VOLUME THREE OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from York County

John C. Few, Circuit Court Judge

JAMES D. ROBERTSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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ATTORNEYS FOR RESPONDENT

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(THE JUROR LEFT THE COURTROOM.)

THE COURT: ALL RIGHT, NEXT, NUMBER 100, CLIFTON GUFFEY.

CLIFTON P. GUFFEY, JUROR NUMBER 100, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. I'LL REMIND YOU THAT I'M JOHN HAYES AND I'M THE JUDGE THAT'S BEEN ASSIGNED THIS CASE. AND I WILL REMIND YOU THAT YOU'RE UNDER OATH.

DURING THE TRIAL OF THIS CASE IF YOU ARE CHOSEN AS A JUROR, YOU WILL PERHAPS SEE TELEVISION CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM. THEY ARE ALLOWED TO BE HERE BUT THEY ARE NOT ALLOWED TO TAKE YOUR PICTURE OR REPORT ABOUT YOU. SO, DON'T BE DISTRACTED IF YOU SEE ANY CAMERAS OR ANYTHING.

YOU TURNED IN A QUESTIONNAIRE. IS IT ACCURATE OR DO YOU NEED TO MAKE ANY CORRECTIONS TO IT?

A. AS FAR AS I KNOW IT'S ACCURATE.

Q. ALL RIGHT. YOU HAD AN OPPORTUNITY TO REVIEW A LIST OF WITNESSES THAT MAY TESTIFY IN THIS CASE. DID YOU SEE ANYBODY ON THERE THAT YOU WERE RELATED TO BY BLOOD OR MARRIAGE OR DID YOU SEE

ANYBODY THAT YOU WERE PERSONAL FRIENDS OR ACQUAINTANCES WITH?

A. PERSONAL FRIENDS, ONE.

Q. WHO WAS THAT?

A. MAGISTRATE RAY LONG.

Q. WOULD THE FACT THAT HE IS LISTED AS A WITNESS AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

A. NO, SIR.

Q. NOW, HAD YOU BEFORE COMING TO COURT -- OF COURSE, MONDAY YOU WERE TOLD THE NATURE OF THE CASE, BUT PRIOR TO THEN AND PRIOR TO NOW, OTHER THAN THAT, HAVE YOU HEARD ANYTHING ABOUT THIS CASE, DISCUSSED IT, FORMED AN OPINION OR KNOW ANYTHING ABOUT IT WHATSOEVER?

A. NO, SIR.

Q. YOU HAVEN'T SEEN ANY NEWS COVERAGE?

A. I DON'T VERY SELDOM WATCH T.V. OR READ THE PAPER EITHER ONE.

Q. OKAY. IN THE JURY ROOM THERE WAS A LIST OF THREE JUROR TYPES. HAVE YOU HAD A CHANCE TO REVIEW IT?

A. YES, SIR.

Q. NOW, THIS CASE WILL PROCEED IN TWO PHASES. ONE DEALING WITH WHETHER MR. ROBERTSON WOULD BE

FOUND GUILTY OR NOT GUILTY OF MURDER. IF HE'S FOUND NOT GUILTY, THE CASE WOULD THEN END. IF HE'S FOUND GUILTY, THEN THE CASE WOULD MOVE INTO THE SECOND PHASE. HE WOULD HAVE TO BE FOUND GUILTY BEYOND A REASONABLE DOUBT BY A UNANIMOUS VERDICT OF A JURY.

HE IS PRESUMED INNOCENT OF THESE CHARGES UNTIL THAT JURY, IF IT DID, WERE TO RETURN A VERDICT OF GUILTY.

SO, WE ARE TALKING ABOUT SOMETHING THAT MAY NEVER OCCUR, THE SECOND PHASE, BUT WE HAVE TO TALK ABOUT IT AT THIS TIME. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. IN REVIEWING THESE TYPES OF JURORS, DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

A. THE THIRD ONE.

Q. IN THAT TYPE I USED WORDS LIKE AGGRAVATION AND MITIGATION AND BY THOSE WORDS I MEAN AGGRAVATING CIRCUMSTANCES BEING CIRCUMSTANCES WHICH ARE ATTENDANT TO A CRIMINAL OFFENSE WHICH INCREASE ITS ENORMITY OR ADDS TO ITS INJURIOUS CONSEQUENCE. THESE ARE THINGS THAT ARE ABOVE AND BEYOND JUST THE ESSENTIAL ELEMENTS OF THE CHARGE OF THE CRIME ITSELF.

MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH DO NOT CONSTITUTE A JUSTIFICATION OR AN EXCUSE FOR THE COMMISSION OF AN OFFENSE BUT ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF ONE'S MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. NOW THIS THIRD TYPE JUROR ON THIS LIST IS ONE WHO WOULD, IN SPITE OF THE FACT THAT A JURY HAD DETERMINED MR. ROBERTSON TO BE GUILTY OF MURDER, WOULD, WHEN MOVING INTO THAT SECOND PART, NOT HAVE MADE UP THEIR MIND IN ADVANCE CONCERNING THE PUNISHMENT BUT WOULD RATHER BE OPEN-MINDED. IS THAT THE TYPE JUROR YOU ARE?

A. YES, SIR.

Q. THIS TYPE JUROR WOULD WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION, HEAR THE JUDGE'S CHARGE ON THE LAW AND THEN AND ONLY THEN MAKE A DETERMINATION AS TO WHAT DECISION SHOULD BE MADE REGARDING THE PUNISHMENT. IS THAT THE TYPE JUROR YOU CONSIDER YOURSELF?

A. YES, SIR.

Q. IF YOU WERE A JUROR AND THE FACTS WERE PRESENTED AT THAT SECOND PHASE AND YOU FELT LIKE THE FACTS

WERE SUCH THAT THE APPROPRIATE PENALTY WAS THAT OF LIFE IMPRISONMENT, COULD YOU IMPOSE A VERDICT OF LIFE IMPRISONMENT?

A. YES, SIR.

Q. IF YOU FELT IN THAT EVENT THAT THE FACTS SO PRESENTED WARRANTED A VERDICT OF THE DEATH PENALTY, COULD YOU RETURN A PENALTY OF DEATH?

A. YES, SIR.

Q. ALL RIGHT. ANSWER ANY QUESTIONS THE ATTORNEYS MIGHT HAVE.

QUESTIONS BY MR. POPE:

Q. MR. GUFFEY, MY NAME IS TOMMY POPE; I'M THE SOLICITOR HERE IN YORK COUNTY. SEATED AT MY TABLE IS KEVIN BRACKETT, THE DEPUTY SOLICITOR. WE ARE THE PROSECUTORS IN THIS CASE.

HAVE YOU EVER BEEN IN A SITUATION LIKE THIS BEFORE, QUESTIONED LIKE THIS?

A. NO, SIR.

Q. WELL, I'LL TELL YOU, ONE ADVANTAGE YOU HAVE IS YOU CAN'T GIVE A WRONG ANSWER BECAUSE THIS IS JUST HOW CLIFTON GUFFEY FEELS. SO IF YOU FEEL LIKE WE'RE GOING TO DROP THE LIGHTS DOWN ON YOU AND START INTERROGATING YOU, THAT'S NOT THE CASE. BUT I'LL HAVE SOME QUESTIONS FOR YOU JUST LIKE THE JUDGE DID AND THEN THE DEFENSE WILL.

AND THE BIGGEST THING IS JUST MAKING SURE THAT YOU SPEAK YOUR MIND AND SPEAK YOUR HEART, YOU KNOW, AND TELL US HOW YOU FEEL.

FIRST, YOU NOTED TO THE JUDGE THAT YOU'RE THE TYPE OF FELLOW THAT BASICALLY COMES IN WITH A BLANK SLATE. YOU HAVEN'T DECIDED HE'S GUILTY, NOT GUILTY BECAUSE YOU HAVEN'T HEARD THE FACTS YET. IS THAT A FAIR STATEMENT?

A. YES, SIR.

Q. OKAY. AND IF YOU WERE CHOSEN AS A JUROR, YOU WOULD BE WILLING TO SIT AND HEAR ANYTHING THE STATE PUT FORWARD AND, AGAIN, YOU UNDERSTAND HE'S INNOCENT UNTIL PROVEN GUILTY BEYOND A REASONABLE DOUBT; YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND SO WE HAVE TO CARRY THE BURDEN OF PROOF. YOU WOULDN'T COME IN AUTOMATICALLY THINKING HE HAD TO PROVE ANYTHING, RIGHT?

A. NO. I UNDERSTAND THAT HE'S INNOCENT UNTIL PROVEN GUILTY.

Q. OKAY. NOW, THEY CAN PUT UP EVIDENCE, YOU KNOW, BUT HE DOESN'T HAVE TO. YOU UNDERSTAND IT'S ALWAYS OUR JOB, IN BOTH PHASES, TO BRING THINGS FORWARD. YOU UNDERSTAND THAT AND YOU WOULDN'T REQUIRE HIM TO DO ANYTHING. IS THAT A FAIR

STATEMENT?

A. YES, SIR.

Q. OKAY. IN THE GUILT PHASE WE'RE TALKING ABOUT JUST THAT. THIS IS A LITTLE DIFFERENT THAN A NORMAL TRIAL. HAD YOU BEEN ON A JURY BEFORE?

A. NO.

Q. OKAY, OKAY. IN A NORMAL TRIAL THE JURY DECIDES, TWELVE JURORS HAVE GOT TO BE UNANIMOUS, AND THEY'LL DECIDE THEIR VERDICT AND THEN THE JUDGE WOULD DO THE SENTENCING.

WELL, WHAT'S DIFFERENT IN THIS CASE IS THE JURY ALSO DOES THE SENTENCING BUT IN A SEPARATE PHASE. IN OTHER WORDS, THE FIRST CASE YOU HEAR IS ABOUT GUILT, ABOUT THE STATE TRYING TO PROVE IT BEYOND A REASONABLE DOUBT.

THE SECOND PHASE YOU WOULD HEAR WOULD BE EVIDENCE THAT MAY, YOU KNOW, ENTAIL THE FIRST THING BUT REALLY MORE ABOUT THE CRIME. WE DO WHAT'S CALLED EVIDENCE IN AGGRAVATION. WE DO EVIDENCE OF THINGS OF WHY -- YOU KNOW, WE WOULD SHOW WHY THE DEATH PENALTY SHOULD BE THE CHOICE.

BECAUSE BY THE TIME YOU GET TO THE SECOND PHASE THERE ARE TWO OPTIONS, LIFE AND DEATH.

SO, THE STATE WOULD PUT UP EVIDENCE AS FAR AS AGGRAVATION. THE DEFENSE WOULD, BUT THEY NEVER

HAVE TO, COULD PUT UP EVIDENCE IN MITIGATION WHICH IS JUST THE OPPOSITE, THE REASONS TO SHOW THAT THERE MAY BE EXPLANATIONS OR REASONS THERE SHOULD BE A LESSER PENALTY, THAT IT SHOULD BE A LIFE SENTENCE.

DO YOU UNDERSTAND THAT?

A. UH HUH.

Q. OKAY, AND BASED ON WHAT I HEARD YOU TELL THE JUDGE, YOU'RE THE TYPE OF FELLOW THAT JUST BECAUSE HE'S CONVICTED OF MURDER, YOU'RE NOT GOING TO FOLD YOUR ARMS UP AND SAY WELL I'M NOT LISTENING, I'VE ALREADY DECIDED. YOU'RE GOING TO WEIGH ANYTHING WE PUT FORWARD AND ANYTHING THEY BRING FORWARD. IS THAT A FAIR STATEMENT?

A. YES, SIR.

Q. OKAY. AND AGAIN REALIZING IN THAT PHASE THEY NEVER HAVE TO PROVE ANYTHING, SO JUST BECAUSE HE WAS CONVICTED AND WE SHOWED EVIDENCE DOESN'T MEAN YOU'RE AUTOMATICALLY GOING TO VOTE DEATH. YOU'D JUST HAVE TO WAIT AND HEAR EVERYTHING AND THEN DECIDE. IS THAT CLINTON GUFFEY?

A. YES.

Q. AND AGAIN I WANT TO MAKE THE POINT, YOU KNOW, I'M HITTING A LOT OF LAW AND STUFF, BUT IF YOU'RE A JUROR, THE JUDGE WILL INSTRUCT YOU ON

THE LAW. YOU KNOW, ULTIMATELY HE WILL GIVE YOU THE TOOLS TO DO WHAT YOU NEED TO DO BUT SOME BASIC THINGS YOU NEED TO KNOW IS, OF COURSE, INNOCENT UNTIL PROVEN GUILTY IN THE FIRST STAGE AND ALWAYS THEY NEVER HAVE TO PROVE ANYTHING; THE JOB IS ON US TO BRING IT FORTH.

NOW, BEFORE I GET FURTHER INTO THAT, I WANT TO GO BACK. YOU WERE TALKING ABOUT KNOWING RAY LONG, I BELIEVE?

A. UH HUH.

Q. AND YOU SAID THAT BASICALLY YOU COULD PUT THAT -- YOU LOOKED AT THE WHOLE LIST AND THAT WAS THE ONLY PERSON YOU KNEW, IS THAT RIGHT?

A. NO, I KNOW SOME NAMES ON THERE; I'M NOT SURE IF IT'S THE ONES I KNOW OR NOT BUT I KNOW OF SOME OTHERS. I'M ONLY PERSONAL FRIENDS WITH RAY LONG.

Q. I'VE GOT YOU. AND YOU TOLD THE JUDGE THOUGH THAT YOU COULD DO FAIR BY THE STATE AND FAIR BY THE DEFENSE INDEPENDENT OF KNOWING RAY LONG. YOU WOULDN'T AUTOMATICALLY JUST SAY, WELL, THAT'S RAY LONG SO WHATEVER HE SAYS IS WHAT I'M GOING TO BELIEVE AND I'M NOT GOING TO LISTEN OR JUDGE ANY OTHER WITNESSES. YOU WOULDN'T AUTOMATICALLY BELIEVE HIM OVER ANYBODY ELSE JUST

BECAUSE YOU KNOW HIM, WOULD YOU? I MEAN I'M NOT SAYING HE'S NOT CREDIBLE, I'M JUST SAYING THAT WOULD BE FOR YOU TO JUDGE AND YOU WOULD JUDGE EACH ONE INDIVIDUALLY. IS THAT RIGHT?

A. OH, YES.

Q. GOING BACK NOW AGAIN TO THE PENALTY PHASE. YOU'RE THE TYPE OF JUROR, AS I UNDERSTAND, THAT YOU WOULD WANT TO HEAR EVERYTHING. AND IF AFTER YOU HEARD ANYTHING, ANYTHING WE PUT UP AND THEY MAY PUT UP SOMETHING, THEY MAY NOT, IF YOU THOUGHT, BASED ON WHAT THE LAW WAS THAT YOU HEARD AND YOU APPLIED IT -- WHEN I SAY THE LAW, OF COURSE, YOU GET TO ALWAYS DECIDE, LAW IS NEVER GOING TO MAKE YOU SAY LIFE, LAW IS NEVER GOING TO MAKE YOU SAY DEATH, YOU KNOW WHAT I MEAN, IT'S WHAT YOU DECIDE -- AFTER YOU HEARD EVERYTHING IN THIS PARTICULAR CASE IF YOU THOUGHT THE RIGHT SENTENCE WAS LIFE, YOU COULD SAY SO?

A. YES, SIR.

Q. AND LIKEWISE, AFTER HEARING EVERYTHING, IF YOU FELT THAT THE APPROPRIATE SENTENCE WAS DEATH, TAKING EVERYTHING INTO CONSIDERATION, YOU COULD GIVE A DEATH PENALTY?

A. YES, SIR.

Q. AND, AGAIN, I KNOW WE RUN THROUGH WORDS, IT SEEMS LIKE I'M JUST GOING LIKE THIS. I KNOW IT WOULD TAKE SOME THOUGHT, BUT YOU COULD GIVE EITHER ONE, BUT YOU WOULD HAVE TO WAIT AND HEAR IT. IS THAT FAIR?

A. BASICALLY, YES, SIR.

Q. THE FINAL THING I WANT TO TOUCH BASE WITH YOU ON IS THE DEATH PENALTY IS A LITTLE BIT DIFFERENT. YOU KNOW, I TALKED ABOUT A JURY AND THEY VOTE AND THEN THE FOREPERSON, WHOEVER WOULD BE THE SPOKESMAN FOR THE JURY, WOULD SIGN AND SAY, YOU KNOW, HERE'S THE VERDICT, HERE'S WHAT WE DECIDED.

IN A DEATH PENALTY, IN THE PENALTY PHASE -- NOW, OF COURSE, IN THE PENALTY PHASE HE'S ALREADY BEEN CONVICTED OF KILLING HIS PARENTS -- OF COURSE, NOT NOW, BUT YOU UNDERSTANDING WE'RE NOW SUPPOSING WE'RE IN THE PENALTY PHASE.

A. RIGHT.

Q. OKAY. HE'S ALREADY BEEN CONVICTED OF KILLING HIS PARENTS. YOU'RE STILL WILLING TO THINK LIFE, THINK DEATH, YOU JUST DON'T KNOW YET. IS THAT RIGHT?

A. UH HUH.

Q. OKAY. WELL, WHEN YOU GO BACK AND VOTE NOW IF

ALL TWELVE VOTE, AND IT'S GOT TO BE UNANIMOUS ONE WAY OR THE OTHER, IF ALL TWELVE VOTE LIFE, THEN JUST THE FOREPERSON WOULD SIGN. YOU KNOW, THEY WOULD SAY WE'VE ALL VOTED, WE VOTE LIFE. BUT IF THEY VOTE DEATH, IT'S DIFFERENT AGAIN. IF ALL TWELVE VOTE DEATH, THEN EACH INDIVIDUAL PERSON WOULD HAVE TO SIGN THEIR NAME. AND, OF COURSE, YOU WOULD SIGN IT BASED ON YOUR OWN DECISION, YOUR OWN CONSCIENCE. YOU KNOW, YOU WOULDN'T GIVE IN BECAUSE ELEVEN OTHERS SAID DO IT. YOU KNOW, YOU WOULD LISTEN BOTH WAYS BUT YOU WOULD ULTIMATELY MAKE THE DECISION. IF YOU HEARD THE FACTS AND YOU FELT THE APPROPRIATE PENALTY WAS DEATH, COULD YOU SIGN CLIFTON GUFFEY TO A FORM THAT WOULD TAKE THIS MAN'S LIFE?

A. YOU MAKE IT SOUND HARSH, BUT IF I FELT THAT THAT WAS THE JUST PUNISHMENT, YES.

Q. AND YOU KNOW IT IS A DIFFICULT SITUATION. YOU SAY I MAKE IT SOUND HARSH, BUT IF YOU THOUGHT THAT WAS RIGHT, YOU COULD PUT YOUR NAME ON IT?

A. YES, SIR.

Q. OKAY. I BEG THE COURT'S INDULGENCE.

(AFTER A BRIEF PAUSE.)

Q. MR. GUFFEY, I THINK YOU'VE ANSWERED THIS FOR ME BUT I'VE BEEN TRYING TO WRITE AND TALK. I

REALIZE I'M DOING MOST OF THE TALKING, BUT JUST BECAUSE HE WAS CONVICTED OF KILLING HIS PARENTS WITHOUT HEARING EVERYTHING FURTHER, YOU WOULDN'T AUTOMATICALLY THINK HE GETS DEATH OR HE GETS LIFE. YOU WOULD WANT TO WAIT AND HEAR EVERYTHING BEFORE YOU DECIDE?

A. YES, SIR.

Q. OKAY. AND YOU COULD DECIDE ONE WAY OR ANOTHER ACCORDING TO WHAT YOU HEARD?

A. YES, SIR.

Q. THANK YOU. I APPRECIATE IT.

QUESTIONS BY MR. HANCOCK:

Q. MR. GUFFEY, I'M BILL HANCOCK. I'M THE ATTORNEY FOR JIMMY ROBERTSON SEATED RIGHT HERE AND THIS IS MR. BOYD WHO IS CO-COUNSEL IN THIS MATTER.

WE'RE COMING AT YOU IN WAVES, I REALIZE THAT. YOU'VE HAD THE JUDGE, NOW THE SOLICITOR AND NOW I'M BEFORE YOU.

THIS IS AN UNUSUAL SITUATION. IT'S A TIME THAT WE HAVE TO LISTEN TO YOU AND LISTEN TO YOUR ANSWERS, RESPECT YOUR ANSWERS AND THEN DEAL WITH THEM AS WE MAY IN THIS COURTROOM.

AND I'M JUST TRYING TO CLARIFY WHAT I MAY HAVE ALREADY HEARD. SO, I AM GOING TO ASK YOU SOME QUESTIONS. IT MAY SEEM TO BE REPETITIVE, BUT I

NEED TO LISTEN TO THEM, OKAY?

A. OKAY.

Q. THAT'S ALL RIGHT WITH YOU?

A. YES, SIR.

Q. OKAY. NOW, YOU'VE INDICATED THAT YOU UNDERSTAND THAT THIS IS A DEATH PENALTY CASE. YOU'VE ALSO INDICATED THAT THERE HAS BEEN NO ADJUDICATION OF GUILT OR LACK OF GUILT IN THIS CASE. WE HAVE PUT THE CART BEFORE THE HORSE AND WE'VE GONE FURTHER AND SAID, OKAY, NOW WE'RE TALKING ABOUT THE SECOND PHASE OF THE TRIAL WHICH IS THE DEATH PENALTY PHASE.

A. YES, SIR.

Q. AND YOU UNDERSTAND, DO YOU KNOW, THAT IN THAT PHASE OF THE TRIAL THERE ARE ONLY TWO DECISIONS A JURY CAN MAKE. DEATH OR LIFE IN PRISON. AND IF YOU FIND GUILT, THEN WE WOULD MOVE TO THAT PHASE AND THAT WOULD BE YOUR DECISION. IS THAT CORRECT? YOU UNDERSTAND THAT, SIR?

A. YES, SIR.

Q. AND IN THAT VEIN, IF I HAVE LISTENED TO YOU CORRECTLY, HAVE YOU SAID THAT YOU COULD CONSIDER BOTH AGGRAVATING CIRCUMSTANCES WHICH WOULD MAKE THE CRIME EVEN WORSE THAT WOULD BE PRESENTED BY THE SOLICITOR AND IF THEY WERE PROVED, YOU COULD

CONSIDER THOSE IN GIVING THE DEATH PENALTY. IS THAT CORRECT?

A. COULD YOU EXPLAIN THAT ONE THOUGH. WHAT DO YOU MEAN BY MAKE IT WORSE?

Q. WELL, THE CRIME BEGINS AS HE IS CHARGED WITH TWO HOMICIDES.

A. OKAY.

Q. THE KILLING OF HIS MOTHER AND HIS FATHER. IF THAT IS PROVEN BEYOND A REASONABLE DOUBT, THEN WE WOULD GO TO THE SECOND PHASE.

THAT IS THE PHASE IN WHICH YOU WILL DECIDE EITHER DEATH PENALTY OR LIFE.

A. OKAY.

Q. THE STATE MAY PUT ON WHAT ARE CALLED AGGRAVATING CIRCUMSTANCES. THOSE ARE CIRCUMSTANCES THAT WOULD GO EVEN BEYOND JUST THE KILLING OF HIS TWO PARENTS AND TEND TO MAKE THE CRIME EVEN WORSE. THOSE ARE AGGRAVATING CIRCUMSTANCES. AND YOU HAVE INDICATED THAT YOU COULD CONSIDER THOSE. IS THAT CORRECT?

A. YES, SIR.

Q. AND YOU WOULD CONSIDER THOSE IN GIVING THE DEATH PENALTY. IS THAT ALSO CORRECT?

A. YES, SIR.

Q. WOULD YOU START WITH THE BASIC PREMISE THAT IF

SOMEONE HAD KILLED THEIR PARENTS, THEN THEY SHOULD GET THE DEATH PENALTY?

A. NOT NECESSARILY.

Q. NOT NECESSARILY. YOU WOULD LISTEN TO AGGRAVATING CIRCUMSTANCES?

A. YES, SIR.

Q. WOULD YOU ALSO LISTEN TO WHAT WE CALL MITIGATING CIRCUMSTANCES THAT COULD BE PRESENTED BY MR. BOYD AND MYSELF ON BEHALF OF JIMMY. MITIGATING CIRCUMSTANCES MEANING THAT THOSE ARE CIRCUMSTANCES THAT WOULD TEND TO LESSEN HIS MORAL CULPABILITY. NOT HIS MORAL RESPONSIBILITY, BUT HIS MORAL CULPABILITY FOR THIS PARTICULAR CRIME. COULD YOU LISTEN TO THOSE THAT WOULD LESSEN THAT AND CONSIDER THEM AND POSSIBLY VOTE FOR LIFE IN JAIL?

A. YES, SIR.

Q. YOU COULD DO THAT?

A. YES, SIR.

Q. NOW, YOU HAVE INDICATED AND I THINK FURTHER TO THE SOLICITOR THAT YOU HAVE -- YOU'RE A PERSON OF FAIRLY STRONG OPINIONS. THAT IF YOU HAD THE OPINION THAT HE SHOULD RECEIVE LIFE IN JAIL, THEN YOU COULD STAND BY THAT OPINION AND VOTE FOR LIFE IMPRISONMENT. IS THAT CORRECT?

A. YES, SIR.

Q. NOW, WOULD YOU CHANGE THAT OPINION JUST TO ENTER THE MAJORITY? SAY IF THE MAJORITY OF THE JURORS IN THAT ROOM IN THERE SAID WE WANT THE DEATH PENALTY, WOULD YOU CHANGE JUST TO BE WITH THOSE PEOPLE?

A. NO, SIR.

Q. YOU THINK THAT YOUR OPINION WOULD BE STRONG ENOUGH THAT YOU COULD HOLD YOUR OPINION. IS THAT WHAT YOU'RE TELLING ME, SIR?

A. I TRUST MY OPINION; YES, SIR.

Q. NOW YOU HAVE TOLD ME THAT YOU KNOW MAGISTRATE RAY VAUGHN WHO IS IN THE COURTROOM HERE. IS THAT CORRECT, SIR?

A. YES, SIR.

Q. WAS HE THE PASTOR AT YOUR CHURCH FOR SOME TIME?

A. YES, SIR.

Q. OKAY. AND YOU'VE INDICATED THAT YOU WENT TO CHURCH UP TO, SAY, THREE TIMES A WEEK?

A. YES, SIR.

Q. AND IN LISTENING TO HIM DID YOU PAY HOMAGE -- NOT HOMAGE BUT PAY RESPECT TO WHAT HE SAID REGARDING YOUR RELIGION AND HIS TEACHINGS TO YOU?

A. I TRUSTED HIS JUDGMENT AND THE WAY HE SEEN IT,

BUT I ALSO WENT BY MY JUDGMENT AND THE WAY I SEEN IT.

Q. OKAY, YOU TRUSTED HIS JUDGMENT BUT HE WAS IN FACT YOUR MINISTER AND YOUR TEACHER FOR QUITE SOME TIME. IS THAT CORRECT?

A. YES, SIR.

Q. AND THAT WOULD CAUSE YOU TO PAY MORE RESPECT TO HIS OPINION AS OPPOSED TO SOMEONE ELSE'S OPINION THAT YOU DIDN'T KNOW WOULD IT NOT, SIR?

A. I WOULDN'T SAY THAT. I'M THE TYPE PERSON THAT I KNOW HE'S GOING TO HAVE HIS OWN OPINIONS. AND, THEREFORE, I RESPECT HIM FOR HIS OPINIONS, BUT I ALSO KNOW THAT I HAVE MY OWN OPINIONS, TOO. I DON'T JUST ACCEPT WHAT HE SAYS TO BE THE WAY IT IS.

Q. YOU WOULD BELIEVE HIM OVER SOMEBODY ELSE THAT SAID SOMETHING THAT MAY NOT BE CORRECT WITH HIM. IS THAT CORRECT OR INCORRECT, SIR?

A. I DON'T KNOW IF I'M UNDERSTANDING THAT EXACTLY RIGHT.

Q. ALL RIGHT. IF MR. LONG TESTIFIED TO SOMETHING AND SOMEONE ELSE TESTIFIED TO SOMETHING DIFFERENT, YOU WOULD BE MORE INCLINED TO BELIEVE MR. LONG; IS THAT NOT CORRECT?

A. WELL, BEING THAT I KNOW HIM, YES, I WOULD BE

MORE INCLINED TO BELIEVE HIM, BUT NOT DISBELIEVE THE OTHER ONE THOUGH; I'M NOT SAYING THAT.

Q. YES, SIR. THANK YOU, SIR; I HAVE NO FURTHER QUESTIONS.

THE COURT: I NEED YOU TO STEP RIGHT OUTSIDE THE DOOR, PLEASE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. POPE: YOUR HONOR, I WOULD SUBMIT THAT HE IS QUALIFIED. ALSO ON THE RAY LONG ISSUE, HE'S MADE IT CLEAR THAT HE COULD LISTEN TO THE OTHER JURORS. I THINK FROM THE TOTALITY -- THE OTHER THING I WILL SAY, RAY LONG'S NAME IS ON THERE BECAUSE HE MAY HAVE BEEN THE JUDGE WHO -- WE PUT LYNN BENFIELD'S NAME ON THERE BECAUSE THEY MAY HAVE SIGNED ONE OF THE WARRANTS. THE ONLY TIME RAY LONG -- HE WOULD NEVER TESTIFY IN FRONT OF THE JURY, HE WOULD ONLY TESTIFY IN AN IN CAMERA HEARING CONCERNING THE SEARCH WARRANT.

THE COURT: WHAT SAYS THE DEFENSE?

MR. HANCOCK: YOUR HONOR, AS OTHER WITNESSES HAVE SAID, HE WOULD BELIEVE ONE WITNESS OVER OTHER WITNESSES.

THE COURT: HOW ABOUT WITHERSPOON, DEATH PENALTY QUALIFIED?

MR. HANCOCK: WITHERSPOON QUALIFIED.

THE COURT: I FIND THAT HE IS QUALIFIED. I DO NOT FIND THAT HIS RESPONSES WERE SUCH THAT HE WOULD BE

IMPARTIAL. HE WAS VERY CLEAR, I THINK. ALL RIGHT, BRING HIM IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. GUFFEY, YOU ARE GOING TO BE IN THE POOL FROM WHICH THE JURY IS DRAWN. THAT DOES NOT MEAN THAT YOU WILL ULTIMATELY BE ON THE JURY.

YOU ARE TO CALL BACK TONIGHT AFTER 6:00 AND RECEIVE FURTHER INSTRUCTIONS.

WHEN YOU COME, COME PREPARED TO STAY FOR AN EXTENDED PERIOD, A WEEK OR SO BECAUSE THAT'S ABOUT HOW LONG WE THINK THIS CASE WILL TAKE.

DON'T DISCUSS THE CASE AMONG ANYBODY. DON'T LET ANYBODY DISCUSS THE CASE WITH YOU. AND DON'T READ ANYTHING ABOUT IT; DON'T LISTEN TO ANYTHING ABOUT IT; DON'T RECEIVE ANY INFORMATION ABOUT IT.

IF ANYBODY DOES TRY TO DISCUSS THE CASE WITH YOU, TELL THEM THAT YOU CANNOT AS YOU ARE SERVING ON THE JURY.

LIKE I SAY, DON'T DISCUSS THE CASE; DON'T RECEIVE ANY PUBLICITY ABOUT IT, IF THERE IS ANY. AND REPORT BACK -- CALL TONIGHT AFTER 6:00. THANK YOU.

THE JUROR: THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: I DON'T WANT TO APPEAR RUDE, BUT COULD I ASK THAT PEOPLE BE QUIET WHEN I'M TALKING TO THESE INDIVIDUALS? THIS IS VERY DISTRACTING. AND I TRY NOT TO

SPEAK WHEN Y'ALL ARE SPEAKING. ALL RIGHT, BRING IN SUSAN COCHRAN, NUMBER 53.

SUSAN D. COCHRAN, JUROR NUMBER 53, WHITE FEMALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. MS. COCHRAN, IF YOU WOULD COME UP HERE AND HAVE A SEAT PLEASE, MA'AM. I'M JOHN HAYES, AND I'M THE JUDGE ASSIGNED TO THIS CASE. AND YOU'RE STILL UNDER OATH FROM MONDAY.

IF YOU ARE CHOSEN AS A JUROR ON THIS CASE, YOU WILL PERHAPS SEE CAMERAS IN THE COURTROOM. THE PRESS IS ALLOWED TO COVER A CASE, ANY CASE, BUT THEY CAN'T PUBLICIZE, TALK ABOUT BY NAME OR PHOTOGRAPH THE JURY. SO, DON'T BE DISTRACTED BY THAT IF THAT OCCURS.

NOW, YOU HAVE GIVEN US THE QUESTIONNAIRE. IS IT OKAY OR DO YOU NEED TO MAKE SOME CORRECTIONS?

A. NO, IT'S ALL RIGHT.

Q. DID YOU REVIEW THE LIST OF WITNESSES OUT THERE?

A. YES, I DID.

Q. IS THERE ANYBODY ON THERE TO WHOM YOU ARE RELATED BY BLOOD OR MARRIAGE OR WHO YOU KNOW OR A PERSONAL FRIEND OR ACQUAINTANCE?

A. NO, SIR. I RECOGNIZED THE NAME DOUG MANNING, BUT THE DOUG MANNING I KNOW IS IN NASHVILLE,

TENNESSEE. I DON'T THINK IT'S THE SAME ONE.

Q. ALL RIGHT. BEFORE COMING HERE AND BEING TOLD ABOUT THIS CASE ON MONDAY, HAD YOU HEARD ABOUT IT FROM ANY SOURCE WHATSOEVER, READ ABOUT IT, TALKED ABOUT IT, FORMED AN OPINION ABOUT IT OR DISCUSSED IT IN ANY WAY?

A. I HAVE READ ONE ARTICLE IN THE SUNDAY PAPER.

Q. WOULD THE FACT THAT YOU HAVE READ THAT ARTICLE AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

A. NO, SIR.

Q. WOULD YOU BE ABLE TO BASE YOUR VERDICT IN THIS CASE SOLELY ON WHAT YOU HEAR IN THIS COURTROOM AS FAR AS THE LAW AND THE EVIDENCE AND DISREGARD WHAT YOU HAD HEARD OR READ PRIOR TO COMING HERE?

A. YES, SIR.

Q. THIS TYPE CASE TAKES PLACE IN TWO PARTS. THE FIRST DEALING WITH WHETHER OR NOT MR. ROBERTSON IS GUILTY OR NOT OF THE CRIMES OF MURDER. IF HE'S FOUND NOT GUILTY, THE CASE WOULD END.

IF HE'S FOUND GUILTY, THE CASE WOULD MOVE FURTHER INTO A SECOND PHASE CALLED THE PENALTY PHASE.

WE'RE TALKING ABOUT THAT SECOND PHASE BUT THAT DOES NOT PRESUPPOSE HIS GUILT. WE MAY NOT EVER

GET TO THE SECOND PHASE. IF HE'S FOUND NOT GUILTY, AS I SAY, THE CASE ENDS.

HE IS PRESUMED INNOCENT OF THESE CHARGES AND IS SO PRESUMED UNTIL A JURY WERE CONVINCED UNANIMOUSLY BEYOND A REASONABLE DOUBT OF HIS GUILT. THEN AND ONLY THEN WOULD WE MOVE INTO THIS SECOND PHASE. BUT BECAUSE OF THE NATURE OF THE CASE, WE HAVE TO TALK ABOUT THAT SECOND PHASE NOW.

DID YOU HAVE A CHANCE TO REVIEW THE JUROR TYPES THAT WERE SET FORTH ON A SHEET OF PAPER IN THE JURY ROOM?

A. YES.

Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

A. YES.

Q. WHICH TYPE?

A. THE THIRD TYPE.

Q. IN THAT THIRD TYPE I USED THE WORDS AGGRAVATION AND MITIGATION. AND BY THOSE WORDS I WANT YOU TO UNDERSTAND THAT WE'RE TALKING ABOUT AGGRAVATING CIRCUMSTANCES BEING THOSE THINGS THAT MIGHT ATTEND A CRIME WHICH WOULD INCREASE THE ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE. THEY ARE THINGS THAT ARE ABOVE AND BEYOND JUST THE ESSENTIAL ELEMENTS OF THE CRIME

ITSELF.

AND MITIGATING CIRCUMSTANCES ARE THINGS THAT WHILE NOT CONSTITUTING JUSTIFICATION OR EXCUSE ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL CULPABILITY. DO YOU UNDERSTAND THOSE TERMS?

A. YES, SIR.

Q. SO YOU ARE TELLING ME THAT IF YOU WERE ON THE JURY AND THE JURY HAD DETERMINED THAT MR. ROBERTSON WAS GUILTY OF MURDER AND WE WENT INTO THAT SECOND PHASE, THAT AS WE ENTERED THAT SECOND PHASE YOU WOULD NOT HAVE MADE UP YOUR MIND IN ADVANCE CONCERNING WHAT PUNISHMENT WOULD BE APPROPRIATE. IS THAT CORRECT?

A. YES, SIR.

Q. AND AS I UNDERSTAND IT, YOU WOULD WISH TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION AND WOULD WANT TO LISTEN AND FOLLOW THE LAW AS IT'S CHARGED TO YOU AND THEN AND ONLY THEN MAKE A DECISION CONCERNING PUNISHMENT. IS THAT CORRECT?

A. YES, SIR.

Q. IF AT THAT TIME THE FACTS PRESENTED WARRANTED IT, COULD YOU RETURN A VERDICT OF LIFE

IMPRISONMENT AGAINST MR. ROBERTSON?

A. YES, SIR.

Q. COULD YOU, IF YOU FELT THE FACTS PRESENTED SO WARRANTED, RETURN A VERDICT IMPOSING THE PENALTY OF DEATH?

A. YES, SIR.

Q. ALL RIGHT. ANSWER ANY QUESTIONS THESE ATTORNEYS MAY HAVE.

QUESTIONS BY MR. BOYD:

Q. GOOD MORNING, MS. COCHRAN, HOW ARE YOU DOING?

A. FINE, THANK YOU.

Q. I KNOW YOU'RE PROBABLY NOT USED TO SITTING IN A WITNESS CHAIR ANSWERING QUESTIONS. LET ME ASSURE YOU, THIS IS NOT CROSS EXAMINATION. WE JUST WANT YOU TO ANSWER THE QUESTIONS HOW YOU FEEL BECAUSE YOU'RE NOT IN TROUBLE NO MATTER HOW YOU ANSWER THESE QUESTIONS.

I WANT TO FOLLOW UP ON A FEW THINGS THE JUDGE ASKED YOU ABOUT.

NOW, YOU UNDERSTAND IN THIS TRIAL OR A TRIAL OF THIS NATURE THERE ARE TWO PHASES OF THE TRIAL POTENTIALLY. THE FIRST PHASE IS IN WHICH THE JURY DETERMINES WHETHER OR NOT JIMMY ROBERTSON WILL BE FOUND GUILTY OR NOT GUILTY OF MURDER. YOU UNDERSTAND?

A. YES, SIR.

Q. YOU UNDERSTAND HE IS CHARGED WITH KILLING BOTH OF HIS PARENTS?

A. YES, SIR.

Q. THAT'S THE CHARGE. AND IF HE'S FOUND GUILTY IN THE FIRST PHASE, THEN IT GOES TO A SENTENCING PHASE OF THE TRIAL. AND IN THAT PHASE OF THE TRIAL THE JURY IS ASKED TO DETERMINE WHETHER HE WILL RECEIVE A LIFE SENTENCE IN PRISON OR WHETHER HE WILL RECEIVE THE DEATH PENALTY.

NOW, I DON'T WANT TO INTIMATE TO YOU BY ASKING ABOUT THE SENTENCING PORTION OF IT THAT I THINK HE IS GOING TO GET TO THAT POINT, BUT I HAVE TO ASK THESE QUESTIONS NOW BECAUSE THIS IS THE ONLY TIME I GET TO ASK THEM.

NOW, ASSUMING THAT WE'RE TO THE POINT THAT IT IS IN THE SENTENCING PHASE OF THE TRIAL AND THAT HE HAS BEEN FOUND GUILTY OF MURDERING HIS PARENTS, OF COURSE, AT THAT POINT HIS GUILT HAS BEEN DETERMINED. THERE'S NO QUESTION ABOUT IT WAS JUSTIFIED OR IT WAS SELF-DEFENSE OR IT WAS ACCIDENT OR ANYTHING, THAT HE'S BEEN CONVICTED OF DELIBERATELY KILLING HIS PARENTS.

WOULD THE FACT THAT HE HAS BEEN CONVICTED OF DELIBERATELY KILLING HIS PARENTS, WOULD YOU

ASSUME FROM THAT THAT THE DEATH PENALTY IS THE APPROPRIATE SENTENCE?

A. I THINK THERE WOULD BE OTHER FACTORS THAT I WOULD HAVE TO HEAR.

Q. OKAY.

A. OTHER EVIDENCE THAT I WOULD HAVE TO HEAR BEFORE HANDING DOWN A DEATH SENTENCE.

Q. OKAY, SO YOU WOULD WANT TO HEAR ALL THE EVIDENCE?

A. YES, SIR.

Q. AND IN THAT PHASE OF THE TRIAL THE STATE COULD PRESENT WHAT'S CALLED AGGRAVATING CIRCUMSTANCES WHICH MEANS THINGS THAT MAKE THE MURDER WORSE. AND WE COULD PRESENT -- WE DON'T HAVE TO PRESENT ANYTHING, BUT WE COULD PRESENT WHAT ARE CALLED MITIGATING FACTORS. THAT IS THINGS THAT ARE NOT AN EXCUSE BUT MAY LESSEN THE MORAL CULPABILITY. MY QUESTION TO YOU NOW IS WOULD YOU BE WILLING TO OPENLY LISTEN TO AND CONSIDER THESE MITIGATING CIRCUMSTANCES IN PASSING SENTENCE?

A. YES, SIR.

Q. SO, YOU WOULDN'T AUTOMATICALLY THINK THAT THE DEATH PENALTY IS THE CORRECT WAY TO GO?

A. NO.

Q. OKAY. NOW, IF YOU ARE SEATED ON THE JURY AND IF

THE JURY DOES DETERMINE THAT DEATH IS THE APPROPRIATE SENTENCE, IN MOST CASES JUST THE FOREMAN SIGNS THE INDICTMENT SAYING, OR THE VERDICT FORM SAYING WHAT THE VERDICT IS. THAT'S IN A REGULAR CASE AND EVEN IN THIS CASE IF A LIFE SENTENCE IS PASSED DOWN. BUT BECAUSE OF THE SERIOUS NATURE OF THIS KIND OF CASE IF THERE IS A DEATH SENTENCE, ALL TWELVE OF THE JURORS HAVE TO SIGN THE FORM STATING THAT THEY AGREE WITH THE DEATH SENTENCE. THAT'S JUST AN EXTRA PROTECTION TO MAKE SURE ALL THE JURORS AGREE. DO YOU UNDERSTAND THAT?

A. YES.

Q. AND IF YOU HAVE CONSIDERED THE EVIDENCE AND IF YOU THOUGHT THAT THE DEATH PENALTY WAS APPROPRIATE AND HAD VOTED FOR THE DEATH PENALTY, COULD YOU SIGN YOUR NAME THERE KNOWING THAT THAT SENTENCE WOULD BE CARRIED OUT BY THE JUDGE?

A. YES, I COULD.

Q. OKAY. AND LET ME ASK YOU A FEW OTHER QUESTIONS AND I'LL BE THROUGH. YOU UNDERSTAND, OF COURSE, WHEN YOU'RE SITTING IN A JURY ROOM THAT DIFFERENT JURORS HAVE DIFFERENT OPINIONS ABOUT THINGS.

A. YES.

Q. AND, OF COURSE, YOU ARE ENTITLED TO HAVE YOUR OPINION RESPECTED BY ALL THE OTHER JURORS. YOU UNDERSTAND THAT.

A. YES, SIR.

Q. OKAY. AND LIKEWISE, YOU ARE REQUIRED TO RESPECT THE OPINION OF OTHER JURORS. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND IF YOU WERE ON THE JURY, AND OF COURSE THIS MAY BE A LONG PROCESS OF DELIBERATION AND HEARING EVIDENCE, WOULD YOU BE WILLING -- I KNOW YOU HAVE TO LISTEN TO OTHER PEOPLE AND THAT TYPE OF THING, BUT ONCE YOU HAVE REACHED YOUR DECISION ON HOW TO VOTE, WOULD YOU BE WILLING TO CHANGE YOUR VOTE JUST TO GET IN THE MAJORITY?

A. NO, SIR.

Q. OKAY. SO, EVEN IF THERE WAS ELEVEN PEOPLE, SAY, VOTING FOR DEATH AND YOU WERE THE ONLY PERSON WHO WANTED TO VOTE FOR LIFE, YOU WOULDN'T CHANGE YOUR MIND JUST TO BE WITH THE MAJORITY AND GET IT OVER WITH?

A. NO.

Q. AND, OF COURSE, YOU WOULD UNDERSTAND THAT YOU WOULD RESPECT OTHER JURORS' OPINIONS AND THEY WOULD HAVE TO RESPECT YOUR'S?

A. YES, SIR.
Q. AND THE FACT THAT THIS CASE MAY -- WELL, IT WILL IF YOU ARE SELECTED AS A JUROR, REQUIRE YOU BY LAW TO BE SEQUESTERED. YOU'D BE AWAY FROM YOUR HOME. WOULD YOU BE INCLINED TO REACH A SPEEDY VERDICT TO GET OUT OF HERE AND GET BACK HOME?
A. WELL, THERE IS A CIRCUMSTANCE. I DON'T KNOW IF I CAN SPEAK ABOUT THAT NOW OR NOT.
Q. WELL, WHY DON'T YOU GO AHEAD AND TELL US WHAT THAT CIRCUMSTANCE IS.
A. I HAVE A TRIP PLANNED TO EUROPE LEAVING APRIL 1ST.
Q. OKAY. WELL, I THINK YOU'LL BE OUT OF HERE BY APRIL 1ST. I CERTAINLY HOPE THAT I'M GOING TO BE OUT OF HERE BY APRIL 1ST AND I HOPE YOU WILL BE, TOO.
A. GOOD.
Q. THANK YOU. THAT'S ALL THE QUESTIONS.

QUESTIONS BY MR. POPE:

Q. MS. COCHRAN, IF WE'RE HERE ON APRIL 1ST, WE'RE ALL IN TROUBLE.
Q. I'M TOMMY POPE; I'M THE SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN BRACKETT. WE ARE THE PROSECUTORS FOR THE STATE. I'M THE SOLICITOR; I THINK IN TENNESSEE YOU PROBABLY CALL THEM

DISTRICT ATTORNEYS I BELIEVE; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. YOU SAID YOU'D NEVER BEEN IN THIS SITUATION WHERE YOU HAVE BASICALLY THREE LAWYERS GOING THROUGH THE SAME QUESTIONS. WELL, ONE ADVANTAGE YOU HAVE IS YOU CAN'T GIVE A WRONG ANSWER BECAUSE WE'RE JUST TRYING TO FIND OUT A LITTLE BIT ABOUT YOU AND HOW YOU FEEL. AND I'M PROBABLY GOING TO BE REAL BRIEF WITH YOU BASED ON WHAT I'VE ALREADY HEARD.

BASICALLY SUSAN COCHRAN IS THE KIND OF PERSON THAT'S GOING TO KEEP AN OPEN MIND UNTIL YOU HEAR THE FACTS AND THEN MAKE A DECISION. IS THAT A FAIR STATEMENT?

A. YES.

Q. OKAY. AND YOU KNOW THE DEFENDANT IS INNOCENT UNTIL PROVEN GUILTY AND THAT WE HAVE TO PROVE THE CASE. YOU UNDERSTAND THAT?

A. THAT'S CORRECT; YES, SIR.

Q. AND YOU WOULD NEVER HOLD THE DEFENDANT TO THE BURDEN OF PROVING ANYTHING. YOU KNOW WHAT I MEAN, HE DOESN'T HAVE TO COME AND PROVE -- HE'S INNOCENT AND WE HAVE TO PROVE IT.

A. UH HUH.

Q. AND LIKEWISE WHEN WE GET TO THE PENALTY, YOU'RE

NOT PREDISPOSED -- AS A MATTER OF FACT YOU SAID, I'D HAVE TO HEAR ALL OF THE OTHER FACTORS BEFORE I HANDED IN A DEATH SENTENCE. YOU WOULD HAVE TO HEAR EVERYTHING BOTH WAYS, RIGHT?

A. RIGHT.

Q. OKAY. AND AGAIN KNOWING, AND I THINK I'M BELABORING THE POINT, BUT YOU KNOW EVEN IN THE SECOND PHASE, THE PENALTY PHASE, HE DOESN'T HAVE TO PUT UP ANYTHING. YOU UNDERSTAND THAT?

A. RIGHT.

Q. BUT YOU'RE THE TYPE OF JUROR THAT YOU WOULD HEAR WHATEVER WE PUT UP WHICH IS CALLED EVIDENCE IN AGGRAVATION WHICH IS THE BAD THINGS OR THE THINGS THAT WOULD MAKE IT EVEN WORSE. OF COURSE, AT THAT POINT HE WOULD HAVE BEEN CONVICTED OF KILLING HIS PARENTS.

A. RIGHT.

Q. BUT YOU WOULD HEAR THINGS ABOUT THE CRIME OR THINGS THAT MAY MAKE IT WORSE THAT THE STATE WOULD PROVE THAT WOULD TEND TO SAY IT OUGHT TO BE A DEATH PENALTY. AND LIKEWISE, IF THEY CHOSE, YOU'D HEAR MITIGATION, THINGS THAT THEY SAY MAY EXPLAIN WHY IT SHOULD BE A LIFE SENTENCE. AND FROM WHAT YOU'RE TELLING ME, YOU'RE THE TYPE THAT COULD HEAR BOTH. AND AS

SOON AS YOU GET IN THERE YOU'RE NOT SAYING, I'M LOOKING OUT THE WINDOW, I'M VOTING LIFE OR I'M VOTING DEATH. YOU'D HEAR EVERYTHING, IS THAT RIGHT?

A. YES.

Q. OKAY. AND LIKEWISE, AS FAR AS BEING ON THE JURY, YOU'RE NOT GOING TO FLIP ONE WAY OR THE OTHER JUST TO BE IN THE MAJORITY BUT YOU'RE GOING TO HAVE OPEN DISCOURSE -- IN OTHER WORDS, YOU'RE GOING TO TALK TO PEOPLE AND, YOU KNOW, THEY MIGHT POINT OUT SOMETHING YOU DIDN'T REMEMBER; YOU MIGHT POINT OUT SOMETHING THEY DIDN'T THINK OF. IN OTHER WORDS, YOU WOULD COME TO A CONCLUSION BASED ON BEING FAIR TO BOTH SIDES. IS THAT RIGHT?

A. YES.

Q. OKAY. FINALLY, AS MR. BOYD EXPLAINED TO YOU, IN A DEATH PENALTY CASE IF THE VERDICT IS LIFE, THE FOREPERSON SIGNS. IF THE VERDICT IS DEATH AND, AGAIN, THIS IS AFTER ALL THIS DELIBERATION, AFTER ALL OF THIS CONSIDERATION.

A. UH HUH.

Q. IF THE VERDICT IS DEATH, EACH AND EVERY JUROR HAS TO SIGN THE DOCUMENT. AND OF COURSE, OBVIOUSLY, IT'S A DIFFICULT DECISION REGARDLESS

OF WHICH WAY YOU DECIDE, BUT PAST THAT THE LAW REQUIRES THAT THE JURORS SIGN THEIR NAME TO THE VERDICT FORM. AND THE COURT'S GOING TO DO WHATEVER YOU SAY. YOU KNOW, IF YOU SAY LIFE, THAT'S WHAT IT WILL BE. WHEN I SAY YOU, THE UNANIMOUS JURY. IF YOU SAY DEATH, THAT'S WHAT IT'S GOING TO BE.

IF YOU THOUGHT, AFTER HEARING IT, THAT DEATH WAS APPROPRIATE, COULD YOU SIGN SUSAN COCHRAN TO A DOCUMENT KNOWING IT WOULD GIVE THIS MAN DEATH?

A. YES.

Q. THANK YOU, MA'AM.

THE COURT: I'M GOING TO LET YOU STEP OUTSIDE THE DOOR JUST A MOMENT, MS. COCHRAN.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE DEFENSE?

MR. BOYD: SHE'S QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAYS THE STATE?

MR. POPE: I SUBMIT SHE'S QUALIFIED, YOUR HONOR.

THE COURT: I FIND SHE'S QUALIFIED. HAVE HER COME BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MS. COCHRAN, WE'RE GOING TO INCLUDE YOU IN THE POOL FROM WHICH THE JURY WILL BE DRAWN. THAT DOES NOT MEAN THAT YOU WILL AUTOMATICALLY BE ON IT BUT YOU

WILL BE A POSSIBLE JUROR.

DON'T DISCUSS THIS CASE WITH ANYONE AT ALL. IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, TELL THEM YOU CAN'T AND REPORT THAT BACK TO ME IF THEY DO.

DON'T LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE. DON'T READ ABOUT IT, LISTEN TO IT OR ANYTHING.

PLEASE CALL BACK TONIGHT AFTER 6:00 AND YOU WILL BE TOLD YOUR INSTRUCTIONS.

NOW, I'VE BEEN ASKING THE OTHER INDIVIDUALS ABOUT ANY EXTENUATING CIRCUMSTANCES AND YOU'VE ALREADY TOLD ME WHAT YOUR'S WAS. IS THERE ANY OTHER, OTHER THAN THE APRIL 1ST?

THE JUROR: NO, SIR.

THE COURT: I DON'T BELIEVE WE WILL HAVE TO DEAL WITH THAT, BUT I APPRECIATE YOU CALLING THAT TO OUR ATTENTION.

SO, CALL BACK TONIGHT AFTER 6:00. THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: ALL RIGHT, ALTA VANDERGRIFT.

ALTA M. VANDERGRIFT, JUROR NUMBER 279, WHITE FEMALE, WAS QUESTIONED AS FOLLOWS:

Q. MR. VANDERGRIFT, YOU CAN HAVE A SEAT UP HERE PLEASE, MA'AM. AND I'M GOING TO INTRODUCE MYSELF. I'M JOHN HAYES; I'M THE JUDGE WHO IS ASSIGNED TO PRESIDE OVER THIS TRIAL. AND YOU'RE

STILL UNDER OATH, OKAY?

AND YOU MAY NOTICE AT SOME POINT IF YOU END UP SITTING ON THIS TRIAL PHOTOGRAPHERS OR CAMERAS HERE IN THE COURTROOM. THEY ARE BY LAW ALLOWED IN THE COURTROOM, BUT THEY ARE NOT ALLOWED TO TAKE PICTURES OF THE JURY. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. SO, DON'T BE DISTRACTED BY ANY OF THAT IF THERE IS ANY. THERE IS ONE HERE NOW BUT IT'S NOT ON. THE QUESTIONNAIRE THAT YOU SENT IN, DO YOU FEEL THAT IT'S ACCURATE OR DO YOU NEED TO MAKE ANY CHANGES TO IT?

A. NO, IT'S RIGHT.

Q. DID YOU HAVE A CHANCE IN THE JURY ROOM TO VIEW THE LIST OF WITNESSES?

A. YES.

Q. ARE YOU RELATED BY BLOOD OR MARRIAGE TO ANY OF THEM OR ARE ANY OF THOSE INDIVIDUALS CLOSE PERSONAL FRIENDS OR ACQUAINTANCES OF YOUR'S?

A. NO. MY NAME WAS MOON BEFORE I WAS MARRIED, BUT I DON'T THINK THERE IS ANY CONNECTION BECAUSE I'M FROM MARYLAND.

Q. ALL RIGHT.

A. SO I DON'T THINK THERE IS ANY CONNECTION.

Q. PRIOR TO YOUR HAVING THIS CASE DEFINED FOR YOU OR OUTLINED FOR YOU MONDAY, THE INDICTMENTS READ, HAD YOU HEARD ANYTHING ABOUT IT, TALKED ABOUT IT, FORMED AN OPINION ABOUT IT OR HEARD ANYTHING ABOUT IT FROM ANY SOURCE WHATSOEVER?

A. ONLY JUST A FEW THINGS THAT I HAD READ IN THE PAPER. THAT'S ALL.

Q. WOULD WHAT YOU HAD READ IN THE PAPER AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

A. YES.

Q. IT WOULD?

A. IF I HAD READ ABOUT IT?

Q. NO, LET ME ASK IT AGAIN. WOULD THE THINGS IN THE PAPER PREVENT YOU, WHAT YOU HAD ALREADY READ, WOULD THAT PREVENT YOU FROM BEING FAIR?

A. I'M NOT SURE I UNDERSTAND WHAT YOU MEAN.

Q. IF YOU SIT ON THIS JURY, YOU MUST BASE YOUR VERDICT ON THE LAW AND THE EVIDENCE THAT COMES IN HERE IN THIS COURTROOM.

A. UH HUH.

Q. AND NOT CONSIDER ANYTHING THAT YOU'VE HEARD ABOUT THIS CASE BEFORE YOU CAME IN. COULD YOU DO THAT?

A. YES, I'D LISTEN TO WHAT I HEARD IN THE COURTROOM

AND NOT WHAT I'VE READ.

Q. OKAY. NOW, A CASE OF THIS TYPE PROCEEDS THROUGH TWO STAGES OR POSSIBLY PROCEEDS THROUGH TWO STAGES. THE FIRST BEING ONE DEALING WITH WHETHER OR NOT MR. ROBERTSON IS GUILTY OF THE OFFENSE OF MURDER. IF HE WERE TO BE FOUND NOT GUILTY, THE CASE WOULD THERE END.

IF HE WERE FOUND GUILTY BY THE JURY BY A UNANIMOUS VERDICT, A FINDING BEYOND A REASONABLE DOUBT OF HIS GUILT, THEN THE CASE WOULD GO INTO A SECOND PHASE.

HE IS PRESUMED INNOCENT OF THESE CHARGES UNTIL SUCH TIME AS A JURY WERE TO FIND HIM GUILTY, IF THEY DID.

AND THE FACT THAT WE'RE TALKING ABOUT THIS SECOND PHASE, WHAT IS CALLED THE PENALTY PHASE, IS NOT TO PRESUPPOSE THAT WE WOULD GET THERE. BUT WE'VE GOT TO TALK ABOUT IT AT THIS POINT. DO YOU UNDERSTAND THAT?

A. YES.

Q. IN THE JURY ROOM THERE WERE THREE JUROR TYPES SET FORTH ON A PIECE OF PAPER. DID YOU HAVE A CHANCE TO REVIEW THAT?

A. YES.

Q. DID YOU CONSIDER YOURSELF TO BE ONE OF THOSE

TYPES OF JURORS?

A. YES, I THINK SO.

Q. WHICH ONE?

A. I THINK I WOULD HAVE TO GO WITH NUMBER THREE.

Q. ALL RIGHT. THE THIRD TYPE JUROR WOULD BE ONE WHO EVEN THOUGH MR. ROBERTSON HAD BEEN FOUND GUILTY OF MURDER, THIS JUROR WOULD NOT GO INTO THAT PENALTY PHASE PREDISPOSED AS TO WHAT THE PENALTY WOULD BE, BUT WOULD RATHER HAVE AN OPEN MIND AS TO WHAT PENALTY SHOULD BE IMPOSED. IS THAT THE TYPE JUROR YOU ARE?

A. YES.

Q. THIS TYPE JUROR WOULD WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN BOTH AGGRAVATION AND MITIGATION.

AND THOSE TERMS, AGGRAVATION BASICALLY MEANS CIRCUMSTANCES THAT ATTEND A CRIME WHICH INCREASE ITS ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE BUT WHICH ARE THINGS THAT ARE ABOVE AND BEYOND JUST THE ELEMENTS OF THE CRIME ITSELF.

MITIGATING CIRCUMSTANCES ARE THOSE THINGS THAT WHILE NOT BEING SUFFICIENT FOR A JUSTIFICATION OR EXCUSE FOR THE COMMISSION OF THE CRIME, THEY ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE

OF MORAL CULPABILITY OF AN INDIVIDUAL. SO, YOU ARE TELLING ME THAT YOU'RE THE TYPE WHO WOULD WANT TO HEAR THAT TYPE INFORMATION AND THE LAW BEFORE MAKING ANY DECISION AS TO PUNISHMENT?

A. YES.

Q. IF FACTS PRESENTED AT THAT TIME WARRANTED IT, COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT FOR MR. ROBERTSON IF WE GET TO THAT STAGE?

A. YES.

Q. COULD YOU ON THE OTHER HAND, IF YOU THOUGHT THE EVIDENCE PRESENTED SO WARRANTED, RETURN A VERDICT FOR THE DEATH PENALTY?

A. YES, IF I HEARD ENOUGH AND THOUGHT SO.

Q. ALL RIGHT. LET ME LET YOU ANSWER ANY QUESTIONS THAT COUNSEL MAY HAVE.

QUESTIONS BY MR. BRACKETT:

Q. GOOD MORNING, MS. VANDERGRIFT.

A. GOOD MORNING.

Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. SOLICITOR IS WHAT THEY CALL DISTRICT ATTORNEY UP IN MARYLAND, I THINK, IS WHAT THEY CALL IT. SEATED OVER AT COUNSEL TABLE WITH ME IS THE SOLICITOR, TOMMY POPE. HE AND I ARE PROSECUTING THIS CASE TOGETHER.

I'M JUST GOING TO ASK YOU A FEW QUESTIONS, KIND OF GO BACK OVER IN A LITTLE MORE DETAIL ON SOME POINTS, THE SAME KIND OF THINGS THE JUDGE HAS BEEN ASKING YOU.

A. OKAY.

Q. AND I WANT TO REITERATE AT THE OUTSET THAT THERE ARE NO WRONG ANSWERS. THIS ISN'T A QUIZ, WE'RE NOT GRADING YOU; WE'RE NOT GOING TO ALL SIT AROUND AND COMPARE NOTES ON WHAT WE THOUGHT OF YOUR OPINIONS. YOU'RE ENTITLED TO YOUR OPINIONS JUST LIKE ANYBODY ELSE. WE JUST NEED TO KNOW WHAT THOSE ARE SO THAT WE CAN DO OUR JOB PROPERLY.

AS THE JUDGE HAS TOLD YOU, THIS IS A TWO PART TRIAL. AND THE FIRST PART IS JUST LIKE A REGULAR TRIAL EXCEPT BASICALLY WHAT WE ARE TRYING TO DO IS WE'RE TRYING TO PROVE OR DECIDE WHETHER OR NOT MR. ROBERTSON IS GUILTY OF THESE CHARGES OR NOT. AND IN THAT FIRST PART OF THE TRIAL, SOLICITOR POPE AND I HAVE THE RESPONSIBILITY OF BRINGING FORWARD THE EVIDENCE THAT SHOWS THAT HE IS GUILTY.

BUT YOU UNDERSTAND AS HE SITS THERE RIGHT NOW, HE'S PRESUMED INNOCENT?

A. YES.

Q. AND WE HAVE TO PROVE THAT HE'S GUILTY.
A. YES.
Q. OKAY. AND IN THAT FIRST PART OF THE TRIAL WE'RE NOT CONCERNED WITH ANY ISSUES OF WHETHER OR NOT, WHAT THE PENALTY SHOULD BE, BECAUSE UNTIL HE'S PROVED GUILTY, THERE IS NO PENALTY. YOU UNDERSTAND THAT?
A. YES.
Q. AND YOU UNDERSTAND THAT HE'S PRESUMED INNOCENT AND HE HAS NO BURDEN WHATSOEVER IN THIS COURTROOM?
A. YES.
Q. HE DOES NOT HAVE TO PRESENT ANY EVIDENCE. HE MAY CHOOSE TO REMAIN SILENT AND YOU COULDN'T HOLD THAT AGAINST HIM. THAT'S HIS CONSTITUTIONAL RIGHT. AND YOU UNDERSTAND THAT?
A. YES.
Q. AND YOU'RE SAYING IN THAT FIRST PHASE YOU COULD COME INTO THIS COURTROOM AND YOU COULD HEAR THE EVIDENCE AND YOU DON'T HAVE ANY CONCEPTION ONE WAY OR THE OTHER WHAT THE VERDICT IS GOING TO BE. YOU DON'T KNOW YET BECAUSE YOU HAVEN'T HEARD THE EVIDENCE, BUT YOU WOULD GIVE IT A FAIR HEARING AND THEN BASED ON THE EVIDENCE YOU WOULD MAKE YOUR DECISION.

A. I THINK HE DESERVES A FAIR HEARING.

Q. YES, MA'AM. ONLY IF THAT FIRST PHASE RESULTS IN GUILTY VERDICTS DO WE GO TO THE SECOND PHASE. IF HE'S FOUND GUILTY OF THE MURDERS, THEN WE GO INTO THE SECOND PHASE OF THE TRIAL.

IN THAT PHASE OF THE TRIAL WE ARE CONCERNED WITH THE PENALTY. AND THAT KIND OF COMES BACK TO WHAT THE JUDGE WAS ASKING YOU.

WHAT I UNDERSTOOD YOU TO TELL THE JUDGE WAS YOU WOULD GO INTO THAT SECOND PHASE KIND OF LIKE YOU WENT INTO THE FIRST, AN OPEN MIND. YOU WOULDN'T HAVE ANY PREDISPOSITION ONE WAY OR THE OTHER WHAT THE PENALTY SHOULD BE. AND YOU UNDERSTAND IT REALLY IS ONE WAY OR THE OTHER BECAUSE THERE ARE ONLY TWO CHOICES, LIFE OR DEATH. YOU UNDERSTAND THAT?

A. YES.

Q. OKAY. BUT WHEN YOU WENT INTO THAT SECOND PHASE, EVEN THOUGH HE HAD BEEN FOUND GUILTY OF MURDERING HIS PARENTS, ASSUMING THAT HE IS FOUND GUILTY, EVEN THE FACT THAT IT WAS HIS PARENTS THAT HE KILLED, THAT WOULDN'T AUTOMATICALLY PREDISPOSE YOU TOWARD ONE OR THE OTHER, DEATH OR LIFE? YOU WOULD STILL WANT TO HEAR THE EVIDENCE.

A. I WOULD STILL WANT TO HEAR THE EVIDENCE.

Q. OKAY. AND THE SECOND PHASE IS KIND OF LIKE THE FIRST PHASE, THE SAME SORT OF DEAL, THE STATE HAS TO PROVE WHAT ARE CALLED AGGRAVATING CIRCUMSTANCES. WE HAVE TO PROVE THAT IT'S NOT JUST A REGULAR MURDER, IF THERE IS SUCH A THING AS A REGULAR MURDER, IT'S NOT JUST A REGULAR MURDER, IT IS AN AGGRAVATED MURDER. THAT THERE ARE CIRCUMSTANCES SURROUNDING THIS MURDER WHICH MAKE IT AGGRAVATED IN THE EYES OF THE LAW AND THE JUDGE IS GOING TO INSTRUCT YOU; YOU DON'T NEED TO BE AN EXPERT ON THE LAW, HE'S GOING TO TELL YOU WHAT THE LAW IS. BUT IN THE EYES OF THE LAW, IT MAKES IT AGGRAVATED.

YOU UNDERSTAND THAT THAT, AGAIN, IS OUR BURDEN AND THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING IN THE SECOND PHASE, JUST LIKE IN THE FIRST.

YOU UNDERSTAND THAT?

A. YES.

Q. NOW, IF THE DEFENDANT CHOOSES TO, HE CAN PRESENT WHAT'S CALLED MITIGATING EVIDENCE WHICH KIND OF LESSENS, EVIDENCE WHICH WOULD TEND TO LESSEN OR TRY TO SHOW A LESSER INVOLVEMENT OR A LESSER MORAL CULPABILITY IN THE CRIME. DO YOU UNDERSTAND THAT?

A. YES.

Q. NOW, IF YOU CHOSE TO PUT THAT SORT OF EVIDENCE UP, ARE YOU THE KIND OF JUROR THAT WOULD LISTEN TO THAT?

A. YES.

Q. OKAY. SO, AFTER THE STATE PUT ITS EVIDENCE UP YOU WOULDN'T AUTOMATICALLY MAKE YOUR MIND UP, OKAY, THIS IS IT, YOU'D WAIT TO SEE WHAT THE DEFENSE HAD TO SAY, RIGHT?

A. YES.

Q. AND THEN THE JUDGE WOULD CHARGE YOU ON WHAT THE LAW IS. THAT'S WHEN HE WOULD EDUCATE YOU AS TO WHAT THE LAW SAYS ABOUT THESE MATTERS. AND BASED ON WHAT YOU HEARD IN THIS COURTROOM, AGGRAVATING CIRCUMSTANCES, MITIGATING CIRCUMSTANCES AND THE JUDGE'S CHARGE, YOU WOULD THEN RETIRE WITH THE OTHER JURORS BACK TO THE JURY ROOM TO DECIDE ON WHAT THE PENALTY SHOULD BE FOR THESE MURDERS. THEN YOU CAN START THINKING ABOUT WHAT THE PENALTY SHOULD BE. AND YOU COULD DO THAT, RIGHT?

A. RIGHT.

Q. AS YOU WENT BACK INTO THE JURY ROOM WITH YOUR OTHER JURORS, YOU'RE THE KIND OF JUROR, YOU TOLD THE JUDGE, AT THAT POINT YOU MIGHT FIND THAT THE

DEFENDANT DESERVED LIFE IN PRISON DEPENDING ON HOW YOU FELT.

A. YES.

Q. BUT YOU COULD ALSO, BASED ON HOW YOU FELT AND THE EVIDENCE, YOU COULD ALSO CONCLUDE THAT THE DEFENDANT DESERVED DEATH; IS THAT RIGHT?

A. RIGHT.

Q. ONE UNIQUE RESPONSIBILITY THAT A DEATH PENALTY JUROR HAS THAT IS DIFFERENT FROM ANY OTHER CASE IN THE LAW IS THAT IF THE JURY -- WELL, IN ANY OTHER CASE WHEN THE JURY HAS IT'S VERDICT, THE ONLY PERSON THAT HAS TO SIGN ANYTHING AT ALL IS THE FOREPERSON OF THE JURY. HAVE YOU EVER BEEN ON THE JURY BEFORE?

A. NO.

Q. YOU HAVE NOT.

A. NO.

Q. OKAY. WELL, THE JUDGE IS GOING TO APPOINT ONE PERSON TO BE THE FOREPERSON, FORELADY, FOREMAN. THEY ARE GOING TO BE KIND OF LIKE THE LIAISON BETWEEN THE COURT AND THE REST OF THE JURY. THEY KIND OF ACT AS THE POINT PERSON FOR THE JURY. NOW, IN A TYPICAL CASE THE ONLY PERSON WHO HAS TO SIGN ANYTHING SAYING WHAT THE VERDICT IS IS THE FOREPERSON. THEY WRITE GUILTY OR NOT

GUILTY AND THEY SIGN IT AND THAT'S THE END OF THE MATTER.

BUT IN A DEATH PENALTY CASE BECAUSE WE HAVE THAT SECOND PHASE, THERE IS A SECOND VERDICT TO SIGN.

IF THE VERDICT IS LIFE, AGAIN THE ONLY PERSON THAT HAS TO SIGN ANYTHING IS THE FOREPERSON, THEY WRITE LIFE, THEY SIGN THEIR NAME, IT'S DONE.

IF, HOWEVER, THE VERDICT OF THE JURY IS DEATH, EACH AND EVERY JUROR HAS TO TAKE THE PEN AND SIGN THEIR NAME ON THE VERDICT SHEET SAYING THAT THIS MAN SHOULD BE SENTENCED TO DEATH. OKAY?

ARE YOU SAYING YOU'RE THE KIND OF JUROR THAT IF YOU HEARD ALL OF THE AGGRAVATING CIRCUMSTANCES AND ALL THE MITIGATING CIRCUMSTANCES THAT YOU COULD TAKE THIS PEN AND SIGN YOUR NAME ALTA VANDERGRIFT ON THAT PIECE OF PAPER SENDING THIS MAN TO HIS DEATH IF YOU THOUGHT THAT WAS RIGHT?

A. THAT'S A HARD QUESTION.

Q. SURE. YOU'VE NEVER BEEN ASKED THIS BEFORE, RIGHT?

A. NO.

Q. OKAY. TAKE YOUR TIME AND THINK ABOUT IT BECAUSE, AGAIN, IT'S IMPORTANT THAT WE KNOW THESE THINGS NOW BEFORE YOU GET IN THE JURY BOX.

STATE OF SOUTH CAROLINA	)	
	)	IN COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	
THE STATE,	)	INDICTMENT NOS. 98-GS-46-1020
	)	1021, 1022, 1023
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF TRIAL AND
	)	PRE-TRIAL MOTIONS (7-17-98,
JAMES DEJARNETTE	)	9-22-98, 9-25-98, 11-2-98,
ROBERTSON,	)	AND 12-4-98)
	)	MARCH 15, 1999
DEFENDANT.	)	YORK, SOUTH CAROLINA

VOLUME V

WE NEED TO KNOW HOW YOU FEEL NOW BECAUSE ONCE YOU'RE IN THERE, IT'S TOO LATE AND SAY, UH OH, I CAN'T DO THIS. SO, WE NEED TO KNOW HOW YOU FEEL ABOUT THIS AT THIS POINT IN TIME, BUT TAKE YOUR TIME TO THINK ABOUT IT. NOBODY IS RUSHING YOU.

A. I FEEL THAT IF THE CRIME IS SEVERE AND WHATEVER, AND THAT'S WHAT I FEEL IN MY HEART THAT SHOULD HAPPEN, I BELIEVE I COULD.

Q. ALL RIGHT. THANK YOU, MS. VANDERGRIFT. PLEASE ANSWER ANY QUESTIONS DEFENSE COUNSEL MAY HAVE.

QUESTIONS BY MR. HANCOCK:

Q. MS. VANDERGRIFT, WE'RE IN THE PORTION OF THIS TRIAL THAT WE CALL VOIR DIRE AND I'M THE LAST ONE YOU'LL SEE, THE LAST ONE TO QUESTION YOU IN THIS PARTICULAR PHASE BEFORE WE GET TO THE TRIAL. AND IN THAT VEIN I HAVE BEEN LISTENING TO YOUR ANSWERS AND I HAVE BEEN CONSIDERING THEM, BUT I NEED TO SIT HERE AND ASK YOU SOME OTHER QUESTIONS THAT MAY BE SOMEWHAT REPETITIVE BUT IN A MANNER THAT I FIND OUT AND UNDERSTAND WHAT I NEED TO UNDERSTAND.

AND I WANT TO TELL YOU THAT THERE IS NO RIGHT OR WRONG ANSWER, JUST LIKE EVERYONE ELSE HAS SAID. IT'S JUST THAT WE'RE TRYING TO FIND OUT WHAT YOUR FEELINGS ARE AND WHERE YOU STAND IN THIS

PARTICULAR MATTER AND NOT ALL OTHER MATTERS, BUT IN THIS PARTICULAR MATTER.

AND IN THAT VEIN I BELIEVE THAT YOU HAVE EXPLAINED TO BOTH THE JUDGE AND TO THE SOLICITOR THAT YOU UNDERSTAND THAT THIS IS A MURDER TRIAL AND IT'S THE MURDER TRIAL OF JIMMY ROBERTSON SEATED RIGHT HERE. I AM HIS DEFENSE COUNSEL; MR. BOYD SEATED HERE IS ALSO HIS DEFENSE COUNSEL.

AND YOU ARE IN A SITUATION THAT YOU HAVE SAID IS UNUSUAL; YOU HAVE NEVER BEEN HERE BEFORE?

A. NO.

Q. AND SO IN THAT VEIN YOU HAVE INDICATED THAT YOU COULD RENDER A FAIR AND JUST AND IMPARTIAL VERDICT IN THIS TRIAL. IS THAT CORRECT?

A. YES.

Q. AND IF I UNDERSTAND YOU CORRECTLY YOU SAID THAT YOU HAD READ SOMETHING IN THE PAPER BUT THAT YOU COULD PUT THAT ASIDE AND LISTEN TO THE EVIDENCE IN THIS COURTROOM AND LET THE EVIDENCE CONVINCE YOU OF EITHER GUILT OR LACK OF GUILT, OF THE DEATH PENALTY OR LIFE. YOU COULD DO THAT?

A. YES.

Q. THE NEWSPAPER IS NOT GOING TO INFLUENCE YOU IN ANY WAY WHATSOEVER, IS THAT CORRECT?

A. THAT'S RIGHT.

Q. NOW, YOU UNDERSTAND, AND YOU FOUND OUT YESTERDAY OR THE DAY BEFORE YESTERDAY THAT JIMMY IS CHARGED WITH KILLING BOTH OF HIS PARENTS?

A. YES.

Q. AND YOU JUST INDICATED THAT IF THE CRIME WAS SEVERE ENOUGH, THEN YOU COULD SIGN YOUR NAME TO A DOCUMENT THAT SAID THAT JIMMY WOULD GET THE DEATH PENALTY. IS THAT CORRECT?

A. I FEEL IF THE EVIDENCE PROVED IT THAT WAY.

Q. IF THE EVIDENCE PROVED IT.

A. IF THE EVIDENCE PROVED IT.

Q. NOW YOU HAVE ALSO BEEN EXPLAINED THAT THERE ARE CERTAIN AGGRAVATING AND CERTAIN MITIGATING CIRCUMSTANCES THAT MAY BE PRESENTED TO YOU. NOW, AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES THE STATE WOULD PRESENT TO YOU TO MAKE THE CRIME EVEN WORSE THAN HIM JUST KILLING HIS PARENTS. WOULD YOU CONSIDER THAT SEVERE ENOUGH THAT YOU WOULD AUTOMATICALLY VOTE FOR THE DEATH PENALTY?

A. NO.

MR. BRACKETT: YOUR HONOR, I OBJECT. I DON'T THINK THAT'S A PROPER QUESTION.

THE COURT: SHE ANSWERED IT. GO AHEAD.

Q. AND THEN AM I TO UNDERSTAND YOU AND YOU'RE

TELLING ME THAT EVEN THOUGH YOU HAVE A CRIME THAT MAY BE OF THAT NATURE AND MAY BE AGGRAVATED, THAT YOU CAN CONSIDER MITIGATING CIRCUMSTANCES, CIRCUMSTANCES THAT MAY LESSEN HIS DEGREE OF MORAL CULPABILITY BEFORE YOU DECIDE ON DEATH OR LIFE. IS THAT WHAT YOU'RE TELLING ME?

A. YOU'RE ASKING ME SOME QUESTIONS I DON'T UNDERSTAND.

Q. OKAY, IF YOU DON'T UNDERSTAND, TELL ME YOU DON'T UNDERSTAND. WE'LL BACK UP AND WE'LL GET TO IT, OKAY?

A. I WOULD HAVE TO HEAR BOTH SIDES OF THE TRIAL BEFORE I WOULD MAKE UP MY MIND.

Q. SO WHAT YOU ARE TELLING ME IS THAT YOU COULD LISTEN TO THE DEFENDANT'S MITIGATING CIRCUMSTANCES, SHOULD WE PUT THOSE UP, BEFORE YOU DECIDE ON EITHER LIFE OR THE DEATH PENALTY. IS THAT CORRECT, MA'AM?

A. ARE YOU SAYING WOULD I MAKE MY DECISION ON WHAT HE SAYS?

Q. YES, MA'AM.

A. NO, I WOULD HAVE TO LISTEN TO BOTH SIDES BEFORE I COULD MAKE MY DECISION.

Q. SO YOU WOULD LISTEN TO THE DEFENSE AND WHAT THEY PUT UP ALSO?

A. THE DEFENSE AND YOUR SIDE, TOO, YES, BEFORE I MADE MY DECISION.

Q. AND IF YOU WERE TO DECIDE, SAY, ON LIFE AS OPPOSED TO THE DEATH PENALTY, AND THOSE WOULD BE YOUR ONLY TWO CHOICES, THEN YOU WOULD HAVE TO MAKE THE DECISION FOR ONE OR THE OTHER -- LET ME BACK UP.

IN ORDER TO COME TO A DECISION, IT TAKES TWELVE PEOPLE.

A. RIGHT.

Q. WE'VE GOT A JURY AND YOU WOULD BE ONE OR A MEMBER OF THOSE TWELVE PEOPLE. AND IN THE PENALTY PHASE THE SOLICITOR HAS INDICATED TO YOU THAT YOU MAY HAVE TO SIGN A PIECE OF PAPER THAT SAID THAT HE WOULD GET DEATH.

ON THE OTHER HAND, YOU HAVE INDICATED THAT YOU COULD VOTE, IF YOU CONSIDERED ALL THE FACTORS THAT WE WOULD PRESENT AND OTHERWISE, THAT YOU WOULD CONSIDER LIFE IMPRISONMENT. IS THAT CORRECT?

A. RIGHT.

Q. IF THAT WERE YOUR DECISION, LIFE IMPRISONMENT, THEN WOULD YOU CHANGE THAT DECISION JUST BECAUSE THE MAJORITY OF THE JURY WANTED TO VOTE FOR THE DEATH PENALTY?

A. NO, I WOULD VOTE THE WAY I FELT, THE WAY I SAW THE EVIDENCE AND THE TESTIMONY.

Q. YES, MA'AM. THANK YOU VERY MUCH.

THE COURT: I'LL LET YOU STEP OUTSIDE, MS. VANDERGRIFT, FOR JUST A MOMENT.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. BRACKETT: WE SUBMIT SHE'S QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAYS THE DEFENSE?

MR. HANCOCK: SHE'S QUALIFIED, YOUR HONOR.

THE COURT: I FIND THAT SHE IS QUALIFIED. BRING HER BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MS. VANDERGRIFT, YOU'RE GOING TO BE A PART OF THE POOL FROM WHICH THE JURY IS SELECTED. CALL BACK TONIGHT AFTER 6:00 AND YOU WILL BE INSTRUCTED ABOUT WHEN TO COME.

WHEN YOU DO COME, BRING YOUR BELONGINGS SO THAT YOU CAN HAVE CLOTHING, TOILETRY ITEMS TO STAY FOR A WEEK OR SO.

DON'T BE DISCUSSING THIS CASE WITH ANYONE. DON'T READ ABOUT IT, DON'T LISTEN TO ANY NEWS ARTICLES. IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, REPORT THEM BACK TO ME.

NOW, I'LL ASK, ARE THERE ANY EXTENUATING CIRCUMSTANCES WE NEED TO KNOW ABOUT CONCERNING YOUR BEING SEQUESTERED?

THE JUROR: NO, SIR.

THE COURT: ALL RIGHT, CALL BACK TONIGHT AFTER 6:00. THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: NEXT IS NUMBER 180, BARNEY MELTON.

BARNEY R. MELTON, JUROR NUMBER 180, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. JUST COME ON UP HERE AND HAVE A SEAT PLEASE, SIR. HOW ARE YOU THIS MORNING?

A. JUST FINE; HOW ARE YOU, SIR?

Q. GOOD. I'M GOING TO REINTRODUCE MYSELF; I'M JOHN HAYES; I'M THE JUDGE WHO HAS BEEN ASSIGNED TO PRESIDE OVER THIS CASE. AND I WANT TO REMIND YOU THAT YOU ARE UNDER OATH.

A. YES, SIR.

Q. IF YOU ARE CHOSEN TO SIT ON THIS JURY, YOU WILL PERHAPS SEE CAMERAS. THERE'S ONE IN THE COURTROOM NOW, BUT IT'S NOT ON. BUT YOU MIGHT SEE CAMERAS AND PHOTOGRAPHERS IN THE COURTROOM, BUT THEY ARE NOT ALLOWED TO TAKE YOUR PICTURE OR REPORT ABOUT YOU, SO DON'T BE DISTRACTED IF

THERE ARE.

A. OKAY.

Q. YOU HANDED UP A QUESTIONNAIRE THAT YOU HAD FILLED OUT. IS IT ACCURATE OR DO YOU NEED TO MAKE ANY CHANGES TO IT?

A. NOT AS I KNOW OF.

Q. DID YOU HAVE A CHANCE TO REVIEW THAT LIST OF WITNESSES BACK IN THE BACK?

A. YES, SIR.

Q. ANYBODY ON THERE THAT YOU'RE RELATED TO BY BLOOD OR MARRIAGE OR ANYBODY YOU KNOW?

A. NOT RELATED, BUT PERSONALLY KNOW.

Q. ALL RIGHT, WHO IS THAT?

(A PAPER WAS GIVEN TO THE COURT)

Q. ALL RIGHT, CHARLENE BLACKWELDER, JOE ALLEN AND MAGISTRATE RAY LONG. WOULD THE FACT THAT THEY ARE POSSIBLE WITNESSES IN THE CASE, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

A. NO, SIR, IT WOULDN'T.

Q. HAVE YOU HEARD ABOUT THIS CASE PRIOR TO COMING HERE, HEARD ABOUT IT FROM ANY SOURCE WHATSOEVER, DISCUSSED IT WITH ANYBODY, INFORMED AN OPINION OR RECEIVED ANY INFORMATION ABOUT THIS CASE

BEFORE YOU CAME HERE?

A. NOTHING EXCEPT THE NEWSPAPER AND OVER THE RADIO.

Q. ALL RIGHT. WHAT YOU HEARD ON THE RADIO AND IN THE NEWSPAPER, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IF YOU WERE ON THE JURY?

A. NO, SIR, IT WOULDN'T.

Q. WOULD YOU BE ABLE TO DISREGARD WHAT YOU HAD HEARD ON THE RADIO OR SEEN IN THE NEWSPAPER AND BASE YOUR VERDICT SOLELY ON WHAT YOU HEAR AND SEE HERE IN THIS COURTROOM?

A. YES, SIR, I COULD.

Q. THIS TYPE CASE TAKES PLACE IN TWO STAGES. ONE DEALING WITH WHETHER OR NOT AN INDIVIDUAL IS GUILTY AND IF THEY ARE NOT GUILTY, IF THEY ARE SO FOUND, THEN THE CASE WOULD NOT PROCEED ANY FURTHER.

IF THEY ARE FOUND GUILTY, THEN WE GO INTO WHAT'S CALLED A PENALTY PHASE.

BUT THE DEFENDANT HERE, MR. ROBERTSON, IS PRESUMED INNOCENT AND IS SO PRESUMED UNTIL SUCH TIME AS THE STATE WERE TO BE ABLE TO PROVE TO A JURY HIS GUILT BEYOND A REASONABLE DOUBT. AND UNLESS A JURY RETURNS A VERDICT UNANIMOUSLY SO FINDING, HE IS PRESUMED INNOCENT.

BUT IF HE WERE TO BE FOUND GUILTY, WE WOULD MOVE

INTO THAT SECOND PHASE. AND THE FACT THAT WE ARE TALKING ABOUT THE SECOND PHASE IS NOT TO PRESUPPOSE THAT WE WOULD GET THERE BUT JUST BECAUSE OF THE NATURE OF THESE PROCEEDINGS WE HAVE TO TALK ABOUT THE SECOND PHASE NOW. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. IN THE ROOM WERE THREE JUROR TYPES SET FORTH ON A PIECE OF PAPER. DID YOU REVIEW IT?

A. YES, SIR, I DID.

Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE JUROR TYPES?

A. THE THIRD ONE.

Q. ALL RIGHT. IN THAT DEFINITION I USED WORDS AGGRAVATION AND MITIGATION AND THOSE WORDS AGGRAVATION, IN ESSENCE, ARE CIRCUMSTANCES THAT ATTEND THE COMMISSION OF A CRIME WHICH ADD TO ITS ENORMITY OR INJURIOUS AFFECT. THEY ARE THINGS THAT ARE ABOVE AND BEYOND JUST THE CRIME OR THE ELEMENTS OF THE CRIME ITSELF.

MITIGATING CIRCUMSTANCES ARE THINGS THAT DO NOT CONSTITUTE A JUSTIFICATION OR AN EXCUSE FOR A CRIME BUT ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF ONE'S MORAL CULPABILITY. DO YOU

UNDERSTAND THAT?

A. YES, SIR.

Q. SO, YOU ARE TELLING ME THAT IF YOU WERE ON THIS JURY AND THE JURY HAD UNANIMOUSLY DETERMINED BEYOND A REASONABLE DOUBT THAT MR. ROBERTSON WAS GUILTY OF MURDER WHEN MOVING INTO THAT SECOND PHASE YOU WOULD NOT HAVE AT THAT TIME MADE UP YOUR MIND CONCERNING PUNISHMENT. IS THAT CORRECT?

A. THAT'S RIGHT.

Q. ARE YOU TELLING ME THAT BEFORE YOU MAKE UP YOUR MIND THAT YOU WOULD WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION, LISTEN TO AND FOLLOW THE JUDGE'S INSTRUCTIONS AND THEN AND ONLY THEN DETERMINE AND MAKE A DECISION AS TO WHAT WOULD BE THE APPROPRIATE PUNISHMENT. IS THAT WHAT YOU ARE TELLING ME?

A. YES, SIR.

Q. IF YOU FELT THAT THE FACTS WARRANTED A VERDICT OF LIFE IMPRISONMENT, COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT?

A. YES, SIR.

Q. IF YOU FELT THE FACTS PRESENTED WARRANTED A VERDICT IMPOSING THE DEATH PENALTY, COULD YOU RETURN A VERDICT FOR THE DEATH PENALTY?

A. YES, I COULD.

Q. ALL RIGHT. ANSWER ANY QUESTIONS THE ATTORNEYS MAY HAVE.

QUESTIONS BY MR. BOYD:

Q. GOOD MORNING, MR. MELTON.

A. GOOD MORNING; HOW ARE YOU, SIR?

Q. I'M DOING FINE. I KNOW YOU'RE PROBABLY NOT USED TO SITTING IN A WITNESS CHAIR.

A. NO.

Q. WELL, LET ME TELL YOU, DON'T WORRY, THERE ARE NO RIGHT OR WRONG ANSWERS ABOUT THESE QUESTIONS. I'M JUST GOING TO FOLLOW UP TO A FEW OF THE QUESTIONS THE JUDGE HAD WITH YOU.

A. OKAY.

Q. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON WHO IS SEATED OVER THERE.

A. OKAY.

Q. AND MY CO-COUNSEL IS BILL HANCOCK, AND HE'S SEATED AT THE END OF THE TABLE.

Q. I WANTED TO JUST FOLLOW UP ON A FEW OF THE QUESTIONS THE JUDGE ASKED YOU ABOUT THE DEATH PENALTY. HE TOLD YOU, AND YOU UNDERSTAND THAT IN A TRIAL LIKE THIS THERE ARE TWO PARTS TO THE TRIAL.

IN THE FIRST PART THE JURY IS JUST ASKED TO

DETERMINE WHETHER THE PERSON ACCUSED, JIMMY ROBERTSON IN THIS CASE, IS GUILTY OR NOT GUILTY.

A. RIGHT.

Q. OF COURSE IF IT'S NOT GUILTY, THERE'S NOT EVEN A SECOND PHASE OF THE TRIAL. BUT THIS IS THE ONLY OPPORTUNITY I HAVE TO ASK YOU ABOUT THE PENALTY PHASE OF IT. SO, WE ARE JUST GOING TO ASSUME FOR THE PURPOSES OF MY QUESTIONS THAT WE'VE MOVED INTO THAT PHASE OF THE TRIAL.

A. YES, SIR.

Q. OF COURSE, YOU ARE AWARE THAT HE IS CHARGED WITH MURDER; IS THAT CORRECT?

A. RIGHT.

Q. AND YOU'RE AWARE THAT HE IS CHARGED WITH MURDERING BOTH OF HIS PARENTS?

A. YES.

Q. NOW, OF COURSE IF HE IS CONVICTED OF MURDER AND WE MOVE INTO THAT SECOND PHASE OF THE TRIAL, IT'S NOT A QUESTION OF WHETHER HE'S GUILTY OR NOT AT THAT POINT.

A. NO.

Q. IT'S NOT A QUESTION OF WHETHER IT WAS AN ACCIDENT OR SELF-DEFENSE, IT WOULD BE A DELIBERATE MURDER AT THAT POINT.

A. YES, SIR.

Q. KNOWING THAT HE'S BEEN CONVICTED AT THAT POINT OF KILLING BOTH OF HIS PARENTS, CAN YOU STILL CONSIDER A LIFE SENTENCE FOR HIM?

A. YES.

Q. AS OPPOSED TO THE DEATH PENALTY. YOU'RE NOT GOING TO AUTOMATICALLY VOTE FOR THE DEATH PENALTY BECAUSE HE HAS BEEN CONVICTED OF MURDERING BOTH OF HIS PARENTS?

A. NO, SIR.

Q. OKAY. ALSO YOU WOULD BE ABLE TO HEAR EVIDENCE ON AGGRAVATING CIRCUMSTANCES THAT THE STATE WOULD PRESENT YOU. THAT'S THINGS THAT MAKE IT WORSE THAN A NORMAL MURDER. YOU WOULD ALSO BE ABLE TO HEAR, IF WE CHOOSE TO, TO PRESENT MITIGATING CIRCUMSTANCES. THAT IS, CIRCUMSTANCES THAT MAKE IT LESS LIKELY THAT HE SHOULDN'T GET THE DEATH PENALTY, THAT WOULD LESSEN HIS MORAL RESPONSIBILITY, THAT TYPE OF THING. DO YOU UNDERSTAND?

A. YES, SIR.

Q. WOULD YOU BE WILLING TO LISTEN TO THAT EVIDENCE?

A. I SURE WOULD.

Q. I NOTICED ON YOUR APPLICATION FORM THAT YOU WENT TO COLLEGE, YOU WERE MAJORING IN RELIGION. IS THAT CORRECT?

A. YES.
Q. WERE YOU PLANNING ON BECOMING A MINISTER AT ONE POINT?
A. WELL, I AM.
Q. YOU ARE?
A. YES, SIR, I AM SUPPOSED TO PREACH SUNDAY.
Q. OKAY, WHAT CHURCH ARE YOU A MINISTER OF?
A. GLENROCK BAPTIST CHURCH IN FORT MILL, SOUTH CAROLINA.
Q. IS THAT A SOUTHERN BAPTIST CHURCH?
A. YES, IT IS.
Q. OKAY. AND LET ME ASK YOU, IS THAT YOUR FULL TIME JOB OR IS IT PART TIME?
A. NO, SIR, IT ISN'T. I WORK FOR DUFF NORTON COMPANY IN CHARLOTTE AND I'M A PASTOR, TOO.
Q. YOU'RE A BUSY FELLOW THEN, AREN'T YOU?
A. I KEEP PRETTY BUSY. I ENJOY IT.
Q. JUST FOLLOWING UP ON THAT, IS THERE ANYTHING ABOUT YOUR STUDIES OF RELIGION OR YOUR BEING A MINISTER THAT WOULD AFFECT YOUR ABILITY ONE WAY OR ANOTHER ABOUT THE DEATH PENALTY IN THIS CASE, NOT TO REACH A VERDICT ONE WAY OR ANOTHER?
A. NO, SIR, NOT THAT I KNOW OF. I THINK EVERY MAN DESERVES JUSTICE.
Q. NOW LET ME ASK YOU, OF COURSE IF YOU'RE CALLED

ON THE JURY IN THIS CASE THERE ARE, OF COURSE, OFTENTIMES DIFFERING OPINIONS AMONG JURORS. YOU UNDERSTAND THAT?

A. RIGHT.

Q. AND, OF COURSE, EVERY JUROR WOULD BE ENTITLED TO THEIR OPINION; YOU UNDERSTAND THAT?

A. THAT'S THE ONLY WAY.

Q. AND, OF COURSE, IF YOU HAVE AN OPINION, YOU'RE ENTITLED TO HAVE YOUR OPINION RESPECTED BY THE OTHER JURORS.

A. YES, SIR.

Q. AND LIKEWISE, THOUGH YOU MAY DISAGREE, YOU WOULD HAVE TO RESPECT THEIR OPINIONS ALSO.

A. YES, I WOULD.

Q. YOU SAID YOU KNEW CHARLENE BLACKWELDER, JOE ALLEN AND RAY LONG; IS THAT CORRECT?

A. YES, SIR.

Q. DO YOU KNOW THESE PEOPLE WELL?

A. YES, I DO. I MARRIED CHARLENE AND HER HUSBAND; AND RAY LONG, IF IT'S WHO I THINK IT IS, IS A MINISTER, TOO.

Q. RIGHT. OKAY. AND SO YOU MARRIED CHARLENE?

A. THAT'S CORRECT. AND JOE ALLEN, IS THAT THE WRECKER SERVICE, IS THAT WHO THAT IS?

Q. I THINK, YES, SIR.

A. OKAY.
Q. IF ANY OF THESE PEOPLE TESTIFIED, WOULD YOU BE MORE INCLINED TO BELIEVE THEM, KNOWING THEM, THAN YOU WOULD SOMEBODY THAT YOU DIDN'T KNOW?
A. NO, SIR. I'D JUST LISTEN FOR THE FACTS.
Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE. THANK YOU VERY MUCH.

