

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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 18 OF 22

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1 THE COURT: Okay.

2 (BENCH CONFERENCE CONCLUDED).

3 THE COURT: All right. Ladies
4 and gentlemen, we have prepared two sheets.
5 There is one sheet of paper that talks about
6 the death penalty and it lists three
7 different types of opinions on the death
8 penalty. What we have been doing is giving
9 it to the jurors in the jury room. I am
10 going to give it to you tonight so that you
11 can look at it tonight, read it.

12 I have also prepared a witness, a
13 potential witness list of one hundred
14 thirty-four names. I am going to give that
15 to you tonight. I want you to look at that
16 witness list to see if you recognize or know
17 anybody on the witness list.

18 As far as the type of opinions on
19 the death penalty, I want you to look at it.
20 Please don't discuss it with anybody else.
21 It is a personal opinion that you have on
22 the death penalty and that's what we want to
23 know, not your husband's opinion or not your
24 mother's opinion or your child's opinion or
25 anyone else. We want your opinion. So

1 please don't discuss it with anyone else.

2 It is a personal decision on your part.

3 Just read it and be prepared tomorrow. I
4 will ask you which type that you fall in if
5 you fall in any of those types.

6 Madame Clerk, if you will, pass
7 them out.

8 CLERK: (Distributes copies to
9 jurors).

10 THE COURT: You are free to go.
11 I will see you at 9:00 o'clock in the
12 morning.

13 (JURY PANEL NUMBER SIX EXITS COURTROOM)

14 THE COURT: All right, we are
15 adjourned until 9:00 o'clock in the morning.
16 Is there anything that we can deal with or
17 that we need to deal with this afternoon?
18 (No response).

19 See you at 9:00.

20 (COURT IN RECESS)

21 (TRANSCRIPT CONTINUED NEXT PAGE)
22
23
24
25

1 SEPTEMBER 16, 2009 9:00 A.M.

2
3 (DEFENDANT PRESENT)

4 THE COURT: Mr. Merlin Williams,
5 who I excused yesterday to go to the
6 hospital with his wife is back. I am going
7 to bring him in first. He's already been
8 sworn and he had already -- we had already
9 gone through the group questions. I am
10 going to bring him back as an individual.
11 He's Juror Number 387, on Panel 5.

12 Bring in Mr. Williams, please.

13 (JUROR NUMBER 387 ENTERS COURTROOM)

14 THE COURT: Mr. Williams, if I
15 may --, I don't mean to pry into your
16 personal affairs, but how is your wife?

17 JUROR NUMBER 387: She's fine.
18 She's home.

19 THE COURT: Is she home?

20 JUROR NUMBER 387: She's on
21 bedrest. Yes, sir.

22 THE COURT: Does she need care or
23 do you have someone to assist with her?

24 JUROR NUMBER 387: She's fine.
25 Her blood pressure was high yesterday and

1 they sent her, out of caution, to the
2 hospital.

3 THE COURT: So are you going to
4 be able to continue with your duties as a
5 juror?

6 JUROR NUMBER 387: Yes, sir.
7 I'm fine. She's back home.

8 THE COURT: Yesterday I believe
9 that you had been sworn and we had asked the
10 group -- or explained -- I had made some
11 statements to the group. Do you remember
12 what was said yesterday?

13 JUROR NUMBER 387: Yes, sir.

14 THE COURT: All right. I've got
15 some questions now and then the attorneys
16 will also ask you some questions.

17 MERLIN WILLIAMS, having been
18 previously sworn to tell the truth testified
19 as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q. Did you have an opportunity to review
23 the different categories of opinions on the
24 death penalty?

25 A. Yes, sir.

1 Q. Did you understand it?

2 A. Yes, sir

3 Q. Do you fit into any of the categories?

4 A. Yes, sir, I fit into type two.

5 Q. Type two?

6 A. Yes, sir.

7 Q. So you think that if anyone is
8 convicted of murder, they should be
9 sentenced to death?

10 A. Yes, sir.

11 Q. Is that correct?

12 A. Yes, sir...

13 Q. And you don't think there'd be any type
14 of circumstances where someone should not
15 receive the death penalty?

16 A. Right. No, sir. I think if you take a
17 life then there is no excuse for that.

18 Q. All right, Mr. Williams. I will excuse
19 you from jury service.

20 A. Okay.

21 (JUROR NUMBER 387 EXCUSED)

22 (JUROR NUMBER 387 EXITS COURTROOM)

23 THE COURT: Bring in Panel Number
24 Six.

25 (JURY PANEL NUMBER SIX ENTERS COURTROOM)

1 THE COURT: Ladies and gentlemen
2 of the jury panel, the defendant in this
3 case is charged with attempted arson, armed
4 robbery, assault and battery with intent to
5 kill, criminal sexual conduct first, grand
6 larceny, burglary first, and murder.

7 As to the murder charge, the State
8 has served notice of the death penalty. In
9 South Carolina when notice of the death
10 penalty is served, then it is commonly
11 referred to as a death penalty case.

12 Now commonly in South Carolina a
13 death penalty case is divided up into two
14 parts. The first part of the trial is the
15 guilt portion. During the guilt portion the
16 State is responsible for proving the
17 Defendant guilty beyond a reasonable doubt
18 of the murder charge and of the other
19 charges.

20 A defendant never has to prove
21 himself innocent. It is the State's burden
22 to prove the defendant guilty.

23 I am going to talk to you this
24 morning and there will be some questions
25 asked about the penalty. The fact that we

1 are talking about a penalty does not
2 indicate one way or the other about the
3 defendant's innocence or guilt, it is just
4 the fact that we have to talk to you about
5 the penalty phase of the trial.

6 The second phase of the trial is
7 the sentencing or the penalty phase. In
8 that part of the trial you, the jury will
9 determine whether or not the defendant
10 receives life without parole or death. When
11 I say life without the possibility of
12 parole, I mean what it says, the defendant
13 will never be eligible for parole. He will
14 basically die in jail. He will not get out
15 of jail.

16 You, the jury, makes the
17 determination whether a defendant receives
18 death or life. You make a recommendation to
19 the court and the court is obligated to
20 follow that recommendation.

21 Now, in the penalty phase the State
22 requires certain aggravation, commonly
23 referred to as aggravating circumstances.
24 These are facts, details, incidents of the
25 murder which increase the enormity of the

1 crime. I do not know exactly what
2 aggravating circumstances are going to be
3 presented because I have not heard the
4 testimony. The State will be obligated to
5 prove these aggravating circumstances.

6 Then there will be mitigating
7 circumstances. Mitigating circumstances
8 are characteristics of a defendant, facts
9 about the crime, facts about the defendant's
10 lifestyle. It is being offered to you to
11 reduce the severity of the murder, or to
12 reduce the defendant's culpability or
13 responsibility for the murder.

14 If there is a second phase, he
15 would have been found guilty. I am talking
16 not about his innocence or guilt but that
17 you make a decision of death or life.

18 So you will have to consider
19 aggravating circumstances and all of the
20 mitigation before you make a decision to
21 find life, recommend life, or recommend
22 death to the defendant.

23 Now, I have prepared basically two
24 forms. There is one form that you received
25 last night, that I gave to you, concerning

1 the different categories. You will come
2 back in individually and we will ask you
3 questions about those categories.

4 Also I gave to you last night a
5 list of potential witnesses. Has everybody
6 had an opportunity to review the list of
7 witnesses? (Affirmative nods by Jurors).

8 Has everybody had an opportunity to
9 review the list of opinions about the death
10 penalty? (Affirmative nods by Jurors).

11 All right, one witness was left
12 off. Jessica Broughton's name was left off
13 of the list. Is there any member of the
14 jury panel who knows anyone by the name of
15 Jessica Broughton? (No response). Do you
16 recognize that name at all? (No response).
17 Let the record reflect that no one raised
18 their right hand in reference to the
19 question -- or at least everyone shook their
20 head 'no', that they do not know a Jessica
21 Broughton.

22 Solicitor, do you want to introduce
23 yourself?

24 SCARLETT WILSON: Yes, sir. I am
25 Scarlett Wilson. I am the solicitor here in

1 Berkeley County. I also have Charleston
2 County. This is Bruce Durant, he is the
3 chief deputy for the circuit. This is Brian
4 Alfaro, he is over there Berkeley office.
5 The three of us together will be presenting
6 evidence, asking questions of the witnesses
7 and basically presenting the State's case
8 over the next week or week and a half.

9 THE COURT: Is there any member
10 of the jury panel who has a close personal
11 relationship with Ms. Wilson, or anyone in
12 her office; if so, please raise your hand.
13 (No response).

14 Mr. Maguire?

15 WILLIAM MAGUIRE: Thank you,
16 Judge. My name is Bill Maguire. I am a
17 lawyer. I live in Columbia now, work with
18 the State government.

19 This is Colin Broughton, my client.
20 I represent Colin.

21 Morgan Daniels is to his right. She
22 is an investigator in the office.

23 To her right is Pati Kennedy, she
24 is the chief public defender for Berkeley
25 County.

1 And to her right is Mr. Boyd young.
2 He is a lawyer in my office.

3 THE COURT: All right. Does
4 any member of the jury panel know any of the
5 attorneys that Mr. Maguire recognized or has
6 anybody been represented by Mr. Maguire or
7 any of the lawyers that he introduced? If
8 so, raise your right hand. (No response).

9 What I am going to do is to ask Ms.
10 Pittman to come and have a seat in the
11 witness stand. The other five jurors can go
12 and have a seat in the jury room and we will
13 be with you shortly.

14 (JUROR NUMBER 268 TAKES WITNESS STAND)

15 (JURY PANEL NUMBER SIX EXITS COURTROOM)

16 THE COURT: Swear the witness
17 (sic).

18 DEANNA PITTMAN, having been
19 previously sworn to tell the truth testified
20 as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Ms. Pittman, have you had an
24 opportunity to review the three types or
25 opinions about the death penalty?

1 A. Yes, sir.

2 Q. Have you determined if you fit into any
3 of the categories?

4 A. With what you have, I would fit into
5 category number two.

6 Q. You would be a number two?

7 A. Yes, sir.

8 Q. And number two is that you think that
9 everyone convicted of murder should be
10 sentenced to death?

11 A. Yes, sir.

12 Q. You cannot give anyone life under any
13 circumstances?

14 A. No, sir.

15 THE COURT: All right, I am going
16 to excuse yo. Thank you very much.

17 (JUROR NUMBER 268 EXCUSED)

18 (JUROR NUMBER 268 EXITS COURTROOM)

19 THE COURT: Bring the next juror,
20 please.

21 (JUROR NUMBER 271 ENTERS COURTROOM)

22 STACY PLONA, having been previously
23 sworn to tell the truth testified as
24 follows:

25 EXAMINATION

1 BY THE COURT:

2 Q. Ms. Thompson (sic), have you had --
3 sorry, what was your name again?

4 A. Plona. Stacy Plona, Juror Number 271.

5 Q. Ms. Plona, have you had an opportunity
6 to review the three types of opinions about
7 death penalty?

8 A. Yes, Your Honor.

9 Q. Have you determined if you fit into any
10 of those types?

11 A. Type three.

12 Q. Yes, sir. Did you have an opportunity
13 to review the list of witnesses of the
14 potential people that we may call?

15 A. Yes, sir.

16 Q. Did you recognize any names on that
17 list?

18 A. I recognized six names. I don't ---

19 Q. Tell me the six names.

20 A. Sure: Number 6, Danny Mozelle

21 Q. Where do you know him from?

22 A. My ex-boyfriend, ex-fiancé worked for
23 Berkeley County, he was with the Sheriff's
24 Office, so I remember him saying those names
25 -- though, I don't know them personally.

1 Q. But you recognize the names because of
2 your ex-boyfriend, ex-fiancé?

3 A. Yes.

4 Q. How long have you been split up?

5 A. Four years.

6 Q. But you don't know Danny Mozelle
7 personally?

8 A. No, sir.

9 Q. Who were the other names? Why don't
10 you just call them all out.

11 A. Call them all out?

12 Q. Are they all in the same category as
13 Mr. Mozelle?

14 A. Yes, sir: Number 37, ---

15 Q. What is his name?

16 A. Gerald McElvogue.

17 Number 94, Bobby Shuler.

18 Number 95, Rick Ollic

19 Number 96, A.B. Ashe

20 Q. These are all people that work for
21 Berkeley County Sheriff's Office; is that
22 correct?

23 A. That's correct.

24 Q. You don't know them personally you just
25 know your ex-fiancé referred to them and you

1 know them by name?

2 A. I know them by name. That's correct.

3 Q. What is the name of your ex-fiancé?

4 A. Jeremy Baker.

5 Q. Mr. Baker, does he still work for the
6 Berkeley County Sheriff's Department, Police
7 Department?

8 A. I am not sure if he does or not.

9 Q. How long did you go with Mr. Baker?

10 A. Five years.

11 Q. Out of that five you were engaged an
12 year or ---

13 A. Four months.

14 Q. Four months?

15 A. (Affirmative nod). We split up in
16 April of 2004 -- well, 2005. Sorry.

17 Q. During the five years that you went
18 with him, dated him, was he a deputy the
19 entire time?

20 A. He was a deputy and then he worked in
21 the canine unit.

22 Q. Have you had any conversations with him
23 about his viewpoints on law enforcement in
24 general?

25 A. No, sir.

1 Q. Did he talk about his job with you very
2 often?

3 A. Not very often, no.

4 Q. Do you have any bias or prejudice
5 towards police officers because of the
6 relationship that you had with your ex-
7 fiancé?

8 A. No.

9 Q. Do you have any bias or prejudice in
10 favor of law enforcement offices because of
11 your relationship with your ex-fiancé?

12 A. Uh, -- no.

13 Q. You had set that relationship aside and
14 be fair to both the State and the Defendant
15 in this case?

16 A. Yes, sir.

17 Q. Base your decision on the testimony you
18 hear here in the courtroom?

19 A. Yes, sir.

20 Q. Have you heard anything about the
21 case? Anybody talk about the case or
22 anything in the paper, or heard anything on
23 the TV?

24 A. No, sir.

25 Q. Do you have any relatives or close

1 friends in law enforcement other than the
2 people that you have previously told the
3 court about?

4 A. No, sir.

5 Q. Has the solicitor prosecuted you or any
6 member of your family?

7 A. No, sir.

8 Q. Has any member of your family or close
9 friend ever been the victim of any crime?

10 A. No, sir.

11 Q. Do you have any relatives in jail?

12 A. No, sir.

13 Q. Are you a member of any groups which
14 have as its primary goal to support
15 primarily law enforcement, such as MADD?

16 A. No, sir.

17 Q. Do you have any special or particular
18 interest in the outcome of this case?

19 A. No, sir.

20 Q. Are you aware of any bias or prejudice
21 for or against the State as a result of
22 religious beliefs?

23 A. No, sir.

24 Q. Are you aware of any bias or prejudice
25 for or against the Defendant as a result of

1 religious beliefs?

2 A. No, sir.

3 Q. Are you aware of any bias or prejudice
4 against the Defendant because of his race.
5 Being black?

6 A. No, sir.

7 Q. I read the charges to you earlier. Do
8 you have any bias or prejudice against the
9 defendant because of those charges?

10 A. No, sir.

11 Q. Do you know of any reason, personal or
12 otherwise, why you could not sit on the
13 jury?

14 A. No, sir.

15 Q. Is there any reason that you could not
16 give the State and the Defendant a fair and
17 impartial trial?

18 A. No, sir.

19 Q. All right. As I explained to you a few
20 minutes ago about the mitigating
21 circumstances and the aggravating
22 circumstances, in the penalty phase, as I
23 said earlier, the jury has to make a
24 decision on life or death. But before they
25 make that decision, they have to consider

1 all of the aggravating circumstances and all
2 of the mitigating circumstances. Before you
3 make a decision of life or death, will you
4 listen to all of the aggravating
5 circumstances and all of the mitigating
6 circumstances and consider those factors
7 before you make a decision?

8 A. Yes, sir.

9 THE COURT: Whose turn?

10 EXAMINATION

11 BY WILLIAM MAGUIRE:

12 Q. Good morning, Ms. Plona.

13 A. Good morning.

14 Q. Did I pronounce your name correctly?

15 A. Yes, you did.

16 Q. Okay. Thank you. This is sort of
17 difficult for a lot of different reasons.

18 I am just going to remind you that there are
19 no right or wrong answers. Just be as
20 candid as you can. I just want to know some
21 of your thought processes. Okay?

22 A. Okay. Thank you.

23 Q. You have heard that one of the charges
24 in this case is murder, obviously, and that
25 the State is seeking the death penalty.

1 A. (Affirmative nod).

2 Q. I just want to make sure that were on
3 the same page, so I am going to give you a
4 pretty detailed description of murder. In
5 South Carolina, it is the unlawful and
6 intentional killing of an innocent person
7 with a heart that is described as black and
8 malignant, fatally bent on wickedness or
9 mischief. That is what we are talking about
10 here.

11 To put you in a hypothetical
12 situation, you are on a jury, you and eleven
13 people have convicted a person of that
14 offense that I just described beyond a
15 reasonable doubt. You are satisfied that it
16 is the right person, it is not an accident,
17 it is not a bar room brawl. It is the
18 intentional killing of an innocent person.

19 In that situation, what are your
20 thoughts about the death penalty as the
21 appropriate penalty?

22 A. The appropriate penalty if, you know,
23 I heard all the facts in the case and
24 everything, then I believe that that would
25 be an option for me.

1 Q. Obviously we are going to ask you some
2 questions about, for you, what makes the
3 case a life-in-prison case or what makes the
4 case a death penalty case. So I am just
5 going to put that to you. But what would
6 you want to look at to make that decision?

7 A. I would want to look at the person's
8 intent, then just the facts of the case, and
9 then would be able to make my decision.

10 Q. When you said the facts of the case,
11 are you talking about the circumstances of
12 the crime itself?

13 A. The circumstances of the crime, the
14 evidence. I would want to hear everything
15 so that I can make my decision.

16 Q. Sure. When you say everything, that is
17 the circumstances of the crime. I guess?

18 A. The circumstances, the facts, the
19 evidence. I would want to hear the whole
20 testimony before making my decision.

21 Q. And what kinds of circumstances or
22 evidence would make you lean toward the
23 death penalty?

24 A. I guess would be how aggravated -- I
25 mean, that's hard for me to answer that, I

1 guess.

2 Q. Well, in your mind are there any types
3 of murders that should definitely get the
4 death penalty?

5 A. No, I don't have a specific type. I
6 mean, I guess it would depend on -- like I
7 said before -- the intent, I guess is what I
8 think about and -- (pause).

9 Q. Well, let's talk about intent.

10 THE COURT: Let me interrupt for
11 just a second and explain something to the
12 juror. Murder in South Carolina -- all
13 murders are intentional. Okay?

14 JUROR NUMBER 271: Okay.

15 WILLIAM MAGUIRE: Thanks, Judge.

16 THE COURT: Don't mislead her.
17 Okay? I am not indicating that you were but
18 I don't want you to go misleading her.
19 Okay?

20 WILLIAM MAGUIRE: Well, that's
21 exactly what I was going to say.

22 EXAMINATION CONTINUED

23 BY WILLIAM MAGUIRE:

24 Q. Ms. Plona, you mentioned the word
25 "intent" and I -- I agreed whole-heartedly

1 with what the Judge said. All murders in
2 South Carolina, to be eligible -- well, all
3 murders are intentional, meaning that the
4 person meant to do it. Does that ---

5 A. I guess if it was somebody that was
6 defending himself, I would say that I would
7 be more inclined to do maybe life in prison;
8 you know, depending on what the
9 circumstances were, if it were self-defense
10 or something along that line.

11 Q. Let's go backwards. We are not talking
12 about self-defense or accident or a bar room
13 brawl that gets out of hand. What we are
14 talking about is that a person knew right
15 from wrong, chose to take the life of
16 another person, like the Judge said,
17 intentionally; is that a death penalty case
18 for you?

19 A. Yes.

20 Q. And would it always be a death penalty
21 case for you?

22 A. Yeah.

23 Q. Those facts?

24 A. Yeah.

25 Q. Can you think of anything -- having

1 decided that that would be a death penalty
2 case, is there anything that could undo that
3 and make you go backwards, to go for life?

4 A. If I could tell that the person that
5 committed the crime actually looked
6 remorseful and regretted what they had done,
7 that might change my decision.

8 Q. Anything else?

9 A. No.

10 Q. So, again, as the Judge said,
11 intentional, has chosen to take the life of
12 another, knew right from wrong, that person
13 -- that person, with you, is going to get
14 the death penalty unless they can show some
15 substantial remorse?

16 SCARLETT WILSON: Judge, can we
17 approach?

18 THE COURT: Yes, ma'am. Ms.
19 Plona, would you mind stepping out into the
20 hall with the bailiff for just a moment. I
21 will get you back in just a minute.

22 (JUROR NUMBER 271 EXITS COURTROOM)

23 BRUCE DURANT: Your Honor, we
24 object to this whole manner in which they
25 are questioning the witnesses in this case.

1 They are putting them in a box on the death
2 penalty without letting them know about
3 mitigating circumstances, what mitigating
4 circumstances are and the charge on the law
5 about mitigating circumstances.

6 THE COURT: I understand that.
7 Either I will straight them out or you will
8 when it is your opportunity. I am going to
9 let them -- I have already straightened them
10 out of intentional and I'll straighten them
11 out on mitigation. Okay? You can do that
12 also but I will be happy to do it if you
13 want me to do.

14 All he is doing now is asking her
15 about the murder. I assume that he is going
16 to go to mitigation next. If he doesn't go
17 to mitigation, I am.

18 BRUCE DURANT: But he -- my
19 whole point is that he's asking him -- they
20 know nothing about this process.

21 THE COURT: I understand.

22 BRUCE DURANT: They know
23 nothing about mitigating circumstances.
24 They do not know what mitigating
25 circumstances are or what they may consider

1 or what your charge on the law may be. What
2 they are trying to do is to put them in a
3 box on the murder conviction and then argue
4 that as a basis that they are not qualified
5 as jurors without giving them the whole
6 picture.

7 THE COURT: Yes, but -- that's
8 not going to happen, as far as
9 disqualification goes. I am not going to
10 let them mislead the jurors.

11 BRUCE DURANT: We would use
12 that word, they are misleading them.

13 THE COURT: Don't mislead the
14 jurors. I don't think that they are
15 misleading. They are just trying to get
16 about the death penalty. If he doesn't go
17 to the mitigation, then I will.

18 WILLIAM MAGUIRE: Judge, ---

19 THE COURT: Do you understand
20 what I am saying?

21 WILLIAM MAGUIRE: And, Judge, just
22 for the record, I just want to put out there
23 that Mr. Durant's objection ---

24 THE COURT: I am going to let you
25 do it, so why are you arguing with us?

1 Bring us the juror.

2 (JUROR NUMBER 271 ENTERS COURTROOM)

3 THE COURT: Ms. Plona, let me
4 explain one thing to you. As I told you
5 when we started, before you consider death
6 or life, you have to consider aggravating
7 circumstances, conditions of the crime as
8 the attorney has been asking you, but you
9 also have to consider any mitigation that
10 may be offered. Mitigation would be about
11 the defendant himself. Understand?

12 JUROR NUMBER 271: (No verbal
13 response).

14 THE COURT: You are required to
15 consider both items before you make a
16 decision, death or life. Do you understand?

17 JUROR NUMBER 271: Yes, sir.

18 THE COURT: Please proceed.

19 BOYD YOUNG: Thank you, Your
20 Honor.

21 EXAMINATION CONTINUED

22 BY WILLIAM MAGUIRE:

23 Q. Ms. Plona, I think when we left off --
24 I think you'd identified remorse as the one
25 item that could take you away from the death

1 penalty in that intentional chose-to-take-
2 the-life type murder.

3 A. Yes.

4 Q. " Can you think of anything else?

5 A. No, sir.

6 Q. Things about -- things about the
7 defendant, like say that he grew up in
8 poverty, that wouldn't be relevant to you
9 because you're looking to the facts of the
10 murder to make your decision?

11 A. Right.

12 Q. And that's where your focus is going to
13 be if you have to make this life and death
14 decision, on the facts of the murder?

15 A. Yes. Yes, sir.

16 Q. And, again, like a drug addiction, an
17 abusive father or poverty, that is not going
18 to be relevant to your decision?

19 A. No, sir.

20 Q. And these answers -- I appreciate your
21 candor. These are difficult questions and I
22 appreciate you being honest with us. It is
23 obviously a very serious case and I'm
24 assuming that you're answers are well
25 thought out?

1 A. Yes, sir.

2 Q. That they are based on your value
3 system as a person?

4 A. Yes, sir.

5 Q. And your answers aren't going to change
6 ---

7 SCARLETT WILSON: Objection, Your
8 Honor.

9 THE COURT: Let him finish the
10 question before I -- go ahead. Not going to
11 change what? Then I'll rule. I gotta hear
12 the question before I can rule.

13 EXAMINATION CONTINUED

14 BY WILLIAM MAGUIRE:

15 Q. Your answers aren't temporary, these
16 are your ---

17 THE COURT: Hold on a second.
18 What is your objection?

19 SCARLETT WILSON: Speculation.

20 THE COURT: I will sustain the
21 objection. Go ahead. Sustained means that
22 it is an improper question and you won't
23 answer it. Okay?

24 JUROR NUMBER 271: Yes, sir.

25 THE COURT: Go ahead.

EXAMINATION CONTINUED

BY WILLIAM MAGUIRE:

Q. Ms. Plona, thank you for coming --
that's all that I have for you.

A. Thank you.

THE COURT: Solicitor.

EXAMINATION

BY SCARLETT WILSON:

Q. Good morning.

A. Good morning.

Q. Thanks for hanging in there with us
this week. I've got just a few other
questions. When the Judge was talking with
you about the second phase of the trial,
after there has been a conviction for a
brutal murder, he asked you if you could
consider aggravating and mitigating
circumstances. Do you know what mitigating
circumstances are?

A. No.

Q. This is new to you?

A. Yeah.

Q. Let me ask you this way, even after
convicting someone of a brutal, heinous
crime, could you then still keep an open

1 mind and hold the State to its burden to
2 prove aggravating circumstances; could you
3 do that?

4 A. Yeah.

5 Q. Likewise, could you also listen to
6 anything about the Defendant? You don't
7 have to say what you would do about it but
8 could you meaningfully consider and really
9 use information from the defense about the
10 defendant: his mental health, his substance
11 abuse perhaps, or the way he grew up, things
12 like that. Could you factor those in him
13 before making your final decision about
14 whether or life without parole is
15 appropriate or whether the death penalty is
16 appropriate?

17 A. Yeah.

18 Q. You would factor in those things?

19 A. Yes, I could.

20 SCARLETT WILSON: That's all that
21 I have, Your Honor.

22 THE COURT: One question if you
23 want, on that issue -- if you don't want to,
24 that's fine but I'm going to give you an
25 opportunity on that issue.

1 WILLIAM MAGUIRE: I am assuming
2 that it is necessary.

3 EXAMINATION RESUMED

4 BY WILLIAM MAGUIRE:

5 Q. Ms. Plona, I want to take about ninety
6 more seconds of your time.

7 THE COURT: You are not taking
8 ninety, but go ahead.

9 EXAMINATION CONTINUED

10 BY WILLIAM MAGUIRE:

11 Q. Maybe sixty. The circumstances that we
12 talked about, maybe growing up in poverty,
13 having an abusive parent or something like
14 that, for you if you reached in your mind
15 that the death penalty were appropriate
16 based on the facts of the crime, those
17 things wouldn't really be enough to make you
18 go all the way down to life without parole,
19 would they?

20 A. Well, based on what was just explained
21 to me in answering the questions -- yes, I
22 could.

23 Q. If life without parole, for you, a
24 severe sentence for an intentional, choose-
25 to-kill, murder?

1 A. Yes.

2 THE COURT: Thank you, sir.
3 Any Motions on this juror?

4 WILLIAM MAGUIRE: Yes, Your Honor.

5 THE COURT: Would you step back
6 out in the hall very briefly? We will be
7 back with you shortly. Thank you very much.

8 (JUROR NUMBER 172 EXITS COURTROOM)

9 THE COURT: What's your Motion?

10 WILLIAM MAGUIRE: Judge, move to
11 strike for cause. Failure to strike this
12 juror for cause would violate Mr.
13 Broughton's Sixth and Fourteenth Amendment
14 rights to an impartial jury.

15 Based on her additional responses
16 -- and I was very specific. I said 'things
17 about the defendant's background, if he grew
18 up in poverty, drug addiction, an abusive
19 father' and to all of those, in the
20 beginning, she said no, that -- she actually
21 say were not relevant. You've got to go
22 with where she kind of comes from the heart.
23 A lot of people are going to change when you
24 say, 'well, can you factor that in', 'can
25 you listen to it', in a leading way. But I

1 think that if you're going with where she
2 really is, that's where she is.

3 THE COURT: Well, Mr. Maguire,
4 the problem is that, you know, you paint a
5 nice box with some leading questions -- and
6 that's fine, that's the way that the system
7 works.

8 But I'll just have to take
9 responsibility because it's probably not
10 been explained to these people what
11 mitigation means. I think until what
12 mitigation really means is explained and
13 these people understand that, it's probably
14 an unfair question. Okay?

15 Now, once she understood what
16 mitigation meant, she said that she would
17 consider it. So your Motion is denied.

18 WILLIAM MAGUIRE: Thank you,
19 Judge.

20 THE COURT: Thank you. Next
21 juror -- bring her back.

22 (JUROR NUMBER 271 ENTERS COURTROOM)

23 THE COURT: Ms. Ploma, do you
24 have the card with the phone number to call
25 in?

1 JUROR NUMBER 271: Yes.

2 THE COURT: The bailiff has one
3 for you if you don't have it. There is a
4 phone number. Call in tomorrow after five
5 o'clock, please. There will be
6 instructions for the jury panel. Follow
7 those instructions. The instruction may be
8 to come in Friday. The instruction may be
9 to call in after Friday at five. Okay?

10 JUROR NUMBER 271: Okay.

11 THE COURT: Thank you so very
12 much. Appreciate your service.

13 (JUROR NUMBER 271 EXITS COURTROOM)

14 THE COURT: Bring in the next
15 juror.

16 (JUROR NUMBER 343 ENTERS COURTROOM)

17 LEIGH MERCHANT THOMPSON, having
18 been previously sworn to tell the truth
19 testified as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q. State your full name, please.

23 A. Leigh Merchant Thompson.

24 Q. Ms. Thompson, how are you doing today?

25 A. I am good, thank you.

1 Q. Ms. Thompson, I gave you the form
2 yesterday after the opinions concerning the
3 death penalty.

4 A. (Affirmative nod).

5 Q. Did you review it?

6 A. Yes.

7 Q. Did you understand that?

8 A. Yes.

9 Q. Do you fit into either category one,
10 two or three?

11 A. Yes.

12 Q. Which category?

13 A. Three.

14 Q. Three?

15 A. (Affirmative nod).

16 Q. Did you have the opportunity to review
17 the list of potential witnesses?

18 A. Yes.

19 Q. Did you recognize any names on it?

20 A. No.

21 Q. You did not recognize any names, you
22 did not know anybody?

23 A. I did not know anybody, no.

24 Q. Okay. Have you heard anyone talking
25 about the case other than what you were told

1 this week in the courtroom?

2 A. No.

3 Q. Have you seen anything on television?

4 A. No.

5 Q. Have you read anything in the paper?

6 A. No.

7 Q. Do you have any relatives or close
8 personal friends who are employees in law
9 enforcement?

10 A. No.

11 Q. Has the solicitor prosecuted to you or
12 any member of your immediate family?

13 A. No.

14 Q. Is there any member of your immediate
15 family or close personal friend who has ever
16 been the victim of a crime?

17 A. No.

18 Q. Do you have any relatives in jail?

19 A. No.

20 Q. Are you a member of any groups that
21 have as their primary function the support
22 of law enforcement, such as MADD?

23 A. No.

24 Q. Do you have any special or particular
25 interest in the outcome of this particular

1 case?

2 A. No.

3 Q. Are you aware of any bias or prejudice.
4 As a result of any religious beliefs for or
5 against the Defendant?

6 A. No.

7 Q. Any bias or prejudice based on religion
8 beliefs either for or against the State?

9 A. No.

10 Q. Do you have any bias or prejudice
11 against the Defendant because of his race,
12 being black?

13 A. No.

14 Q. I read the charges to you which the
15 State has brought against the Defendant.
16 Do you have any bias our prejudices as a
17 result of those charges themselves?

18 A. No.

19 Q. Have you had any bad or good
20 experiences with law enforcement?

21 A. No.

22 Q. I remember that you have a speeding
23 ticket. Have you?

24 A. What was that

25 Q. Have you had a speeding ticket?

1 A. Yes.

2 Q. Was that a good experience or a bad
3 experience?

4 A. It was fine. I deserved it, it was
5 fine.

6 Q. Pardon?

7 A. I deserved it. It was fine.

8 Q. Do you have any reason, personal or
9 otherwise, why you could not serve on the
10 jury?

11 A. No, not at this point.

12 Q. Now, earlier today I explained to you
13 about aggravation and mitigation and the
14 jury's responsibility to consider those
15 factors before they make a decision as to
16 whether to give life or death.

17 Aggravating circumstances are set
18 out by State law and the State is
19 responsible for meeting one of those
20 aggravating circumstances. I do not know
21 exactly what aggravating circumstance that
22 they will present, because I have not heard
23 the testimony.

24 Now, mitigating circumstances, some
25 are set out by State law which the defendant

1 may offer testimony on or he may offer some
2 other relevant mitigating circumstances.

3 When I use the word "mitigating
4 circumstances," I mean things about the
5 defendant's background, things about his
6 upbringing, possibly drug use or over use of
7 drugs affecting his emotional or mental
8 capacity. I don't know what is going to be
9 offered in mitigation because, there again,
10 I have not heard testimony.

11 But my point being, the jury is
12 responsible and the court on charging that
13 you have to consider those factors -- as a
14 matter of fact, you have to find unanimously
15 that the State has proven one or more
16 aggravating circumstance. And you have to
17 consider the mitigation before you make a
18 decision of life or death. Do you
19 understand what I am telling you about
20 mitigation?

21 A. Yes.

22 Q. In other words, it is not that he
23 committed a crime and just gets the death
24 penalty. Do you understand?

25 A. (Affirmative nod).

1 Q. Are you able to consider all of the
2 aggravating circumstances that the State
3 introduces and all of the mitigating
4 circumstances which the Defendant may
5 introduce?

6 A. Yes.

7 Q. Would you consider those aggravating
8 and mitigating circumstances before you make
9 a decision of life or death?

10 A. Yes.

11 THE COURT: Whose turn?

12 EXAMINATION

13 BY SCARLETT WILSON:

14 Q. Good morning, Ms. Thompson. Thanks for
15 hanging in there with us the past couple of
16 days.

17 A. Sure.

18 Q. I've got just a few questions to kind
19 of followup. Have you ever been involved
20 in a situation like this, with the death
21 penalty?

22 A. No.

23 Q. This is the first time that you heard
24 all of this stuff?

25 A. Right.

1 Q. As the Judge told you and as you saw on
2 your sheet, every murder in South Carolina
3 is an intentional act, an act that also
4 involves what is called now malice
5 aforethought. That means that at some point
6 before that fatal blow the person meant to
7 kill. Keeping that in mind, not every
8 murder case is a death penalty case.

9 As the Judge told you, after a
10 conviction is found in a murder case in
11 which the death penalty is sought, there
12 is a second phase of the trial. Did you
13 understand that there would be two separate
14 events?

15 A. Yes.

16 Q. Okay. The question that I have for you
17 about the second phase, and it really comes
18 down not to whether you lean towards life
19 without parole or lean towards death, but
20 whether or not in the second phase you can
21 keep an open mind.

22 A. Yes.

23 Q. An open mind until the end?

24 A. Yes.

25 Q. Could you make us meet our burden in

1 that second phase? In other words, the
2 Judge told you that the State would have to
3 prove aggravating circumstances.
4 Circumstances that statutorily would allow
5 the death penalty to the given. If the
6 State did not prove those to yours and the
7 other jurors satisfaction, then it would not
8 be an option.

9 A. Right.

10 Q. You could make us do that?

11 A. Right.

12 Q. On the other hand, the defense never
13 has a burden of anything. They don't have
14 to prove anything, ever. But if they did
15 decide to put up things about the Defendant,
16 about his life, about his family, about
17 substance abuse, about anything that they
18 thought was important, could you keep an
19 open mind and factor those things in and
20 then meaningfully consider those things
21 before reaching your decision?

22 A. Yes.

23 Q. And when we say mitigation, that's what
24 we are talking about. Things about the
25 defendant, his life, not about the crime.

1 A. Yes.

2 Q. So even in a case where, again, the
3 jury would have found guilt, guilt is not a
4 question.

5 A. I understand.

6 Q. Intent is not a question.

7 A. I understand.

8 Q. If you are considering the death
9 penalty, then an aggravating circumstance
10 would have already have been found. It
11 could be a home invasion, it could be a
12 rape, whatever. Could you keep your mind
13 open until everything was in?

14 A. Yeah.

15 Q. No doubt about it?

16 A. Right.

17 SCARLETT WILSON: Thank you.

18 THE COURT: Yes, sir.

19 WILLIAM MAGUIRE: Thank you, Your
20 Honor.

21 EXAMINATION

22 BY BOYD YOUNG:

23 Q. Ms. Thompson, good morning.

24 A. Good morning.

25 Q. I have to ask you, "Hockey Mom" on the

1 back of the car.

2 A. Yeah.

3 Q. We don't have a lot of ice around here.
4 Where is that from?

5 A. From the Carolina Ice Palace.

6 Q. Okay. Fair enough. Over there by
7 Lowe's?

8 A. Yes.

9 Q. I am just going to ask you very briefly
10 about your thought process. Just ask for
11 honest answers, just pretend like I'm in
12 your kitchen or you are in my kitchen.

13 A. Okay.

14 Q. I am just going to ask you, regarding
15 leaning towards the death penalty or Life
16 without the possibility of parole penalty,
17 what would you want to hear to make that
18 decision?

19 A. Just really all the facts. Whatever is
20 needed to be able to make -- that is a very
21 serious decision, so whatever is needed to
22 make that decision.

23 Q. When you say the facts, are you talking
24 about the facts of the crime?

25 A. Facts of the crime, the mitigating

1 circumstances, whatever needs -- the jurors
2 need to know to be able to make that
3 decision, that is what I would want to know.

4 Q. Would the death penalty be appropriate
5 for somebody who shows substantial remorse
6 for what they have done?

7 A. I guess that it depends on everything
8 that goes into the situation. I would say
9 yes or no, one way, yet without knowing the
10 situation, the facts, everything that needs
11 to be done.

12 Q. Okay. Regarding circumstances of the
13 Defendant, there's been a lot of talk about
14 mitigation, that would be something about Mr
15 Broughton. Does it have to -- for you to
16 consider it, be a factor, be a factor in
17 your decision making, does it have to be
18 something that leads directly to the crime?

19 A. Could you ---

20 Q. Yeah, let me be a little bit more
21 specific. Say if somebody was addicted to
22 drugs and they burglarized a house to get
23 drug money, do you have to have ---

24 SCARLETT WILSON: Your Honor, I
25 object.

1 THE COURT: What's the legal
2 objection?

3 SCARLETT WILSON: Staking out.

4 THE COURT: Pardon?

5 SCARLETT WILSON: Staking out.

6 THE COURT: Overruled.

7 WILLIAM MAGUIRE: Thank you,
8 Judge.

9 EXAMINATION CONTINUED

10 BY WILLIAM MAGUIRE:

11 Q. Do you see what I am saying, does it
12 have to have a direct nexus with the crime
13 or connection?

14 A. Well, I guess it would depend on what
15 both sides say. I would want to hear both
16 sides of that situation versus just
17 answering that side.

18 Q. Fair enough. So let's say that it is a
19 characteristic or something about his role
20 in life, like being, say, having been
21 sexually abused as a child. It doesn't
22 really have a direct connection to the
23 crime. Is it something that you can still
24 factor in?

25 A. I think all of that gets factored in.

1 That is one situation that would get
2 factored in to the whole situation making
3 process.

4 Q. Why would that be important to you?
5 Why would that factor matter?

6 A. Well, I think all of that makes a part
7 of what happens in a situation like that, as
8 far as what determines what a person does.
9 You can't take that away from somebody. I
10 mean, it is part of their life as well as
11 whatever the circumstances are that lead up
12 to that. I mean, there are two sides. You
13 have to be able to understand all of that to
14 be able to make that decision.

15 Q. Okay. And life without parole, that
16 penalty, is that a severe penalty to you?

17 A. I think all of it is a serious
18 situation. I mean, I think all of this is
19 serious, no matter which way that it goes.

20 WILLIAM MAGUIRE: Thank you,
21 ma'am.

22 THE COURT: Any Motions as to
23 this ---

24 SCARLETT WILSON: No, sir.

25 WILLIAM MAGUIRE: No, sir.

1 THE COURT: Ms. Thompson, the
2 bailiff has a card with a phone number on
3 it. You may have it, they gave it to you
4 the first day.

5 JUROR NUMBER 343: (Affirmative
6 nod).

7 THE COURT: She will give you the
8 phone number. Call and after five o'clock
9 tomorrow night, Thursday, tomorrow night.
10 There will be instructions for the jury
11 panel. The instruction may be to come in on
12 Friday afternoon, the instruction made the
13 to call back after five o'clock on Friday.
14 Follow those instructions.

15 What is going to take place is that
16 we are going to qualify so many people for a
17 death penalty jury. And then we will draw
18 the jury. Okay? At that time you will have
19 to come back. Okay?

20 JUROR NUMBER 343: Yes, sir.

21 (JUROR NUMBER 343 EXITS COURTROOM)

22 THE COURT: Do you'all want to
23 take five minutes?

24 BOYD YOUNG: I will take you up on
25 it.

1 THE COURT: Let's take five
2 minutes.

3 (BRIEF RECESS 9:49 - 9:53 A.M.)

4 (DEFENDANT PRESENT)

5 THE COURT: Ready to proceed?

6 SCARLETT WILSON: Yes, sir, thank
7 you.

8 THE COURT: Bring us our next
9 juror, please.

10 (JUROR NUMBER 362 ENTERS COURTROOM)

11 THE COURT: State your name, sir.

12 JUROR NUMBER 362: My name is
13 Lawrence Vining.

14 LAWRENCE VINING, having been
15 previously sworn to tell the truth testified
16 as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q. Mr. Vining, how you doing today?

20 A. Good.

21 Q. I gave you a sheet that explained or
22 put in three different categories people's
23 possible viewpoints concerning the death
24 penalty.

25 A. Yes, sir.

1 Q. Did you read that?

2 A. Yes.

3 Q. Did you understand it?

4 A. Yes, I did.

5 Q. Did you fit into either type one, two
6 or three? Are you did not fit into any of
7 those categories?

8 A. I think type one and type three.

9 Q. Type one and type three?

10 A. Yes, because I think that I would kind
11 of feel weird, you know, sending a person to
12 death. I mean, I would hold that on me
13 forever.

14 Q. All right. Type one says that you
15 could never sentence a human being to death.

16 A. Yeah.

17 Q. And then type three says that it
18 depends upon the circumstances.

19 A. Yes.

20 Q. So, you can't be both.

21 A. Yes.

22 Q. Do you understand?

23 A. Yes, sir.

24 Q. Where you think that you fall in?

25 A. Type one.

1 Q. You think that you're type one?

2 A. Yes, sir.

3 Q. You don't think you could ever sentence
4 anyone to death, regardless of the crime?

5 A. No.

6 Q. Regardless of how horrible it might be?

7 A. No.

8 THE COURT: Thank you so much. I
9 am going to excuse you from service on this
10 jury.

11 (JUROR NUMBER 362 EXCUSED)

12 (JUROR NUMBER 362 EXITS COURTROOM)

13 THE COURT: Bring in the next
14 juror.

15 (JUROR NUMBER 48 ENTERS COURTROOM)

16 THE COURT: Yes, ma'am.

17 JUROR NUMBER 48: Dixie Carmen.

18 DIXIE CARMEN, having been
19 previously sworn to tell the truth testified
20 as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Ms. Carmen, how are you doing today?

24 A. I am doing fine.

25 Q. Ms. Carmen, did you have an opportunity

1 to review the sheet that lays out the three
2 different opinions about the death penalty?

3 A. I did.

4 Q. Did you understand the sheet?

5 A. Yes.

6 Q. Do you understand the different types?

7 A. Yes.

8 Q. Could you determine whether or not you
9 fit into either of those three types?

10 A. Yes.

11 Q. Which type do you think that you fit
12 into?

13 A. Type three.

14 Q. Type three?

15 A. Yes.

16 Q. Did you also have the opportunity to
17 review the potential witness lists?

18 A. Yes.

19 Q. Did you recognize any names or did you
20 know anybody on the list?

21 A. Not a single one.

22 Q. Nobody?

23 A. Nobody.

24 Q. Out of one hundred thirty-four names?

25 A. (Negative gesture), out of one hundred

1 thirty-four names. Nobody.

2 Q. Pardon?

3 A. Nobody.

4 Q. All right. Ms. Carmen, have you heard
5 anybody talking about the case or have you
6 read anything in the paper or have you seen
7 anything on television about the case?.

8 A. Absolutely nothing.

9 Q. Nothing?

10 A. Nothing.

11 Q. Okay. Do you have any relatives who
12 are employed in law enforcement?

13 A. No.

14 Q. Has the solicitor prosecuted any member
15 of your family?

16 A. No.

17 Q. Has any member of your family or have
18 you been a victim of a crime?

19 A. No.

20 Q. Have any close friends who have been
21 the victim of a crime?

22 A. No.

23 Q. Do you have any relatives in jail?

24 A. No.

25 Q. Are you a member of any groups that

1 primarily function for the support of law
2 enforcement, such as MADD?

3 A. No.

4 Q. Do you have any special interest or
5 particular interest in the outcome of this
6 case?

7 A. No.

8 Q. Are you aware of any bias or prejudice
9 because of religious beliefs for or against
10 the Defendant?

11 A. No.

12 Q. Are you aware of any bias or prejudice
13 based on religious beliefs for or against
14 the State?

15 A. No.

16 Q. Do you have any bias or prejudice
17 against the Defendant because of his race,
18 which is black?

19 A. No.

20 Q. I read the charges out to you earlier.
21 Do you have any bias or prejudice against
22 the defendant just merely as a result of the
23 charges?

24 A. No.

25 Q. Have you ever had any bad or good

1 experiences with law enforcement?

2 A. Not really.

3 Q. Not really?

4 A. (Negative gesture).

5 Q. No good or bad?

6 A. No, I really haven't had any.

7 Q. At all?

8 A. ((Negative gesture), any.

9 Q. Okay. Do you have any reason, personal
10 or otherwise, why you could not serve on the
11 jury?

12 A. No.

13 Q. Do you know of any reason why you
14 cannot give both the State and the Defendant
15 a fair and impartial trial in this case?

16 A. No.

17 Q. Earlier I talked to you about
18 aggravating circumstances and mitigating
19 circumstances. It is the jury's
20 responsibility, in considering both of
21 those, before making a decision on life or
22 death -- do you understand?

23 A. Yes.

24 Q. Now, aggravating circumstances are set
25 out by State law and the State is

1 responsible for proving one or more
2 , aggravating circumstance. The State
3 statute lays out specific claims that have
4 to be proven. I do not know which category
5 the State is going to include in the
6 aggravating circumstances, because I have
7 not heard the testimony.

8 The jury would unanimously have to
9 find that the State had proven one or more
10 aggravating circumstance before you could
11 consider death or life, do you understand?

12 A. Yes.

13 Q. Also our statutes -- the State has laid
14 out certain mitigating circumstances.

15 Mitigating circumstances, as I told you
16 earlier, our facts, information that reduces
17 the severity of the crime or makes the
18 defendant less responsible.

19 The jury has the responsibility to
20 consider all mitigating circumstances before
21 they make a decision of life or death. Do
22 you understand?

23 A. Yes.

24 Q. I am going to read to you the statutory
25 mitigating circumstances but before I read

1 them to you, the defendant also can offer
2 anything else about his character, about his
3 upbringing, about his lifestyle, or use of
4 drugs or whatever that is relevant in
5 mitigating or to reduce the severity of the
6 crime.

7 On the mitigating circumstances:
8 the defendant has no significant history of
9 prior criminal convictions; the murder was
10 committed while the defendant was under the
11 influence of mental or emotional
12 disturbance; the victim was a participant in
13 the defendant's conduct; the defendant
14 brought about the conflict; the defendant
15 acted under duress or domination of another
16 person such that he cannot appreciate the
17 criminality of his conduct or to conform his
18 conduct to the requirements of law -- or
19 was substantially impaired; age and
20 mentality of the defendant; the defendant
21 was provoked by the victim; the defendant
22 was below the age of eighteen and mentally
23 retarded; plus, as I said any other
24 mitigation may be offered concerning the
25 defendant personally. Do you understand

1 what I am telling you about mitigating
2 circumstances

3 A. Yes.

4 Q. Are you willing to consider all of the
5 statutory aggravations and the mitigation
6 offered before you make a decision of life
7 or death?

8 A. Yes.

9 Q. Can you do that?

10 A. Yes.

11 Q. Thank you.

12 THE COURT: Whose turn?

13 EXAMINATION

14 BY WILLIAM MAGUIRE:

15 Q. I appreciate you being here. There are
16 no right or wrong answers.

17 A. Okay.

18 Q. Like I said, I want to talk to you
19 about your thoughts just like you were in
20 kitchen or I was in yours. Okay?

21 A. Okay.

22 Q. If you were Governor for a day and a
23 Bill came across your desk and you can put
24 pen to it and we would either have the death
25 penalty or not, what would you do?

1 A. I would have it.

2 Q. It serves a purpose for you?

3 A. Yes.

4 Q. What is that purpose to you?

5 A. Punishment. Perhaps a message, you
6 know, that it is taken very seriously and
7 that there are serious consequences.

8 Q. Okay. Sure. For you, are some types
9 of cases or murders so serious that the
10 death penalty should be the only punishment?

11 A. Not the only punishment.

12 Q. There is nothing that you can think of,
13 for instance like if it is a child victim or
14 a police officer ---

15 SCARLETT WILSON: Objection.

16 THE COURT: What is the legal
17 ground of your objection?

18 SCARLETT WILSON: Staking out.

19 THE COURT: Overruled.

20 SCARLETT WILSON: She has answered
21 the question.

22 THE COURT: Overruled.

23 WILLIAM MAGUIRE: Thank you,
24 Judge.

25 EXAMINATION CONTINUED

1 BY WILLIAM MAGUIRE:

2 Q. I am just trying to figure out what
3 kind moves your piece towards death or life.
4 Are there any categories like that that
5 appeal or resonant with you where the death
6 penalty should be the primary or the only
7 punishment?

