sheriff's affidavit, unable to
20 locate Velvadean Vaught in Horry County. No forwarding
21 information can be found.

22 Going to juror number 647, the juror was located,
23 has filled out the juror information sheet, and is
24 coming in.

25 Going then to juror number 650, a Sheriff's

1 affidavit. Unable to locate Natasha D. Walker in Horry
2 County. Checked Post Office. No phone. Checked with
3 letter carrier. No forwarding information found.

4 Go to juror number 654, a Sheriff's affidavit.
5 Unable to locate Michael P. Walsh in Horry County. Not
6 at given address. No forwarding found.

7 And we have for 655, review for criminal record,
8 Solicitor.

9 MR. HEMBREE: Your Honor, this is another one that
10 I'm not convinced is the same person that we have a
11 criminal history on, and I would request that they be --
12 are they coming in otherwise?

13 THE COURT: Yes, they are coming in. The juror
14 has filled -- was located, has filled out a juror
15 questionnaire form, and is coming in.

16 MR. HEMBREE: Thank you, Your Honor. We'd like to
17 bring him in and review it with him at that time.

18 THE COURT: All right, very good.

19 MS. WILLIAMS: Your Honor, ---

20 THE COURT: Yes, ma'am.

21 MS. WILLIAMS: --- if we may, if you are not sure,
22 but in his questionnaire, he indicates on number 32 that
23 he was convicted of -- in Florida ---

24 THE COURT: Let's see, number 32. It says, "Yes,
25 Florida, trafficking of a controlled substance.

1 Adjudication withheld. 1989," so ---

2 MR. HEMBREE: That's correct, but that is the same
3 -- I didn't have the questionnaire, but that's ---

4 THE COURT: So it says, "Adjudication withheld."
5 Does that mean -- is that like PTI?

6 MR. HEMBREE: He got three years probation is what
7 this record indicates.

8 THE COURT: All right. What's the -- what would
9 be the State's position then?

10 MR. HEMBREE: Your Honor, we'd ask that he be
11 excused.

12 THE COURT: Defense?

13 MR. DIGGS: Excused.

14 THE COURT: All right. I'm going to excuse this
15 particular juror then.

16 Go to juror number 656. The juror was located, has
17 filled out the juror information sheet, and is coming
18 in.

19 Juror number 657, a Sheriff's affidavit. Unable to
20 locate Dhana M. Warren in Horry County. Not at given
21 address. No forwarding found.

22 658, the juror was located, has filled out the
23 juror questionnaire form, and is coming in.

24 Juror number 661, the juror was located, has filled
25 out the juror questionnaire form. There was a change of

1 address. The juror is coming in.

2 Juror number 662, there was a change of address.
3 The juror was located. The juror has filled out the
4 juror questionnaire form, and 662 is coming in.

5 664, there was a change of address. The juror was
6 located. The juror has filled out the juror ---

7 THE CLERK: 664?

8 THE COURT: 664, right. 664, Dennis E. Webb, 664,
9 has been located, filled out the juror questionnaire
10 form, and is coming in.

11 THE CLERK: 666, I put coming in ---

12 THE COURT: 667? I don't have anything for 666.

13 THE CLERK: That was my error. I just wanted to
14 make sure it wasn't on your sheet.

15 THE COURT: No, I don't have anything on that.

16 667, a change of address. The juror was located.
17 The juror has filled out the juror information sheet,
18 and is coming in.

19 668, the juror was located, has filled out the
20 juror questionnaire form, and is coming in.

21 669, Larry D. West, the juror was located, has
22 filled out the juror questionnaire form, and is coming
23 in.

24 Juror number 670, the juror was located, has filled
25 out the juror questionnaire form, and is coming in.

1 All right, 671, we had for review for criminal
2 history, but we've got a Sheriff's affidavit that states
3 that unable to locate juror number 671, Christopher
4 Weston in Horry County. Not at given address. No
5 forwarding found.

6 Go to 672. The juror was located, has filled out
7 the juror information sheet, and is coming in.

8 Juror number 677, a Sheriff's affidavit. Unable to
9 locate Douglas W. White in Horry County. Moved from
10 address over three years ago. No forwarding found.

11 682, juror was located, has filled out the juror
12 information sheet, and is coming in.

13 683, the juror was located, has filled out the
14 juror information sheet, and is coming in.

15 Going to juror number 684, got a Sheriff's
16 affidavit indicating unable to locate Stephanie M.
17 Williams in Horry County. Not at given address.
18 Checked the Post Office. No phone. House at given
19 address is vacant. No forwarding found.

20 All right, go to juror number 685. The juror was
21 located, has filled out the juror questionnaire form,
22 and is coming in.

23 688, the juror was located, has filled out the
24 juror questionnaire form, and is coming in.

25 Going to 690, the juror was located, has filled out

1 the juror questionnaire form, and is coming in.

2 All right, going to 692, we've got a letter from
3 that juror, Greg J. Wojcik, asking to be excused. The
4 letter states, "Dear Sir, Please excuse me from jury
5 duty for the following reasons. I have a young business
6 in these struggling times that I operate seven days a
7 week, open to close. I could not afford to pay someone
8 else to work or afford to shut down. I also have two
9 kids, age nine and four, that I have to get fed, bathed,
10 and dressed each day, take them to school, and pick up
11 each afternoon, and watch until my wife gets out of
12 work. I just can't justify time or affordability to
13 take off for any length of time for jury duty. Thank
14 you," signed by the juror.

15 What is the State's position?

16 MR. HEMBREE: Normally, Your Honor, I would ask
17 that this juror be required to at least come in. I
18 mean, just the hardship of his business is not usually
19 sufficient, but I noted his answer in question number
20 50. It says it's difficult or impossible to be fair and
21 impartial, and he says, "Yes. I do not believe in the
22 legal system," a pretty broad statement. We could bring
23 him in and maybe inquire more about that, Your Honor,
24 but it sounds like this gentlemen is going to be excused
25 either way, and it would probably just be taking up time

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1 on Friday. I don't have any objection to him being
2 excused.

3 THE COURT: All right. What's the Defense's
4 position?

5 MR. DIGGS: Your Honor, we don't mind him being
6 transferred to another term where he's not going to be
7 sequestered.

8 THE COURT: All right. I'm going to excuse this
9 particular juror.

10 All right, 693 was located. The juror has filled
11 out the juror questionnaire form, and is coming in.

12 694, we have a juror's affidavit -- I'm sorry, not
13 a juror's affidavit -- a Sheriff's affidavit on the
14 juror. Unable to locate William B. Wood in Horry
15 County. This person resides in the State of North
16 Carolina.

17 We've got here 695. The juror was located, has
18 filled out the juror questionnaire form, is coming in.
19 I also have some note about review for the criminal
20 record. She did indicate in her juror questionnaire
21 form that she has not been indicted or convicted.

22 MR. HEMBREE: And I would state, I don't believe
23 that the record that we have on a Woolard is the same
24 person as this Teresa P. Woolard that is listed as a
25 juror.

1 THE COURT: All right, very good.

2 MR. HEMBREE: I would take it she's coming in,
3 Your Honor?

4 THE COURT: Yes, she is coming in. She's filled
5 out the juror questionnaire form, and is coming. That's
6 correct. That was 695, Teresa P. Woolard.

7 696, there was also a review for criminal record,
8 but we have a Sheriff's affidavit. Unable to locate
9 juror 696, Alan E. Yoder, in Horry County. Checked the
10 Post Office. No phone. Checked with letter carrier.
11 No forwarding information found.

12 Go to juror number 697. The Clerk's affidavit,
13 date of birth for the juror, Janet M. Young, is
14 2/20/1932. The juror wishes to be excused, being over
15 sixty-five. The State's position?

16 MR. HEMBREE: No objection, Your Honor.

17 THE COURT: Defense?

18 MR. DIGGS: We object.

19 THE COURT: Excused.

20 And then going down to juror number 700, the juror
21 was located, has filled out the juror information form,
22 and is coming in.

23 All right, except for those ones that the Clerk
24 indicated at the very beginning, y'all have all the
25 information regarding these particular jurors. Whatever

1 additional information the Clerk gets, you know, from
2 the Sheriff as to those other ones, we'll -- she will
3 obviously give that to you.

4 You know we are going to have the Blair hearing on
5 next Thursday, Counsel, so Madam Clerk, if we get the
6 information on -- what was it, fifteen of them, or
7 whatever, fifteen, we get some more information on those
8 fifteen, we'll review it at that point in time on
9 Thursday after the Blair hearing on Thursday.

10 MR. HUMPHRIES: Your Honor, we have just as a
11 point of clarification -- you might be getting to this.
12 We've got ---

13 THE COURT: I'm sorry; just one second. The Blair
14 hearing is at ten o'clock. All right, very good.

15 MR. HUMPHRIES: We have scheduled -- at least at
16 some point we had scheduled for Tuesday morning at 9:30
17 additional jury excusals, submission of witness lists to
18 the Court, and the stipulation of exhibits.

19 THE COURT: Right. As far as just the
20 documentation, I was just expecting y'all to give that
21 to the Court and we were not going to have some type of
22 formal proceeding or hearing.

23 MR. HUMPHRIES: And I just want to be clear about
24 that, that we weren't going to actually have a hearing
25 on it?

1 THE COURT: That's correct. We're not having a
2 hearing. I'm just expecting y'all to give that
3 information to the Court on that particular day.

4 MR. HUMPHRIES: Yes, sir, and what we'll do in
5 terms of the actual marking of the exhibits -- of
6 course, this is at the Court's pleasure, but we can have
7 the physical exhibits ready to be marked Friday after we
8 impanel the jurors, or we can do it sometime later.
9 Obviously we've got two to three days, you know, the
10 following week before we'll actually start putting in
11 evidence.

12 THE COURT: Dixie, would you like to do it on the
13 6th, get that done on the 6th?

14 THE COURT REPORTER: Yes, whatever you want.

15 THE COURT: Yeah, on that Friday when we get done
16 with the general qualification, so if we could do that
17 -- if y'all could do that with the Court Reporter on the
18 6th when we get done with the general qualification and
19 get those marked with the Court Reporter on that Friday,
20 the 6th, that would be good, all right?

21 MR. HUMPHRIES: Yes, sir. One other matter, Your
22 Honor, and I've inquired of the Defense, they had not
23 filed a motion to suppress based on a search warrant
24 executed on the victim's truck in Augusta, Georgia. Of
25 course, we'd have a number of issues about whether

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1 there's standing or not, but in any event, we can't just
2 wait for them to make an objection right before we, you
3 know, intend to elicit the testimony because that
4 witness is in Georgia, and that witness doesn't testify
5 about anything else but the obtaining of the search
6 warrant, so we would have to have that person here if
7 there's going to be a motion to suppress.

8 Like I said, there's not been one. I've inquired
9 this morning, and just so logistically we can plan as to
10 whether or not to have that witness here.

11 THE COURT: Mr. Diggs, do you anticipate filing a
12 suppression motion?

13 MR. DIGGS: No, we don't, ---

14 THE COURT: Very good.

15 MR. DIGGS: --- not on that issue.

16 THE COURT: Not on that particular person.

17 MR. HUMPHRIES: Very good. Thank you, Your Honor.

18 THE COURT: Very good.

19 (The Court has an off the record discussion with the
20 Clerk.)

21 THE COURT: All right, is there anything further
22 from the State at this point in time?

23 MR. HEMBREE: No, sir, Your Honor.

24 THE COURT: All right.

25 MR. DIGGS: Your Honor, is Dr. Crawford going to

1 interview the defendant ---

2 THE COURT: Yes, at sometime before the hearing on
3 Thursday. Hopefully there will be -- we're going to
4 have arrangements made for Mr. Stanko to come over here
5 at, say, 8:30 on Thursday, and -- so that Dr. Crawford
6 can speak to him on that particular date and time prior
7 to the -- prior to the hearing.

8 MR. DIGGS: Your Honor, back in, I think, it was
9 2006, Dr. Crawford and I were -- I was present when she
10 interviewed Mr. Stanko about the Horry County incident,
11 and if you -- I don't have her report here in front of
12 me, but I do have a copy of it. Excuse me.

13 In her report, and the State has a copy of it also,
14 and we touched based on this issue previously with Mr.
15 Humphries, she was ordered by Judge Jefferson not to
16 disclose any of the information, you know, about the
17 Henry Turner incident until further order of the Court,
18 and so when you look at the report that was issued by
19 Dr. Crawford, it makes mention of the Henry Turner
20 incident, but then it's X-ed out, and I think that the
21 parties are in agreement at this point. We would like
22 for the Court -- I didn't prepare an Order for you to
23 sign this morning, but I'm going to hand one up probably
24 later today, get it to you by e-mail, and allowing Dr.
25 Crawford to go ahead and disclose that portion of the

1 report that was previously redacted and sealed.

2 We're asking that she go ahead and be permitted to
3 include that information in that report that previously
4 was provided, and I've been handed a copy of it. I
5 think I can ---

6 THE COURT: All right. Is there any objection to
7 that from the State?

8 MR. HEMBREE: No, Your Honor. We'd actually join
9 in that request.

10 THE COURT: All right. Well, if y'all -- if you
11 could, Mr. Diggs, if you could when you -- could you e-
12 mail that Order over to the Solicitor's Office first so
13 they can look at it and make sure everybody is in
14 agreement with the Order, and then y'all give it to me
15 and I'll be glad to sign it.

16 MR. DIGGS: Thank you, Your Honor.

17 THE COURT: All right. Anything else from the
18 Defense at this point in time?

19 MR. DIGGS: Your Honor, also at the time that Mr.
20 Stanko, before his arrest down in -- following the
21 incident in Georgetown, the police came in and, of
22 course, took a lot of personal items. The police took a
23 lot of the information, personal belongings, things of
24 that nature, writings and so forth, that belonged to Mr.
25 Stanko that were left in the residence down in

1 Georgetown, and if they're not of evidentiary value, I'm
2 going to ask the Court to enter an Order just releasing
3 those things back to the possession of the Defense or
4 the defendant.

5 MR. HEMBREE: Your Honor, it would be premature, I
6 think, at this time to consider that request. It would
7 be inappropriate. You know, there will be an
8 appropriate time for that at the conclusion of this
9 trial. I'm not exactly sure what Mr. Diggs is speaking
10 of, but I think at that point in time we can probably
11 jointly look at what is being requested and probably
12 consent to much of it.

13 THE COURT: All right, so there is some overall
14 evidentiary list that the State has as far as specifying
15 what items that were seized, correct?

16 MR. HEMBREE: Yes, sir.

17 THE COURT: What I'd have you do, Solicitor, is at
18 the -- is there any reason that you need any of that for
19 this particular trial, Mr. Diggs? Is it necessary for
20 this trial?

21 MR. DIGGS: Your Honor, I'm not ---

22 MS. WILLIAMS: Your Honor, part of what we were
23 looking for is in part of the mitigation relationship,
24 and there are basically two boxes. For instance, there
25 are copies of prior cases that Mr. Stanko worked on with

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1 other inmates and things. I mean, it's ---

2 THE COURT: Okay. Where is this evidence located?
3 Where is it at?

4 MS. WILLIAMS: It's all -- it's in the Georgetown
5 County Sheriff's Office, and ---

6 THE COURT: Okay. I thought y'all ---

7 MR. HUMPHRIES: Your Honor, we ---

8 MS. WILLIAMS: Part of where that comes from is
9 when we went down ---

10 THE COURT: Okay, just hold on a second. I
11 thought y'all already reviewed all of that and were
12 going to make copies of whatever it is that you needed?
13 Y'all hadn't done that?