QUESTIONS BY MR. BRACKETT:

Q. GOOD AFTERNOON, MR. MELTON.
A. GOOD AFTERNOON; HOW ARE YOU TODAY?
Q. FINE, THANK YOU. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. I WORK FOR TOMMY POPE OVER HERE; HE AND I ARE THE PROSECUTORS IN THIS CASE.
A. YES, SIR.
Q. WE ARE THE ONES RESPONSIBLE FOR BEARING THE BURDEN OF PROOF AND PROVING THAT THE DEFENDANT SEATED OVER HERE, JIMMY ROBERTSON, IS GUILTY OF THESE CHARGES.
A. RIGHT.
Q. YOU UNDERSTAND THAT'S OUR RESPONSIBILITY?
A. YES, SIR.
Q. HE IS PRESUMED INNOCENT.
A. YES, SIR.
Q. WE HAVE TO PROVE HE'S GUILTY.

A. THAT'S RIGHT.

Q. IF HE'S FOUND GUILTY IN THE FIRST PHASE, ONLY THEN DO WE GO TO THE SECOND PHASE.

A. RIGHT.

Q. IN THAT PHASE WE HAVE TWO CONSIDERATIONS, LIFE OR DEATH.

A. RIGHT.

Q. HE'S BEEN FOUND GUILTY. WHAT YOU'RE SAYING IS THAT YOU COULD LISTEN TO THE AGGRAVATING CIRCUMSTANCES AND YOU WOULDN'T MAKE UP YOUR MIND AFTER YOU HEARD THOSE, YOU'D LISTEN TO WHATEVER MITIGATION THEY DECIDED TO PUT UP.

A. YES, SIR.

Q. AND YOU WOULDN'T MAKE YOUR MIND UP THEN, YOU WOULD LISTEN TO THE CHARGE THAT THE JUDGE GAVE YOU BECAUSE YOU DON'T KNOW MUCH ABOUT THE LAW, DO YOU?

A. NO, SIR, I DON'T.

Q. NO TRAINING IN THE LAW?

A. NO, I HAVEN'T.

Q. OKAY, WELL, YOU DON'T HAVE TO HAVE ANY TO BE A GOOD JUROR BECAUSE THE JUDGE IS GOING TO TELL YOU EVERYTHING YOU NEED TO KNOW ABOUT THE LAW IN ORDER TO MAKE A DECISION IN THIS CASE. BUT YOU'D LISTEN TO THE JUDGE'S INSTRUCTIONS?

A. YES, I WOULD.
Q. AND THEN BASED ON ALL THAT YOU HEARD, YOU COULD RETIRE BACK TO THE JURY ROOM AND DELIBERATE WITH YOUR FELLOW JURORS?
A. YES, I COULD.
Q. YOU COULD TALK TO THEM; YOU'D LISTEN TO THEIR VIEWPOINTS AND IF THEY MADE GOOD POINTS, YOU MIGHT CHANGE YOUR MIND?
A. NO.
Q. WELL, IF THEY POINTED OUT SOMETHING TO YOU THAT YOU HADN'T THOUGHT OF AND YOU SAID, WELL, NOW, YOU MIGHT HAVE SOMETHING THERE, WOULD YOU LISTEN TO THEM?
A. YES, I WOULD.
Q. SO YOU COULD SIT BACK THERE AND DELIBERATE WITH THE OTHER JURORS?
A. YES, I COULD.
Q. AND REACH A DECISION?
A. RIGHT.
Q. AND THAT DECISION MIGHT BE LIFE IN PRISON?
A. RIGHT.
Q. AND THAT DECISION MIGHT BE DEATH?
A. YES.
Q. ALL RIGHT, SIR. NOW, ONE OF THE REQUIREMENTS THAT IS UNIQUE IN A DEATH PENALTY CASE FROM ANY

OTHER CASE -- HAVE YOU EVER SERVED ON A JURY BEFORE, SIR?

A. NO, I HAVEN'T.

Q. OKAY.

A. NOT ON THIS KIND.

Q. HAVE YOU SERVED ON ANY JURY?

A. YES.

Q. WERE YOU THE FOREPERSON BY ANY CHANCE?

A. NO, I WASN'T.

Q. YOU KNOW THE FOREMAN HAS A RESPONSIBILITY THAT'S DIFFERENT FROM THE OTHER JURORS?

A. YES.

Q. THEY HAVE TO SIGN THE VERDICT SAYING THIS IS WHAT THE VERDICT OF THE JURY IS AND THEY SIGN THEIR NAME AND WRITE THE VERDICT?

A. RIGHT.

Q. OKAY. IN EVERY OTHER CRIMINAL CASE, ONLY THE FOREPERSON HAS TO SIGN WHAT THE VERDICT IS.

A. RIGHT.

Q. IF THE JURY IN THIS CASE LISTENS TO EVERYTHING, THEY RETIRE, THEY DELIBERATE, THEY DECIDE LIFE, AGAIN ONLY THE FOREPERSON HAS TO SIGN.

A. RIGHT.

Q. THEY WRITE LIFE, AND THEY SIGN THEIR NAME.

A. RIGHT.

Q. IF IT'S DEATH, HOWEVER, IT'S A DIFFERENT SITUATION. IF THE VERDICT OF THE JURY IS DEATH, EACH JUROR HAS TO TAKE THE PEN AND SIGN THEIR NAME ON THE VERDICT SHEET INDICATING THAT THIS MAN SHOULD BE PUT TO DEATH.

A. YES.

Q. OKAY, SIR. IF THE PEN COMES AROUND THE ROOM AND YOU'VE DECIDED -- YOU'VE HEARD THE EVIDENCE AND YOU'VE DECIDED THAT DEATH IS THE APPROPRIATE VERDICT, COULD YOU TAKE THIS PEN AND SIGN YOUR NAME BARNEY MELTON ON THAT SHEET SENDING THIS MAN TO HIS DEATH?

A. YES, I COULD.

Q. THANK YOU VERY MUCH, MR. MELTON.

A. THANK YOU.

THE COURT: I'M GOING TO LET YOU STEP OUT FOR JUST A MINUTE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. BRACKETT: WE SUBMIT HE'S QUALIFIED.

THE COURT: THE DEFENSE?

MR. BOYD: HE'S QUALIFIED, YOUR HONOR.

THE COURT: I FIND HE IS QUALIFIED. BRING MR. MELTON BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. MELTON, WE'RE GOING TO INCLUDE YOU IN THE PANEL FROM WHICH THE JURY WILL BE DRAWN. THAT DOES NOT MEAN THAT YOU WILL NECESSARILY BE ON THE JURY, BUT ON THE PANEL.

CALL BACK TONIGHT AFTER 6:00 AND THEY WILL TELL YOU WHEN TO RETURN. WHEN YOU DO RETURN, BRING WITH YOU ENOUGH BELONGINGS TO STAY A WEEK. AND I KNOW YOU HAVE ONE EXTENUATING CIRCUMSTANCE AND THAT IS YOU'RE SUPPOSED TO PREACH ON SUNDAY, BUT OTHER THAN THAT DO YOU HAVE ANYTHING ELSE?

THE JUROR: NO, SIR, I DON'T.

THE COURT: OKAY.

THE JUROR: IF I SHOULD BE CHOSEN, COULD I HAVE SOMEONE GO TO THE CHURCH WITH ME AND LET ME PREACH AND COME BACK?

THE COURT: WELL, WE'LL SEE. I'LL TELL YOU PROBABLY NOT, BUT WE'LL SEE ABOUT THAT.

THE JUROR: THERE'S NOBODY ELSE TO PREACH THAT SUNDAY, SIR.

THE COURT: WELL, I DON'T KNOW EXACTLY HOW WE COULD DEAL WITH THAT. I DOUBT THAT WE CAN ALLOW YOU TO DO THAT BUT YOU MIGHT SEE IF YOU CAN GET ONE OF THE LAYMEN OR SOMEBODY TO -- THEY HAVE EVEN LET ME READ SERMONS AT MY CHURCH, SO IF THEY LET ME DO IT, THEN YOU MIGHT CAN FIND SOMEBODY THAT CAN DO IT AT YOUR CHURCH.

NOW, DON'T LET YOURSELF BE EXPOSED TO ANY PUBLICITY ABOUT THE CASE. DON'T READ ABOUT IT, DON'T LISTEN TO THE NEWS; DON'T DISCUSS IT WITH ANYONE. IF ANYONE TRIES TO DISCUSS IT WITH YOU, TELL THEM YOU CANNOT AS YOU WILL POSSIBLY BE A JUROR.

SO, I'LL ALLOW YOU TO LEAVE, AND CALL BACK TONIGHT AFTER 6:00 O'CLOCK.

THE JUROR: ALL RIGHT. THANK YOU, SIR.

THE COURT: THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: LET'S TAKE ABOUT A THREE MINUTE BREAK -- IS THAT WHAT YOU WERE GOING TO ASK FOR?

MR. BOYD: YES, SIR.

THE COURT: OKAY. WE'LL TAKE A REAL QUICK BREAK.

AFTER THE RECESS:

THE COURT: ALL RIGHT, WE HAVE THREE MORE ON THIS PANEL AND IT'S ALREADY 12:30. WE HAD THE OTHER PANEL HERE AT 12:00, BUT I AM GOING TO RELEASE THEM UNTIL -- I'LL SAY 2:30. THREE WILL TAKE US UNTIL PROBABLY 1:30 OR SO. SO, I'M GOING TO HAVE THEM COME BACK IN AT 2:30. WE WILL HAVE PANEL "L" COME BACK IN AT 2:30.

ALL RIGHT, THE NEXT IS TERRY DUNLAP.

TERRY DUNLAP, JUROR NUMBER 76, BLACK FEMALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. GOOD AFTERNOON I GUESS; I'M SORRY. I'M JOHN HAYES; I'M THE JUDGE WHO HAS BEEN ASSIGNED THIS CASE TO PRESIDE OVER IT. I'M GOING TO REMIND YOU THAT YOU ARE STILL UNDER OATH.

A. YES, SIR.

Q. IF YOU ARE CHOSEN ON THIS CASE, YOU MAY SEE CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM, BUT I DON'T WANT YOU TO BE DISTRACTED BY THEM. THEY CAN'T FILM YOU OR TAKE PICTURES OF YOU OR REPORT ON YOU. SO, DON'T BE DISTRACTED IF YOU SEE CAMERAS. THERE'S ON HERE NOW BUT I DON'T BELIEVE THEY ARE FILMING ANYTHING TODAY.

YOU TURNED IN A QUESTIONNAIRE TO US. IS THAT QUESTIONNAIRE CORRECT OR DO YOU NEED TO MAKE ANY CORRECTIONS TO IT?

A. IT'S CORRECT.

Q. HAVE YOU HAD A CHANCE TO REVIEW THAT LIST OF WITNESSES?

A. YES.

Q. IS THERE ANYBODY ON THERE THAT YOU WERE RELATED TO BY BLOOD OR MARRIAGE OR ANYBODY THAT YOU KNEW?

A. I KNOW A COUPLE OF THEM.

Q. WHO DO YOU KNOW?
A. KERRY SPITZENBERGER; THAT'S ONLY BECAUSE SHE WORKS AT THE HOSPITAL. I DON'T KNOW HER PERSONALLY, BUT I KNOW HER WHEN I SEE HER. AND DENNIS CHISOLM WHO WORKS AT THE SHERIFF'S OFFICE. HIS MOTHER LIVES NEAR MY MOTHER.
Q. LIVES WITH YOUR MOTHER?
A. LIVES NEAR MY MOTHER.
Q. OKAY. WOULD THE FACT THAT THOSE INDIVIDUALS ARE POSSIBLE WITNESSES IN THIS CASE, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS TRIAL?
A. NO, SIR.
Q. HAD YOU HEARD ANYTHING ABOUT THIS CASE BEFORE YOU CAME, FORMED ANY OPINION, EXPRESSED ANY OPINION OR READ ABOUT IT OR HEARD ABOUT IT IN ANY WAY WHATSOEVER?
A. JUST WHEN IT FIRST HAPPENED. I DON'T TAKE THE PAPER, SO I DON'T KEEP UP ON IT.
Q. ALL RIGHT, WELL WHAT YOU DID HEAR, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?
A. NO, SIR.
Q. COULD YOU DISREGARD ANYTHING THAT YOU HEARD BEFORE YOU CAME AND BASE YOUR VERDICT SOLELY ON

WHAT YOU HEAR HERE IN THE COURTROOM?

A. YES, SIR.

Q. IN A TRIAL LIKE THIS, THERE ARE TWO PARTS TO IT. ONE WOULD BE A TRIAL AS TO WHETHER OR NOT MR. ROBERTSON IS OR IS NOT GUILTY OF THE CHARGE OF MURDER.

IF HE'S FOUND NOT GUILTY, THE CASE WOULD BE OVER. IF HE'S FOUND GUILTY, THE CASE WOULD PROCEED INTO WHAT'S CALLED THE SECOND PHASE. THAT IS, WITH THE JURY DETERMINING WHAT PENALTY TO BE IMPOSED.

HE IS PRESUMED INNOCENT OF THE CHARGES AND IS SO PRESUMED UNTIL SUCH TIME AS A JURY WERE TO RETURN A UNANIMOUS VERDICT FINDING BEYOND A REASONABLE DOUBT THAT HE IS GUILTY OF MURDER.

SO, WE'RE TALKING ABOUT THE SECOND PART OF THE TRIAL BUT THAT DOESN'T PRESUPPOSE THAT WE'LL EVER GET THERE. WE WOULD ONLY GET THERE IF HE IS FOUND GUILTY. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. DID YOU HAVE A CHANCE TO REVIEW IN THE JURY ROOM THOSE JUROR TYPES?

A. YES.

Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

A. NUMBER THREE.

Q. IN NUMBER THREE I USED WORDS AGGRAVATION AND MITIGATION IN TALKING ABOUT CIRCUMSTANCES.

IN USING THOSE WORDS, AGGRAVATION BASICALLY IS ADDRESSED TO CIRCUMSTANCES THAT ATTEND THE COMMISSION OF A CRIME WHICH INCREASE IT'S ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE BUT THEY ARE THINGS WHICH ARE OVER AND ABOVE THE ACTUAL ELEMENTS OF THE CHARGE ITSELF OR THE CRIME ITSELF.

MITIGATING CIRCUMSTANCES ARE THINGS THAT ARE NOT JUSTIFICATION OR EXCUSE FOR THE COMMISSION OF A CRIME BUT ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF ONE'S MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

A. YES.

Q. NOW YOU'RE TELLING ME THEN THAT IF YOU ARE THIS TYPE OF JUROR, THAT IF YOU WERE ON THE JURY AND YOU WENT INTO THE SECOND PART OF THIS TRIAL; THAT IS THE PENALTY PHASE, THAT YOU WOULD GO IN WITH AN OPEN MIND; THAT IS, WITH NO PREDISPOSED IDEA OR DETERMINATION AS TO WHAT PENALTY SHOULD BE IMPOSED. IS THAT CORRECT?

A. YES, SIR.

Q. AND YOU'RE TELLING ME THAT YOU WOULD WANT TO

HEAR THE EVIDENCE AND THE JUDGE'S CHARGE ON THE LAW AND ANY MITIGATING AND AGGRAVATING CIRCUMSTANCES AND THEN AND ONLY THEN DECIDE WHAT PENALTY WOULD BE APPROPRIATE. IS THAT CORRECT?

A. YES, SIR.

Q. AND WOULD YOU, IF AFTER HEARING ALL THAT, IF YOU DETERMINED THAT THE APPROPRIATE PENALTY WAS LIFE IMPRISONMENT, COULD YOU IMPOSE THAT PENALTY?

A. YES, SIR.

Q. IF YOU FELT THAT THE APPROPRIATE PENALTY WAS THE PENALTY OF DEATH, COULD YOU IMPOSE THAT PENALTY?

A. YES, SIR.

Q. ALL RIGHT, ANSWER ANY QUESTIONS THAT COUNSEL MIGHT HAVE.

QUESTIONS BY MR. POPE:

Q. MS. DUNLAP, I'M TOMMY POPE; I'M THE SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN BRACKETT, MY DEPUTY SOLICITOR, AND WE'RE THE PROSECUTORS FOR THE STATE IN THIS CASE.

LET ME ASK YOU, HAVE YOU EVER BEEN ON JURY DUTY BEFORE?

A. NO, SIR.

Q. HAVE YOU EVER HAD TO SIT DOWN AND ANSWER QUESTIONS LIKE THIS?

A. NO, SIR.

Q. YOU KIND OF FEEL LIKE YOU'RE ON TRIAL A LITTLE BIT?

A. YES.

Q. WELL, LET ME TELL YOU ONE THING YOU'RE LUCKY AT IS YOU CAN'T GIVE A WRONG ANSWER BECAUSE WHAT WE ARE TRYING TO LEARN, THE JUDGE IS TRYING TO FIND OUT, THE DEFENSE AND US IS HOW TERRY DUNLAP FEELS ABOUT DIFFERENT THINGS.

WE'RE NOT GOING TO PUT YOU UNDER A MICROSCOPE OR ANYTHING BUT THERE ARE JUST DIFFERENT LITTLE QUESTIONS WE ASK AND, YOU KNOW, THE QUESTIONS THE JUDGE ASKED, YOU'LL BE WORN OUT. TIME I GET THROUGH TALKING, ANOTHER LAWYER IS GOING TO TALK. BUT IF YOU WILL JUST BEAR WITH ME, I WANT TO TRY TO GET TO SOME OF THE POINTS.

NOW ONE THING I'LL TELL YOU IS THE JUDGE, HE WILL ALWAYS TELL YOU THE LAW. YOU KNOW, PEOPLE DON'T HAVE TO BE TRAINED SPECIALLY TO BE JURORS. YOU KNOW, YOU COME IN, YOU WORRY THAT YOU'RE NOT ANSWERING THE RIGHT THINGS AND DON'T KNOW, YOU KNOW, WHAT THE REQUIREMENTS ARE. HE WILL ALWAYS TELL YOU, IF YOU WERE CHOSEN TO BE ONE OF THE JURORS, HE WOULD TELL YOU, YOU KNOW, WHAT LAW TO APPLY AND THINGS OF THAT NATURE. SO, YOU DON'T HAVE TO WORRY THAT, YOU KNOW, THAT WAS ONE OF

THE CLASSES THAT YOU DIDN'T TAKE IN HIGH SCHOOL OR SOMETHING.

IN THE FIRST PHASE, AND AGAIN YOU UNDERSTAND THAT THIS IS A LITTLE DIFFERENT THAN A TRIAL YOU MIGHT SEE ON T.V. OR SOMETHING. THIS IS A TWO PART TRIAL. YOU KNOW, A NORMAL TRIAL, THEY TRY IT AND THEY DECIDE A VERDICT AND IF IT'S GUILTY, THEN THE JUDGE WOULD DO A SENTENCE. YOU KNOW, HE'D SAY THIS IS THE SENTENCE. AND THE JURY WOULD JUST SAY GUILTY OR NOT GUILTY.

IN THIS TRIAL IT'S TWO PART IN THAT THE JURY DETERMINES GUILTY OR NOT GUILTY. OF COURSE, IF THE MAN'S NOT GUILTY, THAT'S THE END OF IT.

IF HE SAYS GUILTY -- I MEAN IF THE JURY SAYS GUILTY, THEN YOU WOULD GO TO THE SECOND PHASE AND HEAR DIFFERENT OTHER EVIDENCE ON WHETHER THE PUNISHMENT SHOULD BE LIFE OR BE DEATH. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. OKAY. LET'S TALK ABOUT THE FIRST PHASE. OKAY, AND THAT'S MORE LIKE A REGULAR TRIAL. IN THE FIRST PHASE YOU UNDERSTAND THIS DEFENDANT, HE'S INNOCENT UNTIL PROVEN GUILTY. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND YOU UNDERSTAND THAT WE, THE STATE, HAVE TO PROVE IT. YOU KNOW WHAT I MEAN, HE DOESN'T HAVE TO PROVE ANYTHING, HE DOESN'T HAVE TO SAY ANYTHING. CONSTITUTIONAL RIGHTS PROVIDE HIM THAT HE DOESN'T HAVE TO PROVE ANYTHING TO US OR YOU OR ANYBODY. DO YOU UNDERSTAND THAT?

A. YES.

Q. AND THAT'S IN THE FIRST PHASE. OKAY, IF WE PROVE OUR CASE BEYOND A REASONABLE DOUBT AND THE JUDGE WILL EXPLAIN ALL OF THAT TO YOU, BUT IF WE PROVE OUR CASE AND HE WAS FOUND GUILTY BY THE TWELVE JURORS, THEN AND ONLY THEN WOULD WE GO TO THE SECOND PHASE. DO YOU UNDERSTAND THAT?

A. YES.

Q. OKAY. IN THE SECOND PHASE AND, OF COURSE, TODAY HE STANDS INNOCENT UNTIL PROVEN GUILTY BUT JUST SO WE CAN TALK ABOUT THE SECOND PHASE, I'M GOING TO SAY NOW IN ORDER TO GET TO THE SECOND PHASE, HE'S BEEN CONVICTED, AND HE'S BEEN CONVICTED OF KILLING BOTH OF HIS PARENTS. YOU KNOW, IF WE ARE NOW IN THAT PHASE.

A. UH HUH.

Q. OKAY. DO I UNDERSTAND THAT TERRY DUNLAP IS THE TYPE JUROR THAT ONCE YOU GET TO THAT PHASE, WOULD YOU HAVE ALREADY MADE UP YOUR MIND THAT HE

SHOULD GET LIFE OR DEATH?

A. NO.

Q. OKAY. BECAUSE YOU WOULDN'T KNOW -- I MEAN YOU'D KNOW THAT HE WAS CONVICTED.

A. UH HUH.

Q. BUT YOU WOULDN'T KNOW THE FACTS IN THE SECOND PHASE; IS THAT RIGHT?

A. UH HUH.

Q. SO YOU WOULD HAVE TO WAIT AND HEAR THEM?

A. YES.

Q. OKAY. LET ME TELL YOU, IN THE SECOND PHASE THE EVIDENCE YOU'LL HEAR, AND THE JUDGE EXPLAINED TO YOU A MINUTE AGO, WHAT THE STATE WOULD PUT FORWARD IS CALLED EVIDENCE IN AGGRAVATION.

FOR LACK OF A BETTER TERM, WHAT THAT IS IS EVIDENCE THAT WOULD MAKE THE CASE SEEM EVEN WORSE. YOU KNOW, OBVIOUSLY THERE ARE NO NORMAL AVERAGE MURDERS BUT, YOU KNOW, IT WOULD BE -- YOU KNOW, TWO PARENTS HAD BEEN KILLED BUT HERE'S MORE INFORMATION, HERE'S MORE THINGS THAT MAKE IT WORSE, THINGS THAT WE WOULD PUT FORTH TO THINK IT SHOULD MAKE IT A DEATH PENALTY.

NOW, THE DEFENSE COULD, BUT AGAIN WOULDN'T HAVE TO, BUT IF THEY WANTED TO THEY COULD PUT UP EVIDENCE CALLED EVIDENCE IN MITIGATION AND

THAT'S KIND OF OPPOSITE OF AGGRAVATION. MITIGATION IS TRYING TO SAY THIS IS REASONS IT OUGHT TO COME DOWN AND BE A LIFE SENTENCE. YOU KNOW, THIS IS REASONS, YOU KNOW, THIS IS BEHIND THE STORY OR SOMETHING, YOU KNOW, THIS IS WHY IT WOULD BE A LIFE SENTENCE.

NOW ARE YOU THE TYPE, WOULD YOU MAKE UP YOUR MIND AFTER JUST HEARING ONE OR WOULD YOU WANT TO HEAR ---

A. I'D WANT TO HEAR BOTH SIDES.

Q. OKAY. AND SO JUST BECAUSE YOU HEARD OUR SIDE, YOU WOULDN'T AUTOMATICALLY VOTE DEATH. JUST BECAUSE YOU HEARD THEIR SIDE, YOU WOULDN'T AUTOMATICALLY VOTE LIFE. YOU'D HAVE TO LISTEN TO EVERYTHING?

A. EVERYTHING.

Q. OKAY. NOW IN THE JURY ROOM, AND YOU SAID THAT YOU HAVE NOT BEEN ON A JURY, RIGHT?

A. NO.

Q. IN THE JURY ROOM, OF COURSE, THERE ARE TWELVE JURORS AND THE VERDICT OF LIFE OR DEATH, IN ORDER FOR A JURY TO RETURN THAT VERDICT, IT WOULD HAVE TO BE UNANIMOUS, MEANING ALL TWELVE. BUT, OF COURSE, WHEN YOU GET BACK TO THE JURY ROOM YOU HAVE THE EVIDENCE AND YOU START

DELIBERATING. YOU KNOW, YOU GIVE YOUR OPINION AND YOUR OPINION WOULD BE RESPECTED. AND THE OTHER JURORS WOULD GIVE THEIR OPINION.

ARE YOU THE TYPE JUROR, COULD YOU LISTEN TO OTHER PEOPLE'S OPINIONS?

A. YES.

Q. COULD YOU GIVE YOUR OPINION?

A. YES.

Q. OKAY. IF YOU THOUGHT YOUR OPINION WAS RIGHT, WOULD YOU STICK WITH IT AND NOT JUST JOIN THE OTHERS JUST BECAUSE THERE WERE ELEVEN OF THEM?

A. WELL, AFTER TALKING AND, YOU KNOW, GETTING WHAT EVERYBODY HAS TO SAY AND GOING BACK OVER WHAT'S BEEN SAID ALREADY AND THINKING ABOUT IT, I MAY CHANGE.

Q. BUT YOU WOULD CHANGE NOT JUST BECAUSE WELL ELEVEN SAY THIS, SO I'M GOING TO GO WITH THEM.

A. NO.

Q. YOU'D HAVE TO DO SOMETHING TO MAKE YOU COMFORTABLE?

A. YES.

Q. BUT, AGAIN, YOU'RE THE TYPE OF PERSON YOU'RE NOT GOING TO GO IN THERE AND FOLD UP YOUR ARMS AND SAY I'VE DECIDED, I'M NOT LISTENING, I WON'T HEAR WHAT YOU'VE GOT TO SAY?

A. NO.

Q. OKAY. AND SO WHEN YOU GET BACK THERE, AFTER HEARING IT, AGAIN, YOU DON'T KNOW YET BECAUSE YOU HAVEN'T HEARD THE EVIDENCE, RIGHT? BUT WHEN YOU GET BACK THERE, ACCORDING TO THE EVIDENCE, YOU COULD VOTE LIFE. ACCORDING TO WHAT YOU HEARD. YOU DON'T KNOW YET, BUT IF THE EVIDENCE WAS SUCH YOU FELT YOU COULD VOTE LIFE IF YOU THOUGHT THAT WAS RIGHT?

A. UH HUH.

Q. OKAY, IF THE JURY VOTES LIFE AND THERE ARE TWELVE JURORS AND SAY THEY GO AROUND THE ROOM AND EVERYBODY RAISES THEIR HAND AND YOU SAY ALL RIGHT, WE VOTE LIFE. THEN ONLY THE FOREPERSON, THE FOREMAN, YOU KNOW LIKE ON T.V., ONE PERSON KIND OF SPEAKS TO THE JUDGE FOR THE JURY, ONLY THE FOREMAN OR FORELADY WOULD ACTUALLY HAVE TO SIGN IT. AND THEY WOULD SAY, YOU KNOW, BECAUSE IT'S A SECRET DELIBERATION, THEY'D SAY, YOU KNOW, WE VOTED AND WE VOTE LIFE, AND THAT ONE PERSON WOULD SIGN IT.

OF COURSE THE JUDGE IS GOING TO DO WHATEVER YOU SAY. IF YOU SAY LIFE, HE'S GOING TO DO IT. IF YOU SAY DEATH, HE'S GOING TO DO IT.

LIKEWISE, YOU TOLD ME THAT YOU'RE THE TYPE OF

JUROR THAT AFTER HEARING THE EVIDENCE, JUST ACCORDING TO WHAT YOU HEARD, YOU MAY BE ABLE TO VOTE DEATH. IS THAT RIGHT?

A. YES, SIR.

Q. THE DIFFERENCE IN A DEATH PENALTY CASE IS THAT IF EVERYBODY VOTES FOR DEATH, OF COURSE IT HAS TO BE UNANIMOUS, BUT IF EVERYBODY VOTES FOR DEATH, EACH INDIVIDUAL JUROR HAS TO SIGN THEIR NAME AND SIGN THEIR NAME TO GIVE THE INDIVIDUAL DEATH.

IF YOU HAD HEARD THE FACTS AND TERRY DUNLAP THOUGHT THAT DEATH WAS THE RIGHT VERDICT -- YOU KNOW, LIKE YOU SAY, AFTER TALKING AND HEARING EVERYTHING, COULD YOU SIGN YOUR NAME TO THE DOCUMENT TERRY DUNLAP THAT GIVES THIS MAN DEATH?

A. IF I VOTED FOR IT, YES.

Q. THANK YOU, MS. DUNLAP.

A. YOU'RE WELCOME.

QUESTIONS BY MR. HANCOCK:

Q. MS. DUNALP, I'M BILL HANCOCK; I REPRESENT JIMMY ROBERTSON, THE DEFENDANT IN THIS CASE WHO IS SEATED RIGHT HERE. AND THIS IS CO-COUNSEL, MR. JIM BOYD.

I'M THE LAST ONE THAT'S GOING TO GET TO QUESTION YOU TODAY.

A. OKAY.

Q. NOW, YOU HAVE ANSWERED MANY QUESTIONS AND I'M JUST GOING TO ASK A FEW. YOU'VE BEEN TOLD THAT THERE IS NO RIGHT OR WRONG ANSWER. THAT WE'RE LISTENING AND WE'RE RESPECTING WHAT YOU SAY SO THAT WE CAN HOPEFULLY ARRIVE AT SOME PROPER DECISIONS IN THIS CASE, ALL OF US.

NOW, YOU HAVE INDICATED THAT YOU KNOW CERTAIN PEOPLE, DENNIS CHISOLM AND KERRY SPITZENBERGER; IS THAT CORRECT?

A. YES, SIR.

Q. AND HAVE YOU INDICATED THAT YOU'RE NOT REAL CLOSE FRIENDS WITH THEM, YOU'RE JUST ACQUAINTANCES?

A. NOT REALLY CLOSE FRIENDS, I JUST KNOW HER. SHE DOESN'T KNOW ME. I JUST KNOW HER BECAUSE SHE'S THE DIRECTOR OVER THE MEDICAL RECORDS DEPARTMENT. AND I JUST KNOW DENNIS BECAUSE HE GREW UP CLOSE TO MY MOTHER.

Q. AND SO YOU STATED THAT THEY WOULD HAVE NO AFFECT ON YOUR UNDERSTANDING AND RULING ON THIS CASE. IS THAT CORRECT, MY UNDERSTANDING OF THAT?

A. THAT'S CORRECT.

Q. AND I HAVE UNDERSTOOD THAT YOU IN THIS CASE COULD LISTEN TO ALL OF THE EVIDENCE AND ARRIVE

AT A PROPER DECISION THAT WOULD BE YOUR DECISION. IS THAT CORRECT?

A. CORRECT.

Q. NOW, YOU KNOW WE'RE STARTING WITH -- AND WE'RE JUST ASSUMING THAT JIMMY HAS BEEN CONVICTED OF KILLING HIS PARENTS, ONE OR BOTH; YOU UNDERSTAND THAT?

A. YES.

Q. AND JUST THE FACT THAT HE KILLED HIS PARENTS, WOULD THAT CAUSE YOU TO VOTE FOR THE DEATH PENALTY?

A. NO, NOT JUST THAT FACT ALONE.

Q. YOU HAVE TOLD THE SOLICITOR THAT YOU WOULD LISTEN TO THE AGGRAVATING CIRCUMSTANCES, AND YOU UNDERSTAND WHAT THOSE ARE?

A. YES.

Q. AND YOU WOULD UNDERSTAND AND LISTEN TO THE MITIGATING CIRCUMSTANCES IF WE WERE TO PUT ON MITIGATING CIRCUMSTANCES? AND YOU WOULD LISTEN TO ALL OF THOSE WITH AN OPEN MIND BEFORE YOU ARRIVED AT A DECISION?

A. YES.

Q. YOU UNDERSTAND THAT SHOULD WE GET TO THAT POINT THAT THERE WOULD BE ONLY TWO DECISIONS. ONE WOULD BE TO VOTE FOR THE DEATH PENALTY. TWO

WOULD BE TO VOTE FOR LIFE IN PRISON. THAT WOULD BE YOUR ONLY TWO CHOICES. AND YOU'VE INDICATED THAT YOU COULD AFTER LISTENING TO CIRCUMSTANCES, POSSIBLY IN AGGRAVATION AND MITIGATION, THAT YOU COULD VOTE FOR LIFE IMPRISONMENT. IS THAT CORRECT?

A. YES.

Q. AND HAVE I HEARD YOU CORRECTLY WHEN YOU SAID THAT YOU COULD HOLD THAT OPINION AGAINST ALL OTHERS. THAT IF ELEVEN PEOPLE ON A TWELVE PEOPLE JURY YOU WERE THE ONLY ONE THAT WANTED TO VOTE FOR LIFE, THEN YOU WOULDN'T CHANGE YOUR OPINION JUST TO BE WITH THE MAJORITY?

A. NO, NOT TO -- UH UH.

Q. SO, I UNDERSTOOD YOU CORRECTLY?

A. YES.

Q. I HAVE NO FURTHER QUESTIONS.

THE COURT: I'M GOING TO ASK YOU JUST TO STEP OUTSIDE. LET ME ASK YOU ONE THING. I NOTICED THAT YOU HAVE SOME YOUNG CHILDREN. IF YOU SERVE ON THIS JURY, IS SOMEBODY GOING TO BE ABLE TO TAKE CARE OF THOSE CHILDREN?

THE JUROR: WELL, BASICALLY MY HUSBAND AND GRANDMOTHER KEEPS THEM AT NIGHT ANYWAY, BUT LIKE I TAKE THEM TO SCHOOL AND PICK THEM UP.

THE COURT: COULD SOMEBODY DO THAT FOR YOU?

THE JUROR: YES.

THE COURT: OKAY. JUST STEP RIGHT OUTSIDE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. POPE: WE SUBMIT SHE'S QUALIFIED.

THE COURT: THE DEFENSE?

MR. HANCOCK: QUALIFIED, YOUR HONOR.

THE COURT: ALL RIGHT, I FIND THAT SHE IS QUALIFIED. BRING HER BACK IN.

(THE JUROR RETURN TO THE COURTROOM.)

THE COURT: MS. DUNLAP, WE'RE GOING TO HAVE YOU ON THE POOL FROM WHICH THE JURY IS DRAWN. THAT DOES NOT MEAN THAT YOU WILL AUTOMATICALLY BE ON THE JURY, BUT YOU WILL BE ON THE POOL THAT WILL BE DRAWN.

THE JUROR: OKAY.

THE COURT: DON'T BE DISCUSSING THE CASE WITH ANYONE. DON'T LET YOURSELF READ ABOUT IT IN THE PAPER OR BE EXPOSED TO ANY NEWS COVERAGE ABOUT THE CASE.

WHEN YOU CALL BACK -- CALL BACK TONIGHT AFTER 6:00 AND THEY WILL TELL YOU WHAT TIME TO REPORT. AND WHEN YOU REPORT, BRING THINGS YOU NEED TO STAY FOR A WEEK OR SO BECAUSE THAT'S ABOUT HOW LONG WE ANTICIPATE THIS CASE WILL TAKE.

SO, CALL BACK TONIGHT AFTER 6:00.

THE JUROR: OKAY. THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: ALL RIGHT, CHRISTOPHER JAMES.

CHRISTOPHER M. JAMES, JUROR NUMBER 131, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. I'LL REMIND YOU THAT I'M JOHN HAYES, THE JUDGE WHO IS ASSIGNED THIS CASE. AND YOU'RE UNDER OATH.

THERE'S A T.V. CAMERA IN HERE NOW THAT'S NOT OPERATING, BUT IF YOU ARE ON THE JURY PANEL YOU WILL SEE PERHAPS T.V. CAMERAS OR PHOTOGRAPHERS, BUT THEY CAN'T TAKE YOUR PICTURE OR REPORT ABOUT YOU. YOU ARE ON THE JURY AND THEY ARE PROHIBITED BY LAW FROM REPORTING ANY OF THAT.

YOU HANDED TO US AT AN EARLIER TIME A QUESTIONNAIRE. IS IT ACCURATE OR IS THERE ANYTHING ON THERE YOU NEED TO CHANGE?

A. EVERYTHING IS ACCURATE.

Q. ALL RIGHT. DID YOU HAVE A CHANCE TO REVIEW THAT LIST OF WITNESSES IN THE JURY ROOM?

A. YES, SIR.

Q. WAS THERE ANYBODY THEREON WHO YOU KNEW?

A. KEN FIELDS AND ANN HOWE.

Q. WOULD THE FACT THAT YOU KNOW THEM AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE

AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

A. NO, SIR.

Q. HAVE YOU BEFORE COMING TO THIS COURT THIS WEEK HEARD ANYTHING ABOUT THE CASE? READ ABOUT IT, FORMED AN OPINION ABOUT IT, TALKED ABOUT IT OR GOTTEN ANY INFORMATION ABOUT IT FROM ANY SOURCE WHATSOEVER?

A. I HEARD WHAT MY GRANDMA WAS TALKING ABOUT IT; IT WAS IN THE PAPER.

Q. WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT DURING THE TRIAL?

A. NO, SIR.

Q. COULD YOU SORT OF ERASE FROM YOUR MIND AND NOT FACTOR INTO YOUR CONSIDERATION ANYTHING YOU HEARD PRIOR TO COMING HERE AND BASE YOUR VERDICT SOLELY ON THE INFORMATION THAT YOU RECEIVED IN THE TRIAL? COULD YOU DO THAT?

A. YES, SIR.

Q. THE CASE WE'RE IN WOULD POSSIBLY BE IN TWO PARTS. ONE DEALING WITH WHETHER OR NOT MR. ROBERTSON IS GUILTY OF THE OFFENSE OF MURDER. IF HE'S FOUND NOT GUILTY, THAT WOULD BE THE END OF THE CASE.

IF HE'S FOUND BEYOND A REASONABLE DOUBT

UNANIMOUS BY A JURY TO BE GUILTY, THEN WE WOULD MOVE INTO A SECOND PHASE.

WE'RE GOING TO BE TALKING ABOUT THE SECOND PHASE BUT BECAUSE WE'RE TALKING ABOUT IT, THAT DOESN'T PRESUPPOSE THAT WE WILL REACH THERE. THE JURY MAY FIND HIM NOT GUILTY AND, OF COURSE, WE WOULD GO NO FURTHER. HE IS PRESUMED INNOCENT UNTIL HE IS FOUND GUILTY IF HE IS. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. DID YOU IN THE JURY ROOM HAVE AN OPPORTUNITY TO GO OVER THAT LIST OF JUROR TYPES?

A. UH ---

Q. THE THREE TYPES OF JURORS?

A. OH, YES, SIR.

Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

A. UH, WELL, JUST THE FIRST ONE, I RECKON.

Q. ALL RIGHT. THE FIRST TYPE JUROR IS SOMEONE WHO WHEN A PERSON HAS BEEN FOUND GUILTY OF MURDER AND YOU'RE CONSIDERING PUNISHMENT THAT YOU FEEL THAT YOU WOULD BE REQUIRED IN EVERY CASE TO IMPOSE THE DEATH PENALTY. THAT IS, ARE YOU TELLING ME THAT SIMPLY BECAUSE ONE HAS COMMITTED A MURDER THAT IT IS YOUR OPINION AND THAT YOU WOULD FIND THAT THE DEATH PENALTY IS THE

APPROPRIATE PUNISHMENT NO MATTER WHAT THE CIRCUMSTANCES ARE?

A. THAT'S THE WAY I FEEL. I MEAN IF SOMEBODY, YOU KNOW, HURTS SOMEBODY, YOU KNOW, REAL BAD, EVEN KILL THEM OR WHATEVER, YOU KNOW, IT OUGHT TO BE THE SAME THING DONE TO THEM.

Q. YOU BELIEVE THAT ONE WHO COMMITS MURDER SHOULD AUTOMATICALLY GET THE DEATH PENALTY?

A. YEAH, I MEAN IF THEY DONE IT.

Q. ALL RIGHT, LET ME LET YOU ANSWER QUESTIONS BY COUNSEL.

QUESTIONS BY MR. BOYD:

Q. GOOD AFTERNOON, MR. JAMES. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON WHO IS SEATED HERE. AND THAT'S MY CO-COUNSEL, BILL HANCOCK, AT THE END OF THE TABLE.

I WANTED TO JUST ASK YOU A FEW THINGS TO FOLLOW UP ON THE JUDGE'S QUESTIONS TO YOU. AND THERE'S NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. I KNOW YOU'RE NOT USED TO SITTING IN A WITNESS BOX ANSWERING QUESTIONS. YOU PROBABLY FEEL LIKE YOU'RE ON THE SPOT PROBABLY BUT THERE'S NO RIGHT OR WRONG ANSWERS. WE JUST NEED TO KNOW HOW YOU TRULY FEEL.

IN ANSWER TO THE JUDGE'S QUESTION YOU SAID THAT

YOU BELIEVE BASICALLY THAT IF SOMEONE IS GUILTY OF MURDER, KILLS SOMEBODY, THE SAME THING SHOULD HAPPEN TO THEM. IS THAT CORRECT?

A. RIGHT.

Q. AND IS THAT A PRETTY FIRM BELIEF ON YOUR PART?

A. THAT'S HOW I'VE ALWAYS BEEN, YOU KNOW.

Q. AND IN A PARTICULAR CASE, A CASE OF NOT JUST MURDER BUT A MURDER WITH AGGRAVATING CIRCUMSTANCES; THAT IS, WORSE THAN AN ORDINARY MURDER, YOU WOULD BE EVEN MORE INCLINED TO GIVE THE DEATH PENALTY UNDER THOSE CIRCUMSTANCES. WOULD THAT BE A FAIR STATEMENT?

A. YEAH. I MEAN I REALLY DIDN'T UNDERSTAND WHAT YOU WERE SAYING.

Q. OKAY. LET ME EXPLAIN THIS TO YOU. THERE ARE TWO PHASES TO A TRIAL OF THIS NATURE.

A. OKAY.

Q. IN ONE PHASE THE JURY DETERMINES WHETHER JIMMY ROBERTSON IS GUILTY OR NOT GUILTY.

A. RIGHT.

Q. ONCE HE IS DETERMINED TO BE GUILTY, IT GOES INTO A SECOND PHASE OF THE TRIAL IN WHICH THE JURY IS ASKED TO GIVE A SENTENCE OF EITHER LIFE IMPRISONMENT OR DEATH.

A. YEAH, I UNDERSTAND.

Q. AND IN THAT SECOND PHASE OF THE TRIAL THE STATE, THE PROSECUTORS, COULD PRESENT EVIDENCE WHAT'S CALLED IN AGGRAVATION. THAT IS, THINGS THAT MAKE THE MURDER EVEN WORSE. DO YOU UNDERSTAND?

A. YES, SIR.

Q. THE DEFENDANT COULD PRESENT EVIDENCE OF MITIGATION. THAT IS THINGS THAT WOULD SORT OF LESSEN THE DEFENDANT'S MORAL CULPABILITY. DO YOU SEE WHAT I'M SAYING?

A. UH HUH.

Q. MY UNDERSTANDING IS BASICALLY IN SUCH A CASE YOU WOULD BE NOT INCLINED TO CONSIDER EVIDENCE IN MITIGATION ONCE IT'S BEEN PROVEN THAT HE HAD COMMITTED THE MURDERS. THAT IS, I'M NOT TALKING ABOUT SELF-DEFENSE OR ACCIDENT OR ANYTHING. BUT ONCE HE IS CONVICTED OF MURDER; THAT IS, HE HAS DELIBERATELY KILLED, IN THIS CASE TWO PEOPLE, HIS PARENTS, THAT YOU WOULD FAVOR THE DEATH PENALTY IN THAT CASE.

A. YES, SIR.

Q. AND YOU WOULDN'T BE INCLINED TO CONSIDER MUCH OF ANYTHING ELSE ONCE THAT'S BEEN PROVEN?

A. RIGHT.

Q. OKAY. AND IS THAT OPINION OF YOUR'S PRETTY FIRM?

A. YEAH, I MEAN IT'S FIRM, YOU KNOW, IF SOMEBODY DONE IT, YOU KNOW, THAT'S WHAT I WOULD CHOOSE.

Q. ALL RIGHT. ONCE SOMEBODY HAS BEEN CONVICTED OF MURDER, EVEN IF THERE WAS SOME OTHER CIRCUMSTANCES, YOU WOULD START FROM THE ASSUMPTION THAT THEY SHOULD GET THE DEATH PENALTY; IS THAT CORRECT?

A. IF THEY DID IT.

Q. THAT'S WHAT I MEAN, ONCE IT'S PROVEN THAT THEY DID IT.

A. RIGHT.

Q. ONCE IT'S PROVEN THEY DID IT, YOU START FROM THAT ASSUMPTION; IS THAT CORRECT?

A. RIGHT.

Q. AND EVEN IF YOUR MIND COULD BE CHANGED WHICH YOU HAVE INDICATED IT COULDN'T, BUT IF IT COULD BE CHANGED IT WOULD TAKE PRETTY STRONG EVIDENCE ---

A. RIGHT.

Q. --- TO CHANGE YOUR MIND ABOUT THAT. IS THAT CORRECT?

A. RIGHT. IF THEY DID, YOU KNOW, THEY DID. OR IF THEY DIDN'T, THEY DIDN'T, YOU KNOW.

Q. ALL RIGHT, I UNDERSTAND. ONCE THEY DID IT, THEY DESERVE THE DEATH PENALTY?

A. RIGHT.

Q. I UNDERSTAND. NOW, I JUST WANT TO ASK YOU A FEW OTHER QUESTIONS. IF YOU ARE SELECTED ON THE JURY, YOU KNOW DIFFERENT JURORS HAVE DIFFERENT OPINIONS; YOU UNDERSTAND THAT?

A. RIGHT.

Q. AND YOU'RE ENTITLED TO HAVE YOUR OPINION RESPECTED BY THE OTHER JURORS. YOU UNDERSTAND THAT?

A. RIGHT.

Q. AND LIKEWISE, YOU HAVE TO RESPECT THE OPINION OF OTHER JURORS WHO HAVE A DIFFERENT OPINION THAN YOUR'S. DO YOU UNDERSTAND THAT?

A. UH HUH.

Q. THANK YOU. I APPRECIATE YOUR HONESTY.

QUESTIONS BY MR. POPE:

Q. MR. JAMES, MY NAME IS TOMMY POPE; I'M THE SOLICITOR HERE. THIS IS KEVIN BRACKETT, MY DEPUTY SOLICITOR. I'VE JUST GOT A FEW QUESTIONS TO FOLLOW UP WITH YOU.

DO YOU UNDERSTAND THIS IS A LITTLE BIT DIFFERENT THAN A REGULAR TRIAL. THE FIRST STAGE IS JUST ABOUT GUILT AND THEN THE SECOND STAGE GETS INTO PENALTY. DO YOU UNDERSTAND THAT?

A. YES.

Q. OKAY. AND YOU UNDERSTAND IN THE FIRST STAGE

THAT THIS DEFENDANT IS INNOCENT UNTIL PROVEN GUILTY?

A. RIGHT.

Q. OKAY. AND YOU UNDERSTAND THAT WE'VE GOT TO PROVE THE CASE. THEY DON'T HAVE TO PROVE ANYTHING; WE'VE GOT TO PROVE IT. YOU UNDERSTAND THAT?

A. UH HUH.

Q. COULD YOU BE A FAIR JUROR IN THAT STAGE OF THE TRIAL, BECAUSE YOU DON'T KNOW ABOUT THE CASE YET, YOU SAID.

A. RIGHT.

Q. SO, I MEAN YOU COULD BE FAIR AND IF WE PROVED THE CASE, YOU COULD SAY GUILTY; AND IF WE DIDN'T PROVE THE CASE, YOU COULD SAY NOT GUILTY?

A. YES, SIR.

Q. OKAY. NOW, WHEN WE GET TO THE SECOND STAGE OF THE TRIAL, OF COURSE THEN THE TWO CHOICES -- AND LIKE YOU SAY, HE WOULD HAVE THEN BEEN FOUND GUILTY.

A. UH HUH.

Q. AND HE WOULD HAVE BEEN FOUND GUILTY IN THIS CASE OF KILLING HIS PARENTS. I JUST WANT TO MAKE SURE I UNDERSTAND. IN THAT SITUATION THERE IS A SECOND PHASE IN WHICH WE PUT UP WHAT'S CALLED

AGGRAVATION. WE PUT THE BAD STUFF, THE THINGS -- - OF COURSE, YOU KNOW, YOU'VE ALREADY HEARD, YOU KNOW, THERE WERE TWO MURDERS.

A. YEAH.

Q. BUT THINGS THAT WOULD MAKE IT WORSE, THINGS THAT OUGHT TO MAKE IT A DEATH PENALTY.

AND THEY WOULD PUT UP, THEY DON'T HAVE TO, THEY WOULD PUT UP WHAT'S CALLED MITIGATION, THINGS THAT MAY EXPLAIN, YOU KNOW, THIS IS WHY IT HAPPENED, YOU KNOW, WHATEVER THEY WOULD CHOOSE TO EXPLAIN.

DO I UNDERSTAND THAT YOU'RE THE TYPE JUROR THAT ONCE THE VERDICT HAD BEEN HAD, YOU'RE FOLDING UP YOUR ARMS AND YOU'RE JUST AUTOMATICALLY SAYING DEATH PENALTY, YOU'RE NOT EVEN GOING TO LISTEN TO WHAT ELSE IS BEING SAID. IS THAT RIGHT?

A. WELL, THE WAY I FEEL IS IF YOU'VE DONE SOMETHING LIKE THAT TO SOME, YOU KNOW, TO A HUMAN, THE SAME THING OUGHT TO HAPPEN TO YOU.

Q. RIGHT. AND, AGAIN, I WANT TO MAKE IT CLEAR ---

A. NO MATTER WHAT, YOU KNOW.

Q. RIGHT. AND LET ME TELL YOU, THIS IS YOUR ANSWER. WHATEVER YOU FEEL, THAT'S EXACTLY WHAT I'M WANTING TO FIND OUT.

SO, WHAT YOU'RE TELLING ME IS THAT IF SOMEBODY

KILLED SOMEBODY AND THEY'RE CONVICTED, YOU COULD BE A JUROR ON THAT PART.

A. RIGHT.

Q. BUT ONCE THEY ARE CONVICTED YOU REALLY, BASED ON YOUR VIEWS, YOU CAN'T GIVE THEM A FAIR HEARING IN THE SECOND PHASE BECAUSE YOU'VE ALREADY DECIDED WHAT THEIR PUNISHMENT OUGHT TO BE, IS THAT RIGHT?

A. RIGHT, YOU KNOW, YEAH.

Q. I MEAN IF THAT'S YOUR VIEW.

A. YEAH, MY VIEW IS IF SOMEBODY HAS MURDERED SOMEBODY AND IT'S A KNOWN FACT, THE SAME THING OUGHT TO HAPPEN TO THEM.

Q. KIND OF AN EYE FOR AN EYE KIND OF THING.

A. RIGHT, AN EYE FOR AN EYE, LIKE THAT.

Q. OKAY.

A. NO MATTER WHAT, I MEAN IF THEY WERE DRUNK OR WHATEVER.

Q. IT DOESN'T MATTER?

A. IT DOESN'T MATTER.

Q. OKAY AND THERE'S NO SITUATION THAT'S GOING TO CHANGE -- AND, AGAIN, I'M NOT TRYING TO CHANGE YOU, I'M JUST TRYING TO UNDERSTAND.

A. YEAH, THAT'S IT.

Q. THAT'S YOUR VIEW, THAT ONCE THEY ARE CONVICTED,

THAT THAT'S IT?

A. UH HUH.

Q. OKAY, I APPRECIATE IT. THANK YOU.

THE COURT: MR. JAMES, JUST STEP OUTSIDE FOR JUST ONE MINUTE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE DEFENSE?

MR. BOYD: NOT QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAYS THE STATE?

MR. POPE: I DON'T BELIEVE HE'S QUALIFIED, YOUR HONOR.

THE COURT: I FIND HE'S NOT QUALIFIED. BRING HIM BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. JAMES, WE'RE GOING TO EXCUSE YOU FROM ANY FURTHER SERVICE. WE APPRECIATE YOUR TIME AND YOUR CANDOR. YOU CAN FEEL FREE TO LEAVE. THANK YOU A LOT.

(THE JUROR LEFT THE COURTROOM.

THE COURT: NELL SMART.

NELL Q. SMART, JUROR NUMBER 244, WHITE FEMALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. MS. SMART, I KNOW YOU WEAR A HEARING AID AND YOU'VE INDICATED IN YOUR QUESTIONNAIRE THAT YOU DO HAVE TROUBLE HEARING.

A. I DO.
Q. WOULD YOU CALL IT SUBSTANTIAL?
A. IT'S REALLY BAD. I CAN HEAR SOUNDS, BUT -- I HEAR THE END OF A WORD, BUT IF IT SOUNDS LIKE SOMETHING ELSE, I PUT THE FIRST -- YOU KNOW, LIKE MOON AND KOON, I'M LIABLE TO THINK LIKE THAT. I JUST DON'T HEAR WELL AT ALL.
Q. DO YOU THINK YOU WOULD BE ABLE TO HEAR WITNESSES AND ATTORNEYS AND UNDERSTAND WHAT ---
A. I DON'T THINK SO; I REALLY DON'T THINK SO.
Q. IF YOU ARE LISTENING TO TELEVISION, ARE YOU ABLE TO HEAR AND UNDERSTAND EVERYTHING THAT'S SAID ON T.V.?
A. NO, NOT EVEN IF I TURN THE VOLUME UP REAL LOUD, I STILL DON'T UNDERSTAND ALL THE WORDS. I CAN HEAR THE NOISE, BUT I DON'T UNDERSTAND THE WORDS.
Q. I NOTICE YOU WEAR A HEAR AID IN BOTH EARS?
A. YES, SIR.
Q. HOW LONG HAVE YOU WORN THEM?
A. SINCE I WAS ABOUT 25.
Q. SO, THAT'S BEEN ABOUT TWO YEARS, HUH?
A. OH, YEAH.
Q. ALL RIGHT, LET ME LET YOU STEP OUT JUST A MINUTE.

(THE JUROR LEFT THE COURTROOM)

THE COURT: WE CAN GO FURTHER. SHE ADDED AN ADDITION TO HER SHEET INDICATING JUST WHAT SHE'S TOLD ME. I DON'T HAVE A DOCTOR'S EXCUSE, BUT SHE DOES HAVE TWO HEARING AIDS AND TO ME SHE IS A BELIEVABLE INDIVIDUAL.

DOES THE STATE HAVE ANY COMMENT ON WHETHER SHE SHOULD BE EXCUSED OR NOT?

MR. BRACKETT: THE STATE WOULD HAVE NO OBJECTION TO EXCUSING HER.

MR. HANCOCK: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. HAVE HER COME BACK IN.

MR. BRACKETT: NOR DO WE WISH TO QUESTION HER.

THE COURT: DO YOU WISH TO QUESTION HER?

MR. HANCOCK: NOR DO WE WISH TO, YOUR HONOR.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: BECAUSE OF YOUR HEARING, WE ARE GOING TO EXCUSE YOU FROM SERVING. WE APPRECIATE YOU COMING AND GIVING US YOUR TIME AND YOUR CANDOR, BUT WE ARE GOING TO NOT INCLUDE YOU ON THE PANEL. SO YOU CAN FEEL FREE TO LEAVE AND WE THANK YOU FOR YOUR TIME.

THE JUROR: THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: IT'S 1:00 O'CLOCK AND WE'VE GOT THE NEXT PANEL COMING IN AT 2:30 I BELIEVE. WHAT I WOULD LIKE TO DO IS BREAK FOR LUNCH AND THEN RECONVENE AROUND 2:00.

THAT WILL GIVE US A HALF AN HOUR FOR ME TO DEAL WITH THE CHAIN OF CUSTODY MOTION THAT'S OUTSTANDING, LOOK AT SCHEDULING.

I BELIEVE -- WELL, I KNOW THAT WE ARE GOING TO GET THE JURY TODAY IF WE HAVE TO STAY HERE UNTIL MIDNIGHT, BUT WE'LL GET THE JURY AND FIVE MORE WOULD BE MINIMALLY ENOUGH. I WOULD LIKE TO GET A COUPLE OF MORE AND I'LL TELL YOU THAT'S PARTLY BECAUSE OF QUESTIONS THAT I AM GOING TO ASK ABOUT WHAT OCCURRED ON MONDAY AS FAR AS DISCUSSIONS IN THE JURY ROOM. IF I HAVE TO LET SOMEBODY -- I DON'T WANT TO HAVE 35 HERE AND END UP FOR SOME REASON LETTING ONE OR TWO GO. I DON'T KNOW THAT THAT WILL HAPPEN, BUT I WOULD FEEL SAFER IF WE GET A COUPLE MORE AND I THINK THAT WILL BE ENOUGH.

SO, LET'S COME BACK AT -- WE'LL SAY 2:15 AND THEN WE CAN DISPOSE OF THE MOTION. IS THERE ANYTHING ELSE WE CAN BE DOING?

MR. POPE: YOUR HONOR, JUST FOR A KIND OF GENERAL UNDERSTANDING, I KNOW WE'RE GOING TO TALK ABOUT IT AT 2:15, BUT WE WERE GOING TO TRY TO CALL SOME WITNESSES DURING THE BREAK.

ARE WE THINKING WE WILL GET THE POOL COMPLETED TODAY, BRING THEM IN IN THE MORNING AND DRAW THEM AND BEGIN THE CASE?

THE COURT: I'D LIKE TO GET THEM HERE BY 9:30 OR

10:00 AND I HAVEN'T DECIDED WHICH. I'M GOING TO GIVE THEM A LITTLE MORE TIME IN THE MORNING THAN 9:00 BECAUSE THEY DO NEED TO BRING THEIR CLOTHING AND STUFF. I'LL PROBABLY SAY 9:30 AND I FIGURE IT WILL TAKE ABOUT AN HOUR TO DRAW THE JURY. SO, I GUESS THAT WE WILL BE DOING -- IT MIGHT NOT EVEN TAKE AN HOUR.

MR. POPE: REALISTICALLY, AS FAR AS WITNESSES, WE COULD START WITNESSES PROBABLY AFTER THE LUNCH BREAK?

THE COURT: I HOPE WE CAN START ONE OR TWO BEFORE LUNCH BUT IT MIGHT BE -- WE'LL HAVE OPENING STATEMENTS AND I WILL HAVE MAYBE A LITTLE BIT LONGER THAN USUAL OPENING STATEMENT OF MY OWN. AND I WOULD LIKE TO HAVE ONE OR TWO WITNESSES, PERHAPS SHORT ONES IF WE COULD BEFORE LUNCH.

MR. POPE: WE'LL HAVE THEM READY.

THE COURT: ALL RIGHT. WE WILL BE AT EASE UNTIL 2:15.

AFTER THE LUNCHEON RECESS:

THE COURT: I APOLOGIZE FOR BEING A COUPLE OF MINUTES LATE BUT I HAD A TELEPHONE CALL JUST AS I WAS GETTING READY TO COME IN.

THE PANEL WILL BE HERE AT 2:30. I EARLIER HANDED A COPY OF A LIST OF THINGS THAT I WAS GOING TO HAVE THE CLERK TELL THE JURORS TO NOT BRING WITH THEM. THEY WOULD INCLUDE RADIOS, TAPE PLAYERS, CERTAIN TYPES OF READING MATERIALS. COMPUTERS CAN BE BROUGHT BUT KEPT WITH SLED AND

USED IN THE COMMON ROOM. AND I'M GOING TO ADD TO THAT NO GAMES OF VIOLENCE. ALCOHOLIC BEVERAGES, ILLEGAL DRUGS, WEAPONS, CELL PHONES AND BEEPERS.

CAN THE STATE THINK OF ANYTHING ELSE THAT SHOULD BE ON THERE?

MR. POPE: I DID NOTE YOU SAID COMPUTERS, I ASSUME TO USE FOR WORK, BUT WHATEVER REASON ---

THE COURT: WE'VE HAD ONE REQUEST ALREADY. WE DON'T KNOW IF THAT PERSON WILL BE ON THE JURY BECAUSE WE HAVEN'T DRAWN IT, BUT I HAVE ALREADY HEARD THROUGH THE BAILIFFS, I GUESS, OR SOMEBODY SAID THAT ONE PERSON HAD INQUIRED AS TO WHETHER THEY COULD BRING A COMPUTER TO DO SOME WORK. I DON'T SEE WHY THEY COULDN'T IF THEY DO IT IN THE COMMON AREA.

MR. POPE: THE ONLY CONCERN IS THE OPPORTUNITY TO RUN ACROSS THE MEDIA, BUT OTHER THAN THAT THE STATE WOULD HAVE NO OBJECTION.

THE COURT: WELL, I'LL TELL SLED NOT TO LET THEM USE INTERNET. ANYTHING FROM THE DEFENSE?

MR. HANCOCK: NOTHING, YOUR HONOR.

THE COURT: OKAY. AND MS. ZAPATA, IF Y'ALL REMEMBER, DOES HER HUSBAND'S PAYROLL AND THOSE SORT OF THINGS. IF SHE IS CHOSEN, I'M PROPOSING AND Y'ALL CAN TALK ABOUT IT AND LET ME KNOW LATER, WE DON'T HAVE TO MAKE A DECISION, THAT SHE BE ALLOWED TO HAVE SOMEBODY FROM HER

BUSINESS BRING HER THAT MATERIAL, EXCHANGE IT IN THE PRESENCE OF SLED AND LET HER DO THAT PAYROLL OR WHATEVER, BILLING, IN THE COMMON AREA OR MAYBE EVEN IN HER ROOM, BUT AT ANY RATE LET IT BE BROUGHT WITH SLED BEING INVOLVED.

MR. POPE: THE STATE HAS NO OBJECTION TO THAT, YOUR HONOR.

MR. HANCOCK: WE HAVE NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. POPE: YOUR HONOR, THE ONLY OTHER ISSUE OF THAT NATURE THAT MAY COME UP IS MS. GWINN IS GOING TO BE IN THE 3:00 O'CLOCK PANEL WHOSE HUSBAND HAS ALREADY BEEN QUALIFIED. WE REALLY HAVEN'T DISCUSSED THAT. IT MAY BE A NON-ISSUE, BUT JUST FOR THE COURT TO START THINKING ABOUT IT.

THE COURT: WELL, THAT DOES PRESENT A DILEMMA BECAUSE IF SHE'S QUALIFIED, SHE'S QUALIFIED, BUT I DON'T THINK I CAN TAKE TWO PEOPLE AWAY FROM THEIR FAMILY. BUT I CAN'T DECIDE FOR Y'ALL WHICH ONE OUGHT TO BE ON THE PANEL. SO, I THINK IF SHE'S QUALIFIED, SHE'LL BE QUALIFIED AND THIS MAY BE ANOTHER REASON TO GET A COUPLE OF EXTRA ONES. BUT IF ONE OF THEM IS SEATED, I WILL PROBABLY AT THAT TIME EXCUSE THE OTHER.

ANY PROBLEM WITH THAT FROM THE STATE?

MR. POPE: NO, SIR, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. HANCOCK: NO, SIR.

THE COURT: NOW, ONCE AGAIN TELL ME EXACTLY, FOR ABOUT THE FIFTH TIME BECAUSE I KEEP FORGETTING TO WRITE IT DOWN, THE ITEMS THAT ARE THE SUBJECT OF THE MOTION REGARDING THE CHAIN OF EVIDENCE.

MR. POPE: YOUR HONOR, I APOLOGIZE. I WOULD EVEN HAVE STATE'S EXHIBIT NUMBERS FOR YOU, BUT I DON'T HAVE THAT FILE WITH ME. THE ITEMS WOULD BE -- I'LL BE HONEST WITH YOU, I'LL HAVE DIFFICULTY QUOTING IT WITHOUT MY LIST. THE ITEMS WOULD BE THE TO DO LIST THAT WAS RECOVERED IN THE CAR, IT WAS WRITTEN ON THE BACK OF THE MANUAL FROM THE CLASS. WE'VE HAD A HANDWRITING ISSUE INVOLVED IN THAT. A RECEIPT FROM THE CAR THAT IS A DUPLICATE RECEIPT TO THE LADYSMITH RECEIPT THAT WAS RECOVERED AND THE HANDWRITING HAS BEEN MATCHED ON THAT. AND THE THIRD WOULD BE SOME CHECKS, IT'S EITHER CHECKS OR I THINK IT'S ACTUALLY CHECK DUPLICATES, THE CARBON COPIES OF CHECKS THAT CAME OUT OF THE MOTHER'S CHECKBOOK THAT WAS RECOVERED IN THE CAR. THOSE WOULD BE THE THREE ITEMS.

THE COURT: ALL THREE WERE RECOVERED IN THE CAR?

MR. POPE: BY AN AGENT OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION AT ---

THE COURT: HOW WAS THE CAR IDENTIFIED?

MR. POPE: HOW WAS THE CAR IDENTIFIED? BY TAG NUMBER AND DESCRIPTION. IS THAT WHAT YOU'RE SAYING?

THE COURT: YES.

MR. POPE: BY THE TAG NUMBER AND DESCRIPTION -- IN THE AFFIDAVIT FOR THE SEARCH WARRANT YOU'RE TALKING ABOUT?

THE COURT: NO, NO, NO, I MEAN ---

MR. POPE: HOW DID WE KNOW HIS CAR FROM ANY OTHER CAR?

THE COURT: YES.

MR. POPE: IT WAS THE CAR THAT WAS RECOVERED THAT THE DEFENDANT WAS IN THAT MATCHED THE TAG THAT WAS KNOWN FROM HERE, YOU KNOW, THE TAG THEY WERE LOOKING FOR.

THE COURT: WILL THE TESTIMONY BE THAT THE DEFENDANT WAS ACTUALLY IN THE CAR AT THE TIME IT WAS ---

MR. POPE: YES, SIR.

THE COURT: ALL RIGHT, LET ME HEAR WHAT THE POSITION IS FROM THE DEFENSE.

MR. HANCOCK: YOUR HONOR, IT IS GOING TO BE UP TO THE COURT. I DON'T THINK WE'RE IN A POSITION TO STIPULATE TO THE CHAIN OF CUSTODY, ESPECIALLY UNDER THESE CIRCUMSTANCES WHERE THIS EVIDENCE COULD BE VERY, VERY DAMAGING. SO, WE CAN'T STIPULATE TO IT.

THE COURT: WELL, I AM GOING TO ALLOW IT IN IF THE STATE CAN LAY THE PREDICATE SET FORTH IN STATE VERSUS GLENN HEADNOTE 1. THEY ALLOWED THE ADMISSION ON THE BASIS OF THE TESTIMONY THAT THE ITEM IS THE ONE IN QUESTION AND

IS IN A SUBSTANTIALLY UNCHANGED CONDITION. SO, IF YOU CAN MEET THAT REQUIREMENT, MY FINDING IS THAT THAT WOULD SATISFY THE NECESSARY -- REQUIREMENTS NECESSARY FOR IT TO BE ADMITTED INTO EVIDENCE AND THAT THESE ARE THE TYPE ITEMS THAT WOULD NOT REQUIRE -- THEY ARE NOT FUNGIBLE AND ARE NOT THE TYPE THAT WOULD REQUIRE A COMPLETE CHAIN OF CUSTODY. ALL YOU WOULD NEED TO DO WOULD BE TO SATISFY THE COURT WITH THE CRITERIA SET FORTH IN GLENN.

ALL RIGHT, LET'S SEE, JOSEPH COOK, NUMBER 59.

MR. POPE: YOUR HONOR, WE HAD THE ISSUE OF THE CO-DEFENDANT AND SCHEDULING THAT AS FAR AS TOMORROW. THE CO-DEFENDANT WILL BE ENTERING A PLEA PRIOR TO THE TRIAL AND WILL BE SENTENCED AFTER THE TRIAL AND I'M JUST TRYING TO DETERMINE FOR SCHEDULING PURPOSES HOW THE COURT WANTS TO DEAL WITH THAT.

THE COURT: 9:00 O'CLOCK AND WE'LL HAVE THE JURY REPORT EITHER AT 9:30 OR 10:00, PROBABLY 9:30. LET'S GO AHEAD AND SAY WE WILL HAVE THAT AT 9:00. THAT WON'T TAKE OVER A HALF AN HOUR WILL IT?

MR. BRACKETT: I DON'T KNOW HOW MUCH MITIGATION MR. DEST IS PLANNING, BUT HE IS REPRESENTING THE CO-DEFENDANT.

MR. DEST: YOUR HONOR, AT THAT TIME WE DON'T PLAN TO INTRODUCE ANY MITIGATION, I THINK IT'S JUST FOR THE QUALIFICATION OF THE PLEA ITSELF.

THE COURT: NO SENTENCING?

MR. BRACKETT: THAT'S CORRECT. I'M SORRY, I FORGOT; THERE WILL BE NO MITIGATION AT THAT TIME.

THE COURT: OKAY, 9:00 O'CLOCK FOR THE MOON PLEA AND 9:30 WE'LL HAVE THE JURY.

ALL RIGHT, JOSEPH COOK.

THE BAILIFF: HE NEEDS A COUPLE OF MINUTES, SIR; HE'S LOOKING OVER THE LISTS.

THE COURT: ALL RIGHT, THAT'S FINE.

MR. HANCOCK: YOUR HONOR, SINCE WE HAVE A COUPLE OF MINUTES?

THE COURT: YES, SIR.

MR. HANCOCK: THERE ARE JUST SOME HOUSEKEEPING THINGS. HOW ARE WE GOING TO WORK THE OPENING AND CLOSING ARGUMENTS IN EACH PHASE, ARE WE GOING TO DIVIDE IT UP, WHAT ARE WE GOING TO BE ABLE TO DO?

THE COURT: WELL, LET'S DON'T TALK ABOUT CLOSING ARGUMENTS YET. I THINK THAT THE DEFENSE HAS THE RIGHT TO CLOSING ARGUMENTS, I'LL HAVE TO LOOK BACK AT THE STATUTE, BUT I THINK THE DEFENSE HAS THE RIGHT, THE DEFENSE AND THE DEFENDANT.

AND AS FAR AS OPENING STATEMENTS, I WOULD THINK WE WOULD DO JUST GENERAL OPENING STATEMENTS WITH THE STATE AND THEN THE DEFENSE UNLESS SOMEBODY TELLS ME THERE IS SOME OTHER PROCEDURE THAT'S CORRECT.

MR. HANCOCK: WELL, ARE WE GOING TO HAVE AN OPENING STATEMENT PRIOR TO THE GUILT PHASE AND THEN OPENING STATEMENTS PRIOR TO THE PENALTY PHASE?

THE COURT: YES, I PLAN TO ALLOW, UNLESS YOU HAVE SOME OBJECTION TO THAT ---

MR. HANCOCK: NO, SIR.

THE COURT: I WAS THINKING AT THE PENALTY PHASE, IF WE GET TO THE PENALTY PHASE, THAT I WOULD HAVE SOME OPENING REMARKS TO THE JURY. I WON'T GO BACK OVER EVERYTHING I ALREADY HAD GONE OVER, BUT EXPLAIN TO THEM A LITTLE BIT BECAUSE WE WILL BE DEALING WITH DIFFERENT MATTERS. AND ALLOW OPENING STATEMENTS.

MR. HANCOCK: AND THAT WOULD BE ONE EACH?

THE COURT: YES, SIR.

MR. POPE: THE STATE'S INTENTION, OF COURSE, IN OPENING WOULD BE ONE AND ONE. IN CLOSING THE STATE WOULD CLOSE AND THEN THE DEFENSE. OF COURSE, WE WOULD HAVE TO ADDRESS THE ISSUE PRIOR TO THAT OF THE DEFENDANT HAVING THE OPPORTUNITY, HE AND HIS ATTORNEYS TO CLOSE, EACH PHASE. SO, WE WILL HAVE TO DEAL WITH THAT.

THE COURT: ALL RIGHT. COME ON UP AND HAVE A SEAT, MR. COOK.

JOSEPH H. COOK, JR., JUROR NUMBER 59, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. MR. COOK, I WILL REMIND YOU THAT I'M JOHN HAYES AND I'M THE JUDGE WHO HAS BEEN ASSIGNED TO PRESIDE OVER THE TRIAL OF THIS PARTICULAR CASE. YOU'RE UNDER OATH, WE SWORE YOU IN ON MONDAY. I WILL TELL YOU IN ADVANCE THAT IF YOU END UP SITTING ON THE JURY, YOU MAY SEE CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM. THEY ARE BY LAW ALLOWED IN THE COURTROOM, BUT THEY ARE NOT ALLOWED TO FILM ANYTHING ABOUT JURORS OR DISCUSS ANYTHING ABOUT JURORS. SO, DON'T BE DISTRACTED BY THAT.

A. OKAY.

Q. YOU HANDED IN A QUESTIONNAIRE. DO YOU THINK THERE IS ANYTHING THAT NEEDS TO BE CHANGED ON THERE?

A. I DON'T THINK SO. IT'S BEEN A WHILE SINCE I FILLED IT OUT, BUT I THINK IT'S ACCURATE.

Q. ALL RIGHT. DID YOU HAVE A CHANCE TO GO OVER THAT LIST OF WITNESSES?

A. YES, I DID.

Q. ANYBODY ON THERE THAT YOU'RE RELATED TO BY BLOOD OR MARRIAGE OR ANYBODY ON THERE YOU KNOW?

A. YES, I THINK SO. MACK AND JULIE MCLAUGHLIN, I BELIEVE, ARE MY NEIGHBORS, IF IT'S THE SAME FOLKS.

Q. I'M SURE IT IS, AND THEY DO LIVE IN YOUR NEIGHBORHOOD. WOULD THE FACT THAT THEY ARE POSSIBLE WITNESSES, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

A. NO. THERE WAS ONE OTHER NAME ON THE LIST, JOHN ARANTS. IT'S A FAMILIAR NAME AND I'M NOT SURE WHETHER IT'S JUST A COINCIDENCE OR WHETHER IT'S SOMEBODY I ACTUALLY KNOW, POSSIBLY FROM WORK.

Q. WHAT DOES MR. ARANTS DO, IS HE A POLICE OFFICER?

MR. BRACKETT: PHARMACIST FROM C.V.S. PHARMACY.

A. THAT'S WHERE I RECOGNIZED THE NAME.

Q. ALL RIGHT, WOULD THE FACT THAT HE MAY BE A WITNESS, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

A. NO. THERE WAS ONE OTHER POSSIBILITY, THE NAME IS NOT GIVEN, BUT THE WESTMINSTER CATAWBA SCHOOL KEEPER OF RECORDS, MY SON ATTENDED THERE SEVERAL YEARS AGO; HE'S NOT CURRENTLY A STUDENT, AND I PROBABLY DON'T KNOW THIS PERSON BUT IT'S A POSSIBILITY.

Q. WELL, IF IT IS SOMEBODY THAT YOU KNOW, HERE AGAIN, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT?

A. NO.

Q. PRIOR TO YOUR ARRIVING MONDAY -- WELL, PRIOR TO NOW, HAVE YOU HEARD ANYTHING ABOUT THIS CASE OTHER THAN WHAT WAS ANNOUNCED MONDAY? HAVE YOU FORMED AN OPINION, EXPRESSED AN OPINION OR KNOW ANYTHING ABOUT THIS CASE FROM ANY SOURCE WHATSOEVER?

A. YES, SIR, THERE WAS AN ARTICLE IN THE SUNDAY PAPER, THE YORK OBSERVER HAD AN ARTICLE ABOUT THE CASE. AND I RECALL READING THAT ARTICLE WHEN THE INCIDENT HAPPENED. I COULDN'T PUT MUCH OF IT TOGETHER, BUT I DID READ IT.

Q. WOULD THE FACT THAT YOU HAD READ THAT, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL; THAT IS, COULD YOU IN SPITE OF THAT COME INTO COURT AND RENDER YOUR VERDICT SOLELY ON THE LAW AND THE EVIDENCE IN THE TRIAL?

A. I THINK SO.

Q. WELL, COULD YOU DISREGARD WHAT HAS BEEN REPORTED IN THE PAPER? COULD YOU DO THAT?

A. YES.

Q. AND BASE YOUR VERDICT ON THE EVIDENCE RECEIVED AT THE TRIAL?

A. YES.

Q. OKAY. NOW, THESE TYPE CASES PROCEED IN TWO

PHASES, ONE BEING A TRIAL JUST AS ANY OTHER TRIAL TO DETERMINE WHETHER AN INDIVIDUAL IS GUILTY OR NOT. AND IF MR. ROBERTSON WERE FOUND NOT GUILTY, THE CASE WOULD END.

IF HE WERE TO BE FOUND UNANIMOUSLY BEYOND A REASONABLE DOUBT GUILTY OF THE OFFENSE OF MURDER, THEN THE CASE WOULD MOVE INTO THE SECOND PART WHICH WOULD BE THE PENALTY PHASE.

HE IS PRESUMED INNOCENT AND THE FACT THAT WE ARE TALKING ABOUT THE POSSIBLE PENALTY PHASE IS NOT TO PRESUPPOSE THAT WE WOULD EVEN EVER GET THERE. HE WOULD HAVE TO BE FOUND GUILTY FIRST. BUT BECAUSE OF THE NATURE OF THESE PROCEEDINGS, WE HAVE TO GO AHEAD AND TALK ABOUT THAT PART NOW. DO YOU UNDERSTAND THAT?

A. YES.

Q. DID YOU HAVE A CHANCE TO REVIEW THE LIST OF TYPES OF JURORS?

A. I DID.

Q. ARE YOU ONE OF THOSE TYPES, AND IF SO, WHICH ONE?

A. I THINK THE THIRD JUROR CATEGORY WOULD MOST APPROPRIATELY DESCRIBE HOW I WOULD DO IT.

Q. ALL RIGHT. IN THERE I USED THE WORDS AGGRAVATION AND MITIGATION WHEN I REFERRED TO

CIRCUMSTANCES.

AGGRAVATING CIRCUMSTANCES ARE THOSE CIRCUMSTANCES THAT ATTEND THE COMMISSION OF A CRIME WHICH ADD TO ITS ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE, THAT IS THINGS THAT ARE NOT ESSENTIAL ELEMENTS OF THE CHARGE BUT SORT OF OVER AND ABOVE THAT.

MITIGATING CIRCUMSTANCES ARE THINGS THAT WHILE THEY DO NOT CONSTITUTE A JUSTIFICATION OR AN EXCUSE FOR THE OFFENSE ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

A. YES.

Q. SO, AS A TYPE THREE JUROR YOU ARE TELLING ME THAT WERE YOU TO BE SEATED ON THIS JURY AND IF THAT JURY RETURNED A VERDICT OF GUILTY OF MURDER, THAT WHEN YOU STARTED INTO THAT SECOND PHASE YOU WOULD NOT HAVE A PREDISPOSITION TOWARD PENALTY BUT WOULD RATHER MAKE UP YOUR MIND ON THAT EVIDENCE PRESENTED IN THE SECOND PART. ARE YOU TELLING ME THAT?

A. YES.

Q. ARE YOU TELLING ME THEN THAT YOU WOULD WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION

AND MITIGATION IN THAT SECOND PHASE AND HEAR AND LISTEN TO AND FOLLOW THE LAW AS I AS TRIAL JUDGE WOULD CHARGE YOU AND ONLY THEN MAKE A DECISION AS TO PENALTY, IS THAT WHAT YOU'RE TELLING ME?

A. THAT'S RIGHT.

Q. IF THE FACTS AT THAT STAGE OF THE TRIAL WARRANTED, COULD YOU RETURN A VERDICT IF YOU THOUGHT IT APPROPRIATE OF LIFE IMPRISONMENT?

A. I COULD.

Q. COULD YOU AT THAT POINT IF YOU THOUGHT THE FACTS PRESENTED WARRANTED IT RETURN A VERDICT IMPOSING THE PENALTY OF DEATH?

A. YES.

Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS MAY HAVE.

A. YOUR HONOR, I WONDER IF I MIGHT ASK YOU A QUESTION?

Q. CERTAINLY.

A. I'M A LITTLE BIT CONCERNED ABOUT IF I'M SELECTED FOR THIS JURY, WOULD I HAVE AN OPPORTUNITY IN THE EVENINGS AFTER COURT IS OVER TO STAY IN TOUCH WITH WORK BY CHECKING MESSAGES AND RETURNING CALLS AND SENDING AND RECEIVING ANY PAPERWORK THAT MIGHT HELP ME KEEP IN TOUCH?

Q. WELL, WE MIGHT BE ABLE TO WORK IT OUT. WHAT

SORT OF WORK DO YOU DO?

A. I'M AN ENGINEER WITH CLARIANT IN CHARLOTTE.

Q. I'LL DISCUSS THAT WITH THE ATTORNEYS. THERE WILL BE SOME TIME IN THE EVENINGS -- WE DO HAVE TO HAVE ANYTHING THAT'S BROUGHT IN MONITORED.

A. THAT WOULD BE FINE.

Q. THAT IS, SLED WOULD HAVE TO LOOK AT IT. AND TELEPHONE CALLS ARE GENERALLY RESTRICTED TO YOUR FAMILY, BUT WE MIGHT BE ABLE TO WORK SOMETHING OUT. WE WILL CERTAINLY SEE. I CAN'T MAKE THAT PROMISE RIGHT NOW BUT WE WILL CERTAINLY TAKE THAT INTO CONSIDERATION.

A. ALL RIGHT

QUESTIONS BY MR. POPE:

Q. MR. COOK, MY NAME IS TOMMY POPE; I'M THE SOLICITOR HERE IN YORK COUNTY. THIS IS MY DEPUTY SOLICITOR, KEVIN BRACKETT. WE REPRESENT THE STATE IN THIS CASE.

HAVE YOU EVER BEEN IN THIS TYPE OF SITUATION BEFORE?

A. NO, I HAVEN'T.

Q. DO YOU FEEL LIKE YOU'RE KIND OF BEING INTERROGATED YOURSELF?

A. A LITTLE BIT.

Q. WELL, YOU'RE GOING TO HEAR SOME QUESTIONS FROM

ME AND THEN YOU'LL HEAR SOME QUESTIONS FROM THE DEFENSE AND YOU'RE GOING TO QUICKLY FIND OUT THAT IT LOOKS LIKE ALL WE'RE DOING IS DOING LAWYER TALK, REPEATING IT AND CHANGING IT. BUT THE BOTTOM LINE IS REALLY THAT YOU CAN'T GIVE A WRONG ANSWER FROM THE STANDPOINT OF WHAT WE ARE TRYING TO FIND OUT IS HOW JOSEPH COOK FEELS, YOU KNOW, ABOUT DIFFERENT ISSUES AND WHAT YOUR POSITION IS.

SO, AGAIN, I WANT YOU TO PUT THOUGHT INTO YOUR ANSWERS BUT, YOU KNOW, YOU CAN'T GIVE US -- I'M NOT TAKING YOU ONE WAY OR ANOTHER, YOU KNOW, YOUR ANSWER IS THE RIGHT ANSWER, WHATEVER YOU GIVE ME.

DO YOU UNDERSTAND IN TALKING TO THE JUDGE THAT THIS CASE IS A LITTLE BIT DIFFERENT, IT'S CALLED A BIFURCATED OR A TWO PART TRIAL. DO YOU UNDERSTAND THAT?

A. DO YOU MEAN THAT THERE WILL BE A PHASE WHERE YOU DETERMINE GUILT OR INNOCENCE AND THEN A PHASE WHERE YOU DETERMINE THE SENTENCE?

Q. THAT IS EXACTLY CORRECT.

A. I UNDERSTAND.

Q. THAT IS EXACTLY CORRECT. AND YOU UNDERSTAND THAT THE DEFENDANT IS INNOCENT UNTIL PROVEN

GUILTY IN THE FIRST PHASE?

A. YES.

Q. AND YOU UNDERSTAND THAT THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING, THEY HAVE NO BURDEN WHATSOEVER; THAT IT IS MY BURDEN, THE STATE'S BURDEN TO PROVE THE CASE BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

A. YES.

Q. AND SO WHEN WE TALK ABOUT THIS SECOND PHASE, I'VE GOT TO CARRY MY BURDEN IN THE FIRST PHASE BEFORE WE EVEN GET TO THE SECOND PHASE. DO YOU UNDERSTAND THAT?

A. RIGHT.

Q. BECAUSE CERTAINLY IF A DEFENDANT IS FOUND NOT GUILTY IF I DON'T PROVE IT BEYOND A REASONABLE DOUBT, THEN WE NEVER HAVE A PENALTY PHASE.

A. RIGHT.

Q. OKAY. NOW, AS I UNDERSTAND WHAT YOU TOLD THE JUDGE, YOU'RE THE TYPE OF JUROR THAT IN THE FIRST PHASE -- YOU KNOW, YOU'VE HEARD SOME STUFF IN THE PAPER AND I THINK YOU SAID YOU KNEW A FEW PEOPLE BUT YOU COULD SET THAT ASIDE AND BASICALLY COME IN HERE WITH A BLANK SLATE AND HEAR WHATEVER COMES FROM THAT WITNESS STAND AND WHATEVER COMES BY WAY OF EVIDENCE AND MAKE YOUR

DETERMINATION ONLY AFTER HEARING ALL OF THAT. IS THAT A FAIR STATEMENT?

A. COMING IN AS A BLANK SLATE IS MAYBE A DIFFICULT THING FOR ME TO THINK OF RIGHT NOW. I'VE READ A LITTLE BIT; I DON'T THINK I HAVE FORMED AN OPINION COMPLETELY, BUT YOU CAN'T HELP BUT BE INFLUENCED A LITTLE BIT BY WHAT YOU'VE READ.

Q. RIGHT.

A. BUT I THINK I COULD TRY TO SET THAT ASIDE AND BE IMPARTIAL.

Q. AND I THINK THAT'S THE ISSUE. WE'RE ALL HUMAN, YOU KNOW, WE READ THINGS OR SEE THINGS EVERY DAY. THE ISSUE IS AS THE JUDGE DISCUSSED IT WITH YOU, EVEN IF IT'S THERE YOU'VE GOT TO MAKE THAT INTERNAL DECISION THAT IF IT DIDN'T COME FROM HERE OR DIDN'T COME FROM THE EVIDENCE, YOU KNOW, IF THE JUDGE SAYS IT'S NOT SOMETHING YOU CAN CONSIDER, DO YOU THINK YOU'RE THE TYPE THAT YOU COULD SET THAT ASIDE?

A. I THINK SO.

Q. OKAY. AND SO WE GET IN THAT FIRST STAGE AND, OF COURSE, THE STATE SHOWS THE EVIDENCE AND IF WE GET TO THE SECOND PHASE -- AND, OF COURSE NOW THE SECOND PHASE IS A LITTLE BIT DIFFERENT IN THAT AT THAT JUNCTURE THE DEFENDANT IS PROVED

GUILTY BEYOND A REASONABLE DOUBT. SO AT THAT JUNCTURE IN THIS CASE THE DEFENDANT WOULD HAVE BEEN PROVED GUILTY OF KILLING HIS PARENTS.

AT THAT POINT, LIKE YOU SAID, THERE WOULD BE THE SECOND TRIAL IN WHICH THE STATE WOULD BRING FORWARD EVIDENCE CALLED EVIDENCE IN AGGRAVATION. AND EVIDENCE OF AGGRAVATION IS THINGS, FOR LACK OF A BETTER TERM, THINGS THAT WOULD SHOW WHY THE CRIME IS MORE WORTHY OF THE DEATH PENALTY OR, YOU KNOW, MORE HEINOUS OR, YOU KNOW, WHATEVER, MORE AGGRAVATED FOR LACK OF A BETTER TERM.

THE DEFENSE COULD, BUT AGAIN THEY NEVER HAVE TO, COULD BRING FORTH EVIDENCE IF THEY CHOSE TO CALLED EVIDENCE IN MITIGATION WHICH OBVIOUSLY IS JUST OPPOSITE OF AGGRAVATION SHOWING WHY IT SHOULD BE MORE TOWARD LIFE.

AND, OF COURSE, YOU UNDERSTAND THAT THE DEFENSE NEVER HAS TO BRING FORTH ANYTHING. YOU KNOW, AGAIN, IT'S OUR JOB TO BRING FORTH THE EVIDENCE IN AGGRAVATION. THEY CAN ALWAYS DO IT BUT THEY DON'T HAVE TO. DO YOU UNDERSTAND THAT?

A. YES.

Q. IF WE GET TO THE STAGE AND, AGAIN, I WANT YOU TO TELL ME. IF THE DEFENDANT IS CONVICTED AND WE'RE AT THE STAGE NOW, THE PENALTY STAGE,

YOU'RE THE TYPE OF JUROR THAT WOULD WANT TO HEAR EVERYTHING BEFORE YOU DECIDED?

A. YES.

Q. OKAY. AND, AGAIN, YOUR TWO CHOICES WOULD BE LIFE OR DEATH. AND JUST BECAUSE THE MAN HAD BEEN CONVICTED OF TWO MURDERS, DO YOU AUTOMATICALLY SAY HE OUGHT TO GET DEATH OR DO YOU WANT TO WAIT AND HEAR EVERYTHING?

A. I THINK EVERYBODY HAS THE RIGHT TO HAVE ALL THE CIRCUMSTANCES BROUGHT OUT. THE TYPE OF CRIME THAT WAS COMMITTED, THOUGH, SEEMS TO BE PRETTY HEINOUS.

Q. OKAY.

A. IT'S HARD SOMETIMES TO SEPARATE YOUR PERSONAL FEELINGS FROM WHAT YOU DO IN A TRIAL. I GO BACK TO WHAT THE CLERK TOLD US OR MAYBE IT WAS YOU OR POSSIBLY THE JUDGE TOLD US HOW YOU WANT TO ACT AS A JUROR. IF YOU HAD A LOVED ONE UP THERE, HOW WOULD YOU WANT TO ACT AS A JUROR. AND THAT'S THE WAY WE SHOULD ACT THIS WAY. SO, I FEEL BOUND BY THAT RESPONSIBILITY TO GIVE THE BENEFIT OF THE DOUBT. BUT I'D HAVE TO ADMIT THAT, YOU KNOW, I MIGHT HAVE SOME INTERNAL BONDS THAT I'D HAVE TO SET ASIDE TO BE FAIR.

Q. OKAY. AND I THINK YOU'VE GOT AS GOOD A GRASP AS

ANYONE OF THE JURY SYSTEM. WE'VE GOT TO LOOK AND SEE CAN YOU TAKE THESE BIASES AND SET THEM ASIDE BECAUSE, AGAIN, OF COURSE ONCE HE'S CONVICTED THE STATE IS GOING TO BRING FORTH EVIDENCE TO SHOW, YOU KNOW, THE AGGRAVATION AS MUCH AS IS THERE.

AND LIKEWISE, THE DEFENSE MAY SHOW YOU REASONS, AGAIN NOT TO BELABOR THE POINT, BUT WHY IT SHOULD BE A LIFE SENTENCE.

A. UH HUH.

Q. ARE YOU TELLING ME THAT YOU'RE THE TYPE JUROR THAT UNDER YOUR OBLIGATION AS A JUROR YOU WOULD SET ASIDE EVERYTHING AND TAKE YOUR DECISION BOTH IN GUILT AND PENALTY FROM WHAT YOU HEAR RIGHT HERE?

A. THAT'S WHAT I WOULD TRY TO DO.

Q. OKAY. AND, OF COURSE, YOU MAY ONCE YOU HEAR THE EVIDENCE HAVE STRONG FEELINGS EITHER WAY. YOU KNOW WHAT I'M SAYING, ONCE YOU HEAR IT. BUT YOU'RE NOT GOING TO COME IN -- JUST BECAUSE HE'S CONVICTED OR JUST BECAUSE HE'S CHARGED, YOU'RE NOT GOING TO SAY OH, HE'S GUILTY OR OH, HE GETS DEATH OR OH, HE GETS LIFE. YOU'RE GOING TO WAIT AND HEAR IT ALL OUT. IS THAT FAIR?

A. YES.

Q. OKAY. NOW, YOU HAD ALSO INDICATED, I THINK, THAT THE MCLAUGHLINS LIVE IN YOUR NEIGHBORHOOD?
A. YES.
Q. IF THEY WOULD COME AND TESTIFY -- HOW WELL DO YOU KNOW THEM?
A. NOT EXTREMELY WELL. THEY ARE A BIT MORE ACTIVE IN OUR NEIGHBORHOOD HOMEOWNER'S ASSOCIATION, THAN WE ARE. THAT'S BASICALLY HOW WE KNOW THEM. WE GOT TO KNOW THEM EARLY ON WHEN WE BUILT A HOUSE IN THE NEIGHBORHOOD. IT'S MORE OF A CASUAL ACQUAINTANCE, I GUESS.
Q. AND THE FACT THAT YOU KNOW THEM -- OF COURSE YOU SAW THE LIST OF 200 WITNESSES AND, OF COURSE, YOU WON'T HEAR FROM ALL THE WITNESSES, BUT THE FACT THAT YOU KNOW THEM, CAN YOU JUDGE THEM FAIRLY JUST LIKE YOU WOULD EVERY OTHER WITNESS, NOT GIVE ANY MORE WEIGHT OR ANY LESS WEIGHT? IN OTHER WORDS, WOULD YOU TAKE EVERYBODY JUST AS THEY COME AND EVALUATE THEM IN THE JURY BOX?
A. YES, I THINK SO.
Q. AND SO THE FACT THAT YOU KNOW THEM AND I SAY FRIENDSHIP, A NEIGHBORHOOD FRIENDSHIP WOULDN'T MAKE YOU BELIEVE THEM ANY MORE OR LESS, YOU'D TAKE IT INTO CONSIDERATION WITH EVERYTHING?
A. THAT'S RIGHT.

Q. OKAY. I JUST HAVE ABOUT TWO MORE QUESTIONS, MR. COOK. ONE, AGAIN AS A GENERAL QUESTION, YOU UNDERSTAND THAT IT'S GOING TO BE WORK TO DO IT, BUT YOU'RE GOING TO SET ASIDE EVERYTHING AND DECIDE GUILT AND YOU'RE GOING TO SET ASIDE EVERYTHING AND YOU'RE NOT GOING TO MAKE A DECISION OF LIFE OR DEATH UNTIL AFTER YOU'VE HEARD EVERYTHING THERE IS TO HEAR WHEN YOU GO IN THAT JURY ROOM. IS THAT THE TYPE JUROR YOU WOULD BE?

A. THAT'S RIGHT.

Q. THANK YOU, SIR. ONE FINAL EXPLANATION LET ME GIVE YOU AND, AGAIN, I WANT TO TELL YOU THE JUDGE WILL ALWAYS BE THE ONE THAT REALLY INSTRUCTS YOU ON THE LAW. YOU KNOW, I'M HITTING ON A LITTLE DIFFERENT PRINCIPLES OF LAW, BUT YOU DON'T HAVE TO COME PRE-ARMED, HE'S GOING TO TELL YOU WHAT THE LAW IS AND WHAT TO REQUIRE. BUT ONE OF THE REQUIREMENTS IN A NORMAL CASE IS THAT IF EVERYBODY VOTES FOR LIFE, THEN ONLY THE FOREPERSON HAS TO SIGN. YOU KNOW, THE FOREMAN, FORELADY, WHOEVER IS KIND OF ACTING AS THE LIAISON WITH THE JUDGE, THEY ARE THE ONLY ONES THAT HAVE TO SIGN. BUT IF EVERYONE VOTES FOR DEATH, AND OF COURSE AGAIN AFTER DUE

DELIBERATION ON BOTH COUNTS, BUT AFTER DUE DELIBERATION IF EVERYBODY VOTES FOR DEATH, THEN EACH INDIVIDUAL JUROR HAS TO SIGN THE DOCUMENT THAT ACTUALLY -- OF COURSE THE COURT'S GOING TO DO WHAT YOU SAY. IF YOU SAY LIFE, THAT'S WHAT THE SENTENCE WILL BE OR IF YOU SAY DEATH -- BUT EACH INDIVIDUAL JUROR HAS TO SIGN THE DOCUMENT; THOSE TWELVE JURORS SIGN THE DOCUMENT THAT GIVES DEATH.

