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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2018-001499

WILLIAM O. DICKERSON PETITIONER,

v.

STATE OF SOUTH CAROLINA.....RESPONDENT.

APPENDIX
VOLUME 3 OF 22

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1 against him. In fact, I would instruct you
2 that you can't even talk about that.

3 A. All right.

4 Q. Do you understand that?

5 A. Yes.

6 Q. All right. If the jury concludes that the
7 State has failed to meet its burden of proof,
8 in other words you weren't convinced beyond a
9 reasonable doubt that all the elements of
10 murder had been established, then the jury
11 would be instructed to return a verdict of not
12 guilty. If that occurred, then there would be
13 no second phase. Do you understand that?

14 A. Um-humm, (affirmative nod).

15 Q. But if the jury found that the State did
16 meet its burden of proof, established each
17 element beyond a reasonable doubt, then the
18 instruction would be that you must return a
19 verdict of guilty. Do you understand that?

20 A. (No verbal response).

21 Q. In other words, you were convinced as an
22 individual, as a member of the panel, that the
23 State had convinced you of each element. You
24 would vote for guilty. Okay?

25 A. (No verbal response).

1 Q. Do you understand that?

2 A. (Affirmative nod).

3 Q. If that happens, then and only then on the
4 offense would we then go into the second phase.
5 Do you understand that?

6 A. Yes.

7 Q. And at that point, given your responses,
8 you said you were a type two but I think after
9 we've talked further you were really more of a
10 type three, which is a person that can consider
11 all the facts and circumstances and make a
12 determination as to what the most appropriate
13 sentence is. Is that correct?

14 A. Yes.

15 Q. At that point, then, you would not have
16 predetermined what the appropriate sentence is
17 in this case. Is that true?

18 A. I think it's predetermined.

19 Q. You do?

20 A. I do.

21 Q. Based on the fact that he is convicted of
22 murder and you think it ought to be life in
23 prison?

24 A. Right.

25 Q. So you would have decided that already?

1 A. Yes.

2 Q. But would you consider the evidence
3 offered by the State in the second phase and
4 could that change?

5 A. I don't -- no. No, it couldn't.

6 THE COURT: All right, please answer
7 any questions that the attorneys may have.

8 BRUCE DURANT: Thank you, Your
9 Honor.

10 VOIR DIRE EXAMINATION

11 BY BRUCE DURANT:

12 Q. Good afternoon, Mr. Mead. My name is
13 Bruce Durant. I'm the Deputy Solicitor, this
14 is Scarlet Wilson and Rutledge Durant. Am I
15 correct in saying that you are pretty anti-
16 death penalty?

17 A. Yes.

18 Q. In fact, you said as much in your
19 questionnaire.

20 A. Yes.

21 Q. You said, 'I'd lay awake if I killed
22 them.'

23 A. Yes.

24 Q. That is a true statement, isn't it?

25 A. It is.

1 Q. And you wouldn't want to sign your name to
2 a verdict which required that someone be put to
3 death?

4 A. Yes, I wouldn't want to. Yeah.

5 Q. You said -- the Judge asked you if you
6 could envision a situation where you could do
7 something like that and you were very hesitant
8 and then you said 'yes'. Is there just one
9 situation where you would do that?

10 MR. BLOOM: Objection, Your Honor.

11 THE COURT: Sustained.

12 EXAMINATION CONTINUED

13 BY BRUCE DURANT:

14 Q. We just need to know. I mean, because the
15 law requires more than you just consider the
16 death penalty. Do you understand that?

17 A. No, the law requires that -- (pause).

18 Q. It requires more than you just consider
19 giving the death penalty, it actually requires
20 that you could give a death penalty in the
21 appropriate case.

22 A. Um-humm.

23 Q. Is there a case where you could give a
24 death penalty or vote for the death penalty?

25 A. (Pause) -- I think, in my mind there is.

1 Q. Okay. Assuming a malicious murder -- not
2 talking about self-defense or accident or
3 anything like that but an intentional malicious
4 murder -- and assuming the State proved
5 aggravating circumstances, and the Judge has
6 already said that a defendant can prove
7 mitigating circumstances but it's not required
8 to and that it doesn't then you can't take that
9 against them.

10 A. (Affirmative nod).

11 Q. If that was the situation -- in other
12 words, malice murder, aggravating
13 circumstances, no mitigating circumstances,
14 would you always in a case like that find life
15 without parole as opposed to a death penalty?

16 A. I'd do life without parole.

17 BRUCE DURANT: Court's indulgence?

18 THE COURT: Yes, sir.

19 EXAMINATION CONTINUED

20 BY BRUCE DURANT:

21 Q. Just a couple more questions. You
22 understand that in the event that the defendant
23 was found guilty of the actual offense and an
24 aggravating circumstance the decision to be
25 made by you as a juror would always be the

1 death penalty or life without parole. You
2 understand that?

3 A. That would be the decision that I would
4 have to make, yes.

5 Q. Life without parole would always be on the
6 table. You understand that?

7 A. Right.

8 Q. That the judge will not tell you that you
9 have to impose a death penalty.

10 A. Right.

11 Q. If that's the situation and you have those
12 two alternatives, would you always vote for
13 life without parole?

14 A. Yes.

15 Q. Would you do that despite the jury's (sic)
16 instructions to consider that you have to give
17 due consideration to aggravating (sic)
18 circumstances and be able to actually impose
19 the death penalty?

20 A. (No verbal response).

21 Q. He is not going to charge you that you
22 have to impose the death penalty, but could you
23 consider the imposition of a death penalty in
24 that circumstance, or would it always be life
25 without parole?

1 A. I don't understand what you're getting at.

2 Q. In any case where a murder -- you've found
3 the defendant guilty of murder, you and the
4 jury are determining what punishment is
5 available. Do you understand that?

6 A. (Affirmative nod), okay.

7 Q. Life without parole is always on the
8 table. Death penalty is whether the jury
9 agrees to it. Is there ever a circumstance
10 where you would agree to a sentence of death
11 instead of a sentence of life without parole.
12 Those are your two alternatives?

13 A. Well, I'd vote for death if it was a
14 member of my family, like my children. Then I
15 think that it would be so close that I probably
16 would vote but ---

17 Q. So your answer would be that it could only
18 be someone that was directly related to you,
19 like a wife or a child, before you ---

20 A. Exactly, a person who ---

21 Q. --- could ---

22 MR. BLOOM: Judge, I am going to
23 object to him probing the juror.

24 THE COURT: Yes. He's answered your
25 question. He's answered it fully, I think.

1 BRUCE DURANT: I have no further
2 questions.

3 MR. BLOOM: Just very briefly.

4 THE COURT: Yes. Please.

5 VOIR DIRE EXAMINATION

6 BY MR. BLOOM:

7 Q. Mr. Mead, my name is Jeff Bloom and, along
8 with Andrew Carroll, we represent William
9 Dickerson. I just have a few followup
10 questions from what Judge Dennis asked you.

11 At any time did you think we were trying to ask
12 you for a commitment or how you might vote in
13 this case?

14 A. Yes.

15 Q. It can get pretty confusing. Is this your
16 first time you've served as a juror?

17 A. No, I've been on the jury in other trials.
18 Twice.

19 Q. But this kind of process, is ---

20 A. Yes, for this kind of process.

21 Q. I understand. You understand now that we
22 can't ask you how you might vote in this case?

23 A. Okay.

24 Q. Because you haven't heard the evidence?

25 A. Right.

1 Q. The law allows you to have strong opinions
2 against the death penalty. Okay? Do you
3 understand that?

4 A. Yes.

5 Q. I guess what I want to ask you next,
6 first, is can you set those opinions aside and
7 tell the Judge you would hear all the evidence
8 -- not in this particular case but a case --
9 before you decided the penalty?

10 A. (No verbal response).

11 Q. Because we can't ask you in this case what
12 you might do, in this case or any other
13 hypothetical situation. Can you set those
14 opinions aside and follow His Honor's
15 instruction and consider life without parole or
16 the death penalty, in your mind?

17 A. I don't think that I could. I think it
18 would always be life.

19 Q. Do you hold that view as -- is that part
20 of your religious faith or religious
21 upbringing?

22 A. Well, no.

23 MR. BLOOM: Thank you very much.

24 THE COURT: Thank you very much. If
25 you will step down, we will be with you in just

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1 a. moment.

2 JUROR NUMBER 207: Outside?

3 THE COURT: Yes, sir.

4 (JUROR NUMBER 207 EXITS COURTROOM)

5 THE COURT: State?

6 BRUCE DURANT: Your Honor, it
7 would be our position that he is not qualified.
8 I think under *State v. Drayton* which states
9 basically that they can only consider the death
10 penalty given certain circumstances but
11 wouldn't because of reasons personally to him,
12 and I think that's what he stated.

13 MR. BLOOM: He is not.

14 THE COURT: I agree. He's not
15 qualified. Bring him in, please.

16 (JUROR 207 ENTERS COURTROOM)

17 THE COURT: Mr. Mead, Thank you very
18 much for your patience. I am going to excuse
19 you from any further participation in this
20 dispute. You're free to talk about this case
21 now, read anything you want.

22 I wish I could tell you that you're
23 free from jury service but we have the civil
24 side that is still going this week. You're now
25 in that civil panel and you need to call

1 tonight after 6:00 and follow the general
2 instructions that it has for jurors that need
3 to do something. If it is tied to this case,
4 the Dickerson jurors, that is not you.

5 JUROR NUMBER 207: Thank you.

6 THE COURT: Just follow the general
7 instructions. Good luck to you, sir. Thank
8 you so much.

9 JUROR NUMBER 207: Thank you.

10 (JUROR NUMBER 207 EXITS COURTROOM)

11 THE COURT: Juror Number 92, Ms.
12 Copeland.

13 (JUROR NUMBER 92 ENTERS COURTROOM)

14 THE COURT: Hey, Ms. Copeland. If
15 you will sit there, get comfortable and pull
16 yourself up so that you can speak into that
17 mic. Good afternoon.

18 JUROR NUMBER 92: Good afternoon.

19 THE COURT: Thank you for your
20 patience. I know that we've run later than we
21 had hoped to but that's just the way that it
22 sometimes goes. I thank you for being so kind
23 and enduring it. We won't keep you much
24 longer.

25 We want to continue the process that

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1 we started on Friday in that I am going to be
2 asking you some questions and the attorneys may
3 be asking you some questions. Just as we did
4 on Friday, there really are no correct answers
5 to any of these questions. They are just
6 really to assist you and us in making a
7 determination as to whether you can be a fair
8 and impartial juror in this case. Okay.

9 JUROR NUMBER 92: Okay.

10 THE COURT: I assume you will answer
11 truthfully our questions and respond
12 completely. Is that fair?

13 JUROR NUMBER 92: Yes, sir.

14 THE COURT: I would remind you in
15 that regard that you are still under oath in
16 this matter. Okay?

17 JUROR NUMBER 92: Yes, sir.

18 MELISSA FIELDS COPELAND, being duly
19 sworn to tell the truth, the whole truth and
20 nothing but the truth, testified, as follows:

21 VOIR DIRE EXAMINATION

22 BY THE COURT:

23 Q. Since we were last together, have you
24 talked with anyone about this case or permitted
25 anyone to talk about it in your presence?

1 A. No, sir.

2 Q. Have you read any newspaper articles or
3 watched any television programs?

4 A. No, sir.

5 Q. I asked you, you remember on Friday that I
6 gave you a list of a number of people, asked
7 whether you knew them or was related to any of
8 them. I failed to mention two names that I
9 need to ask you about. Are you related by
10 blood or marriage, have any business dealings
11 with or socially or casually acquainted with or
12 have you any dealings with Jeff Osborne or Matt
13 Casey?

14 A. No, sir.

15 Q. Okay. When you came in this afternoon you
16 were given a sheet when you came in that sets
17 forth three types of jurors, have you had a
18 opportunity to review that sheet?

19 A. Yes, sir.

20 Q. Which type most accurately describes you?

21 A. The last one.

22 Q. Number three?

23 A. Um-humm, (affirmative nod).

24 Q. And that's a juror that says 'there are
25 circumstances where I could vote for imposing a

1 death in a murder case and there are
2 circumstances where I would think the more
3 appropriate punishment would not be a death
4 sentence but would, rather, be a life
5 imprisonment without the possibility of
6 parole.'

7 A. Yes, sir.

8 Q. And before you could make a determination
9 as to which one was best ---

10 A. I would have to hear.

11 Q. --- you would have to hear all the facts
12 and circumstances?

13 A. Precisely.

14 Q. Now, you understand that the jury has the
15 responsibility, the sole responsibility, of
16 determining the facts in a case?

17 A. Yes, sir.

18 Q. And they would promise to determine those
19 facts by considering evidence and only
20 evidence. Do you understand that?

21 A. Yes, sir.

22 Q. Evidence would consistent of the testimony
23 of any witnesses and exhibits that might be
24 introduced through their testimony?

25 A. Yes, sir.

1 Q. And it is my understanding that you
2 believe that you could perform that function,
3 applying your common sense, your sense of logic
4 and reason, ---

5 A. Yes, sir.

6 Q. --- listen to what somebody said or
7 reading, looking at what somebody gave, put
8 into evidence, and make a decision of what you
9 believe?

10 A. Yes, sir.

11 Q. And you'd do that fairly and impartially?

12 A. Yes, sir.

13 Q. You also understand that it would be my
14 responsibility to be the judge of the law?

15 A. Yes, sir.

16 Q. That means while I don't have anything to
17 do with the facts, it would be my
18 responsibility to give you the law and your job
19 is to determine the facts and you don't have
20 anything to do with the law?

21 A. Oh, yeah, I understand.

22 Q. That means that you would accept the law
23 as I gave it to you and apply that law fairly
24 and impartially to those facts? You would do
25 that?

1 A. Yes, sir.

2 Q. That would mean -- and there be some
3 principle of law that you may hear that would
4 cause you to think, 'You know, that's not what
5 I thought the law was' or 'I think there's a
6 better way to state that law.' But if you had
7 those feelings, you promise the court and
8 promise the parties that you'd set those
9 feelings aside?

10 A. Yes, sir. I am not a lawyer.

11 Q. I understand. That's okay. People
12 sometimes hear some things -- let me give you
13 an example, and you don't have to be a lawyer
14 for this, you know when I asked you the
15 question about whether you had a driver's
16 license or a highway department identification
17 card or a voter's registration?

18 A. Um-humm.

19 Q. Remember?

20 A. Yes, sir.

21 Q. I knew that you had it because you all
22 were there. That always causes me to scratch
23 my head. I don't know why we have to ask that
24 question because you wouldn't be there if you
25 didn't have it in the first place. But you

1 know why I ask that question?

2 A. Because you have to.

3 Q. Because it's the law. It doesn't matter
4 about my personal feelings about it. I am
5 going to follow that law as long as it is the
6 law. That is what you'd have to do, too.

7 A. Yes.

8 Q. And you would do that?

9 A. Yes, sir.

10 Q. Without any problem, is that correct?

11 A. Yes, sir.

12 Q. Okay. Now, you understand as I told you
13 on Thursday -- not Thursday, on Friday -- that
14 Mr. Dickerson has been accused of committing
15 some crimes?

16 A. Yes, I understand.

17 Q. But under the law that I discussed with
18 you he, as any person who is accused of
19 committing a criminal offense in this state or
20 country, is presumed innocent. You don't have
21 any problem with that?

22 A. I don't have no problem with that.

23 Q. Okay. That means as he sits here today
24 that he is innocent in your eyes, as far as
25 you're considered?

1 A. Yes, he's innocent until proven guilty.

2 Q. That is exactly correct because the law
3 says that the State, who makes the charge, has
4 the burden of proving that.

5 A. Yeah.

6 Q. And has to prove it beyond a reasonable
7 doubt. As I mentioned to you on Friday, they
8 have to prove each element of each crime to
9 that level. If they don't, then the jury has
10 to return a verdict of not guilty.

11 A. Yes, sir.

12 Q. You wouldn't have any problem doing that?

13 A. No problem at all.

14 Q. And if you were on that jury, after
15 considering all the evidence, you were
16 convinced beyond a reasonable doubt that the
17 State had convinced you as to each element,
18 you'd return a verdict of guilty?

19 A. Yeah, if they convinced me.

20 Q. Because that would be your duty as a
21 matter of law. You understand that?

22 A. Yes, sir.

23 Q. You understand that the only person or the
24 only party that has to prove anything is the
25 State?

1 A. Yes, sir.

2 Q. Mr. Dickerson doesn't have to prove
3 anything at all?

4 A. No, sir.

5 Q. Doesn't have to say anything, doesn't have
6 to produce any evidence. You understand that?

7 A. Yes, sir.

8 Q. In fact, he has the right not to say
9 anything, not to even testify, not to put in
10 any evidence and I would instruct you that you
11 can't use that against him. Would you have any
12 problem with that principle of law?

13 A. No, sir.

14 Q. You would do that?

15 A. Yes, sir.

16 Q. Okay. Now, you understand as I mentioned
17 to you that there may be two phases to this
18 proceeding?

19 A. Yes, sir.

20 Q. The second phase would only occur if the
21 jury had been convinced beyond a reasonable
22 doubt that Mr. Dickerson committed the offense
23 of murder. Do you understand that?

24 A. Yes, sir.

25 Q. That means that he killed somebody, that

1 they've proved that he killed somebody with
2 malice.

3 A. Yes, sir.

4 Q. That he intended to do it, it wasn't an
5 accident, it wasn't some other defense to it,
6 he intended to do what was done and that's what
7 they prove. Okay?

8 A. Yes, sir.

9 Q. If the jury were to find him guilty, and
10 again I am not suggesting that is what is going
11 to happen, but if you do, then we would go into
12 the second phase. Do you understand that?

13 A. Yes, sir.

14 Q. As I understand from our discussions when
15 we started you, being a type three juror, the
16 fact that he had been convicted of murder would
17 not at that point mean that you had decided
18 what sentence would be appropriate?

19 A. (Negative gesture).

20 Q. Because you'd only heard one part, that is
21 what happened in the crime.

22 A. Yes, sir.

23 Q. Now you'd hear other evidence concerning
24 what would be the appropriate sentence, do you
25 understand that?

1 A. Yes, sir.

2 Q. In fact, I would tell you that in this
3 state, this is not the normal situation. That
4 is, that this is not what typically happens
5 because these are very limited occurrences
6 where a jury participates in the sentencing of
7 a person for murder. Do you understand that?

8 A. Yes, sir.

9 Q. Most of the time the jury determines
10 whether or not the State proves the crime and
11 then if the jury convicts him of the crime, the
12 judge imposes the sentence without the jury's
13 involvement. Do you understand that?

14 A. Yes, sir.

15 Q. And in those situations, we can't even
16 consider the death penalty but we're not
17 limited to life without parole. Do you
18 understand that?

19 A. Yes, sir.

20 Q. Okay. But in this case, if you're on that
21 -- if you're on the jury and you go into the
22 second phase, the State has another
23 responsibility. In order to get to the
24 position where the jury can even consider a
25 death penalty they have to establish something,

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1 and I would define it for you, called an
2 aggravating circumstance; which changes it or
3 makes it rise to the level that the jury would
4 be involved, in this case. They have to prove
5 that beyond a reasonable doubt. Do you
6 understand that?

7 A. Yes, sir.

8 Q. If the jury is not convinced from the
9 evidence that the State has met its burden of
10 proof and established that beyond a reasonable
11 doubt, that would -- the only sentence could be
12 life without parole. Do you understand that?

13 A. Yes, sir.

14 Q. But if the jury did find that the State
15 had proven or established one or more
16 aggravating circumstance, then the jury may
17 consider a death sentence but only then. Do
18 you understand that?

19 A. Yes, sir.

20 Q. I would further instruct you that should
21 that occur, Ms. Copeland, that it would be --
22 that's not something the jury has to do, it is
23 just an option for you to consider. In other
24 words, if we got to that point then the jury
25 would consider whether life imprisonment

1 without the possibility of parole or the death
2 sentence was the most appropriate -- which one
3 was the most appropriate. Do you understand
4 that?

5 A. Yes, sir.

6 Q. And you would be able to do, evaluate all
7 the evidence?

8 A. Yes, sir.

9 Q. As I understand, being a type three juror,
10 depending on the circumstance -- you would have
11 to hear all the circumstances before you could
12 make a determination?

13 A. Yeah. Yes, sir.

14 Q. But you could consider both sentences as a
15 possible sentence, ---

16 A. Yes, sir.

17 Q. --- should that all exist?

18 A. Yes, sir.

19 Q. In addition to aggravating circumstances,
20 there would be other evidence. There may be
21 evidence of mitigating circumstances. Now,
22 mitigating circumstances -- I will define them
23 for you but they are circumstances that talk
24 about the background of the defendant, his
25 upbringing, maybe any problems that he had such

1 as any mental problems, emotional problems or
2 addictions, maybe drug addictions and that type
3 of situation. If that appears, then I would
4 instruct you that you must consider those, give
5 meaningful consideration to those mitigating
6 circumstances. Do you understand that?

7 A. Yes, sir.

8 Q. You would do that, as well?

9 A. Yes, sir.

10 Q. And I would tell you that, just as Mr.
11 Dickerson doesn't have to prove anything in the
12 first phase, he doesn't have to prove that
13 either. Do you understand that?

14 A. Yes, sir.

15 Q. That you still, even if there weren't
16 mitigating circumstances, you still may impose
17 a life imprisonment notwithstanding aggravating
18 circumstances had been established. Do you
19 understand that?

20 A. Yes, sir.

21 Q. Because it's up to the jury to make that
22 determination.

23 A. Yes, sir.

24 Q. But it is my understanding that you could
25 consider all of the evidence, including

1 aggravating circumstances, mitigating
2 circumstances if any, and make a determination
3 of what you believe to be the appropriate
4 sentence?

5 A. Yes, sir.

6 Q. And you would apply the law and your
7 decision would be fair to both sides?

8 A. Yeah, (affirmative nod).

9 THE COURT: Thank you, ma'am.
10 Please answer any questions that the attorneys
11 may have.

12 MR. BLOOM: May it please the court?

13 THE COURT: Yes.

14 VOIR DIRE EXAMINATION

15 BY MR. BLOOM:

16 Q. Ms. Copeland, how are you doing this
17 evening, ma'am?

18 A. Fine.

19 Q. Thank you for your patience with us. My
20 name is Jeff Bloom and along with Andrew
21 Carroll, we represent William Dickerson. I
22 just have a few followup questions from what
23 Judge Dennis asked you.

24 A. Okay.

25 Q. We are just looking for your honest

1 answers and we'll go from there. First off, I
2 want to make sure -- we're not asking you how
3 you might vote in this case, do you understand
4 that?

5 A. I understand that.

6 Q. Because it's not fair for us to ask you
7 what you'd do in this case because you haven't
8 heard any of the evidence. Right?

9 A. Exactly.

10 Q. Let me just start by asking you if you and
11 I were together and we were sharing a cup of
12 coffee, a cup of tea, Diet Pepsi or whatever,
13 and something came on the news about the death
14 penalty and I turned to you and said, "Gee,
15 what do you think about the death penalty?"
16 What would your general opinion of that be?

17 A. I don't have -- I really don't have an
18 opinion one way or the other. I mean, I don't
19 watch stuff like that on TV. I just like stuff
20 that is funny, so -- I don't really have an
21 opinion.

22 Q. Other than you being here today, it's not
23 something that you've really ---

24 A. It is not something that I really,
25 (negative gesture). I mean, I don't want

1 anything about it.

2 Q. Okay. Fair enough. Of course, you know
3 from just your life experience that some people
4 are against it in all cases. You understand
5 that, that some people have that opinion;
6 right?

7 A. Yes, sir.

8 Q. And some people believe that the death
9 penalty is the proper punishment in all murder
10 cases. You understand that?

11 A. That's right.

12 Q. Where might you fall in that spectrum of
13 things, if at all? Have you given any thought
14 to it?

15 A. I really don't think about it. I mean, to
16 be honest it's not that -- if somebody kills
17 someone -- first, you have to prove it to me.

18 Q. Sure.

19 A. Once you've proved something to me then I
20 will make decision. I can't say anything right
21 now because I don't -- I've never sat on a
22 jury, I've never gotten into any of this.

23 Q. Okay.

24 A. You gotta prove it to me, show me.

25 Q. Fair enough. I appreciate that, I

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1 appreciate your honest answers and Judge Dennis
2 appreciates your honest answers. I just have a
3 few more that I want to ask in that regard.

4 One, I just want to define "murder"
5 because sometimes people have false assumptions
6 about that. Murder, of course, when we talk
7 about if someone is found guilty of murder,
8 that would have to happen before you could even
9 think about life without parole or any other
10 penalty. Right?

11 A. Um-humm, (affirmative nod).

12 Q. As the judge explained.

13 A. (Affirmative nod).

14 Q. First let me tell you what murder is not.
15 Murder is not accident, murder is not self-
16 defense, it is not manslaughter like where you
17 catch someone in bed with someone else, and it
18 doesn't include insanity. Murder is where
19 someone did it, they intended to do, with
20 malice, and you've got the right person beyond
21 a reasonable doubt.

22 I take it that even if you found someone
23 guilty of that type of murder you wouldn't --
24 would you automatically make your mind up as to
25 one penalty or another or are you still

1 waiting, as Judge Dennis asked you, to hear
2 everything else?

3 A. I do have to hear everything.

4 Q. Fair enough. That's what I understood but
5 I wanted to make sure that I ask you the
6 question.

7 As Judge Dennis asked you, some of that
8 'everything else' might be -- we call it
9 aggravation. That would be evidence that the
10 prosecutor brings that is basically reasons or
11 evidence for the death penalty. You wouldn't
12 end there, I understand?

13 A. No.

14 Q. Judge Dennis explained that there might be
15 things called mitigating circumstances, and
16 that's just a fancy legal phrase for things
17 that may have nothing to do with the crime
18 itself but may be things such as the
19 defendant's background, how he was raised. You
20 could consider that?

21 A. Yes.

22 Q. It might be things like drug abuse, would
23 you consider that?

24 A. Yes.

25 Q. Might be mental health issues, a whole

1 host of things that have nothing to do with the
2 crimes but you could give all of that
3 meaningful consideration?

4 A. Yes, sir.

5 Q. Actually the last issue that I want to
6 touch on, and Judge Dennis asked you this but I
7 want to make sure that I heard you right. You
8 understand that the law never requires to vote
9 for the death penalty?

10 A. I know.

11 Q. In fact, the law says that is always a
12 moral, individualized choice. I take it that
13 you're the type of person that you could make
14 that moral, individualized choice after you
15 heard all the evidence?

16 A. That's right.

17 Q. Talk to your other jurors ---

18 A. Yes.

19 Q. If you were in that situation and eleven
20 jurors were voting one way and you were voting
21 another way, you'd made your moral,
22 individualized choice, you wouldn't just say,
23 'Hey, look, ---

24 A. Uh-uh, (negative gesture).

25 Q. --- it's late, I am ready to go to dinner.

1 I am going to go along to get along.'

2 A. No, I wouldn't.

3 Q. You don't strike me as that kind of
4 person. You would want them to respect your
5 vote, just as you would respect their vote?

6 A. Yes, sir.

7 Q. And if the flip side were true, you were
8 in the eleven and there was one juror who had
9 made their moral, individualized choice, you
10 could respect that juror's choice?

11 A. Yes, sir.

12 Q. Just as you would want them to respect
13 yours?

14 A. Yes, sir.

15 MR. BLOOM: Thank you very much,
16 ma'am. I don't have any further questions.
17 Thank you for being here.

18 THE COURT: Solicitor?

19 MR. BLOOM: I'm sorry, I do have one
20 other. On your questionnaire, you indicated
21 that you have an aunt that works for DSS?

22 JUROR NUMBER 92: Um-humm.

23 MR. BLOOM: Was that here in
24 Charleston?

25 JUROR NUMBER 92: Um-humm.

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1 MR. BLOOM: What ---

2 THE COURT: Was that a "yes", ma'am?

3 JUROR NUMBER 92: Yes. "Yes." Yeah.

4 I'm sorry.

5 THE COURT: That's okay.

6 MR. BLOOM: She (court reporter) has
7 to take it down.

8 JUROR NUMBER 92: She worked at the
9 one in North Charleston. She works with the
10 kids.

11 MR. BLOOM: With kids?

12 JUROR NUMBER 92: Um-humm.

13 MR. BLOOM: Do you know what years
14 that was?

15 JUROR NUMBER 92: No, sir. After the
16 Naval Hospital closed down she went to DSS.

17 MR. BLOOM: Did you ever talk with
18 her about her work much?

19 JUROR NUMBER 92: No.

20 MR. BLOOM: Thank you so much,
21 ma'am. I appreciate it.

22 THE COURT: Solicitor?

23 VOIR DIRE EXAMINATION

24 BY SOLICITOR WILSON:

25 Q. Good afternoon, I'm Scarlet Wilson, I'm

- 1 the Solicitor here -- why are you laughing?
- 2 A. Just the thought of me talking to my aunt
- 3 about her work.
- 4 Q. Why is that funny?
- 5 A. My aunt's sixty years old, she's not going
- 6 to tell me nothing. Okay.
- 7 Q. Don't tell Judge Dennis that!
- 8 A. Oh, I'm sorry, Judge.
- 9 Q. It sounds like to me, based on your
- 10 answers to the questions, that it might be
- 11 pretty hard to convince you of something but
- 12 that you're convinced, you've made up your
- 13 mind?
- 14 A. Yes, ma'am.
- 15 Q. And is that what you mean by your aunt
- 16 telling you something?
- 17 A. I was raised up in a family where children
- 18 get out of the way, we don't get in no
- 19 grownup's conversations, we don't ask no
- 20 questions.
- 21 Q. So that wouldn't be your place?
- 22 A. No, ma'am.
- 23 Q. Once you've made up your mind, you don't
- 24 have any problems standing your ground?
- 25 A. No, ma'am.

1 Q. And once you're convinced of something it
2 would be hard to sway your mind the other way,
3 wouldn't it?

4 A. Yeah.

5 Q. So in a situation involving the death
6 penalty, and again we're talking a malicious
7 murder -- not an accident, not something that
8 was self-defense but a malicious murder. If
9 the State proved that beyond a reasonable doubt
10 and then we moved on to the death penalty and
11 we went beyond that and we proved aggravating
12 circumstances, things that made the crime
13 really bad, the whole situation, worse than
14 just a malicious murder -- are you with me?

15 A. Yes, ma'am.

16 Q. At that point could you give the death
17 penalty automatically?

18 A. I just -- you know, I can't say that. I
19 just gotta listen to -- you know, I can't say
20 'yes' or 'no' to anything about that.

21 Q. Let me ask you this, ---

22 A. If it occurred, I would have to hear
23 everything. I can't say 'yes' or 'no.' You
24 know what I mean?

25 Q. That's good. So we're talking a malicious

1 murder, we're talking aggravating circumstances
2 and a situation where the defendant doesn't
3 testify, doesn't put any evidence in
4 mitigation. Could you get past that?

5 A. (Affirmative nod), as long as you proved
6 it.

7 Q. Once we proved it, you could get past the
8 fact that the defendant did ---

9 A. Once it's proven, I can get past any of
10 that but it has to be proven.

11 Q. You can't imagine in your mind, and I
12 won't ask you what, but you can imagine in your
13 mind situations that would call for the death
14 penalty?

15 A. Yes.

16 Q. How about situations that would call for
17 life without parole?

18 A. Yeah, (affirmative nod).

19 Q. So you don't favor one or the other?

20 A. Not really.

21 Q. It'd depend on the fact of the situation?

22 A. Yes, ma'am.

23 SOLICITOR WILSON: Okay, that's all
24 that I have.

25 JUROR NUMBER 92: All right.

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1 THE COURT: Are there any other
2 questions?

3 MR. BLOOM: No, Your Honor.

4 THE COURT: If you would step down,
5 Ms. Copeland, and step out, we'll be with you
6 momentarily.

7 (JUROR 92 EXITS COURTROOM)

8 THE COURT: What says the State?

9 SOLICITOR WILSON: I think she's
10 qualified.

11 MR. BLOOM: We agree.

12 THE COURT: I do, too. Bring her
13 in, please.

14 (JUROR 92 ENTERS COURTROOM)

15 THE COURT: Thank you, Ms. Copeland,
16 and thank you again for your patience. You've
17 been found to be qualified to be a member of
18 the panel from which we will select our jury.

19 We are hopeful that we may be able to
20 do that Wednesday afternoon but I'm not sure of
21 that at this point. I am going to ask you to
22 call the number that you were given for the
23 answering machine, tomorrow night after 6:00,
24 and follow the instruction that will be on
25 there about the Dickerson jury panel. It will

1 say the Dickerson jury panel -- it may say
2 needs to report at 3:00 o'clock. It may say to
3 call back on Wednesday at a certain time. But
4 whenever it tells the Dickerson jury panel to
5 come, that's you.

6 JUROR NUMBER 92: Okay.

7 THE COURT: You'll need to come
8 directly to this courtroom at that time. Okay?

9 JUROR NUMBER 92: Yes, sir.

10 THE COURT: Please understand that
11 until you are excused from this case that you
12 are not permitted to talk with anyone about
13 this case or to allow anyone to talk about it
14 in your presence. Don't watch news programs
15 and ---

16 JUROR NUMBER 92: I don't look at any
17 anyway.

18 THE COURT: --- don't read any news
19 articles about it.

20 JUROR NUMBER 92: No, sir.

21 THE COURT: Thank you, ma'am. Have
22 a good evening.

23 JUROR NUMBER 92: You'all, too.

24 (JUROR NUMBER 92 EXITS COURTROOM)

25 THE COURT: All right, we need Juror

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1 Number 256, Ms. Robinson.

2 (JUROR NUMBER 256 ENTERS COURTROOM)

3 THE COURT: Good evening, Ms.

4 Robinson. How are you?

5 JUROR NUMBER 256: I'm fine.

6 THE COURT: If you will sit and pull
7 yourself up so that you can speak into that mic
8 comfortably. Sorry we're running late, we
9 appreciate your patience.

10 We are going to continue the process
11 that we started on Friday. There are some
12 questions that I have of you and then the
13 lawyers may have some additional questions for
14 you. All that we ask you to do, Ms. Robinson,
15 is to respond truthfully to those questions and
16 to them completely. I am confident that you
17 will do that. Will you do that?

18 JUROR NUMBER 256: Yes, sir.

19 THE COURT: I would remind you in
20 that regard that you are still under oath in
21 this matter. Okay?

22 JUROR NUMBER 256: Okay.

23 LISA ROBINSON, being duly sworn to
24 tell the truth, the whole truth and nothing but
25 the truth, testified, as follows:

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. Before we start, have you talked with
4 anyone or permitted anyone to talk with you
5 about this case?

6 A. No, I haven't.

7 Q. Have you read any newspaper articles or
8 watched any news programs about it?

9 A. No, I have not.

10 Q. I mentioned a number of names on Friday.
11 I failed to mention two names that I need to
12 share with you. Are you related by blood or
13 marriage, have any business dealings with or
14 socially or casually acquainted with or have
15 any dealings with Jeff Osborne or Matt Casey?

16 A. No, sir.

17 Q. You were given a sheet when you came in
18 that sets forth three types of jurors, have you
19 had a opportunity to review that sheet?

20 A. Yes, sir.

21 Q. Which type most accurately describes you?

22 A. Type three.

23 Q. Type three?

24 A. (Affirmative nod)

25 Q. That's the juror that you believe, as I

1 understand, could in some situations impose a
2 death penalty for a murder conviction and
3 could, in some other situations, while they may
4 consider the death sentence believe that a more
5 appropriate sentence would be life imprisonment
6 without the possibility of parole. Is that
7 correct?

8 A. Yes, sir.

9 Q. But which one applies when, it would
10 depend on the circumstances, the factual
11 circumstances of each case; is that true?

12 A. Yes, sir.

13 Q. That's -- until you know that you couldn't
14 give an opinion which one would be most
15 appropriate?

16 A. That's right.

17 Q. Now, you understand that in this case, in
18 this process that if you're on the jury you
19 would be instructed and it would be your
20 responsibility to determine the facts in this
21 dispute. Do you understand that?

22 A. Yes.

23 Q. And you'd make a promise to determine the
24 facts by considering the evidence and evidence
25 consists of the testimony of the witnesses and

1 the exhibits that are introduced through that
2 testimony. Do you understand that?

3 A. Yes.

4 Q. You could do that?

5 A. Yes.

6 Q. You would consider that evidence at the
7 appropriate time and apply your common sense
8 and be fair and impartial in deciding that, is
9 that right?

10 A. Yes.

11 Q. You also understand that while it is your
12 duty to be the sole judge of the facts as a
13 juror that you would have nothing to do with
14 the law, that that would be my sole
15 responsibility. You understand that?

16 A. Yes, sir.

17 Q. And part of the commitment in addition to
18 deciding the facts of the case by considering
19 the evidence, you would promise that you would
20 take the law as I gave it to you and apply that
21 law fairly and impartially to those facts. Do
22 you understand that?

23 A. Yes.

24 Q. That means that even though you may hear
25 some law with which you may differ, you can set

1 aside those differences ---

2 MR. BLOOM: (Noise) -- I'm sorry, I
3 hit this microphone. I apologize.

4 THE COURT: That's okay. No
5 problem.

6 EXAMINATION CONTINUED

7 BY THE COURT:

8 Q. You would set aside those differences and
9 take the law as I have it to you notwithstanding
10 ing your feelings or how you felt about what it
11 should be or what you thought that it was. Is
12 that true?

13 A. Yes, sir.

14 Q. And you would do that?

15 A. Yes, sir.

16 Q. Okay. One of the principles of law that
17 we talked about on Friday and you didn't stand
18 or say that you had any problem with is the
19 principle of law that when persons such as Mr.
20 Dickerson are accused of committing criminal
21 offenses in this state, or in this country,
22 they're presumed innocent until they are proven
23 guilty. Do you understand that?

24 A. Yes, sir.

25 Q. And you have no problem with that

1 principle of law, as I understand?

2 A. No, sir.

3 Q. It's an active presumption. It means that
4 you have to actively presume that. So today as
5 you look at Mr. Dickerson, do you believe him
6 to be innocent of these charges?

7 A. Yes.

8 Q. And that won't change until and unless you
9 were on the jury and heard the evidence
10 presented by the State and had decided that
11 they had convinced you beyond a reasonable
12 doubt that he was guilty of one or more of the
13 offenses. Is that true?

14 A. Yes, sir.

15 Q. You understand that the only person or
16 body that has a burden of proof is the State of
17 South Carolina. Mr. Dickerson doesn't have to
18 prove anything in this dispute. You would
19 never and should never look to him to prove
20 anything or explain anything. Would you have
21 any problem with that?

22 A. No, sir.

23 Q. In fact, I would tell you that Mr.
24 Dickerson, not having to prove anything, he
25 doesn't have to prove that he is innocent, he

1 doesn't have to present any evidence, he
2 doesn't even have to testify. I would instruct
3 the jury that they couldn't use that against
4 him. Would you have any problem with that?

5 A. No, sir.

6 Q. Now, we mentioned on Friday that there
7 could be two phases in this proceeding. The
8 second phase, if that should occur, would be
9 the phase where you would hear evidence that
10 would be in addition to the crime itself,
11 evidence concerning the appropriate sentence to
12 be imposed. Do you understand that?

13 A. Yes, ma'am.

14 Q. But you would not go into that second
15 phase unless the jury had found beyond a
16 reasonable doubt that he was guilty of the
17 crime of murder. Do you understand that?

18 A. Yes, sir.

19 Q. And murder is the intentional killing of
20 someone with malice. It is not mistaken, it is
21 not angry and doing something. It's knowing
22 what you want to do and doing it, carrying it
23 out and killing somebody. Do you understand
24 that?

25 A. Yes, sir.

1 Q. As I understand your answer to the
2 question about being a type three, if you were
3 on the jury -- and I am not suggesting that
4 that is what is going to happen or should
5 happen, we're talking about something that
6 might and I just need to ask you a question
7 about it. Am I to understand that you would
8 not at that time have any idea as to the
9 appropriate sentence to be imposed or what you
10 would impose because you haven't heard all the
11 facts and circumstances, is that correct?

12 A. Yes, sir.

13 Q. So you wouldn't have had any predetermina-
14 tion of which one of the two sentences would be
15 appropriate?

16 A. No, sir, I would not.

17 Q. That's important for lots of reasons,
18 because number one you need to hear all the
19 evidence and the law, of course, before making
20 that decision.

21 Secondly, because in the second phase a
22 part of that is that the jury can't even
23 consider a death sentence unless the jury
24 concludes, after going through that second
25 phase, that the State had presented evidence to

1 persuade the jury beyond a reasonable doubt of
2 one or more -- the existence of one or more
3 aggravating circumstances. I would define that
4 term for you but, basically, those are
5 circumstances that make the crime not the
6 normal murder of someone. It gives rise to
7 having a jury present, because in this state
8 the jury is not always involved in sentencing
9 someone for the crime of murder. The jury may
10 be involved in determining the guilt but
11 typically in a situation when that happens, the
12 judge imposes the sentence. Do you understand
13 that?

14 A. Yes, sir.

15 Q. So before the jury can even consider a
16 death sentence, because a judge in that setting
17 without a jury present, the judge can't even
18 consider a death sentence. Do you understand
19 that?

20 A. Yes.

21 Q. And the judge is not bound to life
22 imprisonment without the possibility of parole,
23 so it's something that changes it and raises
24 the level of it. Do you understand that?

25 A. Yes, sir.

1 Q. That is what aggravating circumstances
2 are. In order to do that, the jury has to
3 decide beyond a reasonable doubt that the State
4 has proven that aggravating or those
5 aggravating circumstances. You understand
6 that?

7 A. Yes, sir.

8 Q. I will instruct you, if you were on the
9 jury and the jury concluded that an aggravating
10 circumstance had been established that then,
11 and only then, could you even consider a death
12 sentence. Do you understand that?

13 A. Yes, sir.

14 Q. But I would also instruct you that you
15 don't have to return a death sentence just
16 because you found aggravating circumstances.
17 Would you have any problem following that?

18 A. No, sir.

19 Q. That means simply that while you could
20 then consider it, then you would have to
21 consider all the facts and circumstances in
22 evidence and decide -- and consider the law and
23 decide what you believe to be the appropriate
24 punishment. Do you understand that?

25 A. Yes, sir.

1 Q. There could be a number of things that you
2 would consider in that second phase should that
3 occur. One of the things that may be in
4 evidence would be something that I would define
5 for you as mitigating circumstances. Those are
6 circumstances that may deal with such things,
7 and usually do not even involve the crime
8 itself, but deal with such things as the
9 person's upbringing, their background, their --
10 there be some evidence of drug addictions,
11 mental impairments, things of that nature.

12 If that evidence is there and you're instructed
13 to give meaningful consideration to those
14 mitigating circumstances, you would do that as
15 well ---

16 A. Yes, sir.

17 Q. --- in making a determination of what was
18 the appropriate sentence; is that correct?

19 A. Yes, sir.

20 Q. Because I would instruct also that in
21 making the determination, even if there weren't
22 any mitigating circumstances presented, if
23 there was nothing in the evidence that you
24 would consider a mitigating circumstance, the
25 jury still may return a life without parole.

1 Do you understand that?

2 A. Yes.

3 Q. Because it is your option. You are not
4 bound and I am not instructing you that just
5 because aggravating circumstances exist, I'm
6 not instructing you that you have to return a
7 death sentence, only that you may if you choose
8 to. Do you understand that?

9 A. Yes, sir.

10 Q. You wouldn't have any problem following
11 that instruction. Is that correct?

12 A. No.

13 Q. I would also tell you, just as Mr.
14 Dickerson doesn't have to prove anything in the
15 first phase, he certainly has no obligation to
16 prove anything in the second phase. He doesn't
17 have any responsibility to prove any mitigating
18 circumstances or present it for your
19 consideration. He may do that but he doesn't
20 have to do that. Do you understand?

21 A. Yes, sir.

22 Q. And if he chose not to, you wouldn't hold
23 that against him; would you?

24 A. No, I wouldn't.

25 Q. You would look at the case and what the

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1 State is asking for and decide whether or not
2 you were convinced that that was the
3 appropriate sentence?

4 A. Yes, sir.

5 Q. And make a determination between the two?

6 A. Yes, sir.

7 Q. And you believe that you could perform
8 that function fairly and impartially?

9 A. Yes, sir.

10 THE COURT: Thank you. Please
11 answer any questions that either side may have.

12 VOIR DIRE EXAMINATION

13 BY SOLICITOR WILSON:

14 Q. Thank you, Ms. Robinson. I'm Scarlet
15 Wilson, I'm the Solicitor here. This is Bruce
16 Durant and Rutledge Durant and we're the
17 prosecutors in the case, so we will be the ones
18 presenting evidence. I am going to be asking
19 you just a few followup questions. Okay?

20 A. Okay.

21 Q. You've done a lot of yes or no questions.
22 I just want you to tell us in your own words
23 what your thoughts are about the death penalty.

24 A. Well, I really don't -- I am not for it or
25 against it. It just -- it depends on, you

1 know, the evidence that is brought forward and
2 whether the prosecution has proved evidence.
3 If that's what they're asking for, you know,
4 and that's what the jury decides that, you
5 know, he should get it.

6 Q. You're okay with that?

7 A. I'm okay with that. I'm not -- you know,
8 I am not for it or not against it. Whatever
9 the decision is that we, you know, that the
10 jury makes.

11 Q. That would have to come after proof?

12 A. Right.

13 Q. And the judge talked to you about the fact
14 that there would be or that in death penalty
15 cases there are two phases in a trial, the
16 guilt phase where it's determined whether a
17 person is guilty or not guilty and then a
18 punishment phase, that second part.

19 A. Right.

20 Q. In that second part, you understand that
21 again we have to prove beyond a reasonable
22 doubt aggravating circumstances?

23 A. (Affirmative nod).

24 Q. If we prove those to you, beyond a
25 reasonable doubt, could you actually sign your

1 name to a death warrant?

2 A. Yes, I could.

3 Q. You wouldn't have any problems doing that?

4 A. No.

5 Q. Would you also consider mitigating
6 circumstances, that being anything that makes
7 the crime maybe a little less severe or helps
8 explain some of a defendant's behavior. Would
9 you be interested in that?

10 A. Yes.

11 Q. And you would look at all those things
12 together before reaching your decision?

13 A. Yes, I would.

14 Q. Now, I believe that you in your
15 questionnaire mentioned that you served on a
16 jury once before?

17 A. No, I testified in a case. I've never
18 served on a jury.

19 Q. You were a witness?

20 A. I was.

21 Q. Were you a witness for the prosecution or
22 for the defense?

23 A. For the prosecution.

24 Q. Okay.

25 A. I was subpoenaed by the prosecution.

1 Q. So you've sat on a witness stand before?

2 A. Yes, ma'am.

3 Q. Okay. You're ahead of some of us.

4 SOLICITOR WILSON: I believe that's
5 all the questions that I have. Beg the court's
6 indulgence.

7 THE COURT: Certainly, Solicitor,
8 take your time.

9 SOLICITOR WILSON: That's all that I
10 have. Thank you.

11 THE COURT: Very well.

12 MR. BLOOM: May it please the court?

13 THE COURT: Yes, sir.

14 VOIR DIRE EXAMINATION

15 BY MR. BLOOM:

16 Q. Good evening, Ms. Robinson.

17 A. Good evening.

18 Q. How are you?

19 A. I'm well.

20 Q. My name is Jeff Bloom and with Andrew
21 Carroll, we represent William Dickerson. I
22 just have a few followup questions. Okay?

23 A. Okay.

24 Q. And there's no right or wrong answers,
25 we're just looking for your honest answers --

1 and I think that's what you've given us so far.

2 A. Yes, sir.

3 Q. Just to follow up, first, you told Ms.

4 Wilson that you'd been a witness in a case?

5 A. (Affirmative nod).

6 Q. What kind of case was that?

7 A. It was a trespassing case. I was actually

8 the manager at a hotel and there was a party

9 that was out of hand and the Police Department

10 was called. I was subpoenaed.

11 Q. Was that a city court or magistrate's

12 court, one of those?

13 A. I believe that it was magistrate.

14 Q. All right. Now, I want to ask you, on

15 your questionnaire you put that "If you are up

16 for the death penalty and you are guilty, then

17 that is what you should get." Could you just

18 explain to me by that?

19 A. What I meant by that was that if that's

20 what they're asking for us to give the

21 defendant or if that is what we decided to go

22 with then, depending on the evidence, if it is

23 brought forward the fact that they proved, you

24 know, the evidence that, you know, he did it

25 then I figure that's what he should get -- if

1 that would all be decided by the jury.

2 Q. Fair enough. You understand that there
3 are some folks who are opposed to the death
4 penalty in each and every case?

5 A. Right.

6 Q. And there are some folks who are for the
7 death penalty in each and every case.

8 A. Right.

9 Q. We're not asking you ahead of time to tell
10 us what you would do in this case, but in that
11 spectrum where do you believe you fall in terms
12 of your general opinion?

13 A. I don't really have an opinion. I am not
14 for it or I'm not against it. Like I explained
15 earlier, even if it was a family member of mine
16 I couldn't bring my family member back by
17 imposing the death penalty. But either way, it
18 just depends on what we decide as a jury and
19 the evidence that is brought forth in a crime.

20 Q. You've been clear. I just want to follow
21 up on your comments on the jury sheet that I
22 just asked you about.

23 A. Right.

24 Q. That doesn't mean that just because you
25 were a juror in a case and you found someone

1 guilty of murder that you would automatically
2 vote for death?

