

VOLUME THREE OF SIX

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY

Edward W. Miller, Circuit Court Judge

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FREDRICK ANTONIO EVINS,

APPELLANT

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1 Ward. And then, finally, a grand larceny indictment that
2 alleges that Mr. Evins did in Spartanburg County on or
3 about February 13th, 2003, feloniously take and carry away
4 a 1993 Nissan Sentra belonging to Rhonda Marie Ward.
5 Those are just allegations. They're not proven. The
6 State has the burden always to prove beyond a reasonable
7 doubt the charges that are raised in an indictment.

8 But we need to know -- I'm going to ask a few
9 questions. I just need to know -- we recognize there's
10 been publicity about this case in the newspaper, on the
11 television, and on the radio. And I just need to know,
12 have you heard, seen, or read anything about this case?

13 JUROR #137, CHARLEY GWINN: Not to my knowledge.

14 THE COURT: Okay. Do you understand that if going
15 through this process or if you get selected to serve that
16 if something prodded your memory and you remembered that
17 you did hear something about it that you would have to
18 disregard anything that you may have read, heard, or seen
19 about this case? Because the facts of the case can only
20 be decided on the evidence presented in the courtroom.

21 Do you understand that?

22 JUROR #137, CHARLEY GWINN: Yes, sir.

23 THE COURT: Okay.

24 JUROR #137, CHARLEY GWINN: I've heard so many,
25 though, I'm not sure whether I've read about that one or

1 not.

2 THE COURT: What's that?

3 JUROR #137, CHARLEY GWINN: I read the newspaper all
4 the time. I may have read about it and don't know it.

5 THE COURT: Okay. Well, that's what I'm talking
6 about. It may come to your mind later. This allegedly
7 happened back in February of 2003.

8 Do you understand that?

9 JUROR #137, CHARLEY GWINN: Yes, sir.

10 THE COURT: Now, would you serve as a fair and
11 impartial juror and reach a verdict based solely on the
12 facts presented at trial and in accordance with my
13 instruction on the law?

14 JUROR #137, CHARLEY GWINN: Yes, sir.

15 THE COURT: Have you already formed an opinion as to
16 the facts of this case?

17 JUROR #137, CHARLEY GWINN: No, sir. I don't know.

18 THE COURT: Have you already formed an opinion as to
19 the guilt of Mr. Evins or innocence of Mr Evins?

20 JUROR #137, CHARLEY GWINN: No, sir.

21 THE COURT: Now, keeping in mind those legal
22 principles, the presumption of innocence and the
23 obligation of the State to prove guilt beyond a reasonable
24 doubt, could you, depending upon the facts and evidence
25 presented at a trial and the law I would give you, could

1 you find a defendant either guilty or not guilty depending
2 on that evidence?

3 JUROR #137, CHARLEY GWINN: Yes, sir.

4 THE COURT: Okay. Your mind is not made up one way
5 or the other?

6 JUROR #137, CHARLEY GWINN: No, sir.

7 THE COURT: Remember, we may not get to the second
8 phase of the trial, but since it's a possibility, I need
9 to ask you a little bit about your views on the death
10 penalty.

11 Do you understand that?

12 JUROR #137, CHARLEY GWINN: (Juror nodded.)

13 THE COURT: Now, I emphasize again to you that when
14 we move to the second phase of the trial, it means that
15 the jury has already decided that the Defendant is guilty
16 of murder. Okay. In the second phase, the jury wouldn't
17 be concerned with guilt or innocence. They would be
18 concerned with the aggravating circumstances and the
19 mitigating circumstances. So I would tell you that your
20 oath would require you to put aside any preconceived
21 notions that you have and you would have to follow the law
22 as I instruct it to you. In other words, you would --
23 your oath would require you to give serious and meaningful
24 consideration to the aggravation and mitigation evidence.

25 Could you be bound by your oath in that regard?

1 JUROR #137, CHARLEY GWINN: Yes, sir.

2 THE COURT: Now, a hypothetical question. You're a
3 juror in the second phase of the trial, and depending upon
4 the particular facts and circumstances in the case,
5 considering all the aggravating and all the mitigating
6 circumstances and the law I will give you, could you
7 return a sentence of life in prison?

8 JUROR #137, CHARLEY GWINN: Yes, sir.

9 THE COURT: All right. The same situation, second
10 phase of the trial, depending on the particular facts and
11 circumstances of the case and the law I give you and all
12 the mitigating and aggravating circumstances, could you
13 return a sentence of death?

14 JUROR #137, CHARLEY GWINN: Yes, sir.

15 THE COURT: The law requires that that be a unanimous
16 decision and that all 12 jurors sign the death sentence
17 verdict form. Could you sign your name to the verdict
18 form that gave the death sentence?

19 JUROR #137, CHARLEY GWINN: Yes, sir.

20 THE COURT: All right. Do you recall that sheet with
21 the three types of jurors on it?

22 JUROR #137, CHARLEY GWINN: Yes, sir.

23 THE COURT: Which one are you?

24 JUROR #137, CHARLEY GWINN: I guess the last one.

25 THE COURT: Okay. You'd need to hear everything

1 before you made a decision?

2 JUROR #137, CHARLEY GWINN: Of course.

3 THE COURT: Now, if you're selected, would you follow
4 your oath and serve as a fair and impartial juror and
5 approach jury service with an open mind to find the truth
6 from the evidence and apply the law as I gave it to you?

7 JUROR #137, CHARLEY GWINN: Yes, sir.

8 THE COURT: Do you know of any reason why you can't
9 serve?

10 JUROR #137, CHARLEY GWINN: I got in trouble in my
11 younger days. But other than that, I wouldn't know.

12 THE COURT: All right. What was that for?

13 JUROR #137, CHARLEY GWINN: Being a kid.

14 THE COURT: All right. Well, how -- you don't look
15 that old, but how long ago was it?

16 JUROR #137, CHARLEY GWINN: 40 years.

17 THE COURT: All right. Do you remember how old you
18 were when it happened?

19 JUROR #137, CHARLEY GWINN: Which time?

20 THE COURT: Well --

21 JUROR #137, CHARLEY GWINN: I just got in --

22 THE COURT: All right. What kind of trouble was it?

23 JUROR #137, CHARLEY GWINN: Just running out at night
24 breaking into some places, something to do.

25 THE COURT: All right. Did you go to court on it?

1 JUROR #137, CHARLEY GWINN: Yes, sir.

2 THE COURT: All right. Where was it? Do you know?

3 JUROR#137, CHARLEY GWINN: Spartanburg County.

4 THE COURT: Okay. And were you a juvenile?

5 JUROR #137, CHARLEY GWINN: Yes, sir. I went to
6 SCIS.

7 THE COURT: Okay. A juvenile.

8 Now, if you're qualified, we're going to call the
9 qualified jurors to come in here and -- probably tomorrow
10 for jury selection. So if you're qualified, just remember
11 that you're going to have to be packed for five to seven
12 days when you get called back and you'll be staying over
13 there at the Marriott Hotel, a couple blocks away. It's
14 the brand new one.

15 Okay. I'm going to turn it over -- questioning over
16 to the lawyers at this time.

17 MR. ANTHONY: Thank you, Your Honor.

18 EXAMINATION

19 BY MR. ANTHONY:

20 Q Mr. Gwinn, how are you?

21 A Just fine.

22 Q My name is John Anthony. I work for the Solicitor's
23 Office. This is Barry Barnette, and this is Trey Gowdy.
24 And we're the attorneys who will be representing the State
25 in this case.

1 I have just a few things I wanted to ask you. I saw
2 in this questionnaire that you talk about some -- a drunk
3 attacking you or something. Do you know what I'm talking
4 about?

5 A (There was no response.)

6 Q That you got beat up by a drunk?

7 A Oh, yeah, yeah, not too long ago.

8 Q How long ago --

9 A I had forgotten about that.

10 Q How long ago was that?

11 A Going on two years.

12 Q Two years. Did the man who beat you up get charged?

13 A Yes, sir. But they give me a court date and when I
14 come up here, they said they tried it the day before.

15 Q Okay. Did he get charged in Magistrate's Court?

16 A I don't know. I just had the court papers. And when
17 I showed up, they said it had been done the day before.

18 Q When you showed up, did you go downstairs in this
19 building?

20 A Yes, sir.

21 Q And they told you downstairs that it was tried the
22 day before?

23 A Yeah.

24 Q Okay.

25 A Or I called to see what time I was supposed to be

1 here and they said it was the day before.

2 Q And you put on your form that you're what you call a
3 sign mechanic?

4 A I build, erect, and put up signs.

5 Q And you work for a business doing this?

6 A Jones Signs.

7 Q And so like somebody calls Jones Signs saying they
8 want a sign put at such and such a business and you go out
9 there and do it?

10 A If we could get a permit.

11 Q And how long have you been doing that?

12 A I cut grass around the place when I was 13.

13 Q Okay. How long have you been working for the sign
14 business?

15 A Back this time?

16 Q Yeah.

17 A 17, 18 years.

18 Q Okay. Let me ask you a couple of things about the
19 death penalty. You said that you thought you could impose
20 it if you thought that was the right thing to do?

21 A If somebody did something bad enough.

22 Q Okay. I just wanted to ask you, what is it -- or
23 could you just tell us what your thought process is that
24 leads you to take the position that, you know, you could
25 vote for the death penalty if that was what you thought

1 was the right thing to do?

2 A I don't understand the question.

3 Q Well, what -- why is it that -- why do you feel the
4 way you do or think the way you do?

5 A If somebody hurt a child or something, I'd have no
6 reservations.

7 Q You -- I'm sorry. What did you say?

8 A If something hurt a child or an old person.

9 Q Okay. Would your consideration of it be limited to
10 those two situations?

11 A No, sir, just the situation itself.

12 Q Okay.

13 A I hope I'm never put in that position.

14 Q And why is that?

15 A I wouldn't like to think about the circumstances.

16 Q Okay. Do you think if you were put in that position,
17 though, could you do what you'd be asked to do?

18 A Yes, sir.

19 Q Okay. And, of course, you understand that if we went
20 to a sentencing hearing in this case that there would be
21 evidence put up by the State, what's called evidence in
22 aggravation, which would be designed to try and persuade
23 the jury to vote for the death penalty. And there also --
24 there wouldn't necessarily have to be, but there might be
25 evidence put up by the Defense, what's called mitigation,

1 to try to argue that a life without parole sentence ought
2 to be the sentence that's imposed by the jury. And could
3 you listen to whatever evidence the Defense put up, if
4 they put up evidence?

5 A Yes, sir.

6 Q Okay. Would you be willing to consider that as well?

7 A Of course.

8 Q And if you had a choice between voting for the death
9 penalty for the Defendant or voting for life in prison,
10 which is -- that would be an option. You'd have an option
11 between the death penalty or life in prison, would you
12 always vote for life in prison?

13 A No, sir. It depends entirely on the circumstances.

14 Q Okay. And like the Judge told you, when we do this,
15 if you're on the jury and you decided to vote for the
16 death penalty, there will be a form back in the jury room
17 that every juror has to sign.

18 A I understand.

19 Q And if -- say, if all 11 jurors have signed that form
20 and the only one left to sign it is you, could you write
21 your name down on that form and sentence somebody to
22 death, if you thought that was the appropriate verdict?

23 A Yes, sir.

24 MR. ANTHONY: If I can have one moment.

25 THE COURT: Sure.

1 (Pause.)

2 BY MR. ANTHONY:

3 Q And just one more question just to kind of follow-up
4 on the last thing I asked. You said that you could -- you
5 said you would -- you could vote for death if you thought
6 that was -- the circumstances dictated that. Could you
7 also vote for life if you thought the circumstances
8 dictated that?

9 A Yes, sir.

10 MR. ANTHONY: All right. Thank you very much.

11 That's all from the State.

12 Thank you, Mr. Gwinn. I appreciate you answering my
13 questions.

14 MS. QUIMBY: May it please the Court?

15 EXAMINATION

16 BY MS. QUIMBY:

17 Q Hey, Mr. Gwinn. My name is Karen Quimby. And this
18 is Tam Boggs with the glasses and Chris Brough at the end
19 of the table. Fredrick Evins is over there also at the
20 table.

21 I understand that you're not against the death
22 penalty. Do you understand that it -- or you believe it
23 should apply in certain circumstances; correct?

24 A If the circumstances warrant it.

25 Q Right. Does the fact that the police make an arrest

1 of somebody, does that kind of imply anything to you or
2 make you think one way or the other about whether that
3 person is guilty or not guilty?

4 A I've been arrested when I didn't think I was guilty.

5 Q Okay. So when you read about something in the paper
6 and someone has been arrested and charged with
7 something --

8 A Normally, I just go by what's happened. I don't know
9 enough about the situation.

10 Q Okay. So you'd want to know more?

11 A Yeah.

12 Q Okay. And you know Mr. Evins has been charged with
13 these offenses and Mr. Gowdy and the Solicitor's Office
14 have decided to seek the death penalty if he's convicted
15 of murder. Does that fact -- the fact that this is a
16 potential death penalty case, does that make you think one
17 thing or the other about whether he might be guilty or
18 not?

19 A It makes me think there's a reason to be here, but,
20 no, not necessarily whether he's guilty or not.

21 Q Okay. It makes you think there's a reason to be
22 here. What kind of reasons might there be?

23 A He was charged with it, I suppose.

24 Q Okay. Well, you know there are people who are
25 charged with murder who the State doesn't seek the death

1 penalty on?

2 A I didn't mean it as I think he's guilty. I mean, I
3 just assume -- I don't know what I mean.

4 Q All right. And there aren't any right or wrong
5 answers. We're just looking for your answers.

6 A I was searching my mind.

7 Q Okay. You said that you hadn't heard anything about
8 this case, to your knowledge, but you do read the paper a
9 pretty good bit?

10 A Regularly.

11 Q So if you knew a little bit more about it rather than
12 just the names, do you think it might maybe jog your
13 memory if you'd heard about it?

14 A I don't know. I only thought of one that I've read
15 about in the last year or year before that I thought it
16 might be.

17 Q Okay. Which one was that one?

18 A An elderly lady on the north side was killed and
19 raped.

20 Q And that was about a year or --

21 A It was in the Cleveland Park area.

22 Q I'm sorry?

23 A It was in Cleveland Park. A friend told me about it.
24 She lives over there.

25 Q Your friend lives in Cleveland Park?

1 A In the area, yeah, Sullivan Street.

2 Q Is that something that you had just heard about from
3 your friend or did you remember reading that in the paper?

4 A Well, I heard about it in the paper before or
5 somewhere, and I talked to her about it because it was in
6 her neighborhood.

7 Q Okay. Do you remember anything else about it?

8 A (Juror shook head.)

9 Q Nothing?

10 A Not really. It was just a bad crime.

11 Q Do you remember if they ever arrested anybody for
12 that?

13 A No, ma'am. I don't know. I have no idea.

14 Q Okay. Well, if I were to kind of try to jog your
15 memory, this incident that we're here for on this trial,
16 it started out at the Cigarette's 4 Less store in Drayton
17 and continued out toward the country toward Reidville to a
18 field or an orchard. Does knowing that bring anything to
19 your mind?

20 A No, ma'am. I never heard of it.

21 Q Never heard of it. Okay. And we've already talked
22 about your general views -- well, that you're not opposed
23 to the death penalty. What are your general views based
24 on? Where do you get your views? Is it something you
25 were brought up with?

1 A If something is bad enough.

2 Q I know. But I guess I'm asking where those views
3 come from. Is it the way that you were raised and your
4 family --

5 A I suppose.

6 Q Okay. Do you know if your church takes a particular
7 position on the death penalty?

8 A I don't know.

9 Q Okay. And I see that you work for Terry Gwinn.
10 That's a family business?

11 A Younger brother.

12 Q And I also see that you kind of hung your head a
13 little bit when the Judge mentioned sequestration?

14 A Of course.

15 Q I read in your questionnaire --

16 A I live alone.

17 Q You live alone?

18 A Well, I try to as much as possible.

19 Q Okay. I can appreciate that. Would it cause a
20 problem at work? I see you do rely on overtime.

21 A Of course.

22 Q What kind of problems would it cause?

23 A I wouldn't be working.

24 Q You wouldn't be working. He's your brother?

25 A It's not my fault.

1 Q What kind -- how many people work there?

2 A 11.

3 Q 11 people?

4 A (Juror nodded.)

5 Q And he would need you --

6 A I would hope so.

7 Q Well, I mean --

8 A No, anybody can be replaced.

9 Q And -- but can you tell me why you think that you
10 would be --

11 A It's wintertime and there would be nobody to take
12 care of my house --

13 Q Okay.

14 A -- more than anything.

15 Q So it's not so much the job aspect of it as what
16 losing a job --

17 A And how much money I've lost not working.

18 Q Do you think that would be on your mind if you were
19 asked to serve?

20 A I'm sure everything would be on my mind.

21 Q Okay. Do you think that -- do you think it might in
22 any way impair or kind of effect your ability to
23 concentrate on this -- on the trial, because you might be
24 worried about not being able to make this month's bills?

25 A I can't honestly say. I don't know. It would make a

1 difference, I'm sure.

2 Q It would make a difference?

3 A I mean, it wouldn't make a difference in here, but
4 I'd be thinking about it.

5 MS. QUIMBY: Okay. Well, thank you very much for
6 answering all our questions. I know it's an imposition.

7 THE COURT: Mr. Gwinn, could I get you to step into
8 the hallway for one second.

9 (Pause.)

10 THE COURT: All right. Is there any statutory
11 disqualification here?

12 MR. GOWDY: Statutory?

13 THE COURT: Do you all have a prior criminal history?
14 I can't find anything where he would be statutorily
15 disqualified for a juvenile conviction.

16 MR. GOWDY: No, sir, Your Honor.

17 He -- I've got a no disposition in West Virginia on a
18 breaking and entering in 1982. I've got a petit larceny
19 here with no disposition. The only convictions I have for
20 him are a DUI first, which would not qualify, and a --

21 THE COURT: Well, his testimony -- pardon me for
22 interrupting -- is that he has been convicted for breaking
23 and entering as a juvenile in Spartanburg County.

24 MR. GOWDY: I do not have that on my NCIC. And I
25 cannot honestly tell you whether a juvenile conviction

1 qualifies or not. I don't know.

2 THE COURT: We've looked and I don't think it does,
3 because it's not a felony conviction greater than a year.

4 MR. GOWDY: My cracker jack legal team is shaking
5 their head, no, they don't think it qualifies.

6 THE COURT: Any other objection to his qualifications?

7 MS. QUIMBY: Your Honor, I was, actually, just trying
8 to explore to see if he would be impaired. I think it
9 would be on his mind, but I don't think it would impair
10 his ability to serve.

11 THE COURT: All right. He's qualified. Let's bring
12 him on back in.

13 (Pause.)

14 THE COURT: Mr. Gwinn, let me give you this. Take it
15 home and read it. Let me tell you, you're qualified and
16 you continue to be eligible to serve in the case. So
17 we're going to try and select this jury tomorrow. We'll
18 call you up and tell you what time to be up here. You
19 need to be packed for five to seven days. And you may or
20 may not get chosen, but you just need to be ready to go.

21 And, again, let me tell you, don't read anything
22 about this case, watch TV, or listen to the radio about
23 this case, and don't talk about this case to anybody.
24 You've got to tell your brother where you're going to be
25 and all that, but don't talk about the case.

1 All right. Thank you, Mr. Gwinn.

2 (Juror #137, Charley Gwinn, was excused from the
3 courtroom.)

4 THE COURT: All right. We need to take a little
5 break. We'll take about a five-minute break. It's 5:30.
6 We've got six more to go. We need to try and pick up the
7 pace a little bit. I would just ask the lawyers to be a
8 little more direct in their questioning.

9 (WHEREUPON, a break was taken.)

10 THE COURT: Bring the next panel in, please.

11 (WHEREUPON, Juror Panel No. 9 entered the courtroom.)

12 THE COURT: Ladies and gentlemen, welcome back to the
13 courtroom. And I appreciate your patience. I know we're
14 running behind here. We're going just as quickly as we
15 can go. This is not a situation where we can be anything
16 less than thorough, so I appreciate your patience. I'll
17 be as brief with you as I possibly can. I want to tell
18 you before we start that I will be -- we're going to
19 individually question you and, of course, five of you will
20 be waiting and one at a time is going to come in is,
21 basically, what's going to happen.

22 I want to tell you again that I have no opinion about
23 the facts. And I will be asking you some questions, so
24 don't infer by anything I say or do that I have an opinion
25 about the facts. Because not only does the law not allow

1 me to have an opinion about the facts, but I truly do not
2 have an opinion about the facts in this case.

3 Now, I want to remind you about the basic principles
4 of law that apply. And keep these in mind throughout this
5 process and if you're selected, you'll, of course, have to
6 keep them in mind throughout the trial of the case. And
7 that is that every citizen who is charged with a crime is
8 presumed innocent unless and until the State can prove
9 them guilty beyond a reasonable doubt of each and every
10 element of the offense or the offenses that they are
11 charged with. I want you to keep those basic principles
12 in mind throughout this process and throughout the case.

13 Do each of you understand that process?

14 (All jurors said yes.)

15 THE COURT: Okay. Very good.

16 Now, a case of this nature is generally referred to
17 as a capital case. And I know I've explained that to you
18 once before, but let me give you another brief explanation
19 in general. We're going through the qualification process
20 of the jury right now. Once we have the jury qualified,
21 we will then select the jury. Once the jury is selected,
22 the Court conducts the first phase, which is -- and could
23 be, perhaps, the only phase of the trial. The jury
24 determines whether the State has proven that the Defendant
25 on trial is guilty of murder and any other charges that he

1 might have, and whether or not the State has proven that
2 beyond a reasonable doubt. Should a jury find the
3 Defendant not guilty of murder, that would end the case.
4 There would be no further jury service and the case would
5 be over.

6 If the jury, on the other hand, finds beyond a
7 reasonable doubt that the Defendant is guilty of murder,
8 then we would move to the second phase, which is sometimes
9 called the sentencing phase of the trial. And at that
10 part of the trial, the jury would consider evidence in
11 aggravation and evidence in mitigation. And the jury,
12 after hearing this additional evidence, would determine
13 the sentence, and that would be life imprisonment or
14 death.

15 Now, in a capital case, if the jury finds the
16 presence of an aggravating circumstance, a sentence of
17 life means life without the possibility of parole. In
18 other words, a Defendant who has been convicted of murder
19 that was accompanied by an aggravating circumstance, then
20 a life sentence means what it says, and that is life.
21 There would be no possibility of parole under such a
22 circumstance and the Defendant would die in prison.

23 Now, please understand I am talking about the process
24 of a capital case in general. And in this case, we may
25 not even get to the second phase of the trial. But in the

1 event we do, I would need to question you somewhat on --
2 as a result of that. Let me just briefly tell you what
3 the terms aggravating and mitigating circumstances mean.
4 These are terms which you'll hear and consider only in the
5 event the trial proceeds to the second phase.

6 Aggravating circumstances are facts, incidents, or
7 occurrences which the South Carolina General Assembly has
8 declared by statute would aggravate or worsen the crime of
9 murder. In other words, an aggravating circumstance, when
10 accompanying a murder, increases the enormity of it or
11 adds to the injury of the crime of murder.

12 Now, mitigating circumstances are incidents, facts,
13 or occurrences which the General Assembly has declared by
14 statute or which a jury otherwise determines should reduce
15 the severity of the offense of murder and may be
16 considered as extenuating or as reducing the degree of
17 responsibility or culpability.

18 Now, do each of you -- does that help you with those
19 terms, aggravating and mitigating circumstances?

20 (All jurors said yes.)

21 THE COURT: Does anyone need any further explanation?

22 (There was no response.)

23 THE COURT: I've introduced the attorneys to you.

24 And I will ask you now, is there any member of the panel
25 who's related by blood or marriage or acquainted in any

1 way with any of the attorneys involved in this case? If
2 so, please raise your right hand.

3 (There was no response.)

4 THE COURT: Okay. Is there any member of the jury
5 panel who is related by blood or marriage or acquainted in
6 any way with Mr. Fredrick Antonio Evins? If so, please
7 raise your right hand.

8 (There was no response.)

9 THE COURT: Is there any member of the jury panel
10 related by blood or marriage or acquainted in any way with
11 anyone associated with these attorneys offices or law
12 firms, that would be the Seventh Circuit Solicitor's
13 Office, the Public Defender's Office, or the Law Offices
14 of Mr. Tam Boggs? If so, please raise your right hand.

15 (There was no response.)

16 THE COURT: Now, I hope that each of you had an
17 opportunity to review the extensive witness list that's
18 back there. I'll ask you now the same question, is there
19 any member of the jury panel related by blood or marriage
20 or acquainted in any way with any of the witnesses listed
21 on that list? If so, please raise your right hand.

22 (There was no response.)

23 THE COURT: All right. Very good.

24 Thank you.

25 Now, before I let you go, I'm going to ask y'all to

1 stand please and raise your right hand. We're going to
2 swear another oath.

3 (WHEREUPON, Juror Panel No. 9 was sworn.)

4 THE COURT: All right. Would everyone go back to the
5 jury room, with the exception of Ms. Cynthia McCrary.

6 (WHEREUPON, Juror Panel No. 9 exited the courtroom,
7 with the exception of Juror #237, Cynthia McCrary.)

8 (Juror #237, Cynthia McCrary, a white female, was
9 seated.)

10 THE COURT: Ms. McCrary, welcome to the courtroom. I
11 know you're just pleased as punch to be here in that
12 chair. I want you to feel -- please be as comfortable as
13 you possibly can be. And let me assure you, if you're
14 feeling any nervousness or any anxiety, that is completely
15 normal and natural. Everyone in the courtroom understands
16 that and we all sympathize with you. And, hopefully, the
17 fact that we recognize that will put you a little bit more
18 at ease.

19 I want to tell you that we're going to ask you some
20 questions and give you a road map of the subjects we're
21 going to cover. It will be whether you've heard anything
22 about the case, whether you can be fair and impartial, and
23 then we need, because of the serious nature of this case,
24 to discuss your views on the death penalty a little bit.
25 Okay.

1 JUROR #237, CYNTHIA MCCRARY: Okay.

2 THE COURT: Now, that can be fairly -- sometimes
3 people might consider that to be intrusive, because that's
4 a pretty deeply held personal belief and a lot of times
5 people are conflicted and don't know exactly how they feel
6 about it. So if that's how you feel, then that's fine.
7 There are no right or wrong answers. There's no litmus
8 test. No one is going to pass judgment based on your
9 answers. The only thing we ask is that you give candid,
10 complete, and truthful answers to the questions. We just
11 want to know how you feel deep down inside about some of
12 these issues. Okay.

13 JUROR #237, CYNTHIA MCCRARY: Okay.

14 THE COURT: Before I can go any farther, I need to
15 tell you a little bit more about the case to make sure you
16 understand what I'm talking about. And, again, these
17 indictments are not evidence and they cannot be considered
18 by anyone to be evidence.

19 The first indictment alleges murder, that Fredrick
20 Antonio Evins did in Spartanburg County on or about
21 February 13, 2003, feloniously, willfully, and with malice
22 aforethought kill Rhonda Marie Ward by stabbing. The next
23 indictment is for kidnapping. It alleges that Mr. Evins
24 did on or about the same date unlawfully seize or kidnap
25 Rhonda Marie Ward. The next indictment is for criminal

1 sexual conduct. And it alleges that Mr. Evins did on or
2 about the same date, and that is February 13th, 2003,
3 willfully and unlawfully commit a sexual battery upon the
4 victim, Rhonda Marie Ward. Finally, there's an indictment
5 for grand larceny that alleges that Mr. Evins did on or
6 about the same date feloniously take and carry away a 1993
7 Nissan Sentra automobile and its contents belonging to
8 Rhonda Marie Ward.

9 Now, those are the allegations that the State has
10 brought to court. And, of course, they are not evidence
11 at this time and the State is required to prove those
12 beyond a reasonable doubt at trial.

13 Now, I would tell you, we recognize there's been a
14 lot of publicity about this case on TV, in the newspaper,
15 and on the radio. So my first question would be, have you
16 read, heard, or seen anything about this case?

17 JUROR #237, CYNTHIA MCCRARY: Yes, sir, I have.

18 THE COURT: Would you just tell me what that is?

19 JUROR #237, CYNTHIA MCCRARY: What I can recall was
20 that the Defendant was caught on a surveillance tape on
21 Isom Street at a cigarette discount store forcing Ms. Ward
22 into her car. And that she was later discovered in a --
23 I'm wanting to say a peach orchard or somewhere off of
24 I-85. And that he was later found only because they
25 discovered the surveillance tape in the parking lot.

1 THE COURT: You have a good memory.

2 JUROR #237, CYNTHIA MCCRARY: I have a very good
3 memory.

4 THE COURT: Do you remember when you --

5 JUROR #237, CYNTHIA MCCRARY: It's been over a year
6 ago or it seems like. I don't remember the exact date,
7 but it's been a very long time. And the reason I can
8 remember that is my mother works at Mary Black Hospital
9 and I can remember picking up the phone and saying, mom,
10 please be careful. When you leave work, lock your doors,
11 please be careful. There has been something that has
12 happened.

13 THE COURT: Okay. Do you remember if you read that
14 in the newspaper or saw it on TV?

15 JUROR #237, CYNTHIA MCCRARY: I saw that on TV.

16 THE COURT: Did you read, hear, or see anything else
17 about the case?

18 JUROR #237, CYNTHIA MCCRARY: I did not read or
19 see -- the only thing I did remember seeing was that they
20 did find the person that they thought had committed the
21 crime.

22 THE COURT: All right. Now, is there anything else
23 that -- any other publicity or anything that you --

24 JUROR #237, CYNTHIA MCCRARY: Not since that time,
25 no, sir.

1 THE COURT: Okay. Well, very good.

2 Do you understand that, as a juror, your oath would
3 require you to put aside everything that you might have
4 seen, heard, or read about this case? Because the law
5 requires that the case be decided solely on the evidence
6 presented at trial?

7 Do you understand that?

8 JUROR #237, CYNTHIA MCCRARY: Yes, sir.

9 THE COURT: Do you think that you could put aside
10 what you have heard about the case?

11 JUROR #237, CYNTHIA MCCRARY: I'm not real sure. I
12 don't know if I could or not.

13 THE COURT: Okay.

14 JUROR #237, CYNTHIA MCCRARY: I really don't.

15 THE COURT: Well, do you feel that you could serve as
16 a fair and impartial juror and reach a verdict based
17 solely on the evidence presented at trial?

18 JUROR #237, CYNTHIA MCCRARY: That, I could.

19 THE COURT: You could?

20 JUROR #237, CYNTHIA MCCRARY: That, I could.

21 THE COURT: Do you think you could put aside these
22 things that you've heard and read?

23 JUROR #237, CYNTHIA MCCRARY: I think that I could.

24 THE COURT: Okay. Well, let me ask you this then,
25 have you already formed an opinion, big or small, about

1 the facts of the case?

2 JUROR #237, CYNTHIA MCCRARY: No, sir.

3 THE COURT: Have you formed any opinion about the
4 guilt or innocence of Mr. Evins?

5 JUROR #237, CYNTHIA MCCRARY: No, sir.

6 THE COURT: Now, keeping in mind the legal principles
7 of the presumption of innocence and the State's obligation
8 to prove guilt beyond a reasonable doubt, could you,
9 depending on the facts and evidence and the law that would
10 be presented at trial, could you find a defendant either
11 guilty or not guilty depending on the evidence?

12 JUROR #237, CYNTHIA MCCRARY: Yes.

13 THE COURT: Okay. And do you understand the purpose
14 behind this is that we don't allow our citizens to be
15 tried in the media?

16 JUROR #237, CYNTHIA MCCRARY: Yes, sir.

17 THE COURT: It's got to be done in a courtroom.

18 JUROR #237, CYNTHIA MCCRARY: Yes, sir.

19 THE COURT: Now, please remember, we might not ever
20 even reach the second or sentencing phase of the case, but
21 since we possibly could, I need to ask you some questions
22 about your views on the death penalty.

23 JUROR #237, CYNTHIA MCCRARY: Okay.

24 THE COURT: All right. I will tell you that when a
25 jury moves to the sentencing phase, that means the jury

1 has already found that particular defendant guilty of
2 murder in the first phase.

3 JUROR #237, CYNTHIA MCCRARY: Uh-huh.

4 THE COURT: They've already found him guilty -- he or
5 she guilty and there's no legal defense for the jury to
6 explore or discuss in the second phase. The only thing
7 that the jury is going to consider in the second phase are
8 the -- the only thing you'll hear in the second phase is
9 the evidence in mitigation and the evidence in aggravation.

10 Okay. And your oath will require you to put aside
11 any preconceived notions you might have and follow the law
12 exactly as I give it to you. In other words, your oath
13 will require you to give serious and meaningful
14 consideration to all the evidence in mitigation and all
15 the evidence in aggravation.

16 Do you think you could follow your oath and do that?

17 JUROR #237, CYNTHIA MCCRARY: Yes, sir.

18 THE COURT: Okay. Now, if you were a juror in that
19 situation, in the sentencing phase, this is a hypothetical
20 question, could you, depending upon the particular facts
21 and circumstances of the case, including the consideration
22 of all the aggravating and mitigating circumstances and
23 the law that I would give to you, could you return a
24 verdict of life imprisonment?

25 JUROR #237, CYNTHIA MCCRARY: Yes.

1 THE COURT: All right. Now, the second hypothetical
2 question, same situation, in the sentencing phase, the
3 second phase, could you, depending on the particular facts
4 and circumstances of the case, including consideration of
5 all the mitigating and aggravating circumstances and the
6 law, could you return a sentence of death?

7 JUROR #237, CYNTHIA MCCRARY: Yes.

8 THE COURT: And the law requires that a death
9 sentence would have to be unanimous, all the jurors would
10 have to agree, and each juror would have to sign the death
11 sentence verdict form. Could you sign your name to such a
12 form?

13 JUROR #237, CYNTHIA MCCRARY: Yes.

14 THE COURT: Do you recall the sheet with the three
15 types of jurors on it?

16 JUROR #237, CYNTHIA MCCRARY: Yes, sir.

17 THE COURT: Where do you put yourself?

18 JUROR #237, CYNTHIA MCCRARY: I think I put myself in
19 the neither for nor against. I would have to know the
20 situation and the circumstances, the facts and the
21 evidence, and consider all of that before a decision could
22 be made.

23 THE COURT: Okay. Very good. Thank you.

24 If you were selected to serve, would you honor your
25 oath and serve as a fair and impartial juror and approach

1 jury service with an open mind to find the truth from the
2 evidence and the law as I instructed it?

3 JUROR #237, CYNTHIA MCCRARY: Yes, sir.

4 THE COURT: Do you know of any reason why you could
5 not serve?

6 JUROR #237, CYNTHIA MCCRARY: The only reason I can
7 think of that I would not be able to serve is I have a
8 three-year-old daughter at home and my husband is out of
9 state until the 23rd of November. So if the jury were
10 sequestered, I would not have child care or care for my
11 child for 24/7. That would be a problem for me.

12 THE COURT: So he's out of town until almost
13 Thanksgiving?

14 JUROR #237, CYNTHIA MCCRARY: Yes, sir.

15 THE COURT: Is there some reason you didn't come tell
16 me about it before?

17 JUROR #237, CYNTHIA MCCRARY: He did not realize that
18 he left during this time -- we did not realize that it was
19 during this time that he left. I did call the Clerk of
20 Court's Office and was instructed just to come at my
21 appointed time and discuss it at that time.

22 THE COURT: All right. Can I see the lawyers up here
23 for a second?

24 (WHEREUPON, a bench conference was held with the
25 attorneys.)

1 THE COURT: Ms. McCrary, is there anyone else that
2 could take care of the child?

3 JUROR #237, CYNTHIA MCCRARY: There's not.

4 THE COURT: There's no grandparents?

5 JUROR #237, CYNTHIA MCCRARY: My grandmother is
6 disabled. Both of my parents work. My husband's family
7 is from Hendersonville. And my sister owns her own
8 business and has two children of her own. She -- and when
9 you asked the question if I had child care during that
10 time, I was thinking day care. I wasn't thinking
11 sequestering. So I did have someone that would help me
12 during the day.

13 THE COURT: Well, you have a right to claim an
14 exemption. Are you claiming that exemption?

15 JUROR #237, CYNTHIA MCCRARY: If at all possible, I
16 would like to.

17 THE COURT: Well, you certainly can. You meet the
18 qualifications and I will exempt you from service.

19 JUROR #237, CYNTHIA MCCRARY: Thank you.

20 And I'm sorry that I took so much of your time.

21 THE COURT: No, no. We appreciate you coming in.
22 Thank you very much.

23 (Juror #237, Cynthia McCrary, was excused from the
24 courtroom.

25 THE COURT: Bring the next juror in, please.

1 (Juror #154, Rosetta Higgins, a black female, was
2 seated.)

3 THE COURT: Hello, Ms. Higgins, how are you doing?

4 JUROR #154, ROSETTA HIGGINS: I'm doing great.

5 THE COURT: You're looking great. You look a lot
6 better than I feel, I'll tell you that.

7 Let me tell you, we're up here -- and a couple of
8 brief opening remarks to you that I hope will put you at
9 ease and let you know where we're going with all this.
10 The first thing I want to tell you is what we're going to
11 -- we're going to talk about three basic subject matters.
12 The first one is whether you know anything about the case,
13 whether you could be fair and impartial, and whether --
14 we're going to discuss -- because of the serious nature of
15 this case, we're going to discuss your views about the
16 death penalty.

17 JUROR #154, ROSETTA HIGGINS: Okay.

18 THE COURT: And I will tell you right off, there are
19 no right or wrong answers. Okay.

20 JUROR #154, ROSETTA HIGGINS: Okay.

21 THE COURT: You're not going to be put to the test.
22 There's no judgment that will be handed down about your
23 answers at all. And all we would ask is that you be
24 fully -- or be candid, complete, and truthful with your
25 answers. And we just want to know from your heart how you

1 feel about these issues. Okay.

2 JUROR #154, ROSETTA HIGGINS: Okay.

3 THE COURT: I need to tell you a little bit about the
4 case to make sure we're on the same page. And I'll tell
5 you there are three indictments -- four indictments that
6 I'm going to read partially to you. They're not evidence
7 and never should be considered as evidence.

8 The first indictment is for murder. And it alleges
9 that Fredrick Antonio Evins did in Spartanburg County on
10 or about February 13th, 2003, feloniously, willfully, and
11 with malice aforethought kill Rhonda Marie Ward by
12 stabbing. The next indictment is for kidnapping. And it
13 alleges that Mr. Evins did in Spartanburg County on the
14 same date unlawfully seize and kidnap Rhonda Marie Ward.
15 The next indictment is for criminal sexual conduct. It
16 alleges that Mr. Evins did on or about the same date,
17 February 13th of 2003, willfully and unlawfully commit a
18 sexual battery upon Rhonda Marie Ward. And, finally,
19 there's an indictment for grand larceny. It alleges that
20 Mr. Evins did in Spartanburg County on or about February
21 13th, 2003, feloniously take and carry away a 1993 Nissan
22 Sentra automobile and its contents belonging to Rhonda
23 Marie Ward.

24 Now, those are allegations only and the burden is on
25 the State to prove those allegation beyond a reasonable

1 doubt. Okay.

2 JUROR #154, ROSETTA HIGGINS: Okay.

3 THE COURT: We recognize that there's been publicity
4 concerning this case on the television, in the newspaper,
5 and on the radio. The first question is, have you heard,
6 read, or seen anything about this case?

7 JUROR #154, ROSETTA HIGGINS: Yes, I have.

8 THE COURT: If you would, tell me what that is.

9 JUROR #154, ROSETTA HIGGINS: I just heard -- the
10 only thing is they was looking for her body. I think she
11 was missing then when I heard about it. And then some
12 time went by and they said they had found her body and had
13 arrested someone.

14 THE COURT: Okay. Did you -- do you remember where
15 you got that information?

16 JUROR #154, ROSETTA HIGGINS: It was on the news.

17 THE COURT: On TV?

18 JUROR #154, ROSETTA HIGGINS: Yeah. I think I heard
19 a little bit at the beauty shop. That's where I was
20 working.

21 THE COURT: Well, no wonder you look so good.

22 Do you remember anything else?

23 JUROR #154, ROSETTA HIGGINS: No. Because I wasn't
24 really interested because it didn't concern me.

25 THE COURT: All right. Well, do you understand, as a

1 juror, your oath would require you to disregard anything
2 you might have heard, read, or seen outside the courtroom
3 because the law requires that the case be decided only on
4 the evidence presented during a trial?

5 Do you understand that?

6 JUROR #154, ROSETTA HIGGINS: Yes, I do.

7 THE COURT: Could you serve as a fair and impartial
8 juror and reach a verdict based solely on the evidence
9 presented at trial and in accordance with my instructions
10 on the law?

11 JUROR #154, ROSETTA HIGGINS: Yes, I can.

12 THE COURT: Okay. Have you already formed an opinion
13 as to the facts of this case?

14 JUROR #154, ROSETTA HIGGINS: No.

15 THE COURT: Have you already formed an opinion as to
16 the guilt or innocence of Mr. Evins?

17 JUROR #154, ROSETTA HIGGINS: No, I have not.

18 THE COURT: Okay. Now, keeping in mind the legal
19 principles of the presumption of innocence and the
20 obligation of the State to prove guilt beyond a reasonable
21 doubt, could you, depending on the facts and evidence and
22 the law that I would give you at a trial, find a defendant
23 either guilty or not guilty depending on that evidence?

24 JUROR #154, ROSETTA HIGGINS: Yes.

25 THE COURT: Okay. Remember, we might not even get to

1 the second phase that I've been talking about, but since
2 we possibly could, that's why we need to talk to you about
3 your views on the death penalty.

4 And when a jury moves into the sentencing phase, it
5 means that that same jury has already decided that the
6 Defendant is guilty of murder. It's already been decided.

7 So in the second phase, the jury is not concerned
8 with any legal defenses. They're not concerned with guilt
9 or innocence. They're concerned with the mitigating and
10 aggravating evidence that would be presented at that
11 second phase. And I would tell you that your oath would
12 require you throughout the case to put aside any
13 preconceived notions that you might have and follow the
14 law as I gave it to you. And your oath would require you
15 to give serious and meaningful consideration to all the
16 mitigating evidence and all the aggravating evidence.

17 Do you understand that?

18 JUROR #154, ROSETTA HIGGINS: Yes, I do.

19 THE COURT: And could you honor your oath and do
20 that?

21 JUROR #154, ROSETTA HIGGINS: Yes, I could.

22 THE COURT: If you would, imagine a hypothetical
23 situation with me. You're a juror in the second or
24 sentencing phase of the trial. And depending on the
25 particular facts -- could you, depending on the particular

1 facts and circumstances of the case, including the
2 consideration of all the aggravating and mitigating
3 circumstances and the law that I would give to you, could
4 you return a verdict -- or a sentence of life in prison?

5 JUROR #154, ROSETTA HIGGINS: Yes, I can.

6 THE COURT: Are you sure?

7 JUROR #154, ROSETTA HIGGINS: Uh-huh. I had to think
8 about all you said. That's why I hesitated.

9 THE COURT: Yes. It's a mouthful.

10 The second hypothetical question, same situation,
11 you're a juror in the second phase of the trial where the
12 Defendant has already deemed to be guilty of murder by the
13 jury, could you, depending on the particular facts and
14 circumstances of the case, including the consideration of
15 all the aggravating and mitigating circumstances and the
16 law that I would give you, could you return a sentence of
17 death?

18 JUROR #154, ROSETTA HIGGINS: Yes.

19 THE COURT: And in the event of the death sentence,
20 the law requires that it be unanimous and that each juror
21 sign their name to a death sentence verdict form. Could
22 you sign your name to a death sentence verdict form?

23 JUROR #154, ROSETTA HIGGINS: Yes.

24 THE COURT: Do you recall that sheet where I had the
25 three types of jurors listed?

1 JUROR #154, ROSETTA HIGGINS: Yes.

2 THE COURT: What kind are you?

3 JUROR #154, ROSETTA HIGGINS: Number 3.

4 THE COURT: All right. You want to hear everything
5 before you make a decision?

6 JUROR #154, ROSETTA HIGGINS: Yes.

7 THE COURT: And your mind is not made up about what
8 the sentence ought to be beforehand?

9 JUROR #154, ROSETTA HIGGINS: No.

10 THE COURT: Now, if you were selected, you would
11 honor -- would you honor your oath and serve as a fair and
12 impartial juror and approach jury service with an open
13 mind to find the truth from the evidence and apply the law
14 as I instructed it?

15 JUROR #154, ROSETTA HIGGINS: Yes.

16 THE COURT: Do you know of any reason why you could
17 not serve?

18 JUROR #154, ROSETTA HIGGINS: No.

19 THE COURT: All right. Before I let the attorneys
20 ask you a few questions, I want to tell you that if you
21 are qualified -- if you are found to be a qualified juror,
22 then you would be asked to come back probably tomorrow for
23 jury selection. We're going to select 12 jurors and two
24 or three alternates. Okay.

25 JUROR #154, ROSETTA HIGGINS: Okay.

1 THE COURT: And if -- and we need you to be prepared
2 when you come back if you're qualified to bring five to
3 seven days worth of clothing. Because you're going to be
4 staying over at the new Marriott Hotel if you're selected.

5 I'll let the lawyers ask you some questions.

6 JUROR #154, ROSETTA HIGGINS: Okay.

7 EXAMINATION

8 BY MR. GOWDY:

9 Q Good evening, Ms. Higgins how are you?

10 A I'm doing great. How are you?

11 Q I'm doing great. Thank you.

12 My name is Trey Gowdy. That's John Anthony to your
13 left, and Barry Barnette in the center. The three of us
14 represent the State of South Carolina. We're what they
15 call prosecutors.

16 It looks like your husband is a patient care
17 technician at Regional?

18 A That's correct.

19 Q And your questionnaire says that you are self-employed
20 and you have a booth?

21 A Yes.

22 Q Do you work for a company, for another business?
23 Where is your booth?

24 A It's at the beauty shop in Inman. I am a nail
25 technician and I have a booth there.

1 Q Where in Inman is that?

2 A It's on Baker Street. It's right past Eckerd
3 drugstore, you make a right.

4 Q Okay. I know where it is. Thank you.

5 Let me thank you on behalf of everybody for filling
6 out this questionnaire. It ask questions that I wouldn't
7 ordinarily ask you if you and I just met one another. And
8 some of them are personal and you were good enough to fill
9 it out very completely, even right down to the church
10 situation.

11 A Yeah.

12 Q Was that Foster Grove?

13 A Foster Chapel.

14 Q Foster Chapel?

15 A Yes.

16 Q And it was a couple years ago that there was a
17 situation there at the church?

18 A That's correct.

19 Q And if I read your questionnaire correctly, you are
20 now at First Baptist, Roebuck?

21 A Yes.

22 Q Where you are, I think, a trustee?

23 A Yes.

24 Q Which leads me to believe that church is a pretty
25 important part of your life?

1 A Oh, yes.

2 Q Does your church or do your spiritual beliefs impact
3 your position on the death penalty?

4 A Repeat that.

5 Q Does your upbringing in the church or your spiritual
6 beliefs impact how you feel about the death penalty?

7 A Yes.

8 Q Tell me about that.

9 A I believe in the law of the land. If you do a crime,
10 you have to pay the price.

11 Q Okay. Judge Miller explained this and he did it a
12 lot better than I can, but I'm going to take one more stab
13 at it, perhaps. And I think your answer is clear, but I
14 just want to ask you one more time. All murder cases are
15 not death penalty eligible.

16 A That's right.

17 Q Some are. And it would be the State's job to prove
18 that this is one of them by what we call aggravating
19 circumstances, which is something that tends to make the
20 murder worse.

21 A Yes.

22 Q But no matter how bad the murder is, no matter how
23 aggravated it is, you will always have the option of life
24 in prison. Nobody, not the Judge, not me, nobody can
25 stand up and say, Ms. Higgins, you've got to find him --

1 you've got to sentence him to death because of the law of
2 the land. Do you still think you could vote for the death
3 penalty understanding that you will always have the option
4 of life?

5 A After looking at the whole picture of it, all the
6 evidence and everything, I think I would make my decision.

7 Q After you looked at everything?

8 A Everything.

9 Q And you would have an open mind?

10 A Yes.

11 Q And even though you would always have that option
12 that he would never ever get out of prison, he'd spend the
13 rest of his life in prison, you still think there's
14 situations where you would say, I think death is the right
15 thing?

16 A No. I couldn't always say that. I still have to
17 look at the whole picture and all the evidence and then I
18 can decide whether it would be life or death.

19 Q You would not lean one way or the other?

20 A Not unless I have all the evidence --

21 Q Right.

22 A -- before me.

23 Q That's good. You mentioned, I believe, that you had
24 some prior knowledge -- that you thought you had some
25 prior knowledge of this case?

1 A Yeah.

2 Q What source would that have come from?

3 A I've heard -- it was at the beauty shop, talk at the
4 beauty shop.

5 Q I should have guessed.

6 A Yes, yes. I guess it was a little bit on the news.
7 I don't know. Because I wasn't really concerned about it
8 and I didn't really act upon it or listen. Because a lot
9 of times, people say something that couldn't be the truth
10 all the time.

11 Q Absolutely.

12 A And I was not interested -- I'm going to be honest
13 with you, I was not interested in it.

14 Q That's kind of what I was getting at, everything in
15 the newspaper ain't necessarily the truth. And as much as
16 I hate to say it, everything they say at the beauty parlor
17 may not be the truth either.

18 A That's exactly right.

19 Q So you would confine and restrict your judgment to
20 what came from that witness chair?

21 A That's right.

22 Q Okay. One final question and I'm going to sit down.
23 If you decided that death was the appropriate verdict,
24 would you be able to sign your name to a piece of paper
25 and pass it up to the Judge and say, this is what I think

1 the sentence ought to be?

2 A Yes, I would.

3 Q And if you were picked as a juror on this case, would
4 you listen with an open mind to both sides and keep an
5 open mind, and are you confident in your well of souls
6 that you can vote for death, if you think that's what this
7 case deserves?

8 A If that's what it deserved, yes, sir.

9 MR. GOWDY: Okay. Thank you for filling out your
10 questionnaire.

11 And I appreciate your time this evening.

12 EXAMINATION

13 BY MS. QUIMBY:

14 Q Hey, Ms. Higgins.

15 A Hey.

16 Q My name is Karen Quimby. I introduced myself the
17 other day when we were in the big courtroom. That's Tam
18 Boggs, and Chris Brough, and Fredrick Evins is over there
19 in the corner.

20 Thank you for coming and being here and for answering
21 all of these personal questions. I've got one more,
22 though, if you wouldn't mind. The court reporter needs to
23 hear you and you're so very soft spoken.

24 I do know that -- how people talk at the beauty shop.
25 I'm probably guilty of it myself. What did they say when

1 they found out about a month ago that you got called for
2 jury duty? Did they make fun of you?

3 A Very few people knew. Just the lady that I do booth
4 rental from, I told her because I had to rearrange my
5 appointments. So that was the only person I was concerned
6 about besides my husband, you know.

7 Q Did you have any idea what it was about?

8 A No, I didn't.

9 Q Okay. And I don't want to bring up anything that
10 would be too personal, but it is in the questionnaire.
11 You saw something when you were about 12 years old. It
12 sounds pretty bad. You saw your cousin kill someone?

13 A Yes.

14 Q Could you tell us just a little bit about that, if
15 that's okay?

16 A Yes.

17 Q Thank you.

18 A I was on the porch. It was in the summertime. And
19 my cousin's wife went off with this man. I seen her get
20 in the car with this man. And they was gone for like an
21 hour.

22 So my cousin, I seen him, he was -- he pulled up, I
23 guess, about 15 minutes before they got back. And when
24 they got back, he came from the house. And when he came
25 from the house, they got out of the car, this man and

1 woman got out of the car, and he started shooting at the
2 man. And the man ran down towards the house where I was
3 living at. I was sitting on the porch. And I seen him
4 running and he kept shooting.

5 So the man went behind the house. And when he went
6 behind the house, I was going to be nosey, I went down
7 there to see what was going on. And we had a big rock in
8 the yard. And when he hit the rock, he fell. And when he
9 fell, his brains just came out. And by that time, blow
10 flies came from everywhere, you know. And this one lady,
11 I think she was drinking, she went in his pocket and got
12 the man's money out of the pocket. And I was sitting
13 there crying then, because I knew something bad had
14 happened. And then the police came.

15 Q That is an awful lot to see at 12 years old.

16 A Yeah. I remembered it, too.

17 Q Yes, you did. Did it effect you later on or at that
18 time?

19 A Well, a little while -- because that was the house we
20 was living in. And about a week later, it was raining
21 real bad outside. And I was on the back porch and I
22 looked down and the blood started coming out of the ground
23 from the rain. And they came and put a tree or something,
24 they dug it up and put a tree or something. I don't
25 remember. But after that, I got over it. I didn't have

1 any dreams or nothing, because it's one of those things.

2 Q Do you remember -- did anything happen to your
3 cousin?

4 A Yeah, he went to prison. I think he went there for
5 about four years, I believe, and he got out.

6 Q Okay. And does he live still somewhere around here?

7 A Yes. I don't see him.

8 Q You don't see him?

9 A No.

10 Q When is the last time you saw him?

11 A About 15 years ago.

12 Q Okay. And you don't remember a whole lot, other than
13 what you told us about there was a lady missing?

14 A Yeah.

15 Q If you heard a little bit more, do you think maybe it
16 might jog your memory?

17 A Not really. Because I tune a lot of stuff out when
18 it comes to -- because I know how people talk because,
19 like I say, I work with the public. And I can understand
20 a lot of times they say stuff.

21 Q Well, let me just tell you this, this incident
22 happened at a cigarette store in Drayton, and it continued
23 on through town to around Reidville and ended up in a
24 field or an orchard. Do you remember hearing anything
25 about that around town, grocery store, at the beauty shop,

1 or anywhere?

2 A About the lady at the cigarette place, I think it was
3 in Drayton. I did hear a little something about that, but
4 that's as far as -- I might be talking about two different
5 things. I thought it was in Duncan. They said the lady
6 was in Drayton and one was in Duncan Park or something. I
7 don't know. I really couldn't tell you, because I really
8 didn't pay that much attention to it.

9 Q Okay. So -- and that's okay. We're just trying to
10 find out what you do know and what you've heard. And
11 there aren't any right or wrong answers.

12 So you've heard of the woman at the cigarette store
13 in Drayton and then was Duncan Park -- how did Duncan Park
14 fit into anything?

15 A They said it was two ladies, I do know that, one at
16 Drayton and one at Duncan Park. And I do know the lady in
17 Duncan Park was missing or she was walking or something.
18 I don't know. Like I say, I tune a lot of things out.

19 Q Okay. Is there some connection or anything that you
20 know of?

21 A Huh-uh.

22 MS. QUIMBY: Hold on one second, please, Ms. Higgins.

23 (Pause.)

24 MS. QUIMBY: Thank you very much for answering all of
25 our questions. We appreciate it.

1 THE COURT: Ma'am, would you mind stepping into the
2 hallway for just one second. I'll be right back with you.

3 (Pause.)

4 THE COURT: Do we have any objections?

5 MS. QUIMBY: One moment, please, Your Honor.

6 THE COURT: Does the State have any objections?

7 MR. GOWDY: No, sir, Your Honor.

8 THE COURT: Does the Defense have any objections?

9 MS. QUIMBY: Your Honor, I just -- I don't know that
10 there is an actual ground to disqualify her. But I do
11 want to put it on the record that she did make some
12 connection in her mind about the cigarette store, Drayton,
13 Duncan Park in the same sentence, even if she doesn't know
14 of an actual connection. So I just wanted that --

15 THE COURT: Yes. Well, she didn't -- you know, she
16 said she could put it all aside. She doesn't have any
17 recollection of any specific facts. And she said that she
18 did not connect the two. So I'm going to find her
19 qualified.

20 All right. Let's bring Ms. Higgins back on out.

21 (Pause.)

22 THE COURT: Ms. Higgins, come on around. I'm going
23 to give that to you. You can take it home. And let me
24 tell you what it says a little bit. It says that you
25 continue to be eligible to serve and you're a qualified

1 juror. You're still under oath. You can't talk about it.
2 You can't read anything. You can't look at anything on TV
3 or listen to anything on the radio. And I'll tell you
4 what else it means, it means tomorrow, we're probably
5 going to call you up and you need to be on up here for
6 jury selection. And when we tell you that, you need to be
7 packed.

8 So you ought to go home tonight and pack for five to
9 seven days. You'll be staying up there at that new
10 Marriott. You may not get selected, you might not have to
11 stay, but then, again, you might.

12 JUROR #154, ROSETTA HIGGINS: All right.

13 THE COURT: Thank you, Ms. Higgins.

14 (Juror #154, Rosetta Higgins, was excused from the
15 courtroom.)

16 THE COURT: Bring the next juror in.

17 (Juror #210, Beverly Schulte, a white female, was
18 seated.)

19 THE COURT: Ms. Lawter, I hope you're doing all
20 right.

21 JUROR #210, BEVERLY SCHULTE: I'm fine.

22 My name is Schulte. I don't know why they haven't
23 changed that.

24 THE COURT: Schulte?

25 JUROR #210, BEVERLY SCHULTE: Yes. I changed it all

1 in the beginning.

2 THE COURT: How do you spell that?

3 JUROR #210, BEVERLY SCHULTE: S-C-H-U-L-T-E.

4 THE COURT: All right. I will see if I can't get
5 that right. I'm sorry about that.

6 JUROR #210, BEVERLY SCHULTE: That's okay.

7 THE COURT: Let me just tell you, we're going to go
8 over -- ask you some questions. And you seem like you're
9 pretty comfortable and you're not too nervous about this,
10 and that's really good. I want you to know that we're
11 going to talk about three basic subject matters. One is,
12 what you know about the case. Two is, can you be fair and
13 impartial. And three, because of the nature of the case
14 and the seriousness of it, we're going to talk to you a
15 little bit about your views on the death penalty. Okay.

16 JUROR #210, BEVERLY SCHULTE: Okay.

17 THE COURT: There are no right or wrong answers. We
18 just need your true, complete, candid answers just from
19 the bottom of your heart.

20 JUROR #210, BEVERLY SCHULTE: Okay.

21 THE COURT: Before I do that, I'm going to read parts
22 of the indictments to you. And I just tell you again that
23 these are not evidence and cannot be considered as
24 evidence. They're just allegations.

25 And one of these indictments is for murder. And it

1 alleges that Fredrick Antonio Evins did in Spartanburg
2 County on or about February 13th of 2003, feloniously,
3 willfully, and with malice aforethought kill one Rhonda
4 Marie Ward by stabbing. The next one is for kidnapping.
5 It alleges that Mr. Evins did on or about the same date
6 unlawfully seize, confine, or kidnap Rhonda Marie Ward.
7 The next one is for criminal sexual conduct. And it
8 alleges that Mr. Evins did in Spartanburg County on or
9 about the same date, that's February 13th of 2003,
10 willfully and unlawfully commit a sexual battery upon
11 Rhonda Marie Ward. And then, finally, there's a grand
12 larceny indictment that alleges that Mr. Evins did on or
13 about the same date feloniously take and carry away a 1993
14 Nissan Sentra and its contents belonging to Rhonda Marie
15 Ward.

16 Now, those are the allegations in the case. And the
17 State has the burden of proof beyond a reasonable doubt to
18 prove those allegations.

19 Now, I will tell you, we know and recognize that
20 there's been publicity about this case on the TV, and the
21 radio, and in the newspaper. So my first question to you
22 is, have you heard, read, or seen anything about this
23 case?

24 JUROR #210, BEVERLY SCHULTE: Yes.

25 THE COURT: Would you tell me what that is?

1 JUROR #210, BEVERLY SCHULTE: What's been in the
2 papers.

3 THE COURT: Okay.

4 JUROR #210, BEVERLY SCHULTE: I do read the daily
5 newspaper.

6 THE COURT: Tell me what you remember that you've
7 seen.

8 JUROR #210, BEVERLY SCHULTE: I remember the fact
9 that the lady was abducted out of Drayton and then her
10 body was found. That's pretty much it, just the
11 general -- what the papers printed is all I know.

12 THE COURT: All right. Well, I'm not from
13 Spartanburg and I don't know everything they printed. And
14 I guess that's what I'm getting at. Can you tell me
15 everything you remember that they printed?

16 JUROR #210, BEVERLY SCHULTE: That's all I remember.

17 THE COURT: Okay. Well, let me tell you that -- you
18 didn't see anything on TV or hear anything else?

19 JUROR #210, BEVERLY SCHULTE: No, not to my
20 knowledge, I didn't.

21 THE COURT: Do you understand that, as a juror, your
22 oath would require you to disregard anything you have
23 heard, read, or seen about this case, and that the law
24 requires that the case be tried -- decided from the facts
25 presented and the evidence at trial?

1 Do you understand that?

2 JUROR #210, BEVERLY SCHULTE: Yes, sir.

3 THE COURT: Could you serve as a fair and impartial
4 juror and reach a verdict based on the facts presented at
5 trial and in accordance with my instructions on the law?

6 JUROR #210, BEVERLY SCHULTE: Yes.

7 THE COURT: Have you already formed any kind of
8 opinion about the facts?

9 JUROR #210, BEVERLY SCHULTE: No, sir.

10 THE COURT: Have you formed any kind of opinion about
11 the guilt or innocence of Mr. Evins?

12 JUROR #210, BEVERLY SCHULTE: No, sir. I don't know
13 hardly any facts.

14 THE COURT: Now, keeping in mind the legal principles
15 of the presumption of innocence and the State's obligation
16 to prove guilt beyond a reasonable doubt, could you,
17 depending on the facts and circumstances and the law as I
18 will instruct it at a trial, could you find a defendant
19 guilty or not guilty?

20 JUROR #210, BEVERLY SCHULTE: Yes, sir.

21 THE COURT: Okay. So your mind is not made up one
22 way or the other?

23 JUROR #210, BEVERLY SCHULTE: No, sir.

24 THE COURT: All right. Please remember, we may not
25 even get to the second phase of the trial. But because

1 that's a possibility, I need to talk to you about your
2 views on the death penalty. So -- and I will tell you in
3 that regard that when a jury moves into the sentencing
4 phase, it means that that jury has already found that the
5 Defendant is guilty of murder.

6 So in the second phase of the trial, the jury won't
7 be concerned with any legal defenses with respect to guilt
8 or innocence. The jury will have listened to and been
9 presented with evidence of mitigation and evidence of
10 aggravation.

11 Now, your oath will require you to put aside any
12 preconceived notions that you have. And it also requires
13 you to give serious and meaningful consideration to all
14 the evidence with respect to mitigation and to
15 aggravation.

16 Could you honor your oath and do that?

17 JUROR #210, BEVERLY SCHULTE: Yes, sir.

18 THE COURT: Okay. Now, I'm going to ask you a little
19 hypothetical question. Imagine that you're a juror in the
20 second phase of the trial. And could you, depending upon
21 the particular facts and circumstances, including
22 consideration of all the mitigating and aggravating
23 circumstances and the law that I would give you, could you
24 return a sentence of life in prison?

25 JUROR #210, BEVERLY SCHULTE: Yes.

1 THE COURT: All right. The second hypothetical, same
2 circumstance, the second phase of the trial, could you,
3 depending upon the particular facts and circumstances of
4 the case, including consideration of all the aggravating
5 and mitigating circumstances and the law that I would give
6 you, could you return a sentence of death?

7 JUROR #210, BEVERLY SCHULTE: Yes.

8 THE COURT: All right. Now, the law requires that
9 that sentence would have to be unanimous and -- that the
10 verdict would have to be unanimous. And it requires that
11 each juror, all 12 jurors, would have to sign their name
12 to a death sentence verdict form. Could you sign your
13 name to that form?

14 JUROR #210, BEVERLY SCHULTE: Yes, sir.

15 THE COURT: Okay. Do you recall the list of the
16 three types of jurors?

17 JUROR #210, BEVERLY SCHULTE: Yes, sir.

18 THE COURT: Where do you figure you fit in all that?

19 JUROR #210, BEVERLY SCHULTE: Number 3.

20 THE COURT: Number 3. You're pretty sure about that?
21 You need to hear all the evidence before you make a
22 decision?

23 JUROR #210, BEVERLY SCHULTE: Always.

24 THE COURT: And you're not -- you don't -- haven't
25 decided beforehand what sentence somebody ought to get?

1 JUROR #210, BEVERLY SCHULTE: No, sir.

2 THE COURT: And if you were selected, would you honor
3 your oath to serve as a fair and impartial juror, and
4 approach jury service with an open mind to find the truth
5 from the evidence and the law I instruct?

6 JUROR #210, BEVERLY SCHULTE: Yes, sir.

7 THE COURT: Do you know of any reason why you could
8 not serve?

9 JUROR #210, BEVERLY SCHULTE: No, sir.

10 THE COURT: I'll tell you now before I let the
11 lawyers talk to you that if you're found to be a qualified
12 juror, then you will be asked to return probably tomorrow
13 for selection of the jury. And you were selected, you
14 would be sequestered right away.

15 So whether you're selected or not, if you're a
16 qualified juror, you need to be packed when you come back
17 for jury selection. And we anticipate it would be from
18 five to seven days. You would be staying at the new
19 Marriott Hotel just a couple blocks from here. Okay.

20 JUROR #210, BEVERLY SCHULTE: Okay.

21 THE COURT: Thank you.

22 I'm going to let the attorneys question you a little
23 bit.

24 MR. BROUGH: May it please the Court?

25 THE COURT: Yes, sir.

EXAMINATION

BY MR. BROUGH:

Q Good evening, Ms. Schulte. How are you?

A Good evening.

Q I know it's a little late. As Judge Miller introduced us a couple days ago, I'm Christopher Brough. I'm going to be assisting Karen Quimby and Tam Boggs. And we're going to be representing Fredrick Evins sitting right over there.

First of all, I want to thank you for being here. And I also want to thank you for filling out the questionnaire. I know that it must not have been easy filling this out, but we do appreciate your honesty.

I'm going to ask you some questions. And if ever you feel that you need a minute or anything like that, just tell me and you can take all the time you need. Does that sound fair?

A That's fine.

Q I noticed that when Judge Miller asked you, you said you read the paper every day?

A Yes, I do.

Q Is that the Herald that you read?

A The Spartanburg Herald.

Q What section do you normally read first?

A I read it from cover to cover.

