

ORIGINAL

VOLUME THREE OF TEN

STATE OF SOUTH CAROLINA
In The Supreme Court

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

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THE STATE,

S.C. Supreme Court

RESPONDENT,

V.

WILLIAM O. DICKERSON,

APPELLANT

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

6 A. Yes, I do.

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

13 A. Right.

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

23 A. Yes, sir.

24 Q. You could do that, as well?

25 A. Yes, sir.

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

5 A. Yes, sir.

6 Q. You would do that fairly and impartially?

7 A. Yes, I will.

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

11 A. No.

12 THE COURT: Thank you, ma'am.
13 Please answer any questions that the attorneys
14 might have.

15 MR. BLOOM: May it please the court?

16 THE COURT: Um-humm.

17 VOIR DIRE EXAMINATION

18 BY MR. BLOOM:

19 Q. Ms. Grant, good morning.

20 A. Good morning.

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

25 A. Okay.

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

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

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

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

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

19 A. No.

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

23 A. Okay.

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

1 and some people may be confused about it.

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

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

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

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

24 A. No.

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

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

3 A. I understand.

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

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

12 A. Okay.

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

20 A. Yes, sir.

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

24 A. Okay.

25 Q. Some people, even though they get that

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

5 A. Right.

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

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

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

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

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

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

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

6 A. Yes, sir.

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

10 A. Yes, sir.

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

13 A. Sure.

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

20 A. No.

21 Q. You'd look at everything?

22 A. Everything.

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

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

4 A. Right.

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

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

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

10 A. Yes.

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

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

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

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

1 that, you know.

2 Q. Okay.

3 A. You know.

4 Q. All right.

5 A. (Affirmative nod).

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

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

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

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

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

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

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

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

4 A. I understand.

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

8 A. Yes, I can.

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

15 A. No.

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

17 A. No.

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

19 A. No.

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

21 A. Okay.

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

24 A. (Negative gesture), no.

25 Q. And you would want those eleven jurors to

1 respect their vote?

2 A. Exactly.

3 Q. And you would respect their vote?

4 A. Exactly.

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

10 A. No, I would not.

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

13 A. Exactly.

14 MR. BLOOM: Thank you very much.

15 THE COURT: Any questions,
16 Solicitor?

17 VOIR DIRE EXAMINATION

18 BY SOLICITOR WILSON:

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

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

3 A. (Affirmative nod).

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

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

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

17 A. Yes, I would.

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

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

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

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

1 very shortly.

2 (JUROR NUMBER 363 EXITS COURTROOM)

3 THE COURT: What says the State?

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

6 MR. BLOOM: Qualified, Your Honor.

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

19 (JUROR NUMBER 363 ENTERS COURTROOM)

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

25 That, I believe, will take place on

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

11 When you come back on Thursday, you will need
12 to come directly to this courtroom and we will
13 -- they will direct you where to come.

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

23 JUROR NUMBER 363: Thank you, Judge.

24 THE COURT: Thank you.

25 (JUROR NUMBER 363 EXITS COURTROOM)

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

3 (JUROR NUMBER 378 ENTERS COURTROOM)

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

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

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

10 JUROR NUMBER 378: Yes, sir.

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

16 JUROR NUMBER 378: James Keith Martin.

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

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

5 JUROR NUMBER 378: Yes, sir.

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

9 JUROR NUMBER 378: Yes, sir.

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

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

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

22 A. No, sir.

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

1 A. No, sir.

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

5 A. No, sir.

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

9 A. Yes, sir.

10 Q. Which one most accurately describes you?

11 A. I guess type three.

12 Q. Type three?

13 A. Yes, sir.

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

1 believe to be the most appropriate sentence.

2 Is that correct?

3 A. Yes, sir.

4 Q. That would be you?

5 A. Yes, sir.

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

12 A. Yes, sir.

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

20 A. Yes, sir.

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

1 that?

2 A. Yes, sir.

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

5 A. Yes, sir.

6 Q. And would?

7 A. Yes, sir.

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

10 A. Yes, sir.

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

18 A. Yes, sir.

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

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

4 A. Yes, sir.

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

7 A. Yes, sir.

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

13 A. Right.

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

22 A. That's correct.

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

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

5 A. Yes, sir.

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

13 A. (Affirmative nod).

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

17 A. Yes, sir.

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

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

4 A. Yes, sir.

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

9 A. Yes, sir.

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

14 A. Okay.

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

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

4 A. (Affirmative nod).

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

10 A. Yes, sir.

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

19 A. Yes, sir.

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

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

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

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

16 Q. Yes.

17 A. No, I would not.

18 Q. You would not?

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

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

23 A. That is my strong feeling, yes.

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

1 penalty?

2 A. Yes, sir.

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

7 A (Affirmative nod).

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

11 A. (Affirmative nod).

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

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

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

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

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

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

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

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

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

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

18 A. Like somebody's past history?

19 Q. Yes, that type of thing.

20 A. Yes. Yes.

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

1 A. Yes, sir.

2 Q. Notwithstanding your strong feelings?

3 A. That's correct.

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

6 A. Yes, sir.

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

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

11 Q. You know what, ---

12 A. I could set that aside, yes.

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

22 A. (Affirmative nod).

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

1 A. Yes.

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

6 A. Yes, sir.

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

12 A. (Affirmative nod).

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

18 A. No, sir.

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

22 VOIR DIRE EXAMINATION

23 BY SOLICITOR WILSON:

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

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

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

7 Okay?

8 A. Yes, ma'am.

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

12 A. No, ma'am.

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

17 A. Yes, ma'am.

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

21 A. Yes, ma'am.

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

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

2 A. That's correct.

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

12 A. Yes, ma'am.

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

18 A. Yes, ma'am.

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

22 A. I understand.

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

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

4 A. Right. Yes, ma'am.

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

7 A. Right.

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

15 A. Yes, ma'am.

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

18 A. That's correct.

19 Q. And you could do that?

20 A. Yes, ma'am.

21 Q. You could give life without parole?

22 A. Yes, ma'am.

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

24 A. Yes, ma'am.

25 Q. The second part of that would be

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

7 Do you understand that concept?

8 A. Yes, ma'am.

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

22 A. Yes, ma'am.

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

1 parole. Do you understand that?

2 A. Yes, ma'am.

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

6 A. Yes, ma'am.

7 Q. Life without parole is a long time?

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

9 Q. Do what?

10 A. A few months is a long time.

11 Q. Yes, sir.

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

14 THE COURT: Certainly, take your
15 time.

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

18 VOIR DIRE EXAMINATION

19 BY MR. BLOOM:

20 Q. Good morning, Mr. Martin.

21 A. How you doing?

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

24 I just have a few followup questions. Okay?

25 A. (Affirmative nod).

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

3 A. Yes, sir.

4 Q. A little nervous?

5 A. Maybe a little bit.

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

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

25 A. That's correct.

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

3 A. (Affirmative nod).

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

6 A. I understand. Yes, sir.

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

11 A. Yes, sir.

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

19 A. Yes, sir.

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

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

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

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

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

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

19 A. I understand.

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

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

4 A. I understand.

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

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

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

20 A. Yes, sir.

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

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

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

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

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

11 MR. BLOOM: Yes, sir.

12 THE COURT: Thank you.

13 EXAMINATION CONTINUED

14 BY MR. BLOOM:

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

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

5 A. No.

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

11 A. No.

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

16 A. No, sir.

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

22 A. Yes, sir.

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

1 for the death penalty. Do you understand that?

2 A. Yes, sir.

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

5 A. (Affirmative nod).

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

8 A. What was the question, again?

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

12 A. Yes.

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

21 A. No.

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

24 A. Yes.

25 Q. You would make that moral, individualized

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

3 A. That's correct.

4 Q. And you could respect theirs?

5 A. That's correct.

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

12 A. No, sir.

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

14 A. Yes, sir.

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

16 A. Yes, sir.

17 MR. BLOOM: Thank you.

18 THE COURT: Anything further,
19 Solicitor?

20 SOLICITOR WILSON: No, sir.

21 THE COURT: Thank you, Mr. Martin.

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

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

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

12 JUROR NUMBER 378: Yes, sir.

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

17 (JUROR NUMBER 378 EXITS COURTROOM)

18 THE COURT: State?

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

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

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

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

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

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

1 trial.

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

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

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

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

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

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

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1 you and not be influenced by that.

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

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

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

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

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

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

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

8 SOLICITOR WILSON: Right.

9 THE COURT: As a parent, I could ---

10 SOLICITOR WILSON: (Affirmative nod),
11 that's what you do.

12 THE COURT: That's what you do,
13 (affirmative nod). I could understand that.
14 Thank you. Let's bring him in.

15 (JUROR NUMBER 378 ENTERS COURTROOM)

16 THE COURT: Thank you very much, Mr.
17 Martin. Thank you very much, and I appreciate
18 your patience. You've been -- you may stand or
19 take a seat, whatever you want to do -- found
20 to be qualified to be a member of the panel
21 from which we will select our jury.

22 At this point, we plan on doing that
23 Thursday morning at 9:30. I need for you to
24 call the number tonight after 6:00 o'clock and
25 just follow the instruction that will be placed

1 on there pertaining to the Dickerson jury
2 panel. More than likely it will say the
3 Dickerson jury panel needs to report at 9:30 on
4 Thursday.

5 When you come, you will come directly
6 to this courtroom and take a seat out in the
7 audience. We will select our jury, as I
8 stated, and then we will start with the trial.
9 So be prepared if you're selected to spend the
10 day here.

11 Also until you're dismissed from this
12 case, please understand that you cannot talk
13 with anyone about this case or permit anybody
14 to talk about it in your presence. Again,
15 you're not permitted to read anything about it
16 or watch any news programs about it. Thank you
17 very much. Have a good day and we'll probably
18 see you on Thursday. Thank you.

19 JUROR NUMBER 378: Thank you.

20 (JUROR NUMBER 378 EXITS COURTROOM)

21 CLERK, MIKE CALLAHAN: Judge, Mr.
22 White has turned in his questionnaire.

23 THE COURT: If you would pass those
24 out, that would be great.

25 SOLICITOR WILSON: Judge, if I could

1 have two minutes. If you want to continue on,
2 that's fine.

3 BRUCE DURANT: I could use two
4 minutes.

5 THE COURT: Let's all take a few
6 minutes.

7 MR. BLOOM: We're ready.

8 THE COURT: Let's take a minute.
9 Mike will give you Mr. White's questionnaire
10 and that will give you a minute to look over
11 that. We'll be right back.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Yes, sir?

15 MR. BLOOM: Judge, if I may, two
16 brief things. One, I neglected and my co-
17 counsel kindly reminded me that that last
18 objection, as well as previous objections to
19 the jurors, those are of course made to the
20 Fifth, Sixth, Eighth and Fourteenth Amendments
21 to the United States Constitution.

22 THE COURT: Correct.

23 MR. BLOOM: *Morgan v. Illinois* and
24 -- of course, I think from the outset that we
25 said that we were going to rely on those

1 objections.

2 THE COURT: Right.

3 MR. BLOOM: Which was in our
4 memorandum which is on file with the court, but
5 I just wanted to make that clear for the
6 record.

7 Secondly, I would respectfully object
8 from this point on to any attempted
9 rehabilitation by the trial court or the
10 solicitor of jurors who firmly place themselves
11 in what we have been calling a Type One
12 category according to this sheet where they
13 clearly say that they would automatically vote
14 for death.

15 THE COURT: Let me ---

16 MR. BLOOM: The law allows ---

17 THE COURT: --- interrupt you, sir.

18 MR. BLOOM: Yes, sir.

19 THE COURT: If you want to do that,
20 that suits me fine but we'll apply that to life
21 imprisonment, too.

22 MR. BLOOM: Well, my next sentence
23 was going to be that the exception to that is
24 the law under *Morgan* requires attempted
25 rehabilitation under *Morgan* and the Eighth

1 Amendment, for this purpose: If there's going
2 to be an error on either law, through the U.S.
3 Supreme Court jurisprudence favors life. So we
4 would err on that side of caution.

5 I know that South Carolina has no
6 precedence on it. It's my understanding that
7 other states do and they conspicuously, under
8 the Constitution, allow efforts at
9 rehabilitation of a pro-life juror but disfavor
10 attempted rehabilitation of jurors who say they
11 are automatic death penalty jurors.

12 I think the argument there flows from
13 *Morgan* and similar cases in an effort to avoid
14 jury organized -- so I would respectfully place
15 that objection on the record.

16 THE COURT: Fine.

17 MR. BLOOM: I acknowledge that there
18 is no South Carolina precedent on that issue,
19 so we would make our objection to the Fifth,
20 Sixth, Eighth and Fourteenth amendments to the
21 United States Constitution. Thank you, Your
22 Honor.

23 THE COURT: Thank you. Of course,
24 you know, to say that the court has
25 rehabilitated a juror is somewhat remarkable,

1 to me. I think I have the responsibility --
2 I am not "rehabilitating" a soul, because I
3 believe I've done the same thing with those who
4 have said that they are -- that their
5 predisposition is life. I understand your
6 position is that it applies only one way.

7 I thought my purpose was to find out
8 whether or not they can follow the court's
9 instructions and fairly and impartially
10 consider the evidence in this case, because
11 that seems to be, in reading every single case
12 that I've read and every note that I've read,
13 -- and I confess that I haven't read the full
14 cases of all the notes that I have read. It
15 seems to be fairly consistent that the
16 fundamental question -- and I understand that
17 there is a major concern and certainly an
18 evolving of the law in this area, and you've
19 alluded to a number of areas, that South
20 Carolina is not the same as in other states,
21 and that there are some areas where it is very
22 gray and some areas where it just simply is
23 nonexistent.

24 But, clearly, -- and I haven't read
25 these, you probably have. There's -- we have

1 recognized, at least as I read *State v.*
2 *Singleton* and citing *Witherspoon*, that it does
3 require the jurors who favor capital punishment
4 be excused.

5 The question again comes back to, and
6 the reason for that, as the cases have said, is
7 that I have to determine whether or not they
8 can follow the court's instructions and
9 meaningful give -- not just say, not give just
10 lip service to it, but can they truly do that;
11 to the extent that we can make that assertion
12 from what we are doing right here in asking the
13 question.

14 I appreciate that. I don't call it
15 rehabilitation. I am just trying to find out
16 information. Your objection is noted.

17 Solicitor, do you want to be heard any
18 further on that?

19 SOLICITOR WILSON: No, sir.

20 THE COURT: Thank you very much, Mr.
21 Bloom. I appreciate it. Certainly the record
22 will be supplemented by the basis given in your
23 argument, and the court is -- continues its
24 ruling notwithstanding the supplementing of
25 your argument.

1 Mr. White, Juror Number 398 filled out
2 his questionnaire and apparently he overlooked
3 a page in error. He is -- Mr. Callahan was
4 kind enough to catch that and he's now asked
5 the juror to complete it. So you've now been
6 handed page five of his form, modified, having
7 been completed.

8 SOLICITOR WILSON: This is on Mr.
9 White?

10 THE COURT: Yes. He's still going
11 to be the last one. I will give you a chance
12 to look at it. I am not going to go to him
13 right now. We're going to do Juror 315.

14 (JUROR NUMBER 315 ENTERS COURTROOM)

15 THE COURT: Good morning, Ms.
16 Toomer.

17 JUROR NUMBER 315: Good morning.

18 THE COURT: Ms. Toomer, I need for
19 you to pull that chair up so that you can speak
20 comfortably into the microphone.

21 We are going to continue the process
22 that we started on Friday when we were asking
23 some questions about this case, talking about
24 this case. Just as you will recall on Friday,
25 there aren't any correct answers to any of

1 these questions. We just want you to be
2 truthful in responding and give us complete
3 answers. Will you do that?

4 JUROR NUMBER 315: Yes, sir.

5 THE COURT: I would remind you that
6 you are still under oath in this matter. Okay,
7 is that agreeable with you?

8 JUROR NUMBER 315: Yes, sir.

9 SALLYLISHA TOOMER, being duly sworn to
10 tell the truth, the whole truth and nothing but
11 the truth, testified, as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. Since we were last together, have you
15 talked with anyone or permitted anyone to talk
16 with you about this case?

17 A. No, sir.

18 Q. Have you watched any television programs,
19 news program or read any news articles about
20 this case?

21 A. No, sir.

22 Q. You will recall that I gave you a number
23 of names of persons on Friday and asked you
24 whether or not you had any connection with
25 those persons?

1 A. (Affirmative nod).

2 Q. I failed to mention two names that I need
3 to ask you about. Are you related by blood or
4 marriage, have any business dealings with or
5 socially or casually acquainted with or have
6 any dealings with Jeff Osborne or Matt Casey?

7 A. No, sir.

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

11 A. Yes, sir.

12 Q. Which type most accurately describes you?

13 A. (Upon review of sheet) -- number two.

14 Q. Number two?

15 A. (Affirmative nod)

16 Q. Let me understand something. Number two
17 is a juror that simply says if I am on a jury
18 and that jury has the responsibility of
19 deciding what the appropriate sentence is for
20 the crime of murder and the person has been
21 convicted of murder, when I'm given that
22 choice, the only decision that I could ever
23 make is life imprisonment. I could never,
24 under any circumstances, consider imposing a
25 death sentence for the crime of murder. That

1 is what you are?

2 A. Yes, sir.

3 Q. So you're telling me, and I am not asking
4 you to tell me what those circumstances would
5 be, I am just asking you, as you sit here
6 today, there are no circumstances where a
7 person was convicted of murder, if you were
8 instructed to make a determination between life
9 imprisonment and the death sentence in which
10 you could sign or impose a death sentence?

11 A. Yes, sir.

12 Q. "Yes, sir" there are circumstances or
13 there is no way you could ever do that?

14 A. I mean there's no way that I could ever do
15 that.

16 Q. That's just a strong belief that you have?

17 A. Yes, sir.

18 THE COURT: I am going to let the
19 attorneys ask you some questions. I may have
20 some followup questions.

21 MR. BLOOM: May it please the court?

22 THE COURT: Yes, sir.

23 VOIR DIRE EXAMINATION

24 BY MR. BLOOM:

25 Q. Ms. Toomer, good morning.

1 A. Good morning.

2 Q. My name is Jeff Bloom and along with
3 Andrew Carroll, we represent William Dickerson.
4 I just have a few questions to ask you after
5 the judge.

6 First off, the law never requires a jury
7 to vote for the death penalty. Do you under-
8 stand that?

9 A. Yes, sir.

10 Q. It never requires that. If you were a
11 juror, Judge Dennis would never instruct you or
12 order you that that's what you had to find.
13 Okay?

14 A. Okay.

15 Q. All right. Now, the law also recognizes
16 that it is okay to have moral reservations or
17 be against the death penalty. Do you
18 understand that?

19 A. Yes, sir.

20 Q. But the law next requires, though, or asks
21 is whether you can set those strong feelings
22 aside and listen to all the evidence in a case
23 when deciding life or death?

24 A. Yes, sir.

25 Q. Could you set those strong opinions aside

1 and listen to all the evidence?

2 A. Yes, sir.

3 Q. The law doesn't stop there. It goes a few
4 more questions. What the law next requires, of
5 course, is that you listen to all the evidence
6 from the State and the defense -- and we're not
7 talking about this case, we're just talking
8 about any case -- and decide first if a
9 defendant is guilty or not guilty of murder.

10 Can you do that?

11 A. Yes, sir.

12 Q. So you could find someone, depending on
13 all the evidence, either committed a murder and
14 were guilty or if they didn't commit it were
15 not guilty. You could do that?

16 A. Yes, sir.

17 Q. The next phase, and this is what I want
18 you to pay close attention to, as Judge Dennis
19 and the Solicitor may have some followup
20 questions, the State -- the Judge would then
21 charge you that your job doesn't end there in
22 such a case. The jury then hears more
23 evidence, both presented by the State for the
24 death penalty and presented by the defendant
25 perhaps for life without parole. Could you

1 listen to and consider all that evidence?

2 A. Yes, sir.

3 Q. Typically what the State sometimes
4 introduces is something called, to get to that
5 basis, aggravating circumstances. That is
6 something like murder and a burglary, or murder
7 and a robbery, of murder of a child or
8 something else. Okay?

9 A. (Affirmative nod).

10 Q. Do you understand that?

11 A. Yes, sir.

12 Q. This nice lady (court reporter) had to
13 take down your answers. That's why a shake of
14 the head isn't enough. The law then asks that
15 you consider those aggravating circumstances,
16 that murder and extra evidence. Could you do
17 that?

18 A. Yes, sir.

19 Q. And then the law also requires you to
20 consider mitigating circumstances, that is just
21 a fancy phrase for things like how the person
22 was raised, their childhood, drug addiction,
23 mental health, things like that. Could you
24 listen to that evidence?

25 A. Yes, sir.

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1 Q. And then what the law asks is, after
2 you've heard all of that evidence and listened
3 to Judge Dennis' instructions on the law, that
4 you weigh life without parole or the death
5 penalty. Could you follow that instruction?

6 A. Yes, sir.

7 Q. Then what the law asks is, even if you
8 have strong feelings against the death penalty,
9 that if it were a situation where you thought,
10 'Golly, you know, here I am, Ms. Toomer, and
11 I'm against the death penalty but I've heard a
12 particular case...' -- and we're not talking
13 about this case, but a case in your mind.
14 'I've heard it and even though I am against the
15 death penalty, I could set my opinion aside in
16 that case and in that type of case give death.'
17 Can you do that?

18 A. Yes, sir.

19 Q. Okay. Likewise, in a case if you felt
20 that the death penalty wasn't warranted, could
21 you give a life without parole sentence?

22 A. Yes, sir.

23 Q. Okay. If you were on a jury and felt --
24 again, we're not talking about this case, just
25 a case. Is there a particular case where you

1 think of that you might say, 'Okay, I can give
2 the death penalty.' If that was your verdict,
3 then you would sign your name to a verdict
4 form. Could you do that?

5 A. Yes, sir.

6 Q. So even though I take it that you have
7 some strong opinions against the death penalty,
8 what ---

9 A. Yes, sir.

10 Q. --- you've told me is that you can perhaps
11 set those aside in a case.

12 A. Yes, sir.

13 Q. Listen to the instructions that Judge
14 Dennis gave you, listen to his instructions
15 both in terms of guilty or not guilty and
16 follow that, right?

17 A. Yes, sir.

18 Q. And if a defendant were guilty you could
19 listen to his instructions about those
20 aggravating circumstances and mitigating
21 circumstances, both good and bad; right?

22 A. Yes, sir.

23 Q. And you could weigh all that and with the
24 others jurors talk among them about the
25 evidence and then decide either life without

1 parole or the death penalty?

2 A. Yes, sir.

3 Q. You could set those opinions aside and
4 follow his -- listen to the law and if it was
5 warranted in a particular case, again not this
6 case, if -- even if those were your strong
7 beliefs against the death penalty, you could
8 say, 'Wow, I just heard a case where I think,
9 you know, the death penalty needs to be
10 imposed.' You could vote for that and set your
11 opinions aside?

12 A. Yes, sir.

13 Q. All right. And sign your name to that
14 verdict, if that was your choice?

15 A. Yes, sir.

16 Q. Likewise, you could sign a verdict for
17 life without parole, if that was your choice?

18 A. Yes, sir.

19 Q. And after having done all that, if you
20 were on a jury and, having done all that,
21 eleven jurors were voting one way and you were
22 voting another, you could still hold onto your
23 reasoned, moral, individualized choice?

24 A. Yes, sir.

25 Q. You wouldn't just give up your vote and go

1 home because it was the end of the day. Right?

2 A. No, sir.

3 Q. You would respect their vote and want them
4 to respect yours?

5 A. Yes, sir.

6 Q. Thank you very much. Is there any
7 question that I've asked you that you were
8 confused about or didn't understand?

9 A. No, sir.

10 Q. All right. Even though you have strong
11 beliefs against the death penalty -- and,
12 again, we're not asking what -- you understand
13 nobody is going to ask you what you'd do in
14 this case, right?

15 A. Yes, sir.

16 Q. Because that's not fair. You haven't
17 heard any of the evidence. Right?

18 A. Yes, sir.

19 Q. I mean, if you got selected. You haven't
20 heard any witnesses or anything like that,
21 right?

22 A. Yes, sir.

23 Q. But in a particular case you could set
24 those strong opinions against the death penalty
25 aside and be fair to both sides, follow Judge

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1 Dennis' instruction?

2 A. Yes, sir.

3 MR. BLOOM: Thank you, ma'am.

4 THE COURT: Solicitor?

5 SOLICITOR WILSON: Thank you, Your
6 Honor.

7 VOIR DIRE EXAMINATION

8 BY SOLICITOR WILSON:

9 Q. Ms. Toomer, I'm Scarlet Wilson, I'm the
10 Solicitor in this case. How are you?

11 A. Fine. How are you doing?

12 Q. I'm doing pretty good. I notice that in
13 your questionnaire that they gave us, that you
14 filled out, that you didn't answer the question
15 about the death penalty.

16 A. I didn't answer the question about the
17 death penalty?

18 Q. No. You answered the other questions but
19 on page eight of your questionnaire, you didn't
20 answer the question about the death penalty.

21 Why is that?

22 A. Probably because I really didn't
23 understand.

24 Q. You didn't understand what?

25 A. That part, I probably didn't even see that

1 part.

2 Q. Just now, ten minutes ago, the Judge went
3 through a whole bunch of questions and you told
4 the Judge on more than one occasion that you
5 could never give the death penalty.

6 A. Yes.

7 Q. You told him that several times.

8 A. Yes, I did.

9 Q. Then a few seconds later when the defense
10 was asking you questions, you said that you
11 could give a death penalty?

12 A. Yeah.

13 Q. What is the right answer for you? Not
14 that there is a right answer for all of us, but
15 for you. Could you give the death penalty or
16 not?

17 A. I could set them aside, like he said.

18 Q. You could put those feelings aside?

19 A. Yes, I could.

20 Q. Okay. Can you imagine cases where you
21 think the death penalty would be appropriate?

22 A. Yes, ma'am.

23 Q. You could?

24 A. (Affirmative nod).

25 Q. And when the judge asked you whether or

1 not you could ever give the death penalty and
2 you said that you could never give it, why did
3 you say never if you can imagine situations
4 where you could give it?

5 THE COURT: Solicitor, let me inject
6 something here. In fairness, I turned the
7 juror over to you'all for questioning because
8 she said that she was a type two person. I had
9 not gone through the instruction and had not
10 instructed her. He asked her a question
11 whether she would follow the law, so I will
12 follow up, if you'd like for me to, and then
13 you can follow up with that question. I think
14 really she was responding, as I understand the
15 questions, to following the court's
16 instruction. That would be an explanation as
17 to why. In fairness, I didn't ask the
18 question.

19 EXAMINATION CONTINUED

20 BY SOLICITOR WILSON:

21 Q. Ms. Toomer, just to make sure that we are
22 clear, Mr. Bloom asked you about weighing
23 whether or not or considering whether or not
24 you would give the death penalty or life
25 without parole. Do you understand that in a

1 death penalty case that life without parole is
2 always on the table?

3 A. Yes, ma'am.

4 Q. And do you think that life without parole
5 is a pretty harsh sentence?

6 A. Yes, ma'am.

7 Q. And if you have that option, would you
8 always pick life without parole over the death
9 penalty?

10 A. (No verbal response).

11 Q. If you always had that option?

12 A. If I always had the option, then -- yeah.

13 Q. You would always pick life without parole?

14 A. Yes.

15 Q. Okay. Why is that, why do you say that?

16 A. I don't know. I mean, even though -- I
17 don't think nobody should have no death, I mean
18 the death penalty.

19 Q. And especially when life without parole is
20 an option?

21 A. Yes, ma'am.

22 Q. You don't think anybody should have a
23 death sentence?

24 A. No, ma'am.

25 SOLICITOR WILSON: That's all that I

1 have.

2 THE COURT: All right, let me ask
3 some questions and then you'all can ask some
4 followup questions.

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. I thank you very much, Ms. Toomer. As I
8 understand your responses, as Mr. Bloom asked
9 you or instructed, you understand that if
10 you're selected as a juror in a case that that
11 jury has the responsibility of deciding the
12 facts?

13 A. Yes, sir.

14 Q. The jury promises that they will decide
15 the facts by considering the evidence?

16 A. Yes, sir.

17 Q. And in order to do that, it's what you do
18 every day of your life. You listen to
19 somebody, what they say, or you look at
20 something and you say either 'I believe that'
21 or 'I don't believe that'. Whatever has
22 assisted you in making those decisions before,
23 that is what you will use to help you with
24 that. Is that correct?

25 A. Yes, sir.

1 Q. Is that your understanding?

2 A. Yes, sir.

3 Q. And you understand that the judge, me, I
4 would have nothing to do with the facts. Do
5 you understand that?

6 A. Yes, sir.

7 Q. But, likewise, you have nothing to do with
8 the law. Do you understand that?

9 A. Yes, sir.

10 Q. Because that is my responsibility.

11 A. Yes, sir.

12 Q. What you'd have to do is to promise both
13 sides that you will take the law as I give it
14 to you and apply it fairly and impartially.

15 A. Yes, sir.

16 Q. One of the instructions that I would give
17 you, if you were on a jury in a case involving
18 murder and the jury has already concluded that
19 the person was guilty of murder and we'd moved
20 into the second phase where -- there are very
21 limited situations where that happens in this
22 state, where the jury is going to participate.
23 I would give you instructions at the conclusion
24 of that that you're to consider all the
25 evidence and first have to determine whether or

1 not the State proved the existence of something
2 called aggravating circumstances. They have to
3 prove that, the State has to prove it ---

4 A. Yes, sir.

5 Q. --- to be entitled to it.

6 A. Yes, sir.

7 Q. Otherwise, the jury would have to return a
8 verdict of life without parole.

9 A. Yes, sir.

10 Q. If they don't prove an aggravating
11 circumstance you can't even consider the death
12 sentence. It is my understanding that
13 notwithstanding your feeling, your strong
14 feeling, which you have every right to have, we
15 are not asking you to change that. But
16 notwithstanding your strong feeling that life
17 imprisonment would be the best sentence, in
18 your mind you could set that aside, listen to
19 that law and apply that law fairly and
20 impartially. Is that right?

21 A. Yes, sir.

22 Q. And you could, if you analyzed the
23 evidence, decide whether or not fairly and
24 impartially the State had met its burden of
25 proof and convinced beyond a reasonable doubt

1 of the existence of an aggravating
2 circumstance?

3 A. Yes, sir.

4 Q. That would mean that now the jury could
5 consider the death penalty. Do you understand
6 that?

7 A. Yes, sir.

8 Q. And you could, if the State convinced you
9 and the other jurors, then you could vote 'yes'
10 to answering that question, yes, you were
11 convinced beyond a reasonable doubt, as I
12 understand that; is that correct?

13 A. Yes, I could.

14 Q. And if they didn't convince you, then you
15 could likewise vote no, that they haven't
16 convinced me; is that correct?

17 A. Yes, sir.

18 Q. And you would be fair and impartial?

19 A. Yes, sir.

20 Q. If you were to find that in that case,
21 then the jury and only then would the jury be
22 instructed that they then could consider two
23 possible sentences; one, life imprisonment and,
24 the other, the death sentence. Now, in answer
25 to the questions, mine, the solicitor's and Mr.

1 Bloom's, you've kind of said two different
2 things.

3 I need to ask you, my instruction would be
4 that you would have to consider all the
5 evidence, including any mitigating
6 circumstances that may be -- that is, things
7 that would make the crime less culpable, less
8 serious, such as the background of a defendant
9 and that sort of thing.

10 Or you may consider, for no reason at all,
11 that you don't want to impose a death sentence,
12 for no reason, because of mercy.

13 But am I to understand you when you
14 answered the question that your personal
15 feelings, you would set that side, and you
16 would consider seriously both sentences and
17 decide which one, based on all those facts and
18 circumstances, best suits that particular
19 crime?

20 A. Yes, sir.

21 Q. That would include -- if at the end of
22 that analysis you could conclude 'yes, the
23 death sentence in this situation would be the
24 best' ---

25 A. Yes, sir.

1 Q. And if that happened and you found that
2 beyond a reasonable doubt, then you would sign
3 a verdict form indicating the death sentence
4 for that person?

5 A. Yes, sir.

6 Q. Likewise you could then also say, after
7 analyzing it, 'Nope, I don't think so. I think
8 life imprisonment is the best sentence.' But
9 that would be one that was fair and impartial
10 to both sides, not controlled by your strong
11 beliefs; is that correct?

12 A. Yes, sir.

13 Q. It would be based on the evidence in that
14 case?

15 A. Yes, sir.

16 Q. And you can honor that commitment to both
17 sides?

18 A. Yes, sir.

19 Q. And you understand that you would have to
20 raise your hand and promise that that is
21 exactly what you are going to do?

22 A. Yes, sir.

23 Q. Okay.

24 THE COURT: Please answer any
25 additional questions that they may have. Any

1 additional questions, Mr. Bloom?

2 MR. BLOOM: I have nothing further
3 at this time, Your Honor.

4 THE COURT: Any additional
5 questions?

6 SOLICITOR WILSON: Yes, sir.

7 VOIR DIRE EXAMINATION

8 BY SOLICITOR WILSON:

9 Q. Ms. Toomer, I'm sorry, I've got just a few
10 followup questions. Okay?

11 A. Okay.

12 Q. When I asked you questions a minute ago,
13 you were telling us what you thought about life
14 imprisonment without the possibility of parole
15 and what you thought about the death sentence.

16 Based on your answers to the Judge's
17 questions, I have to ask you again, what is
18 your belief about the death penalty?

19 A. What do you mean, what is my belief about
20 the death penalty?

21 Q. What is your belief about it?

22 A. (No verbal response).

23 Q. What is your opinion on it?

24 A. Just like I said, I ---

25 THE COURT: Solicitor, she said that

1 she is opposed to it. That's what she --
2 that's her belief.

3 SOLICITOR WILSON: I was just asking
4 if she ---

5 THE COURT: I understand but I don't
6 think you -- you have that, she's indicated
7 that clearly.

8 SOLICITOR WILSON: Your Honor, she has
9 indicated a lot of things.

10 THE COURT: That she is opposed to
11 it and that she generally -- my understanding
12 of this juror is that she is more prone for
13 life but she said that she understands what a
14 death sentence is and that she could ---

15 EXAMINATION CONTINUED

16 BY SOLICITOR WILSON:

17 Q. You are strongly opposed to the death
18 sentence?

19 A. (No verbal response).

20 Q. Is that the gist of it?

21 A. Yes, ma'am.

22 Q. Because of those beliefs or your strong
23 opposition to the death penalty, could you in
24 the appropriate situation sign your name to a
25 death warrant for ---

1 MR. BLOOM: Your Honor, I object. I
2 don't know that "death warrant" is ---

3 SOLICITOR WILSON: To a death verdict.

4 EXAMINATION CONTINUED

5 BY SOLICITOR WILSON:

6 Q. Sentencing someone to death, could you
7 sign that form?

8 A. Yes, ma'am.

9 Q. You could put your name on it?

10 A. Yes, ma'am.

11 Q. Thank you.

12 THE COURT: Thank you, Solicitor.

13 THE COURT: Anything else?

14 MR. BLOOM: Nothing further, Your
15 Honor.

16 THE COURT: Thank you very much. If
17 you would, step outside just for a moment.

18 (JUROR NUMBER 315 EXITS COURTROOM)

19 THE COURT: Given -- her timing is
20 wonderful, her position is wonderful because I
21 find exactly what I was just saying about Mr.
22 Martin. This lady, no question about it, she's
23 prone to life imprisonment -- no ifs, ands or
24 buts. But she has convinced me by her
25 responses, she changed who she was, she said

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1 that she'd set it aside just as Mr. Martin did.

2 I find that she is qualified. I assume that
3 you agree?

4 MR. BLOOM: Yes, sir.

5 THE COURT: And that that State does
6 not, I assume; is that correct?

7 BRUCE DURANT: That would be
8 correct.

9 THE COURT: Very well, thank you
10 very much.

11 SOLICITOR WILSON: Your Honor, I would
12 just ask -- well, we can take this up after you
13 ---

14 THE COURT: No, you can -- go ahead.

15 SOLICITOR WILSON: We can wait until
16 she is done. This isn't about her.

17 THE COURT: Okay.

18 (JUROR NUMBER 315 ENTERS COURTROOM)

19 THE COURT: Thank you, Ms. Toomer.

20 I find that you have been found to be qualified
21 to be a member of the panel from which we will
22 select our panel, and that will occur on
23 Thursday morning.

24 I ask that until then that you please
25 do not talk with anyone, don't discuss this

1 case with anyone, don't permit anyone to talk
2 to you, don't read any newspaper accounts of
3 this case and certainly don't watch any
4 television programs. When you come back,
5 you'll come directly to this courtroom and take
6 a seat out in the audience there.

7 Call the number after 6:00 tonight,
8 that is that number that was given to you and
9 there will be a message for the Dickerson
10 panel. It's more than likely going to say to
11 report at 9:30, but just follow that
12 instruction.

13 JUROR NUMBER 315: Okay.

14 THE COURT: Thank you, ma'am. Have
15 a good day.

16 (JUROR NUMBER 315 EXITS COURTROOM)

17 THE COURT: Solicitor?

18 THE COURT: Beg the court's
19 indulgence.

20 THE COURT: Yes, ma'am.

21 MR. BLOOM: Judge, if I could take
22 this opportunity ---

23 SOLICITOR WILSON: Beg the court's
24 indulgence.

25 MR. BLOOM: I apologize. I

1 apologize, Solicitor.

2 SOLICITOR WILSON: Judge, I am going
3 to ask that when we have jurors that are either
4 number one or number two that you continue with
5 your instruction as you are with jurors number
6 three, or jurors who say that they are number
7 three, because what the typing does not do is
8 explain to them what you will instruct them to
9 do.

10 THE COURT: Yes, ma'am.

11 SOLICITOR WILSON: It then becomes
12 who is the better leader with their leading
13 questions. I think if the court addressed that
14 initially as to how it is going to work,
15 because they answer those questions in a vacuum
16 without knowing what you're going to be
17 instructing them. As you said, the key
18 question is whether or not they can set those
19 things aside.

20 THE COURT: Correct. I appreciate
21 that. Now I will hear from Mr. Bloom.

22 MR. BLOOM: My only response is that
23 the majority of those folks who come in as very
24 opposed to the death penalty, as Your Honor
25 knows, I have to answer the questions -- it is

1 very few that have expressed the opinion that
2 they could set it aside. Out of time
3 constraints, I will continue that practice. I
4 am not going to put up a fight. If she had
5 told me that 'no, I can't set it aside', I
6 would have set down just as I have with the
7 ones who ---

8 THE COURT: I appreciate you being
9 benevolent. That's nice, but I don't think
10 that's necessarily true. I've seen you fight
11 pretty hard in this case already. I don't
12 blame you for that.

13 Let me just make an observation. The
14 easy thing for me is to ask that question and
15 turn it over to you and just listen. That may
16 be what I ought to do, then make my call.

17 But this is the language that gives me
18 -- that motivates me to do what I do, and why I
19 do it. Because I read it over and over, and it
20 simply says -- this one happens to be from
21 *Adams v. Texas*, but it is the same language
22 that appears -- it says, "The U.S. Supreme
23 Court held that a juror could be excluded
24 because, based on his views about capital
25 punishment these views..." -- and this is the

1 key -- "...would prevent or substantially
2 impair the performance of his duties of his
3 duties as a juror in accordance with his
4 instruction and his oath."

5 That is what I have to determine. You
6 know, I think we need to put aside who is
7 "winning" insofar as who is bringing it up.
8 The whole purpose, we're collectively trying to
9 make one determination and that is, can this
10 juror comply with the oath and the
11 instructions? That is what it is all about.
12 It really doesn't matter to me who's on first,
13 who does it first.

14 I would agree with you but my concern
15 is, I don't think I'm rehabilitating anyone. I
16 know that I have a tendency to be a lawyer,
17 because I was for twenty-one years, and I try
18 to fight that. But I have a responsibility
19 consistent with that, I believe. That's all
20 that I am interested in doing. I sure don't
21 want to give the appearance -- and my concern
22 about when they say that they are a type one or
23 a type two, until something comes up for me to
24 ask questions, I am honoring that.

25 If you will recall, and I think the

1 record will support us, that Mr. Martin said
2 that he was a type three and that was the
3 problem. I went on through, but I don't think
4 that I have done anything -- I've been
5 consistent with ---

6 SOLICITOR WILSON: I think you have,
7 too.

8 THE COURT: When they've said they
9 are a type two, I've asked the question if
10 there is anything -- I would agree with you
11 that there is no question that the key is, 'Can
12 you set those aside?'

13 I don't mind asking a followup
14 question and not be detailed -- let me just
15 ask, because I don't want -- I am not asking
16 you to waive anything ---

17 MR. BLOOM: Sure.

18 THE COURT: -- about your positions.
19 But would you object to my asking the question,
20 'You are going to be instructed on various
21 aspects of the law, would that prevent you from
22 following the law?'

23 MR. BLOOM: I would prefer you to be
24 consistent as you already have in ---

25 SOLICITOR WILSON: And that's all that

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1 I am asking.

2 THE COURT: I think I've done it
3 consistently ---

4 SOLICITOR WILSON: I think you have,
5 too.

6 THE COURT: --- with the death
7 penalty or anything else.

8 SOLICITOR WILSON: I didn't mean to
9 imply that with this juror that you did it
10 differently from the others, at all.

11 THE COURT: No, and I am not taking
12 offense at it. I'm just stating that -- I
13 understand what you're saying and I don't have
14 any problem. My problem is that if I start
15 doing that, then I'm taking on the appearance
16 of being an advocate; or either side, be it --
17 I am being that advocate for the defendant and
18 I'm being that advocate for the State if I --
19 if the person says, 'I am a type one' or 'I am
20 a type two', my question is -- the simple
21 question is, 'Is there any circumstance where
22 you can?' If they say no, that they can't,
23 well that leans itself now for you to ask the
24 questions. If the case is -- if the person is
25 a type one, I think -- we did that with Mr.

1 White (sic) and you -- the questions were
2 asked and he stayed firm.

3 SOLICITOR WILSON: I think that there
4 would be a way for the court to engage in a
5 back-and-forward as we have with the jurors,
6 but to enlighten them as to the fact that this
7 is not just how you feel out on the street.
8 This is -- 'I will give you instructions at
9 some point. Can you follow my instructions
10 despite your opinions?'

11 THE COURT: But, again, I am not --
12 I don't need to do that until they give me a
13 reason to say, 'Well, yeah, I can do that.'
14 They've answered my question. The question is
15 the threshold question, which is critical to
16 all of you, it is what each one has said.

17 You would say, insofar as Mr. Ott
18 this morning, the -- 'You know, that's your
19 opinion. That's how you feel, but is there a
20 situation where you could consider it?' And,
21 no, there was not.

22 SOLICITOR WILSON: Right.

23 THE COURT: He said 'no, that's who
24 I am.' You took him through that.

25 SOLICITOR WILSON: Right.

1 THE COURT: There is no reason for
2 me to challenge who they are at this point.
3 So that's -- until there is a conflict, I
4 don't believe that it warrants any question.
5 Obviously there -- this isn't the first time
6 that we've had jurors that were included in
7 the pool, because in reading some of the
8 cases, re-reading some of those notes on the
9 Batson challenges, equivocation is a reason
10 given for striking a juror. So obviously it
11 is not uncommon for the panel to have people
12 that have testified both ways. That is what
13 I'm saying, it's just the way it is. Thank
14 you very much.

15 SOLICITOR WILSON: I get that, I
16 understand.

17 THE COURT: I know you do, but I'm
18 just saying that I -- I think that I am going
19 to go with my tried-and-true, at this point,
20 and try to be consistent with it. I
21 appreciate your obser--, -- I appreciate your
22 note.

23 We haven't brought her in yet, have
24 we? Ask Ms. Toomer to come in.

25 COURT REPORTER Yes, sir, we did.

1 THE COURT: Oh, I have.

2 BAILIFF: Yes, Judge, you have.

3 MR. BLOOM: Judge, if I could -- we
4 agree with the court, but if I could move to a
5 second point. I may not have articulated my
6 objection very well -- in fact, I know that I
7 didn't articulate it very well after Mr.
8 Martin. My considered objection with type one
9 jurors who are for the death penalty would be
10 to set the question -- I didn't state it very
11 clearly on the record, but I -- I used other
12 language, and that's my objection.

13 What I am asking the court is, is the
14 court going to require me each time that the
15 Solicitor asks that question of an automatic
16 death penalty juror, a type one juror, or if
17 the court asks that, is the court going to
18 require me to object each and every time or
19 can I have a -- I know that we don't usually
20 do continuing objections, ---

21 THE COURT: What do you mean, set
22 aside?

23 MR. BLOOM: If we get a type one
24 juror ---

25 THE COURT: I am going to require

1 you to place it on the record, just as you
2 did, that the court rehabilitated and can't --
3 can't set aside. I -- you're saying that the
4 question can be asked and -- there are some
5 cases in South Carolina where they have
6 recognized that a person pro-death penalty can
7 sit.

8 MR. BLOOM: Yes, sir, and I ---

9 THE COURT: So ---

10 MR. BLOOM: And I don't know if
11 the question has been ever framed to our
12 courts whether that's permissible under *Morgan*
13 and other cases.

14 THE COURT: Yeah.

15 MR. BLOOM: That the reason you can
16 do it for pro-life jurors is that it is
17 Constitutional-based. The state doesn't have
18 a Fifth, Eighth or Fourteenth Amendment right.

19 THE COURT: I understand that. My
20 question, I guess, is that you're saying that
21 insofar as that limited circumstance, all this
22 language about whether they could honor their
23 oath and follow the instruction doesn't apply.
24 It applies but it doesn't -- it doesn't allow
25 you to make that determination?

1 MR. BLOOM: There appears to be a
2 line of cases evolving out there, and I grant
3 that it may be an initial first impression in
4 South Carolina, that if a juror says 'I am a
5 type one, I am always going to vote for
6 death', that the question, 'Can you set that
7 aside?' is improper. I don't think South
8 Carolina has ever specifically addressed that.

9 THE COURT: Okay.

10 MR. BLOOM: And automatically -- I
11 just want to preserve that ---

12 THE COURT: You've made your basis
13 for it, but you -- you don't have to
14 elaborate. You can simply say "as previously
15 stated, I object."

16 MR. BLOOM: Do you want me to place
17 that when the question is asked or just after
18 we've qualified?

19 THE COURT: Well, obviously when
20 the question -- you don't object to the
21 question, you object to the qualification.

22 MR. BLOOM: Yes, sir.

23 THE COURT: I mean, the question is
24 not objectionable. The qualification is
25 objectionable, as I understand it.

1 MR. BLOOM: Yes, sir. Well, the
2 question -- well, yes, sir.

3 THE COURT: I think you're
4 protected when you say, 'Judge, you can't
5 qualify this because they tried to
6 rehabilitate and ---

7 MR. BLOOM: Correct. From that
8 point onward, that's our objection. Thank
9 you.

10 THE COURT: Well, the objection is
11 to the qualification. They can ask any
12 questions that they -- I don't think -- I
13 think a legitimate question is whether or not
14 I can qualify them.

15 MR. BLOOM: Thank you, Your Honor.

16 THE COURT: Thank you. Okay, bring
17 in Ms. Szivak, Number 306. I am beginning to
18 think 9:30 is a moving target on Thursday,
19 too.

20 BRUCE DURANT: You could be right,
21 Your Honor.

22 THE COURT: But we've got Wednesday
23 night.

24 (JUROR NUMBER 306 ENTERS COURTROOM)

25 THE COURT: Thank you for your

1 patience.' I bet you thought, 'they've
2 forgotten about us.' I apologize for keeping
3 you waiting. We won't keep you much longer.

4 We are going to continue the process
5 that we started on Friday. That is, asking
6 you some questions. As you will recall, on
7 Friday I indicated that these questions don't
8 have any correct answers. They are just
9 designed to help you and to help us decide
10 whether you can be a fair and impartial judge
11 in this case. Okay?

12 JUROR NUMBER 306: Okay.

13 THE COURT: All that we ask is that
14 you truthfully respond to them and give
15 complete answers to the questions. Will you
16 do that?

17 JUROR NUMBER 306: I will.

18 THE COURT: Would you state your
19 full name for the record?

20 JUROR NUMBER 306: My name is Rebecca
21 Szivak.

22 REBECCA SZIVAK, being duly sworn to
23 tell the truth, the whole truth and nothing
24 but the truth, testified, as follows:

25 VOIR DIRE EXAMINATION

1 BY THE COURT:

2 Q. Ms. Szivak, you -- when we last were
3 together, I advised you not to discuss this
4 case with anyone or permit anyone to talk with
5 you. Have you had any conversation with
6 anyone, has anyone talked with you about this
7 case?

8 A. No, I have not.

9 Q. Have you watched any news reports or read
10 any newspaper articles about it?

11 A. No.

12 Q. You recall that I gave you a number of
13 names of persons and asked if there was any
14 connection to these persons?

15 A. Yes, sir.

16 Q. I failed to mention two names that I need
17 to ask you about. Are you related by blood or
18 marriage, have any business dealings with or
19 socially or casually acquainted with or have
20 any dealings with Jeff Osborne or Matt Casey?

21

22 A. No.

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

1 A. Right.

2 Q. Of those three types, which one most
3 accurately describes you?

4 A. Type three.

5 Q. Type three, as I understand, to see if
6 we're in agreement on that, is the type of
7 juror who if empaneled in a case in which the
8 trial is about murder and the jury convicted
9 the person on trial for murder, after
10 convicting that person there would be a second
11 phase where there would be evidence received
12 about what would be the most appropriate
13 sentence between life imprisonment and the
14 death sentence. You would have heard, of
15 course, the circumstances of the crime at that
16 point but now were moving in the second phase.

17

18 As I understand it, the type three at that
19 precise moment, you have an open mind as to
20 which sentence would be the most appropriate
21 of the two?

22 A. Yes.

23 Q. You wouldn't have any predetermination?

24 A. No.

25 Q. Notwithstanding that you'd found the

1 person guilty of the crime of murder, which
2 means that the person -- murder means that the
3 person killed someone, with malice, that they
4 intended to do what they did, it wasn't an
5 accident, it was a planned murder, they
6 intended to do it, that they carried it out,
7 that they got the person they wanted, they
8 weren't upset with anybody, there was nothing
9 to mitigate the murder, it was an intentional
10 killing. Do you understand that?

11 A. Yes.

12 Q. You still wouldn't have predetermination?

13 A. Not at all.

14 Q. The second phase in which you would hear
15 the evidence concerning certain aspects for
16 sentencing purposes, my understanding is that
17 as a type three that you would have to hear
18 all of that and then have the opportunity to
19 think about, considering all the evidence,
20 including the nature of the crime, to make a
21 determination as to what would be the
22 appropriate sentence?

23 A. Yes.

24 Q. And you would not know that until you know
25 all the circumstances?

1 A. Right.

2 Q. Now, you understand that a jury has the
3 responsibility of deciding the facts and they
4 would promise and would take an oath to decide
5 those facts by considering one source; that
6 is, the evidence in a trial. Evidence
7 consists of testimony of the witnesses and
8 exhibits, nothing else. You would be able to
9 perform that function?