3 A. No, definitely not.

4 Q. That's what I wanted to find out.

5 A. Right.

6 Q. And you understand that when we're talking
7 about murder we're not talking about accident
8 or self-defense or manslaughter, like you catch
9 someone in bed with someone, or insanity.
10 We're talking about a person did it, intended
11 to do it, with malice and they've got the right
12 person beyond a reasonable doubt, you're not
13 going to automatically vote for the death
14 penalty?

15 A. No, it's something that they are going to
16 have to prove to me.

17 Q. Okay. You still also want to hear, Judge
18 Dennis asked you about it, you also would want
19 to hear about the defendant's background?

20 A. Yes.

21 Q. You could give meaningful consideration to
22 that?

23 A. I could, yes.

24 Q. There might be other things like drug
25 addiction that you could give meaningful

1 consideration to?

2 A. Yes.

3 Q. Things like mental health issues that you
4 could give meaningful consideration to?

5 A. Yes.

6 Q. All right. Lastly, I think you understood
7 Judge Dennis to tell you that he will never
8 instruct the jury that they have to vote for
9 death. You understand that?

10 A. Right.

11 Q. The law says that it is an individualized
12 moral choice. You could make that moral,
13 individualized choice?

14 A. Yes, sir.

15 Q. After you hear all the evidence?

16 A. Right.

17 Q. After you hear mitigation evidence?

18 A. Yes, sir.

19 Q. Everything else?

20 A. (Affirmative nod).

21 Q. Talked with your other jurors?

22 A. (Affirmative nod).

23 Q. If that was the situation, if you were
24 voting one way, your moral, individualized
25 choice and eleven jurors were voting the other

1 way, you're not just going to fold? Say, 'My
2 goodness, it's late and I'm hungry. I'm just
3 going to go along to get along.'

4 A. No, I'm not. No.

5 Q. You don't strike me as that kind of person
6 that would have.

7 A. No.

8 Q. You're going to respect those jurors'
9 votes?

10 A. (Affirmative nod).

11 Q. Right?

12 A. Right.

13 Q. But you're asking them to respect your
14 vote, as well?

15 A. Yes, sir.

16 Q. And the flip side of that, if you're in
17 the eleven and there is one juror who has made
18 their moral, individualized choice, you're
19 going to respect that juror's vote?

20 A. Yes.

21 Q. Just as you would ask them to respect
22 yours?

23 A. Yes, sir.

24 MR. BLOOM: Thank you very much.

25 THE COURT: Anything further?

1 SOLICITOR WILSON: I just have one
2 question that I forgot to ask. Do you know
3 Kanesha Singleton?

4 JUROR NUMBER 256: No, I do not.

5 THE COURT: Thank you, ma'am. If
6 you would step out and step out just for a
7 minute, we'll be with you momentarily.

8 (JUROR NUMBER 256 EXITS COURTROOM)

9 THE COURT: What says the State?

10 SOLICITOR WILSON: I think she is
11 qualified.

12 MR. BLOOM: She's qualified, Your
13 Honor.

14 THE COURT: Ask her to come in,
15 please. I agree she is qualified.

16 (JUROR NUMBER 256 ENTERS COURTROOM)

17 THE COURT: Thank you, Ms. Robinson,
18 I appreciate it. Thank you very much, and I
19 appreciate your patience. You've been found to
20 be qualified to be a member of the panel from
21 which we will select our jury.

22 We're hopeful that we will be able to
23 perform that process Wednesday afternoon.
24 That's what we are shooting for. We are not
25 sure that we are going to be able to do that

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1 but we -- we will let you know. If you will
2 call the number that was given you, tomorrow
3 night after 6:00, there will be a message that
4 will say the Dickerson jury panel needs to --
5 it may say to report on Wednesday at such-and-
6 such time or it may say to call back. I just
7 don't know yet. Just follow that instruction
8 and when it tells you to report, at the time
9 given you'll need to come directly to this
10 courtroom. Okay?

11 JUROR NUMBER 256: Yes, sir.

12 THE COURT: Now, please remember
13 that while and until -- that while you are
14 still in the panel, until you are discharged
15 from this case, you're not at liberty to talk
16 to anyone about this case or permit anybody to
17 talk to you about serving on the jury or talk
18 about the case in your presence. Also, please
19 continue not to read anything about it or watch
20 any news programs. Have a good evening,
21 hopefully we will see you Wednesday afternoon.

22 JUROR NUMBER 256: Thank you.

23 (JUROR NUMBER 256 EXITS COURTROOM)

24 THE COURT: The last one, at least
25 for today, is Ms. Cox. Juror Number 402.

1 (JUROR NUMBER 402 ENTERS COURTROOM)

2 THE COURT: Ms. Cox, good afternoon
3 -- finally, almost 'good evening', I guess I
4 should say. Thank you so much for your
5 patience.

6 JUROR NUMBER 402: You're welcome.

7 THE COURT: I am sure you thought
8 'gracious me', it's been a long afternoon.

9 JUROR NUMBER 402: That's okay.

10 THE COURT: I appreciate that.
11 Sometimes it takes longer than we anticipate.

12 JUROR NUMBER 402: I understand.

13 THE COURT: You're very gracious.
14 We are going to continue the process that we
15 started on Friday. By that, I mean -- I have
16 some questions that I need to ask of you and
17 then the attorneys may have some question.
18 Just as you did on Friday, remember that there
19 are really no correct answers to any of these
20 questions. All that we ask is that you be
21 truthful in your responses and complete in your
22 response. You will do that?

23 JUROR NUMBER 402: (Affirmative nod),
24 okay.

25 THE COURT: Is that correct?

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1 JUROR NUMBER 402: Correct.

2 THE COURT: I would remind you in
3 that regard that you are still under oath in
4 this matter. Okay?

5 JUROR NUMBER 402: Yes, sir.

6 MARY COX, being duly sworn to tell the
7 truth, the whole truth and nothing but the
8 truth, testified, as follows:

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q. Since we were last together, did you talk
12 with anyone or permit anyone to talk with you
13 or talk about this case in your presence?

14 A. No, sir.

15 Q. Have you read any newspaper articles or
16 watched any news programs about it?

17 A. No, sir.

18 Q. I named -- gave a number of names on
19 Friday. I failed to mention two names that I
20 need to ask you about. Are you related by
21 blood or marriage, have any business dealings
22 with or socially or casually acquainted with or
23 have any dealings with Jeff Osborne or Matt
24 Casey?

25 A. No.

1 Q. You were given a sheet when you came in
2 that describes three types of jurors, have you
3 had a opportunity to review that sheet?

4 A. Yes.

5 Q. Which type most accurately describes you?

6 A. I've thought about that for awhile and I
7 think -- again, it is sort of a similar
8 situation with -- you really try to think about
9 it, personally. I think that, you know, the
10 punishment should fit the crime. With that
11 said, unless it was self-defense or something
12 of that nature or a child, I would lean towards
13 number one -- but, again, I don't know, it
14 would just depend.

15 Q. Well, first of all, I would tell you that
16 self-defense -- of course, if it were self-
17 defense, it is not murder. Okay?

18 I am not sure about the crime if it was a
19 child. One of the things that I would ask you,
20 I guess, when you say number one, you would say
21 that if a person is convicted of murder, you're
22 inclination would be that the most appropriate
23 sentence would be a death sentence?

24 A. Correct.

25 Q. And it really wouldn't depend on the

1 circumstances so much or would you be able to
2 consider other possible sentences, such as life
3 imprisonment?

4 A. I think it would to a certain degree
5 depend on the circumstances. Like I said, I
6 know that's more -- that's basically what
7 number three said, as well, but I am leaning
8 towards number one.

9 Q. You would consider yourself -- starting,
10 it would be a death sentence?

11 A. (Affirmative nod).

12 Q. And then you would consider the
13 circumstances?

14 A. Correct.

15 Q. Well, let me ask you a couple of questions
16 in that regard. You understand that you would
17 decide the circumstances if you were on the
18 jury by considering the evidence in the case?

19 A. Yes.

20 Q. And it would be your responsibility as a
21 juror to be the sole judge of the evidence, or
22 sole judge of the facts, and you'd make that
23 determination on what you found to be the truth
24 by evaluating the evidence?

25 A. Yes.

1 Q. And you could do that and would do that at
2 the appropriate time?

3 A. Yes.

4 Q. You also understand that there may be two
5 phases in this process, do you understand that?

6 A. Um-humm, (affirmative nod).

7 Q. In both cases you would be the judge of
8 the facts and it would be my responsibility to
9 be the judge of the law. Do you understand
10 that?

11 A. Um-humm, (affirmative nod).

12 COURT REPORTER: Was that a "yes"?

13 JUROR NUMBER 402: Yes.

14 EXAMINATION CONTINUED

15 BY THE COURT:

16 Q. And there is a very well-defined line
17 between our lines. I don't have anything to do
18 with the facts and you have nothing to do with
19 the law. You understand that?

20 A. Right. Yes.

21 Q. Part of that means that you would have to
22 take the law as I gave it to you and apply that
23 law fairly and impartially to the facts as you
24 determined them. Do you understand that?

25 A. Yes.

- 1 Q. And you could do that?
- 2 A. Yes, sir.
- 3 Q. And you would do that notwithstanding your
4 personal opinions about the law and what the
5 law should be?
- 6 A. Correct.
- 7 Q. You could set those aside and take the law
8 and follow that law, is that correct?
- 9 A. Yes, sir.
- 10 Q. If we had in this trial, in this case, --
11 the first phase is called -- you understand
12 that persons such as Mr. Dickerson who have
13 been accused of committing criminal offenses
14 are never required to prove anything at all.
15 Do you understand that?
- 16 A. Yes, sir.
- 17 Q. And they're not required to prove their
18 innocence. The reason is that the law says the
19 party that makes the claim has the burden of
20 proof and the persons accused are presumed
21 innocent until and unless the accusing party
22 proves their guilty beyond a reasonable doubt.
23 Do you understand that?
- 24 A. Yes.
- 25 Q. As I understand from Friday, you don't

1 have any problem with that principle of law?

2 A. No, sir.

3 Q. You would follow that?

4 A. Yes.

5 Q. So -- it's an active presumption. It's
6 not just words, it's an active presumption.

7 A. (Affirmative nod).

8 Q. So as we sit here today and you look at
9 Mr. Dickerson, he's innocent of these charges
10 as far as you're concerned?

11 A. Yes.

12 Q. I would also instruct you that they don't
13 have -- that a person accused of criminal
14 offenses don't have to prove their innocent; in
15 fact, they don't have to prove anything at all.
16 They don't have to present any evidence, they
17 don't even have to testify if they don't want
18 to. You understand that?

19 A. Yes.

20 Q. And that could never be used by a jury at
21 any time, do you understand that?

22 A. Yes.

23 Q. Would you have any problem applying that
24 principle of law?

25 A. No.

1 Q. In fact, if they choose not to testify,
2 the jury cannot even discuss that in the jury
3 room. If they did, they would violate their
4 oath. Could you -- do you realize that?

5 A. Yes.

6 Q. Okay. If after considering the evidence
7 and hearing law -- hearing the evidence and
8 receiving the law in the first phase you and
9 the jury decided that the State had not
10 convinced beyond a reasonable doubt of each
11 element of the crime of murder, would you
12 return a verdict of not guilty?

13 A. Yes.

14 Q. On the other hand, if you were convinced
15 beyond a reasonable doubt of each elements of
16 the crime of murder, would you return a verdict
17 of guilty?

18 A. Yes, sir.

19 Q. That would be the instruction that the
20 court would give you. That's what you would
21 have to do.

22 A. (Affirmative nod)

23 Q. If you returned a verdict of not guilty,
24 you understand that would end this proceeding?
25 There would be no second phase.

1 A. Yes, sir.

2 Q. Okay. Not guilty of murder. You under-
3 stand that?

4 A. Um-humm, (affirmative nod).

5 Q. And, again, murder is not self-defense,
6 it's not manslaughter where someone takes the
7 life of another in the heat of passion, sudden
8 heat of passion, it's not an accident, it is an
9 intentional killing of someone, with malice.

10 Do you understand that a malicious killing?

11 A. Yes.

12 Q. As I understand you've indicated that you
13 would lean towards type one, so at the point
14 that you concluded as a juror that he was
15 guilty of the offense of the murder, your
16 inclination would be that the death sentence
17 would be the appropriate sentence?

18 A. Yes. With the definition of murder, I
19 guess I would -- if it was intentional and with
20 malice, yes, I would.

21 Q. But am I understanding you to say that you
22 would consider all of the circumstances,
23 because you said type three is incorporated?

24 A. Correct.

25 Q. Well, part of the instruction that I would

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1 give you if we went into the second phase would
2 be that before you could even consider a death
3 sentence, before the jury had the right to even
4 consider that as a possibility, you would have
5 to first determine that the State had met its
6 burden of proof and established beyond a
7 reasonable doubt at least aggravating
8 circumstances, which is something that takes
9 the murder out of the -- out of the norm, so to
10 speak.

11 Typically a jury is not involved in this
12 state in fashioning a sentence or in sentencing
13 someone for the crime of murder. Typically
14 they hear the first phase and decide whether
15 the State met its burden of proof but the
16 sentence to be imposed is done, is left up to
17 the judge. Do you understand?

18 A. Yes, sir.

19 Q. Only in those circumstances where there is
20 an aggravating circumstances and the State has
21 identified this as death penalty case, and
22 that's what has been done here, may the jury be
23 empaneled to even consider that. Before
24 considering it, the jury has to first make a
25 determination that they were convinced that

1 there was an aggravating circumstance.

2 If the jury concludes that it was not,
3 then you may not even consider a death
4 sentence. Do you understand that?

5 A. Yes.

6 Q. The only option would be to return a
7 sentence of life imprisonment without the
8 possibility of parole.

9 A. (Affirmative nod).

10 Q. Now, given your feelings about the death
11 sentence -- if it was appropriate, would you
12 set those aside and return a verdict of life
13 imprisonment without the possibility of parole
14 just as if there were no aggravating
15 circumstances?

16 A. What exactly do you mean by aggravating
17 circumstances?

18 Q. That is what I would explain to you.
19 There are a number of them that we would --
20 rather than go through the litany, I would
21 define it for you but it is something that has
22 to exist before you can even consider that.
23 You have to find that existed in the evidence
24 beyond a reasonable doubt. I would tell you
25 that if you don't find, you can't consider a

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1 death penalty. Would you have any problem
2 following that instruction?

3 A. No, sir.

4 Q. Notwithstanding your personal opinion?

5 A. Right.

6 Q. If the jury were to find that an
7 aggravating circumstances or circumstance had
8 been established beyond a reasonable doubt, I
9 would instruct you that then, and only then,
10 may you consider a death sentence; but that you
11 don't have to return a death sentence. In
12 other words, it is not mandatory. It's up to
13 you to make the determination. "You" being the
14 jury, you as a member of the jury, in deciding
15 what the appropriate sentence would be, whether
16 it would be life imprisonment without the
17 possibility of parole or a death sentence. Do
18 you understand that?

19 A. Yes.

20 Q. Am I understanding you to say that you
21 could then consider the circumstances and make
22 a determination between the two?

23 A. Yes, I could.

24 Q. You understand that, again, the State has
25 the sole burden of proving everything in the

1 second phase. Do you understand that, the
2 State has the burden of proving the aggravating
3 circumstance?

4 A. Yes.

5 Q. They would present evidence for your
6 consideration. What would you be considering?

7 I would tell you that there may be other
8 evidence, known as mitigating circumstances,
9 that may exist and I would instruct you that
10 if you were on the jury that if there are
11 mitigating circumstances you, as a juror, must
12 give meaningful consideration to those
13 mitigating circumstances. Would you be able to
14 do that?

15 A. Yes, sir.

16 Q. And mitigating circumstances are things
17 like how a person was raised, their upbringing,
18 whether they -- there may be some evidence of
19 addictions, may be evidence of some mental
20 incapacity or infirmity, those types of things
21 that have really nothing to do with the crime
22 itself but are factors that I would instruct
23 you that you would have to consider. Could you
24 do that and would you do that?

25 A. Yes.

1 Q. Notwithstanding your feeling about the
2 death penalty?

3 A. Correct.

4 Q. I would also instruct you that the
5 defendant has no burden whatsoever to prove
6 anything in the second phase. He doesn't have
7 to prove any mitigating circumstances. The
8 jury may, even if no mitigating circumstances
9 exist, return a verdict of life without parole
10 notwithstanding that there is an aggravating
11 circumstance that has been established. Do you
12 understand that?

13 A. I do.

14 Q. If after considering it all, you could
15 give due consideration to a verdict of life
16 without parole, even though there weren't any
17 mitigating circumstances?

18 A. Yes, sir.

19 Q. Okay.

20 THE COURT: Answer any questions
21 that ---

22 MR. BLOOM: May it please the court.

23 THE COURT: Yes, sir.

24 VOIR DIRE EXAMINATION

25 BY MR. BLOOM:

1 Q. Good evening, Ms. Cox. How are you?

2 A. Fine. Thanks.

3 Q. My name is Jeff Bloom and along with
4 Andrew Carroll, we represent William Dickerson.
5 I just have a few followup questions. Okay?

6 A. Okay.

7 Q. I want you to know that there are no right
8 or wrong answers, we just need you to be as
9 honest as you can. Okay?

10 A. All right.

11 Q. I want to go back and just ask you a few
12 questions first about murder. I want to make
13 sure that I understand your answers. Okay?

14 A. (Affirmative nod).

15 Q. Judge Dennis has defined murder to you as
16 not involving self-defense, it is not accident,
17 it is not manslaughter where you catch someone
18 in bed, and it's not insanity. It's where
19 someone did it, they intended to do it, with
20 malice -- which is an evil heart, -- you got
21 the right person and all that's proven beyond a
22 reasonable doubt. For some jurors, they just
23 feel that 'once you show to me that person is
24 guilty of that malice murder, I'm going to vote
25 for death pretty much each and every time.'

1 Judge Dennis just kind of needs to know where
2 you are on that. So I would ask you, in that
3 situation where malice murder is proven to you,
4 that it is intentional, that they got the right
5 person, he did it, meant to do it, no self-
6 defense, are you in that group that 'Judge,
7 even though you're instructing me on the law,
8 I'm pretty much going to vote for death each
9 time.'

10 A. Well, I mean, I think every case is
11 different but I've always pretty much thought
12 that if malice is involved, that it was
13 intentional, I just feel like the punishment
14 should fit the crime. That's just always been
15 my belief. I mean, I've never had to think
16 about it in this detail before but that's just
17 how I've always felt, prior to this.

18 Q. Sure. There's nothing wrong with that
19 belief, we're just trying to find out where you
20 fall in that.

21 A. Right.

22 Q. We are not asking you how you would vote
23 in this case. Please understand that.

24 A. Okay.

25 Q. Some jurors just have the belief that --

1 they believe it so strongly that they'd say,
2 'Judge Dennis, you know, I want to be a good
3 citizen, I want to follow the law and listen to
4 your instruction but, you know what, I just --
5 I have this strong belief and it's such a
6 personal, strong belief that if I find someone
7 guilty of that kind of malice murder that is
8 intentional, I am going to vote for death each
9 and every time. I don't need to wait and hear
10 all that other stuff.'

11 We just kind of kind of need to know if
12 that is where you are.

13 A. That's pretty much the way I feel. I know
14 that every situation is different and I might
15 feel differently after I'm able to hear more
16 details of a case, but I just -- just
17 generally, that's how I've always felt. It may
18 be different, like I said, after I'd hear all
19 the details.

20 Q. Sure. It's okay if you can't set that
21 view aside, you just need to tell Judge Dennis
22 that now, because some jurors can't. As you
23 can imagine, some jurors feel strongly against
24 the death penalty, you know, kind of the other
25 end of the spectrum that they have to come in

1 and tell Judge Dennis, 'Look, I'd like to
2 listen to your instructions but I've got to
3 tell you upfront that I could never vote for
4 death.' So that is kind of the flip side of
5 that.

6 A. (Affirmative nod).

7 Q. I am just asking you, quite honestly, and
8 you can understand why I'm doing that, right?

9 A. Yeah.

10 Q. Or are your beliefs so strong, ma'am, that
11 in a malice murder case that you're not really
12 going to be able to set them aside? That if
13 you find someone guilty of that malice murder,
14 for you that's okay but it's going to be the
15 death penalty each and every time?

16 A. Well, I think prior to coming into this
17 those were my beliefs but I think I can really
18 set them aside, hear the case and make a
19 reasonable judgment after hearing all the
20 details. I'd be able to set them aside and
21 listen to the details and the other jurors and
22 make a judgment.

23 I am not one hundred percent for the death
24 penalty, period. I'm.-- but that's just how
25 I've always felt prior to this.

1 Q. Okay. The next step after that is if a
2 jury found someone guilty, and again we're not
3 asking you about this case, of that malice
4 murder and then they heard aggravation -- and
5 aggravation is just is a fancy legal word for
6 more evidence to support the death penalty.

7 A. (Affirmative nod).

8 Q. For example, it might be murder and armed
9 robbery, murder of a police officer, types of
10 extra circumstances.

11 A. Right.

12 Q. Some jurors just say, feel, 'You know,
13 Judge Dennis, I want to be fair, I want to
14 follow the law but I've got to tell you upfront
15 that if he is found guilty of a malice murder
16 and all that other bad stuff, if it is proven
17 beyond a reasonable doubt, I'm going to vote
18 for death each and every time.' We just kind
19 of kind of need to know in that step, if that
20 is where you are.

21 SOLICITOR WILSON: Your Honor, I have
22 an objection to the question because it's not
23 in the context of what your instructions are.

24 THE COURT: Frame in and qualify it,
25 because that's not what the instruction will

1 be. Frame it in the sense of 'will you follow
2 the instruction', then however you want to
3 phrase it.

4 MR. BLOOM: All right, sir.

5 EXAMINATION CONTINUED

6 BY MR. BLOOM:

7 Q. Judge Dennis would give the jury an
8 instruction that after they hear the evidence
9 of that extra bad evidence supporting the death
10 penalty, and any mitigating circumstances, as
11 Judge Dennis told you that is any background,
12 upbringing, childhood, those types of things,
13 that they could should still keep both
14 penalties in mind and weigh all this.

15 Some jurors just say, 'You know what,
16 Judge Dennis? I've just got to tell you
17 upfront I can't listen to all that other stuff.
18 My beliefs are so strong that I can't sit it
19 aside. Once I find him guilty of malice murder
20 and then there is more evidence in support of
21 the death penalty, I'm going to vote for death
22 each and every time.' Are you tell me where
23 you are in that?

24 A. I think I could take everything into
25 consideration and whether it would be the death

1 penalty or life in prison. Honestly, after I
2 hear the case, I believe that I could make a
3 judgment. What I was trying to say before is
4 that going into this, I'd never really had to
5 think to this length on this type of thing.

6 Q. Sure.

7 A. I've just always felt before, you know, an
8 eye for an eye or that type of thing but I
9 think I could make a reasonable judgment after
10 I heard all the details of the case and then
11 decide, you know after everything is said and
12 done, whether it should be the death penalty or
13 life imprisonment.

14 Q. Fair enough. No one is here to criticize
15 those views. We just really need to ---

16 A. Right.

17 Q. I think you're being as honest as you can
18 and we appreciate that. Let me go a step
19 further -- and, again, assuming that same
20 instruction that I laid out for you that Judge
21 Dennis would give the jury, some people look at
22 it that their beliefs are so strong that they
23 say, 'You know what? I'm just going to look at
24 the facts of the crime and all that other stuff
25 ---

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1 SOLICITOR WILSON: Your Honor, I

2 believe that ---

3 THE COURT: I will allow one more
4 question about it.

5 EXAMINATION CONTINUED

6 BY MR. BLOOM:

7 Q. 'I'm not going to look at all that stuff
8 that doesn't have anything to do with the
9 crime; such as the childhood, his upbringing,
10 drug addiction.' Some people feel very
11 strongly about it.

12 THE COURT: No, sir. Rephrase it
13 because as I would instruct it, she has the
14 responsibility to consider that evidence.

15 MR. BLOOM: Yes, sir, and I had
16 asked her assuming that instruction, but I will
17 rephrase it.

18 EXAMINATION CONTINUED

19 BY MR. BLOOM:

20 Q. If Judge Dennis instructed the jury that
21 they still had to consider all the mitigating
22 circumstances, which are facts that may have
23 nothing to do with the crime, some jurors still
24 have such a strong belief that they say, 'You
25 know what? I can't consider anything that is

1 separate from the crime, like how they were
2 raised as a child. That has nothing to do with
3 it.' Some jurors just very strongly hold that
4 belief. If Judge Dennis gave that instruction,
5 are you still able to set aside your personal
6 beliefs or are you in that group that says,
7 'You know what? I can't.' We just kind of
8 kind of need to know now where you are?

9 A. I could set aside my personal beliefs and
10 take all the upbringing and things like that
11 into consideration.

12 Q. Okay. Fair enough. And, lastly, if Judge
13 Dennis asked you in some cases that the
14 defendant may present no evidence and the only
15 thing for the jury to consider on that side is
16 simple mercy. Some jurors say, 'I can't.' If
17 the judge has instructed you, you have to
18 everything and, uh, both aggravation and even
19 if there is no mitigation, you have to set your
20 personal beliefs aside. If it is simply just
21 mercy, can you still set your personal beliefs
22 aside and consider even that?

23 A. Yes.

24 Q. You wouldn't expect the defense to try to
25 prove a life sentence?

1 A. No..

2 MR. BLOOM: Thank you very much.

3 THE COURT: Questions, Solicitor?

4 SOLICITOR WILSON: I don't have any
5 questions.

6 THE COURT: Thank you. You may step
7 down and we'll be with you in just a moment,
8 Ms. Cox.

9 (JUROR NUMBER 402 EXITS COURTROOM)

10 THE COURT: State?

11 SOLICITOR WILSON: Your Honor, I
12 believe that she is qualified.

13 MR. BLOOM: Judge, we would
14 respectfully submit that while we acknowledge
15 that she answered some of the -- many of the
16 questions appropriately, her initial response
17 was that she could impose life if it was self-
18 defense. Her hesitation over imposing life
19 without parole for a malice murder renders her
20 unqualified.

21 THE COURT: Well, thank you very
22 much. I appreciate it and -- I think I've
23 ruled the other way on some persons that felt
24 they were prone for life imprisonment without
25 the possibility of parole today. As I noted in

1 the one that paused, I think she gave pause
2 before responding that she could do that
3 although it was something that she really
4 didn't want to do. This lady, I think, was as
5 candid as anyone in her response. She
6 acknowledged that that is what her feelings
7 were.

8 But also I think what we've all
9 alluded to, and I appreciate, Mr. Bloom, the
10 number of times that you've mentioned that and
11 noted that, that this isn't something that
12 people think about every day. Once she has
13 given serious thought to it, she though, 'You
14 know, I could.'

15 The most important thing, as you
16 pointed out in a number of your questions, it's
17 okay to have these beliefs. The question is
18 can you follow the law and consider it
19 seriously. I think she demonstrated on several
20 occasions, different approaches, that she
21 could.

22 For those reasons and from my
23 observations of her, her obvious candor in her
24 responses, I find that she is qualified. Thank
25 you. Bring her in.

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1 (JUROR NUMBER 402 ENTERS COURTROOM)

2 THE COURT: Thank you, Ms. Cox.

3 Thank you very much, and I appreciate again
4 your patience. You've been found to be
5 qualified to be a member of the panel from
6 which we will select our jury.

7 We are hopeful that that process will
8 take place Wednesday afternoon. I am not sure
9 yet that can be done, it depends on --
10 obviously we took longer today -- when we can
11 get through all of these prospective jurors.

12 I am going to ask that you call the
13 answering machine, the number that you have,
14 tomorrow night after 6:00. There will be a
15 message that says the Dickerson jury panel
16 needs to -- it may say to call back on
17 Wednesday or it may say to report. Just follow
18 the instructions. Whenever it says to report,
19 then you will come directly to this courtroom
20 at that time and then we will select a jury.

21 JUROR NUMBER 402: Okay.

22 THE COURT: Please remember that
23 until you are released from this case that you
24 are not at liberty to discuss this case with
25 anyone or permit anyone to talk about the case

1 in your presence or talk to you about serving
2 on the jury. You also are not at liberty to
3 watch any news programs about it or read any
4 newspaper accounts of it. Okay?

5 JUROR NUMBER 402: Yes, sir.

6 THE COURT: Have a great evening we
7 hopefully will see you on Wednesday. Thank you
8 again for your patience.

9 JUROR NUMBER 402: You're welcome.

10 (JUROR NUMBER 402 EXITS COURTROOM)

11 THE COURT: Folks, I think that
12 concludes today's work. Let me just -- Mike,
13 we have the telephone numbers for the jurors?

14 CLERK, MIKE CALLAHAN: Yes.

15 THE COURT: I am inclined to leave
16 the morning panel as we have it but possibly,
17 given the apparent time it's -- and I am not
18 being critical, that's fine, I don't any
19 criticism on either side on your questions, I
20 appreciate very much your questions. I am
21 sincere. There were jurors that I had marked
22 one way and -- quite frankly, the questions
23 convinced me otherwise. That's what this
24 process is about and I thank you for that.
25 It's very helpful.

1 Mr. Bloom, as I think you've said,
2 these questions sometimes are also canned but
3 then when you delve into it a little bit you
4 find something that really is not so
5 programmed. That is most helpful in making
6 these determinations. I thank you for those.

7 Having said that, I hope that you will
8 be as concise as we can and not be as
9 repetitive as sometimes we are. I recognize
10 and will honor, as long as I wear this robe and
11 am in this position, the defendant's right to
12 ask the questions, Mr. Bloom. I believe that,
13 there is no question about that. I will not --
14 I am going to try to make rulings that I think
15 are correct legal rulings but please understand
16 that that is in no way trying to restrict you
17 in fulfilling your responsibilities.

18 Having said that, I'm thinking let's
19 go 2:30, that may give us about thirty minutes
20 for lunch, then have the other panel come and
21 we'll just have another late night tomorrow
22 night. We will have them come at 4:30 and
23 hopefully we will be ready to go.

24 Folks, I'm sorry for those persons
25 here serving and I apologize to you but I don't

1 think that there is any way to do -- in
2 fairness, I think that is the better approach.

3 I'm okay with the 11:00 o'clock
4 waiting a little while if they have to. I'm
5 sorry for those of us that are eating on the
6 run but -- maybe Wednesday we will get a good
7 break.

8 Mike, if you could, call those two
9 panels in the morning and make that known to
10 them. The 2:00 should go to 2:30 and the 3:45,
11 I think, make them go to 4:30. Okay.

12 CLERK, MIKE CALLAHAN: Yes, sir.

13 THE COURT: Thank you all. We'll
14 see you in the morning. Have a good evening.

15 (COURT IN RECESS)

16 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 THE COURT: On the sheet it sort of
2 looks like "Orr" but it's not, it is "Ott.
3 Juror Number 385, Charles R. Ott. Bring him
4 in, please. Wait just a minute.

5 I've asked Ms. Garrison to mark the
6 sheet with the three types of jurors and it is
7 Court's Exhibit 6, for your reference purposes.

8 (SO ENTERED AS COURT'S EXHIBIT 6)

9 THE COURT: As I understand, there
10 are no objections to Court's Exhibit 6, as to
11 the wording of the three type of jurors. From
12 the State?

13 SOLICITOR WILSON: No objection.

14 THE COURT: No objection from the
15 Defendant either?

16 MR. BLOOM: No, Your Honor.

17 (JUROR NUMBER 385 ENTERS COURTROOM)

18 THE COURT: Good morning, Mr. Ott.
19 How are you this morning?

20 JUROR NUMBER 385: Doing okay.

21 THE COURT: If you would, take a
22 seat there. Pull that chair closer so that you
23 can speak comfortably into the mic. I
24 appreciate your being here. I am going to have
25 a few questions that I am going to ask you and

1 then the attorneys may have a few they want to
2 ask you, much along the line that we started on
3 Friday. There are no correct answers to any of
4 these questions. They are really designed and
5 the purpose is help all of us make a
6 determination as to whether you can be a fair
7 and impartial juror in this proceeding. That
8 is the purpose of the questions. It is
9 certainly not to invade your privacy in any
10 way.

11 JUROR NUMBER 385: Okay.

12 THE COURT: In that regard, I would
13 remind you that you are still under oath in
14 this matter.

15 JUROR NUMBER 385: Yes, sir.

16 CHARLES OTT, being duly sworn to tell
17 the truth, the whole truth and nothing but the
18 truth, testified, as follows:

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. First, I'd like to ask you if since we
22 were together on Friday, have you permitted
23 anyone to talk to you about this case or talk
24 about it in your presence or have you talked
25 with anybody about it?

1 A. No, sir, I have not.

2 Q. Have you watched any news programs or read
3 any newspaper articles about it?

4 A. No, sir. I saw the headlines in
5 yesterday's paper but I did not read the
6 article.

7 Q. Thank you, sir. You recall that I asked
8 you, listed a number of persons on Friday and
9 asked whether anyone was related by blood or
10 marriage, had any connection. I failed to
11 mention two names that I need to ask you about.
12 Are you related by blood or marriage, have any
13 business dealings with or socially or casually
14 acquainted with or have any dealings with Jeff
15 Osborne or Matt Casey?

16 A. No, sir.

17 Q. When you came this morning, they handed
18 you a sheet and that sheet contained three
19 types of jurors. Have you had an opportunity
20 to review that?

21 A. Yes, sir, I have.

22 Q. Which type most accurately describes you?

23 A. Type one.

24 Q. Type one?

25 A. Yes.

1 Q. That is a person who is they're sitting on
2 a jury in a criminal case in which the jury has
3 an opportunity to determine the appropriate
4 sentence and the person would have been at that
5 point convicted of murder, if you were on that
6 jury it is my understanding that you would in
7 all situations, because of the conviction of
8 murder, impose a sentence of death. Is that
9 correct?

10 A. I do not believe in mitigating
11 circumstances. I'm a right/wrong kind of guy,
12 that's the way I was raised, that's the way I
13 believe.

14 Q. So, again, ---

15 A. To answer your questions, "Yes, sir."

16 Q. So life imprisonment without the
17 possibility of parole would not be a
18 consideration for you?

19 A. I do not think so, no. No. To be
20 perfectly candid with you and to be honest, no.

21 Q. As I understood you to say, mitigating
22 circumstances is not part of your makeup, that
23 you would never consider that in a crime of
24 murder?

25 A. No, sir, I would not. I'm a pass/fail

1 type of person. You either did it or you
2 didn't do it and that's it.

3 THE COURT: Any questions from the
4 attorneys?

5 SOLICITOR WILSON: Yes, sir.

6 VOIR DIRE EXAMINATION

7 BY SOLICITOR WILSON:

8 Q. Mr. Ott, I am Scarlet Wilson. I'm the
9 prosecutor in this case. Bruce Durant and
10 Rutledge Durant are also prosecutors. Together
11 we are going to be presenting the evidence in
12 this case. I am just going to ask you a few
13 followup questions. Okay?

14 A. (No verbal response).

15 Q. If you were selected or seated on a death
16 penalty jury, is there any way that you can set
17 aside your feelings about the death penalty,
18 about murder and follow the judge's
19 instructions?

20 A. If he told me that I had to do so, yeah.

21 Q. In this sort of case, in a death penalty
22 case there are two phases to determine.
23 There's the part where the jury determines
24 guilt, guilty or not guilty. Then if they find
25 the person is guilty, they move to the second

1 phase, the penalty phase. At that point what
2 the Judge would instruct you would be that you
3 would have to consider and would have to sign
4 that the State has proven an aggravating
5 circumstance beyond a reasonable doubt. Do you
6 understand that?

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

8 Q. So you made it to the point in a death
9 penalty case, it wouldn't be enough that it was
10 a murder. The State would still have to prove
11 some aggravating circumstances. Could you wait
12 and listen to see if the State proved those
13 aggravating circumstances or would it be over
14 after guilty?

15 A. It's probably over.

16 Q. Okay.

17 A. I'm sorry, but ---

18 Q. You don't need to be sorry. You need to
19 tell us the truth, and that's what you're
20 doing, and I appreciate that.

21 A. I am a pass/fail type person. I don't
22 believe in A- and B+, pass or fail.

23 Q. I hear you. Thank you.

24 THE COURT: Any questions?

25 MR. BLOOM: We have no questions for

1 the juror. Thank you very much.

2 THE COURT: Thank you very much, Mr.
3 Ott. If you will step out for just a few
4 moments, we will be with you, sir, in just a
5 second.

6 (JUROR NUMBER 385 EXITS COURTROOM)

7 THE COURT: He clearly is not
8 qualified. I assume that there is no objection
9 from the State or the defense on that?

10 MR. BLOOM: No, sir.

11 SOLICITOR WILSON: (Negative gesture).

12 THE COURT: Thank you very much.
13 Let's bring him in.

14 (JUROR NUMBER 385 ENTERS COURTROOM)

15 THE COURT: Thank you, Mr. Ott. I
16 was just saying that it is always nice to read
17 something that somebody -- the questionnaire
18 that you completed, and thank you for that.
19 Your candor there was equal to your candor here
20 today and that's nice to see consistent candor
21 about something when a person sets forth who
22 they are. You've done that very clearly.

23 I am going to excuse you from any
24 further involvement in this case. Thank you
25 very much for your assistance and your

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1 participation. Is the panel still calling back
2 or are they excused for the week?

3 CLERK, MIKE CALLAHAN: They are still
4 calling back tonight after 6:00, Judge.

5 THE COURT: This gentleman has been
6 gracious enough. He came up -- and I mean that
7 sincerely -- and described some problems that
8 he was having physically. I appreciate that.
9 I asked you to stick around and you've done
10 that. You've been a part of this. I am going
11 to find that you're fulfilled your
12 responsibility for jury service and you're
13 excused from any further service this week,
14 sir. Thank you very much. Have a great day,
15 sir.

16 JUROR NUMBER 385: Thank you'll,
17 too.

18 (JUROR NUMBER 385 EXITS COURTROOM)

19 THE COURT: All right. Let's bring
20 in 363, Ms. Grant. Thank you.

21 (JUROR NUMBER 363 ENTERS COURTROOM)

22 THE COURT: Good morning, Ms. Grant.
23 How are you?

24 JUROR NUMBER 363: Fine.

25 THE COURT: If you will sit and pull

1 yourself up so that you can speak into that mic
2 comfortably. State your full name for the
3 record, please.

4 JUROR NUMBER 363: Debra Louise Grant.

5 THE COURT: Ms. Grant, good morning.

6 I appreciate you being here. We are going to
7 continue the process that we started on Friday
8 when we were asking you questions concerning
9 this dispute. As you recall, and these
10 question will continue in that vein. They
11 don't have any correct answers. The purpose of
12 these questions is really to assist you and
13 assist us in determining whether you can be a
14 fair and impartial judge with me in this case.
15 That's the reason that they are being asked.
16 They are not intended to invade your privacy or
17 anything of that nature. I want you to know
18 that again there are no correct answers to
19 them.

20 I am going to ask you some questions
21 and the attorneys may ask you some questions.
22 We just ask that you be truthful in your
23 response and that you give a complete response,
24 is that okay with you?

25 JUROR NUMBER 383: Okay.

1 THE COURT: I would remind you that
2 you are still under oath in this matter. Okay?

3 JUROR NUMBER 383: Yes, sir.

4 DEBRA GRANT, being duly sworn to
5 tell the truth, the whole truth and nothing but
6 the truth, testified, as follows:

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Since Friday, have you talked with anyone
10 or permitting anyone to talk with you about
11 this case?

12 A. No, I haven't.

13 Q. Have you read any newspaper accounts or
14 watched any news programs about it?

15 A. Uh-uh, (Negative gesture).

16 Q. Okay. On Friday I identified a number of
17 persons for the jury panel, and for you, and
18 ask you if you knew them or had any connection
19 to them. I failed to mention two names that I
20 need to ask you about. Are you related by
21 blood or marriage, have any business dealings
22 with or socially or casually acquainted with or
23 have any dealings with Jeff Osborne or Matt
24 Casey?

25 A. Uh-uh, (Negative gesture).

1 Q. When you came this morning, they gave you
2 a sheet that showed three types of jurors.

3 A. Um-humm, (affirmative nod).

4 Q. Have you had an opportunity to review that
5 sheet?

6 A. Yes, I have.

7 Q. Which type of number most accurately
8 described you?

9 A. Three.

10 Q. Number three?

11 A. (Affirmative nod).

12 Q. Number three basically, as I understand
13 it, says that 'if I am a juror in a murder case
14 in which the jury has the responsibility of
15 determining the punishment between life
16 imprisonment without the possibility of parole
17 and death there are circumstances if I heard in
18 a case when I would sentence someone convicted
19 of murder to death and there are circumstances
20 where given those options, my choice would be
21 life imprisonment without the possibility of
22 parole but I would have to hear all the
23 circumstances before I could decide which one
24 was the most appropriate.'

25 A. Okay.

1 Q. That's you?

2 A. Yes, sir.

3 Q. Obviously you understand that as a juror,
4 as we talked about it, that if you're selected
5 that you will become a judge with me in this
6 dispute. Do you understand that?

7 A. Yes.

8 Q. And it would be your responsibility to
9 decide the facts of the case. You promise to
10 decide those facts by considering only the
11 evidence. Do you understand that?

12 A. Yes, sir.

13 Q. You would be directed by me at the
14 appropriate time to apply your common sense,
15 your sense of logic to analyzing the evidence
16 and deciding what you believe to be the truth
17 and you believe that you could fulfill that?

18 A. Yes, sir.

19 Q. Because you would be only requested and
20 expected to apply your common sense, your sense
21 of logic and reason fairly and impartially?

22 A. Yes, sir.

23 Q. And you would do that?

24 A. Yes, sir.

25 Q. You also, being the judge of the facts --

1 as I told you on Friday, this is a great
2 system, two judges working together; one has
3 the responsibility to be the judge of the
4 facts, one that has the duty to be the judge of
5 the law and that would be my responsibility.

6 A. Yes, sir.

7 Q. It would be also your duty and
8 responsibility to accept the law as I gave it
9 to you and you would do that.

10 A. Yes, sir.

11 Q. You would do that?

12 A. Yes, sir.

13 Q. Now, that seems to be pretty straight-
14 forward and pretty easy but it's not uncommon
15 for you to hear, and I am not suggesting that
16 you would but you could, principles of law that
17 would cause you to think, 'You know, that law
18 needs to be changed' or 'that's not what I
19 thought the law was.' Whatever your reaction
20 to it, you're promised the parties to which you
21 have to make a commitment that you would
22 promise to set aside your personal opinion ---
23 A. Yes, sir.

24 Q. --- and apply the law as I give it to you,
25 and ---

1 A. Yes, sir.

2 Q. --- follow that instruction?

3 A. Yes, I would.

4 Q. You would do that?

5 A. Yes, sir.

6 Q. And you would apply that fair and
7 impartially?

8 A. Yes, sir.

9 Q. Okay. As we talked on Friday, Mr.

10 Dickerson has been accused of a criminal
11 violation, several violations, you understand,
12 and I ---

13 A. Um-humm.

14 Q. --- told you that he, as anyone in this
15 state accused of criminal offenses is presumed
16 to be innocent.

17 A. Right.

18 Q. As I understand, you have no problem with
19 that principle of law?

20 A. No.

21 Q. In fact, as I told you, that principle
22 means that we have to actively presume that he
23 is not guilty of these charges, ---

24 A. Right.

25 Q. --- that he is innocent.

1 A. Right.

2 Q. So as he sits here today, you see him as
3 being innocent of these charges; is that
4 correct?

5 A. Yes, sir.

6 Q. Okay. And you understand that that
7 presumption has to stay and remain in your mind
8 until and unless the State presents evidence
9 that would persuade you otherwise?

10 A. Yes, sir.

11 Q. To convince you that he was guilty of one
12 or more of the offenses?

13 A. Yes, sir.

14 Q. And you would do that if you were on the
15 jury?

16 A. Yes, sir.

17 Q. You understand in criminal disputes that
18 the State has the burden of proof?

19 A. Right.

20 Q. And that persons accused of criminal
21 offenses never have to prove anything?

22 A. Right.

23 Q. They don't have to present any evidence,
24 they don't have to present witnesses, they
25 don't have to testify, they don't have to

1 explain anything, they certainly don't have to
2 prove their innocence. You would have no
3 problem in following those principles of law;
4 is that correct?

5 A. That's correct.

6 Q. And if you were in this case you would
7 never look to the defendant, Mr. Dickerson, to
8 prove anything or expect him to do that; is
9 that correct?

10 A. That's correct.

11 Q. As I mentioned to you, the first phase of
12 this proceeding would deal with the charges
13 themselves. One of those charges is the
14 offense of murder. Murder is a charge in this
15 state that means -- it is the killing of
16 another with malice aforethought. What that
17 means is that at the time the person formed or
18 committed the act, they would have had malice,
19 evil spirited, evil mind, bent on mischief.
20 They intended to do what they did and they was
21 to kill a person.

22 A. Um-humm, (affirmative nod).

23 Q. That is what you'd consider if you were on
24 a jury on a murder charge. Do you understand
25 that?

1 A. Um-humm, (affirmative nod).

2 Q. And if you found that the State had
3 established each element required of it in
4 order to prove a person guilty, would you
5 return a verdict of Guilty?

6 A. Yes, I would.

7 Q. If on the other hand you were not
8 convinced beyond a reasonable doubt that the
9 State had not met its burden of proof and failed
10 on one or more elements, would you return a
11 verdict of Not Guilty?

12 A. Yes, I would.

13 Q. Those -- that would be my instruction to
14 you, of course.

15 A. (Affirmative nod).

16 Q. Now, if in this case -- and I am not
17 suggesting by talking with you about this for
18 this purpose that we would even -- that the
19 result in any way, and I am not suggesting how
20 it would come out because obviously there's
21 been no trial yet.

22 But assuming for the sake of our
23 discussion, if this case would result in a
24 verdict of guilty on murder, only then would we
25 move into the second phase. Do you understand

1 that?

2 A. Yes, sir.

3 Q. Okay. Now, let's talk generally about the
4 second phase of these types of proceedings. As
5 you may know, in this state a jury is not
6 customarily involved in sentencing in a murder
7 trial. Do you understand that?

8 A. Um-humm, (affirmative nod).

9 COURT REPORTER: Is that a "yes"?

10 JUROR NUMBER 363: Yes, ma'am.

11 COURT REPORTER: Please answer
12 verbally.

13 JUROR NUMBER 363: Yes, ma'am. I'm
14 sorry.

15 COURT REPORTER: That's okay. I
16 just want to be sure I understand your answer.

17 JUROR NUMBER 363: Yes, ma'am.

18 EXAMINATION CONTINUED

19 BY THE COURT:

20 Q. Most of the time what happens is that the
21 jury hears a case, they decide whether the
22 State has met its burden. If the jury convicts
23 the person accused of murder, then the court,
24 the judge would provide the sentence without
25 the involvement of the jury.

1 A. Okay.

2 Q. The judge in that case is not limited to
3 the two options that a jury would have, when
4 they are involved. When a jury is involved,
5 they have two options: life imprisonment
6 without the possibility of parole or death.
7 Those are the two that the jury -- life
8 imprisonment without the possibility of parole
9 or a death sentence.

10 A. Okay.

11 Q. When a judge sentences, the judge has no
12 option of a death sentence, that is not
13 available; but the judge is not bound by life
14 imprisonment without the possibility of parole.
15 Do you understand that?

16 A. Yes.

17 Q. What changes that and makes the difference
18 happens in the second phase, in this respect:
19 In order for the State to be entitled for the
20 jury to consider the potential death sentence,
21 in the second phase they have to prove
22 something that is critical to that. They have
23 to prove something that is called aggravating
24 circumstances. Aggravating circumstances are
25 circumstances that our law defines that

1 elevates the crime of murder, makes it more
2 serious than a typical murder case and
3 justifies, therefore, the jury's consideration
4 of a death sentence. Do you understand that?

5 A. Right, (affirmative nod).

6 Q. In order for a jury to consider that, that
7 jury would have to conclude from considering
8 the evidence, and again there would be
9 instructions on that aspect of it, and the jury
10 would be instructed that they have to find the
11 existence of at least one aggravating
12 circumstance beyond a reasonable doubt before
13 they can consider a death sentence. Do you
14 understand that?

15 A. Yes.

16 Q. If the jury finds that there is an
17 aggravating circumstances beyond a reasonable
18 doubt then, and only then, may the jury then
19 put the possible death sentence as an option,
20 that it would become available.

21 If it is not, if a jury in that situation
22 concludes that the State has not convinced that
23 jury beyond a reasonable doubt that there was
24 an aggravating circumstances, then they can't
25 sentence one to a death sentence but only to

1 life imprisonment without the possibility of
2 parole. Do you understand that?

3 A. Yes, sir.

4 Q. Would you have any problem if you were
5 empaneled on a case of that nature, would you
6 have any problem applying that law?

7 A. No, I would not.

8 Q. Assuming in that case that we're talking
9 about, and again we're not talking about this
10 case, but assuming in that case, if you were on
11 that panel, then you would have the option to
12 consider the death sentence and make a choice
13 between life imprisonment without the
14 possibility of parole or death.

15 Some of the other evidence that may be in
16 that proceeding, and there will be other
17 evidence concerning that all deals -- all of
18 that second phase dealing with evidence that
19 would assist a jury in determining what the
20 appropriate punishment is.

21 One aspect would be something called
22 mitigating circumstances. There are some that
23 are provided by statute and there are
24 nonstatute mitigating circumstances. Generally
25 we are talking about evidence such as

1 background of the defendant, possible
2 addictions that the person may have had, if
3 they had mental health challenges, that type of
4 evidence and there are a number of others.

5 The judge would instruct you at that time
6 that you should consider all the facts and
7 circumstances -- of course, you have to
8 determine aggravating circumstances.