1 Q Okay. And can you tell me what you've read, if
2 anything, regarding Mr. Evins?

3 A Just that he had been charged with this.

4 Q Do you recall any kind of other publicity regarding
5 Mr. Evins at all?

6 A No, I don't. I don't watch a whole lot of TV, so.

7 Q But you said you do read it cover to cover?

8 A Yes, I do.

9 Q Did you read the paper on Monday?

10 A Yes, I did.

11 Q And you read the whole paper?

12 A Yes, I did.

13 Q Did you see an article in there regarding this case?

14 A Yes, I did.

15 Q And you read the whole article?

16 A Yes.

17 Q Okay. Did it mention anything besides this case?

18 A Yes, it did.

19 Q And what was that?

20 A Another female.

21 Q And can you tell me what you know about that case,
22 what you've read about that case?

23 A From my memory, if I'm not mixing up the things that
24 I read in the paper, there was a lady jogger in a park.
25 But, see, I could be mixing it up with something else.

1 Q And you read that and that was regarding Mr. Evins?

2 A But that wasn't in there Monday.

3 Q Okay. I want to ask you a couple of questions. Can
4 you just kind of -- I'm going to ask you a little bit
5 about the death penalty. And I know that's kind of
6 putting the cart before the horse since we may not even
7 get to that phase. But I'm just going to ask you to kind
8 of explain your views on the death penalty in general, in
9 your own words as honestly as you can, if you would,
10 ma'am.

11 A I guess I feel like if the person doesn't seem to be
12 remorseful or they're like a habitual offender and they're
13 doing real bad things, then I think it's justified, if
14 they can't be controlled in another manner.

15 Q And you say, "habitual offender," what do you mean by
16 that?

17 A The same crimes habitually repeated.

18 Q Okay. Now, if we were to get to the second phase of
19 the trial -- and, again, there's no guarantee that we
20 would. But at that time, the jury, hypothetically, we'll
21 presume Mr. Evins would have been found guilty of murder
22 and it would be the State's job to prove what the Judge
23 referred to as aggravating factors, which is kind of like
24 murder, plus something else. And at that phase, the
25 Defense might try and introduce, although we're not

1 obligated, some mitigating factors. Could you listen at
2 that point? Would you be able, possibly, to give life
3 without parole if the State were to prove murder, plus
4 something else?

5 A I'm not quite following you.

6 Q Okay. I'm sorry. I know that was a little
7 convoluted. What I'm, basically, asking you is, the State
8 is trying to prove an aggravating factor, murder, plus
9 something else. If they were to prove that, would you
10 lean more towards one, life or death or the other?

11 A I'd have to -- I can't say either way. I would just
12 have to -- it depends on the situation and circumstances.

13 Q I want to ask you about a couple other questions. I
14 noticed that on your questionnaire at one point, you
15 indicated that at one time you were scared about a
16 neighborhood you lived in because there was a peeping Tom.
17 Can you tell me a little bit about that?

18 A I was living alone and I had come home from work and
19 gotten in the tub, and somebody tried to get in my back
20 door. Luckily, it was locked. So they come around and
21 started jumping up and looking in the bathroom window.

22 Q Is that also the same incident you later referred to
23 about trying -- breaking and entering into the home, or
24 was that something else?

25 A Oh, that's something else.

1 Q Can you tell me about that?

2 A The breaking and entering?

3 Q Yes.

4 A I came home from the grocery store and my home had
5 been broken into.

6 Q Was anything taken?

7 A Money, guns, a little bit of jewelry.

8 Q And I hate to ask this question, but I did notice
9 that it was on your questionnaire.

10 A I know what's coming.

11 Q And if you need to take a couple of minutes, feel
12 free to do so, ma'am. But I did notice that you listed
13 that you and your friend had been the victims of some sort
14 of sexual assault at some point?

15 A Uh-huh.

16 Q Can you tell me a little bit about it, if it's not
17 too painful?

18 A Well, I'm 39, almost 40 years old. And 30 years ago,
19 35 years ago, it wasn't out in the open, people didn't
20 tell what was happening to them. They've just started
21 doing that in the last 20 years. So everything was kept
22 quiet. It was just family. It was family.

23 Q So something happened when you were a child?

24 A Uh-huh.

25 Q Does it still effect you, I would imagine, on

1 occasion?

2 A On occasion, mentally, sometimes, yeah. That's
3 something you'll never get over. It's like birthing a
4 child, you'll never get over it.

5 Q Do you feel -- and, again, there are no right or
6 wrong answers, that having gone through that experience
7 and having heard Judge Miller indicate that one of the
8 allegations against Mr. Evins is for criminal sexual
9 conduct, would it be kind of hard that it would predispose
10 you in any way?

11 A No. Because this happened to me as a child, not an
12 adult. It's a different story.

13 Q Okay. I just had to ask. You said that -- I also
14 noticed that you got some training as a paralegal
15 possibly?

16 A Uh-huh.

17 Q But the school went out of business?

18 A Uh-huh.

19 Q What were you learning in paralegal school exactly,
20 what kind of stuff?

21 A They told me it wasn't typical -- it was Blanton's
22 Business College. One of the Wood brothers, the attorneys
23 down here, that was my teacher. And he was teaching us
24 out of his law books instead of paralegal manuals. But I
25 went through 18 months, I think, and I had to have 22

1 months. And they went bankrupt after 18 months.

2 Q Did you ever go over any criminal kind of law stuff?

3 A We were just starting into that.

4 Q Could you put what you might have learned aside and
5 accept what Judge Miller would instruct you?

6 A That's been so many years ago and I haven't used it,
7 so knowledge unused gets lost.

8 MR. BROUGH: If I could just have one minute, Your
9 Honor.

10 (Pause.)

11 MR. BROUGH: No further questions, Your Honor.

12 THE COURT: All right. Thank you.

13 EXAMINATION

14 BY MR. ANTHONY:

15 Q Hey, Ms. Schulte.

16 A Hey.

17 Q My name is John Anthony. I'm an attorney with the
18 Solicitor's Office. And this is Barry Barnette, and this
19 is Trey Gowdy. And we're the three lawyers that
20 represents the State in this case. I just have a few
21 questions for you.

22 A Okay.

23 Q When Mr. Brough was asking you questions, you talked
24 about some of the circumstances that you thought would
25 justify the imposition of the death penalty. And I don't

1 want to put words in your mouth, but, as I recall, you
2 said something along the lines of, if there's not anything
3 else that can be done with a person or something like that
4 when you were talking. Do you recall what I'm referring
5 to?

6 A Yes, sir, I do.

7 Q When we -- if this case goes to the sentencing phase,
8 there will be two options. There will be an option of
9 life without parole and an option of the death penalty.
10 And I just want to ask you if, you know, knowing that
11 there will be an option of life without parole and that's
12 an option that the jury could always consider and always
13 go with, could you -- if you thought that the
14 circumstances required it, could you vote for the death
15 penalty knowing that option of life without parole was
16 present?

17 A Yes. I could if there was enough meanness involved
18 in the crime, you know. Do you know what I'm saying?

19 Q I think I understand what you're saying. Do you want
20 to try and explain it to me a little more? When you say
21 "enough meanness" in the crime, what do you mean by that?

22 A If it's just downright, cold-blooded, and no emotion
23 in it.

24 Q So you would be willing to consider the death penalty
25 even with life without parole being on the table?

1 A Yes, I would.

2 Q Okay. There's just one other thing I need to mention
3 to you. And, once again, this is not to embarrass you in
4 any way or to pry in any way. But I noticed in your
5 questionnaire, you listed -- you talked about having a
6 driving under the influence conviction?

7 A Yes, I did.

8 Q When was that, if you don't mind my asking?

9 A That was two years ago. My husband left and he left
10 me for another woman. And I got a little crazy and done
11 something stupid.

12 Q Who -- if you recall, which law enforcement agency
13 arrested you?

14 A The State troopers.

15 Q It was the highway patrol?

16 A Uh-huh.

17 Q And would that -- the fact that you've been arrested
18 for a DUI -- obviously, in a case like this, there are
19 going to be people from law enforcement testifying. Would
20 that prejudice you in any way against people in law
21 enforcement that would testify?

22 A No, not at all.

23 MR. ANTHONY: If I could have one second.

24 THE COURT: Sure.

25 MR. ANTHONY: No other questions from the State.

1 Thank you very much for speaking with us, Ms. Schulte.

2 THE COURT: Ms. Schulte, let me just ask you real
3 briefly, the fact that you've -- what you've read in the
4 paper, is that going to impair your ability to put aside
5 all that? Would you be able to put all that aside, follow
6 your oath, and decide this case solely on the evidence
7 presented in the courtroom?

8 JUROR #210, BEVERLY SCHULTE: Yes, sir.

9 Because there was no facts in the paper. The paper
10 was very impartial. It was just, you know, bottom line.

11 THE COURT: All right. Thank you very much. I
12 appreciate that.

13 If you'll step out in the hall for just a minute, and
14 I'll be right back with you.

15 (Pause.)

16 THE COURT: Any objections?

17 MR. BROUGH: Your Honor, the Defense objects to the
18 inclusion of Ms. Schulte as a juror for a couple of reasons.

19 When I asked her what her views were about the death
20 penalty, she did indicate that for habitual offenders,
21 people that do the same type of crime, she would give it.
22 She also indicated that she had some knowledge, although
23 she then later backed off on it, of the jogger case, the
24 Duncan Park case. I believe I specifically asked her if
25 she reads the paper, she said she read it cover to cover.

1 And I asked her if she read it Monday and she said, yes.
2 I asked her if she read the whole article and she said,
3 yes. She also indicated, even after admitting before that
4 she had read something about the Duncan Park case, that
5 there was nothing in that article about it. I believe the
6 Defense introduced that article into evidence yesterday
7 and I know there is something in it about that.

8 Additionally, given the fact that she's been the
9 victim of sexual abuse in the past and wouldn't be able to
10 put it out of her mind -- at least, she used the term,
11 "it's just like birthing a child, and it's not something
12 you forget about." And we believe she would be
13 unqualified to sit in this case.

14 MR. ANTHONY: Your Honor, as to the prior -- the fact
15 that she's a crime victim, obviously, that's -- people who
16 are -- just because someone is a crime victim is no reason
17 to exclude them from jury service. She said that there's
18 no reason to think that's going to affect her judgment in
19 the jury room.

20 As to the Huff murder, she said repeatedly that she
21 could set any prior knowledge she had aside and base a
22 verdict on what she heard. And the first --

23 What was the first thing she said?

24 MR. GOWDY: Habitual offender.

25 MR. ANTHONY: Oh, as to the thing about being the

1 habitual offender, she just threw that out as a
2 circumstance she would consider it. She said repeatedly
3 that she would consider the mitigation evidence. So
4 there's no reason to think this juror isn't qualified.

5 THE COURT: Okay. Well, I'm going to overrule your
6 objection, because I think she did respond appropriately
7 to those matters.

8 So let's bring her on back.

9 (Pause.)

10 THE COURT: Hey, Ms. Schulte.

11 I'm going to give that to you and let you take it
12 home to read it. I want to tell you that you continue to
13 be eligible to serve in this case and you are a qualified
14 juror. I anticipate that tomorrow we'll be calling the
15 qualified jurors back in so that we can select the jury in
16 this case. I will tell you that you need to be packed and
17 ready to go for five to seven days when you come back for
18 selection whether you're picked or not.

19 And, additionally, don't read -- I'm going to ask
20 you, don't read any articles about this, don't watch
21 television, or listen to the news. And don't discuss it
22 with anybody. Because an innocent comment from family or
23 friends might inject itself into this case, and we don't
24 want that to happen. Okay.

25 JUROR #210, BEVERLY SCHULTE: Okay.

1 THE COURT: Thank you very much.

2 JUROR #210, BEVERLY SCHULTE: Thank you.

3 (Juror #210, Beverly Schulte, was excused from the
4 courtroom.)

5 THE COURT: Please bring the next juror in.

6 (Juror #91, Joann Ertzberger, a white female, was
7 seated.)

8 THE COURT: Ms. Ertzberger, welcome back to the
9 courtroom. How are you doing?

10 JUROR #91, JOANN ERTZBERGER: Fine.

11 THE COURT: All right. Listen, I'm going to -- we're
12 going to talk to you briefly about the case and ask you a
13 few questions. And what we're going to be talking about
14 will be what you know about the case, if anything, whether
15 or not you can be fair and impartial, and also your views
16 on the death penalty. Okay.

17 So I want to tell you that there are no right or
18 wrong answers and no one is going to judge you. There's
19 no test that they're going to put your answers up against
20 or anything like that. It's just in a case like this,
21 it's important that we discuss those views with you. I
22 know a lot of people consider that to be intrusive, but --
23 and because a lot of people may not be sure how they feel.
24 And we all understand that. And just what we need from
25 you is just candid, truthful, and complete answers from

1 your heart. Okay. There are no right or wrong answers.
2 We just need to know how you feel about it.

3 So in order for me to do that, I'm going to read part
4 of the indictments to you so that you've got a -- you know
5 what we're talking about and you and I are talking about
6 the same case. And these are not evidence and cannot be
7 considered as evidence in any way.

8 The first indictment is for murder. And it alleges
9 that Fredrick Antonio Evins did in Spartanburg County on
10 or about February 13th, 2003, feloniously, willfully, and
11 with malice aforethought kill Rhonda Marie Ward by
12 stabbing. The next indictment is for kidnapping. It
13 alleges that Mr. Evins did on or about the same day
14 unlawfully seize, confine, and kidnap Rhonda Marie Ward.
15 The next indictment is for criminal sexual conduct. It
16 alleges that Mr. Evins did on or about the same date,
17 February 13th, 2003, willfully and unlawfully commit a
18 sexual battery upon Rhonda Marie Ward. And then, finally,
19 there's a grand larceny indictment that alleges that he
20 did -- Mr. Evins did on or about the same date feloniously
21 take and carry away a 1993 Nissan Sentra and its contents
22 that belonged to Rhonda Marie Ward.

23 Now, those are just allegations. The burden is on
24 the State to prove those allegations beyond a reasonable
25 doubt.

1 But we recognize that there has been publicity about
2 the case and it's been on TV, on the radio, and in the
3 newspaper. So my first question is, have you heard, read,
4 or seen anything about this case?

5 JUROR #91, JOANN ERTZBERGER: I remember it, hearing
6 about it, you know, when it happened, but I didn't keep up
7 with it.

8 THE COURT: Okay. Can you tell me what it is that
9 you remember?

10 JUROR #91, JOANN ERTZBERGER: Just what happened, you
11 know, what you said what happened. As I say, I just
12 listen to the news and I don't think anything else about
13 it later on, you know.

14 THE COURT: Okay. Well, do you understand, as a
15 juror, that you have an oath and your oath would require
16 you to disregard anything that you may have read, seen, or
17 heard about the case and decide the case solely on the
18 evidence that would be presented at trial?

19 Do you understand that?

20 JUROR #91, JOANN ERTZBERGER: Yes, sir.

21 THE COURT: Okay. Could you serve as a fair and
22 impartial juror and reach a verdict based solely on the
23 facts presented at trial and in accordance with my
24 instructions on the law?

25 JUROR #91, JOANN ERTZBERGER: Yes, sir.

1 THE COURT: All right. Have you already formed any
2 opinion about the facts?

3 JUROR #91, JOANN ERTZBERGER: No, sir.

4 THE COURT: Have you formed any kind of opinion about
5 the guilt or innocence of Mr. Evins?

6 JUROR #91, JOANN ERTZBERGER: I think you would have
7 to hear the evidence, I mean, know more about the facts.

8 THE COURT: Okay. So you have not formed an opinion?

9 JUROR #91, JOANN ERTZBERGER: No, sir.

10 THE COURT: Okay. Now, keeping in mind the legal
11 principles of the presumption of innocence and the State's
12 obligation to prove guilt beyond a reasonable doubt, could
13 you, depending on the facts and the evidence and the law
14 at trial, could you find a defendant either guilty or not
15 guilty depending on the evidence?

16 JUROR #91, JOANN ERTZBERGER: Yes, sir.

17 THE COURT: So your mind is not set or made up?

18 JUROR #91, JOANN ERTZBERGER: No, sir. I have no
19 feelings at all.

20 THE COURT: Now, please remember, we may not reach
21 the second phase, but because it's a possibility, we need
22 to discuss your views on the death penalty. And I'll tell
23 you again that if we get to the second phase, it means
24 that the jury would have already decided in the first
25 phase that the Defendant was guilty of murder.

1 So in the second phase, the jury is not talking about
2 guilt or innocence. They're looking at the evidence in
3 aggravation and the evidence in mitigation. So -- and I
4 will tell you that your oath would require you to put
5 aside any preconceived notions that you might have and
6 your oath would require that you give serious and
7 meaningful consideration to the aggravation and mitigation
8 evidence. Could you follow your oath and do that?

9 JUROR #91, JOANN ERTZBERGER: Yes, sir.

10 THE COURT: All right. And if you were a juror in
11 that situation, in the sentencing phase, this is a
12 hypothetical question, could you, depending on the
13 particular facts and circumstances of the case, including
14 consideration of all the aggravating and mitigating
15 evidence and the law that I would instruct you, could you,
16 considering all that, return a sentence of life in prison?

17 JUROR #91, JOANN ERTZBERGER: Well, I would have to
18 hear the evidence first before I could say what the
19 verdict would be.

20 THE COURT: But assuming in a certain circumstance,
21 could you ever return a verdict of life in prison?

22 JUROR #91, JOANN ERTZBERGER: Yes.

23 THE COURT: Now, by the same token, another
24 hypothetical, if you were a juror in that same situation,
25 the second phase or sentencing phase, depending on the

1 particular facts and circumstances of the case and
2 considering all the evidence in mitigation and aggravation
3 and the law that I would give you, could you return a
4 verdict of death?

5 JUROR #91, JOANN ERTZBERGER: Yes, sir.

6 THE COURT: I --

7 JUROR #91, JOANN ERTZBERGER: Yes, sir, you know, if
8 the facts came to that.

9 THE COURT: All right. And in the event of a death
10 sentence, the law requires that it's unanimous and
11 everybody -- all the jurors have to find that way, and
12 they also would have to sign their name to a death
13 sentence verdict form. In that event, could you sign your
14 name to a death sentence verdict?

15 JUROR #91, JOANN ERTZBERGER: Yes, sir.

16 THE COURT: You could?

17 JUROR #91, JOANN ERTZBERGER: (Juror nodded.)

18 THE COURT: All right. Now, do you remember the
19 three types of jurors that I --

20 JUROR #91, JOANN ERTZBERGER: (Juror nodded.)

21 THE COURT: Where are you in that?

22 JUROR #91, JOANN ERTZBERGER: Number 3.

23 THE COURT: You'd need to hear everything before you
24 made a decision?

25 JUROR #91, JOANN ERTZBERGER: Right.

5 JUROR #91, JOANN ERTZBERGER: Yes.

8 JUROR #91, JOANN ERTZBERGER: No, sir.

18 All right. I'll let the attorneys ask you a few
19 questions now.

21 THE COURT: Yes, sir.

23 BY MR. BARNETTE:

25 | A Good evening.

1 Q I know the Judge introduced us the other day, but I
2 just want to reintroduce ourselves. I'm Barry Barnette.
3 This is Trey Gowdy and John Anthony. We'll be
4 representing the State in this case. Again, I want to
5 take a minute. I appreciate your patience. I know it is
6 taking a long time to wait and everything. And we
7 appreciate you filling out all the information. You've
8 given us a lot of information and we appreciate it.
9 There's just a few general questions I'd like to ask you
10 to follow-up to the Judge's questions.

11 If we reach the second phase -- the first phase of
12 the trial is the Defendant is found guilty of murder.
13 Could you in a situation if the State proved one -- and we
14 just have to prove one aggravating circumstance -- proved
15 one or more aggravates circumstance, do you feel you could
16 give the death penalty in that situation?

17 A If I thought the facts -- I mean, you know, I would
18 have to listen to the facts before I could say I would
19 give the death penalty.

20 Q And what's your basis -- have you ever thought about
21 the death penalty before you ever came up here this week?

22 A No. I mean, I just know about it.

23 Q Can you just give us a general idea about how you
24 feel about the death penalty?

25 A Well, some people, I think, deserve the death penalty

1 if they're found guilty of wrong doings.

2 Q And what you would do is -- like you said, some
3 people. You realize all murders aren't death penalty
4 cases? You realize some may be life without parole and
5 some murders may be death penalty cases?

6 A Right.

7 Q And when you listened to the Judge when he gave his
8 instructions, would you apply the instructions to what you
9 hear in court?

10 A Right. Yes, sir.

11 Q And in the cases where you felt like an aggravating
12 circumstance wasn't proven or where the evidence wasn't
13 strong enough, could you come back with life without
14 parole in that situation?

15 A Yes, sir.

16 Q At the same time, if there was an aggravating
17 circumstance and if you felt like the evidence warranted
18 it, could you give a death penalty sentence?

19 A Yes, sir.

20 Q And could you sign the form?

21 A Yes, sir.

22 Q If you felt like that was the proper verdict?

23 A Yes, sir.

24 MR. BARNETTE: Well, ma'am, thank you for your time.

25 THE COURT: Yes, sir, Mr. Boggs.

EXAMINATION

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BY MR. BOGGS:

Q Good evening, Ms. Ertzberger. How are you doing today?

A Fine.

Q I'm Tam Boggs. I'm representing Fredrick, along with Karen Quimby, in the red, and at the end is Chris Brough. Let me just follow-up a little bit about what Mr. Barnette was asking you.

Under what circumstances -- well, let me rephrase that. What is your general feeling about the death penalty? When do you think it is appropriate?

A I think if they're found guilty and -- I don't really know how to word it.

Q That's fine.

A If they're found guilty, you know, if it really happened and that they did what they did to another person, took their life -- you know, not necessarily took their life.

Q Okay. So -- and, again, I don't want to put words in your mouth. But if somebody is charged with murder and the death penalty and -- has been classified as a death penalty case, are you saying if they're found guilty in that type case then they deserve the death penalty or --

A Not necessarily, no.

1 Q Okay.

2 A It just depends on the circumstances. I mean, you
3 can't really say until you hear all the facts what your
4 opinion would be.

5 Q So you're saying even if a person was found guilty in
6 the trial of the case of murder and it ended up going to a
7 death penalty case, you would go in there with an open
8 mind?

9 A Right.

10 Q And you would take into consideration not only the
11 facts from the first trial, but also any new evidence that
12 may come in, is that what you're saying?

13 A (Juror nodded.)

14 Q All right. Have you been around law enforcement
15 officers a good bit during your life?

16 A Well, I was married to one a long time ago, but we've
17 been divorced for 13 years. He worked for the Spartanburg
18 County Sheriff's Department. But we've been divorced 17
19 years.

20 Q Okay. So you don't really -- through that
21 association --

22 A We didn't discuss it.

23 Q Yeah. You wouldn't have much connection with the
24 Sheriff's Department?

25 A No. I wouldn't know anybody that works there now.

1 And we didn't discuss, you know --

2 Q Cases or anything like that?

3 A No.

4 Q Okay. When Mr. Barnette asked you about just a
5 general idea -- I think you made a general idea about your
6 feeling on the death penalty and, you said some people
7 deserve it. Your explanation to me just a minute ago. Is
8 that an expansion of some people deserve it or -- can you
9 be more particular about that?

10 MR. BARNETTE: Objection, Your Honor. I think, at
11 this point, he's asking for specific you conduct. She's
12 answered the question.

13 THE COURT: I don't --

14 BY MR. BOGGS:

15 Q What do you mean by some people deserve it?

16 A Well, before you can make a judgement as to whether
17 you think anybody deserves it, you would have to listen
18 and know all the facts and stuff and any circumstances.

19 Q Okay. So it's that you're not sure really, but you
20 think you would know it if you saw it type thing based on
21 the facts?

22 A If they were innocent or --

23 Q No, no, no. I mean, your explanation is that some
24 people deserve it, but you're really not sure about the
25 definition. But you feel confident that if the case

1 warranted it, you could give the death penalty; is that
2 correct?

3 A If it warranted it, yes.

4 MR. BOGGS: I think that's all the questions I have,
5 Ms. Ertzberger.

6 Thank you.

7 THE COURT: Ms. Ertzberger, would you wait out in the
8 hallway for me for just a second?

9 (Pause.)

10 THE COURT: Any objection?

11 MR. BARNETTE: Not from the State.

12 THE COURT: From the Defense?

13 MR. BOGGS: Well, I think she's qualified.

14 THE COURT: Okay. Thank you.

15 Please bring Ms. Ertzberger back in.

16 (Pause.)

17 THE COURT: Hey, Ms. Ertzberger.

18 Let me give you that to hang onto. I'm going to tell
19 you, basically, what's in there. But you remain a
20 qualified juror and you're eligible to serve. And we're
21 going to -- we will be giving you a call probably tomorrow
22 and ask you to come up and sit for jury selection. I
23 would tell you that you need to be packed for five to
24 seven days when you come up here. You may or may not get
25 selected, but in case you are, you need to be packed and

1 ready.

2 Again, I would tell you, don't read anything, don't
3 listen to anything, and don't talk about the case with
4 anybody.

5 Thank you, Ms. Ertzberger.

6 (Juror #91, Joann Ertzberger, was excused from the
7 courtroom.)

8 THE COURT: Bring the next juror in, please.

9 (Juror #107, Douglas Fowler, a white male, was
10 seated.)

11 THE COURT: Mr. Fowler, how are you doing?

12 JUROR #107, DOUGLAS FOWLER: I'm doing good. How are
13 you doing?

14 THE COURT: I'm fine. Thanks.

15 We're going to talk to you a little bit and ask a few
16 questions. We just want to get your honest answers to
17 these questions. I want to tell you that there's no right
18 or wrong answer to any of these questions. And you --
19 there's not a test you're going to be put to, and nobody
20 is going to judge your answer one way or another. But
21 it's real important that we get honest, complete, truthful
22 answers to the questions.

23 And the subjects we're going to ask about are whether
24 you know anything about this particular case, whether you
25 can be fair and impartial, and what your views on the

1 death penalty might be. So I'm -- you know, a lot of
2 people consider that to be a pretty private thing and some
3 people are not sure what it means, you know, how they feel
4 about it. But we need to just get your honest, heartfelt
5 feelings about it. That's all we're looking for.

6 I'm going to read you parts of the indictments so you
7 can be on the same page and know what I'm talking about
8 and -- so just listen carefully. I remind you that these
9 are not evidence and can't be construed as evidence in any
10 way. They're just allegations.

11 The first one is for murder. And it alleges that
12 Fredrick Antonio Evins did in Spartanburg County on or
13 about February 13th, 2003, feloniously, willfully, and
14 with malice aforethought kill Rhonda Marie Ward by
15 stabbing. The next indictment is for kidnapping. It
16 alleges that Mr. Evins did on or about the same day
17 unlawfully seize, confine, or kidnap Rhonda Marie Ward.
18 The next indictment is for criminal sexual conduct. And
19 it alleges that Mr. Evins did on or about the same day,
20 that's February 13th, 2003, willfully and unlawfully
21 commit a sexual battery upon Rhonda Marie Ward. And,
22 finally, there's a grand larceny indictment that alleges
23 that Mr. Evins did on or about the same day feloniously
24 take and carry away a 1993 Nissan Sentra and the contents
25 belonging to Rhonda Marie Ward. Now, those are just

1 allegations. And the burden is on the State to prove the
2 allegations in the indictments.

3 But what I wanted to do is tell you that we recognize
4 there was publicity surrounding this case on the TV, the
5 radio, and in the newspaper. And I just need to know, my
6 first question would be, have you heard, read, or seen
7 anything about this case?

8 JUROR #107, DOUGLAS FOWLER: When it first happened,
9 I recall a little bit about it.

10 THE COURT: All right. What -- tell me what you can
11 recall about it.

12 JUROR #107, DOUGLAS FOWLER: I just remember them
13 talking about what you just said about the murder.

14 THE COURT: Okay. Do you have any specific facts you
15 can remember?

16 JUROR #107, DOUGLAS FOWLER: Not really, because it's
17 been a while.

18 THE COURT: And when you say you remember "them"
19 talking about it, who is them?

20 JUROR #107, DOUGLAS FOWLER: You, what you were just
21 saying.

22 THE COURT: No. You said back when it happened, you
23 remember hearing "them" talk about it.

24 JUROR #107, DOUGLAS FOWLER: In the newspaper, I
25 remember reading about it, but I don't remember a whole

1 lot about it.

2 THE COURT: Okay. Have you read anything about it
3 since?

4 JUROR #107, DOUGLAS FOWLER: I had read something
5 Monday morning in the paper. I had seen an article Monday
6 morning.

7 THE COURT: Did you read that whole article?

8 JUROR #107, DOUGLAS FOWLER: Yes, sir.

9 THE COURT: And what do you remember that article
10 saying? Anything?

11 JUROR #107, DOUGLAS FOWLER: I just remember them
12 talking about the trial coming up.

13 THE COURT: Okay. Anything else?

14 JUROR #107, DOUGLAS FOWLER: Not really.

15 THE COURT: Well, we've got to be sure about it. Are
16 you sure you read the whole article?

17 JUROR #107, DOUGLAS FOWLER: I read it, but I didn't
18 pay a whole lot of attention to it.

19 THE COURT: Well, you understand that, as a juror,
20 your oath would require you to disregard anything you
21 might have read, seen, or heard about this case outside of
22 the courtroom, and you'd be required to decide the facts
23 only from the evidence presented during the trial?

24 Do you understand that?

25 JUROR #107, DOUGLAS FOWLER: Yes, sir.

1 THE COURT: Would you or could you serve as a fair
2 and impartial juror and reach a verdict based on the facts
3 presented at trial and in accordance with my instructions
4 on the law?

5 JUROR #107, DOUGLAS FOWLER: I think I could.

6 THE COURT: Okay. Have you in any way -- and, again,
7 there are no right or wrong answers. Have you in any way
8 formed any opinion as to the facts of the case?

9 JUROR #107, DOUGLAS FOWLER: No, sir.

10 THE COURT: Have you formed any opinion one way or
11 the other as to the guilt or innocence of Mr. Evins?

12 JUROR #107, DOUGLAS FOWLER: No, sir.

13 THE COURT: Okay. Keeping in mind the legal
14 principles of the presumption of innocence and the State's
15 obligation to prove guilt beyond a reasonable doubt, could
16 you, depending on the facts and the evidence and the law
17 presented at trial, could you find a defendant either
18 guilty or not guilty?

19 JUROR #107, DOUGLAS FOWLER: I think so.

20 THE COURT: Okay. Your mind is not made up one way
21 or the other?

22 JUROR #107, DOUGLAS FOWLER: No.

23 THE COURT: Now, remember, we may not even get to the
24 second or sentencing phase in the case, but since we
25 possibly could, I need to ask you questions about your

1 views on the death penalty. Okay.

2 Now, I would tell you that when a jury moves to the
3 second or sentencing phase, they have already decided in
4 the first phase that the Defendant is guilty of murder.
5 And in the second phase, the jury is not concerned with
6 guilt or innocence or legal defenses. The only thing
7 they're interested in or concerned about is the -- that
8 they'll hear in the second phase are the aggravating
9 circumstances and the mitigating circumstances.

10 Do you understand that?

11 JUROR #107, DOUGLAS FOWLER: Yes, sir.

12 THE COURT: Okay. Your oath would require you to put
13 aside any preconceived notions that you might have and
14 follow the law as I give it to you. In other words, your
15 oath would require you to give serious and meaningful
16 consideration to mitigating circumstances and aggravating
17 circumstances.

18 Do you understand that?

19 JUROR #107, DOUGLAS FOWLER: I understand.

20 THE COURT: Okay. And could you honor your oath in
21 that regard?

22 JUROR #107, DOUGLAS FOWLER: Yes, sir.

23 THE COURT: All right. And if you were a juror in
24 that situation, in the second phase, this is a
25 hypothetical question, could you, depending upon the

1 particular facts and circumstances of the case, including
2 consideration of the aggravating and mitigating
3 circumstances and the law that I would give you, could you
4 return a verdict -- a sentence of life in prison?

5 JUROR #107, DOUGLAS FOWLER: Yes, sir.

6 THE COURT: All right. Another hypothetical
7 question, the same situation, the sentencing phase, could
8 you, depending upon the particular facts and circumstances
9 of the case, including consideration of aggravating and
10 mitigating circumstances and the law that I would
11 instruct you that applies, could you return a sentence of
12 death?

13 JUROR #107, DOUGLAS FOWLER: I don't think so.

14 THE COURT: Okay. Would you just tell me a little
15 bit about that?

16 JUROR #107, DOUGLAS FOWLER: I could on the life, but
17 on the death, I don't think I could do that.

18 THE COURT: All right. Are you --

19 JUROR #107, DOUGLAS FOWLER: I wouldn't feel
20 comfortable.

21 THE COURT: Are you opposed to a death sentence?

22 JUROR #107, DOUGLAS FOWLER: No, I'm not opposed to
23 it, but I just don't feel like I would be comfortable --

24 THE COURT: Okay.

25 JUROR #107, DOUGLAS FOWLER: -- you know, making that

1 choice for somebody.

2 THE COURT: Do you think there are situations -- are
3 there, in fact, situations where you could give a death
4 sentence?

5 JUROR #107, DOUGLAS FOWLER: I'm kind of mixed on
6 that.

7 THE COURT: Okay.

8 JUROR #107, DOUGLAS FOWLER: I think that some people
9 deserve the death penalty, but I don't think I could -- I
10 don't believe I could be one that could decide somebody's
11 fate like that.

12 THE COURT: Okay. Well, do you recall the sheet of
13 the three types of jurors?

14 JUROR #107, DOUGLAS FOWLER: Yes, sir.

15 THE COURT: Do you -- which category do you think you
16 fit in?

17 JUROR #107, DOUGLAS FOWLER: Probably Number 3 on the
18 life.

19 THE COURT: On the life. Well, we can't limit it to
20 just that, so where are you?

21 JUROR #107, DOUGLAS FOWLER: I'd have to say Number 2
22 then.

23 THE COURT: All right. Well, let me let the
24 attorneys ask you a few questions then.

25 Mr. Boggs.

EXAMINATION

1
2 BY MR. BOGGS:

3 Q Mr. Fowler, I'm Tam Boggs. I'm one of the attorneys
4 that will be representing Mr. Evins. This is Karen Quimby
5 and this is Chris Brough and they'll be -- we'll all three
6 be working together. We appreciate you filling out the
7 questionnaire and we appreciate taking your time. You've
8 filled a great civic duty by being here. We're sorry to
9 keep you so late.

10 A That's fine.

11 MR. BOGGS: But it's a long process.

12 Thank you, sir.

13 THE COURT: Anything from the State?

14 MR. ANTHONY: No, sir. No questions from the State.

15 THE COURT: Well, Mr. Fowler, I appreciate you being
16 here, too, and staying so late and being so patient.

17 Let me just tell you that considering your -- the
18 position that you have and fully respecting that, I'm
19 going to excuse you from service in this case.

20 All right. Thank you very much, sir.

21 I appreciate your honesty.

22 JUROR #107, DOUGLAS FOWLER: Thank you.

23 (Juror #17, Douglas Fowler, was excused from the
24 courtroom.)

25 THE COURT: Does anybody want to put anything on the

1 record about that ruling?

2 MR. BOGGS: No, sir, not from the Defendant.

3 THE COURT: Bring the next juror in, please.

4 (Juror #269, Jimmy Norman, a white male, was seated.)

5 THE COURT: Mr. Norman, how are you?

6 JUROR #269, JIMMY NORMAN: Fine.

7 THE COURT: I want to welcome you to the courtroom.

8 I hope you're feeling at ease and comfortable. I'm being
9 a little bit facetious there, I know you're probably a
10 little anxious up there. But I want you to know that
11 we're going to ask you a few questions. I promise you no
12 one will cause you any embarrassment or humiliation. And
13 what we're going to ask you about -- there are really
14 three basic subject matters that we want to know about.
15 And that is whether you know anything about this
16 particular case, whether you could be a fair and impartial
17 juror, and because of the nature of the case and the
18 seriousness of the proceedings, we're going to want to
19 know a little bit about your opinion on the death penalty,
20 your views on the death penalty.

21 I will tell you there are no right or wrong answers.
22 No one is going to judge your answers. There's no litmus
23 test that those answers will be put up against. The only
24 thing we ask is that you give us candid, complete, and
25 truthful answers to these questions. A lot of people

1 might feel that that is a very personal issue. And a lot
2 of people are conflicted in their own mind about what they
3 believe, and we're aware of that. And, again, I say
4 there's absolutely no wrong answer. All we're looking for
5 is your heartfelt beliefs on these issues.

6 So in order for me to talk about the case, I'm going
7 to go through the indictments with you. I remind you,
8 they are not evidence and should never be considered to be
9 evidence. They are just allegations.

10 The first indictment is for murder. And it alleges
11 that Mr. Fredrick Antonio Evins did in Spartanburg County
12 on or about February 13th of 2003, feloniously, willfully,
13 and with malice aforethought kill one Rhonda Marie Ward by
14 stabbing. The next indictment is for kidnapping. And it
15 alleges that Mr. Evins did on or about the same day
16 unlawfully seize, confine, or kidnap Rhonda Marie Ward.
17 The next indictment is for criminal sexual conduct. It
18 alleges that Mr. Evins did on the same day, February 13th
19 of 2003, willfully and unlawfully commit a sexual battery
20 upon Rhonda Marie Ward. And then, finally, there's a
21 grand larceny indictment which alleges that Mr. Evins did
22 in Spartanburg County on or about the same date
23 feloniously take and carry away a 1993 Nissan Sentra
24 automobile belonging to Rhonda Marie Ward.

25 Now, again, I emphasize those are just allegations

1 and the burden is on the State to prove beyond a
2 reasonable doubt what those allegations are that they've
3 made. We recognize there's been publicity about this case
4 on television, on the radio, and in the newspaper. So my
5 first question to you would be, have you heard, seen, or
6 read anything about this case?

7 JUROR #269, JIMMY NORMAN: I read the article Monday
8 morning that was in the paper. I haven't heard anything
9 on the news, radio, or television.

10 THE COURT: Okay. Did you read anything back in
11 2003?

12 JUROR #269, JIMMY NORMAN: I remember hearing news
13 reports about it, but just general.

14 THE COURT: All right. Can you tell me what all you
15 remember from what you've read, seen, or heard about this?

16 JUROR #269, JIMMY NORMAN: The details I remember is
17 it happened over in Drayton, which is an area I pass
18 through quite often, and there was a kidnapping and
19 murder.

20 THE COURT: All right. Anything that you -- what do
21 you remember about the article on Monday?

22 JUROR #269, JIMMY NORMAN: I think, generally, it was
23 the same facts.

24 THE COURT: Okay. Well, let me tell you that -- do
25 you understand that, as a juror, your oath would require

1 you to put aside anything that you may have read, seen, or
2 heard about this case? Because the law requires that this
3 matter would be decided only on the facts and the evidence
4 presented during a trial.

5 Do you understand that?

6 JUROR #269, JIMMY NORMAN: I do.

7 THE COURT: Do you think that you could put aside
8 what you've read, seen, or heard about this case and
9 follow your oath in that regard?

10 JUROR #269, JIMMY NORMAN: I do.

11 THE COURT: Okay. Could you serve as a fair and
12 impartial juror and reach a verdict based solely on the
13 evidence presented at trial and in accordance with my
14 instructions on the law?

15 JUROR #269, JIMMY NORMAN: I believe I could.

16 THE COURT: All right. Have you formed any opinion
17 as to the facts of this case?

18 JUROR #269, JIMMY NORMAN: No, sir.

19 THE COURT: Have you formed any opinion as to the
20 guilt or innocence of Mr. Evins?

21 JUROR #269, JIMMY NORMAN: No.

22 THE COURT: All right. Now, keeping in mind the
23 legal principles I've talked to you about, the presumption
24 of innocence and the State's obligation to prove guilt
25 beyond a reasonable doubt, could you, depending on the

1 facts and circumstances and the law as I would instruct
2 it, could you find a defendant either guilty or not guilty
3 depending on what that evidence would show you?

4 JUROR #269, JIMMY NORMAN: I could.

5 THE COURT: Okay. Your mind is -- is your mind made
6 up beforehand?

7 JUROR #269, JIMMY NORMAN: No.

8 THE COURT: Okay. Please remember, we may not even
9 reach the second or sentencing phase of the trial, but
10 since it's a possibility, we need to discuss your views on
11 the death penalty. I would tell you again that when a
12 jury moves to the sentencing phase of a trial, it means
13 that that jury has already found the Defendant guilty of
14 murder.

15 So in the second phase, there wouldn't be any
16 consideration by the jury of guilt or innocence, no
17 discussion about legal defenses or anything. All of that
18 would have been decided. The jury would be concerned with
19 the evidence in mitigation and the evidence in
20 aggravation. I would tell you that your oath would
21 require you to put aside any preconceived notions that you
22 have. And your oath would require you to give serious and
23 meaningful consideration to all the evidence of
24 aggravation and all the evidence of mitigation. Could you
25 honor your oath and do that?

1 JUROR #269, JIMMY NORMAN: I believe I could.

2 THE COURT: All right. Now, if -- this is a
3 hypothetical question, if you were a juror in the second
4 phase of the trial, could you, depending upon the
5 particular facts and circumstances of the case, including
6 the consideration of aggravating and mitigating
7 circumstances and the law that I would instruct you that
8 applies, could you return a sentence of life in prison?

9 JUROR #269, JIMMY NORMAN: I could.

10 THE COURT: All right. The second hypothetical
11 question, same situation, could you, depending upon the
12 particular facts and circumstances of the case, including
13 consideration of all the mitigating and aggravating
14 circumstances and the law that I would instruct you, could
15 you return a sentence of death?

16 JUROR #269, JIMMY NORMAN: I believe I could.

17 THE COURT: All right. Now, the law requires that a
18 verdict be unanimous and it requires that all of the
19 jurors in a case that returned a death verdict would have
20 to sign a death penalty verdict form. Could you sign your
21 name to a death verdict form?

22 JUROR #269, JIMMY NORMAN: I believe I could.

23 THE COURT: Okay. Now, do you recall the sheet with
24 the three types of jurors on there?

25 JUROR #269, JIMMY NORMAN: I do.

1 THE COURT: What type of juror do you consider
2 yourself to be?

3 JUROR #269, JIMMY NORMAN: I believe I would be
4 Number 3.

5 THE COURT: Okay. In other words, you would need to
6 hear all the facts and all the evidence before you made a
7 decision; is that right?

8 JUROR #269, JIMMY NORMAN: Yes.

9 THE COURT: All right. Now, if you were selected,
10 would you honor your oath and serve as a fair and
11 impartial juror and would you approach jury service with
12 an open mind to find the truth from the evidence and the
13 law as I instructed you?

14 JUROR #269, JIMMY NORMAN: I would.

15 THE COURT: Do you know of any reason why you could
16 not serve in this case?

17 JUROR #269, JIMMY NORMAN: No.

18 THE COURT: All right. Now, I will tell you this, if
19 you are qualified, then you would be required to come back
20 for jury selection, which I anticipate will be sometime
21 tomorrow. You may or may not be selected at that time,
22 but you have to come back and you have to come back
23 packed. Because if you're selected, then you'll
24 immediately go into sequestration. We anticipate it will
25 last five to seven days and you would be housed or staying

1 at the new Marriott Hotel, which is just a couple blocks
2 from here.

3 JUROR #269, JIMMY NORMAN: All right.

4 THE COURT: I'm going to turn questioning over to the
5 attorneys at this time.

6 MR. BARNETTE: May it please the Court, Your Honor?

7 THE COURT: Yes.

8 EXAMINATION

9 BY MR. BARNETTE:

10 Q Good evening, Mr. Norman.

11 A Good evening.

12 Q My name is Barry Barnette. I'm one of the people who
13 represents the Prosecution. This is Trey Gowdy, and John
14 Anthony. I'd just like to ask you a few questions to
15 follow-up.

16 I notice that you're a CPA; is that right?

17 A Correct.

18 Q And your wife is a teacher?

19 A Correct.

20 Q District Seven; is that correct?

21 A Uh-huh.

22 Q Just following up to the Judge's questions -- and I
23 noticed you went through and filled out the information on
24 the questionnaire and everything. And we appreciate you
25 doing that.

1 A Very intrusive.

2 Q I understand and we apologize. I know it's an
3 intrusive process and I apologize for that. I'd like to
4 ask you a few other questions concerning that, because you
5 did give us a lot of information in the questionnaire and
6 we appreciate that.

7 What's your general views on the death penalty? How
8 do you feel about it, or have you ever thought about it
9 before you came into court today?

10 A I have, but I've never been called on to make that
11 decision. But just based on theoretical outlook, I
12 believe that that is the way to go in the enforcement of
13 law. I have no opposition to it.

14 Q But you realize not all murders are death penalty
15 cases?

16 A I do.

17 Q You realize some murders depend on severity and so
18 forth?

19 A I do.

20 Q Some murders are death penalty type cases and some
21 are life without parole?

22 A Correct.

23 Q And would you listen to the Judge's instructions
24 concerning what factors you would use?

25 A I would.

1 Q Would you -- we have to prove one aggravating
2 circumstance, there may be one or more aggravating
3 circumstances. And even though we prove that
4 circumstance, it may not rise to the level of a death
5 penalty case. If that happens, could you find a sentence
6 of life without parole?

7 A I could.

8 Q At the same time, if it did lead to a certain level,
9 could you find a death sentence in that case?

10 A I could.

11 Q And you realize there's a form at the end that you
12 fill out. And could you sign that form, if you felt the
13 death penalty was appropriate?

14 A I could.

15 Q At the same time, if after listening to all the case
16 and applying the law that the Judge gives to you, could
17 you find a life without parole sentence?

18 A I could.

19 Q Even though a defendant in convicted of murder?

20 A In some circumstances, yes.

21 Q So you'd look at the circumstances?

22 A Right.

23 Q And you'd evaluate the facts as presented to you in
24 court?

25 A Right. My business is one of logic and discernment,

1 Do you recall anything else it might have said about the
2 process or the procedure or anything else?

3 A No, I don't.

4 Q Okay. When you had heard about this back in 2003,
5 did you remember hearing any follow-up whenever there was
6 an arrest whenever that might have been?

7 A I do remember news stories that somebody was arrested
8 for it.

9 Q Okay. Do you remember anything about them, about the
10 stories?

11 A Not particularly, no.

12 Q Okay. I do notice that you've had a car stolen
13 before. I have, too.

14 A I have.

15 Q So I feel your pain on that. You said that the
16 perpetrators were convicted and sent to prison. And that
17 was an interesting term for me to see somebody use. Is
18 that just a term you've picked up?

19 A I guess it's something I've picked up from
20 television.

21 Q Do you watch a lot of television?

22 A Mostly news-type shows, but I watch the CSI shows.

23 Q CSI is good. Do you like shows like CSI, Law and
24 Order?

25 A Typically, I don't watch shows for that long of a

1 period of time. I'm more of a channel surfer.

2 Q Okay. Anything that -- when a police officer or a
3 police agency makes an arrest in a case, obviously --
4 well, there's an investigation into it, and do you attach
5 any significance to the fact that somebody has been
6 arrested?

7 A I do. I have a very high regard for law enforcement.

8 Q And as well as we all should. I agree with that. So
9 do you attach any -- well, do you make any -- do you tend
10 to lean one way or the other in thinking that someone may
11 be guilty or not guilty by the fact that the police have
12 arrested someone?

13 A I suppose I do. I don't feel like they would arrest
14 them for no reason. There must be some basis there.

15 Q Okay. And Judge Miller explained the process of this
16 trial to you, that the first thing that we do after we
17 bother all of you people to come in and sit here and
18 answer a bunch of questions, we pick a jury and we have a
19 trial. That is to decide whether Mr. Evins is guilty or
20 not guilty. After that point, if he is found guilty of
21 murder, then we move into a second -- a sentencing
22 trial.

23 Do you attach any significance or tend to lean one
24 way or the other on the fact that the Solicitor's Office
25 has decided to seek the death penalty, if he is convicted

1 of murder?

2 A I wouldn't think there would be any particular
3 leaning, I would just assume that would be the case.

4 Q Assume which would be the case?

5 A That there would be that type of penalty option out
6 there.

7 Q Do you mean -- well -- and, I'm sorry. I've been
8 talking to all these people today. It's hard to keep
9 everything in line.

10 So do you -- in your mind, is the death penalty --
11 let me rephrase. If someone has been convicted of murder
12 and we move on to a sentencing phase -- you had said
13 earlier that you don't necessarily lean one way or the
14 other as far as life or death at that point until you've
15 heard all the evidence. And we appreciate that. Do you
16 believe that the death penalty is an appropriate sentence
17 for murder?

18 A In some cases.

19 Q Okay. Do you believe that it is an appropriate
20 sentence for all murders?

21 A Not necessarily.

22 Q And I'm trying to reconcile. I know that you said
23 you do attach some significance to the fact that the death
24 penalty is being sought, but -- I'm trying -- I don't want
25 to put words in your mouth and I don't want to

1 misunderstand.

2 A What I think I was trying to say is that I assume
3 that there's a capital case, that it's life or the death
4 penalty maybe one of the options there, that doesn't
5 surprise me or sway me.

6 Q Okay. And a capital murder case, it being capital,
7 does that mean that the death penalty is being sought
8 so --

9 A I'm not familiar with the terminology.

10 Q I understand. I understand.

11 A I just treat murder as all the same thing.

12 Q I understand. And that's why we're talking. Your
13 opinions are not right or wrong, they're yours. There's
14 no answers that are right or wrong, the opinions are
15 yours.

16 If there is a murder charge on any particular
17 defendant, the State has to look at it and then make a
18 decision on whether they choose to seek the death penalty
19 unless -- if they do not --

20 MR. BARNETTE: Your Honor, I'm going to object at
21 this point. I've given a lot of latitude. It's been
22 asked and answered several different ways.

23 MS. QUIMBY: Can I rephrase?

24 THE COURT: All right. Try it again.

25 MS. QUIMBY: Okay.

1 BY MS. QUIMBY:

2 Q Not every murder -- as you've already acknowledged to
3 the State, not every murder is a death penalty warranted
4 murder is what you had said earlier. Death penalty and
5 capital, they go together. So not all murders would be
6 capital murders. And the death penalty is not eligible
7 for every murder. It's not just -- I know you said you
8 didn't think it was appropriate for every murder and
9 that's fine, because it's not even eligible for every
10 murder.

11 Do you think that -- if you get to the sentencing
12 phase, you've already found him guilty, you -- or the jury
13 has already found a person guilty. The State would then
14 have to prove one or more aggravating circumstances,
15 something that makes it worse. Do you believe that if the
16 State proved to you -- after you had already found him
17 guilty, if the State proved to you that he was guilty of
18 something that made it worse to you, do you think that you
19 would lean one way or the other in deciding life or death?

20 A I can't tell you what I would believe made it
21 aggravating. But, yes, if it was aggravating, I would be
22 more likely to go with the death penalty than not.

23 Q Okay. Do you feel pretty strongly about that?

24 A Not defiantly strongly about that, but I believe that
25 that is an appropriate punishment. I wouldn't look

1 forward to making that decision about somebody's life. I
2 value life greatly. But by the same token, I wouldn't
3 back away from it.

4 Q Okay. So then you -- so just to back up a little
5 bit, you do -- am I understanding you that you do attach
6 some weight or significance to the fact that it is -- that
7 the Solicitor is seeking a death penalty if he is
8 convicted of murder?

9 MR. BARNETTE: Objection, Your Honor. I mean, it's
10 been asked and answered so many times already.

11 THE COURT: Yes. He's answered that.

12 MS. QUIMBY: Okay. One moment, please.

13 (Pause.)

14 MS. QUIMBY: We appreciate your time.

15 Thank you.

16 THE COURT: Mr. Norman, I just wanted to ask you, you
17 had said that you feel like when the police arrest
18 somebody that you felt like that that created a likelihood
19 that he was guilty; is that right?

20 JUROR #269, JIMMY NORMAN: Not a likelihood that he
21 was guilty, but a likelihood that there was a reason for
22 it to be called into question. I don't believe that
23 everybody arrested is guilty.

24 THE COURT: Okay. Do you understand the principles
25 of -- that every citizen, each citizen is presumed

1 innocent unless and until the Government can prove them
2 guilty?

3 Do you understand that?

4 JUROR #269, JIMMY NORMAN: I do.

5 THE COURT: That's a very serious and fundamental
6 part of our legal structure. Do you have any question
7 that that's the law?

8 JUROR #269, JIMMY NORMAN: No.

9 THE COURT: Thank you very much.

10 Would you wait out in the hall for just a second,
11 please?

12 (Pause.)

13 THE COURT: Does the State object?

14 MR. BARNETTE: No, sir. I didn't hear --

15 THE COURT: Okay. I didn't think so.

16 MR. BARNETTE: We were waiting to see what the
17 Defense says.

18 MR. GOWDY: No. We were just discussing the
19 different quantum of proof necessary in the criminal
20 process.

21 THE COURT: All right. Any objection?

22 MS. QUIMBY: Your Honor, we do object to his being
23 qualified.

24 He does have knowledge of the case, not in so much
25 great detail, but he does have prior knowledge of it,

1 prior knowledge. He did read Monday's article. And at
2 first, he said he read the whole article, then only chose
3 the information that he remembered as being exactly what
4 you told him. When if he had read the whole article, he
5 would have read about Demaris Huff.

6 He was -- I can understand why somebody might be
7 offended at filling out all that information about
8 themselves, but he seemed a little overly belligerent.

9 THE COURT: I didn't pick up on belligerence, but go
10 ahead.

11 MS. QUIMBY: I think that, Your Honor, his -- on his
12 questionnaire, he attached a note. I don't know if the
13 Court has a copy of the note. He said, "I find this
14 questionnaire to be an offensive intrusion into my
15 privacy. I completed it only to avoid contempt of court,"
16 signed J.W. Norman.

17 I think that also his views that -- he does attach --
18 whether he wants to term it -- he can term it however he
19 wants, he does have -- he attaches weight and significance
20 to the fact that someone is arrested. He then said that
21 he doesn't believe everybody that's arrested is guilty.
22 So I don't know that he could bring a presumption of
23 innocence to the table.

24 THE COURT: Well, I understand your concerns. I
25 understand -- and that gave me a lot of pause as well.

1 But I can't speculate as to what -- I mean, the man is
2 under oath. I have to presume he's telling me the truth.

3 So where and what -- I mean, either show me where
4 he's not qualified, other than the fact that I know the
5 Defense would not want him. Show me where he's not
6 qualified. I went back not trying to rehabilitate him
7 because I thought his question -- your question about him
8 giving -- about an arrest and what he felt about that, but
9 he responded appropriately. So show me where he's not
10 qualified.

11 MS. QUIMBY: Well, with all due respect, Your Honor,
12 I don't know that he did respond appropriately. He said,
13 I don't believe that everyone arrested is guilty. That
14 means he may --

15 THE COURT: No. He said that he understood that was
16 the law of the land and he would follow it. He did. I
17 mean, that's -- I understand your concerns and why you
18 would not favor this juror. I completely understand it.
19 But show me where he's not qualified. That's all I'm
20 asking. Is it there?

21 MS. QUIMBY: He said the appropriate answers to make
22 him qualified.

23 THE COURT: And I agree with you that it bothers me
24 about what he said about the article.

25 Go ahead. I let them do it, Mr. Boggs.

1 MR. BOGGS: Well, Your Honor, dealing with the
2 belligerent attitude, I don't know if the Court, actually,
3 saw this.

4 THE COURT: I haven't looked at it.

5 Juror #269 -- well, they have it.

6 MR. BOGGS: Plus, Judge, you can also -- well, not
7 really -- you can tell the demeanor is a condescending,
8 you know, what are these lawyers doing for us, you know.
9 I know more about it. So his demeanor on the stand is
10 exactly the same as that note. He said he doesn't want to
11 be held in contempt. Well, what that note says is he's
12 got nothing but contempt now. He gave all the right
13 answers and he's pretty slick, but we want jurors that
14 will, actually, come in and follow what you say and want
15 to do it and want to do it without a condescending
16 attitude.

17 My problem with this note and the way that he acts on
18 the stand is the potential -- because he is a pretty
19 powerful -- his manner is pretty powerful and is almost
20 intimidating if this whole attitude overflows to the other
21 jurors for being intimidating. And that potential for
22 that infection is there.

23 THE COURT: I understand your concerns, but I --

24 MR. GOWDY: Your Honor, just to correct the record a
25 little bit. This juror said in a non-belligerent,

1 non-defiant tone that he didn't understand the relevance
2 of all the questions. And, frankly, I'll bet you other
3 jurors felt the same way. But, nevertheless, he filled it
4 out. There was no belligerence in his attitude today. He
5 was tired of being asked the same question by both sides.
6 I'm not singling them out. But he was not belligerent.

7 And the notion that nothing is attached to an arrest
8 warrant, something is attached even in the criminal
9 justice system to an arrest warrant. It means there's
10 probable cause. So to say that the correct answer is, no,
11 I don't believe anyone that's arrested is guilty is --
12 defies logic.

13 THE COURT: Okay. Well, I'm going to find that he is
14 qualified and that's -- you know, your choice is to
15 pre-emptory challenge. I don't see anything to disqualify
16 him.

17 Okay. Would you ask him to come on back?

18 (Pause.)

19 THE COURT: Mr. Norman, thank you very much.

20 I'm going to give this to you and ask you to hang
21 onto that. Let me just tell you that what that,
22 basically, says is you are a qualified juror and eligible
23 to serve on the jury in this case. I anticipate that the
24 jury will be called back tomorrow and selection be made
25 probably tomorrow afternoon. That's my guess. So you'll

1 get a call. But you have to be prepared. You may not be
2 selected to serve. But if you're qualified and called
3 back up here, you have to be prepared to be selected.
4 Because those people who are selected will immediately be
5 sequestered. So please pack enough clothes for five to
6 seven days. And, remember, you will be housed at the
7 Marriott.

8 Now, I also would instruct you not to read the paper
9 about this case. Don't watch television or listen to the
10 radio about this case, and don't discuss it with anyone.
11 It's imperative that if you are chosen that the decision
12 that you would make or be called upon to make be based
13 solely on sworn testimony and evidence that is subject to
14 Constitutional scrutiny, not to what some newspaper
15 reporter might throw out. And even an innocent comment by
16 a family member or friend could infect the trial. And
17 that's not fair for them to have an impact on the outcome
18 of the case when they're not going to sit here and listen
19 to the evidence and watch the witnesses. Okay.

20 JUROR #269, JIMMY NORMAN: Okay.

21 THE COURT: Thank you very much.

22 JUROR #269, JIMMY NORMAN: There's no set time for me
23 to come, just wait for a phone call?

24 THE COURT: Yes. We have your number and we'll be in
25 touch with you.

1 Thank you very much.

2 (Juror #269, Jimmy Norman, was excused from the
3 courtroom)

4 THE COURT: All right. I believe we're finished for
5 the day. I understand we -- am I correct that we have 35
6 qualified jurors?

7 THE CLERK: Yes.

8 THE COURT: We have panels coming in at 9:00 in the
9 morning. Is there anything -- we can deal with the issue
10 with respect to the chain of custody tomorrow, at some
11 point, unless y'all are ready tonight.

12 MR. BOGGS: No, sir.

13 THE COURT: Okay. Yes, sir.

14 MR. GOWDY: Your Honor, would you permit me to ask
15 how many qualified jurors the Court would like to get to?

16 THE COURT: I had in my mind about 42. And that's
17 kind of where I'm heading. I'm going to see how long it
18 takes to get there. And I may -- I had planned on three
19 alternates, but it may be only necessary to get two. I
20 just need to think about that.

21 MR. GOWDY: Yes, sir.

22 THE COURT: Do y'all have any input on that?

23 MR. BOGGS: I think anywhere from 40 -- you know, 40
24 will cover, I think, everything we need. But we wouldn't
25 object to 40, Judge, which looks like we'll probably have

1 in the morning with the first panel, no later than the
2 second panel.

3 And, again, for scheduling purposes, would you then
4 anticipate having the 40 come in at 2:00 or 2:30?

5 THE COURT: Yes. If we get them in the morning, I
6 think we're going to try to have them and pick the jury at
7 about 2:30.

8 MR. BOGGS: All right.

9 THE COURT: And what I anticipate that we would do is
10 to put those 40 or however many names we get into the box,
11 draw them out in a random order --

12 Are y'all listening to this?

13 MR. GOWDY: No, sir.

14 THE COURT: Draw the jurors out in random order and
15 list them on a sheet in the order that they are pulled
16 out, and give those sheets to the attorneys so that it
17 will give you plenty of time. You'll know the order that
18 the names are going to be called. It's not just going to
19 come out of a box, stand up, and make your decision. I'm
20 going to try to get you a randomly selected list of jurors
21 so that you all can decide how to use your strikes.

22 MR. BOGGS: All right.

23 MR. GOWDY: Is the Court saying the first 27 will be
24 done that way or all of the qualified jurors?

25 THE COURT: Yeah, the first 27.

1 MR. GOWDY: The first 27 that were qualified will be
2 the actual 12-member jury, and then from 28 on will be
3 alternates?

4 THE COURT: No. The first 27 will be the potential
5 jurors on the actual jury.

6 MR. GOWDY: Yes, sir.

7 THE COURT: If y'all don't use all your strikes to
8 get there, then we're just going right down as if they
9 were pulled out. I mean, that's how it's going to work.

10 MR. GOWDY: But the first 27 that we qualify, they're
11 going to be the 27 --

12 THE COURT: No, no. We're going to put all 40 names
13 into the bingo spin thing. Charlena is going to pull them
14 out while you're not here -- I mean, if you want to be
15 here to watch her pull it out. And then she's going to
16 write the names on a list in the order that she pulls them
17 out. It's just as if she did it while you're sitting
18 here. She's going to do it randomly.

19 MR. GOWDY: I think I know what the Court is saying,
20 I just -- and I don't know -- I don't know if there is law
21 on it. I just -- I'm going based on -- and you,
22 obviously, know more about it than I do. I'm going based
23 on the way we've done it previously, which is the first 27
24 that are qualified are the ones that we select the jury
25 from. In other words, the 28th juror is not going to be

1 on the 12-member jury. That is the first -- I mean, the
2 next four are the alternates.

3 THE COURT: Oh, you think the first 27 off of this
4 list is --

5 MR. GOWDY: That's the only way we've ever done it.

6 THE COURT: I'm going to -- I think this is within
7 the discretion of the Court.

8 MR. GOWDY: Okay.

9 THE COURT: I hadn't even -- I mean, that hadn't
10 entered my mind. I had intended to get the qualified
11 jurors and then throw them into the box and pull them out
12 in a random order.

13 Now, we could do it while they're sitting in here and
14 y'all have to immediately make a decision. But what I
15 would like to do is to give you more time to consider what
16 you want to do and to get a list how they are randomly
17 drawn out. And you would go down through the first -- how
18 many ever it took you, whether it took 12 or it took 27 to
19 get 12 on the jury. If it only took 24, then from 25 on
20 would be the order in which we'd go to get the alternates.
21 Just as if they were sitting in the courtroom and their
22 names were being drawn out of the hat.

23 Does that make sense?

24 MR. BOGGS: Yes, sir.

25 MR. GOWDY: It does make sense, yes, sir.

1 THE COURT: And that way, there's no -- you'll have
2 plenty of time to review the list and make your decision.

3 MR. BOGGS: 9:00?

4 THE COURT: 9:00 in the morning.

5 (WHEREUPON, the proceedings were concluded at
6 approximately 7:53 p.m., to be reconvened on
7 Thursday, November 11, 2004.)
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THURSDAY, NOVEMBER 11, 2004

THE COURT: Mr. Barnette, I understand there is a matter concerning Juror #32, Ms. Kristine Brown, that has come to your attention.

MR. BARNETTE: Yes, sir.

I received a phone call this morning from Allen Myrick, he's in the Attorney General's Office. And the reason why he called me was Ms. Brown called him last night. I guess she used to be a baby-sitter for his children when he lived in Spartanburg.

And what he said was that Ms. Brown called and said, why do I have to be sequestered for eight days? Once Mr. Myrick realized what she was talking about, he said, I can't talk to you. He said, you need to talk to the Judge. And she said, well, I don't know if I can do it or not. That's all she said. And he said, well, you need to tell the Judge.

I don't know whether she's going to come in and tell you later today or not, but I felt like we needed to bring that to the Court's attention, obviously, after the instructions you gave them not to talk to anybody about the case. And he said he doesn't want to get anybody in trouble by the Court, but he felt like he needed to tell us and if we needed to tell the Court, to tell the Court.

1 THE COURT: All right. Thank you very much.

2 I'll just have to -- I'll think about it, but I'm
3 inclined to disqualify her and excuse her from service
4 based on that violation of the Court order. But we'll --
5 I'll just think about it and make that decision.

6 Anything else before we bring in this next panel?

7 (There was no response.)

8 THE COURT: Bring the next panel in, please.

9 (WHEREUPON, Juror Panel No. 10 entered the
10 courtroom.)

11 THE COURT: Good morning, ladies and gentlemen. How
12 are y'all doing?

13 I want to appreciate -- again, say thank you for
14 being here. I appreciate your patience, although y'all
15 didn't have to wait too long. We're cranking up. And
16 just on the record, I want to thank all the Court staff
17 for working today. They've been working every night.
18 Today is, actually, a holiday, but because of the serious
19 nature of the case, we are proceeding with the case. So I
20 just want to extend my gratitude to everybody for their
21 hard work. And that includes the attorneys as well.

22 Now, ladies and gentlemen, I want to tell you -- the
23 first thing I would like to do is just have y'all feel as
24 comfortable as you possibly can. I know that's difficult
25 to do. You don't know what's coming, except you know

1 you're going to be questioned. And I will explain that to
2 you individually when you get up here. But I want to tell
3 you, it's a painless experience and we've done over 50
4 jurors and haven't had a casualty yet. So I just want you
5 to know you'll be all right.

6 Now, I want to -- before I start, I want to tell you
7 that you'll be individually questioned. And, of course,
8 it will be confidential and private. But I will be asking
9 you some questions. And because I will be doing that, I
10 want to make sure that you understand that I have no
11 opinion about the facts in the case. And I -- for two
12 reasons, as I've told everyone. One, the first one, most
13 importantly, is that the Constitution and law requires
14 that a judge does not have -- cannot have an opinion about
15 the facts. As you'll hear if you're selected, the jury is
16 the sole judges of the facts in the case. And so I don't
17 have an opinion for that reason and also because I don't
18 have an opinion about the facts. I know -- I don't know
19 very much more about it than you all do. So I have no
20 opinion.

21 So why I'm telling you that is that when I ask you
22 these questions, do not -- please do not deduce or infer
23 from the way I speak or the questions I ask or from
24 anything whatsoever, how I talk to you that I have an
25 opinion about the facts, because I do not.