10 A. Yes.

11 Q. That means apply your common sense, your
12 sense of logic and reason, your life's
13 experience fairly and impartially and analyze
14 the evidence at the appropriate time and
15 deciding fairly and impartially the truth; is
16 that correct?

17 A. That's correct.

18 Q. You also as a jury would take an oath that
19 you accept the law as I gave it you, because
20 as you recall we described this system of two
21 judges working together, one judge having the
22 responsibility to determine the facts, which
23 is your responsibility; and a judge that has
24 the responsibility of the law, and in this
25 case that would be me. You would promise to

1 accept the law as I gave it to you and apply
2 that law fairly and impartially to those
3 facts?

4 A. Yes.

5 Q. And you would do that?

6 A. I would.

7 Q. That also means, while it sounds -- a
8 normal human reaction would be 'Oh, sure, I
9 will do that' but it is not uncommon for
10 persons to hear something sometimes and they
11 say 'you know, that's not what I thought the
12 law was' or 'I think that law is wrong, they
13 should change that law.'

14 As I tell jurors when I instruct them, I
15 respect everybody's right to feel that way,
16 it's a wonderful country and we have that
17 right, but for purposes of that proceeding you
18 would promise to set aside your personal
19 feelings.

20 A. Yes, I feel comfortable knowing that I do
21 not ---

22 Q. You would do not?

23 A. --- know the law better than ---

24 Q. I understand but even if you heard
25 something that you said, 'You know, that's

1 just against my philosophy', you could still
2 and would still follow the law notwithstanding
3 your personal philosophy and feelings. Is
4 that correct?

5 A. Yes.

6 Q. One of the principles that we talked about
7 when I mentioned to you that Mr. Dickerson has
8 been accused of a number of crimes and that
9 he, as anyone who is accused of a crime in
10 this state or this country, is presumed
11 innocent until -- until and unless the State
12 proves him guilty beyond a reasonable doubt.
13 You didn't have any problem with the principle
14 of law?

15 A. No.

16 Q. As I mentioned, it is an active
17 presumption. That means that as we sit here
18 today, actively, you see Mr. Dickerson as
19 being innocent of these charges?

20 A. Yes.

21 Q. And you don't have any problem with that?

22 A. No.

23 Q. And I would also instruct you in a
24 criminal dispute such as this that it is the
25 burden -- the burden rests upon the State to

1 prove its case, whether it is the first phase
2 or the second phase.

3 In the first phase, you deal with the
4 crimes themselves. The State is the only
5 party that has any burden. They have to prove
6 the elements of each crime beyond a reasonable
7 doubt for a jury to return a verdict of
8 guilty. Do you understand that?

9 A. Yes.

10 Q. If you were sitting in a criminal dispute
11 and the State completed the -- if all the
12 evidence had been entered and you, after
13 viewing all the evidence, and applying your
14 commonsense, were not convinced of one or more
15 of the elements, would you return a verdict of
16 not guilty, as instructed?

17 A. If I was not convinced, yes.

18 Q. Likewise, if you were firmly convinced
19 that the State had established each element,
20 would you return a verdict of guilty?

21 A. Yes.

22 Q. I would reiterate something. The State is
23 the only party that has to prove anything.
24 The defendant never has to prove anything,
25 either in the first phase or in these cases

1 where you have a second phase, they don't have
2 to prove anything there either. Do you
3 understand that?

4 A. Yes.

5 Q. In fact, a defendant doesn't even have to
6 present evidence, doesn't have to testify and
7 the jury can never consider that against him,
8 never look to the defendant to prove or to
9 establish anything. Would you have any
10 problem applying that principle of law?

11 A. No.

12 Q. In a criminal case such as we have talked
13 about where a jury would have been empaneled
14 to decide the punishment, because as I am sure
15 you are aware, in this state that is not a
16 common occurrence because typically in a
17 murder case most of them are tried to a jury
18 and the jury determines whether the State has
19 met its burden of proof and if they return a
20 verdict of guilty then a judge imposes the
21 sentence. Do you understand that?

22 A. Yes.

23 Q. The jury is not involved in that process.
24 Is that your understanding?

25 A. Yes.

1 Q. In that situation a death sentence is
2 never an option for a murder conviction. That
3 is an intentional killing of someone, just
4 like what we talked about earlier. Do you
5 understand that?

6 A. (Affirmative nod).

7 Q. The judge can sentence someone to life
8 imprisonment without the possibility of parole
9 but the judge is not limited to that sentence.
10 Do you understand that?

11 A. Okay.

12 Q. It is only in these circumstances where we
13 have a second phase, that as part of the
14 second phase in addition to hearing evidence
15 about the effect of the crime and other
16 circumstances the jury would consider to
17 determine the appropriate sentence, the State
18 has another burden. It's a very important
19 burden, because the State has to prove
20 something called aggravating circumstances.
21 It has to prove at least one, which elevates
22 that murder, takes it out of that normal realm
23 where a jury makes the determination of
24 whether a person did it or not and then the
25 judge imposes the sentence. That has to be

1 established beyond a reasonable doubt.

2 So one thing that that jury would
3 determine is whether or not the State has
4 convinced them of the existence of that
5 aggravating circumstance.

6 It is my understanding that, just as you
7 would do in the first phase, you'd apply your
8 common sense, your sense of logic and reason
9 at that time fairly and impartially and make
10 that determination beyond a reasonable doubt.
11 Is that true?

12 A. Yes.

13 Q. If the jury concludes that the State had
14 not established an aggravating circumstance,
15 then there wouldn't be any option. The only
16 sentence that the jury could return would be
17 life imprisonment without the possibility of
18 parole. Do you understand that?

19 A. Yes.

20 Q. And you would have no problem with that?

21 A. Okay.

22 Q. On the other hand, if the jury found the
23 existence of an aggravating circumstance, then
24 and only then -- and that has been established
25 beyond a reasonable doubt -- would that jury

1 have the opportunity to consider death.

2 Now, I say opportunity because just
3 because you find it doesn't mean, and the
4 court would not instruct you, that you have to
5 return a verdict of death.

6 A. Right.

7 Q. It simply means that now you have the
8 option. You can impose a death sentence or
9 you can impose life imprisonment without the
10 possibility of parole.

11 My understanding is that in that situation
12 you would apply your common sense, you'd
13 consider all the evidence and decide, based on
14 the nature of the crime, based on all the
15 evidence in the second phase what you believe
16 to be the most appropriate sentence. Is that
17 correct?

18 A. Yes.

19 Q. And in that type of case, it's my
20 understanding from your answer of being a type
21 three that there are circumstances in which
22 you could and would sign and vote for a death
23 sentence?

24 A. Yes.

25 Q. And there are circumstances where you

1 would have had the right to vote for a death
2 sentence but you chose to vote for life
3 imprisonment instead?

4 A. Yes.

5 Q. Without the possibility of parole?

6 A. (Affirmative nod).

7 Q. And you don't know which type -- what
8 circumstances, you'd have to hear them all
9 before you could say which one applies?

10 A. Right.

11 Q. One other aspect in that proceeding, in
12 addition to the aggravating circumstances and
13 other factors that may be considered in
14 formulating or deciding a sentence, you may
15 hear matters of mitigating circumstances.
16 There are some that are statutorily provided
17 and some that are nonstatutory. Those are
18 matters that would make that murder crime --
19 would lessen the effect, such as -- and this
20 is just by way of, not giving you specifics
21 but just generally -- background information
22 about the person accused of the crime, there
23 may be background information concerning
24 mental health problems, addictions and that
25 type of thing.

1 If that evidence is present, the court
2 would instruct you that you have to give
3 meaningful consideration to those mitigating
4 circumstances in depending what the
5 appropriate sentence would be.

6 You could follow and would follow that
7 instruction?

8 A. I would.

9 Q. You would give meaningful consideration to
10 that?

11 A. Yes.

12 Q. You understand, again, that the defendant
13 is not required to prove anything at all?

14 A. Yes.

15 Q. You can't hold that against the defendant?

16 A. Right.

17 Q. And you would not, is that correct?

18 A. Correct.

19 Q. In fact, if the evidence -- if the record
20 didn't contain any mitigating circumstances,
21 it still would not prevent the jury from
22 returning a life imprisonment without the
23 possibility of parole because you have that
24 right for no reason whatsoever.

25 A. Right.

1 Q. Do you understand that?

2 A. I do.

3 Q. That's again a choice that you have to
4 make?

5 A. Yes.

6 Q. It is my understanding that you don't have
7 any predetermination, that you would make that
8 choice at the appropriate time when the court
9 had instructed you to evaluate a given case,
10 and not before?

11 A. Yes.

12 Q. Do you understand that what we've talked
13 about here today absolutely doesn't apply to
14 anything specifically about Mr. Dickerson
15 because we haven't had a trial yet?

16 A. Yes.

17 THE COURT: Plaintiff answer any
18 questions that the attorneys may have.

19 JUROR NUMBER 306: Okay.

20 VOIR DIRE EXAMINATION

21 BY BRUCE DURANT:

22 Q. Good morning, Ms. Szivak. My name is
23 Bruce Durant. I'm the Deputy Solicitor and
24 this is Scarlet Wilson, Solicitor, and
25 Rutledge Durant. We will be trying this case

1 on behalf of the State. I have heard your
2 answers to Judge Dennis' questions and I will
3 try not to be repetitive. There are just a
4 couple of things that I want to be clear
5 about.

6 I understand from reading your
7 questionnaire that you probably are, on the
8 philosophical spectrum between anti-death
9 penalty on one end and the pro-death penalty
10 on the other, you probably are more towards
11 the anti-death penalty side.

12 A. Uh, -- I don't like the idea of it but
13 socially I understand the use for it.

14 Q. That's quite all right. Certainly
15 everybody has their own opinions of something
16 like that, but we need to understand -- what
17 Judge Dennis needs to understand is, if in the
18 appropriate case -- assuming that we get to
19 that point in the trial -- where the defendant
20 has been found guilty of murder. It's a
21 malice murder, it's not a situation of self-
22 defense or involuntary manslaughter or heat-
23 of-passion or anything like that. We're
24 talking about an intentional killing.

25 A. (Affirmative nod).

1 Q. A killing that was meant to occur, that we
2 got the right guy, all of that.

3 A. (Affirmative nod).

4 Q. He's found guilty, that there is no
5 question about all of that.

6 A. Okay.

7 Q. The question is, when you get to the
8 second phase of the trial and the jury,
9 assuming that they find an aggravating
10 circumstance, has that opinion that Judge
11 Dennis has been telling you about.

12 A. Right.

13 Q. My question is, if those are your two
14 options as a juror, given the instruction that
15 Judge Dennis will give you, is there ever a
16 scenario where you would vote for the death
17 penalty as opposed to life imprisonment
18 without the possibility of parole?

19 A. Well, based on what was explained to me, I
20 didn't realize that there was a difference
21 between the aggravation and the mitigation
22 topic. I think that it would definitely
23 depend on those which way that I would go.

24 Q. Okay.

25 A. Because I don't know that I -- I think it

1 would be very case-specific, what I would say.

2 Q. I understand that and certainly I think
3 you would want to hear the aggravating -- what
4 you're saying is that you'd like to hear the
5 aggravating circumstances, that you'd like to
6 hear the mitigating circumstances?

7 A. Probably that, yes.

8 Q. And then make your decision based -- after
9 having heard all of that?

10 A. (Affirmative nod).

11 Q. Assuming that there were no -- that there
12 were just aggravating circumstances and the
13 defendant decided to present no mitigating
14 circumstances, just wanted to ask for mercy,
15 could you do that?

16 A. I could.

17 Q. Okay. And when it gets right down to it
18 and it was the collective, once again subject
19 to the Judge's instruction, decision of the
20 jury that the death penalty was the
21 appropriate sentence, could you actually sign
22 your name to the verdict form requiring
23 someone to be put to death?

24 A. (Affirmative nod), I could.

25 BRUCE DURANT: I don't think that

1 I have any other questions. Could you please
2 answer any questions that Mr. Bloom may have.

3 MR. BLOOM: Mr. Bloom.

4 VOIR DIRE EXAMINATION

5 BY MR. BLOOM:

6 Q. Good morning, Ms. Szivak. My name is Jeff
7 Bloom. How are you today?

8 A. Very good.

9 Q. Good. My name is Jeff Bloom and along
10 with Andrew Carroll, we represent William
11 Dickerson. I just have a few followup
12 questions from what Judge Dennis asked you,
13 and I will try not to repeat the questions --
14 but you understand that it is kind of
15 important?

16 A. I absolutely do understand.

17 Q. And this is the only time that we get to
18 talk to you, right?

19 A. (Affirmative nod).

20 Q. Okay. Thank you. Let me start, I guess,
21 -- I was writing to write down, to keep up
22 with you and I think you told Mr. Durant that
23 you said 'I don't' -- that you have your
24 opinion on the death, 'I don't like the idea
25 of it but socially I understand the use for

1 it.'

2 A. Right.

3 Q. Could you just explain that for me in your
4 own words?

5 A. Morally, I just don't like the idea of my
6 choosing someone else's death but I understand
7 that there are social aspects that might cause
8 or necessitate the death penalty because of
9 the actions people have taken.

10 Q. Okay.

11 A. So it is more -- personally, I don't know
12 if I would like deciding that but I understand
13 that I am part of society and I might be
14 called upon to do that.

15 Q. Okay. All right. Now, next let me ask
16 you, and I think the solicitor did this rather
17 well but I want to make sure that I understood
18 your answer.

19 A. Okay.

20 Q. You responded to him that you would also
21 want to hear mitigating circumstances and
22 aggravating circumstances?

23 A. Yes.

24 Q. I just wondered if we were talking about
25 the same things, because this is new to you, I

1 take it?

2 A. It is.

3 Q. Have you ever served on a jury, any kind
4 of jury duty?

5 A. I have not.

6 Q. First time?

7 A. Yes.

8 Q. That's okay, don't be nervous.

9 A. (Laughs).

10 Q. I was nervous starting Monday but we're
11 all doing fine now. Aggravating, if I could
12 just use a simple explanation is usually
13 murder and something else, like a murder and
14 armed robbery, a murder and burglary or murder
15 of a child. Do you understand that?

16 A. Yes.

17 Q. So it is murder and something else that
18 supports the death penalty. If that's what
19 the State presents and the jury hears that, I
20 take it that you would be open and consider
21 that and discuss with your fellow jurors that
22 type evidence.

23 A. Yes.

24 Q. Mitigating evidence, and let's just define
25 that term. I think Judge Dennis told you some

1 of that. It can often be stuff that has
2 nothing to do with the facts of the crime. It
3 can be something such as how a person's
4 childhood or how they were raised. Is that
5 something that you can give meaningful
6 consideration to?

7 A. Yes.

8 Q. Because you understand that some people
9 say, 'You know, I could look at the facts of
10 the crime but what happened in their childhood
11 doesn't matter to me.' I take it that is not
12 your ---

13 A. No, I feel very strongly about social
14 aspects.

15 Q. Social aspects?

16 A. (Affirmative nod).

17 Q. And it could be other things such as drug
18 addiction. Is that something that you can
19 give meaningful consideration to?

20 A. Yes.

21 Q. Mental health issues?

22 A. Yes.

23 Q. And you could be open to considering all
24 that type of evidence before you made your own
25 moral, individualized choice?

1 A. Yes.

2 Q. Next, I want to ask you, ma'am, as Judge
3 Dennis told you and I think the Solicitor,
4 sometimes a jury may disregard that evidence
5 or there would be no evidence and jurors are
6 supposed to also consider a life without
7 parole verdict as a possibility, as an option,
8 for any reason, for no reason, or as a simply
9 act of mercy. If that is an instruction that
10 the Judge gave you, one that you feel you
11 could follow?

12 A. Yes.

13 Q. Okay. Lastly, I want to ask you, ma'am,
14 and I think Judge Dennis explained this well,
15 too, but I want to make sure that I understand
16 your answers, too. You understand that Judge
17 Dennis would never order you to find the death
18 penalty?

19 A. Yes.

20 Q. That in fact his instructions to you would
21 be that the law does not ever require a death
22 penalty?

23 A. Yes.

24 Q. So, for example, even if a jury found A, B
25 and C, that doesn't automatically mean that

1 the jury has to vote for death. Do you
2 understand that?

3 A. Okay, (affirmative nod).

4 Q. It is always the juror's reasoned moral
5 judgment or moral, individualized choice.
6 That is what the law is. Okay?

7 A. (Affirmative nod), Okay.

8 Q. Is that something that you could do, make
9 you own moral, individualized choice?

10 A. Yes.

11 Q. And if you were on a jury where eleven
12 jurors were voting one way and you were voting
13 another, you're not just going to say, 'My
14 goodness, it's late. I'm hungry. I am going
15 to go along to get along. I am going to vote
16 with you'all'?

17 A. I am not ---

18 Q. You are not going to give up your moral,
19 individualized choice?

20 A. I am not.

21 Q. You didn't strike me as that but you know
22 that I have to ask?

23 A. (Affirmative nod), absolutely.

24 Q. All right. And you would ask those eleven
25 jurors to respect your vote ---

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1 A. Yes.

2 Q. --- just as you would respect theirs?

3 A. Yes.

4 Q. And if the flip side were true, if you
5 with the eleven and there is a juror in making
6 his or her own moral, individualized choice,
7 you would respect that juror's choice?

8 A. Absolutely.

9 Q. You'd ask them to respect yours?

10 A. Yes.

11 Q. You wouldn't make them give it up just to
12 go along with the eleven?

13 A. No.

14 MR. BLOOM: Thank you, ma'am.

15 JUROR NUMBER 306: You're welcome.

16 THE COURT: Any additional
17 questions, Mr. Durant?

18 BRUCE DURANT: No, Your Honor.

19 THE COURT: Ma'am, if you will step
20 out, we will be with you momentarily.

21 (JUROR NUMBER 306 EXITS COURTROOM)

22 THE COURT: The court thinks that
23 she is qualified. Any objection from the
24 State?

25 BRUCE DURANT: I think she's

1 qualified.

2 MR. BLOOM: No objection, Your
3 Honor.

4 THE COURT: Bring her in, please.

5 (JUROR NUMBER 306 ENTERS COURTROOM)

6 THE COURT: Thank you, Ms. Szivak.
7 Thank you very much, and I appreciate your
8 patience. You've been found to be qualified
9 to be a member of the panel from which we will
10 select our jury.

11 We hopefully will do that on Thursday
12 morning at 9:30. That will be done in this
13 courtroom. You need to call the number that
14 you were given, tonight after 6:00, and follow
15 the instructions for the Dickerson jury panel.

16 There may be some other instructions,
17 probably are going to be panels -- Panel
18 Number Eleven and Panel Number Twelve will
19 have to do certain things but that doesn't
20 apply to you.

21 JUROR NUMBER 306: Okay.

22 THE COURT: Follow the instruction
23 that says the Dickerson jury panel needs to --
24 and it will probably say to report at 9:30.

25 JUROR NUMBER 306: Call that tonight?

1 THE COURT: Yes, after 6:00

2 tonight. And it may say call back tomorrow
3 night.

4 JUROR NUMBER 306: Okay.

5 THE COURT: Because if things don't
6 go or progress as we anticipate, we may have
7 to push that up some. Anyway, when you are
8 told to come, just come and come directly to
9 this courtroom. We will select a jury.
10 Obviously be prepared to stay if you're
11 selected on the jury because we will start the
12 trial at that time.

13 JUROR NUMBER 306: Okay.

14 THE COURT: Until then, please
15 remember that until you are dismissed that you
16 are not at liberty to talk about this case
17 with anyone or let anyone talk with you about
18 it or talk about it in your presence.

19 Also, continue to not read anything
20 about it or to watch any news programs. Have
21 a great day. Thank you again for your
22 patience.

23 (JUROR NUMBER 306 EXITS COURTROOM)

24 THE COURT: Mr. White, has
25 everybody had a chance to glance through his

1 questionnaire?

2 SOLICITOR WILSON: Yes, sir.

3 (JUROR NUMBER 398 ENTERS COURTROOM)

4 THE COURT: Hello, Mr. White. How
5 are you?

6 JUROR NUMBER 398: Doing all right.

7 THE COURT: Mr. White, we are going
8 to continue the process that we started on
9 Friday. I have some questions that I need to
10 ask of you and the attorneys may have some
11 questions, as well. All we ask is that you
12 truthfully respond to those questions, that
13 you completely respond to them. I would
14 remind you in that connection that you are
15 still under oath. Okay?

16 JUROR NUMBER 398: Okay.

17 DAVID E. WHITE, being duly sworn to
18 tell the truth, the whole truth and nothing
19 but the truth, testified, as follows:

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q. Would you state your full name for the
23 record, please?

24 A. David Emmanuel White.

25 Q. Thank you, sir. Mr. White, Friday I gave

1 you a list of a number of persons. I failed
2 to mention two names that I need to ask you
3 about. Are you related by blood or marriage,
4 have any business dealings with or socially or
5 casually acquainted with or have any dealings
6 with a Jeff Osborne or Matt Casey?

7 A. No.

8 Q. You were given a sheet when you came in,
9 Mr. White, that lists three types of jurors.
10 Have you had a chance to read over that sheet?

11 A. Yes.

12 Q. Which type most accurately describes you?

13 A. I am torn between type three and type one.

14 Q. Okay. What do you mean by that?

15 A. Well, I might be more leaning towards type
16 one and only a few cases would be type three.
17 Well, I guess I am mostly a type three but ---

18 Q. All right.

19 A. --- I lean towards a type one in most
20 cases.

21 Q. Well, let me say something because I read
22 the form that you completed, and thank you
23 very much for that.

24 A. Okay.

25 Q. I just need to ask you because there seems

1 to be something, when you say type three, it
2 says (reading): "When someone is convicted of
3 a cold-blooded and premeditated murder,
4 without valid reason, he or she should without
5 a doubt receive the death penalty..." -- and
6 then it goes on to say, "...with public
7 display to the family of the victim and anyone
8 else of adult age who wishes to see it."

9 A. Yes.

10 Q. Obviously when we are talking about which
11 type of a juror we're talking about, that type
12 of juror has just made a decision in a case
13 involving murder, which is with malice
14 aforethought, ---

15 A. Yes.

16 Q. --- and you said premeditated. They
17 intended to kill somebody, that there wasn't
18 any reason for killing them, they just
19 intended to do it, it was an evil act that
20 they committed, they got the right person, no
21 self-defense, no accident, that's the person,
22 they got the person who did it.

23 A. Okay.

24 Q. In that situation, are you a type one or a
25 type three?

1 A. That would be a type one.

2 Q. Just because they are convicted of murder,
3 of the intentional killing of somebody, then
4 the only sentence that you could consider is a
5 death sentence?

6 A. Yes.

7 Q. As you said, you think it ought to be
8 carried out publicly?

9 A. Yeah, to some extent. Yes.

10 Q. And that's your strong feeling?

11 A. Yes.

12 Q. You can't think of any circumstance right
13 now where a person who is convicted of murder,
14 that is the intentional killing of somebody,
15 one as I described, and there would be
16 aggravating circumstances -- because in order
17 for a jury to consider it, it's got to be more
18 than just a murder, that the jury would to
19 determine and that jury would decide that, can
20 you think of any circumstances ---

21 A. Only circumstances like if ---

22 Q. Let me finish.

23 A. Okay, go ahead.

24 Q. --- where a death sentence wouldn't be the
25 sentence but life imprisonment without the

1 possibility of parole would be?

2 A. Only the situation might be -- well, if
3 they intended -- if it got to the point where
4 it happened, where they intended to maybe hurt
5 them really bad and it turned out that the
6 person wound up dead, in a situation maybe
7 like that. But in a situation where they
8 intended to kill them, if that was the intent,
9 yes.

10 THE COURT: Questions?

11 MR. BLOOM: May it please the
12 court?

13 THE COURT: Yes, sir.

14 VOIR DIRE EXAMINATION

15 BY MR. BLOOM:

16 Q. Mr. White, how are you this morning?

17 A. Good.

18 Q. My name is Jeff Bloom and along with
19 Andrew Carroll, we represent William
20 Dickerson. I just have a few followup
21 questions and, as you know, there are no right
22 or wrong answers. We just need your honest
23 opinions. As Judge Dennis has said, we
24 appreciate your honesty so far. Okay?

25 A. Yes.

1 Q. I just want to ask you a few follow-up
2 questions. Let's make sure that -- Judge
3 Dennis defined murder and I want to make sure
4 that I understand your answer, make sure that
5 we're talking about the same term.

6 First, murder is not accident, no self-
7 defense, not manslaughter where you might
8 catch someone with someone, ---

9 A. Right.

10 Q. --- and it's not insanity. It is that a
11 person did it, intended to do it, with malice
12 -- which is where they have a cold, depraved
13 heart, -- they got the right person beyond a
14 reasonable doubt. In that situation, you have
15 strong beliefs that that person ought to get
16 the death penalty?

17 A. Yes.

18 Q. In each and every case?

19 A. Yes.

20 Q. I think your last comment to the judge was
21 that if a person didn't intend to do -- but if
22 someone was found guilty of murder, then that
23 jury has already found that person acted with
24 malice. That's part of it, an evil heart,
25 cold-bloodied.

1 A. Yes, sir.

2 Q. That's where you ---

3 A. --- would give the death penalty. Yes.

4 Q. We appreciate your honesty. Even if Judge
5 Dennis gave you instructions to wait until you
6 heard other evidence for the -- whether it was
7 for the death penalty or whether it was other
8 evidence for life imprisonment without the
9 possibility of parole, for Mr. White, you've
10 already made that decision once you'd found
11 them guilty of malice murder ---

12 A. Yeah, (affirmative nod).

13 Q. --- in each and every case?

14 A. Yes.

15 Q. And I think on your questionnaire that you
16 also candidly indicted that you have a strong
17 belief that the execution ought to be carried
18 out in a public display?

19 A. In some ---

20 Q. So that other adults could see and
21 understand the ---

22 A. Yeah.

23 Q. That the victim's family ought to be able
24 to witness that publicly, so that they can
25 have their sense of ---

1 A. Yeah.

2 MR. BLOOM: Thank you very much,
3 sir.

4 THE COURT: Questions, Solicitor?

5 BRUCE DURANT: I will be very
6 brief.

7 VOIR DIRE EXAMINATION

8 BY BRUCE DURANT:

9 Q. Just to be clear, generally these cases --
10 as the Judge explained it, there's going to be
11 a phase where guilt or innocence is determined
12 and then there would be a phase, assuming that
13 the jury found a defendant guilty, a second
14 phase to determine the sentence.

15 A. Okay.

16 Q. Is it fair to say that if you in the first
17 phase found a defendant guilty of malice
18 murder, and I'm not talking about any of the
19 other stuff, you would always impose the death
20 sentence?

21 A. Yes.

22 Q. You are not interested in knowing about
23 any mitigating circumstances like his
24 background, how he was raised or mental health
25 issues or anything like that? You're not

1 interested in hearing any of that sort of
2 stuff about a defendant?

3 A. Well, a mental health issue, would that be
4 an insanity situation and not a ---

5 Q. Not necessarily. I don't propose to be
6 the judge charging the law but there can be
7 mental health issues that don't rise to the
8 level of insanity. Insanity, in the legal
9 sense means that it is something that is
10 actually a defense to a crime. There are
11 varying degrees of mental states. You know,
12 mental health issues, drug abuse issues,
13 abused as a child. Would you be not be
14 interested in any of those kinds of things
15 about the defendant before you made up your
16 mind in a case like this?

17 A. (Pause) -- well, to a certain extent. I
18 don't think I would ---

19 Q. That's fine, either way that you go. We
20 just need to know which way.

21 A. Well, being that there was -- that it was
22 judged in that way, judged that it was cold-
23 bloodied murder, no.

24 Q. Okay, so you wouldn't ---

25 A. I wouldn't apply -- that wouldn't apply in

1 that case, no.

2 BRUCE DURANT: Thank you. I have
3 no further questions.

4 THE COURT: Thank you very much,
5 Mr. White. I am going to excuse you from
6 further participate in this dispute. You
7 don't have to call or come back for any of
8 this proceeding on the criminal side. You
9 need to call the number after 6:00 tonight and
10 there may be a message concerning the jury
11 panel and that will apply to you, but if it
12 should say the Dickerson panel or Panel Number
13 Ten or Panel Number Eleven, that is not you.
14 I think we put "the civil jury panel" on the
15 message, so just follow that instruction.
16 Thank you, sir, have a good day.

17 (JUROR NUMBER 398 EXITS COURTROOM)

18 THE COURT: Any objection to
19 disqualifying Mr. White, from the State?

20 BRUCE DURANT: No, sir.

21 THE COURT: Any objection from the
22 defendant?

23 MR. BLOOM: No, sir.

24 THE COURT: Thank you. I kind of
25 anticipated on that one, tried to expedite a

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1 little bit on that one.

2 Let's move into the next panel. Does
3 anybody need a break for a minute? Okay, we
4 will -- you'all, I understand what it is to be
5 a lawyer and I understand why *voir dire* is
6 important to lawyers. When I was a lawyer, I
7 wanted to do it -- not just in these, I wanted
8 to do it in all of them. The reason is, we
9 all know that there is a psychology behind it,
10 we get to establish our rapport. But that's
11 what is happening and we need to stop asking -
12 - Mr. Bloom, I am going to ask you to do me a
13 favor. I want you to ask questions and not
14 make arguments with your questions. You're
15 talking in -- you're doing a great job, no
16 problem, but I am just going to ask that you
17 limit it to questions and not make statements
18 about -- you know, talking about 'just general
19 discussion' with them. Please do that for me,
20 if you will. I would ask that you'all do the
21 same thing on the State's side.

22 Just ask the questions. I mean, we
23 don't have to ask the same question three
24 times to get the same answer. If you have
25 some reason -- having said that, if there is

1 something about the witness' questionnaire or
2 something that they've said that triggers,
3 'Wait a minute, this witness is not being
4 consistent here' , no problem. I have no
5 problem with that. But we don't need to have
6 somebody confirm three times that they are
7 doing the same thing.

8 Let me further define it. The lady
9 that was here before, Ms. Szivak, I think if I
10 am not mistaken -- she has a master's degree.
11 I think she understands what her answers are.
12 We don't have to ask those people those
13 questions about that -- to which there is an
14 obvious answer to the question.

15 I just ask you to do that to help
16 move this case forward. That's all that I am
17 asking. I am not asking that you restrict
18 what you need to find out at all. I'm asking
19 you think about that. Thank you all. We'll
20 take about five minutes.

21 (BRIEF RECESS)

22 (DEFENDANT PRESENT)

23 THE COURT: Let the record reflect
24 that Mr. Dickerson is present. We are all bad
25 about talking and not communicating. Let me

1 give you an example of one of the things that
2 I thought, 'Come on, Mr. Bloom.'

3 I understand the question and I
4 overruled the objection. In fact, I didn't
5 realize that there is a *Bennett* case that
6 existed that says that creates a major
7 problem. I read that last night, I'd guess
8 correctly so I was delighted to see that.

9 That *Bennett* case talked about that
10 juror polling because everybody wanted to go
11 home. Fortunately, it was in the sense that
12 they didn't have to retry both phases, because
13 it said that it didn't contaminate the first
14 phase but, rather, the second phase where they
15 were deciding the sentence. But you don't
16 need to ask whether they are going to respond
17 because that's -- that one, borderline, is in
18 violation.

19 Don't hear me as saying that I would
20 give an *Allen* charge. I've made it in the
21 first phase but I doubt that I would ever give
22 an *Allen* charge in the second phase, for lots
23 of reasons that are articulated.

24 You have already asked every single
25 jury in theory, that's on your panels, whether

1 they would fold. That's all you're interested
2 in. You don't need to ask them whether they
3 would respect somebody else because that's not
4 -- that could be misinterpreted. I think.

5 That is not what that case says. It
6 doesn't fault the other jurors for trying to
7 compel the person to agree. So you've covered
8 it when you say 'you would respect their
9 opinions such as you would expect them to
10 respect yours.' Then you ask a question that
11 says what you've gotten in the answer. That's
12 what I am talking about. If you could cut
13 down on those duplications. That's gotten --
14 you've obtained the same information that the
15 previous question gave to you, and I don't
16 think it is really of any use to you.

17 Whether they respect their opinion or
18 not, that's not important You just don't want
19 that person to fold, to give up because --
20 something for which is no reason. That's how
21 I see that, because otherwise if there's a
22 reason, it doesn't stop them from
23 reconsidering their position.

24 That's not what your question says,
25 because it really is that you're giving up a

1 position for no real reason at all. I think
2 that's legitimate. That's a legitimate,
3 that's a legitimate challenge.

4 But it should never imply that they
5 shouldn't reconsider their position, so that's
6 where we get into that area where I think the
7 solicitor was getting to that -- there's
8 always -- that's part of the jury process,
9 that's part of the deliberative process, as I
10 understand it.

11 So that's an example, not to be
12 picking or anything but to be specific about
13 what I'm talking about.

14 Thank you very much, Mr. Bloom, --
15 and I'm not picking on you, there's been
16 others on both side of the ledger. You could
17 say, 'Judge, you've done the same thing.' So
18 I appreciate that and I am going to try to be
19 conscious about that, too.

20 Okay, now we move to Panel Number
21 Six. The first one that we have is Mr. Hall,
22 son of the weatherman -- and I don't mean the
23 weatherman of my era. Do any of you remember
24 Charlie, his daddy.

25 SOLICITOR WILSON: Oh, definitely.

1 BRUCE DURANT: I was wondering if
2 he was related to ---

3 THE COURT: He is, I asked him when
4 he stood there. Do you know that he learned
5 to write backwards because he had to, the
6 screen would reverse him.

7 (JUROR NUMBER 124 ENTERS COURTROOM)

8 THE COURT: We were just talking
9 about your father.

10 JUROR NUMBER 124: Oh, good, sir.
11 Yes.

12 THE COURT: Good afternoon, Mr.
13 Hall.

14 JUROR NUMBER 124: Hi.

15 THE COURT: How are you?

16 JUROR NUMBER 124: I'm doing
17 wonderful. Thank you.

18 THE COURT: Thank you for your
19 patience. I know you've been here awhile.
20 These things run a little longer sometimes and
21 we apologize but that is just sort of the
22 nature of the process.

23 JUROR NUMBER 124: I understand.

24 THE COURT: Thank you for your
25 patience. We are going to continue the

1 process that we started on Friday. At that
2 time, as you will recall, we were asking you
3 some questions and those question, you'll
4 remember, really don't have any correct
5 answers.

6 JUROR NUMBER 124: I understand.

7 THE COURT: They are questions
8 really to help you and to help us decide
9 whether you can be a fair and impartial juror
10 in this case. That is the sole purpose. They
11 are not decided to try to invade your privacy
12 and they are certainly not designed to try to
13 change your philosophy or anything else,
14 you're entitled to that philosophy.

15 JUROR NUMBER 124: I understand, Your
16 Honor.

17 THE COURT: So as a result, I am
18 going to be asking you some questions and the
19 attorneys will probably ask you some
20 questions. All we ask is that you respond
21 truthfully to those questions and that you
22 give a complete answer. Will you do that?

23 JUROR NUMBER 124: Yes, sir, I will.

24 THE COURT: I would remind you in
25 that regard that you are still under oath in

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1 this matter. Okay?

2 JUROR NUMBER 124: Yes.

3 CHARLES HALL, being duly sworn to
4 tell the truth, the whole truth and nothing
5 but the truth, testified, as follows:

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. Since we were last together, have you
9 talked with anyone or permitted anyone to talk
10 with you or talk about this case in your
11 presence?

12 A. No, sir, I have not.

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

15 A. No, sir, I have not.

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

23 A. I don't know either one of those people.

24 Q. You were given a sheet when you came in
25 that sets forth three types of jurors, have

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1 you had a opportunity to review that sheet?

2 A. I have, Your Honor.

3 Q. Which type most accurately describes you?

4 A. I am a type three.

5 Q. A type three juror, Mr. Hall, as I
6 understand is that juror who if empaneled in a
7 case in which the jury had as a charge to
8 determine the appropriate punishment for
9 murder -- do you understand that?

10 A. Yes.

11 Q. --- and basically, given the type of how
12 jury and how it was established, that jury
13 would have concluded that the person had
14 already convicted -- that is, the State had
15 proved that person's guilt as to the crime of
16 murder.

17 Murder -- you may or may not know, murder
18 is the intentional killing of someone with
19 malice. It is not an accident, there is no
20 self-defense, self-defense is not involved,
21 it's not manslaughter where somebody is
22 provoked into taking some action; this is an
23 intentional killing, somebody intended to kill
24 somebody, they went about it and they
25 performed it.

1 A. Yes, sir.

2 Q. As I understand, type three at that point,
3 at that precise point, and that's -- you now
4 would go into the second phase where the jury
5 would hear evidence concerning what the
6 appropriate sentence would be or should.
7 At that moment, though, before starting that,
8 as a type three juror, you would not have any
9 predetermination or idea whether your sentence
10 would be life imprisonment without the
11 possibility of parole or the death sentence;
12 is that correct?

13 A. That's correct, Your Honor.

14 Q. Because you would need to hear all of the
15 circumstances before you could make that
16 determination?

17 A. I believe I'd need to hear all the
18 circumstances; yes, sir.

19 Q. All of them?

20 A. Any circumstance, (affirmative nod).

21 Q. Because you would have already heard all
22 the circumstances concerning the crime, you
23 understand that?

24 A. Yes, sir.

25 Q. You may hear additional circumstances

1 about the crime, that is the effect on the
2 person and a number of other things during the
3 second phase, but the crime itself you would
4 have already established that, you understand,
5 beyond a reasonable doubt?

6 A. Yes.

7 Q. But you still wouldn't have any pre-
8 decision as to what the appropriate sentence
9 would be?

10 A. No, sir, I would not.

11 Q. If you were in that second phase, there
12 would be something that had to be done first
13 before you could even consider a death
14 sentence, because normally in this state, as
15 you probably know, it is not common for a jury
16 to participate in sentencing in a murder
17 trial.

18 A. Yes, sir.

19 Q. You understand?

20 A. Yes, sir.

21 Q. It is only in limited circumstances
22 because typically when we have a murder trial
23 a jury hears the case and decides whether or
24 not the State has proven the charge, but once
25 the jury determines that they established that

1 person committed the crime, then the sentence
2 is by the court, the judge, the presiding
3 judge would impose the sentence. Do you
4 understand that?

5 A. Yes, sir.

6 Q. Without the jury's involvement.

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

8 Q. And in that situation, the presiding judge
9 doesn't even have as an option for the
10 sentence of the offense of murder a death
11 sentence. Do you understand that?

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

13 Q. The only -- the presiding judge could
14 sentence to life imprisonment without the
15 possibility of parole but they are not limited
16 to that either for a murder. Do you
17 understand that?

18 A. Yes, sir.

19 Q. It is only when a jury is empaneled and
20 that jury, in the second phase, has considered
21 the evidence and determined something that the
22 State has to prove very specifically in the
23 second phase. They have to prove the
24 existence of an aggravating circumstance.
25 That is something that the law provides, and I

1 would define it for you if you were on the
2 jury, but an aggravating circumstance is a
3 circumstance that the law says separates this
4 murder from any other murder, it elevates it
5 because of the existence of that circumstance.

6 A. Um-humm.

7 Q. Sometimes it may be the killing of a
8 police officer, it may be the killing of a
9 child. There are a number of reasons
10 enumerated that allow the jury to be empaneled
11 to make a determination. The jury has to
12 conclude beyond a reasonable doubt from the
13 evidence that that person, that that
14 circumstance was present. Do you understand?

15 A. Yes, sir.

16 Q. Assuming then that that was established,
17 then the jury would then consider whether life
18 imprisonment without the possibility of parole
19 or the death sentence; do you understand that?

20 A. Yes, sir, I understand that.

21 Q. It is my understanding that you would have
22 -- you, being on that jury, would first have
23 to make that determination and then you'd have
24 to hear all the circumstances before you could
25 decide which one was appropriate?

1 A. That's true, Your Honor. Yes.

2 Q. Okay, let's talk about that. You
3 understand that jury's function is to
4 determine the truth from the evidence, do you
5 understand that?

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

7 Q. You understand that?

8 A. Yes, sir.

9 Q. That would be the sole job of the jury and
10 no one else, certainly not the judge has no
11 responsibility in making that kind of
12 decision.

13 A. I understand.

14 Q. You also understand that it is the court's
15 responsibility, a judge's responsibility to
16 give you the law and that it would be your
17 duty as a judge, because you would be a judge
18 of the facts, to accept the law as the judge
19 gives you and apply it fairly and impartially?

20 A. Yes, sir.

21 Q. And that part of the oath that you would
22 take as a juror, you would commit that you
23 would at the appropriate time apply your
24 common sense, your sense of logic and
25 reasoning in analyzing the evidence and decide

1 what you believe to be the truth and, then
2 once making that decision, you further promise
3 to take the law and apply it fairly and
4 impartially. You would do that if you were on
5 a jury?

6 A. I would, Your Honor.

7 Q. That means also, Mr. Hall, and I am not
8 suggesting that you would but if you should
9 hear as an instruction -- if you were on a
10 jury and you heard some principle of law that
11 caused you to think, 'You know, that's not
12 what I thought the law was' or 'that law needs
13 to be changed' or 'I don't agree with that
14 law', that is certainly your right to feel
15 that way -- or you could say, 'that's just
16 against everything that I was taught to
17 believe.' Okay?

18 A. (No verbal response).

19 Q. The law says and this process says and
20 your oath says that you've promised, will have
21 promised, to set aside all those feelings and
22 take the law notwithstanding those feelings.
23 You would do that?

24 A. Absolutely, Your Honor.

25 Q. Okay. One the principle of law that I

1 would charge if you were involved in a
2 criminal dispute -- and, please understand
3 that what we're talking about here is not
4 specifically about Mr. Dickerson because
5 there's been no trial for that one.

6 A. Yes, sir.

7 Q. Do you understand that?

8 A. I do.

9 Q. But as I mentioned on Friday he's been
10 accused of several criminal offense, and of
11 course one of them the principles that we have
12 already talked about is that he is presumed to
13 be innocent until proven guilty. You didn't
14 have any problem with that principle of law,
15 as I recall?

16 A. No, sir, I don't.

17 Q. Of course, that's an active presumption.
18 That means that a person such as Mr.
19 Dickerson, in this country and in this state,
20 we have to actively presume that they are
21 innocent. I assume today that as you look at
22 Mr. Dickerson that he is innocent as far as
23 you are concerned?

24 A. Yes, sir, he is.

25 Q. Of course, that position cannot change

1 until you, if you were on a jury, were
2 persuaded beyond a reasonable doubt of that
3 person's guilt. Do you understand that?

4 A. Yes, sir.

5 Q. Let's talk about that. If you were on a
6 criminal dispute -- of course, the State --
7 part of the instruction would be that the
8 State is the only party that has to prove
9 anything. You understand that?

10 A. Yes, sir.

11 Q. And the person who is accused of
12 committing the criminal offense has no
13 obligation to prove anything, to explain
14 anything. They certainly don't have to prove
15 their innocence. Do you understand that?

16 A. Yes, sir.

17 Q. In fact, the jury should never look to the
18 person accused to establish anything at all,
19 because they have no responsibility.

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

21 Q. And if they did, they would have violated
22 the oath. Would you have any problem honoring
23 that?

24 A. No, sir, I wouldn't.

25 Q. In fact, they don't even have to present

1 evidence. If they chose not to, the jury
2 can't -- then persons accused wouldn't even
3 have to testify and the jury would be
4 instructed that they could not use that
5 against that person in any way. You could
6 follow that instruction also.

7 A. Yes, sir, I could.

8 Q. Obviously if you were empaneled in that
9 type of case that we are talking about and you
10 heard the case, you would hear evidence
11 concerning the various charge or charges, and
12 the jury would be instructed to go evaluate
13 the evidence and decide whether they were
14 convinced as to each element of the crime(s)
15 charged.

16 If in your analyses you weren't firmly
17 convinced of one of more, then you would be
18 instructed to return a verdict of not guilty.

19 If you were firmly convinced, the
20 instruction would be to return a verdict of
21 guilty.

22 Am I to understand that you believe that
23 you could at the appropriate time apply your
24 common sense, your sense of logic and reason
25 and analyze the evidence and decide what you

1 believe to be the truth, then apply the law
2 given to you and make a decision as to whether
3 or not each element had been established. If
4 they had been established, each elements
5 established beyond a reasonable doubt you
6 would return a verdict of guilty. Is that
7 correct?

8 A. That's correct, Your Honor. I would.

9 Q. But likewise if you weren't firmly
10 convinced of one or more, would you have any
11 hesitancy returning a verdict of not guilty?

12 A. No, sir, I would not. It's the law, and I
13 would up hold it.

14 Q. Okay. In this type of situation that
15 we've talked about, we've already discussed
16 what would happen if the jury found murder.
17 Of course we know that's -- that is
18 premeditated, with malice aforethought, that
19 they thought about it before, it doesn't have
20 to be any requisite period of time but they
21 intended to do that and they carried it out.
22 Do you understand that?

23 A. Yes, sir.

24 Q. In this case that you've just made that
25 decision, as I understand further being a type

1 three juror you still don't have an opinion as
2 to what the appropriate sentence is?

3 A. No, sir, I don't.

4 Q. As I previously mentioned, you are now
5 going to hear evidence and you're going to
6 have to determine the aggravating
7 circumstance. You would do that, as well?

8 A. Yes, sir. I can.

9 Q. I would further instruct you in that
10 setting, if you were involved in that type of
11 case, that if the jury does not find beyond a
12 reasonable doubt an aggravating circumstance,
13 the only sentence that they could impose is
14 life imprisonment without the possibility of
15 parole, do you understand that?

16 A. I understand that.

17 Q. And you would have no problem following
18 that instruction?

19 A. I would not.

20 Q. I would further instruct in that setting
21 that if the jury concluded that the State had
22 convinced it beyond a reasonable doubt that
23 there were at least one aggravating
24 circumstance, and there may be more, but at
25 least one, that then and only then may they

1 consider a death sentence. Do you understand
2 that?

3 A. Yes, sir.

4 Q. And when I say consider, it means just
5 what I just said. It could -- the court would
6 never instruct you that because you found an
7 aggravating circumstance you must return a
8 death sentence. It simply means that now the
9 jury has the option.

10 A. I understand.

11 Q. And that the jury would have to determine,
12 based on all facts and circumstances whether
13 this particular situation justified a death
14 sentence or a life imprisonment without the
15 possibility of parole. Do you understand
16 that?

17 A. Yes, sir, I understand.

18 Q. You could follow that instruction, as
19 well?

20 A. I could, Your Honor.

21 Q. I would also instruct you that among other
22 things such as aggravating circumstances and
23 circumstances concerning what sentence is
24 appropriate that there may be evidence of
25 mitigating circumstances.

1 Some of those are statutory mitigating
2 circumstances that I would define for you;
3 such as background issues, mental health
4 issues that may have existed, addiction issues
5 that a person may have. A lot of those don't
6 even have anything to do with the crime
7 itself.

8 But the instruction would be that the jury
9 would have to give meaningful consideration to
10 any statutory or nonstatutory mitigating
11 circumstances. You could do that in
12 formulating your sentence, is that correct?

13 A. Yes, sir, I could.

14 Q. And you would honor that instruction?

15 A. I would, Your Honor.

16 Q. I would also instruct you in considering
17 that, assuming you found an aggravating
18 circumstance, as I mentioned you don't have to
19 return a death sentence. In fact, the
20 instruction is there be no mitigating
21 circumstances but the jury still has the right
22 to return a life without parole sentence for
23 no reasons. Do you understand that?

24 A. Yes, sir.

25 Q. And you could consider that as well in

1 making a determination?

2 A. Okay.

3 Q. And it is my understanding that if you
4 were in that situation and had to consider all
5 the evidence -- and, again, remember something
6 that I said initially. The defendant has no
7 burden to prove or disprove anything and that
8 would apply to the mitigating circumstances,
9 as well. Do you understand that?

10 A. Yes, sir.

11 Q. And you wouldn't hold that against the
12 defendant in any way?

13 A. Absolutely not.

14 Q. Okay. But it is my understanding that at
15 that time, then you would be able to apply
16 your common sense, your sense of logic and
17 reason and determine from the facts what you
18 believe to be the truth, take the law as the
19 court had given it to you and make a
20 determination to decide between the death
21 sentence and life imprisonment.

22 A. I would, Your Honor.

23 Q. And whether it is life imprisonment
24 without parole or the death sentence, you
25 don't know because you haven't heard any of

1 the facts or circumstances?

2 A. No, sir, I have no clue. I don't have my
3 mind made up at that time.

4 Q. And you don't -- you'd have to hear all of
5 it before you could even say which would be --
6 which would apply?

7 A. I would, Your Honor.

8 Q. Okay.

9 THE COURT: Please answer any
10 questions that the attorneys may have.

11 SOLICITOR WILSON: Mr. Hall, I'm
12 Scarlet Wilson, I'm the Solicitor here. This
13 is Bruce Durant and Rutledge Durant and we're
14 the prosecutors in the case, so we will be the
15 ones presenting evidence. I don't have any
16 questions for you. If you would, please
17 answer any questions that Mr. Bloom may have.

18 JUROR NUMBER 124: Okay.

19 VOIR DIRE EXAMINATION

20 BY MR. BLOOM:

21 Q. Good afternoon, Mr. Hall.

22 A. Yes, sir.

23 Q. How are you today, sir?

24 A. I'm fine.

25 Q. My name is Jeff Bloom and along with

1 Andrew Carroll, we represent William
2 Dickerson. I want to thank you for being
3 here. I will try not to repeat anything that
4 the Judge just asked you. I just have a few
5 followup questions from what Judge Dennis
6 asked you.

7 Let me start, though, if we were sitting
8 around and having a cup of coffee and
9 something came on the TV or the news about the
10 death penalty and we turned to have a
11 conversation, what would your opinion about
12 the death penalty be?

13 A. You know, I think my opinion about the
14 death penalty is that in order for anybody to
15 have any kind of input toward a person's life,
16 it's a very serious thing that you have to
17 think about. I have no conviction that I
18 believe in the death penalty or that I don't
19 believe in the death penalty. I believe it's
20 a very serious matter, that every individual
21 matter is very different and very important
22 and there's a lot of things to be considered
23 before a person can say that he believes in
24 the death penalty or doesn't believe in the
25 death penalty.

1 Q. On your questionnaire, I believe that you
2 put that "it is necessary." Can you explain
3 what you mean to me by that?

4 A. I don't remember how the question was
5 answered as far as being necessary. I don't
6 remember writing "necessary".

7 Q. Okay. I may have the wrong questionnaire,
8 if I could just check on that.

9 A. I am not familiar with that question.

10 Q. Well, it's been some time since you filled
11 it out and ---

12 A. Yes, sir, I filled it out within moments
13 after I got it.

14 Q. I understand.

15 THE COURT: The court has it.

16 Do you have it there?

17 MR. BLOOM: Yes, sir, thank you.

18 EXAMINATION CONTINUED

19 BY MR. BLOOM:

20 Q. The question was, "What is your opinion,
21 if any, about the death penalty?" You wrote,
22 "I believe it is necessary." Can you just
23 explain what you mean to me by that?