IF YOU THOUGHT DEATH WAS APPROPRIATE, COULD YOU TAKE PEN IN HAND AND SIGN JOSEPH COOK KNOWING THAT IT WOULD GIVE THIS MAN DEATH?

A. YES, I COULD.

Q. THANK YOU, SIR.

QUESTIONS BY MR. HANCOCK;

Q. MR. COOK, I'M BILL HANCOCK; I REPRESENT JIMMY ROBERTSON SITTING RIGHT HERE. THIS IS CO-COUNSEL, MR. JIM BOYD SITTING BESIDE HIM.

AGAIN I WANT TO EMPHASIZE TO YOU THAT THE ANSWERS YOU GIVE TO ME, THERE IS NO RIGHT, THERE IS NO WRONG ANSWER, IT'S JUST TO BE CONSIDERED AS YOUR ANSWER AND UNIQUE TO YOU AND WE'LL CONSIDER IT AS WE MAY.

YOU SEEM TO UNDERSTAND THE SYSTEM THAT WE'RE WORKING UNDER HERE, THE BIFURCATED TRIAL SYSTEM

PRETTY WELL; YOU'VE DESCRIBED IT WELL.

A. OKAY.

Q. I WANT TO ASK YOU SOMETHING AND GO BACK TO YOUR READING. YOU INDICATED IN THE BEGINNING IN TALKING TO THE JUDGE THAT YOU MAY HAVE BEEN INFLUENCED BY WHAT YOU HAVE READ. IS THAT CORRECT, SIR?

A. I CAN'T PUT IT OUT OF MY MIND, I CAN'T FORGET IT, SO IT IS SOMETHING THAT I KNOW.

Q. OKAY. AND WHAT HAVE YOU READ?

A. I READ THE ARTICLE THAT WAS IN THE YORK OBSERVER SUNDAY, AND I SAW IN TODAY'S PAPER, THE SAME PAPER THE HEADLINE, JUST THE LITTLE SMALL HEADLINE THAT THERE WERE SO MANY JURORS PICKED FOR THE CASE AND THE JUDGE WAS LOOKING FOR SO MANY MORE, AND I REALIZED THAT IT WAS THIS CASE AND I STOPPED READING.

Q. ALL RIGHT, SIR. AND YOU'VE INDICATED THAT YOU MAY HAVE FORMED AN OPINION IN THIS CASE. IN WHAT MATTERS OF THE CASE WOULD YOU HAVE FORMED AN OPINION?

A. WHETHER IT'S A HARD OPINION OR JUST THE THOUGHT PROCESS THAT GOES ALONG WITH READING AN ARTICLE, IT SEEMS THAT THE CRIME THAT WAS COMMITTED WAS A PRETTY HEINOUS CRIME. THE ARTICLE IN THE PAPER

MENTIONED CIRCUMSTANTIAL EVIDENCE AND ---

Q. WHAT CIRCUMSTANTIAL EVIDENCE DID IT MENTION?

A. IT MENTIONED THAT THE MOTHER HAD INDICATED THAT SHE HAD REASON TO BELIEVE SHE MIGHT EXPECT SOMETHING BAD TO HAPPEN FROM HER SON. I REMEMBER THAT HE WAS APPREHENDED WITH SOME CREDIT CARDS OF HIS FATHER'S.

Q. DO YOU REMEMBER WHERE HE WAS APPREHENDED?

A. NO.

Q. AND HAVE YOU SEEN ANYTHING ON T.V. CONCERNING THIS?

A. NO.

Q. AND YOU'VE INDICATED THAT YOU'VE ALREADY CATEGORIZED THIS AS A HEINOUS CRIME BEFORE WE BEGIN; IS THAT CORRECT?

A. WELL, FOR SOMEONE TO BE BEATEN TO DEATH AND SOMEONE ELSE TO BE STABBED TO DEATH, IF THAT IS ACCURATE, THAT SEEMS TO ME TO BE PRETTY ---

Q. YOU FORMED THAT THOUGH FROM YOUR READING AND THE MATERIAL THAT YOU HAVE HAD UP TO THIS POINT. IS THAT CORRECT, SIR?

A. THAT'S RIGHT.

Q. AND YOU'RE INDICATING, AND I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH, I'M JUST LISTENING TO YOU, AND YOU HAVE INDICATED THAT IT WOULD BE

DIFFICULT TO PUT THAT OUT OF YOUR MIND BEFORE WE BEGIN DELIBERATIONS ON THIS; ISN'T THAT CORRECT, SIR?

A. WELL, YOU CAN'T FORGET WHAT YOU KNOW BUT WITH THE RESPONSIBILITY THAT A JUROR WOULD HAVE, YOU WOULD HAVE TO SET THAT ASIDE AND LISTEN TO THE TESTIMONY IN COURT AND LET THE STATE PROVE THEIR CASE.

Q. NOW YOU INDICATED THAT YOU COULD -- I AM TRYING TO DETERMINE HERE. YOU HAVE SAID THAT YOU WERE INFLUENCED BY WHAT YOU HAVE READ AND YOU CATEGORIZED THE CRIME AS HEINOUS BUT YOU COULD SET THAT ASIDE AND LISTEN TO ALL OF THE EVIDENCE. IS THAT WHAT YOU'RE SAYING, SIR?

A. YES, I THINK SO.

Q. NOW YOU SAY YOU THINK SO. NOW ARE YOU CERTAIN OF THAT FACT?

(AFTER A PAUSE.)

Q. AS YOU HESITATE, YOU'RE REALLY NOT CERTAIN ARE YOU, SIR?

A. WELL, I TAKE VERY SERIOUSLY THE OBLIGATION AS A JUROR BUT AT THE SAME TIME, I CAN'T FORGET WHAT I'VE READ. I GUESS THERE MIGHT BE SOME DOUBT.

Q. I HAVE NO FURTHER QUESTIONS.

THE COURT: I'M GOING TO LET YOU STEP OUT JUST A

MINUTE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. POPE: YOUR HONOR, I SUBMIT THAT HE IS CLEARLY QUALIFIED TAKING HIS ANSWERS IN TOTALITY. HE HAS MADE CLEAR THAT THERE ARE THINGS THAT HE CAN'T FORGET, BUT HE UNDERSTANDS HIS OBLIGATION AS A JUROR. AND THAT IS PARAMOUNT HERE THAT HE UNDERSTANDS HIS OBLIGATION AND CAN SET THOSE THINGS ASIDE AND MAKE A FAIR AND IMPARTIAL DETERMINATION OF THIS CASE IN BOTH AS TO GUILT AND THE PENALTY. HE HAS INDICATED CLEARLY THAT HE COULD, THAT HE COULD SET THEM ASIDE AND MAKE THAT DETERMINATION. HE TAKES VERY SERIOUSLY HIS OBLIGATION AS A JUROR HE INDICATED. AND UNDERSTANDS THE RULES AND THE FACT THAT THE STATE WOULD HAVE TO PROVE THE CASE.

THE COURT: WHAT SAYS THE DEFENSE?

MR. HANCOCK: YOUR HONOR, WE WOULD INDICATE HE'S NOT QUALIFIED. I BELIEVE HIS ANSWERS WERE THAT HE HAD ALREADY BEEN INFLUENCED BY WHAT HE HAS READ, AND THAT HE HAD FORMED THE OPINION THAT THIS WAS A HEINOUS CRIME AND THAT HE WAS NOT CERTAIN THAT HE COULD SET ALL OF THIS ASIDE IN ARRIVING AT A VERDICT. I BELIEVE IN FINALITY THOSE WERE HIS ANSWERS, YOUR HONOR. AND I WOULD SAY THAT HE IS NOT QUALIFIED.

MR. POPE: MAY I DRAW A CASE TO THE COURT'S

ATTENTION, YOUR HONOR?

THE COURT: PLEASE.

MR. POPE: STATE V. CALDWELL, STATE V. SPANN ---

THE COURT: LET ME SEE THEM.

MR. POPE: I WOULD HAVE TO PULL THEM, YOUR HONOR. SPANN SAYS EVEN A JUROR WHO HAS FORMED AN OPINION PRIOR TO THE CASE CAN STILL BE QUALIFIED WHEN HE STATES HE CAN BE FAIR AND IMPARTIAL.

CALDWELL STATES THAT A JUROR HAD FORMED AN OPINION THAT THE DEFENDANT WAS PROBABLY GUILTY, CHANGED HIS MIND WHEN HE WAS SUMMONED TO JURY DUTY. A SECOND JUROR HAD READ AN ARTICLE AND FORMED AN OPINION, BUT STATED HE WOULD HAVE TO HEAR ALL THE EVIDENCE BEFORE HE COULD REACH A CONCLUSION.

YOUR HONOR, THIS IS THE ONLY COPY I HAVE, BUT I'LL HAND IT UP TO THE COURT. THIS IS CALDWELL, YOUR HONOR.

(AFTER A LONG PAUSE.)

THE COURT: HAVE THE JUROR COME BACK IN FOR JUST A MOMENT.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: I DON'T WANT TO BE CONTINUING TO GO OVER THINGS, BUT JUST LET ME ASK ONE MORE TIME. FIRST, DO YOU FEEL LIKE YOU COULD IF YOU SERVED AS A JUROR, IN SPITE OF HAVING READ THOSE ARTICLES, COULD YOU BE FAIR AND

IMPARTIAL TO THE STATE AND THE DEFENDANT?

THE JUROR: YES, SIR.

THE COURT: COULD YOU IF THE EVIDENCE WARRANTED IT, FIND A VERDICT OF NOT GUILTY IF THE STATE DID NOT CARRY ITS BURDEN OF PROOF OF PROVING MR. ROBERTSON'S GUILT BEYOND A REASONABLE DOUBT?

THE JUROR: YES.

THE COURT: COULD YOU RETURN A VERDICT OF GUILTY IF THEY DID CARRY THAT BURDEN OF PROOF?

THE JUROR: YES.

THE COURT: COULD YOU RETURN A VERDICT IN THE PENALTY PHASE IF YOU THOUGHT IT WAS APPROPRIATE BASED ON THE EVIDENCE PRESENTED AT THAT TIME, OF LIFE IMPRISONMENT?

THE JUROR: YES.

THE COURT: COULD YOU AT THE SECOND PHASE IF YOU FELT IT APPROPRIATE, RETURN A VERDICT OF THE DEATH PENALTY IF YOU THOUGHT THAT WAS APPROPRIATE?

THE JUROR: YES.

THE COURT: COULD YOU BASE YOUR VERDICT THEN IN ALL OF THOSE INSTANCES SOLELY ON THE EVIDENCE PRESENTED AT TRIAL UNINFLUENCED BY WHAT YOU HAD PREVIOUSLY READ, EVEN THOUGH I KNOW YOU SAID YOU CAN'T WIPE IT FROM YOUR MIND, BUT COULD YOU DISREGARD THAT AND CONCENTRATE AND BASE YOUR VERDICT ON WHAT TRANSPIRES HERE IN THE COURTROOM?

THE JUROR: YES, YOUR HONOR. WHILE I WAS

STANDING OUTSIDE I HAD A CHANCE TO THINK ABOUT COULD I SEPARATE IT, AND I CAN.

THE COURT: OKAY, LET ME LET YOU STEP OUTSIDE JUST ONE MINUTE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: ANYTHING FURTHER FROM THE STATE?

MR. POPE: NO, SIR, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. HANCOCK: YOUR HONOR, I AM GOING TO OBJECT. I DON'T MEAN TO ANGER THE COURT BUT I'M GOING TO OBJECT BECAUSE IN THIS SITUATION -- I KNOW THE COURT HAS TO GO THROUGH ALL THE INFORMATION AND GIVE EVERY JUROR A CHANCE, BUT, YOUR HONOR, THIS WAS ALMOST IN REHABILITATION OF THE WITNESS, AS WE SEE IT ---

THE COURT: HE'S NOT A WITNESS.

MR. HANCOCK: I MEAN THE JUROR, A POTENTIAL JUROR. HE WAS NEVER ASKED ABOUT -- I DIDN'T HEAR HIM ASKED OR GONE INTO THE SAME QUESTION CONCERNING THE PUBLICITY WHICH IS THE CRUX OF THIS MATTER.

THE COURT: I WAS NOT ATTEMPTING TO REHABILITATE HIM BECAUSE THAT'S NOT MY JOB. I WAS HANDED THE CASE OF CALDWELL AND I WAS FOLLOWING ALMOST VERBATIM THE LANGUAGE THEREIN. AND ONE REASON I WANTED TO DO THAT WAS BECAUSE, IN ALL DEFERENCE TO MR. POPE, I DIDN'T READ IT QUITE TO SAY EXACTLY WHAT MR. POPE DID BECAUSE IN THIS CASE THEY ALLOWED

THE JURORS TO SIT BECAUSE THEY INDICATED THEY COULD DECIDE THE CASE BASED ONLY ON EVIDENCE PRESENTED AT THE TRIAL AND COULD DISREGARD ANYTHING THEY HAD READ OR HEARD ABOUT THE CASE.

AND THAT'S WHAT I WANTED TO DETERMINE, WHETHER HE COULD IN FACT DO THAT. AND HE HAS CONVINCED ME HE CAN, SO I FIND HE IS QUALIFIED.

BUT I WAS NOT MAKING AN ATTEMPT TO REHABILITATE HIM. I WAS MAKING SURE UNDER THE CASE THAT I HAD COVERED HIM -- YOU KNOW, WE ARE IN THE AGE OF BATSON WHERE NOT ONLY ARE WE LOOKING -- WELL, WE ARE LOOKING AT JURORS IN A DIFFERENT LIGHT TO SOME DEGREE AND JURORS HAVE A RIGHT TO SERVE IF THEY ARE QUALIFIED. AND I BELIEVE HE IS QUALIFIED.

AGAIN, IT IS NOT MY POSITION TO REHABILITATE HIM, BUT IT IS MY POSITION AND MY JOB TO MAKE SURE THAT I UNDERSTAND AND FEEL COMFORTABLE WITH WHAT HIS POSITION IS.

BRING MR. COOK BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. COOK, YOU ARE QUALIFIED FOR THE POOL, AND IF YOU WILL CALL BACK AFTER 6:00 TONIGHT, THEY WILL GIVE YOU FURTHER INSTRUCTIONS.

DON'T READ ANYTHING ABOUT THE CASE OR WATCH ANYTHING ABOUT IT. DON'T DISCUSS IT.

YOU'VE ALREADY TOLD ME YOU HAVE SOME EXTENUATING

CIRCUMSTANCES AND IF YOU'RE CHOSEN ON THE PANEL, WE WILL SEE WHAT WE CAN DO ABOUT THAT.

BUT CALL BACK TONIGHT AFTER 6:00 AND YOU WILL RECEIVE INSTRUCTIONS ABOUT WHAT TO BRING, WHAT TIME TO COME AND THOSE SORT OF THINGS.

THE JUROR: OKAY.

THE COURT: BUT DON'T DISCUSS THE CASE; DON'T LET ANYBODY DISCUSS IT WITH YOU, AND IF THEY TRY, SOMEBODY TRIES, REPORT THAT BACK TO ME. THANK YOU, SIR.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: KELLY HOPE, 119.

KELLY F. HOPE, JUROR NUMBER 119, WHITE FEMALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. COME UP AND HAVE A SEAT RIGHT HERE, PLEASE. AS I TOLD YOU EARLIER, I'M JOHN HAYES AND I HAVE BEEN ASSIGNED TO PRESIDE OVER THE TRIAL OF THIS CASE. I WANT TO REMIND YOU FIRST THAT YOU ARE STILL UNDER OATH IN REGARDS TO RESPONDING TO THIS QUESTIONS. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. IF YOU ARE CHOSEN ON THIS JURY, YOU MAY SEE IN THE COURTROOM PHOTOGRAPHERS OR T.V. CAMERAS. I DON'T WANT YOU TO BE DISTRACTED BY THEM BECAUSE THEY CAN'T SHOW YOU ON T.V. OR PHOTOGRAPH YOU

AND RUN YOUR PICTURE IN THE PAPER, EVEN YOUR NAME. SO, DON'T BE DISTRACTED BY THAT.

YOU HANDED UP A QUESTIONNAIRE. IT'S BEEN A LITTLE WHILE, BUT TO YOU KNOWLEDGE IS IT AN ACCURATE QUESTIONNAIRE OR IS THERE ANYTHING THAT YOU FEEL LIKE YOU NEED TO CHANGE?

A. IT'S ACCURATE.

Q. DID YOU HAVE AN OPPORTUNITY TO REVIEW IN THE JURY ROOM THE WITNESS LIST?

A. YES, SIR.

Q. WAS THERE ANYBODY ON THERE THAT YOU'RE RELATED TO BY BLOOD OR MARRIAGE?

A. NO, SIR.

Q. IS THERE ANYBODY ON THERE YOU KNOW?

A. NO, SIR.

Q. PRIOR TO YOUR APPEARING HERE WITH US, HAD YOU HEARD, OTHER THAN THE INDICTMENT THAT WAS READ TO YOU MONDAY WHEN I ANNOUNCED THE CASE, HAD YOU READ ANYTHING ABOUT THIS CASE, HEARD ANYTHING ABOUT IT, DISCUSSED IT, FORMED AN OPINION OR EXPRESSED AN OPINION ABOUT THE CASE?

A. NO, SIR.

Q. IN THE JURY ROOM THERE WERE SOME JUROR TYPES AND WE'RE GOING TO TALK ABOUT THAT IN JUST A MOMENT. THESE TYPE CASES ARE TRIED IN TWO PHASES. ONE

DEALING WITH WHETHER OR NOT THE PERSON CHARGED IS GUILTY OR NOT GUILTY.

MR. ROBERTSON IS PRESUMED INNOCENT OF THE CHARGES AGAINST HIM AND IS SO PRESUMED UNTIL SUCH TIME AS A JURY WERE TO FIND HIM UNANIMOUSLY GUILTY BEYOND A REASONABLE DOUBT IF THEY DID.

IF THEY FOUND HIM NOT GUILTY, THE CASE WOULD GO NO FURTHER. IF THEY FOUND HIM GUILTY, THE CASE WOULD PROCEED INTO A SECOND PHASE WHICH WOULD BE THE PENALTY PHASE.

WE ARE TALKING NOW ABOUT THAT SECOND PHASE, BUT THAT'S NOT TO PRESUPPOSE THAT WE WOULD GET THERE BECAUSE WE'VE GOT TO GET PAST THE GUILTY PART FIRST BUT WE HAVE TO TALK OUT OF NECESSITY ABOUT THIS SECOND PART BECAUSE OF THE NATURE OF THESE PROCEEDINGS. DO YOU UNDERSTAND ALL OF THAT?

A. YES, SIR.

Q. IN THE JURY ROOM WERE THREE JUROR TYPES SET FORTH ON A SHEET OF PAPER. DID YOU HAVE A CHANCE TO REVIEW THOSE?

A. YES, SIR.

Q. DO YOU FIND YOURSELF TO BE ONE OF THOSE TYPES OF JURORS?

A. THE THIRD PERSON.

Q. THE THIRD?

A. UH HUH.

Q. IN THAT OUTLINE OF THAT TYPE JUROR I USED THE WORDS AGGRAVATING AND MITIGATING CIRCUMSTANCES OR AGGRAVATION AND MITIGATION.

THERE I'M TALKING ABOUT AGGRAVATING CIRCUMSTANCES, THINGS THAT ARE ATTENDANT TO THE COMMISSION OF A CRIME WHICH INCREASE ITS ENORMITY OR ADDS TO ITS INJURIOUS CONSEQUENCE BUT ARE THINGS THAT ARE ABOVE AND BEYOND THE CRIME ITSELF, ABOVE AND BEYOND THE ELEMENTS OF THE CRIME.

MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH WHILE THEY WOULD NOT CONSTITUTE JUSTIFICATION OR EXCUSE FOR THE CRIME, THEY ARE THINGS WHICH IN ALL FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF ONE'S MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. SO, ARE YOU TELLING ME THAT YOU ARE THE TYPE JUROR THAT WERE THIS CASE TO CONTINUE INTO ITS SECOND PHASE; THAT IS, IF YOU WERE ON THE JURY AND MR. ROBERTSON HAD BEEN FOUND GUILTY OF MURDER, THAT YOU WOULD -- WHEN WE STARTED INTO THAT SECOND PHASE, YOU WOULD NOT HAVE ALREADY MADE UP YOUR MIND AS TO THE APPROPRIATE

PUNISHMENT TO IMPOSE?

A. THAT'S CORRECT.

Q. YOU ARE TELLING ME THEN THAT YOU WOULD WANT TO LISTEN TO THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION, HEAR THE LAW AS THE JUDGE CHARGES IT TO YOU AND ONLY AFTER YOU HAVE ALL OF THAT INFORMATION, THEN AND ONLY THEN MAKE A DECISION REGARDING THE APPROPRIATE PUNISHMENT. IS THAT CORRECT?

A. YES, SIR.

Q. IF YOU FELT THAT THE APPROPRIATE PUNISHMENT BASED ON ALL OF THAT WAS LIFE IMPRISONMENT, COULD YOU IMPOSE LIFE IMPRISONMENT AS A PUNISHMENT?

A. YES, SIR.

Q. COULD YOU, IF YOU, AFTER HEARING ALL THAT EVIDENCE, IF YOU FELT THAT THE VERDICT OF DEATH WAS APPROPRIATE, COULD YOU RETURN A PENALTY OF DEATH?

A. YES, SIR.

Q. ALL RIGHT, ANSWER ANY QUESTIONS THESE ATTORNEYS MAY HAVE.

QUESTIONS BY MR. BOYD:

Q. GOOD AFTERNOON, MS. COOK.

A. HELLO.

Q. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON WHO IS SEATED OVER HERE AND MY CO-COUNSEL IS BILL HANCOCK WHO IS SEATED HERE.

I JUST HAVE A FEW QUESTIONS TO ASK YOU TO FOLLOW UP ON WHAT THE JUDGE ASKED YOU ABOUT. I KNOW IT PROBABLY FEELS UNCOMFORTABLE TO BE IN THE WITNESS CHAIR. YOU ARE PROBABLY NOT USED TO THAT.

A. NO.

Q. BUT THERE ARE NO RIGHT OR WRONG ANSWER TO WHAT I'M GOING TO ASK YOU; SO, JUST ANSWER THE QUESTIONS AS OPENLY AND HONESTLY AS YOU CAN. ALL RIGHT?

A. YES, SIR.

Q. NOW I NOTICED YOU SAID YOU DO HAVE A FAMILY MEMBER WHO IS EMPLOYED IN LAW ENFORCEMENT?

A. YES, SIR.

Q. RUSTY HORN AND HE IS A SHERIFF'S DEPUTY?

A. CORRECT.

Q. IS HE A FIRST COUSIN?

A. HE'S A SECOND COUSIN.

Q. DO YOU SEE HIM OFTEN?

A. ONLY AT FAMILY REUNIONS, USUALLY ONCE A WEEK.

Q. YOU DON'T SEE HIM ON A REGULAR BASIS?

A. YES, SIR.

Q. DOES THAT AFFECT -- DO YOU THINK THAT WOULD AFFECT YOUR ABILITY TO BE A JUROR ON THIS CASE?

A. I DON'T THINK SO; NO, SIR.

Q. EVEN IF SOME OF THE WITNESSES ARE MEMBERS OF THE SHERIFF'S DEPARTMENT?

A. NO, SIR.

Q. I'M GOING TO FOLLOW UP WITH YOU ON A COUPLE OF THE QUESTIONS THAT THE JUDGE ASKED YOU CONCERNING THE DEATH PENALTY.

YOU UNDERSTAND THAT THIS TRIAL IS POTENTIALLY A TWO PHASE TRIAL. IN THE FIRST PHASE OF THE TRIAL THE JURORS WOULD HEAR EVIDENCE ON WHETHER OR NOT JIMMY ROBERTSON SHOULD BE FOUND GUILTY OR NOT GUILTY OF THESE CHARGES.

AND THEN IF THE JURY FINDS HIM NOT GUILTY, THERE'S NOT A SECOND PHASE.

A. UH HUH.

Q. BUT IF THE JURY DOES FIND HIM GUILTY, THEN THERE IS A SECOND PHASE IN WHICH THE JURY DETERMINES WHETHER HE RECEIVES LIFE IMPRISONMENT OR WHETHER HE RECEIVES THE DEATH SENTENCE. DO YOU UNDERSTAND?

A. YES, SIR.

Q. AND FOR PURPOSE OF THESE QUESTIONS, I JUST HAVE TO ASSUME THAT WE'VE ALREADY GONE INTO THAT

SECOND PHASE BECAUSE THIS IS THE ONLY TIME I WILL GET TO QUESTION YOU ABOUT THAT.

NOW IN THAT CASE YOU HAVE INDICATED THAT YOU COULD HEAR EVIDENCE IN THAT PHASE OF THE TRIAL AND YOU COULD VOTE EITHER WAY DEPENDING ON THE EVIDENCE THAT YOU HEARD?

A. YES, SIR.

Q. SO, DO YOU HAVE ANY PREDISPOSITION TO GO ONE WAY OR THE OTHER?

A. NO, SIR.

Q. NOW, IF WE GET TO THAT PHASE, THE STATE WILL BE INTRODUCING EVIDENCE IN WHAT'S CALLED AGGRAVATION OF THE CRIME WHICH MEANS THAT IT'S EVIDENCE THAT MAKES THE CRIME WORSE. DO YOU UNDERSTAND?

A. UH HUH.

Q. OR THE MURDER WORSE. AND YOU UNDERSTAND ALSO THAT THE DEFENSE WILL HAVE AN OPPORTUNITY TO PRESENT WHAT'S CALLED MITIGATING EVIDENCE. AND THAT'S EVIDENCE, WHILE NOT EXCUSING THE MURDER AT ALL, WILL BE EVIDENCE THAT BEARS ON THE DEFENDANT'S MORAL CULPABILITY AND LESSENS, NOT THE GUILT, BUT LESSENS HIS DEGREE OF RESPONSIBILITY. DO YOU UNDERSTAND?

A. YES, SIR.

Q. AND IN THAT CASE, KNOWING THAT JIMMY ROBERTSON IS ACCUSED OF KILLING BOTH OF HIS PARENTS, CAN YOU CONSIDER A LIFE SENTENCE FOR THAT AS OPPOSED TO A DEATH SENTENCE, EVEN KNOWING THAT'S WHAT HE IS CHARGED WITH?

A. AGAIN, I WOULD PROBABLY HAVE TO HEAR THE REASONS WHY.

Q. OKAY.

A. I DON'T KNOW RIGHT NOW.

Q. YOU WOULD HAVE TO HEAR THE EVIDENCE?

A. RIGHT.

Q. AND I AM ASSUMING FOR PURPOSES OF THESE QUESTIONS THAT HE HAS BEEN CONVICTED AND, OF COURSE, IT'S NOT SELF-DEFENSE OR ACCIDENT OR ANYTHING LIKE THAT.

A. UH HUH.

Q. AT THIS POINT GUILT HAS BEEN DETERMINED.

A. UH HUH.

Q. SO, YOU CAN CONSIDER A SENTENCE OTHER THAN A DEATH SENTENCE IN THAT CASE?

A. YES, SIR.

Q. LET ME ASK YOU THIS, AND I JUST WANT YOU TO BE HONEST ABOUT THIS. WOULD YOU START WITH THE PREDISPOSITION THAT IT SHOULD BE A DEATH SENTENCE AND SOMETHING NEEDS TO BE INTRODUCED TO

SHOW YOU OTHERWISE OR ARE YOU COMPLETELY OPEN AT THE START?

A. I'M OPEN.

Q. YOU'RE COMPLETELY OPEN ON IT?

A. YES, SIR.

Q. OKAY. NOW, I'VE GOT A FEW OTHER QUESTIONS AND I'LL LEAVE YOU ALONE. IN THE JURY ROOM, YOU UNDERSTAND, DIFFERENT JURORS HAVE DIFFERENT OPINIONS.

A. UH HUH.

Q. JUST LIKE EVERYTHING ELSE. AND, OF COURSE, YOU AS A JUROR HAVE A RIGHT TO HAVE YOUR OPINION RESPECTED BY THE OTHER JURORS, BY THE COURT, BY EVERYBODY INVOLVED IN THE PROCEEDING. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. I MEAN BASICALLY IF YOU REACH AN OPINION HONESTLY AFTER THOUGHT, NOBODY CAN CRITICIZE YOU FOR THAT OPINION. YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND LIKEWISE, THE OTHER JURORS WHO MAY HAVE DIFFERING OPINIONS THAN YOUR'S HAVE A RIGHT TO HAVE THEIR OPINION RESPECTED BY YOU. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. OKAY. AND LET ME ASK YOU, ARE YOU WILLING TO BE RESPECTFUL OF THE OTHER JURORS' OPINIONS JUST LIKE THEY ARE SUPPOSED TO BE RESPECTFUL OF YOUR'S?

A. YES, SIR.

Q. AND MY FINAL QUESTION IS IF YOU WERE ON THE JURY AND AFTER DUE DELIBERATION YOU DECIDED THAT A LIFE SENTENCE WAS APPROPRIATE, AND THE MAJORITY OF THE JURORS, MAYBE EVEN ELEVEN JURORS, DECIDED THEY DISAGREED WITH YOU AND IT SHOULD BE THE DEATH SENTENCE AND YOU'RE THE ONLY JUROR OUT THERE LEFT, COULD YOU STILL VOTE YOUR CONSCIENCE AND STAND UP TO THE OTHER ELEVEN JURORS?

A. I WOULD.

Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

QUESTIONS BY MR. POPE:

Q. I WAS ABOUT TO CALL YOU MS. KELLY, IT'S MS. HOPE, IS THAT RIGHT?

A. YES, SIR.

Q. I'M TOMMY POPE AND I'M THE SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN BRACKETT, MY DEPUTY SOLICITOR, AND WE REPRESENT THE STATE AND I'LL BE THE THIRD LAWYER NOW THAT'S GOING TO ASK YOU SOME QUESTIONS AND I'M GOING TO TRY TO BE A LITTLE BIT BRIEF WITH YOU. I'VE HEARD THE

ANSWERS THAT YOU GAVE TO THE JUDGE AND THAT YOU GAVE TO MR. BOYD.

JUST A COUPLE OF THINGS. YOU UNDERSTAND THIS IS A TWO PART TRIAL.

A. UH HUH.

Q. OKAY, AND THAT'S A LITTLE BIT DIFFERENT THAN NORMAL. THE FIRST IS JUST ABOUT GUILT, YOU DON'T EVEN THINK ABOUT PENALTY. DO YOU UNDERSTAND THAT?

A. UH HUH.

Q. AND, OF COURSE, YOU UNDERSTAND THAT WE HAVE THE BURDEN OF PROOF; THE STATE HAS TO PROVE EVERYTHING; THE DEFENDANT DOESN'T HAVE TO PROVE ANYTHING.

A. YES, SIR.

Q. YOU UNDERSTAND THAT.

A. UH HUH.

Q. AND ONLY IF WE CARRY THAT BURDEN AND GET TO THE SECOND PHASE WOULD WE BE IN A SITUATION THAT YOU WOULD ACTUALLY GET TO DETERMINING THE PENALTY. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. OKAY. AND AS I UNDERSTOOD FROM WHAT I HEARD YOU SAY, YOU'RE THE TYPE OF PERSON THAT YOU'RE NOT GOING TO COME ROLLING IN AS SOON AS YOU HEAR

SOMETHING AND SAY HE'S GUILTY OR NOT GUILTY; YOU'RE GOING TO WAIT AND HEAR THE EVIDENCE?

A. CORRECT.

Q. AND YOU'RE GOING TO BASE IT IF YOU'RE SITTING ON THE JURY FROM WHAT YOU HEAR FROM HERE AND THE PHYSICAL EVIDENCE, RIGHT?

A. YES, SIR.

Q. AND IF YOU HEARD IT AND YOU THOUGHT WE'D CARRIED OUR BURDEN OF PROOF, THEN -- OF COURSE, WHEN I SAY BURDEN OF PROOF, THE JUDGE WILL INSTRUCT YOU ALL ABOUT THE LAW AND HOW WE HAVE TO PROVE IT AND ALL OF THAT STUFF, BUT IF YOU THOUGHT WE HAD DONE OUR JOB, YOU'D SAY HE WAS GUILTY; IF YOU THOUGHT WE HADN'T, YOU COULD SAY HE'S NOT GUILTY?

A. YES, SIR.

Q. OKAY. THEN WHEN WE GET TO THE SECOND STAGE, AGAIN IT'S SIMILAR AND YOU WILL BE, YOU KNOW, YOU CAN CONSIDER ALL OF THE EVIDENCE THAT YOU HEARD IN THAT FIRST STAGE, BUT THERE WILL BE OTHER EVIDENCE. WE'LL DO EVIDENCE THAT'S CALLED EVIDENCE IN AGGRAVATION. OF COURSE LIKE YOU SAID AND MR. BOYD SAID, AT THAT POINT THE DEFENDANT WILL STAND CONVICTED OF KILLING HIS PARENTS.

A. UH HUH.

Q. BUT THERE ARE OTHER THINGS CALLED EVIDENCE IN AGGRAVATION THAT WE WOULD BRING FORTH TO SHOW EVEN MORE SO WHY IT OUGHT TO BE A DEATH PENALTY.

A. UH HUH.

Q. THE DEFENSE WOULD, BUT THEY DON'T HAVE TO, WOULD BRING FORTH EVIDENCE IN MITIGATION. AND MITIGATION IS JUST THE OPPOSITE OF AGGRAVATION, THEY ARE SHOWING WHY IT SHOULDN'T BE A DEATH PENALTY. THINGS THAT YOU MIGHT NOT KNOW THAT MIGHT, SAY, BRING YOU BACK TOWARD A LIFE SENTENCE. FROM WHAT I HEARD YOU TELL BOTH OF THESE GENTLEMEN, YOU'RE THE TYPE JUROR THAT YOU WOULD AUTOMATICALLY, AS SOON AS YOU HEAR OUR CASE, YOU WOULDN'T SAY DEATH; OR AS SOON AS YOU HEARD THEIR CASE, YOU WOULDN'T SAY LIFE. YOU'D HAVE TO WAIT AND HEAR BOTH SIDES BEFORE YOU COULD DECIDE.

A. CORRECT.

Q. SO, BASICALLY YOU WOULD NOT MAKE A DECISION IN EITHER PHASE UNTIL YOU HEARD EVERYTHING AND THE JUDGE INSTRUCTS YOU AND YOU GO BACK TO DELIBERATE, YOU WOULDN'T MAKE UP YOUR MIND ONE WAY OR THE OTHER.

A. CORRECT.

Q. OKAY, OKAY. AND YOU TOLD MR. BOYD THAT IF IT WARRANTED, YOU COULD GIVE LIFE AND IF IT WARRANTED, YOU COULD GIVE DEATH. IS THAT RIGHT?

A. THAT'S RIGHT.

Q. AND HE WAS TALKING ABOUT THE JURY ROOM AND OF COURSE -- HAVE YOU EVER BEEN ON A JURY BEFORE?

A. NO, SIR.

Q. YOU'VE PROBABLY SEEN ON T.V. OR SOMETHING, YOU KNOW, TWELVE PEOPLE ARE SITTING AROUND AND YOU'VE HEARD ALL THE EVIDENCE AND YOU DISCUSS YOUR VIEWS AND LIKE HE SAID, EVERYBODY RESPECTS EACH OTHER'S VIEWS.

A. UH HUH.

Q. ARE YOU THE TYPE PERSON THAT YOU COULD STAND UP AND STATE YOUR VIEWS BASED ON WHAT YOU SAW?

A. YES, SIR.

Q. BY THE SAY TOKEN, AND I KEEP DOING THIS, YOU WOULDN'T BE THE TYPE AS SOON AS YOU DECIDED, YOU'D BE UNWILLING, YOU'D SAY I'M NOT GOING TO LISTEN TO ANYBODY ELSE. WOULD YOU BE WILLING TO LISTEN BACK AND FORTH OR ARE YOU GOING TO MAKE UP YOUR MIND WITHOUT -- YOU KNOW, SAY IF THEY MADE A POINT THAT YOU DIDN'T THINK ABOUT.

A. UH HUH.

Q. WOULD YOU LISTEN TO IT?

A. YES.

Q. SO, YOU'RE GOING TO BE A TRUE JUROR. YOU'RE GOING TO GIVE AND TAKE, GIVE THEM YOUR IDEAS AND VISE VERSA AND THEN AND ONLY THEN COME TO A DECISION.

A. YES, SIR.

Q. IN A DEATH PENALTY CASE IT'S A LITTLE BIT DIFFERENT. IN A NORMAL JURY WHEN YOU GET TO THE POINT OF GUILTY, LIKE YOU SAID, THEN THE JUDGE DECIDES THE SENTENCE.

A. UH HUH.

Q. IN THIS CASE THE JURY WILL BE DECIDING. SO IN THAT SECOND PHASE AFTER THEY GO TO DELIBERATE AND YOU DISCUSS THE CASE IF EVERYBODY VOTES LIFE, RAISE YOUR HAND OR CHECK A SHEET OR HOWEVER THEY DO IT, IF EVERYBODY VOTES LIFE, THEN JUST THE FOREPERSON, IT WOULD BE THE FOREMAN OR FORELADY OF THE JURY WOULD SIGN THE VERDICT FORM. THEY WOULD SAY JUDGE, YOU KNOW, WE'VE VOTED AND WE UNANIMOUSLY SAY BASED ON EVERYTHING IT OUGHT TO BE LIFE.

BUT IN A DEATH PENALTY CASE IF THE JURY AFTER HEARING EVERYTHING DETERMINES THAT DEATH IS APPROPRIATE, IT'S A LITTLE BIT DIFFERENT AND IT'S BECAUSE OF THE SERIOUS NATURE OF, YOU KNOW,

A DEATH PENALTY CASE.

A. UH HUH.

Q. EACH OF THE TWELVE JURORS HAVE TO SIGN THEIR NAME. AND, OF COURSE, THE SYSTEM AND THE COURT IS GOING TO DO WHATEVER YOU TWELVE JURORS SAY. IF YOU SAY LIFE, THEY ARE GOING TO DO LIFE. IF YOU SAY DEATH, THEY ARE GOING TO DO DEATH. YOUR VERDICT IS WHAT IT'S GOING TO BE.

IF YOU HEARD THE EVIDENCE AND YOU FELT THAT DEATH WAS APPROPRIATE -- AND, AGAIN, IN FAIRNESS TO YOU, YOU DON'T KNOW THE EVIDENCE YET -- BUT IF YOU THOUGHT DEATH WAS APPROPRIATE, AND THIS IS WHERE I NEED TO KNOW, YOU KNOW, WHAT KELLY HOPE REALLY FEELS.

A. UH HUH.

Q. IF YOU HEARD AND THOUGHT DEATH WAS APPROPRIATE AND THE SIGNATURES WERE THERE AND IT WAS YOUR TURN TO TAKE THE SIGNATURE, YOU KNOW, TO SIGN. AND YOUR SIGNATURE IS GOING TO GIVE THIS MAN DEATH, BASED ON WHAT YOU'VE HEARD, COULD YOU SIGN KELLY HOPE KNOWING THAT IT WOULD GIVE THIS MAN DEATH?

A. I THINK SO.

Q. IT'S NOT AN EASY DECISION.

A. NO.

Q. OKAY. FINALLY I WAS GOING TO ASK, I WAS LOOKING -- OF COURSE, WE HAVE A COPY OF YOUR QUESTIONNAIRE.

A. UH HUH.

Q. AND I SAW YOU'VE BEEN, IT LOOKS LIKE ALL OVER THE PLACE, PARTICULARLY YOU'VE BEEN TO AFRICA, TOO; IS THAT RIGHT?

A. YES, SIR.

Q. WAS THAT AS A MISSIONARY SITUATION?

A. MY PARENTS WERE MISSIONARIES OVER THERE FOR TWO YEARS.

Q. OKAY AND AS A MATTER OF FACT, I THINK STARTING DOWN IN LIKE PENSACOLA, YOU'VE BEEN RAISED PRETTY STRONGLY IN A CHRISTIAN BACKGROUND; IS THAT TRUE?

A. THAT'S CORRECT.

Q. WITHOUT GETTING DIRECTLY INTO YOUR BELIEFS, IS THERE ANYTHING ABOUT YOUR BACKGROUND THAT'S GOING TO KEEP YOU FROM BEING A FAIR AND IMPARTIAL JUROR EITHER IN THE GUILT PHASE OR IN THE PENALTY PHASE?

A. I DON'T THINK SO.

Q. ALL RIGHT; THANK YOU, MA'AM.

THE COURT: YOU CAN STEP OUT FOR A MINUTE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. POPE: I SUBMIT SHE'S QUALIFIED, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. BOYD: SHE'S QUALIFIED, YOUR HONOR.

THE COURT: I FIND THAT SHE IS QUALIFIED. BRING HER BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MS. HOPE, YOU WILL BE PART OF THE POOL FROM WHICH THE JURY IS DRAWN. THAT DOESN'T NECESSARILY MEAN THAT YOU WILL ACTUALLY BE ON THE JURY BUT YOU WILL BE AVAILABLE TO BE DRAWN.

FIRST I WANT YOU TO CALL TONIGHT AND THEY WILL TELL YOU WHAT TIME TO REPORT AND WHAT YOU CAN AND CANNOT BRING. AND, OF COURSE, BRING YOUR CLOTHING AND STUFF TO STAY A WEEK OR SO.

ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT WOULD INTERFERE WITH YOUR STAYING FOR THAT PERIOD OF TIME?

THE JUROR: AS LONG AS IT'S NOT PAST THE TWO WEEKS.

THE COURT: IT WON'T BE, I CAN ALMOST GUARANTEE THAT. DON'T DISCUSS THE CASE WITH ANYONE. IF ANYONE TRIES TO DISCUSS IT, TELL THEM YOU CANNOT AS YOU ARE A JUROR.

DON'T LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE ABOUT IT EITHER .

CALL BACK AFTER 6:00 TONIGHT. THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: 190, SUE MOORE.

MR. HANCOCK: YOUR HONOR, BEFORE WE CALL THE NEXT JUROR, COULD WE APPROACH THE BENCH?

THE COURT: YEAH. I DON'T WANT A LOT OF BENCH CONFERENCES.

MR. HANCOCK: NO, SIR, WE CAN GO ON THE RECORD ABOUT WHAT IT IS, I JUST WANT TO ---

THE COURT: OKAY.

(COUNSEL APPROACHED THE BENCH AND HAD A CONFERENCE WITH THE COURT OFF THE RECORD.)

THE COURT: WE WERE DISCUSSING, FOR THE LACK OF A BETTER WORD, A RAP SHEET THAT HAS COME BACK ON ONE OF THE JURORS, MR. COOK. IT MOST PROBABLY IS NOT ON HIM, BUT WE WANT TO VERIFY THAT SO THAT WE WILL KNOW BUT IT HAS A DIFFERENT BIRTH DATE ON IT; IT'S FROM AN AREA WHICH IS NOT REFLECTED ON ANY OF HIS QUESTIONNAIRE AS TO WHERE HE HAS LIVED. BUT WE ARE GOING TO CHECK ON IT.

ARE WE READY FOR MS. MOORE?

MR. POPE: LET ME JUST TELL HER TO GET HIS SOCIAL SECURITY NUMBER.

MR. HANCOCK: THE SOCIAL SECURITY NUMBER IS NOT ON HERE.

THE COURT: ON THE N.C.I.C. IT DOESN'T HAVE A SOCIAL SECURITY NUMBER?

MR. BRACKETT: NO, SIR. IT'S GOT HIS BIRTH PLACE AS VIRGINIA AS WELL. I MEAN ON THE RAP SHEET.

THE COURT: THIS INDIVIDUAL WAS BORN IN GREENVILLE, SOUTH CAROLINA AND WAS BORN ON 6-17-54.

MR. POPE: I ALSO NOTE THIS SAYS SIX FOOT TALL. I DON'T KNOW HOW TALL MR. IVEY IS, BUT THIS GENTLEMAN WAS A LITTLE BIT SHORTER THAN MR. IVEY. HOW TALL ARE YOU?

THE BAILIFF: FIVE EIGHT.

THE COURT: ALL RIGHT, WE WILL CONTINUE TO CHECK ON IT, BUT IT DOES NOT APPEAR TO BE THE SAME INDIVIDUAL. HIS SOCIAL SECURITY NUMBER, OF COURSE, IS ON THIS SHEET OF PAPER.

MR. HANCOCK: YES, SIR.

MR. POPE: THE STATE'S READY, YOUR HONOR.

THE COURT: ALL RIGHT, SUE MOORE, PLEASE.

SUE M. MOORE, JUROR NUMBER 190, WHITE FEMALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. MS. MOORE, PLEASE COME UP HERE AND HAVE A SEAT RIGHT HERE BETWEEN THIS LADY AND I. MS. MOORE, I'M JOHN HAYES AND I'M THE JUDGE THAT'S BEEN ASSIGNED TO THIS CASE AND I'M GOING TO REMIND YOU THAT YOU'RE UNDER OATH. YOU'VE GOT TO ANSWER WITH WORDS SO THAT WE CAN HEAR YOU.

A. YES.

Q. AND YOU MAY IF YOU ARE SEATED ON THIS JURY, YOU MAY SEE CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM. DON'T BE DISTRACTED BY THEM. THEY CAN'T TAKE YOUR PICTURE, AND THEY CAN'T REPORT ANYTHING ABOUT YOU, BUT THEY HAVE A RIGHT TO BE HERE.

A. OKAY.

Q. WE HAVE YOUR QUESTIONNAIRE. DO YOU THINK IT NEEDS ANY CHANGES OR DO YOU THINK IT'S ACCURATE?

A. I THINK IT'S ACCURATE.

Q. DID YOU REVIEW THAT LIST OF WITNESSES IN THE JURY ROOM?

A. YES, I DID.

Q. WERE YOU RELATED BY BLOOD OR MARRIAGE TO ANYONE SET FORTH THEREON OR DO YOU KNOW ANY OF THOSE PEOPLE?

A. NO, I DO NOT.

Q. PRIOR TO YOUR COMING HERE, OF COURSE, WE ANNOUNCED THE CASE ON MONDAY AND THE INDICTMENTS WERE READ AND THE PARTIES WERE INTRODUCED TO YOU. DO YOU, OTHER THAN THAT, HAVE ANY KNOWLEDGE ABOUT THIS CASE FROM ANY SOURCE WHATSOEVER?

A. I JUST REMEMBER HEARING ABOUT IT WHEN IT HAPPENED, BUT THAT'S ALL. JUST THAT THERE WAS A

MURDER, THAT'S ALL THAT I REMEMBER.

Q. HAVE YOU FORMED OR EXPRESSED ANY OPINION OR DISCUSSED THIS WITH ANYBODY?

A. NO.

Q. THE FACT THAT YOU READ SOMETHING ABOUT IT AT ONE TIME, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

A. NO.

Q. IT WOULD NOT AFFECT IT?

A. NO, IT WOULD NOT.

Q. SO, YOU COULD BE FAIR AND IMPARTIAL?

A. YES, I COULD.

Q. AND COULD YOU DISREGARD ANYTHING THAT YOU HAD READ?

A. YES.

Q. A CASE OF THIS TYPE GOES IN TWO STAGES, THE FIRST DEALING WITH WHETHER OR NOT THE PERSON CHARGED HERE, MR. ROBERTSON, IS GUILTY OR NOT GUILTY. IF HE'S FOUND NOT GUILTY OF THE CHARGES, THEN, OF COURSE, THE CASE IS OVER. BUT IF HE IS FOUND GUILTY BEYOND A REASONABLE DOUBT UNANIMOUSLY BY A JURY, THEN THE CASE GOES INTO A SECOND PHASE.

NOW HE IS PRESUMED INNOCENT OF THE CHARGES UNTIL A JURY WERE TO FIND HIM GUILTY AND WE'RE TALKING

ABOUT THIS SECOND STAGE BUT WE ARE NOT PRESUPPOSING HIS GUILT, BUT WE HAVE TO TALK ABOUT IT BECAUSE OF THE NATURE OF THESE PROCEEDINGS. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. YOU HAD A CHANCE, I HOPE, TO READ THAT LIST OF THREE JUROR TYPES?

A. YES, SIR.

Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

A. THREE, THE THIRD ONE.

Q. THE THIRD TYPE, WHEN I WROTE THAT OUT, I USED WORDS OF AGGRAVATION AND MITIGATION TALKING ABOUT CIRCUMSTANCES.

AND AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES THAT ATTEND THE CRIME THAT INCREASE ITS ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE. THAT IS, THINGS WHICH ARE OVER AND ABOVE THE CRIME ITSELF.

AND MITIGATING CIRCUMSTANCES ARE THINGS THAT DO NOT CONSTITUTE JUSTIFICATION OR EXCUSE BUT THEY ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF ONE'S MORAL CULPABILITY IN REGARD TO A CRIME.

DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. SO, YOU ARE TELLING ME THAT AS A TYPE THREE JUROR YOU'RE ONE WHO AFTER THE JURY HAD, IF IT DID, FIND MR. ROBERTSON GUILTY AND WE WENT INTO THIS SECOND PHASE, YOU WOULD NOT HAVE ANY PRECONCEIVED IDEA OR WOULD NOT HAVE MADE UP YOUR MIND AS TO WHAT PENALTY SHOULD BE IMPOSED AT THAT POINT?

A. THAT'S CORRECT.

Q. AND YOU'RE A JUROR THEN, I UNDERSTAND, WHO WOULD WANT TO HEAR THE EVIDENCE AND THE LAW, THE MITIGATING CIRCUMSTANCES AND THE AGGRAVATING CIRCUMSTANCES AND THEN AND ONLY THEN DETERMINE WHAT THE APPROPRIATE PUNISHMENT SHOULD BE. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND YOU COULD, AS I UNDERSTAND THIS TYPE JUROR, RETURN A VERDICT OF LIFE IMPRISONMENT IF YOU FELT THAT WAS APPROPRIATE.

A. YES.

Q. AND YOU COULD RETURN A VERDICT OF THE DEATH PENALTY IF YOU FELT THAT WAS APPROPRIATE?

A. YES.

Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS MAY HAVE.

QUESTIONS BY MR. BRACKETT:

Q. GOOD AFTERNOON, MS. MOORE, HOW ARE YOU DOING?

A. FINE.

Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY SOLICITOR IN THE SIXTEENTH CIRCUIT. SEATED AT COUNSEL WITH ME OVER THERE IS TOMMY POPE. HE'S THE SOLICITOR. HE AND I ARE THE DISTRICT ATTORNEYS, THE SOLICITORS, THE PROSECUTORS IN THIS CASE. IT'S OUR JOB TO PROVE THAT MR. ROBERTSON IS GUILTY OF THE CRIMES WITH WHICH HE IS CHARGED.

AT THE OUTSET LET ME SAY A COUPLE OF THINGS. ARE YOU A LITTLE BIT NERVOUS? YOU HAVEN'T BEEN IN A SITUATION LIKE THIS BEFORE, HAVE YOU?

A. I'VE NEVER BEEN IN A COURTROOM LIKE THIS BEFORE, NO.

Q. SURE. WELL, I WANT YOU TO UNDERSTAND THAT YOU CAN RELAX. NOBODY IS GRADING YOU OR JUDGING YOU. WE JUST NEED TO KNOW A LITTLE BIT ABOUT HOW YOU FEEL SO THAT WE CAN DO OUR JOBS PROPERLY. SO, I JUST WANT TO KIND OF GO BACK OVER A COUPLE OF THINGS THAT THE JUDGE ASKED YOU QUESTIONS ABOUT AND KIND OF TOUCH ON A FEW MORE THINGS MAYBE IN A LITTLE MORE DEPTH, BUT THERE ARE NO RIGHT OR WRONG ANSWERS. YOU'RE JUST TELLING US HOW YOU FEEL AND GIVING US YOUR

OPINIONS SO THAT, LIKE I SAID, SO THAT WE CAN DO OUR JOB.

AS THE JUDGE EXPLAINED TO YOU, THIS IS A TWO PART TRIAL.

A. UH HUH.

Q. THE FIRST PART ONLY INVOLVES ISSUES OF GUILT, WHETHER OR NOT THE DEFENDANT IS GUILTY OF THE CHARGES THAT HE'S GOT AGAINST HIM HERE.

AS A CRIMINAL DEFENDANT IN THIS COURTROOM, MR. ROBERTSON HAS THE RIGHT TO REMAIN SILENT. YOU UNDERSTAND THAT.

A. UH HUH.

Q. HE DOESN'T HAVE TO BRING FORWARD ANY EVIDENCE, HE'S PRESUMED INNOCENT IN THE EYES OF THE LAW UNTIL SUCH TIME AS SOLICITOR POPE AND MYSELF PRESENT EVIDENCE TO A JURY TO PROVE HIS GUILT BEYOND A REASONABLE DOUBT. ONLY WHEN THAT HAPPENS DOES THAT PRESUMPTION OF INNOCENCE LEAVE HIM AND HE BECOMES GUILTY. UNTIL THAT TIME HE IS INNOCENT. YOU UNDERSTAND THAT?

A. YES.

Q. NOW, YOU CAN -- IF YOU WERE A JUROR, YOU COULD DECIDE THIS CASE AGREEING AND ACCEPTING THAT AS A FACT, COULD YOU NOT?

A. YES, I COULD.

Q. AND YOU WOULD MAKE US CARRY OUR BURDEN OF PROOF AND SHOW YOU THAT HE WAS GUILTY.

A. THAT'S THE WAY I FEEL. IF YOU CAN PROVE IT BY THE SHADOW OF A DOUBT SOMEONE IS GUILTY, YES.

Q. YOU UNDERSTAND THE BURDEN OF PROOF, AND THIS WILL BE EXPLAINED TO YOU BY THE JUDGE. YOU HAVEN'T HAD ANY FORMAL TRAINING IN THE LAW HAVE YOU, MS. MOORE?

A. NO.

Q. WELL, YOU DON'T NEED TO COME -- YOU COME ARMED TO THIS COURTROOM WITH YOUR MOST VALUABLE TOOL, COMMON SENSE. THAT'S WHAT YOU BRING TO THE DANCE.

THE JUDGE IS THE LAST WORD ON THE LAW. HE IS THE ONE WHO IS GOING TO TELL YOU WHAT THE LAW IS AND HE'LL EXPLAIN EVERYTHING YOU NEED TO KNOW ABOUT THE LAW SO THAT YOU CAN DO YOUR JOB AS A JUROR. BUT HE'S GOING TO EXPLAIN THAT WE NEED TO PROVE OUR CASE BEYOND A REASONABLE DOUBT. VERY FEW THINGS IN THIS WORLD CAN BE PROVED IN THIS WORLD BY A SHADOW OF A DOUBT.

A. YES, THAT'S TRUE.

Q. BUT BEYOND A REASONABLE DOUBT. ONCE WE'VE PROVED THAT BEYOND A REASONABLE DOUBT THAT HE'S GUILTY OF THESE CHARGES, WHAT WE DO THEN IS WE

GO TO THE SECOND PHASE OF THE TRIAL.
WE DON'T GO TO THE SECOND PHASE UNLESS HE'S PROVED GUILTY BECAUSE, OBVIOUSLY, IF YOU AREN'T GUILTY OF SOMETHING, YOU CAN'T BE PUNISHED. RIGHT?

A. RIGHT.

Q. **SO IN THE SECOND PHASE IF HE'S PROVED GUILTY,** WE GOT TO THE PUNISHMENT PHASE, THE PENALTY PHASE IT'S CALLED. AND IN THAT PHASE THERE'S ONLY TWO OPTIONS AVAILABLE TO THE JURY.

A. UH HUH.

Q. LIFE IN PRISON OR DEATH.

A. UH HUH.

Q. OKAY. IN THAT PHASE, AGAIN, SOLICITOR POPE AND I BEAR THE BURDEN OF PROOF. WE HAVE TO PROVE AN AGGRAVATING CIRCUMSTANCE. AND THE JUDGE WILL EXPLAIN WHAT AN AGGRAVATING CIRCUMSTANCE IS, AND HE HAS BRIEFLY ALREADY. HE WILL EXPLAIN IT IN MUCH MORE DETAIL. BUT BASICALLY, FOR WHAT OUR PURPOSE IS NOW, WHAT YOU NEED TO UNDERSTAND IS THAT AN AGGRAVATING CIRCUMSTANCE IS SOMETHING THAT MAKES IT MORE THAN JUST A REGULAR MURDER, IF THERE IS SUCH A THING AS A REGULAR MURDER. IT MAKES IT EVEN MORE SERIOUS, EVEN MORE HEINOUS THAN A REGULAR MURDER; IT AGGRAVATES THE CRIME

OF MURDER IN SOME RESPECT. AND YOU'LL HEAR MORE ABOUT THAT LATER.

THE DEFENSE, IF THEY CHOOSE, THEY DON'T HAVE TO DO ANYTHING IN THE PENALTY PHASE EITHER, BUT IF THEY CHOOSE TO, THEY CAN PUT UP WHAT'S CALLED MITIGATING EVIDENCE WHICH LESSENS THE DEFENDANT'S CULPABILITY, LESSENS HIS INVOLVEMENT OR EXPLAINS TO SOME DEGREE THE CIRCUMSTANCES SURROUNDING THE CRIME IN A MANNER FAVORABLE TO HIM. DO YOU UNDERSTAND THAT?

A. YES.

Q. WHAT YOU'RE SAYING IS THAT WHEN YOU GO INTO THAT SECOND PHASE, HE'S BEEN FOUND GUILTY FOR THE SAKE OF ARGUMENT. HE'S BEEN FOUND GUILTY, WE'RE GOING INTO THE SECOND PHASE. YOU'RE GOING TO GO IN WITH AN OPEN MIND; IS THAT RIGHT?

A. YES.

Q. YOU'RE NOT GOING TO HAVE A DECISION -- EVEN THOUGH, FOR EXAMPLE, HE HAS BEEN FOUND GUILTY OF KILLING BOTH OF HIS PARENTS, ASSUME THAT'S THE CASE, EVEN THOUGH THAT'S THE CASE, YOU'RE NOT GOING TO GO IN THERE WITH THE PREDISPOSITION THAT HE SHOULD GET DEATH; HE DID A TERRIBLE THING, I'M GOING TO ASSUME THAT HE SHOULD GET DEATH UNLESS SOMEBODY CAN PROVE OTHERWISE.

A. NO.
Q. YOU'RE GOING TO HAVE AN OPEN MIND?
A. YES, SURE.
Q. AND YOU'RE GOING TO LISTEN TO WHAT THE STATE HAS TO SAY?
A. YES.
Q. AND THEN ANYTHING THE DEFENSE MAY CARE TO SAY?
A. YES.
Q. OKAY. AND THEN WHAT THE JUDGE CHARGES YOU ON THE LAW?
A. YES.
Q. AND THEN YOU'LL MAKE YOUR DECISION?
A. YES.
Q. AND YOUR DECISION COULD BE LIFE?
A. YES.
Q. AND IT COULD BE DEATH?
A. YES.
Q. OKAY. ONE OF THE RESPONSIBILITIES THAT A JUROR IN A DEATH PENALTY CASE HAS IS DIFFERENT FROM ANY OTHER CASE. IN A REGULAR CASE THE ONLY PERSON THAT HAS TO SIGN WHAT THE VERDICT IS IS THE FOREPERSON. AND YOU'VE NEVER BEEN IN A COURTROOM BEFORE, SO YOU'VE NEVER BEEN ON A JURY BEFORE; IS THAT RIGHT?
A. I HAVE, BUT JUST IN CITY COURT.

Q. OKAY, YOU'VE NEVER BEEN IN CIRCUIT COURT?
A. NO, NO.
Q. WERE YOU THE FOREPERSON ON THE JURY IN CITY COURT?
A. NO.
Q. DO YOU REMEMBER THAT THE FOREPERSON HAD TO KIND OF BE IN CHARGE OF THINGS?
A. YES.
Q. AND AT THE END OF THE CASE THE FOREPERSON WROTE DOWN WHAT THE VERDICT WAS AND SIGNED THEIR NAME?
A. YES.
Q. WELL, IF THE JURY IN THIS CASE AFTER HEARING ALL THE EVIDENCE DECIDES THAT MR. ROBERTSON SHOULD GET LIFE, THEN THE ONLY PERSON WHO HAS TO SIGN ANYTHING IS THE FOREPERSON. THEY TAKE THE PEN, WRITES LIFE, AND SIGNS THEIR NAME AND THAT'S THE END OF THE MATTER.
A. UH HUH.
Q. IF, HOWEVER, THE VERDICT OF THE JURY IN THIS CASE IN THE PENALTY PHASE IS DEATH, A VERDICT FORM IS PASSED AROUND THE JURY ROOM AND EACH INDIVIDUAL JUROR HAS TO TAKE THE PEN AND WRITE THEIR NAME INDICATING THAT THEY HAVE VOTED FOR DEATH. EACH ONE HAS TO SIGN THEIR NAME SENDING THIS MAN TO HIS DEATH.

Q. AND YOU HAVE TO UNDERSTAND THAT WHATEVER YOUR VERDICT IS IS WHAT HE'S GOING TO GET.

A. RIGHT.

Q. THE JUDGE DOESN'T HAVE ANY CHOICE TO CHANGE IT; HE'S GOING TO FOLLOW THE JURY'S RECOMMENDATION.

A. RIGHT.

Q. THE QUESTION IS, IF THAT PEN COMES AROUND THE ROOM AND IT'S PUT IN YOUR HAND, YOU'VE LISTENED TO THE EVIDENCE AND FOUND THAT DEATH IS THE APPROPRIATE SENTENCE IN THIS CASE, COULD YOU TAKE THE PEN AND WRITE YOUR NAME SUE MOORE ON THAT PAGE SENDING MR. ROBERTSON TO HIS DEATH?

A. YES.

Q. ON YOUR QUESTIONNAIRE THAT YOU FILLED OUT, AND I DON'T MEAN TO PRY, BUT AGAIN THESE ARE THE KIND OF THINGS THAT WE NEED TO KNOW SO THAT WE CAN DO OUR JOB, YOU HAD WRITTEN THAT YOU KNEW SOMEBODY WHO HAD BEEN THE VICTIM OF A HOMICIDE OR A SERIOUS ACT OF VIOLENCE.

A. YES.

Q. WHO WAS THAT?

A. I HAD AN AUNT WHO WAS RAPED WHEN I WAS -- I WAS A LITTLE GIRL. AND IT WOULDN'T FORM AN OPINION BECAUSE I WAS SO YOUNG, I JUST REMEMBER THAT IT HAPPENED.

Q. YOU'VE ANTICIPATED MY NEXT QUESTION. THE FACT THAT YOU KNOW ABOUT THAT, YOU UNDERSTAND THAT IS A DIFFERENT CASE FROM THIS ONE.

A. OH, YES.

Q. IT DOESN'T HAVE ANYTHING TO DO WITH THIS CASE.

A. NO, AND I WAS VERY YOUNG.

Q. SO, IT WOULDN'T AFFECT YOUR ABILITY TO BE A JUROR IN THIS CASE?

A. NO, I DON'T THINK SO. NO, UH UH.

Q. OKAY, THANK YOU VERY MUCH, MS. MOORE. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

QUESTIONS BY MR. HANCOCK:

Q. MS. MOORE, I'M BILL HANCOCK. I'M THE ATTORNEY FOR JIMMY ROBERTSON SITTING RIGHT HERE. MR. JIM BOYD SEATED BESIDE HIM IS ALSO HIS ATTORNEY IN THIS MATTER.

YOU HAVE HEARD DOWNSTAIRS ON MONDAY THAT HE IS CHARGED WITH KILLING BOTH OF HIS PARENTS.

A. YES.

Q. AND YOU KNOW THAT WE'RE ASSUMING THAT WE HAVE GONE PAST HIM BEING FOUND GUILTY OF KILLING BOTH OF HIS PARENTS TO A POINT THAT IF YOU WERE SITTING ON THE JURY YOU WOULD HAVE TO DECIDE ONE OF TWO THINGS, WHETHER HE GETS THE DEATH PENALTY OR LIFE IN PRISON.

AND IN THAT VEIN WHEN I ASK YOU THESE QUESTIONS, THERE'S NO RIGHT OR WRONG ANSWER, WE'RE JUST LISTENING TO WHAT YOU'RE SAYING AND I'M TRYING TO DEFINE WHAT YOU'RE SAYING BECAUSE I KNOW -- I'VE LISTENED TO WHAT YOU SAID TO SOLICITOR BRACKETT AND TO THE JUDGE. I JUST WANT TO MAKE SURE IN THIS PARTICULAR INSTANCE.

YOU HAVE INDICATED THAT SHOULD YOU SIT ON THE JURY, YOU COULD LISTEN TO ALL OF THE FACTS AND CIRCUMSTANCES AVAILABLE IN THIS CASE. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. YOU HAVE NO PRECONCEIVED OPINION OF WHAT THE VERDICT SHOULD BE, EVEN IN THE GUILTY OR NOT GUILTY PHASE?

A. THAT'S CORRECT.

Q. AND YOU HAVE NO PRECONCEIVED OPINION OF WHAT THE VERDICT SHOULD BE IN THE DEATH PENALTY PHASE, WHETHER IT SHOULD BE DEATH OR LIFE. IS THAT WHAT YOU'RE TELLING ME?

A. YES, SIR.

Q. AND YOU HAVE INDICATED, I BELIEVE TO THE SOLICITOR AND TO THE JUDGE, THAT YOU COULD CONSIDER BOTH AGGRAVATING CIRCUMSTANCES WHICH WOULD MAKE THE CRIME EVEN WORSE --

A. I DID.
Q. -- THAN JUST THE KILLING OF ONE'S PARENTS. THAT YOU COULD CONSIDER THOSE CIRCUMSTANCES. AND IF THEY WERE PROVEN TO YOU, THAT YOU COULD DELIVER THE SENTENCE OF DEATH. IS THAT CORRECT?
A. THAT'S CORRECT.
Q. EVEN TO THE POINT OF SIGNING YOUR NAME ON A PIECE OF PAPER THAT SAID JIMMY WOULD BE GIVEN THE DEATH PENALTY. IS THAT CORRECT, MA'AM, THAT'S WHAT YOU SAID?
A. THAT'S CORRECT.
Q. AND IF I LISTENED CORRECTLY, CORRECT ME IF I'M WRONG, YOU ALSO INDICATED THAT YOU COULD LISTEN TO MITIGATING CIRCUMSTANCES WHICH ARE CIRCUMSTANCES THAT COULD BE CONSIDERED IN FAIRNESS AND MERCY IN THIS PARTICULAR CASE. IS THAT CORRECT?
A. THAT'S CORRECT.
Q. SO, YOU ARE INDICATING THAT YOU COULD EXTEND MERCY IF IT WERE APPROPRIATE TO JIMMY ROBERTSON IN THIS CASE. IS THAT CORRECT, MA'AM?
A. YES.
Q. EVEN THOUGH HE HAD KILLED AND IT WOULD HAVE BEEN PROVEN THAT HE HAD KILLED BOTH OF HIS PARENTS?
A. IT WOULD DEPEND ON HEARING EVERYTHING. YOU'D

HAVE TO HEAR EVERYTHING BEFORE YOU COULD MAKE A DECISION. MAYBE I DON'T UNDERSTAND WHAT YOU'RE TRYING TO ASK ME.

Q. NO, MA'AM, YOU'RE ANSWERING; I'M JUST LISTENING.

A. I WOULD HAVE TO HEAR EVERYTHING BEFORE I MAKE A DEFINITE DECISION.

Q. BUT, AGAIN, YOU HAVE INDICATED THAT YOU COULD GIVE DEATH, BUT YOU COULD ALSO CONSIDER THE CIRCUMSTANCES IN MITIGATION IN FAIRNESS AND MERCY TOWARD MR. ROBERTSON?

A. YES.

Q. AND YOU UNDERSTAND THAT THE DEFENSE HAS NOTHING TO PROVE TO YOU, YOU WOULD ONLY HAVE TO CONSIDER THOSE CIRCUMSTANCES.

A. THAT'S TRUE.

Q. AND IF THEY WEIGHED ON YOUR OPINION, YOU COULD DELIVER MERCY TO MR. ROBERTSON.

A. AFTER HEARING EVERYTHING, YES.

Q. AND YOU'VE INDICATED THAT YOU HAVE A FAIRLY STRONG OPINION THAT SHOULD YOU DECIDE TO VOTE FOR MERCY FOR LIFE IN PRISON, THAT IF THAT WAS YOUR VERDICT, THEN COULD YOU SUSTAIN THAT VERDICT AGAINST, SAY, THE OTHER ELEVEN PEOPLE ON THE JURY IF IT WERE YOUR HEARTFELT CONSIDERATION?

A. REPEAT THAT?

Q. I'LL REPEAT IT. IF YOU HAVE DECIDED TO VOTE FOR LIFE IN PRISON.

A. UH HUH.

Q. WOULD YOU CHANGE THAT OPINION JUST TO GO ALONG WITH THE MAJORITY OF THE JURY IF THEY WANTED TO VOTE FOR DEATH?

A. NO. I THINK YOU SHOULD USE YOUR OWN DECISION. I THINK YOU SHOULD DO WHAT YOU THINK.

Q. I HAVE NO FURTHER QUESTIONS.

THE COURT: I'M GOING TO LET YOU STEP OUTSIDE THE DOOR FOR JUST A MOMENT.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. BRACKETT: I SUBMIT SHE'S QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAYS THE DEFENSE?

MR. HANCOCK: QUALIFIED, YOUR HONOR.

THE COURT: I FIND SHE IS QUALIFIED. WOULD YOU BRING HER BACK IN, MR. IVEY?

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MS. MOORE, WE ARE GOING TO INCLUDE YOU ON THE POOL FROM WHICH THE JURY WILL BE DRAWN. CALL BACK TONIGHT AFTER 6:00 AND THEY WILL TELL YOU WHEN TO REPORT AND WHAT TO BRING. YOU WILL BRING, OF COURSE,

CLOTHING AND TOILETRY ITEMS FOR APPROXIMATELY A WEEK'S STAY. THEY WILL TELL YOU SOME THINGS PERHAPS NOT TO BRING.

ARE THERE ANY EXTENUATING CIRCUMSTANCES THAT WE NEED TO KNOW ABOUT THAT WOULD INTERFERE WITH YOUR SERVICE?

THE JUROR: NO.

THE COURT: EVEN THOUGH YOU'RE NOT ON THE JURY, YOU POSSIBLY WILL BE. YOU'RE A POTENTIAL JUROR, SO YOU STILL CAN'T DISCUSS THIS CASE WITH ANYONE AND IF ANYONE TRIES TO DISCUSS THE CASE WITH YOU, TELL THEM YOU CANNOT, AND REPORT BACK TO ME IF THEY DO.

AND YOU CAN'T LET YOURSELF BE EXPOSED, AS I BELIEVE I TOLD EVERYBODY EARLIER IN THE JURY ROOM DOWNSTAIRS, DON'T READ ABOUT IT, WATCH IT OR LISTEN TO IT. YOU'VE GOT TO MAKE YOUR DECISION ON WHAT YOU HEAR IN HERE, SO DON'T LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE OR ANY CONVERSATION ABOUT THE CASE. AND CALL BACK TONIGHT AFTER 6:00. THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: MR. GOFF, JAMES GOFF.

JAMES G. GOFF, JUROR NUMBER 94, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. MR. GOFF, JUST COME ON UP HERE AND HAVE A SEAT PLEASE, SIR. MR. GOFF, I'M JOHN HAYES AND I'M THE JUDGE THAT HAS BEEN ASSIGNED TO PRESIDE OVER

THIS TRIAL. AND I WANT TO REMIND YOU THAT YOU ARE STILL UNDER OATH, OKAY?

A. YES, SIR.

Q. DURING THE COURSE OF THE TRIAL IF YOU SIT ON THE TRIAL, YOU MAY NOTICE CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM. THEY ARE ALLOWED BY LAW TO BE HERE BUT THEY CANNOT FILM YOU OR THE JURY AND THEY CAN'T REPORT ANYTHING ABOUT YOU, SO I DON'T WANT YOU TO BE DISTRACTED BY THAT.

YOU HANDED US A QUESTIONNAIRE, DO YOU NEED TO MAKE ANY CHANGES TO IT OR DO YOU RECALL IT BEING CORRECT?

A. I THINK IT'S CORRECT NOW.

Q. DID YOU HAVE A CHANCE TO REVIEW THE WITNESS LIST IN THE JURY ROOM?

A. YES, I DON'T KNOW ANYBODY. I JUST MOVED HERE A COUPLE OF YEARS AGO.

Q. YOU DIDN'T KNOW ANYBODY AND ARE NOT RELATED TO ANYBODY?

A. NO.

Q. PRIOR TO YOUR COMING HERE AND, OF COURSE, YOU HAVE BEEN TOLD MONDAY THE NAME OF THE DEFENDANT AND THE TYPE OF CASES THAT ARE BEING TRIED, OTHER THAN THAT HAVE YOU HEARD ANYTHING ABOUT THIS CASE, EXPRESSED AN OPINION ABOUT IT, FORMED

AN OPINION OR READ ANYTHING IN THE PAPER OR SEEN ANYTHING ON T.V.?

A. NO, SIR.

Q. THIS CASE WOULD GO FORWARD IN TWO SEPARATE SEGMENTS OR COULD. THE FIRST HAS TO DO WITH WHETHER OR NOT A JURY WERE TO FIND MR. ROBERTSON GUILTY UNANIMOUSLY BEYOND A REASONABLE DOUBT OF MURDER. IF THE JURY FOUND NOT GUILTY, THEN THE CASE WOULD BE OVER.

AND MR. ROBERTSON IS PRESUMED INNOCENT OF THESE CHARGES UNTIL SUCH TIME AS A JURY WERE CONVICTED.

IF THE JURY DID CONVICT HIM, WE WOULD MOVE INTO A SECOND PART OR A SECOND PHASE WHICH WOULD BE THE PENALTY PHASE WHEREIN THE ISSUE WOULD BE WHAT PENALTY WOULD BE THE APPROPRIATE PENALTY TO BE IMPOSED ON HIM, HAVING ALREADY BEEN FOUND GUILTY OF MURDER. DO YOU UNDERSTAND THAT?

A. UH HUH.

Q. I WANT YOU TO UNDERSTAND THAT WHILE WE ARE TALKING ABOUT THIS SECOND PHASE, THAT DOESN'T PRESUPPOSE THAT WE WILL EVER GET THERE. WE JUST HAVE TO TALK ABOUT IT NOW BECAUSE OF THE NATURE OF THE PROCEEDINGS. YOU UNDERSTAND THAT?

A. YES.

Q. DID YOU FIND ON THAT LIST OF JUROR TYPES ANY OF THOSE THAT WOULD APPLY TO YOU AS THE TYPE JUROR YOU THINK YOU MAY BE?

A. TYPE THREE.

Q. IN TYPE THREE I HAD USED WORDS AGGRAVATING AND MITIGATING WHEN TALKING ABOUT THE FACTS AND CIRCUMSTANCES.

AGGRAVATING CIRCUMSTANCES ARE THOSE WHICH ATTEND THE COMMISSION OF A CRIME WHICH ADD TO ITS ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCE. THEY ARE THINGS OVER AND ABOVE JUST THE ELEMENTS OF THE CRIME ITSELF.

MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH WOULD NOT CONSTITUTE JUSTIFICATION OR EXCUSE BUT ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING THE DEGREE OF ONE'S MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. SO, YOU'RE TELLING ME THAT AS JUROR TYPE THREE, YOU WOULD BE THE TYPE OF JUROR WHO EVEN THOUGH MR. ROBERTSON WOULD HAVE AT THAT POINT BEEN FOUND GUILTY, YOU WOULD NOT HAVE MADE UP YOUR MIND AT THAT POINT CONCERNING WHAT THE APPROPRIATE PUNISHMENT WOULD BE. IS THAT

CORRECT?

A. YES, SIR.

Q. YOU'RE TELLING ME THAT DURING THAT SECOND PART YOU WOULD WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION, THE JUDGE'S CHARGE ON THE LAW AND ONLY AFTER HEARING ALL THAT WOULD YOU DETERMINE WHAT WOULD BE THE APPROPRIATE PENALTY. IS THAT THE TYPE JUROR YOU ARE?

A. YES, SIR.

Q. AND WHEN YOU REACHED THAT POINT IF YOU FELT THAT THE FACTS WARRANTED IT, COULD YOU RETURN A VERDICT OF LIFE IN PRISON?

A. I COULD.

Q. COULD YOU IF YOU FELT THE FACTS WARRANTED IT, BRING IN AND RETURN A VERDICT OF THE DEATH PENALTY?

A. I COULD.

Q. ALL RIGHT, ANSWER ANY QUESTIONS THAT THEY MAY HAVE.

QUESTIONS BY MR. BOYD:

Q. GOOD AFTERNOON, MR. GOFF; HOW ARE YOU?

A. FINE; HOW ARE YOU?

A. JUST FINE. I'M JIM BOYD AND I REPRESENT JIMMY ROBERTSON IN THIS CASE. THAT'S HIM SEATED OVER

THERE AT THE END OF THAT TABLE, AND THAT'S MY CO-COUNSEL, BILL HANCOCK, SITTING THERE.

I NEED TO FOLLOW UP WITH YOU ON A FEW QUESTIONS THE JUDGE ASKED YOU. FIRST I WANT TO TELL YOU, HE EXPLAINED TO YOU THAT THIS IS POTENTIALLY A TWO PHASE TRIAL. IN THE FIRST PHASE IF YOU'RE SITTING AS A JUROR, YOU WOULD BE DETERMINING WHETHER OR NOT JIMMY ROBERTSON SHOULD BE FOUND GUILTY OR NOT GUILTY OF THE CRIME. DO YOU UNDERSTAND THAT?

A. YES.

Q. AND, OF COURSE, IF HE IS FOUND NOT GUILTY, THEN IT DOESN'T EVEN GO INTO A SECOND PHASE OF THE TRIAL.

A. RIGHT.

Q. YOU UNDERSTAND THAT?

A. UH HUH.

Q. AND YOU UNDERSTAND THAT IT IS THE DUTY OF THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT IN THE FIRST PHASE OF THE TRIAL.

A. THAT'S RIGHT.

Q. BECAUSE EVEN INNOCENT PEOPLE CAN BE MISTAKENLY CHARGED FOR A CRIME. YOU UNDERSTAND THAT?

A. RIGHT.

Q. OKAY. NOW, IN THE SECOND PHASE OF THE TRIAL IF

IT GETS TO THAT POINT, I'M GOING TO ASK YOU A FEW QUESTIONS ABOUT THAT. AND BY ASKING YOU THOSE QUESTIONS -- FOR PURPOSES OF THESE QUESTIONS, YOU'RE ASSUMING THAT WE'VE GOT TO THAT POINT, BUT I DON'T WANT TO IMPLY THAT WE ARE GOING TO GET TO THAT POINT JUST BY ME ASKING YOU THESE QUESTIONS.

A. I UNDERSTAND.

Q. THIS IS JUST THE ONLY CHANCE THAT I GET TO ASK THAT. OKAY?

A. RIGHT.

Q. NOW, LET'S ASSUME THAT JIMMY ROBERTSON HAS BEEN FOUND GUILTY OF MURDER. AND DO YOU UNDERSTAND WHAT HE'S CHARGED WITH AS FAR AS HE IS CHARGED WITH KILLING HIS MOTHER AND HIS FATHER.

A. OKAY.

Q. DID YOU KNOW THAT?

A. NO, I DIDN'T KNOW THAT.

Q. WELL, THAT IS WHAT HE IS CHARGED WITH DOING.

A. OKAY.

Q. KNOWING THAT, KNOWING THAT HE'S CHARGED WITH KILLING HIS MOTHER AND HIS FATHER, CAN YOU STILL CONSIDER A LIFE SENTENCE AS OPPOSED TO A DEATH SENTENCE KNOWING THAT?

A. YES.

Q. AND IF IT GETS TO THAT PENALTY PHASE, THE STATE WILL PRESENT EVIDENCE IN WHAT'S CALLED AGGRAVATION ABOUT THE CRIME. THAT'S THINGS THAT MAKE THE MURDERS WORSE. DO YOU SEE WHAT I'M TALKING ABOUT?

A. YES.

Q. THEY CAN GO INTO DIFFERENT THINGS ABOUT IT THAT MAKE IT WORSE. WE ON THE OTHER HAND, IF WE WANT TO, WE DON'T HAVE TO, BUT WE CAN PRESENT EVIDENCE IN WHAT'S CALLED MITIGATION. AND YOU UNDERSTAND, MITIGATION IS NOT A DEFENSE TO WHAT HE WOULD HAVE BEEN CONVICTED OF, IT DOESN'T EXCUSE WHAT HE DID, BUT IT WOULD BE THINGS POTENTIALLY ABOUT HIM OR ABOUT THE SURROUNDING CIRCUMSTANCES THAT MAY MAKE HIM LESS CULPABLE. DO YOU SEE WHAT I'M SAYING?

A. UH HUH.

Q. OKAY. AND IN THAT EVENT WOULD YOU BE WILLING TO CONSIDER THE MATTERS THAT WE WOULD PRESENT IN MITIGATION?

A. YES.

Q. YOU WOULD CONSIDER THOSE THINGS, IS THAT CORRECT?

A. YES.

Q. SO YOU WOULDN'T AUTOMATICALLY, JUST BECAUSE HE'S

BEEN CONVICTED OF MURDERING BOTH OF HIS PARENTS, ASSUME THAT A DEATH SENTENCE IS THE APPROPRIATE PUNISHMENT?

A. NO.

Q. OKAY. SO, YOU COULD GO EITHER WAY DEPENDING ON OTHER EVIDENCE YOU HEAR IN THE CASE?

A. YES.

Q. OKAY. THERE ARE A FEW OTHER THINGS I WANT TO ASK YOU AND I'LL LEAVE YOU ALONE. ONE THING I WANT YOU TO REMEMBER AND, OF COURSE, YOU KNOW AS A JUROR YOU'LL HAVE AN OPINION, OTHER JURORS MAY HAVE DIFFERING OPINIONS. YOU UNDERSTAND THAT.

A. THAT'S RIGHT.

Q. OKAY. AND YOU'RE ENTITLED TO HAVE YOUR OPINION RESPECTED BY THE OTHER JURORS. YOU UNDERSTAND THAT.

A. THAT'S RIGHT.

Q. ON THE OTHER HAND, YOU HAVE AN OBLIGATION TO RESPECT THE OTHER JUROR'S OPINIONS, TOO.

A. UH HUH, YES.

Q. IF AFTER DUE DELIBERATION AND AFTER LISTENING TO ALL OF THE EVIDENCE AND WHAT THE OTHER JURORS HAD TO SAY, YOU WERE CONVINCED, LET'S JUST GIVE AN EXAMPLE, YOU WERE CONVINCED THAT IT SHOULD BE LIFE IN PRISON AND THE OTHER JURORS, EVEN ELEVEN

OF THEM, SAID THAT WE THINK IT SHOULD BE DEATH. WOULD YOU CHANGE YOUR VOTE TO BE IN THE MAJORITY BECAUSE THE OTHER ELEVEN WAS AGAINST YOU?

A. IF I KNEW -- I DON'T KNOW. I DON'T KNOW HOW TO ANSWER THAT.

Q. WHAT I GUESS I MEANT IS WOULD YOU CHANGE YOUR VOTE SO THAT YOU COULD GET A VERDICT AND GET OUT OF THERE?

A. NO, NO, I WOULDN'T DO THAT.

Q. OKAY. EVEN IF THE OTHERS WERE AGAINST YOU. AND I UNDERSTAND YOU CAN LISTEN TO THEM ---

A. YEAH, YEAH.

Q. --- AND CONSIDER WHAT THEY ARE SAYING. BUT UNLESS YOU WERE CONVINCED IN YOUR MIND THAT IT WAS THE RIGHT THING TO DO, WOULD YOU CHANGE YOUR MIND?

A. NO.

Q. OKAY, THANK YOU; THAT'S ALL THE QUESTIONS I HAVE.

QUESTIONS BY MR. BRACKETT:

Q. GOOD AFTERNOON, MR. GOFF.

A. GOOD AFTERNOON.

Q. MY NAME IS KEVIN BRACKETT, AND I'M WITH THE SOLICITOR'S OFFICE. SEATED OVER AT COUNSEL TABLE WITH ME IS TOMMY POPE. SOLICITOR POPE AND

I WILL BE PROSECUTING MR. ROBERTSON FOR THESE CHARGES AND I JUST WANT TO KIND OF FOLLOW UP WITH A FEW BRIEF QUESTIONS ALONG THE SAME LINES.

A. OKAY.

Q. AS I UNDERSTAND IT, YOU KNOW THIS IS A TWO PART TRIAL.

A. YES.

Q. THE FIRST PART IS GUILT OR INNOCENCE; IT DOESN'T HAVE ANYTHING TO DO WITH THE DEATH PENALTY, JUST WHETHER OR NOT HE DID IT. AND YOU DON'T HAVE ANY IDEAS ONE WAY OR ANOTHER BECAUSE YOU HAVEN'T HEARD ANY EVIDENCE. IS THAT RIGHT?

A. THAT'S RIGHT.

Q. AND YOU COULD BE FAIR AND IMPARTIAL, LISTEN TO THE EVIDENCE. IF HE'S GUILTY, YOU'LL VOTE GUILTY; IF HE'S NOT, YOU'LL VOTE NOT.

A. THAT'S RIGHT.

Q. OKAY. AND THEN WE GO TO THE SECOND PHASE. IN THE SECOND PHASE THERE WE ARE EXCLUSIVELY CONCERNED WITH PUNISHMENT AND THE OPTIONS ARE LIFE AND DEATH. AND WHAT YOU'VE SAID IS THAT IF YOU FIND THAT THE DEFENDANT DESERVES LIFE IMPRISONMENT AFTER LISTENING TO THE EVIDENCE FROM THE STATE AND FROM THE DEFENSE, ANYTHING THEY CHOOSE TO PUT UP, IF YOU THINK THAT THE

SENTENCE SHOULD BE LIFE, YOU COULD VOTE FOR LIFE IN PRISON?

A. I COULD.

Q. AND IF YOU THINK THAT AFTER HEARING ALL OF THE EVIDENCE IT SHOULD BE DEATH, YOU COULD VOTE FOR DEATH AS WELL?

A. I COULD.

Q. OKAY. ONE OF THE REQUIREMENTS IN A CAPITAL MURDER CASE -- AND YOU'VE SERVED ON A JURY BEFORE I SAW ON YOUR QUESTIONNAIRE; IS THAT RIGHT?

A. YES, IT WAS JUST A CIVIL CASE.

Q. AND HOW LONG AGO WAS THAT?

A. I THINK IT'S BEEN ABOUT EIGHT YEARS.

Q. WERE YOU THE FOREMAN BY ANY CHANCE?

A. NO.

Q. WELL, YOU KNOW THE RESPONSIBILITIES OF A FOREMAN EVEN IN A CIVIL CASE IT'S THE SAME RESPONSIBILITIES, THE FOREMAN, FOREPERSON, FORELADY IF IT'S A WOMAN REPORTS THE VERDICT OF THE JURY.

A. YES.

Q. IN ALMOST EVERY TYPE OF CASE, CIVIL OR CRIMINAL, THEY REPORT THE VERDICT OF THE JURY. AND THEY DO THAT BY WRITING WHAT THEIR VERDICT IS, AND

THEN SIGNING THEIR NAME UNDERNEATH.

A. RIGHT.

Q. AND THAT'S THE SAME IN MOST EVERY CRIMINAL CASE INCLUDING THIS ONE IN THE FIRST PART. THE ONLY PERSON THAT HAS TO SIGN IS THE FOREPERSON.

IN THE SECOND PART OF THE TRIAL, LIFE OR DEATH, IF THE JURY DECIDES THAT THE VERDICT IS LIFE, AGAIN THE ONLY PERSON THAT HAS TO WRITE THAT IS THE FOREPERSON; WRITES LIFE, SIGNS THEIR NAME, THAT'S THE END OF THE MATTER.

IF, HOWEVER, THE VERDICT IS DEATH AND THE JURY DECIDES THAT THIS DEFENDANT SHOULD BE SENTENCED TO DEATH, THEN EACH AND EVERY JUROR ON THAT JURY HAS TO SIGN THE VERDICT SHEET INDICATING THAT THEY WANT TO SEND THIS MAN TO DEATH.

IF IT BECAME, AFTER LISTENING TO THE EVIDENCE IN AGGRAVATION, THE EVIDENCE IN MITIGATION, HEARING THE JUDGE EXPLAIN WHAT THE LAW IS, IF AFTER HEARING ALL OF THAT AND DELIBERATING WITH THE OTHER JURORS YOU DECIDED THAT THE VERDICT SHOULD BE DEATH, COULD YOU TAKE A PEN IN YOUR HAND AND SIGN JAMES GOFF ON A SHEET SENTENCING AND SENDING THIS MAN TO DEATH?

A. YES.

Q. OKAY, SIR. ONE FINAL QUESTION. THE DEFENSE

ASKED YOU A COUPLE OF QUESTIONS ABOUT YOUR INTERACTION WITH OTHER JURORS AND WOULD YOU CHANGE YOUR MIND JUST TO SUIT THE OTHER JURORS. YOU'D STICK TO YOUR CONVICTIONS IF THEY WERE HEARTFELT?

A. THAT'S RIGHT.

Q. BUT THAT DOESN'T MEAN YOU WOULDN'T LISTEN TO THE OTHER JURORS, WOULD IT?

A. NO.

Q. OF COURSE, YOU'RE GOING TO DELIBERATE WITH THEM, TALK TO THEM, KEEP YOUR MIND OPEN. IF THEY POINT OUT SOMETHING YOU HADN'T THOUGHT OF, YOU MIGHT CHANGE YOUR MIND IF IT'S A GOOD ENOUGH REASON, RIGHT?

A. THAT'S RIGHT.

Q. THANK YOU VERY MUCH, MR. GOFF.

THE COURT: MR. GOFF, IF YOU WOULD JUST STEP RIGHT OUTSIDE THE DOOR FOR JUST A MOMENT.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. BRACKETT: I SUBMIT HE'S QUALIFIED.

THE COURT: WHAT SAYS THE STATE?

MR. BOYD: HE'S QUALIFIED, YOUR HONOR.

THE COURT: I FIND THAT HE IS QUALIFIED. ALL RIGHT, BRING HIM BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. GOFF, WE'RE GOING TO INCLUDE YOU IN THE POOL FROM WHICH THE JURY WILL BE DRAWN. THAT DOES NOT NECESSARILY MEAN THAT YOU ACTUALLY WILL BE ON THE JURY BECAUSE WE WILL TAKE A GROUP AND COMPRESS IT DOWN.

PLEASE CALL BACK TONIGHT AFTER 6:00 AND YOU WILL RECEIVE INSTRUCTIONS. AND THEY WILL INCLUDE WHAT TO BRING. OF COURSE, BRING CLOTHING AND TOILETRY ITEMS TO PLAN ON STAYING A WEEK, I THINK IT WILL BE ABOUT THAT LONG.

ARE THERE ANY EXTENUATING CIRCUMSTANCES CONCERNING YOUR SERVICE THAT WE NEED TO BE AWARE OF?

THE JUROR: NO, SIR.

THE COURT: DON'T TALK ABOUT THE CASE TO ANYONE. IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, TELL THEM YOU CANNOT, THAT YOU ARE A JUROR. AND REPORT BACK TO ME IF ANYBODY TRIES TO TALK TO YOU ABOUT IT.

AND DON'T LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE IF THERE IS ANYTHING THAT EVEN REMOTELY LOOKS LIKE IT COULD DEAL WITH THIS CASE, PLEASE DON'T PAY ANY ATTENTION TO IT, OKAY?

THE JUROR: OKAY.

THE COURT: CALL BACK AFTER 6:00 TONIGHT.

THE JUROR: OKAY.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: MY COUNT IS 34, DOES THAT JIVE WITH

Y'ALL?

MR. BRACKETT: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT, CHRISTOPHER WILSON.

CHRISTOPHER J. WILSON, JUROR NUMBER 291, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. COME UP HERE AND HAVE A SEAT PLEASE, SIR. MR. WILSON, I'M JOHN HAYES AND I'M THE JUDGE ASSIGNED TO PRESIDE OVER THIS CASE AND I WANT TO REMIND YOU THAT YOU'RE UNDER OATH. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. NOW, IF YOU ARE SEATED ON THIS JURY, YOU WILL PERHAPS SEE PHOTOGRAPHERS OR CAMERAS HERE IN THE COURTROOM. DON'T LET THAT INTIMIDATE YOU OR DON'T BE DISTRACTED BY IT BECAUSE THEY CANNOT SHOW YOU, THEY CANNOT FILM THE JURORS OR REPORT ABOUT THE JURORS. OKAY?

A. OKAY.

Q. YOU HAVE TURNED IN A JUROR INFORMATION CARD AND A QUESTIONNAIRE AND SOME INFORMATION ON IT. IS THAT CORRECT OR DO YOU NEED TO MAKE ANY CHANGES TO IT?

A. NO, SIR.

Q. IT'S CORRECT?

A. IT'S CORRECT.

Q. DID YOU GET A CHANCE TO REVIEW THE WITNESS LIST BACK THERE IN THE JURY ROOM?

A. YES, SIR.

Q. WAS ANYBODY ON THERE TO WHOM YOU ARE RELATED BY BLOOD OR MARRIAGE?

A. NO, SIR.

Q. ANYBODY ON THERE YOU KNEW?

A. NO, SIR.

Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE YOU GOT HERE? I KNOW MONDAY I HAD THE INDICTMENTS READ AND INTRODUCED YOU TO THE PEOPLE INVOLVED, BUT HAVE YOU RECEIVED ANY INFORMATION OTHER THAN THAT REGARDING THIS TRIAL, HAVE YOU FORMED AN OPINION OR DISCUSSED THE CASE OR READ OR HEARD ABOUT IT?

A. NO, SIR.

Q. THIS CASE WILL PROCEED IN TWO PARTS. THE FIRST DEALING WITH WHETHER OR NOT A JURY WOULD FIND MR. ROBERTSON GUILTY OF MURDER. THEY WOULD HAVE TO FIND HIM GUILTY OF MURDER BEYOND A REASONABLE DOUBT BY A UNANIMOUS VERDICT.

HE IS PRESUMED INNOCENT UNTIL THAT WERE TO OCCUR. IF HE WERE FOUND NOT GUILTY, THE CASE WOULD END. IF HE WERE FOUND GUILTY, THE CASE

WOULD PROCEED INTO WHAT'S CALLED THE PENALTY PHASE.

WE'RE TALKING ABOUT THAT SECOND PART EVEN THOUGH WE ARE NOT SURE WE WILL GET THERE BECAUSE WE WILL NOT GET THERE UNLESS HE IS FOUND GUILTY.

DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. DID YOU REVIEW THE JUROR TYPES THAT WERE SET FORTH ON THAT LIST IN THE JURY ROOM?

A. YES, SIR.

Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

A. YES, SIR.

Q. WHICH ONE?

A. THE SECOND ONE.

Q. ALL RIGHT, THE SECOND, THAT IS THE TYPE OF JUROR WHO EVEN THOUGH ONE HAS BEEN FOUND GUILTY OF MURDER WOULD UNDER NO CIRCUMSTANCES GIVE THE DEATH PENALTY. THAT IS, SOMEONE WHO REGARDLESS OF WHAT WAS PRESENTED IN THE PENALTY PHASE AS FAR AS CIRCUMSTANCES OF AGGRAVATION, THIS JUROR, YOU'RE TELLING ME YOU'RE THIS TYPE, WOULD HAVE YOUR MIND MADE UP CONCERNING PUNISHMENT AND WOULD NOT GIVE THE DEATH PENALTY NO MATTER WHAT YOU HEARD AT THAT SECOND PHASE. IS THAT CORRECT?

A. YES, SIR.

Q. ALL RIGHT, ANSWER ANY QUESTIONS THE ATTORNEYS MAY HAVE.

QUESTIONS BY MR. POPE:

Q. MR. WILSON, I'M TOMMY POPE; I'M THE SOLICITOR HERE IN YORK COUNTY. MR. KEVIN BRACKETT IS MY DEPUTY SOLICITOR, AND WE REPRESENT THE STATE. HAVE YOU EVER BEEN IN A SITUATION LIKE THIS BEFORE WHERE YOU HAD TO BE QUESTIONED LIKE THIS?