14 MR. HUMPHRIES: They've been given that
15 opportunity.

16 THE COURT: Okay. Is there some reason why that's
17 not been done or we can't do that?

18 MS. WILLIAMS: Well, with regards to making copies
19 of it, basically when we ask them to make copies of it,
20 we're going to have to go down there and -- I mean, it's
21 like -- it's a box full, two big box fulls of it, and we
22 thought maybe it would make more sense in a monetary
23 type situation as opposed to having to pay somebody to
24 stand there, pay for all the copies, pay for all these
25 other things, if they're not going to use that stuff, if

1 they could release it and then we would have it instead
2 of duplicating ---

3 THE COURT: Well, I'm not comfortable with
4 releasing any potential evidence until the matters are
5 concluded and we know that they either are exhibits in
6 the trial or they are not exhibits in the trial, so I'm
7 not comfortable with releasing the items that were
8 seized, so what I'm going to have y'all do is cooperate,
9 have the Defense given the opportunity to make any and
10 all copies of any documentation they would like, but as
11 far as the originals, those will remain seized at this
12 point in time and will not be released until the
13 conclusion of this trial, and then it could be addressed
14 by y'all if there's some reason for it, but State and
15 Defense, obviously Solicitors, if y'all will again
16 cooperate, give them the opportunity to review and copy
17 any and all documentation or items that they would like.

18 MR. DIGGS: Your Honor, we have different people
19 working on different aspects of the case, and it may be
20 -- I don't always know what another expert or another
21 person -- might be important and need to copy and that
22 kind of thing. That's why we make the request, and
23 that's why it might seem disjointed.

24 THE COURT: Well, and I appreciate that, but as to
25 your motion, I'm not going to release the items at this

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1 point in time. I'm just not comfortable with that
2 process, but I'm giving you full, complete access to
3 them to make any and all copies that you would like to
4 do, all right?

5 MR. DIGGS: Thank you, Your Honor.

6 THE COURT: Anything else from the Defense at this
7 point in time?

8 MR. DIGGS: Not with the Solicitors.

9 THE COURT: Well, can we cover the issue of Mr.
10 Stanko and him returning to the South Carolina
11 Department of Corrections or him staying here in Horry
12 County? Has that been resolved?

13 MR. HUMPHRIES: Your Honor, we thought it was
14 resolved, and as I understood your Order, he was to
15 remain today throughout. That was my understanding.

16 THE COURT: That's correct. Once he was here, he
17 was going to stay, and he wasn't going back.

18 MR. HUMPHRIES: Well, what I've heard, and what I
19 advised the Court just in terms of scheduling today was
20 that I had received a call from the Department of
21 Corrections, a Rob Steele, or I can't remember his name,
22 worked in the Department of Corrections, and he did not
23 seem clear on that point, so that's the reason I brought
24 it up to the Court so we could get some ---

25 THE COURT: All right. The Department of

1 Corrections representatives that were here, what were
2 your instructions? Were you to take Mr. Stanko back, or
3 were you to leave him here in Horry County? Y'all must
4 have got some instructions.

5 A DEPARTMENT OF CORRECTIONS REPRESENTATIVE: Leave
6 him here.

7 THE COURT: Y'all were going to leave him here.
8 All right, that's fine. I mean, that's -- as I
9 understood, that was the situation. I just wanted to be
10 clear about that, so y'all will leave him in the custody
11 of the Horry County Sheriff's Office. He's going to
12 remain with us until the conclusion of the trial.

13 Yes, ma'am?

14 MS. WILLIAMS: Your Honor, I was just going to say
15 that Mr. Stanko understood that that's what the Judge --
16 that Your Honor had ordered, and he actually brought his
17 things and is prepared to stay.

18 THE COURT: Well, and I just said -- I just got
19 some information that it might be unclear, and so I just
20 wanted to be clear that we were all -- that's what was
21 going to happen, he's going to stay with us. He'll
22 stay, you know, until the conclusion of the trial.

23 Please, if y'all would, make sure that the Sheriff
24 is aware that Mr. Stanko needs to come back next
25 Thursday, you know, at 8:30, so that he could speak to

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1 Dr. Crawford, and then we can have the hearing, okay?

2 All right, gentlemen, thank you very much.

3 MR. HEMBREE: Thank you, Judge.

4 MR. DIGGS: Thank you.

5 (Conclusion of Transcript of Record)

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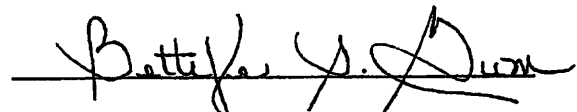
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had and evidence introduced in the
9 hearing of the captioned case, as taken by Dixie Cox
10 Eubank, Official Reporter, and transcribed by me,
11 relative to appeal, in the Court of General Sessions for
12 Horry County, South Carolina.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15
16
17 July 7, 2010

18
19 

20 BETTYE S. GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina

23 My Commission Expires: 7/13/14
24
25

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
))
Plaintiff,)
))
-VS-) TRANSCRIPT OF RECORD
))
Stephen Christopher Stanko,)
))
Defendant.)
_____)

November 4, 2009
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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Official Reporter

I N D E X
 (SW) STATE'S WITNESS
 (DW) DEFENSE WITNESS

BLAIR HEARING:

WITNESS: DIRECT CROSS REDIRECT RECROSS

DR. PAMELA CRAWFORD

MR. HEMBREE 3

MR. DIGGS --

STEPHEN C. STANKO

THE COURT 11

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(S) STATE
 (D) DEFENSE
 (C) COURT

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DR. PAMELA CRAWFORD - DIRECT EXAMINATION BY MR. HEMBREE 3

1 THE COURT: All right, we are here in the State of
2 South Carolina versus Stephen C. Stanko, 2005, GS-26-
3 2927, for the purposes of a Blair hearing. Is the State
4 ready to proceed?

5 MR. HEMBREE: Yes, Your Honor, we are.

6 THE COURT: Is the Defense ready to proceed?

7 MR. DIGGS: Yes, sir.

8 THE COURT: All right, Solicitor.

9 MR. HEMBREE: Thank you, Your Honor. The State
10 calls Dr. Pam Crawford to the witness stand.

11 THE COURT: All right. If you would come forward,
12 please, ma'am.

13 DR. PAMELA CRAWFORD, being first duly sworn,
14 testifies as follows:

15 THE COURT: Yes, ma'am.

16 MS. WILLIAMS: If we may, if the Court could
17 instruct the deputies to at least release a hand so that
18 Mr. Stanko can take notes, please.

19 THE COURT: All right. If you would just release
20 one -- one hand for Mr. Stanko so he can take some notes,
21 please. Thank you.

22 THE CLERK: State your full name and spell your
23 last name for the Court.

24 DR. CRAWFORD: Pamela Crawford, C-R-A-W-F-O-R-D.

25 DIRECT EXAMINATION BY MR. HEMBREE:

1 Q. Dr. Crawford, if you could very briefly give the
2 Court the benefit of your training and experience in the
3 field of forensic psychiatry.

4 A. Yes. I am a forensic psychiatrist. I trained at
5 Emory University, became a physician first, and then a
6 general psychiatrist, and then I specialized in forensic
7 psychiatry, and I've been practicing in the State of
8 South Carolina -- the forensic psychiatry specifically
9 since about 1998 in a variety of capacities.

10 Q. And, Dr. Crawford, have you been qualified as a
11 forensic psychiatrist in courts of record in this state
12 and other states?

13 A. Yes, I have.

14 Q. On how many occasions?

15 A. Several hundred.

16 MR. HEMBREE: Thank you, Dr. Crawford.

17 Your Honor, we would move that Dr. Crawford be
18 qualified to testify as an expert in the field of
19 forensic psychiatry.

20 MR. DIGGS: Your Honor, we don't have any
21 objections, ---

22 THE COURT: All right. She is so qualified.

23 MR. DIGGS: --- or questions, or objections.

24 THE COURT: All right, thank you. She is so
25 qualified.

1 MR. HEMBREE: Thank you, Your Honor.

2 Q. Dr. Crawford, you were called upon in the case, I
3 believe, to perform a competency evaluation on the
4 defendant, as well as evaluation for criminal
5 responsibility?

6 A. Yes, criminal responsibility back in 2006 I was
7 called upon for that purpose, for today's purpose for
8 competency.

9 Q. Correct, and you had -- back in 2006, you had the
10 opportunity to evaluate Mr. Stanko for the purposes of
11 competency?

12 A. Yes.

13 Q. In relation to a different, but related case?

14 A. Yes.

15 Q. And then you once again recently have been ordered
16 by the Court to conduct a competency evaluation in
17 relation to the Henry Turner case?

18 A. That's correct.

19 Q. If you would, please share with the Court the
20 steps that you undertook to fulfill that obligation in
21 determining the competency of Mr. Stanko.

22 A. Okay.

23 Q. And you can take that back -- certainly anything
24 that has helped you even back at the other evaluation ---

25 A. Sure.

1 Q. --- you think that assisted you in rendering -- in
2 forming an opinion would be an appropriate item to
3 discuss.

4 A. Okay. Well, first of all, I referred back to my
5 evaluation in 2006 in which it was my opinion that he did
6 not have a major psychiatric illness, but had a severe
7 personality disorder, and it was my opinion back then
8 that he was competent to stand trial, so when I was
9 ordered to do this evaluation, I had to determine whether
10 there was any information, anything that had changed,
11 between the time I saw him last and now in terms of new
12 medical illnesses, new mental health issues, new mental
13 health treatment, so I needed that information updated,
14 and I received that, and then I interviewed him today
15 with his attorneys present to do a psychiatric evaluation
16 and an evaluation of competence.

17 Q. And what specific questions or issues were you
18 focusing on in determining Mr. Stanko's competency to
19 stand trial?

20 A. Well, I wanted to make sure that he had both a
21 factual understanding of the legal proceedings against
22 him, and we went into, I think, pretty good detail about
23 the legal process in general, about the roles of
24 different people in the courtroom, the different
25 sentences. We talked pretty extensively about this being

1 a death penalty trial, and he was clear and able to
2 understand the difference of the two phases of the trial.
3 We just went through a lot of detail about all the
4 procedures involved in the trial of this case, and we
5 also -- I also interviewed him to see if there was
6 anything that was impairing him psychiatricly so that he
7 could not assist his counsel in his defense.

8 Q. And you sort of anticipated my next question. I
9 was going to ask if he -- was there anything about the
10 way he presented himself, the manner in which he answered
11 questions, that gave you any concern whatsoever regarding
12 his mental status?

13 A. No, I have no concerns.

14 Q. Now, did you, as a result of your evaluation in
15 2006, generate a report?

16 A. I did.

17 Q. And at that time, did you render an opinion
18 regarding his competency to stand trial?

19 A. I did.

20 Q. Let me ask you to take a look at what has been
21 pre-marked as Court's Exhibit Number 1 and ask if you can
22 identify it for us?

23 A. Yes. This is a report that I provided to Judge
24 Jefferson alone. I had provided redacted copies at her
25 order to Mr. Stanko's attorneys and to the Solicitor's

1 office prior to this, but this is a copy that I sent to
2 Judge Jefferson.

3 MR. HEMBREE: Defense counsel indicates that he has
4 no objection, that they have no objection to this being
5 entered in evidence as a Court's Exhibit.

6 THE COURT: Is that correct?

7 MR. DIGGS: Correct, no objection.

8 THE COURT: Very good. That's Court's Exhibit 1
9 without objection.

10 REPORT OF DR. PAMELA CRAWFORD ENTERED AS
11 COURT'S EXHIBIT NUMBER 1.

12 Q. Dr. Crawford, in 2006, Mr. Stanko's -- Mr. Stanko
13 retained a forensic psychiatrist for his -- or a
14 psychiatrist to assist in his defense, Dr. Sachy from
15 Georgia. Are you familiar with Dr. Sachy?

16 A. Yes.

17 Q. And as a result of this examination of Mr. Stanko,
18 he also generated a report. Were you provided an
19 opportunity to review that report?

20 A. I was.

21 Q. If you would take a look at Court's Exhibit Number
22 2 and I would ask if you could identify that document,
23 please.

24 A. Yes. This is Dr. Sachy's report from 2006.

25 Q. And do you recall if Dr. Sachy back in 2006

1 conducted an evaluation of Mr. Stanko's competency to
2 stand trial?

3 A. He did.

4 Q. And did he render an opinion at that time?

5 A. It was his opinion based on his report that Mr.
6 Stanko was competent to stand trial.

7 Q. So y'all were in agreement about that in 2006?

8 A. Yes, we were.

9 Q. Dr. Crawford, is there anything at all about your
10 essentially updated conversation, your interview with Mr.
11 Stanko, and a review of his medical and psychiatric
12 records from the Department of Mental Health that gives
13 you any indication that he has any issue as to
14 competency?

15 A. No. There's -- I have no concerns about it.

16 Q. And so in your opinion, he is competent to stand
17 trial, competent to assist his counsel?

18 A. It is my opinion that he is, yes.

19 Q. Okay, within a reasonable degree of medical and
20 psychiatric certainty?

21 A. Yes.

22 MR. HEMBREE: Your Honor, we would ask that Dr.
23 Sachy's report be entered into evidence as Court's
24 Exhibit Number 2.

25 THE COURT: Is there any objection to that?

1 MR. DIGGS: Your Honor, we don't really object to
2 it. I don't know that it would have any relevance, but,
3 you know, if the State wants to offer it, we're not going
4 to object.

5 THE COURT: All right. Well, it's entered without
6 objection.

7 MR. HEMBREE: Thank you, Your Honor.

8 REPORT OF DR. SACHY ENTERED AS COURT'S
9 EXHIBIT NUMBER 2.

10 THE COURT: Do you have any further questions,
11 Solicitor? I'm sorry.

12 MR. HEMBREE: No, Your Honor.

13 THE COURT: All right. Mr. Diggs.

14 MR. DIGGS: Your Honor, we don't have any
15 questions.

16 THE COURT: All right.

17 Thank you, ma'am. You may step down.

18 THE COURT: Anything further from the State?

19 MR. HEMBREE: No, Your Honor.

20 THE COURT: All right. Anything from the Defense
21 at this point in time?

22 MR. DIGGS: No, Your Honor.

23 THE COURT: All right, very good.

24 As to Mr. Stanko and the requirements of the Court
25 to make a determination in this matter, is your -- Mr.

1 Diggs, is your client prepared at this point in time to
2 answer some procedural questions by the Court?

3 MR. DIGGS: Yes, sir.

4 THE COURT: All right, very good.

5 Madam Clerk, would you -- you can stay right there,
6 Mr. Stanko.

7 Just place him under oath.

8 THE CLERK: Please raise your right hand.

9 (Mr. Stanko raises his right hand.)

10 STEPHEN C. STANKO is placed under oath by the Clerk:

11 THE COURT: Mr. Stanko, let me ask you a couple of
12 questions. In the interview with Dr. Crawford today, did
13 you discuss with her the proceedings you are facing
14 upcoming in this particular case?

15 MR. STANKO: Yes, sir, I did.

16 THE COURT: All right, and in her discussions with
17 you, were there any matters that were unclear to you or
18 you did not understand?

19 MR. STANKO: No, sir. They were all clear.

20 THE COURT: All right, sir, and in this particular
21 proceeding, in this particular matter, that is 2005-GS-
22 26-2927, you understand that the State of South Carolina
23 is seeking the death penalty against you, correct?

24 MR. STANKO: Yes, sir, correct.

25 THE COURT: All right. Though it may seem basic, I

1 want you to review with me your basic understanding of
2 what is the job of the Solicitors, Mr. Hembree, Mr.
3 Humphries. What is their job in these proceedings in
4 general?

5 MR. STANKO: Their job is to prosecute the charges
6 which are being presented against me.

7 THE COURT: All right, sir. In that regard, what
8 would they be trying to do?

9 MR. STANKO: They would be trying to convict me and
10 eventually sentence me, have me sentenced to death for
11 the result of the death of Henry Turner.