9 A. (Affirmative nod).

10 Q. But you also would be instructed to give
11 meaningful consideration to mitigating
12 circumstances, if any, in the trial?

13 A. Okay.

14 Q. Would you be able to follow that
15 instruction?

16 A. Right.

17 Q. After then -- the judge would then say,
18 'then evaluating all the evidence' you would
19 make a choice. It is my understanding that you
20 could at the appropriate time in that case, you
21 could then apply your common sense, your sense
22 of logic and reason, analyze the evidence in
23 the second phase and make a decision between
24 life imprisonment or a death sentence?

25 A. Yes, sir.

VOLUME THREE OF TEN

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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1 Q. If in your analysis of those facts and
2 circumstances in that particular case you were
3 to conclude that the most appropriate -- that
4 you believe death was appropriate, you could
5 sign a death sentence warrant?

6 A. Yes, I do.

7 Q. Likewise, if you believed, analyzing all
8 the evidence and even assuming that there were
9 aggravating circumstances -- because one of the
10 things about that, once a jury finds that the
11 judge would never instruct a jury that they
12 must return a death sentence. It's an option.

13 A. Right.

14 Q. You have a right to return a life
15 imprisonment without the possibility of parole
16 even though there are aggravating
17 circumstances. There may not even be any
18 mitigating circumstances put in evidence but
19 you still have the right to do that because the
20 court would instruct you that you have the
21 right to return life imprisonment for no
22 reason. Do you understand that?

23 A. Yes, sir.

24 Q. You could do that, as well?

25 A. Yes, sir.

1 Q. And if you felt so inclined in a certain
2 case, notwithstanding your option to impose a
3 death sentence, you could impose life
4 imprisonment, choose between the two?

5 A. Yes, sir.

6 Q. You would do that fairly and impartially?

7 A. Yes, I will.

8 Q. Is there anything about this case that
9 would give you any concern about your ability
10 to be a fair and impartial judge?

11 A. No.

12 THE COURT: Thank you, ma'am.

13 Please answer any questions that the attorneys
14 might have.

15 MR. BLOOM: May it please the court?

16 THE COURT: Um-humm.

17 VOIR DIRE EXAMINATION

18 BY MR. BLOOM:

19 Q. Ms. Grant, good morning.

20 A. Good morning.

21 Q. My name is Jeff Bloom and along with
22 Andrew Carroll, we represent William Dickerson.
23 I just have a few followup questions to ask you
24 this morning. Okay?

25 A. Okay.

1 Q. Can I just start by asking you what are
2 your general opinions about the death penalty?

3 A. If the crime warrants the death penalty
4 and there are facts and proof, then -- all the
5 evidence, there are some crimes that, you know,
6 deserve the death penalty.

7 Q. Okay. If I could ask you, on your
8 questionnaire you put -- one of the other
9 sentences you put was, "Some people continue in
10 jail." Can you explain to me what you meant by
11 that?

12 A. Sometimes people who does crimes that gets
13 the life sentence, they go in and still commit
14 some of the crimes the would have outside.

15 Q. I see. Okay, all right. Thank you. Are
16 you -- you know some people call themselves
17 kind of an eye-for-an-eye, tooth-for-a-tooth
18 person. Would that be your belief?

19 A. No.

20 Q. You understand that we just kind of have
21 to ask these questions to understand what your
22 feelings are.

23 A. Okay.

24 Q. Let me start first by talking a little bit
25 about murder. That has a special definition

1 and some people may be confused about it.

2 First I want to, so that I can ask you a few
3 questions about it, define that term. I can
4 tell you first what murder is not.

5 We are not talking about accident, we're
6 not talking about self-defense. We're not
7 talking about insanity, we're not talking about
8 manslaughter where someone catches another
9 person in bed.

10 What we are talking about is where a
11 person did it, intended to do it with malice --
12 which is a depraved or evil heart -- and they
13 got the right person, all beyond a reasonable
14 doubt.

15 Some people feel that once that is proven
16 that they have to stop there. They say, 'You
17 know what? If you prove all that to me and
18 you're going to instruct me to look at all this
19 other stuff about other circumstances, I've
20 kind of got my mind made up once a person's did
21 it, intended to do, got the right person and
22 it's not accident or self-defense and all that
23 other stuff.' Is that -- would you stop there?

24 A. No.

25 Q. All right. I didn't take it from you that

1 you are, but you understand that I have to kind
2 of ask?

3 A. I understand.

4 Q. Then the next part after that in that kind
5 of case that Judge Dennis has explained, I've
6 got a few questions but what I want to start
7 with is I want to remind you of the few
8 instructions that Judge Dennis would give you.

9 If you would, kind of keep those in mind
10 so that I won't have to repeat them with every
11 question. Will you do that for me?

12 A. Okay.

13 Q. Okay. As Judge Dennis told you, he would
14 tell a jury to, even if they found someone
15 convicted of that type of malice murder, that
16 they still had to keep an open mind towards the
17 aggravating circumstances, the mitigating
18 circumstances, and give meaningful
19 consideration to mitigating circumstances.

20 A. Yes, sir.

21 Q. There would be other instructions but
22 that's kind of generally what he'd -- to
23 summarize it.

24 A. Okay.

25 Q. Some people, even though they get that

1 instruction from Judge Dennis, they feel, 'You
2 know what? Now that I understand it, I just
3 really can't do that.' You understand why
4 Judge Dennis would need to know that now?

5 A. Right.

6 Q. So keeping all that in mind, that kind of
7 instruction, understanding that would come from
8 Judge Dennis and not me, let me ask you, first,
9 ma'am, are you in that group of people that
10 once you hear murder and the aggravating
11 circumstances -- which is usually like murder
12 and something else, murder and burglary or
13 murder and armed robbery or murder of a child,
14 those other kind of bad things that support the
15 death penalty.

16 Some people say, 'You know what? You
17 prove that malice murder to me and that extra
18 bad stuff, then I'm going to automatically vote
19 the death penalty.' Are you in that group?

20 A. No, I couldn't do that.

21 Q. Because what you're telling me is that you
22 would still ---

23 A. I'd have to hear both, right.

24 Q. Okay, good. The next step would be
25 mitigating circumstances. Let's kind of define

1 that term, too, so that we're not working in a
2 vacuum. Mitigating circumstances are things
3 like a person's background, childhood, how they
4 were raised. Is that something that you could
5 give meaningful consideration to?

6 A. Yes, sir.

7 Q. Okay. It may also be something like drug
8 addictions. Is that something that you could
9 give meaningful consideration to?

10 A. Yes, sir.

11 Q. It may be mental health issues, is that
12 something that you could ---

13 A. Sure.

14 Q. And you understand why I ask, because some
15 people say, 'You know what, Mr. Bloom? I don't
16 want to hear anything that doesn't have
17 anything to do with the crime. I don't want to
18 hear childhood or drug addictions.' But you're
19 not in that group?

20 A. No.

21 Q. You'd look at everything?

22 A. Everything.

23 Q. If I could ask you, and you kind of
24 understand that we are kind of getting the cart
25 before the horse, because we're not talking

1 about this case. Of course, Mr. Dickerson has
2 entered a not guilty plea. Do you understand
3 that.

4 A. Right.

5 Q. And so I take it that you understand that
6 some people are always going to vote for the
7 death penalty; you understand that?

8 A. Um-humm, (affirmative nod)..

9 Q. And some people are always in favor of it?

10 A. Yes.

11 Q. Where does Ms. Grant kind of fall in that
12 spectrum? If we were sitting around having a
13 cup of coffee, what would your response be?

14 A. My response would be that there are some
15 crimes that are just so hideous that the death
16 penalty would be, and then if the crime is not
17 as bad but it is a crime it may determine life
18 imprisonment or something else. Different
19 crimes would be punished by different
20 sentences.

21 Q. Okay. When you say some crimes are so
22 hideous that they desire the death penalty, you
23 aren't saying that you would automatically vote
24 for the death penalty even in those situations?

25 A. No. I mean if everything would come to

1 that, you know.

2 Q. Okay.

3 A. You know.

4 Q. All right.

5 A. (Affirmative nod).

6 Q. Now, have you ever -- has this subject
7 ever come up or is this something that you have
8 given a lot of thought to, the death penalty?

9 A. (Negative gesture), I mean -- (pause).

10 Q. It's not the normal type of conversation?

11 A. Yeah, I mean, it's not something that you
12 get around to talking about every day but, you
13 know, some things -- like using your common
14 sense and judgment, there are things you could
15 do that would put you in certain categories.

16 Q. Okay. Let me ask you, lastly, ma'am, if
17 you were on a jury, one of the things that
18 Judge Dennis would explain to you, he would
19 tell a jury again, is that the death penalty is
20 never required under the law. Do you
21 understand that?

22 A. Uh-huh, (affirmative nod).

23 Q. Even if the State proved everything that
24 they've put forward and you're satisfied beyond
25 a reasonable doubt and even if it is, as you

1 said, a hideous crime or things like that, the
2 law never mandates or requires the death
3 penalty. You understand that, right?

4 A. I understand.

5 Q. What the law calls it is a juror's moral,
6 individualized choice. You can make that
7 moral, individualized choice for Ms. Grant?

8 A. Yes, I can.

9 Q. If you were on a jury and eleven jurors
10 were voting one way and you were voting
11 another, you wouldn't give up that moral,
12 individualized choice just to say, 'It's been a
13 long day. I want to go home. I'm hungry.'
14 Just kind of fold up and go along?

15 A. No.

16 Q. I didn't think you ---

17 A. No.

18 Q. --- were that kind of person.

19 A. No.

20 Q. But you know why I've kind of got to ask.

21 A. Okay.

22 Q. You aren't the kind to just follow along
23 to get along?

24 A. (Negative gesture), no.

25 Q. And you would want those eleven jurors to

1 respect their vote?

2 A. Exactly.

3 Q. And you would respect their vote?

4 A. Exactly.

5 Q. On the flip side of that, if you were in
6 the eleven and there was one juror who had made
7 his or her moral, individualized choice, you
8 wouldn't want them to kind of pack up their
9 things and go home, would you?

10 A. No, I would not.

11 Q. You would respect their moral,
12 individualized choice?

13 A. Exactly.

14 MR. BLOOM: Thank you very much.

15 THE COURT: Any questions,
16 Solicitor?

17 VOIR DIRE EXAMINATION

18 BY SOLICITOR WILSON:

19 Q. Ms. Grant, I'm Scarlet Wilson, I'm the
20 Solicitor here. This is Bruce Durant and
21 Rutledge Durant and together we will be trying
22 this case. I just want to ask you a few
23 questions following up, where at the end, of
24 what Mr. Bloom was asking you about if you were
25 on a jury. You said that you could make a

1 decision yourself, based on your own morals and
2 your own belief.

3 A. (Affirmative nod).

4 Q. Would you also be interested in an
5 exchange between you and other jurors about
6 their opinions and ideas, would you listen and
7 converse about it, about the evidence?

8 A. Yes. If I feel like there is something
9 that I didn't get and they explained it to me
10 where, you know, for me to understand it and I
11 truly believed in my heart that's what it is,
12 yes, I would.

13 Q. Or if you felt like another juror missed
14 something or didn't quite get it, you would try
15 to use your own words and explain to them why
16 you thought whatever it is that you thought?

17 A. Yes, I would.

18 SOLICITOR WILSON: Okay. That's all
19 that I have.

20 THE COURT: Thank you. Any
21 additional questions, Mr. Bloom?

22 MR. BLOOM: No, Your Honor. Thank
23 you.

24 THE COURT: Ms. Grant, if you would
25 step out for just a moment, we will be with you

1 very shortly.

2 (JUROR NUMBER 363 EXITS COURTROOM)

3 THE COURT: What says the State?

4 SOLICITOR WILSON: I believe that she
5 is qualified, Your Honor.

6 MR. BLOOM: Qualified, Your Honor.

7 THE COURT: I agree. It appears
8 now, looking this morning and going through --
9 and of course it is a guesstimate, and that's
10 all that you can do, try to anticipate numbers.
11 I think that we are going to probably need to
12 interview the remaining panels, so my plan is
13 to schedule them for Wednesday afternoon. It
14 now looks as though we will not strike the jury
15 until Thursday morning. My intention is to
16 have the jury report at 9:30, we'll strike the
17 jury and then start. Okay? All right, let's
18 bring her in.

19 (JUROR NUMBER 363 ENTERS COURTROOM)

20 THE COURT: Ms. Grant, Thank you
21 very much, and I appreciate your patience.
22 You've been found to be qualified to be a
23 member of the panel from which we will select
24 our jury.

25 That, I believe, will take place on

1 Thursday morning at 9:30. You will need to
2 call the number -- I guess it's tonight that we
3 told them to call. Call the number after 6:00.
4 and we will confirm as to when we -- the
5 message will say the Dickerson panel, and there
6 may be some other messages, but those don't
7 apply to you. The one that applies to you is
8 the Dickerson jury panel and it will tell you
9 when it needs to report. More than likely it
10 is going to say Thursday morning at 9:30.
11 When you come back on Thursday, you will need
12 to come directly to this courtroom and we will
13 -- they will direct you where to come.

14 Please remember that until you are
15 excused from participation in this dispute that
16 you're not at liberty to talk with anybody
17 about this case or permit anybody to talk to
18 you about it or talk about it in your presence.
19 Also, you need to continue not to read any news
20 articles about it or watch any television
21 programs. Have a great day, and I'll probably
22 see you Thursday morning.

23 JUROR NUMBER 363: Thank you, Judge.

24 THE COURT: Thank you.

25 (JUROR NUMBER 363 EXITS COURTROOM)

1 THE COURT: We have Mr. Martin, 378,
2 bring him in.

3 (JUROR NUMBER 378 ENTERS COURTROOM)

4 THE COURT: Good morning, Mr.
5 Martin.

6 JUROR NUMBER 378: Good morning. How
7 you doing?

8 THE COURT: I'm well. I hope you
9 are.

10 JUROR NUMBER 378: Yes, sir.

11 THE COURT: If you will sit and pull
12 yourself up so that you can speak into that mic
13 comfortably. You can move it to accommodate
14 you. I'd like for you to state your full name
15 for the record.

16 JUROR NUMBER 378: James Keith Martin.

17 THE COURT: Mr. Martin, good
18 morning. We started this process on Friday.
19 As you will recall, we were asking you some
20 pretty general questions. Those questions, as
21 I mentioned, don't have any real correct
22 answers. Their purpose and design is to assist
23 you and to assist us in determining whether you
24 could be a fair and impartial juror in this
25 dispute. That is what we are going to continue

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1 today. I may have some questions and the
2 attorneys -- I am going to have and they may
3 have some questions. All we ask is that you
4 truthfully respond.

5 JUROR NUMBER 378: Yes, sir.

6 THE COURT: I would remind you in
7 that regard that you are still under oath in
8 this matter. Agreed?

9 JUROR NUMBER 378: Yes, sir.

10 JAMES MARTIN, being duly sworn to tell
11 the truth, the whole truth and nothing but the
12 truth, testified, as follows:

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. On Friday I asked you about a number of
16 persons to find out whether you knew them or
17 not. I failed to mention two names that I need
18 to ask you about. Are you related by blood or
19 marriage, have any business dealings with or
20 socially or casually acquainted with or have
21 any dealings with Jeff Osborne or Matt Casey?

22 A. No, sir.

23 Q. Since we were together on Friday, you
24 haven't read anything or watched any news
25 programs about this, have you?

1 A. No, sir.

2 Q. Have you talked with anyone about this
3 case or permitted anybody to talk to you about
4 it or to talk about it in your presence?

5 A. No, sir.

6 Q. You were given a sheet when you came in
7 that contained three types of jurors. Have you
8 had a chance to review those?

9 A. Yes, sir.

10 Q. Which one most accurately describes you?

11 A. I guess type three.

12 Q. Type three?

13 A. Yes, sir.

14 Q. And type three is basically that juror who
15 is empaneled in a case where the jury will be
16 involved in determining the sentence for an
17 individual. The options of sentence are life
18 imprisonment without the possibility of parole
19 or a death sentence. As I understand, if
20 you're a juror in that type of case that you
21 wouldn't have any predetermined idea of which
22 sentence would be the most appropriate. You
23 would be able to consider either and, after
24 hearing all the facts and circumstances, and
25 only then, could you determine which one you

1 believe to be the most appropriate sentence.

2 Is that correct?

3 A. Yes, sir.

4 Q. That would be you?

5 A. Yes, sir.

6 Q. You understand, as I told you on Friday,
7 that the jury has a very important function in
8 this process of dispute resolution, that they
9 would become a judge with me in this case or in
10 any case where the jury is the judge of the
11 facts. Do you understand that?

12 A. Yes, sir.

13 Q. Everyone would expect if you were on a
14 jury that you would be using your common sense,
15 your sense of logic and reason, you life's
16 experiences, you would be applying those fairly
17 and impartially in making your decision, the
18 decision of what you believe to be the truth.
19 Do you understand that?

20 A. Yes, sir.

21 Q. And you would understand also that your
22 tasks would be to obtain the true, the true
23 facts from one source and that source is
24 evidence, which consists of testimony of the
25 witnesses and exhibits. Do you understand

1 that?

2 A. Yes, sir.

3 Q. And you believe that you could perform
4 that task as a juror?

5 A. Yes, sir.

6 Q. And would?

7 A. Yes, sir.

8 Q. That you could make a commitment to do,
9 fairly and impartially?

10 A. Yes, sir.

11 Q. You also understand that in this process
12 that we talked about on Friday, that while the
13 jury has the sole responsibility of the facts,
14 the judge having none, the jury has nothing to
15 do with the law because that would be the
16 Judge's responsibility, to be the sole judge of
17 the law. Do you understand?

18 A. Yes, sir.

19 Q. And if you were on a jury in a criminal
20 dispute, you would be making a commitment that
21 you would accept that law as the judge gives it
22 to you and set aside any personal opinions or
23 feelings you may have about what you thought
24 the law was or should have been or that you
25 just didn't agree with it? You would set those

1 feelings aside and take the law and apply it
2 fairly and impartially. Do you understand
3 that?

4 A. Yes, sir.

5 Q. And if you were selected in this case, you
6 would be able to do that, as well?

7 A. Yes, sir.

8 Q. Okay. I told you that persons accused of
9 committing criminal offenses in this state and
10 in this country are never required to prove
11 anything. They are not required to prove their
12 innocence.

13 A. Right.

14 Q. That they are in fact perceived innocent
15 until the charging party, in this case the
16 State, in this state any criminal case it is
17 the State, proves their guilt beyond a
18 reasonable doubt. I believe that you did not
19 have any problem with the presumption of
20 innocence, that principle of law; is that
21 correct?

22 A. That's correct.

23 Q. And as I mentioned to you, it's an active
24 presumption, so those persons such as Mr.
25 Dickerson who have been accused of committing

1 criminal offenses, that law requires all
2 individuals to see him as being innocent of
3 those charges at this point. Would that apply
4 to you?

5 A. Yes, sir.

6 Q. If you were empaneled in a case involving
7 a criminal dispute, and I am not talking about
8 this particular case, just talking in general,
9 the State of course -- but it would certainly
10 apply insofar as what I'm saying, because this
11 is a criminal dispute but we're talking about
12 just in general criminal disputes.

13 A. (Affirmative nod).

14 Q. The State has the burden of proving its
15 case beyond a reasonable doubt. You understand
16 that?

17 A. Yes, sir.

18 Q. That means that they have to prove each
19 element of any crimes that they have alleged to
20 that standard, for a jury to return a verdict
21 of guilty? My question is, if you were sitting
22 in a case involving murder and that -- after
23 considering all the evidence you were not
24 convinced beyond a reasonable doubt, that is
25 that the State hadn't convinced you of one or

1 more elements, would you be willing and would
2 you insist on returning a verdict of not guilty
3 in that case?

4 A. Yes, sir.

5 Q. If you were firmly convinced as to each
6 element that the State had met its burden, would
7 you likewise be firmly convinced and return a
8 verdict of guilty?

9 A. Yes, sir.

10 Q. That would be consistent with the
11 instructions that would be given to you because
12 that's precisely what the court is going to
13 require of you.

14 A. Okay.

15 Q. Let's assume also that you were in a case,
16 and again not this case, -- what we're talking
17 about, please understand, is somewhat
18 dramatically premature because obviously Mr.
19 Dickerson has not been in trial yet. There has
20 been no determination made. As you said and we
21 all know, we see him as innocent today. I'm
22 not trying to infer anything but talking with
23 you, but let me -- let's talk about this. If
24 you were in that case where you had the
25 responsibility, after determining guilt of

1 murder, to determine punishment, you understand
2 that there would be a second phase in this
3 state?

4 A. (Affirmative nod).

5 Q. And do you understand that is generally
6 not the case in most situations, most disputes
7 that are tried in this state? The jury
8 generally doesn't participate in sentencing,
9 even in murder cases. You understand that?

10 A. Yes, sir.

11 Q. Most of the time the jury returns a
12 verdict as to whether or not they're guilty of
13 the offense and then the judge imposes the
14 sentence. In those situations, the judge could
15 consider life without the possibility of parole
16 but would not be restricted to that. The judge
17 could not even consider a death sentence. You
18 understand that?

19 A. Yes, sir.

20 Q. You understand, too, that when we're
21 talking about being convicted of murder that
22 you would have been on the jury and you would
23 have found in that case, if you returned a
24 verdict of guilty of murder, because the
25 instructions would be that murder is the

1 intentional killing of someone with malice
2 aforethought. You would have found that that
3 person intended to do what they did, they
4 killed somebody with malice aforethought. It
5 wasn't mistake, it wasn't accident, it wasn't
6 self-defense, it wasn't manslaughter, not
7 something less, it was murder.

8 As I understand what you told me of your
9 being a type three juror, in that case at that
10 moment you would have an open mind of the
11 appropriate sentence would be, because all you
12 would have heard is the evidence concerning the
13 crime; is that correct?

14 A. Now, you're talking about deliberately, no
15 questions asked, he meant to do it?

16 Q. Yes.

17 A. No, I would not.

18 Q. You would not?

19 A. I would not be a type three in that case.

20 Q. All right. Let me ask you this, because
21 you -- that's your opinion, that is your strong
22 feeling?

23 A. That is my strong feeling, yes.

24 Q. I appreciate that, I assume in that case
25 your feeling would be -- what? The death

1 penalty?

2 A. Yes, sir.

3 Q. Okay. Let me go back to something that I
4 asked you. You said that you understood that
5 it is the judge's responsibility to instruct
6 you on the law.

7 A (Affirmative nod).

8 Q. That you would be able to set aside
9 personal opinions about what you thought the
10 law was or should be.

11 A. (Affirmative nod).

12 Q. In the second phase, the instruction would
13 be that the person -- that the jury would be
14 instructed that they have to consider a number
15 of things.

16 The first thing, before the jury can even
17 consider a death sentence, before considering
18 it, the State has to prove the existence of at
19 least one aggravating circumstance. That is
20 something that statutorily has been provided
21 that changes the customary murder case, it
22 raises it to a level to where now a jury is
23 empaneled. That's the difference. That's what
24 takes it out of the realm where we talked about
25 that a judge would be imposing the sentence.

1 The jury would be instructed that in order
2 to even consider that sentence, they have to
3 first find the existence of an aggravating
4 circumstance, because if they don't, beyond a
5 reasonable doubt, they can't even consider it.
6 They must return a verdict of life imprisonment
7 without the possibility of parole.

8 Secondly the instruction would say that if
9 the jury does, then they may consider that but
10 they don't have to return a verdict of a death
11 sentence. They still have the option of a life
12 imprisonment and the death sentence.

13 Furthermore, because the second phase is
14 where you hear all evidence, there may be
15 evidence offered of mitigating circumstances.
16 Those are -- some are defined by statute, some
17 nonstatutory. Those are things such as the
18 background, training, upbringing, addictions
19 that a person may have had, mental problems
20 that a person may have had, that type of
21 evidence. You would be instructed to
22 meaningful consideration to any mitigating
23 circumstances.

24 The instruction would also say that jury,
25 even though they find aggravating circumstances

1 and don't find any mitigating circumstances --
2 in other words, there are none, there are no
3 mitigating circumstances offered, -- the jury
4 still would be entitled to return a verdict, a
5 decision of life imprisonment without the
6 possibility of parole, for no reason.

7 Am I understanding you that when you say
8 that would be my strong feeling, that you would
9 not be able to set that aside and perform that
10 function consistent with that instruction?

11 A. Now, you're saying -- what?

12 Q. The court is going to instruct you to
13 consider all the evidence and consider between
14 the two which one you think is most
15 appropriate. Could you give meaningful
16 consideration to the mitigating circumstances,
17 if any, ---

18 A. Like somebody's past history?

19 Q. Yes, that type of thing.

20 A. Yes. Yes.

21 Q. And in that case, you said that you were a
22 type three. After fully considering all the
23 evidence, could you then see a circumstance
24 where you could return a life imprisonment
25 without the possibility of parole?

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1 A. Yes, sir.

2 Q. Notwithstanding your strong feelings?

3 A. That's correct.

4 Q. So you could follow the court's
5 instruction?

6 A. Yes, sir.

7 Q. Okay. That would require you to set aside
8 that predetermination that you just made?

9 A. Yes. That's kind of hard to set aside.
10 I've got four children and -- you understand.

11 Q. You know what, ---

12 A. I could set that aside, yes.

13 Q. --- that's the beauty of this process and
14 there is no reason for you to be ashamed or
15 should you expect to have to justify your
16 position. That's not what we are here to do.
17 You're entitled to believe what you believe.
18 As you've heard me already ask persons when
19 they say, 'well, I think I can', the question
20 is -- I guess really this, you acknowledge
21 that, you're aware of that.

22 A. (Affirmative nod).

23 Q. Could you make a commitment to both sides
24 by taking that oath that you would do that,
25 that you would consciously set that aside?

1 A. Yes.

2 Q. That means that you have to consciously
3 maintain an open mind until the jury has been
4 instructed to decide the case. You could do
5 that?

6 A. Yes, sir.

7 Q. Now, is there anything that you've heard
8 about this case that would give you any concern
9 about your ability -- you know this is a case,
10 all we've been talking about a potential murder
11 situation.

12 A. (Affirmative nod).

13 Q. But in this particular case, what you have
14 heard had been alleged that would give you
15 concern about your ability to be a hard and
16 impartial juror, to fairly and impartially
17 apply the law?

18 A. No, sir.

19 THE COURT: Thank you. Please
20 answer any questions that the attorneys may
21 have.

22 VOIR DIRE EXAMINATION

23 BY SOLICITOR WILSON:

24 Q. Thank you, Mr. Martin. I'm Scarlet
25 Wilson, I'm the Solicitor here. This is Bruce

1 Durant and Rutledge Durant and we're the
2 prosecutors in the case, so we will be the ones
3 presenting evidence to the jury.

4 Before that, I'm going to ask you a few
5 followup questions based on your answers to the
6 judge and also based on your questionnaire.

7 Okay?

8 A. Yes, ma'am.

9 Q. Again, there aren't any right or wrong
10 answers. I know you probably aren't -- have
11 you ever testified before?

12 A. No, ma'am.

13 Q. Neither have I, not like this. So I
14 appreciate your candor with the court. I want
15 to ask you again, in your questionnaire you
16 noted that you believe in an eye for an eye?

17 A. Yes, ma'am.

18 Q. Sounds like based on your answers to the
19 Judge that you have pretty strong feelings
20 about the death penalty?

21 A. Yes, ma'am.

22 Q. But also in your answers to the Judge,
23 after thought, it sounds like you could put
24 those feelings aside, not make a decision with
25 your heart but make a decision with your head

1 based on what he tells you that you have to do.

2 A. That's correct.

3 Q. Okay. Understanding that, and I think the
4 Judge went through this with you but I want to
5 make sure that we are, to even get to a second
6 phase, the penalty phase, there has to be a
7 malicious murder. In other words, a defendant
8 in a death penalty case, to even get to the
9 penalty phase, would have had to have already

10 been convicted of a malicious murder. Does
11 that make sense to you, do you understand that?

12 A. Yes, ma'am.

13 Q. No self-defense, no accident, no heat of
14 passion situations where like a husband catches
15 his wife with someone else and somebody gets
16 killed, no manslaughter situations. You
17 understand that?

18 A. Yes, ma'am.

19 Q. Malicious murder, evil murder. Those are
20 the only cases that go to the second phase.
21 You understand?

22 A. I understand.

23 Q. Okay. What the Judge was telling you is
24 that at that point it's not good enough, and
25 it's not even allowed under the law, to just

1 stop -- for a juror to just stop, turn off, not
2 listen any further. You've told the Judge that
3 you could continue to listen?

4 A. Right. Yes, ma'am.

5 Q. You could continue to hold the State to
6 its burden? Right?

7 A. Right.

8 Q. Because he also will tell you, and told
9 you here, that what we have to do in the second
10 phase is prove an aggravating circumstance,
11 something that makes it elevated. The State
12 would have to prove that beyond a reasonable
13 doubt. Could you continue to hold us to that
14 burden or proof in the second phase?

15 A. Yes, ma'am.

16 Q. Because if we didn't prove that, then you
17 automatically have to give life without parole.

18 A. That's correct.

19 Q. And you could do that?

20 A. Yes, ma'am.

21 Q. You could give life without parole?

22 A. Yes, ma'am.

23 Q. Even though it's been a malicious murder?

24 A. Yes, ma'am.

25 Q. The second part of that would be

1 mitigation, things about the defendant or
2 things about the crime that you didn't hear
3 earlier that make the crime not as bad or help
4 you understand the defendant and why he may
5 have acted the way that he acted -- a
6 defendant, not necessarily this defendant.

7 Do you understand that concept?

8 A. Yes, ma'am.

9 Q. Do you also understand, and I am not sure
10 if the Judge told you this or not, and I'm
11 sorry if I am repeating him, but that a
12 defendant, in any criminal case, never has to
13 prove anything. You can't hold the fact that a
14 defendant doesn't testify or that a defendant
15 doesn't present mitigating circumstances,
16 against him. You can't just say, 'He didn't
17 say anything, he didn't do anything, so it's
18 over.' You have to consider mercy and you have
19 to, again, find that the State has proven
20 beyond a reasonable doubt these aggravating
21 circumstances. Could you do that?

22 A. Yes, ma'am.

23 Q. Even if you had expectations or wanted to
24 hear from a defendant, you couldn't require
25 that of him in order to give him life without

1 parole. Do you understand that?

2 A. Yes, ma'am.

3 Q. Do you believe also that life without
4 parole in certain situations can be a pretty
5 tough sentence?

6 A. Yes, ma'am.

7 Q. Life without parole is a long time?

8 A. A few months is a long time in there.

9 Q. Do what?

10 A. A few months is a long time.

11 Q. Yes, sir.

12 SOLICITOR WILSON: Beg the court's
13 indulgence?

14 THE COURT: Certainly, take your
15 time.

16 SOLICITOR WILSON: That's all that I
17 have, Your Honor. Thank you very much.

18 VOIR DIRE EXAMINATION

19 BY MR. BLOOM:

20 Q. Good morning, Mr. Martin.

21 A. How you doing?

22 Q. My name is Jeff Bloom and along with
23 Andrew Carroll, we represent William Dickerson.

24 I just have a few followup questions. Okay?

25 A. (Affirmative nod).

1 Q. I take it that this is your first time
2 being in a situation like that?

3 A. Yes, sir.

4 Q. A little nervous?

5 A. Maybe a little bit.

6 Q. I was when we got started yesterday, too,
7 so that's okay. I want to just ask you a few
8 questions about some of your responses to Judge
9 Dennis. As Judge Dennis told you, there are no
10 right or wrong answers.

11 The first thing that I want to ask you is,
12 when Judge Dennis defined murder to you --
13 because it helps if we understand our terms, he
14 explained that it was someone who did it,
15 intended to do it, with malice which is an evil
16 heart, they've got the right person, the State
17 has proved it beyond a reasonable doubt. As
18 the Solicitor explained, we're not talking
19 about accident, self-defense, manslaughter,
20 insanity but a person did it, intended to do
21 it, they got the right person. Initially your
22 response was that would put you back in a
23 category one and you'd be automatically voting
24 for the death penalty?
25 A. That's correct.

1 Q. Okay. No one here to question those, we
2 just need to kind of understand.

3 A. (Affirmative nod).

4 Q. And you understand why we need to kind of
5 understand?

6 A. I understand. Yes, sir.

7 Q. Sure. Of course, Judge Dennis explained
8 that part of his instruction would be that you
9 have to those strong feelings aside. Do you
10 understand that?

11 A. Yes, sir.

12 Q. Some jurors are able to do that and some
13 aren't, and that's why we kind of need to know
14 now, Judge Dennis just needs to kind of know
15 now, and I just want you to think about a
16 little bit further, if you're truly able to do
17 that, because we just need your own responses,
18 and I think that we have that so far.

19 A. Yes, sir.

20 Q. All right. So if I could ask you, even if
21 Judge Dennis instructed you that way -- well,
22 let me back up a minute and ask first, how do
23 you come about those strong feelings?

24 A. Well, like I said, I have four children --
25 (emotional) (takes Kleenex) ---

1 Q. You take your time, sir. I've got two
2 children, one has been to Iraq and back, so I
3 understand parent-to-a-parent what that means.

4 Is there anything about your experiences
5 as a parent or with your children that causes
6 you have those strong feelings?

7 A. Not really. I just -- I wouldn't want
8 something to happen to my child, like if my
9 child was murdered.

10 Q. Absolutely. Absolutely. I understand
11 that. As I said, my son has been to Iraq and
12 back and I don't want any other parent to have
13 to share, so I respect the service and I
14 understand completely what you're saying when
15 one of our children might be in harm's way.
16 Is that such a strong feeling, and that's why
17 Judge Dennis just kind of needs to know, you
18 know, now and not later.

19 A. I understand.

20 Q. Because it wouldn't be fair to you if we
21 got in the middle of a case and you had second
22 thoughts and just said, 'You know what, Judge
23 Dennis? I've really tried my best, I did an
24 earnest job. I meant it when I said it but
25 I've had second thoughts.' That is why Judge

1 Dennis kind of needs to know now. Do you
2 understand what I'm saying? I am just trying
3 to be as plain as I can.

4 A. I understand.

5 Q. Is that such a strong feeling that you
6 think that you might have second thoughts and
7 it would be hard to set those, too hard to set
8 those aside, to go on with the second part of
9 the trial?

10 A. I don't think so. I've lived a rough life
11 myself.

12 Q. I understand. I am not trying to probe or
13 invade your privacy, but are there experiences
14 you've had in your life that would cause you to
15 have second thoughts and make it too hard --
16 because, you know, we don't want to put any
17 juror, put them in such a situation that they
18 violate their conscience. Do you understand
19 what I'm saying?

20 A. Yes, sir.

21 Q. That's why Judge Dennis kind of asked
22 those questions that he did and it helps that
23 he knows -- because it is okay if you can't set
24 those aside and can't follow the law if Judge
25 Dennis knows that now, because that's an

1 instruction that will come later. If those
2 feelings are such, you need to tell him now.
3 I guess that is what I'm asking you.

4 A. No, sir. I don't mean -- like I said,
5 that's fine. I've been up and down these
6 roads, I've done a lot of stuff in my life.

7 Q. Sure. And, again, I am not going to
8 invade your privacy ---

9 THE COURT: Let's move on, please,
10 sir.

11 MR. BLOOM: Yes, sir.

12 THE COURT: Thank you.

13 EXAMINATION CONTINUED

14 BY MR. BLOOM:

15 Q. Next I would ask you, Mr. Martin, in that
16 next phase, let me just touch on mitigating
17 circumstances some. The judge explained some
18 of them may be things such as a person's
19 background, how they were raised, their life's
20 experiences, drug addiction, mental health
21 issues, and some jurors are of opinions that
22 are strong that they say, 'You know what? Can
23 get by malice murder but stuff that has nothing
24 to do with the crime -- how they were raised,
25 drug addictions, I am not going to sit there

1 with my fingers in my ears, of course, but I'm
2 not going to give that meaningful
3 consideration. I don't think it has anything
4 to do with.' Is that where you are?

5 A. No.

6 Q. Okay. Is there anything about your life
7 experience of what you've related to us that
8 would cause you to have second thoughts at that
9 point and not be able to follow Judge Dennis'
10 instructions?

11 A. No.

12 Q. Is there anything else at all about your
13 personal views, your life experiences, that
14 would cause you to have any struggle to follow
15 Judge Dennis' instructions?

16 A. No, sir.

17 Q. Lastly, Mr. Martin, I want to ask you --
18 as Judge Dennis told you, anytime a juror
19 weighs life imprisonment or the death penalty,
20 that's any individual moral choice. You
21 understand that?

22 A. Yes, sir.

23 Q. And the death penalty never requires or
24 orders a juror -- excuse me. The law and the
25 judge never orders or requires a juror to find

1 for the death penalty. Do you understand that?

2 A. Yes, sir.

3 Q. It is totally up to the jury based on the
4 evidence that has been proved. Okay?

5 A. (Affirmative nod).

6 Q. Would you be able to make that moral
7 individual choice for yourself?

8 A. What was the question, again?

9 Q. In terms of weighing life without parole
10 and the death penalty, would you be able to
11 make that moral, individualized choice?

12 A. Yes.

13 Q. And let me ask you, if you were on the
14 jury and eleven jurors were voting one way and
15 you were voting another and you'd made your own
16 moral, individualized choice after listening to
17 everything and having talked to everybody, you
18 wouldn't just like say, 'Oh, my goodness. It's
19 time to go. I'm hungry, I'm just going to give
20 up and go along to get along.'

21 A. No.

22 Q. You didn't strike me as that person but
23 you understand why I have to ask?

24 A. Yes.

25 Q. You would make that moral, individualized

1 choice for you and ask that the other jurors
2 would respect your vote?

3 A. That's correct.

4 Q. And you could respect theirs?

5 A. That's correct.

6 Q. All right. And, likewise, on the flip
7 side if you were in the eleven and there was
8 one juror making his or her moral,
9 individualized choice, you wouldn't make that
10 juror give up the vote just to go along to get
11 along?

12 A. No, sir.

13 Q. You would respect that juror's choice?

14 A. Yes, sir.

15 Q. As you would want them to respect yours?

16 A. Yes, sir.

17 MR. BLOOM: Thank you.

18 THE COURT: Anything further,
19 Solicitor?

20 SOLICITOR WILSON: No, sir.

21 THE COURT: Thank you, Mr. Martin.

22 I just want to ask one followup question. You
23 have been candid and just an observation that I
24 have, I think it's wonderful about you as a
25 human being that you are willing to show how

1 you feel. That's a credit to you, sir. I
2 thank you for that.

3 I just want to be sure that this case,
4 if you were selected, setting aside your strong
5 feelings will not put you in any situation that
6 would create a problem for you. You've stated
7 over and over again, and you've stated it to me
8 once but I want to tell you again that if you
9 feel that it would, that's fine, no problem.
10 Am I understanding that you would set that
11 aside and would honor that commitment?

12 JUROR NUMBER 378: Yes, sir.

13 THE COURT: I believe you would do
14 that, sir. Thank you very much, sir. If you
15 will step out, we'll be with you in just a
16 moment.

17 (JUROR NUMBER 378 EXITS COURTROOM)

18 THE COURT: State?

19 SOLICITOR WILSON: Your Honor,
20 I believe that he is qualified.

21 MR. BLOOM: Your Honor, we would
22 respectfully object. While I understand his
23 answers on the cold written record are that he
24 can set it aside, Your Honor observed that he,
25 when he started talking about his children,

1 that he became emotionally distraught, he was
2 crying, he reached for a tissue.

3 When he volunteered that he's had some
4 life experience, things in his background, he
5 continue to be tearful and grabbed another
6 tissue from the stand. I tried to be as
7 tactful as I could about probing those life
8 experiences that made him so distraught that he
9 was unable to answer some of my questions and
10 continued to be emotional.

11 While he was giving the correct
12 answers I think, respectfully, part of that
13 comes from his apparent desire to do the right
14 thing. Obviously Your Honor is in a position
15 of authority and he -- all jurors look to the
16 trial court for guidance on these issues
17 because they're new to it.

18 I think he is trying to be a good
19 citizen and tell you the right answers, but he
20 became incredible distraught. We don't know,
21 obviously, what personal life experiences that
22 he had that may affect him in the middle of
23 testimony or deliberations. While the juror is
24 trying to do the right thing I honestly believe
25 he is unqualified and will become so during the

1 trial.

2 He volunteered that he is a parent and
3 he would hate for any horrible thing to happen
4 to his children and, as parents, we all think
5 that but for him to volunteer that in the
6 middle of this process is -- I think is
7 something that he will be unable to set aside.
8 No parent can set aside that they are a parent,
9 it's a biological fact. I would note in the
10 Sapp case that the court upheld the trial court
11 finding jurors distraught under similar
12 circumstances, only they were of the opposite
13 view. In that case it was a more pro-life
14 juror who had become distraught on the witness
15 stand.

16 We would submit that out of an
17 abundance of caution we have a number of jurors
18 left and putting this juror in a position where
19 it's difficult for him to get through some
20 fairly neutral questions, once he hears
21 testimony that -- that while he wants to do the
22 right thing, he is not qualified. Thank you,
23 Your Honor.

24 THE COURT: Thank you. I appreciate
25 you pointing out that he wants to do the right

1 thing, because I think that's true of many,
2 many people that find themselves in this
3 position. That's what I love about this whole
4 process.

5 The fact that he was brought to tears
6 in thinking about his children, there are a lot
7 of people -- you're at one, I cry at the
8 national anthem at a football game. There's a
9 joke about -- I have a friend that is in church
10 with me and we tear up pretty much at least one
11 every Sunday. Everybody laughs about it. You
12 know, I used to be a little bit uneasy about
13 that. I'm not any more. I guess I've lived
14 long enough to not worry about it.

15 The reason that I ask the question was
16 two-fold. I wanted to follow up along those
17 lines because of his reaction. Because I do
18 believe sincerely that this man, when he was
19 confronted with, 'Will you set your personal
20 feelings aside and honor a commitment', that's
21 a big word, "honor", to someone who is here to
22 honor something. To me, he demonstrated by his
23 responses, his body language, and his words in
24 responding to that, that he would honor the
25 commitment that he'd make to the State and to

1 you and not be influenced by that.

2 When that juror says that they are
3 going to do that, and I asked him as you did is
4 there anything about this case that would give
5 you any concern about your ability to honor
6 that commitment, he said no. I have no reason
7 to doubt that.

8 Therefore, -- insofar as the Sapp
9 case, you're correct. The observation was
10 placed on the record in the Sapp case because
11 it further supported the juror's inability to
12 follow the court's instruction. That's why he
13 was excused, not because he was so strongly
14 opposed to the death penalty but because, as I
15 read the law, and what I have stated before,
16 'Will your philosophies affect you from
17 following instructions?' He, when I told him
18 the instruction, he said 'No, I will follow the
19 instruction.'

20 Therefore, those are the reasons that
21 I do. Thank you very much.

22 Yes, do you want to put something else
23 on the record, Solicitor?

24 SOLICITOR WILSON: I was just going
25 to add that I think -- just for the record that

1 Mr. Bloom's characterization that he was
2 distraught is an exaggeration. He clearly was
3 upset but I wouldn't say that he was extremely
4 distraught.

5 THE COURT: He was crying when he
6 was thinking about the fact that his children,
7 that something could happen to his children.

8 SOLICITOR WILSON: Right.

9 THE COURT: As a parent, I could ---

10 SOLICITOR WILSON: (Affirmative nod),
11 that's what you do.

12 THE COURT: That's what you do,
13 (affirmative nod). I could understand that.
14 Thank you. Let's bring him in.

15 (JUROR NUMBER 378 ENTERS COURTROOM)

16 THE COURT: Thank you very much, Mr.
17 Martin. Thank you very much, and I appreciate
18 your patience. You've been -- you may stand or
19 take a seat, whatever you want to do -- found
20 to be qualified to be a member of the panel
21 from which we will select our jury.

22 At this point, we plan on doing that
23 Thursday morning at 9:30. I need for you to
24 call the number tonight after 6:00 o'clock and
25 just follow the instruction that will be placed

1 on there pertaining to the Dickerson jury
2 panel. More than likely it will say the
3 Dickerson jury panel needs to report at 9:30 on
4 Thursday.

5 When you come, you will come directly
6 to this courtroom and take a seat out in the
7 audience. We will select our jury, as I
8 stated, and then we will start with the trial.
9 So be prepared if you're selected to spend the
10 day here.

11 Also until you're dismissed from this
12 case, please understand that you cannot talk
13 with anyone about this case or permit anybody
14 to talk about it in your presence. Again,
15 you're not permitted to read anything about it
16 or watch any news programs about it. Thank you
17 very much. Have a good day and we'll probably
18 see you on Thursday. Thank you.

19 JUROR NUMBER 378: Thank you.

20 (JUROR NUMBER 378 EXITS COURTROOM)

21 CLERK, MIKE CALLAHAN: Judge, Mr.
22 White has turned in his questionnaire.

23 THE COURT: If you would pass those
24 out, that would be great.

25 SOLICITOR WILSON: Judge, if I could

1 have two minutes. If you want to continue on,
2 that's fine.

3 BRUCE DURANT: I could use two
4 minutes.

5 THE COURT: Let's all take a few
6 minutes.

7 MR. BLOOM: We're ready.

8 THE COURT: Let's take a minute.
9 Mike will give you Mr. White's questionnaire
10 and that will give you a minute to look over
11 that. We'll be right back.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Yes, sir?

15 MR. BLOOM: Judge, if I may, two
16 brief things. One, I neglected and my co-
17 counsel kindly reminded me that that last
18 objection, as well as previous objections to
19 the jurors, those are of course made to the
20 Fifth, Sixth, Eighth and Fourteenth Amendments
21 to the United States Constitution.

22 THE COURT: Correct.

23 MR. BLOOM: *Morgan v. Illinois* and
24 -- of course, I think from the outset that we
25 said that we were going to rely on those

1 objections.

2 THE COURT: Right.

3 MR. BLOOM: Which was in our
4 memorandum which is on file with the court, but
5 I just wanted to make that clear for the
6 record.

7 Secondly, I would respectfully object
8 from this point on to any attempted
9 rehabilitation by the trial court or the
10 solicitor of jurors who firmly place themselves
11 in what we have been calling a Type One
12 category according to this sheet where they
13 clearly say that they would automatically vote
14 for death.

15 THE COURT: Let me ---

16 MR. BLOOM: The law allows ---

17 THE COURT: --- interrupt you, sir.

18 MR. BLOOM: Yes, sir.

19 THE COURT: If you want to do that,
20 that suits me fine but we'll apply that to life
21 imprisonment, too.

22 MR. BLOOM: Well, my next sentence
23 was going to be that the exception to that is
24 the law under *Morgan* requires attempted
25 rehabilitation under *Morgan* and the Eighth

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1 Amendment, for this purpose: If there's going
2 to be an error on either law, through the U.S.
3 Supreme Court jurisprudence favors life. So we
4 would err on that side of caution.

5 I know that South Carolina has no
6 precedence on it. It's my understanding that
7 other states do and they conspicuously, under
8 the Constitution, allow efforts at
9 rehabilitation of a pro-life juror but disfavor
10 attempted rehabilitation of jurors who say they
11 are automatic death penalty jurors.

12 I think the argument there flows from
13 *Morgan* and similar cases in an effort to avoid
14 jury organized -- so I would respectfully place
15 that objection on the record.

16 THE COURT: Fine.

17 MR. BLOOM: I acknowledge that there
18 is no South Carolina precedent on that issue,
19 so we would make our objection to the Fifth,
20 Sixth, Eighth and Fourteenth amendments to the
21 United States Constitution. Thank you, Your
22 Honor.

23 THE COURT: Thank you. Of course,
24 you know, to say that the court has
25 rehabilitated a juror is somewhat remarkable,

1 to me. I think I have the responsibility --
2 I am not "rehabilitating" a soul, because I
3 believe I've done the same thing with those who
4 have said that they are -- that their
5 predisposition is life. I understand your
6 position is that it applies only one way.

7 I thought my purpose was to find out
8 whether or not they can follow the court's
9 instructions and fairly and impartially
10 consider the evidence in this case, because
11 that seems to be, in reading every single case
12 that I've read and every note that I've read,
13 -- and I confess that I haven't read the full
14 cases of all the notes that I have read. It
15 seems to be fairly consistent that the
16 fundamental question -- and I understand that
17 there is a major concern and certainly an
18 evolving of the law in this area, and you've
19 alluded to a number of areas, that South
20 Carolina is not the same as in other states,
21 and that there are some areas where it is very
22 gray and some areas where it just simply is
23 nonexistent.

24 But, clearly, -- and I haven't read
25 these, you probably have. There's -- we have

1 recognized, at least as I read *State v.*
2 *Singleton* and citing *Witherspoon*, that it does
3 require the jurors who favor capital punishment
4 be excused.

5 The question again comes back to, and
6 the reason for that, as the cases have said, is
7 that I have to determine whether or not they
8 can follow the court's instructions and
9 meaningful give -- not just say, not give just
10 lip service to it, but can they truly do that;
11 to the extent that we can make that assertion
12 from what we are doing right here in asking the
13 question.

14 I appreciate that. I don't call it
15 rehabilitation. I am just trying to find out
16 information. Your objection is noted.

17 Solicitor, do you want to be heard any
18 further on that?

19 SOLICITOR WILSON: No, sir.

20 THE COURT: Thank you very much, Mr.
21 Bloom. I appreciate it. Certainly the record
22 will be supplemented by the basis given in your
23 argument, and the court is -- continues its
24 ruling notwithstanding the supplementing of
25 your argument.