1 Now, I want to repeat a couple of basic concepts of
2 the law that I've spoken to you about. With y'all, it's
3 been several days ago. And that is that every citizen who
4 is charged with a crime is presumed innocent unless and
5 until the State can prove them guilty beyond any
6 reasonable doubt of each and every element of the offense
7 or offenses that they're charged with. Those are real
8 basic fundamental and cardinally important rules in our
9 criminal justice system. And I ask you to keep those in
10 mind throughout this individual voir dire process, and
11 also if you're selected throughout the trial of the case.

12 Do each of you understand those concepts or do I need
13 to explain them any further? I'll be happy to do that.

14 (There was no response.)

15 THE COURT: I think y'all are satisfied with that.

16 Now, one of the -- this case is called a capital
17 case. So, again, I want to briefly go through the process
18 of a capital case with you so you have a road map of
19 what's going on. What we're doing today is qualifying --
20 further qualification of the jury. Y'all have met -- been
21 qualified under state law for general service on a jury.
22 Now, we are qualifying you for the specific case that
23 we're here on.

24 Now, I will tell you that we'll qualify -- we'll get
25 a certain number of qualified jurors and once that's done,

1 we will then select the jury out of that group of people.
2 Once the jury is selected, then we move into the first
3 phase of the trial. That is when the jury is -- the State
4 has to prove their case with respect to guilt and
5 innocence. And the jury has to make a determination based
6 on those fundamental concepts that I've given you about
7 the guilt or innocence of the defendant. If, and only if,
8 the jury finds a verdict of guilty on the charge of murder
9 do we move to the second phase of the trial.

10 The second phase, as I've told you, is where the jury
11 will listen to facts that will be presented in aggravation
12 of the offense and facts in mitigation of the offense.
13 The jury will then determine the appropriate sentence to
14 be given, and the choices will be life imprisonment or
15 death.

16 Now, I would tell you that in a capital case, if the
17 jury finds the presence of an aggravating circumstance,
18 then a sentence of life means life without the possibility
19 of parole. In other words, if a defendant who has been
20 convicted of murder and the murder is accompanied by an
21 aggravating circumstance, then a life sentence means life.
22 There would be no possibility of parole under such
23 circumstances and the defendant would die in jail.

24 Now, please understand, I am talking about the
25 process of a capital case in general. In this particular

1 case, we may not get to the second phase. But in the
2 event we do, we are going to need to ask you certain
3 questions. And that will include questioning you about
4 your heartfelt feelings about the death penalty. We're
5 going to need to talk about that just a little bit. So I
6 just kind of put that out and take some of the sting out
7 of it so you know part of what's coming.

8 Let me just briefly explain to you the terms
9 aggravating circumstances and mitigating circumstances so
10 you'll have a general idea of what you'll be listening to
11 if the case goes to the second phase of the trial.

12 Now, aggravating circumstances are facts, incidents,
13 or occurrences which the South Carolina General Assembly
14 has declared by statute would aggravate or worsen the
15 crime of murder. In other words, an aggravating
16 circumstance, when accompanying a murder, increases the
17 enormity of it or adds to the injury of the crime of
18 murder.

19 Mitigating circumstances, on the other hand, are
20 incidents, facts, or occurrences which the General
21 Assembly has declared by statute or which a jury otherwise
22 determines should reduce the severity of the offense of
23 murder and may be considered as extenuating or as reducing
24 the degree of responsibility or culpability.

25 Does that help y'all understand what those terms mean

1 in the context of this case? Is there anyone who would
2 like further explanation?

3 (There was no response.)

4 THE COURT: Okay. Now, I have -- on Monday, we
5 introduced the attorneys involved in the case. And I want
6 to ask you now, is there any member of the jury panel who
7 is related by blood or marriage or an acquaintance of any
8 kind with any of the attorneys involved in this case? If
9 so, please stand.

10 All right. Yes, ma'am. Your name?

11 JUROR #155, CAROLE HIGHTOWER: Carole Hightower. I
12 work at Westgate Family Physicians and --

13 THE COURT: Okay. Is that where he gets his --

14 JUROR #155, CAROLE HIGHTOWER: Yeah.

15 THE COURT: Has he been getting his physicals
16 regularly?

17 (There was no response.)

18 THE COURT: Let me ask you, does the fact -- and you
19 can sit down. And I really meant for you to just raise
20 your right hand, but I know I said stand up. Does the
21 fact that he receives his medical care from your employer,
22 does that in any way impair your ability to be fair and
23 impartial in this case?

24 JUROR #155, CAROLE HIGHTOWER: No, sir. I don't
25 think so.

1 THE COURT: All right. Then let me ask you this, is
2 there any member of the jury panel who is related by blood
3 or marriage or acquainted in any way with Mr. Fredrick
4 Antonio Evins? If so, raise your right hand.

5 (There was no response.)

6 THE COURT: All right. Is there any member of the
7 jury panel who is related by blood or marriage or
8 acquainted in any way with anyone associated with these
9 attorneys and their respective law offices, so that would
10 be the Seventh Circuit Solicitor's Office, the Spartanburg
11 County Public Defender's Office, or the Law Offices of
12 Mr. Tam Boggs? If so, please raise your right hand.

13 (There was no response.)

14 THE COURT: Now, I hope each of you had an ample
15 opportunity to review that extensive witness list that's
16 back in the jury room. And I will ask you the same
17 question about that list of witnesses. Is there any
18 member of the panel related by blood or marriage or
19 acquainted in any way with any of the names on the witness
20 list? If so, raise your right hand.

21 Yes, ma'am.

22 JUROR #118, TINA GODFREY: I know a few, like Deanne
23 Arnold. She goes to our church. She's married -- since
24 been married. And Jim Rhodes, I went to school with him.
25 And I think -- I went to a school with a Jason Yown, but

1 I'm not sure if it's the same one.

2 THE COURT: And your name?

3 JUROR #118, TINA GODFREY: Tina Godfrey.

4 THE COURT: All right. Ms. Godfrey, I appreciate you
5 giving me those names. I don't know -- I don't even know
6 who the -- what the content --

7 JUROR #118, TINA GODFREY: I think they work for the
8 Sheriff's Office.

9 THE COURT: -- what the content of those witnesses --
10 what they're going to testify to. But let me ask you, the
11 fact that you know some of these people, attend church
12 with one of them, would that in any way impair your
13 ability to be fair and impartial to both the State and the
14 Defense?

15 JUROR #118, TINA GODFREY: No, sir.

16 THE COURT: Yes, ma'am.

17 JUROR #165, JACKIE HOSTETLER: My husband is related
18 to Deanne Arnold. And I went to school with a Dennis Ray.
19 And I'm pretty sure I know Teresa Johnson from Woodruff.

20 THE COURT: And your name, ma'am?

21 JUROR #165, JACKIE HOSTETLER: Jackie Hostetler.

22 THE COURT: Well, Ms. Hostetler, would that in any
23 way impair your ability to be fair and impartial in this
24 case to both the State and the Defense?

25 JUROR #165, JACKIE HOSTETLER: No, sir.

1 THE COURT: Okay. Yes, ma'am. You had raised your
2 hand?

3 JUROR #155, CAROLE HIGHTOWER: Yes, sir. Officer
4 Carroll Emory, he used to work for the county. He's an
5 acquaintance of mine. And Jane Millwood, she's, I think,
6 an officer. And there were a couple more I wrote down
7 their numbers, but I can't remember the names without
8 looking at the list. They just were acquaintances that I
9 knew, perhaps, and come in the office where I work.

10 THE COURT: All right. Well, let me ask you, would
11 that -- the fact that you know some of these people, would
12 that impair your ability to be fair and impartial in this
13 case?

14 JUROR #155, CAROLE HIGHTOWER: I don't think so.

15 THE COURT: Okay. Well, thank y'all very much for
16 answering those questions. And I'll tell you, you may or
17 may not get some more questions about that when we're
18 talking to you.

19 Now, at this time, I'd ask y'all to please stand and
20 raise your right hand. We're going to put you under oath
21 again.

22 (WHEREUPON, Juror Panel No. 10 was sworn.)

23 THE COURT: Okay. Y'all don't have to sit down again
24 because I'm going to ask you to retire to the jury room,
25 with the exception of Ms. Susan Kanipe.

1 (WHEREUPON, Juror Panel No. 10 exited the courtroom,
2 with the exception of Juror #194, Susan Kanipe.)

3 (Juror #194, Susan Kanipe, a white female, was
4 seated.)

5 THE COURT: Ms. Kanipe, I appreciate you being here.
6 And since you're the first, you're probably going to be a
7 little more apprehensive than anybody else. But I just
8 want you -- if there was some way I could throw some magic
9 dust on you and have you relax, that's what I would do.
10 But, of course, we understand you can't do that. I will
11 tell you that everyone in the courtroom knows and
12 understands the position you're in. And if you're feeling
13 a little nervous, a little anxious about this, then that
14 is completely normal. I want to tell you and assure you
15 that no one will attempt to in any way embarrass you or
16 humiliate you with this. They don't want to do that.
17 And, you know, through all these other people that we've
18 been through, they have not even, you know, seen the
19 horizon of doing that with anybody. So just don't -- feel
20 comfortable about that.

21 The other thing that I want to tell you is that what
22 we're looking for are your candid, complete, truthful
23 responses to these questions. And this is a very serious
24 and solemn proceeding and so it's very important that you
25 be completely honest and forthright. And what we're

1 looking for are just your heartfelt responses to these
2 questions.

3 The subject matter is going to be fairly limited.
4 It's not a wide ranging inquisition of any kind. We're
5 going to be interested in knowing if you know anything
6 about this case, if you can be fair and impartial, and
7 then we need -- because of the nature of the case, we need
8 to talk to you about your views on the death penalty.

9 Now, I know a lot of people consider that to be very
10 personal and private. A lot of people are conflicted
11 about it. And we all understand that. So all we ask is
12 that you be honest and forthright about that and tell us
13 how you feel deep down inside. And I can promise you
14 there are no right or wrong answers. Your answers will
15 not be judged by -- against any standard, and there will
16 be no test that you're taking in any way. Okay. The only
17 correct answers are your answers.

18 Now, I want to tell you -- because we're going to
19 talk about the case, I want to go through the indictments
20 a little bit and make sure that we're on the same page
21 about what we're talking about. The first one is an
22 indictment for murder that alleges that Fredrick Antonio
23 Evins did in Spartanburg County on or about February 13th,
24 2003, feloniously, willfully, and with malice aforethought
25 kill Rhonda Marie Ward. The next indictment is for

1 kidnapping. It alleges that Mr. Evins did on or about the
2 same date unlawfully seize, confine, and kidnap Rhonda
3 Marie Ward. The next indictment is for criminal sexual
4 conduct. And it alleges that Mr. Evins did in Spartanburg
5 County on or about the same date, which is February 13th,
6 2003, willfully and unlawfully commit a sexual battery
7 upon Rhonda Marie Ward. And, finally, grand larceny
8 alleges that Mr. Evins did in Spartanburg County on or
9 about the same date feloniously take and carry away a 1993
10 Nissan Sentra and its contents belonging to Rhonda Marie
11 Ward.

12 Now, we recognize -- those are -- and let me tell you
13 again, the indictments are not evidence and not to be
14 considered as evidence. They're just allegations typed on
15 a piece of paper.

16 Now, we recognize there's been publicity about the
17 case. It's been on TV, in the newspaper, and on the
18 radio. So the first thing -- the first question I would
19 like to ask you is, have you heard, read, or seen anything
20 about this case? There's nothing wrong if you have.

21 JUROR #197, SUSAN KANIPE: I might have when it
22 occurred, but since that time, I would say, no. I mean,
23 I'd have to ask a question about exactly what it is. But
24 I might have when it initially occurred in February of
25 2003, but not since.

1 THE COURT: It was an event that allegedly occurred
2 over in Drayton, the Drayton community.

3 JUROR #197, SUSAN KANIPE: At a store?

4 THE COURT: Yes, at a cigarette store.

5 JUROR #197, SUSAN KANIPE: Yes, at the time, but not
6 since.

7 THE COURT: Okay. Tell me what you can remember
8 about what you read, heard, or saw.

9 JUROR #197, SUSAN KANIPE: That she had gone into
10 work that morning and someone had met her in the parking
11 lot, supposedly, and she, actually, did not go into work.
12 She had left in her car. And then several days later, she
13 was found in an apple orchard.

14 THE COURT: That's a pretty good memory.

15 All right. Well, anything else that you've heard,
16 read, or seen?

17 JUROR #197, SUSAN KANIPE: No, not since she was
18 found. I mean, I knew someone had been -- a suspect had
19 been apprehended or -- but, I mean, I couldn't have told
20 you if that person -- and they didn't investigate anybody
21 else. I don't know anything about that.

22 THE COURT: You don't remember anything about the
23 circumstances of that person being arrested?

24 JUROR #197, SUSAN KANIPE: No, just that there was
25 someone that was initially arrested.

1 THE COURT: Okay. Very good. I want to tell you,
2 you understand your oath would require you to put aside
3 and disregard anything you had previously read, seen, or
4 heard about this case?

5 JUROR #194, SUSAN KANIPE: Yes.

6 THE COURT: And that if you were -- because the law
7 requires that the case be decided on the facts presented
8 in evidence at trial.

9 Do you understand that?

10 JUROR #194, SUSAN KANIPE: Yes.

11 THE COURT: Could you serve as a fair and impartial
12 juror and reach a verdict based solely on the facts
13 presented at trial and in accordance with my instructions
14 on the law?

15 JUROR #194, SUSAN KANIPE: I believe that I could.

16 THE COURT: Okay. Have you formed any kind of
17 opinion about the facts in this case?

18 JUROR #194, SUSAN KANIPE: No, sir.

19 THE COURT: All right. Have you formed any kind of
20 opinion about the guilt or innocence of Mr. Evins?

21 JUROR #194, SUSAN KANIPE: No, sir.

22 THE COURT: Now, keeping in mind the legal principles
23 of the presumption of innocence and the State's obligation
24 to prove guilt beyond a reasonable doubt, could you,
25 depending upon the facts and circumstances and the

1 evidence presented at trial and the law that I would give
2 to you, could you find a defendant either guilty or not
3 guilty based on the evidence?

4 JUROR #194, SUSAN KANIPE: Yes.

5 THE COURT: All right. Your mind is not made up one
6 way or the other?

7 JUROR #194, SUSAN KANIPE: No, sir.

8 THE COURT: Okay. Now, please remember, we might not
9 even reach the second or the sentencing phase of the case,
10 but since we possibly could, I need to talk to you a
11 little bit about your views on the death penalty. When a
12 jury moves to the sentencing phase or the second phase of
13 a trial, that same jury will have already determined and
14 found the defendant guilty of murder.

15 So in the second phase of the trial, there won't be
16 any consideration of the guilt or innocence. There won't
17 be any exploring or discussion about a legal defense to
18 the charge. It's already decided. And you would hear in
19 the second phase, as I've told you, evidence in mitigation
20 and evidence in aggravation.

21 Now, your oath would require you to abandon any
22 preconceived notions that you might have and follow the
23 law as I instruct it. And your oath would require that
24 you give serious and meaningful consideration to all the
25 evidence in aggravation and all the evidence in

1 mitigation. Could you follow your oath and do that?

2 JUROR #194, SUSAN KANIPE: Yes, sir.

3 THE COURT: All right. Now, if you were a juror --
4 this is a hypothetical question. If you were a juror in
5 that situation, the second or sentencing phase of the
6 case, could you, depending upon the particular facts and
7 circumstances that were placed into evidence, including
8 the consideration of all the evidence in mitigation and
9 aggravation and the law that I would give you, could you
10 return a sentence of life in prison?

11 JUROR #194, SUSAN KANIPE: Yes, sir.

12 THE COURT: All right. The second hypothetical, if
13 you were a juror in that same scenario, the same second
14 phase where the guilt has already been established, could
15 you, depending upon the particular facts and circumstances
16 in evidence and considering all the evidence in
17 aggravation and in mitigation and the law that I would
18 give you, could you return a sentence of death?

19 JUROR #194, SUSAN KANIPE: I don't know. I mean, I
20 just don't know.

21 THE COURT: Well, let me tell you this, no one has --
22 no juror yet has -- that we've talked to has faced that
23 decision before.

24 JUROR #194, SUSAN KANIPE: Right.

25 THE COURT: So, clearly, it's uncharted territory.

1 JUROR #194, SUSAN KANIPE: I -- in reading the papers
2 that were in the room, I would be in the third group in
3 that I don't think that the death penalty is for every
4 murder and I don't think that no one should get it.

5 THE COURT: Okay.

6 JUROR #194, SUSAN KANIPE: But I don't know not ever
7 having been put in that situation before. But from what
8 you've said, there are certain criteria that have to be
9 met in order for the death penalty to be the decision. So
10 I would hope I could use those as guidelines.

11 THE COURT: You absolutely could. I would instruct
12 you fully on the law. So I guess my question is, could
13 you, depending on the facts and circumstances --

14 JUROR #194, SUSAN KANIPE: And based on the law?

15 THE COURT: Based on the law.

16 JUROR #194, SUSAN KANIPE: Yes.

17 THE COURT: Could you return a death verdict?

18 JUROR #194, SUSAN KANIPE: Yes.

19 THE COURT: In the event of a death sentence, the law
20 requires that it be unanimous and that all the jurors
21 agree. And it also requires that all the jurors sign
22 their name to a death penalty verdict form. Could you
23 sign your name to a death verdict?

24 JUROR #194, SUSAN KANIPE: Yes.

25 THE COURT: Now, you've already answered my next

1 question, which was what type of juror you considered
2 yourself to be. So you would want to hear everything
3 before you made a decision?

4 JUROR #194, SUSAN KANIPE: Yes.

5 THE COURT: If you were selected, would you honor
6 your oath and serve as a fair and impartial juror and
7 approach jury service with an open mind to find the truth
8 from the evidence and the law as I instructed it?

9 JUROR #194, SUSAN KANIPE: Yes, sir.

10 THE COURT: All right. Do you know of any reason why
11 you could not serve in this case?

12 JUROR #194, SUSAN KANIPE: No, sir.

13 THE COURT: All right. Now, before I turn the
14 questioning over to the attorneys, I want to inform you,
15 as I told you on Monday, that this case will include
16 sequestration. So if you are qualified as a juror in this
17 case, then you'll be allowed to go home, but we will be
18 selecting the jury this afternoon, I anticipate. So you
19 would need to go home and pack your belongings, if you're
20 qualified, for five to seven days. You would be staying
21 at the Marriott Hotel. And, as I said, we anticipate five
22 to seven days is what we're thinking about. Okay.

23 JUROR #194, SUSAN KANIPE: Yes, sir.

24 THE COURT: All right. I'll turn the questioning
25 over to the attorneys at this time.

EXAMINATION

1
2 BY MS. QUIMBY:

3 Q Hey, Ms. Kanipe. My name is Karen Quimby. I
4 introduced myself to everybody on Monday. This is Tam
5 Boggs, in the middle, and Chris Brough. And we represent
6 Fredrick Evins. Thank you for coming here today and
7 Monday. We appreciate it.

8 Just a couple of questions, if you don't mind. What
9 are your views on the death penalty, your general views?

10 A Well, I don't believe that in the case of a murder
11 that everyone that murders deserves the death penalty.
12 And that the decision should be based on the evidence of
13 the case and, I guess, as I learned today, the law of the
14 state. And I don't know.

15 Does that answer your question?

16 Q Sure. There aren't any right or wrong answers.
17 There's just your opinion. That's all we're asking.

18 Do you know where the basis for your views comes
19 from? Is it religious upbringing or anything
20 else?

21 A I don't know that I would base it on my religion,
22 necessarily. Because I think you can find points of view
23 on both sides in the Bible. I guess I base it on being an
24 American citizen and being somewhat informed of what we do
25 related to murder and crimes like that and the death

1 penalty and life imprisonment.

2 Q Okay. So do you -- so you believe that in certain
3 circumstances the death penalty is an appropriate
4 punishment for murder?

5 A According to our law, yes.

6 Q Okay. And you believe in circumstances that warrant
7 it that life without the possibility of parole would be an
8 appropriate punishment for murder?

9 A Yes.

10 Q Okay. If you had -- if you were to serve on the
11 jury, the first phase, as Judge Miller told you, would be
12 a trial where you would be deciding whether Mr. Evins is
13 guilty or not guilty of murder. If you found that he were
14 guilty and you advanced to the second phase or second
15 trial, the sentencing or penalty phase, do you think that
16 you would also be able to consider mitigating
17 circumstances in addition to aggravating circumstances?

18 A Yes, ma'am.

19 MS. QUIMBY: Thank you.

20 One second, please.

21 (Pause.)

22 MS. QUIMBY: Ms. Kanipe, thank you so much for
23 answering my questions. We appreciate it.

24 MR. GOWDY: May it please the Court, Your Honor?

25 THE COURT: Yes.

EXAMINATION

BY MR. GOWDY:

Q Good morning, ma'am.

A Good morning.

Q My name is Trey Gowdy. And this is John Anthony to your left, and Barry Barnette in the middle. The three of us represent the State of South Carolina. We're what they call prosecutors.

Thank you for filling out the questionnaire. It asks a lot of personal questions that I wouldn't ask you if we just ran into each other at Wal-Mart or the grocery store. But, obviously, we have to have answers to them. And you provided thoughtful answers to the Judge and to Ms. Quimby. And I just want to follow up on a couple of things.

You, twice, I think, conditioned your answer on "according to the law."

A Uh-huh.

Q And I want to make sure -- the Judge, obviously, did a good job doing it. But I want to make sure that you understand the law is never going to tell you that you have to impose the death penalty. Do you understand that?

A Yes.

Q You will, no matter what kind of case it is, always have the option of life in prison. Understanding that,

1 can you see yourself ever voting to impose death?

2 A From what the Judge said, there would be some
3 mitigating and aggravating circumstances --

4 Q Yes.

5 A -- that would either lead you to life in prison or
6 the death penalty.

7 Q Yes. That is correct to this extent, all murder
8 cases are not equal.

9 A Right.

10 Q You would agree with me on that?

11 A Yes.

12 Q All murder cases are not death penalty eligible.

13 Some are, some are not. What distinguishes -- there's no
14 such thing as the average murder. But what distinguishes
15 these murders from potentially capital murders is what we
16 call aggravating circumstances, which are a list of
17 conditions that our General Assembly has said can, if
18 proven, make this case more aggravated. The Defense may
19 or may not -- whatever they want to do. They may present
20 mitigation, they may not.

21 What I'm trying to ask you is, if the State proves 11
22 different aggravating circumstances, you will never be
23 required to impose the death penalty. The Judge won't
24 tell you that you have to. I can't tell you that you have
25 to. What I'm asking is -- because you said "according to

1 the law," I want to make sure -- the law is never going to
2 say, Ms. Kanipe, you have to impose the death penalty.

3 A Right. Because then there wouldn't be a jury to make
4 the decision.

5 Q Right. And what I'm asking is, do you still think
6 you could do it?

7 A Yes, sir.

8 Q In your own well of souls?

9 A Yes, sir.

10 Q With nobody telling you that you have to?

11 A Yes, sir.

12 Q I notice -- if I read it right, you're the momma of
13 two children?

14 A Yes, sir.

15 Q Okay. Medical missionary?

16 A Yes, sir.

17 Q Nurse?

18 A Yes.

19 Q You and your husband have a Methodist church --

20 A He has one, yes.

21 Q You're the pastor's --

22 A I'm just a member.

23 Q Okay. Your position on capital punishment, has it
24 remained consistent throughout your life or have you --
25 has it evolved?

1 A It has evolved. I think I probably never had an
2 opinion on it until I did some reading. And I saw -- I
3 don't remember the name of the book, but then I did give
4 thought to -- actually, stepped back -- I mean, to think
5 about it. I mean, not to the sense that -- I don't know.
6 I just never have had anybody in our family that has been
7 a victim of a crime and we just have never had exposure to
8 it, other than the newspaper and public. And I think as
9 one ages, we tend to look at different aspects of life
10 than we did before. So I consider that I have evolved.

11 Does that answer --

12 Q That's perfect. I mean, that's -- you can't help but
13 evolve. Your children and other factors change the way we
14 look at life. If you decided -- if you believed that
15 death was the right verdict, would you be able to sign
16 your name to a death warrant and pass it up to the Judge?

17 A Yes. I mean, he has said that if that's the verdict
18 that that would be the expectation to do.

19 Q One more question. There's a Duke sticker on the
20 back of y'all's car?

21 A That's my husband.

22 MR. GOWDY: I just wanted to make sure.

23 Thank you.

24 THE COURT: Mr. Gowdy, are you satisfied?

25 MR. GOWDY: Yes, sir, absolutely.

1 THE COURT: All right. Ms. Kanipe, I'm going to
2 ask -- you can step down and come right over here. I want
3 to tell you that you are qualified and you continue to be
4 eligible to serve on the jury in this case.

5 So I'll give that to you to take. You're not going
6 to have a whole lot of time to do anything but pack, I'm
7 afraid. My secretary said -- I talked to her this morning
8 and she said, when do you intend to pick the jury? And I
9 said, well, we're going to continue to qualify this
10 morning and then pick them at 2:30. She said, you must
11 not have any women on that jury because they need more
12 than a couple of hours to pack. And I said, no, they can
13 do it. So you just have this morning to make
14 arrangements. You may or may not be selected on the jury,
15 so it may be that you packed for nothing.

16 JUROR #194, SUSAN KANIPE: Okay.

17 THE COURT: But just in case, we need to go ahead and
18 get you to pack and be back --

19 Charlene, did I say 2:30?

20 THE CLERK: Yes.

21 THE COURT: At 2:30.

22 JUROR #194, SUSAN KANIPE: Are we allowed to share
23 that information that we're going to be sequestered?

24 THE COURT: Absolutely. Just tell them that you're
25 going to be sequestered and that you'll be staying at the

1 Marriott. And I'll just tell you this, your contact with
2 the outside world is going to be limited during this
3 trial.

4 And, of course, you'll be very safe. We will have
5 security officers who will be with you around the clock.
6 So there's no -- you don't have to worry about -- there's
7 no safety issues. And other than that, please don't talk
8 about the case. And if they start to say -- somebody
9 starts to say something, just tell them to please
10 don't.

11 JUROR #194, SUSAN KANIPE: Okay.

12 THE COURT: Because an innocent comment from someone
13 you love and trust or that you don't love just could
14 poison the well, so to speak, and we just don't want that
15 to happen.

16 JUROR #194, SUSAN KANIPE: Okay.

17 THE COURT: Thank you very much.

18 JUROR #194, SUSAN KANIPE: So we'll get a phone call?

19 THE COURT: No. We want you to come back at 2:30.

20 JUROR #194, SUSAN KANIPE: Oh, everybody is to come
21 back at 2:30?

22 THE COURT: The qualified jurors, yes.

23 (Juror #194, Susan Kanipe, was excused from the
24 courtroom.)

25 THE COURT: Bring the next juror in.

1 (Juror #155, Carole Hightower, a white female, was
2 seated.)

3 THE COURT: All right. I just have a message that
4 Dr. Seif called, his daughter has apparently been in an
5 accident and is paralyzed in Lexington County. We -- I am
6 going to -- he's qualified, I hate it, but we've got to
7 cut him loose.

8 THE CLERK: Call him?

9 THE COURT: Yes. Just call him and tell him that
10 everyone's thoughts and prayers are with him.

11 Ms. Hightower, I'm sorry. I didn't see you come in
12 the courtroom.

13 JUROR #155, CAROLE HIGHTOWER: That's okay.

14 THE COURT: We're going to go ahead. I guess you saw
15 Ms. Kanipe, the previous juror, went out on her own two
16 feet, so you're going to be fine, too. I just want to try
17 and put you at ease as best I can and let you know the
18 road map of what we're going to talk about. The subject
19 matters are going to include what you, if anything, know
20 about this particular case, whether or not you can be fair
21 and impartial. And because of the serious nature of the
22 proceedings, we need to talk to you about your views on
23 the death penalty. And I know that that is -- a lot of
24 people consider that to be a very personal, private issue.
25 A lot of people are conflicted about it and don't -- you

1 know, don't in their heart of hearts don't know exactly
2 how they feel. That is completely normal and natural.
3 But because of the serious nature of the charge, we do
4 need to talk to you about that.

5 And I would tell you that along those lines, there
6 are no right or wrong answers. There is not a litmus test
7 that you're going to have to match up against. No one is
8 going to make a judgment about what you think. And all we
9 need are candid, truthful, complete answers to all the
10 questions. And we recognize the nature -- the intrusive
11 nature of the questioning and everyone will be sensitive
12 to that, I promise you.

13 JUROR #155, CAROLE HIGHTOWER: Okay.

14 THE COURT: Now, in order for me to go forward with
15 this, I am going to go through the indictments in a little
16 more detail than I've given you so far, so I know that you
17 know we're talking about the same -- on the same page.
18 And I would emphasize these indictments are not evidence
19 and are not to be considered evidence in any way, manner,
20 shape, or form. They're just allegations.

21 The first one is an indictment for murder. It
22 alleges that Fredrick Antonio Evins did in Spartanburg
23 County on or about February 13th, 2003, feloniously,
24 willfully, and with malice aforethought kill Rhonda Marie
25 Ward. The next indictment is for kidnapping. It alleges

1 that Mr. Evins did on or about the same date unlawfully
2 seize, confine, and kidnap Rhonda Marie Ward. The next
3 indictment is for criminal sexual conduct. It alleges
4 that Mr. Evins did in Spartanburg County on or about the
5 same date, which is February 13th, 2003, willfully and
6 unlawfully commit a sexual battery upon Rhonda Marie Ward.
7 And, finally, the indictment for grand larceny alleges
8 that Mr. Evins did in Spartanburg County on the same date
9 feloniously take and carry away a 1993 Nissan Sentra and
10 its contents belonging to Rhonda Marie Ward.

11 Now, we recognize that there has been publicity about
12 this case on television, on the radio, and in the
13 newspaper. So my first question to you is, have you
14 heard, read, or seen anything at all about this case?

15 JUROR #155, CAROLE HIGHTOWER: Yes, sir.

16 THE COURT: If you would, just tell me about that.

17 JUROR #155, CAROLE HIGHTOWER: There again, just
18 working in a physician's office, a couple of the coworkers
19 probably back sometime back, you know, one of the girls,
20 her husband came in and said some stuff about who they had
21 arrested and they thought they were able to connect him
22 with another case. And that lady knew the librarian and
23 just that kind of thing. That was about it. We talked
24 about that a while back.

25 THE COURT: All right. That was a coworker who told

1 you about it?

2 JUROR #155, CAROLE HIGHTOWER: Yeah.

3 THE COURT: And you heard her husband talking about
4 it?

5 JUROR #155, CAROLE HIGHTOWER: No. Her husband told
6 her and she came in and talked to us, because she had
7 known that lady.

8 THE COURT: Did her husband have some special
9 connection?

10 JUROR #155, CAROLE HIGHTOWER: No. I think just at
11 the workplace, where he worked, they talked about it or
12 something like that.

13 THE COURT: Okay. Did you read anything in the
14 newspaper or see anything on TV?

15 JUROR #155, CAROLE HIGHTOWER: I saw something on the
16 news one night just, you know, about an arrest, but I
17 really didn't pay much attention. I was just sort of
18 cooking and heard the beginning, but not the end. And
19 that was really all -- a while back, you know. I haven't
20 really heard anything until I came here Monday about it
21 currently.

22 THE COURT: Okay. Well, let me just tell you that
23 under your oath, as a juror, you would be required to
24 disregard and put aside anything that you had read, heard,
25 or seen about this case. Because the law requires that

1 the case be tried solely on the evidence presented in the
2 courtroom.

3 Do you understand that?

4 JUROR #155, CAROLE HIGHTOWER: (Juror nodded.)

5 THE COURT: All right. And the reason for that is
6 that -- you know, we don't -- America is very -- has a
7 long-standing tradition that we don't lock people up or
8 convict them of crimes for -- based on gossip, and that
9 would include media coverage.

10 JUROR #155, CAROLE HIGHTOWER: Right.

11 THE COURT: Now, could you serve as a fair and
12 impartial juror and reach a verdict based on the facts --
13 solely on the facts presented at trial and in accordance
14 with my instructions on the law?

15 JUROR #155, CAROLE HIGHTOWER: I think so.

16 THE COURT: Could you put aside the -- what really
17 amounts to gossip about this case and decide it solely on
18 what's presented in the courtroom?

19 JUROR #155, CAROLE HIGHTOWER: I think so.

20 THE COURT: Okay. Well, your oath would require you
21 to do that.

22 JUROR #155, CAROLE HIGHTOWER: (Juror nodded.)

23 THE COURT: Okay. Now, you heard something about it,
24 have you in any way, large or small, or in any manner
25 whatsoever formed an opinion about the facts?

1 JUROR #155, CAROLE HIGHTOWER: I just didn't know --
2 don't know anybody and, no, not really.

3 THE COURT: Okay. Have you formed any opinion about
4 the guilt or innocence of Mr. Evins?

5 JUROR #155, CAROLE HIGHTOWER: No.

6 THE COURT: Okay. Now, keeping in mind the legal
7 principles of the presumption of innocence and the State's
8 obligation to prove guilt beyond a reasonable doubt, could
9 you, depending upon the facts and evidence presented at a
10 trial and the law that I would give you, could you find a
11 defendant either guilty or not guilty depending on what
12 the evidence showed you?

13 JUROR #155, CAROLE HIGHTOWER: I think so. But I
14 think that I would be -- I don't know. When I listen to
15 one side, I would probably be torn to that side, you know,
16 just real torn in the sense of watching a movie, you know,
17 listening to the one side, then I would feel he was
18 innocent. Then when I -- but I guess -- I think that I
19 would be able to form an opinion, but I think it would be
20 difficult just because I would be swayed, if that makes
21 sense to you.

22 THE COURT: Well, now that is a --

23 JUROR #155, CAROLE HIGHTOWER: I'm a very undecided
24 person, you know, in a sense.

25 THE COURT: Okay. Well, that is not -- that is an

1 admirable quality that you would listen to everything that
2 was said.

3 Okay. My question would be, you haven't made up your
4 mind beforehand one way or the other about guilt or
5 innocence?

6 JUROR #155, CAROLE HIGHTOWER: No.

7 THE COURT: Okay. Now, please remember that we may
8 not even reach the second phase of the trial. Okay. But
9 since it's a possibility, we need to talk about or discuss
10 with you your views on the death penalty. And I can tell
11 you're just a little bit sensitive about this.

12 JUROR #155, CAROLE HIGHTOWER: Yeah.

13 THE COURT: And I promise you to be just as easy with
14 you as possible. And, again, I remind you there's no test
15 that you're put up against. No judgments are going to be
16 made and no questions will be asked of you that hasn't
17 been asked of all these other people.

18 JUROR #155, CAROLE HIGHTOWER: Okay.

19 THE COURT: Now, when we move -- just to go through
20 it again, when we go to the sentencing phase, the jury --
21 that same jury would have already decided guilt, that the
22 defendant was guilty of murder.

23 So in the second phase, there is no issue or decision
24 about guilt because that's already decided. There's no
25 exploring a legal defense or theory about, you know, did

1 he do it or not do it. Okay. That's over with. The
2 second phase -- the only thing in the second phase you'll
3 be hearing will be the evidence in aggravation and the
4 evidence in mitigation.

5 So I tell you, your oath is going to require you to
6 put aside any preconceived notion that you have and to
7 follow the law as I give it to you. In other words, your
8 oath would require you to give serious and meaningful
9 consideration to all of the evidence in aggravation and
10 all of the evidence in mitigation. Could you follow your
11 oath and do that?

12 JUROR #155, CAROLE HIGHTOWER: Do you mean when it
13 comes to deciding about the death penalty or not? Is that
14 what you mean?

15 THE COURT: Well, when you're back there, could you
16 follow your oath and give serious and meaningful
17 consideration to both evidence put in to show aggravation
18 and evidence put in to show mitigation? Could you give it
19 serious and meaningful consideration, or would you just
20 blow it off and go, I don't want to listen to it?

21 JUROR #155, CAROLE HIGHTOWER: No. I wouldn't blow
22 it off and say that. I'm just not sure if I can make that
23 decision, that final decision.

24 THE COURT: Well, let me ask you then. Let me move
25 on to a hypothetical question. If you were a juror in

1 that situation, the second phase of a trial where the
2 jury -- and you'd be part of it -- had already decided
3 that the defendant was guilty of murder, could you,
4 depending upon the particular facts and circumstances
5 presented at trial and considering all of the aggravating
6 and mitigating circumstances and the law that I would
7 instruct you that applies, could you return a verdict of
8 life in prison?

9 JUROR #155, CAROLE HIGHTOWER: (Juror nodded.)

10 THE COURT: Your answer is "yes"?

11 JUROR #155, CAROLE HIGHTOWER: Yes.

12 THE COURT: Now, another hypothetical question, same
13 situation, you're a juror in that situation, part of the
14 jury that has already determined guilt of the defendant of
15 murder, could you, depending upon the particular facts and
16 circumstances presented at trial and after considering all
17 the mitigating and aggravating evidence and the law that I
18 would instruct you, could you return a sentence of death?

19 JUROR #155, CAROLE HIGHTOWER: No.

20 THE COURT: You seem very firm about that.

21 JUROR #155, CAROLE HIGHTOWER: (Juror nodded.)

22 THE COURT: Well, let me ask you, now, you told me
23 you were an indecisive person?

24 JUROR #155, CAROLE HIGHTOWER: I just don't think I
25 could do that.

1 THE COURT: Could you tell me a little bit about why?

2 JUROR #155, CAROLE HIGHTOWER: I just don't think
3 it's my right to decide for him to die.

4 THE COURT: All right. Well, we are certainly
5 respectful of that decision. I don't want you to -- it's
6 okay.

7 JUROR #155, CAROLE HIGHTOWER: I know.

8 THE COURT: Okay. Would you like a little cup of
9 water?

10 JUROR #155, CAROLE HIGHTOWER: Please [crying].
11 I'm sorry.

12 THE COURT: That's fine. When I said it's a very
13 personal matter, you know, it clearly is. And we're all
14 very well aware of that, and so I don't want you to feel
15 bad about it.

16 JUROR #155, CAROLE HIGHTOWER: I'm sorry.

17 THE COURT: No. That's fine. A lot of people, you
18 know, when they have to consider deeply these types of
19 things, it draws out a lot of emotion.

20 JUROR #155, CAROLE HIGHTOWER: I've been thinking
21 about it.

22 THE COURT: Okay. So just so I'm sure, there's
23 nothing that could convince you to do that?

24 JUROR #155, CAROLE HIGHTOWER: I don't think so.

25 THE COURT: Okay. Do y'all want to --

1 MS. QUIMBY: No.

2 THE COURT: Ms. Hightower, I want to thank you for
3 coming up here and for your sacrifices, being away from
4 your family, friends, and your work. And, particularly, I
5 want to thank you for sharing with us some of these deep
6 thoughts.

7 JUROR #155, CAROLE HIGHTOWER: I'm sorry.

8 THE COURT: You don't have to -- don't apologize. I
9 am going to excuse you from service and I wish you the
10 very best. And, please, just don't feel badly about this.

11 JUROR #155, CAROLE HIGHTOWER: Okay. I appreciate
12 you saying that to me.

13 Thank you.

14 THE COURT: Yes, ma'am.

15 (Juror #155, Carole Hightower, was excused from the
16 courtroom.)

17 THE COURT: Bring the next juror in, please.

18 (Juror #118, Tina Godfrey, a white female, was
19 seated.)

20 THE COURT: Ms. Godfrey, welcome to the courtroom.

21 JUROR #118, TINA GODFREY: Thank you.

22 THE COURT: I promise you it's not going to be bad.
23 Did you get a chance to see Ms. Hightower?

24 JUROR #118, TINA GODFREY: (Juror nodded.)

25 THE COURT: Well, let me just say, I was the only one

1 that questioned her. And she just had some deeply held
2 beliefs. And I told her and instructed her and asked her
3 to be completely honest with us and she was.

4 JUROR #118, TINA GODFREY: Yes, sir.

5 THE COURT: And she -- I also told her she has
6 nothing to be embarrassed or ashamed about and she
7 doesn't.

8 We're going to talk about -- what we're going to talk
9 about with you -- I want to give you a road map of where
10 we're going. And we will -- what we're going -- the
11 subject matter, generally, that we're going to talk about
12 with you is whether or not -- what you know about this
13 case and whether or not you can be fair and impartial.
14 And because of the serious nature of the case, we need to
15 talk about your views on the death penalty.

16 JUROR #118, TINA GODFREY: Okay.

17 THE COURT: Those are the subjects, generally, we're
18 going to talk about. And because you knew some people,
19 you may get asked a few questions about who you knew and
20 that sort of thing. But, generally, those are the
21 subjects, and we stick to that pretty well.

22 I want to tell you there are no right or wrong
23 answers. And the only correct answer that you can give is
24 your candid, honest, and complete answers to the questions
25 that we talk about. And sometimes that stirs emotions in

1 people. And that's fine. That is perfectly natural.

2 I want to tell you that a lot of people consider
3 their views on capital punishment to be very personal and
4 private. A lot of people are conflicted in their own mind
5 about what they believe. And that is normal and natural,
6 too. And that's all we're looking for. And I hope that
7 that won't be too intrusive.

8 JUROR #118, TINA GODFREY: Yes, sir.

9 THE COURT: Now, in order for us to do that, I need
10 to tell you a little bit about the indictments in this
11 case. And I need to tell you before I even tell you about
12 the indictments -- emphasize to you that this is not
13 evidence and shouldn't be considered in any way to be
14 evidence. These are the allegations that have been made
15 against Mr. Evins, which the duty is upon the State to
16 prove beyond a reasonable doubt.

17 Now, the murder indictment alleges that Mr. Fredrick
18 Antonio Evins did in Spartanburg County on or about
19 February 13th, 2003, feloniously, willfully, and with
20 malice aforethought kill Rhonda Marie Ward by stabbing.
21 The next indictment is for kidnapping. It alleges that
22 Mr. Evins did in Spartanburg County, same date, unlawfully
23 seize, confine, and kidnap Rhonda Marie Ward. The next
24 indictment is for criminal sexual conduct. It alleges
25 that Mr. Evins did in Spartanburg County on or about the

1 same date, February 13th, 2003, willfully and unlawfully
2 commit a sexual battery upon Rhonda Marie Ward. And,
3 finally, there's a grand larceny indictment that alleges
4 that Mr. Evins did in Spartanburg County on the same date
5 feloniously take and carry away a 1993 Nissan Sentra and
6 its contents belonging to Rhonda Marie Ward.

7 Now, we recognize there's been a lot of publicity
8 about this case, television, newspaper, and radio. And
9 the first question I would like to ask you is, have you
10 heard, read, or seen anything about this case?

11 JUROR #118, TINA GODFREY: No, sir. When I came in
12 to the Court the other day, there was a guy that was
13 sitting beside me and he said, do you know why we're here?
14 And I said, no, because I really did not know. And he
15 said that we were here because of a murder and somebody
16 stabbed somebody at a cigarette outlet.

17 And then when the attorneys and Mr. Evins came in, he
18 said, that's the guy that was on TV. Well, I thought he
19 was a reporter and I'm thinking this the whole time. And
20 then whenever he stood up is when I realized that he
21 wasn't the reporter, that he was, actually, the person
22 that was --

23 THE COURT: On trial?

24 JUROR #118, TINA GODFREY: Yeah. And I did -- that
25 morning when I was getting ready, I sometimes listen to

1 the news. I turn on the news in the bedroom so I can hear
2 the weather so I can know whether to dress my kids warm or
3 what to put on. And I did hear something to the effect
4 that some jurors were going to be picked in Spartanburg
5 County. But that was about -- you know, I was just
6 listening and getting ready.

7 THE COURT: Did it mention anything about the facts
8 of the case in any way?

9 JUROR #118, TINA GODFREY: It may have, but I just
10 picked up that there were so many people in Spartanburg
11 County that were going to get picked for a jury.

12 THE COURT: All right. You don't -- do you remember
13 who the juror was that you were sitting beside?

14 JUROR #118, TINA GODFREY: No, sir.

15 THE COURT: Okay.

16 JUROR #118, TINA GODFREY: I probably -- I mean, I
17 knew what he had on. I could probably tell you what he
18 had on, but as far as -- I probably couldn't pick him out.

19 THE COURT: All right. Well, I appreciate you
20 telling me that. Other than that, you hadn't seen
21 anything on the news or heard anything or read the paper
22 or anything about it?

23 JUROR #118, TINA GODFREY: No. But he did look
24 familiar to me once the guy told me -- said that he was on
25 the news. And that's when I thought he was a reporter.

1 Because I remember seeing his face on the news, but didn't
2 put it together.

3 THE COURT: Okay. Fair enough.

4 Let me just tell you that your oath as a juror would
5 require you to put aside anything that you have heard,
6 read, or seen about this case. Because the case is to be
7 decided only and solely from the facts presented in the
8 courtroom.

9 Do you understand that?

10 JUROR #118, TINA GODFREY: Yes, sir.

11 THE COURT: Okay. And anything less is just mere
12 gossip. And we don't -- Americans have a deep-seeded
13 belief that we don't do that. We don't try someone based
14 on gossip.

15 Now, could you serve as a fair and impartial juror
16 and reach a verdict based on the facts and solely on the
17 facts presented in the courtroom at trial and in
18 accordance with my instructions on the law?

19 JUROR #118, TINA GODFREY: Yes, sir.

20 THE COURT: Have you already form an opinion of any
21 kind about the facts in the case?

22 JUROR #118, TINA GODFREY: No, sir. Because I don't
23 really know any facts. I mean, that possibly sounds
24 ignorant, but I don't really have time to watch news or
25 anything else because of work and my kids. They keep me

1 busy.

2 THE COURT: Yes. How old are they?

3 JUROR #118, TINA GODFREY: I have a five-year-old, an
4 eight-year-old, and a 12-year-old.

5 THE COURT: Well, just one of those would be enough
6 to keep you busy.

7 JUROR #118, TINA GODFREY: Yes, sir.

8 THE COURT: Have you formed any opinion as to the
9 guilt or innocence of Mr. Evins?

10 JUROR #118, TINA GODFREY: No, sir.

11 THE COURT: Now, keeping in mind the legal principles
12 that I talked about before, the presumption of innocence
13 and the State's obligation to prove guilt beyond a
14 reasonable doubt, could you, depending on the facts and
15 the evidence presented at trial and the law that I would
16 give you, could you find a defendant either guilty or not
17 guilty depending on that evidence?

18 JUROR #118, TINA GODFREY: Yes, sir. I think I
19 could.

20 THE COURT: Your mind is not made up?

21 JUROR #118, TINA GODFREY: No, sir.

22 THE COURT: Now, please remember, we may not even
23 reach the second phase of the case. It may not happen.
24 But because it's a possibility, we need to talk to you
25 about -- with you about your views on the death penalty.

1 Now, when the jury moves to the sentencing phase or
2 the second phase of the trial, it means that that same
3 jury has already determined that the defendant is guilty
4 of murder. That decision is already made. So in the
5 second phase, you wouldn't be worried about a legal
6 defense and you wouldn't be questioning guilt or
7 innocence. That's over with, okay, done. And that same
8 jury has already decided that the defendant is guilty of
9 murder.

10 Now, in the second phase, what you would be presented
11 with would be evidence in aggravation and evidence in
12 mitigation. Those would be the types of things that you
13 would hear.

14 Do you understand that?

15 JUROR #118, TINA GODFREY: Yes, sir.

16 THE COURT: Your oath would require you to abandon
17 any preconception you might have and to follow the law as
18 I would give it to you. In other words, your oath would
19 require you to give serious and meaningful consideration
20 to all the evidence in aggravation and all the evidence in
21 mitigation.

22 Do you understand that?

23 JUROR #118, TINA GODFREY: Yes, sir. I think so.

24 THE COURT: Could you follow your oath and do that?

25 JUROR #118, TINA GODFREY: Yes, sir.

1 THE COURT: All right. Now, if you were a juror in
2 that situation, which is the sentencing phase, imagine
3 that, okay, you're on a jury that's already found a
4 defendant guilty of murder. Could you, based -- depending
5 upon the particular facts and evidence presented at trial,
6 including consideration of all the evidence in mitigation
7 and aggravation and the law that I would give you, could
8 you return a sentence of life in prison?

9 JUROR #118, TINA GODFREY: Yes.

10 THE COURT: All right. Now, the second hypothetical
11 question, the same scenario, you're a juror in the second
12 phase and the jury has already decided that the defendant
13 is guilty of murder, could you, depending upon the facts
14 and the evidence presented at trial and considering all
15 the evidence in aggravation and all the evidence in
16 mitigation and the law that I would give you, could you
17 return a death verdict?

18 JUROR #118, TINA GODFREY: I don't know.

19 THE COURT: Okay. That's the tough question. That
20 is the tough one. That's the tough one and it's where
21 you've got to kind of reach down deep.

22 JUROR #118, TINA GODFREY: Could I? Maybe. But
23 would I want to? I don't know. I don't think I would be
24 a good juror for that [crying].

25 THE COURT: All right. Let me get you a little cup

1 of water.

2 JUROR #118, TINA GODFREY: Okay.

3 THE COURT: I'll tell you what, we've been doing this
4 for what seems like forever, but, actually, for two and a
5 half days or so, but I must be getting mean.

6 JUROR #118, TINA GODFREY: No. It's just that I
7 don't know about -- I'm not God. I don't want to take
8 somebody's life. And, I mean, I just -- I don't know that
9 I could do that.

10 THE COURT: Okay. Well, it's a -- it really is -- I
11 mean, you've got to search deep within yourself and no one
12 in here wants any answer except your true answer. Okay.

13 JUROR #118, TINA GODFREY: Okay.

14 THE COURT: And no one wants anyone in here to go
15 against their deeply held beliefs. And that's all we want
16 to know is, where you stand on those issues.

17 JUROR #118, TINA GODFREY: I do think that certain
18 things may warrant the death penalty. I mean, you know,
19 but -- and then I think that some things may not. And I
20 would try to give -- you know, and I'm not saying that I
21 couldn't, but I'm just saying that that would be really
22 hard for me to do.

23 THE COURT: Okay. Well, that's, you know, a very
24 responsible statement, and I really appreciate that. But
25 you think that there are circumstances and facts that you

1 could hear along with all the aggravating evidence and the
2 mitigating evidence and you think there are facts where
3 you could give the death penalty, not that you'd want to,
4 but that you could?

5 JUROR #118, TINA GODFREY: I would hope that I could.
6 I mean, I would want to be fair. And I would hope that I
7 could, but I don't know that I could.

8 THE COURT: All right. So it's kind of a two -- I
9 get the sense there are two issues here. One, you believe
10 there are facts and circumstances where the death penalty
11 is warranted; right?

12 JUROR #118, TINA GODFREY: Yes, sir.

13 THE COURT: And then the other side of that equation
14 is that in that situation where you think it is warranted,
15 then you've -- that's where you kind of are not sure that
16 you can do it?

17 JUROR #118, TINA GODFREY: That I can do it.

18 THE COURT: But you think you could?

19 JUROR #118, TINA GODFREY: I would -- I mean, I want
20 to say that I'm a fair person and I want to -- I mean, I
21 believe that I am. But just to say that I want somebody
22 to die, I just don't know that I could do that [crying].

23 THE COURT: Okay. Take your time, ma'am, and,
24 please -- there's a Kleenex.

25 JUROR #118, TINA GODFREY: I'm fine. And I'm sorry.

1 THE COURT: No, good gosh. Listen, let me tell you,
2 it just shows you're being completely honest and doing
3 what I asked you to do. And I really, really appreciate
4 that.

5 Well, let me ask you this, let's say we're in a
6 situation -- are you ready to go forward?

7 JUROR #118, TINA GODFREY: Yes. I'm ready.

8 THE COURT: We're in a situation where you felt that
9 the facts and the circumstances and all the mitigating and
10 aggravating evidence and the law warranted a death
11 sentence, the jury gave a death sentence. The law
12 requires that it be a unanimous decision and the law
13 requires that each of the 12 jurors sign their name to a
14 death penalty verdict form.

15 Now, if you were in that situation, could you sign
16 your name to a death verdict?

17 JUROR #118, TINA GODFREY: If I felt that I was
18 doing -- I mean, if I felt in my own heart and in my own
19 self that it was the right thing, yeah, I could. Yeah, I
20 guess I could.

21 THE COURT: Okay. Well, do you recall the sheet with
22 the three types of jurors on it?

23 JUROR #118, TINA GODFREY: Yes, sir.

24 THE COURT: All right. How would you -- where do you
25 find yourself on that sheet, or do you find yourself on

1 that sheet?

2 JUROR #118, TINA GODFREY: I don't --

3 THE COURT: Do you remember it?

4 JUROR #118, TINA GODFREY: Yes, sir, I do.

5 I don't think that everybody deserves the death
6 penalty. I don't think that, so I wouldn't fall in that
7 group. I'm not totally against the death penalty as far
8 as just some people are really -- you know, they're really
9 totally against it. I do feel that sometimes it does
10 warrant it. So I guess maybe the other, the third group.
11 If I had to fall in one, I guess that would be it.

12 THE COURT: Is there a fourth group I missed?
13 Because I'm not very smart, I might have forgotten one.

14 JUROR #118, TINA GODFREY: Just that I could be in my
15 own group, the fourth group. I guess if I had to chose a
16 group I would be --

17 THE COURT: You would want to hear everything?

18 JUROR #118, TINA GODFREY: I would want to hear
19 everything, yes.

20 THE COURT: All right. Now, fair enough.

21 Now, let me ask you, if you were a juror in that
22 situation, could you, depending upon the particular facts
23 and circumstances of the case, including -- well, I didn't
24 turn the page. I'm sorry.

25 If you were selected and -- would you honor your oath

1 and serve as a fair and impartial juror and approach jury
2 service with an open mind to find the truth from the
3 evidence and the law as I would give it to you?

4 JUROR #118, TINA GODFREY: Yes, sir.

5 THE COURT: And do you know of any reason at all why
6 you could not serve?

7 JUROR #118, TINA GODFREY: I don't want to, not other
8 than that.

9 THE COURT: This is really where the rubber meets the
10 road, isn't it?

11 JUROR #118, TINA GODFREY: Yes, sir.

12 THE COURT: Okay. Well, I would tell you now that if
13 you're qualified that we're going to try and select a jury
14 this afternoon, so -- and it would be -- and that jury, if
15 you were selected, would be sequestered for five to seven
16 days at the new Marriott Hotel. So if you're qualified,
17 we would ask you to go home and pack for five to seven
18 days and be back here at 2:30. Okay.

19 JUROR #118, TINA GODFREY: Okay.

20 THE COURT: And you have -- your husband is there to
21 take care of the children?

22 JUROR #118, TINA GODFREY: Yes, sir, between him and
23 my mom.

24 THE COURT: All right. Well, thank you very much.

25 I'm going to let the attorneys question you a little

1 bit now.

2 MR. BARNETTE: May it please the Court, Your Honor?

3 THE COURT: Yes, sir.

4 EXAMINATION

5 BY MR. BARNETTE:

6 Q Good morning, Ms. Godfrey.

7 A Good morning.

8 Q My name is Barry Barnette. Trey Gowdy, John Anthony,
9 and I represent the Prosecution in this case. I need to
10 ask you a few questions. And there's no right or wrong
11 answers to them.

12 The first thing, I notice you have three children and
13 one is a five-year-old. And I know there's going to be
14 sequestration for, at least, five to seven days. Is that
15 going to be a hardship on you or especially your husband
16 and so forth, the children?

17 A It's going to be a hardship because I'll miss them.
18 But my mom helps me with my children as far as my kids are
19 concerned.

20 Q Do you take an active role in your kids and so forth?

21 A Yes, I do.

22 Q And do you take them back and forth to school?

23 A Actually, my work hours prevent me from doing that.
24 I take them to my mom's and she puts them on the bus. And
25 then they get off the bus at my mom's house and that's

1 where my husband picks them up.

2 Q So the sequestration won't -- you won't be thinking
3 about your children or anything like that?

4 A I'll miss my kids. Because I've never been away from
5 them, other than when me and my husband may go off for a
6 weekend or something, but I've never been away from them
7 for a week.

8 Q Okay. Will you be thinking about them during this
9 time?

10 A Yeah, I probably will.

11 Q One thing I notice was -- and, obviously, you're a
12 very emotional person?

13 A Yes, sir.

14 Q I notice you even put that down on your questionnaire
15 here and I noticed that when you were answering the
16 Judge's questions.

17 I need to ask you some questions about the death
18 penalty. Do you think that you could make a decision to
19 send somebody to death?

20 A I don't -- I would if -- I mean, if there was enough
21 evidence to -- you know, there are -- like I told him,
22 there are cases that I maybe could, but then there are
23 some that I don't think -- it would be hard for me.

24 Q Like I said, there are no right or wrong answers.

25 A Right.

1 Q And no one is expecting that. We just want to know
2 what your true feelings are. Do you think you could send
3 somebody to death?

4 A I think that if I feel that they're guilty and there
5 are certain circumstances that warrant it, I think that it
6 would be hard for me, but I think that I could. But do I
7 want to do it or do I -- I mean, I don't know what to say.

8 Q I understand. I see how emotional you are about this
9 issue. And I'm sorry about asking you questions about it,
10 but it's something we've just got to know because this is
11 a very serious case.

12 A Yes, sir.

13 Q Like the Judge said, you have to sign a death
14 warrant, sign your name to it in order for him to be
15 sentenced, and it has to be given to the Judge. Is that
16 something you could do?

17 A If I felt it was the right thing -- if I felt I was
18 making the right decision, I could -- signing my name was
19 backing what I felt, yeah, I probably could. Do I want to
20 do it? No.

21 Q With your emotions and everything, could you do it?

22 MS. QUIMBY: Your Honor, I've got to object. I think
23 she's answered that many times.

24 THE COURT: I think she's answered it.

25 So go ahead and move on.

1 MR. BARNETTE: Yes, sir.

2 BY MR. BARNETTE:

3 Q On the death sentence, it's passed around and
4 everybody has signed it and you're the twelfth person that
5 has to sign it, could you sign it?

6 A I could if I felt that that was the decision that was
7 the right decision to go with and the right punishment to
8 go with the crime. Do I want to? No.

9 Q Let me ask you about your opinion -- your feelings
10 about the death penalty. How do you feel about the
11 death -- or where does your feelings about the death
12 penalty come from? Does it come from church? Does it
13 come from personal experience?

14 A No. I just -- I guess the way I was raised and just
15 the family, I think, because I have a family. I have
16 children. And I know that no matter what those kids do,
17 they're mine and I love them. And when you put somebody
18 to death, it's -- whether they're being murdered or
19 whether they're being put in the electric chair or
20 whatever or the lethal injection or whatever, it's
21 effecting somebody's parents or somebody's family. And I
22 guess I just consider that.

23 Q Would that substantially impair your ability to serve
24 as a juror and to sign the death penalty, your feelings
25 about that?

1 A I mean, it would probably come into play because
2 those are my feelings. But do I think that it would -- I
3 mean, it would just depend on what evidence I saw or that
4 if I thought the person was guilty or not guilty or, you
5 know, just does that fit the crime.

6 Q Knowing that Mr. Evins may be the child of a mother
7 and so forth -- I know you just mentioned children --
8 could you sign the death warrant?

9 MS. QUIMBY: Your Honor --

10 THE COURT: Well, I'll allow him to ask about the
11 impact that it would have on her knowing about his mother.

12 MR. BARNETTE: Your Honor, I'm just following up with
13 the question.

14 THE COURT: Yes. Let's just give her a second.

15 Are you okay?

16 JUROR #118, TINA GODFREY: Yeah, I'm fine. I'm
17 sorry.

18 THE COURT: No. Please don't feel like you need to
19 apologize in any way at all.

20 Okay. I can't tell you how much everybody in the
21 courtroom appreciates your honesty and just being there.
22 None of us would want to be in that chair. So it's a
23 tough duty and we just thank you.

24 JUROR #118, TINA GODFREY: Tougher than I thought it
25 would be.

1 THE COURT: And I hope you'll find when it's over,
2 you're going to feel good because it gives you a chance to
3 explore your real feelings.

4 Thank you.

5 All right. Mr. Barnette.

6 BY MR. BARNETTE:

7 Q Going back to the question, knowing that Mr. Evins is
8 a son and has a mother, could you sentence him to death in
9 that situation?

10 A I feel like that if I felt that the evidence that was
11 presented warranted that, I feel like that I could make
12 that decision. Do I want to make it? No. But can I make
13 it? Yeah, I feel like I could. But I don't want to make
14 it.

15 Q You realize -- and the Judge will give you the law on
16 this, you never -- nobody will ever tell you, nobody in
17 the law will tell you that you have to send somebody to
18 death. They won't tell you A, B, or C is a death
19 sentence. Life without parole is always going to be an
20 option. It's always going to be there. You don't ever
21 have to sentence anybody to death. Knowing that, would
22 you always pick life without parole as an option?

23 A No, sir.

24 Q As a juror, I noticed you said you don't want to do
25 it.

1 A No.

2 Q Are you a person that believes in the death penalty,
3 but would not want to be the person imposing it?

4 A Yeah.

5 Q So you feel like the death penalty should be there,
6 but you wouldn't want to be the one to impose that?

7 A (Juror nodded.)

8 Q Knowing that, you don't feel like you could give a
9 death sentence if you felt like --

10 MS. QUIMBY: Your Honor, that's not what she just
11 testified to.

12 MR. BARNETTE: I'll rephrase the question.

13 THE COURT: All right.

14 BY MR. BARNETTE:

15 Q Knowing that the death sentence is always -- I mean,
16 you don't have to give that, life without parole is an
17 option. Do you feel like you would give life without
18 parole in those situations?

19 A I feel like if -- I mean -- what do you mean? Would
20 I chose life without parole or would I choose the death
21 penalty?

22 Q Well, just knowing that you may believe in the death
23 penalty, but feel like you don't --

24 A Personally?

25 Q Yes, ma'am.

1 A If the evidence is proven to me and, you know, I feel
2 in my heart that the death penalty may be warranted, I
3 feel like I could make that decision. But, again, I don't
4 want to. I mean, do I want to? Who wants to make a
5 decision like that?

6 Q I guess the bottom line is, could you, ma'am?

7 MS. QUIMBY: Your Honor --

8 MR. BOGGS: She's answered it three times.

9 JUROR #118, TINA GODFREY: Yes, I could make it.

10 MR. BARNETTE: One moment, Your Honor.

11 THE COURT: All right.

12 MR. BARNETTE: No further questions.

13 THE COURT: Okay. Take just a minute.

14 We're going to take just a second. I'll tell you
15 what, I need to take a little break.

16 Do you mind, Ms. Godfrey, if you step down off the
17 stand for a minute while I go down the hall?

18 JUROR #118, TINA GODFREY: No. That would be great.

19 THE BAILIFF: Your Honor, do you want her to leave
20 the courtroom?

21 THE COURT: Yes, she can.

22 (Juror #118, Tina Godfrey, was excused from the
23 courtroom.)

24 (WHEREUPON, a break was taken.)

25 (Juror #118, Tina Godfrey, was seated.)

1 THE COURT: Ms. Godfrey, you don't have a thing in
2 the world to apologize about, nothing. We appreciate your
3 honesty and frankness.

4 And so, at this time, I'm going to turn it -- go
5 through a little -- turn it over to the Defense and let
6 them ask you some questions.

7 JUROR #118, TINA GODFREY: Okay.

8 THE COURT: You're going to be fine, I promise you.

9 MS. QUIMBY: Hello, Ms. Godfrey. My name is Karen
10 Quimby. I introduced myself to everyone in the courtroom
11 on Monday. And that's Tam Boggs and this is Chris Brough.
12 And that is Fredrick Evins.

13 And I just wanted to apologize. I am so glad that
14 you were able to come back in here. And I'm glad that you
15 might be a juror on this case.

16 Thank you for coming on Monday and thank you for
17 coming today.

18 Thank you.

19 THE COURT: All right. Can I get you to just step in
20 the hallway for just a second?

21 JUROR #118, TINA GODFREY: Okay.

22 THE COURT: No more questions, I promise.

23 (Pause.)

24 THE COURT: Okay. Any objection?

25 MR. BARNETTE: Your Honor, one thing I wanted to

1 bring up first before I talk about the objection and so
2 forth. I noticed she has a child under five, and I asked
3 her about that and so forth. And I don't know if she
4 realizes that she may have an exemption with that. And I
5 know with #237, we had a situation where she had a younger
6 child and you informed her of the exemption. And I'd just
7 ask that you inform her of the same situation.

8 THE COURT: Well, we did. And I asked her about that
9 when I heard she had a younger child. She said that her
10 husband and her mother -- she could make adequate
11 arrangements for the care of the children. And she -- I
12 asked everybody the same thing about the exemptions.

13 MR. BARNETTE: I know. I just remember #237, she was
14 asked about small children. And I think the Court told
15 her she had the exemption. And, obviously, she could use
16 it, but she doesn't have to use it, obviously.

17 THE COURT: I think we've already covered that and
18 she has got adequate care. I mean, that is part of the
19 exemption, that she does not have adequate care. The
20 other woman, #237, could not provide adequate care. And I
21 specifically asked both them about that.

22 MR. BARNETTE: And the other thing, Your Honor, I
23 think -- and I know Your Honor saw the totality of the
24 circumstances, her emotional state, in answering your
25 questions. And, unfortunately, I didn't want to go into

1 the detail. I did what I had to -- what I felt like with
2 this juror. I mean, she got to the point where she was
3 just breaking down and just crying. And I don't think
4 that's an exaggeration.

5 She mentioned even answering your questions, I wrote
6 down, no, I don't want to take anybody else's life. I
7 hope that I could. I don't know. And at one point, she
8 said that she did believe in the death penalty, but she
9 did not think she could give it herself. And I think that
10 would substantially impair her ability to serve as a juror
11 on this case.

12 THE COURT: Okay.

13 MS. QUIMBY: Your Honor, I'm --

14 THE COURT: Well, I'm going to --

15 MS. QUIMBY: I'm sorry. Go ahead.

16 THE COURT: Whatever you want to say.

17 MS. QUIMBY: No, sir, Your Honor.

18 THE COURT: I am going to find that she is qualified.
19 She -- I agree with you that she's very emotional. She,
20 however, exhibited a lot of strength even though she's
21 suffering from her emotions. She did not waiver in her
22 reply to the questions. And so I don't think she's
23 disqualified on that basis. So we'll qualify her.

24 Let's bring her on back in.

25 (Pause.)

1 THE COURT: Hey, Ms. Godfrey.

2 JUROR #118, TINA GODFREY: Hey.

3 THE COURT: I'm going to give that to you. I'm going
4 to tell you, basically, what's on that form. You are a
5 qualified juror and you remain eligible to serve in this
6 case. So we anticipate -- I'm telling everybody to come
7 back at 2:30. We're going to select the jury at 2:30,
8 which means you need to go home and pack for five to seven
9 days and bring that back with you. You may or may not be
10 selected to serve, but you have to be prepared for that
11 when you come back.