12 THE COURT: All right, sir, and the Defense
13 attorneys that are seated with you and are participating
14 in this matter as your Defense attorneys, Mr. William
15 Diggs and Ms. Brana Williams, what is -- in general, what
16 is their job in these proceedings?

17 MR. STANKO: Their job is to defend me in those
18 same charges, to present evidence on my behalf to the
19 jury that might earn me either an acquittal, or in the
20 event that I'm found guilty, a life sentence rather than
21 death.

22 THE COURT: All right, sir, and in general again,
23 when or if and when a jury is seated in this particular
24 matter, what would be the jury's job or responsibility in
25 these proceedings?

1 MR. STANKO: Their -- their duty would be to
2 observe all the evidence, see the facts, the way
3 everything was presented, and make first the decision of
4 guilt or innocence, and since this is a bifurcated case,
5 then they'll -- in the event that I'm found guilty, they
6 will have to decide whether to give me death or life.

7 THE COURT: All right, sir; thank you, sir, and
8 finally as to my role, how would you see or observe my
9 role in these proceedings to be?

10 MR. STANKO: Your role is to make sure that these
11 proceedings are handled in a judicial and constitutional
12 manner, to make sure the rules are followed, the statutes
13 are obeyed, and nobody acts out, I guess.

14 THE COURT: All right, sir. Thank you very much.

15 MR. STANKO: Yes, sir.

16 THE COURT: Any questions in that regard from the
17 State?

18 MR. HEMBREE: No, Your Honor.

19 THE COURT: From the Defense?

20 MR. DIGGS: No.

21 THE COURT: All right, thank you.

22 Pursuant to the dictates of State v. Blair, and our
23 South Carolina Code of Laws, especially 44-23-410 and 44-
24 23-430, based upon the matters that have been presented
25 to me, those being Court's Exhibits 1 and 2, the

1 testimony of Dr. Crawford, the testimony of Mr. Stanko in
2 these proceedings, I do find Mr. Stanko to be competent
3 to stand trial. He has the capacity to understand the
4 proceedings against him in this particular matter. He
5 has the capacity to assist in his own defense, and not
6 only -- this is based upon not only the Court's
7 questioning and observation of Mr. Stanko at this point
8 in time, but in all the proceedings that the Court has
9 already had in these matters and Mr. Stanko's
10 participation in those.

11 Anything further from the State at this point in
12 time regarding the Blair hearing?

13 MR. HEMBREE: No, Your Honor. We would only ask
14 that Dr. Crawford be excused so she can return to
15 Columbia.

16 THE COURT: Very good. Any objection to that, Mr.
17 Diggs?

18 MR. DIGGS: No, no objection.

19 THE COURT: All right.

20 Thank you, Doctor. You are excused and released
21 from your subpoena. Thank you, ma'am.

22 Anything further from the Defense as to the Blair
23 hearing, Mr. Diggs?

24 MR. DIGGS: Nothing at this time, Your Honor.

25 THE COURT: All right, very good.

1 Madam Clerk is sort of stretched thin this afternoon
2 being in a number of places, and I told her -- she
3 probably will not be here probably until about two-thirty
4 to go over those other -- I think there were sixteen
5 jurors, I believe, that we had still left outstanding
6 that we had to get some report on, so if we'll hold on
7 and we'll do that.

8 One thing I did want to cover with y'all, gentlemen,
9 to see if you had any issues or problem with it on
10 Friday, just to kind of go over generally on Friday when
11 the panel comes in and they're going to be reporting
12 initially downstairs to the jury assembly room. They'll
13 then -- to be logged in. They will then come upstairs.

14 We will do the general qualification of the jurors
15 at that point in time. The first thing, obviously, the
16 Clerk will place them under oath. We will find out their
17 general information about their work or employment, the
18 information the Clerk needs about their mileage. We will
19 do the general qualification. We would not excuse any
20 particular juror. If any issues come up in the general
21 qualification, the Court will, the Clerk will, and
22 obviously I expect y'all to note that particular issue,
23 and when that person is placed on the panel, we will deal
24 with that particular issue when that juror is singularly
25 before the Court at that point in time.

1 My other intention at that point in time is to
2 before the panel as a whole is excused, they would
3 obviously all of them be given reporting dates when to
4 come back and what time to come back, but even before
5 they leave on Friday, they would be handed by the Clerk's
6 Office a sheet that has -- I don't know if we would call
7 them the standard questions, but the recognized questions
8 of the juror as to the type of category that the juror
9 believed would best describe them, and have the jurors
10 pick the one type of juror that they believe best
11 describes them. We would then have that juror sign that
12 document and put Friday's date on it so that that would
13 be available to all when that particular juror is
14 singularly questioned as to their ability to be a juror
15 in this -- or in these proceedings.

16 Any questions or suggestions as to the totality of
17 that that I described from the State?

18 MR. HEMBREE: The question, Your Honor, about the
19 -- whether they're what we call a one, two, or three
20 juror, I assume that's the form that the Court proposes
21 to provide to each juror?

22 THE COURT: That's correct.

23 MR. HEMBREE: Okay. What sort of an environment
24 does the Court anticipate giving the juror to contemplate
25 those three questions? Will it be ---

1 THE COURT: Well, and that's the reason I wanted
2 suggestions -- I wanted answers or suggestions from you.
3 I -- if y'all would want to wait until the juror comes
4 before the Court singularly and then give them some short
5 period of time to answer it all by themselves, I don't
6 have a problem with doing so. I'll be glad to hear any
7 suggestions, Solicitor, that you might have, and
8 obviously, Mr. Diggs, Ms. Williams, if y'all have any
9 suggestions that you want to give to the Court on that
10 issue, I'll be glad to hear from you.

11 MR. DIGGS: Your Honor, I -- I'm sorry.

12 THE COURT: Go ahead, Solicitor, and then I'll hear
13 from Mr. Diggs.

14 MR. HEMBREE: Thank you, Your Honor. The -- and,
15 of course, it's -- you know, I fall back into the --
16 maybe the methods that we've used in the past that have
17 -- that we know have worked well, that we feel like, you
18 know, we've gotten an opportunity to see and experience
19 and have seen -- have experienced very few or no problems
20 with.

21 Typically we had the forms available in the jury
22 rooms when the panels report. They then had the
23 opportunity to review the witness list, as well as the --
24 as well as the type juror they are and then make that
25 determination. They -- typically it's quiet, fairly

1 quiet. It's isolated. There are very few people in
2 there with them, four or five, you know, usually at the
3 most, and they have some time to do it because the only
4 one that ever has -- none of them are ever rushed,
5 because we don't rush them, but the only one that might
6 be somewhat rushed would be the first juror in that panel
7 because we're expecting them first, but by the time we
8 get to the second juror, we have always had -- already
9 had plenty -- plenty of time for the rest of the jurors
10 to have had an opportunity to read those forms.

11 It's -- I don't know -- we've never had them
12 actually take a form and sign it, but that -- it does
13 tend to -- you know, that -- that would be a good --
14 sounds like a pretty good idea, that when they came out,
15 they would have the form. They could -- you know,
16 they've used that form, they've signed that form and
17 indicated which juror they are, so it's a ---

18 THE COURT: Well, that and ---

19 MR. HEMBREE: That's a good -- make that part of
20 the record.

21 THE COURT: I just think it's just a point, and
22 obviously there could very well be further review of the
23 matter, that I just think it's important that a juror --
24 that all that information be clear to any reviewing
25 authority, what the juror actually initially indicated

1 and then maybe thereafter indicated as a result of
2 questions that may be posed to them, so all that is clear
3 to any reviewing authority.

4 MR. HEMBREE: I think that makes good sense, Judge,
5 and I think that's a good addition to the policy we've
6 used or the practice we've used in the past. My -- I
7 guess my concern, if we do it en masse or you have a
8 large body of people out here ---

9 THE COURT: Well, I hear that, and I hear what you
10 have suggested about the panels.

11 Mr. Diggs, any problem with that or any other
12 suggestion you'd like to make?

13 MR. DIGGS: Well, it just -- it occurs to me that
14 the sooner we can let them know they're going to have
15 that decision to make, the better, so like Friday, if you
16 could give them -- let them know this is a sheet they're
17 going to be asked to look at at some point and they might
18 want to be thinking about it over the weekend, it just
19 seems to me that the more lead time that we can give the
20 jurors, the better it would be, because they would have
21 had the ability and the opportunity to sit down and, you
22 know, contemplate on it and think about it, and then be
23 ready to go, you know, when we actually start the process
24 of examination.

25 THE COURT: All right. What I may do in that --

1 what I may do in that regard is then in some comments to
2 them in the general qualification, I may tell them before
3 I excuse them that the process that will then go forward
4 and they would be -- when they come, that they would be
5 delivered a witness list, as well as this category
6 question form, and that for them to anticipate that they
7 would be -- before the Court talks to them, that they
8 will have examined the witness list to see if they know
9 anybody, to have gone through the juror categories and
10 selected a particular category that they believe best
11 describes them so they can anticipate that, and I may
12 tell them in general -- I think just telling them, from
13 what I've heard from y'all, I think talking to them in
14 general will probably be the best and then have them when
15 they come to look at the form and then pick the juror
16 that best describes them. I don't anticipate handing it
17 to them or giving it to them until they actually come
18 then to the panels.

19 MR. HUMPHRIES: And -- and the only concern that
20 the State would have in that regard, and I'm certain the
21 Court will give them an additional charge, what -- what
22 we've seen in the past, and it doesn't happen wholesale,
23 but it does happen on a regular enough basis that I think
24 a charge is warranted. If we tell them we want -- you
25 know, "This is something that you can anticipate dealing

1 with when you show up for individual voir dire," there
2 will be those jurors, unless otherwise charged, who will
3 talk to their family members about that decision, to
4 their preacher about that decision, and it is a unique --
5 it is a very unique position not to be, you know, talked
6 about with other folks, so as long as there's some charge
7 in connection with that, I certainly don't have any
8 problem with that.

9 I think they've got some anticipation of that, and I
10 think it helps, you know, sort of put it in context and
11 sets the parameters. I certainly don't have any
12 objection to that, but, you know, in conjunction with
13 some charge that this is their unique position, not that
14 collectively of their family, or their preacher, or
15 significant others, whatever, so if the Court would
16 consider that, we don't have any objection to that
17 process.

18 THE COURT: Any comments on that, Mr. Diggs?

19 MR. DIGGS: We don't really disagree. I mean, when
20 they ---

21 THE COURT: Ultimately it has to be the juror's
22 decision.

23 MR. DIGGS: Exactly; exactly. Another thing comes
24 to mind as well. In fact, I was thinking maybe the exact
25 opposite; they might want to go home and discuss it with

1 family, but understanding that it's their decision that
2 ultimately they're going to have to make, or they might
3 want to -- they might not have ever thought about it
4 before and they might want to discuss it with people or
5 confide in them, but with an understanding on the proper
6 instruction probably from the Court that it's a decision
7 they're ultimately going to have to make and not based on
8 something else that was told to them by another person.

9 Also, Your Honor, in that regard, too, we might want
10 to let them know that simply by selecting a particular
11 category, they're not going to be automatically excused
12 from service.

13 THE COURT: I'm not even going to bring that up.
14 I'm just going to say, you know, to pick a category which
15 best describes you, and then that will, of course, then
16 lead to other questions by the Court and the attorneys in
17 this matter, so that I don't -- I don't even think I'll
18 bring up that subject with them. I just don't think
19 that's -- that would be probably the right thing to do,
20 but just talk to them in general about it, okay?

21 All right, why don't we just take a real short break
22 and if you can communicate with Madam Clerk and see how
23 quickly she might be able to come join us and then we'll
24 get started. Thank y'all.

25 (OFF THE RECORD)

ON THE RECORD

THE COURT: All right, so the first one that we're going to go over is Juror Number 6, Mayra I. Alfonso. The Sheriff's affidavit says unable to locate Mayra Alfonso in Horry County. Moved from given address. No forwarding found.

Then we go on to juror number 26, and that one is Thomas B. Aumiller. The Sheriff's affidavit states unable to locate Thomas B. Aumiller in Horry County. Not at given address. Per neighbor, this person moved two years ago.

THE CLERK: Number 37 will be the next one. They are picking up the paperwork tomorrow, and they are being told to come in, and the paperwork will be done.

THE COURT: All right, so they're coming in Friday, and that was number ---

THE CLERK: Number 37, and I will have the paperwork tomorrow.

THE COURT: Great. Number 37 was located by the Sheriff's Office. The paperwork will be to the Clerk tomorrow, and the juror will be here on Friday, and that was Number 37.

Okay, the next one after that is 43. We've got a written statement from the juror, Daniel E. Begley, and I'll just read it verbatim. "To Whom It May Concern. I

1 would like to request to be excused from jury duty at
2 this time. I have recently started a new job with
3 Outback Steakhouse. I am in the management training
4 program and will be until mid-December. Here is a copy
5 of my schedule. Schedule attached." What's the State's
6 position?

7 MR. HEMBREE: Your Honor, it appears that Mr. --
8 that juror number 43 -- it appears that this training is
9 a local training. I don't know that this would be -- if
10 it were some sort of out of town, you know, ---

11 THE COURT: Or out of state.

12 MR. HEMBREE: --- or out of state type of training
13 that can't be -- you know, can't be repeated or he'd have
14 to start the class all over, or something like that, I
15 guess I would have a different -- I would feel that he
16 should be excused. This appears to be something that's
17 just sort of on-the-job type training. Maybe it can be
18 kind of plugged back in at a later date or not. I'd ask
19 that this juror be required to come in.

20 THE COURT: All right, very good, to come in, and
21 the position of the Defense?

22 MR. DIGGS: Your Honor, we don't object to him
23 being rolled over to the next term. If it's something --
24 I mean, he's got an opportunity to improve himself on the
25 job. He may lose that if he's forced to come in. I

1 would prefer not to have that type of juror ---

2 THE COURT: Well, we'll have the juror come in and
3 maybe we can further explore that when they are
4 singularly questioned, but Madam Clerk, you'll have this
5 juror come in, please.

6 THE CLERK: Yes, sir.

7 This is number 49. They were in the stack to be
8 coming in, but they're over sixty-five and they do want
9 to be excused.

10 THE COURT: All right. Juror Number 49 did fill
11 out a juror questionnaire form. They have indicated on
12 the juror summons for circuit court that they are over
13 sixty-five and wish to be excused. The date of birth on
14 that one is January 26, 1944. What is the position of
15 the State?

16 MR. HEMBREE: No objection to the juror being
17 excused.

18 THE COURT: All right, and the Defense's position?

19 MR. DIGGS: We object.

20 THE COURT: I am going to excuse the juror.

21 THE CLERK: Number 50 was also coming in, but is
22 over sixty-five and wants to be excused.

23 THE COURT: All right. The next one is juror
24 number 50. The juror did fill out a questionnaire form,
25 has indicated on the juror summons for circuit court that

1 they are over sixty-five and wish to be excused. Date of
2 birth, December 31, 1942. What's the State's position?

3 MR. HEMBREE: No objection to this juror being
4 excused.

5 THE COURT: All right, and Defense?

6 MR. DIGGS: We object.

7 THE COURT: I am going to excuse the juror.

8 The next one we have is juror number 84. Juror
9 number 84, we have Rolando S. Calixto. The Sheriff's
10 affidavit states that unable to locate Rolando S.
11 Calixto, Jr. in Horry County. Moved from given address
12 for five years. No other address found.

13 The next one we have is juror number 116. 116,
14 Eryca V. Cook. The Sheriff's affidavit indicates unable
15 to locate Eryca V. Cook in Horry County. Not at this
16 address. No forwarding found.