1 Mr. White, Juror Number 398 filled out
2 his questionnaire and apparently he overlooked
3 a page in error. He is -- Mr. Callahan was
4 kind enough to catch that and he's now asked
5 the juror to complete it. So you've now been
6 handed page five of his form, modified, having
7 been completed.

8 SOLICITOR WILSON: This is on Mr.
9 White?

10 THE COURT: Yes. He's still going
11 to be the last one. I will give you a chance
12 to look at it. I am not going to go to him
13 right now. We're going to do Juror 315.

14 (JUROR NUMBER 315 ENTERS COURTROOM)

15 THE COURT: Good morning, Ms.
16 Toomer.

17 JUROR NUMBER 315: Good morning.

18 THE COURT: Ms. Toomer, I need for
19 you to pull that chair up so that you can speak
20 comfortably into the microphone.

21 We are going to continue the process
22 that we started on Friday when we were asking
23 some questions about this case, talking about
24 this case. Just as you will recall on Friday,
25 there aren't any correct answers to any of

1 these questions. We just want you to be
2 truthful in responding and give us complete
3 answers. Will you do that?

4 JUROR NUMBER 315: Yes, sir.

5 THE COURT: I would remind you that
6 you are still under oath in this matter. Okay,
7 is that agreeable with you?

8 JUROR NUMBER 315: Yes, sir.

9 SALLYLISHA TOOMER, being duly sworn to
10 tell the truth, the whole truth and nothing but
11 the truth, testified, as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. Since we were last together, have you
15 talked with anyone or permitted anyone to talk
16 with you about this case?

17 A. No, sir.

18 Q. Have you watched any television programs,
19 news program or read any news articles about
20 this case?

21 A. No, sir.

22 Q. You will recall that I gave you a number
23 of names of persons on Friday and asked you
24 whether or not you had any connection with
25 those persons?

1 A. (Affirmative nod).

2 Q. I failed to mention two names that I need
3 to ask you about. Are you related by blood or
4 marriage, have any business dealings with or
5 socially or casually acquainted with or have
6 any dealings with Jeff Osborne or Matt Casey?

7 A. No, sir.

8 Q. You were given a sheet when you came in
9 that sets forth three types of jurors, have you
10 had a opportunity to review that sheet?

11 A. Yes, sir.

12 Q. Which type most accurately describes you?

13 A. (Upon review of sheet) -- number two.

14 Q. Number two?

15 A. (Affirmative nod)

16 Q. Let me understand something. Number two
17 is a juror that simply says if I am on a jury
18 and that jury has the responsibility of
19 deciding what the appropriate sentence is for
20 the crime of murder and the person has been
21 convicted of murder, when I'm given that
22 choice, the only decision that I could ever
23 make is life imprisonment. I could never,
24 under any circumstances, consider imposing a
25 death sentence for the crime of murder. That

1 is what you are?

2 A. Yes, sir.

3 Q. So you're telling me, and I am not asking
4 you to tell me what those circumstances would
5 be, I am just asking you, as you sit here
6 today, there are no circumstances where a
7 person was convicted of murder, if you were
8 instructed to make a determination between life
9 imprisonment and the death sentence in which
10 you could sign or impose a death sentence?

11 A. Yes, sir.

12 Q. "Yes, sir" there are circumstances or
13 there is no way you could ever do that?

14 A. I mean there's no way that I could ever do
15 that.

16 Q. That's just a strong belief that you have?

17 A. Yes, sir.

18 THE COURT: I am going to let the
19 attorneys ask you some questions. I may have
20 some followup questions.

21 MR. BLOOM: May it please the court?

22 THE COURT: Yes, sir.

23 VOIR DIRE EXAMINATION

24 BY MR. BLOOM:

25 Q. Ms. Toomer, good morning.

1 A. Good morning.

2 Q. My name is Jeff Bloom and along with
3 Andrew Carroll, we represent William Dickerson.
4 I just have a few questions to ask you after
5 the judge.

6 First off, the law never requires a jury
7 to vote for the death penalty. Do you under-
8 stand that?

9 A. Yes, sir.

10 Q. It never requires that. If you were a
11 juror, Judge Dennis would never instruct you or
12 order you that that's what you had to find.
13 Okay?

14 A. Okay.

15 Q. All right. Now, the law also recognizes
16 that it is okay to have moral reservations or
17 be against the death penalty. Do you
18 understand that?

19 A. Yes, sir.

20 Q. But the law next requires, though, or asks
21 is whether you can set those strong feelings
22 aside and listen to all the evidence in a case
23 when deciding life or death?

24 A. Yes, sir.

25 Q. Could you set those strong opinions aside

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1 and listen to all the evidence?

2 A. Yes, sir.

3 Q. The law doesn't stop there. It goes a few
4 more questions. What the law next requires, of
5 course, is that you listen to all the evidence
6 from the State and the defense -- and we're not
7 talking about this case, we're just talking
8 about any case -- and decide first if a
9 defendant is guilty or not guilty of murder.

10 Can you do that?

11 A. Yes, sir.

12 Q. So you could find someone, depending on
13 all the evidence, either committed a murder and
14 were guilty or if they didn't commit it, were
15 not guilty. You could do that?

16 A. Yes, sir.

17 Q. The next phase, and this is what I want
18 you to pay close attention to, as Judge Dennis
19 and the Solicitor may have some followup
20 questions, the State -- the Judge would then
21 charge you that your job doesn't end there in
22 such a case. The jury then hears more
23 evidence, both presented by the State for the
24 death penalty and presented by the defendant
25 perhaps for life without parole. Could you

1 listen to and consider all that evidence?

2 A. Yes, sir.

3 Q. Typically, what the State sometimes
4 introduces is something called, to get to that
5 basis, aggravating circumstances. That is
6 something like murder and a burglary, or murder
7 and a robbery, of murder of a child or
8 something else. Okay?

9 A. (Affirmative nod).

10 Q. Do you understand that?

11 A. Yes, sir.

12 Q. This nice lady (court reporter) had to
13 take down your answers. That's why a shake of
14 the head isn't enough. The law then asks that
15 you consider those aggravating circumstances,
16 that murder and extra evidence. Could you do
17 that?

18 A. Yes, sir.

19 Q. And then the law also requires you to
20 consider mitigating circumstances, that is just
21 a fancy phrase for things like how the person
22 was raised, their childhood, drug addiction,
23 mental health, things like that. Could you
24 listen to that evidence?

25 A. Yes, sir.

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1 Q. And then what the law asks is, after
2 you've heard all of that evidence and listened
3 to Judge Dennis' instructions on the law, that
4 you weigh life without parole or the death
5 penalty. Could you follow that instruction?

6 A. Yes, sir.

7 Q. Then what the law asks is, even if you
8 have strong feelings against the death penalty,
9 that if it were a situation where you thought,
10 'Golly, you know, here I am, Ms. Toomer, and
11 I'm against the death penalty but I've heard a
12 particular case...' -- and we're not talking
13 about this case, but a case in your mind.
14 'I've heard it and even though I am against the
15 death penalty, I could set my opinion aside in
16 that case and in that type of case give death.'
17 Can you do that?

18 A. Yes, sir.

19 Q. Okay. Likewise, in a case if you felt
20 that the death penalty wasn't warranted, could
21 you give a life without parole sentence?

22 A. Yes, sir.

23 Q. Okay. If you were on a jury and felt --
24 again, we're not talking about this case, just
25 a case. Is there a particular case where you

1 think of that you might say, 'Okay, I can give
2 the death penalty.' If that was your verdict,
3 then you would sign your name to a verdict
4 form. Could you do that?

5 A. Yes, sir.

6 Q. So even though I take it that you have
7 some strong opinions against the death penalty,
8 what ---

9 A. Yes, sir.

10 Q. --- you've told me is that you can perhaps
11 set those aside in a case.

12 A. Yes, sir.

13 Q. Listen to the instructions that Judge
14 Dennis gave you, listen to his instructions
15 both in terms of guilty or not guilty and
16 follow that, right?

17 A. Yes, sir.

18 Q. And if a defendant were guilty you could
19 listen to his instructions about those
20 aggravating circumstances and mitigating
21 circumstances, both good and bad; right?

22 A. Yes, sir.

23 Q. And you could weigh all that and with the
24 others jurors talk among them about the
25 evidence and then decide either life without

1 parole or the death penalty?

2 A. Yes, sir.

3 Q. You could set those opinions aside and
4 follow his -- listen to the law and if it was
5 warranted in a particular case, again not this
6 case, if -- even if those were your strong
7 beliefs against the death penalty, you could
8 say, 'Wow, I just heard a case where I think,
9 you know, the death penalty needs to be
10 imposed.' You could vote for that and set your
11 opinions aside?

12 A. Yes, sir.

13 Q. All right. And sign your name to that
14 verdict, if that was your choice?

15 A. Yes, sir.

16 Q. Likewise, you could sign a verdict for
17 life without parole, if that was your choice?

18 A. Yes, sir.

19 Q. And after having done all that, if you
20 were on a jury and, having done all that,
21 eleven jurors were voting one way and you were
22 voting another, you could still hold onto your
23 reasoned, moral, individualized choice?

24 A. Yes, sir.

25 Q. You wouldn't just give up your vote and go

1 home because it was the end of the day. Right?

2 A. No, sir.

3 Q. You would respect their vote and want them
4 to respect yours?

5 A. Yes, sir.

6 Q. Thank you very much. Is there any
7 question that I've asked you that you were
8 confused about or didn't understand?

9 A. No, sir.

10 Q. All right. Even though you have strong
11 beliefs against the death penalty -- and,
12 again, we're not asking what -- you understand
13 nobody is going to ask you what you'd do in
14 this case, right?

15 A. Yes, sir.

16 Q. Because that's not fair. You haven't
17 heard any of the evidence. Right?

18 A. Yes, sir.

19 Q. I mean, if you got selected. You haven't
20 heard any witnesses or anything like that,
21 right?

22 A. Yes, sir.

23 Q. But in a particular case you could set
24 those strong opinions against the death penalty
25 aside and be fair to both sides, follow Judge

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1 Dennis' instruction?

2 A. Yes, sir.

3 MR. BLOOM: Thank you, ma'am.

4 THE COURT: Solicitor?

5 SOLICITOR WILSON: Thank you, Your
6 Honor.

7 VOIR DIRE EXAMINATION

8 BY SOLICITOR WILSON:

9 Q. Ms. Toomer, I'm Scarlet Wilson, I'm the
10 Solicitor in this case. How are you?

11 A. Fine. How are you doing?

12 Q. I'm doing pretty good. I notice that in
13 your questionnaire that they gave us, that you
14 filled out, that you didn't answer the question
15 about the death penalty.

16 A. I didn't answer the question about the
17 death penalty?

18 Q. No. You answered the other questions but
19 on page eight of your questionnaire, you didn't
20 answer the question about the death penalty.
21 Why is that?

22 A. Probably because I really didn't
23 understand.

24 Q. You didn't understand what?

25 A. That part, I probably didn't even see that

1 part.

2 Q. Just now, ten minutes ago, the Judge went
3 through a whole bunch of questions and you told
4 the Judge on more than one occasion that you
5 could never give the death penalty.

6 A. Yes.

7 Q. You told him that several times.

8 A. Yes, I did.

9 Q. Then a few seconds later when the defense
10 was asking you questions, you said that you
11 could give a death penalty?

12 A. Yeah.

13 Q. What is the right answer for you? Not
14 that there is a right answer for all of us, but
15 for you. Could you give the death penalty or
16 not?

17 A. I could set them aside, like he said.

18 Q. You could put those feelings aside?

19 A. Yes, I could.

20 Q. Okay. Can you imagine cases where you
21 think the death penalty would be appropriate?

22 A. Yes, ma'am.

23 Q. You could?

24 A. (Affirmative nod).

25 Q. And when the judge asked you whether or

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1 not you could ever give the death penalty and
2 you said that you could never give it, why did
3 you say never if you can imagine situations
4 where you could give it?

5 THE COURT: Solicitor, let me inject
6 something here. In fairness, I turned the
7 juror over to you'all for questioning because
8 she said that she was a type two person. I had
9 not gone through the instruction and had not
10 instructed her. He asked her a question
11 whether she would follow the law, so I will
12 follow up, if you'd like for me to, and then
13 you can follow up with that question. I think
14 really she was responding, as I understand the
15 questions, to following the court's
16 instruction. That would be an explanation as
17 to why. In fairness, I didn't ask the
18 question.

19 EXAMINATION CONTINUED

20 BY SOLICITOR WILSON:

21 Q. Ms. Toomer, just to make sure that we are
22 clear, Mr. Bloom asked you about weighing
23 whether or not or considering whether or not
24 you would give the death penalty or life
25 without parole. Do you understand that in a

1 death penalty case that life without parole is
2 always on the table?

3 A. Yes, ma'am.

4 Q. And do you think that life without parole
5 is a pretty harsh sentence?

6 A. Yes, ma'am.

7 Q. And if you have that option, would you
8 always pick life without parole over the death
9 penalty?

10 A. (No verbal response).

11 Q. If you always had that option?

12 A. If I always had the option, then -- yeah.

13 Q. You would always pick life without parole?

14 A. Yes.

15 Q. Okay. Why is that, why do you say that?

16 A. I don't know. I mean, even though -- I
17 don't think nobody should have no death, I mean
18 the death penalty.

19 Q. And especially when life without parole is
20 an option?

21 A. Yes, ma'am.

22 Q. You don't think anybody should have a
23 death sentence?

24 A. No, ma'am.

25 SOLICITOR WILSON: That's all that I

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1 have.

2 THE COURT: All right, let me ask
3 some questions and then you'all can ask some
4 followup questions.

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. I thank you very much, Ms. Toomer. As I
8 understand your responses, as Mr. Bloom asked
9 you or instructed, you understand that if
10 you're selected as a juror in a case that that
11 jury has the responsibility of deciding the
12 facts?

13 A. Yes, sir.

14 Q. The jury promises that they will decide
15 the facts by considering the evidence?

16 A. Yes, sir.

17 Q. And in order to do that, it's what you do
18 every day of your life. You listen to
19 somebody, what they say, or you look at
20 something and you say either 'I believe that'
21 or 'I don't believe that'. Whatever has
22 assisted you in making those decisions before,
23 that is what you will use to help you with
24 that. Is that correct?

25 A. Yes, sir.

1 Q. Is that your understanding?

2 A. Yes, sir.

3 Q. And you understand that the judge, me, I
4 would have nothing to do with the facts. Do
5 you understand that?

6 A. Yes, sir.

7 Q. But, likewise, you have nothing to do with
8 the law. Do you understand that?

9 A. Yes, sir.

10 Q. Because that is my responsibility.

11 A. Yes, sir.

12 Q. What you'd have to do is to promise both
13 sides that you will take the law as I give it
14 to you and apply it fairly and impartially.

15 A. Yes, sir.

16 Q. One of the instructions that I would give
17 you, if you were on a jury in a case involving
18 murder and the jury has already concluded that
19 the person was guilty of murder and we'd moved
20 into the second phase where -- there are very
21 limited situations where that happens in this
22 state, where the jury is going to participate.
23 I would give you instructions at the conclusion
24 of that that you're to consider all the
25 evidence and first have to determine whether or

1 not the State proved the existence of something
2 called aggravating circumstances. They have to
3 prove that, the State has to prove it ---

4 A. Yes, sir.

5 Q. --- to be entitled to it.

6 A. Yes, sir.

7 Q. Otherwise, the jury would have to return a
8 verdict of life without parole.

9 A. Yes, sir.

10 Q. If they don't prove an aggravating
11 circumstance you can't even consider the death
12 sentence. It is my understanding that
13 notwithstanding your feeling, your strong
14 feeling, which you have every right to have, we
15 are not asking you to change that. But
16 notwithstanding your strong feeling that life
17 imprisonment would be the best sentence, in
18 your mind you could set that aside, listen to
19 that law and apply that law fairly and
20 impartially. Is that right?

21 A. Yes, sir.

22 Q. And you could, if you analyzed the
23 evidence, decide whether or not fairly and
24 impartially the State had met its burden of
25 proof and convinced beyond a reasonable doubt

1 of the existence of an aggravating

2 circumstance?

3 A. Yes, sir.

4 Q. That would mean that now the jury could

5 consider the death penalty. Do you understand

6 that?

7 A. Yes, sir.

8 Q. And you could, if the State convinced you

9 and the other jurors, then you could vote 'yes'

10 to answering that question, yes, you were

11 convinced beyond a reasonable doubt, as I

12 understand that; is that correct?

13 A. Yes, I could.

14 Q. And if they didn't convince you, then you

15 could likewise vote no, that they haven't

16 convinced me; is that correct?

17 A. Yes, sir.

18 Q. And you would be fair and impartial?

19 A. Yes, sir.

20 Q. If you were to find that in that case,

21 then the jury and only then would the jury be

22 instructed that they then could consider two

23 possible sentences; one, life imprisonment and,

24 the other, the death sentence. Now, in answer

25 to the questions, mine, the solicitor's and Mr.

1 Bloom's, you've kind of said two different
2 things.

3 I need to ask you, my instruction would be
4 that you would have to consider all the
5 evidence, including any mitigating
6 circumstances that may be -- that is, things
7 that would make the crime less culpable, less
8 serious, such as the background of a defendant
9 and that sort of thing.

10 Or you may consider, for no reason at all,
11 that you don't want to impose a death sentence,
12 for no reason, because of mercy.

13 But am I to understand you when you
14 answered the question that your personal
15 feelings, you would set that side, and you
16 would consider seriously both sentences and
17 decide which one, based on all those facts and
18 circumstances, best suits that particular
19 crime?

20 A. Yes, sir.

21 Q. That would include -- if at the end of
22 that analysis you could conclude 'yes, the
23 death sentence in this situation would be the
24 best' ---

25 A. Yes, sir.

1 Q. And if that happened and you found that
2 beyond a reasonable doubt, then you would sign
3 a verdict form indicating the death sentence
4 for that person?

5 A. Yes, sir.

6 Q. Likewise you could then also say, after
7 analyzing it, 'Nope, I don't think so. I think
8 life imprisonment is the best sentence.' But
9 that would be one that was fair and impartial
10 to both sides, not controlled by your strong
11 beliefs; is that correct?

12 A. Yes, sir.

13 Q. It would be based on the evidence in that
14 case?

15 A. Yes, sir.

16 Q. And you can honor that commitment to both
17 sides?

18 A. Yes, sir.

19 Q. And you understand that you would have to
20 raise your hand and promise that that is
21 exactly what you are going to do?

22 A. Yes, sir.

23 Q. Okay.

24 THE COURT: Please answer any
25 additional questions that they may have. Any

1 additional questions, Mr. Bloom?

2 MR. BLOOM: I have nothing further
3 at this time, Your Honor.

4 THE COURT: Any additional
5 questions?

6 SOLICITOR WILSON: Yes, sir.

7 VOIR DIRE EXAMINATION

8 BY SOLICITOR WILSON:

9 Q. Ms. Toomer, I'm sorry, I've got just a few
10 followup questions. Okay?

11 A. Okay.

12 Q. When I asked you questions a minute ago,
13 you were telling us what you thought about life
14 imprisonment without the possibility of parole
15 and what you thought about the death sentence.

16 Based on your answers to the Judge's
17 questions, I have to ask you again, what is
18 your belief about the death penalty?

19 A. What do you mean, what is my belief about
20 the death penalty?

21 Q. What is your belief about it?

22 A. (No verbal response).

23 Q. What is your opinion on it?

24 A. Just like I said, I ---

25 THE COURT: Solicitor, she said that

1 she is opposed to it. That's what she --
2 that's her belief.

3 SOLICITOR WILSON: I was just asking
4 if she ---

5 THE COURT: I understand but I don't
6 think you -- you have that, she's indicated
7 that clearly.

8 SOLICITOR WILSON: Your Honor, she has
9 indicated a lot of things.

10 THE COURT: That she is opposed to
11 it and that she generally -- my understanding
12 of this juror is that she is more prone for
13 life but she said that she understands what a
14 death sentence is and that she could ---

15 EXAMINATION CONTINUED

16 BY SOLICITOR WILSON:

17 Q. You are strongly opposed to the death
18 sentence?

19 A. (No verbal response).

20 Q. Is that the gist of it?

21 A. Yes, ma'am.

22 Q. Because of those beliefs or your strong
23 opposition to the death penalty, could you in
24 the appropriate situation sign your name to a
25 death warrant for ---

1 MR. BLOOM: Your Honor, I object. I
2 don't know that "death warrant" is ---

3 SOLICITOR WILSON: To a death verdict.

4 EXAMINATION CONTINUED

5 BY SOLICITOR WILSON:

6 Q. Sentencing someone to death, could you
7 sign that form?

8 A. Yes, ma'am.

9 Q. You could put your name on it?

10 A. Yes, ma'am.

11 Q. Thank you.

12 THE COURT: Thank you, Solicitor.

13 THE COURT: Anything else?

14 MR. BLOOM: Nothing further, Your
15 Honor.

16 THE COURT: Thank you very much. If
17 you would, step outside just for a moment.

18 (JUROR NUMBER 315 EXITS COURTROOM)

19 THE COURT: Given -- her timing is
20 wonderful, her position is wonderful because I
21 find exactly what I was just saying about Mr.
22 Martin. This lady, no question about it, she's
23 prone to life imprisonment -- no ifs, ands or
24 buts. But she has convinced me by her
25 responses, she changed who she was, she said

1 that she'd set it aside just as Mr. Martin did.
2 I find that she is qualified. I assume that
3 you agree?

4 MR. BLOOM: Yes, sir.

5 THE COURT: And that that State does
6 not, I assume; is that correct?

7 BRUCE DURANT: That would be
8 correct.

9 THE COURT: Very well, thank you
10 very much.

11 SOLICITOR WILSON: Your Honor, I would
12 just ask -- well, we can take this up after you
13 ---

14 THE COURT: No, you can -- go ahead.

15 SOLICITOR WILSON: We can wait until
16 she is done. This isn't about her.

17 THE COURT: Okay.

18 (JUROR NUMBER 315 ENTERS COURTROOM)

19 THE COURT: Thank you, Ms. Toomer.
20 I find that you have been found to be qualified
21 to be a member of the panel from which we will
22 select our panel, and that will occur on
23 Thursday morning.

24 I ask that until then that you please
25 do not talk with anyone, don't discuss this

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1 case with anyone, don't permit anyone to talk
2 to you, don't read any newspaper accounts of
3 this case and certainly don't watch any
4 television programs. When you come back,
5 you'll come directly to this courtroom and take
6 a seat out in the audience there.

7 Call the number after 6:00 tonight,
8 that is that number that was given to you and
9 there will be a message for the Dickerson
10 panel. It's more than likely going to say to
11 report at 9:30, but just follow that
12 instruction.

13 JUROR NUMBER 315: Okay.

14 THE COURT: Thank you, ma'am. Have
15 a good day.

16 (JUROR NUMBER 315 EXITS COURTROOM)

17 THE COURT: Solicitor?

18 THE COURT: Beg the court's
19 indulgence.

20 THE COURT: Yes, ma'am.

21 MR. BLOOM: Judge, if I could take
22 this opportunity ---

23 SOLICITOR WILSON: Beg the court's
24 indulgence.

25 MR. BLOOM: I apologize. I

1 apologize, Solicitor.

2 SOLICITOR WILSON: Judge, I am going
3 to ask that when we have jurors that are either
4 number one or number two that you continue with
5 your instruction as you are with jurors number
6 three, or jurors who say that they are number
7 three, because what the typing does not do is
8 explain to them what you will instruct them to
9 do.

10 THE COURT: Yes, ma'am.

11 SOLICITOR WILSON: It then becomes
12 who is the better leader with their leading
13 questions. I think if the court addressed that
14 initially as to how it is going to work,
15 because they answer those questions in a vacuum
16 without knowing what you're going to be
17 instructing them. As you said, the key
18 question is whether or not they can set those
19 things aside.

20 THE COURT: Correct. I appreciate
21 that. Now I will hear from Mr. Bloom.

22 MR. BLOOM: My only response is that
23 the majority of those folks who come in as very
24 opposed to the death penalty, as Your Honor
25 knows, I have to answer the questions -- it is

1 very few that have expressed the opinion that
2 they could set it aside. Out of time
3 constraints, I will continue that practice. I
4 am not going to put up a fight. If she had
5 told me that 'no, I can't set it aside', I
6 would have set down just as I have with the
7 ones who ---

8 THE COURT: I appreciate you being
9 benevolent. That's nice, but I don't think
10 that's necessarily true. I've seen you fight
11 pretty hard in this case already. I don't
12 blame you for that.

13 Let me just make an observation. The
14 easy thing for me is to ask that question and
15 turn it over to you and just listen. That may
16 be what I ought to do, then make my call.

17 But this is the language that gives me
18 -- that motivates me to do what I do, and why I
19 do it. Because I read it over and over, and it
20 simply says -- this one happens to be from
21 *Adams v. Texas*, but it is the same language
22 that appears -- it says, "The U.S. Supreme
23 Court held that a juror could be excluded
24 because, based on his views about capital
25 punishment these views..." -- and this is the

1 key -- "...would prevent or substantially
2 impair the performance of his duties of his
3 duties as a juror in accordance with his
4 instruction and his oath."

5 That is what I have to determine. You
6 know, I think we need to put aside who is
7 "winning" insofar as who is bringing it up.
8 The whole purpose, we're collectively trying to
9 make one determination and that is, can this
10 juror comply with the oath and the
11 instructions? That is what it is all about.
12 It really doesn't matter to me who's on first,
13 who does it first.

14 I would agree with you but my concern
15 is, I don't think I'm rehabilitating anyone. I
16 know that I have a tendency to be a lawyer,
17 because I was for twenty-one years, and I try
18 to fight that. But I have a responsibility
19 consistent with that, I believe. That's all
20 that I am interested in doing. I sure don't
21 want to give the appearance -- and my concern
22 about when they say that they are a type one or
23 a type two, until something comes up for me to
24 ask questions, I am honoring that.

25 If you will recall, and I think the

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1 record will support us, that Mr. Martin said
2 that he was a type three and that was the
3 problem. I went on through, but I don't think
4 that I have done anything -- I've been
5 consistent with ---

6 SOLICITOR WILSON: I think you have,
7 too.

8 THE COURT: When they've said they
9 are a type two, I've asked the question if
10 there is anything -- I would agree with you
11 that there is no question that the key is, 'Can
12 you set those aside?'

13 I don't mind asking a followup
14 question and not be detailed -- let me just
15 ask, because I don't want -- I am not asking
16 you to waive anything ---

17 MR. BLOOM: Sure.

18 THE COURT: -- about your positions.
19 But would you object to my asking the question,
20 'You are going to be instructed on various
21 aspects of the law, would that prevent you from
22 following the law?'

23 MR. BLOOM: I would prefer you to be
24 consistent as you already have in ---

25 SOLICITOR WILSON: And that's all that

1 I am asking.

2 THE COURT: I think I've done it
3 consistently ---

4 SOLICITOR WILSON: I think you have,
5 too.

6 THE COURT: --- with the death
7 penalty or anything else.

8 SOLICITOR WILSON: I didn't mean to
9 imply that with this juror that you did it
10 differently from the others, at all.

11 THE COURT: No, and I am not taking
12 offense at it. I'm just stating that -- I
13 understand what you're saying and I don't have
14 any problem. My problem is that if I start
15 doing that, then I'm taking on the appearance
16 of being an advocate; or either side, be it --
17 I am being that advocate for the defendant and
18 I'm being that advocate for the State if I --
19 if the person says, 'I am a type one' or 'I am
20 a type two', my question is -- the simple
21 question is, 'Is there any circumstance where
22 you can?' If they say no, that they can't,
23 well that leans itself now for you to ask the
24 questions. If the case is -- if the person is
25 a type one, I think -- we did that with Mr.

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1 White (sic) and you -- the questions were
2 asked and he stayed firm.

3 SOLICITOR WILSON: I think that there
4 would be a way for the court to engage in a
5 back-and-forward as we have with the jurors,
6 but to enlighten them as to the fact that this
7 is not just how you feel out on the street.
8 This is -- 'I will give you instructions at
9 some point. Can you follow my instructions
10 despite your opinions?'

11 THE COURT: But, again, I am not --
12 I don't need to do that until they give me a
13 reason to say, 'Well, yeah, I can do that.'
14 They've answered my question. The question is
15 the threshold question, which is critical to
16 all of you, it is what each one has said.

17 You would say, insofar as Mr. Ott
18 this morning, the -- 'You know, that's your
19 opinion. That's how you feel, but is there a
20 situation where you could consider it?' And,
21 no, there was not.

22 SOLICITOR WILSON: Right.

23 THE COURT: He said 'no, that's who
24 I am.' You took him through that.

25 SOLICITOR WILSON: Right.

1 THE COURT: There is no reason for
2 me to challenge who they are at this point.
3 So that's -- until there is a conflict, I
4 don't believe that it warrants any question.
5 Obviously there -- this isn't the first time
6 that we've had jurors that were included in
7 the pool, because in reading some of the
8 cases, re-reading some of those notes on the
9 Batson challenges, equivocation is a reason
10 given for striking a juror. So obviously it
11 is not uncommon for the panel to have people
12 that have testified both ways. That is what
13 I'm saying, it's just the way it is. Thank
14 you very much.

15 SOLICITOR WILSON: I get that, I
16 understand.

17 THE COURT: I know you do, but I'm
18 just saying that I -- I think that I am going
19 to go with my tried-and-true, at this point,
20 and try to be consistent with it. I
21 appreciate your obser--, -- I appreciate your
22 note.

23 We haven't brought her in yet, have
24 we? Ask Ms. Toomer to come in.

25 COURT REPORTER Yes, sir, we did.

1 THE COURT: Oh, I have.

2 BAILIFF: Yes, Judge, you have.

3 MR. BLOOM: Judge, if I could -- we
4 agree with the court, but if I could move to a
5 second point. I may not have articulated my
6 objection very well -- in fact, I know that I
7 didn't articulate it very well after Mr.
8 Martin. My considered objection with type one
9 jurors who are for the death penalty would be
10 to set the question -- I didn't state it very
11 clearly on the record, but I -- I used other
12 language, and that's my objection.

13 What I am asking the court is, is the
14 court going to require me each time that the
15 Solicitor asks that question of an automatic
16 death penalty juror, a type one juror, or if
17 the court asks that, is the court going to
18 require me to object each and every time or
19 can I have a -- I know that we don't usually
20 do continuing objections, ---

21 THE COURT: What do you mean, set
22 aside?

23 MR. BLOOM: If we get a type one
24 juror ---

25 THE COURT: I am going to require

1 you to place it on the record, just as you
2 did, that the court rehabilitated and can't --
3 can't set aside. I -- you're saying that the
4 question can be asked and -- there are some
5 cases in South Carolina where they have
6 recognized that a person pro-death penalty can
7 sit.

8 MR. BLOOM: Yes, sir, and I ---

9 THE COURT: So ---

10 MR. BLOOM: And I don't know if
11 the question has been ever framed to our
12 courts whether that's permissible under *Morgan*
13 and other cases.

14 THE COURT: Yeah.

15 MR. BLOOM: That the reason you can
16 do it for pro-life jurors is that it is
17 Constitutional-based. The state doesn't have
18 a Fifth, Eighth or Fourteenth Amendment right.

19 THE COURT: I understand that. My
20 question, I guess, is that you're saying that
21 insofar as that limited circumstance, all this
22 language about whether they could honor their
23 oath and follow the instruction doesn't apply.
24 It applies but it doesn't -- it doesn't allow
25 you to make that determination?

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1 MR. BLOOM: There appears to be a
2 line of cases evolving out there, and I grant
3 that it may be an initial first impression in
4 South Carolina, that if a juror says 'I am a
5 type one, I am always going to vote for
6 death', that the question, 'Can you set that
7 aside?' is improper. I don't think South
8 Carolina has ever specifically addressed that.

9 THE COURT: Okay.

10 MR. BLOOM: And automatically -- I
11 just want to preserve that --

12 THE COURT: You've made your basis
13 for it, but you -- you don't have to
14 elaborate. You can simply say "as previously
15 stated, I object."

16 MR. BLOOM: Do you want me to place
17 that when the question is asked or just after
18 we've qualified?

19 THE COURT: Well, obviously when
20 the question -- you don't object to the
21 question, you object to the qualification.

22 MR. BLOOM: Yes, sir.

23 THE COURT: I mean, the question is
24 not objectionable. The qualification is
25 objectionable, as I understand it.

1 MR. BLOOM: Yes, sir. Well, the
2 question -- well, yes, sir.

3 THE COURT: I think you're
4 protected when you say, 'Judge, you can't
5 qualify this because they tried to
6 rehabilitate and ---

7 MR. BLOOM: Correct. From that
8 point onward, that's our objection. Thank
9 you.

10 THE COURT: Well, the objection is
11 to the qualification. They can ask any
12 questions that they -- I don't think -- I
13 think a legitimate question is whether or not
14 I can qualify them.

15 MR. BLOOM: Thank you, Your Honor.

16 THE COURT: Thank you. Okay, bring
17 in Ms. Szivak, Number 306. I am beginning to
18 think 9:30 is a moving target on Thursday,
19 too.

20 BRUCE DURANT: You could be right,
21 Your Honor.

22 THE COURT: But we've got Wednesday
23 night.

24 (JUROR NUMBER 306 ENTERS COURTROOM)

25 THE COURT: Thank you for your

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1 patience. I bet you thought, 'they've
2 forgotten about us.' I apologize for keeping
3 you waiting. We won't keep you much longer.

4 We are going to continue the process
5 that we started on Friday. That is, asking
6 you some questions. As you will recall, on
7 Friday I indicated that these questions don't
8 have any correct answers. They are just
9 designed to help you and to help us decide
10 whether you can be a fair and impartial judge
11 in this case. Okay?

12 JUROR NUMBER 306: Okay.

13 THE COURT: All that we ask is that
14 you truthfully respond to them and give
15 complete answers to the questions. Will you
16 do that?

17 JUROR NUMBER 306: I will.

18 THE COURT: Would you state your
19 full name for the record?

20 JUROR NUMBER 306: My name is Rebecca
21 Szivak.

22 REBECCA SZIVAK, being duly sworn to
23 tell the truth, the whole truth and nothing
24 but the truth, testified, as follows:

25 VOIR DIRE EXAMINATION

1 BY THE COURT:

2 Q. Ms. Szivak, you -- when we last were
3 together, I advised you not to discuss this
4 case with anyone or permit anyone to talk with
5 you. Have you had any conversation with
6 anyone, has anyone talked with you about this
7 case?

8 A. No, I have not.

9 Q. Have you watched any news reports or read
10 any newspaper articles about it?

11 A. No.

12 Q. You recall that I gave you a number of
13 names of persons and asked if there was any
14 connection to these persons?

15 A. Yes, sir.

16 Q. I failed to mention two names that I need
17 to ask you about. Are you related by blood or
18 marriage, have any business dealings with or
19 socially or casually acquainted with or have
20 any dealings with Jeff Osborne or Matt Casey?

21

22 A. No.

23 Q. You were given a sheet when you came in
24 that sets forth three types of jurors, have
25 you had a opportunity to review that sheet?

1 A. Right.

2 Q. Of those three types, which one most
3 accurately describes you?

4 A. Type three.

5 Q. Type three, as I understand, to see if
6 we're in agreement on that, is the type of
7 juror who if empaneled in a case in which the
8 trial is about murder and the jury convicted
9 the person on trial for murder, after
10 convicting that person there would be a second
11 phase where there would be evidence received
12 about what would be the most appropriate
13 sentence between life imprisonment and the
14 death sentence. You would have heard, of
15 course, the circumstances of the crime at that
16 point but now were moving in the second phase.

17

18 As I understand it, the type three at that
19 precise moment, you have an open mind as to
20 which sentence would be the most appropriate
21 of the two?

22 A. Yes.

23 Q. You wouldn't have any predetermination?

24 A. No.

25 Q. Notwithstanding that you'd found the

1 person guilty of the crime of murder, which
2 means that the person -- murder means that the
3 person killed someone, with malice, that they
4 intended to do what they did, it wasn't an
5 accident, it was a planned murder, they
6 intended to do it, that they carried it out,
7 that they got the person they wanted, they
8 weren't upset with anybody, there was nothing
9 to mitigate the murder, it was an intentional
10 killing. Do you understand that?

11 A. Yes.

12 Q. You still wouldn't have predetermination?

13 A. Not at all.

14 Q. The second phase in which you would hear
15 the evidence concerning certain aspects for
16 sentencing purposes, my understanding is that
17 as a type three that you would have to hear
18 all of that and then have the opportunity to
19 think about, considering all the evidence,
20 including the nature of the crime, to make a
21 determination as to what would be the
22 appropriate sentence?

23 A. Yes.

24 Q. And you would not know that until you know
25 all the circumstances?

1 A. Right.

2 Q. Now, you understand that a jury has the
3 responsibility of deciding the facts and they
4 would promise and would take an oath to decide
5 those facts by considering one source; that
6 is, the evidence in a trial. Evidence
7 consists of testimony of the witnesses and
8 exhibits, nothing else. You would be able to
9 perform that function?

10 A. Yes.

11 Q. That means apply your common sense, your
12 sense of logic and reason, your life's
13 experience fairly and impartially and analyze
14 the evidence at the appropriate time and
15 deciding fairly and impartially the truth; is
16 that correct?

17 A. That's correct.

18 Q. You also as a jury would take an oath that
19 you accept the law as I gave it you, because
20 as you recall we described this system of two
21 judges working together, one judge having the
22 responsibility to determine the facts, which
23 is your responsibility; and a judge that has
24 the responsibility of the law, and in this
25 case that would be me. You would promise to

1 accept the law as I gave it to you and apply
2 that law fairly and impartially to those
3 facts?

4 A. . Yes.

5 Q. And you would do that?

6 A. I would.

7 Q. That also means, while it sounds -- a
8 normal human reaction would be 'Oh, sure, I
9 will do that' but it is not uncommon for
10 persons to hear something sometimes and they
11 say 'you know, that's not what I thought the
12 law was' or 'I think that law is wrong, they
13 should change that law.'

14 As I tell jurors when I instruct them, I
15 respect everybody's right to feel that way,
16 it's a wonderful country and we have that
17 right, but for purposes of that proceeding you
18 would promise to set aside your personal
19 feelings.

20 A. Yes, I feel comfortable knowing that I do
21 not ---

22 Q. You would do not?

23 A. --- know the law better than ---

24 Q. I understand but even if you heard
25 something that you said, 'You know, that's

1 just against my philosophy', you could still
2 and would still follow the law notwithstanding
3 your personal philosophy and feelings. Is
4 that correct?

5 A. Yes.

6 Q. One of the principles that we talked about
7 when I mentioned to you that Mr. Dickerson has
8 been accused of a number of crimes and that
9 he, as anyone who is accused of a crime in
10 this state or this country, is presumed
11 innocent until -- until and unless the State
12 proves him guilty beyond a reasonable doubt.
13 You didn't have any problem with the principle
14 of law?

15 A. No.

16 Q. As I mentioned, it is an active
17 presumption. That means that as we sit here
18 today, actively, you see Mr. Dickerson as
19 being innocent of these charges?

20 A. Yes.

21 Q. And you don't have any problem with that?

22 A. No.

23 Q. And I would also instruct you in a
24 criminal dispute such as this that it is the
25 burden -- the burden rests upon the State to

1 prove its case, whether it is the first phase
2 or the second phase.

3 In the first phase, you deal with the
4 crimes themselves. The State is the only
5 party that has any burden. They have to prove
6 the elements of each crime beyond a reasonable
7 doubt for a jury to return a verdict of
8 guilty. Do you understand that?

9 A. Yes.

10 Q. If you were sitting in a criminal dispute
11 and the State completed the -- if all the
12 evidence had been entered and you, after
13 viewing all the evidence, and applying your
14 commonsense, were not convinced of one or more
15 of the elements, would you return a verdict of
16 not guilty, as instructed?

17 A. If I was not convinced, yes.

18 Q. Likewise, if you were firmly convinced
19 that the State had established each element,
20 would you return a verdict of guilty?

21 A. Yes.

22 Q. I would reiterate something. The State is
23 the only party that has to prove anything.
24 The defendant never has to prove anything,
25 either in the first phase or in these cases

1 where you have a second phase, they don't have
2 to prove anything there either. Do you
3 understand that?

4 A. Yes.

5 Q. In fact, a defendant doesn't even have to
6 present evidence, doesn't have to testify and
7 the jury can never consider that against him,
8 never look to the defendant to prove or to
9 establish anything. Would you have any
10 problem applying that principle of law?

11 A. No.

12 Q. In a criminal case such as we have talked
13 about where a jury would have been empaneled
14 to decide the punishment, because as I am sure
15 you are aware, in this state that is not a
16 common occurrence because typically in a
17 murder case most of them are tried to a jury
18 and the jury determines whether the State has
19 met its burden of proof and if they return a
20 verdict of guilty then a judge imposes the
21 sentence. Do you understand that?

22 A. Yes.

23 Q. The jury is not involved in that process.
24 Is that your understanding?

25 A. Yes.

1 Q. In that situation a death sentence is
2 never an option for a murder conviction. That
3 is an intentional killing of someone, just
4 like what we talked about earlier. Do you
5 understand that?

6 A. (Affirmative nod).

7 Q. The judge can sentence someone to life
8 imprisonment without the possibility of parole
9 but the judge is not limited to that sentence.
10 Do you understand that?

11 A. Okay.

12 Q. It is only in these circumstances where we
13 have a second phase, that as part of the
14 second phase in addition to hearing evidence
15 about the effect of the crime and other
16 circumstances the jury would consider to
17 determine the appropriate sentence, the State
18 has another burden. It's a very important
19 burden, because the State has to prove
20 something called aggravating circumstances.
21 It has to prove at least one, which elevates
22 that murder, takes it out of that normal realm
23 where a jury makes the determination of
24 whether a person did it or not and then the
25 judge imposes the sentence. That has to be

1 established beyond a reasonable doubt.

2 So one thing that that jury would
3 determine is whether or not the State has
4 convinced them of the existence of that
5 aggravating circumstance.

6 It is my understanding that, just as you
7 would do in the first phase, you'd apply your
8 common sense, your sense of logic and reason
9 at that time fairly and impartially and make
10 that determination beyond a reasonable doubt.
11 Is that true?

12 A. Yes.

13 Q. If the jury concludes that the State had
14 not established an aggravating circumstance,
15 then there wouldn't be any option. The only
16 sentence that the jury could return would be
17 life imprisonment without the possibility of
18 parole. Do you understand that?

19 A. Yes.

20 Q. And you would have no problem with that?

21 A. Okay.

22 Q. On the other hand, if the jury found the
23 existence of an aggravating circumstance, then
24 and only then -- and that has been established
25 beyond a reasonable doubt -- would that jury

1 have the opportunity to consider death.

2 Now, I say opportunity because just
3 because you find it doesn't mean, and the
4 court would not instruct you, that you have to
5 return a verdict of death.

6 A. Right.

7 Q. It simply means that now you have the
8 option. You can impose a death sentence or
9 you can impose life imprisonment without the
10 possibility of parole.

11 My understanding is that in that situation
12 you would apply your common sense, you'd
13 consider all the evidence and decide, based on
14 the nature of the crime, based on all the
15 evidence in the second phase what you believe
16 to be the most appropriate sentence. Is that
17 correct?

18 A. Yes.

19 Q. And in that type of case, it's my
20 understanding from your answer of being a type
21 three that there are circumstances in which
22 you could and would sign and vote for a death
23 sentence?

24 A. Yes.

25 Q. And there are circumstances where you

1 would have had the right to vote for a death
2 sentence but you chose to vote for life
3 imprisonment instead?

4 A. Yes.

5 Q. Without the possibility of parole?

6 A. (Affirmative nod).

7 Q. And you don't know which type -- what
8 circumstances, you'd have to hear them all
9 before you could say which one applies?

10 A. Right.

11 Q. One other aspect in that proceeding, in
12 addition to the aggravating circumstances and
13 other factors that may be considered in
14 formulating or deciding a sentence, you may
15 hear matters of mitigating circumstances.
16 There are some that are statutorily provided
17 and some that are nonstatutory. Those are
18 matters that would make that murder crime --
19 would lessen the effect, such as -- and this
20 is just by way of, not giving you specifics
21 but just generally -- background information
22 about the person accused of the crime, there
23 may be background information concerning
24 mental health problems, addictions and that
25 type of thing.

1 If that evidence is present, the court
2 would instruct you that you have to give
3 meaningful consideration to those mitigating
4 circumstances in depending what the
5 appropriate sentence would be.

6 You could follow and would follow that
7 instruction?

8 A. I would.

9 Q. You would give meaningful consideration to
10 that?

11 A. Yes.

12 Q. You understand, again, that the defendant
13 is not required to prove anything at all?

14 A. Yes.

15 Q. You can't hold that against the defendant?

16 A. Right.

17 Q. And you would not, is that correct?

18 A. Correct.

19 Q. In fact, if the evidence -- if the record
20 didn't contain any mitigating circumstances,
21 it still would not prevent the jury from
22 returning a life imprisonment without the
23 possibility of parole because you have that
24 right for no reason whatsoever.

25 A. Right.

1 Q. Do you understand that?

2 A. I do.

3 Q. That's again a choice that you have to
4 make?

5 A. Yes.

6 Q. It is my understanding that you don't have
7 any predetermination, that you would make that
8 choice at the appropriate time when the court
9 had instructed you to evaluate a given case,
10 and not before?

11 A. Yes.

12 Q. Do you understand that what we've talked
13 about here today absolutely doesn't apply to
14 anything specifically about Mr. Dickerson
15 because we haven't had a trial yet?

16 A. Yes.

17 THE COURT: Plaintiff answer any
18 questions that the attorneys may have.

19 JUROR NUMBER 306: Okay.

20 VOIR DIRE EXAMINATION

21 BY BRUCE DURANT:

22 Q. Good morning, Ms. Szivak. My name is
23 Bruce Durant. I'm the Deputy Solicitor and
24 this is Scarlet Wilson, Solicitor, and
25 Rutledge Durant. We will be trying this case

1 on behalf of the State. I have heard your
2 answers to Judge Dennis' questions and I will
3 try not to be repetitive. There are just a
4 couple of things that I want to be clear
5 about.

6 I understand from reading your
7 questionnaire that you probably are, on the
8 philosophical spectrum between anti-death
9 penalty on one end and the pro-death penalty
10 on the other, you probably are more towards
11 the anti-death penalty side.

12 A. Uh, -- I don't like the idea of it but
13 socially I understand the use for it.

14 Q. That's quite all right. Certainly
15 everybody has their own opinions of something
16 like that, but we need to understand -- what
17 Judge Dennis needs to understand is, if in the
18 appropriate case -- assuming that we get to
19 that point in the trial -- where the defendant
20 has been found guilty of murder. It's a
21 malice murder, it's not a situation of self-
22 defense or involuntary manslaughter or heat-
23 of-passion or anything like that. We're
24 talking about an intentional killing.

25 A. (Affirmative nod).

1 Q. A killing that was meant to occur, that we
2 got the right guy, all of that.

3 A. (Affirmative nod).

4 Q. He's found guilty, that there is no
5 question about all of that.

6 A. Okay.

7 Q. The question is, when you get to the
8 second phase of the trial and the jury,
9 assuming that they find an aggravating
10 circumstance, has that opinion that Judge
11 Dennis has been telling you about.

12 A. Right.

13 Q. My question is, if those are your two
14 options as a juror, given the instruction that
15 Judge Dennis will give you, is there ever a
16 scenario where you would vote for the death
17 penalty as opposed to life imprisonment
18 without the possibility of parole?

19 A. Well, based on what was explained to me, I
20 didn't realize that there was a difference
21 between the aggravation and the mitigation
22 topic. I think that it would definitely
23 depend on those which way that I would go.

24 Q. Okay.

25 A. Because I don't know that I -- I think it

1 would be very case-specific, what I would say.

2 Q. I understand that and certainly I think
3 you would want to hear the aggravating -- what
4 you're saying is that you'd like to hear the
5 aggravating circumstances, that you'd like to
6 hear the mitigating circumstances?

7 A. Probably that, yes.

8 Q. And then make your decision based -- after
9 having heard all of that?

10 A. (Affirmative nod).

11 Q. Assuming that there were no -- that there
12 were just aggravating circumstances and the
13 defendant decided to present no mitigating
14 circumstances, just wanted to ask for mercy,
15 could you do that?

16 A. I could.

17 Q. Okay. And when it gets right down to it
18 and it was the collective, once again subject
19 to the Judge's instruction, decision of the
20 jury that the death penalty was the
21 appropriate sentence, could you actually sign
22 your name to the verdict form requiring
23 someone to be put to death?

24 A. (Affirmative nod), I could.

25 BRUCE DURANT: I don't think that

1 I have any other questions. Could you please
2 answer any questions that Mr. Bloom may have.

3 MR. BLOOM: Mr. Bloom.

4 VOIR DIRE EXAMINATION

5 BY MR. BLOOM:

6 Q. Good morning, Ms. Szivak. My name is Jeff
7 Bloom. How are you today?

8 A. Very good.

9 Q. Good. My name is Jeff Bloom and along
10 with Andrew Carroll, we represent William
11 Dickerson. I just have a few followup
12 questions from what Judge Dennis asked you,
13 and I will try not to repeat the questions --
14 but you understand that it is kind of
15 important?

16 A. I absolutely do understand.

17 Q. And this is the only time that we get to
18 talk to you, right?

19 A. (Affirmative nod).

20 Q. Okay. Thank you. Let me start, I guess,
21 -- I was writing to write down, to keep up
22 with you and I think you told Mr. Durant that
23 you said 'I don't' -- that you have your
24 opinion on the death, 'I don't like the idea
25 of it but socially I understand the use for

1 it.'