8 A. Perhaps if it was a child that was the
9 victim.

10 Q. When I talk to people sometimes they
11 say that's because it is the innocence of
12 the victim that's important. I just want
13 to make sure that we're on the same page,
14 because all murders in South Carolina have a
15 completely innocent victim. It's not self-
16 defense, not accident, not a bar room brawl
17 gone awry.

18 What it is.-- just so that we are
19 on the same page, I want to give you a more
20 detailed definition of murder in South
21 Carolina. It is the unlawful, intentional
22 killing of another person, an innocent
23 victim, with no justification or excuse. It
24 is not self-defense, not accident, that sort
25 of thing. The person knew right from wrong,

1 chose to take a life. What are your
2 thoughts about the death penalty as the
3 appropriate punishment in that case?

4 A. Well, I guess I should think of it. If
5 the victim is totally defenseless, that
6 makes it worse. I would be more apt to
7 think death penalty if the victim was
8 defenseless.

9 Q. Okay. I am not going to talk to you
10 about the facts of this case, I want to talk
11 in general terms: a home invasion, rape,
12 armed robbery. Does that resonate with the
13 death penalty for you?

14 A. Not necessarily.

15 Q. Okay. When you say not necessarily,
16 why are you not voting on the death penalty
17 in that type of case?

18 A. Well, I mean murder -- is probably the
19 most serious. A burglary, home inversion,
20 while there is a the victim no one has died.
21 I guess that ---

22 Q. I'm sorry. I left out a very important
23 word. Murder.

24 A. Okay .

25 Q. Home invasion, armed robbery, rape,

1 murder. Would that be death penalty
2 appropriate or ---

3 A. It depends. You know, each situation
4 is different.

5 Q. What I am going to do is, for arguments
6 sake, just for discussion, let's assume that
7 you hear the facts of the case -- not this
8 case any case -- a murder case, you get the
9 aggravation, and for you, that puts you on
10 the move for the death penalty.

11 A. (No verbal response).

12 Q. Why would you want to know to come
13 backwards from that? Is there anything?

14 A. Perhaps if the defendant, how they
15 were brought up, their childhood, their
16 backgrounds.

17 Q. Why is that important to you?

18 A. Perhaps if they grew up in a rough
19 lifestyle, I could be a little bit more
20 --- not "forgiving," but ---

21 Q. You could be more understanding?

22 A. A little bit more understanding,
23 (affirmative nod).

24 Q. So these are factors -- well, let me
25 just ask you this, it sounds like that you

1 believe a person's childhood is pretty
2 important as to how they turn out?

3 A. Yes.

4 Q. In terms of weighing a death penalty or
5 life in prison penalty, does the background
6 have to lead right into the crime, have a
7 connection to it, or can it be something
8 really not connected with it.

9 A. It would not have to be connected.

10 Q. Say, for instance, somebody could have
11 -- could have grown up in abject poverty or
12 have had an abusive father, that really does
13 not connect directly to the crime. But you
14 could take that into consideration?

15 A. Yes.

16 Q. Is mercy something that is earned or
17 freely given?

18 A. I think that it should be freely given.

19 Q. And ---

20 WILLIAM MAGUIRE: Judge, if I
21 could have one second.

22 THE COURT: Yes, sir.

23 BOYD YOUNG: Ms. Carmen, I
24 appreciate all your honesty. That's really
25 all I have for you. Thank you for coming.

1 THE COURT: Solicitor.

2 SCARLETT WILSON: No questions.

3 THE COURT: Thank you very much.

4 Are there any Motions?

5 WILLIAM MAGUIRE: No, sir.

6 THE COURT: No Motion from the

7 State?

8 SCARLETT WILSON: No, sir.

9 THE COURT: Ms. Carmen, the
10 bailiff has a card with a phone number. You
11 may have it, because they gave it to you
12 Monday.

13 Call that number after 5:00 o'clock
14 tomorrow. There will be instructions for
15 the jury panel. Follow the instructions.
16 The instruction may be to come in Friday
17 afternoon, it may be to call in. Follow
18 those instructions.

19 What is going to happen is that we
20 are going to qualify so many people for the
21 death penalty jury. When you come back in,
22 we are going to draw that jury or strike
23 that jury and you will be a part of that
24 process. Thank you very much.

25 JUROR NUMBER 48: After 5:00

1 tomorrow?

2 THE COURT: After 5:00 tomorrow.

3 Thank you.

4 (JUROR NUMBER 48 EXITS COURTROOM)

5 THE COURT: Bring in the next --
6 who is next?

7 (JUROR NUMBER 361 ENTERS COURTROOM)

8 THE COURT: Your name, please.

9 JUROR NUMBER 361: Tabitha
10 Villaneuva.

11 TABITHA VILLANEUVA, having been
12 previously sworn to tell the truth testified
13 as follows:

14 EXAMINATION

15 BY THE COURT:

16 Q. Ms. Villaneuva, how are you doing this
17 morning?

18 A. Fine, I think.

19 Q. You think?

20 A. I think.

21 Q. You're doing fine. You've never done
22 anything like this before, have you?

23 A. No, sir.

24 Q. Well, I hope you've enjoyed it ---

25 A. (Negative gesture).

1 Q. Not yet?

2 A. No.

3 Q. Not fun yet, huh?

4 A. No.

5 Q. All right. I gave you yesterday a
6 sheet that lists various opinions about the
7 death penalty. Did you read?

8 A. Yes, sir.

9 Q. Did you understand it?

10 A. Yes, sir.

11 Q. Did you determine whether you fit into
12 category one, two, or three?

13 A. Yes, sir, three.

14 Q. You fit into number three?

15 A. Yes, sir.

16 Q. Did you also read the witness list of
17 potential witnesses of one hundred thirty-
18 four names that I gave to you?

19 A. Yes, sir.

20 Q. Did you recognize or know anybody on
21 that list?

22 A. No, sir.

23 Q. You did not recognize or know anybody?

24 A. No, sir.

25 Q. Out of one hundred thirty-four nine,

1 nobody?

2 A. Nobody.

3 Q. Okay. Do you know anything about the
4 case or have you heard anything about the
5 case?

6 A. No, sir.

7 Q. Have you read anything in the paper?

8 A. No, sir.

9 Q. Or seen anything on television?

10 A. No, sir.

11 Q. Do you have any relatives pr close
12 friends that are employed with law
13 enforcement?

14 A. No, sir.

15 Q. Has the solicitor or any of her
16 assistants prosecuted any member of your
17 family?

18 A. No, sir.

19 Q. Has a member of your family or you ever
20 been the victim of a crime?

21 A. No, sir.

22 Q. Do you have any relatives in jail?

23 A. Now?

24 A. Yes.

25 Q. No, no.

1 Q. How about previously?

2 A. Years ago.

3 Q. Who?

4 A. My brother.

5 Q. When did your brother go to jail?

6 A. Oh, I was a teenager.

7 Q. You were a teenager?

8 A. Yes, that was back in the '60s, the
9 early '60s.

10 Q. What did he go to jail for?

11 A. I think that he took my daddy's car,
12 our daddy's car.

13 Q. He took your daddy's car?

14 A. Yeah. Right over here. When I got in,
15 I got sick, threw up, passed out and Mr.
16 Finklea took me out. I was fine. I decided
17 that I would never break the law because I
18 was not going back.

19 Q. Oh, okay. How long did he stay in
20 jail?

21 A. It wasn't but a few days.

22 Q. Are you a member of any groups that
23 primarily support law enforcement, such as
24 MADD?

25 A. No.

1 Q. Do you have any special or particular
2 interest in the outcome of this case?

3 A. Note.

4 Q. Are you aware of any bias or prejudice
5 based on any religious beliefs for or
6 against the defendant?

7 A. No.

8 Q. Are you aware of any religious beliefs
9 or any bias or prejudice as a result of
10 religious beliefs, for or against the State?

11 A. No.

12 Q. Are you aware of any bias or prejudice
13 for or against this defendant because of his
14 race, being black?

15 A. No.

16 Q. I read out earlier to you the charges
17 in this case that have been brought against
18 the defendant. Do you have any bias or
19 prejudice as a result of the charges brought
20 against the defendant?

21 A. No, sir.

22 Q. Have you had any bad experiences or
23 good experiences with law enforcement, other
24 than the one that you told me about with
25 your brother?

1 A. Yes.

2 Q. Good or bad?

3 A. Bad.

4 Q. Tell me about it.

5 A. My husband's niece -- not mine -- not
6 niece, but my husband's cousin came onto our
7 property and stole about thirty-five
8 thousand dollars worth of jewelry and old
9 money that we had. Somehow or another ---

10 Q. Was it real money?

11 A. Silver coins and money that his dad had
12 brought back from the Philippines and stuff
13 like that there. There were witnesses to
14 prove that she did it but somehow or other
15 it got closed and she is walking.

16 Q. So you never got any of the coins back
17 or anything?

18 A. No, sir.

19 Q. How long ago was this?

20 A. About three years.

21 Q. About three years ago?

22 A. (Affirmative nod).

23 Q. Do you know what happened to the case,
24 was she ever arrested?

25 A. She was arrested. She's got two cases

1 against her now. The first case, she came
2 into our house and stole my husband's
3 medicine and my medicine, pain medicine. My
4 husband is ninety-nine percent blind and he
5 was out on the front porch. They all knew
6 that on Thursdays, back then, that I wasn't
7 home. I cleaned house with my sister-in-
8 law. She come around and came into the back
9 door and she took the pills. That case was
10 -- because my husband did not see her pick
11 the pills up, it was dismissed because
12 nobody seen her do it but she was the only
13 one in the house. Then the other case was
14 about a month later.

15 Q. How would that experience with law
16 enforcement affect you sitting on this jury?

17 A. It would not.

18 Q. It wouldn't?

19 A. (Negative gesture).

20 Q. You could be fair for the State and to
21 the Defendant?

22 A. Yes, sir.

23 Q. Do you know of any reason, personal or
24 otherwise, why you could not serve on this
25 jury?

1 A. No, sir.

2 Q. Is there any reason why you cannot give
3 the State and the Defendant a fair and
4 impartial trial?

5 A. No, sir.

6 Q. All right. Earlier I had explained to
7 you briefly about the jurors responsibility
8 in making a determination in the sentencing
9 phase, whether or not the defendant should
10 receive life or death. Do you remember
11 that?

12 A. Yes, sir.

13 Q. Did you understand what I was telling
14 you?

15 A. Yes, sir.

16 Q. I want to tell you a little bit more
17 about that.

18 A. Okay.

19 Q. In order for the jury to make a
20 determination of life or for death, the
21 State has to prove some statutory
22 aggravating circumstances. They are laid
23 out by statute. I do not know which
24 aggravating circumstances that the State is
25 going to produce and this case, because I

1 have not heard the facts. Okay? I have not
2 heard the case. However, they do have the
3 responsibility of proving that. All twelve
4 jurors unanimously have to find that the
5 State has proven one or more aggravating
6 circumstance. Do you understand?

7 A. Yes, sir.

8 Q. So the jury has to consider that first.

9 Then the second thing that they have to
10 consider is mitigating circumstances.

11 Navigating circumstances are facts
12 surrounding the crime that may reduce the
13 severity of the crime or the culpability or
14 lessen the responsibility on the part of the
15 defendant. Those are set out by statute.
16 Even outside the statute, mitigating
17 circumstances can be introduced about the
18 character of the defendant, anything about
19 his lifestyle, from childhood up to present.
20 All of that can be introduced as mitigating
21 circumstances. Do you understand?

22 A. (Affirmative nod).

23 Q. Now, these statutory mitigating
24 circumstances, I am going to read to you:
25 the first is that he would have no

1 significant history of prior criminal
2 convictions; the murder was committed while
3 the defendant was under the influence of
4 mental or emotional disturbance; that the
5 victim was a participant in the defendant's
6 conduct or consented to the act; that the
7 defendant was an accomplice in the murder
8 committed by another person; that the
9 defendant acted under duress or under the
10 domination of another person; and the
11 capacity of the defendant to appreciate the
12 criminality of his conduct, conform his
13 conduct to the requirements of law are
14 substantially impaired; age or mentality at
15 the time of the crime; the defendant was
16 below the age of eighteen at the time of the
17 crime. Plus any other relevant information
18 that may be produced, as I said earlier,
19 about the defendant's character,
20 characteristics, even his capacity and
21 ability to - I would just read to you: his
22 adaptability to prison if sentenced to life
23 in prison. All of those are mitigating
24 circumstances. The jury has to consider
25 those before they make a decision of life

1 for. Do you understand?

2 A. Yes, sir.

3 Q. Do you understand what I am telling you
4 about mitigating circumstances?

5 A. Yes, sir.

6 Q. Will you consider all aggravating
7 circumstances and all mitigating circum-
8 stances before you make a decision of life
9 or death?

10 A. Yes, sir.

11 Q. Thank you very much.

12 WILLIAM MAGUIRE: Judge, if you
13 would, would you read all the aggravating
14 circumstances and also define statutory
15 aggravation.

16 THE COURT: You can ask her about
17 it. Let me look at it. I don't have the
18 aggravating statute in front of me but I
19 will get it. I just don't have it in front
20 of me right now. Give me a chance to look
21 at the statute and I will do that. Who is
22 next.

23 SCARLETT WILSON: Thank you.

24 EXAMINATION

25 BY SCARLETT WILSON:

1 Q. Thank you. We appreciate you hanging
2 in there with us the last couple of days.
3 I just have a few questions to ask you
4 again. We're trying to learn more about
5 your thoughts about the death penalty and
6 because it's your thoughts there is not a
7 right or wrong answer. Okay?

8 A. Yes, ma'am.

9 Q. Did you understand from the sheet that
10 you read that in a death penalty case they
11 are two separate phases to a trial if the
12 person is found guilty?

13 A. Yes, ma'am.

14 Q. Have you, before this week have you had
15 any experience involving the death penalty
16 or kept up much with how it works?

17 A. No, ma'am.

18 Q. First of all let's talk about what is
19 even eligible for the death penalty. Okay?

20 A. (Affirmative nod).

21 Q. Not ever murder can be a death penalty
22 case, did you know that?

23 A. Yes, ma'am.

24 Q. And so even if someone is found guilty
25 of murder -- and murder in this state means

1 something that intentional and something
2 that was done with malice, that means a
3 heart bent on mischief, and that malice came
4 at some point before that fatal blow was
5 stricken. That person would be guilty of
6 murder. Are you with me on that?

7 A. Yes, ma'am.

8 Q. For the death penalty to be given by a
9 jury, the State has to prove aggravating
10 circumstances. There is not a set number
11 that we have to prove but we have to prove
12 at least one and the jury, all twelve, would
13 have to find an aggravating circumstance.
14 Do you understand that?

15 A. Yes, ma'am.

16 Q. Could you, even if someone had been
17 convicted of a brutal, heinous murder, could
18 you still make us prove that aggravating
19 circumstance in the penalty phase?

20 A. Do you mean ---

21 Q. Could you -- before making up your
22 mind.

23 A. Beyond a shadow of a doubt that ---

24 Q. Beyond a reasonable doubt.

25 A. --- the person is guilty?

1 Q. Right.

2 A. I would consider everything.

3 Q. That is kind of what we are getting at.

4 To even move into the second phase, a jury

5 would have already found guilt beyond a

6 reasonable doubt.

7 A. Okay.

8 Q. Where is no question who done it, it's

9 not a who-dunnit anymore.

10 A. Okay.

11 Q. It's now, what do we do with him?

12 A. Yes, ma'am.

13 Q. What I am asking is, could you keep an

14 open mind and still make the State, as it is

15 required to do, prove those aggravating

16 circumstances before making up your mind?

17 A. I -- Yes, ma'am.

18 Q. I know that it is kind of awkward

19 because we can't talk about this case

20 specifically, and we ---

21 A. Yeah.

22 Q. --- have to talk generally.

23 A. Okay.

24 Q. Also, as the Judge told you, there are

25 things called mitigating circumstances.

1 Those things wouldn't come out in the guilt
2 part of the trial either. If a defendant
3 wanted to or had things to present about
4 their life, their background, substance
5 abuse, family abuse, anything like that --
6 if they chose to, they could present that in
7 that second phase. The question is, would
8 you keep an open mind as to those types of
9 things too?

10 A. Yes, ma'am.

11 Q. And listen and give them meaningful
12 consideration. Not say, 'oh, that's just
13 great' but really factor it into your
14 decision whether Life without the
15 possibility of parole is appropriate or
16 whether death were appropriate.

17 A. Yes, ma'am.

18 Q. Again, in that situation where we're
19 talking about those mitigation factors and
20 things that the Judge read that are about
21 the defendant's life -- or a defendant --
22 you could still consider those things even
23 after you found guilty the person of a bad,
24 bad, brutal, heinous murder?

25 A. Yeah.

1 Q. You would still listen to them?

2 A. Yes, ma'am.

3 Q. Would it be important for you to hear
4 all that, to know as much as you could know?

5 A. You would have to know as much as you
6 could know.

7 Q. Before making that decision?

8 A. Yes, ma'am.

9 Q. And how about life without parole. How
10 do you feel about that as an option?

11 A. Well, to me it really depends on how
12 the crime -- what happened to the person,
13 how the person died, and ---

14 Q. So that would be important?

15 A. Yes, very important.

16 Q. You'd want to hear all the
17 circumstances ---

18 A. Yeah.

19 Q. And, again, those mitigating factors
20 about the defendant, would those also be
21 important?

22 A. Yes, ma'am.

23 Q. You would look at all of it?

24 A. The whole nine yards.

25 Q. And you wouldn't make your decision

1 until after everything had come in?

2 A. Yes, ma'am.

3 SCARLETT WILSON: That's all that
4 I have, Your Honor.

5 THE COURT: Let me see the
6 attorneys up here just a second. Ms.
7 Villeneuve, would you step out in the hall
8 for just a second, please, ma'am.

9 (JUROR NUMBER 361 EXITS COURTROOM)

10 THE COURT: What do you want me
11 to read? One, two, three, if that what you
12 want me to read?

13 WILLIAM MAGUIRE: And four.

14 THE COURT: All right. Do you
15 want me to read it before you start?

16 WILLIAM MAGUIRE: If you would.

17 SCARLETT WILSON: Would you also,
18 when you read it, say that the State would
19 have to prove one, not all?

20 THE COURT: Yeah, I'll be happy
21 to. If I am going to read the mitigation
22 statue, I will read the aggravating
23 circumstances.

24 SCARLETT WILSON: Okay.

25 THE COURT: I just didn't have it

1 in front of me when he asked me to.

2 WILLIAM MAGUIRE: If you could
3 also explain nonstatutory aggravation.

4 THE COURT: What do you want me
5 -- be specific.

6 BRUCE DURANT: I think he
7 'already did. He said that in addition to
8 that that they could consider other things
9 like the defendant's background, his
10 upbringing, ---

11 WILLIAM MAGUIRE: Nonstatutory
12 like ---

13 BRUCE DURANT: Oh.

14 THE COURT: Tell me what you want
15 me to say about nonstatutory, specifically.
16 Okay?

17 WILLIAM MAGUIRE: That it would be
18 any reason ---

19 THE COURT: Write it down. Write
20 it down for me. Tell me what you want.

21 SIDEBAR:

22 THE COURT: Bruce, you look
23 at what he writes. I don't have it, I don't
24 do it -- I don't do it until I hear the
25 case.

1 BRUCE DURANT: Okay.

2 THE COURT: Write them out
3 for me because I don't have a list for them.
4 Okay? I will be happy to read them.

5 Do you have any nonstatutory
6 factors in this case?

7 BRUCE DURANT: Not very
8 much. We've got basically the victim --
9 they don't have a whole lot of mitigation to
10 tell you the truth.

11 THE COURT: See that's my
12 problem when you start dealing with
13 nonstatutory.

14 BRUCE DURANT: He's got a
15 little bit of a prior record, we got some
16 lack of remorse -- right afterward he did
17 this, he went down to Rivers Avenue and
18 whored it up pretty good.

19 THE COURT: That was his
20 hormones and age. That doesn't have
21 anything to do with remorse.

22 BRUCE DURANT: But he was
23 only like twenty-one when he did it, so he
24 didn't really have a whole lot of criminal
25 background. You know, he graduated from

1 high school, he had like a B average, mom
2 and dad were together. He's an odd case.
3 But when he went off the deep end, he went
4 off the deep end.

5 THE COURT: Did he have any
6 brain injury when he was a kid?

7 BRUCE DURANT: Yeah, he'd
8 been in a traffic accident ten years ago or
9 ---

10 THE COURT: I find that is a
11 common trait throughout a lot of these
12 people.

13 BRUCE DURANT: --- so and
14 it was negative and all that. That doesn't
15 mean that they might not bring some witch
16 doctor here to say different.

17 (SIDEBAR CONCLUDED)

18 WILLIAM MAGUIRE: I don't mean to
19 interrupt.

20 THE COURT: That's okay, we were
21 just b.s.'ing. We weren't talking about the
22 case. We were talking about witch doctors.

23 WILLIAM MAGUIRE: Judge, for the
24 purpose of our discussion over here ---

25 THE COURT: I don't need any of

1 this on the record right now. Just make me
2 a list of what you want me to say and I will
3 say it.

4 WILLIAM MAGUIRE: I would propose
5 that we not read any of the statutes,
6 mitigation or aggravation.

7 THE COURT: No, I am not -- I am
8 going to read both of them. I've read
9 mitigation. If you want aggravation, I'll
10 read it. I mean, what's good for -- I'll
11 read both of them.

12 I just think that the way that the
13 questions went yesterday that the jurors are
14 entitled to know this information before you
15 start questioning. That's all.

16 If the questioning had gone
17 differently, we wouldn't be here. But
18 that's fine. I am not trying to tell you
19 how to try your case.

20 WILLIAM MAGUIRE: With regard to
21 the mitigation statute, Judge, if you could
22 not read the under eighteen or mental
23 retardation because those are not even
24 eligible for the death penalty.

25 THE COURT: I understand.

1 WILLIAM MAGUIRE: If you would
2 just not read those.

3 THE COURT: All right, I will
4 leave those out.

5 BRUCE DURANT: We don't have
6 any problem with that.

7 THE COURT: I agree that they are
8 not on the table.

9 Mr. Maguire, come up here just a
10 second -- Solicitor, you and Bruce, come up
11 here.

12 BENCH CONFERENCE:

13 THE COURT: Now, if you all
14 agree that you don't want me to read the
15 statutes, I won't.

16 BRUCE DURANT: No, I ---

17 THE COURT: I was just
18 trying to get through and make sure that
19 these jurors what mitigation is.

20 BRUCE DURANT: That was
21 exactly our concern.

22 THE COURT: I listened to it
23 all day yesterday. I decided last night
24 that I need to tell them more about
25 mitigation. I don't need to tell them -- I

1 don't have any problem telling them as much
2 as he wants about aggravation, but that
3 hasn't been an issue until now. I'd be
4 happy to do that. But if you'all don't want
5 me to, I won't.

6 BRUCE DURANT: You know,
7 the problem is -- and it is a problem that
8 we raised this morning, Judge, is that they
9 were painting them into a box with them
10 knowing the whole picture.

11 WILLIAM MAGUIRE: That is what
12 *Morgan* entitles us to do.

13 THE COURT: I think they're
14 entitled to do that, I think, Bruce. But my
15 problem is -- and I will take the blame for
16 not fully explaining it to the jury before
17 they started. That's my fault.

18 BRUCE DURANT: Okay.

19 THE COURT: That's my fault.
20 It's not your fault, it's not his fault,
21 it's my fault.

22 BRUCE DURANT: Okay.
23 That's why we want you to continue doing it,
24 so they will know what they are doing.

25 THE COURT: I know. That's

1 why I should have done it yesterday earlier.
2 I thought about but I said, 'no, we will
3 fly' -- lowing flying yesterday.

4 SCARLETT WILSON: In your free
5 time, which I am sure you have right now,
6 can we get a ruling on ---

7 THE COURT: Do you'all want
8 me to just do the mitigation or do you want
9 me to read all of them.

10 SCARLETT WILSON: All of them.

11 THE COURT: Because kidnap,
12 larceny, I mean killing by poison -- do you
13 want me to read them all?

14 SCARLETT WILSON: Um-humm.

15 THE COURT: I will limit
16 them if you need me to.

17 SCARLETT WILSON: Will you --
18 do you think that you will be able to get us
19 an Order in that drug case that you did with
20 Dale Savage and ---

21 THE COURT: Not right now.
22 I will be honest with you, I was going to do
23 that, I was going to do it last week and I
24 got embroiled in -- I just didn't have time
25 to look at it. It's laying on my desk in

1 Charleston. I thought about bringing it up
2 here and I said, 'no, I am going to have my
3 hands full.'

4 SCARLETT WILSON: During the
5 chain of custody, you can do it.

6 THE COURT: Okay.

7 (OFF RECORD DISCUSSION RE: UNRELATED CASE)

8 (BENCH CONFERENCE CONCLUDED)

9 THE COURT: Have you got me a
10 list yet?

11 WILLIAM MAGUIRE: We have got a
12 starting point and we can add to it as we
13 talk.

14 THE COURT: Come on back in
15 chambers and let's talk for a minute.
16 Let's take about a ten-minute break. Okay.

17 (IN CHAMBERS CONFERENCE)

18 (BRIEF RECESS)

19 (OFF RECORD DISCUSSION RE: SCHEDULE)

20 (DEFENDANT PRESENT)

21 THE COURT: Please be seated.
22 All right, Mr. Maguire and Solicitor, we had
23 a conference in chambers concerning the
24 court asking questions about -- informing
25 the jury about statutory aggravating

1 circumstances as well as statutory
2 mitigating circumstances. The parties have
3 basically agreed upon how they want the
4 court to approach it and the court has
5 agreed. I am going to put that on the
6 record as to what the parties have agreed to
7 and ask the respective parties to verify
8 their agreement.

9 As to the mitigating circumstances,
10 the court would tell the jurors that there
11 are facts surrounding the incident itself or
12 which shed light on the defendant's history,
13 background, upbringing, childhood, which
14 make the crime less severe or less harsh; as
15 well as certain statutory mitigation, and I
16 have going to read those:

17 The defendant has no significant
18 history or prior criminal convictions
19 involving the use of violence against
20 another person.

21 The murder was committed while the
22 defendant was under the influence of mental
23 or emotional disturbance.

24 The capacity of the defendant to
25 appreciate the criminality of his conduct or

1 to conform his conduct to the requirements
2 of the law was substantially impaired.

3 The age or the mentality of the
4 defendant at the time of the crime.

5 Plus any other relevant issue that
6 should arise concerning mitigation.

7 I will also tell the jury that the
8 defendant does not have to put up any
9 mitigation, has no obligation whatsoever to
10 offer any mitigating circumstance but they
11 can offer one, all or done.

12 Is that what the Defendant agreed
13 with?

14 WILLIAM MAGUIRE: Yes, sir.

15 THE COURT: Is that what the
16 prosecution agreed with?

17 SCARLETT WILSON: Yes, sir.

18 THE COURT: Now, as to the
19 aggravating circumstances, in the statute, I
20 am going to read that:

21 The murder was committed in the
22 commission of the following crimes are acts:

23 Criminal sexual conduct in any
24 degree; kidnaping; burglary in any degree;
25 robbery while armed with a deadly weapon;

1 larceny with the use of a deadly weapon; or
2 physical torture.

3 Instead of reading the entire
4 statute. That was at the request of the
5 defendant and the State agreed. Is that
6 correct, Solicitor?

7 SCARLETT WILSON: Yes, sir.

8 THE COURT: Is that correct from
9 the Defendant's standpoint?

10 WILLIAM MAGUIRE: Yes, sir.

11 THE COURT: Is there anything
12 else that we need to put on the record
13 concerning this issue?

14 WILLIAM MAGUIRE: That's fine.

15 THE COURT: And the court is
16 taking the position that we are not talking
17 to the jurors in the *voir dire* on the
18 factual basis of this particular case. We
19 are explaining the law in reference to
20 statutory mitigation and aggravating
21 circumstances. We limit the options that
22 are giving the jury, so the court is -- we
23 are not talking about this case and the
24 specifics. Anything else?

25 WILLIAM MAGUIRE: No, sir.

1 SCARLETT WILSON: Thank you.

2 THE COURT: All right, I believe
3 -- your turn?

4 WILLIAM MAGUIRE: Yes, sir.

5 THE COURT: Bring in Ms.
6 Villaneuva.

7 SCARLETT WILSON: Your Honor, I
8 would only ask -- I don't think that I will
9 need to go back to her but in light of your
10 further instructions, if something were to
11 come up, ---

12 THE COURT: Okay. 'Had I finished
13 with her? I don't remember.

14 SCARLETT WILSON: It's his turn.

15 THE COURT: Okay. Bring her in.

16 (JUROR NUMBER 361 ENTERS COURTROOM)

17 THE COURT: Mr. Maguire, you may
18 proceed.

19 WILLIAM MAGUIRE: Thank you, Your
20 Honor.

21 EXAMINATION

22 BY WILLIAM MAGUIRE:

23 Q. It is Ms. Villaneuva?

24 A. Villaneuva.

25 Q. I'll do my best.

1 A. That's fine.

2 Q. Thank you. Thank you for being here.

3 I am just going to ask you some questions
4 about your thoughts, maybe your decision
5 making process regarding the death penalty.

6 There are no right or wrong answers. We are
7 just going to talk like I'm in your kitchen
8 or maybe you're in my kitchen. Okay?

9 A. All right.

10 Q. If you were Governor and a Bill came
11 across your desk and you could put pen to
12 it and say that we should have the death
13 penalty or not, what would you do?

14 A. I think that it depends on the
15 circumstances; you know, there are a lot of
16 reasons for the death penalty, and there are
17 reasons not to have it. I just think that
18 you've got to listen to everything.

19 Q. Fair enough. When you say everything,
20 are you talking about the circumstances of
21 the crime?

22 A. Yes.

23 Q. If you were Governor and a Bill came
24 across your desk and you could pick out the
25 kinds of cases that would be automatically

1 the death penalty, can you think of any that
2 you would put on the list?

3 A. No. Let's go back to what you said
4 about considering everything. So that we
5 are on the same page, I want to talk a
6 little bit about murder. I use that term,
7 I am a lawyer and I kind of know what it
8 means. As lots of people see TV and stuff
9 like that and I just want to make sure that
10 you and I are on the same page. Okay?

11 A. (Affirmative nod).

12 Q. In South Carolina murder is the
13 intentional, unlawful killing of another
14 human being with no justification or excuse
15 and with malice aforethought. Malice
16 aforethought has been described by the
17 courts as having a black, malignant heart
18 fatally bent on mischief or wickedness. Are
19 you with me?

20 A. Yes.

21 Q. It sounds pretty bad?

22 A. Yes, sir.

23 Q. I want to put you in a situation where
24 you and eleven other jurors heard that case,
25 an intentional killing. You and eleven

1 people have convicted the person. There is
2 no doubt that you got the right guy, it was
3 not self-defense, it is not an accident, it
4 is not a big fight that started in a bar
5 where everybody is fighting. It is the
6 intentional killing of another, an innocent
7 person. What are your thoughts about the
8 death penalty as the appropriate punishment
9 for that offense?

10 A. I would say yes.

11 Q. Okay. Would you always say yes in
12 that circumstance?

13 A. Under the same circumstances?

14 Q. Yes, ma'am. The circumstances that I
15 just gave you.

16 A. Yes.

17 Q. The intentional killing?

18 A. (Affirmative nod).

19 Q. The phrase "an eye for an eye," is that
20 a phrase that resonates with you?

21 A. Well, yes and no, because -- I guess in
22 your way, I guess if somebody deliberately
23 went out there and done something harsh and,
24 you know, another person had no chance
25 whatsoever and the person just deliberately

1 took his life, that's wrong.

2 Q. Right. It sounds like that kind of
3 case is deserving of the death penalty?

4 A. Yes.

5 Q. Given the circumstances, your vote
6 would always be for the death penalty in
7 those circumstances?

8 A. Yes.

9 Q. And with regard to -- it sounds like a
10 life in prison sentence would not be severe
11 enough in those circumstances for a person
12 who chose deliberately to take the life of
13 another person.

14 A. No.

15 Q. Okay. One second. In that kind of
16 case, that intentional, chose-to-take the
17 life of some person, is there anything --
18 like, say in the defendant's background that
19 could really get you off of that, all the
20 way to a life sentence? Like if he grew up
21 in poverty or something like that?

22 A. Well, if the defendant had mental
23 problems or if the defendant was , I guess,
24 like abused -- that it is there is just no
25 reason to kill somebody.

1 Q. To so that we are talking about the
2 same thing here, we are talking about a
3 person who knows right from wrong, knowing
4 right from wrong, chose to kill. In that
5 situation, with the background circumstances
6 really warrant a life in prison sentence for
7 you?

8 A. No.

9 Q. Sometimes it's easy to talk about this
10 in terms of it being almost like a board
11 game where your vote is like a board piece.
12 It sounds like that at the end of the day
13 for an intentional, meant-to-do-it murder
14 for somebody who knew right from wrong just
15 to kill anyway, that your game piece is on
16 the death penalty and that there is really
17 nothing that you can picture that would get
18 you to consider a life in prison sentence,
19 absent some mental problems.

20 A. I can't think of anything but it's --
21 I mean, to me, you'd have to listen to the
22 whole nine yards. I'd have to go with what
23 the whole courtroom is telling me.

24 Q. Sure.

25 A. You can't just sit there and not pay

1 attention and just -- 'well, he killed
2 somebody and that's it, give him the death
3 penalty.'

4 Q. I agree. When you say the whole nine
5 yards, you're talking about the
6 circumstances of the crime?

7 A. Yeah.

8 Q. And the circumstances -- and I am not
9 going to talk about this case but I want to
10 throw out some terms: home invasion,
11 burglary, rape, murder. In that situation,
12 it sounds like your game piece is on the
13 death penalty.

14 A. Yes, sir.

15 Q. And you can't think of anything that
16 would get you off of that, down to life, in
17 those circumstances?

18 A. No.

19 Q. And if -- if you -- it sounds like your
20 game piece starts there and ends there, is
21 that fair enough to say?

22 SCARLETT WILSON: Your Honor,
23 again I would object to ---

24 THE COURT: I'll -- that's
25 cumulative. Go ahead. I will sustain the

1 objection. Cumulative. Go ahead.

2 EXAMINATION CONTINUED

3 BY WILLIAM MAGUIRE:

4 Q. Let's say that somebody did have -- you
5 know, the Judge read examples of like the
6 defendant's background, his history, his
7 walk in life, that sort of that. I think
8 that we have agreed that those things are
9 not relevant in your decision for the death
10 penalty because you focus is on the facts of
11 the crime.

12 A. Yeah.

13 SCARLETT WILSON: Judge, I object.
14 That's a mischaracterization of her
15 testimony. She said 'the whole nine
16 yards', she said 'everything', she said ---

17 WILLIAM MAGUIRE: Judge, I would
18 object to the speaking objection.

19 THE COURT: Okay. I will
20 overrule the objection. You can clear it up
21 on cross. I'll give you an opportunity to
22 clear it up. I heard the whole nine yards
23 and I heard what you said. Okay?

24 SCARLETT WILSON: Thank you,
25 Judge.

1 THE COURT: Go ahead. If you
2 remember the question, answer it. If you
3 don't, repeat the question.

4 WILLIAM MAGUIRE: I believe I am
5 going to have to repeat it.

6 THE COURT: Do you remember it?

7 WILLIAM MAGUIRE: I'm doing my
8 best.

9 EXAMINATION CONTINUED

10 BY WILLIAM MAGUIRE:

11 Q. So what I a hearing you saying is that
12 the stuff that the Judge talks about --
13 briefly, stuff like the defendant's
14 background, his growing up, his walk in life
15 and that sort of thing, when it comes to
16 death penalty or life without parole, those
17 things aren't necessarily relevant in your
18 decision process because you're focusing on
19 the facts of the crime. I believe that you
20 said 'yes'.

21 A. Yeah.

22 Q. I think that's all that I have, ma'am.
23 Thank you so much for coming.

24 THE COURT: Solicitor?

25 SCARLETT WILSON: I have just a

1 few followups based on everything else.

2 EXAMINATION RESUMED

3 BY SCARLETT WILSON:

4 Q. When you're asked a couple of
5 questions about what all would be important
6 to you, I believe that you volunteered some

7 things about a defendant that might matter
8 to you. Can you tell me about what those
9 things were?

10 A. As far as ---

11 Q. Not this particular defendant but a
12 defendant in general?

13 A. As far as coming to a decision?

14 Q. Yes, ma'am. Things you might want to
15 hear?

16 A. I would want complete details. I would
17 want to listen to everything your side has
18 to say, everything that side has to say,
19 everything that the Judge has to say. You
20 can't just listen to a little bit of it and
21 just ignore the rest.

22 Q. So even in the case like Mr. Maguire
23 was saying where it's not question who did
24 it, there's no question that they meant to
25 do, there's no question that it was

1 aggravated, could you still keep your mind
2 open until hearing things about the
3 defendant or his life before making your
4 decision?

5 A. Yes, ma'am.

6 Q. Would your decision be automatic or
7 would you consider all that there was to
8 hear?

9 A. You have to consider everything. I
10 mean, I don't think you would want me to
11 just say 'guilty'.

12 A. Right. I would, you know, think of
13 what -- everything that was pointed out to
14 me.

15 THE COURT: Thank you, Solicitor.

16 SCARLETT WILSON: That's all that
17 I have. Thank you.

18 THE COURT: Any Motions on this
19 juror?

20 WILLIAM MAGUIRE: Yes, sir.

21 THE COURT: Ms. Villaneuva, I
22 know you're getting familiar with the hall.
23 If you will go back out in the hall. I know
24 you've been waiting there quite a while. We
25 will get you back here shortly.

(JUROR NUMBER 361 EXITS COURTROOM)

THE COURT: Be glad to hear you.

WILLIAM MAGUIRE: Thank you,

Judge. Judge, we move to strike this juror for cause. Failure to strike her for cause, to remove her from the panel, would violate

Mr. Broughton's Sixth and Fourteenth Amendment rights to a fair and impartial juror.

As soon as she understand what the definition of murder was, she said that she would always vote for the death penalty.

Then I even went into specific examples of mitigation and I even referenced your comments to make sure that we were covered for mitigation, and even then she said those factors would not be relevant in her decision making process because she was focused on the facts of the trial.

I can't be any clearer than that. I am not going to get a better record.

Not only when you're leading: 'can you consider everything, would you want to hear what everybody is saying, the comments from the court, both sides' everybody is

1 going to say yes.

2 But when you really look at her
3 answers and we were really getting into the
4 specifics and she didn't have the safe
5 harbor of 'well, I want to hear everything',
6 she clearly and consistently stated that she
7 would always vote death penalty for the
8 elements of murder.

9 THE COURT: Well, she also said
10 in reference to your questions that she
11 wanted to hear "the whole nine yards" -- my
12 interpretation of the whole nine yards means
13 everything. I think that is a localism
14 (sic) that she referred to. She also said,
15 'I can't say he killed someone and then not
16 give him the death penalty.' Automatically.
17 Is what she said. That was in reference to
18 your questions.

19 WILLIAM MAGUIRE: So when I gave
20 her the elements of murder and she
21 understood that, she never waivered from
22 that she was going to vote for the death
23 penalty.

24 She understood in response to my
25 question -- I had the elements of murder --

1 when she understood that, she was always
2 consistently death penalty.

3 Yes, she was always mitigation
4 impaired, aside from her statements of ---

5 THE COURT: I understand your
6 argument.

7 WILLIAM MAGUIRE: Judge, her last
8 response, she even referenced the guilt
9 phase. I mean, I am not sure she fully
10 understood what we were talking about. I
11 mean, basically she was going back to some
12 residual doubt of 'did we get the right
13 guy.' But once she understood that they had
14 the right guy and she understood the
15 elements of murder, she was consistently
16 voting death.

17 THE COURT: Thank you very much.
18 Solicitor?

19 SCARLETT WILSON: Judge, I believe
20 that she is qualified. I mean, she may lean
21 towards death but she volunteered several
22 times that she would definitely want to hear
23 anything that there was to hear about the
24 defendant and that she would wait before
25 making her decision. It's fine that she

1 leans towards death as long as she can keep
2 an open mind. She said that she could. She
3 even volunteered that.

4 Yes, Mr. Maguire was able to box
5 her in several times through his leading
6 questions. But when she was to speak
7 herself, she made it clear that she was
8 qualified.

9 THE COURT: Thank you very much.
10 Motion denied. Bring Ms. Villaneuva in,
11 please.

12 (JUROR NUMBER 361 ENTERS COURTROOM)

13 THE COURT: Ms. Villaneuva, do
14 you have that card with the phone number
15 that they gave you when you came to court
16 Monday?

17 JUROR NUMBER 361: (Affirmative
18 nod), that little slip.

19 THE COURT: The bailiff has one
20 for you. Okay?

21 JUROR NUMBER 361: Okay.

22 THE COURT: She is handing it to
23 you now -- see right here to the left.

24 BAILIFF: (Tendering).

25 THE COURT: See the phone number?

1 JUROR NUMBER 361: Yes, ma'am.

2 I mean 'yes, sir.' Sorry.

3 THE COURT: Call that number
4 after five o'clock tomorrow night. Tomorrow
5 night there will be a message for the jury
6 panel. Follow this instruction. Okay?

7 JUROR NUMBER 361: (Affirmative
8 nod).

9 THE COURT: What is going to
10 happen is that you have been qualified to
11 draw the jury. At some point, when we get
12 enough jurors, we will draw a jury or strike
13 a jury and begin the trial. Okay? You will
14 be involved in that process. Thank you very
15 much.

16 (JUROR NUMBER 361 EXITS COURTROOM)

17 THE COURT: Can you bring in the
18 next panel, please.

19 (JURY PANEL NUMBER 7 ENTERS COURTROOM)

20 THE COURT: All right, ladies
21 and gentlemen of the jury panel. In this
22 particular case, the defendant has been
23 charged by the State with the following
24 crimes: attempted larceny, armed robbery,
25 assault and battery with intent to kill, CSC

1 first, grand larceny, burglary first, and
2 murder.

3 Now, the State has the burden in
4 South Carolina of proving the defendant
5 guilty beyond a reasonable doubt. The State
6 has that responsibility, that burden, to
7 prove that the defendant committed all of
8 the crimes for which he is charged.

9 I'm going to talk to you
10 specifically about the murder charge. The
11 murder charge, in this case the State has
12 served a notice of the death penalty upon
13 the defendant. When that is done in South
14 Carolina, it is commonly referred to as a
15 death penalty case.

16 A death penalty case is divided up
17 into two parts. The first part is the guilt
18 phase of the trial. I just told you that
19 the State's burden is to prove the Defendant
20 guilty beyond a reasonable doubt.

21 The second part of the trial is the
22 sentencing or the penalty phase. I am going
23 to talk to you some about the penalty phase.
24 The fact that I am talking to you about the
25 penalty phase in no way indicates that the

1 Defendant is innocent or guilty of the
2 charge, but because of the nature of the
3 two-phase trial, I am obligated to discuss
4 the penalty phase with you.

5 When I have finished talking to you
6 about the penalty phase, the attorneys will
7 have an opportunity to ask you questions
8 individually.

9 In the penalty phase, the State has
10 the obligation to prove a statutory
11 aggravating circumstance. The statutory
12 aggravating circumstances are facts,
13 incidents, details or occurrences which the
14 State says aggravates the offense of murder.
15 In other words, these circumstances increase
16 the enormity of the crime of murder.

17 So in order to find the defendant
18 deserves death or life, you have to make a
19 determination of whether or not the State
20 has proven one or more aggravating
21 circumstance. That is their responsibility,
22 to prove the aggravating circumstances.

23 You, the jury, make a determination
24 in the penalty phase whether or not the
25 defendant receives a life or death. When I

1 save life, I said life without parole. The
2 defendant will never be eligible for parole.
3 He will die in jail.

4 You make a recommendation to the
5 court of life or death in the sentencing
6 phase and the court is obligated to impose
7 the sentence that you recommend. I am
8 talking about the penalty phase, not the
9 guilt phase, when I am talking about the
10 aggravating circumstances.

11 Now, I am going to read parts of
12 the statute concerning aggravating
13 circumstances. The State has to prove only
14 one of these, not all of them. I do not
15 know specifically what they are going to
16 prove as aggravation because I have not
17 heard the case but I am going to list some
18 of the aggravating circumstances that are in
19 the South Carolina code section 16-3-20:
20 Criminal sexual conduct in any degree;
21 kidnaping; burglary in any degree; robbery
22 while armed with a deadly weapon; larceny
23 with the use of a deadly weapon; or physical
24 torture.

25 Now, the State does not have to

1 prove all of them. All they have to do is
2 prove one of those. That is their
3 obligation in the penalty phase to prove the
4 aggravating circumstances.

5 Now, before you make a decision on
6 life or death, all twelve of you have to

7 agree -- it has to be a unanimous decision.
8 All twelve you have to agree that the State
9 has proven one or more of the aggravating
10 circumstances; and which aggravating
11 circumstance, says that the State has
12 proven.

13 After you do that, you have to
14 consider the mitigating circumstances.

15 Now, mitigating circumstances
16 affect the defendant and they are generally
17 offered to make the crime that the defendant
18 committed less serious, or the defendant
19 less culpable or less responsible. In other
20 words, to reduce the severity of the crime.

21 Now, we have statutory mitigation
22 and we have nonstatutory mitigation. The
23 defendant has no obligation to prove or
24 offer any mitigation. The defendant may, if
25 it so chooses, offer mitigation or they may

1 not."

2 Mitigation are facts surrounding
3 the incident itself or which have -- like a
4 defendant's history, background, upbringing,
5 childhood, which makes the crime less severe
6 or less harsh.

7 Some samples from the statute are:

8 The defendant has no significant
9 history or prior criminal convictions
10 involving the use of violence against
11 another person.

12 The murder was committed while the
13 defendant was under the influence of mental
14 or emotional disturbance.

15 The capacity of the defendant to
16 appreciate the criminality of his conduct or
17 to conform his conduct to the requirements
18 of the law was substantially impaired.

19 The age or mentality of the
20 defendant at the time of the crime.

21 Plus any other relevant issue that
22 should arise concerning mitigation.

23 Mitigation evidence can in essence
24 be any reason for a sentence less than the
25 death penalty.

1 So, ladies and gentlemen, you have
2 to consider the aggravating circumstances
3 and the mitigations before you decide
4 whether the defendant should receive life
5 without parole or death.

6 Also, I want to explain to you very
7 briefly that what I am going to do is to ask
8 you to go to the jury room. What I am going
9 to do is to give you a sheet and on that
10 sheet that lists three different opinions
11 about the death penalty. I want you to read
12 the sheet. There is a type one, a type two
13 and a type three. I want to see if you fit
14 into any of these categories. You may not
15 fit into any of them. That's okay if you
16 don't. Then we are going to bring you out
17 individually and I will ask you if you fit
18 into any of these categories.

19 Please don't discuss what type that
20 you fit into with each other. It is a
21 personal decision. I want you to read it
22 and it is a personal decision that I want
23 you to make.

24 I'm also going to give you a list
25 of witnesses. There are one hundred

1 thirty-four names on the list. I want you
2 to review those names and see if you
3 recognize anybody on that list or if you
4 know anybody on that list.

5 Now, before I send you to the jury
6 room -- and we will bring you back out
7 individually, I am going to ask the clerk to
8 swear the jury.

9 CLERK: Please stand and raise
10 your right hand -- (jurors comply). You
11 should truthfully answer all questions asked
12 of you in this matter now before the court,
13 by the court or by Order thereof. You
14 should speak the truth, the whole truth and
15 nothing but the truth so help you God.
16 Please say "I do." (Affirmative response
17 from all jurors).

18 THE COURT: All right. If you
19 will go to the jury room, the bailiff will
20 give you the sheets to look at. Whenever
21 somebody is ready, ---

22 WILLIAM MAGUIRE: Your Honor, do
23 you want the parties to introduce ourselves?

24 THE COURT: I'm sorry. Excuse
25 me. Solicitor.

1 SCARLETT WILSON: Thank you,
2 Judge. I am Scarlett Wilson. I am the
3 solicitor here in Berkeley County. I also
4 have Charleston County.

5 This is Bruce Durant. He's the
6 chief deputy solicitor for the 9th Circuit,

7 which again is Charleston County and
8 Berkeley County.

9 This is Bryan Alfaro. He's over
10 out Berkeley office.

11 Together the three of us will be
12 asking questions, introducing testimony and
13 evidence, presenting this case for the next
14 week or so.

15 Thank you.

16 THE COURT: Is there any member
17 of the jury panel that is a close friend or
18 has close contact with anyone in the
19 solicitor's office here in Berkeley or
20 Charleston County? If so, raise your hand.
21 (No response).

22 Mr. Maguire.

23 WILLIAM MAGUIRE: Thank you, Your
24 Honor. I am Bill Maguire, a lawyer from
25 Columbia. I work for the State Government.

1 I used to live in Charleston and I practiced
2 in the 9th Circuit Public Defender's Office,
3 with Ashley Pennington. I also worked for
4 Andy Savage for a couple of years. I have
5 also practiced in Georgia and am now back in
6 Columbia.

7 I represent Colin Broughton. He is
8 here, right next to me.

9 To his right is Morgan Daniel, an
10 investigator in my office. She just
11 graduated from USC.

12 To her right is Pati Kennedy. Ms.
13 Kennedy is the chief public defender in
14 Berkeley County here in Moncks Corners.

15 To her right is Mr. Boyd Young.
16 Boyd is another lawyer in my office and he,
17 like me, lived in Charleston for a number of
18 years and he's living in Columbia now.

19 Thank you.

20 THE COURT: Is there any member
21 of the jury panel who is a close personal
22 friend or who has close contacts with Mr.
23 Maguire are anybody that he introduced? If
24 so, raise your right hand. (No response).

25 Now there is one name that is not

1 on the list. That name is Jessica
2 Broughton. Is there any member of the jury
3 panel who recognizes that name or is there
4 anybody who knows Jessica Broughton? If so,
5 raise your right hand. (No response). Let
6 the record reflect that no one raised their
7 right hand.

8 You will go to the jury room, the
9 bailiff will give you the two sheets.
10 Whenever somebody has made the decision of
11 which type, let the bailiff know and we will
12 bring you back into the court room.