24 A. I think when I was thinking that, that I
25 believe that some type of capital punishment

1 is necessary in the criminal justice system to
2 make the criminal justice system effective.

3 Q. Of course, you understand that some people
4 are very strong proponents of the death
5 penalty and believe ---

6 A. Yes.

7 Q. --- that it ought to be applied in every
8 case. Do you understand that?

9 A. I understand that.

10 Q. And some people believe that it should be
11 applied. You know, those are kind of the two
12 bookends of ---

13 A. (Affirmative nod), yes, sir.

14 Q. If we were chatting and you and I were
15 talking, where would you fall in kind of that
16 spectrum, do you believe?

17 A. Well, like I said, I am a type three.
18 Every case is different, every circumstance is
19 different, I have no opinion for it or against
20 it until I hear everything that there is to
21 hear about it.

22 A. All right.

23 Q. Do you have a general view as to whether
24 it's imposed too much, not enough, about
25 right, anything in that general area?

1 A. No, sir, I don't have any opinion about
2 that whatsoever.

3 Q. Okay. Is there anything about your
4 background of law enforcement that brings you
5 to have any view about the death penalty?

6 A. No, sir, I don't believe so. I have a
7 military background, I have a background of
8 law enforcement and if, uh, -- again, every
9 circumstance is different, every individual is
10 different and that requires that you look at
11 everything involved.

12 Q. Certainly, and I appreciate your candor
13 here this morning. You understand that we
14 kind of have to talk ---

15 A. I understand.

16 Q. It's kind of like getting the cart before
17 the horse, ---

18 A. Right, I understand.

19 Q. I notice that you were a deputy sheriff at
20 one point. That was in Texas?

21 A. Yes, it was. Houston, Texas.

22 Q. Did you have any contact with any death
23 penalty cases during your service?

24 A. No, sir, I was pretty much off the road,
25 in the jail.

1 Q. Was that a county jail or ---

2 A. County jail, Harris County. Yes, sir.

3 Q. And you mentioned to me your military
4 experience. Was there anything in that that
5 has you -- that has helped form particular
6 views about the death penalty for you?

7 A. No, sir.

8 Q. And you understand when we are talking
9 about murder, as we define that term, it is
10 not accident, self-defense, insanity, or
11 manslaughter where you catch someone and in
12 the heat-of-passion of the moment. It's where
13 they did it, intended to do it, with malice,
14 an evil heart, and they got the right person
15 beyond a reasonable doubt. There are some
16 folks that say that 'once that malice murder
17 is proven to me, I am going to vote for death
18 every time.' I take it from your responses --
19 and we have to define the term because some
20 people say, 'Well, golly, I don't know what
21 malice murder is.' I take it, as Judge Dennis
22 has talked to you and you answered him, that
23 you could still, even when finding someone
24 guilty of malice murder, move into another
25 phase and look at all the circumstances?

1 A. I could. Yes, sir.

2 Q. And if I could define the term mitigating
3 circumstances. Sometimes these legal terms
4 that people don't know.

5 A. I understand.

6 Q. A mitigating circumstance may have nothing
7 to do with the facts of the crime. It may be
8 a person's background, childhood, how they
9 were raised, drug addictions. Are those
10 things that you could give meaningful
11 consideration to?

12 A. Absolutely.

13 Q. All right. Finally, sir, I want to ask
14 you if -- if you understood Judge Dennis'
15 preliminary instruction that the law never
16 requires the death penalty. Did you
17 understand that?

18 A. I understood that. Yes, sir.

19 Q. And it is always what the law calls the
20 moral, individualized judgment of that juror.
21 Do you understand that?

22 A. I do.

23 Q. If you were on a jury and eleven jurors
24 were voting one way and you were voting
25 another, after you had heard all the evidence

1 and you had deliberated among your fellow
2 jurors, discussed it and with an open mind
3 listened to their viewpoint and they had
4 listened to yours but you found yourself in
5 that position, could you still make that
6 moral, individualized choice for yourself?

7 A. I could.

8 Q. You wouldn't just pack up your bag and
9 say, 'My goodness, it's late, I'm hungry, it's
10 time to go.' Just fold your tent and go?

11 A. No, sir. You know, my being in this
12 situation has caused me to do a lot of soul
13 searching about possible decisions that I may
14 or may not have to make and I would stand by
15 my own convictions, regardless.

16 Q. You strike me as that person but you know
17 I just have to ask that question.

18 A. I understand.

19 Q. And in that vein, you would want those
20 other jurors to respect your view?

21 A. Absolutely.

22 Q. And you would respect theirs?

23 A. Absolutely.

24 Q. Thank you, sir. And, lastly, if the flip
25 side happened and you were in the eleven to

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1 one, would ---

2 THE COURT: He's answered that.

3 Move on, please.

4 MR. BLOOM: May I ask if he would
5 force a juror ---

6 THE COURT: No, sir, you may not.
7 I just said so.

8 MR. BLOOM: Thank you. Thank you
9 very much, Mr. Hall.

10 THE COURT: Any additional
11 questions?

12 SOLICITOR WILSON: No, sir.

13 THE COURT: Mr. Hall, if you will
14 step out just for a moment, sir.

15 (JUROR NUMBER 124 EXITS COURTROOM)

16 THE COURT: You were asking him --
17 if you want to take out "would you respect
18 their decision" as you said in the previous
19 question, then I would agree with you that
20 you're entitled to ask that. But you asked
21 him, 'Would you respect theirs just as you
22 would want them to respect you?' So he'd
23 answered your question.

24 MR. BLOOM: Yes, sir.

25 THE COURT: That's the reason that

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1 I thought he had already answered it.

2 MR. BLOOM: I get it. Thank you.

3 THE COURT: What says the State?

4 SOLICITOR WILSON: Qualified.

5 MR. BLOOM: Qualified.

6 THE COURT: Thank you. Let's bring
7 him in, please.

8 (JUROR NUMBER 124 ENTERS COURTROOM)

9 THE COURT: Mr. Hall, thank you
10 very much, and I appreciate your patience.
11 You've been found to be qualified to be a
12 member of the panel from which we will select
13 our jury.

14 We anticipate that will take place
15 Thursday morning at 9:30, that's hopeful at
16 this point. I would ask you to do me this
17 favor, call the answering machine tonight, the
18 number that you have and follow that
19 instruction. I am hopeful that it will say
20 report on Thursday morning at 9:30. Whatever
21 it says, just follow it and when you are
22 instructed to report, you will come directly
23 to this courtroom and take a seat in the
24 audience.

25 Until then and until you have been

1 dismissed from this case, please remember that
2 you still are not at liberty to discuss this
3 case with anyone or permit anyone to talk with
4 you about it. Also, please continue not to
5 watch any news programs about it or read any
6 news accounts. Have a great day and we'll see
7 you, hopefully, Thursday.

8 JUROR NUMBER 124: Thank you, Your
9 Honor.

10 (JUROR NUMBER 124 EXITS COURTROOM)

11 THE COURT: Okay, Mr. Waterman.
12 Number 330.

13 (JUROR NUMBER 330 ENTERS COURTROOM)

14 THE COURT: Hello, Mr. Waterman.
15 How are you, sir?

16 JUROR NUMBER 330: Good.

17 THE COURT: Sorry, we've run over a
18 little bit but we won't detain you too much
19 longer. We are going to continue the process
20 that we started on Friday. You will recall
21 that we were asking you a number of questions
22 and I mentioned to you that there are no
23 correct answers to any of these questions, they
24 are not designed to challenge any beliefs that
25 you have or any philosophies that you have

1 developed in your life, nor are we trying to
2 invade any privacy.

3 The questions really are designed to
4 help you and to help us make a determination as
5 to whether you can be a fair and impartial
6 judge in this case. Okay?

7 JUROR NUMBER 330: Yes, sir.

8 THE COURT: The only thing that we
9 ask is that you fully respond. I will have
10 some questions and the attorneys may have some
11 questions, and we ask that you truthfully and
12 completely respond to those questions. Will
13 you do that?

14 JUROR NUMBER 330: Yes, sir.

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

18 JUROR NUMBER 330: Okay.

19 GARRETT WATERMAN, being duly sworn to
20 tell the truth, the whole truth and nothing but
21 the truth, testified, as follows:

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q. Since we were together on Friday have you
25 talked with anyone or permitted anyone to talk

1 with you about this case, sir?

2 A. No, sir.

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

5 A. No, sir.

6 Q. You remember on Friday that I mentioned to
7 you a number of persons and asked about whether
8 you had any connection to any of those persons.

9 A. Yes, sir.

10 A. I failed to mention two names that I need
11 to ask you about. Are you related by blood or
12 marriage, have any business dealings with or
13 are you socially or casually acquainted or have
14 any dealings with a Jeff Osborne or Matt Casey?

15 A. No, sir.

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

19 A. Yes, sir.

20 Q. Which type most accurately describes you?

21 A. Type three.

22 Q. That is a juror in a case in which the
23 jury would have the responsibility of
24 determining the appropriate sentence for a
25 person who had been convicted of murder, and

1 you understand that murder means that the
2 person intentionally killed somebody. It was
3 not an accident, no self-defense, none of those
4 things that make it not murder. It is the
5 intentional killing, they wanted to kill this
6 person, they intended to kill them, they did it
7 with an evil heart, with malice, no mistake.
8 You will have convicted that person -- in other
9 words, the State would have already convinced
10 you beyond a reasonable doubt that they
11 committed this crime, so you know that you have
12 the right person.

13 A. Okay.

14 Q. Type three, as I understand it, at that
15 moment before you start the second phase you
16 still do not have an opinion as to what the
17 appropriate sentence would be, whether it is
18 life imprisonment or the death sentence. Is
19 that correct?

20 A. Yes, sir.

21 Q. Because you haven't heard all the
22 circumstances that you need to consider in
23 fashioning a sentence?

24 A. That's right.

25 Q. And you wouldn't make that decision until

1 you've heard it all and been instructed by the
2 court on the law. Is that correct?

3 A. That's correct.

4 Q. And it is my understanding that there are
5 circumstances in which you've thought about it
6 that, yes, you could probably impose a life
7 sentence without parole and there are
8 circumstances where you could impose a death
9 sentence, but you'd have to hear it all before
10 you could make a decision as which sentence
11 would suit the circumstance. Is that right?

12 A. Yes, sir.

13 Q. You understand that the jury has a very
14 important role in this process, as I mentioned
15 to you when we were qualifying you, they become
16 a judge with the presiding judge; do you
17 understand that?

18 A. (Affirmative nod).

19 Q. That jury has the responsibility of
20 determining the facts of a case, and that is
21 your sole responsibility. Do you understand
22 that?

23 A. Yes, sir.

24 Q. Do you understand that you would be
25 expected, at the appropriate time to apply your

1 common sense, your sense of logic and reason,
2 your life's experiences, fairly and impartially
3 in analyzing the testimony of witnesses and any
4 exhibits that are introduced in deciding what
5 you find to be true. You've done that before
6 in your life, haven't you?

7 A. Yes, sir.

8 Q. And you could do that function, you're
9 willing to perform that function?

10 A. Right.

11 Q. And you understand that you'd make a
12 commitment to be fair and impartial in doing
13 that, and you could do that as well?

14 A. Yes, sir.

15 Q. Another part of that oath that you will
16 take, in addition to performing the tasks and
17 deciding the facts, by considering the
18 evidence, which consists of testimony and
19 exhibits, you would also promise to take the
20 law as the court gave it to you, as the
21 presiding judge gave it to you and apply that
22 law fair and impartially to those facts that
23 you determine. Do you understand that?

24 A. Yes, sir.

25 Q. And you could and would do that, as well?

1 A. I would.

2 Q. That means that if you heard some law that
3 -- first of all that differs from what your
4 understanding of the law was or you thought the
5 law ought to be changed or you just didn't
6 agree with the law, you thought that it was bad
7 law or you had some philosophy that says, 'you
8 know, that's not consistent with how I
9 believe.' No matter what the reason, you would
10 be expected and your oath would say that you
11 would set aside any feelings you may have and
12 you would take that law and apply it fairly and
13 impartially notwithstanding your own feelings.
14 You would do that?

15 A. Yes, sir.

16 Q. And you would do that fairly and
17 impartially?

18 A. Yes.

19 Q. As you know, persons accused of committing
20 criminal offenses, just as Mr. Dickerson, are
21 presumed to be innocent. I told you that on
22 Friday and you indicated that you had no
23 problem with that principle of law, is that
24 true?

25 A. That's true.

1 Q. In fact, it is an active presumption. We
2 have to actively presume they are innocent
3 until the State proves beyond a reasonable
4 doubt to a jury that they are guilty of that
5 offense. Do you understand that?

6 A. Yes, sir.

7 Q. There has been no trial of Mr. Dickerson.
8 Everything that we're talking about today is to
9 in no way suggest anything to you about how
10 that trial should be resolved. Today, as he
11 sits there, you see him as innocent of these
12 charges for which he stands accused. Is that
13 correct?

14 A. That's correct.

15 Q. I would also instruct you if you were on a
16 jury in a criminal case with me that the only
17 party that has to prove anything is the State.
18 They made the claim, they have to prove it. Do
19 you understand that?

20 A. Yes, sir.

21 Q. And persons accused of committing criminal
22 offenses never have to prove or disprove
23 anything. They don't have to explain anything,
24 they don't have to justify anything, they
25 certainly don't have to prove their innocence.

1 Do you understand that?

2 A. Yes.

3 Q. Would you have any problem following that
4 instruction?

5 A. No, sir.

6 Q. In fact, I would instruct you that they
7 don't even have to present any evidence.
8 Persons accused of committing offenses don't
9 even have to testify. If they don't present
10 any evidence or don't testify, the jury would
11 be instructed that they couldn't use that
12 against the person. Do you understand that?

13 A. Yes, sir.

14 Q. Would you have any problem following that
15 instruction?

16 A. No problem.

17 Q. And if in that criminal dispute we are
18 talking about the jury would be involved in the
19 sentencing process, then that would apply to
20 both phases. Do you understand that?

21 A. (No verbal response).

22 Q. Persons accused don't have any
23 responsibility at any time to prove their
24 innocence, and you would have no problem
25 honoring that; is that correct?

1 A. No problem.

2 Q. In that case -- and murder would be one of
3 the charges. If you considered all the
4 evidence and -- and I would instruct you that
5 the State has to prove each element beyond a
6 reasonable doubt for the offense of murder. If
7 you found that they had, then you would have to
8 return a verdict of guilty. Of course, if they
9 failed on one or more then you would have to
10 return a verdict of not guilty.

11 If in analyzing the evidence you are
12 firmly convinced that the State had established
13 each element beyond a reasonable doubt, you
14 would vote for guilty?

15 A. Yes, sir.

16 Q. Any hesitancy in doing that?

17 A. No.

18 Q. Likewise, if in analyzing the evidence you
19 weren't convinced of one or more elements,
20 would you return a verdict and vote for not
21 guilty?

22 A. Yes, sir.

23 Q. And would you have any hesitancy in doing
24 that?

25 A. No, sir.

1 Q. Let's talk a little, assuming in that
2 situation that jury also is going to have the
3 responsibility of determining the sentence,
4 okay?

5 A. (Affirmative nod).

6 Q. Am I understanding that at that time --
7 you had just voted for guilty; that is, the
8 intentional killing of somebody with malice,
9 a malice murder. Do you understand that?

10 A. Yes, sir.

11 Q. At that moment you still have not made a
12 determination which one applies, life or death;
13 is that right?

14 A. (No verbal response).

15 Q. Is that correct?

16 A. That's correct.

17 Q. Okay. You would want to go through the
18 second phase and hear all the evidence and the
19 law before making that decision?

20 A. Yes, sir.

21 Q. I would tell you that -- you know, it's
22 not usual that a jury in this state is involved
23 with the sentencing of a person for murder. Do
24 you understand that?

25 A. Yes, sir.

1 Q. Normally the jury makes a determination of
2 whether they committed the crime and once that
3 jury determines that they have, then the judge
4 imposes the sentence. Do you understand that?

5 A. Yes, sir.

6 Q. If a judge imposes the sentence for the
7 crime of the intentional killing of another,
8 with malice, the maximum sentence that can be
9 given is life imprisonment without the
10 possibility of parole. The judge could never
11 impose a death sentence. Do you understand
12 that?

13 A. Yes, sir.

14 Q. But the judge is not limited to life
15 without parole, without the possibility of
16 parole. But in this setting, because this
17 crime would be something that would warrant a
18 jury -- there's something else that happens in
19 that second phase, that has to be established
20 for the jury to even get to that point of being
21 able to consider it. The law says that the
22 State, after they've proven the crime had been
23 committed, the crime of murder, has to prove
24 something that we call aggravating
25 circumstances. There are circumstances that

1 our law has defined, such as an example would
2 be the killing of a police officer, that's one
3 area; killing of a child, that's another; and
4 there are several others.

5 Those would be defined for you but the
6 State has to prove that beyond a reasonable
7 doubt before you can even consider it, because
8 it has to be more than just murder for the jury
9 to consider that. Do you understand that?

10 A. Yes, sir.

11 Q. Would you have any problem following that
12 instruction?

13 A. No problem.

14 Q. That standard of course is beyond a
15 reasonable doubt. I would instruct you that if
16 the jury, after considering it, does not find
17 that the State has met its burden, then the
18 only verdict that you can return is life
19 without parole. Would you have any problem
20 following that instruction?

21 A. No, sir.

22 Q. My instruction would also say that if the
23 jury finds that there was an aggravating
24 circumstances beyond a reasonable doubt, at
25 least one, then they may consider a death

1 sentence, but that doesn't mean that you have
2 to impose it. In fact, I would instruct you
3 that's up to the jury. I would never instruct
4 you that you have to impose a death sentence.
5 Do you understand that?

6 A. Yes, sir.

7 Q. That means that you have the option and it
8 is my understand that at that point, you've now
9 determined that there is an aggravating
10 circumstance, in other words there is some --
11 something that makes this a more serious
12 murder, based on our law that defines
13 aggravating circumstances. You now are
14 sitting, looking at 'which one am I going to
15 choose?' It's my understanding that you would
16 still have to evaluate all the other evidence,
17 consider everything in the law before you could
18 make a decision. Is that correct?

19 A. Yes, sir.

20 Q. And as I understand, after considering it
21 all, if the jury had that option, there are
22 circumstances in your mind that would warrant
23 you signing, and you could, a verdict of death?

24 A. Yes, sir, it's a possibility.

25 Q. Likewise there is a possibility, given the

1 option of returning a verdict of death, that
2 you would say, 'No, I don't think death is
3 appropriate here but life without parole', life
4 imprisonment without the possibility of parole.

5 A. Okay.

6 Q. But you won't know which until you have
7 heard it all?

8 A. That's correct.

9 Q. The court would also instruct you in that
10 situation that there may be in the evidence
11 something that we call mitigating
12 circumstances. Some are defined by statute and
13 some are nonstatutory. Mitigating
14 circumstances are circumstances such as the
15 background of the person accused of the crime,
16 whether they've had some mental impairment,
17 some mental issues that wouldn't rise to
18 insanity, would be a defense but they are
19 issues that our law would recognize as
20 mitigating circumstances; and such as
21 addictions, that type of thing. The court
22 would instruct you that in fashioning a
23 sentence, before you could decide which one you
24 have to give meaningful consideration to any
25 mitigating circumstances. Would you do that?

1 A. Yes, sir.

2 Q. You could do that?

3 A. Yes, sir.

4 Q. And you would consider any of those
5 mitigating circumstances?

6 A. Yes, sir.

7 Q. The record may have none. Obviously as I
8 stated before, the defendant doesn't have any
9 burden at that second phase, doesn't have to
10 prove anything. You wouldn't have any problem
11 -- if there's no mitigating circumstances
12 present, you wouldn't hold that against the
13 defendant, would you?

14 A. No.

15 Q. Okay. Because the court would instruct
16 you that even if there aren't mitigating
17 circumstances the jury has the right, for no
18 reason whatsoever, to decide not to impose a
19 death sentence but instead to impose life
20 without parole, life imprisonment. Do you
21 understand that?

22 A. Yes, sir.

23 Q. You could follow that instruction in that
24 regard, as well; is that true?

25 A. Yes, sir.

1 Q. I am not asking you what your decision
2 would be but you could give meaningful
3 consideration, that is to think about, analyze
4 it, and make a decision for yourself?

5 A. Yes, sir.

6 Q. You're confident that you could do that
7 fairly and impartially?

8 A. Yes, sir.

9 Q. All right. Now, looking at this case just
10 for a moment -- and I am just going to ask you
11 this question, is there anything that you've
12 heard about this case that would give you any
13 concern about your ability to be that fair and
14 impartial juror that you've just described in
15 that case that we've been talking about?

16 A. No, sir, none.

17 THE COURT: Please answer any
18 questions that the attorneys may have.

19 MR. BLOOM: May it please the court.

20 THE COURT: Yes, sir.

21 VOIR DIRE EXAMINATION

22 BY MR. BLOOM:

23 Q. Good afternoon, Mr. Waterman. My name is
24 Jeff Bloom and along with Andrew Carroll, we
25 represent William Dickerson. I just have a few

1 followup questions from what Judge Dennis asked
2 you about. Okay?

3 A. Okay.

4 Q. First off, I just want to ask is there
5 anything in your background or life experiences
6 that would make it difficult for you to serve
7 on a murder jury?

8 A. No, sir.

9 Q. Next, let me just ask you if we were
10 standing around and had a Diet Coke or a cup of
11 coffee and something came on the news about the
12 death penalty and we got into a discussion,
13 what would your opinion about the death penalty
14 be?

15 A. I would have to -- I believe that it would
16 have to be a very serious offense.

17 Q. But as Judge Dennis asked you, it's only a
18 murder case, it's not for just serious offense.

19 A. Yes, sir, I understand.

20 Q. It's only, as he described, malice murder
21 where a person did it, they intended to do it,
22 with malice, an evil heart, they got the right
23 one, beyond a reasonable doubt, you're not
24 going to automatically give death in that case?

25 A. No.

1 Q. Are there any other opinions of feelings
2 that you have about the death penalty?

3 A. (Negative gesture). No, sir.

4 Q. I'm glad you answered because this lady,
5 our kind court reporter can't take down a head
6 shake.

7 A. Okay, all right. No, sir.

8 Q. That's okay. Is this the first time that
9 you've ever done this?

10 A. Yes, sir.

11 Q. All right. Let me ask you next, sir, --
12 have you given a lot of thought to the death
13 penalty or had a lot of discussions about it or
14 is it something that has come up in your life's
15 experiences?

16 A. In general, yes, we've talk about it in my
17 family and such but I -- I really have my own
18 opinions on it.

19 Q. What kind of opinions have you expressed
20 to your family or your friends when that
21 discussion has come up?

22 A. I grew up in a Christian household but I
23 feel that, you know, if it is a murder charge
24 and the crime is severe enough, that it's the
25 right thing to do.

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1 Q. I have to go back, because I just want to
2 be clear. Does that mean that if it is a
3 murder charge, as the judge explained to you, a
4 malice murder, that you're automatically going
5 to vote for death once you found them guilty of
6 that?

7 A. No, absolutely not.

8 Q. You can wait and listen, as Judge Dennis
9 described, to mitigating circumstances; such as
10 drug addiction, how a person was raised, you
11 could listen to that type of evidence?

12 A. Yes, sir.

13 Q. Then you can give that meaningful
14 consideration?

15 A. Yes, sir.

16 Q. Because you understand that some people
17 think, you know, 'I just want to hear what
18 happened, the facts of the crime. I don't want
19 to hear all that stuff about how someone was
20 raised.' You're not in that group?

21 A. No, I'm not.

22 Q. You are going to give meaningful
23 consideration and weigh things like a person's
24 background before you give the death penalty?

25 A. Correct.

1 Q. Lastly, let me just ask you, sir, -- well,
2 let me go back to one other question about your
3 opinion on the death penalty. Some people feel
4 that they fall in the camp that says an eye-
5 for-an-eye and a tooth-for-a-tooth. Does that
6 describe you?

7 A. No.

8 Q. All right. And you understand what I mean
9 by that?

10 A. Yes, sir, I do.

11 Q. In response your ---

12 A. I agree that's always the case for some
13 people.

14 Q. All right, sir. Lastly I want to ask
15 you, as Judge Dennis explained, the law never
16 requires the death penalty. You can always
17 vote for a life without parole sentence if you
18 feel that is a proper sentence. Do you
19 understand that explanation that the judge gave
20 you?

21 A. Yes, sir.

22 Q. And in that vein, the law also says that
23 that choice, whatever choice that you make, for
24 whatever penalty, including life without
25 parole, after you hear all the evidence, after

1 you have discussed with your jurors and you
2 deliberate with your fellow jurors, you get to
3 make your own moral, individualized choice. Do
4 you think that you can do that?

5 A. Yes, sir.

6 Q. And if you were in a jury and after you'd
7 heard all the evidence, deliberated with your
8 jurors, everybody was looking to one side or
9 the other, if eleven jurors were voting one way
10 and you were voting another, and you'd made
11 your own moral, individualized choice, could
12 you stand by that or would you just kind of
13 say, 'You know what? It's late, I'm hungry. I
14 am going to go home. I am just going to go
15 along to get along.'

16 A. I would stand by my opinion.

17 Q. You struck me as that kind of person, but
18 you know that I have to ask.

19 In that vein, then you would ask those
20 other jurors to respect your vote?

21 A. Yes, sir.

22 Q. However it was split, and you'd respect
23 theirs?

24 A. Absolutely.

25 MR. BLOOM: Thank you, sir. I have

1 nothing further.

2 THE COURT: Solicitor?

3 SOLICITOR WILSON: Thank you, Your
4 Honor. Mr. Waterman, I'm Scarlet Wilson, I'm
5 the Solicitor here. This is Bruce Durant and
6 Rutledge Durant and the three of us will be
7 presenting the evidence in this case.

8 Based on all your answers and the
9 questions that have been asked, I don't have
10 anything further for you. Thank you.

11 THE COURT: Thank you, Solicitor.
12 Mr. Waterman, I am going to ask that you step
13 out for just a moment. We will be with you
14 momentarily, sir.

15 (JUROR NUMBER 330 EXITS COURTROOM)

16 THE COURT: I find -- I believe this
17 young man is qualified. Does the State have
18 any objection to his being qualified?

19 BRUCE DURANT: No, sir.

20 THE COURT: Does the defendant have
21 any objection?

22 MR. BLOOM: No, sir.

23 THE COURT: Thank you very much.
24 Bring him in, please.

25 (JUROR NUMBER 330 ENTERS COURTROOM)

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1 THE COURT: Thank you, Mr. Waterman.
2 Thank you very much, and I appreciate your
3 patience. You've been found to be qualified to
4 be a member of the panel from which we will
5 select our jury.

6 We hope that will occur on Thursday
7 morning at 9:30. It will occur in this
8 courtroom and when you're instructed to return
9 you will need to come directly to the
10 courtroom. Make plans so that if -- if you are
11 selected, obviously we will start the trial on
12 Thursday, so make plans if need be to spend the
13 day with us and then we would continue of
14 course with the trial.

15 I need for you to call the number
16 tonight after 6:00 o'clock and follow the
17 instructions that appears on there concerning
18 the Dickerson panel. There will be some others
19 about -- remember, we identified a number of
20 panels? You were in Panel Number Six. There
21 are probably going to be instructions for Panel
22 Eleven and Panel Twelve to come in, and that
23 doesn't apply to you obviously but it will say
24 that the Dickerson panel needs to -- and it may
25 say to call back tomorrow night. I don't know

1 yet. Whatever the instruction, just follow it.
2 Whenever you are told to be here, just be here
3 at that time.

4 Until then and until you have been
5 dismissed from this case, please remember that
6 you still are not at liberty to discuss this
7 case with anyone or permit anyone to talk with
8 you about it. Also, please continue not to
9 watch any news programs about it or read any
10 news accounts. Have a great day and we'll see
11 you, hopefully, Thursday.

12 JUROR NUMBER 330: Yes, sir.

13 (JUROR NUMBER 330 EXITS COURTROOM)

14 THE COURT: Ms. Green, please. She
15 is Juror Number 121.

16 (JUROR NUMBER 121 ENTERS COURTROOM)

17 THE COURT: Good morning, Ms. Green.
18 If you will sit and pull yourself up so that
19 you can speak into that mic comfortably.
20 Thank you for your patience, I appreciate you
21 waiting.

22 We are going to continue that process
23 that we started on Friday of asking you some
24 questions. As you recall, there really aren't
25 any correct answers to any of these questions.

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1 They are just designed to help you make a
2 determination of whether you can be fair and
3 impartial in this case as a judge, and help us
4 determine whether you can be fair and
5 impartial. Do you understand that?

6 JUROR NUMBER 121: (Affirmative nod).

7 THE COURT: All that we ask is that
8 you truthfully respond to those questions and
9 completely respond to those questions. Will
10 you do that?

11 JUROR NUMBER 121: Yes.

12 THE COURT: I would remind you in
13 that regard that you are still under oath in
14 this matter. You want to pull that microphone
15 to you so that you can speak more into the
16 microphone?

17 JUROR NUMBER 121: (Complies).

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

21 JUROR NUMBER 121: Okay?

22 ANITA GREEN, being duly sworn to tell
23 the truth, the whole truth and nothing but the
24 truth, testified, as follows:

25 VOIR DIRE EXAMINATION

1 BY THE COURT:

2 Q. Let me ask you a question because I see
3 something in your questionnaire when I was
4 reviewing it to ask the questions today, it
5 didn't come up and I don't recall you coming up
6 and sharing with me any concern. You didn't
7 come up and ask to be excused, did you?

8 A. No.

9 Q. You put in there, on the last questions
10 where it says "Statements", you said "I would
11 rather not be picked because sometimes
12 criminals might remember who you are and they
13 want to find you and hurt you or worse." Is
14 that what you put?

15 A. Yes.

16 Q. Is that how you feel?

17 A. Yes.

18 Q. Would that influence your serving on a
19 jury?

20 A. Well, I'd rather not be a part of a jury.

21 Q. I understand that but -- and I respect
22 that, that's probably true of a lot of people.
23 My questions is, I understand that is how you
24 feel, but my question is would that interfere
25 with your serving as juror, performing the

1 function if you were selected?

2 JUROR NUMBER 121: Yes.

3 THE COURT: It would?

4 JUROR NUMBER 121: That's the way that
5 I feel.

6 THE COURT: I am going to ask you to
7 step out for just a moment. We will be with
8 you momentarily. We'll just take a moment. I
9 need to take up something with the attorneys.

10 (JUROR NUMBER 121 EXITS COURTROOM)

11 THE COURT: After reading that last
12 night, I am very concerned about her ability to
13 perform the function, just the basic function,
14 of a juror. I don't think that she is
15 qualified as a juror, just on basic qualifica-
16 tion. Has nothing to do with a death penalty.
17 Any objection from the State?

18 SOLICITOR WILSON: None from the
19 State.

20 THE COURT: Any objection from the
21 defense?

22 MR. BLOOM: No, sir.

23 THE COURT: Thank you very much. I
24 appreciate your patience with the court. I
25 should have caught it earlier, but I didn't.

1 Ask her to come in.

2 (JUROR NUMBER 121 ENTERS COURTROOM)

3 THE COURT: Thank you, Ms. Green.

4 I am going to excuse you from further
5 participation in this dispute. You're free to
6 leave. You've finished your services this
7 week. Thank you for working with us, thank you
8 for your patience. Good luck to you, ma'am.

9 JUROR NUMBER 121: Thank you.

10 (JUROR NUMBER 121 EXITS COURTROOM)

11 THE COURT: Next is Donna Melville,
12 Number 209.

13 (JUROR NUMBER 209 ENTERS COURTROOM)

14 THE COURT: Good morning, Ms.
15 Melville. If you will sit and pull yourself up
16 so that you can speak into that mic
17 comfortably. How are you?

18 JUROR NUMBER 209: I'm good. How
19 are you?

20 THE COURT: Fine. I apologize for
21 keeping you so long. In this process, we make
22 the best predictions that we can but you don't
23 always get them right.

24 JUROR NUMBER 209: I understand.

25 THE COURT: But I certainly

1 appreciate you patience. We are going to
2 continue the process that we started on Friday.
3 There are some questions that I have for you
4 and then the attorneys may have some questions.
5 As you will recall from Friday, there really
6 are no correct answers to any of these
7 questions. Their purpose is really to help you
8 to make a determination as to whether you can
9 be a fair and impartial juror?

10 JUROR NUMBER 209: Okay.

11 THE COURT: And to help us make that
12 assessment and determination, as well. So all
13 that we ask is that you be truthful in your
14 responses and that you will respond completely.
15 Will you do that?

16 JUROR NUMBER 209: I can do that.

17 THE COURT: Please understand that
18 we are not trying to change your beliefs or
19 philosophies. You're entitled to those, and
20 don't think that you have to defend them at
21 all. Nor are we trying to invade your privacy
22 either. Just answer the questions completely
23 and truthfully, that is all that we are asking
24 of you.

25 JUROR NUMBER 209: Yes, sir.

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

4 JUROR NUMBER 209: Yes, sir.

5 DONNA MELVILLE, being duly sworn to
6 tell the truth, the whole truth and nothing but
7 the truth, testified, as follows:

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. Since we were last together, have you
11 talked with anyone or let anyone talk about
12 this case in your presence?

13 A. At work some of the others had read
14 things in the paper and they asked me if this
15 was the trial that I was going to be on the
16 jury for, and I told them yes but that was the
17 extent of it.

18 Q. That was the extent of it?

19 A. (Affirmative nod).

20 Q. The court would not consider that to
21 violate anything, that's just simply responding
22 where you're going to be. That's all.

23 A. Right.

24 Q. They didn't talk any specifics about the
25 case itself, is that correct?

1 A. No, they didn't.

2 Q. Or attempt to talk with you about it?

3 A. (Negative gesture).

4 Q. Have you read anything about it or viewed
5 any news accounts about it?

6 A. No, sir.

7 Q. I know you heard a number of names on
8 Friday but I failed to mention two names that I
9 need to ask you about. Are you related by
10 blood or marriage, have any business dealings
11 with or socially or casually acquainted with or
12 have any dealings with Jeff Osborne or Matt
13 Casey?

14 A. No.

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

18 A. (Affirmative nod).

19 Q. Which type most accurately describes you?

20 A. Type three.

21 Q. Type three as I understand it, basically
22 we're talking about -- the type juror that we
23 are talking about, that jury would have the
24 responsibility of determining an appropriate
25 sentence in a murder case.

1 What type three says is that while that
2 juror has just completed, would have completed
3 the first phase, that is that they've found
4 that person guilty of the crime of
5 intentionally killing somebody, not a mistake,
6 not manslaughter, not self-defense, not
7 accident, a person with malice has killed
8 somebody intentionally, willfully, meant to do,
9 they've got the right person and now the jury
10 has concluded that the State has the right
11 person charged with the crime.

12 This is before you start the second phase
13 where the jury is now going to hear some
14 evidence to help the jury make a determination
15 as to what the appropriate sentence would be,
16 you haven't heard that yet.

17 Am I to understand that notwithstanding
18 that you have been a part of the jury where you
19 have considered a very serious, horrible crime,
20 somebody had been killed intentionally, you
21 still don't have a decision in your mind of
22 what the appropriate sentence would be at that
23 point. Is that correct?

24 A. Yes, sir.

25 Q. Because a type three juror says 'I haven't

1 heard it all yet', and that's what you are?

2 A. (Affirmative nod).

3 Q. In other words, you want to wait until you
4 go through that part where you hear all the
5 evidence, receive the law and then deliberate
6 about what the appropriate sentence would be.
7 Is that correct?

8 A. (Affirmative nod).

9 Q. Now, you understand that a jury has a very
10 important function in this process of dispute
11 resolution. They have the job of deciding the
12 facts, they are the sole judges of the facts.
13 Do you understand that?

14 A. (Affirmative nod).

15 Q. I appreciate that -- it's very
16 conversational and it doesn't offend me in the
17 slightest, nor does -- Ms. Garrison (court
18 reporter) is sitting there and she can put
19 "nods head" but it's very important and would
20 help if you would just say "yes" or "no".

21 A. Okay.

22 Q. Please understand that it is not offensive
23 at all, it's just for the purpose of the
24 record. You would promise if you were on a
25 jury to decide those facts by considering one

1 source, that's evidence. Evidence is testimony
2 of witnesses and exhibits. You would do that?

3 A. (Affirmative nod).

4 Q. Obviously you're expected to use your
5 common sense, your sense of logic and reasoning
6 and your life's experiences. Part of that
7 function is that you promise that you'd have an
8 open mind, just as you've just talked about in
9 that situation we just discussed. You hadn't
10 heard all the evidence about the appropriate
11 sentence and you'd have an open mind as to the
12 sentence, is that correct?

13 A. Right.

14 Q. That is the way that a jury has to start a
15 case, do you understand that?

16 A. Yes, I do.

17 Q. That would be yours?

18 A. Yes.

19 Q. You'd promise not to change that until the
20 court told you to begin your deliberations. Is
21 that correct?

22 A. That's true.

23 Q. And you have the ability then of applying,
24 and would apply, your common sense, your sense
25 of logic and reasoning fairly in deciding what

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1 you believe to be the truth?

2 A. Yes.

3 Q. Now, you understand that in a criminal
4 dispute in this state persons who are accused
5 are never required to prove or disprove
6 anything at all; do you understand that?

7 A. (Affirmative nod).

8 Q. In fact, we talked about one principle of
9 law, that is the presumption of innocence on
10 Friday and I mentioned to you that while Mr.
11 Dickerson has been accused of several criminal
12 offenses that the law presumes that he is
13 innocent until the State proves him guilty
14 beyond a reasonable doubt. Do you understand
15 that?

16 A. Yes, sir.

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

19 A. No.

20 Q. That principle of law is really not just a
21 thought, it is an active presumption. It means
22 that when people are accused of something,
23 we're required as citizens, as persons in this
24 state, to look at him and see him as innocent.
25 Do you see Mr. Dickerson as innocent of those

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1 charges against him today?

2 A. Yes, sir.

3 Q. Okay. You understand that that position
4 can't change until we've been convinced beyond
5 a reasonable doubt and that is each element of
6 the offense has been established to our
7 satisfaction to make us change that position.
8 Do you understand that?

9 A. Yes, sir.

10 Q. I would tell you that in criminal
11 disputes, persons accused don't have to prove
12 or disprove anything. They certainly don't
13 have to prove their innocence. They don't even
14 have to present any evidence. Do you under-
15 stand that?

16 A. Yes, I do.

17 Q. Nor does a person accused of a criminal
18 offense even have to testify in a dispute, do
19 you realize that?

20 A. Yes.

21 Q. And you understand that the court would
22 instruct you, if you're on a jury in that
23 situation, that you couldn't use that against
24 that person in any way, shape or form at any
25 time during that proceeding. Would you have

1 any problem following that instruction?

2 A. No.

3 Q. Okay. As I understand it, you would then

4 after hearing all the evidence and receiving

5 the law, you would then in that situation be

6 able to retire, evaluate that evidence and

7 decide for yourself whether or not the State

8 has convinced you beyond a reasonable doubt of

9 the offense of murder? Is that correct?

10 A. That's correct. Yes, sir.

11 Q. And my instruction would be that if you

12 are convinced as to each element, your

13 responsibility and duty would be to return a

14 verdict of guilty. But if you weren't

15 convinced of one or more elements, then your

16 duty and responsibility would be to return a

17 verdict of not guilty. Would you have any

18 problem following that instruction?

19 A. No, sir.

20 Q. Now, let's assume in that situation that

21 the jury had found a verdict of guilty. This

22 would be one of those unusual cases because

23 typically in this state, it is not common for a

24 jury to participate in sentencing someone for

25 murder. Do you understand that?

1 A. (No verbal response).

2 Q. Typically that decision of whether they
3 committed the offense is certainly left to the
4 jury and the jury makes a decision of whether
5 the State has established it's case. Once the
6 jury convicts that person of murder, then the
7 trial judge would impose the sentence. Do you
8 understand?

9 A. Yes, sir, I do.

10 Q. The trial judge in that setting, without a
11 jury empaneled, unless there was some special
12 waiver involved, would never have the option of
13 sentencing that person to a death sentence.
14 The most serious sentence that a judge could
15 impose would be life without the possibility of
16 parole. Do you understand that?

17 A. Yes.

18 Q. And the judge isn't bound to that
19 sentence. Do you realize that?

20 A. I do.

21 Q. It's only in these limited situations
22 where we have a jury empaneled, and its very
23 restricted types of case where the jury decides
24 what the sentence will be. In this murder
25 case, assume for the purpose of discussion, it

1 is that type of case.

2 As I understand -- now I want to reaffirm
3 something and confirm something, you at that
4 point -- you've participated now and decided on
5 the guilt but you still don't have an opinion
6 yet as to what is the appropriate sentence, is
7 that correct?

8 A. Yes, sir.

9 Q. In the second phase, it's an important
10 part, this second phase, because the State has
11 to prove something before the jury can even
12 think about imposing a death sentence. They
13 have to prove the existence of some aggravating
14 circumstances. The law defines those. The
15 court would define them for you. You have to
16 concluded, considering the evidence, that at
17 least one of those aggravating circumstances
18 has been established beyond a reasonable doubt.

19 Some of them or a couple of them would be
20 the killing of a police officer, the killing of
21 a child. That would then -- if the jury found
22 that type of situation, that would be one of
23 those aggravating circumstances.

24 The jury has to decide that aggravating
25 circumstances exist before they could even

1 consider it, because if the jury in analyzing
2 the evidence finds that they are not convinced
3 of an aggravating circumstance, then the only
4 verdict that can be returned is life without
5 parole. Do you understand that?

6 A. I understand.

7 Q. Would you have any problem following that
8 instruction?

9 A. No, sir.

10 Q. The instruction would further say that if
11 the jury did conclude that the State had met
12 its burden of proof, that the jury then and
13 only then would have the option of considering
14 a death sentence. That doesn't mean that they
15 have to, in fact the court would never instruct
16 you that you had to return a death sentence.
17 It is just to imply that now the jury has to
18 make the choice, the jury now has to weigh and
19 evaluate the evidence and determine whether a
20 death sentence or life imprisonment without the
21 possibility of parole is appropriate. Do you
22 understand that.

23 A. I understand.

24 Q. And it is my understanding that as a type
25 three juror that it is after that analysis has

1 been performed, there's discussion among the
2 jurors, the law considered, that you could
3 decide whether in that situation that we are
4 talking about you -- you in some situations may
5 impose the death sentence, even though you have
6 the right to find life imprisonment without the
7 possibility of parole or you may impose life
8 without parole even though you have the option
9 of imposing a death sentence. Is that correct?

10 A. That's correct.

11 Q. In addition the aggravating circumstances
12 and all evidence that would be in the record
13 for your consideration of determining the
14 appropriate sentence, I would instruct you that
15 there are certain statutory mitigating
16 circumstances that may be in the record, some
17 nonstatutory mitigating circumstances, and I
18 would instruct the jury that they have to give
19 meaningful consideration to those mitigating
20 circumstances. Some of the statutory
21 mitigating circumstances are -- such as the
22 background of the person accused, maybe mental
23 health issues, their upbringing, the kind of
24 childhood that they've had, addictions, those
25 types of things. It is my understanding that

1 if the record contained that, that you could
2 consider and would consider that in determining
3 what the appropriate sentence would be. Is
4 that correct?

5 A. That's correct.

6 Q. Do you understand that the record may have
7 -- that the evidence may be none, that there
8 may be no mitigating circumstances?

9 A. (Affirmative nod).

10 Q. I would tell you that, obviously as I told
11 you before, the person accused of committing a
12 criminal offense doesn't have the
13 responsibility of proving anything, and that
14 includes the second phase. If there aren't
15 any, you wouldn't hold that against the person;
16 would you?

17 A. No, sir.

18 Q. That's very important before the
19 instruction would also say that you have the
20 right to impose a life imprisonment without the
21 possibility of parole for no reason whatsoever
22 if you choose to do so. Do you understand
23 that?

24 A. Yes, sir.

25 Q. And you would consider that right, as

1 well, as I understand?

2 A. Yes, sir.

3 Q. But it is my understanding that you just
4 don't know which one it would be until you've
5 heard it all and go through that process?

6 A. That's correct.

7 Q. Let me ask you -- of course, we've been
8 talking about this abstract case and nothing,
9 nothing that we talk about implies anything
10 about Mr. Dickerson's case, but what you've
11 heard thus far about this case would give you
12 no concern, based on your philosophy, your
13 background, your experiences in life, of your
14 being a fair and impartial judge with me?

15 A. (Negative gesture), only what you told me
16 from Friday.

17 Q. And that doesn't give you any concern?

18 A. No, sir.

19 Q. Okay.

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

22 VOIR DIRE EXAMINATION

23 BY SOLICITOR WILSON:

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

1 Durant and this is Rutledge Durant, they are
2 both prosecutors in my office as well. We're
3 the prosecutors in the case, so we will be the
4 ones presenting evidence and I just want to ask
5 you a few followup questions to the Judge's
6 questions. Okay.

7 A. Okay.

8 Q. That is mainly based on your answers here
9 and also we were able to get, both sides, a
10 copy of your questionnaire. In your
11 questionnaire you stated that you have no
12 strong feelings about the death penalty.

13 A. That's right.

14 Q. Can you just tell me what your feelings
15 are?

16 A. I think that maybe the death penalty would
17 apply to someone who'd killed or murdered a
18 child, but ---

19 Q. Is that the only time you think?

20 MR. BLOOM: Objection.

21 THE COURT: Sustained.

22 JUROR NUMBER 209: I ---

23 SOLICITOR WILSON: You can't -- you've
24 got to wait for me to ---

25 THE COURT: Wait for the next

1 question.

2 JUROR NUMBER 209: Okay.

3 EXAMINATION CONTINUED

4 BY SOLICITOR WILSON:

5 Q. You said that you were a type three juror?

6 A. Yes, ma'am.

7 Q. You understand -- and the Judge has talked
8 about this a good bit -- that not all murders
9 qualify for the death penalty?

10 A. Yes, I do.

11 Q. Even though murder in itself means that
12 something was malicious, that a person acted
13 with malice, intent, killed someone, we're
14 talking about a situation where a jury has
15 already found that but then the State has an
16 additional burden. We have a burden to prove
17 aggravating circumstances.

18 A. Okay.

19 Q. Would you be able to listen and consider
20 and make a decision about an aggravating
21 circumstance beyond the guilt phase?

22 A. Yes, I would.

23 Q. After a guilty verdict, if you were on a
24 case, you wouldn't just shut down and say, 'I
25 don't want to hear any more.'

1 A. No, I wouldn't.

2 Q. So, likewise, regarding what the Judge
3 described actual damages mitigating
4 circumstances, things that might help you
5 understand why a person acted the way that they
6 did or things about the crime that you hadn't
7 heard before that might shed a different light,
8 you would be very interested in hearing that as
9 well?

10 A. That's right, I would keep an open mind
11 about it.

12 Q. Now, as the death penalty goes, being on a
13 jury, I want to make sure that you understand
14 that it is not enough to be able to consider
15 the death penalty. You'd have to be able to
16 vote for the death penalty in certain
17 situations. Do you think you could do that?

18 A. Yes.

19 Q. Could you also sign your name to the
20 warrant or verdict commanding someone's death?

21 A. Yes.

22 Q. It would be hard.

23 A. It would be hard to do.

24 Q. On the spectrum of those who think the
25 death penalty should be applied in every murder

1 and those who think it should never apply,

2 where are you?

3 A. Probably right in the middle.

4 Q. Right in the middle?

5 A. (Affirmative nod).

6 Q. It just depends on the circumstances?

7 A. (Affirmative nod).

8 Q. And if you were on a jury, would you be
9 able to listen to other people's opinions and
10 thoughts on the evidence even if you had made
11 up your mind?

12 A. Yes.

13 Q. You would consider what other people
14 thought?

15 A. Yes.

16 Q. And if you thought that there was someone
17 who missed something or didn't quite understand
18 a concept that the Judge had given, or maybe a
19 piece of evidence or testimony, you think you
20 could use your skills to help them understand
21 and feel or think the way that you were
22 thinking?

23 A. Yes.

24 Q. So you can deliberate?

25 A. Yes.

1 SOLICITOR WILSON: That's all that I
2 have, Your Honor.

3 THE COURT: Thank you. Any
4 questions?

5 VOIR DIRE EXAMINATION

6 BY MR. BLOOM:

7 Q. Good afternoon, Ms. Melville. How are you
8 today?

9 A. Good.

10 Q. My name is Jeff Bloom. Along with Andrew
11 Carroll, we represent Mr. Dickerson. I am just
12 going to do some followup and I will try not to
13 repeat. Okay?

14 A. Okay.

15 Q. Is this your first time in this kind of
16 situation?

17 A. Yes, it is.

18 Q. Are you a little nervous?

19 A. I'm okay.

20 Q. Well, I was nervous when I started off
21 Monday so -- it's getting easier. Let me start
22 by asking you -- I am not going to try to
23 repeat but I want to make sure that I
24 understand your answers. Judge Dennis asked
25 you if you were a juror on a case, trying to

1 decide one penalty, life without parole or the
2 death sentence, that you would look to
3 mitigating circumstances.

4 A. (Affirmative nod).

5 Q. Sometimes we forget what these words are
6 but he gave you a list and it was things like
7 drug addiction, mental health, how a person was
8 raised. I understand that would be important
9 to you and that you could consider that?

10 A. Yes.

11 Q. Because you understand that some jurors,
12 'I just want to look at the facts of the crime.
13 That other stuff has nothing to do with it.'
14 But you're not in that group?

15 A. No, sir.

16 Q. So that is something that you could give
17 meaningful consideration to, and you'd be
18 interested in hearing that?

19 A. Yes, sir.

20 Q. Let me ask you next, the Judge also
21 described of course that you'd never get to a
22 sentence phase, second phase, and decide the
23 penalty unless a person is convicted of what
24 the Judge explained to you as malice murder --
25 that the person did it, intended to do it, with

1 malice, an evil heart, got the right person, it
2 was not accident, not self-defense, insanity or
3 manslaughter, heat-of-passion. There are some
4 jurors that say, 'Once I've convicted someone
5 of malice murder, I'm going to automatically
6 vote for death.' That doesn't describe you?

7 A. No.

8 Q. All right. Now, I just want to ask you a
9 few questions about your questionnaire. You
10 have worked at MUSC in the past at some point?

11 A. (Affirmative nod).

12 Q. Some of the witnesses have also been
13 employed there. I know it's a big place. You
14 heard their names but I just want to review.
15 One of the witnesses was listed as Sandra
16 Fokes, she has also gone by Sandra Jenkins or
17 Sandra Dickerson in the past. Does that name
18 ring a bell?

19 A. No.

20 Q. She may have worked in maintenance,
21 clerical duties or -- but you don't know her?

22 A. I don't remember anyone by those names.

23 Q. What department did you work in when you
24 were there?

25 A. Pediatrics, for children.

1 Q. Again, I ---

2 THE COURT: Ms. Melville, I am going
3 to ask you -- could you pull that mic so that
4 you could speak into it, please. Thank you so
5 very much. I'm sorry.