A. NO, SIR.

Q. OKAY. WELL, LET ME TELL YOU ONE THING OFF THE BAT, YOU CAN'T GIVE A WRONG ANSWER. YOU KNOW, YOU'RE UP HERE AND WE'VE SWORN YOU IN AND EVERYBODY IS AROUND. WHATEVER CHRIS WILSON THINKS, THAT'S WHAT WE WANT TO KNOW ABOUT. YOU KNOW, JUST LIKE YOU'RE TELLING THE JUDGE ABOUT WHAT CATEGORY YOU'RE IN AND STUFF LIKE THAT, YOU CAN'T GIVE A WRONG ANSWER.

SO, I DON'T WANT YOU TO FEEL LIKE YOU'RE GETTING INTERROGATED BECAUSE AFTER THE JUDGE GETS THROUGH, I GET THROUGH, THEN THEY ARE GOING TO ASK YOU SOME QUESTIONS, TOO. BUT I JUST WANT TO KIND OF HELP YOU BE AT EASE A LITTLE BIT.

HAVE YOU EVER SERVED ON A JURY BEFORE?

A. NO, SIR.

Q. SO, THIS WHOLE SHOOTING MATCH IS A NEW EXPERIENCE FOR YOU, IS THAT RIGHT?

A. YES, SIR.

Q. OKAY. WELL, AGAIN I'LL TELL YOU THAT WHATEVER YOUR ANSWERS ARE OR WHAT YOU'RE TELLING US FROM YOUR HEART AND YOUR MIND IS THE WAY YOU FEEL. AND I'M GOING TO GO RIGHT TO IT. YOU HAD SAID THAT YOU WERE THE TYPE OF JUROR THAT WOULD JUST NEVER GIVE THE DEATH PENALTY. IS THAT RIGHT?

A. THAT'S RIGHT.

Q. OKAY. AND IS THIS A -- I GUESS YOU -- AGAIN, YOU HAVEN'T SAT IN A CHAIR AND HAD TO THINK ABOUT IT BEFORE LIKE THIS, BUT IS THIS SOMETHING YOU'VE THOUGHT ABOUT OR HAD A CHANCE TO THINK ABOUT SINCE READING THAT OR HAVE YOU FELT LIKE THIS A LONG TIME IN YOUR LIFE?

A. I'M CATHOLIC AND I DON'T BELIEVE IN THE DEATH PENALTY.

Q. OKAY. AND AGAIN THAT'S YOUR ANSWER. I'M NOT TRYING TO CHANGE YOUR ANSWER, I'M JUST TRYING TO UNDERSTAND A LITTLE BIT MORE ABOUT IT.

Q. CHRIS, IS THERE ANY CIRCUMSTANCE -- WHAT YOU'RE TELLING ME IS JUST BASED ON YOUR RELIGIOUS VIEWS NO MATTER WHAT THE CASE -- AND, OF COURSE, YOU DON'T KNOW ANYTHING ABOUT THE FACTS OF THIS CASE

ANYWAY, BUT YOU'RE TELLING ME NO MATTER WHAT THE CASE -- SOLICITOR, YOU CAN BRING THE WORSE THING IN THE WORLD, JUST THE WAY CHRIS WILSON FEELS, HE'S NOT GOING TO GIVE THE DEATH PENALTY. IS THAT A FAIR STATEMENT?

A. YES, SIR.

Q. AND, AGAIN, YOU KNOW, WE WILL SHOW WHAT'S CALLED EVIDENCE IN AGGRAVATION, YOU KNOW, WE SHOW BAD THINGS ABOUT THE CASE. OF COURSE, THEY WOULD SHOW THINGS IN MITIGATION. I COULD BRING IT IN BY THE TRUCK LOAD AND JUST BASED ON YOUR VIEWS AND YOUR CATHOLIC VIEWS, I'M NOT GOING TO CHANGE YOU NO MATTER IF I SHOW YOU ONE DAY'S WORTH OF TESTIMONY OR A HUNDRED DAYS BECAUSE THAT'S JUST THE WAY YOU FEEL. IS THAT A FAIR STATEMENT?

A. YES, SIR.

Q. LET ME ASK YOU ANOTHER QUESTION. PART OF THE DEATH PENALTY, AND OF COURSE YOU REALIZE THAT THIS MAN IS INNOCENT UNTIL PROVEN GUILTY AND WE'VE GOT TO PROVE THAT FIRST. YOU UNDERSTAND THAT FROM WHAT THE JUDGE SAID, RIGHT?

A. YES, SIR.

Q. WELL, AS PART OF THE SECOND PHASE -- SAY WE DO GET HIM CONVICTED, WE PROVED THE CASE AND GET TO THE SECOND PHASE, THAT'S WHEN YOU DECIDE LIFE OR

DEATH. AND THAT'S WHEN YOU SAY EVERY TIME YOU'D VOTE LIFE NO MATTER WHAT. RIGHT?

A. YES, SIR.

Q. IF YOU'RE ON THE JURY AND THE TWELVE JURORS VOTE FOR LIFE, THEN JUST THE FOREPERSON, ONE OF THE TWELVE THAT KIND OF REPRESENTS THE JURY, WOULD SIGN THEIR NAME. AND THEY WOULD SIGN THEIR NAME SAYING WE VOTED AND EVERYBODY VOTED LIFE. AND OF COURSE IF YOU'RE ON THE JURY, YOU COULD VOTE FOR LIFE, COULDN'T YOU?

A. YES, SIR.

Q. OKAY. BUT NOW IF THEY VOTE FOR DEATH, AND OF COURSE YOU TOLD ME, AND I'M NOT TRYING TO RUN IT IN THE GROUND, BUT YOU TOLD ME THAT YOU WOULD NOT VOTE FOR DEATH, BUT IF EVERYBODY VOTED FOR DEATH, THEN EACH INDIVIDUAL JUROR WOULD HAVE TO SIGN THEIR NAME. AND WHATEVER THE JURY SAID, THE JUDGE WOULD DO. IF YOU SAID LIFE, THAT'S WHAT HE WOULD DO; IF YOU SAID DEATH, THAT'S WHAT HE'D DO. WHAT YOU'RE TELLING ME IS THAT THERE IS NO WAY, NO SET OF CIRCUMSTANCES THAT CHRIS WILSON IS GOING TO SIGN HIS NAME TO GIVE THIS MAN THE DEATH PENALTY. IS THAT RIGHT?

A. THAT'S RIGHT.

Q. OKAY. EVEN THE FACT THAT HE KILLED -- AND, OF

COURSE, AT THAT POINT HE WOULD HAVE BEEN CONVICTED OF KILLING HIS PARENTS. WHAT YOU ARE TELLING ME IS THAT THAT JUST AIN'T FOR YOU. YOU'RE NOT GOING TO SIGN YOUR NAME, NO MATTER WHAT, I COULD GRAB YOUR ARM, BUT YOU'RE NOT GOING TO SIGN YOUR NAME TO GIVE THE MAN THE DEATH PENALTY. IS THAT A FAIR STATEMENT?

A. YES, I WOULD NOT.

Q. MR. WILSON, THANK YOU. I APPRECIATE YOU BEING HONEST WITH ME.

QUESTIONS BY MR. HANCOCK:

Q. MR. WILSON, I AM JIMMY ROBERTSON'S ATTORNEY, BILL HANCOCK. THIS IS JIMMY SEATED HERE, HE IS THE DEFENDANT IN THIS CASE. AND THIS IS CO-COUNSEL, MR. JIM BOYD SEATED BESIDE HIM.

AGAIN, THERE ARE NO RIGHT AND WRONG ANSWERS. I JUST WANT TO CLARIFY WHAT YOU'VE SAID AND MAKE SURE THAT I UNDERSTAND IT. OKAY, SIR?

A. OKAY.

Q. NOW, YOU HAVE INDICATED THAT YOU HAVE RELIGIOUS VIEWS CONCERNING THE DEATH PENALTY. IS THAT CORRECT, SIR?

A. YES, SIR.

Q. AND THOSE RELIGIOUS VIEWS WOULD NOT IN ANY CIRCUMSTANCE ALLOW YOU TO VOTE FOR THE PENALTY

OF DEATH?

A. THAT'S RIGHT.

Q. THAT'S CORRECT?

A. YES, SIR.

Q. WOULD THAT BE ALSO IF YOU WERE SEATED ON A JURY THAT THE JUDGE TOLD YOU THAT YOU HAD TO CONSIDER MITIGATING CIRCUMSTANCES, THAT YOU HAD TO CONSIDER AGGRAVATING CIRCUMSTANCES AND THAT IN CONSIDERATION OF THOSE IF YOU FIND THOSE, YOU COULD FIND THE PENALTY OF DEATH. YOU STILL COULDN'T DO IT EVEN IF THE JUDGE INSTRUCTED YOU THAT---

MR. POPE: YOUR HONOR, I'M GOING TO OBJECT. HE'S MAKING IT SOUND LIKE YOU WILL INSTRUCT HIM TO HAVE TO FIND DEATH.

THE COURT: REPHRASE THE QUESTION. THAT PRESUPPOSES SOMETHING THAT'S NOT GOING TO HAPPEN.

Q. YES, SIR. YOU COULD NOT DO THAT?

A. NO, SIR.

Q. YOU COULD NOT IN ANY SITUATION OR CIRCUMSTANCE, NO MATTER HOW BAD, VOTE FOR THE DEATH PENALTY?

A. THAT'S RIGHT.

Q. OKAY, I'M NOT GOING TO TRY TO BROWBEAT YOU, BUT YOU UNDERSTAND THAT MR. ROBERTSON IS ACCUSED OF KILLING BOTH OF HIS PARENTS. IS THAT CORRECT?

A. YES, SIR.

Q. AND THAT HE COULD POSSIBLY BE CONVICTED OF THAT AND THEN THERE COULD BE EVEN WORSE CIRCUMSTANCES PRESENTED TO YOU WERE YOU A JUROR, AND YOU WOULD HAVE TO CONSIDER THOSE. AND IF IT WAS EVEN WORSE THAN KILLING BOTH OF HIS PARENTS, THERE WERE AGGRAVATING CIRCUMSTANCES AVAILABLE EVEN AFTER THAT, IF THOSE WERE PRESENTED TO YOU AND YOU WERE ON THE JURY, YOU COULD NOT SAY HE SHOULD BE GIVEN THE DEATH PENALTY. IS THAT WHAT I'M HEARING?

A. THAT'S RIGHT.

Q. I HAVE NO FURTHER QUESTIONS.

THE COURT: I'M GOING TO ASK YOU TO STEP OUTSIDE THE DOOR FOR JUST ONE MINUTE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT'S THE STATE'S POSITION?

MR. POPE: HE IS CLEARLY UNQUALIFIED, YOUR HONOR.

MR. HANCOCK: I CAN'T ARGUE WITH THAT, YOUR HONOR.

THE COURT: ALL RIGHT, BRING HIM IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. WILSON, WE APPRECIATE YOUR TIME AND YOUR CANDOR, AND WE'RE GOING TO EXCUSE YOU. YOU CAN BE EXCUSED FROM THIS JURY PANEL. THANK YOU A LOT.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: BRING IN MR. TERLINDE.

MICHAEL S. TERLINDE, JUROR NUMBER 268, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. JUST HAVE A SEAT. MR. TERLINDE, I'M JOHN HAYES, I'M THE JUDGE THAT HAS BEEN ASSIGNED TO PRESIDE OVER THIS CASE AND I WANT TO REMIND YOU THAT YOU ARE UNDER OATH. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. DURING THE TRIAL OF THIS CASE YOU MAY SEE PHOTOGRAPHERS OR T. V. CAMERAS IN THE COURTROOM. DON'T BE DISTRACTED BY THEM, THEY CAN'T FILM YOU; THEY ARE FORBIDDEN BY LAW TO FILM JURORS OR TO REPORT ON JURORS.

YOU HANDED IN A QUESTIONNAIRE AT AN EARLIER TIME. IS IT ACCURATE OR DO YOU NEED TO MAKE ANY CHANGES TO IT?

A. AS FAR AS MY KNOWLEDGE, IT'S PRETTY ACCURATE.

Q. YOU HAD A CHANCE TO REVIEW A LIST OF WITNESSES; DID YOU FIND ANYBODY ON THERE TO WHOM YOU WERE RELATED BY BLOOD OR MARRIAGE OR WHO WAS A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF YOUR'S?

A. NOT CLOSE PERSONAL FRIENDS, BUT I HAD A COUPLE OF EMPLOYEES ON THERE THAT USED TO WORK FOR ME.

Q. WHO IS THAT?

A. THERE WAS A CHARLENE AMANDA HILL AND A MARIE ANN HILL. THEY USED TO WORK FOR ME AT A SUBWAY. I USED TO BE A MANAGER THERE. AND THERE'S THREE OTHER NAMES ON THERE THAT I BELIEVE WERE FRIENDS OF MY YOUNGER SISTER THAT HAVE BEEN AT MY HOUSE BEFORE. I'M NOT CLOSE PERSONAL FRIENDS OF THEM, BUT I KNOW OF THESE PEOPLE.

Q. WHO WOULD THAT BE?

A. IT'S KELLY BIGHAM, KATIE MARTIN AND CLAY ROBINSON.

Q. WOULD THE FACT THAT YOU KNOW THOSE INDIVIDUALS OR PERHAPS KNOW THEM EITHER THROUGH WORK OR THROUGH YOUR SISTER, WOULD THAT IN ANY WAY AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

A. NO, SIR.

Q. HAD YOU HEARD ANYTHING ABOUT THIS CASE BEFORE YOU GOT HERE? HEARD ABOUT IT, FORMED AN OPINION, EXPRESSED AN OPINION, READ ABOUT IT OR ANYTHING?

A. NO, SIR. I HAD NO IDEA -- I MEAN, I HEARD ABOUT IT AT ONE TIME, BUT I DID NOT KEEP UP WITH IT. I JUST DIDN'T KNOW ANYTHING ABOUT IT UNTIL I GOT

HERE.

Q. ALL RIGHT. WOULD THE FACT THAT YOU HAD AT LEAST HEARD A LITTLE BIT ABOUT IT, THAT'S MY WORD, NOT YOUR'S, BUT THAT YOU HAD AT SOME POINT, LET'S SAY, HEARD ABOUT IT, WOULD THAT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS CASE?

A. NO, SIR.

Q. COULD YOU BASE YOUR VERDICT IN THIS TRIAL ON WHAT YOU HEAR IN THIS COURTROOM AND NOT ON WHAT YOU HAD PREVIOUSLY HEARD?

A. WOULD YOU REPEAT THAT AGAIN?

Q. COULD YOU BASE YOUR VERDICT IN THIS CASE ON WHAT YOU HEAR HERE IN THIS COURTROOM AND NOT WHAT YOU HAD HEARD AT SOME OTHER TIME?

A. YES, SIR, ON WHAT I HEAR IN THIS COURTROOM.

Q. THIS CASE WOULD PROCEED IN TWO PARTS. THE FIRST PART WOULD DEAL WITH THE QUESTION OF WHETHER OR NOT MR. ROBERTSON WERE TO BE FOUND GUILTY OR NOT GUILTY OF MURDER. IF HE'S FOUND NOT GUILTY, THE CASE IS OVER.

HE IS PRESUMED INNOCENT OF THE CHARGES AND WOULD BE SO PRESUMED UNTIL SUCH TIME AS A JURY, IF IT WERE TO DO SO, WERE TO FIND HIM GUILTY UNANIMOUSLY BEYOND A REASONABLE DOUBT.

SO, WE'RE TALKING ABOUT THE SECOND PART OF THE TRIAL BUT THAT'S NOT TO PRESUPPOSE OR BE ANY INDICATION OF ANY GUILT. WE JUST SIMPLY MUST AT THIS POINT TALK ABOUT THAT. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. DID YOU HAVE A CHANCE TO REVIEW THE JUROR TYPES THAT WERE SET FORTH ON A LIST IN THERE?

A. YES, SIR.

Q. DID YOU FIND YOURSELF TO BE ONE OF THOSE TYPES?

A. YES, SIR.

Q. WHICH ONE?

A. THE THIRD ONE.

Q. IN THAT LANGUAGE I USED THE WORDS AGGRAVATION AND MITIGATION IN REGARD TO CIRCUMSTANCES. AND BY THAT THESE ARE THINGS IN AGGRAVATION, THOSE WOULD BE THINGS THAT ATTENDED THE COMMISSION OF A CRIME THAT ADDED TO ITS ENORMITY OR INCREASED ITS INJURIOUS CONSEQUENCE. THAT IS, THEY ARE THINGS OVER AND ABOVE THE CRIME ITSELF.

MITIGATING CIRCUMSTANCES ARE THINGS THAT WOULD NOT CONSTITUTE OR JUSTIFY AN EXCUSE FOR A CRIME, BUT WOULD BE THINGS WHICH IN FAIRNESS AND MERCY COULD BE CONSIDERED AS EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL CULPABILITY. DO YOU

UNDERSTAND THAT?

A. YES, SIR.

Q. YOU ARE TELLING ME YOU'RE THIS THIRD TYPE JUROR. BY THAT I UNDERSTAND THAT YOU'RE SAYING THAT YOU ARE A JUROR WHO IF YOU WERE ON THE JURY AND THE CASE WENT INTO THE SECOND PART, THE PENALTY PHASE, THAT WHEN THAT PART STARTED YOU WOULD NOT HAVE ALREADY MADE UP YOUR MIND IN ADVANCE CONCERNING WHAT THE APPROPRIATE PUNISHMENT WOULD BE. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. YOU'RE TELLING ME THAT AT THAT POINT YOU WOULD WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION AND YOU WOULD WANT TO LISTEN TO AND FOLLOW THE LAW THAT THE JUDGE CHARGES YOU AND THEN AND ONLY THEN MAKE A DECISION ON PUNISHMENT. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. IF YOU FELT THAT THE FACTS SUPPORTED IT AND WARRANTED IT, COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT?

A. COULD I?

Q. YEAH, AFTER YOU HEARD ALL THE FACTS AND THE LAW AND YOU FELT THAT WAS APPROPRIATE, COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT?

A. I COULD. IT'S JUST THE WAY, I MEAN I CAN'T JUDGE, I MEAN I'D HAVE TO KNOW -- I CAN'T TELL YOU ---

Q. WELL, I'M ASKING AFTER YOU'VE HEARD ALL THAT ---

A. YEAH, I MEAN I COULD.

Q. --- WOULD THAT BE A POSSIBILITY THAT YOU COULD RETURN A VERDICT OF LIFE IMPRISONMENT?

A. YEAH, IT COULD BE A POSSIBILITY.

Q. WOULD IT ALSO BE A POSSIBILITY THAT IF THE FACTS WERE SUCH THAT YOU WERE CONVINCED THAT DEATH WAS THE APPROPRIATE PENALTY COULD YOU, IF YOU THOUGHT THE FACTS WARRANTED IT, COULD YOU RETURN A VERDICT OF THE DEATH PENALTY?

A. IT COULD BE A DEATH PENALTY.

Q. SO, YOU'RE TELLING ME THAT YOU COULD CONSIDER AND RETURN A VERDICT OF EITHER LIFE IMPRISONMENT OR DEATH BUT YOU WOULD HAVE TO WAIT UNTIL SUCH TIME AS YOU HAVE HEARD EVERYTHING. IS THAT WHAT YOU'RE TELLING ME?

A. THAT'S CORRECT.

Q. ALL RIGHT. ANSWER ANY QUESTIONS THAT THE ATTORNEYS MAY HAVE.

QUESTIONS BY MR. BOYD:

Q. HOW ARE YOU THIS AFTERNOON?

A. I'M OKAY.

Q. I'M JIM BOYD; I REPRESENT JIMMY ROBERTSON WHO IS SEATED OVER HERE. AND THAT'S BILL HANCOCK, MY CO-COUNSEL THERE. I JUST WANT TO FOLLOW UP WITH YOU ON A FEW QUESTIONS CONCERNING THIS.

YOU HAD STATED THAT YOU KNEW SOME PEOPLE THAT ARE ON THE WITNESS LIST. AND WOULD YOUR KNOWLEDGE OF THESE PEOPLE -- I THINK THE JUDGE HAS ALREADY ASKED YOU THIS BUT I WANTED TO ASK YOU, WOULD IT AFFECT YOUR ABILITY TO JUDGE THIS CASE IF YOU'RE A JUROR?

A. NO, SIR, IT WOULDN'T AFFECT ME.

Q. AND ALSO YOU HAVE ANSWERED A FEW QUESTIONS ABOUT THE DEATH PENALTY AND THAT TYPE OF THING. MY UNDERSTANDING IS, DEPENDING ON THE CIRCUMSTANCES OF THE CASE, YOU COULD EITHER VOTE FOR EITHER LIFE IMPRISONMENT OR THE DEATH PENALTY DEPENDING ON THE CIRCUMSTANCES. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND IF YOU -- YOU UNDERSTAND THIS IS POTENTIALLY A TWO PHASE TRIAL. THE FIRST PHASE WOULD BE DETERMINING WHETHER JIMMY IS GUILTY OR NOT GUILTY OF THESE CHARGES. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND THEN IN THE SECOND PHASE YOU WOULD BE

DETERMINING WHETHER OR NOT A LIFE SENTENCE OR THE DEATH PENALTY SHOULD BE IMPOSED. AND YOU COULD VOTE EITHER WAY; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. THE STATE WOULD INTRODUCE EVIDENCE IN AGGRAVATION TO SHOW THE CRIME IS WORSE. AND WE WOULD ATTEMPT, POSSIBLY, WE DON'T HAVE TO, BUT WE COULD INTRODUCE WHAT'S CALLED MITIGATING CIRCUMSTANCES, THINGS THAT MAKE IT LESS MORALLY CULPABLE. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND YOU WOULD BE WILLING TO CONSIDER THE MITIGATING CIRCUMSTANCES THAT WE WOULD INTRODUCE?

A. IS WHAT YOU'RE SAYING -- YOU'RE SAYING -- WOULD YOU REPHRASE THAT AGAIN?

Q. OKAY. YOU KNOW, WE'RE IN THE PENALTY PHASE NOW FOR THE PURPOSES OF MY QUESTION. NOT REALLY THOUGH.

A. UH HUH.

Q. AND WE ARE -- HE HAS ALREADY BEEN FOUND GUILTY AT THIS POINT. YOU UNDERSTAND THAT HE IS CHARGED WITH MURDERING BOTH OF HIS PARENTS?

A. YES, SIR.

Q. SO, THE POINT OF WHETHER HE IS GUILTY OR NOT

GUILTY IS OVER. HE'S BEEN FOUND GUILTY, AND WE'RE ONLY TALKING ABOUT SENTENCE. AND WE WOULD TRY TO INTRODUCE THINGS MAYBE ABOUT HIM OR ABOUT THE SURROUNDING CIRCUMSTANCES THAT WOULD TRY TO CONVINCE YOU THAT HE SHOULD GET A LIFE SENTENCE INSTEAD OF A DEATH SENTENCE. WHAT I'M ASKING YOU IS WOULD YOU BE WILLING TO CONSIDER THOSE, NOT JUST LISTEN TO US, BUT ALSO CONSIDER THOSE THINGS IN REACHING A SENTENCE?

A. THAT'S CORRECT.

Q. OKAY. AND I JUST HAVE A FEW OTHER QUESTIONS I WANT TO ASK YOU AND I'LL LEAVE YOU ALONE. YOU KNOW ON A JURY YOU MAY HAVE YOUR OPINION, OTHER JURORS WOULD HAVE THEIR OPINION. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND YOU'RE ENTITLED TO HAVE YOUR OPINION RESPECTED BY EVERY OTHER JUROR, EVEN IF THEY DISAGREED WITH YOU. AND LIKEWISE, YOU HAVE TO RESPECT OTHER JURORS' OPINIONS EVEN IF THEY DISAGREED WITH YOU. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND LET ME ASK YOU THIS. AND I'M SORT OF ASKING YOU A HYPOTHETICAL QUESTION, NOT REALLY THOUGH. IF YOU WERE ON THE JURY AND YOU WERE CONVINCED -

- YOU HAD MADE YOUR MIND UP AFTER HEARING ALL OF THE EVIDENCE AND AFTER DISCUSSING THE CASE WITH THE OTHER JURORS THAT THE SENTENCE SHOULD BE LIFE IMPRISONMENT, YET ALL THE OTHER JURORS WERE VOTING FOR DEATH, WOULD YOU CHANGE YOUR CONVICTIONS JUST BECAUSE YOU WERE IN THE MINORITY?

A. NO, SIR. I WOULD DO WHAT I BELIEVED OR WHAT I THOUGHT WAS RIGHT. I MEAN I WOULDN'T CHANGE FOR NOBODY ELSE, I'D DO IT FOR MYSELF, I WOULDN'T DO IT FOR THE OTHER PEOPLE ON THERE.

Q. YOU REALIZE THAT IN THIS CASE IF YOU'RE SELECTED AS A JUROR, YOU WILL BE SEQUESTERED BY LAW. THAT IS, YOU WILL BE KEPT IN A MOTEL ROOM, BROUGHT BACK AND FORTH TO COURT AND ALL OF THAT WITH THE OTHER JURORS. WOULD YOU BE LIKELY TO TRY TO REACH A QUICK VERDICT JUST TO GET OUT OF THERE?

A. I WOULD DO WHAT I BELIEVED IN, I WOULDN'T LET ANYBODY ELSE CHANGE MY MIND FOR ME. I MEAN THAT'S JUST THE WAY I AM. I AM GOING TO DO WHAT I WANT TO DO, NOT WHAT NOBODY ELSE TELLS ME TO DO JUST TO TRY TO GET OUT.

Q. THAT'S ALL WE'RE ASKING YOU TO DO. THANK YOU.

QUESTIONS BY MR. POPE:

Q. YOU'RE MR. TERLINDE; IS THAT CORRECT?
A. YES, SIR.
Q. I'M TOMMY POPE; I'M THE SOLICITOR HERE IN YORK COUNTY. THIS IS KEVIN BRACKETT, MY DEPUTY SOLICITOR, AND WE REPRESENT THE STATE IN THIS CASE. I'VE GOT JUST A FEW QUESTIONS I'M GOING TO ASK YOU. I KNOW WE'RE ABOUT TO WEAR YOU DOWN AFTER THE JUDGE AND THE DEFENSE, SO I'M GOING TO BE FAIRLY BRIEF.
THERE ARE A COUPLE OF THINGS I WANT TO HIT ON. YOU UNDERSTAND IT'S A TWO PART TRIAL AND THE FIRST PART IS JUST ABOUT GUILT, AND YOU'RE THE TYPE JUROR THAT YOU WOULD KEEP YOUR MIND OPEN AND, YOU KNOW, WE'VE GOT TO PROVE THE CASE AND YOU'D MAKE US PROVE THE CASE; IF WE DIDN'T HE'D BE NOT GUILTY; IS THAT RIGHT?
A. THAT'S CORRECT.
Q. AND YOU WOULDN'T MAKE A DECISION UNTIL AFTER YOU HEARD ALL OF THE EVIDENCE BECAUSE RIGHT NOW YOU DON'T KNOW WHAT THE EVIDENCE IS?
A. THAT'S CORRECT.
Q. LIKEWISE, IN THE PENALTY PHASE, AND OF COURSE OBVIOUSLY IF WE GET TO THE PENALTY PHASE, IT WOULD BE BECAUSE HE WAS CONVICTED. IF HE'S NOT GUILTY, THERE WOULDN'T BE A PENALTY PHASE.

ONCE WE GET TO THE PENALTY PHASE, YOU'RE THE TYPE GUY THAT'S GOING TO LISTEN TO EVERYTHING, WAIT UNTIL THE END, HEAR THE BAD WE MAY BRING FORTH, THE GOOD THEY MAY BRING FORTH, WHATEVER MIXTURE OF AGGRAVATION AND MITIGATION, YOU'RE GOING TO HEAR THE WHOLE THING BEFORE YOU MAKE A DECISION. IS THAT RIGHT?

A. THAT'S CORRECT.

Q. OKAY. AND MR. BOYD WAS TALKING ABOUT GOING BACK INTO THE JURY ROOM. AS I UNDERSTAND WHAT YOU SAID, YOU'RE THE TYPE GUY THAT YOU'RE GOING TO LISTEN TO THE EVIDENCE, YOU'RE GOING TO BE YOUR OWN MAN, YOU'RE GOING TO MAKE YOUR OWN DECISION, RIGHT?

A. THAT'S CORRECT.

Q. LET ME ASK YOU THIS, AND THIS IS JUST A VARIATION ON IT -- HAVE YOU EVER BEEN ON JURY DUTY BEFORE?

A. YES, SIR.

Q. OKAY, SO YOU KNOW HOW YOU GO BACK AND EVERYBODY TELLS THEIR SIDE AND SO ON AND SO FORTH. ARE YOU THE TYPE, WOULD YOU BE WILLING TO LISTEN TO OTHER PEOPLE'S OPINIONS AND SHARE YOUR OPINIONS OR ARE YOU JUST GOING TO DECIDE WHAT YOU'RE GOING TO DECIDE AND FOLD YOUR ARMS UP?

A. PEOPLE ARE PROBABLY GOING TO TALK, BUT I'M GOING TO DECIDE WHAT I'M GOING TO DECIDE ON; I'M NOT GOING TO LET SOMEBODY ELSE DECIDE FOR ME. WHAT I FEEL, NOBODY ELSE CAN CHANGE THAT.

Q. OKAY. LET ME ASK YOU THIS. WHEN YOU SAY NOBODY ELSE CAN CHANGE IT. WHAT IF SOMEBODY BRINGS UP SOMETHING THAT YOU HADN'T THOUGHT ABOUT. ARE YOU WILLING TO LISTEN TO THAT TYPE STUFF?

A. I'M JUST GOING TO LISTEN TO WHAT'S IN THIS COURTROOM, I MEAN WHAT GOES ON IN HERE.

Q. OKAY. YOU WERE MENTIONING A COUPLE OF PEOPLE, AND I APOLOGIZE, I'M JUMPING AROUND A LITTLE BIT, A COUPLE OF DIFFERENT PEOPLE YOU KNEW, A COUPLE FROM WORK AND A COUPLE OF PEOPLE THAT WERE LIKE YOUR SISTER'S FRIENDS, I THINK YOU SAID CHARLENE AND MARIE HILL YOU KNEW FROM WORK?

A. YES, THEY WERE EMPLOYEES. I WAS A MANAGER OF A SUBWAY IN ROCK HILL AND THEY WERE BOTH EMPLOYED BY ME.

Q. OKAY. SO, THAT'S HOW YOU KNEW THEM?

A. YES, SIR. AS FAR AS MANAGER, WE KIND OF ALL HUNG TOGETHER, YOU KNOW.

Q. BUT YOU TOLD THE JUDGE THAT YOU COULD BASICALLY SET THAT ASIDE AND ASSIGN WHATEVER WEIGHT TO THEIR TESTIMONY JUST LIKE YOU'D JUDGE EVERYBODY

ELSE'S TESTIMONY. IS THAT RIGHT?

A. YES, SIR. BECAUSE I HAVEN'T SEEN NONE OF THOSE PEOPLE IN FOUR OR FIVE YEARS.

Q. THE OTHER PEOPLE YOU WERE SAYING AS FAR AS YOUR SISTER'S FRIENDS LIKE KELLY BIGHAM AND IT WAS ANOTHER GIRL, I THINK?

A. I THINK IT WAS CLAY ROBINSON AND KATIE MARTIN. THE NAMES SOUND FAMILIAR. I THINK THEY'VE BEEN TO MY HOUSE.

Q. LIKE HOW MUCH YOUNGER IS YOUR SISTER THAN YOU?

A. SHE'S 21, SHE JUST TURNED 21.

Q. AND HOW OLD ARE YOU NOW?

A. I'M 27

Q. SO, YOU DIDN'T REALLY NECESSARILY HANG WITH THEM.

A. NO, SIR.

Q. YOU JUST KNOW THEM FROM THE NAME AND THEY MIGHT HAVE BEEN ---

A. TO MY HOUSE.

Q. I GOT YOU, I GOT YOU. ALL RIGHT, LET ME TAKE YOU BACK TO ONE FINAL THING ON THE DEATH PENALTY. YOU KNOW WHEN YOU WERE ON JURY DUTY BEFORE AND Y'ALL VOTED, YOU KNOW IT'S GOT TO BE A UNANIMOUS VERDICT, YOU KNOW, GUILTY OR NOT GUILTY. AND Y'ALL VOTED AND THEN THE FOREPERSON

-- WERE YOU THE FOREMAN ON YOUR JURY?

A. NO, SIR.

Q. WELL, YOU KNOW HOW THEY HAD A FOREPERSON, THAT'S KIND OF LIKE A LIAISON TO THE COURT, AND YOU PROBABLY KNOW MORE ABOUT JURY DUTY THAN I DO BECAUSE I'VE NEVER BEEN IN THE JURY ROOM BUT YOU VOTE, YOU KNOW, YOU TALK ABOUT THE EVIDENCE, YOU VOTE AND EVERYBODY VOTES AND DECIDES AND THE FOREPERSON WROTE, LIKE IN THAT CASE, WROTE NOT GUILTY AND TURNED IT IN.

IN A DEATH PENALTY CASE IT'S A LITTLE BIT DIFFERENT. IN THE PENALTY PHASE WHEN YOU GET IN AND EVERYBODY VOTES AND, OF COURSE, IT'S GOT TO BE UNANIMOUS, IF EVERYBODY VOTES FOR LIFE, THEN ONLY THE FOREPERSON SIGNS, JUST LIKE IN THE CASE YOU WERE IN.

IF EVERYBODY VOTES FOR DEATH AND BECAUSE IT'S SUCH A SERIOUS DECISION, EACH INDIVIDUAL JUROR HAS TO SIGN THEIR OWN NAME. AND THEY SIGN THEIR NAME TO THE DOCUMENT. OF COURSE THE COURT'S GOING TO DO WHAT YOU SAY. IF YOU SAY LIFE, THAT'S WHAT THE COURT WILL DO. IF YOU SAY DEATH, THAT'S WHAT THE COURT WILL DO. IF THE VERDICT IS DEATH, EACH INDIVIDUAL JUROR SIGNS THEIR NAME. IN ESSENCE, YOU'RE SIGNING YOUR

NAME TO A DOCUMENT THAT WOULD TAKE THIS MAN'S LIFE.

A. UH HUH.

Q. IF YOU HEARD THE EVIDENCE AND YOU THOUGHT THAT TO YOU THE APPROPRIATE VERDICT WAS DEATH, COULD YOU WRITE MICHAEL TERLINDE ON A DOCUMENT THAT'S GOING TO TAKE THIS MAN'S LIFE?

A. I COULD IF THAT PERSON COMMITTED A CRIME, I MEAN I COULD. I MEAN I COULD WRITE MY NAME. IF IT COMES TO IT AND I KNEW ALL THE FACTS AND THAT WAS WHAT HE DESERVED, I COULD DO IT. I COULD PUT MY NAME ON IT.

Q. LET ME ASK YOU ANOTHER WAY. IF YOU FELT STRONG ENOUGH THAT DEATH WAS THE RIGHT VERDICT, I THINK THAT'S WHAT YOU'RE TELLING ME, IF YOU'D HEARD EVERYTHING AND YOU THOUGHT DEATH WAS WHAT HE OUGHT TO GET, THEN YOU WOULDN'T HAVE A PROBLEM WITH PUTTING YOUR NAME ON IT AND SAYING SO. IS THAT RIGHT?

A. NO, SIR, I SURE WOULDN'T.

Q. THANK YOU, SIR. I APPRECIATE IT.

THE COURT: IF YOU WILL STEP OUT FOR JUST A MINUTE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE DEFENSE?

MR. BOYD: I BELIEVE HE'S QUALIFIED.

THE COURT: THE STATE?

MR. POPE: I SUBMIT HE'S QUALIFIED, YOUR HONOR.

THE COURT: ALL RIGHT, BRING HIM BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. TERLINDE, YOU'RE GOING TO BE A PART OF THE POOL FROM WHICH THE JURY WILL BE DRAWN. CALL BACK TONIGHT AFTER 6:00 AND THEY WILL TELL YOU WHEN TO REPORT.

THEY WILL TELL YOU WHAT TO BRING AND WHAT NOT TO BRING. COME PREPARED TO STAY FOR A WEEK.

ARE THERE ANY EXTENUATING CIRCUMSTANCES IN YOUR LIFE?

THE JUROR: NO, SIR.

THE COURT: OKAY. DON'T TALK ABOUT THE CASE TO ANYONE. IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, TELL THEM YOU CANNOT. AND DON'T LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE OF THE CASE. OKAY?

THE JUROR: YES, SIR.

THE COURT: ALL RIGHT, THANK YOU A LOT.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: ALL RIGHT, LET'S TAKE A SHORT BREAK BEFORE WE GET INTO THE NEXT. WE'VE GOT 35, I WOULD LIKE TO GET TWO MORE. AND I HAVE MADE A FINAL CUT OF WHAT I AM GOING TO HAVE PUT ON THE ANSWERING MACHINE AS TO THE TIME

TO REPORT AND, OF COURSE, I'VE ALREADY TOLD THEM TO BRING STUFF TO STAY FOR AROUND A WEEK. THIS TELLS THEM SOME THINGS NOT TO BRING. I'VE CHANGED IT A LITTLE BIT, SO ON THIS BREAK IF YOU WOULD LOOK AT ALL OF THIS AND MAKE SURE IT'S OKAY, THEN I'LL GO AHEAD AND TURN IT OVER AND LET THEM START GETTING THAT TAKEN CARE OF.

AFTER THE RECESS:

THE COURT: DID YOU GET A COPY OF WHAT I'M GOING TO HAVE PUT ON THE MACHINE?

MR. POPE: YOUR HONOR, I DID NOT GET A COPY OF IT.

MR. HANCOCK: I DIDN'T EITHER, YOUR HONOR.

MR. POPE: YOU TOLD US AND WE DIDN'T DO IT, BUT I'M SURE IT WILL BE FINE, YOUR HONOR.

THE COURT: WELL, TAKE A SECOND AND LOOK AT IT.

(AFTER A PAUSE.)

MR. POPE: NO OBJECTION, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. HANCOCK: NO OBJECTION.

MR. BOYD: NO OBJECTION.

THE COURT: ALL RIGHT, I AM GOING TO GIVE THIS TO THE CLERK, AND WE'LL MAKE THIS ONE A COURT'S EXHIBIT.

(THE INSTRUCTIONS TO PROSPECTIVE JURORS WAS MARKED COURT'S EXHIBIT 7.)

THE COURT: ALL RIGHT, AND WE'RE READY FOR WILTON

MCALLISTER.

THE COURT REPORTER: JUDGE, DID YOU WANT TO MAKE THIS A COURT'S EXHIBIT, TOO?

THE COURT: YES. I CAN'T REMEMBER WHOSE IT WAS.

THE COURT REPORTER: WELL, I'VE GOT ANOTHER ONE AND THERE'S NO NAME ON IT EITHER.

THE COURT: WELL, I SHOULD HAVE WRITTEN THE NAME ON IT, BUT IT WILL BE IN THE RECORD WHEN WE QUESTIONED THE JUROR IF IT SHOULD COME UP ON APPEAL.

(A LIST OF KNOWN WITNESSES FROM A JUROR WAS MARKED AS COURT'S EXHIBIT 6)

MR. HANCOCK: YOUR HONOR, IF IT PLEASE THE COURT, WE ALSO HAD THE MATTER OF THE RAP SHEET AND IT HAS BEEN RUN AND THE MANNER IN WHICH IT HAS BEEN DESCRIBED IS THAT IT'S RUN, THERE WAS NO RAP SHEET FOUND ON HIM AND WHAT WE WERE ACTUALLY READING WAS THE RAP SHEET OF ANOTHER INDIVIDUAL WITH A DIFFERENT SOCIAL SECURITY NUMBER, DIFFERENT BIRTH DATE, AND DIFFERENT SIZE.

THE COURT: SO, THE ONE WE HAVE DOES NOT HAVE A RECORD?

MR. HANCOCK: DOES NOT HAVE A RECORD, YOUR HONOR. WE ARE CONVINCED OF THAT.

THE COURT: ALL RIGHT, BRING THE JUROR IN PLEASE.

WILTON MCALLISTER, JUROR NUMBER 167, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. MR. MCALLISTER, JUST COME ON OVER HERE AND HAVE A SEAT. WE APPRECIATE YOUR PATIENCE.

A. CERTAINLY.

Q. I'M JOHN HAYES, AND I'M THE JUDGE ASSIGNED TO PRESIDE OVER THIS TRIAL. AND I WANT TO REMIND YOU NOW THAT YOU'RE UNDER OATH. OKAY?

A. YES, SIR.

Q. DURING THE TRIAL OF THIS CASE IF YOU'RE ON THE JURY, YOU MAY SEE CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM AND BY LAW THEY ARE ALLOWED TO BE HERE. BUT THEY ARE NOT ALLOWED TO TAKE PICTURES OR REPORT ABOUT JURORS. SO, DON'T BE DISTRACTED OR BE CONCERNED IF YOU SEE CAMERAS.

YOU TURNED IN A QUESTIONNAIRE. DO YOU BELIEVE THERE IS ANYTHING YOU NEED TO CHANGE ON IT OR DO YOU FEEL LIKE IT'S ACCURATE?

A. THE BEST I REMEMBER, SIR, IT IS ACCURATE.

Q. OKAY. I HAD IN THE JURY ROOM A LIST OF POTENTIAL WITNESSES. HAVE YOU REVIEWED IT?

A. YES, SIR.

Q. ARE YOU RELATED BY BLOOD OR MARRIAGE OR ARE YOU A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF ANYBODY ON THE LIST?

A. I'M AN ACQUAINTANCE OF MR. BRYANT.

Q. SHERIFF BRYANT?
A. YES.
Q. WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND MR. ROBERTSON IN THE TRIAL OF THIS PARTICULAR CASE?
A. NO, YOUR HONOR.
Q. PRIOR TO YOUR COMING HERE, AND OF COURSE MONDAY WE DID TELL YOU THE NAME OF THE DEFENDANT AND WE DID TELL YOU THE CHARGES, BUT PRIOR TO RECEIVING THAT INFORMATION, HAD YOU HEARD ABOUT THIS CASE, FORMED AN OPINION, EXPRESSED AN OPINION OR READ ABOUT IT OR HEARD ABOUT IT FROM ANY SOURCE WHATSOEVER?
A. I HEARD ABOUT IT WHEN IT OCCURRED.
Q. WOULD THE FACT THAT YOU HAD HEARD ABOUT IT WHEN IT OCCURRED AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF MR. ROBERTSON?
A. NO, SIR, I DON'T THINK SO.
Q. WELL, WOULD YOU BE ABLE -- YOU SAID YOU DON'T THINK SO -- WOULD YOU BE ABLE TO DISASSOCIATE WHAT YOU HAD LEARNED EARLIER AND BASE YOUR VERDICT SOLELY ON THE EVIDENCE AND THE LAW THAT'S PRESENTED IN THE COURTROOM DURING THE TRIAL?
A. YES, SIR.

Q. THIS CASE WOULD PROCEED IN TWO PARTS, POSSIBLY. THE FIRST PART BEING THAT TO DETERMINE WHETHER OR NOT A JURY WOULD BE CONVINCED FROM THE STATE'S EVIDENCE THAT MR. ROBERTSON WAS GUILTY UNANIMOUSLY BEYOND A REASONABLE DOUBT OF MURDER. IF HE'S FOUND NOT GUILTY, THE CASE WOULD END. HE'S PRESUMED INNOCENT OF THESE CHARGES AND IS SO PRESUMED UNTIL A JURY WERE TO FIND HIM GUILTY.

IF A JURY DID FIND HIM GUILTY, WE WOULD MOVE INTO A SECOND PART OF THE TRIAL OR THE SECOND PHASE WHICH WOULD DEAL WITH WHAT WOULD BE THE APPROPRIATE PENALTY, FOR A JURY TO DECIDE WHAT WOULD BE THE APPROPRIATE PENALTY TO RECOMMEND AS PUNISHMENT.

WE'RE TALKING ABOUT THAT SECOND PART BUT THAT'S NOT TO PRESUPPOSE THAT WE WOULD GET THERE BECAUSE IF HE'S FOUND NOT GUILTY, OF COURSE, THE CASE WOULD END. BUT WE HAVE TO, DUE TO THE NATURE OF THE PROCEEDINGS, TALK ABOUT THAT SECOND PART AT THIS POINT. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. IN THE JURY ROOM THERE WAS A PIECE OF PAPER WITH THREE JUROR TYPES ON IT. DID YOU READ IT?

A. YES, SIR.

Q. DID YOU CONSIDER YOURSELF TO BE ON OF THOSE TYPES?

A. MAY I ASK A QUESTION, SIR?

Q. YES, SIR.

A. WOULD YOU GIVE ME A DEFINITION OF MURDER?

Q. ALL RIGHT. WELL, LET ME PULL MY DEFINITION SO THAT I CAN MAKE SURE I GIVE IT TO YOU CORRECTLY. I JUST WANT TO MAKE SURE THAT I CHARGE IT IN THE LANGUAGE THAT YOU WILL BE HEARING IT LATER IF YOU SERVE ON THE JURY, THAT'S MY CONCERN.

(AFTER A BRIEF PAUSE.)

Q. IN THIS CASE THE JURY THAT SITS AND DECIDES THE QUESTION OF GUILT OR NOT WOULD HEAR THIS DEFINITION: "MURDER IS DEFINED AS THE WILFUL, FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT. MALICE IS A WORD SUGGESTING WICKEDNESS, HATRED AND A DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG WITHOUT JUST CAUSE OR EXCUSE OR LEGAL PROVOCATION. MALICE NEED NOT BE IN THE MIND OF THE ONE DOING THE KILLING ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT OF KILLING TO RENDER THE KILLING MURDER. IF MALICE IS PRESENT IN THE MIND OF THE ONE DOING THE KILLING FOR ANY LENGTH OF TIME BEFORE THE ACT, IT WOULD BE AFORETHOUGHT AND THEN IT'S PRESENCE WOULD BE SUFFICIENT TO RENDER THE KILLING MURDER."

THAT'S THE DEFINITION.

A. I TEND TOWARD THE DEFINITION ONE.

Q. ALL RIGHT. THAT'S THE TYPE OF JUROR WHO WOULD FEEL THAT ONCE A MURDER HAS BEEN COMMITTED, THEN THE DEATH PENALTY WOULD BE THE MOST APPROPRIATE PUNISHMENT, NO MATTER THE CIRCUMSTANCES OF THE CASE. IS THAT WHAT YOU'RE TELLING ME?

A. YES, SIR. I SEE DOUBLE MEANINGS IN THESE PARAGRAPHS, BUT BASICALLY, YES SIR. BECAUSE IF IT'S MITIGATING CIRCUMSTANCES, YOU KNOW, THAT'S DIFFERENT. IF A PERSON SHOULD MAKE ANOTHER PERSON VERY ANGRY FOR WHATEVER REASON.

Q. WELL, MITIGATING CIRCUMSTANCES WOULD BE CIRCUMSTANCES THAT WOULD NOT JUSTIFY OR EXCUSE A KILLING, BUT THEY WOULD BE THINGS TO SORT OF DIMINISH OR REDUCE ITS -- WELL, LET ME TELL YOU WHAT I HAVE BEEN TELLING PEOPLE MITIGATING CIRCUMSTANCES ARE.

MITIGATING CIRCUMSTANCES ARE THINGS THAT DO NOT JUSTIFY OR EXCUSE THE OFFENSE IN QUESTION. THEY ARE MATTERS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED BY A JURY AS EXTENUATING OR REDUCING THE DEGREE OF MORAL CULPABILITY. THAT WOULD BE FACTORS THAT DON'T JUSTIFY ONE TAKING ANOTHER'S LIFE. THAT IS, THERE ARE JUSTIFIABLE HOMICIDES,

BUT WE'RE NOT TALKING ABOUT THAT. WE'RE TALKING ABOUT MURDER WHICH I HAVE DEFINED FOR YOU. BUT THESE ARE THINGS THAT ARE NOT JUSTIFICATION OR EXCUSE, BUT ARE THINGS WHICH WOULD GIVE REASONS FOR WHAT HAPPENED HAVING HAPPENED, EVEN THOUGH THEY ARE NOT AN EXCUSE FOR WHAT HAPPENED.

NOW HAVING SAID THAT, DO YOU FEEL THAT IF MR. ROBERTSON WERE FOUND GUILTY OF MURDER, THAT THAT IN AND OF ITSELF WOULD BE ENOUGH FOR YOU TO DETERMINE THAT THE MOST APPROPRIATE PUNISHMENT WOULD BE THE DEATH PENALTY, EVEN IF YOU LATER HEARD CIRCUMSTANCES IN MITIGATION. WOULD YOU STILL BELIEVE THAT THE APPROPRIATE PUNISHMENT WOULD BE DEATH?

A. PROBABLY NOT IN SOME CIRCUMSTANCES.

Q. WELL, YOU SOUND TO ME LIKE YOU WOULD BE MORE OF A TYPE THREE. LET ME RUN THROUGH THAT FOR JUST A MOMENT. I TOLD YOU WHAT MITIGATING CIRCUMSTANCES WERE. AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES THAT ATTEND THE COMMISSION OF A CRIME WHICH ADD TO ITS INJURIOUS CONSEQUENCE OR ADD TO ITS ENORMITY. THEY ARE ABOVE AND BEYOND THE ESSENTIAL ELEMENTS OF THE CRIME OF MURDER ITSELF.

WOULD YOU AS A JUROR BE ABLE IN THE PENALTY

PHASE TO LISTEN TO THE EVIDENCE, LISTEN TO ANY AGGRAVATING OR MITIGATING FACTS, IF ANY, WHICH ARE PRESENTED, THEN LISTEN TO THE LAW THAT THE JUDGE CHARGES YOU AND THEN DETERMINE WHAT WOULD BE THE APPROPRIATE PUNISHMENT. COULD YOU DO THAT?

A. YES, SIR.

Q. IF WHEN YOU HEARD THOSE MATTERS, COULD YOU BRING IN A VERDICT IF YOU THOUGHT THAT BASED ON THE CIRCUMSTANCES THAT WERE BROUGHT TO YOUR ATTENTION IN THE SECOND PHASE, IF YOU THOUGHT LIFE IMPRISONMENT WAS THE APPROPRIATE VERDICT, COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT FOR MURDER?

A. YES, SIR.

Q. COULD YOU, IF YOU FELT THAT THE CIRCUMSTANCES WERE SUCH THAT THE APPROPRIATE PENALTY WOULD BE THAT OF THE DEATH PENALTY, WOULD YOU IN THAT EVENT BRING IN THE PENALTY OF DEATH?

A. YES, SIR.

Q. ALL RIGHT, LET ME LET YOU ANSWER QUESTIONS ---

A. MAY I PRESENT THIS TO YOU WITH YOUR PERMISSION, SIR?

THE COURT: YES, SIR.

A. AND ALSO I WOULD LIKE TO REMIND YOU THAT I HAVE

A SON THAT'S ALREADY BEEN TOLD TO PACK HIS BAG.

THE COURT: OKAY.

A. IF THAT MAKES ANY DIFFERENCE, AND I'M NOT SURE THAT IT DOES.

THE COURT: I WILL TELL YOU IN ADVANCE THAT I DO NOT THINK THIS WOULD INTERFERE, THIS BEING MARCH 27TH WHEN YOU'RE SUPPOSED TO BE THERE.

A. YES, SIR. OKAY.

THE COURT: I DON'T THINK THAT WE'RE GOING TO GO THAT FAR. AND THE FACT THAT YOUR SON IS COMING BACK IS NOT OF ANY SIGNIFICANCE IN REGARD TO WHETHER YOU WOULD BE CALLED BACK OR NOT. BUT I APPRECIATE YOU CALLING THOSE THINGS TO MY ATTENTION.

AND WHAT HE SHOWED ME, FOR THE RECORD, MR. MCALLISTER HAS A NOTE FROM THE SOUTH CAROLINA FIRE ACADEMY IN COLUMBIA WHICH SAYS THAT HE HAS BEEN ACCEPTED AND REGISTERED AND PAID TO ATTEND A COURSE AT 9:00 A.M. MARCH 27TH, 1999 AT THE SOUTHEASTERN FIRE SCHOOL. AND THAT'S WHAT HE WAS CONCERNED ABOUT. IF ANY OF YOU WANT TO ASK ANY QUESTIONS ABOUT THAT.

THANK YOU, MR. MCALLISTER, I'M GOING TO LET THE ATTORNEYS TALK TO YOU FOR A MINUTE.

QUESTIONS BY MR. BRACKETT:

Q. GOOD AFTERNOON, MR. MCALLISTER; HOW ARE YOU TODAY?

A. I'M FINE, SIR.

Q. MY NAME IS KEVIN BRACKETT, I'M WITH THE SOLICITOR'S OFFICE. SEATED OVER AT COUNSEL TABLE HERE WITH ME IS TOMMY POPE, HE'S THE SOLICITOR, AND HE AND I ARE PROSECUTING THIS CASE ON BEHALF OF THE SOLICITOR'S OFFICE.

OVER THERE AT COUNSEL TABLE FOR THE DEFENSE ARE MR. HANCOCK, MR. BOYD AND THE DEFENDANT, JIMMY ROBERTSON, WHO IS CHARGED IN THIS CASE WITH TWO COUNTS OF MURDER, ONE COUNT OF ARMED ROBBERY AND ONE COUNT OF FINANCIAL TRANSACTION CARD FRAUD.

I'M GOING TO ASK YOU A FEW QUESTIONS AND KIND OF DELVE A LITTLE MORE IN DETAIL TO WHAT THE JUDGE WAS ASKING YOU TO KIND OF REFINE MY UNDERSTANDING OF HOW YOU THINK ON THESE SUBJECTS.

BUT I DON'T WANT YOU TO THINK I'M LEADING YOU ANY WAY SHAPE OR FORM. YOU SEEM TO HAVE YOUR OWN OPINIONS AND KNOW YOUR MIND. SO, IF I MISUNDERSTAND IN ANY WAY, PLEASE INTERRUPT ME AND TELL ME THAT THIS IS NOT THE WAY YOU FEEL.

FEEL FREE TO TELL ME HOW YOU THINK; IT'S IMPORTANT THAT WE KNOW THAT SO THAT WE CAN DO OUR JOBS PROPERLY.

NOW, AS I UNDERSTOOD IT, YOU HAD HEARD SOMETHING

ABOUT THIS CASE?

A. YES, SIR, THE NEWS WHEN IT HAPPENED.

Q. BUT WHAT YOU HEARD, YOU'RE ABLE TO PUT THAT OUT OF YOUR MIND ---

A. YES, SIR.

Q. --- AND DECIDE THIS CASE BASED ON THE EVIDENCE THAT COMES FROM THAT WITNESS STAND AND THE EVIDENCE THAT SOLICITOR POPE AND I PUT IN, ANY PHYSICAL EVIDENCE WE MIGHT PUT IN. IS THAT RIGHT?

A. YES, SIR.

Q. OKAY. YOU UNDERSTAND THE IMPORTANCE OF HAVING IMPARTIAL OPEN-MINDED FAIR JURORS IN ANY CRIMINAL CASE, NOT JUST THIS ONE, BUT ANYONE.

A. YES, SIR.

Q. ANYONE WHO IS BEING JUDGED AS MR. ROBERTSON IS SHOULDN'T BE JUDGED ON HEARSAY FROM THE NEWSPAPERS OR WORD OF MOUTH ON THE STREET, BUT ONLY ON COMPETENT EVIDENCE THAT THIS JUDGE DECIDES THAT THE JURY SHOULD BE ALLOWED TO HEAR.

A. YES, SIR.

Q. YOU AGREE WITH THAT PRINCIPLE, DON'T YOU?

A. YES, SIR.

Q. ALL RIGHT, SIR. AND YOU DON'T EVEN KNOW IF WHAT YOU HEARD IS CORRECT, DO YOU?

A. NO, SIR.

Q. OKAY. SO, THE ONLY EVIDENCE YOU WOULD CONSIDER AS A FAIR JUROR IS THE EVIDENCE THAT COMES FROM THIS WITNESS STAND AND THE EVIDENCE THAT IS ALLOWED TO BE PUT IN, THE PHYSICAL EVIDENCE?

A. YES, SIR.

Q. AND YOU COULD LISTEN TO THE EVIDENCE THAT WE PUT IN AND THROUGHOUT THE TIME THAT WE'RE PUTTING IN THE EVIDENCE, YOU UNDERSTAND THAT MR. ROBERTSON IS INNOCENT AS HE SITS THERE. HE IS PRESUMED INNOCENT IN THE EYES OF THE LAW?

A. YES, SIR.

Q. YOU CAN AGREE WITH THAT PRINCIPLE AS WELL?

A. YES, SIR.

Q. AND YOU WOULD NOT EXPECT HIM TO HAVE TO PROVE ANYTHING IN EITHER PHASE OF THE TRIAL. HE HAS NO BURDEN OF PROOF. THE BURDEN OF PROOF IS EXCLUSIVELY SOLICITOR POPE'S AND MINE IN THIS CASE. WE HAVE TO PROVE TO YOU THAT HE'S GUILTY, HE DOESN'T HAVE TO PROVE HE'S INNOCENT.

A. YES, SIR.

Q. OKAY. YOU'RE SAYING THAT IN THAT FIRST PHASE THAT YOU, SIR, MR. MCALLISTER, YOU COULD SIT AS A JUROR IN THIS CASE, TOTALLY ERASE YOUR MIND OF THE SIGNIFICANCE OF ANYTHING YOU HEARD, AND

DECIDE THIS CASE BASED ONLY ON THE EVIDENCE THAT YOU HEARD IN THIS COURTROOM.

A. SIR, I DON'T THINK YOU CAN EVER TOTALLY ERASE SOMETHING THAT YOU'VE HEARD.

Q. YES, SIR, BUT YOU COULD PUT IT OUT OF YOUR MIND?

A. TRY MY BEST TO, YES, SIR.

Q. OKAY, SIR. THE QUESTION IS COULD YOU TAKE ONLY THE EVIDENCE THAT YOU HEARD IN THIS CASE, ONLY THE EVIDENCE THAT YOU HEARD IN THIS COURTROOM RATHER, AND DECIDE THIS CASE BASED ON THAT? BECAUSE AS YOU INDICATED EARLIER, YOU DON'T EVEN KNOW IF THE OTHER STUFF IS TRUE.

A. THAT'S RIGHT.

Q. SO, YOU WOULD DECIDE THIS CASE BASED ON THE EVIDENCE YOU HEARD HERE?

A. YES, SIR. I WOULD TRY MY BEST TO.

Q. OKAY, SIR. NOW, ASSUMING THAT WE BEAR OUR BURDEN OF PROOF. ASSUME THAT WE PRESENT EVIDENCE TO YOU THAT SATISFIES YOU BEYOND A REASONABLE DOUBT THAT HE'S GUILTY OF THESE MURDERS AND SATISFIES THE OTHER JURORS THAT HE'S GUILTY OF THESE MURDERS, WE THEN MOVE INTO THE SECOND PHASE OF THE TRIAL.

IN THE SECOND PHASE OF THE TRIAL, WE'RE PAST GUILT, WE NOW HAVE ESTABLISHED GUILT, WE ARE

ONLY CONCERNED WITH THE PENALTY FOR THE CRIME. AND THERE ARE TWO OPTIONS IN THE SECOND PHASE. THOSE OPTIONS ARE LIFE AND DEATH.

AND YOU HAVE INDICATED TO JUDGE HAYES THAT YOU'RE THE TYPE OF JUROR THAT COULD CONSIDER BOTH A SENTENCE OF LIFE AND A SENTENCE OF DEATH. IS THAT CORRECT?

A. YES, SIR.

Q. YOU CAN UNDERSTAND, JUST AS IN THE FIRST PHASE HOW WE NEEDED AN IMPARTIAL OPEN-MINDED JUROR TO HEAR THE EVIDENCE TO DECIDE GUILT, WE LIKEWISE NEED AN OPEN-MINDED IMPARTIAL JUROR TO DECIDE WHAT THE PENALTY SHOULD BE. AND YOU COULD BE THAT JUROR; IS THAT CORRECT?

A. YES.

Q. OKAY. IT WOULDN'T MATTER TO YOU THE FACT THAT HE HAD BEEN FOUND GUILTY OF KILLING HIS PARENTS, YOU WOULDN'T GO INTO THE PENALTY PHASE, THE SECOND PART OF THE TRIAL WITH ANY PRECONCEIVED NOTION OF WHAT THE PENALTY SHOULD BE, WOULD YOU? YOU WOULDN'T HAVE, FOR EXAMPLE, YOU WOULDN'T GO INTO THE PENALTY PHASE THINKING HE NEEDS TO DIE FOR THIS. YOU WOULD WANT TO HEAR THE AGGRAVATING EVIDENCE, AND THE JUDGE EXPLAINED THAT BRIEFLY. WOULD YOU LIKE FOR ME TO EXPLAIN

IT IN A LITTLE MORE DETAIL WHAT AGGRAVATING AND MITIGATING EVIDENCE IS?

MR. HANCOCK: YOUR HONOR, I WOULD JUST ASK THAT HE BE ALLOWED TO ANSWER THE QUESTIONS BEFORE ---

THE COURT: I AGREE. JUST ASK QUESTIONS, PLEASE.

Q. DO YOU UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING EVIDENCE?

A. YES.

Q. OKAY, YOU UNDERSTAND THAT AS THE STATE WE HAVE TO PROVE THAT IT'S NOT JUST A MURDER BUT THERE ARE WHAT ARE CALLED AGGRAVATING CIRCUMSTANCES IN THE EYES OF THE LAW THAT MAKE THE MURDER MORE SEVERE, MORE HEINOUS. DO YOU UNDERSTAND THAT?

A. YES.

Q. AND THE DEFENSE IN THAT PHASE, THEY ARE LIKEWISE AFFORDED THE OPPORTUNITY, BUT THEY DON'T HAVE TO, PRESENT EVIDENCE OF MITIGATION WHICH TENDS TO LESSEN THE DEFENDANT'S RESPONSIBILITY. IS THAT CORRECT?

A. YES, SIR.

Q. ALL RIGHT, SIR. GOING INTO THAT SECOND PHASE, ARE YOU THE KIND OF JUROR THAT WOULD GO INTO THAT SECOND PHASE WITH YOUR MIND MADE UP ONE WAY OR THE OTHER AS TO WHAT THE PENALTY SHOULD BE?

A. NO.

Q. OKAY. AS YOU WENT INTO THE SECOND PHASE OF THE TRIAL, ASSUMING HE HAD BEEN CONVICTED OF KILLING BOTH OF HIS PARENTS, ASSUME THAT AS TRUE, AS YOU GO INTO THE SECOND PHASE OF THE TRIAL, ARE YOU DISPOSED ONE WAY OR THE OTHER AS TO WHAT HIS PENALTY SHOULD BE, LIFE OR DEATH?

A. NO.

Q. ALL RIGHT, SIR. COULD YOU LISTEN TO THE EVIDENCE THAT THE STATE PRESENTED?

A. YES, SIR.

Q. AND WOULD YOU LISTEN TO ANY EVIDENCE THAT THE DEFENDANT CHOSE TO PRESENT?

A. YES.

Q. AND AT THAT POINT -- HAVE YOU HAD ANY FORMAL TRAINING IN THE LAW, SIR?

A. NO, SIR.

Q. OKAY. YOU DON'T KNOW THE LAW IN THIS STATE ON THESE ISSUES, DO YOU?

A. NO, SIR.

Q. OKAY. WELL, YOU DON'T HAVE TO, THAT'S THE GOOD NEWS. YOU DON'T NEED ANY EXPERIENCE IN THE LAW AT ALL. JUDGE HAYES IS GOING TO EDUCATE YOU AND TELL YOU EVERYTHING YOU NEED TO KNOW ABOUT THE LAW SO THAT YOU CAN MAKE A PROPER DECISION UNDER THE LAW.

WOULD YOU AGREE THAT YOU COULDN'T REALLY MAKE A DECISION ABOUT WHETHER OR NOT THE SENTENCE SHOULD BE LIFE OR DEATH UNTIL YOU'D HEARD THE LAW?

A. YES, THAT'S RIGHT.

Q. SO, WOULD IT BE FAIR TO SAY THAT YOU WOULD WAIT UNTIL THE JUDGE HAD TOLD YOU WHAT THE LAW IS BEFORE YOU MADE YOUR MIND UP WHETHER THE SENTENCE SHOULD BE LIFE OR DEATH?

A. YES.

Q. OKAY. SO, YOU WOULD WAIT UNTIL THE STATE HAD THE OPPORTUNITY TO PRESENT ITS EVIDENCE, THE DEFENSE HAD THE OPPORTUNITY TO PRESENT ANY EVIDENCE THEY WANTED, AND THEN THE JUDGE CHARGED YOU BEFORE YOU WOULD START THINKING IN YOUR OWN MIND WHAT THE PENALTY SHOULD BE?

A. YES.

Q. OKAY, SIR. AND I BELIEVE YOUR TESTIMONY WAS, SIR, THAT AFTER ALL OF THAT AND AFTER THE JUDGE TOLD YOU WHAT THE LAW WAS, YOU COULD DECIDE UNDER CERTAIN CIRCUMSTANCES IF THE CIRCUMSTANCES WERE RIGHT, THAT THIS DEFENDANT SHOULD BE SENTENCED TO LIFE IN PRISON?

A. YES.

Q. AND THEN IF THE CIRCUMSTANCES WERE RIGHT AND

SEVERE ENOUGH, YOU WOULD ALSO DECIDE THAT THIS DEFENDANT SHOULD BE SENTENCED TO DEATH?

A. YES.

Q. ALL RIGHT, SIR. THE LAST THING I'M GOING TO ASK YOU, SIR, IS HAVE YOU SERVED ON A JURY BEFORE?

A. NO, SIR.

Q. THAT'S THE SECOND TO THE LAST THING I'M GOING TO ASK YOU. THE LAST THING I'M GOING TO ASK YOU IS COULD YOU IF YOU WERE SERVING AS A JUROR AND YOU DECIDED THAT THIS DEFENDANT SHOULD BE SENTENCED TO DEATH, IT WOULD BE NECESSARY UNDER THE LAW FOR EACH JUROR TO SIGN THEIR NAME ON THE VERDICT SHEET. IT'S THE ONLY TYPE OF CASE WHERE EACH JUROR HAS TO SIGN. IF THE JURY DECIDES TO SENTENCE HIM TO DEATH, EACH JUROR IS REQUIRED TO TAKE A PEN, TAKE THE VERDICT SHEET IN HAND AND SIGN THEIR NAME SAYING THAT THEY ARE SENDING THIS MAN TO DEATH.

COULD YOU IF THE CIRCUMSTANCES WERE RIGHT UNDER THE LAW AS THE JUDGE TELLS YOU, SIGN ON A SHEET OF PAPER WILTON MCALLISTER SENDING JIMMY ROBERTSON TO HIS DEATH?

A. YES.

Q. THANK YOU, SIR.

QUESTIONS BY MR. HANCOCK:

Q. MR. MCALLISTER, I'M BILL HANCOCK. I'M THE ATTORNEY FOR JIMMY ROBERTSON WHO IS SEATED HERE. THIS IS MR. JIM BOYD WHO IS CO-COUNSEL IN THIS CASE.

A. COULD YOU SPEAK UP JUST A LITTLE BIT, PLEASE?

Q. YES, SIR, I WILL. I'M BILL HANCOCK.

A. OKAY.

Q. THIS IS THE DEFENDANT JIMMY ROBERTSON.

A. OKAY.

Q. I REPRESENT JIMMY AND SO DOES MR. BOYD SEATED RIGHT HERE.

A. RIGHT.

Q. AS WE BEGAN THIS QUESTIONING, YOU TOLD THE JUDGE THAT YOU WERE JUROR TYPE ONE; ISN'T THAT CORRECT, SIR?

A. YES.

Q. AND DID YOU UNDERSTAND THAT JUROR TYPE TO BE A TYPE THAT NO MATTER WHAT THE CIRCUMSTANCES WERE, YOU WOULD VOTE FOR THE DEATH PENALTY?

A. THAT'S WHY I ASKED THE QUESTION OF THE JUDGE, THE DEFINITIONS. I SAID I LEAN TOWARD THAT. HOWEVER, UNDER THE DEFINITIONS BY HIM AND AS EXPLAINED BY HIM, I BELIEVE I'M THREE.

Q. YOU'RE FREE?

A. I AM THREE.

Q. THREE.
A. TYPE THREE.
Q. ALL RIGHT. WELL, YOU WERE READ THE DEFINITION OF MURDER AND YOU KNOW THAT IT IS THE UNLAWFUL KILLING OF ANOTHER HUMAN BEING WITH MALICE AFORETHOUGHT.
A. YES, SIR.
Q. WITH A WICKED, EVIL AND DEPRAVED PURPOSE AND HEART. YOU UNDERSTAND THAT?
A. YES, SIR.
Q. AND THAT IF YOU GOT TO THE POINT OF JUDGING WHETHER IT'S THE DEATH PENALTY OR LIFE, THAT WOULD HAVE ALREADY BEEN PROVEN TO YOU, SIR. IS THAT CORRECT?
A. YES, SIR.
Q. YOU UNDERSTAND THAT?
A. RIGHT.
Q. AND KNOWING THAT, YOU ARE INDICATING THAT YOU HAVE NO PRECONCEIVED OPINION AS TO WHETHER HE SHOULD RECEIVE LIFE OR DEATH?
A. NO, SIR, I DO NOT.
Q. WELL, WHEN YOU SAID THAT YOU WERE NUMBER ONE, THEN YOU JUST DIDN'T KNOW WHAT MURDER WAS. IS THAT CORRECT, SIR?
A. THAT IS CORRECT. THAT'S WHY I ASKED THE JUDGE

THE QUESTION.

Q. WHEN YOU VOTED NUMBER ONE, WHAT DID YOU THINK MURDER WAS?

A. I THOUGHT MURDER WAS KILLING ANOTHER HUMAN BEING, MEANING TO DO IT -- BETTER YET, I THOUGHT MANSLAUGHTER -- THE CHARGE OF MANSLAUGHTER, THERE MIGHT BE SOME MITIGATING CIRCUMSTANCES AND REASONS FOR DOING IT.

Q. WHEN YOU VOTED NUMBER ONE, YOU INDICATED -- YOU THOUGHT MURDER WAS KILLING ANOTHER HUMAN BEING AND MEANING TO DO IT?

A. YES, SIR.

Q. AND IF YOU HAD SOMEBODY THAT KILLED ANOTHER HUMAN BEING AND MEANT TO DO IT, THEN THEY SHOULD GET THE DEATH PENALTY. ISN'T THAT RIGHT, SIR?

A. IF IT WASN'T SELF-DEFENSE OR PROTECTING SOMEONE ELSE.

Q. AND YOU STILL STAND BY THAT DO YOU NOT, SIR?

A. YES, SIR.

Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: YOU CAN STEP OUTSIDE JUST A MOMENT.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. BRACKETT: YOUR HONOR, I SUBMIT AFTER HE WAS EDUCATED AND CERTAIN THINGS WERE EXPLAINED TO HIM, HE

CLARIFIED HIS POSITION AND HE CLEARLY ANSWERED YOUR QUESTIONS AND MY QUESTIONS BOTH AND SAID THAT THE COULD FIND FOR LIFE, HE COULD FIND FOR DEATH, HE COULD WAIT UNTIL THE LAW HAD BEEN EXPLAINED TO HIM. HE UNDERSTOOD AND HE IS CLEARLY QUALIFIED UNDER THE TOTALITY OF THE CIRCUMSTANCES.

THE COURT: WHAT SAYS THE DEFENSE?

MR. HANCOCK: YOUR HONOR, UNDER YOUR DEFINITION HE THOUGHT THAT THERE WERE CIRCUMSTANCES OF SELF-DEFENSE, MANSLAUGHTER OR OTHERWISE. I ASKED HIM WHAT WAS HIS DEFINITION OF MURDER AND HE SAID THAT HE SHOULD GET THE DEATH PENALTY.

THE COURT: I FIND HE'S NOT QUALIFIED. AS CLEAR AS IT IS TO MR. BRACKETT, I FIND THAT HE'S NOT QUALIFIED. ALL RIGHT, BRING HIM IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. MCALLISTER, WE'RE GOING TO EXCUSE YOU FROM FURTHER SERVICE. I'M GOING TO ASK THE BAILIFF TO HAND YOU YOUR RECEIPT FOR ATTENDING YOUR SCHOOL.

THE JUROR: ALL RIGHT.

THE COURT: AND YOU ARE TO FEEL FREE TO LEAVE. WE APPRECIATE YOUR CANDOR AND YOUR TIME.

THE JUROR: THANK YOU, SIR.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: ALL RIGHT, THE NEXT IS CHARLES MILBURY.

CHARLES E. MILBURY, JUROR NUMBER 184, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. COME ON UP HERE AND HAVE A SEAT PLEASE, SIR. MR. MILBURY, I'M JOHN HAYES, THE JUDGE WHO HAS BEEN ASSIGNED THIS CASE, AND I'LL BE PRESIDING AND I WANT TO REMIND YOU THAT YOU'RE UNDER OATH. YOU REMEMBER THAT?

A. YES.

Q. AND I WANT YOU TO KNOW THAT DURING THE TRIAL OF THIS CASE IF YOU ARE ON THE JURY, YOU WILL PERHAPS SEE TELEVISION CAMERAS OR PHOTOGRAPHERS IN THE COURTROOM. DON'T BE DISTRACTED BY THEM. THEY ARE ALLOWED TO BE HERE, BUT THEY ARE NOT ALLOWED TO SHOW JURORS OR REPORT ABOUT JURORS. NOW, YOU HAD TURNED IN A QUESTIONNAIRE. DO YOU BELIEVE THAT QUESTIONNAIRE IS ACCURATE OR DO YOU NEED TO MAKE SOME CHANGES TO IT?

A. I BELIEVE IT'S ACCURATE, YOUR HONOR.

Q. DID YOU HAVE AN OPPORTUNITY TO REVIEW THAT LIST OF WITNESSES THAT WAS IN THAT JURY ROOM?

A. YES, YOUR HONOR.

Q. ARE YOU RELATED BY BLOOD OR MARRIAGE OR ARE YOU A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF ANY OF THOSE INDIVIDUALS?

A. NO, YOUR HONOR.

Q. HAVE YOU PRIOR TO YOUR COMING HERE, OF COURSE, WE DID ANNOUNCE THE CASE ON MONDAY AND THE INDICTMENTS WERE READ, PRIOR TO THAT TIME AND PRIOR TO NOW, OTHER THAN THAT, HAVE YOU HEARD ANYTHING ABOUT THIS CASE, READ ABOUT IT, FORMED AN OPINION ABOUT IT OR EXPRESSED AN OPINION ABOUT IT?

A. NO, YOUR HONOR.

Q. IN THE JURY ROOM THERE WAS A LIST INVOLVING JUROR TYPES. IN A CASE SUCH AS THIS THERE ARE TWO PARTS TO A TRIAL. THAT WOULD BE A FIRST PART DEALING WITH WHETHER OR NOT THE STATE WERE TO PROVE TO A JURY'S SATISFACTION BEYOND A REASONABLE DOUBT UNANIMOUSLY THAT MR. ROBERTSON WERE GUILTY OF MURDER. IF THAT JURY WERE TO FIND HIM NOT GUILTY, THE CASE WOULD END THERE. AND HE IS, OF COURSE, PRESUMED INNOCENT UNTIL SUCH TIME AS A JURY WERE TO FIND HIM GUILTY. BUT IF THE JURY WERE TO BE CONVINCED BEYOND A REASONABLE DOUBT AND UNANIMOUSLY FIND HIM GUILTY, WE WOULD MOVE TO A SECOND PART OF THE TRIAL DEALING WITH WHAT PENALTY WOULD BE APPROPRIATE. DO YOU UNDERSTAND THAT?

A. YES, YOUR HONOR.

Q. HAVE YOU LOOKED AT THOSE TYPES OF JURORS?
A. I HAVE, YOUR HONOR.
Q. DO YOU FIND YOURSELF TO BE IN ONE OF THOSE TYPES?
A. THE LAST GROUP, SIR.
Q. OKAY. THAT THIRD TYPE IS THE TYPE THAT I TALKED IN THERE OR I SET FORTH LANGUAGE DEALING WITH WHAT ARE CALLED AGGRAVATING AND MITIGATING CIRCUMSTANCES.

AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH ATTEND THE COMMISSION OF A CRIME WHICH ADD TO ITS ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCES. THAT IS, THEY ARE THINGS ABOVE AND BEYOND JUST THE ESSENTIAL ELEMENTS OF THE ACT ITSELF.

MITIGATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH DO NOT CONSTITUTE JUSTIFICATION OR EXCUSE FOR THE COMMISSION OF A CRIME, BUT ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED AS EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL CULPABILITY FOR AN OFFENSE. DO YOU UNDERSTAND THAT?

A. I DO, YOUR HONOR.
Q. SO, TYPE THREE JUROR, YOU'RE TELLING ME THAT ONCE GUILT HAD BEEN ESTABLISHED AND WE WENT INTO

THE SECOND PHASE OF THE TRIAL, YOU WOULD NOT HAVE MADE UP YOUR MIND AT THAT POINT AS TO WHAT WOULD BE THE APPROPRIATE PUNISHMENT. IS THAT CORRECT?

A. YES, YOUR HONOR.

Q. YOU ARE TELLING ME THAT YOU WOULD NEED TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION AND WOULD WANT TO LISTEN TO AND FOLLOW THE LAW AS THE JUDGE CHARGES YOU AND THEN AND ONLY THEN MAKE UP YOUR MIND AND MAKE A DECISION AS TO WHAT PUNISHMENT WOULD BE APPROPRIATE. IS THAT CORRECT?

A. YES, YOUR HONOR.

Q. AND AT THAT TIME IF YOU ARE CONVINCED AND FEEL THAT THE FACTS WARRANTED A VERDICT OF LIFE IMPRISONMENT, COULD YOU RETURN A VERDICT OF LIFE IMPRISONMENT?

A. YES, YOUR HONOR.

Q. IF AT THAT TIME YOU FELT THAT THE FACTS WARRANTED A VERDICT OF THE DEATH PENALTY, COULD YOU RETURN A VERDICT IMPOSING THE DEATH PENALTY ON MR. ROBERTSON?

A. YES, YOUR HONOR.

Q. ANSWER ANY QUESTIONS THAT THE ATTORNEYS MAY HAVE.

Q. YES, YOUR HONOR.

QUESTIONS BY MR. BOYD:

Q. GOOD AFTERNOON, MR. MILBURY.

A. GOOD AFTERNOON.

Q. MY NAME IS JIM BOYD; I REPRESENT JIMMY ROBERTSON IN THIS CASE, HE'S SEATED OVER THERE. AND BILL HANCOCK IS MY CO-COUNSEL, HE'S SEATED THERE AT THE END OF THE TABLE.

I JUST WANT TO ASK YOU A FEW QUESTIONS ABOUT THE JUROR INFORMATION FORM YOU FILLED OUT AND ALSO TO FOLLOW-UP ON A FEW QUESTIONS THAT THE JUDGE ASKED YOU.

NOW, I NOTICED ON YOUR JURY INFORMATION FORM YOU PUT DOWN THAT YOU ARE AN I.R.A. MEMBER. WHAT IS THAT?

A. THAT IS THE LEGAL SIDE OF THE NATIONAL RIFLE ASSOCIATION.

Q. OKAY. I WANTED TO MAKE SURE IT WASN'T THE IRISH REPUBLICAN ARMY.

A. NO.

Q. OKAY. SO, YOU'RE A MEMBER OF THE ---

A. NATIONAL RIFLE ASSOCIATION.

Q. AND I.R.A. IS THEIR LEGAL ARM?

A. CORRECT.

Q. YOU INDICATED ALSO ON YOUR FORM, YOU WERE IN THE

Q. AIR FORCE, IS THAT CORRECT?

A. CORRECT.

Q. AND YOU WERE PART OF THE MILITARY POLICE IN THE AIR FORCE?

A. CORRECT.

Q. DO YOU HAVE ANY LAW ENFORCEMENT EXPERIENCE OUTSIDE OF BEING IN THE AIR FORCE?

A. NO, SIR.

Q. NOW, IN THIS CASE THIS CASE IS A TWO PHASE TRIAL. IN THE FIRST PHASE OF THE TRIAL, THE JURORS ARE ASKED TO DETERMINE IF JIMMY ROBERTSON WOULD BE FOUND GUILTY OR NOT GUILTY OF THE CHARGES.

OF COURSE, IF HE'S FOUND NOT GUILTY, THAT ENDS THE CASE, THERE IS NO PUNISHMENT FOR SOMEONE WHO IS NOT GUILTY. AND THE QUESTIONS I'M GOING TO ASK YOU GO TO WHAT HAPPENS IN THE PENALTY PHASE OF THE TRIAL IF THERE IS ONE. NOW, I DON'T WANT TO ASSUME THAT THERE IS GOING TO BE ONE JUST BY ASKING THESE QUESTIONS.

BUT IN A PENALTY PHASE OF THE TRIAL JURORS HEAR EVIDENCE ON AGGRAVATION ON BEHALF OF THE STATE. THAT IS, THINGS THAT MAKE THE MURDER WORSE, WORSE THAN EVEN AN ORDINARY MURDER. DO YOU SEE WHAT I'M SAYING?

A. YES.

Q. AND THEN THEY ALSO CAN HEAR INFORMATION CONCERNING MITIGATING FACTORS. THAT IS, THINGS THAT DON'T EXCUSE THE MURDER, BUT MAY MAKE THE PERSON LESS MORALLY CULPABLE, BASICALLY. THINGS ABOUT THE PERSON, OR THE SURROUNDING CIRCUMSTANCES, THAT TYPE OF THING.

NOW, KNOWING THAT -- I DON'T KNOW IF YOU DO KNOW THIS. YOU KNOW THAT JIMMY ROBERTSON IS CHARGED WITH MURDERING BOTH OF HIS PARENTS?

A. CORRECT.

Q. AND KNOWING THAT, AND KNOWING THAT MURDER IS THE KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT AND THAT IT'S A DELIBERATE ACT AND ALL OF THAT, ASSUMING WE'RE IN THE PENALTY PHASE OF THE TRIAL AND HE'S BEEN CONVICTED OF THAT AND THERE'S NO SELF-DEFENSE OR ACCIDENT OR ANYTHING OF THAT NATURE, ASSUMING THOSE CIRCUMSTANCES, CAN YOU STILL CONSIDER A SENTENCE OF LIFE AS OPPOSED TO DEATH UNDER THOSE CIRCUMSTANCES?

A. YES.

Q. SO, WOULD YOU BE WILLING TO LISTEN TO, AND NOT JUST LISTEN TO, BUT CONSIDER MITIGATING CIRCUMSTANCES WE MAY WANT TO PRESENT IN HIS BEHALF IN THAT PHASE OF THE TRIAL?

A. I'M GOING TO BE FORCED TO LISTEN TO WHATEVER YOU SAY.

Q. WELL, THERE'S A DIFFERENCE BETWEEN LISTENING -- I CAN LISTEN TO WHAT ANYBODY SAYS, BUT REALLY CONSIDERING SOMETHING IS ANOTHER MATTER. AND WHAT I'M ASKING YOU ARE YOU WILLING TO CONSIDER IT, NOT JUST LISTEN TO IT?

A. TO MITIGATING CIRCUMSTANCES?

Q. YES, SIR.

A. YES.

Q. A FEW OTHER QUESTIONS I WANT TO ASK YOU. WOULD YOU START FROM A PRESUMPTION OR AN INFERENCE OR ANYTHING THAT THE CORRECT PUNISHMENT SHOULD BE DEATH UNLESS YOU ARE CONVINCED OTHERWISE, OR DO YOU START FROM A BLANK SLATE?

A. I'D START FROM A BLANK SLATE.

Q. NOW UNDERSTANDING IF YOU'RE ON A JURY OF COURSE YOU HAVE YOUR OPINION, OTHER JURORS MAY HAVE THEIR OPINION. YOU UNDERSTAND THAT, OF COURSE. AND YOU'RE ENTITLED TO HAVE YOUR OPINION RESPECTED BY ALL THE OTHER MEMBERS OF THE JURY. YOU UNDERSTAND THAT?

A. UH HUH.

Q. AND LIKEWISE, JURORS WHO MAY DISAGREE WITH YOUR OPINION HAVE THE RIGHT TO HAVE THEIR OPINION

RESPECTED BY YOU. YOU UNDERSTAND THAT?

A. UH HUH.

Q. AND, OF COURSE, YOU HAVE A DUTY TO DISCUSS AND DELIBERATE BUT NOBODY CAN FORCE THEIR OPINION ON ANOTHER PERSON; YOU UNDERSTAND THAT?

A. YES.

Q. I THINK THAT'S ALL THE QUESTIONS I HAVE. THANK YOU.

QUESTIONS BY MR. BRACKETT:

Q. GOOD AFTERNOON, MR. MILBURY.

A. GOOD AFTERNOON, SIR.

Q. MY NAME IS KEVIN BRACKETT; I'M THE DEPUTY SOLICITOR HERE IN THE SIXTEENTH CIRCUIT. SEATED OVER HERE AT COUNSEL TABLE WITH ME IS TOMMY POPE. SOLICITOR POPE AND I ARE PROSECUTING THIS CASE ON BEHALF OF THE STATE OF SOUTH CAROLINA. AND IT'S MR. JIMMY ROBERTSON OVER THERE WHO IS CHARGED WITH TWO COUNTS OF MURDER, ONE COUNT OF ARMED ROBBERY AND ONE COUNT OF FINANCIAL TRANSACTION CARD FRAUD.

AS I UNDERSTAND IT, YOU ARE SAYING YOU COULD BE A FAIR JUROR IN THE FIRST PHASE OF THE TRIAL. IS THAT CORRECT?

A. YES, SIR.

Q. OKAY. IN THE FIRST PHASE, OF COURSE, WE ARE

ONLY CONCERNED WITH GUILT OR INNOCENCE.

A. CORRECT.

Q. AND ONLY IF WE FIND HIM GUILTY IN THE FIRST PHASE -- ONLY IF WE PROVE HIM GUILTY -- YOU UNDERSTAND THE BURDEN IS OUR'S?

A. UH HUH.

Q. HE SITS THERE INNOCENT, PRESUMED INNOCENT IN THE EYES OF THE LAW.

A. CORRECT.

Q. UNTIL WE PROVE HE'S GUILTY BEYOND A REASONABLE DOUBT.

A. UH HUH.

Q. AND YOU COULD SIT -- YOU HAVE NO PRECONCEIVED NOTIONS BECAUSE YOU'VE NOT HEARD ANYTHING ABOUT THIS CASE?

A. NO, SIR.

Q. SO, YOU'LL TAKE THIS CASE AS WE PRESENT IT TO YOU AND THE EVIDENCE THAT WE PRESENT, ANY EVIDENCE THEY CHOOSE TO PRESENT AND YOU WILL MAKE A FAIR DECISION?

A. CORRECT.

Q. IF THE JURY FINDS THAT HE IS GUILTY IN THE FIRST PHASE, THEN WE PROCEED TO THE SECOND PHASE. JUST KIND OF RECAPPING WHAT HAS ALREADY BEEN ASKED OF YOU A NUMBER OF TIMES.

A. CORRECT.
Q. I'M JUST GOING TO GO THROUGH IT REAL QUICK. IN THE SECOND PHASE YOU WOULD GO IN AGAIN WITH AN OPEN MIND; YOU COULD GIVE LIFE, YOU COULD GIVE DEATH. AND YOU WOULD HEAR WHAT WE PRESENTED. AGAIN, WE BEAR THE RESPONSIBILITY OF SHOWING AGGRAVATING CIRCUMSTANCES, MAKING THIS MORE OF A HEINOUS MURDER.
A. UH HUH.
Q. MORE THAN JUST A, NOT TO SAY THAT THERE EVER IS A GARDEN VARIETY, BUT MORE THAN A REGULAR MURDER, AGGRAVATING CIRCUMSTANCES SHOWING WHY IT IS MORE SEVERE.
A. UH HUH.
Q. THE DEFENSE, AGAIN, HAS THE OPPORTUNITY TO PRESENT EVIDENCE IN THIS PHASE. THEY DON'T HAVE TO, BUT THEY CAN PRESENT EVIDENCE IN WHAT'S CALLED MITIGATION, LESSENING THE DEFENDANT'S CULPABILITY.
A. UH HUH.
Q. AND YOU COULD LISTEN TO ALL OF THAT; TAKE IT ALL IN; LISTEN TO WHAT THE JUDGE HAS TO SAY ---
A. UH HUH.
Q. AND THEN YOU WOULD RETIRE WITH THE JURY TO DELIBERATE, DECIDE WHETHER OR NOT HE SHOULD

RECEIVE LIFE.

A. UH HUH.

Q. WHICH IS A POSSIBILITY IN YOUR MIND, DEPENDING ON THE CIRCUMSTANCES.

A. UH HUH.

Q. OR DEATH, AND THAT'S A POSSIBILITY IN YOUR MIND, AGAIN.

A. WELL, AS I UNDERSTAND IT, SIR, YOU ARE SEEKING THE DEATH PENALTY?

Q. YES, SIR, WE'RE SEEKING ---

A. BUT YOU ARE SEEKING IT ONLY?

Q. I'M SORRY?

A. I MEAN YOU'RE SEEKING THE DEATH PENALTY, BUT IT DOESN'T NECESSARILY MANDATE UPON A CONVICTION OF GUILTY THAT IT IS AUTOMATICALLY A DEATH PENALTY. CORRECT?

Q. THAT'S ABSOLUTELY CORRECT.

A. THAT IS YOUR GOAL, IS TO SEEK THE DEATH PENALTY.

Q. THAT IS OUR RESPONSIBILITY, TO SHOW EVIDENCE IN AGGRAVATION WHICH ALLOWS -- IF THERE IS NO AGGRAVATING EVIDENCE, THERE CAN BE NO DEATH PENALTY.

A. UH HUH.

Q. SO, WE HAVE TO SHOW THE AGGRAVATING EVIDENCE.

A. UH HUH.

Q. AND THEN THEY CAN SHOW THE MITIGATING EVIDENCE, AND YOU CAN DECIDE FOR YOURSELF WHETHER OR NOT HE SHOULD RECEIVE LIFE OR DEATH.
A. UH HUH.
Q. AND YOU LISTEN TO ALL OF THE EVIDENCE AND MAKE A DECISION ON THAT.
A. UH HUH.
Q. AND THE JUDGE WILL CHARGE YOU, YOU CAN GIVE HIM LIFE FOR NO REASON AT ALL.
A. UH HUH.
Q. OR ANY REASON.
A. UH HUH.
Q. SO, WHAT YOU'RE SAYING IS THAT YOU COULD LISTEN TO ALL OF THAT AND YOU COULD GIVE HIM LIFE.
A. UH HUH.
Q. AND YOU COULD ALSO GIVE HIM DEATH.
A. YES.
Q. OKAY. ONE OF THE RESPONSIBILITIES -- HAVE YOU SERVED ON A JURY BEFORE, SIR?
A. NO, SIR.
Q. ONE OF THE RESPONSIBILITIES IS KIND OF DIFFERENT FROM ANY OTHER CRIMINAL CASE OR ANY OTHER CIVIL CASE. ON MOST JURIES ONCE THE JURY RETIRES AND DELIBERATES AND COMES UP WITH A VERDICT, THE FOREPERSON OF THE JURY WHICH WILL BE APPOINTED

BY THE JUDGE ---

A. THE CHAIRMAN OF THE BOARD.

Q. EXACTLY, KIND OF THE LEAD MAN FOR THE JURY.

A. UH HUH.

Q. WILL DESIGNATE WHAT THE VERDICT IS ON A VERDICT SHEET.

A. UH HUH.

Q. AND THEN SIGN THEIR NAME ATTESTING THAT THIS WAS THE VERDICT OF THE JURY AND SIGN THEIR NAME.

A. UH HUH.

Q. IF THE VERDICT OF THE JURY IN THE SECOND PHASE IS LIFE, THEN THAT'S THE SAME PROCEDURE. ONLY THE FOREPERSON WILL SIGN AND THAT'S IT.

A. UH HUH.

Q. IF, HOWEVER, THE VERDICT OF THE JURY IS DEATH, THERE WILL BE A SENTENCING SHEET PASSED AROUND THE JURY ROOM.

A. UH HUH.

Q. AND EACH JUROR WILL BE REQUIRED TO SIGN THEIR NAME INDICATING THAT THEY VOTED FOR DEATH.

A. UH HUH.

Q. NOW, IF THE CIRCUMSTANCES WARRANTED IT AND IT WAS PROPER UNDER THE LAW AS THE JUDGE CHARGED IT, COULD YOU TAKE THE PEN IN YOUR HAND, UNDER THE RIGHT CIRCUMSTANCES, AND SIGN YOUR NAME,

CHARLES MILBURY, SENDING THIS MAN OVER HERE TO HIS DEATH?

A. YES, SIR.

Q. OKAY, SIR. THANK YOU VERY MUCH, MR. MILBURY.

THE COURT: IF YOU WOULD JUST STEP OUTSIDE FOR JUST A MOMENT.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. BRACKETT: I SUBMIT HE'S QUALIFIED.

THE COURT: THE DEFENSE?

MR. BOYD: I AGREE, YOUR HONOR.

THE COURT: BEFORE I CALL HIM BACK IN, I'M GOING TO HAVE TO GIVE HIM ONE OF THOSE SHEETS THAT SHOW WHAT HE CAN AND CANNOT BRING. DID Y'ALL GIVE THEM BACK?

MR. BOYD: NO, SIR.

THE COURT: ALL RIGHT, LET ME GIVE HIM ONE AND LET ME TAKE YOUR'S AND HAVE A COPY MADE SO Y'ALL CAN EACH HAVE ONE FOR YOUR FILE. BRING HIM BACK IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. MILBURY, YOU CAN STOP RIGHT THERE. YOU HAVE BEEN CHOSEN TO BE IN THE POOL. THAT DOES NOT MEAN THAT YOU WILL END UP ON THE JURY PANEL ITSELF, BUT YOU WILL BE CONSIDERED.

YOU ARE NOT TO DISCUSS THE CASE WITH ANYBODY. YOU ARE NOT TO LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE

ABOUT THE CASE. YOU ARE TO REPORT AT 9:30 IN THE MORNING TO THE JURY ASSEMBLY ROOM DOWNSTAIRS.

AND BE PREPARED TO STAY FOR A WEEK OR SO. ARE THERE ANY EXTENUATING CIRCUMSTANCES WE NEED TO KNOW ABOUT?

THE JUROR: THE ONLY THING IS, YOUR HONOR, I RUN A CORPORATION, A U. S. SUBSIDIARY -- A GERMAN CORPORATION. SO THAT THE OFFICE IS GOING TO BE MORE OR LESS CLOSED FOR A WEEK. BUT THAT'S MY PROBLEM.

THE COURT: OKAY. MR. IVEY IS GOING TO HAND YOU A SHEET THAT'S GOT A LITTLE BIT OF INSTRUCTIONS ON IT. AT THE TOP IT SAYS WHAT TIME AND AT THE TOP IT SAYS WHERE TO REPORT WHICH IS 9:30 DOWNSTAIRS AND THEN IT'S GOT SOME ITEMS THAT WE DON'T WANT YOU TO BRING. SOME OF THEM ARE PROBABLY PRETTY OBVIOUS WHY WE DON'T WANT YOU TO BRING THEM.

BUT REPORT DOWNSTAIRS AT 9:30 TOMORROW MORNING.

THE JUROR: YES, YOUR HONOR.

THE COURT: AND DON'T DISCUSS THE CASE OR LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE.

THE JUROR: YES, SIR.

THE COURT: THANK YOU.

THE JUROR: THANK YOU, SIR.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: ALL RIGHT, ROBERT THURMAN, NUMBER 272.

ROBERT W. THURMAN, JUROR NUMBER 272, WHITE MALE, WAS QUESTIONED AS FOLLOWS:

QUESTIONS BY THE COURT:

Q. MR. THURMAN, IF YOU WILL COME OVER HERE AND HAVE A SEAT. MR. THURMAN, I'M JOHN HAYES AND I'VE BEEN ASSIGNED TO PRESIDE OVER THIS TRIAL. AND I WANT TO REMIND YOU THAT YOU'RE UNDER OATH.

A. YES, SIR.

Q. IF YOU ARE PICKED TO BE ON THIS JURY, YOU MAY SEE IN THE COURTROOM A CAMERA OR T.V. CAMERAS. DON'T PAY ANY ATTENTION TO THEM AND DON'T BE DISTRACTED BY THEM. THEY CAN COVER THE CASE BUT THEY CAN'T SHOW THE JURORS OR REPORT ABOUT THE JURORS.