13 (JURY PANEL NUMBER 7 EXITS COURTROOM)

14 THE COURT: Let us know when
15 somebody is ready.

16 SCARLETT WILSON: Judge, would it
17 make sense to talk to the next panel that is
18 waiting while we are waiting?

19 THE COURT: Do you have the other
20 panel available?

21 CLERK: Yes, sir.

22 THE COURT: Yeah, bring them in.
23 We can do that. That will help to speed up
24 the process.

25 (JURY PANEL 8 ENTERS COURTROOM)

1 THE COURT: ladies and gentlemen
2 of the jury panel, I am going to make a few
3 statements and try to explain a few things
4 to you. It is a process that we will go
5 through. After we do that; I've got another
6 panel that we need to talk to individually
7 but when we have finished with that panel,
8 we will start talking to you individually.

9 Like I said, I am just going to
10 make a few remarks to you in the beginning
11 and then we will start bringing jurors in
12 individually. The attorneys will be asking
13 questions.

14 In this case, the State has charged
15 the defendant with the following crimes:
16 attempted arson, armed robbery, assault and
17 battery with intent to kill, criminal sexual
18 conduct first, grand larceny, burglary
19 first, and murder.

20 Now, I am going to talk to you now
21 about the murder charge. In South Carolina
22 a defendant is never obligated to prove
23 himself innocent. The burden is on the
24 State to prove a defendant guilty beyond a
25 reasonable doubt of the crimes charged. In

1 this case the State is responsible for
2 proving the defendant guilty beyond a
3 reasonable doubt of murder.

4 I am going to talk to you about the
5 murder charge. On the murder charge, a
6 death penalty notice has been served on the
7 defendant. Therefore, the death penalty
8 becomes the issue that I am going to talk to
9 you about at this time. When a death
10 penalty notice is filed and served, this
11 trial is conducted in two parts. The first
12 part is the guilt phase. As I said earlier,
13 the State has to prove the defendant guilty
14 beyond a reasonable doubt on all charges, as
15 well as the murder charge.

16 Now, for the purposes of questions
17 and for the purpose of discussion, I am
18 going to talk to you about the second part
19 of the trial or the second phase, which is
20 known as the sentencing phase or the penalty
21 phase.

22 Please don't take into
23 consideration the fact that I am talking
24 about the penalty phase to in any way
25 indicate whether the defendant is innocent

1 or guilty. But for purposes of our
2 discussion, please assume that the jury has
3 found the defendant guilty and that we are
4 in the penalty or sentencing phase, so that
5 you can properly understand the context in
6 which I am talking to you and the questions
7 that the attorneys will be asking you.

8 As I said earlier, it is a
9 bifurcated trial. The first part is guilt,
10 the second part is the penalty phase.

11 Now, in the penalty phase you,
12 the jury, determines whether the defendant
13 should receive life without parole or death.
14 Now, when I use the term "life without
15 parole" I mean what it says. The defendant
16 is not eligible for parole, the defendant
17 will die in jail.

18 Now, the jury makes the determina-
19 tion of life or death. The jury makes a
20 recommendation to the court and the court is
21 obligated to follow your recommendation.

22 Now, what do you have to consider
23 before you make a decision of life or death?
24 The State's -- the South Carolina statute
25 concerning aggravating circumstances, the

1 State has to prove what is referred to as
2 legally as aggravating circumstances.
3 Aggravating circumstances are facts,
4 incidents, details or occurrences which the
5 state law says aggravates the offense of
6 murder. In other words, these circumstances
7 increase the enormity of the crime.

8 In order to find that the defendant
9 shall receive the death penalty, the State
10 is obligated to prove one or more of the
11 aggravating circumstances. You, the jury,
12 have to unanimously find that the State has
13 proven aggravating circumstances and you
14 have to write on a piece of paper what
15 aggravating circumstances that you say the
16 State has proven.

17 I am going to list some of the
18 aggravating circumstances for you from the
19 statute. The State does not have to prove
20 them, the State has to prove one of them:

21 Criminal sexual conduct in any
22 degree; kidnaping; burglary in any degree;
23 robbery while armed with a deadly weapon;
24 larceny with the use of a deadly weapon; or
25 physical torture.

1 So it is the State's obligation to
2 find or proof one or more aggravating
3 circumstance. I do not know what
4 aggravating circumstance that the State is
5 going to prove, because I have not heard the
6 testimony. I am not talking about this
7 particular case. I am talking in
8 generalities about what the statute covers.

9 Now, another consideration will be
10 what is referred to as mitigating
11 circumstances. Mitigating circumstances,
12 you have statutory mitigating circumstances
13 and nonstatutory mitigating circumstances.
14 A defendant may put up mitigating
15 circumstances but the defendant is not
16 obligated to that.

17 I am going to talk to you a few
18 minutes about mitigating circumstances.
19 Now, mitigating circumstances are facts
20 either surrounding the incident itself or
21 which shed light on a defendant's history,
22 background, upbringing, childhood, which
23 makes the crime less severe or less harsh.

24 Now, these are some of the
25 mitigating circumstances laid out by

1 statute:

2 The defendant has no
3 significant history or prior criminal
4 convictions involving the use of violence
5 against another person.

6 The murder was committed while the
7 defendant was under the influence of mental
8 or emotional disturbance.

9 The capacity of the defendant to
10 appreciate the criminality of his conduct or
11 to conform his conduct to the requirements
12 of the law was substantially impaired.

13 The age or the mentality of the
14 defendant at the time of the crime.

15 Plus any other relevant issue that
16 should arise concerning mitigation. Those
17 are some of the statutory mitigating
18 factors.

19 There are also nonstatutory
20 mitigation factors such as the history and
21 background, which I discussed earlier -- as
22 well as past or future adaptability to life
23 in prison. Anything that is relevant as to
24 mitigation that may come up at trial.

25 I do not know if the defendant is

1 going to offer any mitigating circumstances.
2 I do not know what mitigating circumstances
3 that the defendant will offer. I am talking
4 to you about the statute and the law and
5 South Carolina concerning mitigation.

6 Mitigation evidence can, in
7 essence, be any reason for a sentence less
8 than the death penalty.

9 So, ladies and gentlemen, what I am
10 telling you -- I will try to summarize it.
11 In the penalty phase, the jury has to do two
12 things. They have to be unanimous in
13 agreement that the State has proven one or
14 more of the aggravating circumstances. You
15 also have to consider any and all mitigating
16 circumstances offered and whether that is
17 sufficient to give life without parole or to
18 give death. That is your decision but you
19 have to consider both before you make a
20 decision of life without parole or death.

21 Now, I have prepared basically a sheet
22 and on that sheet are three types of
23 individuals, three types of opinions about
24 the death penalty. The bailiff is going to
25 give that to you. I want you to take it to

1 the jury room. . Don't discuss it with each
2 other, it is a personal decision that you
3 need to make. But if you fit into one of
4 those types, when you come back in the
5 courtroom individually I will ask you. If
6 you don't fit into one of those types,
7 that's fine.

8 Please review the sheet and decide
9 if you fit into one of the types: one, two,
10 three.

11 I'm also going to give you a list
12 of one hundred thirty-four names which are
13 potential witnesses in this case. I want
14 you to look at them and see if you recognize
15 or know anybody on this list. I'll ask you
16 about it when you come back into the
17 courtroom.

18 One witness was left off, Jessica
19 Broughton. Does anybody know the name
20 Jessica Broughton, or does anybody know
21 Jessica Broughton? If so, raise your hand.
22 (No response).

23 Solicitor, do you want to introduce
24 yourself?

25 SCARLETT WILSON: Yes, sir. Thank

1 you. I am Scarlett Wilson. I am the
2 solicitor here in Berkeley County. I also
3 have Charleston County.

4 This is Bruce Durant, he is the
5 chief deputy solicitor for what is called
6 the 9th Circuit, which is Charleston and
7 Berkeley counties.

8 This is Bryan Alfaro and he is my
9 deputy over the Berkeley office.

10 For the next week and a half, the
11 three of us will be presenting the State's
12 case. That means that we will be asking
13 questions of witnesses and introducing
14 evidence. Thank you.

15 THE COURT: Is there any member
16 of the jury panel who has a close relation-
17 ship with anyone in the solicitor's office,
18 which includes Charleston and Berkeley
19 County, or are you close personal friends
20 with anyone in the solicitor's office? If
21 so, raise your right hand. (No response).

22 Mr. Maguire.

23 WILLIAM MAGUIRE: Thank you, Your
24 Honor. Good morning. I guess that this is
25 still morning. Thank you for hanging in

1 there with us. My name is Bill Maguire. I
2 am a lawyer from Columbia, South Carolina.
3 I work for the State Government. I've also
4 lived in Charleston, worked in Charleston
5 with the 9th Circuit Public Defender's
6 office. I also worked with Andy Savage in
7 private practice.

8 I represent Mr. Colin Broughton, he
9 is sitting here next to me at my table.

10 Next to him is Morgan Daniel, and
11 she is an investigator in my office. She is
12 from Florida, she is a graduate of USC.

13 To her right is Pati Kennedy. Pati
14 is the chief public defender for Berkeley
15 County here in Moncks Corner.

16 To her right is Mr. Boyd Young.
17 Boyd is a lawyer that works with me in my
18 office. Like me, he also lived in
19 Charleston for a number of years, practiced
20 in Charleston but lives in Columbia now.
21 Thank you.

22 THE COURT: Does anybody know
23 Mr. Maguire are any of the names that he has
24 called out or has anybody ever been
25 represented by any the attorneys that have

1 been introduced here or by Mr. Maguire
2 himself? If so, raise your right hand. (No
3 response).

4 Madame Clerk, would you swear the
5 the jury, please?

6
7 CLERK: Please stand and raise
8 your right hand -- (jurors comply). You
9 should truthfully answer all questions asked
10 of you in this matter now before the court,
11 by the court or Order thereof. You should
12 speak the truth, the whole truth and nothing
13 but the truth so help you God. Please say
14 "I do." (Affirmative response from all
15 jurors).

16 THE COURT: All right. I am
17 going to ask you to go to the jury room.
18 Take these forms with you. Look at them,
19 but don't discuss them amongst yourselves.

20 Now, it is five minutes to 12:00.
21 We've got six more jurors that we are going
22 to go through individually and ask
23 questions. I don't know how long that is
24 going to take. It may be after lunch when
25 we bring you back. We will just sort of see

1 how it goes with the first six and then we
2 will start with you. Okay?

3 So follow the bailiff and she will
4 take you a room.

5 (JURY PANEL NUMBER 8 EXITS COURTROOM)

6 THE COURT: Bring in the first
7 one of that other panel, if you would.

8 (JUROR NUMBER 145 ENTERS COURTROOM)

9 BAILIFF: State your name
10 please.

11 JUROR NUMBER 145: My name is
12 Emma Hennix.

13 EMMA HENNIX, having been previously
14 sworn to tell the truth testified as
15 follows:

16 EXAMINATION

17 BY THE COURT:

18 Q. Ms. Hennix, did you have an opportunity
19 to view the various opinions about the death
20 penalty?

21 A. Yes, sir.

22 Q. Did you make a determination whether
23 you fit into a type one, two or three?

24 A. Type three.

25 Q. You fit into type three?

1 A. Yes, sir.

2 Q. Did you have an opportunity to look at
3 the witness list?

4 A. Yes.

5 Q. Do you recognize or know any names on
6 that list?

7 A. No, sir.

8 Q. Did you recognize anybody?

9 A. No, sir.

10 Q. You're not familiar with anybody?

11 A. No.

12 Q. Okay. I am going to be asking you some
13 questions and then after I finish the
14 attorneys are going to be asking you some
15 questions. Okay?

16 A. Okay. Do you understand?

17 A. Yes, sir.

18 Q. Have you read anything in the paper
19 about the case?

20 A. No, sir.

21 Q. Anything on television?

22 A. No, sir.

23 Q. Have you heard anybody talk about it,
24 even here in the courthouse or elsewhere,
25 anyplace?

1 A. Yes, sir.

2 Q. You heard somebody?

3 A. (Affirmative nod).

4 Q. Who has been talking about it?

5 A. I don't know. Monday, I am not sure
6 what the young lady's name is but she

7 mentioned that she had seen it on the news
8 that morning before we came in.

9 Q. What did she specifically tell you, do
10 you remember?

11 A. That this was probably a murder trial.

12 Q. Probably a murder trial?

13 A. Um-humm.

14 Q. That she -- well, she is right. Did
15 she say anything else?

16 A. No, not -- not then, no.

17 Q. Did she say anything else at a later
18 time?

19 A. Well, just overhearing general
20 conversation. I did not had a conversation
21 with anybody in particular, just general
22 conversation.

23 Q. Tell us specifically what you
24 overheard.

25 A. Specifically that the accused had

1 murdered a family member of some sort.

2 Q. What else have you heard?

3 A. That's about it.

4 Q. That's about it?

5 A. That's about it, (affirmative nod).

6 Q. Tell us what you heard in the hallway
7 or wherever it was that you heard it,
8 because of that have you formed an opinion
9 about the defendant's innocence or guilt?

10 A. No, sir.

11 Q. Can you set that aside and base your
12 decision on what you hear in the courtroom?

13 A. Yes, sir.

14 Q. Do you have any relatives or close
15 personal friends working in law enforcement?

16 A. I work at the Charleston County
17 Detention Center.

18 Q. You work at the detention center?

19 A. Yes.

20 Q. In Charleston?

21 A. Yes, sir.

22 Q. Okay. Have you ever had anything to do
23 with prisoners in Berkeley County?

24 A. No, sir.

25 Q. Would it cause you any difficulty

1 because of your employment to sit on this
2 jury?

3 A. I don't believe so, Sir.

4 Q. Do you think that you can be fair and
5 impartial to both the State and to the
6 Defendant?

7 A. Yes, sir.

8 Q. Do you have any other relatives that
9 work in law enforcement?

10 A. No. My sister, she works at the
11 detention center.

12 Q. How long have you been working at the
13 detention center?

14 A. I've been with Charleston County as a
15 detention officer for nine years, it will be
16 nine years this December.

17 Q. What do you do at the detention center
18 in Charleston?

19 A. Well, I worked for six years as a
20 detention officer, a field training
21 instructor responsible for training new
22 hires for the job as a detention officer.
23 So now I am a training sergeant. I have
24 been a training sergeant for the past three
25 years.

1 Q. Has the solicitor or anyone in her
2 office prosecuted any member of your family?

3 A. I don't believe so.

4 Q. Anyone?

5 A. No, sir.

6 Q. Have you or a member of your family are
7 any close personal friend ever been the
8 victim of a crime?

9 A. My older sister has been.

10 Q. What was she a victim -- what was the
11 crime?

12 A. Armed robbery.

13 Q. How long ago was that?

14 A. It was about four years or so ago. She
15 worked at a gas station in Goose Creek and
16 they were held-up.

17 Q. Who was anyone ever arrested?

18 A. Yes.

19 Q. Were they ever convicted?

20 A. Probably by now, I'm sure.

21 Q. You don't know?

22 A. Offhand, no, sir, I don't.

23 Q. Would that affect your ability to sit
24 on the jury?

25 A. No, sir.

1 Q. With that affect your impartiality
2 towards either the State or the Defendant?

3 A. No, sir.

4 Q. Do you have any relatives in jail?

5 A. Yes, sir, I do.

6 Q. Who?

7 A. My son.

8 Q. Your son?

9 A. Yes, sir.

10 Q. What is your son in jail for?

11 A. He had a bench warrant. He is actually
12 over there right now.

13 Q. Is he in Berkeley or is he in
14 Charleston?

15 A. He's in Berkeley.

16 Q. He is in Berkeley?

17 A. Yes, sir.

18 Q. The bench warrant was for not showing
19 up where?

20 A. I am not sure.

21 Q. Was that this Court, Family Court, ---

22 A. It might have been -- because I know
23 that he had jury duty, that he was called
24 for jury duty, and that he did not show up.

25 Q. Jury duty in this case?

1 A. No, not this case. It was one a couple
2 of weeks ago.

3 Q. And he didn't show up?

4 A. (Negative gesture).

5 Q. So you think that that is why he is in
6 jail?

7 A. I think that's what it is. He's not
8 telling me. He's twenty, so he doesn't have
9 to, I guess, tell me.

10 Q. So he is not communicating that to you?

11 A. No, sir.

12 Q. Does that cause you any difficulty in
13 sitting on the jury?

14 A. No, sir.

15 Q. Are you a member of any groups who
16 primarily support law enforcement, such as
17 MADD, SADD, CAVC?

18 A. No, sir.

19 Q. Do you have any special interest or
20 particular interest in the outcome of this
21 case?

22 A. No, sir.

23 Q. Are you aware of any bias or prejudices
24 as a result of the charges against the
25 defendant?

1 A. No, sir.

2 Q. Do you have any religious beliefs that
3 would cause a bias or prejudice for or
4 against the Defendant?

5 A. No, sir.

6 Q. How about for or against the State?

7 A. No, sir.

8 Q. Do you have any bias or prejudice for
9 or against the Defendant because of his
10 race, being black?

11 A. No, sir.

12 Q. Do you have any reason, personal or
13 otherwise, why you could not serve on the
14 jury?

15 A. No, sir.

16 Q. Do you have any reason why you cannot
17 give the State and or the Defendant a fair
18 and impartial trial?

19 A. No, sir.

20 THE COURT: Whose turn? You'all
21 are pointing at each other. Do you want to
22 flip a coin?

23 EXAMINATION

24 BY WILLIAM MAGUIRE:

25 Q. Is it Ms. Hennix, did I pronounce that

1 right?

2 A. Yes, sir.

3 Q. Good afternoon, ma'am. Thanks for
4 hanging in there with us. I know that this
5 is a tough process. I am just going to ask
6 you a couple of questions about your views
7 about the death penalty.

8 A. Okay.

9 Q. If you were the governor and we did not
10 even have the death penalty at all in South
11 Carolina and a Bill crossed your desk and
12 you could sign it saying that we should have
13 a death penalty, would you sign it?

14 A. Probably.

15 Q. You believe that the death penalty does
16 serve a function in society?

17 A. Yes.

18 Q. That some crimes warrant the death
19 penalty?

20 A. Yes.

21 Q. So you believe that the death penalty
22 does serve a function in society?

23 A. Yes.

24 Q. Just so that we understand, murder in
25 South Carolina -- and you probably have a

1 more sophisticated vocabulary from working
2 in the detention center and in law
3 enforcement, but all murders in South
4 Carolina -- all murder -- are intentional,
5 meaning that it is the unlawful killing of a
6 another human being without justification or
7 excuse. It is basically that one chose to
8 kill, knew what they were doing, but it was
9 not self-defense, not an accident, that sort
10 of thing.

11 A. Right.

12 Q. It is the intentional taking of an
13 innocent life.

14 A. (Affirmative nod).

15 Q. In that situation what do you feel
16 about whether the death penalty is the
17 appropriate penalty?

18 A. Well, -- well, I believe that it is --
19 that it would be appropriate depending upon
20 the circumstances. I mean, there are
21 extenuating circumstances in every
22 situation, I believe, so ---

23 Q. Okay. Well, you said a couple of
24 things there. You said circumstances and
25 extenuating circumstances.

1 A. Well, I mean circumstances in general.
2 I mean everything. It is not cut-and-dried,
3 in my opinion. So depending on what
4 occurred, you know, the nature, I believe
5 then -- a decision would be made of that.

6 Q. Do you believe that there are some
7 murders that are so bad or that the category
8 of some murders is so bad that there ought
9 to be an automatic death penalty?

10 A. Yes.

11 Q. What is that, for you?

12 A. Particularly when it is involving,
13 like, children.

14 Q. So the victim would matter for you?

15 A. Yes.

16 Q. Now, just so that we are sure, the
17 victim in all murder cases -- they are
18 completely innocent.

19 A. Right, that's true.

20 Q. They did not bring about the
21 difficulty, they did not do anything to
22 cause it -- just so that we are on the same
23 page, the intentional killing of an innocent
24 victim, -- are you still with me, could you
25 consider both?

1 A. I could.

2 Q. Let's say hypothetically that after
3 hearing an entire case with the aggravating
4 circumstances that the State would then have
5 to prove -- let's say that hypothetically
6 your vote was for the death penalty after

7 hearing all the circumstances. What could
8 you hear that would undo that or untie that
9 knot and get you to go backwards?

10 A. Well, I believe that if I made a
11 decision and it was my vote then I don't
12 think that there would be anything that
13 could possibly swing me. In that case.

14 Q. Just so that we are clear in the
15 framework of things, you know, there is the
16 guilt phase and then the State has to prove
17 the aggravation and then you can hear other
18 stuff, if ever, in the penalty phase.

19 So to just kind of get like to a
20 starting point with you -- you hear the
21 case. It is, like we said, the unlawful,
22 intentional killing of a completely innocent
23 person. Where are you starting out?

24 A. Where am I starting out?

25 Q. Yes. Sort of like if you had a game

1 piece in front of you and you had to put it
2 on the death penalty or on life without
3 parole, where would you move it?

4 A. Actually I would be right in the
5 middle.

6 Q. Right in the middle?

7 A. Right. Just sort of hovering right
8 there to see which way that I am going to

9 ---

10 Q. That's fair enough. Well, let me ask
11 you this -- when you said circumstances and
12 you mentioned the words extenuating
13 circumstances, what did you mean you that?

14 A. Well, I -- I really meant circumstances
15 in general. I mean, there's always -- I
16 mean there are always situations or
17 incidences that always lead up to something
18 else but every situation is different. I
19 mean, I wouldn't say cut-and-dried that if I
20 got called somewhere down the line for
21 another trial of this nature that I would
22 automatically vote that way because I voted
23 that way on this one. It just ---

24 Q. They are different?

25 A. Exactly, and that's kind of what I

1 meant.

2 Q. Well, let's talk about a specific kind,
3 not necessarily this case but I want to
4 throw some terms out to you: home invasion,
5 armed robbery, burglary, rape, murder. Is
6 that the kind of case that is bad enough

7 where the death penalty should always be the
8 appropriate penalty? Kind of like the child
9 victim case?

10 A. With all of those involved, is that
11 what you're asking?

12 Q. Yes.

13 A. No, not necessarily. I guess. I don't
14 know.

15 Q. In fact, based on your answers I have
16 just a very few questions left for you.

17 A. Okay.

18 Q. Maybe just one or two. Do you think
19 that you would want to consider Mr.
20 Broughton as a person, his walk in life, his
21 childhood, that sort of thing?

22 A. Would all that come into play for me,
23 is that what you're asking?

24 Q. Would you want to hear that?

25 A. Sure. I mean, (affirmative nod). I

1 guess, I mean, it would kind of give you
2 some background on the person.

3 Q. And ---

4 A. Before -- you know.

5 Q. Sure, before having to make a decision?

6 A. Exactly.

7 Q. How important would it be to you, I
8 mean when you're focusing on the facts of a
9 pretty heinous murder, his background, is
10 that something that would have a lot of
11 importance or medium importance, or how
12 would you rate that?

13 A. It would probably be about medium, I
14 would suppose.

15 Q. Does it have to be connected to the
16 crime? Say somebody is very much addicted
17 to drugs and that's the motivate to break
18 into a place. Does it have to have a
19 connection like that for you or could it be
20 something in his past, like being sexually
21 abused as a child? Would that be relevant
22 or not relevant?

23 A. I guess it all would be relevant.

24 Q. Thank you, ma'am.

25 THE COURT: Solicitor, you don't

1 have any questions, do you?

2 SCARLETT WILSON: Yes, sir, I do.

3 THE COURT: Okay.

4 EXAMINATION

5 BY SCARLETT WILSON:

6 Q. Ms., Hennix, you said that you -- I
7 believe on your questionnaire that you
8 mentioned that you were at the Charleston
9 County Detention Center now?

10 A. Um-humm.

11 Q. And that before that you were at
12 Dorchester County?

13 A. No.

14 Q. You weren't?

15 A. No, I've always worked at ---

16 Q. You were a dispatcher ---

17 A. I was a dispatcher at the Charleston
18 County Sheriff's Office.

19 Q. Oh, that was at the Charleston County
20 Sheriff's Department?

21 A. Um-humm, and before that Charleston
22 City.

23 Q. With any of that, did you have to do
24 law enforcement training? Do you have a
25 commission in law enforcement, arrest powers

1 or any of that?

2 A. No, not outside of work. You know, if
3 something happened on the premises, then ---

4 Q. So you are considered a civilian worker
5 for the Sheriff's Office?

6 A. Actually we are certified detention
7 officers because we go through the South
8 Carolina Criminal Justice Academy to get
9 certification but -- we can't arrest outside
10 of normal duties, outside of normal work, I
11 don't believe.

12 Q. Now, can you tell me -- you talked a
13 lot about the death penalty based on Mr.
14 Maguire's questions. Can you tell me about
15 your thoughts about life without parole?

16 A. Again, depending on what the
17 circumstances were. Like he had asked
18 before, I would kind of start out in the
19 middle and I guess lean one way or the other
20 if those were the options.

21 Q. Well, would you say that you lean more
22 towards life or towards death?

23 A. At the moment?

24 Q. Yes.

25 A. No, ma'am.

1 Q. That's good.

2 A. I mean, I ---

3 Q. What types of things would make you
4 lean more toward life, what types of things
5 do you think would affect you, your view and
6 your feelings that life without the
7 possibility of parole were an appropriate
8 sentence?

9 A. I really don't know. I don't have an
10 opinion right off which would be the
11 appropriate.

12 Q. You mentioned that the death penalty
13 should be given for someone who killed a
14 child?

15 A. I just -- yeah.

16 Q. Is that the only time that you think it
17 is appropriate?

18 A. I mean, the children are just the truly
19 innocent.

20 Q. Right.

21 A. That's why I would lean strongly -- for
22 me, the kids.

23 Q. But would that be the only time that it
24 would be appropriate for you?

25 A. Yeah, without further information -- I

1 mean, without knowing the circumstances.

2 Kids just -- I don't know.

3 Q. I am talking about automatically?

4 A. Yeah, that's the only automatic.

5 Q. The only time that you think that it
6 should be automatic?

7 A. Right.

8 Q. No more question asked, is with a
9 child?

10 A. Yeah.

11 Q. Other than that, you could consider
12 everything and it wouldn't be automatic?

13 A. Yes, ma'am.

14 SCARLETT WILSON: That's all the
15 questions that I have.

16 THE COURT: Any Motions on this?

17 SCARLETT WILSON: Yes, Your Honor,
18 I ---

19 THE COURT: Ma'am, would you step
20 out into the hall for just a second?

21 (JUROR NUMBER 145 EXITS COURTROOM)

22 THE COURT: Give me a chance -- I
23 need to do a little research. Why don't we
24 bring in another juror ---

25 SCARLETT WILSON: That's fine.

1 THE COURT: Let me see the
2 attorneys up here for a second.

3 BENCH CONFERENCE:

4 THE COURT: The statute says
5 law enforcement commission. We need to look
6 and see if that's an exception. We'll
7 check. I don't know that detention officers
8 are included.

9 SCARLETT WILSON: We can look
10 it up, we've got several days before we get
11 to it. But on the death penalty
12 qualification, we don't have a Motion or
13 anything, so this would be just general
14 qualification.

15 THE COURT: All right.
16 Okay.

17 (BENCH CONFERENCE CONCLUDED)

18 THE COURT: Bring her back in if
19 you would:

20 (JUROR NUMBER 145 ENTERS COURTROOM)

21 THE COURT: Ms. Hennix, if you
22 would, come around and let me just ask you
23 one question. Stand right there. Do you
24 have any type of certification as far as --
25 you testified earlier that you had, I think

1 that you said the department -- not the
2 Department of corrections but a detention
3 officer's certification. Is that correct?

4 JUROR NUMBER 145: Yes, sir.

5 THE COURT: Do you have that in
6 writing?

7 JUROR NUMBER 145: Yes, in
8 writing through the State of South Carolina.
9 I'm sorry, through the South Carolina
10 Criminal Justice Academy .

11 THE COURT: So is -- it's a
12 diploma or something?

13 JUROR NUMBER 145: It is a
14 certificate, yes, sir.

15 THE COURT: It is a certificate?

16 JUROR NUMBER 145: (Affirmative
17 nod).

18 THE COURT: And it says what?

19 JUROR NUMBER 145: It is a
20 certification for a detention officer.

21 THE COURT: A detention officer,
22 so you work for the Sheriff's office, right?

23 JUROR NUMBER 145: Yes..

24 THE COURT: The point of my
25 question is, do you have a law enforcement

1 commission through the ---

2 JUROR NUMBER 145: No, sir, it
3 is just for a jail.

4 THE COURT: Just for the jail?

5 JUROR NUMBER 145: Yes, and it
6 was issued by the South Carolina Criminal
7 Justice Academy.

8 THE COURT: Would you run me a
9 copy of that and bring it by and drop it off
10 to the clerk's office, if you would, please?

11 JUROR NUMBER 145: Yes. Sure.

12 THE COURT: Thank you very much.
13 She (bailiff) is going to give you a little
14 card with a phone number on it. Call in
15 tomorrow night after five o'clock and there
16 will be instructions for the jury panel.
17 What is going to happen is that we will get
18 a pool of jurors. Once we get so many, a
19 certain number qualified then we will strike
20 or draw the jury and you will be part of
21 that process. Okay?

22 JUROR NUMBER 145: Okay. After
23 five o'clock tomorrow.

24 THE COURT: Just follow those
25 instructions.

1 JUROR NUMBER 145: Should I have
2 them fax it over?

3 THE COURT: Yeah, you can fax it
4 over. Thank you.

5 JUROR NUMBER 145: Thank you.

6 (JUROR NUMBER 145 EXITS COURTROOM)

7 THE COURT: Who is next? You
8 want to bring in our next one?

9 Solicitor, a special deputy sheriff
10 is disqualified. I am not sure what a
11 special deputy sheriff is.

12 SCARLETT WILSON: I'm not either.

13 THE COURT: I think they're all
14 special.

15 (JUROR NUMBER 355 ENTERS COURTROOM)

16 THE COURT: Yes, ma'am, your
17 name?

18 JUROR NUMBER 355: Priscilla
19 Vandross.

20 THE COURT: Ms. Vandross, I am
21 going to ask you a few questions and then
22 the -- first thing that I want to ask you,
23 did you have an opportunity to look at the
24 sheet showing the opinions about the
25 different types of death penalties?

1 JUROR NUMBER 355: Yes.

2 THE COURT: Did you fit into
3 category one, two, three?

4 JUROR NUMBER 355: One.

5 THE COURT: You fit into one?

6 JUROR NUMBER 355: Yes.

7 THE COURT: Number one says that
8 you could not ever give the death penalty as
9 the sentence regardless of the reasons,
10 right?

11 JUROR NUMBER 355: Yes.

12 THE COURT: And that is your
13 opinion

14 JUROR NUMBER 355: Yes.

15 THE COURT: Okay. All right, I
16 will excuse you from jury duty. Okay?
17 Thank you very much.

18 (JUROR NUMBER 355 EXCUSED)

19 (JUROR NUMBER 355 EXITS COURTROOM)

20 THE COURT: Who is next?

21 (JUROR NUMBER 69 ENTERS COURTROOM)

22 THE COURT: Kenneth Barrineau?

23 JUROR NUMBER 69: Joseph Creel.

24 THE COURT: Okay. Mr. Creel, I
25 have a few questions for you.

1 JOSEPH CREEL, having been
2 previously sworn to tell the truth testified
3 as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q. Mr. Creel, did you have an opportunity
7 to look at the sheet concerning opinions
8 about the death penalty?

9 A. Yes, I did.

10 Q. Did you fit into any of the categories,
11 one, two, or three?

12 A. I would say number three.

13 Q. You fit into category number three?

14 A. Yes, sir.

15 Q. Did you have an opportunity to look at
16 the witness list?

17 A. Yes.

18 Q. Did you recognize or know anyone on
19 that list?

20 A. No, sir, I did not.

21 Q. You did not recognize anybody out of
22 one hundred thirty-four names?

23 A. None that stuck out, no.

24 Q. None that stuck out?

25 A. No, sir.

1 Q. Okay. All right, I'am going to ask you
2 some questions and then the attorneys will
3 ask you some questions. Understand?

4 A. Yes, sir.

5 Q. Have you read anything in the paper
6 about this case?

7 A. No, sir.

8 Q. Have you seen anything on television?

9 A. No, sir.

10 Q. Have you heard anybody talk in the
11 courthouse or on the streets about the case,
12 or talking anywhere about the case?

13 A. Just in the courthouse.

14 Q. What have you heard in the courthouse?

15 A. Just that it was a death penalty case.

16 Q. When did you hear this?

17 A. Monday.

18 Q. Did you hear anything else?

19 A. No, sir.

20 Q. Well, that's correct, it is a death
21 penalty case.. Do you have any relatives or
22 close personal friends employed in law
23 enforcement?

24 A. No, sir.

25 Q. Has the solicitor or any of her

1 assistants prosecuted anyone in your family
2 or yourself?

3 A. No, sir.

4 Q. Do you have any members of your family,
5 or close personal friends who had been
6 convicted of crimes?

7 A. No, sir.

8 Q. Do you have any relatives in jail?

9 A. None that I'm aware of, no, sir.

10 Q. Are you a member of any groups which
11 primarily support law enforcement, such as
12 MADD, SADD?

13 A. No, sir, I am not.

14 Q. Do you have any special or particular
15 interest in the outcome of this case?

16 A. No, sir, I don't.

17 Q. Are you aware of any bias or prejudices
18 based on religious beliefs for or against
19 the Defendant?

20 A. No, sir.

21 Q. Are you aware of any bias or prejudices
22 for or against the State based on religious
23 beliefs?

24 A. No, sir.

25 Q. Do you have any bias or prejudices

1 against the Defendant because of his race,
2 being black?

3 A. No, sir.

4 Q. I read the charges to you earlier when
5 you were sitting in the jury box. As a
6 result of those charges, do you have any

7 biases or prejudices against the Defendant
8 because of the charges?

9 A. No, sir.

10 Q. Have you had any bad experiences or
11 good experiences with law enforcement?

12 A. Good experiences, I guess.

13 Q. What are some of the good experiences
14 that you have had with law enforcement?

15 A. Assistance in offering to change a
16 tire.

17 Q. How long ago was that?

18 A. Years.

19 Q. A year?

20 A. Years. Several years.

21 Q. Any other good experiences?

22 A. No, sir.

23 Q. Any bad experiences?

24 A. No, sir. Well, speeding tickets.

25 Q. Pardon?

1 A. Speeding tickets.

2 Q. Speeding tickets. Well, that made you
3 slow down, so that was a good experience;
4 wasn't it? Or was it?

5 A. The fine was not.

6 Q. There was a fine?

7 A. (Affirmative nod).

8 Q. Do you know the reason, personal or
9 otherwise, why you could not serve on this
10 jury?

11 A. Not an excusable one.

12 Q. Do you know of any reason why you could
13 not give a fair and impartial trial to both
14 the State and to the Defendant?

15 A. No, sir, no reason.

16 EXAMINATION

17 BY SCARLETT WILSON:

18 Q. Mr. Creel, I have just a few questions
19 to follow up on what the Judge told you all
20 as a panel earlier and to kind of get your
21 thoughts on the death penalty and life
22 without parole, just to see where you fit in
23 all of that; okay?

24 A. Okay.

25 Q. And we cannot talk about specific facts

1 of this case at this point, so we are
2 talking in generalities. All right?

3 A. (Affirmative nod).

4 Q. In reading the sheet that you said that
5 you were a juror number three, did you
6 understand from that that in a death penalty
7 eligible case that the trial would be in two
8 separate phases?

9 A. Not from this, but from the Judge's
10 instructions -- I did.

11 Q. So you now know that?

12 A. Yes.

13 Q. Before this week, did you have any
14 special interest or reason to know anything
15 about death penalty cases?

16 A. No.

17 Q. So you are not real familiar with the
18 process?

19 A. No, ma'am, not at all.

20 Q. Okay. So you understand that it is a
21 two-step process?

22 A. (Affirmative nod).

23 Q. And I believe that it was on your sheet
24 in the first introductory paragraph about
25 what the definition of murder is, meaning

1 that it was an intentional act, that the
2 person who commits a murder means to kill,
3 but it is not an accident, that it is not a
4 killing that is provoked, and the person
5 acts with malice aforethought, which means
6 that they have a heart that is bent on
7 mischief, that is fatally bent on mischief,
8 a dark heart. So, understanding that, that
9 would be anyone convicted of murder.

10 Could you keep an open mind going into
11 the second phase, where the penalty for that
12 person is determined?

13 A. Yes, ma'am, I could.

14 Q. Okay. Could you hold the State to its
15 burden. The Judge told you about
16 aggravating circumstances, things that make
17 the crime worse than any just normal
18 statutory murder. Could you hold the State
19 to its burden and make us prove an
20 aggravating circumstance?

21 A. Yes, ma'am.

22 Q. And if the State did not prove that to
23 all twelve of the jurors, could you then
24 return a sentence for life?

25 A. Yes, ma'am.

1 Q. Even though a heinous murder with an
2 aggravating circumstance, if we did not meet
3 that burden in the second phase, you would
4 return the life without parole sentence?

5 A. If it was not met, yes, ma'am.

6 Q. Now, beyond that, assuming a situation
7 where again that there is no question that
8 it is the right person, that there is no
9 question that they meant to do it, that
10 there is no question that it was brutal,
11 that it was heinous, that there was an
12 aggravating circumstance and the State has
13 proven that, could you still keep an open
14 mind and listen to things about the
15 defendant, his background, his history,
16 substance abuse, things of that nature that
17 may have affected him. Could you listen to
18 those things and give them consideration,
19 meaningful consideration, before making your
20 decision?

21 A. Yes, ma'am. I could give them
22 consideration.

23 Q. And when we use that term
24 "consideration," we are not meaning just
25 'yes, I will listen to it, I will hear you'

1 but -- that it was brutal, it was heinous,
2 not that you are just not only going to
3 think about that that you are going to
4 factor it in. You would let it factor in?

5 A. Yes, ma'am.

6 Q. In a situation when a case was
7 especially brutal or heinous, what types of
8 things do you think that you might want to
9 hear about or might be interested in hearing
10 about as far as the defendant goes?

11 A. I am not sure that I understand the
12 question. Are you talking about act or the
13 nature of the ---

14 Q. Not about the crime itself because,
15 remember, in this situation there wouldn't
16 be any question about the crime itself. It
17 would've already have been determined that
18 the person was guilty, that the aggravating
19 circumstances were met, it might be a
20 burglary, it might be a rape, it might be
21 something that made aggravated. What kind
22 of things could you listen to and consider
23 about a defendant that might move you from
24 the death penalty, or that might make you
25 think that life without parole were

1 appropriate?

2 A. I guess the situation around why the
3 murder happened or was caused, if there was
4 an alternative to the murder, fleeing
5 instead of killing someone.

6 Q. Now, we are back to talking about the
7 crime -- which I know is hard not to do.

8 A. Okay..

9 Q. It's hard to move away from, that. How
10 about, for example, could you listen to and
11 consider and factor in, before making your
12 decision of life without parole or death,
13 could you think about things that happened
14 in a defendant's life as he was growing up,
15 drug abuse, substance abuse, things like
16 that?

17 A. I can listen to that and give it
18 consideration. But I think that I would
19 more listen to the facts of what actually
20 happened and not necessarily what happened
21 twenty years ago.

22 Q. Tell us more about that. You said that
23 you could listen to it. We just need to
24 know if it matters. If it would matter to
25 you, if it would matter at all or if you

1 would say no, that it would not matter at
2 all, or that you would keep an open mind and
3 listen and consider it. We need to know
4 that.

5 A. Yes, ma'am, I could keep an open mind.
6 I could listen to it. I cannot say that it
7 would not matter without hearing it first.
8 Everyone's circumstance is different.

9 Q. You would consider it?

10 A. Yes, ma'am.

11 Q. So for example, say that we had -- or
12 say that you had a situation that was a
13 brutal, heinous, crime/murder and then a
14 month later you were on a jury and had
15 another situation, a brutal, heinous crime,
16 murder. In that situation would you
17 automatically give the same verdict? Both
18 times?

19 A. No.

20 Q. Why do you think that they could be
21 different from one situation to another?

22 A. Well, the circumstances surrounding it.
23 I still think that the facts of the case
24 would be what would cause me to make my
25 decision, not necessarily what happened to

1 someone in their lifetime.

2 Q. Okay. How about other factors, like
3 whether or not they were in their right mind
4 at the time? Whether or not they were under
5 the influence of something at the time?
6 Something like that.

7 A. Those may be mitigating factors.. But I
8 guess it would just depend.

9 Q. That if you were in that situation
10 where the crime had been proven, aggravating
11 circumstances have been proven, could you
12 wait to hear everything before returning
13 your verdict?

14 A. Yes.

15 Q. What do you think about life without
16 parole?

17 A. (No verbal response).

18 Q. Is it a harsh punishment?

19 A. I think is very harsh. I guess -- just
20 -- I don't know, is my first time on a jury.
21 And I am not sure what that means.

22 Q. Really, there are no right or wrong
23 answers. We are not looking for you to say
24 one thing or the other. We just need to
25 kind of know where you are coming from.

1 A. I think that if someone has been proven
2 guilty of a terrible, heinous crime that
3 there are two options that the State has,
4 death or life without parole.

5 If there were circumstances that
6 surrounded the defendant that we thought
7 that he deserved to have his life, then we
8 should not take it from him.

9 If there were ---

10 Q. Things like extreme remorse?

11 A. Remorse, potentially under the
12 influence, or duress or maybe not in his
13 right mind at the time. Outside of that, if
14 it was premeditated ---

15 THE COURT: Let me interject.
16 All murders are premeditated. Okay?
17 Please proceed.

18 JUROR NUMBER 69: Okay.

19 EXAMINATION CONTINUED

20 BY SCARLETT WILSON:

21 Q. Go ahead.

22 A. Then the death penalty would be ---

23 Q. You would lean towards death in a
24 premeditated murder ---

25 A. Yes, ma'am.

1 Q. With aggravating circumstances?

2 A. Yes, ma'am.

3 Q. That's okay. Again the question is
4 just whether or not you would be open to
5 hearing things about mitigation and things
6 about the Defendant. It sounds like you're
7 saying that some things would be more
8 important to you than others, ---

9 A. Yes.

10 Q. That you would listen to them all and
11 consider them all?

12 A. I would listen to them and consider
13 them all; yes, ma'am, that would be correct.

14 Q. And I believe that you said that it is
15 hard for you unless you hear them whether
16 they would be that important?

17 A. Right.

18 SCARLETT WILSON: That's all that
19 I have, Your Honor.

20 THE COURT: Mr. Maguire.

21 WILLIAM MAGUIRE: Thank you, Your
22 Honor.

23 EXAMINATION

24 BY MR. MAGUIRE:

25 Q. Mr. Creel, good afternoon, how are you

1 doing today?

2 A. Okay.

3 Q. No reason to be nervous.

4 A. Okay.

5 Q. No wrong answers, nothing that you can
6 say that is a wrong answer. I am just going
7 to talk to you kind of like we were in my
8 kitchen or your kitchen, just talking about
9 your thoughts. Okay?

10 A. Okay.

11 Q. So just be completely at-ease. The
12 only thing that we're asking for is honesty.
13 Okay?

14 A. (Affirmative nod).

15 THE COURT: Why don't you move
16 out on the deck?

17 WILLIAM MAGUIRE: I'm sorry?

18 THE COURT: Why don't you move
19 out on the deck? You've been in the kitchen
20 for two days now.

21 WILLIAM MAGUIRE: Oh, -- sorry.

22 THE COURT: Or maybe the front
23 porch. Go ahead.

24 WILLIAM MAGUIRE: I like the
25 kitchen, Judge.

1 THE COURT: Okay. That's where
2 everybody goes, the kitchen.

3 WILLIAM MAGUIRE: Or if you prefer
4 the deck or the front porch.

5 EXAMINATION CONTINUED

6 BY WILLIAM MAGUIRE:

7 Q. . Wherever you are comfortable, sir, I'll
8 follow you around. Okay?

9 A. Yes, sir.

10 Q. What I want to do is just talk to you a
11 little bit more in detail. There are some
12 categories of murder that for some people,
13 which is basically the category could be
14 that the death penalty is always appropriate
15 for that. . Some people might say life for a
16 child victim or for a police officer killed
17 in the line of duty.

18 I am not going to talk to you about
19 this case but I am going to give you a
20 scenario. Okay? Armed robbery, home
21 invasion, rape, robbery, murder. The person
22 knew what they were doing, chose to take a
23 completely innocent life. In that scenario,
24 what are your thoughts about the death
25 penalty as the appropriate punishment?

1 A. I wouldn't have a problem with that
2 verdict.

3 Q. Well, when you say that you wouldn't
4 have a problem with it, it sounds like that
5 is where you are starting from; that your
6 starting point would be the death penalty on
7 that.

8 SCARLETT WILSON: I object to
9 "starting point".

10 THE COURT: Overruled. Go ahead.

11 WILLIAM MAGUIRE: Thank you,
12 Judge.

13 EXAMINATION CONTINUED

14 BY WILLIAM MAGUIRE:

15 Q. What was your starting point on that?

16 A. After hearing the facts all that was
17 proven, I would probably agree with that as
18 a verdict.

19 Q. Agree with it or ---

20 A. Or a punishment, yes.

21 Q. --- you would cast your vote that way?

22 A. I would cast my vote that way.

23 Q. Okay. For instance, if it was a
24 completely secret ballot and you'all were
25 writing your votes without hearing anybody's

1 vote, your vote -- your starting point in
2 that kind of scenario would be the death
3 sentence?

4 A. Correct.

5 Q. And if I hear you correctly, it's
6 because the person knew what they were doing
7 and chose to take an innocent life?

8 A. Correct.

9 Q. And in that scenario chose to
10 intentionally take an innocent life -- that
11 your starting point is always going to be
12 the death penalty?

13 A. If they chose to, yes.

14 Q. Kind of an eye-for-an-eye; is that a
15 fair statement?

16 A. Fair assessment.

17 Q. And as long as they knew what they were
18 doing and chose to kill, uh, -- death
19 penalty is your vote?

20 A. Yes.

21 Q. Okay. And the things that the
22 prosecutor talked about briefly ---

23 A. You -- in that previous question, you
24 did include burglary, rape and something
25 else, did you not? Or was that -- did I

1 misunderstand?

2 Q. Same scenario -- home invasion,
3 burglary, armed robbery, rape, knew what
4 they were doing, took an innocent life in
5 that scenario.

6 A. Okay. I just wanted to make sure that
7 I gave my correct answer to what you asked.

8 Q. Yeah, we're on the same page.

9 A. All right.

10 Q. In that scenario, always the death
11 penalty?

12 A. Yes.

13 Q. And some of the things that we were
14 talking about earlier or that you were
15 talking about earlier with the prosecutor
16 may be something about the defendant that
17 happened twenty years ago -- say an abusive
18 father. That's not going to be relevant in
19 that decision because you're focusing on the
20 facts of the case?

21 A. Correct.

22 Q. And sometimes I describe this as sort
23 of like a game piece on a board. The
24 scenario that we've been talking about, your
25 game piece is on the death penalty and I'm

1 trying to think -- if you didn't hear
2 anything else and we just stopped the case
3 with that scenario, home invasion, burglary,
4 rape, armed robbery, murder, if you didn't
5 hear anything else you're on death penalty
6 and that's where you are going to end up.

7 Right?

8 A. If I didn't hear anything else, yes.

9 Q. And we already established that
10 something that may have happened ten years
11 ago or twenty years ago to somebody, that is
12 not really going to be relevant in your
13 decision making process given that scenario
14 on those facts?

15 A. I'd have to say that unless it was
16 pretty severe that, no, it wouldn't.

17 Q. Okay. Because your focus is on the
18 person being in the right mind and that they
19 chose?

20 A. Correct.

21 Q. Because things that happen in someone's
22 life, as long as they know what they are
23 doing, they can chose to kill, that's what
24 you are going to hold them accountable for?

25 A. Correct.

1 Q. Okay. Mr. Creel, that's all that I
2 have for you. Thank you for coming.

3 THE COURT: Solicitor.

4 EXAMINATION RESUMED

5 BY SCARLETT WILSON:

6 Q. Mr. Creek, you talked about what you
7 would focus on and then you said unless it
8 was something severe about the Defendant's
9 life or past; is that right?

10 A. Correct.

11 Q. So you would still, even after hearing
12 something really bad -- aggravating
13 circumstances, rape, burglary, whatever --
14 you could still listen and consider things
15 about the Defendant?

16 A. It would have to be very severe. I
17 mean, I can't even think of anything ---

18 Q. You can't name what it would be?

19 A. Right.

20 Q. But you could keep an open mind ---

21 WILLIAM MAGUIRE: Objection.

22 Asked and answered.

23 THE COURT: Overruled.

24 EXAMINATION CONTINUED

25 BY SCARLETT WILSON:

1 Q. Could you keep an open mind, even after
2 hearing burglary, rape, murder?

3 A. Yes, ma'am.

4 SCARLETT WILSON: That's all that
5 I have, Your Honor.

6 THE COURT: Okay. Mr. Creel, if
7 you will just step out in the hall for a
8 minute, please.

9 (JUROR NUMBER 69 EXITS COURTROOM)

10 THE COURT: Any Motions?

11 WILLIAM MAGUIRE: Yes, sir.

12 THE COURT: Let me just ask the
13 Solicitor a few things. Solicitor, let me
14 ask you a few questions. He said that he
15 could consider some of the other things
16 other than the facts and circumstances of
17 the crime but -- as you crossed, you asked
18 him about -- he said that unless it was
19 severe, and then he said 'I can't think of
20 anything that would be severe enough to make
21 me back off the death penalty.'

22 Let me hear your argument why I
23 should keep him.

24 SCARLETT WILSON: Your Honor, I
25 think we are getting into situations where

1 they don't know what all that entails, what
2 all mitigation entails. I think what is
3 important is that he went -- when asked if
4 it would be automatic, he said 'yes, unless
5 there was something else.' He is not going
6 to know it until he hears it. He hasn't
7 predetermined it.

8 It's like the lady yesterday who we
9 qualified that said ninety-five percent life
10 without parole, but there were things that
11 she could do it. He's in that situation.

12 THE COURT: The problem that I
13 have with what he said, Solicitor, is that
14 -- and he vacillated when the question was
15 asked, because you'all led him.

16 SCARLETT WILSON: Right.

17 THE COURT: And I understand
18 that.

19 SCARLETT WILSON: Sure.

20 THE COURT: But in your question
21 -- and I don't remember specifically what
22 you asked him but, in essence, you asked him
23 'what would you consider'; and he said, 'I
24 can't think of anything.'