2 A. Right.

3 Q. Could you just explain that for me in your
4 own words?

5 A. Morally, I just don't like the idea of my
6 choosing someone else's death but I understand
7 that there are social aspects that might cause
8 or necessitate the death penalty because of
9 the actions people have taken.

10 Q. Okay.

11 A. So it is more -- personally, I don't know
12 if I would like deciding that but I understand
13 that I am part of society and I might be
14 called upon to do that.

15 Q. Okay. All right. Now, next let me ask
16 you, and I think the solicitor did this rather
17 well but I want to make sure that I understood
18 your answer.

19 A. Okay.

20 Q. You responded to him that you would also
21 want to hear mitigating circumstances and
22 aggravating circumstances?

23 A. Yes.

24 Q. I just wondered if we were talking about
25 the same things, because this is new to you, I

1 take it?

2 A. It is.

3 Q. Have you ever served on a jury, any kind
4 of jury duty?

5 A. I have not.

6 Q. First time?

7 A. Yes.

8 Q. That's okay, don't be nervous.

9 A. (Laughs).

10 Q. I was nervous starting Monday but we're
11 all doing fine now. Aggravating, if I could
12 just use a simple explanation is usually
13 murder and something else, like a murder and
14 armed robbery, a murder and burglary or murder
15 of a child. Do you understand that?

16 A. Yes.

17 Q. So it is murder and something else that
18 supports the death penalty. If that's what
19 the State presents and the jury hears that, I
20 take it that you would be open and consider
21 that and discuss with your fellow jurors that
22 type evidence.

23 A. Yes.

24 Q. Mitigating evidence, and let's just define
25 that term. I think Judge Dennis told you some

1 of that. It can often be stuff that has
2 nothing to do with the facts of the crime. It
3 can be something such as how a person's
4 childhood or how they were raised. Is that
5 something that you can give meaningful
6 consideration to?

7 A. Yes.

8 Q. Because you understand that some people
9 say, 'You know, I could look at the facts of
10 the crime but what happened in their childhood
11 doesn't matter to me.' I take it that is not
12 your ---

13 A. No, I feel very strongly about social
14 aspects.

15 Q. Social aspects?

16 A. (Affirmative nod).

17 Q. And it could be other things such as drug
18 addiction. Is that something that you can
19 give meaningful consideration to?

20 A. Yes.

21 Q. Mental health issues?

22 A. Yes.

23 Q. And you could be open to considering all
24 that type of evidence before you made your own
25 moral, individualized choice?

1 A. Yes.

2 Q. Next, I want to ask you, ma'am, as Judge
3 Dennis told you and I think the Solicitor,
4 sometimes a jury may disregard that evidence
5 or there would be no evidence and jurors are
6 supposed to also consider a life without
7 parole verdict as a possibility, as an option,
8 for any reason, for no reason, or as a simply
9 act of mercy. If that is an instruction that
10 the Judge gave you, one that you feel you
11 could follow?

12 A. Yes.

13 Q. Okay. Lastly, I want to ask you, ma'am,
14 and I think Judge Dennis explained this well,
15 too, but I want to make sure that I understand
16 your answers, too. You understand that Judge
17 Dennis would never order you to find the death
18 penalty?

19 A. Yes.

20 Q. That in fact his instructions to you would
21 be that the law does not ever require a death
22 penalty?

23 A. Yes.

24 Q. So, for example, even if a jury found A, B
25 and C, that doesn't automatically mean that

1 the jury has to vote for death. Do you
2 understand that?

3 A. Okay, (affirmative nod).

4 Q. It is always the juror's reasoned moral
5 judgment or moral, individualized choice.

6 That is what the law is. Okay?

7 A. (Affirmative nod), Okay.

8 Q. Is that something that you could do, make
9 you own moral, individualized choice?

10 A. Yes.

11 Q. And if you were on a jury where eleven
12 jurors were voting one way and you were voting
13 another, you're not just going to say, 'My
14 goodness, it's late. I'm hungry. I am going
15 to go along to get along. I am going to vote
16 with you'all'?

17 A. I am not ---

18 Q. You are not going to give up your moral,
19 individualized choice?

20 A. I am not.

21 Q. You didn't strike me as that but you know
22 that I have to ask?

23 A. (Affirmative nod), absolutely.

24 Q. All right. And you would ask those eleven
25 jurors to respect your vote ---

1 A. Yes.

2 Q. --- just as you would respect theirs?

3 A. Yes.

4 Q. And if the flip side were true, if you
5 with the eleven and there is a juror in making
6 his or her own moral, individualized choice,
7 you would respect that juror's choice?

8 A. Absolutely.

9 Q. You'd ask them to respect yours?

10 A. Yes.

11 Q. You wouldn't make them give it up just to
12 go along with the eleven?

13 A. No.

14 MR. BLOOM: Thank you, ma'am.

15 JUROR NUMBER 306: You're welcome.

16 THE COURT: Any additional
17 questions, Mr. Durant?

18 BRUCE DURANT: No, Your Honor.

19 THE COURT: Ma'am, if you will step
20 out, we will be with you momentarily.

21 (JUROR NUMBER 306 EXITS COURTROOM)

22 THE COURT: The court thinks that
23 she is qualified. Any objection from the
24 State?

25 BRUCE DURANT: I think she's

1 qualified.

2 MR. BLOOM: No objection, Your
3 Honor.

4 THE COURT: Bring her in, please.

5 (JUROR NUMBER 306 ENTERS COURTROOM)

6 THE COURT: Thank you, Ms. Szivak.
7 Thank you very much, and I appreciate your
8 patience. You've been found to be qualified
9 to be a member of the panel from which we will
10 select our jury.

11 We hopefully will do that on Thursday
12 morning at 9:30. That will be done in this
13 courtroom. You need to call the number that
14 you were given, tonight after 6:00, and follow
15 the instructions for the Dickerson jury panel.

16 There may be some other instructions,
17 probably are going to be panels -- Panel
18 Number Eleven and Panel Number Twelve will
19 have to do certain things but that doesn't
20 apply to you.

21 JUROR NUMBER 306: Okay.

22 THE COURT: Follow the instruction
23 that says the Dickerson jury panel needs to --
24 and it will probably say to report at 9:30.

25 JUROR NUMBER 306: Call that tonight?

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1 THE COURT: Yes, after 6:00
2 tonight. And it may say call back tomorrow
3 night.

4 JUROR NUMBER 306: Okay.

5 THE COURT: Because if things don't
6 go on progress as we anticipate, we may have
7 to push that up some. Anyway, when you are
8 told to come, just come and come directly to
9 this courtroom. We will select a jury.
10 Obviously be prepared to stay if you're
11 selected on the jury because we will start the
12 trial at that time.

13 JUROR NUMBER 306: Okay.

14 THE COURT: Until then, please
15 remember that until you are dismissed that you
16 are not at liberty to talk about this case
17 with anyone or let anyone talk with you about
18 it or talk about it in your presence.

19 Also, continue to not read anything
20 about it or to watch any news programs. Have
21 a great day. Thank you again for your
22 patience.

23 (JUROR NUMBER 306 EXITS COURTROOM)

24 THE COURT: Mr. White, has
25 everybody had a chance to glance through his

1 questionnaire?

2 SOLICITOR WILSON: Yes, sir.

3 (JUROR NUMBER 398 ENTERS COURTROOM)

4 THE COURT: Hello, Mr. White. How
5 are you?

6 JUROR NUMBER 398: Doing all right.

7 THE COURT: Mr. White, we are going
8 to continue the process that we started on
9 Friday. I have some questions that I need to
10 ask of you and the attorneys may have some
11 questions, as well. All we ask is that you
12 truthfully respond to those questions, that
13 you completely respond to them. I would
14 remind you in that connection that you are
15 still under oath. Okay?

16 JUROR NUMBER 398: Okay.

17 DAVID E. WHITE, being duly sworn to
18 tell the truth, the whole truth and nothing
19 but the truth, testified, as follows:

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. Would you state your full name for the
23 record, please?

24 A. David Emmanuel White.

25 Q. Thank you, sir. Mr. White, Friday I gave

1 you a list of a number of persons. I failed
2 to mention two names that I need to ask you
3 about. Are you related by blood or marriage,
4 have any business dealings with or socially or
5 casually acquainted with or have any dealings
6 with a Jeff Osborne or Matt Casey?

7 A. No.

8 Q. You were given a sheet when you came in,
9 Mr. White, that lists three types of jurors.
10 Have you had a chance to read over that sheet?

11 A. Yes.

12 Q. Which type most accurately describes you?

13 A. I am torn between type three and type one.

14 Q. Okay. What do you mean by that?

15 A. Well, I might be more leaning towards type
16 one and only a few cases would be type three.

17 Well, I guess I am mostly a type three but ---

18 Q. All right.

19 A. --- I lean towards a type one in most
20 cases.

21 Q. Well, let me say something because I read
22 the form that you completed, and thank you
23 very much for that.

24 A. Okay.

25 Q. I just need to ask you because there seems

1 to be something, when you say type three, it
2 says (reading): "When someone is convicted of
3 a cold-blooded and premeditated murder,
4 without valid reason, he or she should without
5 a doubt receive the death penalty..." -- and
6 then it goes on to say, "...with public
7 display to the family of the victim and anyone
8 else of adult age who wishes to see it."

9 A. Yes.

10 Q. Obviously when we are talking about which
11 type of a juror we're talking about, that type
12 of juror has just made a decision in a case
13 involving murder, which is with malice
14 aforethought, ---

15 A. Yes.

16 Q. --- and you said premeditated. They
17 intended to kill somebody, that there wasn't
18 any reason for killing them, they just
19 intended to do it, it was an evil act that
20 they committed, they got the right person, no
21 self-defense, no accident, that's the person,
22 they got the person who did it.

23 A. Okay.

24 Q. In that situation, are you a type one or a
25 type three?

1 A. That would be a type one.

2 Q. Just because they are convicted of murder,
3 of the intentional killing of somebody, then
4 the only sentence that you could consider is a
5 death sentence?

6 A. Yes.

7 Q. As you said, you think it ought to be
8 carried out publicly?

9 A. Yeah, to some extent. Yes.

10 Q. And that's your strong feeling?

11 A. Yes.

12 Q. You can't think of any circumstance right
13 now where a person who is convicted of murder,
14 that is the intentional killing of somebody,
15 one as I described, and there would be
16 aggravating circumstances -- because in order
17 for a jury to consider it, it's got to be more
18 than just a murder, that the jury would to
19 determine and that jury would decide that, can
20 you think of any circumstances ---

21 A. Only circumstances like if ---

22 Q. Let me finish.

23 A. Okay, go ahead.

24 Q. --- where a death sentence wouldn't be the
25 sentence but life imprisonment without the

1 possibility of parole would be?

2 A. Only the situation might be -- well, if
3 they intended -- if it got to the point where
4 it happened, where they intended to maybe hurt
5 them really bad and it turned out that the
6 person wound up dead, in a situation maybe
7 like that. But in a situation where they
8 intended to kill them, if that was the intent,
9 yes.

10 THE COURT: Questions?

11 MR. BLOOM: May it please the
12 court?

13 THE COURT: Yes, sir.

14 VOIR DIRE EXAMINATION

15 BY MR. BLOOM:

16 Q. Mr. White, how are you this morning?

17 A. Good.

18 Q. My name is Jeff Bloom and along with
19 Andrew Carroll, we represent William
20 Dickerson. I just have a few followup
21 questions and, as you know, there are no right
22 or wrong answers. We just need your honest
23 opinions. As Judge Dennis has said, we
24 appreciate your honesty so far. Okay?

25 A. Yes.

1 Q. I just want to ask you a few follow-up
2 questions. Let's make sure that -- Judge
3 Dennis defined murder and I want to make sure
4 that I understand your answer, make sure that
5 we're talking about the same term.

6 First, murder is not accident, no self-
7 defense, not manslaughter where you might
8 catch someone with someone, ---

9 A. Right.

10 Q. --- and it's not insanity. It is that a
11 person did it, intended to do it, with malice
12 -- which is where they have a cold, depraved
13 heart, -- they got the right person beyond a
14 reasonable doubt. In that situation, you have
15 strong beliefs that that person ought to get
16 the death penalty?

17 A. Yes.

18 Q. In each and every case?

19 A. Yes.

20 Q. I think your last comment to the judge was
21 that if a person didn't intend to do -- but if
22 someone was found guilty of murder, then that
23 jury has already found that person acted with
24 malice. That's part of it, an evil heart,
25 cold-bloodied.

1 A. Yes, sir.

2 Q. That's where you ---

3 A. --- would give the death penalty. Yes.

4 Q. We appreciate your honesty. Even if Judge
5 Dennis gave you instructions to wait until you
6 heard other evidence for the -- whether it was
7 for the death penalty or whether it was other
8 evidence for life imprisonment without the
9 possibility of parole, for Mr. White, you've
10 already made that decision once you'd found
11 them guilty of malice murder ---

12 A. Yeah, (affirmative nod).

13 Q. --- in each and every case?

14 A. Yes.

15 Q. And I think on your questionnaire that you
16 also candidly indicted that you have a strong
17 belief that the execution ought to be carried
18 out in a public display?

19 A. In some ---

20 Q. So that other adults could see and
21 understand the ---

22 A. Yeah.

23 Q. That the victim's family ought to be able
24 to witness that publicly, so that they can
25 have their sense of ---

1 A. Yeah.

2 MR. BLOOM: Thank you very much,
3 sir.

4 THE COURT: Questions, Solicitor?

5 BRUCE DURANT: I will be very
6 brief.

7 VOIR DIRE EXAMINATION

8 BY BRUCE DURANT:

9 Q. Just to be clear, generally these cases --
10 as the Judge explained it, there's going to be
11 a phase where guilt or innocence is determined
12 and then there would be a phase, assuming that
13 the jury found a defendant guilty, a second
14 phase to determine the sentence.

15 A. Okay.

16 Q. Is it fair to say that if you in the first
17 phase found a defendant guilty of malice
18 murder, and I'm not talking about any of the
19 other stuff, you would always impose the death
20 sentence?

21 A. Yes.

22 Q. You are not interested in knowing about
23 any mitigating circumstances like his
24 background, how he was raised or mental health
25 issues or anything like that? You're not

1 interested in hearing any of that sort of
2 stuff about a defendant?

3 A. Well, a mental health issue, would that be
4 an insanity situation and not a ---

5 Q. Not necessarily. I don't propose to be
6 the judge charging the law but there can be
7 mental health issues that don't rise to the
8 level of insanity. Insanity, in the legal
9 sense means that it is something that is
10 actually a defense to a crime. There are
11 varying degrees of mental states. You know,
12 mental health issues, drug abuse issues,
13 abused as a child. Would you be not be
14 interested in any of those kinds of things
15 about the defendant before you made up your
16 mind in a case like this?

17 A. (Pause) -- well, to a certain extent. I
18 don't think I would ---

19 Q. That's fine, either way that you go. We
20 just need to know which way.

21 A. Well, being that there was -- that it was
22 judged in that way, judged that it was cold-
23 bloodied murder, no.

24 Q. Okay, so you wouldn't ---

25 A. I wouldn't apply -- that wouldn't apply in

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1 that case, no.

2 BRUCE DURANT: Thank you. I have
3 no further questions.

4 THE COURT: Thank you very much,
5 Mr. White. I am going to excuse you from
6 further participate in this dispute. You
7 don't have to call or come back for any of
8 this proceeding on the criminal side. You
9 need to call the number after 6:00 tonight and
10 there may be a message concerning the jury
11 panel and that will apply to you, but if it
12 should say the Dickerson panel or Panel Number
13 Ten or Panel Number Eleven, that is not you.
14 I think we put "the civil jury panel" on the
15 message, so just follow that instruction.
16 Thank you, sir, have a good day.

17 (JUROR NUMBER 398 EXITS COURTROOM)

18 THE COURT: Any objection to
19 disqualifying Mr. White, from the State?

20 BRUCE DURANT: No, sir.

21 THE COURT: Any objection from the
22 defendant?

23 MR. BLOOM: No, sir.

24 THE COURT: Thank you. I kind of
25 anticipated on that one, tried to expedite a

1 little bit on that one.

2 Let's move into the next panel. Does
3 anybody need a break for a minute? Okay, we
4 will -- you'all, I understand what it is to be
5 a lawyer and I understand why *voir dire* is
6 important to lawyers. When I was a lawyer, I
7 wanted to do it -- not just in these, I wanted
8 to do it in all of them. The reason is, we
9 all know that there is a psychology behind it,
10 we get to establish our rapport. But that's
11 what is happening and we need to stop asking -
12 - Mr. Bloom, I am going to ask you to do me a
13 favor. I want you to ask questions and not
14 make arguments with your questions. You're
15 talking in -- you're doing a great job, no
16 problem, but I am just going to ask that you
17 limit it to questions and not make statements
18 about -- you know, talking about 'just general
19 discussion' with them. Please do that for me,
20 if you will. I would ask that you'all do the
21 same thing on the State's side.

22 Just ask the questions. I mean, we
23 don't have to ask the same question three
24 times to get the same answer. If you have
25 some reason -- having said that, if there is

1 something about the witness' questionnaire or
2 something that they've said that triggers,
3 'Wait a minute, this witness is not being
4 consistent here' , no problem. I have no
5 problem with that. But we don't need to have
6 somebody confirm three times that they are
7 doing the same thing.

8 Let me further define it. The lady
9 that was here before, Ms. Szivak, I think if I
10 am not mistaken -- she has a master's degree.
11 I think she understands what her answers are.
12 We don't have to ask those people those
13 questions about that -- to which there is an
14 obvious answer to the question.

15 I just ask you to do that to help
16 move this case forward. That's all that I am
17 asking. I am not asking that you restrict
18 what you need to find out at all. I'm asking
19 you think about that. Thank you all. We'll
20 take about five minutes.

21 (BRIEF RECESS)

22 (DEFENDANT PRESENT)

23 THE COURT: Let the record reflect
24 that Mr. Dickerson is present. We are all bad
25 about talking and not communicating. Let me

1 give you an example of one of the things that
2 I thought, 'Come on, Mr. Bloom.'

3 I understand the question and I
4 overruled the objection. In fact, I didn't
5 realize that there is a *Bennett* case that
6 existed that says that creates a major
7 problem. I read that last night, I'd guess
8 correctly so I was delighted to see that.

9 That *Bennett* case talked about that
10 juror polling because everybody wanted to go
11 home. Fortunately, it was in the sense that
12 they didn't have to retry both phases, because
13 it said that it didn't contaminate the first
14 phase but, rather, the second phase where they
15 were deciding the sentence. But you don't
16 need to ask whether they are going to respond
17 because that's -- that one, borderline, is in
18 violation.

19 Don't hear me as saying that I would
20 give an *Allen* charge. I've made it in the
21 first phase but I doubt that I would ever give
22 an *Allen* charge in the second phase, for lots
23 of reasons that are articulated.

24 You have already asked every single
25 jury in theory, that's on your panels, whether

1 they would fold. That's all you're interested
2 in. You don't need to ask them whether they
3 would respect somebody else because that's not
4 -- that could be misinterpreted. I think.

5 That is not what that case says. It
6 doesn't fault the other jurors for trying to
7 compel the person to agree. So you've covered
8 it when you say 'you would respect their
9 opinions such as you would expect them to
10 respect yours.' Then you ask a question that
11 says what you've gotten in the answer. That's
12 what I am talking about. If you could cut
13 down on those duplications. That's gotten --
14 you've obtained the same information that the
15 previous question gave to you, and I don't
16 think it is really of any use to you.

17 Whether they respect their opinion or
18 not, that's not important. You just don't want
19 that person to fold, to give up because --
20 something for which is no reason. That's how
21 I see that, because otherwise if there's a
22 reason, it doesn't stop them from
23 reconsidering their position.

24 That's not what your question says,
25 because it really is that you're giving up a

1 position for no real reason at all. I think
2 that's legitimate. That's a legitimate,
3 that's a legitimate challenge.

4 But it should never imply that they
5 shouldn't reconsider their position, so that's
6 where we get into that area where I think the
7 solicitor was getting to that -- there's
8 always -- that's part of the jury process,
9 that's part of the deliberative process, as I
10 understand it.

11 So that's an example, not to be
12 picking or anything but to be specific about
13 what I'm talking about.

14 Thank you very much, Mr. Bloom, --
15 and I'm not picking on you, there's been
16 others on both side of the ledger. You could
17 say, 'Judge, you've done the same thing.' So
18 I appreciate that and I am going to try to be
19 conscious about that, too.

20 Okay, now we move to Panel Number
21 Six. The first one that we have is Mr. Hall,
22 son of the weatherman -- and I don't mean the
23 weatherman of my era. Do any of you remember
24 Charlie, his daddy.

25 SOLICITOR WILSON: Oh, definitely.

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1 BRUCE DURANT: I was wondering if
2 he was related to ---

3 THE COURT: He is, I asked him when
4 he stood there. Do you know that he learned
5 to write backwards because he had to, the
6 screen would reverse him.

7 (JUROR NUMBER 124 ENTERS COURTROOM)

8 THE COURT: We were just talking
9 about your father.

10 JUROR NUMBER 124: Oh, good, sir.

11 Yes.

12 THE COURT: Good afternoon, Mr.
13 Hall.

14 JUROR NUMBER 124: Hi.

15 THE COURT: How are you?

16 JUROR NUMBER 124: I'm doing
17 wonderful. Thank you.

18 THE COURT: Thank you for your
19 patience. I know you've been here awhile.
20 These things run a little longer sometimes and
21 we apologize but that is just sort of the
22 nature of the process.

23 JUROR NUMBER 124: I understand.

24 THE COURT: Thank you for your
25 patience. We are going to continue the

1 process that we started on Friday. At that
2 time, as you will recall, we were asking you
3 some questions and those question, you'll
4 remember, really don't have any correct
5 answers.

6 JUROR NUMBER 124: I understand.

7 THE COURT: They are questions
8 really to help you and to help us decide
9 whether you can be a fair and impartial juror
10 in this case. That is the sole purpose. They
11 are not decided to try to invade your privacy
12 and they are certainly not designed to try to
13 change your philosophy or anything else,
14 you're entitled to that philosophy.

15 JUROR NUMBER 124: I understand, Your
16 Honor.

17 THE COURT: So as a result, I am
18 going to be asking you some questions and the
19 attorneys will probably ask you some
20 questions. All we ask is that you respond
21 truthfully to those questions and that you
22 give a complete answer. Will you do that?

23 JUROR NUMBER 124: Yes, sir, I will.

24 THE COURT: I would remind you in
25 that regard that you are still under oath in

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1 this matter. Okay?

2 JUROR NUMBER 124: Yes.

3 CHARLES HALL, being duly sworn to
4 tell the truth, the whole truth and nothing
5 but the truth, testified, as follows:

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. Since we were last together, have you
9 talked with anyone or permitted anyone to talk
10 with you or talk about this case in your
11 presence?

12 A. No, sir, I have not.

13 Q. Have you watched any news programs or read
14 any newspaper accounts?

15 A. No, sir, I have not.

16 Q. On Friday I gave you a list of a number of
17 persons. I failed to mention two names that I
18 need to ask you about. Are you related by
19 blood or marriage, have any business dealings
20 with or socially or casually acquainted with
21 or have any dealings with Jeff Osborne or Matt
22 Casey?

23 A. I don't know either one of those people.

24 Q. You were given a sheet when you came in
25 that sets forth three types of jurors, have

1 you had a opportunity to review that sheet?

2 A. I have, Your Honor.

3 Q. Which type most accurately describes you?

4 A. I am a type three.

5 Q. A type three juror, Mr. Hall, as I
6 understand is that juror who if empaneled in a
7 case in which the jury had as a charge to
8 determine the appropriate punishment for
9 murder -- do you understand that?

10 A. Yes.

11 Q. --- and basically, given the type of how
12 jury and how it was established, that jury
13 would have concluded that the person had
14 already convicted -- that is, the State had
15 proved that person's guilt as to the crime of
16 murder.

17 Murder -- you may or may not know, murder
18 is the intentional killing of someone with
19 malice. It is not an accident, there is no
20 self-defense, self-defense is not involved,
21 it's not manslaughter where somebody is
22 provoked into taking some action; this is an
23 intentional killing, somebody intended to kill
24 somebody, they went about it and they
25 performed it.

1 A. Yes, sir.

2 Q. As I understand, type three at that point,
3 at that precise point, and that's -- you now
4 would go into the second phase where the jury
5 would hear evidence concerning what the
6 appropriate sentence would be or should.

7 At that moment, though, before starting that,
8 as a type three juror, you would not have any
9 predetermination or idea whether your sentence
10 would be life imprisonment without the
11 possibility of parole or the death sentence;
12 is that correct?

13 A. That's correct, Your Honor.

14 Q. Because you would need to hear all of the
15 circumstances before you could make that
16 determination?

17 A. I believe I'd need to hear all the
18 circumstances; yes, sir.

19 Q. All of them?

20 A. Any circumstance, (affirmative nod).

21 Q. Because you would have already heard all
22 the circumstances concerning the crime, you
23 understand that?

24 A. Yes, sir.

25 Q. You may hear additional circumstances

1 about the crime, that is the effect on the
2 person and a number of other things during the
3 second phase, but the crime itself you would
4 have already established that, you understand,
5 beyond a reasonable doubt?

6 A. Yes.

7 Q. But you still wouldn't have any pre-
8 decision as to what the appropriate sentence
9 would be?

10 A. No, sir, I would not.

11 Q. If you were in that second phase, there
12 would be something that had to be done first
13 before you could even consider a death
14 sentence, because normally in this state, as
15 you probably know, it is not common for a jury
16 to participate in sentencing in a murder
17 trial.

18 A. Yes, sir.

19 Q. You understand?

20 A. Yes, sir.

21 Q. It is only in limited circumstances
22 because typically when we have a murder trial
23 a jury hears the case and decides whether or
24 not the State has proven the charge, but once
25 the jury determines that they established that

1 person committed the crime, then the sentence
2 is by the court, the judge, the presiding
3 judge would impose the sentence. - Do you
4 understand that?

5 A. Yes, sir.

6 Q. Without the jury's involvement.

7 A. Um-humm, (affirmative nod).

8 Q. And in that situation, the presiding judge
9 doesn't even have as an option for the
10 sentence of the offense of murder a death
11 sentence. Do you understand that?

12 A. Um-humm, (affirmative nod).

13 Q. The only -- the presiding judge could
14 sentence to life imprisonment without the
15 possibility of parole but they are not limited
16 to that either for a murder. Do you
17 understand that?

18 A. Yes, sir.

19 Q. It is only when a jury is empaneled and
20 that jury, in the second phase, has considered
21 the evidence and determined something that the
22 State has to prove very specifically in the
23 second phase. They have to prove the
24 existence of an aggravating circumstance.
25 That is something that the law provides, and I

1 would define it for you if you were on the
2 jury, but an aggravating circumstance is a
3 circumstance that the law says separates this
4 murder from any other murder, it elevates it
5 because of the existence of that circumstance.

6 A. Um-humm.

7 Q. Sometimes it may be the killing of a
8 police officer, it may be the killing of a
9 child. There are a number of reasons
10 enumerated that allow the jury to be empaneled
11 to make a determination. The jury has to
12 conclude beyond a reasonable doubt from the
13 evidence that that person, that that
14 circumstance was present. Do you understand?

15 A. Yes, sir.

16 Q. Assuming then that that was established,
17 then the jury would then consider whether life
18 imprisonment without the possibility of parole
19 or the death sentence; do you understand that?

20 A. Yes, sir, I understand that.

21 Q. It is my understanding that you would have
22 -- you, being on that jury, would first have
23 to make that determination and then you'd have
24 to hear all the circumstances before you could
25 decide which one was appropriate?

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1 A. That's true, Your Honor. Yes.

2 Q. Okay, let's talk about that. You
3 understand that jury's function is to
4 determine the truth from the evidence, do you
5 understand that?

6 A. Um-humm, (affirmative nod).

7 Q. You understand that?

8 A. Yes, sir.

9 Q. That would be the sole job of the jury and
10 no one else, certainly not the judge has no
11 responsibility in making that kind of
12 decision.

13 A. I understand.

14 Q. You also understand that it is the court's
15 responsibility, a judge's responsibility to
16 give you the law and that it would be your
17 duty as a judge, because you would be a judge
18 of the facts, to accept the law as the judge
19 gives you and apply it fairly and impartially?

20 A. Yes, sir.

21 Q. And that part of the oath that you would
22 take as a juror, you would commit that you
23 would at the appropriate time apply your
24 common sense, your sense of logic and
25 reasoning in analyzing the evidence and decide

1 what you believe to be the truth and, then
2 once making that decision, you further promise
3 to take the law and apply it fairly and
4 impartially. You would do that if you were on
5 a jury?

6 A. I would, Your Honor.

7 Q. That means also, Mr. Hall, and I am not
8 suggesting that you would but if you should
9 hear as an instruction -- if you were on a
10 jury and you heard some principle of law that
11 caused you to think, 'You know, that's not
12 what I thought the law was' or 'that law needs
13 to be changed' or 'I don't agree with that
14 law', that is certainly your right to feel
15 that way -- or you could say, 'that's just
16 against everything that I was taught to
17 believe.' Okay?

18 A. (No verbal response).

19 Q. The law says and this process says and
20 your oath says that you've promised, will have
21 promised, to set aside all those feelings and
22 take the law notwithstanding those feelings.
23 You would do that?

24 A. Absolutely, Your Honor.

25 Q. Okay. One the principle of law that I

1 would charge if you were involved in a
2 criminal dispute -- and, please understand
3 that what we're talking about here is not
4 specifically about Mr. Dickerson because
5 there's been no trial for that one.

6 A. Yes, sir.

7 Q. Do you understand that?

8 A. I do.

9 Q. But as I mentioned on Friday he's been
10 accused of several criminal offense, and of
11 course one of them the principles that we have
12 already talked about is that he is presumed to
13 be innocent until proven guilty. You didn't
14 have any problem with that principle of law,
15 as I recall?

16 A. No, sir, I don't.

17 Q. Of course, that's an active presumption.
18 That means that a person such as Mr.
19 Dickerson, in this country and in this state,
20 we have to actively presume that they are
21 innocent. I assume today that as you look at
22 Mr. Dickerson that he is innocent as far as
23 you are concerned?

24 A. Yes, sir, he is.

25 Q. Of course, that position cannot change

1 until you, if you were on a jury, were
2 persuaded beyond a reasonable doubt of that
3 person's guilt. Do you understand that?

4 A. Yes, sir.

5 Q. Let's talk about that. If you were on a
6 criminal dispute -- of course, the State --
7 part of the instruction would be that the
8 State is the only party that has to prove
9 anything. You understand that?

10 A. Yes, sir.

11 Q. And the person who is accused of
12 committing the criminal offense has no
13 obligation to prove anything, to explain
14 anything. They certainly don't have to prove
15 their innocence. Do you understand that?

16 A. Yes, sir.

17 Q. In fact, the jury should never look to the
18 person accused to establish anything at all,
19 because they have no responsibility.

20 A. Um-humm, (affirmative nod).

21 Q. And if they did, they would have violated
22 the oath. Would you have any problem honoring
23 that?

24 A. No, sir, I wouldn't.

25 Q. In fact, they don't even have to present

1 evidence. If they chose not to, the jury
2 can't -- then persons accused wouldn't even
3 have to testify and the jury would be
4 instructed that they could not use that
5 against that person in any way. You could
6 follow that instruction also.

7 A. Yes, sir, I could.

8 Q. Obviously if you were empaneled in that
9 type of case that we are talking about and you
10 heard the case, you would hear evidence
11 concerning the various charge or charges, and
12 the jury would be instructed to go evaluate
13 the evidence and decide whether they were
14 convinced as to each element of the crime(s)
15 charged.

16 If in your analyses you weren't firmly
17 convinced of one of more, then you would be
18 instructed to return a verdict of not guilty.

19 If you were firmly convinced, the
20 instruction would be to return a verdict of
21 guilty.

22 Am I to understand that you believe that
23 you could at the appropriate time apply your
24 common sense, your sense of logic and reason
25 and analyze the evidence and decide what you

1 believe to be the truth, then apply the law
2 given to you and make a decision as to whether
3 or not each element had been established. If
4 they had been established, each elements
5 established beyond a reasonable doubt you
6 would return a verdict of guilty. Is that
7 correct?

8 A. That's correct, Your Honor. I would.

9 Q. But likewise if you weren't firmly
10 convinced of one or more, would you have any
11 hesitancy returning a verdict of not guilty?

12 A. No, sir, I would not. It's the law, and I
13 would up hold it.

14 Q. Okay. In this type of situation that
15 we've talked about, we've already discussed
16 what would happen if the jury found murder.
17 Of course we know that's -- that is
18 premeditated, with malice aforethought, that
19 they thought about it before, it doesn't have
20 to be any requisite period of time but they
21 intended to do that and they carried it out.
22 Do you understand that?

23 A. Yes, sir.

24 Q. In this case that you've just made that
25 decision, as I understand further being a type

1 three juror you still don't have an opinion as
2 to what the appropriate sentence is?

3 A. No, sir, I don't.

4 Q. As I previously mentioned, you are now
5 going to hear evidence and you're going to
6 have to determine the aggravating
7 circumstance. You would do that, as well?

8 A. Yes, sir. I can.

9 Q. I would further instruct you in that
10 setting, if you were involved in that type of
11 case, that if the jury does not find beyond a
12 reasonable doubt an aggravating circumstance,
13 the only sentence that they could impose is
14 life imprisonment without the possibility of
15 parole, do you understand that?

16 A. I understand that.

17 Q. And you would have no problem following
18 that instruction?

19 A. I would not.

20 Q. I would further instruct in that setting
21 that if the jury concluded that the State had
22 convinced it beyond a reasonable doubt that
23 there were at least one aggravating
24 circumstance, and there may be more, but at
25 least one, that then and only then may they

1 consider a death sentence. Do you understand
2 that?

3 A. Yes, sir.

4 Q. And when I say consider, it means just
5 what I just said. It could -- the court would
6 never instruct you that because you found an
7 aggravating circumstance you must return a
8 death sentence. It simply means that now the
9 jury has the option.

10 A. I understand.

11 Q. And that the jury would have to determine,
12 based on all facts and circumstances whether
13 this particular situation justified a death
14 sentence or a life imprisonment without the
15 possibility of parole. Do you understand
16 that?

17 A. Yes, sir, I understand.

18 Q. You could follow that instruction, as
19 well?

20 A. I could, Your Honor.

21 Q. I would also instruct you that among other
22 things such as aggravating circumstances and
23 circumstances concerning what sentence is
24 appropriate that there may be evidence of
25 mitigating circumstances.

1 Some of those are statutory mitigating
2 circumstances that I would define for you;
3 such as background issues, mental health
4 issues that may have existed, addiction issues
5 that a person may have. A lot of those don't
6 even have anything to do with the crime
7 itself.

8 But the instruction would be that the jury
9 would have to give meaningful consideration to
10 any statutory or nonstatutory mitigating
11 circumstances. You could do that in
12 formulating your sentence, is that correct?

13 A. Yes, sir, I could.

14 Q. And you would honor that instruction?

15 A. I would, Your Honor.

16 Q. I would also instruct you in considering
17 that, assuming you found an aggravating
18 circumstance, as I mentioned you don't have to
19 return a death sentence. In fact, the
20 instruction is there be no mitigating
21 circumstances but the jury still has the right
22 to return a life without parole sentence for
23 no reasons. Do you understand that?

24 A. Yes, sir.

25 Q. And you could consider that as well in

1 making a determination?

2 A. Okay.

3 Q. And it is my understanding that if you
4 were in that situation and had to consider all
5 the evidence -- and, again, remember something
6 that I said initially. The defendant has no
7 burden to prove or disprove anything and that
8 would apply to the mitigating circumstances,
9 as well. Do you understand that?

10 A. Yes, sir.

11 Q. And you wouldn't hold that against the
12 defendant in any way?

13 A. Absolutely not.

14 Q. Okay. But it is my understanding that at
15 that time, then you would be able to apply
16 your common sense, your sense of logic and
17 reason and determine from the facts what you
18 believe to be the truth, take the law as the
19 court had given it to you and make a
20 determination to decide between the death
21 sentence and life imprisonment.

22 A. I would, Your Honor.

23 Q. And whether it is life imprisonment
24 without parole or the death sentence, you
25 don't know because you haven't heard any of

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1 the facts or circumstances?

2 A. No, sir, I have no clue. I don't have my
3 mind made up at that time.

4 Q. And you don't -- you'd have to hear all of
5 it before you could even say which would be --
6 which would apply?

7 A. I would, Your Honor.

8 Q. Okay.

9 THE COURT: Please answer any
10 questions that the attorneys may have.

11 SOLICITOR WILSON: Mr. Hall, I'm
12 Scarlet Wilson, I'm the Solicitor here. This
13 is Bruce Durant and Rutledge Durant and we're
14 the prosecutors in the case, so we will be the
15 ones presenting evidence. I don't have any
16 questions for you. If you would, please
17 answer any questions that Mr. Bloom may have.

18 JUROR NUMBER 124: Okay.

19 VOIR DIRE EXAMINATION

20 BY MR. BLOOM:

21 Q. Good afternoon, Mr. Hall.

22 A. Yes, sir.

23 Q. How are you today, sir?

24 A. I'm fine.

25 Q. My name is Jeff Bloom and along with

1 Andrew Carroll, we represent William
2 Dickerson. I want to thank you for being
3 here. I will try not to repeat anything that
4 the Judge just asked you. I just have a few
5 followup questions from what Judge Dennis
6 asked you.

7 Let me start, though, if we were sitting
8 around and having a cup of coffee and
9 something came on the TV or the news about the
10 death penalty and we turned to have a
11 conversation, what would your opinion about
12 the death penalty be?

13 A. You know, I think my opinion about the
14 death penalty is that in order for anybody to
15 have any kind of input toward a person's life,
16 it's a very serious thing that you have to
17 think about. I have no conviction that I
18 believe in the death penalty or that I don't
19 believe in the death penalty. I believe it's
20 a very serious matter, that every individual
21 matter is very different and very important
22 and there's a lot of things to be considered
23 before a person can say that he believes in
24 the death penalty or doesn't believe in the
25 death penalty.

1 Q. On your questionnaire, I believe that you
2 put that "it is necessary." Can you explain
3 what you mean to me by that?

4 A. I don't remember how the question was
5 answered as far as being necessary. I don't
6 remember writing "necessary".

7 Q. Okay. I may have the wrong questionnaire,
8 if I could just check on that.

9 A. I am not familiar with that question.

10 Q. Well, it's been some time since you filled
11 it out and ---

12 A. Yes, sir, I filled it out within moments
13 after I got it.

14 Q. I understand.

15 THE COURT: The court has it.

16 Do you have it there?

17 MR. BLOOM: Yes, sir, thank you.

18 EXAMINATION CONTINUED

19 BY MR. BLOOM:

20 Q. The question was, "What is your opinion,
21 if any, about the death penalty?" You wrote,
22 "I believe it is necessary." Can you just
23 explain what you mean to me by that?

24 A. I think when I was thinking that, that I
25 believe that some type of capital punishment

1 is necessary in the criminal justice system to
2 make the criminal justice system effective.

3 Q. Of course, you understand that some people
4 are very strong proponents of the death
5 penalty and believe ---

6 A. Yes.

7 Q. --- that it ought to be applied in every
8 case. Do you understand that?

9 A. I understand that.

10 Q. And some people believe that it should be
11 applied. You know, those are kind of the two
12 bookends of ---

13 A. (Affirmative nod), yes, sir.

14 Q. If we were chatting and you and I were
15 talking, where would you fall in kind of that
16 spectrum, do you believe?

17 A. Well, like I said, I am a type three.
18 Every case is different, every circumstance is
19 different, I have no opinion for it or against
20 it until I hear everything that there is to
21 hear about it.

22 A. All right.

23 Q. Do you have a general view as to whether
24 it's imposed too much, not enough, about
25 right, anything in that general area?

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1 A. No, sir, I don't have any opinion about
2 that whatsoever.

3 Q. Okay. Is there anything about your
4 background of law enforcement that brings you
5 to have any view about the death penalty?

6 A. No, sir, I don't believe so. I have a
7 military background, I have a background of
8 law enforcement and if, uh, -- again, every
9 circumstance is different, every individual is
10 different and that requires that you look at
11 everything involved.

12 Q. Certainly, and I appreciate your candor
13 here this morning. You understand that we
14 kind of have to talk ---

15 A. I understand.

16 Q. It's kind of like getting the cart before
17 the horse, ---

18 A. Right, I understand.

19 Q. I notice that you were a deputy sheriff at
20 one point. That was in Texas?

21 A. Yes, it was. Houston, Texas.

22 Q. Did you have any contact with any death
23 penalty cases during your service?

24 A. No, sir, I was pretty much off the road,
25 in the jail.

1 Q. Was that a county jail or ---

2 A. County jail, Harris County. Yes, sir.

3 Q. And you mentioned to me your military
4 experience. Was there anything in that that
5 has you -- that has helped form particular
6 views about the death penalty for you?

7 A. No, sir.

8 Q. And you understand when we are talking
9 about murder, as we define that term, it is
10 not accident, self-defense, insanity, or
11 manslaughter where you catch someone and in
12 the heat-of-passion of the moment. It's where
13 they did it, intended to do it, with malice,
14 an evil heart, and they got the right person
15 beyond a reasonable doubt. There are some
16 folks that say that 'once that malice murder
17 is proven to me, I am going to vote for death
18 every time.' I take it from your responses --
19 and we have to define the term because some
20 people say, 'Well, golly, I don't know what
21 malice murder is.' I take it, as Judge Dennis
22 has talked to you and you answered him, that
23 you could still, even when finding someone
24 guilty of malice murder, move into another
25 phase and look at all the circumstances?

1 A. I could. Yes, sir.

2 Q. And if I could define the term mitigating
3 circumstances. Sometimes these legal terms
4 that people don't know.

5 A. I understand.

6 Q. A mitigating circumstance may have nothing
7 to do with the facts of the crime. It may be
8 a person's background, childhood, how they
9 were raised, drug addictions. Are those
10 things that you could give meaningful
11 consideration to?

12 A. Absolutely.

13 Q. All right. Finally, sir, I want to ask
14 you if -- if you understood Judge Dennis'
15 preliminary instruction that the law never
16 requires the death penalty. Did you
17 understand that?

18 A. I understood that. Yes, sir.

19 Q. And it is always what the law calls the
20 moral, individualized judgment of that juror.
21 Do you understand that?

22 A. I do.

23 Q. If you were on a jury and eleven jurors
24 were voting one way and you were voting
25 another, after you had heard all the evidence

1 and you had deliberated among your fellow
2 jurors, discussed it and with an open mind
3 listened to their viewpoint and they had
4 listened to yours but you found yourself in
5 that position, could you still make that
6 moral, individualized choice for yourself?

7 A. I could.

8 Q. You wouldn't just pack up your bag and
9 say, 'My goodness, it's late, I'm hungry, it's
10 time to go.' Just fold your tent and go?

11 A. No, sir. You know, my being in this
12 situation has caused me to do a lot of soul
13 searching about possible decisions that I may
14 or may not have to make and I would stand by
15 my own convictions, regardless.

16 Q. You strike me as that person but you know
17 I just have to ask that question.

18 A. I understand.

19 Q. And in that vein, you would want those
20 other jurors to respect your view?

21 A. Absolutely.

22 Q. And you would respect theirs?

23 A. Absolutely.

24 Q. Thank you, sir. And, lastly, if the flip
25 side happened and you were in the eleven to

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1 one, would ---

2 THE COURT: He's answered that.

3 Move on, please.

4 MR. BLOOM: May I ask if he would
5 force a juror ---

6 THE COURT: No, sir, you may not.
7 I just said so.

8 MR. BLOOM: Thank you. Thank you
9 very much, Mr. Hall.

10 THE COURT: Any additional
11 questions?

12 SOLICITOR WILSON: No, sir.

13 THE COURT: Mr. Hall, if you will
14 step out just for a moment, sir.

15 (JUROR NUMBER 124 EXITS COURTROOM)

16 THE COURT: You were asking him --
17 if you want to take out "would you respect
18 their decision" as you said in the previous
19 question, then I would agree with you that
20 you're entitled to ask that. But you asked
21 him, 'Would you respect theirs just as you
22 would want them to respect you?' So he'd
23 answered your question.

24 MR. BLOOM: Yes, sir.

25 THE COURT: That's the reason that

1 I thought he had already answered it.

2 MR. BLOOM: I get it. Thank you.

3 THE COURT: What says the State?

4 SOLICITOR WILSON: Qualified.

5 MR. BLOOM: Qualified.

6 THE COURT: Thank you. Let's bring
7 him in, please.

8 (JUROR NUMBER 124 ENTERS COURTROOM)

9 THE COURT: Mr. Hall, thank you
10 very much, and I appreciate your patience.
11 You've been found to be qualified to be a
12 member of the panel from which we will select
13 our jury.

14 We anticipate that will take place
15 Thursday morning at 9:30, that's hopeful at
16 this point. I would ask you to do me this
17 favor, call the answering machine tonight, the
18 number that you have and follow that
19 instruction. I am hopeful that it will say
20 report on Thursday morning at 9:30. Whatever
21 it says, just follow it and when you are
22 instructed to report, you will come directly
23 to this courtroom and take a seat in the
24 audience.

25 Until then and until you have been

1 dismissed from this case, please remember that
2 you still are not at liberty to discuss this
3 case with anyone or permit anyone to talk with
4 you about it. Also, please continue not to
5 watch any news programs about it or read any
6 news accounts. Have a great day and we'll see
7 you, hopefully, Thursday.

8 JUROR NUMBER 124: Thank you, Your
9 Honor.

10 (JUROR NUMBER 124 EXITS COURTROOM)

11 THE COURT: Okay, Mr. Waterman.
12 Number 330.

13 (JUROR NUMBER 330 ENTERS COURTROOM)

14 THE COURT: Hello, Mr. Waterman.
15 How are you, sir?

16 JUROR NUMBER 330: Good.

17 THE COURT: Sorry, we've run over a
18 little bit but we won't detain you too much
19 longer. We are going to continue the process
20 that we started on Friday. You will recall
21 that we were asking you a number of questions
22 and I mentioned to you that there are no
23 correct answers to any of these questions, they
24 are not designed to challenge any beliefs that
25 you have or any philosophies that you have

1 developed in your life, nor are we trying to
2 invade any privacy.

3 The questions really are designed to
4 help you and to help us make a determination as
5 to whether you can be a fair and impartial
6 judge in this case. Okay?

7 JUROR NUMBER 330: Yes, sir.

8 THE COURT: The only thing that we
9 ask is that you fully respond. I will have
10 some questions and the attorneys may have some
11 questions; and we ask that you truthfully and
12 completely respond to those questions. Will
13 you do that?

14 JUROR NUMBER 330: Yes, sir.

15 THE COURT: I would remind you in
16 that regard that you are still under oath in
17 this matter. Okay?

18 JUROR NUMBER 330: Okay.

19 GARRETT WATERMAN, being duly sworn to
20 tell the truth, the whole truth and nothing but
21 the truth, testified, as follows:

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q. Since we were together on Friday have you
25 talked with anyone or permitted anyone to talk

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1 with you about this case, sir?

2 A. No, sir.

3 Q. Have you read any newspaper articles or
4 watched any news programs about it on TV?

5 A. No, sir.

6 Q. You remember on Friday that I mentioned to
7 you a number of persons and asked about whether
8 you had any connection to any of those persons.

9 A. Yes, sir.

10 A. I failed to mention two names that I need
11 to ask you about. Are you related by blood or
12 marriage, have any business dealings with or
13 are you socially or casually acquainted or have
14 any dealings with a Jeff Osborne or Matt Casey?

15 A. No, sir.

16 Q. You were given a sheet when you came in
17 that sets forth three types of jurors, have you
18 had a chance to review that sheet?

19 A. Yes, sir.

20 Q. Which type most accurately describes you?

21 A. Type three.

22 Q. That is a juror in a case in which the
23 jury would have the responsibility of
24 determining the appropriate sentence for a
25 person who had been convicted of murder, and

1 you understand that murder means that the
2 person intentionally killed somebody. It was
3 not an accident, no self-defense, none of those
4 things that make it not murder. It is the
5 intentional killing, they wanted to kill this
6 person, they intended to kill them, they did it
7 with an evil heart, with malice, no mistake.

8 You will have convicted that person -- in other
9 words, the State would have already convinced
10 you beyond a reasonable doubt that they
11 committed this crime, so you know that you have
12 the right person.

13 A. Okay.

14 Q. Type three, as I understand it, at that
15 moment before you start the second phase you
16 still do not have an opinion as to what the
17 appropriate sentence would be, whether it is
18 life imprisonment or the death sentence. Is
19 that correct?

20 A. Yes, sir.

21 Q. Because you haven't heard all the
22 circumstances that you need to consider in
23 fashioning a sentence?

24 A. That's right.

25 Q. And you wouldn't make that decision until

1 you've heard it all and been instructed by the
2 court on the law. Is that correct?

3 A. That's correct.

4 Q. And it is my understanding that there are
5 circumstances in which you've thought about it
6 that, yes, you could probably impose a life
7 sentence without parole and there are
8 circumstances where you could impose a death
9 sentence, but you'd have to hear it all before
10 you could make a decision as which sentence
11 would suit the circumstance. Is that right?

12 A. Yes, sir.

13 Q. You understand that the jury has a very
14 important role in this process, as I mentioned
15 to you when we were qualifying you, they become
16 a judge with the presiding judge; do you
17 understand that?

18 A. (Affirmative nod).

19 Q. That jury has the responsibility of
20 determining the facts of a case, and that is
21 your sole responsibility. Do you understand
22 that?