17 MR. HEMBREE: Your Honor, we had some paperwork on
18 juror number 98.

19 THE COURT: 98.

20 MR. HEMBREE: It appears that that juror was found
21 and has answer- -- has provided a questionnaire. I
22 just ---

23 THE CLERK: I have it.

24 THE COURT: Okay.

25 THE CLERK: I didn't know that they wanted to --

REVIEW OF ROLLCALL LIST FOR PANEL

27

1 number 98.

2 THE COURT: Is coming in?

3 THE CLERK: Yes, is coming in.

4 THE COURT: Okay. 98 is coming in.

5 MR. HEMBREE: I just wanted to confirm that, Your
6 Honor. Thank you.

7 THE COURT: Very good. I just wanted to make sure.
8 98 is coming in.

9 All right, so 129, the Sheriff's affidavit on Robert
10 N. Crowe. Unable to locate Robert N. Crowe in Horry
11 County. Not at address given. No forwarding found.
12 Unable to locate.

13 All right, juror number 151. The juror has filled
14 out the questionnaire and the juror summons for circuit
15 court, indicating they are over sixty-five and wish to be
16 excused. Date of birth is 11/8/1938. The State's
17 position?

18 MR. HEMBREE: No objection, Your Honor.

19 THE COURT: Defense?

20 MR. DIGGS: We object.

21 THE COURT: All right. I'm going to excuse the
22 juror.

23 All right, juror number 155 has filled out the juror
24 questionnaire form and the Clerk has just recently
25 received an e-mail from the juror, and I'll read it

1 verbatim.

2 "Mrs. Huggins, my name is Bruce Diamond," and that's
3 juror number 155, "and I am scheduled to appear for jury
4 duty on Friday, November 6th. I am writing you to
5 request dismissal from my responsibility to appear. I
6 have become unemployed recently after the time I received
7 the original juror summons and due to financial
8 restraints, I have been forced to make certain changes.
9 I now care for my three year old full-time, as I was
10 forced to take him out of daycare, and I also now pick up
11 my seven year old from school three days per week to
12 avoid paying for after-school care.

13 I absolutely do not have the financial/personal
14 resources to provide for outside care and having to do so
15 would be financially devastating to my family. I would
16 appreciate any consideration you can give me. I have
17 previously sent in my questionnaire. My juror number is
18 155, but clearly my situation has changed since that
19 time."

20 The State's position?

21 MR. HEMBREE: Your Honor, it appears based on this
22 communication that juror number 155 would be entitled to
23 an exemption based on full-time care of a child ---

24 THE COURT: Under the age of seven.

25 MR. HEMBREE: Excuse me, under the age of seven,

1 and we would ask that he be excused.

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

3 MR. DIGGS: We agree.

4 THE COURT: All right. Madam Clerk, this juror is
5 excused.

6 All right, juror number 185 has filled out the juror
7 questionnaire form and also the juror summons for circuit
8 court, and that juror is -- I don't have that page.
9 Madam Clerk, just make me another one of those.

10 All right, juror number 185. Juror number 185
11 filled out the juror -- as I said, juror questionnaire
12 form. The juror summons for circuit court indicates
13 under disqualifications that "I have been sentenced in a
14 State or Federal Court for a crime that carries a
15 sentence of more than one year," and they said unlawful
16 harvesting of water fowl, June 1995, Charleston Federal
17 Court, a Thousand Dollar fine, two years probation -- I'm
18 having a hard time reading this -- "penalty up to" -- I
19 believe it says one and a half years jail and a Five
20 Thousand Dollar fine or a Fifteen Thousand Dollar fine.

21 All right, what's the State's position on that?

22 MR. HEMBREE: Your Honor, we have a criminal
23 history on juror number 185 that indicates his statement
24 here is accurate, that he was convicted in 1996 of
25 violating federal migratory bird laws. He was given a

1 sentence, it indicates here, of two years probation and
2 fifty hours community service. It appears it's a crime
3 that -- at least the probation carries more than a year,
4 and I can't speak for my own knowledge of the maximum
5 sentence of this violation, but I am aware that they
6 carry some fairly hefty penalties.

7 THE COURT: All right. What's the Defense's
8 position?

9 MR. DIGGS: We don't object to him being excused.

10 THE COURT: All right. We'll excuse juror number
11 185 then.

12 All right, the next one we have then is juror number
13 186. 186 filled out the juror questionnaire form and the
14 juror summons, indicates also under disqualifications,
15 "I've been convicted in State or Federal Court," and they
16 say -- the handwritten note says, "Possession with intent
17 of" -- I'm assuming marijuana, "1979, question mark."

18 Solicitor, do you have anything on juror 186?

19 MR. HEMBREE: Yes, Your Honor. That conviction
20 actually was in 1982, and he was convicted of PWID
21 marijuana, received a three year suspended sentence,
22 three years probation, and a fine.

23 THE COURT: All right, so you'd ask he be excused?

24 MR. HEMBREE: Yes, Your Honor.

25 THE COURT: And Defense position?

1 MR. DIGGS: No objection.

2 THE COURT: All right. He is excused.

3 The next one we have then is juror number 192,
4 Barbara Farmer. The Sheriff's affidavit states unable to
5 locate Barbara Farmer in Horry County. Not at given
6 address. No forwarding found. Unable to locate.

7 All right, let's go to juror number 197. That juror
8 did fill out the juror questionnaire form and the juror
9 summons, has checked an exemption. "I am the primary
10 caretaker of a disabled person or person age sixty-five
11 or older who cannot care for himself." Their current
12 place of employment in the juror questionnaire form
13 indicates N/A, not applicable. In looking through --
14 let's see, questionnaire number 23, "Are you or any
15 family members currently being treated for a medical
16 illness which would prevent or impair your jury service?"
17 "Yes." "If yes, please explain." "Eighty-seven year old
18 mother with health issues" is what they say, and that
19 appears to be the only notation with that.

20 What's the -- what's the State's position on juror
21 number 197?

22 MR. HEMBREE: Your Honor, it appears that the juror
23 is entitled to the exemption. They are not working, and
24 claim that they are caring for a disabled person. We
25 would ask that the juror be excused.

1 THE COURT: The Defense position?

2 MR. DIGGS: Your Honor, we don't object.

3 THE COURT: All right. Mark this juror as excused,
4 Madam Clerk.

5 The next one is juror number 209, and that is
6 Nicholas T. Fowler. The Sheriff's affidavit states that
7 unable to locate Nicholas T. Fowler in Horry County. Not
8 at address given. No forwarding found. 209, unable to
9 locate.

10 All right, juror 255 has been located and filled out
11 the juror information form, doesn't list any
12 disqualifications or exemptions. That juror is coming
13 in.

14 272, the Sheriff's affidavit on Deborah B. Hattem.
15 Unable to locate Deborah B. Hattem in Horry County.
16 Subject moved to Greenville, South Carolina, on 10/31/09,
17 and no longer resides.

18 All right, juror number 279 had filled out the juror
19 questionnaire form and indicated on the juror
20 questionnaire form regarding exemptions that they served
21 on circuit court jury duty during the previous four
22 calendar years. Date of service, they have -- and Madam
23 Clerk indicates that they served on May 22nd, 2008, per
24 the Clerk of Court's records, so the juror did serve in
25 circuit court May 22nd of '08.

1 What's the State's position?

2 MR. HEMBREE: The juror is entitled to the
3 exemption, Your Honor. No objection.

4 THE COURT: Defense?

5 MR. DIGGS: Yeah, no objection.

6 THE COURT: And I noted that I read the previous
7 four calendar years. It's obviously three calendar years
8 is what the statute has, but the juror summons for
9 circuit court that was sent to all the Clerks by the
10 State had that typographical error in it. Obviously
11 we're going by the statute of the three calendar years,
12 and when Madam Clerk brought that to the attention, the
13 State authorities they weren't going to spend money to
14 have new summons, so until those are used up, that's what
15 they have.

16 All right, so that one is excused.

17 All right, go to juror number 313. Juror number 313
18 filled out the juror form. Apparently the Sheriff hadn't
19 been able to locate, but the mail service did, and so the
20 Clerk -- the juror filled out the juror information sheet
21 and will be coming in. That's juror number 313.

22 All right, the next one, we go to juror number 401,
23 had filled out the juror questionnaire form. The juror
24 summons indicated prior circuit court jury duty, and the
25 Clerk of Court went through her records and has an

1 affidavit stating that the juror served on jury duty on
2 July 23rd, 2008, on juror 401. What's the State's
3 position?

4 MR. HEMBREE: The juror is excused, Your Honor. No
5 objection to the juror being excused, Your Honor.

6 THE COURT: Defense?

7 MR. DIGGS: No objection.

8 THE COURT: And 401 is excused.

9 Go to juror number 413, Counsel, if you would. They
10 did fill out the juror information sheet, but they set
11 forth on the juror summons that the exemption -- that
12 they have legal custody and duty of care of a child under
13 the age of seven and cannot provide adequate child care
14 while serving as a juror. They also added to their juror
15 questionnaire form that, "I am the only one who can take
16 and pick up my two kids from school and care for them
17 after school. My son stays sickly, and I really need to
18 be on call if I need to pick him up. May I please be
19 excused from this trial to be able to do this."

20 In the juror questionnaire form and the answer of 9
21 and 10, she indicates she's a homemaker. Current job,
22 title, or description, "Stay-at-home mom," and 11 was,
23 "For the last seven years."

24 The children, as indicated, are seven and five, as
25 set forth in number 15. What's the State's position?

1 MR. HEMBREE: The juror is entitled to the
2 exemption in our judgment, Your Honor. We would ask that
3 she be excused.

4 THE COURT: All right. Defense?

5 MR. DIGGS: No objection.

6 THE COURT: All right, excused 413.

7 All right, if we can go down to juror number 415.
8 They answered the juror questionnaire and a juror
9 summons, indicated in the exemption that they had a
10 criminal record, and they indicate breach of trust,
11 August 1997, in Horry County. Do you have any
12 information on that, Solicitor, 415?

13 MR. HEMBREE: No, Your Honor, we don't have any
14 information on that one. We can double-check that and
15 make a -- you know, try to make a determination on the
16 amount. Certainly if it's over ---

17 THE COURT: But they have it listed, and, you know,
18 honestly we don't know if that's correct or not, but they
19 list it as breach of trust, August 1997, Horry County.
20 That's what they -- that's what they set forth, so if
21 you'll check out juror number 415.

22 We'll have them come in, Madam Clerk, and then if we
23 find that out, and the Defense is in agreement, maybe on
24 Friday we'll excuse that juror, all right?

25 MR. HEMBREE: We'll double-check that, Your Honor.

1 Thank you.

2 THE COURT: All right, great.

3 All right, just so there is some added information
4 on juror number 448, it's not an exemption of any kind,
5 but they did indicate that they are a title abstracter.
6 I don't know if that was -- since they added that to the
7 bottom of the juror summons for circuit court, I wanted
8 to make sure that y'all had that additional information.
9 They do title abstracting work. All right, that was 448.

10 All right, go to number 485. The juror had
11 initially responded, sent in the juror questionnaire and
12 the juror summons for circuit court, and thereafter had
13 faxed to the Clerk's Office a statement from the Conway
14 Adult Medicine, and it has Karen Owens giving a date of
15 birth that matches the one on the juror questionnaire
16 form, date 11/3/09. "Patient under my care and is unable
17 to attend jury duty due to illness at this time." That's
18 what it says.

19 What's the State's position?

20 MR. HEMBREE: Your Honor, that's just a big vague.
21 I would ask that this juror at least required to come in
22 for general qualification and then we can assess the
23 situation at that ---

24 THE COURT: Very good. Madam Clerk, you can tell
25 them if they want to bring in some additional

1 information, that would be great.

2 All right, let's go to juror number 506, if you
3 would, please. 506 filled out the juror questionnaire
4 form and on the juror summons for circuit court in the
5 exemption category, he states that, "I am the primary
6 caretaker of a disabled person or a person age sixty-five
7 or older who cannot care for himself." They indicate in
8 their juror questionnaire form they have a place of
9 employment as Celebrations Nightlife, bartender, business
10 hours 7:00 to 3:00 A.M. I'm assuming that's 7:00 P.M. --
11 7:00 P.M. to 3:00 A.M., five years employment there.

12 Looking at number 23, "Are you or any family member
13 currently being treated for any medical illness which
14 would prevent or impair your jury service? Yes. Mother
15 recovering from breast cancer and father is disabled." I
16 don't see any other information. What would be the
17 State's position on that particular juror? Do you want
18 to have them come in and question them further?

19 MR. HEMBREE: Normally I would say yes, Your Honor.
20 That was where I was headed until I got to question
21 48, ---

22 THE COURT: 48.

23 MR. HEMBREE: --- and it's unrelated to the
24 exemption that he claims, but he states there that "He
25 don't want to" ---

1 THE COURT: "Feel personally responsible for a
2 decision."

3 MR. HEMBREE: --- "responsible for a decision." He
4 indicates that would -- you know, anything that would
5 prevent him from paying attention during the trial. It
6 sounds to me like he's probably going to get excused
7 anyway, but ---

8 THE COURT: All right. What's the Defense
9 position, Mr. Diggs?

10 MR. DIGGS: Your Honor, we believe he needs to come
11 in.

12 THE COURT: All right. Madam Clerk, we'll have the
13 juror come in. You might want to tell them that if they
14 have further information or explain further their request
15 regarding the primary caregiver, since that doesn't
16 square with their employment status.

17 THE CLERK: Okay, I will.

18 THE COURT: All right. Go to 532. They filled out
19 the juror questionnaire form and the juror summons, and
20 then contacted the Clerk of Court, and we have an
21 affidavit indicating that their date of birth is
22 5/18/1942, over the age of sixty-five, and wishes now to
23 be excused. What is the State's position?

24 MR. HEMBREE: No objection, Your Honor.

25 THE COURT: Defense?

1 MR. DIGGS: We object.

2 THE COURT: Excused.

3 Go to juror number 540, Melody B. Rogers. The
4 Sheriff's affidavit, unable to locate Melody B. Rogers in
5 Horry County. Not at this address. No forwarding found.
6 Unable to locate.

7 Go to juror 545, the Sheriff's affidavit on Scott R.
8 Roth. Unable to locate Scott R. Roth in Horry County.
9 Not at given address. No forwarding found. Unable to
10 locate.

11 We've got juror number 548. I think there was some
12 information about the father was having surgery on the
13 5th, and I think we were going to have them come in, or
14 come in on the 9th or the 10th, or whenever it was they
15 were put in a panel. There's another e-mail to the Clerk
16 of Court. "Mrs. Huggins, juror number 548. I am e-
17 mailing the dates I am to be there, November 6th. I was
18 just notified last Thursday of this. My father is having
19 major surgery on November 5th in Pinehurst, North
20 Carolina. If there is any way at all that I can be moved
21 to the next case, I would greatly appreciate it," and
22 Valerie Ruonala.

23 She indicates her place of employment is Ruonala
24 Durable Medical Equipment, the owner. Business hours,
25 9:00 to 5:00. Length of employment, seven years.

1 What's the State's position? I think before we had
2 indicated to put her on a panel and have her come in and
3 be sworn at that time, and questioned.

4 MR. HEMBREE: I guess the only thing that changes,
5 Your Honor, is that she's got to be there for the surgery
6 on the 5th. Coming in on the 6th, I don't ---

7 THE COURT: If she comes in on -- like I said, if
8 she doesn't have to come in -- well, if she was not
9 coming in Friday, she was placed on a panel, come in the
10 next week and then be sworn and questioned at that point
11 in time.