6 EXAMINATION CONTINUED

7 BY MR. BLOOM:

8 Q. There is a Dr. Cynthia Schandl who works
9 there in Pathology, does autopsies. Do you
10 know her?

11 A. No, sir, I don't know her.

12 Q. Lastly, ma'am, I want to ask you -- Judge
13 Dennis of course instructed you that in such
14 cases that one reasons jurors may consider a
15 life sentence is for any reason, no reason, no
16 reason at all, for a simple act of mercy. Some
17 jurors, you know, just say 'I can't follow
18 that.' I take it from your answers that is an
19 instruction that you could follow?

20 A. Yes.

21 Q. That is something that is important to
22 you?

23 A. Yes.

24 Q. All right. And you understood his
25 instructions that the death penalty is never

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1 required.

2 A. I understand that.

3 Q. Okay. In fact, the law says that it is an
4 individual, reasoned moral, individualized
5 judgement. Right?

6 A. Right.

7 Q. And you could make that moral,
8 individualized choice for you if you were in a
9 jury room?

10 A. Yes.

11 Q. After you've heard all the evidence and
12 discussed with your fellow jurors, there had
13 been debate back and froth, everybody had
14 listened to each other and you came to your own
15 moral, individualized choice about the penalty
16 that you thought was appropriate and eleven
17 jurors were going one way and you another,
18 would you be able to stand by your reasoned,
19 individual moral judgment?

20 A. Yes, sir.

21 Q. You are not the kind of person who would
22 just say, 'You know, it's late. I'm hungry.
23 I'm ready to go along to get along.'

24 A. No.

25 Q. You don't strike me as that but you know

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1 that I have to ask.

2 A. Yes, sir.

3 Q. You would want them to respect your choice
4 and you would respect theirs?

5 A. Yes, sir.

6 MR. BLOOM: Thank you, ma'am.

7 THE COURT: Anything else,
8 Solicitor?

9 SOLICITOR WILSON: No, sir.

10 THE COURT: Ms. Melville, thank you
11 very much. If you would step out for just a
12 few moments, we will be with you in just a
13 second.

14 (JUROR NUMBER 209 EXITS COURTROOM)

15 THE COURT: The court believes that
16 she is qualified. Any objection from the
17 State?

18 SOLICITOR WILSON: No, sir.

19 THE COURT: Any objection from the
20 defendant?

21 MR. BLOOM: No, Your Honor.

22 THE COURT: Thank you very much.
23 Ask her to step in.

24 (JUROR NUMBER 209 ENTERS COURTROOM)

25 THE COURT: Ms. Melville, thank you

1 very much. I appreciate your patience. You've
2 been found to be qualified to be a member of
3 the panel from which we will select our jury.

4 We anticipate and hope that will occur
5 Thursday morning at 9:30. It will occur here
6 in this courtroom. So when you are instructed
7 to return, you will need to come back and take
8 your seat out there. If you are -- when you do
9 come, please know that we -- we need to be
10 prepared to go forward, so make whatever
11 arrangements that you need to do at work that
12 day.

13 At this moment, we think it is going
14 to be Thursday. I need for you to call the
15 number after 6:00 tonight, follow the
16 instructions that pertain, that are there for
17 the Dickerson panel. There will be an
18 instruction about, more than likely, Panel
19 Number Eleven and Panel Number Twelve. Those
20 are the additional panels, and that doesn't
21 apply to you because you were in Panel Six.

22 Just follow the instructions for the
23 Dickerson panel. Probably it's going to say to
24 report but it may say to call back tomorrow
25 night. Whatever the instruction, follow it and

1 whenever you are instructed to come, just come
2 here to this courtroom.

3 Until then and until you have been
4 dismissed from this case, please remember that
5 you still are not at liberty to discuss this
6 case with anyone or permit anyone to talk with
7 you about it. Also, please continue not to
8 watch any news programs about it or read any
9 news accounts. Have a great day and we'll see
10 you, hopefully, Thursday.

11 (JUROR NUMBER 209 EXITS COURTROOM)

12 BRUCE DURANT: Your Honor, before
13 we call the next witness, could I ask the court
14 for some direction?

15 THE COURT: Yes.

16 BRUCE DURANT: During the last
17 juror's examination, the Solicitor asked some
18 questions concerning some comments that the
19 juror made about the death penalty imposed for
20 the death of a child and then there was the
21 followup question if that would be the only
22 situation where you could impose the death
23 penalty.

24 THE COURT: Right.

25 BRUCE DURANT: Is there a case on

1 this that I am missing?

2 THE COURT: You can't ask in what
3 situations that they would impose it, I don't
4 think. If you've got one that says that they
5 can, I'll be happy to consider that.

6 BRUCE DURANT: I just don't know
7 of a case one way or the other, and our ---

8 THE COURT: Well, I don't think ---

9 BRUCE DURANT: --- concern is that
10 in a situation like that it kind of cuts to the
11 heart of the matter if they're saying that this
12 is the only situation that 'I could ever
13 consider the death penalty.'

14 THE COURT: I would have no problem
15 with your asking, 'The Judge is going to
16 instruct you that you could consider a death
17 sentence if you find these aggravating, certain
18 aggravating circumstances. Would you give
19 meaningful consideration -- would you consider
20 that and could you impose that if you were
21 convinced from all the evidence.' I don't have
22 any problem with that.

23 I don't think that you can ask
24 specifically whether in a given case they can.

25 Now, yesterday the one juror said

1 'yeah, that would be the only one.' That was
2 volunteered. I think that, personally, that's
3 an invasion but if you all to -- I understand
4 the basis for it, I don't have any problem, I
5 just don't have -- is there a case specifically
6 that you rely on to support the definition?

7 MR. BLOOM: Judge, I think, the
8 *State v. Powers* and *State v. David Hill*, which
9 I cited, ---

10 THE COURT: *David Hill*, that's the
11 Georgetown ---

12 MR. BLOOM: When *voir dire* first
13 started over a decade ago I was a proponent of
14 saying to ask the juror what situation, so that
15 we would know, but our court has limited that.

16 THE COURT: Right.

17 MR. BLOOM: So I can't ask them what
18 types of mitigating circumstances under which
19 they'd vote for life, and the State -- I think
20 under *Collins* and *Hill* are likewise limited 'in
21 what kind of situations would you vote for
22 death.' That's what our court has said staking
23 out when you get into case-specific mitigators
24 and aggravations.

25 THE COURT: I would allow the

1 question that you -- I think you're entitled to
2 ask if that is the only one. I don't think
3 that this juror, that that was the only
4 situation.

5 BRUCE DURANT: I didn't believe
6 so, but I thought that it was necessary to find
7 that out.

8 THE COURT: I don't have any problem
9 with that. I wouldn't allow the question of
10 'are there others, what are they?' But the
11 question of, 'Is that the only circumstance in
12 which you could vote to impose the death
13 penalty?' No problem.

14 BRUCE DURANT: I think if you get
15 to the point where you start asking them about
16 individual mitigating circumstances or
17 individual aggravating circumstances, you are
18 getting to the staking out part. I just
19 thought that was a legitimate response to a
20 comment that the juror had made.

21 THE COURT: I don't have any problem
22 with that type of general response to it or --
23 you know, 'Would you be able to, if you were
24 convinced from all the circumstances, to
25 consider it?' And if she said 'only if it was

1 a...' -- as that person did, 'only if it a
2 child.' I think that would lend itself to
3 maybe getting a listing responses indirectly.
4 I think -- I'm comfortable with it if you want
5 to ask her that but that is not the only one.

6 BRUCE DURANT: I am comfortable
7 with her, Your Honor.

8 THE COURT: No, not ---

9 BRUCE DURANT: I was just asking
10 that more in terms of future ---

11 THE COURT: I don't have any
12 problem. I would say that's one way but I
13 think the other, 'Is that the only one?' is a
14 fair question.

15 BRUCE DURANT: Thank you, Your
16 Honor.

17 THE COURT: I think if she says 'no,
18 there are not', I don't think that you can then
19 come back and say 'what are the others?'

20 BRUCE DURANT: I totally agree.

21 THE COURT: Thank you. Not a
22 problem and I appreciate your asking, inquiring
23 as to that.

24 BRUCE DURANT: Thank you.

25 THE COURT: Okay. And Hill was the

1 one that ---

2 MR. BLOOM: David Clayton Hill.

3 THE COURT: I remember him. I

4 actually was in Georgetown and, thank the Lord,

5 that's when they started assigning, I think

6 Judge Anderson tried that case because I heard

7 some Motions in that case because that was one

8 of my first assignment. Judge Marrow -- I was

9 assigned my first death penalty case in 1995,

10 where he was putting them all on the docket.

11 It was a different ballgame then. Thank the

12 Lord it's changed.

13 Okay, let's bring in Mr. Cochran,

14 Number 54. I will reread *Hill* over the break,

15 Solicitor, to make sure that there is nothing

16 in there that would create a problem.

17 (JUROR NUMBER 54 ENTERS COURTROOM)

18 THE COURT: Good afternoon, Mr.

19 Cochran. Finally you've arrived and I know you

20 were probably wondering, 'when are they going

21 to get to me?' I'm sorry that it has taken so

22 long. This process, we move as quickly as we

23 can and we hopefully can make some time limits

24 but, just as anything in our lives, you do the

25 best you can and sometimes you miss it. I

1 appreciate your patience, though.

2 JUROR NUMBER 54: Thank you, Your
3 Honor.

4 THE COURT: Mr. Cochran, we started
5 a process on Friday and we were asking you some
6 questions about this case. As you recall, I
7 said that these questions really have no
8 correct answers to any of them. They are
9 really designed to help the jury make a
10 determination as to whether or not they could
11 be a fair and impartial judge in this case, and
12 to help us make a determination as to whether
13 you could be a fair and impartial judge.

14 They are not designed to change your
15 mind or challenge any philosophies that you may
16 have in your life. Those are yours and you are
17 entitled to them. They certainly are not meant
18 to challenge or invade your privacy.

19 All that we ask is that you be
20 truthful in your responses and completely
21 respond. Will you do that, sir?

22 JUROR NUMBER 54: Yes, sir.

23 THE COURT: I would remind you in
24 that regard that you are still under oath in
25 this matter. Okay?

1 JUROR NUMBER 54: Yes, sir.

2 ANTHONY COCHRAN, being duly sworn to
3 tell the truth, the whole truth and nothing but
4 the truth, testified, as follows:

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. Since we were together on Friday, have you
8 talked with anyone or let anyone talk about
9 this case in your presence?

10 A. No.

11 Q. Have you watched any news accounts or read
12 anything about this case?

13 A. No.

14 Q. Friday I mentioned a number of persons. I
15 failed to mention two names that I need to ask
16 you about. Are you related by blood or
17 marriage, have any business dealings with or
18 socially or casually acquainted with or have
19 any dealings with Jeff Osborne or Matt Casey?

20 A. No.

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

24 A. Yes, I have.

25 Q. Which type most accurately describes you?

1 A. Probably type two.

2 Q. Probably two?

3 A. (Affirmative nod).

4 Q. Let me state what I understand two to say.

5 Type two says that you're on a jury in which

6 the jury has the responsibility of determining

7 the type of sentence to be imposed for the

8 crime of murder. Murder is the intentional

9 killing of somebody with malice aforethought.

10 It's not a mistake, it's not manslaughter, not

11 provoked by anything that would -- it's not the

12 result of any provocation that would justify

13 it. It's the intentional killing of somebody

14 that they wanted to kill, they intended to kill

15 them, they had malice, they killed the person.

16 Now, the jury has concluded that the State had

17 the right person, the evidence has convinced

18 the jury that that is the person. The type two

19 juror, as I understand, says 'Okay, they've

20 been found guilty of murder. I believe that

21 the appropriate punishment is life

22 imprisonment, always life imprisonment. It

23 doesn't matter about the circumstances, I don't

24 need to hear anymore.' Is that you?

25 A. (Affirmative nod), I would say.

1 Q. Now, you understand that it is in the
2 second phase, it is a two-phase process, where
3 you would hear evidence of what the appropriate
4 sentence would be. If certain factors were
5 present, you may could then even consider the
6 death penalty but as a type two person, as I
7 understand it, you've went through that phase
8 and even if the jury had the option to consider
9 a death sentence, the court instructed you to
10 consider that, you still could not impose a
11 death sentence?

12 A. No, sir.

13 Q. You would always vote for life imprison-
14 ment?

15 A. (Affirmative nod), because I have to sleep
16 at night.

17 Q. I understand. That's your strong
18 philosophy?

19 A. (Affirmative nod).

20 THE COURT: Thank you, sir. If you
21 would, please answer any questions that the
22 attorneys may have for you.

23 VOIR DIRE EXAMINATION

24 BY MR. BLOOM:

25 Q. Good afternoon, Mr. Cochran. My name is

1 Jeff Bloom and along with Andrew Carroll, we
2 represent William Dickerson. I just have a few
3 followup questions from what Judge Dennis asked
4 you. You understand that there are right or
5 wrong answers, right, sir?

6 A. Absolutely.

7 Q. You strike me as someone that you're going
8 to be honest, say exactly what you think and
9 what is your opinion?

10 A. I'll do my best, (affirmative nod).

11 Q. Now, the law says that it is okay to have
12 strong feelings either for or against the death
13 penalty, do you understand that?

14 A. Yes.

15 Q. What the law first requires then, after
16 that, is whether you can set those strong
17 feelings aside and listen to all the evidence
18 and the law that Judge Dennis gives you. Do
19 you think that you could set those feelings
20 against the death penalty, that you have, could
21 you set them aside and listen to the evidence,
22 listen to the instructions of Judge Dennis?

23 A. Yes.

24 Q. All right. But then the next thing the
25 law does is ask if you can set those feelings

1 aside and decide the first part of the case,
2 guilty or not guilty of murder, you understand
3 that?

4 A. Yes.

5 Q. That's like any case that you may have
6 seen on TV or read about, that is where the
7 jury hears evidence and they decide guilty of
8 murder or not guilty. Do you understand that?

9 A. Yes.

10 Q. You can listen to that evidence and decide
11 whether someone is guilty or not guilty of
12 murder, I take it; correct?

13 A. Yes.

14 Q. Then the next thing that the law requires
15 is after -- if a jury finds someone guilty of
16 murder, you move to a second phase, which we
17 call the sentencing phase, and that's where
18 your view on the death penalty -- my next
19 questions are going to be important. That's
20 where the jury decides if a defendant, after
21 hearing all the evidence, and instructions from
22 the judge, can decide on the death penalty or
23 life without parole. So my question is, at
24 that stage if you had found someone guilty of
25 murder and you moved to that second part, can

1 you set your strong feelings about the death
2 penalty aside and weigh the death penalty or
3 life without parole?

4 A. What are you asking me?

5 Q. I am going to ask it this way, I am going
6 to be as simple as I can. I'm not trying to
7 trick you. I am not trying to lead you
8 somewhere where you don't want to go. What I
9 am simply asking you is, if you were in that
10 second phase where you were listening to
11 evidence that the State presented to support
12 the death penalty and you were looking at the
13 evidence that the defense presented to support
14 life without parole, is there ever a situation
15 -- and we're not talking about this case,
16 nothing to do with this case, -- is there ever
17 a situation where you could set your personal
18 feelings against the death penalty aside and
19 give consideration to a death penalty ---

20 SOLICITOR WILSON: Your Honor, I
21 object.

22 THE COURT: Yeah, you need to phrase
23 the question properly, because the instruction
24 is going to be that he can't even return a
25 death penalty.

1 MR. BLOOM: Yes, sir.

2 THE COURT: Not consider.

3 MR. BLOOM: Yes, sir, I was going to
4 take ---

5 THE COURT: No, sir, well, don't
6 take it to that. Don't use the word "consider"
7 because it's got to be more than that.

8 MR. BLOOM: All right, sir.

9 EXAMINATION CONTINUED

10 BY MR. BLOOM:

11 Q. In that situation can you set your
12 personal beliefs against the death penalty
13 aside in a situation and ever give a verdict of
14 the death penalty if you felt the circumstances
15 were appropriate and after the law that the
16 judge gave you?

17 A. Yeah, as I said to the Judge, I have to
18 sleep at night.

19 Q. Sure.

20 A. So, you know, however you phrase your
21 question, I still have to sleep at night and
22 -- I still have to sleep at night.

23 Q. I understand. I wasn't trying to confuse
24 you or anything, I was just trying to
25 understand how you felt. So do I understand

1 you to say that you could not set your feelings
2 aside?

3 A. (Negative gesture).

4 Q. Because you'd have to sleep at night?

5 A. (Affirmative nod).

6 Q. I'm sorry, is there something ---

7 THE COURT: He's answered that
8 question.

9 JUROR NUMBER 54: Yeah, can I -- can
10 I just say something. I know Mr. Roper.

11 THE COURT: You know Mr. who?

12 JUROR NUMBER 54: I know Mr. Roper.

13 MR. BLOOM: Thank you, sir.

14 THE COURT: Who is Mr. Roper?

15 SOLICITOR WILSON: The father ---

16 MR. BLOOM: He's the father of the
17 victim.

18 THE COURT: You know him?

19 JUROR NUMBER 54: I know him.

20 THE COURT: So that would influence
21 you, as well?

22 JUROR NUMBER 54: Yes, sir, it would.

23 THE COURT: Thank you, sir. You are
24 excused from participation in this dispute.
25 Thank you so much, good luck to you, sir.

1 JUROR NUMBER 54: That's why I said
2 to you the other day that I wasn't sure.

3 THE COURT: You weren't sure about
4 him?

5 JUROR NUMBER 54: But I see him.

6 THE COURT: Okay. Thank you, sir.

7 (JUROR NUMBER 54 EXITS COURTROOM)

8 THE COURT: This is one, Mr. Bloom,
9 and I appreciate your attempt to represent your
10 client but this is where you're getting into
11 that area of going over the top.

12 This man is a pastor. If you want to
13 raise an objection, you didn't ask him about
14 whether -- we don't need to because he realized
15 that he knew Mr. Roper. That is precisely
16 where -- you can ask all the questions that you
17 want to protect it but that's where you are
18 invading and challenging his philosophy, I
19 think. I don't have any problem with your
20 setting up but when that man has already
21 responded to me saying 'there's no way, I am
22 not going to do that'; you know, he's already
23 answered that question, and you asked him
24 precisely what I asked him. The only
25 difference is that it came from you and not me,

1 and I understand your concern about the robe
2 and I -- that's why I don't say 'I've already
3 asked that question.' I agree with you about
4 that. Don't have any problem about that. But
5 to try to challenge him on that, that's just
6 going too far. I'm probably going to stop you
7 in the future. Okay.

8 MR. BLOOM: I apologize to the court
9 if he came off as a challenge. He quite
10 frankly, Your Honor, surprised me when I asked
11 him if he could set it aside, because I think
12 at minimum I'm required to do that when he
13 initially said yes.

14 THE COURT: No, you asked him -- and
15 the problem that I have with that is that
16 you're setting him up and that's what bothers
17 me. You set him up by asking 'in the first
18 stage, could you set it aside?' That hasn't
19 got a thing to do with it. Of course, he's
20 going to set it aside.

21 You need to ask the critical question
22 right out of the chute. If you want to follow
23 -- if there really is going to be a followup,
24 'I understand you just said that there is no
25 circumstance where you could impose a death

1 penalty. Does that mean that you could never,
2 ever in any situation, notwithstanding that the
3 court instructed you, impose a death sentence?'

4 You don't need to set up, 'Now, in the
5 first phase would you be influenced by that?'

6 Of course he's not going to be influenced.

7 He's already said that by being a type three
8 (sic) juror. He's already decided that.

9 He said, 'I could, fairly and impartially.' So
10 he's already answered the question. That is
11 what I am saying.

12 Don't -- you know, you use that as a
13 door opening that really and truly didn't open
14 any door because it doesn't relate to the
15 critical question. That's my concern. Now,
16 that is my reaction to it.

17 I'm -- I welcome you to explain how it
18 does. Maybe I am just missing it, Mr. Bloom.
19 I'm not trying to be argumentative and I'm
20 certainly not trying to be overly controlling
21 of it, but I just -- I felt like -- because I
22 have this other responsibility and it's kind of
23 like what you were saying, I would love it if
24 we just say that we're going to allow *voir dire*
25 and these are the areas that you can cover.

1 That would make it lot simpler than saying,
2 'Judge, you have' -- that voir dire permitted
3 but you can't -- you can't invade people's
4 privacy. You can't challenge them as people.
5 At what point does that happen? That's those
6 things that place a responsibility on us to do
7 that and still afford you the opportunity to
8 examine this juror, to make determination as to
9 whether they can be -- whether they are rote
10 responses or whether there is something else
11 there. You and I mentioned that before, and
12 you understand.

13 MR. BLOOM: Yes, sir.

14 THE COURT: I just ask you to try to
15 consider that for the balance. I know we're
16 fighting but some -- I just ask you to pick
17 your battles properly, but -- I trust you to do
18 the right thing. I am not implying that you
19 intentionally are doing anything, sir. I think
20 you've been nothing but the most professional
21 -- as everybody has in this case. Thank you
22 for that.

23 All right, Mr. Cochran I excused
24 primarily because as he stated he did come
25 forward, and I'd forgotten, and said that he

1 knew the person but wasn't sure. When he saw
2 Mr. Roper -- what is the gentleman's name, for
3 the record.

4 SOLICITOR WILSON: Aven Roper.

5 THE COURT: He saw Mr. Roper and he
6 knew him. He had already demonstrated that he
7 -- that would affect him, so he is disqualified
8 not for death penalty reasons but insofar as
9 the fact that he could not be fair and
10 impartial, knowing Mr. Cochran (sic). There's
11 nothing wrong with that. That's why we have a
12 number of jurors. So, Mr. Cochran (sic),
13 that's nothing about you or anything else --
14 that's a proper process.

15 Let's bring in Juror 343, please.

16 (JUROR NUMBER 343 ENTERS COURTROOM)

17 THE COURT: On Panel Number Seven,
18 Ms. Sherri Barker has called and is ill and
19 wants to postpone hers to tomorrow. She is
20 throwing up, apparently. Any objection, we
21 will put her in -- move her in with the panels
22 and tell her what time to come in. Any problem
23 with that?

24 BRUCE DURANT: No, sir.

25 THE COURT: Any problem with that?

1 MR. BLOOM: No, sir, Your Honor. Do
2 you intend if she is qualified to keep her in
3 the same order?

4 THE COURT: Oh, absolutely. It
5 doesn't change anything from the strike
6 proposition. It would be just simply -- most
7 certainly, (affirmative nod). We just simply
8 will accommodate her situation and hopefully
9 she will be better tomorrow.

10 Sorry to keep you waiting, Mr.
11 Wineinger. I know you must have been wondering
12 'how much longer?' We appreciate your
13 patience.

14 We are going to continue the process
15 that we started on Friday. There are some
16 questions that I have for you and then some
17 questions that the attorneys will probably have
18 for you. There are no correct answers to any
19 of these questions. We just ask that you
20 respond truthfully and give us complete
21 answers. I am confident that you will do that.

22 JUROR NUMBER 343: Okay.

23 THE COURT: I would remind you in
24 that regard that you are still under oath in
25 this matter. Please understand that we are not

1 here to try to change your mind on any feelings
2 that you have, you don't have to justify any of
3 your philosophies. You understand that?

4 JUROR NUMBER 343: Yes, sir.

5 STEVEN WINEINGER, being duly sworn to
6 tell the truth, the whole truth and nothing but
7 the truth, testified, as follows:

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q. First of all, please state your full name
11 for the record.

12 A. Steven Douglas Wineinger.

13 Q. Mr. Wineinger, you were instructed not to
14 talk about this case with anyone or permit
15 anyone to talk with you. Have you at any time
16 since Friday discussed this matter or permitted
17 anyone to talk with you about it?

18 A. No, Your Honor.

19 Q. Have you read any news accounts or watched
20 any news programs about it?

21 A. No.

22 Q. Friday I gave you the names of a number of
23 persons. I failed to mention two names that I
24 need to ask you about. Are you related by
25 blood or marriage, have any business dealings

1 with or are you socially or casually acquainted
2 with or have any dealings with a Jeff Osborne
3 or Matt Casey?

4 A. No, sir.

5 Q. You were given a sheet when you came in
6 that lists three types of jurors, have you had
7 a opportunity to review that sheet?

8 A. Right.

9 Q. Have you had a chance to review it?

10 A. Yes, Your Honor.

11 Q. Which of the three types of juror bests
12 describes you?

13 A. Type three.

14 Q. Type three is that juror that basically --
15 and you understand that would be the type of
16 juror that in a jury trial that has the
17 responsibility of deciding the appropriate
18 punishment for murder. Do you understand that?

19 A. Yes, sir.

20 Q. And murder in that setting -- the murder
21 would have been an intentional killing of
22 somebody, with malice. In other words, it's
23 not a mistake, not something where somebody got
24 in a fight and then shot somebody,
25 manslaughter, but rather was someone who wanted

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1 to kill somebody, intended to kill them and
2 went about it, took the actions necessary and
3 killed that person. The jury would have
4 decided that the State had the right person
5 because the jury had found that they'd met the
6 burden of proof.

7 As I understand, if you're in that jury
8 you at that point, having found a verdict of
9 guilty, knowing that you had a second phase
10 where you were going to receive additional
11 evidence as to what sentence would be
12 appropriate you would not have made the
13 decision as to what sentence was best?

14 A. No, sir.

15 Q. You would have an open mind?

16 A. Yes, sir.

17 Q. And you would consider all the evidence
18 and make a decision on which you would choose
19 and then there are times when your verdict
20 would be life imprisonment without the
21 possibility of parole and there be sometimes
22 when it may be the death sentence; is that
23 correct?

24 A. Yes, sir.

25 Q. But you don't know until you've heard it

1 all?

2 A. Right.

3 Q. And had a chance to talk with your jurors
4 and receive the law, is that correct?

5 A. (Affirmative nod).

6 Q. Now, you understand that in trials such as
7 -- in a criminal trial there are two judges
8 working together; the judge of the facts which
9 is the jury and the judge of the law, which is
10 the presiding judge. Do you understand that?

11 A. Yes, sir.

12 Q. And you understand that the jury has the
13 responsibility of determining the true facts by
14 considering the evidence, which consists of
15 testimony of the witnesses and exhibits that
16 are introduced and nothing else. Do you
17 understand that?

18 A. Yes, sir.

19 Q. I understand from your answers thus far
20 that you believe that you are the type of
21 person that could, having heard what you've
22 heard about this case, be a fair and impartial
23 judge of the facts in this case; is that
24 correct?

25 A. Yes, sir.

1 Q. Let's talk about not this case but just
2 sitting as a juror in a criminal case. You
3 understand that the jury would have to make the
4 determination of the facts and they would also
5 make a commitment that they would accept the
6 law given to them by the presiding judge. Do
7 you understand that?

8 A. Yes, sir.

9 Q. And you could do that, would do that?

10 A. Yes, sir.

11 Q. And that would mean that if you heard some
12 principle of law that maybe challenged some
13 philosophy that you have, maybe it was not what
14 you believed the law was or should be, that you
15 would have to set aside those feelings and take
16 the law and apply that law fairly and
17 impartially to those facts that you determine.
18 Do you understand that?

19 A. Yes, sir.

20 Q. And you could and would do that?

21 A. I could.

22 Q. You understand that in a criminal dispute
23 the State is the only party that has the burden
24 of proof?

25 A. Right.

1 Q. That means that persons accused of
2 committing criminal offenses don't have to
3 prove anything at all. They don't have to
4 prove their innocence, they don't have to
5 explain anything, they don't have to justify
6 anything. They don't have to present any
7 evidence. Do you understand that?

8 A. Yes, sir.

9 Q. The court would instruct you that you
10 couldn't use that against them. In fact,
11 persons accused don't even have to testify. Do
12 you understand that?

13 A. Yes, sir.

14 Q. Would you have any problem following that
15 principle of law?

16 A. No.

17 Q. I believe that you have already indicated,
18 as I mentioned to you, that Mr. Dickerson has
19 been accused of several criminal offenses. You
20 indicated after I discussed with you a basic
21 principle of law that applies to Mr. Dickerson
22 and anyone who is accused of committing a
23 criminal offenses, in this state and in this
24 country, they are presumed to be innocent until
25 and unless the State proves them guilty beyond

1 a reasonable doubt. Do you understand that?

2 A. Yes, sir.

3 Q. And as I mentioned to you on Friday,
4 that's an active presumption. It is not just
5 some words. People have to look at persons who
6 are accused with criminal offenses as innocent
7 of those offenses until the State convicts them
8 of those offenses or they admit their guilt.

9 Do you understand that?

10 A. Yes, sir.

11 Q. So today as Mr. Dickerson sits here, do
12 you believe that he is innocent of those
13 offenses which he has been accused of?

14 A. As far as I know, he is.

15 Q. Now, you understand that if we -- that if
16 you were in a criminal dispute as to which the
17 jury was going to make a determination as to
18 the appropriate sentence, the first thing that
19 would happen is that you would have a trial on
20 the charge itself. Do you understand?

21 A. (Affirmative nod).

22 Q. One of those charges would be murder, do
23 you understand that?

24 A. Yes, sir.

25 Q. You -- if you were on the jury, you would

1 listen to all the evidence?

2 A. (Affirmative nod).

3 Q. You would be instructed at the end to
4 evaluate the evidence, apply the law that the
5 court gave to you and decide whether or not the
6 State has convinced you beyond a reasonable
7 doubt of each element of that particular
8 offense. That is, the offense of murder. Do
9 you understand that?

10 A. Yes.

11 Q. You have to have an open mind when you
12 start. In other words, you can't have any
13 predeterminations. You would be able to do
14 that?

15 A. Yes, sir.

16 Q. If after hearing all the evidence the
17 court is instructing that if the State proves
18 all the evidence beyond a reasonable doubt,
19 you'd return a verdict of guilty. But if they
20 failed on one or more, you'd have to return a
21 verdict of not guilty. Do you understand that?

22 A. Yes.

23 Q. If after listening to the evidence,
24 evaluating it, you decide that the State has
25 failed to prove each element -- in other words,

1 you're not convinced beyond a reasonable doubt
2 of one element or more, would you return a
3 verdict of not guilty?

4 A. Yes, sir.

5 Q. Would you have any hesitancy in doing
6 that?

7 A. No.

8 Q. Also is at that time, evaluating the
9 evidence, you were firmly convinced that the
10 State has convinced you of each element, would
11 you return a verdict of guilty?

12 A. Yes, sir.

13 Q. Would you have any hesitancy in doing
14 that?

15 A. No, sir.

16 Q. Do you understand at that point in that
17 case, there would be another phase where you
18 would hear additional evidence. It is my
19 understanding that you, notwithstanding that
20 you had just taken part in a decision as a
21 group, twelve persons, that the twelve persons
22 had found this person guilty of a crime of
23 murder, you still would not have any decision
24 -- you still wouldn't have, in your mind, what
25 the appropriate punishment should be?

1 A. (Affirmative nod).

2 Q. And you understand that you would be asked
3 -- may be asked to consider both?

4 A. Yes, sir.

5 Q. And I say "may be" because, you know,
6 normally when the jury is not empaneled to
7 decide what the appropriate punishment is for
8 murder -- typically the jury decides the crime
9 and then the presiding judge determines the
10 sentence. Do you understand that?

11 A. Yes.

12 Q. Unless there was some special waiver that
13 allowed the judge to hear it, the judge could
14 never impose a death sentence for murder., Do
15 you understand that?

16 A. Yes, sir.

17 Q. The most serious sentence that a judge can
18 impose would be life imprisonment without the
19 possibility of parole, but the judge isn't
20 limited to that sentence. Do you understand
21 that?

22 A. Yes, sir.

23 Q. In this setting the jury would now have to
24 hear evidence, and the first thing that the
25 jury has to determine, because as I just

1 stated, normally the death sentence is not an
2 option, is whether or not the State had proved
3 beyond a reasonable doubt something that we
4 call aggravating circumstances.

5 Those are circumstances that our law
6 defines that raises the offense -- in other
7 words, takes it out of that normal setting
8 where a judge is going to make the determina-
9 tion of sentence and a jury instead is going to
10 decide that. Some of those things are when a
11 person has killed a police officer, killed a
12 child, and there are others and I would define
13 them for you.

14 The jury has to conclude first, beyond a
15 reasonable doubt, that those aggravating
16 circumstances have been established before you
17 can even consider a death sentence. Do you
18 understand that?

19 A. Yes, sir.

20 Q. If that jury after considering it wasn't
21 convinced that that had been established, then
22 the instruction would be the only sentence that
23 could be imposed would be life without the
24 possibility of parole. Would you have any
25 problem following that instruction if you were

1 on that jury?

2 A. No.

3 Q. The instruction would go on to say that
4 if, on the other hand, you found beyond a
5 reasonable doubt that there were aggravating
6 circumstances and, those again, were
7 established beyond a reasonable doubt, then you
8 could consider a death sentence as a potential
9 sentence, but that doesn't mean that you have
10 to. In other words, the instruction would
11 never tell you that you must return a death
12 sentence, only that you have the option of
13 doing so. That's because the jury has found
14 that existence of this aggravating
15 circumstance. Do you understand that?

16 A. Yes.

17 Q. So now you have a murder, beyond a
18 reasonable doubt; now you have aggravating
19 circumstances, beyond a reasonable doubt; and
20 now on the table for your consideration is the
21 death sentence on the one side and life
22 imprisonment without the possibility of parole
23 on the other side. It is my understanding that
24 even at that point you still have not made a
25 determination as to what the most appropriate

1 sentence is.

2 A. Right.

3 Q. You'd need to talk about it with your
4 jurors, consider all the evidence, because you
5 would receive in addition to aggravating
6 circumstances other evidence concerning the
7 appropriate sentence, both from the State and
8 from the -- and there may be evidence of
9 mitigating circumstances. Remember something,
10 the defendant doesn't have to prove anything at
11 any point in time and that includes the second
12 phase. Do you understand that?

13 A. Yes, sir.

14 Q. But the court would say that if there are
15 mitigating circumstances in the evidence, then
16 you must consider those. Mitigating
17 circumstances are circumstances -- some are
18 statutory and some of nonstatutory. Mitigating
19 circumstances are such things as the
20 background, how the person who is accused of
21 the offense was raised, problems they may have
22 had -- child abuse, those types of things,
23 mental health issues, addiction issues. And
24 most of those don't even apply to the crime
25 itself. Do you understand that?

1 A. Yes, sir.

2 Q. But if those exist, the court would
3 instruct you that you must give meaningful
4 consideration, that means that you must
5 consider those in determining the appropriate
6 sentence. Could you and would you do that?

7 A. Yes, sir.

8 Q. Would you have any problem following that
9 instruction?

10 A. No, sir.

11 Q. There may be none. If there aren't any,
12 you would be instructed that you can't hold
13 that against the defendant. Do you understand
14 that?

15 A. Yes, sir.

16 Q. And would you expect the defendant to
17 prove anything to you at that stage?

18 A. No, sir.

19 Q. So you wouldn't hold that against him if
20 there weren't any mitigating circumstances?

21 A. No.

22 Q. That's important because another part of
23 the instruction would be, even though the jury
24 has concluded that there are aggravating
25 circumstances and even though there are no

1 mitigating circumstances, the jury still has
2 the right to return a verdict of life
3 imprisonment without the possibility of parole
4 because the jury has that right for no reason.
5 Do you understand that?

6 A. Yes, sir.

7 Q. And you could give consideration to that
8 part?

9 A. Yes.

10 Q. And after considering it all, am I to
11 understand that you could, in certain
12 circumstances, find that this crime warranted a
13 death sentence and sign your name to a death
14 verdict?

15 A. Yes, sir.

16 Q. Likewise, you could even though you had
17 the option to find a death sentence, return a
18 verdict of life imprisonment without the
19 possibility of parole?

20 A. Yes, sir.

21 Q. But as we sit here today you couldn't tell
22 me which because you've got to hear the facts
23 and circumstances of each case?

24 A. Right.

25 Q. Is there anything that you've heard now

1 about this case, and again nothing that we have
2 talked about thus far has been specifically
3 this case, is there anything that you have
4 heard that would give you any concern about
5 your ability to be a fair and impartial judge
6 in this case, sir?

7 A. No, there isn't.

8 THE COURT: Thank you. Please
9 answer any questions that any of the attorneys
10 may have.

11 VOIR DIRE EXAMINATION

12 BY SOLICITOR WILSON:

13 Q. I'm Scarlet Wilson, I'm the Solicitor
14 here. This is Bruce Durant and Rutledge Durant
15 and they are prosecutors in my office and when
16 we start the trial we will be the ones
17 presenting evidence before the jury. Before
18 that, I am just going to ask a few followup
19 questions based on your questionnaire and your
20 answers to the Judge, just to make sure that I
21 am square with where you are.

22 A. Okay.

23 Q. Can you just tell me in your own words
24 what your thoughts are on the death penalty and
25 life without parole?

1 A. On the death penalty, I feel that it is
2 warranted under certain circumstances.

3 Life without parole is warranted under
4 other circumstances.

5 Q. So if there is a spectrum of people who
6 think no matter what if there is a murder there
7 should be the death penalty and people who
8 think no matter what the death penalty should
9 never be given, you would be in the middle?

10 A. Yes.

11 Q. You understand, based on what the Judge
12 told you today, -- first of all, have you ever
13 been involved in a murder case as a witness or
14 a juror?

15 A. No.

16 Q. The judge told you, I believe, that in
17 order for there to be a conviction of murder,
18 the killing has to be intentional and
19 malicious, ---

20 A. Yes.

21 Q. --- mean-spirited?

22 A. Yes.

23 Q. So it is already a bad situation when
24 someone is convinced of murder versus killing
25 that may have been as the result of self-

1 defense that involved heat-of-passion. We are
2 talking mean-spirited, a malicious murder.

3 A. Right.

4 Q. Based on what you told the judge, it is my
5 understanding that you would be willing to
6 follow his instructions and if you were in a
7 situation where someone even voted to convict
8 someone of murder, you could wait before you
9 made up your mind about what to do with it?

10 A. Yes, ma'am.

11 Q. And you could listen to the State's
12 evidence and understand that we have the burden
13 of proof in that penalty phase, that second
14 phase, of proving to you aggravating
15 circumstances?

16 A. Yes, ma'am.

17 Q. You could hold us to that burden, make
18 sure that we did that?

19 A. Yes, ma'am.

20 Q. If we did that, could you still wait and
21 listen to any mitigation, if the defense chose
22 to bring you any, anything about the defendant
23 or anything about the crime that maybe hadn't
24 come out, that shed a little more light on it.
25 Could you wait and listen to that?

1 A. Yes, ma'am.

2 Q. And seriously, fairly consider that
3 mitigation, too?

4 A. Yes, ma'am.

5 Q. And then at that point if the death
6 penalty were still on the table because we'd
7 proven our aggravating circumstances and life
8 without parole, which is always on the table,
9 you could make your decision on one of those?

10 A. Yes, ma'am.

11 Q. It wouldn't always be death or always be
12 life?

13 A. Right.

14 Q. It just depends.

15 A. Yes.

16 SOLICITOR WILSON: Thank you so much.
17 I know you'd been waiting for a while and we
18 appreciate your patience.

19 MR. BLOOM: May it please the court?

20 THE COURT: Yes, sir.

21 VOIR DIRE EXAMINATION

22 BY MR. BLOOM:

23 Q. Mr. Wineinger, how are you doing, sir?

24 A. Pretty good.

25 Q. My name is Jeff Bloom and along with

1 Andrew Carroll, we represent William Dickerson.

2 I just have a few followup questions.

3 The first thing that I want to ask you is,
4 on your questionnaire you said "I agree with
5 the death penalty." Can you just tell me what
6 you mean by that?

7 A. Well, if someone commits murder, then he
8 should deserve what he gave out -- if that's
9 the situation.

10 Q. Okay. Does that mean that if you were a
11 juror and you would find someone guilty of
12 murder that you're going to automatically vote
13 for the death sentence?

14 A. No, sir, not automatically. It is going
15 to be the situation that determines it.

16 Q. Because you understand, as the Judge
17 defined murder, that it is someone who did it,
18 intended to do it, with malice, an evil heart,
19 they got the right person -- and there are some
20 people who feel that once they've found that
21 type of malice murder, someone guilty, that
22 they are always going to vote for death. But
23 you're --

24 A. (Negative gesture), not necessarily.

25 Q. All right. Let me ask you next, sir, I

1 think you understood Judge Dennis to tell you
2 that you as a jury in a case -- and we are not
3 asking you about this case. You understand
4 that?

5 A. Yes.

6 Q. If in a case you would be able to consider
7 things such as a person's background, mental
8 health, drug additions. Do you think you could
9 give meaningful consideration to those kinds of
10 things.

11 A. Yes, sir.

12 Q. That is not something that you are just
13 sort of going to rule out and not consider at
14 all?

15 A. No, not at all.

16 Q. And you understood Judge Dennis to tell
17 you that the law in fact never requires the
18 death penalty?

19 A. Right.

20 Q. You understood him to tell you that?

21 A. (Affirmative nod).

22 Q. And it is always the juror's, what the law
23 calls their "individual moral, reasoned choice"
24 or moral, individualized choice?

25 A. Yes.

1 Q. And you could make your own moral,
2 individualized judgment in such a case?

3 A. Yes, sir.

4 Q. If you were with other jurors and after
5 you heard all the evidence, considered
6 everything, and debated with your other jurors,
7 discussed this with them, listened to them,
8 they listened to you, you could come to your
9 own individual, moral, reasoned judgment?

10 A. Yes, sir.

11 Q. And if eleven jurors were going one way
12 and you were voting one way and you'd made your
13 own individual moral judgment, you wouldn't
14 just give up that vote just to say, 'Golly,
15 it's late, I'm hungry. I'm going to go along
16 to get along and get done with it.'

17 A. No, sir.

18 Q. Okay. You would want them to respect your
19 vote?

20 A. Yes, sir.

21 Q. Just as you would respect their vote?

22 A. Right.

23 MR. BLOOM: Thank you, sir.

24 THE COURT: Thank you, Mr. Bloom.

25 Any additional questions, Solicitor?

Case No. 06-GS-10-2981 et al
Jury Trial of April 20 - May 7, 2009
Before The Honorable R. Markley Dennis, Jr.

1 SOLICITOR WILSON: No, sir.

2 THE COURT: Mr. Wineinger, if you
3 will step out, we will be with you momentarily,
4 sir.

5 (JUROR NUMBER 343 EXITS COURTROOM)

6 THE COURT: The court believes that
7 he is qualified. Any objection from the State?

8 SOLICITOR WILSON: No, sir.

9 THE COURT: Any objection from the
10 defense?

11 MR. BLOOM: No, sir.

12 THE COURT: Thank you. Bring him
13 in, please.

14 (JUROR NUMBER 343 EXHIBITS COURTROOM)

15 THE COURT: Mr. Wineinger, you've
16 been found to be qualified to be a member of
17 the panel from which we will select our jury.

18 We anticipate and hope that will occur
19 on Thursday morning at 9:30 in this courtroom.
20 When you are instructed to return, we would ask
21 you to come directly here at that time and be
22 prepared, if necessary to stay. Once we select
23 the jury, we will start the trial of the case.

24 Until then and until you have been
25 dismissed from this case, please remember that

1 you still are not at liberty to discuss this
2 case with anyone or permit anyone to talk with
3 you about it. Also, please continue not to
4 watch any news programs about it or read any
5 news accounts. Have a great day and we'll see
6 you, hopefully, Thursday.

7 (JUROR NUMBER 343 EXITS COURTROOM)

8 THE COURT: Given the hour, it's
9 time for us to take our lunch break, such as it
10 is. Let's try to be back at 2:45. Anything
11 from the State before we recess?

12 SOLICITOR WILSON: No, sir.

13 THE COURT: Anything from the
14 defendant?

15 MR. BLOOM: No, sir.

16 THE COURT: Very well, we will be at
17 ease until 2:45.

18 (LUNCH RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Let the record reflect
21 that Mr. Dickerson is present.

22 Ms. Frasier is the first one and she
23 has just finished filling out her questionnaire
24 now. Do you want to move her back a bit and
25 give you'all a chance to look at it?

1 MR. BLOOM: The court's discretion.

2 I am comfortable going forward.

3 THE COURT: If you're comfortable, I
4 am. Is the State ready?

5 SOLICITOR WILSON: Yes, sir.

6 THE COURT: Let the record reflect
7 that Mr. Dickerson is present.

8 Folks, I apologize to you that you
9 don't get a lunch break. I'm sorry. I thank
10 you for your endurance and your patience with
11 the court, as well. We will try to -- we do
12 have one good thing, one of the jurors on this
13 panel is not here today, so we only have five.
14 Maybe we can get back on track so we don't keep
15 the jurors waiting quite so long.

16 We're checking on the temperature to
17 see if they can give us some relief. I'm sorry
18 if anyone is cold. I apologize to you but -- I
19 don't know if we have the same thing -- when we
20 were in Melbourne, I remember asking one time
21 and they said, 'Yeah, we can call Columbia.
22 They in turn will get in touch with Myrtle
23 Beach because Myrtle Beach will have to make
24 the adjustment.

25 SOLICITOR WILSON: That's the way it

1 was in the public schools in Hemmingway.

2 THE COURT: Really?

3 SOLICITOR WILSON: (Affirmative nod),

4 Columbia or somewhere.

5 THE COURT: Go figure.

6 All right, bring in Ms. Fraiser.

7 (JUROR NUMBER 358 ENTERS COURTROOM)

8 THE COURT: Good afternoon, Ms.

9 Fraizer. How are you?

10 JUROR NUMBER 358: All right.

11 THE COURT: Thank you for completing

12 the form for us. We appreciate that. I

13 appreciate your patience. We started this

14 process on Friday and we're going to continue

15 that process, there are some more questions

16 that I have for you and the attorneys may have

17 some questions. All that we ask is, as we told

18 you on Friday, that you be truthful in your

19 responses and complete.

20 There are no correct answers to any of

21 these questions and they certainly aren't

22 designed to invade your privacy or beliefs or

23 philosophies that you have. You're entitled to

24 those, we don't want you to feel like you have

25 to defend anything that you believe, because

1 you have that right. We just ask that you will
2 be totally candid in your responses; will you
3 do that, please?

4 JUROR NUMBER 358: Yes.

5 THE COURT: I remind you that you're
6 still under oath in this matter.

7 JUROR NUMBER 358: Yes, sir.

8 DIANE FRASIER, being duly sworn to
9 tell the truth, the whole truth and nothing but
10 the truth, testified, as follows:

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. Would you please, for the record, state
14 your full name?

15 A. Diane Frasier.

16 Q. Ms. Frasier, since we were together on
17 Friday, have you talked with anyone about this
18 case or permitted anyone to talk about it in
19 your presence?

20 A. No.

21 Q. Have you read anything about it or watched
22 any news programs about it?

23 A. No.

24 Q. Friday I gave you a list of a number of
25 people. I failed to mention two names that I

1 need to ask you about. Are you related by
2 blood or marriage, have any business dealings
3 with or socially or casually acquainted with or
4 have any dealings with Jeff Osborne or Matt
5 Casey?

6 A. No.

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

10 A. Yes.

11 Q. Which type most accurately describes you?

12 A. Number two.

13 Q. Number two is the type of juror in a case
14 where in this state where it is one of those
15 rare cases, because normally the jury doesn't
16 participate in a sentencing, do you understand
17 that?

18 A. (Affirmative nod).

19 Q. But in certain situations they would and
20 in this type of case where these types are
21 determined, that jury would have been involved
22 in a murder trial. They would have found a
23 person guilty of the offense of murder.

24 Murder is the intentional killing of
25 somebody with malice. In other words, the

1 person wanted to kill someone, they killed that
2 person, there wasn't any reason to kill them,
3 they were motivated by evil intent -- that's
4 one of the things that malice means, -- and
5 they performed that act. It wasn't
6 manslaughter, that is that they weren't
7 provoked into anything, it wasn't self-defense,
8 it wasn't an accident.

9 The jury would have concluded that that
10 person committed an intentional murder, a
11 willful murder, and now that jury would have
12 the responsibility of deciding what was the
13 appropriate sentence. In that type of case
14 there may be a situation where the jury could
15 possibly have to consider a death sentence.
16 Okay? To choose between a death sentence and
17 life imprisonment without the possibility of
18 parole.

19 As I understand your answer,
20 notwithstanding -- even though you've just
21 convicted someone of murder, the only sentence
22 that you believe would be appropriate would be
23 a life imprisonment sentence?

24 A. Yes. I don't believe in the death
25 penalty.

1 Q. That is your strong belief on that?

2 A. Yes, sir.

3 Q. There's not a circumstance -- and, you
4 understand, the court would instruct that jury
5 in that second phase that they would have to
6 determine that the State would have some
7 burdens to prove certain circumstances existed
8 -- we call it aggravating circumstances, and if
9 the jury found that to be in existence beyond a
10 reasonable doubt then the court would instruct
11 the jury that they could consider a death
12 penalty. They couldn't have to impose it but
13 they would consider the death penalty and could
14 impose a death sentence if they chose to.

15 It is my understanding from your answer
16 that if you were even in that situation where
17 the jury had concluded an aggravating
18 circumstance for the offense of murder and the
19 jury was given the option to consider between
20 life imprisonment without the possibility of
21 parole and a death sentence, there is no
22 circumstance that you can think of in which you
23 would say, 'I would vote for a death sentence
24 and sign a death sentence'?

25 A. No.

1 Q. None?

2 A. None.

3 THE COURT: Please answer any
4 questions the attorneys may have.

5 VOIR DIRE EXAMINATION

6 BY SOLICITOR WILSON:

7 Q. This is Bruce Durant and this is Rutledge
8 Durant. They are also prosecutors in my office
9 and the three of us, over the next couple of
10 weeks, will be presenting evidence in this
11 case, trying this case before the jury.

12 Before we get into all that, I want to ask
13 you some followup questions based on your
14 answers to Judge Dennis and also on your
15 questionnaire. Okay?

16 A. (Affirmative nod).

17 Q. Can you tell me in your own words more
18 about your feelings about the death penalty?
19 Listen, there are no right answers here, so
20 just however you feel about it, if you could
21 just share that with.

22 A. I don't believe in the death penalty.
23 Maybe because more than half of my family has
24 died. There was like seventy-five of us and
25 now I just got one aunt, one daughter, three

1 grandkids.

2 Q. Out of seventy-five?

3 A. (Affirmative nod), seventy-five.

4 Q. So there's been a lot of loss in your
5 family?

6 A. Yeah.

7 Q. Aside from the death penalty, the fact
8 that you and your family have suffered so much
9 loss through death, would that affect your
10 ability to sit on a murder jury?

11 A. Yes.

12 Q. It would?

13 A. Yes.

14 Q. You wouldn't be comfortable -- set aside
15 it being a death penalty case, just talking
16 about someone who had been killed and whether a
17 person would be found guilty or not guilty,
18 would you even be comfortable with that?

19 A. No.

20 SOLICITOR WILSON: Judge, would you
21 like to follow up or ---

22 THE COURT: No. Additional
23 questions?

24 MR. BLOOM: I don't have any
25 followup.

1 THE COURT: Thank you very much. I
2 appreciate you -- you didn't come forward on
3 Friday and disclose that to me, did you?