25 SCARLETT WILSON: Judge, I think

1 that has happened a number of times, not
2 necessarily in this exact scenario but a
3 number of times where people can't think of
4 an example of how heinous something would
5 have to be. Then they say 'well, a child.'
6 They can't come up ---

7 THE COURT: You were specifically
8 asking about circumstances affecting the
9 defendant when he said that.

10 SCARLETT WILSON: Right, I
11 understand that. I think that it -- again,
12 this juror also testified that this was his
13 first time being involved in anything like
14 this, he wasn't clear on everything and I
15 think that it would be hard on-the-spot,
16 sitting there, first time you've ever
17 thought about this stuff to come up with
18 reasons that we all think fit.

19 What is key and what qualifies him
20 is that he is willing to hold off, listen
21 and consider. I think that he is a
22 definitely a leaner for us, no question
23 about it.

24 THE COURT: Sorry, he's a what?

25 SCARLETT WILSON: He is definitely

1 a leaner for death, there's no question
2 about that.

3 THE COURT: Oh, yeah.

4 SCARLETT WILSON: But that doesn't
5 disqualify him.

6 THE COURT: He is awfully close
7 to a type one (sic).

8 SCARLETT WILSON: He is close but
9 he is not there. He is no different than
10 the lady yesterday.

11 THE COURT: You will have to
12 refresh my memory about the lady yesterday,
13 Solicitor. I am not sure that I remember
14 which one that you're talking about. Sorry.

15 SCARLETT WILSON: She was the lady
16 who had the dog at home.

17 THE COURT: Oh, yeah, who was
18 worried about her little dog.

19 SCARLETT WILSON: And who had been
20 through the Orangeburg stuff that happened
21 in the '60s.

22 THE COURT: That's right.

23 SCARLETT WILSON: And she was
24 definitely a life leaner. I mean, she
25 leaned towards life -- "ninety-five percent

1 of the time" is something that she came up
2 with but she could keep an open mind and
3 there could be situations where she felt the
4 death penalty might be appropriate.

5 THE COURT: Okay.

6 WILLIAM MAGUIRE: Judge, I am not
7 sure how much you want to hear from me. I
8 mean, I can cite the typical death penalty
9 cases: 'extreme hardship, death in
10 different, if you're waffling or if you're
11 undecided at all, you'll always err on the
12 side of caution.' I don't think it's even a
13 close call. He had his whole mind ---

14 THE COURT: I know you don't but
15 I do.

16 WILLIAM MAGUIRE: I understand.
17 Judge, he had -- after having been
18 instructed by you, you know, very carefully,
19 what mitigation is, he -- examples of it,
20 examples from the prosecutor, examples from
21 me, he had the universe of his imagination
22 and his history of life to try to think of
23 something and he couldn't come up with one.
24 He's so clearly mitigation impaired
25 that I -- I don't think that there could be

1 a clearer case unless he just said, 'I am
2 not considering anything.'

3 THE COURT: All right. Let me
4 put a big question mark and I'll think about
5 it. Can you put him somewhere for a little
6 while and call the next one.

7 CLERK: Yes, sir.

8 (JUROR NUMBER 16 ENTERS COURTROOM)

9 BAILIFF: Please state your
10 name for the record.

11 JUROR NUMBER 16: Kenneth
12 Barrineau.

13 THE COURT: I'm sorry, what was
14 your name?

15 JUROR NUMBER 16: Kenneth
16 Barrineau.

17 THE COURT: Mr. Barrineau, have
18 you reviewed this sheet concerning the
19 various opinions about the death penalty?

20 JUROR NUMBER 16: Yes, sir.

21 THE COURT: Did you understand
22 it?

23 JUROR NUMBER 16: Yes, sir.

24 THE COURT: Did you fit in either
25 type one, two or three?

1 JUROR NUMBER 16: Yes, sir.

2 THE COURT: Which type?

3 JUROR NUMBER 16: Two.

4 THE COURT: Type two?

5 JUROR NUMBER 16: Yes, sir.

6 THE COURT: You would fit in

7 category two, you would give the death
8 penalty irregardless?

9 JUROR NUMBER 16: Yes, sir.

10 THE COURT: Is that correct?

11 JUROR NUMBER 16: Yes, sir.

12 THE COURT: Thank you, Mr.

13 Barrineau. I will excuse you from jury
14 service.

15 JUROR NUMBER 16: Thank you.

16 (JUROR NUMBER 16 EXCUSED)

17 (JUROR NUMBER 16 EXITS COURTROOM)

18 THE COURT: Bring us the next
19 one.

20 (JUROR NUMBER 33 ENTERS COURTROOM)

21 JUROR NUMBER 33: I'm number 33,
22 Judy Branham.

23 THE COURT: Yes, ma'am, Ms.
24 Branham. How you doing?

25 JUROR NUMBER 33: Doing fine.

1 THE COURT: Have you had an
2 opportunity to review this sheet concerning
3 opinions about death penalty?

4 JUROR NUMBER 33: I have.

5 THE COURT: Did you understand
6 it?

7 JUROR NUMBER 33: I do.

8 THE COURT: Do you fit in type
9 one, two or three?

10 JUROR NUMBER 33: Between one and
11 three.

12 THE COURT: Pardon?

13 JUROR NUMBER 33: I have -- I
14 don't know about the life sentence, but I
15 think I could probably do the death penalty
16 if I had to. So I guess it would be three.

17 THE COURT: So you think that you
18 vacillate between one and three?

19 JUROR NUMBER 33: Right.

20 THE COURT: Is that correct?

21 JUROR NUMBER 33: That's correct.

22 THE COURT: Okay, let me ask you
23 a few questions.

24 JUDY BRANHAM, having been
25 previously sworn to tell the truth testified

1 as follows:

2 EXAMINATION

3 BY THE COURT:

4 Q. Do you understand that one states that
5 you could never, under any circumstances,
6 give the death penalty?

7 A. At first I thought that but I think
8 that I am leaning towards three.

9 Q. Pardon?

10 A. I think that I am leaning towards
11 three.

12 Q. Number three says that depending on the
13 facts and circumstances you would consider
14 those facts and circumstances before you did
15 or didn't?

16 A. Yes, sir. I was leaning towards one
17 but I went to three.

18 Q. Okay. I guess my difficulty -- and I'm
19 not trying to pin you down, but I need you
20 to say, 'Hey, I'm ...' ---

21 A. It would be hard for me to put the
22 death penalty on somebody because of my
23 faith.

24 Q. Pardon?

25 A. It would be hard for me to do that.

1 Q. Let me explore that with me for just a
2 few minutes. Is that just based on personal
3 conviction, religious beliefs or what?

4 A. My faith.

5 Q. Pardon?

6 A. My faith.

7 Q. Pardon?

8 A. My faith.

9 Q. What is your faith?

10 A. I am a Baptist. It bothers me. That
11 doesn't mean that I can't make that decision
12 but it would be hard for me to do it.

13 Q. Does it bother you because you'd be
14 sitting in judgment of a fellow human being
15 or what bothers ---

16 A. Yes.

17 Q. --- about it?

18 A. The fact of taking somebody else's
19 life.

20 Q. Do you understand that it is not just
21 you, it is twelve people that have to
22 unanimously agree?

23 A. I understand.

24 Q. And it is a collective reasoning of a
25 collective process between twelve people,

1 not just one?

2 A. I do.

3 Q. Do you understand that?

4 A. That's what makes me lean towards the
5 third one, since I would want to hear all
6 the facts before I made that judgment. I
7 really am leaning more toward three.

8 Q. Pardon?

9 A. I am leaning more towards three than I
10 am one. I would have to hear all the facts
11 before I ---

12 Q. I'm sorry. What?

13 A. I'm sorry for my voice. I would have
14 to hear all the facts before I made my
15 judgment on that. I mean, it would make me
16 do some soul searching but I could probably
17 do it.

18 Q. Did you understand what I was telling
19 you about the aggravating circumstances and
20 the mitigating circumstances?

21 A. Yes, sir.

22 Q. All right. Did you have an opportunity
23 to read the witness list?

24 A. Yes, sir. I don't recognize anybody.

25 Q. You don't know anybody or recognize any

1 names?

2 A. No, sir.

3 Q. I am going to ask you some other
4 questions but right now I'm going to let the
5 attorneys ask you some questions. Okay?

6 A. Okay.

7 Q. Do you have any knowledge of the case,
8 has anybody talked to you about the case?

9 A. The water cooler gossip out in the area
10 but I am not sure exactly what the case is
11 about. I don't know any names.

12 Q. You read something in the paper?

13 A. I didn't -- someone else, one of the
14 jurors out there was talking about picking
15 juries for a crime. So -- I really wasn't
16 paying that much attention to it.

17 Q. Do you remember specifically what you
18 heard?

19 A. I think about maybe a murder trial.
20 Other than that, I really wasn't paying that
21 much close attention because I do not ---

22 Q. Somebody said that it was a murder
23 trial?

24 A. That's what somebody out there said,
25 yes, sir.

1 Q. They were correct. It is.

2 A. Apparently so.

3 Q. Do you remember anything else that was
4 said?

5 A. No.

6 Q. Do you have any relatives or close
7 friends that are employed in law
8 enforcement?

9 A. My uncle was the police chief in North
10 Myrtle Beach for thirty-five years. Then he
11 became the Commissioner who hired the police
12 chief.

13 Q. Whereabouts?

14 A. North Myrtle Beach.

15 Q. North Myrtle Beach?

16 A. (Affirmative nod).

17 Q. Okay. With that cause you any
18 difficulty in sitting on the jury?

19 A. No.

20 Q. Can you set that relationship aside
21 and be fair to both the State and to the
22 Defendant?

23 A. Yes.

24 Q. Has the solicitor prosecuted you or
25 any member of your family?

1 A. No.

2 Q. Is there any member of your family or
3 close friends who have ever been the victim
4 of a crime?

5 A. Yes.

6 Q. Who?

7 A. One of my friends was murdered.

8 Q. What happened?

9 A. He was a bouncer at Three Fat Guys in
10 North Charleston and a nineteen-year-old
11 came back and shot him because they would
12 not let him into the bar, because he was
13 nineteen years old.

14 Q. Let me interrupt you just a second.

15 THE COURT: Can everybody hear
16 her?

17 WILLIAM MAGUIRE: Yes, sir.

18 SCARLETT WILSON: (Affirmative
19 nod).

20 EXAMINATION CONTINUED

21 BY THE COURT:

22 Q. What was the results of that?

23 A. He got twenty years in jail.

24 Q. Twenty years in jail?

25 A. Yes, sir.

1 Q. As a result of that, do you have any
2 bias or prejudice towards defendants in
3 general?

4 A. No.

5 Q. Do you have any relatives in jail?

6 A. No, sir.

7 Q. Are you a member of any groups that
8 support law enforcement, such as MADD?

9 A. No, sir.

10 Q. To have any special or particular
11 interest in the outcome of this case?

12 A. No, sir..

13 Q. Are you aware of any bias or prejudice
14 towards the defendant as a result of his
15 race, being black?

16 A. No, sir..

17 Q. I read the charges to you earlier
18 today. Do you have any biases or prejudices
19 against the defendant as a result of the
20 charges?

21 A. No, sir.

22 Q. Do you have any bias or prejudice is
23 for or against the defendant as a result of
24 your religious beliefs?

25 A. No, sir.

1 Q. Do you have any bias or prejudice this
2 for our against the State because of your
3 religious beliefs?

4 A. No, sir.

5 Q. Do you know of any reason, personal or
6 otherwise, as to why you could not serve on
7 this jury?

8 A. No, sir.

9 Q. Do you know of any reason why you
10 cannot give a fair and impartial trial to
11 the State and to the Defendant?

12 A. No, sir.

13 Q. Do you understand that if you are on
14 the jury and if all twelve of you made the
15 decision, after listening to the aggravation
16 being proven by the State, and if in the
17 jurors minds this was proven, and you have
18 listened to all of the mitigating
19 circumstances, considered the mitigation,
20 all twelve of you agree that the Defendant
21 should receive death, you will have to sign
22 your name to a verdict form. Do you
23 understand that?

24 A. Yes, sir.

25 Q. If that was your vote, would you be

1 able to sign your name?

2 A. Yes, sir.

3 Q. Can you just give our tell me in your
4 own words, since you vacillate between one
5 and two (sic) what type of situation or what
6 type of factual scenario would require you
7 to consider or vote for the death penalty?

8 A. I am not sure what the scenarios with
9 that, I am just bouncing between the two of
10 them because I don't know that I want to
11 kill anybody, that -- I am leaning towards
12 -- once I hear all the facts, if it turned
13 out to be guilty, then I would have to do
14 that. I would have to face my own religious
15 background for that.

16 Q. Your own what?

17 A. My own religious beliefs and stuff, I
18 would have to confront it and do that to the
19 best my ability because it would be my job
20 to listen to all the facts and give my vote
21 on that, whether it would be death or not.

22 Q. Well, you can't tell me what type of
23 crime or what type of facts would ---

24 A. I would think murder.

25 Q. What?

1 A. Murder would be a hard one for me to
2 adjust for, because it is somebody's life.

3 Q. Do you understand that all murders are
4 intentional in South Carolina?

5 A. Yes, sir.

6 Q. All murders are premeditated?

7 A. Yes, sir.

8 Q. That all murder is bad?

9 A. Yes, sir.

10 Q. What about a murder that in your
11 opinion would make you want to go with the
12 death penalty are not go with the death
13 penalty?

14 A. I had a hard time whenever my friend.
15 It probably would not have been wise for me
16 to be on that jury, because I still have a
17 tough time believing that you can take
18 somebody's life. But if a person -- if it
19 had been proven beyond a shadow of a doubt
20 that he was guilty, I don't think that I
21 would have a problem with giving him the
22 death penalty for it.

23 Q. Which you be able to follow the
24 instructions that the court would give to
25 you?

1 A. Yes, sir.

2 THE COURT: Whose turn? Mr.
3 Maguire.

4 EXAMINATION

5 BY WILLIAM MAGUIRE:

6 Q. Ms. Branham, good afternoon.

7 A. Good afternoon.

8 Q. Thank you for being here. I know that
9 it is difficult and sometimes it's hard
10 thinking about wrestling with these issues.
11 The only thing that we are going to ask of
12 you is your honesty.

13 A. Okay.

14 Q. We appreciate that you have been honest
15 so far and we are just going to ask you to
16 keep doing that. Okay?

17 A. Okay.

18 Q. No reason to be nervous. Just pretend
19 that you and I are talking, maybe on your
20 porch. Okay?

21 A. Okay.

22 Q. So let me give you a more specific
23 definition of murder in South Carolina, so
24 that we are clearly on the same page. Okay?

25 A. Okay.

1 Q. Like the Judge said, all murders in
2 South Carolina are intentional. They are an
3 unlawful, intentional killing of a innocent
4 person with malice aforethought.

5 Malice aforethought has been defined by
6 our courts as having a black and depraved
7 heart fatally bent on wickedness and
8 mischief.

9 So you have a person who knew what they
10 were doing. It was not self-defense, it is
11 not accident, none of those things. It's
12 the intentional taking of innocent life.

13 In that situation, what are your
14 thoughts about the death penalty as the
15 appropriate punishment?

16 A. I could -- (pause) -- I could actually
17 vote for the death penalty for that.

18 Q. Okay. Without hearing more, with just
19 what I gave you, would that always be your
20 starting point, the death penalty?

21 A. Yes, sir.

22 Q. And it's -- it is your religious faith
23 that you would wrestle with in actually
24 having to face doing it?

25 A. Yes.

1 Q. It sounds like you have a logical
2 argument and then certainly the emotional,
3 religious argument?

4 A. Yes, sir.

5 Q. And you are wrestling with ---

6 A. My own heart.

7 Q. Can I get you some water?

8 A. No, I'm fine. Have a cold.

9 Q. I've been wrestling with that myself.

10 A. Um-humm.

11 Q. It sounds like that it a difficult
12 wrestling that you're having?

13 A. It is.

14 Q. But you could resolve it and follow the
15 Judge's instruction and the law?

16 A. Yes, sir, I could.

17 Q. And render a verdict?

18 A. Yes, sir.

19 Q. Although it sounds like it could be
20 very difficult.

21 A. (Affirmative nod).

22 Q. A lot of people show up to court with
23 some confusion about the law. Do you
24 understand that the death penalty is never
25 automatic?

1 A. Yes, sir.

2 Q. It is always the jury's decision?

3 A. Yes, sir.

4 Q. It is not like 'if the State proves
5 this, this and this' then death is
6 automatically the verdict. That's never the
7 case.

8 A. Right.

9 Q. The State is always satisfied with a
10 life sentence. Does that sound like a fair
11 proposition?

12 A. It does.

13 Q. We have already established that you
14 would wrestle deeply with knowing that your
15 one vote could end someone's life or give
16 them life without parole in prison?

17 A. Yes, sir.

18 Q. If you heard that scenario that I
19 talked about, the intentional taking of an
20 innocent life, can you think of any reason
21 why the death penalty would not be
22 appropriate?

23 A. Not right-hand, no, sir.

24 Q. Okay. Things about the Defendant's
25 life, like the Judge talked about briefly,

1 things in their background, their childhood,
2 say they had a really difficult childhood,
3 but that they still knew right from wrong,
4 would those things be relevant in your
5 decision-making with regard to the death
6 penalty?

7 A. No, sir. They should know right from
8 wrong.

9 Q. Right. As long as the person knows
10 right from wrong and they have chosen to
11 take an innocent life, that is what helps
12 you?

13 A. Right.

14 Q. Just a second -- Ms. Branham, I
15 appreciate your honesty. Thank you so much.
16 Thanks for coming.

17 THE COURT: Solicitor?

18 SCARLETT WILSON: Beg the Court's
19 indulgence.

20 THE COURT: Yes, ma'am.

21 SCARLETT WILSON: (Sidebar with
22 Mr. Durant). Ms. Branham, I don't have any
23 questions for you. Thank you.

24 THE COURT: Ma'am, would you step
25 out into the hallway?

1 (JUROR NUMBER 33 EXITS COURTROOM)

2 THE COURT: Any Motions?

3 WILLIAM MAGUIRE: One second -- if
4 I could have one second. We are a little
5 tore about this, Judge.

6 THE COURT: You had a hundred
7 eighty degree reversal on you.

8 WILLIAM MAGUIRE: Judge, I am
9 wrestling as hard with her as she is with
10 her faith. Judge, we would have to make a
11 Motion to excuse her for cause.

12 THE COURT: Granted. I'm sorry,
13 Solicitor. Did you have some argument on
14 that?

15 SCARLETT WILSON: No, sir.

16 THE COURT: I didn't figure you
17 did since you didn't ask any questions. I
18 figured that you didn't want to burn a
19 strike on her.

20 All right, let me see. We've got
21 Mr. John Reeb. It's 1:00 o'clock, let me
22 see the attorneys up here for just a second.
23 How many panels do we have backed up now?

24 CHIEF BAILIFF, JO ALLISON: We
25 have one in the conference room that you

1 have already talked with and another one in
2 the jury panel room and we still have one
3 more juror in here.

4 (JUROR NUMBER 33 ENTERS COURTROOM)

5 THE COURT: Yeah, we've got one
6 more here and then we've got Mr. Creel that
7 I've got to make a decision on.

8 BENCH CONFERENCE;

9 THE COURT: Do you want to
10 finish this panel or take lunch?

11 BRUCE DURANT: Whatever you
12 want to do. It's taking -- whatever.

13 (BENCH CONFERENCE)

14 THE COURT: Why don't you tell
15 that second group to come back at 2:30?

16 BAILIFF: And the other one?

17 THE COURT: Is anyone getting
18 track.

19 CLERK: The panel that you have
20 is the 9:30 one.

21 THE COURT: Okay. Why don't we
22 tell both of them to come back -- now, one
23 we have already the briefing on so they are
24 ready to be brought in individually. Bring
25 them back at 2:30 and then let's bring the

1 other ones back at 3:30. It's 1:00 o'clock
2 now.

3 CLERK: Panel Number 8 is ready,
4 and so we have three after that.

5 THE COURT: Panel 8, we've
6 already talked to them.

7 (OFF RECORD DISCUSSION RE: LUNCH
8 AND DISCUSSION OF WHEN PANELS ARE TO RETURN)

9 THE COURT: We need to speed it
10 up.

11 BRUCE DURANT: It doesn't seem
12 to be speeding up much.

13 THE COURT: Bring John Reeb in.

14 BRUCE DURANT: What about Ms.
15 Branham?

16 THE COURT: Yeah, bring Judy
17 Branham in.

18 (JUROR NUMBER 33 ENTERS COURTROOM)

19 THE COURT: Ms. Branham, I want
20 to thank you for your honesty and your
21 truthfulness in your answer. I am going to
22 find you disqualified for serving on a death
23 penalty jury. Okay. Have a good day and
24 thank you so very much.

25 (JUROR NUMBER 33 EXCUSED)

1 (JUROR NUMBER 33 EXITS COURTROOM)

2 THE COURT: Bring in the next
3 juror, please.

4 (JUROR NUMBER 285 ENTERS COURTROOM)

5 CLERK: State your name.

6 JUROR NUMBER 256: John Reeb.

7 JOHN REEB, having been previously
8 sworn to tell the truth testified as
9 follows:

10 EXAMINATION

11 BY THE COURT:

12 Q. Mr. Reeb, have you had an opportunity
13 to look at the categories of opinions about
14 the death penalty?

15 A. Yes, I have.

16 Q. Could you determine where you fit into?
17 Category one, two, three?

18 A. Yes, I fit into three.

19 Q. Three?

20 A. (Affirmative nod).

21 Q. Have you had an opportunity to look and
22 review the list of potential witnesses?

23 A. Yes, I have.

24 Q. Did you recognize or do you know
25 anybody on that list?

1 A. No, I do not.

2 Q. You do not recognize any names?

3 A. No names.

4 Q. All right, I'm going to ask you some
5 questions and the attorneys will be asking
6 you some questions. Okay?

7 A. Sure.

8 Q. Have you heard anybody talk about the
9 case?

10 A. No.

11 Q. In the courtroom or in the courthouse
12 or anywhere?

13 A. No.

14 Q. Have you read anything in the paper?

15 A. No.

16 Q. See anything on television?

17 A. No.

18 Q. Do you have any relatives or close
19 friends employed in law enforcement?

20 A. No.

21 Q. Has the solicitor prosecuted you or any
22 member of your family?

23 A. No.

24 Q. Have you or any member of your family
25 or any close personal friend ever been the

1 victim of a crime?

2 A. No.

3 Q. Do you have any relatives in jail?

4 A. No.

5 Q. Are you a member of any groups that
6 primarily support law enforcement, like
7 MADD?

8 A. No.

9 Q. Do you have any special or particular
10 interest in the outcome of this case?

11 A. No.

12 Q. Are you aware of any bias or prejudice
13 as a result of your religious beliefs, for
14 or against the defendant?

15 A. No.

16 Q. Are you aware of any bias or prejudice
17 based on religious beliefs for or against
18 the State?

19 A. No.

20 Q. Do you have any bias or prejudice
21 against the defendant because of his race,
22 being black?

23 A. No.

24 Q. I read the charges to you earlier
25 today. Just based on the charges.

1 themselves, do you have any bias or
2 prejudice against the defendant?

3 A. No.

4 Q. Have you had any bad experiences or
5 good experiences with law enforcement?

6 A. Traffic tickets, that's about -- no.

7 Q. Was that good experience or a bad
8 experience?

9 A. Well, they have -- yeah, I had one that
10 I did not like the way that it came out on
11 an accident, but that would be it.

12 Q. Did that cause any bias or prejudice
13 against law enforcement?

14 A. No.

15 Q. Do you have any reason, personal or
16 otherwise, as to why you could not serve on
17 this jury?

18 A. No.

19 Q. Is there any reason why you could not
20 give a fair and impartial trial to both the
21 State and to the Defendant?

22 A. No.

23 EXAMINATION

24 BY SCARLETT WILSON:

25 Q. Good afternoon, Mr. Reeb. Thank you

1 for hanging in there with us. I know that
2 there has been a lot of hurrying up and
3 waiting.

4 A. Yes.

5 Q. What we need to do is just sort of get
6 your thoughts on life without parole and the
7 death penalty.

8 A. Yes.

9 Q. There is not a right or wrong answer.

10 A. Yes.

11 Q. Before this week, had you had any
12 experience with following death penalty
13 cases or knowing how they work here in South
14 Carolina?

15 A. No, I -- we -- I've only just been in
16 South Carolina for about fifteen months but
17 even in -- I am from Ohio.

18 Q. Do they have the death penalty in Ohio?

19 A. Yes, they do.

20 Q. Did you know -- do you know now or did
21 you know before now that the death penalty
22 wasn't an option in every murder case?

23 A. Correct.

24 Q. And did you understand from reading
25 your sheet, especially that first sort of

1 introductory paragraph that in South
2 Carolina we don't have different degrees of
3 murder? Murder is an intentional killing.
4 It is not a killing where there's an
5 accident or there is some sort of legal
6 provocation or where self-defense is
7 involved. Did you understand that?

8 A. Yes, I did.

9 Q. So in a case where a jury is
10 considering the death penalty, that
11 situation would be where a defendant has
12 been found guilty, no question that he did
13 it, that he committed that murder with
14 malice aforethought -- which means a heart
15 fatally bent on mischief, mean.

16 That's what we are talking about when
17 we move on to this second phase, the penalty
18 phase.

19 Do you understand that?

20 A. Yes, I do.

21 Q. Okay. Even knowing that, that if you
22 were on a jury considering the death
23 penalty, that collective jury would have
24 already decided beyond a reasonable doubt
25 that this person was guilty.

1 Then the State would be put to the
2 burden of proving an aggravating
3 circumstance.

4 A. Yes.

5 Q. Could you, based upon your being a
6 number three, could you hold us to that
7 burden and hold off on making your decision
8 I bout life without parole board Until we
9 met that burden?

10 A. Yes.

11 Q. And, likewise, even if we did that,
12 even if we proved an aggravating
13 circumstance, it may be that there was a
14 burglary involved, or a rape involved, some
15 sort of torture involved, could you still
16 keep an open mind and listen to things about
17 the defendant, his life before making your
18 recommendation?

19 A. Yes.

20 Q. Tell me your thoughts just generally
21 about the death penalty.

22 A. I believe that in the act of the crime
23 itself, if someone is murdered that a --
24 that with the proof -- for me, I would have
25 to be, it would have to be, it would have to

1 be definite proof to me, to me, that this
2 was something that the person that committed
3 the crime really had intentions of injuring
4 someone to start out with.

5 Q. Now, again -- and I know that I am
6 being a little bit redundant.

7 A. That's all right.

8 Q. Remember, now, to even consider the
9 death penalty, that's already doing to have
10 bene decided.

11 A. Correct.

12 Q. And you said that you're a juror type
13 thee, which means that in some murders you
14 think the death penalty would be appropriate
15 and that in some murders that it wouldn't be
16 appropriate.

17 A. That's correct.

18 Q. I guess what I am getting at is, you're
19 -- if you're on a death penalty jury in the
20 penalty phase, the person is already guilty.

21 A. Okay. Correct.

22 Q. It has already been decided that it was
23 intentional.

24 A. Right.

25 Q. The only thing left is whether or not

1 the State proves that aggravating
2 circumstance.

3 A. That's correct.

4 Q. And you said that you would hold us to
5 that burden.

6 A. That's correct.

7 Q. Okay. If we met that burden, could you
8 still listen to things about the defendant
9 and move away from the death penalty towards
10 Life without the possibility of parole?

11 A. I see what you're saying. If it was
12 already proven to me, like you said, that
13 would be obviously my vote because we have
14 already gone pass that stage.

15 Q. Right.

16 A. Then I would hold to that stance that
17 the ---

18 Q. Your vote would have already been
19 guilty?

20 A. Right.

21 WILLIAM MAGUIRE: Objection, Your
22 Honor. Let him finish the answer.

23 THE COURT: Overruled. Go ahead.

24 EXAMINATION CONTINUED

25 BY SCARLETT WILSON:

1 Q. You're talking about that if you'd
2 already voted for guilty that you would be
3 there?

4 A. That's correct.

5 Q. Okay.

6 A. Yes, sir.

7 Q. Again, and I know that this is kind of
8 new to you?

9 A. That's fine.

10 Q. We are now talking about this second
11 phase?

12 A. Yes, I understand.

13 Q. There wouldn't be a vote until the end?

14 A. That's correct.

15 Q. Until the State finished presenting
16 aggravating circumstances.

17 A. Right.

18 Q. And if the defense wanted to, if they
19 wanted to they presented mitigation?

20 A. That's correct.

21 Q. Things about the defendant and his
22 life?

23 A. That's correct.

24 Q. The question is, could you really hold
25 off in your heart in making a decision until

1 you heard it all?

2 A. Yes. . . That's the kind of person that I
3 believe that I am, that I don't make snap
4 decisions.~ I like to hear all the
5 information first and then -- if there was
6 any mitigating circumstances that were
7 presented and, like you said, in my heart I
8 believed was something to -- that I felt
9 needed to help me make my decision, then I
10 would look at that. Yes. . .

11 Q. Can you think of some things that might
12 make you want to give a life without parole
13 sentence, even for a malicious, brutal
14 murder?

15 A. I guess that I don't have a lot of
16 experience with that to be able to come up
17 with too many. Uh, -- I guess I would have
18 to be open to whatever was said. I don't
19 know that I would be able to come up with
20 any off the top of my head. If that's okay.

21 Q. Yeah. Again, there's not a right or
22 wrong answer. . .

23 A. I understand. . .

24 Q. 'Some of the ones that are listed in the
25 statue, I think the Judge read off to you.

1 A. Right.

2 Q. There were some about the defendant's
3 background, his upbringing, substance abuse,
4 many abuse as a child, maybe not much of a
5 criminal record. Could you factor those
6 into your decision?

7 A. Yes, definitely.

8 Q. And could there be a situation where
9 those things could move you from the death
10 penalty to Life without the possibility of
11 parole?

12 A. Yes.

13 SCARLETT WILSON: That's all that
14 I have, Your Honor.

15 THE COURT: Mr. Maguire?

16 WILLIAM MAGUIRE: Thank you, Your
17 Honor.

18 EXAMINATION

19 BY WILLIAM MAGUIRE:

20 Q. Mr. Reeb -- did I pronounce that
21 correctly?

22 A. Yes, sir.

23 Q. You're from Ohio?

24 A. Yes.

25 Q. Are you familiar with the legal system

1 in Ohio, to any extent, regarding criminal
2 justice?

3 A. No, not really. I never served on a
4 jury, I've never -- no, not really.

5 Q. Would it be fair to say that most of
6 your legal knowledge comes from TV, news,
7 that sort of thing?

8 A. Yeah, *Law & Order* and all that. Yeah,
9 that's probably true.

10 Q. Because we throw out terms and
11 sometimes I know what they mean or the
12 prosecutor knows what they mean but
13 sometimes we forget that we need to bring
14 you along with us.

15 A. That's right.

16 Q. So what I am going to do is that I am
17 going to go backwards a little bit and we're
18 going to talk about a relatively detailed
19 definition of murder in South Carolina.
20 Okay?

21 A. Yes.

22 Q. Murder and South Carolina is the
23 unlawful and intentional killing of an
24 innocent person who with malice afore-
25 thought.

1 Malice has been described by our courts
2 as having a black, depraved heart fatally
3 bent on wickedness and mischief.

4 A. Um-humm.

5 Q. So it is a meant-to-do it, killed an
6 innocent person.

7 A. Okay.

8 Q. Not self-defense, not accident, ---

9 A. Right.

10 Q. --- not didn't know right from wrong,
11 that sort of thing.

12 A. Okay.

13 Q. Hearing that, what is your opinion as
14 to the appropriateness of the death penalty
15 in that situation?

16 A. Using that as a description, I think
17 that it is pretty justified, the death
18 penalty.

19 Q. Okay. Sometimes I talk to people in
20 terms of sort of like you're on a board game
21 and you have a piece. You get to a fork and
22 -- just hearing what you have heard from me
23 so far with the definition of murder, the
24 intentional choosing to take an innocent
25 life and you reach a fork in your board game

1 and you have to go to, 'death penalty or
2 life without the possibility of parole?'
3 Where would you place your piece, just
4 knowing what you know now.

5 A. Yeah, I understand. I would probably
6 say death penalty.

7 Q. That is your starting position?

8 A. Yeah, that's where I would start.

9 Q. Even after your starting position you
10 would hear the aggravation evidence ---

11 A. That's correct.

12 Q. --- that, as the Judge said, that .
13 increases the enormity of the crime. That
14 sounds like that would certainly keep your
15 game piece of the death penalty, hearing the
16 aggravation?

17 A. Right. Correct.

18 Q. Without talking about specifics of this
19 case, I want to throw out a scenario for you
20 and I want you to put yourself there
21 visually.

22 A. Okay.

23 Q. A crime, a home invasion -- which means
24 breaking into a house and people are in
25 there.

1 A. (Affirmative nod).

2 Q. A home invasion, rape, burglary, armed
3 robbery. That is the incident that I want
4 you to see.

5 A. Okay.

6 Q. In that situation, what are your
7 thoughts about the death penalty as the
8 appropriate punishment?

9 A. But you didn't say murder.

10 Q. I'm sorry. (Affirmative nod).

11 A. Okay.

12 Q. I left out something rather
13 significant?

14 A. Yeah.

15 Q. I thank you for being that attuned to
16 what I'm saying.

17 A. Yeah.

18 Q. A home invasion, rape, burglary, armed
19 robbery, murder. That's the scenario that I
20 want you to see.

21 A. Okay.

22 Q. Is the death penalty appropriate in
23 that situation?

24 A. Yes.

25 Q. Can you think -- in that situation, can

1 you think of anything that would make the
2 death penalty inappropriate for that?

3 A. Well, the only thing that I could think
4 of would be if there was more than one
5 person involved and that part of it. But if
6 it was just that one person, I don't know
7 that there would be anything that would
8 mitigate that.

9 Q. Okay. You can't think of anything as
10 we are sitting here that would mitigate that
11 to anything less?

12 A. Right.

13 Q. You can't think of any relevant factor
14 that would knock that down?

15 A. No.

16 Q. And when you mentioned more than one
17 person, I don't want to put words in your
18 mouth but I think maybe you were thinking of
19 if maybe somebody wasn't the triggerman or
20 somebody had a lesser role?

21 A. That's correct.

22 Q. But if you have one actor that embarks
23 on that kind of crime, they know what they
24 are doing, the death penalty is the
25 appropriate punishment?

1 A. That's what I would say.

2 Q. And will always be the appropriate
3 punishment in that kind of case?

4 A. Yes.

5 Q. And things that are not connected to
6 the crime about the defendant, like ten
7 years ago he may have had a difficult
8 childhood or stuff like that, that is not
9 going to be relevant in your analysis
10 because the facts are what drives the
11 decision?

12 A. I would say yes, that it would not be a
13 factor.

14 WILLIAM MAGUIRE: I think that's
15 all that I have. Thank you so much for
16 coming.

17 THE COURT: Solicitor?

18 EXAMINATION

19 BY SCARLETT WILSON:

20 Q. Just trying to figure out where you
21 are.

22 A. That's fine.

23 Q. When I was asking you questions earlier
24 you said that you could keep an open mind
25 and hold out before making your decision?

1 A. Yes.

2 Q. Could listen and consider mitigation.

3 A. Yes.

4 Q. But when Mr. Maguire asked you
5 questions about a hypothetical murder, you
6 said that case would always be the death
7 penalty?

8 A. Um-humm. Well, I just think that he
9 was pretty specific. Like you said, I have
10 an open mind but at that point -- I mean, he
11 was pretty specific about it and -- I would
12 say that that would be the case, that I -- I
13 don't -- and I couldn't come up with any
14 other being ---

15 Q. You aren't saying that there aren't
16 things that might move you?

17 A. No, I am not saying that. I am not
18 saying that there are things that could move
19 me. I can't think of anything that would
20 specifically from what he said, that would
21 lead me to believe that -- the only thing
22 that he said was that his background,
23 upbringing, something that happened ten
24 years ago. I don't see that as a major
25 deterrent (sic).

1 Q. What if something ten or fifteen years
2 ago affected how a defendant acted on a
3 particular occasion, that it had an affect.

4 WILLIAM MAGUIRE: Objection, Your
5 Honor.

6 THE COURT: Overruled.

7 JUROR NUMBER 285: (No verbal
8 response).

9 EXAMINATION CONTINUED

10 BY SCARLETT WILSON:

11 Q. What if somehow, some way something had
12 happened in a person's past had an effect on
13 their actions. Could you consider that?

14 A. I definitely would consider. It's just
15 that I don't -- I guess -- I guess for me --
16 I'm a retired math teacher. I like facts
17 and stuff. I need more information to be
18 able to, you know, I would definitely be
19 open to those but I -- I just -- from what
20 the -- with the small information that he
21 gave me, I don't know that I could vary from
22 that.

23 SCARLETT WILSON: Beg the Court's
24 indulgence.

25 EXAMINATION CONTINUED

1 BY SCARLETT WILSON:

2 Q. In that situation -- again that we're
3 talking about, that narrow set of things
4 that Mr. Maguire was asking you about,
5 things like lack of criminal history, things
6 like remorse, extreme remorse, could you

7 consider those and factor those in towards
8 making your decision?

9 A. (Pause) -- I would consider them. I
10 definitely would consider them. If they are
11 remorseful, I think that that is something
12 to consider.

13 I think -- you know, the crime that he
14 describes pretty graphically -- you know,
15 for something like that that would happen,
16 there would -- to me, there would have to be
17 time within the period of the crime -- he
18 talked about where the person should have
19 time to step back and say, you know, the
20 remorse afterwards is great, that's nice
21 that you have remorse but -- but when you --
22 but during that time, didn't you have time
23 to kind of step back and say, 'Where am I
24 headed with this?'

25 Q. When do you think the life without

1 parole sentence would be appropriate?

2 A. That's a good question. To me, I guess
3 is that I -- I would see it as -- as -- when
4 the -- the murder necessarily was not as
5 premeditated, not something that would
6 definitely be -- they would have thought
7 that was going to happen in the initial part
8 of the crime.

9 Q. So it would make a difference to you,
10 possibly, if it had been thought about or
11 planned out for days versus things happening
12 ---

13 A. Yeah. Well, like he said -- if it was
14 a -- like in his scenario, if it was an home
15 invasion and there was a murder but there
16 wasn't a rape and all of that that happened
17 during time, then I could see where, you
18 know, that it wasn't their intention --
19 didn't realize that somebody was there, you
20 know, something and something -- you know,
21 something went wrong. I would be open to
22 that.

23 But to me from what he described to me,
24 that there is plenty of time for you to --
25 as someone who is committing the crime, to,

1 uh, -- you know, to make a different choice.

2 Q. Okay. All right. Thank you.

3 SCARLETT WILSON: That's all that
4 I have, Your Honor.

5 THE COURT: You want to step
6 outside, please, if you would, Mr. Reeb.

7 (JUROR NUMBER 285 EXITS COURTROOM)

8 THE COURT: Any Motions?

9 WILLIAM MAGUIRE: To dismiss for
10 cause, Judge. Failure to do so would
11 violate Mr. Broughton's Sixth and Fourteenth
12 Amendments rights to an impartial fair jury.
13 If you are not entitled to let him go, I
14 would ask that I be entitled to ask him a
15 couple more questions.

16 THE COURT: We have already asked
17 him all the questions that we are going to
18 ask him but I will be glad to hear your
19 argument. I am not inclined to let him go.

20 WILLIAM MAGUIRE: Judge, he was
21 pretty clear that in an intentional, choose
22 to kill murder that he is death penalty.

23 His very last comment was, you
24 know, that if the person has some kind of
25 alternate route, they didn't take it, they

1 meant to do it, and the rape didn't happen
2 that then maybe he could think about it --
3 but, we're talking -- the evidence is an
4 intentional choose-to-kill murder and he is
5 going to vote death penalty. That's where
6 he is.

7 He also initially said to me that
8 the background stuff just wouldn't be
9 relevant. The prosecutor got him a little
10 bit along about would he consider it. But
11 the fact of the matter is that in an
12 intentional murder, choose-to-kill, when you
13 didn't have to, he's voting death. He's
14 automatic death penalty.

15 I mean, all the jurisprudence is
16 err on the side of caution. He's got to go.

17 THE COURT: Okay. Thank you.
18 Solicitor?

19 SCARLETT WILSON: Judge, I think
20 that he qualified what he was saying about
21 when he would vote for death automatically
22 and when he wouldn't. He definitely -- once
23 again, he is a leaner. But he clearly
24 understood that he would keep an open mind.

25 When he was talking about the home

1 invasion type scenario, he was talking about
2 whether or not it had been planned out for
3 days versus whether or not the person went
4 there ---.

5 WILLIAM MAGUIRE: That's just ---

6 THE COURT: Don't interrupt.

7 WILLIAM MAGUIRE: I'm sorry,
8 Judge.

9 THE COURT: Okay?

10 WILLIAM MAGUIRE: I apologize.

11 THE COURT: I'll listen to you
12 but don't interrupt.

13 BOYD YOUNG: I apologize.

14 THE COURT: Go ahead.

15 SCARLETT WILSON: It was my
16 understanding from what he was saying, is --
17 remember he was saying about a burglary or
18 home invasion, he talked about whether or
19 not there was -- if the person thought that
20 somebody was going to be there. I said, 'So
21 if it was planned days in advance, that
22 would make a difference to you versus
23 something that got out of control and
24 happened?' He said yes.

25 I think all of those things show

1 that he is considering the various factual
2 scenarios.. I think also that, he said when
3 I first talked with him initially, that
4 although he couldn't think of things that
5 would move him that he recognized that there
6 might be things that he hadn't heard.
7 Again, we're talking about people who have
8 never been in this situation, never thought
9 or heard of mitigating circumstances. He is
10 saying, 'I am open to hearing it.'

11 THE COURT: Okay. I will be glad
12 to hear you now. Stand up and tell me what
13 you want to say.

14 WILLIAM MAGUIRE: Judge, I
15 apologize for jumping up and interrupting
16 Ms. Wilson ---

17 THE COURT: I know that you get
18 excited. Just keep in your chair until they
19 finish and then I will listen to you.

20 WILLIAM MAGUIRE: Thank you,
21 Judge. Well, certainly, Judge, he was like
22 Mr. Creel, the fellow who you will cut loose
23 in just a second, who in the universe of his
24 mind, even after introductory comments from
25 you where you threw out examples and

1 described what mitigation was, examples from
2 me, examples from the prosecutor, -- in the
3 universe of his mind, nothing mattered.

4 THE COURT: Thank you very much.
5 All right. As far as Mr. Reeb is concerned,
6 I am going to find him qualified.

7 As far as Mr. Creel is concerned, I
8 am going to find him not qualified.

9 Would you bring in Mr. Reeb,
10 please? I am going to deny your Motion on
11 Mr. Reeb: I will grant it on Mr. Creel.

12 (JUROR NUMBER 285 ENTERS COURTROOM)

13 THE COURT: Mr. Reeb, the bailiff
14 is going to give you a note with a phone
15 number. I need to call in tomorrow night
16 after five o'clock. There will be
17 instructions for the jury panel.. What is
18 going to happen is that we are going to
19 qualify. So many people for a jury panel
20 and then we will draw that jury. You are
21 going to be involved in that process.
22 Please don't talk to anybody about the case.
23 She has got the phone number for you.

24 JUROR NUMBER 285: After 5:00,
25 is that what you said.

1 THE COURT: That is five o'clock
2 tomorrow.

3 (JUROR NUMBER 285 EXITS COURTROOM)

4 THE COURT: Would you bring in
5 Mr. Creel, please.

6 WILLIAM MAGUIRE: Judge, it might
7 not be necessary but I would just cite
8 *Morgan v. Illinois* as to the grounds for my
9 objection.

10 THE COURT: Okay. Anything else
11 that you want to cite for your objection?

12 WILLIAM MAGUIRE: No, thank you.

13 (JUROR NUMBER 69 ENTERS COURTROOM)

14 THE COURT: Mr. Creel, I want to
15 thank you for your sincere answers and sure
16 honest answers. I am going to find you not
17 qualified to sit on the jury. Thank you so
18 very much. You are free to go.

19 (JUROR NUMBER 69 EXCUSED)

20 (JUROR NUMBER 69 EXITS COURTROOM)

21 THE COURT: All right, we will
22 adjourn until 2:30.

23 (LUNCH RECESS 1:29 P.M. - 2:26 P.M.)

24 (DEFENDANT PRESENT)

25 THE COURT: Solicitor, do you

1 want to come take a look at this?

2 SCARLETT WILSON: Yes, sir.

3 THE COURT: Mr. Young, you can
4 come take a look at it also.

5 (OFF RECORD BENCH CONFERENCE)

6 THE COURT: We got Panel 8 coming
7 in. Are all six of them back from lunch?

8 BAILIFF: Yes, sir. Ms. Kinlaw
9 is not here but there are five ready to go.

10 THE COURT: Anything else before
11 we get started?

12 WILLIAM MAGUIRE: Yes, sir, ---

13 CLERK: Judge, we have a juror
14 coming in. Do you want her to go back out?

15 THE COURT: Ma'am, just step out
16 in the hall for just a second, please.

17 (OFF RECORD BENCH CONFERENCE)

18 THE COURT: Well, let's see what
19 happens -- it doesn't make a difference to
20 me, unless it makes a difference to you.

21 WILLIAM MAGUIRE: Well, she is the
22 other appointed lawyer on the case.

23 THE COURT: If she is not going
24 to be able to make it for some health
25 reasons, I will take care of that

1 appointment. But right now he's got
2 adequate counsel with you being here, Mr.
3 Young being here and also our -- what do you
4 call him?

5 WILLIAM MAGUIRE: Glorified
6 paralegal, Mr. Butler.

7 THE COURT: Okay. I am not going
8 to do anything right now. Let's see what
9 happens. If so some reason she cannot
10 attend trial, then I'll deal with that issue
11 at the time. Okay. Do you have any problem
12 with that?

13 WILLIAM MAGUIRE: No, sir.

14 THE COURT: Bring us the juror,
15 please.

16 (JUROR NUMBER 53 ENTERS COURTROOM)

17 CLERK: State your name, please.

18 JUROR NUMBER 53: Jeanne Cassavaw.

19 THE COURT: Ms. Cassavaw, have
20 you had an opportunity to read the sheet
21 that specifics various opinions about the
22 death penalty?

23 JUROR NUMBER 53: Yes, sir.

24 THE COURT: Have any questions
25 about it?

1 JUROR NUMBER 53: Can I give like
2 a percentage on ---

3 THE COURT: Pardon?

4 JUROR NUMBER 52: --- a couple of
5 them?

6 THE COURT: My question to you,
7 do you find yourself, that you fit into any
8 one of these categories?

9 JUROR NUMBER 52: Well, part of me
10 would be a type one.

11 THE COURT: Part would type one?

12 JUROR NUMBER 52: And the other
13 part would be type three.

14 THE COURT: Do you understand
15 type one basically says that you could never
16 ever sentence anyone to death irregardless
17 of circumstances?

18 JUROR NUMBER 52: (Affirmative
19 nod).

20 THE COURT: Type three basically
21 says before you would sentence someone to
22 death you would consider all the
23 circumstances involved and the conditions
24 surrounding it.

25 I explained to you early today

1 about the aggravating circumstances and the
2 mitigating circumstances. Do you understand
3 all that?

4 JUROR NUMBER 53: Yes.

5 THE COURT: It is your opinion
6 and there are no right or wrong answers.
7 Okay?

8 JUROR NUMBER 53: Um-humm.

9 JEANNE CASSAVAW, having been
10 previously sworn to tell the truth testified
11 as follows:

12 EXAMINATION

13 BY THE COURT:

14 EXAMINATION

15 BY THE COURT:

16 Q. I guess I need to ask you some
17 questions as to why you feel that you might
18 be a type one.

19 A. I just think that it would be on my
20 conscience to sentence ---

21 Q. Obviously it would be on your
22 conscience or you wouldn't be a
23 conscientious juror.

24 A. (No verbal response).

25 Q. It would be on anyone's conscience.

1 A. Um-humm.

2 Q. It's a heavy burden, it's an important
3 burden.

4 A. (Affirmative nod).

5 Q. Why do you think that you would fit
6 into a type three?

7 A. I feel like it is what I should do.
8 You know, as a Christian, I do believe in
9 the death penalty but -- (pause) -- it is
10 not something that I am comfortable with.

11 Q. Why aren't you comfortable with it?

12 A. I couldn't even put my dog to sleep. I
13 mean, not to be "funny" about it but I'm
14 just not comfortable.

15 Q. Do you understand that -- and I don't
16 mean to indicate that there is comfort in
17 numbers but do you understand that it is not
18 your sole decision?

19 A. Right.

20 Q. There are eleven other individuals that
21 would have to agree with your decision
22 whether it was life without parole or death.
23 Do you understand?

24 A. Yes.

25 Q. So it is not your sole decision. Let

1 me ask you this, if you were on the jury and
2 the jury did decide that the defendant in
3 the penalty phase deserved death, all twelve
4 jurors would have to sign the verdict form.

5 Would that make a difference to you?

6 A. I don't think that I could do that.

7 Q. Pardon?

8 A. I don't think that I could do that.

9 Q. You don't think you could sign the
10 verdict form?

11 A. (Negative gesture).

12 Q. You don't think you could vote to place
13 someone to death?

14 A. (Negative gesture), neither one.

15 Q. You don't think you could do either
16 one?

17 A. (Negative gesture). No, sir.

18 THE COURT: I will excuse you.

19 JUROR NUMBER 53: Thank you.

20 THE COURT: Thank you very much.

21 (JUROR NUMBER 53 EXCUSED)

22 (JUROR NUMBER 53 EXITS COURTROOM)

23 THE COURT: Bring us another one.

24 (JUROR NUMBER 215 ENTERS COURTROOM)

25 THE COURT: Your name?

1 JUROR NUMBER 215: Eric
2 Meibers.

3 THE COURT: Mr. Meibers, did you
4 have an opportunity to read the sheet that
5 listed three types of opinion about the
6 death penalty?

7 JUROR NUMBER 215: Yes, sir.

8 THE COURT: Did you understand
9 it?

10 JUROR NUMBER 215: Yes, sir.

11 THE COURT: Did you fit into any
12 of the categories?

13 JUROR NUMBER 215: I would have
14 to say number three.

15 THE COURT: Okay, I have some
16 questions for you and then the attorneys
17 will have some questions.

18 ERIC MEIBERS, having been
19 previously sworn to tell the truth testified
20 as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Did you also read the list of
24 potential witnesses of one hundred thirty-
25 four names?