12 In the meantime, please don't read, listen to, or
13 watch anything about this case. Don't talk to anybody
14 about the case. Of course, you've got to talk to somebody
15 about the sequestration, but don't let them talk to you
16 about the case. And I want to congratulate you and tell
17 you how proud everybody in the courtroom is of your
18 honesty and forthrightness.

19 So thank you very much.

20 JUROR #118, TINA GODFREY: So I have to come back
21 here at 2:30?

22 THE COURT: 2:30, yes, ma'am.

23 (Juror #118, Tina Godfrey, was excused from the
24 courtroom.)

25 THE COURT: I don't think there's a chance she'll

1 serve.

2 MR. GOWDY: I was going to say, I hate she has to
3 pack and unpack.

4 THE COURT: Of course, the same could be said about
5 some of the others.

6 MR. GOWDY: It has been.

7 THE COURT: Bring the next juror in, please.

8 (Juror #11, Shelton Benjamin, a black male, was
9 seated.)

10 THE COURT: Hi, Mr. Benjamin.

11 JUROR #11, SHELTON BENJAMIN: Good morning.

12 THE COURT: How are you doing?

13 JUROR #11, SHELTON BENJAMIN: Fine.

14 THE COURT: I know you had an opportunity to see Ms.
15 Godfrey and I hope that that won't put you in an
16 apprehensive mood. We're going through the same process
17 with everybody, and just some people's emotions are a
18 little bit closer to the surface than others.

19 JUROR #11, SHELTON BENJAMIN: Right.

20 THE COURT: I want to tell you a little bit about the
21 subject of what we're going to talk to you about. The
22 first part is -- well, the three topics, really, that
23 we're going to talk to you about is, one, if you know
24 anything about this case, two, can you be fair and
25 impartial, and, three, because of the serious nature of

1 the case, we need to talk to you about your views on the
2 death penalty. So those are the subject matters,
3 generally, we're going to talk to you about.

4 And I want to tell you that there are -- when we go
5 through that, I know, obviously, some people take the
6 discussion about the death penalty very, very seriously.
7 It's -- a lot of people regard it as a very personal issue
8 and a lot of people are conflicted about it and are not
9 sure what they think. So that is normal and natural if
10 you fit into one of those categories.

11 I want to tell you there are no right or wrong
12 answers to any of the questions. Your answers aren't
13 going to be put up and judged anywhere. There's no test
14 that you're taking or anything like that. The only
15 correct answers you can give us are your candid, truthful,
16 and complete answers to the questions.

17 JUROR #11, SHELTON BENJAMIN: Okay.

18 THE COURT: We're looking for your heartfelt feelings
19 about some of these issues.

20 Okay. Now, having said that, I'm going to tell you a
21 little bit more about the case by reading parts of the
22 indictments to you so you'll know a little bit more about
23 the facts, not a lot, but a little bit. And I want to
24 tell you that before I do that, the indictments are not
25 evidence and may never be considered evidence. They are

1 just allegations in the case.

2 JUROR #11, SHELTON BENJAMIN: Okay.

3 THE COURT: The first indictment alleges murder, that
4 Mr. Fredrick Antonio Evins did in Spartanburg County on or
5 about February 13th, 2003, feloniously, willfully, and
6 with malice aforethought kill Rhonda Marie Ward by
7 stabbing. The next one is for kidnapping. It alleges
8 that Mr. Evins did in Spartanburg County on or about the
9 same date unlawfully seize, confine, and kidnap Rhonda
10 Marie Ward. The next indictment is for criminal sexual
11 conduct. It alleges that Mr. Evins did in Spartanburg
12 County on the same date, February 13th of 2003, willfully
13 and unlawfully committed a sexual battery upon Rhonda
14 Marie Ward. And, finally, there's an indictment for grand
15 larceny that alleges that Mr. Evins did on or about the
16 same date feloniously take and carry away a 1993 Nissan
17 Sentra automobile and its contents belonging to Rhonda
18 Marie Ward. Those are the allegations in the case.

19 Now, we recognize that there has been a fair amount
20 of publicity about the case on television, in the
21 newspaper, and on the radio. And the first question I
22 want to ask you is, have you heard, read, or seen anything
23 about this case?

24 JUROR #11, SHELTON BENJAMIN: Not recently. I mean,
25 maybe about the time it happened, but I haven't been

1 keeping up with it.

2 THE COURT: Okay. What do you remember reading,
3 hearing, or seeing?

4 JUROR #11, SHELTON BENJAMIN: It might be just
5 exactly what you said. I mean, I really don't keep up too
6 much. There's a lot of incidents pretty similar to that
7 on the news lately, so I really don't keep up too much
8 with the events.

9 THE COURT: Well, let me tell you, following your
10 oath, as a juror, would require you to put aside and
11 disregard anything that you had heard, read, or seen about
12 the case outside of the courtroom.

13 JUROR #11, SHELTON BENJAMIN: I understand.

14 THE COURT: And it would require you to make a
15 decision or to decide the facts solely from the evidence
16 presented in the courtroom.

17 Do you understand that?

18 JUROR #11, SHELTON BENJAMIN: Yes, I do.

19 THE COURT: Could you serve as a fair and impartial
20 juror and reach a verdict based on the facts presented at
21 trial and in accordance with any instructions on the law?

22 JUROR #11, SHELTON BENJAMIN: Yes, I could.

23 THE COURT: Have you already formed an opinion about
24 the facts in any way?

25 JUROR #11, SHELTON BENJAMIN: No. I don't know even

1 know the facts so, no, I haven't.

2 THE COURT: Have you already formed an opinion as to
3 the guilt or innocence of Mr. Evins?

4 JUROR #11, SHELTON BENJAMIN: No. I can't do it
5 without knowing what's going on so, no, I haven't.

6 THE COURT: Now, keeping in mind those legal
7 principles I talked about, the presumption of innocence
8 and the obligation of the State to prove guilt beyond a
9 reasonable doubt, could you, depending upon the facts and
10 the evidence and the law presented at a trial, could you
11 find a defendant either guilty or not guilty depending on
12 what that -- all that evidence showed you?

13 JUROR #11, SHELTON BENJAMIN: Yes, I could.

14 THE COURT: So your mind is not made up one way or
15 the other?

16 JUROR #11, SHELTON BENJAMIN: Not until I know
17 exactly what's going on, no, it's not.

18 THE COURT: Now, please remember, we might not even
19 reach the second or sentencing phase of the trial, but
20 because it's a possibility, I need to talk to you a little
21 bit about that.

22 When a jury moves to a sentencing phase or the second
23 phase, it means that that same jury has already determined
24 that the Defendant in that case is guilty of the charge of
25 murder. They have already decided that issue. So in the

1 second phase, the jury is not concerned with any theories
2 of defense -- any legal defense to a case because the
3 issue of guilt is over with and decided.

4 Now, in the second part of the trial, the only thing
5 that the jury would be listening to would be the evidence
6 in aggravation and the evidence in mitigation. Now, your
7 oath would require you to put aside any preconceived
8 notion you might have and to follow the law as I instruct
9 it to you. It would require you -- your oath would
10 require you to give serious and meaningful consideration
11 to all of the evidence in aggravation and all of the
12 evidence in mitigation.

13 Do you understand that?

14 JUROR #11, SHELTON BENJAMIN: Yes, sir, I do.

15 THE COURT: And could you follow your oath and do
16 that?

17 JUROR #11, SHELTON BENJAMIN: Yes, I could.

18 THE COURT: Now, a hypothetical question for you, if
19 you were a juror in that situation, the second part of the
20 trial, guilt -- you've already decided guilt on murder,
21 could you, depending upon the particular facts and
22 circumstances presented at the trial, including
23 consideration of all of the evidence in mitigation and all
24 of the evidence in aggravation and the law that I would
25 give to you, could you return a verdict of life

1 imprisonment?

2 JUROR #11, SHELTON BENJAMIN: It depends on what we
3 decide, what we hear in mitigation, yes.

4 THE COURT: Okay. Now, same factual scenario,
5 another question, a juror in that same situation, a
6 defendant guilty of murder, could you, depending on the
7 particular facts and circumstances and the evidence
8 presented at trial, along with the mitigating and
9 aggravating circumstance and the law that I would give
10 you, could you return a sentence of death?

11 JUROR #11, SHELTON BENJAMIN: Yes, depending on the
12 facts, yes.

13 THE COURT: In the event of a death sentence, the law
14 requires that that would be a unanimous decision, all the
15 jurors have to agree and all the jurors have to sign their
16 name to a death sentence verdict form. Could you sign
17 your name to a death verdict?

18 JUROR #11, SHELTON BENJAMIN: Yes. If we decided it,
19 yes.

20 THE COURT: Do you recall the sheet that listed the
21 three types of jurors I had you look at?

22 JUROR #11, SHELTON BENJAMIN: Yes.

23 THE COURT: Where would you put yourself?

24 JUROR #11, SHELTON BENJAMIN: Number three.

25 THE COURT: You'd want to hear everything before you

1 made a decision?

2 JUROR #11, SHELTON BENJAMIN: Absolutely everything.
3 It's a most important decision to make, yes.

4 THE COURT: All right. Thank you.

5 Now, if you were selected, would you honor your oath
6 to serve as a fair and impartial juror and approach jury
7 service with an open mind to find the truth from the
8 evidence and the law?

9 JUROR #11, SHELTON BENJAMIN: Yes, I would.

10 THE COURT: Do you know of any reason why you could
11 not serve?

12 JUROR #11, SHELTON BENJAMIN: No.

13 THE COURT: I'm going to turn you over to the
14 attorneys in just a second and let them question you a
15 little bit. Before I do that, I want to tell you, if you
16 are determined to be a qualified juror, then this
17 afternoon -- we're going to strike -- or swear the jury
18 this afternoon at 2:30. So if you're qualified, I would
19 need to ask you to go home and pack for five to seven
20 days, because you'll be coming back. Now, you might not
21 get selected and you might be packing for nothing.

22 JUROR #11, SHELTON BENJAMIN: Right.

23 THE COURT: But if you're selected, you've got to be
24 ready to go. And you would be staying over at the
25 Marriott Hotel.

1 JUROR #11, SHELTON BENJAMIN: Okay.

2 THE COURT: Thank you.

3 EXAMINATION

4 BY MR. BOGGS:

5 Q Good morning, Mr. Benjamin.

6 A Good morning.

7 Q How are you?

8 A Fine.

9 Q My name is Tam Boggs. I'm one of the attorneys
10 representing Mr. Evins in this case, along with Karen
11 Quimby, this lady here, and the man at the end is Chris
12 Brough. Okay.

13 A Okay.

14 Q I appreciate you filling out your questionnaire.
15 That saves us a lot of time and gives us a little insight.
16 And it also shows that you're responsible, so we do
17 appreciate you doing that.

18 I want to ask you a couple of questions about the
19 questionnaire and some of what Judge Miller talked to you
20 about. When you listed a school, you had W.V.U., is that
21 West Virginia --

22 A West Virginia University, yes, sir.

23 Q So you attended West Virginia University for a period
24 of time; is that right?

25 A Yes, sir.

1 Q Do you still keep up with their football?

2 A I try to, but I haven't been able to. I work a lot,
3 seven days sometimes. I keep up with the highlights.

4 Q Well, I keep up with Clemson and we don't like that
5 you've got our coach up there. We want you to send him
6 back to us.

7 A When I was there, we didn't like Lou Holtz for South
8 Carolina now. He was for Notre Dame.

9 Q There may be a rating party going up there if Coach
10 Holtz leaves, they may want him back -- I mean, want
11 Rodriguez. I also see that your wife works at Walker; is
12 that correct?

13 A Yes.

14 Q Do you ever go to any of those ball games?

15 A No. My son might want to go this weekend, but I
16 don't know.

17 Q They've got pretty good football over there. See,
18 that's my school, so I'm kind of partial to them.

19 A Okay.

20 Q You were a Marine?

21 A Yes.

22 Q And you have worked in the past as a security guard,
23 I believe; is that correct?

24 A Yes.

25 Q When was that approximately?

1 A 1995, 1996.

2 Q Okay. And was that in South Carolina or was that --

3 A No. That was in -- actually, in Atlanta.

4 Q And you now work at Spartanburg Steel?

5 A Spartanburg Steel.

6 Q You're a CMM programmer?

7 A It's a coordinate measurement machine. What we do is
8 write programs for new parts that want to be introduced in
9 the car line for BMW, Mercedes, whoever. If they want to
10 introduce it for the next year models, we write programs
11 to check the parts out before we can stamp them.

12 Q I think that's way out of my league. I'm not sure
13 exactly what you're talking about, but it deals with
14 computers and that kind of thing?

15 A Yes, definitely.

16 Q Mr. Benjamin, just tell me very briefly what are your
17 feelings on the death penalty? Do you have a formed set
18 of feeling?

19 A No. If the punishment fits the crime, that's the
20 only feeling I have about it. I can't really decide one
21 way or the other.

22 Q Well, do you recognize that it's a part of the law?

23 A Yes, sir.

24 Q And you feel if a particular case warrants it, then
25 you could?

1 A Yes.

2 Q But by the same token, if a particular case, even
3 though it might be murder, has circumstances that doesn't
4 warrant it, there is always an option of life without
5 parole.

6 Do you understand that?

7 A According to the law, yes.

8 Q Now, backing up even further, though, if you're
9 selected on the jury, you understand that just because
10 Mr. Gowdy has designated this as a death penalty case,
11 there hasn't even been a trial on the case?

12 A Right.

13 Q And the first thing that has to be done is there has
14 to be a trial. The only reason we're going through this
15 portion is that it's important to the Court that we
16 explore the opinions about the death penalty. But if you
17 go to trial and you're on the jury, everything we're
18 talking about now has to be put outside of the courtroom.
19 It won't have anything to do with the trial.

20 Do you understand that?

21 A Yes.

22 Q Okay. And if you're put on the jury, it will be just
23 like any other trial, the Defendant is presumed innocent.

24 A Yes, sir.

25 Q The State has to prove -- or put up their evidence in

1 an attempt to prove beyond a reasonable doubt that he is
2 guilty. And you'll make a decision only on that evidence,
3 not anything else that you've heard before.

4 Do you understand that?

5 A Yes.

6 Q And do you think you could do that?

7 A Yes.

8 Q And just the designation that this could be a death
9 penalty situation would not have any influence on the
10 first part of the trial; is that correct?

11 A No, not at all.

12 MR. BOGGS: Okay. Well, again, I appreciate you
13 filling this out and I appreciate you being here.

14 Thank you very much.

15 THE COURT: All right.

16 MR. BARNETTE: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 EXAMINATION

19 BY MR. BARNETTE:

20 Q Hello, Mr. Benjamin.

21 A Good morning.

22 Q Good morning. My name is Barry Barnette. Along with
23 me is Trey Gowdy and John Anthony. We'll be representing
24 the State. I just want to ask you a few questions. I
25 appreciate you filling out the questionnaire, too.

1 And I did notice you went to Western University up
2 there. You went in 1988?

3 A Yeah. Morgantown in '88 was pretty hot.

4 Q It was. Don Elinio was the coach and everything?

5 A He was, yeah.

6 Q Maybe running or throwing the ball?

7 A They put him in the Fiesta Bowl that year.

8 Q That was a big win. They beat Notre Dame. I know
9 exactly what you're talking about. But I do appreciate
10 you filling it out. It's always good to see people from
11 West Virginia down here.

12 I noticed you had an arrest, theft by taking -- and I
13 appreciate you filling it out. And, basically, I think
14 you said that other people had done it and you just --

15 A Yeah. I was the supervisor on the docks. And, I
16 mean, I knew what was going on, but I didn't do anything
17 to stop it or report it. Because, at that time, I was 25.
18 I was a young guy and didn't know about responsibility too
19 much. I had one child and the second was on the way.
20 But, you know, it's been a long time and I've had a long
21 time to grow up.

22 Q I understand that. Do you remember what the sentence
23 was for that?

24 A Actually, it was all probated, five years probated
25 sentence. I had to report to my probation officer twice a

1 month and then it dropped to once a month. Once the fines
2 were paid, there was nothing else to do.

3 Q Do you remember what the top of the sentence was?
4 Was it five years suspended to probation?

5 A Yes.

6 Q Five years suspended to probation?

7 A Yes.

8 Q I just wanted to follow-up, I know Mr. Boggs asked
9 you about your views on the death penalty. If you -- have
10 you -- what would you draw about your views on the death
11 penalty, from your church experiences, from life
12 experiences, where would you draw from that?

13 A I really wouldn't draw anything until I found out
14 what was, actually, going on. I know that's part of the
15 law to enforce the death penalty, but it's not always
16 required to that full extent. You can always go with life
17 or a reduced sentence. I mean, I would have to hear the
18 facts before I could tell you, but if it's warranted, it's
19 warranted. Certain things do warrant the death penalty.

20 Q Well, it sounds like you pretty well understand just
21 because A, B, and C is proven --

22 A Right. You can't just jump straight to it. You need
23 to know what's going on, because it might not require
24 that.

25 Q And you realize that the State has to prove

1 aggravating circumstances, and they just have to prove one
2 or more for the death sentence?

3 A Right.

4 Q And do you feel like if those aggravators were proven
5 to your satisfaction, could you give the death penalty in
6 that situation?

7 A If it was proven to my satisfaction, more than
8 likely, yes.

9 Q And could you sign your name to the death warrant the
10 Judge was talking about, if you felt it was appropriate?

11 A Yes. If I voted for it, yes, I would sign for it.

12 Q And you've got three sons, I see?

13 A Yes.

14 Q And you coach a son?

15 A Yes.

16 Q Is that soccer?

17 A Yes, soccer league.

18 Q One other thing, we noticed you were in the Marine
19 Corp. And you were there four years?

20 A Yes. I did four active and four inactive reserves.

21 Q What was your position?

22 A Logistic specialist. If you need beans, bullets,
23 Band-Aids, I gave it to you, I sent it to you. That was
24 my job.

25 MR. BARNETTE: I understand.

1 Thank you, sir.

2 Thank you, Your Honor.

3 THE COURT: Mr. Benjamin, let me just ask you, where
4 was the trouble you had with the law?

5 JUROR #11, SHELTON BENJAMIN: In Atlanta in 1996.

6 THE COURT: All right. And do you know if you've had
7 a pardon?

8 JUROR #11, SHELTON BENJAMIN: Yeah. Everything has
9 been done. I've been off of paper since 2000. I did it
10 early because -- and I had to hurry up and pay my fines
11 and get everything else done out the way. They knew I was
12 working two jobs. They worked with me towards the end of
13 it, so it's all been cleared since 2000. I want to say
14 September of 2000.

15 THE COURT: Well, I congratulate you on that.

16 So you've had your civil rights restored, is that
17 what you're telling me?

18 JUROR #11, SHELTON BENJAMIN: Yes.

19 THE COURT: Okay. Do you know if it was by way of a
20 pardon or --

21 JUROR #11, SHELTON BENJAMIN: No. It wasn't by way
22 of pardon. I finished my time totally and never had any
23 other question raised about it until I filled your
24 paperwork out. But I figured it needed to be mentioned in
25 case somebody --

1 THE COURT: It did. And I really appreciate your
2 honesty on it.

3 Can I ask you to wait in the hall for just one
4 second?

5 JUROR #11, SHELTON BENJAMIN: Okay.

6 THE COURT: And let me just tell you, I'm glad you
7 didn't cry in here.

8 JUROR #11, SHELTON BENJAMIN: Yeah, me, too. It
9 looked real painful before I got here.

10 (Pause.)

11 THE COURT: And by the way, I will put on the record
12 that we are now not sending the next juror out in the
13 hallway. We're keeping them totally sequestered so they
14 don't see the juror who comes out.

15 I don't think I have any choice but to disqualify
16 him. I think he would be an outstanding juror, but the
17 law will not permit him to serve

18 MR. BOGGS: Do they -- does he have -- on your RAP
19 sheet, what does he have on that? I was wondering if
20 there wasn't an expungement or something.

21 MR. BARNETTE: No. It's on his RAP sheet. The
22 reason why I asked him about it, Your Honor, it's not real
23 clear -- it's out of Georgia, and it's not real clear what
24 the sentence was.

25 MR. GOWDY: He's very clear about it. He wrote -- I

1 agree with the Court, he was very forthright about it.
2 But out of Georgia, it is difficult to read the RAP, which
3 is why we asked him what the potential -- maximum
4 potential was, and he said five years.

5 MR. BOGGS: Of course, we haven't seen that even
6 though it was supposed to be turned over to us, but I'd
7 like to see it.

8 THE COURT: Yes. Take a look at what they've got.
9 He has given sworn testimony under oath, though.

10 MR. BOGGS: And he wasn't sure. He thought it had
11 been disposed of.

12 THE COURT: Well, that's why I explored it.

13 MR. BOGGS: Would you ask him what the maximum was on
14 that, Judge?

15 THE COURT: Well, he testified it was five years.
16 I'll bring him back in and ask him.

17 MR. BOGGS: If you would, ask him that one question
18 because I'm not -- I know Mr. Barnette said something, but
19 if you could just clear that up.

20 THE COURT: Would you bring him on in, please.

21 (Pause.)

22 THE COURT: Mr. Benjamin, just come on around. I
23 need to talk to you for a second. Come on up. Let me ask
24 you, what was the maximum possible punishment you could
25 have gotten?

1 JUROR #11, SHELTON BENJAMIN: I don't know, to tell
2 you the truth, Judge. I wasn't too up on my laws back
3 then.

4 THE COURT: What was the sentence you got? Was it
5 something suspended to five years?

6 JUROR #11, SHELTON BENJAMIN: Yes, five years
7 suspended probation.

8 THE COURT: Five years suspended to five years
9 probation?

10 JUROR #11, SHELTON BENJAMIN: Yes.

11 THE COURT: Well, the law does not permit me to
12 qualify you.

13 JUROR #11, SHELTON BENJAMIN: Okay.

14 THE COURT: It makes me sick because you would be a
15 great juror. Let me just suggest that maybe you go ahead
16 and contact somebody in Georgia and get your record
17 cleared by way of pardon. You shouldn't have any trouble
18 doing that.

19 JUROR #11, SHELTON BENJAMIN: Okay.

20 THE COURT: And that way, there would never be any
21 question.

22 JUROR #11, SHELTON BENJAMIN: Like I said, I don't
23 know, but I know I've done my time.

24 THE COURT: Yes. You would know if you had gone
25 through the pardon process because you've got to take an

1 affirmative step. Now, your right to vote is restored.

2 JUROR #11, SHELTON BENJAMIN: Right.

3 THE COURT: But, shoot, you need to go ahead and get
4 that cleared off your record.

5 JUROR #11, SHELTON BENJAMIN: Okay.

6 THE COURT: And I'm sorry I cannot qualify you. Best
7 of luck to you.

8 Thank you very much.

9 JUROR #11, SHELTON BENJAMIN: Have a good day.

10 THE COURT: You, too.

11 (Juror #11, Shelton Benjamin, was excused from the
12 courtroom.)

13 THE COURT: Bring the next juror in.

14 (Juror #165, Jackie Hostetler, a white female, was
15 seated.)

16 THE COURT: Ms. Hostetler, welcome to the courtroom.
17 How are you?

18 JUROR #165, JACKIE HOSTETLER: Thank you.

19 THE COURT: Are you all right?

20 JUROR #165, JACKIE HOSTETLER: A little nervous.

21 THE COURT: Well, I tell you, I've told a bunch of
22 people that were sitting in that chair, if you're not
23 nervous, there's a little something wrong with you.

24 JUROR #165, JACKIE HOSTETLER: Okay.

25 THE COURT: And we all know that, we're aware of that

1 and we're very sensitive to it. Okay.

2 JUROR #165, JACKIE HOSTETLER: Okay.

3 THE COURT: Now, I want to tell you, we're going to
4 talk about three basic subject matters, maybe a few other
5 questions outside of that. But we're going to want to
6 know if you know anything about this case. We're going to
7 want to know if you can be fair and impartial. And we're
8 going to want to talk to you about your views on the death
9 penalty a little bit.

10 Now, there are no right or wrong answers. All we
11 want is your truthful, complete, candid answers. And
12 sometimes that requires reaching down deep and telling us
13 how you feel. And a lot of times, a lot of people
14 consider it to be personal. And they might have a little
15 conflict themselves and they're not sure. And that's
16 fine. Don't worry about that.

17 JUROR #165, JACKIE HOSTETLER: Okay.

18 THE COURT: There are no right or wrong answers.
19 Your answer is the correct answer.

20 I'm going to read these indictments to you real
21 quickly. They're not evidence and don't ever consider
22 them to be evidence. They're just allegations.

23 The first one alleges murder. It alleges that
24 Mr. Fredrick Antonio Evins did in Spartanburg County on or
25 about February 13th, 2003, feloniously, willfully, and

1 with malice aforethought kill Rhonda Marie Ward by
2 stabbing. The next indictment is for kidnapping. It
3 alleges that Mr. Evins did in Spartanburg County, same
4 date, unlawfully seize, confine, and kidnap Rhonda Marie
5 Ward. The next indictment is for criminal sexual conduct.
6 It alleges on the same date, February 13th of 2003,
7 Mr. Evins did willfully and unlawfully commit a sexual
8 battery on Rhonda Marie Ward. And, finally, a grand
9 larceny indictment that alleges on the same date that
10 Mr. Evins feloniously took and carried away a 1993 Nissan
11 Sentra automobile and its contents belonging to Rhonda
12 Marie Ward.

13 Now, we recognize that there's -- again, those are
14 just allegations. We recognize that there has been
15 publicity about this case on television, radio, and in the
16 newspaper. So my first question to you is, have you
17 heard, seen, or read anything about this case?

18 JUROR #165, JACKIE HOSTETLER: Prior before Monday,
19 I've seen it on the news.

20 THE COURT: Okay. What did you see?

21 JUROR #165, JACKIE HOSTETLER: It was just saying
22 that -- talking about Mr. Evins and that he's the one they
23 are saying, you know, done the crime. Other than that,
24 that's about it.

25 THE COURT: Do you remember when you saw that?

1 JUROR #165, JACKIE HOSTETLER: Maybe about Saturday
2 or Sunday.

3 THE COURT: Okay. So just recently, you've seen
4 something?

5 JUROR #165, JACKIE HOSTETLER: Like I said, it was
6 prior to Monday.

7 THE COURT: Okay. You don't remember anything from
8 way back when?

9 JUROR #165, JACKIE HOSTETLER: No, sir.

10 THE COURT: Okay. So it was just a news story that
11 showed -- that said they were going to try Mr. Evins for
12 these cases?

13 JUROR #165, JACKIE HOSTETLER: Yes, sir.

14 THE COURT: All right. Now, you understand in
15 America, we've got a -- how old is this country, 200
16 and -- I forget how long. But as long as we've been in
17 existence 200 -- 300 years, is it, over 300 years?

18 JUROR #165, JACKIE HOSTETLER: I think so.

19 THE COURT: We don't try people on gossip. We
20 require hard evidence in the courtroom.

21 Do you understand that?

22 JUROR #165, JACKIE HOSTETLER: Yes, sir.

23 THE COURT: And the newspaper and TV, as much as
24 they'd like to claim otherwise, are gossip.

25 JUROR #165, JACKIE HOSTETLER: Yes, sir.

1 THE COURT: Now, I want to tell you that your oath,
2 as a juror, would require you to put aside and disregard
3 everything that -- anything that you might have heard,
4 read, or seen about this case. Because the law requires
5 that a case be tried solely on the evidence presented in
6 the courtroom at trial.

7 Do you understand that?

8 JUROR #165, JACKIE HOSTETLER: Yes, sir.

9 THE COURT: Could you be a fair and impartial juror
10 and decide this case based solely on the evidence
11 presented in the courtroom at trial?

12 JUROR #165, JACKIE HOSTETLER: Yes, sir.

13 THE COURT: All right. Have you formed any kind of
14 opinion with regard to these facts?

15 JUROR #165, JACKIE HOSTETLER: No, sir, I haven't.

16 THE COURT: Do you have any opinion as to the guilt
17 or innocence of Mr. Evins?

18 JUROR #165, JACKIE HOSTETLER: No, sir.

19 THE COURT: Okay. Now, keeping in mind those legal
20 principles I talked to you about, the presumption of
21 innocence and the State's obligation to prove guilt beyond
22 a reasonable doubt, could you, at a trial, depending upon
23 the facts and the circumstances presented, the facts and
24 the evidence and the law that I would give you, could you
25 find a defendant guilty or not guilty depending on what

1 that evidence showed you?

2 JUROR #165, JACKIE HOSTETLER: Yes, sir, I could.

3 THE COURT: Your mind is not made up one way or the
4 other?

5 JUROR #165, JACKIE HOSTETLER: No, sir.

6 THE COURT: Now, remember, we may not even get to the
7 second phase of the trial. We might not get there, but
8 because it's a possibility, I want to ask you about that,
9 okay, your views on the death penalty.

10 JUROR #165, JACKIE HOSTETLER: Okay.

11 THE COURT: Now, this is where it gets -- it might be
12 personal to you, it might not, but if it is, we understand
13 that. And we're just looking for your heartfelt responses
14 here. No right or wrong answers. There's no test that
15 you're going to be put to, and no judgment is made on your
16 answers to these questions.

17 JUROR #165, JACKIE HOSTETLER: Okay.

18 THE COURT: Let me tell you again, when we move to
19 the sentencing phase, the second phase, the jury, that
20 same jury in the first phase will have already decided
21 that that defendant is guilty of murder, okay, that's
22 already decided. In the second phase, the jury is not
23 concerned with any legal defense or any theory of defense,
24 or anything about guilt or innocence because the jury has
25 already decided that that defendant is guilty of murder.

1 Now, in the second phase of the trial, what you would hear
2 would be the evidence in mitigation and the evidence in
3 aggravation. Okay.

4 JUROR #165, JACKIE HOSTETLER: Okay.

5 THE COURT: Your oath would require you to put aside
6 any preconceived notions you might have and your oath
7 would require you to give serious and meaningful
8 consideration to all the evidence in aggravation and all
9 the evidence in mitigation.

10 Do you understand that?

11 JUROR #165, JACKIE HOSTETLER: Yes, sir.

12 THE COURT: Okay. And could you honor your oath and
13 do that?

14 JUROR #165, JACKIE HOSTETLER: Yes, sir.

15 THE COURT: Now, if you were a juror in that
16 situation, in the sentencing phase -- this is a
17 hypothetical question, and you're on the jury that's
18 already determined that that defendant is guilty of
19 murder, could you, based on all the facts and the evidence
20 presented at the trial, based on all the -- after having
21 considering all the aggravating and mitigating
22 circumstances and the law that I would give to you, could
23 you return a verdict of life in prison?

24 JUROR #165, JACKIE HOSTETLER: Yes, sir.

25 THE COURT: Okay. The same scenario, you're on a

1 jury that has already convicted a defendant of murder,
2 considering -- could you, considering all the facts and
3 evidence presented at trial, considering all of the
4 mitigating evidence and all the aggravating evidence and
5 the law, could you return a sentence of death?

6 JUROR #165, JACKIE HOSTETLER: Honestly, no, sir, I
7 couldn't.

8 THE COURT: Okay. Honesty is all we want.

9 JUROR #165, JACKIE HOSTETLER: Okay.

10 THE COURT: You can't imagine a situation where you
11 would give a death sentence?

12 JUROR #165, JACKIE HOSTETLER: No, sir. Because I
13 could understand, you know, the families from both sides.

14 THE COURT: And you're absolutely sure about that?

15 JUROR #165, JACKIE HOSTETLER: Yes, sir.

16 THE COURT: Okay. What kind of -- where did you get
17 that strongly held belief, which I'm not challenging?
18 Where did that come from?

19 JUROR #165, JACKIE HOSTETLER: I can understand, you
20 know, the people -- the family that lost the one that's
21 been murdered. And I can also understand, you know, if
22 the family of one that done is going to be convicted to
23 die. And, you know, both families would be losing
24 someone, you know, they really care about.

25 THE COURT: Okay. And you just could not ever do it?

1 JUROR #165, JACKIE HOSTETLER: No, sir, I couldn't.

2 THE COURT: Well, let me tell you, Ms. Hostetler, I
3 really appreciate you coming in here and being that
4 honest. And everybody in here respects your firmly held
5 beliefs. And I am -- I'm just going to -- I'm going to
6 tell you that I'm going to excuse you from service in this
7 case. I won't put you through that.

8 Thank you very much for coming in.

9 JUROR #165, JACKIE HOSTETLER: Thank you.

10 THE COURT: Yes, ma'am.

11 (Juror #165, Jackie Hostetler, was excused from the
12 courtroom.)

13 THE COURT: Bring the next juror in, please.

14 (Juror #346, Christy Stewart, a white female, was
15 seated.)

16 THE COURT: Hey, Ms. Stewart.

17 JUROR #346, CHRISTY STEWART: Hi.

18 THE COURT: How are you?

19 JUROR #346, CHRISTY STEWART: Fine.

20 THE COURT: Good. We're going to -- I promise you --
21 are you totally at ease and totally comfortable?

22 JUROR #346, CHRISTY STEWART: Not really.

23 THE COURT: Okay. I didn't think so. And I've told
24 a bunch of people that if you're sitting in that chair in
25 this situation and you're not a little nervous, not a

1 little -- not suffering from anxiety, there's probably
2 something wrong with you. So it's completely normal and
3 natural. Don't worry about it. Everybody in here is
4 aware of it and sensitive to you. I just want you to feel
5 as comfortable as you possibly can. Because we're looking
6 to just hear your honest, heartfelt answers to the
7 questions. That's all we want.

8 We're going to talk about three basic subject
9 matters. And the first is if you know anything about this
10 particular case. The second is, can you be fair and
11 impartial. And the third, because of the serious nature
12 of this case, we need to talk with you a little bit about
13 your views on the death penalty. Now, I know a lot of
14 people consider that to be a personal matter and have
15 deeply held beliefs about it. Some people are very
16 conflicted in their own mind about it -- in their own mind
17 and their own heart. So we're all aware of that and we
18 just need to know how you feel about it.

19 I will tell you there are no right or wrong answers.
20 As long as you give us candid, complete, and honest
21 answers, those are the correct answers. Your answers will
22 not be judged in any way and your answers will not be put
23 up against some litmus test. Okay.

24 So having said that, let me tell you that we're going
25 to have to -- I need to read to you some of the

1 allegations contained in the indictments. And I'll,
2 again, tell you that the indictments are not evidence and
3 cannot be considered as evidence in any way. They're just
4 the vehicle that gets us here to court.

5 The first indictment is for murder. And it alleges
6 that Fredrick Antonio Evins did in Spartanburg County on
7 or about February 13th, 2003, feloniously, willfully, and
8 with malice aforethought kill Rhonda Marie Ward by
9 stabbing. The next indictment alleges that Mr. Evins did
10 on the same date unlawfully seize, confine, and kidnap
11 Rhonda Marie Ward. The next indictment is for criminal
12 sexual conduct. It alleges that Mr. Evins did, same date,
13 February 13th, 2003, willfully and unlawfully commit a
14 sexual battery upon Rhonda Marie Ward. And, finally,
15 there's an indictment for grand larceny that alleges that
16 Mr. Evins did feloniously and unlawfully take and carry
17 away a 1993 Nissan Sentra automobile and its contents
18 belonging to Rhonda Marie Ward.

19 Now, those are the allegations in the case. And we
20 recognize that there's been publicity about the case on
21 the television, on the radio, and in the newspaper. My
22 first question is, have you heard, seen, or read anything
23 about this case?

24 JUROR #346, CHRISTY STEWART: No, sir.

25 THE COURT: Nothing at all?

1 JUROR #346, CHRISTY STEWART: I don't watch the news,
2 and I don't read the newspapers.

3 THE COURT: Okay. Well, that's great.

4 Let me tell you, as you go through the process, you
5 might be asked a question that -- or if you get selected
6 to serve on the jury, your memory might get jarred and you
7 go, oh, I do remember something about this. Well, your
8 oath requires you to disregard and put aside anything you
9 might have read, heard, or seen about this case. Because
10 the law requires that the decision made at trial is made
11 solely from the evidence presented in the courtroom.
12 Could you serve as a fair and impartial juror and reach a
13 verdict based on the facts -- solely on the facts
14 presented at trial in the courtroom?

15 JUROR #346, CHRISTY STEWART: Yes, sir.

16 THE COURT: All right. Have you already formed an
17 opinion about the facts in this case?

18 JUROR #346, CHRISTY STEWART: No, sir.

19 THE COURT: It would be kind of hard to do without
20 knowing anything.

21 JUROR #346, CHRISTY STEWART: Yeah.

22 THE COURT: Have you already formed an opinion about
23 the guilt or innocence of Mr. Fredrick Evins?

24 JUROR #346, CHRISTY STEWART: No, sir, not without
25 knowing anything.

1 THE COURT: Okay. Now, keeping in mind those legal
2 principles I talked about, the presumption of innocence
3 and the State's obligation to prove guilt beyond a
4 reasonable doubt, could you, depending on the facts and
5 evidence presented at a trial and the law that I would
6 give you, could you return a verdict of either guilty or
7 not guilty depending on what the evidence showed you?

8 JUROR #346, CHRISTY STEWART: Yes, sir.

9 THE COURT: So your mind is not made up?

10 JUROR #346, CHRISTY STEWART: Huh-uh.

11 THE COURT: Now, please remember, we may not even
12 reach the second or the sentencing phase in this trial,
13 but because it's a possibility, we need to discuss your
14 views on the death penalty a little bit.

15 Now, when the jury moves to the sentencing phase or
16 the second phase, that same jury has already found that
17 defendant guilty of murder. In other words, in the second
18 phase, there is no -- there won't be any consideration
19 about a defense or a legal theory, because the jury has
20 already decided guilt. So in the second phase, the only
21 thing that you're going to hear about and you'll be
22 considering will be evidence in mitigation and evidence in
23 aggravation. That's what will be presented.

24 Now, let me ask you -- well, let me tell you that
25 your oath will require you to put aside any preconceived

1 notion that you might have. And it will require you to
2 give serious and meaningful consideration to all of the
3 evidence in aggravation and all of the evidence in
4 mitigation. Could you honor your oath and do that?

5 JUROR #346, CHRISTY STEWART: Uh-huh.

6 THE COURT: Well, let me ask you a hypothetical
7 question then. Let's assume you're a juror in the second
8 phase of a trial. You've been on a jury that's found a
9 defendant guilty of murder. In that second phase, could
10 you, considering the particular facts and the evidence
11 presented to you at the trial, considering all of the
12 mitigating and aggravating evidence presented and the law
13 I would give you, could you return a verdict of life
14 imprisonment?

15 JUROR #346, CHRISTY STEWART: Uh-huh.

16 THE COURT: Can you speak because we're --

17 JUROR #346, CHRISTY STEWART: Yes, sir.

18 THE COURT: All right. Thank you. That's all right.

19 If you -- the second hypothetical question, the same
20 scenario, you're a juror in the second phase of a trial
21 and that jury has already determined guilt of a defendant
22 of murder, could you, depending on the particular facts,
23 circumstances, and evidence that had been presented at the
24 trial and considering all of the aggravating and
25 mitigating evidence and the law that I would give you,

1 could you return a sentence of death?

2 JUROR #346, CHRISTY STEWART: Yes, sir.

3 THE COURT: Now, the law requires that a death
4 sentence be a unanimous sentence by the jury. And it
5 requires that every juror sign their name to the death
6 sentence verdict form. Could you sign your name to such a
7 form?

8 JUROR #346, CHRISTY STEWART: If I believed it in my
9 heart, yes, sir.

10 THE COURT: Okay.

11 JUROR #346, CHRISTY STEWART: If the evidence proved
12 it and I believed it, yes.

13 THE COURT: All right. If it had been proven to you
14 beyond a reasonable doubt, you could do that?

15 JUROR #346, CHRISTY STEWART: But if there was any
16 doubt, I couldn't.

17 THE COURT: Well, any doubt or a reasonable doubt?
18 The law is a reasonable --

19 JUROR #346, CHRISTY STEWART: A reasonable doubt,
20 yeah.

21 THE COURT: Because some people could say there's a
22 doubt the sun would come up tomorrow, but that's not a
23 reasonable doubt. Do you understand the difference there?

24 JUROR #346, CHRISTY STEWART: Uh-huh.

25 THE COURT: All right. Now, do you recall the list

1 of the three types of jurors that I had you review?

2 JUROR #346, CHRISTY STEWART: Uh-huh.

3 THE COURT: Where would you rate yourself?

4 JUROR #346, CHRISTY STEWART: Number 3.

5 THE COURT: You would want to hear everything before
6 you made a decision?

7 JUROR #346, CHRISTY STEWART: Uh-huh.

8 THE COURT: Now, could you follow your oath to be a
9 fair and impartial juror and find -- and approach jury
10 service with an open mind to find the truth from the
11 evidence and the law as I gave it to you?

12 JUROR #346, CHRISTY STEWART: Yes, sir.

13 THE COURT: Do you know of any reason whatsoever why
14 you couldn't serve?

15 JUROR #346, CHRISTY STEWART: Yeah. I wanted to
16 speak with you about that. I have two small kids. I have
17 a ten-year-old and a two-year-old. My husband is a truck
18 driver, so he's only home on the weekends. So it would
19 just be very difficult for me to be sequestered.

20 THE COURT: Do you have anybody else who could take
21 care of them?

22 JUROR #346, CHRISTY STEWART: I do, but it would be
23 really hard. I mean, I'm not saying it would be
24 impossible, but.

25 THE COURT: Who would you have to take care of them?

1 JUROR #346, CHRISTY STEWART: Well, I have my mother,
2 my husband has his mother, and I have grandparents.

3 THE COURT: Well, I'll tell you this, it is a -- I
4 know it would be an incredible burden on you and your
5 family, but the -- you can make adequate care arrangements
6 for them?

7 JUROR #346, CHRISTY STEWART: Yes, I could.

8 THE COURT: And I know it's extremely inconvenient,
9 but this is an extremely serious case. And, you know, in
10 a perfect world, we'd never even be here.

11 JUROR #346, CHRISTY STEWART: Right.

12 THE COURT: So I am going to ask that you continue to
13 serve. And I appreciate you mentioning that to us.

14 Would you please answer the questions that the
15 attorneys have?

16 JUROR #346, CHRISTY STEWART: Could you repeat that?

17 THE COURT: I'm just going to ask you to please
18 answer the questions that the attorneys might have for you.

19 JUROR #346, CHRISTY STEWART: Okay.

20 THE COURT: Thank you very much about.

21 MR. ANTHONY: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 EXAMINATION

24 BY MR. ANTHONY:

25 Q Hey, Ms. Stewart.

1 A Hi.

2 Q My name is John Anthony. And I'm an attorney in the
3 Solicitor's Office. This is Barry Barnette, he's another
4 attorney that will be representing the State in this case.
5 And the other attorney, who you'll see, I'm sure, if
6 you're picked for service is Trey Gowdy. And the three of
7 us are the lawyers who are representing the State on this
8 case.

9 I just have a very few questions I want to ask you.
10 You heard the Judge explain to you that in order to be a
11 juror -- you said that you could impose a life without
12 parole sentence if that was appropriate, and you said that
13 you could impose a death sentence if that was appropriate.
14 If the case goes to a sentencing hearing, the jurors will
15 have a choice. They can choose life without parole or
16 they can choose a death sentence. And a life without
17 parole sentence will always be an option to a jury that
18 hears a case like this.

19 So I just want to ask you, knowing that you would
20 always have an option of choosing a life without parole
21 sentence, could you, if you thought it was the right thing
22 to do, choose a death sentence knowing that you would
23 always be able to sentence somebody to life without
24 parole?

25 A I would just want to hear all of the evidence and

1 just feel that that would be the right choice to make.

2 Q Okay. But if you thought it was the right choice?

3 A Then I could make it, yes.

4 Q You could do it?

5 A Yes.

6 Q Even if you had life without parole as an option?

7 A Yes.

8 Q And you understand that there will have to be 12
9 people and all 12 people would have to agree to impose the
10 death sentence?

11 A Uh-huh.

12 Q And that would mean that there would be a piece of
13 paper back there and you would have to sign your name,
14 Ms. Stewart's name will have to go on that piece of paper.

15 A Yeah.

16 Q And if you thought that was the right sentence to
17 impose, could you sign that piece of paper and do that?

18 A Yes, sir.

19 MR. ANTHONY: If I could just have one second.

20 BY MR. ANTHONY:

21 Q And at the same time, as you would consider imposing
22 a sentence of death, would you also consider imposing a
23 sentence of life, if you thought that was the appropriate
24 thing to do?

25 A Yes.

1 MR. ANTHONY: All right. Thank you.

2 That's all my questions.

3 Thank you very much, Ms. Stewart.

4 THE COURT: Okay.

5 MR. BROUGH: May it please the Court, Your Honor?

6 EXAMINATION

7 BY MR. BROUGH:

8 Q Hi, Ms. Stewart. How are you doing today? My name
9 is Christopher Brough. And I'm going to be assisting
10 Karen Quimby, seated over there, and Tam Boggs. We
11 represent Fredrick Evins, who is seated over there.

12 I don't have too many questions for you. I just have
13 a couple. We appreciate you filling out the questionnaire
14 and your time in being here. I just want to ask you a
15 couple of questions.

16 I noticed that you had indicated that you were in
17 a -- I guess, a drunk driver had hit your car?

18 A Uh-huh.

19 Q Are you suffering from any kind of injuries?

20 A No.

21 Q Can you kind of tell me about that a little bit?

22 A It was the morning of August the 8th, 2003, I was on
23 my way to work. I was taking my kids to my grandparents.
24 It was 5:00 in the morning. I was on Reidville Road
25 traveling towards 290. At that time, that's when they

1 were doing the construction on Reidville Road. They were
2 widening the road, but, still, just the two lanes were
3 open. I came upon this car that was stopped in the middle
4 of the road. So I stopped behind the car. Not knowing
5 what the situation was, I wasn't going to just fly around
6 the car. I stopped far enough back to see -- to assess
7 the situation and see what was going on. And as soon as I
8 came to a complete stop, the man rear-ended me and took
9 off.

10 Q Got you. I noticed you said that he eventually
11 pleaded guilty?

12 A Uh-huh.

13 Q Do you remember if that was -- if you came to court?

14 A Yes, I did.

15 Q Who handled the case? Do you know?

16 A One of the solicitors, Jason Davis, I believe.

17 Q Okay. The fact that the Solicitor's Office having
18 worked with you before, would that bear any effect --

19 A No, sir.

20 MR. BROUGH: If I could just have one minute, Your
21 Honor?

22 THE COURT: Yes.

23 MR. BROUGH: Thank you very much for your time,
24 ma'am.

25 THE COURT: All right. Would you step into the

1 hallway for one second? I would appreciate it.

2 (Pause.)

3 THE COURT: Any objections?

4 MR. BROUGH: None from the Defense.

5 MR. ANTHONY: Not from the State, Your Honor.

6 THE COURT: All right. Bring her on back.

7 (Pause.)

8 THE COURT: Hey, Ms. Stewart.

9 I want to give you one of these and you can review
10 that. I want to tell you that -- you can review it later.
11 I'm going to tell you, basically, what's on there. You
12 are a qualified juror and remain eligible to serve. We
13 are asking all qualified jurors to return at 2:30 today
14 packed and ready to go for five to seven days. Okay.

15 JUROR #346, CHRISTY STEWART: Okay.

16 THE COURT: And you may or may not get selected, but
17 you have to be packed and ready to go at that time.

18 Do you have time to make arrangements with everyone?

19 JUROR #346, CHRISTY STEWART: Yes, sir.

20 THE COURT: I know it will be tough. This is a tough
21 duty for everybody, but we really appreciate it.

22 Please don't talk to anybody about the case. You can
23 tell them, of course, that you're going to be at the
24 Marriott, but don't talk about the case and don't let them
25 talk to you about it. Because even an innocent comment

1 might impact the decision that's going to be made in the
2 courtroom and that just can't be. Okay.

3 JUROR #346, CHRISTY STEWART: Thank you.

4 (Juror #346, Christy Stewart, was excused from the
5 courtroom.)

6 THE COURT: All right. Let's take about five minutes
7 and then we'll start on the next panel.

8 (WHEREUPON, a break was taken.)

9 THE COURT: Bring the next panel in.

10 (WHEREUPON, Juror Panel No. 11 entered the
11 courtroom.)

12 THE COURT: Ladies and gentlemen, welcome back to the
13 courthouse. Glad to see you. I know y'all are just glad
14 to be here, too. We're about to -- I want to thank you
15 for coming back, in all seriousness, and I appreciate your
16 sacrifices. And everybody in here knows the sacrifices
17 you've made and we appreciate it very much.

18 We're about to start the individual questioning of
19 each of you. It really doesn't last that long and it's
20 really not that painful. I want to -- before we do that,
21 I want to assure you again that I have no opinion about
22 the facts in this case. And I have no opinion for two
23 reasons. The first reason is that the law and
24 Constitution does not allow a trial judge to have an
25 opinion about the facts. The second reason is I don't

1 have an opinion about the facts because I don't know too
2 much more about it than you all do. So I have no opinion
3 about the facts. And you might say, why is he telling us
4 that again. The reason is I'm going to be asking you some
5 questions myself and I don't want y'all to think or infer
6 from something I say or the way I ask a question that I
7 have an opinion about the facts, because I do not have an
8 opinion. And that's why I tell you that.

9 Now, I want to repeat two basic legal principles to
10 you that are the foundation of our system of justice, and
11 that is that every citizen in this country who is charged
12 with a crime is presumed innocent unless and until the
13 State can prove them guilty beyond any reasonable doubt of
14 each and every element of every offense that they're
15 charged with. Those are basic fundamental building blocks
16 of our system of justice. And for 300 years, they have
17 worked and have made us and given us the best justice
18 system in the world and the freest country in the world.
19 So this is where the rubber meets the road and this is --
20 I know everybody has heard those terms and this is where
21 the citizens have to apply those terms to keep us with the
22 finest justice system in the world.

23 Now, I want to tell you, a case like this is
24 generally referred to as a capital case. And so I want to
25 discuss the process with you a little bit that goes on in

1 a capital case. I'll tell you that right now, we're doing
2 jury -- or juror qualification. All of y'all have been
3 qualified to sit -- you can sit on any General Sessions
4 case. You're all qualified jurors. We're qualifying you
5 for the specific case before us today. So that's why
6 we're going to do the -- and because of the serious nature
7 of this case, that's why we'll do the individual
8 questioning.

9 Now, I will tell you, once the jury is selected,
10 then you go to the first phase of the trial, that's where
11 the State has got to prove the allegations beyond a
12 reasonable doubt that they've made. If, and only if, to
13 the satisfaction of all 12 jurors the State has met that
14 burden of proof with respect to the charge of murder and
15 the jury finds the Defendant guilty of the charge of
16 murder do we go to the second phase of the trial.

17 Now, I want to tell you that in the -- if we get
18 there, the only thing you're going to be considering in
19 the second phase will be -- not the only thing, but what
20 you'll be hearing about in the second phase will be
21 evidence in aggravation and evidence in mitigation of the
22 charge of murder. I will tell you, ladies and gentlemen,
23 that you would consider all that evidence and you would
24 return a verdict with the appropriate -- what the jury
25 found to be the appropriate sentence in that case. And

1 that would be either life imprisonment or death.

2 Now, in a capital case, if the jury finds the
3 presence of an aggravating circumstance, a sentence of
4 life means what it says, it is life without the
5 possibility of parole. In other words, a defendant who is
6 convicted of murder accompanied by an aggravating
7 circumstance, a life sentence means life with no
8 possibility of parole under that circumstance and the
9 defendant would die in jail. Please understand, I am
10 talking about the process of a capital case in general.
11 And in this particular case, we might not even get to the
12 second phase of the trial.

13 Do each of you understand -- have a general
14 understanding of the process or does anyone need further
15 explanation? If you do, please raise your right hand.

16 (There was no response.)

17 THE COURT: Now, let me briefly explain the terms
18 aggravating and mitigating circumstances to you and what
19 they mean in this context. And, again, I tell you, you're
20 only going to get to that if we get to the second phase.

21 Aggravating circumstances are facts, incidents, or
22 occurrences which the South Carolina General Assembly has
23 declared by statute would aggravate or worsen the crime of
24 murder. In other words, an aggravating circumstance when
25 accompanying a murder increases the enormity of it or adds

1 to the injury of the crime of murder.

2 Mitigating circumstances are incidents, facts, or
3 occurrences which the General Assembly has declared by
4 statute or which a jury otherwise determines should reduce
5 the severity of the offense of murder and may be
6 considered as extenuating or as reducing the degree of
7 responsibility or culpability.

8 Does that explain to everyone's satisfaction and give
9 you a good general explanation of aggravating and
10 mitigating circumstances? Does anyone need further
11 explanation?

12 (There was no response.)

13 THE COURT: Now, we've already introduced the
14 attorneys to you. So I would ask you if there's anyone on
15 the jury panel related by blood or marriage or acquainted
16 in any way with any of the attorneys involved in this
17 case? If so, raise your right hand, please.

18 (There was no response.)

19 THE COURT: Okay. No response.

20 Is there any member of the jury panel related by
21 blood or marriage or an acquaintance of any kind with
22 Mr. Fredrick Antonio Evins? If so, please raise your
23 right hand.

24 (There was no response.)

25 THE COURT: Is there any member of the jury panel

1 related by blood, or marriage, or an acquaintance of any
2 kind in any way with anyone associated with these
3 attorneys or their respective law offices, which means the
4 Seventh Circuit Solicitor's Office, the Spartanburg County
5 Public Defender's Office, or the Law Offices of Mr. Tam
6 Boggs? If so, please raise your hand.

7 (There was no response.)

8 THE COURT: Each of you, I hope, has had ample
9 opportunity to review the extensive witness list in this
10 case, so I'll ask you the same question about that. Is
11 there any member of the panel who is related by blood, or
12 marriage, or acquainted in any way with any of the
13 witnesses listed on those lists? If so, please raise your
14 right hand.

15 All right. Yes, sir. Your name?

16 JUROR #380, KENNETH WILKINS: Kenneth Wilkins.

17 THE COURT: All right. Mr. Wilkins, what can you
18 tell me?

19 JUROR #380, KENNETH WILKINS: I know Raymond Gist.
20 I've been knowing him for 10 or 11 years.

21 THE COURT: Okay.

22 JUROR #380, KENNETH WILKINS: He's just an
23 acquaintance, just friend. I just know him.

24 THE COURT: Yes, ma'am.

25 JUROR #153, PHYLLIS HIGGINS: Phyllis Higgins. And

1 the Magistrate's Court, I'm like related -- my husband is
2 like -- Joel Higgins, they're cousins. And he's like a
3 Magistrate.

4 THE COURT: Yes, sir.

5 JUROR #399, JOHNNY YOUNG: I recognize some of the
6 names, but I don't put the names with a face. I remember
7 faces better. The names jumped out at me, but I couldn't
8 say whether I know them or not.

9 THE COURT: What's your name?

10 JUROR #399, JOHNNY YOUNG: Johnny Young.

11 THE COURT: All right. Mr. Young, thank you.

12 Well, let me ask the three of you, would the fact
13 that you know some of these people or you might know some
14 of these people, would it limit your ability to be a fair
15 and impartial juror in this case and be fair and impartial
16 to both the State and the Defense?

17 JUROR #399, JOHNNY YOUNG: No.

18 JUROR #380, KENNETH WILKINS: No.

19 JUROR #153, PHYLLIS HIGGINS: No.

20 THE COURT: All right. All negative responses.

21 Thank y'all very much for being so honest about this.

22 Now, we are going to proceed in just a moment to the
23 individual questioning. Before I do that, we haven't had
24 y'all sworn enough, so I'm going to get y'all to stand up,
25 raise your right hand, and we're going to put you under

1 oath again.

2 (WHEREUPON, Juror Panel No. 11 was sworn.)

3 THE COURT: All right. Now, I'm going to ask y'all
4 to retire to the jury room with the exception of -- let me
5 just pick a name out of hat, Phyllis Higgins.

6 Actually, you're not the first one pulled out of the
7 hat, you're the first one on the list.

8 (WHEREUPON, Juror Panel No. 11 exited the courtroom,
9 with the exception of Juror #153, Phyllis Higgins.)

10 (Juror #153, Phyllis Higgins, a white female, was
11 seated.)

12 THE COURT: Ms. Higgins, are you completely
13 comfortable?

14 JUROR #153, PHYLLIS HIGGINS: Yes. This is fine.

15 THE COURT: Are you? Okay. Well, I was just going
16 to say a lot of people might be a little nervous sitting
17 where you're sitting and knowing what's coming, but I hope
18 you are comfortable. And if you do feel a little nervous,
19 that's totally normal.

20 Now, we're going to talk briefly about three subjects
21 and ask you questions about those. And the first subject
22 will be if you know anything about this case. The next
23 subject will be if you can be fair and impartial. And,
24 finally, the last subject will be, we want to discuss your
25 views on the death penalty a little bit.

1 Now, I want to tell you that there are no right or
2 wrong answers to any of these questions. A lot of people
3 might consider, particularly, that last subject, the death
4 penalty, to be kind of private and personal. And a lot of
5 people are conflicted in their own mind and hearts about
6 how they feel about it. That's perfectly understandable
7 and perfectly normal and we expect that, if that's how you
8 feel. So I just want you to feel comfortable with that.
9 There are no right or wrong answers. The only correct
10 answers that you can give would be your candid, complete,
11 and truthful answers to your questions, all the questions
12 and your heartfelt response. And no one will put you --
13 will attempt to embarrass you or humiliate you in any way.
14 The responses you give will not be subject to any scrutiny
15 or judgment. There is not a litmus test you have to pass.

16 JUROR #153, PHYLLIS HIGGINS: Okay.

17 THE COURT: So it's just what your real heartfelt
18 feelings about these issues are. That's all we're
19 interested in. So before I can get started, I want to
20 review these indictments with you and go through the facts
21 a little bit to give you a little more information about
22 the case. It's not a lot, but just a little more to
23 identify it some more. I do want to tell you that
24 indictments are not evidence and may never be considered
25 to be evidence. They're allegations and allegations only.

1 The first indictment is for murder. And it alleges
2 that Fredrick Antonio Evins did in Spartanburg County on
3 or about February 13, 2003, feloniously, willfully, and
4 with malice aforethought kill Rhonda Marie Ward by
5 stabbing. The next indictment is for kidnapping. It
6 alleges that Mr. Evins did in Spartanburg on the same date
7 unlawfully seize, confine, and kidnap Rhonda Marie Ward.
8 The next indictment is for criminal sexual conduct. It
9 alleges that Mr. Evins did on or about the same date,
10 February 13th of 2003, willfully and unlawfully commit a
11 sexual battery upon Rhonda Marie Ward. And, finally, the
12 last indictment is for grand larceny. It alleges that
13 Mr. Evins did on the same date unlawfully and feloniously
14 take and carry away a 1993 Nissan Sentra automobile and
15 its contents belonging to Rhonda Marie Ward.

16 Now, we recognize there has been publicity about this
17 case on the television, on the radio, and in the
18 newspaper. My first question to you is, have you heard,
19 read, or seen anything about this case?

20 JUROR #153, PHYLLIS HIGGINS: No. I've been at work,
21 so I've not -- I haven't seen the news or -- no, it's --
22 I've not been paying attention. I've been working, so
23 I've not had time, no news, or no TV, or nothing like
24 that.

25 THE COURT: Now, this happened over a year and a half

1 ago, so it could be that you may have heard something back
2 then and you may have forgotten about it.

3 JUROR #153, PHYLLIS HIGGINS: Yeah, possibly.

4 THE COURT: Now, let me tell you that your oath, as a
5 juror, would require you -- and as we go through this
6 process, something might pop into your mind and your
7 memory might get prodded and you might remember that, in
8 fact, yes, I did hear something about it. Your oath would
9 require you to set aside and disregard totally anything
10 you may have heard, read, or seen about this case outside
11 of the courtroom. Because our law requires that a
12 decision be made on a case based solely on the evidence
13 presented at a trial.

14 Do you understand that?

15 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

16 THE COURT: And could you serve as a fair and
17 impartial juror and reach a verdict based solely on the
18 facts and evidence presented at trial and in accordance
19 with my instructions on the law?

20 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

21 THE COURT: Have you already formed any kind of
22 opinion as to the facts of this case?

23 JUROR #153, PHYLLIS HIGGINS: No, sir.

24 THE COURT: Have you formed any kind of opinion as to
25 the guilt or innocence of Mr. Evins?

1 JUROR #153, PHYLLIS HIGGINS: No, sir.

2 THE COURT: Keeping in mind the legal principles of
3 the presumption of innocence and the State's obligation to
4 prove guilt beyond a reasonable doubt, could you,
5 depending upon the facts and the evidence presented and
6 the law that I would give you, could you find a defendant
7 either guilty or not guilty depending on what the evidence
8 showed you?

9 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

10 THE COURT: Okay. So your mind is not made up one
11 way or the other?

12 JUROR #153, PHYLLIS HIGGINS: No, sir.

13 THE COURT: Now, please remember, we may never get to
14 the second phase of the trial, but because it is a
15 possibility, I need to discuss with you your views on the
16 death penalty. Now, when a jury gets to the second phase
17 or the sentencing phase of a trial, it means that they've
18 already been through the first phase, of course. And in
19 the first phase, that same jury has already determined
20 that the defendant is guilty of murder.

21 Okay. So in the second phase, there won't be any
22 consideration about the -- about some legal theory or
23 legal defense.

24 Do you understand that?

25 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

1 THE COURT: In the second phase, you're only going to
2 be considering the aggravating and mitigating evidence
3 that will be presented in that second phase. Now, your
4 oath would require you to set aside any preconceived
5 notions that you might have and to follow the law as I
6 instructed it to you. Your oath would require you to give
7 serious and meaningful consideration to the mitigating
8 evidence and the aggravating evidence. Could you follow
9 your oath and do that?

10 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

11 THE COURT: Now, this is a hypothetical question for
12 you, if you were a juror in that situation, in the second
13 or sentencing phase of a trial, could you, depending upon
14 the particular facts and the evidence presented at the
15 trial and after considering all of the mitigating and
16 aggravating circumstances and the law that I would give
17 you, could you return a verdict of life imprisonment?

18 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

19 THE COURT: Now, the same scenario, second
20 hypothetical question, you're a juror in the sentencing
21 phase and have already established the guilt of the
22 defendant to murder, could you, depending on the
23 particular facts and circumstances of the case presented
24 at trial, considering all the aggravating and all the
25 mitigating evidence and the law that I would give you,

1 could you return a verdict of death?

2 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

3 THE COURT: Now, the law requires that a jury be
4 unanimous in that decision and that you would -- that all
5 12 jurors would have to sign their names to a death
6 sentence verdict form. Could you sign your name to a
7 death verdict?

8 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

9 THE COURT: Okay. Now, do you remember that sheet of
10 paper that I had y'all read about the three types of
11 jurors?

12 JUROR #153, PHYLLIS HIGGINS: Uh-huh.

13 THE COURT: Where do you put yourself in that
14 category?

15 JUROR #153, PHYLLIS HIGGINS: I would be at Number 3.

16 THE COURT: Number 3?

17 JUROR #153, PHYLLIS HIGGINS: (Juror nodded.)

18 THE COURT: So you would want to hear everything
19 before you made a decision?

20 JUROR #153, PHYLLIS HIGGINS: Uh-huh.

21 THE COURT: And your mind is not made up one way or
22 the other?

23 JUROR #153, PHYLLIS HIGGINS: No, sir.

24 THE COURT: Okay. Now, if you were selected, would
25 you honor your oath to serve as a fair and impartial juror

1 and approach jury service with an open mind to find the
2 truth from the evidence and the law as I gave it to you?

3 JUROR #153, PHYLLIS HIGGINS: Yes, sir.

4 THE COURT: Do you know of any reason why you could
5 not serve?

6 JUROR #153, PHYLLIS HIGGINS: Not really.

7 THE COURT: Okay. Well, let me tell you real quickly
8 that we are going to pick a jury this afternoon.

9 JUROR #153, PHYLLIS HIGGINS: Okay.

10 THE COURT: And that jury -- the people who are
11 picked to serve will be sequestered for five to seven
12 days. They'll be staying at the Marriott Hotel. So let
13 me -- and we're going to pick the jury this afternoon. So
14 all of the people who are qualified would have to come
15 this afternoon packed and ready to go.

16 JUROR #153, PHYLLIS HIGGINS: Okay.

17 THE COURT: Now, not all of them are going to get
18 picked, obviously, and most of them won't get picked. But
19 you've got to be packed and ready to go this afternoon.

20 JUROR #153, PHYLLIS HIGGINS: 2:30?

21 THE COURT: Yes, ma'am.

22 I'm going to turn the questioning over to the
23 attorneys right now.

24 Thank you.

25 MR. BROUGH: May it please the Court?

EXAMINATION

BY MR. BROUGH:

Q Ms. Higgins, how are you doing today?

A Fine. How are you doing?

Q I'm Chris Brough. And I, along with Karen Quimby, seated over there, and Tam Boggs, we represent Fredrick Evins. I just want to ask you a couple of questions. I'll try and be as brief as I can.

I did notice that one of your hobbies is you like to read?

A Uh-huh.

Q What do you like to read? What types of stuff?

A Let's see. I like -- Harry Potter is one of my favorite ones. I like love stories. I like horror books, mysteries.

Q I also noticed that you like to watch Law and Order?

A Uh-huh. I don't get to see it much no more because of work.

Q Is that the regular one?

A Yeah. Well, they've got several ones.

Q Did you watch the one last night?

A No. I was at work.

Q I'm sorry. I know you must be tired then.

A I'm fine.

Q I just want to ask you if you could just kind of

1 verbalize to me -- and, again, there's no right or wrong
2 answers.

3 Just tell me, generally, how you feel in your own
4 words about the death penalty.

5 A Well, like I said, I would have to make sure that
6 everything -- you know, all the evidence, everything was,
7 you know, it would have to be without a doubt. It's hard
8 to sort of explain it, but that's how I think it would
9 have to be.

10 Q You do know that the legal standard is beyond a
11 reasonable doubt, not without a doubt?

12 A Right.

13 Q Now, you also understand that the first -- I know
14 that Judge Miller explained this, but we may not even get
15 to the second phase, we're asking in the event we do. You
16 understand Mr. Evins is presumed innocent?

17 A Uh-huh.

18 Q And that we'd still have to have the trial just like
19 in any other case. So I'm going to ask you, does the fact
20 that Mr. Gowdy has designated this a death penalty case,
21 do you attach any significance to that?