YOU SENT IN A QUESTIONNAIRE. DO YOU BELIEVE IT'S ACCURATE OR IS THERE SOMETHING ON THERE THAT YOU WANT TO CHANGE?

A. WELL, I SENT IT IN IN DECEMBER. I KIND OF FILLED IT OUT REAL QUICK TO BE HONEST WITH YOU. I DON'T EVEN KNOW WHAT'S ON IT.

Q. BUT YOU DID FILL IT OUT ACCURATELY AT THAT TIME?

A. YES, SIR, TO THE BEST OF MY KNOWLEDGE.

Q. OKAY. DID YOU REVIEW THE LIST OF WITNESSES THAT WAS IN THE JURY ROOM?

A. YES.

Q. ON THERE WAS THERE ANYONE TO WHOM YOU ARE RELATED BY BLOOD OR MARRIAGE?

A. NO.

Q. WAS THERE ANYBODY ON THERE WHO IS A CLOSE PERSONAL FRIEND OR ACQUAINTANCE OF YOUR'S?

A. NO, SIR.

Q. HAVE YOU HEARD ANYTHING ABOUT THIS CASE BEFORE YOU GOT HERE?

A. NO, SIR, I HAD NEVER EVEN HEARD OF THE CASE WHEN I GOT HERE MONDAY. THAT WAS THE FIRST TIME I'D EVER HEARD OF IT.

Q. ALL RIGHT. SO, YOU HAVEN'T FORMED OR EXPRESSED ANY OPINION ABOUT THE CASE?

A. NO, SIR.

Q. THIS CASE WILL TAKE PLACE IN TWO PARTS. ONE DEALING WITH A DETERMINATION OF WHETHER OR NOT MR. ROBERTSON WAS GUILTY OF THESE CHARGES, AND HE IS PRESUMED INNOCENT OF THESE CHARGES. HE WILL BE DETERMINED TO BE GUILTY ONLY IF THE STATE WERE TO CONVINCE A JURY UNANIMOUSLY OF HIS GUILT BEYOND A REASONABLE DOUBT.

IF THE JURY FOUND HIM NOT GUILTY, THE CASE WOULD BE OVER. IF THEY FOUND HIM GUILTY, WE WOULD MOVE INTO A SECOND PHASE, THE PENALTY PHASE. WE ARE NOT PRESUPPOSING THAT WE WILL GET THERE, BUT

WE HAVE TO TALK ABOUT THAT AT THIS POINT.
IN THE JURY ROOM THERE WAS A PIECE OF PAPER WITH THREE TYPES OF JURORS ON IT. DID YOU HAVE A CHANCE TO REVIEW IT?

A. YES, SIR.

Q. DID YOU FIND YOURSELF TO BE IN ONE OF THOSE CATEGORIES?

A. YES, SIR.

Q. WHICH ONE?

A. I WAS THE THIRD ONE.

Q. THIS TYPE JUROR, IN EXPLAINING IT, I SET OUT THE WORDS AGGRAVATION AND MITIGATION REGARDING CIRCUMSTANCES.
AGGRAVATING CIRCUMSTANCES ARE CIRCUMSTANCES WHICH WOULD ATTEND THE COMMISSION OF THE CRIME WHICH INCREASE ITS ENORMITY OR ADD TO ITS INJURIOUS CONSEQUENCES. THAT IS, THINGS THAT ARE ABOVE AND BEYOND THE ESSENTIAL ELEMENTS OF THE OFFENSE ITSELF.
MITIGATING CIRCUMSTANCES ARE THINGS WHICH ARE NOT JUSTIFICATION OR EXCUSE FOR THE CRIME BEING COMMITTED, BUT THEY ARE THINGS WHICH IN FAIRNESS AND MERCY MAY BE CONSIDERED BY A JURY AS EXTENUATING OR REDUCING ONE'S DEGREE OF MORAL CULPABILITY. DO YOU UNDERSTAND THAT?

A. RIGHT.

Q. SO YOU ARE TELLING ME THAT IF YOU WERE ON THIS JURY AND MR. ROBERTSON HAD BEEN FOUND BY THAT JURY GUILTY OF MURDER, YOU WOULD NOT GO INTO THAT SECOND PHASE WITH YOUR MIND MADE UP IN ADVANCE CONCERNING WHAT PUNISHMENT WOULD BE APPROPRIATE?

A. NO.

Q. YOU'RE TELLING ME THAT YOU WOULD WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION AND THAT YOU WOULD WANT TO LISTEN AND FOLLOW THE LAW CHARGED BY THE JUDGE AND THEN AND ONLY THEN WOULD YOU BE ABLE TO -- LET ME REPEAT THAT, I GOT TONGUE-TIED. YOU ARE TELLING ME, IF I UNDERSTAND IT, THAT YOU WOULD WANT TO HEAR THE FACTS AND CIRCUMSTANCES IN AGGRAVATION AND MITIGATION, HEAR THE JUDGE'S CHARGE ON THE LAW AND THEN AND ONLY THEN DETERMINE WHAT WOULD BE THE APPROPRIATE PUNISHMENT. IS THAT CORRECT?

A. YES, SIR, THAT IS CORRECT.

Q. IF AT THAT POINT YOU FELT THE APPROPRIATE PUNISHMENT WAS LIFE IMPRISONMENT, COULD YOU RETURN A VERDICT IMPOSING LIFE IMPRISONMENT?

A. I DID NOT HEAR THE WHOLE QUESTION.

Q. IF AT THAT POINT YOU DETERMINED THAT BASED ON

THOSE FACTS AND CIRCUMSTANCES AND THE LAW THAT THE JUDGE CHARGES YOU, YOU DETERMINED THAT LIFE IMPRISONMENT WAS THE APPROPRIATE PUNISHMENT FOR THE OFFENSE, COULD YOU RETURN A VERDICT OF LIFE IN PRISON?

A. YES, SIR.

Q. IF YOU FELT UNDER THOSE CIRCUMSTANCES THAT THE APPROPRIATE VERDICT WAS THAT FOR THE DEATH PENALTY, COULD YOU RETURN A DEATH PENALTY ?

A. I BELIEVE I COULD. I'VE NEVER BEEN IN THAT SITUATION, BUT I BELIEVE, YES, I COULD.

Q. ALL RIGHT, THANK YOU. ANSWER ANY QUESTIONS THAT COUNSEL MIGHT HAVE.

QUESTIONS BY MR. POPE:

Q. MR. THURMAN, I'M THE SOLICITOR HERE, DISTRICT ATTORNEY HERE IN YORK COUNTY. THIS IS MR. KEVIN BRACKETT, MY DEPUTY SOLICITOR AND, OF COURSE, WE REPRESENT THE STATE IN THIS CASE.

I THINK YOUR LAST ANSWER PRETTY MUCH HIT MY FIRST QUESTION. HAVE YOU EVER BEEN IN A SITUATION LIKE THIS BEFORE?

A. NO, I HAVEN'T.

Q. HAVE YOU EVER HAD TO BE BROUGHT IN AND QUESTIONED ABOUT ALL OF YOUR DIFFERENT VIEWS AND ALL THAT STUFF BEFORE?

A. NO, I HAVE NOT.
Q. I SAW YOU HAD SERVED, I THINK, ON A CIVIL CASE BEFORE?
A. YES, ON A LIABILITY CASE.
Q. BUT IT'S NOTHING LIKE THIS?
A. NO, SIR.
Q. AND ALSO I THINK I SAW THAT YOUR SISTER IS AN ATTORNEY?
A. NO, SHE'S A THIRD YEAR LAW STUDENT.
Q. WHEN WE'RE THIRD YEAR LAW STUDENTS WE THINK WE'RE ATTORNEYS ALREADY.
A. RIGHT, SHE GRADUATES IN MAY.
Q. HAVE YOU DISCUSSED THESE TYPE ISSUES WITH HER BEFORE?
A. NO, I ONLY TOLD MY MOM I WAS ON JURY DUTY.
Q. I GOT YOU. WELL, LET ME TELL YOU, ONE THING THAT YOU'RE IN A GOOD POSITION IS THAT ROBERT THURMAN CAN'T GIVE A WRONG ANSWER BECAUSE THIS IS WHAT, YOU KNOW WHAT I MEAN, IT'S NOT LIKE A QUIZ, THIS IS WHAT YOU'RE ABOUT. THIS IS JUST US TRYING TO FIND OUT A LITTLE BIT ABOUT YOU, YOU KNOW, TO HELP US MAKE YOUR DECISION.
AND ONE THING I'LL TELL YOU AND YOU PROBABLY LEARNED WHEN YOU WERE ON THAT FIRST CASE. THE JUDGE IS ALWAYS GOING TO INSTRUCT YOU WHAT THE

LAW IS. YOU KNOW, I'M GOING TO TOUCH ON IT A LITTLE BIT, THE JUDGE HAS TOUCHED ON IT AND, OF COURSE, MR. HANCOCK OR MR. BOYD WILL TOUCH ON IT, TOO. BUT IF YOU WERE CHOSEN TO BE A JUROR, YOU UNDERSTAND THAT YOU JUDGE THE FACTS AND THE JUDGE WILL TELL YOU WHAT THE LAW IS. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. AND DO YOU UNDERSTAND THAT THIS IS, AS THE JUDGE EXPLAINED, IS A TWO PART TRIAL. DO YOU UNDERSTAND WHAT THAT MEANS?

A. RIGHT, YES.

Q. SO IT'S DIFFERENT, YOU KNOW, IN THE CASE YOU WERE ON Y'ALL RENDERED THE VERDICT AND THEN THE JUDGE WOULD GIVE WHATEVER SENTENCE. OF COURSE, I SAW IT WAS LIABILITY, BUT YOU KNOW WHAT I'M SAYING?

A. YES.

Q. WELL, IN OUR SITUATION YOU WOULD RENDER THE VERDICT AND THEN YOU WOULD DECIDE THE PENALTY IN A SEPARATE PROCEEDING. AND THERE WOULD BE EVIDENCE IN THE FIRST PROCEEDING AND, OF COURSE, YOU COULD CONSIDER THAT IN THE SECOND PROCEEDING, BUT THERE WOULD ALSO BE OTHER EVIDENCE YOU WOULD HEAR IN THE SECOND

PROCEEDING. DO YOU UNDERSTAND THAT?

A. RIGHT.

Q. OKAY. THE FIRST PROCEEDING IS JUST ABOUT GUILT. IT'S JUST LIKE A NORMAL CRIMINAL TRIAL AND THIS DEFENDANT IS INNOCENT UNTIL PROVEN GUILTY AND IT'S OUR BURDEN AS THE STATE TO PROVE IT BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. IN OTHER WORDS, HE DOESN'T HAVE TO PROVE ANYTHING; HE DOESN'T HAVE TO PUT UP WITNESSES; HE DOESN'T HAVE TO SAY ANYTHING; HE HAS THE RIGHT TO NOT DO ANY OF THAT. WE'VE GOT TO PROVE IT. DO YOU UNDERSTAND THAT?

A. UH HUH.

Q. AND FROM WHAT I HEARD YOU TELL THE JUDGE, YOU'RE THE TYPE JUROR THAT YOU CAN ACCEPT THAT, HOLD US TO OUR BURDEN TO PROVE THE CASE. IS THAT RIGHT?

A. THAT'S CORRECT.

Q. AND YOU WOULD KEEP AN OPEN MIND -- AS YOU SIT RIGHT NOW, I THINK YOU SAID YOU HADN'T HEARD HARDLY ANYTHING ABOUT THE CASE TO START WITH.

A. NO. WHEN I CAME IN MONDAY, I THOUGHT I WAS IN CIVIL COURT.

Q. KIND OF A RUDE AWAKENING I GUESS.

A. YES, IT WAS.

Q. SO, WHAT YOU KNOW AT ALL ABOUT IT IS JUST WHAT YOU HEARD WHEN THE JUDGE TALKED TO YOU?

A. YES, THAT'S ALL I KNOW.

Q. OKAY. WELL, IN THE FIRST PHASE, OBVIOUSLY, IT'S A CASE WITH TWO COUNTS OF MURDER, AND A COUNT OF ARMED ROBBERY, AND A COUNT OF FINANCIAL TRANSACTION CARD FRAUD AND WE'VE GOT TO PROVE THE CASE.

ON THE FIRST SITUATION YOU'D COME IN, YOU'D WAIT AND HEAR THE EVIDENCE; IF WE PROVED IT, YOU'D VOTE GUILTY; IF WE DIDN'T PROVE IT, YOU'D VOTE NOT GUILTY. IS THAT RIGHT?

A. RIGHT.

Q. OKAY. IF WE GET TO THE SECOND PHASE AND, OF COURSE, THAT WOULD PRESUPPOSE THAT HE WAS FOUND GUILTY, THEN THE DECISION IS DIFFERENT. IT'S NOT ABOUT GUILTY AND NOT GUILTY BECAUSE HE WOULD HAVE ALREADY BEEN FOUND GUILTY AT THAT POINT.

A. UH HUH.

Q. THE ISSUE THEN IS LIFE OR DEATH. AND, AGAIN, THE STATE WOULD BRING FORWARD WHAT'S CALLED EVIDENCE IN AGGRAVATION. AND THESE ARE ALL TERMS OF ART, BUT THE BEST WAY TO EXPLAIN IT IS THE STATE WOULD BRING FORTH THE THINGS THAT SHOW WHY IT SHOULD BE A DEATH PENALTY CASE. YOU

KNOW, YOU ALREADY KNEW HE HAD BEEN CONVICTED OF KILLING HIS PARENTS. NOW YOU WOULD HEAR OTHER THINGS THAT THE STATE WOULD PUT FORWARD TO SAY THAT THIS IS WORSE AND IT SHOULD BE A DEATH PENALTY CASE.

THE DEFENSE WOULD BUT THEY DON'T HAVE TO, COULD BRING FORWARD EVIDENCE IN MITIGATION WHICH IS JUST THE OPPOSITE, TO SHOW SOMETHING OR SHOW SOME EXPLANATION OR SHOW SOMETHING WHY IT SHOULD BE LIFE INSTEAD OF DEATH. AND YOU UNDERSTAND THAT?

A. RIGHT.

Q. AND AS I UNDERSTAND, YOU'RE THE TYPE OF JUROR JUST BECAUSE HE'S CONVICTED, AND HE'D BE CONVICTED OF KILLING HIS PARENTS, YOU COULDN'T TELL ME IF YOU'RE GOING TO GIVE LIFE OR DEATH BECAUSE YOU HADN'T HEARD ALL THE FACTS YET. IS THAT RIGHT?

A. THAT'S CORRECT.

Q. OKAY. AND YOU UNDERSTAND THAT YOU COULD NEVER HOLD HIM TO THE BURDEN OF PROVING ANYTHING TO YOU. YOU KNOW, YOU COULDN'T SAY ROBERT THURMAN IS NOT GOING TO LISTEN TO ANYTHING UNLESS THEY PROVE TO ME TO GIVE LIFE. YOU CAN GIVE LIFE FOR ANY REASON AT ALL. DO YOU UNDERSTAND THAT?

A. WELL, I'M NOT SURE I UNDERSTAND.

Q. WELL, LET ME SAY THAT AGAIN. THE JUDGE WILL INSTRUCT YOU THAT YOU CAN GIVE LIFE FOR ANY REASON AT ALL.

A. OH, OKAY.

Q. OF COURSE, THE JUDGE WILL INSTRUCT YOU BUT THE BOTTOM LINE IN ITS SIMPLEST FORM, A LIFE OR DEATH DECISION IF YOU'RE IN THAT SITUATION, IS YOUR DECISION. YOU KNOW, THE JUDGE WILL INSTRUCT YOU WHEN YOU CAN GIVE IT OR WHEN YOU CAN'T, BUT YOU'LL NEVER BE MADE TO GIVE IT, YOU KNOW, EITHER WAY. YOU HAVE TO DECIDE.

SO, YOU'RE TELLING ME THAT YOU'RE THE TYPE JUROR THAT YOU COULD GET THERE AND YOU REALLY COULDN'T MAKE A DECISION UNTIL AFTER YOU HEARD WHATEVER WE SAID AND WHATEVER THEY SAID IF THEY WANTED TO. AND THE TRUTH OF THE MATTER, UNTIL THE JUDGE GAVE YOU WHAT THE LAW IS. YOU'RE THE TYPE YOU'RE GOING TO KEEP AN OPEN MIND AND HEAR IT ALL. IS THAT RIGHT?

A. YES, I HAVE TO AGREE TO SOMETHING, I DON'T TAKE SOMEONE'S WORD.

Q. AND LET ME ASK YOU, IN ACTUALLY SERVING, AND AGAIN YOU'VE BEEN ON JURY BEFORE, YOU KNOW HOW IT IS, YOU GO BACK THERE AND I'VE HEARD PART OF

IT AND YOU'VE HEARD PART OF AND YOU TALK ABOUT IT AND -- I SAY PART OF IT, WE ALL HEARD IT ALL BUT I REMEMBER ONE THING. ARE YOU THE TYPE OF JUROR, COULD YOU TALK IT OUT WITH ALL THE OTHER JURORS AND LISTEN TO WHAT THEY HAVE TO SAY AND YOU TELL THEM WHAT YOU HAVE TO SAY?

A. YES, SIR.

Q. AND, OF COURSE, YOU ALWAYS GO BY YOUR CONVICTION IN YOUR HEART AND YOUR BELIEF, BUT ARE YOU WILLING TO HEAR, AGAIN, WHAT THEY HAVE TO SAY. AGAIN, I USE THE EXAMPLE, YOU KNOW, I'VE HEARD THE TRIAL, I'M GOING IN THERE, I'M GOING TO LOOK OUT OF THE WINDOW, I DON'T EVEN WANT TO TALK TO Y'ALL BECAUSE I'VE DECIDED. ARE YOU THAT TYPE PERSON OR ARE YOU WILLING TO TALK ---

A. I DON'T BELIEVE I AM. I KNOW THAT IN MOST THINGS IN MY LIFE I LOOK AT BOTH SIDES.

Q. AND THAT'S EXACTLY, YOU KNOW JUROR-WISE, WHAT WE'RE LOOKING AT. AND, AGAIN, I KNOW YOU FEEL LIKE I'M INTERROGATING YOU BUT, AGAIN, IT'S JUST FOR ME TO UNDERSTAND WHAT YOU'RE ABOUT.

FINALLY, I'LL TELL YOU -- THE LAST THING I'M GOING TO TELL YOU ON THIS ISSUE, AND THAT'S ALWAYS COMFORTING TO HEAR ME SAY IT'S THE LAST THING, BUT IN A DEATH PENALTY CASE IT'S A LITTLE

DIFFERENT THAN IN A NORMAL CASE.

IF YOU'LL REMEMBER IN A NORMAL CASE THE FOREPERSON OF THE JURY SIGNS THE VERDICT. YOU KNOW, SAID WE FOUND LIABILITY OR NOT LIABILITY.

WELL, IN A DEATH PENALTY CASE IF YOU GET BACK THERE AND, OF COURSE, IT HAS TO BE UNANIMOUS, IF THE VERDICT IS LIFE, YOU KNOW, YOU GO AROUND THE ROOM, ALL TWELVE VOTE AND EVERYBODY SAYS LIFE, THEN ONLY THE FOREPERSON SIGNS.

BUT IF THE VERDICT IS DEATH -- YOU KNOW, YOU TOLD US EARLIER YOU BELIEVED YOU COULD VOTE FOR DEATH, IT'S A SERIOUS DECISION.

A. RIGHT.

Q. BUT BECAUSE IT'S A SERIOUS DECISION, THE LAW REQUIRES SOMETHING A LITTLE DIFFERENT. IF IT'S DEATH AND ALL TWELVE HAVE HEARD EVERYTHING AND DETERMINED THAT IT'S DEATH, THEN EACH INDIVIDUAL JUROR HAS TO SIGN.

AND, OF COURSE, THE LAW AND THE COURT IS GOING TO DO WHATEVER Y'ALL SAY, AND IT WILL TRULY BE IN YOUR HANDS. IF YOU SAY LIFE, THEY'RE GOING TO GIVE LIFE; IF YOU SAY DEATH, THEY'RE GOING TO GIVE DEATH. IF YOU HEARD THE FACTS AND EVIDENCE AND THE FORM WAS PASSED AROUND AND IT CAME TO YOUR HANDS AND YOU TOOK PEN IN HAND IF YOU

THOUGHT DEATH WAS APPROPRIATE, COULD YOU SIGN ROBERT THURMAN TO A DOCUMENT THAT WOULD TAKE THIS MAN'S LIFE IF YOU THOUGHT THAT WAS APPROPRIATE?

A. I BELIEVE I COULD IF IT WARRANTED THAT. AGAIN, I HAVEN'T HEARD THE CASE.

Q. BUT IF YOU THOUGHT IT DID, YOU COULD, AND IF YOU THOUGHT IT DIDN'T, YOU'D PUT THE PEN DOWN?

A. RIGHT.

Q. FAIR ENOUGH. THANK YOU, SIR.

QUESTIONS BY MR. HANCOCK:

Q. MR. THURMAN, I'M BILL HANCOCK. I REPRESENT JIMMY ROBERTSON WHO IS SEATED HERE, AND THIS IS MR. BOYD WHO IS CO-COUNSEL IN THIS CASE.

I HAVE LISTENED CLOSELY TO YOUR ANSWERS AND I'M JUST GOING TO ASK YOU A FEW QUESTIONS TO MAKE SURE THAT I HEARD WHAT YOU SAID AND I HEARD IT CORRECTLY.

A. OKAY.

Q. AGAIN, THERE'S NO RIGHT ANSWER, THERE'S NO WRONG ANSWER, IT'S JUST YOUR ANSWER. ALL RIGHT, SIR?

A. OKAY.

Q. NOW I NOTICED ON YOUR QUESTIONNAIRE YOU INDICATE THAT YOU KNEW SOMEONE WHO HAD LOST A LOVED ONE TO A HOMICIDE.

A. YES, I DO.
Q. WHO WAS THAT, SIR?
A. THIS WAS BACK WHEN I WAS IN HIGH SCHOOL, A NEIGHBOR ACROSS THE STREET, HER SON WAS SHOT IN FLORIDA.
Q. WOULD THAT IN ANY WAY AFFECT YOUR OPINION REGARDING THIS CASE?
A. NO, THAT WOULDN'T AFFECT MY OPINION AT ALL.
Q. AND HOW OLD WERE YOU WHEN THAT TOOK PLACE, SIR?
A. 16.
Q. WERE YOU INVOLVED IN EITHER THE PROSECUTION OR THE DEFENSE OF THAT CASE IN ANY WAY?
A. NO. WE LIVED IN MARYLAND, WE WEREN'T INVOLVED IN IT.
Q. THANK YOU, SIR. NOW, YOU'VE INDICATED THAT YOU CAN LISTEN TO THE FACTS AND CIRCUMSTANCES IN THE CASE AND GIVE A FAIR AND JUST VERDICT. IS THAT CORRECT, SIR?
A. YES, SIR.
Q. THAT'S WHAT WE'RE ALL LOOKING FOR, ISN'T THAT RIGHT?
A. YES, SIR.
Q. AND YOU KNOW THAT JIMMY IS CHARGED WITH KILLING BOTH OF HIS PARENTS?
A. YES, SIR.

Q. AND THAT'S KILLING THEM WITHOUT JUST CAUSE OR EXCUSE, IT'S CALLED MURDER.

A. THAT'S THE FIRST TIME I'VE HEARD IT PUT THAT WAY, BUT YES.

Q. AND YOU KNOW THAT THE STATE IS SEEKING THE DEATH PENALTY?

A. YES, SIR.

Q. AND THE SOLICITOR AND THE JUDGE DISCUSSED WITH YOU THAT THAT WOULD BE IN A SECOND TRIAL. WE ARE NOT ASSUMING -- WE ARE ASSUMING THAT HE'S GUILTY FOR PURPOSES OF QUESTIONING, BUT HE HAS NOT BEEN FOUND GUILTY. THAT WOULD BE PART OF YOUR DUTY.

A. RIGHT.

Q. DO YOU UNDERSTAND THAT?

A. UH HUH.

Q. AND YOU HAVE INDICATED ALSO THAT YOU COULD CONSIDER WHAT WE CALL MITIGATING FACTS AND CIRCUMSTANCES IN THIS CASE. DO YOU KNOW WHAT THOSE ARE?

A. WELL, I HAVEN'T HEARD THE CASE, SO I DON'T KNOW WHAT THEY ARE.

Q. YOU HAVEN'T HEARD THE CASE, BUT YOU COULD LISTEN TO SOMETHING -- ARE YOU TELLING THIS COURT AND ARE YOU TELLING ME THAT YOU COULD LISTEN TO

THINGS THAT WOULD LESSEN THE MORAL CULPABILITY OF JIMMY?

A. YES.

Q. AND THAT, YOU KNOW, IN FAIRNESS AND MERCY YOU COULD LISTEN TO THOSE THINGS AND POSSIBLY ARRIVE AT A SENTENCE OF DEATH -- EXCUSE ME, A SENTENCE OF LIFE. IS THAT CORRECT, SIR?

A. YES, SIR.

Q. NOW, YOU DON'T START WITH ANY PRECONCEIVED OPINION THAT SOMEONE CONVICTED OF MURDER SHOULD GET THE DEATH PENALTY; IS THAT RIGHT, SIR?

A. THAT IS CORRECT.

Q. AND IF YOU ARRIVED AT THE DECISION THAT YOUR VERDICT WOULD BE LIFE IN PRISON RATHER THAN DEATH, WOULD YOU CHANGE THAT OPINION JUST TO BE IN THE MAJORITY OF JURORS SHOULD THEY SAY THAT THEY WANTED THE DEATH PENALTY?

YOU FEEL LIKE YOU ARE AN INDEPENDENT GENTLEMAN AND CAN ---

A. I'VE ALWAYS KIND OF DONE MY OWN THING.

Q. THANK YOU, SIR.

THE COURT: I'M GOING TO LET YOU STEP OUTSIDE FOR JUST A MINUTE, MR. THURMAN.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

MR. POPE: I SUBMIT HE'S QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAYS THE DEFENSE?

MR. HANCOCK: QUALIFIED, YOUR HONOR.

THE COURT: I FIND HE IS QUALIFIED. HAVE HIM COME IN.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. THURMAN, YOU'RE GOING TO BE ON THE POOL FROM WHICH THE JURY IS DRAWN. PLEASE REPORT AT 9:30 IN THE MORNING AND I'M GOING TO HAVE THE BAILIFF IN JUST A SECOND GIVE YOU A LITTLE SHEET OF SOME INSTRUCTIONS.

DON'T TALK ABOUT THIS CASE WITH ANYONE. IF ANYONE TRIES TO DISCUSS THE CASE WITH YOU, TELL THEM YOU CANNOT AS YOU ARE A POTENTIAL JUROR.

DO NOT LET YOURSELF BE EXPOSED TO ANY NEWS COVERAGE, IF THERE IS ANY, IN ANY FASHION WHATSOEVER.

NOW, COME PREPARED TO BE LODGED BY THE COUNTY FOR ABOUT A WEEK DURING THE TRIAL OF THIS CASE.

ARE THERE ANY EXTENUATING CIRCUMSTANCES WE NEED TO KNOW ABOUT?

THE JUROR: NONE THAT I CAN THINK OF.

THE COURT: OKAY. WELL, I'M GOING TO LET THE BAILIFF GIVE YOU THIS LIST AND IT'S BASICALLY A LIST OF THINGS YOU CANNOT BRING. AND IT TELLS YOU AT THE TOP THAT YOU ARE TO REPORT AT 9:30 IN THE MORNING TO THE JURY ASSEMBLY ROOM DOWNSTAIRS. THANK YOU A LOT. WE'LL SEE YOU

IN THE MORNING.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: BY MY COUNT THAT'S 37. DOES ANYBODY DIFFER WITH ME?

ALL RIGHT, LET'S JUST GO OVER IT REAL QUICK. I'VE GOT 206, DONNA PARLER; 158, DONA LOWDER; 165, FRANCIS MATTHEWS; 293, PAMELA WITHERSPOON; 152, LISA LILLY; 238, FRED SHELLEY; 231, STEVEN SAMIOS; 144, LESTER LANDRUM; 166, TIMOTHY MCALLISTER; 93, MICHAEL GOELLER; 258, ROGER STIKELEATHER; 205, ROBIN PARKER; 101, JERRY GWINN; 241, LORRIE SIGLER; 232, YANCEY SANDERS; 73, FRANK O. DEATON; 296, BARBARA WRIGHT; 153, ROBERT LONCARIC; 48, BETTE CHRISTENSEN; 249, TORRENCE SMITH; 300, BETTY ZAPATA; 175, PAUL MCGUIRT; 123, RUSSELL HOVIS; 237, CHARLES SHAW; 64, TINO CHRISTINA; 100, CLIFTON GUFFEY; 53, SUSAN COCHRAN; 279, ALTA VANDERGRIFT; 180, BARNEY MELTON; 76, TERRY DUNLAP; 59, JOSEPH COOK; 119, KELLY HOPE; 190, SUE MOORE; 94, JAMES GOFF; 268 MICHAEL TERLINDE; 184, CHARLES MILBURY; 272, ROBERT THURMAN.

MR. HANCOCK: YOUR HONOR, IF I MAY, START WITH THE FIRST PANEL AND ABOUT THE FIRST FOUR TO 293, I WASN'T ABLE TO GET TO MY LIST BEFORE YOU GOT THERE.

THE COURT: PAMELA WITHERSPOON?

MR. HANCOCK: THAT'S THE FIRST ONE I'VE GOTTEN, THE ONES BEFORE THAT.

THE COURT: OH, 206, DONNA PARLER, THE VERY FIRST ONE, AND THE SECOND ONE, DONA LOWDER. AND THEN THE ONE BEFORE MS. WITHERSPOON, FRANCIS MATTHEWS.

MR. HANCOCK: THANK YOU, SIR.

THE COURT: NOW, WE CAN IN JUST A MINUTE LET THE REST OF THE PANEL GO. THE CLERK WILL TELL ON THE TELEPHONE TO LET THE REST GO. I'VE GOT EXTRA COPIES OF THAT LITTLE SHEET CONCERNING THE JURY THAT EACH OF YOU CAN HAVE.

WE HAVE PENDING A MOTION BY THE DEFENDANT FOR A CHANGE OF VENUE BASED ON PRE-TRIAL PUBLICITY. WOULD YOU LIKE TO ARGUE THAT AT THIS TIME, MR. BOYD AND MR. HANCOCK?

MR. BOYD: YES, SIR. YOUR HONOR, WE STILL WOULD MAKE THAT MOTION. THE ACTUAL MOTION IS TO SELECT A JURY FROM ANOTHER COUNTY.

I REALIZE THAT INDIVIDUALLY THE JURORS HAVE BEEN QUESTIONED AND SAID THAT THEY COULD GIVE THIS DEFENDANT A FAIR TRIAL. I WOULD POINT OUT, HOWEVER, YOUR HONOR, THAT THE JUROR -- MOST OF THE JURORS HAVE HEARD SOMETHING ABOUT THIS CASE, READ SOMETHING ABOUT THIS CASE. ALSO, MANY OF THE JURORS KNOW ONE OR MORE WITNESSES THAT ARE GOING TO TESTIFY IN THE CASE.

INDIVIDUALLY THAT MAY NOT DISQUALIFY ANY PARTICULAR JUROR, BUT WHEN YOU TAKE THE PANEL AS A WHOLE, THE FACT THAT SO MANY OF THE JURORS HAVE HEARD ABOUT THIS CASE, READ ABOUT THIS CASE AND ALSO THE FACT THAT SO MANY

OF THE JURORS KNOW WITNESSES IN THE CASE, I THINK IN THE TOTALITY OF THE CIRCUMSTANCES CERTAINLY SHOW THERE IS THE POTENTIAL FOR PREJUDICE HERE AND IT IS PREJUDICE THAT COULD BE CURED BY DRAWING THIS JURY FROM ANOTHER COUNTY.

THE CASE IS NOT SUCH THAT WE COULDN'T FIND JURORS IN ANOTHER COUNTY WHO HAVE HEARD NOTHING AT ALL ABOUT THIS CASE, KNOW NOTHING ABOUT THE WITNESSES AT ALL. AND FOR THOSE REASONS, WE WOULD STILL MAKE THAT MOTION.

THE COURT: ALL RIGHT, BEFORE I HEAR FROM THE STATE, I BELIEVE, AND I'LL ASK COUNSEL FOR THE DEFENSE, I ONLY EXCUSED THE FOLLOWING PEOPLE BASED ON THEIR INABILITY TO -- I KNOW A LOT SAID THEY DID HEAR, BUT ONLY RELEASED THE FOLLOWING PEOPLE BECAUSE THEY HAD SUCH PRECONCEIVED IDEAS THAT THEY COULD NOT BE FAIR AND IMPARTIAL:

THAT WAS 138, DAVID KAYLOR; 230, ROSEMARY ROZSAK, AND SHE WAS NOT DEATH PENALTY QUALIFIED ANYWAY BUT I ALSO PUT HER DOWN AS SAYING SHE WAS AFFECTED BY PRE-TRIAL PUBLICITY; 155, JOHNNY LOVE; AND I BELIEVE 63, JAMES CRAWFORD.

THAT'S ONLY FOUR PEOPLE OUT OF 75 WHICH SAID THEY COULD NOT SET ASIDE WHAT THEY HAD HEARD AND RENDER A FAIR AND IMPARTIAL VERDICT.

THE OTHER 71 SAID THEY COULD -- WELL, I BETTER TAKE THAT BACK. SOME WERE EXCUSED BEFORE WE EVEN GOT INTO THOSE SORT OF QUESTIONS BECAUSE OF CRIMINAL RECORDS AND

BEING ARRESTED ON THE SPOT.

BUT I DENY THAT MOTION. THE PROOF OF THE PUDDING IS IN THE EATING, AS THEY SAY, AND WE WERE ABLE TO GET 37 JURORS OUT OF THAT PANEL. SO, THAT MOTION IS DENIED.

ARE THERE ANY OTHER PENDING MOTIONS THAT WE NEED TO DISPOSE OF AT THIS POINT. I KNOW WE HAVE SOME THAT WE HAVE TO TAKE UP AS WE GO ALONG PERHAPS LIKE JACKSON VERSUS DENNO, THE PHOTOGRAPHS, BUT I BELIEVE EVERYTHING ELSE HAS BEEN DISPOSED OF. IS THERE ANYTHING ELSE FROM THE STATE?

MR. POPE: YOUR HONOR, AS FAR AS THE COURT ELABORATING ON THE EVIDENCE IN AGGRAVATION, MR. BRACKETT HAD SPOKEN BRIEFLY WITH MR. HANCOCK, I BELIEVE IT WAS AT THE CLOSE YESTERDAY. WE HAVE BEEN COORDINATING WITH THEM FOR A TIME TO SIT DOWN AND LOOK FURTHER AT OUR WITNESS LIST.

YOUR HONOR, AS FAR AS JACKSON VERSUS DENNO, MR. MISLE IS BACK PRESENT AND I'LL HAVE HIM HERE IN THE MORNING BUT WE'LL DEAL WITH IT WHENEVER THE COURT DEEMS IT APPROPRIATE.

THE COURT: IT'S 5:41, I'D RATHER WE STOP FOR THE DAY. IT'S BEEN A PRETTY LONG DAY FOR EVERYBODY.

MR. POPE: I MEANT HE WAS PRESENT IN YORK COUNTY; I DON'T MEAN THAT HE'S HERE.

THE COURT: OH, OKAY.

MR. POPE: SO, WE WILL BE PREPARED TO DEAL WITH

THAT. YOUR HONOR, AT SOME POINT, I KNOW WE'RE STARTING AT 9:00, I'VE TOLD THE COURT REPORTER THAT WE WILL GET WITH THE DEFENSE AND PRE-MARK AS MANY EXHIBITS AS POSSIBLE. I WILL HAVE THE EVIDENCE CUSTODIAN TO -- WHAT WE HAVE ARRANGED IS FOR THE ITEMS WE DIDN'T PRE-MARK, TO HAVE THEM SECURED IN THE CLERK'S EVIDENCE ROOM SO THAT IF THE DEFENSE NEEDS ACCESS OR THERE WERE OTHER ITEMS THAT WE DIDN'T PRE-MARK IF NEEDED, THEY WILL BE READILY AVAILABLE. WE'VE ADDRESSED THAT AND WE WILL COORDINATE THAT WITH THE CLERK.

THE COURT: WELL, WE'VE GOT THE JURY COMING BACK AT 9:30. WE PROBABLY WON'T GET STARTED UNTIL CLOSER TO 10:00 BECAUSE WE WILL HAVE SOME MATTERS -- WE HAVE TO SWEAR THE SLED SECURITY INDIVIDUALS IN; THE CLERK WILL HAVE TO ADMINISTER THE OATH FOR THEM TO BE CUSTODIANS OF THE JURY.

THERE ARE ALWAYS LITTLE ODDS AND ENDS THAT COME UP THAT WE HAVE TO DISPOSE OF. SO, DON'T FEEL PUSHED TO INVITE THE JURY UP. SOME OF THEM MAY RUN A LITTLE LATE; THEY'VE GOT LUGGAGE. IF WE DON'T START UNTIL CLOSE TO 10:00 I'M NOT GOING TO BE REAL UPSET, BUT I WOULD LIKE TO START NO LATER THAN 10:00 AND I WOULD LIKE TO START AS CLOSE TO 9:30 AS WE CAN.

MR. POPE: AND I'LL CALL THE COURT'S ATTENTION -- IF NEED BE, IT MAY EVEN BE THAT I CAN USE THE ITEMS THAT WE'LL NEED WITH THE FIRST COUPLE OF WITNESSES TO GET US TO LUNCH. OF COURSE, I KNOW EVERYBODY NEEDS LUNCH, BUT WE CAN

COORDINATE SOMETHING.

ANOTHER THING I HAVE SPOKEN WITH DEFENSE ABOUT AND THIS IS SOMETHING THAT WE WILL DEAL WITH AS IT COMES, THERE'S A TREMENDOUS VOLUME -- WE CUT DOWN PROBABLY 170 ITEMS TO 100 ITEMS AS IT IS AND, OF COURSE, THAT DOESN'T EVEN BEGIN TO INCLUDE PICTURES OR ANYTHING YET. ONE THING WE'RE GOING TO TRY TO DO AS BEST AS POSSIBLE IS ALL THE DIFFERENT EXPERTS LIKE FROM SLED -- I MEAN I MIGHT BE ASKING THE COURT AT SOME POINT TO HAVE A BREAK, LET THEM GO THROUGH ALL THE ITEMS SO WE DON'T SPEND TIME WITH THE JURY SITTING IN HERE FOR AN OFFICER TO LOOK AT 100 ITEMS AND SAY, YES, I BROUGHT THIS, YES, I BROUGHT THAT.

I WILL DO IT IN THE RECORD ULTIMATELY, BUT HAVE THE OPPORTUNITY WITH THE JURY OUTSIDE, AND I WILL TRY TO BRING ALL EXPERTS SO THAT WE CAN DO THAT AT ONE TIME.

THE COURT: ALL RIGHT, ANYTHING ELSE FOR THIS EVENING?

MR. HANCOCK: ONE THING, YOUR HONOR. JUST TO CLARIFY HOW WE'RE GOING TO DRAW THE JURY. ARE WE GOING TO DRAW THEM AS THEY HAVE BEEN PRESENTED, ONE, TWO, THREE ---

THE COURT: NO, THEY ARE GOING TO PUT 37 IN THE CANISTER, SPIN IT AROUND, CALL THEM UP AND LET THEM STAND UP HERE AND WHAT SAYS THE STATE, EITHER PRESENT THEM OR EXCUSE THEM -- WE'RE GOING TO DO IT THE OLD FASHION WAY. IS THERE ANY OBJECTION TO THAT FROM THE STATE?

MR. POPE: I DON'T THINK I HAVE STANDING TO OBJECT. EITHER WAY SUITS THE STATE, I'VE DONE IT BOTH WAYS. WHATEVER SUITS THE COURT.

THE COURT: ANY OBJECTION BY THE DEFENSE?

MR. HANCOCK: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. I APPRECIATE EVERYBODY'S PATIENCE, THE STAFF AND EVERYONE. THANK YOU A LOT. WE CAN LET THE REST OF THE JURY PANEL GO. THE OTHERS WHO ARE CALLING IN ARE DISMISSED. AND WE WILL SEE YOU HERE AT 9:00 ON MS. MOON AND BACK ON MR. ROBERTSON'S CASE AT 9:30.

MARCH 18, 1999:

(THE GUILTY PLEA WAS TENDERED IN THE CO-DEFENDANT, MEREDITH MOON, CASE.)

THE COURT: LET'S ESTABLISH THAT FOR THE RECORD THE STRIKES WOULD BE FIVE FOR THE STATE, TEN FOR THE DEFENSE. AS FOR THE ALTERNATES, ONE FOR THE STATE, TWO FOR THE DEFENSE. DOES THE STATE AGREE?

MR. POPE: YES, SIR, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. BOYD: YES, SIR.

THE COURT: DO BOTH SIDES CONSENT TO THE CLERK DRAWING THE JURY? DOES THE STATE?

MR. POPE: THE STATE CONSENTS, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. BOYD: THE DEFENSE CONSENTS, YOUR HONOR.

THE COURT: ALL RIGHT, AT THIS POINT I SEE THAT THE SLED AGENTS ARE PRESENT. I AM GOING TO ASK THAT THEY COME FORWARD AND HAVE THEM SWORN IN. I KNOW MOST OF THEM AND HAVE ALL OF THEIR NAMES, BUT WHAT I'M GOING TO DO IS I'M GOING TO ASK EACH OF YOU TO COME FORWARD, TURN AROUND AND FACE COUNSEL TABLE SO THAT THE ATTORNEYS CAN KNOW YOUR NAMES AND, COUNSEL, I'M GOING TO RUN EACH OF YOU A COPY OF MY LIST. BUT I JUST WANT TO KNOW THAT WHEN YOU SEE THESE INDIVIDUALS, WHO THEY ARE AND WHY THEY ARE AROUND, PARTICULARLY WHEN YOU SEE THEM WITH THE JURY.

ALL RIGHT, MS. CORLEY, YOU CAN START.

A. I'M ELIZABETH CORLEY,

A. RUSSELL, FEASTER.

A. NATALIE TALBERT.

A. ROBBIE HENDRIX.

A. JOHN FRADELLA.

A. RICK MCCLOUD.

A. FRANK THOMAS.

THE COURT: I'M GOING TO ASK THE CLERK TO ADMINISTER THE OATH.

THE CLERK: EACH OF YOU SWEAR THAT YOU WILL KEEP THE JURORS IN YOUR CARE SO LONG AS ORDERED BY THE COURT; THAT YOU WILL SUFFER NO PERSON TO SPEAK TO THEM NOR SPEAK TO THEM YOURSELVES WITHOUT SUCH LEAVE; THAT YOU WILL SEE THAT THEY CARRY OUT ALL ORDERS OF THE COURT AND YOU WILL

CARRY OUT ALL ORDER OF THIS COURT PERTAINING TO YOUR RESPONSIBILITIES TO THE COURT IN THIS CASE, SO HELP YOU GOD.

(ALL ANSWERED IN THE AFFIRMATIVE.)

THE COURT: YOU MAY HAVE A SEAT. THANK YOU. I APPRECIATE YOUR HELP. ARE THERE ANY MOTIONS FROM THE STATE THAT NEED TO BE DISPOSED OF PRIOR TO US GETTING THE JURY UP HERE?

MR. POPE: NO, SIR, YOUR HONOR. WE HAVE THE PENDING DENNO MOTION THAT WE WILL PROBABLY NOT REACH UNTIL SOMETIME AFTER LUNCH, THE ACTUAL TESTIMONY. I JUST CALL THAT TO THE COURT'S ATTENTION.

THE COURT: IS THERE ANY MATTER WHATSOEVER THAT WE NEED TO PUT ON THE RECORD?

MR. BOYD: NO, SIR, YOUR HONOR.

THE COURT: ANY MOTIONS THAT YOU WANT TO RESTATE OR PLACE ON THE RECORD CONCERNING THE METHOD OF DRAWING THE JURY TO THIS POINT? AND I'LL START BY SAYING THAT I AM GOING TO GO INTO -- MAYBE I OUGHT TO DO THIS FIRST. I'M GOING TO GIVE A BRIEF ANOTHER VOIR DIRE. WE'VE DONE THE GENERAL VOIR DIRE AND WE'VE DONE THE SPECIFIC.

I AM GOING TO ASK AGAIN IF THEY HAVE, SINCE THEY HAVE BEEN ADMONISHED NOT TO, HEARD ANYTHING ABOUT THE CASE OR BEEN EXPOSED TO IT IN ANY WAY.

I AM GOING TO TELL THEM, UNLESS BOTH SIDES AGREE

THAT I SHOULD NOT, THAT IT HAS BEEN BROUGHT TO MY ATTENTION THAT THERE WAS SOME DISCUSSION IN THE JURY ROOM ON MONDAY. I AM GOING TO TELL THEM WHAT I UNDERSTOOD THOSE DISCUSSIONS CONCERNED, BASICALLY PENNSYLVANIA WITNESSES, VICTIMS MALE AND FEMALE, AND HOW THE ARMED ROBBERY CAME ABOUT. AND I'M GOING TO ASK IF THAT INFLUENCED -- ALONG THE LINES OF WHETHER THAT WOULD HAVE ANY AFFECT ON THEIR ABILITY TO BE FAIR AND IMPARTIAL.

DOES THE STATE HAVE ANY PROBLEM WITH THAT?

MR. POPE: NO OBJECTION, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. HANCOCK: NO OBJECTION, YOUR HONOR.

THE COURT: DOES THE DEFENSE HAVE ANYTHING FURTHER THEY WANT ME TO COVER -- WELL, LET ME ASK THIS. DOES THE STATE HAVE ANY FURTHER QUESTIONS ON SORT OF A FINAL VOIR DIRE?

MR. POPE: NO, SIR, YOUR HONOR.

THE COURT: DOES THE DEFENSE?

MR. HANCOCK: NONE, YOUR HONOR.

THE COURT: ALL RIGHT, THEN I BELIEVE WE ARE READY. TO THE MEDIA, OF COURSE, THE JURORS CANNOT BE FILMED, PHOTOGRAPHED IN ANY WAY OR SKETCHED OR ANYTHING LIKE THAT.

ALL RIGHT, IS THE STATE READY FOR THE JURY?

MR. POPE: THE STATE'S READY, YOUR HONOR.

THE COURT: IS THE DEFENSE READY?

MR. BOYD: THE DEFENSE IS READY, YOUR HONOR.

THE COURT: ALL RIGHT, LET'S BRING UP THE PANEL.

(THE JURY PANEL WAS BROUGHT INTO THE COURTROOM.)

THE COURT: HAS A ROLL CALL BEEN TAKEN?

THE CLERK: YES, SIR.

THE COURT: AND ALL 37 ARE PRESENT?

THE CLERK: MELISSA, OUR JURY COORDINATOR, HAS VERIFIED THAT ALL JURORS ARE PRESENT.

THE COURT: MEMBERS OF THE JURY PANEL, AGAIN I'M JOHN HAYES, AND I KNOW Y'ALL ARE PROBABLY TIRED OF HEARING ME SAY THAT.

FIRST, I WANT TO REMIND YOU THAT YOU ARE STILL UNDER OATH AND THOSE OF YOU WHO ARE ACTUALLY CHOSEN WILL BE PLACED UNDER ANOTHER OATH BY THE CLERK AT THAT TIME.

FIRST, I HAVE ASKED YOU QUITE A FEW QUESTIONS OVER THE LAST FEW DAYS. DOES ANYBODY AT THIS POINT NEED TO CHANGE ANYTHING THEY HAVE TOLD ME OR ANYTHING ABOUT THEIR QUESTIONNAIRE AT THIS TIME?

(A JUROR STOOD.)

THE COURT: YES, SIR?

THE JUROR: MONDAY WHEN YOU ASKED ME IF I KNEW ANYBODY, FAMILY OR ANYTHING LIKE THAT AND I SAID, NO, I DIDN'T KNOW ANYBODY. AND MONDAY NIGHT GOING HOME I STOPPED AT A RESTAURANT ON MT. GALLANT ROAD AND I RAN INTO A FRIEND

OF MINE WHO HAPPENS TO KNOW THE DEFENDANT'S FAMILY ---

MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR, THIS MIGHT BE APPROPRIATE TO TAKE ON THE RECORD OUTSIDE THE PRESENCE OF THE WHOLE JURY. I THINK IT WOULD BE MORE APPROPRIATE ON THIS ISSUE.

THE COURT: YOU'RE JUST SAYING NOW THAT YOU FEEL LIKE YOU KNOW SOMEBODY WHO KNOWS THE DEFENDANT?

THE JUROR: WELL, YES, I DO AND ---

THE COURT: DON'T GO INTO DETAILS. WOULD THAT FACT -- YOUR NAME AGAIN?

THE JUROR: STEVEN SAMIOS.

THE COURT: WOULD THAT FACT AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE?

THE JUROR: IT COULD POSSIBLY.

THE COURT: ALL RIGHT, WELL LET ME LET THE REST OF THE JURY GO OUT INTO THE HALL THEN. Y'ALL KEEP THE JURY TOGETHER, AND I'LL BRING MR. SAMIOS UP HERE.

IN CAMERA:

THE COURT: ALL RIGHT, TELL ME ABOUT WHAT HAPPENED NOW?

THE JUROR: WHEN I LEFT HERE MONDAY EVENING AT 6:30 OR 7:00 O'CLOCK I STOPPED IN AT THE -- IT'S CALLED THE LAKESIDE BAR AND GRILL, IT'S OVER ON MT. GALLANT ROAD AND INDIA HOOK, AND I STOPPED IN TO GET SOME DINNER AND I HAPPENED TO RUN INTO A FRIEND OF MINE. HE'S AN

ACQUAINTANCE, YOU KNOW, NOT A GREAT FRIEND BUT HE'S AN ACQUAINTANCE, I'VE HUNG WITH HIM FOR QUITE A WHILE, YOU KNOW, QUITE A FEW TIMES WE'VE BEEN TOGETHER. AND SOME WAY OR ANOTHER IT JUST CAME UP, YOU KNOW, TALKING ABOUT JURY DUTY AND THAT I HAD JUST CAME BACK FROM THAT AND EVERYBODY SEEMED TO KNOW WHAT THE CASE WAS. IT'S NOT A SECRET, I FOUND THAT OUT. A LOT OF PEOPLE -- IT WAS A PRETTY BIG WELL PUBLICIZED CASE. AND HE TOLD ME THAT HE HAD KNOWN THE DEFENDANT AND HIS FAMILY. AND IT SEEMS LIKE EVERYBODY PRETTY MUCH HAS THEIR MIND MADE UP ON CERTAIN DECISIONS THAT KIND OF MAKES ME FEEL UNEASY ABOUT IT.

THE COURT: WELL, OF COURSE, I HAD ASKED YOU NOT TO DISCUSS THE CASE AND NOT TO LET ANYBODY DISCUSS IT WITH YOU.

THE JUROR: WELL, I DIDN'T DISCUSS THE CASE WITH HIM AT ALL. HE JUST HAPPENED TO BRING IT UP, AND I JUST FIGURED I'D BRING IT TO YOUR ATTENTION THAT NOW I DO KNOW SOMEBODY. AND I DON'T KNOW IF HE WOULD BE ON THAT WITNESS LIST OR NOT. I NEVER ASKED HIM. I DON'T KNOW HIS LAST NAME.

THE COURT: WELL, WOULD THE FACT THAT YOU HAD THAT DISCUSSION, WOULD THAT CHANGE YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND THE DEFENDANT IN THE TRIAL OF THIS CASE OR WOULD YOU STILL BE ABLE TO BASE YOUR VERDICT ON WHAT YOU HEAR IN ---

THE JUROR: IT KIND OF MADE ME FEEL A LITTLE DIFFERENT, NOW KNOWING THAT SOMEBODY KNOWS THAT I'M HERE AND I LIVE IN THE COMMUNITY -- I THINK IT WOULD CHANGE MY POINT OF VIEW A LITTLE BIT.

THE COURT: WELL, LET ME LET YOU STEP OUTSIDE THE COURTROOM THERE.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: ANY COMMENT BY THE STATE?

MR. POPE: YOUR HONOR, IT APPEARS WITH A LITTLE MORE PROBING, HE MAY HAVE IN FACT VIOLATED THE OATH THAT YOU GAVE HIM.

THE COURT: WELL, I'LL TAKE CARE OF THAT LATER. I JUST WANT TO MOVE ON WITH THE JURY. I CAN DEAL WITH MR. SAMIOS AT A LATER TIME IF NEED BE.

MR. POPE: I THINK OUT OF AN ABUNDANCE OF CAUTION, HE PROBABLY NEEDS TO BE EXCUSED.

THE COURT: WHAT SAYS THE DEFENSE?

MR. BOYD: WE AGREE, YOUR HONOR.

THE COURT: BRING HIM BACK IN PLEASE.

(THE JUROR RETURNED TO THE COURTROOM.)

THE COURT: MR. SAMIOS, BASED ON WHAT YOU'VE TOLD ME, AND I APPRECIATE YOUR CANDOR IN TELLING ME THAT, WE'RE GOING TO EXCUSE YOU FROM ANY FURTHER SERVICE.

IT MAY BE THAT I'LL HAVE TO TALK TO YOU AT A LATER TIME AND FOLLOW UP ON SOME OF THIS BUT WE ARE NOT

GOING TO TAKE THE TIME TO DO THAT AT THIS TIME. SO, DON'T BE SURPRISED IF YOU HEAR FROM ME AGAIN, BUT I'M GOING TO EXCUSE YOU AT THIS TIME AND LET YOU LEAVE THROUGH THE BACK INSTEAD OF THROUGH THE FRONT.

THE JUROR: OKAY. THANK YOU.

(THE JUROR LEFT THE COURTROOM.)

THE COURT: ANYTHING FOR THE RECORD FROM THE STATE?

MR. POPE: NO, SIR, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. BOYD: NO, SIR.

THE COURT: BRING IN THE JURY.

IN THE PRESENCE OF THE JURY:

THE COURT: I HAVE EXCUSED MR. SAMIOS BECAUSE OF AN OCCURRENCE, INADVERTENT, IT WAS NOT INTENTIONAL, BUT I FELT WE NEEDED TO DO IT UNDER THE CIRCUMSTANCES.

NO ONE ELSE RAISED THEIR HAND WHEN I ASKED THAT QUESTION. SO, I'LL ASK AGAIN, DOES ANYBODY HAVE ANYTHING -- HAVE YOU BEEN ABLE TO ABIDE BY MY INSTRUCTIONS AND STAY AWAY FROM INFORMATION ABOUT THE CASE? IF NOT, RAISE YOUR HAND. NO ONE RAISES THEIR HAND.

NOW, IT WAS BROUGHT TO MY ATTENTION AT SOME POINT ON MONDAY THAT SOME OF THE GROUP THAT WERE IN THE JURY ROOM HAD SOME DISCUSSIONS ABOUT SOME ASPECTS OF THE CASE.

ONCE WE FOUND OUT ABOUT IT, WE CHATTED WITH EACH

JUROR THEREAFTER ABOUT WHETHER OR NOT THAT WOULD HAVE AN AFFECT AND WE TOOK CARE OF THAT.

BUT WHAT I UNDERSTAND IS THAT THE GROUP THAT WAS IN THERE MONDAY AFTERNOON DISCUSSED OR AT LEAST IT CAME UP, WHAT I'VE GOT IS THREE SORT OF SEPARATE ISSUES. ONE, SOMEONE ASKED WHY THERE WERE PENNSYLVANIA WITNESSES LISTED AND AS I UNDERSTAND, THAT WAS ANSWERED SOMETHING TO THE EFFECT THAT SOME COURSE OF EVENTS THAT MAY UNFOLD IN THIS TRIAL HAD SOMETHING TO DO WITH PENNSYLVANIA. IT WAS ALSO ASKED WHETHER THE VICTIMS WERE MALE AND FEMALE. AND THE ANSWER TO THAT, OF COURSE, WAS YES BECAUSE THE INDICTMENTS WERE READ AND I BELIEVE MOST OF YOU HEARD AND WERE ASKED WHEN YOU WERE IN HERE AND WERE ADVISED THAT THIS INVOLVED MR. ROBERTSON'S MOTHER AND FATHER.

THE THIRD THING THAT I HEARD WAS THAT SOMEONE INQUIRED AS TO HOW AN ARMED ROBBERY CAME INTO THE ISSUES, AND IT WAS RELATED -- THAT WAS RESPONDED TO BY SOMEONE SAYING THAT PERHAPS IT HAD SOMETHING TO DO WITH THE PENNSYLVANIA CONNECTION TO THE CASE.

FIRST, IF THAT DOES NOT INCLUDE, FOR ANY OF YOU THAT WERE PRIVY TO ANY OF THOSE CONVERSATIONS, IF THAT DOES NOT INCLUDE THE TOTALITY OF THE MATTERS THAT WERE BROUGHT UP, SOMEBODY PLEASE RAISE YOUR HAND AND LET ME KNOW. NOBODY RAISES THEIR HAND.

TO THOSE OF YOU WHO WERE PRESENT WHEN THOSE

DISCUSSIONS TOOK PLACE, I WANT TO KNOW IF THAT WOULD AFFECT ANY OF YOUR ABILITIES TO REMAIN, AS YOU TOLD ME YOU WOULD BE, FAIR AND IMPARTIAL. THAT IS, COULD ANY OF YOU THAT HEARD THOSE COMMENTS, COULD ANY OF YOU NOT STILL REMAIN FAIR AND IMPARTIAL IN THE TRIAL OF THIS CASE. IF SO, PLEASE STAND.

(NO ONE STOOD.)

IF ANY OF YOU WOULD BE UNABLE TO DISASSOCIATE THOSE REMARKS FROM THE TRIAL OF THE CASE AND BASE YOUR VERDICT SOLELY ON THE LAW AND THE EVIDENCE, PLEASE STAND. NO ONE STANDS.

I ASK AGAIN IF ANY OF YOU ARE AWARE OF ANY BIAS OR PREJUDICE THAT YOU WOULD HAVE THAT WOULD AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL TO THE STATE AND TO MR. ROBERTSON ON THE ISSUES INVOLVED IN THIS CASE. IF SO, PLEASE STAND. NO ONE STANDS.

ARE THERE ANY FURTHER QUESTIONS BY THE STATE?

MR. POPE: NO, SIR, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. HANCOCK: NO, SIR.

THE COURT: MEMBERS OF THE JURY PANEL, THE WAY WE WILL DRAW THE JURY AT THIS TIME WILL BE AS FOLLOWS. EACH OF YOUR NAMES HAVE BEEN PLACED ON A LITTLE PIECE OF PAPER SORT OF LIKE THE PAPER YOU FIND IN A FORTUNE COOKIE AND THAT HAS BEEN PLACED INSIDE A CAPSULE, OPAQUE CAPSULE WHICH

CANNOT BE SEEN INTO, AND PLACED INTO THIS BRASS DRUM WHICH WILL BE SPUN. AND THEN YOUR NAMES WILL BE DRAWN AT RANDOM. IF YOU HEAR YOUR NAME CALLED, THE BAILIFF WILL BE STANDING SORT OF OUT HERE IN THE MIDDLE, I'LL ASK YOU TO COME FORWARD AND STAND BY THE BAILIFF.

WHEN YOU GET HERE, YOU WILL FACE FIRST THE TABLE TO WHAT WILL THEN BE TO YOUR LEFT, WHERE MR. POPE AND MR. BRACKETT ARE SEATED AND ONE OF THEM WILL SAY EITHER PRESENT THE JUROR OR EXCUSE THE JUROR. IF YOU HEAR THE WORDS EXCUSE THE JUROR, PLEASE RETURN TO YOUR SEAT. DON'T LEAVE, JUST RETURN TO YOUR SEAT.

IF YOU HEAR THE WORDS PRESENT THE JUROR, THEN PLEASE TURN AND FACE THE TABLE WHERE MR. ROBERTSON AND HIS COUNSEL, MR. BOYD AND MR. HANCOCK, ARE SEATED. AND ONE OF THOSE ATTORNEYS WILL SAY EITHER EXCUSE THE JUROR, WHICH AGAIN MEANS, YOU KNOW, YOU MAY RETURN TO YOUR SEAT, OR SWEAR THE JUROR. IF YOU HEAR THE WORDS SWEAR THE JUROR, YOU WILL BE PLACED IN THE JURY BOX.

MADAM CLERK?

THE CLERK: NUMBER 241, LORRIE A. SIGLER (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PLEASE EXCUSE MS. SIGLER.

THE CLERK: YOU'RE EXCUSED IN THIS CASE, MA'AM. NUMBER 206, DONNA J. PARLER (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MS. PARLER.

THE CLERK: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, MA'AM. NUMBER 272, ROBERT W. THURMAN (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. THURMAN.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE. NUMBER 166, TIMOTHY J. MCALLISTER (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. MCALLISTER.

THE CLERK: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR. JUROR NUMBER 190, SUE M. MOORE (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MS. MOORE.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, MA'AM. NUMBER 268, MICHAEL TERLINDE (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. TERLINDE.

THE COURT: THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, SIR. JUROR NUMBER 73, FRANK O. DEATON (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. DEATON.

THE COURT: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR. NUMBER 180, BARNEY R. MELTON (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. MELTON.

THE COURT: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR. AND THIS IS MR. SAMIOS WHO WAS EXCUSED BY THE COURT. NUMBER 232, YANCEY V. SANDERS (BLACK MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. SANDERS.

THE CLERK: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR. NUMBER 100, CLIFTON P. GUFFY (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. GUFFY.

THE COURT: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR. NUMBER 300, BETTY D. ZAPATA (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MS. ZAPATA.

THE COURT: THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, MA'AM. NUMBER 53, SUSAN D. COCHRAN (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT THE MS. COCHRAN.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, MA'AM. NUMBER 101, JERRY D. GWINN (BLACK MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. GWINN.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, SIR. NUMBER 165, FRANCES C. MATTHEWS (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MS. MATTHEWS.

THE COURT: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED FROM THIS CASE, MA'AM. NUMBER 93, MICHAEL D. GOELLER (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PLEASE EXCUSE MR. GOELLER.

THE CLERK: NUMBER 153, ROBERT B. LONCARIC (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. LONCARIC.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, SIR. NUMBER 59, JOSEPH H. COOK, JR. (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. COOK.

THE COURT: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED IN THIS CASE.

MR. HANCOCK: MADAM CLERK, JUST FOR RECORD KEEPING, DO YOU HAVE THE STRIKES?

THE CLERK: YES, SIR, I DO.

MR. HANCOCK: HOW MANY FOR THE STATE?

THE CLERK: TWO. NUMBER 152, LISA M. LILLY (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MS. LILLY.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, MA'AM. NUMBER 64, TINO CRISTINA (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. CRISTINA.

THE COURT: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED IN THIS CASE, SIR. NUMBER 249, TORRENCE W. SMITH (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. SMITH.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, SIR. NUMBER 258, ROGER D. STIKELEATHER (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. STIKELEATHER.

THE CLERK: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, SIR. NUMBER 119, KELLY F. HOPE (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MS. HOPE.

THE CLERK: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

MR. POPE: HAVE A SEAT IN THE JURY BOX PLEASE, MA'AM.

THE COURT: ALTERNATE STRIKES. THE FIRST ALTERNATE THE STRIKES WILL BE ONE AND TWO.

THE CLERK: NUMBER 238, FRED W. SHELLEY (WHITE MALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MR. SHELLEY.

THE COURT: AND THE DEFENSE?

MR. BOYD: EXCUSE THE JUROR.

THE CLERK: YOU'RE EXCUSED, SIR. NUMBER 48, BETTE CHRISTENSEN (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MS. CHRISTENSEN.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, MA'AM.

THE COURT: THE STRIKES ON THE NEXT ALTERNATE WILL ALSO BE ONE AND TWO.

THE CLERK: NUMBER 296, BARBARA E. WRIGHT (WHITE FEMALE). WHAT SAY YOU FOR THE STATE?

MR. POPE: PRESENT MS. WRIGHT.

THE COURT: AND THE DEFENSE?

MR. BOYD: SWEAR THE JUROR.

THE CLERK: HAVE A SEAT IN THE JURY BOX PLEASE,

MA'AM.

THE COURT: ANYTHING FROM THE STATE DEALING WITH THE DRAWING AND THE COMPOSITION OF THE JURY?

MR. POPE: I BEG THE COURT'S INDULGENCE?

(AFTER A BRIEF PAUSE.)

MR. POPE: NO, SIR, YOUR HONOR.

THE COURT: ANYTHING ON THESE ISSUES FROM THE DEFENSE?

MR. BOYD: NO, SIR, YOUR HONOR.

THE COURT: ALL RIGHT, THOSE OF YOU WHO WERE NOT CHOSEN, I'M GOING TO ASK YOU TO RETURN BACK DOWNSTAIRS TO THE JURY ASSEMBLY ROOM AND YOU WILL RECEIVE SOME INSTRUCTIONS DOWN THERE I BELIEVE. EVERYONE ELSE REMAIN SEATED.

(AFTER THE JURY VENIRE LEFT)

THE COURT: MEMBERS OF THE JURY, I'M GOING TO LET YOU, ONE MORE TIME, GO TO THE JURY ROOM AND WHEN YOU COME BACK OUT, I'M GOING TO TELL YOU WHO IS GOING TO BE THE FOREPERSON. THAT PERSON THAT IS APPOINTED WILL SIT WHERE MS. ZAPATA IS NOW SEATED.

THE TWO ALTERNATES, Y'ALL WILL ALWAYS SIT IN THOSE TWO SEATS. THE REST OF YOU, THERE IS NO ASSIGNED SEATING. IT'S SORT OF FIRST COME FIRST SERVED. I FIND THAT A TRIAL THAT TAKES SEVERAL DAYS, MOST PEOPLE SORT OF FIND A SEAT AND GET COMFORTABLE TO IT, BUT YOU DON'T HAVE TO SIT

ANY PARTICULAR WHERE OTHER THAN THE FOREPERSON AND THE TWO ALTERNATES.

MS. ZAPATA, YOU HAD INDICATED SOME CONCERN ABOUT TAKING CARE OF YOUR FAMILY BUSINESS' PAYROLL, AND I THINK I'VE WORKED THAT OUT SO THAT WE CAN HAVE YOU HOPEFULLY DO THAT WITHOUT INTERFERING WITH YOUR SERVICE. WE CAN'T LET YOU GO TO YOUR JOB, BUT YOU CAN HOPEFULLY BE ABLE TO DO THAT.

NOW, WHEN YOU GO INTO THE JURY ROOM -- WHEN YOU COME BACK OUT, I'M GOING TO HAVE A LITTLE BIT OF A TALK TO GIVE TO YOU.

YOU'RE ON THE JURY NOW. I'M GOING TO HAVE THE CLERK ADMINISTER THE OATH IN JUST A MINUTE BEFORE YOU GO BACK IN THERE. DON'T DISCUSS THIS CASE NOW OR AT ANY TIME. DON'T DISCUSS IT AMONG YOURSELVES UNTIL WE REACH THE POINT OF THE TRIAL WHERE I TELL YOU TO JOINTLY DELIBERATE AND RETURN A UNANIMOUS VERDICT. FIRST ON THAT PART WE'VE TALKED ABOUT SO MUCH, THE GUILT PHASE.

DON'T DISCUSS A THING ABOUT THIS CASE, GUILT OR PENALTY. DON'T DISCUSS ANYTHING UNTIL YOU HEAR ME TELL YOU TO GO INTO THE JURY ROOM, JOINTLY DELIBERATE AND RETURN A UNANIMOUS VERDICT.

DON'T EVEN TRY TO MAKE UP YOUR MIND ABOUT THE CASE UNTIL WE REACH THAT POINT. PRIOR TO THAT TIME, PRIOR TO ME TELLING YOU THAT, YOU WON'T HAVE ALL THE TOOLS YOU

NEED TO MAKE A FAIR AND REASONED DECISION BECAUSE YOU WOULD NOT HAVE HEARD ALL OF THE EVIDENCE. YOU WOULD NOT HAVE HEARD THE ATTORNEYS' ARGUMENTS AND YOU WOULD NOT HAVE HEARD MY CHARGE TO YOU ON THE LAW. SO, YOU WON'T BE EQUIPPED TO MAKE UP YOUR MIND AND MAKE A FAIR AND REASONED DECISION UNTIL WE REACH THAT POINT.

SO, LET ME LET YOU GO TO THE JURY ROOM FOR A FEW MINUTES AFTER THE OATH IS ADMINISTERED AND WHEN YOU COME BACK IN, I WILL CHAT WITH YOU FOR A WHILE AND THEN THE ATTORNEYS WILL HAVE THE RIGHT TO MAKE OPENING STATEMENTS. MADAM CLERK?

(THE JURY WAS SWORN BY THE CLERK)

THE COURT: BEFORE YOU SIT DOWN, IF YOU'LL JUST FOLLOW THE BAILIFF. GO AHEAD AND GET REFRESHED AND WE'LL SEE YOU IN JUST A FEW MINUTES.

IN CAMERA:

THE COURT: IS THERE ANYTHING AT THIS STAGE FROM THE DEFENSE BEFORE WE TAKE A REAL SHORT BREAK -- I MEAN FROM THE STATE?

MR. POPE: NO, SIR, YOUR HONOR, DURING THE BREAK I'LL TRY TO GET THE EVIDENCE IN THE COURTROOM.

THE COURT: ANYTHING FROM THE DEFENSE?

MR. BOYD: NO, SIR, YOUR HONOR.

THE COURT: ALL RIGHT, WOULD YOU DO THAT AND LET ME KNOW WHEN YOU'RE READY.

MR. POPE: YES, SIR, YOUR HONOR. WHAT I'LL DO, LIKE I SAID, UNTIL I TRANSFER IT, PETE MITCHUM IS CUSTODIAN OF THE EVIDENCE AND HE WILL REMAIN IN THE COURTROOM. HE IS JUST A CHAIN WITNESS AND HE WILL REMAIN WITH THE EVIDENCE UNTIL WE CAN GET IT TRANSFERRED OVER IF THE DEFENSE DOES NOT HAVE AN OBJECTION.

MR. BOYD: NO OBJECTION.

THE COURT: ALL RIGHT, WE WILL BE AT EASE FOR A FEW MINUTES.

AFTER THE BREAK:

THE COURT: ALL RIGHT, WE HAVE A COUPLE OF THINGS WE WANT TO PUT ON THE RECORD INVOLVING INDIVIDUALS WHO ARE IN THE COURTROOM. SHERIFF BRYANT WHO WAS LISTED AS A WITNESS, BY AGREEMENT, IS GOING TO BE ALLOWED TO STAY IN THE COURTROOM. AND THERE ARE TWO MEMBERS OF TERRY ROBERTSON'S FAMILY, I BELIEVE, AUNTS OR COUSINS, WHO ARE POSSIBLE LISTED WITNESSES WHO I FIND QUALIFY UNDER THE VICTIM'S RIGHTS ACT TO REMAIN IN THE COURTROOM. SO, I'M GOING TO LET THE SOLICITOR TELL US ABOUT THAT AND THEN LET DEFENSE COMMENT.

MR. POPE: IF YOU WOULD, STAND, STATE YOUR NAME FOR THE COURT REPORTER AND TELL WHAT YOUR RELATION IS TO TERRY ROBERTSON PLEASE.

A. I'M MARGARET ANN BRENNER, TERRY WAS MY NIECE, MY SISTER'S DAUGHTER. MY LAST NAME IS BRENNER, B-

STATE OF SOUTH CAROLINA	)	
	)	IN COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	
THE STATE,	)	INDICTMENT NOS. 98-GS-46-1020
	)	1021, 1022, 1023
PLAINTIFF,	)	
	)	
VS.	)	TRANSCRIPT OF TRIAL AND
	)	PRE-TRIAL MOTIONS (7-17-98,
JAMES DEJARNETTE	)	9-22-98, 9-25-98, 11-2-98,
ROBERTSON,	)	AND 12-4-98)
	)	MARCH 15, 1999
DEFENDANT.	)	YORK, SOUTH CAROLINA

VOLUME VI

R-E-N-N-E-R.

THE COURT: THANK YOU.

A. MELISSA GRIFFITH, AND I WAS TERRY'S COUSIN, G-R-I-F-F-I-T-H.

THE COURT: ALL RIGHT THANK YOU. NOW, ANY COMMENT FROM THE DEFENSE?

MR. HANCOCK: YOUR HONOR, I DEFER TO THE COURT UNDER THE JUDGMENT OF THE STATUTE, BUT I WILL POINT OUT THAT WE DO OBJECT BECAUSE THEY ARE POTENTIAL PAINE WITNESSES AS WE UNDERSTAND IT AT THIS TIME.

THE COURT: ALL RIGHT, THANK YOU.

MR. POPE: YOUR HONOR, AS FAR AS THE SEQUESTRATION ORDER, AND WE DID NOT ADDRESS THIS, BUT I THINK THE DEFENSE KNOWS IT, IT WOULD BE RECIPROCAL, IS THAT CORRECT?

THE COURT: YES. ALL RIGHT, LET'S BRING IN THE JURY.

IN THE PRESENCE OF THE JURY:

THE COURT: MEMBERS OF THE JURY PANEL, FIRST I HAVE APPOINTED MR. GWINN AS FOREMAN OF THIS JURY PANEL. HE WILL BE THE LIAISON BETWEEN MYSELF AND YOU AS JURY MEMBERS. HE WILL PRESIDE OVER YOUR DELIBERATIONS AND HE WILL, IN THE GUILT PHASE OF THIS TRIAL WHICH WE HAVE TALKED ABOUT, SIGN THE VERDICT ON YOUR BEHALF.

AND I AM GOING TO BE TALKING NOW, AND THE

ATTORNEYS WILL IN JUST A MOMENT, ABOUT THAT FIRST PART THAT WE HAVE DISCUSSED SO MUCH OVER THE LAST COUPLE OF DAYS.

AT THE LUNCH HOUR, WHICH WE ARE HAVING LUNCH BROUGHT IN TODAY AND WE'RE GOING TO TRY TO DO THAT PROBABLY MOST DAYS BECAUSE IT WOULD HELP US WITH TIME, WE'LL TRY TO GET IT HERE AROUND 12:30. I'M GOING TO ADD A LITTLE BIT OF EXTRA TIME TODAY FOR THE SECURITY PEOPLE WHO WILL BE ACCOMPANYING YOU WHO HAVE NO CONNECTION WITH THIS CASE, I'M GOING TO LET THEM ORIENT YOU TO HOW THEY ARE GOING TO BE HANDLING YOUR LODGING AND YOUR LUGGAGE AND YOUR TELEPHONE CALLS AND YOUR LAUNDRY, IF NEED BE, MEDIAL ATTENTION IF NEED BE, AND ALL OF THOSE THINGS.

NOW I'M GOING TO TELL YOU NOW, THEY ARE SWORN, WHICH WAS OUTSIDE YOUR PRESENCE, BUT THEY HAVE BEEN SWORN NOT TO TALK TO YOU ABOUT ANYTHING ABOUT THIS CASE. I DON'T THINK YOU WOULD, BUT PLEASE BE CAUTIOUS AND DON'T TALK TO THEM ABOUT ANYTHING THAT COULD REMOTELY DEAL WITH THIS CASE. BECAUSE THEY, AND NOT BEING RUDE IN DOING IT, BUT JUST TELL YOU I CAN'T TALK TO YOU ABOUT THAT. SO, JUST STAY AWAY FROM THAT.

THERE ARE OTHER SUBJECTS THAT YOU CAN DISCUSS AND OF COURSE OBVIOUSLY IN MAKING CHOICES ABOUT PERHAPS WHERE TO GO EAT BECAUSE THERE ARE SEVERAL OPTIONS, TELEPHONE CALLS AND LOGISTICAL TYPE THINGS, BUT STAY AWAY FROM ANYTHING THAT HAS TO DO WITH THIS TRIAL AND THE MERITS OF

IT.

MR. ROBERTSON WHO YOU MET IS, I'LL REMIND YOU, REPRESENTED BY MR. HANCOCK AND MR. BOYD AND THE STATE WILL BE PRESENTING ITS CASE THROUGH THE SOLICITOR, MR. POPE, AND HIS DEPUTY, MR. BRACKETT.

MR. ROBERTSON IS CHARGED IN FOUR SEPARATE INDICTMENTS. HIS NAME IS JAMES DEJARNETTE ROBERTSON. I THINK HE HAS BEEN REFERRED TO AS JAMES AND JIMMY OVER THE LAST COUPLE OF DAYS.

ALL FOUR OF THESE INDICTMENTS HAVE BEEN PUBLISHED TO YOU BUT I WILL REMIND YOU THAT THEY ALLEGE OCCURRENCES HERE IN YORK COUNTY ON NOVEMBER 25TH, 1997. THEY ALLEGE THAT AT THAT TIME WITH MALICE AFORETHOUGHT MR. ROBERTSON DID KILL TERRY ROBERTSON BY MEANS OF BEATING AND/OR STABBING HER AND THAT SHE DIED AS A RESULT THEREOF. AND EARL ROBERTSON, SR. BY BEATING AND/OR STABBING AND HE DIED THEREOF.

HE IS ALLEGED ALSO TO HAVE AT THAT TIME WILFULLY AND UNLAWFULLY WITH INTENT TO DEFRAUD USED A VISA CARD ISSUED TO EARL ROBERTSON, SR. TO OBTAIN GOODS, MONIES OR SERVICES OR OTHER THINGS OF VALUE BY PRESENTING THAT CARD WITHOUT THE AUTHORIZATION OR PERMISSION OF MR. ROBERTSON IN VIOLATION OF STATE LAW.

IT IS ALSO ALLEGED THAT AT THAT TIME WHILE ARMED WITH A DEADLY WEAPON HE FELONIOUSLY TOOK FROM EARL

ROBERTSON, SR. GOODS OR MONIES OF MR. ROBERTSON IN VIOLATION OF STATE LAW.

TO EACH OF THESE INDICTMENTS MR. ROBERTSON HAS ENTERED PLEAS OF NOT GUILTY. THESE PLEAS OF NOT GUILTY PLACE ON THE STATE OF SOUTH CAROLINA AND THE PROSECUTION THE BURDEN OF PROOF. THAT IS, THE BURDEN OF PROVING EACH ESSENTIAL ELEMENT OF EACH OF THESE OFFENSES BEFORE AS TO AN OFFENSE YOU COULD FIND MR. ROBERTSON GUILTY. THEY MUST PROVE THESE ESSENTIAL ELEMENTS BEYOND A REASONABLE DOUBT.

THE INDICTMENTS WHICH I HAVE READ TO YOU ARE NOT EVIDENTIARY, THEY ARE NOT PART OF THE EVIDENCE IN THE TRIAL. THEY ARE THE CHARGING PAPERS, THE PAPERWORK BY WAY OF WHICH THIS CASE WAS PROCESSED THROUGH OUR COURT SYSTEM. THEY ARE WHERE YOU, MR. GWINN, WILL ULTIMATELY SIGN THE VERDICTS IN THIS STAGE OF THE TRIAL THEREON, AND THEY WILL BE PERMANENT RECORDS OF THIS TRIAL.

I USE THE WORD REASONABLE DOUBT OR PHRASE AND I WILL CHARGE YOU AT THE END OF THE CASE THAT A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

NOW IT IS YOUR DUTY AS JURORS TO LISTEN. I AM GOING TO ASK YOU FIRST NOT TO TAKE NOTES. I AM GOING TO ASK YOU TO USE YOUR COLLECTIVE MINDS TO LISTEN ATTENTIVELY AND WHEN WE'VE REACHED THE STAGE FOR DELIBERATION TO -- WHAT DO WE NEED?

THE BAILIFF: NOTHING, SIR.

THE COURT: THE STATE HAS THE BURDEN OF PROVING THE CHARGES BEYOND A REASONABLE DOUBT, AS I HAVE SAID. MR. ROBERTSON HAS ENTERED PLEAS OF NOT GUILTY TO EACH OF THESE CHARGES. HE IS PRESUMED INNOCENT OF EACH OF THESE CHARGES AND IS SO PRESUMED UNTIL SUCH TIME AS THE STATE, IF IT WERE ABLE TO, HAS CONVINCED YOU OF HIS GUILT BEYOND A REASONABLE DOUBT.

NOW, I HAVE THREE PRIMARY JOBS IN THIS TRIAL. THE FIRST IS WHAT I SOMETIMES REFER TO A BEING THE WAGON MASTER; THAT IS, THE LOGISTICS PERSON; I MAKE SURE WE TAKE BREAKS; I MAKE SURE ONLY ONE PERSON IS SPEAKING AT A TIME. I DO THOSE MECHANICAL THINGS. THE SECOND IS THAT I RULE ON QUESTIONS OF ADMISSIBILITY OF EVIDENCE. IF ONE SIDE BELIEVES CERTAIN EVIDENCE SHOULD COME INTO THE RECORD FOR YOUR REVIEW AND THE OTHER BELIEVES IT SHOULD NOT, IT IS UP TO ME TO MAKE A DETERMINATION. WHEN I HAVE RULED, THAT RULE IS BINDING ON THE WITNESSES, THE ATTORNEYS AND ON YOU.

IF AT ANY TIME YOU HEAR TESTIMONY OR SEE EVIDENCE AND I THEREAFTER TELL YOU TO DISREGARD IT, THEN YOU MUST DISREGARD IT. YOU CAN ONLY UTILIZE FACTORS IN YOUR CONSIDERATION THAT EVIDENCE WHICH IS ALLOWED INTO EVIDENCE.

ALONG THAT LINE YOU MAY HEAR AN ATTORNEY OBJECT; THAT IS, STAND UP AND SAY I OBJECT, YOUR HONOR. DON'T HOLD THAT AGAINST THE ATTORNEY, THEY'RE DOING THEIR JOB; THAT'S

WHAT THEY ARE SUPPOSED TO DO IF THEY BELIEVE SOME EVIDENCE SHOULD NOT COME IN.

IT MAY BE THAT I CAN RULE WITHOUT LETTING YOU GO TO THE JURY ROOM, IT MAY BE SOMETHING THAT I CAN RULE ON IN A SNAP, IT MAY NOT. IT MAY BE SOMETHING THAT I WILL HAVE TO ALLOW YOU TO LEAVE THE ROOM AND DISCUSS WITH THE ATTORNEYS AND MAKE A RULING. BUT DON'T BE OFFENDED AND DON'T TAKE ANY -- DON'T HOLD AGAINST ANY ATTORNEY THE FACT THAT THEY MAY OBJECT.

MY THIRD JOB AND DUTY IN THIS CASE IS I AM THE SOLE JUDGE OF THE LAW. YOU AS THE JURY MUST TAKE, ACCEPT AND APPLY THE LAW AS I CHARGE IT TO YOU, EVEN IF YOU THINK WHAT I TELL YOU IS TOLD TO YOU IN ERROR OR EVEN IF YOU THINK THE LAW SHOULD BE DIFFERENT, YOU MUST TAKE, ACCEPT AND APPLY THE LAW JUST AS I CHARGE IT TO YOU.

I AM GIVING YOU SOME LEGAL PRINCIPLES NOW. THROUGHOUT THE TRIAL I WILL PERHAPS GIVE YOU SOME. AT THE END OF THE TRIAL I WILL GIVE YOU A CONCISE, COMPREHENSIVE CHARGE ON THE LAW THAT YOU ARE TO APPLY TO THE FACTS AS YOU DETERMINE THE FACTS TO BE.

YOU ARE THE SOLE JUDGE OF THE FACTS. I JUST TOLD YOU THAT YOU CANNOT DIFFER WITH ME ON WHAT I TELL YOU THE LEGAL PRINCIPLES IN THIS CASE ARE, AND I CANNOT DIFFER WITH YOU AS TO THE FACTS. A TRIAL JUDGE IS NOT ALLOWED TO FORM OR EXPRESS TO A JURY AN OPINION ON THE FACTS. THAT IS YOUR

JOB. DO NOT INFER FROM ANYTHING I SAY AT ANY TIME OR ANYTHING I DO AT ANY TIME AS BEING INDICATIVE OF AN OPINION OF MINE ON THE FACTS. YOU WOULD BE WRONG IN MAKING THAT INFERENCE. I WILL NOT CONVEY TO YOU NOR FORMULATE AN OPINION ON THE FACTS. THAT IS YOUR JOB.

AS JUDGES OF THE FACTS, IT IS SOLELY UP TO YOU TO EXAMINE THE EVIDENCE AND GIVE TO IT THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH YOU BELIEVE IT SHOULD HAVE. USE YOUR COMMON SENSE, YOUR SENSE OF LOGIC, YOUR EXPERIENCES IN LIFE, YOUR SENSE OF REASON. YOU MAY BELIEVE ONE WITNESS AS OPPOSED TO SEVERAL, SEVERAL AS OPPOSED TO ONE. YOU MAY BELIEVE ALL, PART OR NONE OF A WITNESS' TESTIMONY.

AS JUDGES OF THE FACTS, YOU OF NECESSITY MUST JUDGE THE CREDIBILITY OF THE WITNESSES WHO TESTIFY; THAT IS, THE BELIEVABILITY. IN LAW WE USE THE WORD CREDIBILITY. IN ASSESSING BELIEVABILITY AND CREDIBILITY, YOU CAN USE THOSE THINGS I'VE JUST DISCUSSED. YOU CAN USE THOSE THINGS THAT YOU FIND IN YOUR DAY TO DAY LIFE AS BEING INDICATIVE OF TRUTHFULNESS.

WHAT WE WANT YOU TO DO IS TO EXAMINE THE EVIDENCE AND RETURN A VERDICT THAT SPEAKS THE TRUTH BASED ON THE TRUE FACTS.

NOW, DURING THIS CASE YOU MAY HEAR SOME TESTIMONY, IN FACT I ANTICIPATE THAT YOU WILL, FROM INDIVIDUALS WHO WE QUALIFY AS EXPERTS. I TELL YOU FIRST

THAT GENERALLY A WITNESS CAN ONLY TESTIFY AS TO SOMETHING THEY HAVE OBSERVED WITH ONE OF THEIR FIVE SENSES. THEY'VE SEEN SOMETHING, TASTED IT, FELT IT, HEARD IT OR SMELLED IT. THEY CAN TESTIFY TO THOSE SORT OF THINGS, BUT THEY CAN'T REACH OPINIONS AS TO WHAT THOSE FACTS MEAN AND CANNOT RENDER OPINIONS. HOWEVER, WHERE AN INDIVIDUAL HAS CERTAIN SKILL, TRAINING, KNOWLEDGE OR EXPERIENCE IN A CERTAIN AREA AND I FIND THAT THEY CAN TESTIFY AS AN EXPERT IN THAT AREA, THEY CAN GIVE OPINIONS ON ISSUES.

LET ME GIVE YOU AN EXAMPLE. THIS WOULD BE AN EXAMPLE THAT PROBABLY WON'T ARISE IN THIS CASE, BUT LET ME GIVE YOU AN EXAMPLE OF WHAT I'M TALKING ABOUT. IF I HAD A YOUNG CHILD AND THAT CHILD WAS FEVERISH, COMPLAINING OF A TUMMY ACHE, SHIVERING ONE MINUTE AND PERSPIRING THE NEXT, I COULD TAKE THEIR TEMPERATURE AND SEE AND READ THE THERMOMETER, IT MAY READ A HUNDRED. THE CHILD MAY BE THROWING UP. I CAN SEE ALL THOSE THINGS AND I COULD COME INTO COURT AND TESTIFY TO EVERY ONE OF THOSE THINGS BECAUSE I HAD EYE WITNESSED THEM, SO TO SPEAK. BUT I COULD NOT, BECAUSE I AM NOT A PHYSICIAN, I DON'T HAVE THE EXPERIENCE, THE TRAINING OR THE KNOWLEDGE, I COULD NOT GIVE YOU AN OPINION OF WHAT WAS WRONG WITH THAT CHILD. I COULD TAKE A GUESS, BUT THAT IS ALL IT WOULD BE. IT WOULDN'T EVEN BE AN EDUCATED GUESS.

SO, I COULD NOT GIVE YOU AN OPINION OF WHAT WAS

WRONG WITH THAT CHILD. HOWEVER, I COULD TAKE THAT CHILD TO A PHYSICIAN AND THAT PHYSICIAN COULD OBSERVE EXACTLY WHAT I OBSERVED AND BECAUSE OF THAT PHYSICIAN'S EXPERTISE, THEIR TRAINING, THEIR KNOWLEDGE, THEIR EXPERIENCE, THEY COLD RENDER AN OPINION. IN MEDICINE IT'S OFTEN CALLED A DIAGNOSIS, BUT THEY COULD RENDER AN OPINION AS TO WHAT THOSE SYMPTOMS MEAN. THAT IS, IT'S THE FLU OR IT'S A VIRUS OR BRONCHITIS.

THAT'S WHAT THE DIFFERENCE IS IN SORT OF EYE WITNESS AND LAY TESTIMONY AND EXPERT OPINION TESTIMONY.

SO, DURING THE TRIAL I ANTICIPATE WE WILL HAVE THAT, AND I WILL TELL YOU HOW YOU ANALYZE THAT TYPE EVIDENCE AT THE END OF THE TRIAL AND BASICALLY IT'S JUST LIKE YOU ANALYZE OTHER EVIDENCE IN THE TRIAL.

NOW, YOU ARE GOING TO NOT BE EXPOSED TO ANYTHING ABOUT THIS CASE. WE ARE GOING TO MAKE SURE THAT YOU ARE NOT ALLOWED TO SEE ANYTHING ON TELEVISION ABOUT IT, HEAR ANYTHING ON THE RADIO ABOUT IT OR READ ANYTHING ABOUT IT.

IF FOR SOME REASON SOMETHING POPS UP THAT APPEARS TO DEAL WITH THIS CASE, DON'T LET YOURSELF BE EXPOSED TO IT. YOU MUST BASE YOUR VERDICT ON WHAT HAPPENS HERE IN THE COURTROOM.

DON'T DISCUSS THE CASE AMONG YOURSELVES UNTIL I INSTRUCT YOU TO JOINTLY DELIBERATE AND RETURN A UNANIMOUS VERDICT. DON'T, AS I THINK I HAVE ALREADY TOLD YOU, EVEN

TRY TO MAKE UP YOUR OWN MIND UNTIL WE'VE REACHED THAT POINT BECAUSE YOU DO NOT HAVE ALL THE TOOLS YOU NEED.

AS I TOLD YOU, YOU DO NOT NEED TO TAKE NOTES. WE WILL RELY ON EVERYBODY'S COLLECTIVE RECOLLECTIONS.

IN JUST A MOMENT I WILL ALLOW THE ATTORNEYS AN OPPORTUNITY TO STAND BEFORE YOU AND MAKE OPENING STATEMENTS. THESE ARE NOT ARGUMENTS. AT A LATER TIME THE ATTORNEYS WILL BE ALLOWED TO SUM UP THEIR CASE AND GIVE YOU ARGUMENTS AS TO WHY YOUR VERDICT SHOULD BE A CERTAIN WAY. THAT'S NOT WHAT THEY ARE DOING NOW. THEY ARE SIMPLY GIVING YOU A ROAD MAP OR A BLUEPRINT OF THE TRIAL AND THE ISSUES IN THE TRIAL. THEY ARE ALSO NOT TO GIVE YOU TESTIMONY BECAUSE THEY ARE NOT WITNESSES. IF THEY WERE WITNESSES, THEY COULDN'T BE THE ATTORNEYS IN THE TRIAL. SO, WHAT THEY SAY IS NOT EVIDENCE. EVIDENCE WILL COME IN THROUGH WITNESSES WHO TESTIFY UNDER OATH JUST WHERE Y'ALL HAVE BEEN SEATED EARLIER THIS WEEK AND THROUGH PHYSICAL EXHIBITS, THINGS YOU CAN ACTUALLY HOLD IN YOUR HAND AND TAKE WITH YOU INTO THE JURY ROOM WHEN YOU DELIBERATE. BUT THEY DO HAVE THE RIGHT TO MAKE AN OPENING STATEMENT, BOTH THE STATE AND THE DEFENSE. BUT THERE IS NO OBLIGATION ON THE DEFENSE TO MAKE A STATEMENT, BUT THEY HAVE THE RIGHT TO DO THAT AND I ASK YOU TO GIVE THEM THE ATTENTION YOU HAVE BEEN GIVING ME WHEN THEY DO THAT.

NOW, WE WILL TRY TO RUN COURT FROM ABOUT 9:00 OR

9:30 UNTIL 5:00 OR 5:30 IN THE AFTERNOON. WE CAN'T ALWAYS DO THAT. SOMETIMES WE HAVE MATTERS TO TAKE UP OUTSIDE YOUR PRESENCE AND WHEN WE DO THAT WE DO IT FOR SORT OF TWO REASONS. ONE, BECAUSE THE LAW REQUIRES IT. AND THE OTHER IS BECAUSE WE CAN USUALLY MAKE DECISIONS ON MATTERS OUTSIDE YOUR PRESENCE THAT HELP SPEED THE TRIAL ALONG AND MAKE IT A MORE EFFICIENT PRESENTATION FOR YOU WHEN YOU ARE HERE IN THE COURTROOM.

WE WILL TRY TO BREAK AROUND 12:30 OR 1:00. I THINK WE ARE GOING TO TRY TO BRING IN LUNCH MUST DAYS. THAT JUST CUTS DOWN ON THE TIME BECAUSE OF TRANSPORTATION AND ALSO THAT WILL GIVE YOU SOME COMFORT TIME.

WE WILL ALLOW PEOPLE WHO SMOKE TO GO OUTSIDE AND SMOKE. AND THOSE OF YOU WHO DON'T SMOKE, THAT DOESN'T MEAN YOU CAN'T GO OUT. IF YOU WILL RECALL OUTSIDE THE JURY ASSEMBLY ROOM THERE IS A PATIO AREA AND I CERTAINLY THINK WE CAN MAKE ARRANGEMENTS FOR THOSE OF YOU WHO WISH TO GO OUT THERE AND JUST SIT WHEN WE HAVE A BREAK AND GET SOME FRESH AIR, WE CAN ALLOW YOU TO DO THAT.

BUT, AGAIN, WE WILL GO FROM SAY 9:00 OR 9:30 IN THE MORNING TO 5:30 OR 6:00 IN THE EVENING AND WE WILL BREAK FOR LUNCH AROUND 12:30 OR 1:00.

WE ALSO TRY TO TAKE BREAKS ABOUT EVERY HOUR AND A HALF. I KNOW EVERYBODY'S COMFORT LEVEL IS DIFFERENT. IT'S HARD TO PAY ATTENTION IF YOU'RE NOT COMFORTABLE. SO,

I INVITE ANYBODY WHO NEEDS A BREAK TO LET ME KNOW. I ASSURE YOU THAT IF I WANT TO TAKE A BREAK, I'M GOING TO DO IT. WELL, I'M GOING TO GIVE YOU THE SAME PREROGATIVE. IF YOU NEED A BREAK FOR ANY REASON WHATSOEVER, I DO NOT WANT ANYBODY TO SIT THERE AND BE UNCOMFORTABLE. IF YOU NEED A BREAK, JUST RAISE YOUR HAND AND WITH NO QUESTIONS ASKED, WE'LL TAKE A BREAK. AND I EXTEND THAT TO COUNSEL AND MR. ROBERTSON.

WE WANT TO MOVE THIS CASE ALONG, BUT WE ARE NOT IN SUCH A HURRY THAT WE WANT ANYONE TO NOT BE ABLE TO PAY ATTENTION. SO, WE WILL TAKE BREAKS AS NECESSARY.

NOW, IS THERE ANYTHING ELSE THAT THE STATE WISHES ME TO COVER AT THIS TIME?

MR. POPE: NO, SIR, YOUR HONOR.

THE COURT: THE DEFENSE?

MR. HANCOCK: NOTHING, YOUR HONOR.

THE COURT: ALL RIGHT, MR. SOLICITOR?

OPENING STATEMENT BY MR. POPE:

LADIES AND GENTLEMEN OF THE JURY, ON AUGUST 19TH, 1983 TERRY DEJARNETTE ROBERTSON AND EARL LAMAR ROBERTSON EXECUTED THEIR LAST WILL AND TESTAMENT. THEIR LAST WILL AND TESTAMENT LEFT THEIR ESTATE TO THEIR TWO SONS. AND THEIR ESTATE WAS VALUED AT A LITTLE OVER TWO MILLION DOLLARS.

ON NOVEMBER 25TH OF 1997 ONE OF THEIR SONS, JAMES

ROBERTSON, EXECUTED TERRY AND EARL IN ORDER THAT HE COULD RECEIVE THE BENEFITS OF THAT TWO MILLION DOLLAR ESTATE.