1 A. Yes, sir.

2 Q. Do you know any of them?

3 A. I do not.

4 Q. Did you recognize anyone?

5 A. I did not.

6 Q. All right. I am going to ask you some
7 questions. There are no right or wrong
8 answers to these questions. We are just
9 trying to get your opinion about various
10 issues. I'm going to ask you about some
11 issues and the attorneys may also ask you
12 about some things. Please just be as honest
13 and straightforward as you can. As I said,
14 there are no right or wrong answers.

15 A. Okay.

16 Q. Is that okay?

17 A. Okay.

18 Q. Do you have any knowledge of the case?

19 Have you heard anyone talking about the
20 case?

21 A. No, sir.

22 Q. Have you read anything in the paper
23 about the case?

24 A. No, sir.

25 Q. Have you seen anything on television?

1 A. No, sir.

2 Q. Do you have any relatives or close
3 personal friends that are employed with law
4 enforcement

5 A. No, sir.

6 Q. Has the solicitor or any of her
7 assistants prosecuted you or any members of
8 your family?

9 A. No, sir.

10 Q. Have you or any members of your family,
11 or close personal friends ever been the
12 victim of crime?

13 A. No, sir.

14 Q. Do you have any relatives in jail?

15 A. Not that I'm aware of.

16 Q. Are you a member of any groups that
17 primarily support law enforcement, such as
18 MADD?

19 A. No, sir.

20 Q. Do you have any special or particular
21 interest in the outcome of this case?

22 A. No, sir.

23 Q. Are you aware of any bias or prejudice
24 based upon the defendant's race, being
25 black?

1 A. No, sir.

2 Q. I stated to you the charges that were
3 against the defendant earlier. Based on the
4 charges, do you have any bias or prejudice
5 against the defendant -- just merely based
6 upon the charges brought by the State?

7 A. No, sir.

8 Q. Do you have any religious beliefs that
9 would make you biased or prejudiced toward
10 the defendant?

11 A. No, sir.

12 Q. Do you have any religious belief that
13 would make you bias or prejudice towards the
14 State?

15 A. No, sir.

16 Q. Have you had any bad or good
17 experiences with law enforcement?

18 A. Just speeding tickets in high school.

19 Q. Okay. Were those good experiences or
20 bad experiences?

21 A. Those were in the state of Ohio, so
22 they were different experiences. I guess
23 that it was as pleasant as it could have
24 been.

25 Q. Have you any reason, personal or

1 otherwise, why you could not serve on the
2 jury?

3 A. No, sir.

4 Q. Do you have any reason why you could
5 not give the State and the defendant a fair
6 and impartial trial?

7 A. No, sir.

8 Q. It's been a couple of hours since I
9 went over the aggravating circumstances and
10 the mitigating circumstances. You
11 understand what I was telling you about the
12 jury's responsibility as far as aggravating
13 circumstances?

14 A. Yes, sir.

15 Q. Did you also understand the jury's
16 responsibilities and duties concerning
17 mitigating circumstances?

18 A. Yes, sir.

19 THE COURT: Whose turn?

20 EXAMINATION

21 BY WILLIAM MAGUIRE:

22 Q. Good afternoon, sir. Is it Mr.
23 Meibers?

24 A. Meibers.

25 Q. Sorry.

1 A. It happens all the time.

2 Q. Mr. Meibers, I'm just going to talk to
3 you briefly about your views about capital
4 punishment and the death penalty. The main
5 thing that I want to emphasize is that there
6 are no right or wrong answers. Honesty is
7 the only thing that matters. Okay?

8 A. Okay.

9 Q. So that we are on the same thing, I
10 want to take you through the definition of
11 some words in South Carolina. Murder in
12 South Carolina is the unlawful, intentional
13 killing of an innocent person without
14 justification or excuse. It is not self-
15 defense, it is not accident, it is not a
16 fight in a bar that goes haywire. It is a
17 choice to take an innocent person's life.
18 Are you with me?

19 A. I think so, (affirmative nod).

20 Q. All right. In that scenario, what are
21 your views about the death penalty as the
22 appropriate punishment?

23 A. Well, any time -- in my experience from
24 what I have seen on TV and in the media, and
25 things like that, I have always been

1 influenced to think that murder is something
2 that is usually pretty premeditated; you
3 know, something that takes quite a lot of
4 forethought and planning, calculation,
5 things like that.

6 Depending up on the aggravating and
7 mitigating circumstances that may be present
8 at that time, then certainly capital
9 punishment might be the fit, you know, the
10 punishment:

11 THE COURT: Let me interrupt you
12 for just a second.

13 WILLIAM MAGUIRE: Sure.

14 THE COURT: In South Carolina
15 every murder is intentional and
16 premeditated. The premeditation does not
17 have to be for a long period of time. It
18 can be for a short period of time or for a
19 long period of time. Do you understand?

20 JUROR NUMBER 215: Yes, sir.

21 THE COURT: It is not necessarily
22 like television?

23 JUROR NUMBER 215: I understand.

24 THE COURT: Television is make-
25 believe. Okay.

1 JUROR NUMBER 215: I understand.

2 THE COURT: Written by some
3 Hollywood producer, he knows the outcome, he
4 knows the script, he knows what people are
5 going to say. This is real life. Okay?

6 JUROR NUMBER 215: Yes, sir.

7 THE COURT: Please proceed.

8 WILLIAM MAGUIRE: Thank you,
9 Judge.

10 EXAMINATION RESUMED

11 BY WILLIAM MAGUIRE:

12 Q. I am going to take you down the road a
13 little bit further. Okay?

14 A. (Affirmative nod).

15 Q. You've heard about aggravating
16 circumstances.

17 A. (Affirmative nod).

18 Q. I am not going to talk about this case
19 specifically but I want to throw out some
20 terms and I want to get you to try to
21 picture a crime: home invasion, burglary,
22 rape, armed robbery, murder.

23 SCARLETT WILSON: Your Honor, I
24 object. May we approach?

25 THE COURT: Yes, ma'am.

(OFF RECORD BENCH CONFERENCE)

THE COURT: Please proceed. The objection is overruled at this point.

WILLIAM MAGUIRE: Thank you, Your Honor.

EXAMINATION RESUMED

BY WILLIAM MAGUIRE:

Q. Mr. Meibers, as you can see, this is a pretty important process. I mean we are all putting a lot of emphasis on trying to do the right thing. The only thing that you have to do is to just give honest answers. Okay?

A. (Affirmative nod).

Q. So when we left off, we were talking about commendation, which means going into a home when there are people there, burglary, rape, armed robbery, murder. Now where are you as far as the death penalty being the appropriate punishment?

A. I guess that I would have to say that I don't know if all of those crimes are equal in their -- I guess in the punishment they deserved. I guess I could understand other circumstances being present, but I don't

1 know if I would put murder on the same level
2 as a home invasion.

3 Q. What I am trying to do is to convey to
4 you a single criminal act where those facts
5 are involved -- all of those acts.

6 A. Oh, I'm sorry. Yes. Okay. I under-
7 stand. Sorry, I was thinking that they were
8 independent of each other.

9 Q. No. I'm talking about all of those
10 together.

11 A. All of this together.

12 Q. Right, where somebody goes into a home,
13 the people are there, it is a burglary,
14 there is a rape, there is an armed robbery,
15 there is a kidnaping, murder.

16 A. Well then, I could see the death
17 penalty as being a viable punishment.

18 Q. Could you see a life without parole
19 sentence being a penalty ever really severe
20 enough for that kind of situation?

21 A. I guess I could.

22 THE COURT: Let me interject.
23 What he asked you absolutely totally ignores
24 any mitigation issues. Okay? Please
25 proceed.

1 WILLIAM MAGUIRE: Sure, and we
2 will get there.

3 JUROR NUMBER 215: So are you
4 saying would I recommend one over the other?

5 EXAMINATION CONTINUED

6 BY WILLIAM MAGUIRE:

7 Q. Just knowing that much, just that
8 little information, what is your starting
9 point if you had to cast a secret ballot,
10 writing it down on a piece of paper in the
11 jury room, just knowing that information,
12 where is your starting point?

13 A. What do you mean by "starting point"?

14 Q. Well, if you had to pick between life
15 or death?

16 A. Oh, if I, just had to pick one?

17 Q. Sure.

18 A. I guess I would probably have to say
19 death penalty in that case.

20 Q. Okay. And in that case, in that
21 situation can you think of anything that
22 would make you come down from that to life?

23 A. I guess there would have to be some
24 pretty strong arguments as for the latter,
25 to say why something would be reduced from

1 let's say capital punishment to life in
2 prison. What evidence there is, what other
3 circumstances there is, like they said would
4 necessitate that.

5 Q. Sure. And we're going to talk about
6 mitigation in just a second but right now --
7 a lot of times when people say that they
8 want to hear everything, that they would
9 want to hear the circumstances of the case,
10 they're talking about the facts of the crime
11 itself.

12 A. Um-humm.

13 Q. Would you say that is where your
14 primary focus would be in deciding death or
15 life, the facts of the crime?

16 A. Definitely.

17 Q. Would something like the defendant
18 having a difficult childhood ten years --
19 would that be factor that could get you from
20 death down to life?

21 A. I would definitely consider it a
22 factor, what the -- the actual details would
23 have to vary, obviously. The severity of
24 the childhood would definitely weigh very
25 heavily on that fact. But if I was to -- if

1 someone was to just say 'oh, he had a rough
2 childhood ...' ---

3 Q. It would have to be like an abusive
4 excuse?

5 A. Yeah, it really would have to depend on
6 the nature of the abuse and what kind, how
7 long of an abusive period that it was. I
8 mean, there would be a lot of circumstantial
9 things that would go into that decision.

10 Q. In your mind, can you think of any
11 other factor that you might want to hear
12 about that would get you from death down to
13 life without parole, or that would factor
14 in?

15 A. Such as other environmental factors
16 with the crime or do you mean factors with
17 the defendant?

18 Q. Yes.

19 A. I guess I would probably want to get a
20 little more information on the defendant's
21 relationship to the victim. You know, find
22 out what kind of terms they were on before
23 the crime took place; how they knew each
24 other, you know, were they estranged at that
25 point, to what degree, -- I mean, there

1 would be a lot of other factors that I guess
2 that I would consider.

3 Q. Are you talking about anything like
4 they may have had bad blood before, arguing
5 or anything like that?

6 A. Possibly. I mean, you know, were they
7 at a point in their relationship where they
8 had been courting each other at one point
9 and then they had, like you said, bad blood
10 at a point. Would that necessarily sway my
11 argument (sic) one way or the other?

12 Perhaps. But it all kind of depends on the
13 situation, I guess.

14 Q. You said something about the defendant,
15 that his background would have to be pretty
16 substantial for it to weigh into your
17 decision?

18 A. (No verbal response).

19 Q. Can you think of anything that would
20 rise to that level? It sounds like you're
21 okay considering some of this stuff but that
22 it would have to be pretty substantial. Can
23 you tell me what you mean by that?

24 A. I'm trying to think of a good example
25 to use. I mean, it would definitely have to

1 be pretty extreme environmental factors that
2 would -- personally, that I would think
3 would cause a person to think that such an
4 act would be acceptable.

5 So I -- I mean, I can't think of a
6 situation off the top of my head that would
7 say, 'Okay, if X happened when they were ten
8 years old, that makes it okay for them to
9 commit murder when they are X-years old.'

10 Q. Sure. So some hardships when somebody
11 is young where they are abused or something
12 like that, it would have to rise to a level
13 where their mental facilities weren't
14 exactly correct, that they thought murder
15 was okay?

16 A. (No verbal response).

17 Q. I just want to make sure that you and I
18 are on the same page?

19 A. Yeah. I don't want to sit here and say
20 that because someone had a bad childhood
21 that they automatically get a free pass to
22 do whatever they want. You know, I am just
23 saying that there are certain factors that I
24 would take into consideration when deciding
25 whether or not someone should receive the

1 death penalty versus life in prison.

2 Q. Very briefly, in the law your decision
3 in a case like this is defined as an
4 individual moral judgment. It's not like a
5 civil trial or a case was it red, was it
6 green -- 'Was the light red, was it green?
7 Did the car go through it.'

8 It's not like that. It's more a
9 morally emotional choice at the end of the
10 case. Are you okay with that?

11 A. Sure.

12 Q. Does that sound fair?

13 A. Absolutely.

14 Q. And you can - you certainly would be
15 entitled to your own opinion. Ad you would
16 respect everybody else's?

17 A. I would.

18 Q. And you would expect people to disagree
19 in a case of this magnitude?

20 A. Absolutely.

21 Q. And you could respect that, as well?

22 A. Absolutely.

23 WILLIAM MAGUIRE: Thank you.

24 THE COURT: Solicitor?

25 SCARLETT WILSON: Mr. Meibers, I

1 don't have any questions for you. Thank
2 you.

3 THE COURT: Any Motions?

4 WILLIAM MAGUIRE: No, sir.

5 THE COURT: All right. The
6 bailiff is going to give you a card that has
7 a phone number on it. Call the number
8 after five o'clock tomorrow. There will be
9 a message for the jury panel. Follow those
10 instructions. Okay?

11 JUROR NUMBER 215: Yes, sir.

12 THE COURT: What is going to
13 happen is that we're going to qualify so
14 many jurors for the trial and then we will
15 strike from the panel after all the jurors
16 are qualified, and then we will start the
17 trial. You will be part of that process.
18 Okay?

19 JUROR NUMBER 215: Yes, sir.

20 THE COURT: Thank you very much.

21 (JUROR NUMBER 215 EXITS COURTROOM)

22 THE COURT: Bring us a juror.

23 (JUROR NUMBER 370 ENTERS COURTROOM)

24 THE COURT: Your name, sir.

25 JUROR NUMBER 370: Derrick

1 Weatherly.

2 THE COURT: Mr. Weatherly, how
3 you doing today?

4 JUROR NUMBER 370: Just fine,
5 sir.

6 THE COURT: Got just a few
7 questions for you.

8 DERRICK WEATHERLY, having been
9 previously sworn to tell the truth testified
10 as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q. Did you have the opportunity to review
14 the list of witnesses?

15 A. Yes.

16 Q. All one hundred thirty four them?

17 A. Yes, sir.

18 Q. Did you recognize any names or know any
19 names on that list?

20 A. No, sir, I didn't know anybody on that
21 list.

22 Q. Pardon?

23 A. No, I didn't know anyone on the list.

24 Q. You didn't recognize anybody?

25 A. No, sir.

1 Q. Did you have an opportunity to look at
2 the three opinions about the death penalty?

3 A. Yes, sir.

4 Q. Did you read it?

5 A. Yes, sir.

6 Q. Did you understand?

7 A. Yes, sir.

8 Q. Do you fit into any of the categories?
9 One, two, three?

10 A. Category three.

11 Q. You fit into category number three?

12 A. Yes, sir.

13 Q. All right, I'm going to ask you some
14 questions and then the attorneys will
15 probably ask you some questions. Okay?

16 A. (Affirmative nod).

17 Q. There are no right or wrong answers to
18 the questions. Just answer the question as
19 truthfully and as best you can. Okay?

20 A. Yes.

21 Q. All right, have you read anything in
22 the paper about the case?

23 A. No.

24 Q. Have you seen anything on television?

25 A. No.

1 Q. Have you heard anyone talking about the
2 case, in the courthouse or anyplace?

3 A. No.

4 Q. You know absolutely nothing about the
5 case?

6 A. No.

7 Q. Other than what you have heard today?

8 A. That's right.

9 Q. Do you have any relatives or close
10 friends employed in law enforcement?

11 A. No.

12 Q. Has the solicitor or any of her
13 assistants prosecuted you or any member of
14 your family?

15 A. No.

16 Q. Have you or any member of your family
17 or close personal friends been the victim of
18 any crime?

19 A. Yes.

20 Q. Tell me who and when.

21 A. My mother -- I don't remember how many
22 years ago, I would say in excess of fifteen
23 or more, was -- she worked at a convenience
24 store and she was robbed.

25 Q. Do you remember how old that you were?

1 A. I want to say probably about twenty-
2 five or so.

3 Q. Was anybody ever arrested?

4 A. Yes.

5 Q. Was anybody prosecuted?

6 A. I don't know.

7 Q. Were you involved in it at all?

8 A. No.

9 Q. So all you know is that it happened?

10 A. Correct.

11 Q. Does your mother lives in Berkeley
12 County?

13 A. Yes, she does.

14 Q. Do you have any relatives in jail?

15 A. No. Are you a member of any group
16 that has as its primary purpose the support
17 of law enforcement, such as MADD?

18 A. No.

19 Q. Have you any special or particular
20 interest in the outcome of this case?

21 A. No.

22 Q. Are you aware of any bias or prejudice
23 based upon religious grounds for or against
24 the defendant?

25 A. No.

1 Q. Are you aware of any bias or prejudice
2 based upon the charges against the
3 defendant?

4 A. No.

5 Q. Are you aware of any bias or prejudice
6 against the defendant because of his race,
7 being black?

8 A. No.

9 Q. Have you had any good or bad
10 experiences with law enforcement?

11 A. No, I can't -- no, sir.

12 Q. Do you know of any reason, personal or
13 otherwise, why you could not serve on this
14 jury?

15 A. No, sir.

16 Q. Do you know of any reason why you could
17 not give that the State and the Defendant a
18 fair and impartial trial?

19 A. No.

20 Q. I spoke to you earlier, and explained
21 to you about the penalty phase of the trial.
22 You understand what I told you?

23 A. Yes.

24 Q. And I explained to you about the
25 aggravating circumstances. Did you

1 understand that?

2 A. Yes.

3 Q. And also explained to you about the
4 mitigating circumstances and gave you some
5 examples. Did you understand that?

6 A. Yes, sir.

7 Q. To you understand that the as a jury
8 the jury's duty would be to consider those
9 factors before you make a decision on life
10 or death. Do you understand that?

11 A. Yes.

12 Q. Do you have any questions about that?

13 A. No.

14 Q. Thank you very much.

15 THE COURT: Whose turn?

16 EXAMINATION -

17 BY SCARLETT WILSON:

18 Q. Mr. Weatherly, how are you?

19 A. Okay.

20 Q. Thank you for hanging in there and
21 being patient with us. It's kind of a long
22 process. I've got a few questions to ask
23 you to get more of the general idea of your
24 thoughts on life without parole and the
25 death penalty. There are no right or wrong

1 answers. This just really trying to pick
2 your brain to see where you stand on those.

3 A. Okay.

4 Q. Can you tell me what your thoughts are
5 on life without parole?

6 A. Well, that's nothing that anyone would
7 ever want. But, I mean, -- I don't know
8 what you mean. Like?

9 Q. So I take it that you think it is a
10 pretty severe sentence?

11 A. Yes.

12 Q. I saw that on your questionnaire you
13 noted, and I think that it was in a part
14 that you did not have to answer that. I
15 appreciate you answering, that you go to the
16 Kingdom Hall of Jehovah's Witnesses.

17 A. Yes, ma'am.

18 Q. Does that mean that you are a Jehovah's
19 Witness?

20 A. Yes, ma'am.

21 Q. Are you aware of the views of your
22 church regarding the death penalty?

23 A. 'Um-humm.

24 Q. Can you tell me what those are?

25 A. Well, Jehovah's Witnesses -- for the

1 most part we are neutral in almost all
2 affairs: If anything goes against what
3 God's word says, then we are not involved
4 with it.

5 So, if -- Jesus said to pay back.
6 Caesar's things to Caesar's and God's things
7 to God. So if the law says that the death
8 penalty is an option, then that is something
9 that a person can receive for the crime and
10 we don't go against that.

11 Though -- the Bible does not say
12 anything against the death penalty, and so
13 we don't either.

14 Q. Okay. So that part is not an issue
15 for you, being Jehovah's Witness?

16 A. No.

17 Q. Is there any issue regarding judging
18 your fellow man, as far as your religion
19 goes?

20 A. Well, it is always difficult to be in
21 those shoes, to judge your fellow man.
22 Nobody wants to do it. But sometimes, you
23 know, because we are human that is the role
24 that we have to fill.

25 As a Jehovah's Witnesses, if I have to

1 do that, then I am always going to try to
2 make sure that what I do or my judgment
3 lines up with God's judgment.

4 We don't always know -- man has not
5 always resided in heaven but we are just
6 trying to do our best to make sure that it
7 matches up.

8 Q. Can you tell me a little more when you
9 say that you would try to do what God's
10 thoughts are, can you tell me more about
11 that?

12 A. Well, I guess -- I guess the best way
13 to do it is to say that if something is said
14 against Bible principles, that I am going to
15 try to be in harmony with that. That I
16 think for the most part that -- I guess I
17 don't want to give the wrong impression.

18 Q. I promise, there are no right or wrong
19 impressions. It is just whatever is, is.

20 A. Yeah. I am -- give me the question
21 again. I kind of lost it.

22 Q. Well, you had just said that if you
23 were in the position of making this kind of
24 decision that you would want to be, I think,
25 in God's - that you would make God's choice

1 or something to that effect.

2 A. Well, maybe I was painting with too
3 wide a brush there. In life, that's just
4 the general rule that we go by. In a
5 situation like this, you do what the law
6 says. The law is -- in a situation like
7 this, it is not going against God's laws, so
8 if the law that you live in, the land that
9 you live in, then you follow the rules of
10 what the court are or the State's -- and you
11 do the best that you can.

12 Q. You understand that nobody is ever
13 going to instruct you that you have to give
14 the death penalty or that you have to give
15 life without parole?

16 A. Correct. So it would not be a rule of
17 law that you had to do something.

18 A. Correct.

19 Q. It would be up to you.

20 A. Right.

21 Q. And you would feel comfortable making
22 that kind of decision?

23 A. I guess so. I - "comfortable" is not a
24 word that I would use, but you do what you
25 have to do.

1 Q. I understand. You feel like that you
2 could ---

3 A. Do what is necessary, yes.

4 Q. Now, in reading the types of jurors and
5 in hearing the Judge's instructions, do you
6 understand this process, a death penalty
7 case, is a two-step process, a conviction
8 phase and then if there is a conviction the
9 penalty phase? Obviously, if there is no
10 conviction there is no penalty phase. Did
11 you understand that?

12 A. Yes, ma'am.

13 Q. Have you before this week had any
14 occasion to be involved in any death penalty
15 cases or follow any death penalty cases?

16 A. Some time ago, I had jury duty before
17 and to be honest with you I don't remember
18 if that was a death penalty case or not but
19 I have set on jury duty before.

20 Q. Was it a murder case?

21 A. Yes.

22 Q. Do you remember what your verdict was?

23 A. We did not deliberate because it was
24 dismissed or thrown out of court -- I don't
25 know what the word for it is.

1 Q. Resolved?

2 A. Resolved. At some point.

3 Q. In these kinds of cases, generally
4 speaking,, a murder -- well, a murder always
5 in South Carolina means the unlawful killing
6 with malice aforethought. Meaning that the
7 person, by definition, if they are convicted
8 of murder acted with a heart bent on
9 mischief. Basically, just meanness.

10 So in starting that second phase,
11 would you be able to, knowing that, that it
12 was just a mean thing that the person had
13 done, would you be able to then wait and
14 hear the rest of the story before making up
15 your mind as to what the penalty should be?

16 A. Oh, absolutely.

17 Q. So you could require the State to prove
18 anything in aggravation, whether it was a
19 burglary, a rape or whatever it was that may
20 have made the murder more aggravated. You
21 would be able to do that?

22 A. Yes.

23 Q. It would not be automatic?

24 A. Right.

25 Q. And then how about things about the

1 defendant, like his background, his
2 childhood and things like that? Would that
3 be important for you at all?

4 A. Yes, I think so. I do.

5 Q. Tell me how that could make a
6 difference for you.

7 A. Well, I think certain things -- certain
8 extenuating circumstances and factors, I
9 think, lead people to a certain point in
10 life. We all have choices that we can make.

11 Q. Right.

12 Q. So we are all free moral agents, we can
13 choose what to do. That certain -- I think
14 certain backgrounds -- a person from one
15 background and a person from another
16 background they may face the same situations
17 in life, but it could make it more difficult
18 for that.

19 Q. And that would affect whether or not
20 you thought that a life sentence was the
21 appropriate sentence or a death sentence was
22 the appropriate sentence?

23 A. I think so, yes. Possibly.

24 Q. In your mind, sounds like to me that in
25 your mind it -- well, maybe I should ask you

1 this. If life were always an option for a
2 murder, would you always give life without
3 parole as the sentence?

4 A. No.

5 Q. So there would be sometimes when you
6 would think that the life without the
7 possibility of parole penalty would be the
8 right result?

9 A. Yes.

10 Q. Can you give us some examples of those,
11 what types of situations?

12 A. I don't know. I think the word that
13 you used, mentioned, and -- malice might be
14 the word. I guess maybe I am at a loss for
15 words.

16 THE COURT: Mr. Weatherly, all
17 murders in South Carolina require malice,
18 either direct or indirect. Okay?

19 JUROR NUMBER 370: Okay.

20 THE COURT: Go ahead.

21 EXAMINATION CONTINUED

22 BY SCARLETT WILSON:

23 Q. So in a situation where there is a
24 malicious murder, basically, in each of
25 those types of murder, which the Judge is

1 telling you would be all murders, would the
2 death penalty ever be automatic for you?

3 A. No, I don't think automatic is the
4 right word.

5 Q. Tell me what the right word would be.

6 A. (No verbal response).

7 Q. Or what would be important for you?

8 That's just what I am trying to figure out.

9 What do you want to hear about before making
10 that decision?

11 A. I guess -- I guess I am having a hard
12 time being specific, but the specifics of
13 the case. You know, what happened?
14 Details.

15 Q. What would you want to hear, keeping in
16 mind that a defendant never had to put
17 anything up, ever.

18 A. Right.

19 Q. What would you want to hear if you were
20 to hear from a defendant, his lawyers,
21 witnesses? What types of things would make
22 a difference?

23 A. As to which way.

24 Q. Which punishment? Either one.

25 A. Things I would want to hear? That's

1 difficult, because I think I've been trying
2 to keep -- I am trying to keep a clean
3 slate, so I don't know what I would want to
4 hear to push me one way or the other.
5 Things that I would want to hear to push me
6 one way or the other, life versus death?

7 Q. How about substance abuse, things like
8 that? Would that be of interest to you?

9 A. That could be. Could be a factor.

10 Q. I think you also said ---

11 A. Could be.

12 Q. Have already said that background could
13 make a difference ---

14 A. It could make a difference as regards
15 punishment. Could be. Like I said, people
16 could still be -- if you have had substance
17 abuse, that's a factor but individuals have
18 a choice to choose a substance also. So --
19 (pause).

20 Q. Okay. You mentioned in your
21 questionnaire that when you were serving on
22 that criminal jury that it was an
23 interesting experience.

24 A. Yes.

25 Q. Tell us about that. What made it

1 interesting to you?

2 A. Just the entire process. If you are
3 not - if you - most of the time, you just
4 see this stuff on television but it's not
5 always as it is on television.

6 Q. A little bit slower?

7 A. Much slower. You know, it's also the
8 finality. So that is one thing, you know,
9 one thing that made that interesting.

10 Q. Okay.

11 A. I guess it's just the process, the
12 judicial processes is interesting. I guess
13 I could say it like that.

14 Q. Mr. Weatherly, that's all the questions
15 that I have for you. Thank you.

16 THE COURT: On television the
17 crime is committed, investigated, arrested,
18 tried in probably about forty-five minutes.
19 Please proceed.

20 WILLIAM MAGUIRE: Thank you,
21 Judge. I don't have any questions for Mr.
22 Weatherly. Thank you, sir.

23 THE COURT: Any Motions on Mr.
24 Weatherly?

25 WILLIAM MAGUIRE: No, sir.

1 SCARLETT WILSON: No, sir.

2 THE COURT: Mr. Weatherly, what
3 is going to happen now is that we are
4 qualifying a group of people that we are
5 going to draw a jury from.

6 The bailiff is going to give you a
7 little card with a phone number on it. Call
8 that number after five o'clock tomorrow.
9 There will be a message for the jury panel.
10 Follow those instructions. Okay?

11 JUROR NUMBER 370: Yes, sir.

12 THE COURT: You are going to be
13 part of the jury panel from which we are
14 going to draw or strike the jury in this
15 case. Understand?

16 JUROR NUMBER 370: Yes, sir.

17 THE COURT: You are going to be
18 a part of that. Please don't discuss the
19 case with anybody, read anything in the
20 paper or watch television about it. See you
21 as soon as we can get enough people
22 qualified. Thank you very much.

23 (JUROR NUMBER 370 EXITS COURTROOM)

24 THE COURT: Bring in the next
25 juror.

1 (JUROR NUMBER 118 ENTERS COURTROOM)

2 BAILIFF: Please state your
3 name.

4 JUROR NUMBER 118: Holly Gomez.

5 THE COURT: Ms. Gomez, how you
6 doing today?

7 JUROR NUMBER 118: Fine, how
8 are you?

9 THE COURT: You had a sheet ---

10 JUROR NUMBER 118: Yes, I have
11 it.

12 THE COURT: --- concerning
13 opinions about the death penalty. Have you
14 had an opportunity to look at that?

15 JUROR NUMBER 118: Yes, sir.

16 THE COURT: Did you understand
17 it?

18 JUROR NUMBER 118: Yes.

19 THE COURT: Did you fall into
20 either category -- any of the types: one,
21 two or three?

22 JUROR NUMBER 118: I was a type
23 three.

24 THE COURT: Okay. Type three.
25 I've got some questions for you and then the

1 attorneys may have some questions.

2 HOLLY GOMEZ, having been previously
3 sworn to tell the truth testified as
4 follows:

5 EXAMINATION

6 BY THE COURT:

7 Q. Have you had an opportunity to read
8 one hundred thirty-four names of potential
9 witnesses in the case?

10 A. Yes, sir.

11 Q. Did you recognize any names?

12 A. No, sir.

13 Q. So you don't know anybody on that list?

14 A. No, Sir.

15 Q. Out of one hundred and thirty-four
16 people, you don't recognize anybody?

17 A. No, sir, I am not originally from
18 Berkeley County.

19 Q. Where are you from originally?

20 A. Chesterfield County

21 Q. Chesterfield?

22 A. (Affirmative nod).

23 Q. Okay. All right. I am going to ask
24 some questions and in the attorneys will

25 probably ask you some questions. Ms. Gómez,

1 there are no right or wrong answers. Just
2 give your opinion as best you can, answer
3 the question as best you can. Understand?

4 A. Yes, sir.

5 Q. Have you heard anything about the case,
6 read anything in the paper or seen anything
7 on television?

8 A. No, sir.

9 Q. Have you heard anyone talking about the
10 case?

11 A. No, sir.

12 Q. Do you have any relatives or close
13 personal friends employed in law
14 enforcement?

15 A. No, sir.

16 Q. Has the solicitor or any members of her
17 staff prosecuted you or any members of your
18 family?

19 A. No, sir.

20 Q. Have you or any members of your family
21 or close personal friends been the victim of
22 a crime?

23 A. No, sir.

24 Q. Do you have any relatives in jail?

25 A. No, sir.

1 Q. Are you a member of any groups that
2 primarily support law enforcement, such as
3 MADD?

4 A. No, sir..

5 Q. Do you have any special interest or
6 particular interest in the outcome of this
7 case?

8 A. No, sir.

9 Q. Are you aware of any bias or prejudice
10 based upon the charges against the
11 defendant?

12 A. No, sir.

13 Q. Do you have any religious beliefs that
14 would make you biased or prejudiced against
15 -- for or against the defendant?

16 A. No, sir.

17 Q. Any religious beliefs that would make
18 you biased or prejudiced against the State?

19 A. No, sir.

20 Q. Do you have any bias or prejudice
21 against the defendant because of his race,
22 being black?

23 A. No, sir.

24 Q. Have you had any bad or good
25 experiences with law enforcement?

1 A. No, sir.

2 Q. Do you know of any reason, personal or
3 otherwise, as to why you could not serve on
4 the jury?

5 A. Not that I can think of.

6 Q. Do you know of any reason why you could
7 not give both the State and Defendant a fair
8 and impartial trial?

9 A. No, sir.

10 Q. Earlier today I had explained to you
11 about the penalty phase of the trial and I
12 explained to you about aggravating
13 circumstances. Did you understand?

14 A. Most of it I understood.

15 Q. And also explained to you about
16 mitigating circumstances. Did you
17 understand?

18 A. Yes, sir.

19 Q. Do you understand that before the jury
20 can consider death or life that the State is
21 required to prove one or more aggravating
22 circumstance? Do you understand?

23 A. Yes, sir.

24 Q. All twelve jurors have to vote
25 unanimously?

1 A. Yes, sir.

2 Q. You understand that?

3 A. (Affirmative nod).

4 Q. That is the first requirement. The
5 second requirement that the jury has is to
6 consider any and all mitigation offered. So
7 you have to consider both of those things
8 before you decide whether the defendant
9 should get life or death. Do you
10 understand?

11 A. Yes, sir.

12 THE COURT: Whose turn is it?

13 EXAMINATION

14 BY WILLIAM MAGUIRE:

15 Q. Good afternoon, Ms. Gomez. How are you
16 doing today?

17 A. Fine. How are you?

18 Q. I'm good. Thank you. The only thing
19 that we are going to require for you today
20 is just complete honesty. Just be candid in
21 your responses. Okay?

22 A. Okay.

23 Q. No right or wrong answers. No one is
24 going to judge you. We are just curious how
25 you feel about certain things. Okay?

1 A. Okay.

2 Q. To make sure that we are on the same
3 page because lawyers throw out terms that we
4 assume everybody knows what we are talking
5 about. I am going to get back with a little
6 bit and talk to you specifically about the
7 definition of murder. Okay?

8 A. Okay.

9 Q. In South Carolina, to have a murder,
10 you have the intentional, unlawful killing
11 of an innocent person with malice afore-
12 thought. Malice aforethought has been
13 described by our courts as having a dark,
14 black, depraved heart fatally bent on
15 wickedness or mischief. Are you with me?

16 A. Yes.

17 Q. Given that scenario and not knowing any
18 more right now, and we will talk about more
19 stuff later, just knowing that information,
20 what is your opinion about life without
21 parole being a severe enough punishment for
22 something like that?

23 A. Well, life without parole. We give the
24 person a chance to think about what they had
25 done to the victim. That is my opinion.

1 Q. And what is your thought about the
2 death penalty as the appropriate punishment
3 in that kind of scenario?

4 A. I believe that would be too easy.

5 Q. Too easy?

6 A. (Affirmative nod).

7 Q. Do you have any first-hand experience
8 with the prison or the prison system, the
9 Department of Corrections or anything like
10 that?

11 A. No, sir.

12 Q. Just from TV, news, that sort of thing?

13 A. Well, I get to watch a little bit.

14 Yes, sir.

15 Q. If you had to choose between -- in that
16 scenario that I gave you, the intentional
17 killing where someone chose to take the life
18 of an innocent person, would you always vote
19 life without parole because you would want
20 them to think and reflect upon their
21 actions?

22 A. Yes.

23 Q. And -- because the death penalty kind
24 of lets them off the hook without really
25 have to sort of be punished for their crime?

1 A. Right.

2 Q. And -- okay.

3 WILLIAM MAGUIRE: Judge, may I
4 have just a moment -- (sidebar with Mr.
5 Young). Ms. Gomez, I'm going to sit down
6 now and let the State ask you some
7 questions. Okay?

8 JUROR NUMBER 118: Okay.

9 THE COURT: Solicitor?

10 SCARLETT WILSON: Judge, I don't
11 have any questions.

12 THE COURT: Does anybody have a
13 Motion on this?

14 SCARLETT WILSON: We do.

15 THE COURT: Pardon?

16 SCARLETT WILSON: We do.

17 THE COURT: Okay. Would you step
18 out in the hallway, please, ma'am.

19 (JUROR NUMBER 118 EXITS COURTROOM)

20 THE COURT: Okay.

21 SCARLETT WILSON: Your Honor, I
22 believe based on her answer to the questions
23 that she is not qualified. She said that
24 life without parole would be automatic, that
25 death was too easy and -- I think based on

1 her words alone that she is not qualified.

2 WILLIAM MAGUIRE: I don't have a
3 position, Judge.

4 THE COURT: Pardon?

5 WILLIAM MAGUIRE: I don't have a
6 position.

7 THE COURT: I am going to find
8 her not qualified based on what she said.
9 That's what she said.

10 WILLIAM MAGUIRE: I agree with
11 you.

12 THE COURT: Will you bring her
13 back in, please.

14 (JUROR NUMBER 118 ENTERS COURTROOM)

15 THE COURT: Ms. Gomez, I want to
16 thank you very much. I am going to excuse
17 you from any further jury service. Okay?

18 JUROR NUMBER 118: All right.
19 Thank you.

20 THE COURT: Thank you very much.

21 (JUROR NUMBER 118 EXCUSED)

22 (JUROR NUMBER 118 EXITS COURTROOM)

23 THE COURT: Bring us the next
24 juror, please.

25 (JUROR NUMBER 178 ENTERS COURTROOM)

1 BAILIFF: State your name for
2 the record, please.

3 JUROR NUMBER 178: Tamika
4 Kinlaw.

5 THE COURT: Ms. Kinlaw, how are
6 you doing today?

7 JUROR NUMBER 178: Good. How
8 are you?

9 THE COURT: Have you had an
10 opportunity to look at the sheet concerning
11 the three opinions about the death penalty?

12 JUROR NUMBER 178: Yes.

13 THE COURT: Did you understand
14 the sheet?

15 JUROR NUMBER 178: Yes.

16 THE COURT: To you fit into any
17 of those categories? One, two, three?

18 JUROR NUMBER 178: Yes, sir.

19 THE COURT: Which category do you
20 fit in?

21 JUROR NUMBER 178: One.

22 THE COURT: One?

23 JUROR NUMBER 178: (Affirmative
24 nod).

25 THE COURT: One says that you

1 cannot give death to someone for any reason.

2 Is that correct?

3 JUROR NUMBER 178: Yes, sir.

4 THE COURT: That is your opinion?

5 JUROR NUMBER 178: Yes, sir.

6 THE COURT: Okay. I will excuse
7 you from jury service on this case.

8 JUROR NUMBER 178: Thank you.

9 (JUROR NUMBER 178 EXCUSED)

10 (JUROR NUMBER 178 EXITS COURTROOM)

11 THE COURT: Who is next?

12 (JUROR NUMBER 198 ENTERS COURTROOM)

13 BAILIFF: Speak into the
14 microphone and state your name.

15 JUROR NUMBER 198: Darius
16 Lloyd.

17 THE COURT: Mr. Lloyd, how are
18 you doing today?

19 JUROR NUMBER 198: I am doing
20 all right.

21 THE COURT: Mr. Lloyd, and he had
22 an opportunity to review the sheet that the
23 court gave to you?

24 JUROR NUMBER 198: Yes.

25 THE COURT: Showing the three

1 different opinions about the death penalty?

2 JUROR NUMBER 198: Yes, sir.

3 THE COURT: Did you understand
4 it?

5 JUROR NUMBER 198: Yes, sir.

6 THE COURT: Do you fall into
7 category or type -- excuse me, type one, two
8 or three?

9 JUROR NUMBER 198: Type three.

10 THE COURT: Okay, I have some
11 questions for you.

12 DARIUS LLOYD, having been
13 previously sworn to tell the truth testified
14 as follows:

15 EXAMINATION

16 BY THE COURT:

17 Q. Did you have an opportunity to look at
18 the one hundred thirty-four names that are
19 on this witness list?

20 A. Yes, sir.

21 Q. Did you recognize or know anybody on
22 that list?

23 A. One person.

24 Q. Who?

25 A. Author Caldwell.

1 Q. Do you know his number?

2 A. Thirty-eight (38).

3 Q. All right. How do you know Mr.
4 Caldwell?

5 A. He is like -- I know his son, I played
6 football with his son, basketball.

7 Q. Basketball in high school?

8 A. Yes, sir.

9 Q. Did you ever visit in his home?

10 A. Not recently but back in the day.

11 Q. When you were playing basketball?

12 A. Yes, sir.

13 Q. How long ago was that?

14 A. 2005,, 2006, 2008. Eight years ago.

15 Q. Eight years ago?

16 A. (Affirmative nod).

17 Q. Have you seen him since you graduated
18 from high school? I am talking about Mr
19 Arthur Caldwell, not his son?

20 A. He had talked to us on Monday.

21 Q. Pardon?

22 A. , He was out there on Monday, parking the
23 cars.

24 Q. So you saw him Monday?

25 A. Yes.

1 Q. How long before Monday had it been
2 since you had seen him prior to that time?

3 A. Oh, it had been a while.

4 Q. Do you see him on a routine basis?

5 A. No, sir.

6 Q. If he would testify in the case would
7 that cause you any difficulty in sitting on
8 this jury?

9 A. No, sir.

10 Q. Can you set that relationship aside and
11 be fair to both the State and the Defendant?

12 A. Yes, sir.

13 Q. Do you know anything about the case?

14 A. Not really.

15 Q. Have you seen anything on television?

16 A. No, sir.

17 Q. Read anything in the paper?

18 A. I don't read the paper.

19 Q. You don't read the paper?

20 A. (Negative gesture).

21 Q. Have you heard anybody talk about it,
22 either in the courthouse, outside, or
23 anywhere?

24 A. No, sir.

25 Q. Do you have any relatives or close

1 personal friends, other than Mr. Caldwell,
2 that work in law enforcement?

3 A. Mr. Frank Jackson.

4 Q. Who is Mr. Frank Jackson?

5 A. He, I think that he works for SLED now.

6 Q. He works for SLED?

7 A. Yes, sir.

8 Q. How do you know Mr. Jackson?

9 A. I used to cut his grass.

10 Q. His what?

11 A. His grass.

12 Q. Oh, okay. How long had you been doing
13 that?

14 A. That was back in high school, too.

15 Q. Back in high school?

16 A. Yes, sir.

17 Q. You haven't cut his grass since then?

18 A. No, sir.

19 Q. Have you seen him since then?

20 A. No, sir.

21 Q. Has the solicitor or any member of her
22 staff prosecuted you or any member of your
23 family?

24 A. Not that I know of. Not me.

25 Q. Not you?

1 A. Not me.

2 Q. Have you or any member of your family,
3 or close personal friend been the victim of
4 a crime?

5 A. For myself, I can say no but I can't
6 speak for anyone else.

7 Q. But do you know if any of them have
8 been victims of a crime?

9 A. The whole family. The mother, ---

10 Q. Mother, father, brothers, sisters?

11 A. No, sir.

12 Q. Do you have any relatives in jail?

13 A. Yes, sir.

14 Q. Who?

15 A. Andrea McNeil.

16 Q. What relationship is he?

17 A. Third cousin.

18 Q. What is he in jail for? Do you know?

19 A. Robbery.

20 Q. How long has he been in jail?

21 A. Over ten years.

22 Q. So I presume that you haven't seen him
23 in ten years?

24 A. No, sir.

25 Q. Were you close to your cousin?

1 A. When I was like ---

2 Q. Did you play ball with him in school?

3 A. No, sir. He was way older than me.

4 Q. He is way older than you?

5 A. Yes, sir.

6 Q. Are you a member of any group that
7 primarily supports law enforcement, such as
8 MADD?

9 A. Say that again?

10 Q. Are you a member of any group that
11 primarily supports law enforcement, such as
12 MADD, Mothers Against Drunk Drivers?

13 A. No, sir.

14 Q. Do you have any special interest in the
15 outcome of this case?

16 A. Just everything be fair.

17 Q. Pardon?

18 A. No, sir. No, sir.

19 Q. Are you aware of any bias or prejudice
20 against the defendant because of the charges
21 against him?

22 A. No, sir.

23 Q. Do you have any bias or prejudice
24 against the defendant because of his race,
25 being black?

1 A. No, sir.

2 Q. Do you have any bias or prejudice for
3 or against the State or the Defendant
4 because of any religious beliefs that you
5 may have?

6 A. No, sir.

7 Q. Do you have any bias or prejudice
8 against the State because of any religious
9 beliefs that you may have?

10 A. No, sir.

11 Q. Do you know of any reason, personal or
12 otherwise, why you cannot serve on the jury?

13 A. No, sir.

14 Q. Do you know of any reason why you
15 cannot give both the State and the Defendant
16 a fair and impartial trial?

17 A. No, sir.

18 Q. All right, Mr. Lloyd, earlier in the
19 day, before lunch I had explained to you
20 about aggravating circumstances. Do you
21 remember?

22 A. Yes, sir.

23 Q. Did you understand what I told you
24 about aggravating circumstances?

25 A. Yes.

1 Q. Do you also remember me explaining to
2 you about mitigating circumstances?

3 A. Yes, sir.

4 Q. Did you understand what I explained to
5 you about mitigating circumstances?

6 A. Yes, sir.

7 Q. Do you understand that in the penalty
8 phase of the trial that the jury has to
9 consider aggravating circumstances as well
10 as any mitigating circumstances before a
11 decision is made about life without parole
12 or death, do you understand?

13 A. Yes, sir.

14 Q. Thank you, sir.

15 THE COURT: Whose turn?

16 EXAMINATION

17 BY SCARLETT WILSON:

18 Q. Thank you, Mr. Lloyd, for being patient
19 with us. I have just a few questions to
20 kind of get a better idea -- mostly, I want
21 to get a better idea of your thoughts of
22 life without parole and the death penalty.
23 Okay?

24 A. All right.

25 Q. So it is not a matter of getting the

1 question right because it's really just your
2 opinion; which is as good as anybody's.
3 Okay?

4 A. (Affirmative nod).

5 Q. And listening to the Judge and in
6 reading the sheet that put you into the
7 different types, could you get from all of
8 that and understand that a death penalty
9 trial goes in two phases; one, just to
10 determine if the person did it and, two, for
11 the jury to decide what kind of penalty to
12 give?

13 A. Yes, ma'am.

14 Q. So you knew that?

15 A. Yes, ma'am.

16 Q. Also in the sheet that you were given,
17 it explained to you what murder is. Just to
18 sort of use more layman's terms, a murder in
19 South Carolina, anyway, murder is always
20 something intentional. It is not about
21 self-defense, it is not about an accident or
22 somebody dies. It is about malice
23 aforethought. Meaning that the person who
24 committed the crime, who committed that
25 killing, had a heart that was evil and

1 fatally bent on doing wrong.

2 So to start a penalty phase, a jury
3 would have already had found the defendant
4 guilty on that. Does that make sense to
5 you?

6 A. Yes, ma'am.

7 Q. So we are not in a situation, again,
8 where somebody is provoked or something like
9 that. Okay?

10 A. Okay.

11 Q. Now, in that situation, could you hold
12 off on deciding what penalty should be given
13 until the State proved to you and the other
14 jurors what is called those aggravators,
15 aggravating circumstances? Could you wait
16 until we did that before you formed your
17 opinion?

18 A. I mean, if I don't know all what
19 happened, I would like to be fair about it.

20 Q. Okay. Well, in this situation that we
21 are talking about, not in this case but I'm
22 what I am trying to figure out with you,
23 there wouldn't be any question about whether
24 or not the defendant did the crime. That
25 would be settled. You would have already

1 decided that and noted that the person did
2 it, that they were guilty. Okay?

3 A. (Affirmative nod).

4 Q. The next part would be when the Judge
5 tells the jury that we, the State, has to
6 prove the other circumstances that
7 surrounded the crime, that make it worse
8 than just a murder. Are you with me now?

9 A. Yes.

10 Q. Okay. The question is, could you hold
11 us to that burden and not reach your final
12 opinion until we met that burden?

13 A. Yes, ma'am.

14 Q. And, likewise, if we got to that part
15 of the trial and we have shown you all kinds
16 of evidence about how aggravated that it
17 was, there would still possibly be more to
18 come. The defense, if they wanted to, could
19 put up evidence about the defendant, what
20 was going on in his world, his life, his
21 childhood. Could you still, having seen
22 those aggravating factors, it might be rape,
23 it might be torture, it might be burglary,
24 whatever, if you had seen all of that
25 evidence, could you still keep an open mind

1 and listen to what they might have to say
2 about the defendant?

3 A. I mean, even though he might have had a
4 rough life that still doesn't give you a
5 reason to do a lot of things. So I could --
6 it don't give you a reason to do a lot of
7 things. I mean, even that I would have an
8 open mind but -- like you said, I mean, I --
9 about this, (affirmative nod), I could have
10 an open mind.

11 Q. Well, the Judge would tell you and the
12 other jurors that you had to listen and to
13 consider all of the evidence before you can
14 make a decision. Could you do that?

15 A. Listens all the evidence?.

16 Q. Yes.

17 A. I could listen to all the evidence,
18 yes, ma'am.

19 Q. And if you heard all of this -- whether
20 for example there was drug abuse or you
21 heard that the defendant was sorry, would
22 you want to know whether or not a defendant
23 that you are deciding punishment for was
24 sorry that he had did it or not?

25 A. Every time you something you could say

1 that your are sorry. It's all -- but
2 whether you learn from your mistakes or not.
3 Some things, you can't learn from.

4 Q. Would you be able to listen to that to
5 try to determine whether or not the person
6 who had done the crime felt really bad,
7 honestly and sincerely?

8 A. Yes, I would be willing to listen.

9 Q. And if you believed that the person was
10 really sorry, you would consider that in
11 determining the sentence?

12 A. I want to say that -- I could say that
13 I would consider that in determining the
14 sentence; but due to the circumstances --
15 yeah, I would take into consideration.

16 Q. When you tell me that you would take
17 something into consideration, tell me what
18 that means to you.

19 A. To take it into consideration means
20 that I would, due to my judgment, I would
21 put that in the question.

22 Q. It would help you form your judgment?

23 A. Yes, give me better clarity of what my
24 judgment is.

25 Q. Clarity?

1 A. Yes, ma'am.

2 Q. It would help to give you clarity?

3 A. (Affirmative nod).

4 Q. Is that ever a situation -- and, again,
5 one of these brutal, heinous murders where
6 you think that death should be automatic?

7 A. I mean -- I am not saying that death
8 should be automatic, it depends on what they
9 did.

10 Q. Does it also depend on those things
11 that we were talking about, the mitigating
12 circumstances about the defendant and what
13 was going on with him, would it depend upon
14 that too?

15 A. Yes, ma'am.

16 Q. So in a situation where -- again, you
17 might have a home invasion and a rape and as
18 a result of those two things someone is
19 murdered. Are you saying that death would
20 not have to be automatic in that situation,
21 that you would listen to any mitigating
22 circumstances?

23 A. I wouldn't say that. Because I've got
24 a mother and a sister and wife.

25 Q. Tell me that how that affects you.

1 A. Due to that, that would affect -- I
2 wouldn't vote -- I would listen to
3 everything clear. But as you put it in the
4 terms that you have a mother and a sister
5 that starts making you think like 'what if
6 that was them?'