12 MR. HEMBREE: Your Honor, that sounds -- we have no
13 objection to that process, Your Honor. Thank you.

14 THE COURT: All right. Defense?

15 MR. DIGGS: Your Honor, we don't object to you
16 moving her on down to the next term of court, you know,
17 in the event that there's some complications with the
18 surgery.

19 THE COURT: All right. Well, have her come in not
20 -- Madam Clerk, she doesn't have to come in Friday, but
21 tell her we will put her on a panel and she will be
22 coming in the next week at whatever time you tell her to
23 come in, all right?

24 THE CLERK: Yes, sir.

25 THE COURT: And remember, that's one we'll need to

1 swear.

2 All right, going then -- skipping up to 600. Juror
3 number 600, Barbara Jo Stanley, filled out the juror
4 questionnaire form and is coming in.

5 Go to juror number 625, originally was unable to
6 locate, but apparently mail caught up with them, and
7 there's certainly a different address from the one set
8 forth for 625. There's a change of address, Madam Clerk,
9 so we'll note that for 625, and then they did fill out
10 the questionnaire form, so we'll have that juror coming
11 in.

12 MR. HEMBREE: Your Honor, ---

13 THE COURT: Yes, sir.

14 MR. HEMBREE: --- on this one, it may -- and if the
15 Clerk would like to contact this juror, it appears that
16 they may live in Georgetown County. It's Murrells Inlet.
17 Now, some Murrells Inlet ---

18 THE COURT: Murrells Inlet, and that's -- we don't
19 know.

20 MR. HEMBREE: Right; right.

21 THE COURT: I mean, that's the problem with
22 Murrells Inlet is part of it is in Horry County and part
23 of it is not, so is there any way, rather than leaving it
24 to the juror to tell you, Madam Clerk, is there any way
25 for y'all to check to see or have someone check to see if

1 this address is located in Horry County or Georgetown?

2 THE CLERK: I can call 911.

3 THE COURT: How about do that. How about see if we
4 can't communicate otherwise than relying upon the juror
5 to tell us what county they live in.

6 THE CLERK: If they say that, can I go ahead and
7 excuse them?

8 THE COURT: If 911 indicates that this juror lives
9 in Georgetown County, is there any problem with the Clerk
10 just informing us of that and that juror being excused?
11 From the State?

12 MR. HEMBREE: No objection from the State, Your
13 Honor.

14 THE COURT: Defense?

15 MR. DIGGS: No objection.

16 THE COURT: Very good.

17 All right, go to 642. It's another one that
18 apparently was originally unable to -- unable to locate,
19 but the mail caught up with them and they filled out the
20 juror questionnaire form. Again, the street address is
21 different. It's still North Myrtle Beach, but it's a
22 different street address, but they have filled out the
23 juror questionnaire form and are coming in.

24 MR. HEMBREE: Your Honor, I don't know -- I just
25 point it out. I'm not sure what it means. We'll

1 probably just have to -- clearly have to wait until they
2 get here, but they checked the box that says they're not
3 a U.S. citizen, and then they filled in -- they said they
4 were born in Conway, South Carolina. I'm puzzled with
5 the ---

6 THE COURT: Well, we'll just see. It might be that
7 they got -- I don't know. I'm assuming it may be that
8 they're not -- maybe they're not registered to vote or
9 something, ---

10 MR. HEMBREE: May be. I just -- we'll have them
11 here.

12 THE COURT: --- so I don't know. We'll find out,
13 but obviously we'll just have this juror coming in, and
14 just note the new address.

15 All right, 686 was originally unable to -- unable to
16 locate, but then has filled out the juror questionnaire
17 form. Is the correct address that's on the rollcall list
18 -- the same address on the rollcall list and they filled
19 out the juror information form, so they'll be coming in.

20 All right, go to number 700, if you would. Got a --
21 the Clerk got a fax dated November 3rd, 2009, so Horry
22 County Judicial Complex, 1301 Second Avenue, Conway,
23 South Carolina. It says, "Dear Judge, I have a friend
24 typing this letter for me as I am unable to do so myself.
25 I was summoned as a potential juror, juror number 700,

1 for a case to begin this Friday, November 6, 2009.

2 After receiving the summons, I contacted the Clerk
3 of Courts requesting a deferral of my jury duty as I have
4 made travel plans to go to New York to visit my ailing
5 grandparents. Before receiving a reply from the Court on
6 this matter, I suffered a broken right hand. I had a
7 cast put on yesterday and am finding the simplest task
8 very difficult to perform. I am presently taking pain
9 medication that leaves me drowsy, and the instructions on
10 the label warn against driving or operating heavy
11 equipment. I now have no way of getting to and from
12 Court.

13 In view of these recent events, I am again
14 requesting to be dismissed from this jury pool and
15 rescheduled for a later date. Contact number -- thank
16 you for considering my request. Michelle Zona."

17 All right, what's the State's position?

18 MR. HEMBREE: Your Honor, we don't have any
19 objection to Ms. Zona's jury service being transferred to
20 another term.

21 THE COURT: Defense?

22 MR. DIGGS: We don't object.

23 THE COURT: All right, Madam Clerk, you can
24 transfer her. Let's transfer her to January. Transfer
25 her to a term in January. Let's pick January 11th.

1 Transfer her to January 11th, please, ma'am.

2 What we're going to do, Counsel, is with the Clerk,
3 she's going to go through the numbers just to make sure
4 who's coming in so that we're all on the same page. If
5 y'all don't mind us doing that, we'll try to do it as
6 quickly as we can.

7 All right, Madam Clerk, go ahead.

8 THE CLERK: I've got 3, 4, 5, -- and if anybody has
9 any question ---

10 THE COURT: If you have a question, y'all raise
11 your hand, or jump up, or something.

12 THE CLERK: 9, 11, 12, 13, 17, 19, 21, 22, 23, 31,
13 33, 35, 37, and the paperwork will be here tomorrow, ---

14 THE COURT: Okay.

15 THE CLERK: --- 38, 41, 42, 43, 44, 45, 46, 47 --
16 I'm sorry -- 53, 54, 57, 60, 64, 65, 67, 68, 69, 70, 73,
17 76, 78, 83, ---

18 THE COURT: Could you stop for just one second and
19 let me catch up.

20 All right, go ahead, Madam Clerk.

21 THE CLERK: 87, 88, 89, 90, 93, 95, 98, 99, 101,
22 102, 103, 104, 106, 107, 115, 119, 121, 122, 123, 131,
23 134, 137, 138, 145, 149, 150, 154, 156, 157, 158, 159,
24 162, 163, 166, 167, ---

25 THE COURT: I'm sorry. I had 163 as excused, being

1 over sixty-five, 163.

2 THE CLERK: I could have marked the wrong one.

3 THE COURT: I have 162 is coming in; 163 as being
4 excused, over sixty-five.

5 THE CLERK: And that's correct.

6 THE COURT: All right, very good.

7 THE CLERK: Okay, 166, 167, 170, 172, 179, 180,
8 181, 183, 187, 190, 191, 195, 198, 199, 200, 204, 208,
9 213, 215, 218, 222, 224, 227 ---

10 THE COURT: Wait a minute.

11 MR. HEMBREE: Excuse me, Your Honor. We had 222
12 down as not coming in, a criminal record.

13 THE COURT: 222? I didn't have anything -- I don't
14 have anything on 222. I'm sorry.

15 THE CLERK: No; he's coming in.

16 THE COURT: Do you have anything on Angel Garcia
17 then?

18 MR. HEMBREE: Your Honor, we didn't bring that
19 material up here today, but we will ---

20 THE COURT: All right. How about -- we'll have to
21 -- y'all just make a note to check 222, and then on
22 Friday, we'll need to check on that, okay?

23 MR. HEMBREE: Thank you, Your Honor.

24 THE CLERK: I think that might have been one you
25 wasn't sure if that was really them or not. I'm not

1 sure.

2 THE COURT: All right, that's okay. We'll just
3 check it out again. Okay, 222.

4 THE CLERK: Okay, 224, 227, 229, 231, 234, 236,
5 237, 240, 241, 243, ---

6 THE COURT: Wait; wait. 241, I had excused, over
7 sixty-five.

8 THE CLERK: And they would be over sixty-five.

9 THE COURT: Okay.

10 THE CLERK: Okay, 243, 247, ---

11 MR. HEMBREE: Your Honor, I have 246 coming in.

12 THE COURT: Yes, 246 also coming in.

13 THE CLERK: I had it written to the side.

14 THE COURT: All right.

15 THE CLERK: I'm sorry. 246 and 247.

16 THE COURT: All right, very good.

17 THE CLERK: 250, 251, 253, 255, 257, 258, 260, 261,
18 265, 268, 275, 277, 280, 281, 282, 284, 287, 290, 294,
19 297 ---

20 THE COURT: How about 291?

21 THE CLERK: 291, I have criminal conviction.

22 THE COURT: Is that what you have, Solicitor?

23 MR. HEMBREE: Yes, Your Honor.

24 THE COURT: All right, thank you.

25 THE CLERK: Then I have 294 coming in.

1 THE COURT: Okay.

2 THE CLERK: 297, 298, 299, 300, 302, 307, 309, 313,
3 315, 316, 320, 321, 322, 326, 329, 330, 331, 333, 337,
4 342, 343, ---

5 MR. HEMBREE: Excuse me. Your Honor, I had 339
6 coming in also.

7 THE CLERK: That's a commissioned law enforcement.

8 THE COURT: 339, no; I don't have that.

9 THE CLERK: I could have wrote it on the wrong one,
10 so let me pull it.

11 THE COURT: Okay. I've got -- I've got 338 is
12 excused.

13 THE CLERK: Yes, I have that.

14 THE COURT: 339, William P. Johnson. All right, my
15 clerk indicates that that person is employed with the
16 Horry County Police Department.

17 MR. HEMBREE: Thank you, Your Honor.

18 THE CLERK: So that is correct?

19 THE COURT: Yes, ma'am, Horry County Police
20 Department, that's correct.

21 THE CLERK: All right, 342, 343 ---

22 THE COURT: Just stop for one second.

23 Now, obviously, Mr. Diggs, Ms. Williams, if y'all
24 object to any of these, y'all let me know, okay? Y'all
25 haven't said anything, but if you've got any problems,

REVIEW OF ROLLCALL LIST FOR PANEL

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1 y'all let me know.

2 MR. DIGGS: We will.

3 THE COURT: All right, thank you. Go ahead, ma'am.

4 THE CLERK: 345, 346, 347, 348, 351, 352, 354, 362,
5 363, 366, 370, 372, 375, 377, 378, 380, 382.

6 THE COURT: I've got -- let's see; okay, 378 is
7 coming in. Okay, great. I'm sorry. Go ahead.

8 THE CLERK: Okay, 385, 386, 387, 388, 389, 390,
9 391, 392, 393, 396, 397, 399, 402, 407, 408, 411, 415,
10 418 ---

11 THE COURT: What happened to 412?

12 THE CLERK: Invalid caregiver.

13 THE COURT: Okay, thank you, ma'am.

14 THE CLERK: 423, 424, 426, 428, 429, 433, 438,
15 444, ---

16 THE COURT: And tell me what happened to 436,
17 please, ma'am.

18 THE CLERK: 436 is over sixty-five.

19 THE COURT: Over sixty-five. All right, thank you,
20 ma'am.

21 THE CLERK: Okay, 446, 448, 451, 458, 459, 462,
22 466, 467, 468, 472, 473, 477, 478, 479, 480, 484, 485,
23 487, 490, 494, 496, ---

24 THE COURT: What happened to 495?

25 THE CLERK: Transferred.

1 THE COURT: Transferred. All right, thank you.
2 THE CLERK: 499, -- I said 497, right?
3 THE COURT: Yes, ma'am.
4 THE CLERK: No, that's not a resident.
5 THE COURT: No, 496.
6 THE CLERK: Okay, and then 499, 503, 505, 506, 507,
7 508, 510, 512, 513, 515, 516, 518, 522, 524, 529, 530,
8 534, 539, 542, 547, 548, 549, 552, 554, 557, 558 ---
9 MR. HEMBREE: Excuse me. I had 554 was unable to
10 locate.
11 THE CLERK: 554?
12 MR. HEMBREE: Yes, ma'am.
13 THE CLERK: I've got 553, unable to locate.
14 THE COURT: Well, I had the first three, 53, 54,
15 and 55 was unable to locate.
16 THE CLERK: I could have missed just coding it on
17 the computer. She's checking that for you.
18 THE COURT: All right.
19 THE CLERK: 557, 558, 561, 564, ---
20 THE COURT: And 563, what happened to 563?
21 THE CLERK: Law enforcement.
22 THE COURT: Okay.
23 THE CLERK: I think he's the DHEC officer.
24 MR. HEMBREE: He's the DHEC officer.
25 THE COURT: All right, very good.

REVIEW OF ROLLCALL LIST FOR PANEL

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1 THE CLERK: 554 is unable to locate.

2 THE COURT: All right, very good.

3 THE CLERK: Okay, 564 is coming in, 567, 568, 570,
4 571, 572, 573, 575, 577, 580, 582, 586, 587, 592, 594,
5 597, 598, 600, 601, 602, 607, 608, 610, 611, 612, 615,
6 621, 622, 625, 628, 631, 632, 633, 634, 637, 638, 639,
7 642, 647, 656, 658, 659, 660, 661, 662, 664, 667, 668,
8 669, 670, 672, 673, 682, 683, ---

9 MR. HEMBREE: Excuse me.

10 THE COURT: Sorry, Madam Clerk.

11 MR. HEMBREE: Madam Clerk, I had 673 as a student.

12 THE COURT: Transferred. 673 transferred, a
13 student.

14 THE CLERK: Thank you.

15 THE COURT: All right, start with 673 again,
16 please.

17 THE CLERK: After that, the next one coming in will
18 be 682.

19 THE COURT: All right.

20 THE CLERK: 683, 685, 686, 688, 690, 693, 695, and
21 that's it. Does that sound right?

22 MR. HEMBREE: That's good.

23 THE CLERK: That puts it up around 300, maybe 299.

24 THE COURT: All right, very good.

25 Anything else from the State at this point in time?

1 MR. HEMBREE: Yes, Your Honor. One sort of just
2 housekeeping matter, and I may have misunderstood the
3 Court's intention on Friday, that I understand that the
4 jurors will be checking in downstairs when they first
5 arrive and they will be coming up here for the general
6 qualification?

7 THE COURT: Right. They just -- the Clerk is going
8 to -- downstairs is going to kind of with their computer
9 system kind of check them off, make sure that they have
10 all of them, and you're just going to send them up as you
11 check them in?

12 THE CLERK: And we're going to get their mileage.

13 THE COURT: Their mileage.

14 THE CLERK: Get their mileage, check them in and
15 get their mileage, and give them their badge, and send
16 them up.

17 THE COURT: Okay.

18 MR. HEMBREE: And that was my understanding. Then
19 I think I heard the Court say that they were going to be
20 asked about their employment when they got up here?

21 THE COURT: Well, if we don't need to do the -- if
22 we don't need that -- I don't know that we need to do
23 that. I could just go into then just the general
24 qualification. I didn't know you were going to get the
25 mileage down there, so I was just going to have them ---

1 THE CLERK: Yes. That was to just try to save some
2 time.

3 THE COURT: All right. Then we'll just do the --
4 we'll just start off with the general -- swear them all
5 in and then do the general qualification then as soon as
6 -- when they come upstairs.

7 MR. HEMBREE: Very good. I just wanted to check on
8 that. Thank you, Your Honor.

9 THE COURT: Okay great. Yes, sir?

10 MR. DIGGS: Your Honor, do we need to be there?
11 I'm not sure ---

12 THE COURT: I'm sorry?

13 MR. DIGGS: Do we need to be there?

14 THE COURT: Downstairs, no; just upstairs. That's
15 just a -- you know, they're going to be coming in in
16 dribs and drabs, you know, ones and twos, and the Clerk
17 is just going to check them off, mileage, give them a
18 badge, and send them upstairs, so I don't see a necessity
19 for any of us honestly to be there. That's more an
20 administrative matter for the Clerk's Office and to help
21 them, you know, in their recordkeeping, and making sure
22 the people get paid properly, that sort of thing.