4 JUROR NUMBER 358: No, I didn't.

5 THE COURT: But that's your honest,
6 sincere feelings, that you just simply would be
7 influenced by the fact that we are trying a
8 murder case?

9 JUROR NUMBER 358: Yes.

10 THE COURT: That alone would prevent
11 you from being fair and impartial?

12 JUROR NUMBER 358: Yes.

13 THE COURT: Very well. I am going
14 to excuse you then, ma'am, from any further
15 participation in this dispute. Thank you very
16 much.

17 I'm informed that the civil jury has
18 completed its duty, so you are now excused from
19 any further participation. Thank you and good
20 luck to you, ma'am.

21 (JUROR NUMBER 358 EXITS COURTROOM)

22 THE COURT: Number 149, Mr. Ishmael.

23 (JUROR NUMBER 149 ENTERS COURTROOM)

24 THE COURT: Good afternoon, Mr. Ishmael.
25 How are you, sir?

1 JUROR NUMBER 149: I'm doing fine,
2 sir.

3 THE COURT: Thank you for being
4 here. Sorry we delayed your coming in, but
5 we're working as quickly -- we ran over a
6 little bit, so I wanted to give some people an
7 opinion to grab a bite to eat. Thank you very
8 much, we appreciate it.

9 JUROR NUMBER 149: Yes, sir.

10 THE COURT: We are going to continue
11 the process that we started on Friday when we
12 were talking about this case. We asked you
13 some questions. As you recall, there really
14 are no correct answers to any of these
15 questions. They're really designed to help you
16 and help us determine whether you can be a fair
17 and impartial judge in this case with me.

18 Please understand that all that we ask
19 is -- I'm going to have some questions and the
20 attorneys may have, is that you be truthful and
21 candid with your responses and answer the
22 questions completely. Please know that no one
23 is here to challenge your beliefs, your
24 philosophies. You're entitled to those and you
25 should not feel like you have to defend any of

1 those. All that we ask is that you share
2 those. We are not trying to invade your
3 privacy, either. Will you do that?

4 JUROR NUMBER 149: Yes, sir.

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

8 JUROR NUMBER 149: Yes, sir.

9 DAVID ISHMAEL, being duly sworn to
10 tell the truth, the whole truth and nothing but
11 the truth, testified, as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. Since we were together on Friday, have you
15 talked with anyone or permitted anyone to talk
16 with you or to talk about this case in your
17 presence?

18 A. No, sir.

19 Q. Have you read any news accounts or watched
20 any news programs concerning this case?

21 A. I see the paper and on the news but when
22 it came across and said there was going to be
23 something about that, I turned the channel. I
24 didn't read the paper -- wanted to.

25 Q. I understand.

1 A. I read the Sports page.

2 Q. That's good. Fine, you can read it -- you
3 want to put it aside and when we finish you're
4 entitled to read it but until then I would
5 appreciate it and -- I've read them. I don't
6 think that there is anything in there that
7 would be unusual but it is that appearance that
8 we are trying to avoid and the problems that it
9 creates by reading something outside of the
10 courtroom. The jury has to decide the case
11 based on evidence and the evidence, of course,
12 is what they hear in the courtroom. That's the
13 primary reason for the restriction. I
14 appreciate your honoring that.

15 A. Yes, sir.

16 Q. On Friday I mentioned to you a number of
17 names of persons. I failed to mention two
18 names that I need to ask you about. Are you
19 related by blood or marriage, have any business
20 dealings with or socially or casually
21 acquainted with or have any dealings with Jeff
22 Osborne or Matt Casey?

23 A. I am not familiar with them.

24 Q. When you came in today they handed you a
25 sheet of paper that had listed on it three

1 types of jurors. Have you had an opportunity
2 to review those types of jurors?

3 A. Yes, sir.

4 Q. Which one most accurately describes you?

5 A. Most accurately?

6 Q. Yes, sir.

7 A. I am going to go with number three.

8 Q. Number three is a juror and of course all
9 of these jurors and this obviously is a
10 situation in which -- one of those cases where
11 the jury would have the responsibility of
12 determining the appropriate sentence, you
13 understand that?

14 A. Yes.

15 Q. That is not always the case. In fact, in
16 this state it is only in very limited
17 circumstances, you understand that?

18 A. Yes, sir.

19 Q. And what that type three juror described
20 there was -- what would have happened at this
21 point is that that juror would have been
22 involved in the first phase that trial, and
23 that juror would have considered the evidence
24 concerning the guilt of that individual for the
25 offense of murder and would have concluded

1 beyond a reasonable doubt that the State had
2 established each element and, therefore, would
3 have returned a verdict of guilty. Do you
4 understand that?

5 A. Yes, sir.

6 Q. Murder in that situation is -- murder is
7 defined in this state as the intentional
8 killing of someone with malice aforethought.
9 Basically it means that I wanted to kill this
10 person, that person wanted to do what he did,
11 he took care of carrying it out, he did it with
12 malice and was motivated by evil thoughts.
13 There wasn't any provocation, there wasn't
14 anything that would have reduced it or that
15 would have made it a lesser offense, such as
16 manslaughter. It wasn't self-defense, it
17 wasn't an accident, he did what he wanted to do
18 and what he intended to do. The jury concluded
19 that the person that was accused was that
20 person and you'd found him guilty. As I
21 understand, given that situation, -- you've
22 just been through that trial. Notwithstanding
23 that you'd just found somebody guilty of the
24 crime of intentional murder, murder with
25 malice, you still -- and you would then know

1 that you had another phase where you were going
2 to hear additional evidence concerning what
3 sentence would be most appropriate, you still
4 at that point would not have made a decision as
5 to whether it would be life imprisonment
6 without the possibility of parole or the death
7 penalty; is that correct?

8 A. (Affirmative nod), I would hope so.

9 Q. That's what you would have to commit to
10 do.

11 A. (Affirmative nod).

12 Q. The important thing that we have to
13 remember is that a jury -- one thing, in
14 addition to applying your common sense, your
15 sense of logic and reason is that the jury is
16 expected to whenever they start, whatever phase
17 they start in this situation, either phase,
18 that they start with an open mind.

19 By that, for instance let's talk for just
20 a moment -- what we are talking about now is
21 obviously not Mr. Dickerson's case.

22 A. Right.

23 Q. Mr. Dickerson has been accused of a
24 criminal offense and, of course, we've told you
25 some things about that case and thus far you've

1 said 'I don't know anything about this case.'

2 I have not made any determinations about this
3 case.'

4 A. (Affirmative nod), yes, sir.

5 Q. Another thing that you've said by
6 answering in that fashion or not responding is,
7 'I have an open mind about this case.'

8 A. (Affirmative nod), I hope so.

9 Q. Well, that's what you said.

10 A. Yes, sir, (affirmative nod).

11 Q. By not answering any of those questions,
12 do you understand that?

13 A. Yes, sir, (Affirmative nod).

14 Q. You have also said that the person who has
15 been accused of committing this offense --
16 excuse me. He's been accused of committing
17 these offenses but as I mentioned to you he, as
18 anyone who is accused of committing a criminal
19 offense, is presumed to be innocent.

20 A. I do believe that.

21 Q. And you indicated that on Friday, ---

22 A. (Affirmative nod).

23 Q. --- that you didn't have any problem with
24 that?

25 A. I don't.

1 Q. That's an active presumption. That means
2 that you have to actively, mentally and
3 physically, see that person as being innocent.
4 Do you believe that about Mr. Dickerson today?

5 A. Yes, sir.

6 Q. That he is innocent of these charges?

7 A. Yes, sir.

8 Q. And you understand that that does not
9 change until the State has convinced you, if
10 you were on a jury, beyond a reasonable doubt
11 that he committed one or more of these
12 offenses?

13 A. I do believe what you're saying, beyond a
14 reasonable doubt.

15 Q. They would have to prove that?

16 A. Yes, sir.

17 Q. Let's go back to the three types of
18 jurors. What would have happened in that case
19 is that we've already gone from that starting
20 point to where the person now knew that --
21 because they'd been convinced beyond a
22 reasonable doubt -- they were guilty. My
23 question would be, just as you would have been
24 in that case, you would have had to have had an
25 open mind about that individual. You know,

1 being a type three juror, what you're saying
2 is, 'Okay, I have now decided that he is guilty
3 of that crime but I have an open mind as to the
4 appropriate sentence.'

5 A. Correct, I would do that.

6 Q. Okay.

7 A. Yes, sir.

8 Q. That would be you, is that correct?

9 A. Yes, sir.

10 Q. That is important, because as you may be
11 aware, generally a jury doesn't participate in
12 sentencing of a murder offense in this state.
13 Normally the jury makes its determination, as
14 that jury would have done there, that the State
15 had proven its case, that the person was guilty
16 of murder, and the presiding judge would impose
17 a sentence. The jury wouldn't have anything to
18 do with that. Do you understand that?

19 A. Yes, sir.

20 Q. It is only in very limited circumstances
21 where a jury does have that opportunity or
22 option. That's one of the things that that
23 second phase is about. In addition to hear
24 evidence about what would be helpful in making
25 a determination on the sentence, you're going

1 to hear evidence as to whether or not the State
2 is entitled to a jury even considering a death
3 sentence. In a situation that is tried before
4 a jury and sentenced by a judge, unless there's
5 been some special waiver, and that rarely
6 occurs, the judge has no right to impose a
7 death sentence. Do you understand that?

8 A. Yes, sir.

9 Q. The most serious sentence that can be
10 imposed by the trial judge is life imprisonment
11 without the possibility of parole, but the
12 judge is not even limited to that; do you
13 understand that?

14 A. Yes, sir.

15 Q. So the second phase is important for a lot
16 of reasons. The first is a threshold
17 situation, because the jury has to hear the
18 evidence and decide first of all whether or not
19 the State has established beyond a reasonable
20 doubt that the person -- that what happened,
21 there were aggravating circumstances
22 surrounding this murder. That generally --
23 they are well-defined by statute. I would give
24 those to you and the jury would make a
25 determination whether they were convinced by

1 the evidence that that had been established;
2 such as the killing of a police officer, the
3 killing of a child. Those are two situations
4 where a jury may consider imposing a death
5 sentence, if that's been established beyond a
6 reasonable doubt. Do you understand that?

7 A. Yes, sir.

8 Q. So you can understand why it's very
9 important that you have that open mind, because
10 you wouldn't even be entitled to think about a
11 death sentence unless that is established
12 first. Do you understand that?

13 A. Yes.

14 Q. And, in addition, the charge would also
15 say that if the jury concludes that an
16 aggravating circumstance had been established,
17 then you may have the option of considering but
18 you don't have to impose a death penalty. In
19 other words, now you have an option. You can
20 pick between life imprisonment without the
21 possibility of parole or you can pick a death
22 sentence. Do you understand that?

23 A. I understand.

24 Q. So, again, another very important reason
25 that that juror have that open mind at that

1 point because it is not even mandatory that
2 that be done. In fact, the court would never
3 instruct you that that is what you would have
4 to do. Do you understand that?

5 A. Yes, sir.

6 Q. It merely says that now you evaluated it
7 and you made the decision.

8 A. Yes, sir.

9 Q. The judge would also say that you should
10 consider mitigating circumstances that may be
11 in the evidence. Some of those may be
12 statutory mitigating circumstances and some may
13 be non-statutory mitigating circumstances.
14 Those are matters that would tend to lessen the
15 impact or the effect of that murder. Some of
16 them would be such as the experiences in
17 childhood that a person may have had, their
18 mental health issues may have an effect on it
19 it wouldn't rise to insanity but it may have an
20 influence and effect on the appropriate
21 sentence. Addictions to various drugs, that
22 type of evidence. If that is present, the
23 court would instruct you that you must give
24 meaningful consideration to those elements of
25 mitigation, if you found them. Would you do

1 that, could you follow that instruction ---

2 A. Oh, yes, sir.

3 Q. --- before determining what was the
4 appropriate sentence?

5 A. Yes, sir.

6 Q. The court would also instruct you that, of
7 course, just as in the first phase that you'd
8 completed that person who had been accused has
9 no responsibility to prove or disprove anything
10 in the first phase and has no responsibility
11 whatsoever to prove or disprove anything in the
12 second phase, including mitigating
13 circumstances. In other words, if there aren't
14 any, you can't hold that against that
15 individual. Would you be able to follow that
16 instruction?

17 A. Say that again?

18 Q. Yeah. Because the person is accused of
19 committing a criminal offense, as I mentioned
20 to you, they don't have to prove or disprove
21 anything. They don't have to prove their
22 innocence and they don't have to disprove or
23 prove anything in the second phase concerning
24 what's appropriate.

25 You have taken an oath that you are going

1 to consider the evidence, whatever it is and
2 evaluate and analyze that evidence and decide
3 what you think is the most appropriate. There
4 may be mitigating circumstances or there may
5 not be mitigating circumstances but if there is
6 no evidence presented by the defendant, you
7 can't hold that against the defendant because
8 he doesn't have any obligation to do that.
9 That would be the instruction that the court
10 would give you. Would you follow that
11 instruction?

12 A. Yes, sir.

13 Q. So you wouldn't even expect him to or you
14 wouldn't penalize him because he didn't offer
15 something; is that correct?

16 A. That's important because that's part of
17 that principle of law but there's also another
18 aspect of all of this. My instruction would
19 further say that the jury has the right, even
20 though there are aggravating circumstances,
21 even though you've found that you have the
22 right to consider a death penalty, you have the
23 right -- the jury would have the right to
24 impose a life imprisonment without the
25 possibility of parole for no reason whatsoever.

1 In other words, you just chose to do it.

2 Q. Okay.

3 Q. That's another reason why you should have
4 that open mind, because you have to be able to
5 consider that right as well. Would you be able
6 to do that, follow that instruction?

7 A. Yes.

8 Q. So it is my understanding that in that
9 situation, as a type three juror, you would
10 have to go through all that process and then
11 sit down with that jury and analyze it fully
12 and then at the appropriate time, after doing
13 that, then and only then would you be able to
14 make a determination between life and life
15 without parole? Excuse me. Between life
16 imprisonment without the possibility of parole
17 and a death sentence. Excuse me.

18 A. Yes, sir.

19 Q. And it is my understanding, being a type
20 three juror, there are circumstances that you
21 can think of that would justify and support
22 your finding a death sentence, and you could do
23 that?

24 A. A death sentence?

25 Q. If those circumstances were present, you

1 could do that?

2 A. Oh, (affirmative nod), I could do that.

3 Q. Likewise, notwithstanding that you could
4 have imposed a death sentence, you could also
5 think of circumstances in which you not impose
6 a death sentence but instead would impose life
7 in prison without the possibility of parole?

8 A. Yes, sir.

9 Q. Notwithstanding the person has been
10 convicted of a murder in which malice was
11 present, he intended to do it; you could do
12 that, either one of them?

13 A. Yes, sir. It depends on the evidence, as
14 you stated, but I've got an open mind.

15 Q. Okay. Now let me talk about being a juror
16 now, if you were selected in this case, just as
17 you have just demonstrated -- but I want to
18 confirm, you believe that you could at the
19 appropriate time and would keep that open mind
20 that you have at the start and not change that
21 position until the court told you to do so; is
22 that correct?

23 A. Yes, sir.

24 Q. And that you would analyze the evidence
25 fairly and impartially and decide what you

1 believe to be the true facts, and then you
2 would be willing to accept the law that I would
3 give you and apply that law fairly and
4 impartially to the evidence?

5 A. Yes, sir.

6 Q. That would apply in the first phase and,
7 if necessary, a second phase?

8 A. Yes, sir.

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

12 MR. BLOOM: May it please the court?

13 THE COURT: Yes, sir.

14 VOIR DIRE EXAMINATION

15 BY MR. BLOOM:

16 Q. Mr. Ishmael, how you are doing today?

17 A. I am doing well.

18 Q. My name is Jeff Bloom and along with
19 Andrew Carroll, we represent William Dickerson.
20 I just have a few followup questions from what
21 Judge Dennis asked you. I recall from Friday
22 and you know a number of these police officers
23 that Judge Dennis asked you about?

24 A. From being a firefighter.

25 Q. You work with the fire department?

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1 A. Yes.

2 Q. And if you saw a number of these police
3 officers that you know testify -- and, I take
4 it that you know them both personally and
5 professionally?

6 A. Some I do.

7 Q. If you heard them testify in a trial you
8 aren't going to give any more weight ---

9 SOLICITOR WILSON: Objection.

10 THE COURT: Hold on a second. I
11 will sustain that at this point. Rephrase your
12 question. I understand at this point but
13 rephrase it if you would.

14 MR. BLOOM: Yes, sir.

15 EXAMINATION CONTINUED

16 BY MR. BLOOM:

17 Q. If you heard a number of those police
18 officers testify, is that going to cause you to
19 be fair and impartial to one side or the other?
20 We've just looking for an honest answer.

21 A. Oh, I understand. Like I told you Friday,
22 I know some of them. But like I just told the
23 Judge, I haven't made a decision, I really
24 don't know the situation but I give you my word
25 that I would be honest about it.

1 Q. And if someone testified who was your
2 friend, either personally or professionally,
3 that is not going to cause you to be influenced
4 by their testimony?

5 A. No, sir.

6 Q. All right.

7 A. I assume they would be my friends
8 afterwards.

9 Q. Okay. I also note from your questionnaire
10 that you've served on jury duty before?

11 A. I have, in General Sessions on Melbourne
12 Avenue in North Charleston years ago.

13 Q. What type of case was that?

14 A. It wasn't a murder case. If I remember
15 right it was something like insurance,
16 something with insurance or something like
17 that.

18 Q. What was the result of that?

19 A. I got picked for jury duty, they sent us
20 in the jury room, we came out, they got a plea
21 bargain and that was the end of it.

22 Q. Okay. So you're a little familiar with
23 the process, although this part where you have
24 to come out and answer questions is different?

25 A. Yes, this is different.

1 Q. I notice on your questionnaire, for your
2 opinion about the death penalty was "If it is
3 proven a reasonable doubt", can you explain to
4 me what you mean by that?

5 A. I mean if the facts support it a hundred
6 percent, I have no -- I wouldn't feel bad, or
7 something, you know, to do the death penalty.
8 They'd still have to prove it, I'd still be
9 acceptable to listening to everything but if I
10 felt like the case was going in that direction,
11 whatever, I have no issue with saying or voting
12 for the death penalty.

13 Q. Okay. Of course, you heard Judge Dennis
14 define murder to you. So we're all on the same
15 page, to where it is not accident, self-
16 defense, insanity of manslaughter where you
17 might catch someone in bed with another. It's
18 where a person did it, intended to do it with
19 malice, an evil heart, they got the right
20 person, proved beyond a reasonable doubt, some
21 jurors feel that once that kind of malice
22 murder is proven to them beyond a reasonable
23 doubt they are going to automatically vote for
24 the death penalty once that part is done. Is
25 that you?

1 A. No, sir.

2 Q. Can you explain to me how ---

3 A. I'd have to listen to the facts. If they
4 were found guilty in that first phase, I would
5 still listen to whatever that second phase is,
6 if it goes that direction -- I mean, this is
7 all new to me but I would listen to it all.

8 Q. And Judge Dennis also asked you, and I
9 want to make sure that I understand the
10 response, that you could give meaningful
11 consideration if you were in that phase to
12 weighing life without parole to things such as
13 drug addiction, mitigating circumstances.
14 That's a fancy legal phrase for things like
15 mental health, drug addiction, ---

16 A. I understand what that means.

17 Q. And you could give meaningful
18 consideration to that?

19 A. Sure.

20 Q. Because you understand that some folks
21 don't want to give -- they say the facts of the
22 crime are enough for them, but you're willing
23 to listen to all of that?

24 A. Yes.

25 Q. I have to ask, if you and I just ran into

1 each other at the firehouse and we were
2 chatting, having a Diet Dr. Pepper or
3 something, and something came on the TV about
4 the death penalty and we turned to talk about
5 that, what would your opinion about the death
6 penalty be?

7 A. For right now?

8 Q. We are not asking you about this case.
9 Understand that, we're not asking you about
10 this case.

11 A. You just mean if someone were to ask me,
12 whatever?

13 Q. Yeah, just your general opinion about the
14 death penalty?

15 A. Well, beyond a reasonable doubt -- I do
16 believe that if it is beyond a reasonable
17 doubt, everything is proved and it goes that
18 direction, I am not afraid to say the death
19 penalty.

20 Q. Okay.

21 A. But you have to prove it.

22 Q. Okay. I notice that it's a term that you
23 keep using, so I just want to ask you, if it is
24 proven beyond a reasonable doubt are you going
25 to vote to death in each and every case.

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1 A. No, because -- this is all new to me but
2 apparently there's another phase and I would
3 listen to what was said in that second side of
4 the thing.

5 Q. Okay.

6 A. I come up, you know, I've never been in
7 this circumstance or anything like that but I
8 -- I always looked at it, you know, if they
9 were guilty that the judge took care of those
10 issues. This is all new to me.

11 Q. Kind of different than that?

12 A. It is, it is, (affirmative nod).

13 Q. It's different than ---

14 A. But to answer your question, I believe that
15 I am a number three juror and that how I feel,
16 I'd have to listen to everything but I'm not
17 afraid to sit there and say, you know, the
18 person is guilty and -- I'd listen to the
19 directions in the second part and if it goes
20 that direction, it goes that direction.

21 Q. Okay.

22 A. Or if someone proves it, you know, it
23 would be the other side. I have an open mind
24 about it.

25 Q. And you understand, as Judge Dennis

1 instructed you, that the law never requires the
2 death penalty?

3 A. I understood what he said.

4 Q. Okay. In that vein, the law instructs a
5 juror that the choice between the death penalty
6 or life without parole is an individual and
7 reasoned moral judgement. Can you accept that?

8 A. And you could make that individual and
9 reasoned moral judgment?

10 A. Yes.

11 Q. And if you were on a jury and eleven
12 jurors were voting one way and you'd make your
13 own, after all the evidence and His Honor's
14 instructions, after all the consideration and
15 discussions among your fellow jurors, you've
16 listened to them, they've listened to you, but
17 after all that, eleven were voting one way and
18 you were voting another because you had made
19 your moral, individualized judgment; could you
20 stand your ground and hold to that judgment, or
21 are you just going to say, 'You know what? I'm
22 hungry, it's late in the day, I'm going to go
23 along to get along and give up.'

24 A. No, because when I close my eyes at night
25 I want to know that I made the right decision.

1 Q. So you would want them to respect your
2 vote?

3 A. Sure.

4 Q. And you would respect their votes?

5 A. (Affirmative nod), I actually do that
6 every day.

7 Q. Thank you very much.

8 THE COURT: Solicitor?

9 VOIR DIRE EXAMINATION

10 SOLICITOR WILSON:

11 Q. Mr. Ishmael, I'm Scarlet Wilson, I'm the
12 Solicitor here. This is Bruce Durant and
13 Rutledge Durant and the three of us will be
14 presenting evidence in this case once we have
15 started.

16 Based on your answers to the Judge and
17 also to Mr. Bloom, I don't have any other
18 questions for you. Thank you.

19 THE COURT: Thank you, Mr. Ishmael,
20 I am going to ask that you step out just for a
21 few moments. We will be with you momentarily.

22 (JUROR NUMBER 149 EXITS COURTROOM)

23 THE COURT: I find that Mr. Ishmael
24 is qualified. Any objection from the State?

25 SOLICITOR WILSON: No, sir.

1 THE COURT: Any objection from the
2 defendant?

3 MR. BLOOM: No, sir.

4 THE COURT: Ask him to step in,
5 please.

6 (JUROR NUMBER 149 ENTERS COURTROOM)

7 THE COURT: Thank you, Mr. Ishmael.
8 Thank you very much, and I appreciate your
9 patience. You've been found to be qualified to
10 be a member of the panel from which we will
11 select our jury.

12 We are hopeful that will take place
13 Thursday morning at 9:30. We can't be positive
14 of that but that's the anticipated time.
15 Whatever time is designated for you to return,
16 and I think it is going to be that, just come
17 back to this courtroom here and take a seat in
18 the audience. Be prepared to remain because my
19 plan would be that once a jury has been
20 selected we will start the trial of the case.
21 So you need to be ready to do that in case
22 you're on the jury.

23 Until then and until you have been
24 dismissed from this case, please remember that
25 you still are not at liberty to discuss this

1 case with anyone or permit anyone to talk with
2 you about it. Also, please continue not to
3 watch any news programs about it or read any
4 news accounts. Have a great day and we'll see
5 you, hopefully, Thursday.

6 Do you have the number for the Clerk's
7 office, that answering machine, that card that
8 was given to you?

9 JUROR NUMBER 149: I have that at the
10 house.

11 THE COURT: Call that tonight after
12 6:00 o'clock, there will be a message for the
13 Dickerson panel, it may say to report at 9:30
14 but it might say to call back tomorrow night.
15 Follow the instruction, whatever it is.
16 Whenever it says to come and report, at that
17 time that is when you need to be here.

18 JUROR NUMBER 149: I have one
19 question.

20 THE COURT: Yes, sir.

21 JUROR NUMBER 149: Tomorrow is my duty
22 day at the fire station. I work twenty-four
23 hours, so I can go there. No problem?

24 THE COURT: You're good to go
25 tomorrow. Thursday is when you might need to

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1 say 'I may not be here.

2 JUROR NUMBER 149: I told them
3 that I have jury duty for the week, I just
4 didn't tell them what was going on.

5 THE COURT: No problem about
6 tomorrow. Tomorrow is yours. Thank you.

7 JUROR NUMBER 149: Thank you.

8 THE COURT: Have a great day.

9 (JUROR NUMBER 149 EXITS COURTROOM)

10 THE COURT: All right, let's bring
11 in Ms. Tompkins. Juror Number 314.

12 (JUROR NUMBER 314 ENTERS COURTROOM)

13 THE COURT: Hello, Ms. Tompkins, how
14 are you?

15 JUROR NUMBER 314: I'm fine.

16 THE COURT: We are going to continue
17 the process that we started on Friday when we
18 were talking about this case. We asked you
19 some questions. As you recall, there really
20 are no correct answers to any of these
21 questions. They're really designed to help you
22 and help us determine whether you can be a fair
23 and impartial judge in this case with me.

24 Please understand that all that we ask
25 is -- I'm going to have some questions and the

1 attorneys may have, is that you be truthful and
2 candid with your responses and answer the
3 questions completely. Please know that no one
4 is here to challenge your beliefs, your
5 philosophies. You're entitled to those and you
6 should not feel like you have to defend any of
7 those. All that we ask is that you share
8 those. We are not trying to invade your
9 privacy, either.

10 I would remind you in that regard that
11 you are still under oath in this matter. We
12 just ask that you give truthful answers. Will
13 you do that?

14 JUROR NUMBER 314: I will.

15 VIRGINIA TOMPKINS, being duly sworn to
16 tell the truth, the whole truth and nothing but
17 the truth, testified, as follows:

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. First let me ask you, since we were last
21 together have you talked with anyone or
22 permitted anyone to talk with you or to talk
23 about this case in your presence?

24 A. No, I just told work that I had to be back
25 here today.

1 Q. I understand.

2 A. Okay.

3 Q. Have you read any news accounts or watched
4 news programs about this case?

5 A. No.

6 Q. Friday I gave you the names of a number of
7 people and asked if you were related to any of
8 those persons. I failed to mention two names
9 that I need to ask you about. Are you related
10 by blood or marriage, have any business
11 dealings with or socially or casually
12 acquainted with or have any dealings with Jeff
13 Osborne or Matt Casey? Do you know them?

14 A. No, I do not.

15 Q. When you came, you were given a sheet that
16 identified three types of jurors.

17 A. (Affirmative nod).

18 Q. Have you had an opportunity to review
19 those three jurors?

20 A. Yes, sir.

21 Q. On that sheet, which type most accurately
22 describes you?

23 A. I would think probably type three.

24 Q. Type three basically -- and let's talk
25 about that. Obviously those -- the juror on

1 that sheet, the type that you've just said is
2 the category into which you fall, that juror
3 has been involved in a case in which the jury
4 is going to determining the sentence for
5 murder. Do you understand that?

6 A. Yes.

7 Q. That is not a customary or is not a common
8 occurrence in this state, only in limited
9 situations. Do you understand that?

10 A. Normally the jury makes a determination
11 first of whether the person is guilty of the
12 charge or not and that's what would have
13 happened in that situation in which the three
14 jurors are listed. The jury would have
15 considered the evidence concerning the issue of
16 whether that person who was accused had
17 committed the offense of murder. Obviously if
18 you were on the jury, you would have concluded
19 that the State had convinced you beyond a
20 reasonable doubt as to each element of the
21 crime of murder. Do you understand that?

22 A. (No verbal response).

23 Q. As I understand type three, while you
24 would have just participated in deliberations
25 and decided that a person had committed the

1 crime of murder -- that is, the killing of
2 someone with malice aforethought, that is that
3 they intended to do, they wanted to do it, they
4 have an evil motive behind it, they wanted
5 somebody to be dead and they picked that person
6 and the person that they picked is now
7 deceased.

8 A. (Affirmative nod).

9 Q. It wasn't a mistake, wasn't an accident,
10 wasn't anything that provoked it, no reason for
11 doing it, just out of the meanness of a mean
12 spirit.

13 A. (Affirmative nod).

14 Q. As I understand, as a type three juror you
15 would then know at that point that you were
16 about to embark on the second phase where you
17 were going to hear evidence concerning the
18 appropriate sentence. I understand what you
19 said is, 'While I have just convicted him, I
20 still at this point don't know whether I am
21 going to impose life imprisonment or the death
22 penalty.'

23 A. It would have to be beyond a reasonable
24 doubt.

25 Q. I understand that and all of this --

1 you've found beyond a reasonable doubt that
2 this person killed somebody, intended to kill
3 them, no question about it.

4 A. (Affirmative nod).

5 Q. In other words, you've concluded that.

6 A. (Affirmative nod).

7 Q. My question is, at that point before you
8 start that second phase, do you have an open
9 mind as to what sentence that person should
10 receive?

11 A. Yes, sir.

12 Q. So you had not made any determination just
13 simply ---

14 A. No.

15 Q. --- the person had been found guilty of
16 committing a murder?

17 A. Right, (negative gesture).

18 Q. That is important for a number of reasons.

19 A. (Affirmative nod).

20 Q. Most of the time, as you may or may not
21 know, the jury is not involved with sentencing.
22 Normally the jury is involved in determining
23 whether or not the person committed the offense
24 that they were accused of committing, in this
25 case murder. In the normal situation or a

1 typical situation, the jury says 'yes, they are
2 guilty of murder' and then the presiding judge
3 would impose the sentence. The jury wouldn't
4 have anything to do with that. Do you
5 understand that?

6 A. (Affirmative nod).

7 Q. You need to answer "yes".

8 A. "Yes."

9 Q. Thank you. It is not offensive to me but
10 we are keeping a record and it just helps to
11 keep that record clear. Okay?

12 A. (Affirmative nod).

13 Q. Thank you. Normally in most situations,
14 unless it's been some special situation that is
15 rare, the judge may never impose a death
16 sentence for a murder. The most serious
17 sentence that a judge can impose is life
18 imprisonment without the possibility of parole.
19 You understand that?

20 A. Yes.

21 Q. But the judge is not limited to that. He
22 can consider matters under that, as well, in
23 making that determination.

24 In this setting you would be a part of the
25 jury that was going to determine between life

1 imprisonment without the possibility of parole
2 or a death sentence. Do you understand that?

3 A. Yes.

4 Q. It is important for another reason,
5 because you're not entitled even as a juror to
6 consider death unless in the second phase the
7 State establishes something which the law says
8 that they have to establish beyond a reasonable
9 doubt -- that standard that you just mentioned.

10 A. Yes, sir.

11 Q. The existence of at least aggravating
12 circumstance. The law defines those for the
13 jury and I will give you that -- I, as the
14 trial judge in that case that we're talking
15 about, would have given you and charged you on
16 what aggravating circumstances you could
17 consider.

18 Aggravating circumstances are those
19 circumstances which make it -- bring it higher,
20 make it a more serious murder than the typical
21 murder that a judge would impose a sentence on;
22 therefore, that's why a jury has been
23 empaneled. Such as the killing of a police
24 officer, the killing of a child. Those are
25 circumstances that if a jury found that beyond

1 a reasonable doubt that they exist as an
2 aggravating circumstance, then that jury has
3 the right, and only then, does it have the
4 right to even consider a death sentence.
5 Now, "consider" doesn't mean that they have to
6 ---

7 A. Right.

8 Q. It means that they have the option now.
9 In other words, there are two sentences that
10 they can impose. If they can't -- if the jury
11 does not conclude beyond a reasonable doubt
12 that the aggravating circumstance had been
13 established, it can't impose a death sentence.
14 It has to impose only life imprisonment without
15 the possibility of parole. Do you understand
16 that?

17 A. Yes.

18 Q. You can begin to see why it is so critical
19 that you have that open mind when you start?

20 A. Yes.

21 Q. Now, I would further instruct you that
22 even the jury has found -- if the jury finds
23 that and they can consider the death sentence,
24 they don't have to return a death sentence.
25 The judge would never tell you that you must

1 return it. That's an option for the jury. The
2 jury has to decide which one is most
3 appropriate considering all the evidence and
4 considering the law. My understanding is that
5 you could do that, is that correct?

6 A. Yes, sir.

7 Q. And I would further instruct you that it
8 would be your right, if you chose not to, to
9 impose a life sentence. Do you understand
10 that?

11 A. Yes, sir.

12 Q. Even though you may have the right to
13 impose a death sentence you could still impose
14 a life sentence, if you thought the
15 circumstances in a situation warranted it. Do
16 you understand that?

17 A. Yes.

18 Q. Again, you can begin to see why its so
19 important that that jury have an open mind?

20 A. (Affirmative nod).

21 Q. I would also instruct you that there are
22 other things in addition to the aggravating
23 circumstances, that you're going to hear other
24 evidence of why a certain sentence may be more
25 appropriate than others.

1 You may have in the evidence mitigating
2 circumstances. Now, mitigating circumstances,
3 some are statutory, some are nonstatutory.
4 They, as the name would imply would tend to
5 make that crime, tend to reduce the severity of
6 it. In other words, give some explanation for
7 maybe why the person may have done what they
8 did; such as, some mental health issues that
9 may exist, addiction issues that may have some
10 involvement, how that person was raised as a
11 child, a number of those issues.

12 If they are present, I would instruct you
13 that you would have to give meaningful
14 consideration if you're on that jury to those
15 issues and consider those before determining
16 what sentence is appropriate. You could follow
17 that instruction, too?

18 A. Yes, sir.

19 Q. You would do that?

20 A. Yes, sir.

21 Q. You understand the State has the burden of
22 proving what sentence is most appropriate. The
23 defendant -- a person accused and we are not
24 talking about this individual now, we're
25 talking about that person that is on that sheet

1 that we're talking about right now. That
2 person would have had no burden to prove
3 anything at all. Do you understand that?

4 A. Yes, sir.

5 Q. In fact -- and that's in the first and the
6 second phase. They don't have to offer any
7 mitigating circumstances and if they chose to
8 offer no evidence at all, the instruction would
9 be that you can't use that against them. Would
10 you be able to follow that instruction, too?

11 A. Yes, sir.

12 Q. So you wouldn't look to that defendant to
13 establish any, and would not hold it against
14 them if they didn't?

15 A. No, sir.

16 Q. I would also tell you, in addition to
17 everything that we've said, a part of that
18 instruction would say that the jury has the
19 right, for no reason, to impose life
20 imprisonment without the possibility of parole
21 even though they could have imposed the death
22 sentence. Do you understand that?

23 A. Yes.

24 Q. That means that would be another aspect
25 that you would have to consider as to whether

1 you just, in these circumstances, just decided
2 that you thought the appropriate sentence was
3 life without parole. Do you understand that?

4 A. Yes.

5 Q. And it is my understanding that as a type
6 three that you would perform and follow that
7 instruction, as well?

8 A. Yes, sir.

9 Q. And you would not have made any decision
10 or would not have made any predetermination
11 until you've had an opportunity to hear all the
12 evidence in both phases, until you had received
13 the law and you could follow that instruction
14 and would give that instruction meaningful
15 consideration. Is that correct?

16 A. Yes, sir.

17 Q. And only then would you make your decision
18 in that case that we're talking about in that
19 sheet; is that correct?

20 A. Yes, sir.

21 Q. And it is my understanding, being a type
22 three juror, and I am not asking you to tell me
23 which ones, but there are circumstances in your
24 mind that you believe if you were convinced
25 beyond a reasonable doubt that you could impose

1 a death sentence and sign the form necessary to
2 carry that out?

3 A. Yes, sir.

4 Q. Likewise, there are circumstances,
5 notwithstanding aggravating circumstances,
6 notwithstanding the fact that you've convicted
7 somebody of murder, -- all of those things may
8 exist but you could still say, 'Well, no, I
9 think the appropriate sentence in this case is
10 life imprisonment without the possibility of
11 parole.' You could do that?

12 A. Yes, sir.

13 Q. And you could be fair and impartial in
14 performing that task?

15 A. Yes, sir.

16 Q. Let's talk for a moment about these
17 charges here. As I mentioned to you, Mr.
18 Dickerson of course has been accused of
19 committing several criminal offenses. You
20 mentioned to me on Friday that you didn't have
21 any problem with the presumption of innocence.
22 Is that correct?

23 A. Yes, sir.

24 Q. And you understand that that principle of
25 law says that people that are accused of

1 committing criminal offenses such as Mr.
2 Dickerson, they're innocent until the State
3 prove otherwise or they admit their guilt. Do
4 you understand that?

5 A. Yes, sir.

6 Q. That is an active presumption. It means
7 that as you see that person and as you see Mr.
8 Dickerson today you assume and you see him as
9 being innocent of these charges?

10 A. Yes, sir.

11 Q. No problem with that?

12 A. No, sir.

13 Q. And you understand that he has no burden
14 to prove anything or disprove anything, being
15 accused of criminal violations?

16 A. Yes, sir.

17 Q. If you were in the trial involving Mr.
18 Dickerson, you would never look to him to prove
19 anything or expect that he had to prove
20 anything?

21 A. No, sir.

22 Q. Because I would tell you that persons such
23 as Mr. Dickerson, who are accused of criminal
24 offenses, they don't have to prove anything.
25 The jury could never look to them for anything.

1 In fact, they don't even have to offer any
2 evidence and you can't use that against them.
3 You wouldn't have any trouble following that
4 instruction?

5 A. No, sir.

6 Q. It is my understanding that you could and
7 would at the appropriate time apply your common
8 sense, your sense of logic and reasoning in
9 analyzing the evidence and decide what you
10 believe to be the truth?

11 A. Yes, sir.

12 Q. And then you would be willing to accept
13 the law as I gave it to you, notwithstanding
14 your personal opinion or philosophies, you
15 could set those aside and you'd take the law
16 and apply it fairly and impartially?

17 A. Yes, sir.

18 THE COURT: Thank you so much.
19 Answer any questions that the attorneys may
20 have for you. Solicitor?

21 VOIR DIRE EXAMINATION

22 BY SOLICITOR WILSON:

23 Q. Hey, Ms. Tompkins. I'm Scarlet Wilson.
24 I'm the Solicitor here. This is Bruce Durant
25 and Rutledge Durant, they're also prosecutors

1 in my office. When we get started, the three
2 of us will be presenting the case to the jury.

3 Before that, I want to ask you some
4 followup questions based on your answers to the
5 Judge and, also, we were given copies of the
6 questionnaire that you filled out.

7 No right or wrong answers. You must have
8 gotten your questionnaire in right on time.

9 A. Yes.

10 Q. I saw in your questionnaire that you like
11 C.S.I. and *Law & Order* and all that?

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

13 Q. You aren't going to hold us to that
14 standard, are you?

15 A. No.

16 Q. You understand that those people can work
17 magic? We can do a lot of things but we can't
18 work magic.

19 A. Yes, ma'am.

20 Q. You mentioned in your questionnaire and, I
21 believe, again when the Judge was asking you
22 questions that it was very important to you
23 that the crime be proven beyond a reasonable
24 doubt?

25 A. Yes.

1 Q. You said that you could believe in the
2 death penalty if the crime warrants it?

3 A. Yes.

4 Q. Okay. Now, based on your conversation
5 with the Judge, I take it that you now
6 understand that there is more to it than just
7 the crime.

8 A. Yes.

9 Q. That it is a two-phase process.

10 A. (Affirmative nod).

11 Q. You may not have even thought about it
12 before but after your conversation with him,
13 you understand that all murders -- for it to be
14 murder in South Carolina, we don't have
15 different degrees of murder but for someone to
16 be convicted of murder they are guilty of a
17 malicious, intentional, evil act,
18 automatically. Do you understand that?

19 A. Yes, ma'am.

20 Q. Otherwise, it would be a self-defense case
21 or it might be a voluntary manslaughter case,
22 an involuntary manslaughter case, or something
23 like that. Something different.

24 A. (Affirmative nod).

25 Q. But even with murder, not all murders

1 qualify for the death penalty. Do you know
2 that now? Today?

3 A. Yeah.

4 Q. Did you know that before today?

5 A. I'm not sure. I really didn't -- (pause).

6 Q. Think about it too much?

7 A. (Negative gesture).

8 Q. Okay. But now that you know that and have
9 heard what some of the instructions from the
10 judge are, do you think you could follow his
11 instructions?

12 A. Yes, ma'am.

13 Q. Are you one of those people who thinks in
14 murder cases that death should always be given
15 or never given?

16 A. No, I -- (pause).

17 Q. Somewhere in the middle?

18 A. It's hard for me to make a decision
19 without knowing ---

20 Q. --- everything?

21 A. --- everything.

22 Q. Well, again, assuming in a situation that
23 you are -- that you've found guilt beyond a
24 reasonable doubt, that malicious, evil murder
25 and the Judge told you that you had to wait

1 before making up your mind as to the penalty.

2 Could you follow that instruction?

3 A. Yes.

4 Q. He would also tell you that you would have

5 to hold all three of us to our burden of

6 proving these aggravating circumstances -- it

7 might be an armed robbery or -- there are

8 several of them that he'll tell you about. We

9 have to prove those aggravators, again beyond a

10 reasonable doubt, before you could even

11 consider the death penalty. You could wait?

12 A. Yes.

13 Q. Then he would tell you something else:

14 Even after that, you have to be able to listen

15 and fairly consider and give meaningful

16 consideration to any mitigation, anything that

17 makes you understand the defendant more, makes

18 you understand the defendant or a defendant as

19 to why they would do something like that or

20 maybe even more information about the crime

21 that didn't come out in the guilt phase. You

22 would have to listen to those things and really

23 consider them before making a decision as to

24 life without parole or the death penalty.

25 Would you do that?

1 A. Yes, ma'am.

2 Q. So even your feelings about the death
3 penalty and your willingness to do that, you
4 could wait if he told you to wait, ---

5 A. (Affirmative nod).

6 Q. --- could pay attention, listen and
7 consider and keep an open mind until it was all
8 over?

9 A. (Affirmative nod), I would do my best.
10 Yes.

11 Q. Okay. Well, the problem is that you've
12 got to do more than that. You've got to ---

13 A. Well, I feel that I could.

14 Q. Okay. You could commit to us and to the
15 defense that you would do that?

16 A. Um-humm.

17 Q. Okay.

18 THE COURT: Was that a "yes"?

19 JUROR NUMBER 314: Yes.

20 THE COURT: Thank you.

21 EXAMINATION CONTINUED

22 BY SOLICITOR WILSON:

23 Q. Now, there's another aspect to it --

24 A. (Laughs).

25 Q. There's always a little bit more.

1 A. Okay.

2 Q. There's another aspect to it and that is
3 that if you were on a death penalty jury and
4 you believed that death was the appropriate
5 sentence, you'd have to do more than just raise
6 your hand and say that you felt that. You'd
7 have to actually sign your name to a verdict
8 form or to a death warrant. Could you sign
9 your name on that?

10 A. Yes, ma'am.

11 Q. You'd feel comfortable with that?

12 A. Yes, ma'am.

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

15 THE COURT: Certainly.

16 SOLICITOR WILSON: Thank you. That's
17 all that I have, Ms. Tompkins. Thank you.

18 THE COURT: Mr. Bloom?

19 MR. BLOOM: Yes, sir.

20 VOIR DIRE EXAMINATION

21 BY MR. BLOOM:

22 Q. Good afternoon, Ms. Tompkins.

23 A. Hi.

24 Q. My name is Jeff Bloom and together with
25 Andrew Carroll, we represent William Dickerson.

1 We will try not to keep you. I want to ask you
2 just a little bit of followup.

3 If we were just standing around having a
4 coffee or a Diet Dr. Pepper and something came
5 on the news about the death penalty and we were
6 just kind of chatting, what would your response
7 be about the death penalty?

8 A. The same as I said earlier. If someone
9 has been found guilty of murder beyond a
10 reasonable doubt and it warrants it, I believe
11 in the death penalty.

12 Q. Okay. Some people feel that once it is
13 proven beyond a reasonable doubt that it is a
14 malice murder, and you remember that the Judge
15 defined that for you, ---

16 A. (Affirmative nod.

17 Q. That they are going to automatically vote
18 for the death penalty. There are some people
19 who once you've shown that malice murder, each
20 and every time beyond a reasonable doubt,
21 that's enough for them. How do you respond to
22 that? Is that you or is that not you?

23 A. You're saying that it has been proven
24 that, yes, he did it, he was there, and then I
25 would say, yes, that I believe in the death

1 penalty in that case.

2 Q. What I want to ask you next, and there are
3 no right or wrong answers, if that malice
4 murder is proven beyond a reasonable doubt --
5 did it, intended to do it, got the right
6 person, are you going to automatically vote for
7 the death penalty once that is proven to you
8 beyond a reasonable doubt?

9 A. I would have to wait and -- I guess wait
10 for the second phase, to make sure that
11 everything is in line. I am not going to put
12 someone in the death penalty that I don't have
13 -- give someone a death sentence knowing that
14 they did it, but I could, yeah.

15 Q. Okay. Let me ask it this way, when you
16 get -- when a jury gets to that second part
17 where they are weighing the death penalty and
18 life imprisonment without the possibility of
19 parole, the person has already been convicted
20 beyond a reasonable doubt for that malice
21 murder.

22 A. Yes, sir.

23 Q. The jury knows that they did it, meant to
24 do it, and -- I guess I am just a little -- I
25 want to make sure that I understand your

1 answers. I'm not trying to put words in your
2 mouth. Is the fact that he's been convicted
3 beyond a reasonable doubt the only thing that
4 you're looking at?

5 A. No. If everything points to -- no. If
6 the crime warrants it, if everything points to
7 me being guilty as charged, this person or
8 anyone else, then yes I could do that and ---

9 Q. Okay.

10 A. --- I would do that.

11 Q. If it is proven to you beyond a reasonable
12 doubt that he's done that, that it's a malice
13 murder, are you still going to be able to
14 consider things that may have nothing to do
15 with the crime, such as his background or how
16 he was raised, drug addiction or mental health?

17 A. Yes. I have to know everything before I
18 can make a decision on anything. I can't sit
19 here today and say, 'This is how I am going to
20 do it without hearing anybody speak or testify
21 or anything else.'

22 Q. Okay. Because you understand the Judge's
23 discussion with you and his instruction. Even
24 if someone has proven beyond a reasonable doubt
25 that he did it, there's other things to

1 consider.

2 A. I understand.

3 Q. I guess what I am trying -- I just want to
4 make sure, I'm not trying to put words in your
5 mouth. I just want to make sure that I
6 understand your answers. Are you saying that
7 you're still going to consider even stuff that
8 had nothing to do with the crime or for you,
9 when it's proven beyond a reasonable doubt,
10 you'd stop?

11 A. I ---

12 SOLICITOR WILSON: Objection.

13 THE COURT: I will allow this one
14 question. Overruled. You can continue.

15 EXAMINATION CONTINUED

16 BY MR. BLOOM:

17 Q. Are you still going to be ---

18 A. (Affirmative nod), listen to everything.

19 Yes, sir.

20 Q. Okay. So you're not going to stop just a
21 "beyond a reasonable doubt"?

22 A. No. Everything comes into. All right?

23 I'd take everything -- I think he said Friday

24 that there were like three phases and you'd

25 have to prove all three of those. I could keep

1 an open mind.

2 Q. Okay. But "beyond a reasonable doubt"
3 doesn't decide it for you, that's not where it
4 ends for you?

5 A. No, there are a lot of collective things
6 that add up to ---

7 Q. That's all that I was trying to ask.

8 A. Okay.

9 Q. Let me ask you next, Judge Dennis of
10 course told you that a juror in such a case
11 never has to impose the death penalty. Do you
12 understand that?

13 A. Yes.

14 Q. That the law never requires it. Right?

15 A. Right.

16 Q. Even if beyond a reasonable doubt it is
17 proven that he did it, the law doesn't require
18 the death penalty. Do you understand that
19 part?

20 A. Yes.

21 Q. And what the law does require is that each
22 juror make individualized and moral reasoned
23 judgments as to the sentence. Do you think
24 that you can do that?

25 A. Yes.

1 Q. And that would include considering life
2 without parole in that judgment?

3 A. Yes, sir.

4 Q. As Judge Dennis told you, that would
5 include considering life without parole for any
6 reason, no reason or as a simple act of mercy.
7 Could you do that?

8 A. Yes, sir.

9 Q. And if after you heard all the evidence,
10 all the circumstances, discussed the matter
11 with your fellow jurors, everyone has debated
12 it, you've listened back and forth, once you
13 came to your own moral, individualized choice,
14 if eleven jurors were going one way and you
15 were going another, could you stand by your own
16 moral, reasoned, individualized judgment?

17 A. Yes, sir.

18 Q. And you couldn't just like say, 'I'm
19 tired, I'm ready to go home for dinner. I'm
20 just going to go along to get along.'

21 A. No.

22 Q. You could ask them to respect your vote?

23 A. (Affirmative nod).

24 Q. And you would respect their vote?

25 A. Yes, sir.

1 MR. BLOOM: Thank you.

2 THE COURT: Anything else,
3 Solicitor?

4 SOLICITOR WILSON: No, sir.

5 THE COURT: Let me ask one question,
6 because -- I think you clarified it but I want
7 to be sure, because there's one way of hearing
8 it makes it somewhat different from some of the
9 things that you told me. I understand but I --
10 I think you clarified it. You were talking
11 about if you get convicted beyond a reasonable
12 doubt then you could -- I think what you were
13 saying, and I want to be sure, is that if the
14 circumstances warranted it, you could vote for
15 a death sentence but it doesn't mean that's
16 automatic? That it automatically would be a
17 death sentence?

18 JUROR NUMBER 314: Correct.

19 THE COURT: You'd still have to
20 consider everything first?

21 JUROR NUMBER 314: Correct.

22 THE COURT: Okay, I just wanted to
23 be sure about that. Thank you, ma'am. If you
24 will step outside for just a moment, we will be
25 with you momentarily.

1 (JUROR NUMBER 314 EXITS COURTROOM)

2 THE COURT: Notwithstanding the
3 equivocation, I still believe that she is
4 qualified. Any objection from the State?

5 SOLICITOR WILSON: No, sir.

6 THE COURT: Any objection from the
7 Defendant?

8 MR. BLOOM: No, sir.

9 THE COURT: Thank you very much. I
10 think she clarified that for me.

11 (JUROR NUMBER 314 ENTERS COURTROOM)

12 THE COURT: Thank you, Ms. Tompkins.
13 Thank you very much, and I appreciate your
14 patience. You've been found to be qualified to
15 be a member of the panel from which we will
16 select our jury.