7 Q. If the Judge asked you to put aside
8 your personal family situation and to make
9 your decision based upon the facts of the
10 case, not on what is going on in your life,
11 could you do that?

12 A. Yes, ma'am.

13 Q. Are you sure?

14 A. Yes, ma'am.

15 SCARLETT WILSON: That's all the
16 questions that I have. Thank you.

17 THE COURT: Mr. Maguire?

18 WILLIAM MAGUIRE: Thank you,
19 Judge.

20 EXAMINATION

21 BY WILLIAM MAGUIRE:

22 Q. Is it Mr. Darren's?

23 A. Darius.

24 Q. Sorry. I've got some bad hand lotion
25 on my piece of paper here. I want to talk

1 to you just in a little bit more detail.

2 Okay?

3 A. Okay.

4 Q. The only thing that we are going to
5 ask is that you be completely honest.

6 A. Okay.

7 Q. There are no right or wrong answers.
8 Whatever you think is what you think and
9 that is perfectly fine. Okay?

10 A. All right.

11 Q. I want to go backwards a little bit and
12 talk to you in a little bit more detail
13 about murder in South Carolina. Okay?

14 A. Okay.

15 Q. And that is defined as when somebody
16 intentionally kills an innocent person with
17 no -- unlawfully with no justification or
18 excuse. It is not self-defense, it is not
19 accident, it is not a fight that gets out of
20 hand. It is an intentional decision to take
21 an innocent life. Are you with me?

22 A. Yes.

23 Q. In that situation without knowing more,
24 sort of as a starting point, if you had to
25 vote death or life right then, how would you

1 vote?

2 A. Death or life?

3 Q. (Affirmative nod).

4 A. Life.

5 Q. Without knowing more, you would be at
6 life?

7 A. Without knowing more?

8 Q. (Affirmative nod).

9 A. Without more?

10 Q. No, without -- just the intentional --
11 in a murder case -- and in South Carolina
12 all murder cases are intentional. So
13 intentional, meant to do it, deliberate
14 taking of an innocent life with. Without
15 knowing any more information, just knowing
16 that, if you had to cast a vote for the life
17 penalty or for the death penalty, what would
18 you choose?

19 A. I would say life.

20 Q. You would have to hear more to get you
21 to death?

22 A. Yes.

23 Q. And when you say -- well, I said more.
24 Actually, what would you be looking for?

25 A. More is where he did it, everything

1 that he did.

2 Q. Circumstances?

3 A. Yes, circumstances.

4 Q. Like armed robbery, ---

5 A. The circumstances, other crimes. How
6 he took the action.

7 Q. Okay.

8 A. What brought him to do that.

9 Q. What brought him to do it?

10 A. Yes.

11 Q. The motive?

12 A. Yes.

13 Q. Some people might wonder how violent
14 the crime was and that sort of thing.

15 A. Yes.

16 Q. And let's say -- I want to take you
17 down the road a little bit further in terms
18 of -- let's add to that situation
19 aggravating circumstances, which could be
20 kidnaping, torture, rape, armed robbery,
21 burglary, or that sort of thing. After you
22 hear that, if you had to -- putting yourself
23 in a situation where now you're dealing with
24 an aggravating circumstance, and I want to
25 be a little bit more specific -- I am not

1 talking about this case. I want you to see
2 something in your mind, which is a home
3 invasion, which means entering into a home
4 knowing that people are there. Rape,
5 burglary, armed robbery, murder. If that
6 happens -- okay, are you there with me?

7 A. Yes.

8 Q. Okay. What is your opinion about the
9 death penalty as the appropriate punishment
10 in that case?

11 A. I mean, that is basically premeditated,
12 that you thought about it. So as you are
13 thinking, you know that you're doing wrong.
14 While you are thinking about it. So the
15 death penalty could be a consideration.

16 Q. You said that it could be a
17 consideration. Are you saying that it
18 should always be for cases like that?

19 A. Not always.

20 Q. Not always?

21 A. (Negative gesture), again it depends
22 upon the circumstances.

23 Q. Okay it sounds like -- where Ms. Wilson
24 was talking to you about the defendant and
25 things in his background, that you would

1 want to hear about that too; right?

2 A. Yes.

3 Q. Because -- because that's kind of how
4 we become people is by their upbringing and
5 our childhood; is that right?

6 A. Yes.

7 Q. Even though you still have choices, it
8 sounds like that you would still want to
9 hear about how the person sort of came to
10 be, how they came to be there? Their
11 background?

12 A. Yes, sir.

13 Q. In a case like this, very often a
14 decision is described as an individual moral
15 decision. There is not necessarily a right
16 or wrong answer, 'is the death penalty right
17 or wrong?' It is more an individual moral,
18 emotional decision. Does that sound fair to
19 you?

20 A. Yes, sir.

21 Q. And if other people had their own
22 individual moral decision, you would respect
23 their opinion?

24 A. I mean, everybody has the opportunity
25 to think how they want to think.

1 Q. Right, you would respect that?

2 A. Yes.

3 Q. And you would want to be respected?

4 A. Yes.

5 WILLIAM MAGUIRE: Thank you so
6 much, sir.

7 THE COURT: Any Motions?

8 WILLIAM MAGUIRE: No, sir.

9 SCARLETT WILSON: No, sir.

10 THE COURT: All right, Mr.

11 Darius, the bailiff is going to give you a
12 card okay? It has a phone number on the
13 card. Call that phone number tomorrow after
14 five o'clock and there will be a message for
15 the jury panel. Follow those instructions,
16 okay?'

17 JUROR NUMBER 198: Yes, sir.

18 THE COURT: What is going to
19 happen is that we are going to qualify so
20 many people for this jury panel and then we
21 are going to draw or to strike the jury.
22 You will be involved in the process.
23 Okay?

24 JUROR NUMBER 198: Yes, sir

25 THE COURT: Don't read anything in

1 the paper or watch television or talk to
2 anyone about the case. Okay?

3 JUROR NUMBER 198: Yes, sir.

4 THE COURT: Thank you very much.
5 You may go.

6 (JUROR NUMBER 198 EXITS COURTROOM)

7 THE COURT: What is our next
8 panel, Number 9?

9 CLERK: Yes, sir.

10 THE COURT: We have not gone
11 through it with them as a group, have we?

12 CLERK: No, sir.

13 THE COURT: Do we have nine and
14 ten here?

15 CLERK: And Panel Number 11.

16 THE COURT: All right. I am
17 going to take about a five-minute break.

18 (BRIEF RECESS 3:47 - 3:57 P.M.)

19 (OFF RECORD SIDEBAR WITH CLERK

20 RE: SCHEDULING PANELS)

21 THE COURT: Let me see the
22 attorneys up here a minute.

23 COURT REPORTER: On the record?

24 THE COURT: No.

25 (OFF RECORD BENCH CONFERENCE)

1 (DEFENDANT PRESENT)

2 THE COURT: Bring in groups nine
3 and ten at the same time. We will do both
4 of them at the same time. While they are
5 reading, we will be eleven.

6 (JURY PANELS NUMBER 9 & 10 ENTERS COURTROOM)

7 THE COURT: All right, ladies
8 and gentlemen of the jury panel. I am sorry
9 that we -- that you have been waiting so
10 long. We have been staying in here, talking
11 to jurors. It is a time-consuming process.
12 I am going to tell you -- going to make some
13 comments to you and make some instructions
14 on what is going to take place and explain
15 some of the law to you. But before we get
16 to that, I'm going to ask the clerk to swear
17 you.

18 CLERK: Please stand and raise
19 your right hand. (Jurors comply).

20 You should truthfully answer all
21 questions asked of you concerning this
22 matter now before the court, by the court or
23 by order thereof.

24 You should speak the truth, the
25 whole truth and nothing but the truth, so

1 help you God. Say "I do." (Affirmative
2 response from jurors). Please be seated.

3 THE COURT: We only have eleven.

4 CLERK: Number 280, he was
5 excused.

6 BRUCE DURANT: That would be
7 Mr. Putney, Your Honor?

8 THE COURT: Yeah, he was excused.

9 (JUROR NUMBER 280 EXCUSED)

10 THE COURT: All right, ladies
11 and gentlemen of the jury panel, the State
12 of South Carolina has charged the defendant
13 with the following crimes: attempted arson,
14 armed robbery, assault and battery with
15 intent to kill, criminal sexual conduct
16 first degree, grand larceny, burglary first
17 and murder.

18 Now in South Carolina, the
19 defendant never has to prove his innocence.
20 The State is required to prove the defendant
21 guilty beyond any reasonable doubt. It is
22 the State's responsibility to prove the
23 defendant guilty on all the charges that
24 they have brought.

25 This afternoon I am going to talk

1 to you about the murder charge, specifically
2 about the murder charge. In this particular
3 case, the State has filed a notice of the
4 death penalty on the defendant. In that
5 case when the death penalty notice has been
6 served, the trial is broken into two parts.
7 It is legally referred to as a bifurcated
8 trial, which means that there are two parts
9 to the trial. The first part is the guilt
10 phase. The second part is the penalty
11 phase.

12 For purposes of our discussion this
13 afternoon, you are going to have to assume
14 that the jury has found the defendant guilty
15 of murder. I am going to make some
16 statements and instruct you on the penalty
17 phase of the two-part trial.

18 Now, in the penalty phase the jury
19 determines whether the defendant should
20 receive death or life without parole. But
21 when I use the words "life without parole,"
22 I mean without parole. The defendant would
23 never be eligible for parole, he would die
24 in jail.

25 But you the jury makes that

1 determination of death or life without
2 parole. You make that recommendation to the
3 court and the court is obligated to sentence
4 according to your recommendation.

5 Now, before you get to the point of
6 considering life without parole or death,
7 the State is required by statute to prove
8 one or more aggravating circumstances. They
9 are laid out by state law. Aggravating
10 circumstances are facts, incidents, details
11 or occurrences which State law says
12 aggravates the offense of murder. In other
13 words, the circumstances increased the
14 enormity of the crime. The State is
15 obligated to prove one or more of those
16 aggravating circumstances.

17 You the jury has to decide and make
18 a decision whether or not the state has
19 proven aggravating circumstances. Some of
20 the aggravating circumstances, which I will
21 read to you:

22 That murder was committed while in
23 the commission of the following crimes or
24 acts: Criminal sexual conduct in any degree;
25 kidnaping; burglary in any degree; robbery

1 while armed with a deadly weapon; larceny
2 with the use of a deadly weapon; or physical
3 torture. Those are statutory aggravating
4 circumstances. The State would have to
5 prove those.

6 All twelve jurors, they to agree
7 that the State has proven one aggravating
8 circumstance -- not all aggravating
9 circumstances.

10 Now, in this particular case I do
11 not know what aggravating circumstance(s)
12 that the State is going to rely on or try to
13 prove, because I have not heard the case.
14 So I am talking in general terms to you, not
15 specifically about this crime.

16 So, in the penalty phase, once the
17 jury has voted and decided that the State
18 has proven the aggravations, and all twelve
19 of you agree, then the defendant will have
20 the opportunity to -- excuse me, to offer
21 testimony concerning mitigation.

22 What is mitigation? OI referred to
23 mitigating circumstances. Mitigating
24 circumstances, which are incidents, details
25 or occurrence which surround the incident

1 itself or which shed light on the
2 defendant's history, background, upbringing,
3 childhood, which make the crime less severe
4 or less harsh.

5 Now, some of the aggravating
6 circumstances by statute are that the
7 defendant has no significant history or
8 prior criminal convictions involving the use
9 of violence against another person.

10 The murder was committed while the
11 defendant was under the influence of mental
12 or emotional disturbance.

13 The capacity of the defendant to
14 appreciate the criminality of his conduct or
15 to conform his conduct to the requirements
16 of the law was substantially impaired.

17 The age or the mentality of the
18 defendant at the time of the crime.

19 Those are statutory mitigation in
20 the statute. I do not know if the defendant
21 is going to offer any mitigation or what
22 mitigation that he is going to offer.

23 Mitigation evidence can, in
24 essence, can be any reason for a sentence
25 less than the death penalty. So there are

1 also nonstatutory mitigation, which I
2 explained to you earlier -- concerning the
3 background, upbringing, or anything else
4 that may be relevant to the history of
5 mitigation.

6 So in the penalty phase, number one
7 you have to be convinced that the State has
8 proven an aggravating circumstance; number
9 two, you have to consider any and all
10 mitigating circumstances offered by the
11 Defendant. Then you make a decision of life
12 or death, life without the possibility of
13 parole or death. But you have to consider
14 the aggravating circumstance and the
15 mitigating circumstances before you decide
16 whether you are going to give the Defendant
17 life without parole or death.

18 Now, keep in mind that this is the
19 second part, this is the penalty phase. The
20 Defendant has already been found of the
21 crime of murder, as charged; that decision
22 was made, this is in the sentencing phase
23 that I am talking about.

24 I have prepared a form and the
25 bailiff when you go the jury room will give

1 you this form. It basically has a brief
2 explanation of murder and then it lays out
3 types one, two and three -- which are
4 general opinions that people may have
5 concerning the death penalty. I want you to
6 read this; see if you fit into any of these
7 categories.

8 Please don't discuss the categories
9 or the sheet amongst yourself. Just look at
10 it. It's a personal decision for you to
11 make, which category that you fit into.

12 Then I am going to bring you back
13 into the courtroom individually and ask you
14 about which category that you fit into, if
15 any. You may not fit into any of the
16 categories. That's fine. But read it and
17 see if you fit into a category.

18 I have also prepared a list of
19 potential witnesses. There are one hundred
20 thirty-four names on the list. I want you
21 to look at this list, see if you recognize
22 any names or if you know anybody on this
23 list, because I will ask about it when you
24 come back into the courtroom. One name has
25 been left off, Jessica Broughton. Does any

1 member of the jury panel know a Jessica
2 Broughton or recognize the name, Jessica
3 Broughton? If so, please raise your right
4 hand. Yes, sir, your name?

5 JUROR NUMBER 30: Daniel Bowen.

6 THE COURT: Pardon?

7 JUROR NUMBER 30: Daniel Bowen.

8 THE COURT: Mr. Bowen, Juror 30.
9 How do you know Jessica Broughton?

10 JUROR NUMBER 30: I recognize the
11 last name. I worked at Arnold's and there
12 is a guy that started with us, his name is -
13 - and he said that, uh, -- could I approach?

14 THE COURT: Pardon?

15 JUROR NUMBER 30: Could I approach
16 you -- because I don't know ---

17 SIDEBAR:

18 THE COURT: Yes, sir? Let
19 me turn this microphone off.

20 JUROR NUMBER 30: We had a
21 guy start working with us and --

22 THE COURT: What is his
23 name?

24 JUROR NUMBER 30: Devon
25 Crumbee and he told us at lunch one day

1 about his cousin and said that there was a
2 trial coming up.

3 THE COURT: Who was his
4 cousin?

5 JUROR NUMBER 30: I just
6 recognize the last name, Broughton. I don't
7 know ---

8 THE COURT: Broughton.

9 JUROR NUMBER 30: He told us
10 about ---

11 THE COURT: What did he tell
12 you about it?

13 JUROR NUMBER 30: He told us
14 that his cousin killed his aunt.

15 THE COURT: What else did he
16 tell you?

17 JUROR NUMBER 30: I don't
18 remember anything else. I don't think I was
19 paying attention too much, but then when I
20 told them at work that I had to come to jury
21 duty, he said -- told them that it was this
22 week, he said that his cousin's trial was
23 supposed to start this week. So I didn't
24 know if that had anything to do with ---

25 THE COURT: He said that he

1 killed his aunt?

2 JUROR NUMBER 30: (Affirmative
3 nod).

4 THE COURT: Is that what he
5 said to you?

6 JUROR NUMBER 30: (Affirmative
7 nod).

8 THE COURT: All right. Did
9 he tell you anything else?

10 JUROR NUMBER 30: No, sir.

11 THE COURT: Do you know the
12 Broughtons other than ---

13 JUROR NUMBER 30: No, sir.

14 THE COURT: When you heard
15 that information, did you form an opinion at
16 all about the case or the innocence or guilt
17 of Mr. Broughton in this case?

18 JUROR NUMBER 30: Uh, ---

19 THE COURT: Or what did you
20 think when you heard it?

21 JUROR NUMBER 30: Well, he did
22 say that supposedly he was ---

23 THE COURT: He what?

24 JUROR NUMBER 30: He told me
25 that he was going to be claiming that he

1 killed her because of insanity -- or
2 something, about drugs.. But, I mean, ---

3 THE COURT: What else did he
4 tell you? I am not -- (pause). He told you
5 that he was going to claim insanity or was
6 on drugs. What else did he tell you?

7 JUROR NUMBER 30: That he said
8 that he was already guilty.

9 THE COURT: That he was
10 what?

11 JUROR NUMBER 30: That he was
12 already guilty.

13 THE COURT: That he was
14 already guilty?

15 JUROR NUMBER 30: Right.

16 THE COURT: Okay. What else
17 did he tell you?

18 JUROR NUMBER 30: I think
19 that's it.

20 THE COURT: What do you
21 think about what he told you? At the time
22 that he told you, what did you think about
23 it?

24 JUROR NUMBER 30: You mean as
25 far as my personal opinion about it?

1 THE COURT: Yes, sir, your
2 personal opinion. Not what he said but what
3 you think -- what did you think about it?

4 JUROR NUMBER 30: Well, he
5 told me that he was going to use drugs as an
6 excuse. My personal opinion is that you're
7 going to do drugs, then whatever you do --
8 you know, you made a decision and you've got
9 to deal with it.

10 THE COURT: Did you form an
11 opinion about whether he was innocent or
12 guilty of the crime.

13 JUROR NUMBER 30: He told me.
14 He said that he was guilty, so I just went
15 off of that.

16 THE COURT: So you felt like
17 he is guilty, based on what he told you; is
18 that correct?

19 JUROR NUMBER 30: Well,
20 that's what I am told. So -- (pause).

21 THE COURT: Well, I don't
22 care what you're told. I want to know what
23 you think?

24 JUROR NUMBER 30: Well, I
25 don't really know. I just know what I am

1 told.

2 THE COURT: Okay. Well,
3 based on what you're told, do you have an
4 opinion as to whether Mr. Broughton is
5 innocent or guilty?

6 JUROR NUMBER 30: My first
7 instinct is that he would be guilty, from
8 what I was told.

9 THE COURT: Okay. Have you
10 got any questions that you would want to ask
11 on that issue?

12 SCARLETT WILSON: Yes, sir.
13 Do you want me to ask ---

14 THE COURT: Sure.

15 SCARLETT WILSON: Despite what
16 you were told, could you set all that aside
17 and make your decision based on the
18 testimony and facts given in court?

19 JUROR NUMBER 30: I could, but
20 working with -- if he ---

21 THE COURT: Let me do this.
22 Let me finish with this panel and then we
23 will deal with him -- so that the panel can
24 be in the jury room.

25 SCARLETT WILSON: That's fine.

1 THE COURT: Just have a seat
2 right over here for a second.

3 (SIDEBAR CONCLUDED)

4 THE COURT: All right. Ladies
5 and gentlemen of the jury, I have explained
6 to you the aggravation and the mitigation in
7 the trial and what to expect this afternoon.

8 Now I am going to introduce you to
9 the parties involved. Solicitor? Where did
10 she go? Okay. Mr. Maguire, would you
11 introduce yourself, please, sir.

12 WILLIAM MAGUIRE: Be glad to, Your
13 Honor. Ladies and Gentlemen, my name is
14 Bill Maguire. I am a lawyer, I live in
15 Columbia but I have also practiced here in
16 the lowcountry, Charleston, primarily. I
17 worked for Ashley Pennington in the 9th
18 Circuit Public Defender's Office and I
19 worked for Andy Savage for a couple of years
20 before moving to Georgia and then moving
21 back to Columbia.

22 The rest of the folks here at my
23 table -- obviously, Mr. Colin Broughton.

24 To his right is Morgan Daniels.
25 Morgan is an investigator in my office.

1 To her right is Pati Kennedy.

2
3 Ms. Kennedy is the chief public defender for
4 Berkeley County and her office is here in
5 Moncks Corner.

6 At the end of the table is Mr. Boyd
7 Young. Mr. Young is a lawyer in my office
8 and he, like me, has practiced in the
9 lowcountry and Georgia, as well:

10 THE COURT: Ladies and
11 gentlemen, is there any member of the jury
12 panel who is personal friends or who has a
13 close relationship with any the attorneys or
14 parties introduced by Mr. Maguire? If you
15 are, raise your right hand. (No response).

16 Have you been represented by Mr.
17 Maguire or any of the attorneys that he has
18 introduced? (No response).

19 Solicitor?

20 SCARLETT WILSON: Thank you,
21 Judge. I am Scarlett Wilson. I am the
22 solicitor for Charleston and Berkeley
23 counties.

24 This is Bruce Durant, he is my
25 chief deputy solicitor over Charleston and

1 Berkeley counties; which is known as the 9th
2 Circuit.

3
4 This is Brian Alfaro. He is a
5 deputy (solicitor) in our Berkeley office.

6 Together the three of us will be
7 asking questions, submitting evidence in
8 this case over the next week or so. Thank
9 you.

10 THE COURT: Is there any member
11 of the jury panel who has a close personal
12 relationship with anyone in the solicitor's
13 office? If so, raise your right hand. (No
14 response). All right, let the record
15 reflect that no one has raised their right
16 hands to the court's last two questions.

17 Ladies and gentlemen of the jury,
18 what I am going to ask you to do is to
19 follow the bailiff. They are going to take
20 you to the jury room. I want to look at the
21 witness list and also review the sheet
22 concerning the opinions on the death
23 penalty.

24 After you have done that, I'll get
25 you back and we will start questioning each

1 individual juror. Like I said, that is what
2 takes so much time in these cases. If you
3 would follow the bailiff, please.

4 (JURY PANELS 9 & 10 EXIT COURTROOM)

5 THE COURT: All right. Mr. Bowen,
6 would you come around and have a seat in the
7 witness stand, please.

8 All right, solicitor. I had told
9 you that I would give you an opportunity to
10 ask Mr. Bolan some questions about
11 information about his opinion .

12 I will give the defense counsel an
13 opportunity to ask him questions.

14 I'll listen to any Motions if you
15 have any.

16 DANIEL BOWEN, having been
17 previously sworn to tell the truth testified
18 as follows:

19 EXAMINATION

20 BY SCARLETT WILSON:

21 Q. I just have a couple of followup
22 questions based on the information that you
23 learned from your friend at work. That was
24 whether or not you could set what you heard
25 aside and base your opinion or your verdict

1 as to whether or not the Defendant is guilty
2 or not -- base it on what happened here in
3 court, the testimony and evidence. Would
4 you be able to do that?

5 A. Yes. But at the same time -- yes, I
6 could. But I have to go back to work there,
7 so depending on what I decide that could
8 influence his opinion with me or how my work
9 is or that, -- but that would not change how
10 I am going to see the case, but at the same
11 time it could change what happens to me
12 afterwards.

13 Q. Are you worried about that? Would that
14 put you in a bind?

15 A. Well, it's my work. You know, right
16 now -- I mean, I need the job. I wouldn't
17 say that he and I are close but we do work
18 together and -- we work together, either
19 hour a day every day.

20 Q. I mean, we are just trying to find out
21 what kind of situation that puts you in and
22 whether or not you think that you should not
23 serve as a juror on this case.

24 A. I don't think -- I mean, I would rather
25 not considering what the charges are. I

1 mean, they are pretty serious and -- I mean,
2 knowing somebody that knows the person, it
3 could make things difficult after the fact.

4 SCARLETT WILSON: Okay. That's
5 all. Thank you. That's all.

6 THE COURT: Your friend at work,
7 is he a coworker or is he your supervisor?

8 JUROR NUMBER 30: Coworker.

9 THE COURT: Coworker?

10 JUROR NUMBER 30: (Affirmative
11 nod).

12 THE COURT: Okay. Mr. Maguire?

13 WILLIAM MAGUIRE: Judge, I -- do I
14 need to ask him anything.

15 THE COURT: That is up to you.

16 WILLIAM MAGUIRE: All right.

17 THE COURT: I am just giving you
18 the opportunity. If you don't want to, you
19 can sit down.

20 EXAMINATION

21 BY WILLIAM MAGUIRE:

22 Q. I'm sorry, your last name again?

23 A. Bowen.

24 Q. Mr. Bowen, you are coworkers with
25 Devon?

1 A. Devon. Yes, sir.

2 Q. And Devon gave you this information
3 about Mr. Broughton?

4 A. (Affirmative nod).

5 Q. And did you get the impression that
6 Devon had this information because he was
7 speaking to Mr. Broughton?

8 A. No. I don't really know how he got it.
9 It just come up in conversation at lunch.
10 And then ---

11 Q. Okay.

12 A. Then, you know, I got my jury summons
13 and I said that I had to go to court, all
14 this, and he said, 'Yeah, it's probably for
15 my cousin's trial.' I was like, 'What did
16 your cousin do?' Then he told me again.

17 Q. So would it be fair to say that you
18 don't know what all information that Devon
19 has ---

20 A. Correct.

21 Q. But that he has it because he is a
22 family member?

23 A. Correct.

24 Q. And the conversations that you've had
25 with Devon, based on your comments I kind of

1 got the impression that he told you
2 basically that Mr. Broughton was in fact
3 guilty but had like an excuse or a mental
4 health defense that he was going to try to
5 put up at trial?

6 A. Correct.

7 Q. And when Devon was talking to you about
8 this, did he - he seemed convinced to Mr.
9 Broughton's guilt?

10 A. I assume so. I mean, that's the
11 impression that I got.

12 Q. It. He also gave you the impression
13 that the defense that he was going to put up
14 was kind of an "excuse"?

15 A. From what I heard, it was due to like
16 drug related. So, I don't know if you
17 really -- if you could consider that an
18 excuse or not, but that's what I was told.

19 Q. Okay. Are you aware that Devon was in
20 jail not too long ago?

21 A. I was not.

22 Q. Okay.

23 Q. He did not tell you about any of his
24 experiences in jail, obviously?

25 A. (Negative gesture).

1 Q. You did not even know that he was
2 there.

3 A. No, I did not know that he was in jail.
4 I know that he got pulled over before but
5 that was about it.

6 Q. Okay.

7 WILLIAM MAGUIRE: That's it.

8 THE COURT: All right, Mr. Bowen,
9 I've got one question or a couple for you.
10 You told me when you were up here to the
11 bench that based upon the information that
12 Mr. Devon has given you that you felt like
13 that you had formed an opinion that the
14 defendant, Mr. Broughton, is guilty; is that
15 correct

16 JUROR NUMBER 30: Yes.

17 THE COURT: Do you still feel
18 that way?

19 JUROR NUMBER 30: That's the only
20 way that I can feel right now because that's
21 all that I have heard. I mean, until I am
22 told otherwise.

23 THE COURT: All right. If you
24 had that opinion initially when he told you,
25 that way, is there any way that you could

1 set that aside and listen to the facts of
2 this case and base your decision on what you
3 hear in this courtroom? Can you set it
4 aside?

5 JUROR NUMBER 30: Yes.

6 THE COURT: Pardon?

7 JUROR NUMBER 30: Yes, sir.

8 THE COURT: Are you sure?

9 JUROR NUMBER 30: (Affirmative
10 nod).

11 THE COURT: You think you can?

12 JUROR NUMBER 30: I mean, I can --
13 it's just that ---

14 THE COURT: I mean, only you know
15 that.

16 JUROR NUMBER 30: Right.

17 THE COURT: You are the only
18 person in the world that knows whether you
19 can or you can't. I am just asking you
20 pointblank, can you?

21 JUROR NUMBER 30: Yes.

22 THE COURT: Pardon?

23 JUROR NUMBER 30: Yes, sir.

24 THE COURT: You can forget about
25 it, you can set it aside?

1 JUROR NUMBER 30: Yes, sir.

2 THE COURT: And you won't discuss
3 it with any other jurors if you're chosen
4 for this jury?

5 JUROR NUMBER 30: (Negative
6 gesture), no, sir.

7 THE COURT: You're positive that
8 you could set it aside and base your
9 decision on what you hear here in the
10 courtroom, not what Devon told you prior to
11 trial; is that correct?

12 JUROR NUMBER 30: Yes, sir. I
13 could, but I would have to be out of work
14 and stuff because it's going to be ---

15 THE COURT: I understand that.
16 I understand that you don't want to be on
17 the jury. I understand that. I am not
18 concerned about that as much as I am about
19 what you know about the case ---

20 JUROR NUMBER 30: I understand.

21 THE COURT: --- and your opinion
22 about the case.

23 JUROR NUMBER 30: I mean, I form
24 my own opinion about everything.

25 THE COURT: Pardon?

1 JUROR NUMBER 30: I form my own
2 opinion. I don't let anybody else make my
3 opinion for me.

4 THE COURT: Okay. So what is
5 your opinion about the innocence or guilt of
6 Mr. Broughton? JUROR NUMBER 30:
7 Just what I have been told.

8 THE COURT: Well, you just said
9 -- you just told me that nobody else made
10 opinions for you. My question to you is,
11 what is your opinion about Mr. Broughton's
12 innocence or guilt?

13 JUROR NUMBER 30: I'd have to say
14 guilty because from what I'm told supposedly
15 he's done admitted that he is guilty. So
16 from the information that I collect, that's
17 the only opinion I can form.

18 THE COURT: Okay. All right.
19 Stand out in the hall for a minute.

20 (JUROR NUMBER 30 EXITS COURTROOM)

21 THE COURT: Any Motions?

22 WILLIAM MAGUIRE: Judge, if I
23 could have just one second -- (sidebar with
24 Mr. Young).

25 Judge, I don't believe that we have

1 any choice but to move that he be excused.
2 He's got information straight from a family
3 member. He's under the impression that it's
4 coming from the family. He's got sort of an
5 inside track on their opinion, which is that
6 Mr. Broughton is guilty and has a defense
7 planned.

8 I think that not to excuse him
9 would violate Mr. Broughton's Sixth and
10 Fourteenth Amendment right to have a juror
11 with that kind of knowledge to sit on a
12 panel.

13 THE COURT: Solicitor?

14 SCARLETT WILSON: We don't have
15 any objection.

16 THE COURT: Okay. I am going to
17 excuse him.

18 BAILIFF: Do you want me to
19 bring him back in, sir?

20 THE COURT: No, just tell him
21 that he is excused.

22 (JUROR NUMBER 30 EXCUSED)

23 THE COURT: Do we have nine and
24 ten in the same jury room?

25 BAILIFF: Yes, sir.

1 THE COURT: Are any of them ready
2 to go -- where is eleven? Bring eleven in.

3 (JURY PANEL NUMBER 11 ENTERS COURTROOM)

4 THE COURT: Ladies and Gentlemen
5 of the jury panel, I'm going to make a few
6 comments to you about the case. Before I
7 get to that, I am going to ask the clerk to
8 swear you.

9 CLERK: Please stand and raise
10 your right hands. (Jurors comply).

11 You should truthfully answer all
12 questions asked of you concerning this
13 matter now before the court, by the court or
14 by order thereof.

15 You should speak the truth, the
16 whole truth and nothing but the truth, so
17 help you God. Say "I do." (Affirmative
18 response from jurors). Please be seated.

19 THE COURT: Ladies and gentlemen
20 of the jury panel, the State has charged the
21 Defendant in this case with attempted arson,
22 armed robbery, assault and battery with
23 intent to kill, criminal sexual conduct
24 first, grand larceny, burglary first, and
25 murder.

1 Now, the State has the burden of
2 proof in the Defendant guilty of all these
3 charges beyond a reasonable doubt. All
4 twelve jurors would have to go to find the
5 defendant guilty.

6 This afternoon I am going to talk
7 to you about murder. In this particular
8 case, the State has filed a notice of the
9 death penalty on the defendant. In that
10 case when the death penalty notice has been
11 served, the trial is broken into two parts.
12 It is legally referred to as a bifurcated
13 trial, which means that there are two parts
14 to the trial. The first part is the guilt
15 phase. Then the trial goes into the penalty
16 or the sentencing part, that is the second
17 part is the penalty phase..

18 For purposes of our discussion this
19 afternoon, you are going to have to assume
20 that the jury has found the defendant guilty
21 of murder. I am going to make some
22 statements and instruct you on the penalty
23 phase of the two-part trial.

24 Now, in the penalty phase the jury
25 determines whether the defendant should

1 receive death or life without parole. And
2 when I use the words "life without parole,"
3 that's what I mean -- without parole. The
4 defendant would never be eligible for
5 parole, he would die in jail. That is your
6 decision, life without parole or death.

7 But you the jury makes that
8 determination of death or life without
9 parole. You make that recommendation to the
10 court and the court is obligated to sentence
11 accordingly.

12 Please don't consider the fact that
13 the attorneys are talking about the penalty
14 phase as -- in no way does that indicate
15 whether this defendant is guilty or innocent
16 of the charges. We have to talk to you
17 about the penalty phase, the death penalty
18 and your view on the death penalty to make a
19 determination of jurors.

20 Now, before you get to making the
21 decision of death or life without parole
22 there are certain things that you have to
23 consider and we will go briefly over those
24 things that you will have to consider.

25 Now, the point -- in considering

1 life without parole or death, the State is
2 required by statute to prove one or more
3 aggravating circumstances. They are laid
4 out by state law. Aggravating circumstances
5 are facts, incidents, details or occurrences
6 which State law says aggravates the offense
7 of murder. In other words the circumstances
8 increased the enormity of the crime. The
9 State is obligated to prove one or more of
10 those aggravating circumstances.

11 You the jury has to decide and make
12 a decision whether or not the State has
13 proven aggravating circumstances. Some of
14 the aggravating circumstances, which I will
15 read to you:

16 That murder was committed while in
17 the commission of the following crimes or
18 acts: Criminal sexual conduct in any degree;
19 kidnaping; burglary in any degree; robbery
20 while armed with a deadly weapon; larceny
21 with the use of a deadly weapon; or physical
22 torture. Those are statutory aggravating
23 circumstances. The State would have to
24 prove one of those.

25 All twelve jurors, they to agree

1 that the State has proven one aggravating
2 circumstance -- not all aggravating
3 circumstances but one aggravating
4 circumstances to your satisfaction, where
5 all twelve jurors agree.

6 Now, in this particular case I do
7 not know what aggravating circumstance(s)
8 that the State is going to rely on or try to
9 prove, because I have not heard the case.
10 So I am talking in general terms to you, not
11 specifically about this crime.

12 So, in the penalty phase, once the
13 jury has voted and decided that the State
14 has proven the aggravations, and all twelve
15 of you agree, then the defendant will have
16 the opportunity to offer testimony
17 concerning mitigation.

18 What is mitigation? I referred to
19 mitigating circumstances. Mitigating
20 circumstances, which are incidents, details
21 or occurrence which surround the incident
22 itself or which shed light on the
23 defendant's history, background, upbringing,
24 childhood, which make the crime less severe
25 or less harsh.

1 Now, some of the aggravating
2 circumstances by statute are that the
3 defendant has no significant history or
4 prior criminal convictions involving the use
5 of violence against another person.

6 The murder was committed while the
7 defendant was under the influence of mental
8 or emotional disturbance.

9 The capacity of the defendant to
10 appreciate the criminality of his conduct or
11 to conform his conduct to the requirements
12 of the law was substantially impaired.

13 The age or the mentality of the
14 defendant at the time of the crime.

15 Those are statutory mitigation in
16 the statute. I do not know if the defendant
17 is going to offer any mitigation or what
18 mitigation that he is going to offer.

19 Mitigation evidence can, in
20 essence, can be any reason for a sentence
21 less than the death penalty. So there are
22 also nonstatutory mitigation, which I
23 explained to you earlier -- concerning the
24 background, upbringing, or anything else
25 that may be relevant to the history of

1 mitigation.

2 So in the penalty phase, number one
3 you have to be convinced that the State has
4 proven an aggravating circumstance; number
5 two, you have to listen to and consider any
6 and all mitigating circumstances offered by
7 the Defendant.. Then you make a decision of
8 life or death, life without the possibility
9 of parole or death.

10 But you have to consider the
11 aggravating circumstance and the mitigating
12 circumstances before you decide whether you
13 are going to give the Defendant life without
14 parole or death.

15 Now, keep in mind that this is the
16 second part, this is the penalty phase. The
17 Defendant has already been found of the
18 crime of murder, as charged; that decision
19 was made, this is in the sentencing phase
20 that I am talking about.

21 I have prepared a form and the
22 bailiff when you go the jury room will give
23 you this form. It basically has a brief
24 explanation of murder and then it lays out
25 types one, two and three -- which are

1 general opinions that people may have
2 concerning the death penalty. I want you to
3 read this, see if you fit into any of these
4 categories.

5 Please don't discuss the categories
6 or the sheet amongst yourself. Just look at
7 it. It's a personal decision for you to
8 make, which category that you fit into.

9 Then I am going to bring you back
10 into the courtroom individually and ask you
11 about which category that you fit into, if
12 any. You may not fit into any of the
13 categories. That's fine. Read it and see
14 if you fit into a category. We'll bring in
15 back in one at a time and we will talk about
16 that issue and some other issues.

17 I have also prepared a list of
18 potential witnesses. There are one hundred
19 thirty-four names on the list. I want you
20 to look at this list, see if you recognize
21 any names or if you know anybody on this
22 list, because I will ask about it when you
23 come back into the courtroom. One name has
24 been left off, that name is Jessica
25 Broughton. Does any member of the jury

1 panel know a Jessica Broughton or recognize
2 the name, Jessica Broughton? If so, please
3 raise your right hand. (No response).

4 Solicitor, do you want to introduce
5 yourself?

6 SCARLETT WILSON: Yes, sir.
7 Thank you. I am Scarlett Wilson. I am the
8 solicitor for Charleston and Berkeley
9 counties.

10 This is Bruce Durant, he is my
11 chief deputy solicitor over Charleston and
12 Berkeley counties; which is known as the 9th
13 Circuit.

14 This is Brian Alfaro. He is over
15 our Berkeley office.

16 Together the three of us will be
17 asking questions, submitting evidence,
18 taking testimony during this trial over the
19 next week or so. Thank you.

20 THE COURT: Is there any member
21 of the jury panel who has a close personal
22 relationship with anyone in the solicitor's
23 office? If so, raise your right hand. (No
24 response).

25 Mr. Maguire?

1 WILLIAM MAGUIRE: Ladies and
2 Gentlemen, my name is Bill Maguire. I am a
3 lawyer, I live in Columbia, I work for the
4 State Government.

5 Before moving to Columbia, I
6 practiced here in the lowcountry,
7 Charleston, primarily. I worked for Ashley
8 Pennington in the 9th Circuit Public
9 Defender's Office and I also worked for Andy
10 Savage in private practice.

11 Obviously this is Mr. Colin
12 Broughton, my client. I will representing
13 him, along with the people at my table.

14 To his right is Morgan Daniels.
15 Morgan is an investigator in my office,
16 graduated from USC. She's from Florida.

17 To her right is Pati Kennedy.
18 Ms. Kennedy is the chief public defender of
19 the Berkeley County Public Defender's Office
20 and her office is here in Moncks Corner.

21 At the end of the table is Mr. Boyd
22 Young. Mr. Young is a lawyer in my office
23 and he, like me, has practiced both in the
24 lowcountry, Charleston, and Georgia, as
25 well.

1 THE COURT: Ladies and
2 gentlemen, is there any member of the jury
3 panel who is personal friends or who has a
4 close relationship with any the attorneys or
5 parties introduced by Mr. Maguire? If you
6 are, raise your right hand. (No response).

7 Have you been represented by Mr.
8 Maguire or any of the attorneys that he has
9 introduced? (No response).

10 Let the record reflect that no one
11 has raised their hands in answer to the
12 questions concerning the Solicitor's office
13 or the defense attorneys.

14 All right. Ladies and Gentlemen,
15 what I am going to do now is I am going to
16 ask you to go to the jury room and start
17 reviewing the individual opinions concerning
18 the death penalty to see if you fit into any
19 of the categories and to look at the witness
20 list.

21 Now, let me ask this to you. We
22 have ten jurors in front of you that we are
23 going to be talking to individually before
24 we start on your group, so it's going to be
25 awhile. I don't know how long it is going

1 to be. We would just try to get to as many
2 of you as we can this afternoon. Please
3 follow the Bailiff to the jury room.

4 (JURY PANEL NUMBER 11 EXITS COURTROOM)

5 THE COURT: Have we got anybody
6 ready?

7 (JUROR NUMBER 331 ENTERS COURTROOM)

8 CLERK: State your name please.

9 JUROR NUMBER 331: My name is
10 Brittany Storo.

11 THE COURT: Ms. Storo -- is it
12 Miss or Mrs?

13 JUROR NUMBER 331: It is Miss.

14 THE COURT: Miss Storo, how are
15 you doing today?

16 JUROR NUMBER 331: Fine. How
17 are you?

18 THE COURT: Have you had an
19 opportunity to review the opinions about the
20 death penalty?

21 JUROR NUMBER 331: Yes, sir.

22 THE COURT: Did you understand
23 it?

24 JUROR NUMBER 331: Yes, sir.

25 THE COURT: Could you determine

1 if you fell into any of the categories?

2 JUROR NUMBER 331: Type three.

3 THE COURT: Okay, type three.

4 I've got a few questions to ask you and then
5 the attorneys may have some questions.

6 BRITTANY STORO, having been
7 previously sworn to tell the truth testified
8 as follows:

9 EXAMINATION

10 BY THE COURT:

11 Q. Did you have an opportunity to review
12 the witness list?

13 A. Yes, sir.

14 Q. Did you recognize or know anyone on the
15 list?

16 A. No, sir.

17 Q. Out of one hundred and thirty-four,
18 nobody?

19 A. No. The only Officer Floyd that I know
20 was a school detention officer in middle
21 school. That was the only possible one.

22 Q. What number is that?

23 A. That is number one twenty-two.

24 Q. One twenty-two?

25 A. Yes, sir.

1 Q. Okay.

2 A. But I am not sure that is the same one.

3 Q. Do you know if that is the same one

4 A. No, sir.

5 Q. Okay. And he was, what? A detention
6 officer at the middle school when you were
7 in middle school?

8 A. Yes, sir

9 Q. Okay. Have you heard anybody talking
10 about the case?

11 A. No, sir.

12 Q. Have you read anything in the paper
13 about the case?

14 A. No, sir. I don't read the paper.

15 Q. Have you heard or seen anything on
16 television?

17 A. No, sir.

18 Q. Know anything at all about?

19 A. No, sir.

20 Q. Do you have any relatives or close
21 personal friends employed in law
22 enforcement?

23 A. Just a police officer that lives across
24 the street from us. That's it.

25 Q. Okay. What is his name?

1 A. His name is Shane Judy (phonetic).

2 Q. Who does he work for?

3 A. Berkeley County.

4 Q. Sheriff's Department?

5 A. Yes, sir.

6 Q. How long has he lived across the street
7 from you?

8 A. Last five years.

9 Q. Five years?

10 A. (Affirmative nod). Q

11 Q. Are you good friends with him?

12 A. No, my parents are.

13 Q. Your parents are?

14 A. (Affirmative nod).

15 Q. Does he visit in your home?

16 A. No, not really. My parents -- if they
17 associate, they go over there usually.

18 Q. Okay. Would that cause you any
19 difficulty in sitting on this jury?

20 A. No, sir.

21 Q. Has the solicitor prosecuted you or
22 anyone in your family or any close personal
23 friends?

24 A. No, sir.

25 Q. Are you a victim of a crime or has any

1 member of your family ever been a victim?

2 A. No, sir.

3 Q. Have you any relatives in jail?

4 A. No, sir.

5 Q. Do you belong to any organization or
6 groups that have as their primary purpose
7 the support of law enforcement, such as
8 MADD?

9 A. No, sir.

10 Q. Do you have any special or particular
11 interest in the outcome of this case?

12 A. Not really, no.

13 Q. Are you aware of any bias or prejudice
14 towards the defendant as a result of the
15 charges that the State has brought against
16 him?

17 A. No, sir.

18 Q. Are you aware of any bias or prejudice
19 towards the defendant because of his race,
20 being black?

21 A. No, sir.

22 Q. Do you have any religious beliefs that
23 would give you a bias or prejudice for or
24 against the defendant?

25 A. No, sir.

1 Q. Do you have any religious beliefs that
2 would cause you to be biased or prejudiced
3 for or against the State?

4 A. No, sir.

5 Q. Have you had any bad experiences or
6 good experiences with law enforcement?

7 A. No, sir.

8 Q. Do you know of any reason, personal or
9 otherwise, as to why you couldn't serve on
10 this jury?

11 A. No, sir.

12 Q. Do you know the reason why you cannot
13 give the State and the Defendant a fair and
14 impartial trial?

15 A. No, sir.

16 Q. Okay.

17 THE COURT: Whose turn?

18 WILLIAM MAGUIRE: Mine, Your
19 Honor.

20 EXAMINATION

21 BY MR. MAGUIRE:

22 Q. Good afternoon, Ms. Storo.

23 A. Yes, sir.

24 Q. Did I get that right?

25 A. (Affirmative nod).

1 Q. Thanks for being here with us. I know
2 that it is tough, a lot of waiting, very
3 inconvenient. I appreciate you hanging in
4 there with us.

5 A. That's no problem.

6 Q. The only thing that we are going to ask
7 of you is just complete honesty and candor.

8 A. Okay.

9 Q. Just be completely honest with your
10 answers. That is all that we are looking
11 for.

12 A. Okay.

13 Q. There are no right or wrong answers.
14 Okay?

15 A. Okay.

16 Q. But I want to do is, just to make sure
17 that we start off on the same page, I am
18 going to start at the beginning and talk to
19 you a little bit about the definition of
20 murder in South Carolina.

21 A. Okay.

22 Q. That is that it is the intentional
23 killing, unlawfully, of an innocent victim
24 with no justification or excuse. It is not
25 self-defense, it is not an accident, it is

1 not somebody that might have hit somebody in
2 a car accidentally or that sort of thing.
3 We are talking about a deliberate act,
4 choosing to take an innocent life. Are you
5 with me?

6 A. Yes, sir.

7 Q. In that situation, what are your
8 opinions about the death penalty as being
9 the appropriate punishment?

10 A.. If the person is proven guilty, they
11 -- (pause) -- should be punished.

12 Q. Okay. When you say punished, are you
13 saying that the death penalty is an
14 appropriate sentence in that situation?

15 A. Yes, sir.

16 Q. Okay: If -- you said they are guilty.
17 I just want to make sure that we are talking
18 about somebody where you and eleven other
19 people would have found this person guilty
20 beyond a reasonable doubt.

21 A. Yes, sir, from hearing all the
22 information.

23 Q. Exactly. All the circumstances of the
24 crime, that you got the right guy, that
25 there is no defense, no alibi, no self-

1 defense, all of that. Guilty. The
2 intentional taking of an innocent life.

3 A. Yes, sir.

4 Q. And what it appears is that to you is
5 that the death penalty is an appropriate
6 punishment in that situation?

7 A. Yes, sir.

8 Q. In fact, it sounds like it's always
9 going to be appropriate to you in that
10 situation.

11 SCARLETT WILSON: Objection, Your
12 Honor.

13 THE COURT: Come up here, both of
14 you.

15 BENCH CONFERENCE:

16 THE COURT: I didn't hear
17 the question.

18 SCARLETT WILSON: He said,
19 'it sounds like it's always going to be
20 appropriate to you in that situation.'

21 THE COURT: Okay. I just
22 didn't hear the question.

23 (BENCH CONFERENCE CONCLUDED)

24 EXAMINATION CONTINUED

25 BY WILLIAM MAGUIRE:

1 Q. Miss Storo, let's go back to that
2 situation. I just want to ask you a little
3 bit more to make sure that we are on the
4 same page.

5 A. Okay.

6 Q. Because I forgot to tell you little bit
7 about murder in South Carolina. Not only is
8 it the unlawful, intentional killing of an
9 innocent person but it is also with malice
10 aforethought. I left that out. Malice is
11 acting with a black and malignant or
12 depraved heart, fatally bent on wickedness
13 or mischief. It is kind of an odd
14 definition but that is how we define it in
15 South Carolina. In that situation, with
16 that malice, mean, intentional murder, the
17 intentional decision to take a life, is a
18 life sentence ever a severe enough
19 punishment for that murder?

20 A. I mean -- yes, sir, depending upon the
21 case or the individual, because previous --
22 like medical history, depending upon the
23 person.

24 Q. Maybe there are mental health issues?

25 A. Yes.

1 Q. Well, I just want to make sure that you
2 are talking about somebody who knows right
3 from wrong.

4 A. (Affirmative nod), and they
5 intentionally did it.

6 Q. Yes. But they can distinguish between
7 right and wrong.

8 A. Okay.

9 Q. That they don't have a mental defect
10 where they did not know what they were
11 doing.

12 A. Yes, sir.

13 Q. So it is somebody who knows what they
14 were doing, they intentionally took an
15 innocent life. In that situation, is a life
16 penalty really severe enough?

17 A. Yes, sir.

18 Q. What would -- it sounds like that you
19 would consider life without parole to be a
20 serious punishment?

21 A. Yeah, I do.

22 Q. And in deciding between the death
23 penalty and life without parole, what would
24 you want to hear to make up your mind?

25 A. Basically all the facts, stating -- the

1 previous history of the person, but
2 basically just the facts. If there were any
3 witnesses or such as that.

4 Q. Now, again, we are talking with
5 somebody who has already been convicted.

6 A. Yes, sir.

7 Q. No doubt about that. Guilty, guilty.
8 I just want to make sure that you are not
9 confused about that.

10 A. I am not.

11 Q. Good. And I see that you are a child
12 care provider??

13 A. Yes, I am an assistant teacher in a
14 classroom.

15 Q. What do you teach?

16 A. Oakbrook Child Development.

17 Q. Is that kind of like a kindergarten age
18 school?

19 A. My kids are actually three. They will
20 be four. So they are already in like a 3K
21 program.

22 Q. And is that your education and
23 training, being a teacher?

24 A. Yes, sir.

25 Q. Are you -- my wife went to the college

1 of Charleston and was a teaching person and
2 she had to take certified tests and all of
3 that. Have you done all of that?

4 A. We just have to take fifteen credit
5 hours through DSS, as well as CPR, blood
6 borne pathogens and first aid.

7 Q. Okay. Have you ever had occasion to
8 have to intervene in a family regarding any
9 kind of abuse or any kind of situation with
10 the child?

11 A. Yes, sir. We did have a child which
12 was showing inappropriate behavior and was
13 talking about stuff that was going on at
14 home. I confronted my director and she kind
15 of handled it because they do not want us to
16 intervene with the parents, so that possibly
17 there is no conflict in the classroom.