22 A No, sir.

23 Q Do you attach any significance to the fact that
24 someone is arrested?

25 A No, sir.

1 Q And, again, there's no right or wrong answers. Let
2 me ask you this, if you were back deliberating, would you
3 want to be the first person to vote?

4 A No.

5 Q Say, you were the fifth person to vote and the
6 previous four people all voted whatever it was opposite of
7 what you were going to vote, would that cause you to
8 question your vote?

9 A No.

10 Q What if all 11 had voted before the other way, would
11 that cause you to?

12 A I don't think so.

13 Q So you pretty much make up your mind?

14 A Uh-huh.

15 Q I did notice that you had supervised about 12 to 13
16 people before?

17 A Uh-huh.

18 Q Was that when you were at Petroleum.

19 A No. I was at DX Travel Center doing that.

20 Q Oh, okay.

21 A Yeah, they closed it down.

22 MR. BROUGH: Thank you very much, ma'am.

23 I appreciate your time.

24 MR. BARNETTE: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

EXAMINATION

1
2 BY MR. BARNETTE:

3 Q Hello, Ms. Higgins. My name is Barry Barnette. This
4 is Trey Gowdy and John Anthony. We'll all be presenting
5 the case for the State. We appreciate you filling out the
6 questionnaire and we appreciate you coming up here.

7 I need to ask you just a few follow-up questions, if
8 I could. Your views on the death penalty, where do you
9 get those from or can you tell us what sources or what
10 ideas you get about the death penalty, I guess, in your
11 lifetime?

12 A It's sort of hard to explain, I guess. I really
13 can't give you an answer on that, because it's hard to
14 explain.

15 Q Is it your religion or life experiences?

16 A I guess it's my religion sort of.

17 Q And what kind of impact would that have on you? Or
18 how do you feel about the death penalty?

19 A It's, like I said, if it's, you know, all the
20 evidence is there, if the crime is bad enough, I think,
21 yeah, that it should be.

22 Q So that would be something you would look at?

23 A Uh-huh.

24 Q And you realize all murders aren't death penalty?

25 A Uh-huh.

1 Q And there are also some that are death penalty?

2 A Uh-huh.

3 Q And you realize with the death penalty, the law won't
4 tell you A, B, C, if that's proven, that you automatically
5 have to get the death penalty. Life without parole is
6 always an option. Knowing that life without parole is
7 always an option there, could you give the death penalty?

8 A I believe so.

9 Q Do you realize the State will present aggravating
10 circumstances in the sentencing phase?

11 A Uh-huh.

12 Q And an aggravating circumstance, which the State just
13 has to prove one, but if the State proves one or more of
14 them, could you consider that and give the death penalty?

15 A Yes.

16 Q And if -- you was talking about the severity of the
17 crime or whatever, from that standpoint, what severity
18 would you be looking at?

19 A I guess I would have to look and see. Because the
20 person -- if the person's life has been taken and it was
21 really bad, stuff that had been done to them, you know. I
22 would think about the family and how the family -- you
23 know.

24 Q And you'd take into consideration everything, how
25 it's effected?

1 A Uh-huh.

2 Q And could you sign -- if you felt like the
3 circumstances warranted it, could you sign the death
4 warrant?

5 A I believe I could.

6 MR. BARNETTE: One moment, Your Honor, please.

7 THE COURT: Okay.

8 MR. BARNETTE: Ma'am, thank you for answering all my
9 questions.

10 THE COURT: All right. Ms. Higgins, could I get you
11 to step in the hallway for just a moment, please?

12 (Pause.)

13 THE COURT: How about it?

14 MR. BROUGH: No objection from the Defense.

15 MR. BARNETTE: No objection from the State.

16 THE COURT: All right. Let's bring her on back.

17 (Pause.)

18 THE COURT: Hey, Ms. Higgins.

19 I want to give this to you. You can take it with you
20 to read. I want to tell you what's in there, basically,
21 is that you remain a qualified juror. You're eligible to
22 serve. We're going to pick the jury at 2:30 this
23 afternoon. That doesn't give you a whole lot of time to
24 pack.

25 JUROR #153, PHYLLIS HIGGINS: No.

1 THE COURT: So we need to get you to go home, pack up
2 for five to seven days, and be back up here with all your
3 stuff at 2:30.

4 JUROR #153, PHYLLIS HIGGINS: Okay.

5 THE COURT: And just leave your stuff in the car, you
6 don't need to bring it in the courthouse.

7 JUROR #153, PHYLLIS HIGGINS: All right. Thank you.

8 (Juror #153, Phyllis Higgins, was excused from the
9 courtroom.)

10 MR. GOWDY: Your Honor, in the interest of time, it
11 looks like Juror #334 has suffered a conviction of
12 possession of cocaine first. Although I don't recall him
13 coming forward, I can't swear that he did not. I think
14 it's an offense that carries up to two years.

15 THE COURT: It is.

16 Do y'all have that as well?

17 MS. QUIMBY: We don't have that, but Solicitor Gowdy
18 has advised us of that.

19 THE COURT: Just show it them before the next one or
20 whenever.

21 MS. QUIMBY: Okay.

22 THE COURT: Bring the next juror in, please.

23 (Juror #264, Stephanie Newman, a white female, was
24 seated.)

25 THE COURT: Ms. Newman, welcome to the courtroom.

1 JUROR #264, STEPHANIE NEWMAN: Thank you.

2 THE COURT: Thanks for being here. We appreciate the
3 sacrifices you've made to come sit on the jury. And I
4 want you to feel as comfortable as you possibly can.

5 And you're probably already just totally comfortable,
6 aren't you?

7 JUROR #264, STEPHANIE NEWMAN: Not totally.

8 THE COURT: I didn't think so. I've told everybody
9 who's been in here that if you're not a little bit nervous
10 and suffering from a little anxiety when you're sitting in
11 that chair, then there's probably something wrong with
12 you. So it's completely normal to be a little tense and a
13 little nervous. And we all expect that and we're all
14 aware of it and we all are sensitive to it. So,
15 hopefully, you'll get comfortable here real quickly,
16 because it's really not a threatening situation.

17 What we're going to do is talk to you about,
18 basically, three subject areas, three subject matters.
19 And it's not a long -- you know, it's pretty brief
20 questioning. The first subject is whether or not you've
21 heard anything about this case. The second subject is if
22 you can be fair and impartial. And the third subject,
23 because of the serious nature of this offense, we need to
24 discuss with you your views on capital punishment.

25 Now, I understand a lot of people find that to be a

1 very private issue. And it's not something that everybody
2 runs around talking about all the time. A lot of people
3 are conflicted in their own minds and in their own hearts
4 about how they feel about that because, quite frankly,
5 most of us have not had to really face it. So it's easy
6 to kind of talk in esoteric terms about. But, you know,
7 now, we need to know your kind of heartfelt feelings about
8 it.

9 I want to tell you there are no right or wrong
10 answers to any of the questions that you give. The only
11 correct answers that you can give are truthful, candid,
12 complete answers to the questions, your heartfelt
13 feelings. That's the only correct answer. And there's no
14 right or wrong. Your answers will not be judged by some
15 standard. They will not be put up to some litmus test.
16 So I hope you understand that. And then -- and that's
17 what we're going to be doing and talking about.

18 Now, before we go forward, I want to review parts of
19 the indictments with you, because I want to make sure you
20 understand what we're here for. I want to emphasize that
21 the indictments are not evidence and can never be
22 considered as evidence. They're allegations only.

23 The first indictment is an indictment for murder. It
24 alleges that Fredrick Antonio Evins did in Spartanburg
25 County on or about February 13th of 2003, feloniously,

1 willfully, and with malice aforethought kill Rhonda Marie
2 Ward by stabbing. The next indictment is for kidnapping.
3 It alleges that Mr. Evins did in Spartanburg County on the
4 same date unlawfully seize, confine, and kidnap Rhonda
5 Marie Ward. The next indictment alleges criminal sexual
6 conduct. And it alleges that Mr. Evins did in Spartanburg
7 County on or about the same date, February 13th of 2003,
8 willfully and unlawfully commit a sexual battery upon
9 Rhonda Marie Ward. And, finally, the last indictment is
10 for grand larceny. And it alleges that Mr. Evins did on
11 or about the same date feloniously and unlawfully take,
12 seize, and carry away a 1993 Nissan Sentra automobile and
13 its contents belonging to Rhonda Marie Ward.

14 Now, those are just allegations. The burden is on
15 the State at trial to prove the allegations alleged in the
16 indictment. And it has to be proven beyond a reasonable
17 doubt.

18 Now, we recognize that there's been publicity about
19 this case on the television, on the radio, and in the
20 newspaper. So my first question would be, have you heard,
21 read, or seen anything at all about this cas?

22 JUROR #264, STEPHANIE NEWMAN: Not that I remember,
23 not that sticks out in my mind.

24 THE COURT: Well, now, let me just tell you that as
25 you go through this questioning and if you were selected

1 to serve on the jury, as you heard things, your memory
2 might be prodded and it might pop into your head that, oh,
3 yeah, I do remember seeing this on the television or I
4 read it in the newspaper. I would tell you that your oath
5 would require you to put aside anything you have read,
6 seen, or heard about this case outside of this courtroom.
7 Because the law requires that a decision be made about a
8 case based solely on the evidence presented at trial in
9 the courtroom.

10 Do you understand that?

11 JUROR #264, STEPHANIE NEWMAN: Yes, sir.

12 THE COURT: Okay. Could you follow your oath and
13 serve as a fair and impartial juror and reach a verdict
14 based solely on the evidence and facts presented in the
15 courtroom?

16 JUROR #264, STEPHANIE NEWMAN: I believe so.

17 THE COURT: Okay. Have you already formed any type
18 of opinion about the facts of this case?

19 JUROR #264, STEPHANIE NEWMAN: No, sir.

20 THE COURT: Have you formed any type of opinion about
21 the guilt or innocence of Mr. Evins?

22 JUROR #264, STEPHANIE NEWMAN: No, sir.

23 THE COURT: All right. Now, keeping in mind the
24 legal principles that I talked to you about before, the
25 presumption of innocence and the State's obligation to

1 prove guilt beyond a reasonable doubt, at a trial, could
2 you, depending upon the facts and circumstances of the
3 case as presented and the law that I will give you, could
4 you find a defendant either guilty or not guilty based on
5 the evidence that was presented?

6 JUROR #264, STEPHANIE NEWMAN: I think so.

7 THE COURT: Okay. So your mind is not made up one
8 way or the other beforehand?

9 JUROR #264, STEPHANIE NEWMAN: No, sir.

10 THE COURT: All right. Very good. Now, remembering
11 that we may or may not even get to the second phase of a
12 trial, but since we possibly could, it's necessary for us
13 to just talk a little bit about your views on the death
14 penalty.

15 Now, when we get to -- a jury gets to the second
16 phase of the trial, it means that the same jury in the
17 first phase has already decided that the Defendant is
18 guilty of murder and they've made that decision based on
19 evidence proven beyond a reasonable doubt. In the second
20 phase, there wouldn't be a legal defense to consider or
21 discuss because that guilt or innocence -- guilt has been
22 established. In the second part of the trial, the jury
23 would be presented with evidence in aggravation and
24 evidence in mitigation that I've talked with you about
25 before.

1 Now, your oath would require you to set aside any
2 preconceived notion that you might have. Your oath would
3 require you to give serious and meaningful consideration
4 to all the evidence in aggravation and to all the evidence
5 in mitigation. Could you honor your oath and do that?

6 JUROR #264, STEPHANIE NEWMAN: I believe so. I hope
7 so.

8 THE COURT: Okay. Now, let me ask you a hypothetical
9 question, if you were a juror in that situation, a juror
10 in the second phase of a trial, which means that you were
11 a juror in the first phase that decided guilt of murder,
12 could you, depending upon the facts and the evidence
13 presented at trial, considering all of the mitigating and
14 aggravating circumstances and the law that I would give
15 you, could you return a verdict of life in prison?

16 JUROR #264, STEPHANIE NEWMAN: (Juror nodded.)

17 THE COURT: Okay. Now, the next hypothetical, same
18 scenario, you're a juror in the second phase of a trial,
19 where in the first phase you found the defendant guilty of
20 murder, could you, depending upon the facts and the
21 evidence presented at that second phase and considering
22 all of the aggravating evidence and all of the mitigating
23 evidence and the law that I would give you, could you
24 return a verdict of death?

25 JUROR #264, STEPHANIE NEWMAN: I believe so.

1 THE COURT: Okay.

2 JUROR #264, STEPHANIE NEWMAN: Depending on the
3 aggravating circumstances.

4 THE COURT: All right. And you would follow the law
5 that I gave you with respect to that, would you not?

6 JUROR #264, STEPHANIE NEWMAN: Yes, sir.

7 THE COURT: And would you consider all the mitigating
8 evidence as well?

9 JUROR #264, STEPHANIE NEWMAN: Yes, sir.

10 THE COURT: Now, in the event that a death sentence
11 was handed down by a jury, the law requires that it be a
12 unanimous decision. And the law would require that every
13 juror sign their name to a death sentence verdict form.
14 Could you sign your name to such a form?

15 JUROR #264, STEPHANIE NEWMAN: Yes.

16 THE COURT: Now, do you recall the list of names that
17 I had -- the list of juror types that I had you review?

18 JUROR #264, STEPHANIE NEWMAN: Yes, sir.

19 THE COURT: Where would you -- what type do you
20 consider yourself to be?

21 JUROR #264, STEPHANIE NEWMAN: The third.

22 THE COURT: All right. You would want to hear all of
23 the evidence and the law before you made a decision?

24 JUROR #264, STEPHANIE NEWMAN: Yes, sir.

25 THE COURT: All right. Your mind -- is your mind

1 made up in any way about guilt or innocence or life or
2 death beforehand?

3 JUROR #264, STEPHANIE NEWMAN: No.

4 THE COURT: All right. If you were selected to
5 serve, would you follow your oath and serve as a fair and
6 impartial juror and approach jury service with an open
7 mind to find the truth from the evidence and the law that
8 I would give you?

9 JUROR #264, STEPHANIE NEWMAN: As best I could, yes.

10 THE COURT: Do you have any reservations about that?

11 JUROR #264, STEPHANIE NEWMAN: No.

12 THE COURT: And do you know of any reason why you
13 could not serve in this case?

14 JUROR #264, STEPHANIE NEWMAN: No.

15 I do have a concern --

16 THE COURT: Yes, ma'am, please tell me.

17 JUROR #264, STEPHANIE NEWMAN: -- about being
18 sequestered. I have two small children and --

19 THE COURT: How old are they?

20 JUROR #264, STEPHANIE NEWMAN: Three and 16 months.
21 And having care for them during the day is not a problem,
22 but 24 hours a day would pose more of a problem. And I've
23 also had some minor complications very recently in this
24 pregnancy.

25 THE COURT: All right. You are pregnant?

1 JUROR #264, STEPHANIE NEWMAN: Yes.

2 THE COURT: How pregnant are you?

3 JUROR #264, STEPHANIE NEWMAN: Just about four
4 months. It's nothing serious. But if anything else were
5 to happen, I would need to contact the doctor and things
6 like that.

7 THE COURT: Oh, certainly, absolutely.

8 JUROR #264, STEPHANIE NEWMAN: That's definitely a
9 concern.

10 THE COURT: Well, who would be taking care of your
11 children if you were sequestered?

12 JUROR #264, STEPHANIE NEWMAN: Well, my husband would
13 be -- during the day, they would be with friends. I have
14 friends that are willing to keep them during the day. But
15 the evening and weekends and things like that, my husband.
16 But he also has obligations that pull him away during the
17 evening or weekends or whatever, which is -- it will be a
18 little more difficult for sure.

19 THE COURT: All right. Well, I was about to tell you
20 that if you are qualified, you would be returning at 2:30
21 packed and ready to go for seven days and be staying at
22 the Marriott Hotel.

23 JUROR #264, STEPHANIE NEWMAN: Today?

24 THE COURT: Today.

25 JUROR #264, STEPHANIE NEWMAN: Whoa.

1 THE COURT: All right. Could you -- before I allow
2 questioning to go on with the attorneys, would you step
3 into the hallway for me for just a second?

4 JUROR #264, STEPHANIE NEWMAN: Sure.

5 THE COURT: Thank you very much.

6 (Pause.)

7 MR. GOWDY: It's the exact same situation we had
8 earlier this morning. She's aware of the exemption. She
9 has not asserted it. If she can find an alternative --

10 THE COURT: All right.

11 MR. GOWDY: The last lady could, so.

12 THE COURT: Okay. Well, let's bring her on back.

13 Ms. Newman, we -- it would be a family jury service,
14 I guess. Your husband is going to have to make some
15 sacrifices as well, if you are selected. You may not even
16 be selected, but I think you're qualified to go forward.
17 So -- at this point, you're qualified to go forward.

18 I'm going to allow the attorneys to question you at
19 this time. And I promise you, we will be very sensitive
20 to those personal issues.

21 Thank you.

22 MR. BARNETTE: May it please the Court, Your Honor?

23 EXAMINATION

24 BY MR. BARNETTE:

25 Q Ms. Newman, my name is Barry Barnette. I'm going to

1 introduce everybody again. This is Trey Gowdy and John
2 Anthony. We represent the State in this case.

3 I noticed you like to watch CSI. You enjoy the CSI
4 shows?

5 A Not as much as my husband does.

6 Q Oh, you have to watch what he watches?

7 A I don't have to.

8 Q But y'all watch the same thing?

9 A Pretty much.

10 Q I just want to ask you a few questions in follow-up
11 to what the Judge asked you.

12 A Okay.

13 Q Talking about the death penalty -- and that's one of
14 the parts of this case.

15 A All right.

16 Q What is your view of the death penalty, if you can
17 just tell me? Have you ever thought about it?

18 A I have. I think that sometimes it is necessary and
19 depending -- I mean, I think it's case by case. It
20 completely depends on what has been done.

21 Q So you would look at the individual facts?

22 A Yes.

23 Q Like you say, case by case determines it?

24 A Yes.

25 Q So you realize all murders aren't death penalty

1 cases?

2 A Right. No, I don't think so.

3 Q But some are death penalty cases?

4 A Right.

5 Q And you feel like when looking at the circumstances,
6 if it was warranted, you could give the death penalty?

7 A Yes, I do.

8 Q And could you sign the form?

9 A Yes.

10 Q And you'd listen to the evidence and if you felt like
11 the evidence didn't reach that point, could you return a
12 verdict of life without parole?

13 A Yes, sir.

14 Q But at the same time, if you felt like the evidence
15 warranted it, you could give the death penalty?

16 A Yes, sir.

17 Q You realize that the death penalty is not automatic?
18 The law doesn't say A plus B plus C equals the death
19 penalty. Life without parole is always an option.

20 A Uh-huh.

21 Q It will always be an option.

22 A Uh-huh.

23 Q But you feel like if the circumstances warranted it,
24 you could give the death penalty?

25 A Yes.

1 Q And your husband is a minister, also?

2 A Yes.

3 Q A minister of music at a baptist church?

4 A Yes.

5 MR. BARNETTE: One second, Your Honor.

6 THE COURT: Okay.

7 MR. BARNETTE: Thank you, ma'am, for answering my
8 questions. And thank you for filling out the
9 questionnaire.

10 MS. QUIMBY: May it please the Court, Your Honor?

11 EXAMINATION

12 BY MS. QUIMBY:

13 Q Hey, Ms. Stewart, how are you? My name is Karen
14 Quimby. That's Tam Boggs and Christopher Brough, and then
15 Fredrick Evins in the corner. We're glad you're with us
16 this week.

17 A Thank you.

18 Q So this is your third pregnancy?

19 A Yes.

20 Q And you're four months?

21 A Yes.

22 Q Not -- I hate to pry. Can you describe the
23 complications that you were talking about? Are they --

24 THE COURT: I don't think we need to get into that.

25 MR. BARNETTE: I think this is not the appropriate --

1 MS. QUIMBY: I'm sorry.

2 THE COURT: That's all right.

3 Go ahead.

4 BY MS. QUIMBY:

5 Q I didn't mean to -- I think -- okay. You have served
6 on a jury once before, I think?

7 A Yes.

8 Q Do you remember when that was?

9 A It was in 1999.

10 Q 1999?

11 A Yes.

12 Q Okay. And I think you said you were 19?

13 A Uh-huh.

14 Q Okay. That's a tough thing to do, I guess, when
15 you're 19?

16 A No, it wasn't 1999, it was 1996.

17 Q Okay.

18 A Is that right? Because I was already married in
19 1996. I'm sorry.

20 Q That's okay. How did you like jury service?

21 A I felt I was a little too young for it at the time.
22 It was a sexual assault and I just wasn't prepared for
23 that.

24 Q Okay. In what ways -- like I don't want to put words
25 in your mouth.

1 A I just didn't feel prepared to handle that kind of a
2 case, honestly.

3 Q Emotionally or was --

4 A Uh-huh.

5 Q Was it emotionally or --

6 A Emotionally, and just being able to handle all that,
7 all of the details of a case like that.

8 Q Do you think things have changed between then and
9 now?

10 A Yes, ma'am.

11 Q How so?

12 A I'm just older and more maturity and being able to
13 form opinions and discern facts and things like that.

14 Q Okay. Have you thought about -- you probably haven't
15 had much time to think about whether serving on the same
16 type of case would bother you at all.

17 A Well, I mean, sure, no one enjoys that.

18 Q No, no one does.

19 A But I feel like I could be fair and impartial.

20 Q Okay. And that's what we want. We want fair and
21 impartial jurors. Do you have any feelings one way or the
22 other about when the police make an arrest whether that
23 person is or may be guilty or innocent?

24 A Well, honestly, you just the way it's often presented
25 in the media, you just assume that what they're saying is

1 true. You assume that they've got the right person. And
2 I tend to be that way. But if I were to -- I do realize
3 that that's not necessarily true.

4 Q Well, right. Because what you read in the paper is
5 not what you would hear in court and in court is what you
6 would have to take into consideration.

7 A But it is easy for me to tend towards assuming that
8 they are guilty, because of the way things are presented
9 in the media.

10 Q Okay. You had said you were not sure if you
11 remembered hearing about this case or not. This occurred
12 out in Drayton at a Cigarette's 4 Less store. It started
13 out there and continued on through town out to the country
14 in Reidville and ended up in a field or an orchard. Does
15 that ring any bells at all from about a year and a half
16 ago?

17 A No.

18 MS. QUIMBY: Okay. Hold on one second, please.

19 Ms. Newman, thank you for answering our questions.
20 We appreciate it.

21 THE COURT: Can I get you to step out in the hall one
22 more time for me?

23 JUROR #264, STEPHANIE NEWMAN: Sure.

24 (Pause.)

25 MS. QUIMBY: Your Honor, if I may, I just wanted to

1 apologize for the first question.

2 THE COURT: Don't worry about it.

3 MS. QUIMBY: I just wanted to explain that my
4 intention was if it was something that might get
5 exacerbated by any stress.

6 THE COURT: I'll find that out privately. We'll
7 check on that and make sure we're okay. Don't worry about
8 it.

9 Any objections?

10 MR. BARNETTE: None from the State, Your Honor.

11 MS. QUIMBY: Your Honor, we would object.

12 And I do find a distinction between this juror and
13 the other juror, I think, that was number #118, the one
14 who had the child care concerns. The distinction that I
15 find is, first of all, that juror -- the previous juror
16 was not currently pregnant with mild complications. I
17 don't know if the Court wants to inquire privately with
18 her about that, but I understand that they are similarly
19 situated, that they both have child care issues, but
20 they're two different situations.

21 THE COURT: I'll question her privately about those.

22 MS. QUIMBY: Okay. Additionally, Your Honor, she
23 does tend to believe that based on an arrest, a person is
24 guilty. She said she does understand that what comes in
25 in court is what she would have to look at, but she says

1 that it's easier to tend towards assuming they are guilty
2 by an arrest.

3 THE COURT: I heard her.

4 MS. QUIMBY: And that would be another basis.

5 THE COURT: All right. Let me -- I guess I need to
6 do it on the record.

7 MR. GOWDY: Do you want us to leave, Your Honor?

8 MR. BARNETTE: We wouldn't have any objection to
9 that.

10 MS. QUIMBY: That's fine.

11 MR. BARNETTE: Your Honor, if you want to talk in
12 chambers, you can do that.

13 THE COURT: Okay. Let me step back there and ask
14 her.

15 (Pause.)

16 THE COURT: Okay. Without disclosing the nature of
17 the complications, she described it as not a major
18 concern -- well, actually, y'all come up here and let me
19 tell you.

20 (WHEREUPON, a bench conference was held with the
21 attorneys.)

22 MR. GOWDY: I have an idea of what the problem is.
23 It's limited to only a couple of things.

24 THE COURT: Okay, Dr. Gowdy.

25 MR. GOWDY: I would think that's not on the record.

1 THE COURT: She's got some minor bleeding that has
2 been going on last week and this week. And she said if it
3 occurs again, she needs to call her doctor. She's not
4 very concerned about it. And she doesn't think it would
5 stop her from serving, but she would need to contact the
6 doctor. So that's the substance of what she had to say.
7 And she's a very pleasant young lady. And I don't think
8 I'm going to disqualify her based on that.

9 MS. QUIMBY: That's fine.

10 MR. BOGGS: The medical thing doesn't --

11 THE COURT: I don't think the medical thing is enough
12 to put her over the edge. She doesn't think so, I asked
13 her.

14 All right. And with respect to her comments on her
15 bias after exposure to the media, I'm going to find
16 that -- I'm going to find her qualified. I think she is
17 probably -- and really ought to be congratulated for her
18 honesty. I think it is human nature to -- the first
19 impression, everybody hearing something and they kind of
20 believe it. So I just think she's very honest and is very
21 conscientious. She understands the obligation to follow
22 the oath.

23 So over your objection, I will find her qualified.

24 MS. QUIMBY: Yes, sir.

25 (WHEREUPON, the bench conference was concluded.)

1 THE COURT: Bring Ms. Newman back in, please.

2 (Pause.)

3 THE COURT: Hey, Ms. Newman.

4 Thank you for your patience.

5 I want you to come forward, please. I'm going to
6 give that to you to take with you. It doesn't really say
7 anything I'm not going to tell you, but I just made all
8 these copies and I want to get rid of them. You are a
9 qualified juror and continue to be eligible to serve.
10 And, as I told you, we're going to try and pick this jury
11 at 2:30. And if you could be back here with your
12 belongings at 2:30, we would greatly appreciate it. We
13 don't just appreciate it, we expect it.

14 Please don't you discuss the matter with anyone else.
15 And, of course, you have to tell your family about the
16 situation. The reason for that is that even an innocent
17 comment from someone you love and trust could poison the
18 well, so to speak, and that would not be fair to have an
19 influence on the outcome. That's why I ask you not to do
20 that.

21 Thank you very much.

22 We'll see you back at 2:30.

23 JUROR #264, STEPHANIE NEWMAN: Okay.

24 (Juror #264, Stephanie Newman, was excused from the
25 courtroom.)

1 THE COURT: We're up to 38.

2 Solicitor, is there anything else?

3 MR. GOWDY: No. I was just checking to see if my
4 number was correct.

5 THE COURT: I'd say we keep going on, that way there
6 won't be any problems.

7 Bring the next juror in, please.

8 (Juror #399, Johnny Young, a black male, was seated.)

9 THE COURT: All right. Mr. Young, welcome to the
10 courtroom. I know you're sitting in the hot seat. It's
11 not as bad as it might seem. I want to tell you that I
12 don't know how many folks we've talked to, it's been over
13 60 people, and everybody has survived the experience. So
14 you're going to do just fine. If you're feeling a little
15 nervous or some anxiety about it, that's completely
16 normal, we expect it and don't worry about it.

17 I want to tell you that we're going to talk about
18 three subjects, basically. We might expand beyond that a
19 little bit. We want to know if you've heard anything
20 about this case. We want to know if you can be fair and
21 impartial. And then because of the nature of the case,
22 we're going to want to talk to you about your views on the
23 death penalty.

24 JUROR #399, JOHNNY YOUNG: All right.

25 THE COURT: There are no right or wrong answers. The

1 only correct answers would be your truthful, candid,
2 complete answers to the questions. We're looking for your
3 heartfelt feelings. We realize some of them are kind of
4 sensitive and you might not have your own mind made up.
5 And that's fine. But we just need to know how you feel
6 about it.

7 JUROR #399, JOHNNY YOUNG: Okay.

8 THE COURT: I'm going to read to you these
9 indictments, parts of them. They're not evidence and
10 cannot be considered as evidence. They're just
11 allegations.

12 JUROR #399, JOHNNY YOUNG: All right.

13 THE COURT: The first one is for murder. It alleges
14 that the Defendant, Fredrick Antonio Evins, did in
15 Spartanburg County on or about February 13th, 2003,
16 feloniously, willfully, and with malice aforethought kill
17 one Rhonda Marie Ward by stabbing. The next indictment is
18 for kidnapping. It alleges that Mr. Evins did on the same
19 date, February 13th, 2003, willfully and unlawfully seize,
20 confine, and kidnap Rhonda Marie Ward. The next is a
21 criminal sexual conduct indictment. It alleges that
22 Mr. Evins did on the same date, February 13th of 2003,
23 willfully and unlawfully commit a sexual battery upon
24 Rhonda Marie Ward. And, finally, the last indictment is
25 for grand larceny. It alleges on the same date that

1 Mr. Evins did unlawfully and feloniously carry away a 1993
2 Nissan Sentra automobile and all the contents that were in
3 it that belonged to Rhonda Marie Ward. Now, those are the
4 allegations in the indictments against Mr. Evins. And the
5 State has the obligation to prove those.

6 We recognize that there's been publicity on the
7 television, the radio, and in the newspaper. My first
8 question is, have you heard, read, or seen anything about
9 this case?

10 JUROR #399, JOHNNY YOUNG: Since this week?

11 THE COURT: No. At any time?

12 JUROR #399, JOHNNY YOUNG: I've heard about it in the
13 past, yeah.

14 THE COURT: Okay. How did you hear about it? Do you
15 recall how?

16 JUROR #399, JOHNNY YOUNG: I think it was on
17 television and people talking about it and something.

18 THE COURT: People in your neighborhood talking about
19 it?

20 JUROR #399, JOHNNY YOUNG: Yeah.

21 THE COURT: People at work, stuff like that?

22 JUROR #399, JOHNNY YOUNG: Yeah.

23 THE COURT: Tell me, do you remember what you saw on
24 television?

25 JUROR #399, JOHNNY YOUNG: I don't really remember.

1 I mean, I just remember bits and pieces about it. That's
2 it.

3 THE COURT: All right.

4 JUROR #399, JOHNNY YOUNG: I don't think there was no
5 suspects or nothing like that.

6 THE COURT: All right. Do you remember -- what did
7 your neighbors say about it?

8 JUROR #399, JOHNNY YOUNG: Well, everybody had
9 different opinions, different views, I mean.

10 THE COURT: Okay. Did you have a view about it?

11 JUROR #399, JOHNNY YOUNG: Well --

12 THE COURT: Remember, I'm looking for your
13 heartfelt -- the truth.

14 JUROR #399, JOHNNY YOUNG: Well, you can say anything
15 when you're not directly there looking at it, but, you
16 know, until that happened, you can't really say.

17 THE COURT: Okay. Absolutely. Well, let me tell you
18 that your oath, as a juror, would require you, if you were
19 selected, to put aside anything that you had heard, read,
20 or seen about the case outside of the courtroom. Because
21 the law requires that a decision be made solely on the
22 evidence presented in the courtroom at trial.

23 Do you understand that?

24 JUROR #399, JOHNNY YOUNG: Yes.

25 THE COURT: Okay. Could you follow your oath and

1 serve as a fair and impartial juror and reach a verdict
2 based solely on the evidence presented at trial in the
3 courtroom and based on the law that I would give you?

4 JUROR #399, JOHNNY YOUNG: Possibly, I could, but I
5 don't know.

6 THE COURT: Well, tell me your feelings.

7 JUROR #399, JOHNNY YOUNG: It's hard to say until
8 that time comes. It's hard to say. I don't know.

9 THE COURT: Well, tell me, do you think you would be
10 influenced by what you've heard?

11 JUROR #399, JOHNNY YOUNG: Probably not. I don't
12 know. Probably not.

13 THE COURT: All right. Are you sure about that?
14 Could you put it aside?

15 Let me tell you the reason I'm telling you this is
16 because our country has been around for over 300 years.
17 We've got the best justice system in the world. It's not
18 perfect by any means, but it's the best. And we have
19 never convicted people -- I'm not saying it never has
20 happened, but the law is that we don't convict people
21 based on gossip.

22 Do you understand?

23 JUROR #399, JOHNNY YOUNG: Right.

24 THE COURT: And we want hard, cold evidence. And the
25 only way we can trust that evidence is if it's presented

1 in the courtroom under oath.

2 Do you understand that?

3 JUROR #399, JOHNNY YOUNG: Uh-huh.

4 THE COURT: That's why it is so vitally important
5 that you put aside any thoughts that you might have about
6 things you've heard outside the courtroom. Having said
7 that, I understand it is human nature that when you hear
8 something to assume things. So my question to you is, do
9 you think you could put aside anything you have heard,
10 seen, or read outside the courtroom?

11 JUROR #399, JOHNNY YOUNG: I probably could.

12 THE COURT: And follow your oath?

13 JUROR #399, JOHNNY YOUNG: I probably could.

14 THE COURT: All right. Have you formed any opinion
15 about the guilt or innocence of Mr. Evins?

16 JUROR #399, JOHNNY YOUNG: No.

17 THE COURT: All right. Now, keeping in mind those
18 legal principles I told you about, the presumption of
19 innocence and the State's obligation to prove guilt beyond
20 a reasonable doubt, could you, depending upon the facts
21 and the evidence presented at a trial and the law that I
22 would instruct you, could you find a defendant either
23 guilty or not guilty based on the evidence presented at
24 trial?

25 JUROR #399, JOHNNY YOUNG: Sure.

1 THE COURT: Okay. You wouldn't come into court with
2 a preconceived notion?

3 JUROR #399, JOHNNY YOUNG: Preconceived?

4 THE COURT: Preconceived about whether somebody is
5 guilty or not guilty?

6 JUROR #399, JOHNNY YOUNG: No.

7 THE COURT: Okay. Now, remember, we may not even get
8 to the second phase of the trial, but because it's a
9 possibility, I need to talk to you about your views on the
10 death penalty.

11 Okay. Now, when we go to the second phase -- I've
12 already talked about this a little bit, it means they're
13 already through the first phase of the trial and that jury
14 has unanimously agreed that the defendant is guilty of
15 murder -- guilty beyond a reasonable doubt of murder.
16 That's how you get to the second phase.

17 In the second phase, you're not going to hear
18 anything and won't be discussing anything about guilt or
19 innocence. You're going to be talking about -- the
20 evidence that will be presented in the second phase would
21 be aggravating evidence and mitigating evidence.

22 Do you understand that?

23 JUROR #399, JOHNNY YOUNG: (Juror nodded.)

24 THE COURT: So your oath would require you to put
25 aside -- your oath would require you to give serious and

1 meaningful consideration to all the evidence in
2 aggravation and to all the evidence in mitigation. Could
3 you honor your oath?

4 JUROR #399, JOHNNY YOUNG: Yes.

5 THE COURT: All right. Now, I'm going to ask you a
6 hypothetical question. Just think, presume you're a juror
7 in the second phase of the trial, the jury has already
8 convicted the defendant guilty of murder, you're in the
9 second phase, could you, based upon the facts and the
10 circumstances and the evidence presented, after
11 considering all of the evidence in aggravation and all of
12 the evidence in mitigation and the law that I would
13 instruct you, could you return a sentence of life without
14 parole?

15 JUROR #399, JOHNNY YOUNG: That's a hypothetical?

16 THE COURT: Yes. Just depending -- I just need to
17 know, could you give somebody life in prison without
18 parole?

19 JUROR #399, JOHNNY YOUNG: Yeah. I probably could.

20 THE COURT: Okay.

21 JUROR #399, JOHNNY YOUNG: I probably could.

22 THE COURT: Now, a second hypothetical question. The
23 same scenario, you're in the second phase of a trial,
24 you've already found a defendant guilty of murder beyond a
25 reasonable doubt. Could you in that situation, depending

1 upon the particular facts and the evidence presented at
2 trial after considering all of the mitigating evidence and
3 all of the aggravating evidence and the law that I would
4 give to you, could you sentence somebody to death?

5 JUROR #399, JOHNNY YOUNG: That's a tough one.

6 THE COURT: It is a tough one.

7 JUROR #399, JOHNNY YOUNG: I'm not sure about that
8 one.

9 THE COURT: All right. Well, let's talk about it.
10 This is what I'm asking for, your heartfelt feelings about
11 it.

12 JUROR #399, JOHNNY YOUNG: I've never really thought
13 about it. I really don't know. I don't know if I could
14 or not.

15 THE COURT: All right. Well, I need to explore it a
16 little bit with you. Can you tell me a little more about
17 that?

18 JUROR #399, JOHNNY YOUNG: You know, it's possible
19 that I could. It's possible that I could, but I don't
20 know. Because I never really thought about it, you know.

21 THE COURT: Right. It's a tough question. It's a
22 very tough.

23 JUROR #399, JOHNNY YOUNG: It's real tough..

24 THE COURT: And I'm telling you again, there are no
25 right or wrong answers to it. And, you know, you're

1 not -- nobody is going to judge your answers. Nobody is
2 going to put it up to a litmus test. The only correct
3 answer we can get is just exactly how you feel about it.
4 That's all we're interested in.

5 JUROR #399, JOHNNY YOUNG: Well, like I said, I never
6 really thought about it, but that would still be just like
7 killing somebody. I mean, that's, basically, the same
8 thing to me.

9 THE COURT: Yes.

10 JUROR #399, JOHNNY YOUNG: That's just what I --
11 that's just the way I feel right now, you know. Like I
12 say, I never really thought about it.

13 THE COURT: Okay.

14 JUROR #399, JOHNNY YOUNG: So, I mean, death is
15 death.

16 THE COURT: It sure is. So are -- you don't -- what
17 you're telling me is that you don't believe in killing; is
18 that right?

19 JUROR #399, JOHNNY YOUNG: Well, I like life better
20 than death. That's a tough one, I'm going to tell you.

21 THE COURT: It is. And we -- and it's a tough
22 question to ask, it's a tough question to answer. And,
23 normally, we wouldn't do it. But we're in a tough
24 situation here, a very serious and demanding case. And
25 that's why we need to know. We need to know your honest

1 feelings.

2 And let me tell you something, I understand I'm
3 sitting up here and I'm wearing this robe and you're in
4 this formal courtroom and I wish it wasn't that way. I
5 wish we could have this formal discussion without all the
6 trappings of it. Because I know it's tough when you're
7 talking to somebody about it. You're talking to the
8 Judge. And I understand that. I haven't been a Judge all
9 my life, I promise you. So I'm not -- and I'm not going
10 to pass judgment on what you tell me. But I do need to
11 know where you stand on it. And any answer you give me is
12 okay.

13 JUROR #399, JOHNNY YOUNG: I probably could. But
14 then again, I hear this little voice saying, you know,
15 it's not right, but I probably could.

16 THE COURT: Okay. I appreciate that. There's a lot
17 of soul searching involved in this.

18 JUROR #399, JOHNNY YOUNG: Yes, you're right, a lot.

19 THE COURT: Now, do you understand that if you're on
20 a jury in a situation where you felt that you could give
21 the death penalty and you did that, the law requires that
22 every member of the jury sign a death sentence verdict
23 form. Could you sign your name to a death verdict?

24 JUROR #399, JOHNNY YOUNG: Yeah. I mean, if I said
25 it, I guess I could, yeah.

1 THE COURT: Okay. Do you remember the sheet I gave
2 you about the three types of jurors?

3 JUROR #399, JOHNNY YOUNG: Yeah.

4 THE COURT: Which type do you figure you are? Do you
5 remember it?

6 JUROR #399, JOHNNY YOUNG: Probably Number 3 -- what
7 was Number 3?

8 THE COURT: Number 3 is --

9 JUROR #399, JOHNNY YOUNG: The one with something
10 about the details.

11 THE COURT: Yes. Number 3 is the juror who, although
12 the guilt of a defendant has been determined, would not
13 have his or her mind made up concerning punishment. The
14 juror would need to hear the facts and circumstances in
15 aggravation and mitigation and would want to listen to and
16 follow the law as the Judge charges the law before he or
17 she could make a decision regarding punishment.

18 And if the facts presented so warranted, the juror
19 could bring in the verdict of life. Also, if the facts
20 presented so warranted, the juror could bring in a
21 verdict for the death penalty. Do you think that's where
22 you are.

23 JUROR #399, JOHNNY YOUNG: Probably Number 3.

24 THE COURT: Okay. Now, let me -- if you were
25 selected, would you follow your oath to serve as a fair

1 and impartial juror and approach jury service with an open
2 mind to find the truth from the evidence and the law that
3 I gave to you?

4 JUROR #399, JOHNNY YOUNG: Yes.

5 THE COURT: Do you know of any reason why you could
6 not serve?

7 JUROR #399, JOHNNY YOUNG: Well, really, it's a bad
8 time for me.

9 THE COURT: All right. Why is that?

10 JUROR #399, JOHNNY YOUNG: Well, I just started back
11 to work. I went back to work this year. I was out of
12 work for three years. I worked on a job for about 23
13 years and they shut down and I was out of work for three
14 years. I just started back to work and am just getting
15 myself back above water. So, really, it would be a bad
16 time for me, because I'm just getting back to where I
17 should be.

18 THE COURT: Well, let me tell you that if you're
19 qualified -- if we find you qualified, we're going to pick
20 this jury in less than two hours. So if you're qualified,
21 we're going to need you to get home, get packed for five
22 to seven days, and come back up here. Okay. You'll be
23 staying at the Marriott.

24 Now, I'm going to let these lawyers question you a
25 little bit.

EXAMINATION

1
2 BY MR. BOGGS:

3 Q Hello, Mr. Young. How are you doing today?

4 A I guess I'll make it.

5 Q I'm Tam Boggs, Mr. Young. Karen Quimby, who's not
6 here right now, is an attorney that represents Fredrick
7 Evins along with me as well as Chris Brough, who is the
8 young man at the end. And as Judge Miller has already
9 explained to you, all we want to do is just find out
10 whether or not you're qualified to be on the panel.

11 Now, from what I understand -- well, first of all, I
12 noticed on your questionnaire that you like to watch Judge
13 Brown and Judge Mathis?

14 A Yeah.

15 Q So you must have an interest in the court system,
16 you're kind of interested in how our justice system works;
17 is that right?

18 A Uh-huh.

19 Q And you have watched that, you can see there are
20 always two sides and people have to make tough decisions
21 in court; is that right?

22 A Yes.

23 Q And it's the same thing with jurors, you do have to
24 make decisions a lot of times that are real tough. Okay.
25 But do you believe -- let me ask you this, on the death

1 penalty situation, you had to think about what your real
2 feelings were about it; correct?

3 A Well, yes.

4 Q But when Judge Miller asked you could you follow your
5 oath and if the case warranted it, if the case was bad
6 enough, could you pass on a death penalty sentence and you
7 said you probably could; is that right?

8 A Yeah.

9 Q Now, you know, in the death penalty phase of a case,
10 there's always going to be two options, one is either life
11 without parole or death. Okay.

12 A (Juror nodded.)

13 Q And what -- in the penalty phase, the State tries to
14 present what they call aggravators. So you've got your
15 murder, and the murder has already been decided in the
16 trial. And then the State tries to put on aggravators.
17 And if they can show that a case is so bad and put all
18 these aggravators on it, do you feel like you could find
19 the death penalty in certain cases?

20 A Yes.

21 Q All right. If you had the choice between death and
22 life in prison, would you automatically pick one over the
23 other or would you just go on a case by case basis,
24 depending on how severe it was?

25 A It probably depends on how it was.

1 Q So you wouldn't automatically pick life all the time
2 just because it was an option?

3 A No.

4 Q So if it was a real -- if Mr. Gowdy puts all these
5 aggravators on cr, at least, one aggravator and it was bad
6 enough as far as you were concerned, then you could find
7 the death penalty; correct?

8 A (Juror nodded.)

9 Q And you would be able to sign along with your other
10 jurors the verdict for the death penalty; correct?

11 A (Juror nodded.)

12 Q But if they don't show the aggravator or if there's
13 mitigating circumstances and you think the case is more
14 life in prison without parole, then could you vote that
15 way, too, depending on the case?

16 A Depending on the case.

17 Q So, basically, what I understand you saying -- and I
18 don't want to put words in your mouth. You tell me if I'm
19 not correct. Your feeling is you're not real wild about
20 the death penalty or serving on a death penalty jury, but
21 if you were called to serve on the jury, you would do your
22 duty; is that correct?

23 A Yes.

24 Q And that duty would require that you look at all the
25 facts and all the testimony; correct?

1 A Yes.

2 Q And once you heard all that, you would be able to
3 decide life in prison or death; correct, depending on the
4 case?

5 A Yes.

6 Q Okay. Now, you mentioned something about going
7 back -- you've just recently gone back to work. How long
8 have you been back to work?

9 A I've been back at work a year now.

10 Q All right. Now, obviously, any time anybody serves
11 on a jury, it disrupts their normal routine.

12 A Yeah.

13 Q But it's an obligation and a privilege, really, to
14 serve on a jury, even though it disrupts your life. If
15 you're picked on the jury -- right now, you're thinking,
16 oh, I don't want to serve because of my job. But if you
17 were picked to serve on the jury and you were sworn in,
18 you took an oath to truly try the facts and do your duty,
19 could you put aside the fact that you weren't at work and
20 concentrate strictly on your job, which as a juror is to
21 decide the case?

22 A That's a tough one. I've still got to take care of
23 my home, too.

24 Q I understand. But if you're put on the jury, you
25 know, basically --

1 A I'd do my best. I would do all I could.

2 Q So you believe you could follow what Judge Miller has
3 told you?

4 A I'd do what I could.

5 Q And not be distracted by anything else, just do what
6 a juror is supposed to do; is that correct?

7 A Yes, sir.

8 Q You did make a -- when Judge Miller asked you about
9 could you rule for the death penalty, I think you were
10 thinking about it because you apparently hadn't sat around
11 and thought about it too much in the past.

12 A No, I hadn't.

13 Q And we could tell, you know, you were weighing what
14 your opinion was. And you said you probably could, and
15 then you said there's this little voice that says it's not
16 right, but you probably could. So now that you've had a
17 chance to think about it and answer Judge Miller's
18 questions, again, do you feel that if you sat on the jury
19 and the case was right and the State met the burden of
20 proving these aggravators, could you sign for the death
21 penalty?

22 A Yes.

23 Q And even though life is an option, you would not
24 automatically go to life if the case deserved the death
25 penalty?

1 A Right.

2 MR. BOGGS: All right. Mr. Young, I appreciate you
3 filling this out. I appreciate you being here.

4 Thank you very much.

5 MR. ANTHONY: Thank you, Your Honor.

6 EXAMINATION

7 BY MR. ANTHONY:

8 Q Mr. Young, how are you doing?

9 A All right.

10 Q My name is John Anthony. And I'm one of the lawyers
11 that will be representing the State in this case. And
12 this is Barry Barnette, and this is Trey Gowdy. And the
13 three of us will be trying the case together.

14 I had just a few things I wanted to ask you. I saw
15 from the questionnaire you sent in that you're a Limestone
16 graduate?

17 A Yes.

18 Q When did you graduate from Limestone?

19 A 1989.

20 Q Okay. And now, you're working for Carolina
21 Recycling?

22 A Right.

23 Q And you just got back to work?

24 A Yes, almost a year ago.

25 Q About almost a year ago. After being unemployed for

1 how long?

2 A Almost three.

3 Q Okay. And so the missing work is a pretty bad thing
4 for you right now?

5 A Yes, it is. I mean, my -- I mean, my wife, she
6 works, but she don't make anything. She makes enough to
7 pay a couple bills, but that's about it. I'm more less --
8 I run things. Right now, I'm averaging around 50, 60
9 hours a week. And that's taking care of my expenses.
10 Because, see, before I lost my job, I was up here and then
11 I lost my job and I'm down here now. But I've still got
12 bills from where I was up here.

13 Q Yes. You've still got bills from when you had that
14 lifestyle from three years ago?

15 A So now 50, 60 hours a week is helping me get back to
16 where I'm supposed to be.

17 Q Well, let me ask you this, Mr. Young. And we're not
18 asking for anything but an honest answer to this question.
19 But if you were picked for this jury, what are you going
20 to be thinking, you know, sitting over there in the jury
21 box on Monday or Tuesday next week when you're not
22 working? What are you going to be thinking about?

23 A I'll be thinking about what's going on, but I'll be
24 thinking about what's going on in court.

25 Q All right. Will that be the only thing you'll be

1 thinking about?

2 A Well, you know, common nature tells you that you are
3 going to think about other things, too. You can't block
4 things out for good.

5 Q How much of your -- how much time will you spend
6 thinking about missing work?

7 MR. BOGGS: Your Honor, I object to the form of that
8 question. How can he answer that? He said he would pay
9 attention to what's going on. Mr. Anthony is asking for a
10 percentage of the thought process.

11 THE COURT: He did. So he's already said that, but
12 I'll let him ask that question.

13 BY MR. ANTHONY:

14 Q You can go ahead and answer that. How much of your
15 time will be occupied thinking about missing work, if you
16 were on this jury?

17 A It wouldn't -- probably knowing the whole time I'm
18 here, but I won't be in the courtroom all the time.

19 Q I'm sorry?

20 A I won't be in the courtroom all the time, will I?

21 Q No. You won't be in the courtroom all the time.

22 A As long as I'm in here, I'll probably be thinking
23 about the case.

24 Q Okay. Going back to this issue about the death
25 penalty -- and I don't want to belabor this, because I

1 think you've already been asked about it, but I just want
2 to make sure you understand. If a case goes to a
3 sentencing phase, there will be two options that a jury
4 will have. The jury will have the option to vote for the
5 death penalty, the jury will have the option to vote for
6 life in prison.

7 Now, could you -- if you knew that you could sentence
8 somebody to life in prison and that was going to be the
9 end of it, they would get life in prison, could you
10 consider giving them the death penalty?

11 A I didn't understand that. I mean --

12 Q Okay.

13 A It seemed like you asked me two questions at one
14 time.

15 Q Well, let me ask you again. If the case goes to a
16 sentencing phase and you're on the jury.

17 A Right.

18 Q There will be two options.

19 A Right.

20 Q One option will be to give the Defendant life without
21 parole.

22 A Right.

23 Q That will be one option. And that will always be an
24 option that a jury has. The second option would be to
25 impose the death penalty.

1 A Right.

2 Q Now, what I'm asking is, knowing that you could
3 always give somebody life without parole, could you
4 consider giving them the death penalty knowing that you
5 could give them life without parole?

6 A Could I go ahead and give them the death penalty
7 knowing I could give them life?

8 Q That's right.

9 A Yeah, probably. If all the evidence was there to
10 prove it, yeah.

11 Q Okay. And you said -- when the Judge was talking to
12 you, you said -- and I don't want to put words in your
13 mouth. But as I recall, you talked about being back in
14 the jury room and thinking that, you know, you could vote
15 for death if it was the right thing to do, but you heard
16 this voice in your head telling you that it wasn't right.
17 Do you remember saying that?

18 A Yeah.

19 Q Okay. Can you explain to me what you meant by that
20 voice in your head? Where was that coming from?

21 A Like I said, I never really thought about it until I
22 got here. And when I got here, all this just jumped out
23 at me. I mean, you know, I hadn't never thought about the
24 fact of killing somebody. I mean, I never thought about
25 it. And, you know, we sit out there on the street and we

1 talk junk all the time, but that's on the street. You're
2 talking about real life now, and I never really thought
3 about it.

4 So I was thinking, yeah, and then I was thinking, no.
5 That's all that was.

6 Q Okay.

7 A Because all of it just jumped out at me at one time.

8 Q Well, when you -- if you were selected in this case
9 and you went back to the jury room, do you think the voice
10 would keep you from thinking about doing -- sentencing
11 somebody to death?

12 A That's the same question he asked me, too, the same
13 thing. I probably could do it if I had to, yeah. But you
14 still have to think about it.

15 Q Okay. Well, I'm just asking, do you think there's
16 something that you'd bring into the jury room outside of
17 what you'd hear in the courtroom and what the Judge would
18 tell you that would -- that might keep you from being able
19 to vote for death?

20 A No. I could probably do it.

21 Q So you don't think that voice would be something that
22 would stop you from doing it, if you thought it was
23 something you needed to do?

24 A No, sir, not if I thought that's what I needed to do.

25 Q Okay. I just had a couple other things I wanted to

1 ask you. I saw on the questionnaire that you filled out
2 that you said you had a nephew who served time at some
3 point. You didn't say when that was.

4 A I have no idea.

5 Q Okay.

6 A All I know is he have served time. And it's my
7 sister's kid, and they don't talk about it.

8 Q Okay. Do you know when it was?

9 A I don't.

10 Q I mean, was it in the last five years, the last ten
11 years, the last year?

12 A It's been within the last ten years, but I don't
13 know.

14 Q Okay. Do you know what it was for?

15 A Not really. Like I said, the only thing I get from
16 them is bits and pieces, you know. I think it had
17 something to do with stolen cars or something like that.
18 I don't know what else was involved. I don't know.

19 Q Okay. Was he in Spartanburg County?

20 A At one time, he was.

21 Q I mean, did he get charged in Spartanburg County and
22 go to court here?

23 A I don't know that either, I mean.

24 MR. ANTHONY: If I could have one second, one moment.

25 THE COURT: All right.

1 BY MR. ANTHONY:

2 Q Let me ask you just a couple more things. Could you
3 tell me just as far as -- you know, you've said that you
4 think when you go into the jury room that you could
5 consider the death penalty and you could impose it. Could
6 you just tell me what your thought process is and how you
7 come to have that opinion that you could do that?

8 A Tell you how my thought process is and how I would do
9 that?

10 Q Yeah. How you come to believe you could do that.

11 A If all the evidence was in line to prove to do that,
12 I guess I probably could do it. I mean, if it showed
13 enough to do that.

14 Q Okay. And when the Judge was asking you questions,
15 he said something -- or you said something to him -- and,
16 once again, I don't want to put words in your mouth. But
17 as I recall, you said something to him about, that's just
18 like killing somebody to give them the death penalty. And
19 I was just wanting to ask you, how did you come to make
20 that comment?

21 A I just said it. I mean, the death penalty means
22 killing somebody; right? Sooner or later, somebody is
23 going to die. Well, death is death. I mean, that's the
24 way I look at it, death is death.

25 Q Okay. Well, do you think that that is something that

1 somebody in your spot should do or should not do?

2 A What you mean?

3 Q Well, do you think -- I mean, when you say it's just
4 like killing somebody, do you think that -- would that be
5 something you don't believe you should do?

6 A Well, I really don't know. I mean, I really don't
7 know. Like I say, I'm here today because the law says I
8 have to be here.

9 Q Yes, sir.

10 A I mean, you know, other than that, I would much
11 rather be home.

12 Q Well, let me just ask you -- I mean, you --

13 MR. BOGGS: Your Honor, this whole line of
14 questioning --

15 THE COURT: We're getting pretty far afield.

16 MR. BOGGS: Are they channeling in on singling him out?

17 THE COURT: If there's new matter -- he's pretty much
18 answered your questions. But if you've got some other
19 subject you need to get to, let's get to it.

20 MR. ANTHONY: Well, if I may, let me ask one
21 follow-up question to what he just said.

22 THE COURT: All right.

23 BY MR. ANTHONY:

24 Q You just said that you didn't know if you could kill
25 somebody?

1 MR. BOGGS: Your Honor, I object to that phraseology,
2 too.

3 THE COURT: Yes. We're not talking about -- please
4 caption it in terms of the appropriate sentence that he
5 would -- that the jury would be passing on.

6 MR. ANTHONY: Yes, sir.

7 BY MR. ANTHONY:

8 Q Mr. Young, I believe when you were talking, you were
9 saying that the reality of what you were doing is you were
10 imposing the sentence of death on somebody and you didn't
11 know if that was the right thing to do. Is that what you
12 just said?

13 A I don't know. When, a few minutes ago?

14 Q No, the last thing you just said.

15 A I don't remember if I -- did I say that?

16 Q I'm not --

17 A I don't know. I'm lost now.

18 Q Well, let me ask you, do you believe that you could
19 go back to a jury room and sign a form that says that
20 someone is going to be put to death? Since you just said
21 that's what you'd be doing back there, do you think you
22 can do that?

23 A I suppose, yeah. I mean, yeah.

24 MR. ANTHONY: Thank you.

25 That's all.

1 THE COURT: Okay. Mr. Young, would you do me a favor
2 and step into the hallway for just one second?

3 JUROR #399, JOHNNY YOUNG: This is like I'm on trial.
4 (Pause.)

5 THE COURT: All right. Any objections?

6 MR. ANTHONY: Yes, sir. There's an objection from
7 the State.

8 THE COURT: Well, go ahead and state it on the
9 record.

10 MR. ANTHONY: The State believes that when he was
11 questioned, basically, everything -- every answer he gave,
12 he couched in a very provisional way. I probably could
13 impose it, you know. I suppose -- the last thing he said,
14 I suppose I could do it. The State believes he never gave
15 an unequivocal answer whether he could impose the death
16 penalty. And he should be disqualified for that reason.

17 THE COURT: Do y'all object?

18 MR. BOGGS: No. We don't object. In fact, I think
19 under the intense questioning, he stood up pretty well.

20 THE COURT: I'm going to find he's qualified. I
21 understand he's not a juror the State would particularly
22 want on their jury. But I think he answered the questions
23 appropriately. So I'm going to find him qualified.

24 And we now have 39 jurors. It is 1:00. They're
25 coming back -- well, let me take care of him.

1 Bring him back.

2 (Pause.)

3 THE COURT: No more questions, I promise you. Come
4 on up here. You're all right. You did real well. We --
5 let me just tell you right now, we really appreciate you
6 answering the questions and being as honest and forthright
7 as you were. I really appreciate that. Everybody
8 appreciates the service you've done.

9 You are a qualified juror. You remain eligible to
10 serve on this case. So I need you to get on home, pack up
11 for five to seven days, and come back up here at 2:30. I
12 know it's a hard duty. It's hard duty. You may not be
13 selected, but you need to be back.

14 JUROR #399, JOHNNY YOUNG: I need to be back when?

15 THE COURT: 2:30.

16 JUROR #399, JOHNNY YOUNG: 2:30 when, today?

17 THE COURT: Today, yes, sir.

18 JUROR #399, JOHNNY YOUNG: That's hard.

19 THE COURT: I know it's a hard duty. The whole thing
20 is hard.

21 JUROR #399, JOHNNY YOUNG: There ain't no way I could
22 get out of it?

23 THE COURT: No, sir. You're coming back with all the
24 other qualified jurors. And out of that group of people,
25 we're going to select a jury. And you may or may not be

1 selected. Okay. Many are called, few are chosen.

2 All right. We'll see you at 2:30.

3 You'll be all right, Mr. Young.

4 THE BAILIFF: Your Honor, he's questioning the number
5 of days. Do you want to explain it to him again?

6 THE COURT: Five to seven days.

7 (Juror #399, Johnny Young, was excused from the
8 courtroom.)

9 THE COURT: I propose that we -- it's 1:00. The jury
10 is coming back at 2:30. We've got enough -- we, actually,
11 could probably get three alternates, couldn't we?

12 MR. GOWDY: We've now got 39.

13 THE COURT: Yes, 39.

14 MR. GOWDY: We could. The only issue is --

15 THE COURT: Okay. We're just going to go with two
16 alternates. And so what I would propose we do right now
17 is get those names and put them in the bingo box and draw
18 them out. And everybody be here to listen and we will
19 give you a written list.

20 MR. GOWDY: Does Your Honor propose doing a dry
21 strike for purposes of Batson or Edmundson or Leesville
22 Concrete or any of those other issues before --

23 THE COURT: We could do that. Would that give you
24 enough time?

25 MR. GOWDY: I think it would. Your Honor, this

1 morning has certainly helped me be able to pick my
2 strikes. So, yeah, I think I can do it pretty quickly.
3 But the dry strike eliminates the need to send the jury
4 back out to deal with Batson and all that stuff.

5 THE COURT: Would that be agreeable with you all? In
6 other words, we'll do it, and then in front of the jury,
7 of course, we'll reenact it.

8 MR. GOWDY: The only caveat being, at least, in the
9 past, you can't change your strike.

10 THE COURT: No. You're not allowed to change.

11 MR. GOWDY: Right.

12 THE COURT: Do y'all want to think about that for a
13 little bit?

14 MR. BARNETTE: Judge.

15 THE COURT: Yes.

16 MR. BARNETTE: Are you going to take both of those
17 other two jurors out?

18 THE COURT: Yes. I'm getting rid of Dr. Sief and
19 Ms. Brown. I want Ms. Brown coming back because I want to
20 have a word of prayer with her. But then she's not going
21 to be in the panel. I mean, we just can't chance that.

22 Do y'all want to hang around? We'll get you the
23 list?

24 Do y'all want to try and be back -- I mean, what time
25 do you want to try and be back? 2:15? That will give you

1 an hour, maybe, to go through it. The jury may have to
2 wait a little bit while we go through that process.

3 MR. BOGGS: It will save time on the back end. 2:15,
4 that will be fine.

5 THE COURT: Yes. Y'all hang around and get the list
6 so you can take it with you.

7 THE CLERK: How many are on this list?

8 THE COURT: Well, all 39 that are qualified. Just
9 put them all in and draw them all out. Does that make
10 sense?

11 THE CLERK: Do you want all 39 on the list, or do you
12 want an "X" amount on the list?

13 THE COURT: We're going with two alternates. You
14 better put them all on the list in case somebody doesn't
15 show up.

16 THE CLERK: Draw them out?

17 THE COURT: Draw them out. And if somebody doesn't
18 show up, just go to the next number. It's all very random
19 and there shouldn't be any questions.

20 THE BAILIFF: Sir, we still have three in the back.

21 THE COURT: I'm going to go back and dismiss the
22 remaining panel. Tell them they are not released as of
23 yet. Until we get this jury sworn, nobody is released.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: While we're here, before Mr. Evins gets

1 here, let me just tell you, I'm presuming everybody is
2 going to show up. So we'll go through the process and get
3 the jury. But if we find out somebody doesn't show up,
4 we're just going to have to go back.

5 Do y'all understand that? Would you rather wait?

6 You would have given your strikes away. Of course,
7 that doesn't matter.

8 MR. GOWDY: As long as we're bound by our strikes.

9 THE COURT: Yes. You can't change your strikes.

10 MR. BOGGS: If somebody doesn't show up and we've
11 already struck them --

12 MS. QUIMBY: Do we lose a strike?

13 THE COURT: Yes. Why don't we just wait and do it.

14 MR. BOGGS: Because that would push everybody up one.

15 THE COURT: All right. We won't -- although, it was
16 a great idea, we'll wait and just do it.

17 MR. GOWDY: Judge, once all the jurors get here -- I
18 mean, again, it's whatever the -- if the Defense doesn't
19 want to do it, it suits me fine not to do it. It's just
20 if we do a dry strike and there are legal issues, we can
21 deal with it without the presence of people being in here.
22 If they still -- once the jurors get here --

23 MR. BOGGS: I didn't say I didn't want to do it,
24 Judge Miller.

25 MR. GOWDY: I know that.

1 MR. BOGGS: What he said is in the event we went
2 ahead and struck and then somebody didn't show up, that
3 creates a problem.

4 MR. GOWDY: Right. Okay. I see.

5 THE COURT: We're five minutes away --

6 THE CLERK: Judge, do you want me to go out and do a
7 roll call to make sure everybody is here prior to doing
8 it?

9 THE COURT: Yes. And then we'll do a dry strike.

10 THE BAILIFF: We also have a list and we're checking
11 them off as they come in.

12 MR. BOGGS: Why don't we just do a dry strike?

13 THE COURT: While they're out there.

14 MR. BOGGS: It's no different than them sitting here
15 and sitting out there.

16 THE COURT: Right. And then we'll go through the
17 process again and please everyone, play your parts.

18 THE BAILIFF: We've got a list at all entrances and
19 everybody is checking it off.

20 THE COURT: Do you have one of these lists?

21 THE BAILIFF: Yes, sir. We've got a list with them
22 all on it.

23 THE COURT: Let us know when they all get there.

24 (WHEREUPON, a break was taken.)

25 THE COURT: Ladies and gentlemen, the jury is here.

1 And we are going to proceed with what has been termed a
2 dry strike process. That's not exactly accurate, I guess,
3 but what we're going to do is strike the jury out of their
4 presence and deal with any issues that come up as a result
5 of that afterwards -- or before we bring the jury back.

6 Now, they're all here, so we don't have any issues
7 with that. The only issue that we could possibly have
8 that I can think of is if one of them indicates to me that
9 they have had contact with somebody outside and violated
10 the Court orders not to speak. And we'll just have to
11 deal with that issue when it comes up. I will tell you
12 that if something comes up and we have to replace a juror,
13 you will be bound by the strikes that you've had. And
14 depending on the circumstance, if it's a juror that --
15 well, hopefully, we won't have to deal with that. I don't
16 want to think through how we would handle it if it's a
17 juror that would have been struck anyway. Okay.

18 MR. GOWDY: Yes, sir.

19 THE COURT: We'll just cross that bridge if we come
20 to it.

21 MR. GOWDY: All right.

22 THE COURT: All right. Charlena, are you ready?

23 THE CLERK: Yes, sir. Do you want me to begin with
24 the State?

25 MR. GOWDY: Your Honor, do we want to go one by one

1 and she'll ask, or do you want me to just call out the
2 strikes?