23 All right, anything else, Solicitor?

24 MR. HEMBREE: Nothing else from the State; no, Your
25 Honor.

1 THE COURT: Mr. Diggs? Ms. Williams?

2 MR. DIGGS: Nothing from the Defense, Your Honor.

3 THE COURT: All right, very good. All right, so
4 the next matter that we have then, as I see it, is on
5 Friday, correct?

6 MR. HEMBREE: Yes, Your Honor.

7 THE COURT: All right, I'll see y'all Friday
8 morning then here in the courtroom.

9 MR. DIGGS: Thank you.

10 THE COURT: Yes. All right, we're going to be
11 optimistically shooting for ten 'til ten. They're
12 starting at 9:30 downstairs. It will probably be later
13 than that, but let's make sure that Mr. Stanko is here by
14 ten 'til ten on Friday. How about that, okay, so that if
15 we can go forward, we'll be able to, all right?

16 MR. HEMBREE: Thank you, Your Honor.

17 THE COURT: Thank y'all. I appreciate it very
18 much.

19 THE CLERK: I did pull my paperwork on Garcia and I
20 do have excused, and I called and spoke with his wife and
21 told him not to come in.

22 THE COURT: And that was excused for?

23 THE CLERK: Excused for a criminal record.

24 THE COURT: And what number was that?

25 THE CLERK: 222.

1 THE COURT: 222, excused for criminal record.

2 Thank you.

3 (Conclusion of Transcript of Record.)

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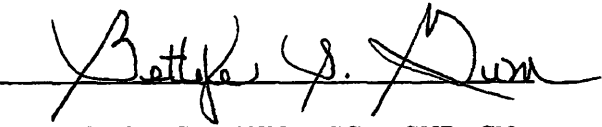
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF HORRY)
3

4 I, the undersigned Bettye S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a true,
7 accurate and complete Transcript of Record of all the
8 proceedings had and evidence introduced in the hearing of
9 the captioned case, as taken by Dixie Cox Eubank,
10 Official Reporter, and transcribed by me, relative to
11 appeal, in the Court of General Sessions for Horry
12 County, South Carolina.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15
16

17 July 9, 2010

18 
19
20 BETTYE S. GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina
23 My Commission Expires: 7/13/14
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
)
Plaintiff,)

-VS-

) TRANSCRIPT OF RECORD
)

Stephen Christopher Stanko,)
)
Defendant.)

November 6, 2009
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

A P P E A R A N C E S:

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I N D E X
(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

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E X H I B I T I N D E X

(No Exhibits Marked)

GENERAL QUALIFICATION OF JURORS

3

1 THE COURT: All right, ladies and gentlemen, I
2 appreciate very much your patience in this regard.
3 Obviously there is a large number of you. It took a
4 long time for the Clerk's Office to index you, to make
5 sure we had everybody that was properly responded.
6 Unfortunately we couldn't start until we had all of
7 y'all, so we needed to make sure that we had everybody
8 before we could begin any part of the process.

9 My name is Steven John, the Resident Judge of the
10 Fifteenth Judicial Circuit which covers Horry and
11 Georgetown Counties.

12 Madam Clerk, have you placed them all under oath?

13 THE CLERK: Yes, sir.

14 THE COURT: Very good. The first thing that we're
15 going to do is call the roll. The Clerk will call the
16 roll, make sure that we haven't lost some of y'all from
17 downstairs to up here, they aren't still hanging out in
18 the bathrooms or whatever, so we do need to call the
19 roll once y'all have been sworn, and then we will start
20 the general qualification process.

21 All right, Madam Clerk, if you would call the roll,
22 please, ma'am.

23 THE CLERK: When I call your name, please stand,
24 and then you can be seated.

25 Number 3, Agripino. (The juror stands.) Thank

GENERAL QUALIFICATION OF JURORS

4

1 you.

2 4, Anntanette Aklin. (The juror stands.) Thank

3 you.

4 Number 9, Layton Allen. (The juror stands.) Thank

5 you.

6 11, Wesley Allen. (The juror stands.) Thank you.

7 13, James Alvey. (The juror stands.) Thank you.

8 21, Jennifer -- I'm not quite sure. (The juror stands.)

9 MS. ARAUJO: Araujo. That's okay.

10 THE CLERK: Thank you.

11 22, Matthew Arbaugh. (The juror stands.) Thank

12 you.

13 23, Tina Arms. (The juror stands.) Thank you.

14 31, Karen Barr. (The juror stands.) Thank you.

15 33, Margaret Bartomeo. (The juror stands.) Thank

16 you.

17 35, Mary Bates. (The juror stands.) Thank you.

18 37, Darryl Bayne. (The juror stands.) Thank you.

19 41, Daniel Becker. (The juror stands.) Okay.

20 42, Leroy Beckwith. (The juror stands.) Thank

21 you.

22 43, Daniel Begley. (The juror stands.) Thank you.

23 44, Madgie Bell. (The juror stands.) Thank you.

24 45, Rosanne Bell. (The juror stands.)

25 46, James Bellamy. (The juror stands.) Thank you.

GENERAL QUALIFICATION OF JURORS

5

1 53, James Berry. (The juror stands.) Thank you.
2 54, Jaime Bess. (The juror stands.)
3 57, Gwendl Blondmonville. (The juror stands.)
4 Thank you.
5 60, Gina Boggs. (The juror stands.) Thank you.
6 64, Brandon Boyd. (The juror stands.) Thank you.
7 65, Jeannemarie Brady. (The juror stands.) Thank
8 you.
9 67, Bobby Branton, Jr. (The juror stands.) Thank
10 you.
11 68, Susan Briggs. (The juror stands.) Thank you.
12 69, Randall Broughton. (The juror stands.) Thank
13 you.
14 70, Earnest Brown. (The juror stands.) Thank you.
15 73, Brian Bullock. (The juror stands.)
16 76, Brenda Butler. (The juror stands.) Okay.
17 78, Rashel Butler. (The juror stands.) Thank you.
18 83, Tim Caldwell. (The juror stands.) Thank you.
19 87, Amanda Cannon. (The juror stands.) Thank you.
20 88, Sonny Cannon. (The juror stands.) Thank you.
21 90, Barbara Carr. (The juror stands.) Thank you.
22 93, Lisa Carver. (The juror stands.)
23 95, Angel Castillo. (The juror stands.) Thank
24 you.
25 98, Ray Caulk. (The juror stands.) Thank you.

GENERAL QUALIFICATION OF JURORS

1 99, Johnny Causey. (The juror stands.) Thank you.
2 101, Allyson Chambers. (The juror stands.) Thank
3 you.
4 103, Joyce Chestnut. (The juror stands.)
5 102, Johnny Chestnut. (The juror stands.) Thank
6 you.
7 104, Anthony Cimini. (The juror stands.) Thank
8 you.
9 106, Zachary Clark. (The juror stands.) Okay.
10 121, Thomas Cooper. (The juror stands.)
11 119, Michael Cooper. (The juror stands.) Thank
12 you.
13 131, Walter Cumbow. (The juror stands.) Thank
14 you.
15 134, Nancy Custard. (The juror stands.) Thank
16 you.
17 137, Lonnie Daniels. (No response.) 137 Lonnie
18 Daniels. (No response.) That's one that's coming in
19 Monday, Judge.
20 138, Melinda Daniels. (The juror stands.) Thank
21 you.
22 145, Laura Davis. (The juror stands.) Thank you.
23 149, Ronaldo De Los Reyes. (The juror stands.)
24 Thank you.
25 150, Vance Defelice. (The juror stands.) Thank

GENERAL QUALIFICATION OF JURORS

7

1 you.
2 154, John Desantis. (The juror stands.) Thank
3 you.
4 156, Rose Diaz. (The juror stands.) Thank you.
5 158, Tiffany Dixon. (The juror stands.) Thank
6 you.
7 159, Cynthia Dodd. (The juror stands.) Thank you.
8 162, Jeremiah Doyle. (The juror stands.) Thank
9 you.
10 166, Sybil Dupie. (The juror stands.) Thank you.
11 167, Linda Dupree. Did she stand up? 167, Linda
12 Dupree. (The juror stands.) Thank you.
13 172, Lynn Edmonds. (The juror stands.) Thank you.
14 179, Toni Elliott. (The juror stands.)
15 180, Dale Ellis. (The juror stands.)
16 181, Gerald Ellis. (The juror stands.) Thank you.
17 183, Tamira Elvis. (The juror stands.) Thank you.
18 190, James Faircloth. (The juror stands.) Thank
19 you.
20 191, Kenneth Farley. (The juror stands.)
21 195, Donna Ferrebee. (The juror stands.) Thank
22 you.
23 199, William Files. (The juror stands.) Thank you.
24 200, Steven Finley. (The juror stands.) Thank
25 you.

GENERAL QUALIFICATION OF JURORS

1 204, Herman Ford. (The juror stands.) Thank you.
2 208, Jill Fowler. (The juror stands.) Thank you.
3 213, Jamie Franklin. (The juror stands.)
4 215, Lynn Frick. (The juror stands.) Thank you.
5 218, Deborah Fullwood. (The juror stands.) Thank
6 you.
7 224, Terry Gartner. (The juror stands.) Thank
8 you.
9 227, Solomon Gause. (The juror stands.) Thank
10 you.
11 229, Karen Geigle. (The juror stands.) Thank you.
12 231, Telia Gibbons. (The juror stands.) Thank
13 you.
14 234, John Gira. (The juror stands.) Thank you.
15 236, Judy Glymph. (The juror stands.) Thank you.
16 237, Kimberley Goh. (The juror stands.) Thank
17 you.
18 240, Donna Gore. (The juror stands.) Thank you.
19 243, Nancy Goss. (The juror stands.) Thank you.
20 246, Norman Graham. (The juror stands.) Thank
21 you.
22 247, Terry Lynn Graham. (The juror stands.) Thank
23 you.
24 250, Diane Graziano. (The juror stands.) Thank
25 you.

GENERAL QUALIFICATION OF JURORS

9

1 255, Richard Gregory. (The juror stands.) Thank
2 you.
3 257, Celeste Griffin. (The juror stands.) Thank
4 you.
5 258, Virginia Grissett. (The juror stands.) Thank
6 you.
7 260, Robert Hall. (The juror stands.) Thank you.
8 261, Donna Hallaran. (The juror stands.) Thank
9 you.
10 265, Sandra Hardin. (The juror stands.) Thank
11 you.
12 268, William Harrill. (The juror stands.) Thank
13 you.
14 275, Shannon Headley. (The juror stands.) Thank
15 you.
16 277, Martin Hemingway. (The juror stands.) Thank
17 you.
18 280, Veola Hemingway. (The juror stands.) Thank
19 you.
20 281, Tammy Henderson. (The juror stands.) Thank
21 you.
22 282, Karen Henry. (The juror stands.) Thank you.
23 284, Arcissia Herndon. (The juror stands.) Thank
24 you.
25 290, Brenda Holderfield. (The juror stands.)

1 Thank you.

2 294, Andrea Hollemback. (The juror stands.) Thank

3 you.

4 297, William Holt. (The juror stands.) Thank you.

5 298, Elizabeth Holton. (The juror stands.) Thank

6 you.

7 299, Michelle Horne. (The juror stands.) Okay.

8 300, Richard Hudson. (The juror stands.) Thank

9 you.

10 302, Eddie Hughes. (The juror stands.) Thank you.

11 307, Bonnie Hutto. (The juror stands.) Thank you.

12 309, James Hyman. (The juror stands.) Thank you.

13 313, Melissa Isaacson. (The juror stands.) Thank

14 you.

15 315, Audrie Ivey. (The juror stands.) Thank you.

16 316, James Jablonski. (The juror stands.) Thank

17 you.

18 320, Lewis Janes. (The juror stands.) Thank you.

19 322, Gary Jeffcoat. (The juror stands.) Thank

20 you.

21 326, Amanda Johnson. (The juror stands.) Thank

22 you.

23 333, Karen Johnson. (The juror stands.) Thank

24 you.

25 329, Glenda Johnson. (The juror stands.) Thank

GENERAL QUALIFICATION OF JURORS

11

1 you.

2 330 Jennifer Johnson. (The juror stands.) Okay.

3 337, Rhonda Johnson. (The juror stands.)

4 331, Joseph Johnson. (The juror stands.) Okay.

5 342, Bradley Jordan. (The juror stands.) Okay.

6 345, Timothy Jordan. (The juror stands.) Thank

7 you.

8 346, Wanda Jordan. (The juror stands.) Thank you.

9 343, Lakenya Jordan. (The juror stands.) Thank

10 you.

11 347, Ariane Joyce. (The juror stands.) Thank you.

12 348, Sharon Kantowitz. (The juror stands.) Thank

13 you.

14 351, Brian Keane. (The juror stands.) Thank you.

15 352, Lisa Keane. (The juror stands.) Thank you.

16 354, Dawn Kennedy. (The juror stands.) Thank you.

17 363, Norine Klebach. (The juror stands.) Thank

18 you.

19 370, David Lally. (The juror stands.) Thank you.

20 372, Andrew Langway. (The juror stands.) Okay.

21 375, Michael Laughter. (The juror stands.) Thank

22 you.

23 377, Paul Leckie. (The juror stands.) Thank you.

24 378, Tonja Leidig. (The juror stands.) Thank you.

25 380, Sharon Lemon. (The juror stands.) Thank you.

1 382, Dreama Lentz. (The juror stands.) Thank you.
2 385, Richard Lewis. (The juror stands.) Thank
3 you.
4 386, Barbara Linderman. (The juror stands.) Thank
5 you.
6 387, Ellic Livingston. (The juror stands.) Thank
7 you.
8 388, Jeanetta Livingston. (The juror stands.)
9 Thank you.
10 389, David Lloyd. (The juror stands.) Okay.
11 391, Linda Lockner. (The juror stands.) Thank
12 you.
13 392, Michael Loehr. (The juror stands.) Thank
14 you.
15 393, Christopher Lombardi. (The juror stands.)
16 Thank you.
17 396, Billy Lookabill. (The juror stands.) Thank
18 you.
19 397, John Lopes. (The juror stands.) Thank you.
20 399, Catherine Lowery. (The juror stands.) Thank
21 you.
22 402, Rebecca Lyons. (The juror stands.) Thank
23 you.
24 407, Raymond Maggio. (The juror stands.) Thank
25 you.

GENERAL QUALIFICATION OF JURORS

13

1 408, Guiseppe Maglione. (The juror stands.) Thank
2 you.
3 415, Anne Mateer. (The juror stands.) Thank you.
4 418, Richard McAbee. (The juror stands.) Thank
5 you.
6 423, Gregory McEvoy. (The juror stands.) Thank
7 you.
8 424, Lisa McGee. (The juror stands.) Thank you.
9 426, Rachel McGowan. (The juror stands.) Thank
10 you.
11 428, Melvin McKinney. (The juror stands.) Thank
12 you.
13 429, Bryan McKnight. (The juror stands.) Thank
14 you.
15 433, Russel McMahon. (The juror stands.) Thank
16 you.
17 444, Mildred Millar. (The juror stands.) Thank
18 you.
19 446, Jane Miller. (The juror stands.) Thank you.
20 448, Vickie Miller. (The juror stands.) Thank
21 you.
22 451, Sherrie Mitchell. (The juror stands.) Thank
23 you.
24 458, Mary Morningstar. (The juror stands.) Thank
25 you.