23 A. Yes, sir.

24 Q. Do you understand that you would be
25 expected, at the appropriate time to apply your

1 common sense, your sense of logic and reason,
2 your life's experiences, fairly and impartially
3 in analyzing the testimony of witnesses and any
4 exhibits that are introduced in deciding what
5 you find to be true. You've done that before
6 in your life, haven't you?

7 A. Yes, sir.

8 Q. And you could do that function, you're
9 willing to perform that function?

10 A. Right.

11 Q. And you understand that you'd make a
12 commitment to be fair and impartial in doing
13 that, and you could do that as well?

14 A. Yes, sir.

15 Q. Another part of that oath that you will
16 take, in addition to performing the tasks and
17 deciding the facts, by considering the
18 evidence, which consists of testimony and
19 exhibits, you would also promise to take the
20 law as the court gave it to you, as the
21 presiding judge gave it to you and apply that
22 law fair and impartially to those facts that
23 you determine. Do you understand that?

24 A. Yes, sir.

25 Q. And you could and would do that, as well?

1 A. I would.

2 Q. That means that if you heard some law that

3 -- first of all that differs from what your

4 understanding of the law was or you thought the

5 law ought to be changed or you just didn't

6 agree with the law, you thought that it was bad

7 law or you had some philosophy that says, 'you

8 know, that's not consistent with how I

9 believe.' No matter what the reason, you would

10 be expected and your oath would say that you

11 would set aside any feelings you may have and

12 you would take that law and apply it fairly and

13 impartially notwithstanding your own feelings.

14 You would do that?

15 A. Yes, sir.

16 Q. And you would do that fairly and

17 impartially?

18 A. Yes.

19 Q. As you know, persons accused of committing

20 criminal offenses, just as Mr. Dickerson, are

21 presumed to be innocent. I told you that on

22 Friday and you indicated that you had no

23 problem with that principle of law, is that

24 true?

25 A. That's true.

1 Q. In fact, it is an active presumption. We
2 have to actively presume they are innocent
3 until the State proves beyond a reasonable
4 doubt to a jury that they are guilty of that
5 offense. Do you understand that?

6 A. Yes, sir.

7 Q. There has been no trial of Mr. Dickerson.
8 Everything that we're talking about today is to
9 in no way suggest anything to you about how
10 that trial should be resolved. Today, as he
11 sits there, you see him as innocent of these
12 charges for which he stands accused. Is that
13 correct?

14 A. That's correct.

15 Q. I would also instruct you if you were on a
16 jury in a criminal case with me that the only
17 party that has to prove anything is the State.
18 They made the claim, they have to prove it. Do
19 you understand that?

20 A. Yes, sir.

21 Q. And persons accused of committing criminal
22 offenses never have to prove or disprove
23 anything. They don't have to explain anything,
24 they don't have to justify anything, they
25 certainly don't have to prove their innocence.

1 Do you understand that?

2 A. Yes.

3 Q. Would you have any problem following that
4 instruction?

5 A. No, sir.

6 Q. In fact, I would instruct you that they
7 don't even have to present any evidence.
8 Persons accused of committing offenses don't
9 even have to testify. If they don't present
10 any evidence or don't testify, the jury would
11 be instructed that they couldn't use that
12 against the person. Do you understand that?

13 A. Yes, sir.

14 Q. Would you have any problem following that
15 instruction?

16 A. No problem.

17 Q. And if in that criminal dispute we are
18 talking about the jury would be involved in the
19 sentencing process, then that would apply to
20 both phases. Do you understand that?

21 A. (No verbal response).

22 Q. Persons accused don't have any
23 responsibility at any time to prove their
24 innocence, and you would have no problem
25 honoring that; is that correct?

1 A. No problem.

2 Q. In that case -- and murder would be one of
3 the charges. If you considered all the
4 evidence and -- and I would instruct you that
5 the State has to prove each element beyond a
6 reasonable doubt for the offense of murder. If
7 you found that they had, then you would have to
8 return a verdict of guilty. Of course, if they
9 failed on one or more then you would have to
10 return a verdict of not guilty.

11 If in analyzing the evidence you are
12 firmly convinced that the State had established
13 each element beyond a reasonable doubt, you
14 would vote for guilty?

15 A. Yes, sir.

16 Q. Any hesitancy in doing that?

17 A. No.

18 Q. Likewise, if in analyzing the evidence you
19 weren't convinced of one or more elements,
20 would you return a verdict and vote for not
21 guilty?

22 A. Yes, sir.

23 Q. And would you have any hesitancy in doing
24 that?

25 A. No, sir.

1 Q. Let's talk a little, assuming in that
2 situation that jury also is going to have the
3 responsibility of determining the sentence,
4 okay?

5 A. (Affirmative nod).

6 Q. Am I understanding that at that time --
7 you had just voted for guilty; that is, the
8 intentional killing of somebody with malice,
9 a malice murder. Do you understand that?

10 A. Yes, sir.

11 Q. At that moment you still have not made a
12 determination which one applies, life or death;
13 is that right?

14 A. (No verbal response).

15 Q. Is that correct?

16 A. That's correct.

17 Q. Okay. You would want to go through the
18 second phase and hear all the evidence and the
19 law before making that decision?

20 A. Yes, sir.

21 Q. I would tell you that -- you know, it's
22 not usual that a jury in this state is involved
23 with the sentencing of a person for murder. Do
24 you understand that?

25 A. Yes, sir.

1 Q. Normally the jury makes a determination of
2 whether they committed the crime and once that
3 jury determines that they have, then the judge
4 imposes the sentence. Do you understand that?

5 A. Yes, sir.

6 Q. If a judge imposes the sentence for the
7 crime of the intentional killing of another,
8 with malice, the maximum sentence that can be
9 given is life imprisonment without the
10 possibility of parole. The judge could never
11 impose a death sentence. Do you understand
12 that?

13 A. Yes, sir.

14 Q. But the judge is not limited to life
15 without parole, without the possibility of
16 parole. But in this setting, because this
17 crime would be something that would warrant a
18 jury -- there's something else that happens in
19 that second phase, that has to be established
20 for the jury to even get to that point of being
21 able to consider it. The law says that the
22 State, after they've proven the crime had been
23 committed, the crime of murder, has to prove
24 something that we call aggravating
25 circumstances. There are circumstances that

1 our law has defined, such as an example would
2 be the killing of a police officer, that's one
3 area; killing of a child, that's another; and
4 there are several others.

5 Those would be defined for you but the
6 State has to prove that beyond a reasonable
7 doubt before you can even consider it, because
8 it has to be more than just murder for the jury
9 to consider that. Do you understand that?

10 A. Yes, sir.

11 Q. Would you have any problem following that
12 instruction?

13 A. No problem.

14 Q. That standard of course is beyond a
15 reasonable doubt. I would instruct you that if
16 the jury, after considering it, does not find
17 that the State has met its burden, then the
18 only verdict that you can return is life
19 without parole. Would you have any problem
20 following that instruction?

21 A. No, sir.

22 Q. My instruction would also say that if the
23 jury finds that there was an aggravating
24 circumstances beyond a reasonable doubt, at
25 least one, then they may consider a death

1 sentence, but that doesn't mean that you have
2 to impose it. In fact, I would instruct you
3 that's up to the jury. I would never instruct
4 you that you have to impose a death sentence.
5 Do you understand that?

6 A. Yes, sir.

7 Q. That means that you have the option and it
8 is my understand that at that point, you've now
9 determined that there is an aggravating
10 circumstance, in other words there is some --
11 something that makes this a more serious
12 murder, based on our law that defines
13 aggravating circumstances. You now are
14 sitting, looking at 'which one am I going to
15 choose?' It's my understanding that you would
16 still have to evaluate all the other evidence,
17 consider everything in the law before you could
18 make a decision. Is that correct?

19 A. Yes, sir.

20 Q. And as I understand, after considering it
21 all, if the jury had that option, there are
22 circumstances in your mind that would warrant
23 you signing, and you could, a verdict of death?

24 A. Yes, sir, it's a possibility.

25 Q. Likewise there is a possibility, given the

1 option of returning a verdict of death, that
2 you would say, 'No, I don't think death is
3 appropriate here but life without parole', life
4 imprisonment without the possibility of parole.

5 A. Okay.

6 Q. But you won't know which until you have
7 heard it all?

8 A. That's correct.

9 Q. The court would also instruct you in that
10 situation that there may be in the evidence
11 something that we call mitigating
12 circumstances. Some are defined by statute and
13 some are nonstatutory. Mitigating
14 circumstances are circumstances such as the
15 background of the person accused of the crime,
16 whether they've had some mental impairment,
17 some mental issues that wouldn't rise to
18 insanity, would be a defense but they are
19 issues that our law would recognize as
20 mitigating circumstances; and such as
21 addictions, that type of thing. The court
22 would instruct you that in fashioning a
23 sentence, before you could decide which one you
24 have to give meaningful consideration to any
25 mitigating circumstances. Would you do that?

1 A. Yes, sir.

2 Q. You could do that?

3 A. Yes, sir.

4 Q. And you would consider any of those
5 mitigating circumstances?

6 A. Yes, sir.

7 Q. The record may have none. Obviously as I
8 stated before, the defendant doesn't have any
9 burden at that second phase, doesn't have to
10 prove anything. You wouldn't have any problem
11 -- if there's no mitigating circumstances
12 present, you wouldn't hold that against the
13 defendant, would you?

14 A. No.

15 Q. Okay. Because the court would instruct
16 you that even if there aren't mitigating
17 circumstances the jury has the right, for no
18 reason whatsoever, to decide not to impose a
19 death sentence but instead to impose life
20 without parole, life imprisonment. Do you
21 understand that?

22 A. Yes, sir.

23 Q. You could follow that instruction in that
24 regard, as well; is that true?

25 A. Yes, sir.

1 Q. I am not asking you what your decision
2 would be but you could give meaningful
3 consideration, that is to think about, analyze
4 it, and make a decision for yourself?

5 A. Yes, sir.

6 Q. You're confident that you could do that
7 fairly and impartially?

8 A. Yes, sir.

9 Q. All right. Now, looking at this case just
10 for a moment -- and I am just going to ask you
11 this question, is there anything that you've
12 heard about this case that would give you any
13 concern about your ability to be that fair and
14 impartial juror that you've just described in
15 that case that we've been talking about?

16 A. No, sir, none.

17 THE COURT: Please answer any
18 questions that the attorneys may have.

19 MR. BLOOM: May it please the court.

20 THE COURT: Yes, sir.

21 VOIR DIRE EXAMINATION

22 BY MR. BLOOM:

23 Q. Good afternoon, Mr. Waterman. My name is
24 Jeff Bloom and along with Andrew Carroll, we
25 represent William Dickerson. I just have a few

1 followup questions from what Judge Dennis asked
2 you about. Okay?

3 A. Okay.

4 Q. First off, I just want to ask is there
5 anything in your background or life experiences
6 that would make it difficult for you to serve
7 on a murder jury?

8 A. No, sir.

9 Q. Next, let me just ask you if we were
10 standing around and had a Diet Coke or a cup of
11 coffee and something came on the news about the
12 death penalty and we got into a discussion,
13 what would your opinion about the death penalty
14 be?

15 A. I would have to -- I believe that it would
16 have to be a very serious offense.

17 Q. But as Judge Dennis asked you, it's only a
18 murder case, it's not for just serious offense.

19 A. Yes, sir, I understand.

20 Q. It's only, as he described, malice murder
21 where a person did it, they intended to do it,
22 with malice, an evil heart, they got the right
23 one, beyond a reasonable doubt, you're not
24 going to automatically give death in that case?

25 A. No.

1 Q. Are there any other opinions of feelings
2 that you have about the death penalty?

3 A. (Negative gesture). No, sir.

4 Q. I'm glad you answered because this lady,
5 our kind court reporter can't take down a head
6 shake.

7 A. Okay, all right. No, sir.

8 Q. That's okay. Is this the first time that
9 you've ever done this?

10 A. Yes, sir.

11 Q. All right. Let me ask you next, sir, --
12 have you given a lot of thought to the death
13 penalty or had a lot of discussions about it or
14 is it something that has come up in your life's
15 experiences?

16 A. In general, yes, we've talk about it in my
17 family and such but I -- I really have my own
18 opinions on it.

19 Q. What kind of opinions have you expressed
20 to your family or your friends when that
21 discussion has come up?

22 A. I grew up in a Christian household but I
23 feel that, you know, if it is a murder charge
24 and the crime is severe enough, that it's the
25 right thing to do.

1 Q. I have to go back, because I just want to
2 be clear. Does that mean that if it is a
3 murder charge, as the judge explained to you, a
4 malice murder, that you're automatically going
5 to vote for death once you found them guilty of
6 that?

7 A. No, absolutely not.

8 Q. You can wait and listen, as Judge Dennis
9 described, to mitigating circumstances; such as
10 drug addiction, how a person was raised, you
11 could listen to that type of evidence?

12 A. Yes, sir.

13 Q. Then you can give that meaningful
14 consideration?

15 A. Yes, sir.

16 Q. Because you understand that some people
17 think, you know, 'I just want to hear what
18 happened, the facts of the crime. I don't want
19 to hear all that stuff about how someone was
20 raised.' You're not in that group?

21 A. No, I'm not.

22 Q. You are going to give meaningful
23 consideration and weigh things like a person's
24 background before you give the death penalty?

25 A. Correct.

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1 Q. Lastly, let me just ask you, sir, -- well,
2 let me go back to one other question about your
3 opinion on the death penalty. Some people feel
4 that they fall in the camp that says an eye-
5 for-an-eye and a tooth-for-a-tooth. Does that
6 describe you?

7 A. No.

8 Q. All right. And you understand what I mean
9 by that?

10 A. Yes, sir, I do.

11 Q. In response your ---

12 A. I agree that's always the case for some
13 people.

14 Q. All right, sir. Lastly I want to ask
15 you, as Judge Dennis explained, the law never
16 requires the death penalty. You can always
17 vote for a life without parole sentence if you
18 feel that is a proper sentence. Do you
19 understand that explanation that the judge gave
20 you?

21 A. Yes, sir.

22 Q. And in that vein, the law also says that
23 that choice, whatever choice that you make, for
24 whatever penalty, including life without
25 parole, after you hear all the evidence, after

1 you have discussed with your jurors and you
2 deliberate with your fellow jurors, you get to
3 make your own moral, individualized choice. Do
4 you think that you can do that?

5 A. Yes, sir.

6 Q. And if you were in a jury and after you'd
7 heard all the evidence, deliberated with your
8 jurors, everybody was looking to one side or
9 the other, if eleven jurors were voting one way
10 and you were voting another, and you'd made
11 your own moral, individualized choice, could
12 you stand by that or would you just kind of
13 say, 'You know what? It's late, I'm hungry. I
14 am going to go home. I am just going to go
15 along to get along.'

16 A. I would stand by my opinion.

17 Q. You struck me as that kind of person, but
18 you know that I have to ask.

19 In that vein, then you would ask those
20 other jurors to respect your vote?

21 A. Yes, sir.

22 Q. However it was split, and you'd respect
23 theirs?

24 A. Absolutely.

25 MR. BLOOM: Thank you, sir. I have

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1 nothing further.

2 THE COURT: Solicitor?

3 SOLICITOR WILSON: Thank you, Your
4 Honor. Mr. Waterman, I'm Scarlet Wilson, I'm
5 the Solicitor here. This is Bruce Durant and
6 Rutledge Durant and the three of us will be
7 presenting the evidence in this case.

8 Based on all your answers and the
9 questions that have been asked, I don't have
10 anything further for you. Thank you.

11 THE COURT: Thank you, Solicitor.
12 Mr. Waterman, I am going to ask that you step
13 out for just a moment. We will be with you
14 momentarily, sir.

15 (JUROR NUMBER 330 EXITS COURTROOM)

16 THE COURT: I find -- I believe this
17 young man is qualified. Does the State have
18 any objection to his being qualified?

19 BRUCE DURANT: No, sir.

20 THE COURT: Does the defendant have
21 any objection?

22 MR. BLOOM: No, sir.

23 THE COURT: Thank you very much.
24 Bring him in, please.

25 (JUROR NUMBER 330 ENTERS COURTROOM)

1 THE COURT: Thank you, Mr. Waterman.
2 Thank you very much, and I appreciate your
3 patience. You've been found to be qualified to
4 be a member of the panel from which we will
5 select our jury.

6 We hope that will occur on Thursday
7 morning at 9:30. It will occur in this
8 courtroom and when you're instructed to return
9 you will need to come directly to the
10 courtroom. Make plans so that if -- if you are
11 selected, obviously we will start the trial on
12 Thursday, so make plans if need be to spend the
13 day with us and then we would continue of
14 course with the trial.

15 I need for you to call the number
16 tonight after 6:00 o'clock and follow the
17 instructions that appears on there concerning
18 the Dickerson panel. There will be some others
19 about -- remember, we identified a number of
20 panels? You were in Panel Number Six. There
21 are probably going to be instructions for Panel
22 Eleven and Panel Twelve to come in, and that
23 doesn't apply to you obviously but it will say
24 that the Dickerson panel needs to -- and it may
25 say to call back tomorrow night. I don't know

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1 yet. Whatever the instruction, just follow it.
2 Whenever you are told to be here, just be here
3 at that time.

4 Until then and until you have been
5 dismissed from this case, please remember that
6 you still are not at liberty to discuss this
7 case with anyone or permit anyone to talk with
8 you about it. Also, please continue not to
9 watch any news programs about it or read any
10 news accounts. Have a great day and we'll see
11 you, hopefully, Thursday.

12 JUROR NUMBER 330: Yes, sir.

13 (JUROR NUMBER 330 EXITS COURTROOM)

14 THE COURT: Ms. Green, please. She
15 is Juror Number 121.

16 (JUROR NUMBER 121 ENTERS COURTROOM)

17 THE COURT: Good morning, Ms. Green.
18 If you will sit and pull yourself up so that
19 you can speak into that mic comfortably.
20 Thank you for your patience, I appreciate you
21 waiting.

22 We are going to continue that process
23 that we started on Friday of asking you some
24 questions. As you recall, there really aren't
25 any correct answers to any of these questions.

1 They are just designed to help you make a
2 determination of whether you can be fair and
3 impartial in this case as a judge, and help us
4 determine whether you can be fair and
5 impartial. Do you understand that?

6 JUROR NUMBER 121: (Affirmative nod).

7 THE COURT: All that we ask is that
8 you truthfully respond to those questions and
9 completely respond to those questions. Will
10 you do that?

11 JUROR NUMBER 121: Yes.

12 THE COURT: I would remind you in
13 that regard that you are still under oath in
14 this matter. You want to pull that microphone
15 to you so that you can speak more into the
16 microphone?

17 JUROR NUMBER 121: (Complies).

18 THE COURT: I would remind you in
19 that regard that you are still under oath in
20 this matter. Okay?

21 JUROR NUMBER 121: Okay?

22 ANITA GREEN, being duly sworn to tell
23 the truth, the whole truth and nothing but the
24 truth, testified, as follows:

25 VOIR DIRE EXAMINATION

1 BY THE COURT:

2 Q. Let me ask you a question because I see
3 something in your questionnaire when I was
4 reviewing it to ask the questions today, it
5 didn't come up and I don't recall you coming up
6 and sharing with me any concern. You didn't
7 come up and ask to be excused, did you?

8 A. No.

9 Q. You put in there, on the last questions
10 where it says "Statements", you said "I would
11 rather not be picked because sometimes
12 criminals might remember who you are and they
13 want to find you and hurt you or worse." Is
14 that what you put?

15 A. Yes.

16 Q. Is that how you feel?

17 A. Yes.

18 Q. Would that influence your serving on a
19 jury?

20 A. Well, I'd rather not be a part of a jury.

21 Q. I understand that but -- and I respect
22 that, that's probably true of a lot of people.
23 My questions is, I understand that is how you
24 feel, but my question is would that interfere
25 with your serving as juror, performing the

1 function if you were selected?

2 JUROR NUMBER 121: Yes.

3 THE COURT: It would?

4 JUROR NUMBER 121: That's the way that
5 I feel.

6 THE COURT: I am going to ask you to
7 step out for just a moment. We will be with
8 you momentarily. We'll just take a moment. I
9 need to take up something with the attorneys.

10 (JUROR NUMBER 121 EXITS COURTROOM)

11 THE COURT: After reading that last
12 night, I am very concerned about her ability to
13 perform the function, just the basic function,
14 of a juror. I don't think that she is
15 qualified as a juror, just on basic qualifica-
16 tion. Has nothing to do with a death penalty.
17 Any objection from the State?

18 SOLICITOR WILSON: None from the
19 State.

20 THE COURT: Any objection from the
21 defense?

22 MR. BLOOM: No, sir.

23 THE COURT: Thank you very much. I
24 appreciate your patience with the court. I
25 should have caught it earlier, but I didn't.

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1 Ask her to come in.

2 (JUROR NUMBER 121 ENTERS COURTROOM)

3 THE COURT: Thank you, Ms. Green.

4 I am going to excuse you from further
5 participation in this dispute. You're free to
6 leave. You've finished your services this
7 week. Thank you for working with us, thank you
8 for your patience. Good luck to you, ma'am.

9 JUROR NUMBER 121: Thank you.

10 (JUROR NUMBER 121 EXITS COURTROOM)

11 THE COURT: Next is Donna Melville,
12 Number 209.

13 (JUROR NUMBER 209 ENTERS COURTROOM)

14 THE COURT: Good morning, Ms.
15 Melville. If you will sit and pull yourself up
16 so that you can speak into that mic
17 comfortably. How are you?

18 JUROR NUMBER 209: I'm good. How
19 are you?

20 THE COURT: Fine. I apologize for
21 keeping you so long. In this process, we make
22 the best predictions that we can but you don't
23 always get them right.

24 JUROR NUMBER 209: I understand.

25 THE COURT: But I certainly

1 appreciate you patience. We are going to
2 continue the process that we started on Friday.
3 There are some questions that I have for you
4 and then the attorneys may have some questions.
5 As you will recall from Friday, there really
6 are no correct answers to any of these
7 questions. Their purpose is really to help you
8 to make a determination as to whether you can
9 be a fair and impartial juror?

10 JUROR NUMBER 209: Okay.

11 THE COURT: And to help us make that
12 assessment and determination, as well. So all
13 that we ask is that you be truthful in your
14 responses and that you will respond completely.
15 Will you do that?

16 JUROR NUMBER 209: I can do that.

17 THE COURT: Please understand that
18 we are not trying to change your beliefs or
19 philosophies. You're entitled to those, and
20 don't think that you have to defend them at
21 all. Nor are we trying to invade your privacy
22 either. Just answer the questions completely
23 and truthfully, that is all that we are asking
24 of you.

25 JUROR NUMBER 209: Yes, sir.

1 THE COURT: I would remind you in
2 that regard that you are still under oath in
3 this matter. Okay?

4 JUROR NUMBER 209: Yes, sir.

5 DONNA MELVILLE, being duly sworn to
6 tell the truth, the whole truth and nothing but
7 the truth, testified, as follows:

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. Since we were last together, have you
11 talked with anyone or let anyone talk about
12 this case in your presence?

13 A. At work some of the others had read
14 things in the paper and they asked me if this
15 was the trial that I was going to be on the
16 jury for, and I told them yes but that was the
17 extent of it.

18 Q. That was the extent of it?

19 A. (Affirmative nod).

20 Q. The court would not consider that to
21 violate anything, that's just simply responding
22 where you're going to be. That's all.

23 A. Right.

24 Q. They didn't talk any specifics about the
25 case itself, is that correct?

1 A. No, they didn't.

2 Q. Or attempt to talk with you about it?

3 A. (Negative gesture).

4 Q. Have you read anything about it or viewed

5 any news accounts about it?

6 A. No, sir.

7 Q. I know you heard a number of names on

8 Friday but I failed to mention two names that I

9 need to ask you about. Are you related by

10 blood or marriage, have any business dealings

11 with or socially or casually acquainted with or

12 have any dealings with Jeff Osborne or Matt

13 Casey?

14 A. No.

15 Q. You were given a sheet when you came in

16 that sets forth three types of jurors, have you

17 had a opportunity to review that sheet?

18 A. (Affirmative nod).

19 Q. Which type most accurately describes you?

20 A. Type three.

21 Q. Type three as I understand it, basically

22 we're talking about -- the type juror that we

23 are talking about, that jury would have the

24 responsibility of determining an appropriate

25 sentence in a murder case.

1 What type three says is that while that
2 juror has just completed, would have completed
3 the first phase, that is that they've found
4 that person guilty of the crime of
5 intentionally killing somebody, not a mistake,
6 not manslaughter, not self-defense, not
7 accident, a person with malice has killed
8 somebody intentionally, willfully, meant to do,
9 they've got the right person and now the jury
10 has concluded that the State has the right
11 person charged with the crime.

12 This is before you start the second phase
13 where the jury is now going to hear some
14 evidence to help the jury make a determination
15 as to what the appropriate sentence would be,
16 you haven't heard that yet.

17 Am I to understand that notwithstanding
18 that you have been a part of the jury where you
19 have considered a very serious, horrible crime,
20 somebody had been killed intentionally, you
21 still don't have a decision in your mind of
22 what the appropriate sentence would be at that
23 point. Is that correct?

24 A. Yes, sir.

25 Q. Because a type three juror says 'I haven't

1 heard it all yet', and that's what you are?

2 A. (Affirmative nod).

3 Q. In other words, you want to wait until you
4 go through that part where you hear all the
5 evidence, receive the law and then deliberate
6 about what the appropriate sentence would be.

7 Is that correct?

8 A. (Affirmative nod).

9 Q. Now, you understand that a jury has a very
10 important function in this process of dispute
11 resolution. They have the job of deciding the
12 facts, they are the sole judges of the facts.
13 Do you understand that?

14 A. (Affirmative nod).

15 Q. I appreciate that -- it's very
16 conversational and it doesn't offend me in the
17 slightest, nor does -- Ms. Garrison (court
18 reporter) is sitting there and she can put
19 "nods head" but it's very important and would
20 help if you would just say "yes" or "no".

21 A. Okay.

22 Q. Please understand that it is not offensive
23 at all, it's just for the purpose of the
24 record. You would promise if you were on a
25 jury to decide those facts by considering one

1 source, that's evidence. Evidence is testimony
2 of witnesses and exhibits. You would do that?

3 A. (Affirmative nod).

4 Q. Obviously you're expected to use your
5 common sense, your sense of logic and reasoning
6 and your life's experiences. Part of that
7 function is that you promise that you'd have an
8 open mind, just as you've just talked about in
9 that situation we just discussed. You hadn't
10 heard all the evidence about the appropriate
11 sentence and you'd have an open mind as to the
12 sentence, is that correct?

13 A. Right.

14 Q. That is the way that a jury has to start a
15 case, do you understand that?

16 A. Yes, I do.

17 Q. That would be yours?

18 A. Yes.

19 Q. You'd promise not to change that until the
20 court told you to begin your deliberations. Is
21 that correct?

22 A. That's true.

23 Q. And you have the ability then of applying,
24 and would apply, your common sense, your sense
25 of logic and reasoning fairly in deciding what

1 you believe to be the truth?

2 A. Yes.

3 Q. Now, you understand that in a criminal
4 dispute in this state persons who are accused
5 are never required to prove or disprove
6 anything at all; do you understand that?

7 A. (Affirmative nod).

8 Q. In fact, we talked about one principle of
9 law, that is the presumption of innocence on
10 Friday and I mentioned to you that while Mr.
11 Dickerson has been accused of several criminal
12 offenses that the law presumes that he is
13 innocent until the State proves him guilty
14 beyond a reasonable doubt. Do you understand
15 that?

16 A. Yes, sir.

17 Q. As I recall, you have no problem with that
18 principle of law?

19 A. No.

20 Q. That principle of law is really not just a
21 thought, it is an active presumption. It means
22 that when people are accused of something,
23 we're required as citizens, as persons in this
24 state, to look at him and see him as innocent.
25 Do you see Mr. Dickerson as innocent of those

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1 charges against him today?

2 A. Yes, sir.

3 Q. Okay. You understand that that position
4 can't change until we've been convinced beyond
5 a reasonable doubt and that is each element of
6 the offense has been established to our
7 satisfaction to make us change that position.

8 Do you understand that?

9 A. Yes, sir.

10 Q. I would tell you that in criminal
11 disputes, persons accused don't have to prove
12 or disprove anything. They certainly don't
13 have to prove their innocence. They don't even
14 have to present any evidence. Do you under-
15 stand that?

16 A. Yes, I do.

17 Q. Nor does a person accused of a criminal
18 offense even have to testify in a dispute, do
19 you realize that?

20 A. Yes.

21 Q. And you understand that the court would
22 instruct you, if you're on a jury in that
23 situation, that you couldn't use that against
24 that person in any way, shape or form at any
25 time during that proceeding. Would you have

1 any problem following that instruction?

2 A. No.

3 Q. Okay. As I understand it, you would then
4 after hearing all the evidence and receiving
5 the law, you would then in that situation be
6 able to retire, evaluate that evidence and
7 decide for yourself whether or not the State
8 has convinced you beyond a reasonable doubt of
9 the offense of murder? Is that correct?

10 A. That's correct. Yes, sir.

11 Q. And my instruction would be that if you
12 are convinced as to each element, your
13 responsibility and duty would be to return a
14 verdict of guilty. But if you weren't
15 convinced of one or more elements, then your
16 duty and responsibility would be to return a
17 verdict of not guilty. Would you have any
18 problem following that instruction?

19 A. No, sir.

20 Q. Now, let's assume in that situation that
21 the jury had found a verdict of guilty. This
22 would be one of those unusual cases because
23 typically in this state, it is not common for a
24 jury to participate in sentencing someone for
25 murder. Do you understand that?

1 A. (No verbal response).

2 Q. Typically that decision of whether they
3 committed the offense is certainly left to the
4 jury and the jury makes a decision of whether
5 the State has established it's case. Once the
6 jury convicts that person of murder, then the
7 trial judge would impose the sentence. Do you
8 understand?

9 A. Yes, sir, I do.

10 Q. The trial judge in that setting, without a
11 jury empaneled, unless there was some special
12 waiver involved, would never have the option of
13 sentencing that person to a death sentence.
14 The most serious sentence that a judge could
15 impose would be life without the possibility of
16 parole. Do you understand that?

17 A. Yes.

18 Q. And the judge isn't bound to that
19 sentence. Do you realize that?

20 A. I do.

21 Q. It's only in these limited situations
22 where we have a jury empaneled, and its very
23 restricted types of case where the jury decides
24 what the sentence will be. In this murder
25 case, assume for the purpose of discussion, it

1 is that type of case.

2 As I understand -- now I want to reaffirm
3 something and confirm something, you at that
4 point -- you've participated now and decided on
5 the guilt but you still don't have an opinion
6 yet as to what is the appropriate sentence, is
7 that correct?

8 A. Yes, sir.

9 Q. In the second phase, it's an important
10 part, this second phase, because the State has
11 to prove something before the jury can even
12 think about imposing a death sentence. They
13 have to prove the existence of some aggravating
14 circumstances. The law defines those. The
15 court would define them for you. You have to
16 concluded, considering the evidence, that at
17 least one of those aggravating circumstances
18 has been established beyond a reasonable doubt.

19 Some of them or a couple of them would be
20 the killing of a police officer, the killing of
21 a child. That would then -- if the jury found
22 that type of situation, that would be one of
23 those aggravating circumstances.

24 The jury has to decide that aggravating
25 circumstances exist before they could even

1 consider it, because if the jury in analyzing
2 the evidence finds that they are not convinced
3 of an aggravating circumstance, then the only
4 verdict that can be returned is life without
5 parole. Do you understand that?

6 A. I understand.

7 Q. Would you have any problem following that
8 instruction?

9 A. No, sir.

10 Q. The instruction would further say that if
11 the jury did conclude that the State had met
12 its burden of proof, that the jury then and
13 only then would have the option of considering
14 a death sentence. That doesn't mean that they
15 have to, in fact the court would never instruct
16 you that you had to return a death sentence.
17 It is just to imply that now the jury has to
18 make the choice, the jury now has to weigh and
19 evaluate the evidence and determine whether a
20 death sentence or life imprisonment without the
21 possibility of parole is appropriate. Do you
22 understand that.

23 A. I understand.

24 Q. And it is my understanding that as a type
25 three juror that it is after that analysis has

1 been performed, there's discussion among the
2 jurors, the law considered, that you could
3 decide whether in that situation that we are
4 talking about you -- you in some situations may
5 impose the death sentence, even though you have
6 the right to find life imprisonment without the
7 possibility of parole or you may impose life
8 without parole even though you have the option
9 of imposing a death sentence. Is that correct?

10 A. That's correct.

11 Q. In addition the aggravating circumstances
12 and all evidence that would be in the record
13 for your consideration of determining the
14 appropriate sentence, I would instruct you that
15 there are certain statutory mitigating
16 circumstances that may be in the record, some
17 nonstatutory mitigating circumstances, and I
18 would instruct the jury that they have to give
19 meaningful consideration to those mitigating
20 circumstances. Some of the statutory
21 mitigating circumstances are -- such as the
22 background of the person accused, maybe mental
23 health issues, their upbringing, the kind of
24 childhood that they've had, addictions, those
25 types of things. It is my understanding that

1 if the record contained that, that you could
2 consider and would consider that in determining
3 what the appropriate sentence would be. Is
4 that correct?

5 A. That's correct.

6 Q. Do you understand that the record may have
7 -- that the evidence may be none, that there
8 may be no mitigating circumstances?

9 A. (Affirmative nod).

10 Q. I would tell you that, obviously as I told
11 you before, the person accused of committing a
12 criminal offense doesn't have the
13 responsibility of proving anything, and that
14 includes the second phase. If there aren't
15 any, you wouldn't hold that against the person;
16 would you?

17 A. No, sir.

18 Q. That's very important before the
19 instruction would also say that you have the
20 right to impose a life imprisonment without the
21 possibility of parole for no reason whatsoever
22 if you choose to do so. Do you understand
23 that?

24 A. Yes, sir.

25 Q. And you would consider that right, as

1 well, as I understand?

2 A. Yes, sir.

3 Q. But it is my understanding that you just
4 don't know which one it would be until you've
5 heard it all and go through that process?

6 A. That's correct.

7 Q. Let me ask you -- of course, we've been
8 talking about this abstract case and nothing,
9 nothing that we talk about implies anything
10 about Mr. Dickerson's case, but what you've
11 heard thus far about this case would give you
12 no concern, based on your philosophy, your
13 background, your experiences in life, of your
14 being a fair and impartial judge with me?

15 A. (Negative gesture), only what you told me
16 from Friday.

17 Q. And that doesn't give you any concern?

18 A. No, sir.

19 Q. Okay.

20 THE COURT: Please answer any
21 questions that the attorneys may have.

22 VOIR DIRE EXAMINATION

23 BY SOLICITOR WILSON:

24 Q. Thank you, Ms. Melville. I'm Scarlet
25 Wilson, I'm the Solicitor here. This is Bruce

1 Durant and this is Rutledge Durant, they are
2 both prosecutors in my office as well. We're
3 the prosecutors in the case, so we will be the
4 ones presenting evidence and I just want to ask
5 you a few followup questions to the Judge's
6 questions. Okay.

7 A. Okay.

8 Q. That is mainly based on your answers here
9 and also we were able to get, both sides, a
10 copy of your questionnaire. In your
11 questionnaire you stated that you have no
12 strong feelings about the death penalty.

13 A. That's right.

14 Q. Can you just tell me what your feelings
15 are?

16 A. I think that maybe the death penalty would
17 apply to someone who'd killed or murdered a
18 child, but ---

19 Q. Is that the only time you think?

20 MR. BLOOM: Objection.

21 THE COURT: Sustained.

22 JUROR NUMBER 209: I ---

23 SOLICITOR WILSON: You can't -- you've
24 got to wait for me to ---

25 THE COURT: Wait for the next

1 question.

2 JUROR NUMBER 209: Okay.

3 EXAMINATION CONTINUED

4 BY SOLICITOR WILSON:

5 Q. You said that you were a type three juror?

6 A. Yes, ma'am.

7 Q. You understand -- and the Judge has talked
8 about this a good bit -- that not all murders
9 qualify for the death penalty?

10 A. Yes, I do.

11 Q. Even though murder in itself means that
12 something was malicious, that a person acted
13 with malice, intent, killed someone, we're
14 talking about a situation where a jury has
15 already found that but then the State has an
16 additional burden. We have a burden to prove
17 aggravating circumstances.

18 A. Okay.

19 Q. Would you be able to listen and consider
20 and make a decision about an aggravating
21 circumstance beyond the guilt phase?

22 A. Yes, I would.

23 Q. After a guilty verdict, if you were on a
24 case, you wouldn't just shut down and say, 'I
25 don't want to hear any more.'

1 A. No, I wouldn't.

2 Q. So, likewise, regarding what the Judge
3 described actual damages mitigating
4 circumstances, things that might help you
5 understand why a person acted the way that they
6 did or things about the crime that you hadn't
7 heard before that might shed a different light,
8 you would be very interested in hearing that as
9 well?

10 A. That's right, I would keep an open mind
11 about it.

12 Q. Now, as the death penalty goes, being on a
13 jury, I want to make sure that you understand
14 that it is not enough to be able to consider
15 the death penalty. You'd have to be able to
16 vote for the death penalty in certain
17 situations. Do you think you could do that?

18 A. Yes.

19 Q. Could you also sign your name to the
20 warrant or verdict commanding someone's death?

21 A. Yes.

22 Q. It would be hard.

23 A. It would be hard to do.

24 Q. On the spectrum of those who think the
25 death penalty should be applied in every murder

1 and those who think it should never apply,
2 where are you?

3 A. Probably right in the middle.

4 Q. Right in the middle?

5 A. (Affirmative nod).

6 Q. It just depends on the circumstances?

7 A. (Affirmative nod).

8 Q. And if you were on a jury, would you be
9 able to listen to other people's opinions and
10 thoughts on the evidence even if you had made
11 up your mind?

12 A. Yes.

13 Q. You would consider what other people
14 thought?

15 A. Yes.

16 Q. And if you thought that there was someone
17 who missed something or didn't quite understand
18 a concept that the Judge had given, or maybe a
19 piece of evidence or testimony, you think you
20 could use your skills to help them understand
21 and feel or think the way that you were
22 thinking?

23 A. Yes.

24 Q. So you can deliberate?

25 A. Yes.

1 SOLICITOR WILSON: That's all that I
2 have, Your Honor.

3 THE COURT: Thank you. Any
4 questions?

5 VOIR DIRE EXAMINATION

6 BY MR. BLOOM:

7 Q. Good afternoon, Ms. Melville. How are you
8 today?

9 A. Good.

10 Q. My name is Jeff Bloom. Along with Andrew
11 Carroll, we represent Mr. Dickerson. I am just
12 going to do some followup and I will try not to
13 repeat. Okay?

14 A. Okay.

15 Q. Is this your first time in this kind of
16 situation?

17 A. Yes, it is.

18 Q. Are you a little nervous?

19 A. I'm okay.

20 Q. Well, I was nervous when I started off
21 Monday so -- it's getting easier. Let me start
22 by asking you -- I am not going to try to
23 repeat but I want to make sure that I
24 understand your answers. Judge Dennis asked
25 you if you were a juror on a case, trying to

1 decide one penalty, life without parole or the
2 death sentence, that you would look to
3 mitigating circumstances.

4 A. (Affirmative nod).

5 Q. Sometimes we forget what these words are
6 but he gave you a list and it was things like
7 drug addiction, mental health, how a person was
8 raised. I understand that would be important
9 to you and that you could consider that?

10 A. Yes.

11 Q. Because you understand that some jurors,
12 'I just want to look at the facts of the crime.
13 That other stuff has nothing to do with it.'
14 But you're not in that group?

15 A. No, sir.

16 Q. So that is something that you could give
17 meaningful consideration to, and you'd be
18 interested in hearing that?

19 A. Yes, sir.

20 Q. Let me ask you next, the Judge also
21 described of course that you'd never get to a
22 sentence phase, second phase, and decide the
23 penalty unless a person is convicted of what
24 the Judge explained to you as malice murder --
25 that the person did it, intended to do it, with

1 malice, an evil heart, got the right person, it
2 was not accident, not self-defense, insanity or
3 manslaughter, heat-of-passion. There are some
4 jurors that say, 'Once I've convicted someone
5 of malice murder, I'm going to automatically
6 vote for death.' That doesn't describe you?

7 A. No.

8 Q. All right. Now, I just want to ask you a
9 few questions about your questionnaire. You
10 have worked at MUSC in the past at some point?

11 A. (Affirmative nod).

12 Q. Some of the witnesses have also been
13 employed there. I know it's a big place. You
14 heard their names but I just want to review.
15 One of the witnesses was listed as Sandra
16 Fokes, she has also gone by Sandra Jenkins or
17 Sandra Dickerson in the past. Does that name
18 ring a bell?

19 A. No.

20 Q. She may have worked in maintenance,
21 clerical duties or -- but you don't know her?

22 A. I don't remember anyone by those names.

23 Q. What department did you work in when you
24 were there?

25 A. Pediatrics, for children.

1 Q. Again, I ---

2 THE COURT: Ms. Melville, I am going
3 to ask you -- could you pull that mic so that
4 you could speak into it, please. Thank you so
5 very much. I'm sorry.

6 EXAMINATION CONTINUED

7 BY MR. BLOOM:

8 Q. There is a Dr. Cynthia Schandl who works
9 there in Pathology, does autopsies. Do you
10 know her?

11 A. No, sir, I don't know her.

12 Q. Lastly, ma'am, I want to ask you -- Judge
13 Dennis of course instructed you that in such
14 cases that one reasons jurors may consider a
15 life sentence is for any reason, no reason, no
16 reason at all, for a simple act of mercy. Some
17 jurors, you know, just say 'I can't follow
18 that.' I take it from your answers that is an
19 instruction that you could follow?

20 A. Yes.

21 Q. That is something that is important to
22 you?

23 A. Yes.

24 Q. All right. And you understood his
25 instructions that the death penalty is never

1 required.

2 A. I understand that.

3 Q. Okay. In fact, the law says that it is an
4 individual, reasoned moral, individualized
5 judgement. Right?

6 A. Right.

7 Q. And you could make that moral,
8 individualized choice for you if you were in a
9 jury room?

10 A. Yes.

11 Q. After you've heard all the evidence and
12 discussed with your fellow jurors, there had
13 been debate back and forth, everybody had
14 listened to each other and you came to your own
15 moral, individualized choice about the penalty
16 that you thought was appropriate and eleven
17 jurors were going one way and you another,
18 would you be able to stand by your reasoned,
19 individual moral judgment?

20 A. Yes, sir.

21 Q. You are not the kind of person who would
22 just say, 'You know, it's late. I'm hungry.
23 I'm ready to go along to get along.'

24 A. No.

25 Q. You don't strike me as that but you know

1 that I have to ask.

2 A. Yes, sir.

3 Q. You would want them to respect your choice
4 and you would respect theirs?

5 A. Yes, sir.

6 MR. BLOOM: Thank you, ma'am.

7 THE COURT: Anything else,
8 Solicitor?

9 SOLICITOR WILSON: No, sir.

10 THE COURT: Ms. Melville, thank you
11 very much. If you would step out for just a
12 few moments, we will be with you in just a
13 second.

14 (JUROR NUMBER 209 EXITS COURTROOM)

15 THE COURT: The court believes that
16 she is qualified. Any objection from the
17 State?

18 SOLICITOR WILSON: No, sir.

19 THE COURT: Any objection from the
20 defendant?

21 MR. BLOOM: No, Your Honor.

22 THE COURT: Thank you very much.
23 Ask her to step in.

24 (JUROR NUMBER 209 ENTERS COURTROOM)

25 THE COURT: Ms. Melville, thank you

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1 very much. I appreciate your patience. You've
2 been found to be qualified to be a member of
3 the panel from which we will select our jury.

4 We anticipate and hope that will occur
5 Thursday morning at 9:30. It will occur here
6 in this courtroom. So when you are instructed
7 to return, you will need to come back and take
8 your seat out there. If you are -- when you do
9 come, please know that we -- we need to be
10 prepared to go forward, so make whatever
11 arrangements that you need to do at work that
12 day.

13 At this moment, we think it is going
14 to be Thursday. I need for you to call the
15 number after 6:00 tonight, follow the
16 instructions that pertain, that are there for
17 the Dickerson panel. There will be an
18 instruction about, more than likely, Panel
19 Number Eleven and Panel Number Twelve. Those
20 are the additional panels, and that doesn't
21 apply to you because you were in Panel Six.

22 Just follow the instructions for the
23 Dickerson panel. Probably it's going to say to
24 report but it may say to call back tomorrow
25 night. Whatever the instruction, follow it and

1 whenever you are instructed to come, just come
2 here to this courtroom.

3 Until then and until you have been
4 dismissed from this case, please remember that
5 you still are not at liberty to discuss this
6 case with anyone or permit anyone to talk with
7 you about it. Also, please continue not to
8 watch any news programs about it or read any
9 news accounts. Have a great day and we'll see
10 you, hopefully, Thursday.

11 (JUROR NUMBER 209 EXITS COURTROOM)

12 BRUCE DURANT: Your Honor, before
13 we call the next witness, could I ask the court
14 for some direction?

15 THE COURT: Yes.

16 BRUCE DURANT: During the last
17 juror's examination, the Solicitor asked some
18 questions concerning some comments that the
19 juror made about the death penalty imposed for
20 the death of a child and then there was the
21 followup question if that would be the only
22 situation where you could impose the death
23 penalty.

24 THE COURT: Right.

25 BRUCE DURANT: Is there a case on

1 this that I am missing?

2 THE COURT: You can't ask in what
3 situations that they would impose it, I don't
4 think. If you've got one that says that they
5 can, I'll be happy to consider that.

6 BRUCE DURANT: I just don't know
7 of a case one way or the other, and our ---

8 THE COURT: Well, I don't think ---

9 BRUCE DURANT: --- concern is that
10 in a situation like that it kind of cuts to the
11 heart of the matter if they're saying that this
12 is the only situation that 'I could ever
13 consider the death penalty.'

14 THE COURT: I would have no problem
15 with your asking, 'The Judge is going to
16 instruct you that you could consider a death
17 sentence if you find these aggravating, certain
18 aggravating circumstances. Would you give
19 meaningful consideration -- would you consider
20 that and could you impose that if you were
21 convinced from all the evidence.' I don't have
22 any problem with that.

23 I don't think that you can ask
24 specifically whether in a given case they can.

25 Now, yesterday the one juror said

1 'yeah, that would be the only one.' That was
2 volunteered. I think that, personally, that's
3 an invasion but if you all to -- I understand
4 the basis for it, I don't have any problem, I
5 just don't have -- is there a case specifically
6 that you rely on to support the definition?

7 MR. BLOOM: Judge, I think, the
8 *State v. Powers* and *State v. David Hill*, which
9 I cited, ---

10 THE COURT: *David Hill*, that's the
11 Georgetown ---

12 MR. BLOOM: When voir dire first
13 started over a decade ago I was a proponent of
14 saying to ask the juror what situation, so that
15 we would know, but our court has limited that.

16 THE COURT: Right.

17 MR. BLOOM: So I can't ask them what
18 types of mitigating circumstances under which
19 they'd vote for life, and the State -- I think
20 under *Collins* and *Hill* are likewise limited 'in
21 what kind of situations would you vote for
22 death.' That's what our court has said staking
23 out when you get into case-specific mitigators
24 and aggravations.

25 THE COURT: I would allow the

1 question that you -- I think you're entitled to
2 ask if that is the only one. I don't think
3 that this juror, that that was the only
4 situation.

5 BRUCE DURANT: I didn't believe
6 so, but I thought that it was necessary to find
7 that out.

8 THE COURT: I don't have any problem
9 with that. I wouldn't allow the question of
10 'are there others, what are they?' But the
11 question of, 'Is that the only circumstance in
12 which you could vote to impose the death
13 penalty?' No problem.

14 BRUCE DURANT: I think if you get
15 to the point where you start asking them about
16 individual mitigating circumstances or
17 individual aggravating circumstances, you are
18 getting to the staking out part. I just
19 thought that was a legitimate response to a
20 comment that the juror had made.

21 THE COURT: I don't have any problem
22 with that type of general response to it or --
23 you know, 'Would you be able to, if you were
24 convinced from all the circumstances, to
25 consider it?' And if she said 'only if it was

1 a...' -- as that person did, 'only if it a
2 child.' I think that would lend itself to
3 maybe getting a listing responses indirectly...
4 I think -- I'm comfortable with it if you want
5 to ask her that but that is not the only one.

6 BRUCE DURANT: I am comfortable
7 with her, Your Honor.

8 THE COURT: No, not ---

9 BRUCE DURANT: I was just asking
10 that more in terms of future ---

11 THE COURT: I don't have any
12 problem. I would say that's one way but I
13 think the other, 'Is that the only one?' is a
14 fair question.

15 BRUCE DURANT: Thank you, Your
16 Honor.

17 THE COURT: I think if she says 'no,
18 there are not', I don't think that you can then
19 come back and say 'what are the others?'

20 BRUCE DURANT: I totally agree.

21 THE COURT: Thank you. Not a
22 problem and I appreciate your asking, inquiring
23 as to that.

24 BRUCE DURANT: Thank you.

25 THE COURT: Okay. And Hill was the

1 one that ---

2 MR. BLOOM: David Clayton Hill.

3 THE COURT: I remember him. I
4 actually was in Georgetown and, thank the Lord,
5 that's when they started assigning, I think
6 Judge Anderson tried that case because I heard
7 some Motions in that case because that was one
8 of my first assignment. Judge Marrow -- I was
9 assigned my first death penalty case in 1995,
10 where he was putting them all on the docket.
11 It was a different ballgame then. Thank the
12 Lord it's changed.