17 We expect that to take place on
18 Thursday at 9:30. When it happens -- when
19 you're instructed to return, you will need to
20 come to this courtroom and take a seat out
21 there.

22 JUROR NUMBER 314: Okay.

23 THE COURT: Be prepared to stay
24 because if you're selected we will start with
25 the trial after we've selected our jury.

1 Until then and until you have been
2 dismissed from this case, please remember that
3 you still are not at liberty to discuss this
4 case with anyone or permit anyone to talk with
5 you about it. Also, please continue not to
6 watch any news programs about it or read any
7 news accounts. Have a great day and we'll see
8 you, hopefully, Thursday.

9 Tonight, if you will, call the
10 answering machine, the number that you were
11 given, on that card from the Clerk's Office.
12 There will be a message on there tonight
13 telling the Dickerson panel when they need to
14 report. Just follow that instruction. I think
15 that it will probably say 9:30 on Thursday but
16 we're trying to kind of weigh how long it is
17 going to take us to complete the panels. So
18 there may be a change. Whatever time that it
19 says to report, just follow that instruction
20 until we are together again. Look forward to
21 seeing you on Thursday. Have a good day.

22 (JUROR NUMBER 314 EXITS COURTROOM)

23 THE COURT: Mr. Johnson, Number 157.

24 (JUROR NUMBER 157 ENTERS COURTROOM)

25 THE COURT: Mr. Johnson, how are you

1 this afternoon?

2 JUROR NUMBER 157: Fine.

3 THE COURT: Good. We're going to
4 have some questions that we need to ask of you,
5 pretty much along the lines of what we talked
6 about when we were last together on Friday.

7 As you will recall, Mr. Johnson, those
8 questions didn't have any correct answers. It
9 really is designed to help you make a decision
10 and to help us make a decision as to whether or
11 not you can be a fair and impartial juror in
12 this case. That is the sole purpose. We're
13 not here to invade your privacy, nor challenge
14 any of your philosophies.

15 All that we ask if that you be candid
16 with your responses, truthful with your
17 responses and give complete answers. Will you
18 do that, sir?

19 JUROR NUMBER 157: Yes, sir.

20 THE COURT: I would remind you, sir,
21 that you are still under oath in this matter.

22 JUROR NUMBER 157: Yes, sir.

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

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q. First, since we were together, have you
4 talked with anyone or allowed anybody to talk
5 with you about this case?

6 A. No, sir.

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

9 A. No.

10 Q. When we were together on Friday, I gave
11 you the names of a number of persons. I failed
12 to mention two names that I need to ask you
13 about. Are you related by blood or marriage,
14 have any business dealings with or socially or
15 casually acquainted with or have any dealings
16 with a Jeff Osborne or Matt Casey?

17 A. No, sir.

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

21 A. Yes.

22 Q. Which type most accurately describes you?

23 A. I'd have to say type three.

24 Q. Type three?

25 A. (Affirmative nod).

1 Q. Type three is the juror that, as obviously
2 you would see from the listing there that jury
3 would be empaneled to determine the sentence
4 for a person convicted of murder. Do you
5 understand that?

6 A. Yes.

7 Q. It is my understanding that you being a
8 member of that jury, as a type three juror,
9 would have to hear all the facts and
10 circumstances before you would make a
11 determination as to what the appropriate
12 sentence would be?

13 A. That's correct.

14 Q. You understand that in that situation that
15 we're talking about where we have the three
16 types of jurors, that the jury and you as a
17 member of that jury would have heard all the
18 evidence concerning whether the person who was
19 accused of murder had committed the murder and
20 you would have decided beyond a reasonable
21 doubt at that point that the person was guilty
22 of that crime. In other words, the State would
23 have established each of those elements. Do
24 you understand that?

25 A. I'm sorry. I didn't follow that. The

1 question?

2 Q. Yeah, the question is that obviously if
3 you're going to consider the sentence -- of the
4 three types -- they have the responsibility of
5 considering the sentence, at that point they
6 wouldn't have started the second phase. They
7 would have completed the first phase, found the
8 person was guilty of murder. Do you understand
9 that?

10 A. Yes.

11 Q. That jury would have been a part of --
12 they would have made the decision on whether or
13 not the state had convinced them of the crime.
14 They would be aware of the circumstances
15 surrounding the crime and they would have found
16 that the State had accused (sic) the correct
17 person and they were convinced, that you as a
18 member of that jury, of each element of that
19 crime and you'd found that person guilty of
20 murder. Do you understand that?

21 A. Okay.

22 Q. That means that they had the right person,
23 you felt that they'd -- that he was the person
24 or that she was the person, that they had
25 killed somebody with malice aforethought. That

1 is what murder means. It means simply as it
2 sounds, that they intended to kill somebody,
3 they went out to kill them, they were motivated
4 with evil intent, no reason, no rhyme or reason
5 for doing it, they just did it out of a mean
6 spirit and they killed an individual. So
7 that's what we're talking about.

8 We are not talking about, 'well, they
9 were upset' and they got in a fight or that
10 there was something that aggravated them and
11 they killed them there, manslaughter, self-
12 defense, accident or mistake. This was the
13 person, they did it, now they're guilty of
14 that.

15 In this state, being in that situation,
16 there would be a second phase where you would
17 hear additional evidence, evidence that you
18 haven't heard. You've heard all about the
19 crime but this would be evidence that would be
20 useful and essential for a jury to consider in
21 determining the appropriate sentence. Do you
22 understand that?

23 A. Yes, sir.

24 Q. Am I to understand that as a type three
25 juror, notwithstanding that you'd just found

1 somebody guilty of the serious crime of murder,
2 you still would have an open mind as to what
3 the appropriate sentence was?

4 A. I think so.

5 Q. I appreciate that answer. Let me follow
6 up with this, people say 'I think I could', 'I
7 believe that I could', 'I'd try to', and I
8 understand that. That's a very human response.
9 The question that I have is this, as a juror
10 you would have in that situation raised your
11 hand and promised the State and the person who
12 was accused that you would keep an open mind at
13 all times throughout the trial and would change
14 that only when you were instructed to begin
15 your deliberations. That you would have made a
16 decision consistent with the law and your view
17 of the facts of the case and in this setting
18 what you're saying is that -- in that setting
19 -- that jury would have had to have had an open
20 mind about the appropriate sentence for the
21 crime of murder, because you would have found
22 him guilty beyond a reasonable doubt of murder.
23 No question about it. That's been established.
24 Are you a person that would be in that position
25 or is your philosophy such that you'd say, 'No,

1 I think I'd probably be more inclined to one
2 sentence or another.'

3 A. I think I would have to evaluate all the
4 data and make the decision once I saw all the
5 information.

6 Q. And "all of the data" would be that
7 additional evidence that you would have to hear
8 in the second phase?

9 A. Yes.

10 Q. You understand that?

11 A. Yes.

12 Q. You would be able to make a commitment
13 that you would not have had any predetermined
14 sentence at that point?

15 A. I don't believe so.

16 Q. You don't think you would or you don't
17 think you could make that commitment?

18 A. Well, I don't know that I could make that
19 commitment because I don't know what the
20 evidence that I would have seen up to that
21 point ---

22 Q. Well, understand something. Typically in
23 most situations in this case the jury doesn't
24 even have anything to do with the sentence on a
25 murder. Do you understand that?

1 A. (No verbal response).

2 Q. All the jury does most of the time is
3 decide whether the State has proven the crime;
4 in other words, proved that person committed
5 that particular crime. As I told you on
6 Friday, the State has the burden of proving
7 each element beyond a reasonable doubt.

8 A. (Affirmative nod).

9 Q. And until and unless they do, that person
10 is innocent of those charges and that would
11 carry the day. If they didn't do it, the jury
12 has to return a verdict of not guilty. Do you
13 understand that?

14 A. Right.

15 Q. But if they convinced that jury beyond a
16 reasonable doubt of the offense of murder,
17 normally once that jury returns a verdict of
18 guilty then the judge would impose a sentence.
19 The sentence in that situation, that the judge
20 would impose, there is a remote situation but
21 typically does not happen, the judge most of
22 the time, and typically, the only sentence --
23 the most serious sentence that can be imposed
24 would be life imprisonment without the
25 possibility of parole. The judge could not

1 impose a death sentence in that situation. He
2 is not bound to life imprisonment without the
3 possibility of parole but he can't -- he or she
4 could not give more than that.

5 It is only when a jury is selected because
6 the State has alleged and raised that there are
7 certain circumstances that change this from a
8 normal murder. We call those aggravating
9 circumstances. That is what the second phase
10 -- that is one of the things that the second
11 phase is about.

12 The second phase is where the jury has to
13 first determine that aggravating circumstances
14 exist before you can even consider the death
15 penalty. Otherwise, you can't even consider
16 it, the law says that it is not available.

17 So you can begin to see why it is so
18 important when I ask you if you have an open
19 mind because you can't even think about
20 imposing a death sentence until a jury -- until
21 the State has convinced you that an aggravating
22 circumstance exists.

23 That is part of what you're talking about,
24 that you have to evaluate all, I assume is what
25 you mean. You'd have to go through that entire

1 process.

2 And you'd have another charge. Just as
3 you would be instructed on the law in the first
4 phase, there would be an instruction on the law
5 in the second phase. I would tell you about
6 aggravating circumstances. They are
7 statutorily provided. An example of that would
8 be if someone is convicted of killing a police
9 officer and the jury finds that that was done
10 beyond a reasonable doubt, then that is an
11 aggravating circumstance; which then allows the
12 jury to consider a death penalty, in addition
13 life imprisonment without the possibility of
14 parole.

15 If the jury -- the jury would be
16 instructed in the second phase that if the
17 State fails to prove an aggravating
18 circumstance, then the only sentence that you
19 can return is life without parole. You can't
20 even consider it without that. Do you
21 understand that?

22 A. (Affirmative nod).

23 Q. But it would be further instructed that if
24 the jury is convinced that an aggravating
25 circumstance has been established, then they

1 may consider a death sentence but they are not
2 required to return a death sentence. In other
3 words, the court is not going to tell you that
4 you have to return a death sentence if such and
5 such exists.

6 It just simply means that if you find that
7 now, in addition to life without parole, you
8 may now consider imposing a death sentence but
9 you have to consider all the evidence, you'd be
10 instructed to consider all evidence presented,
11 that is presented to assist you in making that
12 determination of what the appropriate sentence
13 would be.

14 Am I understanding you that you at this
15 point still don't have a pre--, -- one way or
16 the other, life imprisonment without the
17 possibility of parole or a death sentence,
18 you'd still have to go through the entire
19 process?

20 A. I would have to go through the process.

21 Q. Okay. All right. Because part of that
22 instruction would be that even -- even when you
23 determine that there is an aggravating
24 circumstance and you have the right to return a
25 death sentence, a jury can return a life

1 without parole. Do you understand that?

2 A. I understand that.

3 Q. And you could consider that and make that
4 decision, between -- assuming you were given
5 the choice -- of which one you thought was most
6 appropriate, but it would have to be based on
7 all the circumstances; is that correct?

8 A. Yes, sir.

9 Q. Okay. Because in addition to that I would
10 instruct you that the record may contain
11 mitigating circumstances. Mitigating
12 circumstances are circumstances that -- some
13 are statutory, some are nonstatutory. Some of
14 them are addictions that the person may have
15 had, mental illness problems that don't rise to
16 insanity but would be a factor that the jury
17 maybe should consider in fashioning a sentence
18 -- the raising of the person, what sort of
19 problems may have happened in childhood that
20 may have some influence or affect on the
21 sentence that you would impose.

22 If those are present, the jury would be
23 instructed that they have to give meaningful
24 consideration to those mitigating circumstances
25 before deciding between life or death. You

1 would be able to follow that instruction?

2 A. Absolutely.

3 Q. And you would give meaningful
4 consideration to those?

5 A. Yes, sir.

6 Q. Some of them may not have anything in the
7 world to do with the crime itself but they are
8 factors that the court would find that you have
9 to consider, and you would do that; is that
10 correct?

11 A. Yes, sir.

12 Q. Okay. I would further instruct you that,
13 just as I would in the first phase, in that
14 setting that the State has the burden of proof
15 in both phases. The defendant, the person who
16 is accused of the crime has no burden. That
17 would include mitigating circumstances. They
18 don't have to prove anything at all. You
19 couldn't hold that against them. I assume you
20 would be able to follow that instruction, as
21 well.

22 A. Yes, sir.

23 Q. And if there weren't any mitigating
24 circumstances, you wouldn't hold that against
25 the defendant?

1 A. No.

2 Q. That is important for a lot of reasons
3 because, I would tell you, you can't do that.
4 But another very important reason is because
5 the instruction would further say, even where
6 there aren't any mitigating circumstances, that
7 the jury still has the right, for no reason
8 whatsoever, to return -- notwithstanding that
9 they could return a death sentence, they could
10 still vote to say, 'No, we believe the
11 appropriate sentence is life without parole.'
12 Do you understand that?

13 A. Yes, sir.

14 Q. So it is my understanding that as a type
15 three juror that you would have to go through
16 all of that process and have to have the
17 benefit of exchange with your fellow jurors and
18 then you could make a decision as to which one
19 was most appropriate? Is that correct?

20 A. That's correct.

21 Q. And there are circumstances, and I'm not
22 asking you to tell me what they are, but there
23 are circumstances that at the end of that
24 process that you believe in which you could
25 vote for a life sentence without the

1 possibility of parole notwithstanding that you
2 could have imposed a death sentence?

3 A. Yes, sir.

4 Q. And there are circumstances where you
5 could have imposed a life without parole but
6 you would choose to impose a death sentence?

7 A. Possibly.

8 Q. Well, there -- could you do that if you
9 found those circumstances existed?

10 A. Yes, I think I could.

11 Q. Well, you have to sign a form that I would
12 give you -- it is not just voting, you would
13 have to put your name and say it's a death
14 sentence. You would sign that as one of the
15 jurors. You could do that?

16 A. Yes, sir.

17 Q. If you felt, after considering it all,
18 that that ---

19 A. Yes, sir.

20 Q. --- would be the appropriate sentence?

21 A. Yes, sir.

22 Q. Okay. Now, let's talk about this
23 particular case. As I mentioned to you -- just
24 for a few moments.

25 Mr. Dickerson has been accused of

1 committing some criminal offenses. We talked
2 about the fact that you didn't have any problem
3 with the presumption of innocence. As I
4 understand, that's still your position?

5 A. Yes, sir.

6 Q. Okay. And of course that means -- it's an
7 active presumption, ---

8 A. (Affirmative nod).

9 Q. --- it means that as you see Mr. Dickerson
10 today that he is innocent of these charges, as
11 far as you're concerned?

12 A. Correct.

13 Q. And you understand that the only person
14 that has any burden of proving anything is the
15 State?

16 A. Yes, sir.

17 Q. And I would tell you in a trial, if you
18 were empaneled, that Mr. Dickerson -- that you
19 would never look to him to prove or disprove
20 anything at all, he has no obligation
21 whatsoever. You would be able to follow that
22 instruction?

23 A. Yes, sir.

24 Q. And I would tell you that persons accused
25 of criminal offenses such as Mr. Dickerson

1 don't even have to put up evidence if they
2 don't want to, and you would be instructed not
3 to view that against them. In fact, they don't
4 have to testify. Do you understand that?

5 A. Yes, sir.

6 Q. You would have no problem following that
7 instruction?

8 A. No.

9 Q. And as I understand, you would have --
10 nothing about this case would give you any
11 concern about your ability to apply your common
12 sense, your sense of logic and reasoning fairly
13 and impartially in analyzing the evidence,
14 which is the testimony of the witnesses and
15 exhibits, deciding what you believe to be the
16 truth? Then once deciding that, taking the law
17 as I gave it to you and applying that law
18 fairly and impartially? Is that correct?

19 A. Correct.

20 Q. Even though you may hear something which
21 may cause you to say, 'Wait a minute, I didn't
22 think that was the law' or 'that's not what I
23 believe.' I would respect your right to
24 believe otherwise, but you would make a
25 commitment that you would set that aside and

1 you would be able to do that and follow my
2 instruction. Is that correct?

3 A. I don't quite understand what you're
4 saying.

5 Q. Well, sometimes people hear some law and
6 they may say, 'I don't think that's the law, I
7 don't think the Judge is right.' Or, 'I don't
8 think that should be the law.' Or, 'That's not
9 consistent with what I believe and therefore I
10 don't care what the Judge is telling me, I am
11 going to do what I've been doing all my life
12 and I'm going to disregard the instruction.'
13 That happens. I am not saying that it will, I
14 am just saying that it could.

15 I am saying that if you hear something,
16 you have to make a commitment that if you had
17 that thought, you'd have to promise the State
18 and Mr. Dickerson and this Court that you would
19 set that aside and take the law as I give it to
20 you. Because we have two judges working
21 together. I don't have anything to do with the
22 factual determinations but you don't have
23 anything to do with the legal aspects of it.

24 Do you understand that?

25 A. I understand.

1 Q. Would you be able to do that?

2 A. Yes.

3 Q. And you'd be able to make that commitment?

4 A. Yes, sir.

5 THE COURT: Thank you, sir. Please
6 answer any questions that the attorneys may
7 have for you.

8 MR. BLOOM: May it please the court?

9 THE COURT: Yes, sir.

10 VOIR DIRE EXAMINATION

11 BY MR. BLOOM:

12 Q. Mr. Johnson, good afternoon, sir.

13 A. Yes, sir.

14 Q. My name is Jeff Bloom and along with
15 Andrew Carroll, we represent William Dickerson.
16 I just have a few followup questions from what
17 Judge Dennis asked you.

18 Can I just ask you, kind of right off the
19 bat, what your general opinion or feeling is
20 about the death penalty?

21 A. My general feelings are that, as I
22 mentioned on the questionnaire, that I think
23 that there possibly are cases where it is
24 warranted.

25 Q. Okay.

1 A. It's not something that I think should be
2 taken too lightly or perhaps used too
3 liberally.

4 Q. Okay. Can you explain to me what you mean
5 by that? I think I know what you mean but I
6 don't want to assume.

7 A. Well, I just think that it is -- as the
8 Judge mentioned, it probably has to do with the
9 aggravating nature of certain crimes. You
10 know, in my limited understanding of the law
11 there are different degrees of murder. There's
12 first degree, second degree, and I don't know
13 how many other degrees but -- again, it just
14 goes back to each individual situation. I
15 don't think that you can make a blanket
16 statement as to -- well, I can't personally,
17 categorically, say whether it should never be
18 used or sometimes be used -- I think that it
19 should sometimes be used.

20 Q. Okay. In general, do you feel that it is
21 used too much or not enough or about right?

22 A. I don't really have a feeling for that, to
23 be honest with you.

24 Q. Fair enough.

25 A. It's just not something that I follow that

1 closely.

2 Q. Okay. Fair enough. At one point when you
3 were answering Judge Dennis' questions, you
4 hesitated a bit and told him that you didn't
5 know if you could make a commitment, at a
6 certain point in time, to keep an open mind I
7 think about sentencing. It was during the
8 point where Judge Dennis, I believe, was asking
9 you if you would have kind of a predetermined
10 decision, if you as a juror found someone
11 guilty of malice murder and -- I was trying to
12 write it down and I didn't get it all, you said
13 something to the effect, 'I don't know if I
14 could make a commitment'.

15 A. Well, ---

16 Q. Can you just explain to me what you meant
17 by that, by your hesitation?

18 A. Well, the way that I understand it is that
19 apparently we're going to receive, as a juror,
20 additional information after you've made a
21 decision as to guilt or innocence, and whether
22 the State has proved its case, that the Judge
23 is going to instruct the jury, you know, as to
24 the specifics of the law and -- other,
25 additional information.

1 Q. Yes.

2 A. So I don't see how you can say in advance
3 whether you're going to commit to anything or
4 not commit if you don't have all the
5 information.

6 Q. I see. Okay.

7 A. That's what I meant by that.

8 Q. I understand.

9 A. I am not going to commit either way to
10 anything until I've received every bit of the
11 data.

12 Q. I appreciate you explaining that to me.

13 A. Okay.

14 Q. Let me go back and ask you just a few more
15 questions about the process and I'll try not to
16 repeat what Judge Dennis asked but I want to
17 define a few terms.

18 One of the terms that Judge Dennis defined
19 for us was "murder." He not you that in this
20 state it is where someone did it, intended to
21 do it, with malice, an evil heart, that they
22 got the right person. I know you in one of
23 your responses talked about first degree and
24 second degree murder and I just want to clarify
25 for you that South Carolina is one of those

1 states that we don't have degrees of murder.

2 A. Okay.

3 Q. That's fine, that's fine, you wouldn't be
4 expected to know that. There are some folks,
5 though, that feel once malice murder is proven
6 to them, that they've got the right person
7 beyond a reasonable doubt, no questions asked,
8 that they are going to automatically vote for
9 the death penalty at that point, they don't
10 need the rest of that information after that
11 kind of first phase.

12 A. (Affirmative nod)

13 Q. Can you just tell me -- I think I know
14 where you are but I don't want to assume --
15 your response at that point in time, once
16 you've -- if you're a juror and you have
17 resolved the first phase, found someone guilty
18 of that malice murder, did it, set out to do
19 it, found the person and did it, do you have a
20 predetermined view as to the sentence at that
21 point in time?

22 A. I don't think so.

23 Q. Okay. I am not trying to reask what Judge
24 Dennis asked but you've clarified for me some
25 of your responses, so I appreciate that.

1 Judge Dennis also you -- well, let me
2 rephrase. Some jurors feel that once they go
3 into that extra phase where they are going to
4 weigh life without parole and the death
5 penalty, that they just want to focus on the
6 facts of the crime; that there is nothing about
7 the person's background or childhood or drug
8 addictions -- that type of data, isn't
9 relevant. I take it from your responses that
10 that type of data or information that may have
11 nothing to do with the crime is relevant and
12 important to you.

13 A. Yes, sir.

14 Q. Because that's the type of thing that you
15 would want to hear? You'd want all the data?

16 A. Yes, because as the Judge said there may
17 be some mitigating issues, as well as the
18 aggravating issues.

19 Q. Okay. Just to help you understand the
20 process, because I appreciate your honesty that
21 the process is new to you, when we talk about
22 aggravation, as Judge Dennis said, that's like
23 murder and the murder of a police officer;
24 murder and an armed robbery; murder and
25 something else. Again there are some people

1 that, once they hear that, they're done. I
2 take it that's not you, that you still don't
3 have a predetermined ---

4 SOLICITOR WILSON: Judge, I object.
5 It's been asked and answered.

6 THE COURT: I will allow this one
7 question.

8 MR. BLOOM: Yes, sir.

9 EXAMINATION CONTINUED

10 BY MR. BLOOM:

11 Q. You don't have a predetermined opinion?

12 A. No, sir.

13 Q. Lastly, sir, you understood Judge Dennis'
14 instruction that the death penalty is never
15 required.

16 A. (Affirmative nod).

17 Q. All right. In fact, the law states that
18 your choice about life without parole or a
19 death sentence is an individualized, reasoned,
20 moral judgment. You can accept that, I take
21 it?

22 A. Yeah.

23 Q. All right. If after you'd heard all the
24 evidence and all the circumstances and all the
25 information and discussed it all with every

1 juror, listened to them and they'd listened to
2 you and you all had come to your own
3 individualized and moral, reasoned judgment, if
4 eleven jurors feel one way and you were feeling
5 another, you could stand to your moral,
6 individualized judgment and not just give your
7 vote up to go along to get along?

8 A. They would have to convince me somehow to
9 change how I felt.

10 Q. Okay, and you'd be open to discussion.

11 A. Sure.

12 Q. I am not suggesting that but, you know,
13 some jurors just say, 'You know what? It is
14 late, I'm...' ---

15 A. I'm not going to cave in to just get out
16 of there.

17 Q. I didn't think that but I had to ask.

18 A. Okay.

19 Q. You would ask them to respect your vote?

20 A. Yeah.

21 Q. You would respect theirs?

22 A. Yes, sir.

23 MR. BLOOM: Thank you, sir.

24 THE COURT: Solicitor, any
25 questions.

1 SOLICITOR WILSON: Mr. Johnson, I'm
2 Scarlet Wilson, I'm the Solicitor here. This
3 is Bruce Durant and Rutledge Durant and the
4 three of us will be the ones presenting
5 evidence once we get started. Based on your
6 answers to Mr. Bloom's questions and the
7 Judge's questions, I don't have anything else
8 for you. Thank you, sir.

9 THE COURT: Thank you, Solicitor.
10 Thank you, Mr. Johnson. I am going to ask you
11 to step out just for a few moments. We will be
12 with your momentarily.

13 (JUROR NUMBER 157 EXITS COURTROOM)

14 THE COURT: I find him to be
15 qualified. Any objection from the State?

16 SOLICITOR WILSON: No, sir.

17 THE COURT: Any objection from the
18 defendant?

19 MR. BLOOM: No, sir.

20 THE COURT: Thank you. Ask him to
21 come in, please.

22 (JUROR NUMBER 157 ENTERS COURTROOM)

23 THE COURT: Thank you very much, Mr.
24 Johnson. You've been found to be qualified to
25 be a member of the panel from which we will

1 select our jury.

2 We expect that to take place on
3 Thursday at 9:30. That is what we are hoping
4 for. As you have already seen, these things
5 tend to run over and we have a few more panels
6 to go through tomorrow but we are hoping to be
7 ready at that time.

8 When you're instructed to return, you
9 will need to come to this courtroom and take a
10 seat out there. When you are instructed to
11 return, know that we will pick our jury and
12 then we will start the trial. So if you're
13 selected, you will be expected to remain with
14 us and complete the day's work, so be prepared
15 to do that if necessary.

16 Also, until then and until you have
17 been dismissed from this case, please remember
18 that you still are not at liberty to discuss
19 this case with anyone or permit anyone to talk
20 with you about it. Also, please continue not
21 to watch any news programs about it or read any
22 news accounts. Have a great day and we'll see
23 you, hopefully, Thursday. Okay?

24 JUROR NUMBER 157: Yes, sir.

25 Will someone contact me?

1 THE COURT: I'm glad you said that,
2 because we need for you to call the number
3 after 6:00 tonight. There will be a message.
4 The message may say/confirm what I said, the
5 panel -- what it will say is that the Dickerson
6 jury panel needs to report Thursday at 9:30.
7 If that is the message, then come. It may say
8 to call back tomorrow night after 6:00. If
9 that is the case, then you'll know we still
10 aren't sure about that. If it says what I've
11 said I think it's going to say, then just be
12 here Thursday. Thank you, sir.

13 JUROR NUMBER 157: Great.

14 THE COURT: Have a good day.

15 JUROR NUMBER 157: Thank you.

16 THE COURT: Hopefully we will see
17 you Thursday.

18 (JUROR NUMBER 157 EXITS COURTROOM)

19 THE COURT: Last one, in this panel,
20 is Mr. Simmons.

21 (JUROR NUMBER 392 ENTERS COURTROOM)

22 THE COURT: Mr. Simmons, good
23 afternoon to you, sir. Thank you for your
24 patience in this matter. How are you?

25 JUROR NUMBER 392: I'm great.

1 THE COURT: We won't detain you much
2 longer. We are going to continue the process
3 that we started on Friday. You will recall
4 when we were last together that we were asking
5 you a number of questions, and we want to
6 continue that. I may have -- I am going to
7 have some questions for you and the attorneys
8 may have some questions for you.

9 If you remember, Mr. Simmons, there
10 really are no correct answers to any of these
11 questions. They really are designed to help
12 you and to help us decide whether you can be a
13 fair and impartial juror or not. Okay?

14 JUROR NUMBER 392: Okay.

15 THE COURT: Likewise, we certainly
16 aren't asking you to change how you think or
17 believe, nor are we trying to invade your
18 privacy.

19 JUROR NUMBER 392: Okay.

20 THE COURT: We just need for you to
21 be honest with your answers and give us
22 complete answers to the questions. I am
23 confident that you will do that. Okay?

24 JUROR NUMBER 392: Yes, sir.

25 THE COURT: I would remind you in

1 that regard that you are still under oath in
2 this matter. Okay?

3 JUROR NUMBER 392: Okay.

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

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. First let me ask you, since we were last
10 together have you talked with anyone or
11 permitted anyone to talk with you or to talk
12 about this case in your presence?

13 A. No.

14 Q. Have you read any news accounts or watched
15 news programs about this case?

16 A. No.

17 Q. Friday I gave you the names of a number of
18 people and asked if you were related to any of
19 those persons. I failed to mention two names
20 that I need to ask you about. Are you related
21 by blood or marriage, have any business
22 dealings with or socially or casually
23 acquainted with or have any dealings with Jeff
24 Osborne or Matt Casey? Do you know them?

25 A. No, I do not.

1 Q. When you came, you were given a sheet that
2 identified three types of jurors.

3 A. (Affirmative nod).

4 Q. Have you had an opportunity to review
5 those three jurors?

6 A. Yes, sir.

7 Q. Of the three types listed on that sheet,
8 which type most accurately describes you?

9 A. Type two.

10 Q. Type two is the juror that basically, as I
11 understand it, and I will share my understand-
12 ing to see if we are together. Obviously in
13 that situation of those three types, there are
14 jurors that are involved in a murder case where
15 they are going to have to determine the
16 appropriate sentence for that person.

17 A. (Affirmative nod).

18 Q. At that stage where the question comes,
19 they would have already found that a person is
20 guilty of the crime of murder. Okay?

21 A. Yes, sir.

22 Q. Now, and it is in very limited
23 situations, they are going to have to make the
24 choice of what the appropriate sentence is
25 going to be. They are going to -- there is

1 going to be a second phase where they are going
2 to hear additional evidence in addition to the
3 evidence of the crime. Now they are going to
4 hear evidence concerning -- there would be
5 information important to determining a
6 sentence. Okay? For this person.

7 A. (Affirmative nod).

8 Q. A number of things would occur, one of
9 which that that they would have to first
10 determine whether they are even entitled to
11 consider a death penalty because not every
12 murder is it entitled for the jury to consider
13 a death penalty. They have to find beyond a
14 reasonable doubt in the second phase, first,
15 that there was at least one aggravating
16 circumstance that existed and they have to find
17 that beyond a reasonable doubt for the jury to
18 even consider a death sentence. Do you
19 understand that?

20 A. Yes, sir.

21 Q. But as I understand, as a type two juror,
22 once you found that person guilty of murder, it
23 would be your position that the only sentence
24 which would be appropriate for that crime would
25 be life imprisonment without the possibility of

1 parole?

2 A. Yes, sir.

3 Q. And if you were to go into the second
4 phase where you heard all the evidence and the
5 judge instructed you that if you found
6 aggravating circumstances and you were a part
7 of that jury and had that instruction and that
8 jury and you concluded, beyond a reasonable
9 doubt, that the State had established the
10 existence of an aggravating circumstance, now
11 that you have the right to consider it, you
12 couldn't even consider it as part of your
13 philosophy; is that right?

14 A. Right.

15 Q. Because there is no circumstance that
16 exists that you could think of that would
17 warrant you imposing a death sentence?

18 A. Right.

19 Q. None whatsoever?

20 A. None.

21 THE COURT: Please answer any
22 questions that the attorneys may have.

23 VOIR DIRE EXAMINATION

24 BY SOLICITOR WILSON:

25 Q. Mr. Simmons, I'm Scarlet Wilson, I'm the

1 Solicitor here. This is Bruce Durant and
2 Rutledge Durant. They are also prosecutors in
3 my case -- my office -- sorry, it's been a long
4 day for us, too.

5 When we get started in this case, the
6 three of us are going to be presenting the
7 evidence for the jury and the judge. Before
8 that, I need to follow up on some of your
9 answers to Judge Dennis and also your
10 questionnaire. Okay?

11 A. Okay.

12 Q. First of all, I want to assure you that
13 there aren't any right or wrong answers,
14 because we're talking about feelings and
15 everybody has their own feelings and opinions.
16 I just want you to feel comfortable. Okay?

17 A. Okay.

18 Q. Have you ever testified before?

19 A. No.

20 Q. Have you ever been in court with Mr. Swan?

21 A. No, ma'am.

22 Q. When you filled out your questionnaire,
23 you said that you didn't really agree with the
24 death penalty because some people may have been
25 falsely accused and put to death, then it

1 turned out to be wrong.

2 A. Correct.

3 Q. That is a big concern for you?

4 A. Yes.

5 Q. You understand that nobody, nobody with
6 the prosecution, nobody in this room, I don't
7 think would want an innocent person put to
8 death.

9 A. Correct.

10 Q. Do you have issues with the death penalty
11 beyond those? In other words, if there was no
12 question that someone were guilty, it was on
13 videotape, it was confessed or whatever, do you
14 still have issues with the death penalty being
15 an option?

16 A. I do.

17 Q. Can you tell me a little more about that?

18 A. For some reason -- I mean, some people may
19 have had experience and someone else may come
20 to jail to tell them about their experience,
21 what they went through, and it may better that
22 person.

23 Q. So it is a matter of hope?

24 A. Yes, and my religious belief. I just
25 personally don't agree with it.

1 Q. You said your religious belief? You go to
2 Full Word Ministries?

3 A. Full Word, yeah.

4 Q. Where is that?

5 A. Gordon Street.

6 Q. Is that downtown?

7 A. No, in North Charleston.

8 Q. In North Charleston?

9 A. (Affirmative nod).

10 Q. And part of your feelings about this is
11 based on the church?

12 A. (Affirmative nod), that's part of it.

13 But, as I said, there could be hope for someone
14 else.

15 Q. And you could never give up hope?

16 A. No.

17 Q. I get that. So even if the judge
18 instructed you -- well, let me ask you this
19 first of all, say the death penalty is not on
20 the table.

21 A. Okay.

22 Q. The jury is not going to be deliberating
23 the sentence, only guilt or innocence. You
24 wouldn't have a problem sitting on that kind of
25 jury, where you'd just decide whether someone

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1 is guilty or not guilty?

2 A. No, ma'am.

3 Q. Then it would be up to the judge?

4 A. Yeah.

5 Q. In this kind of case, where there are two
6 phases, if you were on the jury or on a death
7 penalty jury, the Judge would instruct you that
8 you would have to put aside the fact that you
9 had convicted a person; that if you believed
10 that they were guilty beyond a reasonable
11 doubt, then hold the State to its burden to
12 prove what makes it an aggravated murder, -- we
13 have to prove to you again, beyond a reasonable
14 doubt, elements of aggravation, that make a
15 murder even worse. Do you understand that
16 concept?

17 A. Yes.

18 If the judge asked you to do that for us, to
19 set apart your feelings for the death penalty,
20 could you do that?

21 A. No.

22 Q. You couldn't set that aside?

23 A. No, ma'am.

24 Q. Can you think of any situation where if
25 life without parole were on the table and there

1 was hope that you could choose the death

2 penalty over life without parole?

3 A. No.

4 Q. And you couldn't set aside your views,
5 your beliefs even if the judge asked you to?

6 A. No.

7 Q. Or instructed you to?

8 A. No, ma'am.

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

11 THE COURT: Mr. Bloom?

12 VOIR DIRE EXAMINATION

13 BY MR. BLOOM:

14 Q. Mr. Simmons, I believe that you said that
15 your belief that you told us about today is one
16 that you hold as a matter of your religious
17 faith?

18 A. Yes, sir.

19 MR. BLOOM: Thank you very much,
20 sir.

21 THE COURT: All right. Thank you
22 very much. If you would step out, Mr. Simmons.
23 We will be with you momentarily.

24 (JUROR NUMBER 392 EXITS COURTROOM)

25 THE COURT: What is the State's

1 position?

2 SOLICITOR WILSON: He is not
3 qualified, Your Honor.

4 THE COURT: Mr. Bloom?

5 MR. BLOOM: Judge, just as we
6 previously objected on other jurors, we would
7 object to the disqualification of this juror on
8 the grounds of the First Amendment, Eighth and
9 Fourteenth Amendments of the United States
10 Constitution.

11 THE COURT: Thank you, sir. It is
12 protected. I would note, however, that he said
13 that there were reasons other than religious
14 reasons that led him to that conclusion.
15 Certainly the record is there. I think the
16 juror was very candid, for a multitude of
17 reasons he simply isn't going to consider the
18 death sentence and I respect him for that.
19 Ask him to come in, please.

20 (JUROR NUMBER 392 ENTERS COURTROOM)

21 THE COURT: Mr. Simmons, I am going
22 to excuse you from any further participation in
23 this dispute and tell you that now you've
24 completed your services for the jury and you've
25 earned your exemption for three years. Tell

1 Mr. Swan that you are not going to lose that,
2 but also tell him that Judge Dennis said he's a
3 very lucky man to have somebody like you.

4 JUROR NUMBER 392: All right.

5 THE COURT: He needs to let you work
6 with him because somebody with a voice like
7 yours is going to go far in this business.
8 Take care of yourself.

9 JUROR NUMBER 392: Thank you.

10 THE COURT: Let's be at-ease for
11 about ten minutes.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Let the record reflect
15 that Mr. Dickerson is present. Is the State
16 ready to continue?

17 SOLICITOR WILSON: Yes, sir.

18 THE COURT: Defense is ready?

19 MR. BLOOM: Defense is ready, Your
20 Honor.

21 THE COURT: Let's bring in -- the
22 first one in Panel Number Eight is Juror Number
23 381.

24 (JUROR NUMBER 381 ENTERS COURTROOM)

25 THE COURT: Good afternoon, ma'am.

1 JUROR NUMBER 381: Good afternoon.

2 THE COURT: If you will sit and pull
3 yourself up so that you can speak into that mic
4 comfortably.

5 JUROR NUMBER 381: Okay, (complies).

6 THE COURT: How are you?

7 JUROR NUMBER 381: I'm fine.

8 THE COURT: We are going to continue
9 the process that we started on Friday where we
10 were asking you some questions, talking about
11 this case. Of course, none of these questions
12 have any intent or design to invade your
13 privacy or force you to change any beliefs or
14 philosophies that you have. They are really
15 designed to help you make a determination, help
16 us make the determination as to whether you can
17 be a fair and impartial judge in this case.
18 Okay?

19 JUROR NUMBER 381: Okay.

20 THE COURT: We just simply ask -- I
21 am going to have some questions, the attorneys
22 may have some questions -- that you respond
23 truthfully and candidly to the questions and
24 that you give complete answers. We're
25 confident that you will do that. I would

1 remind you in that regard that you are still
2 under oath in this matter. Okay?

3 JUROR NUMBER 381: Yes, sir.

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

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Would you please state your full name for
10 the record?

11 A. Deborah Jean Meteraud.

12 Q. Ms. Meteraud, since we were together on
13 Friday, have you talked with anyone, permitted
14 anyone to talk with you or talk about this case
15 in your presence?

16 A. The people that I work with are aware that
17 I'm on jury selection. One of thee brought to
18 my attention that there was complication about
19 selection the jury and I said, 'I can't talk
20 about this.' So I don't. That's all ---

21 Q. That was the extent of it?

22 A. (Affirmative nod).

23 Q. Well, I understand that and I thank you.
24 You followed the court's instructions and did
25 exactly what you should do. I don't think

1 people intentionally do anything.

2 Several years ago my wife happened to be,
3 believe it or not, on a jury that I tried. It
4 was the most awkward situation in the world.
5 We were right before finishing it and I made a
6 comment about how somebody acted in the
7 courtroom. You know what her response was?
8 "You told us not to talk about this case."

9 I said, "Yes, ma'am. I'm sorry."

10 So you did exactly what you should do, no
11 problems. Thank you very much. And I know
12 they don't mean anything, I think that's just
13 the nature of everything that goes on.

14 That didn't influence you in any way, did
15 it?

16 A. No.

17 Q. Now, I named a number of persons on Friday
18 and told you -- asked you whether or not you
19 had any relationship with any of these persons.
20 I failed to mention two names that I need to
21 ask you about. Are you related by blood or
22 marriage, have any business dealings with or
23 socially or casually acquainted with -- have
24 any dealings with Jeff Osborne or Matt Casey?

25 A. No, sir.

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

4 A. I have.

5 Q. Which type most accurately describes you?

6 A. Type three.

7 Q. That is the juror that is obviously in the
8 limited situation, as we mentioned on Friday,
9 where a jury has the very -- the very limited
10 times when a jury is actually involved in
11 sentencing someone for murder. Do you
12 understand that?

13 A. Yes.

14 Q. That would be one of those situations
15 described in that sheet. As I understand it,
16 as a type three juror having been through the
17 trial, that is that you would have already
18 found the person who is accused of the offense
19 of murder guilty beyond a reasonable doubt --
20 do you understand that?

21 A. Yes, sir, I do.

22 Q. You would be just before entering that
23 second phase where you would -- that I
24 mentioned to you that could happen if there was
25 a verdict of murder.

1 Just before starting that, it is my
2 understanding that as a type three juror, while
3 you would have found him guilty of murder you
4 still would not have an opinion as to what the
5 appropriate sentence would be; is that correct?

6 A. I would need to evaluate what I've heard
7 and look within my self to see what the
8 sentence, what sentence I would ---

9 Q. So you wouldn't have decided anything at
10 that point?

11 A. No.

12 Q. You would still have an open mind
13 concerning the sentence?

14 A. Yes.

15 Q. And that is important because, as I
16 stated, most of the time the jury has -- once
17 they return a verdict of guilty as to murder,
18 that would end their involvement. They don't
19 participate in the sentencing. The trial judge
20 would then impose the sentence and unless it's
21 some unusual circumstances, and generally that
22 is not the case. The maximum sentence the
23 trial judge could impose would be a sentence of
24 life imprisonment without the possibility of
25 parole. There are other sentences that would

1 be less than that but the judge could never
2 impose a death sentence. Do you understand
3 that?

4 A. Okay.

5 Q. Okay.

6 A. I wasn't aware that was the case.

7 Q. That would be the case normally. But
8 there are circumstances where we have where our
9 law permits -- and that sheet that you are
10 looking at, types one, two and three, are
11 involved in making that determination as to
12 whether or not a death sentence is warranted in
13 that particular case. It's very important that
14 you keep an open mind for a lot of reasons.
15 Number one, that is the commitment that a jury
16 has to make when they start a sentencing
17 proceeding, is that they haven't predetermined
18 anything. Do you agree with that?

19 A. Yes, sir.

20 Q. That would be true whether it was the
21 first phase or the second phase. Okay?
22 Doesn't matter.

23 In the second phase the other reason it is
24 very important is that the jury, notwithstand-
25 ing that they've just found a person guilty of

1 murder. Now, you understand that "murder"
2 means that that person, that you would have
3 found as being a member of that jury panel that
4 the person the State accused was the person
5 that committed the crime, number one.

6 A. I understand.

7 Q. Number two, that that crime, the State had
8 convinced you beyond a reasonable doubt that
9 that crime was murder. That means that that
10 person intentionally killed someone with
11 malice, that there wasn't any question about
12 it, that there wasn't any reason for doing it
13 other than that person was just evil spirited
14 and intended to take someone's life, for no
15 reason, and they did it. That was a murder
16 with malice, no question about it, beyond a
17 reasonable doubt if you'd decided that. Okay?

18 A. Okay.

19 Q. The jury still is not entitled to consider
20 -- even consider -- a death sentence unless in
21 the second phase the State proves beyond a
22 reasonable doubt the existence of at least one
23 aggravating circumstance. Because that's what
24 is necessary to elevate the normal murder
25 situation to where a death sentence may be

1 considered. That is what the law requires. Do
2 you understand that?

3 A. All right.

4 Q. And the jury makes that determination
5 based on the evidence, so obviously you would
6 have to keep an open mind. Obviously, as you
7 stated, you would need to hear all that
8 evidence before making that decision and that
9 would be important.

10 A. Yes.

11 Q. And you'd need to be instructed on the law
12 before doing that, as well, okay?

13 A. Yes.

14 Q. If the jury, in their deliberations after
15 hearing all the evidence and receiving an
16 instruction, found that the state had met it's
17 burden of proof and established -- at least one
18 aggravating circumstance, and there are -- in
19 that particular case the judge would have given
20 those circumstances that may be applicable to
21 that factual situation.

22 I'll give you an example. Aggravating
23 circumstances can be the killing of a police
24 officer, the killing of a child, those are some
25 that the statute has identified as being an

1 aggravating circumstance, which then would
2 warrant the jury considering, if they found
3 that beyond a reasonable doubt, considering a
4 death sentence. Okay?

5 A. Okay.

6 Q. But the jury would have had to have
7 concluded that was present because if they
8 don't find that -- in other words, if the jury,
9 after analyzing the evidence said, 'No, I am
10 not convinced beyond a reasonable doubt that
11 there is an aggravating circumstance here, then
12 the instruction would be that you have to
13 return a verdict of life imprisonment without
14 the possibility of parole. Do you understand
15 that?

16 A. Yes, sir.

17 Q. Would you have any problem following that
18 instruction?

19 A. No.

20 Q. But the instruction would go on to say
21 that if you did find the aggravating
22 circumstance, then and only then may the jury
23 consider imposing a death sentence. But it
24 doesn't say that you have to. In other words,
25 it just means now that the jury has to make a

1 choice considering all the facts and
2 circumstance, including the crime, the nature
3 of the crime and other factors that you would
4 have heard during that proceeding, you would
5 have to weigh it all and determine what you
6 believe to be the most appropriate sentence.

7 Do you understand that?

8 A. Yes, sir.

9 Q. And as I understand, from your being a
10 type three, there are circumstances, and I am
11 not asking you what those circumstances are,
12 but in your mind there are circumstances that
13 if those were present, considering all the
14 facts and circumstances, and you found an
15 aggravating circumstance as the State is
16 required to prove and you'd considered all the
17 evidence, you could impose a death sentence?

18 A. Yes, sir.

19 Q. Likewise, notwithstanding that you may
20 have found aggravating circumstances, you could
21 consider it all and make a decision that 'while
22 I could have imposed a death sentence, in this
23 case I don't think it is warranted and I would
24 choose to impose life imprisonment without the
25 possibility of parole'?

1 A. Yes.

2 Q. Because that would be your option.

3 Because as I stated, the court would never tell
4 you that you must choose one over the other;
5 other than as stated, if you don't find an
6 aggravating circumstance, then you can't even
7 consider death. Other than that, if you do,
8 you have to make the choice.

9 And there are other reasons, because in
10 addition to those aggravating circumstances and
11 other evidence that you may hear as to the
12 appropriateness of the sentence, the court
13 would further instruct you that you are also to
14 consider any mitigating circumstances. There
15 may be statutory mitigating circumstances, that
16 is those provided by law and nonstatutory
17 mitigating circumstances; which, if you find as
18 a member of the jury are part of the record, I
19 would instruct you that before you can impose a
20 sentence that you have to give meaningful
21 consideration to those mitigating
22 circumstances.

23 A. Could you explain that a little?

24 Q. Sure. That you would not -- in other
25 words, meaningful consideration means that 'I

1 am going to consider', as you stated, 'all the
2 evidence and if that evidence considers
3 mitigating circumstances...' -- and those
4 statutory ones are such as the raising of a
5 child, what was going on in their childhood,
6 maybe some issues there, maybe some mental
7 health issues, addictions are another area
8 where there may be evidence concerning that,
9 some explanation that would bring mitigating
10 meaning that 'yes, it's a bad crime with the
11 aggravating circumstances but this tends to
12 mitigate that crime.'

13 A. I understand.

14 Q. Okay. And what meaningful consideration
15 means is that you wouldn't predetermine a
16 sentence until you'd given fair consideration
17 to those factors, as well. Would you be able
18 to follow that instruction?

19 A. Yes, sir.

20 Q. I would also instruct you that the
21 evidence may have no mitigating circumstances,
22 and I would tell you of course that in either
23 phase, as I mentioned on Friday, persons
24 accused of criminal offenses don't have to
25 prove anything, whether it is the first or

1 second phase, and you can't hold that against
2 them. For instance, they don't have to offer
3 any evidence. If they chose not to present any
4 evidence, you can't hold that against them. I
5 assume -- would you have any problem following
6 that instruction?

7 A. No, sir.

8 Q. So you would never look to the person
9 accused of this crime -- again, not only
10 accused but that you've convicted this person
11 now.

12 A. (Affirmative nod).

13 Q. You wouldn't expect that person to or hold
14 it against them if they didn't present any
15 evidence in the second phase?

16 A. No, sir.

17 Q. And that is important because there is
18 another factor that would be a part of the
19 charge. That is, that you have the right as a
20 jury that when -- and there may be no
21 mitigating circumstances or there may be some
22 or there just may be none, you have the right
23 to sentence (sic) a life imprisonment instead
24 of a death sentence for no reason at all. You
25 may just choose to do that if you're part of

1 the jury. Do you understand that?

2 That is what the charge would say. Would
3 you be able to follow that instruction, as
4 well, if you felt so inclined?

5 A. Yes, sir.

6 Q. Again, not suggesting how you are to
7 determine but these are the options available
8 to you as a juror. A I understand then, given
9 all of those instructions, you would be able to
10 follow that instruction, consider all the
11 evidence, discuss the matter with your fellow
12 jurors, take that law and apply it fairly to
13 those facts that you determine, and fashion a
14 sentence which would be fair. Is that correct?

15 A. I believe that's correct, yes.

16 Q. And given those options, if you were at
17 the point whether you could consider either,
18 there are circumstances where you could vote
19 for a death sentence and sign the necessary
20 paperwork to effect that; is that correct?

21 A. That's correct.

22 Q. Likewise, there are times when you can
23 vote for and sign whatever is necessary, should
24 there be anything, to carry out a life
25 imprisonment without the possibility of parole.

1 A. That's right.

2 Q. And you would have an open mind at all
3 times until the court instructed you to begin
4 your deliberations, as a juror?

5 A. Yes, sir. I take this very seriously.

6 Q. I'm sure that you do. I appreciate that
7 very much.

8 A. (Affirmative nod).

9 Q. Let's talk for just a moment then about
10 this case and the possibility of your being a
11 juror in this case. As you know, because none
12 of those things have happened here -- all we
13 have, as I told you, Mr. Dickerson has been
14 accused of certain criminal offenses. And as I
15 mentioned to you, it's the law of this state
16 and this country that he is presumed to be
17 innocent and I believe that you said that you
18 have no problem with that principle of law; is
19 that correct?

20 A. (Affirmative nod). No.

21 Q. That is an active presumption. That means
22 that you have to -- we all have to -- see him
23 as innocent of these charges. Today as he sits
24 here, do you think that he is innocent of these
25 charges?

1 A. I have no reason to believe otherwise.

2 Q. Precisely, and what you've promised is
3 that you will consider him to be innocent until
4 one of two things happen. Either he admits
5 that he is guilty of it or the State proves him
6 guilty beyond a reasonable doubt. Only then
7 would you have any right to say that the
8 presumption of innocence 'is now taken away.'
9 Until that happens, you have to actively
10 presume that he is innocent. Any problem with
11 that?