3 THE COURT: Well, first of all, before we do this.

4 Mr. Evins, do you understand what we're doing here?

5 DEFENDANT EVINS: Yes, sir.

6 THE COURT: Have you had an opportunity to fully
7 discuss this with your attorneys?

8 DEFENDANT EVINS: Yes, sir.

9 THE COURT: Is this agreeable with you, this process?

10 DEFENDANT EVINS: Yes, sir.

11 THE COURT: All right. Thank you very much.

12 DEFENDANT EVINS: You're welcome.

13 MR. BOGGS: I'd prefer that she call them out one by
14 one, Judge.

15 THE COURT: Okay.

16 MR. BOGGS: Because that's the way we're going to do
17 it in front of the jury.

18 THE COURT: That's exactly right.

19 All right. Go ahead.

20 THE CLERK: Juror #296, Leslie Putze.

21 What says the State?

22 MR. GOWDY: Present the juror.

23 THE CLERK: What says the Defense?

24 MS. QUIMBY: Please excuse the juror.

25 THE CLERK: #149, Michael Henline.

1 What says the State?

2 MR. GOWDY: Present the juror.

3 THE CLERK: What says the Defense?

4 MS. QUIMBY: Please swear the juror.

5 THE CLERK: #118, Tina Godfrey.

6 What says the State?

7 MR. GOWDY: Please excuse the juror.

8 THE CLERK: #316, Mark Roller.

9 What says the State?

10 MR. GOWDY: Present the juror.

11 THE CLERK: What says the Defense?

12 MS. QUIMBY: Please swear the juror.

13 THE CLERK: #309, Pamela Ridings.

14 What says the State?

15 MR. GOWDY: Present the juror.

16 THE CLERK: What says the Defense?

17 MS. QUIMBY: Please swear the juror.

18 THE CLERK: #66, Allen Combs.

19 What says the State?

20 MR. GOWDY: Present the juror.

21 THE CLERK: What says the Defense?

22 MS. QUIMBY: Please swear the juror.

23 THE CLERK: #205, William Klutz.

24 What says the State?

25 MR. GOWDY: Present the juror.

1 THE CLERK: What says the Defense?

2 MR. QUIMBY: Please excuse the juror from service.

3 THE CLERK: #194, Susan Kanipe.

4 What says the State?

5 MR. GOWDY: Present the juror.

6 THE CLERK: What says the Defense?

7 MS. QUIMBY: Please swear the juror.

8 THE CLERK: #234, Kim May.

9 What says the State?

10 MR. GOWDY: Please excuse the juror.

11 THE CLERK: #306, Neddie Richards.

12 What says the State?

13 MR. GOWDY: Present the juror.

14 THE CLERK: What says the Defense?

15 MS. QUIMBY: Please swear the juror.

16 THE CLERK: #108, Lizzie Frawley.

17 What says the State?

18 MR. GOWDY: Present the juror.

19 THE CLERK: What says the Defense?

20 MS. QUIMBY: Please swear the juror.

21 THE CLERK: #78, Annie Davis.

22 What says the State?

23 MR. GOWDY: Please excuse the juror.

24 THE CLERK: #19, Donald Bower.

25 What says the State?

1 MR. GOWDY: Present the juror.

2 THE CLERK: What says the Defense?

3 MS. QUIMBY: Please swear the juror.

4 THE CLERK: #284, Robert Perry.

5 What says the State?

6 MR. GOWDY: Present the juror.

7 THE CLERK: What says the Defense?

8 MS. QUIMBY: Please swear the juror.

9 THE CLERK: #153, Phillis Higgins.

10 What says the State?

11 MR. GOWDY: Present the juror.

12 THE CLERK: What says the Defense?

13 MS. QUIMBY: Please swear the juror.

14 THE CLERK: #101, Larry Ford.

15 What says the State?

16 MR. GOWDY: Present the juror.

17 THE CLERK: What says the Defense?

18 MS. QUIMBY: Please excuse the juror from service in
19 this case.

20 THE CLERK: #111, Wayne Gambrell.

21 What says the State?

22 MR. GOWDY: Present the juror.

23 THE CLERK: What says the Defense?

24 MS. QUIMBY: Please excuse the juror from service in
25 this case.

1 THE CLERK: #346, Christy Stewart.

2 What says the State?

3 MR. GOWDY: Present the juror.

4 THE CLERK: What says the Defense?

5 MR. QUIMBY: Please excuse the juror from service in
6 this case.

7 THE CLERK: #269, Jimmy Norman.

8 What says the State?

9 MR. GOWDY: Present the juror.

10 THE CLERK: What says the Defense?

11 MS. QUIMBY: Please excuse the juror from service in
12 this case.

13 THE CLERK: #163, William Horton.

14 What says the State?

15 MR. GOWDY: Present the juror.

16 THE CLERK: What says the Defense?

17 MS. QUIMBY: Please excuse the juror from service in
18 this case.

19 THE CLERK: #399, Johnny Young.

20 What says the State?

21 MR. GOWDY: Please excuse the juror.

22 THE CLERK: #204, Betty Kirby.

23 What says the State?

24 MR. GOWDY: Present the juror.

25 THE CLERK: What says the Defense?

1 MS. QUIMBY: Please swear the juror.

2 THE CLERK: #112, Howard Garland.

3 What says the State?

4 MR. GOWDY: Present the juror.

5 THE CLERK: What says the Defense?

6 MS. QUIMBY: Please excuse the juror from service in
7 this case.

8 THE CLERK: #300, Thomas Ray.

9 What says the State?

10 MR. GOWDY: Present the juror.

11 THE CLERK: What says the Defense?

12 MS. QUIMBY: Please excuse the juror from service in
13 this case.

14 THE CLERK: #154, Rosetta Higgins.

15 What says the State?

16 MR. GOWDY: Please excuse the juror.

17 THE CLERK: #320, Philip Sanders.

18 What says the State?

19 MR. GOWDY: Present the juror.

20 THE CLERK: What says the Defense?

21 MS. QUIMBY: Please swear the juror.

22 THE CLERK: #244, Norma McMakin.

23 What says the State?

24 MR. GOWDY: Present the juror.

25 THE CLERK: What says the Defense?

1 MS. QUIMBY: Please excuse the juror from service in
2 this case.

3 THE CLERK: #172, Derek Huntsinger.

4 What says the State?

5 MR. GOWDY: Present the juror.

6 THE CLERK: What says the Defense?

7 MR. BOGGS: We're into the alternates now, Your
8 Honor?

9 MS. QUIMBY: Please excuse the juror from service in
10 this case.

11 MR. BOGGS: Your Honor, could we just hold up one
12 second?

13 THE COURT: Yes. You've used two strikes on the
14 alternates, I believe.

15 MR. BOGGS: The first one was McMakin; right?

16 THE COURT: Yes. Well, Mr. Cecil is up to the --

17 MR. BOGGS: All right. Thank you.

18 THE COURT: Up to the State.

19 MR. GOWDY: It's up to me on Mr. Cecil?

20 THE COURT: Yes.

21 MR. GOWDY: Please excuse the juror.

22 THE CLERK: #246, Linda Means.

23 What says the State?

24 MR. GOWDY: Present the juror.

25 THE CLERK: What says the Defense?

1 MS. QUIMBY: Please swear the juror.

2 THE CLERK: #347, Elaine Stewart.

3 What says the State?

4 MR. GOWDY: Present the juror.

5 THE CLERK: What says the Defense?

6 MS. QUIMBY: Please excuse the juror from this case.

7 THE CLERK: #56, Sandy Chapman.

8 What says the State?

9 MR. GOWDY: Please excuse the juror.

10 THE CLERK: #137, Charlie Gwinn.

11 What says the State?

12 MR. GOWDY: Present the juror.

13 THE CLERK: What says the Defense?

14 MS. QUIMBY: Please swear the juror.

15 THE COURT: All right. Now, let me ask you, we have
16 enough left to get another alternate. Do you want to
17 bother with that or not?

18 MR. GOWDY: I don't care. I am fine to do it, Judge.
19 I just would ask the Judge -- the Court not to get --
20 we've got that issue with the overhead.

21 THE COURT: Okay.

22 MR. GOWDY: But I'm fine to get one and we can put a
23 chair in front. I mean, we'll adjust. It's just that if
24 we use the projector, that person sitting in that last
25 seat -- I mean, we've always had judges make them scoot

1 down one so they can see. But if the Court can see from
2 there the overhead, then I don't care. The overhead comes
3 out of the ceiling right on the wall.

4 THE COURT: Yes.

5 MR. GOWDY: And if you can see it in that last seat,
6 then -- that's my only concern.

7 THE COURT: It doesn't look like you could. We'll
8 just go with two alternates.

9 All right. Let's review their strikes and make sure
10 we're all on the same page.

11 THE CLERK: The State strikes #118, #234, #78, #399,
12 #154. And for the alternate, #54 and #56.

13 MR. GOWDY: Yes, ma'am.

14 THE CLERK: Defense strikes #296, #205, #101, #111,
15 #346, #269, #163, #112, #300, #244; #172 and #347 for the
16 alternates.

17 MS. QUIMBY: Yes, ma'am.

18 THE COURT: All right. Are there any exceptions or
19 objections to the jury that's not quite impaneled, but
20 proposed to be impaneled?

21 MR. GOWDY: Not from the State -- well, to be honest
22 with you, Judge, I have not had an opportunity to --
23 having just heard their strikes, it may take me a minute.

24 THE COURT: All right. You take your time.

25 Y'all take five minutes, both of you, and look and see.

1 (Brief recess.)

2 THE COURT: Yes, sir, Mr. Gowdy.

3 MR. GOWDY: No exceptions or objections from the
4 State, Your Honor.

5 THE COURT: All right. From the Defense?

6 MR. BOGGS: Yes, sir. We'd like to know race neutral
7 reasons on #78, #399, and #154 under Batson.

8 MR. GOWDY: Your Honor, may it please the Court?

9 #78, Juror Annie Davis, we struck her. Mr. Barnette
10 prosecuted a felony DUI in which her two sons were killed.
11 Mr. Boggs, actually, defended the Defendant. Ms. Davis
12 didn't remember either one of those facts. What she did
13 remember is the person that killed her two sons -- and she
14 used the word "killed" -- received six years in prison.

15 My concern is, why should a mother who lost two sons
16 to somebody that got six years be asked to give death to
17 Ms. Tessier's daughter who lost one life. That is our
18 concern with Ms. Davis. The fact that she didn't remember
19 meeting or talking to Barry Barnette who prosecuted the
20 case, doesn't remember the fact that Mr. Boggs defended
21 the guy who got six years, and the fact that she used the
22 words, I have two sons that were killed. I don't want her
23 weighing and balancing why my son's life was worth six
24 years and the State is trying to put Fredrick Evins to
25 death.

1 THE COURT: All right. Mr. Boggs.

2 MR. BOGGS: Well, first of all, she remembered
3 Mr. Barnette. Second, she remembered seeing me around. I
4 don't know if she ever did make the association. But I
5 can tell the Court, and the Solicitor knows this, is that
6 she took no position on sentencing in that particular
7 case. So I think that's just a veil. She was fully
8 qualified otherwise. That case is over and doesn't have
9 anything to do with this particular case. And I think
10 that's, again, a veil to exclude a black juror.

11 THE COURT: All right. I'm going to find that he has
12 satisfied the test required in Batson. That is a race
13 neutral reason.

14 Next one.

15 MR. GOWDY: With respect --

16 THE COURT: Wait a minute. Anything else you want to
17 tell me?

18 MR. BOGGS: No, Your Honor.

19 THE COURT: Okay.

20 MR. GOWDY: With respect to #399, Your Honor. I'm
21 not -- we may not have qualified -- and I'm not disputing
22 he was qualified, but we may not have qualified more of a
23 life pro juror than Mr. Young. He was -- this morning, he
24 initially began the voir dire process by saying, death is
25 death. It's just killing somebody. We, as the Court

1 remembers, argued that he was unqualified. We respect and
2 accept the Judge's finding that he was, but he is beyond
3 vacillation on death penalty. He is clearly life prone.
4 And that's why we struck him.

5 THE COURT: Okay. Anything you want to tell me?

6 MR. BOGGS: No. Other than that's not -- he answered
7 the questions that the Court asked. And even by pounding
8 by Mr. Barnette, he said, yes, I can give the death
9 penalty. I'd rather not, but I can -- excuse me, Mr.
10 Anthony, I believe it was, if the facts of the case
11 warranted it, which is the same standard, ironically, that
12 they've used -- they used yesterday and the day before to
13 get some even on the panel, even though it was obvious
14 that those people were pretty much leaning towards the
15 death penalty on any case.

16 MR. GOWDY: I don't believe we tried very hard to get
17 very many life pro jurors on the jury, Your Honor.

18 THE COURT: I'm going to find that is a race neutral
19 reason as well.

20 MR. GOWDY: Your Honor, with respect to --

21 THE COURT: And I will also -- well, I won't qualify
22 any juror's stance. I do agree with his assessment that
23 Mr. Young did appear to have -- was one of the jurors with
24 one of the largest problems with finding -- would have one
25 of the hardest times finding death. So I do agree with

1 that.

2 Okay. Mr. Gowdy, your last one.

3 MR. GOWDY: Your Honor, with respect to Ms. Higgins,
4 Ms. Higgins was unquestionably qualified on the Wainwright
5 v. Witt issue. And, frankly, to tell the Court, we had a
6 fairly lengthy discussion about Ms. Higgins upstairs over
7 lunch.

8 What it came down to, my concern with Ms. Higgins was
9 two-fold. She was a member of the Foster Chapel Church,
10 which unless you're from Spartanburg, I don't know -- or
11 really Spartanburg Herald, I don't know that you can
12 appreciate the schism that that church went through. My
13 office, me, directly, was asked to intervene in that
14 schism. I was asked to take sides. Buck Brant
15 represented one half of the congregation. Rodney Richey
16 represented the other half.

17 There were arrest warrants flying around, including
18 against Ms. Higgins. She was arrested in connection with
19 incidents at the church. This -- Deputy Solicitor
20 Barnette, actually, presided over one of those trials
21 while he was a Magistrate Judge. Church is
22 extraordinarily important to her. She left her church. I
23 didn't want to signal to her that I was the Prosecutor
24 that was asked to intervene and did not. I think it was
25 the proper decision not to do so. But I did ask her,

1 church plays an important part in your role. Here is a
2 lady that was forced to leave her church and go to another
3 one. And I was asked to intervene and we did not do so.

4 For the Court to have a full understanding of this,
5 on an almost weekly basis, the Spartanburg County
6 Sheriff's Department was down at the church during the
7 church service to make sure there were not criminal
8 incidents during the church service. That is how divisive
9 and incendiary that situation was. I was asked my both
10 sides to intervene. I did not do so. Deputy Barnette,
11 actually, wound up presiding over a trial that emanated
12 from her church.

13 THE COURT: I think that's pretty clearly a race
14 neutral reason.

15 MR. BOGGS: Well, it seems to me then that because
16 he's in the position of Solicitor that any -- just about
17 anybody in this county can be excluded by him at his
18 discretion. Because they can be somebody's third or
19 fourth cousin by marriage once removed, and that person
20 may potentially know he either prosecuted that person or
21 whatever. I mean, using that theory is that there is some
22 connection --

23 THE COURT: She was arrested. That woman was
24 arrested based on the schism in her church; is that
25 correct?

1 MR. GOWDY: Yes, sir.

2 MR. BOGGS: There were people arrested that are on
3 this panel.

4 THE COURT: But the Solicitor's Office involvement,
5 as I understand it --

6 MR. BOGGS: They weren't involved. He said they
7 chose not to be involved.

8 THE COURT: Let me back up. Deputy Solicitor
9 Barnette's involvement as the prosecuting Magistrate
10 Judge --

11 MR. BARNETTE: And, Your Honor, just to go on the
12 record about it, I had to, basically, as the Magistrate
13 Judge -- they had two services. They had a morning -- I
14 mean, an early morning service and late morning service to
15 try to separate the two groups. And they had to send
16 police officers to make sure in between. I had to help
17 kind of arrange that for the church to try to survive.
18 And it didn't survive, you know, they went through such a
19 schism. They had convictions and hearings and everything.

20 MR. GOWDY: And with respect to what was just
21 recently said, I have never been asked to intervene in a
22 church schism in my almost four years as Solicitor other
23 than this. So to analogize that that could happen in any
24 church, it hasn't in four years, but it did with this one.

25 THE COURT: Okay. I'm going to find that he does

1 have race neutral reasons. And the jury is impaneled
2 pursuant to -- correctly pursuant to the applicable law.

3 Any other exceptions or objections?

4 MR. GOWDY: The only thing I would -- the only other
5 thing I would add, Your Honor, for purposes of the record
6 is that the State did seat Juror #108, Ms. Frawley, and
7 the State did seat Juror #246, who is Ms. Means, both of
8 whom are African American women.

9 THE COURT: Okay.

10 MS. QUIMBY: Yes, sir.

11 THE COURT: All right. Anything else, Mr. Boggs, at
12 this point?

13 MR. BOGGS: Well, no, sir. We have the -- we still
14 need to be heard on the venue. And I understand it's not
15 going to be granted. And I don't really know whether it
16 needs to be --

17 THE COURT: Well, how do you know that, Mr. Boggs?

18 MR. BOGGS: Because he knows somebody's cousin that
19 can take care of it.

20 THE COURT: Well, would you like to finish your
21 argument on that motion.

22 MR. BOGGS: That's what I was thinking, if we can go
23 ahead and get the jury drawn. I don't think it really
24 impacts as to the proper time to do it procedurally. I
25 don't think I'm giving up anything by saying let's go

1 ahead and get this done.

2 THE COURT: All right. Let's draw the jury. The
3 problem is, I don't want to let them go until I get them
4 sworn. I don't want Agent Hendricks to take them until
5 they're sworn.

6 So do you have other motions you need to argue before
7 they're sworn?

8 MR. BOGGS: No.

9 THE COURT: How long is it going to take you to argue
10 the venue motion?

11 Do you have other evidence that you would like to
12 introduce with respect to that? Because now that we have
13 been through and we had 39 qualified jurors, and I believe
14 there were four of them that specifically knew about the
15 other -- the Demaris Huff case.

16 Am I correct about that?

17 MR. BOGGS: Was it four?

18 MS. QUIMBY: I'm checking.

19 MR. BOGGS: Ms. Quimby has been keeping a tab on
20 that.

21 THE COURT: All right.

22 MR. BOGGS: Well, and, of course, it also includes
23 the number -- not only Huff, but people that had --

24 THE COURT: Who had heard of this case?

25 MR. BOGGS: Of this case, that's correct.

1 THE COURT: Yes, ma'am.

2 MS. QUIMBY: Your Honor, by my count, seven of the 12
3 seated jurors had heard of -- had heard something about
4 Huff and/or Ward and/or Huff, one of the two cases or
5 both. I'll have to look a little bit further.

6 THE COURT: Let me -- you have it all figured. How
7 many of the people you struck had heard of them?

8 And I point out that the Defense used nine of their
9 ten strikes.

10 MS. QUIMBY: Your Honor, by my count, there were four
11 that we struck of our first nine strikes.

12 THE COURT: All right. Well, I don't believe we
13 seated anybody who did not properly reply to the question
14 about their ability to set aside knowledge of the case
15 from any other case. And I think the law in South
16 Carolina requires that someone be disqualified only if
17 they cannot put aside their views with respect to things
18 that they have heard outside of the presence of the jury.

19 So I don't know if you have other empirical data you
20 want to put on the record with respect to the -- that you
21 want me to consider with respect to the change of venue.
22 I know Mr. Boggs had talked about a videotape or something
23 like.

24 MS. QUIMBY: Your Honor --

25 THE COURT: The problem is most people -- most of the

1 people we talked to, even the ones that were struck, had
2 not heard of the -- I mean, they were definitely in the
3 minority, people that had heard of this case and the Huff
4 case.

5 Am I correct about that?

6 MS. QUIMBY: No, sir.

7 THE COURT: Because we --

8 MS. QUIMBY: Your Honor, I'm sorry. I don't mean
9 to --

10 THE COURT: No, I understand. We have talked to 63
11 jurors.

12 MS. QUIMBY: Right. And as of yesterday evening, 38
13 of 60 --

14 THE COURT: Had heard of this case?

15 MS. QUIMBY: Yes, sir.

16 THE COURT: All right.

17 MS. QUIMBY: 39 of 68 as of yesterday.

18 THE COURT: So it's not greatly larger than half.

19 I mean, do you dispute those numbers, Solicitor?

20 MR. GOWDY: No, sir. I'm just wondering, are they
21 including the people that didn't pay enough attention to
22 remember the name of the park? Does that include
23 Cleveland Park people?

24 THE COURT: Yes. I think that would be everybody
25 that had heard anything about the case.

1 MR. GOWDY: Well, I guess, my point is there are
2 different degrees of what they've heard. There were some
3 people that heard a lot. And there were some that didn't
4 hear enough to get the name of the park right.

5 THE COURT: Well, I'm glad to get that cleared up,
6 the number of people who heard about it. But I'm going to
7 find -- I'm going to deny the motion for a change of
8 venue.

9 If you have more material --

10 MS. QUIMBY: We do.

11 THE COURT: -- that you would like to submit, I will
12 allow you to do that. I don't think, based on the
13 extensive questioning and the interviewing of these
14 perspective jurors, that any juror was allowed on the
15 panel who could not set aside their views. And there was
16 a fairly limited number of people who could, actually,
17 give details about what -- I was impressed with the fact
18 that as few people -- I would have expected more people to
19 know more about it is the way I would put it.

20 Anything else you want to say?

21 MS. QUIMBY: Your Honor, if you would give me just a
22 moment, please.

23 THE COURT: Sure.

24 (Pause.)

25 MR. BOGGS: Your Honor, that will be all on the issue

1 of venue, other than there is an exhibit --

2 MS. QUIMBY: The newspaper articles from the
3 Spartanburg Herald Journal and the transcripts from all
4 the Channel 7 broadcasts through Monday morning.

5 THE COURT: All right. That will be fine. I'll
6 accept those and make them a part of the record.

7 Is there any objection to that from the State?

8 MR. GOWDY: No, sir, Your Honor.

9 THE COURT: Anything else before we bring this jury
10 in here. We're going to go through the process. We've
11 had a dress rehearsal, let's do it right.

12 THE CLERK: Are we going to call them down?

13 THE COURT: Do y'all want to call them down or would
14 you prefer just to have them stand where they are seated?
15 How do y'all normally do it?

16 MR. GOWDY: I've seen it done both ways. I think
17 it's more comfortable for the juror to stand, as opposed
18 to having to walk up here.

19 MS. QUIMBY: Yes, sir.

20 THE COURT: Okay. So y'all go ahead -- if you need
21 to rearrange your seating or anything, go ahead and do
22 that. And let's go ahead and bring in the jury.

23 THE BAILIFF: Bring in the whole panel?

24 THE COURT: Bring in the whole panel. They don't
25 know anything about this.

1 (WHEREUPON, the jury panel entered the courtroom.)

2 THE COURT: Ladies and gentlemen, welcome back to the
3 courtroom. We are trying to give you a tour of the entire
4 courthouse. You've been in the back, you've been in the
5 front, and now you're seated in the back of the courtroom.

6 I want to welcome y'all back. Before we start, I
7 want to thank you again for your hard work and sacrifices
8 that you've already made. And we appreciate everything
9 you've done thus far in this very important case. I would
10 -- I understand that everyone is here and that the roll
11 has been called.

12 I want to ask you, is there any -- since you last
13 appeared in Court, is there any member of the panel --
14 since you appeared, has anyone approached you about this
15 case or any issue in this case, or have you been exposed
16 to any information about this case from the media or
17 otherwise? If so, please stand.

18 All right. Yes, sir. Your name?

19 JUROR #164, WILLIAM HOSPODAR: William Hospodar, #164.

20 THE COURT: Please, if I could, get the three of you
21 to approach, and a representative of each side.

22 Yes, sir.

23 JUROR #164, WILLIAM HOSPODAR: I had the TV on this
24 morning and they came up with one of those brief
25 five-minute before the hour news briefs. Fred Cunningham

1 on Channel 7 said something about the jury has been seated
2 and testimony could begin today in the Spartanburg capital
3 murder case. I went to the TV to turn the power off at
4 that time. The only thing I saw was a picture of the
5 Defendant flashed up there with his name. At that time, I
6 hit the power button and turned it off.

7 THE COURT: Would that in any way impair your ability
8 to be fair and impartial to both the State and the
9 Defense?

10 JUROR #164, WILLIAM HOSPODAR: No.

11 THE COURT: Thank you for bringing that to my
12 attention.

13 JUROR #164, WILLIAM HOSPODAR: Yes, sir.

14 THE BAILIFF: Juror #347.

15 THE COURT: Yes, ma'am. Your name?

16 JUROR #347, ELAINE STEWART: Elaine Stewart.

17 I was in the store the other day and people were
18 talking about it to me.

19 THE COURT: Who was that?

20 JUROR #347, ELAINE STEWART: Just some people in the
21 store.

22 THE COURT: Do you know who they are?

23 JUROR #347, ELAINE STEWART: I don't want to give out
24 any names.

25 THE COURT: Well --

1 JUROR #347, ELAINE STEWART: They was telling me
2 about some things.

3 THE COURT: Your number?

4 JUROR #347, ELAINE STEWART: #347.

5 THE COURT: What did they tell you?

6 JUROR #347, ELAINE STEWART: They was talking about
7 that he killed more than one.

8 THE COURT: All right. You didn't walk away from
9 them at that time?

10 JUROR #347, ELAINE STEWART: I did. I told them I
11 couldn't talk about it, but I already heard it.

12 THE COURT: All right.

13 MR. BOGGS: May I ask just whether or not she
14 mentioned that to any of the other jurors?

15 THE COURT: Did you mention that to any of the other
16 jurors?

17 JUROR #347, ELAINE STEWART: No.

18 THE COURT: Don't do that.

19 Thank you very much.

20 THE BAILIFF: #399.

21 THE COURT: I've got to know, Mr. Young, how that
22 happened? You were just here -- what happened?

23 JUROR #399, JOHNNY YOUNG: Well, I called my wife and
24 everything to let my wife know I was selected. And come
25 to find out, she works for the same company, R.L. Jordan.

1 THE COURT: The same what?

2 JUROR #399, JOHNNY YOUNG: R.L. Jordan. Don't they
3 own the Hot Spots?

4 THE COURT: Is that all you said? Is that all you
5 talked about?

6 JUROR #399, JOHNNY YOUNG: Yeah. That was it.

7 THE COURT: I appreciate you coming and telling me
8 about it.

9 JUROR #399, JOHNNY YOUNG: But I didn't know if that
10 would have some kind of effect or anything.

11 THE COURT: I thank you. And don't mention that to
12 anyone seated around you.

13 (WHEREUPON, a bench conference was held with the
14 attorneys.)

15 THE COURT: I appreciate y'all coming forward to tell
16 me about what we discussed at the bench.

17 We are now, ladies and gentlemen, going to do what we
18 call striking the jury. Your name is going to be called
19 by our very efficient Clerk's Office. And if you would,
20 when your name is called, please stand where you are. We
21 don't need to have you come forward. The attorneys will
22 then make their decision with respect to your service on
23 this jury.

24 So I'll turn it, at this time, over to our very
25 efficient Clerk's Office.

JURY SELECTION

1 THE CLERK: Juror #296, Leslie Putze.

2 (Leslie Putze, a white female, stood.)

3 THE CLERK: What says the State?

4 MR. GOWDY: Present the juror.

5 THE CLERK: What says the Defense?

6 MS. QUIMBY: Please excuse the juror from service in
7 this case.

8 THE COURT: You may be seated.

9 Thank you.

10 THE CLERK: #149, Michael Henline.

11 (Michael Henline, a white male, stood.)

12 THE CLERK: What says the State?

13 MR. GOWDY: Present the juror.

14 THE CLERK: What says the Defense?

15 MS. QUIMBY: Please swear the juror.

16 THE CLERK: #118, Tina Godfrey.

17 (Tina Godfrey, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. GOWDY: Please excuse the juror.

20 THE CLERK: #316, Mark Roller.

21 (Mark Roller, a white male, stood.)

22 THE CLERK: What says the State?

23 MR. GOWDY: Present the juror.

24 THE CLERK: What says the Defense?

1 MS. QUIMBY: Please swear the juror.

2 THE CLERK: #309, Pamela Ridings.

3 (Pamela Ridings, a white female, stood.)

4 THE CLERK: What says the State?

5 MR. GOWDY: Present the juror.

6 THE CLERK: What says the Defense?

7 MS. QUIMBY: Please swear the juror.

8 THE CLERK: #66, Allen Combs.

9 (Allen Combs, a white male, stood.)

10 THE CLERK: What says the State?

11 MR. GOWDY: Present the juror.

12 THE CLERK: What says the Defense?

13 MS. QUIMBY: Please swear the juror.

14 THE CLERK: #205, William Klutz.

15 (William Klutz, a white male, stood.)

16 THE CLERK: What says the State?

17 MR. GOWDY: Present the juror.

18 THE CLERK: What says the Defense?

19 MR. QUIMBY: Please excuse the juror from service in
20 this case.

21 THE CLERK: #194, Susan Kanipe.

22 (Susan Kanipe, a white female, stood.)

23 THE CLERK: What says the State?

24 MR. GOWDY: Present the juror.

25 THE CLERK: What says the Defense?

1 MS. QUIMBY: Please swear the juror.
2 THE CLERK: #234, Kim May.
3 (Kim May, a white female, stood.)
4 THE CLERK: What says the State?
5 MR. GOWDY: Please excuse the juror.
6 THE CLERK: #306, Neddie Richards.
7 (Neddie Richards, a white male, stood.)
8 THE CLERK: What says the State?
9 MR. GOWDY: Present the juror.
10 THE CLERK: What says the Defense?
11 MS. QUIMBY: Please swear the juror.
12 THE CLERK: #108, Lizzie Frawley.
13 (Lizzy Frawley, a black female, stood.)
14 THE CLERK: What says the State?
15 MR. GOWDY: Present the juror.
16 THE CLERK: What says the Defense?
17 MS. QUIMBY: Please swear the juror.
18 THE CLERK: #78, Annie Davis.
19 (Annie Davis, a black female, stood.)
20 THE CLERK: What says the State?
21 MR. GOWDY: Please excuse the juror.
22 THE CLERK: #19, Donald Bower.
23 (Donald Bower, a white male, stood.)
24 THE CLERK: What says the State?
25 MR. GOWDY: Present the juror.

1 THE CLERK: What says the Defense?

2 MS. QUIMBY: Please swear the juror.

3 THE CLERK: #284, Robert Perry.

4 (Robert Perry, a white male, stood.)

5 THE CLERK: What says the State?

6 MR. GOWDY: Present the juror.

7 THE CLERK: What says the Defense?

8 MS. QUIMBY: Please swear the juror.

9 THE CLERK: #153, Phillis Higgins.

10 (Phyllis Higgins, a white female, stood.)

11 THE CLERK: What says the State?

12 MR. GOWDY: Present the juror.

13 THE CLERK: What says the Defense?

14 MS. QUIMBY: Please swear the juror.

15 THE CLERK: #101, Larry Ford.

16 (Larry Ford, a white male, stood.)

17 THE CLERK: What says the State?

18 MR. GOWDY: Present the juror.

19 THE CLERK: What says the Defense?

20 MS. QUIMBY: Please excuse the juror from service in
21 this case.

22 THE CLERK: #111, Wayne Gambrell.

23 (Wayne Gambrell, a white male, stood.)

24 THE CLERK: What says the State?

25 MR. GOWDY: Present the juror.

1 THE CLERK: What says the Defense?

2 MS. QUIMBY: Please excuse the juror from service in
3 this case.

4 THE CLERK: #346, Christy Stewart.

5 (Christy Stewart, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. GOWDY: Present the juror.

8 THE CLERK: What says the Defense?

9 MR. QUIMBY: Please excuse the juror from service in
10 this case.

11 THE CLERK: #269, Jimmy Norman.

12 (Jimmy Norman, a white male, stood.)

13 THE CLERK: What says the State?

14 MR. GOWDY: Present the juror.

15 THE CLERK: What says the Defense?

16 MS. QUIMBY: Please excuse the juror from service in
17 this case.

18 THE CLERK: #163, William Horton.

19 (William horton, a white male, stood.)

20 THE CLERK: What says the State?

21 MR. GOWDY: Present the juror.

22 THE CLERK: What says the Defense?

23 MS. QUIMBY: Please excuse the juror from service in
24 this case.

25 THE CLERK: #399, Johnny Young..

1 (Johnny Young, a black male, stood.)

2 THE CLERK: What says the State?

3 MR. GOWDY: Please excuse the juror.

4 THE CLERK: #204, Betty Kirby.

5 (Betty Kirby, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. GOWDY: Present the juror.

8 THE CLERK: What says the Defense?

9 MS. QUIMBY: Please swear the juror.

10 THE CLERK: #112, Howard Garland.

11 (Howard Garland, a white male, stood.)

12 THE CLERK: What says the State?

13 MR. GOWDY: Present the juror.

14 THE CLERK: What says the Defense?

15 MS. QUIMBY: Please excuse the juror from service in
16 this case.

17 THE CLERK: #300, Thomas Ray.

18 (Thomas Ray, a white male, stood.)

19 THE CLERK: What says the State?

20 MR. GOWDY: Present the juror.

21 THE CLERK: What says the Defense?

22 MS. QUIMBY: Please excuse the juror from service in
23 this case.

24 THE CLERK: #154, Rosetta Higgins.

25 (Rosetta Higgins, a black female, stood.)

1 THE CLERK: What says the State?

2 MR. GOWDY: Please excuse the juror.

3 THE CLERK: #320, Philip Sanders.

4 (Phillip Sanders, a white male, stood.)

5 THE CLERK: What says the State?

6 MR. GOWDY: Present the juror.

7 THE CLERK: What says the Defense?

8 MS. QUIMBY: Please swear the juror.

9 THE CLERK: I will begin with the alternates.

10 #244, Norma McMakin.

11 (Norma McMakin, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. GOWDY: Present the juror.

14 THE CLERK: What says the Defense?

15 MS. QUIMBY: Please excuse the juror from service in
16 this case.

17 THE CLERK: #172, Derek Huntsinger.

18 (Derek Huntsinger, a white male, stood.)

19 THE CLERK: What says the State?

20 MR. GOWDY: Present the juror.

21 THE CLERK: What says the Defense?

22 MS. QUIMBY: Please excuse the juror from service in
23 this case.

24 THE CLERK: #54, P. S. Cecil, III.

25 (P.S. Cecil, III, a white male, stood.)

1 THE CLERK: What says the State?

2 MR. GOWDY: Please excuse the juror.

3 THE CLERK: #246, Linda Means.

4 (Linda Means, a black female, stood.

5 THE CLERK: What says the State?

6 MR. GOWDY: Present the juror.

7 THE CLERK: What says the Defense?

8 MS. QUIMBY: Please swear the juror.

9 THE CLERK: #347, Elaine Stewart.

10 (Elaine Stewart, a white female, stood.)

11 THE CLERK: What says the State?

12 MR. GOWDY: Present the juror.

13 THE CLERK: What says the Defense?

14 MS. QUIMBY: Please excuse the juror from service in
15 this case.

16 THE CLERK: #56, Sandy Chapman.

17 (Sandy Chapman, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. GOWDY: Please excuse the juror.

20 THE CLERK: #137, Charlie Gwinn.

21 (Charlie Gwinn, a white male, stood.)

22 THE CLERK: What says the State?

23 MR. GOWDY: Present the juror.

24 THE CLERK: What says the Defense?

25 MS. QUIMBY: Please swear the juror.

1 THE COURT: All right. The remaining members of the
2 panel, I want to, again, thank you wholeheartedly for your
3 service up to this point. I want to tell you that we
4 could not -- the wheels of justice would not turn and we
5 could not proceed if it wasn't for citizens like you who
6 are willing to sacrifice your time and perform your civic
7 duty and be here to allow us to proceed and to go forward
8 with this case.

9 And, at this time, you all are released from service
10 and y'all are free to go.

11 I would like to see Ms. Kristine Brown, however,
12 please. If she would remain in the courtroom.

13 If you'll just wait, I'll be with you in a minute.

14 (WHEREUPON, the jury panel exited the courtroom.)

15 THE COURT: If you'll just have a seat, ma'am, I'll
16 be with you in just a few minutes.

17 Ladies and gentlemen of the jury, I am going to turn
18 you over, at this time, to Special Agent Robbie Hendricks
19 with the South Carolina State Law Enforcement Division.
20 Y'all are going to be in the best of hands while you are
21 working on this jury. Mr. Hendricks and a number of his
22 associates will be responsible for your care, custody, and
23 keeping throughout the course of this trial.

24 I want to thank you all, too, for your service up to
25 this point. And I want y'all to know that, obviously, a

1 lot of careful consideration has gone into the case up to
2 this point. And you all have clearly abided by your oaths
3 and we are so very pleased about that. We want you to
4 continue to abide by the oath that you have already taken,
5 and we're about to swear you as jurors in this case.

6 Now, a couple of things, what we will do, the plan or
7 the road map will be that Agent Hendricks will take you
8 all and let you get settled at the Marriott. And I hope
9 you can do that. And I may -- we're not -- I'm not sure
10 how much we will get done today, because I have a number
11 of matters that I need to take up with the attorneys that
12 I will explain to you more.

13 But I will tell you now that throughout the course of
14 this trial, there will be times when I need to ask y'all
15 to exit the courtroom, and y'all will be taken back to the
16 jury room. And y'all are familiar with the back halls
17 here. The reason for that is it will be to discuss a
18 point of law or some related subject, and it may require
19 me to make a comment on the facts. And, as you all know,
20 I've told you, probably, until you're sick of hearing it,
21 but you're going to hear it some more, I have no opinion
22 on the facts and I'm not allowed to have an opinion on the
23 facts. So it would be inappropriate for y'all to hear me
24 make any comment about the facts. And that's why from
25 time to time throughout the course of the trial, you may

1 be asked to leave. Please understand that. And it's --
2 again, we may be determining any number of issues and it
3 wouldn't be appropriate for y'all to hear it unless it's
4 going to be hard, fast evidence that's going to be
5 introduced at trial. So that will be one of the reasons
6 why we'll ask you to leave throughout the course of the
7 trial.

8 But during the trial, I am going to ask that the 12
9 primary jurors sit in the 12 seats as far that way as you
10 can get.

11 And then the two alternates, y'all are free to sit on
12 these two seats right here.

13 And I understand that left seat, the very far right
14 seat for you all, sometimes, you can't see really very
15 well. So we'll just leave that one empty, if we could.
16 Well, actually, this is -- I'm from Greenville, we do it a
17 little differently. Actually, we'll let the two
18 alternates stay just exactly where you are. Would that
19 work? I think that will probably work.

20 I am going to ask you all when you go back to the
21 hotel sometime tonight or this afternoon to talk among
22 yourselves and see if you all can decide on a person that
23 you would like to serve as your foreperson. And so be
24 thinking about it. If y'all can't come to a decision or
25 don't want to, I can do that for you. But I want to see

1 if you all think that there's someone among you that could
2 handle that duty for you. It's a promotion without a
3 raise in pay. You get to be the leader of the discussions
4 at the very end of the case -- the moderator of the
5 discussions, not the leader, the moderator. And you're
6 also the jury's spokesperson in the courtroom.

7 So think about that. Y'all just be thinking about
8 it. And if it's a problem for you, then I'll be happy to
9 take that responsibility. But since y'all are going to be
10 together throughout this trial, I'd like for you to think
11 about it and see if you can decide on it.

12 Now, in just a moment, I'm going to swear -- have
13 y'all sworn and then let Agent Hendricks take you back.
14 Now, I want to tell you a couple of things. One, we're
15 going to have to collect your cell phones, it if you have
16 them. I meant to tell you before not to bring them. Your
17 contact with the outside world, I guess, is going to be
18 restricted. So we apologize for that. But due to the
19 serious nature of this case, we need to really watch our
20 P's and Q's, so to speak.

21 Additionally, if you drove in a car, please take your
22 car -- Agent Hendricks can talk to you about it. And
23 y'all take your cars over to the Marriott. If you want to
24 leave them there all week, fine. If not, Agent Hendricks
25 will collect your keys and you can contact a family member

1 and tell them to come get it and Agent Hendricks will
2 coordinate turning the keys over and make sure that is
3 handled properly. I think --

4 Agent, is there anything else I need to tell them?

5 AGENT HENDRICKS: No.

6 THE COURT: All right. At this time, ladies and
7 gentlemen, if you would all stand, please, and raise your
8 right hand.

9 (WHEREUPON, the jury was sworn at approximately
10 3:28 p.m.)

11 THE COURT: Now, if y'all would -- don't sit down.
12 I'll let y'all go on back to the jury room. If you have
13 any special concerns or problems that you can think of
14 right at this moment, go ahead and tell Agent Hendricks
15 about it and he'll relay those to me.

16 Again, thank you all for your service in this case.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 3:29 p.m.)

19 THE COURT: Ms. Brown, would you please come around.

20 Ms. Brown, I'm a little upset with you. I understand
21 that you made a phone call concerning this case to a
22 friend of yours. And I understand it's someone who you
23 may trust. You violated the oath that you took. It's a
24 very serious violation. And I hope you understand the
25 importance of the magnitude of what you've done.

1 I am going to require that you attend the trial
2 tomorrow to watch. And in the future, when you have --
3 this is an extremely important civic duty. Some people --
4 it could result in contempt court and you can end up going
5 to jail for that. I'm not trying to --

6 JUROR #32, KRISTINE BROWN: I mean, I didn't say
7 anything about the case at all. I said, I have juror duty
8 and my brother's wedding is next week. And I just asked
9 if I should tell someone that.

10 THE COURT: Well, I appreciate that and I understand
11 it. You should have come to me with that. And maybe I'm
12 a mean, old guy, but you need in the future to address it
13 with the proper authority.

14 Do you understand?

15 JUROR #32, KRISTINE BROWN: Yes.

16 THE COURT: Okay. And so your punishment will be you
17 have to watch this case tomorrow.

18 JUROR #32, KRISTINE BROWN: Okay.

19 THE COURT: And I appreciate your service truly up to
20 this point. And I understand how harrowing and
21 frightening this experience could be. But in the future,
22 we would never let anything bad happen to you. So we'll
23 see you tomorrow morning and be here about 9:00.

24 Thank you.

25 JUROR #32, KRISTINE BROWN: Okay.

1 THE COURT: Thank you, Ms. Brown.

2 All right. Ms. Burdett, front and center, please,
3 ma'am. I just want to thank you for your service. We're
4 not going to punish you in any way. But I want to
5 compliment you.

6 THE CLERK: Okay. Thanks.

7 THE COURT: I can't even be nice.

8 THE CLERK: I'm embarrassed.

9 THE COURT: I know. That's what I meant to do. I
10 meant to embarrass you, but I want to thank you. It was
11 extremely well run and I appreciate all your hard work. I
12 know you really worked.

13 I'll talk about you ladies later some time.

14 Thank you. I appreciate it a lot. I won't embarrass
15 you again, if you want to stay and watch.

16 THE CLERK: I'm going to watch a little bit.

17 THE COURT: Are there other issues that we need to
18 address at this time?

19 MR. BOGGS: Well, again, I've got some suppressions
20 and motions in limine and I'm trying to pin down the
21 scheduling.

22 THE COURT: Okay.

23 MR. BOGGS: And, Your Honor, I can put a request to
24 the Court about the scheduling, if you want me to.

25 THE COURT: Sure.

1 MR. BOGGS: Judge, we've been going pretty heavy here
2 and, actually, through the efforts of -- we got the jury
3 picked. I would ask the Court since the jury is going to
4 be taken back, by the time they could get back here, we'll
5 be getting on toward 4:30, that we address any issues that
6 need to be done today, but not start any portion of the
7 trial until in the morning. That will give both sides
8 some time.

9 THE COURT: I think that's a reasonable request.

10 Does the State have a position on that?

11 MR. GOWDY: Your Honor, I defer to the Court. I do
12 appreciate the difficulty in being in private practice and
13 being in this case. And we're ready, but I certainly
14 understand and respect that and have no objection to that.

15 THE COURT: And I know Mr. Boggs will be ready to go,
16 too. I'll just note for the record that we worked until
17 7:00 Monday, 7:30 Tuesday, and 8:00 last night and we've
18 started at 9:00 promptly every day. I know Mr. Boggs
19 lives over towards Greenville and so do I. And I know
20 he's been working after we finished in the courtroom. So
21 I think it's a reasonable request. I think it will give
22 everybody an opportunity to be refreshed when we start in
23 the morning. So we will just address the issues --
24 whatever issues you have this afternoon and we'll start
25 the trial in the morning.

1 Okay. Anything else?

2 MR. BOGGS: No, sir.

3 THE COURT: Well, I thought you had some other
4 motions.

5 MR. BOGGS: Oh, you want to do the motions?

6 THE COURT: Do you want to do those -- I think we
7 need to address those today.

8 MOTIONS

9 MR. BOGGS: One of them is a motion to suppress on a
10 piece of evidence that the State may introduce or may not
11 introduce. But there is, at least, a picture of a knife
12 handle, Your Honor, that was -- that we reviewed last
13 week, I think last Friday, as being a potential exhibit
14 put in. And we were going to move to suppress the
15 introduction of the knife or picture of the knife handle.

16 We also have a motion in limine. One of the
17 witnesses in her statement -- do you want me to go ahead
18 and argue them and tell you what they are?

19 THE COURT: Sure.

20 MR. BOGGS: One of the witnesses, a Tammy Foster, in
21 her statement to the police, a portion of it made
22 reference to her saying something about Mr. Evins being on
23 the sexual registry. What she said was, actually, not --
24 or what's on the sexual registry is, actually, not true
25 anyway. But we're moving to limit or exclude that

1 testimony if she is called as a witness by the State.

2 THE COURT: You want to redact any reference to
3 Mr. Evins being on the sexual registry?

4 MR. BOGGS: That's correct.

5 THE COURT: All right. That's in the guilt phase, I
6 understand.

7 MR. BOGGS: Yes, sir.

8 MR. GOWDY: Does the Court wish to hear from the
9 State, at this point, on that or would you rather Mr.
10 Boggs go on through?

11 THE COURT: What else do you have? You just want to
12 redact that one portion from the statement?

13 MR. BOGGS: Yes. That she makes no reference -- if
14 she testifies during the guilt portion that she make no
15 reference to the sexual registry.

16 MR. GOWDY: Your Honor, she has been prepared not to
17 mention that.

18 The only thing I would alert to the Court's
19 attention -- and the Court may have picked up on it during
20 the voir dire process. If there is going to be a defense
21 that suggests that Rhonda Ward went voluntarily with him
22 that morning to smoke crack and have sex, then I do think
23 the State should be allowed to present evidence to -- I
24 can't call Rhonda and say she didn't, but if she's got a
25 friend that can say Rhonda knew he was on the sexual

1 offender list and she said she would stay away from him, I
2 told her to stay away from him, that's rebuttal. But I
3 think that's fair game if they go down the path of Rhonda
4 leaving to drive across the county to have sex and smoke
5 crack with this Defendant. We prepped our witnesses not
6 to mention sexual registry, but the context in which it
7 came up was her being asked, did Rhonda know Fredrick
8 Evins. And this witness said, I told her he was on the
9 sexual offender registry and to be careful of him.

10 THE COURT: That's double hearsay. It's character
11 evidence. How does it -- how do you get past that?

12 MR. GOWDY: Well, I'm not trying to get past it,
13 unless --

14 THE COURT: Even in a rebuttal situation,

15 MR. GOWDY: Well, I think it's -- that goes to
16 Rhonda's state of mind. I mean, her state of mind is,
17 would she leave with this man from the parking lot at
18 work. And to the extent that a friend of hers told her
19 and she was aware and had, actually, pulled up on the
20 Internet and saw that he was on the sexual offender
21 registry, I think that goes straight to her state of mind,
22 which would be an exception to the hearsay rule.

23 THE COURT: Well -- and how about -- all right. I'm
24 going to have to think about that.

25 MR. BOGGS: That's fine. And if he's talking about

1 in rebuttal, we may have to address that at the
2 appropriate time, because only then will you have seen
3 whatever evidence the Defense has put in.

4 THE COURT: Right. But I'm glad you've made me aware
5 of that.

6 And you've already prepped your witnesses not to put
7 his character into issue?

8 MR. GOWDY: They're not going to mention it.

9 THE COURT: Unless that door is opened and kept open.

10 MR. GOWDY: Right.

11 THE COURT: Now, the other issue about the knife?

12 MR. BOGGS: Yes, sir, Your Honor.

13 (Pause.)

14 (WHEREUPON, Court's Exhibit Nos. 7 and 8 were marked
15 for identification and admitted into evidence.)

16 MR. BARNETTE: What we're looking for, Your Honor, is
17 the statement.

18 MR. GOWDY: I don't have his statement down here
19 and I wanted to look at it and see something.

20 THE COURT: Do you want me to open it?

21 THE CLERK: Yes.

22 THE COURT: All right. I've unsealed that envelope.
23 Is that it? That's Not it.

24 All right. I'll unseal the other one.

25 MR. GOWDY: I can send somebody upstairs to get a

1 copy of it.

2 THE COURT: Has Barry gone to get a copy?

3 MR. GOWDY: Yes, sir.

4 THE COURT: I've read your motion, Mr. Boggs. I
5 don't know that I can make a -- it's not a Constitutional
6 objection, is it? It's not a Constitutional violation
7 you're talking about, is it?

8 MR. BOGGS: About the introduction of a knife handle?

9 THE COURT: Yes. You're arguing that it's not
10 relevant or it might be 403, prejudice outweighs the
11 probative value?

12 MR. BOGGS: No. There's no nexus. There's nothing
13 to --

14 THE COURT: Okay.

15 MR. BOGGS: I can go ahead and argue that part of it
16 and check the statement when it gets back.

17 THE COURT: I'm not -- do you mean, if it's --

18 MR. BOGGS: No. There was a knife handle -- a handle
19 of a knife that was recovered in an area where some other
20 property that they say belonged to Rhonda Ward was
21 recovered. Where that was was a kind of a trash --
22 actually, a place where people went and drank beer and
23 whatnot. There were a couple of trash cans and an old bed
24 and all kinds of trash around. And I think some of these
25 pictures show that. But there was a black knife handle

1 recovered from that area, from all this trash that has no
2 connection as far as I've been notified to this particular
3 crime. No fingerprints, no blood samples, nothing.

4 And to imply without any connection to this
5 particular offense that this was the knife -- and we're
6 talking about it's just a handle, we're not talking about
7 a complete knife, would outweigh -- I mean, there's just
8 no relevance. They cannot establish a connection between
9 that knife and this. Which is just like the case I tried
10 a month ago that was sent back because of the introduction
11 of a gun that was introduced that the State could not
12 connect with the particular crime.

13 THE COURT: Okay. What does the statement have to do
14 with the knife?

15 MR. BOGGS: Well, he said -- there was something
16 about -- obviously, he said something about stabbing. But
17 we're looking to see whether or not he identified this
18 particular handle is what I think they're looking for.

19 THE COURT: Okay.

20 MR. GOWDY: Yes, a black-handled knife.

21 MR. BOGGS: A black-handled knife. This is not a
22 black-handled knife. This is a handle of a knife. And
23 they could have had forensics done either for fingerprints
24 or blood. If there was blood on the knife handle, they
25 certainly could have picked that up. But the statement

1 says "a black-handled knife." What they recovered, my
2 understanding was, was just a handle of a kitchen knife
3 sitting out in this trash dump. They say it was a trash
4 dump and there was a bunch of trash around.

5 THE COURT: Well, I think it's premature for me to
6 make a ruling on that. I think I'm going to have to hear
7 the evidence, to be perfectly honest. I don't know how it
8 will play out, but, certainly -- I'm glad you brought that
9 to my attention. The question of whether or not it is
10 relevant and competent will be raised -- I think you need
11 to raise it at that time.

12 MR. BOGGS: All right.

13 THE COURT: So it's not purely speculative.

14 MR. BOGGS: Well, again, that's -- what I wanted the
15 Court to be aware of is that this could be an issue. And
16 I don't know that they could present the testimony, but I
17 will preserve it until we --

18 THE COURT: Yes. Just wait and see what happens.

19 Now, let me talk to you about the chain of custody.
20 I understand that the State has 140 witnesses listed.

21 MR. BARNETTE: 171, Your Honor.

22 THE COURT: Oh, I'm sorry. I haven't been too good
23 with numbers today.

24 How many of those are related to the chain?

25 MR. BARNETTE: It possibly could be up to 30. It

1 depends on different pieces of evidence. I mean, there's
2 several pieces of evidence here. There's blood samples
3 and the sexual assault kits that would be involved in the
4 guilt phase as well as the sentencing phase.

5 THE COURT: Okay.

6 MR. BARNETTE: And a lot of those are chain witnesses
7 from SLED. The bag was sealed and -- the evidence was
8 sealed that was given to different departments throughout
9 SLED taken from the drop boxes and so forth. And we know
10 the identity of those folks too, Your Honor, just for the
11 record. And they're available to testify. We just want
12 to make sure the Court is aware of that. And we've talked
13 to Mr. Boggs and Ms. Quimby.

14 THE COURT: They cannot -- I understand their
15 position on this, you can publish the protocol and you can
16 establish the chain and there's no missing link with
17 respect to -- I mean, you have a witness who can identify
18 each person through the chain; is that right?

19 MR. BARNETTE: Yes, sir. And it's documented, the
20 Sheriff's Department record as well as the documents from
21 SLED.

22 THE COURT: I am not going to require them to produce
23 every single witness in the chain. But I think they're
24 going to have to produce the significant witnesses with
25 respect to -- I think you have to establish the identity

1 of all the people who handled the evidence, the manner in
2 which it was handled and it's -- I'm not going to limit
3 you. You can put them up if you want to. It's a question
4 then of credibility that the Defense can raise.

5 You are aware of that?

6 MR. BARNETTE: Yes, sir.

7 THE COURT: And we're all on the same page on this
8 State v. Taylor, which is a recent case that was decided
9 in June of this year. Okay.

10 MR. BARNETTE: Yes, sir.

11 THE COURT: All right.

12 MR. BARNETTE: One other matter, Your Honor. I
13 mentioned this to Mr. Boggs earlier, in the sentencing
14 phase, we have certified convictions that Mr. Evins has
15 had, some are here from Spartanburg, one from Greenville
16 and so forth. They can't take a position, obviously. But
17 will you require us to have somebody come from Greenville
18 Clerk of Court's Office as well as the Magistrate's Court
19 Office? Obviously, we have the clerk here from
20 Spartanburg.

21 THE COURT: They're certified court records?

22 MR. BARNETTE: Yes. And they've been provided to the
23 Defense and they've seen them all.

24 THE COURT: Okay. I'm not going to require you to
25 have a witness. I'll allow you to introduce those without

1 a witness as long as they are bona fide certified copies.

2 MR. BARNETTE: Yes, sir. And what I could do is
3 introduce them through the clerk here.

4 THE COURT: All right. Would y'all like to be heard
5 on that?

6 MR. BOGGS: No. I can't remember if there's a
7 statute or rule, and it's pretty explicit and lays it out.

8 THE COURT: All right. Anything else?
9 Yes, sir.

10 AGENT HENDRICKS: What time do you want them in the
11 morning?

12 THE COURT: What time do y'all want to start in the
13 morning? 9:00?

14 Okay. Let's start at 9:00.

15 Do you think they're going to be able to get a
16 foreperson?

17 AGENT HENDRICKS: They're still talking about it.

18 THE COURT: You haven't taken them over there yet?

19 AGENT HENDRICKS: No. We had some things we had to
20 go over before we took them to the hotel.

21 THE COURT: Okay. Tell them we'll start at 9:00.
22 And if they have trouble -- you know, tell them just if
23 they can have a foreperson by the time they get back over
24 here. And they probably ought to be over here at a
25 quarter until 9:00, something like that. If not, I'll

1 appoint one in the morning. I've got an idea about who,
2 but I wanted to give them a chance to do it.

3 AGENT HENDRICKS: The order, a copy of the order?

4 THE COURT: Oh, the sequestration order.

5 MR. BOGGS: Judge, we'd ask that the Court remind
6 them that they cannot discuss anything about this case
7 amongst themselves.

8 THE COURT: Okay. Yes, I'm going to.

9 We've got to get this clocked in, clocked and copied.
10 I forgot. I'm sorry.

11 THE CLERK: How many copies?

12 THE COURT: How many copies do you want?

13 AGENT HENDRICKS: One.

14 THE COURT: Just one and give us one, if you would.

15 I'm going to bring the jury in and admonish them not
16 to talk about the case.

17 MR. BOGGS: I do have a question, what is your
18 position on jurors taking notes?

19 THE COURT: Well, I generally don't let them do it.
20 I'm afraid that one might be more efficient than another
21 and one might -- you know, then it becomes an issue of
22 whose notes are better and it takes --

23 MR. BOGGS: Thank you.

24 That's fine.

25 THE COURT: All right. Yes, sir, Mr. Barnette.

1 MR. BARNETTE: I'm sorry, Judge. I was going to try
2 to bring some of the exhibits tomorrow just to try to get
3 those premarked. Is there any problem with that? Some
4 judges don't like them premarked and some do.

5 THE COURT: No. The more logistical stuff you can
6 get out of the way, the better.

7 MR. BARNETTE: Okay.

8 THE COURT: Are there stipulated exhibits or not?

9 MR. BARNETTE: I don't think so. I don't think there
10 are going to be any objections to them being marked.

11 THE COURT: Do you have any objection, Ms. Quimby?

12 MS. QUIMBY: Your Honor, I think we were going to
13 look at some pictures this afternoon, but then, I think,
14 once we get those settled, they should be fine.

15 MR. BARNETTE: And they may consent. They've seen
16 the pictures.

17 THE COURT: Okay. Let's bring them back in and let
18 me admonish them not to talk about the case, and we'll
19 take it from there.

20 (WHEREUPON, the jury came into open court at
21 approximately 3:53 p.m.)

22 THE COURT: Okay. I guess Agent Hendricks has had an
23 opportunity to explain how things are going to work. And
24 he's an outstanding agent, very competent, and has done
25 this before, so he's very experienced as well.

1 Have y'all had any luck with coming up with your
2 fearless leader?

3 (There was no response.)

4 THE COURT: Not yet. Okay. Just take your time and
5 if you can't, don't feel any pressure to do it. I can do
6 it for you and it's not a problem. I just wanted to give
7 y'all an opportunity to come up with someone amongst
8 yourselves.

9 I want to tell you that pursuant to your oath, I will
10 instruct you again not to talk about this case among
11 yourselves. You might think, why is that, you know, we're
12 sworn, we've been through this incredible process. But
13 the reason for that, ladies and gentlemen, is that each of
14 you -- at the end of the case, we want 12 unsullied
15 opinions at the end of the case so that when y'all begin
16 your deliberations, each of you brings your own history,
17 experience, and world views to the table. And, obviously,
18 you've been selected through a very careful process. And
19 so it is your view that we're interested in, not a view of
20 yours mixed with anybody else's until all the facts and
21 all the law are in.

22 I'm tempted to go ahead and give you my opening
23 statement now, but I won't. I'll wait until tomorrow.
24 But that's very vitally important. You can talk about,
25 you know, the mean, ugly judge. You can talk about the

1 accommodations, sports, all that kind of stuff. Don't
2 talk about the case. Okay. And if you'll do that -- I
3 promise you it's probably going to get harder as the -- as
4 we get further into the case. It's going to be harder for
5 you not to want to talk about it. Because you're going to
6 be hearing the evidence and seeing things and so forth.
7 But you just have to resist it, remember your oath. And
8 stay strong throughout the course of the trial.

9 I'll tell you a little bit, we're going to move right
10 through the case. And I guess now is a good time to talk
11 about this. Because y'all are sequestered, we are going
12 to work just pretty much around the clock as much as we
13 can. We're going to work Saturday and assuming that
14 everything else -- if we need to, we're going to work
15 Saturday. We'll work Sunday afternoon.

16 I need to know, would you all like me to try and
17 arrange some sort of spiritual -- we've got to be
18 careful -- a spiritual service on Sunday morning? I could
19 try and arrange to have a chaplain brought in for a
20 nondenominational devotional period, if you would like for
21 me to try and do that.

22 Okay. We have one vote on that. Y'all talk about it
23 tonight, if you would like, and just see if you'd like me
24 to try and arrange that. And if there are enough of you
25 who are interested, we'll certainly try to provide that

1 for you. But I need to know that pretty quickly, because
2 we don't have that long until the time comes.

3 And any other concerns and questions you have, please
4 let Agent Hendricks know about it and we'll deal with them
5 as best we can as quickly as we can. And I promise you,
6 we will treat you with courtesy and respect.

7 All right. I think, at this time, I'll excuse y'all
8 back to your jury room. And I think y'all will be headed
9 over to the Marriott here pretty soon.

10 Thank you all very much.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 3:57 p.m.)

13 THE COURT: Anything else we need to talk about
14 today?

15 MR. BOGGS: I just want to put on the record that the
16 jury is not a fair representation of a cross section.
17 It's not a jury of his peers and due process and equal
18 protection of the laws. I think it's 11 to one racial
19 composition --

20 MR. GOWDY: For the entire venire?

21 MR. BOGGS: No, for the panel.

22 MR. GOWDY: I've seen it done.

23 THE COURT: You can make that an argument. Do you
24 have the numbers on the entire panel?

25 MR. BOGGS: As far as the racial composition?

1 THE COURT: Yes.

2 MR. BOGGS: No.

3 THE COURT: Okay.

4 MR. BOGGS: Listen, I don't expect 99 percent of
5 them, but --

6 THE COURT: Absolutely. Put that --

7 MR. GOWDY: I don't know if we need to check to see
8 what process they went through to select the venire and
9 the panels.

10 THE COURT: You probably want to respond to that.

11 MR. GOWDY: Yes. It was just pulled out.

12 THE COURT: Why don't you wait and do that -- put the
13 motion on and we'll argue it later. Okay. Because I
14 think the State would like the opportunity to put the
15 Clerk of Court up to describe the process and procedure to
16 draft to get the panel.

17 MR. BOGGS: All right. Do it first thing in the
18 morning?

19 THE COURT: No. We can do it any time.

20 MR. BOGGS: All right. Thank you.

21 Is that all for us?

22 THE COURT: I think.

23 Can y'all think of anything else we can do today?
24 The more we do today, the less we do at the end of the
25 trial.

1 MR. GOWDY: The statute provides for two hours
2 opening statement.

3 THE COURT: Yes.

4 Well, you can appeal it.

5 MR. BOGGS: What scares me about that is he could,
6 actually, take up to two hours.

7 THE COURT: Well, you can take two hours talking
8 about relatives and who he met at K-Mart.

9 MR. GOWDY: It was Wal-Mart, Judge.

10 THE COURT: Wal-Mart, I'm sorry.

11 MR. GOWDY: I know a lot of people from K-Mart.

12 THE COURT: We will see you all in the morning.

13 (WHEREUPON, the proceedings were concluded at
14 approximately 4:01 p.m., to be reconvened on
15 Friday, November 12, 2004.)
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1 FRIDAY, NOVEMBER 12, 2004

2
3 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7,
4 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
5 22, 23, 24, 25, 26, 27, 28, 28-A, 29, 30, 31, 32, 33,
6 34, 35, 36, 37, 38, 38-A, 39, 40, 41, and 42 were
7 marked for identification only.)

8 THE COURT: The first thing I want to do is announce
9 that the jury has chosen a foreperson.

10 I guess the media is aware that the jurors pictures
11 are not to be ever taken and their names are not ever to
12 be in any kind of media coverage. So if they're running
13 right now, turn them off is what I'm trying to tell you.

14 They have chosen Lizzie Frawley. And I have a
15 piece -- a document, if you all want to see, where they
16 have chosen her right here.

17 We'll mark that as a Court's Exhibit.

18 (WHEREUPON, Court's Exhibit No. 9 was marked for
19 identification and entered into evidence.)

20 THE COURT: I had requested of Mr. Gowdy with respect
21 to the Sunday morning -- some of the jurors have requested
22 that they be allowed to watch a service on television.

23 You were going to check out and see what the content
24 of that was going to be.

25 MR. GOWDY: Yes, sir, Your Honor.

1 I called Trip Dillard, who is the minister of media
2 at First Baptist Church. I left him a message, which was
3 very explicit, that I needed to know the full content of
4 what was going to be televised Sunday. I asked him to
5 send it to me in an e-mail or leave it on my voice mail.
6 When that call comes in, I will save it and play it for
7 the Court and the Defense attorneys or share the e-mail
8 with you.

9 THE COURT: All right. Very good.

10 Is Mr. Brough around? He's not here yet?

11 MR. BOGGS: He's on his way, Your Honor, as we speak.

12 THE COURT: All right.

13 MR. BROUGH: Your Honor, I got the file that you had
14 requested.

15 THE COURT: All right. Let's announce what the issue
16 is in this case.

17 I understand that last night that we discovered that
18 one of the State's witnesses has been -- has pending
19 criminal charges and that you have -- or your office has
20 recently been assigned the case; is that correct?

21 MR. BROUGH: Yes.

22 Your Honor, we have her in our computer system down
23 as under a Teresa Smith, which is why the name Teresa
24 Johnson didn't ring a bell.

25 THE COURT: Okay.

1 MR. BROUGH: We picked up some charges for her,
2 specifically, I believe it is an ABHAN charge. It looks
3 like we picked it up in August of this year. I don't
4 recall ever having any specific dealings with her. We're
5 in the process of drawing up a conflict order to conflict
6 that case out, as we speak.

7 THE COURT: You've never had -- to your knowledge,
8 you've never had a conversation with this client; is that
9 right?

10 MR. BROUGH: I don't recall having any conversations
11 with her. I don't have any notes in my file to that
12 effect. It's one of our relatively newer files.

13 THE COURT: But it was an investigator from your
14 office that has spoken --

15 MR. BROUGH: That's correct, Your Honor.

16 THE COURT: -- and taken the basic information; is
17 that correct?

18 MR. BROUGH: That's correct.

19 And his name is John Lancaster, Your Honor.

20 THE COURT: All right. Has he worked on this case?

21 MR. BROUGH: Not very much. On the outskirts, he's
22 done a couple of things for us. But he hasn't really been
23 involved.

24 THE COURT: All right. I want him to have no further
25 connection with this case.

1 MR. BROUGH: Okay.

2 THE COURT: Does the State have a position in this
3 matter?

4 MR. GOWDY: Your Honor, I just felt I needed to bring
5 it to your attention. I understand the difficulty. I
6 take Mr. Brough at his word that he says he's not
7 discussed it with Ms. Johnson -- or Ms. Smith. I think
8 the Court can appreciate our concern that she would be
9 cross-examined by somebody that may have knowledge. He
10 says he doesn't, and I take him at his word.

11 THE COURT: Well, Mr. Brough, I will -- I mean, this
12 is --

13 Well, first of all, Mr. Evins, do you understand the
14 issue that we're talking about here today?

15 DEFENDANT EVINS: Yes, sir.

16 THE COURT: There is a -- there exists, at this
17 moment, a conflict of interest between you and one of your
18 attorneys. Now, it's a conflict -- an inadvertent
19 conflict that has existed without the knowledge of your
20 attorney, Mr. Brough.

21 It's a conflict -- now, Mr. Brough, I will not allow
22 him to be the attorney who examines this particular
23 witness. Okay.

24 As a matter of fact, Ms. Quimby, I'm not going to
25 allow you to do it.

1 MS. QUIMBY: Yes, sir.

2 THE COURT: So, Mr. Boggs, it falls on your
3 shoulders. I understand you had no knowledge of this
4 until today; is that right?