GENERAL QUALIFICATION OF JURORS

1 459, Gloria Morris. (The juror stands.)
2 I've got number 5, Linda Morrison. (The juror
3 stands.) Thank you.
4 462, Joseph Morrow. (The juror stands.) Thank
5 you.
6 466, Thomas Murray. (The juror stands.) Thank
7 you.
8 468, Harrie Myers. (The juror stands.) Thank you.
9 472, Sara Newton. (The juror stands.) Thank you.
10 473 Andrea Nobles. (The juror stands.) Thank
11 you.
12 477, Sandra Norton. (The juror stands.) Thank
13 you.
14 478, Byrdeen Nota. (The juror stands.) Thank you.
15 115, Darlene Novak. (The juror stands.) Thank
16 you.
17 480, Bonnie Oguin. (The juror stands.) Thank you.
18 484, Linda Orsimarsi. (The juror stands.) Thank
19 you.
20 485, Karen Owens. (The juror stands.) Thank you.
21 487, Salvatore Panepinto. (The juror stands.)
22 Thank you.
23 490, Ashwin Patel. (The juror stands.) Thank you.
24 494, Carey Payne. (The juror stands.) Thank you.
25 499, Thomas Pennington. (The juror stands.) Thank

GENERAL QUALIFICATION OF JURORS

15

1 you.

2 503, Hoaly Pham. (The juror stands.) Thank you.

3 505, Cynthia Phipps. (The juror stands.) Thank

4 you.

5 506, Jerry Pike. (The juror stands.) Thank you.

6 507, Benjamin Pinckney. (The juror stands.) Thank

7 you.

8 508, Beverly Pitman. (The juror stands.) Thank

9 you.

10 510, Jane Powell. (The juror stands.) Thank you.

11 512, Dave Priest. (The juror stands.) Thank you.

12 513, Samuel Pringle. (The juror stands.) Thank

13 you.

14 515, Stacey Prosser. (The juror stands.) Thank

15 you.

16 516, John Pryor. (The juror stands.) Thank you.

17 522, Michael Ray. (The juror stands.) Thank you.

18 524, Richard Lewis. (The juror stands.)

19 MR. RICHARDS: That's Lewis Richards.

20 THE CLERK: Oh, I've got it backwards. Sorry.

21 529, Jay Riddell. (The juror stands.) Thank you.

22 530, Nicholas Rider. (The juror stands.)

23 534 Violeta Roberts. (The juror stands.) Thank

24 you.

25 539, Ryan Rodriguez. (The juror stands.) Thank

1 you.
2 542, Victor Romano. (The juror stands.) Thank
3 you.
4 547, Keith Roy. (The juror stands.) Thank you.
5 549, Linda Russ. (The juror stands.) Thank you.
6 552, Sharon Safford. (The juror stands.) Thank
7 you.
8 557, Lisa Sapochak. (The juror stands.) Thank
9 you.
10 558, Linda Scheyd. (The juror stands.) Thank you.
11 561, Vicki Schwimmer. (The juror stands.) Thank
12 you.
13 564, Lisa Sellers. (The juror stands.) Thank you.
14 567, Renee Shaw. (The juror stands.) Thank you.
15 568, Thomas Shelley. (The juror stands.) Thank
16 you.
17 570, Joan Silvestri. (The juror stands.) Thank
18 you.
19 571, Robert Simeone. (The juror stands.) Thank
20 you.
21 573, Dorothy Simpson. (The juror stands.) Thank
22 you.
23 575, William Simril. (The juror stands.) Thank
24 you.
25 577, Joyce Singleton. (The juror stands.) Thank

GENERAL QUALIFICATION OF JURORS

17

1 you.

2 580, Chester Skowronski. (The juror stands.)

3 Thank you.

4 592, Sandra Smith. (The juror stands.) Thank you.

5 586, Gene Smith. (The juror stands.) Thank you.

6 594, Sandra Snyder. (The juror stands.) Thank
7 you.

8 597, Joyce Spengler. (The juror stands.) Thank
9 you.

10 598, James Spivey. (The juror stands.) Thank you.

11 600, Barbara Stanley. (The juror stands.) Thank
12 you.

13 601, Waverly Stanley. (The juror stands.) Thank
14 you.

15 602, Susan Starr. (The juror stands.) Thank you.

16 607, Katherine Steighner. (The juror stands.)

17 Thank you.

18 608. I'm not sure how to pronounce the first name
19 -- Stevens.

20 MS. STEVENS: (The juror stands.) Siobhan.

21 THE CLERK: Siobhan. Okay, thank you.

22 610, Pauline Strickland. (The juror stands.)

23 Thank you.

24 612, Deborah Stuhlemmer. (The juror stands.)

25 Thank you.

1 615, Robert Summers. (The juror stands.) Thank
2 you.

3 621, Christopher Templeton. (The juror stands.)
4 Thank you.

5 622, Beverly Thalman. (The juror stands.) Thank
6 you.

7 625, William Thomas. (The juror stands.) Thank
8 you.

9 631, Danny Todd. (The juror stands.) Thank you.

10 628, Betty Todd. (The juror stands.) Thank you.

11 632, Bernard Tomayko. (The juror stands.) Thank
12 you.

13 633, David Towers. (The juror stands.) Thank you.

14 634, Kyna Triplett. (The juror stands.) Thank
15 you.

16 637, Diane Tyler. (The juror stands.) Thank you.

17 638, Kathryn Ubel. (The juror stands.) Thank you.

18 639, Jill Uhland. (The juror stands.) Thank you.

19 642, Velvadean Vaught. (The juror stands.) Thank
20 you.

21 647, Heidi Vukov. (The juror stands.) Thank you.

22 654, Michael Walsh. (The juror stands.) Thank
23 you.

24 656, Susan Ward. (The juror stands.) Thank you.

25 658, Kristal Warren. (The juror stands.) Thank

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19

1 you.
2 659, Nikkia Washington. (The juror stands.) Thank
3 you.
4 660, Sylvia Waterston. (The juror stands.) Thank
5 you.
6 662, Jimmy Watson. (The juror stands.) Thank you.
7 664, Dennis Webb. (The juror stands.) Thank you.
8 667, Eatha Wells. (The juror stands.) Thank you.
9 668, Jeremie West. (The juror stands.) Thank you.
10 669, Larry West. (The juror stands.) Thank you.
11 670, Eddie Westbury. (The juror stands.) Thank
12 you.
13 672, Elaine Wheaton. (The juror stands.) Thank
14 you.
15 682, Alexandra Wilcken. (The juror stands.) Thank
16 you.
17 683, Easter Wilder. (The juror stands.) Thank
18 you.
19 685, Stephen Williams. (The juror stands.) Thank
20 you.
21 686, Barbara Williamson. (The juror stands.)
22 Thank you.
23 688, Amanda Wilson. (The juror stands.) Thank
24 you.
25 690, Delphia Wilson. (The juror stands.) Thank

1 you.

2 693, Thomas Wood. (The juror stands.) Thank you.

3 695, Teresa Woolard. (The juror stands.) Thank
4 you.

5 Did I miss anyone? If I did, please stand. (No
6 jurors stand.)

7 THE COURT: All right, thank you.

8 All right, ladies and gentlemen, in this particular
9 matter, you can see this is not the usual case. You
10 have been called by the officials of Horry County to
11 perform an important task. In this particular matter,
12 your civic duty and responsibility will be called upon
13 for your service as potential jurors in this case, that
14 being the State of South Carolina versus Stephen C.
15 Stanko.

16 Now, the State of South Carolina has charged Mr.
17 Stanko with the crimes of murder and armed robbery.
18 This trial has potentially two parts. The first part
19 would be that the jury would be called upon to
20 unanimously decide whether or not the State of South
21 Carolina has proved beyond a reasonable doubt that Mr.
22 Stanko is guilty of murder or armed robbery, or both.
23 If the jury unanimously finds Mr. Stanko guilty of both
24 crimes, we would then proceed to the second stage of the
25 trial in which the jury would be called upon to decide a

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1 sentence, death or life in prison without the
2 possibility of parole.

3 After we finish the general qualification process
4 today, you will be assigned to certain panels by random
5 drawing, and the Clerk will tell you when, and what day
6 and time you will report back next week.

7 When you report back, you will be given two sheets
8 of paper. On one of those, you will be asked to circle
9 the juror category which best describes you. The second
10 will be a potential witness list and you will be asked
11 to circle anyone you might possibly know. You will then
12 be asked to sign and date each page.

13 I understand, the participants in this important
14 trial understand, the time, effort, and sacrifice
15 ultimately the twelve jurors and the four alternates
16 will be asked to make to serve on this case and perform
17 this civic task. I thank all of you and the officials
18 of Horry County thank you for your time, and attention,
19 and sacrifice. The justice system of this State cannot
20 operate without the help and cooperation of its
21 citizens.

22 Now, some of you may have already served on a jury
23 before, but experience will tell us that this case or
24 this matter is something new for the vast majority of
25 you. Experience also tells us that some of you are

1 apprehensive, worried, or scared about being called, and
2 these are natural feelings, normal feelings. Don't let
3 that bother you. I believe by the time we finish this
4 process you will feel comfortable and good about being
5 called for this matter, whether or not you actually were
6 selected to serve on the jury.

7 I've heard it said many times and I really believe
8 this to be true, other than serving your country in a
9 time of war, serving on a jury, being called for jury
10 duty, is your highest service that you can give to your
11 community.

12 Since the State of South Carolina in this
13 particular matter is seeking the death penalty against
14 Mr. Stanko, this case is not like cases, most cases,
15 where someone is charged with a crime. This process
16 allows the lawyers and the Court to ask you questions,
17 so it may take several days for us to actually pick a
18 jury and start the trial of the case.

19 By asking you these questions, I assure you, the
20 participants assure you, we're not trying to invade your
21 personal lives, but you understand that this is a very
22 serious matter and it is necessary that we learn about
23 your thoughts, beliefs, and opinions.

24 Now, you may have already read or heard about some
25 items in this case, and there's nothing wrong with that.

1 If you do know something about the case or heard
2 something about it, when you are individually
3 questioned, the Court will ask you if you can set that
4 aside and reach a fair and impartial verdict. This is
5 important because obviously in every criminal matter,
6 the defendant comes into the Court presumed innocent of
7 the crime charged. The burden of proof is on the State
8 of South Carolina to prove the defendant guilty beyond a
9 reasonable doubt.

10 A defendant never has to call witnesses. A
11 defendant has nothing to prove to you. The burden is
12 always upon the State of South Carolina to prove the
13 defendant guilty beyond a reasonable doubt. The
14 question will be whether or not you have formed or
15 expressed an opinion concerning this particular matter.
16 In other words, do you know of any reasons why you
17 cannot give the Defendant and the State a fair trial, if
18 there's any reason that you cannot be a fair and
19 impartial juror in this particular matter.

20 As I indicated, obviously some of you may have
21 already have some knowledge or heard about this case.
22 From this point on, I am instructing all of you that you
23 may not, you are prohibited from reading any news
24 accounts. You may not watch or listen to T.V. accounts
25 about this particular matter. You may not look up

1 anything on the Internet. You may not do any research
2 on your own.

3 Do not talk to your fellow prospective jurors about
4 this case. Do not talk to anyone about this case. That
5 includes your family members or friends. If anyone
6 tries to contact you about this case, if you can in
7 relative safety, you find out who that person is and the
8 Court will deal with them.

9 I need to ask you has every single member of the
10 jury panel in this courtroom filled out the juror
11 questionnaire form. That was the fifty-question form
12 that was mailed to you sometime ago by the Clerk's
13 Office. If you did not fill out that questionnaire
14 form, raise your hand now. (No response.)

15 I'm going to go into the general qualification
16 questions. These are the general qualification
17 questions that we ask any jury any time a panel is
18 brought before the Court. If you need to respond to any
19 of these general qualification questions after I ask the
20 question, I will ask that you stand, identify yourself,
21 tell us who you are, and your juror number, please.

22 Is there any member of the jury panel who is not
23 eighteen years of age? (No response.)

24 Any member of the jury panel who is not a citizen
25 of the United States of America? (No response.)

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1 Any member of the jury panel who is not a citizen
2 -- resident of Horry County? (No response.)

3 The next question, ladies and gentlemen, has three
4 parts. If you've got one of the items, you are
5 qualified to be a juror. At the end of the question if
6 for some reason you don't have any one of them at all,
7 then I'll ask that you stand and identify yourself, so
8 is there any member of the jury panel who is not a
9 qualified elector? That is, are you registered to vote?
10 If we had an election in Horry County today, could you
11 vote, or do you have a South Carolina driver's license,
12 or do you have an identification card issued by the
13 State of South Carolina? If you've got one of them, you
14 are qualified. If you don't have any at all, please
15 stand. (No response.)

16 All right, is there any member of the jury panel
17 who is a commissioned law enforcement officer with the
18 powers of arrest? If so, please stand. (No response.)

19 Any member of the jury panel who is a prison guard
20 in the State or the Federal system? If so, please
21 stand. (No response.)

22 The next four questions, ladies and gentlemen, I'm
23 going to ask these four questions together. At the end
24 of these four questions, if any one of those four
25 questions pertains to you, then I'll ask that you stand

1 and identify yourself.

2 Now, is there any member of the jury panel who has
3 less than a sixth grade education or its equivalent? If
4 you are currently employed, have been for some
5 significant period of time, or were employed for some
6 significant period of time, most likely I'm going to
7 find that to be the equivalent.

8 Is there any member of the jury panel who is unable
9 to read, write, speak, or understand the English
10 language?

11 Any member of the jury panel who has been convicted
12 or pled guilty in a State or a Federal Court of a crime
13 punishable by imprisonment for more than one year and
14 your civil rights have not been restored by pardon or
15 amnesty? Now, this doesn't mean you actually had to
16 serve the year in jail. What it means is your possible
17 punishment, your potential punishment could have been
18 more than one year. You could have gotten probation or
19 some other kind of alternative sentence.

20 And the fourth question is, is there any member of
21 the jury panel by reason of a physical or a mental
22 infirmity unable to render efficient jury service? The
23 Legislature has determined that this excuse needs to be
24 in writing. It has to be authored by a medical doctor,
25 a medical professional, stating what your problem is and

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1 why you cannot render efficient jury service, so any
2 member of the jury panel that needs to respond to any of
3 those four questions, if so, please stand at this time.

4 All right, we have three people. Anyone else other
5 than these three -- four? Anyone else? One, two,
6 three, four -- anybody else? Five. If you need to
7 respond, stand now. There are five people. Anybody
8 else? (No response.)

9 All right, Mr. Bailiff, form a line right there,
10 please, sir. Thank you.

11 (Juror 487, Salvatore N. Panepinto, approached the
12 Bench and after a conference with the Court, Juror 487
13 was placed on panel for further voir dire at a later
14 date - medical reason with doctor's excuse.)

15 (Juror 580, Chester R. Skowronski, approached the
16 Bench and after a conference with the Court, Juror 580
17 was placed on panel for further voir dire at a later
18 date - power of arrest.)

19 (Juror 573, Dorothy Simpson, approached the Bench
20 and after a conference with the Court, Juror 573 was not
21 excused by the Court - needs statement from doctor.
22 Juror to be informed of status later.)

23 (Juror 149, Ronaldo De Los Reyes, approached the
24 Bench and after a conference with the Court, Juror 149
25 was not excused by the Court - needs statement from

1 doctor. Juror to be informed of status later.)

2 (Juror 667, Eatha M. Wells, approached the Bench
3 and after a conference with the Court, Juror 667 was
4 excused by the Court - Over sixty-five.)

5 (Juror 542, Victor Romano, approached the Bench and
6 after a conference with the Court, Juror 542 was placed
7 on panel for further voir dire at a later date -
8 criminal record.)