12 A. No.

13 Q. Okay. Now, you understand that if we had
14 a trial that there is a possibility of a second
15 phase though we don't know that. Whatever it
16 will be, your function in either or both phases
17 -- the first phase, obviously will take place
18 where these charges are going to be tried and
19 the State is going to have to present the
20 evidence to prove its case; because, as you
21 know, Mr. Dickerson doesn't have anything to
22 prove whatsoever. He doesn't have to prove his
23 innocence, you understand that?

24 A. Yes, sir.

25 Q. In fact, he doesn't have to put up any

1 evidence or testify and I would instruct the
2 jury that they can't use that against him.

3 Would you have any problem with that?

4 A. I'm sorry, I didn't hear that first part.

5 Q. He doesn't even have to present any
6 evidence nor does he have to testify.

7 A. Right.

8 Q. And the jury would be instructed that they
9 can't use that against him. Any problem
10 following that instruction?

11 A. No.

12 Q. And then you would be expected at the
13 appropriate time to consider the evidence and
14 decide what you believe to be the truth and you
15 believe that you could apply your common sense
16 fairly and impartially in doing that?

17 A. Yes, sir.

18 Q. And then you would be expected to take the
19 law as I gave it to you and apply that law
20 fairly and impartially to those facts as you
21 determine them?

22 A. Yes, sir.

23 Q. So that your decision is fair and you
24 believe that you could accomplish that, as
25 well?

1 A. Yes, sir.

2 Q. One of the parts that jurors sometimes
3 say, 'How can that be?' is, as one juror said
4 today, 'I don't know.' You may hear some law
5 that either you didn't think was the law, the
6 way that it was stated, or you don't agree with
7 it, that it is inconsistent with your
8 philosophy. I'm not suggesting that you will
9 but I am just saying that you could.

10 One of the important parts about being a
11 juror is that you will make a commitment to
12 decide this case based on the evidence and the
13 law and in order to do that you have to be
14 willing to make the commitment that you will
15 set aside your personal feelings and take the
16 law notwithstanding those feelings. Would you
17 be able to do that?

18 A. Yes, sir.

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

22 SOLICITOR WILSON: Thank you, Your
23 Honor.

24 VOIR DIRE EXAMINATION

25 BY SOLICITOR WILSON:

1 Q. Ms. Meteraud, I'm Scarlet Wilson. I'm the
2 Solicitor here. This is Bruce Durant, this is
3 Rutledge Durant. The three of us together are
4 going to be presenting the evidence in this
5 case once we get started.

6 Before that, I want to ask you some
7 followup questions based on your questionnaire
8 that we were given and based on the exchange
9 that you and the Judge had. Okay?

10 A. Okay.

11 Q. When you filled out your questionnaire,
12 you stated on the question about the death
13 penalty that you were uncertain. Can you tell
14 me what you meant by that?

15 A. Uncertain in that I can't say that across
16 the board that I believe in the death penalty
17 or that I don't believe in the death penalty.
18 I'd have to know -- I think that there are
19 certain situations where -- it's something that
20 I would have to consider. I've been on both
21 sides of the discussion and I've landed at this
22 point in my life where I am -- until I know all
23 the facts, I can't determine.

24 Q. Tell me the context of the discussions
25 that you've had in the past.

1 A. About the death penalty?

2 Q. Yes.

3 A. Just with, you know, different people who
4 are adamant that there should be no death
5 penalty or that it's not the right thing to do,
6 and then discussion with people that are if the
7 crime is just absolutely terrible, such as
8 serial killers or premeditated murders, hired
9 killer, -- you know, how can you have the same
10 punishment all the different murderers.

11 Q. You raise a good point when you say all
12 the different murderers. I want to go over
13 that a little bit with you.

14 South Carolina is not like some states, in
15 that we don't have Murder One, Murder Two, if
16 there is a Murder Three. We have murder, and
17 then we have other crimes that are called
18 murder.

19 Basically if someone is convicted of
20 murder, a jury has found that they acted with
21 malice, that it was malicious, that they acted
22 with intent, basically that they had an evil
23 heart, they set out to do something, they did
24 it, and the State got the right person, they've
25 been convicted.

1 Other situations where there has been a
2 death but which is not murder but could be some
3 sort of manslaughter; which in other states
4 could be a degree of murder. It could be an
5 accident, where it is not charged at all, or it
6 could be self-defense.

7 So in the context that we're talking about
8 the death penalty and your decision making
9 process, we're talking about cases where --
10 premeditated meaning malice aforethought, which
11 is what is required to convict someone of
12 murder here. We're talking about those
13 situations: evil, mean, murder.

14 What the judge would tell you, or anyone
15 sitting on a death penalty jury in South
16 Carolina, is that once that conviction is found
17 that a jury can't just stop. They can't say,
18 'I've heard enough.' They've promised to follow
19 instructions and to make us, the three of us,
20 prove the aggravators. He gave you an example
21 and there are many more but he would give you
22 instructions in that phase and make you or ask
23 you, instruct you, to hold us to our burden of
24 proof; which is, again, beyond a reasonable
25 doubt. You could do that?

1 A. Yes.

2 Q. And even if you found that malicious
3 murder, following the judge's instructions, you
4 could wait until you made up your mind, until
5 that was proven, the aggravators?

6 A. Yes.

7 Q. Likewise, the judge would tell you that if
8 you were on a jury that you would have to
9 really give meaningful consideration -- not lip
10 service but meaningful consideration to
11 anything in mitigation, and you'all talked
12 about that. Things that make the crime that
13 maybe wasn't introduced in the guilt phase or
14 you might learn something about the defendant
15 that made you understand a little more why a
16 defendant might do something like kill. Could
17 you hold off on your opinions until you heard
18 that information and give that meaningful
19 consideration? Really take it into account?

20 A. As I -- is that the first phase?

21 Q. That's the second phase.

22 A. So there is more involved, and discussion,
23 in the second phase?

24 Q. Right. The first phase, a jury decided
25 guilt or innocence. That's it.

1 A. Okay.

2 Q. Now, I think the reason you might have
3 thought there was more than one part to the
4 first phase is that guilt or innocence, when
5 you're deciding guilt, you're looking at
6 whether it was malicious, whether or not it was
7 intentional, all those things. Those are the
8 elements of murder.

9 A. (Affirmative nod).

10 Q. That is decided in the first phase.

11 A. Okay.

12 Q. Now, moving to the second phase, what
13 we're looking at is aggravating circumstances
14 that we have to prove and then if the defendant
15 chooses, they don't have to, any of those
16 mitigators, things that you've learned about
17 the defendant, things that you've learned that
18 you didn't know about the crime, for whatever
19 reason it didn't come in in the first part.
20 Are you with me?

21 A. Yeah, I get it now.

22 Q. Okay.

23 A. I wasn't sure how it was broken out.

24 Q. Well, it's kind of a foreign process for
25 many of us.

1 A. (Affirmative nod).

2 Q. So you could do that?

3 A. Yes.

4 Q. Even in a malicious murder, you could wait
5 until you heard it all?

6 A. Yeah.

7 Q. Okay. And there -- after that, you are
8 not going to get any more -- after that, if you
9 were convinced that the death penalty were the
10 appropriate sentence, you would have to do more
11 than just vote it, you would have to sign your
12 name to a verdict, to a death warrant. Could
13 you do that?

14 A. Yes.

15 Q. Is there anything -- I think you noted in
16 your questionnaire that you go to the Circular
17 Church and have some involvement there. Is
18 there anything about that that would affect
19 your service on a jury?

20 A. No.

21 Q. And you also mentioned on your question-
22 naire, is that a "listening coach"?

23 A. Yes.

24 Q. What is that?

25 A. A process that I went through for several

1 years that teaches you to listen to the key in
2 discussions.

3 Q. That kind of brings me to the deliberation
4 process. If you were on the jury and you were
5 convinced, as to either the verdict or the
6 punishment, what you thought was appropriate,
7 would you still be able to listen and have
8 dialogue with the other jurors who might feel
9 differently than you?

10 A. Yes, I can listen to them.

11 Q. Could you have meaningful dialogue back
12 and forth, an exchange of ideas and that sort
13 of thing?

14 A. Yes.

15 Q. And if someone maybe -- if you thought
16 maybe someone on the jury didn't understand or
17 hear all of the testimony or maybe didn't
18 understand all of the law, could you use your
19 skills in trying to make them see your point of
20 view?

21 A. I believe I could do that. I do that all
22 the time.

23 Q. But if someone in the end, if you were dug
24 into your position and they were -- if there
25 were eleven just who felt another way, could

1 you hold firm in your position?

2 A. Yes

3 Q. And, likewise, if the situation were
4 reversed and there were eleven of you that felt
5 one way and one juror who didn't, you could
6 respect that one's decision if it was clear
7 that there was no more dialogue to be had?

8 A. Yes.

9 Q. You could do that?

10 A. (Affirmative nod).

11 SOLICITOR WILSON: Thank you. I
12 appreciate your patience.

13 JUROR NUMBER 381: Thank you.

14 THE COURT: Mr. Bloom?

15 MR. BLOOM: Very briefly.

16 THE COURT: Sure.

17 VOIR DIRE EXAMINATION

18 BY MR. BLOOM:

19 Q. Ms. Meteraud, I'm not -- my name is Jeff
20 Bloom. How are you doing this afternoon?

21 A. Fine. And you?

22 Q. My name is Jeff Bloom and along with
23 Andrew Carroll, we represent William Dickerson.
24 I just have a few followup questions from what
25 Judge Dennis asked you. I am not going to

1 retread the same ground the Judge and the
2 Solicitor asked you.

3 It appears to be that you now -- and this
4 is a foreign process to you. You've never done
5 this before, is that right?

6 A. That's correct.

7 Q. And it appears to me, and I just want to
8 be clear, that you now known that there's two
9 phases in such a case. Right?

10 A. Correct.

11 Q. We are not asking you to submit how you'd
12 vote, for life imprisonment without the
13 possibility of parole or for death in this
14 instance. You understand that, right?

15 A. Yes.

16 Q. And it seems clear to me but I've just got
17 to kind of ask you, you understand when
18 deciding life without parole or other penalties
19 you get to hear about mitigating circumstances,
20 which is stuff that has nothing to do with the
21 crime? It is stuff that has to do with the
22 defendant's background, how they were raised,
23 childhood, drug addiction issues. You could
24 listen to all that type of evidence?

25 A. Yes, sir. I'm glad that I got it cleared

1 up because I didn't know that -- I thought all
2 that would come in during the first phase.

3 Q. Right, I heard you say that. But that's
4 clear to you now?

5 A. Yes. Definitely.

6 Q. That's what I wanted to know.

7 A. Yes, sir.

8 Q. And you would be interested in hearing
9 that kind of information about a defendant?

10 A. Absolutely.

11 Q. All right. In fact, the judge instructed
12 you that the death penalty is never required in
13 any phase. You can accept that instruction?

14 A. Yes, sir.

15 Q. The law never requires it or orders it.
16 Okay?

17 A. I understand.

18 Q. And in fact, as I think Judge Dennis told
19 you, you can vote for life without parole for
20 any reason, no reason, as a simple act of
21 mercy. You could follow that instruction?

22 A. Yes, sir.

23 Q. And I am not going to be asking you the
24 same questions that the Solicitor did, but at
25 the end there she was talking about a situation

1 where there might be some jurors voting one way
2 and you might vote another. The law calls that
3 -- when you get ready to make that choice for
4 whatever penalty, including the life without
5 parole penalty, a reasoned, individualized
6 moral judgment. You can accept that and make
7 that moral judgment for yourself?

8 A. Yes, sir.

9 Q. You can respect the other jurors choice if
10 it is different from yours?

11 A. Yes, sir.

12 Q. You can reach that fairly?

13 A. Yes, sir.

14 MR. BLOOM: Thank you.

15 THE COURT: Solicitor, anything
16 further?

17 SOLICITOR WILSON: No, sir.

18 THE COURT: Thank you very much, Ms.
19 Meteraud. We will be with you in just a
20 moment.

21 (JUROR NUMBER 381 EXITS COURTROOM)

22 THE COURT: I find that she is
23 qualified. Any objection from the State?

24 SOLICITOR WILSON: No, sir.

25 THE COURT: Any objection from the

1 defense?

2 MR. BLOOM: No, sir.

3 THE COURT: Ask her to step in.

4 (JUROR NUMBER 381 ENTERS COURTROOM)

5 THE COURT: Ms. Meteraud, thank you
6 very much. Thank you very much, and I
7 appreciate your patience. You've been found to
8 be qualified to be a member of the panel from
9 which we will select our jury. That will occur
10 Thursday morning at 9:30.

11 You will need to report here at 9:30
12 -- when I say "here", you will be out in the
13 audience. We will then go through the process
14 of selecting the jury. After we select the
15 jury, the intention is to start the trial of
16 the case, so be prepared on Thursday, if need
17 be, to stay and start your first day of work on
18 this case.

19 Until then and until you have been
20 dismissed from this case, please remember that
21 you still are not at liberty to discuss this
22 case with anyone or permit anyone to talk with
23 you about it. Also, please continue not to
24 watch any news programs about it or read any
25 news accounts. Have a nice tomorrow and we'll

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1 see you, hopefully, Thursday.

2 JUROR NUMBER 381: Can I ask how many
3 are on the panel.

4 THE COURT: There will be twelve on
5 the panel and the goal is to obtain four
6 alternates. Whether we can get enough to have
7 four without -- we hope, we'll see today and
8 tomorrow. That's the goal. Twelve persons who
9 will be on the jury and some number of
10 alternates. Thank you.

11 (JUROR NUMBER 381 EXITS COURTROOM)

12 THE COURT: Number 247, Ms.
13 Prioleau.

14 (JUROR NUMBER 247 ENTERS COURTROOM)

15 THE COURT: Ms. Prioleau, please
16 take a seat and position that chair so that you
17 can speak into that mic comfortably. Okay?

18 JUROR NUMBER 247: Yes, sir.

19 THE COURT: Friday, we started this
20 process. As you will recall, we were asking
21 you a number of questions, the group as a
22 whole. We are going to continue that process
23 now. I have some questions I need to ask you
24 and the attorneys may need to ask some
25 questions that they need to ask you.

1 Just as you noticed on Friday, there
2 are no correct answers to any of these
3 questions. They are really designed to help
4 you and to help us decide whether you can be a
5 fair and impartial juror in this case. Okay?

6 JUROR NUMBER 247: (Affirmative nod).

7 THE COURT: In that regard, we are
8 not trying to change your mind or to challenge
9 any philosophies that you may have or invade
10 your privacy. We just need you to be candid
11 and truthful in responding to the questions and
12 completely answer them. Will you do that?

13 JUROR NUMBER 247: Yes, sir.

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

17 JUROR NUMBER 247: Yes, sir.

18 ELAINE PRIOLEAU, being duly sworn
19 to tell the truth, the whole truth and nothing
20 but the truth, testified, as follows:

21 VOIR DIRE EXAMINATION

22 BY THE COURT:

23 Q. If you would, state your full name for the
24 record.

25 A. Elaine Prioleau.

1 Q. Since we were together on Friday, Ms.
2 Prioleau, have you talked with anyone or
3 permitted anyone to talk with you about this
4 case?

5 A. No, sir.

6 Q. Have you read any news articles or watched
7 any news programs about the case?

8 A. No -- (coughing).

9 Q. If you need some water or you just need to
10 pause, you just tell us and we will do that.
11 Okay?

12 A. Okay. It's just me moving from one room
13 to another.

14 Q. I understand. I think it's something in
15 the air here. Last night riding home, my eyes
16 felt like somebody had poured sand in there.
17 I was coughing and sputtering last night. I
18 felt better this morning, so I am blaming it on
19 this building. That's my position. But if you
20 need to stop, just let me know. Okay?

21 A. All right.

22 Q. Thank you. As I was saying, on Friday I
23 failed to mention two names that I need to ask
24 you about. Are you related by blood or
25 marriage, have any business dealings with or

1 socially or casually acquainted with or have
2 any dealings with Jeff Osborne or Matt Casey?

3 A. No, sir.

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

7 A. Three.

8 Q. Number three?

9 A. (Affirmative nod).

10 Q. That is a juror who -- as you will
11 remember Friday, we were talking about this
12 case. Of course right now -- in this case
13 there could be two phases. You understand
14 that?

15 A. (Affirmative nod).

16 Q. The first phase is when the State would be
17 required to prove the charges that they made
18 and that's all that you hear, that's all the
19 evidence you would hear in that first phase.

20 A. Okay.

21 Q. It just deals with the charge. Do you
22 understand that?

23 A. Um-humm.

24 Q. And then the jury, depending on the jury's
25 verdict, we may go into the second phase. The

1 sheet that you have, not this case but the case
2 in which that jury was empaneled to hear a
3 murder charge and the jury is going to impose a
4 sentence and they've heard the evidence only as
5 to the charge of murder and other things
6 surrounding the murder and now they're going to
7 make a determination -- now they are going to
8 move into the second phase. Okay?

9 A. Okay.

10 Q. They have already gone halfway through,
11 they've heard all the evidence about the charge
12 and basically their decision has been 'yeah,
13 the State has convinced me beyond a reasonable
14 doubt that the individual accused is guilty of
15 murder.'

16 A. Right.

17 Q. Okay?

18 A. Okay.

19 Q. So as a type three juror in that setting,
20 you will have already heard all that evidence
21 and you would have decided beyond a reasonable
22 doubt that this person committed this crime and
23 that crime was the intentional killing of
24 another person with malice.

25 A. Right.

1 Q. Not something that -- sometimes you may
2 have heard or read about something where
3 somebody was in a fight or they got angry over
4 something else and they shot somebody and they
5 died. In this state, that's called
6 manslaughter. It's not there. It's more than
7 that, because it is an intentional killing with
8 malice.

9 A. All right.

10 Q. There's no reason for it, there is no
11 defense, it was not self-defense, there was no
12 mistake, it was no accident. They wanted to
13 kill somebody, there were evil thoughts about
14 it, they went out and they carried it out.
15 That's what we are talking about. Okay?

16 A. Okay.

17 Q. In that situation, you've just convicted
18 that person, a type three juror, as I
19 understand and as I understand you to be, you
20 haven't started, you haven't heard any evidence
21 now about what the appropriate decision would
22 be -- you would have an open mind as to what
23 the sentence should be at this point. Is that
24 right?

25 A. Right.

1 Q. And you wouldn't change that until you've
2 heard all the evidence and been instructed on
3 the law, is that right?

4 A. Okay.

5 Q. And you'd have had to have all of it
6 before you would change, is that correct?

7 A. Yes, sir.

8 Q. Well, it is important to the process
9 because typically in this state, for instance,
10 it is very seldom that a jury is involved to
11 determine the sentence in murder. Most of the
12 time what happens is that the jury is -- you
13 would have been involved in the first phase,
14 heard all the evidence about the crime, found
15 the person guilty of murder and then the judge
16 imposes a sentence. The jury is not even
17 involved. Did you realize that?

18 A. No.

19 Q. Well, that's what normally happens. Okay?

20 A. (Affirmative nod).

21 Q. It is only in limited circumstances where
22 a jury could be empaneled to make that
23 determination. What the law says is that the
24 State -- the first thing of that second phase,
25 one part of that phase is that they have to

1 prove that there is a reason for this jury to
2 make that choice. They have to prove what is
3 called the existence of an aggravating
4 circumstance. At least one.

5 The judge would define that for you, what
6 they are. There are a number of them. Some of
7 them, just for your information, -- let's
8 assume in this case that it was the killing of
9 a police officer. You'd have to find beyond a
10 reasonable doubt that the person committed
11 murder and that the murder -- that they killed
12 a police officer. That would have to be
13 established beyond a reasonable doubt before
14 the jury could even consider a death sentence.

15 A. Okay.

16 Q. Because unless the aggravating
17 circumstance is there, the only sentence that
18 the jury could impose is life imprisonment
19 without the possibility of parole. Okay?

20 A. Okay.

21 Q. Would you have any problem following that
22 law?

23 A. No, sir.

24 Q. None whatsoever?

25 A. No, sir..

1 Q. Now, if the jury found the person guilty
2 and then you were -- in that case --
3 deliberating, after you've heard all the
4 evidence in the second phase and you'd already
5 received the law, if you -- after talking with
6 your jurors you concluded that 'yeah, the state
7 has convinced me of the existence of an
8 aggravating circumstance', I would have
9 instructed you that once you find that then you
10 may consider a death sentence. That doesn't
11 mean that you have to impose it, it just means
12 now that the jury has the option. Because they
13 found that aggravating circumstance, which you
14 understand makes the crime more than just your
15 normal murder, now you have the right, if you
16 chose to, to impose a death sentence. Do you
17 understand that?

18 A. Okay.

19 Q. Now, you would of course be instructed to
20 consider all of the evidence, including
21 aggravating circumstances, and there may be
22 evidence introduced in the trial or presented
23 in the record that we would call mitigating
24 circumstances.

25 Mitigating circumstances, some are

1 statutory -- that is, our laws have been
2 written to provide these types of mitigation.
3 The jury has to consider to determine whether
4 they're present.

5 Now, mitigating circumstances are circum-
6 stances that while you may have found an
7 aggravating circumstance, that raises the level
8 of the murder, this kind of lessens the effect
9 of the murder or gives you some explanation or
10 reason that this person may have done what they
11 did, such as the person had an addiction, they
12 were suffering from some addiction to some
13 drug. They had a very difficult childhood, may
14 have been abused or that type of thing. Maybe
15 they had some physical or mental disorder,
16 emotional or physical disorder that had some
17 influence or that affected them, that didn't
18 rise to the level of insanity but it was
19 something that a jury would be instructed, if
20 it was present, to consider as a mitigating
21 circumstance. Do you understand that?

22 A. Yes, sir.

23 Q. Understanding what they are in general,
24 and some are statutory and some of
25 nonstatutory, the instruction would be that if

1 they are present you have -- you would have to
2 give meaningful consideration. That means that
3 you'd have to think about those, look at those
4 and consider those before you decide what the
5 appropriate sentence is. Would you be able to
6 do that?

7 A. Yes, sir.

8 Q. And you would do that?

9 A. I would.

10 Q. Now, I would tell you that in criminal
11 prosecution, as I mentioned to you on Friday,
12 the person accused doesn't have any burden to
13 prove anything ever. Okay?

14 A. Okay.

15 Q. They don't have to prove their innocence
16 and in this phase, that you are talking about
17 with this case that -- this imaginary case
18 where you're sitting as a type three juror,
19 that person would not have any burden either.

20 A. Okay.

21 Q. I would instruct you that if they didn't
22 present any evidence that you couldn't use that
23 against them. That means, if they didn't
24 present anything for you to consider and there
25 wasn't any mitigation in the evidence, then you

1 couldn't use that against them in any fashion.

2 Would you be able to follow that instruction?

3 A. Yes.

4 Q. So you would never penalize that person
5 for not having -- not presenting any evidence
6 of mitigation or anything. Is that right?

7 A. Right.

8 Q. Well, that's important because another
9 aspect of the charge, aside from it being the
10 law, it is also important because part of the
11 instruction would say not only can you give --
12 for instance, life without parole because of
13 some mitigating circumstance, you have the
14 right to give life without parole, even though
15 you could have given the death penalty, for no
16 reason whatsoever, if you choose to. Do you
17 understand that?

18 A. No.

19 Q. Well, that would be part of the instruc-
20 tion. You would have that right on that jury.
21 Okay?

22 A. (Affirmative nod).

23 Q. The question is, would you be able to
24 follow that instruction, as well?

25 A. (Affirmative nod).

1 Q. That means, would you then consider all of
2 the options available to you, consider all the
3 evidence and make a decision what you believe
4 to be the appropriate sentence?

5 A. (Affirmative nod).

6 Q. You could do that?

7 A. Yes.

8 Q. And you wouldn't have any predetermination
9 or pre-inclination of what you would do? You
10 would have to go through all the process, hear
11 all the evidence and talk with other jurors
12 before you would reach that decision?

13 A. Yes.

14 Q. But as a type three juror, it is my
15 understanding that after doing all of that and
16 now we're at the end, after you've considered
17 the evidence in that case, your decision could
18 be a death sentence?

19 A. Could be.

20 Q. If you believe the facts warranted it?

21 A. Right.

22 Q. After considering all the circumstances?

23 A. Yes.

24 Q. Likewise, even though you could have
25 imposed a death sentence, assuming that was the

1 case, you could still have voted for life
2 imprisonment without the possibility of parole?

3 A. Yes.

4 Q. Just depends on the facts?

5 A. (Affirmative nod), it depends on the
6 facts.

7 Q. Thank you, ma'am. Now let's focus on this
8 particular case in which you're being
9 considered as a potential juror. Do you
10 understand that the jury has the burden of
11 determining the true facts from considering the
12 evidence. You understand that?

13 A. Yes, sir.

14 Q. And you understand that you have to have
15 an open mind when we start?

16 A. Yes.

17 Q. And an open mind throughout until the
18 court tells you to begin your deliberations?

19 A. Yes.

20 Q. And you'd be able to honor that?

21 A. I would.

22 Q. And you feel that you'd be able to apply
23 your common sense, your sense of logic and
24 reasoning in analyzing the evidence; in the
25 first phase and, if necessary, in the second

1 phase. Is that correct?

2 A. That's correct.

3 Q. And you would decide what you believe to
4 be the truth and then once deciding that you're
5 willing to take the law as I gave it to you and
6 apply it fairly to those facts?

7 A. Yes.

8 Q. And your decision would be fair to both
9 sides?

10 A. Yes.

11 Q. Do you understand that I would have
12 nothing to do with the factual determinations?

13 A. I understand.

14 Q. Because that's the jury's sole side?

15 A. (Affirmative nod).

16 Q. But you don't have anything to do with the
17 law, do you understand that?

18 A. Yes, sir.

19 Q. That means that you promised to take the
20 law as I give it to you, even if you should
21 hear something which would cause you to say,
22 'hummm, that's not what I thought the law was'
23 or 'I think the law ought to be changed' or 'I
24 don't agree with that principle of law',
25 because part of the oath that you took, if you

1 had those feelings you would be promising the
2 court and you would be promising the State and
3 Mr. Dickerson that you would set those aside
4 and do what the law says regardless of how you
5 think or feel. You would do that?

6 A. Yes.

7 Q. Okay. Now, you understand again that Mr.
8 Dickerson merely is accused of these crimes and
9 he has nothing to prove or disprove. Do you
10 agree with that?

11 A. Yes.

12 Q. And you didn't have any problem with the
13 presumption of innocence -- is that correct?

14 A. That's correct.

15 Q. So as you see him today, he is innocent of
16 these charges as far as you're concerned; is
17 that right?

18 A. Yes, he is.

19 Q. I would tell you also that he doesn't have
20 to explain anything. In fact, he doesn't have
21 to put any evidence in, nor does he have to
22 testify. If he didn't, I would instruct you
23 that you couldn't use that against him. Would
24 you have any problem following that principle
25 of law?

1 A. No.

2 THE COURT: Thank you, ma'am.

3 Please answer any questions that the attorneys
4 may have. Mr. Bloom?

5 VOIR DIRE EXAMINATION

6 BY MR. BLOOM:

7 Q. Good afternoon, Ms. Prioleau.

8 A. Hi.

9 Q. My name is Jeff Bloom and along with
10 Andrew Carroll, we represent William Dickerson.
11 I just have a few followup questions from what
12 Judge Dennis asked you. If I could start off
13 by asking, if we were just standing around
14 having a cup of coffee and something came on
15 the News about the death penalty and I turned
16 to you and we were just chatting and I asked
17 you, 'What is your opinion about the death
18 penalty?' What would your response be?

19 A. My response would be that it just depends
20 on the situation whether or not I could give
21 the death penalty.

22 Q. Okay. So you're not going to vote for it
23 in every case?

24 A. Right.

25 Q. Okay. You're going to wait, as Judge

1 Dennis asked, until you hear all the evidence
2 and all the circumstances?

3 A. Right.

4 Q. Okay. And you understood one of Judge
5 Dennis' instructions to you was that in fact
6 the law never requires a juror to vote for the
7 death penalty. I think you understood that?

8 A. Yes.

9 Q. In fact, the judge would never order a
10 jury to find a death penalty. After you hear
11 all the evidence and all the circumstances and
12 you deliberate, it's totally up to you and your
13 fellow jurors. Do you understand that?

14 A. Yes.

15 Q. Okay. There was one thing that the judge
16 asked you and I just want to make sure that I
17 understand because he asked you about one
18 instruction and this -- you've served on jury
19 duty before, right?

20 A. Yes.

21 Q. But doing like this, nothing like a murder
22 case or a possible death penalty case; right?

23 A. No.

24 Q. Or a possible life without parole case?

25 A. No.

1 Q. And Judge Dennis asked you if a jury could
2 vote for life without parole for any reason or
3 for no reason or for a simple act of mercy and
4 I think initially your response was that you
5 didn't know that was the law but now you do; is
6 that correct?

7 A. Yes.

8 Q. And you accept that?

9 A. Yes.

10 Q. So as a juror you could follow that
11 instruction but if you felt a life without
12 parole sentence was the proper sentence, you
13 could give it for any reason or for no reason
14 or as a simple act of mercy; is that right?

15 A. Yes.

16 Q. Okay. The next thing that I want to ask
17 you, ma'am, is when -- if you were a juror,
18 when the jury -- after they hear all the
19 evidence and all the circumstances, and the law
20 as Judge Dennis gives it to you and you debate
21 it with your other jurors, you listen to them
22 and debate it, discuss it back and forth, each
23 juror -- the law requires them to come to their
24 own individualized and reasoned moral judgment.
25 Can you accept that?

1 A. Yes.

2 Q. Because what the -- what one juror's
3 verdict might be might be different from
4 another juror's moral, individualized choice.
5 You can understand that?

6 A. Right.

7 Q. And you were in a situation where after
8 you'd heard everything, all the circumstances,
9 Judge Dennis' information on the law and had
10 discussed with your other jurors, listened to
11 them and they'd listened to you but you came to
12 your own individualized and reasoned moral
13 judgment, if eleven jurors were going one way
14 but you were going another way, you would make
15 that judgment that was right for you in your
16 heart of hearts, could you stand by that?

17 A. Yes, I could.

18 Q. You wouldn't give that up just to say,
19 'No, it's late. I'm hungry. I've got to go
20 home and make dinner. You wouldn't just go
21 along to get along.'

22 A. No, I make up my own mind.

23 Q. You didn't strike me as that kind of
24 person but you know that I have to ask.

25 A. Okay.

1 Q. And, lastly, in that regard, once you had
2 made that judgment that was right for you, in
3 your heart of hearts, could you ask those other
4 jurors to respect your vote?

5 A. Yes.

6 Q. Just as you would respect theirs?

7 A. Yeah.

8 Q. Thank you, ma'am.

9 MR. BLOOM: I have nothing further.

10 THE COURT: Thank you, Mr. Bloom.

11 Solicitor?

12 VOIR DIRE EXAMINATION

13 BY SOLICITOR WILSON:

14 Q. I'm Scarlet Wilson, I'm the prosecutor
15 here. This is Bruce Durant and Rutledge Durant
16 and the three of us will be the ones trying the
17 case together, we will be the ones presenting
18 evidence when the case starts.

19 I've looked over your questionnaire and
20 listened to your answers to Mr. Bloom's
21 questions and also to the judge's questions and
22 I think you've answered all my questions. So I
23 don't have anything further. The judge is
24 probably going to let you go. Thank you.

25 THE COURT: Thank you, Solicitor.

1 Ms. Prioleau, if you would step out for just a
2 moment, we are almost to the point of you being
3 out of here very quickly.

4 (JUROR NUMBER 247 EXITS COURTROOM)

5 THE COURT: I find Ms. Prioleau to
6 be qualified. Any objections from the State?

7 SOLICITOR WILSON: No, sir.

8 THE COURT: Any objection from the
9 defense?

10 MR. BLOOM: No, sir.

11 THE COURT: Ask her to step in,
12 please.

13 (JUROR NUMBER 247 ENTERS COURTROOM)

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

18 That will occur Thursday morning at
19 9:30 in this courtroom. So you'll need to be
20 back here Thursday morning. When you come
21 back, you'll come directly to the audience
22 there. They will direct you and -- take a seat
23 and we will go through that process and we will
24 identify our jury. Be prepared to remain,
25 because if you're on the jury we intend to

1 start the trial of this case right after we
2 select our jury. Okay?

3 JUROR NUMBER 247: 9:30?

4 THE COURT: Yes, ma'am, 9:30 on
5 Thursday. Until then and until you have been
6 dismissed from this case, please remember that
7 you still are not at liberty to discuss this
8 case with anyone or permit anyone to talk with
9 you about it. Also, please continue not to
10 watch any news programs about it or read any
11 news accounts. Have a great day and we'll see
12 you, hopefully, Thursday.

13 (JUROR NUMBER 247 EXITS COURTROOM)

14 THE COURT: Bring in 177.

15 (JUROR NUMBER 177 ENTERS COURTROOM)

16 THE COURT: Good afternoon.

17 JUROR NUMBER 177: Good afternoon.

18 THE COURT: We are going to continue
19 the process that we started on Friday. I am
20 going to have some questions, the attorneys may
21 have some. The attorneys may have some.

22 As you will recall, these questions
23 don't have any particular answer. They just
24 simply require you to -- we just ask that you
25 be truthful. There are no correct answers, nor

1 are we trying to invade your privacy or change
2 your mind about how you feel or any philosophy
3 that you have. We just want you to be candid
4 and share fully your responses. Are you
5 willing to do that?

6 JUROR NUMBER 177: Yes, Your
7 Honor.

8 THE COURT: In that regard, I would
9 remind you that you are still under oath?

10 JUROR NUMBER 177: Yes, sir.

11 PHILLIP KUEHMAN, being duly sworn to
12 tell the truth, the whole truth and nothing but
13 the truth, testified, as follows:

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. State your full name for the record?

17 A. Phillip Kuheman.

18 Q. Thank you, sir. Mr. Kuheman, since we
19 were together on Friday, have you talked with
20 anybody about this case, or permitted anyone to
21 talk with you about it?

22 A. No, sir.

23 Q. Have you read any newspaper accounts or
24 watched any TV news accounts of it?

25 A. No, sir.

1 Q. On Friday I gave you a number of persons
2 to find out whether you were related by blood
3 or marriage to any of them. I failed to
4 mention two names that I need to ask you about.
5 Are you related by blood or marriage, have any
6 business dealings with or socially or casually
7 acquainted with or have any dealings with Jeff
8 Osborne or Matt Casey?

9 A. No, sir.

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

13 A. Yes, sir.

14 Q. Which type most accurately describes you?

15 A. I'd say type one.

16 Q. Type one?

17 A. (Affirmative nod).

18 Q. And that means that if you were empaneled
19 on a jury, and this would be the setting that
20 we're talking about, that jury panel would have
21 been empaneled to determine the proper penalty
22 for a person convicted of murder.

23 You would be at the point where you would
24 have finished the only phase -- in other words,
25 the State would have proved beyond a reasonable

1 doubt that this individual committed the crime
2 murder -- that is, killing someone with malice,
3 they intended to do it, there wasn't any
4 question about it, no mistake, no reason, no
5 provocation, nothing that would make it less
6 such as manslaughter, no self-defense, a
7 murder, a malice murder.

8 Now you're about to start the second
9 phase, where you're going to hear evidence as
10 to what the most appropriate sentence would be.
11 The options could be life imprisonment without
12 the possibility of parole or the death
13 sentence, assuming certain factors were
14 established.

15 It is my understanding that given that
16 situation one of the things that I would charge
17 you is that, first of all, you couldn't even
18 consider a death sentence unless the jury found
19 beyond a reasonable doubt the existence of some
20 aggravating circumstance. Those are things
21 that occur that are -- that make the crime of
22 murder more than typical. Because typically a
23 jury is not involved in sentencing. The
24 maximum sentence which can be imposed for
25 murder, typically, is life without parole.

1 In some situations our law provides that
2 where a jury concludes beyond a reasonable
3 doubt that certain aggravating circumstances
4 exist, then the jury has the right to consider
5 a death sentence in addition to life without
6 parole. Okay?

7 A. Okay.

8 Q. If that jury were to determine that there
9 were aggravating circumstances, and an example
10 of that would the killing of a police officer,
11 or the killing of a child, those types -- those
12 are some and there are others, then the jury
13 would have that option. It is my understanding
14 as a type one, that it wouldn't matter factors
15 that you heard in the second phase, if there
16 were aggravating circumstances and you were
17 given the option of life or a death sentence,
18 you would always choose a death sentence?

19 A. Yes, sir.

20 Q. Absolutely?

21 A. (Affirmative nod).

22 Q. And you would never, ever, consider nor
23 could you impose in that situation a life
24 sentence?

25 A. No, sir.

1 Q. Even if the court instructed you to set
2 your personal feelings aside, you could never
3 do that?

4 A. (Pause) -- no, sir, (negative gesture).

5 THE COURT: Any questions from the
6 State?

7 SOLICITOR WILSON: Yes, sir, Your
8 Honor.

9 VOIR DIRE EXAMINATION

10 BY SOLICITOR WILSON:

11 Q. I'm Scarlet Wilson, I'm the Solicitor
12 here. This is Bruce Durant and Rutledge Durant
13 and together we will be prosecuting this case
14 once we get started.

15 Based on your answers to Judge Dennis and
16 the answers in your questionnaire, I have some
17 followup questions that I want to go over with
18 you first.

19 I noticed on your questionnaire that you
20 filled out when you were given a copy of that
21 you didn't fill out anything about the death
22 penalty. You didn't answer the question. Why
23 was that?

24 A. There was a bunch of personal information
25 that I didn't feel was right.

1 Q. Okay. Based on what the Judge has told
2 you here today, do you understand that the law
3 doesn't require or even consider or care what
4 your personal belief is as long as you can set
5 it aside and consider the facts of the case.

6 Do you think that there is any situation where
7 you can set aside your personal feelings and
8 follow the judge's instruction?

9 A. (Pause) -- no.

10 Q. Let's talk about that for a minute. In
11 South Carolina we don't have different degrees
12 of murder like you may have seen on TV or
13 murder in different states. Once someone has
14 been convicted of murder, they have been
15 convicted of an evil, malicious, intentional
16 killing; not self-defense, not an accident, not
17 some sort of manslaughter; a malicious, evil
18 killing. But under South Carolina law even
19 murder doesn't always qualify for the death
20 penalty. Does that make sense to you?

21 A. Yeah.

22 Q. You understand what I'm saying there?

23 A. (Affirmative nod).

24 Q. And what the judge talked about was that
25 in a death penalty case there are two phases;

1 one which is the guilt phase and if there is a
2 finding, again of evil, malicious murder, the
3 State would then seek the second phase. Would
4 you be able to hold the State to its burden of
5 proof and be able to wait, in fact, until the
6 State has proven beyond a reasonable doubt an
7 aggravating circumstance before making up your
8 mind?

9 A. (Pause) -- yes.

10 Q. Do you want to explain something about
11 that?

12 A. (Pause) -- yeah, I could -- tell me that
13 again.

14 Q. You want me to go through that again?

15 A. Yes.

16 Q. If after conviction for a malicious,
17 intentional murder, the Judge would instruct
18 you or the jury that is seated in a death
19 penalty case that they couldn't make their
20 decision yet, even though they have already
21 found the person guilty of a malicious,
22 intentional, bad, evil murder, that they would
23 have to wait and they would have to hold the
24 State to its burden in the second phase.

25 In the second phase, our burden -- three

1 of us (indicating prosecutors) would have to
2 prove beyond a reasonable doubt aggravating
3 circumstances, an aggravating circumstance. If
4 we didn't prove aggravating circumstances, that
5 jury could not even consider the death penalty.
6 Do you understand that?

7 A. I understand.

8 Q. Do you think that you could follow those
9 instructions and not go to the death penalty
10 because the State hasn't proved those
11 aggravating circumstances?

12 A. Yes.

13 Q. Even though it was a really bad, malicious
14 murder?

15 A. I couldn't.

16 Q. You couldn't?

17 A. No, I couldn't.

18 Q. That is what I was getting at. Every
19 murder in South Carolina is, by its very
20 definition, going to be malicious. If it is
21 not malicious, if there was not malice it can't
22 be murder. So are you saying that if there was
23 a conviction for murder, you'd automatically
24 have to go to the death sentence?

25 A. Yeah.

1 SOLICITOR WILSON: That's all that I
2 have, Your Honor.

3 THE COURT: Any questions, Mr.
4 Bloom?

5 MR. BLOOM: Mr. Kuheman, thank you
6 for being here. My name is Jeff Bloom, this is
7 Andrew Carroll. We represent William
8 Dickerson. I have no questions. Thank you.

9 THE COURT: Thank you. Mr. Kuheman,
10 if you will step out, we will be with you
11 momentarily.

12 (JUROR NUMBER 177 EXITS COURTROOM)

13 THE COURT: Solicitor, I appreciate
14 the attempt but this gentleman is not
15 qualified. No question.

16 BRUCE DURANT: Had to try.

17 THE COURT: I understand. I will
18 give -- no problem. Anything further,
19 Solicitor?

20 SOLICITOR WILSON: No, sir.

21 THE COURT: Any objection?

22 MR. BLOOM: No, sir, Your Honor, we
23 agree that he is not qualified.

24 THE COURT: Thank you, please ask
25 him to return.

1 (JUROR NUMBER 177 ENTERS COURTROOM)

2 THE COURT: Thank you, Mr. Kuheman.

3 I appreciate very much your participation in
4 this process and your candor. As I mentioned
5 to you, you are entitled to your belief and
6 your philosophies, and nobody is going to
7 challenge those.

8 I am going to excuse you from any
9 further participation in this dispute. Thank
10 you for your services that you've rendered.
11 You don't have to come back anymore, nor do you
12 have to call. You have completed your service
13 and earned your exemption for the next three
14 years.

15 I hope you have a good day and a good
16 rest of the year. Thank you. Thank you for
17 your patience with us, too, sir.

18 (JUROR NUMBER 177 EXITS COURTROOM)

19 THE COURT: Ms. Mullen, Juror Number
20 221.

21 THE COURT: We may be out by 7:00.

22 (JUROR NUMBER 221 ENTERS COURTROOM)

23 THE COURT: Hi, Ms. Mullen. How are
24 you?

25 JUROR NUMBER 221: I'm good. How are

1 you?

2 THE COURT: Fine. Thank you for
3 your patience. I know it's late and I
4 apologize for keeping you so long, but the
5 process takes some time and I thank you for
6 your endurance and understanding. We won't
7 take much longer.

8 We want to continue the process that
9 we started on Friday. By that, I mean that I
10 have some questions that I need to ask of you
11 and the attorneys may have some questions.
12 Just as you noted on Friday, there really are
13 no correct answers to any of these questions.
14 All that we ask is that you be truthful and
15 candid in your responses and I am confident
16 that you will do that and that you completely
17 answer the questions. Will you do that?

18 JUROR NUMBER 221: Yes.

19 THE COURT: Please understand that
20 we're not here to challenge any belief that you
21 may have or any philosophies that you may have,
22 nor are we here to invade your privacy. This
23 whole process is to help all of us, you
24 included, to determine whether you can be a
25 fair and impartial juror. Okay?

1 JUROR NUMBER 221: Yes, sir.

2 THE COURT: I would remind you, Ms.

3 Mullen, that you are still under oath.

4 JUROR NUMBER 221: I understand.

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. Would you state your full name for the
8 record, please?

9 A. Susan Marie Mullen.

10 Q. Okay. Ms. Mullen, since we were together
11 on Friday, have you spoken with anyone or
12 permitted anyone to talk about this case or
13 talk to you about serving on this case?

14 A. No, I have not.

15 Q. Have you watched any news programs or read
16 any news accounts of this case?

17 A. No, I have not.

18 Q. Friday we mentioned a number of names of
19 persons to ascertain whether you were related
20 to any of them. I failed to mention two names
21 that I need to ask you about. Are you related
22 by blood or marriage, have any business
23 dealings with or socially or casually
24 acquainted with or have any dealings with Jeff
25 Osborne or Matt Casey?

1 A. No, sir.

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

5 A. Um-humm.

6 Q. Which type most accurately describes you?

7 A. Number three.

8 Q. Okay. Number three is basically the juror
9 that in certain circumstances could impose a
10 death sentence and in certain circumstances
11 would impose a life imprisonment without the
12 possibility of parole but they don't know which
13 one it would be because they'd have to hear all
14 the facts and circumstances first; correct?

15 A. Correct.

16 Q. You filled out this questionnaire, and I
17 thank you for that, that answered a number of
18 questions. One stated that you had a brother
19 that was murdered, is that correct?

20 A. Yes.

21 Q. I need to ask you and I don't believe that
22 you came forward, or did you come forward --
23 you did come forward in response to concerning
24 any ---

25 A. I did, (affirmative nod).

1 Q. As I recall, you said that you would not
2 be unduly influenced by that; is that correct?

3 Self-defense

4 A. No. Correct.

5 Q. And that means that you could make a
6 commitment that you'd make this decision based
7 on the facts in this case; is that correct?

8 A. Correct.

9 Q. I just wanted to verify that part. And,
10 secondly, you said "I do not believe in the
11 death penalty" in answer to the question of
12 what was your opinion. "Life in prison without
13 parole is a better solution." That's fine.
14 But it is my understanding that notwithstanding
15 that opinion that it is your statement here
16 today that in certain circumstances you could
17 vote to impose a death sentence notwithstanding
18 that opinion.

19 A. In certain circumstances, yes.

20 Q. I understand that.

21 A. (Affirmative nod).

22 Q. And it would depend on those
23 circumstances?

24 A. Exactly, (affirmative nod).

25 Q. Let's talk about that situation that that

1 sheet represents because obviously now the jury
2 is going to have to consider the sentence to be
3 imposed. As you will recall, this is a case
4 where -- in which a jury is going to be
5 empaneled and it is not something that is the
6 norm in this state, because normally a jury
7 does not participate in the sentence in a
8 murder case. Do you understand that?

9 A. (No verbal response).

10 Q. In this case, this imaginary case here
11 where we're talking about you being the type
12 three juror, that jury -- we would be at this
13 point -- remember, I said that there could be a
14 first phase and could be a second phase?

15 A. (Affirmative nod).

16 Q. Well, in that particular case on that
17 sheet, you will have completed the first phase.
18 That means that you will have heard, you would
19 have been on a jury that has heard all the
20 evidence about a murder and you will have
21 concluded that the person who was charged by
22 the State -- you would have been instructed to
23 evaluate the evidence, you would have been
24 persuaded that the State had met its burden of
25 proof and established each element of the crime

1 of murder and returned a verdict of guilty of
2 murder. Do you understand that?

3 A. Yes.

4 Q. Because you had returned that verdict, now
5 you would be moving into that second phase
6 where the sentence would be determined by that
7 jury. Do you understand that?

8 A. Yes.

9 Q. What you would have said in the first
10 phase is that based on the evidence surrounding
11 the crime and only the crime, that's all that
12 you would have heard about, of what was
13 alleged, that the State would have had to have
14 proved, you would have found that the person
15 who was accused of committing this offense,
16 number one, the State had the right person, no
17 question about that, beyond a reasonable doubt,
18 and that that person had committed a -- had
19 killed someone with malice -- in other words,
20 they intended to do it, it wasn't a mistake,
21 they weren't provoked, that wasn't anything to
22 make it manslaughter or to lessen the murder
23 offense, it wasn't self-defense, wasn't an
24 accident, it was something that -- they were
25 motivated by evil intent, malice, it was a

1 malicious killing. Do you understand that?

2 A. Yes.

3 Q. Now we would be talking about the
4 appropriate sentence. As I understand, your
5 position would be, notwithstanding your own
6 personal feelings, you would be open to
7 considering all the evidence as to what would
8 be pertinent to determining that sentence and
9 then you would have to hear it all before you
10 could make a decision of what the appropriate
11 sentence would be. Is that correct?

12 A. Correct.

13 Q. All right. That's important for a number
14 of reasons. First of all, it would be
15 consistent with the law and your decision must
16 be consistent with the law and the facts. Do
17 you understand that?

18 A. Yes, I do.

19 Q. If you were on the jury?

20 A. (Affirmative nod).

21 Q. But, secondly, because it's not normal,
22 it's not the norm because in this state what
23 generally happens is that the jury decides
24 whether the State has met its burden of proof;
25 that is, it considers the evidence about the

1 crime but if they return a conviction the jury
2 is not going to participate in sentencing, the
3 judge would sentence them. It's only in
4 limited circumstances where the jury is
5 involved in the sentence. Okay? That's the
6 norm.

7 A. Okay.

8 Q. In that situation, the maximum sentence
9 that typically can be imposed by the court is
10 life imprisonment without the possibility of
11 parole. There is a lesser sentence than even
12 that that the court can consider imposing if it
13 chooses to, but the court can't even impose the
14 death sentence. Do you understand that?

15 A. Yes, sir.

16 Q. Okay. Therefore, when we start this
17 proceeding, one aspect of this second phase is
18 that in order for the State to have you as a
19 member of the jury to consider a death
20 sentence, they have to first establish beyond
21 a reasonable doubt the existence of some
22 aggravating circumstances, as the law provides.
23 There are a number of them. By way of example,
24 such as the killing of a police officer, the
25 killing of a child. If the jury in that

1 situation found beyond a reasonable doubt that
2 was done, then that jury would be entitled to
3 consider a death sentence, but not until they
4 found that beyond a reasonable doubt because
5 the law says if the jury does not find beyond a
6 reasonable doubt the existence of some
7 aggravating circumstances, you can't impose a
8 death sentence, you have to impose life without
9 parole. Would you have any problem following
10 that instruction?

11 A. No, sir.

12 Q. Now, an aggravating circumstance would be
13 defined, and that is a circumstance that makes
14 the crime worse than a typical murder; do you
15 understand that?

16 A. (Affirmative nod).

17 Q. In addition to that, you'd also hear some
18 other evidence that a jury would want to
19 consider in deciding to make a decision of what
20 the appropriate evidence -- that you would not
21 have heard in the first phase, none of this
22 would you have heard in the first phase. Do
23 you understand that?

24 A. Yes, sir.

25 Q. Because the first phase is limited

1 strictly to whether or not that crime was
2 committed by that individual and the State has
3 to prove that.

4 Now, we're in second phase where that
5 becomes evidence that is pertinent to the
6 jury's decision. Do you understand that?

7 A. Yes, sir.

8 Q. Some of that evidence may be mitigating
9 circumstances. Those are circumstances, which
10 some are provided by statute, some are non-
11 statutory, meaning that the law -- meaning that
12 the legislature has passed several statute
13 saying that 'these are mitigating circumstances
14 in this type of case' and some that aren't even
15 -- that the jury may consider that aren't even
16 statutorily provided. What those are, are
17 matters that a jury would be instructed to
18 consider which may lessen the culpability or
19 the seriousness of that murder. A lot of them
20 don't even deal with the crime itself, such as
21 what happened in this person's childhood; what
22 sort of things occurred to them, mental health
23 issues that may have occurred in their life
24 that may have some influence or affect how they
25 acted or didn't act that would not be insanity

1 but would have something that a jury may want
2 to consider and should consider before making a
3 determination.

4 Part of the instruction would be that you
5 would be required if those circumstances are
6 present in the evidence to give meaningful
7 consideration to those mitigating circumstances
8 before deciding on a sentence. Would you be
9 able to do that, honor the instruction?