5 MR. BOGGS: That's correct.

6 THE COURT: Mr. Evins, understanding what I've just
7 said, do you have any problems whatsoever with -- do you
8 think that there's any -- that your -- the representation
9 by Mr. Brough has been compromised by this in any way?

10 DEFENDANT EVINS: No, sir.

11 THE COURT: Okay. And you don't think -- do you
12 think he is giving you his full and undivided allegiance
13 in this matter?

14 DEFENDANT EVINS: Yes, sir.

15 THE COURT: Do you have any reason to doubt that he
16 has never personally talked to this person?

17 DEFENDANT EVINS: No, sir.

18 THE COURT: Okay. And while there is -- do you waive
19 your -- any potential or actual conflict in this matter
20 with respect to this one issue?

21 DEFENDANT EVINS: (There was no response.)

22 THE COURT: When I say that, I mean, do you give up
23 any -- I mean, you're not asserting a conflict in this
24 matter, are you?

25 DEFENDANT EVINS: No, sir.

1 THE COURT: And do you waive any potential or actual
2 conflict that might be determined to exist -- this is a
3 technical matter, do you understand? Do you waive that?

4 DEFENDANT EVINS: Your Honor, sir, I would like for
5 him to continue to represent me.

6 THE COURT: Okay. And, Mr. Brough, do you
7 understand -- I take you at your oath as an officer of the
8 Court that you have given Mr. Evins your undivided
9 allegiance and you will continue to do so; is that right?

10 MR. BROUGH: Yes, Your Honor.

11 THE COURT: And you don't know -- do you know
12 anything about that file?

13 MR. BROUGH: Just, basically, what she's charged
14 with, Your Honor. And we have drafted an order to relieve
15 myself as counsel and dismiss the case. I'd be happy to
16 pass that up to Your Honor.

17 Do you want me to do that now?

18 THE COURT: Yes.

19 Let's go ahead and get that taken care of.

20 Thank you, Mr. Evins. I appreciate that very much.

21 DEFENDANT EVINS: You're welcome.

22 THE COURT: I'm going to allow the jury to take
23 notes. They want to take notes and I'm going to allow
24 them to do it.

25 MR. BOGGS: Individually?

1 THE COURT: Yes.

2 Each of them will have an equal opportunity to take
3 the notes and I'll, of course, give them the instruction
4 on that.

5 Is everybody ready?

6 MR. GOWDY: Yes, sir, Your Honor.

7 THE COURT: Let's go ahead and bring the jury in.

8 (WHEREUPON, the jury came into court at approximately
9 9:45 a.m.)

10 INTRODUCTORY REMARKS

11 THE COURT: Good morning, ladies and gentlemen. I
12 hope you all had a pleasant nights sleep. I know it's
13 awful hard the first night away from home in a different
14 bed to do that, but I hope you did. And I hope the
15 accommodations are comfortable for you. Anything that we
16 can do to make you more comfortable within the confines of
17 the law, we will certainly do that.

18 Now, we are about to start the trial of the case,
19 ladies and gentlemen. And as you all have learned
20 firsthand, the selection of a jury is a difficult and time
21 consuming process, but we are finished with that and ready
22 to move forward.

23 I'm going to briefly explain to you the process of
24 the trial so that you will know upfront what is expected
25 of you, what your role is, what my role is and what the

1 role of the fine attorneys in this case is. And my
2 purpose of doing that is to give you a road map for the
3 next few days, and put you at ease as best I can in what
4 I'm sure is an unfamiliar setting to most, if not all of
5 you.

6 You may have noticed the cameras in the courtroom.
7 In accordance with South Carolina law, there will be no
8 picture of you or any mention of any of your names in the
9 press. The media represented in this case have been
10 informed of the law. And they have assured me that they
11 will strictly honor the law in that regard.

12 Now, in this Court, a charge of a criminal law
13 violation is presented in a legal document known as an
14 indictment. I know we've talked about this, but I'm going
15 to go over it again. And there are three indictments in
16 this case. One indictment contains two separate counts.
17 I've been over all those indictments with you and I'm not
18 going to go over them again at this time.

19 Please remember that an indictment is not evidence of
20 any kind whatsoever. It is merely a legal document
21 containing allegations against a particular individual.
22 And as you're aware in this matter, the State is seeking
23 the death penalty. And when the State seeks the death
24 penalty, the trial is bifurcated. And as I've told you
25 before, that's a fancy legal term that means the trial is

1 held in two separate phases. I've talked about all this
2 before, but I feel it's appropriate to do it again to make
3 sure there's no misunderstanding.

4 Now, the first phase of the trial is held to
5 determined the guilt or innocence of the Defendant as to
6 the charges against him, including the charge of murder.
7 That is the phase of the trial that we are beginning at
8 this time. At the conclusion of the first phase of the
9 trial, if, and only if, you find a verdict of guilty as to
10 the charge of murder will we proceed to the second phase
11 of the trial.

12 The second proceeding, if it is reached, is a
13 sentencing proceeding at which aggravating, extenuating,
14 and mitigating circumstances may be introduced into
15 evidence and considered by you.

16 Now, again, I tell you, please don't infer from
17 anything that I have said that I have any opinion as to
18 what your verdict should be. And my purpose in telling
19 you this is to emphasize that you are not to consider
20 punishment or sentence in this phase of the case. I know
21 it's difficult to do, but you must put up a fire wall
22 between the two phases. And this first phase is only to
23 determine the innocence or guilt of the Defendant based
24 upon the evidence that will be introduced during this part
25 of the trial.

1 Now, as I previously told you, I have no opinion
2 about the facts of this case. The Constitution of South
3 Carolina provides that a trial judge shall make no comment
4 or statement to the trial jury about the facts of the
5 case. Consequently, do not infer from anything that I may
6 say to you in my instructions to you now or anything that
7 I may say during the course of this trial, in ruling upon
8 the admissibility of evidence, or otherwise that I have
9 any opinion about the facts in this case.

10 I will tell you that you, and you alone, are the sole
11 and exclusive judges of the facts in the case. You must
12 decide what evidence convinces you that it is true.
13 However, the same law that makes you the sole judges of
14 the facts makes me the sole judge of the law in this case.
15 So if you have any preconceived notion or idea about what
16 the law is or what the law should be, you must put that
17 aside and abide by and follow the law precisely as I state
18 it to you.

19 Now, let me remind you again of the two principles
20 which I previously instructed you about, the two legal
21 principles. One is the legal yardstick you will use in
22 judging or measuring the evidence in the case. And that
23 legal yardstick is known as the burden of proof. In this
24 and in every case, the burden of proof is on the State to
25 prove guilt beyond a reasonable doubt. And should the

1 State fail to meet that burden of proof with respect to a
2 particular charge, it would be your duty to find the
3 Defendant not guilty with respect to that charge. There
4 is absolutely no burden whatsoever on any Defendant to
5 prove or disprove anything.

6 The second legal principle that I've talked to you
7 about is the presumption of innocence. It is a cardinal
8 and fundamental rule of law that every citizen will always
9 be presumed innocent of the crime or crimes of which they
10 are accused. And I tell you that the presumption of
11 innocence is not some simple legal theory or simple legal
12 phrase. It is a substantial right to which any accused,
13 including this Defendant, is entitled.

14 Now, as we begin the trial, your role lies
15 essentially in the oath that you took, part of which
16 requires you to well and truly try this case. Your oath
17 requires you to find facts and to find the truth from the
18 evidence presented to you during the course of this trial.
19 And you are not to consider anything you may have read,
20 heard, or seen about the case outside the courtroom. When
21 you talk about what you need to consider, the only thing
22 that you need to consider is evidence that's presented
23 under oath and subject to the Constitutional scrutinies
24 provided in this courtroom.

25 So I will tell you now, what is evidence? What are

1 you all going to be looking at to find out -- to make your
2 decisions on? And in South Carolina, evidence comes from
3 one of three sources. The most common example of evidence
4 is the testimony of a witness. And each witness will
5 testify from this witness stand where each of you has sat.
6 So you'll have -- you can have a little understanding
7 about how they feel.

8 Now, you will see, and you will hear, and you will
9 observe the witness, including the demeanor of the
10 witness. And it is your job to determine the credibility
11 or believability of each witness.

12 The second source of evidence known to the law is
13 what the law calls an exhibit. And an exhibit, by way of
14 example, could be a photograph, a chart, a diagram, or the
15 like. And an exhibit is a tangible item with an exhibit
16 label attached to it. At the end of the case when you
17 retire to the jury room to begin your deliberations, all
18 of the exhibits received into evidence in this case will
19 go back with you.

20 The third source of evidence is what the law calls a
21 stipulation. Now, there may or may not be any
22 stipulations in this case. As the name implies, a
23 stipulation is, basically, an agreement between the
24 parties as to the existence of a certain fact. And if
25 there is a stipulation, you would be required to accept

1 that stipulation as conclusive for the purposes of this
2 trial.

3 So that, ladies and gentlemen, is what evidence is,
4 testimony, exhibits, and any stipulations.

5 Now, it is my responsibility to preside over the
6 trial of the case and to rule on the admissibility of
7 evidence. At the end of the case, I will also instruct
8 you on the applicable law in this case.

9 Now, ladies and gentlemen, you and I do not ask
10 questions of witnesses, and we do not offer exhibits.
11 That is the job of the fine attorneys involved in the
12 case. Your duty is to listen openly and honestly to the
13 evidence. Keep an open mind. Do not form any conclusions
14 or judgments prematurely. Do not make any decisions in
15 this case until you have received and considered all of
16 the evidence, you've heard the arguments of the attorneys,
17 and my final charge on the law to you.

18 Now, consistent with your oath, do not discuss this
19 case with your fellow jurors or with anyone else until the
20 end of the case, until I have given you my charge on the
21 law and released you to begin your deliberations.

22 Now, this is a road map -- another brief little road
23 map of how the trial will proceed. A trial can be broken
24 down into as many parts as you'd like to break it down
25 into, but I break a trial -- the first phase of a trial

1 down into five parts. And we're involved in the first
2 part right now, and that is the opening statements to you.
3 And I'll -- I promise you I'm about done. You've had to
4 listen to me an awful lot over the last few days. But
5 when I conclude my remarks to you, then the attorneys will
6 have an opportunity to make their opening remarks to you.

7 The second phase of the trial is the real meat and
8 potatoes. And that's when you receive the testimony, the
9 evidence, and any stipulations that may or may not be
10 introduced in this case. The third part of the trial is
11 the closing arguments of the attorneys. The fourth part
12 of the trial will be my charge to you on the law at the
13 end of the case. And then the fifth part of the trial
14 will be when you all are freed up to begin your
15 deliberations back in private in your jury room.

16 Now, I'm going to close my remarks to you with just a
17 couple housekeeping matters. We, generally, run court for
18 an hour and a half -- an hour to two hours between breaks.
19 But things normally -- as part of the normal course of a
20 trial, things happen during the trial that require us to
21 deviate from a normal schedule. For example, we will
22 break whenever you need to break. So if during the trial
23 of the case, you need to take a break, raise your hand,
24 get my attention, notify the bailiffs and we will take a
25 break. Because we want you all to be comfortable. We

1 don't want you all to be distracted by anything other
2 than -- while the presentation of the case is going on.

3 Now, the other thing I talked about briefly with you
4 yesterday is that from time to time, legal issues come up
5 during a trial of a case where it needs to be discussed
6 outside the presence of the jury. I told you part of
7 that -- one of the causes for that is that it might
8 require me to make a comment on the facts. And as I've
9 told you, the Constitution does not permit me to do that.
10 So that's why we'll ask you to leave.

11 The other thing I would tell you, if you have trouble
12 hearing anyone, a witness, an attorney, me, anybody in the
13 courtroom, and you need someone to speak up, then you
14 just, again, need to get my attention or the attention of
15 the bailiffs, and we will make sure you hear everything
16 that is discussed in this courtroom.

17 Now, if you need to notify me of anything throughout
18 the course of the trial -- and I'm sure Agent Hendricks
19 has talked to you about this. You may contact me through
20 the bailiffs and through our fine agents from SLED. And I
21 will require you in most instances to write that down so
22 that we can make a record of it. We keep track of
23 everything that goes on in a case of this magnitude of
24 this seriousness.

25 Now, ladies and gentlemen, the final thing -- and I

1 will tell you with respect -- the lawyers are all notified
2 that they are to speak up loudly and clearly so that you
3 can understand what they say.

4 Now, the final thing is I understand that there are
5 certain members of the jury who want to take notes during
6 this trial.

7 Is that correct?

8 (Some jurors said yes.)

9 THE COURT: Okay. Well, let me just tell you, it's
10 not my normal practice to allow that, but I'm going to
11 allow you all to take notes. And each of you has to have
12 an equal and fair opportunity to take notes. So we have
13 14 note pads and I'm sure 14 writing instruments, pens,
14 pencils, which we will provide to you.

15 Now, please remember that some people are better note
16 takers than others. Juror notes should not be given any
17 greater weight than the recollection of other jurors. The
18 recollection of individual jurors may be considered as
19 reliable as notes taken by other jurors. And I also warn
20 you that when you are taking notes, you may not notice the
21 body language of a witness, or the demeanor of a witness,
22 which could be used by you in deciding that witnesses
23 credibility. So there are certain dangers inherent with
24 taking notes. You may not be able to watch a witness.
25 The other thing that concerns me is that you may take

1 notes for a while, stop, and then take them again later.
2 So be aware of those issues, that just because you didn't
3 take notes of a certain witness doesn't lessen the value
4 or the importance of that witnesses testimony in the trial
5 of the case.

6 Ladies and gentlemen, thank you for your kind
7 attention and for all your hard work up to this point.
8 Again, if you need anything through the course of the
9 trial, please let me know and we will do our best within
10 the confines of the law to help you out with that.

11 At this time, ladies and gentlemen, I'm going to turn
12 the case --

13 Would you all like the note pads now?

14 (Some jurors said yes.)

15 THE COURT: All right. Let's go ahead and provide
16 those to whoever wants them.

17 And I will tell the rest of you, those who have not
18 taken a note pad, if at any time during the trial, you
19 would like one, let us know and we will provide one for
20 you.

21 Ladies and gentlemen, I thank you for your kind
22 attention to my remarks to you. I appreciate over the
23 last four days how much attention that y'all have paid and
24 how hard you've worked.

25 At this time, I'm going to turn it over to the

1 attorneys. And please give them the same full and kind
2 attention that you have given me.

3 Thank you very much.

4 MR. ANTHONY: Thank you, Your Honor.

5 OPENING STATEMENT

6 MR. ANTHONY: Good morning.

7 One of my favorite singers -- I like country music.
8 But one of my favorite singers is George Jones. And I'm
9 sure that any of y'all who know anything about country
10 music know that George Jones has lived a very troubled
11 life. He's lived a life that's been barred by alcohol and
12 by drug abuse. And, fortunately, he's gotten more control
13 of his demons as he's aged. But George Jones spent the
14 prime of his life engaged in very destructive behavior.
15 And I once read this quote from George Jones where he
16 described his life as follows, he described his life as a
17 journey across a sea of whiskey and a mountain of cocaine
18 in a vehicle of self-destruction.

19 Now, that quote puts me in mind of this case because
20 this case can be seen as a journey that was taken by the
21 Defendant, Fredrick Evins. And a lot like George Jones'
22 journey, we can't really understand why Mr. Evins decided
23 to take it, we can only observe that he did.

24 Mr. Evins took his journey on February the 13th of
25 last year. It began a little before 7:00 a.m. at the

1 Cigarette's 4 Less store on Drayton Road, and it took a
2 stop at an apple orchard off of Gano Road, which is out in
3 the county near Reidville, and it made some more stops on
4 Walker Road, which is out in the county near Woodruff.
5 The journey took Mr. Evins all the way to Greer, and then
6 it took him back to Walker Road. And just like George
7 Jones, Fredrick Evins engaged in some very destructive
8 behavior on February the 13th of last year. But unlike
9 George Jones, Fredrick Evins' trip wasn't one of just
10 self-destruction, because Fredrick Evins made his journey
11 with an unwilling passenger, and her name was Rhonda Ward.

12 Rhonda Ward was the manager of the Cigarette's 4 Less
13 store on Drayton Road where Mr. Evins journey began. On
14 February 13th, when she pulled into the parking lot on
15 schedule a little bit before 7:00 in the morning, Fredrick
16 Evins approached her car. They spoke. Then she opened
17 her driver's side door, got out, and got back into the
18 driver's seat. Mr. Evins got into the passenger seat.
19 And she drove off with him in her white Nissan.

20 A little over an hour later, Ms. Ward's car was seen
21 sitting on the side of Gano Road beside an apple orchard.
22 And then a little later that morning, Fredrick Evins
23 showed up by himself on Walker Road driving Ms. Ward's
24 Nissan car. That day, Mr. Evins plowed through a mountain
25 of drugs, first on Walker Road, and then later on in

1 Greer. And both the figurative and the literal vehicle
2 for this journey that Fredrick Evins took that day was
3 Rhonda Ward, because Rhonda Ward's money financed Fredrick
4 Evins' party. And the literal vehicle for the party was
5 Rhonda Ward's car, which took him from one stop on the
6 trip to another.

7 But the evidence will show that while Fredrick Evins
8 was out having his party and making his stops, Rhonda Ward
9 was lying dead on the hard, cold ground in that apple
10 orchard off of Gano Road where Mr. Evins's journey had
11 made its first stop. Ms. Ward's body was discovered on
12 February 15th, two days after she disappeared. And she
13 was found completely naked and she had been stabbed
14 multiple times.

15 Almost two weeks after Ms. Ward's body was found,
16 some hunters found some of Ms. Ward's belongings on the
17 side of Walker Road, which is near where Mr. Evins had
18 made his second stop and where he started his party. The
19 belongings were turned over to the Sheriff's Office. And
20 the investigators began to question people who lived
21 around Walker Road. And they realized that Mr. Evins had
22 been there around Walker Road in Ms. Ward's car on
23 February 13th.

24 Mr. Evins was questioned and he, initially, denied
25 knowing anything about this incident. But later, he gave

1 a statement admitting to going to the apple orchard with
2 Ms. Ward, stabbing her, taking her money, and leaving her
3 there. Mr. Evins, initially, denied having sex with
4 Ms. Ward. But after he gave his statement, Mr. Evins was
5 taken to Spartanburg Regional to have his blood drawn for
6 a DNA test to see if his DNA could be matched to the semen
7 in Ms. Ward's vagina. Before the blood was drawn,
8 Mr. Evins admitted that he had sex with Ms. Ward, and a
9 DNA test confirmed that Mr. Evins' DNA matched the semen
10 found in Ms. Ward's vagina.

11 In this case, we're going to present evidence to you
12 from each stage of Mr. Evins's journey, the taking of
13 Ms. Ward from the Cigarette's 4 Less, killing Ms. Ward in
14 the apple orchard off of Gano Road, and partying with his
15 friends on Walker Road and in Greer while he drove around
16 in Ms. Ward's car.

17 The evidence you're going to hear is going to come
18 from several types of witnesses. There are going to be
19 people who worked with Rhonda Ward and missed her on
20 February 13th. There are going to be people who saw the
21 white car on Gano Road and who found Ms. Ward's body in
22 that apple orchard. There are going to be people who
23 partied with Mr. Evins after this happened. There are
24 going to be investigators that processed the crime scenes
25 and collected the evidence from the crime scenes. There

1 are going to be the detectives who interviewed Mr. Evins
2 and took his statement from him. And there are going to
3 be agents from the South Carolina Law Enforcement Division
4 who tested the evidence that was collected and sent to
5 them by the Sheriff's Office.

6 So we have a lot of witnesses to call in this case,
7 and it will take us a few days to go through all of them.
8 But we believe that once you've heard all the witnesses,
9 you'll see how Fredrick Evins' trip became Rhonda Ward's
10 final journey. And we believe that you'll find Fredrick
11 Evins guilty of grand larceny, kidnapping, criminal sexual
12 conduct, and murder.

13 Thank y'all very much.

14 MR. BOGGS: May it please the Court?

15 THE COURT: Yes, sir.

16 MR. BOGGS: Mr. Foreman, and, ladies and gentlemen of
17 the jury, let me introduce myself. My name is Tam Boggs.
18 I'm one of the attorneys representing Mr. Evins. I want
19 to thank you again for your service. Probably nobody in
20 this courtroom wants to be here, but you are participating
21 in one of the probably most perplexing, I guess, systems
22 in the world, but also the most differentiating, I guess
23 is the best word, system in the world. Because we're the
24 only country that has a jury system like this. So I want
25 to thank you up front for your participation and for you

1 fulfilling your civic duty.

2 Each of you has taken an oath. You've taken several
3 oaths this week. That oath, basically, is that you will
4 try this case and truly try the facts of this case within
5 the confines of this courtroom. Judge Miller will charge
6 you that anything outside of this courtroom is not
7 appropriate to consider when you collectively retire to
8 your jury room to make a decision as to what the truth is.
9 I think Judge Miller even mentioned to some of you when he
10 was speaking with you individually that our Constitution
11 is, actually, founded on a person being tried and a
12 verdict rendered not based on gossip. And, unfortunately,
13 some of the information that gets disseminated out in the
14 general public is gossip. And that's why that oath
15 requires that you only deal with what you hear in this
16 courtroom and nothing else. And when the Judge asks you
17 if you could do it, you did it -- each of you said, yes, I
18 can.

19 I remember a movie, I think the name of it was Men in
20 Black. It was Tommy Lee Jones and Will Smith, I think, as
21 an alien spoof. But they had a gadget where you could pop
22 up your short term memory or your selective memory could
23 be obliterated. Well, we don't have gadgets like that.
24 What we rely on is jurors, a juror's honesty and integrity
25 to honor the oath you take.

1 The Solicitor has brought charges against Mr. Evins.
2 And by doing so, the Solicitor has taken on a burden. And
3 that burden, Judge Miller has told you, is called the
4 burden of proof. And that burden of proof has a
5 threshold. That threshold being the Solicitor has to
6 prove each element of the offense charged beyond a
7 reasonable doubt, the legal definition for which will be
8 given to you at the conclusion of the trial. The
9 Solicitor by bringing the charges, he's the one that
10 brought them and he's the one that has got this burden.
11 He's the one that must prove beyond a reasonable doubt.

12 Now, how does he do that? Mr. Anthony has just told
13 you, he said they're going to bring in witnesses and bring
14 in evidence in an attempt to meet this burden. And he
15 said there's going to be a lot of witnesses. And he's put
16 it in kind of a timeline, saying when they -- or a
17 sequence line.

18 So, hopefully, what's going to happen is they're
19 going to bring every witness that can relate to each of
20 the specific incidents Mr. Anthony talked about along this
21 timeline. Because if you don't have all of the witnesses
22 and there are gaps there, then there's some missing. So,
23 hopefully, Mr. Anthony will be able to bring every witness
24 that has something to do with the timeline.

25 And the importance of that is this, we are not trying

1 one case here. We are trying four cases. Judge Miller
2 will charge you at the conclusion of the trial that you
3 are to treat each individual charge as a separate case.
4 You will have to rule on each case individually and
5 separate from the other three charges.

6 So, in effect, even though we're here just under --
7 altogether for one series, it is, actually, four cases
8 you're going to have to decide. And each one of those
9 cases is treated as if we were in four separate courtrooms
10 with one charge in each courtroom. Judge Miller is going
11 to charge you on that, and that's the law because they're
12 not tied together. They each stand or fall on their own
13 merits.

14 The first charge in order of sequence, as Mr. Anthony
15 has pointed out, the first case you're going to have to
16 try is called kidnapping. And kidnapping is, basically --
17 and I need to read the definition. The State must prove
18 beyond a reasonable doubt that Mr. Evins unlawfully
19 seized, confined, inveigled, decoyed, kidnapped, abducted,
20 or carried away Ms. Ward. That's the definition. And
21 there will be a case -- the first case you try is
22 kidnapping. And that is the definition that must be
23 proven beyond a reasonable doubt.

24 There's another case, a second case, a criminal
25 sexual conduct case. In order of the time, as Mr. Anthony

1 said, is a separate case. So we'll need, figuratively, to
2 move to the other courtroom to try the criminal sexual
3 conduct. The standard of proof that the Solicitor must
4 prove beyond a reasonable doubt is that Mr. Evins
5 committed a sexual battery against Ms. Ward and used force
6 or Ms. Ward was the victim of either a confinement,
7 kidnapping, robbery, extortion, housebreaking, or
8 burglary. So there's a two-prong test, but that is moving
9 to the second courtroom. Criminal sexual conduct. This
10 is an independent case and must be proven independently.

11 The Solicitor has also brought a third charge. And
12 the charge in that case, moving to the third courtroom, is
13 murder. Murder is the unlawful killing of another with
14 malice aforethought. That is an independent case that
15 must be ruled on independently. It has its own facts that
16 will apply to that, and you will make a decision
17 independently with the other charges.

18 And there's a fourth case. And that fourth case is
19 larceny. Larceny is, basically, taking the property of
20 another with the intent to deprive the owner thereof.
21 That is an independent case. That is a case that must be
22 tried on its own merits.

23 So, again, as you can see -- and I think Mr. Anthony
24 even eluded to it himself when he was using this timeline,
25 bear in mind, we're talking about four separate trials

1 during the course of the testimony.

2 On February 13th, 2003, a tragedy occurred. Rhonda
3 Ward lost her life. That's horrible. It's horrible for
4 anybody to lose their life. This tragedy has effected a
5 good many people. It's effected her mother sitting right
6 here. It's effected her mother-in-law, the lady in the
7 tan sitting next to her. It's effected the Evins family,
8 Fredrick's mother, his children, his brothers. It's a
9 tragedy. We all have sympathy for the victims and
10 families. Anyone in this room would want to change what
11 happened, but we can't do that. We have to deal with what
12 the facts are and what we're here to do.

13 How do we deal with that? He's facing criminal
14 charges. You, as jurors, are going to be the judges of
15 the facts. Sympathy is not something that factors into
16 that. You need to look at the facts to make a decision as
17 to whether or not the Solicitor, by bringing these
18 charges, prove the elements alleged. Because I submit
19 that the facts that either existed on the outside, or as
20 Mr. Anthony has pointed out, are not really what happened.
21 I think you'll see that the facts are going to stack up
22 exactly like the Solicitor said up to this point.

23 You, as jurors, will have to listen to the facts
24 because you are the judges of the facts. And once you
25 have those facts and once you decide what is important and

1 what is not and you apply it to the law as the Judge gives
2 it, then you reach what's called a verdict. And all
3 anybody wants is a verdict based on jurors using their
4 good common sense, applying the facts that make sense to
5 the law, and coming into a decision that speaks the truth.
6 Because that's what verdict means. Verdict literally
7 means to speak the truth, and that's all we want. That's
8 all we want.

9 It's been 19 months -- or 18 months since this
10 incident happened. Everybody needs closure and that's
11 what we're here for. All the hearsay talk and gossip, et
12 cetera, it doesn't matter. This is the time that we find
13 out what really happened. Four separate trials, four
14 separate set of circumstances, and four verdicts. Take
15 your oath seriously. Render verdicts that speak the
16 truth. And if you do that, no one can complain. If you
17 do that, no one can challenge your decision. Pay
18 attention. The bottom line is this, everyone deserves a
19 fair trial. And a fair trial is only rendered when the
20 jury takes its oath seriously, looks at the facts, and
21 delivers a verdict that speaks the truth.

22 Thank you.

23 THE COURT: Call your first witness.

24 MR. GOWDY: May it please the Court, Your Honor?

25 The State would call Bill Southerland.

1 THE CLERK: Please place your left hand on the Bible
2 and raise your right.

3 WHEREUPON,

4 WILLIAM F. SOUTHERLAND, JR.,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Have a seat, please.

7 DIRECT EXAMINATION

8 BY MR. GOWDY:

9 Q Good morning, Mr. Southerland.

10 A Good morning.

11 Q How are you?

12 A Good.

13 Q You've got a good, strong, clear voice. I want you
14 to keep it so the last gentleman and the last lady in the
15 jury box can hear you. Okay.

16 A Yes, sir.

17 Q Give them your name and where you work.

18 A William F. Southerland, Jr. I work for R.L. Jordan
19 Oil Company.

20 Q What is R.L. Jordan Oil Company?

21 A We own Hot Spots, Cigarette's 4 Less, and some hotels
22 down by Myrtle Beach and in the Asheville area.

23 Q How long have you worked there, Mr. Southerland?

24 A Approximately three years.

25 Q What is your title?

1 A I'm an area supervisor.

2 Q What are some of your responsibilities as an area
3 supervisor?

4 A I supervise seven store operations from hiring
5 personnel, training personnel, cost control, and profit
6 and loss statements.

7 Q Is one of those stores you supervise on Drayton Road?

8 A Yes.

9 Q What's the name of the store?

10 A Cigarette's 4 Less on Drayton Road.

11 Q Mr. Southerland, for those members of the jury that
12 may not be familiar with that part of Spartanburg County,
13 tell them where Drayton Road is.

14 A That runs between Pine Street and explain Street over
15 by the Hillcrest area on the east side.

16 Q Did you have an employee at your Drayton Road store
17 by the name of Rhonda Ward?

18 A Yeah. Rhonda was the store manager.

19 Q What were some of her responsibilities as the store
20 manager?

21 A She was responsible for maintaining her staff, hiring
22 with my help, training the staff, scheduling, doing the
23 paperwork and the banking, and opening the store in the
24 mornings.

25 Q How long had you known Ms. Ward?

1 A Approximately a year and a half.

2 Q Had y'all worked together previous to your
3 supervising her as a store manager?

4 A Yes. When I first started with the company, I was
5 her immediate manager at East Henry Street. That's a Hot
6 Spot in downtown Spartanburg.

7 Q I want to show you what's been marked as State's
8 Exhibit No. 10, and see if you can tell us who that is.

9 A That's Rhonda Ward.

10 MR. GOWDY: Your Honor, the State would move State's
11 Exhibit No. 10 into evidence.

12 MR. BOGGS: No objection, Your Honor.

13 THE COURT: Without objection.

14 (WHEREUPON, State's Exhibit No. 10 was admitted into
15 evidence.)

16 BY MR. GOWDY:

17 Q You said you knew Rhonda for a year and a half,
18 Mr. Southerland?

19 A Yes, sir.

20 Q How long had she been at the Drayton Road store?

21 A Approximately six weeks. She went there in late
22 December.

23 Q What were the hours of the operation of that store?

24 A Store hours were from 8:00 in the morning until 11:00
25 at night. The manager usually arrives sometime around

1 7:00 to start the morning procedures.

2 Q I want to move to February the 13th of 2003.

3 A Yes, sir.

4 Q Did you have an occasion to ride by the Cigarette's 4
5 Less on Drayton Road at any point that morning?

6 A At approximately 9:15, I was on my way to the East
7 Henry location in downtown Spartanburg. And I always made
8 it a point to drive by -- if I was near a store, to drive
9 by that store. And I did drive by the store at 9:15 that
10 morning.

11 Q All right. This is something I want you to think
12 back clearly on.

13 A Okay.

14 Q Had you had any plans to stop by that store in your
15 official capacity as the area supervisor?

16 A Not on that day, no, sir.

17 Q Not on that day. Were you going to stop by that
18 store? Did I hear you right?

19 A Yes, sir.

20 Q You were just driving from one store to another?

21 A Yes, sir.

22 Q Tell the ladies and gentlemen of the jury what you
23 noticed when you drove by the store.

24 A When I passed the Drayton Road store, I noticed that
25 Rhonda's white small car wasn't in the parking lot, and

1 that was not like her. She had never missed a day of work
2 and had never been late. So right away, I pulled in the
3 parking lot and walked up to the front door. It was
4 locked. The gate was still pulled down. Nobody was
5 there.

6 So, at that point, I went back to my car, pulled out
7 the store folder, and called Rhonda's number. I got no
8 answer. I then called my office, the payroll department,
9 to get the emergency phone numbers. Because I knew it was
10 highly unusual for her not to be there.

11 I got the emergency phone numbers. And I got ahold
12 of Ms. Faith Goodwin, her mother-in-law. I asked her if
13 she had heard from Rhonda or knew if anything was wrong.
14 She had not. And we discussed what to do. She was going
15 to start searching from her end, checking the school and
16 see if her kids were at school and this type of thing.
17 And we hung up at that point.

18 At that point, I had to go to the office to get a key
19 to open the front door. I got back to the store, unlocked
20 the door, and entered the premises. I could tell that
21 nobody had entered that premises that morning. The store
22 was still set up as we would leave it the night before
23 with the cash drawer open, money emptied out of the tray,
24 and everything in the safe.

25 Q Mr. Sullivan [sic], at what point on February the

1 13th did you do these things? You said you drove by --

2 A It started at 9:15. So I probably talked to Faith
3 around 9:25. I called the office to make sure they had a
4 key and drove over there, which is about ten minutes away
5 from the store, the offices. I got back to the store
6 maybe at 9:45 or so and then entered the premises at that
7 time. Realizing I needed some help because I was by
8 myself, I called another employee of mine, Rebecca Lathan,
9 and told her I needed help, to get down there so we could
10 get the store opened and see what was going on.

11 Q And you testified, I believe, Mr. Southerland that
12 you worked with Rhonda for a year and a half?

13 A Yes.

14 Q Did you also testify that in that time, she had never
15 been late for work?

16 A I cannot remember her ever being late or not showing
17 up for work.

18 Q After you talked to Ms. Lathan, what did you do?

19 A I called the maintenance department because we had to
20 get a set of keys for the safe. I notified my superior
21 that I had a problem, that the manager didn't show up.
22 And then I just went about getting the store ready to go
23 to open. When Rebecca got there, I went back to secure --
24 I pulled the videotapes out and started watching --
25 trying to watch those to see if I could see anything

1 unusual.

2 Q I want to show you State's Exhibit No. 11,
3 Mr. Southerland, and ask you whether or not you recognize
4 that?

5 A That's a videotape from our A camera set, Drayton
6 Road February 13th. It was recorded from 12:00 midnight
7 until 8:00 in the morning.

8 Q How do you know that much about that tape?

9 A We label it right here with the name. That's the
10 date and that's the time.

11 Q Did you, yourself, pull that tape from the
12 surveillance camera from the store on Drayton Road?

13 A Yes.

14 Q Did you, yourself, review that tape on the 13th of
15 February?

16 A Yes.

17 Q Have you reviewed that tape at my request since then?

18 A Yes.

19 Q Is this the tape that you pulled from the security
20 camera on February the 13th?

21 A Absolutely.

22 MR. GOWDY: Your Honor, we would move State's Exhibit
23 No. 11 in.

24 MR. BOGGS: No objection, Your Honor.

25 THE COURT: All right. Without objection.

1 (WHEREUPON, State's Exhibit No. 11 was admitted into
2 evidence.)

3 BY MR. GOWDY:

4 Q Mr. Southerland, did you begin to look at this tape
5 in an effort to find out why Rhonda wasn't at work?

6 A Yes. Between getting the store opened and getting
7 Rebecca there and trying to do ten things at once, I did
8 try to look at the tape during the day. I went back to
9 approximately 7:00. In my mind, that was the time I
10 thought would be a good time to start.

11 Q Now, when you say you went back to 7:00, I have in my
12 mind that you're rewinding a tape --

13 A Yes.

14 Q -- and stopping it at 7:00?

15 A That's correct.

16 Q Is there a timer on the tape?

17 A Yes. It shows a timer on the tape.

18 Q And this rewinding and reviewing of the tape, you
19 would have done this when?

20 A Between 12:00 and 3:00 off and on, you know, maybe
21 spend 15, 20 minutes rewinding and looking at it, and then
22 dealing with the situation out front during the day.

23 Q So this is within three hours of your first
24 noticing --

25 A Right.

1 Q -- that Rhonda's car was not in the parking lot, you
2 pulled the tapes?

3 A Yes, absolutely.

4 Q At what point did you call law enforcement or have
5 someone else call law enforcement?

6 A At about 10:30 or so, Faith Goodwin called me back
7 and we had a conversation, you know, well, Rhonda is not
8 here, you can't find her, you know, something is wrong.
9 Would it be better for me to call the police or you, being
10 a relative, would it be better for you to call the police.
11 And we decided she would notify the police.

12 Q So the decision was made for Ms. Goodwin to notify
13 the police and you reviewed the surveillance?

14 A Right.

15 Q Backing it up to 7:00, did you see anything unusual
16 on the surveillance tape?

17 A No, sir, not that day.

18 Q After reviewing the surveillance tape in addition to
19 other job -- I guess you had stores you were trying to run
20 that day?

21 A Yes.

22 Q All right. What else did you do? Did you make any
23 other efforts to try and find Rhonda?

24 A I took the tape home with me. And at the house, I
25 played the B tape. That's a one camera shot out the front

1 door. You need a special system to play the A tape. It's
2 a 12-camera shot.

3 Q All right. I'm going to call Mr. Coley Peak to get
4 those tapes.

5 A Okay.

6 Q You mentioned A and B tapes, tell them what you're
7 talking about.

8 A Our A tape records all 12 cameras at the store, so
9 you need a special piece of equipment to be able to replay
10 those 12 cameras. The B tape records only one camera.
11 That's a front shot right out by the cash register out the
12 front door. That tape I could review at home, which I did
13 that night, to try and see anything on it. But I did not
14 see anything that night.

15 Q Again, Mr. Southerland, let me ask you how far back
16 were you watching the tape?

17 A I was still going back until approximately 7:00.

18 Q At some point, did you decide to go back a little
19 prior to 7:00?

20 A Yes, sir. The next morning, I went to the East Henry
21 store and said, well, maybe I'll go back to 6:45. And
22 at -- that morning, at approximately 8:15, 8:30, we rolled
23 it back to 6:45 on the B tape first. And around 6:50, you
24 see some headlights pull into the parking lot.

25 Q What led you to back the tape up 15 more minutes?

1 A I just had concluded that it's possible she could
2 have got there before 7:00.

3 Q Do you know a Rebecca Lathan?

4 A Yes.

5 Q Did you have any conversations with her about what
6 Rhonda may or may not have been doing on the morning of
7 February 13th?

8 A Yes. I talked to Rebecca during the day and she
9 said she had talked to --

10 MR. BOGGS: Objection, Your Honor. I believe that
11 would be double hearsay or, at least, hearsay.

12 THE COURT: Yes.

13 THE WITNESS: I apologize.

14 MR. GOWDY: I wasn't going to offer it for the truth
15 of what she said. I was trying to set the time, but I can
16 do it -- I'll do it another way.

17 THE COURT: All right. Thank you.

18 BY MR. GOWDY:

19 Q Without going into what Ms. Lathan told you, did you
20 then back the tape up prior to 7:00?

21 A Yes. I concluded I needed to look prior to 7:00.

22 Q Okay. And when you backed it up to 6:45 and looked
23 at it, tell the jury what you saw.

24 A Again, around 6:50 and some seconds, you see the
25 white car, Rhonda's white small car, pull into the parking

1 lot. She turns her lights off, turns her car off, and she
2 gets out. And you see a black man walking up and they
3 have a conversation, but there's no audio. They talk for
4 maybe 45 seconds. Rhonda gets back in the car. He walks
5 around the front of the car, gets in the other side and
6 the car leaves.

7 Q Any doubt in your mind, Mr. Southerland, that that
8 was Rhonda Ward's car you saw on the videotape?

9 A No doubt.

10 Q Any doubt in your mind that that was Rhonda Ward you
11 saw on the videotape?

12 A No doubt.

13 Q Had you ever seen the man that was on the videotape
14 before?

15 A No, sir.

16 Q Did he arrive in a car or how did he appear on the
17 scene?

18 A He was on foot. He walked up from the east side of
19 the store and entered the parking lot on the driver's side
20 of the car.

21 Q I want to show you for identification purposes only
22 State's Exhibit No. 9, and ask you if you can identify
23 what that document is and whether or not you recognize the
24 handwriting?

25 A Yes. This is a schedule for Drayton Road Cigarette

1 store for the week of February 9th through the 15th. And
2 it's in Rhonda Ward's handwriting, and she signed the
3 bottom of it.

4 MR. GOWDY: Your Honor, we're not offering State's
5 Exhibit No. 9 at this point. I just wanted it --

6 THE COURT: All right.

7 BY MR. GOWDY:

8 Q Did you ride around and look for Rhonda yourself any
9 on the 13th, Mr. Southerland?

10 A No. I didn't have an opportunity to do that.

11 Q In the year and a half that y'all worked together,
12 how many days did she not show up for work and not call
13 you?

14 A Never.

15 MR. GOWDY: Please answer any questions the Defense
16 attorney may have for you.

17 THE WITNESS: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. BOGGS:

20 Q Mr. Southerland, excuse me?

21 A Southerland.

22 Q Okay. My name is Tam Boggs. Explain a little bit,
23 if you would, about the tapes. Now, I understand you have
24 what you call an A tape and a B tape; is that correct?

25 A Yes, sir.

1 Q Now, on the outside of Cigarette's 4 Less, I believe
2 there were two security cameras, one at each corner?

3 A Yes, sir.

4 Q It would be the front corner on the east end of the
5 building and the front corner on the west end?

6 A That's correct.

7 Q All right. And then would those cameras be the
8 cameras that were on the A tape?

9 A They would be on the A tape, yes, sir.

10 Q And the A tape shows a real quick series, or is it a
11 slow tape showing just a continuous observation of the
12 parking lot -- well, let me -- just for the jury's
13 benefit, these two security cameras are, actually, focused
14 into the parking lot; correct?

15 A Yes, sir.

16 Q And, at least, one of them, I believe, swings,
17 doesn't it, the east camera?

18 A Yes, it spans.

19 Q And is the west one fixed?

20 A It's fixed.

21 Q It's fixed?

22 A Yes, sir.

23 Q So you have a fixed camera on the west end of the
24 building covering the front and the parking lot?

25 A Uh-huh

1 Q And the east end, you had a swinging camera that took
2 in everything from the woods all the way to the parking
3 lot; correct?

4 A Yes, sir.

5 Q And both of those would be on this tape?

6 A The A tape, yes, sir.

7 Q Now, my question is, do you have a tape that only
8 shows the west end camera?

9 A A separate tape?

10 Q Yeah.

11 A No. It would be on the A tape with the other 12
12 cameras.

13 Q But you have the ability -- or somebody has the
14 ability of sorting that out and only having a clear shot
15 from the west end camera?

16 A Yeah. You'd have to talk to security, Mr. Coley
17 Peak, but, yeah, he would be able to do something like
18 that.

19 Q And, to your knowledge, did he provide the State with
20 just that one particular tape?

21 A I really don't know. I gave --

22 Q If there's one in existence, it had to come from
23 Mr. Peak?

24 A Yes, sir.

25 Q I believe you testified that Rhonda Ward had been the

1 manager of the Cigarette's 4 Less for about six weeks?

2 A Yes, sir.

3 Q And did I understand you to say prior to that, she
4 had been at the East Henry store?

5 A East Henry store, yes, sir.

6 Q But that wasn't the Cigarette's 4 Less, that was the
7 Hot Spot?

8 A Yes, sir, Hot Spot.

9 Q And how long had she been employed over at the Hot
10 Spot on Henry Street?

11 A I can't remember exactly the time frame, but she was
12 there prior to my arrival. I got there in September of
13 2001. And I know she was there, at least, five or six
14 months prior to that. But I don't know the exact date.

15 Q Over a year and a half?

16 A Approximately, yes, sir.

17 Q Okay. What was her position over at the East Henry
18 store?

19 A She started out as a cashier, which is our entry
20 level position. And then she was promoted to assistant
21 manager sometime in the summer of 2002, I want to say
22 August.

23 Q Okay. And then she got promoted to the manager of
24 the Cigarette's 4 Less store?

25 A In December of 2002, yes, sir.

1 Q And as manager, what were her duties?

2 A Total store operation as far as scheduling, hiring,
3 training, banking, paperwork, ordering, anything to do
4 with store functions. She would be there on a day-to-day
5 hands-on basis.

6 Q You mentioned banking, would she be responsible for
7 ever making deposits or anything of that nature?

8 A Yes, sir. She would count the daily money and do the
9 deposit slips.

10 Q On the days that she would not be there -- she
11 wasn't -- I've noticed the hours were like 8:00 in the
12 morning until 11:00 at night?

13 A Right.

14 Q But she didn't work the full-time, did she? She
15 wasn't working 15 hours a day?

16 A No. She had three other employees.

17 Q So she would set the schedule, what, eight hours a
18 day for each employee and rotate them, I assume?

19 A Yes, sir.

20 Q Is that, basically, what she did?

21 A Yes, sir.

22 Q And the times she did not work until the store
23 closed, what would happen with the deposits at that time?

24 A When she wasn't there, she had an assistant manager
25 for the two days she would normally be off to do that.

1 Q Did that assistant manager have the same authority to
2 make bank deposits or did she not?

3 A No. She had the authority to make bank deposits.

4 Q Did you make mail drops? Is that, basically, what
5 you did -- I mean, bank deposits at night?

6 A Well, typically, at that store, the other shift comes
7 on at 3:00. So the manager would go to the bank around
8 3:30 after the other person showed up and got started.

9 Q So your deposits weren't at night, they were,
10 basically, midday deposits from previous nights receipts
11 and that mornings receipts?

12 A Yes, sir.

13 Q Okay. Now, when she -- when Ms. Ward opened up,
14 would she normally open up by herself?

15 A Yes.

16 Q And, I believe, you said the store hours were from
17 8:00 until 11:00?

18 A Yes, sir.

19 Q So her responsibility as store manager was to have it
20 opened by 8:00?

21 A Yes, sir.

22 Q And she -- if she wanted to go at 6:30, that was fine
23 with you. If she wanted to go at 7:55 and had it opened,
24 that was fine with you, too; is that correct?

25 A Company policy was she had to be there 15 minutes

1 prior to opening, so no later than 7:45 would be
2 acceptable.

3 Q But so long as it was opened and running by 8:00?

4 A Right.

5 Q So she had to have it opened by 8:00, and she made
6 bank deposits, she did some hiring, she did, I guess, all
7 the scheduling for the employees?

8 A Yes, sir.

9 Q Now, as far as the number of people in the store at
10 any one time, in employees I'm talking about, not just
11 customers, how many actual store employees would be in the
12 store at any one time?

13 A No more than two. Like I said, you had to overlap
14 around 3:00 where the other person would be coming in and
15 she would be finishing up. So you had maybe an hour there
16 where there was two people.

17 Q So just a window in changing. But then --

18 A Yes.

19 Q But then there would be only one employee in the
20 store just to work the counter and cash register?

21 A Yes, sir, one employee.

22 Q You took a tape home with you; is that correct?

23 A I took both tapes home with me.

24 Q Okay. One of them you called the B tape?

25 A Yes, sir.

1 Q What was the angle -- or where was it located and
2 what was the angle that could you see?

3 A All you could see -- the B tape was behind the cash
4 register, which took a shot on the cash register. And the
5 front door happened to be right there, so you could see
6 out into the parking lot, you know, just right there in
7 the front door.

8 Q So its primary purpose was to get people coming in
9 and out of the store?

10 A Right.

11 Q So the cameras on the sides of the building took care
12 of the parking lot area and the exterior security, and the
13 B camera took care of people that, actually, came into the
14 store?

15 A That's correct.

16 Q Okay. And the testimony about seeing the vehicle,
17 though, came off of the A tape; is that correct?

18 A We discovered on the -- we first looked at the -- we
19 rolled the B tape back to 6:45. You could see some head
20 lights pull in, but you can't tell much else.

21 Q Because of the glare coming through the door?

22 A Right. Absolutely.

23 Q Okay.

24 A So that gave us the clue, okay, let's go to the A
25 tape, go to the outside cameras and see what we see there.

1 MR. BOGGS: Mr. Southerland, I believe that's all the
2 questions I have for you. I appreciate it.

3 Thank you.

4 MR. GOWDY: Very briefly, Your Honor.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. GOWDY:

8 Q Mr. Southerland, Mr. Boggs asked you a question and I
9 may have misunderstood him. But he almost sounded as if
10 he were asking if Rhonda had to be at work by 8:00. What
11 time did your store managers have to get to work?

12 A They usually showed up around 7:00, and they had to
13 be there no later than 7:45.

14 Q Okay. Do you know what Rhonda's habit or custom was
15 in terms of when she got to work?

16 A I talked to her many days at around 7:00, 7:15.
17 So she was there every day, as far as I know, around
18 7:00.

19 Q And, again, this is a technical question, but I've
20 got to ask you, Drayton Road is in Spartanburg County;
21 correct?

22 A Yes, sir.

23 MR. GOWDY: Thank you, Mr. Southerland.

24 No further questions, Your Honor.

25 THE COURT: All right.

RE CROSS-EXAMINATION

BY MR. BOGGS:

Q The company says that they want them there by 7:45.
And if a manager at any of the stores, let's say, showed
up, checked up on everything at 7:00 and then had to go
pick up laundry or something like that, so long as they
were back, then that was okay under company policy;
correct?

A Yes.

MR. BOGGS: That's all the questions, Mr. Southerland.
Thank you.

THE COURT: You can step down.

Thank you, sir.

MR. GOWDY: Your Honor, the State would call
Mr. Coley Peak.

THE CLERK: Place your left hand on the Bible and
raise your right.

WHEREUPON,

COLEY PEAK,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you

Have a seat, please.

DIRECT EXAMINATION

BY MR. GOWDY:

Q Good morning, Mr. Peak.

1 A Good morning.

2 Q How are you doing?

3 A Fine.

4 Q You've got a good strong, clear voice, but I'm going
5 to get you to speak up so the last lady and gentleman can
6 hear you. Okay.

7 Introduce yourself to the jury and tell them where
8 you work.

9 A My name is Coley Peak. I'm an investigator with
10 Jordan Oil Company. We own Cigarette's 4 Less.

11 Q How long have you been with Jordan Oil, Mr. Peak?

12 A A little over nine years.

13 Q What are some of your duties and responsibilities
14 there?

15 A Investigating internal matters.

16 Q Is the broad head of security, is that a fair title
17 to give you?

18 A Chief of security, yes, sir.

19 Q All right. Do you -- do y'all have a store on
20 Drayton Road?

21 A Yes, sir.

22 Q Are you familiar with the surveillance set up at
23 Drayton Road?

24 A Yes, sir.

25 Q Can you tell the jury what surveillance set up you

1 have there, with particular attention to A and B cameras,
2 whatever those may mean?

3 A All right. We have what we call the multiplex
4 system, which the multiplex system would record up to 16
5 cameras. And we have one video set up to record the
6 multiplex cameras. We also have one video set up to just
7 record one camera inside the store at the checkout, which
8 we call the B. The multiplex is called the A videotape
9 with all the cameras on it.

10 Q And when I think of a camera, Mr. Peak, I think of
11 something I hold up to my head at a birthday party. What
12 is a multiplex camera?

13 A A multiplex system records up to 16 cameras.

14 Q What happens if one of those 16 cameras is broken or
15 doesn't have a tape in it or the lens is out? What
16 happens if one of the 16 is not working?

17 A Well, they either won't show or either if there's a
18 problem with it, it will be blurry or something like that.
19 You can have a problem with the camera showing up blurry.

20 Q With the 16 cameras, do they shoot at different
21 intervals from different angles?

22 A Yes, sir.

23 Q And how do you get it all to show in a way that makes
24 sense to somebody or they can, actually, follow without
25 going crazy?

1 A Well, you have to break it down with the system, the
2 system multiplex, you have to break the camera down.

3 Q And you can do that; right?

4 A Yes, sir.

5 Q In fact, you have done that; right?

6 A Yes, sir.

7 Q I'm going to show you what's been introduced as
8 State's Exhibit No. 11.

9 MR. GOWDY: And, Your Honor, with the Court's
10 permission, Mr. Peak can play this -- he plays it better
11 than anybody I know. So I was going to ask him if he
12 could come down and set it up to play it for the jury.

13 THE COURT: Do you have any objection to that?

14 MR. BOGGS: No objection.

15 BY MR. GOWDY:

16 Q Can I get you to play this for the jury?

17 MR. GOWDY: Your Honor, would you inquire of the jury
18 as to whether they all can see, or if I need to reposition
19 this?

20 THE COURT: Ladies and gentlemen, if you cannot see
21 this television, please raise your hand and we will
22 accommodate you. Is there anyone who cannot see it?

23 (There was no response.)

24 THE COURT: Okay.

25 MR. GOWDY: Thank you, Judge.

1 (WHEREUPON, State's Exhibit No. 11 was played in open
2 court.)

3 MR. GOWDY: Thank you, Mr. Peak.

4 BY MR. GOWDY:

5 Q Mr. Peak, what the jury just saw was a pretty
6 continuous shot of one camera?

7 A Yes, sir.

8 Q How do you get there from a multiplex?

9 A Well, each camera is set up with the ID number, each
10 camera is like numbered 1 through 16. That was number 10.
11 On this system, you punch in number 10 and it will bring
12 it up.

13 Q So camera number 10 was that viewpoint?

14 A Yes, sir.

15 Q Are there other cameras that would have had
16 viewpoints of the parking lot where you might could have
17 seen something else, a different perspective?

18 A Well, we have one camera on the other side, which is
19 a rotating camera. You wouldn't see anything from that
20 view on the other one. It was like a rotating camera that
21 had a blurry shot of it and you couldn't get a good view
22 from it. So the number 10 was the best shot.

23 Q Did you review every conceivable camera that was at
24 Cigarette's 4 Less on February 13th?

25 A Yes, sir. I viewed all the cameras.

1 Q Is that the best and only video recording of what
2 happened in the parking lot?

3 A Yes, that's it.

4 Q Mr. Peak, if I remember right, you were, actually,
5 out of town on February the 13th of 2003, am I correct?

6 A Yes, sir, I was.

7 Q As the head of security for Jordan Oil, did you go
8 back and look at other tapes for a day or a week or so
9 prior to February the 13th in an effort to better
10 understand what may have happened?

11 A Yes, sir, I did.

12 Q Did you happen to notice whether Rhonda Ward --
13 according to that tape, it looked like she got to work
14 around 6:50, 6:51; is that right?

15 A Yes, sir.

16 Q Did you happen to notice on any of those other tapes
17 that you reviewed what time Ms. Ward got to work?

18 A Yes, sir.

19 Q Would you tell the jury what time that was?

20 A Well, between 6:42 a.m. and 7:00 on most of the
21 tapes.

22 Q On every tape you looked at?

23 A Yeah. I believe it was like four tapes the first
24 part of that month, that was the time, between 6:42 and
25 7:00, she was there.

1 MR. GOWDY: Thank you, Mr. Peak.

2 Please answer any questions the Defense attorney has
3 for you.

4 CROSS-EXAMINATION

5 BY MR. BOGGS:

6 Q The other tapes that you looked at, did you provide
7 copies of those to the Solicitor?

8 A Excuse me?

9 Q The other tapes -- you said you had gone back and
10 looked at other tapes during the month?

11 A Right.

12 Q Did y'all provide copies of those to the Solicitor?

13 A No, sir.

14 Q Did they ask you for them?

15 A No, sir.

16 Q Mr. Peak, I'm going to ask you, if you can, to get
17 back down and plug that tape back up because there's some
18 numbers on there I'm not sure about. And if you can
19 explain to the jury what all these numbers mean and
20 everything. So if you could help me run this tape one
21 more time, please, sir.

22 And while you're setting that up, can you pause it --
23 if you're running the tape and you come to a spot you want
24 to pause, do you have the capability of doing that?

25 A Yes, sir.

1 Q Okay. When you get it ready, we'll get the lights
2 down. You take one side and I'll take the other
3 side.

4 A Okay.

5 Q While you're doing that, have you been physically to
6 the store? Do you know where it's located?

7 A Yes, sir.

8 (WHEREUPON, State's Exhibit No. 11 was played in open
9 court.)

10 BY MR. BOGGS:

11 Q Okay. These are -- are these lights that went by --
12 or is that people out on Drayton Avenue? Is it Drayton
13 Avenue, is that the name of the road?

14 A Drayton Road.

15 Q Drayton Road?

16 A Yes.

17 Q So the Cigarette's 4 Less sits right on the road; is
18 that correct? That's a four-lane road out in the area,
19 isn't it, or two lanes?

20 A No.

21 Q Didn't they widen it and make it four lanes?

22 A It is four lanes.

23 Q So these lights we see going by up here are the cars
24 on Drayton Road?

25 A Yes.

1 Q Thank you.

2 Stop it there. These are headlights coming in;
3 right?

4 A Yes, sir.

5 Q That's at 6:51:02. Okay.

6 So this is the time -- the actual time recorded;
7 right?

8 A Yes, sir.

9 Q This is your date. And this identifies the camera
10 over on the left side of the west side of the building; is
11 that right?

12 A On this camera side, it's from the front.

13 Q I'm sorry. It's on the left side or the west side of
14 the building? That's not an interior camera, is it?

15 A No. This is the outside camera.

16 Q Okay. So 6:51:02, the lights come in. Continue,
17 please, Mr. Peak. Park at 6:51:06.

18 All right. Is that a -- can you tell if that looks
19 like a person walking there?

20 A Yes, sir.

21 Q There's a person here; right?

22 A Yes, sir.

23 Q Okay. Let me just ask you, too, there's an outside
24 camera on this end; is that correct?

25 A Yes, sir.

1 Q But it would not be scanning this same area in the
2 parking lot?

3 A Yeah. It's a rotating camera and that's the way I
4 put the shot.

5 Q I'm sorry?

6 A I put the camera so it could see everything.

7 Q So that other camera picked up what's going on. You
8 said you couldn't distinguish what it was?

9 A Right. Like I said, it's a scanning camera.

10 Q Over to the woods?

11 A Yeah.

12 Q But there wasn't any way to separate out anything
13 that was distinguishable out of that?

14 A (Witness shook head.)

15 Q Okay. Thank you, Mr. Peak.

16 There's no other numbers or anything that needs to be
17 identified, just date, time, and camera?

18 A Yes, sir.

19 Q Okay. Thank you, Mr. Peak.

20 And I believe you testified -- oh, excuse me. You're
21 not back yet. I'm sorry.

22 A (Witness returns to the stand.)

23 Q Thank you, sir.

24 And I believe you testified that you did review the
25 tape that shoots through the front door. And I think it's

1 located behind the cash register or the cashier?

2 A That's the B tape that just shows the front, the
3 checkout and front door.

4 Q Okay. You couldn't pick up anything?

5 A No, sir.

6 Q Because of the glare of the head lights; is that --

7 A No, sir.

8 Q Is that correct?

9 A Yes, sir.

10 MR. BOGGS: Thank you, Mr. Peak.

11 Nothing else.

12 MR. GOWDY: Nothing on redirect.

13 THE COURT: All right. You can stand down.

14 Thank you very much.

15 Any objection to releasing him from the subpoena?

16 MR. BOGGS: No objection.

17 THE COURT: All right. Ladies and gentlemen, how are
18 you doing? Do you want to keep going or do you need a
19 break?

20 (There was no response.)

21 THE COURT: Let's do another witness then.

22 MR. BARNETTE: I call Daniel Bridwell to the stand,
23 Your Honor.

24 THE CLERK: Would you place your left hand on the
25 Bible and raise your right hand.

1 WHEREUPON,

2 DANIEL R. BRIDWELL

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Have a seat, please.

5 DIRECT EXAMINATION

6 BY MR. BARNETTE:

7 Q Mr. Bridwell, if you would, give us your full name
8 for the record, please.

9 A Daniel R. Bridwell.

10 Q And where do you work at, sir?

11 A I'm an engineer for HP.

12 Q Where do you live at, sir?

13 A 316 Shell Drive, Woodruff.

14 Q Let me take you back to February 13th of 2003, last
15 year. That morning, what was you doing, sir?

16 A That morning, I had gotten up, taken my son to
17 school, went by the Y, worked out, and was on my way home.

18 Q And where does your son go to school at, sir?

19 A Ware Shoals.

20 Q And the YMCA you're talking about is the one near
21 Reidville?

22 A West side, yes, sir.

23 Q On the west side. Let me show you a picture we've
24 marked as State's Exhibit No. 12. Do you recognize that
25 area that's on the picture?

1 A Yes, I do.

2 Q And what does that picture represent?

3 A This is Gano Drive and the apple orchard that Granny
4 Smith Apples owns.

5 Q And you're real familiar with that area?

6 A Yes, I am.

7 Q Why are you real familiar with that area?

8 A I have leased that property from Granny Smith Apples
9 for several years for hunting purposes.

10 MR. BARNETTE: Your Honor, at this time, I'd like to
11 enter State's Exhibit No. 12 into evidence.

12 MR. BOGGS: No objection.

13 (WHEREUPON, State's Exhibit No. 12 was admitted into
14 evidence.)

15 BY MR. BARNETTE:

16 Q If you would, on that morning, was you driving on
17 Gano Road that day?

18 A Yes, I was. The morning when I was coming back, it
19 was in the neighborhood of 8:00.

20 Q So you was coming back from the Y?

21 A From the Y, yes, sir, from working out. And as I
22 come down the road, typically, because of being the
23 caregiver of the property, if I notice anything out of the
24 ordinary, I usually stop and inquire what's going on.

25 And as I was driving back that morning, as I was

1 driving down, I encountered a white four-door car with a
2 black male in the driver's side. And I don't know why,
3 but that day, I didn't stop. But I did slow down to
4 observe if there was anything funny going on.

5 Q So it was a white car? Was it a Nissan or what kind
6 of car was it?

7 A Honestly, I couldn't tell you, sir.

8 Q It was a white car and you saw a black male in the
9 driver's seat?

10 A Yes, I did.

11 Q Was there anybody else in the car?

12 A No.

13 Q You didn't see anybody else in the car or around the
14 car?

15 A No, sir.

16 Q And when you drove by, could you tell anything else
17 about the black male, or was it too much -- you couldn't
18 tell who it was or anything like that?

19 A No, I couldn't.

20 Q Is this in Spartanburg County?

21 A Yes, it was.

22 Q Are you familiar with Drayton Road?

23 A No, sir.

24 Q How far is this from the east side of Spartanburg?

25 A It's pretty much the opposite side. I mean, this is

1 on the county line of Greenville and Spartanburg County.

2 Q But it's in Spartanburg County?

3 A Yes, it is.

4 MR. BARNETTE: Let me go ahead -- Your Honor, I'd
5 like to publish this to the jury at this time.

6 THE COURT: All right.

7 BY MR. BARNETTE:

8 Q One other thing, too, when you went by, you were
9 driving on the right side; is that right, back towards
10 Reidville?

11 A That is correct.

12 Q And the car was located off the road on the left?

13 A Yes, sir.

14 Q So it was off the road?

15 A Off the road.

16 Q If you could, sir, step down for a second.

17 A (Witness complied.)

18 Q If you would, step back here, sir.

19 You cannot see it real well, but on this road here,
20 approximately, where did you see the car, sir? You can
21 use this laser pointer.

22 A The car was in this vicinity there.

23 Q And is there a pump house up the road a little bit?

24 A Right there.

25 Q Okay. And the car was off the road there to the

1 left -- I guess, the way you were going -- which way were
2 you going, sir?

3 A I was going -- traveling in this direction.

4 Q So going that way, it's off the left side of the
5 road?

6 A Yes, it is.

7 Q If you would, sir, please have a seat -- or if you
8 would, come right here, sir, and let me show this. Just
9 show approximately where the area was and if you would
10 point it out there --

11 THE COURT: We can't hear you.

12 THE WITNESS: The car was sitting in this vicinity
13 right here, just pulled in.

14 THE COURT: A little bit louder, please. She's got
15 to record everything you say.

16 THE WITNESS: I'm sorry. The car was sitting in this
17 vicinity right here, just pulled in, sir.

18 BY MR. BARNETTE:

19 Q Let me show you what's been marked as State's Exhibit
20 No. 10. Did you see this lady near that car, around that
21 car, or in that car?

22 A No, sir.

23 Q You never saw her?

24 A No, sir.

25 MR. BARNETTE: Your Honor, I'd like to go ahead and

1 give this picture to the jury at this time.

2 THE COURT: All right. That will be fine.

3 MR. BARNETTE: Please answer any questions Mr. Boggs
4 has for you.

5 CROSS-EXAMINATION

6 BY MR. BOGGS:

7 Q If I might get the picture just for one second,
8 please, sir.

9 Okay. Mr. Bridwell, I'm going to try to use this
10 thing just to get oriented. Okay.

11 A Yes, sir.

12 Q And I believe your testimony is -- is your testimony
13 that you own the apple orchard?

14 A No, sir.

15 Q Or you leased it?

16 A Leased it, sir.

17 Q Did you grow the apples on it?

18 A No, sir.

19 Q And you leased it for hunting purposes; is that
20 correct?

21 A Hunting, yes, sir.

22 Q Was it a producing orchard at that time?

23 A As far as working-wise, no, sir. But did it produce
24 apples, yes, sir.

25 Q But it wasn't commercially farmed --

1 A No, sir.

2 Q -- it was just an old apple orchard that would
3 produce apples, I guess?

4 A Yes, sir.

5 Q You may be more comfortable, Mr. Bridwell, if you
6 want to step down, so you don't have to break your neck
7 looking at this thing.

8 Have you got your little laser gun?

9 MR. BARNETTE: I've got it right here.

10 BY MR. BOGGS:

11 Q I don't know how to use it, so you'll have to figure
12 it out. But if you'll help me kind of orient the jury as
13 to where we're talking about. Okay.

14 A Yes, sir.

15 Q The road in the middle, that is what?

16 A Gano Drive.

17 Q Gano Drive. Okay. And the direction you were
18 heading in was heading toward what?

19 A Reidville Road.

20 Q Reidville Road. So go ahead and point out where
21 Spartanburg would be.

22 A Spartanburg would be in this direction here.

23 Q And Reidville would be where?

24 A This direction here.

25 Q So if you were coming from Spartanburg toward

1 Reidville, according to that, you would, actually, take a
2 right on Gano Road?

3 A That is correct.

4 Q Okay.

5 A You'd come in and turn right and go this way.

6 Q Now, at the bottom end of Gano Road, back down here,
7 what's the name of the road that runs -- I guess it would
8 be kind of --

9 A Silver Lake Drive.

10 Q Kind of parallel to Reidville Road?

11 A Yes, sir.

12 Q So Gano Road runs between Reidville Road and Silver
13 Lake Drive?

14 A Yes.

15 Q And out at Silver Lake Drive, is that out near Silver
16 Lake?

17 A Yes, sir.

18 Q Is there something called Berry's Pond out in that
19 area, too?

20 A Yes.

21 Q Are they kind of like in a pond system or lake
22 system? They're pretty close together, I guess, is what
23 I'm asking?

24 A A road separates them.

25 Q So they would be fed off the same water source, I

1 assume, just two side by side ponds, basically?