LADIES AND GENTLEMEN, YOU HAVE ALREADY BEEN THROUGH A DIFFICULT PROCESS AND I'LL BE HONEST WITH YOU, IT'S JUST BEGINNING. I WANT TO APOLOGIZE IN ADVANCE FOR THE CASE YOU'RE ABOUT TO SEE, BUT THE STATE DOES INTEND TO BEAR ITS BURDEN, AND THE STATE DOES INTEND TO BRING THE EVIDENCE FORWARD TO YOU IN THIS PARTICULAR CASE.

AS YOU RECALL FROM ALL THE DISCUSSIONS WE HAD HERE AND ALL THE DISCUSSIONS THE JUDGE GAVE YOU, WE ARE NOW IN THE GUILT PHASE. PENALTY HAS NO PLACE IN YOUR CONSIDERATION. AS THE JUDGE SAID, YOU'RE NOT EVEN TO CONSIDER GUILT OR PENALTY UNTIL HE INSTRUCTS YOU.

SO NOW THE ISSUE THAT YOU HAVE BEFORE YOU IS CAN THE STATE PROVE BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT MURDERED BOTH OF HIS PARENTS. THAT HE TOOK A CREDIT CARD FROM HIS FATHER'S WALLET AND OTHER ITEMS OF PERSONAL PROPERTY, WENT AND USED THAT CREDIT CARD AS PART OF FACILITATING HIS ESCAPE AND IN ACTUALITY OF FACILITATING HIS ALIBI.

BECAUSE WHAT YOU WILL DISCOVER AND YOU WILL AGAIN GET THIS FROM THE EVIDENCE THAT WILL BE PRESENTED AND FROM THE WITNESSES HERE IS THAT EARLY ON THAT TUESDAY MORNING RIGHT BEFORE THANKSGIVING, TUESDAY THE 25TH, TERRY DEJARNETTE ROBERTSON WHO HAD A NUMBER OF CLOSE FRIENDS WAS

SUPPOSED TO BE CERTAIN PLACES AT CERTAIN TIMES. SUPPOSED TO PICK UP A CAKE; SUPPOSED TO GO TO AN APPOINTMENT. YOU WILL HEAR TESTIMONY FROM THOSE FRIENDS THAT SHE DIDN'T COME AND THEY GOT TO MISSING HER.

YOU WILL HEAR TESTIMONY FROM CO-WORKERS OF EARL ROBERTSON WHO WORKED DOWN AT SPRINGS DOWN IN LANCASTER, HE WAS ALWAYS THERE, AND ALWAYS ON TIME. AND IF HE CALLED A MEETING, HE WAS GOING TO BE THERE. AND YOU WILL HEAR THAT EARL DIDN'T SHOW UP. AND THIS IS REALLY THE FIRST PROBLEM WITH JIM'S PLAN BECAUSE THE PLAN WAS A BURGLARY THAT TAKES BOTH THE PARENTS' LIVES, THE GLASS IS BROKE OUT OF THE BACK OF THE HOUSE. JIM, MEREDITH MOON AND THE OTHER BROTHER, CHIP, COME BACK FROM PHILADELPHIA WHERE CHIP'S IN SCHOOL AND WHAT DO THEY FIND WHEN THEY GET HOME? SOMEBODY BROKE IN AND KILLED MOM AND DAD.

WHAT THEY DIDN'T COUNT ON WAS TERRY AND EARL HAD SO MANY CLOSE FRIENDS THAT NOT AN HOUR, TWO HOURS AFTER THE CRIME HAD TAKEN PLACE WHEN THEY'RE AT THE PEACH STAND USING THE CREDIT CARD AND HEADING ON UP THE INTERSTATE, THESE FRIENDS ARE CALLING THE POLICE; THESE FRIENDS ARE CALLING EACH OTHER. AND THEY'RE SAYING SOMEBODY HAS GOT TO GO TO THE HOUSE. IF TERRY'S NOT SHOWING UP, IF EARL'S NOT AT WORK, SOMETHING IS WRONG.

AND YOU WILL HEAR FROM THE WITNESS STAND THE WITNESSES THAT CAME THERE. YOU WILL HEAR ABOUT THE FRIEND

THAT FOUND THEM. YOU'LL HEAR ABOUT THE POLICE OFFICER WHO WENT THERE. AND YOU WILL HEAR THE INVESTIGATION THAT BEGAN.

WE WILL BRING TO YOU THE INVESTIGATION THAT BEGAN AT THAT HOUSE AND BASICALLY TRACES HIS RIDE FROM THE HOUSE TO THE PEACH STAND OVER IN FORT MILL USING HIS DADDY'S CREDIT CARD, UP THE ROAD TO LADYSMITH, VIRGINIA AND UP TO PENNSYLVANIA WHERE THEY ARRESTED HIM.

BUT YOU WILL ALSO HEAR ABOUT THE STOP THEY MADE IN MARYLAND. WHEN I SAY "THEY" NOW, I'M TALKING ABOUT THIS DEFENDANT AND MEREDITH MOON. THEY STOPPED IN MARYLAND AND PUT AN ODD ASSORTMENT OF ITEMS IN A DUMPSTER. ONE WAS A BASEBALL BAT; ONE WAS A CLAW HAMMER; ONE WAS A KNIFE; SOME OF THE CHECK ITEMS WERE IN THERE; THERE WERE BLOODY CLOTHES; THERE WERE SOCKS THAT WERE WORN OVER THE HANDS TO PREVENT FINGERPRINTS. AND ALL THAT EVIDENCE WAS IN A DUMPSTER IN MARYLAND.

AND THE TRUTH BE KNOWN, IF MEREDITH MOON HAD NOT TOLD THE POLICE WHEN THEY GOT TO PHILADELPHIA, WHEN THEY WERE ARRESTED IN PHILADELPHIA, THAT EVIDENCE WOULD HAVE NEVER BEEN RECOVERED.

BUT YOU WILL HEAR ABOUT THE EVIDENCE THAT WAS RECOVERED; YOU WILL HEAR ABOUT THE TESTIMONY FROM THE VARIOUS EXPERTS, WHAT THEY DISCOVERED; YOU WILL HAVE DNA TESTING; YOU WILL HAVE HAIR AND FIBER TESTING. YOU WILL

HAVE ALL OF THE EVIDENCE THAT CONNECTS THIS MAN TO THE CRIME YOU'LL SEE AND HIS TRAIL OF HEADING TOWARD HIS ALIBI ALL THE WAY UP TO PHILADELPHIA.

AGAIN, LADIES AND GENTLEMEN, WE WILL BRING THE OFFICERS, WE WILL BRING THE INVESTIGATORS, WE WILL BRING THE EXPERTS, WE WILL PROVE THIS CASE TO YOU BEYOND A REASONABLE DOUBT. WE WILL PROVE GUILT BEYOND A REASONABLE DOUBT AT THIS POINT. AND THAT IS YOUR SOLE FOCUS AT THIS TIME.

MR. BRACKETT AND I WILL BRING THE CASE FORWARD IN A FASHION SUFFICIENT TO RECOGNIZE YOUR SENSIBILITIES. AND AS I SAID EARLIER, IT WILL BE SUFFICIENT TO PROVE OUR CASE.

YOU WILL NOW HEAR FROM THE DEFENSE ATTORNEYS AND ONCE YOU DO, YOU WILL HEAR FROM CISSY GEORGE THAT WILL DESCRIBE HOW SHE WAS SUPPOSED TO MEET TERRY THAT FIRST MORNING.

I KNOW IT'S GOING TO BE A LONG WEEK. I APPRECIATE YOUR ATTENTION. I APPRECIATE YOUR COOPERATION AND WE LOOK FORWARD TO PRESENTING THE CASE TO YOU. THANK YOU.

OPENING STATEMENT BY MR. HANCOCK:

LADIES AND GENTLEMEN OF THE JURY, I'M BILL HANCOCK. WE HAVE MET ON VOIR DIRE WHICH IS UNIQUE TO THIS CASE WHICH IS A DEATH PENALTY CASE. MANY OF YOU MET MR. BOYD AND THIS IS THE DEFENDANT, JIMMY ROBERTSON, SEATED HERE.

I AM GOING TO REITERATE MUCH OF WHAT THE JUDGE SAID AND REFLECT ON WHAT THE SOLICITOR HAS SAID.

I WILL REMIND YOU AS WE ARE HERE THAT WHAT I SAY TO YOU IS NOT EVIDENCE. I ONLY REFLECT ON THE EVIDENCE AND ASK YOU TO REFLECT ON THE EVIDENCE IN A PARTICULAR WAY.

AS WE COURSE THROUGH THIS TRIAL, THE WAY IT TAKES PLACE IS THAT THE SOLICITOR PRESENTS HIS CASE, PRESENTS HIS WITNESSES AND WE ARE ALLOWED TO CROSS EXAMINE AND TEST THE CREDIBILITY OR TRUTHFULNESS OF THOSE WITNESSES.

THE JUDGE HAS TOLD YOU HE IS THE SOLE AUTHORITY OF THE LAW. YOU ARE TO TAKE THE LAW AS HE GIVES IT TO YOU.

YOU ARE THE SOLE FINDERS OF THE FACTS. AND EVENTUALLY YOU WILL FIND THE FACTS, THE JUDGE WILL GIVE YOU THE LAW AND YOU WILL ARRIVE AT A VERDICT IN THIS CASE THAT SPEAKS THE TRUTH.

WE ARE NOW SOLELY IN THE GUILT PHASE OF THIS CASE. AND AS WE GO ALONG, IT IS THE BURDEN OF THE STATE OF SOUTH CAROLINA TO PROVE IT'S CASE BEYOND A REASONABLE DOUBT.

THE JUDGE WILL INSTRUCT YOU AS TO WHAT A REASONABLE DOUBT IS. HE HAS ALREADY MOVED TOWARD THAT AND SAID IT'S A DOUBT FOR WHICH A REASONABLE JUROR WOULD HESITATE TO ACT, ANY REASON. IF THAT IS SO, THEN YOU MUST FIND NOT GUILTY IF THAT IS INTERJECTED INTO YOUR DELIBERATION.

I WILL REMIND YOU THAT DURING THE COURSE OF THE TRIAL THE JUDGE HAS SAID THAT THERE WILL BE TIMES WHERE THERE WILL BE OBJECTIONS. AND THERE WILL BE. WE HAVE RULES, WE HAVE LAWS, WE HAVE COURT PROCEDURES IN ORDER TO ARRIVE AT A FAIR TRIAL FOR THE STATE OF SOUTH CAROLINA AND FOR JIMMY ROBERTSON SEATED HERE.

IN ORDER TO ENSURE THAT, IT IS MY JOB, IT IS MR. BOYD'S JOB, AT TIMES IF WE DO NOT THINK THOSE RULES AND/OR LAWS ARE BEING FOLLOWED, THEN WE STAND AND WE SAY I OBJECT. THAT IS JUST TO SAY, YOUR HONOR, WE NEED TO LOOK AT THIS. IT IS NOT IN ANY WAY TO HIDE EVIDENCE FROM YOU, BUT IT IS TO SAY, YOUR HONOR, WE NEED TO TALK ABOUT THIS. THAT'S WHAT AN OBJECTION IS.

YOU CAN PUT ASIDE EVERYTHING YOU'VE SEEN IN L.A. LAW; YOU CAN PUT ASIDE EVERYTHING YOU'VE EVER SEEN ON T.V.; WE'RE IN SOUTH CAROLINA; WE'RE TRYING A DEATH PENALTY CASE. AND WE DO IT WELL, AND WE DO IT BY THE RULES, AND BY THE LAWS OF THIS STATE.

SO, THAT'S WHAT I'M CHARGED TO DO. WHEN I SAY THAT, AS THE JUDGE SAID, HE MAY RULE ON THAT OBJECTION FROM THE BENCH RIGHT HERE WITH YOU SITTING HERE. IN ORDER FOR YOU NOT TO HEAR THINGS THAT MIGHT MAKE THE TRIAL UNFAIR, THERE MAY BE TIMES THAT YOU ARE REMOVED TO THE JURY ROOM AND THEN WE ARGUE OUR POINT. AND THE JUDGE THEN TELLS US, HE SAYS I'M THE AUTHORITY ON THE LAW, GENTLEMEN, YOU MAY

DO IT THIS WAY, THIS IS THE WAY IT IS. AND WE SAY YES, SIR.

SO, DON'T HOLD ANY OF THOSE OBJECTIONS AGAINST JIMMY ROBERTSON SITTING HERE BECAUSE WE ARE CHARGED WITH GIVING A FAIR TRIAL IN THIS CASE.

AS WE COURSE THROUGH, THERE WILL BE MUCH EVIDENCE PRESENTED TO YOU. THE ONLY EVIDENCE THAT YOU CONSIDER IS EVIDENCE THAT COMES FROM THAT WITNESS STAND. AS I SAID, THE SOLICITOR'S OPENING ARGUMENT, THE SOLICITOR'S CLOSING ARGUMENT, MY OPENING ARGUMENT, MY CLOSING ARGUMENT, THEY ARE NOT EVIDENCE. THE EVIDENCE COMES FROM THIS WITNESS STAND.

I THANK YOU VERY MUCH FOR BEING HERE. WE HAVE GONE THROUGH A RIGOROUS PROCESS OF YOUR SELECTION. YOU ARE UNIQUELY QUALIFIED IN A VERY UNIQUE CASE, IT'S A DEATH PENALTY CASE.

WE HAVE SPOKEN WITH EACH OF YOU. WE HAVE DETERMINED THAT YOU ARE FAIR AND JUST AND WILL BE FAIR AND JUST IN THE JUDGMENT OF THIS CASE. AND THAT IS ALL THAT WE CAN ASK. MR. BOYD AND MYSELF, THAT'S ALL WE CAN ASK OF YOU. THAT YOU CONSIDER THE EVIDENCE, THAT YOU LISTEN TO THE EVIDENCE AND YOU ARRIVE EVENTUALLY AFTER PUTTING THE EVIDENCE AND THE LAW INTO EFFECT, THAT YOU ARRIVE AT A VERDICT THAT SPEAKS THE TRUTH. AND WHEN YOU DO THAT, THEN WE WILL HAVE ALL ACCOUNTED OURSELVES ADMIRABLY, AND WE WILL

HAVE DONE OUR JOBS IN THIS CASE.

BUT THAT'S ALL THAT THE DEFENSE ASKS IN THIS CASE IS THAT YOU TWELVE PEOPLE ARRIVE AT A VERDICT THAT SPEAKS THE TRUTH. THANK YOU.

MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR, THE STATE WILL CALL MARTHA CISSY GEORGE TO THE STAND.

MARTHA CISSY GEORGE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. MS. GEORGE IF YOU WOULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER, PLEASE.

A. MY LEGAL NAME IS MARTHA CLARK GEORGE, G-E-O-R-G-E, AND MOST PEOPLE CALL ME CISSY.

Q. DO YOU MIND IF I CALL YOU CISSY?

A. THAT'S FINE.

Q. HOW LONG HAVE YOU RESIDED HERE IN YORK COUNTY?

A. PROBABLY ABOUT 35 YEARS.

Q. WHERE ARE YOU FROM ORIGINALLY?

A. I'M ORIGINALLY FROM MILLEDGEVILLE, GEORGIA.

Q. AND DID YOU KNOW TERRY AND EARL ROBERTSON?

A. YES, I MET TERRY WHEN I WAS IN HIGH SCHOOL.

Q. AND WOULD YOU TELL THE JURY HOW YOU CAME TO BE IN ROCK HILL AND HOW THEY CAME TO BE IN ROCK

HILL?

A. WHEN WE WERE FIRST MARRIED AND LOOKING TO BUILD A HOUSE, WE DECIDED THAT WE WANTED TO LIVE OUTSIDE OF CHARLOTTE WHERE WE WERE WORKING, AND EARL HELPED US FIND A LOT DOWN IN FORT MILL.

Q. AND CAN YOU JUST TELL THE JURY BRIEFLY WHAT TYPE RELATIONSHIP YOU AND YOUR HUSBAND HAD WITH TERRY AND EARL?

A. WE WERE FRIENDS AS COUPLES. TERRY AND I HAD BEEN FRIENDS, LIKE I SAID, SINCE HIGH SCHOOL. SHE WAS LIKE A SISTER TO ME.

Q. CAN YOU TELL THE JURY, DO YOU REMEMBER THE LAST TIME YOU ACTUALLY SPOKE WITH TERRY?

A. THE LAST TIME I TALKED TO HER WAS THE NIGHT OF NOVEMBER 24TH. WE WERE TALKING ABOUT MEETING THE NEXT MORNING. I HAD HAD A COCONUT CAKE MADE FOR HER, A HOMEMADE COCONUT CAKE FOR THANKSGIVING AND SHE WAS GOING TO MEET ME ON THE MORNING OF THE 25TH TO PICK IT UP.

Q. THE 24TH WOULD HAVE BEEN LIKE ON A MONDAY EVENING, IS THAT RIGHT?

A. THAT'S CORRECT.

Q. AND SO THE NEXT MORNING -- COULD YOU TELL THE JURY, WHERE WERE YOU SUPPOSED TO MEET HER THE NEXT MORNING TO DELIVER THE COCONUT CAKE?

A. WE WERE GOING TO MEET IN A PARKING LOT ON MAIN STREET ACROSS FROM YORK NATURAL GAS AT ABOUT 8:15.

Q. COULD YOU TELL THE JURY APPROXIMATELY WHAT TIME YOU GOT THERE?

A. I GOT THERE ABOUT FIVE OR SEVEN MINUTES AFTER 8:00 O'CLOCK.

Q. AND DID TERRY EVER SHOW UP TO PICK UP THE CAKE?

A. TERRY WASN'T THERE. SHE DIDN'T COME, AND ABOUT 8:25 I WENT ON BECAUSE I HAD TO GET TO WORK.

Q. AND WHAT HAPPENED THEN; WHAT DID YOU DO AFTER YOU GOT TO WORK?

A. WHEN I GOT TO WORK I CONTINUED TO CALL TO GET HER BECAUSE COCONUT SPOILS, FRESH COCONUT, AND I DIDN'T WANT IT TO BE SPOILED, I WANTED HER TO HAVE IT. SO, I CALLED UNTIL ALMOST 9:00 AND I HAVE CLIENTS COMING IN FROM 9:00 UNTIL LUNCH. SO THEN WHEN SHE DIDN'T SHOW UP I CALLED LINDA WEAVER TO SEE IF SHE COULD GET IN TOUCH WITH HER.

Q. OKAY, AND YOU SAID YOU CALLED. WHERE DID YOU TRY TO CALL?

A. I CALLED HER AT HER HOME, 2506 WESTMINSTER DRIVE IN ROCK HILL.

Q. AND WHAT WAS HAPPENING WHEN YOU WOULD CALL HER?

A. I WOULD GET THE ANSWERING, THE CALL SERVICE.
Q. THE VOICE MAIL TYPE?
A. THE VOICE MAIL.
Q. OKAY. AND SO YOU SAID AT SOME POINT YOU CALLED LINDA WEAVER. WOULD YOU TELL THE JURY, WHO IS LINDA WEAVER?
A. LINDA WEAVER IS ANOTHER GOOD FRIEND OF TERRY'S AND MINE; WE'VE BEEN FRIENDS FOR OVER 30 YEARS.
Q. AND AFTER TALKING TO LINDA, WHAT DID YOU DO THEN?
A. THEN I JUST MET WITH MY CLIENTS AND STAYED AT WORK UNTIL MRS. WEAVER AND HER HUSBAND CAME TO GET ME TO TELL ME ABOUT THE DEATH OF TERRY AND EARL.
Q. IF YOU WOULD, ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE, PLEASE.

MR. BOYD: NO QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU. WE APPRECIATE YOUR TIME; YOU MAY STEP DOWN.

MR. POPE: THE STATE WOULD CALL LINDA WEAVER, YOUR HONOR.

THE COURT: MRS. GEORGE, YOU MAY BE EXCUSED IF YOU WISH.

MR. POPE: COME ON UP HERE AND BE SWORN, MRS. WEAVER.

LINDA WEAVER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. MRS. WEAVER, IF YOU WOULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER.

A. LINDA WEAVER, W-E-A-V-E-R.

Q. MRS. WEAVER, WOULD YOU TELL THE JURY, WHERE DO YOU RESIDE?

A. AT 105 HILTON HEAD COURT IN FORT MILL.

Q. AND COULD YOU TELL THE JURY, DID YOU KNOW TERRY AND EARL ROBERTSON?

A. YES, I DID.

Q. EXPLAIN TO THEM HOW YOU KNEW TERRY AND EARL.

A. I MET TERRY AND EARL BEFORE THEY WERE MARRIED. EARL CAME TO INTERVIEW WITH SPRINGS WHERE MY HUSBAND WORKS PROBABLY ABOUT 27 YEARS AGO.

Q. COULD YOU TELL THE JURY JUST A LITTLE BIT ABOUT WHAT KIND OF RELATIONSHIP YOU AND YOUR HUSBAND HAD WITH TERRY AND EARL?

A. WELL, WE DID ALL THE NORMAL THINGS LIKE GOING OUT TO EAT, BALL GAMES. TERRY AND I HAD LUNCH. SHE WAS MORE LIKE A SISTER TO ME AND SHE WAS MY FRIEND BUT SHE WAS MY SISTER, TOO. I DIDN'T HAVE ANY SISTERS. WE JUST DID ALL THE NORMAL

THINGS THAT, YOU KNOW, COUPLES DO.

Q. CAN YOU TELL THE JURY TO THE BEST OF YOUR RECOLLECTION WHEN THE LAST TIME YOU WOULD HAVE TALKED TO TERRY?

A. I TALKED TO TERRY ABOUT 10:00 O'CLOCK ON NOVEMBER 24TH.

Q. THAT WOULD HAVE BEEN MONDAY NIGHT, IS THAT CORRECT?

A. YES, SIR.

Q. AND WHAT WAS THAT IN REFERENCE TO?

A. TERRY HAD CALLED US TO GO TO A PARTY SOMETIME BEFORE CHRISTMAS. I DON'T REMEMBER THE EXACT DATE BUT SHE HAD CALLED AND ASKED US TO GO TO A PARTY WITH THEM THAT NIGHT.

Q. SO, THAT WAS THE GIST OF THAT DISCUSSION?

A. PRETTY MUCH.

Q. BASED ON THAT CONVERSATION, DID YOU HAVE KNOWLEDGE THAT SHE WAS PICKING UP A CAKE FROM CISSY THAT NEXT MORNING?

A. YES, SHE HAD MENTIONED TO ME THAT THAT NEXT MORNING ---

MR. BOYD: I'M GOING TO OBJECT TO THE HEARSAY.

THE COURT: I SUSTAIN THE OBJECTION.

Q. AGAIN, DON'T TELL US WHAT TERRY SAID.

A. OKAY.

Q. BASED ON THAT DID YOU KNOW THAT SHE WAS PICKING UP A CAKE?

A. YES.

Q. LET ME ASK YOU, IF YOU COULD, WHEN IS THE NEXT TIME YOU HAD ANY PHONE CONVERSATION CONCERNING TERRY?

A. CISSY GEORGE CALLED ME THE NEXT MORNING ABOUT 8:30 EXPRESSING THAT TERRY HAD NOT SHOWN UP TO PICK UP THE CAKE. CISSY HAD TO GO TO WORK AND ASKED ME IF I WOULD PLEASE SEE IF I COULD GET IN TOUCH WITH TERRY BECAUSE THE CAKE WAS GOING TO SPOIL IN HER CAR.

SO, AS SOON AS I HUNG UP THE PHONE WITH CISSY, I STARTED TO CALL HER HOUSE. AND EVERY TIME I CALLED THE VOICE MAIL WOULD PICK UP ON THE FIRST RING.

Q. OKAY, SO AFTER CALLING HER HOUSE -- HOW LONG DID YOU CALL HER HOUSE?

A. I PROBABLY CALLED UNTIL SOMEWHERE AROUND 10:00 O'CLOCK AND EVERY TIME I CALLED, THE VOICE MAIL PICKED UP ON THE FIRST RING.

Q. OKAY, SO WHAT DID YOU DO THEN?

A. I THEN REMEMBERED THAT TERRY HAD AN APPOINTMENT WITH SKIP MEYER THAT MORNING AT SOME POINT, I COULDN'T REMEMBER WHAT TIME. SO, I CALLED HIS

OFFICE AND TALKED TO DEBBIE BRISSON AND TOLD DEBBIE THAT I KNEW THAT TERRY WOULD PROBABLY RUN IN LATE IN A FEW MINUTES AND WOULD SHE JUST CALL ME AND LET ME KNOW IF TERRY WAS ALL RIGHT. THAT WAS PROBABLY ABOUT 10:00 O'CLOCK.

Q. AND WHAT WAS THE NEXT THING YOU HEARD CONCERNING TERRY?

A. DEBBIE CALLED ME BACK SOMEWHERE I THINK CLOSE TO 11:00 O'CLOCK AND SAID THAT ---

MR. BOYD: I OBJECT TO HEARSAY.

THE COURT: DON'T GO INTO WHAT WAS SAID. I SUSTAIN THE OBJECTION.

Q. BASED ON THAT CALL, DID YOU THEN KNOW SOMETHING WAS WRONG?

A. YES, I DID KNOW SOMETHING WAS WRONG.

Q. AND ULTIMATELY DID YOU GO TO THE RESIDENCE?

A. FIRST I WENT TO CAROLINA COUNSELING AND THEN I WENT TO WESTMINSTER DRIVE.

Q. WERE THERE POLICE THERE?

A. YES, THERE WAS A POLICE BARRICADE. WE COULD ONLY GET TO, I GUESS MAYBE TWO HOUSES CLOSE TO TERRY AND EARL'S HOUSE.

Q. SO, YOU NEVER WENT IN THE HOUSE?

A. NO, SIR.

Q. OKAY, ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

CROSS EXAMINATION BY

MR. HANCOCK:

Q. MRS. WEAVER, YOU EVENTUALLY CALLED CAROLINA COUNSELING, IS THAT RIGHT, LOOKING FOR TERRY ROBERTSON?

A. YES, SIR.

Q. AND YOU WERE AWARE THAT SHE WAS RECEIVING COUNSELING FROM SKIP MEYER?

A. YES, SIR.

Q. ARE YOU AWARE OF HOW MANY TIMES SHE HAD ACTUALLY SEEN MR. MEYER, SAY OVER THE PAST SIX MONTHS OR YEAR OR ANYTHING OF THAT NATURE. YOU WOULD BE PRIVY TO THAT INFORMATION?

A. NO.

Q. ARE YOU AWARE IN ANY WAY THAT SHE MIGHT HAVE BEEN AN EMPLOYEE OF CAROLINA COUNSELING AND MR. MEYER?

A. I THINK SHE DID SOME VOLUNTEER WORK THERE.

Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: REDIRECT?

MR. POPE: NO, SIR, YOUR HONOR. I WOULD ASK THAT THIS WITNESS BE EXCUSED.

THE COURT: THANK YOU, MRS. WEAVER. WE APPRECIATE YOUR TIME, AND YOU CAN BE EXCUSED. CALL YOUR NEXT WITNESS.

MR. POPE: THE STATE WOULD CALL MARGIE JORDAN TO THE STAND, YOUR HONOR.

MARGIE JORDAN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. MS. JORDAN, IF YOU WILL, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER PLEASE, MA'AM.

A. MARGIE JORDAN, J-O-R-D-A-N.

Q. MS. JORDAN, COULD YOU TELL THE JURY WHERE YOU ARE EMPLOYED?

A. I'M EMPLOYED AT SPRINGS INDUSTRIES AT FABRICATION SERVICES IN LANCASTER.

Q. COULD YOU TELL US HOW LONG YOU'VE BEEN THERE?

A. I'VE BEEN WITH SPRINGS FOR 34 YEARS.

Q. AND BACK IN 1997 YOU WERE WITH SPRINGS, TOO?

A. YES, SIR.

Q. WOULD YOU TELL THE JURY WHAT YOUR OCCUPATION WAS BACK IN 1997 AS FAR AS YOUR DUTIES WITH SPRINGS?

A. I WAS SECRETARY FOR EARL ROBERTSON.

Q. HOW LONG DID YOU ACTUALLY WORK WITH EARL? DID YOU WORK WITH HIM MORE THAN ONCE?

A. YES, SIR. I WORKED FOR EARL FROM 1983 UNTIL 1994, AND THEN HE LEFT AND WENT TO ANOTHER AREA

OF THE COMPANY AND I CAME BACK TO WORK FOR HIM IN 1997.

Q. COULD YOU TELL THE JURY AS HIS PERSONAL SECRETARY WHAT TYPE OF DUTIES YOU HAD OR YOU PERFORMED FOR MR. ROBERTSON?

A. I HANDLED ALL OF HIS CORRESPONDENCE, HIS INTER-COMPANY MEMOS, HIS TRAVEL; I ARRANGED TRAVEL TRIPS, HE DID A LOT OF TRIPS TO MEXICO; FILING. YOU KNOW, ARRANGED MEETINGS AND JUST BASICALLY KEPT UP WITH HIS DAY TO DAY ROUTINE.

Q. AS FAR AS KEEPING UP WITH WHERE HE'S GOING, THE NATURE OF HIS BUSINESS, DID YOU KEEP TABS ON HIM SO TO SPEAK?

A. YES, SIR. MR. ROBERTSON WAS VERY GOOD ABOUT ALWAYS LETTING ME KNOW WHERE HE WAS. IF HE WAS IN A BUILDING AND HE WOULD GO FROM ONE MEETING TO ANOTHER, HE WOULD CALL ME AND LET ME KNOW WHAT ROOM HE WAS IN JUST IN CASE SOMEBODY NEEDED HIM, I COULD ALWAYS FIND HIM.

Q. COULD YOU TELL THE JURY WHEN THE LAST TIME WAS THAT YOU SPOKE TO EARL?

A. I SPOKE TO HIM ON MONDAY AFTERNOON, A LITTLE AFTER 5:00 O'CLOCK.

Q. AND WHAT WAS THE NATURE OF THAT CONVERSATION?

A. WE WERE DISCUSSING A SHANCO PROJECT AND SHANCO

IS OUR MEXICAN AFFILIATE.

Q. WHEN YOU LEFT THAT DAY, WERE YOU AWARE OF ANY MEETINGS THAT EARL HAD SCHEDULED FOR THE NEXT MORNING?

A. YES, SIR. HE HAD SCHEDULED A PACER MEETING AT THE CUSTOMER SERVICE CENTER WHICH IS RIGHT ACROSS THE STREET FROM WHERE WE ARE AT 8:30 THE NEXT MORNING. HE HAD ABOUT 10 PEOPLE THAT HE WANTED TO MEET WITH AND HE HAD CALLED THE MEETING. IT WAS HIS MEETING.

Q. AND WHAT TIME DID YOU ARRIVE THE NEXT MORNING, THAT WOULD HAVE BEEN TUESDAY THE 25TH, IS THAT RIGHT?

A. YES, SIR.

Q. TELL THE JURY WHAT TIME YOU ARRIVED THAT MORNING.

A. I USUALLY GET TO WORK ABOUT 10 TILL 8:00.

Q. AND DID YOU SEE EARL THAT MORNING?

A. NO, SIR, I DIDN'T.

Q. AND IN REGARDS TO HIS MEETING, YOU SAID THAT HE SCHEDULED THE MEETING?

A. WELL, HE ASKED ME TO CALL THE PEOPLE.

Q. I MEAN IT WAS AT HIS DIRECTION?

A. YES, SIR.

Q. OKAY. AND DID MR. ROBERTSON ATTEND THAT

MEETING?

A. NO, SIR. ABOUT 15 TILL 9:00 ONE OF THE LADIES THAT WAS WAITING IN THE MEETING CALLED ME AND ASKED ME WHERE EARL WAS AND I SAID, WELL, I THOUGHT HE WAS THERE, YOU KNOW, HE WAS SUPPOSED TO BE THERE THIS MORNING. AND I SAID, I'LL CALL HOME AND SEE IF HE'S HAD CAR TROUBLE.

Q. OKAY AND WHAT DID YOU ACTUALLY DO THEN?

A. I CALLED THE HOUSE AND THE PHONE JUST DID A BRIEF RING AND ROLLED RIGHT OVER TO VOICE MAIL AND I SAID TERRY, THIS IS MARGIE, I'M LOOKING FOR EARL. I SAID CALL AND LET ME KNOW IF HE'S HAD CAR TROUBLE OR, YOU KNOW, IF SOMETHING ELSE IS THE MATTER, GIVE ME A CALL.

Q. DID YOU DO ANYTHING ELSE AS FAR AS TRYING TO LOCATE EARL AT THAT TIME?

A. NO, SIR. I CALLED BACK OVER TO THE CUSTOMER SERVICE CENTER AND TOLD THEM THAT -- WHAT I DID, I HAD CALLED A COUPLE OF LADIES OVER AT THE CUSTOMER SERVICE CENTER THAT I KNEW CAME DOWN THE SAME ROADS THAT EARL CAME DOWN EVERY MORNING AND ASKED THEM DID THEY SEE HIM STOPPED ON THE SIDE OF THE ROAD TO SEE IF HE HAD HAD CAR TROUBLE OR ANYTHING. AND THEY TOLD ME, NO, THEY HADN'T SEEN EARL ON THE SIDE OF THE ROAD

ANYWHERE.

Q. AFTER MAKING THE CALL TO THE HOUSE AND CHECKING WITH THE PEOPLE WHO HAD COME FROM ROCK HILL WHAT, IF ANYTHING, DID YOU DO NEXT?

A. WELL, I CALLED BACK OVER TO THE CUSTOMER SERVICE CENTER AND TOLD THE PEOPLE IN THE MEETING TO JUST GO AHEAD AND LEAVE AND THAT I WOULD RESCHEDULE THE MEETING AT A LATER TIME.

Q. AND WHAT DID YOU DO AFTER THAT?

A. I GUESS ABOUT 9:15 WE HAD GOTTEN REAL CONCERNED AND I CALLED THE POLICE DEPARTMENT IN ROCK HILL.

Q. YOU SAY YOU HAD GOTTEN CONCERNED, WHAT WAS THE BASIS OF YOUR CONCERN? WHY WERE YOU CONCERNED?

A. WELL, IT WAS JUST VERY UNCHARACTERISTIC OF EARL NOT TO LET ME KNOW WHERE HE WAS, YOU KNOW, OR TERRY NOT TO CALL ME BACK.

Q. SO AT THAT POINT YOU CALLED THE SHERIFF'S DEPARTMENT OVER HERE?

A. YES, SIR.

Q. DO YOU RECALL WHO YOU TALKED TO?

A. I TALKED TO A DISPATCHER TO START WITH.

Q. OKAY. WHEN YOU SAY TO START WITH, WHAT ACTUALLY OCCURRED. COULD YOU TELL THEM WHAT YOU TOLD THEM AND WHAT TOOK PLACE?

A. I ASKED THE DISPATCHER COULD THEY SEND SOMEONE

OUT TO EARL'S HOUSE TO SEE IF THERE WAS ANYTHING WRONG BECAUSE I HADN'T BEEN ABLE TO REACH TERRY. I HAD CALLED THE HOUSE A COUPLE OF TIMES AND THE PHONE JUST KEPT GOING TO VOICE MAIL.

I ASKED THEM COULD THEY JUST PLEASE GO OUT THERE AND LOOK TO SEE IF ANYTHING WAS WRONG AND TO LET ME KNOW.

AND SO THE DISPATCHER TOLD ME THAT SHE WOULD SEND SOMEONE OUT THERE.

Q. OKAY. NOW, DID YOU HAVE ANY MORE CONVERSATION WITH LAW ENFORCEMENT AFTER THAT INITIAL CONVERSATION?

A. YES, SIR. THE DISPATCHER CALLED ME BACK AND SAID THAT THEY HAD SENT A DEPUTY OUT THERE ---

MR. BOYD: YOUR HONOR, I OBJECT.

THE COURT: I SUSTAIN THE OBJECTION.

MR. POPE: YOUR HONOR, I WOULD SUBMIT THAT THESE ARE WORDS OF INFORMATION, BUT I'LL GO FORWARD.

THE COURT: WELL, IT PROBABLY DOESN'T GO TO THE TRUTH OF THE MATTER ASSERTED, BUT I'LL SUSTAIN THE OBJECTION.

Q. YOU RECEIVED A CALL BACK?

A. YES, SIR.

Q. AND OTHER THAN THE DISPATCHER, DID YOU ULTIMATELY TALK TO SOMEBODY WITH REFERENCE TO

THE SITUATION IN THE HOUSE?

A. YES, SIR.

Q. AND WHO WAS THAT?

A. A DEPUTY GREG MAGGART.

Q. AND BASED ON THOSE DISCUSSIONS, WHAT DID YOU TELL DEPUTY MAGGART?

A. HE TOLD ME THAT EVERYTHING SEEMED TO BE OKAY NOW, AND I TRIED TO IMPRESS UPON HIM THAT IT WAS UNCHARACTERISTIC FOR MY BOSS NOT TO LET ME KNOW WHERE HE WAS, AND WOULD HE PLEASE GO BACK AND LOOK AGAIN.

Q. DID YOU ULTIMATELY CONVINCE HIM TO GO BACK?

A. YES, SIR.

Q. AFTER THAT POINT DID YOU HAVE ANY MORE CONTACT WITH LAW ENFORCEMENT?

A. YES, SIR. THE DEPUTY CALLED ME BACK.

Q. AND THAT WAS IN REFERENCE TO WHAT HAD BEEN DISCOVERED AT THE HOUSE?

A. HE CALLED ME BACK TWICE. THE FIRST TIME HE SEEMED TO THINK EVERYTHING WAS OKAY AND I ASKED HIM COULD THEY GO INSIDE AND LOOK, AND HE SAID HE WOULD HAVE TO HAVE SOMEBODY HIGHER UP TO GIVE HIM THAT AUTHORITY.

Q. AND THEN DID HE ALSO CALL YOU BACK AND YOU DISCUSSED WHAT HAD OCCURRED?

A. HE JUST TOLD ME THAT THERE WAS A PROBLEM THERE AND THAT HE COULDN'T TELL ME WHAT IT WAS, BUT THEY WOULD GET BACK IN TOUCH WITH US.

Q. THANK YOU, MA'AM. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

CROSS EXAMINATION BY

MR. BOYD:

Q. MS. JORDAN, HOW LONG DID YOU WORK AS MR. ROBERTSON'S SECRETARY?

A. THE FIRST TIME THAT I WORKED FOR EARL, I THINK IT WAS ABOUT 11 YEARS. AND THEN THE LAST TIME I CAME TO WORK FOR HIM IN MARCH OF 1997.

Q. '97?

A. YES, SIR.

Q. OKAY, AND WHEN WAS THE TIME YOU FIRST STARTED WORKING FOR HIM?

A. IN 1983.

Q. 1983?

A. YES, SIR, UNTIL 1994.

Q. AND DID HE WORK IN THE LANCASTER OFFICE OR THE FORT MILL OFFICE?

A. HE WORKED IN THE LANCASTER OFFICE.

Q. THE LANCASTER OFFICE?

A. YES, SIR.

Q. GENERALLY WHAT TIME DID HE GET TO WORK IN THE

MORNING?

A. HE USUALLY GOT THERE PRETTY EARLY. HE WAS USUALLY THERE WHEN I'D GET THERE EVERY MORNING.

Q. AND WHAT TIME DID YOU USUALLY GET THERE?

A. I WAS USUALLY THERE BEFORE 8:00 O'CLOCK.

Q. BEFORE 8:00?

A. YES, SIR.

Q. AND HE WAS USUALLY THERE BEFORE YOU WOULD GET THERE; IS THAT CORRECT?

A. YES, SIR.

Q. AND DO YOU KNOW WHAT TIME HE GENERALLY CAME IN THEN IN THE MORNINGS?

A. I GUESS IT ALL DEPENDED ON HIS WORK SCHEDULE FOR THAT DAY. IF HE HAD MEETINGS OR SOMETHING, HE MAY COME IN A LITTLE EARLIER TO GO OVER WHAT HE WAS TO HAVE AT THE MEETING; MAKE SURE EVERYTHING WAS READY.

Q. AND WHAT TIME DID HE GENERALLY LEAVE THE OFFICE IN THE AFTERNOON?

A. MOST OF THE TIME HE WAS STILL THERE WHEN I LEFT.

Q. AND WHAT TIME ---

A. IT WOULD BE AFTER 5:00 O'CLOCK.

Q. SO, YOU LEFT AT 5:00 OR AFTER, IS THAT CORRECT?

A. YES, SIR.

Q. AND HE WOULD STAY AFTER THAT?

A. YES, SIR.

Q. AND YOU DON'T KNOW HOW LATE -- DO YOU KNOW HOW LATE HE WOULD GENERALLY STAY?

A. I WOULD SAY MAYBE UNTIL 5:30, MAYBE 6:00 O'CLOCK SOME DAYS.

Q. AND DO YOU KNOW HOW -- DID HE KEEP THAT BASIC SCHEDULE THE ENTIRE TIME THAT YOU WORKED FOR HIM AS A SECRETARY?

A. YES, SIR.

Q. EVEN THE FIRST TIME?

A. YES, SIR.

Q. THANK YOU; THAT'S ALL I HAVE.

THE COURT: REDIRECT?

MR. POPE: NO, SIR, YOUR HONOR. I WOULD ASK THAT THIS WITNESS BE EXCUSED.

THE COURT: YOU CAN STEP DOWN. WE APPRECIATE YOUR TIME, AND YOU CAN BE EXCUSED.

MR. POPE: THE STATE WOULD CALL OFFICER GREG MAGGART.

ALSO, YOUR HONOR, I'M GOING TO ASK THE COURT'S INDULGENCE, I'M GOING TO -- WE'VE GOT AN EASEL FOR THE EXHIBITS THAT MR. MAGGART WILL BE REFERRING TO, AND I'M GOING TO RETRIEVE THAT, PLEASE.

THE COURT: CERTAINLY.

(AFTER A BRIEF PAUSE.)

GREGORY S. MAGGART, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. DEPUTY MAGGART, IF YOU WOULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER PLEASE, SIR.

A. MY NAME IS GREGORY SCOTT MAGGART; MY LAST NAME IS SPELLED M-A-G-G-A-R-T.

Q. DEPUTY MAGGART, WOULD YOU TELL THE JURY YOUR OCCUPATION AND HOW LONG YOU HAVE BEEN EMPLOYED?

A. CURRENTLY I'M A DETECTIVE WITH THE YORK COUNTY SHERIFF'S DEPARTMENT. I'VE BEEN EMPLOYED THERE SINCE 1990 AND THREE YEARS WITH THE CITY OF YORK PRIOR TO THAT.

Q. OKAY AND I'M GOING TO CALL YOUR ATTENTION BACK TO NOVEMBER 25TH OF 1997, WERE YOU EMPLOYED WITH THE SHERIFF'S DEPARTMENT THEN?

A. YES, I WAS.

Q. AND WHAT WERE YOUR DUTIES THEN?

A. I WAS A DEPUTY AT THAT TIME AND MY DUTIES WERE PATROL, ANSWERING CALLS.

Q. SO YOU WERE ACTUALLY A UNIFORMED OFFICER AT THAT POINT?

A. THAT'S CORRECT, I WAS IN UNIFORM AT THAT TIME.

Q. CALLING YOUR ATTENTION BACK TO NOVEMBER 25TH, 1997 AT APPROXIMATELY 10 A.M., DID YOU HAVE AN OPPORTUNITY TO RESPOND TO A CALL AT 2506 WESTMINSTER DRIVE IN ROCK HILL?

A. YES, I DID. I WAS CALLED THERE TO A CHECK ON THE WELL-BEING WHICH IS SOMEONE CALLED CONCERNED ABOUT SOMEONE'S WELL-BEING AND I WAS SENT THERE TO CHECK TO SEE IF EVERYTHING WAS OKAY WITH THAT PERSON.

Q. AND DID YOU IN FACT GO TO THAT ADDRESS?

A. YES, I DID.

Q. WOULD YOU JUST DESCRIBE GENERALLY TO THE JURY WHERE THAT'S LOCATED, WHERE WESTMINSTER DRIVE IS?

A. IT'S ON INDIA HOOK ROAD BEHIND CATAWBA SCHOOL, I'M GOING TO SAY THE SECOND ROAD TO THE RIGHT BEHIND THE SCHOOL.

Q. AND IS THAT LOCATION THAT YOU RESPONDED TO, OBVIOUSLY YOU'RE A YORK COUNTY OFFICER, IS THAT LOCATED IN YORK COUNTY?

A. YES IT IS, IN ROCK HILL.

Q. CAN YOU TELL THE JURY WHAT YOU ACTUALLY DID WHEN YOU ARRIVED, WHAT YOU OBSERVED AND WHAT YOU DID?

A. YES, I PULLED INTO THE DRIVEWAY OF THE RESIDENCE. I WENT UP TO THE FRONT DOOR AND RANG

THE DOORBELL AND WAITED THERE FOR A FEW MINUTES AND THERE WAS NO RESPONSE.

I WENT OUT TO THE SIDE OF THE HOUSE WHERE THERE'S A GARAGE. I WENT UP INTO THE GARAGE, THERE'S A DOOR THERE. I RANG THAT DOOR BELL AND HAD NO RESPONSE.

AND I SAW A NEIGHBOR OUT IN HIS YARD NEXT DOOR TO THE RIGHT OF THE HOUSE I WAS AT, SO I WALKED OVER AND ASKED HIM IF HE WAS AWARE OF WHERE HIS NEIGHBOR WAS BECAUSE NO ONE CAME TO THE DOOR AND SOMEONE HAD CALLED FOR US TO GO OUT THERE. HE TOLD ME THEN THAT ---

MR. BOYD: OBJECTION.

THE COURT: I SUSTAIN THE OBJECTION.

MR. POPE: YOUR HONOR, AGAIN, THIS MIGHT BE A MATTER OF LAW. THIS IS NOT FOR THE TRUTH OF THE MATTER ASSERTED, IT'S INFORMATION TO EXPLAIN WHY HE GOES AND DOES WHAT HE DOES.

THE COURT: WELL, I'M GOING TO HAVE TO HEAR THE ANSWER, SO I'M GOING TO HAVE TO LET THE JURY GO TO THE JURY ROOM.

Y'ALL GO TO THE JURY ROOM WHILE WE TAKE UP THIS MATTER.

IN CAMERA:

THE COURT: YES, SIR.

Q. OFFICER MAGGART, DID YOU TALK TO THE NEIGHBOR, IS THAT CORRECT?

A. YES, I DID.

Q. AND IN YOUR DISCUSSION WHAT DID HE RELATE TO YOU?

A. HE TOLD ME THAT MR. ROBERTSON DROVE THE RED CAR AND IF THE RED CAR WAS NOT AT HOME, HE WAS AT WORK. THAT MR. ROBERTSON LEFT EARLY FOR WORK, APPROXIMATELY 6:30 IN THE MORNING AND DIDN'T GET HOME UNTIL AFTER DARK AT NIGHT AND USUALLY HE ONLY SAW HIM ON THE WEEKENDS BECAUSE HE WORKED SO MUCH DURING THE WEEK.

MR. POPE: YOUR HONOR, ALL WE WOULD TENDER IS ACTUALLY THE FIRST SENTENCE REGARDING IF THE RED CAR WAS NOT AT HOME, HE WASN'T AT HOME.

THE COURT: ANY OBJECTION?

MR. BOYD: YOUR HONOR, BASED ON WHAT THE ANSWER IS, WE DON'T HAVE ANY OBJECTION TO THE WHOLE TESTIMONY.

THE COURT: BRING THE JURY BACK. WHILE THEY ARE GOING FOR THE JURY, LET ME JUST ASK THAT ALL PEOPLE INVOLVED TELL ANYONE ASSOCIATED WITH THEM TO TRY NOT TO BE COMING THROUGH THE DOOR OVER HERE. THIS IS FOR THE BAILIFFS. ON BREAKS, OF COURSE, COUNSEL CAN GO OUT AND IN IT, BUT IT IS VERY DISTRACTING WHEN SOMEONE OPENS THE DOOR TO SEE WHAT'S GOING ON. THEY OUGHT TO KNOW WHAT'S GOING

ON.

IN THE PRESENCE OF THE JURY:

THE COURT: I HAD CONCERN ABOUT THE TEMPERATURE FROM ONE OF THE JURORS, IT SAYS A LITTLE WARM. LET ME TELL YOU AND IT MIGHT BE TOO LATE SINCE YOU HAVE ALREADY PACKED, WHAT I USUALLY TELL JURORS IN THESE PUBLIC BUILDINGS, THE TEMPERATURE IS HARD TO REGULATE; THE BEST WAY TO COMBAT THAT IS TO WEAR SHORT SLEEVES AND BRING A SWEATER.

UNFORTUNATELY, YOU'VE PROBABLY ALREADY PACKED, BUT WE'LL TRY TO ACCOMMODATE YOU. I GET WARM MYSELF, I CAN ASSURE YOU. BUT WE'LL TRY TO GET THE TEMPERATURE COOLED OFF A LITTLE BIT.

CONTINUED DIRECT OF DETECTIVE MAGGART BY MR. POPE:

Q. DETECTIVE MAGGART, I WAS ASKING YOU WHEN YOU WENT TO THE RESIDENCE, YOU SAID THAT ULTIMATELY YOU TALKED TO A NEIGHBOR?

A. YES, I DID.

Q. AND WHAT WAS THE GIST OF THE CONVERSATION WITH THAT NEIGHBOR?

A. I ASKED THE NEIGHBOR HAD HE SEEN MR. ROBERTSON WHO I WAS THERE TO CHECK ON AND HE LOOKED OVER AND SAW THAT THE RED CAR WAS NOT THERE AND HE SAID IF THE RED CAR IS NOT THERE, HE'S AT WORK. HE SAID HE USUALLY LEAVES EARLY IN THE MORNING FOR WORK.

Q. HAD YOU ACTUALLY GONE AROUND THE RESIDENCE OR HAD YOU JUST GONE TO THE FRONT DOOR AND THE CARPORT?

A. JUST TO THE FRONT AND TO THE RIGHT SIDE, THE CARPORT.

Q. AND BASED ON THAT, AFTER TALKING TO THE NEIGHBOR, WHAT DID YOU DO THEN?

A. I GOT BACK IN MY PATROL CAR AND LEFT AND BASICALLY CLEARED UP FROM THAT CALL.

Q. OKAY. DID YOU ULTIMATELY RECEIVE A CALL FROM DISPATCH CONCERNING A FURTHER INVESTIGATION OF THIS?

A. THAT'S CORRECT.

Q. AND BASED ON THAT, WHAT DID YOU DO?

A. I MADE A TELEPHONE CALL AND TALKED TO A MS. JORDAN.

Q. THAT WAS EARL'S SECRETARY, MARGIE JORDAN?

A. THAT'S CORRECT.

Q. AND BASED ON THAT CONVERSATION, WHAT DID YOU DO?

A. WENT BACK TO THE RESIDENCE TO CHECK AGAIN.

Q. AND COMING BACK TO THE RESIDENCE -- EITHER TIME COMING TO THE RESIDENCE, DID YOU NOTICE ANY VEHICLES AT OR NEAR THE HOUSE?

A. YES, THERE WAS A VEHICLE PARKED ON THE SIDE OF THE ROAD JUST BEFORE THE HOUSE ON THE LEFT-HAND

SIDE OF THE ROAD.

Q. OKAY, AND WHEN YOU'RE COMING BACK THE SECOND TIME WHAT, IF ANYTHING, DID YOU DO IN REFERENCE TO THE VEHICLE?

A. WHEN I CAME BACK THE SECOND TIME, THE VEHICLE WAS ON THE LEFT SIDE OF THE ROAD GOING AGAINST TRAFFIC, SO AS I APPROACHED I CAME UP BEHIND IT SO THAT I COULD SEE THE LICENSE PLATE, AND I RAN THE TAG.

Q. DID YOU GIVE THAT INFORMATION TO INVESTIGATORS IN THIS CASE?

A. YES, I DID.

Q. WHEN YOU RETURNED TO THE HOUSE WHAT, IF ANYTHING, DID YOU SEE DIFFERENT THAN YOU SAW THE FIRST TIME WHEN YOU WERE THERE?

A. WHEN I RETURNED -- THE FIRST TIME I WENT TO THE HOUSE THERE WAS A CADILLAC THAT WAS PARKED IN THE GARAGE AREA AND A VAN IN THE DRIVEWAY. WHEN I RETURNED THE SECOND TIME, THERE WAS ANOTHER CAR PARKED IN THE DRIVEWAY THAT WASN'T THERE THE FIRST TIME.

Q. DO YOU KNOW ROUGHLY HOW LONG YOU HAD BEEN GONE?

A. APPROXIMATELY 10 OR 15 MINUTES.

Q. AND SO WHEN YOU CAME BACK AND THERE IS NOW A CAR IN THE DRIVEWAY, TELL THE JURY WHAT TOOK PLACE

THEN, WHAT DID YOU DO THEN?

A. I GOT OUT OF MY CAR, I WAS WALKING UP TO THE GARAGE AREA AGAIN AND I COULD SEE A WOMAN IN THE DOORWAY. THE DOOR IN THE GARAGE WAS BASICALLY HALF WOOD AND THE TOP PART WAS A SOLID PANE OF GLASS AND THERE WAS A WOMAN STANDING IN THE DOORWAY LOOKING OUT.

Q. AND TELL THE JURY WHAT YOU -- CAN YOU DESCRIBE HER DEMEANOR OR APPEARANCE?

A. WELL, I REALLY DIDN'T NOTICE UNTIL I GOT UP TO THE DOOR AND THEN SHE SEEMED EXTREMELY UPSET, TO THE POINT OF EVEN BEING FRIGHTENED.

SHE WAS TRYING TO GET OUT OF THE DOOR AND SHE WAS SAYING THAT THE DOOR WAS LOCKED. AND WHEN I LOOKED INTO THE GLASS, BECAUSE IT WAS SUCH A BIG AREA OF GLASS, YOU COULD SEE THAT IT WAS A DEAD BOLT LOCK THAT KEYED ON BOTH SIDES AND APPARENTLY IT WAS LOCKED AND SHE DIDN'T HAVE A KEY AND SHE COULDN'T GET OUT.

THERE WAS A DOOR BEHIND HER IN LIKE A LAUNDRY ROOM AND I ASKED HER TO GO TO THAT DOOR. I CAME OUT OF THE GARAGE AND WENT AROUND TO THAT DOOR AND THAT DOOR ALSO WAS LOCKED; SHE COULDN'T GET OUT OF THAT DOOR.

SO, I TOLD HER TO GO TO THE WINDOW IN THE

KITCHEN AND PUT THE WINDOW UP WHICH SHE DID AND SHE CAME OUT OF THE WINDOW.

Q. SO, SHE CAME OUT OF THE WINDOW TO YOU?

A. YES, SHE DID.

Q. OKAY. AND WHAT WAS HER CONDITION PHYSICALLY AND EMOTIONALLY AS YOU OBSERVED HER WHEN SHE CAME OUT OF THE WINDOW?

A. SHE BASICALLY DOVE OUT THE WINDOW ON TOP OF ME EXTREMELY UPSET, SHAKING.

Q. AND WHAT, IF ANYTHING, DID SHE TELL YOU AT THAT TIME?

A. AT THAT POINT SHE SAID THAT EARL WAS DEAD.

Q. BASED ON THAT -- DID YOU KNOW WHO THAT INDIVIDUAL WAS?

A. NOT ---

Q. DID YOU ULTIMATELY DETERMINE HER IDENTITY?

A. NO, I DIDN'T. NOT AT THAT POINT I DIDN'T.

Q. RIGHT, BUT LATER DID YOU DETERMINE WHO IT WAS?

A. RIGHT.

Q. AND WHO WAS THAT?

A. IT WAS MRS. BRISSON, I THINK IS HOW YOU PRONOUNCE HER NAME.

Q. SO, WHAT DID YOU DO. ONCE YOU HELPED HER ESCAPE OUT OF THE WINDOW, WHAT DID YOU DO WITH HER?

A. I WALKED HER OVER TO MY PATROL CAR AND PLACED

HER IN THE BACK SEAT. I ASKED HER HOW SHE GOT INTO THE HOUSE BECAUSE SHE COULDN'T GET OUT AND SHE SAID THAT THE BASEMENT DOOR AT THE BACK, THE BOTTOM SIDE OF THE HOUSE, THE DOOR WAS OPEN. I PLACED HER IN THE CAR AND LOCKED THE DOOR -- OR SHUT THE DOOR. THE DOORS DON'T OPEN FROM THE INSIDE IN THE BACK SEAT, SHE WAS BASICALLY LOCKED IN AND I WENT BACK AND WENT INTO THE HOUSE.

Q. COULD YOU TELL THE JURY WHEN YOU WENT TO THE BACK AND WENT IN THE HOUSE, IF YOU COULD DESCRIBE FOR THEM FIRST AT THE BACK, WHAT IT IS THAT YOU ACTUALLY SAW.

A. THERE WAS A WOODEN DOOR AND STORM DOOR. THE STORM DOOR HAD BROKEN GLASS; THERE WAS GLASS ON THE GROUND AND SOME RIGHT INSIDE THE WOODEN DOOR WHICH WAS THE EXTERIOR DOOR GOING INTO THE HOUSE WAS OPEN AND SOME GLASS WAS INSIDE.

Q. SO, THERE WAS GLASS OUTSIDE AND GLASS INSIDE?

A. THAT'S CORRECT.

Q. WAS ANYBODY WITH YOU AT THIS TIME?

A. YES, MY LIEUTENANT, GARY ROLLINS, WAS WITH ME AT THE TIME.

Q. AND TELL THE JURY WHAT YOU DID AS FAR AS ENTERING THE HOUSE, HOW YOU WERE EQUIPPED AND

WHAT YOU DID.

A. BECAUSE OF HER STATING THAT SOMEONE WAS DEAD IN THE HOUSE, WE ENTERED IT AS A CRIME SCENE OR POSSIBLE CRIME IN PROGRESS, SO WE HAD OUR WEAPONS DRAWN AND I HAD A FLASHLIGHT BECAUSE IT WAS SOMEWHAT DARK, DIMLY LIT IN THE HOUSE. BUT WEAPONS WERE DRAWN; MY SERVICE PISTOL WAS DRAWN FOR MY OWN PROTECTION.

Q. AND ULTIMATELY DID YOU -- YOU WERE DOING WHAT'S CALLED CLEARING, IS THAT RIGHT?

A. YES.

Q. WHAT DOES THAT MEAN?

A. CLEARING, BASICALLY LOOKING FOR EITHER VICTIMS OR SUSPECTS OF A CRIME.

Q. AND IN DOING THAT DID YOU GO THROUGH THE ENTIRETY OF THE HOUSE, UPSTAIRS AND DOWN?

A. YES, I DID.

Q. DETECTIVE MAGGART, I'LL ASK YOU TO LOOK AT STATE'S EXHIBIT 101 AND 102 FOR IDENTIFICATION. HAVE YOU HAD A CHANCE TO LOOK AT THESE PRIOR TO TESTIFYING TODAY?

A. YES, I HAVE.

Q. AND BASED ON YOUR ENTRY AND PASSING THROUGH THE HOUSE, DO THEY ACCURATELY REPRESENT THE LAYOUT OF THE HOUSE, BOTH UPSTAIRS AND DOWN?

A. YES, SIR, THEY DO.

Q. AND WOULD THEY ASSIST YOU IN EXPLAINING YOUR MOTIONS IN THE HOUSE TO THE JURY?

A. YES.

MR. POPE: YOUR HONOR, AT THIS TIME I WOULD MOVE STATE'S EXHIBIT 101 AND 102 FOR IDENTIFICATION INTO EVIDENCE.

MR. BOYD: NO OBJECTION.

THE COURT: THEY WILL BE RECEIVED WITHOUT OBJECTION.

(A DIAGRAM OF THE DOWNSTAIRS WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 101 AND A DIAGRAM OF UPSTAIRS WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 102 WITHOUT OBJECTION.)

MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR, I'M GOING TO ASK THE DEPUTY TO STEP DOWN.

THE COURT: THAT WILL BE FINE.

Q. DEPUTY, DID YOU ALSO HAVE THE OPPORTUNITY TO REVIEW A NUMBER OF PHOTOS THAT INCLUDE THE OUTSIDE OF THE HOUSE AND SOME AREAS ON THE INSIDE OF THE HOUSE?

A. YES, I DID.

Q. AND DO THEY ACCURATELY DEPICT THE HOUSE AS YOU OBSERVED IT THAT DAY?

A. THEY DO.

Q. YOUR HONOR, I WILL HAVE TO GET THE NUMBERS

ADDRESSED, BUT WE WOULD MOVE STATE'S EXHIBITS -- IT APPEARS TO BE 103 THROUGH 122 INTO EVIDENCE.

MR. BOYD: NO OBJECTION.

THE COURT: PHOTOGRAPHS?

MR. POPE: YES, SIR, YOUR HONOR.

THE COURT: THEY ARE RECEIVED WITHOUT OBJECTION.

Q. DEPUTY FIRST IF YOU WOULD -- I AM GOING TO HAVE YOU REFER TO THE DIAGRAM BUT I AM ALSO GOING TO SEE IF WE CAN USE THE PICTURES WITHOUT LOSING THE LIGHT.

I'LL SHOW YOU STATE'S EXHIBIT 103 AND SEE IF YOU CAN RELATE TO THE JURY WHAT THAT INDICATES?

A. THAT WOULD BE THE FRONT OF THE HOUSE.

Q. AND AS YOU OBSERVED THE FRONT OF THE HOUSE, YOU HAD INDICATED EARLIER -- CLERK, IF WE COULD CUT SOME OF THE LIGHTS, MAYBE JUST THE ONES ON THAT SIDE.

(THE MAJORITY OF THE LIGHTS WERE TURNED OFF IN THE COURTROOM)

Q. IF YOU COULD RELATE TO THE JURY HOW THAT'S LOCATED AND WHAT THAT EXHIBIT SHOWS -- THAT'S THE FRONT OF THE HOUSE?

A. YES, IT IS.

Q. OKAY, AND YOU HAD INDICATED THAT YOU WENT TO A DOOR AT THE HOUSE, WHAT DOOR INITIALLY DID YOU

GO TO?

A. THAT WOULD BE THE FRONT DOOR RIGHT HERE. I PARKED MY VEHICLE ON HERE, THE DRIVEWAY IS ON THE SIDE AND THERE'S A SIDEWALK, AND I WALKED UP TO THIS DOOR RIGHT HERE.

Q. I'LL SHOW YOU NOW WHAT'S BEEN MARKED AS STATE'S EXHIBIT 104, AND ASK IF YOU CAN RELATE TO THE JURY WHAT THAT INDICATES.

A. THAT'S THE RIGHT SIDE OF THE HOUSE; I PARKED MY VEHICLE RIGHT IN HERE AND WALKED -- THIS IS THE FRONT DOOR. AFTER I WENT TO THE FRONT DOOR, I CAME BACK AND HERE'S THE GARAGE AREA.

Q. I'LL CALL YOUR ATTENTION NOW TO WHAT WOULD BE STATE'S EXHIBIT 109. DESCRIBE TO THE JURY WHAT THAT IS AND WHAT OCCURRED THERE.

A. THIS IS THE DOOR -- YOU COME IN THE GARAGE FROM THIS AREA. THIS IS THE DOOR IN THE GARAGE THAT I CAME TO, I RANG AND KNOCKED ON THE DOOR AND WENT TO THE NEIGHBOR'S.

WHEN I CAME BACK THE SECOND TIME, THIS IS THE AREA WHERE MS. BRISSON WAS STANDING.

Q. OKAY. AND SHOWING STATE'S EXHIBIT 102, CAN YOU GIVE THE JURY A ROUGH IDEA OF WHERE THAT LOCATION IS ALSO?

A. THAT WOULD BE -- THIS IS WHERE I PARKED; THIS

WOULD BE THE DOOR RIGHT HERE. COMING IN THIS WAY, IT WOULD BE RIGHT HERE.

Q. AND YOU HAD INDICATED THAT ULTIMATELY YOU DIRECTED HER TO THE BACKSIDE OF THE HOUSE WHERE SHE CAME OUT OF A WINDOW, IS THAT CORRECT?

A. RIGHT. FROM HERE I ASKED HER TO COME TO THIS DOOR. IT WAS LOCKED ALSO. SHE WENT BACK AND CAME OUT THIS WINDOW RIGHT HERE.

Q. AND I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 110, CAN YOU DESCRIBE TO THE JURY WHAT THAT INDICATES?

A. THIS WOULD BE THE DOOR, THE SECOND DOOR SHE ATTEMPTED TO GET OUT OF. ALSO IT WAS LOCKED, AND SHE WENT OVER TO THIS WINDOW AND OPENED IT AND CAME OUT RIGHT THERE. I WAS STANDING ON THE GROUND HERE WHEN SHE CAME OUT.

Q. AND ONCE SHE WAS PLACED IN YOUR VEHICLE, IF YOU COULD DESCRIBE ON STATE'S EXHIBITS 101 AND 102 WHERE YOU WENT FROM THERE WITH LIEUTENANT ROLLINS, WHERE YOU WENT AS FAR AS THE ENTRY.

A. OKAY. WE CAME AROUND TO THE BACKSIDE OF THE HOUSE. THE DOOR IS HERE. THIS IS THE DOOR THAT WAS BROKEN. WE ENTERED RIGHT HERE AND CLEARED THIS WHOLE FLOOR, GOING INTO EVERY ROOM.

Q. IF YOU WOULD, IF YOU COULD STEP AWAY JUST A

LITTLE BIT TO MAKE SURE THAT THE JURY CAN SEE.

THE COURT: ANYBODY ON THE JURY ON THE BACK ROW IF YOU NEED TO STAND, FEEL FREE TO DO IT SO THAT YOU CAN SEE.

MR. POPE: YOUR HONOR, PERHAPS ALSO NEXT TIME THEY COME IN THEY COULD SIT SEVEN AND SEVEN AND THAT WOULD BRING THEM IN ON THIS SIDE.

THE COURT: ALL RIGHT.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 108 AND ASK YOU TO INDICATE TO THE JURY, GET THEM ORIENTED AS TO WHAT THAT INDICATES.

A. ALL RIGHT, THIS AREA RIGHT HERE, IT'S A LITTLE HARD TO SEE BUT RIGHT HERE IS THE DOOR. RIGHT BEHIND IT IS THE WINDOW SHE CAME OUT, AND THIS IS THE DOOR THAT WE ENTERED RIGHT HERE.

Q. STATE'S EXHIBIT 107?

A. ALSO THE SAME. THIS IS THE DOOR THAT WE WENT IN. IT WAS OPEN.

Q. I'LL SHOW YOU STATE'S EXHIBIT 111.

A. THAT'S THE AREA THAT WE ENTERED THE HOUSE, AND BASICALLY THE WAY IT WAS WHEN WE FOUND IT WITH THE GLASS ON THE GROUND.

Q. IF YOU WOULD USING AGAIN 101 AND 102, IF YOU COULD DESCRIBE TO THE JURY WHERE YOU ENTERED AGAIN AND SHOW THEM HOW YOU WENT THROUGH THE

HOUSE.

A. WE CAME IN THIS DOOR HERE AND BASICALLY CLEARED THE AREA AS WE COME TO IT. THIS WAS AN OPEN ROOM, ALL OF THIS IS OPEN, THERE IS A SOFA AND STUFF HERE AND YOU CAN SEE ALL THE WAY THROUGH IT, SO WE CLEARED THAT ROOM BY ENTERING THIS ROOM. AND THEN WE WENT THROUGH AND CLEARED EACH OF THESE ROOMS AND THEN THE STAIRS, WE STARTED UP THE STAIRS TO GO TO THE UPSTAIRS.

Q. I'M GOING TO SHOW YOU NOW WHAT'S BEEN MARKED STATE'S EXHIBIT 116. DESCRIBE TO THE JURY WHAT THIS PICTURE DEPICTS.

A. THAT'S THE STAIRWAY FROM THE BOTTOM FLOOR TO THE TOP FLOOR.

Q. CAN YOU TELL THE JURY, IF YOU COULD, ONCE YOU ARRIVED AT THE TOP OF THE STAIRS -- SHOW FIRST ON THE DIAGRAM AND TELL THEM WHAT, IF ANYTHING, YOU ENCOUNTERED THERE.

A. WHEN YOU GO UP THE STAIRS, YOU COME UP RIGHT HERE AND YOU COME TO A HALLWAY, A BATHROOM AREA AND HALLWAY RIGHT HERE. WHEN WE COME AROUND RIGHT IN THIS AREA HERE, I ENCOUNTERED A BODY.

Q. IF YOU COULD, DESCRIBE IN DETAIL WHAT YOU OBSERVED TO THE JURY.

A. THERE APPEARED TO BE A MALE LAYING ON HIS

STOMACH. THE ONLY THING HE HAD ON WAS UNDERWEAR, A LARGE AMOUNT OF BLOOD SURROUNDING THE BODY; IT WAS ON THE WALLS AND THE CEILING SURROUNDING THE BODY.

Q. AFTER THAT OBSERVATION, WHAT DID YOU DO THEN?

A. OKAY, WE WERE GOING UP TO CLEAR THIS PART OF THE HOUSE, SO LIEUTENANT ROLLINS STAYED AT THIS AREA AND I STEPPED OVER THE BODY TO GO TO THIS AREA CLEARING THESE ROOMS, SO HE WAS BASICALLY WATCHING MY BACK ON THIS SIDE OF THE HOUSE AND I WENT DOWN AND CLEARED THESE ROOMS.

I WENT INTO THIS BEDROOM, ENTERED THIS BEDROOM AND FOUND A BODY BESIDE THE BED IN THIS AREA RIGHT HERE.

Q. IF YOU COULD, DESCRIBE FOR THE JURY THE CONDITION OF THAT BODY.

A. IT APPEARED TO BE A FEMALE. SHE WAS OFF THE BED HERE, SOME OF THE SHEETS WERE PULLED OFF ON TOP OF HER, BUT I COULD SEE SEVERAL LARGE SEVERE LACERATIONS AND A LOT OF BLOOD AROUND HER ALSO.

Q. AFTER DISCOVERING THE TWO BODIES, DID YOU ULTIMATELY CLEAR THE REST OF THE HOUSE?

A. THAT'S CORRECT. LIKE I SAID, ALL THESE ROOMS WERE CLEARED AND THEN WE CAME INTO THIS PART OF THE HOUSE, NOT THE GARAGE, BUT THE LIVING ROOM

DEN AND THE KITCHEN, ALL THE WAY UP INTO HERE. THEN WE SAW THERE WAS NOBODY ELSE OR NOTHING ELSE IN THE RESIDENCE, NO ONE AT ALL. WE WENT BACK DOWN THE STAIRS, AND WE WENT OUT THE SAME DOOR.

Q. AND YOU SAID YOU WENT IN, I BELIEVE, THE LIVING ROOM AND YOU ALSO WENT IN THE DEN AREA HERE, IS THAT CORRECT?

A. YES.

Q. NOW WHICH WAY DID YOU ENTER THE DEN AREA?

A. FROM BACK -- I CAME BACK DOWN THE HALL AND CAME IN THIS WAY AROUND LIKE THIS.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 118, THIS WOULD HAVE BEEN THE DOOR THAT YOU WERE COMING IN THROUGH COMING INTO THAT DEN; WOULD THAT BE CORRECT?

A. RIGHT, THIS WOULD BE THE HALLWAY HERE AND THIS IS COMING INTO THE DEN FROM THIS AREA RIGHT HERE. THAT PICTURE IS LOOKING AT THIS PART RIGHT HERE.

Q. WOULD YOU TELL THE JURY IN THIS PHOTO WHERE EARL'S BODY WOULD HAVE BEEN?

A. JUST BEHIND THIS DOORWAY ACTUALLY, IN THE HALLWAY.

Q. AND COMING THAT WAY, YOU ULTIMATELY CAME AND

CAME OUT OF THE OTHER SIDE OF THAT ROOM AND WENT INTO THE KITCHEN ALSO?

A. RIGHT, THAT'S GOING INTO THE KITCHEN WHICH WOULD BE LOOKING THIS WAY, COMING TO HERE.

Q. FINALLY I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 120, THAT WOULD BE COMING INTO THE KITCHEN; IS THAT CORRECT?

A. CORRECT. THIS IS THE DOOR IN THE GARAGE HERE AND THIS WOULD BE THE LAUNDRY ROOM. RIGHT IN THIS AREA WOULD BE THE WINDOW THAT MS. BRISSON COME OUT OF.

Q. AND DID YOU DETERMINE, STATE'S EXHIBIT 122, THAT IT WAS A KEY DEAD BOLT LOCK?

A. YES, SIR.

MR. HANCOCK: YOUR HONOR, I'M GOING TO OBJECT. THE SOLICITOR IS LEADING WITH EACH QUESTION.

THE COURT: I SUSTAIN THE OBJECTION. REPHRASE YOUR QUESTION.

Q. WOULD YOU TELL US WHAT STATE'S EXHIBIT 122 DEPICTS PLEASE?

A. THE INSIDE DEAD BOLT WHERE IT'S KEYED AND LOCKED.

Q. CAN YOU TELL US WHAT STATE'S EXHIBIT 121 DEPICTS?

A. THAT'S THE OTHER VIEW OF THE DOOR LOOKING FROM

THIS AREA BACK TOWARD THE DOOR HERE.

Q. I BELIEVE YOU CAN HAVE A SEAT.

(THE WITNESS RESUMED THE WITNESS STAND.)

Q. MR. MAGGART, YOU ALSO INDICATED -- YOU SAID YOU CLEARED THE HOUSE AND OTHER THAN THE TWO DECEDENTS AND, OF COURSE, MS. BRISSON WHO YOU FIRST ENCOUNTERED, THERE WAS NO ONE ELSE IN THE HOUSE?

A. NO, SIR.

Q. CAN YOU TELL THE JURY, AFTER YOU DID THAT AND SECURED THE HOUSE, WHAT DID YOU DO?

A. AT THAT POINT WE WENT OUT, MYSELF AND LIEUTENANT ROLLINS, WE TOOK EVIDENCE TAPE AND TAPED OFF THE WHOLE CURTILAGE, THE WHOLE YARD, HOUSE, RESIDENCE. WE GOT MS. BRISSON, IDENTIFIED HER, GOT HER VEHICLE OUT OF THE DRIVEWAY AND BACKED MY VEHICLE UP ONTO THE STREET AND PUT TAPE AROUND THE WHOLE CRIME SCENE.

Q. WAS ANYONE FROM YOUR DEPARTMENT CONTACTED TO FURTHER THE INVESTIGATION?

A. RIGHT, THE DETECTIVES WERE CALLED.

Q. AND FINALLY, YOU HAD INDICATED EARLIER THAT YOU HAD CALLED IN THE TAG OF THE CAR YOU SAW AT THE RESIDENCE. I'LL SHOW YOU STATE'S EXHIBITS 112, 113, 114 AND 115, MY UNDERSTANDING ALL OF WHICH

ARE IN EVIDENCE. IF YOU COULD LOOK AND TELL ME IF YOU CAN IDENTIFY THAT PICTURE.

A. YES, THAT'S THE VEHICLE THAT I RAN THE TAG ON THAT WAS PARKED OUT ON THE STREET.

Q. OKAY, I NOTICE IN SOME OF THOSE PHOTOS THERE'S LIKE A YELLOW STRIP. COULD YOU EXPLAIN TO THE JURY WHAT THAT IS?

A. THAT'S THE EVIDENCE TAPE. YOU CAN ALSO SEE IT AROUND THE YARD AND THERE WAS SOME PLACED AROUND THE CAR TO SECURE THE CRIME SCENE, TO KEEP OTHER PEOPLE OUT.

Q. AFTER SECURING THE CRIME SCENE AND OFFICERS COMING, DID YOU HAVE ANY FURTHER INVOLVEMENT IN THE INVESTIGATION?

A. NOT IN THE INVESTIGATION. THE ONLY THING I DID AFTER THAT WAS STAND AT THE ENTRANCE TO THE CRIME SCENE AND LOG DOWN ANYONE THAT ENTERED IT.

Q. OKAY. IF YOU WOULD, ANSWER ANY QUESTIONS THAT THE DEFENSE WOULD HAVE.

A. CERTAINLY.

MR. BOYD: NO QUESTIONS, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. THANK YOU.

MR. POPE: I WOULD ASK THAT THIS WITNESS BE EXCUSED, YOUR HONOR.

THE COURT: YOU MAY BE EXCUSED. IT'S QUARTER

AFTER, LUNCH WILL BE HERE AT 12:30, DO YOU HAVE ANOTHER WITNESS WE CAN TAKE?

MR. POPE: YES, SIR.

THE COURT: ALL RIGHT, LET'S DO THAT.

MR. POPE: THE STATE WOULD CALL DEBBIE BRISSON TO THE STAND, YOUR HONOR.

DEBBIE BRISSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. MS. BRISSON, IF YOU WOULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER PLEASE, MA'AM.

A. DEBBIE BRISSON, B-R-I-S-S-O-N.

Q. MS. BRISSON, WE'VE GOT A LOT OF STUFF IN HERE, YOU MAY NEED TO SPEAK UP JUST A LITTLE BIT PLEASE, MA'AM.

A. OKAY.

Q. COULD YOU TELL THE JURY WHAT YOUR OCCUPATION IS?

A. I'M AN OFFICE MANAGER AT A COUNSELING CENTER.

Q. AND YOU RESIDE HERE IN YORK COUNTY?

A. YES, I DO.

Q. WOULD YOU TELL THE JURY, DID YOU KNOW TERRY AND EARL ROBERTSON?

A. YES, I DID.

Q. COULD YOU TELL THEM APPROXIMATELY HOW LONG OR HOW YOU CAME TO KNOW THEM?

A. FOR ABOUT A YEAR AND A HALF, AND I KNEW TERRY FROM WORK, FROM WORKING WITH HER AND WE JUST BECAME GOOD FRIENDS AND DID THINGS TOGETHER, TALKED ON THE PHONE ALMOST EVERY DAY WHEN WE DIDN'T SEE EACH OTHER.

THE SUMMER BEFORE HER DEATH, MY DAUGHTER WAS GRADUATING HIGH SCHOOL AND GETTING READY TO GO OFF TO COLLEGE AND SHE HELPED ME A LOT WITH THAT KIND OF STUFF. AND WE JUST KIND OF DID THINGS TOGETHER AS FRIENDS AND WERE AT EACH OTHER'S HOMES AND THAT KIND OF STUFF.

Q. SO YOU WERE CO-WORKERS AND FRIENDS, BASICALLY?

A. YES.

Q. LET ME CALL YOUR ATTENTION BACK TO TUESDAY, NOVEMBER 25TH, 1997 AT APPROXIMATELY 10:00 O'CLOCK IN THE MORNING. DID YOU HAVE AN OPPORTUNITY TO RECEIVE A CALL FROM LINDA WEAVER CONCERNING TERRY?

A. YES, I DID.

Q. COULD YOU RELATE TO THE JURY, BASED ON THAT CONVERSATION, WHAT YOU DID?

A. WELL, I HAD ALSO BEFORE LINDA CALLED ME BEEN TRYING TO CALL TERRY AND REALIZED HER PHONE WAS

OFF THE HOOK BECAUSE SHE HAD CALLED ME AT HOME THE PREVIOUS NIGHT ABOUT 11:00 O'CLOCK AND LEFT ME A MESSAGE.

Q. WHEN YOU REALIZED HER PHONE WAS OFF THE HOOK, WHAT DO YOU MEAN BY THAT?

A. WELL, SHE HAD THE TELEPHONE VOICE MAIL, SO WHEN IT RINGS ONE TIME IT IMMEDIATELY CLICKS OVER TO VOICE MAIL AND YOU KNOW THEY'RE EITHER ON THE PHONE OR THE PHONE IS OFF THE HOOK. BUT I HAD CALLED SO MANY TIMES THAT I HAD JUST DETERMINED THAT IT WAS PROBABLY OFF THE HOOK AT THAT POINT.

Q. AND AFTER MAKING THOSE CALLS WHAT, IF ANYTHING, DID YOU DO?

A. AND THEN AFTER MRS. WEAVER CALLED AND HAD ALSO BEEN CALLING HER AND WAS CONCERNED, I WENT TO GO TO HER HOME TO CHECK ON HER AND SEE HOW SHE WAS AND GET HER UP OR WHATEVER.

Q. COULD YOU TELL THE JURY WHAT YOU OBSERVED WHEN YOU FIRST GOT THERE AS FAR AS WHAT YOU ACTUALLY DID WHEN YOU GOT THERE AT THE RESIDENCE?

A. WELL, WHEN I FIRST GOT THERE, TERRY'S CAR WAS IN THE GARAGE LIKE NORMAL. THE VAN WAS PARKED ON THE SIDE LIKE NORMAL, AND EARL'S CAR WAS GONE. SO, I JUST THOUGHT THAT TERRY HAD OVERSLEPT OR SOMETHING.

Q. YOU SAY EARL'S CAR, WHAT CAR WAS IT THAT EARL DROVE?

A. THE RED CAR.

Q. AT THAT POINT DID YOU GO TO ANY PARTICULAR DOOR? WHAT DOOR DID YOU GO TO?

A. WELL, I ALWAYS WENT TO THE CARPORT DOOR, THE ONE THAT LED INTO THE KITCHEN. SO, I WENT THERE AND KNOCKED AND RANG THE DOORBELL. AND SHE NEVER CAME TO THE DOOR. SO, I KNOCKED A COUPLE OF MORE TIMES AND SHE NEVER CAME TO THE DOOR.

ON A PRIOR OCCASION -- I JUST KNEW FROM A PRIOR OCCASION OF TALKING WITH HER, HER BASEMENT DOOR WAS DIRECTLY ABOVE HER BEDROOM, SO I JUST WENT AROUND THE HOUSE AND WENT TO THE BASEMENT DOOR TO KNOCK ON THE BASEMENT DOOR.

Q. AND WHAT WAS THE PURPOSE OF KNOCKING ON THE BASEMENT DOOR?

A. SO THAT SHE COULD HEAR ME.

Q. AND IF YOU WOULD, WHEN YOU GOT AROUND TO THE BACKSIDE OF THE HOUSE, WHAT DID YOU OBSERVE, WHAT DID YOU ENCOUNTER THERE?

A. WELL, THE BASEMENT DOOR IS AT THE OPPOSITE END FROM WHERE I ROUNDED THE HOUSE, SO IT TAKES YOU A WHILE TO GET OVER TO IT. WHEN I GOT CLOSER TO IT, I NOTICED THAT THE GLASS WAS BUSTED OUT OF

THE STORM DOOR, BUT THE OTHER DOOR WAS SHUT. AND SO I JUST OPENED THE DOOR AND WENT IN AND WENT UP THE STAIRS.

Q. OKAY. AND SO YOU WENT IN THROUGH THE DOWNSTAIRS AND WENT UP TO THE TOP OF THE STAIRS GOING INTO THE UPPER LIVING PART, IS THAT CORRECT?

A. UH HUH.

Q. IF YOU COULD, WHEN YOU GOT TO THE TOP OF THE STAIRS, IF YOU COULD, RELATE TO THE JURY WHAT YOU OBSERVED.

A. WELL, IT WAS FAIRLY DARK GOING UP THE STEPS BECAUSE I DIDN'T TURN ON ANY LIGHTS OR ANYTHING, IT WAS JUST THE DAYLIGHT SHINING THROUGH THE WINDOW. SO WHEN I GOT TO THE TOP OF THE STEPS AND OPENED THE BASEMENT DOOR -- THE BASEMENT DOOR OPENS BACK AGAINST THE BATHROOM WHICH KEPT ANY LIGHT FROM COMING OUT OF THERE, SO IT WAS STILL KIND OF DARK. I MEAN I WAS JUST GOING AROUND THE CORNER TO HEAD TO TERRY'S BEDROOM.

Q. AND WHAT WAS YOUR PURPOSE IN GOING TO TERRY'S BEDROOM?

A. TO WAKE HER UP.

Q. OKAY.

A. AND WHEN I OPENED THE BASEMENT DOOR AND JUST STARTED TO STEP FORWARD, I STUMBLED ONTO

SOMETHING. AND WHEN I LOOKED DOWN, IT WAS A MALE BODY LAYING THERE WITH JUST UNDERWEAR ON, LAYING FACE DOWN ON THE FLOOR.

Q. DID YOU RECOGNIZE THE MALE AT THAT TIME?

A. I WOULDN'T SAY THAT I ACTUALLY RECOGNIZED -- I MEAN AT THAT POINT I GUESS I WAS JUST IN SHOCK, SO I'M NOT SURE. I MEAN I GUESS I ASSUMED THAT IT WAS EARL, BUT I DIDN'T INVESTIGATE TO FIGURE OUT IF IT WAS EARL OR NOT.

Q. ALL RIGHT. WELL, BASED ON THAT, AFTER ENCOUNTERING HIS BODY, WHAT DID YOU DO THEN?

A. I KNEW WHERE THE CLOSEST PHONE WAS, SO I HAD TO LIKE STEP OVER HIS BODY TO GO INTO THE DEN TO GO TO THE PHONE AND WHEN I REACHED THE DEN WHICH WAS JUST AROUND THE CORNER, THE KITCHEN PHONE WAS STRETCHED -- IT HAS A LONG CORD, AND IT WAS STRETCHED OUT AND IT WAS LIKE LAYING UNDER THE COUCH CUSHION OR ON THE COUCH WITH THE CUSHION OVER IT OR SOMETHING, SO I JUST PICKED UP THE PHONE, WENT TO THE WALL AROUND THE CORNER AND TRIED TO GET THE PHONE TO START BACK, YOU KNOW, IT HAD BEEN OFF THE HOOK, SO IT WASN'T IMMEDIATELY GIVING A DIAL TONE. SO, I WAS JUST TRYING TO GET THE PHONE TO WORK AT THAT POINT.

Q. OKAY. LET ME GO BACK, WHEN YOU STEPPED AROUND

AND CAME INTO THE DEN, THE PHONE ACTUALLY IS HOOKED IN THE KITCHEN ---

A. IT'S A WALL PHONE; YES, SIR.

Q. BUT YOU'RE SAYING IT WAS STRETCHED INTO THE DEN AND ONTO THE COUCH?

A. RIGHT, THE RECEIVER PART.

Q. I'LL SHOW YOU STATE'S EXHIBIT 119 AND ASK YOU IF YOU COULD LOOK AT THAT AND TELL ME WHAT THAT REPRESENTS?

A. IT'S STANDING IN THE KITCHEN WHERE THE PHONE IS ON THE WALL LOOKING INTO THE DEN AT THE SOFA WHERE I FOUND THE BODY.

Q. SO, THAT'S THE ROOM THAT YOU CAME IN THROUGH?

A. YES.

Q. AND I'LL SHOW YOU STATE'S EXHIBIT 117 AND ASK IF YOU COULD IDENTIFY THAT?

A. THAT'S COMING FROM THE WAY I CAME AND THE CORD WAS COMING THROUGH THIS DOOR AND WAS ON THIS SOFA.

Q. FINALLY I'LL ASK YOU, STATE'S EXHIBIT 121, CAN YOU TELL ME WHAT THAT DEPICTS?

A. THAT'S LOOKING BACK FROM THE LAUNDRY ROOM TO THE KITCHEN TABLE GOING BACK TO WHERE THE PHONE IS ON THE WALL TO THE CARPORT DOOR THAT I FIRST WENT TO.

Q. OKAY, AND ONE MORE. STATE'S EXHIBIT 118, IF YOU WOULD LOOK AT THAT.

A. THAT'S THE DOOR THAT I ENTERED THROUGH TO GO INTO THE DEN.

Q. OKAY. AND ON 118, WHERE WOULD EARL HAVE BEEN IN THAT?

A. JUST RIGHT AROUND THAT CORNER. LIKE THE BASEMENT DOOR, THAT DOOR AND THE HALLWAY ALL CONNECT TOGETHER.

Q. OKAY. YOU WERE TELLING THE JURY, ONCE YOU GOT TO THE PHONE, YOU SAID IT WAS ON THE COUCH AND YOU TRIED TO GET A DIAL TONE, WHAT DID YOU DO THEN?

A. I CALLED BACK TO MY WORK TO TELL THEM, I MEAN, YOU KNOW, I DON'T KNOW EXACTLY WHY -- I MEAN, YOU'RE IN SHOCK AND YOU DON'T KNOW, BUT I JUST IMMEDIATELY CALLED BACK TO MY WORK TO TELL THEM THAT SOMEBODY NEEDED TO COME OVER THERE AND GET ME. AND SO THEY TOLD ME TO CALL 911.

WHILE I WAS TALKING ON THE PHONE TO THEM, I WAS TRYING TO SEE IF I COULD GET THE DOOR OPEN BECAUSE ALL I WANTED TO DO WAS JUST GET OUT OF THE HOUSE TO OUTSIDE. AND THE DOOR WOULDN'T OPEN.

THEY TOLD ME TO CALL 911, SO I HUNG UP THE PHONE

AND WAS GOING TO CALL 911. I TRIED THE DOOR AGAIN AND THEN THAT'S WHEN A DETECTIVE WAS WALKING UP -- I MEAN I SAW THE DETECTIVE CAR, A POLICE CAR PULL UP AND A DETECTIVE WAS GETTING OUT OF THE CAR.

SO THEN I DIDN'T CALL 911, I WAITED FOR HIM TO GET TO THE DOOR AND THEN I TOLD HIM THAT I COULD NOT GET OUT.

Q. AND THEN WHAT DID YOU DO?

A. HE SAW THROUGH TO THE LAUNDRY ROOM DOOR AND SAW THAT THERE WAS ANOTHER OUTSIDE ENTRANCE DOOR, SO HE MOTIONED FOR ME TO GO AROUND TO THAT DOOR.

SO, I WENT AROUND TO THAT DOOR, AND HE PROCEEDED AROUND TO THAT DOOR. HE GOT TO THAT DOOR AND I GOT TO THAT DOOR, AND WE COULDN'T -- IT WOULDN'T OPEN EITHER. WE COULDN'T GET THEM OPEN BECAUSE THEY WERE DEAD BOLTS WITH THE KEY FOR THE INSIDE AND THERE WAS NO KEY. SO, I WAS STUCK IN THERE.

AND SO THEN HE MOTIONED TO THE WINDOW BEHIND THE KITCHEN TABLE, AND FINALLY I GOT THE WINDOW OPEN, AND I PRETTY MUCH DOVE OUT ONTO HIM.

Q. WHEN YOU DOVE OUT THE WINDOW, WHY DIDN'T YOU JUST GO BACK THE WAY THAT YOU CAME IN?

A. BECAUSE I COULDN'T -- I MEAN I WOULD HAVE HAD TO GO BACK BY THE BODY AND I COULD NOT DO THAT.

Q. LET ME ASK YOU, THE TIME THAT YOU WERE IN THE HOUSE, OTHER THAN THE STUMBLING INTO THE BODY, DID YOU EVER TOUCH OR CHANGE EARL'S BODY OR DO ANYTHING TO EARL'S BODY?

A. NO, SIR.

Q. DURING THE TIME YOU WERE IN THE HOUSE, DID YOU EVER ENCOUNTER TERRY AT ALL?

A. NO, SIR.

Q. DID YOU EVER TOUCH TERRY OR HER BODY IN ANY WAY?

A. NO, SIR.

Q. IF YOU WOULD PLEASE, MA'AM, ANSWER ANY QUESTIONS THE DEFENSE MIGHT HAVE.

CROSS EXAMINATION BY

MR. HANCOCK:

Q. MS. BRISSON, I ONLY HAVE A FEW QUESTIONS. YOU WERE THE OFFICE MANAGER FOR WHOM, FOR CAROLINA COUNSELING, IS THAT THE NAME?

A. YES, SIR.

Q. AND HOW LONG WERE YOU THEIR OFFICE MANAGER?

A. FIVE OR SIX YEARS.

Q. AND DID YOU WRITE THE PAYCHECKS?

A. NO, SIR.

Q. DID YOU HANDLE ANY OF THE FINANCES OF THE BUSINESS?

A. I MEAN I GOT THE STUFF READY FOR EVERYTHING, BUT

I DIDN'T ACTUALLY SIGN ANY CHECKS.

Q. AND DID YOU SUBMIT INSURANCE CLAIM FORMS FOR THE PATIENTS OR DO ANYTHING LIKE THAT?

A. WELL, WHEN I FIRST WORKED THERE I DID, BUT THEN WE CONTRACTED A BILLING SERVICE LATER BECAUSE IT WAS JUST -- I MEAN I WAS THE ONLY -- WHEN I FIRST STARTED, I WAS THE ONLY OFFICE STAFF PERSON, SO IT BECAME TOO MUCH FOR ME TO DO, SO WE HIRED A BILLING SERVICE.

Q. WAS TERRY ROBERTSON AN EMPLOYEE OF CAROLINA COUNSELING?

A. NOT WHEN I FIRST CAME TO KNOW HER.

Q. DID SHE EVER BECOME AN EMPLOYEE?

A. YES, LATER ON.

Q. AND WAS SHE PAID THROUGH CAROLINA COUNSELING OR DO YOU KNOW?

A. I THINK SO.

Q. WAS SHE A PATIENT OF DR. MCMEEKIN'S, ARE YOU AWARE OF THAT?

A. YES, SIR.

Q. AND SHE WAS ALSO BEING COUNSELED EXTENSIVELY BY SKIP MEYER; IS THAT CORRECT?

A. YES, SIR.

Q. DO YOU KNOW HOW MANY TIMES SHE WAS IN THERE AND HAD COUNSELING SESSIONS WITH MR. MEYER OVER A

PERIOD OF, SAY, A YEAR?

A. IN MY OFFICE?

Q. YES.

A. HARDLY NEVER ---

MR. POPE: YOUR HONOR, I'M GOING TO OBJECT TO THE RELEVANCE OF THIS. I UNDERSTAND THE OCCUPATIONAL THING, BUT WHAT BEARING THIS HAS ON THE GUILT PHASE OF THIS CASE, I DON'T UNDERSTAND. I OBJECT TO THE RELEVANCE.

THE COURT: I SUSTAIN THE OBJECTION.

Q. YOU INDICATED THAT YOU CALLED AND YOU LATER WENT TO THE HOUSE AND WENT DOWNSTAIRS BECAUSE TERRY HAD NOT WAKED UP; IS THAT CORRECT?

A. WELL, SHE WASN'T ANSWERING THE PHONE.

Q. SHE WASN'T ANSWERING THE PHONE. YOU FIGURED THAT SHE JUST HAD OVERSLEPT?

A. UH HUH.

Q. WAS SHE NORMALLY DIFFICULT TO WAKE UP?

A. NO, NOT UNLESS SHE HAD BEEN UP HALF THE NIGHT FOR SOME REASON. I MEAN I HAD TALKED TO HER LATE AT NIGHT BEFORE BECAUSE SHE WAS UPSET ABOUT THINGS THAT HER SONS HAD DONE OR SOMETHING, AND SHE WOULD BE UP AND I KNEW THAT ONE OF HER SONS HAD JUST COME BACK HOME ---

Q. EXCUSE ME. I'LL ASK YOU TO ANSWER MY QUESTION. MY QUESTION WAS, WAS IT OFTEN DIFFICULT FOR HER

TO WAKE UP AND YOU WOULD WAKE HER UP?

A. NOT PARTICULARLY. I MEAN MAYBE ON OCCASION.

Q. I HAVE NOTHING FURTHER.

MR. POPE: NOTHING FURTHER, YOUR HONOR.

THE COURT: YOU CAN STEP DOWN AND BE EXCUSED, WE APPRECIATE YOUR TIME.

MEMBERS OF THE JURY PANEL, IT'S TIME FOR US TO TAKE OUR LUNCH BREAK AND WHAT WE'RE GOING TO TRY TO DO IS TAKE ABOUT AN HOUR.

DURING THIS LUNCH BREAK I'M GOING TO LET THE SECURITY PEOPLE WHO ARE GOING TO BE WORKING WITH YOU GIVE YOU A LITTLE ORIENTATION ABOUT THINGS. SO, IF YOU NEED A LITTLE MORE THAN AN HOUR, THAT WILL BE FINE. I'LL CHECK IN AN HOUR AND IF YOU'RE NOT READY, AND YOU STILL NEED A LITTLE MORE TIME, LET ME KNOW. BUT SINCE WE'RE HAVING LUNCH BROUGHT IN, I THINK THAT WE CAN USUALLY STICK TO 45 MINUTES OR AN HOUR TO HELP US MOVE ALONG.