18 Q. Good. Was it sexually acting out?

19 A. No, sir.

20 Q. How was it inappropriate?

21 A. The child was talking about a witch and
22 that the witch lived in her house, that the
23 witch took her clothes from her. It went in
24 a lot of directions and they said that a lot
25 of times that a person, a child, can relate

1 the witch to someone else by looks or
2 behavior.

3 Q. Sure. So that's something that you're
4 kind of on the lookout for, to make sure
5 that all the kids are safe and being taken
6 care of?

7 A. Yes, sir.

8 Q. When you said that you would want to
9 consider things about a person's background,
10 the defendant's background, what would you
11 be looking for? Would be important to you?

12 A. The mental status, majorly, because if
13 the person is not in their right mind
14 obviously they do not know that they are
15 doing right or wrong.

16 Q. Well, now we are talking about someone
17 that has been found guilty and is in their
18 right mind.

19 A. Yes.

20 Q. If you found that they would actually
21 have been found not guilty by reason of
22 insanity.

23 A. Right. So, I mean, there would be
24 nothing.

25 Q. Well, you really could not say that

1 because you would not be in the penalty
2 phase of a death penalty trial because -
3 to be quite honest. Anything else?

4 A. No, sir.

5 Q. Okay. I want to go back again to talk
6 a bit about murder. Okay?

7 A. Okay.

8 Q. I want to describe the crime and I want
9 you to be there with me. Okay?

10 A. Okay.

11 Q. A home invasion, rape, burglary, armed
12 robbery, murder. In that situation, what
13 is your opinion about the death penalty as
14 an appropriate punishment?

15 SCARLETT WILSON: Your Honor, I
16 object to the hypothetical.

17 THE COURT: I will overrule the
18 objection.

19 WILLIAM MAGUIRE: Thank you,
20 Judge.

21 JUROR NUMBER 331: Yes, sir, I
22 would say that would be appropriate because
23 it was more than one thing, as he had
24 obviously listed earlier.

25 EXAMINATION CONTINUED

1 BY WILLIAM MAGUIRE:

2 Q. In that situation, is there anything,
3 absent somebody not being in their right
4 mind, that would bring your vote down from
5 the death penalty to a life without parole
6 penalty?

7 A. No, sir.

8 Q. Okay. In that kind of scenario, even
9 if you did hear things about the defendant's
10 background, say something that happened ten
11 years ago, because he knew right from wrong
12 and did those crimes with that wrong, mean
13 behavior, it would not justify that? That
14 would not really be relevant in your
15 decision?

16 A. Right.

17 WILLIAM MAGUIRE: Just a second,
18 Judge.

19 THE COURT: Solicitor?

20 EXAMINATION CONTINUED

21 BY WILLIAM MAGUIRE:

22 Q. Just briefly, when you make a decision
23 in a case like this, if you were to be on
24 the jury, it is very often described as an
25 individual moral judgment. It is not like a

1 right or wrong type thing. It is not like
2 it is a car wreck case and you are trying to
3 decide if the red light was green or red.
4 It is kind of a personal moral individual
5 choice. Are you okay with that?

6 A. Yes, sir.

7 Q. How do you feel about having the power
8 to decide whether somebody lives or dies?

9 A. Well, if you all -- obviously if you
10 all think I am suitable to make that
11 judgment, I personally think that I would be
12 fine with that.

13 Q. Okay. Could you also respect other
14 people that had a different individual moral
15 assessment?

16 A. Yes, sir.

17 Q. Respect their decision?

18 A. Yes, sir.

19 Q. In something of this matter, something
20 so grave as somebody's life being at stake,
21 it would be okay at the end of the day to
22 agree to disagree?

23 A. Yes, sir.

24 Q. Thank you.

25 THE COURT: Solicitor.

EXAMINATION

BY SCARLETT WILSON:

Q. Miss Storo, I will try not to repeat the same questions that Mr. Maguire asked you but I want to get clear about -- it sounds like you have a lot of insight about what you think you could and couldn't do. I want to ask you if after the first phase of the trial, where you and the other jurors have decided that someone is guilty of the murder, no question about it, that murder was malicious, that it was intentional, that it was someone with a heart fatally bent on mischief to do something bad/mean, you all had found them guilty.

A. (Affirmative nod).

Q. Would you be able to participate in the second part of the trial where the Judge would then tell you that the State had to do more than just prove his guilt of the murder, that we had to prove an aggravating circumstance?

A. Yes, ma'am.

Q. Could you make us do that?

A. To be a part of the second part?

1 A. Yes. Could you hold out on your
2 decision on the sentence until we had met
3 that burden?

4 A. Yes, ma'am.

5 Q. And if we didn't meet that burden, you
6 could give life without parole as required
7 by the law?

8 A. Yes, ma'am.

9 Q. Okay. If we went through that part of
10 the second phase and if you had heard all
11 the evidence about things that made the
12 crime aggravated, say that it was a torture
13 case, torture that went on for a little
14 while or something that was excessive in
15 killing the person. Even after hearing
16 that, could you keep an open mind and follow
17 the Judge's instructions to hear about the
18 defendant and mitigating circumstances?

19 A. Yes, ma'am.

20 Q. So even in those cases, again, where
21 you might lean towards death you could
22 listen and hear about the background and see
23 if that had any effect on your decision?

24 A. Yes, ma'am.

25 Q. You would consider anything going on in

1 the defendant's life that might sway you,
2 and maybe life without parole would be
3 appropriate?

4 A. Yes, ma'am.

5 Q. You could do that?

6 A. Yes, ma'am.

7 Q. Even though you might lean towards
8 death?

9 A. Yes, ma'am.

10 Q. That's all that I have, Judge.

11 THE COURT: Thank you very much.
12 Any Motions?

13 WILLIAM MAGUIRE: Yes, sir.

14 THE COURT: Miss Storo, would you
15 step out in the hall; please.

16 (JUROR NUMBER 331 EXITS COURTROOM)

17 THE COURT: Be glad to hear your
18 Motion.

19 WILLIAM MAGUIRE: Thank you, Your
20 Honor. Pursuant to *Morgan v. Illinois* and
21 the Sixth and Fourteenth Amendment guarantee
22 to a fair and impartial jury, I move to
23 strike this juror for cause. She is what is
24 referred to as "automatic death penalty".

25 Specifically to this case, those

1 charges, if evidence of those charges come
2 up and my client is found guilty, she is
3 going to vote death. She cannot consider
4 mitigation except for, her words were "if
5 somebody wasn't in their mind", if their
6 mental faculties weren't working. Absent
7 that, she couldn't think of anything that
8 would get her down from death to life.

9 She is automatic death penalty case
10 specific and she's also mitigation impaired.

11 THE COURT: She is also what?

12 WILLIAM MAGUIRE: Uh, -- what's
13 called mitigation impaired. She can't
14 consider mitigation.

15 THE COURT: All right. Mr.
16 Maguire, the same thing the solicitor has
17 been objecting to for two days. I've been
18 listening to it for two days. You asked the
19 question -- you know, you could very easily
20 say that you were staking the juror out but
21 I've allowed you to do it. But you leave
22 out parts of your little "hypothetical" with
23 the explanation of the law when you ask the
24 questions. You're leaving it out. So the
25 way that you ask the questions, obviously

1 she is going to have to answer the way that
2 you want it answered. Okay? She very
3 clearly has said that she has an open mind,
4 that she would consider everything. Motion
5 denied.

6 Bring Miss Storo in, please.

7 (JUROR NUMBER 331 ENTERS COURTROOM)

8 THE COURT: Miss Storo, the
9 bailiff is going to give you a card which
10 has a phone number on it. Okay? If you
11 would, call that number after five o'clock
12 tomorrow. There will be a message for the
13 jury panel. Follow those instructions.

14 What we are doing is that we are
15 going through the jurors to come up with a
16 number who are qualified for the trial.
17 Then we will strike from that panel of
18 jurors. You will be part of that process.
19 Okay?

20 JUROR NUMBER 331: okay.

21 THE COURT: Please don't discuss
22 the case with anyone else or watch anything
23 on television or read anything in the paper.
24 Okay?

25 JUROR NUMBER 331: Yes, sir.

1 THE COURT: Thank you very much.

2 (JUROR NUMBER 331 EXITS COURTROOM)

3 THE COURT: Bring in the next
4 juror.

5 (JUROR NUMBER 384 ENTERS COURTROOM)

6 THE COURT: Yes, ma'am, your
7 name?

8 JUROR NUMBER 384: Angel
9 Williams.

10 THE COURT: I'm sorry. What?

11 JUROR NUMBER 384: Angel
12 Williams.

13 THE COURT: Ms. Williams how are
14 you doing today?

15 JUROR NUMBER 384: I'm fine.
16 How about yourself?

17 THE COURT: Have you had an
18 opportunity to review the types one, two and
19 three concerning the opinions about the
20 death penalty?

21 JUROR NUMBER 384: Yes, sir.

22 THE COURT: Were you able to
23 determine if you fit into any of those
24 categories?

25 JUROR NUMBER 384: Yes, sir.

1 THE COURT: Which category do you
2 fit into?

3 JUROR NUMBER 384: Type one.

4 THE COURT: Type one says that
5 you can never vote for the death penalty
6 under any circumstances; is that correct?

7 JUROR NUMBER 384: Yes, sir.

8 THE COURT: Okay, Ms. Williams,
9 I'll excuse you from service on this jury.
10 Okay?

11 JUROR NUMBER 384: Thank yo.

12 (JUROR NUMBER 384 EXCUSED)

13 (JUROR NUMBER 384 EXITS COURTROOM)

14 THE COURT: Bring us the next
15 one.

16 (JUROR NUMBER 6 ENTERS COURTROOM)

17 CLERK: State your name.

18 JUROR NUMBER 6: Dana Alves.

19 THE COURT: What is your name?

20 JUROR NUMBER 6: Dana Alves.

21 THE COURT: Ms. Alves, how are
22 you doing today?

23 JUROR NUMBER 6: Good.

24 THE COURT: Have you had an
25 opportunity to review the sheet that

1 specifics various opinions about the death
2 penalty?

3 JUROR NUMBER 6: Yes, sir.

4 THE COURT: Did you look at type
5 one, type two and type three?

6 JUROR NUMBER 6: Yes, sir.

7 THE COURT: Did you understand
8 it?

9 JUROR NUMBER 6: Yes, sir.

10 THE COURT: Do you fit into any
11 of the types?

12 JUROR NUMBER 6: Type three.

13 THE COURT: Okay, I have a few
14 questions for you.

15 DANA ALVES, having been previously
16 sworn to tell the truth testified as
17 follows:

18 EXAMINATION

19 BY THE COURT:

20 Q. Have you had an opportunity to review
21 the one hundred thirty-four names of
22 potential witnesses in the case?

23 A. Yes, sir.

24 Q. Do you recognize any name or know
25 anybody on that sheet?

1 A. No, sir.

2 Q. Nobody?

3 A. Nobody.

4 Q. Okay. Have you heard anything about
5 the case?

6 A. No, I have not.

7 Q. Have you heard or seen anything on the
8 television?

9 A. No, sir.

10 Q. Read anything in the paper?

11 A. No, sir.

12 Q. Do you have any relatives or close
13 personal friends employed in law
14 enforcement?

15 A. No, sir.

16 Q. Has the solicitor prosecuted you or any
17 members of your family?

18 A. No, sir.

19 Q. Have you been, or has any member of
20 your family ever been the victim of crimes?

21 A. No, sir.

22 Q. Do you have any relatives in jail?

23 A. No, sir.

24 Q. Are you a member of any group whose
25 primary purpose is to support law

1 enforcement such as MADD?

2 A. No.

3 Q. Do you have any special or particular
4 interest in the outcome of this case?

5 A. No, sir.

6 Q. Are you aware of any bias or prejudice
7 toward the defendant as a result of his
8 race, being black?

9 A. No, sir, I don't.

10 Q. Are you aware of any bias or prejudice
11 for or against the defendant because of the
12 charges that the State has brought against
13 him?

14 A. No, sir.

15 Q. Do you have any religious belief that
16 would make you biased or prejudiced toward
17 the defendant?

18 A. No, sir.

19 Q. Do you have any religious belief that
20 would make you biased and prejudiced towards
21 the State?

22 A. No.

23 Q. Have you had any good or bad
24 experiences with law enforcement?

25 A. Good.

1 Q. Pardon?

2 A. I have had good experiences with them.

3 Q. Okay. Do you know of any reason,
4 personal or otherwise, why you could not
5 serve on the jury?

6 A. No, I don't.

7 Q. Do you have any -- do you know of any
8 reason why you could not give a fair and
9 impartial trial to the State and to the
10 Defendant?

11 A. No, I don't..

12 THE COURT: Whose turn?

13 SCARLETT WILSON: Thank you.

14 EXAMINATION

15 BY SCARLETT WILSON:

16 Q. Ms. Alves, thank for hanging in there
17 with us. I know it's been a long few days
18 for you, too.. What we are trying to do now
19 is to get an idea of your general thoughts
20 about the death penalty and life without
21 parole.. Not about this case. We can't talk
22 to you about this case in particular yet.
23 So I am going to just ask you some questions
24 about that. Okay?

25 A. Yeah.

1 Q. There's no right or wrong answer. We
2 are just asking for your thoughts and
3 opinions, which are as good as mine or
4 anybody else's. Okay?

5 A. Okay.

6 Q. I'm reading the sheet that you were
7 given, did you understand murder is an
8 intentional killing with someone who has
9 malice in their heart?

10 A. Yes.

11 Q. Just a mean/ugly murder, no excuse for
12 it. It is not an accident, it is not
13 provoked, nothing like that.

14 A. Yes.

15 Q. Did you know based on what the Judge
16 told you or did you know that in death
17 penalty cases, cases where the State is
18 seeking it, that the trial is in two phases?

19 A. No, I did not.

20 Q. Okay. Do you understand how that
21 works?

22 A. Yes.

23 Q. For now -- you understand that after
24 someone is found guilty of murder in a death
25 penalty case, then the jury would decide

1 what type punishment?

2 A. Correct.

3 Q. And based on that and based on your
4 beliefs that you are a type three juror,
5 could you hold out on forming an opinion as
6 to the sentence until everything was
7 finished in the second phase?

8 A. Yes, I think that I could.

9 Q. Okay. What that means is that --
10 again, someone -- that there is no doubt in
11 your mind or any of the other jurors' minds
12 that this person is guilty but to even
13 consider the death penalty all twelve of you
14 would have to find one aggravating
15 circumstance. And then it still wouldn't
16 be over. Do you understand that?

17 A. Yes.

18 Q. Because of those mitigating
19 circumstances.

20 A. Correct.

21 Q. So in that situation, again let's take
22 as an example -- not this case, but let's
23 say that you had a case involving torture
24 where the person was convicted of murder,
25 the State then presented evidence about

1 torture are something extreme that caused
2 the killing, could you still hold out and
3 not find a sentence until you heard things
4 about the defendant?

5 A. Yes, I could.

6 Q. Could you really consider and take to
7 heart things about a person's childhood or
8 things that were going on in the person's
9 life that maybe did not even relate to the
10 murder?

11 A. Yes.

12 Q. Could you consider things like
13 substance abuse or whether or not they have
14 all of their mental faculties?

15 A. Yes.

16 Q. Not whether they knew right or wrong,
17 because they would have to had to know
18 right or wrong to know they kill them. But
19 things -- other mental health things going
20 on?

21 A. I could consider that.

22 Q. Would you be interested as to whether
23 or not they were sorry, truly sorry?

24 A. Oh, yes.

25 Q. And all of those things that matter to

1 you?

2 A. Yes, they would.

3 Q. Tell me what you think about life
4 without parole.

5 A. I think that it depends on the case.

6 Q. Do you think that it is a harsh
7 sentence?

8 A. Not really.

9 Q. In some situations it could be harsh
10 and in others it might not be enough, is
11 that what you mean?

12 A. Yes.

13 Q. Okay. And, again, when you said that
14 you could wait until the end of the penalty
15 phase, to be sure you have heard everything,
16 that includes situations where the murder
17 was brutal and you would have to listen to
18 things that did not have anything to do with
19 that event, that murder, that might only
20 have to do with the defendant. You could
21 still wait?

22 A. I think that I could, yes.

23 SCARLETT WILSON: That's all that
24 I have. Thank you so much.

25 THE COURT: Mr. Maguire.

1 WILLIAM MAGUIRE: Thank you,
2 Judge.

3 EXAMINATION

4 BY WILLIAM MAGUIRE:

5 Q. How you doing, Ms. Alves? Thank you
6 for being here. I know that it is a really
7 difficult process, the waiting. We are just
8 going to ask that you be honest in your
9 responses. There are no right or wrong
10 answers. Okay?

11 A. Okay.

12 Q. I want to go backwards a little bit.
13 We are going to start at the very beginning,
14 with the definition of murder.

15 In South Carolina murder is an
16 unlawful, intentional killing of an innocent
17 person with no justification or excuse and
18 it is done with malice aforethought. That
19 is a depraved, wicked heart fatally bent on
20 mischief. Okay? Are you with me?

21 A. Yes.

22 Q. So I want you to put yourself, in your
23 mind, sort of on a jury with eleven other
24 people. That is your starting point. You
25 have already found the defendant guilty

1 beyond a reasonable doubt. Okay? You have
2 got the right guy, it is not self-defense,
3 it is not accident, they meant to do it,
4 killed an innocent person. Okay?

5 A. Okay.

6 Q. And then you would hear aggravating
7 circumstances which, like the Judge said,
8 increases the enormity of the crime.

9 Now I want you to come with me down this
10 road and see this crime: a home invasion
11 where somebody breaks into a home, people
12 are in the house; rape, burglary, armed
13 robbery, murder. Are you with me?

14 A. Yes.

15 Q. Then you would also hear mitigation
16 evidence, background for the defendant and
17 that sort of thing. Based on everything
18 that you have heard so far, is the life
19 penalty severe enough not in that situation?

20 A. Yes.

21 Q. And how so? How do you justify it in
22 that situation?

23 A. For the fact that he still has to live
24 and live with himself through the whole
25 thing in jail.

1 Q. Sorry?

2 A. While he is in jail, he still has to
3 live with himself and the whole thing.

4 Q. So life in prison is a severe
5 punishment because he has to live every day
6 knowing that he is never getting out? Like
7 the Judge said, he would die in prison?

8 A. Right.

9 Q. Some people say that giving the death
10 penalty is the easy way out because it
11 allows someone to escape without punishment.
12 Do you believe that?

13 A. Sometimes.

14 Q. And what kind of case, would you say
15 that that would apply to you?

16 A. Would be the easy way out?

17 Q. Yes.

18 Q. You know, he kills somebody brutally
19 and he doesn't care; that he's gone, it is
20 done and over, he does not have to continue
21 thinking about it.

22 Q. That, for you, is sort of like an
23 easier way out?

24 A. Yes.

25 Q. It sounds like then that if you wanted

1 to punish somebody in a murder case that you
2 would lean towards life to make sure that
3 they were really punished?

4 A. It depends on the case.

5 Q. When you say "the case"; are you
6 talking about ---

7 A. I am talking about all the facts that
8 are in a case.

9 Q. And those are pretty big terms "all the
10 facts" --are you talking about the facts of
11 the crime?

12 A. The crime.

13 Q. Anything else?

14 A. Based on the crime and sometimes it is
15 the people themselves.

16 Q. When you say the people themselves, are
17 you talking about the defendant?

18 A. It could be the defendant, it could be
19 not. You know, it depends on the case, the
20 way that it goes, all the other things that
21 are involved in it.

22 Q. Sure. Sure. And in making that
23 decision between life and death, what are
24 some of the facts and circumstances that
25 made you lean towards the death penalty?

1 A. I think that the -- how brutal the
2 crime was and their attitude toward the,
3 whether they cared, were not sorry.

4 Q. Would the death penalty ever be
5 appropriate for somebody who expresses
6 substantial remorse?

7 A. No, I don't think so.

8 Q. Okay. In terms of mercy, is mercy
9 something that is earned or is it freely
10 giving?

11 A. I think that it is earned.

12 Q. And how would somebody go about earning
13 mercy?

14 A. I think the way that they feel
15 afterwards, if they are really, truly sorry.

16 Q. Thank you. I don't have anything else.

17 THE COURT: Any Motions on this
18 witness (sic)?

19 SCARLETT WILSON: No, sir, I think
20 she is qualified.

21 WILLIAM MAGUIRE: No, sir.

22 THE COURT: Ms. Alves, the
23 bailiff is going to give you a card with a
24 telephone number on it. Call it tomorrow
25 night after five o'clock. There will be a

1 message for the jury panel. Follow those
2 instructions.

3 What we are doing is qualifying a
4 group of people and from that group of
5 people we are going to draw our jury for
6 this trial. I don't know how long that's
7 going to take. We are now in the second day
8 of doing this. So follow those
9 instructions.

10 Please don't discuss the case with
11 anyone or reading anything in the papers or
12 listen to anything on TV about it. Okay?

13 JUROR NUMBER 6: Yes, sir.

14 THE COURT: Thank you so very
15 much.

16 (JUROR NUMBER 6 EXITS COURTROOM)

17 (JUROR NUMBER 107 ENTERS COURTROOM)

18 CLERK: State your name.

19 JUROR NUMBER 107: David Fuchs.

20 THE COURT: Mr. Fuchs, how you
21 are doing today?

22 JUROR NUMBER 107: Fine. Thank
23 you.

24 THE COURT: Have you had an
25 opportunity to review the sheet with the

1 three opinions about the death penalty?

2 JUROR NUMBER 107: Yes, sir.

3 THE COURT: Did you understand
4 it?

5 JUROR NUMBER 107: I did.

6 THE COURT: Do you fit into
7 either type one, two or three?

8 JUROR NUMBER 107: Type one.

9 THE COURT: You're a type one?

10 JUROR NUMBER 107: Yes, sir.

11 THE COURT: All right. Type one
12 says that you could never sentence someone
13 to death, is that correct?

14 JUROR NUMBER 107: Yes, sir.

15 THE COURT: That is your opinion?

16 JUROR NUMBER 107: Yes, it is.

17 THE COURT: All right. I will
18 excuse you from the jury service on this
19 jury. Thank you very much.

20 (JUROR NUMBER 107 EXCUSED)

21 (JUROR NUMBER 107 EXITS COURTROOM)

22 THE COURT: Bring us the next
23 one.

24 (JUROR NUMBER 132 ENTERS COURTROOM)

25 CLERK: State your name.

1 JUROR NUMBER 132: Timothy Ham.

2 THE COURT: Mr. Ham, how are you
3 doing today?

4 JUROR NUMBER 132: I am doing
5 good. How about yourself?

6 THE COURT: Oh, I am okay, I
7 guess. Have you had an opportunity to
8 review the sheet that lays out the three
9 different opinions concerning the death
10 penalty?

11 JUROR NUMBER 132: Yes, sir.

12 THE COURT: Did you understand
13 it?

14 JUROR NUMBER 132: Yes, sir.

15 THE COURT: Do you fit into
16 category type one, two or three?

17 JUROR NUMBER 132: Type two.

18 THE COURT: Number two?

19 JUROR NUMBER 132: Yes, sir.

20 THE COURT: Number two says that
21 if a person is convicted of murder that you
22 would always give the death penalty; is that
23 correct?

24 JUROR NUMBER 132: Yes, sir.

25 THE COURT: You couldn't consider

1 anything else?

2 JUROR NUMBER 132: I wouldn't
3 think so.

4 THE COURT: Okay. All right, I
5 will excuse you from jury duty on this
6 trial. Thank you very much.

7 (JUROR NUMBER 132 EXCUSED)

8 (JUROR NUMBER 132 EXITS COURTROOM)

9 (JUROR NUMBER 106 ENTERS COURTROOM)

10 CLERK: State your name, please.

11 JUROR NUMBER 106: Gilbert
12 Foxworth.

13 THE COURT: Good afternoon, Mr.
14 Foxworth. How are you doing?

15 JUROR NUMBER 106: Fine. You?

16 THE COURT: Doing fine. Did you
17 read the sheet concerning opinions about the
18 death penalty?

19 JUROR NUMBER 106: Yes, sir, I
20 did.

21 THE COURT: Did you understand
22 types one, two and three?

23 JUROR NUMBER 106: Yes, sir, I
24 did.

25 THE COURT: Could you determine

1 if you fit into any of those categories?

2 JUROR NUMBER 106: Yes, sir.

3 THE COURT: Which type do you fit
4 into?

5 JUROR NUMBER 106: Type two.

6 THE COURT: Type two. Type two
7 says that you would always give the death
8 penalty.

9 JUROR NUMBER 106: Yes, sir.

10 THE COURT: Okay. Thank you very
11 much. You're excused from jury service.

12 JUROR NUMBER 106: Thank you.

13 (JUROR NUMBER 106 EXCUSED)

14 (JUROR NUMBER 106 EXITS COURTROOM)

15 THE COURT: Let's roll on to
16 group number ten.

17 (JUROR NUMBER 389 ENTERS COURTROOM)

18 CLERK: State our name.

19 JUROR NUMBER 389: Alfreda
20 Wilson.

21 THE COURT: Ms. Wilson, how you
22 doing today?

23 JUROR NUMBER 389: I'm fine.
24 How are you?

25 THE COURT: Have you had an

1 opportunity to review the sheet concerning
2 opinions about the death penalty?

3 JUROR NUMBER 389: Yes, sir.

4 THE COURT: Did you understand
5 the categories: type one, two and three:

6 JUROR NUMBER 389: Yes, sir.

7 THE COURT: Were you able to
8 determine whether or not you have an opinion
9 that fits into type one, two or three?

10 JUROR NUMBER 389: Yes, sir.

11 THE COURT: What type do you fit
12 into, in your opinion?

13 JUROR NUMBER 389: In my
14 opinion, three.

15 THE COURT: Okay, I have a few
16 questions for you and then the attorneys
17 will ask you some questions.

18 ALFREDA WILSON, having been
19 previously sworn to tell the truth testified
20 as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Did you have an opportunity to review
24 the witness list, one hundred thirty-four
25 names?

1 A. Yes.

2 Q. Did you recognize any of the names?

3 A. No, sir.

4 Q. You don't know anybody out of one
5 hundred and thirty-four names?

6 A. Not by name.

7 Q. Not by name?

8 A. (Negative gesture).

9 Q. You might recognize them by sight but
10 not by name?

11 A. Right.

12 Q. Okay. All right. I am going to ask
13 you some questions and then the attorneys
14 will be asking you some questions. Okay?

15 A. All right.

16 Q. And -- do you know anything about the
17 case or have you heard anybody talking about
18 the case?

19 A. I've heard only that it was on the
20 news but I don't know very much about it.

21 Q. Tell me what you heard on the news.

22 Q. I didn't catch it. I tried -- before
23 coming to court now, I tried to catch it but
24 I keep forgetting to turn the TV on at that
25 time.

1 Q. So you have not actually heard anything
2 on television?

3 A. No.

4 Q. Has somebody told you what they heard
5 on television?

6 A. No, somebody was telling me what they
7 saw in the paper.

8 Q. What did somebody tell you that they
9 saw in the paper?

10 A. That the former judge and the attorney
11 was dismissed and they did not understand
12 why.

13 Q. Do you remember anything else that they
14 told you about the case?

15 A. No, I don't remember anything else.

16 Q. Okay. Do you have any relatives or
17 close personal friends employed in law
18 enforcement?

19 A. No. I don't think so.

20 Q. Okay. Has the solicitor or anybody in
21 her office prosecuted you or a member of
22 your family?

23 A. No, sir, thank God.

24 Q. Have you or any member of your family
25 ever been the victim of a crime?

1 A. No, sir.

2 Q. Do you have any relatives in jail?

3 A. No, sir.

4 Q. Are you a member of any groups that
5 primarily support law enforcement, such as
6 MADD?

7 A. No, sir.

8 Q. Do you have any special interest,
9 particular interest in the outcome of this
10 particular case?

11 A. No, sir.

12 Q. Are you aware of any bias or prejudice
13 as a result of the charges that the State
14 has brought against the defendant? Based on
15 the charges, do you have any bias or
16 prejudice against the defendant?

17 A. No, sir.

18 Q. Yes or no?

19 A. No.

20 Q. Do you have any religious beliefs that
21 would make you biased or prejudiced towards
22 the defendant?

23 A. No, sir.

24 Q. Do you have any religious beliefs that
25 would make you biased or prejudiced toward

1 the State?

2 A. No, sir.

3 Q. Do you have any bias or prejudice
4 towards the defendant because of his race,
5 being black?

6 A. No, sir.

7 Q. Have you had any bad experiences or
8 good experiences with law enforcement?

9 A. Both.

10 Q. Both?

11 A. Yes.

12 Q. Tell me a little bit about the bad.

13 Q. Oh, just getting traffic tickets and I
14 tried to beg my way out of it.

15 Q. Okay. What about the good?

16 A. They always seem to help me when I need
17 them.

18 Q. Okay. Do you know of any reason,
19 personal or otherwise, as to why you could
20 not serve on this jury?

21 A. No.

22 Q. Do you know of any reason why you can't
23 give a fair and impartial trial to both the
24 State and the Defendant?

25 A. No, sir.

1 THE COURT: Mr. Maguire.

2 EXAMINATION

3 BY WILLIAM MAGUIRE:

4 Q. Good afternoon, Ms. Wilson. Appreciate
5 you hanging in there with us. I know that
6 this is kind of a tortuous process for you
7 guys, having to wait, that it is very
8 inconvenient and we appreciate your service
9 even up to his point.

10 The only thing that I want to ask of
11 you right now is to just your honest
12 opinions. Okay?

13 A. All right.

14 Q. Just pretend that you and I are on
15 your front porch just having a conversation.

16 A. Okay.

17 THE COURT: Finally outside, huh?

18 WILLIAM MAGUIRE: Finally out of
19 the kitchen, Judge.

20 THE COURT: Okay. Go ahead.

21 EXAMINATION CONTINUED

22 BY WILLIAM MAGUIRE:

23 Q. If we were just rocking on your front
24 porch and I wanted to ask you what are your
25 thoughts about the death penalty, what would

1 you tell me?

2 A. My honest opinion is that I'm not
3 against it but with the death penalty, I
4 don't feel like it is a punishment because
5 you lay down and you die. To live is a
6 punishment. That's my opinion.

7 Q. But you could consider both
8 punishments?

9 A. Yes.

10 Q. It sounds like if you wanted to punish
11 somebody that maybe you would lean more
12 towards life so that they would have to
13 think about it.

14 A. Every day.

15 Q. Okay. But there are some circumstances
16 where you could consider death, I suppose?

17 A. Yes.

18 Q. Ms. Wilson, that's all that I have for
19 you. Thank you.

20 THE COURT: Solicitor?

21 EXAMINATION

22 BY SCARLETT WILSON:

23 Q. Hey, Ms. Wilson. I am Miss Wilson,
24 too.

25 A. (Laughs).

1 Q. Can you tell me a little more about
2 what your thoughts are on life without
3 parole?

4 A. Life without parole, uh, I feel like,
5 uh, in a way life would be over for that
6 person. I feel like -- you know, you can
7 never enjoy life with your family again.
8 I don't know a lot about jail, thank God,
9 but I just don't feel like it is a pleasant
10 place so it's just punishment, you know.

11 Q. Right.

12 A. That's my feeling.

13 Q. Tell me how that fits in with your
14 thoughts about the death penalty.

15 A. I feel like to die is just easy. To
16 live is hard .

17 Q. What do you mean?

18 A. You're asking me why? If you are a
19 human being, you are going to think about
20 what you have done at some point. I mean,
21 you can't live and not at some point regret,
22 wish that you had done something different,
23 wish that you were somewhere else other than
24 jail. I mean, if you live even five, ten,
25 fifteen years. There are some other desires

1 that you have other than being in jail. So
2 you are going to suffer.

3 Q. A long time?

4 A. Yes. And to die -- well, you may --
5 I've heard of people on death row for years
6 and years and I feel like, yeah, they are
7 suffering, waiting, wondering when it is
8 going to happen. But when it actually
9 happens, it just seems easy.

10 Q. It's over.

11 A. Yeah. That's just my opinion.

12 Q. That is what we are asking for.

13 A. Yeah.

14 SCARLETT WILSON: Beg the court's
15 indulgence -- (sidebar with Mr. Durant).

16 EXAMINATION CONTINUED

17 BY SCARLETT WILSON:

18 Q. Let me ask you this, based on how you
19 feel about living in prison, being a worst
20 punishment and a harsh punishment because
21 somebody would have to live with their
22 conscience, I guess you're saying, ---

23 THE COURT: I don't think that
24 she said that it was the worst punishment.

25 SCARLETT WILSON: Was a harsh

1 punishment. I'm sorry.

2 THE COURT: If I missed that, I
3 stand corrected but I don't think that she
4 said it was the worst.

5 EXAMINATION CONTINUED

6 BY SCARLETT WILSON:

7 Q. Did you say you whether you thought
8 life would be worse than death? Life
9 without parole in prison would be worse than
10 death.

11 A. Yes, I think I did. I feel like it
12 would be.

13 THE COURT: Thank you.

14 SCARLETT WILSON: Yes, sir.

15 EXAMINATION CONTINUED

16 BY SCARLETT WILSON:

17 Q. Based on that in a brutal, heinous
18 murder, would your feelings about that
19 affect your being able to give the death
20 penalty?

21 A. To be honest, ---

22 Q. That you would only want to give life?

23 A. To be honest, after reading the third,
24 I would have to know something about this
25 before I could say that a person deserves

1 this or that. Right now I don't know a lot
2 about this.

3 Q. Right. And we are not able to talk
4 about this specific case and that is one of
5 the things that makes it sort of awkward to
6 talk about, generally. I guess what I am
7 getting at is that in a situation where you
8 are trying to determine what to do, if life
9 without parole, life in prison, were always
10 on the table, would that be what you would
11 always want to give so that they would have
12 to suffer with it for a long time?

13 A. I don't think so.

14 Q. Can you give me an example of when you
15 think of that might be appropriate?

16 THE COURT: I'm sorry. What did
17 you say last -- just a minute ago?

18 JUROR NUMBER 389: That I
19 didn't think so.

20 THE COURT: Okay.

21 EXAMINATION CONTINUED

22 BY SCARLETT WILSON:

23 Q. What factors would make death
24 appropriate for you?

25 A. Right now I am thinking that maybe if

1 there is any chance at all that this could
2 happen again -- or even if it could happen
3 in prison, if this person is capable of
4 ending somebody's life in prison then he
5 shouldn't be there.

6 Q. When you say "this happening again",
7 understand that life means life without
8 parole.

9 A. Right.

10 Q. So it wouldn't be an issue of it
11 happening out in the community?

12 A. Right. I am still going with what I've
13 heard about prison and people do get killed
14 in prison, so if there is any chance that
15 this could happen again -- even in prison --
16 I think the death penalty should be.

17 SCARLETT WILSON: Thank you.

18 WILLIAM MAGUIRE: No more
19 questions.

20 THE COURT: All right. Ms.
21 Wilson, when we first started, you said that
22 you felt like you fell into type three. Do
23 you have that sheet in front of you?

24 JUROR NUMBER 389: (Displaying).

25 THE COURT: Would you take a

1 minute and just read it, please, ma'am.

2 JUROR NUMBER 389: Out loud?

3 THE COURT: No, just read it to
4 yourself.

5 JUROR NUMBER 389: Okay. (Upon
6 review), all right.

7 THE COURT: Have you read it?

8 JUROR NUMBER 389: Yes.

9 THE COURT: The last part says,
10 (reading): "If the facts warrant it, this
11 juror could return a verdict of life in
12 prison without the possibility of parole.
13 On the other hand, if the fact warranted and
14 if the law allowed it, this juror could
15 return a verdict of the death penalty."

16 Is that your opinion concerning the
17 death penalty?

18 JUROR NUMBER 389: Yes, sir.

19 THE COURT: You would not always
20 give life, is that correct?

21 JUROR NUMBER 389: Correct.

22 THE COURT: Thank you. Any
23 Motions on this juror?

24 WILLIAM MAGUIRE: No, sir.

25 SCARLETT WILSON: No, sir.

1 THE COURT: Okay. Ms. Wilson,
2 the bailiff is going to give you a card that
3 has a telephone number on it. Call that
4 number after five o'clock tomorrow. Follow
5 the instructions for the jury panel. The
6 instructions may be to call back Thursday or
7 Friday. I don't know. Okay? Follow those
8 instructions.

9 What we are doing is that we are
10 qualifying so many people and when we get so
11 many, we are going to strike the jury. You
12 will be a part of that process. Okay?

13 Please don't discuss the case with
14 anyone, don't read anything in the paper,
15 don't watch anything on television about.
16 Forget to turn on the news, just as you have
17 been doing. Okay?

18 JUROR NUMBER 389: All right.

19 THE COURT: Have a good day.

20 (JUROR NUMBER 389 EXITS COURTROOM)

21 THE COURT: Bring us another one.

22 (JUROR NUMBER 173 ENTERS COURTROOM)

23 THE COURT: Yes, sir, your name?

24 JUROR NUMBER 173: Last name is
25 Kent, first name is Charles, Number 173.

1 THE COURT: Mr. Kent, how are you
2 doing tonight?

3 JUROR NUMBER 173: Fine, sir.

4 THE COURT: Have you had an
5 opportunity to review the sheet that the
6 Court gave you concerning the various
7 opinions about the death penalty?

8 JUROR NUMBER 173: Yes, sir.

9 THE COURT: Did you understand
10 the type one, type two and the type three?

11 JUROR NUMBER 173: Yes, sir.

12 THE COURT: All right. Do you
13 have an opinion as to which type that you
14 would fall under?

15 JUROR NUMBER 173: Type three.

16 THE COURT: Type three?

17 JUROR NUMBER 173: Yes, sir.

18 CHARLES KENT, having been
19 previously sworn to tell the truth testified
20 as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q. Have you had an opportunity to review
24 the one hundred thirty-four names of
25 potential witnesses in this case?

1 A. Yes.

2 Q. Do you recognize any names of that
3 list?

4 A. No.

5 Q. You don't know anyone?

6 A. No, sir.

7 Q. I am going to ask you some questions
8 and then the attorneys will probably ask you
9 some questions. Okay?

10 A. Sure.

11 Q. Have you heard anything about the case
12 or anybody talk about the case?

13 A. No, sir.

14 Q. Have you read anything in the paper
15 about the case?

16 A. No, sir.

17 Q. Have you seen anything on television
18 about the case?

19 A. No, sir.

20 Q. Do you have any relatives who are
21 employed with law enforcement?

22 A. I have a nephew in California that is
23 in law enforcement.

24 Q. How often do you see him?

25 A. Probably once every two to three years.

1 Q. Has the solicitor prosecuted you or any
2 member of your immediate family?

3 A. No.

4 Q. Have you or any members of your family
5 ever been the victim of a crime?

6 A. We had -- when my wife and I first got
7 married, her ex-husband, cut the tires on
8 her car but that was twenty-some years ago
9 in California. Other than that, no.

10 Q. That was how many years ago?

11 A. Twenty-plus.

12 Q. Twenty-plus?

13 A. Yes, sir.

14 Q. Do you have any relatives in jail?

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

16 Q. Are you a member of any group that
17 primarily supports law enforcement, such as
18 MADD?

19 A. No.

20 Q. Do you have any special or particular
21 interest in the outcome of this case?

22 A. No, sir.

23 Q. Are you aware of any bias or prejudice
24 as a result of the charges that the State
25 has brought against the Defendant?

1 A. Can you say that again?

2 Q. Are you aware of any bias or prejudice
3 strictly because of the charges that have
4 been brought against the Defendant?

5 A. No, sir.

6 Q. Do you have any religious beliefs that
7 would create any bias or prejudice for or
8 against the Defendant?

9 A. I am Roman Catholic but I still am a
10 type three, per the questionnaire.

11 Q. You have any religious beliefs that
12 would create any bias or prejudice for or
13 against the State?

14 A. No, sir.

15 Q. Do you have any bias or prejudice
16 towards the defendant because of his race,
17 being black?

18 A. No, sir.

19 Q. Have you had any good or bad
20 experiences with law enforcement?

21 A. No, sir.

22 Q. Do you know of any reason, personal or
23 otherwise, why you cannot serve on this
24 jury?

25 A. No, sir. Do you know of any reason why

1 you could not give a fair and impartial
2 trial to both the State and to the
3 Defendant?

4 A. No, sir.

5 Q. Very briefly, if you would, tell me
6 what the Roman Catholics believe concerning
7 the death penalty.

8 A. They don't believe in the death
9 penalty.

10 Q. 'Okay. What is your personal opinion?

11 A. Depending on the circumstances, I do
12 believe in it. I say that -- sometimes I
13 hear stuff on the news and I think, well,
14 you know, I think that they deserve it for
15 what they did or that they didn't. I mean,
16 I think that based on the circumstances and
17 the facts that I could go that way or the
18 other way depending on the circumstances.

19 THE COURT: Solicitor.

20 EXAMINATION

21 BY SCARLETT WILSON:

22 Q. Thank you, Mr. Kent, for being patient
23 with us. What we want to do now is just try
24 to get a better view of how you feel about
25 the death penalty and also life without the

1 possibility of parole -- understanding that
2 we can't talk about this specific case. So
3 we've got to kind of talk in generalities,
4 which is sometimes a little bit awkward.
5 Okay?

6 A. Okay.

7 Q. In taking a looking at the question-
8 naire, it had a definition of murder. I
9 want to make sure that you understood what
10 in South Carolina murder is, because it's
11 different in other states.

12 In South Carolina, murder is always
13 intentional, it is always done when the
14 killer has malice in their heart -- meaning
15 that at some point before the fatal blow
16 that their heart was bent on mischief, that
17 it was an evil heart and that they intended
18 to do what they did. Did you understand
19 that?

20 A. Yes.

21 Q. With that in mind, did you also
22 understand how these kind of cases work as
23 far as there is a guilt phase where that is
24 all that the jury has to determine and that
25 then if there is a guilty verdict then it

1 moves on to the second phase. Did you know
2 that?

3 A. Yes, I understand that.

4 Q. We just have to make sure that we are
5 on the same page.

6 A. I understand.

7 Q. With that in mind in any given
8 situation, if you were on a jury and you and
9 the other twelve had convicted a person of a
10 brutal murder, one that clearly shows the
11 person intended to do what they did, that
12 there was no excuse, no justification, in
13 moving to that second phase, could you keep
14 an open mind and wait to hear all the
15 evidence before making your decision as to
16 death or life without parole?

17 A. I honestly think that I could.

18 Q. That being said, if -- say that we had
19 a situation in which you are a juror in that
20 second phase and the State set out to prove
21 an aggravating circumstance. No matter how
22 brutal the murder was, the State somehow for
23 whatever reason, failed to prove that
24 aggravating circumstance. Could you follow
25 the law and return a verdict for life

1 without parole.

2 A. I'm not so sure that I understood the
3 last part. Are you saying that it
4 definitely had proven that there was an
5 aggravation, intentional?

6 Q. No, that we failed to prove the
7 aggravating circumstance. Say that we set
8 out to prove that it was torture and we did
9 not prove that it was torture. You still
10 had a brutal murder but we could not meet
11 that aggravating circumstance as required by
12 law for you to even consider the death
13 penalty.

14 A. I would want to say that I would have
15 to see what you gave me. You're giving me a
16 very vague situation, so it's very hard to
17 say one way or the other. I mean, in my
18 mind I would think that I would do/weigh out
19 the facts based on the information that you
20 gave me to make the decision as best I could
21 based on that.

22 Q. And you'd take the Judge's instructions
23 to heart, too?

24 A. Right.

25 Q. I guess what I'm telling you is that in

1 that situation the Judge would've instructed
2 you that before you could consider death
3 that all twelve would have to agree beyond a
4 reasonable doubt that the State had proven
5 that aggravating circumstance. Could you
6 hold us to that burden?

7 A. Yes.

8 Q. And if we did not meet that burden, you
9 could say, 'Well, the State did not meet
10 that burden. That means life without
11 parole.'

12 A. Yes.

13 Q. Understanding that is what the law
14 required?

15 A. Yes.

16 Q. In that situation, say the State did
17 prove an aggravating circumstance or at
18 least the evidence of it and the trial was
19 still going on in the penalty phase, could
20 you still follow the court's instructions
21 and hold out before coming down with your
22 final decision taking into account any
23 information about the defendant and
24 information of mitigation?

25 A. I believe that I could.

1 Q. Could you take into consideration --
2 and when I say "take into consideration," I
3 don't mean just listen, I mean could you
4 really factor in things about the defendant,
5 his life, even if you are leaning towards
6 death, could you still give meaningful
7 consideration to those mitigating factors?

8 A. I think that I am pretty fair and
9 consistent, so I -- if not, then I think, I
10 think that if you gave me the facts and
11 circumstances of the situation that I could
12 do that.

13 Q. Things like whether or not the
14 defendant had all of his mental faculties,
15 whether or not the defendant was very
16 remorseful, those things that you could
17 listen to and factor into your decision?

18 A. Yes, ma'am.

19 Q. Even in one of those situations -- we
20 might be talking about torture, we might be
21 talking about a rape that went along with
22 the murder, you could follow the
23 instructions and wait to the end of the case
24 to factor everything in?

25 A. I honestly think that I can because of

1 being in the military and stuff. We
2 listened to everything first, during all of
3 my career, and didn't make a decision until
4 everything was done and we had everything
5 gathered at the end. So I honestly think
6 that I could do that.

7 Q. Thank you.

8 THE COURT: Mr. Maguire.

9 EXAMINATION

10 BY WILLIAM MAGUIRE:

11 Q. Good afternoon, Mr. Kent.

12 A. Good afternoon.

13 Q. Appreciate you hanging in there with
14 us. I know this is a very long process, a
15 lot of waiting. I am going to ask one more
16 thing of you, and that's for your honest
17 opinion. There are no right or wrong
18 answers. Just be honest and sincere.

19 I am just going to walk you through this
20 process a little bit and check in with your
21 thought process. Okay?

22 A. Okay.

23 Q. To start at the beginning, which is
24 the definition of murder in South Carolina.
25 I want to be a little bit more detailed than.

1 the prosecutor was. Murder in South
2 Carolina is always an intentional, unlawful
3 killing of an innocent victim with malice
4 aforethought. Malice aforethought is
5 described by the courts as a black and
6 depraved, malignant heart fatally bent on
7 wickedness and mischief. Are you with me?

8 A. Yes, sir.

9 Q. Okay, that is our starting point. Then
10 in this process of the death penalty -- in
11 the case where the State is seeking the
12 death penalty, the next step -- I am going
13 to give you an overview and then we are
14 going to walk through it together. Okay?

15 A. Yes, sir.

16 Q. It is starting off with a guilty/
17 convicted murderer, okay?

18 A.. Okay.

19 Q. The right guy, no doubt about it, no
20 alibi, no self-defense, no accident.

21 Guilty, intentional murder. An innocent
22 victim. Okay?

23 A. Okay.

24 Q. And then the next step would be going
25 to the penalty phase and you would hear

1 about aggravation, things that as the Judge
2 said would increase the enormity of the
3 crime. Okay?

4 A. Okay.

5 Q. I want you to see a crime with me. I
6 am not going to talk about this case
7 specifically but I'm going to use some terms
8 here -- a crime which is a home invasion,
9 rape, armed robbery, burglary, murder.
10 Okay? Are you still with me?

11 A. Yes.

12 Q. That is, we are now in the process.

13 A. Okay.

14 Q. As the Judge indicated, there would be
15 a mitigation phase where you might be
16 hearing some stuff about the defendant, his
17 background and that sort of thing. Are you
18 with me?

19 A. Yes, sir.

20 Q. And at that point in that process, what
21 is your opinion about a life penalty being
22 severe enough for that type of situation?

23 A. If in my mind I thought that the
24 darkened heart was there, I guess I could go
25 either way but I would also -- I would want

1 to weigh it all out. Depending on the
2 mitigation that you gave me, I would have to
3 decide whether I would go with the death
4 penalty. You are giving me a vagueness
5 and I am trying to picture everything that
6 you said.

7 Q. Okay. 'Let's go through it. Guilty,
8 convicted murderer. You've definitely got
9 the right guy, he'd deliberately acted and
10 chose to take the life of an innocent
11 person.

12 A. A blackened heart, intentionally meant
13 to do it.

14 Q. A black, depraved, malignant heart.

15 A. Intentionally meant to do it.

16 Q. He intentionally meant to do it. No
17 accident, no self-defense, no argument that
18 got out of hand. Deliberately acted and
19 chose to take an innocent life.

20 THE COURT: Let me interject one
21 thing at this point, Mr. Kent. All murders
22 in South Carolina are intentional. Please
23 proceed.

24 WILLIAM MAGUIRE: Thank you,
25 Judge.

1 JUROR NUMBER 173: Intentional,
2 with a dark heart.

3 EXAMINATION CONTINUED

4 BY WILLIAM MAGUIRE:

5 Q. Dark heart?

6 A. (Affirmative nod), I'd have to stand by
7 what I said.

8 Q. Which is?

9 A. Death penalty.

10 Q. Can you think of anything that would
11 allow you to vote for life in that
12 situation?

13 A. If there were some type of mitigating
14 circumstance such as not full mental
15 capacity, something -- was there something
16 they were on, something that swayed their
17 cognitive skills to make a valid decision in
18 their life, was there something impacting
19 them. I think I would be open to listening
20 to and reviewing that, to look at that.

21 Q. Okay. I want to take you back a little
22 bit.

23 THE COURT: Mr. Maguire, let's
24 move on. You've pretty well covered the
25 waterfront ---

1 WILLIAM MAGUIRE: I understand.

2 THE COURT: --- on the issue of
3 the death penalty. Let's move -- if you've
4 got something about the questionnaire or
5 some other information, let's move on to it.
6 Okay?

7 WILLIAM MAGUIRE: I am just going
8 to follow up on his ---

9 THE COURT: Let's move on. Okay?

10 WILLIAM MAGUIRE: Okay.

11 EXAMINATION CONTINUED

12 BY WILLIAM MAGUIRE:

13 Q. To convict somebody of murder, you
14 would have to know that the person knew
15 right from wrong and knew what they were
16 doing. So absent that mental faculty thing,
17 can you think of any reason that would get
18 you from your prior decision of the death
19 penalty to life without parole?

20 A. I am not sure. I am trying to think
21 about it -- I mean, there are probably
22 various things out there that I don't know
23 that might cause somebody to not be in their
24 right -- in an adequate medical (sic) state.
25 If that was proven to me, to my ability,

1 that would probably change my opinion. But
2 right now I just can't off the top of my
3 head know what that would be.

4 Q. Okay. And what I am saying is that to
5 find somebody guilty of an intentional
6 murder, you have already decided that they
7 do not have a mental defect, where they
8 don't know right from wrong.