13 Okay, let's bring in Mr. Cochran,
14 Number 54. I will reread Hill over the break,
15 Solicitor, to make sure that there is nothing
16 in there that would create a problem.

17 (JUROR NUMBER 54 ENTERS COURTROOM)

18 THE COURT: Good afternoon, Mr.
19 Cochran. Finally you've arrived and I know you
20 were probably wondering, 'when are they going
21 to get to me?' I'm sorry that it has taken so
22 long. This process, we move as quickly as we
23 can and we hopefully can make some time limits
24 but, just as anything in our lives, you do the
25 best you can and sometimes you miss it. I

1 appreciate your patience, though.

2 JUROR NUMBER 54: Thank you, Your
3 Honor.

4 THE COURT: Mr. Cochran, we started
5 a process on Friday and we were asking you some
6 questions about this case. As you recall, I
7 said that these questions really have no
8 correct answers to any of them. They are
9 really designed to help the jury make a
10 determination as to whether or not they could
11 be a fair and impartial judge in this case, and
12 to help us make a determination as to whether
13 you could be a fair and impartial judge.

14 They are not designed to change your
15 mind or challenge any philosophies that you may
16 have in your life. Those are yours and you are
17 entitled to them. They certainly are not meant
18 to challenge or invade your privacy.

19 All that we ask is that you be
20 truthful in your responses and completely
21 respond. Will you do that, sir?

22 JUROR NUMBER 54: Yes, sir.

23 THE COURT: I would remind you in
24 that regard that you are still under oath in
25 this matter. Okay?

1 JUROR NUMBER 54: Yes, sir.

2 ANTHONY COCHRAN, being duly sworn to
3 tell the truth, the whole truth and nothing but
4 the truth, testified, as follows:

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. Since we were together on Friday, have you
8 talked with anyone or let anyone talk about
9 this case in your presence?

10 A. No.

11 Q. Have you watched any news accounts or read
12 anything about this case?

13 A. No.

14 Q. Friday I mentioned a number of persons. I
15 failed to mention two names that I need to ask
16 you about. Are you related by blood or
17 marriage, have any business dealings with or
18 socially or casually acquainted with or have
19 any dealings with Jeff Osborne or Matt Casey?

20 A. No.

21 Q. You were given a sheet when you came in
22 that sets forth three types of jurors, have you
23 had a opportunity to review that sheet?

24 A. Yes, I have.

25 Q. Which type most accurately describes you?

1 A. Probably type two.

2 Q. Probably two?

3 A. (Affirmative nod).

4 Q. Let me state what I understand two to say.

5 Type two says that you're on a jury in which

6 the jury has the responsibility of determining

7 the type of sentence to be imposed for the

8 crime of murder. Murder is the intentional

9 killing of somebody with malice aforethought.

10 It's not a mistake, it's not manslaughter, not

11 provoked by anything that would -- it's not the

12 result of any provocation that would justify

13 it. It's the intentional killing of somebody

14 that they wanted to kill, they intended to kill

15 them, they had malice, they killed the person.

16 Now, the jury has concluded that the State had

17 the right person, the evidence has convinced

18 the jury that that is the person. The type two

19 juror, as I understand, says 'Okay, they've

20 been found guilty of murder. I believe that

21 the appropriate punishment is life

22 imprisonment, always life imprisonment. It

23 doesn't matter about the circumstances, I don't

24 need to hear anymore.' Is that you?

25 A. (Affirmative nod), I would say.

1 Q. Now, you understand that it is in the
2 second phase, it is a two-phase process, where
3 you would hear evidence of what the appropriate
4 sentence would be. If certain factors were
5 present, you may could then even consider the
6 death penalty but as a type two person, as I
7 understand it, you've went through that phase
8 and even if the jury had the option to consider
9 a death sentence, the court instructed you to
10 consider that, you still could not impose a
11 death sentence?

12 A. No, sir.

13 Q. You would always vote for life imprison-
14 ment?

15 A. (Affirmative nod), because I have to sleep
16 at night.

17 Q. I understand. That's your strong
18 philosophy?

19 A. (Affirmative nod).

20 THE COURT: Thank you, sir. If you
21 would, please answer any questions that the
22 attorneys may have for you.

23 VOIR DIRE EXAMINATION

24 BY MR. BLOOM:

25 Q. Good afternoon, Mr. Cochran. My name is

1 Jeff Bloom and along with Andrew Carroll, we
2 represent William Dickerson. I just have a few
3 followup questions from what Judge Dennis asked
4 you. You understand that there are right or
5 wrong answers, right, sir?

6 A. Absolutely.

7 Q. You strike me as someone that you're going
8 to be honest, say exactly what you think and
9 what is your opinion?

10 A. I'll do my best, (affirmative nod)..

11 Q. Now, the law says that it is okay to have
12 strong feelings either for or against the death
13 penalty, do you understand that?

14 A. Yes.

15 Q. What the law first requires then, after
16 that, is whether you can set those strong
17 feelings aside and listen to all the evidence
18 and the law that Judge Dennis gives you. Do
19 you think that you could set those feelings
20 against the death penalty, that you have, could
21 you set them aside and listen to the evidence,
22 listen to the instructions of Judge Dennis?

23 A. Yes.

24 Q. All right. But then the next thing the
25 law does is ask if you can set those feelings

1 aside and decide the first part of the case,
2 guilty or not guilty of murder, you understand
3 that?

4 A. Yes.

5 Q. That's like any case that you may have
6 seen on TV or read about, that is where the
7 jury hears evidence and they decide guilty of
8 murder or not guilty. Do you understand that?

9 A. Yes.

10 Q. You can listen to that evidence and decide
11 whether someone is guilty or not guilty of
12 murder, I take it; correct?

13 A. Yes.

14 Q. Then the next thing that the law requires
15 is after -- if a jury finds someone guilty of
16 murder, you move to a second phase, which we
17 call the sentencing phase, and that's where
18 your view on the death penalty -- my next
19 questions are going to be important. That's
20 where the jury decides if a defendant, after
21 hearing all the evidence, and instructions from
22 the judge, can decide on the death penalty or
23 life without parole. So my question is, at
24 that stage if you had found someone guilty of
25 murder and you moved to that second part, can

1 you set your strong feelings about the death
2 penalty aside and weigh the death penalty or
3 life without parole?

4 A. What are you asking me?

5 Q. I am going to ask it this way, I am going
6 to be as simple as I can. I'm not trying to
7 trick you. I am not trying to lead you
8 somewhere where you don't want to go. What I
9 am simply asking you is, if you were in that
10 second phase where you were listening to
11 evidence that the State presented to support
12 the death penalty and you were looking at the
13 evidence that the defense presented to support
14 life without parole, is there ever a situation
15 -- and we're not talking about this case,
16 nothing to do with this case, -- is there ever
17 a situation where you could set your personal
18 feelings against the death penalty aside and
19 give consideration to a death penalty ---

20 SOLICITOR WILSON: Your Honor, I
21 object.

22 THE COURT: Yeah, you need to phrase
23 the question properly, because the instruction
24 is going to be that he can't even return a
25 death penalty.

1 MR. BLOOM: Yes, sir.

2 THE COURT: Not consider.

3 MR. BLOOM: Yes, sir, I was going to
4 take ---

5 THE COURT: No, sir, well, don't
6 take it to that. Don't use the word "consider"
7 because it's got to be more than that.

8 MR. BLOOM: All right, sir.

9 EXAMINATION CONTINUED

10 BY MR. BLOOM:

11 Q. In that situation can you set your
12 personal beliefs against the death penalty
13 aside in a situation and ever give a verdict of
14 the death penalty if you felt the circumstances
15 were appropriate and after the law that the
16 judge gave you?

17 A. Yeah, as I said to the Judge, I have to
18 sleep at night.

19 Q. Sure.

20 A. So, you know, however you phrase your
21 question, I still have to sleep at night and
22 -- I still have to sleep at night.

23 Q. I understand. I wasn't trying to confuse
24 you or anything, I was just trying to
25 understand how you felt. So do I understand

1 you to say that you could not set your feelings
2 aside?

3 A. (Negative gesture).

4 Q. Because you'd have to sleep at night?

5 A. (Affirmative nod).

6 Q. I'm sorry, is there something ---

7 THE COURT: He's answered that
8 question.

9 JUROR NUMBER 54: Yeah, can I -- can
10 I just say something. I know Mr. Roper.

11 THE COURT: You know Mr. who?

12 JUROR NUMBER 54: I know Mr. Roper.

13 MR. BLOOM: Thank you, sir.

14 THE COURT: Who is Mr. Roper?

15 SOLICITOR WILSON: The father ---

16 MR. BLOOM: He's the father of the
17 victim.

18 THE COURT: You know him?

19 JUROR NUMBER 54: I know him.

20 THE COURT: So that would influence
21 you, as well?

22 JUROR NUMBER 54: Yes, sir, it would.

23 THE COURT: Thank you, sir. You are
24 excused from participation in this dispute.
25 Thank you so much, good luck to you, sir.

1 JUROR NUMBER 54: That's why I said
2 to you the other day that I wasn't sure.

3 THE COURT: You weren't sure about
4 him?

5 JUROR NUMBER 54: But I see him.

6 THE COURT: Okay. Thank you, sir.

7 (JUROR NUMBER 54 EXITS COURTROOM)

8 THE COURT: This is one, Mr. Bloom,
9 and I appreciate your attempt to represent your
10 client but this is where you're getting into
11 that area of going over the top.

12 This man is a pastor. If you want to
13 raise an objection, you didn't ask him about
14 whether -- we don't need to because he realized
15 that he knew Mr. Roper. That is precisely
16 where -- you can ask all the questions that you
17 want to protect it but that's where you are
18 invading and challenging his philosophy, I
19 think. I don't have any problem with your
20 setting up but when that man has already
21 responded to me saying 'there's no way, I am
22 not going to do that'; you know, he's already
23 answered that question, and you asked him
24 precisely what I asked him. The only
25 difference is that it came from you and not me,

1 and I understand your concern about the robe
2 and I -- that's why I don't say 'I've already
3 asked that question.' I agree with you about
4 that. Don't have any problem about that. But
5 to try to challenge him on that, that's just
6 going too far. I'm probably going to stop you
7 in the future. Okay.

8 MR. BLOOM: I apologize to the court
9 if he came off as a challenge. He quite
10 frankly, Your Honor, surprised me when I asked
11 him if he could set it aside, because I think
12 at minimum I'm required to do that when he
13 initially said yes.

14 THE COURT: No, you asked him -- and
15 the problem that I have with that is that
16 you're setting him up and that's what bothers
17 me. You set him up by asking 'in the first
18 stage, could you set it aside?' That hasn't
19 got a thing to do with it. Of course, he's
20 going to set it aside.

21 You need to ask the critical question
22 right out of the chute. If you want to follow
23 -- if there really is going to be a followup,
24 'I understand you just said that there is no
25 circumstance where you could impose a death

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1 penalty. Does that mean that you could never,
2 ever in any situation, notwithstanding that the
3 court instructed you, impose a death sentence?'

4 You don't need to set up, 'Now, in the
5 first phase would you be influenced by that?'

6 Of course he's not going to be influenced.

7 He's already said that by being a type three
8 (sic) juror. He's already decided that.

9 He said, 'I could, fairly and impartially.' So
10 he's already answered the question. That is
11 what I am saying.

12 Don't -- you know, you use that as a
13 door opening that really and truly didn't open
14 any door because it doesn't relate to the
15 critical question. That's my concern. Now,
16 that is my reaction to it.

17 I'm -- I welcome you to explain how it
18 does. Maybe I am just missing it, Mr. Bloom.
19 I'm not trying to be argumentative and I'm
20 certainly not trying to be overly controlling
21 of it, but I just -- I felt like -- because I
22 have this other responsibility and it's kind of
23 like what you were saying, I would love it if
24 we just say that we're going to allow *voir dire*
25 and these are the areas that you can cover.

1 That would make it lot simpler than saying,
2 'Judge, you have' -- that voir dire permitted
3 but you can't -- you can't invade people's
4 privacy. You can't challenge them as people.
5 At what point does that happen? That's those
6 things that place a responsibility on us to do
7 that and still afford you the opportunity to
8 examine this juror, to make determination as to
9 whether they can be -- whether they are rote
10 responses or whether there is something else
11 there. You and I mentioned that before, and
12 you understand.

13 MR. BLOOM: Yes, sir.

14 THE COURT: I just ask you to try to
15 consider that for the balance. I know we're
16 fighting but some -- I just ask you to pick
17 your battles properly, but -- I trust you to do
18 the right thing. I am not implying that you
19 intentionally are doing anything, sir. I think
20 you've been nothing but the most professional
21 -- as everybody has in this case. Thank you
22 for that.

23 All right, Mr. Cochran I excused
24 primarily because as he stated he did come
25 forward, and I'd forgotten, and said that he

1 knew the person but wasn't sure. When he saw
2 Mr. Roper -- what is the gentleman's name, for
3 the record.

4 SOLICITOR WILSON: Aven Roper.

5 THE COURT: He saw Mr. Roper and he
6 knew him. He had already demonstrated that he
7 -- that would affect him, so he is disqualified
8 not for death penalty reasons but insofar as
9 the fact that he could not be fair and
10 impartial, knowing Mr. Cochran (sic). There's
11 nothing wrong with that. That's why we have a
12 number of jurors. So, Mr. Cochran (sic),
13 that's nothing about you or anything else --
14 that's a proper process.

15 Let's bring in Juror 343, please.

16 (JUROR NUMBER 343 ENTERS COURTROOM)

17 THE COURT: On Panel Number Seven,
18 Ms. Sherri Barker has called and is ill and
19 wants to postpone hers to tomorrow. She is
20 throwing up, apparently. Any objection, we
21 will put her in -- move her in with the panels
22 and tell her what time to come in. Any problem
23 with that?

24 BRUCE DURANT: No, sir.

25 THE COURT: Any problem with that?

1 MR. BLOOM: No, sir, Your Honor. Do
2 you intend if she is qualified to keep her in
3 the same order?

4 THE COURT: Oh, absolutely. It
5 doesn't change anything from the strike
6 proposition. It would be just simply -- most
7 certainly, (affirmative nod). We just simply
8 will accommodate her situation and hopefully
9 she will be better tomorrow.

10 Sorry to keep you waiting, Mr.
11 Wineinger. I know you must have been wondering
12 'how much longer?' We appreciate your
13 patience.

14 We are going to continue the process
15 that we started on Friday. There are some
16 questions that I have for you and then some
17 questions that the attorneys will probably have
18 for you. There are no correct answers to any
19 of these questions. We just ask that you
20 respond truthfully and give us complete
21 answers. I am confident that you will do that.

22 JUROR NUMBER 343: Okay.

23 THE COURT: I would remind you in
24 that regard that you are still under oath in
25 this matter. Please understand that we are not

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1 here to try to change your mind on any feelings
2 that you have, you don't have to justify any of
3 your philosophies. You understand that?

4 JUROR NUMBER 343: Yes, sir.

5 STEVEN WINEINGER, being duly sworn to
6 tell the truth, the whole truth and nothing but
7 the truth, testified, as follows:

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. First of all, please state your full name
11 for the record.

12 A. Steven Douglas Wineinger.

13 Q. Mr. Wineinger, you were instructed not to
14 talk about this case with anyone or permit
15 anyone to talk with you. Have you at any time
16 since Friday discussed this matter or permitted
17 anyone to talk with you about it?

18 A. No, Your Honor.

19 Q. Have you read any news accounts or watched
20 any news programs about it?

21 A. No.

22 Q. Friday I gave you the names of a number of
23 persons. I failed to mention two names that I
24 need to ask you about. Are you related by
25 blood or marriage, have any business dealings

1 with or are you socially or casually acquainted
2 with or have any dealings with a Jeff Osborne
3 or Matt Casey?

4 A. No, sir.

5 Q. You were given a sheet when you came in
6 that lists three types of jurors, have you had
7 a opportunity to review that sheet?

8 A. Right.

9 Q. Have you had a chance to review it?

10 A. Yes, Your Honor.

11 Q. Which of the three types of juror bests
12 describes you?

13 A. Type three.

14 Q. Type three is that juror that basically --
15 and you understand that would be the type of
16 juror that in a jury trial that has the
17 responsibility of deciding the appropriate
18 punishment for murder. Do you understand that?

19 A. Yes, sir.

20 Q. And murder in that setting -- the murder
21 would have been an intentional killing of
22 somebody, with malice. In other words, it's
23 not a mistake, not something where somebody got
24 in a fight and then shot somebody,
25 manslaughter, but rather was someone who wanted

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1 to kill somebody, intended to kill them and
2 went about it, took the actions necessary and
3 killed that person. The jury would have
4 decided that the State had the right person
5 because the jury had found that they'd met the
6 burden of proof.

7 As I understand, if you're in that jury
8 you at that point, having found a verdict of
9 guilty, knowing that you had a second phase
10 where you were going to receive additional
11 evidence as to what sentence would be
12 appropriate you would not have made the
13 decision as to what sentence was best?

14 A. No, sir.

15 Q. You would have an open mind?

16 A. Yes, sir.

17 Q. And you would consider all the evidence
18 and make a decision on which you would choose
19 and then there are times when your verdict
20 would be life imprisonment without the
21 possibility of parole and there be sometimes
22 when it may be the death sentence; is that
23 correct?

24 A. Yes, sir.

25 Q. But you don't know until you've heard it

1 all?

2 A. Right.

3 Q. And had a chance to talk with your jurors
4 and receive the law, is that correct?

5 A. (Affirmative nod).

6 Q. Now, you understand that in trials such as
7 -- in a criminal trial there are two judges
8 working together; the judge of the facts which
9 is the jury and the judge of the law, which is
10 the presiding judge. Do you understand that?

11 A. Yes, sir.

12 Q. And you understand that the jury has the
13 responsibility of determining the true facts by
14 considering the evidence, which consists of
15 testimony of the witnesses and exhibits that
16 are introduced and nothing else. Do you
17 understand that?

18 A. Yes, sir.

19 Q. I understand from your answers thus far
20 that you believe that you are the type of
21 person that could, having heard what you've
22 heard about this case, be a fair and impartial
23 judge of the facts in this case; is that
24 correct?

25 A. Yes, sir.

1 Q. Let's talk about not this case but just
2 sitting as a juror in a criminal case. You
3 understand that the jury would have to make the
4 determination of the facts and they would also
5 make a commitment that they would accept the
6 law given to them by the presiding judge. Do
7 you understand that?

8 A. Yes, sir.

9 Q. And you could do that, would do that?

10 A. Yes, sir.

11 Q. And that would mean that if you heard some
12 principle of law that maybe challenged some
13 philosophy that you have, maybe it was not what
14 you believed the law was or should be, that you
15 would have to set aside those feelings and take
16 the law and apply that law fairly and
17 impartially to those facts that you determine.
18 Do you understand that?

19 A. Yes, sir.

20 Q. And you could and would do that?

21 A. I could.

22 Q. You understand that in a criminal dispute
23 the State is the only party that has the burden
24 of proof?

25 A. Right.

1 Q. That means that persons accused of
2 committing criminal offenses don't have to
3 prove anything at all. They don't have to
4 prove their innocence, they don't have to
5 explain anything, they don't have to justify
6 anything. They don't have to present any
7 evidence. Do you understand that?

8 A. Yes, sir.

9 Q. The court would instruct you that you
10 couldn't use that against them. In fact,
11 persons accused don't even have to testify. Do
12 you understand that?

13 A. Yes, sir.

14 Q. Would you have any problem following that
15 principle of law?

16 A. No.

17 Q. I believe that you have already indicated,
18 as I mentioned to you, that Mr. Dickerson has
19 been accused of several criminal offenses. You
20 indicated after I discussed with you a basic
21 principle of law that applies to Mr. Dickerson
22 and anyone who is accused of committing a
23 criminal offenses, in this state and in this
24 country, they are presumed to be innocent until
25 and unless the State proves them guilty beyond

1 a reasonable doubt. Do you understand that?

2 A. Yes, sir.

3 Q. And as I mentioned to you on Friday,
4 that's an active presumption. It is not just
5 some words. People have to look at persons who
6 are accused with criminal offenses as innocent
7 of those offenses until the State convicts them
8 of those offenses or they admit their guilt.
9 Do you understand that?

10 A. Yes, sir.

11 Q. So today as Mr. Dickerson sits here, do
12 you believe that he is innocent of those
13 offenses which he has been accused of?

14 A. As far as I know, he is.

15 Q. Now, you understand that if we -- that if
16 you were in a criminal dispute as to which the
17 jury was going to make a determination as to
18 the appropriate sentence, the first thing that
19 would happen is that you would have a trial on
20 the charge itself. Do you understand?

21 A. (Affirmative nod).

22 Q. One of those charges would be murder, do
23 you understand that?

24 A. Yes, sir.

25 Q. You -- if you were on the jury, you would

1 listen to all the evidence?

2 A. (Affirmative nod).

3 Q. You would be instructed at the end to
4 evaluate the evidence, apply the law that the
5 court gave to you and decide whether or not the
6 State has convinced you beyond a reasonable
7 doubt of each element of that particular
8 offense. That is, the offense of murder. Do
9 you understand that?

10 A. Yes.

11 Q. You have to have an open mind when you
12 start. In other words, you can't have any
13 predeterminations. You would be able to do
14 that?

15 A. Yes, sir.

16 Q. If after hearing all the evidence the
17 court is instructing that if the State proves
18 all the evidence beyond a reasonable doubt,
19 you'd return a verdict of guilty. But if they
20 failed on one or more, you'd have to return a
21 verdict of not guilty. Do you understand that?

22 A. Yes.

23 Q. If after listening to the evidence,
24 evaluating it, you decide that the State has
25 failed to prove each element -- in other words,

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1 you're not convinced beyond a reasonable doubt
2 of one element or more, would you return a
3 verdict of not guilty?

4 A. Yes, sir.

5 Q. Would you have any hesitancy in doing
6 that?

7 A. No.

8 Q. Also is at that time, evaluating the
9 evidence, you were firmly convinced that the
10 State has convinced you of each element, would
11 you return a verdict of guilty?

12 A. Yes, sir.

13 Q. Would you have any hesitancy in doing
14 that?

15 A. No, sir.

16 Q. Do you understand at that point in that
17 case, there would be another phase where you
18 would hear additional evidence. It is my
19 understanding that you, notwithstanding that
20 you had just taken part in a decision as a
21 group, twelve persons, that the twelve persons
22 had found this person guilty of a crime of
23 murder, you still would not have any decision
24 -- you still wouldn't have, in your mind, what
25 the appropriate punishment should be?

1 A. (Affirmative nod).

2 Q. And you understand that you would be asked
3 -- may be asked to consider both?

4 A. Yes, sir.

5 Q. And I say "may be" because, you know,
6 normally when the jury is not empaneled to
7 decide what the appropriate punishment is for
8 murder -- typically the jury decides the crime
9 and then the presiding judge determines the
10 sentence. Do you understand that?

11 A. Yes.

12 Q. Unless there was some special waiver that
13 allowed the judge to hear it, the judge could
14 never impose a death sentence for murder., Do
15 you understand that?

16 A. Yes, sir.

17 Q. The most serious sentence that a judge can
18 impose would be life imprisonment without the
19 possibility of parole, but the judge isn't
20 limited to that sentence. Do you understand
21 that?

22 A. Yes, sir.

23 Q. In this setting the jury would now have to
24 hear evidence, and the first thing that the
25 jury has to determine, because as I just

1 stated, normally the death sentence is not an
2 option, is whether or not the State had proved
3 beyond a reasonable doubt something that we
4 call aggravating circumstances.

5 Those are circumstances that our law
6 defines that raises the offense -- in other
7 words, takes it out of that normal setting
8 where a judge is going to make the determina-
9 tion of sentence and a jury instead is going to
10 decide that. Some of those things are when a
11 person has killed a police officer, killed a
12 child, and there are others and I would define
13 them for you.

14 The jury has to conclude first, beyond a
15 reasonable doubt, that those aggravating
16 circumstances have been established before you
17 can even consider a death sentence. Do you
18 understand that?

19 A. Yes, sir.

20 Q. If that jury after considering it wasn't
21 convinced that that had been established, then
22 the instruction would be the only sentence that
23 could be imposed would be life without the
24 possibility of parole. Would you have any
25 problem following that instruction if you were

1 on that jury?

2 A. No.

3 Q. The instruction would go on to say that
4 if, on the other hand, you found beyond a
5 reasonable doubt that there were aggravating
6 circumstances and, those again, were
7 established beyond a reasonable doubt, then you
8 could consider a death sentence as a potential
9 sentence, but that doesn't mean that you have
10 to. In other words, the instruction would
11 never tell you that you must return a death
12 sentence, only that you have the option of
13 doing so. That's because the jury has found
14 that existence of this aggravating
15 circumstance. Do you understand that?

16 A. Yes.

17 Q. So now you have a murder, beyond a
18 reasonable doubt; now you have aggravating
19 circumstances, beyond a reasonable doubt; and
20 now on the table for your consideration is the
21 death sentence on the one side and life
22 imprisonment without the possibility of parole
23 on the other side. It is my understanding that
24 even at that point you still have not made a
25 determination as to what the most appropriate

1 sentence is.

2 A. Right.

3 Q. You'd need to talk about it with your
4 jurors, consider all the evidence, because you
5 would receive in addition to aggravating
6 circumstances other evidence concerning the
7 appropriate sentence, both from the State and
8 from the -- and there may be evidence of
9 mitigating circumstances. Remember something,
10 the defendant doesn't have to prove anything at
11 any point in time and that includes the second
12 phase. Do you understand that?

13 A. Yes, sir.

14 Q. But the court would say that if there are
15 mitigating circumstances in the evidence, then
16 you must consider those. Mitigating
17 circumstances are circumstances -- some are
18 statutory and some of nonstatutory. Mitigating
19 circumstances are such things as the
20 background, how the person who is accused of
21 the offense was raised, problems they may have
22 had -- child abuse, those types of things,
23 mental health issues, addiction issues. And
24 most of those don't even apply to the crime
25 itself. Do you understand that?

1 A. Yes, sir.

2 Q. But if those exist, the court would
3 instruct you that you must give meaningful
4 consideration, that means that you must
5 consider those in determining the appropriate
6 sentence. Could you and would you do that?

7 A. Yes, sir.

8 Q. Would you have any problem following that
9 instruction?

10 A. No, sir.

11 Q. There may be none. If there aren't any,
12 you would be instructed that you can't hold
13 that against the defendant. Do you understand
14 that?

15 A. Yes, sir.

16 Q. And would you expect the defendant to
17 prove anything to you at that stage?

18 A. No, sir.

19 Q. So you wouldn't hold that against him if
20 there weren't any mitigating circumstances?

21 A. No.

22 Q. That's important because another part of
23 the instruction would be, even though the jury
24 has concluded that there are aggravating
25 circumstances and even though there are no

1 mitigating circumstances, the jury still has
2 the right to return a verdict of life
3 imprisonment without the possibility of parole
4 because the jury has that right for no reason.
5 Do you understand that?

6 A. Yes, sir.

7 Q. And you could give consideration to that
8 part?

9 A. Yes.

10 Q. And after considering it all, am I to
11 understand that you could, in certain
12 circumstances, find that this crime warranted a
13 death sentence and sign your name to a death
14 verdict?

15 A. Yes, sir.

16 Q. Likewise, you could even though you had
17 the option to find a death sentence, return a
18 verdict of life imprisonment without the
19 possibility of parole?

20 A. Yes, sir.

21 Q. But as we sit here today you couldn't tell
22 me which because you've got to hear the facts
23 and circumstances of each case?

24 A. Right.

25 Q. Is there anything that you've heard now

1 about this case, and again nothing that we have
2 talked about thus far has been specifically
3 this case, is there anything that you have
4 heard that would give you any concern about
5 your ability to be a fair and impartial judge
6 in this case, sir?

7 A. No, there isn't.

8 THE COURT: Thank you. Please
9 answer any questions that any of the attorneys
10 may have.

11 VOIR DIRE EXAMINATION

12 BY SOLICITOR WILSON:

13 Q. I'm Scarlet Wilson, I'm the Solicitor
14 here. This is Bruce Durant and Rutledge Durant
15 and they are prosecutors in my office and when
16 we start the trial we will be the ones
17 presenting evidence before the jury. Before
18 that, I am just going to ask a few followup
19 questions based on your questionnaire and your
20 answers to the Judge, just to make sure that I
21 am square with where you are.

22 A. Okay.

23 Q. Can you just tell me in your own words
24 what your thoughts are on the death penalty and
25 life without parole?

1 A. On the death penalty, I feel that it is
2 warranted under certain circumstances.

3 Life without parole is warranted under
4 other circumstances.

5 Q. So if there is a spectrum of people who
6 think no matter what if there is a murder there
7 should be the death penalty and people who
8 think no matter what the death penalty should
9 never be given, you would be in the middle?

10 A. Yes.

11 Q. You understand, based on what the Judge
12 told you today, -- first of all, have you ever
13 been involved in a murder case as a witness or
14 a juror?

15 A. No.

16 Q. The judge told you, I believe, that in
17 order for there to be a conviction of murder,
18 the killing has to be intentional and
19 malicious, ---

20 A. Yes.

21 Q. --- mean-spirited?

22 A. Yes.

23 Q. So it is already a bad situation when
24 someone is convinced of murder versus killing
25 that may have been as the result of self-

1 defense that involved heat-of-passion. We are
2 talking mean-spirited, a malicious murder.

3 A. Right.

4 Q. Based on what you told the judge, it is my
5 understanding that you would be willing to
6 follow his instructions and if you were in a
7 situation where someone even voted to convict
8 someone of murder, you could wait before you
9 made up your mind about what to do with it?

10 A. Yes, ma'am.

11 Q. And you could listen to the State's
12 evidence and understand that we have the burden
13 of proof in that penalty phase, that second
14 phase, of proving to you aggravating
15 circumstances?

16 A. Yes, ma'am.

17 Q. You could hold us to that burden, make
18 sure that we did that?

19 A. Yes, ma'am.

20 Q. If we did that, could you still wait and
21 listen to any mitigation, if the defense chose
22 to bring you any, anything about the defendant
23 or anything about the crime that maybe hadn't
24 come out, that shed a little more light on it.
25 Could you wait and listen to that?

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1 A. Yes, ma'am.

2 Q. And seriously, fairly consider that
3 mitigation, too?

4 A. Yes, ma'am.

5 Q. And then at that point if the death
6 penalty were still on the table because we'd
7 proven our aggravating circumstances and life
8 without parole, which is always on the table,
9 you could make your decision on one of those?

10 A. Yes, ma'am.

11 Q. It wouldn't always be death or always be
12 life?

13 A. Right.

14 Q. It just depends.

15 A. Yes.

16 SOLICITOR WILSON: Thank you so much.
17 I know you'd been waiting for a while and we
18 appreciate your patience.

19 MR. BLOOM: May it please the court?

20 THE COURT: Yes, sir.

21 VOIR DIRE EXAMINATION

22 BY MR. BLOOM:

23 Q. Mr. Wineinger, how are you doing, sir?

24 A. Pretty good.

25 Q. My name is Jeff Bloom and along with

1 Andrew Carroll, we represent William Dickerson.

2 I just have a few followup questions.

3 The first thing that I want to ask you is,
4 on your questionnaire you said "I agree with
5 the death penalty." Can you just tell me what
6 you mean by that?

7 A. Well, if someone commits murder, then he
8 should deserve what he gave out -- if that's
9 the situation.

10 Q. Okay. Does that mean that if you were a
11 juror and you would find someone guilty of
12 murder that you're going to automatically vote
13 for the death sentence?

14 A. No, sir, not automatically. It is going
15 to be the situation that determines it.

16 Q. Because you understand, as the Judge
17 defined murder, that it is someone who did it,
18 intended to do it, with malice, an evil heart,
19 they got the right person -- and there are some
20 people who feel that once they've found that
21 type of malice murder, someone guilty, that
22 they are always going to vote for death. But
23 you're --

24 A. (Negative gesture), not necessarily.

25 Q. All right. Let me ask you next, sir, I

1 think you understood Judge Dennis to tell you
2 that you as a jury in a case -- and we are not
3 asking you about this case. You understand
4 that?

5 A. Yes.

6 Q. If in a case you would be able to consider
7 things such as a person's background, mental
8 health, drug additions. Do you think you could
9 give meaningful consideration to those kinds of
10 things.

11 A. Yes, sir.

12 Q. That is not something that you are just
13 sort of going to rule out and not consider at
14 all?

15 A. No, not at all.

16 Q. And you understood Judge Dennis to tell
17 you that the law in fact never requires the
18 death penalty?

19 A. Right.

20 Q. You understood him to tell you that?

21 A. (Affirmative nod).

22 Q. And it is always the juror's, what the law
23 calls their "individual moral, reasoned choice"
24 or moral, individualized choice?

25 A. Yes.

1 Q. And you could make your own moral,
2 individualized judgment in such a case?

3 A. Yes, sir.

4 Q. If you were with other jurors and after
5 you heard all the evidence, considered
6 everything, and debated with your other jurors,
7 discussed this with them, listened to them,
8 they listened to you, you could come to your
9 own individual, moral, reasoned judgment?

10 A. Yes, sir.

11 Q. And if eleven jurors were going one way
12 and you were voting one way and you'd made your
13 own individual moral judgment, you wouldn't
14 just give up that vote just to say, 'Golly,
15 it's late, I'm hungry. I'm going to go along
16 to get along and get done with it.'

17 A. No, sir.

18 Q. Okay. You would want them to respect your
19 vote?

20 A. Yes, sir.

21 Q. Just as you would respect their vote?

22 A. Right.

23 MR. BLOOM: Thank you, sir.

24 THE COURT: Thank you, Mr. Bloom.

25 Any additional questions, Solicitor?

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1 SOLICITOR WILSON: No, sir.

2 THE COURT: Mr. Wineinger, if you
3 will step out, we will be with you momentarily,
4 sir.

5 (JUROR NUMBER 343 EXITS COURTROOM)

6 THE COURT: The court believes that
7 he is qualified. Any objection from the State?

8 SOLICITOR WILSON: No, sir.

9 THE COURT: Any objection from the
10 defense?

11 MR. BLOOM: No, sir.

12 THE COURT: Thank you. Bring him
13 in, please.

14 (JUROR NUMBER 343 EXHIBITS COURTROOM)

15 THE COURT: Mr. Wineinger, you've
16 been found to be qualified to be a member of
17 the panel from which we will select our jury.

18 We anticipate and hope that will occur
19 on Thursday morning at 9:30 in this courtroom.
20 When you are instructed to return, we would ask
21 you to come directly here at that time and be
22 prepared, if necessary to stay. Once we select
23 the jury, we will start the trial of the case.

24 Until then and until you have been
25 dismissed from this case, please remember that

1 you still are not at liberty to discuss this
2 case with anyone or permit anyone to talk with
3 you about it. Also, please continue not to
4 watch any news programs about it or read any
5 news accounts. Have a great day and we'll see
6 you, hopefully, Thursday.

7 (JUROR NUMBER 343 EXITS COURTROOM)

8 THE COURT: Given the hour, it's
9 time for us to take our lunch break, such as it
10 is. Let's try to be back at 2:45. Anything
11 from the State before we recess?

12 SOLICITOR WILSON: No, sir.

13 THE COURT: Anything from the
14 defendant?

15 MR. BLOOM: No, sir.

16 THE COURT: Very well, we will be at
17 ease until 2:45.

18 (LUNCH RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Let the record reflect
21 that Mr. Dickerson is present.

22 Ms. Frasier is the first one and she
23 has just finished filling out her questionnaire
24 now. Do you want to move her back a bit and
25 give you'all a chance to look at it?

1 MR. BLOOM: The court's discretion.

2 I am comfortable going forward.

3 THE COURT: If you're comfortable, I
4 am. Is the State ready?

5 SOLICITOR WILSON: Yes, sir.

6 THE COURT: Let the record reflect
7 that Mr. Dickerson is present.

8 Folks, I apologize to you that you
9 don't get a lunch break. I'm sorry. I thank
10 you for your endurance and your patience with
11 the court, as well. We will try to -- we do
12 have one good thing, one of the jurors on this
13 panel is not here today, so we only have five.
14 Maybe we can get back on track so we don't keep
15 the jurors waiting quite so long.

16 We're checking on the temperature to
17 see if they can give us some relief. I'm sorry
18 if anyone is cold. I apologize to you but -- I
19 don't know if we have the same thing -- when we
20 were in Melbourne, I remember asking one time
21 and they said, 'Yeah, we can call Columbia.
22 They in turn will get in touch with Myrtle
23 Beach because Myrtle Beach will have to make
24 the adjustment.

25 SOLICITOR WILSON: That's the way it

1 was in the public schools in Hemmingway.

2 THE COURT: Really?

3 SOLICITOR WILSON: (Affirmative nod),
4 Columbia or somewhere.

5 THE COURT: Go figure.

6 All right, bring in Ms. Fraiser.

7 (JUROR NUMBER 358 ENTERS COURTROOM)

8 THE COURT: Good afternoon, Ms.
9 Fraizer. How are you?

10 JUROR NUMBER 358: All right.

11 THE COURT: Thank you for completing
12 the form for us. We appreciate that. I
13 appreciate your patience. We started this
14 process on Friday and we're going to continue
15 that process, there are some more questions
16 that I have for you and the attorneys may have
17 some questions. All that we ask is, as we told
18 you on Friday, that you be truthful in your
19 responses and complete.

20 There are no correct answers to any of
21 these questions and they certainly aren't
22 designed to invade your privacy or beliefs or
23 philosophies that you have. You're entitled to
24 those, we don't want you to feel like you have
25 to defend anything that you believe, because

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1 you have that right. We just ask that you will
2 be totally candid in your responses; will you
3 do that, please?

4 JUROR NUMBER 358: Yes.

5 THE COURT: I remind you that you're
6 still under oath in this matter.

7 JUROR NUMBER 358: Yes, sir..

8 DIANE FRASIER, being duly sworn to
9 tell the truth, the whole truth and nothing but
10 the truth, testified, as follows:

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. Would you please, for the record, state
14 your full name?

15 A. Diane Frasier.

16 Q. Ms. Frasier, since we were together on
17 Friday, have you talked with anyone about this
18 case or permitted anyone to talk about it in
19 your presence?

20 A. No.

21 Q. Have you read anything about it or watched
22 any news programs about it?

23 A. No.

24 Q. Friday I gave you a list of a number of
25 people. I failed to mention two names that I

1 need to ask you about. Are you related by
2 blood or marriage, have any business dealings
3 with or socially or casually acquainted with or
4 have any dealings with Jeff Osborne or Matt
5 Casey?

6 A. No.

7 Q. You were given a sheet when you came in
8 that sets forth three types of jurors, have you
9 had a opportunity to review that sheet?

10 A. Yes.

11 Q. Which type most accurately describes you?

12 A. Number two.

13 Q. Number two is the type of juror in a case
14 where in this state where it is one of those
15 rare cases, because normally the jury doesn't
16 participate in a sentencing, do you understand
17 that?

18 A. (Affirmative nod).

19 Q. But in certain situations they would and
20 in this type of case where these types are
21 determined, that jury would have been involved
22 in a murder trial. They would have found a
23 person guilty of the offense of murder.

24 Murder is the intentional killing of
25 somebody with malice. In other words, the

1 person wanted to kill someone, they killed that
2 person, there wasn't any reason to kill them,
3 they were motivated by evil intent -- that's
4 one of the things that malice means, -- and
5 they performed that act. It wasn't
6 manslaughter, that is that they weren't
7 provoked into anything, it wasn't self-defense,
8 it wasn't an accident.

9 The jury would have concluded that that
10 person committed an intentional murder, a
11 willful murder, and now that jury would have
12 the responsibility of deciding what was the
13 appropriate sentence. In that type of case
14 there may be a situation where the jury could
15 possibly have to consider a death sentence.
16 Okay? To choose between a death sentence and
17 life imprisonment without the possibility of
18 parole.

19 As I understand your answer,
20 notwithstanding -- even though you've just
21 convicted someone of murder, the only sentence
22 that you believe would be appropriate would be
23 a life imprisonment sentence?

24 A. Yes. I don't believe in the death
25 penalty.

1 Q. That is your strong belief on that?

2 A. Yes, sir.

3 Q. There's not a circumstance -- and, you
4 understand, the court would instruct that jury
5 in that second phase that they would have to
6 determine that the State would have some
7 burdens to prove certain circumstances existed
8 -- we call it aggravating circumstances, and if
9 the jury found that to be in existence beyond a
10 reasonable doubt then the court would instruct
11 the jury that they could consider a death
12 penalty. They couldn't have to impose it but
13 they would consider the death penalty and could
14 impose a death sentence if they chose to.

15 It is my understanding from your answer
16 that if you were even in that situation where
17 the jury had concluded an aggravating
18 circumstance for the offense of murder and the
19 jury was given the option to consider between
20 life imprisonment without the possibility of
21 parole and a death sentence, there is no
22 circumstance that you can think of in which you
23 would say, 'I would vote for a death sentence
24 and sign a death sentence'?

25 A. No.

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1 Q. None?

2 A. None.

3 THE COURT: Please answer any
4 questions the attorneys may have.

5 VOIR DIRE EXAMINATION

6 BY SOLICITOR WILSON:

7 Q. This is Bruce Durant and this is Rutledge
8 Durant. They are also prosecutors in my office
9 and the three of us, over the next couple of
10 weeks, will be presenting evidence in this
11 case, trying this case before the jury.

12 Before we get into all that, I want to ask
13 you some followup questions based on your
14 answers to Judge Dennis and also on your
15 questionnaire. Okay?

16 A. (Affirmative nod).

17 Q. Can you tell me in your own words more
18 about your feelings about the death penalty?
19 Listen, there are no right answers here, so
20 just however you feel about it, if you could
21 just share that with.

22 A. I don't believe in the death penalty.
23 Maybe because more than half of my family has
24 died. There was like seventy-five of us and
25 now I just got one aunt, one daughter, three

1 grandkids.

2 Q. Out of seventy-five?

3 A. (Affirmative nod), seventy-five.

4 Q. So there's been a lot of loss in your
5 family?

6 A. Yeah.

7 Q. Aside from the death penalty, the fact
8 that you and your family have suffered so much
9 loss through death, would that affect your
10 ability to sit on a murder jury?

11 A. Yes.

12 Q. It would?

13 A. Yes.

14 Q. You wouldn't be comfortable -- set aside
15 it being a death penalty case, just talking
16 about someone who had been killed and whether a
17 person would be found guilty or not guilty,
18 would you even be comfortable with that?

19 A. No.

20 SOLICITOR WILSON: Judge, would you
21 like to follow up or ---

22 THE COURT: No. Additional
23 questions?

24 MR. BLOOM: I don't have any
25 followup.

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1 THE COURT: Thank you very much. I
2 appreciate you -- you didn't come forward on
3 Friday and disclose that to me, did you?

4 JUROR NUMBER 358: No, I didn't.

5 THE COURT: But that's your honest,
6 sincere feelings, that you just simply would be
7 influenced by the fact that we are trying a
8 murder case?

9 JUROR NUMBER 358: Yes.

10 THE COURT: That alone would prevent
11 you from being fair and impartial?

12 JUROR NUMBER 358: Yes.

13 THE COURT: Very well. I am going
14 to excuse you then, ma'am, from any further
15 participation in this dispute. Thank you very
16 much.

17 I'm informed that the civil jury has
18 completed its duty, so you are now excused from
19 any further participation. Thank you and good
20 luck to you, ma'am.

21 (JUROR NUMBER 358 EXITS COURTROOM)

22 THE COURT: Number 149, Mr. Ishmael.

23 (JUROR NUMBER 149 ENTERS COURTROOM)

24 THE COURT: Good afternoon, Mr. Ishmael.
25 How are you, sir?

1 JUROR NUMBER 149: I'm doing fine,
2 sir.

3 THE COURT: Thank you for being
4 here. Sorry we delayed your coming in, but
5 we're working as quickly -- we ran over a
6 little bit, so I wanted to give some people an
7 opinion to grab a bite to eat. Thank you very
8 much, we appreciate it.

9 JUROR NUMBER 149: Yes, sir.

10 THE COURT: We are going to continue
11 the process that we started on Friday when we
12 were talking about this case. We asked you
13 some questions. As you recall, there really
14 are no correct answers to any of these
15 questions. They're really designed to help you
16 and help us determine whether you can be a fair
17 and impartial judge in this case with me.

18 Please understand that all that we ask
19 is -- I'm going to have some questions and the
20 attorneys may have, is that you be truthful and
21 candid with your responses and answer the
22 questions completely. Please know that no one
23 is here to challenge your beliefs, your
24 philosophies. You're entitled to those and you
25 should not feel like you have to defend any of

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1 those. All that we ask is that you share
2 those. We are not trying to invade your
3 privacy, either. Will you do that?

4 JUROR NUMBER 149: Yes, sir.

5 THE COURT: I would remind you in
6 that regard that you are still under oath in
7 this matter. Okay?

8 JUROR NUMBER 149: Yes, sir.

9 DAVID ISHMAEL, being duly sworn to
10 tell the truth, the whole truth and nothing but
11 the truth, testified, as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. Since we were together on Friday, have you
15 talked with anyone or permitted anyone to talk
16 with you or to talk about this case in your
17 presence?

18 A. No, sir.

19 Q. Have you read any news accounts or watched
20 any news programs concerning this case?

21 A. I see the paper and on the news but when
22 it came across and said there was going to be
23 something about that, I turned the channel. I
24 didn't read the paper -- wanted to.

25 Q. I understand.

1 A. I read the Sports page.

2 Q. That's good. Fine, you can read it -- you
3 want to put it aside and when we finish you're
4 entitled to read it but until then I would
5 appreciate it and -- I've read them. I don't
6 think that there is anything in there that
7 would be unusual but it is that appearance that
8 we are trying to avoid and the problems that it
9 creates by reading something outside of the
10 courtroom. The jury has to decide the case
11 based on evidence and the evidence, of course,
12 is what they hear in the courtroom. That's the
13 primary reason for the restriction. I
14 appreciate your honoring that.

15 A. Yes, sir.

16 Q. On Friday I mentioned to you a number of
17 names of persons. I failed to mention two
18 names that I need to ask you about. Are you
19 related by blood or marriage, have any business
20 dealings with or socially or casually
21 acquainted with or have any dealings with Jeff
22 Osborne or Matt Casey?

23 A. I am not familiar with them.

24 Q. When you came in today they handed you a
25 sheet of paper that had listed on it three

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1 types of jurors. Have you had an opportunity
2 to review those types of jurors?

3 A. Yes, sir.

4 Q. Which one most accurately describes you?

5 A. Most accurately?

6 Q. Yes, sir.

7 A. I am going to go with number three.

8 Q. Number three is a juror and of course all
9 of these jurors and this obviously is a
10 situation in which -- one of those cases where
11 the jury would have the responsibility of
12 determining the appropriate sentence, you
13 understand that?

14 A. Yes.

15 Q. That is not always the case. In fact, in
16 this state it is only in very limited
17 circumstances, you understand that?

18 A. Yes, sir.

19 Q. And what that type three juror described
20 there was -- what would have happened at this
21 point is that that juror would have been
22 involved in the first phase that trial, and
23 that juror would have considered the evidence
24 concerning the guilt of that individual for the
25 offense of murder and would have concluded

1 beyond a reasonable doubt that the State had
2 established each element and, therefore, would
3 have returned a verdict of guilty. Do you
4 understand that?

5 A. Yes, sir.

6 Q. Murder in that situation is -- murder is
7 defined in this state as the intentional
8 killing of someone with malice aforethought.
9 Basically it means that I wanted to kill this
10 person, that person wanted to do what he did,
11 he took care of carrying it out, he did it with
12 malice and was motivated by evil thoughts.
13 There wasn't any provocation, there wasn't
14 anything that would have reduced it or that
15 would have made it a lesser offense, such as
16 manslaughter. It wasn't self-defense, it
17 wasn't an accident, he did what he wanted to do
18 and what he intended to do. The jury concluded
19 that the person that was accused was that
20 person and you'd found him guilty. As I
21 understand, given that situation, -- you've
22 just been through that trial. Notwithstanding
23 that you'd just found somebody guilty of the
24 crime of intentional murder, murder with
25 malice, you still -- and you would then know

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1 that you had another phase where you were going
2 to hear additional evidence concerning what
3 sentence would be most appropriate, you still
4 at that point would not have made a decision as
5 to whether it would be life imprisonment
6 without the possibility of parole or the death
7 penalty; is that correct?

8 A. (Affirmative nod), I would hope so.

9 Q. That's what you would have to commit to
10 do.

11 A. (Affirmative nod).

12 Q. The important thing that we have to
13 remember is that a jury -- one thing, in
14 addition to applying your common sense, your
15 sense of logic and reason is that the jury is
16 expected to whenever they start, whatever phase
17 they start in this situation, either phase,
18 that they start with an open mind.

19 By that, for instance let's talk for just
20 a moment -- what we are talking about now is
21 obviously not Mr. Dickerson's case.

22 A. Right.

23 Q. Mr. Dickerson has been accused of a
24 criminal offense and, of course, we've told you
25 some things about that case and thus far you've

1 said 'I don't know anything about this case.'

2 I have not made any determinations about this
3 case.'

4 A. (Affirmative nod), yes, sir.

5 Q. Another thing that you've said by
6 answering in that fashion or not responding is,
7 'I have an open mind about this case.'

8 A. (Affirmative nod), I hope so.

9 Q. Well, that's what you said.

10 A. Yes, sir, (affirmative nod).

11 Q. By not answering any of those questions,
12 do you understand that?

13 A. Yes, sir, (Affirmative nod).

14 Q. You have also said that the person who has
15 been accused of committing this offense --
16 excuse me. He's been accused of committing
17 these offenses but as I mentioned to you he, as
18 anyone who is accused of committing a criminal
19 offense, is presumed to be innocent.