SO, JUST GO INTO THE JURY ROOM; FOLLOW THE BAILIFF'S; HAVE YOUR LUNCH; GET YOUR ORIENTATION AND WE'LL START BACK AS CLOSE TO 1:30 AS PRACTICAL.

IN CAMERA:

THE COURT: MR. HANCOCK, I SUSTAINED THAT OBJECTION AND I'M SURE MS. BRISSON IS AROUND. I SHOULD HAVE GIVEN YOU THE OPPORTUNITY TO MAKE A PROFFER IF YOU WISH. DO YOU WISH TO GET HER BACK IN HERE AND MAKE A

PROFFER?

MR. HANCOCK: I DON'T THINK WE NEED TO, YOUR HONOR.

THE COURT: ALL RIGHT. PLEASE BE READY AT 1:30.

AFTER THE LUNCHEON RECESS IN CAMERA:

THE COURT: IS THE STATE READY TO PROCEED?

MR. POPE: YOUR HONOR, DO YOU WANT TO TAKE UP THE DENNO MATTER NOW?

THE COURT: IS THE DEFENSE READY TO PROCEED?

MR. HANCOCK: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT, WHY DON'T WE GO AHEAD AND DO THAT?

MR. POPE: THE STATE WOULD CALL RALPH MISLE TO THE STAND.

RALPH MISLE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. DETECTIVE MISLE, IF YOU WOULD, STATE YOUR NAME AND OCCUPATION TO THE COURT, PLEASE.

A. YES, MY NAME IS RALPH MISLE. I AM PRESENTLY A CAPTAIN WITH THE YORK COUNTY SHERIFF'S DEPARTMENT.

Q. WOULD YOU TELL THE COURT HOW LONG YOU'VE BEEN WITH THE SHERIFF'S DEPARTMENT?

A. I'VE BEEN WITH THE SHERIFF'S DEPARTMENT FOR 10 YEARS, YOUR HONOR.

Q. I CALL YOUR ATTENTION BACK TO NOVEMBER OF 1997, IN WHAT CAPACITY WERE YOU WITH THE SHERIFF'S DEPARTMENT AT THAT TIME?

A. I WAS AN INVESTIGATOR IN THE CRIMINAL INVESTIGATION DIVISION, CRIMES AGAINST PERSONS.

Q. IN PARTICULAR, DID YOU HAVE AN OPPORTUNITY TO INVESTIGATE THE CRIME CONCERNING TERRY AND EARL ROBERTSON?

A. YES, SIR, I DID.

Q. AS PART OF YOUR DUTIES, DID YOU HAVE THE OPPORTUNITY TO TRAVEL WITH BOBBY BROWN FROM SLED, DID YOU GO UP TO PHILADELPHIA TO FURTHER THE INVESTIGATION?

A. YES, ON NOVEMBER 26TH, WEDNESDAY DAY OF THE WEEK, 1997.

Q. AND IN GOING UP THERE, DID YOU HAVE AN OPPORTUNITY TO TALK TO THE DEFENDANT, JAMES ROBERTSON?

A. YES, SIR, I DID.

Q. DO YOU SEE HIM HERE IN THE COURTROOM TODAY?

A. YES, HE'S SITTING AT THE DEFENSE TABLE.

Q. AND WHEN YOU TALKED TO HIM, THAT WAS IN THE COURSE OF THE INVESTIGATION CONCERNING HIS

PARENTS' DEATH?

A. THAT'S CORRECT.

Q. DID YOU HAVE AN OPPORTUNITY TO READ HIM HIS RIGHTS AT THAT TIME?

A. I DID.

Q. OKAY, AND WHAT MANNER DID YOU -- WHAT DID YOU USE, A CARD OR A FORM OR ---

A. NO, WE HAD A FORM THAT WE USE, IT'S A STATE LAW ENFORCEMENT DIVISION FORM.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 125 FOR IDENTIFICATION AND ASK IF YOU WOULD TAKE A LOOK AT THAT AND TELL ME IF YOU CAN IDENTIFY IT.

A. YES, SIR, MR. POPE, THIS IS THE FORM THAT I USED AND READ TO MR. ROBERTSON, COMMONLY REFERRED TO AS MIRANDA RIGHTS.

Q. I'M NOT GOING TO ASK YOU TO READ IT VERBATIM BUT IF YOU WOULD, PASS IT UP TO THE COURT, PLEASE.

(THE CARD WAS GIVEN TO THE COURT)

Q. DETECTIVE MISLE, WHO WAS PRESENT WHEN YOU READ THE RIGHTS TO JAMES ROBERTSON?

A. SPECIAL AGENT BOBBY BROWN WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

Q. AND WHERE DID THIS TAKE PLACE?

A. THIS TOOK PLACE IN THE PHILADELPHIA POLICE

STATION.

Q. AND DID YOU RELAY EACH OF THOSE RIGHTS TO HIM THAT'S LISTED ON THAT STATE'S EXHIBIT?

A. YES, SIR, I DID.

Q. DID HE INDICATE TO YOU THAT HE UNDERSTOOD THOSE RIGHTS?

A. YES, SIR, HE DID.

Q. DID HE INDICATE BY SIGNATURE AND ORALLY THAT HE INTENDED TO WAIVE HIS RIGHTS?

A. THAT'S CORRECT; YES, SIR.

Q. OKAY. COULD YOU TELL THE COURT ---

THE COURT: BEFORE WE GO ANY FURTHER, I NOTICE THAT MR. HANCOCK IS NOT HERE.

MR. BOYD: YOUR HONOR, HE WENT OUT TO GET SOMETHING. I CAN TAKE CARE OF WHAT'S GOING ON.

THE COURT: OKAY; GO AHEAD.

Q. WHEN HE WAIVED THESE RIGHTS TO YOU, DID YOU HAVE A CHANCE TO OBSERVE HIS DEMEANOR?

A. YES, SIR, I DID. HE WAS IN FULL CONTROL OF HIS FACULTIES, HE WAS ALERT. AS A MATTER OF FACT, HE WAS VERY RELAXED SITTING IN A RELAXED MODE, SLUMPED BACK IN HIS CHAIR, HIS FEET WERE OUT IN FRONT OF HIM.

Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS?

A. NO, SIR, HE DID NOT.

Q. BASED ON YOUR INVESTIGATION AT THAT TIME, DID YOU HAVE ANY KNOWLEDGE OF ANY PRIOR INVOLVEMENT THAT HE HAD HAD WITH THE LAW?

A. YES, I HAD.

Q. AT THE TIME THAT YOU WERE TALKING TO HIM AND READING HIM HIS RIGHTS, DID YOU OR OFFICER BROWN PROMISE HIM ANYTHING OR THREATEN HIM IN ANY MANNER OF LENIENCY OR ANYTHING OF THAT NATURE?

A. NO, SIR, THAT WAS NOT AN ISSUE.

Q. OKAY. AND BASED ON THAT AND BASED ON THE WAIVER OF RIGHTS AND FROM WHAT YOU OBSERVED DID THIS STATEMENT HE GAVE YOU APPEAR TO BE FREE AND VOLUNTARY?

A. YES, SIR, IT WAS.

Q. WOULD YOU RELATE TO THE COURT THE SUBSTANCE OF WHAT HE TOLD YOU AT THAT TIME?

A. AT THAT TIME HE TOLD ME THAT WHEN HE LEFT ROCK HILL THAT HIS PARENTS WERE ALIVE.

MR. POPE: YOUR HONOR, AS TO THAT HEARING, THAT WOULD BE THE ONLY STATEMENT THAT WILL BE TENDERED. AT THAT POINT THE DEFENDANT ASSERTED HIS RIGHTS. I HAVE INSTRUCTED THE OFFICER THAT THAT WILL NOT BE MENTIONED IN FRONT OF THE JURY, THAT HE WOULD JUST MERELY RELATE WHAT THE STATEMENT WAS. THAT WOULD BE AS TO THE FIRST STATEMENT, YOUR HONOR.

THE STATEMENT THAT WE INTEND TO INTRODUCE THROUGH DETECTIVE MISLE'S TESTIMONY.

AS I INDICATED, AND I CAN DO IT ONE OF TWO WAYS, THERE IS A SECOND STATEMENT BUT IN AN ABUNDANCE OF CAUTION I WILL NOT USE IT IN THE CASE IN CHIEF. I THINK IT WOULD BE PROPERLY ADMISSIBLE; HOWEVER, DUE TO THE CONCERN ABOUT THE ATTORNEY BEING APPOINTED FOR THE EXTRADITION PROCEEDINGS, IN AN ABUNDANCE OF CAUTION I WILL NOT GO THERE. HOWEVER, IT WOULD BE SUBJECT TO USE AS CROSS EXAMINATION SHOULD THE DEFENDANT TESTIFY TO THE CONTRARY IF THE COURT DETERMINES IT'S A VOLUNTARY STATEMENT.

SO, AT THE APPROPRIATE TIME, WHETHER NOW OR AFTER CROSS ON THE FIRST STATEMENT, I WILL BE GLAD TO GO ALSO THROUGH THE SECOND STATEMENT, YOUR HONOR.

THE COURT: ANY CROSS EXAMINATION?

CROSS EXAMINATION BY

MR. BOYD:

Q. WHEN DID YOU TALK TO MR. ROBERTSON ON THAT OCCASION?

A. IT WAS ON NOVEMBER 26TH, 1997, THE TIME WAS APPROXIMATELY 6:45 P.M.

Q. 6:45 P.M.?

A. YES, SIR.

Q. AT THAT TIME DO YOU KNOW HOW LONG HE HAD ALREADY BEEN IN CUSTODY OF LAW ENFORCEMENT?

A. HE WAS APPREHENDED ON THE 25TH AT APPROXIMATELY 8:30 P.M.

Q. 8:30 P.M.?

A. YES, SIR.

Q. SO, HE HAD BEEN IN CUSTODY APPROXIMATELY 22 HOURS?

A. YES, SIR.

Q. OKAY. DO YOU KNOW IF ANY OTHER LAW ENFORCEMENT OFFICERS HAD TALKED TO HIM BEFORE THAT TIME?

A. YES, SIR, THE PHILADELPHIA POLICE DEPARTMENT HAD TO SPEAK TO HIM.

Q. OF COURSE, YOU WEREN'T PRESENT DURING THOSE CONVERSATIONS WERE YOU?

A. NO, SIR.

Q. DO YOU KNOW WHETHER OR NOT HE HAD SAID ANYTHING ABOUT WANTING AN ATTORNEY TO THOSE OFFICERS?

A. I DON'T RECALL, SIR.

Q. YOU DON'T RECALL?

A. I DON'T RECALL. I'D HAVE TO REFRESH MY MEMORY FROM MY NOTES, BUT JUST SITTING HERE THINKING ABOUT IT, I CAN'T SAY.

Q. WELL, YOU WEREN'T THERE.

A. NO, I WASN'T THERE.

Q. SO, YOU DON'T KNOW WHAT TRANSPIRED ---

A. NO, AND IF THEY TOLD ME, I'VE FORGOTTEN WHAT WAS

SAID.

Q. THANK YOU. THAT'S ALL I HAVE.

MR. POPE: MAY IT PLEASE THE COURT, DO YOU WANT TO ---

THE COURT: DO YOU WANT TO DO THAT NOW OR WAIT UNTIL WE ---

MR. POPE: WE CAN WAIT UNTIL SOME LATER TIME, YOUR HONOR, AND IF IT COMES UP, DO IT THEN.

THE COURT: I'D RATHER TAKE IT ONE AT A TIME. LET'S JUST WAIT AND SEE IF AND WHEN THAT COMES UP, AND WE WILL DEAL WITH IT AT THAT TIME.

MR. POPE: YOUR HONOR, IT WOULD COME UP, IF AT ANY TIME, IT WOULD BE THE CROSS EXAMINATION OF THE DEFENDANT.

THE COURT: ALL RIGHT. IF THAT'S THE CASE, WE BETTER GO AHEAD AND DO IT NOW THEN. NO ONE ASKED TO SEE THIS ON BEHALF OF THE DEFENSE, IT'S NUMBER 125 FOR I.D., I'M PLACING IT IN THE RECORD AS A COURT'S EXHIBIT FOR PURPOSES OF THIS HEARING. IT'S THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION'S YOUR RIGHTS. DO YOU WANT TO SEE IT?

MR. BOYD: I'VE ALREADY SEEN IT, YOUR HONOR.

THE COURT: ALL RIGHT, LET'S GO INTO THE SECOND ONE.

MR. POPE: YOUR HONOR, ALSO FOR THE SECOND ONE, I'LL SHOW THE DEFENSE, I BELIEVE THEY HAVE A COPY OF THESE.

REDIRECT EXAMINATION BY

MR. POPE:

Q. DETECTIVE MISLE, DID YOU ALSO ALONG WITH INVESTIGATOR TIM HAGER HAVE AN OPPORTUNITY TO TALK TO THE DEFENDANT AFTER HE ARRIVED HERE FROM EXTRADITION HERE AT YORK COUNTY?

A. YES, SIR, WE DID.

Q. AND IN DISCUSSING -- YOU HAD AN OPPORTUNITY TO APPROACH HIM AND DISCUSS THE CASE WITH HIM AT THAT TIME?

A. YES, SIR.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 126 FOR IDENTIFICATION AND ASK YOU TO TAKE A LOOK AT THAT AND TELL ME WHAT THAT IS.

A. THIS IS A WAIVER OF RIGHTS FORM THAT IS IN MY HANDWRITING AND IT WAS PRESENTED TO MR. ROBERTSON AT THE DETENTION CENTER ON THE SECOND DAY OF MARCH, 1998 AT APPROXIMATELY 8:30 IN THE MORNING -- 8:35 IN THE MORNING.

Q. OKAY. AND WHAT WAS THE CIRCUMSTANCES UNDER WHICH HE WAS APPROACHED AT THIS TIME?

A. LIEUTENANT HAGER AND MYSELF WANTED TO APPROACH MR. ROBERTSON WITH SOME INVESTIGATORY QUESTIONS IN RELATION TO THE CASE.

Q. AND WHERE DID THIS ACTUALLY TAKE PLACE?

A. THIS TOOK PLACE IN AN INTERVIEW ROOM IN THE DETENTION CENTER NEAR THE BOOKING AREA.

Q. IN THIS CASE HE WAS CLEARLY IN CUSTODY AS HE WAS IN THE FIRST INSTANCE?

A. THAT'S CORRECT, HE WAS.

Q. AND WHO WAS PRESENT WHEN HE WAS READ THESE RIGHTS?

A. MYSELF AND LIEUTENANT HAGER.

Q. DID YOU OR LIEUTENANT HAGER THREATEN HIM OR PROMISE HIM ANYTHING OR GIVE HIM A HOPE OF REWARD IF HE WOULD COOPERATE?

A. NO, SIR.

Q. DID HE APPEAR TO BE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR ANYTHING OF THAT NATURE?

A. NO, SIR.

Q. THE RIGHTS THAT YOU READ TO HIM, DID HE APPEAR TO UNDERSTAND THEM?

A. YES, SIR. I ROUTINELY READ EACH ONE INDIVIDUALLY AND I ASK FOR ACKNOWLEDGEMENT FOR AN UNDERSTANDING OF EACH.

Q. AND DID HE SIGN ON THERE THAT HE UNDERSTOOD THOSE RIGHTS?

A. YES, SIR, HE DID.

Q. AND DID HE WAIVE THOSE RIGHTS TO YOU?

A. YES, SIR, HE DID.

Q. NOW THERE IS A PLACE FOR A WRITTEN STATEMENT, DID HE GIVE YOU A WRITTEN STATEMENT?

A. NO, HE DID NOT GIVE US A WRITTEN STATEMENT.

Q. I'LL HAND THIS UP TO THE COURT, IT WILL BE STATE'S EXHIBIT 126. DETECTIVE MISLE, IF YOU COULD, RELATE TO THE COURT THE SUBSTANCE OF THE CONVERSATION THAT WAS HAD WITH THE DEFENDANT.

A. I'LL READ FROM THIS FOLLOW-UP, MR. POPE. SUBJECT ROBERTSON WAS AT YORK COUNTY DETENTION CENTER WHEN HE WAS INTERVIEWED BY LIEUTENANT HAGER AND DETECTIVE MISLE. SUBJECT WAS ADVISED OF HIS RIGHTS AND STATED TO OFFICERS THAT HE WOULD TALK WITH US BUT THERE WERE CERTAIN ASPECTS OF THE CASE THAT HE WOULD NOT DISCUSS. WE COVERED ALL ASPECTS OF HIS PRIOR INCARCERATION, HABITS IN REFERENCE TO THE USE OF ALCOHOL AND DRUGS AND TO THE RELATIONSHIP WITH HIS PARENTS. HE STATED TO US THAT DURING HIS TIME IN PRISON HIS MOM WOULD COME TO SEE HIM OFTEN AND WOULD SEND HIM ITEMS VIA THE MAIL SYSTEM. THESE ITEMS WOULD CONSIST OF WRITING PADS AND PENS. HE STATED THAT HIS MOM WOULD VISIT ON A REGULAR BASIS AND THAT THEIR RELATIONSHIP WAS PRETTY GOOD. HE STATED THAT HE AND HIS FATHER DID NOT GET ALONG VERY WELL BUT

SEEMED TO HAVE WORKED OUT A SOLUTION TO THEIR RELATIONSHIP. HE STATED THAT HE WAS LOOKING FORWARD TO MOVING IN WITH HIS PARENTS AND THAT THINGS WERE WORKING OUT BETWEEN THEM. HE WOULD NOT TALK ABOUT THE INVESTIGATION EXCEPT TO SAY THAT THERE WERE ONLY TWO PEOPLE IN THE WORLD THAT KNEW WHAT WENT ON IN THE HOUSE ON THAT MORNING AND THAT WAS MEREDITH MOON AND HIMSELF. HE STATED THE REAL TRUTH OF THE NIGHT WOULD COME OUT AT THE RIGHT TIME.

AND THERE IS A FOLLOW-UP STATEMENT ALSO PREPARED STEMMING FROM THE SAME INTERVIEW. DURING OUR CONVERSATION WITH MR. ROBERTSON THE QUESTION WAS ASKED OF HIM HOW HE FELT THE ITEMS FROM HIS HOME HAD COME TO BE FOUND AT A DUMPSTER AT A MARYLAND REST AREA. ROBERTSON STATED TO OFFICERS THAT HE DID NOT KNOW WHAT WAS IN THE BAG. THAT MEREDITH HAD JUST TOLD HIM TO GET THE BAG OUT OF THE TRUNK OF THE CAR AND THROW IT AWAY. HE STATED THAT IT WAS A PLASTIC BAG AND THAT WAS ALL HE KNEW ABOUT IT. HE DID NOT KNOW HOW OR WHY IT GOT INTO THE TRUNK OF THE CAR.

Q. I NOTICE THAT SECOND MEMORANDUM OF THE INTERVIEW WAS DATED 3-28, THE FIRST DATED 3-2. WAS THIS TWO DIFFERENT INTERVIEWS?

A. NO, SIR, THAT'S A TYPO. IF YOU NOTICE, THE TIME IS IDENTICAL, BOTH TIMES ARE 08:35 IN THE MORNING. IT'S JUST A TYPO.

Q. SO, IT'S THE SAME DATE AS THE EXHIBIT THE COURT HAS?

A. YES, SIR. WE RAN OUT OF SPACE ON THIS ONE AND I CONTINUED ON THE OTHER PAGE.

Q. AGAIN, DID YOU THREATEN THE DEFENDANT OR PROMISE HIM ANY HOPE OF REWARD FOR HIM TO GIVE YOU THIS STATEMENT?

A. NO, SIR.

Q. YOUR HONOR, THAT WOULD BE THE PROFFER AS FAR AS THIS GOES. BUT IT IS THE STATE'S INTENT TO INTRODUCE THE FIRST ONE AND NOT TO GO INTO THE SECOND ONE IN THIS PHASE.

THE COURT: ALL RIGHT, THE SECOND ONE IS SUPPOSED TO BE DATED 3-22?

A. THESE STATEMENTS HERE, YOUR HONOR?

THE COURT: WELL, I DON'T HAVE THE STATEMENTS, I'VE JUST GOT HIS MIRANDA FORM.

A. THE MIRANDA RIGHTS HAS THE RIGHT DATE, 3-2-98; THAT IS THE CORRECT DATE.

THE COURT: OKAY. ANY QUESTIONS BY MR. BOYD?

MR. BOYD: IF THE STATE IS NOT SEEKING TO INTRODUCE THOSE STATEMENTS, I HAVE NO QUESTIONS.

THE COURT: WELL, TO BE CLEAR, THEY MAY AT SOME POINT WISH TO USE THEM IN CROSS EXAMINATION.

MR. BOYD: I UNDERSTAND THAT.

THE COURT: YOU DO? ALL RIGHT. YOU MAY STEP DOWN. I DON'T WANT TO PUT A SIGN ON THIS DOOR SAYING DO NOT ENTER BUT I THINK JUST ABOUT EVERYBODY IN THIS BUILDING KNOWS THAT THERE IS A TRIAL GOING ON IN HERE. AND I DON'T KNOW WHO THEY ARE IDENTIFIED WITH, BUT IF I FIND PEOPLE COMING IN AND OUT OF THAT DOOR AND THEY KNOW THAT THE TRIAL IS GOING ON, I'M GOING TO DO SOMETHING ABOUT IT. SO, IF ANYBODY IS CONNECTED WITH EITHER SIDE, PLEASE LET THEM KNOW IF THEY HAVE TO COME IN AND OUT DURING THE TRIAL TO USE THAT BACK DOOR. IT IS EXTREMELY DISTRACTING.

ALL RIGHT, AS TO THE FIRST ---

MR. BOYD: YOUR HONOR, ARE YOU MAKING A RULING?

THE COURT: OH, NO, GO AHEAD, DO YOU HAVE ANY WITNESSES YOU WANT TO PUT UP?

MR. BOYD: CAN I CONFER WITH MR. HANCOCK AND MY CLIENT FOR JUST A SECOND?

THE COURT: CERTAINLY.

MR. BOYD: YOUR HONOR AT THIS TIME FOR PURPOSES OF THE DENNO HEARING, I WOULD LIKE TO CALL MR. ROBERTSON TO THE WITNESS STAND FOR THAT LIMITED PURPOSE.

THE COURT: MR. ROBERTSON, BEFORE YOU DO THAT, I WANT TO ADVISE YOU THAT YOU, OF COURSE, HAVE A RIGHT TO

REMAIN SILENT. THAT IS, YOU HAVE A RIGHT NOT TO MAKE ANY STATEMENT OR TESTIFY ABOUT THIS MATTER TO ANYONE. YOU HAVE AN ABSOLUTE CONSTITUTIONAL RIGHT TO REMAIN SILENT.

IF YOU WAIVE THAT RIGHT AND IF YOU TESTIFY, THEN WHATEVER YOU SAY CAN AND WILL BE USED AGAINST YOU IN A TRIAL INVOLVING THESE ISSUES. DO YOU UNDERSTAND THAT?

(AFTER A BRIEF PAUSE WHILE THE DEFENDANT CONFERRED WITH COUNSEL.)

MR. ROBERTSON: I UNDERSTAND, YOUR HONOR.

THE COURT: I WILL TELL YOU THAT I AM GOING TO RESTRICT ANY CROSS EXAMINATION AT THIS POINT ONLY TO ISSUES THAT ARE RAISED IN THIS STATEMENT. I'LL TELL YOU THAT. BUT I WANT YOU TO BE WELL AWARE THAT IF YOU WAIVE THAT RIGHT TO TESTIFY -- THE RIGHT TO REMAIN SILENT AND TESTIFY, YOU WILL BE SUBJECT TO CROSS EXAMINATION BY THE STATE AND WHATEVER YOU SAY CAN BE USED AGAINST YOU IN THIS TRIAL. DO YOU UNDERSTAND THAT?

MR. ROBERTSON: I UNDERSTAND, YOUR HONOR.

THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT ANY OF THAT?

MR. ROBERTSON: NO, YOUR HONOR.

THE COURT: MR. BOYD, MR. HANCOCK, DO YOU BELIEVE HE UNDERSTANDS IT?

MR. BOYD: YES, SIR.

MR. HANCOCK: YES, SIR.

THE COURT: YOU MAY PROCEED.

JAMES D. ROBERTSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. BOYD:

Q. STATE YOUR NAME, PLEASE.

A. JAMES DEJARNETTE ROBERTSON.

Q. NOW, I WANT TO TAKE YOU BACK TO THE TIME WHEN YOU WERE ARRESTED IN PHILADELPHIA AND THE TIME BEFORE CAPTAIN MISLE QUESTIONED YOU, OKAY?

A. ALL RIGHT.

Q. AT THAT POINT WERE YOU ASKED ANY QUESTIONS BY ANY LAW ENFORCEMENT IN PHILADELPHIA?

A. YES, I WAS.

Q. AT ANY POINT DURING THE QUESTIONING BY THE PHILADELPHIA OFFICERS, DID YOU SAY ANYTHING ABOUT WANTING AN ATTORNEY?

A. I RESPONDED TO A QUESTION BY SAYING I WOULD NOT ANSWER ANY MORE QUESTIONS WITHOUT REPRESENTATION OF AN ATTORNEY.

Q. THANK YOU, THAT'S ALL THE -- WAIT, LET ME ASK YOU ONE MORE QUESTION. WAS THAT BEFORE CAPTAIN MISLE QUESTIONED YOU?

A. YES, IT WAS.

Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

WHAT THEY LOOKED LIKE?

A. NO, I CAN'T.

Q. WERE THEY TALL OR SHORT?

A. I CAN'T REMEMBER, IT'S BEEN 15 MONTHS AGO.

Q. BLACK OR WHITE?

A. WHITE, I BELIEVE.

Q. YOU BELIEVE?

A. LIKE I SAID, IT'S BEEN A LONG TIME.

Q. I BEG THE COURT'S INDULGENCE?

(AFTER A BRIEF PAUSE.)

Q. NO FURTHER QUESTIONS.

THE COURT: ANYTHING ELSE?

MR. BOYD: YOU MAY COME DOWN.

THE COURT: YOU MAY STEP DOWN. ARGUMENTS ON BEHALF OF THE STATE?

MR. POPE: YOUR HONOR, WE'VE GOT NO INDICATION FROM THE FILE THAT I'M AWARE OF OF ANY PRIOR QUESTIONING, ANY QUESTIONING OF THIS DEFENDANT OTHER THAN WHAT I BROUGHT FORTH TO THE COURT TODAY. THERE IS NO WAY OF FOLLOWING UP ON THAT BASED ON THE DESCRIPTION OR LACK OF DESCRIPTION OF THEM.

THE COURT: THE DEFENSE?

MR. BOYD: YOUR HONOR, IT'S UNCONTRADICTED TESTIMONY THAT MR. ROBERTSON INVOKED HIS RIGHT TO COUNSEL. OF COURSE, UNDER ARIZONA VERSUS EDWARDS THIS STATEMENT

CANNOT COME INTO EVIDENCE.

THE COURT: I DO FIND THAT UNDER EDWARDS VERSUS ARIZONA THAT MR. ROBERTSON, PRIOR TO THE INTERVIEW OF OFFICER MISLE, DID ASSERT HIS RIGHT TO COUNSEL AND THAT THEREAFTER ONLY INSTANCES IN WHICH HE, THAT IS MR. ROBERTSON, INITIATED A CONVERSATION OR COMMUNICATION WAS THAT REQUEST WAIVEABLE. AND I FIND THAT THERE IS NO EVIDENCE THAT THAT OCCURRED. SO, I WILL NOT ALLOW EITHER OF THE EXHIBITS IN -- EITHER OF THE STATEMENTS.

MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR, WE WILL OBVIOUSLY HAVE THE PHILADELPHIA OFFICERS THAT WE KNOW WERE TRULY INVOLVED IN THIS CASE. WOULD I BE ALLOWED TO PURSUE THAT WITH THEM AT THE APPROPRIATE TIME AS TO WHETHER THEY HAD ACTUALLY DONE ANY QUESTIONING OF HIM?

THE COURT: WE'LL HAVE TO CROSS THAT BRIDGE IF WE GET TO IT.

MR. POPE: I WOULD JUST RESERVE THAT OPPORTUNITY, YOUR HONOR.

THE COURT: ALL RIGHT. ANYTHING ELSE BEFORE WE GET THE JURY IN?

MR. POPE: YOUR HONOR, WE HAVE PRE-MARKED A NUMBER OF ITEMS AND THERE WERE SOME THAT PHILADELPHIA HAD THAT THEY HAD NOT SEEN AND I'VE SHOWN THEM TO MR. HANCOCK AND WE'RE GOING TO HAVE THEM PRE-MARKED ALSO.

THE COURT: OKAY. BRIEFLY, THE SLED DID THEIR

ORIENTATION OVER LUNCH AND THERE ARE A COUPLE OF ITEMS TO DISCUSS AND MR. FRADELA CAN HELP ME IF I OVERLOOK ONE. BUT, ONE, THERE WAS A REQUEST BY SOMEONE WHETHER OR NOT AS READING MATERIAL THEY COULD HAVE THEIR BIBLE. IS THERE ANY OBJECTION TO THAT FROM THE STATE?

MR. POPE: IT'S MY UNDERSTANDING THAT WE'VE NO PROBLEM WITH THAT OTHER THAN IN THE JURY ROOM DURING DELIBERATION.

THE COURT: ANY FROM THE DEFENSE?

MR. BOYD: NO OBJECTION.

THE COURT: ALL RIGHT, THERE WAS A REQUEST OF WHAT TYPE READING MATERIAL OTHER THAN THAT THEY COULD HAVE. I WAS TOLD THAT SLED SUGGESTED SOMETHING LIKE REDBOOK, AND THAT DID NOT GET A VERY RESOUNDING RESPONSE FROM THE MALE POPULATION. IS THERE ANY OBJECTION TO SUCH THINGS AS, NOT TIME, NOT NEWSWEEK, NOT U.S. WORLD REPORTS, BUT SUCH THINGS AS SPORTS ILLUSTRATED, FIELD AND STREAM, REDBOOK, MCCALL'S, IF THAT'S STILL PUBLISHED, THOSE TYPE BOOKS AFTER HAVING BEEN CENSORED BY SLED AND REMOVAL OF ANYTHING THAT MAY PERTAIN TO ISSUES THAT WOULD BE DEVELOPED IN THIS TRIAL?

ANY OBJECTION FROM THE STATE?

MR. POPE: NO, SIR, YOUR HONOR. AS A MATTER OF FACT, EVEN AS TO OTHER MAGAZINES AS LONG AS SLED WOULD REVIEW THEM FOR MATTERS THAT MIGHT PERTAIN TO THIS CASE, I DON'T HAVE ANY OBJECTION TO ANY.

THE COURT: THE DEFENSE?

MR. BOYD: NO OBJECTION.

THE COURT: WE'VE HAD ALSO THE USUAL QUESTION ABOUT RELIGIOUS SERVICES ON SUNDAY. IN THE PAST WHAT WE HAVE DONE ON SUNDAY MORNING IS TO ALLOW A DEVOTIONAL OF SOME TYPE, OF COURSE MONITORED BY SLED, BUT USUALLY PUT ON BY THE JURORS WHO WISH TO PARTICIPATE. IS THERE ANY OBJECTION TO THAT FROM THE STATE?

MR. POPE: NO OBJECTION FROM THE STATE.

THE COURT: THE DEFENSE?

MR. BOYD: NO OBJECTION.

THE COURT: AND FINALLY, AND I WILL DO THE SAME, I DON'T WANT TO BE ACCUSED OF BEING A SEXIST AND I WILL CERTAINLY DO THE SAME IF WE GET SOME SIMILAR TYPE REQUEST FROM FEMALE JURORS, BUT SOME OF THE MALE JURORS HAVE REQUESTED THE RIGHT TO WATCH THE NCAA TOURNAMENT.

THE ONLY CONCERN THAT SLED HAD AND THAT I HAVE IS THAT IT IS ON A LOCAL STATION AND OCCASIONALLY THEY DO HAVE TUNE IN AT 11:00 FOR NEWS.

I HAVE SUGGESTED, AND I THINK WE CAN HANDLE THAT BY ALLOWING THEM TO WATCH THESE GAMES AS LONG AS IT IS MONITORED BY SOMEONE FROM SLED AND AT ANY TIME WHEN IT'S OBVIOUS WHEN IT COMES ON THAT THEY ARE GETTING READY TO TELL US ABOUT NEWS AT 11:00 THAT IT BE MUTED.

ANY PROBLEM WITH THAT FROM THE STATE?

MR. POPE: NO OBJECTION, YOUR HONOR. YOU'RE TALKING ABOUT THE LEAD INTO THE NEWS AS OPPOSED TO ---

THE COURT: WELL, USUALLY THEY SHOW A LITTLE THING -- THEY USUALLY HAVE SOME CATCH PHRASE TO CATCH EVERYBODY'S ATTENTION AND THEN THEY SAY SORT OF FILM AT 11:00 SORT OF THING.

MR. POPE: NO OBJECTION.

MR. BOYD: NO OBJECTION.

THE COURT: DOES THAT COVER IT?

AGENT FRADELLA: YES, SIR. THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. ALL RIGHT, BRING IN THE JURY.

IN THE PRESENCE OF THE JURY:

THE COURT: MEMBERS OF THE JURY PANEL, WELCOME BACK. WE HAVE DISCUSSED SOME OF THE ISSUES THAT CAME UP DURING YOUR SECURITY PEOPLE ORIENTATION. I THINK WE ARE ABLE TO ADDRESS POSITIVELY EACH OF THOSE. THEY CAN TELL YOU MORE ABOUT THAT WHEN THEY MEET WITH YOU. I WON'T TAKE UP OUR TIME GOING OVER IT, BUT WE HAVE TALKED ABOUT IT; I HAVE TALKED ABOUT IT WITH THE ATTORNEYS AND WE THINK WE WILL SMOOTH SOME THINGS OUT FOR YOU.

NOW, CALL YOUR NEXT WITNESS.

MR. POPE: THE STATE WOULD CALL CORONER DOUG MCKOWN.

THE COURT: COME AROUND AND BE SWORN, PLEASE.

DOUGLAS P. MCKOWN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. MR. MCKOWN, IF YOU COULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER, PLEASE.

A. DOUGLAS PAUL MCKOWN, M-C-K-O-W-N.

Q. COULD YOU TELL THE JURY YOUR OCCUPATION PLEASE, SIR?

A. I'M THE ELECTED COUNTY CORONER FOR THE COUNTY OF YORK, SOUTH CAROLINA.

Q. CAN YOU TELL THEM EXACTLY WHAT IT IS YOU DO FROM DAY TO DAY, WHAT YOUR JOB DUTIES ARE?

A. YES, SIR. OUR JOB INVOLVES THE INVESTIGATION OF SUSPICIOUS OR OTHERWISE UNATTENDED DEATHS THAT OCCUR THROUGHOUT THE COUNTY AND THAT IS PROVIDED BY THE LAWS AND THE STATUTES OF THE STATE OF SOUTH CAROLINA.

Q. I'M GOING TO CALL YOUR ATTENTION BACK TO NOVEMBER 25TH OF 1997. WERE YOU THE CORONER AT THAT TIME?

A. YES, SIR, I WAS.

Q. DID YOU HAVE THE OPPORTUNITY TO GO TO 2506

WESTMINSTER DRIVE IN ROCK HILL HERE IN YORK COUNTY?

A. YES, SIR, I DID.

Q. COULD YOU TELL THE JURY WHAT THE PURPOSE OF YOU GOING THERE WAS?

A. WE HAD RECEIVED A CALL THAT THERE HAD BEEN SOME SORT OF UNNATURAL DEATH AT THAT RESIDENCE. I RESPONDED TO THAT RESIDENCE IN MY CAPACITY AS CORONER.

Q. COULD YOU TELL THE JURY APPROXIMATELY WHAT TIME YOU ARRIVED?

A. I HAVEN'T COMMITTED IT TO MY MEMORY; IT WAS SOMEWHERE AROUND 11:20 OR 11:30, SOMEWHERE AROUND THERE.

Q. AND THIS IS IN THE MORNING HOURS?

A. IN THE MORNING HOURS, YES, SIR.

Q. COULD YOU RELATE TO THE JURY WHAT YOU DID WHEN YOU GOT THERE?

A. WHEN I GOT THERE, I WAS INITIALLY MET BY THE OFFICER THAT WAS PATROLLING THE SCENE THERE. WE WAITED MAYBE A LITTLE WHILE. I WANTED TO ASCERTAIN AS TO WHETHER THERE HAD BEEN PARAMEDICS ON THE SCENE THAT COULD PLACE CARDIAC MONITOR ON THE DECEASED VICTIMS TO DETERMINE IF THEY WERE DEAD ON PARAMEDIC ARRIVAL. THAT HAD

NOT HAPPENED. SO, THEREFORE, IT WAS OUR POLICY THAT WE WANTED TO ENSURE THAT BOTH OF THE VICTIMS WERE DEAD SO AT THAT TIME I MADE ENTRY INTO THE RESIDENCE, CHECKED IN WITH THE CRIME SCENE TECHNICIAN THAT HAD THE LOG AND I ENTERED THE RESIDENCE AT THAT TIME.

Q. OKAY. AND HOW DID YOU ENTER THE RESIDENCE?

A. WE ENTERED THROUGH THE BACK, THE LOWER LEVEL OF THE HOUSE.

Q. DID YOU ULTIMATELY GO UPSTAIRS WHERE THE BODIES WERE LOCATED?

A. YES, SIR.

Q. RELATE TO THE JURY, IF YOU COULD FIRST WHAT YOU ENCOUNTERED IN THE HALL AS FAR AS MR. ROBERTSON.

A. WHEN WE CAME OUT OF THE DOOR, I BELIEVE IT CAME UP THE STAIRS. IT CAME INITIALLY TO THE HALLWAY RIGHT WHERE MR. ROBERTSON WAS. HE WAS LYING FACE DOWN THERE IN THE HALLWAY.

Q. IF YOU COULD DESCRIBE TO THE JURY AND TELL US WHAT YOU ACTUALLY DID AS PART OF YOUR OFFICIAL TYPE DUTIES.

A. IT WAS VERY EVIDENT AT THE TIME OF ENTERING THE HALLWAY THAT MR. ROBERTSON WAS DEAD. AT THAT TIME I WANTED TO TRY TO GET SOME FEEL FOR WHAT HAD HAPPENED. IT WAS VERY EVIDENT THAT IT WAS A

TRAUMATIC DEATH. AND, BASICALLY, I JUST MADE A FEW CHECKS FOR SIGNS OF LIFE. THERE WERE NONE. I CHECKED FOR HEAT AND COOLNESS OF THE BODY. THE BODY WAS COOL TO THE TOUCH ON THE BACK AND HIS BODY WAS SOMEWHAT WARM UNDERNEATH. AND I CHECKED THE RIGIDITY OF HIS LEGS AND THEY WERE STILL SOMEWHAT FLEXIBLE.

Q. WHEN YOU OBSERVED HIM, EXPLAIN TO THE JURY WHAT WAS HIS PHYSICAL POSITION AND CONDITION AS YOU OBSERVED IT?

A. AS I OBSERVED IT, HE WAS SOMEWHAT FACE DOWN WITH HIS HANDS, I BELIEVE, UP BY HIS HEAD. THERE WAS A TREMENDOUS AMOUNT OF BLOOD ABOUT THE RESIDENCE ON THE WALLS. I REMEMBER THAT. THERE WAS A TREMENDOUS POOL OF BLOOD AROUND HIS HEAD. I WAS TRYING TO BE CAREFUL NOT TO STEP IN THOSE TO CONTAMINATE THE CRIME SCENE. AND, YOU KNOW, I JUST NOTICED THE BLOOD SPLATTER ON THE WALLS AND ON THE CEILING.

Q. OKAY. DID THERE COME A TIME WHEN YOU FINISHED WITH HIM AND YOU PROCEEDED ON INTO THE BEDROOM WHERE TERRY ROBERTSON WAS LOCATED?

A. YES. I HAD TO STEP OVER HIS HEAD TO MAKE MY WAY DOWN THE HALLWAY. HIS HEAD WAS FACING THE ENTRANCE TO WHERE THE SECOND VICTIM WAS, MRS.

ROBERTSON. I HAD TO STEP OVER HIM AND PROCEED TO THE BACK BEDROOM WHERE WE FOUND HER.

Q. AND CAN YOU DESCRIBE HER CONDITION AND APPEARANCE WHEN YOU ARRIVED THERE?

A. MUCH AS WITH THE FIRST VICTIM, IT WAS A VERY -- I COULD TELL RIGHT AWAY IT WAS A VERY TRAUMATIC DEATH DUE TO THE INJURIES THAT WERE ON THE VICTIM, THE AMOUNT OF BLOOD THAT WAS PRESENT. I BELIEVE THERE WAS A BROKEN KNIFE LAYING THERE ON THE BED. AND, YOU KNOW, MY MAIN CONCERN WAS THAT WE HAD A LOT OF WORK AHEAD OF US. WE DIDN'T WANT TO CONTAMINATE THE SCENE, SO I WANTED TO DO INITIAL CHECKS TO MAKE SURE THAT INDEED BOTH OF THE VICTIMS WERE DEAD.

HAVING DONE THAT, YOU KNOW, MY BEST INTEREST WAS TO BACK OUT OF THE SCENE SO THAT I DID NOT CONTAMINATE OR INTERFERE WITH ANYTHING THAT LAW ENFORCEMENT WOULD HAVE TO DO TO TRY TO FIND OUT WHAT HAD HAPPENED.

Q. AND IN YOUR OFFICIAL CAPACITY, DID YOU DETERMINE SIGNS OF LIFE IN EITHER EARL OR TERRY?

A. I DID, AND THERE WAS NONE ON EITHER ONE OF THEM.

Q. THANK YOU, SIR. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

MR. HANCOCK: WE HAVE NO QUESTIONS, YOUR HONOR.

THE COURT: YOU CAN STEP DOWN. THANK YOU; WE APPRECIATE YOUR TIME, AND YOU CAN FEEL FREE TO LEAVE.

MR. POPE: WE WOULD ASK THAT THIS WITNESS BE EXCUSED, YOUR HONOR.

THE COURT: YOU CAN BE EXCUSED. CALL YOUR NEXT WITNESS.

MR. POPE: THE STATE WOULD CALL CAPTAIN RALPH MISLE TO THE STAND.

RALPH MISLE, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. CAPTAIN MISLE, IF YOU WOULD, STATE YOUR NAME AND OCCUPATION TO THE JURY PLEASE, SIR.

A. YES, SIR. MY NAME IS RALPH MISLE; I'M A CAPTAIN WITH THE YORK COUNTY SHERIFF'S DEPARTMENT DETENTION DIVISION.

Q. AND COULD YOU SPELL YOUR LAST NAME FOR THE COURT REPORTER PLEASE, SIR?

A. M-I-S-L-E.

Q. CAPTAIN MISLE, HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S DEPARTMENT?

A. I'VE BEEN WITH THE SHERIFF'S DEPARTMENT FOR LIKE 10 YEARS, AND 25 YEARS TOTAL IN LAW ENFORCEMENT.

Q. AND HOW LONG HAVE YOU BEEN IN YOUR CURRENT

CAPACITY AS CAPTAIN OVER THE DETENTION CENTER?

A. SINCE MAY OF 1998, MAY 1ST.

Q. I'LL CALL YOUR ATTENTION BACK TO NOVEMBER 25TH, 1997. COULD YOU TELL THE JURY WHAT YOUR DUTIES WERE THEN?

A. I WAS ASSIGNED TO THE CRIMINAL INVESTIGATION DIVISION OF THE YORK COUNTY SHERIFF'S DEPARTMENT, CRIMES AGAINST PERSONS.

Q. AND DID YOU HAVE A PARTNER YOU WORKED WITH IN THAT DIVISION?

A. YES. WELL, IT WAS SEVERAL; LIEUTENANT HAGER WAS AND STILL IS THE COMMANDING OFFICER OVER THAT UNIT, ALONG WITH DETECTIVE HOWE, DETECTIVE CHISOLM AND MYSELF.

Q. SO, Y'ALL WORKED IN CONJUNCTION ON THIS CASE?

A. THAT'S CORRECT.

Q. DID YOU HAVE THE OPPORTUNITY TO PHYSICALLY GO TO 2506 WESTMINSTER DRIVE AROUND NOON THAT DAY?

A. YES, SIR. THAT WAS TUESDAY, NOVEMBER 25TH, 1997 AT APPROXIMATELY THE NOON TIME HOUR I RESPONDED TO THE LOCATION. I WAS DISPATCHED TO THE SCENE OF A DOUBLE HOMICIDE.

A. UPON ARRIVING THERE, I ASSESSED THE SITUATION, MADE SURE THE CRIME SCENE WAS SECURED ALTHOUGH I DID NOT ENTER THE CRIME SCENE MYSELF ---

Q. WHEN YOU SAY CRIME SCENE SECURED, COULD YOU TELL THE JURY WHAT THAT MEANS?

A. TYPICALLY WHEN THERE IS A CRIME, WHETHER IT'S IN AN INSIDE LOCATION OR OUTSIDE LOCATION, THERE IS CERTAIN EVIDENCE THAT NEEDS TO BE PRESERVED FOR EXAMINATION BY SPECIALISTS AND IN THOSE INSTANCES, THE AREA IS CORDONED OFF WITH TYPICALLY YELLOW TAPE, BARRIER TYPE TAPE. AND NO ONE IS ALLOWED TO CROSS THAT BARRIER.

Q. WHEN YOU ARRIVED, WAS THERE SUCH TAPE THERE?

A. YES, THERE WAS.

Q. AT THE TIME YOU ARRIVED, LIEUTENANT HAGER, WAS HE THERE?

A. NO, HE HAD NOT ARRIVED THERE YET.

Q. DID YOU ASSUME RESPONSIBILITY FOR DELEGATION OF VARIOUS DUTIES AND THINGS OF THAT NATURE?

A. YES, SIR, I DID. INITIALLY I ASCERTAINED THAT SOUTH CAROLINA LAW ENFORCEMENT DIVISION, NORMALLY REFERRED TO AS SLED, THAT THEY HAD BEEN NOTIFIED. WE USE THEM AS WELL AS OTHER JURISDICTIONS OF THIS STATE FOR ASSISTANCE FOR INVESTIGATION AND FOR THEIR EXPERTISE IN CRIME SCENES AND THEIR FORENSIC SERVICES. AND THEY HAD BEEN NOTIFIED AND THEY WERE ON THEIR WAY.

Q. SO, SLED WAS GOING TO COME AND PROCESS THE

SCENE?

A. THAT'S CORRECT.

Q. AS FAR AS INVESTIGATION TO DETERMINE WHAT HAPPENED, WHAT TYPE THINGS DID YOU AND THE OTHER INVESTIGATORS DO TO DETERMINE WHAT HAD ACTUALLY OCCURRED OUTSIDE OF THE RESIDENCE?

A. INITIALLY WHAT WE DID WAS WE ESTABLISHED A CANVAS OF THE PERIMETER BEING THE ADJACENT HOUSES, LEFT AND RIGHT ACROSS THE STREET, WE CORDONED OFF AN AREA THAT WE CONCENTRATED ON. AND THERE WAS ALSO A VEHICLE THAT NEEDED TO BE IDENTIFIED. THERE WERE SOME OTHER THINGS THAT OTHER OFFICERS WERE SENT TO INVESTIGATE OUT OF THAT IMMEDIATE AREA AND THOSE WERE ALL DONE PROBABLY WITHIN A HALF HOUR TO 45 MINUTES AFTER MY ARRIVAL.

Q. YOU TALKED ABOUT A VEHICLE TO BE IDENTIFIED. WAS ONE OF THEM THE VEHICLE THAT WAS PRESENT OUT IN FRONT OF THE RESIDENCE WHEN YOU ARRIVED?

A. THAT'S CORRECT. IF YOU LOOK AT THE RESIDENCE, TO THE LEFT OF THE RESIDENCE ON THE ROAD, APPROXIMATELY AT THE LEFT SIDE BOUNDARY LINE, PROPERTY LINE, THERE WAS A BLUE HONDA PARKED THERE ON THE SHOULDER OF THE ROAD.

Q. OKAY AND DID YOU RECEIVE INFORMATION CONCERNING

THAT HONDA AS PART OF THE INVESTIGATION, THE TAG NUMBER AND SO FORTH AS THAT?

A. YES, SIR. EVENTUALLY WE DID IDENTIFY THAT VEHICLE.

Q. I BEG THE COURT'S INDULGENCE.

(AFTER A BRIEF PAUSE)

Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 115 AND ASK IF YOU CAN LOOK AND IDENTIFY THAT?

A. YES, THIS IS THE VEHICLE THAT WAS OBSERVED THERE THAT MORNING OR THAT AFTERNOON.

Q. AGAIN, WHERE IS THAT IN RELATION TO THE HOUSE?

A. IT'S AT THE -- IF YOU'RE LOOKING AT THE HOUSE DIRECTLY, IT'S TO THE LEFT, I WOULD IMAGINE THE LEFT SIDE PROPERTY LINE, I'M GUESSING, OR THE TREE LINE BASICALLY.

Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO DETERMINE THE OWNERSHIP OF THAT VEHICLE AS PART OF THE INVESTIGATION?

A. YES, A CHECK WAS MADE WITH THE DEPARTMENT OF MOTOR VEHICLES ON THE LICENSE TAG AND IT CAME BACK TO DOUGLAS MOON.

Q. BASED ON YOUR CANVASSING, WERE YOU ALSO LOOKING FOR A SECOND VEHICLE IN THIS CASE?

A. YES, THROUGH THE INVESTIGATION AND SPEAKING TO A

NEIGHBOR, IT WAS DETERMINED THAT HE HAD SEEN ---

MR. BOYD: YOUR HONOR, I OBJECT TO HEARSAY.

THE COURT: I SUSTAIN THE OBJECTION.

A. INVESTIGATION REVEALED THAT THERE WAS ANOTHER VEHICLE ---

MR. BOYD: YOUR HONOR, THAT'S STILL ---

THE COURT: I SUSTAIN THE OBJECTION. LET HIM ASK YOU ANOTHER QUESTION.

A. I'M SORRY.

THE COURT: HE'LL ASK YOU A QUESTION.

Q. BASED ON THE CANVASSING OF THE NEIGHBORHOOD WERE YOU AS PART OF YOUR INVESTIGATION LOOKING FOR A SECOND VEHICLE?

A. YES, WE WERE.

Q. AND WHAT WAS THE DESCRIPTION OF THAT VEHICLE?

A. IT WAS A ---

MR. BOYD: YOUR HONOR, I WOULD OBJECT; THAT'S STILL HEARSAY.

THE COURT: I SUSTAIN THE OBJECTION.

MR. POPE: YOUR HONOR, THIS NOW GOES AGAIN TO EXPLAIN WHY THEY ARE DOING WHAT THEY ARE DOING, WHAT INFORMATION THEY ARE LOOKING FOR. IT'S NOT ---

THE COURT: LET ME LET THE JURY GO TO THE JURY ROOM AND WE'LL DISCUSS THIS.

IN CAMERA:

THE COURT: BEFORE WE GET INTO THIS, AND I HATE TO SOUND LIKE I'M MICKEY MOUSE ABOUT THIS, BUT WE JUST HAD ANOTHER PERSON OPEN THE DOOR AND ACTUALLY HOLD IT FOR THE JURY TO COME IN, SOMEBODY ASSOCIATED WITH ONE OF THE PARTIES IN THIS CASE.

I'M GOING TO PUT A NOTE ON THIS DOOR BACK HERE THAT SAYS RESTRICTED ENTRY; UNLESS YOU HAVE BEEN GRANTED PERMISSION BY JUDGE HAYES DO NOT OPEN THIS DOOR UNDER PENALTY OF CONTEMPT OF COURT. PEOPLE WHO HAVE PERMISSION INCLUDE PERSONNEL, MR. BRACKETT, MR. POPE, MR. BOYD AND MR. HANCOCK AND STATE LAW ENFORCEMENT AND THE BAILIFFS.

I ALSO, AND I DON'T KNOW THAT YOU CAN HEAR IT OR THE JURY CAN HEAR IT, BUT THERE ARE PEOPLE WALKING UP AND DOWN THIS HALL TALKING ALL THE TIME. I'M GOING TO PUT ANOTHER SIGN AT THE END OF EACH HALL AND I'M GOING TO ASK MS. CARROLL TO DO THIS, SAYING NO TALKING ON THIS HALLWAY WHILE COURT IS IN SESSION. IF YOU'RE NOT SURE IF COURT IS OR IS NOT IN SESSION, DO NOT TALK.

AND THE NEXT PERSON THAT COMES IN THAT DOOR WHO IS NOT SUPPOSED TO, IS GOING IN THAT DOOR. SO, ANYBODY Y'ALL ARE ASSOCIATED WITH, PLEASE TELL THEM.

MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR, FOR THE RECORD I HAVE ALREADY INFORMED MY STAFF OF THAT DURING THE LUNCH BREAK.

THE COURT: ALL RIGHT, NOW YOU MAY GO AHEAD.

MR. POPE: YOUR HONOR, WITHOUT BELABORING THAT ANY FURTHER, IT'S MY UNDERSTANDING THAT IT'S THE DEFENSE INVESTIGATOR WHO WAS ACTUALLY HOLDING THE DOOR OPEN FOR THE JURY AND ---

THE COURT: WELL, I'M NOT GOING INTO THAT.

MR. POPE: BUT WITH ALL DUE RESPECT, YOUR HONOR ---

THE COURT: I KNOW WHO IT WAS AND I'M PUTTING ON THE RECORD THAT IT WASN'T ANY OF YOUR PEOPLE. HOW ABOUT THAT?

MR. POPE: THAT'S NOT THE POINT I'M MAKING, YOUR HONOR. THE POINT I'M MAKING IS THAT THE DEFENSE INVESTIGATOR SHOULD NOT HAVE THAT CLOSE CONTACT WITH THE JURY, FORGETTING THE DOOR ISSUE.

THE COURT: ALL RIGHT.

MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR, AS TO THIS TESTIMONY, THIS WITNESS WILL EXPLAIN THE COURSE THAT THE INVESTIGATION TOOK, WHY THEY DID CERTAIN ACTIONS. I THINK HE CAN CLEARLY TESTIFY TO THAT WITHOUT SAYING WHO TOLD HIM WHAT.

SECONDARILY, I WOULD SAY THAT EACH WITNESS -- ONE, I'M NOT GOING TO ELICIT HEARSAY, SECONDLY I'LL SAY THAT EACH WITNESS WILL ACTUALLY COME AND TESTIFY, WILL BE PRESENT FOR CROSS EXAMINATION. SO EVEN IF HE DID SAY WITNESS SO AND SO SAID THIS, I SUBMIT IT'S STILL

APPROPRIATE, WOULD NOT BE HEARSAY BECAUSE THEY ARE SUBJECT FOR CROSS EXAMINATION.

THE COURT: ANYTHING ELSE ON THAT, MR. BOYD?

MR. BOYD: NO, SIR.

THE COURT: SUBJECT TO IT BEING CONNECTED UP, I WILL ALLOW IT. BRING THE JURY BACK IN.

IN THE PRESENCE OF THE JURY:

THE COURT: YOU MAY PROCEED.

CONTINUED DIRECT EXAMINATION OF WITNESS MISLE:

Q. DETECTIVE MISLE, WHEN THE JURY LEFT I WAS ASKING YOU, BASED ON YOUR INVESTIGATION WAS THERE ANOTHER VEHICLE THAT YOU WERE LOOKING FOR?

A. YES, SIR, THERE WAS. IT WAS A RED MAZDA PROTEGE WITH SOUTH CAROLINA TAGS YJM-502 AND THAT WAS REGISTERED TO EARL ROBERTSON, JR.

Q. AND BASED ON THE INVESTIGATION, DID YOU DETERMINE WHERE YOU MAY ATTEMPT TO LOCATE THAT VEHICLE.

MR. BOYD: YOUR HONOR, I AM GOING TO OBJECT TO THAT.

THE COURT: I OVERRULE THE OBJECTION, AS LONG AS IT IS GOING TO BE CONNECTED UP.

MR. POPE: YES, SIR.

A. YES, SIR. FURTHER INVESTIGATION AND CANVASSING REVEALED THAT EARL ROBERTSON, JR. WAS A STUDENT

AT WHARTON'S SCHOOL OF BUSINESS AT THE UNIVERSITY OF PENNSYLVANIA IN PHILADELPHIA. AND I DETERMINED THROUGH SOME RECORDS CHECK THAT HE WAS PRESENTLY THERE AS A STUDENT AND HAD AN OFF CAMPUS APARTMENT.

Q. AND SO BASED ON THE INVESTIGATION, WHAT IF ANY INFORMATION DID YOU SEND OUT TO OTHER AGENCIES. WHO WERE YOU LOOKING FOR AND WHERE?

A. THERE WAS A POINT IN TIME WHERE ENOUGH INFORMATION WAS GATHERED AS FAR AS SUSPECTS AND VEHICLES AND LOCATIONS, SUSPECTED LOCATIONS WHERE THE SUSPECTS MIGHT BE HEADING, I COMPOSED WHAT IS COMMONLY REFERRED TO AS A BOLO, BE ON THE LOOKOUT FOR AND I LISTED THE DEFENDANTS BY NAME, DESCRIPTION, AGE; ALSO THE DESCRIPTION OF THE VEHICLE THAT WE FELT THAT THEY MAY BE TRAVELING IN, AND POSSIBLY THE DESTINATION OF TRAVEL.

Q. WAS THERE ANY INFORMATION THAT WAS RECOVERED IN THE CRIME SCENE IN THE HOUSE THAT AIDED IN YOUR DETERMINATION OF WHERE TO BEGIN LOOKING?

A. YES, THERE WAS A NOTE THAT WAS LEFT THERE, A BRIEF NOTE, HANDWRITTEN NOTE SAYING THAT JAMES ROBERTSON WAS ON THE WAY TO PHILADELPHIA TO PICK UP HIS BROTHER, CHIP.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 149 FOR IDENTIFICATION AND ASK IF YOU COULD LOOK AT THAT AND IDENTIFY THAT?

A. YES, SIR, THIS IS THE NOTE I WAS REFERRING TO.

Q. AND IS THAT PART OF WHAT YOU USED IN DETERMINING TO BEGIN LOOKING TO PHILADELPHIA FOR THE CAR AND THE DEFENDANT?

A. THAT'S CORRECT.

THE COURT: DO YOU WANT THE LIGHTS DOWN?

MR. POPE: YOUR HONOR, I'LL TRY TO DO IT WITHOUT IT.

Q. DETECTIVE MISLE, COULD YOU RELATE TO THE JURY, BASED ON THE TOTALITY OF THE INVESTIGATION THERE AT THE HOUSE AND THE CANVASSING, THE RECORDS CHECK, TELL THE JURY AT THAT POINT WHAT INFORMATION YOU WERE RELAYING TO OTHER AGENCIES AS FAR AS BOLO?

A. LIKE I STATED PREVIOUSLY, A DESCRIPTION OF THE SUSPECTS BY NAME, BY DATE OF BIRTH IF I REMEMBER CORRECTLY, ALSO THE VEHICLE WITH THE LICENSE PLATE NUMBER THAT THEY WERE TRAVELING IN, DESCRIPTION OF VEHICLE BY MAKE AND TAG NUMBER; AND ALSO THE FACT THAT THEY COULD BE ARMED AND DANGEROUS AND CAUTION SHOULD BE USED. AND THAT WAS A REGIONAL AND EVENTUALLY WENT TO A

NATIONWIDE BOLO.

Q. DID YOU ULTIMATELY HAVE DIRECT CONTACT WITH THE OFFICERS IN PHILADELPHIA, PENNSYLVANIA?

A. YES, SIR, I DID. PRIOR TO THAT I HAD, THROUGH INVESTIGATION, DISCOVERED THAT A CREDIT CARD BELONGING TO EARL ROBERTSON, SR. HAD BEEN USED AT ---

MR. BOYD: YOUR HONOR, I AM GOING TO OBJECT TO THIS, THAT IS CLEAR HEARSAY.

MR. POPE: AGAIN, THERE WILL BE A WITNESS WHO WILL TESTIFY TO THESE MATTERS AND THIS IS, AGAIN, TO EXPLAIN HOW HE WAS ABLE TO TRACK THEM, YOUR HONOR.

THE COURT: SUBJECT TO IT'S BEING TIED IN, I'LL OVERRULE YOUR OBJECTION.

A. AT THAT POINT I CONTACTED, I BELIEVE IT WAS NATIONS BANK, THE ISSUING BANK. THE INFORMATION WAS THAT THE CREDIT CARD WAS USED AT THE FORT MILL PEACH STAND AT APPROXIMATELY 8:32 IN THE MORNING, TUESDAY, JANUARY 25TH TO PURCHASE VARIOUS SUNDRY ITEMS, AND ALSO DETERMINED THAT A VIDEO HAD BEEN EMPLOYED AT THE CASH REGISTER. THAT VIDEO WAS RETRIEVED BY INVESTIGATORS. FURTHERMORE, THE CREDIT CARD WAS AGAIN USED AT A LOCATION IN VIRGINIA, LADYSMITH, VIRGINIA, APPROXIMATELY 2:19 IN THE AFTERNOON. SOME

GASOLINE, I THINK, WAS PURCHASED ON THAT CREDIT CARD.

AND BASED ON THE INFORMATION GATHERED BEFOREHAND, WE DETERMINED THAT IN FACT IT APPEARED THAT HE WAS TRAVELING NORTHBOUND TO THE PHILADELPHIA LOCATION.

Q. DID YOU MAKE ARRANGEMENTS FOR THE PHILADELPHIA AUTHORITIES TO TRY TO INTERCEPT HE AND MEREDITH MOON IN PHILADELPHIA?

A. WELL, AT THAT POINT WHAT I DID IS I CONTACTED THE FUGITIVE SQUAD OF THE PHILADELPHIA POLICE DEPARTMENT SOMETIME AROUND 3:00 O'CLOCK IN THE AFTERNOON. I MADE THEM AWARE OF OUR SITUATION HERE IN ROCK HILL, EXPLAINED THE CIRCUMSTANCES OF THE CASE, AND GAVE THEM A FULL DESCRIPTION OF THE SUSPECTS AND THEIR VEHICLE AND SUCH, AND EXPLAINED TO THEM THE FACT THAT CHIP ROBERTSON WAS A STUDENT AT THE UNIVERSITY OF PENNSYLVANIA.

AND THROUGH THEIR ASSISTANCE THEY WERE ABLE TO LOCATE A RESIDENCE FOR CHIP ROBERTSON.

THEY RESPONDED TO THAT LOCATION. HE WAS NOT PRESENT AT THAT TIME, BUT ---

MR. BOYD: YOUR HONOR, I AM GOING TO OBJECT TO HEARSAY.

THE COURT: YES, I DO SUSTAIN THE OBJECTION ON

THAT.

Q. GOING BACK TO THE INITIAL QUESTION, YOU ASKED THAT THEY SET UP SURVEILLANCE?

A. THAT'S CORRECT.

Q. AND SUBSEQUENTLY, DO YOU KNOW, WERE THE DEFENDANT AND MEREDITH MOON ARRESTED?

A. THEY WERE PARKING THE VEHICLE OPPOSITE ---

MR. BOYD: YOUR HONOR, I OBJECT ---

THE COURT: I SUSTAIN THE OBJECTION.

Q. IF YOU WILL JUST ANSWER THE QUESTION. NOT THE DESCRIPTION OF HOW IT TOOK PLACE. OF YOUR OWN KNOWLEDGE DO YOU KNOW WERE THEY ARRESTED?

A. WERE THEY ARRESTED? I'M SORRY, I THOUGHT YOU SAID WHERE. YES, THEY WERE ARRESTED AT 8:32 IN THE EVENING.

MR. BOYD: YOUR HONOR, I OBJECT.

THE COURT: DISREGARD THE TIME OF THE ARREST. THE QUESTION WAS WERE, W-E-R-E-, THEY ARRESTED AND THE ANSWER IS, AS I UNDERSTAND IT, YES.

Q. YES, SIR, AND AGAIN THE ARRESTING OFFICER WILL BE PRESENT.

THE COURT: DISREGARD THE REST OF THE ANSWER, ON THAT ANSWER.

Q. BASED ON THAT INFORMATION, DID YOU HAVE THE OPPORTUNITY WITH SLED AGENT BOBBY BROWN TO GO TO

PHILADELPHIA THE FOLLOWING DAY?

A. THAT'S CORRECT. WE LEFT ROCK HILL IN THE EARLY MORNING HOURS OF THE FOLLOWING DAY AND FLEW INTO PHILADELPHIA AND WE WERE TAKEN TO THE STATION HOUSE THERE.

Q. AND WHILE YOU WERE THERE DID YOU HAVE THE OPPORTUNITY TO TALK TO MEREDITH MOON, THE CO-DEFENDANT IN THIS CASE?

A. YES, I DID.

MR. HANCOCK: YOUR HONOR, HE IS LEADING WITH EVERY QUESTION. I DON'T MIND SOME LEADING, BUT EVERY QUESTION IS LEADING.

THE COURT: WELL, I DON'T FIND ANY PROBLEM WITH LEADING ON THIS QUESTION, BUT DO BE CAUTIOUS ABOUT YOUR LEADING QUESTIONS.

Q. DETECTIVE MISLE, DID YOU HAVE AN OPPORTUNITY TO TALK TO MEREDITH MOON, THE CO-DEFENDANT, YOU WERE LOOKING FOR IN PHILADELPHIA?

A. YES, I DID.

Q. AND BASED ON THAT CONVERSATION -- I DON'T WANT YOU TO GET INTO WHAT SHE SAID -- BASED ON THE CONVERSATION, WHAT IF ANY OTHER INSTRUCTIONS DID YOU GIVE TO LAW ENFORCEMENT ANYWHERE UP AND DOWN THE EAST COAST?

A. I REQUEST WAS MADE ---

MR. BOYD: YOUR HONOR, I'M GOING TO OBJECT TO THAT. THAT IMPLIES THAT MEREDITH MOON TOLD HIM SOMETHING.

THE COURT: YES, I SUSTAIN THE OBJECTION.

MR. POPE: YOUR HONOR, I BELIEVE I'VE GOT A MATTER OF LAW.

THE COURT: ALL RIGHT, I'LL LET THE JURY GO TO THE JURY ROOM.

IN CAMERA:

THE COURT: LET ME JUST START BY AN OBSERVATION. IT APPEARS TO ME THAT THIS IS HEARSAY ON HEARSAY, SO LET'S START WITH THAT PREMISE, UNLESS I'M WRONG.

MR. POPE: YOUR HONOR, I'M NOT ASKING WHAT WAS SAID, I'M ASKING WHAT WAS DID -- WHAT DID HE DO. HE CALLED THE MARYLAND AUTHORITIES AND ASKED THEM TO GO SEARCH AN AREA. I THINK THAT'S CLEARLY APPROPRIATE, INDEPENDENT OF WHETHER MEREDITH MOON IS GOING TO TESTIFY OR NOT. IT'S WHAT HE DID AND WHAT HE SAID. IT'S NOT FOR THE TRUTH OF THE MATTER ASSERTED. IT'S WHAT HE SAID HE DID, THE COMMANDS -- CERTAINLY IT DID COME FROM MEREDITH MOON. THE TRUTH OF THE MATTER IS HE COULD SAY MEREDITH MOON TOLD ME TO GO LOOK IN THE DUMPSTER. BUT CLEARLY I REALIZE I CAN'T SAY THAT. AND, OF COURSE, I WOULD SUBMIT I COULD SAY THAT, YOUR HONOR.

THE COURT: WHAT SAYS THE DEFENSE?

MR. BOYD: YOUR HONOR, THE TESTIMONY WOULD BE

CLEARLY IMPLICATION THAT MEREDITH MOON TOLD HIM SOMETHING PERTINENT TO THE CASE AND AS A RESULT OF THAT HE'S LOOKING -- I DON'T KNOW WHAT HE WAS GOING TO SAY, BUT I ASSUME HE WAS GOING TO SAY HE WAS LOOKING FOR A BAG AT THAT POINT IN A DUMPSTER. I THINK THAT'S CLEARLY HEARSAY, THAT SHE TOLD HIM THAT. THERE IS NO OTHER IMPLICATION.

THE COURT: WELL, UNFORTUNATELY SOMETIMES WE DO HAVE THOSE IMPLICATIONS, BUT HE CAN CERTAINLY TESTIFY TO WHAT HE DID. IT MAY BE THAT IT SHOULDN'T BE COUCHED IN AS A RESULT OF, DASH, I DID THIS. BUT IT WOULD CERTAINLY BE APPROPRIATE TO SAY WHAT DID YOU NEXT DO. AND HE COULD THEN CERTAINLY TESTIFY THAT I ALERTED SO AND SO TO DO SO AND SO.

THE SAME IMPLICATION MAY LIE, THAT MAY BE SPLITTING HAIRS, BUT HE CAN CERTAINLY TESTIFY TO WHAT HE DID. AND IF HE CALLED SOMEBODY AND TOLD THEM TO LOOK FOR SOMETHING. YOU CAN CERTAINLY CROSS EXAMINE HIM TO UNDERMINE WHY HE DID THAT. BUT HE CAN TESTIFY TO WHAT HE DID. AND IF HE CALLED SOMEBODY AND SAID GO LOOK IN A DUMPSTER AT A CERTAIN PLACE, HE CAN TESTIFY TO THAT.

MR. BOYD: BUT THE OBJECTION THOUGH WAS THE WAY THE QUESTION WAS ASKED ---

THE COURT: I UNDERSTAND, AND I'M AGREEING WITH YOU THERE. AS A RESULT OF SO AND SO SAYING X, WHAT DID YOU DO. I'M NOT SURE YOU CAN COUCH IT THAT WAY BECAUSE THAT RELATES IT TO A SOURCE. THAT RELATES IT THAT SOMEBODY SAID

THIS. I KNOW THAT SOUNDS VERY ARTIFICIAL AND SOMETIMES IN LAW WE ARE. MR. BRACKETT, YOU'RE POISED READY TO POUNCE.

MR. POPE: YOUR HONOR, STATE V. BROWN, I BELIEVE IT WAS, IT SAYS A THIRD PARTY'S STATEMENTS, AND OF COURSE I'M NOT EVEN TRYING TO GET INTO MOON'S STATEMENT, BUT IT SAYS THIRD PARTY STATEMENT HE HAS A GUN AND HE'S GOING TO KILL MY SISTER TO SHOW WHY THE INVESTIGATION WAS UNDERTAKEN OR WHY AN OFFICER WAS IN THE AREA, TO SHOW THE REASONABLENESS OF THE INVESTIGATION -- AGAIN, THIS IS JUST WORDS OF INFORMATION TO EXPLAIN -- IT'S NOT EVEN HEARSAY, BUT AGAIN I WILL STEER CLEAR OF EVEN SAYING WHAT SHE SAID.

OTHERWISE, WHAT YOU HAVE -- THEY WOULD OBJECT IF I BROUGHT THE GUY FROM MARYLAND TO SAY DID YOU HAVE A REASON TO GO LOOK IN THE DUMPSTER. SO THEN WHAT YOU HAVE IS THIS GUY GOES UP BUT HE CAN'T TELL ANYTHING, THEN IN MARYLAND THEY JUST HAPPENED TO WALK OUT AND FIND SOMETHING IN A DUMPSTER.

THE COURT: WELL, ONE REASON WE CAN ALLOW TESTIMONY ALONG THE LINES OF WHAT I SAID EARLIER IS THAT SOMEBODY IS GOING TO CONNECT IT UP.

I UNDERSTAND THAT MS. MOON IS GOING TO TESTIFY.

MR. POPE: YES, SIR.

THE COURT: SHE CAN TESTIFY THAT SHE TOLD THE OFFICER. AND THEN THE OFFICER CAN TESTIFY THAT HE TOLD OFFICER MISLE.

WE DON'T ALWAYS REQUIRE THAT BECAUSE WE'D HAVE WITNESSES GETTING UP AND DOWN, UP AND DOWN, AND UP AND DOWN. SO, IF THE STATE ASSURES ME THAT IT'S GOING TO BE TIED TOGETHER, IT CAN COME IN OF COURSE; I'VE ALREADY RULED THAT.

BUT THIS WITNESS CAN TESTIFY TO WHAT HE DID. AND IF HE CALLED AND SAID GO LOOK IN THIS DUMPSTER, OBVIOUSLY THE IMPLICATION IS THAT THE INFORMATION CAME FROM SOMEWHERE, BUT HE CAN STILL TESTIFY AS TO WHAT HE DID. AND I DO SEE A LITTLE DIFFERENCE IN THE EXIGENCIES OF THE CASE, AND I HAVEN'T READ IT, WHERE SOMEBODY IS OUT THERE WITH A GUN LOOKING FOR SOMEBODY AS OPPOSED TO SOMETHING THAT DOESN'T HAVE THE URGENCY THAT THAT MIGHT HAVE.

I DON'T KNOW IF THAT'S NUANCE OR NOT; I HAVEN'T READ THAT CASE.

MR. POPE: YOUR HONOR, AGAIN, WITH NOT SPLITTING HAIRS ON THAT CASE, I WOULD SUBMIT THAT THE ITEMS THAT WERE RECOVERED FROM THIS DUMPSTER DO HAVE THE URGENCY OF THE ITEMS MENTIONED. BUT, AGAIN, I'M NOT SPLITTING HAIRS ON THAT MATTER.

YOUR HONOR, EVEN THOUGH I THINK HE COULD TELL US WHAT MEREDITH MOON SAID, I'M GOING TO STEER CLEAR OF IT. I UNDERSTAND THEIR RIGHT TO OBJECT. THE SITUATION -- HE'S GOING TO TELL WHAT HE DID AND WHAT HE TOLD PEOPLE.

THE COURT: THAT'S FINE. BRING IN THE JURY.

IN THE PRESENCE OF THE JURY:

THE COURT: YOU MAY PROCEED, SOLICITOR

CONTINUED DIRECT EXAMINATION OF CAPTAIN MISLE:

Q. DETECTIVE MISLE, YOU ACTUALLY PHYSICALLY WENT TO PHILADELPHIA THE DAY AFTER THE MURDER; IS THAT CORRECT?

A. YES, SIR, I DID.

Q. OKAY. AND YOU HAD THE OPPORTUNITY TO TALK TO MS. MOON?

A. YES, SIR, I DID.

Q. AFTER THAT, BASED ON YOUR INVESTIGATION, DID YOU ALSO HAVE THE OPPORTUNITY TO CONTACT OTHER OFFICERS ALONG THE EAST COAST?

A. YES, SIR. MARYLAND STATE POLICE WERE CONTACTED AND ASKED TO GO TO A CERTAIN LOCATION ON A MARYLAND TURNPIKE TO A MEDIAN SERVICE AREA AND ASKED TO LOOK IN THE DUMPSTERS AT THOSE TWO LOCATIONS BECAUSE WE WEREN'T SURE EXACTLY WHICH ONE.

AND THEY RESPONDED TO OUR REQUEST AND THEY FOUND A PLASTIC BAG ---

MR. HANCOCK: I'M GOING TO OBJECT.

THE COURT: I SUSTAIN THE OBJECTION.

Q. YOU ASKED MARYLAND POLICE TO GO LOOK FOR ITEMS OF EVIDENCE?

A. YES, SIR, I DID.

Q. AFTER ASKING THEM TO DO THAT -- THAT WAS FROM PHILADELPHIA THAT YOU MADE THAT REQUEST; IS THAT CORRECT?

A. FROM PHILADELPHIA, YES.

Q. DID YOU ALSO HAVE THE OPPORTUNITY TO BRING BACK SOME EVIDENCE, YOU AND BOBBY BROWN I BELIEVE, RECEIVED SOME EVIDENCE FROM PHILADELPHIA AND BROUGHT THAT BACK ALSO?

A. YES, SIR. WE BROUGHT BACK THE PROPERTY BELONGING TO JAMES ROBERTSON. IT WAS A BILLFOLD, CREDIT CARD AND PURCHASE RECEIPT WITH A VISA CARD FROM THE PEACH STAND AS I REMEMBER.

Q. I'LL SHOW YOU STATE'S EXHIBIT 88 FOR IDENTIFICATION AND ASK IF YOU COULD TAKE A LOOK AT THAT?

A. YES SIR, THIS IS THE BILLFOLD THAT WE BROUGHT BACK.

Q. YOU ALSO INDICATED TWO OTHER ITEMS, WHAT WERE THOSE TWO ITEMS?

A. IT WAS A NATIONS BANK VISA CREDIT CARD; EARL L. ROBERTSON'S NAME APPEARS ON IT. ALSO THERE IS A RECEIPT FOR PURCHASE -- JUST A SECOND -- AT THE PEACH STAND AT 1365 WEST HIGHWAY 160, FORT MILL, SOUTH CAROLINA AND IT IS FOR THIRTY DOLLARS AND

TWENTY-TWO CENTS. BASICALLY IT STATES GROCERIES. IT DOESN'T STATE BY ITEM, IT'S JUST A GENERAL GROCERIES WITH THE PRICES DATED 11-25-97 AT 08:36 WHICH WOULD BE 8:36 A.M.

I THINK THE QUESTION WAS WHAT ELSE DID WE BRING BACK. WE BROUGHT BACK CLOTHING BELONGING TO CO-DEFENDANT, MEREDITH MOON. WE BROUGHT BACK A SWEATER, I THINK, AND SOME SHOES.

Q. I'LL SHOW YOU STATE'S EXHIBIT 87 FOR IDENTIFICATION AND ASK IF YOU COULD IDENTIFY THAT?

A. YES, SIR, I BELIEVE THIS WAS THE SWEATER.

Q. YOU'VE INDICATED THAT YOU ALSO BROUGHT BACK SOME SHOES. THEY WERE NOT CONTAINED IN THIS ITEM?

A. NO, THEY WERE NOT CONTAINED IN THIS.

Q. CAPTAIN MISLE, OTHER THAN BRINGING THAT ITEM BACK AND THE OTHER ITEMS YOU'VE RELATED, DID YOU HAVE ANY FURTHER INVOLVEMENT IN THE CASE OTHER THAN FOLLOW-UP?

A. YES, SIR. ON JANUARY, I BELIEVE IT WAS THE 9TH OF 1998, MYSELF AND SLED AGENT ALICE SHEALEY WENT TO PHILADELPHIA TO BRING BACK MEREDITH MOON. WE DROVE BACK IN A VEHICLE.

Q. THANK YOU, SIR. I BEG THE COURT'S INDULGENCE.

(AFTER A BRIEF PAUSE.)

Q. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

MR. HANCOCK: WE HAVE NO QUESTIONS, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN. WE APPRECIATE YOUR TIME; YOU MAY BE EXCUSED. CALL YOUR NEXT WITNESS.

MR. BRACKETT: THE STATE CALLS WAYNE LANGLEY.

WAYNE SCOTT LANGLEY, SR.,BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. BRACKETT:

Q. SIR, WOULD YOU PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST FOR THE COURT REPORTER?

A. WAYNE SCOTT LANGLEY, SR.

Q. AND HOW DO YOU SPELL YOUR LAST NAME?

A. L-A-N-G-L-E-Y.

Q. ALL RIGHT, THANK YOU, SIR. WHERE DO YOU LIVE?

A. 2485 WESTMINSTER DRIVE.

Q. ALL RIGHT, SIR. IS THAT IN THE CITY OF ROCK HILL?

A. IT IS.

Q. WHAT DO YOU DO FOR A LIVING, SIR?

A. I'M A SALESMAN.

Q. ARE YOU MARRIED?

A. YES, SIR.

Q. DO YOU HAVE ANY KIDS?

A. THREE.

Q. WHAT'S YOUR WIFE'S NAME?
A. JANE.
Q. AND YOUR KIDS?
A. SCOTT, WAYNE, JR. IS THE OLDEST FOLLOWED BY BETH AND THEN JOSHUA.
Q. HOW LONG HAVE YOU LIVED OVER AT 2485 WESTMINSTER DRIVE?
A. SINCE JULY OF '82.
Q. DO YOU KNOW THIS INDIVIDUAL SEATED RIGHT OVER HERE AT COUNSEL TABLE?
A. YES, SIR, I DO.
Q. WHO IS THAT?
A. JIMMY ROBERTSON.
Q. HOW DO YOU KNOW HIM, SIR?
A. HE'S BEEN MY NEIGHBOR SINCE WE MOVED IN OVER THERE. HE CAME OVER RIGHT AFTER WE MOVED IN AND INTRODUCED HIMSELF.
Q. NOW, DID YOU KNOW HIS PARENTS AS WELL?
A. YES.
Q. TERRY AND EARL. DID YOU KNOW THEM AS NEIGHBORS?
A. OH, YES.
Q. ALL RIGHT, SIR. TURNING YOUR ATTENTION TO TUESDAY NOVEMBER 25TH OF 1997, WHAT TIME DID YOU LEAVE THE HOUSE THAT MORNING?
A. I TOOK MY DAUGHTER TO WORK FOUR OR FIVE MINUTES

BEFORE 8:00. SHE WORKS AT A DAY CARE ON INDIA HOOK WHICH IS ONLY A COUPLE OF MINUTES FROM THE HOUSE SO, THEREFORE, WE LEFT -- SHE HAD TO BE THERE AT 8:00 AND WE DIDN'T LEAVE UNTIL FOUR OR FIVE MINUTES TILL.

Q. OKAY, WHERE DID YOU GO AFTER YOU DROPPED HER OFF?

A. NOWHERE, I CAME STRAIGHT BACK HOME.

Q. OKAY. WHEN YOU LEFT OUT OF THE HOUSE, DID YOU OBSERVE ANYTHING UNUSUAL ACROSS THE STREET?

A. THERE WAS A SMALL DARK CAR SITTING ON THE WRONG SIDE OF THE ROAD. AS WE WERE HEADED OUT WESTMINSTER TOWARD INDIA HOOK, THE CAR WAS FACING US BUT IT WAS ON THE RIGHT-HAND SIDE.

Q. HAD YOU SEEN THAT CAR THERE BEFORE?

A. NOT TO MY RECOLLECTION, NO.

Q. DID YOU KNOW WHO THAT CAR BELONGED TO?

A. NO.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 115 IN EVIDENCE. DO YOU RECOGNIZE THE CAR IN THAT PHOTOGRAPH?

A. YES.

Q. TELL THE JURY WHAT THAT IS.

A. THAT'S THE CAR THAT WAS SITTING THERE THAT MORNING WHEN I TOOK MY DAUGHTER TO WORK.

Q. OKAY, SIR. COULD YOU TELL BY LOOKING AT IT HOW LONG THAT CAR HAD BEEN THERE?

A. IT HAD BEEN THERE FOR QUITE SOME TIME. THERE WAS LIGHT FROST THAT NIGHT AND THE WINDSHIELD WAS COVERED AND YOU COULD SEE THE TRACKS WHERE WHEN IT WAS DRIVEN UP, IT WAS PULLED OFF THE SIDE OF THE ROAD INTO THE GRASS AND IT HAD LEFT DISTINCT TRACKS.

Q. THIS WAS WHEN YOU WERE LEAVING?

A. THAT WAS WHEN I WAS LEAVING.

Q. ALL RIGHT, SIR. ON YOUR WAY BACK DID YOU SEE ANYTHING UNUSUAL ACROSS THE STREET?

A. JIMMY WAS STANDING NEXT TO A CAR PUTTING SOMETHING INTO THE CAR, AND THERE WAS A YOUNG LADY STANDING AT THE BACK OF THE TRUNK, THE CAR. THE TRUNK WAS UP AND SHE WAS PLACING SOMETHING IN THE BACK OF THE CAR.

WHEN I CAME BY I SLOWED DOWN TO GO INTO MY DRIVEWAY WHICH IS DIRECTLY ACROSS FROM THEIR DRIVEWAY AND I LOOKED OVER THERE AT THEM AND JIMMY STOOD UP OUT OF THE CAR WHICH HE WAS LEANING INTO AND WAVED AT ME AND THE YOUNG LADY AT THE BACK STOOD UP AND TURNED AROUND AND WAVED ALSO. I DIDN'T KNOW HER AT THE TIME.

Q. OKAY, SIR. WHAT CAR, CAN YOU DESCRIBE THE CAR?

A. IT WAS A SMALL REDDISH CAR.
Q. AND DO YOU REMEMBER WHICH SIDE JIMMY WAS LEANING INTO?
A. TO THE DRIVER'S SIDE.
Q. WAS IT AT THE DRIVER'S SEAT OR IN THE PASSENGER, THE BACK SEAT?
A. I'M NOT CERTAIN OF THAT. HE WAS LEANING INTO THE DRIVER'S SIDE OF THE CAR.
Q. WHERE DID YOU GO AFTER THAT?
A. I WENT INTO THE HOUSE AND READ MY BIBLE A WHILE, READ THE NEWSPAPER AND WENT TO WORK.
Q. OKAY, SIR. WHEN YOU LEFT FOR WORK -- HOW LONG AFTER YOU PULLED BACK INTO YOUR DRIVEWAY DID YOU LEAVE FOR WORK?
A. PROBABLY AN HOUR AND 20 MINUTES, APPROXIMATELY, AN HOUR THIRTY.
Q. WHEN YOU DID THAT, WAS THE RED CAR ACROSS THE STREET?
A. NO, SIR.
Q. DID YOU SPEAK TO ANY LAW ENFORCEMENT OFFICERS LATER THAT DAY?
A. YES, I DID.
Q. AND WHAT DID YOU TELL THEM?
A. WHEN I CAME HOME, THE PLACE WAS COVERED WITH LAW ENFORCEMENT AND NEWS MEDIA AND STUFF, AND I

FORGET THE NAME OF THE OFFICER WHO ASKED IF I HAD SEEN ANYTHING THAT MORNING AND I TOLD HIM THAT I HAD SEEN JIMMY AND A YOUNG LADY LOADING STUFF INTO A CAR.

Q. DID YOU TELL THEM WHICH CAR?

A. YES.

Q. THE DESCRIPTION AND THAT SORT OF THING?

A. I DID.

Q. DID YOU SEE JIMMY ROBERTSON AGAIN THAT DAY?

A. NO, I DID NOT.

Q. THANK YOU VERY MUCH, SIR. PLEASE ANSWER ANY QUESTIONS THAT DEFENSE COUNSEL MIGHT HAVE.

A. YES, SIR.

MR. HANCOCK: WE HAVE NO QUESTIONS.

THE COURT: MR. LANGLEY, WE APPRECIATE YOUR TIME, YOU CAN STEP DOWN AND BE EXCUSED. CALL YOUR NEXT WITNESS.

MR. BRACKETT: THE STATE CALLS GLENDA JOHNSON.

GLENDA JOHNSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. BRACKETT:

Q. MA'AM, WOULD YOU PLEASE STATE YOUR FULL NAME?

A. GLENDA JOHNSON.

Q. AND CAN YOU TELL US WHERE YOU'RE EMPLOYED?

A. I WORK FOR THE PEACH STAND IN FORT MILL.

Q. HOW LONG HAVE YOU WORKED THERE?
A. ABOUT SEVEN YEARS.
Q. WHAT DO YOU DO FOR THE PEACH STAND?
A. I'M A CASHIER.
Q. OKAY, MA'AM. WHEN DO YOU USUALLY COME TO WORK?
A. I COME TO WORK ABOUT TEN TO SIX EVERY MORNING.
Q. AND CAN YOU BRIEFLY DESCRIBE WHAT YOUR ROUTINE IS IN THE MORNINGS?
A. WELL, I JUST HAVE TO GET THE MONEY, TAKE CARE OF ALL THAT, PUT IT IN THE CASH REGISTER, GET EVERYTHING, YOU KNOW, READY; CHECK IN THE BACK TO SEE IF EVERYBODY IS READY TO OPEN. IT TAKES A LITTLE WHILE.
Q. AND WHERE DO YOU TYPICALLY STAND WHEN YOU'RE WORKING, WHERE IS YOUR POST?
A. WELL, IN THE FRONT OF THE STORE; RIGHT IN FRONT OF THE STORE.
Q. AND THEY SELL OTHER THINGS AT THE PEACH STAND.
A. YES.
Q. DO THEY HAVE A MEAT COUNTER AND THAT SORT OF THING?
A. UH HUH.
Q. WHAT TIME DID YOU GET THERE ON NOVEMBER 25TH, 1997?
A. PROBABLY AROUND TEN TO SIX LIKE ALWAYS.

Q. AND WHEN DOES THE STORE ACTUALLY OPEN?

A. AT 6:30.

Q. DID THE STORE OPEN ON TIME THAT DAY?

A. YES, SIR.

Q. DO YOU RECALL ANY CUSTOMERS COMING IN, A MAN AND A WOMAN, AT APPROXIMATELY 8:30 OR WAS THERE ANYTHING UNUSUAL ABOUT THEIR COMING?

MR. BOYD: I OBJECT TO THE LEADING.

THE COURT: I SUSTAIN THE OBJECTION. REPHRASE YOUR QUESTION.

Q. I BEG THE COURT'S INDULGENCE FOR ONE MINUTE.

(AFTER A BRIEF PAUSE.)

Q. WHEN IS THE RUSH AT THE STORE IN THE MORNINGS?

A. IT'S BETWEEN FIFTEEN TO 8:00 UNTIL ABOUT 8:15, SCHOOL KIDS AND ALL THOSE ARE COMING THROUGH.

Q. AND DO YOU HAVE REGULARS WHO COME IN THERE?

A. YES, SIR. EVERY DAY; YES, SIR.

Q. DO YOU REMEMBER ANY PEOPLE COMING TO THE STORE THAT MORNING WHO WERE NOT REGULARS?

A. YES, SIR, I DO.

Q. DID YOU HAVE AN OCCASION LATER THAY EVENING OR THE NEXT DAY TO SPEAK WITH LAW ENFORCEMENT REGARDING ANY OF YOUR CUSTOMERS THAT MORNING?

A. MY STORE MANAGER CALLED ME AND TOLD ME WHAT HAD HAPPENED ---

MR. BOYD: OBJECTION.

THE COURT: I SUSTAIN THE OBJECTION.

Q. NOT WHAT ANYBODY SAID, BUT YOUR STORE MANAGER CALLED YOU?

A. YES, SIR.

Q. OKAY. AND AS A RESULT OF THAT CALL, DID YOU SPEAK TO LAW ENFORCEMENT?

A. YES, SIR.

Q. AND WHAT WERE THEY INQUIRING ABOUT?

A. ABOUT SOME PEOPLE THAT COME IN THE STORE; ABOUT A GIRL AND A BOY THAT COME IN THE STORE.

Q. DO YOU REMEMBER THE PEOPLE THAT THEY WERE TALKING ABOUT?

A. YES, SIR, I DO.

Q. DID YOU REMEMBER THOSE PEOPLE AT THAT TIME?

A. YES, SIR, I DID.

Q. APPROXIMATELY WHAT TIME DID THESE PEOPLE COME INTO THE STORE?

A. IT WAS ABOUT 8:50.

Q. 8:50?

A. SOMETHING LIKE THAT; YES, SIR.

Q. NOW, ARE THERE ANY CAMERAS IN YOUR STORE?

A. YES, SIR. AT THAT TIME THERE WAS FOUR.

Q. AND WHERE ARE THOSE LOCATED?

A. ONE'S OVER THE BOX; ONE'S AT THE RESTAURANT;

ONE'S IN THE BACK AND ONE'S IN THE PRODUCE.

Q. DOES ONE MONITOR YOUR WORK AREA?

A. YES, SIR. RIGHT OVER ME; YES, SIR.

Q. OKAY. CAN YOU DESCRIBE THE TWO PEOPLE THAT YOU REMEMBER COMING IN AT THAT TIME?

A. YES, SIR. THE GIRL CAME IN FIRST. SHE WAS KIND OF TALL AND REAL HEAVYSET.

Q. OKAY.

A. AND THE GUY WAS PUMPING GAS. AND JUST A FEW MINUTES LATER, HE CAME IN. HE WAS A LITTLE SHORTER THAN HER, IT SEEMED LIKE TO ME. THEY JUST KIND OF LOOKED MISMATCHED.

Q. OKAY. NOW, HOW LONG DID THEY SPEND IN THE STORE?

A. MAYBE FIVE MINUTES. SHE WAS IN THERE FIRST AND THEN HE CAME IN.

Q. OKAY. DID THEY PURCHASE ANY ITEMS?

A. YES, SIR.

Q. DO YOU RECALL WHAT THEY PURCHASED?

A. I RECALL SHE GOT CIGARETTES, DRINK AND CHIPS. SHE BOUGHT A MAP AND THE GAS.

Q. IS THAT ALL THEY BOUGHT OR IS THAT ALL YOU REMEMBER?

A. NO, SIR, THAT'S ALL I REMEMBER.

Q. OKAY. HOW DID THEY APPEAR? WHAT WAS THEIR

DEMEANOR WHEN THEY WERE IN THE STORE?

A. THEY WERE REALLY PLEASANT; YOU KNOW, THEY JUST TALKED TO ME AND THEY WERE REAL PLEASANT.

Q. DO YOU REMEMBER WHAT THE GENTLEMAN, THE MAN, DO YOU REMEMBER WHAT HE TOLD YOU?

A. SHE, THE GIRL SAID FIRST, YOU KNOW, SHE WAS TALKING AND I HAD ASKED THEM FOR AN I.D. FOR THE CIGARETTES AND SHE SAID THAT THEY WERE TRAVELING AND SAID THAT THEY WERE GOING TO PENNSYLVANIA. AND I SAID WELL, THAT'S A LONG TRIP FOR THIS HOLIDAY, WITH THE HOLIDAY SEASON COMING UP. AND SHE SAID THAT THEY WERE GOING TO GET THE BROTHER AND BRING HIM BACK FOR THE HOLIDAY.

AND THEN HE CAME IN AND THEY WERE JUST, YOU KNOW, TALKING TO EACH OTHER. AND HE SAID ---

MR. BOYD: OBJECTION.

THE COURT: DON'T TELL US WHAT SHE SAID; YOU CAN TELL US WHAT HE SAID.

A. OKAY. HE SAID THAT THEY WERE GOING TO GET THE BROTHER IN PENNSYLVANIA FOR THE HOLIDAY AND BRING HIM BACK. AND I SAID DOES HE KNOW YOU'RE COMING. AND HE SAID NO, MA'AM, IT'S A SURPRISE. AND THEN THEY, YOU KNOW, GRINNED AND I SAID HAVE A SAFE TRIP. AND THEY LEFT.

Q. OKAY. HOW DID THEY PAY?

A. HE PAID WITH A CREDIT CARD.
Q. HE PAID?
A. YES.
Q. DID HE HAVE THE CREDIT CARD?
A. YES, SIR.
Q. OKAY. LATER ON -- COURT'S INDULGENCE FOR A MOMENT.
(AFTER A BRIEF PAUSE.)
Q. MA'AM, I SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 90 FOR IDENTIFICATION.
A. YES, SIR.
Q. COULD YOU TAKE A LOOK AT THAT ENVELOPE AND TELL ME IF YOU RECOGNIZE WHAT'S INSIDE OF IT?
A. YES, SIR, THAT'S THE RECEIPT I GAVE THEM.
Q. IS THAT THE RECEIPT, DO YOU RECALL?
A. YES, SIR, IT'S THE ORIGINAL.
Q. WHAT'S THE TOTAL ON IT?
A. THIRTY TWENTY-ONE.
Q. AND WHAT'S THE TIME ON THE RECEIPT?
A. 8:36.
Q. OKAY. THAT'S THE RECEIPT YOU GAVE LAW ENFORCEMENT?
A. YES, SIR.
Q. YOUR HONOR, AT THIS TIME I WOULD MOVE STATE'S EXHIBIT 90 FOR IDENTIFICATION INTO EVIDENCE.

MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

THE COURT: IT'S RECEIVED WITHOUT OBJECTION.

(THE CREDIT CARD RECEIPT WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 90 WITHOUT OBJECTION.)

Q. MA'AM, HAVE YOU HAD OCCASION TO REVIEW THE VIDEO TAPES ON THE SURVEILLANCE CAMERAS THAT DAY?

A. YES, SIR.

Q. OKAY. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 89 FOR IDENTIFICATION. HAVE YOU HAD A CHANCE TO VIEW THAT VIDEO TAPE?

A. YES, SIR.

Q. DOES THIS VIDEO TAPE ACCURATELY REFLECT WHAT TOOK PLACE AT THE PAY OUT COUNTER AT THE PEACH STAND DURING YOUR CONVERSATION WITH THOSE TWO INDIVIDUALS?