9 SCARLETT WILSON: Your Honor, I
10 object.

11 WILLIAM MAGUIRE: That's ---

12 THE COURT: I understand. Move
13 into a new subject matter. Are there any
14 more questions that you have, on a new
15 subject matter?

16 EXAMINATION CONTINUED

17 BY WILLIAM MAGUIRE:

18 Q. Can you think of any other facts that
19 you would want to hear when weighing death
20 and life?

21 THE COURT: Asked and answered.

22 EXAMINATION CONTINUED

23 BY WILLIAM MAGUIRE:

24 Q. Mr. Kent, in case like this, obviously
25 it's a very grave matter that we are in

1 court on. Your decision, if you were
2 sitting on a jury, your ultimate decision
3 would be described as an individual moral
4 judgment or moral assessment. Are you okay
5 with that?

6 A. Yes. Well, I mean based upon the
7 factual information that I heard, yes, I
8 would say what I felt brought up or raised
9 inside me is what I felt was the right
10 decision to make. Yes.

11 Q. Like what I am getting at is that it is
12 not a democracy of the jury, you don't take
13 a straw poll.

14 A. No, I understand.

15 Q. And you can stick to your own
16 individual moral judgment?

17 A. Yes.

18 Q. And you'd respect other people that had
19 their own individual moral judgment or
20 assessment?

21 A. Yes.

22 Q. Thank you, sir.

23 THE COURT: Any Motions?

24 SCARLETT WILSON: No, sir, Judge.

25 WILLIAM MAGUIRE: Yes, sir.

1 THE COURT: You've got a Motion?

2 WILLIAM MAGUIRE: Yes, sir.

3 THE COURT: All right. Mr. Kent,
4 step out in the hall.

5 (JUROR NUMBER 173 EXITS COURTROOM)

6 THE COURT: Let me hear your
7 Motion.

8 WILLIAM MAGUIRE: Thank you,
9 Judge. Pursuant to the Fourteenth and Sixth
10 Amendment rights for an impartial and fair
11 jury and due to -- (pause) -- I was just
12 waiting to make sure that the door was
13 closed. I move to strike this jury for
14 cause. He's automatic death penalty. We
15 understood ---

16 THE COURT: Mr. Maguire, what
17 testimony does he offer as automatic? I
18 understand that you've got to represent your
19 client, and I expect that. If you don't
20 represent your client, we would have to deal
21 with it. I want you to do that. But what
22 testimony is there, at all, to support this
23 Motion?

24 WILLIAM MAGUIRE: Judge, ---

25 THE COURT: It's borderline

1 frivolous for this particular juror.

2 WILLIAM MAGUIRE: Judge, with all
3 due respect, I would disagree with your
4 characterization of "frivolous." When I
5 walked him through the process, I even said
6 "as the court sometimes suggests" ---

7 THE COURT: What he said was
8 that he could go either way. He'd listen
9 to the mitigation, maybe life. That's what
10 he said. That's that was your question. I
11 wrote it down.

12 WILLIAM MAGUIRE: Right but then
13 when I walked him through the process I
14 asked if he could - he started to say that
15 death was going to be his verdict and the
16 only -- the only time was when I asked him
17 if there was anything to get you to move
18 from your position from the death penalty to
19 life and he started go into whether a person
20 did not have his mental faculties. And I
21 said other than that -- I said anything and
22 he just kept repeating the mental defect
23 question.

24 THE COURT: Motion denied.

25 WILLIAM MAGUIRE: Thank you.

1 THE COURT: Let's don't get
2 frivolous on me.

3 WILLIAM MAGUIRE: I am trying not
4 to.

5 THE COURT: I'm telling you not
6 to. If you get too frivolous, you're not
7 going to like the result.

8 WILLIAM MAGUIRE: Yes, sir.

9 THE COURT: Do you understand?

10 WILLIAM MAGUIRE: Yes, sir.

11 THE COURT: I don't mind you
12 representing your client as long as you have
13 a factual basis for it. Okay?

14 WILLIAM MAGUIRE: Okay.

15 THE COURT: Bring Mr. Kent in.

16 (JUROR NUMBER 173 ENTERS COURTROOM)

17 THE COURT: Mr. Kent, stand right
18 there. The bailiff is -- the bailiff is
19 going to give you a card that has a
20 telephone number on it. Call that number
21 after five o'clock tomorrow. Follow the
22 instructions for the jury panel. The
23 instructions may be to call back Thursday or
24 Friday. I don't know. Okay? Follow those
25 instructions.

1 What we are doing is that we are
2 qualifying so many people and when we get so
3 many, we are going to strike the jury. You
4 will be a part of that process. Okay?

5 Please don't discuss the case with
6 anyone, don't read anything in the paper,
7 don't watch anything on television about.
8 Thank you so very much.

9 (JUROR NUMBER 173 EXITS COURTROOM)

10 (JUROR NUMBER 4 ENTERS COURTROOM)

11 CLERK: State your name.

12 JUROR NUMBER 4: Derik Allen.

13 THE COURT: Mr. Allen, how are
14 you doing today?

15 JUROR NUMBER 4: Fine.

16 THE COURT: Have you had an
17 opportunity to review the form that
18 specified the three different types of
19 opinions about the death penalty?

20 JUROR NUMBER 4: Yes, sir.

21 THE COURT: It's types one, two
22 and three. Did you understand the
23 different types?

24 JUROR NUMBER 4: Yes, sir.

25 THE COURT: Were you able to

1 make a decision as to whether or not your
2 opinion corresponds to one, two or three?

3 JUROR NUMBER 4: Yes, sir

4 THE COURT: Which type do you
5 fit into?

6 JUROR NUMBER 4: Type three.

7 THE COURT: Type three?

8 JUROR NUMBER 4: (Affirmative
9 nod)

10 THE COURT: Have you had an
11 opportunity to review -- well, let me ask
12 you some questions.

13 DERICK ALLEN, having been
14 previously sworn to tell the truth testified
15 as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q. Have had an opportunity to review the
19 potential list of witnesses of one hundred
20 thirty-four names?

21 A. Yes, sir.

22 Q. Did you know anybody or recognize any
23 names on that list?

24 A. No, sir.

25 Q. You don't know anyone?

1 A. No, sir.

2 Q. Okay, I'm going to ask certain
3 questions and then the attorneys will be
4 asking you some questions. Do you
5 understand?

6 A. Yes, sir.

7 Q. There are no right or wrong answers.
8 Just give the best answer that you can give.
9 Okay?

10 A. Okay.

11 Q. Do you know anything about the case?

12 A. No, sir.

13 Q. Have you heard anyone talking about the
14 case?

15 A. No, sir.

16 Q. Have you read anything in the paper
17 about it?

18 A. No, sir.

19 Q. Have you seen anything on television
20 about it?

21 A. No, sir.

22 Q. Do you have any relatives or close
23 personal friends that work for law
24 enforcement?

25 A. No, sir.

900

State of South Carolina, y. Colin James Broughton
Case No. 06-GS-08-2164
Jury Trial of September 14-29, 2009,
Before The Honorable J.C. Nicholson, Jr.

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1 Q. Has the solicitor prosecuted you or any
2 member of your family?

3 A. No, sir.

4 Q. Have you been the victim of any crime;
5 or has a member of your family been the
6 victim of any crime?

7 A. No, sir.

8 Q. Do you have any relatives in jail?

9 A. No, sir. Well, yes, sir. Yes, Sir;

10 I do.

11 Q. Who do you have in jail?

12 A. My cousin in Florida.

13 Q. Which cousin, first, second --

14 A. A first cousin.

15 Q. The first?

16 A. Yes.

17 Q. You know what she is in jail for?

18 A. Yes, sir.

19 Q. What?

20 A. He shot somebody.

21 Q. She shot somebody?

22 A. Right.

23 Q. Do you know how long that she is in
24 jail for?

25 A. I believe one year -- he --

1 Q. There are no right or wrong answers.

2 Okay?

3 A. Okay.

4 Q. What are your thoughts about the death
5 penalty in general?

6 A. Uh, -- (pause) -- I think, ummm, it
7 ain't really -- it ain't really -- it
8 depends to me, just depends.

9 Q. When you say it depends, I'm assuming
10 that you're saying that it depends on the
11 kind of case?

12 A. Yes, very much so.

13 Q. Would it also depend on the defendant
14 and who he is as a person?

15 A. No, sir, it depends on how it would
16 affect me.

17 Q. Tell me what you mean about that.

18 A. Like if it was a family member of mine,
19 then I would -- I would agree with it more.

20 Q. Okay. Now, in -- if you were to sit as
21 a juror, is that a process that you would go
22 through, you would treat the victims as
23 though they might be your family members and
24 then you would say, "What would I do if this
25 happened to my family?"

1 A. In a way.

2 Q. Okay. Would things about the
3 defendant, like if he had a touch childhood
4 or an abusive dad or did drugs when he was
5 younger, that sort of thing, that is not
6 relevant in your decision making process
7 because you're looking at the facts of the
8 case?

9 A. Yes, sir.

10 Q. And you are going to be driven
11 primarily on the facts of the crime itself?

12 A. Yes, sir.

13 Q. Okay, well, I am going to walk you
14 through a process and I am going to check in
15 with your thought process from time to time.
16 Okay?

17 A. Okay.

18 Q. I want to take you from the beginning
19 to the end, even after hearing mitigation
20 evidence. I am going to move pretty quickly
21 but you just let me know if I need to stop.
22 Okay?

23 A. Okay.

24 Q. In South Carolina all murders are
25 intentional. They are the unlawful killing

1 of an innocent person with no justification
2 or excuse with malice aforethought. Malice
3 aforethought has been described as a black,
4 evil, depraved heart fatally bent on
5 wickedness or mischief. Are you with me?

6 A. Yes.

7 Q. So I am going to put you in the
8 position where you and eleven other people
9 have already convicted a person of that type
10 of crime: an intentional, deliberate
11 killing, not self-defense, no accident. Are
12 you with me?

13 A. Yes.

14 Q. Where are you now in the process, is
15 the life penalty ever appropriate in that
16 situation?

17 A. No, sir.

18 Q. Okay. Then let's walk through the
19 process a little bit further, a little bit
20 longer. Even after having that opinion that
21 the life penalty is not appropriate in that
22 intentional murder case, you would hear
23 aggravation. I am not going to talk to you
24 about the specifics of this case, but I want
25 to describe a crime for you. Okay?

1 Home invasion, burglary, rape, armed
2 robbery , burglary, murder. Are you with
3 me?

4 A. Yes, sir.

5 Q. In that situation, that kind of
6 intentional killing within that scenario,
7 is the life penalty ever severe enough as
8 a punishment?

9 A. It is severe enough.

10 Q. It is severe enough?

11 A. Yes, sir.

12 Q. Okay. Now we are talking about that
13 guilty murderer who intentionally took an
14 innocent life and then add a home invasion,
15 rape, armed robbery, murder all at one time.
16 Is the life penalty appropriate there?

17 A. No, sir.

18 Q. Okay. And then you might get that
19 background stuff about the defendant that
20 the Judge talked to you about and that I
21 mentioned earlier, but my understanding is
22 that that is not relevant to your decision
23 making process because you are looking at
24 the facts of the murder?

25 A. Yes, sir.

1 WILLIAM MAGUIRE: One moment,
2 Judge.

3 EXAMINATION CONTINUED

4 BY WILLIAM MAGUIRE:

5 Q. And, Mr. Allen, these views are coming
6 from you based on your value system; right?

7 A. Yes, sir.

8 Q. It is obviously a very serious matter
9 that we are here. I am assuming that your
10 answers are well thought out and that you
11 are not being flippant with me.

12 A. No, sir.

13 Q. Those were very serious, truthful and
14 accurate answers?

15 A. Yes, sir.

16 WILLIAM MAGUIRE: I appreciate it.
17 Thank you, sir.

18 THE COURT: Solicitor?

19 SCARLETT WILSON: I don't have any
20 questions, Your Honor.

21 THE COURT: Any Motions?

22 WILLIAM MAGUIRE: Yes, sir.

23 SCARLETT WILSON: Yes, sir.

24 THE COURT: Pardon?

25 SCARLETT WILSON: Yes, sir.

1 THE COURT: Would you step out in
2 the hall just a minute?

3 (JUROR NUMBER 4 EXITS COURTROOM)

4 THE COURT: I assume since you
5 have both got Motions that you both agree
6 that he needs to be excused?

7 SCARLETT WILSON: Yes, sir.

8 WILLIAM MAGUIRE: Yes, sir.

9 THE COURT: All right, he's
10 excused if you both agree. Bring Mr. Allen
11 back in.

12 (JUROR NUMBER 4 ENTERS COURTROOM)

13 THE COURT: Mr. Allen, I am going
14 to excuse you from jury service on this
15 case. I want to thank you so very much for
16 your participation. You're free to go.

17 (JUROR NUMBER 4 EXCUSED)

18 (JUROR NUMBER 4 EXITS COURTROOM)

19 THE COURT: Michael Hearn is the
20 last one. Right? On group ten?

21 CLERK: Yes, sir.

22 (JUROR NUMBER 142 ENTERS COURTROOM)

23 CLERK: State your name.

24 JUROR NUMBER 142: Michael
25 Hearn.

1 THE COURT: Michael, Mr. Hearn,
2 have you had an opportunity to review the
3 form that the court gave to you?

4 JUROR NUMBER 142: Yes, sir.

5 THE COURT: Did you understand
6 that three different opinions about the
7 death penalty?

8 JUROR NUMBER 142: Yes, sir.

9 THE COURT: Do you have any
10 questions about?

11 JUROR NUMBER 142: No, sir.

12 THE COURT: Were you able to
13 determine whether or not you fit into type
14 one, two or three?

15 JUROR NUMBER 142: Yes, sir.

16 THE COURT: Which do you fit
17 into?

18 JUROR NUMBER 142: Type one.

19 THE COURT: Type one? So you
20 could never give the death penalty?

21 JUROR NUMBER 142: No, sir.

22 THE COURT: Under any
23 circumstance?

24 JUROR NUMBER 142: No, sir.

25 THE COURT: Okay, Mr. Hearn. I

1 will excuse you from jury service. Thank
2 you very much.

3 (JUROR NUMBER 142 EXCUSED)

4 (JUROR NUMBER 142 EXITS COURTROOM)

5 THE COURT: Do you'all need five
6 minutes? Need a short break? Mia, do you?

7 COURT REPORTER: I'm fine.

8 (JUROR NUMBER 217 ENTERS COURTROOM)

9 THE COURT: Yes, ma'am, your
10 name?

11 JUROR NUMBER 217: Cori
12 Merritt.

13 THE COURT: Ms. Merritt, how are
14 you doing today?

15 JUROR NUMBER 217: Doing fine.

16 THE COURT: Have you had an
17 opportunity to review the form which I gave
18 to you?

19 JUROR NUMBER 217: Yes.

20 THE COURT: Concerning opinions
21 about the death penalty?

22 JUROR NUMBER 217: Yes, sir.

23 THE COURT: Did you understand
24 the different types, one, two and three?

25 JUROR NUMBER 217: Yes, sir.

1 THE COURT: Were you able to
2 determine whether or not you fit into one of
3 those categories?

4 JUROR NUMBER 217: Yes.

5 THE COURT: Which category do you
6 fit in?

7 JUROR NUMBER 217: Number
8 three.

9 THE COURT: Number three?

10 JUROR NUMBER 217: (Affirmative
11 nod).

12 THE COURT: Okay, I have some
13 questions for you and then the attorneys
14 will have a chance to ask you some
15 questions.

16 CORI MERRITT, having been
17 previously sworn to tell the truth testified
18 as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q. Have had an opportunity to review the
22 potential list of witnesses of one hundred
23 thirty-four names?

24 A. Yes, sir.

25 Q. Did you know anybody or recognize any

1 names on that list?

2 A. I recognized one name.

3 Q. Which name?

4 A. Kevin Murphy might have been somebody
5 that I went to high school with.

6 Q. What number is he?

7 A. Number thirteen.

8 Q. Thirteen, Kevin Murphy?

9 A. Was not a personal friend but somebody
10 that I think I went to high school with.

11 Q. So you think that you went to high
12 school with him?

13 A. If it is the same Kevin Murphy.

14 Q. How long ago was that?

15 A. Twenty-five years ago.

16 Q. If it is the same Kevin Murphy, have
17 you seen him in twenty-five years?

18 A. No.

19 Q. Okay. Do you have any knowledge of the
20 case or do you know anything about the case?

21 A. No, sir.

22 Q. Have you heard anyone talking about the
23 case?

24 A. Just briefly.

25 Q. What have you heard briefly?

1 A. Apparently there were some problems,
2 that the previous judge was removed.

3 Q. What now?

4 A. That there were some problems and that
5 the previous judge was removed.

6 Q. Did you read about that in the paper?

7 A. I didn't but someone else that I know
8 did.

9 Q. All right, what did somebody else tell
10 you about it?

11 A. That they didn't understand what the
12 paper was trying to say but that some people
13 were removed from the case.

14 Q. When was this? Do you recall
15 specifically what they told you about the
16 case?

17 A. They were talking about that that might
18 be the case that I was going to be on this
19 week and that -- something about that the
20 judge was removed and that someone else was
21 removed but that they didn't understand what
22 the story meant. I didn't see the paper.
23 It was last week.

24 Q. Other than that, have you seen anything
25 in the paper, seen anything on television?

1 A. No, sir.

2 Q. Do you have any relatives or close
3 personal friends that work for law
4 enforcement?

5 A. Would a judge be law enforcement?

6 Q. Yeah.

7 A. I have a friend who is a judge.

8 Q. Who is that?

9 A. Kristi Harrington.

10 Q. She is a Circuit Court judge here in
11 Berkeley County; is that correct?

12 A. Yes, sir.

13 Q. Would that cause you any difficulty in
14 sitting on this jury?

15 A. No, sir.

16 Q. You could be fair to both the State and
17 the Defendant?

18 A. Yes, sir.

19 Q. And you would base your decision on the
20 testimony you hear here in the courtroom?

21 A. Yes, sir.

22 Q. Has the solicitor prosecuted you or any
23 member of your family?

24 A. No, sir.

25 Q. Have you been the victim of any crime

1 or has a member of your family, or close
2 personal friends, been the victim of any
3 crime?

4 A. No, sir.

5 Q. Do you have any relatives in jail?

6 A. No, sir.

7 Q. Are you a member of any groups that
8 primarily support law enforcement, such as
9 MADD?

10 A. No, sir.

11 Q. Do have a special interest or a
12 particular interest in the outcome of this
13 case?

14 A. No, sir.

15 Q. Are you aware of any bias or prejudice
16 towards the defendant simply because of the
17 charges brought against the defendant?

18 A. No, sir.

19 Q. You have any bias or prejudice towards
20 the defendant as a result of his race, being
21 black?

22 A. No, sir.

23 Q. Do have any religious beliefs that
24 would create a bias or prejudice for or
25 against the Defendant?

1 A. No, sir.

2 Q. You have any religious beliefs that
3 would create a bias for or against the
4 State?

5 A. No, sir.

6 Q. Have you had any bad experiences or
7 good experiences with law enforcement?

8 A. I have not really had any experiences
9 with law enforcement.

10 Q. Do you know of any reason, personal or
11 otherwise, as to why you could not serve on
12 the jury?

13 A. No, sir.

14 Q. Do you know of any reason why you
15 cannot give the State and the Defendant a
16 fair and impartial trial?

17 A. No, sir. I think I can be fair and
18 impartial.

19 Q. Pardon?

20 A. I think I can be fair and impartial.

21 THE COURT: Solicitor.

22 EXAMINATION

23 BY SCARLETT WILSON:

24 Q. Thank you for hanging in there with us.
25 What we are doing now is to just try to get

1 a better picture of where you stand and how
2 you feel about life without parole and about
3 the death penalty, but we can't talk about
4 the specifics of this case. We have to kind
5 of talk in generalities, which sometimes is
6 kind of awkward. So if you don't understand
7 my question, just let me know and I will try
8 again. Okay?

9 A. Okay.

10 Q. Before this week and this situation,
11 had you been familiar at all with how the
12 death penalty works here in South Carolina?

13 A. I am not familiar with how it works.

14 Q. And did you know before this week that
15 it is a two-step process, that there are two
16 phases to a death penalty trial?

17 A. I didn't know that.

18 Q. And based on the sheet that you have
19 that determines -- that you read to tell you
20 that you were in category one, two or three,
21 do you now understand that the law in South
22 Carolina -- that it is not the same
23 everywhere, but that the law in South
24 Carolina requires that every murder, any
25 murder, is a situation where there is an

1 unlawful killing that is intentional, that
2 the person who does that killing has malice
3 their heart, meaning that they are evil,
4 have a evil heart, a malicious heart at the
5 time that they committed the murder. Did
6 you know that?

7 A. I understand that from reading the
8 first paragraph.

9 Q. So in this situation you are aware that
10 if you were on a death penalty jury, in
11 order to move to the second phase, obviously
12 you the jury, you and the other eleven,
13 would have had to decide that the person was
14 guilty.

15 But then, in moving to that second
16 phase, would you be able to -- despite that
17 fact -- keep an open mind and wait to hear
18 if the State proved that aggravating
19 circumstance, as the Judge told you we are
20 required? And to hear any mitigation,
21 anything that might lessen the crime or
22 information about the defendant, before you
23 make your decision?

24 A. Yes. I would listen to everything
25 before I made my decision.

1 Q. Assuming that penalty phase got started ,
2 and you begin to hear about things that made
3 that murder, not just the murder but things
4 that made it a death penalty eligible
5 murder, an aggravating circumstance. Please
6 use, for example, torture. If you started
7 hearing evidence from the State that the
8 victim had been tortured or that it was sort
9 of overkill, just an ugly murder, despite
10 hearing back, could you still wait and
11 listen and give meaningful consideration to
12 information about the defendant, his or her
13 life, the situation that the defendant was
14 in at the time of the murder, that sort of
15 thing?

16 A. I would certainly be open to hearing
17 both sides.

18 Q. I know I am being a lawyer and I'm
19 sorry but when you say that you would be
20 open to hear what we are asking is it that
21 you would do more than just listen and pay
22 lip service. Could you factor it into your
23 decision?

24 A. (Affirmative nod), I am a pretty
25 analytical thinker. I would consider all

1 the facts before I make a decision.

2 Q. Even in the situation where there might
3 be a burglary, a rape, an armed robbery,
4 that sort of thing that the State had proven
5 as aggravation, you can still listen to
6 things about the defendant?

7 A. Yes, I can still listen.

8 Q. What kind of things would interest you?

9 A. Well, I mean, I would want to hear the
10 circumstances about what made this crime
11 take place, what made him do the crime that
12 he did. I don't know if that would change
13 what I thought about the crime that was
14 committed but I would certainly hear his
15 side of the story.

16 Q. And those kinds of situations, taking a
17 situation where there is overkill or torture
18 or maybe a rape, would you say that you
19 would lean towards death or lean towards
20 life in prison?

21 A. I would probably lean towards death.

22 Q. To sway you from that -- again not
23 having major decision that you are leaning,
24 to sway you from that, what types of things
25 about the defendant would interest you?

1 A. Probably his mental stability, how he
2 was raised, what might have been the
3 circumstances between him and the victim.

4 Q. You mentioned how he was raised. You
5 could consider in some situations that might
6 sway you over to the life without parole?

7 A. Depending on what the situation was.

8 Q. Which you would want to hear about?

9 A. Right.

10 Q. Even in situations -- sorry, I'm losing
11 my train of thought. But even in situations
12 where that information did not necessarily
13 have to do with what went on at the time of
14 the murder but that it had to do with
15 shaping or forming who the defendant was,
16 could you consider it in reaching your
17 decision about life without parole or the
18 death penalty?

19 A. Yes, that would be my reason for
20 considering it, to see what kind of person
21 that he is, product of his environment, I
22 guess.

23 Q. So when the Judge asked you to keep an
24 open mind throughout to the end, you could
25 keep an open mind and consider everything

1 that you have heard before making a
2 decision?

3 A. I believe that I could as far as -- I
4 mean, as far as whether it was death or
5 life, I know that I could. It is a pretty
6 serious decision.

7 Q. Definitely. I think that should answer
8 all the questions that I have. Thank you.

9 THE COURT: Mr. Maguire?

10 WILLIAM MAGUIRE: Thank you, Your
11 Honor.

12 EXAMINATION

13 BY WILLIAM MAGUIRE:

14 Q. Good afternoon, Ms. Merritt. How are
15 you doing?

16 A. Fine. Thank you.

17 Q. I join the prosecutor in saying thanks
18 for hanging in there with. I know that
19 this is terribly inconvenient and we are
20 just asking - well, we are just going to ask
21 one more thing of you, and that is that you
22 will be honest in your answers. Okay?

23 A. Okay.

24 Q. If you were the governor and we did not
25 have the death penalty in South Carolina and

1 a Bill crossed your desk and you could put
2 pen to paper and say, 'yes we are going to
3 have the death penalty', would you sign it?

4 A. Yes.

5 Q. How so?

6 A. Because I think in certain
7 circumstances it is warranted.

8 Q. And when you say circumstances, I am
9 assuming that you mean if a crime is bad
10 enough?

11 A. Yes.

12 Q. I would pick it up for the prosecutor
13 left off. I want to put you in that same
14 situation and kind of walk you through; that
15 is that you are on a jury, that you and
16 eleven other people have convicted a guilty
17 person of intentionally taking the life of
18 innocent human being. That it was a choice
19 to take life. That's the starting point.

20 Then you would hear the aggravating
21 circumstances.

22 I cannot talk about the specifics of
23 this case. I want to get you to see a crime
24 in your head -- which is a home invasion,
25 burglary, rape, murder. Are you with me?

1 A. (Affirmative nod).

2 Q. Then you might hear some background
3 stuff about the defendant's mitigation.
4 Just knowing that, that information alone;
5 is a life penalty ever really appropriate in
6 this situation?

7 A. Just hearing that, without specifics?

8 Q. Right.

9 A. I would generally lean towards death.

10 Q. Okay. When you say "lean towards
11 death", after hearing the crime, that it is
12 an intentional murder, innocent victim, and
13 that home invasion scenario that I just
14 talked to you about, leaning towards death
15 penalty -- it sounds like your starting
16 point is death?

17 SCARLETT WILSON: Objection, Your
18 Honor.

19 JUROR NUMBER 217: I wouldn't
20 say that's my starting point.

21 THE COURT: What is the legal
22 objection?

23 WILLIAM MAGUIRE: Judge, I am
24 going to rephrase it anyway.

25 THE COURT: Okay. All right. Go

1 ahead.

2 EXAMINATION CONTINUED

3 BY WILLIAM MAGUIRE:

4 Q. Obviously we are here in court for a
5 very grave matter. What I want to ask you
6 about is your decision making power in this
7 case. Your vote could mean that someone
8 lives or dies. How does that make you feel?
9 Are you comfortable with that?

10 A. I am. I appreciate -- if I get the
11 opportunity to participate, I think it's
12 very serious. I'm open to listening to all
13 of the circumstances before I reach a
14 decision. But what you ask me was extremely
15 general and I ---

16 Q. Oh, sure. We can't really get into the
17 specifics.

18 A. Right.

19 Q. We have rules about that. Sorry about
20 that.

21 A. That's okay. It's just that's why I --
22 I mean, if you give me something that
23 general and ask which way that I would go,
24 that's the way that I could go.

25 Q. That's a very fair response. I

1 appreciate that. The decision -- if you
2 were to sit on the jury, a juror's decision
3 in a case like this is often described as
4 their individual moral judgment. Does that
5 sound fair to you?

6 A. Yes.

7 Q. What I am getting at is that it is not
8 a democracy, it is not a take a straw poll,
9 take one vote and go.

10 A. Right.

11 Q. It's a very individual, personal
12 decision. Would you agree that's pretty
13 personal?

14 A. Yes, I think so.

15 Q. Can you think of a more personal
16 decision somebody might make?

17 A. (No verbal response).

18 Q. Well, let me rephrase that. Would you
19 agree that it is so personal that it is kind
20 of like whether to bring children into the
21 world or what religion to raise your kids in
22 or something like that?

23 A. I think it's as important as deciding
24 whether you want to have children, if you
25 want to take somebody's life. Yeah.

1 Q. Right, it's up there with the most
2 important personal decisions that anybody
3 could make in their own life?

4 A. (Affirmative nod).

5 Q. And if somebody made a decision --
6 well, let me go back. A decision like this
7 is not a factual fact. It is not, you know,
8 'was the car red' or was the light green or
9 red when a car went through it. You don't
10 have to be right or wrong. It's an
11 emotional decision. Is that okay with you?

12 A. I don't know that it's all emotional.

13 Q. Sure.

14 A. I think emotions play into that
15 decision but I also think that it should be
16 a decision made based on how you think about
17 things, not feel.

18 Q. Sure. Given the fact that it is a very
19 personal decision, can you respect other
20 people's decision in this matter?

21 A. I can respect them, yes.

22 Q. And you want yours to be respected?

23 A. Yes.

24 Q. Mr. Broughton is entitled to fairness
25 in the courtroom but also in the jury room

1 and if you saw something unfair or hostile
2 there, any juror can pass a note out and
3 say, 'This has to be respectful.' You could
4 do that?

5 A. Yes, I think it should be respectful.

6 WILLIAM MAGUIRE: That's all that
7 I have for you. Thank you, ma'am.

8 THE COURT: Any Motions from
9 either party?

10 SCARLETT WILSON: No, sir.

11 WILLIAM MAGUIRE: No, sir.

12 THE COURT: All right. Ms.
13 Merritt, the bailiff is going to give you a
14 little card that has a phone number on it.
15 Call that number after five o'clock
16 tomorrow. There will be instructions for
17 the jury panel.

18 What we are doing is that we are
19 qualifying a group of jurors for a panel to
20 draw from in this case. You are going to be
21 part of that process. Okay?

22 JUROR NUMBER 217: Okay.

23 THE COURT: Please don't discuss
24 the case with anyone, read anything about it
25 in the paper or watch anything on television

1 about it. Have a good day. Thank you, you
2 are excused.

3 (JUROR NUMBER 217 EXITS COURTROOM)

4 (JUROR NUMBER 58 ENTERS COURTROOM)

5 CLERK: Sit here and tell us your
6 name and number.

7 JUROR NUMBER 58: My name is
8 Barbara Bryant.

9 THE COURT: Ms. Bryant, how are
10 you doing today?

11 JUROR NUMBER 58: Doing just fine.

12 THE COURT: Have you had an
13 opportunity to review the sheet that the
14 court gave to you concerning the three types
15 of opinions?

16 JUROR NUMBER 58: Yes, I did.

17 THE COURT: Did you understand
18 that three types of opinions about the death
19 penalty?

20 JUROR NUMBER 58: Yes, sir.

21 THE COURT: Were you able to
22 determine whether or not you fell into type
23 one, two or three.

24 JUROR NUMBER 58: Type three.

25 THE COURT: You fell into type

1 three?

2 JUROR NUMBER 58: Yes, sir.

3 THE COURT: Okay. I have some
4 questions for you and then the attorneys
5 will have some questions for you.

6 BARBARA BRYANT, having been
7 previously sworn to tell the truth testified
8 as follows:

9 EXAMINATION

10 BY THE COURT:

11 Q. Have had an opportunity to review the
12 potential list of witnesses in the case of
13 one hundred thirty-four names?

14 A. Yes, sir.

15 Q. Did you know anybody or recognize any
16 names on that list?

17 A. Yes, sir.

18 Q. What numbers did you recognize?

19 A. Number thirty-eight.

20 Q. Arthur Caldwell?

21 A. Yes, sir.

22 Q. Anybody else?

23 A. Thirty-nine.

24 Q. Anthony Fyall. Who else?

25 A. Eighty-five.

1 Q. Jimmy Richardson. Let me ask you about
2 Arthur Caldwell. How do you know him?

3 A. I just knowing him by being an officer.

4 Q. A what?

5 A. An officer.

6 Q. Where do you see him?

7 A. All around town.

8 Q. Do you wave to him or do you hug his
9 neck or what?

10 A. Oh, no, just wave.

11 Q. Just wave to him?

12 A. Yes, sir.

13 Q. But he is not a personal friend?

14 A. Oh, no.

15 Q. How about Walter Fyall?

16 A. I just know him by being an officer.

17 Q. You just know him by being an officer?

18 A. Yes, sir.

19 Q. How do you know all these officers?

20 A. Well, I -- I mean, I know some of the
21 people who they are associated with.

22 Q. What was the other number?

23 A. Eighty-five.

24 Q. Mr. Richardson. How do you know Jimmy
25 Richardson?

- 1 A. By work.
- 2 Q. Where is that?
- 3 A. Central True Value.
- 4 Q. True Value?
- 5 A. Yes, sir.
- 6 Q. Does he work there with you?
- 7 A. No, he is a regular customer.
- 8 Q. Comes in all the time?
- 9 A. Um-humm.
- 10 Q. Is he a big customer?
- 11 A. Yes, sir.
- 12 Q. Do you get a lot of commissions off
- 13 what he buys?
- 14 A. Well, I mean, since he's not working in
- 15 the area ---
- 16 Q. Oh, he's not in the area, so he doesn't
- 17 come in True Value anymore?
- 18 A. Yeah, he still comes in but he don't
- 19 comes in as much as he did when he worked in
- 20 Moncks Corner.
- 21 Q. Do you see him outside the work
- 22 environment?
- 23 A. No, sir.
- 24 Q. Any other names?
- 25 A. Number one twenty-seven.

1 Q. Agent Vincent Mercer. How do you know
2 Mr. Mercer?

3 A. We're from the same home town and we
4 went to school today.

5 Q. What home town is that?

6 A. Santee Circle.

7 Q. Where?

8 A. Santee Circle.

9 Q. Have you seen him since high school?

10 A. Here and there.

11 Q. Here and there?

12 A. (Affirmative nod).

13 Q. Tell me where here and there is?

14 A. Well, when I come here, I usually see
15 him here. But unless he comes in Central or
16 somewhere where I work, (negative gesture).

17 Q. Anybody else?

18 A. That's it.

19 Q. Do any of the relationships with any of
20 the names, people that we have discussed,
21 cause you any difficulty in sitting on this
22 jury?

23 A. Probably so.

24 Q. Pardon?

25 A. Probably so.

1 Q. Which ones?

2 A. Jimmy Richardson.

3 Q. Which one?

4 A. Jimmy.

5 Q. Jimmy Richardson.

6 A. (Affirmative nod), eighty-five.

7 Q. What kind of problem would you have
8 sitting on this jury because of Jimmy
9 Richardson?

10 A. Well, I mean, -- his son also works
11 with me.

12 Q. His son works with you?

13 A. (Affirmative nod).

14 Q. Why would that cause you -- how would
15 that cause you difficulty?

16 A. Because me and his son talks every day
17 we go to work. I mean, we are pretty tight.

18 Q. You think his son would not want you to
19 be on the jury, because he's assuming he'll
20 testify?

21 A. I am not sure.

22 Q. Do you think that his son would be mad
23 at you because you're on the jury and his
24 father testified?

25 A. Oh, no.

1 Q. What kind of problem do you think that
2 you would have with his son if you were
3 chosen on the jury?

4 A. Well, I also attended the funeral. So
5 -- (pause).

6 Q. The what?

7 A. The deceased person, I went to the
8 funeral.

9 Q. You're talking about the funeral of
10 who, what deceased person?

11 A. Of the victim.

12 Q. So you went to the funeral of the
13 victim in this case?

14 A. Yes, sir.

15 Q. How well did you know the deceased?

16 A. I didn't know her, I had just known the
17 family.

18 Q. You knew the family?

19 A. (Affirmative nod).

20 Q. What members of the family?

21 A. Just the Richardsons. I don't know the
22 Broughtons.

23 Q. You just know the Richardsons?

24 A. (Affirmative nod).

25 THE COURT: Let me see the

1 attorneys up here just a second -- or Ms.
2 Bryant, would you just step out in the hall
3 for just a second.

4 (JUROR NUMBER 58 EXITS COURTROOM)

5 BENCH CONFERENCE:

6 THE COURT: I don't know
7 what family that she is talking about. I
8 don't know -- I asked her questions about
9 who is Jimmy Richardson, what's his
10 involvement or what the family -- I mean, I
11 don't know enough about the names to ask her
12 any more questions.

13 WILLIAM MAGUIRE: Jimmy
14 Richardson, if I remember correctly, ---

15 THE COURT: I can let
16 you'all ask her questions about it, if you
17 want, because -- you'all will have to
18 educate me. I just don't know anything
19 about who she is talking about, to even know
20 enough to even ask questions.

21 WILLIAM MAGUIRE: The
22 Richardsons would be over here and Jimmy
23 would be like a half-brother to the victim,
24 if I am -- they're a huge family and I am
25 pretty sure that Jimmy is ---

1 BRUCE DURANT: I was told
2 that he was the deceased's uncle..

3 WILLIAM MAGUIRE: Yeah, he's
4 half-brother to ---

5 THE COURT: And she is
6 concerned about his son that works with her.

7 SCARLETT WILSON: That would
8 be the victim's first cousin.

9 THE COURT: First cousin.
10 Okay. What is your position on her and that
11 relationship.

12 SCARLETT WILSON: I think that
13 she is uncomfortable.

14 THE COURT: I asked her the
15 questions, I was trying to get enough facts
16 to figure out what her relationship is
17 before I ask her.

18 WILLIAM MAGUIRE: If I am not
19 mistaken, the victim had like maybe fourteen
20 brothers and sisters and he's a half-brother
21 of another daddy or the same mama, I think.

22 THE COURT: What is your
23 position?

24 SCARLETT WILSON: I think
25 she's said that she is uncomfortable ---

1 THE COURT: Do you'all want
2 to cut her loose or what do you'all want to
3 do?

4 WILLIAM MAGUIRE: I think I
5 might want to ---

6 BRUCE DURANT: I thin out
7 of an abundance of caution that we just need
8 to cut her loose because she's too closely
9 related.

10 THE COURT: If you'all agree
11 to cut her loose, I will cut her loose.

12 WILLIAM MAGUIRE: I would like
13 for her to stay.

14 THE COURT: You want her to
15 stay?

16 BOYD YOUNG: If she can fair.

17 SCARLETT WILSON: I think that
18 she was ---

19 THE COURT: The problem that
20 I have -- I have already let one juror go
21 because he said that it would cause a
22 difficulty -- and I can't remember who the
23 difficult was with ---

24 WILLIAM MAGUIRE: Well, he had
25 inside information about the crime, guilt of

1 the defendant.

2 SCARLETT WILSON: But he said
3 that he could set it aside.

4 THE COURT: Huh?

5 SCARLETT WILSON: He said that
6 he could set all that aside.

7 THE COURT: But this one
8 said she couldn't. . .

9 WILLIAM MAGUIRE: Well, we
10 don't know.

11 THE COURT: I haven't asked
12 that question yet.

13 SCARLETT WILSON: I think that
14 it's not only that question. I think what
15 it is, is would she give those people that
16 she knew, their testimony, greater weight or
17 value than any other witness?

18 THE COURT: The cases say
19 that I can't try to box them in on -- to
20 find out who they are going to believe more
21 than others. I mean, this case is -- you
22 can't ask if you'd believe a police officer

23 ---

24 BRUCE DURANT: I think that
25 is a different situation. I think you can't

1 ask them about a general category, like
2 police officers, but if they actually know
3 the people ---

4 THE COURT: Is this guy
5 going to testify for you?

6 WILLIAM MAGUIRE: Yeah, it is
7 possible.

8 BRUCE DURANT: For him.

9 THE COURT: But you don't
10 know yet.

11 WILLIAM MAGUIRE: I've got a
12 lot of witnesses. I am trying to whittle
13 things down, Judge. I don't have any
14 objection to asking the question, 'Would you
15 give him more credence than anybody else?'

16 THE COURT: Okay, let's see
17 what she answers. I just didn't know what
18 the relationship was so that I could ask --
19 thank you very much.

20 (BENCH CONFERENCE CONCLUDED)

21 THE COURT: Bring Barbara Bryant
22 in, please.

23 (JUROR NUMBER 58 ENTERS COURTROOM)

24 EXAMINATION RESUMED

25 BY THE COURT:

1 Q. Ms. Bryant, I'm going to try to recap
2 all that you told me. Tell me if I am
3 correct or incorrect. You went to the
4 victim's funeral, is that correct?

5 A. Yes, sir

6 Q. In this case, of the deceased -- the
7 case that we're trying with Mr. Broughton;
8 is that correct?

9 A. Yes, sir.

10 Q. You know Mr. Jimmy Williams (sic), who
11 was also related to the deceased; is that
12 correct?

13 A. Jimmy Richardson.

14 Q. Jimmy Richardson, (affirmative nod).
15 Excuse me. And Jimmy Richardson's son, you
16 work with him every day. Is that correct?

17 A. Not every day, only ---

18 Q. All right. Has Jimmy Richardson's son
19 told you anything about this case?

20 A. (Affirmative nod).

21 Q. What has he told you?

22 A. Well, he's pretty much told me what
23 happened.

24 Q. What did he specifically tell you?

25 A. Well, I told that he told me that the

1 lady who he murdered was his aunt; the guy
2 on trial, his aunt. That the victim who he
3 assaulted was his cousin. He told me what
4 he used as the murder weapon.

5 Q. What else did he tell you?

6 A. That's about it.

7 Q. Nothing else?

8 A. (Negative gesture).

9 Q. Based on that, what's your opinion
10 about the defendant's innocence or guilt?

11 A. Guilt.

12 Q. Pardon?

13 A. Guilty.

14 Q. So you believe that he is guilty based
15 on what you've been told by ---

16 A. Yes.

17 Q. --- Jimmy Richardson's son; is that
18 right?

19 A. Right.

20 Q. Do you think that there is any way that
21 you could set that aside and be a fair and
22 impartial juror based on what you know?

23 A. I mean, depending on the prosecution
24 and the defendant.

25 Q. Could you set aside what you already

1 know?

2 A. Possibility.

3 Q. Pardon?

4 A. Possibility.

5 Q. Well, I know it's a possibility. It's
6 a possibility that we might have a tornado
7 this afternoon.

8 A. Right.

9 Q. There's all kinds of possibilities.
10 The question is, can you or can you not?

11 A. Yes, sir.

12 Q. You think that you can set it aside?

13 A. Yes.

14 Q. Pardon?

15 A. Yes, sir.

16 Q. All right. Now, you also told me that
17 you would have difficulty sitting on the
18 jury because of Jimmy Richardson's son; is
19 that correct?

20 A. Um-humm.

21 Q. What difficulties do you feel that you
22 would have with Jimmy Richardson's son?

23 A. Because -- I mean, -- well, I mean,
24 like the way that you witnessing something,
25 they are going to ask you this and that and

1 the other. I mean, you know, -- well, he's
2 related to him. And I mean -- (pause).

3 Q. Has he told you that he thinks that he
4 should be convicted?

5 A. Oh, no. No, sir.

6 Q. Does he think that he should be
7 acquitted of the killing of his aunt?

8 A. Oh, he didn't say how he feel.

9 Q. Okay. Well, how can you set all this
10 aside and be fair?

11 A. That's what I am saying, it's going to
12 be hard but I'd try.

13 Q. All right. Thank you very much.

14 THE COURT: I am going to
15 disqualify her based on the connection with
16 the family of Mr. Jimmy Richardson, who is a
17 potential witness, and his son, what prior
18 knowledge that she's attained from Mr.
19 Richardson. Based on that, I am going to
20 disqualify her cause. You may be excused.
21 Thank you very much.

22 (JUROR NUMBER 58 EXCUSED)

23 (JUROR NUMBER 58 EXITS COURTROOM)

24 (JUROR NUMBER 36 ENTERS COURTROOM)

25 CLERK: State your name.

1 JUROR NUMBER 36: Yes. My name is
2 Charlie Brown.

3 THE COURT: Mr. Brown, how are
4 you today?

5 JUROR NUMBER 36: Hey. How
6 you doing, sir?

7 THE COURT: Mr. Brown, have you
8 had an opportunity to review the sheet
9 concerning the views about the death penalty
10 that the court gave to you?

11 JUROR NUMBER 36: Yes, sir.

12 THE COURT: You have?

13 JUROR NUMBER 36: Yes, sir, I
14 looked at it.

15 THE COURT: Have you looked at
16 type one, type two and type three?

17 JUROR NUMBER 36: Yes.

18 THE COURT: Did you understand
19 what type one, type two and type three said?

20 JUROR NUMBER 36: Yes.

21 THE COURT: Have you been able to
22 determine which type that you may fall into?

23 JUROR NUMBER 36: Well, I didn't
24 -- you know, I just didn't decide which one
25 I really was.

1 THE COURT: You what?

2 JUROR NUMBER 36: You know, I just
3 been thinking about it.

4 THE COURT: I understand that
5 you've been thinking about. You've had a
6 lot of time to think about it because
7 you'all have been here a while.

8 JUROR NUMBER 36: Yes.

9 THE COURT: Tell me which type
10 that you think that you fall into?

11 JUROR NUMBER 36: Uh, -- I just
12 didn't -- (pause).

13 THE COURT: Tell me which ones
14 that you're vacillating between.

15 JUROR NUMBER 36: (No verbal
16 response).

17 THE COURT: Do you understand
18 what I mean when I say vacillating?

19 JUROR NUMBER 36: Which one are
20 you trying to decide that you belong it?
21 Type one? Type two? Type three?

22 JUROR NUMBER 36: Well, uh,
23 (pause), type, uh, hummm. Well, type two.

24 THE COURT: Let me ask you this,
25 Mr. Brown, do you have any difficulty in

1 reading?

2 JUROR NUMBER 36: Well, sometimes.

3 THE COURT: How much can you
4 read?

5 JUROR NUMBER 36: A little.

6 THE COURT: Can you read the
7 paper?

8 JUROR NUMBER 36: Which one?

9 THE COURT: The newspaper?

10 JUROR NUMBER 36: Sometimes.

11 THE COURT: What part of the
12 paper do you read?

13 JUROR NUMBER 36: Well, sometimes
14 I look at the Sports and all like that.

15 THE COURT: Okay. Do you read the
16 articles or just sort of look at the
17 pictures, like I do?

18 JUROR NUMBER 36: Just look at the
19 pictures.

20 THE COURT: Would it help if I
21 read these types to you?

22 JUROR NUMBER 36: Yes.

23 THE COURT: Do you want me to do
24 that?

25 JUROR NUMBER 36: Yes.

1 THE COURT: Would that help you
2 make up your mind?

3 JUROR NUMBER 36: Yes.

4 THE COURT: All right. No one
5 else has read this to you, have they?

6 JUROR NUMBER 36: No.

7 THE COURT: Let me see the
8 attorneys up here just a second, please.

9 BENCH CONFERENCE:

10 THE COURT: What I want to
11 is make the clerk available, and we can take
12 a short break, because obviously he can't
13 read it. Is that all right.

14 BRUCE DURANT: That's fine.

15 WILLIAM MAGUIRE: Yes, sir.

16 (BENCH CONFERENCE)

17 THE COURT: Ms. Tucker, what I am
18 going to ask you to do is to take Mr. Brown
19 back into one of the jury rooms, read this
20 to him, make sure that he understands it.
21 If there anything that he doesn't understand
22 about it, explain it you. We are going to
23 take a short break and then we'll bring
24 another juror in and be talking to them
25 while you are going over this, because I

1 think that it is pretty obvious that he
2 can't read this. I don't mean to embarrass
3 him or anything and I'd rather you read it
4 to him back in the jury room. Okay?

5 CLERK: Yes, sir.

6 THE COURT: We will take about a
7 five- or ten-minute break.

8 (JUROR NUMBER 36 EXITS COURTROOM)

9 (BRIEF RECESS)

10 (DEFENDANT PRESENT)

11 THE COURT: You can bring us Mr.
12 Brown.

13 (JUROR NUMBER 36 ENTERS COURTROOM)

14 THE COURT: Mr. Brown, Ms. Tucker
15 has read the sheet to you concerning the
16 opinions about the death penalty; is that
17 correct?

18 JUROR NUMBER 36: Yes, sir.

19 THE COURT: Did you understand
20 what she read to you?

21 JUROR NUMBER 36: Yes, sir.

22 THE COURT: Do you have any
23 questions about what she read to you?

24 JUROR NUMBER 36: No.

25 THE COURT: Are you able to tell

1 me which type that you may fit into: one,
2 two or three? I will summarized the types
3 for you since she read it to you. Okay?

4 JUROR NUMBER 36: Okay.

5 THE COURT: Type number one
6 basically says that you could never give the
7 death penalty for any reason.

8 JUROR NUMBER 36: Okay.

9 THE COURT: Type number two says
10 that you would always give the death penalty
11 when someone is convicted of murder.

12 Type number three basically says
13 that you would consider all the
14 circumstances before you made a decision for
15 life without parole or death.

16 Can you tell me which type that you
17 may fit into?

18 JUROR NUMBER 36: Number three.

19 THE COURT: You would fit into
20 type number three?

21 JUROR NUMBER 36: Yes.

22 THE COURT: Okay, I've got -- I
23 guess I am going to have to get somebody to
24 read you this thing of a hundred thirty-four
25 name.

1 CLERK TUCKER: I went over the
2 names with him.

3 JUROR NUMBER 36: She did.

4 THE COURT: So she went over the
5 names with you also?

6 JUROR NUMBER 36: Yes, sir.

7 THE COURT: Did you recognize any
8 names?

9 JUROR NUMBER 36: No, sir.

10 THE COURT: Okay, I need to ask
11 you -- did you recognize any names?

12 JUROR NUMBER 36: No, sir.

13 THE COURT: Did you know anybody
14 on the list of names that she read to you?

15 JUROR NUMBER 36: No, sir.

16 THE COURT: I got some questions
17 that I need to ask you and then the
18 attorneys may have some questions for you.

19 CHARLIE BROWN, having been
20 previously sworn to tell the truth testified
21 as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q. Do you know anything about the case,
25 Mr. Brown?

1 A. No, sir.

2 Q. Have you heard anything about it?

3 A. No.

4 Q. Have you heard anything on TV about it?

5 A. No.

6 Q. Has anybody read anything to you in the
7 papers about it?

8 A. No.

9 Q. Do you have any relatives or close
10 friends that are employed with law
11 enforcement?

12 A. No.

13 Q. Has the prosecutor, sitting at the
14 table at the right, has the prosecutor or
15 any member of her staff ever prosecuted you
16 or a member of your family?

17 A. No.

18 Q. Have you or any member of your family
19 ever been the victim of a crime?

20 A. No.

21 Q. Do you have any relatives in jail?

22 A. No.

23 Q. There are certain groups out there that
24 support law enforcement, such as MADD, SADD,
25 CAVE, and other groups. Are you a member of