2 A I don't think it's the same water source, but they
3 are close together.

4 Q Okay. Now -- and you live out in this area, I
5 believe you said it was on Shell?

6 A Yes, sir.

7 Q Kind of -- indicate kind of where Shell is.

8 A Shell would be right in there.

9 Q So Shell is between the apple orchard and Reidville
10 Road, but runs the same way that Reidville Road does?

11 A That's correct.

12 Q And you were heading toward Shell Drive from Silver
13 Lake?

14 A That is correct.

15 Q And, again, if you would, as best you can, put the
16 little red dot where you think the car was?

17 A The car was right there.

18 Q And where is that pump house you were talking about?

19 A Right there.

20 Q Okay. I can't see it. I'm sorry. I don't know if
21 it's the picture or what.

22 All right. Let me borrow it and see if I can -- is
23 this kind of like -- is that an open field or were there
24 actual trees there?

25 A No. That is a wash.

1 Q And these would be the apple trees themselves; is
2 that right?

3 A That's correct.

4 Q And these over here?

5 A Apple trees.

6 Q And this is just kind of a low indentation with
7 woods?

8 A It's a hardwood finger, yes, sir.

9 Q Your terminology is a lot better than mine. A
10 hardwood finger, a wash that had, what, grass, I guess, on
11 it?

12 A Yes, sir.

13 Q And is this a little farming road going down that
14 way?

15 A That is one of the gates that proceeds into the
16 orchard itself.

17 Q It's a gate?

18 A There's a barricade there, yes.

19 Q Is there any other road going in or is this the
20 explain way to get into the orchard from Gano Road?

21 A No. You've got several entrances.

22 Q Like maybe here?

23 A There.

24 Q Okay. But that is kind of -- but it's not, actually,
25 a driveway, is it? Don't you just kind of ride over the

1 grass and then go on into it? It wasn't an improved
2 driveway-type thing, was it?

3 A When it was a working orchard, that's where they
4 loaded.

5 Q Okay. Well -- but it wasn't improved as far as
6 gravel and tar, or gravel and asphalt or anything like
7 that; right?

8 A No, sir.

9 Q Just a typical farm road. Okay. Now, if we were
10 coming -- I'm trying, again, to get oriented. If you
11 could tell me --

12 A In that direction.

13 Q It would be this way. And Reidville is, what, a
14 couple miles up this way?

15 A Yes, sir.

16 Q If you went to the intersection of Gano Road and
17 Reidville Road, how far up is it to Reidville?

18 A It is, I would say, approximately a mile and a half
19 to two miles.

20 Q Okay. So if you went up here and took a right, you'd
21 have to go another mile and a half to two miles to get up
22 there, and then you'd come to the intersection of, I
23 guess, Reidville and Duncan Road?

24 A Yes, sir.

25 Q And on past that is 290?

1 A Yes, sir -- no, no.

2 Q 101?

3 A 101.

4 MR. BOGGS: Okay. I think that orients us.

5 Thank you very much.

6 MR. BARNETTE: Real brief redirect, Your Honor.

7 MR. BOGGS: I'm not through.

8 MR. BARNETTE: I'm sorry.

9 MR. BOGGS: I might be, but let me check.

10 BY MR. BOGGS:

11 Q You testified you live in this area; correct?

12 A Yes, sir.

13 Q And I believe you told the Solicitor that if you
14 normally see anything out of order or that might be a
15 little bit suspicious, you normally investigate; is that
16 correct?

17 A That is correct.

18 Q And that particular day, you didn't see any reason to
19 stop and investigate; right? I mean, that's what you told
20 the Solicitor.

21 A I didn't stop.

22 MR. BOGGS: That's all the questions I have.

23 Thank you, Mr. Bridwell.

24 THE COURT: All right. Redirect.

25 MR. BARNETTE: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. BARNETTE:

Q But you noticed it and, you, obviously, looked at it.

Did you slow down?

A Yes, I did.

Q So, obviously, you took notice of it?

A Yes, I did.

Q And which way was the car pointing at?

A The car was pointing back in this direction towards

Silver Lake Drive.

Q If you can, step down for a second.

Now, we've got it focused better.

Which direction -- now, the direction you was going
was back towards Reidville?

A I was traveling from here to there, yes.

Q Which direction was the white car pointed in?

A The front of the car was pointed in this direction
toward Silver Lake Drive.

Q And was it cold that morning?

A Yes, it was.

MR. BOGGS: Your Honor, I believe he's getting into
matters that weren't brought up on --

THE COURT: Yes.

I mean, that's pretty innocuous, but don't go outside
the parameters of cross.

1 MR. BARNETTE: Yes, sir.

2 BY MR. BARNETTE:

3 Q And you pay attention to things in that area; is that
4 correct?

5 A Yes, I do.

6 Q And, obviously, you paid attention to the car?

7 A Yes, I did.

8 Q And you took notice of it?

9 A Somewhat, yes, sir.

10 Q And later on, did you call the Sheriff's Department
11 or whatever --

12 MR. BOGGS: Your Honor --

13 THE COURT: Yes. You're getting outside the --

14 MR. BARNETTE: Yes, sir.

15 That's all the questions I have.

16 MR. BOGGS: I have nothing further for Mr. Bridwell.

17 THE COURT: Is he free to leave or do you want to
18 keep him here?

19 MR. BARNETTE: No, sir.

20 MR. BOGGS: No, sir.

21 THE COURT: All right. You're released from your
22 subpoena.

23 Madam Forelady, and, ladies and gentlemen, we've been
24 going close to two hours. Now would be a good time for a
25 morning stretch. Y'all please retire to your jury room,

1 stretch and take a break, but don't talk about the case.
2 And, if you would, leave your note pads in your chairs,
3 please.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 11:23 a.m.)

6 THE COURT: We'll take about a 10- or 15-minute break.
7 Thank you.

8 (WHEREUPON, a break was taken.)

9 (WHEREUPON, State's Exhibit Nos. 43, 44, and 45 were
10 marked for identification only.)

11 THE COURT: Yes, Mr. Barnette.

12 MR. BARNETTE: May it please the Court, Your Honor?

13 THE COURT: Yes.

14 MR. BARNETTE: We talked about this earlier this
15 morning. I gave Mr. Boggs a new chart, a new thing.
16 We're going to sub it for State's Exhibit No. 7, which is
17 a little bit easier to understand. I think Mr. Boggs will
18 have no objection to it.

19 THE COURT: Any objection from the Defense?

20 MR. BOGGS: No, sir.

21 Because, quite frankly, I don't understand Celsius,
22 but this is a conversion chart.

23 THE COURT: Yes.

24 MR. BOGGS: This is an easier one to read than the
25 one that had previously been submitted.

1 THE COURT: So we'll substitute this or just
2 introduce it as a Court's Exhibit, is that what you're
3 asking?

4 MR. BARNETTE: So everyone understands, State's
5 Exhibit No. 7, Your Honor, is when we had the pre-trial
6 motion, and I think the Court took judicial notice of
7 it.

8 THE COURT: So do you have one marked?

9 MR. BARNETTE: Yes, sir.

10 I already gave one to Hollie to mark, and Mr. Boggs
11 has looked at it and I think everybody agrees.

12 THE COURT: Are we ready to get the jury?

13 MR. BARNETTE: The State is, Your Honor.

14 THE COURT: Are you ready for the jury, Defense?

15 MR. BOGGS: Yes, sir.

16 (WHEREUPON, State's Exhibit No. 7 admitted into
17 evidence and was remarked.)

18 (WHEREUPON, State's Exhibit No. 8 was admitted into
19 evidence.)

20 (WHEREUPON, the jury came into open court at
21 approximately 11:47 a.m.)

22 THE COURT: Mr. Gowdy or Mr. Anthony, whoever.

23 MR. ANTHONY: The next witness would be Ms. Parsons.

24 THE CLERK: Please raise your right hand and place
25 your left hand on the Bible.

1 WHEREUPON,

2 SAMANTHA PARSONS,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 THE BAILIFF: Just have a seat right here, please.

6 DIRECT EXAMINATION

7 BY MR. ANTHONY:

8 Q Would you state your name, please?

9 A Samantha Parsons.

10 Q And, Ms. Parsons, where do you live?

11 A I currently live in Woodruff.

12 Q How are you employed?

13 A I work for the YMCA.

14 Q Which one do you work for?

15 A The Pine Street YMCA.

16 Q What's your position there?

17 A I'm the membership person.

18 Q And where did you work before you worked at the Pine
19 Street YMCA?

20 A I worked for the Middle Tyger Y.

21 Q Will you speak up just a little bit so everyone can
22 hear you?

23 A All right.

24 Q I want to take you back to February the 13th of 2003.
25 Where were you living at that time?

1 A In Reidville on Stoneledge.

2 Q And that morning of February the 13th, where did
3 you -- what did you do and where did you go?

4 A I left my house on my way to the Mill Tiger Y and I
5 took Gano, the shortcut, to get to the Y.

6 Q And when you were on Gano -- when you say Gano,
7 you're referring to Gano Road --

8 A Yes, sir.

9 Q Gano Drive?

10 A Yes, sir.

11 Q Okay. And when you were on Gano as you were driving
12 to work, what did you see?

13 A Well, I was going down Gano and there was a small
14 white car parked on the right-hand side of the road with a
15 gentleman standing on the passenger side.

16 Q Okay. Now, when you got up to this car, what did you
17 have to do?

18 A I had to get over in the other lane just a little
19 bit.

20 Q Okay. And did you stop at any time?

21 A No.

22 Q Okay. And could you describe the car? What did it
23 look like?

24 A It was just a small white car. It looked pretty new.
25 To me, there wasn't any, you know, visible damage to the

1 car. I just thought it was odd that it was parked there.

2 Q And did you see anyone around the car?

3 A There was a male standing at the passenger side.

4 Q Okay. And the male that you saw on the passenger
5 side, did you notice anything else about him that would
6 allow you to give any kind of description of him?

7 A No, sir.

8 Q And what did it appear to you that the man was doing
9 that you saw?

10 A He was -- I'm not real sure. He had his hands down,
11 and it's like he was messing with something on the ground.

12 Q And did you see anybody else around the car as you
13 drove by?

14 A No.

15 Q When did you realize that what you had seen that
16 morning might be of some importance?

17 A A few days later, I saw something on the TV that they
18 were looking for the white car. And I remembered seeing
19 it just because it was odd that it was parked there.
20 Because there was nothing wrong with it, the hood wasn't
21 popped open or anything.

22 Q And what did you do after you heard about it on TV?

23 A I went -- at the time, my next door neighbor was a
24 police officer and so I went to his house.

25 Q And at what time did you see this car? What time did

1 you pass it?

2 A It was around 8:10, 8:15 in the morning.

3 Q Okay. And how is it that you know that?

4 A Shortly after I went down Gano, I called somebody on
5 my cell phone, so I looked back at the time that I called
6 that person and also at the time that I clocked in at the
7 YMCA.

8 Q If you could, step down for just a moment, please.

9 A (Witness complied.)

10 Q I am showing you what has been admitted in evidence
11 as State's Exhibit No. 12. This has been admitted as a
12 photograph of Gano Road. And I'd ask you to just take the
13 laser pointer here and press down on that red button and
14 you show the jury a few things, if you would.

15 Could you just point out, first of all, the way that
16 you were going when you were on Gano Drive that morning?

17 A I was coming from Reidville Road down.

18 Q Okay. And the car that you passed, where was it --
19 first of all, which side of the road was it on?

20 A The same side that I was traveling.

21 Q And can you show the jury where you recall it being
22 on the road?

23 A Somewhere in that area right there.

24 Q Okay. And which direction was the car facing when
25 you drove by it?

1 A With traffic.

2 Q It was going in the same direction you were?

3 A Right.

4 Q And just show the jury again which way you were
5 going?

6 A Down that way.

7 Q Okay. Thank you. You can take your seat back.

8 A (The witness returned to the witness stand.)

9 Q Do you remember what the weather was like that
10 morning?

11 A I'm sorry?

12 Q Do you remember what the weather was like that
13 morning?

14 A No, sir.

15 MR. ANTHONY: Thank you very much.

16 That's all on direct.

17 Do you want me to turn that back on for you?

18 MR. BOGGS: Yes, please.

19 CROSS-EXAMINATION

20 BY MR. BOGGS:

21 Q Ms. Parsons, could you come down here again, please,
22 ma'am?

23 A Sure.

24 Q From what I -- I'm sorry. You lived where at that
25 time?

- 1 A Stoneledge Drive.
- 2 Q Okay. Where is that?
- 3 A If you go --
- 4 Q Gano Road?
- 5 A Up Gano to Reidville Road and take a left, then it's
- 6 the next left. Then it kind of comes back in so those
- 7 houses --
- 8 Q Back up in this area?
- 9 A Yes.
- 10 Q Because when you come down Reidville Road from
- 11 Spartanburg toward the Reidville area and you turn right
- 12 on Gano Road, there are a good many houses, what, four,
- 13 five, or six right here?
- 14 A Yes, sir.
- 15 Q And about four, five, or six right here; right?
- 16 A Yes, sir.
- 17 Q And is that Shell Road? Do you know the name of that
- 18 one?
- 19 A No, sir. I know there's a road right there, it's a
- 20 dead end.
- 21 Q And a bunch of houses back in here; right?
- 22 A Yes, sir.
- 23 Q And you were taking the shortcut heading toward, I
- 24 guess, Silver Lake Road?
- 25 A Right.

1 Q Now, is this where you said you saw the car, right up
2 in this area?

3 A In that vicinity. I don't -- there was like a hill
4 I had to get over and I remember thinking, you know,
5 there's -- I don't want to get over too far in case
6 there's another car coming in the other direction. But
7 this picture doesn't show any -- it shows it being flat,
8 it's not flat. It's hilly.

9 Q Had you been up and down Gano Road fairly regularly?

10 A I used to take that shortcut if I was to go to Mill
11 Tiger Y before I went to Pine Street.

12 Q And right in here, you know this is an apple orchard?

13 A Uh-huh

14 Q And right in here, there's a little farm road that
15 goes back in here. Are you aware of that? Do you
16 remember ever seeing that?

17 A I really haven't paid any attention.

18 Q Could the car have been right here, do you think?

19 A I couldn't say for certain. I mean, some of the
20 other pictures --

21 Q Might show you better?

22 A Yes, because of the hill.

23 Q So you think it might have been up in this area, but
24 as far as you know, it could have been down here near the
25 farm road? You're just not really sure?

1 A No. I mean, I'm pretty sure it was closer over
2 there, but I would know for certain if I could see the
3 incline of the road.

4 Q Okay. That's fair. And it's been a long time?

5 A Right.

6 Q And the car you saw was parked on -- and that's just
7 grass? That's not tar and gravel or anything like that,
8 it's just a grassy area?

9 A Right.

10 Q And it was headed in that direction; is that correct?

11 A That's correct.

12 Q And that's the direction you went?

13 A Yes

14 Q Okay. You can have a seat back up there.

15 Thank you.

16 A (Witness returned to the witness stand.)

17 Q As you approached the car, the first thing, I guess,
18 you noticed was there was a car on the side of the road?

19 A Right.

20 Q And then you said you noticed a male, I believe you
21 said initially, that was standing on the passenger side?

22 A Right.

23 Q Then you went on to say that he had his hands down
24 like he was messing around on the ground?

25 A Correct.

1 Q So you observed this man standing initially, and then
2 what did he do, just bent down behind the car?

3 A I'm not sure if he was standing or if he was like
4 bent down. I just saw him from the shoulders up. And
5 then --

6 Q All right. Would that have been as you were
7 approaching the car or would that have been as you got
8 beside the car and glanced over?

9 A The whole time, he was on the passenger side.

10 Q Well, I understand that. I didn't make my question
11 clear.

12 A I'm sorry.

13 Q When you said you could only see him from the
14 shoulders up, would that have been from the entire time
15 you saw him or did you see that just when you got beside
16 the car?

17 A No, just as I was passing.

18 Q Okay. What I'm trying to reconcile is, standing up,
19 it would be hard for me, at least, to have my hands on the
20 ground.

21 A Uh-huh.

22 Q So did he make a move down or something or what?

23 A No. It just seemed that he was -- like his hands
24 never came up or anything, and it just seemed like he was
25 messing with something on the ground.

1 Q Okay. Reaching over to pick up something -- or you
2 don't know what it was, obviously?

3 A No, sir.

4 Q But when you initially saw him, he was standing up
5 and you never saw his hands and it looked like they may be
6 toward the ground. And all of this was, of course, away
7 from you. Now, as you went by the car, did you look over
8 to the white car?

9 A I glanced at it. I was curious why the car was
10 there, you know, maybe some people -- you know, there's
11 deer that cross that road. I thought maybe he had hit a
12 deer or something. So I did -- you know, I slowed down
13 because I was getting in the other lane and then looked at
14 the car.

15 Q But you didn't see anything that caused you enough
16 concern to call the police or anything?

17 A No, sir.

18 Q All right. And I believe you at some point -- did
19 you, at some point, call the police yourself or did you
20 talk to a friend that called the police, or how did your
21 name come up, to your knowledge, several days later?

22 A I went to my neighbor, who was a cop -- or is a cop.

23 Q That's right. I'm sorry. Was he with the county,
24 Sheriff's Department?

25 A Yes, sir.

1 MR. BOGGS: All right. Ms. Parsons, I appreciate it.
2 Thank you.

3 MR. ANTHONY: No redirect.

4 THE COURT: All right. Ma'am, you can step down.

5 MR. ANTHONY: We'd ask that this witness be excused.

6 MR. BOGGS: No objection.

7 THE COURT: You're released from subpoena.

8 MR. GOWDY: Your Honor, the State would call Mr. Dean
9 Williams.

10 THE CLERK: Place your left hand on the Bible and
11 raise your right, please.

12 WHEREUPON,

13 DEAN WILLIAMS,

14 after first having been duly sworn, testified as follows:

15 THE CLERK: Thank you

16 Have a seat here, please.

17 DIRECT EXAMINATION

18 BY MR. GOWDY:

19 Q Good afternoon, sir. How are you?

20 I'm over here in the corner.

21 A Hi.

22 Q I'm going to get you to speak up with a good strong
23 voice so the last gentleman and lady in the jury box can
24 hear you. Okay.

25 A Okay.

- 1 Q Tell them your name and what you do for a living.
- 2 A My name is Dean Williams and I'm a forklift mechanic
- 3 for a living.
- 4 Q Do you live here in Spartanburg County, Mr. Williams?
- 5 A Yes, sir. I live in Reidville.
- 6 Q Do you got family?
- 7 A Yes, sir.
- 8 Q You've got a son that I know of. What's your son's
- 9 name?
- 10 A Daniel Williams.
- 11 Q What age gentleman is he?
- 12 A He's 26.
- 13 Q I want to go back with you, Mr. Williams, to February
- 14 the 13th of 2003. Are you familiar with Gano Road or some
- 15 people call it Gano Drive?
- 16 A Yes, sir.
- 17 Q How are you familiar with that road?
- 18 A We live on that road and have lived there since 1970.
- 19 Q Is that considered to be the western part of
- 20 Spartanburg County?
- 21 A Yes, sir.
- 22 Q I'm going to show you what's been introduced as
- 23 State's Exhibit No. 12, if I could get it turned right.
- 24 What does that appear to be?
- 25 A Gano Drive.

1 Q I'm going to get you to step down, if you would.

2 Have you ever used a laser pointer before?

3 A Yes, sir.

4 Q I'll get you to keep your voice up so Madam Court
5 Reporter can hear you. Okay.

6 That little red button there, push that. Is that
7 Gano Road the jury is looking at?

8 A Yes, sir. It's over by here.

9 Q Where do you live, if it's on the map?

10 A I live right on down this road here maybe four
11 houses.

12 Q Are you familiar with a golf course called River
13 Falls?

14 A Yes, sir.

15 Q Where would that be in relation to what we're looking
16 at here?

17 A River Falls is in behind this wooded area over here.

18 Q Okay. On the morning of February the 13th, did you
19 travel Gano Road?

20 A Yes, sir.

21 Q What time?

22 A Somewhere between 8:30 and 9:00.

23 Q I want you to tell the jury what direction you
24 traveled it initially.

25 A Initially, me and my son had left 101 and come down

1 Silver Lake Road. This is in this direction. And we came
2 back up Gano Road toward my home because he was having
3 trouble with his pickup truck. And he was going to take
4 his truck home and park it, and he was going to use my
5 truck to get to work. And we took the truck back and we
6 left the house and came back down Silver Lake Road back
7 to -- I mean, back down Gano Road to Silver Lake Road.

8 Q Tell the jury what, if anything, you noticed on Gano
9 Road that might have been out of the ordinary on the
10 morning of February the 13th.

11 A As we were coming back down -- from Silver Lake Road
12 back down to Gano, there was a white small import car
13 sitting right here. And we went on to the house, like I
14 said, and we changed the trucks. The car was empty,
15 nobody was sitting in the car when we went by.

16 And we went to the house and stayed maybe 15 minutes
17 and we came back. We come back down this road and there
18 was a black man sitting in the car at that time. And we
19 just drove by and we went on about our daily work.

20 Q Can you tell the jury, Mr. Williams, what direction
21 the car was facing?

22 A The car was facing toward Silver Lake Road.

23 Q Now, you say an "import," what do you mean by
24 "import"?

25 A It looked like a Nissan, just a small import car.

1 Q What color was it?

2 A White.

3 Q And how many people did you see, if any, around the
4 car the first time you went by?

5 A Nobody. The car was empty and nobody was around the
6 car.

7 Q How many people did you see in and around the car the
8 second time you went by?

9 A When I came back down the road, there was one man
10 sitting behind the steering wheel. And all I seen was the
11 back of his head and the top of his shoulders.

12 Q I think you may have testified -- you referred to him
13 as a black male?

14 A Yes, sir.

15 Q How were you able to determine that? Did you slow
16 down?

17 A No, sir. I just glanced over as I went by. And just
18 through the back glass, I could tell he was a black man.
19 And, like I say, you could see the back of his head and
20 the top of his shoulders.

21 Q Okay. I'm going to take that pointer back from you
22 and ask you to take your seat again.

23 A (Witness returned to the witness stand.)

24 Q The first time you went down Gano and noticed the
25 car, give us an estimate of the time.

1 A Approximately 8:30, 8:35.

2 Q And the second time, give us an estimate of the time.

3 A Approximately 8:45 to 8:50.

4 Q Both of those trips were on the 13th of February, am
5 I right?

6 A Yes, sir.

7 Q Did you notice something in the newspaper that caused
8 you or your son to go investigate a day or so later?

9 A Yes, sir. Well, like I say, we didn't pay it much
10 attention, you know, because people park on that road a
11 lot. So the next Saturday morning as I was reading the
12 paper, I noticed in the paper that they said that the car
13 that she owned that was missing was a white Nissan. And
14 so it kind of clicked in my head, you know, that was a
15 white Nissan that we seen out there.

16 So me and my son, we drove out there about 11:00 that
17 morning just to see if we could see anything. And we
18 looked, and there's a sign that said "Doris Smith Realty,"
19 and some old car batteries that somebody set out there.
20 And we thought maybe they might have just throwed those
21 batteries out.

22 So we looked down between the two apple orchards.
23 There's a wash there. We just kind of looked out there,
24 but didn't see anything. So we went back to the house and
25 we was working on some welding stuff at the house. And my

1 son was going to go back out there on his four-wheeler,
2 but we got to working and we worked until 2:30, 3:00. And
3 my sister had came by wanting me to look at -- something
4 was wrong with her pickup. When I was looking at the
5 pickup, he got on the four-wheeler and he --

6 Q I'm going to stop you right there only because I
7 can't let you tell me what he said.

8 But is it fair that your son got on a four-wheeler
9 and went exploring in connection with what you told him
10 you had seen in the paper?

11 A Yes, sir.

12 MR. GOWDY: We'll leave it right there, Mr. Williams.

13 Thank you.

14 Please answer any questions the Defense attorney
15 might have for you.

16 CROSS-EXAMINATION

17 BY MR. BOGGS:

18 Q Mr. Williams, just a couple of questions. You said
19 that you didn't get a real good look at who was in the
20 car?

21 A No, sir. I just seen the back of his head.

22 Q But you were able to identify a couple of features,
23 weren't you?

24 A Just the top of his shoulders and the back of his
25 head.

1 Q Do you remember telling the police that you thought
2 he had a baseball cap on?

3 A Yes, sir, I think he did.

4 Q And do you remember telling the police that he had
5 slim shoulders?

6 A Yes, sir. He looked like a skinny man.

7 Q A skinny man with slim shoulders, that is what you
8 told them?

9 A Yes, sir.

10 Q And you glanced over as you were coming down Gano
11 Road towards Silver Lake?

12 A Yes, sir.

13 Q You glanced over and as you passed him, you saw him,
14 didn't you?

15 A No, sir.

16 Q You passed the car?

17 A As I was coming up on the car, I saw him. I didn't,
18 actually, look to the side to see him.

19 Q All right. But you thought he had -- was a slim man
20 with slim shoulders -- based on his shoulders and he had
21 on a baseball cap?

22 A Yes, sir.

23 MR. BOGGS: I believe that's all the questions I
24 have, Mr. Williams.

25 Thank you.

1 MR. GOWDY: Nothing on redirect, Your Honor.

2 THE COURT: All right. Thank you, sir.

3 You can step down.

4 MR. GOWDY: We'd also ask that he be excused.

5 MR. BOGGS: We have no objection, Your Honor.

6 THE COURT: You're released from your subpoena.

7 MR. GOWDY: Your Honor, the State would call

8 Mr. Daniel Williams.

9 THE CLERK: If you would, place your left hand on the
10 Bible and raise your right.

11 WHEREUPON,

12 DANIEL WILLIAMS,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you

15 Have a seat, please.

16 DIRECT EXAMINATION

17 BY MR. GOWDY:

18 Q Good afternoon, Mr. Williams.

19 A Hey. How are you doing?

20 Q I'm doing well. I hope you are.

21 A Yes, sir.

22 Q Introduce yourself to the jury, tell them who you are
23 and where you work.

24 A My name is Danny Williams and I work at Carolina
25 Eastern in Spartanburg.

1 Q Was that your daddy that just testified?

2 A Yes, sir.

3 Q Do you live in Spartanburg County, Mr. Williams?

4 A Yes, sir.

5 Q How long have you been here?

6 A Since I was born. It will be almost 26 years here in
7 a couple more days.

8 Q Happy early birthday.

9 A Thank you, sir.

10 Q Let's go back to February the 13th of 2003. Did you
11 have an occasion -- are you familiar with the west side of
12 Spartanburg County, particularly, Gano Road?

13 A Yes, sir. I've lived there 20-something years.

14 Q On February 13th, 2003, did you have an occasion to
15 ride down Gano Road?

16 A Yes, sir.

17 Q In the morning?

18 A Yes, sir.

19 Q Tell the jury about that. What were you doing and
20 what, if anything, did you see?

21 A Well, at the time, I was living in Greer at the
22 Poplar Place Apartments. And I would always meet my
23 father on 101 at the Little Cricket and we'd get a cup of
24 coffee every morning. And that morning, I went to stop at
25 the Little Cricket and I didn't have hardly any brakes.

1 So dad said, well, let's just go to the house and you can
2 use one of the other trucks to go to work. So I said,
3 okay.

4 So we left there and he followed me back to his
5 house. And we pulled into -- well, when we was coming
6 down Gano Drive, we noticed a car on the left-hand side of
7 the road, you know. We didn't think nothing of it, you
8 know. Everybody always thought that was lovers lane back
9 in there. So we just kept going. And we swapped trucks
10 and I went on and went to work. And when we was leaving,
11 you know, the car was still sitting there. And I went
12 back to work and didn't think nothing of it, you know.

13 Q Did you see anybody around the car?

14 A No, sir. Now, I didn't see nobody around the car and
15 probably wasn't paying that much attention, you know. I
16 probably was changing the radio station or whatever in the
17 truck. It didn't really -- I noticed the car, but didn't
18 try to --

19 Q Any kind of description of the car, big, small?

20 A No. It was like a foreign made car, little small
21 foreign made car.

22 Q Do you recall the color?

23 A White.

24 Q This is February 13th; right?

25 A Yes, sir.

1 Q Had you gotten out of your car at the Little Cricket
2 to go and get your cup of coffee?

3 A Yes, sir.

4 Q Do you recall what the temperature was? Was it cold,
5 warm?

6 A It was pretty cool.

7 Q It was February?

8 A Yes, sir.

9 Q There ain't too many warm mornings in February?

10 A Not too many.

11 Q So you rode onto your daddy's house, picked up the
12 truck and then went about your day; is that right?

13 A Yes, sir.

14 Q All right. I want to fast-forward to a couple of
15 days later. Did your father bring to your attention
16 something he had seen in connection with a white car?

17 A Well, Saturday -- I always go to dad's house on
18 Saturday and we work out there in the yard and just do
19 what we've got to do. And Saturday morning, I think it
20 was, there was an article in the newspaper about a lady
21 that was abducted and it gave a description of the car and
22 everything. And daddy said, well, you know, that almost
23 fits that car to a T. And I said, yeah, it does, don't it?

24 And so we got in his car and we rode up there. And
25 we stopped where the car was just about parked at and we

1 got out and walked down -- you know, we didn't even really
2 get into the apple orchard. We just walked to this little
3 ravine that goes down this way. We walked inside and
4 didn't really see nothing and we just left.

5 Q Hop down here with me.

6 A (The witness complied.)

7 Q I'm going to give you a laser pointer. I'm going to
8 let you show the jury what you and your daddy did.
9 There's a red button on there. Keep your voice up so the
10 court reporter can hear you?

11 A Okay. I was trying to figure it out. Right here, if
12 you go down this way here, the car was parked right here.

13 Q Right.

14 A So me and daddy, when we came in, he parked right
15 along here. I mean, I could tell you everything you want
16 to know. There was two batteries sitting right there on
17 top of a piece of a cardboard box and a little bit of
18 trash laying right in there.

19 So we walked right up through here, and there's a
20 little ravine right in here. We looked right up through
21 here, the first couple of rows of apple trees. And we got
22 back in the car and went back home.

23 Q At some point, did you go back out on your own on a
24 four-wheeler?

25 A Yes, sir. It was about 5:30, something like that,

1 6:00, and my aunt came by. And me and daddy, we was
2 working on a Bobcat, welding a bucket, and his sister came
3 by. And I said, daddy, I said, there's something about
4 it, you know. If the Lord talks to you, you've got to
5 answer what he wants you to do, and he's just telling me
6 to go out there. I said, I'm not going to ignore it, I'm
7 going out there.

8 So I got on my four-wheeler and went right down
9 through here. There's two trees that sits right there.
10 There's a driveway right here. I went down that driveway
11 and went into the apple orchard about right in here, I
12 think it is. I went down this way. And there's a road
13 that goes down this way here on the side of them woods,
14 between the woods and apple orchard. And there's a dirt
15 road that cuts from this road to this -- like a dirt trail
16 here. I cut down through here. And then the body was
17 positioned about right in here.

18 Now, I had seen her from a distance and I just turned
19 around. I rode up there, you know, not real close to it,
20 but to identify what it was. And then I turned around and
21 went back out and left.

22 Q I'm going to ask you to take your seat again.

23 A Yes, sir.

24 Q So you found the body?

25 A Yes, sir.

1 Q Okay. And what day was that that you found the body,
2 Mr. Williams.

3 A That was on Saturday. Let's see. It was the 15th of
4 February.

5 Q Saturday, the 15th of February?

6 A Yes, sir.

7 Q I want you to describe, as best you can for the
8 ladies and gentlemen of this jury, the condition of the
9 body that you found.

10 A She was nude, undressed, laying face down. Her
11 legs -- the bottom -- from her knees down were placed,
12 they were in sort of in high briars, and the rest of her
13 body was laying out in the open. And her face was -- her
14 head was laying straight down like this right here. Her
15 arms was like this.

16 I remember seeing a wristwatch on her hand. And I
17 seen something right here on the back of her shoulder. I
18 don't know if it was where she had been stabbed or
19 whatever. I don't know. I just know I seen a black spot
20 right there. And, you know, I didn't really sit there and
21 observe the body. I just noticed it and left, you know.
22 I only noticed that when I went back down there with the
23 fire department when they got there.

24 Q The first time, as soon as you realized it was a
25 human body, did you go back home and call the law?

1 A Yeah. I went back home. And I was shaking so bad
2 and trembling that I couldn't hardly even speak. My dad
3 is the one that called the law.

4 Q Did you go back down and meet EMS and law enforcement
5 and take them back down to the body?

6 A They come to my dad's house to pick me up and they
7 drove me down there to where -- you know, where we pulled
8 off on the side of the road, and they got out with me.
9 And Edward Cooley walked down there with me.

10 Q You didn't touch the body in any way, did you?

11 A No, sir.

12 Q You said her legs were in some briars?

13 A It was -- you know, the back part of her calves were
14 in the higher weeds, you know. You could tell where the
15 deer hunters down there usually bush hog around through
16 there. And you can tell where they don't bush hog and
17 where they do. Her legs were kind of in the briary,
18 higher grass and her body was out in the open.

19 Q Face down?

20 A Yes, sir.

21 Q Totally nude?

22 A Yes, sir. She had a wristwatch on.

23 MR. GOWDY: Thank you, Mr. Williams.

24 Please answer any questions the Defense attorney
25 might have for you.

1 THE WITNESS: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. BOGGS:

4 Q Maybe one or two questions, Mr. Williams, if you
5 don't mind. You mentioned the deer hunter bush hog out
6 areas?

7 A Yes, sir.

8 Q And the -- I probably have got two more questions.
9 If you could, turn around. And I don't know that you need
10 to get back up.

11 But from where you say the car was on the 13th and
12 there was a little wash down there, to the right of the
13 wash is a little dirt road, a little farm road, that goes
14 into the apple orchard?

15 A Yes, sir.

16 Q And then down around that wooded finger, do you see
17 where I'm talking about?

18 A Yes, sir.

19 Q And there's grass planted around there. Isn't that
20 where the deer hunters plant their grass?

21 A No, sir.

22 Q Are you sure about that?

23 A I'm positive.

24 Q Now, the area where you saw the body, you mentioned
25 some briars. But beside the briars is kind of a little

1 grassy area, isn't it?

2 A Yes, sir, I mean, grass grows on it.

3 Q What's all that green stuff, do you think? Maybe I
4 can point it out. What's all that green stuff in there,
5 do you think?

6 A Oh, that's grass.

7 Q Okay. That's what I'm asking.

8 A But it ain't wrong for deer hunting.

9 Q Oh, okay. I don't know anything about deer hunting.
10 But the areas that are not orchard, there's grass growing;
11 right?

12 A Yes, sir.

13 MR. BOGGS: All right. I think that's all the
14 questions I have, Mr. Williams.

15 Thank you.

16 MR. GOWDY: Nothing on redirect, Your Honor.

17 THE COURT: All right. You can stand down.

18 Can we release him from subpoena?

19 MR. GOWDY: Yes, sir.

20 MR. BOGGS: No objection.

21 THE COURT: You're released from subpoena.

22 MR. BARNETTE: Your Honor, the State would call Mike
23 Hill.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right, please.

1 WHEREUPON,

2 MICHAEL RAY HILL,
3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Have a seat, please.

6 DIRECT EXAMINATION

7 BY MR. BARNETTE:

8 Q If you would, sir, please state your full name for
9 the record.

10 A Michael Ray Hill.

11 Q Where do you work at, sir?

12 A Florence County Sheriff's Office.

13 Q And what position do you hold there, sir?

14 A I'm a deputy sheriff.

15 Q And back in February 2003, where was you working at,
16 sir?

17 A The Spartanburg County Sheriff's Office.

18 Q And what position did you have there, sir?

19 A I was an investigator.

20 Q And how long was you with the Sheriff's Department,
21 sir?

22 A For six and a half years.

23 Q Let me take you back to February of 2003,
24 specifically, February 15th of 2003. Were you helping
25 work on a case during that period of time?

1 A Yes, sir.

2 Q And what was that case? Who did that involve?

3 A It was a missing persons case involving a Rhonda
4 Ward.

5 Q And on February 15th, 2003, did the Sheriff's
6 Department receive notification about Ms. Ward?

7 A Yes, sir.

8 Q And where she was located off of Gano Road?

9 A Yes, sir.

10 Q And her body was located there; is that right?

11 A Yes, sir.

12 Q Can you tell the jury -- was you called to the scene
13 that evening or that day?

14 A Yes, sir.

15 Q And when you was called to the scene, who met you
16 there?

17 A There was a -- when I responded, there was, I
18 believe, an EMS unit there. There was an individual on a
19 four-wheeler. Deputy McDaniel was out there. I believe
20 there might have been one other deputy with Deputy McDaniel.

21 Q And who came up -- was there an investigator with you
22 that came to the scene?

23 A Investigator Bryanna Rogers was with me.

24 Q And when y'all arrived there, did you go down and
25 secure the crime scene until the rest of the Sheriff's

1 Department got there, the ID unit?

2 A Yes, sir.

3 Q And can you tell the jury how you went down and
4 looked -- or how did y'all find or locate the body and how
5 did you secure it?

6 A We were directed down the path. There were -- there
7 was a path from where I parked my car that went down back
8 toward the orchard. We were shown partly down the path
9 until I could observe where Ms. Ward was located. At that
10 time, the others were sent back and I secured the area
11 until ID could respond.

12 Q Was anybody else allowed in the area or anything
13 until ID got there?

14 A No, sir. It was just me.

15 Q And was that area -- if you would, just step down for
16 a second.

17 A (The witness complied.)

18 Q Was that area approximately right in that area there?

19 A Yes, sir.

20 Q Okay. And did Randy Bogan of the ID unit arrive
21 there at the scene?

22 A Yes, sir, he did.

23 Q And did he take over the scene at that point?

24 A Yes, sir.

25 Q During the time you were there, there was nobody

1 allowed on the scene or around the scene or anything like
2 that?

3 A No, sir. It was just me.

4 MR. BARNETTE: Please have a seat.

5 Please answer any questions Mr. Boggs has for you.

6 CROSS-EXAMINATION

7 BY MR. BOGGS:

8 Q Officer Hill, do you -- from my understanding then,
9 you got involved in the case, initially, on the missing
10 persons end from the Cigarette's 4 Less; is that correct?

11 A Yes, sir.

12 Q And as part of your duties in this investigation, you
13 started interviewing people or was in the team that was
14 interviewing people that could have had some knowledge or
15 information; correct?

16 A Yes, sir.

17 Q Okay. And part of that team you were involved with
18 interviewed a guy name Phillip Jerome Wallace; is that
19 correct?

20 A I believe so.

21 MR. BARNETTE: Your Honor, may we approach the bench
22 at this time?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was held with the
25 attorneys.)

1 THE COURT: Madam Forelady, ladies and gentlemen of
2 the jury, this is one of those times that I told you about
3 where we're going to have to talk about a legal matter. I
4 don't know how long it will take. I don't think it will
5 take terribly long, but, if you would, retire to your jury
6 room. And please don't discuss the case.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 12:29 p.m.)

9 THE COURT: All right. Do you --

10 MR. BOGGS: May I say my question?

11 THE COURT: Wait a minute. What was the last
12 question that you asked?

13 MR. BOGGS: That's what I was going to say. My
14 question was simply, did they interview a guy named
15 Phillip Jerome Wallace? That's all I've asked. The
16 question is "yes" or "no." And I'll leave it at that.

17 And my next question would be, did they interview a
18 guy named Joseph Parks? And I'll leave it at that. Both
19 of those are on my witness list. And I'm not going any
20 further than that.

21 MR. BARNETTE: Your Honor, I'm going to object at
22 this time. This is why we filed a motion in limine. The
23 first thing, if he may introduce -- it's not relevant.
24 Those are not relevant whatsoever unless he's trying to
25 get third-party guilt in. And third-party guilt, he has

1 to proffer up front what he's going to do about it. I
2 think the case law is clear about that in the motion
3 stated out in State v. Holmes, a case two weeks ago by the
4 Supreme Court that they heard.

5 THE COURT: Where are you going with it?

6 MR. BOGGS: Not third-party guilt, I can tell you
7 that.

8 THE COURT: Well, as an officer of the Court --

9 MR. BARNETTE: Well, it's not relevant then.

10 What's the relevance --

11 MR. BOGGS: I don't have to tell you what the
12 relevance is on a question like that if I've laid a
13 foundation for my case. And that is -- the question is
14 very innocuous, did you talk to this man? Yes. That's
15 it.

16 THE COURT: Okay. I'm going to allow him --
17 Go ahead. What's your argument?

18 MR. GOWDY: Well, now is not the proper time to
19 object to it. I will concede that. He can ask these
20 questions. But there's going to come a time where he's
21 going with -- it goes directly to Rhonda Ward's character.
22 And there will come a time where we will have to revisit
23 this issue. I agree he can ask it right now if the issue
24 is not third-party guilt. But I know where he's going and
25 it's to her character. And we're going to have to have

1 this conversation again in 24 hours.

2 MR. BOGGS: That's fine. If that becomes an issue
3 and if that's something that needs to be addressed at that
4 time, that's fine. That is not -- it's a very innocuous
5 question, do you know him -

6 THE COURT: I'm going to let you ask the question. I
7 don't know where he's going, so I've got to hear it.

8 All right. Let's bring the jury back in.

9 (WHEREUPON, the jury came into open court at
10 approximately 12:33 p.m.)

11 THE COURT: All right. Thank you very much.

12 Mr. Boggs.

13 MR. BOGGS: Thank you, Your Honor.

14 CONTINUED CROSS-EXAMINATION

15 BY MR. BOGGS:

16 Q Officer Hill, before the objection, I was asking you
17 as part of your duties in the investigation team, did you
18 interview a fellow -- or your team interview a fellow by
19 the name of Phillip Jerome Wallace?

20 A Yes.

21 Q And I believe you personally interviewed a man by the
22 name of Joseph Parks; is that correct?

23 A Yes, sir.

24 Q Okay. Do you know if Joseph Parks had a nickname?

25 A I believe his nickname was Miami.

1 Q Okay. And then after that, you got involved from the
2 Cigarette's 4 Less part and then you got called out to the
3 scene; is that correct?

4 A Yes, sir.

5 Q Out off of Gano Road; correct?

6 A Yes, sir.

7 Q Did that pretty much complete your duties in this
8 case?

9 A Yes, sir. I went to a two-week training seminar
10 after that, so I was gone the rest of the time.

11 Q Well, necessarily, it terminated you then. So after
12 that, you were no longer involved in the investigation; is
13 that correct?

14 A No, sir.

15 MR. BOGGS: All right. Thank you.

16 That's all the questions I have of him, Your Honor.

17 THE COURT: All right. Any redirect?

18 MR. BARNETTE: No, Your Honor.

19 We'd ask that this witness be excused.

20 THE COURT: All right. Any objection to that?

21 MR. BOGGS: No, Your Honor.

22 THE COURT: All right. You're released from your
23 subpoena.

24 MR. GOWDY: May it please the Court?

25 The State would call Ms. Janice Holley.

1 THE CLERK: Please place your left hand on the Bible
2 and raise your right hand, please.

3 WHEREUPON,

4 JANICE HOLLEY,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat.

7 DIRECT EXAMINATION

8 BY MR. GOWDY:

9 Q Good afternoon, ma'am.

10 A Good afternoon.

11 Q How are you?

12 A All right.

13 Q I'm going to see if I can get you to speak up in a
14 good, strong voice so the last lady and gentleman in the
15 jury box can hear you.

16 A All right.

17 Q Tell them who you are and where you work.

18 A My name is Janice Holley and I'm on disability now.

19 Q Do you live in Spartanburg County, Ms. Holley?

20 A Yes.

21 Q What part of the county do you live in?

22 A Woodruff. You said Spartanburg County?

23 Q Yes, ma'am.

24 A Uh-huh.

25 Q I want to -- are you familiar with Walker Road?

1 A Yes.

2 Q I want to show you what's been marked for
3 identification purposes as State's Exhibit Nos. 15 and 16,
4 and ask you whether or not you can tell what's depicted in
5 both of those pictures?

6 A Yeah. That's where -- well, it's part of our land
7 where they dump trash and stuff at, different people. And
8 this is the highway right here.

9 Q Is that the dump site?

10 A Yes. That's the dump site over there from the
11 highway.

12 Q Are what's depicted in State's Exhibit Nos. 15 and 16
13 a picture of Walker Road and a close-up of another area on
14 Walker Road? Is that fair to say?

15 A Yes.

16 MR. GOWDY: Your Honor, we would move State's Exhibit
17 Nos. 15 and 16 in evidence.

18 MR. BOGGS: No objection.

19 THE COURT: All right. Without objection.

20 (WHEREUPON, State's Exhibit Nos. 15 and 16 were
21 admitted into evidence.)

22 BY MR. GOWDY:

23 Q Ms. Holley, before I put these pictures up, I want to
24 see if I can get you to explain something, because it's on
25 the west side of Spartanburg and I'm not all that familiar

1 with it.

2 A Okay.

3 Q Do you know where Gano Road is? Have you ever heard
4 of that road?

5 A No.

6 Q Tell me how to get to Walker Road. If you and I were
7 to pop in the car right now and go to Walker Road, tell me
8 how we would get there.

9 A Well, come down Reidville Road and then turn off on
10 417, cross over 101, and keep straight on 417, pass Willow
11 Creek, and it's the left. Coming down 417, it would be on
12 the left, Walker Road would.

13 Q If I was to think in terms of golf courses, it's
14 close to Willow Creek Golf Course?

15 A Yeah, right across from Willow Creek. Yes, sir.

16 Q But it's not close to River Falls Golf Course, is
17 that fair to say?

18 A Yes.

19 Q So it's close to Willow Creek?

20 A Uh-huh

21 Q Down -- 417 and 101 kind of run into each other
22 somewhere out there, don't they?

23 A Yes.

24 Q Isn't there like a little Citgo or something close
25 by?

1 A Uh-huh

2 Q And is Walker Road kind of in that vicinity?

3 A It's on down 417.

4 Q I want to take you back to a day last year -- first
5 of all, before I do that, can you tell the jury what
6 they're looking at, Ms. Holley?

7 A Yes. That's a driveway -- well, it's supposed to be
8 a driveway. It's where they dump trash at and people go
9 down there and hunt.

10 Q Could I impose on you to stand down here with me?
11 And we'll make sure Madam Court Reporter can hear
12 everything you're saying and the jury can hear everything.

13 A All right.

14 Q That road right there, what's that?

15 A That's Walker Road.

16 Q Okay. And what's that in there?

17 A That's a little driveway.

18 Q Okay.

19 A But it just lead to the woods because the person
20 don't use it.

21 Q Do you know a man named Dennis Meredith?

22 A That's my brother.

23 Q Where does he live? Does he live on that road?

24 A Yeah. He lives on down Walker Road.

25 Q Right down in there somewhere?

1 A Yeah.

2 Q How about Ms. Holley, where does she live?

3 A Ms. Holley lives back down and turn off to the right
4 on Prince Caldwell.

5 Q Okay.

6 A Yeah, cross over 146.

7 Q How far from this road right here -- or let's say
8 from that little dump site, how far do you live from
9 there?

10 A It's not a mile.

11 Q Not a mile?

12 A No.

13 Q And Mr. Meredith lives not too far down the road that
14 way?

15 A Uh-huh.

16 Q I want to go back with you to February the 14th,
17 Valentine's Day, 2003?

18 A Uh-huh.

19 Q Do you remember that day?

20 A Yes, sir.

21 Q Did you see anything out of the ordinary or anything
22 that caught your attention as you were traveling down that
23 road?

24 A Yes, sir.

25 Q I want you to tell the ladies and gentlemen of the

1 jury what you saw.

2 A I seen a white Nissan on the side of the road. And
3 there was a guy, he was coming around to get back on the
4 driver's side of the white Nissan, but he was like down
5 from the driveway.

6 Q Would it help if you could use that?

7 A Uh-huh.

8 Q Just push that little button right there.

9 A He was about right in here on the side of the road.

10 Q Do you remember what time of the day you might have
11 seen him?

12 A It was in the morning in between 9:00 and 9:30,
13 sometime in the morning.

14 Q And you remember it being February 14th, Valentine's
15 Day. How come you remember that?

16 A Because I had a [inaudible] later on.

17 Q In Greenville?

18 A In Greenville.

19 Q You said you saw a man, and I think you said it was a
20 white car?

21 A Yes, a white car.

22 Q And it was what?

23 A A Nissan.

24 Q Can you tell the jury anything about what kind of man
25 it was? Was he --

1 A All I knew, he was tall and he had on a green sweater
2 and blue jeans and a gray stocking hat. And I knew he
3 was -- and he threw his hand up and I saw he was light.

4 Q When you say "light," what --

5 A Light-skinned.

6 Q Was he African-American or a white man.

7 A He was a black man, just light-skinned.

8 Q Okay. And he threw his hand up at you?

9 A Uh-huh.

10 Q And you went on about your business?

11 A Yeah. I just drove on.

12 Q Okay. I'm going to get you to stay right there for
13 one second.

14 A Okay.

15 Q I'm now going to show you a picture of State's
16 Exhibit No. 15, and I'm going to ask you, is that Walker
17 Road right there?

18 A Yes, sir.

19 Q And is that a close-up or a different version of that
20 dump site that we were looking at?

21 A Yes, sir.

22 Q Is that what that looks like?

23 A Uh-huh.

24 Q And, again, your brother would live on down that way?

25 A Yes.

1 Q And you're on down this way?

2 A Yes, sir.

3 MR. GOWDY: I'm going to let you take your seat back.

4 Ms. Holley, I greatly appreciate you coming this
5 morning. I don't have anymore questions for you.

6 Please answer any questions the Defense attorney
7 might have for you.

8 THE WITNESS: All right.

9 CROSS-EXAMINATION

10 BY MR. BOGGS:

11 Q Ms. Holley, the Solicitor said he wasn't really
12 familiar with that area, but a lot of times, I go home
13 going out Reidville Road and out to 101. Now, Willow
14 Creek is at 101/417 areas; right?

15 A Yes, sir.

16 Q And River Falls is back on 290?

17 A Uh-huh.

18 Q And they really aren't all that far apart, are they?

19 A No, sir.

20 Q It generally takes me -- I hope I'm not speeding, it
21 takes me a couple of minutes to get there.

22 A Yeah.

23 Q It's not like traveling all the way across the
24 county, is it?

25 A No, sir.

1 Q So from River Falls area to where you're talking
2 about is only a couple minutes; isn't that right?

3 A Yes, sir.

4 Q Now, you describe the man you saw as tall, green
5 sweater, stocking cap, light-skinned. And I think you
6 said he even waved at you?

7 A Yeah.

8 Q And got your attention?

9 A Yes, sir.

10 Q Do you remember anything else about him?

11 A No, sir.

12 Q Were you ever shown any pictures by the police or
13 anything to try to identify who it was?

14 A Yes, sir.

15 Q Were you able to identify him?

16 A No, sir, not by looking at his face. Because I
17 didn't see his face.

18 Q Okay. You mean he had his back to you when he waved
19 at you?

20 A Yeah. He went around and had his hat -- well, he did
21 like this, because this hand -- he just pulled his hat
22 down and done like that and went on around the car and got
23 in.

24 Q Now, the trash dump -- the area that had the --
25 you're familiar with this whole area, aren't you?

1 A Yes, sir.

2 Q And would it be more comfortable for you down here so
3 you don't have to twist your neck?

4 A Yes, sir.

5 Q I believe you told the Solicitor that this is Walker
6 Road; correct?

7 A Yes, sir.

8 Q Okay. And this is a little -- it could almost be
9 like a campsite area?

10 A Yeah, camp trails.

11 Q And there's a lot of trash there, isn't there?

12 A Yes, sir.

13 Q And, in fact, there are two 55-gallon trash cans,
14 aren't there?

15 A Uh-huh.

16 Q And people throw beer cans and beer bottles, because
17 that area is used kind of as a let's-get-off-the-road
18 party area, isn't it?

19 A You can say that.

20 Q Well, a lot of people go down there and hang out --
21 have you ever heard that people go there and smoke crack
22 and drink liquor and drink beer? Have you heard that?

23 A No, sir. But I know they dump trash there.

24 Q Okay. As far as the trash, you could find just about
25 anything there, I guess, couldn't you? Because isn't

1 that -- does that look maybe like a box spring to you
2 that's kind of worn out?

3 A Yes, sir.

4 Q And that looks like kind of a worn out piece of
5 furniture. And then these are the 55-gallon cans?

6 A Yes, sir.

7 Q Is that -- and I don't mean to put words in your
8 mouth, but I've been down there and looked at? You can
9 find just about anything down there, couldn't you?

10 A Yes, sir. A lot of people throw a lot of trash out
11 there.

12 Q And a lot of people kind of hang out there, don't
13 they, and drink?

14 A They don't really hang out down there, but they go by
15 there and like different people clean out their cars and
16 dump stuff out there.

17 Q So that's kind of like a community dumping center.
18 So you could find --

19 A Well, you could say that because there ain't no
20 highway there. I just know that's my property.

21 Q This is on your property?

22 A Uh-huh.

23 Q So you think somebody that had some household trash
24 might even throw it out there?

25 A Probably.

1 Q So, again, anything that might be in a house could be
2 found out there?

3 A I don't know.

4 MR. BOGGS: Okay. You can have a seat back up there.

5 Ms. Holley, I appreciate you being here.

6 That's all the questions I have.

7 MR. GOWDY: I have nothing on redirect for Ms. Holley,
8 and ask that she be excused.

9 THE COURT: All right. She's excused.

10 MR. GOWDY: Your Honor, the State would call
11 Mr. Larry Campbell.

12 THE CLERK: Would you place your left hand on the
13 Bible and raise your right hand.

14 WHEREUPON,

15 LARRY CAMPBELL,
16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you

18 THE BAILIFF: Come around and have a seat right here,
19 please, sir.

20 DIRECT EXAMINATION

21 BY MR. GOWDY:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q How are you?

25 A Fine.

1 Q Good. I'm going to get you to speak up in a good,
2 clear, loud voice so the last lady and gentleman in the
3 jury box can hear you. Okay.

4 A Okay.

5 Q Tell them who you are and where you live.

6 A My name is Larry Campbell and I live at -- next to
7 Blue Ridge, north of Greer.

8 Q Is that Spartanburg County or Greenville County?

9 A Greenville County.

10 Q I want to move back to February of 2003. Okay.

11 A Okay.

12 Q Do you ever do any hunting?

13 A Yes, sir.

14 Q What kind of hunting do you like to do?

15 A Rabbit, deer hunting.

16 Q Do you ever hunt in Spartanburg County?

17 A Yes, sir.

18 Q Have you heard of a road called Walker Road?

19 A Yes, sir.

20 Q Have you done any hunting near Walker Road?

21 A Yes, sir.

22 Q If I was to show you an overhead of Walker Road, do
23 you think you might recognize it?

24 A I probably would.

25 Q Does that look familiar to you?

1 A Not really. It don't look like that from ground
2 level.

3 Q It doesn't, does it? Let me ask you to step down
4 here for one second.

5 Let me show you State's Exhibit No. 15, and ask
6 you -- that's a -- it looks like a trash dump?

7 A Yeah.

8 Q If I were to tell you that there was testimony
9 that --

10 MR. BOGGS: Your Honor, I object to that question.
11 He's --

12 MR. GOWDY: Your Honor, they're both in evidence.

13 MR. BOGGS: Well, if he can identify them, then
14 that's fine.

15 THE COURT: Yes. Don't lead.

16 MR. GOWDY: Yes, sir.

17 BY MR. GOWDY:

18 Q Do you recognize that picture?

19 A Oh, yeah, yeah. That looks like it now.

20 Q Okay. Tell the jury how you recognize it.

21 A Well, we hunted first on this side of the road.

22 Q Yes, sir.

23 A And then the reason I know where that little pull-off
24 is right there is that's where we parked the truck the
25 second time. We hunted all the way down the road and then

1 we crossed the road and went on that far side. And then
2 Mr. Garrett drove the truck up and parked it maybe 50 feet
3 from where that pull-off is. Me and --

4 Q I'm getting ahead of myself. I'm going to slow down
5 for one second. Okay.

6 A Okay.

7 Q Using this laser pointer right here, this little red
8 button, show the jury -- well, first of all, tell them who
9 all was with you.

10 A Jimmy Bruce and Carlos Garrett.

11 Q And y'all were hunting rabbit?

12 A Yes, sir.

13 Q Show the jury where y'all were hunting.

14 A First off, we went on this side. We pulled down
15 another little road here, and we pulled off. And then we
16 hunted all on this side. And then we went on down the
17 road and hunted. And then we crossed over and hunted on
18 this side.

19 Q Okay.

20 A And then Mr. Garrett, which it's not on this picture
21 here, but he drove the truck back up and parked the truck
22 somewhere along in here. And then whenever we found the
23 purse and stuff, we found it back over in here somewhere.

24 Q Okay. Now, what -- do you recall the day that y'all
25 were hunting?

1 A I'm not sure about the day, but it was towards the
2 last of February.

3 Q Of 2003?

4 A Yes, sir.

5 Q All right. I'm going to ask you to take your seat
6 back one more time. I believe I had interrupted you when
7 you were about to tell the jury something that y'all had
8 found while you were hunting.

9 A Yes, sir. We was walking along in the briars.
10 Mr. Bruce was on one side, Jimmy Bruce, and I was on the
11 other side. And then he told me, he said, I found a purse
12 here. I said, a purse? And he said, yeah. I said, well,
13 let me see if it's got any money in it.

14 So we got to looking and he said, it's got pictures
15 and all in it of some woman and her kids. And he told me,
16 he said, come over here. So I weaved on through the
17 briars and got over there. And he was showing -- he said,
18 I believe that's that lady that got missing, you know,
19 murdered. And I said, I don't know. I didn't see it, you
20 know, on the TV.

21 So then we come on and he went one way and I was
22 walking another. And I told him, I said, here's a little
23 insurance pamphlet. And I looked on it and it had a name
24 on it.

25 Q I want to show you State's Exhibit Nos. 17 and 18,

1 and ask you whether or not you recognize either one of
2 those?

3 A This is the pamphlet I found, and then this is the
4 purse Mr. Bruce found. It looked like a purse.

5 Q Mr. Bruce found the purse?

6 A Yes, sir.

7 Q Did you look in it when he found it?

8 A He opened it up and showed me the pictures and stuff
9 in it. And I stood there and looked at it, you know, with
10 him.

11 Q What did y'all do after -- at some point, did you
12 realize that y'all found something that you might need to
13 turn in?

14 A Well, he kept saying he believed it was that lady's
15 that got murdered. So anyhow, I found this and I dropped
16 it in my hunting coat pocket. Well, he had the purse.
17 And we walked on up and I found clothing laying on the
18 ground there.

19 Q Tell the jury what kind of clothing you found laying
20 on the ground.

21 A Well, first, I saw a pair of panties. And then I
22 walked on a little further, then I saw -- it looked like a
23 brand new white tennis shoe. I said, gosh, somebody
24 throwed away a new tennis shoe, you know. And then we was
25 almost pretty close to the road. Mr. Garrett was up at

1 the truck.

2 So, anyhow, we hunted and tromped a little more and
3 we just went on up to the truck. And then when we got up
4 there, Mr. Bruce showed him that picture of that lady in
5 there and he said that was the girl that got --

6 MR. BOGGS: Objection, Your Honor, hearsay.

7 May we approach on one quick matter?

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference was held with the
10 attorneys.)

11 MR. BOGGS: Mr. Bruce removed the purse. Since this
12 fellow didn't find it, he said it looked like. He can't
13 identify it. I don't want him sitting up there in front
14 of the jury --

15 MR. GOWDY: I'm happy to move it in with the next
16 witness.

17 THE COURT: Okay.

18 (WHEREUPON, the bench conference was concluded.)

19 BY MR. GOWDY:

20 Q Mr. Bruce [sic], looking at State's Exhibit No. 18,
21 is that what you found in February of 2003, while you were
22 hunting?

23 A Yes, sir. It looks similar to that, if that ain't it.

24 MR. GOWDY: Your Honor, we would move State's Exhibit
25 No. 18 into evidence.

1 MR. BOGGS: No objection.

2 THE COURT: All right.

3 (WHEREUPON, State's Exhibit No. 18 was admitted into
4 evidence.)

5 BY MR. GOWDY:

6 Q Can you tell the jury what company that's from?

7 A R.L. Jordan Oil Company, Hot Spot.

8 Q Can you tell the jury whose name is on the front
9 sticker?

10 A Ward, Rhonda. Rhonda Ward.

11 Q After you found this, did y'all call law enforcement?
12 What did you do?

13 A No, sir. We went on. We loaded the dogs up and then
14 we rode about three or four miles up to Theo's Restaurant
15 on 101. Then we went in and Mr. Bruce carried the purse
16 in and asked them girls if any of them know Rhonda Ward.
17 One lady worked there said she did.

18 Q We can't say what anybody else said. Did you
19 eventually call law enforcement?

20 A No. He showed the girl the picture in the book, the
21 pocketbook, and then she said that was hers and she called
22 the law enforcement.

23 MR. BOGGS: Objection.

24 THE COURT: Yes. Don't say what somebody else said.
25 Okay.

1 THE WITNESS: Yes.

2 THE COURT: Thank you.

3 BY MR. GOWDY:

4 Q Did law enforcement eventually come to Theo's
5 restaurant and meet you and your two fellow hunters?

6 A Yes, sir.

7 Q Did you take them back down to this scene?

8 A Yes, sir.

9 MR. GOWDY: One moment, Your Honor.

10 THE COURT: All right.

11 (Pause.)

12 MR. GOWDY: Mr. Campbell, thank you.

13 Please answer any questions the Defense attorney may
14 have of you.

15 MR. BOGGS: I have no questions of this witness.

16 Thank you, Mr. Campbell.

17 MR. GOWDY: Your Honor, we'd ask that he be excused.

18 MR. BOGGS: No objection.

19 THE COURT: All right. Thank you, sir.

20 You're released from subpoena.

21 Ladies and gentlemen, it is 1:00. And 1:00 is
22 generally the time we break for lunch, so we're going to
23 do that. I am hopeful that --

24 Is it here?

25 THE CLERK: She's checking on it.

1 Do you want me to go ahead and see?

2 THE COURT: Yes.

3 Y'all just sit tight for one second.

4 THE CLERK: It's not here. Do you want to see if --
5 do you want to take another witness or two?

6 THE COURT: Ladies and gentlemen, there would be no
7 reason to break yet, lunch has not arrived. So we're
8 going to go ahead --

9 Do you have another --

10 MR. GOWDY: Absolutely, yes, sir, Your Honor.

11 We would call Jimmy Bruce.

12 THE COURT: All right. Thank you.

13 THE CLERK: Place your left hand on the Bible and
14 raise your right hand.

15 WHEREUPON,

16 JIMMY BRUCE,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: Please be seated.

19 DIRECT EXAMINATION

20 BY MR. GOWDY:

21 Q Good afternoon, sir.

22 A Hey there.

23 Q Are you doing okay?

24 A Okay.

25 Q Good. I want you to introduce yourself to the jury,

1 give them your name, tell them where you live.

2 A My name is Jimmy Bruce. And I live at 2506 North
3 Highway 14 in Greer.

4 Q Is that the part of Greer that's in Spartanburg
5 County or Greenville County?

6 A Greenville County.

7 Q Are you familiar with the Walker Road area of
8 Spartanburg County?

9 A Yes, sir.

10 Q How are you familiar with that?

11 A We rabbit hunt on it sometimes.

12 Q Who's we?

13 A Me, Carlos Garrett, and Larry Campbell.

14 Q I want to take you back to February of 2003. Do you
15 remember you and those two gentlemen rabbit hunting in
16 that month?

17 A Yes, sir.

18 Q In the Walker Road area?

19 A Yes, sir.

20 Q Can I show you two pictures, State's Exhibit Nos. 15
21 and 16, and ask you if you recognize those?

22 A Yes, sir.

23 Q What are those?

24 A Well, we hunt on both sides there. Right in there is
25 the territory where we found that stuff.

1 Q Okay. Is that Walker Road? Is that fair to say
2 that's Walker Road?

3 A Yes, sir.

4 Q If you don't mind, Mr. Bruce, I'll get you to step
5 down here with me. I'm going to get you to keep your
6 voice up good and loud where the court reporter can hear
7 you. I'm going to let you stand over here. We'll get out
8 of range of the projector.

9 A Okay.

10 Q Have you used one of these things before?

11 A No, sir.

12 Q Just push on that red button right there and use it
13 as a pointer, just like an extension of your finger. And
14 make sure we don't point it at the bailiff.

15 A All right.

16 Q You testified from the witness stand, and I want you
17 to tell the jury what part of Walker Road you and your
18 buddies hunt.

19 A We hunt both sides. We hunted down that road -- we
20 hunted down this road. I'm getting crossed up. We come
21 down this road, you know, first, on this side. And then
22 we crossed over and come back up on that side. And sort
23 of right in there is where we found the billfold and the
24 Hot Spot book, you know.

25 Q When you say "we found it," who found it?

1 A Me, Carlos Garrett, and Larry Campbell. Carlos was
2 sitting in the truck. And I remember being with Larry
3 Campbell down there and Carlos was sitting in the truck
4 right along there.

5 Q And do you remember finding a billfold, Mr. Bruce?

6 A Yeah.

7 Q Let me ask you to take your -- well, show the jury
8 where you found the billfold.

9 A Right in there where I'm pointing at now.

10 Q What else do you remember finding?

11 A There was a white tennis shoe and pair of women's
12 panties. I think they were sort of pink-like.

13 Q Where would you have found those?

14 A Right in there. All of them were right there close,
15 about 15, 20 foot apart.

16 Q It's hard to tell from an aerial, but is that grass
17 or briars, or what is that right in that area?

18 A That's briars right in there, honey suckle and
19 briars.

20 Q Let me get you to take your seat again, please.

21 Thank you.

22 I want to show you State's Exhibit No. 17, and ask
23 you whether or not you recognize that?

24 A Yes, sir, that's the one.

25 Q When you say, "that's the one," that's --

1 A The billfold that I found.

2 MR. GOWDY: Your Honor, we would move State's Exhibit
3 No. 17 in evidence.

4 MR. BOGGS: No objection.

5 THE COURT: All right. Without objection.

6 (WHEREUPON, State's Exhibit No. 17 was admitted into
7 evidence.)

8 BY MR. GOWDY:

9 Q Did you open the billfold up, Mr. Bruce?

10 A Yes, sir.

11 Q What did you see inside?

12 A It had a picture of her and had her credit card and
13 driver's license and stuff.

14 Q When you say, "a picture of her," who are you talking
15 about?

16 A Rhonda Ward, I think is her name.

17 Q Did you also happen to find State's Exhibit No. 18,
18 or see it while you were out there, too?

19 A My buddy found it, Larry Campbell. He found it just
20 a few feet away from me.

21 Q What did you do with State's Exhibit No. 17 when you
22 found it?

23 A I showed it to Larry Campbell and told him I believe
24 that's -- I knowed that was the woman that got murdered.
25 I seen her picture on TV.