A. YES, SIR.

Q. YOUR HONOR, I WOULD MOVE STATE'S EXHIBIT 89 FOR IDENTIFICATION INTO EVIDENCE AT THIS TIME.

MR. HANCOCK: WE AT LEAST NEED SOME CHAIN OF CUSTODY OF THIS ITEM AT THIS TIME. I MEAN HOW CAN SHE IDENTIFY IT. I THINK THE ---

MR. BRACKETT: I DON'T BELIEVE SO, YOUR HONOR. SHE HAS TESTIFIED THAT THIS ACCURATELY REPRESENTS IT AS IT OCCURRED. SHE WAS A PARTY AND SHE'S DEPICTED ON THE VIDEO TAPE. I THINK SHE CAN AUTHENTICATE THIS JUST WITH HER OWN

TESTIMONY.

THE COURT: LET ME LET YOU GO TO THE JURY ROOM FOR JUST A MINUTE.

IN CAMERA:

THE COURT: I SUGGEST THAT IT BE PLAYED AND SEE IF SHE CAN IDENTIFY IT.

MR. BRACKETT: YES, SIR.

MR. HANCOCK: YOUR HONOR, IF I MAY. IN THE INTEREST OF TIME, WHAT WE'RE LOOKING FOR IS -- AND NOT TO DO THE SOLICITOR'S JOB, BUT THAT IT WAS REMOVED. THAT THAT'S THE TAPE THAT WAS REMOVED AND GIVEN TO LAW ENFORCEMENT.

THE COURT: WELL, SHE'S GOING TO WATCH IT AND SHE'S GOING TO TELL US. THAT'S WHAT YOU ASKED FOR.

MR. HANCOCK: I THINK SHE CAN TESTIFY TO THAT FROM THE TAPE ITSELF. WE HAVE VIEWED THE TAPE, WE HAVE BEEN ALLOWED THE TAPE.

THE COURT: WELL, I KNOW, BUT SHE IDENTIFIED IT AND THEN Y'ALL OBJECTED. SHE IDENTIFIED IT AND YOU SAID YOU NEEDED BETTER IDENTIFICATION THAN THAT. SO, THAT'S WHAT WE'RE DOING.

MR. HANCOCK: OKAY.

THE COURT: I AGREE, SHE HAS IDENTIFIED IT AND THAT SHOULD BE ENOUGH, BUT I WANT TO BE ON THE SAFE SIDE.

(AT THIS TIME THE VIDEO TAPE WAS PLAYED.)

Q. MA'AM, HAVE YOU REVIEWED THAT VIDEO TAPE?

A. YES, SIR.

Q. DOES THAT ACCURATELY DEPICT THE EVENTS THAT OCCURRED THE MORNING OF TUESDAY NOVEMBER 25TH, 1997?

A. YES, SIR.

Q. THAT YOU'VE DESCRIBED HERE IN COURT?

A. YES, SIR.

THE COURT: ARE YOU OFFERING IT INTO EVIDENCE, STATE'S 89?

MR. BRACKETT: YES, SIR.

THE COURT: ANY OBJECTION?

MR. HANCOCK: NO OBJECTION.

THE COURT: IT WILL BE RECEIVED INTO EVIDENCE.

(THE VIDEO TAPE WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 89 WITHOUT OBJECTION.

THE COURT: BRING THE JURY IN.

MR. BOYD: YOUR HONOR, WHEN THE VIDEO TAPE IS BEING PLAYED, I WOULD LIKE PERMISSION TO TAKE MR. ROBERTSON OVER TO WATCH IT ALSO WHEN IT'S BEING PLAYED.

THE COURT: WELL, LET ME SUGGEST THIS. HOLD THE JURY JUST A MINUTE. I HAVE FOUND THAT ONE OF THE BEST PLACES TO PLACE STUFF IS ABOUT WHERE THIS BOARD IS. THAT WAY THEY CAN SEE IT, THEY CAN SEE IT, I CAN SEE IT. I CAN'T SEE IT BUT I JUST SAW IT. IS THERE NOT A PLUG UP

THERE?

MR. BRACKETT: YES, SIR. I JUST AUTOMATICALLY PUT IT HERE.

THE COURT: WELL, THEY CAN TURN AND I THINK THEY CAN SEE IT JUST AS GOOD FROM THAT ANGLE.

MR. BRACKETT: THAT'S FINE.

MR. POPE: WE HAVE PRESENTED THIS TO THE DEFENSE NUMEROUS TIMES.

THE COURT: I THINK HE HAS THE RIGHT TO SEE IT WHILE IT'S BEING PRESENTED TO THE JURY. CAN YOU SEE IT FROM THERE?

MR. ROBERTSON: YES, YOUR HONOR.

THE COURT: ALL RIGHT, BRING IN THE JURY.

IN THE PRESENCE OF THE JURY:

THE COURT: THE JURY IS PRESENT, YOU MAY PROCEED.

CONTINUED DIRECT EXAMINATION OF GLENDA JOHNSON:

Q. MA'AM, WOULD YOU STEP DOWN OFF THE STAND FOR JUST A SECOND? TAKE A LOOK AT THE TELEVISION MONITOR IF YOU WOULD PLEASE.

(THE VIDEO WAS STARTED.)

Q. CAN YOU DESCRIBE WHAT IT IS WE'RE SEEING ON THE SCREEN THERE?

A. AT THE RIGHT TOP IS THE MEAT DEPARTMENT ---

MR. BOYD: YOUR HONOR, WE CAN'T SEE ---

THE COURT: THEY CAN'T SEE IF YOU STAND IN THE

WAY.

A. I'M SORRY.

Q. STAND OFF TO THE SIDE SO THAT THEY CAN SEE.

A. THE RIGHT TOP IS THE MEAT DEPARTMENT. OVER TO THE LEFT ON THE TOP, THAT'S THE OFFICE IN THE UPSTAIRS. THE BOTTOM IS ME IN THE BOX AND THIS ONE IS ME IN THE BOX, THAT'S WHAT WE CALL THE LITTLE PLACE IN THE FRONT.

Q. OKAY. AND IS THIS THE VIDEO TAPE THAT DEPICTS -- - YOU'VE SEEN THIS VIDEO TAPE?

A. YES.

Q. AND IT DEPICTS THE EVENTS THAT OCCURRED THAT YOU JUST DESCRIBED?

A. YES, SIR.

(THE TAPE WAS PLAYED FOR THE JURY.)

Q. OKAY, MA'AM, CAN YOU TAKE A LOOK AND TELL ME, CAN YOU SEE THE TWO INDIVIDUALS YOU WERE DESCRIBING ON THERE?

A. YES, SIR, IN THE BOTTOM IN THE RIGHT CORNER AND YOU CAN SEE THEM FROM THE BACK HERE, BUT THAT'S THEIR FACE ON THE RIGHT.

Q. DO YOU KNOW HOW TO USE THIS? PUSH THE BUTTON AND IT MAKES A RED DOT UP HERE?

A. UH HUH.

Q. CAN YOU PUT THE DOT ON THE GENTLEMAN. WELL, YOU

CAN BACK UP.

A. OH, I'M SORRY. I THOUGHT YOU MEANT TO GO UP THERE.

Q. IT WILL PROJECT LIKE A FLASHLIGHT. OKAY?

A. OKAY. RIGHT HERE.

Q. OKAY, YOU CAN HAVE A SEAT.

(THE WITNESS RESUMED THE WITNESS STAND.)

Q. MA'AM, I'M SHOWING YOU A PIECE OF PAPER THAT COMES OUT OF A BROWN LEATHER WALLET CONTAINED IN WHAT'S MARKED AS STATE'S EXHIBIT 88 FOR IDENTIFICATION AND ASK YOU IF YOU CAN RECOGNIZE WHAT THAT IS?

A. YES, SIR. THAT'S THE BOTTOM COPY WE ALWAYS GIVE TO THE CUSTOMER.

Q. THANK YOU VERY MUCH, MA'AM. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MIGHT HAVE.

A. YES, SIR.

CROSS EXAMINATION BY

MR. BOYD:

Q. HOW ARE YOU DOING, MA'AM?

A. FINE.

Q. I JUST WANTED TO ASK YOU A FEW QUESTIONS. YOU SAID WHEN THEY CAME IN IT LOOKED LIKE A MISMATCH. WHAT WERE YOU TALKING ABOUT?

A. WELL, I DON'T KNOW, SHE'S JUST A LOT, YOU KNOW,

THEY JUST DIDN'T FIT TOGETHER.

Q. ARE YOU TALKING ABOUT THAT SHE WAS A LOT BIGGER THAN HE WAS?

A. YES, SHE WAS A REAL HEAVY GIRL; YES, SIR.

Q. SHE WAS ALSO TALL WASN'T SHE?

A. WELL, NOT A LOT TALLER THAN HIM, BUT SHE WAS JUST BIGGER, YOU KNOW, A LOT BIGGER.

Q. OKAY. SO, HE LOOKED SMALL AND THIN BESIDE HER; IS THAT BASICALLY WHAT YOU'RE SAYING?

A. YES, SIR.

Q. OKAY, THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

MR. BRACKETT: YOUR HONOR, IF I MAY, I'M SORRY BUT I FORGOT TWO ITEMS THAT WE HAD PRE-MARKED AND SHE WAS GOING TO IDENTIFY THOSE AS WELL IF I MAY BE ALLOWED TO.

THE COURT: YES, SIR.

REDIRECT EXAMINATION BY

MR. BRACKETT:

Q. MA'AM, I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBITS 123 AND 124. DO YOU RECOGNIZE THOSE?

A. YES, SIR.

Q. WHAT ARE THOSE?

A. THAT'S ME WAITING ON THE MAN AND THE WOMAN IN THE VIDEO.

Q. AND THE NEXT PICTURE?

A. THAT'S THE SAME ONE YOU SHOWED ON THE VIDEO.

Q. YOUR HONOR, I'D MOVE STATE'S 123 AND 124 INTO EVIDENCE AT THIS TIME.

MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

THE COURT: IT WILL BE RECEIVED WITHOUT OBJECTION.

(THE PHOTOS FROM THE VIDEO WERE MARKED IN EVIDENCE AS STATE'S EXHIBITS 123 AND 124 WITHOUT OBJECTION.)

MR. BRACKETT: THANK YOU, YOUR HONOR. NO FURTHER QUESTIONS.

THE COURT: ANY RECROSS?

MR. BOYD: NO, SIR.

THE COURT: MS. JOHNSON, WE APPRECIATE YOUR TIME. YOU CAN FEEL FREE TO LEAVE. THANK YOU A LOT. CALL YOUR NEXT WITNESS.

MR. BRACKETT: THE STATE CALLS TROOPER CURTIS RICHARDSON.

CURTIS LEE RICHARDSON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. BRACKETT:

Q. SIR, WOULD YOU PLEASE STATE YOUR FULL NAME?

A. CURTIS LEE RICHARDSON.

Q. AND WHERE ARE YOU EMPLOYED, SIR?

A. VIRGINIA STATE POLICE.

Q. WHERE DO YOU LIVE?
A. IN CAROLINA COUNTY IN THE STATE OF VIRGINIA.
Q. HOW LONG HAVE YOU BEEN WITH THE VIRGINIA STATE POLICE?
A. 12 YEARS.
Q. AND WHAT ARE YOUR DUTIES WITH THE STATE POLICE THERE?
A. NORMAL PATROL, CRIME INVESTIGATION, ACCIDENT INVESTIGATION.
Q. CAN YOU TELL THE JURY WHERE LADYSMITH, VIRGINIA IS?
A. IT'S GOING TO BE ABOUT 30 MILES NORTH OF RICHMOND, VIRGINIA.
Q. ON NOVEMBER 27TH DID YOU HAVE OCCASION -- FIRST LET ME DO THIS. I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 91 FOR IDENTIFICATION. WOULD YOU TAKE A LOOK AT THAT AND TELL ME IF YOU RECOGNIZE THIS?
A. YES, SIR, I DO.
Q. CAN YOU TAKE A LOOK IN THE ENVELOPE?
A. YES, SIR. IT'S A CREDIT CARD RECEIPT THAT I RETRIEVED FROM THE LADYSMITH SHELL STATION.
Q. AND WHAT DATE DID YOU RETRIEVE THAT ON?
A. I RETRIEVED THAT ON NOVEMBER 26TH.
Q. CAN YOU DESCRIBE THE PLACE YOU GOT THAT FROM FOR

THE JURY?

A. IT'S A SHELL GAS STATION WHICH IS RIGHT AT THE INTERSECTION OF I-95 NORTHBOUND AND ROUTE 639 OR LADYSMITH ROAD AND IT'S ABOUT A HUNDRED YARDS OFF THE INTERSTATE ON THE RIGHT-HAND SIDE.

Q. HAVE YOU HAD A CHANCE TO EXAMINE THIS RECEIPT?

A. YES, SIR.

Q. IS IT IN THE SAME CONDITION AS IT WAS WHEN YOU RETRIEVED IT FROM THE SHELL STATION?

A. YES.

Q. WHAT DID YOU DO WITH IT AFTER YOU RETRIEVED IT?

A. AFTER RETRIEVING IT, I CALLED LIEUTENANT HAGER TO VERIFY THAT THE ACTUAL CREDIT CARD NUMBERS WERE THE CORRECT ONES, AND AT THAT POINT I CARRIED IT BACK TO OUR OFFICE AND PUT IT IN THE ENVELOPE AND MAILED IT TO LIEUTENANT HAGER.

Q. IS THAT YOUR HANDWRITING THERE?

A. YES, SIR, IT IS.

Q. ALL RIGHT, SIR. YOUR HONOR, AT THIS TIME I MOVE STATE'S EXHIBIT 91 FOR IDENTIFICATION INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. HANCOCK: YOUR HONOR, WE JUST NEED TO KNOW THE RELEVANCY OF THAT PARTICULAR RECEIPT AT THIS TIME.

THE COURT: YOUR ONLY OBJECTION IS RELEVANCY?

MR. HANCOCK: THE CHAIN OF EVIDENCE ALSO.

MR. BRACKETT: YOUR HONOR, FOR THE SAME GROUNDS AS THE VIDEO. HE HAS EXAMINED IT, HE RETRIEVED IT FROM THE SHELL STATION AND IT HASN'T BEEN ALTERED.

THE COURT: I OVERRULE THE OBJECTION. IT WILL COME INTO EVIDENCE.

(THE CREDIT CARD RECEIPT FROM THE SHELL STATION IN LADYSMITH, VIRGINIA WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 91 OVER OBJECTION.)

Q. THANK YOU TROOPER RICHARDSON. PLEASE ANSWER ANY QUESTIONS THAT COUNSEL FOR THE DEFENSE MAY HAVE.

MR. HANCOCK: WE HAVE NO QUESTIONS, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN AND BE EXCUSED. WE APPRECIATE YOUR TIME.

MEMBERS OF THE JURY, Y'ALL HAVE HAD QUITE A FEW LITTLE BREAKS, WE HAVE NOT; SO, WE ARE GOING TO TAKE ABOUT A 10 MINUTE REFRESHER BREAK SO THAT WE CAN HAVE A BREAK BEFORE WE GO TO THE NEXT WITNESS.

AFTER THE BREAK IN CAMERA:

MR. POPE: YOUR HONOR, I WOULD CALL TO THE COURT'S ATTENTION -- I HAVE NOT HAD A CHANCE TO STEP OUT AND INVESTIGATE THIS FURTHER, BUT WE HAVE THE PHILADELPHIA OFFICER WHO IS THE LEAD INVESTIGATOR. HE WILL PROBABLY BE FIVE WITNESSES FROM NOW. BUT WE ARE MOVING AT A PRETTY FAST PACE. I JUST WANTED TO TELL YOU THAT AT SOME POINT I

MAY WANT TO ADDRESS THE DENNO ISSUE FURTHER. YOU KNOW, THERE MAY BE LEGAL THINGS WE WANT TO ADDRESS WITH THAT.

I'LL BE HONEST, I DIDN'T EVEN GET OUT OF THE COURTROOM TO HAVE A CHANCE TO TALK TO HIM. I JUST CALL THAT TO THE COURT'S ATTENTION.

THE COURT: DO YOU NEED A REFRESHER MINUTE? DO YOU NEED A MINUTE?

MR. POPE: YOUR HONOR, IT'S ACCORDING TO WHEN YOU'RE GOING TO DEAL WITH THIS; HE IS PROBABLY FIVE WITNESSES DOWN THE ---

THE COURT: NO, I MEAN DO YOU NEED TO TAKE A PERSONAL MINUTE OR TWO?

MR. POPE: OH, NO, SIR; I'D RATHER KEEP PROSECUTING, YOUR HONOR. I APPRECIATE YOUR CONCERN THOUGH.

THE COURT: BRING IN THE JURY.

IN THE PRESENCE OF THE JURY:

THE COURT: CALL YOUR NEXT WITNESS PLEASE.

MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR, THE STATE WOULD CALL TROOPER GUY COX TO THE STAND.

GUY R. COX, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. TROOPER COX, IF YOU COULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER

PLEASE.

A. MY LAST NAME IS C-O-X. I AM TROOPER FIRST CLASS GUY R. COX.

Q. TROOPER COX, COULD YOU TELL THE JURY WHERE YOU ARE EMPLOYED?

A. I AM EMPLOYED BY THE MARYLAND STATE POLICE AT THE JFK BARRACK.

Q. AND COULD YOU TELL THE JURY HOW LONG YOU HAVE BEEN SO EMPLOYED?

A. FOR 21 YEARS.

Q. COULD YOU JUST BASICALLY TELL THE JURY WHAT YOUR DUTIES ARE THERE IN MARYLAND AND WHAT YOU DO DAY TO DAY?

A. UNIFORMED ROAD PATROL.

Q. AND AS PART OF YOUR DUTIES DID YOU HAVE AN OPPORTUNITY TO ASSIST IN THE INVESTIGATION IN THIS CASE BACK IN NOVEMBER 26TH OF 1997?

A. YES, I DID.

Q. AND PARTICULARLY DID YOU HAVE AN OPPORTUNITY TO ASSIST IN THE SEARCH FOR EVIDENCE THERE IN MARYLAND?

A. YES, I DID.

Q. COULD YOU TELL THE JURY WHAT YOUR INVOLVEMENT WAS, WHAT YOU WERE ACTUALLY CALLED TO DO, WHAT YOU DID?

A. ON NOVEMBER 26TH, 1997 AT APPROXIMATELY 5:15 IN THE EVENING I WAS WORKING THE LATE SHIFT WHICH IS THE 3:00 O'CLOCK TO 11:00 O'CLOCK SHIFT WHEN I WAS CONTACTED BY OUR DUTY OFFICER AND ADVISED OR INSTRUCTED TO MAKE A SEARCH IN THE DUMPSTER AT THE CHESAPEAKE HOUSE AT THE EXXON STATION FOR POSSIBLE EVIDENCE FROM A HOMICIDE THAT SOUTH CAROLINA AUTHORITIES WERE INVESTIGATING.

Q. OKAY. CAN YOU DESCRIBE FOR THE JURY, YOU SAID THE CHESAPEAKE HOUSE, CAN YOU DESCRIBE A LITTLE BIT ABOUT WHAT THAT IS AND WHERE THAT'S LOCATED EXACTLY?

A. YES, SIR. THE CHESAPEAKE HOUSE IS A REST AREA ON I-95 IN CECIL COUNTY. IT'S IN THE CENTER OF THE HIGHWAY OF 95. IT CONSISTS OF TWO GAS STATIONS, A SUNNOCO STATION, AN EXXON STATION AND A BUILDING WHERE YOU CAN GET FOOD AT.

Q. AND DID YOU ULTIMATELY GO TO THAT LOCATION?

A. YES, I DID.

Q. AND DID YOU HAVE AN OPPORTUNITY TO SEARCH THE DUMPSTER THERE?

A. YES, I DID.

Q. CAN YOU RELATE TO THE JURY WHAT, IF ANYTHING, TOOK PLACE? WHAT YOU ACTUALLY DID AND WHAT YOU DISCOVERED?

A. ON THAT DATE AND TIME I WAS INSTRUCTED TO CHECK THE DUMPSTER AT THE EXXON STATION. I WENT TO THE AREA, WENT TO THE DUMPSTER, IT WAS FULL OF TRASH. I STARTED REMOVING TRASH BAGS AND BOXES THAT HAD BEEN DISCARDED INTO THE DUMPSTER. AFTER REMOVING APPROXIMATELY NINE OR TEN ITEMS I DISCOVERED A GREEN TRASH BAG WITH AN ALUMINUM BAT HANDLE STICKING OUT OF THE TOP OF IT.

Q. AND ONCE YOU OBSERVED THAT, WHAT DID YOU DO THEN?

A. I THEN CONTACTED MY SUPERVISOR, ADVISED HIM THAT I MAY HAVE DISCOVERED THE EVIDENCE I WAS INSTRUCTED TO LOOK FOR. I ADVISED HIM TO CONTACT THE CRIMINAL INVESTIGATOR AND HAVE HIM COME TO THE SCENE.

I THEN STAYED ON THE SCENE WITH THE PROPERTY SECURING IT UNTIL I WAS RELIEVED.

Q. OKAY. DID YOU ALLOW ANYBODY TO ACCESS THAT DUMPSTER OR CHANGE OR ALTER ANYTHING IN ANY WAY ONCE YOU DISCOVERED THIS ITEM?

A. NO, I DID NOT.

Q. DID YOU YOURSELF ALTER THE BAG OR EVEN OPEN THE BAG IN ANY WAY?

A. I NEVER TOUCHED IT. ONCE I DISCOVERED THE ITEMS, I STOPPED MY SEARCH, DIDN'T ALLOW ANYONE

ELSE TO TOUCH IT AND I DID NOT TOUCH IT MYSELF.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 141, 140 AND 139 FOR IDENTIFICATION. I JUST ASK YOU TO LOOK AT EACH OF THESE AND TELL ME IF YOU RECOGNIZE THESE ITEMS?

A. YES, I DO.

Q. OKAY. AND PARTICULARLY CONCERNING STATE'S EXHIBIT 139 AND 140, DO THEY ACCURATELY DEPICT THE SCENE AND THE ITEM AS YOU OBSERVED IT THAT NIGHT?

A. YES, IT DOES.

Q. AND AS TO 141 I REALIZE THIS WAS TAKEN IN THE DAY TIME, BUT IS THIS THE INCIDENT LOCATION?

A. YES, THAT IS THE EXXON STATION AT THE CHESAPEAKE HOUSE.

Q. THANK YOU, SIR. YOUR HONOR, I MOVE STATE'S EXHIBITS 139, 140 AND 141 INTO EVIDENCE.

MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

THE COURT: IT WILL BE RECEIVED.

(THE PHOTOGRAPHS OF THE DUMPSTER WERE MARKED IN EVIDENCE AS STATE'S EXHIBITS 139, 140 AND 141 WITHOUT OBJECTION.)

MR. POPE: MAY IT PLEASE THE COURT, I'M GOING TO ASK THE TROOPER TO STEP DOWN TO BE ABLE TO SEE THE SCREEN.

THE COURT: CERTAINLY.

Q. IF YOU WOULD, TROOPER, STEP DOWN. AND, MADAM

CLERK, IF YOU COULD GET THE LIGHTS.

(THE LIGHTS IN THE COURTROOM WERE DIMMED.)

Q. AS I PLACE EACH OF THESE UP I'LL IDENTIFY THE ITEM AND IF YOU COULD JUST INDICATE TO THE JURY WHAT THEY DEPICT PLEASE.

A. YES, SIR.

Q. THIS WILL BE STATE'S EXHIBIT 141. IF YOU WILL JUST IDENTIFY THAT FOR US PLEASE.

A. THIS IS THE NORTHBOUND GAS PUMPS AT THE CHESAPEAKE HOUSE. THE DUMPSTER IS RIGHT WHERE THE RED DOT IS AT. THIS IS THE LOCATION OF THE DUMPSTER THAT I SEARCHED WHERE I FOUND THE EVIDENCE.

Q. OKAY, AND I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 140.

A. AGAIN, THE DUMPSTER THAT I SEARCHED. THESE ARE THE BAGS THAT I TOOK OUT OF THE DUMPSTER UP UNTIL THE TIME THAT I FOUND THE EVIDENCE WHICH WAS STILL INSIDE.

ONCE I LOCATED THE PROPERTY, I STOPPED TAKING TRASH OUT OF THE DUMPSTER AND CONTACTED MY SUPERVISOR ABOUT THE RECOVERY.

Q. I'M GOING TO SHOW YOU STATE'S EXHIBIT 139.

A. OKAY, THIS IS THE TRASH BAG THAT I DISCOVERED AFTER REMOVING SOME TRASH OFF OF IT. ONCE I

REMOVED THE TRASH OFF OF IT AND SAW THE TOP OF THE -- THE BAT STICKING OUT OF THE TOP, I THEN STOPPED REMOVING THE TRASH OUT OF IT. I THEN CONTACTED MY SUPERVISOR FROM THE SCENE ABOUT THE RECOVERY AND I STAYED WITH THE EVIDENCE UNTIL I WAS RELIEVED BY THE CRIMINAL INVESTIGATOR.

Q. THANK YOU, SIR. YOU CAN HAVE A SEAT. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

MR. BOYD: NO QUESTIONS, YOUR HONOR.

THE COURT: ALL RIGHT, YOU MAY STEP DOWN AND BE EXCUSED. WE APPRECIATE YOUR TIME.

MR. POPE: YOUR HONOR, I WOULD ASK THAT THIS WITNESS BE EXCUSED. YOU JUST TOOK CARE OF THAT, YOUR HONOR, I APOLOGIZE.

YOUR HONOR, THE NEXT OFFICER WILL ALSO BE USING THE OVERHEAD PROJECTOR AND UNLESS WE HAVE A PROBLEM WITH THE JURY SEEING, WE'LL JUST LEAVE THE LIGHTS DOWN.

THE COURT: THAT SHOULD BE ALL RIGHT, I THINK.

MR. POPE: THE STATE WOULD CALL TROOPER THOMAS BEMAN TO THE STAND.

THE COURT: I'M SORRY, WHAT WAS THE LAST NAME AGAIN?

MR. POPE: BEMAN, YOUR HONOR.

THE COURT: COME ON UP HERE, TROOPER, TO THE CLERK'S DESK AND SHE WILL ADMINISTER THE OATH.

THOMAS S. BEMAN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. TROOPER BEMAN, IF YOU COULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER PLEASE, SIR.

A. THOMAS S. BEMAN, B-E-M-A-N.

Q. COULD YOU EXPLAIN TO THE JURY WHAT YOUR OCCUPATION IS PLEASE, SIR?

A. I'M A MARYLAND STATE TROOPER CURRENTLY ASSIGNED TO THE CRIME LABORATORY DIVISION OF THE MARYLAND STATE POLICE.

Q. SPECIFICALLY WOULD YOU TELL THE JURY, YOU SAY ASSIGNED TO THE CRIME LAB, WHAT ARE YOUR DUTIES DAY TO DAY; WHAT IS IT YOU ACTUALLY DO?

A. I PROCESS CRIME SCENES, COLLECT EVIDENCE; ANYTHING TO DEAL WITH EVIDENCE.

Q. I CALL YOUR ATTENTION TO WEDNESDAY NOVEMBER 26, 1997. DID YOU HAVE AN OPPORTUNITY TO RESPOND TO THE CHESAPEAKE HOUSE THERE IN YOUR JURISDICTION AT APPROXIMATELY 7:23 THAT EVENING?

A. YES, SIR, I DID.

Q. WOULD YOU EXPLAIN TO THE JURY WHAT THE PURPOSE WAS OF YOU GOING THERE AND WHAT YOU OBSERVED?

A. OKAY. UPON ARRIVAL I CONTACTED T.F.C. COX, GUY COX, AND DETECTIVE SERGEANT BARKER WHO WERE ALREADY AT THE SCENE AND THEY HAD SECURED THIS DUMPSTER BY THE NORTHBOUND SIDE OF THIS SERVICE AREA AT WHICH TIME THEY POINTED OUT IN THE DUMPSTER A GARBAGE BAG WITH A BAT STICKING OUT OF IT. IT APPARENTLY HAD SEVERAL OTHER ITEMS IN THERE AND THEY BELIEVED THAT THAT'S WHAT THEY WERE LOOKING FOR IN REFERENCE TO A LOOKOUT FROM SOUTH CAROLINA.

Q. DID YOU ACTUALLY YOURSELF PHYSICALLY RECOVER THIS BAG FROM THE DUMPSTER?

A. YES, I DID.

Q. AND THEN WHAT DID YOU -- DID YOU DO ANYTHING AS FAR AS WHAT WAS IN THE BAG?

A. I TOOK DETAILED PHOTOGRAPHS OF THE AREA; I TOOK MEASUREMENTS, THINGS LIKE THAT.

Q. OKAY, SO WE'RE ACTUALLY OBSERVING THE PHOTOGRAPHS THAT YOU TOOK?

A. YES, SIR.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBITS 142 THROUGH 146 FOR IDENTIFICATION AND ASK IF YOU COULD LOOK AT EACH OF THOSE AND TELL ME IF THEY ACCURATELY DEPICT THE ITEMS THAT YOU RECOVERED.

A. THAT'S RIGHT. THOSE ARE THE ITEMS THAT I TOOK OUT OF THE DUMPSTER.

Q. ALL RIGHT, THANK YOU, SIR. 142 THROUGH 146 FOR IDENTIFICATION, THE STATE WOULD MOVE INTO EVIDENCE.

MR. BOYD: I WOULD OBJECT ON THE GROUND OF RELEVANCY AT THIS TIME.

THE COURT: LET ME SEE THEM.

(THE PHOTOGRAPHS WERE GIVEN TO THE COURT.)

THE COURT: I WILL ALLOW THEM IN EVIDENCE.

MR. POPE: THANK YOU.

(PHOTOGRAPHS 142 THROUGH 146 WERE MARKED IN EVIDENCE OVER OBJECTION.

Q. TROOPER I'M GOING TO ASK YOU IF YOU COULD IF YOU WOULD STEP DOWN RIGHT THIS WAY SO THAT YOU CAN SEE. IF YOU COULD, TELL THE JURY ONCE YOU ACTUALLY RECOVERED THE BAG AND ITEMS, WHAT DID YOU PHYSICALLY DO WITH THOSE ITEMS?

A. OKAY. I PICKED THE WHOLE BAG UP WITH THE BAT STICKING OUT OF IT AND BROUGHT IT OUT. I TOOK MEASUREMENTS. I PHOTOGRAPHED WHAT BAGS HAD BEEN TAKEN OUT ON TOP OF IT. I TOOK ADDITIONAL MEASUREMENTS OF WHERE THE POSITION OF THE DUMPSTER WAS IN RELATION TO THE GARAGE ETCETERA. AT THAT TIME I PUT IT IN MY VEHICLE -- PROPERLY

BAGGED IT, PUT IT IN MY VEHICLE AND TOOK IT BACK TO MY OFFICE AT STATE POLICE BARRACKS AT WHICH TIME I ROLLED OUT A PIECE OF BROWN PAPER ON THE FLOOR AND TOOK THE ITEMS OUT OF THE BAG INDIVIDUALLY AND LAID THEM OUT UPON THE PAPER IN ORDER FOR THEM TO DRY BECAUSE SOME OF THEM WERE STILL WET WITH BLOOD.

Q. FIRST I'LL CALL YOUR ATTENTION BACK AT THE SCENE TO STATE'S EXHIBIT 142 IN EVIDENCE AND SEE IF YOU CAN EXPLAIN WHAT THIS INDICATES.

A. I'M SORRY?

Q. COULD YOU EXPLAIN TO THE JURY WHAT THIS PICTURE DEPICTS.

A. OKAY, THAT'S THE BAG WITH THE BAT STICKING OUT OF IT AND THE MOCCASIN SHOES AND THERE'S PANTS RIGHT THERE, THEY ARE COMING OUT. SOME PART OF THE ITEMS WERE IN ONE BAG AND THEN OTHER ITEMS WERE IN THE OTHER BAG AND THEN THE ONE BAG WAS SOCKS.

Q. I'LL SHOW YOU STATE'S EXHIBIT 143 AND AGAIN ASK IF YOU COULD IDENTIFY WHAT THIS DEPICTS PLEASE.

A. THESE ARE THE MOCCASIN SHOES THAT WERE TAKEN OUT OF THE BAG. OKAY, THIS IS A BOTTLE OF ZYDOT RIGHT THERE, THE BAT THAT WAS STICKING OUT OF THE BAG; THIS IS A KITCHEN TOWEL; THIS IS A

SERRATED WOODEN HANDLED KNIFE; I BELIEVE THESE ARE THE RECEIPTS AND CHECKS WHICH I FOUND IN THE BAG.

Q. AND I NOTICE YOU WERE REFERRING -- DID YOU INVENTORY THE ITEMS INDIVIDUALLY, A LIST TO INDICATE EVERYTHING THAT WAS IN FACT RECOVERED FROM THE DUMPSTER?

A. YES, I DID.

Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED SEPARATELY AS A TWO PAGE DOCUMENT, STATE'S EXHIBIT 147 AND 148 AND ASK DOES THAT INVENTORY ACCURATELY REPRESENT THE ITEMS THAT YOU RECOVERED IN THE CHAIN OF EVIDENCE?

A. YES, IT DOES; IT'S WHAT I TYPED UP.

Q. OKAY. WE WOULD OFFER THESE.

MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

THE COURT: IT WILL BE RECEIVED WITHOUT OBJECTION.

(THE INVENTORY OF ITEMS FOUND IN DUMPSTER WERE MARKED STATE'S EXHIBITS 147 AND 148 WITHOUT OBJECTION.)

Q. TROOPER FOR THE EASE OF YOUR EXPLANATION I WILL REFER TO STATE'S EXHIBITS WHICH WERE JUST PUT INTO EVIDENCE AND YOU CAN INDICATE WHAT WAS RECOVERED AND THEN WE WILL FOLLOW UP WITH THE PHOTOGRAPHS.

A. OKAY.

MR. HANCOCK: YOUR HONOR, IF I COULD JUST MAKE AN INQUIRY. IS THAT THE LIST THAT HE HAS IN HIS HAND; IS HE REFRESHING HIS MEMORY FROM THAT LIST OR ---

A. THIS IS A COPY OF MY REPORT, ALSO THE SAME AS ON THERE.

MR. HANCOCK: ALL RIGHT.

Q. THIS WOULD BE STATE'S EXHIBIT 147 AND 148, A TWO PAGE REPORT, WOULD THIS ASSIST YOU IN THE EXPLANATION OF THE ITEMS THAT WERE RECOVERED?

A. YES, SIR.

Q. IF YOU COULD INDICATE TO THE JURY THE FIRST FOURTEEN ITEMS THAT WERE RECOVERED?

A. OKAY. THE FIRST ITEM WAS ITEM NUMBER 1 WHICH WAS ONE BEACH TOWEL WHICH WAS YELLOW, BLUE AND PINK IN COLOR.

ITEM NUMBER 2 WAS ONE GRAY T-SHIRT IN CONJUNCTION WITH ANOTHER ONE MAROON SWEATSHIRT; THEY WERE INTERTWINED, SO I KEPT THEM TOGETHER.

ITEM NUMBER 3 WAS ONE SMALL ROLL OF TOILET PAPER.

ITEM NUMBER 4 WAS ONE WHITE T-SHIRT.

ITEM NUMBER 5 WAS A GREEN FLANNEL BOXER SHORTS.

ITEM NUMBER 6 WAS A PAIR OF YELLOW UNION BAY PANTS.

ITEM NUMBER 7 WAS TWO PRESCRIPTION BOTTLES OF RITALIN WITH THE NAME CHIP ROBERTSON ON IT.

ITEM NUMBER 8 WAS ONE SILVER CUP, SMALL SILVER CUP.

ITEM NUMBER 9 WAS ONE EMPTY PACK OF MARLBORO LIGHTS MENTHOL.

ITEM NUMBER 10 WAS ONE FILE WITH A WOODEN HANDLE.

ITEM NUMBER 11 WAS ONE SCALPEL WITH A BLACK PLASTIC HANDLE.

ITEM NUMBER 12 WAS ONE CRAFTSMAN CLAW HAMMER, SILVER AND BLACK IN COLOR.

ITEM NUMBER 13 WAS NINE SOCKS, THREE WHITE, THREE DARK BLUE, TWO PINK AND ONE TAN.

ITEM NUMBER 14 WHICH WAS ONE PLASTIC BAG WHICH HELD ALL OF THE ABOVE ITEMS.

Q. I'M GOING TO REFER NOW TO THE SECOND PAGE OF THAT DOCUMENT IF YOU WILL INDICATE THE OTHER ITEMS RECOVERED.

A. OKAY. ITEM NUMBER 15 WAS ONE PAIR OF BUCKSKIN MOCCASINS.

ITEM NUMBER 16 WAS ONE BOTTLE OF ZYDOT DRY POWDER.

NUMBER 17 WAS TWO CHECK RECEIPTS WITH THE NAME ROBERTSON ON THEM; CHECK NUMBER 5219 AND 5220.

ITEM NUMBER 18 IS A CHECK RECEIPT AND ONE CHECK WITH ROBERTSON ON IT AND THE CHECK NUMBER WAS 6111.

NUMBER 19 WAS ONE KITCHEN KNIFE WITH A WOODEN HANDLE WHICH WAS SERRATED.

NUMBER 20 WAS A KITCHEN HAND TOWEL, PINK AND WHITE AND BLUE.

NUMBER 21 WAS AN ALUMINUM EATON 31 INCH BAT, 25 OUNCES, MODEL L-73125.

NUMBER 22 WAS A PAPERMATE PEN BLUE AND SILVER IN COLOR.

NUMBER 23 WAS ONE BLACK PLASTIC GARBAGE BAG WITH NUMBERED STICKERS ATTACHED.

AND ITEM 15 THROUGH 22 WAS CONTAINED IN THE BAG ALONG WITH ITEMS 1 THROUGH 14. AND ITEM NUMBER 24 WAS THE 48 PHOTOGRAPHS THAT I TOOK AT THE SCENE. AND ONCE I GOT BACK TO MY OFFICE, I TOOK SPECIFIC INDIVIDUAL DETAILED PHOTOGRAPHS OF EACH ITEM.

Q. I'LL SHOW YOU STATE'S EXHIBIT 144 AND IN GENERAL IF YOU COULD INDICATE WHAT THAT DEPICTS.

A. THIS LOOKS LIKE THE TOWEL HERE ---

MR. HANCOCK: EXCUSE ME. TROOPER, COULD YOU MOVE TO THE SIDE SO THAT WE COULD SEE?

A. SURE.

Q. AT SOME POINT DID YOU PACKAGE THEM UP TO BE SENT TO SLED, THE STATE LABORATORY HERE?

A. YES, SIR. ON 11-28 I RETURNED TO THE SCENE AND TOOK DAYTIME PHOTOGRAPHS IN CASE THE NIGHTTIME PHOTOGRAPHS DID NOT ALL TAKE.

ON 11-28 MOST OF THE ITEMS WERE PACKAGED IF THEY WERE DRY. IF THEY WERE NOT DRY, I LEFT THEM IN MY OFFICE AND ON 11-29 I PACKAGED THE REST OF THE ITEMS.

ON 11-29 AT 1100 HOURS IN THE MORNING ALL THE ITEMS LISTED WERE TURNED OVER TO DETECTIVE SERGEANT BARKER WHO IN TURN RELAYED THEM TO SLED.

Q. DID ANYONE, UNTIL YOU GAVE THEM TO DETECTIVE SERGEANT BARKER, ONCE THEY CAME INTO YOUR CUSTODY DID ANYBODY ELSE HAVE ACCESS TO THESE ITEMS?

A. NO, MY OFFICE IS LOCKED BY MYSELF AND I'M THE ONLY ONE THAT HAS A KEY.

Q. DID YOU ALTER THEM, CHANGE THEM OR TAMPER WITH THEM IN ANY WAY OTHER THAN PLACE THEM ON THE PAPER AND DRY THEM OUT?

A. NO, I DID NOT.

Q. TROOPER, DID YOU HAVE AN OPPORTUNITY DURING THE BREAK TO REVIEW STATE'S EXHIBITS 52 THROUGH 85?

JUST TAKE A LOOK AND SEE IF YOU HAD AN OPPORTUNITY TO REVIEW THESE ITEMS?

A. YES, SIR. THIS IS WHAT WE REVIEWED DURING THE BREAK AND THESE ARE ALL THE ITEMS THAT I COLLECTED OUT OF THE BAGS, INCLUDING THE BAGS.

Q. INCLUDING THE BAGS THAT YOU TRANSPORTED THEM IN INITIALLY?

A. YES, THE BAGS THAT I PACKAGED THEM IN ARE BACK HERE.

Q. AND THE ITEMS THAT ARE IN STATE'S EXHIBITS 52 THROUGH 85, DID YOU CONFIRM THAT THOSE ARE THE ITEMS THAT YOU SENT TO SOUTH CAROLINA?

A. YES, SIR, THEY ARE.

MR. POPE: YOUR HONOR, AT THIS TIME I WOULD MOVE STATE'S 52 THROUGH 85 INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. BOYD: AN OBJECTION ON THE GROUND OF RELEVANCE. THERE HAS BEEN NO CONNECTION OR ANYTHING TYING THESE ITEMS TO THE MURDER OF THE TWO ROBERTSONS AT THIS POINT.

THE COURT: THAT'S THE GROUND FOR YOUR OBJECTION?

MR. BOYD: YES. THERE'S NO FOUNDATION FOR THIS.

THE COURT: THE OBJECTION IS OVERRULED. THEY WILL BE ADMITTED INTO EVIDENCE, 52 THROUGH 85 AS STATE'S EXHIBITS.

(EXHIBITS 52 THROUGH 85 WERE SO MARKED OVER OBJECTION.)

Q. TROOPER IF YOU WOULD, ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE, PLEASE.

MR. BOYD: NO QUESTIONS, YOUR HONOR.

THE COURT: TROOPER, WE APPRECIATE YOUR TIME. YOU CAN STEP DOWN, AND FEEL FREE TO LEAVE. CALL YOUR NEXT WITNESS.

MR. POPE: THE STATE WOULD CALL DETECTIVE SERGEANT JOSEPH BARKER.

JOSEPH A. BARKER, JR., BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. OFFICER BARKER, IF YOU COULD, STATE YOUR NAME AND OCCUPATION TO THE JURY PLEASE.

A. I'M JOSEPH A. BARKER, JR., MARYLAND STATE POLICE; I'M A DETECTIVE SERGEANT AT NORTHEAST BARRACKS, CECIL COUNTY, MARYLAND WHERE I AM IN CHARGE OF THE CRIMINAL UNIT.

Q. COULD YOU SPELL YOUR LAST NAME FOR THE COURT REPORTER?

A. B-A-R-K-E-R.

Q. DETECTIVE BARKER, HOW LONG HAVE YOU BEEN EMPLOYED THERE IN MARYLAND?

A. 16 YEARS.

Q. OKAY, AND COULD YOU TELL THE JURY JUST BASICALLY WHAT YOUR DUTIES ARE?

A. MY DUTIES ARE TO BE THE CASE MANAGER OF ANY CRIME THAT THE STATE POLICE INVESTIGATE IN CECIL COUNTY, THE JURISDICTION THAT I'M IN CHARGE OF.

Q. NOW, DOES YOUR STATE POLICE HAVE A TRAFFIC DIVISION AND AN INVESTIGATIVE DIVISION IN THE SAME DEPARTMENT?

A. YES, SIR. WE HAVE UNIFORMED TROOPERS THAT WORK THE PATROL FUNCTION, AND WE HAVE PLAIN CLOTHES OFFICERS THAT WORK THE CRIMINAL INVESTIGATION SIDE.

Q. AND DID YOU HAVE THE OPPORTUNITY TO ASSIST IN THE INVESTIGATION OF THIS CASE BACK ON NOVEMBER 26TH OF 1997?

A. YES, SIR, I DID.

Q. COULD YOU TELL THE JURY HOW YOU WERE INVOLVED IN THIS CASE?

A. ON NOVEMBER 26, 1997 AT APPROXIMATELY 5:15 P.M. I WAS NOTIFIED BY THE BARRACK DUTY OFFICER WHO IS THE SHIFT COMMANDER OF THE PATROL FUNCTION ADVISING ME THAT SOUTH CAROLINA ---

MR. HANCOCK: YOUR HONOR, I'M GOING TO OBJECT TO THIS AS HEARSAY.

THE COURT: YES, DON'T GO INTO ANY HEARSAY.

Q. DID YOU HAVE AN OPPORTUNITY TO GO TO CHESAPEAKE HOUSE?

A. YES, SIR, I DID.

Q. CAN YOU TELL THE JURY WHAT YOU DID? DID YOU ENCOUNTER TROOPER COX THERE?

A. YES, I DID. TROOPER COX WAS SECURING THE CRIME SCENE AT THE CHESAPEAKE HOUSE. AT THAT POINT I JUST SUPERVISED THE CRIME SCENE AND NOTIFICATIONS.

Q. SO, YOU WERE PHYSICALLY THERE WHEN THE RECOVERY WAS MADE, DID YOU HAVE ANY HANDLING OF THE EVIDENCE OR ANYTHING OF THAT NATURE OTHER THAN SUPERVISING?

A. NO, SIR, I DID NOT.

Q. NOW SUBSEQUENTLY ON SATURDAY NOVEMBER 29TH DID YOU HAVE THE OPPORTUNITY TO RECEIVE THE ITEMS OF EVIDENCE THAT YOU RECOVERED FROM TROOPER BEMAN TO BE TURNED OVER TO SLED AGENT BAKER FROM SOUTH CAROLINA?

A. YES, SIR, I DID.

Q. AND DID YOU IN FACT TAKE THOSE ITEMS, THE ITEMS LISTED IN STATE'S EXHIBITS 148 AND 149, THE TWO PAGE DOCUMENT, ARE THOSE THE ITEMS THAT YOU TRANSFERRED TO BRETT BAKER OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

A. YES, SIR, I DID. I HAVE CHECK MARKS THAT I PLACED ON ---

MR. HANCOCK: YOUR HONOR, AGAIN, I AM GOING TO OBJECT TO LEADING THE WITNESS. THIS IS ASSUMING FACTS NOT EVEN IN EVIDENCE, BRETT BAKER RECEIVING THE ITEMS. AND HE'S TESTIFYING.

THE COURT: REPHRASE YOUR QUESTION.

Q. DETECTIVE BARKER, LET'S START OVER. DID YOU HAVE AN OPPORTUNITY TO RECEIVE EVIDENCE IN THIS CASE FROM TROOPER BEMAN?

A. YES, SIR. I RECEIVED THE EVIDENCE FROM TROOPER BEMAN ON SATURDAY THE 29TH AT 11:00 A. M. IN HIS OFFICE AT THE NORTHEAST BARRACK.

Q. COULD YOU TELL THIS JURY WHAT YOU DID WITH THE ITEMS OF EVIDENCE THAT YOU RECEIVED FROM TROOPER BEMAN?

A. I TRANSPORTED THOSE TO MY OFFICE AT THE JFK BARRACK AND I GAVE THOSE TO OFFICER BAKER OF THE STATE LAW ENFORCEMENT DIVISION. I HAVE THE CHAIN OF CUSTODY OF EVERY PIECE OF EVIDENCE. WE WENT OVER IT, AND I HAVE ACTUAL CHECK MARKS OF EVERYTHING THAT I TURNED OVER TO HIM WHICH IS ON THE CHAIN OF CUSTODY.

Q. SO THE DOCUMENT THAT'S IN EVIDENCE THAT YOU HAVE IN YOUR HAND, THE CHECK MARKS YOU ACTUALLY MADE

AS YOU TURNED OVER THESE ITEMS TO HIM?

A. YES, SIR, I DID.

Q. AND DURING THE LUNCH BREAK DID YOU HAVE THE OPPORTUNITY TO ALSO REVIEW WITH TROOPER BEMAN STATE'S EXHIBITS 52 THROUGH 85, THE ITEMS THAT WERE RECOVERED. DID YOU HAVE AN OPPORTUNITY TO REVIEW THOSE ITEMS?

A. YES, SIR, I DID AND THEY REFLECT WHAT'S ON THE CHAIN OF CUSTODY FORMS.

Q. AND ALL THOSE ITEMS, AGAIN, WERE GIVEN TO AGENT BAKER OF SOUTH CAROLINA WHO CAME TO YOUR LOCATION?

A. YES, SIR.

Q. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE, PLEASE.

MR. BOYD: NO QUESTIONS, YOUR HONOR.

THE COURT: WE APPRECIATE YOUR TIME. YOU CAN STEP DOWN AND BE EXCUSED. CALL YOUR NEXT WITNESS.

MR. POPE: THE STATE WOULD CALL MICHAEL SYLVESTER TO THE STAND.

MICHAEL SYLVESTER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. OFFICER SYLVESTER, IF YOU COULD, STATE YOUR NAME

AND SPELL YOUR LAST NAME FOR THE COURT REPORTER, PLEASE.

A. POLICE OFFICER MICHAEL SYLVESTER, S-Y-L-V-E-S-T-E-R, BADGE NUMBER 158.

Q. COULD YOU TELL THE JURY WHERE YOU ARE EMPLOYED?

A. UNIVERSITY OF PENNSYLVANIA POLICE DEPARTMENT IN THE CITY OF PHILADELPHIA.

Q. COULD YOU TELL THEM SPECIFICALLY WHAT YOUR DUTIES ARE WITH THAT DEPARTMENT?

A. I WORK WITH A SPECIAL RESPONSE TEAM WHICH IS A PLAIN CLOTHES AND UNIFORMED UNIT.

Q. AND WERE YOU SO EMPLOYED BACK IN NOVEMBER 25TH OF 1997?

A. YES, I WAS.

Q. AND DID YOU HAVE THE OPPORTUNITY TO RESPOND AND ASSIST SOUTH CAROLINA AUTHORITIES IN THE CASE WE HAVE AT HAND?

A. YES, I DID.

Q. PARTICULARLY, COULD YOU TELL WHAT YOUR INVOLVEMENT WAS, WHAT TOOK PLACE IN YOUR JURISDICTION INVOLVING THIS CASE?

A. ON NOVEMBER 25TH, 1997 AT APPROXIMATELY 7:30 P.M. MYSELF AND MY PARTNER, POLICE OFFICER TONY RICHEO SET UP A SURVEILLANCE AT 521 SOUTH 41ST STREET AFTER RECEIVING INFORMATION OF TWO

SUSPECTS WANTED IN A POSSIBLE HOMICIDE IN SOUTH CAROLINA.

Q. AND WHY DID YOU SET UP AT THIS PARTICULAR LOCATION?

A. IT WAS THE RESIDENCE OF THE DEFENDANT'S BROTHER.

Q. AND WERE YOU LOOKING FOR A PARTICULAR VEHICLE?

A. YES, WE WERE.

Q. AND COULD YOU DESCRIBE THAT VEHICLE TO THE JURY?

A. IT WAS A RED MAZDA PROTEGE WITH SOUTH CAROLINA TAGS ON IT.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 127 FOR IDENTIFICATION. I'LL ASK YOU TO LOOK AND TELL ME IF YOU CAN IDENTIFY THAT.

A. YES, THAT'S THE VEHICLE.

Q. OKAY. OFFICER DURING YOUR SURVEILLANCE DID YOU ULTIMATELY SEE ANY ACTIVITY AT THE LOCATION YOU WERE SURVEILLING?

A. YES, AT APPROXIMATELY 8:30 THE RED VEHICLE PULLED UP ACROSS THE STREET FROM 525 SOUTH 41ST STREET AND ATTEMPTED TO PARK INTO A PARKING SPOT.

Q. AND I'LL SHOW YOU STATE'S EXHIBIT 127. I APOLOGIZE, YOUR HONOR, I CAN'T KEEP UP. STATE'S EXHIBIT 127 FOR IDENTIFICATION I'D MOVE INTO EVIDENCE.

MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

THE COURT: IT WILL BE RECEIVED WITHOUT OBJECTION.

(THE PHOTOGRAPH OF THE RED MAZDA WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 127 WITHOUT OBJECTION.)

Q. STATE'S EXHIBIT 127, WOULD YOU TELL THE JURY WHAT THIS PARTICULAR ITEM DEPICTS?

A. THAT'S A PICTURE OF THE MAZDA.

Q. AND IF YOU WOULD, EXPLAIN TO THE JURY EXACTLY WHAT OCCURRED, WHAT YOU OBSERVED AS YOU SAW THE CAR PULL UP.

A. IT PULLED UP AND IN THE CITY WE HAVE TO PARALLEL PARK. IF THERE'S A CAR HERE AND A CAR HERE, YOU HAVE TO KIND OF BACK INTO IT. THEY APPEARED TO BE HAVING TROUBLE SO IT KIND OF HELPED US A LITTLE BIT. WE PULLED UP ONTO THE VEHICLE WHILE THEY WERE PARKING.

THE OTHER TEAM THAT I WAS WORKING WITH PULLED UP FROM THE REAR OF THEM. AT THAT TIME WE GOT OUT AND ORDERED THEM OUT OF THE VEHICLE.

Q. AND COULD YOU TELL THE JURY HOW MANY OCCUPANTS WERE IN THE VEHICLE?

A. THERE WERE TWO OCCUPANTS.

Q. COULD YOU TELL THE JURY THE DESCRIPTION OF EACH OCCUPANT?

A. YES. THE DRIVER WAS A WHITE MALE, APPEARED TO BE IN HIS EARLY TO MID-TWENTIES AND THE OCCUPANT WAS A WHITE FEMALE, LATE TEENS, EARLY TWENTIES.

Q. AND BASED ON THE INFORMATION YOU HAD, WHAT DID YOU DO AT THAT TIME?

A. AT THAT TIME THEY WERE PLACED INTO CUSTODY, SEPARATED, PLACED IN SEPARATE VEHICLES, AND TRANSPORTED TO THE HOMICIDE UNIT FOR INVESTIGATION. THAT WOULD BE PHILADELPHIA'S HOMICIDE UNIT.

Q. OKAY. DID YOU HAVE AN OPPORTUNITY TO -- DID YOU DEAL WITH THE MALE OR THE FEMALE?

A. THE MALE.

Q. DID YOU HAVE AN OPPORTUNITY TO DO A SEARCH OF THE MALE AT THAT TIME?

A. YES, I DID.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 88 FOR IDENTIFICATION AND ASK YOU TO OPEN IT UP AND TAKE A LOOK AND TELL ME IF YOU CAN IDENTIFY THAT.

A. YES, IT'S THE DEFENDANT'S WALLET THAT WAS FOUND IN HIS BACK POCKET.

Q. DID YOU RECOVER IT?

A. YES, I DID.

Q. DID YOU HAVE AN OPPORTUNITY TO LOOK AT THE ITEMS

THEREIN WHEN YOU RECOVERED IT?

A. YES.

Q. AND HAVE YOU HAD AN OPPORTUNITY DURING THE BREAK TO LOOK AT THIS ITEM ALSO?

A. RIGHT.

Q. AND DOES IT STILL HAVE THE SAME ITEMS AS WERE THERE WHEN YOU RECOVERED IT?

A. YES, IT DOES.

Q. AND YOU TOOK THIS OFF THE PERSON OF THE DEFENDANT, IS THAT CORRECT?

A. YES.

MR. BOYD: YOUR HONOR, PLEASE, WE HAVE A MATTER OF LAW THAT WE NEED TO TAKE UP.

THE COURT: I'LL LET THE JURY GO TO THE JURY ROOM JUST FOR A MINUTE.

IN CAMERA:

THE COURT: YES, SIR?

MR. BOYD: YOUR HONOR, AT THIS TIME IT APPEARS THEY ARE GOING INTO CERTAIN ITEMS THAT WERE TAKEN FROM MR. ROBERTSON. WE WOULD OBJECT ON THE GROUNDS THAT POSSIBLE CAUSE TO SEARCH HIM HAS NOT BEEN ESTABLISHED AT THIS TIME.

THE COURT: DO YOU WANT TO MAKE A PROFFER?

MR. POPE: YES, SIR.

CONTINUED DIRECT EXAMINATION OF OFFICER SYLVESTER:

Q. OFFICER, IF YOU WOULD, RELATE TO THE COURT, YOU

HAD AN EARLIER HEARING -- I'M SORRY, LIKE A SQUAD MEETING AROUND 7:00 O'CLOCK THAT EVENING BEFORE YOU WENT OUT TO PATROL; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND COULD YOU RELATE WHAT THE SUBSTANCE OF THAT WAS, OFFICER?

A. IT WAS A BULLETIN THAT WAS PUT OVER N.C.I.C. WHICH GAVE A DESCRIPTION OF THE MALE AND FEMALE, NAMES OF THE MALE AND FEMALE AND IT SAID THAT THEY ARE TO BE CONSIDERED ARMED AND DANGEROUS AND THEY WERE WANTED FOR INVESTIGATION OF A HOMICIDE.

Q. AND PARTICULARLY, I KNOW I HAVE INSTRUCTED YOU BEFORE THE JURY NOT TO DISCUSS ANY FUGITIVE WARRANT INFORMATION, IS THAT CORRECT?

A. CORRECT.

Q. BUT DID YOU ALSO HAVE INFORMATION CONCERNING A FUGITIVE WARRANT ON THE DEFENDANT IN THIS CASE?

A. YES, WE DID.

Q. AGAIN, YOUR HONOR, I KNOW I'M LEADING HIM BUT I HAD INSTRUCTED HIM NOT TO SAY THAT IN FRONT OF THE JURY BASED ON PREVIOUS DISCUSSION WITH THE DEFENSE. BUT IT'S KIND OF A CATCH 22. THEY ARRESTED HIM BASED ON A FUGITIVE WARRANT BUT OUT OF COURTESY TO THE DEFENSE, I CHOSE NOT TO

INTERJECT THAT. SO, THAT'S WHERE WE STAND ON THAT, YOUR HONOR.

MR. BOYD: I JUST WANTED TO SEE IF THERE WAS A WARRANT OUT; I JUST WANTED TO ESTABLISH THAT FOR THE RECORD.

THE COURT: ALL RIGHT. IS THERE ANY OBJECTION TO IT?

MR. HANCOCK: I'M GOING TO FURTHER OBJECT TO ---

THE COURT: LET'S TRY TO STICK TO ONE PERSON ON ONE ISSUE, SO TELL MR. BOYD WHAT YOUR OBJECTION IS.

MR. BOYD: WE MAY HAVE A CHAIN OF CUSTODY ISSUE ON THE ADMISSION OF IT PERIOD, BUT ON THE ISSUE I RAISED WE HAVE NO OBJECTION.

THE COURT: AND THE ISSUE RAISED WAS THE SEARCH ISSUE?

MR. BOYD: THAT'S CORRECT, YOUR HONOR.

THE COURT: I FIND THAT THEY HAD PROBABLE CAUSE FOR A SEARCH.

MR. POPE: YOUR HONOR, JUST FOR SOME CLARIFICATION FROM THE DEFENSE, DO YOU WANT ME TO HAVE HIM SAY THAT THERE WAS A WARRANT AND JUST NOT GET INTO IT? THE DIFFICULTY WE'RE INVOLVED IN IS AT A MINIMUM WHAT THEY ARE PICKING HIM UP FOR IS A FUGITIVE WARRANT FOR A PROBATION VIOLATION.

THE COURT: WELL, AS LONG AS I'M ALLOWING IT IN,

I DON'T THINK THE JURY NEEDS TO KNOW THAT.

MR. BOYD: I AGREE, YOUR HONOR. OF COURSE, IF WE HADN'T HAD THIS HEARING THE RECORD WOULD BE VOID OF THAT.

THE COURT: I UNDERSTAND, BUT I DON'T THINK THAT NEEDS TO COME OUT IN FRONT OF THE JURY.

MR. POPE: YES, SIR. OFFICER, AGAIN, I WOULD INSTRUCT YOU NOT TO GET INTO THE SPECIFICS OF THE FUGITIVE WARRANT.

ALSO, YOUR HONOR, WHILE THE JURY IS OUT IF THERE IS SOME OBJECTION TO THE ADMISSION OF THIS EXHIBIT ---

THE COURT: YES, WHAT IS THAT OBJECTION?

MR. HANCOCK: WE'RE TAG TEAMING HERE, YOUR HONOR. THERE HAS BEEN NO CHAIN OF CUSTODY ESTABLISHED. THE CHAIN OF CUSTODY IS THERE TO ENSURE THAT THERE HAS BEEN NO ALTERATION OF THE ITEM. THIS ITEM HAS BEEN THROUGH SEVERAL PLACES, SEVERAL HANDS BACK HERE. THAT HAS NOT BEEN ESTABLISHED AT THIS TIME, YOUR HONOR.

THE COURT: WELL I THINK IN LINE WITH THE DAVIS CASE WE'VE ALREADY TALKED ABOUT THE ITEMS AND THERE'S TESTIMONY FROM THIS OFFICER THAT HE TOOK IT OFF OF HIM AND THAT IT WAS HIS WALLET AND THAT THOSE ARE THE ITEMS THAT WERE IN THERE. I'LL LET YOU CROSS EXAMINE HIM ON THAT AT THIS TIME.

MR. HANCOCK: OKAY, SIR.

MR. POPE: AND, AGAIN, I BELIEVE THE POSITION

WOULD BE IF THERE WERE ANY TESTING DONE. OF COURSE, WE ARE GOING TO PROVE THE CHAIN SUBSEQUENTLY BUT HE IS NOW SAYING THAT THIS IS THE WALLET HE TOOK.

THE COURT: YES, YOU KNOW, WE'VE TALKED ABOUT THAT DAVIS CASE -- WELL, LET ME HEAR WHAT YOU WANT TO ASK HIM.

CROSS EXAMINATION (IN CAMERA) BY MR. HANCOCK:

Q. YOU HAVE IDENTIFIED THIS AS MR. ROBERTSON'S WALLET, IS THAT CORRECT, SIR, AND I WILL HAND IT TO YOU.

A. THAT'S CORRECT.

Q. AS YOU LOOK AT THAT WALLET -- DID YOU EXAMINE IT AND GO THROUGH IT WHEN YOU FIRST TOOK IT FROM HIM?

A. YES, I DID.

Q. AND ARE THERE ANY ITEMS MISSING THAT YOU'RE AWARE OF?

A. AS FAR AS I'M AWARE, NO, THERE'S NOT.

Q. AND WHAT DO YOU REMEMBER FINDING IN THE WALLET?

A. THE CASH, THE BANK CARD, THE VISA, THE DRIVER'S LICENSE AND A RECEIPT FROM A PEACH STAND.

Q. HAS ANYTHING IN THERE BEEN SUBSTANTIALLY ALTERED TO YOUR MEMORY, SIR?

A. AS FAR AS I CAN RECALL, NO, IT HAS NOT.

Q. I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: DOES YOUR OBJECTION CONTINUE?

MR. HANCOCK: NO, SIR.

THE COURT: ALL RIGHT, BRING IN THE JURY.

MR. HANCOCK: I'M SORRY, YOUR HONOR. MY OBJECTION CONTINUES AND I ASK FOR A RULING FROM THE COURT ON THAT MATTER, SIR.

THE COURT: ALL RIGHT, AS TO THE ADMISSIBILITY OF THE WALLET?

MR. HANCOCK: YES, SIR.

THE COURT: I RULE IT'S ADMISSIBLE. BRING IN THE JURY, PLEASE.

IN THE PRESENCE OF THE JURY:

THE COURT: YOU MAY CONTINUE, SOLICITOR

CONTINUED DIRECT EXAMINATION OF OFFICER SYLVESTER:

Q. OFFICER SYLVESTER, SUBSEQUENT TO ARRESTING THE DEFENDANT IN PHILADELPHIA, YOU RECOVERED HIS WALLET?

A. THAT'S CORRECT.

Q. STATE'S EXHIBIT 88?

A. CORRECT.

Q. AND YOU HAVE HAD AN OPPORTUNITY TO REVIEW THIS WALLET?

A. YES, I HAVE.

Q. AND IS IT IN SUBSTANTIALLY THE SAME CONDITION

WITH THE SAME ITEMS AS IT WAS WHEN YOU RECOVERED IT?

A. YES, IT IS.

MR. POPE: YOUR HONOR, I WOULD MOVE STATE'S EXHIBIT 88 FOR IDENTIFICATION INTO EVIDENCE.

THE COURT: OVER OBJECTION I WILL ALLOW IT INTO EVIDENCE.

(THE WALLET WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 88 OVER OBJECTION.)

Q. I WOULD NOW CALL PARTICULAR ATTENTION, AND I WOULD LIKE TO HAVE THESE MARKED AS 88.1, 2 AND 3 PLEASE MA'AM.

(A S.C. I.D. CARD WAS MARKED 88.1; A VISA CARD WAS MARKED 88.2; THE RECEIPT FROM THE PEACH STAND WAS MARKED 88.3.)

Q. OFFICER, I'LL SHOW YOU EXHIBITS 88.1, 88.2 AND 88.3 THAT ARE ALREADY IN EVIDENCE, THESE ITEMS THAT WERE RECOVERED FROM THE WALLET. PLEASE IDENTIFY EACH ONE OF THOSE BY THE NUMBER, AND TELL THE JURY WHAT IT IS PLEASE, SIR.

A. OKAY. 88.1 IS A SOUTH CAROLINA IDENTIFICATION CARD WITH THE NAME OF ROBERTSON, JAMES D.

Q. OKAY.

A. 88.2 IS A U.S. AIRWAYS NATIONS BANK VISA CARD IN THE NAME OF EARL L. ROBERTSON. AND 88.3 IS A RECEIPT FROM THE PEACH STAND IN FORT MILL, SOUTH

CAROLINA?

Q. OFFICER SYLVESTER, ONCE THE DEFENDANT WAS SECURED, WHAT WAS DONE WITH THE VEHICLE, THE RED VEHICLE?

A. AT THAT TIME A UNIFORMED OFFICER WAS CALLED ON LOCATION TO GUARD THE VEHICLE UNTIL THE CITY OF PHILADELPHIA COULD HAVE THE VEHICLE TOWED AND TAKEN DOWN TO THE POLICE GARAGE.

Q. AND THE POLICE GARAGE, IS THAT WHERE THEY RETAIN VEHICLES TO BE TESTED OR WHATEVER THE CASE MAY BE?

A. THAT'S CORRECT, CRIME LAB WILL DO FINGERPRINTS AND COLLECT WHATEVER EVIDENCE THEY CAN.

Q. DID YOU ALTER ANY OF THE EVIDENCE IN ANY MANNER ONCE YOU CAME IN CONTACT WITH IT?

A. NO, I DID NOT.

Q. FINALLY, WHAT DID YOU PHYSICALLY DO WITH THE DEFENDANT ONCE YOU PLACED HIM IN CUSTODY?

A. ONCE HE WAS PLACED IN CUSTODY, HE WAS PLACED INTO A POLICE VEHICLE AND HE WAS TRANSPORTED DOWN TO THE HOMICIDE UNIT OF THE PHILADELPHIA POLICE DEPARTMENT.

Q. IS JERRY ROBISON A DETECTIVE WITH THE HOMICIDE DIVISION THERE?

A. YES, HE IS.

Q. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

MR. HANCOCK: NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: YOU MAY STEP DOWN AND BE EXCUSED. WE APPRECIATE YOUR TIME. CALL YOUR NEXT WITNESS.

MR. POPE: THE STATE WOULD CALL JERRY ROBISON TO THE STAND.

JERRY GERALD ROBISON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. DETECTIVE ROBISON, IF YOU COULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER, PLEASE.

A. DETECTIVE GERALD ROBISON, R-O-B-I-S-O-N, BADGE 769, PHILADELPHIA HOMICIDE DIVISION, PHILADELPHIA, PENNSYLVANIA.

Q. DETECTIVE, COULD YOU TELL THE JURY HOW LONG YOU'VE BEEN EMPLOYED WITH HOMICIDE DIVISION?

A. I'VE BEEN EMPLOYED AS A HOMICIDE DETECTIVE SINCE FEBRUARY, 1989, SO IT'S 10 YEARS; I WAS WITH THE POLICE DEPARTMENT FOR 22.

Q. COULD YOU TELL THE JURY JUST BASICALLY WHAT YOUR DAY TO DAY DUTIES ARE THERE IN PHILADELPHIA?

A. AT THAT TIME I WAS IN THE FUGITIVE SQUAD, SUPERVISOR. AS AN ASSIGNED DETECTIVE WOULD GET

A WARRANT FOR SOMEBODY IN THE HOMICIDE UNIT, THEY ARE GIVEN FOUR WORKING DAYS TO GET THAT PERSON AND THEN IT'S TURNED OVER TO A SUPERVISOR TO ONE OF THE TEAMS.

ALSO WE HANDLE ALL OUTSIDE JURISDICTIONS THAT COME INTO THE CITY LOOKING FOR SOMEBODY CONCERNING HOMICIDES.

Q. WERE YOU IN ESSENCE A COORDINATOR OR THE TOUCH POINT FOR THE SOUTH CAROLINA AUTHORITIES AS FAR AS YOUR DEPARTMENT?

A. YES.

Q. AND DID YOU HAVE THE OPPORTUNITY BACK IN NOVEMBER OF 1997 TO ASSIST DETECTIVE MISLE AND OTHER OFFICERS AS FAR AS THE COORDINATION OF THE INVESTIGATION IN YOUR AREA?

A. YES, I WAS.

Q. AND PARTICULARLY I WANT TO CALL TO YOUR ATTENTION, WERE YOU INVOLVED THE DAY THAT THE DEFENDANT WAS ACTUALLY ARRESTED AND BROUGHT TO YOUR DEPARTMENT?

A. YES, I WAS.

Q. IS IT FAIR TO SAY THAT YOU WERE SUPERVISING THE INVESTIGATION FROM YOUR END AT THAT TIME?

A. YES, I WAS THE ASSIGN ON THAT PARTICULAR CASE. ANYTHING THAT HAD TO BE DONE, THEY WOULD COME TO

ME AND ASK ME AND I WOULD DIRECT WHICH WAY IT WOULD GO.

Q. WERE YOU PRESENT -- AT YOUR DEPARTMENT DID YOU HAVE AN OPPORTUNITY TO COME IN CONTACT WITH THE DEFENDANT WHILE HE WAS THERE?

A. YES, I DID.

Q. AND ALSO DID YOU HAVE AN OPPORTUNITY TO RECEIVE -- I KNOW YOU'VE HAD AN OPPORTUNITY TO LOOK AT THE EVIDENCE SINCE THE JURY'S BEEN OUT; DID YOU HAVE AN OPPORTUNITY TO LOOK AT THE EVIDENCE DURING THE LUNCH BREAK?

A. YES, I DID.

Q. STATE'S EXHIBIT 88 THAT IS IN EVIDENCE, DID YOU HAVE AN OPPORTUNITY TO RECEIVE THIS ITEM FROM OFFICER SYLVESTER?

A. YES, I DID.

Q. COULD YOU TELL THE JURY WHAT YOU SUBSEQUENTLY DID WITH THAT ITEM?

A. I ITEMIZED THE OBJECTS THAT WERE IN THE WALLET, PUT IT ON A PROPERTY SHEET, AND IT WAS LATER TURNED OVER TO THE SOUTH CAROLINA AUTHORITIES.

Q. LIKEWISE, I'LL SHOW YOU STATE'S EXHIBIT 87 FOR IDENTIFICATION AND ASK YOU TO LOOK AT THAT AND TELL ME IF YOU CAN IDENTIFY THAT?

A. THIS IS A SWEATER THAT I HAD TAKEN FROM MEREDITH

MOON AT MY OFFICE AND PLACED ON A PROPERTY SHEET AND AGAIN TURNED OVER TO SOUTH CAROLINA LAW ENFORCEMENT.

Q. WERE THERE OTHER CLOTHING ITEMS THAT YOU ALSO SENT TO SOUTH CAROLINA IN ADDITION TO THE SWEATER?

A. YES, THERE WAS.

Q. WHAT WAS THAT?

A. A PAIR OF SHOES AND ONE OTHER ITEM, I THINK ANOTHER PAIR OF SHOES.

Q. STATE'S EXHIBIT 87, AGAIN I APOLOGIZE, I KNOW YOU LOOKED AT IT DURING THE BREAK, BUT IS IT IN SUBSTANTIALLY THE SAME CONDITION, OTHER THAN THE TESTING, AS IT WAS WHEN YOU RECEIVED IT?

A. YES, SIR.

MR. POPE: WE WOULD OFFER EXHIBIT NUMBER 87 FOR IDENTIFICATION INTO EVIDENCE, YOUR HONOR.

MR. HANCOCK: WITHOUT OBJECTION.

THE COURT: IT WILL BE RECEIVED WITHOUT OBJECTION.

(THE MULTI-COLORED SWEATER WAS MARKED IN EVIDENCE AS STATE'S EXHIBIT 87 WITHOUT OBJECTION.)

Q. AS PART OF YOUR DUTIES ALSO, COULD YOU EXPLAIN THE POLICE GARAGE, THE AREA THAT'S DEPICTED IN THE PICTURE, STATE'S EXHIBIT 127 -- UNDER YOUR

DIRECTION WAS THE DEFENDANT'S CAR BROUGHT TO THERE FOR LATER PROCESSING BY THE SOUTH CAROLINA AUTHORITIES?

A. YES. WHILE I WAS OUT AT 41ST STREET IN PHILADELPHIA WHERE THE CAR WAS LOCATED, I NOTIFIED POLICE GARAGE WHICH TOWS ALL OUR VEHICLES TO THEIR GARAGE AND IT'S HELD THERE UNTIL ANYBODY ELSE WHO HAS TO PROCESS THAT CAR WOULD COME TO THAT GARAGE AND PROCESS THE CAR FOR FINGERPRINTS AND RECOVERY OF EVIDENCE.

Q. DID YOU ULTIMATELY AS PART OF YOUR ASSISTANCE IN THE INVESTIGATION ON SATURDAY NOVEMBER 29TH HAVE THE OPPORTUNITY TO AUTHORIZE A SEARCH WARRANT FOR THIS CAR THAT WAS EXECUTED WITH SOUTH CAROLINA AUTHORITIES?

A. YES.

Q. AND WHO WAS THE AFFIANT ON THE SEARCH WARRANT?

A. DETECTIVE WILLIAM COOGAN WHO WORKS WHAT WE CALL OUR LINE SQUAD. THROUGH HIS SUPERVISOR I ASKED HIM TO HAVE A SEARCH WARRANT DRAWN UP FOR THE CAR.

Q. BUT AS FAR AS ACTUALLY PHYSICALLY PROCESSING THE CAR, AS FAR AS SEARCHING AND ACTUALLY DOING THE SEARCH, WHO WAS THAT DONE BY?

A. DETECTIVE COOGAN DIRECTED THE SLED, THE SOUTH

CAROLINA PEOPLE WHO PROCESSED THE CAR.

Q. DID YOU ALSO HAVE AN OPPORTUNITY TO ENCOUNTER THE DEFENDANT AT YOUR DEPARTMENT AFTER HE WAS ARRESTED?

A. YES, I DID.

Q. I'LL SHOW YOU STATE'S EXHIBIT 138 FOR IDENTIFICATION AND ASK IF YOU COULD LOOK AT THOSE ITEMS.

A. YES.

Q. DOES THAT ACCURATELY DEPICT THE WAY HE APPEARED THAT DAY AS WELL AS ANY PHYSICAL INJURIES THAT HE HAD WHEN HE CAME INTO YOUR DEPARTMENT?

A. YES.

MR. HANCOCK: AGAIN HE'S LEADING, YOUR HONOR.

THE COURT: I SUSTAIN THE OBJECTION. ASK THE QUESTION AGAIN; THAT'S A LEADING QUESTION.

Q. OFFICER, COULD YOU TELL THE JURY WHAT THIS DEPICTS, PLEASE?

A. THIS IS A SET OF PICTURES, FOUR PICTURES OF JAMES ROBERTSON THAT I DIRECTED OUR PHOTO LAB TO TAKE AND INJURIES TO HIS BODY ON THE DAY THAT HE WAS BROUGHT IN.

MR. POPE: YOUR HONOR, THAT WOULD BE STATE'S EXHIBIT 138 FOR IDENTIFICATION. WE WOULD MOVE IT INTO EVIDENCE.

MR. HANCOCK: WITHOUT OBJECTION, YOUR HONOR.

THE COURT: IT WILL BE RECEIVED.

(THE FOUR PHOTOS OF THE DEFENDANT WERE MARKED IN EVIDENCE AS STATE'S EXHIBIT 138 WITHOUT OBJECTION.)

Q. I BEG THE COURT'S INDULGENCE?

THE COURT: CERTAINLY.

(AFTER A BRIEF PAUSE.)

Q. DETECTIVE, I ASK YOU ON STATE'S EXHIBIT 88 THAT'S IN EVIDENCE, THE WALLET, AGAIN YOU HAD AN OPPORTUNITY TO LOOK AT IT WHILE THE JURY WAS OUTSIDE THE COURTROOM; IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND WAS IT IN SUBSTANTIALLY THE SAME CONDITION WHEN YOU TURNED IT OVER TO SOUTH CAROLINA AUTHORITIES?

A. YES, IT WAS.

Q. DID YOU ALTER OR CHANGE ANYTHING OR ADD OR REMOVE ANYTHING FROM THE CONTENTS?

A. NO.

MR. POPE: YOUR HONOR, PERMISSION TO PUBLISH STATE'S EXHIBIT 138.

THE COURT: CERTAINLY.

(THE PHOTOS WERE SHOWN TO THE JURY)

Q. DETECTIVE, I KNOW THERE ARE FOUR PICTURES, BUT IF YOU COULD INDICATE WHICH EACH ONE OF THESE

DEPICT.

A. IT'S A FRONTAL PICTURE OF MR. ROBERTSON.

Q. AND THIS?

A. THAT'S HIS ELBOW SHOWING A SCRAPE ON HIS ELBOW AND ABRASION.

Q. AND THIS?

A. I BELIEVE THAT WAS HIS INDEX FINGER AND, AGAIN, AN INDEX FINGER.

Q. ALL RIGHT.

A. FOR ABRASIONS AND INJURIES.

Q. THANK YOU. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE, PLEASE.

MR. BOYD: NO QUESTIONS, YOUR HONOR.

THE COURT: WE APPRECIATE YOUR TIME; THANK YOU. FEEL FREE TO LEAVE, YOU'RE EXCUSED. CALL YOUR NEXT WITNESS.

MR. POPE: MAY IT PLEASE THE COURT, YOUR HONOR, OUR NEXT WITNESS IS DETECTIVE COOGAN CONCERNING THE SEARCH OF THE VEHICLE.

I DON'T KNOW IF THE DEFENSE HAS ANY MOTIONS IN THAT REGARD.

MR. BOYD: I THINK WE NEED TO TAKE UP A MATTER.

THE COURT: LET ME LET YOU GO TO THE JURY ROOM JUST FOR A FEW MINUTES.

IN CAMERA:

THE COURT: PLEASE COME UP AND BE SWORN, OFFICER COOGAN.

WILLIAM COOGAN, BEING FIRST DULY SWORN, TESTIFIED IN CAMERA AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. DETECTIVE COOGAN IF YOU COULD FOR THE COURT, STATE YOUR NAME AND OCCUPATION PLEASE, AND SPELL YOUR LAST NAME FOR THE COURT REPORTER.

A. DETECTIVE WILLIAM COOGAN, C-O-O-G-A-N, BADGE NUMBER 9086, I'M ASSIGNED TO THE HOMICIDE DIVISION IN PHILADELPHIA.

Q. DID YOU HAVE AN OPPORTUNITY TO ASSIST THE STATE OF SOUTH CAROLINA IN THE INVESTIGATION OF THIS CASE THERE IN YOUR JURISDICTION?

A. YES, I DID.

Q. AS PART OF YOUR DUTIES DID YOU HAVE THE OPPORTUNITY TO RECEIVE INFORMATION FROM SOUTH CAROLINA OFFICERS AND GET A SEARCH WARRANT IN YOUR JURISDICTION TO SEARCH A RED MAZDA THAT WAS IN YOUR POLICE CUSTODY?

A. YES, I DID.

Q. I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 150 FOR IDENTIFICATION AND ASK IF YOU CAN LOOK AT THAT ITEM AND TELL US IF YOU CAN

IDENTIFY IT?

A. IT IS THE WARRANT I OBTAINED ON 11-29-97.

Q. AND THE PROBABLE CAUSE YOU HAD FOR THAT WARRANT, HOW DID YOU GAIN THAT PROBABLE CAUSE?

A. THAT CAME FROM SPECIAL AGENT BRETT BAKER AND DAVID BLACK.

Q. FROM THE SOUTH CAROLINA LAW ENFORCEMENT?

A. THAT'S CORRECT.

Q. AND BASED ON THAT, YOU ACTUALLY GOT A SEARCH WARRANT IN YOUR JURISDICTION?

A. THAT'S CORRECT.

Q. DID YOU ACTUALLY EXECUTE THE SEARCH ITSELF OR WHO DID THAT?

A. NO, I DIDN'T. MY PARTNER, DETECTIVE RICH BOGA AND DETECTIVE NEBEST.

Q. WOULD THEY ACTUALLY HAVE THE SEARCH WARRANT?

A. THEY HAD THE SEARCH WARRANT AND THEY WENT WITH BAKER AND BLACK TO PROCESS THE VEHICLE.

Q. THANK YOU.

(THE SEARCH WARRANT WAS SHOWN TO THE DEFENSE)

MR. BOYD: YOUR HONOR, IN THE AFFIDAVIT FOR PROBABLE CAUSE FOR THE SEARCH WARRANT IT REFERS TO A STATEMENT BY MEREDITH MOON AND IN THE MOON STATEMENT IT SAYS SHE INDICATED THAT RELEVANT EVIDENCE OF THE CRIME WAS TRANSPORTED IN THE ABOVE VEHICLE.

THERE IS NO SHOWING HERE OF WHAT THE RELEVANT EVIDENCE IS OR REALLY WHAT IT'S BEING SEARCHED FOR. WELL, ACTUALLY I GUESS IT IS, WHAT IT'S BEING SEARCHED FOR, BUT WHAT RELEVANT EVIDENCE -- THERE IS NO INDICATION OF WHAT THE RELEVANT EVIDENCE IS. SO, I WOULD SUBMIT THAT THE WARRANT FAILS TO SHOW PROBABLE CAUSE.

THE COURT: LET ME SEE IT.

(THE WARRANT WAS GIVEN TO THE COURT.)

MR. POPE: YOUR HONOR, AT THE APPROPRIATE TIME I WILL GO INTO THE SPECIFICS OF THE MAGISTRATE AND OBTAINING IT AND ALL.

(AFTER A PAUSE.)

THE COURT: AND THE MOTION IS WHAT, TO QUASH THE WARRANT?

MR. BOYD: YES, SIR, TO QUASH THE SEARCH BASED ON THE FACT THAT THE WARRANT FAILS TO SHOW PROBABLE CAUSE.

THE COURT: WELL, I FIND THE WARRANT IS SUFFICIENT. IT DOES SET FORTH THE ITEMS TO BE SEARCHED FOR WITH SPECIFICITY. SO, I DENY THE MOTION.

MR. POPE: MAY IT PLEASE THE COURT, AS FAR AS THE MECHANICS OF THE JURY AND THIS WITNESS, ALL I WOULD HAVE THIS WITNESS SAY BEFORE THE JURY IS DID YOU ASSIST IN THE INVESTIGATION, DID YOU OBTAIN A SEARCH WARRANT. THE ACTUAL OFFICER WHO DOES THE SEARCH WILL TESTIFY LATER ON.

AGAIN, UNLESS THE COURT WANTS ME TO GET INTO THE

SPECIFICS OF THE SEARCH WARRANT, MY ONLY INTENTION IS TO CALL HIM -- I WASN'T GOING TO MOVE THE WARRANT INTO EVIDENCE OR ANYTHING OF THAT NATURE.

THE COURT: I DON'T KNOW WHAT YOU'RE ASKING ME.

MR. POPE: I'M JUST TELLING THE COURT WHAT I'M GOING TO DO BEFORE IT HAPPENS SO IF THERE IS ANY MOTIONS WE NEED WE CAN DEAL WITH IT BEFOREHAND.

MR. BOYD: YOU'RE NOT PLANNING ON PUTTING THE WARRANT INTO EVIDENCE?

MR. POPE: NO, SIR.

MR. BOYD: I WOULD ASK THAT IT BE MADE A COURT'S EXHIBIT BUT NOT AN EXHIBIT TO GO TO THE JURY.

THE COURT: CERTAINLY.

MR. POPE: NO OBJECTION TO THAT, YOUR HONOR.

(THE WARRANT WAS MARKED COURT'S EXHIBIT NUMBER 10)

THE COURT: ARE YOU READY FOR THE JURY?

MR. POPE: YES, SIR.

THE COURT: BRING IN THE JURY.

MR. POPE: YOUR HONOR, THE WITNESSES NEXT ARE A GOOD NUMBER OF CHAIN WITNESSES. I HAVE THEM IN THE HALL. IF I COULD HAVE A FEW MINUTES WHILE THE JURY IS OUT, I COULD PROBABLY GO THROUGH FIVE OR MORE WITNESSES IN RAPID FASHION IF I COULD HAVE JUST A FEW MINUTES TO STEP OUTSIDE.

THE COURT: ALL RIGHT.

AFTER THE BREAK IN CAMERA:

MR. POPE: YOUR HONOR, THE NEXT SERIES OF WITNESSES WILL BE PRIMARILY CHAIN WITNESSES. WHAT WE HAVE DONE IS WHAT WE'VE DONE WITH THE OTHER EVIDENCE AND I'VE DISCUSSED THIS WITH THE DEFENSE AND MR. HANCOCK SAID IT WOULD BE APPROPRIATE BUT WE WILL PUT IT ON THE RECORD.

I'VE HAD EACH WITNESS GO THROUGH THE EVIDENCE AND CONFIRM THAT THAT IS THE EVIDENCE. OF COURSE, I WILL STILL ASK THEM THAT ON THE STAND BUT RATHER THAN HAVE THEM GOING THROUGH EVERY SINGLE ITEM -- PETE MITCHUM WHO IS THE EVIDENCE CUSTODIAN FOR THE SHERIFF'S DEPARTMENT IS GOING TO REMAIN CLOSE AT HAND TO PHYSICALLY RETRIEVE -- WE'VE GOT OVER A HUNDRED ITEMS -- MY INTENTION IS THE DEFENSE HAS SAID THEY WILL GIVE ME A LITTLE LATITUDE IN LEADING TO WORK THROUGH THE ITEMS AND PRIOR TO GETTING TO THAT BEFORE THE JURY THOUGH, WE HAVE TWO SEARCH WARRANTS THAT WILL IMPACT ON THE ITEMS THAT WILL COME IN.

THEY HAVE BEEN MARKED AS COURT'S EXHIBITS 10 AND 11 ---

THE COURT: WELL, YOU'VE STILL GOT OFFICER COOGAN ON THE STAND.

MR. POPE: YES, SIR. IF HE COULD BE GIVEN AN OPPORTUNITY TO STEP DOWN JUST LONG ENOUGH FOR THE JURY TO COME BACK, AND THEN WE WILL BEGIN WITH HIM.

THE COURT: ALL RIGHT.

MR. POPE: BUT I JUST WANTED TO PASS UP, THE

DEFENSE HAS ALREADY SEEN THEM, COURT'S EXHIBIT 10 WHICH IS THE SEARCH WARRANT THAT YIELDED THE YARD RAKE. COURT'S EXHIBIT 11 IS THE SEARCH WARRANT THAT RESULTED -- BOTH OF THESE ARE OF THE HOUSE, YOUR HONOR -- THAT RESULTED IN A NUMBER OF ITEMS BEING RECOVERED FROM THE HOUSE INCLUDING SOME MEDICINE BOTTLES AND SOME PAPER ITEMS, ITEMS SUCH AS THAT.

I WILL HAND THEM BOTH UP. AGAIN, IT'S COURT'S EXHIBIT 10 AND 11. AND I WILL HAVE THE AFFIANTS, I HAVE THEM HERE READY TO TESTIFY. AND MR. HANCOCK MAY HAVE SOME ISSUES ON THAT.

THE COURT: YES, SIR?

MR. HANCOCK: YOUR HONOR, JUST TO POINT OUT TO THE COURT THAT THINGS ARE BEING DONE IN THIS MANNER, AND I WANT TO PUT IT ON THE RECORD BECAUSE MY MEMORY IS SHORT AND I MIGHT NOT REMEMBER THIS AT A LATER DATE, THIS IS BEING DONE IN THIS MANNER BECAUSE WE HAVE GONE OVER THIS EVIDENCE ON AT LEAST TWO OCCASIONS WITH THE SOLICITOR. WE HAVE GONE AS FAR AS TO OPEN THE EVIDENCE, REDACT ANYTHING THAT HAS TO BE REDACTED. WE HAVE GONE THROUGH EVERY NUMBERING AND SEQUENCE OF THE EVIDENCE AND SO THAT IS THE REASON THAT WE HAVE DONE THIS.

WE HAVE BEEN OVER THE EVIDENCE AND TO EXPEDITE IT FOR THE COURT, RATHER THAN HAVING EACH ITEM HANDED AND THEN THEY HAVE TO UNSEAL IT, INDICATE THAT IT'S THEIR'S. IN

ORDER FOR US TO EXAMINE THE EVIDENCE PROPERLY, WE HAVE ALREADY GONE THROUGH THAT PROCESS.

THE COURT: ALL RIGHT. WHAT'S THE DEFENSE'S POSITION ON THE SEARCH WARRANT DATED -- LET'S GO FIRST WITH THE ONE DATED 11-26-97. IT DESCRIBES THE PROPERTY SOUGHT AS ONE YARD RAKE. ANY QUESTION CONCERNING THE VALIDITY OF THE SEARCH WARRANT? IT'S BASED ON THE AFFIDAVIT OF -- I CAN'T READ THE NAME.

MR. POPE: DETECTIVE HAGER, YOUR HONOR.

MR. HANCOCK: YOUR HONOR, NO, SIR, WE DON'T HAVE A CHALLENGE TO THAT.

THE COURT: ALL RIGHT, THE SECOND ONE IS DATED, IT LOOKS LIKE NOVEMBER 28, '97 ISSUED BY JUDGE BOULWARE ON THE AFFIDAVIT OF JOHN HOWE DEALING WITH THE SAME PROPERTY AND A NUMBER OF ITEMS. ANY CHALLENGE TO THE VALIDITY OF THIS SEARCH WARRANT?

MR. HANCOCK: YOUR HONOR, THE AFFIDAVIT APPEARS ON ITS FACE TO BE SUFFICIENT.

THE COURT: WELL, I FIND BOTH OF THESE SEARCH WARRANTS, ONE IS MARKED COURT'S EXHIBIT 11 -- 10 AND 11. I FIND THAT EACH IS VALID AND MEETS THE REQUIREMENTS OF THE LAW FOR ADEQUATE LEGAL SEARCH WARRANTS GRANTING THE RIGHT TO SEARCH THE PREMISES OUTLINED THEREON; BOTH OF THEM BEING THE ROBERTSON HOME AT 2506 WESTMINSTER DRIVE, ROCK HILL, SOUTH CAROLINA.

MR. POPE: ALSO AS FAR AS THE CHAIN OF EVIDENCE THAT WE WILL GO THROUGH WITH THE NEXT SEVERAL WITNESSES, I HAVE PROVIDED THE DEFENSE WITH WRITTEN COPIES OF THE CHAIN THAT THEY MAY REFER TO WHILE WE GO THROUGH THE EVIDENCE IF THEY HAVE ANY QUESTIONS ABOUT IT.

THE COURT: ALL RIGHT.

MR. POPE: WE WILL CALL OFFICER COOGAN WHEN THE JURY COMES BACK.

THE COURT: ALL RIGHT, BRING IN THE JURY. OFFICER COOGAN CAN COME ON BACK UP.

IN THE PRESENCE OF THE JURY:

THE COURT: I KNOW Y'ALL ARE PROBABLY CONVINCED THAT I MISSED THAT CLASS IN KINDERGARTEN WHEN THEY TAUGHT YOU HOW TO TELL TIME, BUT I REALLY DIDN'T. BUT WE TRY OCCASIONALLY WHEN YOU AREN'T IN THE COURTROOM TO DO THINGS THAT WOULD EXPEDITE THE TIME YOU ARE IN HERE. SO, WE DECIDED AT THIS BREAK TO DO A FEW THINGS THAT WOULD SPEED THINGS ALONG. THAT'S WHY WE TOOK A LITTLE LONGER THAN I HAD INDICATED. YOU MAY PROCEED.

WILLIAM COOGAN, HAVING PREVIOUSLY BEEN SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. OFFICER COOGAN, I BELIEVE YOU'VE PREVIOUSLY BEEN SWORN BY THE CLERK, IS THAT CORRECT?

A. THAT IS CORRECT.
Q. COULD YOU STATE YOUR NAME AND OCCUPATION FOR THE JURY PLEASE, SIR?
A. DETECTIVE WILLIAM COOGAN, C-O-O-G-A-N, BADGE NUMBER 9086. I'M A DETECTIVE ASSIGNED TO THE HOMICIDE DIVISION IN PHILADELPHIA.
Q. ARE YOU IN THE SAME DEPARTMENT AS DETECTIVE ROBISON WHO WAS HERE EARLIER?
A. THAT IS CORRECT.
Q. AND PURSUANT TO HIS GUIDANCE OF THIS INVESTIGATION, DID YOU HAVE THE OPPORTUNITY ON SATURDAY, I BELIEVE THE 29TH, TO OBTAIN A SEARCH WARRANT FOR THE RED VEHICLE IN QUESTION IN THIS CASE?
A. YES, I DID.
Q. AND DID YOU OBTAIN THAT SEARCH WARRANT THROUGH YOUR LOCAL JUDGE THERE?
A. YES. ACTUALLY I OBTAINED IT THROUGH A BAIL COMMISSIONER WHICH IS THE EQUIVALENT OF A MAGISTRATE IN PHILADELPHIA.
Q. OKAY.
A. AND HIS NAME IS TIM O'BRIEN.
Q. OKAY AND AFTER OBTAINING IT FROM HIM, DID YOU FORWARD IT TO THE OFFICERS THAT ULTIMATELY WORKED WITH THE STATE LAW ENFORCEMENT DIVISION

AGENT WHO ACTUALLY SEARCHED THE VEHICLE?

A. YES, I DID.

Q. OKAY. ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE, PLEASE.

MR. BOYD: NO QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU, DETECTIVE COOGAN. YOU CAN STEP DOWN AND BE EXCUSED. WE APPRECIATE YOUR TIME. CALL YOUR NEXT WITNESS.

MR. POPE: THE STATE WOULD CALL BOBBY BROWN TO THE STAND.

ROBERT BROWN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY

MR. POPE:

Q. AGENT BROWN, IF YOU WOULD, STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE COURT REPORTER.

A. MY NAME IS ROBERT BROWN; THE LAST NAME IS B-R-O-W-N.

Q. TELL THE JURY YOUR OCCUPATION.

A. I WORK CRIMINAL INVESTIGATIONS FOR THE STATE LAW ENFORCEMENT DIVISION HERE IN SOUTH CAROLINA.

Q. HOW LONG HAVE YOU BEEN WITH SLED?

A. ALMOST EIGHT YEARS.

Q. I CALL YOUR ATTENTION BACK TO NOVEMBER 25TH, 1997. DID YOU HAVE THE OPPORTUNITY ON NOVEMBER

26TH TO GO UP TO PHILADELPHIA TO ASSIST RALPH MISLE OF THE YORK COUNTY SHERIFF'S DEPARTMENT IN THE INVESTIGATION OF THIS CASE?

A. YES, SIR, I DID.

Q. PURSUANT TO YOUR DUTIES IN THAT INVESTIGATION DID YOU ALSO HAVE THE OPPORTUNITY TO BRING BACK EVIDENCE FROM PHILADELPHIA AND BRING IT TO THE YORK COUNTY SHERIFF'S DEPARTMENT AND TO THE STATE LAW ENFORCEMENT DIVISION?

A. YES, SIR.

Q. WHILE THE JURY WAS OUT DID YOU HAVE AN OPPORTUNITY TO ACTUALLY REVIEW THE EVIDENCE?

A. YES, SIR.

Q. DID IT APPEAR TO BE IN THE SAME CONDITION, OTHER THAN TESTING, AS IT WAS WHEN YOU RETRIEVED IT?

A. YES, SIR, THAT'S CORRECT.

Q. PARTICULARLY I CALL YOUR ATTENTION TO STATE'S EXHIBIT 88 AND 87 THAT ARE IN EVIDENCE. 87 BEING THE MULTI-COLORED SWEATER RECOVERED FROM MEREDITH MOON, 88 BEING THE WALLET RECOVERED FROM THE DEFENDANT. DID YOU TRANSPORT BOTH OF THOSE ITEMS BACK FROM PHILADELPHIA?

A. YES, SIR, I DID.

Q. AND AS TO STATE'S EXHIBIT 87, THE MULTI-COLORED SWEATER, DID YOU HAVE AN OPPORTUNITY TO TAKE