10 A. Yes, sir.

11 Q. And you would do that?

12 A. Yes.

13 Q. Correct?

14 A. (Affirmative nod).

15 Q. In criminal disputes, the person accused
16 of criminal offenses isn't required to prove or
17 disprove anything, as I indicated to you on
18 Friday. The State would have no obligation --
19 the State is the only part that has any burden.
20 That applies in this situation that we're
21 talking about on your sheet, in the first phase
22 or the second phase. That means the penalty
23 phase, the defendant does not have to present
24 or explain anything. He doesn't have the duty
25 to present any evidence for your consideration

1 and I would instruct you that you could not use
2 that against him in any way. Would you have
3 any problem following that instruction?

4 A. No, sir.

5 Q. Therefore -- there may not be any
6 mitigating circumstances that you could
7 consider, but you wouldn't hold that against
8 the defendant? Do you understand that?

9 A. Yes.

10 Q. And you would not, is that correct?

11 A. (Affirmative nod). No, sir, I would not.

12 Q. That is important because, again, it's
13 part of the law but its also important because
14 in addition to all of these things that we have
15 talked about, now the jury's concluded that an
16 aggravating circumstance exists and, therefore,
17 the death penalty is an option. Okay?

18 A. (Affirmative nod).

19 Q. Now it is a potential sentence that the
20 jury may consider.

21 A. (Affirmative nod).

22 Q. I would instruct you that first of all --
23 if you found beyond a reasonable doubt an
24 aggravating circumstance, the jury has the
25 right to consider the death sentence but

1 they're not required to impose a death
2 sentence.

3 Nobody is going to tell you, the court is
4 not going to tell you that you must bring back
5 -- the court is not going to tell you that you
6 must bring back a death sentence if such and
7 such is present, because that's your sole
8 decision. Do you understand that?

9 A. Yes, sir.

10 Q. I would also instruct you that in
11 considering this, whether a death sentence or
12 life without parole without the possibility of
13 parole, the jury has the right -- even though
14 they could bring back a death sentence -- to
15 bring back life without the possibility of
16 parole for no reason whatsoever. It's just
17 your right to choose to do that if you choose
18 to do that. Do you understand that?

19 A. Yes, sir.

20 Q. And you could give consideration to that
21 aspect of the charge as well before you make a
22 determination as to what would be the
23 appropriate sentence; is that correct?

24 A. Yes, sir.

25 Q. And I understand, in that setting after

1 hearing all of the evidence and receiving the
2 instruction that we talked about, it is my
3 understanding that you as a type three juror
4 would then be able to talk with the jury,
5 evaluate the evidence, decide what you believe
6 to be the truth, then take the law and apply it
7 fairly and impartially to those facts and reach
8 a decision. Is that correct?

9 A. Yes, it is.

10 Q. And that decision, in that setting that
11 we're talking about on that sheet, could be a
12 death sentence or it could be life imprisonment
13 without the possibility of parole? It just
14 would depend on the circumstances that have
15 been established to exist, all of those factors
16 that we have talked about; is that correct?

17 A. Correct.

18 Q. And you don't have any predetermination --
19 or predecision -- don't have your mind made up
20 as to one way or the other, is that correct?

21 A. No, sir, I do not.

22 Q. All right. Let's talk now and focus for
23 just a few moments on this particular case. As
24 I mentioned to you, Mr. Dickerson has been
25 accused of several criminal offenses. He's

1 innocent, as we discussed. That's -- that law
2 applies to him and everybody charged with
3 criminal offenses. You have no problem
4 applying that, as I understand it; is that
5 correct?

6 A. Correct.

7 Q. And you understand that he doesn't have
8 any burden of proof either, because people
9 accused of criminal offense, such as we just
10 talked about, have no burden of proof and that
11 applies to him, too; is that correct?

12 A. Correct.

13 Q. And you were on the jury you wouldn't
14 expect him to prove anything or disprove
15 whatsoever. Is that true?

16 A. Correct.

17 Q. In fact, I would instruct you that if Mr.
18 Dickerson chose not to offer any evidence,
19 chose not to even testify, the jury could not
20 consider that against him in any way and you
21 would honor that. Is that correct?

22 A. Correct.

23 Q. And there's nothing that you've heard
24 about this case that would give us -- thus far
25 that would give you any concern about your

1 ability at the appropriate time, when directed
2 by the court, to evaluate the evidence, to
3 consider the evidence, to decide what you
4 believe to be the truth and then make a
5 decision to find the true facts of the dispute;
6 then, once deciding those facts, taking the law
7 as I gave it to you and applying that law
8 fairly and impartially to those facts. Is that
9 true?

10 A. That's true.

11 Q. And, one last question. In applying the
12 law and accepting it, you understand that we
13 are two separate judges working together. That
14 is the beauty of the system. I don't have
15 anything to do with the facts and you don't
16 have anything to do with the law. If in
17 receiving the law and listening to the law you
18 were to hear some law that would cause you to
19 think, 'Well, that's not what I thought it was'
20 or 'I don't agree with that principle of law',
21 that's not consistent with my beliefs', or 'I
22 think the law ought to be changed' or some
23 other similar feeling, the oath that you took
24 says "I promise you, as well, that if I should
25 have those feelings..." -- and I'm not saying

1 that you will, but if you did you would also
2 promise to set those feelings aside and not be
3 influenced at all by that, but rather take the
4 law as I give it to you. You could honor that,
5 as well?

6 A. Yes, sir.

7 THE COURT: Thank you. Please
8 answer any questions that the attorneys may
9 have.

10 MR. BLOOM: May it please the court.

11 VOIR DIRE EXAMINATION

12 BY MR. BLOOM:

13 Q. Ms. Mullen, good evening, ma'am. My name
14 is Jeff Bloom and along with Andrew Carroll, we
15 represent William Dickerson. I just have a few
16 followup questions from what Judge Dennis asked
17 you.

18 I apologize in advance but I need to ask
19 you first -- you've had a very unique
20 experience, being the member of a victim's
21 family.

22 A. (Affirmative nod).

23 Q. If I could just ask you a few questions on
24 that. Was that in this state that your
25 brother's case occurred?

1 A. Yes, it was.

2 Q. Charleston County or ---

3 A. No, he was murdered outside of Shaw Air
4 Force Base.

5 Q. Was it a state or federal case?

6 A. State.

7 Q. And was there a trial or did the person
8 plead guilty?

9 A. Yes -- no, there was a trial.

10 Q. Was it a death penalty trial?

11 A. No, at the time that this went down they
12 didn't have the death penalty. He got life in
13 prison.

14 Q. Is it life without the possibility of
15 parole?

16 A. No.

17 Q. I ask that because I know the law has
18 changed.

19 A. (Affirmative nod).

20 Q. Judge Dennis, of course, has talked about
21 life without parole.

22 A. (Affirmative nod).

23 Q. Do you understand that since that period
24 of time the law has changed so that life really
25 does mean life without parole?

1 A. Yes, I do.

2 Q. Given that very tragic and profound
3 experience, has that affected your views since
4 that time to today?

5 A. In what regard?

6 Q. Pardon me? In terms of life without
7 parole or the death penalty?

8 A. When it first went down, I was only twelve
9 years old. Up until somewhere in my thirties,
10 yeah, I thought that if you did something like
11 that you should get the death penalty; but,
12 that was revenge. Since I've gotten older,
13 no. I've matured and I don't feel that way any
14 more.

15 Q. Thank you. You can understand why I kind
16 of have to have this conversation with you?

17 A. I understand.

18 Q. I apologize in that regard. In that
19 regard, -- well, let me ask you next, you have
20 had jury duty before, in a civil case?

21 A. Yeah, but it -- I mean, we got called in
22 and there weren't any cases that week. They
23 didn't -- they canceled the jury, so I just
24 went in and sat for a couple of hours and left.

25 Q. Okay. Did the jury actually render a

1 verdict in that case?

2 A. There was no case. Literally, we had no
3 cases.

4 Q. I see. Okay. Now, -- so you kind of know
5 the routine, but this is a little different,
6 coming in for this experience?

7 A. Yeah.

8 Q. You can understand why we have to ask you
9 a lot of these questions. Thank you for
10 letting us intrude on you.

11 A. (No verbal response).

12 Q. I just have a few remaining questions.
13 You understood Judge Dennis to tell you that
14 the law never requires the death penalty, when
15 the jury is trying to decide that, against life
16 without parole?

17 A. Yeah.

18 Q. And Judge Dennis would never order a jury
19 to find a death sentence?

20 A. Yes.

21 Q. After hearing all the evidence and the
22 circumstances, it is always up to each
23 individual juror after they've considered the
24 evidence and discussed it among themselves. Do
25 you understand that?

1 , A. Yes, sir.

2 Q. In fact, a juror can decide, as Judge
3 Dennis told you, to give life for any reason or
4 for no reason, for a simple act of mercy. You
5 know that?

6 A. Yes.

7 Q. And if you were on such a jury after
8 you've heard all the evidence, all the
9 circumstances, Judge Dennis' instructions to
10 you on the law, after you've discussed it with
11 all your fellow jurors, each juror makes what
12 the law calls and requires an individualized,
13 reasoned moral judgment. Can you make that for
14 yourself in your heart of hearts?

15 A. Yes.

16 Q. Once you make that individualized and
17 reasoned moral judgment and you've discussed it
18 with your fellow jurors and heard everything,
19 if eleven jurors are voting one way and you're
20 voting another way, and you're confident in
21 your heart of hearts that you've made the right
22 individualized and moral judgment, can you
23 stand to that?

24 A. Yes.

25 Q. Okay. You're not the type of person who

1 is going to say, 'You know what? It's dinner
2 time, I'm hungry, I'm going to go along to get
3 along and give up my vote.'

4 A. (Negative gesture).

5 Q. You're shaking your head 'no', the court
6 reporter has to ---

7 A. Oh, I'm sorry. "No."

8 Q. All right. You didn't strike me as that
9 person but you understand why I have to ask?

10 A. Yes, I do.

11 Q. You would ask those other jurors to
12 respect your vote?

13 A. Yes.

14 Q. Just as you would respect theirs?

15 A. Yes.

16 MR. BLOOM: Thank you very much for
17 your time.

18 THE COURT: Solicitor?

19 VOIR DIRE EXAMINATION

20 BY SOLICITOR WILSON:

21 Q. Hey, Ms. Mullen. I'm Scarlet Wilson, I'm
22 the Solicitor here. This is Bruce Durant and
23 Rutledge Durant and we're the prosecutors in
24 the case, so we will be the ones presenting
25 evidence once we get started.

1 A. Hi.

2 Q. I wanted to follow up on some of the
3 answers that you've given and -- also, we got a
4 copy of your questionnaire and I thank you for
5 filling that out.

6 A. (Affirmative nod).

7 Q. I want to make sure that nobody is trying
8 to change your mind or to put words in your
9 mouth. If I have something mixed up,
10 straighten me out because I'm kind of taking
11 answers from different questions and merging
12 them into one. In your questionnaire, you
13 wrote that you do not believe in the death
14 penalty and then here today you've said that
15 you could vote for death in certain
16 circumstances.

17 A. (Affirmative nod).

18 Q. If you could, just explain to us how if
19 you don't believe in it that you still would be
20 able to give the death penalty?

21 A. There are certain acts, certain things
22 that people do that even though I don't believe
23 in the death penalty I think are just so wrong,
24 so evil, and that's the only way that I can
25 describe it, that you -- you just can't say,

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1 you know.

2 Q. So it really just depends on the facts of
3 the situation?

4 A. Yes, definitely.

5 Q. And another thing, and again I don't want
6 to put words into your mouth, when you were
7 talking to Mr. Bloom about your brother's case
8 you stated that for a long time -- it sounded
9 like you wished that the death penalty would
10 have been sought or ---

11 A. Yes.

12 Q. --- given ---

13 A. Yes.

14 Q. That sometime along in your thirties that
15 you had a change of heart about that and you
16 said that was because that was "revenge" and
17 you don't feel that way now.

18 A. Right.

19 Q. Do you feel that the death penalty is
20 always about revenge?

21 A. No. No, but that is -- that's the
22 viewpoint from a victim.

23 Q. Right.

24 A. You know what I'm saying?

25 Q. Right.

1 A. If you're a toddler and somebody hits you,
2 the first thing you do is strike back. I mean,
3 that's just -- that's the way I think. You
4 know, after a while I really thought about it
5 -- you have to understand that having someone
6 that is murdered and then -- in this case he
7 was given life, but it was not life without
8 parole.

9 Q. Right.

10 A. Therefore, every two years you have to go
11 and stand before that parole board and you have
12 to tell them that, 'Hey, I'm here. I don't
13 want him out. That's not right.'

14 Q. I understand.

15 A. To go through that process, to have to --
16 it's something that I've done since my early
17 twenties. You know, after a while your thought
18 process changes and it evolves.

19 Q. I understand.

20 A. This may sound bad but I think it's more
21 benefitting to deny him rights and privileges
22 that we have and he's still alive, because he
23 can appreciate that more; to my way of
24 thinking.

25 Q. That makes sense. I hear you. I was just

1 concerned when you used the word "revenge", and
2 I think I've got what you were saying now.
3 You're saying that with respect to your
4 situation that your thoughts and feelings
5 weren't really objective because you were
6 involved?

7 A. Right.

8 Q. Okay. Now, as you've -- tell me if this
9 is accurate. It sounds like you're saying that
10 perhaps his being in prison or life without
11 parole is worse than the death penalty in some
12 ways?

13 A. In some ways, yeah, I think -- but, you
14 know, that's personal for me for what he did.
15 You know?

16 Q. Right. And when you say that it's
17 personal, you -- are you saying that sometimes
18 life without parole might not be harder than
19 the death penalty; again, that it just depends
20 on the situation?

21 A. It depends on the situation. It depends
22 upon what that person did. I mean, some people
23 do things that -- (pause) -- they don't feel
24 the same way, you know? They don't appreciate
25 that -- that freedom or that.

1 Q. I understand. Listen, I appreciate you
2 answering our questions and really thinking
3 hard about it. I know it's difficult. I'm
4 sorry about that situation with your family.
5 We certainly know how hard it is to have to go
6 up there year after year.

7 SOLICITOR WILSON: That's all that I
8 have.

9 THE COURT: Thank you, Solicitor.

10 MR. BLOOM: Anything further, Mr.
11 Bloom?

12 MR. BLOOM: Nothing further.

13 THE COURT: Ms. Mullen, thank you
14 very much. If you could step out just for a
15 moment, we will be with you momentarily.

16 (JUROR NUMBER 221 EXITS COURTROOM)

17 THE COURT: What is the State's
18 position on this juror?

19 SOLICITOR WILSON: I think she's
20 qualified.

21 MR. BLOOM: She's qualified.

22 THE COURT: I agree. I think -- I
23 must state that I was concerned about the
24 brother. I appreciate your questions because
25 you've allayed any concern I have about that.

1 I believe this lady could be a very
2 conscientious juror. She has indicated that
3 she could. Bring her in.

4 (JUROR NUMBER 221 ENTERS COURTROOM)

5 THE COURT: Thank you very much, and
6 I appreciate your patience this afternoon and
7 your endurance. You've been found to be
8 qualified to be a member of the panel from
9 which we will select our jury that will
10 ultimately decide this case.

11 That will take place Thursday morning
12 at 9:30 in this courtroom. I am going to ask
13 that you return Thursday morning by 9:30. When
14 you come back, you can take your seat in the
15 audience. We will select our jury. Please
16 understand that at that time -- once we select
17 the jury, we will be prepared to start trying
18 the case, so be prepared to stay for the day if
19 need be because we will begin the trial. I
20 shouldn't say begin the trial but will begin to
21 take testimony in this case.

22 Until then and until you have been
23 dismissed from this case, please remember that
24 you still are not at liberty to discuss this
25 case with anyone or permit anyone to talk with

1 you about it. Also, please continue not to
2 watch any news programs about it or read any
3 news accounts. Have a great day and we'll see
4 you Thursday morning.

5 Have a good evening.

6 (JUROR NUMBER 221 EXISTS COURTROOM)

7 THE COURT: Mr. Smith, Number 289.

8 (JUROR NUMBER 289 ENTERS COURTROOM)

9 THE COURT: Mr. Smith, good evening
10 to you, sir. We appreciate your patience.
11 There's no way to anticipate how long these
12 things take and we apologize that it has taken
13 so long. We appreciate your involvement and
14 your endurance through the process and we won't
15 keep you much longer.

16 If you will sit and pull yourself up
17 so that you can speak into that mic
18 comfortably.

19 We want to continue the process that
20 we started on Friday. That is, we're going to
21 ask you some questions concerning this case and
22 other things that really is designed to help
23 you, and to help us, decide whether you can be
24 a fair and impartial juror in this matter with
25 us.

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1 There are really no correct answers to
2 any of these questions. We also are not here
3 to change your mind about how you feel about
4 certain things, any philosophies that you have.
5 I don't want you to feel like you have to
6 change yourself for any reason whatsoever,
7 because you are entitled to those opinions and
8 beliefs. All that we ask is that you be candid
9 and truthful in responding to questions and
10 completely answer the questions. Can we count
11 on you to do that, sir?

12 JUROR NUMBER 289: Yes, sir.

13 THE COURT: I would remind you that
14 you're still under oath in this matter.

15 JUROR NUMBER 289: Yes, sir.

16 DAMON R. SMITH, being duly sworn
17 to tell the truth, the whole truth and nothing
18 but the truth, testified, as follows:

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. Mr. Smith, since we were last together,
22 have you talked with anyone or allowed anybody
23 to talk with you or talk about this case in
24 your presence?

25 A. No, sir.

1 Q. Have you read any newspaper articles or
2 watched any news programs about the case?

3 A. No, sir.

4 Q. I mentioned a number of names on Friday
5 and asked you whether you had any connection or
6 relation to them. I failed to mentioned two
7 that I need to ask you about. Are you related
8 by blood or marriage, have any business
9 dealings with or socially or casually
10 acquainted with or have any dealings with Jeff
11 Osborne or Matt Casey?

12 A. Not to my knowledge, sir.

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

16 A. I have.

17 Q. Which type most accurately describes you?

18 A. (Pause) -- in all fairness, I have to say
19 type number three.

20 Q. Number three?

21 A. (Affirmative nod).

22 Q. Basically that's the type of juror who
23 when presented with the situation of having to
24 decide the penalty for murder -- you're saying
25 that 'I don't really have any idea until I've

1 heard all the evidence, all of the
2 circumstances and then I would have to talk
3 about it and make a decision after being
4 instructed on the law as to which one was the
5 most appropriate.'

6 A. Well, the situation is a bit ambiguous but
7 ---

8 Q. Well, let me try to clarify it for you.

9 A. Sure.

10 Q. And you tell me whether I've -- if it is
11 still ambiguous after that.

12 A. Okay.

13 Q. The first thing concerning that sheet is
14 that -- because that would be a jury -- first
15 of all, let's talk about generally. Generally
16 in murder trials, a jury is not involved in
17 sentencing. Generally a jury is empaneled to
18 hear the guilty phase, what I've talked about
19 as the first phase that I mentioned to you on
20 Friday.

21 A. (Affirmative nod).

22 Q. They would hear the evidence concerning
23 solely whether the person accused is the person
24 who committed the offense. That's it, that's
25 all that they hear.-

1 Q. That is similar to the sheet that we have
2 in that case that we're talking about, that
3 imaginary case. You would have been on the
4 jury panel and you would have heard evidence of
5 someone being accused of murder and you would
6 have decided several things:

7 Number one, you would have decided
8 that the offense charged, the State was
9 correct, they got the person who did it, no
10 question about it.

11 Secondly, there's no question that the
12 offense committed was murder. That's the
13 killing of another with malice aforethought.
14 That means that it wasn't a mistake, wasn't any
15 self-defense, means that there wasn't some
16 provocation that would reduce it to
17 manslaughter, which is a lesser-included
18 offense. It means that after the jury
19 considered it, no ifs, ands or buts, this
20 person intended to kill someone, they did it --
21 they were motivated with evil purpose, evil
22 thoughts, malice, and they carried it out, no
23 ifs, ands or buts.

24 So that's where you are.

25 A. Okay.

1 Q. Now you're about to start the second
2 phase. The second phase is where you're going
3 to hear evidence about the appropriate
4 sentence, because -- that's for lots of
5 reasons:

6 Number one, the jury has to hear the
7 evidence to consider in fashioning a sentence.

8 But, more important than that even,
9 before a jury can even consider a death
10 sentence, the State has to prove beyond a
11 reasonable doubt some aggravating circumstance.
12 The law in this State is that it is in very
13 limited situations where the death sentence may
14 be imposed.

15 Normally in a murder trial once the jury
16 makes the determination that you would have
17 made in that case, the judge would impose the
18 sentence. The judge has the option of imposing
19 a life without parole or some lesser amount of
20 time, but the judge has no option to impose a
21 death sentence in that setting. Okay?

22 A. Okay.

23 Q. Typically.

24 A. Okay.

25 Q. In this case, the first thing that has to

1 be decided for the jury to consider that is
2 that the jury -- the judge would instruct you,
3 after hearing all the evidence, that you have
4 to determine if the State has established, and
5 there are a number of aggravating circumstances
6 that the law provides; such as, the killing of
7 a police officer, the killing of a child and
8 there are numbers of others.

9 For that jury to consider, even consider
10 the death penalty they have to determine that
11 that had been established beyond a reasonable
12 doubt. With that, obviously you're taking into
13 consideration what you've already heard but
14 there may be some additional evidence
15 concerning that that you didn't hear in the
16 first phase. Do you understand that?

17 A. I do.

18 Q. So has the ambiguity been cleared a little
19 bit at this time?

20 A. A bit, yes, sir.

21 Q. At this point, as a type three juror, you
22 still would have no decision in your mind of
23 what the most appropriate sentence would be.
24 Would that be you?

25 A. No, sir.

1 Q. Where would you be?

2 A. I'd fall closer to the type one.

3 Q. All right. So you would be a person that
4 would say that 'I am more inclined for a death
5 sentence here.'

6 A. Given the fact that you mentioned evil,
7 malice aforethought, etc., and of course
8 depending on the specific details but I'd have
9 to be inclined more to be a type one.

10 Q. All right. Let me ask you this, given
11 what we've said, let me add this other part to
12 it and see if that clarifies anything or causes
13 you to say, 'Well, maybe that does change
14 something.' I need to give you -- you stated
15 that there was some ambiguity.

16 A. Right.

17 Q. Assuming that the jury found an
18 aggravating circumstance -- and obviously if
19 they didn't, then the only verdict that the
20 jury could return would be life without parole,
21 because they would have to find any aggravating
22 circumstance. Assuming that you, in that
23 situation, would have found an aggravating
24 circumstance -- okay?

25 A. Okay.

1 Q. Now the jury now has the option, because
2 of that finding beyond a reasonable doubt, that
3 finding gave you the right now to consider it
4 -- okay?

5 A. There are a number of other things that
6 you would be asked to consider, other factors
7 that may be offered for you to consider in what
8 would be an appropriate sentence -- mitigating
9 circumstances may be present in the record. I
10 would instruct you that if they are then you
11 must give meaningful consideration to
12 mitigating circumstances; those, some are
13 statutory and some are nonstatutory, such as
14 what was the person's childhood, did they have
15 certain things happen to them, did they suffer
16 from some addictions, were they -- did they
17 have some mental problems or emotional
18 disorders that would have affected and given
19 them some reason for why they acted the way
20 that they did. Those types of things. If they
21 were present, you would be instructed to
22 consider those before fashioning a sentence,
23 before deciding on what sentence you would
24 impose. Would you be able to do that, given
25 your general statement that you just made that

1 'I would be more inclined for a death
2 sentence'?

3 A. I would, that's a tough question to answer
4 hypothetically.

5 Q. I understand that and I appreciate that
6 but the question is, you're entitled to your
7 belief. The question is, would that belief in
8 any way hinder you from giving meaningful
9 consideration? That's the question. Only you
10 can answer that question.

11 A. Yeah -- (pause). I would love to tell you
12 one way or the other for certain, but I
13 honestly do not know until I'm presented with
14 the actual specifics. I just don't know.

15 Q. Well, let me ask you this. If at the end,
16 given the choice between life and the death
17 sentence, would you be able to in some
18 circumstances impose a life without parole when
19 somebody has been convicted of a malicious
20 murder?

21 A. I'd have to assume that it's possible,
22 yes.

23 Q. Okay.

24 THE COURT: All right. I am going
25 to ask you to answer any questions that the

1 attorneys may have. I may have some followup
2 questions after they finish. Proceed,
3 Solicitor.

4 VOIR DIRE EXAMINATION

5 BY SOLICITOR WILSON:

6 Q. Mr. Smith, I'm Scarlet Wilson, I'm the
7 Solicitor here. This is Bruce Durant and
8 Rutledge Durant and they both are prosecutors
9 in my office, as well.

10 I want to ask you some followup questions
11 based on your questionnaire and based on your
12 conversation with Judge Dennis. Again, no
13 right or wrong answers. We're just trying to
14 figure out where ---

15 A. I understand. Sure.

16 Q. I'm sure you've never been questioned in
17 this much detail about this topic.

18 A. No. No, I haven't.

19 Q. In your questionnaire, it sounded like you
20 have some pretty strong feelings. You said
21 regarding the death penalty, "I'm for it.
22 Personally, I think some individuals after
23 being found guilty should be marched out back
24 and summarily shot."

25 A. Yes, ma'am.

1 Q. So I'm taking that to mean that you find
2 yourself leaning towards the death penalty?

3 A. I do.

4 Q. Under the law, as Judge Dennis was telling
5 you, it's not about whether you're a type one,
6 two or three or whether or not you believe in
7 the death penalty, the key question is whether
8 or not you can take those beliefs, set them
9 aside and do what the Judge tells you to do.
10 That's where we are. Do you think that you
11 could do that?

12 A. Yeah, I can. As I indicated to the Judge,
13 it's hard to say until I'm faced with the
14 actual process.

15 Q. Okay. Well, let's kind of walk through
16 it. You understand that in South Carolina we
17 don't have different degrees of murder like
18 other places? We have murder, which is -- as
19 the Judge was saying -- a malicious killing
20 with intent, evil, malicious, you name it.

21 So if someone has been convicted of
22 murder, that's what we are talking about. We
23 aren't talking about an accident, we aren't
24 talking about some sort of legal provocation
25 situation. We're not talking about self-

1 defense. None of that. Okay?

2 So to even get to the death penalty, life
3 without parole phase, someone has to be
4 convicted of something that bad.

5 A. That's right.

6 Q. And that's when -- the Judge will instruct
7 you, first of all, that that alone isn't enough
8 for the death penalty under our law. Can you
9 accept that?

10 A. Sure.

11 Q. You don't have an issue with that?

12 A. The fact that someone has been accused of
13 a ---

14 Q. That someone has now been convicted ---

15 A. Someone has now been convicted of murder
16 and that alone is not enough?

17 Q. Right.

18 A. Yes.

19 Q. You could accept that?

20 A. Yes.

21 Q. The next thing that would happen, a few
22 things that would happen in the next phase --
23 but the next thing would be that the State
24 would be required to prove something beyond
25 that murder, called aggravating circumstances.

1 We have to prove, again beyond a reasonable
2 doubt, an aggravating circumstance. The Judge
3 would tell you that you couldn't make up your
4 mind until we had done that.

5 A. Okay.

6 Q. He would tell you to wait. Could you wait
7 and see if we had done that, if we had proven
8 that aggravating circumstance beyond a
9 reasonable doubt?

10 A. Yes.

11 Q. Now, only then, if the jury as a whole had
12 found beyond a reasonable doubt that we'd
13 proven that aggravating circumstance would you
14 be able to consider the death penalty. But the
15 Judge would also tell you that -- again, as he
16 told you earlier, that even at that point you
17 couldn't just stop. You'd have to keep an open
18 mind and meaningfully consider any mitigation.
19 That would be anything about the defendant or
20 anything about the crime that you hadn't heard,
21 possibly, in the prior phase, anything that
22 might shed light on why this defendant acted
23 the way that he did or why the crime occurred
24 the way that it did. You would have to give
25 meaningful consideration to that. Do you think

1 you could set aside your beliefs and give it
2 that meaningful consideration?

3 A. Can you explain to me why there would be
4 facts that would not come to light in the
5 initial part, that would only come to light
6 after the fact?

7 THE COURT: Let me answer that.
8 Because that's the way that the process works.
9 The process -- the first part, we're dealing
10 with one issue because, as I stated, this is
11 not the norm. The norm is that the jury is
12 never involved, so it's just something that the
13 court would hear.

14 JUROR NUMBER 289: Okay.

15 THE COURT: That's just the way it
16 is. The first part is limited, it's
17 restricted, there are rules that apply and
18 that's -- it's not relevant evidence for the
19 first part. It only becomes relevant when that
20 becomes ---

21 JUROR NUMBER 289: I understand.

22 THE COURT: Excuse me, Solicitor,
23 for interrupting you.

24 EXAMINATION CONTINUED

25 BY SOLICITOR WILSON:

1 Q. That is what the Judge would do
2 throughout, tell you what the law is and maybe
3 -- sometimes life is that way, usually not, but
4 that's how it is and that's what you've got to
5 do. So the question would be whether or not
6 seriously you could give meaningful
7 consideration to that, listen to it, not just
8 give it lip service, not just give the answer
9 that you think we want to hear, but can you
10 listen to it and consider it before making your
11 decision?

12 A. I would love to be able to tell you
13 definitely 'yes' or 'no', I'd like to say
14 'yes.'

15 Q. Okay.

16 A. But I can't guarantee anything until I ---

17 Q. Until you hear it?

18 A. (Affirmative nod), until I have it sitting
19 there. The good person in me, the person who
20 stands up and wants to do the right thing,
21 absolutely wants to say yes but I do have
22 fairly strong opinions about some things and I
23 don't want that to ---

24 Q. I think that's fair. I appreciate that.

25 A. --- color my ---

1 Q. Well, I'm happy that it didn't color it
2 enough that you didn't tell us the story, that
3 you told us a story, so -- that's a good thing.
4 All right? Thank you.

5 SOLICITOR WILSON: Thank you.

6 THE COURT: I am going to ask -- Mr.
7 Smith, I am going to ask that you step out just
8 for a few moments. We will be with you in just
9 a few moments.

10 (JUROR NUMBER 289 EXITS COURTROOM)

11 THE COURT: It was, and I -- I think
12 he's sincere in what he says. I honestly
13 believe that last statement is probably true,
14 how he feels. He wants so disparately to be
15 able to say, 'you know, that's what I should
16 do.' I think he'd like to think that he would
17 do it but I can't run the risk of allowing that
18 to happen.

19 SOLICITOR WILSON: I don't -- I can't
20 ---

21 THE COURT: You don't disagree with
22 that?

23 SOLICITOR WILSON: No, sir. Let's
24 ask him to come in.

25 (JUROR NUMBER 289 ENTERS COURTROOM)

1 THE COURT: Mr. Smith, as I told you
2 when we started, the beauty of this process is
3 that you have the right to believe however you
4 believe and it doesn't matter whether anybody
5 in this room agrees with you -- that's the
6 beauty of this wonderful country in which we
7 live. I respect you -- as the Solicitor
8 stated, I respect you for being honest and very
9 candid. Thank you for that. You are, again,
10 an example of why I believe so strongly in this
11 process. You've honored it in every respect.
12 I am not going to put you in that position, I
13 am going to excuse you from participation in
14 this. I heard what you said and it was obvious
15 that you would love to answer the question, but
16 I appreciate the fact that you said 'I can't.'
17 Rather than to run the risk -- you may be able
18 to, but I am not going to put you through that.
19 I am going to excuse you from any further
20 participation.

21 I appreciate very much your
22 participation and your commitment to the
23 process, sir. You are now excused from any
24 further jury service. Good luck to you, sir.

25 JUROR NUMBER 289: Thank you, Your

1 Honor.

2 (JUROR NUMBER 289 EXITS COURTROOM)

3 THE COURT: All right, the last one,
4 Ms. Grant, Number 364.

5 (JUROR NUMBER 364 ENTERS COURTROOM)

6 THE COURT: Ready to go home, Ms.
7 Grant?

8 JUROR NUMBER 364: (Affirmative nod).

9 THE COURT: We're almost there.
10 Thank you so much for being patient. I'm sorry
11 -- somebody has got to be the last person in
12 the room and I'm sorry you had to endure that
13 but thank you very much, ma'am. We appreciate
14 it. We won't keep you much longer.

15 There are some questions that we need
16 to ask you. It really is a continuation of
17 what we started on Friday when we started
18 talking about certain things and I asked all of
19 you when you were together a number of
20 questions. I am going to continue to ask you
21 some questions and the attorneys may also have
22 some questions for you. Okay?

23 JUROR NUMBER 364: (Affirmative nod).

24 THE COURT: I need for you to
25 answer, please, ma'am, with words. Okay?

1 JUROR NUMBER 364: Okay.

2 THE COURT: Because this lady (court
3 reporter) seated between us is taking down
4 everything that I am saying and that you are
5 saying. Okay.

6 JUROR NUMBER 364: Okay.

7 THE COURT: Let me remind you that
8 you're still under oath and tell you that we
9 only ask that you truthfully respond to the
10 questions and that you answer them fully. Are
11 you willing to do that, ma'am?

12 JUROR NUMBER 364: Yes, sir.

13 MARILYN GRANT, being duly sworn to
14 tell the truth, the whole truth and nothing but
15 the truth, testified, as follows:

16 VOIR DIRE EXAMINATION

17 BY THE COURT:

18 Q. Ms. Grant, since we were together on
19 Friday, have you talked with anyone about this
20 case or allowed anybody to talk with you about
21 this case?

22 A. No, sir.

23 Q. Have you watched any news programs or read
24 any newspaper articles about this case?

25 A. No, sir.

1 Q. I failed to mention two names that I need
2 to ask you about. Are you related by blood or
3 marriage, have any business dealings with or
4 socially or casually acquainted with or have
5 any dealings with Jeff Osborne or Matt Casey?

6 A. No, sir.

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

10 A. Yes, sir.

11 Q. Which type best describes you?

12 A. Type three.

13 Q. That means that you are a person that you
14 are -- if those jurors have, on that sheet,
15 have the responsibility of deciding the
16 appropriate sentence for a murder trial, and
17 you have the option of including as a possible
18 sentence a death sentence, there are situations
19 where you could impose a death sentence and
20 there are situations where you would impose a
21 life sentence. Which one is most appropriate,
22 you don't know until you have heard all the
23 facts and circumstances; is that right?

24 A. (Affirmative nod).

25 Q. That means -- lets talk about that, where

1 we would be if you were one of those jurors.

2 Obviously that would be -- the jury would be at
3 the point where the jury would have already
4 heard the evidence about murder and they would
5 have concluded that the person they were trying
6 was the person who committed the charge (sic)
7 of murder. Do you understand that?

8 A. Yes, sir.

9 Q. And they found him guilty of murder. In
10 other words, there wasn't any question that
11 this person intended to kill somebody, that
12 they did it with malice, that they were
13 motivated by evil reasons, not for any
14 legitimate reason, no -- nothing that could
15 make it less such as manslaughter, they weren't
16 provoked into anything, they just went out and
17 killed somebody and that's what the jury
18 concluded. That they intended to do what they
19 did, that it wasn't a mistake, that it wasn't
20 accident, that it wasn't self-defense. Okay?

21 A. Okay.

22 Q. And if you're in that jury that we're
23 talking about on that sheet, you're about to
24 start the second phase where you're going to
25 hear some additional evidence, more than what

1 you heard in the first. You'll be considering
2 that, what you heard, but you're going to hear
3 some other things than what you heard in the
4 first phase. Do you understand that?

5 A. Yes, sir.

6 Q. As I understand a type three juror, at
7 that moment -- no matter -- it doesn't matter
8 that you convicted this person, found them
9 guilty of murder, you still don't know whether
10 you would impose a life sentence or a death
11 sentence; is that right?

12 A. Yes, sir.

13 Q. You would have to hear the rest of the
14 evidence, as I understand?

15 A. Yes, sir.

16 Q. One of the things that would happen in
17 that, if you were in that, the court would tell
18 you in that situation that before you could
19 even think about giving somebody a death
20 sentence that you would have to make a
21 determination from the evidence that you would
22 hear -- and the State would have to prove that,
23 the person accused of that wouldn't have to
24 prove it. Okay?

25 A. Okay.

1 Q. Because that person never has to prove
2 anything. Do you understand that?

3 A. Yes, sir.

4 Q. People accused of criminal offenses don't
5 have to prove or disprove anything, they don't
6 have to prove their innocence, do you
7 understand?

8 A. Yes, sir.

9 Q. You don't have any problem with that law,
10 do you?

11 A. No, sir.

12 Q. In order for you to consider a death
13 sentence, the judge would tell you that you've
14 first got to find that there is something that
15 causes this murder to be different.

16 "Different" meaning -- because, normally, a
17 jury doesn't impose a sentence, determine the
18 sentence in a murder case. That's only by the
19 judge who tries the case.

20 But in this circumstance the State was
21 seeking a possible death sentence, so they
22 empanel a jury and the jury is going to have to
23 decide whether the State proved to the jury,
24 first, that there was some aggravating
25 circumstance. That is something that the law

1 says makes it worse than just a typical murder.

2 To give you an example of something, the
3 law says that if someone kills a police officer
4 that the State can seek the death sentence for
5 that and if they prove that a person killed a
6 police officer then that jury may consider a
7 death sentence. Another example is if someone
8 killed a child, the State may if they chose to
9 seek the death penalty and if a jury determines
10 that was established, that a person killed a
11 child, beyond a reasonable doubt then they
12 could consider a death sentence.

13 Do you understand?

14 A. Yes, sir.

15 Q. Okay. So before you could even consider
16 that, you have to find that there was some
17 aggravating circumstance. The court would tell
18 you the various circumstances that you may
19 consider.

20 If the jury finds, 'Well, no, we're not
21 convinced that there was an aggravating
22 circumstance', then the court would say that
23 'you have to return life without parole.'

24 Would you be able to do that ---

25 A. Yes, sir.

1 Q. --- if you were on that jury?

2 A. Yes, sir.

3 Q. Okay. Assuming for a moment in that case
4 where we're talking about where you, as a type
5 three juror, the jury determined there was an
6 aggravating circumstance, that they found that
7 beyond a reasonable doubt, -- okay?

8 A. (Affirmative nod).

9 Q. Now, as I told you, now the jury can
10 consider life imprisonment without the
11 possibility of parole or they can consider the
12 death sentence. Do you understand that?

13 A. Yes, sir.

14 Q. It is my understanding that you could give
15 consideration to either of those sentences; is
16 that correct?

17 A. Yes, sir.

18 Q. There may be some circumstances where you
19 would say, 'Well, I think the death penalty is
20 most appropriate.' There may be some where you
21 may say, 'Well, I think life imprisonment is
22 the most important.' Do you understand that?

23 A. Yes, sir.

24 Q. That's true for you?

25 A. Yes, sir.

1 Q. Is that correct?

2 A. Yes, sir.

3 Q. I will tell you, if I was the judge, that
4 while you may consider it that you don't have
5 to return a death sentence. Would you have any
6 problem following that instruction?

7 A. (No response).

8 Q. In other words, it's your option. You
9 make the call. You make the decision whether
10 your want life or -- if you want to impose life
11 or death. Do you understand that?

12 A. Yes, sir.

13 Q. And you could follow that instruction, as
14 well?

15 A. Yes, sir.

16 Q. I would also tell you that in addition to
17 the aggravating circumstances and other
18 evidence that you would hear that there may be
19 something that we call mitigating
20 circumstances. Those are circumstances that
21 tend -- while the aggravating tends to make the
22 murder worse, mitigating circumstances are
23 things that seem to say 'oh, that explains
24 maybe why that person would have acted the way
25 that they did.' Such as how the person was

1 treated when they were a child, what sort of
2 emotional or mental problems that they may have
3 had, were they addicted to some drugs and under
4 the influence of those drugs at the time this
5 act was committed. Those are the types of
6 statutory mitigating and nonstatutory. If
7 those exist, I would instruct you that you have
8 to consider those -- meaningfully. That means
9 really think about them before determining what
10 sentence that you would impose. Would you be
11 able to follow that instruction?

12 A. Yes, sir.

13 Q. And you would do that?

14 A. Yes, sir.

15 Q. There may not be anything -- there may not
16 be any mitigating circumstances. I'd tell you,
17 of course, that the State has to prove -- is
18 the only part that has to prove anything. The
19 person accused of the crime doesn't have to
20 prove anything. Do you understand that?

21 A. Yes, sir.

22 Q. Okay. I would tell you that if they
23 choose not to present any evidence, whether in
24 the first phase or the second phase, it doesn't
25 matter, you still can't use that against them.

1 Would you have any trouble following that
2 instruction?

3 A. No, sir.

4 Q. So you wouldn't hold that against them,
5 that there may not be any evidence in
6 mitigation?

7 A. No, sir.

8 Q. Well, that's good because that would be
9 the law. But there is also another reason. In
10 addition to all of that that we've just talked
11 about, I would further instruct you that the
12 jury has the right, even though they could give
13 a death sentence or life imprisonment without
14 the possibility of parole, they can choose life
15 without parole for no reason whatsoever, if
16 they choose to. In other words, that's your
17 right if that's what you want to do and all of
18 them want to do that. Do you understand that?

19 A. Yes, sir.

20 Q. Would you have any problem following that?

21 A. No, sir.

22 Q. So it's my understanding then, Ms. Grant,
23 that at that point after you've heard all the
24 evidence and you've considered all the
25 evidence, including any aggravating

1 circumstances and/or any mitigating
2 circumstances, you would be able to apply your
3 common sense, your sense of logic and reasoning
4 fairly and impartially and decide what you
5 believe to be the truth?

6 A. Yes, sir.

7 Q. Then once doing that, you could take the
8 law as I gave it to you concerning the
9 potential sentence, evaluate everything and
10 decide whether you wanted to impose life
11 imprisonment without the possibility of parole
12 or a death sentence?

13 A. Yes, sir.

14 Q. And there are circumstances that you can
15 think of that would cause you to say death is
16 the best sentence in this case?

17 A. No, sir.

18 Q. There are none?

19 A. (No verbal response).

20 Q. Well, you said you could consider them.
21 You mean that you may consider them but there
22 is no time that you would impose a death
23 sentence?

24 A. Yes, sir.

25 Q. You could impose a death sentence?

1 A. Um-hummm

2 Q. So you didn't understand my question?

3 A. No, sir.

4 Q. I'm saying that -- and I'm not asking you
5 to tell me what those circumstances are. I am
6 just asking you, at that point you could
7 evaluate all the evidence and if you thought
8 the crime was bad enough to rise to the level
9 that you have in your mind that would warrant
10 you giving a death sentence, you could impose a
11 death sentence?

12 A. Oh -- yes, sir.

13 Q. If the situation was warranted?

14 A. Yes, sir.

15 Q. Likewise, even though you could impose a
16 death sentence there are times when you, in
17 looking at it, would say 'Nope, don't think the
18 death sentence is appropriate. I think life
19 imprisonment without the possibility of parole
20 is the most appropriate sentence.'

21 A. Yes, sir.

22 Q. And you could make that choice?

23 A. Yes, sir.

24 Q. And you could do that fairly and
25 impartially?

1 A. Yes, sir.

2 Q. Let's look for a moment at this particular
3 case. As I mentioned to you on Friday, Mr.
4 Dickerson of course has been accused of several
5 criminal violations. You understand that?

6 A. Um-humm.

7 Q. And we talked about him being presumed
8 innocent, and you didn't have any problem with
9 that, is that right?

10 A. Yes, sir.

11 Q. You believe in that principle of law?

12 A. Yes, sir.

13 Q. And that means that as he sits here today
14 he is innocent of these charges. Do you
15 believe that to be the case?

16 A. Yes, sir.

17 Q. And you understand that you can't change
18 that position until the State presents evidence
19 that persuades you beyond a reasonable doubt
20 that he is guilty of the offense. Do you
21 understand that?

22 A. Yes, sir.

23 Q. But if the State presents that evidence
24 and persuades you as to each of those elements,
25 would you have any problem returning a verdict

1 of guilty?

2 A. No, sir.

3 Q. Likewise, if they failed to prove one of
4 the elements required, would you have any
5 hesitancy of returning a verdict of not guilty?

6 A. No, sir.

7 Q. Whatever, you'd hold the State to its
8 burden of proof is what you're telling us?

9 A. Yes, sir.

10 Q. And you understand, just as I told you
11 about in that case that we talked about in the
12 sheet there, Mr. Dickerson has absolutely
13 nothing to prove or disprove. Do you
14 understand that?

15 A. Yes, sir.

16 Q. In fact, he doesn't have to present any
17 evidence, he doesn't even have to testify and
18 if he does not I would instruct you that you
19 wouldn't use that against him under any
20 circumstances. Would you have any problem
21 following that instruction?

22 A. No, sir.

23 Q. So it is my understanding that you could
24 be and are willing to accept the responsibility
25 at the appropriate time, when directed to do so

1 by the court, of considering the evidence,
2 applying your common sense, your sense of logic
3 and reasoning, fairly and impartially in
4 deciding what you believe to be the true facts.
5 You believe that you could do that?

6 A. Yes, sir.

7 Q. And once you decide that, you're also
8 willing to accept the law as I give it to you
9 and apply that law fairly and impartially to
10 those facts so that you would arrive at a
11 decision that would be fair to the State and to
12 Mr. Dickerson?

13 A. Yes, sir.

14 THE COURT: Thank you. Please
15 answer any questions that the attorneys may
16 have.

17 VOIR DIRE EXAMINATION

18 BY MR. BLOOM:

19 Q. Good evening, Ms. Grant. How are you
20 today?

21 A. Fine.

22 Q. Thank you for being with us. I'll try not
23 to be too long. My name is Jeff Bloom and
24 along with Andrew Carroll, we represent William
25 Dickerson. I just have a few followup

1 questions from what Judge Dennis asked you.

2 Okay?

3 A. Okay.

4 Q. If after work you and I were just chatting
5 and something came on the news on TV, or some
6 show, about the death penalty or something and
7 we got to talking about our opinions and I
8 turned to you and said, 'Gee, what is your
9 opinion about the death penalty?' What would
10 your response be?

11 A. (No verbal response).

12 Q. Or have you not given it much thought?

13 A. (No verbal response).

14 Q. I take it from your responses with Judge
15 Dennis that it would just depend on the
16 circumstances of each case, that each case
17 might be different?

18 A. Yes, sir.

19 Q. Is that how I took your responses and
20 answers to Judge Dennis?

21 A. Yes, sir.

22 Q. Same thing with life without parole, you
23 could give life without parole depending on the
24 circumstances in a situation?

25 A. Yes, sir.

1 Q. So it is not an issue that you've really
2 thought a lot about or that you've had a lot of
3 encounters about. Is that right?

4 A. (No verbal response).

5 Q. Let me -- I just have a few more things.
6 If -- did you understand Judge Dennis to say
7 that the law never requires a juror to vote for
8 the death penalty. Did you understand that?

9 A. Yes, sir.

10 Q. And the Judge would never order a juror or
11 a jury to vote for the death penalty. It's
12 always that juror's own choice given the
13 evidence. Do you understand that?

14 A. Yes, sir.

15 Q. One of the last things that I think Judge
16 Dennis told you is that a jury can give a life
17 without parole sentence for any reason or for
18 no reason, or for a simple act of mercy. You
19 understand that, don't you?

20 A. Yes, sir.

21 Q. You could follow that instruction?

22 A. Yes, sir.

23 Q. Okay. One more thing. What the law says
24 about that is that each juror's choice of
25 penalty, including life without parole, is an

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1 individualized and reasoned moral judgment.

2 Can you accept that?

3 A. Yes, sir.

4 Q. And after you'd heard all the evidence and
5 all the circumstances, listened to Judge
6 Dennis' instructions on the law and you'd
7 debated it and discussed it with your fellow
8 jurors but you'd come to your own reasoned and
9 moral judgment as the penalty, including
10 whether that was life without parole or the
11 death sentence, if eleven jurors were going one
12 way and you had made your -- after you had
13 heard all the evidence and the instruction on
14 the law and discussed it with them, if eleven
15 were going one way and you were going one way
16 all by yourself, but you'd made that moral,
17 individualized choice, in your heart of hearts
18 you had the verdict that was right for you as
19 the penalty, could you stand your ground for
20 that verdict?

21 A. Yes, sir.

22 Q. You wouldn't just give it up and say, 'You
23 know what? It's late. I know we're here late
24 but I'm hungry and I want to go home.' You
25 wouldn't just give in to go along to get along?

1 A. No.

2 Q. By that same token, you would want those
3 other jurors to respect your vote?

4 A. Yes, sir.

5 Q. And you would respect theirs?

6 A. Yes, sir.

7 MR. BLOOM: Thank you very much,
8 ma'am.

9 THE COURT: Solicitor?

10 SOLICITOR WILSON: Thank you, Your
11 Honor.

12 THE COURT: Yes, ma'am.

13 VOIR DIRE EXAMINATION

14 BY SOLICITOR WILSON:

15 Q. Ms. Grant, I'm Scarlet Wilson. How are
16 you?

17 A. I'm fine.

18 Q. I know how it feels to go last, I'm having
19 to go last here, too. This is Bruce Durant
20 and Rutledge Durant and we're the prosecutors
21 in the case, so we will be the ones presenting
22 evidence when the trial gets started. I have
23 just a few questions to ask of you. I'm sorry.
24 Do you know Denode Heyward who lives out in
25 Hollywood, too?

1 A. Yes, ma'am.

2 Q. How long have you known him?

3 A. We went to high school together.

4 Q. Did you see him here at the courthouse?

5 A. Yes, ma'am.

6 Q. Have you'all had a chance to talk since
7 you'all have been here?

8 A. No, ma'am.

9 Q. Did you'all ride in together?

10 A. No, ma'am.

11 Q. And you haven't had any discussions with
12 him about this case at all?

13 A. No, ma'am.

14 Q. Would you consider him a friend?

15 A. Yes, ma'am.

16 Q. I noticed when you filled out your
17 questionnaire -- did you send this in in
18 advance or did you have to fill this out here?
19 I can't remember.

20 A. I sent it in in advance.

21 Q. Okay. Thank you. Not everybody did, so
22 we were just getting some as we've been going
23 along. I notice that you skipped the question
24 on the death penalty. Can you tell me why you
25 skipped it?

1 A. (No verbal response).

2 Q. Did you mean to skip it?

3 A. (No verbal response).

4 Q. Well, tell me in your own words, -- you've
5 answered a lot of yes and no questions, but in
6 your words how you feel about the death penalty
7 and how you feel about life without parole.

8 A. (No verbal response).

9 Q. There are not -- this isn't like a pop
10 quiz, there are no "right" answers, I just want
11 to get your thoughts on it.

12 A. (Pause) --

13 Q. Are you okay?

14 A. (No verbal response).

15 THE COURT: Can you answer the
16 question, ma'am?

17 JUROR NUMBER 364: I haven't thought
18 a lot about it.

19 EXAMINATION CONTINUED

20 BY SOLICITOR WILSON:

21 Q. I'm just wondering how you feel about it,
22 your thoughts about it?

23 A. (No verbal response).

24 THE COURT: Do you understand the
25 question?