20 A. I do believe that.

21 Q. And you indicated that on Friday, ---

22 A. (Affirmative nod).

23 Q. --- that you didn't have any problem with
24 that?

25 A. I don't.

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1 Q. That's an active presumption. That means
2 that you have to actively, mentally and
3 physically, see that person as being innocent.
4 Do you believe that about Mr. Dickerson today?

5 A. Yes, sir.

6 Q. That he is innocent of these charges?

7 A. Yes, sir.

8 Q. And you understand that that does not
9 change until the State has convinced you, if
10 you were on a jury, beyond a reasonable doubt
11 that he committed one or more of these
12 offenses?

13 A. I do believe what you're saying, beyond a
14 reasonable doubt.

15 Q. They would have to prove that?

16 A. Yes, sir.

17 Q. Let's go back to the three types of
18 jurors. What would have happened in that case
19 is that we've already gone from that starting
20 point to where the person now knew that --
21 because they'd been convinced beyond a
22 reasonable doubt -- they were guilty. My
23 question would be, just as you would have been
24 in that case, you would have had to have had an
25 open mind about that individual. You know,

1 being a type three juror, what you're saying
2 is, 'Okay, I have now decided that he is guilty
3 of that crime but I have an open mind as to the
4 appropriate sentence.'

5 A. Correct, I would do that.

6 Q. Okay.

7 A. Yes, sir.

8 Q. That would be you, is that correct?

9 A. Yes, sir.

10 Q. That is important, because as you may be
11 aware, generally a jury doesn't participate in
12 sentencing of a murder offense in this state.
13 Normally the jury makes its determination, as
14 that jury would have done there, that the State
15 had proven its case, that the person was guilty
16 of murder, and the presiding judge would impose
17 a sentence. The jury wouldn't have anything to
18 do with that. Do you understand that?

19 A. Yes, sir.

20 Q. It is only in very limited circumstances
21 where a jury does have that opportunity or
22 option. That's one of the things that that
23 second phase is about. In addition to hear
24 evidence about what would be helpful in making
25 a determination on the sentence, you're going

1 to hear evidence as to whether or not the State
2 is entitled to a jury even considering a death
3 sentence. In a situation that is tried before
4 a jury and sentenced by a judge, unless there's
5 been some special waiver, and that rarely
6 occurs, the judge has no right to impose a
7 death sentence. Do you understand that?

8 A. Yes, sir.

9 Q. The most serious sentence that can be
10 imposed by the trial judge is life imprisonment
11 without the possibility of parole, but the
12 judge is not even limited to that; do you
13 understand that?

14 A. Yes, sir.

15 Q. So the second phase is important for a lot
16 of reasons. The first is a threshold
17 situation, because the jury has to hear the
18 evidence and decide first of all whether or not
19 the State has established beyond a reasonable
20 doubt that the person -- that what happened,
21 there were aggravating circumstances
22 surrounding this murder. That generally --
23 the law is well-defined by statute. I would give
24 those to you and the jury would make a
25 determination whether they were convinced by

1 the evidence that that had been established;
2 such as the killing of a police officer, the
3 killing of a child. Those are two situations
4 where a jury may consider imposing a death
5 sentence, if that's been established beyond a
6 reasonable doubt. Do you understand that?

7 A. Yes, sir.

8 Q. So you can understand why it's very
9 important that you have that open mind, because
10 you wouldn't even be entitled to think about a
11 death sentence unless that is established
12 first. Do you understand that?

13 A. Yes.

14 Q. And, in addition, the charge would also
15 say that if the jury concludes that an
16 aggravating circumstance had been established,
17 then you may have the option of considering but
18 you don't have to impose a death penalty. In
19 other words, now you have an option. You can
20 pick between life imprisonment without the
21 possibility of parole or you can pick a death
22 sentence. Do you understand that?

23 A. I understand.

24 Q. So, again, another very important reason
25 that that juror have that open mind at that

1 point because it is not even mandatory that
2 that be done. In fact, the court would never
3 instruct you that that is what you would have
4 to do. Do you understand that?

5 A. Yes, sir.

6 Q. It merely says that now you evaluated it
7 and you made the decision.

8 A. Yes, sir.

9 Q. The judge would also say that you should
10 consider mitigating circumstances that may be
11 in the evidence. Some of those may be
12 statutory mitigating circumstances and some may
13 be non-statutory mitigating circumstances.
14 Those are matters that would tend to lessen the
15 impact or the effect of that murder. Some of
16 them would be such as the experiences in
17 childhood that a person may have had, their
18 mental health issues may have an effect on it
19 it wouldn't rise to insanity but it may have an
20 influence and effect on the appropriate
21 sentence. Addictions to various drugs, that
22 type of evidence. If that is present, the
23 court would instruct you that you must give
24 meaningful consideration to those elements of
25 mitigation, if you found them. Would you do

1 that, could you follow that instruction ---

2 A. Oh, yes, sir.

3 Q. --- before determining what was the
4 appropriate sentence?

5 A. Yes, sir.

6 Q. The court would also instruct you that, of
7 course, just as in the first phase that you'd
8 completed that person who had been accused has
9 no responsibility to prove or disprove anything
10 in the first phase and has no responsibility
11 whatsoever to prove or disprove anything in the
12 second phase, including mitigating
13 circumstances. In other words, if there aren't
14 any, you can't hold that against that
15 individual. Would you be able to follow that
16 instruction?

17 A. Say that again?

18 Q. Yeah. Because the person is accused of
19 committing a criminal offense, as I mentioned
20 to you, they don't have to prove or disprove
21 anything. They don't have to prove their
22 innocence and they don't have to disprove or
23 prove anything in the second phase concerning
24 what's appropriate.

25 You have taken an oath that you are going

1 to consider the evidence, whatever it is and
2 evaluate and analyze that evidence and decide
3 what you think is the most appropriate. There
4 may be mitigating circumstances or there may
5 not be mitigating circumstances but if there is
6 no evidence presented by the defendant, you
7 can't hold that against the defendant because
8 he doesn't have any obligation to do that.
9 That would be the instruction that the court
10 would give you. Would you follow that
11 instruction?

12 A. Yes, sir.

13 Q. So you wouldn't even expect him to or you
14 wouldn't penalize him because he didn't offer
15 something; is that correct?

16 A. That's important because that's part of
17 that principle of law but there's also another
18 aspect of all of this. My instruction would
19 further say that the jury has the right, even
20 though there are aggravating circumstances,
21 even though you've found that you have the
22 right to consider a death penalty, you have the
23 right -- the jury would have the right to
24 impose a life imprisonment without the
25 possibility of parole for no reason whatsoever.

1 In other words, you just chose to do it.

2 Q. Okay.

3 Q. That's another reason why you should have
4 that open mind, because you have to be able to
5 consider that right as well. Would you be able
6 to do that, follow that instruction?

7 A. Yes.

8 Q. So it is my understanding that in that
9 situation, as a type three juror, you would
10 have to go through all that process and then
11 sit down with that jury and analyze it fully
12 and then at the appropriate time, after doing
13 that, then and only then would you be able to
14 make a determination between life and life
15 without parole? Excuse me. Between life
16 imprisonment without the possibility of parole
17 and a death sentence. Excuse me.

18 A. Yes, sir.

19 Q. And it is my understanding, being a type
20 three juror, there are circumstances that you
21 can think of that would justify and support
22 your finding a death sentence, and you could do
23 that?

24 A. A death sentence?

25 Q. If those circumstances were present, you

1 could do that?

2 A. Oh, (affirmative nod), I could do that.

3 Q. Likewise, notwithstanding that you could
4 have imposed a death sentence, you could also
5 think of circumstances in which you not impose
6 a death sentence but instead would impose life
7 in prison without the possibility of parole?

8 A. Yes, sir.

9 Q. Notwithstanding the person has been
10 convicted of a murder in which malice was
11 present, he intended to do it; you could do
12 that, either one of them?

13 A. Yes, sir. It depends on the evidence, as
14 you stated, but I've got an open mind.

15 Q. Okay. Now let me talk about being a juror
16 now, if you were selected in this case, just as
17 you have just demonstrated -- but I want to
18 confirm, you believe that you could at the
19 appropriate time and would keep that open mind
20 that you have at the start and not change that
21 position until the court told you to do so; is
22 that correct?

23 A. Yes, sir.

24 Q. And that you would analyze the evidence
25 fairly and impartially and decide what you

1 believe to be the true facts, and then you
2 would be willing to accept the law that I would
3 give you and apply that law fairly and
4 impartially to the evidence?

5 A. Yes, sir.

6 Q. That would apply in the first phase and,
7 if necessary, a second phase?

8 A. Yes, sir.

9 THE COURT: Thank you, sir. Please
10 answer any questions that the attorneys may
11 have.

12 MR. BLOOM: May it please the court?

13 THE COURT: Yes, sir.

14 VOIR DIRE EXAMINATION

15 BY MR. BLOOM:

16 Q. Mr. Ishmael, how you are doing today?

17 A. I am doing well.

18 Q. My name is Jeff Bloom and along with
19 Andrew Carroll, we represent William Dickerson.
20 I just have a few followup questions from what
21 Judge Dennis asked you. I recall from Friday
22 and you know a number of these police officers
23 that Judge Dennis asked you about?

24 A. From being a firefighter.

25 Q. You work with the fire department?

1 A. Yes.

2 Q. And if you saw a number of these police
3 officers that you know testify -- and, I take
4 it that you know them both personally and
5 professionally?

6 A. Some I do.

7 Q. If you heard them testify in a trial you
8 aren't going to give any more weight ---

9 SOLICITOR WILSON: Objection.

10 THE COURT: Hold on a second. I
11 will sustain that at this point. Rephrase your
12 question. I understand at this point but
13 rephrase it if you would.

14 MR. BLOOM: Yes, sir.

15 EXAMINATION CONTINUED

16 BY MR. BLOOM:

17 Q. If you heard a number of those police
18 officers testify, is that going to cause you to
19 be fair and impartial to one side or the other?
20 We've just looking for an honest answer.

21 A. Oh, I understand. Like I told you Friday,
22 I know some of them. But like I just told the
23 Judge, I haven't made a decision, I really
24 don't know the situation but I give you my word
25 that I would be honest about it.

1 Q. And if someone testified who was your
2 friend, either personally or professionally,
3 that is not going to cause you to be influenced
4 by their testimony?

5 A. No, sir.

6 Q. All right.

7 A. I assume they would be my friends
8 afterwards.

9 Q. Okay. I also note from your questionnaire
10 that you've served on jury duty before?

11 A. I have, in General Sessions on Melbourne
12 Avenue in North Charleston years ago.

13 Q. What type of case was that?

14 A. It wasn't a murder case. If I remember
15 right it was something like insurance,
16 something with insurance or something like
17 that.

18 Q. What was the result of that?

19 A. I got picked for jury duty, they sent us
20 in the jury room, we came out, they got a plea
21 bargain and that was the end of it.

22 Q. Okay. So you're a little familiar with
23 the process, although this part where you have
24 to come out and answer questions is different?

25 A. Yes, this is different.

1 Q. I notice on your questionnaire, for your
2 opinion about the death penalty was "If it is
3 proven a reasonable doubt", can you explain to
4 me what you mean by that?

5 A. I mean if the facts support it a hundred
6 percent, I have no -- I wouldn't feel bad, or
7 something, you know, to do the death penalty.
8 They'd still have to prove it, I'd still be
9 acceptable to listening to everything but if I
10 felt like the case was going in that direction,
11 whatever, I have no issue with saying or voting
12 for the death penalty.

13 Q. Okay. Of course, you heard Judge Dennis
14 define murder to you. So we're all on the same
15 page, to where it is not accident, self-
16 defense, insanity of manslaughter where you
17 might catch someone in bed with another. It's
18 where a person did it, intended to do it with
19 malice, an evil heart, they got the right
20 person, proved beyond a reasonable doubt, some
21 jurors feel that once that kind of malice
22 murder is proven to them beyond a reasonable
23 doubt they are going to automatically vote for
24 the death penalty once that part is done. Is
25 that you?

1 A. No, sir.

2 Q. Can you explain to me how ---

3 A. I'd have to listen to the facts. If they
4 were found guilty in that first phase, I would
5 still listen to whatever that second phase is,
6 if it goes that direction -- I mean, this is
7 all new to me but I would listen to it all.

8 Q. And Judge Dennis also asked you, and I
9 want to make sure that I understand the
10 response, that you could give meaningful
11 consideration if you were in that phase to
12 weighing life without parole to things such as
13 drug addiction, mitigating circumstances.
14 That's a fancy legal phrase for things like
15 mental health, drug addiction, ---

16 A. I understand what that means.

17 Q. And you could give meaningful
18 consideration to that?

19 A. Sure.

20 Q. Because you understand that some folks
21 don't want to give -- they say the facts of the
22 crime are enough for them, but you're willing
23 to listen to all of that?

24 A. Yes.

25 Q. I have to ask, if you and I just ran into

1 each other at the firehouse and we were
2 chatting, having a Diet Dr. Pepper or
3 something, and something came on the TV about
4 the death penalty and we turned to talk about
5 that, what would your opinion about the death
6 penalty be?
7 A. For right now?
8 Q. We are not asking you about this case.
9 Understand that, we're not asking you about
10 this case.
11 A. You just mean if someone were to ask me,
12 whatever?
13 Q. Yeah, just your general opinion about the
14 death penalty?
15 A. Well, beyond a reasonable doubt -- I do
16 believe that if it is beyond a reasonable
17 doubt, everything is proved and it goes that
18 direction, I am not afraid to say the death
19 penalty.
20 Q. Okay.
21 A. But you have to prove it.
22 Q. Okay. I notice that it's a term that you
23 keep using, so I just want to ask you, if it is
24 proven beyond a reasonable doubt are you going
25 to vote to death in each and every case.

1 A. No, because -- this is all new to me but
2 apparently there's another phase and I would
3 listen to what was said in that second side of
4 the thing.

5 Q. Okay.

6 A. I come up, you know, I've never been in
7 this circumstance or anything like that but I
8 -- I always looked at it, you know, if they
9 were guilty that the judge took care of those
10 issues. This is all new to me.

11 Q. Kind of different than that?

12 A. It is, it is, (affirmative nod).

13 Q. It's different than ---

14 A. But to answer your question, I believe that
15 I am a number three juror and that how I feel,
16 I'd have to listen to everything but I'm not
17 afraid to sit there and say, you know, the
18 person is guilty and -- I'd listen to the
19 directions in the second part and if it goes
20 that direction, it goes that direction.

21 Q. Okay.

22 A. Or if someone proves it, you know, it
23 would be the other side. I have an open mind
24 about it.

25 Q. And you understand, as Judge Dennis

1 instructed you, that the law never requires the
2 death penalty?

3 A. I understood what he said.

4 Q. Okay. In that vein, the law instructs a
5 juror that the choice between the death penalty
6 or life without parole is an individual and
7 reasoned moral judgement. Can you accept that?

8 A. And you could make that individual and
9 reasoned moral judgment?

10 A. Yes.

11 Q. And if you were on a jury and eleven
12 jurors were voting one way and you'd make your
13 own, after all the evidence and His Honor's
14 instructions, after all the consideration and
15 discussions among your fellow jurors, you've
16 listened to them, they've listened to you, but
17 after all that, eleven were voting one way and
18 you were voting another because you had made
19 your moral, individualized judgment; could you
20 stand your ground and hold to that judgment, or
21 are you just going to say, 'You know what? I'm
22 hungry, it's late in the day, I'm going to go
23 along to get along and give up.'

24 A. No, because when I close my eyes at night
25 I want to know that I made the right decision.

1 Q. So you would want them to respect your
2 vote?

3 A. Sure.

4 Q. And you would respect their votes?

5 A. (Affirmative nod), I actually do that
6 every day.

7 Q. Thank you very much.

8 THE COURT: Solicitor?

9 VOIR DIRE EXAMINATION

10 SOLICITOR WILSON:

11 Q. Mr. Ishmael, I'm Scarlet Wilson, I'm the
12 Solicitor here. This is Bruce Durant and
13 Rutledge Durant and the three of us will be
14 presenting evidence in this case once we have
15 started.

16 Based on your answers to the Judge and
17 also to Mr. Bloom, I don't have any other
18 questions for you. Thank you.

19 THE COURT: Thank you, Mr. Ishmael,
20 I am going to ask that you step out just for a
21 few moments. We will be with you momentarily.

22 (JUROR NUMBER 149 EXITS COURTROOM)

23 THE COURT: I find that Mr. Ishmael
24 is qualified. Any objection from the State?

25 SOLICITOR WILSON: No, sir.

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1 THE COURT: Any objection from the
2 defendant?

3 MR. BLOOM: No, sir.

4 THE COURT: Ask him to step in,
5 please.

6 (JUROR NUMBER 149 ENTERS COURTROOM)

7 THE COURT: Thank you, Mr. Ishmael.
8 Thank you very much, and I appreciate your
9 patience. You've been found to be qualified to
10 be a member of the panel from which we will
11 select our jury.

12 We are hopeful that will take place
13 Thursday morning at 9:30. We can't be positive
14 of that but that's the anticipated time.
15 Whatever time is designated for you to return,
16 and I think it is going to be that, just come
17 back to this courtroom here and take a seat in
18 the audience. Be prepared to remain because my
19 plan would be that once a jury has been
20 selected we will start the trial of the case.
21 So you need to be ready to do that in case
22 you're on the jury.

23 Until then and until you have been
24 dismissed from this case, please remember that
25 you still are not at liberty to discuss this

1 case with anyone or permit anyone to talk with
2 you about it. Also, please continue not to
3 watch any news programs about it or read any
4 news accounts. Have a great day and we'll see
5 you, hopefully, Thursday.

6 Do you have the number for the Clerk's
7 office, that answering machine, that card that
8 was given to you?

9 JUROR NUMBER 149: I have that at the
10 house.

11 THE COURT: Call that tonight after
12 6:00 o'clock, there will be a message for the
13 Dickerson panel, it may say to report at 9:30
14 but it might say to call back tomorrow night.
15 Follow the instruction, whatever it is.
16 Whenever it says to come and report, at that
17 time that is when you need to be here.

18 JUROR NUMBER 149: I have one
19 question.

20 THE COURT: Yes, sir.

21 JUROR NUMBER 149: Tomorrow is my duty
22 day at the fire station. I work twenty-four
23 hours, so I can go there. No problem?

24 THE COURT: You're good to go
25 tomorrow. Thursday is when you might need to

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1 say 'I may not be here.

2 JUROR NUMBER 149: I told them
3 that I have jury duty for the week, I just
4 didn't tell them what was going on.

5 THE COURT: No problem about
6 tomorrow. Tomorrow is yours. Thank you.

7 JUROR NUMBER 149: Thank you.

8 THE COURT: Have a great day.

9 (JUROR NUMBER 149 EXITS COURTROOM)

10 THE COURT: All right, let's bring
11 in Ms. Tompkins. Juror Number 314.

12 (JUROR NUMBER 314 ENTERS COURTROOM)

13 THE COURT: Hello, Ms. Tompkins, how
14 are you?

15 JUROR NUMBER 314: I'm fine.

16 THE COURT: We are going to continue
17 the process that we started on Friday when we
18 were talking about this case. We asked you
19 some questions. As you recall, there really
20 are no correct answers to any of these
21 questions. They're really designed to help you
22 and help us determine whether you can be a fair
23 and impartial judge in this case with me.

24 Please understand that all that we ask
25 is -- I'm going to have some questions and the

1 attorneys may have, is that you be truthful and
2 candid with your responses and answer the
3 questions completely. Please know that no one
4 is here to challenge your beliefs, your
5 philosophies. You're entitled to those and you
6 should not feel like you have to defend any of
7 those. All that we ask is that you share
8 those. We are not trying to invade your
9 privacy, either.

10 I would remind you in that regard that
11 you are still under oath in this matter. We
12 just ask that you give truthful answers. Will
13 you do that?

14 JUROR NUMBER 314: I will.

15 VIRGINIA TOMPKINS, being duly sworn to
16 tell the truth, the whole truth and nothing but
17 the truth, testified, as follows:

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. First let me ask you, since we were last
21 together have you talked with anyone or
22 permitted anyone to talk with you or to talk
23 about this case in your presence?

24 A. No, I just told work that I had to be back
25 here today.

1 Q. I understand.

2 A. Okay.

3 Q. Have you read any news accounts or watched
4 news programs about this case?

5 A. No.

6 Q. Friday I gave you the names of a number of
7 people and asked if you were related to any of
8 those persons. I failed to mention two names
9 that I need to ask you about. Are you related
10 by blood or marriage, have any business
11 dealings with or socially or casually
12 acquainted with or have any dealings with Jeff
13 Osborne or Matt Casey? Do you know them?

14 A. No, I do not.

15 Q. When you came, you were given a sheet that
16 identified three types of jurors.

17 A. (Affirmative nod).

18 Q. Have you had an opportunity to review
19 those three jurors?

20 A. Yes, sir.

21 Q. On that sheet, which type most accurately
22 describes you?

23 A. I would think probably type three.

24 Q. Type three basically -- and let's talk
25 about that. Obviously those -- the juror on

1 that sheet, the type that you've just said is
2 the category into which you fall, that juror
3 has been involved in a case in which the jury
4 is going to determining the sentence for
5 murder. Do you understand that?

6 A. Yes.

7 Q. That is not a customary or is not a common
8 occurrence in this state, only in limited
9 situations. Do you understand that?

10 A. Normally the jury makes a determination
11 first of whether the person is guilty of the
12 charge or not and that's what would have
13 happened in that situation in which the three
14 jurors are listed. The jury would have
15 considered the evidence concerning the issue of
16 whether that person who was accused had
17 committed the offense of murder. Obviously if
18 you were on the jury, you would have concluded
19 that the State had convinced you beyond a
20 reasonable doubt as to each element of the
21 crime of murder. Do you understand that?

22 A. (No verbal response).

23 Q. As I understand type three, while you
24 would have just participated in deliberations
25 and decided that a person had committed the

1 crime of murder -- that is, the killing of
2 someone with malice aforethought, that is that
3 they intended to do, they wanted to do it, they
4 have an evil motive behind it, they wanted
5 somebody to be dead and they picked that person
6 and the person that they picked is now
7 deceased.

8 A. (Affirmative nod).

9 Q. It wasn't a mistake, wasn't an accident,
10 wasn't anything that provoked it, no reason for
11 doing it, just out of the meanness of a mean
12 spirit.

13 A. (Affirmative nod).

14 Q. As I understand, as a type three juror you
15 would then know at that point that you were
16 about to embark on the second phase where you
17 were going to hear evidence concerning the
18 appropriate sentence. I understand what you
19 said is, 'While I have just convicted him, I
20 still at this point don't know whether I am
21 going to impose life imprisonment or the death
22 penalty.'

23 A. It would have to be beyond a reasonable
24 doubt.

25 Q. I understand that and all of this --

1 you've found beyond a reasonable doubt that
2 this person killed somebody, intended to kill
3 them, no question about it.

4 A. (Affirmative nod).

5 Q. In other words, you've concluded that.

6 A. (Affirmative nod).

7 Q. My question is, at that point before you
8 start that second phase, do you have an open
9 mind as to what sentence that person should
10 receive?

11 A. Yes, sir.

12 Q. So you had not made any determination just
13 simply ---

14 A. No.

15 Q. --- the person had been found guilty of
16 committing a murder?

17 A. Right, (negative gesture).

18 Q. That is important for a number of reasons.

19 A. (Affirmative nod).

20 Q. Most of the time, as you may or may not
21 know, the jury is not involved with sentencing.
22 Normally the jury is involved in determining
23 whether or not the person committed the offense
24 that they were accused of committing, in this
25 case murder. In the normal situation or a

1 typical situation, the jury says 'yes, they are
2 guilty of murder' and then the presiding judge
3 would impose the sentence. The jury wouldn't
4 have anything to do with that. Do you
5 understand that?

6 A. (Affirmative nod).

7 Q. You need to answer "yes".

8 A. "Yes."

9 Q. Thank you. It is not offensive to me but
10 we are keeping a record and it just helps to
11 keep that record clear. Okay?

12 A. (Affirmative nod).

13 Q. Thank you. Normally in most situations,
14 unless it's been some special situation that is
15 rare, the judge may never impose a death
16 sentence for a murder. The most serious
17 sentence that a judge can impose is life
18 imprisonment without the possibility of parole.
19 You understand that?

20 A. Yes.

21 Q. But the judge is not limited to that. He
22 can consider matters under that, as well, in
23 making that determination.

24 In this setting you would be a part of the
25 jury that was going to determine between life

1 imprisonment without the possibility of parole
2 or a death sentence. Do you understand that?

3 A. Yes.

4 Q. It is important for another reason,
5 because you're not entitled even as a juror to
6 consider death unless in the second phase the
7 State establishes something which the law says
8 that they have to establish beyond a reasonable
9 doubt -- that standard that you just mentioned.

10 A. Yes, sir.

11 Q. The existence of at least aggravating
12 circumstance. The law defines those for the
13 jury and I will give you that -- I, as the
14 trial judge in that case that we're talking
15 about, would have given you and charged you on
16 what aggravating circumstances you could
17 consider.

18 Aggravating circumstances are those
19 circumstances which make it -- bring it higher,
20 make it a more serious murder than the typical
21 murder that a judge would impose a sentence on;
22 therefore, that's why a jury has been
23 empaneled. Such as the killing of a police
24 officer, the killing of a child. Those are
25 circumstances that if a jury found that beyond

1 a reasonable doubt that they exist as an
2 aggravating circumstance, then that jury has
3 the right, and only then, does it have the
4 right to even consider a death sentence.

5 Now, "consider" doesn't mean that they have to

6 ---

7 A. Right.

8 Q. It means that they have the option now.

9 In other words, there are two sentences that
10 they can impose. If they can't -- if the jury
11 does not conclude beyond a reasonable doubt
12 that the aggravating circumstance had been
13 established, it can't impose a death sentence.

14 It has to impose only life imprisonment without
15 the possibility of parole. Do you understand
16 that?

17 A. Yes.

18 Q. You can begin to see why it is so critical
19 that you have that open mind when you start?

20 A. Yes.

21 Q. Now, I would further instruct you that
22 even the jury has found -- if the jury finds
23 that and they can consider the death sentence,
24 they don't have to return a death sentence.
25 The judge would never tell you that you must

1 return it. That's an option for the jury. The
2 jury has to decide which one is most
3 appropriate considering all the evidence and
4 considering the law. My understanding is that
5 you could do that, is that correct?

6 A. Yes, sir.

7 Q. And I would further instruct you that it
8 would be your right, if you chose not to, to
9 impose a life sentence. Do you understand
10 that?

11 A. Yes, sir.

12 Q. Even though you may have the right to
13 impose a death sentence you could still impose
14 a life sentence, if you thought the
15 circumstances in a situation warranted it. Do
16 you understand that?

17 A. Yes.

18 Q. Again, you can begin to see why its so
19 important that that jury have an open mind?

20 A. (Affirmative nod).

21 Q. I would also instruct you that there are
22 other things in addition to the aggravating
23 circumstances, that you're going to hear other
24 evidence of why a certain sentence may be more
25 appropriate than others.

1 You may have in the evidence mitigating
2 circumstances. Now, mitigating circumstances,
3 some are statutory, some are nonstatutory.
4 They, as the name would imply would tend to
5 make that crime, tend to reduce the severity of
6 it. In other words, give some explanation for
7 maybe why the person may have done what they
8 did; such as, some mental health issues that
9 may exist, addiction issues that may have some
10 involvement, how that person was raised as a
11 child, a number of those issues.

12 If they are present, I would instruct you
13 that you would have to give meaningful
14 consideration if you're on that jury to those
15 issues and consider those before determining
16 what sentence is appropriate. You could follow
17 that instruction, too?

18 A. Yes, sir.

19 Q. You would do that?

20 A. Yes, sir.

21 Q. You understand the State has the burden of
22 proving what sentence is most appropriate. The
23 defendant -- a person accused and we are not
24 talking about this individual now, we're
25 talking about that person that is on that sheet

1 that we're talking about right now. That
2 person would have had no burden to prove
3 anything at all. Do you understand that?

4 A. Yes, sir.

5 Q. In fact -- and that's in the first and the
6 second phase. They don't have to offer any
7 mitigating circumstances and if they chose to
8 offer no evidence at all, the instruction would
9 be that you can't use that against them. Would
10 you be able to follow that instruction, too?

11 A. Yes, sir.

12 Q. So you wouldn't look to that defendant to
13 establish any, and would not hold it against
14 them if they didn't?

15 A. No, sir.

16 Q. I would also tell you, in addition to
17 everything that we've said, a part of that
18 instruction would say that the jury has the
19 right, for no reason, to impose life
20 imprisonment without the possibility of parole
21 even though they could have imposed the death
22 sentence. Do you understand that?

23 A. Yes.

24 Q. That means that would be another aspect
25 that you would have to consider as to whether

1 you just, in these circumstances, just decided
2 that you thought the appropriate sentence was
3 life without parole. Do you understand that?

4 A. Yes.

5 Q. And it is my understanding that as a type
6 three that you would perform and follow that
7 instruction, as well?

8 A. Yes, sir.

9 Q. And you would not have made any decision
10 or would not have made any predetermination
11 until you've had an opportunity to hear all the
12 evidence in both phases, until you had received
13 the law and you could follow that instruction
14 and would give that instruction meaningful
15 consideration. Is that correct?

16 A. Yes, sir.

17 Q. And only then would you make your decision
18 in that case that we're talking about in that
19 sheet; is that correct?

20 A. Yes, sir.

21 Q. And it is my understanding, being a type
22 three juror, and I am not asking you to tell me
23 which ones, but there are circumstances in your
24 mind that you believe if you were convinced
25 beyond a reasonable doubt that you could impose

1 a death sentence and sign the form necessary to
2 carry that out?

3 A. Yes, sir.

4 Q. Likewise, there are circumstances,
5 notwithstanding aggravating circumstances,
6 notwithstanding the fact that you've convicted
7 somebody of murder, -- all of those things may
8 exist but you could still say, 'Well, no, I
9 think the appropriate sentence in this case is
10 life imprisonment without the possibility of
11 parole.' You could do that?

12 A. Yes, sir.

13 Q. And you could be fair and impartial in
14 performing that task?

15 A. Yes, sir.

16 Q. Let's talk for a moment about these
17 charges here. As I mentioned to you, Mr.
18 Dickerson of course has been accused of
19 committing several criminal offenses. You
20 mentioned to me on Friday that you didn't have
21 any problem with the presumption of innocence.
22 Is that correct?

23 A. Yes, sir.

24 Q. And you understand that that principle of
25 law says that people that are accused of

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1 committing criminal offenses such as Mr.
2 Dickerson, they're innocent until the State
3 prove otherwise or they admit their guilt. Do
4 you understand that?

5 A. Yes, sir.

6 Q. That is an active presumption. It means
7 that as you see that person and as you see Mr.
8 Dickerson today you assume and you see him as
9 being innocent of these charges?

10 A. Yes, sir.

11 Q. No problem with that?

12 A. No, sir.

13 Q. And you understand that he has no burden
14 to prove anything or disprove anything, being
15 accused of criminal violations?

16 A. Yes, sir.

17 Q. If you were in the trial involving Mr.
18 Dickerson, you would never look to him to prove
19 anything or expect that he had to prove
20 anything?

21 A. No, sir.

22 Q. Because I would tell you that persons such
23 as Mr. Dickerson, who are accused of criminal
24 offenses, they don't have to prove anything.
25 The jury could never look to them for anything.

1 In fact, they don't even have to offer any
2 evidence and you can't use that against them.
3 You wouldn't have any trouble following that
4 instruction?

5 A. No, sir.

6 Q. It is my understanding that you could and
7 would at the appropriate time apply your common
8 sense, your sense of logic and reasoning in
9 analyzing the evidence and decide what you
10 believe to be the truth?

11 A. Yes, sir.

12 Q. And then you would be willing to accept
13 the law as I gave it to you, notwithstanding
14 your personal opinion or philosophies, you
15 could set those aside and you'd take the law
16 and apply it fairly and impartially?

17 A. Yes, sir.

18 THE COURT: Thank you so much.
19 Answer any questions that the attorneys may
20 have for you. Solicitor?

21 VOIR DIRE EXAMINATION

22 BY SOLICITOR WILSON:

23 Q. Hey, Ms. Tompkins. I'm Scarlet Wilson.
24 I'm the Solicitor here. This is Bruce Durant
25 and Rutledge Durant, they're also prosecutors

1 in my office. When we get started, the three
2 of us will be presenting the case to the jury.

3 Before that, I want to ask you some
4 followup questions based on your answers to the
5 Judge and, also, we were given copies of the
6 questionnaire that you filled out.

7 No right or wrong answers. You must have
8 gotten your questionnaire in right on time.

9 A. Yes.

10 Q. I saw in your questionnaire that you like
11 C.S.I. and Law & Order and all that?

12 A. Um-humm, (affirmative nod).

13 Q. You aren't going to hold us to that
14 standard, are you?

15 A. No.

16 Q. You understand that those people can work
17 magic? We can do a lot of things but we can't
18 work magic.

19 A. Yes, ma'am.

20 Q. You mentioned in your questionnaire and, I
21 believe, again when the Judge was asking you
22 questions that it was very important to you
23 that the crime be proven beyond a reasonable
24 doubt?

25 A. Yes.

1 Q. You said that you could believe in the
2 death penalty if the crime warrants it?

3 A. Yes.

4 Q. Okay. Now, based on your conversation
5 with the Judge, I take it that you now
6 understand that there is more to it than just
7 the crime.

8 A. Yes.

9 Q. That it is a two-phase process.

10 A. (Affirmative nod).

11 Q. You may not have even thought about it
12 before but after your conversation with him,
13 you understand that all murders -- for it to be
14 murder in South Carolina, we don't have
15 different degrees of murder but for someone to
16 be convicted of murder they are guilty of a
17 malicious, intentional, evil act,
18 automatically. Do you understand that?

19 A. Yes, ma'am.

20 Q. Otherwise, it would be a self-defense case
21 or it might be a voluntary manslaughter case,
22 an involuntary manslaughter case, or something
23 like that. Something different.

24 A. (Affirmative nod).

25 Q. But even with murder, not all murders

1 qualify for the death penalty. Do you know
2 that now? Today?

3 A. Yeah.

4 Q. Did you know that before today?

5 A. I'm not sure. I really didn't -- (pause).

6 Q. Think about it too much?

7 A. (Negative gesture).

8 Q. Okay. But now that you know that and have
9 heard what some of the instructions from the
10 judge are, do you think you could follow his
11 instructions?

12 A. Yes, ma'am.

13 Q. Are you one of those people who thinks in
14 murder cases that death should always be given
15 or never given?

16 A. No, I -- (pause).

17 Q. Somewhere in the middle?

18 A. It's hard for me to make a decision
19 without knowing ---

20 Q. --- everything?

21 A. --- everything.

22 Q. Well, again, assuming in a situation that
23 you are -- that you've found guilt beyond a
24 reasonable doubt, that malicious, evil murder
25 and the Judge told you that you had to wait

1 before making up your mind as to the penalty.

2 Could you follow that instruction?

3 A. Yes.

4 Q. He would also tell you that you would have

5 to hold all three of us to our burden of

6 proving these aggravating circumstances -- it

7 might be an armed robbery or -- there are

8 several of them that he'll tell you about. We

9 have to prove those aggravators, again beyond a

10 reasonable doubt, before you could even

11 consider the death penalty. You could wait?

12 A. Yes.

13 Q. Then he would tell you something else:

14 Even after that, you have to be able to listen

15 and fairly consider and give meaningful

16 consideration to any mitigation, anything that

17 makes you understand the defendant more, makes

18 you understand the defendant or a defendant as

19 to why they would do something like that or

20 maybe even more information about the crime

21 that didn't come out in the guilt phase. You

22 would have to listen to those things and really

23 consider them before making a decision as to

24 life without parole or the death penalty.

25 Would you do that?

1 A. Yes, ma'am.

2 Q. So even your feelings about the death
3 penalty and your willingness to do that, you
4 could wait if he told you to wait, ---

5 A. (Affirmative nod).

6 Q. --- could pay attention, listen and
7 consider and keep an open mind until it was all
8 over?

9 A. (Affirmative nod), I would do my best.

10 Yes.

11 Q. Okay. Well, the problem is that you've
12 got to do more than that. You've got to ---

13 A. Well, I feel that I could.

14 Q. Okay. You could commit to us and to the
15 defense that you would do that?

16 A. Um-humm.

17 Q. Okay.

18 THE COURT: Was that a "yes"?

19 JUROR NUMBER 314: Yes.

20 THE COURT: Thank you.

21 EXAMINATION CONTINUED

22 BY SOLICITOR WILSON:

23 Q. Now, there's another aspect to it --

24 A. (Laughs).

25 Q. There's always a little bit more.

1 A. Okay.

2 Q. There's another aspect to it and that is
3 that if you were on a death penalty jury and
4 you believed that death was the appropriate
5 sentence, you'd have to do more than just raise
6 your hand and say that you felt that. You'd
7 have to actually sign your name to a verdict
8 form or to a death warrant. Could you sign
9 your name on that?

10 A. Yes, ma'am.

11 Q. You'd feel comfortable with that?

12 A. Yes, ma'am.

13 SOLICITOR WILSON: Beg the court's
14 indulgence?

15 THE COURT: Certainly.

16 SOLICITOR WILSON: Thank you. That's
17 all that I have, Ms. Tompkins. Thank you.

18 THE COURT: Mr. Bloom?

19 MR. BLOOM: Yes, sir.

20 VOIR DIRE EXAMINATION

21 BY MR. BLOOM:

22 Q. Good afternoon, Ms. Tompkins.

23 A. Hi.

24 Q. My name is Jeff Bloom and together with
25 Andrew Carroll, we represent William Dickerson.

1 We will try not to keep you. I want to ask you
2 just a little bit of followup.

3 If we were just standing around having a
4 coffee or a Diet Dr. Pepper and something came
5 on the news about the death penalty and we were
6 just kind of chatting, what would your response
7 be about the death penalty?

8 A. The same as I said earlier. If someone
9 has been found guilty of murder beyond a
10 reasonable doubt and it warrants it, I believe
11 in the death penalty.

12 Q. Okay. Some people feel that once it is
13 proven beyond a reasonable doubt that it is a
14 malice murder, and you remember that the Judge
15 defined that for you, ---

16 A. (Affirmative nod.)

17 Q. That they are going to automatically vote
18 for the death penalty. There are some people
19 who once you've shown that malice murder, each
20 and every time beyond a reasonable doubt,
21 that's enough for them. How do you respond to
22 that? Is that you or is that not you?

23 A. You're saying that it has been proven
24 that, yes, he did it, he was there, and then I
25 would say, yes, that I believe in the death

1 penalty in that case.

2 Q. What I want to ask you next, and there are
3 no right or wrong answers, if that malice
4 murder is proven beyond a reasonable doubt --
5 did it, intended to do it, got the right
6 person, are you going to automatically vote for
7 the death penalty once that is proven to you
8 beyond a reasonable doubt?

9 A. I would have to wait and -- I guess wait
10 for the second phase, to make sure that
11 everything is in line. I am not going to put
12 someone in the death penalty that I don't have
13 -- give someone a death sentence knowing that
14 they did it, but I could, yeah.

15 Q. Okay. Let me ask it this way, when you
16 get -- when a jury gets to that second part
17 where they are weighing the death penalty and
18 life imprisonment without the possibility of
19 parole, the person has already been convicted
20 beyond a reasonable doubt for that malice
21 murder.

22 A. Yes, sir.

23 Q. The jury knows that they did it, meant to
24 do it, and -- I guess I am just a little -- I
25 want to make sure that I understand your

1 answers. I'm not trying to put words in your
2 mouth. Is the fact that he's been convicted
3 beyond a reasonable doubt the only thing that
4 you're looking at?

5 A. No. If everything points to -- no. If
6 the crime warrants it, if everything points to
7 me being guilty as charged, this person or
8 anyone else, then yes I could do that and ---

9 Q. Okay.

10 A. --- I would do that.

11 Q. If it is proven to you beyond a reasonable
12 doubt that he's done that, that it's a malice
13 murder, are you still going to be able to
14 consider things that may have nothing to do
15 with the crime, such as his background or how
16 he was raised, drug addiction or mental health?

17 A. Yes. I have to know everything before I
18 can make a decision on anything. I can't sit
19 here today and say, 'This is how I am going to
20 do it without hearing anybody speak or testify
21 or anything else.'

22 Q. Okay. Because you understand the Judge's
23 discussion with you and his instruction. Even
24 if someone has proven beyond a reasonable doubt
25 that he did it, there's other things to

1 consider.

2 A. I understand.

3 Q. I guess what I am trying -- I just want to
4 make sure, I'm not trying to put words in your
5 mouth. I just want to make sure that I
6 understand your answers. Are you saying that
7 you're still going to consider even stuff that
8 had nothing to do with the crime or for you,
9 when it's proven beyond a reasonable doubt,
10 you'd stop?

11 A. I ---

12 SOLICITOR WILSON: Objection.

13 THE COURT: I will allow this one
14 question. Overruled. You can continue.

15 EXAMINATION CONTINUED

16 BY MR. BLOOM:

17 Q. Are you still going to be ---

18 A. (Affirmative nod), listen to everything.

19 Yes, sir.

20 Q. Okay. So you're not going to stop just a
21 "beyond a reasonable doubt"?

22 A. No. Everything comes into. All right?
23 I'd take everything -- I think he said Friday
24 that there were like three phases and you'd
25 have to prove all three of those. I could keep

1 an open mind.

2 Q. Okay. But "beyond a reasonable doubt"
3 doesn't decide it for you, that's not where it
4 ends for you?

5 A. No, there are a lot of collective things
6 that add up to ---

7 Q. That's all that I was trying to ask.

8 A. Okay.

9 Q. Let me ask you next, Judge Dennis of
10 course told you that a juror in such a case
11 never has to impose the death penalty. Do you
12 understand that?

13 A. Yes.

14 Q. That the law never requires it. Right?

15 A. Right.

16 Q. Even if beyond a reasonable doubt it is
17 proven that he did it, the law doesn't require
18 the death penalty. Do you understand that
19 part?

20 A. Yes.

21 Q. And what the law does require is that each
22 juror make individualized and moral reasoned
23 judgments as to the sentence. Do you think
24 that you can do that?

25 A. Yes.

1 Q. And that would include considering life
2 without parole in that judgment?

3 A. Yes, sir.

4 Q. As Judge Dennis told you, that would
5 include considering life without parole for any
6 reason, no reason or as a simple act of mercy.
7 Could you do that?

8 A. Yes, sir.

9 Q. And if after you heard all the evidence,
10 all the circumstances, discussed the matter
11 with your fellow jurors, everyone has debated
12 it, you've listened back and forth, once you
13 came to your own moral, individualized choice,
14 if eleven jurors were going one way and you
15 were going another, could you stand by your own
16 moral, reasoned, individualized judgment?

17 A. Yes, sir.

18 Q. And you couldn't just like say, 'I'm
19 tired, I'm ready to go home for dinner. I'm
20 just going to go along to get along.'

21 A. No.

22 Q. You could ask them to respect your vote?

23 A. (Affirmative nod).

24 Q. And you would respect their vote?

25 A. Yes, sir.

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1 MR. BLOOM: Thank you.

2 THE COURT: Anything else,
3 Solicitor?

4 SOLICITOR WILSON: No, sir.

5 THE COURT: Let me ask one question,
6 because -- I think you clarified it but I want
7 to be sure, because there's one way of hearing
8 it makes it somewhat different from some of the
9 things that you told me. I understand but I --
10 I think you clarified it. You were talking
11 about if you get convicted beyond a reasonable
12 doubt then you could -- I think what you were
13 saying, and I want to be sure, is that if the
14 circumstances warranted it, you could vote for
15 a death sentence but it doesn't mean that's
16 automatic? That it automatically would be a
17 death sentence?

18 JUROR NUMBER 314: Correct.

19 THE COURT: You'd still have to
20 consider everything first?

21 JUROR NUMBER 314: Correct.

22 THE COURT: Okay, I just wanted to
23 be sure about that. Thank you, ma'am. If you
24 will step outside for just a moment, we will be
25 with you momentarily.

1 (JUROR NUMBER 314 EXITS COURTROOM)

2 THE COURT: Notwithstanding the
3 equivocation, I still believe that she is
4 qualified. Any objection from the State?

5 SOLICITOR WILSON: No, sir.

6 THE COURT: Any objection from the
7 Defendant?

8 MR. BLOOM: No, sir.

9 THE COURT: Thank you very much. I
10 think she clarified that for me.

11 (JUROR NUMBER 314 ENTERS COURTROOM)

12 THE COURT: Thank you, Ms. Tompkins.
13 Thank you very much, and I appreciate your
14 patience. You've been found to be qualified to
15 be a member of the panel from which we will
16 select our jury.

17 We expect that to take place on
18 Thursday at 9:30. When it happens -- when
19 you're instructed to return, you will need to
20 come to this courtroom and take a seat out
21 there.

22 JUROR NUMBER 314: Okay.

23 THE COURT: Be prepared to stay
24 because if you're selected we will start with
25 the trial after we've selected our jury.

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1 Until then and until you have been
2 dismissed from this case, please remember that
3 you still are not at liberty to discuss this
4 case with anyone or permit anyone to talk with
5 you about it. Also, please continue not to
6 watch any news programs about it or read any
7 news accounts. Have a great day and we'll see
8 you, hopefully, Thursday.

9 Tonight, if you will, call the
10 answering machine, the number that you were
11 given, on that card from the Clerk's Office.
12 There will be a message on there tonight
13 telling the Dickerson panel when they need to
14 report. Just follow that instruction. I think
15 that it will probably say 9:30 on Thursday but
16 we're trying to kind of weigh how long it is
17 going to take us to complete the panels. So
18 there may be a change. Whatever time that it
19 says to report, just follow that instruction
20 until we are together again. Look forward to
21 seeing you on Thursday. Have a good day.

22 (JUROR NUMBER 314 EXITS COURTROOM)

23 THE COURT: Mr. Johnson, Number 157.

24 (JUROR NUMBER 157 ENTERS COURTROOM)

25 THE COURT: Mr. Johnson, how are you

1 this afternoon?

2 JUROR NUMBER 157: Fine.

3 THE COURT: Good. We're going to
4 have some questions that we need to ask of you,
5 pretty much along the lines of what we talked
6 about when we were last together on Friday.

7 As you will recall, Mr. Johnson, those
8 questions didn't have any correct answers. It
9 really is designed to help you make a decision
10 and to help us make a decision as to whether or
11 not you can be a fair and impartial juror in
12 this case. That is the sole purpose. We're
13 not here to invade your privacy, nor challenge
14 any of your philosophies.

15 All that we ask is that you be candid
16 with your responses, truthful with your
17 responses and give complete answers. Will you
18 do that, sir?

19 JUROR NUMBER 157: Yes, sir.

20 THE COURT: I would remind you, sir,
21 that you are still under oath in this matter.

22 JUROR NUMBER 157: Yes, sir.

23 MICHAEL JOHNSON, being duly sworn to tell
24 the truth, the whole truth and nothing but the
25 truth, testified, as follows:

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. First, since we were together, have you
4 talked with anyone or allowed anybody to talk
5 with you about this case?

6 A. No, sir.

7 Q. Have you watched any news programs or read
8 any newspaper articles?

9 A. No.

10 Q. When we were together on Friday, I gave
11 you the names of a number of persons. I failed
12 to mention two names that I need to ask you
13 about. Are you related by blood or marriage,
14 have any business dealings with or socially or
15 casually acquainted with or have any dealings
16 with a Jeff Osborne or Matt Casey?

17 A. No, sir.

18 Q. You were given a sheet when you came in
19 that sets forth three types of jurors, have you
20 had a opportunity to review that sheet?

21 A. Yes.

22 Q. Which type most accurately describes you?

23 A. I'd have to say type three.

24 Q. Type three?

25 A. (Affirmative nod).

1 Q. Type three is the juror that, as obviously
2 you would see from the listing there that jury
3 would be empaneled to determine the sentence
4 for a person convicted of murder. Do you
5 understand that?

6 A. Yes.

7 Q. It is my understanding that you being a
8 member of that jury, as a type three juror,
9 would have to hear all the facts and
10 circumstances before you would make a
11 determination as to what the appropriate
12 sentence would be?

13 A. That's correct.

14 Q. You understand that in that situation that
15 we're talking about where we have the three
16 types of jurors, that the jury and you as a
17 member of that jury would have heard all the
18 evidence concerning whether the person who was
19 accused of murder had committed the murder and
20 you would have decided beyond a reasonable
21 doubt at that point that the person was guilty
22 of that crime. In other words, the State would
23 have established each of those elements. Do
24 you understand that?

25 A. I'm sorry. I didn't follow that. The

1 question?

2 Q. Yeah, the question is that obviously if
3 you're going to consider the sentence -- of the
4 three types -- they have the responsibility of
5 considering the sentence, at that point they
6 wouldn't have started the second phase. They
7 would have completed the first phase, found the
8 person was guilty of murder. Do you understand
9 that?

10 A. Yes.

11 Q. That jury would have been a part of --
12 they would have made the decision on whether or
13 not the state had convinced them of the crime.
14 They would be aware of the circumstances
15 surrounding the crime and they would have found
16 that the State had accused (sic) the correct
17 person and they were convinced, that you as a
18 member of that jury, of each element of that
19 crime and you'd found that person guilty of
20 murder. Do you understand that?

21 A. Okay.

22 Q. That means that they had the right person,
23 you felt that they'd -- that he was the person
24 or that she was the person, that they had
25 killed somebody with malice aforethought. That