9 (Juror 183, Tamira Elvis, approached the Bench and
10 after a conference with the Court, Juror 183 was placed
11 on panel for further voir dire at a later date - Juror
12 is pregnant.)

13 (Juror 378, Tonya L. Leidig, approached the Bench
14 and after a conference with the Court, Juror 378 was
15 placed on panel for further voir dire at a later date -
16 husband is ill.)

17 (Juror 44, Madgie Bell, approached the Bench and
18 after a conference with the Court, Juror 44 was placed
19 on panel for further voir dire at a later date - does
20 not drive.)

21 (Juror 485, Karen R. Owens, approached the Bench
22 and after a conference with the Court, Juror 485 was
23 placed on panel - statement from doctor - Juror to be
24 informed of status later.)

25 (Juror 503, Hoaly T. Pham, approached the Bench and

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1 after a conference with the Court, Juror 503 was placed
2 on panel for further voir dire at a later date - From
3 Viet Nam - does not speak English fluently.)

4 (Juror 601, Waverly L. Stanley, approached the
5 Bench and after a conference with the Court, Juror 601
6 was placed on panel for further voir dire at a later
7 date - criminal record.)

8 (Juror 102, Johnny M. Chestnut, approached the
9 Bench and after a conference with the Court, Juror 102
10 was placed on panel for further voir dire at a later
11 date - needs statement from doctor.)

12 (Juror 530, Nicholas O. Rider, approached the Bench
13 and after a conference with the Court, Juror 530 was
14 excused by the Court - On P.T.I. for crime, assisted by
15 Chief Deputy Solicitor Humphries.)

16 (Juror 150, Vance A. Defelice, approached the Bench
17 and after a conference with the Court, Juror 150 was
18 placed on panel for further voir dire at a later date -
19 medical needs, diabetic.)

20 (Juror 529, Jay M. Riddell, approached the Bench
21 and after a conference with the Court, Juror 529 was
22 placed on panel for further voir dire at a later date -
23 criminal record.)

24 (Juror 375, Michael L. Laughter, approached the
25 Bench and after a conference with the Court, Juror 375

1 was placed on panel for further voir dire at a later
2 date - medical needs.)

3 (Juror 41, Daniel C. Becker, approached the Bench
4 and after a conference with the Court, Juror 41 was
5 placed on panel for further voir dire at a later date -
6 criminal record.)

7 THE COURT: All right, ladies and gentlemen, what
8 I'm going to do now is I am going to go over certain
9 legislative exemptions. What we'll do is if you fall
10 within one of these categories, it will be noted and it
11 will be -- you will still be placed on one of the
12 individual panels, or one of the panels, and then when
13 you are questioned individually by the Court and the
14 attorneys, then we will deal with the matter at that
15 point in time. What I need for you to do now is after I
16 go through the exemption, if it does pertain to you, I
17 need for you to stand, identify yourself, and we'll note
18 that information.

19 All right, is there any member of the jury panel
20 who is more than sixty-five years of age? If so, please
21 stand. All right, yes, ma'am, your name and juror
22 number, please.

23 JUROR 510: Juror 510, Jane Powell.

24 THE COURT: All right, thank you, ma'am. Yes,
25 sir.

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1 JUROR 70: Earnest Brown.

2 THE COURT: And your juror number is?

3 JUROR 70: 70.

4 THE COURT: 70, all right. Thank you, sir. Yes,
5 ma'am.

6 JUROR 363: Norine Klebach, 363.

7 THE COURT: All right, thank you, ma'am. Yes,
8 ma'am.

9 JUROR 597: Joyce Spengler, 597.

10 THE COURT: All right, thank you. Yes, ma'am.

11 JUROR 686: Barbara Williamson, 686.

12 THE COURT: All right, ma'am. Yes, ma'am.

13 JUROR 265: Sandra Hardin, 265.

14 THE COURT: All right, and yes, ma'am.

15 JUROR 90: Barbara Carr.

16 THE COURT: Yes, ma'am, and what's your juror
17 number?

18 JUROR 90: 90.

19 THE COURT: 90. Thank you, ma'am.

20 All right, is there any member of the jury panel
21 who has already served in circuit court within the past
22 three years? That means you would have come to this
23 courthouse. Most likely you would have come downstairs
24 to the jury assembly room. That is within the past
25 three years. It doesn't count if it was city court, or

1 magistrate's court, or even federal court, but if you
2 came to this building for circuit court jury duty within
3 the past three years, if so, please stand at this time.

4 All right, yes, ma'am, over there on the side, your
5 name and juror number.

6 JUROR 243: Nancy Goss; it is 243.

7 THE COURT: And when is it that you believe the
8 served, ma'am?

9 JUROR 243: It was about a year and a half ago.

10 THE COURT: All right, thank you, ma'am. Yes,
11 sir.

12 JUROR 11: Number 11, Wesley Allen, about two and
13 a half years ago.

14 THE COURT: Thank you, sir. Yes, ma'am.

15 JUROR 570: Joan Silvestri. It was last summer.

16 THE COURT: All right, and your juror number is?

17 JUROR 570: 570.

18 THE COURT: 570. Thank you, ma'am. Yes, sir.

19 JUROR 199: William Files, 199.

20 THE COURT: All right, sir, and approximately
21 when?

22 JUROR 199: I think a couple of years.

23 THE COURT: All right, very good. Thank you, sir.

24 All right, is there any member of the jury panel
25 who has served on the Horry County Grand Jury within the

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1 past five years? If so, please stand; the Grand Jury
2 within five years.

3 Yes, ma'am, your name and juror number, please.

4 JUROR 76: Brenda Butler, 76.

5 THE COURT: All right, ma'am, and when is it that
6 you think that you served?

7 JUROR 76: It was in the old courthouse.

8 THE COURT: In the old courthouse?

9 JUROR 76: In the old courthouse.

10 THE COURT: All right. Thank you, ma'am.

11 Madam Clerk, if you'll just check that out. Thank
12 you.

13 All right, is there any member of the jury panel
14 who has a child under the age of seven for whom you have
15 the legal custody and duty of care, and the final part
16 of that is you do not work outside the home. You stay
17 at home full-time and take care of that child under the
18 age of seven. If so, please stand.

19 All right, yes, sir, your name and juror number,
20 please.

21 JUROR 507: Benjamin Pinckney, number 507.

22 THE COURT: All right, sir. You have children
23 under the age of seven?

24 JUROR 507: Yes, sir.

25 THE COURT: And what's your situation?

1 JUROR 507: I'm a licensed foster parent and I
2 just -- as of today, I've got the paperwork here, I'm
3 picking up twins. They're five years old, a boy and a
4 girl, and I also have custody of my eight year old boy,
5 as well.

6 THE COURT: All right, sir. Madam Clerk, you'll
7 note that information and we will deal with it in the
8 individual questions. Thank you very much.

9 Yes, ma'am, your name and juror number, please.

10 JUROR 473: Andrea Nobles, 473.

11 THE COURT: 473, ma'am?

12 JUROR 473: Yes.

13 THE COURT: All right, yes, ma'am.

14 JUROR 473: I have a year and a half old little
15 boy.

16 THE COURT: All right, ma'am, and you do not work
17 outside the home?

18 JUROR 473: (Nods in the negative.)

19 THE COURT: All right, very good. Madam Clerk,
20 you will note that information. Thank you. Yes, ma'am.

21 JUROR 659: Nikkia Washington. I have three kids.

22 THE COURT: And what ages, please, ma'am?

23 JUROR 659: Two, four, and six.

24 THE COURT: All right, ma'am. You will note that
25 information, Madam Clerk, please. Thank you. Yes,

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1 ma'am.

2 JUROR 101: Allyson Chambers, juror number 101,
3 and I have a five year old, a kindergartner.

4 THE COURT: All right, ma'am. Please note that.
5 Thank you. Yes, ma'am.

6 JUROR 415: Anne Mateer, number 415. I have a two
7 and a half year old. Thank you, ma'am. Yes, ma'am.

8 JUROR 382: 382, Dreama Lentz. I have a six year
9 old.

10 THE COURT: Thank you, ma'am.

11 JUROR 275: Shannon Headley, 275. I have a seven
12 week old.

13 THE COURT: All right, thank you very much. Yes,
14 ma'am, your name and juror number.

15 JUROR 477: Sandra Norton, 477. I have a five
16 year old.

17 THE COURT: All right, thank you, ma'am.

18 All right, is there any member of the jury panel as
19 a whole who is the primary caretaker of a person who is
20 sixty-five years of age or older and that person cannot
21 take care of themselves, or you are the primary
22 caretaker of a severely disabled person, and once again,
23 this is your sole job and responsibility. You take care
24 of that person that cannot take care of themselves. You
25 are not otherwise employed. If so, please stand. (No

1 response.)

2 All right, is there any member of the jury panel
3 who is a full-time student or a full-time teacher? If
4 so, please stand. Yes, ma'am, your name and juror
5 number, please.

6 JUROR 515: 515, Stacey Prosser.

7 THE COURT: And you are a student or teacher?

8 JUROR 515: A computer teacher at South Conway
9 Elementary.

10 THE COURT: All right, thank you, ma'am. Yes,
11 ma'am.

12 JUROR 682: Alexandra Wilcken, 682. I am a full-
13 time student at Southern Vermont. It's in Vermont.
14 It's a low residency program.

15 THE COURT: Where at, please, ma'am?

16 JUROR 682: Southern Vermont.

17 THE COURT: I'm sorry; I did not hear where,
18 nor ---

19 JUROR 682: Southern Vermont. It's a low
20 residency program.

21 THE COURT: All right, thank you, ma'am. Yes,
22 ma'am.

23 JUROR 594: Sandra Snyder. I am 594. I am a high
24 school teacher at Conway.

25 THE COURT: Thank you, ma'am. Yes, ma'am.

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1 JUROR 408: Giuseppe Maglione, 408. I am a full-
2 time student at Horry-Georgetown Tech.

3 THE COURT: Thank you, sir. Yes, ma'am.

4 JUROR 213: Jamie Franklin, 213, and I'm a
5 teacher.

6 THE COURT: Where at?

7 JUROR 213: Myrtle Beach High School.

8 THE COURT: Myrtle Beach High School. All right,
9 thank you, ma'am. Yes, ma'am.

10 JUROR 258: Virginia Grissett at Conway High
11 School.

12 THE COURT: All right. Thank you very much,
13 ma'am.

14 MR. HUMPHRIES: Her number?

15 THE COURT: Oh, I'm sorry. Ms. Grissett, what's
16 your number, your juror number?

17 JUROR 258: 258.

18 THE COURT: Thank you very much.

19 All right, at the present time, because of the
20 number of jurors that are here, I will not go through
21 the next category. Let me just tell you that if there
22 is some issue with your service, if there is something
23 extraordinary, or something very exceptional going on in
24 your personal life, or in your business employment,
25 obviously it must be certainly out of the ordinary, when

1 you are individually questioned by the Court and the
2 lawyers, you may bring that up at that point in time, so
3 if there is some reason or something that you want the
4 Court to address, please remember when you are called in
5 on a panel and you have something that you want to
6 inform the Court about, please do so at that point in
7 time because later on it will obviously be too late, so
8 when you are called in on a panel and you have some
9 matter that you want to address, please make sure you
10 bring that to the Court's attention at that point in
11 time.

12 If you feel more comfortable writing it out ahead
13 of time and bringing it with you, that will certainly be
14 fine, and handing it to the Court at that time, be glad
15 for you to do that, but I just want to emphasize to you
16 that's your opportunity to bring it up. You've got to
17 bring it up then because I won't be able to do anything
18 about it later on. All right, thank you very much.

19 All right, I'm going to go over some more
20 particular questions that have to do either with this
21 particular case or your service in a criminal case in
22 general rather than these general qualification
23 questions.

24 The first one would be is there any member of the
25 jury panel that's related by blood or marriage, close

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1 personal friend, acquaintances of the defendant, Stephen
2 C. Stanko, or members of his immediate family? If so,
3 please stand. (No response.)

4 Is there any member of the jury panel who is
5 related by blood or marriage, close personal friends,
6 acquaintances of the family of Henry Lee Turner or prior
7 to his death were related or personal friends of Henry
8 Lee Turner? If so, please stand. (No response.)

9 Is there any member of the jury panel, either you,
10 yourself, or a member of your immediate family ever had
11 any matters of any kind handled by the Fifteenth Circuit
12 Solicitor's Office? Remember, that's the prosecuting
13 office that covers the Fifteenth Circuit, which is Horry
14 and Georgetown Counties. If so, please stand.

15 UNIDENTIFIED JUROR: Can you repeat that question.

16 THE COURT: Yes, ma'am. Is there any member of
17 the jury panel or a member of your immediate family has
18 ever had any matters in any way effected or handled by
19 the Fifteenth Circuit Solicitor's Office? That's the
20 prosecuting office for Horry and Georgetown Counties,
21 and if you need to respond to the questions, let me just
22 caution you now, I just need for you to tell me yes, and
23 don't tell me any details. Don't bring up anything.
24 We'll talk about that when you're individually
25 questioned.

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1 Ma'am, your name and jury number, please.
2 JUROR 402: Rebecca Lyons, 402.
3 THE COURT: All right, ma'am, thank you very much.
4 Yes, sir.
5 JUROR 102: Johnny Chestnut, 102.
6 THE COURT: Thank you very much. Yes, ma'am.
7 JUROR 35: Mary Bates, number 35.
8 THE COURT: Thank you, ma'am. Yes, sir.
9 JUROR 372: Andrew Langway, 372.
10 THE COURT: Thank you, sir. Yes, ma'am.
11 JUROR 208: Jill Fowler, 208.
12 THE COURT: Thank you, ma'am. Yes, sir.
13 JUROR 685: Stephen Williams, 685.
14 THE COURT: Thank you very much. Yes, ma'am.
15 JUROR 115: Darlene Novak, 115.
16 THE COURT: I'm sorry, ma'am; I didn't hear you.
17 JUROR 115: Darlene Novak, 115.
18 THE COURT: Thank you, ma'am. Yes, sir.
19 JUROR 397: John Lopes, 397.
20 THE COURT: Thank you, sir. Yes, ma'am.
21 JUROR 172: Lynn Edmonds, 172.
22 THE COURT: Thank you. Yes, sir.
23 JUROR 131: Walter Cumbow, 131.
24 THE COURT: Thank you, sir. Yes, sir.
25 JUROR 199: William Files, 199.

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1 THE COURT: Thank you. Yes, sir.

2 JUROR 41: Daniel Becker, number 41.

3 THE COURT: All right, sir. Yes, ma'am.

4 JUROR 386: Barbara Linderman, 386.

5 THE COURT: Next. Yes, ma'am.

6 JUROR 424: Lisa McGee, 424.

7 THE COURT: Thank you, ma'am. The fellow behind
8 her.

9 JUROR 342: Bradley Jordan, 342.

10 THE COURT: Thank you, sir. Yes, ma'am.

11 JUROR 183: Tamira Elvis, 183.

12 THE COURT: Thank you very much.

13 All right, Solicitor, if you'd stand and identify
14 yourself, please.

15 MR. HUMPHRIES: My name is Fran Humphries. I'm
16 the Chief Deputy Solicitor in the Fifteenth Circuit.
17 Along with me is Solicitor Greg Hembree, and Senior
18 Assistant Solicitor, Jimmy Richardson.

19 THE COURT: All right, very good.

20 All right, Mr. Diggs and Ms. Williams, if y'all
21 would stand and identify yourselves and your firms,
22 please.

23 MR. DIGGS: My name is Bill Diggs. I practice law
24 in Myrtle Beach, South Carolina. I am here in the
25 courtroom today with a paralegal from my office, Ms.